

1 VAN NUYS, CALIFORNIA; FRIDAY, FEBRUARY 23, 1996

2 9:00 A.M.

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

4 (APPEARANCES AS HERTOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 THE COURT: EVERYBODY IS PRESENT.

9 ARE WE READY TO RESUME?

10 MR. CONN: YES.

11 (THE JURY ENTERS THE COURTROOM

12 AND THE FOLLOWING PROCEEDINGS

13 WERE HELD:)

14

15 THE COURT: THE JURY IS IN THE JURY BOX.

16 GOOD MORNING, LADIES AND GENTLEMEN.

17 WE'RE READY TO RESUME WITH THE TRIAL. ALL

18 PARTICIPANTS ARE PRESENT.

19 WE WILL RESUME WITH THE PEOPLE'S ARGUMENT.

20 MR. CONN: THANK YOU, YOUR HONOR.

21

22 OPENING ARGUMENT (CONTINUED)

23 BY MR. CONN:

24 GOOD MORNING, LADIES AND GENTLEMEN.

25 WE HAVE STILL A NUMBER OF WITNESSES TO

26 DISCUSS. I KNOW IT'S A LENGTHY ARGUMENT, BUT IT'S AN

27 ARGUMENT THAT I THINK COVERS IMPORTANT WITNESSES WHO

28 TESTIFIED IN THIS TRIAL, AND IT'S VERY IMPORTANT THAT

1 YOU UNDERSTAND THE PROSECUTION'S APPROACH TO THIS CASE,
2 AND OUR VIEW OF THE EVIDENCE.

3 SO I WOULD ASK YOU TO BEAR WITH ME A LITTLE
4 BIT LONGER AS I GO THROUGH THE WITNESSES IN THIS CASE.

5 WE WERE TALKING ABOUT ERIK MENENDEZ AND HIS
6 TESTIMONY, AND WE GOT UP TO SUNDAY. SUNDAY HE SAID THAT
7 HE LEFT HIS ROOM, WENT OUTSIDE, AND DID NOT CARRY HIS
8 GUN WITH HIM AS HE WENT OUTSIDE.

9 I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT
10 HE DID NOT CARRY HIS GUN WITH HIM FOR THE SAME REASON
11 THAT HE DID NOT LOAD OR RELOAD HIS GUN ANY TIME THAT
12 WEEKEND. BECAUSE THERE WAS TRULY NO FEAR. THERE WAS NO
13 FEAR WHATSOEVER OF HIS PARENTS.

14 I ASKED HIM: "DID YOU THINK THAT YOUR
15 FATHER WAS OUTSIDE THE DOOR?" AFTER ALL, SHOULDN'T HE
16 SUSPECT THAT?

17 AND HE SAID: "I JUST DID NOT BELIEVE THAT.
18 I DON'T KNOW WHY."

19 AGAIN, HIS INABILITY TO GIVE A RATIONAL
20 REASON TO SUPPORT HIS OWN BEHAVIOR, TO SUPPORT HIS OWN
21 ACTIONS, TO SUPPORT HIS OWN THOUGHTS. HE IS UNABLE TO
22 BUTTRESS HIS STORY WITH REASONABLE EXPLANATIONS WHERE
23 YOU WOULD EXPECT REASONABLE EXPLANATIONS.

24 HE SAID THAT HE TOLD HIS BROTHER OF THE
25 INCIDENT THAT HAD OCCURRED SATURDAY NIGHT AFTER HE WENT

26 OVER TO THE GUEST HOUSE THAT SUNDAY MORNING, AND STILL,
27 HE DIDN'T LOAD UP HIS GUN, NOR DID HIS BROTHER, LYLE
28 MENENDEZ, LOAD UP HIS GUN.

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1 HE SAID HE LEFT LYLE MENENDEZ ALONE THAT
2 DAY, AND HE TOOK THE AMMUNITION WITH HIM.
3 HE SAID THAT HE RETURNED ABOUT NOON. AND
4 WHEN HE RETURNED ABOUT NOON, HE PARKED IN THE BACK
5 ALLEY, BECAUSE HIS PARENTS -- HE DIDN'T WANT HIS PARENTS
6 TO SEE THAT HE HAD RETURNED. I GUESS THIS IS CONSISTENT
7 WITH HIS THEORY THAT IT'S BETTER IF HE AND HIS BROTHER
8 STAY APART.

9 BUT YET, WHEN HE RETURNS LATER THAT EVENING
10 ON SUNDAY NIGHT, FOR SOME REASON HE DECIDES TO PARK IN
11 FRONT WHERE HIS PARENTS WOULD BE ABLE TO SEE THE CAR.
12 THAT IS INCONSISTENT WITH HIS STORY.

13 AND THEN HE SAYS HE DOESN'T RECALL IF IT
14 OCCURRED TO HIM ANY TIME THAT DAY AFTER HE HAD LEFT LYLE
15 MENENDEZ, THAT HE HAD LEFT LYLE MENENDEZ WITH
16 ESSENTIALLY USELESS AMMO. REMEMBER, I SAID THOSE ARE
17 THE WORDS THAT COME BACK TO BITE HIM, BECAUSE HE SAID
18 THAT HE REGARDED THE AMMUNITION THAT WAS IN THE GUN, THE
19 BIRD SHOT, AS ESSENTIALLY USELESS.

20 WELL, IF IT WAS USELESS, LADIES AND
21 GENTLEMEN, AND YOU WERE DRIVING AROUND THAT SUNDAY ALL

22 DAY LONG, AND THAT SATURDAY NIGHT YOUR FATHER HAD TRIED
23 TO COME INTO YOUR ROOM, AND YOU WERE POWERLESS TO DEFEND
24 YOURSELF AGAINST HIM BECAUSE YOU DIDN'T HAVE THE RIGHT
25 AMMUNITION IN THE GUN, DON'T YOU THINK THERE WOULD BE
26 SOME FLEETING THOUGHT TO THE FACT THAT YOUR BROTHER IS
27 BACK AT THE HOUSE WITH A GUN THAT HAS ESSENTIALLY
28 USELESS AMMUNITION IN IT? OF COURSE IT WOULD OCCUR TO

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1 YOU.

2 SO FOR ERIK MENENDEZ TO SAY: "I DON'T
3 RECALL IF IT EVEN OCCURRED TO ME ANY TIME THAT DAY,"
4 THAT HE LEFT LYLE MENENDEZ ALONE WITH ESSENTIALLY
5 USELESS AMMUNITION, IS ANOTHER MAJOR FLAW IN HIS STORY.

