

1 VAN NUYS, CALIFORNIA; THURSDAY, FEBRUARY 22, 1996

2 9:20 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER)

6 (MARY LU MURPHY, OFFICIAL REPORTER)

7

8 THE COURT: OKAY. WE'RE BACK IN SESSION.

9 EVERYBODY IS HERE.

10 ANYTHING BEFORE THE JURY COMES OUT?

11 OKAY. LET'S GET THE JURY.

12 (THE JURY ENTERED THE COURTROOM

13 AND THE FOLLOWING PROCEEDINGS

14 WERE HELD:)

15

16 THE COURT: THE JURY IS BACK IN COURT.

17 GOOD MORNING, LADIES AND GENTLEMEN.

18 WE'RE READY TO RESUME WITH THE TRIAL.

19 AND WE'RE STILL IN CLOSING ARGUMENT, THE PEOPLE'S

20 OPENING ARGUMENT.

21 YOU MAY CONTINUE.

22

23 OPENING ARGUMENT (CONTINUED)

24 MR. CONN:

25 GOOD MORNING, LADIES AND GENTLEMEN.

26 I THINK AS WE BROKE YESTERDAY WE WERE

27 JUST ABOUT TO TALK ABOUT JAMIE PISARCIK. WE KNOW

28 THAT JAMIE PISARCIK IS A FORMER GIRLFRIEND OF LYLE

1 MENENDEZ, AND YOU HAVE TO ASK YOURSELF WHETHER JAMIE
2 PISARCIK HAD ANY REASON TO LIE, ANY MOTIVATION TO
3 LIE.

4 I WOULD SUBMIT TO YOU, LADIES AND
5 GENTLEMEN, THAT NO MOTIVATION TO LIE WAS EVER
6 DEMONSTRATED. SO I WOULD SUBMIT TO YOU THAT WHAT
7 JAMIE PISARCIK HAD TO SAY IN THESE PROCEEDINGS IS
8 ABSOLUTELY RELIABLE AND TRUSTWORTHY.

9 SHE TOLD US A COUPLE OF THINGS ABOUT
10 LYLE MENENDEZ BEFORE SHE GOT TO THE KEY PORTION OF
11 HER TESTIMONY.

12 FIRST SHE TOLD US A LITTLE BIT ABOUT
13 LYLE MENENDEZ' WORK HISTORY. SHE TOLD US THAT HE
14 WAS A PIZZA DELIVERY MAN. HE HAD A SHORT JOB
15 DELIVERING PIZZAS IN HIS MOTHER'S MERCEDES. HE QUIT
16 THIS JOB AFTER A COUPLE WEEKS BECAUSE HE FOUND THAT
17 PIZZA DELIVERY MEN WHO DRIVE MERCEDES DO NOT GET
18 VERY GOOD TIPS, AS ONE MIGHT EXPECT.

19 WHY IS THAT IMPORTANT? IT'S ANOTHER
20 LITTLE INSIGHT INTO LYLE MENENDEZ AND THE PROBLEM
21 THAT HE WAS EXPERIENCING IN LIVING UP TO THE
22 EXPECTATIONS OF HIS FATHER. IT SHOWS LYLE MENENDEZ
23 ESSENTIALLY IS A HOPELESS FAILURE, SOMEONE WHO HAS

24 TO RESORT TO DELIVERING PIZZAS. THAT'S HIS ENTIRE
25 WORK HISTORY.
26 I WOULD SUBMIT, LADIES AND GENTLEMEN,
27 THAT THERE IS NO EVIDENCE THAT EITHER OF THESE
28 DEFENDANTS EVER CONDUCTED THEMSELVES OR BEHAVED IN A

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1 RESPONSIBLE WAY INsofar AS HOLDING A JOB OR
2 MAINTAINING A JOB IS CONCERNED. THESE WERE TWO MEN
3 WHO VIRTUALLY RELIED UPON THE GENEROSITY OF THEIR
4 FATHER, WHO HAD NO FUTURE EXCEPT FOR THE SUPPORT OF
5 THEIR FATHER, AND THEY KNEW IT. LYLE MENENDEZ KNEW,
6 ONCE AGAIN, HE WOULD NEVER WALK IN THE SHOES OF JOSE
7 MENENDEZ.

8 WE HEARD MORE ABOUT THE MAFIA FROM JAMIE
9 PISARCIK. ONCE AGAIN, SHE WAS STILL ANOTHER WITNESS
10 WHO SPOKE ABOUT HOW LYLE MENENDEZ WENT AROUND
11 SPREADING THE STORY ABOUT HOW THE MAFIA HAD KILLED
12 HIS PARENTS. SHE DESCRIBED HOW SHE DROVE IN A
13 LIMOUSINE, WHICH SHE BELIEVED TO BE BULLET PROOF,
14 TOLD TO HER BY LYLE MENENDEZ. OF COURSE, SHE DIDN'T
15 KNOW BETTER. SHE DROVE IN WHAT SHE THOUGHT TO BE A
16 BULLET-PROOF LIMOUSINE, AND LYLE MENENDEZ HAD TOLD
17 HER THE KILLINGS WERE MAFIA-RELATED.

18 HE EXPLAINED TO HER THAT L.I.V.E.

19 ENTERTAINMENT, L-I-V-E, THE COMPANY HIS FATHER WAS
20 INVOLVED IN, HAD TIES TO PORNOGRAPHY, A BUSINESS
21 TRADITIONALLY LINKED TO ORGANIZED CRIME. AND HIS
22 FATHER HAD BEEN TRYING TO SEVER THOSE TIES. AND HE
23 SUGGESTED THAT IT WAS THOSE EFFORTS ON THE PART OF
24 HIS FATHER THAT HAD COST HIM HIS LIFE.

25 BUT THE MOST IMPORTANT ASPECT OF JAMIE
26 PISARCIK'S TESTIMONY WAS THE EFFORTS BY LYLE
27 MENENDEZ TO GET HER TO COMMIT PERJURY, CONSISTENT
28 WITH HIS EFFORTS IN REGARD TO BRIAN ESLAMINIA, TO

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1 GET HIM TO COMMIT PERJURY.

2 JAMIE PISARCIK TESTIFIED THAT LYLE
3 MENENDEZ WANTED HER TO TELL A LIE ABOUT HIS FATHER.
4 HE WANTED JAMIE PISARCIK TO FALSELY TESTIFY THAT HIS
5 FATHER HAD ATTEMPTED TO SEXUALLY ASSAULT HER. HE
6 SAID YOU CAN PREMISE THE STORY BASED UPON THE
7 INCIDENT THAT OCCURRED IN THE MOVIE, "AT CLOSE RANGE."

8 AND SHE INDICATED THAT SHE HAD SEEN THE
9 MOVIE. AND THERE WAS A SCENE THERE WHICH IS --
10 THERE'S A SEXUAL ASSAULT. WHETHER IT'S A RAPE, IT'S
11 A MATTER OF DEBATE. IT'S ESSENTIALLY THE SAME
12 THING. THERE IS SOME SORT OF A SEXUAL ASSAULT, AND
13 THAT'S WHAT LYLE MENENDEZ WANTED HER TO FALSELY

14 TESTIFY TO.

15 SO THIS IS VERY SIGNIFICANT,
16 PARTICULARLY IN LIGHT OF THE ESLAMINIA LETTER,
17 BECAUSE YOU WILL RECALL THAT IN THE ESLAMINIA LETTER
18 HE NOT ONLY WANTS MR. ESLAMINIA TO FALSELY TESTIFY
19 TO EFFORTS TO OBTAIN A HANDGUN, BUT HE WANTED BRIAN
20 ESLAMINIA TO TESTIFY THAT HE RECALLS THE MOVIE, "AT
21 CLOSE RANGE," AND THAT MR. ESLAMINIA WATCHED THE
22 MOVIE, "AT CLOSE RANGE," WITH LYLE MENENDEZ AND HIS
23 FATHER. AND HIS FATHER SAID THE MOVIE WAS
24 UNREALISTIC, BECAUSE THE FATHER WOULD HAVE KILLED
25 THE SON AS SOON AS THE TROUBLE STARTED.

26 SO YOU CAN SEE HOW LYLE MENENDEZ WAS
27 APPARENTLY IMPRESSED BY THE MOVIE, "AT CLOSE RANGE,"
28 AND HE WAS USING IT AS A BASIS FOR PERJURY IN

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1 DIFFERENT WAYS WITH DIFFERENT PEOPLE. HE WANTED
2 BRIAN ESLAMINIA TO USE THAT AS A BASIS FOR PERJURY.
3 HE WANTED JAMIE PISARCIK TO USE IT AS A BASIS FOR
4 PERJURY, AND IT TENDS TO CORROBORATE THE TESTIMONY
5 OF JAMIE PISARCIK.

6 IS IT A MERE COINCIDENCE THAT SHE SAID
7 THAT LYLE MENENDEZ ASKED HER TO DO THIS? I WOULD
8 SUBMIT IT'S NOT A MERE COINCIDENCE. IT'S BECAUSE IT

9 REALLY HAPPENED. HOW WOULD SHE KNOW THAT BRIAN
10 ESLAMINIA WOULD EVENTUALLY TURN OVER A LETTER TO THE
11 PROSECUTION INDICATING AN EFFORT ON THE PART OF LYLE
12 MENENDEZ TO PUT TOGETHER PERJURY BASED UPON THE
13 MOVIE, "AT CLOSE RANGE"? SHE WOULD HAVE NO WAY TO
14 KNOW THAT.

15 SO I WOULD SUGGEST TO YOU, LADIES AND
16 GENTLEMEN, THE FACT YOU SEE THE SAME PATTERN WITH
17 REGARDS TO THESE TWO PARTICULAR WITNESSES CONCERNING
18 THE MOVIE, "AT CLOSE RANGE," GIVES INDEPENDENT
19 VALIDITY TO WHAT JAMIE PISARCIK IS SAYING, ASIDE
20 FROM THE FACT SHE HAS NO MOTIVATION TO LIE
21 WHATSOEVER. SO SHE'S TOLD THE TRUTH.

22 THEN WE GET TO THE TESTIMONY OF BRIAN
23 ANDERSEN. BRIAN ANDERSEN, YOU WILL RECALL, IS AN
24 UNCLE OF THE DEFENDANTS, AND HE WAS CALLED TO GIVE A
25 LITTLE BACKGROUND, JUST LIKE CARLOS MENENDEZ, OR
26 CARLOS BARALT, WAS CALLED TO GIVE A LITTLE
27 BACKGROUND INTO THE NATURE OF THE DISPUTES THAT WERE
28 OCCURRING IN THE MENENDEZ HOME, BECAUSE YOU WILL

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1 RECALL AN INCIDENT THAT TOOK PLACE IN AUGUST OF
2 1989, JUST BEFORE LEAVING FOR THE TENNIS MATCH IN
3 KALAMAZOO.

4 THIS INCIDENT TOOK PLACE IN ILLINOIS, IN
5 HIS HOME, JUST WITHIN A COUPLE OF WEEKS OF THE
6 KILLING. IT WAS AT THAT TIME THAT HE SAW A DISPUTE
7 BETWEEN KITTY MENENDEZ AND HER SON, ERIK. AND
8 BASICALLY A CAMCORDER HAD BEEN PURCHASED AND THE
9 CAMCORDER HAD BEEN LEFT ON THE PLANE AND THAT WAS
10 WHAT INSTIGATED A CONVERSATION BETWEEN KITTY
11 MENENDEZ AND HER SON.

12 AND WE NOW KNOW, BASED UPON THE LATER
13 CONVERSATION WITH JOSE MENENDEZ, WHAT THE NATURE OF
14 THAT DISPUTE WAS. IT WAS ABOUT THE SPENDING, THE
15 SPENDING OF THE DEFENDANTS AND NOT TAKING
16 RESPONSIBILITY, AND USING MONEY LIKE IT'S WATER.

17 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR
18 HONOR. HE'S MISSTATING THE EVIDENCE. THAT WAS
19 LIMITED AS TO ONLY ONE DEFENDANT.

20 THE COURT: ALL RIGHT.

21 MR. CONN, I BELIEVE THAT WAS LIMITED AS
22 TO THE DEFENDANT, LYLE MENENDEZ, AND THE JURY SHOULD
23 KEEP THAT IN MIND IN REVIEWING THAT EVIDENCE.

24 MR. CONN: OKAY. THANK YOU.

25 THAT PIECE OF EVIDENCE, WHICH IS
26 ADMISSIBLE AGAINST LYLE MENENDEZ, INDICATES A
27 SPENDING ON THE PART OF LYLE MENENDEZ. AND THE
28 EVIDENCE DEMONSTRATED THAT THERE WAS SPENDING

1 CONCERNING THIS CAMCORDER. AND KITTY MENENDEZ TOLD
2 HER SON ANGRILY -- AND THIS IS WHAT THE TESTIMONY
3 WAS -- "YOU GUYS HAVE GOT TO STOP DOING THESE
4 THINGS."

5 AND SOMETIME LATER, AFTER BRIAN ANDERSEN
6 WENT TO KALAMAZOO, HE HAD A CONVERSATION WITH JOSE
7 MENENDEZ CONCERNING THE CAMCORDER, AND HE LEARNED
8 FROM JOSE MENENDEZ THAT JOSE MENENDEZ APPARENTLY
9 INTENDED TO SPEAK TO HIS SON, LYLE MENENDEZ, ABOUT
10 THIS SPENDING. SO HE COULD SEE THAT THIS WAS A
11 PROBLEM WITHIN THE FAMILY.

12 JOSE MENENDEZ SAID: "I'VE GOT TO HAVE A
13 MAJOR TALK WITH LYLE."

14 AND THE EXACT QUOTE IS: "THEY HAVE GOT
15 TO GET THE MESSAGE THAT WE ARE NOT GOING TO BE
16 SUPPORTING THEM FOR THE REST OF THEIR LIVES."

17 SO, AGAIN, THIS PROVIDES US WITH ANOTHER
18 INSIGHT INTO THE NATURE OF THE DISPUTE, THE
19 DISSATISFACTION OF JOSE MENENDEZ CONCERNING THE
20 SPENDING HABITS OF LYLE MENENDEZ, SOMETHING THAT
21 CARLOS BARALT HAD TOLD US ABOUT EARLIER.

22 THEN, LADIES AND GENTLEMEN, WE GOT INTO
23 A TECHNICAL ASPECT OF THE TRIAL, WHICH BEGAN WITH
24 THE TESTIMONY OF DR. ROBERT LAWRENCE. YOU WILL
25 RECALL THAT HE IS A PATHOLOGIST WHO WAS CALLED BY
26 THE PROSECUTION. AND WE CALLED HIM TO TESTIFY TO
27 THE NATURE OF THE INJURIES THAT WERE INFLICTED UPON

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1 AND IF THERE WAS ONE PERSON WHO WAS
2 CONSPICUOUSLY ABSENT FROM THIS TRIAL, IT IS
3 DR. GOLDEN. HIS NAME CAME UP TIME AND TIME AGAIN
4 THROUGHOUT THE CASE. HE WAS THE PATHOLOGIST FOR THE
5 LOS ANGELES CORONER'S OFFICE WHO ACTUALLY PERFORMED
6 THE AUTOPSY IN THIS CASE. DR. GOLDEN WAS NOT CALLED
7 BY EITHER SIDE. AND I REMIND YOU ONCE AGAIN, THAT
8 EITHER SIDE CAN CALL A WITNESS IF THEY FEEL THAT
9 THAT WITNESS HAS SOMETHING TO CONTRIBUTE TO THIS
10 TRIAL THAT WOULD BE OF BENEFIT. NEITHER SIDE
11 DECIDED TO CALL DR. GOLDEN.

12 I WOULD SUBMIT TO YOU, LADIES AND
13 GENTLEMEN, AS FAR AS DR. GOLDEN IS CONCERNED, I
14 THINK YOU CAN SEE THE REASON WHY THE PROSECUTION DID
15 NOT CALL DR. GOLDEN, BECAUSE WHAT CAME OUT FROM ALL
16 OF THE TESTIMONY OF SEVERAL WITNESSES, STARTING WITH
17 DR. LAWRENCE, AND EXTENDING THROUGH CYRIL WECHT AND
18 OTHER PEOPLE, WAS THE INADEQUATE JOB THAT THE
19 CORONER'S OFFICE DID IN THIS CASE. AND I DON'T SAY
20 THAT TO CRITICIZE THE CORONER'S OFFICE
21 UNJUSTIFIABLY. BUT THE FACTS SPEAK FOR THEMSELVES.
22 YOU HAVE TO LOOK AT THE NATURE OF THE WORK THAT

23 DR. GOLDEN DID IN THIS CASE.
24 NOW, THERE MAY BE A GOOD REASON FOR IT.
25 MAYBE THE CORONER'S OFFICE IN LOS ANGELES COUNTY IS
26 JUST TOO BUSY. MAYBE THIS IS GOING TO HAPPEN IN
27 THIS CASE AND OTHERS. AND MAYBE IT'S GOING TO
28 HAPPEN TIME AND TIME AGAIN.

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1 THE FACT OF THE MATTER IS, THE AUTOPSY
2 WAS SCREWED UP, AT LEAST THE REPORT CONTAINS ALL
3 SORTS OF INCONSISTENCIES. THE REPORT HAS BEEN
4 AMENDED BY LATER SUPPLEMENTS SEEKING TO CORRECT
5 THOSE INCONSISTENCIES; AND EVEN THE SUPPLEMENTS ARE
6 INADEQUATE, AS I WILL DEMONSTRATE TO YOU.

7 WE KNOW, FIRST OF ALL, THAT THERE WAS
8 MORE THAN A TWO-DAY WAIT FOR THE AUTOPSY TO EVEN
9 TAKE PLACE. THE BODIES OF KITTY AND JOSE MENENDEZ
10 WERE NOT EXAMINED FOR TWO DAYS. AND CYRIL WECHT,
11 THE PATHOLOGIST CALLED BY THE DEFENSE, EVEN
12 INDICATED THAT ONLY IN LOS ANGELES DO YOU SEE THIS
13 TYPE OF A DELAY. YOU DO NOT SEE THIS TYPE OF DELAY
14 THROUGHOUT THE REST OF THE COUNTRY.

15 SO WE HAVE A VERY LENGTHY DELAY IN THE
16 EXAMINATION OF THE BODIES IN THIS CASE.

17 WE KNOW THAT THE CORONER'S OFFICE LOST

18 THE X RAYS IN THIS CASE. ONE OF THE EXPERTS CALLED
19 BY THE DEFENSE ACKNOWLEDGED THAT HE WAS AWARE OF THE
20 FACT THAT THEY HAD LOST THE X RAYS. HE SAID HE WAS
21 ABLE TO WORK, HOWEVER, FROM SOME COPIES THAT HAD
22 BEEN MADE AVAILABLE TO HIM.

23 AND THEN WE KNOW -- AND THIS MAY BE ONE
24 OF THE KEY PROBLEMS WHY REPORTS IN THIS CASE ARE SO
25 SCREWED UP -- THAT THE REPORTS WERE NOT WRITTEN UNTIL
26 OCTOBER THE 13TH OF 1989. THAT IS WHEN THOSE
27 REPORTS WERE ACTUALLY COMPLETED AND SIGNED.

28 SO YOU HAVE A MONTH AND A HALF OR MORE,

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1 MAYBE A TWO-MONTH DELAY, BETWEEN THE TIME THAT THE
2 BODIES WERE ACTUALLY EXAMINED UNTIL THE REPORTS WERE
3 COMPLETED AND SIGNED. THAT MAY EXPLAIN SOME OF THE
4 DISCREPANCIES IN THE REPORTS. HOW ACCURATE CAN THEY
5 BE IF THEY'RE SO BUSY THAT THEY CAN'T EVEN GET
6 AROUND TO COMPLETING THE REPORT FOR THAT LENGTH OF
7 TIME?

8 BUT THEN THE REAL PROBLEM WITH THE
9 REPORT IS NOT SO MUCH THE TECHNICAL PROBLEMS OF THE
10 TIME DELAY, BUT THE SUBSTANCE OF THE REPORT, WHAT IS
11 CONTAINED IN THE REPORT. AND THERE ARE MULTIPLE
12 PROBLEMS WITH THE REPORT.

13 MOST OF THE PROBLEMS CONCERN THE INJURY
14 TO THE RIGHT ARM OF JOSE MENENDEZ. THIS IS THE AREA
15 WHERE YOU SEE A TREMENDOUS AMOUNT OF INCONSISTENCY
16 AND ERROR, VERY CLEAR ERROR IN THE REPORTS.

17 IN THE ORIGINAL REPORT WRITTEN BY
18 DR. GOLDEN HE DESCRIBES A WOUND HERE (INDICATING),
19 WHICH IS ON THE RIGHT FOREARM, AS POSSIBLY BEING THE
20 ENTRANCE WOUND TO THE INJURY. YOU RECALL THAT JOSE
21 MENENDEZ IN HIS UPPER ARM HAS A LARGE DEFECT ON THE
22 INNER PART OF HIS ARM WHICH WAS MEASURED TO BE
23 APPROXIMATELY SIX BY FOUR INCHES; AND ON THE OUTSIDE
24 OF HIS ARM HERE (INDICATING) THERE'S ANOTHER DEFECT --
25 THAT'S THE TERM USED BY THE PATHOLOGISTS -- ABOUT
26 TWO INCHES SQUARE.

27 ALL RIGHT? WELL, DR. GOLDEN, IN HIS
28 ORIGINAL REPORT INDICATED THAT A POSSIBLE ENTRANCE

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1 FOR THAT WOUND WAS HERE (INDICATING) AT THE FOREARM,
2 WHERE SOME INJURY WAS NOTED.

3 IT WAS ALSO SUGGESTED SOME PLACE IN THE
4 REPORT THAT ANOTHER POSSIBLE ENTRANCE -- THERE WAS A
5 SECOND POSSIBLE EXPLANATION. WELL, HE WAS
6 DESCRIBING AT THE TIME -- BEAR THIS IN MIND. IN
7 1989, WHEN THE REPORTS WERE FIRST WRITTEN, HE

8 TOTALLY IGNORED THIS WOUND TO THE OUTSIDE OF THE
9 ARM. HERE YOU HAVE A DEFECT TWO INCHES SQUARE, TWO
10 BY TWO, WHICH WAS TOTALLY IGNORED IN THE 1989
11 REPORT. FOR ALL PRACTICAL PURPOSES, IT DIDN'T
12 EXIST. AND THAT IS ONE OF THE MAJOR PROBLEMS WITH
13 THE 1989 REPORT.

14 HOW CAN YOU EXAMINE A BODY -- HOW CAN A
15 CORONER'S OFFICE EXAMINE A BODY AND TOTALLY IGNORE
16 THIS WOUND TO THE OUTSIDE OF THE ARM WHEN YOU'RE
17 DESCRIBING THE WOUNDS IN YOUR REPORT?

18 SO HE TOTALLY IGNORED THIS WOUND ON THE
19 OUTSIDE OF THE ARM. HE INDICATED THAT, AS FAR AS
20 THIS WOUND, WHICH WAS ON THE INSIDE OF THE ARM, THE
21 LARGE SIX-BY-FOUR-INCH WOUND, THAT THE POSSIBLE
22 ENTRANCES WERE HERE (INDICATING) AT THE FOREARM, OR
23 HERE (INDICATING), ON THE INNER PART OF THE RIGHT
24 ARM WHERE YOU SEE INDIVIDUAL PELLET DEFECTS.

25 WELL, THAT'S WHAT HE WROTE IN 1989. AND
26 HE ALSO WROTE AT THAT TIME THAT 15 INDIVIDUAL
27 PELLETS WERE RECOVERED ALONG THE PATH OF THAT
28 WOUND. OKAY.

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1 NOW, YEARS LATER, AFTER HE TESTIFIED --
2 BEAR THIS IN MIND. AFTER HE TESTIFIES, NOT ONLY

3 BEFORE THE GRAND JURY, BUT AFTER HE TESTIFIES IN A
4 TRIAL IN FRONT OF A JURY JUST AS YOURSELF,
5 CONCERNING THIS CASE, IN A HOMICIDE PROSECUTION, IN
6 A MURDER, A CAPITAL CASE PROSECUTION, HE THEN GOES
7 BACK AND REWRITES THE WHOLE REPORT AND CHANGES HIS
8 CONCLUSION.

9 NOW, WHAT HE HAS IS -- THIS WOUND TO THE
10 BACK OF THE ARM WAS NOT EVEN MENTIONED IN THE FIRST
11 REPORT.

12 NOW, IN THE SUPPLEMENT THIS WOUND
13 (INDICATING), WHICH HE ORIGINALLY DESCRIBED AS THE
14 ENTRANCE, THIS HAS DISAPPEARED NOW FROM HIS REPORT.
15 HE MAKES NO REFERENCE TO THIS. OKAY? SO THIS HAS
16 NOW TOTALLY DISAPPEARED FROM THE SUPPLEMENT.

17 NOW HE'S SAYING THIS WOUND TO THE BACK
18 OF THE ARM IS THE ENTRANCE. YOU RECALL IN 1989, IT
19 WAS EITHER THIS AT THE FOREARM, OR HERE IN THE INNER
20 ARM. NOW HE'S SAYING THIS IS THE ENTRANCE
21 (INDICATING), AND HE SAID THAT -- HE RULES OUT NOW
22 THE INNER ARM HERE AS BEING THE POSSIBLE ENTRANCE.

23 AND THEN, AS FAR AS THE 15 PELLETS ARE
24 CONCERNED, THESE TOO HAVE NOW TOTALLY DISAPPEARED
25 FROM THE REPORT. SO WHATEVER HAPPENED TO THESE
26 PELLETS? WHERE ARE THEY? THEY JUST VANISHED INTO
27 THIN AIR.

28 SO DR. GOLDEN, WHETHER HE HAS A GOOD

1 REASON OR NOT, WHETHER OR NOT THEY'RE TOO BUSY OR
2 NOT, DID A JOB WHICH AT LEAST ON PAPER LEAVES A
3 GREAT DEAL TO BE DESIRED, AND CALLS INTO QUESTION
4 SOME OF THE RELIABILITY OF THE CONCLUSIONS THAT HE
5 REACHED. ONE OF THE REASONS WHY, I WOULD SUBMIT TO
6 YOU, NEITHER SIDE CALLED DR. GOLDEN.

7 THERE WERE MORE PROBLEMS WITH
8 DR. GOLDEN'S REPORT. ANOTHER PROBLEM WITH
9 DR. GOLDEN'S REPORT IS THAT IT WAS DR. GOLDEN'S
10 OPINION FROM 1989, IN THE ORIGINAL REPORT, THAT THE
11 WOUND TO KITTY'S CHEEK, THAT CONTACT WOUND WHICH WE
12 NOW KNOW, THE MOST REASONABLE CONCLUSION IS THAT IS
13 THE LAST WOUND INFLICTED TO HER BODY. THIS WOUND TO
14 THE LEFT SIDE OF HER CHEEK, THAT WOUND HE DESCRIBED
15 IN THE ORIGINAL REPORT AS BEING ANTEMORTEM,
16 OCCURRING BEFORE DEATH.

17 THEN YEARS LATER HE DECIDES HE'S GOING
18 TO CHANGE HIS REPORT ENTIRELY. OKAY? NOW HE
19 CONCLUDES THAT THIS WOUND TO HER CHEEK WAS EITHER
20 PERIMORTEM, WHICH MEANS OCCURRING AROUND THE TIME OF
21 DEATH, OR IT IS POSTMORTEM; POSSIBLY POSTMORTEM HE
22 SAID, OCCURRING AFTER DEATH.

23 NOW, WHAT IS THE REASON FOR THAT RANGE?
24 HOW DO YOU GO FROM THAT CHANGE? HOW DO YOU GO FROM
25 TESTIFYING IN FRONT OF A JURY, HOLDING THAT OPINION

26 FOR ALL OF THOSE YEARS, AND THEN SUDDENLY YEARS
27 LATER CHANGE YOUR OPINION CONCERNING THAT PARTICULAR
28 WOUND? I MEAN, WHY? SUDDENLY YOU SEE THE COLOR TO

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1 THE SKIN DIFFERENTLY AS YOU'RE LOOKING AT A
2 PHOTOGRAPH? WHEN HE DID THIS CASE BACK IN 1989, AND
3 WHEN HE WROTE HIS REPORT BACK IN 1989, LADIES AND
4 GENTLEMEN, HE WASN'T JUST RELYING UPON A
5 PHOTOGRAPH. HE WAS ACTUALLY LOOKING AT THE WOUND.
6 AND THAT, YOU KNOW, IS ONE OF THE WAYS THAT THEY
7 DETERMINE, OR THE KEY WAY THAT THEY DETERMINE
8 WHETHER OR NOT A WOUND OCCURS BEFORE DEATH, AT THE
9 TIME OF DEATH, OR AFTER DEATH, IS WHETHER THERE IS
10 BLEEDING INTO THE WOUND.

11 ALL RIGHT? AND HE DETERMINED AT THAT
12 TIME THAT APPARENTLY THERE WAS BLEEDING INTO THE
13 WOUND. SO THAT HE CAN CONCLUDE THAT THIS WOUND TO
14 HER CHEEK OCCURRED BEFORE DEATH.

15 SO WHAT BASIS DOES HE HAVE NOW? WHAT
16 COULD POSSIBLY BE THE NEW INFORMATION BY WHICH HE
17 COULD CONCLUDE THAT NO, COME TO THINK OF IT, IT WAS
18 AT THE TIME OF DEATH OR AFTER DEATH.

19 CLEARLY, LADIES AND GENTLEMEN, THERE IS
20 NO NEW MEDICAL EVIDENCE THAT HE HAS, NO REASON FOR

21 HIM TO POSSIBLY CHANGE HIS OPINION IN THIS CASE. IT
22 IS JUST NOT A REASONABLE CHANGE. ALL HE HAS NOW IS
23 LESS THAN WHAT HE HAD BEFORE. HE HAS THE
24 PHOTOGRAPHS. HE CAN LOOK AT THE PHOTOGRAPHS.
25 BUT BEFORE, AT LEAST, WHEN IT WAS FRESH
26 IN HIS MIND, BACK IN 1989, CLEARLY, THAT OPINION
27 WOULD HAVE BEEN MORE RELIABLE. AND WE HAD WITNESSES
28 WHO TESTIFIED ON THE WITNESS STAND, EVEN DEFENSE

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1 WITNESSES, WHO INDICATED THAT THERE IS NO MEDICAL
2 BASIS FOR HIM TO CHANGE HIS OPINION. I THINK THE
3 TWO PEOPLE WHO TESTIFIED TO THAT WAS A PROSECUTION
4 WITNESS AND A DEFENSE WITNESS WHO BOTH SAID THAT
5 THERE WAS NO BASIS -- NO MEDICAL BASIS FOR A CHANGE
6 OF OPINION.

7 DR. LAWRENCE WAS ONE OF THEM. AND I'LL
8 GET TO THE OTHER ONE SOON.

9 SO THERE IS NO REASON FOR DR. GOLDEN TO
10 JUST, MIDSTREAM, FOR THE RETRIAL, CHANGE HIS
11 OPINION.

12 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
13 OBJECT AND ASK TO BE HEARD VERY BRIEFLY.

14 THE COURT: OKAY. WE'LL HAVE YOU APPROACH ON
15 THE SIDE HERE BRIEFLY.

16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD OUT OF THE PRESENCE
18 OF THE JURY:)
19
20 THE COURT: YES.
21 MS. ABRAMSON: THE PEOPLE TRIED TO ELICIT
22 WHAT DR. GOLDEN TESTIFIED TO IN THE FIRST TRIAL, AND
23 I OBJECTED, AND THE OBJECTION WAS SUSTAINED. AND
24 COUNSEL IS GIVING THE IMPRESSION TO THE JURY THAT
25 DR. GOLDEN TESTIFIED A PARTICULAR WAY IN THE FIRST
26 TRIAL, AND THAT NEVER CAME BEFORE THEM.
27 THIS IS THE SECOND TIME HE'S DONE IT. I
28 DIDN'T OBJECT THE FIRST TIME. I THINK THAT'S

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1 ERRONEOUS TO GIVE THE IMPRESSION THAT HE TESTIFIED
2 THAT A WOUND WAS ANTEMORTEM OR POSTMORTEM AT THE
3 FIRST TRIAL. IT'S NOT IN FRONT OF THE JURY.
4 MR. CONN: SEE, I DIDN'T SAY HE TESTIFIED.
5 WHAT I SAID WAS: AFTER THE FIRST TRIAL, AFTER THE
6 FIRST TRIAL HE IS NOW OF THE OPINION, AND THE REPORT
7 WAS WRITTEN.
8 MS. ABRAMSON: YOU SAID AFTER HE TESTIFIED AT
9 THE FIRST TRIAL THE FIRST TIME AROUND. I LET IT GO,
10 BUT I THINK THAT'S AN ERRONEOUS IMPRESSION TO GIVE

11 THE JURY.

12 THE COURT: HE DID CHANGE HIS REPORT. IS

13 THAT WHAT YOU'RE REFERRING TO?

14 MR. CONN: THAT'S WHAT I'M REFERRING TO.

15 THE COURT: THAT'S HOW I INTERPRETED IT.

16 MS. ABRAMSON: I THINK HE'S GONE TOO FAR,

17 PARTICULARLY IN THE FIRST REFERENCE, MORE SO THAN

18 THIS ONE. I WOULD SAY THAT -- SO IF HE CONTINUES TO

19 REFER TO THESE CHANGES -- THERE WASN'T EVEN AN ISSUE

20 IN THE FIRST TRIAL.

21 THE COURT: LET'S NOT TALK ABOUT THAT.

22 IT'S CLEAR YOU SHOULDN'T BE REFERRING TO

23 HIS TESTIMONY FROM THE FIRST TRIAL, SINCE THAT'S NOT

24 BEFORE THE JURY, BUT THE REPORT IS. THE REPORT HAS

25 BEEN RECEIVED.

26 MS. ABRAMSON: RIGHT.

27 MR. CONN: RIGHT.

28 THE COURT: SO YOU CAN CLEARLY TALK ABOUT THE

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1 CHANGE AND THE MOTIVATION FOR IT, THINGS OF THAT

2 NATURE. SO LET'S CONFINE IT TO THAT.

3 (THE FOLLOWING PROCEEDINGS WERE

4 RESUMED IN OPEN COURT IN THE

5 PRESENCE OF THE JURY:)

6

7 THE COURT: YOU MAY PROCEED.

8 MR. CONN: THE FACT OF THE MATTER IS, LADIES

9 AND GENTLEMEN, THAT DR. GOLDEN DID CHANGE HIS

10 REPORT, AND THAT IS SOMETHING THAT THE DEFENSE IS

11 STUCK WITH IN THIS CASE.

12 THE FACT OF THE MATTER IS, HE SAID, IN

13 1989, WHEN IT WAS FRESH IN HIS MIND, THAT THIS WAS A

14 WOUND WHICH WAS ANTEMORTEM, BEFORE DEATH, AND THERE

15 IS NO MEDICAL REASON WHATSOEVER FOR HIM TO SUDDENLY

16 SWITCH OVER AND CHANGE THAT OPINION FOR PURPOSES OF

17 A RETRIAL.

18 NOW, THE DEFENSE IS GOING TO TRY TO USE

19 THIS, LADIES AND GENTLEMEN, BECAUSE WHAT THEY'RE

20 GOING TO TRY TO SAY IS: WELL, WHEN LYLE MENENDEZ

21 WENT IN AND FIRED THAT LAST SHOT AT KITTY'S CHEEK,

22 SHE'S ALREADY DEAD, YOU SEE. THEY'RE GOING TO RELY

23 ON THIS CHANGE IN THE REPORT BY DR. GOLDEN. IT'S

24 ALMOST AS IF LYLE MENENDEZ GETS A FREE SHOT. HE'S

25 SHOOTING AT A DEAD BODY. SO THAT'S A FREE SHOT. HE

26 GETS THAT FREE OF CHARGE. DON'T HOLD THAT AGAINST

27 HIM ANYWAY.

28 YOU SEE HOW THEY'RE GOING TO USE THAT

1 FACT?

2 BUT, LADIES AND GENTLEMEN, YOU HAVE TO
3 LOOK, NOT ONLY AT THE TESTIMONY OF DR. GOLDEN, OR
4 THE REPORT OF DR. GOLDEN, OKAY, WHICH HAS BEEN
5 CHANGED, AND WHICH I WOULD SUBMIT TO YOU IS MORE
6 RELIABLE IN ITS ORIGINAL FORM WHEN IT WAS FRESH IN
7 HIS MIND. BUT YOU ALSO HAVE TO LOOK AT WHAT THE
8 DEFENDANTS IN THIS CASE DID.

9 LADIES AND GENTLEMEN, WHY WOULD LYLE
10 MENENDEZ BE SHOOTING HIS MOTHER IN THE FACE IF SHE
11 WAS ALREADY DEAD? I WILL SUBMIT TO YOU, LADIES AND
12 GENTLEMEN, THAT WHILE DR. GOLDEN IN HIS REPORT IS
13 RELYING UPON JUST THE PHYSICAL OBSERVATIONS, YOU, AS
14 A JURY, CAN RELY UPON MORE. YOU, AS A JURY, CAN
15 TAKE INTO CONSIDERATION THE TESTIMONY THAT WAS
16 PRESENTED HERE IN COURT IN DETERMINING WHETHER OR
17 NOT KITTY MENENDEZ WAS STILL ALIVE AT THE TIME THAT
18 LYLE MENENDEZ WENT BACK AND FIRED THAT SHOT INTO HER
19 FACE.

20 AND I WOULD ASK YOU TO CONCLUDE, LADIES
21 AND GENTLEMEN, THAT KITTY MENENDEZ WAS STILL ALIVE
22 AT THAT POINT IN TIME FOR TWO REASONS: NUMBER ONE,
23 BECAUSE DR. GOLDEN SAID IT WAS AN ANTEMORTEM WOUND
24 IN HIS ORIGINAL REPORT, AND THERE WAS NO REASON TO
25 CHANGE THAT REPORT; AND SECONDLY, BECAUSE LYLE
26 MENENDEZ DID, IN FACT, SHOOT HIS MOTHER IN THE FACE.
27 AND WHY WOULD HE BE SHOOTING HIS DEAD MOTHER IN THE
28 FACE IF SHE WERE TRULY DEAD?

1 BASED UPON THOSE TWO FACTS, I ASK YOU TO
2 FIND THAT KITTY MENENDEZ WAS STILL ALIVE AT THE TIME
3 THAT THE LAST SHOT WAS FIRED, AND I ASK YOU TO TELL
4 LYLE MENENDEZ: YOU DON'T GET A FREE SHOT. THAT ONE
5 COUNTS TOO.

6 BEAR IN MIND, LADIES AND GENTLEMEN, AS
7 YOU LOOK AT THE SHOTS THAT WERE FIRED AGAINST THE
8 PARENTS, IF ANY OF THE -- IF ANY OF THESE SHOTS THAT
9 WERE FIRED AGAINST THE VICTIMS IN THIS CASE WAS DONE
10 WITH THAT MENTAL STATE OF PREMEDITATION AND
11 DELIBERATION, THAT IS A FIRST-DEGREE MURDER, EVEN
12 THOUGH THAT SHOT ONLY CONTRIBUTED TO THE DEATH.

13 SO, FOR EXAMPLE, LET'S SAY YOU WERE TO
14 SHOOT SOMEONE IN AN EXCITED STATE. SOMETHING
15 HAPPENED SUDDENLY, AND YOU PICKED UP A GUN -- I WOULD
16 SUBMIT TO YOU THAT IS THE ONLY CIRCUMSTANCE IN WHICH
17 YOU SHOULD USE THIS CLAIM OF AN EXCITED STATE, WHERE
18 IT OCCURRED JUST LIKE THAT (SNAPPING FINGERS). YOU
19 PICK UP A GUN SPONTANEOUSLY AND YOU SHOOT SOMEONE.

20 IT SHOULDN'T BE APPLIED TO THE SITUATION
21 HERE, WHERE THERE'S CLEAR EVIDENCE OF PREMEDITATION
22 AND CLEAR EVIDENCE OF A COOLING-DOWN PERIOD.

23 BUT EVEN IF YOU WERE TO SHOOT SOMEONE IN
24 AN EXCITED STATE, IF FOLLOWING THAT EXCITED STATE

25 YOU HAD AN OPPORTUNITY TO COOL DOWN, FOR REASON TO
26 RETURN, YOU CAN'T THEN GO BACK AND SAY: "WELL, I
27 SHOT THE PERSON ALREADY. THE PERSON IS DYING
28 ALREADY, SO I JUST MIGHT AS WELL GO AHEAD AND FINISH

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1 THE JOB OFF."

2 NO, YOU CAN'T DO THAT. IF YOU FIRE ONE
3 MORE SHOT INTO THAT PERSON, AND THAT SHOT
4 CONTRIBUTES TO THE DEATH IN ANY WAY, AND YOU FIRED
5 THAT SHOT WITH FIRST-DEGREE MURDER (SIC), THEN IT'S
6 A FIRST-DEGREE MURDER. DOESN'T MATTER WHAT YOUR
7 STATE OF MIND WAS WHEN YOU PUT THE FIRST FIVE ROUNDS
8 INTO THAT PERSON. IF YOU FIRED THAT LAST SHOT AFTER
9 PREMEDITATION AND DELIBERATION, THAT'S A
10 FIRST-DEGREE MURDER. IT'S NO EXCUSE FOR -- YOU
11 CAN'T SAY THAT PERSON WAS DYING ANYWAY.

12 SO, LADIES AND GENTLEMEN, WE HAVE -- WE
13 NOW SEE THE PROBLEMS WITH DR. GOLDEN IN HIS REPORTS
14 AND WHY THOSE REPORTS ARE UNRELIABLE.

15 SO WHAT WE DID IN THIS CASE WAS WE
16 CALLED THE INDEPENDENT PATHOLOGIST. WE CALLED DR.
17 ROBERT LAWRENCE, AND HE TESTIFIED BEFORE YOU. HE
18 TESTIFIED IN REGARD TO ALL OF THE WOUNDS THAT WERE
19 SHOT -- THAT WERE FIRED -- THAT WERE RECEIVED BY THE

20 VICTIMS IN THIS CASE. I'M NOT GOING TO FOCUS ON ALL
21 OF THEM AT THIS TIME, BUT I WILL FOCUS ON THE MORE
22 CONTROVERSIAL ONES, BECAUSE THOSE ARE THE ONES THAT
23 ARE GOING TO BE THE SUBJECT OF MOST ARGUMENT.

24 THE MOST CONTROVERSIAL WOUND IN THIS
25 CASE, OR SET OF WOUNDS IN THIS CASE, IS THE SET OF
26 WOUNDS THAT WERE INFLICTED TO THE ARM OF JOSE
27 MENENDEZ AND THE BREAST OF KITTY MENENDEZ. BECAUSE,
28 YOU WILL RECALL, IT WAS THAT SERIES OF WOUNDS, OR

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1 THAT ASSOCIATION OF WOUNDS, THAT DR. ROGER MC CARTHY
2 USED AS A BASIS FOR HIS RECONSTRUCTION, AND HE GAVE
3 THE OPINION THAT WAS THE FIRST SHOT FIRED IN THIS
4 CASE.

5 NOW, MR. MC CARTHY'S OPINION IS
6 SUPPORTED BY THE TESTIMONY OF DR. LAWRENCE.
7 DR. LAWRENCE TESTIFIED THAT WHILE HE AGREED WITH THE
8 REPORTS OF DR. GOLDEN THAT THE WOUNDS TO THE INSIDE
9 OF THE ARM, THE SIX-BY-FOUR-INCH WOUND AND THE
10 TWO-BY-TWO WOUND TO THE OUTSIDE OF THE ARM, ARE IN
11 FACT THE ENTRY AND EXIT WOUNDS, HE SAID THAT WHERE
12 HE PARTS COMPANY WITH HIM IS HE SAID THAT YOU CANNOT
13 SAY FOR CERTAINTY WHICH IS WHICH.

14 SO I ASK YOU TO TAKE INTO CONSIDERATION

15 THE AMOUNT OF EXPERIENCE THAT DR. LAWRENCE HAS AS A
16 PATHOLOGIST IN CONSIDERING THAT OPINION, THAT YOU
17 CANNOT SAY WITH CERTAINTY WHICH IS THE ENTRY AND
18 WHICH IS THE EXIT.

19 AND HE SAID THAT ONE OF THE ISSUES THAT
20 HE CONSIDERED IN FORMING THE CONCLUSION AS TO
21 WHETHER OR NOT THE ENTRY AND THE EXIT COULD BE
22 DETERMINED IS WHETHER OR NOT THERE WAS A SHORING OF
23 THE WOUNDS ON THE INSIDE OF THE RIGHT ARM, AND HE
24 SAID THAT SHORING IS CAUSED WHEN THE SKIN NEAR THE
25 EXIT WOUND BANGS AGAINST A SURFACE WITH WHICH IT IS
26 IN CONTACT AT THE TIME OF THE INFLECTION OF THE
27 WOUND.

28 BUT HE SAID THAT THAT WOUND, OR THAT

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1 MARK THAT YOU SEE NEXT TO THAT WOUND -- AND YOU WILL
2 SEE IT IN THE PHOTOGRAPH, APPEARING AS A RED
3 ABRASION RIGHT NEXT TO THE WOUND -- HE SAID IT IS NOT
4 NECESSARILY A SHORING WOUND, AND IT COULD BE
5 ATTRIBUTED TO OTHER TYPES OF ABRASION ACTIVITY, SUCH
6 AS A CLOTH DRAGGING AGAINST THE SKIN AT THE TIME OF
7 THE SHOT.

8 NOW, DR. LAWRENCE ALSO DIFFERED SHARPLY
9 WITH DR. GOLDEN IN REGARD TO THE WOUND TO JOSE

10 MENENDEZ' LEFT LEG. HE SAID THAT THIS INJURY, A
11 THROUGH-AND-THROUGH WOUND JUST INCHES ABOVE THE LEFT
12 KNEE OF JOSE MENENDEZ, WENT FROM THE INSIDE OF THE
13 LEG TO THE OUTSIDE. AND THERE'S NO DISPUTE BETWEEN
14 DR. LAWRENCE AND ANY EXPERT IN THIS CASE, INCLUDING
15 THE REPORTS OF DR. GOLDEN.

16 BUT WHAT IS IN DISPUTE IS WHETHER OR NOT
17 THAT WOUND WAS POSTMORTEM. HE SAID THAT WHILE THE
18 MEDICAL EVIDENCE MIGHT NOT BE DISPOSITIVE, HE SAID
19 THAT THE LACK OF BLOOD ON THE FLOOR AT THE CRIME
20 SCENE HAD CONVINCED HIM THAT THIS WOUND MUST HAVE
21 BEEN CAUSED AFTER DEATH. HAD THIS WOUND BEEN CAUSED
22 WHILE JOSE MENENDEZ HAD BEEN ALIVE, THERE WOULD BE
23 MUCH MORE BLOOD IN THE AREA OF THAT CRIME SCENE.

24 NOW, THIS IS SOMETHING THAT YOU CAN TAKE
25 A LOOK AT AND YOU CAN MAKE YOUR OWN DETERMINATION
26 ON. THIS IS AN AREA IN WHICH YOU'VE HEARD
27 CONFLICTING TESTIMONY FROM THE EXPERTS IN THIS
28 CASE.

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1 YOU HEARD, FOR EXAMPLE, THE TESTIMONY OF
2 DR. FACKLER. AND IF YOU BELIEVE DR. FACKLER, WHO'S
3 A WOUND EXPERT, YOU WOULD JUST ABOUT HAVE TO REACH
4 THE CONCLUSION THAT SHOTGUN WOUNDS JUST DON'T HURT

5 AND JUST DON'T BLEED. I MEAN, HE PRACTICALLY WENT
6 SO FAR AS TO SAY THAT. HE WENT WAY OUT OF HIS WAY
7 IN SAYING YOU DON'T NECESSARILY EXPECT TO SEE BLOOD
8 FROM THESE HORRENDOUS WOUNDS, AND YOU DON'T HAVE
9 PAIN FROM THESE HORRENDOUS WOUNDS.

10 AND, I THINK, LADIES AND GENTLEMEN, THAT
11 IS PROBABLY SOMETHING THAT IS GOING TO STRIKE
12 AGAINST YOUR OWN COMMON SENSE. I MEAN, AS TO
13 WHETHER OR NOT YOU SHOULD BELIEVE AN EXPERT, LADIES
14 AND GENTLEMEN, CERTAINLY TAKE INTO CONSIDERATION THE
15 EXPERT'S CREDENTIALS. TAKE INTO CONSIDERATION THE
16 EXPERIENCE THAT THE EXPERT BRINGS TO HIS TESTIMONY.
17 BUT ALSO TAKE INTO CONSIDERATION, LADIES AND
18 GENTLEMEN, THE POSSIBILITY OF BIAS, AND TAKE INTO
19 CONSIDERATION THE REASONABLENESS OF WHAT THAT EXPERT
20 IS SAYING.

21 IF YOU LISTEN TO DR. FACKLER, HE MAKES
22 IT SOUND AS IF IT'S JUST A NATURAL MATTER OF COURSE
23 THAT THESE THINGS FOLLOW. IN FACT, I EVEN ASKED
24 HIM, SOMEWHAT TONGUE IN CHEEK: "ARE YOU SAYING THAT
25 THERE IS AN INVERSE RELATIONSHIP BETWEEN PAIN AND
26 THE SIZE OF THE WOUND?"

27 AND HE WENT SO FAR AS TO MORE OR LESS
28 AGREE WITH THAT. "WELL, I THINK THAT MAY WELL BE

1 TRUE."

2 BUT I WOULD SUBMIT TO YOU, LADIES AND
3 GENTLEMEN, THAT JUST STRIKES AGAINST COMMON SENSE.
4 YOU ALL KNOW FROM YOUR OWN EXPERIENCE YOU CAN GET A
5 PAPER CUT, AND THAT WOUND IS GOING TO HURT YOU. IF
6 YOU GET SOME OF THE MASSIVE WOUNDS, SUCH AS YOU SAW
7 IN THIS CASE INFLICTED BY THE DEFENDANTS ON THEIR
8 MOTHER AND FATHER, I DON'T THINK WE NEED AN EXPERT
9 TO TELL US THOSE WOUNDS ARE GOING TO HURT OR MAKE
10 YOU FALL TO THE FLOOR, OR THOSE WOUNDS ARE GOING TO
11 BLEED; AND YET, YOU HAVE DR. FACKLER COMING IN HERE
12 AND QUESTIONING ALL OF THOSE PROPOSITIONS.

13 WELL, IT WOULDN'T NECESSARILY BE VERY
14 PAINFUL. IT WOULDN'T NECESSARILY CAUSE YOU TO BLEED
15 THAT MUCH, AND IT WOULDN'T NECESSARILY MAKE YOU FALL
16 TO THE FLOOR.

17 TEMPER THE TESTIMONY OF EACH OF THESE
18 EXPERTS WITH YOUR OWN COMMON SENSE. DON'T ACCEPT
19 THE TESTIMONY OF AN EXPERT CALLED BY EITHER SIDE
20 WITHOUT THE INJECTION OF YOUR OWN COMMON SENSE, AND
21 WHETHER THE PROPOSITIONS THAT THEY ARE GIVING YOU
22 ARE REASONABLE AND CONSISTENT WITH YOUR OWN
23 UNDERSTANDING OF THE WORLD. AND IF IT IS VERY FAR
24 FROM YOUR OWN UNDERSTANDING OF THE WORLD, AND IF
25 IT'S NOT SUPPORTED BY LOGIC AND REASONING, THEN I
26 ASK YOU TO REJECT THOSE OPINIONS NO MATTER WHO HAS
27 CALLED THE WITNESS.

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1 DR. LAWRENCE THAT BECAUSE THE WOUND WAS POSTMORTEM,
2 JOSE MENENDEZ COULD NOT POSSIBLY HAVE BEEN STANDING
3 AT THE TIME THAT THAT SHOT WAS FIRED.

4 DR. LAWRENCE ALSO TESTIFIED IN REGARD TO
5 THE WOUNDS TO KITTY MENENDEZ. THAT TOOK MUCH MORE
6 DISCUSSION BECAUSE OF THE NUMBER OF WOUNDS INVOLVED.
7 AND HE SAID, UNLIKE THE WOUNDS TO THE LEG OF JOSE
8 MENENDEZ, NO WOUND TO KITTY MENENDEZ WAS CLEARLY
9 POSTMORTEM. ALL WOUNDS, HE SAID, COULD BE EITHER
10 ANTEMORTEM OR PERIMORTEM.

11 SO THERE'S A THIRD REASON, LADIES AND
12 GENTLEMEN, FOR YOU TO REJECT THE PROPOSITION THAT
13 COUNSEL FOR LYLE MENENDEZ WILL ASK YOU TO ACCEPT;
14 THAT THE LAST SHOT TO KITTY -- KITTY MENENDEZ WAS A
15 FREE SHOT, BECAUSE SHE WAS DEAD AT THAT TIME. WE
16 HAVE THE TESTIMONY FROM DR. LAWRENCE IN THIS REGARD,
17 SAYING THAT NO WOUNDS WERE CLEARLY POSTMORTEM. IF
18 ANYTHING, IT WAS BEFORE DEATH OR PERIMORTEM, AT THE
19 TIME OF DEATH.

20 AND, FINALLY, DOCTOR -- ONE OF THE THINGS
21 THAT I ASKED DR. LAWRENCE TO DO, IN ADDITION TO
22 VARIOUS PHOTOGRAPHS THAT YOU SAW DURING THE

23 PRESENTATION OF HIS TESTIMONY AND THE PRESENTATION
24 OF THE TESTIMONY OF DR. MC CARTHY, I ALSO HAD
25 DR. LAWRENCE MARK A SKELETAL CHART. AND I WILL SHOW
26 THAT TO YOU LATER IN THE COURSE OF MY ARGUMENT; A
27 SKELETAL CHART RELATING TO THE INJURIES INFLICTED
28 UPON THE BODY OF KITTY MENENDEZ. AND I DID THAT FOR

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1 A REASON, LADIES AND GENTLEMEN, AND I WANTED YOU TO
2 SEE THE EXTENSIVE, THE EXTENSIVE SKELETAL DAMAGE
3 THAT WAS DONE TO KITTY MENENDEZ. BECAUSE, BEAR IN
4 MIND THAT LYLE MENENDEZ WENT OUTSIDE -- ERIK
5 MENENDEZ WENT OUTSIDE TOO, ACCORDING TO THE STORY
6 TOLD BY ERIK MENENDEZ. THEY BOTH WENT OUT. THEY
7 WENT OUT TO THE CAR.

8 ERIK MENENDEZ GOT A SHOTGUN ROUND AND
9 HANDED IT TO HIS BROTHER, LYLE MENENDEZ. LYLE
10 MENENDEZ CAME BACK INSIDE THE HOME AND FIRED ONE
11 MORE SHOT AT KITTY MENENDEZ.

12 NOW, YOU COULD SEE, JUST FROM THE NATURE
13 OF THE WOUNDS THAT WERE INFLICTED TO HER BODY, YOU
14 COULD SEE FROM THE PHOTOGRAPHS THE EXTENSIVE DAMAGE
15 THAT WAS DONE TO HER BODY, THE BRUTAL DAMAGE THAT
16 WAS DONE TO HER BODY.

17 YOU CAN SEE, JUST BASED UPON THOSE

18 PHOTOGRAPHS ALONE, THAT THAT WOMAN WAS NOT A THREAT
19 TO ANYONE AT THAT POINT IN TIME. AND IT IS
20 ABSOLUTELY PREPOSTEROUS FOR ERIK MENENDEZ TO MAKE IT
21 APPEAR AS IF HE WAS STILL FRIGHTENED OF HIS PARENTS
22 AT THAT POINT IN TIME.