6 AND THEN HE ADMITS THAT THROUGHOUT THE DAY
7 HE NEVER REGARDED THE DANGER AS IMMINENT. HE SAID, FOR
8 EXAMPLE, THAT SUNDAY AT ABOUT NOON, OR 12:00 O'CLOCK,
9 WHEN HE HAD RETURNED HOME, HE SAID: "I DIDN'T THINK
10 THAT THE DANGER WAS IMMINENT AT THAT POINT IN TIME," AND
11 HE EVEN ADMITTED THAT LATER. AFTER HE RETURNED HOME
12 THAT EVENING, AT ABOUT 9:30 SUNDAY NIGHT, HE STILL SAID
13 THAT THE DANGER WAS NOT IMMEDIATE OR IMMINENT.

14 HE SAID THAT HE BECAME -- HE BECAME
15 CONCERNED WHEN HE LEARNED FROM LYLE MENENDEZ, AFTER HE
16 RETURNED AT ABOUT 9:30 THAT EVENING, THAT JOSE MENENDEZ
17 HAD TOLD LYLE MENENDEZ: "WHAT DOES IT MATTER ANYMORE,"

18 CONCERNING THE NOT GOING TO THE TENNIS CAMP.

19 AND HE SAID: "I INTERPRETED THAT TO MEAN

20 'WHAT DOES YOUR LIFE MATTER ANYMORE?'"

21 BUT HE SAID THAT HE DID NOT INTERPRET IT AS

22 PROOF THAT HIS FATHER WAS GOING TO KILL HIM, ONLY AS A

23 BAD SIGN.

24 SO AGAIN, CONSIDER HIS -- ACCORDING TO HIS

25 STORY, HIS STATE OF MIND AS HE IS GOING OVER TO THE

26 GUEST HOUSE. HE HAS NO REASON TO BELIEVE THAT HIS

27 PARENTS ARE NECESSARILY GOING TO KILL HIM AT THAT POINT

28 IN TIME.

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1 HE SAID THAT LYLE MENENDEZ ALSO TOLD HIM,

2 AND THIS IS WHAT I REFERRED TO EARLIER, THAT OBVIOUSLY

3 JOSE MENENDEZ HAD LIED TO PERRY BERMAN BY SAYING THAT

4 LYLE MENENDEZ HAD GONE OUT THAT DAY.

5 NOW, WE KNOW THAT THAT IS A LIE, BECAUSE

6 PERRY BERMAN HIMSELF TESTIFIED THAT LYLE MENENDEZ

7 ADMITTED TO HIM THAT HE HAD BEEN OUT THAT DAY.

8 SO, THIS PROVOCATION, THIS IS ONE OF THE

9 THINGS THAT ERIK MENENDEZ CITES AS A REASON FOR BEING

10 CONCERNED ABOUT HIS FATHER THAT EVENING, IS A FALSE

11 STORY. WE HAVE PROVEN THAT TO BE A LIE.

12 HE SAID THERE WAS NO CONVERSATION BETWEEN

13 LYLE MENENDEZ AND HIMSELF ABOUT GOING OVER TO THE HOUSE

14 TOGETHER AFTER THEY WENT OVER THERE ABOUT 10:00 P.M. "I

15 JUST DIDN'T THINK ABOUT IT."

16 WELL, LADIES AND GENTLEMEN, ISN'T HIS STORY

17 THEY ARE IN GREAT DANGER WHENEVER THEY WERE TOGETHER?

18 THAT WAS THE GREATEST DANGER, BECAUSE THEY ALWAYS

19 ASSUMED THAT THEIR PARENTS WOULD ATTACK THEM WHEN THEY

20 WERE TOGETHER. ISN'T THAT THE REASON WHY HE PARKED IN

21 THE BACK? HE TOLD US THAT'S THE REASON HE PARKED IN THE

22 BACK, BECAUSE HE DIDN'T WANT HIS PARENTS TO SEE THAT HE

23 WAS HOME, TOGETHER WITH HIS BROTHER.

24 WELL, IF THAT'S TRUE, LADIES AND GENTLEMEN,

25 THEN, OF COURSE, HE WOULD HAVE BEEN CONCERNED ABOUT

26 GOING OVER TO THE MAIN HOUSE AT ABOUT 10:00 P.M. SUNDAY,

27 BECAUSE THEN HE IS EXPOSING HIMSELF TO DANGER. HE IS

28 WITH HIS BROTHER TOGETHER, AND IF THEY WANT US TO

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1 BELIEVE, LADIES AND GENTLEMEN, AS THEY DO, THEY ARE

2 TRYING TO SAY YOU HAVE TO UNDERSTAND WHY ERIK MENENDEZ

3 WENT INTO THIS PANIC STATE SUNDAY NIGHT, BECAUSE IT WAS

4 THE CULMINATION OF ALL OF THIS HEIGHTENED DANGER OVER

5 THE ENTIRE WEEK.

6 BUT, LADIES AND GENTLEMEN, WE KNOW THAT

7 ERIK MENENDEZ ADMITS THAT THERE WAS NO DANGER AT 1:00

8 O'CLOCK THAT DAY. HE ADMITS THAT THERE WAS NO IMMEDIATE

9 DANGER AT 9:30 THAT DAY. AND IF HE FELT THIS SENSE OF

10 HEIGHTENED DANGER AT 10:00 O'CLOCK, WHEN HE WENT OVER TO
11 THE MAIN HOUSE, WHY WOULD HE BE WITH HIS BROTHER? WHY
12 WOULD THEY BOTH HAVE TO CHECK IN WITH THE PARENTS AND
13 TELL THE PARENTS THAT THEY WERE GOING OUT?

14 SO YOU SEE, THEIR STORY IS ONCE AGAIN
15 INCONSISTENT. IF THEY TRULY BELIEVED THERE WAS A
16 HEIGHTENED DANGER AT THAT POINT IN TIME, WHICH IS A
17 NECESSARY INGREDIENT TO SHOW WHY HE FREAKED OUT, THEY
18 NEVER WOULD HAVE WENT TOGETHER OVER TO THE HOUSE TO
19 EXPOSE THEMSELVES TO DANGER, TO TELL THEIR PARENTS THEY
20 WERE LEAVING.