23 BUT I HAD DR. LAWRENCE MARK THE SKELETAL
24 CHART, BECAUSE I WANTED YOU TO SEE, THAT IN ADDITION
25 TO ALL OF THE EXTERNAL INJURIES THAT YOU CAN SEE
26 FROM THE PHOTOGRAPHS, THERE WAS JUST MASSIVE
27 INTERNAL DAMAGE TO HER SKELETAL STRUCTURE; HER LEGS,
28 HER ARMS.

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1 SO, CLEARLY, THIS IS A WOMAN WHO WAS
2 LYING ON THE FLOOR DYING. THIS IS A WOMAN WHO,
3 BECAUSE OF MASSIVE DAMAGE TO HER SKELETAL STRUCTURE,
4 WAS PROBABLY NOT ABLE TO MOVE AT ALL AS SHE LAY
5 THERE ON THE FLOOR DYING.

6 AND BEAR IN MIND, LADIES AND GENTLEMEN,
7 THE AMOUNT OF TIME IT MUST HAVE TAKEN FOR LYLE
8 MENENDEZ AND ERIK MENENDEZ TO LEAVE THE ROOM, AS
9 KITTY MENENDEZ IS LYING THERE ON THE FLOOR DYING
10 WITH THIS MASSIVE INTERNAL SKELETAL DAMAGE. THEY GO
11 OUTSIDE. THEY GO TO THE TROUBLE OF GETTING
12 ADDITIONAL AMMUNITION, AND THEY COME BACK INSIDE AND

13 THIS WOMAN IS --

14 MS. ABRAMSON: OBJECTION, YOUR HONOR.

15 MISSTATES THE TESTIMONY.

16 THE COURT: OVERRULED.

17 MR. CONN: BOTH DEFENDANTS CAME BACK INSIDE

18 AT SOME POINT. LYLE MENENDEZ WENT BACK INTO THE

19 ROOM. ERIK MENENDEZ WAS RIGHT BEHIND HIM. HE WENT

20 INTO THE FOYER. YOU HAVE THE TWO DEFENDANTS COMING

21 BACK INTO THE HOME. LYLE MENENDEZ GOING INTO THE

22 DEN. ASK YOURSELF: DO YOU THINK THAT KITTY

23 MENENDEZ EVEN MOVED ONE INCH FROM THE TIME THAT THEY

24 HAD LEFT THAT ROOM, AS SHE WAS LYING THERE ON THAT

25 FLOOR WITH ALL OF THAT MASSIVE EXTERNAL DAMAGE AND

26 INTERNAL DAMAGE TO HER SKELETAL STRUCTURE? THAT

27 WOMAN COULD NOT HAVE EVEN MOVED AN INCH. AND LYLE

28 MENENDEZ CAME OVER TO HER AND PLACED THAT SHOTGUN TO

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1 HER FACE, AND PLACED THAT SHOTGUN TO HER CHEEK, AND

2 FIRED THAT FINAL SHOT INTO HER.

3 SO I ASKED DR. LAWRENCE TO MARK THAT

4 SKELETAL CHART FOR YOU SO YOU COULD GET AN IDEA OF

5 WHETHER OR NOT KITTY MENENDEZ WAS A THREAT TO ERIK

6 MENENDEZ AND LYLE MENENDEZ AT THAT POINT IN TIME.

7 DON'T FORGET, LADIES AND GENTLEMEN, ON

8 THE THEORY OF AIDING AND ABETTING, ERIK MENENDEZ IS
9 EQUALLY RESPONSIBLE FOR THAT LAST SHOT TO HIS
10 MOTHER'S FACE. HE HANDED THAT ROUND TO HIS BROTHER,
11 LYLE MENENDEZ.

12 THEN WE HEARD THE TESTIMONY OF DR. ROGER
13 MC CARTHY. DR. MC CARTHY, I'M SURE YOU WOULD AGREE,
14 IS VERY IMPRESSIVE, HAS VERY IMPRESSIVE
15 CREDENTIALS.

16 HE IS THE CHIEF EXECUTIVE OFFICER OF
17 FAILURE ANALYSIS. HE RUNS THE LARGEST ENGINEERING
18 AND SCIENTIFIC FIRM IN THE COUNTRY DEVOTED TO THE
19 ANALYSIS AND PREVENTION OF ENGINEERING FAILURES.

20 HE WAS APPOINTED BY PRESIDENT BUSH TO
21 THE PRESIDENT'S COMMISSION FOR THE NATIONAL MEDAL OF
22 SCIENCE THROUGH THE NATIONAL SCIENCE FOUNDATION; AND
23 IN THAT CAPACITY HE IS ONE OF 10 PEOPLE WHO SELECT,
24 FOR THE PRESIDENT OF THE UNITED STATES, SIX PEOPLE
25 IN THIS COUNTRY WHO ARE TO RECEIVE THE YEARLY
26 NATIONAL MEDAL OF SCIENCE AWARD, THE HIGHEST
27 SCIENTIFIC AWARD PRESENTED INSIDE THE UNITED
28 STATES. HE HAS SERVED IN THAT CAPACITY UNDER BOTH

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1 PRESIDENT BUSH AND PRESIDENT CLINTON.

2 HIS FIRM WAS ALSO INVOLVED IN ASSISTING

3 THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION IN
4 THE INVESTIGATION OF THE CHALLENGER DISASTER, AND
5 ULTIMATELY HELPED TO RE-DESIGN THE SPACE SHUTTLE.

6 AS FAR AS BALLISTICS IS CONCERNED, YOU
7 HEARD OF HIS BACKGROUND IN BALLISTICS; AND YOU KNOW
8 THAT HE WAS APPOINTED BY THE SECRETARY OF THE ARMY
9 TO THE ARMY SCIENCE BOARD, WHERE HE IS THE CHAIRMAN
10 OF THE STUDY INTO THE DECISIVE 21ST CENTURY INFANTRY
11 WEAPON FOR THE UNITED STATES ARMY.

12 CLEARLY, HE IS A MAN OF VERY IMPRESSIVE
13 CREDENTIALS.

14 ALSO, WE MARKED AS EVIDENCE, JUST BEFORE
15 THE CONCLUSION OF THE EVIDENCE PHASE OF THE TRIAL, A
16 CALENDAR WHICH FAILURE ANALYSIS PUBLISHES SHOWING
17 THE VARIOUS CASES THAT THEY HAVE WORKED ON.

18 HERE, FOR EXAMPLE, IS THE OKLAHOMA CITY
19 BOMBING, WHICH --

20 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
21 OBJECT TO THAT. THAT CALENDAR WAS OFFERED SOLELY --

22 THE COURT: THE CALENDAR IS IN EVIDENCE AND
23 CAN BE USED BY EITHER SIDE.

24 MS. ABRAMSON: THERE'S NO EVIDENCE THAT HE
25 WORKED ON ANY OF THESE.

26 THE COURT: THE CALENDAR IS THERE FOR COUNSEL
27 TO COMMENT ON, AND FOR NO OTHER REASON.

28 MR. CONN: ON PAGE 2 YOU COULD READ ABOUT

1 WHAT FAILURE ANALYSIS DID IN REGARD TO THE OKLAHOMA
2 CITY BOMBING. IT SAYS FAILURE ANALYSIS ENGINEERS
3 ASSISTED IN THE RESCUE EFFORTS AND HELPED DETERMINE
4 HOW TO SAFELY REMOVE DEBRIS FROM THE REMAINING
5 STRUCTURE. "OUR ENGINEERS ALSO CONDUCTED ON-SITE
6 RESEARCH TO VERIFY CONCEPTS USED IN DESIGNING
7 BLAST-RESISTANT BUILDINGS TO MINIMIZE LOSS OF LIVES
8 AND PROPERTY IN THE FUTURE."

9 AND IT GOES ON TO SPEAK ABOUT THE WORK
10 THAT THEY'VE DONE IN REGARD TO OTHER CASES, SUCH AS
11 THE KOBE, JAPAN EARTHQUAKE OF 1995; AND THE WORK
12 THAT THEY'VE DONE. THEY EVEN DID A VIDEO
13 RECONSTRUCTION OF THE SIMPSON MURDER CASE.

14 THEY WORKED ON THE ARMENIAN EARTHQUAKE
15 IN 1988. IT OUTLINES THE WORK THEY'VE DONE THERE.

16 AND YOU CAN GO THROUGH THIS, LEAF
17 THROUGH THIS AND SEE THE VARIOUS WORK THEY'VE DONE
18 IN REGARDS TO MANY NATURAL AND MAN-MADE DISASTERS
19 OVER THE YEARS, INCLUDING -- THERE'S A PICTURE OF
20 THE RECONSTRUCTION THEY DID IN THIS CRIME, IN THIS
21 CASE, CONCERNING SHOT NO. 1.

22 NOW, DR. MC CARTHY INDICATED THAT
23 NORMALLY HE CHARGES \$600 AN HOUR FEE FOR HIS
24 CONSULTATION AND TESTIMONY. IN THIS CASE HE IS NOT
25 CHARGING THE PROSECUTION ANYTHING.

26 DR. MC CARTHY SET OUT TO TRY TO

27 DETERMINE THE NUMBER OF SHOTS THAT WERE FIRED INSIDE
28 THE ROOM, AND TO DETERMINE, IF POSSIBLE, THE

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1 SEQUENCE OF SHOTS THAT WERE FIRED. HE, FIRST OF
2 ALL, MADE -- SOUGHT TO DETERMINE WHETHER OR NOT
3 DISTANCES CAN BE RELIABLY DETERMINED IN THAT
4 REGARD. HE CONDUCTED A SERIES OF EXPERIMENTS,
5 WORKING WITH A MOSSBERG SHOTGUN.

6 NOW, AT SOME POINT HE CONCLUDED THAT --
7 AND I'M NOT GOING -- AS I DISCUSS THIS EXPERT
8 TESTIMONY, I'M NOT GOING TO GET INTO ALL OF THE
9 LABORIOUS DETAILS THAT WE WENT INTO DURING THE
10 COURSE OF TESTIMONY. I THINK THAT YOU'VE HEARD
11 ENOUGH OF THAT. I DON'T THINK THAT THAT IS
12 DETERMINATIVE OF THE OUTCOME OF THIS CASE, BECAUSE I
13 WANT YOU TO STAY FOCUSED ON THE CRITICAL ISSUES IN
14 THIS CASE.

15 MOST OF THE CONTROVERSY CONCERNING THE
16 TESTIMONY OF DR. MC CARTHY REALLY CAME DOWN TO
17 WHETHER JOSE MENENDEZ WAS SITTING OR STANDING AT THE
18 TIME THAT THE FIRST SHOT WAS FIRED.

19 LADIES AND GENTLEMEN, WE WANTED TO
20 PROVIDE YOU WITH THE TESTIMONY OF ROGER MC CARTHY SO
21 YOU CAN GET SOME IDEA OF WHAT HAPPENED INSIDE THAT

22 ROOM. I DID NOT WANT TO LEAVE YOU WITH A COMPLETE
23 VACUUM AS TO WHAT HAPPENED INSIDE THAT ROOM, A
24 COMPLETE BLANK, AND YOU JUST DRAW YOUR OWN
25 CONCLUSIONS. IF THERE ARE SOME REASONABLE
26 CONCLUSIONS THAT CAN BE DRAWN FROM THE PHYSICAL
27 EVIDENCE THAT IS AVAILABLE, I WANTED YOU TO HEAR
28 THOSE REASONABLE CONCLUSIONS. AND THEN YOU CAN

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1 DECIDE FOR YOURSELF WHICH OF THOSE CONCLUSIONS YOU
2 AGREE WITH, AND WHICH OF THOSE CONCLUSIONS YOU
3 DISAGREE WITH.

4 BUT I WAS NOT GOING TO LEAVE JUST A
5 TOTAL VACUUM AND THE IMPRESSION THAT, GEE, WE DON'T
6 KNOW ANYTHING THAT WENT ON IN THAT ROOM, AND WE
7 CAN'T DRAW ANY CONCLUSIONS FROM IT, BECAUSE THAT'S
8 REALLY NOT THE CASE. THERE ARE REASONABLE
9 CONCLUSIONS THAT CAN BE DRAWN.

10 NOW, AS THE TESTIMONY PLAYED OUT IN
11 COURT, YOU'LL RECALL THAT MOST OF THE TESTIMONY
12 CENTERED AROUND THE FIRST SHOT THAT WAS FIRED; THAT
13 IS, WHETHER JOSE MENENDEZ WAS SEATED OR STANDING AT
14 THE TIME OF THAT SHOT.

15 AND IN THE LARGER SCHEME OF THINGS,
16 LADIES AND GENTLEMEN, WHILE THAT MAY HAVE BEEN A

17 POINT OF CONTENTION, AND WHILE BOTH SIDES MAY HAVE
18 LEGITIMATELY GONE BACK AND FORTH PRESENTING ARGUMENT
19 AND EVIDENCE AND THEORIES CONCERNING THAT SHOT, IN
20 THE LONG SCHEME OF THIS TRIAL, DOES IT REALLY MATTER
21 WHETHER JOSE MENENDEZ WAS STANDING OR SITTING? IT
22 DOESN'T.

23 WHEN ERIK MENENDEZ AND LYLE MENENDEZ
24 WENT INTO THAT ROOM -- ONCE AGAIN, I'M JUST ASSUMING
25 THAT YOU ACCEPT THIS TALE, THE TALE TOLD BY ERIK
26 MENENDEZ, WHICH I WILL SHOW IS VERY QUESTIONABLE.

27 BUT EVEN IF YOU EXCEPT THE TALE TOLD BY
28 ERIK MENENDEZ, BY THE TIME THEY WERE GOING INTO THAT

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1 ROOM THEY WERE GOING INTO THAT ROOM WITH LOADED
2 SHOTGUNS. WHAT DO YOU THINK THEY WERE GOING TO DO
3 WHEN THEY GOT INTO THAT ROOM? THEY WERE GOING TO DO
4 EXACTLY WHAT THEY DID DO, WHICH WAS TO SHOOT THEIR
5 PARENTS TO DEATH.

6 ERIK MENENDEZ WOULD HAVE YOU BELIEVE,
7 THOUGH, THAT HE WAS STANDING, AND BECAUSE HE WAS
8 STANDING, THAT WAS A NEW DANGER, AND SOMEHOW THAT
9 JUSTIFIED HIS CONDUCT, THAT JUSTIFIED HIM SHOOTING
10 HIS FATHER TO DEATH?

11 WHERE WAS THE EVIDENCE? DID HE SEE A

12 GUN AS HE WENT INTO THAT ROOM? OF COURSE HE
13 DIDN'T. SO DOES IT REALLY MAKE A DIFFERENCE WHETHER
14 HE WAS STANDING OR SEATED AT THE TIME THAT THAT SHOT
15 WAS FIRED? IT MAKES ABSOLUTELY NO DIFFERENCE AS FAR
16 AS THE ULTIMATE ISSUE OF CRIMINAL RESPONSIBILITY IS
17 CONCERNED IN THIS CASE.

18 SO CERTAINLY, IT'S SOMETHING THAT YOU
19 SHOULD DISCUSS. CERTAINLY, IT WAS SOMETHING THAT
20 WAS CONTESTED BY THE DEFENSE, AND YOU CAN GO AHEAD
21 AND DISCUSS EVERY SINGLE ARGUMENT THEY RAISED, EVERY
22 EXPERT THAT THEY CALLED WHO QUESTIONED THE
23 RELIABILITY OF MR. MC CARTHY'S CONCLUSIONS
24 CONCERNING THAT SHOT. IT'S ALL LEGITIMATE
25 DISCUSSION FOR YOU TO CONSIDER. BUT IN THE END,
26 LADIES AND GENTLEMEN, IT DOESN'T REALLY MATTER AS
27 FAR AS THE ULTIMATE CRIMINAL RESPONSIBILITY OF THE
28 DEFENDANTS ARE CONCERNED.

51170

1 SO, AS I SAY, I'M NOT GOING TO GET INTO
2 IT A GREAT DEAL AT THIS TIME CONCERNING EVERY SINGLE
3 SHOT THAT WAS FIRED. BUT IF IT COMES DOWN TO
4 GETTING BACK INTO THE PELLET COUNT, I HAVE ONE MORE
5 OPPORTUNITY TO ARGUE AFTER THE DEFENSE ARGUES, AND I
6 WILL RESPOND TO THE ARGUMENTS MADE BY COUNSEL

7 CONCERNING THE RELIABILITY OF EACH AND EVERY SHOT
8 THAT WAS FIRED IN THIS CASE, AND MR. MC CARTHY'S
9 CONCLUSIONS CONCERNING EACH OF THESE SHOTS THAT WERE
10 FIRE.

11 BUT DR. MC CARTHY TESTIFIED THAT HE WENT
12 ABOUT, FIRST, TRYING TO DETERMINE THE DISTANCE AT
13 WHICH THE GUNS WERE FIRED. AND HE CONDUCTED A
14 SERIES OF EXPERIMENTS, AND HE CONCLUDED THAT THERE
15 IS SO MUCH VARIATION, EVEN WHEN YOU'RE USING THE
16 SAME GUN, AND EVEN THOUGH THAT GUN HAS WHAT IS
17 CALLED A FIXED CHOKE. IT'S NOT A VARIABLE CHOKE,
18 WHERE YOU CAN CONTROL THE SPRAY OF THE PELLETS.

19 EVEN WHEN YOU HAVE A FIXED CHOKE, YOU
20 STILL HAVE A GREAT DEAL OF VARIATION FROM SHOT TO
21 SHOT, AND BECAUSE THERE'S SO MUCH VARIATION, WHEN
22 YOU'RE USING A FIXED CHOKE, HE CONCLUDED THAT YOU
23 REALLY CAN'T REACH ANY RELIABLE CONCLUSIONS
24 CONCERNING DISTANCE, BECAUSE WE DON'T EVEN HAVE THE
25 REAL WEAPONS IN THIS CASE. ALL WE HAVE IS AN
26 IDENTICAL MOSSBERG, BUT IT WASN'T THE ONE THAT WAS
27 USED IN THIS CASE. SO HE CONCLUDED IT WOULD BE
28 POINTLESS TO CONDUCT A FURTHER EXAMINATION --

51171

1 FURTHER EXPERIMENTS.

2 NOW, HE WAS CROSS-EXAMINED HEAVILY BY
3 THE DEFENSE ABOUT: WELL, WHY DIDN'T YOU USE THIS
4 TYPE OF AMMUNITION? AND WHY DIDN'T YOU USE THIS?
5 AND WHY DIDN'T YOU DO MORE EXPERIMENTS AND MORE
6 TESTS?

7 LADIES AND GENTLEMEN, THAT WOULD HAVE
8 ALL BEEN POINTLESS, BECAUSE IF HE CONCLUDED YOU
9 CANNOT FORM LIABLE CONCLUSIONS BECAUSE OF THE
10 VARIATION, WHAT DIFFERENCE WOULD IT HAVE MADE TO
11 CONDUCT MORE EXPERIMENTS; AND YET, THEY JUST BERATED
12 HIM FOR THE FAILURE TO DO MORE EXPERIMENTS.

13 AND THE BOTTOM LINE IS HE WAS NOT
14 TESTIFYING TO DISTANCES. HE WAS NOT USING DISTANCES
15 AS A BASIS FOR HIS OPINION. SO IT WAS JUST A
16 POINTLESS AVENUE OF ATTACK UPON THE TESTIMONY OF
17 ROGER MC CARTHY.

18 SO ONCE HE DETERMINED THAT YOU CANNOT
19 REALLY DETERMINE DISTANCES, HE JUST ABANDONED THAT
20 PART OF HIS EVALUATION OF THIS CASE; AND HE FRANKLY
21 ADMITS TO YOU: "I RAN INTO A DEAD END THERE. I
22 REALIZED I'M NOT GOING TO REACH ANY RELIABLE
23 CONCLUSIONS, AND I'M NOT TRYING TO REACH ANY
24 RELIABLE CONCLUSIONS," SO HE ABANDONED THAT ALL
25 TOGETHER.

26 HIS NEXT FOCUS WAS TO TRY TO DETERMINE
27 THE NUMBER OF SHOTS THAT WERE FIRED INSIDE THIS
28 ROOM. AND WHAT HE CONCLUDED IS THAT THE MOST

1 RELIABLE FIGURE FOR THE NUMBER OF SHOTS THAT WERE
2 FIRED INSIDE THAT ROOM ARE 12. AND HE PREPARED A
3 SERIES OF ILLUSTRATIONS ILLUSTRATING EACH OF THOSE
4 12 SHOTS THAT WERE FIRED.

5 HE REACHED HIS CONCLUSION, HE SAID,
6 BASED UPON A NUMBER OF FACTORS. BEAR IN MIND THAT
7 HIS CONCLUSION IS CONSISTENT WITH THE ESTIMATES
8 GIVEN BY THE DEFENSE. HE'S MORE DEFINITE, HE'S MORE
9 PINPOINTED, BY COMING UP WITH THAT SPECIFIC FIGURE,
10 12, BUT THE DEFENSE DOESN'T DISPUTE THAT 12 SHOTS
11 WERE FIRED. THEY'RE JUST SAYING THERE SHOULD BE
12 MORE OF A RANGE. I THINK THE ESTIMATE GIVEN BY ONE
13 OF THEIR EXPERTS WAS 10 TO 13. OKAY. THAT'S NOT
14 INCONSISTENT WITH WHAT ROGER MC CARTHY IS SAYING.
15 HE'S JUST SAYING HE FEELS 12 IS THE MOST RELIABLE
16 FIGURE. THEY'RE SAYING YOU CAN'T BE QUITE THAT
17 RELIABLE OR QUITE THAT CONCLUSIVE.

18 DR. MC CARTHY TESTIFIED THAT THE WAY HE
19 WENT ABOUT MAKING THIS DETERMINATION IS, FIRST, YOU
20 CAN LOOK AT SHOTS THAT CLEARLY WERE SHOTS WHICH DID
21 NOT INTERFERE ANY OTHER OBJECT, WHICH DID NOT STRIKE
22 MULTIPLE OBJECTIONS, SUCH AS THE CONTACT WOUND. YOU
23 CAN COUNT THOSE. HE SAW THEN, FOR EXAMPLE, A CLEAR
24 MISSHOT THAT WENT OUT THE WINDOW, THROUGH THE

25 SHUTTERS, AND BASED UPON THE NATURE AND SIZE OF THE
26 SHOT, BASED UPON THE FACT THAT IT WAS AN OVAL, THAT
27 CAUSED HIM TO CONCLUDE IT WAS SHOT FROM AN ANGLE.
28 HE WAS ABLE TO CONCLUDE THAT ONE WAS A COMPLETE

51173

1 MISS.

2 HE THEN CONCLUDED -- HE THEN REACHED
3 CONCLUSIONS CONCERNING THE NUMBER OF SHOTS FIRED BY
4 ASSOCIATING WOUNDS; THAT IS, REASONABLE CONCLUSIONS
5 CAN BE DRAWN CONCERNING THE ASSOCIATION OF
6 PARTICULAR WOUNDS TO THE BODY.

7 NOW, BEAR IN MIND THAT THIS IS SOMETHING
8 THAT THE DEFENSE EXPERTS ALSO DID. THEY ALSO DID
9 THE VERY SAME THING. THEY TOO ASSOCIATED VARIOUS
10 WOUNDS AND SAID: MORE THAN LIKELY THIS WOUND TO THE
11 HAND, FOR EXAMPLE, CAN BE ASSOCIATED WITH THIS
12 WOUND; OR YOU WILL RECALL THE WOUND IN THE LOWER
13 FOREARM, AND THEN THE UPPER ARM. THESE WOUNDS CAN
14 ALL BE ASSOCIATED TOGETHER. THAT'S BECAUSE OF THE
15 WAY THEY LINE UP. THERE'S A VERY REASONABLE
16 INFERENCE TO BE DRAWN THAT THAT IS A SINGLE WOUND.

17 OKAY? THE MAIN POINT OF CONTENTION
18 BETWEEN THE DEFENSE EXPERTS AND ROGER MC CARTHY WAS
19 THAT ROGER MC CARTHY WAS MUCH MORE DEFINITE IN

20 REGARD TO THE SEQUENCE OF SHOTS THAT WERE FIRED IN
21 THIS CASE; AND THE DEFENSE CONTENDS THAT THAT TYPE
22 OF DEFINITENESS CANNOT BE ACCURATELY DETERMINED.

23 WELL, LADIES, LET ME SAY THIS: THAT
24 DR. MC CARTHY'S CONCLUSIONS ARE BASED, NOT ONLY UPON
25 REASONABLE SCIENTIFIC PRINCIPLES, BUT IT IS ALSO
26 BASED UPON -- AND THIS IS WHERE -- THIS IS WHERE THE
27 CUTOFF POINT IS. THIS IS WHERE THE DEFENSE, SUCH
28 AS -- AND THEY EVEN CALLED DWIGHT VAN HORN, FOR

51174

1 EXAMPLE, FROM THE SHERIFF'S DEPARTMENT, WHO DOESN'T
2 GO THIS FAR, AND WON'T MAKE THIS TYPE OF
3 CONCLUSION. IT'S BASED UPON REASONABLE CONCLUSIONS
4 TO BE DRAWN FROM THE EVIDENCE CONCERNING PEOPLE IN
5 THAT SITUATION.

6 YOU SEE, FOR EXAMPLE, SOME OF HIS
7 CONCLUSION IS BASED UPON -- AND HE ARTICULATED IT
8 HERE IN COURT -- THAT IF JOSE MENENDEZ NOT BEEN SHOT
9 AT A CERTAIN POINT IN TIME, HE WOULD HAVE RESPONDED
10 MORE. YOU MIGHT SEE MORE MOVEMENT. YOU MIGHT SEE
11 MORE BLOOD IN DIFFERENT AREAS OF THE ROOM.

12 NOW, THAT'S WHERE THEY PART COMPANY.
13 AND THEY ARE TELLING DR. MC CARTHY: YOU SHOULD NOT
14 GO THAT FAR. IF WE DON'T GO THAT FAR, THEN YOU

15 DON'T GO THAT FAR.

16 LADIES AND GENTLEMEN, THAT'S FOR THE
17 JURY TO DECIDE. THE JURY CAN DECIDE WHETHER
18 DR. MC CARTHY'S CONCLUSIONS ARE REASONABLE OR
19 UNREASONABLE, BECAUSE HE GIVES YOU THE EVIDENCE THAT
20 HE HAS. HE TELLS YOU WHAT HIS CONCLUSIONS ARE. HE
21 TELLS YOU THE BASIS FOR HIS CONCLUSIONS. AND THEN
22 YOU ARE FREE TO AGREE WITH HIM, OR YOU ARE FREE TO
23 DISAGREE WITH HIM.

24 I WOULD SUBMIT TO YOU, LADIES AND
25 GENTLEMEN, THAT THE CONCLUSIONS REACHED BY ROGER
26 MC CARTHY ARE REASONABLE CONCLUSIONS WHICH ARE WELL
27 SUPPORTED BY THE EVIDENCE. AND I ASK YOU TO AGREE
28 WITH THOSE CONCLUSIONS TO THE EXTENT THAT YOU

51175

1 BELIEVE HE IS CORRECT, TO THE EXTENT THAT YOU
2 BELIEVE THOSE CONCLUSIONS ARE, IN FACT, REASONABLE
3 AND RELIABLE CONCLUSIONS BASED UPON PHYSICAL
4 EVIDENCE. IF YOU FEEL THAT SOMETHING IS
5 SPECULATIVE, IF YOU FEEL THAT SOMETHING IS
6 UNRELIABLE, THEN REJECT IT. DO NOT RELY UPON IT.
7 SO, HE RELIED UPON THE ASSOCIATION OF
8 WOUNDS, WHICH IS SOMETHING THAT IS ACCEPTED BY BOTH
9 SIDES. BOTH SIDES RELIED UPON THE ASSOCIATION OF

10 WOUNDS. AND THEN HE RELIED UPON PELLET COUNT. AND
11 FOR THE PELLET COUNT HE LOOKED AT THE X RAYS AND
12 DETERMINED THE EXACT NUMBER OF PELLETS BASED UPON
13 THE X RAYS.

14 AND LIKE I SAID, AT THIS POINT IN TIME
15 I'M NOT GOING TO GET INTO A PELLET-BY-PELLET COUNT.
16 I THINK THAT MY OPENING ARGUMENT IS LONG ENOUGH
17 WITHOUT ME GETTING INTO THAT KIND OF DETAIL. BUT I
18 WILL, IF NECESSARY, LATER.

19 NOW, DR. MC CARTHY THEN TESTIFIED -- JUST
20 TO GIVE YOU JUST A VERY BRIEF SUMMARY OF WHAT HE
21 TESTIFIED TO, HE SAID THAT SHOT NO. 1 -- WHICH THE
22 DEFENSE ARGUES IS THE MOST CONTROVERSIAL SHOT IN
23 THIS CASE -- IS A SHOT THAT WENT THROUGH THE LEFT
24 ARM OF JOSE MENENDEZ, STRUCK THE LEFT ARM OF JOSE
25 MENENDEZ, WENT INTO THE RIGHT ARM, PASSED THROUGH
26 THE RIGHT ARM. SOME OF THOSE PELLETS EXITED THE
27 RIGHT ARM AND WENT INTO THE BREAST OF KITTY
28 MENENDEZ.

51176

1 HE INDICATED THAT ON THIS SHOT IN
2 PARTICULAR THE PELLET COUNT -- AND WE WENT BACK AND
3 FORTH ON BOTH SIDES AS TO THE NUMBER OF PELLETS THAT
4 SHOULD BE COUNTED AS PART OF THIS SHOT -- HE

5 INDICATED THAT THERE ARE 27 PELLETS, I BELIEVE IT
6 WAS, 27 ASSOCIATED WITH A SINGLE SHOT. AND THE
7 PELLET COUNT WORKED OUT. HE CONCLUDED THAT THIS IS
8 A REASONABLE RECONSTRUCTION WHICH IS BASED UPON,
9 FIRST OF ALL, AS I INDICATED, THE MOVEMENT OF JOSE
10 MENENDEZ, OR THE LACK OF MOVEMENT OF JOSE MENENDEZ.

11 YOU KNOW, LADIES AND GENTLEMEN, WHEN YOU
12 LOOK AT THE BLOOD, BEAR IN MIND THAT -- I ASK YOU TO
13 LOOK AT THE PHOTOGRAPHS IN THIS CASE AS YOU EVALUATE
14 THE TESTIMONY OF THE EXPERTS. BECAUSE, AS I SAID,
15 TEMPER THE TESTIMONY OF ALL WITNESSES IN THIS CASE,
16 OF ALL EXPERT WITNESSES, WITH YOUR OWN COMMON SENSE
17 AND YOUR OWN EVALUATION OF THE EVIDENCE IN THIS
18 CASE.

19 YOU TAKE A LOOK AT THE POOLS OF BLOOD,
20 LADIES AND GENTLEMEN, AND I THINK YOU CAN SEE THAT
21 THERE IS A POOL OF BLOOD WHERE THE BODY OF KITTY
22 MENENDEZ WAS FOUND, AND THEN THERE IS ANOTHER POOL
23 OF BLOOD THAT IS FOUND WHERE JOSE MENENDEZ WAS
24 SEATED. AND I WOULD SUBMIT TO YOU THAT THIS IS ONE
25 OF THE MOST IMPORTANT PHOTOGRAPHS THAT YOU SHOULD
26 RELY UPON AS YOU EVALUATE THE TESTIMONY OF THE
27 EXPERTS IN THIS CASE. WHY? BECAUSE YOU DON'T HAVE
28 TO BE A ROCKET SCIENTIST TO SEE THAT THERE'S HARDLY

1 ANY BLOOD WHATSOEVER OVER HERE IN FRONT OF THE
2 SOFA. THERE'S JUST VERY, VERY FEW DROPS OF BLOOD
3 RIGHT NEXT TO THE SOFA, AND VIRTUALLY NOTHING
4 EXTENDING AWAY FROM THE SOFA.

5 SO YOU DON'T HAVE TO BE A ROCKET
6 SCIENTIST TO FIGURE OUT THAT ALL OF THE SHOTS IN
7 THIS CASE MUST HAVE BEEN FIRED WHILE JOSE MENENDEZ
8 WAS SEATED IN THAT POSITION AND WHILE KITTY MENENDEZ
9 WAS LYING THERE ON THE FLOOR; THAT ALL OR MOST OF
10 THE SHOTS MUST HAVE BEEN FIRED IN THOSE TWO
11 POSITIONS.

12 AS I SAID, ONCE AGAIN, JUST USE YOUR OWN
13 COMMON SENSE. YOU RELY UPON EXPERT TESTIMONY, BUT
14 USE YOUR OWN COMMON SENSE. USE YOUR OWN REASONING
15 AND JUDGMENT AS YOU VIEW THE TESTIMONY OF ALL OF THE
16 EXPERTS IN THIS CASE; AND THEN WHEN YOU LOOK AT THE
17 POSITION OF JOSE MENENDEZ, I MEAN, LOOK VERY
18 CAREFULLY AT THE WAY HE IS SEATED. LOOK VERY
19 CAREFULLY AT THE WAY THAT HIS LEGS ARE CROSSED, AT
20 THE WAY THAT HIS FEET ARE CROSSED. AND I WOULD
21 SUBMIT TO YOU THAT JUST BASED UPON THIS, IT WOULD BE
22 UNREASONABLE FOR YOU TO CONCLUDE THAT THIS SHOOTING
23 COULD HAVE OCCURRED AS THE DEFENSE IS SUGGESTING,
24 BECAUSE AS MUCH AS THEY TRY TO SUGGEST THAT A
25 RECONSTRUCTION IS NOT POSSIBLE, THAT YOU CAN'T REACH
26 THESE REASONABLE CONCLUSIONS CONCERNING HOW THE
27 SHOOTING TOOK PLACE, IN THE END THEY VIRTUALLY
28 OFFERED A RECONSTRUCTION TOO.

1 IN THE END, BY THE TIME THEY GOT TO
2 THEIR LAST EXPERT IN THIS AREA, WHICH WAS MORTON,
3 DR. MORTON WAS GIVING A RECONSTRUCTION, FOR ALL
4 PRACTICAL PURPOSES. THEY CALLED ALL OF THESE
5 WITNESSES TO SAY ROGER MC CARTHY IS WRONG. YOU
6 CAN'T REALLY DO IT. IT'S JUST UNRELIABLE. IT CALLS
7 FOR TOO MUCH SPECULATION.

8 BUT, LADIES AND GENTLEMEN, BY THE TIME
9 DR. MORTON GOT ON THE STAND THEY WERE OFFERING THEIR
10 OWN RECONSTRUCTION. THEY HAD THIS THEORY ABOUT JOSE
11 MENENDEZ PIROUETTING, TURNING AROUND, SPINNING
12 AROUND WHILE SHOTS ARE BEING FIRED; AND WHY, LADIES
13 AND GENTLEMEN? FOR ONE REASON, FOR ONE REASON
14 ONLY. ERIK MENENDEZ SAID THAT WHEN HE ENTERED THE
15 ROOM HIS FATHER WAS STANDING. AND ALL OF THESE
16 EXPERTS OFFERED TESTIMONY DESIGNED TO BE CONSISTENT
17 WITH THAT THEORY.

18 "SO DOCTOR, IS IT POSSIBLE THAT JOSE
19 MENENDEZ WAS STANDING UP?" "YES, IT WAS," THEY ALL
20 TESTIFIED. THEN HOW DO YOU ACCOUNT FOR THIS WOUND
21 AND THIS WOUND AND THIS WOUND? SO TO BE CONSISTENT
22 WITH ERIK MENENDEZ, NOT TO PROVE THAT ERIK MENENDEZ
23 IS A LIAR, THEY HAD TO COME UP WITH THIS CRAZY

24 SPINNING THEORY.

25 AND ASK YOURSELF, DO YOU REALLY BELIEVE
26 THAT? DO YOU REALLY BELIEVE THIS MAN SPUN INTO
27 PLACE? DOES IT REALLY LOOK LIKE THIS MAN -- AND THEN
28 I EVEN SAID TO DR. WECHT: "WELL, YOU WOULD HAVE TO

51179

1 AGREE AT THE VERY LEAST, DOCTOR, THAT HE WAS
2 STANDING THERE AS HE WAS DOING THE SPINNING, THAT HE
3 WASN'T STANDING WAY FROM THE SOFA? AND DR. WECHT
4 SAID,

5 "OH, NOT NECESSARILY. MAYBE HE HOBBLING BACK."

6 SO NOW WE HAVE HIM HOBBLING AND SPINNING
7 AT THE SAME TIME. ASK YOURSELF, AS YOU LOOK AT THIS
8 PHOTOGRAPH, LADIES AND GENTLEMEN, DOES THIS LOOK
9 LIKE A MAN WHO WAS AMBUSHED AS HE WAS LYING THERE,
10 OR DOES THAT LOOK LIKE A MAN WHO WAS HOBBLING AND
11 SPINNING INTO PLACE? USE YOUR OWN COMMON SENSE.

12 SO WE HAVE THE FIRST SHOT, WHICH AS I
13 SAID IS THE MOST CONTROVERSIAL SHOT IN THIS CASE.

14 THE SECOND SHOT TESTIFIED TO BY --
15 ACCORDING TO THE RECONSTRUCTION OF ROGER MC CARTHY,
16 THAT SHOT WAS FIRED TO THE BACK OF THE HEAD. AND I
17 DON'T THINK THERE'S ANY DISPUTE THAT JOSE MENENDEZ
18 WAS SHOT TO THE BACK OF THE HEAD, AS INDICATED IN

19 THIS DIAGRAM; AND THE GUN WOULD NECESSARILY HAVE TO
20 BE AT AN ANGLE, RATHER THAN DIRECTLY BEHIND HIM LIKE
21 THIS, BECAUSE OF THE LENGTH OF THE BARREL.

22 SO THE GUN IS PROPERLY SHOWN HERE AT AN
23 ANGLE.

24 ANOTHER THING TO BEAR IN MIND AS YOU
25 LOOK BACK TO THE CRITICISM OF MR. MC CARTHY'S
26 TESTIMONY, IS HOW MUCH OF THAT CRITICISM WAS REALLY
27 DIRECTED TO THE ILLUSTRATIONS THEMSELVES AS OPPOSED
28 TO THE CONCEPT THAT HE WAS TRYING TO EXPRESS TO

51180

1 YOU. HE REPEATEDLY SAID: "I AM USING THESE DIAGRAMS
2 TO ILLUSTRATE A POINT, TO ILLUSTRATE A CONCEPT, AND
3 THAT CONCEPT IS..."

4 LET'S TAKE THIS ONE, FOR EXAMPLE; THAT
5 JOSE MENENDEZ WAS SEATED AT THE TIME THAT THE SHOT
6 WAS FIRED, AND THAT THE GUN MUST HAVE BEEN AT AN
7 ANGLE RATHER THAN DIRECTLY BEHIND, BECAUSE THE GUN'S
8 TOO LONG TO BE DIRECTLY BEHIND. ALL RIGHT? THAT'S
9 ALL THIS ILLUSTRATION IS DESIGNED TO ILLUSTRATE.

10 NOW, WE COULD HAVE DONE THAT, LADIES AND
11 GENTLEMEN, BY ASKING DR. MC CARTHY: "DR. MC CARTHY,
12 LET ME GIVE YOU A SHEET OF PAPER. GO UP THERE ON
13 THAT SHEET OF PAPER AND WOULD YOU PLEASE ILLUSTRATE

14 HOW YOU THINK HIS HEAD WAS POSITIONED AT THE TIME
15 THAT THE SHOT WAS FIRED," AND HE COULD HAVE DRAWN A
16 LITTLE STICK FIGURE AND HE COULD HAVE MADE A LINE,
17 AND THAT WOULD HAVE JUST BEEN FINE.

18 BUT RATHER THAN PRESENT SUCH A SLIPSHOD
19 PRESENTATION, WHAT WE DID WAS WE ASKED HIM TO
20 PREPARE THESE ILLUSTRATIONS, AND THESE ILLUSTRATIONS
21 PORTRAY THAT CONCEPT VERY CLEARLY FOR YOU; AND YET,
22 WHAT DID THE DEFENSE DO? DID THE DEFENSE FOCUS IN
23 ON WHAT WE WERE TRYING TO CONVEY TO THE JURY; THAT
24 IS, THE INFORMATION THAT IS IN DISPUTE IN THIS
25 CASE? NO.

26 THEY SAID: "WHERE IS THE EVIDENCE THAT
27 THE PILLOW WAS LIKE THAT OR KITTY'S LEG WAS THAT
28 LIKE THAT?"

51181

1 HE REPEATEDLY SAID: "THAT'S NOT THE
2 PURPOSE OF THIS DIAGRAM. THAT'S NOT THE ESSENTIAL
3 INFORMATION."

4 AND SO I REPEATEDLY HAD TO GO BACK AND
5 ASK THAT QUESTION. WHAT IS THE ESSENTIAL
6 INFORMATION THAT YOU WERE TRYING TO PORTRAY?

7 SO, DON'T BE TAKEN -- DON'T BE
8 DISTRACTED BY ARGUMENT FROM COUNSEL SUGGESTING, OH,

9 WELL, THERE IS NO EVIDENCE THAT KITTY MENENDEZ WAS
10 SEATED HERE. WHERE'S THE EVIDENCE HER LEGS WERE
11 LIKE THAT?

12 THAT'S NOT THE POINT OF THIS
13 ILLUSTRATION. IT DOESN'T MATTER WHETHER HER LEGS
14 WERE CROSSED OR WHETHER SHE WAS STARTING TO STAND
15 UP. AND DR. MC CARTHY TOLD YOU ALL OF THE
16 VARIABLES. HE SAID: "I'M NOT SAYING THAT KITTY
17 MENENDEZ -- THAT I KNOW THAT AT THE MOMENT THIS WAS
18 FIRED TO THE BACK OF JOSE MENENDEZ' HEAD THAT KITTY
19 MENENDEZ WASN'T STARTING TO STAND UP; THAT I THINK
20 THERE'S REASON TO BELIEVE THAT AT SOME POINT SHE WAS
21 STANDING UP."

22 AND THE DEFENSE EXPERTS, DR. LINHART
23 FROM THE SHERIFF'S DEPARTMENT, AGREED AT SOME POINT
24 THAT SHE WAS STANDING UP, CONSISTENT WITH
25 DR. MC CARTHY. BUT DR. MC CARTHY IS NOT TRYING TO
26 REPRESENT THAT SHE WAS NECESSARILY SEATED IN THAT
27 POSITION AT THE TIME THE SHOT WAS FIRED.

28 SO, AS YOU LISTEN TO THE ARGUMENT OF

51182

1 COUNSEL, BEAR IN MIND WHAT DR. MC CARTHY WAS SAYING
2 AND WHAT HE WAS NOT SAYING. AND HE IS NOT SAYING
3 THAT KITTY MENENDEZ WAS NECESSARILY SEATED IN THAT

4 POSITION. THAT'S NOT PART OF HIS OPINION. THIS
5 DIAGRAM IS SIMPLY DESIGNED TO FACILITATE THE
6 EXPRESSION OF A SINGLE CONCEPT, AND THAT SINGLE
7 CONCEPT IS THAT JOSE MENENDEZ WAS SHOT IN THE BACK
8 OF THE HEAD; THAT THE GUN WAS HELD AT AN ANGLE AT
9 THE TIME THAT THAT SHOT WAS FIRED; AND THAT IS ALL.
10 THE REST IS JUST FOR THE VISUAL CLARITY. IT'S NOT
11 PART OF HIS OPINION NECESSARILY.

12 THE THIRD SHOT THAT WAS FIRED IS THE
13 SHOT THAT IS A MISS.

14 NOW, BEAR IN MIND, THE SECOND SHOT, HE
15 GAVE THE OPINION THAT IT IS REASONABLE TO CONCLUDE
16 THAT JOSE MENENDEZ WAS TAKEN OUT OF THE PICTURE
17 EARLY, BECAUSE IF HE WERE NOT SHOT EARLY, THERE
18 WOULD BE MORE BLOOD ASSOCIATED THROUGHOUT THE ROOM.
19 YOU'D BE ABLE TO SEE MORE EVIDENCE OF BLOOD. HE
20 CONCLUDED THAT JOSE MENENDEZ WAS TAKEN OUT OF THE
21 PICTURE EARLY; AND THAT IS SUPPORTED BY THE PHYSICAL
22 EVIDENCE AT THE SCENE.

23 THE SECOND (SIC), SHOT 3 IS GOING TO BE
24 A MISS, AND IT IS VERY REASONABLE TO CONCLUDE THAT
25 THE SHOT WAS FIRED FROM THAT ANGLE, AND HE INDICATED
26 THAT IF YOU WERE TO DRAW A LINE EXTENDING FROM THAT
27 WINDOW TO THE TREE OUTSIDE -- AND YOU KNOW THAT
28 THERE ARE IN FACT PELLET DEFECTS TO THE TREE OUTSIDE --

1 YOU COULD CONTINUE THAT LINE FROM THE TREE OUTSIDE
2 THERE, TO THIS BROKEN WINDOW, AND IT WOULD BE ALONG
3 THIS TRAJECTORY.

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1 SO I WOULD SUBMIT TO YOU THAT THAT IS VERY
2 REASONABLE, AND PERHAPS THE MOST SCIENTIFIC ILLUSTRATION
3 IN THIS SERIES, BECAUSE IT IS BASED UPON AN ACTUAL
4 TRAJECTORY WHICH CAN BE MEASURED AND LINED UP. THE
5 GEOMETRY OF THIS WORKS PERFECTLY. AND IT IS REASONABLE
6 TO CONCLUDE, I WOULD SUBMIT, THAT THIS SHOT WAS FIRED
7 EARLY IN THE SEQUENCE. IT WAS INDICATED THAT IT WAS
8 FIRED EARLY IN THE SEQUENCE.

9 ASK YOURSELVES ONCE AGAIN -- AND I AM NOT
10 ASKING YOU TO ACCEPT THIS AS PURE DOGMA, THAT EITHER YOU
11 ACCEPT ALL OF ROGER MCCARTHY'S OPINION OR YOU REJECT ALL
12 OF IT.

13 BUT I WOULD SUBMIT THAT HIS OPINION
14 REGARDING THIS PARTICULAR SHOT IS REASONABLE. IT'S
15 REASONABLE TO CONCLUDE THAT THIS SHOT WOULD HAVE BEEN
16 FIRED WHILE THE VICTIMS WERE STILL ON THE COUCH, OR
17 KITTY MENENDEZ WAS JUST MOVING FROM THE COUCH. KITTY
18 MENENDEZ WAS ALREADY ON THE FLOOR, LYING IN THAT POOL OF
19 BLOOD, WHICH WE KNOW AND WHICH WE SAW, THAT POOL OF
20 BLOOD ON THAT FLOOR. THERE WOULD BE NO REASON FOR THIS
21 SHOT TO BE FIRED AT THIS PARTICULAR TRAJECTORY.

22 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
23 THAT THIS HAD TO BE A SHOT FIRED EARLY IN THE SEQUENCE.

24 AND LIKE I SAID, WHETHER IT WAS -- YOU SEE,
25 WHETHER IT WAS SECOND IN THE SEQUENCE OR WHETHER IT WAS
26 THIRD IN THE SEQUENCE REALLY DOESN'T MATTER. DOES IT

27 REALLY MATTER WHETHER THIS WAS SHOT NO. 2 OR THIS WAS
28 SHOT NO. 3? THESE ARE REASONABLE INFERENCES TO BE DRAWN

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1 FROM THE EVIDENCE, AND THE PRECISENESS DOESN'T REALLY
2 MATTER.

3 SHOT NO. 4, ACCORDING TO DR. MC CARTHY, WAS
4 THE SHOT THAT WAS FIRED TO KITTY MENENDEZ WHILE SHE WAS
5 STANDING UP.

6 AS I INDICATED, EVEN LINHART FROM THE
7 SHERIFF'S DEPARTMENT ALSO AGREES THAT KITTY MENENDEZ WAS
8 IN FACT SHOT AT SOME POINT WHILE SHE WAS STANDING UP,
9 AND THAT IS DEMONSTRATED BY THE BLOOD, THE DRIP DOWN
10 ONTO HER SHOES AND ONTO THE FLOOR.

11 SO THERE IS A CONSISTENCY WITH REGARD TO
12 THE OPINION THAT SHE WAS IN FACT STANDING UP AT SOME
13 POINT IN TIME.

14 NOW, WHY DOES HE PLACE HER STANDING UP FOR
15 THIS PARTICULAR SHOT?

16 WELL, WHEN YOU LOOK AT ALL THE REMAINDER OF
17 THE SERIES OF SHOTS, LADIES AND GENTLEMEN, INFLICTED TO
18 KITTY MENENDEZ, YOU WILL SEE A DIFFERENT ANGULATION.
19 YOU WILL SEE AN ANGULATION THAT IS MORE UPWARD, OKAY,
20 BECAUSE WE HAVE TWO SHOTS COMING UP WHICH ARE BOTH
21 TOWARD THE HEAD, TOWARD THE TORSO, WHICH WOULD SUGGEST
22 ANGULATION, COMING FROM HERE (INDICATING), AND OTHER

23 SHOTS ARE FIRED TO HER LEG, WHICH I SUBMIT IS
24 KNEE-CAPPING SHOTS WHILE SHE WAS ALREADY LYING ON THE
25 FLOOR.
26 SO IT IS MOST REASONABLE TO CONCLUDE THAT
27 THE SHOT THAT WAS FIRED TO HER WHILE SHE WAS STANDING UP
28 IS THIS PARTICULAR SHOT HERE (POINTING).

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1 IF IT WAS ONE OF THE OTHER SHOTS THAT I AM
2 GOING TO SHOW YOU, SUCH AS THE ANGULATION SHOT, THAT
3 WOULD MEAN THAT THE SHOOTER HAD TO GET DOWN LIKE THIS
4 AND SHOOT UP, OR THAT SHE WAS LEANING WAY BACK IN AN
5 AWKWARD POSITION WITH HER ARM BACK SUCH AS THAT.

6 THE REASONABLE CONCLUSION TO BE DRAWN IS
7 THAT THIS WAS THE SHOT THAT WAS FIRED WHILE SHE WAS
8 STANDING UP, AND WAS FIRED EARLY IN THE SEQUENCE. THAT
9 IS ONE OF THE SHOTS WHICH BROUGHT HER TO THE FLOOR.

10 SHOT NO. 5 IS ONE OF THE TWO SHOTS FIRED AT
11 KITTY MENENDEZ TO THE UPPER TORSO, TO THE UPPER BODY.
12 BOTH SHOTS 5 AND 6 ARE TO KITTY MENENDEZ AS SHE IS LYING
13 ON THE FLOOR, TO HER UPPER TORSO.

14 BOTH OF THESE SHOTS IS CONSISTENT WITH THAT
15 TYPE OF ANGULATION TO HER FOREARM AND TO HER UPPER ARM.
16 IN ORDER TO LINE THIS PARTICULAR SHOT UP -- AND YOU CAN
17 SEE IT FROM THE PHOTOGRAPHS -- YOU WOULD HAVE TO LINE
18 THIS UP SUCH THAT IT IS LIKE THIS, AND THE SHOT HAS TO

19 COME LIKE THIS (INDICATING).

20 SO BECAUSE OF THAT ANGULATION, IT'S

21 REASONABLE TO CONCLUDE SHE WAS IN FACT LYING ON THE

22 FLOOR AT THE TIME THAT THIS SHOT WAS FIRED.

23 AND AGAIN, LOOK AT THE BLOOD. LOOK AT THE

24 BLOOD. LOOK AT THE POOL OF BLOOD IN THIS CASE. WHERE

25 IS THE BLOOD ON THE SOFA? LOOK WHERE KITTY MENENDEZ IS.

26 THEY SAY MAYBE KITTY MENENDEZ WAS STANDING

27 UP WHILE ALL OF THESE SHOTS WERE FIRED. FIRST OF ALL,

28 THAT FLIES AGAINST COMMON SENSE. HOW COULD KITTY

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1 MENENDEZ BE STANDING UP WHILE SHOT AFTER SHOT IS FIRED

2 AT HER? THAT DOESN'T MAKE ANY SENSE WHATSOEVER.

3 BUT ALSO, LOOK AT HOW CLEAN THE SOFA IS

4 OVER THERE. TOTALLY CLEAN OVER THERE, NOT MUCH BLOOD AT

5 ALL. ALL THE BLOOD IS THERE, THE POOL OF BLOOD ON THE

6 FLOOR.

7 SO THAT TELLS YOU, LADIES AND GENTLEMEN,

8 THAT SHE IS NOT LEANING AGAINST THE SOFA, AS THE DEFENSE

9 SPECULATES, AS SHOT AFTER SHOT IS FIRED AT HER. IF

10 THAT WERE TRUE, THERE WOULD BE BLOOD ALL OVER THIS SOFA,

11 AND THERE IS NO BLOOD ON THE SOFA. SO CLEARLY SHE HAD

12 TO BE ON THE FLOOR.

13 NOW, DR. MC CARTHY SAID THAT HE CAN'T TELL

14 YOU WHETHER SHOT 5 PRECEDED SHOT 6 OR NOT, BECAUSE BOTH

15 SHOTS ARE FIRED AT APPROXIMATELY THE SAME ANGLE.
16 SO BEAR THAT IN MIND, THAT DR. MC CARTHY,
17 WHERE THERE IS VARIATION -- WHERE THERE IS SOME
18 VARIATION IN REGARD TO HIS OPINION, HE ADMITS TO THAT
19 VARIATION, YOU SEE.
20 SHOT NO. 6 IS FIRED JUST LIKE SHOT NO. 5.
21 IT'S DONE FROM ESSENTIALLY THE SAME ANGLE. IT SHOWS THE
22 SAME ANGULATION. AND FOR THAT REASON HE CAN'T TELL YOU
23 WHETHER SHOT 5 OR SHOT 6 CAME FIRST. AND THIS, HE
24 FRANKLY ADMITS, IS SOMEWHAT ARBITRARY. HE SELECTED
25 SHOT 5 OR SHOT 6, ALTHOUGH HE DID SAY THAT FOR THESE TWO
26 PARTICULAR SHOTS, HE DID SAY THAT BECAUSE OF THE WAY
27 THAT THE HAND WAS FORCED UP -- THAT'S WHAT HE SAID --
28 THE WAY THAT THE HAND WAS FORCED UP, HE CONCLUDED THAT

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1 THE MOST LIKELY SEQUENCE WAS THAT SHOT 5 PRECEDED
2 SHOT 6.

3 THE OTHER SHOTS, WHICH HE SAYS HE CANNOT
4 TELL YOU ANYTHING ABOUT THE SEQUENCE, ARE THE
5 KNEE-CAPPING SHOTS.

6 NOW, WHY DID HE SELECT KNEE-CAPPING SHOTS
7 AS BEING THE LAST?

8 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
9 TO THE USE OF THAT WORD. THERE IS NO EVIDENCE AS TO
10 "KNEE-CAPPING" OR WHAT IT MEANS.

11 THE COURT: THIS IS THE PHRASE USED BY COUNSEL IN
12 HIS ARGUMENT. HE CAN CHOOSE HIS OWN WORDS.

13 OVERRULED.

14 MR. CONN: NOW, WHY DID HE SELECT THESE
15 KNEE-CAPPING SHOTS AS BEING THE LAST IN THE SERIES?

16 WELL, EXCEPT FOR THE TWO SHOTS TO -- THE
17 TWO FINAL SHOTS TO KITTY MENENDEZ, WHICH EVEN THE
18 DEFENSE EXPERT, DR. MORTON, WHO AGREED THAT SHOTS 11 AND
19 12 AS FIRED BY -- AS ILLUSTRATED BY DR. MC CARTHY, ARE
20 CORRECT. DR. MORTON AGREED WITH THOSE TWO LAST SHOTS.