21 THE STORY SIMPLY DOESN'T MAKE SENSE IN
22 MANY, MANY, MANY WAYS.

23 AND HE SAID HE DIDN'T EVEN THINK ABOUT IT.
24 WOULDN'T YOU THINK ABOUT IT? IT'S ONE THING TO SAY, FOR
25 WHATEVER REASON: "WE DID IT FOR A CRAZY REASON, BUT WE
26 BOTH DECIDED TO GO OVER TO THE HOUSE TOGETHER, AND WE
27 EXPOSED OURSELVES TOGETHER."

28 BUT HE WANTS YOU TO BELIEVE THAT HE DIDN'T

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1 EVEN THINK OF IT. THAT'S VERY HARD TO BELIEVE, LADIES
2 AND GENTLEMEN, BECAUSE YOU WOULD THINK OF IT.

3 IF HE WAS IN DANGER, AS HE CLAIMS HIS LIFE
4 WAS IN DANGER, YOU WOULD THINK OF THESE THINGS.

5 LYLE MENENDEZ SAID -- LYLE MENENDEZ TOLD

6 THE PARENTS THAT THEY WERE GOING TO GO TO THE MOVIES.

7 NOW, THAT MAKES NO SENSE, LADIES AND

8 GENTLEMEN, BECAUSE ACCORDING TO HIS STORY, THEY WEREN'T

9 GOING TO GO TO THE MOVIES. IT WAS ALREADY TOO LATE TO

10 GO TO THE MOVIES, AND HE ADMITS THAT IT WAS THEN TIME TO

11 GO AND MEET UP WITH PERRY BERMAN.

12 SO THEY WERE GOING TO GO -- ACCORDING TO

13 HIS STORY -- THEY WERE GOING TO GO AND MEET UP WITH

14 PERRY BERMAN.

15 IF THAT IS THE CASE, WHY WOULD LYLE

16 MENENDEZ FALSELY TELL THE PARENTS THAT THEY WERE GOING

17 TO GO TO THE MOVIES? THAT MAKES NO SENSE, AND THAT

18 WOULD REALLY BE COUNTERPRODUCTIVE.

19 WHY? BECAUSE DIDN'T ERIK MENENDEZ SAY

20 THEY FELT THEY WERE IN GREATER SAFETY IF THEY WERE GOING

21 TO BE WITH SOMEONE THAT EVENING? WOULDN'T THAT BE A WAY

22 OF WARNING THE PARENTS: "DON'T HURT US TONIGHT, BECAUSE

23 WE ARE GOING TO BE WITH OTHER PEOPLE THIS EVENING."

24 BUT, NO. INSTEAD THEY TELL THE PARENTS A

25 LIE WHEN THERE IS NO REASON TO LIE, AND IT IS A LIE

26 WHICH HURTS THEM, BECAUSE THEN THE PARENTS WILL BELIEVE

27 "WELL, THESE GUYS DON'T HAVE ANY APPOINTMENTS TONIGHT

28 ANYWAY, SO WE CAN JUST GO AHEAD AND KILL THEM."

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1 SO IT'S ONCE AGAIN A CONTRADICTION IN HIS

2 STORY.

3 AND HE SAID: "I NEVER CONSIDERED TELLING
4 THEM," TELLING THE PARENTS, "THAT WE WERE GOING OUT TO
5 MEET PEOPLE," WHICH IS WHAT THEY WERE GOING TO DO.

6 WHY WOULD HE NOT CONSIDER THAT? THAT WOULD
7 BE THE BETTER STORY TO TELL THE PARENTS.

8 NOW, HE THEN CLAIMS THAT AFTER GOING OVER
9 TO THE MAIN HOUSE, NOW WE HAVE THIS CONFRONTATION
10 BETWEEN JOSE MENENDEZ AND HIS SONS, AND THE MOTHER TELLS
11 THEM THEY CAN'T GO TO THE MOVIE. AND THE FATHER TELLS
12 ERIK MENENDEZ: "GO TO YOUR ROOM NOW."

13 THAT IS SUPPOSED TO BE THE TRIGGER THAT
14 CAUSES HIM TO BELIEVE, "MY PARENTS ARE GOING TO KILL
15 ME." WHY? NO REASONABLE PERSON IN THAT SITUATION WOULD
16 HAVE CONCLUDED THAT THERE WAS A REASON TO BE KILLED;
17 THAT THERE WAS A THREAT OF BEING KILLED AT THAT
18 PARTICULAR MOMENT, ESPECIALLY WHEN ERIK MENENDEZ
19 ADMITTED THAT HE DIDN'T NECESSARILY BELIEVE THAT HIS
20 PARENTS WERE GOING TO KILL HIM, AS HE WAS GOING OVER TO
21 THE MAIN HOUSE THAT NIGHT.

22 NEVERTHELESS, HE SAID THAT HE RUNS
23 UPSTAIRS, OR HE IS UPSTAIRS. LYLE MENENDEZ COMES
24 RUNNING UP TO HIM, AND THEY HAVE AN EXCHANGE AT THAT
25 TIME.

26 NOW, ONCE AGAIN, HERE IS ANOTHER AREA WHERE
27 ERIK MENENDEZ DOESN'T WANT TO ADMIT TO A CONVERSATION
28 WHICH SOUNDS LIKE -- ANYTHING LIKE PREMEDITATION OR

1 DELIBERATION.

2 SO ONCE AGAIN, HE TRIES TO CONTROL THE
3 LANGUAGE BEING USED IN THE TRIAL.

4 HE SAID -- FOR EXAMPLE, I ASKED HIM:

5 "ISN'T IT TRUE THAT YOU HAD A CONVERSATION?" BECAUSE HE
6 USED THAT TERM AT ONE POINT, HE HAD A CONVERSATION. AND
7 THEN HE TAKES IT BACK.

8 WELL, THINKING BETTER OF IT, YOU SEE. HE
9 DOESN'T WANT TO MAKE IT SOUND LIKE IT'S A REAL EXCHANGE
10 INVOLVING MENTAL PROCESSES. HE SAYS: "WELL, MR. CONN,
11 IT WAS NOT REALLY A CONVERSATION. IT WAS JUST ME
12 GUSHING OUT." GUSHING OUT SOUNDS LIKE IT'S LESS
13 DELIBERATION AND LESS THINKING, LESS RATIONAL.

14 BUT THE FACT OF THE MATTER IS, A
15 CONVERSATION IS A CONVERSATION, AND THAT'S WHAT HE HAD
16 AT THE TOP OF THE STAIRS. HE WAS ABLE TO EXCHANGE
17 CERTAIN THOUGHTS WITH LYLE MENENDEZ. "I DON'T WANT MY
18 FATHER TO COME TO MY ROOM. I AM GOING TO GO AND GET MY
19 GUN."

20 SO WHAT YOU SEE HERE, HE IS FUDGING. HE IS
21 THINKING RATIONALLY. HE IS HAVING A CONVERSATION,
22 DESPITE THE FACT THAT HE NOW WANTS TO DENY IT, AND HE
23 NOW WANTS TO CALL IT A "GUSHING OUT."

24 HIS BROTHER APPARENTLY TELLS HIM AT THIS
25 POINT IN TIME AFTER LYLE -- ERIK MENENDEZ SAYS TO HIM,
26 "I CAN'T LET MY FATHER COME TO MY ROOM," LYLE MENENDEZ

27 TELLS HIM: "DON'T WORRY ABOUT THAT. IT'S HAPPENING
28 NOW."

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1 SO APPARENTLY LYLE MENENDEZ AT THIS POINT
2 IS NOT EVEN FOCUSED ON THE SO-CALLED ALLEGATION OF
3 MOLESTATION. LYLE MENENDEZ IS NOT AT ALL CONCERNED
4 ABOUT THAT. HE SAID: "DON'T WORRY ABOUT THAT. IT'S
5 HAPPENING NOW," REFERRING TO THE SO-CALLED THREAT TO BE
6 KILLED.

7 AND THEN HE SAID, "I HAVE TO GO TO MY CAR."

8 NOW, HE -- ERIK MENENDEZ DOES HIS BEST TO
9 AVOID ANY INDICATION, ANY CONCESSION, ANY ADMISSION ON
10 HIS PART THAT HE THOUGHT ABOUT GOING TO HIS CAR.

11 WELL, OBVIOUSLY, LADIES AND GENTLEMEN, YOU
12 CAN'T GO TO YOUR CAR, YOU CAN'T REALIZE THAT YOU HAVE
13 THE AMMUNITION IN YOUR CAR -- THE GUN IS IN YOUR ROOM.
14 IT DOESN'T HAVE THE RIGHT AMMUNITION. YOU HAVE TO GO TO
15 YOUR CAR, YOU HAVE TO GET AMMUNITION, YOU HAVE TO PUT IT
16 IN YOUR GUN, AND THEN YOU'RE PREPARED TO SHOOT.

17 THIS IS A SIMPLE THOUGHT PROCESS. IT'S
18 WHAT IT IS. IT NECESSARILY TAKES THOUGHTS. IT TAKES
19 THINKING. IT TAKES SOME PUTTING TOGETHER IN YOUR OWN
20 MIND, MAKING THOSE CONNECTIONS.

21 BUT ERIK MENENDEZ WANTS TO DENY AS MUCH AS
22 HE COULD THAT HE MADE THOSE CONNECTIONS, WHEN IT'S

23 OBVIOUS THAT HE DID; BECAUSE HE KNOWS THAT THE MORE HE
24 ADMITS TO MAKING THOSE CONNECTIONS, THE MORE HE ADMITS
25 TO THIS JURY THAT HE WAS ABLE TO THINK, AND DID THINK,
26 AND SAW OPTIONS AND MADE CONNECTIONS, AND THAT'S JUST
27 THE OPPOSITE OF THE IMPRESSION THAT HE WANTS TO LEAVE
28 YOU WITH.

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1 SO HE USES THESE WORDS, FOR EXAMPLE:

2 "I DID NOT THINK ABOUT FIRST GETTING MY GUN
3 AND THEN GOING TO MY CAR AND RELOADING. IT WAS JUST IN
4 MY MIND TO RUN TO MY ROOM."

5 SO HE TRIES TO OVER-SIMPLIFY IT. "THAT WAS
6 THE ONLY THING I COULD THINK ABOUT: "HURRY, HURRY. RUN
7 TO YOUR CAR AND LOAD THE GUN."

8 BUT WE KNOW THAT'S NOT TRUE. BY HIS OWN
9 ADMISSION HE TELLS US THAT HE WAS THINKING OF A LOT MORE
10 THAN " HURRY, HURRY." HE WAS THINKING ABOUT BARRICADING
11 HIMSELF IN THIS ROOM. HE ALSO TOLD PARK DIETZ HE
12 THOUGHT ABOUT LOCKING THE DOOR. HE THOUGHT ABOUT HIS
13 FATHER RUNNING AFTER HIM. AT ONE POINT HE TURNED AROUND
14 TO SEE IF ANYONE WAS FOLLOWING HIM.

15 WE KNOW AFTER HE GOT OUT TO THE CAR HE
16 THOUGHT HE MIGHT HAVE TO RUN INTO THE HOUSE IF LYLE
17 MENENDEZ -- HE MIGHT HAVE TO RUN IN ALONE IF LYLE
18 MENENDEZ DID NOT COME OUT TO THE CAR.

19 SO, CONTRARY TO HIS CLAIM, "ALL I WAS
20 THINKING WAS 'HURRY, HURRY,'" BY HIS ONLY ADMISSION,
21 LADIES AND GENTLEMEN, THAT'S NOT ALL HE WAS THINKING.
22 SO, AS MUCH AS HE WANTS TO SIMPLIFY IT, AS
23 MUCH AS HE WANTS TO CONFINE IT, HE CONCEDES IN HIS OWN
24 WORDS THAT THERE WAS A MUCH GREATER THOUGHT PROCESS THAN
25 THAT.
26 HE SAID -- HERE IS ANOTHER WAY HE TRIES TO
27 CONTROL THE LANGUAGE.
28 "THE FACT THAT THE AMMUNITION WAS USELESS,"

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1 HE SAYS, "WAS NOT SOMETHING THAT I HAD TO THINK ABOUT.
2 IT WAS NOT SOMETHING THAT OCCURRED TO ME. I JUST KNEW
3 IT AT THE TIME."
4 HE TRIES TO MAKE IT SOUND AS IF YOU JUST
5 HAVE THESE THOUGHTS KIND OF STABILIZED IN YOUR MIND, AND
6 YOU DON'T HAVE TO EVEN REFER TO THEM. THEY JUST KIND OF
7 EXIST IN YOUR MIND WITHOUT THINKING ABOUT THEM.
8 LADIES AND GENTLEMEN, OBVIOUSLY HE THOUGHT
9 ABOUT IT. IT'S VERY CLEAR THAT HE WAS MAKING
10 CONNECTIONS THAT HE HADN'T MADE ALL WEEKEND. HE NEVER
11 MADE THOSE CONNECTIONS, LADIES AND GENTLEMEN, BECAUSE HE
12 WAS NEVER IN FEAR. HE NEVER HAD TO MAKE THOSE
13 CONNECTIONS.
14 BUT HE FINALLY DID ADMIT, WHEN I ASKED HIM:

15 "ISN'T IT TRUE YOU MADE THOSE CONNECTIONS? FIRST YOU
16 HAD TO GO TO YOUR GUN. YOU HAD TO GO TO YOUR CAR. YOU
17 HAD TO GET THE SHELLS OUT OF THE BOX AND LOAD THEM INTO
18 YOUR GUN, AND ISN'T IT TRUE YOU MADE THOSE CONNECTIONS?"