21 SO NOW WE'RE DOWN TO THE FOUR SHOTS THAT
22 PRECEDE THOSE FINAL TWO SHOTS THAT MORTON AGREES WITH.

23 NOW, WHY DID HE PLACE THE KNEE-CAPPING
24 SHOTS AS LAST IN THE SEQUENCE?

25 ONLY BECAUSE THESE ARE THE ONES THAT ARE
26 APPARENTLY NOT DIRECTED TOWARD THE MORE LETHAL AREA, THE
27 HEAD. IF YOU WERE GOING TO GO INTO A ROOM -- AND AGAIN,
28 IT'S AN ASSUMPTION ABOUT HUMAN BEHAVIOR. IT'S AN

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1 ASSUMPTION PERHAPS DIRECTED SOMEWHAT TO THE INTENT OF
2 THE DEFENDANTS. YOU ASK YOURSELVES IF THIS IS
3 REASONABLE. IF YOU DON'T FEEL IT'S REASONABLE, REJECT
4 IT.

5 BUT HE INDICATED THAT IF YOU LOOK AT ALL OF
6 THE WOUNDS IN THIS CASE, YOU SEE TWO COMMON PATTERNS.

7 ONE IS DIRECTED TOWARD THE LETHAL AREA; THAT IS, THE
8 HEAD. THE INTENT TO KILL, THE DESIGN TO TAKE THAT
9 PERSON OUT OF THE PICTURE.

10 AND THEN YOU SEE WOUNDS THAT ARE DIRECTED
11 AT THE KNEES; AND SPECIFICALLY THE LEFT KNEE, AND THAT'S
12 WHAT'S INTERESTING. THE LEFT KNEE FOR JOSE MENENDEZ AND
13 THE LEFT KNEE FOR KITTY MENENDEZ.

14 NOW, IF YOUR INTENT IS GOING TO BE TO KILL,
15 THEN YOU'RE GOING TO AIM YOUR SHOTS AT THE MORE LETHAL
16 AREA. ONCE YOU FEEL THAT YOU HAVE THE PERSON KILLED --
17 ONCE THE PERSON IS TAKEN OUT OF THE PICTURE, THEN THE
18 SHOTS CAN BE DIRECTED AT THE KNEE.

19 AND IN THIS CASE I WOULD SUBMIT THAT THAT
20 WAS DONE BY THE DEFENDANTS, ERIK AND LYLE MENENDEZ, TO
21 MAKE IT LOOK LIKE A MAFIA KILLING.

22 NOW, HERE WE HAVE THE FIRST IN THE SEQUENCE
23 OF FOUR SHOTS THAT WERE FIRED. WE HAVE THE SHOT TO JOSE
24 MENENDEZ, WHICH IS TO HIS LEFT KNEE.

25 AND AGAIN, DR. MC CARTHY FRANKLY TELLS YOU
26 THAT HE CANNOT TELL YOU THE EXACT SEQUENCE OF THESE
27 SHOTS. HE SIMPLY PLACES THE KNEE-CAPPING SHOTS
28 FOLLOWING THE MORE LETHAL SHOTS.

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1 HERE WE HAVE A SECOND SHOT FIRED FROM
2 THE -- AT KITTY MENENDEZ, FIRED INTO HER UPPER LEFT

3 THIGH, COMING FROM THAT END OF THE ROOM, AND THEN WE
4 HAVE A SECOND KNEE-CAPPING SHOT FIRED AT KITTY MENENDEZ
5 FROM THE OTHER SIDE OF THE ROOM, SHOT 9.

6 AND FINALLY, WE HAVE A SHOT THAT IS A
7 THROUGH-AND-THROUGH WOUND TO KITTY MENENDEZ AS SHOT
8 NO. 10, WHICH GOES INTO THE LOWER PART OF THE LEG AND
9 COMES OUT THROUGH THE UPPER PART OF THE LEG.

10 ONE OF THE INTERESTING THINGS THAT -- ABOUT
11 THIS PARTICULAR SHOT IS THAT -- BEAR IN MIND THAT, OF
12 COURSE, DR. MC CARTHY WAS CRITICIZED A GREAT DEAL BY THE
13 DEFENSE ABOUT, "WELL, YOU'RE NOT A MEDICAL DOCTOR, AND
14 HOW CAN YOU SAY THAT THIS TOOK PLACE IF YOU ARE NOT A
15 MEDICAL DOCTOR?"

16 WELL, THE INTERESTING THING ABOUT THIS SHOT
17 IS THAT YOU WILL RECALL THE TESTIMONY THAT HE WENT BACK
18 AND EVALUATED THIS SHOT AND DISCUSSED THIS SHOT WITH
19 DR. GOLDEN AFTER REACHING HIS OWN CONCLUSIONS CONCERNING
20 THIS SHOT. AND YOU WILL RECALL THAT DR. GOLDEN
21 APPARENTLY CHANGED HIS REPORT FOLLOWING THESE
22 DISCUSSIONS WITH DR. MC CARTHY. HE CHANGED HIS REPORT.

23 AND NOW GOLDEN AGREES THAT THIS PARTICULAR
24 SHOT -- AND HE PREVIOUSLY DESCRIBED IT TOTALLY
25 DIFFERENTLY BACK IN 1989 -- AND NOW HE DISCUSSED IT WITH
26 DR. MC CARTHY.

27 HE WAS CRITICIZED ABOUT THE FACT THAT HE
28 WAS JUST AN ENGINEER, NOT A MEDICAL DOCTOR.

1 NEVERTHELESS, HE FIGURED OUT SOMETHING THAT HE WENT BACK
2 TO DR. GOLDEN. DR. GOLDEN, THE ORIGINAL PATHOLOGIST,
3 THE CORONER IN THIS CASE, AGREED WITH HIM ABOUT THIS
4 SHOT.

5 NOW, THERE IS A DISPUTE CONCERNING WHETHER
6 OR NOT SHOT 9 AND SHOT 8 WOULD SHOW INJURY TO THE LEFT
7 LEG. ONE IS DEPICTED COMING INTO THE LOWER LEG, AND ONE
8 DEPICTED COMING INTO THE UPPER LEG, ARE ALL PART OF THIS
9 SINGLE SHOT.

10 IT WAS IN REGARD TO THIS THAT THE DEFENSE
11 OFFERS TESTIMONY THAT IN FACT THAT COULD BE A SINGLE
12 SHOT. AND IF THAT IS SINGLE SHOT, THEN SO BE IT. I
13 WILL DISCUSS THAT MORE WITH YOU LATER, IF THERE IS A
14 GREAT DEAL OF TESTIMONY CONCERNING -- A GREAT DEAL OF
15 ARGUMENT CONCERNING THAT SHOT.

16 THE COURT: LET'S TAKE OUR BREAK NOW BEFORE YOU
17 GET INTO YOUR NEXT DISCUSSION HERE.

18 WE WILL RESUME AT 10 MINUTES TO THE HOUR.

19 DON'T DISCUSS THE MATTER WITH ANYONE.

20 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME
21 IN 15 MINUTES.

22 (A RECESS WAS TAKEN FROM
23 10:35 A.M UNTIL 10:55 A.M.)

24

25 THE COURT: ALL RIGHT. WE ARE READY TO RESUME.

26 ALL RIGHT. ANYTHING BEFORE WE HAVE THE
27 JURY COME OUT?

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1 (THE JURY ENTERS THE COURTROOM

2 AND THE FOLLOWING PROCEEDINGS

3 WERE HELD:)

4

5 THE COURT: OKAY. THE JURY IS BACK.

6 YOU MAY CONTINUE ARGUMENT.

7 MR. CONN: THANK YOU.

8 AS YOU -- JUST BEFORE I LEAVE THE SHOTS TO

9 THE KNEES OF THE VICTIMS IN THIS CASE, AS YOU CONSIDER

10 THE PURPOSE FOR WHICH LYLE MENENDEZ AND HIS BROTHER SHOT

11 INTO THE KNEES OF THEIR MOTHER AND FATHER, KEEP IN MIND

12 THE STATEMENTS OF LYLE MENENDEZ TO SERGEANT EDMONDS AND

13 TO WENSKOSKI, WHEN HE TOLD SERGEANT EDMONDS THAT WHOEVER

14 DID THIS DEFINITELY WANTED TO MAKE A MESS, AND HE TOLD

15 RICHARD WENSKOSKI THAT THIS WAS A MESSAGE-TYPE MURDER.

16 AND I WOULD SUBMIT, LADIES AND GENTLEMEN,

17 THAT THE SHOOTING IN THE KNEES WAS THE MESSAGE THAT HE

18 WAS REFERRING TO.

19 NOW, THE SHOT NO. 11, AS I INDICATE, IS A

20 SHOT THAT DR. MORTON AGREED TO. HE INDICATED THAT HE

21 AGREES THAT THE LAST TWO SHOTS WERE THE SHOTS THAT WENT

22 INTO THE LEFT SHOULDER AREA, AND THE -- BEHIND THE LEFT

23 EAR AREA OF KITTY MENENDEZ. THAT WAS THE BIRD SHOT.

24 AND THAT WAS FOLLOWED BY SHOT NO. 12, WHICH
25 WAS THE LAST SHOT FIRED, THE BIRD SHOT TO THE CHEEK OF
26 KITTY MENENDEZ.
27 SO, APPARENTLY, I DON'T THINK THERE IS ANY
28 DISAGREEMENT INsofar AS SHOTS 11 AND 12 ARE CONCERNED IN

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1 THIS CASE.
2 THAT TAKES CARE OF THE PROSECUTION
3 WITNESSES IN THIS CASE.
4 AND AS I INDICATED EARLIER, LADIES AND
5 GENTLEMEN, REITERATING, I SAID, WE ASK YOU TO FIND THE
6 DEFENDANTS GUILTY OF MURDER IN THE FIRST DEGREE BASED
7 UPON ALL OF THE EVIDENCE THAT WE PRESENTED IN OUR CASE.
8 MOST NOTABLY, AS I INDICATE, THE DECEMBER 11 TAPE, WHICH
9 I REFER TO AS A SMOKING GUN IN THIS CASE.
10 I WOULD SUBMIT TO YOU THAT THAT TAPE PROVES
11 ALL OF THE ELEMENTS OF FIRST-DEGREE MURDER. AS I
12 INDICATED, IT DOES SHOW PREMEDITATION AND DELIBERATION.
13 BUT YOU ARE TO DRAW INFERENCES, REASONABLE INFERENCES
14 FROM ALL OF THE EVIDENCE THAT IS PRESENTED TO YOU, AND
15 THE REASONABLE INFERENCE TO BE DRAWN FROM THE
16 CONVERSATION THAT THE DEFENDANTS HAD WITH DR. OZIEL ON
17 THAT DECEMBER 11 TAPE IS THAT THIS WAS APPARENTLY A
18 KILLING THAT THEY THOUGHT ABOUT, THAT THEY WEIGHED AND
19 CONSIDERED AND DECIDED TO DO.

20 NOT ONLY IS IT A PREMEDITATED AND
21 DELIBERATE MURDER IN THE FIRST DEGREE, BUT IT IS ALSO A
22 MURDER WHILE LYING IN WAIT. BECAUSE THAT WOULD MEAN
23 THAT THEY DID GO SHOPPING FOR THE PURPOSE OF OBTAINING
24 WEAPONS TO KILL THEIR PARENTS. THAT WOULD MEAN THAT
25 THEY WERE IN FACT GUILTY OF COUNT 3, CONSPIRACY TO
26 COMMIT MURDER, BECAUSE THEY PURCHASED THOSE GUNS WITH
27 THE INTENT -- WITH THE EXPRESS INTENT OF KILLING THEIR
28 PARENTS. AND IT WOULD ALSO MEAN THAT IT WAS A LYING IN

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1 WAIT MURDER, BECAUSE THEY DID IN FACT WAIT FOR THE RIGHT
2 MOMENT TO TAKE THEIR PARENTS BY SURPRISE, AND AMBUSH
3 THEIR PARENTS AS THEY WERE SITTING COMFORTABLY ON THE
4 SOFA.

5 SO LYING IN WAIT IS SHOWN, NOT ONLY FOR
6 PURPOSES OF FIRST-DEGREE MURDER, BECAUSE IT IS ONE ROAD
7 TO FIRST-DEGREE MURDER. BUT LYING IN WAIT AS A SPECIAL
8 CIRCUMSTANCE IS ALSO SHOWN.

9 AND THEN TWO COUNTS OF FIRST-DEGREE MURDER
10 ARE ALSO SHOWN, ESTABLISHING THE MULTIPLE MURDER SPECIAL
11 CIRCUMSTANCE.

12 SO I WOULD SUBMIT BASED UPON ALL OF THE
13 EVIDENCE WE PRESENTED IN OUR CASE-IN-CHIEF, AND
14 ESPECIALLY THAT TAPE-RECORDING, THERE IS MORE THAN
15 SUFFICIENT EVIDENCE FOR YOU TO FIND THE DEFENDANTS

16 GUILTY OF ALL OF THE CRIMES CHARGED, AND THAT THE

17 SPECIAL CIRCUMSTANCES ARE IN FACT TRUE.

18 NOW LET'S TURN TO THE DEFENDANT'S CASE.

19 DETECTIVE ZOELLER WAS CALLED AS A WITNESS

20 BY THE DEFENSE TO IMPEACH WITNESSES WHO WERE

21 PREVIOUSLY -- WHO HAD PREVIOUSLY TESTIFIED ON BEHALF OF

22 THE PROSECUTION. BECAUSE WHENEVER YOU HAVE AN

23 INCONSISTENT STATEMENT, A PRIOR INCONSISTENT STATEMENT,

24 IF SUCH STATEMENT WAS MADE TO THE INVESTIGATING OFFICER,

25 THEN YOU CAN CALL THE INVESTIGATING OFFICER TO SHOW AT

26 SOME POINT IN THE PAST A PERSON MADE A STATEMENT THAT IS

27 INCONSISTENT TO THE TESTIMONY THAT THE PERSON IS NOW

28 GIVING BEFORE THE JURY.

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1 SO DETECTIVE ZOELLER WAS CALLED TO TESTIFY

2 TO THE FACT THAT MARK SLOTKIN HAD PREVIOUSLY TOLD HIM

3 THAT ERIK MENENDEZ SPENT BETWEEN FOUR AND \$5,000 WHILE

4 GAMBLING, CONTRARY TO HIS TESTIMONY HERE IN COURT, WHICH

5 WAS \$8,000.

6 WELL, IS THAT A BIG DEAL? I THINK THAT THE

7 EVIDENCE STILL ESTABLISHES WHAT WE SOUGHT TO ESTABLISH

8 THROUGH THE TESTIMONY OF MARK SLOTKIN; THAT THE

9 DEFENDANT, ERIK MENENDEZ, WAS SPENDING CONSIDERABLE

10 AMOUNTS OF MONEY FOLLOWING THE KILLING OF HIS PARENTS,

11 AND HE WAS IN FACT ENJOYING THE FRUITS OF THE MURDER.

12 SO WHETHER IT WAS FOUR OR \$5,000, AS MARK
13 SLOTKIN HAD PREVIOUSLY ESTIMATED, OR WHETHER IT WAS FIVE
14 TO \$8,000, WHICH I BELIEVE WAS HIS CURRENT ESTIMATE, IS
15 NEITHER HERE NOR THERE. THE POINT FOR WHICH WE CALLED
16 MARK SLOTKIN IS STILL IN FACT ESTABLISHED.

17 JAMIE PISARCIK WAS SUPPOSEDLY IMPEACHED
18 THROUGH THE TESTIMONY OF DETECTIVE ZOELLER, BECAUSE
19 DETECTIVE ZOELLER TESTIFIED THAT SHE WAS NOT IN FACT
20 SUBPOENAED TO THE D.A.'S OFFICE, AS SHE HAD TESTIFIED,
21 ALTHOUGH SHE WAS SUBPOENAED BEFORE THE GRAND JURY.

22 DETECTIVE ZOELLER SAID THAT HE DID NOT HAVE
23 FURTHER CONTACT WITH HER OR HER ATTORNEY ABOUT THAT
24 SPECIFIC APPEARANCE. SHE DID NOT APPEAR BEFORE THE
25 GRAND JURY ON THAT DAY, BUT DID APPEAR IN THE D.A.'S
26 OFFICE FOR AN INTERVIEW.

27 SHE LATER DID APPEAR BEFORE THE GRAND JURY,
28 ALTHOUGH THERE WAS NO EVIDENCE THAT IN FACT SHE HAD

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1 TESTIFIED BEFORE THE GRAND JURY.

2 SO WHAT I WOULD SUBMIT, LADIES AND
3 GENTLEMEN, IS THAT THIS WAS JUST AN HONEST MISTAKE, A
4 TECHNICAL MISTAKE ON HER PART AS TO WHETHER SHE WAS
5 TECHNICALLY SUBPOENAED TO APPEAR BEFORE THE D.A.'S
6 OFFICE OR TO APPEAR IN THE D.A.'S OFFICE, OR SUBPOENAED
7 TO APPEAR BEFORE THE GRAND JURY. THIS WAS JUST A

8 TECHNICAL MISTAKE ON HER PART. THIS DOESN'T IMPEACH HER
9 IN ANY SIGNIFICANT WAY.

10 WHAT THE DEFENSE IS DOING, LADIES AND
11 GENTLEMEN, THEY'RE SHOWING INCONSISTENCIES JUST FOR THE
12 PURPOSE OF SHOWING INCONSISTENCIES. TO SHOW: WELL, IF
13 SHE IS WRONG ABOUT THIS, MAYBE SHE IS WRONG ABOUT
14 SOMETHING ELSE.

15 BUT IT DOESN'T NECESSARILY FOLLOW. IF A
16 WITNESS TESTIFIES INCONSISTENTLY, IT IS THE DUTY OF THE
17 JURY TO EVALUATE THAT TESTIMONY, AND ASK THEMSELVES
18 WELL, HOW IMPORTANT IS THIS ERROR? AND IS IT A LIE, OR
19 IS IT AN INNOCENT MISTAKE?

20 AND YOU WILL RECEIVE A JURY INSTRUCTION
21 WHICH FOCUSES YOU ON THAT VERY ISSUE, AND THE JURY
22 INSTRUCTION SAYS THAT MISTAKES IN RECOLLECTION ARE
23 COMMON, AND YOU SHOULDN'T CONCLUDE THAT A PERSON IS
24 MISTAKEN OR NECESSARILY LYING JUST BECAUSE THEY MAKE AN
25 INNOCENT MISTAKE.

26 SO BEAR THAT IN MIND, AS WE GO THROUGH THE
27 TESTIMONY, AND SPECIFICALLY WHEN WE GO THROUGH PRIOR
28 INCONSISTENT STATEMENTS. DOES THIS PROVE THE PERSON IS

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1 LYING, OR IS IT JUST AN INNOCENT MISTAKE?

2 AND I WOULD SUBMIT THAT THAT WAS JUST AN
3 INNOCENT MISTAKE ON HER PART.

4 WE THEN -- AND I WON'T COVER EVERY SINGLE
5 POINT THAT THEY RAISED THROUGH THESE WITNESSES. THERE
6 ARE SOME POINTS WHICH I WOULD SUBMIT ARE JUST TOO
7 TRIVIAL, AND I AM NOT EVEN GOING TO MENTION. I WILL
8 HIGHLIGHT WHAT I FEEL ARE THE IMPORTANT ISSUES WHICH
9 THEY ARE TRYING TO ADDRESS, AND IF THEY WANT TO USE IN
10 ARGUMENT SOMETHING THAT IS EVEN MORE TRIVIAL THAN THE
11 ISSUE THAT I AM RAISING, THEN THEY ARE FREE TO DO SO.

12 BUT I AM NOT GOING TO WASTE TIME ON EVERY
13 SINGLE ISSUE THAT THEY RAISED THROUGH THE TESTIMONY OF
14 THESE WITNESSES.

15 THEN WE HAVE THE TESTIMONY OF KURT KUHN.

16 WHAT DID KURT KUHN HAVE TO SAY? HE SAID
17 HE'S A CRIMINALIST FOR THE BEVERLY HILLS POLICE
18 DEPARTMENT, AND THAT HE TOOK MEASUREMENTS AT THE CRIME
19 SCENE. HE SAID WITH RESPECT TO PELLETS, THAT ONLY A
20 REPRESENTATIVE SAMPLE WAS RECOVERED, BECAUSE INDIVIDUAL
21 PELLETS DO NOT HAVE BALLISTICS VALUE. AND HE INDICATED
22 ON CROSS-EXAMINATION, HOWEVER, THAT HE CANNOT SAY IF ANY
23 PELLETS WENT INTO THE SOFA OR NOT.

24 WADDING. HE TESTIFIED THAT ALL OF THE
25 WADDING AT THE CRIME SCENE WAS RECOVERED. NOW YOU SEE,
26 THEY RELIED UPON THIS FACT -- OR THEY'RE GOING TO RELY
27 UPON THIS FACT IN THEIR ARGUMENT TO TRY AND SUGGEST THAT
28 PERHAPS MC CARTHY IS WRONG ABOUT THE NUMBER OF SHOTS

1 THAT WERE FIRED AT THE CRIME SCENE, BECAUSE IF YOU TAKE
2 ALL OF THAT WADDING, YOU WILL RECALL, ACCORDING TO THE
3 TESTIMONY OF DWIGHT VAN HORN, IT DOESN'T ADD UP TO 12
4 SHOTS.

5 BUT, LADIES AND GENTLEMEN, JUST BECAUSE IT
6 DOESN'T ADD UP TO 12 SHOTS DOESN'T MEAN THAT 12 SHOTS
7 WEREN'T FIRED. ALL THAT MEANS IS THAT THE DEFENDANTS,
8 AS THEY WERE SCRAMBLING AROUND TO PICK UP THE SHOTGUN
9 SHELLS, MAY HAVE PICKED UP SOME PIECES OF WADDING.

10 SO THE FACT THAT THE TOTAL NUMBER OF
11 WADDING DEBRIS DOES NOT ADD UP TO 12 SHOTS DOES NOT
12 PROVE THAT 12 SHOTS WERE FIRED.

13 IN FACT, I THINK IF I ADD UP THE TOTAL
14 ITEMS OF WADDING DEBRIS, IT COMES OUT TO SOMETHING LIKE
15 EIGHT OR SO. I DON'T REMEMBER THE EXACT FIGURE OFF THE
16 TOP OF MY HEAD. BUT YOU KNOW THAT THAT'S NOT A RELIABLE
17 FIGURE, BECAUSE THEIR OWN EXPERTS PUT THE NUMBER OF
18 SHOTS FIRED AS SOMEWHERE BETWEEN 10 AND 13.

19 SO CLEARLY, THEY'RE NOT SAYING THAT THE
20 WADDING SHOULD ADD UP TO THE TOTAL NUMBER OF SHOTS FIRED
21 EITHER, BECAUSE THAT IS INCONSISTENT WITH THEIR OWN
22 THEORY OF THE CASE.

23 SO I WOULD SUBMIT TO YOU, THAT JUST AS
24 DETECTIVE ZOELLER REALLY HAD NO SIGNIFICANT IMPEACHMENT
25 TO PROVIDE TO THIS CASE, ALSO THE TESTIMONY OF KURT KUHN
26 DOESN'T REALLY ESTABLISH VERY MUCH EITHER.

27 KURT KUHN WENT ON TO SAY THAT BLOOD AND
28 TISSUE WERE NOT RECOVERED. BUT THEN HE NOTED THAT --

1 EXCUSE ME -- THAT HE WOULD NOT HAVE RECOVERED BLOOD AND
2 TISSUE IN THIS PARTICULAR CRIME, BECAUSE THERE WAS NO
3 REASON TO BELIEVE THAT A SUSPECT HAD BEEN INJURED. SO
4 NO BLOOD AND TISSUE SAMPLES WERE RECOVERED.

5 SO HIS TESTIMONY DOES NOT CONTRIBUTE TO
6 THIS TRIAL.

7 HE ALSO SAID THAT THE SHOTS THAT WENT INTO
8 THE TREE COULD HAVE BEEN FIRED THROUGH EITHER BROKEN
9 WINDOW, AND I SUPPOSE THIS WAS BEING OFFERED TO IMPEACH
10 THE TESTIMONY OF ROGER MC CARTHY.

11 BUT YOU DIDN'T HEAR THE SAME TYPE OF
12 DETAILED ANALYSIS THAT HE GAVE -- THAT DR. MC CARTHY
13 GAVE, HOWEVER. DR. MC CARTHY GAVE YOU A VERY REASONED
14 OPINION. HE WAS THE ONE WHO STUDIED THE ISSUE, AND HE
15 WAS THE ONE WHO CONCLUDED THAT THE MOST REASONABLE
16 CONCLUSION IS THAT A SINGLE SHOT CAUSED THAT LARGER HOLE
17 THROUGH THE WINDOW ON THE RIGHT-HAND SIDE OF THE ROOM,
18 IF YOU'RE STANDING INSIDE THE ROOM.

19 AND FINALLY, HE TESTIFIED THAT THE SHOTGUN
20 CARTRIDGE CASES; THAT IS, THE CARTRIDGES THEMSELVES,
21 THAT THERE WERE NONE RECOVERED IN THIS CASE. BUT
22 SOMETIMES THEY CAN BE MATCHED WHEN THEY ARE RECOVERED.

23 WHAT DOES THAT PROVE? SOMETHING THAT I
24 THINK THAT WE KNEW FROM THE OTHER TESTIMONY IN THIS
25 CASE.

26 SO I WOULD SUBMIT THAT DETECTIVE ZOELLER
27 AND KURT KUHN REALLY HAD NO CONTRIBUTION TO THIS TRIAL,
28 AT LEAST IN THAT PHASE OF THE CASE.

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1 THEY THEN CALLED DR. FACKLER. AND AS I
2 INDICATED TO YOU, THE TESTIMONY OF DR. FACKLER IS
3 SOMEWHAT QUESTIONABLE FOR A NUMBER OF REASONS.
4 NUMBER ONE, BECAUSE HE OFFERED THE OPINION
5 THAT WOUNDS SUCH AS WE SAW HERE IN COURT, WOUNDS -- THE
6 HORRENDOUS WOUNDS THAT WERE INFLICTED IN THIS CASE ARE
7 NOT NECESSARILY PAINFUL, DO NOT NECESSARILY BLEED VERY
8 MUCH. AND HE EVEN WENT SO FAR AS TO SUGGEST THAT THESE
9 WOUNDS WOULD NOT KNOCK KITTY MENENDEZ DOWN TO THE FLOOR.
10 NOW, NO ONE WAS SAYING -- AND DR. MCCARTHY
11 DID NOT TRY TO SUGGEST THAT IT WOULD BE THE IMPACT OF
12 THE BLOW THAT WOULD KNOCK HER DOWN TO THE FLOOR. WHAT
13 HE WAS SUGGESTING IS IN HIS OPINION THE VERY REASONABLE
14 CONCLUSION THAT I THINK WE ALL KNOW: THAT WHEN YOU
15 SUFFER A SEVERE WOUND OF THAT NATURE, IT CAN BE SO
16 DEBILITATING THAT IT WILL IN FACT, OR IT MAY VERY WELL
17 CAUSE A PERSON TO FALL TO THE FLOOR.
18 THERE IS NOTHING UNREASONABLE ABOUT THAT
19 PROPOSITION. AND HE WAS NOT TRYING TO SUGGEST THAT THE
20 FORCE OF THE SHOT WOULD ACTUALLY KNOCK YOU DOWN TO THE
21 FLOOR. AS MUCH AS THE DEFENSE TRIED TO MAKE IT SEEM AS

22 IF DR. MC CARTHY WAS SAYING THAT, HE WAS NOT SAYING
23 THAT.
24 ONE OF THE REASONS WHY YOU SHOULD
25 PARTICULARLY QUESTION THE TESTIMONY OF DR. FACKLER,
26 BECAUSE IT WAS VERY CLEAR, I THINK, THAT HE HAS AN
27 AGENDA TO DISDISCREDIT DR. MC CARTHY, AND HE BASICALLY
28 ADMITTED TO AS MUCH ON THE WITNESS STAND.

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1 HE INDICATED, FIRST OF ALL ON
2 CROSS-EXAMINATION, THAT HE EXPECTED TO BE PAID FOR NO
3 MORE THAN FIVE HOURS IN THIS CASE, DESPITE THE FACT THAT
4 HE HAS DONE AN ENORMOUS AMOUNT OF WORK. HE SAID HE
5 NORMALLY BILLS AT \$250 AN HOUR, AND HE IS ONLY GOING TO
6 GET \$1250 FOR ALL OF THE WORK THAT HE DID IN THIS CASE.
7 AND I ASKED HIM: "WELL, YOU INDICATED THAT
8 YOU SPENT APPROXIMATELY 50 HOURS WORKING ON THIS CASE,"
9 SO THAT BRINGS INTO QUESTION THE OBVIOUS -- THE OBVIOUS
10 ISSUE, WHICH IS WHY IS HE PUTTING IN 45 HOURS OF HIS OWN
11 TIME TO DO THIS?
12 AND THAT IS WHEN HE INDICATED THAT HE IS
13 ESSENTIALLY WORKING PRO BONO, HE SAID, FOR THOSE
14 PROFESSIONALS IN THE FORENSIC SCIENCES WHO BELIEVE THAT
15 MCCARTHY'S CONCLUSIONS ARE INDEFENSIBLE.
16 WELL, LADIES AND GENTLEMEN, I THINK IT WAS
17 RIGHT THEN AND THERE THAT HE LAID HIS AGENDA OUT FOR YOU

18 TO SEE. HE IS SUGGESTING THAT THERE ARE ONLY CERTAIN
19 PEOPLE WHO ARE QUALIFIED TO GIVE AN OPINION CONCERNING
20 THE ISSUES TO WHICH DR. MC CARTHY TESTIFIED,
21 RECONSTRUCTION-TYPE OF EVIDENCE, AND HE SUGGESTED THAT
22 IT IS DOCTORS, SUCH AS HIMSELF, WHO SHOULD GIVE THAT
23 OPINION. AND YET ON THE OTHER HAND, HE IS SUGGESTING
24 THAT HE IS INCAPABLE OF DOING THE RECONSTRUCTION IN THIS
25 CASE.

26 WELL, HE SEEMS TO WANT TO HAVE HIS CAKE AND
27 EAT IT, TOO. HE SEEMS TO SAY ONLY A CERTAIN -- ONLY
28 CERTAIN PEOPLE ARE QUALIFIED, OR SHOULD BE PERMITTED TO

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1 GIVE THIS TYPE OF OPINION. AND HE DID NOT RULE OUT THE
2 POSSIBILITY OF DOING A RECONSTRUCTION. IN FACT, NONE OF
3 THE EXPERTS CALLED BY THE DEFENSE RULED OUT THE
4 POSSIBILITY OF DOING A RECONSTRUCTION IN THE ABSTRACT.
5 EACH AND EVERY ONE OF THEM SORT OF SUGGESTED THAT ISSUE.
6 "IN THE RIGHT CASE YOU CAN DO IT," AND I AM SURE IN THE
7 RIGHT CASE THEY WILL BE GLAD TO COME INTO COURT AND
8 STAND BEFORE ANOTHER JURY AND RECONSTRUCT A CRIME FOR
9 THEM.

10 SO THEY DON'T WANT TO RULE OUT THE
11 POSSIBILITY THAT THEY COULD BE CALLED AS AN EXPERT
12 WITNESS TO DO THE VERY SAME THING THAT DR. MCCARTHY DID
13 IN THIS TRIAL.

14 THEY'RE JUST SAYING: "IN THIS PARTICULAR
15 CASE I HAVE BEEN RETAINED BY THE DEFENSE, AND MY OPINION
16 IS IN THIS PARTICULAR CASE IT CAN'T BE DONE."
17 SO THEY'RE NOT SAYING NO ONE CAN DO WHAT
18 MC CARTHY IS DOING. THEY'RE JUST SAYING THERE WERE TOO
19 MANY SHOTS FIRED IN THIS CASE TO DO IT.
20 BUT NEVERTHELESS, DR. FACKLER SEEMS TO
21 SUGGEST THAT THERE WERE ONLY CERTAIN PEOPLE WHO SHOULD
22 BE PERMITTED TO DO IT, AND THAT DR. MC CARTHY IS NOT ONE
23 OF THEM.
24 AND WHAT IT SHOWS TO A CERTAIN EXTENT,
25 LADIES AND GENTLEMEN, IS CERTAINLY PROFESSIONAL
26 ARROGANCE, THAT THERE ARE ONLY CERTAIN PEOPLE WHO ARE
27 QUALIFIED TO DO THIS.
28 YOU DECIDE FOR YOURSELF, AS I INDICATED,

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1 THE REASONABLENESS OF DR. MC CARTHY'S CONCLUSIONS. BUT
2 BEAR IN MIND, AS YOU LISTEN TO THE TESTIMONY, OR AS YOU
3 REVIEW AND CONSIDER TESTIMONY OF DR. FACKLER, THE BIAS
4 THAT HE BRINGS INTO THIS TRIAL WITH HIM.
5 AND DOES HE REALLY HAVE A TREMENDOUS AMOUNT
6 OF EXPERIENCE CONCERNING THE PARTICULAR TYPES OF RULINGS
7 THAT ARE INVOLVED IN THIS PARTICULAR CASE?
8 WELL, HE DOES PORTRAY HIMSELF AS A WOUND
9 AND SHOTGUN WOUND EXPERT. BUT WHAT KNOWLEDGE AND WHAT

10 BACKGROUND, WHAT SPECIFICALLY DOES HE HAVE CONCERNING
11 THE NATURE OF THE WOUNDS INVOLVED IN THIS PARTICULAR
12 CASE, AND WHAT DID HE SAY IN THAT REGARD?

13 HE SAID THAT IN HIS 31 YEARS AS A SURGEON,
14 HE HAS ONLY TREATED SIX SHOTGUN WOUNDS, ONLY THREE OF
15 WHICH HE COULD RECALL, AND ONLY ONE OF WHICH WAS A
16 SERIOUS WOUND.

17 SO, DR. FACKLER COMES INTO THIS TRIAL WITH
18 THE EXPERIENCE OF HAVING TREATED ONE SERIOUS SHOTGUN
19 WOUND.

20 SO, LADIES AND GENTLEMEN, WHEN HE TELLS YOU
21 THAT SHOTGUN WOUNDS, THE HORRENDOUS WOUNDS THAT YOU SAW
22 IN THIS CASE DON'T NECESSARILY INVOLVE A LOT OF PAIN AND
23 DON'T NECESSARILY BLEED VERY MUCH, AND AREN'T GOING TO
24 BE VERY DEBILITATING, SO AS TO NECESSARILY CAUSE YOU TO
25 GO DOWN TO THE FLOOR, YOU ASK YOURSELF JUST HOW MUCH
26 EXPERIENCE DOES HE REALLY HAVE IN THIS AREA.

27 AND DR. FACKLER, I WOULD SUBMIT, WAS ONE OF
28 THOSE WITNESSES WHO WERE USED BY THE DEFENSE AS A

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1 BASIS -- AS A SPRINGBOARD FOR ATTACKING THE
2 ILLUSTRATIONS OF ROGER MC CARTHY. BECAUSE AS HE WAS
3 QUESTIONED IN REGARDS TO THE ILLUSTRATIONS OF ROGER
4 MC CARTHY, HE WAS REALLY QUIBBLING OVER THE ACCURACY OF
5 THE ILLUSTRATOR'S DEPICTION MORE THAN HE WAS QUIBBLING

6 WITH THE CONCEPT THAT DR. MC CARTHY WAS TRYING TO
7 EXPRESS IN THOSE ILLUSTRATIONS.

8 I ASKED HIM, FOR EXAMPLE: "WELL, DO YOU
9 AGREE WITH THIS?" AND I WOULD SHOW HIM AN ILLUSTRATION,
10 AND I WOULD SAY: "DO YOU AGREE THAT THIS PARTICULAR
11 SHOT, OR THIS PARTICULAR WOUND, COULD HAVE BEEN
12 INFLICTED IN THE MANNER THAT IS DEPICTED IN THIS
13 ILLUSTRATION?"

14 AND DR. FACKLER WOULD SAY: "NO, I DISAGREE
15 WITH THAT."

16 "WELL, WHY?"

17 "WELL, BECAUSE KITTY MENENDEZ' ELBOW, FOR
18 EXAMPLE, MIGHT HAVE TO BE UP FURTHER, OR HER RIGHT ARM
19 MIGHT HAVE TO BE UP FURTHER."

20 AND I SAY: "WELL, ASSUMING THAT THAT IS
21 THE CASE, THAT HER ARM WAS UP FURTHER, WOULD YOU AGREE
22 THAT THE WOUNDS COULD HAVE BEEN INFLICTED AS IS DEPICTED
23 IN THIS ILLUSTRATION?"

24 AND HE SAID: "NO, BECAUSE THEN HER LEG
25 MIGHT HAVE TO BE SLIGHTLY DIFFERENT."

26 AND DO YOU SEE WHAT HE WAS DOING THERE? HE
27 WAS DOING EXACTLY WHAT I POINTED OUT EARLIER IS NOT THE
28 POINT OF DR. MC CARTHY'S TESTIMONY.

2 ACCURACY OF THE ILLUSTRATOR IN THE PRECISE LOCATIONS OF
3 AN ELBOW RELATIVE TO A SHOULDER, OR RELATIVE TO A LEG.
4 HE WAS SIMPLY SAYING THAT THIS PARTICULAR SHOT COULD
5 HAVE BEEN INFLICTED WHILE THE VICTIM WAS IN THIS
6 POSITION. AND IF YOU HAVE TO, IN YOUR MIND, IF YOU HAVE
7 TO MOVE THE ELBOW A LITTLE BIT, OR THE SHOULDER A LITTLE
8 BIT TO MAKE THAT WOUND WORK, THEN YOU SHOULD DO THAT.
9 THAT IS HIS POINT.

10 HIS POINT IS THAT THE SHOT -- THE
11 ILLUSTRATION EXPLAINS THE SHOT, NOT THAT THE ILLUSTRATOR
12 PORTRAYED IT PERFECTLY, YOU SEE.

13 SO BY USING THE WITNESS AS THEY DID, ALL
14 THEY WERE DOING IS THEY WERE QUIBBLING WITH THE
15 ILLUSTRATOR. THEY WERE NOT QUIBBLING WITH
16 DR. MC CARTHY'S POSITION.

17 WE THEN HEARD FROM THE -- WE THEN HEARD
18 FROM THE TESTIMONY -- WE THEN HEARD TESTIMONY OF DWIGHT
19 VAN HORN. LET ME SKIP ON TO HIM. I BELIEVE THAT HE
20 CAME BEFORE WECHT, SO THE SEQUENCE IS NOT ENTIRELY
21 CORRECT.

22 DWIGHT VAN HORN WORKS FOR THE SHERIFF'S
23 DEPARTMENT. I WOULD SUBMIT TO YOU THAT THE MAIN REASON
24 WHY HE WAS CALLED BY THE DEFENSE IS FOR THAT VERY FACT,
25 BECAUSE HE WORKED FOR THE SHERIFF'S DEPARTMENT. AND
26 WHY? BECAUSE WHAT THEY TRIED TO DO IN THIS CASE WAS TO
27 SHOW A DISPUTE IN THE LAW ENFORCEMENT COMMUNITY
28 CONCERNING ROGER MC CARTHY. THEY WANTED TO EMBARRASS

1 THE PROSECUTION BY SAYING, "LOOK, HERE WE HAVE SOMEONE
2 FROM THE SHERIFF'S DEPARTMENT, AND THIS PERSON FROM THE
3 SHERIFF'S DEPARTMENT HAS BEEN CALLED TO CHALLENGE THE
4 CONCLUSIONS REACHED BY ROGER MC CARTHY.

5 NOW, BY DOING SO, LADIES AND GENTLEMEN, ALL
6 THEY WERE ATTEMPTING TO DO IS TO DISCREDIT THE
7 PROSECUTION BY THE VERY FACT THAT DWIGHT VAN HORN WORKS
8 FOR THE SHERIFF'S DEPARTMENT.

9 WELL, YOU HAVE TO LOOK AT THE INVOLVEMENT
10 WITH THE SHERIFF'S DEPARTMENT IN THIS CASE AND THEIR
11 ROLE IN THIS PARTICULAR CASE.

12 WE KNOW THAT DWIGHT VAN HORN WORKS AS A
13 BALLISTICS EXPERT FOR THE SHERIFF'S DEPARTMENT, AND THAT
14 IN FACT IN THE FIRST TRIAL DWIGHT VAN HORN WAS CALLED BY
15 THE PROSECUTION TO TESTIFY TO THE BALLISTICS EVIDENCE.

16 IN OTHER WORDS, HE DID NOT DO A
17 RECONSTRUCTION. WHAT HE DID WAS HE SIMPLY SAID: "THIS
18 IS A SHOTGUN. THIS IS HOW A SHOTGUN WORKS."

19 LET ME --

20 MS. ABRAMSON: OBJECTION TO STATEMENTS ABOUT WHAT
21 HE SAID IN THE FIRST TRIAL.

22 THE COURT: SUSTAINED.

23 MR. CONN: OKAY. I BELIEVE THAT HE TESTIFIED --
24 HE INDICATED THAT HE TESTIFIED IN THE FIRST TRIAL, AND
25 THAT HE WAS CALLED BY THE PROSECUTION AS A BALLISTICS
26 EXPERT.

27 HE ALSO SAID THAT HE DOES NOT DO
28 RECONSTRUCTION. SO HE DID NOT DO A RECONSTRUCTION OF

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1 THIS CASE.

2 I WOULD SUBMIT TO YOU, LADIES AND
3 GENTLEMEN, THAT THIS IS A CASE IN WHICH THE LOS ANGELES
4 DISTRICT ATTORNEY'S OFFICE DECIDED THAT THEY WERE GOING
5 TO GO OUTSIDE TO GET FAILURE ANALYSIS TO ASSIST US IN
6 THE PRESENTATION OF THIS CASE. WE CALLED ROGER
7 MC CARTHY TO TESTIFY ON BEHALF OF THE PROSECUTION, AND
8 DWIGHT VAN HORN WAS IN THE POSITION OF BEING REPLACED --
9 REPLACED BY SOMEONE FROM THE OUTSIDE.

10 NOW, DWIGHT VAN HORN SHOULD NOT BE UPSET OR
11 FEEL DISCREDITED BY THE FACT THAT THE DISTRICT
12 ATTORNEY'S OFFICE CHOSE SOMEONE IN THE OUTSIDE TO DO
13 SOMETHING WHICH HE DOES NOT DO. HE ADMITTEDLY DOES NOT
14 DO THIS. HE ADMITTEDLY DOES NOT DO RECONSTRUCTION.

15 WHAT WE DID WAS WE TOOK WHATEVER DWIGHT VAN
16 HORN HAD TO OFFER, AND TOOK IT ONE STEP FURTHER.

17 MS. ABRAMSON: OBJECTION, YOUR HONOR.

18 THE COURT: OVERRULED.

19 MS. ABRAMSON: THERE'S NO EVIDENCE TO SUPPORT
20 THAT.

21 THE COURT: THIS IS ARGUMENT BASED UPON THE
22 EVIDENCE PRESENTED.

23 YOU MAY PROCEED.

24 MR. CONN: OKAY. WHAT WE DID WAS WE PRESENTED A
25 RECONSTRUCTION, WHICH THE LOS ANGELES SHERIFF'S
26 DEPARTMENT DOES NOT DO.

27 NOW, IF THE LOS ANGELES COUNTY SHERIFF'S
28 DEPARTMENT DOES NOT WANT TO WALK THAT ADDITIONAL

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1 DISTANCE THAT ROGER MC CARTHY WALKED IN THIS PARTICULAR
2 CASE, THEN THAT'S FINE. THAT'S UP TO THEM, IF THEY
3 DON'T WANT TO GO DOWN THAT ROAD. AND I TOLD YOU WHAT
4 THAT ROAD WAS; THAT IS, WHEN YOU GIVE AN OPINION AS AN
5 EXPERT, SHOULD YOU TAKE INTO CONSIDERATION THE
6 PROBABILITY OF -- OR THE LIKELIHOOD OF WHAT PEOPLE WOULD
7 DO IN GIVEN SITUATIONS? WOULD JOSE MENENDEZ, FOR
8 EXAMPLE, HAVE MOVED AROUND THE ROOM AND BLED IN OTHER
9 PLACES UNLESS HE HAD BEEN TAKEN OUT OF THE PICTURE
10 EARLY? SHOT IN THE HEAD, FOR EXAMPLE. SHOULD
11 ASSUMPTIONS LIKE THAT BE PART OF THE EXPERT OPINION?

12 WELL, DR. MC CARTHY INCORPORATED REASONABLE
13 CONCLUSIONS, REASONABLE INFERENCES SUCH AS THAT IN HIS
14 TESTIMONY. AND I WOULD SUBMIT TO YOU, THAT AS LONG AS
15 DR. MC CARTHY INCORPORATES SUCH CONCLUSIONS INTO HIS
16 OPINION, AND PROVIDES THE JURY WITH THAT INFORMATION,
17 AND TELLS THE JURY THE BASIS FOR HIS OPINION, THEN
18 DR. MC CARTHY IS JUSTIFIED IN GIVING AN OPINION, AND THE

19 BASIS FOR THAT OPINION. THE JURY CAN THEN DECIDE
20 WHETHER OR NOT THEY AGREE WITH THAT OPINION OR REJECT
21 THAT OPINION, BECAUSE THEY KNOW THE FULL BASIS FOR THAT
22 OPINION.

23 NOW, IF THE SHERIFF'S DEPARTMENT DOESN'T
24 WANT TO DO THAT, THEN THAT'S PERFECTLY FINE.

25 BUT WHAT HAPPENED HERE, LADIES AND
26 GENTLEMEN, I WOULD SUBMIT TO YOU IS THAT -- I AM NOT
27 POINTING THE FINGER AT THE WHOLE SHERIFF'S DEPARTMENT.

28 BUT THIS ONE PARTICULAR INDIVIDUAL, I WOULD

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1 SUBMIT TO YOU, THAT DWIGHT VAN HORN HAD HIS FEATHERS
2 RUFFLED IN THIS CASE WHEN HE LEARNED THAT THE
3 PROSECUTION WAS GOING TO BE CALLING DR. MC CARTHY.

4 AND YOU KNOW, DWIGHT VAN HORN IS ALSO A
5 FRIEND, HE SAID, OF DR. FACKLER. IN FACT, DWIGHT VAN
6 HORN SAID: "WELL, I DON'T RECALL EXACTLY HOW I FOUND
7 OUT THAT DR. MC CARTHY WAS GOING TO BE CALLED BY THE
8 PROSECUTION, BUT I DO KNOW AT SOME POINT I BEGAN
9 DISCUSSING THIS ISSUE WITH MY FRIEND, DR. FACKLER."

10 WELL, I WOULD SUBMIT THAT'S PROBABLY HOW HE
11 FOUND OUT; FROM HIS FRIEND, DR. FACKLER.

12 AND THEY BEGAN TO DISCUSS THE FACT THAT
13 ROGER MC CARTHY AND HIS FANCY ENGINEERING FIRM IN MENLO
14 PARK WAS GOING TO COME DOWN HERE TO SOUTHERN CALIFORNIA,

15 AND HE WAS GOING TO BE TESTIFYING IN A MAJOR CRIME, IN A
16 MAJOR PROSECUTION BEING PRESENTED BY THE DIRECT
17 ATTORNEY'S OFFICE. AND DWIGHT VAN HORN WAS BEING LEFT
18 OUT OF THE PICTURE.

19 AND DWIGHT VAN HORN AT THAT POINT DECIDED
20 THAT -- FIRST HE SAID THAT HE WASN'T GOING TO TALK TO
21 DR. FACKLER. AND I ASKED HIM: "WELL, WHY DID YOU SAY
22 THAT YOU WERE NOT GOING TO TALK ABOUT THE CASE TO
23 DR. FACKLER AT THAT POINT?"

24 AND HE SAID THAT HE WAS UNWILLING TO
25 DISCUSS THE CASE WITH DR. FACKLER, HE SAID, WHEN HE
26 FIRST BEGAN TO TALK TO HIM ABOUT THIS CASE, BECAUSE HE
27 SAID THAT HE LEARNED THAT FACKLER WAS WORKING FOR THE
28 DEFENSE, AND SO WAS ON THE OTHER SIDE.

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1 AND THAT IS THE SIMPLISTIC VIEW OF THE
2 UNIVERSE THAT DWIGHT VAN HORN APPARENTLY HAS, THAT IT'S
3 A MATTER OF TAKING SIDES. "I'M ON THIS SIDE, HE'S ON
4 THEIR SIDE, YOU SEE."

5 AND IT SHOULDN'T BE THAT WAY. IT SHOULD
6 NOT BE A MATTER OF WITNESSES TAKING SIDES. WITNESSES
7 SHOULD -- WITNESSES WHO ARE CALLED TO TESTIFY SHOULD
8 TESTIFY TO THE TRUTH, REGARDLESS OF WHO CALLS THEM. AND
9 IT'S NOT A MATTER OF TAKING SIDES. YOU DON'T TAKE
10 SIDES. YOU TESTIFY TRUTHFULLY TO WHAT YOU KNOW ABOUT A

11 CASE, AND NOTHING MORE.

12 AND IT WAS AFTER I -- HE USED THAT PHRASE,

13 "WELL, HE WAS ON THE OTHER SIDE," THAT I THEN SAID:

14 "WHAT HAPPENED AFTER THAT?"

15 "WELL, AFTER THAT, I LEARNED THAT I

16 WAS NOT GOING TO BE CALLED BY THE

17 PROSECUTION. I RECEIVED A DEFENSE

18 SUBPOENA. I REALIZED I WAS GOING TO BE

19 CALLED BY THE DEFENSE, AND AT THAT POINT I

20 BEGAN DISCUSSING THE CASE WITH

21 DR. FACKLER."

22 AND THAT IS WHEN I ASKED HIM:

23 "WELL, IF YOU WERE THEN DISCUSSING

24 THE CASE WITH DR. FACKLER, WELL THEN,

25 WHOSE SIDE ARE YOU ON NOW?"

26 FOR THE PURPOSES OF HIGHLIGHTING WHAT HIS

27 FRAME OF MIND IS. DOES HE REGARD HIMSELF -- IF HE

28 REGARDED DR. FACKLER AS BEING ON THE OTHER SIDE BEFORE,

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1 NOW THAT HE IS DISCUSSING THE CASE WITH DR. FACKLER,

2 DOES HE REGARD HIMSELF AS BEING ON THAT SIDE NOW?

3 THAT IS NOT THE RIGHT MENTALITY THAT A

4 WITNESS SHOULD HAVE WHEN A WITNESS COMES IN TO TESTIFY.

5 YOU ARE NOT HERE TO TESTIFY FOR ONE SIDE OR THE OTHER.

6 YOU ARE HERE TO TESTIFY TO THE TRUTH, WHATEVER THAT

7 TRUTH HAPPENS TO BE.

8 AND I WOULD SUBMIT TO YOU THAT DWIGHT VAN
9 HORN'S OBJECTIVITY IS SOMEWHAT QUESTIONABLE IN REGARD TO
10 THIS CASE, BECAUSE WHAT HE BEGAN TO DO APPARENTLY WAS
11 NOT JUST -- HE DIDN'T SAY, "WELL, GIVE ME A SUBPOENA AND
12 I WILL TESTIFY IN COURT." HE DIDN'T SAY THAT TO THE
13 DEFENSE.

14 WHAT HE BEGAN TO DO WAS MUCH MORE THAN
15 THAT. HE BEGAN TO WORK WITH THE DEFENSE, AND HE BEGAN
16 TO REVIEW THE TRANSCRIPTS OF ROGER MC CARTHY'S TESTIMONY
17 FOR THE PURPOSE OF POINTING OUT TO THE DEFENSE AND
18 ADVISING THE DEFENSE CONCERNING WEAKNESSES THAT HE
19 PERCEIVED IN THE TESTIMONY OF ROGER MC CARTHY.

20 AND SO YOU HAVE A VERY STRANGE SITUATION
21 HERE, LADIES AND GENTLEMEN. YOU HAVE A SITUATION WHERE
22 DWIGHT VAN HORN, WHO WORKS FOR THE LOS ANGELES SHERIFF'S
23 DEPARTMENT, AND WHO IS BEING PAID BY THE TAXPAYERS, IS
24 NOW ACTIVELY WORKING AS AN EXPERT WITNESS FOR THE
25 DEFENSE, REVIEWING TRANSCRIPTS OF THE DEFENSE -- OR
26 REVIEWING TRANSCRIPTS OF WITNESSES CALLED BY THE
27 PROSECUTION FOR THE PURPOSE OF FINDING ERRORS, OR
28 FINDING AREAS OF DISAGREEMENT SO THAT HE CAN THEN

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1 TESTIFY ON BEHALF OF THE DEFENDANTS IN THIS CASE.

2 AND I ASKED HIM, "WHO IS PAYING YOU AT THIS

3 POINT?" I MEAN, OBVIOUSLY HE IS WORKING FOR THE
4 DEFENSE. HE IS NO LONGER WORKING AS A LAW ENFORCEMENT
5 OFFICER WHO WAS JUST BEING CALLED TO TESTIFY. HE IS
6 ACTIVELY PREPARING THE DEFENSE IN THIS CASE, USING HIS
7 BACKGROUND, USING HIS RESOURCES, USING HIS SALARY, DOING
8 THIS ON COUNTY EXPENSE TO PREPARE FOR THE DEFENSE OF
9 ERIK AND LYLE MENENDEZ.

10 LADIES AND GENTLEMEN, I DO NOT QUARREL WITH
11 THE PROPOSITION THAT IF A POLICE OFFICER IS CALLED BY
12 THE DEFENSE -- AND IT CAN HAPPEN, AS THE DEFENSE CALLED
13 DETECTIVE ZOELLER -- DETECTIVE ZOELLER HAD SOME
14 INFORMATION CONCERNING JAMIE PISARCIK, AND THEY CALLED
15 HIM.

16 I DO NOT QUARREL WITH THE PROPOSITION THAT
17 A LAW ENFORCEMENT OFFICER, IF CALLED BY EITHER SIDE,
18 MUST TESTIFY TRUTHFULLY.

19 BUT LADIES AND GENTLEMEN, WHAT YOU SAW IN
20 THIS CASE WAS A VERY UNUSUAL SITUATION, WHERE YOU HAVE
21 DWIGHT VAN HORN ACTIVELY PREPARING AS PART OF THE
22 DEFENSE TEAM, AND STRATEGIZING WITH THE DEFENSE TEAM --

23 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT
24 MISSTATES THE TESTIMONY.

25 THE COURT: OVERRULED.

26 YOU MAY CONTINUE.

27 MR. CONN: DWIGHT VAN HORN SAID HE WENT THROUGH
28 TRANSCRIPTS, AND HE LOOKED THROUGH THE TRANSCRIPTS OF

1 DR. MC CARTHY'S TESTIMONY FOR THE PURPOSE OF FINDING
2 PROBLEMS WITH IT, AND THEN DISCUSSING THOSE PROBLEMS.

3 SO I WOULD SUBMIT TO YOU, LADIES AND
4 GENTLEMEN, THAT YOU HAVE A LAW ENFORCEMENT OFFICER WHO
5 IS VERY MUCH AN ACTIVE PART OF THE DEFENSE TEAM IN THIS
6 CASE.

7 MS. ABRAMSON: SAME OBJECTION, YOUR HONOR.

8 THE COURT: OVERRULED.

9 MS. ABRAMSON: FANTASY.

10 THE COURT: OVERRULED.

11 COUNSEL, LET'S NOT -- YOU CAN RESPOND IN
12 YOUR ARGUMENT, BUT AT THIS POINT MR. CONN IS PRESENTING
13 HIS INTERPRETATION OF THE EVIDENCE.

14 MR. CONN: AND I SAID TO HIM: "ISN'T IT TRUE
15 THAT YOU HAD MEETINGS WITH THE DEFENSE TO WHICH THE
16 PROSECUTION WAS NOT INVITED?"

17 AND HE SAID "YES."

18 AND I ASK YOU, LADIES AND GENTLEMEN, WHY IS
19 THAT? WHY IS THAT?

20 IF HE IS A FAIR, IMPARTIAL LAW ENFORCEMENT
21 OFFICER, JUST HERE TO TESTIFY WITH NO AGENDA, WITH NO
22 BIAS, THEN WHY IS HE HAVING MEETINGS WITH THE DEFENSE
23 AND NOT INVITING THE PROSECUTION TO THOSE MEETINGS? IS
24 THAT RIGHT?

25 I WOULD SUBMIT TO YOU THAT WHAT HE DID WAS
26 CLEARLY BEYOND THE CALL OF DUTY. IT WAS NOT PART OF HIS
27 RESPONSIBILITY AS A LAW ENFORCEMENT OFFICER, NOR AS AN

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1 AND I EVEN ASKED HIM:

2 "YOU INDICATED THAT YOU TESTIFIED
3 PREVIOUSLY ABOUT 250 TIMES; ISN'T THAT
4 CORRECT?"

5 AND HE SAID "YES." AND I
6 ASKED HIM:

7 "HOW MANY TIMES OF THOSE 250 WERE
8 YOU CALLED BY THE DEFENSE?"

9 AND HE INDICATED FIVE TIMES.

10 AND AS I SAID, I HAVE NO QUARREL WITH THAT.
11 I DON'T QUARREL IF A LAW ENFORCEMENT OFFICER HAS TO
12 TESTIFY FOR THE DEFENSE IF HE IS CALLED BY THE DEFENSE.

13 BUT I ASKED HIM:

14 "ON HOW MANY OF THOSE FIVE
15 OCCASIONS DID YOU DO WHAT YOU DID IN THIS
16 CASE; THAT IS, GO THROUGH TESTIMONY OF
17 WITNESSES CALLED BY THE PROSECUTION FOR
18 THE PURPOSE OF PREPARING FOR THE DEFENSE?"

19 AND HE INDICATED THAT HE HAD NEVER DONE
20 THAT BEFORE IN HIS ENTIRE CAREER.

21 SO, I WOULD SUBMIT TO YOU, LADIES AND
22 GENTLEMEN, DWIGHT VAN HORN IS NOT EXACTLY A VERY FAIR
23 AND IMPARTIAL WITNESS. HE HAD HIS FEATHERS RUFFLED, AND

24 HE, IN HIS OWN WORDS, IS NOW, QUOTE, ON THE OTHER SIDE.
25 AND THAT'S HOW HE SEES HIMSELF. THAT IS HIS VIEW OF
26 WHAT THESE PROCEEDINGS ARE ALL ABOUT, TAKING SIDES. AND
27 HE ESSENTIALLY DECIDED IN HIS OWN MIND OBVIOUSLY THAT
28 "IF THE PROSECUTION IS NOT GOING TO CALL ME AS A

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1 WITNESS, THEN I AM GOING TO GO WHOLE HOG ON THE OTHER
2 SIDE, AND I AM GOING TO BE THEIR EXPERT."
3 I ONLY GOT INTO THE REASONS FOR
4 DISCREDITING THE TESTIMONY OF DWIGHT VAN HORN. THERE
5 WERE A COUPLE OF THINGS I WANTED TO ELICIT FROM HIM,
6 BECAUSE THERE ARE THINGS WHICH -- NOT GETTING INTO
7 RECONSTRUCTION, BUT JUST GETTING INTO BALLISTICS AND HIS
8 KNOWLEDGE IN THE AREA IN WHICH HE ACTUALLY IS AN EXPERT.
9 HE WAS CALLED TO DISCREDIT MC CARTHY IN
10 TERMS OF THE RECONSTRUCTION, ALTHOUGH HE DOESN'T DO
11 RECONSTRUCTION. SO YOU HAVE TO QUESTION, DOES HE REALLY
12 HAVE THE EXPERTISE TO EVEN -- DOES HE REALLY HAVE THE
13 EXPERTISE EVEN TO BE CHALLENGING THE RECONSTRUCTION OF
14 DR. MC CARTHY IF THAT'S NOT HIS EXPERTISE? HIS
15 EXPERTISE IS SOLELY BALLISTICS. THAT IS WHAT HE KNOWS,
16 AND HE DOESN'T KNOW ANYTHING MORE THAN THAT.
17 BUT INsofar AS HE WAS AN EXPERT, AND
18 INsofar AS HE DID TESTIFY IN REGARD TO BALLISTIC
19 MATTERS, I QUESTIONED HIM ABOUT A COUPLE OF BALLISTIC

20 MATTERS TO SHOW YOU THAT EVEN HE, AS THE BALLISTICS
21 EXPERT IN THIS CASE, IMPEACHES HERE THE DEFENDANT AND
22 OTHER EXPERT WITNESSES CALLED BY THE DEFENSE.
23 I ASKED HIM, FOR EXAMPLE, ABOUT THE TYPE OF
24 AMMUNITION THAT WAS USED IN THIS CASE, AND HE MADE IT
25 VERY CLEAR THAT THE TYPE OF AMMUNITION IN THIS CASE
26 EMPLOYS SMOKELESS POWDER, WHICH DOES NOT IMPAIR VISION.
27 AND THAT IS SOMETHING, LADIES AND
28 GENTLEMEN, THAT I WILL BE GETTING BACK TO LATER, WHEN I

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1 TALK ABOUT THE TESTIMONY OF ERIK MENENDEZ, AND WHETHER
2 HE MADE IT APPEAR THROUGH HIS TESTIMONY THAT WHEN HE
3 WENT INTO THAT ROOM, HIS VISION MIGHT HAVE BEEN IMPAIRED
4 SOMEWHAT BECAUSE OF THE SMOKE.
5 BUT BEAR IN MIND, DWIGHT VAN HORN TESTIFIED
6 VERY CLEARLY THAT THIS WAS SMOKELESS POWDER, WHICH DOES
7 NOT IMPAIR VISION.
8 AND THE OTHER IMPORTANT ISSUE THAT DWIGHT
9 VAN HORN TESTIFIED TO WAS THAT ONE CANNOT GIVE RELIABLE
10 ESTIMATES OF DISTANCES FROM WHICH SHOTGUNS ARE FIRED
11 MERELY BY LOOKING AT THE SPREAD PATTERNS, AND WITHOUT
12 THE BENEFIT OF CONDUCTING EXPERIMENTS WITH THE ACTUAL
13 WEAPON USED IN THE CRIME.
14 NOW, YOU WILL RECALL THAT THAT IS THE VERY
15 SAME CONCLUSION THAT DR. MC CARTHY REACHED, BECAUSE HE

16 DID SOME EXPERIMENTS HIMSELF, AND HE REACHED THAT
17 CONCLUSION. AND ONCE HE REACHED THAT CONCLUSION, HE
18 ABANDONED FURTHER EXPERIMENTS DESIGNED TO DETERMINE
19 DISTANCES FROM WHICH THE SHOTGUNS IN THIS CASE WERE
20 ACTUALLY FIRED.

21 BUT THAT IS SIGNIFICANT, LADIES AND
22 GENTLEMEN, BECAUSE WHILE DR. MC CARTHY REACHED THIS
23 CONCLUSION, AND WHILE DWIGHT VAN HORN, CALLED BY THE
24 DEFENSE, AND RELIED UPON BY THE DEFENSE, SAID THAT THIS
25 IS ABSOLUTELY TRUE, AND HE WILL NOT GIVE ESTIMATES
26 CONCERNING DISTANCES IN ANY CASE, WHAT DID THEY DO WITH
27 THE REST OF THEIR DEFENSE WITNESSES? THEY CALLED OTHER
28 EXPERTS WHO GAVE ESTIMATES CONCERNING DISTANCE.

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1 SO YOU CAN SEE HOW THEY CALLED SO MANY
2 EXPERTS IN THIS CASE THEY WERE TRIPPING OVER EACH OTHER,
3 AND THEY WERE CONTRADICTING EACH OTHER. AND I AM NOT
4 GOING TO GET INTO ALL OF THE DETAILS, ALL OF THE WAYS
5 IN WHICH THEY TRIPPED OVER EACH OTHER. BUT THAT IS JUST
6 ONE OF THE VERY MANY WAYS.

7 WHAT WAS ABSOLUTELY CLEAR IN THIS REGARD IS
8 THAT THEIR OTHER WITNESSES TESTIFIED JUST TO THE
9 CONTRARY. DR. FACKLER, FOR EXAMPLE, GAVE OFF-THE-CUFF
10 ESTIMATES OF ALL OF THE MANY WOUNDS -- ALL OF THE
11 DISTANCES INVOLVED IN THIS CASE. AND THEN DR. MORTON

12 ALSO TESTIFIED THAT HE CONDUCTED HIS OWN EXPERIMENTS,
13 AND HE REACHED RELIABLE CONCLUSIONS.

14 WELL, DWIGHT VAN HORN IS OBVIOUSLY MUCH
15 MORE EXPERIENCED IN BALLISTICS THAN DR. MORTON IS, AND
16 IF DWIGHT VAN HORN SAID THAT YOU CAN'T DO IT, HOW CAN
17 THEY THEN BRING IN MORTON TO SAY, "YES, I CAN DO IT."

18 IT'S LIKE THEY CAN'T GET THEIR OWN THEORY
19 STRAIGHT IN THIS CASE. YOU CAN OR YOU CAN'T. THEIR
20 WITNESSES CONTRADICT EACH OTHER.

21 BUT DWIGHT VAN HORN MADE IT VERY CLEAR. HE
22 SAID, "I WILL NOT" -- AND THE WAY HE WORDED IT I THINK
23 WAS SIGNIFICANT, BECAUSE IT WAS SO EMPHATIC. IT WAS SO
24 CLEAR.

25 HE SAID: "YOU SHOW ME A SHOTGUN WOUND, AND
26 I WILL TELL YOU JUST ONE OF TWO THINGS: EITHER IT'S A
27 CONTACT WOUND, OR IT'S NOT."

28 THAT'S AS FAR AS HE'S WILLING TO GO. AND

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1 HE IS THE PERSON WHO HAS -- HE'S BEEN A FIREARMS
2 EXAMINER FOR THE PAST TEN YEARS, AND HE SAID HE WILL NOT
3 TELL YOU ANYTHING MORE THAN THAT. IT'S EITHER A CONTACT
4 WOUND OR IT WAS FIRED FROM A DISTANCE.

5 AND YET THEIR EXPERTS CAME IN HERE AND SAID
6 THIS WAS FIRED FROM FIVE FEET. THIS WAS FIRED FROM
7 ABOUT TEN FEET. THIS WAS FIRED FROM ABOUT FIFTEEN FEET.

8 HOW CAN THEY SAY THAT? THEY'RE
9 INCONSISTENT. THEY CAN'T GET THE STORY STRAIGHT.
10 NEXT THEY CALLED RON LINHART, AND RON
11 LINHART IS ALSO A BLOOD -- A CRIMINALIST EMPLOYED BY THE
12 LOS ANGELES SHERIFF'S DEPARTMENT, AND I BELIEVE THAT HE
13 IS A CIVILIAN WITNESS EMPLOYED BY THAT DEPARTMENT AT THE
14 PRESENT TIME. AND THE INTERESTING THING ABOUT RON
15 LINHART IS THAT THE DISTRICT ATTORNEY'S OFFICE WENT TO
16 RON LINHART A LONG TIME AGO, AND WE ASKED HIM, "WHAT CAN
17 YOU TELL US ABOUT THIS CASE?" AND HE WROTE A WRITTEN
18 REPORT, AND HE BASICALLY TOLD US EVERYTHING HE COULD --
19 EVERYTHING THAT HE COULD TELL US ABOUT THIS CASE.
20 MS. ABRAMSON: I AM GOING TO OBJECT TO THIS, YOUR
21 HONOR. THIS IS NOT THE EVIDENCE.
22 THE COURT: SUSTAINED AS TO THAT PORTION OF IT AS
23 FAR AS "EVERYTHING," SINCE I DON'T BELIEVE THAT WAS THE
24 NATURE OF HIS TESTIMONY.
25 PERHAPS YOU CAN REPHRASE THAT.
26 MR. CONN: YES.
27 IN MY EXAMINATION OF HIM, I BROUGHT OUT
28 EVERYTHING THAT HE WROTE DOWN IN HIS REPORT, BECAUSE HE

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1 DID IN FACT WRITE A REPORT IN JULY OF 1993, AND THAT
2 REPORT INDICATED HIS CONCLUSIONS IN REGARD TO THIS CASE.
3 AND YOU HAVE TO LOOK AT WHAT WAS HIS

4 CONCLUSIONS BACK THEN WHEN THE PROSECUTION ASKED HIM TO
5 WRITE A REPORT, AND HIS CONCLUSIONS NOW. AND NOW THAT
6 HE'S CALLED BY THE DEFENSE, HE APPARENTLY HAS ADDITIONAL
7 CONCLUSIONS, WHICH HE DID NOT SPECIFY IN HIS REPORT.

8 LINHART TESTIFIED THAT HE WAS PROVIDED WITH
9 PHOTOGRAPHS OF THE CRIME SCENE, AND HE WAS ASKED TO
10 RECONSTRUCT THE LOCATIONS AND POSITIONS OF THE VICTIMS
11 AT THE TIME OF THE SHOOTING. THAT IS REFLECTED IN HIS
12 REPORT.

13 IN JULY OF 1993, HE WROTE A REPORT IN WHICH
14 HE SUMMED UP HIS FINDINGS IN TWO PARAGRAPHS; ONE
15 PARAGRAPH DIRECTED TO KITTY MENENDEZ, AND A SECOND
16 PARAGRAPH DIRECTED TO JOSE MENENDEZ. AND THIS IS WHAT
17 HE CONCLUDED, THAT MARY MENENDEZ WAS ON THE NORTH-FACING
18 COUCH, OR BETWEEN THE COUCH AND COFFEE TABLE, WHEN SHE
19 RECEIVED THE SHOTGUN WOUNDS.

20 AND THERE IS NOTHING INCONSISTENT ABOUT THE
21 CASE THAT WE HAVE PRESENTED TO YOU, NOTHING INCONSISTENT
22 WITH THE EVIDENCE THAT WE PRESENTED TO YOU AS FAR AS
23 THAT IS CONCERNED. THAT IS PRECISELY WHAT DR. MCCARTHY
24 TESTIFIED TO.

25 HE SAID THAT FOR A TIME, AFTER SOME OF THE
26 WOUNDS WERE INFLICTED, SHE WAS IN AN UPRIGHT POSITION,
27 EITHER SITTING ON THE COUCH OR STANDING ON THE FLOOR
28 BETWEEN THE COUCH AND THE COFFEE TABLE.

1 AND ONCE AGAIN, THERE IS NOTHING ABOUT THAT
2 THAT IS INCONSISTENT WITH THE TESTIMONY OF ROGER
3 MC CARTHY.

4 HER FEET WERE MOBILE DURING THIS TIME. AT
5 LEAST ONE OF THE WOUNDS WAS INFLICTED TO AN AREA OF HER
6 BODY THAT WAS AT THE TIME NEAR THE FLOOR, NEAR THE
7 CENTER SECTION OF THE COUCH.

8 WELL AGAIN, NONE OF THAT IS INCONSISTENT
9 WITH THE TESTIMONY OF ROGER MC CARTHY. HE AGREES THAT
10 SHE WAS STANDING AT SOME POINT, THAT BLOOD DRIPPED DOWN,
11 AND THE MOBILITY OF THE FOOT SIMPLY REFERS TO THE FACT
12 THAT SHE MIGHT HAVE MOVED HER FOOT.

13 HE EVEN EXPLAINED THAT BY "MOBILE," ALL HE
14 MEANT BY THAT WAS THAT THE SOLES OF HER SHOES HAD MADE
15 CONTACT WITH BLOOD SPOTS ON THE FLOOR, STAINING THE
16 BOTTOM OF THE SHOES, AND THAT IS CONSISTENT WITH THE
17 ILLUSTRATIONS THAT ROGER MC CARTHY PRESENTED HERE.

18 DOCTOR -- OR RATHER MR. LINHART THEN WENT
19 ON TO GIVE AN OPINION CONCERNING SOMETHING WHICH HE
20 APPARENTLY HAS NO QUALIFICATIONS WHATSOEVER, AND THAT IS
21 HE WAS ASKED -- AND REMEMBER, I TOLD YOU HOW THE
22 DEFENDANTS ARE GOING TO BE SEEKING TO PERSUADE YOU THAT
23 LYLE MENENDEZ GETS A FREE SHOT. THAT SHOT TO KITTY'S
24 CHEEK WAS A FREE SHOT, BECAUSE SHE WAS ALREADY DEAD AT
25 THAT TIME. SO THEY WANTED TO USE LINHART TO HELP
26 SUPPORT THEIR FREE-SHOT THEORY.

27 AND THEY ASKED HIM ABOUT THAT. THEY ASKED
28 HIM: "IN YOUR OPINION, IS THAT WOUND TO HER CHEEK

1 POSTMORTEM?" AND HE INDICATED THAT HE ULTIMATELY DEFERS
2 TO THE CONCLUSION OF A PATHOLOGIST IN THIS AREA, AND
3 CLEARLY HE WAS SUGGESTING IN SO MANY WORDS -- ADMITTING
4 IN SO MANY WORDS THAT HE IS NOT QUALIFIED TO GIVE AN
5 OPINION IN THIS AREA.

6 NEVERTHELESS, HE INDICATED THAT IT APPEARED
7 TO HIM THAT THIS WOUND WAS POSTMORTEM.

8 WELL, HE ABSOLUTELY HAS NO BASIS UPON WHICH
9 HE CAN FORMULATE SUCH AN OPINION.

10 THE FACT THAT HE MAY WORK ON CRIME SCENES,
11 AND THE FACT THAT HE MAY BE A BLOOD-SPATTER EXPERT DOES
12 NOT MEAN THAT HE DOES AUTOPSIES, SO HE HAS NO BASIS TO
13 GIVE SUCH AN OPINION. AND HE EVEN WENT SO FAR AS TO SAY
14 HE COULD NOT RECALL EVER GIVING AN EXPERT OPINION ON THE
15 WITNESS STAND AS TO WHETHER A WOUND WAS ANTEMORTEM,
16 PERIMORTEM OR POSTMORTEM.

17 SO YOU HAVE TO ASK YOURSELF, LADIES AND
18 GENTLEMEN, HOW RELIABLE IS THE OPINION OF A CRIMINALIST
19 WHO IS JUST A BLOOD SPATTER EXPERT? AND THAT'S JUST
20 STAINS. THAT'S ALL IT IS. YOU LOOK AT THE STAINS OF
21 BLOOD AS YOU FLIP THE BLOOD ACROSS AN OBJECT, AND HE CAN
22 TESTIFY TO THE RELIANCE OF THE STAINS.

23 HOW RELIABLE IS THAT PERSON TO GIVE AN
24 OPINION AS TO WHETHER A WOUND WAS BEFORE DEATH OR AFTER
25 DEATH? OBVIOUSLY, IT HAS NO RELIABILITY. AND THAT'S

26 WHERE YOU LEARN FOR THE VERY FIRST TIME IN HIS CAREER HE
27 STATED AN OPINION IN FRONT OF YOU ON THIS WITNESS STAND
28 THAT IT WAS POSTMORTEM.

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1 WELL, HE SHOULDN'T HAVE GIVEN THE OPINION
2 IN THE FIRST PLACE. HE'S CLEARLY NOT QUALIFIED TO DO
3 SO.

4 AND SO ONCE AGAIN, I ASK YOU, DON'T GIVE
5 LYLE MENENDEZ A FREE SHOT TO HIS MOTHER'S FACE BASED
6 UPON THE TESTIMONY OF MR. LINHART.

7 CONCERNING THE WOUND TO JOSE MENENDEZ,
8 HERE'S WHAT HE NOTED IN HIS 93 REPORT:

9 "JOSE MENENDEZ WAS NOT IN A
10 POSITION IN WHICH HE APPEARS IN THE
11 PHOTOGRAPHS AT THE TIME HE RECEIVED THE
12 SHOTGUN WOUNDS TO HIS HEAD, LEFT LEG, AND
13 LEFT ELBOW."

14 BUT THEN HERE'S WHAT HE SAYS TO CLARIFY
15 THAT.

16 "HE WAS EITHER SITTING ON THE WEST
17 END OF THE COUCH, STANDING IN FRONT OR
18 MOVING BETWEEN A SITTING AND STANDING
19 POSITION. HE WAS FOR A TIME, AFTER
20 RECEIVING THE WOUND TO THE HEAD, SITTING
21 ON THE COUCH LEANING FURTHER FORWARD AND

22 MORE TO HIS RIGHT THAN AS SHOWN IN THE
23 PHOTOGRAPHS.
24 "HE WAS SUBSEQUENTLY MOVED TO HIS
25 FINAL POSITION, EITHER BY ANOTHER PERSON
26 OR BY THE SHOTS FIRED INTO HIS RIGHT ARM."
27 SO THE SIGNIFICANT THING IS THAT ALL HE WAS
28 ABLE TO SAY IN HIS '93 REPORT IS THAT JOSE MENENDEZ WAS

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1 NOT EXACTLY IN THE SAME MANNER IN WHICH HE WAS FOUND.
2 IN OTHER WORDS, HE MIGHT HAVE BEEN LEANING FORWARD.
3 THAT'S ALL HE COULD SAY.
4 THEN -- BUT THEN HE CAME INTO THIS
5 COURTROOM AND HE WENT ONE STEP FURTHER. IN THIS
6 COURTROOM, HE IS NOW TRYING TO SAY THAT JOSE MENENDEZ
7 WAS STANDING UP AT THE TIME OF THE SHOTS THAT WERE
8 FIRED.
9 AND I WOULD SUBMIT TO YOU, LADIES AND
10 GENTLEMEN, THAT THERE IS NO BASIS UPON WHICH HE CAN
11 CONCLUDE THAT HE WAS IN FACT STANDING UP AT THE TIME
12 THAT THE SHOT WAS FIRED.
13 HE RELIES UPON WHAT THE OTHER EXPERTS RELY
14 UPON; THAT IS, WHAT HE DESCRIBES AS THE ABSENCE OF
15 BLOW-OUT FROM THE LEG. HE IS SAYING THAT IF JOSE
16 MENENDEZ WAS SEATED IN THAT POSITION AT THE TIME THAT
17 THE SHOT TO THE LEG WAS RECEIVED, THERE SHOULD BE SOME

18 BLOW-OUT ON THE FLOOR.

19 IT'S VERY INTERESTING, LADIES AND

20 GENTLEMEN, THAT THAT IS NOT WHAT HE SAID IN HIS '93

21 REPORTS. WHEN HE WAS ASKED -- AND THE REPORT EVEN

22 REFLECTS THAT HE WAS ASKED TO RECONSTRUCT THE LOCATIONS

23 AND POSITIONS OF THE VICTIMS AT THE TIME OF THE

24 SHOOTING.

25 IF THAT WAS HIS CONCLUSION, THEN WHY DIDN'T

26 HE SAY THAT IN HIS '93 REPORT? HE DIDN'T SAY THAT. WHY

27 IS IT ONLY NOW THAT HE IS MAKING SUCH A CLAIM?

28 AND I WOULD SUBMIT TO YOU, LADIES AND

-14313

1 GENTLEMEN, IT RAISES AN ISSUE AS TO HIS IMPARTIALITY AS

2 WELL.

3 BUT THE INTERESTING THING ABOUT HIS

4 TESTIMONY IS THAT, AS WITH ALL OF THE OTHER EXPERTS WHO

5 SAID, "WELL, THERE SHOULD HAVE BEEN BLOW-OUT AND WE

6 DON'T SEE BLOW-OUT," AS WITH THE OTHER EXPERTS, HE COULD

7 NOT EXPLAIN THAT PIECE OF TISSUE WHICH WAS FOUND NEAR

8 THE FRONT DOOR.

9 YOU WILL RECALL IT, AND I WILL SHOW YOU

10 THAT PHOTOGRAPH AS WE BEGIN TO DISCUSS THE OTHER EXPERTS

11 IN A FEW MINUTES.

12 DETECTIVE ZOELLER TESTIFIED THAT RIGHT NEAR

13 THE FRONT -- RIGHT IN FRONT OF THE DOORS GOING INTO THE

14 DEN HE OBSERVED A PIECE OF TISSUE LYING THERE ON THE
15 FLOOR, AND YOU CAN SEE IT IN THE PHOTOGRAPHS.

16 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU
17 THAT THAT IS THE BLOW-OUT THAT EVERYONE IS SAYING THAT
18 THEY TWO EXPECT; THAT THAT IS THE BLOW-OUT FROM THE LEG.

19 AND IF THAT IS NOT THE BLOW-OUT FROM THE
20 LEG, LADIES AND GENTLEMEN, THEN HOW DID IT GET THERE?
21 HOW DO YOU GET THAT PIECE OF TISSUE ALL THE WAY ACROSS
22 TO THE OTHER END OF THE ROOM?

23 I WOULD SUBMIT THE ONLY WAY THAT COULD HAVE
24 GOTTEN THERE WAS, AS ROGER MC CARTHY ILLUSTRATED IN THE
25 ILLUSTRATION, TO THE SHOT TO JOSE'S KNEE; THAT IS, THE
26 SHOT -- I BELIEVE IT'S NO. 7.

27 IF YOU TAKE LOOK AT SHOT NO. 7, AND IF JOSE
28 MENENDEZ WAS SHOT IN THE LEFT KNEE, AS INDICATED, THAT

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1 WOULD ACCOUNT FOR THE BLOW-OUT OVER THERE ON THAT SIDE
2 OF THE ROOM.

3 AND ALSO BEAR IN MIND, LADIES AND
4 GENTLEMEN, THAT THERE WAS A PHOTOGRAPH THAT WAS
5 INTRODUCED OF THE TYPE OF BLOW-OUT THAT YOU WOULD
6 EXPECT, AND I WILL BE SHOWING YOU THAT PHOTOGRAPH IN
7 JUST A MINUTE.

8 ONE OF THE EXPERTS TESTIFIED THAT HE DID
9 SOME EXPERIMENTS, I BELIEVE MR. MORTON, WHO SAID HE DID

10 SOME EXPERIMENTS CONCERNING THE TYPE OF BLOW-OUT THAT
11 YOU WOULD EXPECT, THE TYPE OF STAINING THAT YOU MIGHT
12 EXPECT TO SEE FROM A SHOT.

13 AND WE SAW SOME -- NOT PHOTOGRAPHS, BUT THE
14 ACTUAL PHYSICAL EXHIBIT OF BLOOD STAINS. AND YOU CAN
15 SEE THAT WHAT YOU SAW WERE VERY FAINT BLOOD STAINS. AND
16 HE EVEN ADMITTED THAT THAT PHYSICAL EXHIBIT WAS
17 UNRELIABLE. BECAUSE OF THE NATURE OF THE EXPERIMENTS
18 THAT WERE CONDUCTED, YOU WOULD EXPECT TO SEE EVEN
19 LESS -- EVEN LESS BLOW-OUT IN THIS CASE THAN WAS
20 CONTAINED IN THAT PHYSICAL EXHIBIT.

21 WELL, IF YOU EXPECT TO SEE LESS THAN THAT,
22 LADIES AND GENTLEMEN, YOU WOULDN'T EXPECT TO SEE VERY
23 MUCH BLOW-OUT AT ALL.

24 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
25 THAT THE TESTIMONY OF MR. LINHART DOES NOT, IN FACT --
26 SHOULD NOT IN FACT CAUSE YOU TO QUESTION THE TESTIMONY
27 OF ROGER MC CARTHY IN ANY WAY. IN FACT, IT IS BASED
28 UPON CERTAIN ASSUMPTIONS AS WELL THAT ARE UNRELIABLE,

-14311

1 SUCH AS -- WELL, I'LL SKIP OVER THAT.

2 WE THEN HEARD FROM CYRIL WECHT, AND CYRIL
3 WECHT INDICATED THAT HE IS A PATHOLOGIST, AND THAT HE
4 DOES NOT DO -- HE WOULD NOT TAKE THE POSITION, AT LEAST
5 IN THIS CASE, THAT A RECONSTRUCTION CAN BE DONE,

6 ALTHOUGH HE ALSO AGREED THAT IN THE RIGHT CASE A

7 RECONSTRUCTION CAN BE DONE.

8 AND I ASKED HIM: "HOW MANY SHOTS MUST BE

9 FIRED? WHAT IS THE LIMIT THAT YOU WOULD DO A

10 RECONSTRUCTION, OR YOU WOULD SAY THAT A RECONSTRUCTION

11 CAN BE DONE?"

12 AND HE SAID: "WELL, I WOULD SAY THREE OR

13 FOUR IS COMING CLOSE TO THAT LIMIT."

14 AND IN THIS CASE, WE HAVE PERHAPS FOUR

15 SHOTS THAT WERE FIRED TO JOSE MENENDEZ, WHICH CERTAINLY

16 SUGGEST THAT A RECONSTRUCTION MIGHT BE POSSIBLE AS FAR

17 AS JOSE MENENDEZ IS CONCERNED.

18 HE WAS THE ONE WHO POINTED OUT PROBLEMS

19 WITH THE -- WITH THE CORONER'S OFFICE IN THIS CASE. HE

20 WAS THE ONE WHO SAID THAT YOU ONLY SEE THAT TYPE OF

21 DELAY IN LOS ANGELES.

22 AND YET HE WAS THE ONE WHO ALSO GOES ON TO

23 GIVE OPINIONS WHICH ARE INCONSISTENT WITH DWIGHT VAN

24 HORN, BY SUGGESTING THAT YOU CAN DO DISTANCES, YOU CAN

25 GIVE AN OPINION CONCERNING DISTANCES AT WHICH THE SHOTS

26 WERE FIRED. AND HE IS ALSO THE ONE WHO SUGGESTED THAT

27 JOSE MENENDEZ MIGHT HAVE BEEN HOBBLING AND SPINNING BACK

28 INTO SOMEPLACE TO END UP IN THIS POSITION HERE.

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1 SO, ASK YOURSELF, LADIES AND GENTLEMEN,

2 WHETHER YOU FEEL THAT THAT IS TRULY POSSIBLE OR NOT.

3 AND HE TESTIFIED TO A LOT MORE DETAIL. AS

4 I INDICATED, I AM NOT GOING TO GO INTO ALL THE DETAIL AT

5 THIS TIME. I WILL RESPOND TO THE DEFENSE, IF THEY FIND

6 IT NECESSARY TO GET INTO ALL OF THE DETAIL.

7 MR. MORTON TESTIFIED THAT HE IS A

8 CRIMINALIST, AND HE SAID THAT HE COULDN'T DO A

9 RECONSTRUCTION. BUT THEN HE IS THE ONE WHO WENT FURTHER

10 THAN ANY OF THE OTHER DEFENSE WITNESSES TO DO A

11 RECONSTRUCTION IN THIS CASE.

12 AND AS FAR AS -- AS MUCH AS HE TRIED TO

13 SUGGEST THAT THE CONCLUSIONS REACHED BY DR. MC CARTHY

14 ARE UNRELIABLE, I WOULD -- AND FOR THE REASON OF BEING

15 SPECULATIVE, I WOULD SUBMIT, LADIES AND GENTLEMEN, THAT

16 HE TESTIFIED IN THIS COURTROOM AS TO THINGS WHICH ARE

17 FAR MORE SPECULATIVE THAN ANY OF THE THINGS TESTIFIED TO

18 BY ROGER MC CARTHY.

19 HE, FOR EXAMPLE, TRIED TO MAINTAIN THE

20 POSITION, AND DID MAINTAIN THE POSITION FOR A GREAT DEAL

21 OF THE TIME, ALTHOUGH HE WAS INCONSISTENT AND ULTIMATELY

22 RETRACTED IT SOMEWHAT, THAT THE BROKEN BRACELET THAT WAS

23 FOUND IN THAT ROOM IN THREE DIFFERENT PLACES PROVIDED

24 EVIDENCE THAT KITTY MENENDEZ WAS STANDING UP AT THE TIME

25 THAT SHE WAS SHOT IN THE ARM.

26 AND HOW COULD YOU POSSIBLY DETERMINE THAT?

27 HOW COULD YOU POSSIBLY DETERMINE FROM THE FACT THAT A

28 PLASTIC BRACELET WAS BROKEN INTO THREE PARTS AND FOUND

1 IN THREE DIFFERENT PARTS OF THE ROOM THAT KITTY MENENDEZ
2 WAS STANDING UP AT THE TIME THAT SHE RECEIVED A SHOT TO
3 THAT ARM?

4 THERE IS NO POSSIBLE WAY YOU CAN DETERMINE
5 THAT, LADIES AND GENTLEMEN. AND I WOULD SUBMIT THAT FOR
6 MR. MORTON TO CALL ROGER MC CARTHY'S TESTIMONY
7 SPECULATIVE IS CERTAINLY AN UNREASONABLE CRITICISM, IN
8 LIGHT OF HIS OWN EXTREMELY SPECULATIVE AND UNSUPPORTABLE
9 TESTIMONY, SUCH AS THAT.

10 HE GAVE A RECONSTRUCTION. HE WENT FURTHER
11 THAN ALL THE REST IN TALKING ABOUT THIS SPINNING THEORY,
12 AND HE EVEN PROVIDED THE SEQUENCE TO THE WOUNDS AT THE
13 TIME JOSE MENENDEZ WAS SHOT WHEN HE WAS SPINNING AROUND.
14 HE WAS SAYING FIRST IT WAS THE WOUND TO THIS ARM, AND
15 THEN IT WAS THE WOUND TO THIS ARM.

16 AND I AM NOT GOING TO GET INTO THE DETAILS
17 OF THAT TESTIMONY, BUT HE DID GIVE SUCH A
18 RECONSTRUCTION, AND THEN HE TONED IT DOWN A BIT BY
19 VARYING IT. AT SOME TIMES HE SAID, "WELL, IT'S MORE
20 LIKELY THAN NOT." AT OTHER TIMES HE SAID, "IT'S THE
21 MOST REASONABLE POSSIBILITY."

22 WELL, THAT'S EXACTLY WHAT DR. MCCARTHY WAS
23 SAYING, THE MOST REASONABLE POSSIBILITY.

24 SO THEY PRESENTED THE VERY TYPE OF EVIDENCE
25 THAT THEY CRITICIZED DR. MC CARTHY FOR, PROVIDING A
26 SEQUENCE WHICH WAS THE MOST REASONABLE POSSIBILITY.

27 SO, LET ME MOVE ON TO SOME NON-TECHNICAL
28 TESTIMONY THAT IS NOT QUITE AS DULL AS SOME OF THE

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1 TECHNICAL EVIDENCE THAT WAS PRESENTED IN THIS CASE.

2 LESLIE GASKILL. WHAT WAS IT SHE TESTIFIED
3 TO? VERY LITTLE.

4 YOU HAVE TO ASK YOURSELF, AS YOU REVIEW THE
5 TESTIMONY OF THESE WITNESSES, DO THEY REALLY CONTRIBUTE
6 ANYTHING TO THIS TRIAL WHATSOEVER, OR IS THE DEFENSE
7 SEEKING TO SCRAPE THE BOTTOM OF THE BARREL TO FIND
8 ABUSE, AND I WOULD SUBMIT THAT THAT IS --

9 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
10 AND ASK TO BE HEARD.

11 THE COURT: OKAY. WELL, PERHAPS THIS IS AN
12 APPROPRIATE TIME TO TAKE OUR BREAK FOR THE LUNCH HOUR.
13 WE WILL RESUME AT 1:30.

14 DON'T DISCUSS THE MATTER WITH ANYONE.
15 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME
16 AT 1:30.

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

20

21 THE COURT: OKAY.

22 MS. ABRAMSON: I THINK THE COURT CAN UNDERSTAND

23 WHY I OBJECTED, AFTER THE PROSECUTION HAS HAD TWO YEARS
24 SEEKING TO PREVENT US FROM PUTTING ON ANY ABUSE EVIDENCE
25 WHATSOEVER, AND THE COURT RULING LIMITING THE AMOUNT AND
26 TYPE OF ABUSE EVIDENCE, THE AMOUNT AND TYPE AND NUMBER
27 OF WITNESSES WE COULD CALL.

28 THEY DO NOT HAVE THE RIGHT TO GET IN FRONT

-14307

1 OF THIS JURY AND SUGGEST THAT WE'RE SCRAPING THE BOTTOM
2 OF THE BARREL TO FIND ANY EVIDENCE OF ABUSE.

3 IF THEY DO HAVE A RIGHT TO DO THAT, I HAVE
4 A RIGHT TO READ THEM THE STATEMENTS OF THOSE 49
5 WITNESSES THAT WE COULD NOT CALL.

6 MR. GESSLER: I JOIN IN THAT OBJECTION, YOUR
7 HONOR. WE HAVE A BARREL FILLED WITH ABUSE THAT WE WERE
8 NOT ABLE TO PRESENT. WE DON'T HAVE TO SCRAPE THE BOTTOM
9 OF THE BARREL, AS ALLEGED BY THE DISTRICT ATTORNEY.

10 WE HAVE DR. HART, AND THE COURT REFUSED TO
11 ALLOW HIM TO TESTIFY.

12 WE HAD PETER CANO, WITH THE INCIDENT WHEN
13 LYLE MENENDEZ WAS ABOUT FIVE YEARS OLD OF THE PUNCHING,
14 THE FEAR OF HIS FATHER.

15 WE HAD DIANE VANDERMOLLEN WITH THE ISSUE OF
16 THE SEXUAL COMPLAINT THAT WAS NOT HANDLED PROPERLY.

17 WE HAD PLENTY OF ABUSE, IF WE COULD HAVE
18 BROUGHT IT ON, AND IT IS VERY IMPROPER FOR THE DISTRICT

19 ATTORNEY, ACCORDING TO THE FEDERAL AND STATE
20 CONSTITUTIONAL RULES, AND THE FACT THAT THIS COURT
21 PREVENTED US FROM PUTTING ON REAL ABUSE, AND
22 CHARACTERIZED THIS FEAR EVIDENCE THAT WE PRESENTED AS
23 SCRAPING THE BOTTOM OF THE BARREL OF ABUSE.

24 AND I JOIN, AND I ASK AGAIN FOR A MISTRIAL
25 BASED UPON THIS IMPROPER CONDUCT, PLUS RENEWING THE
26 OBJECTION I MADE YESTERDAY ON OTHER IMPROPER CONDUCT
27 THAT THE COURT DENIED.

28 MS. ABRAMSON: I JOIN IN THE REQUEST FOR THE

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1 MISTRIAL, YOUR HONOR.

2 THE COURT: DO THE PEOPLE WISH TO RESPOND?

3 MR. CONN: YES.

4 I THINK THAT THE PROSECUTION CAN FAIRLY
5 COMMENT UPON THE EVIDENCE THAT WAS PRESENTED CONCERNING
6 THE BEHAVIOR OF THEM AS IT RELATES TO THIS PARTICULAR
7 WITNESS, AND WHAT I WAS REFERRING TO WAS THIS -- THIS
8 BEHAVIOR OF RESPONDING IN A BARKING TONE OF VOICE DURING
9 THE FISHING TRIP.

10 THEY WERE THE ONES WHO DECIDED TO PRESENT
11 THIS PARTICULAR WITNESS FOR THE BENEFIT OF ESTABLISHING
12 THAT FACT TO THIS JURY, AND IT ESSENCIALLY PROVES
13 NOTHING.

14 AND I THINK THAT THE PROSECUTION IS

15 PERFECTLY JUSTIFIED IN POINTING OUT TO THIS JURY THAT
16 THIS PARTICULAR WITNESS DOES NOT ESTABLISH ANYTHING OF
17 SIGNIFICANCE INsofar AS THIS TRIAL IS CONCERNED. IT'S
18 LEGITIMATE COMMENT UPON THE EVIDENCE. THEY WERE THE
19 ONES THAT DECIDED TO PUT THIS PARTICULAR WITNESS ON, AND
20 IF IT'S A TRIVIAL PIECE OF EVIDENCE, WHICH CONTRIBUTES
21 NOTHING TO THE TRIAL OF THIS MATTER, THEN THE
22 PROSECUTION HAS THE RIGHT TO ADDRESS THAT ISSUE.

23 THE COURT: WELL, THAT'S NOT THE POINT. THE
24 POINT IS THE INFERENCE THAT COULD BE DRAWN FROM YOUR
25 REMARK IS THAT THERE WAS NO OTHER EVIDENCE AVAILABLE FOR
26 THE DEFENSE TO PROVIDE ON THE SUBJECT OF ABUSE BY EITHER
27 PARENT, THE WAY YOU PHRASED IT.

28 AND, THEREFORE, THE COURT IS GOING TO

-14305

1 ADMONISH THE JURY THAT THE REMARK -- THE LAST REMARK
2 THAT YOU MADE IS GOING TO BE STRICKEN, THE JURY TO
3 DISREGARD IT IN ITS ENTIRETY, AND YOU ARE TO REFRAIN
4 FROM REFERRING TO ISSUES THAT WERE THE SUBJECT OF
5 LITIGATION. IT'S IMPROPER FOR EITHER SIDE TO REFER TO
6 SUBJECTS OF LITIGATION AND RULINGS OF THE COURT THAT
7 FORECLOSED INTRODUCTION OF CERTAIN EVIDENCE.

8 AND ALTHOUGH THERE IS SOME AMBIGUITY AS TO
9 WHAT IT WAS THAT YOU WERE REFERRING TO, THERE IS THE
10 POTENTIAL OF MISUSE OF THE REMARK YOU MADE.

11 AND, THEREFORE, THE COURT WILL INFORM THE
12 JURY THAT THE DEFENSE OBJECTION HAS BEEN SUSTAINED TO
13 THAT REMARK, AND THE REMARK IS STRICKEN, AND THE JURY IS
14 TO DISREGARD IT IN ITS ENTIRETY, AND ANY IMPRESSION THAT
15 THEY MIGHT DRAW FROM THAT REMARK IS TO BE DISREGARDED.

16 MS. ABRAMSON: THANK YOU, YOUR HONOR.

17 THE COURT: WE'LL BE IN RECESS UNTIL 1:30.

18 (AT 12:00 P.M. PROCEEDINGS WERE

19 ADJOURNED TO 1:30 P.M. OF THE

20 SAME DAY.)

21

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1 VAN NUYS, CALIFORNIA; THURSDAY, FEBRUARY 22, 1996

2 1:45 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER)

6 (MARY LU MURPHY, OFFICIAL REPORTER)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD IN OPEN COURT, OUT OF THE

10 PRESENCE OF THE JURY:)

11

12 THE COURT: WE HAVE EVERYBODY BACK.

13 ONE LAST REMARK IN REGARD TO THE

14 HEARING. I NEGLECTED TO DENY THE MOTION FOR

15 MISTRIAL.

16 MS. ABRAMSON: EXCUSE ME?
17 THE COURT: LET'S GET THE JURY OUT.
18 MS. ABRAMSON: OH. RIGHT.
19 MR. LEVIN: HOW ABOUT A NEW TRIAL?
20 MS. ABRAMSON: NOT YET. WAIT.
21 (THE JURY ENTERED THE COURTROOM
22 AND THE FOLLOWING PROCEEDINGS
23 WERE HELD:)
24
25 THE COURT: THE JURY IS BACK, AND WE'LL BE
26 RESUMING WITH THE ARGUMENT.
27 THE LAST COMMENT OF MR. CONN IN
28 REFERENCE TO MS. GASKILL, THERE WAS AN OBJECTION TO

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1 THAT. THE OBJECTION'S SUSTAINED. THE JURY IS
2 ADMONISHED TO DISREGARD THAT REMARK, AND YOU ARE NOT
3 TO DRAW ANY INFERENCE WHATSOEVER FROM THE REMARK
4 MADE.
5 ALL RIGHT. YOU MAY CONTINUE.
6 MR. CONN: THANK YOU, YOUR HONOR.
7 GOOD AFTERNOON, LADIES AND GENTLEMEN.
8 WE WERE BEGINNING TO DISCUSS THE
9 TESTIMONY OF LESLIE GASKILL WHEN WE BROKE FOR THE
10 NOON RECESS.

11 AND ONCE AGAIN, LADIES AND GENTLEMEN, I
12 ASK YOU WHAT CONTRIBUTION DID LESLIE GASKILL MAKE TO
13 THIS TRIAL? SHE TESTIFIED THAT SHE WAS THE
14 GIRLFRIEND OF ROBERT ANDERSON, WHO WAS THE BOAT
15 CAPTAIN FOR THE FISHING TRIP ON SATURDAY, AUGUST THE
16 19TH. AND SHE WAS PRESENT DURING THAT TRIP, AND SHE
17 RECALLS SEEING THE MENENDEZ FAMILY PRESENT.

18 BEYOND THAT, DID SHE REALLY HAVE ANY
19 CONTRIBUTION TO THE FACTS OF THIS CASE THAT WERE NOT
20 ESTABLISHED THROUGH THE TESTIMONY OF ROBERT
21 ANDERSON? I WOULD SUBMIT THAT SHE REALLY HAD
22 NOTHING OF SIGNIFICANCE TO RECALL ABOUT THIS TRIP,
23 UNLESS, OF COURSE, THE DEFENSE IS RELYING UPON THE
24 COMMENTS MADE BY JOSE MENENDEZ TO THE DEFENDANTS
25 JUST BEFORE THEY GOT ON BOARD. SHE SAID THAT IT
26 APPEARED TO BE THERE WAS SOME TENSION AMONG THE
27 FAMILY MEMBERS BEFORE THEY GOT ON BOARD. SHE SAID
28 THAT JOSE MENENDEZ TOLD HIS SONS TO PUT A COOLER ON

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1 THE BOAT, AND SHE DESCRIBED IT BEING DONE IN A
2 BARKING TONE OF VOICE.

3 SO IS THE PURPOSE FOR WHICH LESLIE
4 GASKILL WAS CALLED AS A WITNESS IN THIS CASE WAS TO
5 SAY THAT JOSE MENENDEZ SAID THAT IN A BARKING TONE

6 OF VOICE? WHAT DOES THAT PROVE? WE KNOW THAT
7 WHATEVER WAS GOING ON IN THE FAMILY DURING THAT
8 PERIOD OF TIME, IT WAS OBVIOUSLY A TENSE PERIOD.

9 THE PROSECUTION IS ASSERTING THAT IT WAS
10 AS A RESULT OF THE FRICTION IN THE FAMILY, AND THAT
11 THE DEFENDANTS HAD ALREADY DECIDED THAT THEY WERE
12 GOING TO SHOOT THEIR PARENTS TO DEATH. WE KNOW, OF
13 COURSE, THAT THEY HAD ALREADY PURCHASED THE GUNS, SO
14 OBVIOUSLY THERE WAS GOING TO BE TENSION IN FAMILY.
15 SO WHAT DOES THAT PROVE?

16 EVEN IN REGARD TO THIS TENSION, THE
17 WITNESS SAID THAT BY THE END OF THE TRIP THE TENSION
18 HAD SUBSIDED. AND ON CROSS-EXAMINATION SHE SAID
19 THAT WHILE JOSE MENENDEZ MAY HAVE SPOKEN STERNLY TO
20 THE DEFENDANTS WHEN ORDERING THEM TO CARRY THE
21 COOLER ON BOARD, SHE MADE IT VERY CLEAR THAT HE
22 DIDN'T EVEN YELL AT THEM, DIDN'T EVEN RAISE HIS
23 VOICE.

24 SO WHAT THEN IS MEANT BY BARKING AT
25 THEM, IF NOT YELLING AT THEM OR RAISING HIS VOICE,
26 THE FACT HE SPOKE EMPHATICALLY? IS THAT WHY THIS
27 WITNESS WAS CALLED, JUST TO SAY THAT JOSE MENENDEZ
28 WAS SPEAKING EMPHATICALLY ON THAT SATURDAY?

1 CLEARLY, LADIES AND GENTLEMEN, LESLIE
2 GASKILL HAD NO CONTRIBUTION TO THE TRIAL OF THIS
3 MATTER.

4 AND AS I WILL GO THROUGH OTHER WITNESSES
5 IN THIS CASE CALLED BY THE DEFENSE, I INTEND TO SHOW
6 PRECISELY THE SAME, THAT THE WITNESSES THAT WERE
7 CALLED BY THE DEFENSE, EACH AND EVERY ONE OF THEM,
8 HAVE NO TRUE CONTRIBUTION TO MAKE TO YOUR
9 UNDERSTANDING OF THE RELEVANT ISSUES THAT ARE BEFORE
10 YOU, OR SIMPLY SHOULD NOT BE BELIEVED, FOR THE
11 REASONS THAT I WILL POINT OUT TO YOU.

12 BUT I'VE ALREADY DEMONSTRATED, IN REGARD
13 TO ALL EXPERTS THAT WERE CALLED, HOW NONE OF THEM
14 ESTABLISHED ANYTHING OF SIGNIFICANCE. THEY CALLED
15 AS MANY AS FIVE EXPERT WITNESSES TO ESTABLISH WHAT?
16 TO ESTABLISH THAT JOSE MENENDEZ WAS STANDING AT THE
17 TIME THAT ERIK MENENDEZ AND LYLE MENENDEZ ENTERED
18 THE ROOM? WHAT DOES THAT PROVE? TO ESTABLISH THAT
19 PERHAPS ROGER MC CARTHY WAS INCORRECT WHEN HE SAID
20 THAT SHOT 6 PRECEDED SHOT 7? WHAT DOES THAT PROVE?
21 THAT DOESN'T TELL US ANYTHING ABOUT PREMEDITATION
22 AND DELIBERATION.

23 MOST OF THESE WITNESSES, I WOULD SUBMIT,
24 LADIES AND GENTLEMEN, ARE JUST FILLER, WHO HAD NO
25 REAL CONTRIBUTION TO MAKE.

26 WHEN YOU COME RIGHT DOWN TO IT, LADIES
27 AND GENTLEMEN, THE ONLY WITNESS WHO HAD ANYTHING OF
28 SIGNIFICANCE TO SAY IN THIS CASE THAT WAS CALLED BY

1 THE DEFENSE IS ERIK MENENDEZ. BECAUSE HE IS THE
2 ONLY ONE WHO HAS PERSONAL KNOWLEDGE OF THE EVENTS OF
3 AUGUST THE 20TH OF 1989. HE IS THE ONLY ONE WHO HAS
4 SOME CONTRIBUTION TO MAKE. AND I WOULD SUBMIT TO
5 YOU THAT HE WAS TOTALLY UNBELIEVABLE, AND I WILL GET
6 INTO HIS TESTIMONY IN DETAIL.

7 BEFORE I DO, LET'S TURN TO ROBERT
8 ANDERSON. WHAT DID HE HAVE TO SAY ABOUT THE EVENTS
9 OF AUGUST THE 20TH (SIC)? WELL, HE WAS THE BOAT
10 CAPTAIN, AND HE SAID THAT THE DEFENDANTS WERE
11 SOMEWHAT STOIC. THAT WAS ONE OF THE WORDS THAT HE
12 USED. THEY WERE NOT VERY TALKATIVE ON THE TRIP.
13 THAT'S HOW HE EXPLAINED THE USE OF THAT WORD.

14 HE DID DESCRIBE THE TRIP AS WEIRD. BUT
15 THEN AGAIN, HE EXPLAINED THAT WHAT HE MEANT BY THAT
16 WAS SIMPLY THE FAMILY WAS NOT VERY HAPPY OR NOT VERY
17 INTERESTED IN FISHING, AT LEAST. ONCE AGAIN, THAT
18 PROVES NOTHING MORE THAN THERE WAS AN ONGOING
19 DISPUTE AMONG THE FAMILY MEMBERS, WHICH IS SOMETHING
20 BOTH SIDES AGREE TO IN THIS CASE.

21 HE DESCRIBED THE OCCASION AS BEING
22 SOMEWHAT GLOOMY. BUT THEN AGAIN, ONLY BECAUSE THE
23 FAMILY DIDN'T SEEM PARTICULARLY ENTHUSIASTIC ABOUT
24 THE TRIP. HE SAID HE HEARD NO ARGUING, HEARD NO

25 YELLING, AND THAT THE FAMILY MEMBERS BEHAVED
26 FRIENDLY TOWARD HIM.
27 THE IMPORTANT PART OF HIS TESTIMONY, I
28 SUPPOSE, IS THE ACTIVITIES OF THE DEFENDANTS WHILE

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1 THEY WERE ON BOARD THE BOAT. HE SAID THAT THE
2 DEFENDANTS SPENT MOST OF THE TIME UP AT THE FRONT OF
3 THE BOAT, AND I THINK FROM THIS THE DEFENSE IS
4 TRYING TO SUGGEST TO YOU THAT THAT PROVES THAT THE
5 DEFENDANTS WERE IN FEAR OF THEIR PARENTS, IN FEAR
6 THAT THEIR PARENTS WERE GOING TO KILL THEM JUST
7 BECAUSE THEY SPENT A GOOD PORTION OF THE TRIP IN
8 FRONT OF THE BOAT.

9 WELL, DO YOU REALLY BELIEVE THAT, LADIES
10 AND GENTLEMEN? TAKE A LOOK AT THE DISTANCE. WE'RE
11 NOT TALKING ABOUT AN OCEAN LINER HERE. WE'RE
12 TALKING ABOUT THIS LITTLE TINY BOAT. WHAT IS THE
13 ZONE OF SAFETY OF THEY'RE STAYING UP HERE IN THE
14 FRONT OF THE BOAT WHERE THEY FELT THEY WERE SAFE?
15 AND 10 FEET AWAY, BACK HERE, THEY FELT THEY WERE IN
16 DANGER? THAT'S ABSOLUTELY PREPOSTEROUS. THERE IS
17 NO SIGNIFICANT DISTANCE INVOLVED HERE, SUCH THAT
18 THEY WOULD BE JUST AS MUCH IN DANGER IN FRONT OF THE
19 BOAT AS IN THE BACK OF THE BOAT.

20 THEY DID, WE KNOW, SPEND THE ENTIRE -- A
21 GOOD DEAL OF THE TIME IN THE FRONT OF THE BOAT. AND
22 WHY? I WOULD SUBMIT BECAUSE THEY HAD LOT OF TALKING
23 TO DO. THEY HAD A LOT OF PLANNING TO DO. WHAT THEY
24 WERE DOING IS TALKING ABOUT WHAT THEY WERE GOING TO
25 DO THE NEXT DAY, THINKING ABOUT KILLING OF THEIR
26 PARENTS; WORKING UP THAT COURAGE TO DO WHAT THEY
27 FELT THEY WERE GOING TO DO, JUST AS THEY INDICATE ON
28 THE DECEMBER 11 TAPE.