19 AND FINALLY HE ADMITTED IT. "YES, IT'S
20 TRUE, I MADE THOSE CONNECTIONS."

21 THAT ESSENTIALLY, LADIES AND GENTLEMEN, IS
22 THE THOUGHT PROCESS WE'RE TALKING ABOUT HERE. IT IS THE
23 ABILITY TO THINK. IT IS THE ABILITY TO DELIBERATE. HE
24 WAS ABLE TO SEE OPTIONS. HE WAS ABLE TO RECOGNIZE WHAT
25 TO DO. HE WAS ABLE TO PUT TOGETHER THESE THINGS.

26 IF HE WAS ABLE TO PUT THESE THINGS
27 TOGETHER, LADIES AND GENTLEMEN, OF COURSE HE WAS ABLE TO
28 STOP AND THINK: "DO WE REALLY WANT TO DO THIS?"

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1 SHOULDN'T WE DRIVE AWAY? WHY ARE WE REALLY DOING THIS?
2 SHOULDN'T WE WAIT FOR A GREATER SIGN OF DANGER?
3 SHOULDN'T WE WAIT UNTIL OUR PARENTS REALLY POINT GUNS AT
4 US?"

5 NO, LADIES AND GENTLEMEN. THEY WANT US TO
6 BELIEVE THAT THERE IS SOME KIND OF AUTOMATIC PILOT THAT
7 TOOK OVER. THAT'S WHY WE CALLED PARK DIETZ, TO SHOW
8 THAT THERE WAS NO KIND OF AUTOMATIC PILOT IN PLAY HERE.

9 WE ARE GOING TO GO THROUGH THE THEORIES.
10 DR. WILSON CAME IN HERE AND SPOKE ABOUT THIS

11 THEORETICALLY AND THAT THEORETICALLY.

12 LADIES AND GENTLEMEN, YOU BASE THE FACTS OF
13 THIS CASE UPON WHAT ERIK MENENDEZ TOLD YOU. YOU KNOW
14 ERIK MENENDEZ NOW. YOU SAW HIM TESTIFY. YOU SAW HIS
15 EXPLANATION, AND YOU KNOW HE WAS ABLE TO THINK. HE WAS
16 ABLE TO MAKE CONNECTIONS. HIS STORY WAS INCONSISTENT.
17 HE CONCEDES TIME AND TIME AGAIN HE HAS THIS RATIONAL
18 PROCESS -- HE DOESN'T WANT TO USE THOSE WORDS.

19 SO THIS WAS NO AUTOMATIC PILOT, LADIES AND
20 GENTLEMEN. WHAT ARE WE SUPPOSED TO BELIEVE, THAT TWO
21 MEN WERE IN AUTOMATIC PILOT? ISN'T THAT KIND OF LIKE
22 LIGHTENING STRIKING TWICE AT ONE TIME AT THE SAME PLACE?

23 TWO MEN ON AUTOMATIC PILOT. IS THAT WHAT
24 WE'RE SUPPOSED TO BELIEVE? DO THEY BOTH HAVE THE SAME
25 DEFENSE HERE? LYLE MENENDEZ DID NOT CALL A MENTAL
26 HEALTH EXPERT. IS THAT WHAT HE'S CLAIMING?

27 EVEN THE THOUGHT THAT THESE TWO MEN WOULD
28 BOTH HAVE THIS ABSURD BELIEF IN THEIR MIND THAT THEIR

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1 PARENTS WERE GOING TO KILL THEM, THERE WAS NO WAY OUT,
2 THAT THEY HAD TO KILL THEIR PARENTS.

3 THAT, TOO, WOULD BE LIKE LIGHTENING
4 STRIKING TWICE IN THE SAME PLACE, AT THE SAME TIME. HOW
5 COULD THAT POSSIBLY HAPPEN? ALL PEOPLE ARE DIFFERENT.
6 PEOPLE ARE DIFFERENT. YOU CAN'T EVEN GET TWO PEOPLE TO

7 AGREE WHERE TO GO TO LUNCH TOGETHER HALF THE TIME, YET
8 WE'RE SUPPOSED TO BELIEVE THAT THESE TWO MEN AT THE SAME
9 MOMENT IN TIME ARE ABSOLUTELY CONVINCED THAT THEIR
10 PARENTS WERE GOING TO KILL THEM, AND THERE WAS NO WAY
11 OUT? THIS IS JUST AN ABSOLUTELY ABSURD STORY, LADIES
12 AND GENTLEMEN.

13 AND ANOTHER WAY THAT YOU SHOW THAT ERIK
14 MENENDEZ WAS IN -- HAD THE ABILITY, AND DID IN FACT MAKE
15 DECISIONS, WAS BY THE VARIOUS THINGS THAT HE DID.

16 HE WENT UP TO HIS ROOM. HE GOT HIS GUN.
17 HE DECIDED NOT TO BARRICADE HIMSELF. HE CAME DOWN THE
18 STAIRS.

19 ANOTHER INTERESTING THING THAT HE SAID --
20 HE SAID -- HE ADMITTED AT SOME POINT IN TIME THAT --
21 I'LL GET TO THAT LATER. HE CAME DOWNSTAIRS, HE WENT OUT
22 TO THE CAR.

23 BEFORE HE GOT OUT TO THE CAR, HE EVEN MADE
24 A CHOICE OF EXITS RATHER THAN GO OUT THE FRONT DOOR.
25 WHY DID HE DECIDE THAT HE WAS GOING TO TAKE THAT UNUSUAL
26 EXIT OUT THE SIDE? REMEMBER? BECAUSE HE WENT OUT THE
27 STUDY, RATHER THAN GOING OUT THE FRONT DOOR TO THE HOME.
28 HE WENT THROUGH THAT STUDY DOOR. WHY DID HE DO THAT?