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1 IF THEY WERE TRULY IN FEAR, LADIES AND
2 GENTLEMEN, IF THEY TRULY FELT THAT THE FRONT TIP OF
3 THAT LITTLE TINY BOAT WAS THE SAFETY ZONE AND THE
4 BACK OF THE BOAT WAS THE DANGER ZONE, THEN YOU WOULD
5 EXPECT THAT THEY WOULD SPEND THE ENTIRE TIME UP
6 THERE AND NEVER GO TO THE BACK OF THE BOAT. BUT WE
7 KNOW THAT'S NOT WHAT HAPPENED, BECAUSE ROBERT
8 ANDERSON SAID THAT ERIK MENENDEZ MAY HAVE SPENT AS
9 MUCH AS AN HOUR AND A HALF IN THE BACK OF THE BOAT.
10 WELL, THERE GOES HIS CLAIM ABOUT THE
11 SAFETY ZONE, BECAUSE IF YOU ARE TRULY IN FEAR OF
12 BEING KILLED, ARE YOU GOING TO COME -- TO GO TO THE
13 BACK OF THE BOAT FOR AN HOUR AND A HALF? IN FACT,
14 HE DIDN'T GO BACK TO THE BACK OF THE BOAT, ONLY WHEN

15 CALLED BY HIS FATHER, ONLY WHEN THEY CAUGHT THE
16 SHARK. HE WENT TO THE BACK OF THE BOAT AT OTHER
17 TIMES; AND HE RECALLS THE DEFENDANT BEING IN THE
18 BACK OF THE BOAT AND HAVING A CONVERSATION WITH HIM
19 AND TALKING ABOUT THE MAKING OF A FILM. AND, IN
20 FACT, ERIK MENENDEZ WAS SO INTERESTED IN TALKING
21 ABOUT THE MAKING OF THAT FILM THAT AT SOME POINT HE
22 EVEN CALLED HIS BROTHER BACK. HE CALLED LYLE
23 MENENDEZ TO THE BACK OF THE BOAT AND SAID: "HEY,
24 LYLE, COME AND LISTEN TO THIS." LYLE MENENDEZ
25 APPARENTLY WENT TO BACK OF THE BOAT, AND THEY WERE
26 TALKING ABOUT THE MAKING OF A FILM, "TEQUILA
27 SUNRISE," I THINK WAS THE NAME OF THE FILM THAT THE
28 BOAT HAD BEEN INVOLVED IN.

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1 SO, LADIES AND GENTLEMEN, THAT CERTAINLY
2 DOESN'T SHOW THAT THE DEFENDANTS WERE TRULY IN FEAR
3 OF THEIR PARENTS. DOESN'T POSSIBLY PROVE THAT AT
4 ALL. LYLE MENENDEZ, WHILE HE DIDN'T GO TO THE BACK
5 OF THE BOAT AS OFTEN AS ERIK MENENDEZ DID, ROBERT
6 ANDERSON ESTIMATES THAT LYLE MENENDEZ HIMSELF ALSO
7 SPENT BETWEEN A HALF HOUR TO AN HOUR IN THE BACK OF
8 THE BOAT.

9 SO THIS WHOLE BUSINESS ABOUT BEING IN

10 THE FRONT OF THE BOAT FOR REASON OF FEAR IS SIMPLY
11 NOT SUPPORTED BY THE EVIDENCE.

12 THEN WE TURN TO THE TESTIMONY IN THAT
13 TIME OF THE TRIAL OF ERIK MENENDEZ. BEFORE I GO ON
14 TO THE REST OF THE WITNESSES, LET ME DISCUSS ERIK
15 MENENDEZ WITH YOU.

16 I WANT TO MAKE SOME GENERAL COMMENTS
17 CONCERNING THE TESTIMONY OF ERIK MENENDEZ BEFORE I
18 GET INTO THE SPECIFIC BUSINESS OF HIS TESTIMONY.

19 HE ENDS UP, AT THE CONCLUSION OF THE
20 TESTIMONY, TALKING ABOUT BEING -- THAT IS, HIS
21 TESTIMONY ON DIRECT EXAMINATION -- TALKING ABOUT THE
22 RESIDENTIAL BURGLARIES THAT HE WAS INVOLVED IN AND
23 TALKING ABOUT DOING CHARITY WORK, OR WORKING FOR THE
24 HOMELESS IN CONNECTION WITH THAT. AND IT BECAME
25 APPARENT ONLY ON CROSS-EXAMINATION THAT THE ONLY
26 REASON HE WAS DOING THAT IS BECAUSE IT HAD SOMETHING
27 TO DO WITH CASE THAT HE WAS BEING PROSECUTED FOR.
28 THIS WAS DONE FOR PURPOSES OF LENIENCY, FOR

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1 FAVORABLE TREATMENT FROM THE JUDGE. THAT WAS
2 SOMETHING HE DID ONLY FOR HIS OWN SELF-INTEREST.

3 I ASKED ERIK MENENDEZ WHY HE COMMITTED
4 THE BURGLARIES. AND DO YOU RECALL WHAT ERIK

5 MENENDEZ SAID? HE SAID: "I DON'T KNOW."

6 NOW, DO YOU BELIEVE THAT, LADIES AND

7 GENTLEMEN? HE DOESN'T KNOW WHY HE COMMITTED THE

8 BURGLARIES. WE ALL HAVE EXPLANATIONS FOR OUR

9 BEHAVIOR, LADIES AND GENTLEMEN. THEY MAY NOT BE

10 ENTIRELY TRUE. THEY MAY NOT BE ENTIRELY CORRECT.

11 THEY MAY NOT ALWAYS BE ENTIRELY INSIGHTFUL, BUT WE

12 ALL THINK WE KNOW WHY WE BEHAVED IN A PARTICULAR

13 MANNER.

14 IT'S VERY APPARENT, LADIES AND

15 GENTLEMEN, THAT WHAT ERIK MENENDEZ WAS SEEKING TO DO

16 WAS DEFER THAT ISSUE TO HIS MENTAL HEALTH EXPERTS.

17 HE WOULD MUCH PREFER DR. WILSON TO BE ANSWERING

18 THOSE QUESTIONS, OR SOME OTHER MENTAL HEALTH PERSON

19 TO BE ANSWERING THOSE QUESTIONS FOR HIM. HE DIDN'T

20 WANT TO TACKLE THEM, BECAUSE WHAT CAN HE SAY? "I

21 DID IT FOR MONEY" OR "I DID IT FOR THE THRILL OF

22 IT"? WELL, NEITHER OF THESE ANSWERS SOUNDS VERY

23 GOOD. HE DIDN'T WANT TO ANSWER THE QUESTION, SO HE

24 PRETENDS THAT HE CAN'T ANSWER THE QUESTION.

25 THAT IS SIMPLY HARD TO BELIEVE, LADIES

26 AND GENTLEMEN, BECAUSE ANYONE WOULD HAVE AN ANSWER

27 FOR THAT QUESTION. WHETHER OR NOT THERE ARE

28 COMPLEX, PSYCHOLOGICAL REASONS BEHIND ONE'S ACTIONS,

1 WE STILL HAVE ANSWERS.

2 ERIK MENENDEZ SIMPLY DOESN'T WANT TO
3 ADDRESS HIS OWN MORAL RESPONSIBILITY IN ANY WAY. HE
4 DOESN'T WANT TO ADDRESS HIS MORAL RESPONSIBILITY FOR
5 THE BURGLARY, ANYMORE THAN HE WANTS TO ADDRESS HIS
6 MORAL RESPONSIBILITY FOR THE KILLINGS. THIS IS WHY
7 HE PRETENDS HE DOESN'T KNOW.

8 I THINK AT ONE POINT HE SAID: "MY
9 PSYCHIATRISTS ARE STILL GIVING ME REASONS FOR IT,
10 BUT I HAVE NEVER BEEN ABLE TO GIVE MYSELF A REASON
11 FOR DOING THAT."

12 I WOULD SUBMIT, THAT'S VERY HARD TO
13 BELIEVE, THAT ANYONE WOULD HAVE A REASON (SIC).

14 MR. MENENDEZ WAS ASKED IF HE IS A
15 TRUTHFUL PERSON, AND HE SAID: "I TRY TO BE TRUTHFUL
16 THESE DAYS." WELL, HE CERTAINLY HAS HIS WORK CUT
17 OUT FOR HIM, BECAUSE WHEN YOU LOOK AT HIS PRIOR
18 HISTORY IN THIS CASE AND THE LIES THAT HE TOLD, HE
19 HAS A LOT OF MAKING UP TO DO.

20 HE LIED TO DETECTIVE EDMONDS, TO HIS
21 MOTHER'S GRIEVING FAMILY, TO HIS FATHER'S GRIEVING
22 FAMILY, TO FRIENDS, TO BUSINESS ASSOCIATES OF HIS
23 FATHER, TO THE EXECUTOR OF THE ESTATE, AND TO
24 EVERYONE ELSE THAT HE CAME INTO CONTACT WITH. SO HE
25 TOLD US HE WORKS AT TRYING TO BE TRUTHFUL.

26 EVEN WHEN ASKED WHETHER HE LIED IN THE
27 PAST, EVEN THAT HE TRIES TO TWIST. IT'S INTERESTING

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1 MENENDEZ AND THE WAY HE TRIES TO DISTORT THINGS TO
2 HIS OWN ADVANTAGE; AND IT SHOWS, LADIES AND
3 GENTLEMEN, A MIND THAT IS AT WORK AND WAS VERY
4 FOCUSED ON THE WORDS AND LANGUAGE BEING USED IN THE
5 COURTROOM, IN ENSURING THAT EVERYTHING COMES OUT THE
6 WAY HE WANTS IT.

7 WHEN I ASKED HIM, FOR EXAMPLE, IF HE HAD
8 LIED, HE SAID: "DO YOU MEAN DID I TELL ANYONE THAT I
9 WAS RESPONSIBLE?"

10 SEE HOW HE TWISTS THAT AROUND? HE WANTS
11 TO MAKE A LIE SOUND LIKE AN ABSENCE OF COMING
12 FORWARD WITH THE TRUTH. IT SOUNDS MUCH MORE
13 FAVORABLE TO HIM.

14 SO IF YOU THINK THAT MR. MENENDEZ IS NOT
15 FOCUSED ON THE PRECISE LANGUAGE THAT HE WOULD LIKE
16 TO HAVE SPOKEN IN THIS COURTROOM, YOU'RE WRONG.
17 HE'S VERY MUCH FOCUSED ON THAT.

18 WHEN HE WAS PUSHED ON IT, WHEN I WOULD
19 NOT LET HIM GO ON THAT ISSUE, HE ADMITTED THAT HE
20 LIED. HE LIED TIME AND TIME AGAIN; AND HE KNOWS
21 THAT THERE'S NO GETTING AROUND THAT.

22 HE REFUSES TO ACKNOWLEDGE TELLING

23 SERGEANT EDMONDS THAT "MY FAMILY HAS NO ENEMIES, BUT
24 MY DAD DOESN'T HAVE A LOT OF FRIENDS IN HIS
25 BUSINESS."

26 YOU SEE, BECAUSE ERIK MENENDEZ DOESN'T
27 WANT TO BE CROSS-EXAMINED ON A LOT OF THINGS, HE HAS
28 DIFFERENT WAYS OF GETTING OUT OF CROSS-EXAMINATION

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1 ON CERTAIN THINGS. AND FOR THAT REMARK, FOR
2 EXAMPLE, I ASKED HIM -- SINCE THERE IS A DISPUTE IN
3 THE TRANSCRIPT CONCERNING WHAT ARE THE PRECISE WORDS
4 BEING USED IN THAT PASSAGE, I ASKED HIM: "WHAT DID
5 YOU SAY RIGHT THERE WHEN YOU SPOKE TO SERGEANT
6 EDMONDS?"

7 AND HE DIDN'T REMEMBER, HE SAYS. HE
8 DOESN'T REMEMBER WHAT HE SAID. WELL, IT'S HIS
9 WORDS, LADIES AND GENTLEMEN, AND HE SHOULD BE ABLE
10 TO RECOGNIZE HIS WORDS AND TELL YOU WHAT HE SAID.
11 BUT HE HAS NO GOOD EXPLANATION FOR THAT PASSAGE,
12 JUST LIKE HE HAS NO GOOD EXPLANATION FOR MANY OTHER
13 THINGS, AND SO HE AVOIDS IT ALL TOGETHER.

14 I ASKED HIM WHY HE MADE REFERENCE TO HIS
15 FATHER'S BUSINESS ASSOCIATES. THAT MUCH IS CLEAR ON
16 THE TAPE. THAT MUCH IS UNDENIABLE. AND DOES HE
17 TELL US WHY HE MADE REFERENCE TO SAY FATHER'S

18 BUSINESS ASSOCIATES? HE SEES THE DANGER IN THAT.

19 HE DIDN'T WANT TO ADMIT THAT HE WAS IMPLYING THAT

20 THE MAFIA MAY BE INVOLVED, JUST AS HE LATER IMPLIED

21 TO PERRY BERMAN AND AS HIS BROTHER LATER SUGGESTED

22 TO MANY PEOPLE.

23 AND IN RESPONSE TO THAT QUESTION HE

24 SIMPLY ANSWERS: "NO, I CAN'T. I CAN'T TELL YOU WHY

25 I TOLD SERGEANT EDMONDS THAT."

26 LADIES AND GENTLEMEN, THESE ARE HIS

27 WORDS. THESE ARE HIS ANSWERS. HE SHOULD BE ABLE TO

28 SAY WHY HE TOLD CERTAIN THINGS TO SERGEANT EDMONDS.

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1 I ASKED HIM WHY HE MADE REFERENCE TO HIS

2 BROTHER AT THAT POINT. WHAT A COINCIDENCE. JUST

3 WHEN HE'S SPEAKING ABOUT THE BUSINESS ASSOCIATES

4 BEING INVOLVED, HE MAKES REFERENCE TO HIS BROTHER

5 KNOWING SOMETHING. AND AT THAT POINT, WHEN I ASKED

6 HIM WHY HE MADE REFERENCE TO HIS BROTHER, CLEARLY, I

7 WAS GETTING TO THE ISSUE OF WHETHER THERE HAD BEEN A

8 PLAN.

9 ONCE AGAIN, HE SAID HE JUST DOESN'T KNOW

10 HOW TO ANSWER THAT QUESTION. THAT WAS HIS ANSWER

11 HERE IN COURT. "I JUST DON'T KNOW HOW TO ANSWER

12 THAT QUESTION."

13 THAT'S WHAT HE SAYS FROM TIME TO TIME
14 WHEN HE GETS TO PARTICULAR QUESTIONS THAT ARE ASKED
15 OF HIM. HE SAYS: "I DON'T REMEMBER." HE SAYS:
16 "I JUST DON'T KNOW HOW TO ANSWER THAT QUESTION," OR
17 AT OTHER TIMES HE JUST SAID: "I DON'T KNOW WHAT YOU
18 MEAN BY THAT WORD." IS IT BECAUSE I WAS USING
19 COMPLEX WORDS? IS THAT WHY HE DIDN'T UNDERSTAND
20 WHAT I WAS MEANING? LET'S LOOK AT SOME OF THE WORDS
21 THAT I USED.

22 I ASKED HIM ABOUT WHETHER HE HAS A
23 MOTIVE TO LIE, AND HE SAID: "I DON'T KNOW WHAT YOU
24 MEAN BY MOTIVE."

25 I SAID: "DID YOU GIVE ANY THOUGHT TO
26 YOUR DEMEANOR, ABOUT YOUR DEMEANOR, BEFORE
27 TESTIFYING HERE IN COURT?" AND HE SAID: "I DON'T
28 KNOW WHAT YOU MEAN BY THOUGHT."

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1 I ASKED HIM IF HIS FATHER WAS A GOOD
2 MAN. HE SAID: "WHAT DO YOU MEAN BY GOOD?"

3 DOES THIS APPEAR TO YOU TO BE A PERSON
4 WHO'S TRYING TO BE TRUTHFUL, LADIES AND GENTLEMEN,
5 OR A PERSON WHO'S AVOIDING ANSWERING THE QUESTION
6 BECAUSE THE ANSWER'S NOT GOING TO HELP HIM, BECAUSE
7 HE HAS NO GOOD ANSWER.

8 I ASKED HIM: "ARE YOU TELLING US THAT
9 YOU WERE COMPLIANT ENOUGH TO STAY IN THE CLOSET AT
10 THE REQUEST OF YOUR MOTHER WHEN YOU WERE 15 YEARS
11 OLD?"

12 AND HE SAID: "I DON'T KNOW WHAT YOU
13 MEAN BY COMPLIANT."

14 I ASKED HIM: "AREN'T YOU SAYING THAT
15 YOU WERE ABUSED?"

16 AND HE ASKED ME: "WHAT DO YOU MEAN BY
17 ABUSED?"

18 I SAID: "ARE YOU TRYING TO SUGGEST THAT
19 YOU WERE STILL A CHILD AT THE AGE OF 18?"

20 AND HE SAID: "I DON'T KNOW WHAT YOU MEAN
21 BY A CHILD."

22 COME ON, LADIES AND GENTLEMEN. DO YOU
23 REALLY THINK HE DIDN'T UNDERSTAND WHAT I WAS
24 MEANING, OR HE JUST DIDN'T WANT TO ANSWER THE
25 QUESTION?

26 I SAID: "ARE YOU TRYING TO SAY THAT YOU
27 WERE HELPLESS, TOO HELPLESS TO SHOP FOR GUNS?"

28 AND HE SAID: "I DON'T KNOW WHAT YOU

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1 MEAN BY HELPLESS."

2 I SAID: "DIDN'T YOU THINK IT WOULD BE

3 FAIR TO WARN YOUR BROTHER LYLE MENENDEZ ABOUT WHAT
4 WAS OCCURRING IN YOUR HOUSE?"

5 AND HE SAID: "I DON'T KNOW WHAT YOU MEAN
6 BY FAIR."

7 DO YOU KNOW WHAT I MEAN BY FAIR? I THINK
8 YOU ALL KNOW WHAT I MEAN BY FAIR.

9 I SAID: DID YOU EXPRESS SOME ALARM TO
10 LYLE ABOUT YOUR FATHER'S PLANE BEING LATE ON
11 THURSDAY?"

12 AND HE SAID: "I DON'T KNOW WHAT YOU MEAN
13 BY ALARM."

14 AND I SAID: "DID YOU EVER CALL YOUR
15 MOTHER A WITCH?" BECAUSE WE HEARD THAT WORD USED BY
16 MR. GESSLER IN HIS OPENING STATEMENT. "DID YOU EVER
17 CALL YOUR MOTHER A WITCH?"

18 AND HE SAID: "WHAT DO YOU MEAN BY
19 WITCH?"

20 AND I SAID: "AND DID YOU HAVE ANY
21 RESERVATIONS ABOUT BUYING HANDGUNS?"

22 AND HE SAID: "I DON'T KNOW WHAT YOU MEAN
23 BY RESERVATIONS."

24 SO, CLEARLY, LADIES AND GENTLEMEN, I
25 WOULD SUBMIT TO YOU, THIS IS NOT A PERSON WHO'S
26 TRYING TO BE HONEST. THIS IS A PERSON WHO WAS
27 STALLING WHEN IT SERVES HIS PURPOSE, PRETENDING TO
28 PLAY DUMB WHEN IT SERVES HIS INTEREST. IT'S VERY

1 CLEAR THAT ERIK MENENDEZ HAS A STRONG MOTIVATION TO
2 LIE. HE TESTIFIED IN THIS TRIAL THAT HE WOULD LIKE
3 TO GO HOME. THOSE WERE HIS WORDS.

4 HE SAID THAT -- HE SAID HE DIDN'T
5 UNDERSTAND THE DIFFERENCE BETWEEN A MURDER AND A
6 MANSLAUGHTER. BUT THEN AGAIN, HE SAID, HE CONCEDED
7 THAT HE KNEW ENOUGH ABOUT THE TWO TO KNOW HOW IT
8 IMPACTS ON HIM; AND HE VERY CLEARLY STATED THAT HE
9 WANTED A MANSLAUGHTER CONVICTION OVER A MURDER
10 CONVICTION. AND BY THAT CONCESSION, LADIES AND
11 GENTLEMEN, WE ALL KNOW WHAT HE'S INTENDING TO
12 ACCOMPLISH IN HIS TESTIMONY.

13 HE MAKES CLAIMS, LADIES AND GENTLEMEN,
14 WHICH CLAIMS ARE SIMPLY NOT SUPPORTED BY THE
15 EVIDENCE, OF COURSE. AND WHEN HE MAKES SUCH CLAIMS,
16 LADIES AND GENTLEMEN, YOU HAVE TO ASK YOURSELF
17 WHETHER YOU SHOULD GIVE ANY CREDENCE TO SUCH
18 CLAIMS.

19 HE SAYS, FOR EXAMPLE: "I HAD A LOT OF
20 GUILT ABOUT RECEIVING THIS MONEY FROM -- FROM THE
21 ESTATE."

22 HE SAID IT LED TO DEPRESSION. "AND I WAS
23 NOT SURE WHAT TO DO WITH IT."

24 WELL, HE MAY NOT HAVE BEEN SURE WHAT TO
25 DO WITH IT, LADIES AND GENTLEMEN, BUT HE SPENT IT.

26 MS. ABRAMSON: OBJECTION, YOUR HONOR.

27 MISSTATES THE EVIDENCE.

28 THE COURT: OVERRULED. THIS, AGAIN, IS

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1 ARGUMENT, AND COUNSEL'S COMMENTS ON THE EVIDENCE AS
2 PRESENTED.

3 YOU MAY PROCEED.

4 MR. CONN: WE ALREADY WENT THROUGH THE
5 SPENDING EVIDENCE AND THE MONEY THAT HE SPENT.

6 HE SAID, IN TESTIFYING IN REGARD TO
7 THINGS ABOUT HIS PARENTS: "WE FOUGHT AGAINST IT."

8 LADIES AND GENTLEMEN, WHERE'S THE
9 EVIDENCE THAT ERIK MENENDEZ DOESN'T WANT TO TESTIFY
10 AGAINST HIS PARENTS? VERY CLEARLY, HE IS TESTIFYING
11 AGAINST HIS PARENTS, BECAUSE IT SERVES HIS OWN
12 SELF-INTEREST TO DO SO.

13 HE SAID THAT -- I ASKED HIM -- AGAIN,
14 GOING BACK TO THE USE OF THE LANGUAGE AND THE WAY HE
15 TRIES TO AVOID RESPONSIBILITY BY USE OF LANGUAGE --
16 I SAID: "ISN'T IT TRUE THAT YOU WERE TRYING TO
17 TRICK AND FOOL THE POLICE? YOU WERE TRYING TO
18 DECEIVE THE POLICE?"

19 AND RATHER THAN SIMPLY SAYING, "YES, THAT
20 IS CORRECT," HE REPHRASED IT: "WELL, I JUST DIDN'T
21 WANT THEM TO KNOW."

22 THERE ARE QUESTIONS THAT HE JUST CAN'T
23 ANSWER, QUESTIONS THAT HE JUST CAN'T COME UP WITH
24 ANY EXPLANATION THAT SOUNDS GOOD. SO THAT'S WHAT HE
25 SAYS. "I JUST CAN'T ANSWER THAT QUESTION."
26 I ASKED HIM, FOR EXAMPLE, ABOUT MAKING
27 REFERENCE TO HIS FATHER'S BUSINESS TO EDMONDS, AND
28 HE SAID: "I DON'T KNOW WHY I DID THAT."

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1 I ASKED HIM: ISN'T YOUR MOTIVATION
2 TODAY TO AVOID PUNISHMENT JUST AS GREAT AS IT WAS
3 BACK WHEN YOU WERE LYING ABOUT YOUR INVOLVEMENT?"
4 AND HE SAID: "I JUST DON'T KNOW HOW TO
5 ANSWER THAT QUESTION."
6 NO. WHAT HE'S SAYING IS: "I JUST DON'T
7 WANT TO ANSWER THAT QUESTION," BECAUSE THE ONLY
8 TRUTHFUL ANSWER TO THAT QUESTION IS: "OF COURSE, MY
9 MOTIVATION IS JUST AS GREAT, IF NOT GREATER."
10 HE WANTS TO AVOID PUNISHMENT TODAY JUST
11 AS MUCH AS BACK THEN.
12 I ASKED HIM IF HE REALIZED THAT TEARS
13 CAN INFLUENCE THE RIGHT KIND OF JUROR, BECAUSE
14 OBVIOUSLY, HE'S GOING TO USE TEARS IF HE CAN TO TRY
15 TO INFLUENCE PEOPLE, AND ERIK MENENDEZ SAID: "I JUST
16 CAN'T ANSWER THAT QUESTION."

17 I WAS ASKING FOR HIS OPINION, LADIES AND
18 GENTLEMEN. HE COULD HAVE GIVEN HIS OPINION, BUT HE
19 JUST DOESN'T WANT TO ANSWER THAT QUESTION. HE JUST
20 DOESN'T WANT TO GET INTO THAT AREA OF
21 CROSS-EXAMINATION.

22 I ASKED HIM WHETHER HE NOTICED THAT HIS
23 BROTHER, LYLE MENENDEZ, WAS CRYING IN COURT WHILE HE
24 WAS TESTIFYING ON THE WITNESS STAND, AND HE TOLD US
25 HE DIDN'T EVEN NOTICE THAT.

26 WELL, FOR A PERSON WHO'S SUPPOSED TO BE
27 HYPERVIGILANT, IT'S KIND OF SURPRISING.

28 I ASKED HIM IF HE PREVIOUSLY THOUGHT

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1 ABOUT HIS DEemeanOR WHILE TESTIFYING ON THE WITNESS
2 STAND, AND WHETHER THAT DEemeanOR PLAYS A ROLE IN
3 INFLUENCING THE JURY, AND HE WANTS YOU TO BELIEVE
4 NO, HE NEVER PREVIOUSLY THOUGHT ABOUT HIS DEemeanOR
5 WHATSOEVER.

6 LADIES AND GENTLEMEN, YOU HAVE TO
7 UNDERSTAND THE MOTIVATION OF THE DEFENDANTS.
8 OBVIOUSLY, HE'S GOING TO THINK ABOUT EVERY WORD AND
9 ACT THAT HE DOES IN FRONT OF YOU, AND IT'S ALL GOING
10 TO BE A PART OF THE PRESENTATION THAT HE MAKES TO
11 YOU. AND HIS CLAIM THAT HE NEVER EVEN THOUGHT ABOUT

12 HIS DEMEANOR PRIOR TO COMING TO COURT, IS ABSOLUTELY
13 PREPOSTEROUS.

14 HE CLAIMS THAT HIS CHOICE OF LANGUAGE IS
15 NOT SOMETHING THAT HE THOUGHT ABOUT BEFORE
16 TESTIFYING. HE CLAIMS THAT HE DOESN'T CARE IF THERE
17 ARE INCONSISTENCIES BETWEEN HIS TESTIMONY AND ANY
18 POTENTIAL TESTIMONY FROM HIS BROTHER. THAT'S
19 ABSURD. OF COURSE HE WOULD BE CONCERNED.

20 HE WANTS YOU TO BELIEVE THAT HIS
21 ATTORNEY, HE SAID, ASKED HIM ALL SORTS OF QUESTIONS
22 THAT HE HAD NO IDEA THAT HIS ATTORNEY WAS GOING TO
23 ASK. YOU REALLY THINK THAT ERIK MENENDEZ WAS TAKEN
24 BY SURPRISE BY HIS OWN ATTORNEY?

25 LADIES AND GENTLEMEN, WHEN YOU LOOK AT
26 THE CLAIMS OF HIS ABUSE, IT JUST DOESN'T SQUARE WITH
27 THE EVIDENCE. HE WOULD HAVE YOU TO BELIEVE, LADIES
28 AND GENTLEMEN, THAT HE WOULD HAVE RATHER DIED, HE

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1 SAID, THAN CONTINUE WITH THE SEX AFTER THE AGE OF
2 18.

3 THEN I ASKED HIM: "WELL, WHAT ABOUT WHEN
4 YOUR FATHER TOLD YOU THAT YOU WERE GOING TO HAVE TO
5 GO TO U.C.L.A.? WHAT WAS YOUR RESPONSE TO THAT?

6 AND HE SAID: "WELL, IT FLASHED THROUGH

7 MY MIND TO LEAVE." FLASHED THROUGH HIS MIND? IF
8 YOUR PLAN -- THIS WAS SUPPOSEDLY HIS PLAN -- THAT HE
9 WAS ALWAYS GOING TO LEAVE HOME AT THE AGE OF
10 MATURITY, UPON THE AGE OF 18, IT WOULD SIMPLY HAVE A
11 GREATER EFFECT THAN JUST FLASHING THROUGH YOUR
12 MIND. IT WOULD BE A TOTAL PREOCCUPATION IN YOUR
13 MIND. HE SAID HE STAYED BECAUSE HE WANTED TO BE
14 PART OF HIS FATHER'S LIFE. HE WOULD HAVE FOUND HIM
15 AND KILLED HIM, HE SAYS. THEN HE SAYS THIS.
16 ANOTHER WAY OF SAYING: "DON'T ASK ME THE QUESTION.
17 ASK MY MENTAL HEALTH EXPERT THE QUESTION."

18 HE SAID: "EMOTIONALLY I COULDN'T LEAVE.
19 I DON'T UNDERSTAND THE PARTICULARS OF THAT," HE
20 SAID. "MY DOCTORS HAVE TRIED TO EXPLAIN IT TO ME."

21 THAT IS JUST ANOTHER WAY OF DEFERRING
22 THE ISSUE, OF SAYING: "I CAN'T ANSWER THIS AS GOOD
23 AS MY MENTAL HEALTH EXPERTS, AND I WOULD RATHER NOT
24 ANSWER THIS. SO I LEAVE THAT QUESTION UP TO MY
25 MENTAL HEALTH EXPERTS."

26 BUT, LADIES AND GENTLEMEN, IF YOU HAD A
27 REASON FOR STAYING, IF YOU HAD A REASON FOR NOT
28 LEAVING A PARTICULAR SITUATION, ONCE AGAIN, YOU

2 FULL, COMPLEX PSYCHOLOGICAL REASON THAT AN EXPERT
3 MIGHT GIVE OR NOT, YOU WOULD STILL HAVE A REASON FOR
4 IT.

5 ERIK MENENDEZ WANTS YOU TO BELIEVE THAT
6 HE NEVER THOUGHT ABOUT TELLING HIS FATHER THAT WHEN
7 HE GETS TO BE 18 YEARS OLD THAT HE WAS GOING TO MOVE
8 OUT, JUST AS ALL 18-YEAR-OLDS DO. THIS TOTALLY
9 FLIES IN THE FACE OF HIS STORY. IF HE TRULY
10 BELIEVED, IF THAT WAS HIS SECRET WISH, HIS SECRET
11 PLAN THAT WAS ALWAYS IN HIS MIND, THAT THAT IS WHAT
12 WAS GOING TO HAPPEN, THEN AT SOME POINT IT SHOULD
13 HAVE BEEN EXPRESSED; IT WOULD HAVE BEEN EXPRESSED.
14 HE SAID, NOT ONLY DIDN'T HE EVER SAY THAT TO HIS
15 FATHER, HE NEVER EVEN THOUGHT ABOUT MENTIONING THAT
16 TO HIS FATHER.

17 LADIES AND GENTLEMEN, IF HE TRULY WANTED
18 TO GET OUT OF THAT SITUATION, HE WOULD NOT HAVE
19 BEHAVED AS HE DID, AND HE WOULD NOT HAVE THOUGHT AS
20 HE DID. IT WAS MORE THAN ENOUGH OPPORTUNITY TO GET
21 OUT, AND HIS BEHAVIOR AND HIS DESCRIPTION OF THAT
22 BEHAVIOR IS ENTIRELY INCONSISTENT WITH SOMEONE WHO
23 TRULY WANTS TO GET OUT OF THAT SITUATION. HE WANTS
24 YOU TO BELIEVE -- AND AGAIN, I'M FOCUSING ON
25 BACKGROUND ISSUES RIGHT NOW, BEFORE I GET INTO THE
26 SUBSTANCE OF THAT WEEK. HE WANTS YOU TO BELIEVE
27 THAT WHEN HIS MOTHER USED TO TELL HIM TO STAY IN THE
28 CLOSET, AND UP UNTIL THE AGE OF 15, HE WOULD

1 ACTUALLY STAY IN HIS CLOSET FOR HOURS AT A TIME.

2 LADIES AND GENTLEMEN, I THINK SOME OF
3 YOU HAVE CHILDREN WHO ARE -13 -14 15-YEARS-OLD, AND
4 IF YOU DON'T, YOU'VE ALL BEEN 13, 14, AND 15. I
5 THINK YOU WOULD ALL AGREE THAT IS A PREPOSTEROUS
6 STORY. ANY PERSON AT THAT AGE IS REBELLIOUS AND
7 INDEPENDENT ENOUGH THAT YOU WOULD NOT HAVE A YOUNG
8 MAN 15 YEARS OLD SITTING IN A CLOSET AGAINST THE
9 WISHES -- UPON THE WISHES OF HIS MOTHER WHEN HIS
10 MOTHER HAS LEFT THE HOUSE, AND HE'S SITTING THERE BY
11 HIMSELF. HE WOULD NOT HAVE PUT UP WITH THAT
12 BEHAVIOR.

13 HE SAID THAT HIS FATHER NEVER TOLD HIM
14 WHY HE WAS CUTTING HIM OUT OF THE WILL, BUT THAT THE
15 BURGLARIES MAY HAVE BEEN THE STRAW THAT BROKE THE
16 CAMEL'S BACK.

17 WELL, LADIES AND GENTLEMEN, IF YOU WERE
18 IN THAT SITUATION, WOULDN'T YOU HAVE INQUIRED, IF
19 YOU BELIEVED THAT YOU WERE BEING CUT OUT OF THE
20 WILL? WOULDN'T YOU HAVE INQUIRED AT SOME POINT,
21 "HEY DAD, WHY AM I OUT OF THE WILL?"

22 IT'S DIFFICULT TO BELIEVE THAT HE NEVER
23 WOULD HAVE DISCUSSED THIS WITH HIS FATHER, OR THAT
24 HE HAD NO REAL WAY OF KNOWING THE REASON BEHIND IT.

25 I SUBMIT TO YOU, LADIES AND GENTLEMEN,
26 ERIK MENENDEZ KNEW VERY WELL ABOUT HIS FATHER'S
27 DISSATISFACTION WITH HIM AND HIS FATHER'S INTENTION
28 TO INCLUDE OR EXCLUDE FROM HIM THE WILL AND THE

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1 REASONS FOR IT.

2 HE SAID AT ONE POINT THAT HE THOUGHT HIS
3 FATHER WOULD NO LONGER MOLEST HIM WHILE HE WAS AT
4 U.C.L.A., JUST A FEW MILES AWAY. OF COURSE, HE
5 PRECEDED THAT BY SAYING -- WELL, WHEN I FIRST ASKED
6 HIM THAT QUESTION: "DID YOU THINK YOUR FATHER WAS
7 GOING TO MOLEST YOU WHEN YOU WERE AT U.C.L.A.?"

8 HE STARTED TO SAY: "WELL, IT'S DIFFICULT
9 TO REMEMBER."

10 DIFFICULT TO REMEMBER? THIS WAS
11 SUPPOSED TO BE THE MOST IMPORTANT THING IN HIS LIFE,
12 TO END THE SEXUAL ABUSE, AND NOW HE IS TELLING US
13 THAT IT IS DIFFICULT TO REMEMBER WHETHER OR NOT HE
14 THOUGHT HIS FATHER WAS GOING TO MOLEST HIM WHILE HE
15 WAS AT U.C.L.A.? IF THAT WAS THE MOST IMPORTANT
16 THING IN HIS LIFE, LADIES AND GENTLEMEN, THAT WOULD
17 NOT BE SOMETHING THAT IS DIFFICULT TO REMEMBER.

18 BUT THEN HE -- JUST A FEW PAGES LATER HE
19 APPARENTLY RECOGNIZES THAT HIS STORY MAKES NO SENSE,

20 AND HE CONCEDES YEAH, HE BELIEVED THAT HIS FATHER
21 WOULD NO LONGER SEXUALLY ABUSE HIM.
22 THEN I ASKED THE QUESTION: "WHAT MADE
23 YOU BELIEVE THAT YOUR FATHER WOULD NO LONGER
24 SEXUALLY ABUSE YOU ONCE YOU BEGAN TO GO TO U.C.L.A.,
25 JUST A FEW MILES AWAY?"
26 AND ONCE AGAIN, IN RESPONSE TO THAT HE
27 SAID: "I DON'T KNOW."
28 LADIES AND GENTLEMEN, ONCE AGAIN, IF

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1 THIS WAS TRULY THE MOST IMPORTANT THING OF HIS LIFE,
2 IF THIS WAS TRULY SOMETHING THAT PREOCCUPIED HIS
3 ATTENTION, HE WOULDN'T BE GIVING US ANSWERS LIKE:
4 "I DON'T KNOW." HE WOULD HAVE AN EXPLANATION. IT
5 MIGHT BE A GOOD EXPLANATION. IT MIGHT BE A BAD
6 EXPLANATION. BUT HE WOULDN'T SAY: "I DON'T KNOW."
7 IT WOULD HAVE BEEN SOMETHING HE HAD
8 THOUGHT ABOUT. IT WOULD HAVE BEEN SOMETHING HE WAS
9 TOTALLY PREOCCUPIED WITH. IT WOULD HAVE BEEN
10 SOMETHING HE HAD ALL KINDS OF THEORIES ABOUT. BUT
11 TO SAY, "I DON'T KNOW WHY I THOUGHT THAT" IS
12 ABSURD.
13 I ASKED HIM IF IT OCCURRED TO HIM TO RUN
14 AWAY AFTER HE REACHED THE AGE OF 18, AND HE SAID IT

15 NEVER OCCURRED TO HIM. NEVER OCCURRED TO HIM? HE
16 WANTS US TO BELIEVE THAT HIS FATHER IS ABUSING HIM
17 ON A ROUTINE BASIS, ON A REGULAR BASIS, FORCING HIM
18 TO ENGAGE IN SEXUAL ACTS AGAINST HIS WILL, AND HE IS
19 TELLING US THAT IT NEVER OCCURRED TO HIM TO RUN AWAY
20 AFTER THE AGE OF 18?

21 WELL, THIS IS ABSOLUTELY PREPOSTEROUS,
22 LADIES AND GENTLEMEN. HE IS HOPING THAT YOU ARE
23 GOING TO BE MISLED BY THIS CONCEPT OF LEARNED
24 HELPLESSNESS. AND I'LL BE GETTING INTO THE
25 PSYCHOLOGICAL EXPLANATIONS LATER OF THESE CONCEPTS
26 THAT WERE USED BY THE EXPERTS. BUT LEARNED
27 HELPLESSNESS DOES NOT -- IT SHOULD NOT BE
28 INTERPRETED THE WAY THAT THE DEFENSE WISHES YOU TO

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1 INTERPRET THIS, AS IF YOU LOSE RATIONAL THOUGHT.

2 ERIK MENENDEZ WOULD HAVE THOUGHT ABOUT
3 IT. ERIK MENENDEZ WOULD HAVE CONSIDERED LEAVING.
4 TO SAY THAT IT NEVER OCCURRED TO HIM IS ABSURD.

5 AND THEN I ASKED HIM IF IT OCCURRED TO
6 HIM TO LEAVE AT SOME POINT, TO JUST LEAVE AND CALL
7 HIS FATHER UP AND TELL HIS FATHER: "I AM NOT GOING
8 TO LET YOU SEXUALLY ASSAULT ME ANYMORE."

9 ONCE AGAIN, HE SAID IT NEVER OCCURRED TO

10 HIM. HE GOES THROUGH -- IN MY CROSS-EXAMINATION OF
11 HIM I WENT THROUGH MANY, MANY THINGS OF THIS NATURE,
12 WHETHER HE CONSIDERED THIS, WHETHER HE THOUGHT ABOUT
13 DOING THAT; AND TIME AND TIME AGAIN HE SAID IT JUST
14 NEVER OCCURRED TO HIM.

15 IF YOU WERE IN THIS SITUATION, LADIES
16 AND GENTLEMEN, IF THIS HAD TRULY HAPPENED TO THE
17 DEFENDANT, THIS WOULD HAVE BEEN THOUGHT ABOUT. YOU
18 WOULD HAVE THOUGHT ABOUT IT. HE WOULD HAVE THOUGHT
19 ABOUT IT. ANYONE WOULD HAVE THOUGHT ABOUT THESE
20 THINGS. FOR HIM TO JUST SAY: "I JUST NEVER THOUGHT
21 ABOUT IT," THIS STORY CANNOT POSSIBLY BE TRUE.

22 MR. MENENDEZ DESCRIBED WHAT MAY BE
23 CALLED A WEEK IN CRISIS. AND I WILL REFER TO IT AS
24 A SHORTHAND MEANS OF EXPRESSING THE EVENTS WHICH
25 OCCURRED, ACTUALLY, FROM A SUNDAY TO A SUNDAY, THE
26 SUNDAY WHEN HIS FATHER BEGINS TO SPEAK TO HIM ABOUT
27 SCHOOL AND TENNIS, UP UNTIL THE SUNDAY OF THE
28 KILLING, EXACTLY A WEEK LATER.

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1 AND AS SUGGESTED TO YOU, LADIES AND
2 GENTLEMEN, YOU SHOULD TRULY QUESTION WHETHER THAT
3 WEEK IN CRISIS EVER OCCURRED AT ALL, BECAUSE THERE
4 ARE NO WITNESSES TO SUPPORT IT. THIS IS JUST THE

5 TESTIMONY OF ERIK MENENDEZ. THIS IS THE MOST
6 CRITICAL PART OF THIS TESTIMONY, AND ALL OF THOSE
7 WITNESSES ON THEIR CHART HAVE NOTHING TO SAY ABOUT
8 THE WEEK IN CRISIS. THEY HAVE NO PERSONAL KNOWLEDGE
9 OF THE WEEK IN CRISIS, NONE OF THEM. SO THIS ALL
10 COMES DOWN TO THE TESTIMONY, TO THE CLAIM OF ERIK
11 MENENDEZ, THE KILLER, SITTING HERE IN COURT, AND
12 WHETHER YOU ARE GOING TO BELIEVE HIM.

13 HERE'S WHAT HE SAYS ABOUT THAT SUNDAY:
14 HE SAID IT DID NOT MAKE HIM UPSET WHEN HE LEARNED,
15 BEFORE THE KILLINGS, THAT HE WOULD HAVE TO STUDY
16 BUSINESS, AND THAT HE MAY HAVE TO GIVE UP TENNIS.

17 IT DIDN'T MAKE HIM UPSET? DO YOU REALLY
18 BELIEVE THAT, LADIES AND GENTLEMEN? WHAT DID HE DO
19 AFTER HE KILLS HIS PARENTS? HE DID JUST THE
20 OPPOSITE. HE HAD NO INTEREST IN GOING TO SCHOOL.
21 HE DID NOT GO TO SCHOOL, AND HE PLAYED TENNIS.

22 HE HIRED MARK HEFFERNAN AND HE SPENT ALL
23 OF HIS TIME WORKING ON TENNIS. TENNIS WAS OBVIOUSLY
24 A VERY IMPORTANT THING TO HIM, AND HE ADMITTED, JUST
25 IN THE COURSE OF HIS TESTIMONY, JUST HOW IMPORTANT
26 TENNIS WAS TO HIM. IT WAS THE ONE THING HE FELT HE
27 COULD DO RIGHT. AND YET HE WANTS YOU TO BELIEVE
28 THAT WHEN HIS FATHER TOLD HIM THAT NOT ONLY WAS HE

1 GOING TO HAVE TO GO TO U.C.L.A., AND NOT ONLY WAS HE
2 GOING TO HAVE TO COME HOME, BUT THAT HE WOULD HAVE
3 TO GIVE UP TENNIS; THAT THE THOUGHT OF THAT, GIVING
4 UP THE TENNIS, WAS OF NO CONCERN TO HIM.

5 LADIES AND GENTLEMEN, I WOULD SUBMIT TO
6 YOU THAT ONE OF THE STRAWS THAT BROKE THE CAMEL'S
7 BACK HERE WAS THE OCCASION WHEN JOSE MENENDEZ HAD
8 THIS DISCUSSION WITH ERIK MENENDEZ; WHEN HE TOLD
9 ERIK MENENDEZ THAT NOT ONLY WAS HE GOING TO HAVE TO
10 STUDY HISTORY, OR RATHER LAW AND BUSINESS, RATHER
11 THAN THEATRE, WHICH IS WHAT THE DEFENDANT WANTED TO
12 STUDY, AND THAT HE WAS GOING TO HAVE TO GIVE UP --
13 POSSIBLY GIVE UP TENNIS, THAT THAT WAS ONE OF THE
14 STRAWS THAT BROKE THE CAMEL'S BACK FOR ERIK
15 MENENDEZ. BECAUSE NOW HE REALIZED THAT BECAUSE OF
16 HIS PERFORMANCE IN KALAMAZOO, HE WAS GOING TO HAVE
17 TO ABANDON THIS PART OF HIS FUTURE PLANS, PERHAPS AT
18 THE WILL OF JOSE MENENDEZ. AND THIS MUST HAVE LED
19 TO A TREMENDOUS AMOUNT OF ANGER IN ERIK MENENDEZ,
20 CONTRARY TO HIS CLAIM HERE IN COURT.

21 I ASKED HIM: "DIDN'T YOU CARE IF YOUR
22 FATHER WAS GOING TO MAKE ALL OF YOUR DECISIONS FOR
23 THE NEXT 12 YEARS?"

24 AND HE SAID -- IN SO MANY WORDS, HE SAID
25 HE DIDN'T CARE. HE JUST DIDN'T CARE.

26 WELL, IF YOU WERE IN THIS SITUATION
27 CLAIMED BY THE DEFENDANT -- AGAIN, LOOKING AT IT
28 FROM HIS PROSPECTIVE -- IF THIS TRULY EXISTED THE

1 WAY HE CLAIMS IT EXISTED, YOU WOULD CERTAINLY CARE,
2 AND IT IS DIFFICULT TO BELIEVE THAT HE DID NOT CARE
3 IF HIS FATHER WAS GOING MAKE ALL THE DECISIONS IN
4 HIS LIFE FOR SO MANY YEARS.

5 HE CLAIMED THAT WHILE HE COULD NOT
6 CONTEMPLATE EVEN RUNNING AWAY, HE COULD CONTEMPLATE
7 GOING AWAY FOR A FEW DAYS. REMEMBER THAT HE SAID IN
8 RESPONSE TO THIS INDICATION FROM JOSE MENENDEZ. HE
9 STARTED TO PACK A BAG AND HE WAS GOING TO LEAVE FOR
10 A FEW DAYS. WHEN I FIRST ASKED HIM THE QUESTION:
11 "ARE YOU TELLING US YOU COULDN'T CONTEMPLATE RUNNING
12 AWAY, BUT YOU COULD FOR GOING AWAY FOR A FEW DAYS?"
13 FIRST HE SAID NO; AND THEN THE FOLLOWING PAGE OF THE
14 TRANSCRIPT HE CHANGED HIS MIND AND SAID YES.

15 HE ALSO ADMITS THAT IF HE HAD NOT BEEN
16 STOPPED HE MIGHT HAVE LEFT. WHATEVER HAPPENED TO
17 THIS THEORY OF LEARNED HELPLESSNESS THAT THE DEFENSE
18 IS PUSHING, THAT THIS IS A PERSON WHO REALLY
19 COULDN'T CONSIDER OPTIONS AND LEAVE? HERE'S A
20 PERSON WHO'S PACKING HIS BAGS. HE WAS GOING TO GO.
21 IF KITTY MENENDEZ, ACCORDING TO HIS STORY, HADN'T
22 STOPPED HIM, HE WOULD HAVE BEEN GONE.

23 AND YET THEY WANT YOU TO BELIEVE THAT HE

24 WAS SUFFERING FROM SOME SORT OF LEARNED
25 HELPLESSNESS, AND INCAPABLE OF MAKING DECISIONS AND
26 INCAPABLE OF CONTEMPLATING LEAVING. HE HAD HIS BAG
27 PACKED. HE WAS READY TO GO. HE WAS ABLE TO
28 CONSIDER OPTIONS.

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1 AND I WILL GO THROUGH ALL OF THE CLAIMS
2 OF LEARNED HELPLESSNESS THAT HE MADE AND HOW IT
3 DOESN'T MAKE ANY SENSE WITHIN THE CONTEXT OF THE
4 STORY THAT HE TELLS US.

5 I SAID: "AFTER YOU LEARNED THAT SUNDAY
6 THAT YOU WOULD THEN HAVE TO COME HOME, NOW YOU'RE
7 CLAIMING THAT ON THAT SUNDAY YOU LEARNED FOR THE
8 FIRST TIME THAT YOU WERE NOT GOING TO BE ABLE TO
9 LIVE AT THE DORMS, AND YOU WERE GOING TO HAVE TO
10 COME HOME, AND YOUR FATHER WAS GOING TO MOLEST YOU?
11 "WELL, AT THAT POINT DIDN'T YOU REEVALUATE YOUR
12 SITUATION AS TO WHETHER OR NOT YOU SHOULD JUST LEAVE
13 HOME?"

14 AND HE WANTS YOU TO BELIEVE THAT HE
15 DIDN'T EVEN REEVALUATE HIS SITUATION. AGAIN, A
16 MISUSE OF THE NOTION OF LEARNED HELPLESSNESS. HE
17 WOULD HAVE BEEN ABLE TO CONSIDER IT, AND HE WOULD
18 HAVE CONSIDERED IT.

19 THEY REFER REPEATEDLY TO THE BATTERED
20 PERSON AND THE BATTERED WOMAN CASES. IT DOESN'T
21 STOP A WOMAN FROM HAVING A RATIONAL RESPONSE FROM
22 CONSIDERING AND EVALUATING. WHETHER OR NOT A WOMAN
23 IN AN ABUSIVE SITUATION, A TRULY ABUSIVE SITUATION,
24 INVOLVING CONFRONTING PHYSICAL ABUSE, IS ABLE TO
25 LEAVE OR NOT, AT LEAST SHE'S ABLE TO THINK ABOUT IT
26 AND CONSIDER IT.

27 ERIK MENENDEZ WANTS YOU TO BELIEVE THAT
28 HE BASICALLY WASN'T EVEN ABLE TO EVEN CONSIDER THESE

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1 THINGS. THESE THINGS DIDN'T EVEN POP IN HIS MIND.
2 WELL, THAT'S RIDICULOUS. FOR ANYONE IN
3 THAT SITUATION IT WOULD HAVE TO BE IN YOUR MIND.
4 YOU WOULD HAVE CONSIDERED IT OR REEVALUATED IT.
5 WHETHER YOU DECIDED TO GO OR NOT IS SOMETHING ELSE.

6 IT'S RIDICULOUS THAT HE WOULD NOT HAVE
7 REEVALUATED HIS SITUATION AT SOME POINT IN TIME.

8 FOLLOWING SUNDAY, THE NEXT SIGNIFICANT
9 DAY IS TUESDAY. TUESDAY IS THE DAY THAT HIS BROTHER
10 SUPPOSEDLY GETS THE HAIRPIECE TORN OFF HIS HEAD BY
11 HIS MOTHER.

12 ERIK MENENDEZ WANTS YOU TO BELIEVE THAT
13 AFTER NOT SEEING HIS BROTHER FOR EIGHT MONTHS,

14 DURING AN EIGHT-MONTH GAP, WHEN HE DIDN'T SEE HIS
15 BROTHER, THAT SUDDENLY HE HAD A FULL HEAD OF HAIR.
16 HE NOTICED THAT HE HAD A FULL HEAD OF HAIR AND HE
17 DIDN'T EVEN HAVE THE ABILITY TO ASK HIM ABOUT IT.

18 HE DIDN'T ASK HIM. HE SAID THAT HE HAD NO REASON TO
19 ASK HIS BROTHER LYLE ABOUT HIS NEW HEAD OF HAIR.

20 HE DIDN'T HAVE THE RELATIONSHIP WITH HIS
21 BROTHER TO ASK HIM ABOUT THIS NEW HEAD OF HAIR. AND
22 HE WANTS YOU TO BELIEVE THAT WELL, HE WAS JUST SO
23 DETACHED FROM HIS BROTHER, OR NOT CLOSE ENOUGH TO
24 HIS BROTHER, THAT IT WASN'T SOMETHING THAT HE COULD
25 JUST BRING HIMSELF TO ASK HIS BROTHER ABOUT.

26 WELL, THAT MAKES NO SENSE, LADIES AND
27 GENTLEMEN. AND YOU SEE THIS THEME RUNNING
28 THROUGHOUT THE DEFENDANT'S STORY TIME AND TIME

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1 AGAIN, THAT HE SPEAKS OUT OF BOTH SIDES OF HIS MOUTH
2 IN REGARD TO SPECIFIC ISSUES; AND THIS IS ONE OF
3 THOSE ISSUES.

4 HE WANTS YOU TO BELIEVE, FOR EXAMPLE,
5 THAT AFTER HE SAW HIS BROTHER'S HAIRPIECE BEING TORN
6 OFF HIS HEAD, HE WAS CLOSE ENOUGH TO HIS BROTHER
7 THAT HE COULD RUN TO THE GUESTHOUSE AFTER HIS
8 BROTHER, OR GO TO THE GUESTHOUSE AFTER HIS BROTHER

9 AND TELL HIS BROTHER THAT HE STILL LOVED HIM. WHAT
10 A GENUINE HONEST EXPRESSION OF EMOTION. IF HE WAS
11 CLOSE ENOUGH TO HIS BROTHER -- I MEAN, HOW MANY
12 SIBLINGS TELL EACH OTHER THEY LOVE EACH OTHER ALL
13 THE TIME? MANY SIBLINGS DON'T. MANY ARE NOT THAT
14 CLOSE. HE WAS CLOSE ENOUGH TO GO TO THE GUESTHOUSE
15 AND TELL HIS BROTHER: "I WANT YOU TO KNOW I STILL
16 LOVE YOU."

17 HERE'S THESE TWO YOUNG MEN SAYING TO
18 EACH OTHER "I LOVE YOU." DON'T YOU THINK HE'S CLOSE
19 ENOUGH TO SAY: "HEY, WHAT'S WITH THE NEW HAIR?" IT
20 NATURALLY FOLLOWS. IF HE'S CLOSE ENOUGH TO DO ONE,
21 HE'S CLOSE ENOUGH TO DO THE OTHER.

22 HE SAYS HE DID NOT WARN HIS BROTHER ON
23 TUESDAY, EVEN THOUGH HE BELIEVED THAT HIS FATHER
24 WOULD KILL THE PERSON THAT HE TOLD THE SECRET TO,
25 AND EVEN THOUGH HE LOVED HIS BROTHER TREMENDOUSLY,
26 THAT HERE HE IS NOW. HE TELLS HIS BROTHER THAT HE'S
27 BEEN MOLESTED, SUPPOSEDLY AFTER THE HAIRPIECE GETS
28 TORN OFF, AND HE WANTS TO COMMISERATE WITH HIS

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1 BROTHER, OR SHARE THIS SECRET WITH HIS BROTHER, AND
2 HE TELLS HIS BROTHER THAT HE'S BEEN MOLESTED.

3 BUT HE KNOWS THAT HIS FATHER HAD TOLD

4 HIM IF HE EVER TOLD THE SECRET, NOT ONLY WOULD HE
5 KILL ERIK MENENDEZ, BUT HE WOULD KILL THE PERSON HE
6 TOLD THE SECRET TO. YET HE DOESN'T TELL HIS BROTHER
7 OF THIS POSSIBLE DANGER.

8 HIS BROTHER SAID HE'S GOING TO TALK TO
9 HIS FATHER ABOUT THAT SITUATION, AND HE DOESN'T TELL
10 HIS BROTHER: "WAIT A MINUTE, LYLE. MY FATHER SAID
11 HE WILL KILL YOU IF I EVER TOLD ANYONE. SO JUST BE
12 AWARE THAT THIS IS A LIFE-THREATENING SITUATION."

13 WHY WOULD HE NOT DO THIS? IF HE TRULY
14 LOVED HIS BROTHER, AND IF THIS TRULY HAPPENED, HE
15 SHOULD HAVE TOLD HIS BROTHER THAT. YET HE'S WILLING
16 TO PUT HIS BROTHER IN A LIFE-THREATENING SITUATION.

17 I SAID: "WHAT DID YOU TELL YOUR BROTHER?
18 DIDN'T YOU WARN HIM?"

19 AND THE WORDS HE USED -- YOU HEARD HIM
20 ON THE WITNESS STAND -- "WELL, I TOLD HIM THAT DAD
21 MIGHT NOT BE THRILLED ABOUT THIS." WHAT A CHOICE OF
22 WORDS. WHAT A CHOICE OF WORDS. THE ONLY REASON HE
23 WOULD CHOOSE THOSE WORDS, LADIES AND GENTLEMEN, IS
24 BECAUSE THIS SITUATION NEVER OCCURRED. IF THIS
25 SITUATION REALLY OCCURRED, HE WOULDN'T BE USING
26 WORDS LIKE THAT.

27 AND THEN HE SAID: "I DIDN'T WANT TO
28 BURST HIS BUBBLE. HE WAS CONFIDENT ABOUT TALKING TO

1 MY FATHER, AND I DIDN'T WANT TO BURST HIS BUBBLE."
2 THAT'S LIKE SAYING: "I WATCHED MY BROTHER DRIVE OFF
3 THE CLIFF BECAUSE HE WAS HAVING SUCH A NICE RIDE,
4 AND I DIDN'T WANT TO INTERFERE WITH THE DRIVE."

5 IF HE TRULY BELIEVES THAT HIS BROTHER
6 WAS IN DANGER, IF THIS SITUATION TRULY OCCURRED, HE
7 WOULD HAVE SAID SOMETHING TO HIS BROTHER. HE
8 WOULDN'T JUST SAY: "WELL, I DON'T WANT TO BURST HIS
9 BUBBLE. SO LET HIM TALK TO MY FATHER."

10 THEN WE COME TO WEDNESDAY. ON WEDNESDAY
11 LYLE MENENDEZ TELLS HIM THAT HE TOLD KITTY MENENDEZ
12 THAT HE WANTED TO SPEAK TO JOSE MENENDEZ WHEN HE
13 RETURNS ON THURSDAY. NOW, THAT MAKES NO SENSE.
14 HERE'S A WOMAN WHO, SUPPOSEDLY, NEITHER OF THESE
15 YOUNG MEN TRUST. WHAT WOULD BE THE PURPOSE FOR LYLE
16 MENENDEZ TO TELL KITTY MENENDEZ THAT HE WANTS TO
17 SPEAK TO JOSE MENENDEZ UPON HIS RETURN? IT'S
18 ABSOLUTELY UNCALLED FOR. DOESN'T MAKE ANY SENSE.

19 IT ONLY GIVES -- IT'S TOLD TO YOU, LADIES
20 AND GENTLEMEN, I WOULD SUGGEST, BECAUSE IT'S PART OF
21 THE SCRIPT THAT HE'S TRYING TO SELL TO YOU. HE
22 WANTS -- ACCORDING TO THIS SCRIPT, HE WANTS KITTY
23 MENENDEZ TO HAVE AN OPPORTUNITY TO CONSPIRE WITH
24 JOSE MENENDEZ AND KIND OF GET READY FOR THE
25 INEVITABLE CONFRONTATION ON THURSDAY. THAT'S THE
26 ONLY REASON.

27 IN REAL LIFE THERE WOULDN'T BE ANY
28 REASON FOR LYLE MENENDEZ TO HAVE THIS CONVERSATION

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1 WITH KITTY MENENDEZ. ABSOLUTELY NOT.

2 AND I QUESTIONED ERIK MENENDEZ ABOUT
3 THAT, BECAUSE DOESN'T THIS SEEM ODD TO HIM? AFTER
4 ALL, SHE IS SUCH AN UNPREDICTABLE WOMAN, AND
5 CERTAINLY NOT WORTHY OF THEIR TRUST OR CONFIDENCE IN
6 ANY WAY. AND ERIK MENENDEZ TESTIFIED HERE IN COURT
7 THAT HE DIDN'T SEE THAT AS ODD IN ANY WAY, AND HE
8 DIDN'T MENTION IT TO LYLE MENENDEZ.

9 WELL, HE CERTAINLY SHOULD HAVE SAW IT AS
10 ODD; AND HE CERTAINLY SHOULD HAVE DISCUSSED IT WITH
11 LYLE. HE SHOULD HAVE SAID: "LYLE, WHAT DID YOU DO
12 THAT FOR? WHY DID YOU TELL OUR MOTHER? HOW DOES IT
13 ADVANCE OUR CAUSE IN ANY WAY?" IT JUST MAKES NO
14 SENSE, LADIES AND GENTLEMEN.

15 AND I SAID -- ON WEDNESDAY THEN, BEARING
16 IN MIND NOW THAT YOUR FATHER IS SUPPOSEDLY A PERSON
17 WHO WOULD KILL ANYONE YOU TOLD THIS STORY TO, AND
18 YOUR FATHER IS COMING HOME ON THURSDAY, NOW, BY
19 WEDNESDAY, AFTER YOU'VE HAD A DAY TO THINK ABOUT THE
20 FACT THAT YOU TOLD YOUR BROTHER ABOUT THE ABUSE AND
21 YOUR BROTHER WAS GOING TO CONFRONT YOUR FATHER BY

22 THURSDAY, BY WEDNESDAY, DID YOU DECIDE TO WARN YOUR
23 BROTHER AT THIS POINT IN TIME? I MEAN, AFTER ALL,
24 BETTER LATE THAN NEVER.
25 AND THE DEFENDANT SAID: "I'M NOT SURE
26 THAT I PUT THAT TOGETHER, THAT HE MIGHT KILL LYLE
27 MENENDEZ THURSDAY NIGHT. I'M NOT SURE WHY. MAYBE I
28 JUST DIDN'T WANT TO THINK ABOUT IT."

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1 WHAT HE'S SAYING, LADIES AND GENTLEMEN,
2 IS: "MAYBE I JUST DON'T HAVE A GOOD ANSWER TO YOUR
3 QUESTION, MR. CONN." THAT'S WHAT HE'S REALLY
4 SAYING. BECAUSE ANYONE IN THAT SITUATION, LADIES
5 AND GENTLEMEN, WOULD HAVE BEEN THINKING THOSE
6 THINGS, WHETHER HE LOVED HIS BROTHER OR DIDN'T LOVE
7 HIS BROTHER. HE SIMPLY WOULD HAVE CONTEMPLATED WHAT
8 HIS FATHER IS GOING TO DO.

9 AFTER ALL, HE SAID HE WOULD KILL WHOEVER
10 I WOULD TELL THE SECRET TO. IF YOU BELIEVE ERIK
11 MENENDEZ HERE, HE DIDN'T CONSIDER IT OR PUT IT
12 TOGETHER. THAT MAKES NO SENSE. HE CERTAINLY WOULD
13 HAVE PUT IT TOGETHER.

14 ON THURSDAY, LADIES AND GENTLEMEN, HIS
15 BROTHER, LYLE MENENDEZ, IS GOING TO CONFRONT HIS
16 FATHER THAT NIGHT. NOTE HOW ARBITRARY THIS SCRIPT

17 IS THAT HE IS TRYING TO SELL TO YOU. IF HE BELIEVED
18 THAT HIS FATHER WAS GOING TO KILL WHOEVER HE TOLD
19 THE SECRET TO, WHY WOULDN'T HE BE FEARFUL THURSDAY
20 NIGHT, WHEN HIS FATHER IS ACTUALLY GOING TO BE
21 CONFRONTED BY HIS BROTHER, THAT HIS BROTHER MIGHT
22 VERY WELL BE KILLED BY HIS FATHER? WOULDN'T THAT
23 SEEM TO FOLLOW FROM THE STORY THAT HE TOLD US UP TO
24 THIS POINT IN TIME; THAT, YES, MY FATHER REALLY WAS
25 A DANGEROUS PERSON; AND YES, I BELIEVED ALL THESE
26 THREATS THAT HE MADE UPON ME.

27 BUT, YOU SEE, THE SCRIPT DOESN'T CALL
28 FOR A FEAR OF DEATH UNTIL SUNDAY; AND SO, ON

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1 THURSDAY HE JUST SEEMS TO SUGGEST, NO, I WASN'T
2 CONCERNED THAT MY FATHER WAS GOING TO KILL MY
3 BROTHER. WHY NOT? ACCORDING TO THE STORY HE TOLD
4 US HERE IN COURT, HE SHOULD HAVE BEEN CONCERNED
5 ABOUT THAT. BUT HIS SCRIPT, HIS TIME-TABLE DOESN'T
6 CALL FOR IT. SO HE'S JUST NOT CONCERNED ABOUT THE
7 DEATH.

8 DO YOU SEE HOW ARBITRARY THE SCRIPT IS?
9 WHEN IT SUITS HIS PURPOSE, HE'S CONCERNED ABOUT
10 DEATH; WHEN IT DOESN'T SUIT HIS PURPOSE, HE'S NOT
11 CONCERNED ABOUT DEATH.

12 YOU'LL SEE HOW ARBITRARY THIS IS WHEN I
13 GO THROUGH POINT BY POINT. I ASKED HIM: "WHY
14 WEREN'T YOU CONCERNED THAT YOUR BROTHER MIGHT BE
15 KILLED BY YOUR FATHER ON THURSDAY?"
16 AND WHAT DID HE SAY? "I DON'T KNOW WHY.
17 I DIDN'T THINK HE WOULD. I JUST DIDN'T THINK SO."
18 WHY NOT? HE SHOULD HAVE BEEN.
19 HE SAID THAT HE DIDN'T WANT TO BE AROUND
20 WHEN LYLE MENENDEZ CONFRONTED JOSE, BUT HE DID NOT
21 THINK ABOUT WHETHER OR NOT IT WOULD BE SAFE FOR HIM
22 TO RETURN HOME.
23 ONCE AGAIN, IF HE DIDN'T WANT TO BE
24 AROUND FOR THE CONFRONTATION, BECAUSE THERE'S A
25 SAFETY ISSUE THERE, THEN WOULDN'T HE ALSO BE
26 CONCERNED ABOUT COMING HOME AND MAKING SURE IT'S
27 SAFE FOR HIM TO RETURN HOME?
28 AND YET HE WANTS US TO BELIEVE THAT NOT

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1 ONLY WASN'T HE CONCERNED ABOUT HIS SAFETY, BUT HE
2 DIDN'T EVEN THINK ABOUT WHETHER IT WAS SAFE OR NOT.
3 THAT MAKES NO SENSE.
4 ACCORDING TO HIS STORY, IT MAKES NO
5 SENSE. YOU SEE, I'M NOT EVEN EVALUATING THIS BASED
6 UPON A TOTALLY OBJECTIVE APPROACH. BUT I'M EVEN

7 EVALUATING IT BASED UPON HIS OWN STORY, BASED UPON
8 THE CONSISTENCY OF HIS OWN STORY. IT JUST DIDN'T
9 MAKE ANY SENSE. EVEN WHEN YOU TRY TO UNDERSTAND THE
10 STORY, WHEN YOU TRY TO FOLLOW HIS STORY, IT STILL
11 DOESN'T MAKE SENSE.

12 WHAT IT REALLY CALLS FOR IS A SUSPENSION
13 OF DISBELIEF. AS YOU GO THROUGH HIS STORY, TIME AND
14 TIME AGAIN YOU HAVE TO HAVE A SUSPENSION OF
15 DISBELIEF, BECAUSE IT IS JUST SO NATURAL TO SAY:
16 WAIT A MINUTE. THIS STORY COULDN'T HAVE HAPPENED.

17 HE FINALLY CONCEDES THAT HE FELT THERE
18 MIGHT BE A VIOLENT REACTION WHEN HE RETURNED HOME;
19 AND YET, WHILE HE WANTED ADVANCE NOTICE IF HIS
20 BROTHER WAS STILL ALIVE AND HIS FATHER WAS UPSET, HE
21 DOESN'T EVEN BOTHER TO MAKE EYE CONTACT WITH LYLE
22 MENENDEZ BEFORE HIS FATHER CAME HOME. WOULDN'T IT
23 BE A WISE THING TO DO TO CALL LYLE MENENDEZ ON THE
24 PHONE AND SAY: "HOW DID THE MEETING GO? IS THE
25 COAST CLEAR? CAN I COME HOME? IS EVERYTHING OKAY?"

26 NO. HE DOESN'T MAKE ANY EFFORT TO
27 ENSURE HIS SAFETY. HE JUST COMES HOME AND WALKS IN
28 THE DOOR.

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1 HE BELIEVED THAT LYLE MENENDEZ WAS HOME

2 ON THAT THURSDAY NIGHT WHEN HE RETURNED HOME,
3 BECAUSE HE SAW HIS CAR OUTSIDE; AND YET, HE SAID HE
4 WENT INTO THE MAIN HOUSE. WELL, WOULDN'T HE HAVE
5 GONE INTO THE GUESTHOUSE TO FIND OUT WHAT WAS
6 HAPPENING? HE SAID THAT THE LIGHTS WERE OFF, BUT
7 STILL, IF THE LIGHTS WERE OFF, HE STILL WOULD HAVE
8 BEEN CONCERNED ABOUT HIS OWN SAFETY AND THE SAFETY
9 OF LYLE MENENDEZ SUFFICIENTLY ENOUGH TO CHECK IN THE
10 GUESTHOUSE FIRST BEFORE GOING TO THE MAIN HOUSE.

11 AND BEAR IN MIND, WHEN YOU THINK ABOUT
12 THE REASONABLENESS OF HIS ACTIONS, WHETHER HIS
13 ACTIONS ARE CONSISTENT WITH THE STORY HE IS
14 TELLING. REMEMBER WHAT HE TOLD US ABOUT JOSE
15 MENENDEZ. HE SAID THAT: "MY FATHER WAS THE KIND OF
16 PERSON WHO WOULD NOT GIVE PEOPLE ADVANCE NOTICE. HE
17 IS THE TYPE OF PERSON WHO WOULD ATTACK WHEN SOMEONE
18 THINKS HE IS SAFE.

19 IF THAT IS THE CASE, LADIES AND
20 GENTLEMEN, WOULDN'T IT BE NATURAL FOR HIM TO BELIEVE
21 THAT HIS FATHER WOULD ATTACK AT THE EARLIEST
22 OPPORTUNITY; ATTACK, FOR EXAMPLE, THAT THURSDAY
23 NIGHT WHEN HE RETURNED HOME?

24 FOR SOME ODD REASON, ERIK MENENDEZ IS
25 NOT CONCERNED ABOUT HIS SAFETY. WHY NOT? BECAUSE
26 HE'S MAKING UP THIS STORY, LADIES AND GENTLEMEN. AND
27 THAT'S THE ONLY REASON WHY.

28 AND THEN HE SAID HE WENT INTO HIS ROOM.

1 AFTER RETURNING HOME THURSDAY NIGHT, HE GOES INTO
2 HIS BEDROOM. AND AT THIS POINT HE HEARS A KNOCK ON
3 THE DOOR, AND APPARENTLY IT'S HIS FATHER COMING IN
4 TO COMPLAIN ABOUT ERIK MENENDEZ TELLING LYLE
5 MENENDEZ ABOUT THE SEXUAL ABUSE. AND ERIK MENENDEZ
6 TOLD US HERE IN COURT: "I DON'T REMEMBER IF IT
7 CROSSED MY MIND WHEN I OPENED THE DOOR TO LET MY
8 FATHER IN, THAT HE MIGHT KILL ME."

9 YOU DON'T REMEMBER IF YOU THOUGHT THAT
10 YOUR FATHER MIGHT KILL YOU AT THAT POINT IN TIME? I
11 MEAN, WOULDN'T IT BE NATURAL, ONCE AGAIN, IF ALL
12 THIS TOOK PLACE, THAT HE WOULD BE EXTREMELY
13 CONCERNED AT THAT POINT WHETHER HIS FATHER WAS GOING
14 TO KILL HIM? YET, NOT ONLY CAN'T HE SAY THAT HE WAS
15 CONCERNED THAT HIS FATHER MIGHT KILL HIM, HE WANTS
16 YOU TO BELIEVE THAT HE DOESN'T EVEN REMEMBER WHETHER
17 OR NOT HE WAS CONCERNED THAT HE MIGHT BE KILLED.

18 LADIES AND GENTLEMEN, THAT'S THE KIND OF
19 THING YOU DON'T FORGET WHEN YOU THINK SOMEONE IS
20 GOING TO KILL YOU WHEN YOU OPEN UP THE DOOR. THAT'S
21 NOT THE KIND OF THING YOU'RE GOING TO FORGET.

22 HE TELLS US THAT HE LET HIS FATHER COME
23 INTO THE ROOM, AND AFTER HE LET'S HIS FATHER INTO
24 THE ROOM, THEY GET INTO THIS CONFRONTATION INSIDE
25 THE ROOM, AND HE MANAGES TO GET AWAY FROM HIS

26 FATHER. HE MANAGES TO JUMP OVER THE BED OR
27 SOMETHING; AND HE RUNS DOWNSTAIRS.
28 AND WHEN HE'S GOING DOWNSTAIRS HE WANTS

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1 TO RUN OUT TO THE GUESTHOUSE NOW TO SEE LYLE
2 MENENDEZ IN THE GUESTHOUSE. BEFORE HE CAN GET OUT
3 TO THE GUESTHOUSE HE WANTS TO GO THROUGH THAT DEN,
4 AND TO GO THROUGH THE DEN, HE HAS TO GO THROUGH THE
5 DEN TO GET TO THE FRENCH DOORS; AND THEN HE GETS OUT
6 THE BACK.
7 SO HE TELLS US WHEN HE GETS DOWN THERE
8 HE SEES HIS MOTHER, AND HE WANTS US TO BELIEVE THAT
9 HERE HE IS -- NOW, BEAR IN MIND THE VIOLENT
10 CONFRONTATION THAT HE JUST HAD WITH HIS FATHER
11 UPSTAIRS. HIS FATHER BASICALLY TOLD HIM: "I TOLD
12 YOU NEVER TO TELL ANYONE." AND ERIK MENENDEZ SHOULD
13 BE CONCERNED AT THIS POINT IN TIME THAT HIS FATHER
14 MIGHT VERY WELL KILL HIM; AND YET, HE WANTS US TO
15 BELIEVE THAT HE RUNS DOWNSTAIRS AS FAST AS HE COULD
16 TO GET AWAY FROM HIS FATHER.
17 AND WHAT DOES HE DO WHEN HE GETS
18 DOWNSTAIRS? HE SEES HIS MOTHER SITTING IN THE DEN,
19 AND HE STOPS COLD IN HIS TRACKS, AND HE HAS A
20 CONVERSATION WITH HIS MOTHER. WHY WOULD YOU STOP

21 COLD IN YOUR TRACKS? YOU'RE RUNNING AWAY FROM THIS
22 MAN. YOU'RE CONCERNED THAT HE HAS THREATENED TO
23 KILL YOU. YOU'RE RUNNING AS FAST AS YOU CAN, AND
24 OUT OF ALL OF THIS FEAR, YOU STOP COLD IN YOUR
25 TRACKS WHEN YOU SEE YOUR MOTHER.
26 AND WHY DOES HE STOP COLD IN HIS
27 TRACKS? HE SAID WELL, BECAUSE HE WAS SURPRISED. HE
28 SAID: "I EXPECTED THAT SHE WAS IN THE BEDROOM."

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1 AND NOW HE SEES HER IN THE DEN, AND THAT
2 SURPRISE WAS SO SIGNIFICANT TO HIM THAT HE STOPPED
3 COLD IN HIS TRACKS? CAN YOU IMAGINE THAT, LADIES
4 AND GENTLEMEN?
5 AGAIN, PUT YOURSELF IN THE SHOES OF ERIK
6 MENENDEZ AND ASK YOURSELF IF THIS SOUNDS LIKE A TRUE
7 STORY. YOU'RE RUNNING TO GET AWAY FROM SOMEONE AS
8 FAST AS YOU CAN, AND YOU RUN DOWNSTAIRS, AND YOU
9 SAY: "OH, MY GOD. HERE'S MY MOTHER IN THE DEN WHEN
10 SHE'S SUPPOSED TO BE IN THE BEDROOM." WHAT A
11 SHOCK. AND THAT STOPS HIM DEAD IN HIS TRACKS? DOES
12 THAT SOUND LIKE A TRUE STORY TO YOU, LADIES AND
13 GENTLEMEN?
14 HE SAID: "I DON'T KNOW WHY I WAS
15 STARTLED." HE SAID: "I HAD A BRIEF EXCHANGE WITH

16 HER," AND THEN WHEN SHE SAID THOSE WORDS TO HIM: "I
17 UNDERSTAND MORE THAN YOU THINK," THEN HE CAME TO A
18 COMPLETE HALT, BECAUSE HE STARTED TO GO -- CONTINUE
19 ON, AND HE WAS GOING TO GO OUT THE FRENCH DOORS, BUT
20 THEN WHEN SHE SAID: "I UNDERSTAND MORE THAN YOU
21 THINK," HE CAME TO A COMPLETE HALT, AND HE JUST HAD
22 THIS CONVERSATION WITH HIS MOTHER.

23 NOW, CLEARLY, LADIES AND GENTLEMEN, WHY
24 DID HE STOP TO TALK TO HIS MOTHER AT THAT POINT IN
25 TIME? WOULD YOU HAVE STOPPED TO TALK TO YOUR MOTHER
26 AT THAT POINT IN TIME? NO. IF YOU WERE 18 YEARS
27 OLD AND RUNNING THROUGH THE DEN AS FAST AS YOU
28 COULD, YOU'D BE OUT THE FRENCH DOORS BEFORE YOUR

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1 MOTHER COULD HAVE GOTTEN OUT A SENTENCE. THIS NEVER
2 COULD HAVE HAPPENED THIS WAY, AND NO ONE IN THIS
3 SITUATION WOULD HAVE BEHAVED IN THAT WAY.

4 YOU SEE, WHAT THIS SCRIPT CALLS FOR IS
5 THIS: IT CALLS FOR A RAPID TIME-TABLE, BECAUSE
6 HERE'S THE PROBLEM.

7 ERIK MENENDEZ AND LYLE MENENDEZ PURCHASE
8 THE GUNS ON FRIDAY. WE CAN PROVE THAT. THE
9 PROSECUTION CAN PROVE THAT.

10 WE ALSO KNOW THAT JOSE MENENDEZ DIDN'T

11 COME HOME UNTIL THURSDAY. SO IF THERE'S GOING TO BE
12 A FALLING OUT WITH THE PARENTS, THIS MAJOR
13 FALLING-OUT, THERE HAS TO BE A MAJOR FALLING-OUT
14 WITH BOTH THE FATHER AND THE MOTHER ON THURSDAY, IN
15 ORDER FOR THE DEFENDANTS TO FEEL SO THREATENED THAT
16 THEY HAVE TO GO OUT AND PURCHASE GUNS ON FRIDAY.
17 SO IN ORDER TO SQUEEZE IN -- YOU SEE,
18 THE COMPRESSION PROBLEM HERE? -- TO HAVE A MAJOR
19 FALLING-OUT, A LIFE-THREATENING FALLING OUT WITH
20 YOUR FATHER AND A LIFE-THREATENING FALLING-OUT WITH
21 YOUR MOTHER IN THAT SAME NIGHT, IN ORDER TO SQUEEZE
22 IN TWO MAJOR FALLINGS-OUT IN THIS TIME PERIOD, I
23 MEAN, YOU HAVE TO HAVE A SCRIPT THAT MOVES VERY
24 QUICKLY, YOU SEE. AND SO THE FALLING-OUT WITH THE
25 FATHER OCCURS WHEN THE FATHER TELLS HIM THURSDAY
26 NIGHT, TELLS LYLE MENENDEZ: "YOU KNOW, YOU MAKE YOUR
27 DECISIONS, AND EVERYBODY LIVES BY THEIR DECISIONS."
28 BUT THERE HAS TO BE A FALLING OUT WITH

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1 THE MOTHER VERY QUICKLY. SO LOOK AT THE WAY THEY
2 SQUEEZE IN A FALLING-OUT WITH THE MOTHER; THAT IT
3 ACTUALLY OCCURS FROM TIME THAT ERIK MENENDEZ LEAVES
4 THE SECOND FLOOR TO BEFORE HE GETS OUT TO THE
5 GUESTHOUSE. BECAUSE THEN THE MOTHER SAYS: "I KNOW

6 THINGS THAT -- I UNDERSTAND MORE THAN YOU THINK."

7 AND NOW ERIK MENENDEZ SAYS: "OH, WELL,
8 SHE'S KNOWN ALL ALONG. YOU SEE, NOW ERIK MENENDEZ
9 SUDDENLY HAS MOTIVE TO KILL HIS MOTHER TOO, OR AT
10 LEAST FEAR FOR HIS SAFETY FROM HIS MOTHER.

11 THEY HAD TO BUILD IN THAT FALLING-OUT
12 WITH THE FATHER IN SUCH A SHORT PERIOD OF TIME.
13 THAT'S THE ONLY REASON WHY THEY SQUEEZED IN THIS
14 FALLING-OUT AS ERIK MENENDEZ IS RUNNING OUT THE
15 DOOR. THIS FEAR OF DEATH FROM THE MOTHER HAD TO BE
16 INJECTED INTO THE STORY REAL QUICK, AND THEY MANAGED
17 TO COMPOSE THAT PORTION OF THE STORY IN JUST A FEW
18 SECOND'S TIME. NOW HE FEELS THAT BOTH THE FATHER
19 AND MOTHER IS GOING TO KILL HIM WHEN HE GETS OUT IN
20 THE GUESTHOUSE. SO NOW THE STORY MAKES MORE SENSE
21 TO TRY TO SELL TO A JURY.

22 THEN I ASKED HIM: "WELL, WHAT ABOUT YOUR
23 FATHER? AFTER ALL, ISN'T YOUR FATHER THE PERSON WHO
24 COULD CHASE YOU TO THE ENDS OF THE EARTH? AFTER
25 ALL, THE UNITED STATES ARMY WOULD BE OF NO
26 ASSISTANCE TO YOU IN TRYING TO GET AWAY FROM JOSE
27 MENENDEZ. WEREN'T YOU CONCERNED ABOUT IF JOSE
28 MENENDEZ COULD CHASE YOU TO THE ENDS OF THE EARTH,

1 THAT PERHAPS HE COULD CHASE YOU OVER TO THE
2 GUESTHOUSE?"

3 BUT APPARENTLY HIS FATHER JUST GAVE UP
4 THE PURSUIT AT THIS POINT IN TIME, OR WAS STILL
5 RUNNING AROUND IN CIRCLES IN THE BEDROOM UPSTAIRS.
6 BUT HE NEVER SAW HIS FATHER AGAIN THAT EVENING. WHY
7 NOT -- THIS POWERFUL MAN WHO WOULD CHASE HIM, WHY
8 WOULD HIS FATHER STOP CHASING HIM AT THAT POINT?
9 JUST A SILLY ENDING TO THAT PHASE OF THE STORY.
10 THAT'S ALL. JOSE MENENDEZ IS JUST LOSING INTEREST,
11 I GUESS, AND GOES TO SLEEP THAT NIGHT.

12 AND THEN THEY HAVE TO CONCLUDE THAT
13 NIGHT, THAT THURSDAY NIGHT THAT THE PARENTS WERE
14 GOING TO KILL THEM, BECAUSE WE DO KNOW THEY
15 PURCHASED GUNS ON FRIDAY, AND THEY HAVE TO JUSTIFY
16 THAT BEHAVIOR.

17 LOOK HOW QUICKLY THEY CONCLUDE THAT
18 THEIR PARENTS WERE GOING TO KILL THEM. IS THAT THE
19 WAY PEOPLE NORMALLY BEHAVE? DON'T YOU THINK THAT
20 ANY PERSON, REGARDLESS OF THE RELATIONSHIP WITH
21 THEIR PARENTS, WHETHER IT WAS GOOD, BAD, OR NEUTRAL,
22 WOULD REFUSE TO BELIEVE TO THE VERY LAST SECOND THAT
23 THEIR PARENTS ARE GOING TO KILL THEM? NO.

24 ERIK AND LYLE MENENDEZ, WHAT, 20 MINUTES
25 LATER THEY CONCLUDE THAT THEIR PARENTS ARE GOING TO
26 KILL THEM, AND THEY HAVE TO GO SHOPPING FOR SHOTGUNS
27 TO PORTRAY THEIR MOTHER IN SUCH A VIOLENT WAY, AND
28 IN A DANGEROUS WAY. THEY SAID THAT THE MOTHER WAS

1 THE FATHER'S ENFORCER. THAT WAS HIS CHOICE OF
2 WORDS. "MY MOTHER WAS MY FATHER'S ENFORCER. I
3 THOUGHT MY MOTHER WOULD KILL ME BECAUSE SHE HAD
4 KNOWN ABOUT THE SEX, AND SHE WAS MY FATHER'S
5 ENFORCER."

6 BY "ENFORCER" I ASKED HIM WHAT THIS
7 MEANT, AND HE INDICATED THAT: "WELL, MY MOTHER WOULD
8 CARRY OUT MY FATHER'S PUNISHMENTS AND TAKE HIS
9 SIDE."

10 DON'T YOU THINK THERE ARE MANY MOTHERS
11 WHO CARRY OUT THE PUNISHMENT OF THE FATHER WHEN THE
12 FATHER IS NOT AT HOME? DOES THAT MAKE ALL MOTHERS
13 ENFORCERS? IS THIS PART OF THE STRATEGY OF THE
14 DEFENSE, TO USE THIS TYPE OF LANGUAGE SO YOU WILL
15 SEE HER -- YOU WILL SEE KITTY MENENDEZ AS MUCH MORE
16 OMINOUS THAN YOU SHOULD, MUCH MORE OMINOUS THAN THE
17 FACTS WOULD WARRANT.

18 SO THEY ACCUSE HER OF BEING AN ENFORCER,
19 JUST AS ERIK MENENDEZ, IN HIS DISCUSSION WITH JOHN
20 WILSON, DR. WILSON, REFERRED TO HIS MOTHER AS A
21 VAMPIRE. ALL PART OF THE PROCESS, ALL PART OF THE
22 STRATEGY TO PORTRAY HER AS MUCH MORE TERRIBLE THAN
23 THE FACTS WOULD POSSIBLY JUSTIFY.

24 YOU KNOW, LADIES AND GENTLEMEN, THERE
25 WAS CONCERTED EFFORTS ON THE PART OF THE DEFENDANTS
26 AND DEFENSE QUESTIONS, QUESTIONS THEY ASKED OF
27 VARIOUS WITNESSES, THE EFFORT TO PORTRAY THE
28 DEFENDANTS IN THIS CASE AS CHILDREN; THE EFFORTS TO

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1 PORTRAY THEM AS HELPLESS, TO PORTRAY THEM AS WEAK,
2 PART OF A DELIBERATE STRATEGY TO MAKE YOU THINK OF
3 THEM THAT WAY. A STRATEGY, SO WHEN YOU EVALUATE THE
4 RESPONSIBILITY IN THIS CASE, YOU WON'T EVALUATE THEM
5 AS THE TWO ADULTS THAT THEY WERE AT THE TIME OF THE
6 KILLING, BUT YOU WILL LOOK AT THEM MORE LIKE
7 CHILDREN, AND EXCUSE OR EXPLAIN AWAY THEIR BEHAVIOR,
8 AND/OR MITIGATE THEIR BEHAVIOR IN SOME WAY.

9 THE QUESTIONS THAT DR. WILSON WAS
10 ASKING, FOR EXAMPLE, ABOUT CHILDREN. HOW MANY
11 QUESTIONS DID MS. ABRAMSON PUT TO HIM ALONG THE
12 LINES OF: "WELL, DO CHILDREN DO THIS, OR DO CHILDREN
13 DO THAT?" I'D LIKE TO DO A COUNT OF THE NUMBER OF
14 QUESTIONS SHE ASKED ALONG THOSE LINES. WE HEARD SO
15 MUCH ABOUT CHILDREN, CHILDREN, CHILDREN, CHILDREN,
16 CHILDREN. JUST TO DRUM THIS IDEA INTO YOUR HEAD
17 REPEATEDLY, PART OF A DELIBERATE STRATEGY ON THE
18 PART OF COUNSEL AND PART OF A DELIBERATE STRATEGY ON

19 THE PART OF ERIK MENENDEZ.

20 AND WE SEE THAT IN HIS TESTIMONY AT THIS
21 STAGE OF THE STORY, BECAUSE IT IS AT THIS POINT THAT
22 HE RUNS TO THE GUESTHOUSE, SUPPOSEDLY, AND THERE AT
23 THE GUESTHOUSE HE HIDES BEHIND HIS BROTHER WHEN HIS
24 MOTHER COMES RUNNING TO GUESTHOUSE.

25 DO YOU RECALL THAT? HE ACTUALLY WANTS
26 US TO BELIEVE THAT HE WAS PHYSICALLY HIDING BEHIND
27 HIS BROTHER, LYLE MENENDEZ. HERE HE IS, ERIK
28 MENENDEZ, ABOUT SIX-FOOT TALL, A HUNDRED AND SIXTY

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1 POUNDS I THINK HE SAID, AND HIS MOTHER IS A
2 FIVE-FOOT-FIVE WOMAN, THIS DEPRESSED MIDDLE-AGED,
3 ALCOHOLIC HOUSEWIFE, ACCORDING TO HIM, AND HE IS
4 HIDING FROM HER? WHY WOULD HE POSSIBLY BE HIDING
5 FROM HER?

6 BECAUSE, OBVIOUSLY, AT THIS POINT HIS
7 STORY CALLS FOR LYLE MENENDEZ, THE PROTECTING
8 BROTHER; AND HIMSELF, THE WEAK, DEFENSELESS CHILD.
9 THERE WOULD BE NO REASON FOR HIM TO BE HIDING BEHIND
10 HIS BROTHER AT THIS POINT IN TIME.

11 EITHER WAY HE TRIES TO PORTRAY HIMSELF
12 REPEATEDLY AS A HELPLESS CHILD. WHENEVER THE ISSUE
13 OF GOING TO THE POLICE IS DISCUSSED WITH HIM, WHAT

14 DOES HE SAY ABOUT THAT? "WELL, I COULDN'T GO TO
15 POLICE," HE SAID, "BECAUSE I VIEWED THEM AS AN
16 AGENCY. I DIDN'T VIEW THEM AS A HUMAN BEING."

17 WHAT IS THAT SUPPOSED TO MEAN? YOU HAVE
18 TO KNOW A POLICE OFFICER AT YOUR LOCAL POLICE
19 STATION IN ORDER TO RECOGNIZE THAT YOU CAN GO TO THE
20 POLICE AND TALK TO THE POLICE ABOUT SOMETHING? THAT
21 IS ABSOLUTELY ABSURD.

22 AGAIN, HE WANTS US TO LOOK AT THIS AS IF
23 WE'RE VIEWING IT THROUGH THE EYES OF A SIX-YEAR-OLD
24 CHILD. SURE. A SIX-YEAR-OLD CHILD WOULD THINK OF A
25 POLICE AGENCY AS A POLICE AGENCY (SIC). THIS WAS AN
26 18-YEAR-OLD MAN. HE WAS ON HIS WAY TO COLLEGE. HE
27 WAS NOT A SIX-YEAR-OLD CHILD. DON'T EVALUATE HIM AS
28 A SIX-YEAR-OLD CHILD. EVALUATE HIM AS THE ADULT HE

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1 IS.

2 YET, IF HE FELT HE NEEDED TO KNOW A
3 POLICE OFFICER PERSONALLY IN ORDER TO GO TO THE
4 POLICE STATION, DIDN'T HE SAY THAT HE HAD A
5 RELATIONSHIP WITH THE POLICE OFFICERS INVOLVED IN
6 THE CALABASAS BURGLARIES? HE SAID: "WELL, I GOT
7 ALONG WELL WITH THEM." HE DESCRIBED IT AS SOME SORT
8 OF A PERSONAL RELATIONSHIP.

9 THERE YOU GO. IF THAT'S WHAT YOU NEED,
10 MR. MENENDEZ, TO ACTUALLY GO TO THE POLICE, IF YOU
11 NEED THAT PERSONAL RELATIONSHIP, EVEN THOUGH NO
12 OTHER 18-YEAR-OLD WOULD NEED A PERSONAL
13 RELATIONSHIP, BUT IN YOUR OWN TESTIMONY YOU
14 SUPPOSEDLY HAD ONE, BUT STILL HE WANTS US TO BELIEVE
15 THAT WAS INSUFFICIENT.

16 AS I WAS FOCUSING ON THIS ISSUE OF
17 WHETHER HE WAS TRYING TO PORTRAY HIMSELF AS A CHILD,
18 AND HE DENIED THAT HE WAS TRYING TO PORTRAY HIMSELF
19 AS A CHILD, HE NEVERTHELESS ANSWERED THE QUESTION
20 THAT WAY. HE SAID: "I DID NOT THINK OF THE POLICE
21 AS KIND OF WARM PEOPLE WHO WERE GOING TO SAVE A
22 CHILD --" THAT'S HIS WORD -- NO MATTER HOW STRONG
23 OR HOW MUCH MONEY THE FATHER HAS. AND PROTECT THEM
24 FROM THE FATHER.

25 I WAS QUESTIONING HIM IN REGARD TO HIS
26 BEHAVIOR DURING THIS SO-CALLED WEEK IN CRISIS, AND
27 HE EVEN -- IN REFERENCE, EVEN IN THAT CONTEXT, HE
28 ACTUALLY GOES SO FAR AS TO CALL HIMSELF A CHILD.

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1 I SUBMIT TO YOU THAT NO 18-YEAR-OLD SEES
2 HIMSELF AS A CHILD. TO THE CONTRARY. THEY SEE
3 THEMSELVES AS MUCH MORE THAN THAT; AND THE DEFENDANT

4 REALIZED HE WAS NOT A CHILD.

5 HE EVEN WANTS US TO BELIEVE -- HE EVEN
6 USED THIS LANGUAGE. HE WANTS US TO BELIEVE THAT HIS
7 VIEW OF GOING TO THE POLICE WAS THE VIEW OF A
8 13-YEAR-OLD? HE TOLD US THAT THESE THOUGHTS ABOUT
9 THE POLICE, HIS ATTITUDE TOWARD THE POLICE AND HIS
10 ATTITUDE TOWARDS HIS FATHER, HE SAID THESE THOUGHTS
11 EVOLVED SINCE THE AGE OF 13. "AND BY 18 I DIDN'T
12 EVEN CONSIDER IT A POSSIBILITY."

13 I ASKED HIM IF HE AGREED, LIKE EVERY
14 OTHER PERSON, HIS THOUGHTS DEVELOP FROM THE AGE OF
15 13 TO THE AGE 18, AND HE DISAGREED. HE SAID HE DOES
16 NOT AGREE, LIKE EVERY OTHER PERSON, "I DEVELOPED
17 FROM THE AGE OF 13 TO BECOME A DIFFERENT PERSON BY
18 THE AGE OF 18."

19 HE SAID: "I CHANGED PHYSICALLY, BUT MY
20 VIEW OF MY FATHER NEVER CHANGED."

21 WHY WOULD THAT NOT CHANGE? OUR
22 THOUGHTS, OUR CONCEPTIONS, OUR VIEW OF THE WORLD
23 CHANGE FROM THE TIME WE ARE 13 UNTIL THE TIME WE ARE
24 18. IS THAT SOMETHING WE CAN EVER BE CONSCIOUSLY
25 AWARE OF, THAT MY CURRENT THOUGHTS HAVE NOT CHANGED
26 SINCE FIVE YEARS EARLIER? I DON'T THINK THAT IS
27 SOMETHING THAT CAN BE CONSCIOUSLY EXPRESSED OR
28 BECOME AWARE OF. THAT IS SOMETHING THAT SOUNDS MORE

1 LIKE A THEORY, A THEORY THAT HE IS SELLING TO THE
2 JURY, OR TRYING TO SELL TO THE JURY, RATHER THAN A
3 CONSCIOUS BELIEF ON HIS PART.

4 ANOTHER WAY IN WHICH HE TRIES TO MAKE
5 HIMSELF LOOK LIKE A CHILD WAS WHEN I ASKED HIM A
6 SIMPLE QUESTION OF: "WHERE DID YOU GET THE MONEY
7 FROM TO BUY THE GUNS TO KILL YOUR PARENTS?"

8 DID HE SAY FROM MY ROOM? NO.

9 HE SAID: "NO. FROM MY PETER RABBIT
10 BOOK."

11 ONCE AGAIN, AN EFFORT ON HIS PART TO
12 MAKE HIMSELF LOOK LIKE A CHILD. HE ADMITS HE USED
13 THIS MONEY, WHICH HE GOT FROM HIS FATHER, FOR THE
14 SHOTGUNS THAT HE USED TO KILL HIS FATHER.

15 WHEN I ASKED HIM: "ARE YOU SAYING THAT
16 YOU WERE A CHILD WHEN THIS TOOK PLACE?"

17 AND HE SAID: "MAYBE I SHOULD UNDERSTAND
18 YOUR DEFINITION OF A CHILD."

19 AGAIN, HE DIDN'T WANT TO ADMIT THAT HE
20 WAS A YOUNG ADULT WHEN THIS TOOK PLACE. HE WILL
21 EVEN GO SO FAR AS TO QUIBBLE OVER THE USE OF THE
22 WORD "CHILD," TRYING TO INCLUDE HIMSELF IN AT ALL
23 COSTS WITHIN THAT CATEGORY.

24 AND THEN I MADE REFERENCE TO HIS
25 BROTHER, LYLE MENENDEZ, AND HOW HE PERCEIVED HIS
26 BROTHER, LYLE MENENDEZ. WELL, SURELY -- LYLE
27 MENENDEZ WAS 21 YEARS OF AGE AT THE TIME THIS TOOK

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1 BROTHER, LYLE MENENDEZ, WAS NOT A CHILD, SHOULDN'T
2 HE? AND I ASKED HIM IF HE SAW HIS BROTHER AS A MAN
3 OR A CHILD WHEN THIS TOOK PLACE?

4 AND HE SAID: "MY FATHER WAS A MAN.
5 COMPARED TO HIM, MY BROTHER WAS A CHILD."

6 VERY CLEVER ANSWER. VERY CLEVER. HE
7 GETS 10 POINTS FOR CLEVERNESS, ZERO POINTS FOR
8 CREDIBILITY, BECAUSE THE QUESTION SIMPLY ASKS
9 WHETHER HE SAW HIS BROTHER AS A MAN OR A CHILD; AND
10 CLEARLY, THE ANSWER TO THAT IS HIS BROTHER WAS, IN
11 FACT, A MAN.

12 THE REPORTER: YOUR HONOR, I HAVE TO CHANGE
13 MY PAPER.

14 THE COURT: LET'S TAKE OUR RECESS. WE'VE
15 BEEN GOING OVER AN HOUR. WE'LL RESUME AT 10 MINUTES
16 AFTER 3:00.

17 DON'T DISCUSS THE MATTER, AND DON'T FORM
18 ANY FINAL OPINIONS ABOUT IT. WE'LL RESUME AT TEN
19 AFTER 3:00.

20 (A RECESS WAS TAKEN FROM
21 2:53 P.M. TO 3:15 P.M.)

23
24
25
26
27
28

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1 THE COURT: ALL RIGHT. WE'RE ALL HERE.

2 GET THE JURY OUT, PLEASE.

3 (THE JURY ENTERS THE COURTROOM

4 AND THE FOLLOWING PROCEEDINGS

5 WERE HELD:)

6

7 THE COURT: THE JURY IS BACK.

8 YOU MAY CONTINUE YOUR ARGUMENT.

9 MR. CONN: THANK YOU, YOUR HONOR.

10 LADIES AND GENTLEMEN, ERIK MENENDEZ WOULD

11 HAVE YOU BELIEVE THAT EVEN AT THE AGE OF 18 YEARS OLD HE

12 BELIEVED THAT KILLING HIS PARENTS, EVEN IF IN

13 SELF-DEFENSE, WOULD BE UNLAWFUL.

14 DON'T YOU THINK THAT PEOPLE, YOUNG MEN BY

15 THE AGE OF 18, TRULY REALIZE THAT IF YOU KILL SOMEONE IN

16 SELF-DEFENSE, IT IS GOING TO BE EXCUSED OR MITIGATED,

17 AND THERE IS NO SPECIAL EXCEPTION THAT APPLIES TO

18 PARENTS.

19 HE WANTS YOU TO BELIEVE THAT AT THE TIME
20 THAT -- HE DID NOT THINK THAT AT THE TIME THAT HE WENT
21 OUT TO PURCHASE SHOTGUNS TO POTENTIALLY USE AGAINST HIS
22 PARENTS, THAT IT WAS NOT ONE OF THE MOST IMPORTANT
23 DECISIONS IN HIS LIFE.

24 DON'T YOU THINK THAT IF YOU WERE IN THAT
25 SITUATION AND YOU HAD MADE THE DECISION THAT YOU WERE
26 GOING TO HAVE TO GO OUT AND PURCHASE GUNS TO POSSIBLY
27 USE AGAINST YOUR OWN PARENTS, THAT YOU WOULD RECOGNIZE
28 THAT THAT IS ONE OF THE MOST IMPORTANT DECISIONS IN YOUR

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1 LIFE?

2 WHAT IS AMAZING ABOUT THE STORY THAT THE
3 DEFENDANT TELLS, LADIES AND GENTLEMEN, IS HIS FAILURE TO
4 SERIOUSLY CONSIDER ALTERNATIVES TO REMAINING IN A
5 SITUATION IN WHICH HE MIGHT HAVE TO SHOOT HIS PARENTS TO
6 DEATH, AND THE FAILURE TO CONSIDER THE CIRCUMSTANCES
7 UNDER WHICH HE MIGHT BE CALLED UPON TO SHOOT HIS PARENTS
8 TO DEATH.

9 AND ONCE AGAIN, I ASK YOU TO PLACE YOURSELF
10 IN THE SHOES OF ERIK MENENDEZ.

11 ACCORDING TO HIS STORY, IF ON THURSDAY
12 NIGHT THE DEFENDANT TRULY BELIEVED THAT HIS PARENTS WERE
13 GOING TO KILL HIM, DON'T YOU THINK THAT HE WOULD BE
14 CONSIDERING SCENARIOS IN WHICH THAT MIGHT HAPPEN?

15 HE WANTS YOU TO BELIEVE THAT HE NEVER
16 DISCUSSED WITH LYLE MENENDEZ, EVEN IN RESPONSE TO
17 QUESTIONING FROM LYLE MENENDEZ, WHETHER HE WOULD BE ABLE
18 TO USE HANDGUNS AGAINST HIS OWN PARENTS.

19 HE WANTS YOU TO BELIEVE THAT HE ONLY
20 CONSIDERED GOING TO THE POLICE FOR A SECOND BEFORE
21 BRUSHING IT OFF.

22 DON'T YOU THINK IN THAT SITUATION, LADIES
23 AND GENTLEMEN, YOU OR ANYONE ELSE WOULD HAVE SERIOUSLY
24 CONSIDERED AND DISCUSSED THAT SITUATION?

25 HE WANTS YOU TO BELIEVE THAT BECAUSE HE
26 NEVER CONSIDERED GOING TO THE POLICE TO STOP THE ABUSE
27 WHEN HE WAS YOUNG, THAT, THEREFORE, WHEN HE IS NOW IN
28 THIS NEW SITUATION, HE DID NOT CONSIDER GOING TO THE

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1 POLICE.

2 BUT LADIES AND GENTLEMEN, WE ARE TALKING
3 ABOUT A BRAND NEW REASON NOW, A REASON THAT HE HAD NEVER
4 BEEN FACED WITH BEFORE; THAT IS, THE PARENTS ARE
5 ACTUALLY GOING TO KILL HIM. THIS IS HIS BELIEF,
6 SUPPOSEDLY, ON THURSDAY NIGHT.

7 NOW, IF YOU THOUGHT FOR THE FIRST TIME THAT
8 YOUR PARENTS WERE GOING TO KILL YOU, THAT THEY WERE NOW
9 WORKING TO POSSIBLY KILL YOU, WORKING TOGETHER, DON'T
10 YOU THINK AT THAT POINT YOU WOULD REEVALUATE ALL OF YOUR

11 PREVIOUSLY HELD IDEAS, YOU WOULD REEVALUATE THINGS SUCH
12 AS WHETHER YOU SHOULD MOVE OUT, WHETHER YOU SHOULD GO TO
13 THE POLICE?

14 BUT DID HE EVEN CONSIDER OR DISCUSS THESE
15 POSSIBILITIES WITH LYLE MENENDEZ? NO.

16 DON'T YOU THINK YOU WOULD HAVE CONSIDERED
17 AND DISCUSSED THESE POSSIBILITIES WITH YOUR BROTHER?

18 HE SAID THAT HE DID NOT CONSIDER GOING TO
19 THE POLICE FOR MORE THAN A FEW SECONDS. IT WAS
20 DISMISSED AFTER A FEW WORDS, HE SAID. AFTER A FEW WORDS
21 WERE EXCHANGED WITH HIS BROTHER CONCERNING THIS ISSUE,
22 HE SAYS HE DISMISSED IT FROM HIS MIND. HE DOES NOT
23 RECALL DISCUSSING THE POSSIBILITY OF TALKING TO THE
24 POLICE AND THEN MOVING AWAY. YOU LODGE YOUR COMPLAINT
25 WITH THE POLICE, YOU JUST LET THEM KNOW: "HEY, IF
26 ANYTHING HAPPENS TO ME, I WANT YOU TO KNOW THAT MY
27 PARENTS MAY BE RESPONSIBLE FOR IT," AND THEN JUST MOVE
28 OUT OF THE HOUSE. THAT WOULD PUT THE POLICE ON NOTICE.

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1 THAT WOULD PUT THE PARENTS ON NOTICE.

2 ISN'T THAT SOMETHING YOU WOULD DISCUSS?

3 HE WANTS YOU TO BELIEVE THAT HE NEVER EVEN
4 DISCUSSED THIS. DOES THIS SOUND LIKE A PERSON WHO TRULY
5 WISHED TO AVOID KILLING HIS PARENTS?

6 LADIES AND GENTLEMEN, I SUBMIT THIS NEVER

7 OCCURRED. THAT'S WHY THESE DISCUSSIONS NEVER TOOK
8 PLACE. BECAUSE IF YOU WERE IN THAT SITUATION, YOU WOULD
9 HAVE DISCUSSED THESE THINGS.

10 HE DOES NOT RECALL WHETHER THEY DISCUSSED
11 HOW THEIR PARENTS MIGHT KILL THEM AND GET AWAY WITH IT.
12 HE SAID, "I'M SURE WE DID."

13 "I'M SURE THAT WE DID" IS JUST A WAY OF
14 AVOIDING FURTHER CROSS-EXAMINATION ON THE TOPIC. "OH,
15 I'M SURE WE TALKED ABOUT IT."

16 "WELL, WHAT DID YOU DISCUSS?"

17 "WELL, I DON'T -- BECAUSE LIKE I SAID,
18 I DON'T REMEMBER TALKING ABOUT THAT."

19 HE DOES NOT RECALL A DISCUSSION CONCERNING
20 WHERE IT WAS LIKELY TO HAPPEN, OR WHEN IT WAS LIKELY TO
21 HAPPEN.

22 ISN'T THAT SOMETHING THAT YOU WOULD DISCUSS
23 IF YOU WERE IN THAT SITUATION? DON'T YOU THINK THAT YOU
24 WOULD TURN TO YOUR SIBLING, AND SAY: "WAIT A MINUTE.
25 IF YOU REALLY BELIEVE THAT OUR PARENTS ARE GOING TO KILL
26 US, WHEN DO YOU BELIEVE IT'S GOING TO HAPPEN, AND HOW DO
27 YOU BELIEVE IT'S GOING TO HAPPEN?"

28 BUT HE SAID: "WE DIDN'T DISCUSS THESE

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1 THINGS. WE JUST CONCLUDED OUR PARENTS WERE GOING TO
2 KILL US."

3 AND 20 MINUTES LATER -- THAT WAS THE TIME
4 ESTIMATE HE GAVE -- 20 TO 30 MINUTES LATER HE TALKED TO
5 LYLE MENENDEZ BEFORE THEY DECIDED TO GET GUNS.

6 DO YOU THINK YOU WOULD DECIDE -- AFTER 20
7 OR 30 MINUTES -- YOU WOULD DECIDE TO GO OUT AND GET GUNS
8 TO SHOOT YOUR PARENTS AFTER ONLY DISCUSSING THE ISSUE
9 WITH YOUR SIBLING FOR 20 OR 30 MINUTES?

10 HE DOES NOT RECALL A CONVERSATION REGARDING
11 THE FEASIBILITY OF GOING TO ANOTHER STATE OR ANOTHER
12 COUNTRY. HE SAYS HE JUST DISMISSED THE IDEA OUTRIGHT.

13 DON'T YOU THINK HE WOULD DISCUSS THAT
14 POSSIBILITY? DID HE NOT DISCUSS CHANGING NAMES, MOVING
15 OUT, GOING TO ANOTHER LOCATION, AND AVOIDING THE
16 SITUATION WHERE SOMEONE MIGHT HAVE TO GET SHOT? HE
17 SAID: "I JUST DISMISSED IT FROM MY MIND."

18 HE DOES NOT RECALL HIS BROTHER, LYLE
19 MENENDEZ, RAISING THAT AS A POSSIBILITY.

20 SO, WHAT IS LYLE MENENDEZ' EXCUSE IN THIS
21 CASE?

22 COUNSEL FOR CERTAIN IS GOING TO POINT TO
23 THE EXPERT TESTIMONY THAT THEY CALLED DURING THIS TRIAL,
24 TO TRY TO RELY UPON THAT EXPERT TESTIMONY IN SOME WAY.
25 BUT WHAT IS LYLE'S EXCUSE? HE IS THE PERSON WHO HAS
26 LIVED AWAY, BEAR IN MIND, FROM THE HOME FOR SO LONG.

27 DON'T YOU THINK THAT LYLE MENENDEZ, UNDER
28 THOSE CIRCUMSTANCES, WOULD HAVE SAID: "WAIT A MINUTE.

1 WHY ARE WE DOING THIS? LET'S CONSIDER SOME OPTIONS

2 HERE. LET'S MOVE AWAY. LET'S AVOID KILLING OUR

3 PARENTS."

4 I ASKED HIM IF HE CONSIDERED POOLING

5 RESOURCES WITH HIS BROTHER TO TRY TO GET AWAY. "NO."

6 DID HE DISCUSS HOW LONG HE MIGHT BE ABLE TO

7 STAY AWAY FROM HIS FATHER, WITH HIS BROTHER, BEFORE HIS

8 FATHER CAUGHT UP WITH HIM AND KILLED THEM? DON'T YOU

9 THINK THAT WOULD HAVE BEEN A TOPIC? DON'T YOU THINK

10 THEY WOULD HAVE SAID: "WAIT A MINUTE. DON'T YOU THINK

11 WE CAN GET AWAY FOR A WEEK, OR TWO WEEKS, OR THREE WEEKS

12 BEFORE OUR FATHER TRACKS US DOWN; THAT POWERFUL FATHER

13 OF OURS?"

14 WOULDN'T THAT HAVE BEEN DISCUSSED? OF

15 COURSE IT WOULD HAVE BEEN DISCUSSED. BUT HE DIDN'T

16 DISCUSS IT. WHY NOT?

17 IT WAS NOT BECAUSE HE WAS NEGLIGENT IN

18 DISCUSSING IT. IT'S BECAUSE IT NEVER HAPPENED. HE

19 NEVER CONSIDERED STAYING AWAY FROM HIS FATHER, THEN

20 CALLING HIS FATHER UP AND SAYING: "LOOK. WE DIDN'T GO

21 TO THE POLICE, DAD, SO DON'T COME KILLING US NOW,

22 BECAUSE WE COULD HAVE GONE TO THE POLICE, BUT WE DIDN'T.

23 THAT PROVES WE'RE NOT GOING TO DO IT."

24 ISN'T THAT SOMETHING YOU WOULD DISCUSS, IF

25 YOU REALLY LOVED YOUR MOTHER AND YOUR FATHER, AND YOU

26 DIDN'T WANT TO GET INTO A SITUATION WHERE YOU WOULD

27 SHOOT THEM TO DEATH, OR THEY WOULD SHOOT YOU TO DEATH?

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1 AROUND THE HOUSE, WITH ALL OF THESE RESOURCES THEY HAD
2 AVAILABLE TO THEM? DON'T YOU THINK ONE OF THEM WOULD
3 SAY: "HEY, LET'S GO TO PHOENIX FOR TWO WEEKS. LET'S
4 LIVE IN PHOENIX FOR TWO WEEKS, AND CALL UP OUR FATHER
5 AND SAY, 'LOOK, WE DIDN'T GO TO THE POLICE. JUST LEAVE
6 US ALONE. WE WANT TO LIVE OUR LIVES.'"