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1 WELL, I SUBMIT, LADIES AND GENTLEMEN, THAT
2 IF YOU LOOK AT THE PHOTOGRAPHS OF THE FRONT DOORS, YOU

3 CAN SEE THAT THEY ARE THESE LARGE, HEAVY, WOODEN DOORS.

4 SO THOUGH I ASK YOU NOT TO EVEN ACCEPT THIS

5 WHOLE STORY OF THE DEFENDANT OF THE WEEK IN CRISIS, AND

6 THIS PARTICULAR EXCITED MOMENT THAT HE IS TRYING TO ASK

7 YOU TO ACCEPT, IF HE DID IN FACT LEAVE THAT WAY JUST

8 BEFORE SHOOTING HIS PARENTS, LADIES AND GENTLEMEN, HE

9 LEFT FOR ONE REASON AND ONE REASON ONLY, BECAUSE OF THE

10 SOUND THAT THOSE HEAVY DOORS WOULD MAKE.

11 HE WANTED TO CATCH HIS PARENTS UNAWARES.

12 HE WANTED TO TAKE HIS PARENTS BY SURPRISE. HE WANTED TO

13 AMBUSH HIS PARENTS, AND THAT'S THE REASON HE DIDN'T GO

14 OUT THOSE FRONT DOORS.

15 HE WENT OUT THE SIDE DOOR, AND WENT OUT AND

16 GOT HIS AMMUNITION AND CAME BACK IN THROUGH THE SAME

17 DOORS, AND WAS ABLE TO SNEAK UP ON HIS PARENTS AND

18 AMBUSH THEM IN A LYING IN WAIT KILLING, YOU SEE. IT WAS

19 AFTER HE SHOT THE PARENTS THAT HE THEN RAN OUT -- NOW HE

20 SAYS HE WENT THROUGH THE FRONT DOOR, REMEMBER, FOR THE

21 RELOAD, TO GET THE FINAL SHELL THAT WAS USED TO SHOOT

22 KITTY MENENDEZ IN THE FACE. HE WENT THROUGH THE FRONT

23 DOOR.

24 WELL, WHY DID HE GO THROUGH THE FRONT DOOR

25 AT THIS TIME? WHY DIDN'T HE GO THROUGH THE SAME DEN OR

26 STUDY DOOR THIS TIME?

27 WELL, I SUBMIT, BECAUSE HE DIDN'T HAVE TO

28 WORRY ABOUT NOISE ANYMORE. HE KNEW HIS FATHER WAS DEAD.

1 HE KNEW HIS MOTHER WAS DYING. NOISE DIDN'T MATTER. NOW
2 GO THROUGH THE MOST CONVENIENT WAY. GO THROUGH THE BIG,
3 HEAVY FRONT DOORS TO THE HOME. THAT'S EXACTLY WHAT HE
4 DID.

5 AND THEN HE WANTS US TO BELIEVE, LADIES AND
6 GENTLEMEN, THAT HE HAD NO INTENT, YOU SEE, BECAUSE
7 INTENT IS AN IMPORTANT ELEMENT OF THE OFFENSE IN THIS
8 CASE.

9 AND AS I SAID, LADIES AND GENTLEMEN, JUDGE
10 PEOPLE BY WHAT THEY DO. DON'T JUDGE PEOPLE BY WHAT THEY
11 SAY, BECAUSE ANYBODY CAN SAY ANYTHING. ERIK MENENDEZ
12 CAN SAY ANYTHING IN THE WORLD. JUDGE HIM BY HIS
13 ACTIONS. WHAT WAS HE DOING AT THIS POINT IN TIME? HE
14 RAN UP TO THE ROOM TO GET HIS GUN, THEN HE WENT TO GET
15 THE AMMUNITION, THEN HE STORMED INTO THE DEN AND SHOT
16 HIS PARENTS TO DEATH.

17 HE WANTS YOU TO BELIEVE -- HE IS TRULY
18 ASKING YOU TO BELIEVE THAT AT NO POINT IN TIME DID HE
19 INTEND TO SHOOT HIS PARENTS.

20 HE WANTS YOU TO BELIEVE THAT AS HE WAS
21 GETTING HIS GUN, HE WASN'T INTENDING TO FIRE IT. HE IS
22 TRULY ASKING YOU TO ACCEPT THAT STORY. HE WANTS YOU TO
23 BELIEVE THAT AS HE WAS LOADING UP HIS GUN AT THE CAR, HE
24 STILL DIDN'T HAVE ANY INTENTION OF SHOOTING HIS PARENTS.
25 HE WANTS YOU TO BELIEVE THAT AS HE WAS RUNNING TOWARDS
26 THE DEN WITH HIS BROTHER, HE DIDN'T KNOW WHAT HE WAS
27 GOING TO DO WHEN HE WENT INTO THE DEN.

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1 BELIEVE THAT?

2 WHAT WAS HE GOING TO DO, SHOW HIS FATHER
3 HIS BRAND NEW GUN THAT HE PURCHASED IN SAN DIEGO?

4 OBVIOUSLY, LADIES AND GENTLEMEN, HE WAS
5 GOING TO USE HIS GUN. BUT HE JUST WASN'T GOING TO ADMIT
6 IT. "I WASN'T THINKING ABOUT THAT. ALL I WAS THINKING
7 ABOUT WAS 'HURRY.'"

8 WELL, HE CONTRADICTED HIMSELF ON THAT
9 SEVERAL TIMES. AND IN AN EFFORT TO GET HIM TO ADMIT
10 THAT HE KNEW HE WAS GOING TO GO INTO THE ROOM TO SHOOT
11 HIS PARENTS, I SAID TO HIM: "YOU FELT YOUR PARENTS WERE
12 GOING TO KILL YOU, RIGHT?"

13 "RIGHT."

14 "NOW, WHAT WERE YOU GOING TO DO TO TRY TO
15 STOP THEM FROM KILLING YOU?"

16 THE OBVIOUS ANSWER IS, "WELL, I WAS GOING
17 TO GO IN THERE AND KILL THEM FIRST." ISN'T THAT THE
18 OBVIOUS ANSWER?

19 I SAID: "HOW WERE YOU GOING TO STOP THEM
20 FROM KILLING YOU? AND WHAT WAS HIS ANSWER?

21 "ANY WAY I COULD."

22 AGAIN, A VERY CLEVER ANSWER, AND HE GETS 10
23 POINTS FOR CLEVERNESS AND ZERO POINTS FOR CREDIBILITY.

24 HE IS AVOIDING THE ISSUE. HE IS AVOIDING
25 THE ANSWER. HE DOESN'T WANT TO TELL YOU WHAT HE WAS UP
26 TO AND WHAT HE WAS DOING, WHEN OBVIOUSLY HE WAS GOING TO
27 SHOOT HIS PARENTS.