7 BUT NO. HE DIDN'T EVEN DISCUSS IT. THAT'S
8 ABSURD. AND MOST IMPORTANTLY, HE DOES NOT RECALL
9 CONTEMPLATING SCENARIOS IN WHICH HIS PARENTS MIGHT COME
10 AT HIM, AND HE MIGHT HAVE TO RESPOND WITH LETHAL FORCE.

11 THIS IS THE KEY ISSUE, LADIES AND
12 GENTLEMEN. THIS IS A KEY ISSUE. DON'T YOU THINK IF YOU
13 WERE IN THAT SITUATION YOU WOULD SAY TO YOUR BROTHER,
14 "WHEN DO WE SHOOT? WHEN DO WE KNOW FOR SURE? WHAT ARE
15 WE GOING TO BE LOOKING FOR? WHAT IS THE SIGN? DO WE
16 WAIT UNTIL WE HAVE GUNS POINTED AT US? DO WE WAIT UNTIL
17 WE HEAR THE SOUND OF SHOTS? ARE WE LOOKING FOR A
18 SPECIAL WORD? ARE WE LOOKING FOR A SITUATION? ARE WE
19 LOOKING FOR A COMMAND? WHAT ARE WE LOOKING FOR?"

20 THIS, LADIES AND GENTLEMEN, IF YOU WERE IN
21 THAT SITUATION, IF ANYONE WERE IN THAT SITUATION, THAT
22 WOULD HAVE BEEN THE FOCUS OF ALL YOUR ATTENTION: "HOW
23 DO WE KNOW FOR SURE?" BECAUSE YOU DON'T WANT TO SHOOT

24 YOUR PARENTS BY ACCIDENT.

25 SO, ANYONE IN THAT SITUATION WOULD HAVE

26 THOUGHT ABOUT THIS INCESSANTLY. YOU WOULD HAVE SPOKEN

27 ABOUT IT INCESSANTLY. AND YET, HE WANTS US TO BELIEVE

28 THAT HE NEVER EVEN THOUGHT ABOUT THIS, OR DISCUSSED THIS

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1 WITH HIS BROTHER.

2 WELL, THAT'S JUST IMPOSSIBLE, LADIES AND

3 GENTLEMEN. ONE OF THE MANY REASONS WHY YOU SHOULD

4 REJECT HIS STORY.

5 IN A SITUATION SUCH AS -- SUPPOSE THEY KNOW

6 THAT FOR SURE. SUPPOSE THEY KNOW FOR SURE THEIR PARENTS

7 ARE GOING TO KILL THEM WITHIN THE NEXT HALF HOUR.

8 SUPPOSE THEY KNOW FOR SURE THEIR PARENTS ARE GOING TO

9 LOAD UP THE GUNS AND COME AND SHOOT THEM.

10 WHAT DO THEY DO IN THAT SITUATION? DO THEY

11 GO TO THE POLICE? DO THEY LOAD UP THEIR OWN GUNS? DO

12 THEY MOVE OUT? WHAT DO THEY DO?

13 AND YET THIS WAS NEVER DISCUSSED. THIS WAS

14 NEVER CONSIDERED.

15 I ASKED HIM IF YOU EVER SAID TO YOUR

16 BROTHER THAT YOU WOULD DO ANYTHING TO AVOID KILLING YOUR

17 PARENTS, AND HE SAID: "NO, I NEVER REMEMBER SAYING THAT

18 TO HIM."

19 I ASKED: "DID YOU DISCUSS WITH YOUR

20 BROTHER WHETHER YOU WOULD KILL UNDER CIRCUMSTANCES SHORT
21 OF ABSOLUTE NECESSITY?"

22 YOU SEE, THAT'S CRITICAL. DO YOU KILL YOUR
23 PARENTS UPON A HUNCH? DO YOU KILL THEM ON A SUSPICION?
24 OR DO YOU WAIT UNTIL IT'S MORE DEFINITE, UNTIL IT'S MORE
25 CERTAIN?

26 AND HE NEVER DISCUSSED THAT WITH HIS
27 BROTHER, WHETHER THEY SHOULD WAIT UNTIL IT'S ABSOLUTELY
28 NECESSARY.

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1 AND I ASKED HIM: "WOULD YOU KILL YOUR
2 PARENTS UNDER CIRCUMSTANCES SHORT OF ABSOLUTE
3 NECESSITY?"

4 THIS WAS A VERY TELLING QUESTION AND
5 ANSWER, AND HE SAID HE DIDN'T KNOW IF HE WOULD KILL HIS
6 PARENTS UNDER CIRCUMSTANCES SHORT OF ABSOLUTE NECESSITY.

7 WELL, OBVIOUSLY, THE ANSWER TO THAT SHOULD
8 HAVE BEEN NO. NO ONE REALLY WANTS TO KILL THEIR PARENTS
9 UNDER CIRCUMSTANCES SHORT OF ABSOLUTE NECESSITY. WHY
10 WOULD HE EVEN SAY HE DOESN'T KNOW THAT? THIS CLEARLY IS
11 NOT A PERSON WHO WAS SEEKING TO AVOID KILLING HIS
12 PARENTS.

13 DID YOU DISCUSS, FOR EXAMPLE, THE
14 POSSIBILITY OF USING NON-LETHAL FORCE, BECAUSE ISN'T
15 THAT SOMETHING THAT YOU WOULD CONSIDER IF YOU TRULY

16 LOVED YOUR PARENTS, AND YOU FELT THAT YOU WERE GETTING
17 INTO A SITUATION WHERE THERE MIGHT BE SOME FORCE USED
18 AGAINST YOUR PARENTS, OR USED AGAINST YOU OR YOUR
19 BROTHER?

20 WOULDN'T YOU CONSIDER THE POSSIBILITY OF:

21 "MAYBE WE COULD NOT KILL THEM. MAYBE WE COULD DO
22 SOMETHING TO AVOID KILLING THEM. MAYBE WE CAN JUST
23 SHOOT THEM AND WOUND THEM AND CALL THE POLICE."

24 ISN'T THAT SOMETHING THAT YOU WOULD AT
25 LEAST DISCUSS BEFORE YOU WOULD SHOOT YOUR PARENTS TO
26 DEATH? BUT IT WASN'T DISCUSSED? OF COURSE IT WOULD
27 HAVE BEEN DISCUSSED, IF THIS TRULY HAPPENED, LADIES AND
28 GENTLEMEN.

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1 "AND DID YOU EVER DISCUSS," I ASKED HIM,
2 "THE LEGAL IMPLICATIONS?" THAT'S A SIGNIFICANT
3 QUESTION.

4 IN OTHER WORDS, WOULDN'T THE USE OF FORCE
5 BE LEGAL, AND UNDER WHAT CIRCUMSTANCES WOULD IT BE
6 LEGAL?

7 IT MIGHT NOT BE SOMETHING THAT YOU AND I
8 NORMALLY GO AROUND DISCUSSING OR THINKING ABOUT. BUT IN
9 THESE CIRCUMSTANCES, LADIES AND GENTLEMEN, DON'T YOU
10 THINK THEY WOULD HAVE DISCUSSED THAT? OF COURSE THEY
11 WOULD HAVE. THEY WOULD HAVE BEEN VERY MUCH CONCERNED

12 ABOUT THEIR RESPONSIBILITY IN THIS SITUATION.
13 AND YET, THEY WANT YOU TO BELIEVE THAT
14 THIS, TOO, THEY NEVER DISCUSSED.
15 THIS IS JUST TOO PREPOSTEROUS, LADIES AND
16 GENTLEMEN. THIS IS NOT THE STORY OF A PERSON WHO TRULY
17 DID NOT WANT TO KILL HIS PARENTS, BECAUSE A PERSON IN
18 THIS SITUATION WHO TRULY DID NOT WANT TO KILL HIS
19 PARENTS WOULD HAVE BEHAVED DIFFERENTLY, WOULD HAVE
20 THOUGHT DIFFERENTLY, WOULD HAVE DONE DIFFERENT THINGS.
21 HIS STORY JUST DOESN'T PAN OUT. WHAT HE
22 HAS IS A PLOT. HE HAS A SEQUENCE OF ACTIONS BUT HE
23 DOESN'T REALLY MAKE THAT REAL THROUGH HUMAN EMOTION,
24 BECAUSE A HUMAN EMOTION ELEMENT WOULD HAVE BEEN
25 DIFFERENT.
26 YOU PUT YOURSELF IN THAT SITUATION, OR
27 ANYONE ELSE IN THAT SITUATION. THE HUMAN EMOTION
28 ELEMENT WOULD HAVE BEEN DIFFERENT. THEY WOULD HAVE

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1 ACTED DIFFERENTLY, AND THOUGHT DIFFERENTLY, THAN THAT
2 DESCRIBED BY ERIK MENENDEZ, AND THAT'S WHY YOU KNOW IT'S
3 A TOTALLY MANUFACTURED STORY.
4 NOW, ACCORDING TO THIS STORY, LADIES AND
5 GENTLEMEN, IF JOSE MENENDEZ WAS SUCH A POWERFUL MAN, AND
6 IF JOSE MENENDEZ WAS SUCH A MANIPULATIVE PERSON, WHO
7 THOUGHT YOU SHOULD STRIKE AT PEOPLE WHEN THEY'RE

8 VULNERABLE, AND THEY KNEW JOSE MENENDEZ WAS THAT TYPE OF
9 MAN, THEN SHOULDN'T THEY HAVE BEEN VERY CONCERNED FOR
10 THEIR SAFETY THAT VERY NIGHT? SHOULDN'T THEY HAVE FELT
11 THAT VERY NIGHT THAT THEIR FATHER WAS GOING TO KILL
12 THEM?

13 AND IF THEIR FATHER WAS NOT GOING TO KILL
14 THEM THAT NIGHT, THEN SHOULDN'T THAT REALLY CAUSE THEM
15 TO REEVALUATE WHETHER THEIR FATHER WAS GOING TO KILL
16 THEM AT ALL? AFTER ALL, HE MISSED HIS OPPORTUNITY TO
17 STOP THEM FROM GOING TO THE POLICE.

18 I WOULD SUBMIT THAT ANYONE IN THAT
19 SITUATION, BASED UPON THE STORY TOLD TO US BY ERIK
20 MENENDEZ, WOULD HAVE CONCLUDED THAT HIS FATHER WAS GOING
21 TO KILL HIM RIGHT THEN, OR NOT AT ALL. AND YET HE
22 REJECTS THAT STORY.

23 AND WHY SHOULD HE REJECT THAT STORY? I
24 MEAN, THAT INTERPRETATION. WHY DOES HE REJECT THAT
25 INTERPRETATION?

26 AGAIN, IT'S JUST AN ARBITRARY INJECTION.

27 "NO, I DON'T BELIEVE THAT, MR. CONN."

28 WHY WOULDN'T YOU BELIEVE THAT? ACCORDING

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1 TO THE STORY YOU TOLD US HERE IN COURT, THAT FOLLOWS.
2 THAT PROPOSITION WOULD SEEM TO FOLLOW. AND IF YOU WANT
3 TO REJECT THAT NOW -- IF YOU WANT TO REJECT THAT NOW,

4 OKAY. BUT GIVE US A GOOD REASON FOR REJECTING THAT
5 PROPOSITION. AND HE NEVER GAVE US A GOOD REASON FOR
6 REJECTING THAT PROPOSITION.

7 I ASKED HIM: "DID YOU THINK YOUR FATHER
8 MIGHT HAVE SHOT YOU OR STABBED YOU THAT VERY NIGHT?"

9 AND DO YOU REMEMBER WHAT HIS ANSWER WAS? A
10 VERY INTERESTING ANSWER. A VERY INTERESTING ANSWER.

11 HE SAID: "IN THE MIDDLE OF BEVERLY HILLS?
12 I COULDN'T HAVE IMAGINED THAT WOULD HAVE HAPPENED?"

13 BUT WAIT A MINUTE. ISN'T THAT WHAT HE IS
14 TELLING US HIS BELIEF WAS ON SUNDAY; THAT IN THE MIDDLE
15 OF BEVERLY HILLS HIS FATHER WAS GOING TO SHOOT HIM, HIS
16 MOTHER WAS GOING TO SHOOT HIM? THAT IS PRECISELY THE
17 BELIEF THAT HE CLAIMS HE HAD ON SUNDAY NIGHT.

18 WELL, IF HE CLAIMED THAT HE HAD THAT BELIEF
19 ON SUNDAY NIGHT, THEN WHY DIDN'T HE HAVE THAT BELIEF ON
20 THURSDAY NIGHT? YET ON THURSDAY HE DISMISSES IT AS AN
21 ABSURDITY. HE MADE IT SOUND LIKE I ASKED AN ABSURD
22 QUESTION. "IN THE MIDDLE OF BEVERLY HILLS? I COULDN'T
23 HAVE IMAGINED THAT WOULD HAVE HAPPENED."

24 YOU SEE, LADIES AND GENTLEMEN, IT'S AN
25 ARBITRARY STORY. THE SCRIPT DOESN'T CALL FOR HIS BELIEF
26 THAT HIS PARENTS ARE GOING TO KILL HIM RIGHT THEN AND
27 THERE. WHY NOT? I DON'T KNOW WHY NOT. IT SHOULD CALL
28 FOR SUCH A BELIEF. THE SCRIPT IS NOT RIGHT. THAT'S THE

1 ONLY REASON WHY HE DOESN'T HAVE THAT BELIEF ON THURSDAY.

2 AND THEN HE TALKED ABOUT -- LET'S TALK A

3 LITTLE BIT ABOUT THE COMPETENCE OF THE DEFENDANT,

4 BECAUSE HERE YOU KNOW THAT WHAT THE DEFENSE IS RELYING

5 UPON IS THE NOTION THAT ERIK MENENDEZ WAS SOME SORT OF A

6 HELPLESS PERSON, SOME SORT OF A PERSON SUFFERING FROM

7 LEARNED HELPLESSNESS. THAT'S A CONCEPT THAT WAS THROWN

8 OUT HERE.

9 NOW, PARK DIETZ SHED A LITTLE BIT OF LIGHT

10 ON THAT CONCEPT OF LEARNED HELPLESSNESS, AND ESSENTIALLY

11 WHAT HE SAID IS IT'S SOMEWHAT ARROGANT FOR PEOPLE TO SAY

12 THAT WOMEN IN A BATTERED SITUATION TRULY SUFFER FROM A

13 STATE OF MIND SUCH AS LEARNED HELPLESSNESS.

14 WHY? BECAUSE WOMEN, OR ANYONE IN A

15 BATTERED SITUATION, MIGHT HAVE A PANOPLY OF REASONS, A

16 NUMBER OF REASONS TO STAY IN THAT SITUATION, AND IT IS

17 ARROGANT ON OUR PART TO SAY THAT BECAUSE WE WOULD EXPECT

18 A WOMAN TO LEAVE THAT PARTICULAR SITUATION, AND BECAUSE

19 SHE DOESN'T LEAVE THAT SITUATION, THAT SOMEHOW SHE IS

20 SUFFERING FROM SOME SORT OF A STATE OF MIND CALLED

21 LEARNED HELPLESSNESS.

22 BECAUSE PEOPLE HAVE THEIR OWN INDIVIDUAL

23 REASONS, THEIR OWN INDIVIDUAL, COMPLEX REASONS FOR

24 REMAINING IN CERTAIN SITUATIONS, AND IT'S ARROGANT OF US

25 TO ATTRIBUTE IT TO A STATE OF MIND, AND TO SAY THAT THIS

26 PERSON HAS SOME SORT OF A PSYCHIATRIC DISABILITY FOR

27 FAILURE TO LEAVE. IT HAS NOTHING TO DO WITH A

28 PSYCHIATRIC DISABILITY. THEIR OWN PARTICULAR REASONS

1 FOR STAYING ARE THEIR OWN PARTICULAR REASONS FOR
2 STAYING, AND IT MAKES NO SENSE TO ATTRIBUTE THIS CONCEPT
3 OF LEARNED HELPLESSNESS TO IT.

4 SO LEARNED HELPLESSNESS IS NOT A CONCEPT
5 THAT YOU FIND IN THE DIAGNOSTIC AND STATISTIC MANUAL OF
6 MENTAL DISEASES. IT IS SIMPLY NOT A VALID CLINICAL
7 CONCEPT. IT IS MORE OF A SOCIAL CONCEPT, WHICH, AS HE
8 EXPLAINED, HAS SOME UTILITY, AND I WILL TALK MORE ABOUT
9 THAT LATER.

10 SO THERE'S REALLY NO SUCH CLINICAL
11 DIAGNOSIS OF LEARNED HELPLESSNESS. WHAT THEY'RE
12 CLAIMING IN THIS CASE IS THAT ERIK MENENDEZ SOMEHOW FELT
13 HELPLESS.

14 BUT, LADIES AND GENTLEMEN, BEFORE YOU
15 ACCEPT THAT NOTION OF HELPLESSNESS, TRULY EVALUATE THE
16 BEHAVIOR OF ERIK MENENDEZ IN LIGHT OF ALL OF THE
17 CIRCUMSTANCES IN THIS CASE, AND ASK YOURSELF WHETHER HE
18 IS A PERSON WHO FELT HELPLESS.

19 AND I WOULD SUBMIT TO YOU THAT ERIK
20 MENENDEZ WAS A VERY COMPETENT YOUNG MAN WHEN HE WANTED
21 TO BE, AND THIS CLAIM OF HELPLESSNESS SIMPLY DOESN'T
22 HOLD ANY WATER.

23 HE IS A PERSON WHO IS, OF COURSE, A
24 CHAMPIONSHIP TENNIS PLAYER. WHAT STATE OF MIND DO YOU
25 THINK THAT TAKES, A WEAK AND HELPLESS PERSON, TO ACHIEVE

26 THAT TYPE OF A STATUS? YOU HAVE TO HAVE A TREMENDOUS
27 AMOUNT OF DRIVE, AND A TREMENDOUS SENSE OF SELF AND
28 CONFIDENCE IN ORDER TO ACHIEVE THAT.

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1 HE IS A PERSON WHO GOES AROUND AND ACQUIRES
2 PHONY IDENTIFICATIONS WHENEVER HE PLEASES. HE HAD PHONY
3 I.D.'S BELONGING TO DONOVAN GOODREAU, ONE IN THE NAME OF
4 RICHARD STEVENS, ANOTHER ONE OF HIS COUSIN, TIM
5 ANDERSEN.

6 HE OBTAINED A PHONY BIRTH CERTIFICATE. HE
7 COMMITTED RESIDENTIAL BURGLARIES. LADIES AND GENTLEMEN,
8 DOES THAT TELL YOU THAT THIS IS A HELPLESS PERSON?

9 AND WHAT DID HE SAY ABOUT THOSE RESIDENTIAL
10 BURGLARIES? DO YOU REMEMBER THAT THE SECOND RESIDENTIAL
11 BURGLARY WAS ONE IN WHICH THEY TOOK SO MUCH LOOT, HIM
12 AND HIS BROTHER, LYLE MENENDEZ, TOOK SO MUCH LOOT THAT
13 THEY HAD TO RETURN IT WITH A U-HAUL? THE TESTIMONY IS
14 THEY HAD TO RETURN THE LOOT WITH A U-HAUL. THAT'S HOW
15 MUCH WAS TAKEN.

16 IS THIS A HELPLESS PERSON, LADIES AND
17 GENTLEMEN? THIS IS A PERSON WHO, AT THE AGE OF 18 YEARS
18 OLD, WAS COMING AND GOING AS HE PLEASED, IN AND OUT OF
19 THIS HOUSE. THIS WAS NOT A HELPLESS PERSON, LADIES AND
20 GENTLEMEN.

21 HE IS THE KIND OF PERSON WHO CAN GO

22 SHOPPING FOR GUNS, SHOTGUNS, TO POSSIBLY USE AGAINST HIS
23 PARENTS. HE IS THE KIND OF A PERSON WHO CAN CARRY GUNS
24 IN AND OUT OF THE HOUSE, RIGHT UNDER HIS PARENTS' NOSE.
25 CAN YOU IMAGINE THE AUDACITY OF THAT, TO ACTUALLY WALK
26 IN AND OUT OF THE HOUSE CARRYING SHOTGUNS, LOADED
27 SHOTGUNS IN THESE LARGE TENNIS BAGS, WALKING RIGHT UP
28 THOSE STAIRS, WALKING RIGHT NEARBY YOUR PARENTS'

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1 BEDROOM. WHAT A TREMENDOUS AMOUNT OF AUDACITY.
2 THIS IS A HELPLESS PERSON? THIS IS
3 ANYTHING BUT A HELPLESS PERSON, LADIES AND GENTLEMEN.
4 HE CAN GO SHOPPING FOR AMMUNITION ON TWO
5 SEPARATE DAYS, BOTH ON FRIDAY AND ON SATURDAY. HE WANTS
6 TO GO TARGET PRACTICING IN ORDER TO BE ABLE TO USE THIS
7 WEAPON PROPERLY, TO KNOW THAT HE CAN USE THIS WEAPON
8 PROPERLY.
9 THIS IS A HELPLESS PERSON? NO, LADIES AND
10 GENTLEMEN. THIS IS A COMPETENT PERSON. THIS IS A MAN
11 WHO FEELS A SENSE OF COMPETENCE AND SKILL, AND WHO PLANS
12 AHEAD, AND WHO THINKS AHEAD, AND WHO CAN TAKE RISKS.
13 THOSE ARE ALL RISK-TAKING ACTIVITIES.
14 TO COMMIT RESIDENTIAL BURGLARIES, HAVE YOU
15 EVER TAKEN RISKS LIKE THAT? IT TAKES A CERTAIN AMOUNT
16 OF DARING, LADIES AND GENTLEMEN, TO COMMIT RESIDENTIAL
17 BURGLARIES. IT TAKES A CERTAIN AMOUNT OF DARING TO

18 PURCHASE SHOTGUNS WITH FALSE IDENTIFICATION AND CARRY
19 THOSE SHOTGUNS IN AND OUT OF THE HOUSE UNDER THE NOSE OF
20 YOUR PARENTS, NOT TO MENTION THE UNBELIEVABLE ACT OF
21 BEING ABLE TO ACTUALLY SHOOT YOUR PARENTS TO DEATH.
22 TALK ABOUT COMPETENCE.

23 DO YOU REMEMBER HIS TESTIMONY THAT RIGHT
24 AFTER THE SHOOTING, WHAT DID HE AND HIS BROTHER DO?
25 THEY WANTED TO COME BACK TO THE CRIME SCENE, AND THEY
26 WANTED TO REMOVE SOME EVIDENCE FROM THE CAR.
27 AND RIGHT UNDER THE NOSES OF THE POLICE,
28 WHILE THE POLICE WERE STILL AT THE CRIME SCENE, THEY GOT

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1 INTO THE CAR, AND THEY REMOVED EVIDENCE FROM THE CAR.
2 HELPLESSNESS? WHAT A TREMENDOUS AMOUNT OF
3 INGENUITY AND DETERMINATION. DID THEY SWITCH FROM A
4 SENSE OF HELPLESSNESS TO A SENSE OF POWER RIGHT AFTER
5 THEY SHOT THEIR PARENTS TO DEATH? NO. BECAUSE ERIK
6 MENENDEZ WAS EXEMPLIFYING, EXHIBITING THIS SENSE OF
7 POWER AND CONTROL, EVEN PRIOR TO SHOOTING HIS PARENTS TO
8 DEATH. HIS ABILITY TO GO SHOPPING FOR SHOTGUNS
9 DEMONSTRATES THAT.
10 LYLE MENENDEZ WAS A PERSON -- DOES LEARNED
11 HELPLESSNESS APPLY TO LYLE MENENDEZ? LYLE MENENDEZ WAS
12 A PERSON WHO STAYED AWAY FROM THE HOME AT LEAST FOR A
13 YEAR AND A HALF WITHIN THE PAST THREE YEARS. HE IS A

14 PERSON WHO TRAVELED EXTENSIVELY THROUGHOUT THE UNITED
15 STATES, EUROPE AND AUSTRALIA.

16 WHAT TYPE OF MIND DOES THAT DEVELOP, LADIES
17 AND GENTLEMEN? DO YOU THINK A PERSON LIKE THAT FEELS
18 HELPLESS AND INCOMPETENT? THESE WERE TWO VERY COMPETENT
19 YOUNG MEN WHO WERE FEELING THEIR OATS; WHO FELT STRONG,
20 WHO FELT IN CONTROL, WHO FELT THAT THEY HAD POWER, AND
21 THAT'S WHY THEY WERE ABLE TO DO THE THINGS THAT THEY
22 DID. THESE WERE NOT, BY ANY STRETCH OF THE IMAGINATION,
23 LADIES AND GENTLEMEN, HELPLESS YOUNG MEN, AS THE DEFENSE
24 WOULD HAVE YOU BELIEVE.

25 HE ADMITTED IN THE DECEMBER 11 TAPE THAT HE
26 FELT HE COULD LEAVE AT ANY TIME, AND HE ADMITTED HERE ON
27 THE STAND THAT HE SAID THAT HE BELIEVED AT THE AGE OF 18
28 THAT HE COULD FUNCTION AND WORK, IF HE DIDN'T HAVE TO

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1 HIDE FROM HIS FATHER, HE CLAIMED. ALTHOUGH HE SAID: "I
2 NEVER THOUGHT ABOUT IT." BUT HE SAID: "PUTTING ASIDE
3 THE HIDING ISSUE, I FELT THAT I WAS STRONG ENOUGH AND
4 HEALTHY ENOUGH TO BE AS SELF-SUFFICIENT AS ANY OTHER
5 HEALTHY AND INTELLIGENT 18-YEAR-OLD."

6 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
7 THERE IS NO ISSUE -- TRUE ISSUE OF HELPLESSNESS HERE.

8 JUDGE PEOPLE, ONCE AGAIN, BY THEIR
9 BEHAVIOR, NOT BY WHAT THEY CLAIM, MUCH LESS BY WHAT

10 THEIR MENTAL HEALTH EXPERTS WERE BEING PAID TO CLAIM ON
11 THEIR BEHALF. IF YOU JUDGE HIM BY HIS BEHAVIOR, YOU
12 WILL FIND THAT ERIK MENENDEZ WAS NOT A HELPLESS YOUNG
13 MAN. THERE IS NO BASIS UPON WHICH YOU CAN CONCLUDE THAT
14 ERIK MENENDEZ WAS NOT CAPABLE OF JUST WALKING OUT THE
15 DOOR AT ANY TIME.

16 AND SO WE GET TO THE HEART OF THE STORY,
17 WHICH IS THE PURCHASE OF THE WEAPONS. DO YOU THINK THAT
18 YOU WOULD REALLY DO THAT? WOULD ANYONE REALLY DO THAT?
19 PURCHASE WEAPONS, RETURN TO THE DANGER, AND JUST WAIT
20 FOR SOMETHING TO HAPPEN.

21 IF YOU TRULY BELIEVED THAT THERE WAS
22 DANGER, IF YOU TRULY BELIEVED THAT YOU MIGHT POSSIBLY BE
23 KILLED, IS THAT WHAT YOU WOULD DO?

24 NO, LADIES AND GENTLEMEN. YOU OR ANYONE
25 ELSE, INCLUDING THE DEFENDANTS, IF YOU HAD THE STRENGTH,
26 THE INTELLIGENCE, THE COMPETENCE, THE ABILITY TO GO
27 SHOPPING FOR SHOTGUNS AND AMMUNITION, AND TO CONSIDER
28 THINGS SUCH AS TARGET PRACTICING, YOU WOULD DECIDE TO

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1 JUST LEAVE RATHER THAN JUST HANGING AROUND AND WAIT FOR
2 A SHOOT-OUT.

3 AND SO THE STORY OF THE DEFENDANTS JUST
4 DOESN'T MAKE ANY SENSE WHATSOEVER.

5 WE ALSO SEE SIGNS OF INCOMPETENCE WHEN HE

6 TALKS ABOUT THE EVENTS OF SATURDAY.

7 DO YOU REMEMBER THAT ON SATURDAY HE WAS
8 SUPPOSED TO GO ON A FISHING TRIP, AND ON THE FISHING
9 TRIP HE SAID THAT -- I ASKED HIM: "WELL, DIDN'T YOU
10 CONSIDER NOT GOING ON THE FISHING TRIP?"

11 AND HE SAID: "NO, I FELT I HAD TO GO ON
12 THE FISHING TRIP."

13 AND I SAID -- AT SOME POINT HE ALSO ADDED,
14 HOWEVER, THAT IT WAS IN HIS MIND THAT IF HIS PARENTS
15 WERE GOING TO GO ON THE BOAT ALONE WITH HIM AND HIS
16 BROTHER, THAT HE WAS GOING TO RUN AWAY. HE SAID: "AT
17 THAT POINT, I MIGHT AS WELL RUN, BECAUSE I AM GOING TO
18 BE KILLED EITHER WAY. AND IF I THOUGHT THAT I WAS
19 ABSOLUTELY GOING TO DIE ON THAT BOAT, I WAS NOT GOING TO
20 GET ON THAT BOAT."

21 SO, HERE IS A PERSON THAT WAS SAYING THAT
22 WHEN THE TIME BECOMES NECESSARY, I WILL AVOID DANGER. I
23 WILL WALK AWAY. I WILL NOT GO INTO THAT DANGEROUS
24 SITUATION.

25 ONCE AGAIN, IT SHOWS A PERSON WHO IS VERY
26 COMPETENT AND ABLE TO EVALUATE SITUATIONS, AND TO MAKE
27 DECISIONS, AND TO WALK AWAY FROM DANGER AT THE MOMENT
28 THAT THE DANGEROUS SITUATION TRULY ARISES.

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1 WELL, LADIES AND GENTLEMEN, IF HE FELT THAT

2 HE COULD TRULY WALK AWAY ON THAT SATURDAY; THAT IF HE
3 WERE TO GO TO THE MARINA, AND AT THE MARINA NO ONE WAS
4 GOING TO GO ON THE BOAT EXCEPT HIM, HIS BROTHER AND HIS
5 PARENTS, AND HE FELT THAT HE COULD TRULY WALK AWAY AT
6 THAT POINT, AS HE ASSURED US THAT HE COULD DO THAT, WELL
7 THEN, WHY COULDN'T HE WALK AWAY THURSDAY NIGHT OR FRIDAY
8 NIGHT OR SATURDAY NIGHT, OR SUNDAY NIGHT?

9 AGAIN, BECAUSE THE SCRIPT JUST DOESN'T CALL
10 FOR IT. THAT'S THE ONLY REASON.

11 DO YOU SEE THE INCONSISTENCY, THE
12 INCREDIBLE AMOUNT OF INCONSISTENCY IN THIS? HE IS WEAK
13 AND HELPLESS WHEN HE WANTS TO BE, AND YET HE SHOWS A
14 TREMENDOUS AMOUNT OF COMPETENCE AND ABILITY AND
15 DETERMINATION, AND THE RECOGNITION OF OPTIONS, AND THE
16 ABILITY TO WALK AWAY WHEN IT SUITS HIS PURPOSE. TOTALLY
17 INCONSISTENT STORY, WHICH MAKES NO SENSE.

18 HE SAID THAT WE WERE HOPING AND PLANNING
19 THAT THERE WOULD BE CONVERSATIONS OVER THE WEEKEND WHICH
20 WOULD RESOLVE THIS MATTER.

21 DO YOU REMEMBER PARK DIETZ TALKING ABOUT
22 THIS SIGN OF HOPEFULNESS? IT IS THE TOTAL OPPOSITE OF
23 DESPAIR, THE TOTAL OPPOSITE OF HELPLESSNESS.

24 HE SAID: "WE EVEN CONSIDERED PURCHASING
25 CROSSBOWS AND KNIVES." DO YOU REMEMBER THAT TESTIMONY
26 HERE IN COURT? HE SAID THAT HERE IN COURT.

27 ONCE AGAIN, CONSIDERING OPTIONS.
28 CONSIDERING MEANS DOING THIS. A PERSON WITH AN

1 IMAGINATION AND A RECOGNITION OF VARIOUS OPTIONS.

2 AND NOTE THE ARBITRARINESS OF THE STORY HE
3 TELLS HERE IN COURT. WHY IS IT SO ARBITRARY? BECAUSE
4 ONCE AGAIN, IT IS A SCRIPT THAT HAS TO FIT HIS PURPOSE.

5 HE SAID: "I DID NOT THINK THAT MY FATHER
6 WOULD DO IT ALONE. I DID NOT THINK ABOUT THEM THAT WAY.
7 I NEVER DISCUSSED THE POSSIBILITY WITH MY BROTHER THAT
8 ONE PARENT MIGHT DO IT ALONE".

9 WELL, WHY NOT? WHY WOULD HE NOT -- WHY
10 WOULD HE NOT CONSIDER THAT POSSIBILITY? IF HIS FATHER
11 IS UPSET THAT HE TOLD THE SECRET, AND HIS FATHER, HE
12 THINKS, MIGHT WANT TO KILL HIM NOW, HE IS TELLING US:
13 "WELL, JUST BECAUSE I FOUND OUT THAT MY MOTHER KNEW
14 ABOUT THE MOLESTATION, THAT THEREFORE I AUTOMATICALLY
15 CONCLUDED THAT MY MOTHER AND FATHER WERE GOING TO KILL
16 US TOGETHER.

17 NO FURTHER DISCUSSION NECESSARY. NO
18 FURTHER DISCUSSION WARRANTED.

19 IS THAT WHAT YOU WOULD DO, LADIES AND
20 GENTLEMEN? IS THAT WHAT YOU WOULD DO? OF COURSE NOT.

21 DON'T YOU THINK THAT YOU AND YOUR SIBLING
22 WOULD SAY: "WAIT. JUST BECAUSE OUR FATHER MADE THAT
23 THREAT, LET'S TALK ABOUT WHETHER OUR MOTHER WAS REALLY
24 GOING TO KILL US. LET'S TALK ABOUT IT."

25 HE WANTS YOU TO BELIEVE THAT HE WASN'T EVEN
26 GOING TO TALK ABOUT IT? THAT'S ABSURD. YOU, IN THAT

27 SITUATION -- ANYONE IN THAT SITUATION WOULD HAVE

28 DISCUSSED IT, AND SAID: "WAIT A MINUTE. DOES IT

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1 LOGICALLY MEAN THAT OUR MOTHER IS INVOLVED? AND SUPPOSE

2 SHE IS NOT. SUPPOSE ONE PARENT COMES AFTER US. WHAT DO

3 WE DO, AND UNDER WHAT CIRCUMSTANCE DO WE DO IT?"

4 BUT NONE OF THESE OPTIONS WERE DISCUSSED,

5 LADIES AND GENTLEMEN, BECAUSE -- NOT BECAUSE THEY DIDN'T

6 THINK OF THEM. BECAUSE THE STORY COULDN'T HAVE TAKEN

7 PLACE. BECAUSE IF IT HAD TAKEN PLACE, THEY WOULD HAVE

8 DISCUSSED THESE OPTIONS.

9 ERIK MENENDEZ SAYS THAT: "I THOUGHT IF I

10 WERE TO BE SEXUALLY ASSAULTED, IT WOULD PROBABLY BE AT

11 NIGHT. AND IF I WERE TO BE KILLED, IT WOULD PROBABLY BE

12 AT NIGHT."

13 WHY? WHY DOES THAT NECESSARILY FOLLOW? IF

14 YOUR PARENTS WERE GOING TO KILL YOU, WHY WOULD IT HAVE

15 TO BE AT NIGHT? IT'S JUST AN ARBITRARY STORY. THAT'S

16 JUST HIS ARBITRARY CONCLUSION. HE WAS NEVER ABLE TO

17 EXPLAIN THAT, NEVER ABLE TO ANSWER THAT. "I JUST

18 THOUGHT IT WOULD BE AT NIGHT."

19 BECAUSE HE WANTS TO EXPLAIN, OBVIOUSLY, WHY

20 HE CAN COME IN AND OUT OF THE HOUSE ALL DAY LONG, AND HE

21 DOESN'T HAVE TO WORRY ABOUT HIS PARENTS KILLING HIM, YOU

22 SEE.

23 BUT IF YOU REALLY FELT YOUR PARENTS WERE
24 GOING TO KILL YOU, ISN'T IT EQUALLY AS LIKELY THAT THEY
25 WOULD KILL YOU DURING THE DAY AS WELL AS DURING THE
26 NIGHT? AN ARBITRARY POSITION, AN ARBITRARY STORY.

27 HE SAYS: "I DIDN'T BUY HANDGUNS, BECAUSE I
28 BELIEVED THE ATTACK WOULD OCCUR WITHIN TWO WEEKS."

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1 WHY NOT? WHY NOT BE ON THE SAFE SIDE. IF
2 YOU BELIEVED YOUR PARENTS ARE GOING TO KILL YOU, GO
3 AHEAD AND BUY THE HANDGUNS. AND IF YOUR PARENTS DON'T
4 KILL YOU WITHIN TWO WEEKS, BY THEN YOU HAVE THE
5 HANDGUNS. YOU COULD START CARRYING THEM, INSTEAD OF
6 HIDING THESE SHOTGUNS IN THE TENNIS BAGS, AND YOU WILL
7 HAVE ACCESS TO MUCH BETTER WEAPONS THEREAFTER, WEAPONS
8 THAT CAN TRULY BE USED IN SELF-DEFENSE.

9 BUT YOU NOTICE THE ARBITRARINESS OF THE
10 CUT-OFF POINT, THAT, "OH, NO. IT WAS DEFINITELY GOING
11 TO HAPPEN WITHIN TWO WEEKS, OR IT WASN'T GOING TO HAPPEN
12 AT ALL." WHY? WHY?

13 AND YET, IT'S NOT GOING TO HAPPEN THURSDAY
14 NIGHT. WHY NOT THURSDAY NIGHT? IT'S JUST AN ARBITRARY
15 STORY.

16 HE SAID: "THE DANGER WAS GREATEST WHEN WE
17 WERE TOGETHER."

18 AND YET, YOU WILL NOTICE THAT THEY DIDN'T

19 MAKE PLANS TO NECESSARILY BE APART AT ALL TIMES. IN
20 FACT, ON THE ACTUAL SUNDAY WHEN THE SHOOTINGS TAKE
21 PLACE, WHAT DO THEY DO? THEY GO INTO THE HOUSE
22 TOGETHER. THAT DOESN'T MAKE ANY SENSE.

23 LET'S TALK A LITTLE BIT ABOUT FRIDAY NOW.

24 ON FRIDAY HE SAID THAT -- HE CLAIMS THAT HE
25 WENT OUT AND HE WAS PLAYING TENNIS ALONE, AND WE KNOW
26 THAT IS A LIE. WE KNOW THAT IS CONTRADICTED BY MARK
27 HEFFERNAN.

28 BUT HE DOESN'T WANT TO ADMIT THAT, BECAUSE

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1 MARK HEFFERNAN SAID HE NOTICED NOTHING UNUSUAL ABOUT THE
2 DEFENDANTS, AND IF THERE WAS NOTHING UNUSUAL ABOUT THE
3 DEFENDANTS, THIS WOULD CALL INTO QUESTION THIS WHOLE
4 STORY ERIK MENENDEZ IS TELLING. SO HE HAS TO DIRECTLY
5 CONTRADICT MARK HEFFERNAN.

6 HE CLAIMS THAT HE WAS OUT THERE PRACTICING
7 TENNIS. IF HE FELT HE WAS TRULY GOING TO BE KILLED,
8 THEN HOW COULD HE BE OUT THERE PRACTICING TENNIS? IF HE
9 WAS SO CERTAIN THAT HIS PARENTS WERE GOING TO KILL HIM,
10 WHY WOULD HE BE OUT THERE PRACTICING TENNIS?

11 THIS IS WHAT PARK DIETZ EXPLAINED AS
12 SOMETHING THAT IS TOTALLY INCONSISTENT WITH THE NOTION
13 OF HYPERVIGILANCE.

14 IF YOU REALLY BELIEVE YOUR PARENTS WERE

15 GOING TO KILL YOU, YOU WOULDN'T GO OUT THERE AND JUST
16 PUT IT OUT OF YOUR MIND. THAT'S WHAT PARK DIETZ SAID.
17 THE DEFENDANT CLAIMED HE WENT OUT THERE AND
18 PUT IT OUT OF HIS MIND. HE SAID: "I JUST DECIDED I'M
19 NOT GOING TO THINK ABOUT IT. I DIDN'T RECOGNIZE THE
20 DANGERS FRIDAY MORNING, BECAUSE I JUST DIDN'T WANT TO
21 THINK ABOUT IT."

22 I SAID: "SO, ARE YOU SAYING THAT YOU FELT
23 NO DANGER FROM YOUR PARENTS AT THAT POINT IN TIME?"

24 AND HE SAID "YES," THAT HE COULD JUST PUT
25 IT OUT OF HIS MIND AND DIDN'T FEEL DANGER.

26 THAT DOESN'T MAKE ANY SENSE, LADIES AND
27 GENTLEMEN. IF YOU FEEL DANGER FROM YOUR PARENTS, YOU'RE
28 GOING TO FEEL DANGER. YOU CAN'T JUST SAY IT'S FRIDAY,

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1 AND I'M GOING TO GO OUT AND PLAY TENNIS AND NOT LET IT
2 BOTHER ME. IT JUST DOESN'T MAKE SENSE.

3 DO YOU REMEMBER THE WAY HE TRIED TO
4 CHARACTERIZE FRIDAY, ALMOST AS IF HE WERE WRITING A
5 SCREENPLAY HERE. HE SAID: "IT'S A BRAND NEW DAY. THE
6 BIRDS WERE CHIRPING AND THE SUN WAS SHINING."

7 AND YOU MUST WONDER WHEN YOU LISTEN TO
8 TESTIMONY LIKE THAT, IS HE WRITING A STORY? IS HE
9 ESTABLISHING A SCENARIO, A BACKDROP TO A STORY? THAT'S
10 MORE OF A LITERARY DEVICE THAN SOMETHING YOU WOULD

11 RECALL AS A REASON FOR NOT BEING IN FEAR. THE BIRDS
12 WERE CHIRPING AND THE SUN WAS SHINING, AND YOU'RE NOT IN
13 FEAR.

14 IT SOUNDS LIKE HE'S TELLING A STORY, LADIES
15 AND GENTLEMEN.

16 THE SANTA MONICA BIG-5 STORY IS A
17 SIGNIFICANT PART OF HIS TESTIMONY, BECAUSE HE HAS TO
18 EXPLAIN WHY IT IS HE WOULD HAVE PURCHASED SHOTGUNS
19 RATHER THAN HANDGUNS, BECAUSE HANDGUNS, OF COURSE, WOULD
20 BE THE WEAPON OF CHOICE. THEY CAN BE EASILY CONCEALED,
21 AS I MENTIONED THE OTHER DAY.

22 AND SO HE WANTS TO BE ABLE TO EXPLAIN THAT
23 HE WANTED TO PURCHASE HANDGUNS, BUT HE WAS TOLD THAT
24 THERE WAS A TWO-WEEK WAITING PERIOD, AND BECAUSE OF THAT
25 TWO-WEEK WAITING PERIOD, HE WAS UNABLE TO PURCHASE
26 HANDGUNS, AND HE HAD TO RESORT TO SHOTGUNS.

27 THE PROBLEM WITH THAT STORY, LADIES AND
28 GENTLEMEN, IS THAT BASED UPON THE WAY HE TOLD IT IN

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1 COURT, BOTH IN THE FIRST TRIAL, WHICH HE REFERRED TO IN
2 HIS TESTIMONY HERE, AND IN HIS TESTIMONY IN THIS TRIAL,
3 IS ABSOLUTELY FALSE, AND COULD NOT HAVE HAPPENED,
4 BECAUSE HE SAID --

5 MS. ABRAMSON: I AM GOING TO OBJECT, YOUR HONOR.
6 I DON'T BELIEVE THAT THE TESTIMONY FROM THE FIRST TRIAL

7 WAS PRESENTED. IT WAS JUST A GENERAL -- ONE GENERALIZED
8 QUESTION.

9 THE COURT: PERHAPS YOU CAN REPHRASE YOUR REMARKS
10 TO THE FORM OF WHAT APPEARED DURING THIS TRIAL,
11 MR. CONN.

12 MS. ABRAMSON: YES.

13 MR. CONN: YES.

14 WHAT THE DEFENDANT TESTIFIED TO, LADIES AND
15 GENTLEMEN, IS THIS:

16 THAT HE WENT INTO THE BIG-5 STORE IN SANTA
17 MONICA, AND THE MAN POINTED OUT WHICH GUNS WERE REAL AND
18 WHICH GUNS WERE NOT.

19 THAT'S VERY IMPORTANT. THE MAN IN THE
20 STORE POINTED OUT WHICH GUNS WERE REAL AND WHICH GUNS
21 WERE NOT. AND WHEN I ASKED HIM, HE SAID: "COULD WE GET
22 IT NOW?" AND HE SAID THAT THERE WAS A 15-DAY WAITING
23 PERIOD.

24 THAT COULD NEVER HAVE HAPPENED, NEVER.
25 BECAUSE YOU WILL RECALL THAT AFTER HE TESTIFIED, WE WERE
26 THEN PERMITTED TO PUT ON THE TESTIMONY OF GABE
27 FRIEDERICHSON. AFTER WE HEARD THE TESTIMONY OF ERIK
28 MENENDEZ CONCERNING THE BIG-5, WE WERE PERMITTED TO

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1 PRESENT THE TESTIMONY OF GABE FRIEDERICHSON. AND WHAT
2 DID HE TESTIFY TO?

3 HE TESTIFIED THAT HE IS THE SENIOR
4 OPERATIONS MANAGER FOR THE BIG-5 SPORTING GOODS STORES.

5 HE SAID THAT ALL BIG-5 STORES STOPPED
6 SELLING HANDGUNS PRIOR TO MARCH 1986, THREE YEARS BEFORE
7 ERIK MENENDEZ DECIDED TO KILL HIS PARENTS -- OR DECIDED
8 TO GO SHOPPING, SUPPOSEDLY, FOR GUNS.

9 HE SAID THAT THIS POLICY WOULD HAVE
10 INCLUDED THE STORE LOCATED AT 3121 WILSHIRE IN SANTA
11 MONICA, WHERE ERIK MENENDEZ CLAIMS THAT HE AND LYLE
12 MENENDEZ TRIED TO PURCHASE HANDGUNS.

13 FRIEDERICHSON SAID THAT ALTHOUGH THE STORE
14 STILL SOLD AIR GUNS -- AND YOU DO SEE PHOTOGRAPHS OF
15 THESE PISTOLS, THESE B.B. GUNS, AIR GUNS. AND ALTHOUGH
16 THEY STILL SOLD LONG GUNS, SUCH AS RIFLES, IN 1989 THEY
17 WOULD NEITHER HAVE CARRIED NOR DISPLAYED HANDGUNS IN
18 AUGUST OF 1989.

19 AND, OF COURSE, THEN THERE WOULD BE NO
20 REASON FOR A SALESPERSON TO HAVE A DISCUSSION CONCERNING
21 THE 15-DAY RULE, BECAUSE THE 15-DAY RULE DID NOT APPLY
22 TO ANYTHING THAT WAS BEING SOLD IN THE STORE, YOU SEE.

23 BUT ERIK MENENDEZ TESTIFIED TO THAT. ERIK
24 MENENDEZ CLAIMS THAT HE WENT INTO THE STORE, AND HE HAD
25 THAT CONVERSATION, AND THE MAN IN THE STORE POINTED OUT
26 WHICH ONES WERE REAL AND WHICH ONES WERE NOT.

27 IT COULDN'T HAVE HAPPENED. IT COULD NOT
28 HAVE HAPPENED.

1 HE SAID: "WHEN I ASKED HIM, COULD WE GET
2 IT NOW, HE SAID THAT THERE WAS A 15-DAY WAITING PERIOD."

3 IT COULDN'T HAVE HAPPENED. IT COULD NOT
4 HAVE HAPPENED. THIS IS AN ABSOLUTE LIE. ERIK MENENDEZ
5 WAS CAUGHT IN AN ABSOLUTE LIE, AND THERE IS NO WAY OUT
6 OF THIS.

7 ERIK MENENDEZ THEN GOES ON TO SAY: "WELL,
8 AFTER WE LEFT THAT STORE -- AFTER WE TRIED TO PURCHASE
9 THE HANDGUNS," HE SAID, "WE HAD CONCLUDED WHILE WE WERE
10 STILL IN SANTA MONICA THAT A SHOTGUN OR A RIFLE WAS TOO
11 BIG AND AWKWARD, AND IT COULD NOT BE CONCEALED. IT
12 WOULD BE IMPOSSIBLE TO DEFEND MYSELF WITH A SHOTGUN, AND
13 IT SEEMED UNBELIEVABLE THAT THIS GUN COULD HELP ME."

14 SO ERIK MENENDEZ TOTALLY DISMISSED --
15 DIDN'T CONSIDER THE NOTION OF PURCHASING A SHOTGUN WHILE
16 HE WAS HERE IN SANTA MONICA, SUPPOSEDLY, AT THIS STORE.

17 BUT THEN HE CLAIMS THAT AFTER HE JUST
18 HAPPENED TO DRIVE DOWN TO SAN DIEGO, NO REAL GOAL, NO
19 REAL PURPOSE, EVEN THOUGH HE WOKE UP THAT MORNING
20 INTENDING TO GO BUY A GUN. BUT THEY JUST HAPPENED TO
21 DRIVE DOWN TO SAN DIEGO FOR NO PURPOSE. HE SAID THAT --
22 HE CONCLUDED BY THE TIME HE GOT DOWN THERE THAT A
23 SHOTGUN WAS THE ONLY OPTION.

24 WELL, WHY? IF HE HAD REJECTED THE NOTION
25 OF PURCHASING A SHOTGUN IN LOS ANGELES AS BEING TOTALLY
26 IMPRACTICAL, TOTALLY UNFEASIBLE, TOTALLY RIDICULOUS,
27 THERE WAS NO WAY HE COULD CONSIDER IT. WHY? BY THE

28 TIME HE GOT DOWN TO SAN DIEGO HE DECIDED, "HEY, LET'S

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1 GET SHOTGUNS. THAT'S THE ONLY THING WE COULD USE TO
2 DEFEND OURSELVES."

3 LADIES AND GENTLEMEN, IF THAT WERE HIS
4 STATE OF MIND, THAT HE WAS LOOKING FOR ALTERNATIVES, HE
5 WOULD HAVE CONSIDERED THAT IN LOS ANGELES. WHY WOULD HE
6 SUDDENLY NOW, WHEN HE FINDS HIMSELF DOWN IN SAN DIEGO,
7 SEE THE UTILITY OF PURCHASING A SHOTGUN?

8 THE SIMPLE TRUTH OF THE MATTER, LADIES AND
9 GENTLEMEN, IS THAT THEY WENT OUT OF TOWN TO BUY GUNS TO
10 KILL THEIR PARENTS. THAT'S THE ONLY SIMPLE EXPLANATION.
11 THAT IS THE TRUTHFUL EXPLANATION, AND HE SIMPLY DOESN'T
12 WANT TO ADMIT THAT.

13 AND CONSIDER THE AMOUNT OF TIME IT WOULD
14 HAVE TAKEN HIM TO DRIVE DOWN THERE. HE EVEN ADMITS IT
15 WAS A ROUND TRIP, I BELIEVE, OF TWO OR THREE HOURS EACH
16 WAY ON THE SAN DIEGO FREEWAY.

17 WHY? IF HE WAS NOT TRYING TO GO OUT OF
18 TOWN TO PURCHASE A GUN, THERE WOULD BE NO REASON TO MAKE
19 THAT DRIVE.

20 THE FALSE IDENTIFICATION THAT HE USED TO
21 PURCHASE THE GUN, HE WANTS US TO BELIEVE THAT HE HAD
22 LOST HIS CALIFORNIA DRIVER'S LICENSE, AND THAT IS THE
23 REASON WHY HE HAD USED THE DONOVAN GOODREAU DRIVER'S

24 LICENSE. AND HET HE ADMITTED IN HIS EXAMINATION THAT
25 SOMETIME LATER HE OBTAINED A NEW -- OR WAS REISSUED
26 CALIFORNIA DRIVER'S LICENSE. HE SAID THAT IN HIS
27 TESTIMONY. YET THAT DRIVER'S LICENSE WAS NEVER
28 PRODUCED.

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1 MARTHA CANO, I BELIEVE, WAS CALLED TO SHOW
2 THAT HE HAD A FLORIDA DRIVER'S LICENSE. BUT THE
3 SO-CALLED REISSUED CALIFORNIA DRIVER'S LICENSE WAS NEVER
4 PRODUCED. AND YET HE ADMITTED THAT AT SOME TIME AFTER
5 THE KILLINGS, HE DID HAVE A CALIFORNIA DRIVER'S LICENSE.

6 SO YOU TRULY HAVE TO WONDER, LADIES AND
7 GENTLEMEN, IF HE TRULY HAD A CALIFORNIA DRIVER'S
8 LICENSE, WHY WASN'T IT PRODUCED HERE IN COURT?

9 MAYBE HE HAD A CALIFORNIA DRIVER'S LICENSE
10 ALL ALONG, LADIES AND GENTLEMEN, AND JUST DECIDED TO USE
11 THE DONOVAN GOODREAU DRIVER'S LICENSE BECAUSE HE JUST
12 DIDN'T WANT THE PURCHASE TO BE TRACED BACK TO HIM.

13 AND THEN HE SAID SOMETHING VERY INTERESTING
14 TO DR. WILSON CONCERNING THE PURCHASE OF THE HANDGUNS --
15 OR THE SHOTGUNS DOWN IN SAN DIEGO. HE SAID THAT HE
16 PURCHASED -- THE REASON WHY HE USED THE FALSE
17 IDENTIFICATION IN SAN DIEGO, HE SAID, IS THAT HE DIDN'T
18 WANT ANY MAIL CONCERNING THE SORT OF LIKE N.R.A.
19 MATERIAL MAILED BACK TO HIS HOME, WHERE HIS FATHER MIGHT

20 COME ACROSS THAT N.R.A. MATERIAL. HE SAID THAT IN ONE
21 OF HIS INTERVIEWS TO DR. WILSON, AND WE MARKED THOSE
22 DOCUMENTS, AND THOSE DOCUMENTS WILL BE AVAILABLE FOR YOU
23 TO SEE.

24 WELL, LADIES AND GENTLEMEN, IF THIS IS
25 TRULY HIS STORY, THAT HE PURCHASED THE SHOTGUNS WITH THE
26 DONOVAN GOODREAU IDENTIFICATION BECAUSE HE TRULY LOST
27 HIS ONLY IDENTIFICATION, WHY WOULD HE POSSIBLY TELL
28 DR. WILSON THAT HE PURCHASED THESE SHOTGUNS USING THE

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1 FALSE IDENTIFICATION BECAUSE HE DIDN'T WANT N.R.A.
2 MATERIALS TO BE SENT BACK TO HIS HOME IN BEVERLY HILLS
3 WHERE HIS FATHER COULD COME ACROSS SUCH MATERIAL? WHY
4 WOULD HE EVEN MAKE SUCH A STATEMENT TO DR. WILSON? IT
5 WOULD BE TOTALLY UNCALLED FOR.

6 NOW, IN A LATER INTERVIEW WITH WILSON, HE
7 CLEARED THIS UP. BUT IT'S IMPORTANT FOR YOU TO
8 RECOGNIZE THAT THAT OCCURRED LATER.

9 I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT
10 AFTER HE MADE THAT STATEMENT TO DR. WILSON ON THE
11 FIRST -- OR IN THAT ONE INTERVIEW, HE THEN HAD REASON TO
12 THINK ABOUT IT, AND SAID ""UH-OH, WHAT DID I DO? I JUST
13 TOLD WILSON A STORY THAT DOESN'T MAKE ANY SENSE."

14 AND IN THE LATER INTERVIEW, THE SECOND
15 INTERVIEW, HE CLEARS IT UP, AND HE GIVES A TWO-FOLD

16 REASON FOR USING THE DONOVAN GOODREAU I.D.

17 HE SAYS, NUMBER ONE, I DIDN'T WANT N.R.A.

18 MATERIAL TO BE SENT TO MY HOME. OH, BUT BY THE WAY, I

19 ALSO LOST MY DRIVER'S LICENSE.

20 BUT IF HE HAD TRULY LOST HIS DRIVER'S

21 LICENSE, LADIES AND GENTLEMEN, AND THAT WAS TRULY THE

22 REASON WHY WE DID NOT USE HIS DRIVER'S LICENSE, HE NEVER

23 WOULD HAVE TOLD DR. WILSON IN THAT FIRST INTERVIEW THAT

24 HE USED FALSE IDENTIFICATION BECAUSE HE DIDN'T WANT

25 N.R.A. MATERIAL TO BE SENT TO HIS FATHER.

26 HE CLAIMS THAT HE GOES DOWN TO SAN DIEGO

27 AND HE PURCHASES -- HE SEEKS TO PURCHASE A GUN IN SAN

28 DIEGO, AND HE FINDS OUT ABOUT THE NECESSITY THEN TO USE

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1 THE DONOVAN GOODREAU DRIVER'S LICENSE.

2 SO THEY GO TO A RESTAURANT, AND HE

3 PRACTICES THE SIGNATURE OF DONOVAN GOODREAU, AND THEN

4 THEY GO TO A SECOND GUN STORE IN SAN DIEGO, AND THAT'S

5 WHEN THEY PURCHASE THE SHOTGUN.

6 WHY WOULD IT BE NECESSARY TO EVEN SEEK OUT

7 A SECOND STORE IN SAN DIEGO TO MAKE THE PURCHASE? THEY

8 COULD JUST AS EASILY GO BACK TO LOS ANGELES, TO THE GUN

9 STORE IN LOS ANGELES AND MAKE THE PURCHASE.

10 NEVERTHELESS, THEY DECIDED TO DO IT THIS WAY.

11 HE CLAIMS THAT THE PURCHASE OF THE

12 AMMUNITION IN THIS GUN STORE WAS A SEPARATE SALE FROM
13 THE PURCHASE OF THE GUNS IN THIS STORE, AND THAT --
14 ASSUMING THAT THAT IS THE CASE, ASSUMING THAT BOTH THE
15 BIRD SHOT AND THE SHOTGUNS WERE PURCHASED AT THE SAME
16 TIME ON FRIDAY, HE NOW TRIES TO EXPLAIN THAT ON THE
17 SECOND DAY THEY FELT THAT THIS AMMUNITION WAS
18 INADEQUATE, AND THEY HAD TO GO OUT AND PURCHASE SOME
19 BUCKSHOT THE SECOND DAY, ON SATURDAY.

20 WELL, LADIES AND GENTLEMEN, DON'T YOU THINK
21 THAT IF YOU FELT YOUR LIFE WERE TRULY AT STAKE HERE,
22 THAT YOU TRULY NEEDED A WEAPON TO DEFEND YOURSELF, SO
23 MUCH SO THAT DRIVING BACK TO YOUR HOME IN BEVERLY HILLS
24 YOU TOOK THE TROUBLE TO LOAD THE GUN UP WITH BIRD SHOT.

25 DON'T YOU THINK THAT YOU WOULD HAVE TAKEN
26 THE TIME AND TROUBLE TO ENSURE THAT YOU HAVE THE RIGHT
27 AMMUNITION TO BEGIN WITH?

28 AND YET, FOR SOME REASON, HE WANTS US TO

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1 BELIEVE THAT HE JUST REALLY DIDN'T THINK ABOUT IT AND
2 REALLY DIDN'T DISCUSS IT, DIDN'T HAVE ANY CONVERSATIONS
3 WITH THE SALESPERSON. SOMEONE JUST PICKED UP SOME BIRD
4 SHOT AND PURCHASED IT.

5 WAS THIS TRULY A LIFE OR DEATH MATTER? IF
6 IT WERE, DON'T YOU THINK THERE WOULD HAVE BEEN SOME
7 DISCUSSION ABOUT THAT?

8 AND THEN WASN'T THERE ANY CONCERN ABOUT
9 CARRYING THIS SHOTGUN AROUND THE HOUSE IN THIS -- INSIDE
10 THE TENNIS BAGS?
11 WHAT WAS THIS WHOLE BUSINESS ABOUT
12 SUPERNATURAL POWERS OF THE MOTHER ALL ABOUT? THIS IS
13 THE WACKIEST PART OF THE STORY, LADIES AND GENTLEMEN.
14 IT'S SO WACKY THAT EVEN ERIK MENENDEZ, IT APPEARS, WANTS
15 TO KIND OF PUSH THIS PART OF THE STORY BEHIND HIM, AND
16 CLEARLY WANTED TO AVOID ANY QUESTIONS CONCERNING THIS
17 CLAIM BECAUSE IT'S SO WACKY, AND WAS ACCUSING ME, AS I
18 WAS ASKING HIM THESE QUESTIONS, OF BLOWING THINGS OUT OF
19 PROPORTION.

20 LADIES AND GENTLEMEN, THIS IS HIS STORY,
21 NOT MINE. I DIDN'T INVENT THE STORY. THIS IS HIS
22 STORY.

23 AND YET, WHEN I ASKED HIM QUESTIONS ABOUT
24 THE SUPERNATURAL POWERS, HE DIDN'T WANT TO TALK VERY
25 MUCH ABOUT THE SUPERNATURAL POWERS. ON THE ONE HAND, HE
26 SAID: "I DIDN'T BELIEVE THAT SHE HAD SUPERNATURAL
27 POWERS. I DON'T REMEMBER IF I RESPONDED TO MY ATTORNEY
28 THAT MY MOTHER HAD SPECIAL POWERS AND ABILITIES. YES, I

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1 BELIEVE THAT SHE HAD MAGICAL POWERS."

2 SO HERE WE HAVE A CONTRADICTION. HE WAS
3 CONTRADICTING HIMSELF ON THE WITNESS STAND. ON THE ONE

4 HAND, SAYING HE DIDN'T BELIEVE THAT SHE HAD SUPERNATURAL
5 POWERS; ON THE OTHER HAND, ADMITTING THAT SHE HAD SUCH
6 POWERS.

7 "NEITHER MY BROTHER NOR I EVER REFERRED TO
8 HER AS A WITCH. I BELIEVED THIS WHEN I WAS 17 OR 18
9 YEARS OLD."

10 SO AT THE AGE OF 18 HE STILL BELIEVED THAT
11 HIS MOTHER HAD SUPERNATURAL POWERS. "I TRULY BELIEVED
12 THAT MY MOTHER HAD SUPERNATURAL POWERS," HE SAID. "I
13 BELIEVED THAT MY MOTHER HAD POWERS AND ABILITIES BEYOND
14 THE NORMAL HUMAN BEING. I DON'T HAVE THE LEVEL OF
15 COMMUNICATION WITH HER THAT I COULD TALK TO HER ABOUT
16 THIS, NOR DID I DISCUSS IT WITH MY FATHER OR OTHERS."

17 WELL, THIS IS ABSOLUTELY NONSENSE. THIS IS
18 TOTALLY NONSENSE; THAT ERIK MENENDEZ, AT THE AGE OF 18,
19 BELIEVED HIS MOTHER HAD SUPERNATURAL POWERS.

20 LADIES AND GENTLEMEN, SOMETIMES WHEN YOU
21 GET CAUGHT UP IN AN OUTLANDISH STORY YOU DON'T KNOW
22 EXACTLY WHERE TO DRAW THE LINE, AND I SUBMIT TO YOU THAT
23 THAT'S WHAT HAPPENED HERE.

24 IN HIS ZEAL TO PORTRAY HIS MOTHER AS A VERY
25 POWERFUL PERSON WHO WAS A THREAT TO HIS SAFETY, HE
26 REALLY DIDN'T KNOW EXACTLY WHERE TO DRAW THE LINE, AND
27 GOT A LITTLE CARRIED AWAY.

28 AND NOW YOU CAN TELL FROM THE WAY HE WAS

1 ANSWERING THESE QUESTIONS, HE KIND OF WISHES HE COULD
2 TAKE BACK THAT PART OF HIS STORY. IT'S A LITTLE BIT TOO
3 LATE FOR THAT.

4 WELL, IF SHE HAD SUPERNATURAL POWERS, WHY
5 WASN'T HE CONCERNED ABOUT CARRYING THIS TENNIS BAG IN
6 AND OUT OF THE HOUSE? COULDN'T SHE FIGURE OUT WHAT WAS
7 INSIDE THE TENNIS BAG?

8 WE GET INTO ALL KINDS OF SILLY QUESTIONS
9 WHEN WE BEGIN TO GO DOWN THAT ROAD WITH ERIK MENENDEZ,
10 AND IT IS ALL SILLINESS. IT'S SILLYNESS THAT COMES FROM
11 THE MOUTH OF ERIK MENENDEZ.

12 AND THEN ONE OF THE AREAS THAT I EXPLORED
13 WITH HIM IN MY CROSS-EXAMINATION OF HIM WAS: "DIDN'T
14 YOU BEGIN TO RECONSIDER, SINCE YOUR FATHER DID NOT KILL
15 YOU ON THURSDAY NIGHT, AND DID NOT KILL YOU ON FRIDAY
16 NIGHT, DIDN'T YOU BEGIN TO CONSIDER BY SATURDAY THAT
17 PERHAPS YOUR FATHER WASN'T GOING TO BE KILLING YOU AT
18 ALL?"

19 BUT, OF COURSE, HE DENIES THAT HE EVER HAD
20 SUCH THOUGHTS.

21 AND WOULDN'T HE HAVE SUCH THOUGHTS?
22 SHOULDN'T HE HAVE THOUGHT SUCH THOUGHTS IN LIGHT OF THIS
23 STORY THAT HE TOLD US? WOULDN'T SUCH THOUGHTS BE
24 CONSISTENT WITH, AND INEVITABLE, BASED UPON THE STORY
25 THAT HE TOLD US?

26 BUT NO, BECAUSE THE SCRIPT DOESN'T CALL FOR
27 IT.

28 TARGET PRACTICING. WHAT A COLD-BLOODED

1 THOUGHT. CAN YOU IMAGINE GOING OUT AND TARGET
2 PRACTICING WITH A SHOTGUN IN CASE YOU DO HAVE TO SHOOT
3 YOUR OWN PARENTS TO DEATH?

4 THIS IS SOMETHING THAT HE WANTS TO ADMIT,
5 ON THE ONE HAND, HE THOUGHT ABOUT DOING. HE WENT OUT
6 AND HE LOOKED FOR A RANGE.

7 BUT ON THE OTHER HAND, HE WANTS TO PLAY
8 DOWN THE SIGNIFICANCE OF THIS, BECAUSE, OF COURSE, HE
9 REALIZES HOW COLD-BLOODED, HOW CALLOUS THIS APPEARS TO
10 BE, THE NOTION OF PRACTICING, SHOOTING THE WEAPON.

11 I MEAN, ON THE ONE HAND YOU DON'T STOP TO
12 CONTEMPLATE THE CIRCUMSTANCES IN WHICH YOU MIGHT HAVE TO
13 USE YOUR WEAPON. AND THEN YOU HAVE THE WHEREWITHAL TO
14 CONSIDER THE EFFECT OF EFFECTIVE USE OF THIS WEAPON, AND
15 WHETHER YOU'RE GOING TO BE ABLE TO ADEQUATELY USE IT
16 UNDER THE RIGHT CIRCUMSTANCES.

17 ERIK MENENDEZ APPEARS TO BE UNWILLING TO
18 ADMIT THAT HE HAD A GOAL TO SHOOT HIS PARENTS QUICKLY
19 AND ACCURATELY. HE CLAIMS THAT HE WAS JUST CONCERNED
20 ABOUT WHETHER THE GUN WOULD GO OFF.

21 WELL, OBVIOUSLY, HE MUST HAVE REALIZED THAT
22 THE GUN WAS CAPABLE OF GOING OFF. AFTER ALL, HE WAS
23 SATISFIED WITH THE GUN WHEN HE LEFT THE STORE WHERE HE
24 PURCHASED IT, AND WHEN HE LOADED IT ON THE WAY HOME, AND
25 HE KEPT IT IN HIS ROOM ON FRIDAY NIGHT. HE MUST HAVE

26 BEEN SATISFIED THAT THE GUN WAS OPERABLE.

27 AND YET HE CLAIMS: "I REALLY WASN'T

28 THINKING ABOUT WHETHER THE GUN WAS OPERABLE ON FRIDAY."

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1 HE REALLY WASN'T THINKING ABOUT IT? AGAIN,

2 IF THIS STORY IS SUPPOSED TO BE TRUE, WOULDN'T YOU

3 THINK ABOUT WHETHER THE GUN IS OPERABLE? HE ADMITS HE

4 ASSUMED IT WAS OPERABLE COMING BACK FROM SAN DIEGO.

5 WELL, IF THAT IS THE CASE, WHY WOULDN'T HE

6 HAVE THE SAME ASSUMPTION ON SATURDAY? WHY WOULD HE

7 SUDDENLY BEGIN TO QUESTION SATURDAY MORNING WHETHER THE

8 GUN IS OPERABLE OR NOT? THAT MAKES NO SENSE. JUST MORE

9 INCONSISTENCIES IN HIS STORY.

10 AND I SAID TO HIM -- AGAIN, THINK ABOUT

11 THE LANGUAGE THAT WAS USED DURING THE COURSE OF THIS

12 TRIAL.

13 "ISN'T IT TRUE THAT YOU WERE CONTEMPLATING

14 THAT YOU MIGHT NOT BE ABLE TO SHOOT QUICKLY AND

15 ACCURATELY YOUR PARENTS?"

16 AND ERIK MENENDEZ DOESN'T WANT TO ADMIT TO

17 ANY THOUGHT PROCESS THAT SOUNDS REMOTELY LIKE

18 PREMEDITATION AND DELIBERATION. SO WHENEVER I USE WORDS

19 LIKE THAT, HE QUICKLY TRIED TO STEER ME AWAY FROM WORDS

20 LIKE THAT.

21 AND HE SAID: "WELL, I DON'T KNOW THAT

22 CONTEMPLATING IS THE RIGHT WORD. IT WAS JUST A
23 THOUGHT." AND THAT'S HOW HE TRIES TO MINIMIZE THAT.
24 AND YET LATER, WHEN I SAID: "SO YOU HAD
25 THOUGHTS ABOUT THAT?"
26 AND HE SAID: "I DON'T KNOW IF I COULD CALL
27 THEM THOUGHTS. IT WAS JUST A CONCERN."
28 YOU SEE HOW HE'S VERY COGNIZANT OF THE

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1 ISSUES OF PREMEDITATION AND DELIBERATION, AND HE
2 CONSTANTLY STAYS CLEAR OF WORDS THAT INDICATE OR SUGGEST
3 THINKING ABOUT SOMETHING, OR HAVING REFLECTIVE THOUGHTS.
4 AND I CAN GO THROUGH A NUMBER OF HIS RESPONSES TO SHOW
5 YOU HOW THAT HOLDS UP.
6 AND HE GOES SO FAR IN THIS -- IN THIS
7 DESIRE TO AVOID ADMITTING THAT HE THOUGHT ABOUT SHOOTING
8 HIS PARENTS ACCURATELY AND QUICKLY, THAT HE SAID HE
9 DOESN'T KNOW WHY HE TOOK HIS GUN WITH HIM ON SATURDAY.
10 NOW, DOES THAT MAKE ANY SENSE? HE DOESN'T
11 KNOW WHY HE TOOK HIS GUN WITH HIM ON SATURDAY. HE JUST
12 ENDS UP IN A RIFLE RANGE FOR THE PURPOSE OF TARGET
13 PRACTICING, AND YET HE DOESN'T KNOW WHY HE TOOK THE GUN
14 WITH HIM ON SATURDAY.
15 INCONSISTENT WITH HIS CLAIM, LADIES AND
16 GENTLEMEN.
17 AND THEN ON SATURDAY, THEY HAVE DOUBTS

18 ABOUT THE AMMUNITION. ON SATURDAY, FOR SOME REASON,
19 THEY THINK: "WELL, BIRD SHOT IS NO GOOD. LET'S GO OUT
20 AND FIND OUT IF THIS IS THE RIGHT AMMUNITION."
21 WELL, THAT WAS NEVER REALLY EXPLAINED. WHY
22 WOULD THEY NOW HAVE A DOUBT ABOUT THE AMMUNITION? IF
23 THEY WERE HAPPY ABOUT THIS AMMUNITION ON FRIDAY WITHOUT
24 ASKING QUESTIONS ABOUT IT, WHY WOULD THEY HAVE DOUBTS
25 ABOUT IT ON SATURDAY?
26 HE WANTS YOU TO BELIEVE THAT THE MAN IN THE
27 STORE SAID THAT BIRD SHOT WOULD NOT STOP A PERSON, AND
28 THAT IS THE ONLY REASON WHY THEY PURCHASED THE BIRD

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1 SHOT.
2 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU
3 THAT THE MAN IN THE STORE WOULD NOT SUGGEST THAT BIRD
4 SHOT WOULD NOT STOP A PERSON, BECAUSE, AS WE ALL KNOW,
5 YOU SAW THE DAMAGE THAT BIRD SHOT CAN DO. THE BIRD SHOT
6 CAN CERTAINLY STOP A PERSON.
7 ERIK MENENDEZ SIMPLY WANTED TO PURCHASE
8 MORE LETHAL AMMUNITION, MORE POWERFUL AMMUNITION. IT
9 WOULDN'T BE BECAUSE OF ANYTHING THE MAN IN THE STORE
10 SAID. IT'S JUST ANOTHER MEANS OF AVOIDING
11 RESPONSIBILITY, A MEANS OF TRYING TO SHIFT THE
12 RESPONSIBILITY TO SOMEONE ELSE FOR THESE ACTIONS. HE
13 DOESN'T WANT TO ADMIT THAT HE MADE THE DECISION TO GET

14 MORE LETHAL AMMUNITION.

15 THERE ARE MANY WAYS IN WHICH THE DEFENDANT
16 TRIES TO AVOID RESPONSIBILITY IN THIS CASE, AND THAT IS
17 ONE OF THE MANY WAYS IN WHICH HE TRIES TO DO IT.

18 BUT, NEVERTHELESS, HE CLAIMS THAT HE WAS
19 LEFT WITH THE IMPRESSION -- AND THIS IS CRITICAL -- THAT
20 THE AMMUNITION THAT WAS PRESENTLY IN THE GUN, THE BIRD
21 SHOT, WAS ESSENTIALLY USELESS.

22 WELL, THAT'S A VERY DAMAGING CONCESSION ON
23 HIS PART, BECAUSE IF THE AMMUNITION IN THE GUN IS
24 PRESENTLY USELESS, AND YOU ARE TRULY IN THAT SITUATION
25 WHERE YOU BELIEVED THAT YOUR LIFE WAS IN DANGER, THEN
26 THE FIRST THING THAT YOU WOULD WANT TO DO IS TO CHANGE
27 THE AMMUNITION. THE FIRST THING THAT YOU WOULD WANT TO
28 DO IS TO RELOAD THAT GUN AT THE FIRST OPPORTUNITY THAT

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1 YOU POSSIBLY COULD.

2 BUT DID THE DEFENDANT DO THAT? DID HE LOAD
3 THE GUN AT THE FIRST OPPORTUNITY HE COULD? AGAIN, THIS
4 IS ONE OF THE MANY REASONS WHY HIS STORY DOESN'T MAKE
5 SENSE.

6 IF YOU WERE IN THAT SITUATION, IF YOU
7 BELIEVED YOUR LIFE WAS IN DANGER, WHAT WOULD YOU DO?

8 YOU LEAVE THAT GUN STORE -- BEAR IN MIND,
9 HIS GUN IS NOW IN THE CAR, IN THE HATCHBACK, IN THE BAG.

10 IT'S RIGHT BEHIND HIM. HE HAS THE AMMUNITION THERE IN
11 THE CAR WITH HIM. IF YOUR LIFE WAS TRULY IN DANGER, YOU
12 THOUGHT THAT YOUR PARENTS MIGHT KILL YOU, WOULDN'T YOU,
13 RIGHT THERE AND THEN, AFTER YOU LEFT THE GUN STORE,
14 RELOAD THE GUN BEFORE YOU EVEN GO BACK HOME FOR THE
15 FISHING TRIP THAT DAY? OF COURSE YOU WOULD. WHY WOULD
16 YOU NOT LOAD UP YOUR GUN? IT MAKES NO SENSE.

17 IT MAKES NO SENSE THAT THEY DON'T LOAD IT
18 UP THEN. THEY DON'T LOAD IT UP ANY TIME UNTIL THE TIME
19 OF THE SHOOTING. TOTALLY INCONSISTENT WITH HIS CLAIM
20 THAT HE TRULY BELIEVED THAT HE WAS IN IMMINENT DANGER.

21 AND THEN CONCERNING THE FISHING TRIP. WHAT
22 DID HE SAY CONCERNING THE FISHING TRIP? HE TRULY
23 BELIEVED THAT HIS PARENTS WERE GOING TO KILL HIM ON THIS
24 FISHING TRIP. ISN'T THAT WHAT HE SAID? IF HE THOUGHT
25 THAT HIS PARENTS WERE GOING TO KILL HIM, DON'T YOU THINK
26 THAT HE WOULD HAVE HAD A CONVERSATION WITH HIS BROTHER
27 ABOUT WHAT THEY ARE GOING TO DO ON THIS FISHING TRIP?
28 IS THERE AN ALTERNATIVE TO GOING ON THE FISHING TRIP?

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1 ARE THEY GOING TO BRING WEAPONS WITH THEM ON THE FISHING
2 TRIP? HE CLAIMS HE HAD NO SUCH CONVERSATION.

3 WHEN I ASKED HIM WHY DID HE NOT RELOAD HIS
4 GUN COMING HOME, AFTER PURCHASING THE BUCKSHOT, HE SAYS:
5 "I DON'T KNOW WHY. I JUST DIDN'T THINK OF IT."

6 AND THEN ON SATURDAY NIGHT, WHILE HIS
7 FATHER WAS BANGING ON HIS DOOR, HE SAID: "I THOUGHT AT
8 THAT TIME, JESUS, I DIDN'T LOAD THE GUN."
9 BUT DID IT OCCUR TO HIM THEN SUNDAY MORNING
10 WHEN HE WOKE UP TO LOAD THE GUN? AND HE SAID "NO."
11 AND I ASKED HIM: "WHY NOT?"
12 HE SAID: "I CAN'T TELL YOU WHY THE THOUGHT
13 DIDN'T OCCUR TO ME. IT JUST DIDN'T."
14 LADIES AND GENTLEMEN, THAT IS IMPOSSIBLE.
15 IMPOSSIBLE.
16 IF YOU WERE IN THAT SITUATION, IF THIS
17 HAPPENED TO YOU, YOU WOULD WAKE UP SUNDAY MORNING.
18 THERE WOULD BE NO MORE IMPORTANT THING ON YOUR AGENDA
19 THAT DAY.
20 WHAT DID HE HAVE TO DO SUNDAY? WHAT ELSE
21 DID HE HAVE TO DO? NOT ONE THING ON THE AGENDA EXCEPT
22 LOAD UP THE GUN. "MY PARENTS MIGHT KILL ME TODAY." AND
23 THAT ONE THING ON THE AGENDA, HE FORGETS TO DO? IT'S
24 INCONCEIVABLE. THE STORY DOESN'T MAKE ANY SENSE.
25 HE TRIPS UP IN ANOTHER AREA WHEN HE TALKS
26 ABOUT WHEN HE GOES BACK TO HIS HOUSE TO GO ON THE
27 FISHING TRIP AFTER PURCHASING THE AMMUNITION. THE GUN
28 OBVIOUSLY WAS STILL IN THAT TENNIS BAG IN HIS CAR.

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1 AND YET HE PREVIOUSLY TESTIFIED AND I

2 BROUGHT OUT HIS PRIOR TESTIMONY IN THIS TRIAL, THAT HE
3 WANTED -- HE SAID AFTER HE ARRIVED HOME AND HE PULLED
4 INTO THE DRIVEWAY AND HE WAS GOING TO HAVE TO LEAVE WITH
5 HIS PARENTS TO GO ON THE FISHING TRIP, HE SAID THE
6 FOLLOWING:

7 "I WANTED TO COVER THE GUN UP REAL
8 QUICKLY, SO I WENT BACK TO THE HATCHBACK,
9 BECAUSE, CLEARLY, I DIDN'T WANT THEM TO
10 SEE IT."

11 WELL, YOU SEE THAT WAS AN ERROR IN THE
12 FIRST TRIAL. THAT MAKES NO SENSE. HE WOULDN'T HAVE TO
13 COVER UP THE GUN, BECAUSE THE GUN WAS IN THE BAG. SO HE
14 SLIPS. HE MADE AN ERROR IN THE FIRST TRIAL.

15 AND NOW HE TRIES TO CLAIM -- HE TRIES TO
16 CLAIM THAT THE NEXT QUESTION THAT WAS ASKED OF HIM IN
17 THE FIRST TRIAL: "WAS THE BOX STILL IN THE CAR?"

18 AND HE SAID "YES."

19 AND THE DEFENDANT NOW SEEKS TO CLAIM THAT
20 WHAT HE WAS REFERRING TO IN HIS PREVIOUS TESTIMONY WAS
21 THE GUN AND THE BOX. HE IS TRYING TO CLAIM THAT HE IS
22 COVERING UP THE GUN AND THE BOX.

23 BUT HIS PRIOR TESTIMONY WAS NOT THAT. HIS
24 PRIOR TESTIMONY WAS VERY CLEAR IN THIS REGARD. HE DID
25 NOT TESTIFY THAT HE WAS TRYING TO COVER UP THE GUN AND
26 THE BOX, ONLY THAT HE WAS TRYING TO COVER UP THE GUN.

27 SO MR. MENENDEZ SLIPPED IN THE FIRST TRIAL
28 AND MADE A BIG MISTAKE IN HIS STORY, AND CAN'T COVER IT

1 UP.

2 I ASKED HIM WHETHER HE TRULY BELIEVED THAT
3 HE THOUGHT HE MIGHT BE KILLED ON THE FISHING TRIP, AND
4 HE SAID "YES," HE TRULY BELIEVED THAT HE MIGHT BE KILLED
5 ON THE FISHING TRIP.

6 I ASKED HIM WHETHER HE WAS PLANNING ON
7 TAKING HIS SHOTGUN ALONG ON THE FISHING TRIP, AND HE
8 SAID IT DEPENDED ON WHAT HAPPENED.

9 HOW COULD HE GIVE AN ANSWER LIKE THAT? HOW
10 COULD HE POSSIBLY TAKE SHOTGUNS ALONG ON THE FISHING
11 TRIP?

12 BUT HE CLAIMS THERE WAS NO DISCUSSION WITH
13 LYLE MENENDEZ ABOUT WHETHER THEY WOULD HAVE WEAPONS ON
14 THE BOAT.

15 DON'T YOU THINK IF YOU WERE IN THAT
16 SITUATION, LADIES AND GENTLEMEN, AND YOU TRULY BELIEVED
17 THAT YOUR PARENTS WERE GOING TO KILL YOU -- ONCE AGAIN,
18 FOLLOW ALONG WITH THE LOGIC OF THE STORY.

19 IF HE TRULY BELIEVED HIS PARENTS WERE GOING
20 TO KILL HIM, SO MUCH SO THAT HE PURCHASED SHOTGUNS ON
21 FRIDAY, HE PURCHASED AMMUNITION ON FRIDAY, HE PURCHASED
22 MORE AMMUNITION ON SATURDAY. HE WENT TO THE RIFLE RANGE
23 ON SATURDAY TO PRACTICE TARGET SHOOTING.

24 NOW HE'S GOING TO GO ON THE BOAT AND NOT
25 EVEN DISCUSS WITH HIS BROTHER, LYLE MENENDEZ:

26 "HEY, WHY DON'T WE TAKE SOMETHING

27 ELSE? WHY DON'T WE TAKE A KNIFE? WHY
28 DON'T WE TAKE A CLUB? WHY DON'T WE TAKE

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1 SOMETHING WE CAN CONCEAL? WE HAVE TO
2 DEFEND OURSELVES IN SOME WAY. WE MAY BE
3 KILLED ON THIS BOAT. LET'S TALK ABOUT
4 THIS, LYLE. THIS IS HAPPENING. THIS IS
5 HAPPENING NOW. WE'RE GOING ON THE BOAT IN
6 A LITTLE WHILE."

7 DID HE EVER HAVE SUCH A DISCUSSION? NO, HE
8 NEVER HAD ANY SUCH DISCUSSION.

9 ANOTHER REASON TO REJECT HIS STORY, LADIES
10 AND GENTLEMEN. IF YOU WERE IN THAT SITUATION, IF ANYONE
11 WAS IN THAT SITUATION, SURELY, YOU WOULD HAVE HAD SUCH
12 DISCUSSIONS. IT MAKES NO SENSE THAT THOSE DISCUSSIONS
13 WOULD NEVER HAVE TAKEN PLACE.

14 HIS STORY ABOUT ARRIVING LATE, BUT NOT TOO
15 LATE, MAKES NO SENSE.

16 HE WANTS YOU TO BELIEVE THAT, WELL, HE FELT
17 IT WAS OKAY TO BE A LITTLE BIT LATE, BUT IF HE WAS TOO
18 LATE, THEN HIS PARENTS WOULD KNOW FOR SURE THAT
19 SOMETHING WAS UP. THIS IS A STORY WHICH IS TOTALLY
20 CONTRADICTORY AND MAKES NO SENSE.

21 HE CLAIMS THAT WHEN HE WENT ON THAT BOAT,
22 HE WAS TRULY IN FEAR FOR HIS LIFE.

23 LADIES AND GENTLEMEN, HOW COULD HE POSSIBLY
24 BE IN FEAR FOR HIS LIFE WHEN HE HAS THREE STRANGERS ON
25 BOARD? I MEAN, DON'T FORGET WHO WAS ON BOARD ON THIS
26 BOAT.

27 YOU HAVE LESLIE GASKILL ON BOARD. ROBERT
28 ANDERSON ON BOARD, AND THERE IS ALSO A DECKHAND ON

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1 BOARD, TOO, AND LYLE MENENDEZ.

2 ERIK MENENDEZ WANTS YOU TO BELIEVE THAT HE
3 AND HIS BROTHER WERE TRULY AFRAID FOR THEIR LIFE WHILE
4 THEY WERE ON THAT BOAT. THAT MAKES NO SENSE WHATSOEVER.

5 THE REASON WHY THEY STAYED IN THE FRONT OF
6 THE BOAT, LADIES AND GENTLEMEN, WAS TO TALK BUSINESS,
7 NOT BECAUSE THEY WERE AFRAID.

8 HE WANTED -- I BELIEVE HE SAID TO AVOID A
9 SITUATION WHERE HIS FATHER WOULD KILL HIM. HE SAID THAT
10 THEY WANTED THEIR FATHER TO FEEL COMFORTABLE THAT THEY
11 WERE NOT GOING TO GO TO THE POLICE.

12 IF THAT WERE TRUE, LADIES AND GENTLEMEN, IF
13 THEY REALLY WANTED TO REASSURE THEIR FATHER THAT THEY
14 WERE NOT GOING TO GO TO THE POLICE, DON'T YOU THINK THEY
15 WOULD HAVE DONE SOMETHING TO FACILITATE THAT GOAL?
16 DON'T YOU THINK THAT AT SOME POINT THEY WOULD HAVE TOLD
17 THEIR FATHER: "HEY, WE'RE NOT GOING TO GO TO THE
18 POLICE"?

19 YET, NOT ONLY DO THEY NOT EVER HAVE THAT
20 CONVERSATION WITH THEIR FATHER, BUT THEY SPEND ALL DAY
21 AWAY FROM THEIR FATHER ON FRIDAY. AND WHEN THEY SEE HIM
22 ON SATURDAY, THEY DRIVE IN SILENCE TO THE MARINA.

23 AND WHY WOULD YOU DRIVE IN SILENCE? DON'T
24 YOU WANT TO BREAK THE ICE A LITTLE BIT; SAY, "HEY, DAD,
25 WE'RE NOT GOING TO THE POLICE."

26 HE DOESN'T DO THAT. HE SAYS: "I AM JUST
27 NOT THAT KIND OF A PERSON TO START A CONVERSATION."

28 WELL, SOMETIMES WHEN THERE'S REASON TO

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1 START A CONVERSATION, YOU MIGHT WANT TO START A
2 CONVERSATION.

3 DOES HE TRY TO REASSURE HIS FATHER ON THE
4 BOAT? NO. HE AVOIDS HIS FATHER LIKE THE PLAGUE. HE
5 STAYS IN THE FRONT OF THE BOAT. IF YOU WANTED TO
6 DIFFUSE THE SITUATION, IF YOU WANTED TO CONVINCE YOUR
7 FATHER THAT YOU'RE NOT GOING TO GO TO THE POLICE, DON'T
8 YOU THINK, ONCE AGAIN, YOU MIGHT SPEND A FEW MINUTES
9 BACK THERE FISHING WITH HIM, EVEN WHEN HE DOESN'T CALL
10 YOU, AND SAY, "WE'RE NOT GOING TO GO TO THE POLICE."

11 COMING BACK IN THE CAR, DOES HE TRY TO
12 REASSURE HIS FATHER HE'S NOT GOING TO GO TO THE POLICE?
13 NO. WHEN THEY ARRIVE BACK ON SATURDAY, WHAT DO THEY DO?
14 THE FIRST THING THEY DO IS LEAVE THE HOUSE AND GO TO

15 U.C.L.A. TO BE ALONE, TALKING AT U.C.L.A.
16 WELL, IF YOU WANT YOUR FATHER TO THINK
17 SOMETHING IS UP, THAT'S PROBABLY THE BEST WAY TO DO IT,
18 TO SPEND ALL OF YOUR TIME AWAY FROM YOUR FATHER,
19 SEEMINGLY CONSPIRING WITH YOUR BROTHER THE WHOLE TIME.
20 ONCE AGAIN, LADIES AND GENTLEMEN, I SUBMIT,
21 HIS STORY OF WANTING TO REASSURE HIS FATHER MAKES NO
22 SENSE. HE WAS CONSPIRING WITH HIS BROTHER. HE WAS
23 CONSPIRING WITH HIS BROTHER TO KILL HIS PARENTS.
24 AND THEN YOU HAVE TO BELIEVE THAT WHEN THEY
25 CAME BACK FROM, U.C.L.A. SATURDAY NIGHT, HE DIDN'T HAVE
26 A KEY, AND HE DECIDED THAT HE WAS GOING TO WAKE UP HIS
27 PARENTS TO LET HIM IN.
28 WHY WOULD HE DO SOMETHING LIKE THAT? WHY

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1 WOULD HE WAKE UP HIS PARENTS TO LET HIM IN? THESE TWO
2 PEOPLE ARE SUPPOSEDLY GOING TO KILL THEM, AND HE THINKS
3 HE'S GOING TO BE KILLED, AND THE LAST THING HE WANTS TO
4 DO IS UPSET THEM, DON'T YOU THINK?
5 ERIK MENENDEZ COULD HAVE STAYED AT THE
6 GUESTHOUSE WITH LYLE MENENDEZ THAT NIGHT. BUT NO.
7 RATHER THAN STAY AT THE GUESTHOUSE WITH LYLE MENENDEZ
8 THAT NIGHT, THEY DECIDE THAT THEY'RE GOING TO RING THE
9 DOORBELL AND WAKE THE PARENTS UP.
10 I MEAN, HOW DOES THAT HE WORK OUT? "OUR

11 PARENTS ARE ON THE VERGE OF KILLING US, SO I HAVE AN
12 IDEA. LET'S DO SOMETHING TO REALLY PISS THEM OFF." YOU
13 KNOW. "LET'S WAKE THEM UP IN THE MIDDLE OF THE NIGHT."
14 IS THAT CONSISTENT WITH SOMEONE WHO IS
15 TRULY IN FEAR OF THEIR PARENTS? I WOULD SUBMIT THAT
16 THAT IS TOTALLY INCONSISTENT. FLIES IN THE FACE OF THE
17 STORY THAT IS NOW CLAIMED BY ERIK MENENDEZ, YET ANOTHER
18 REASON FOR REJECTING HIS STORY.

19 AND SATURDAY NIGHT HE SAID THAT AFTER THE
20 EXCHANGE WITH HIS MOTHER AT THE DOOR, WHERE AGAIN, SHE
21 SAYS SOMETHING OMINOUS TO HIM, HE BELIEVES -- HE WAS
22 SURE THAT HE WAS GOING TO BE KILLED. BUT HE WAS NOT
23 CERTAIN. AND I PUT THAT QUESTION TO HIM ALMOST
24 TOYFULLY, AND HE BOUGHT RIGHT INTO IT. "YES, THAT'S
25 CORRECT, MR. CONN. I WAS SURE, BUT I WAS NOT CERTAIN."

26 WELL, MAYBE YOU CAN EXPLAIN THAT ANSWER TO
27 ME, BECAUSE IT MAKES ABSOLUTELY NO SENSE.

28 HE SAYS IT DID NOT OCCUR TO HIM ANY TIME ON

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1 THE BOAT TO CHANGE THE AMMUNITION WHEN HE GOT HOME.

2 SO THIS IS NOT SOMETHING THAT HE THOUGHT

3 ABOUT, AND HE'S JUST PUTTING IT OFF. IT DIDN'T EVEN

4 OCCUR TO HIM TO CHANGE THE AMMUNITION DURING THE ENTIRE

5 TIME HE WAS ON THE BOAT.

6 "DID YOU THINK ABOUT IT WHILE YOU WERE ON

7 THE TRACK FIELD?"

8 "NO." DIDN'T THINK ABOUT IT WHILE HE WAS

9 AT THE U.C.L.A. TRACK FIELD.

10 "DID YOU THINK ABOUT BRINGING THE

11 AMMUNITION UP WITH YOU, UP THE STAIRS WHEN YOU BROUGHT

12 HOME THE GUN SATURDAY NIGHT, AFTER COMING BACK FROM THE

13 TRACK FIELD?"

14 "NO. I DIDN'T THINK ABOUT BRINGING THE

15 AMMUNITION UP THE STAIRS.

16 WELL, WASN'T IT FRIDAY NIGHT THAT HE WAS

17 SUPPOSEDLY IN HIS ROOM, CONCERNED ABOUT THE OPERATION OF

18 THE WEAPON? WOULDN'T THAT BE THE DAY TO BRING UP THE

19 AMMUNITION?

20 I SAID: "DID YOU MAKE A RESOLUTION TO

21 YOURSELF TO LOAD THE GUN THE NEXT DAY AFTER YOUR FATHER

22 WAS BANGING ON THE DOOR?"

23 NO. HE MADE NO SUCH RESOLUTION TO HIMSELF.

24 "DO YOU BELIEVE THAT YOUR FATHER WAS

25 BREAKING DOWN THE -- CAPABLE OF BREAKING DOWN THE DOOR?"

26 "YES," HE SAID.

27 "WELL, IF YOU BELIEVED THAT YOUR FATHER WAS

28 CAPABLE OF BREAKING DOWN THE DOOR, DID YOU CALL LYLE

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1 MENENDEZ, EITHER TO GET HELP FROM HIM, OR TO WARN HIM,

2 'HEY, OUR FATHER IS APPARENTLY ON A RAMPAGE. IT'S

3 HAPPENING NOW.'" AFTER ALL, HIS FATHER IS BANGING ON
4 THE DOOR.

5 NO. HE DIDN'T EVEN MAKE A PHONE CALL TO
6 LYLE MENENDEZ. IF THESE TWO MEN WERE RUNNING AROUND FOR
7 A COUPLE OF DAYS NOW CONCERNED THAT THEIR PARENTS WERE
8 GOING TO KILL THEM, DON'T YOU THINK THAT MERITS A PHONE
9 CALL TO LYLE MENENDEZ? "IT'S HAPPENING NOW, LYLE. GET
10 READY. HE'S BANGING ON THE DOOR."

11 NO. HE DIDN'T MAKE A PHONE CALL. WHY?
12 BECAUSE THIS NEVER HAPPENED, LADIES AND GENTLEMEN.

13 "DID YOU THINK THAT LYLE MENENDEZ MIGHT BE
14 IN DANGER THAT NIGHT AFTER YOUR FATHER LEFT THE ROOM?"

15 HE SAYS, "I DON'T RECALL."

16 YOU DON'T RECALL. YOU'RE CONCERNED ABOUT
17 YOUR LIFE AND THE LIFE OF YOUR BROTHER, YOUR FATHER
18 TRIES TO BREAK DOWN YOUR DOOR, AND YOU DON'T REMEMBER IF
19 YOU WERE CONCERNED ABOUT THE LIFE OF YOUR BROTHER AT
20 THAT POINT IN TIME?

21 OF COURSE YOU WOULD HAVE BEEN CONCERNED
22 ABOUT THE LIFE OF YOUR BROTHER. THAT MAKES NO SENSE.
23 HE CLAIMS HE LOVED HIS BROTHER VERY MUCH. WELL, THAT'S
24 TOTALLY INCONSISTENT, LADIES AND GENTLEMEN, WITH LOVING
25 HIS BROTHER VERY MUCH.

26 AND THEN WE TURN TO SUNDAY.

27 AND I ASKED HIM: "OKAY, SUNDAY. NOW,
28 SATURDAY NIGHT WAS THE NIGHT YOUR FATHER SUPPOSEDLY

1 TRIED TO BREAK DOWN YOUR DOOR."

2 OKAY. FROM THURSDAY HE HAS THIS BELIEF

3 THAT HIS PARENTS ARE GOING TO KILL HIM.

4 SO NOW ON SATURDAY HIS FATHER TRIES TO

5 BREAK DOWN HIS DOOR. OBVIOUSLY, DON'T YOU THINK YOU'RE

6 GOING TO BE VERY CONCERNED SUNDAY MORNING ABOUT GOING

7 OUT, LEAVING YOUR DOOR UNARMED? IS THAT SOMETHING HE

8 WOULD DO?

9 I THINK HE SAID: "I TRIED TO KIND OF LOOK

10 UNDER THE DOOR," OR SOMETHING LIKE THAT.

11 I SAID: "ALL RIGHT. WELL, AFTER THAT,

12 WHAT DID YOU DO?"

13 "WELL, I JUST WENT OUT THE DOOR, AND I WENT

14 OVER TO THE GUESTHOUSE."

15 ISN'T THAT TOTALLY INCONSISTENT WITH HIS

16 CLAIM, LADIES AND GENTLEMEN?

17 DON'T YOU THINK AT THAT POINT, AFTER YOUR

18 FATHER WAS TRYING TO BREAK DOWN YOUR DOOR ON SATURDAY --

19 AND BEAR IN MIND WHAT HIS FATHER SAID SATURDAY NIGHT.

20 HE SAID: "YOU'RE GOING TO HAVE TO COME OUT IN THE

21 MORNING," OR SOME WORDS TO THAT EFFECT. "YOU'RE GOING

22 TO HAVE TO COME OUT EVENTUALLY TOMORROW."

23 DON'T YOU THINK THOSE WORDS WERE ENOUGH TO

24 PUT YOU ON NOTICE THAT, "HEY, MY FATHER IS GOING TO KILL

25 ME WHEN I COME OUT."

26 WHY, IF HE HAS THAT BELIEF SUNDAY MORNING,

27 HE SHOULD HAVE BEEN IN A STATE OF HIGH ALERT. HE SHOULD

28 HAVE BEEN IN A PANIC STATE SUNDAY MORNING, SHOULDN'T HE?

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1 SHOULDN'T HE BE EXTREMELY CONCERNED ABOUT HIS SAFETY?

2 NO. APPARENTLY HE IS WILLING TO WALK OUT

3 THE DOOR SUNDAY MORNING UNCONCERNED ABOUT HIS SAFETY,

4 WITHOUT HIS GUN. WHY? WHY IS THAT SUCH A SAFE

5 SITUATION?

6 AND YET SUNDAY NIGHT WHEN HIS MOTHER TELLS

7 HIM: "YOU CAN'T GO TO THE MOVIES," AND HIS FATHER TELLS

8 HIM: "NOW GO TO YOUR ROOM," SUDDENLY, OH, IT'S PANIC

9 MODE. IT'S HAPPENING, YOU SEE. WHY? WHY NOT SUNDAY

10 MORNING? WHY SUNDAY NIGHT?

11 IT'S AN ARBITRARY STORY. YOU COULD FIND

12 JUST AS MUCH JUSTIFICATION TO GO INTO PANIC STATE, OR

13 WHATEVER YOU WANT TO CALL IT, SATURDAY NIGHT. YOU COULD

14 FIND IT THURSDAY NIGHT, YOU COULD FIND IT SUNDAY

15 MORNING. IT'S THE SAME THING.

16 THE DEFENSE WILL TRY TO SAY NO, IT WAS THE

17 CULMINATION. IT WAS THE CULMINATION OF THE WHOLE WEEK.

18 THAT'S THE POINT HERE. THAT'S THE POINT

19 HERE. YOU COULD FIND CULMINATION AT ANY POINT IN THE

20 WEEK YOU WANTED TO FIND IT. YOU COULD FIND IT SUNDAY

21 MORNING. YOU COULD FIND IT SATURDAY NIGHT. IT'S AN

22 ARBITRARY STORY; CERTAINLY, MAKING UP THE STORY AS HE

23 GOES ALONG, HE IS MAKING UP THE RULES AS HE GOES ALONG.

24 HE MAKES UP THE DEFENSE AS HE GOES ALONG. HE IS
25 STACKING THE DECK, BASICALLY, WITH NO EYEWITNESSES, NO
26 ONE THAT CAN TESTIFY THAT THESE EVENTS ACTUALLY
27 OCCURRED.

28 ERIK MENENDEZ IS STACKING THE DECK. HE IS

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1 STACKING THE DEATH FOR A VOLUNTARY MANSLAUGHTER, KNOWING
2 THAT, "I AM GOING TO STACK THE DECK IN THIS WITH ALL OF
3 THESE FACTS, AND THEN I AM GOING TO HAVE A MENTAL HEALTH
4 EXPERT WHO IS GOING TO COME IN AND DEAL OUT THOSE CARDS
5 EXACTLY THE WAY I WANT THEM, AND MY MENTAL STATE IS
6 ASSURED. I CAN GET MY VOLUNTARY MANSLAUGHTER."

7 AND THAT IS HIS GOAL IN THIS CASE.

8 AND WHAT YOU HAVE TO ASK YOURSELF, LADIES
9 AND GENTLEMEN, IS IN LIGHT OF THE FACT THAT THERE IS NO
10 CORROBORATION TO ANY OF THIS -- THERE IS NO
11 CORROBORATION TO THE WEEKEND CRISIS. IN FACT, IT IS
12 REFUTED BY THE WITNESSES WHO WERE PRESENTED; WHETHER
13 IT'S MARK HEFFERNAN, WHETHER IT'S MR. WALKER, ANYONE WHO
14 WAS PRESENT THAT WEEK TENDS TO REFUTE THIS WEEKEND
15 CRISIS.

16 YOU CAN DECIDE, LADIES AND GENTLEMEN, TO
17 REJECT THE TESTIMONY OF ERIK MENENDEZ, NOT TO ANALYZE IT
18 ON HIS TERMS. ANALYZE IT BASED UPON THE OTHER OBJECTIVE
19 EVIDENCE, THE EVIDENCE THAT WE PRESENTED IN OUR CASE,

20 EVIDENCE WHICH ALL POINTS CONVINCINGLY TO A FIRST-DEGREE
21 MURDER.
22 DOES THE COURT WISH TO BREAK AT THIS TIME?
23 THE COURT: WELL, HOW MUCH LONGER DO YOU HAVE? I
24 WOULD LIKE YOU TO COMPLETE YOUR ARGUMENT.
25 MR. CONN: A CONSIDERABLE AMOUNT.
26 THE COURT: WELL, DO YOU PEOPLE HAVE A PROBLEM
27 STAYING A LITTLE LATER?
28 MR. LEVIN: I DO, YOUR HONOR.

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1 THE COURT: OKAY. WELL, I WAS LOOKING IN THAT
2 DIRECTION. I DIDN'T EXPECT A RESPONSE OVER HERE.
3 MR. LEVIN: GEE. YOU SAID "YOU PEOPLE," SO --
4 MS. ABRAMSON: HE IS A PERSON TODAY.
5 THE COURT: OKAY.
6 MS. ABRAMSON: WE VOTED HIM IN.
7 THE COURT: WE WILL RESUME TOMORROW THEN AT 8:30.
8 AND DON'T DISCUSS THIS MATTER WITH ANYONE,
9 DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T LOOK AT
10 ANY NEWS COVERAGE.
11 WE WILL SEE YOU ALL BACK HERE AT 8:30.
12 (THE JURY EXITS THE COURTROOM
13 AND THE FOLLOWING PROCEEDINGS
14 WERE HELD:)
15

16 THE COURT: ALL RIGHT.

17 WE WILL RESUME TOMORROW. I EXPECT

18 EVERYBODY TO BE HERE SO THAT WE CAN START AT 8:30 THIS

19 TIME. WE DIDN'T START TODAY UNTIL ABOUT 9:20 BECAUSE

20 COUNSEL WERE LATE. SO, LET'S THIS TIME MAKE IT 8:30.

21 MS. ABRAMSON: I WAS HERE AT 9:03.

22 THE COURT: WELL, WE FINALLY GOT STARTED WHEN

23 THINGS WERE ORGANIZED AT 9:20. LET'S GET GOING AT 8:30

24 TOMORROW, AND THE ONLY WAY WE CAN DO THAT IS IF

25 EVERYBODY IS HERE.

26 YOU SAY YOU HAVE QUITE A WAYS TO GO. HOW

27 MUCH MORE DO YOU THINK?

28 MR. CONN: I THINK I CAN FINISH IT BY THE END OF

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1 THE DAY TOMORROW.

2 THE COURT: SO. ABOUT 20 MINUTES FOR THE

3 DEFENSE, FOR THEIR CLOSING ARGUMENT.

4 MR. CONN: I THOUGHT THAT THEY WOULD START NEXT

5 WEEK.

6 THE COURT: OKAY. WELL, I WOULD SUGGEST THEN DUE

7 TO THE LENGTH OF YOUR OPENING HERE, THE COURT ASSUMES

8 THAT THE BULK OF YOUR ARGUMENT, EITHER IN OPENING OR

9 CLOSING, IS BEING PRESENTED RIGHT NOW, MR. CONN.

10 SO THAT BE PREPARED IN YOUR CLOSING

11 ARGUMENT TO BE VERY SUCCINCT AND TO THE POINT. IT'S NOT

12 GOING TO BE A LENGTHY ARGUMENT AS COMPARED TO WHAT
13 YOU'VE GONE THROUGH NOW.

14 MR. CONN: RIGHT.

15 MS. ABRAMSON: YOUR HONOR, I WOULD ASSUME, BASED
16 ON THAT SENTIMENT EXPRESSED BY THE COURT, THAT IF I
17 DON'T GO INTO ANY NEW MATERIAL, AND MR. GESSLER DOESN'T
18 GO INTO ANY MATERIAL BEYOND WHAT COUNSEL IS ALREADY
19 ARGUING --

20 THE COURT: LET'S NOT GET INTO THIS. THE RULES
21 ARE AS THEY ARE REGARDING CLOSING ARGUMENT. WE ALL KNOW
22 WHAT THEY ARE. WE'RE NOT GOING TO GET INTO FURTHER
23 DISCUSSIONS AT THIS TIME, OR YOU'RE SUGGESTING THINGS TO
24 THE OPPOSITION, OR PLAYING POKER, OR WHATEVER YOU'RE
25 DOING.

26 MS. ABRAMSON: I AM NOT SUGGESTING IT TO THE
27 OPPOSITION. I JUST WANT THE COURT TO THINK ABOUT IT.

28 THE COURT: WE ALL KNOW WHAT THE RULES ARE, AND

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1 THE PEOPLE'S OPPORTUNITY TO REBUT WHAT IT IS THAT IS
2 MENTIONED IN THE ARGUMENT OF THE DEFENSE.

3 BUT DUE TO THE LENGTH OF THE PEOPLE'S
4 ARGUMENT, ANY ARGUMENT THAT IS NOT RESPONSIVE TO THE
5 DEFENSE ARGUMENT IN CLOSING IS GOING TO HAVE TO BE VERY
6 SUCCINCT AND TO THE POINT.

7 WE WILL BE IN RECESS UNTIL TOMORROW AT

8 8:30.

9 (AT 4:35 P.M. PROCEEDINGS WERE
10 ADJOURNED UNTIL 8:30 A.M. THE
11 FOLLOWING DAY.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

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

4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)

6)
7 PLAINTIFFS,)

8)
9 VS.) NO. BA 068880

10)
11 ERIK GALEN MENENDEZ, AND)
12 JOSEPH LYLE MENENDEZ,)

13)
14 DEFENDANTS.)
15)

16 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

17 THURSDAY, FEBRUARY 22, 1996

18 VOLUME 301

19

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21

22

23

24

25 APPEARANCES:
26 (SEE APPEARANCE PAGE)

27

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24
25
26
27
28

1 APPEARANCES:

2
3 FOR THE PEOPLE: GIL GARCETTI
4 DISTRICT ATTORNEY
5 BY: DAVID CONN, DEPUTY
6 AND
7 CAROL NAJERA, DEPUTY
8 18000 CRIMINAL COURTS BLDG.
9 210 WEST TEMPLE STREET
10 LOS ANGELES, CA 90012
11

12
13 FOR THE DEFENDANT
14 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,
15 PUBLIC DEFENDER
16 BY: CHARLES GESSLER, DEPUTY
17 AND
18 TERRI TOWERY, DEPUTY
19 210 WEST TEMPLE
20 LOS ANGELES, CA 90012
21

22
23 FOR THE DEFENDANT
24 ERIK GALEN MENENDEZ: LESLIE ABRAMSON
25 ATTORNEY AT LAW
26 4929 WILSHIRE BOULEVARD
27 SUITE 940
28 LOS ANGELES, CA 90010

18 BARRY LEVIN, ESQ.
19 11661 SAN VICENTE BOULEVARD
20 LOS ANGELES, CA 90049

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

26
27
28

1 INDEX FOR VOLUME 301 PAGES 51137 THROUGH 51337

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DAY	DATE	SESSION	PAGE	VOL.
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5 THURSDAY, FEBRUARY 22, 1996 P.M. 51232 301

6
7 PROCEEDINGS

8 OPENING ARGUMENT BY
9 THE PEOPLE (CONTINUED) 51137 301

10
11
12 CHRONOLOGICAL INDEX OF WITNESSES
13

14 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.
(NONE THIS VOLUME.)

15

16

17

18

19

20

21

22 LEGEND:

23 A = MS. ABRAMSON

C = MR. CONN

24 G = MR. GESSLER

K = MS. TOWERY

25 L = MR. LEVIN

N = MS. NAJERA

26

27

28

1 EXHIBITS INDEX

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

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12