28 HE USED WORDS LIKE: "I WASN'T THINKING. I

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1 WAS JUST REACTING."

2 AGAIN, ALSO A WAY OF AVOIDING THE ISSUE.

3 AVOIDING THE ISSUE, AVOIDING THE MENTAL STATE.

4 AND THEN HOW ABOUT THE RIFLES THAT ARE

5 UPSTAIRS IN THE CLOSET, IN THE PARENTS' CLOSET? THESE

6 TWO DEFENDANTS WERE CONCERNED ABOUT THEIR SAFETY THAT

7 WEEKEND. DO YOU THINK AT ANY POINT IN TIME THEY WOULD

8 HAVE WENT UP THERE AND CHECKED THESE RIFLES, AND SAID:

9 "HEY, IF OUR PARENTS ARE GOING TO KILL US, WHY DON'T WE

10 CHECK THEM OUT AND SEE IF THEY'RE DUSTING THEM OFF AND

11 OILING THEM, AND SEE IF THEY'RE GETTING THEM READY TO

12 SHOOT US TO DEATH."

13 AT NO POINT THAT WEEKEND DO THEY BOTHER TO

14 GO UP TO THE SECOND FLOOR AND CHECK AND SEE WHAT WAS

15 GOING ON WITH THESE RIFLES. ERIK MENENDEZ ADMITTED THAT

16 IN HIS TESTIMONY.

17 AND THEN WE KNOW THAT TO OPEN UP THE

18 HATCHBACK HE HAD TO GO IN THROUGH THE DRIVER'S SIDE, AND

19 HE HAD TO PULL THE LEVER ON THE DRIVER'S SIDE SO THAT HE

20 COULD THEN GO AROUND TO THE BACK OF THE HATCHBACK AND
21 OPEN UP THE HATCHBACK, AND RATHER THAN DISCUSS THE
22 OBVIOUS MENTAL PROCESSES -- THERE MUST HAVE BEEN SOME
23 MENTAL PROCESSES IN THIS -- HE SAYS: "I DON'T REMEMBER
24 DOING THAT. I DON'T REMEMBER WHAT MY INTENTION WAS AT
25 THE TIME."

26 WHAT WE SEE, LADIES AND GENTLEMEN, IS A
27 PATTERN OF ACTIONS AND DECISIONS AND CHOICES HE MADE.
28 HE ADMITS THAT HE LOADED UP FIVE SHELLS. HE SAID THAT

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1 HE EXPECTED HIS BROTHER, HE SAID, TO COME TO THE CAR,
2 BUT HE CAN'T SAY WHY HE EXPECTED HIS BROTHER TO COME TO
3 THE CAR.

4 LATER IN HIS CROSS-EXAMINATION, HERE IS
5 THE REFERENCE I WAS LOOKING FOR. ERIK MENENDEZ, HE
6 CLAIMS -- HE CLAIMS THAT WHEN HE MET LYLE MENENDEZ AT
7 THE TOP OF THE STAIRS BEFORE HE RAN THROUGH THIS SERIES
8 OF EVENTS, THAT HE DID NOT HAVE A CONVERSATION WITH LYLE
9 MENENDEZ ABOUT MEETING HIM AT THE CAR.

10 BUT, LADIES AND GENTLEMEN, I POINTED OUT
11 THE FACT THAT HE PREVIOUSLY TESTIFIED TO HAVING A
12 CONVERSATION WITH LYLE MENENDEZ ABOUT MEETING HIM OUT AT
13 THE CAR.

14 AND HE ACKNOWLEDGED -- HE SAID: "YES, I
15 PREVIOUSLY TESTIFIED TO THAT. YES, I DID TELL HIM THAT.

16 YES."

17 BUT THEN HE SAID: "BUT, NO. I DID NOT. I

18 JUST ASSUMED THAT HE WOULD GO THERE."

19 SO LOOK AT THE INCONSISTENCY IN THE

20 STATEMENT. HE PREVIOUSLY TESTIFIED THAT HE HAD A

21 CONVERSATION WITH LYLE MENENDEZ ABOUT MEETING OUT AT THE

22 CAR, THEN IN THIS TRIAL HE DENIES IT.

23 I WOULD SUBMIT TO YOU, LADIES AND

24 GENTLEMEN, THAT ALTHOUGH ERIK MENENDEZ PREVIOUSLY

25 TESTIFIED THAT HE HAD A CONVERSATION WITH LYLE MENENDEZ

26 ABOUT MEETING HIM AT THE CAR, HE HAS NOW DECIDED TO

27 ABANDON THAT FOR PURPOSES OF THE RETRIAL, BECAUSE WHAT

28 DOES THAT SHOW?

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1 WELL, IT LENDS TOO MUCH TO THE WHOLE

2 PROCESS OF BEING ABLE TO THINK AND BEING ABLE TO MAKE

3 DECISIONS, AND TO RECOGNIZE THAT THERE IS NO DANGER

4 THERE; THAT HE COULD ACTUALLY GET OUT TO THE CAR, AND HE

5 CAN MEET LYLE MENENDEZ OUT AT THE CAR SAFELY.

6 AND I THINK MR. MENENDEZ HAS SINCE THOUGHT

7 BETTER ABOUT THAT ADMISSION, AND SAID TO HIMSELF: "GEE,

8 WHY SHOULD I ADMIT THAT? WHY SHOULD I ADMIT THAT I WAS

9 GOING -- I TOLD LYLE MENENDEZ I WOULD MEET HIM OUT AT

10 THE CAR, BECAUSE THAT JUST SHOWS I KNOW I CAN GET OUT TO

11 THE CAR. SO I'LL DROP THAT ALTOGETHER FROM MY STORY."

12 FROM THE RETRIAL WE HAVE A NEW STORY. HE
13 TOTALLY FORGETS THAT PART OF HIS TESTIMONY FROM THE
14 FIRST TRIAL, AND DENIES IT.

15 SO YOU SEE HOW THE FACTS CHANGE, DEPENDING
16 UPON THE NEED OF HIS PARTICULAR TRIAL STRATEGY, AND WHAT
17 YOU HAVE HERE IS KIND OF A MORE REFINED THEORY OF HOW HE
18 WAS IN FEAR.

19 MS. ABRAMSON: OBJECTION, YOUR HONOR.

20 THE COURT: OVERRULED.

21 MR. CONN: HE HAS DECIDED -- HE HAS DECIDED THAT
22 THERE ARE CERTAIN FACTS HE SHOULD CHANGE AROUND.

23 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.
24 THERE IS NO EVIDENCE OF THE THEORY FROM THE FIRST TRIAL.

25 THE COURT: OVERRULED.

26 MR. CONN: HE HAS DECIDED THAT THERE ARE CERTAIN
27 THINGS THAT HE WOULD LIKE TO AVOID, SUCH AS THE MOTHER
28 HAVING SUPERNATURAL POWERS, AND THESE ADDITIONAL THINGS

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1 THAT I WILL BE GETTING INTO.

2 YOU CAN SEE HOW, FOR THE RETRIAL, HOW THE
3 TRUTH SHIFTS, DEPENDING UPON WHAT HE WANTS TO DO.

4 AND THEN I ASKED HIM, ONCE AGAIN, TRYING TO
5 GET HIM TO ADMIT -- BECAUSE I ASKED HIM MANY QUESTIONS
6 TRYING TO GET HIM TO ADMIT THAT HE WAS RUNNING INTO THE
7 DEN TO SHOOT THE PARENTS -- BECAUSE OBVIOUSLY THAT'S THE

8 ONLY REASONABLE CONCLUSION TO BE DRAWN FROM THE
9 EVIDENCE. BUT EVEN THOUGH IT'S THE ONLY REASONABLE
10 CONCLUSION, IT WOULD STILL BE NICE JUST TO HEAR HIM
11 ADMIT IT ON THE STAND.

12 SO I ASKED HIM: "WHY WERE YOU RUNNING INTO
13 THAT HOUSE? YOU KNEW THERE WAS DANGER IN THERE; IS THAT
14 WHAT YOU WERE SAYING?"

15 "YES."

16 "THEN WHY WERE YOU RUNNING TOWARDS THE
17 DANGER?"

18 AND THE ANSWER HE GAVE ME: "TO LIVE."

19 AGAIN, 10 POINTS FOR CLEVERNESS, ZERO
20 POINTS FOR CREDIBILITY.

21 HE CLAIMS, AS HE WAS RUNNING INTO THE
22 HOUSE: "I DIDN'T THINK THAT I WAS RUNNING IN THERE TO
23 SHOOT MY PARENTS." OBVIOUSLY HE DOESN'T WANT TO BE
24 CROSS-EXAMINED ON THAT STATE OF MIND.

25 "I DIDN'T KNOW WHAT I WAS GOING TO DO."

26 WELL, GIVE US A BREAK. YOU DIDN'T KNOW
27 WHAT YOU WERE GOING TO DO? YOU WERE RUNNING IN THERE
28 WITH LOADED SHOTGUNS. OBVIOUSLY YOU WERE GOING TO KILL

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1 YOUR PARENTS.

2 "IT WASN'T EVEN IN MY MIND," HE SAYS, "AS I
3 WENT THROUGH THE STUDY I WAS GOING TO SHOOT MY PARENTS.

4 I NEVER THOUGHT ABOUT WHAT I WAS GOING TO DO."

5 AND THEN HE SAYS: "I JUST KNEW THAT I HAD

6 TO GET INTO THE DEN BEFORE THEY CAME OUT, OR ELSE I WAS

7 GOING TO DIE."

8 SO HE MAKES THIS UNSUPPORTABLE PROPOSITION

9 THAT IF HE DIDN'T GET IN THERE BEFORE THEY CAME OUT, HE

10 WOULD DIE.

11 WELL, THAT DOESN'T NECESSARILY FOLLOW,

12 LADIES AND GENTLEMEN. BECAUSE IF THEY CAME OUT, HE

13 WOULD BE ABLE TO SEE THEM. HE HAD WEAPONS. HIS BROTHER

14 HAD A WEAPON. THEY WERE LOADED UP. THEY WERE READY TO

15 SHOOT THE PARENTS TO DEATH.

16 SO HE WANTS TO JUST THROW THIS PROPOSITION

17 AT YOU AND HOPE THAT YOU WILL ACCEPT THIS PROPOSITION

18 WITHOUT QUESTION.

19 "I JUST KNEW I HAD TO GET INTO THE DEN

20 BEFORE THEY CAME OUT, OR ELSE I WOULD DIE."

21 AND THEN HE ADMITS, LADIES AND GENTLEMEN,

22 HE SAID: "WELL, I ADMIT THAT IT SOUNDS RIDICULOUS."

23 LADIES AND GENTLEMEN, WHEN A DEFENDANT IN A

24 CRIMINAL TRIAL TAKES THE STAND AND TELLS YOU OUT OF HIS

25 OWN MOUTH: "I ADMIT IT SOUNDS RIDICULOUS," THAT'S A

26 PRETTY GOOD SIGN, LADIES AND GENTLEMEN, THAT YOU SHOULD

27 REJECT THAT DEFENDANT'S STORY, BECAUSE HE EVEN KNOWS,

28 LOOKING AT IT FROM AN OBJECTIVE POINT OF VIEW, IT IS

1 RIDICULOUS. HE ADMITS IT'S REDICULOUS.

2 THERE'S NO REASON WHY YOU SHOULD FIND IT TO
3 BE REASONABLE, WHEN THE DEFENDANT HIMSELF CALLS IT
4 RIDICULOUS.

5 YOU KNOW, THERE IS AN INSTRUCTION, LADIES
6 AND GENTLEMEN, CONCERNING EVALUATING THE TRUTHFULNESS OF
7 WITNESSES, AND I'D LIKE TO TALK ABOUT THAT.

8 YOU KNOW THAT THE PROSECUTION HAS THE
9 BURDEN OF PROOF. THE PROSECUTION HAS TO PROVE THE
10 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, AND THERE IS
11 A PRESUMPTION OF INNOCENCE.

12 BUT BEAR IN MIND, LADIES AND GENTLEMEN,
13 THAT ALTHOUGH THERE IS A PRESUMPTION OF INNOCENCE, ALL
14 THAT MEANS IS THAT THE PROSECUTION HAS TO PROVE THE CASE
15 AGAINST THE DEFENDANT BEYOND A REASONABLE DOUBT.

16 THERE IS NO PRESUMPTION OF TRUTHFULNESS.
17 IT IS NOT YOUR JOB, AS YOU LISTEN TO THE TESTIMONY OF
18 THE DEFENDANT, TO SAY, "WELL, I'M GOING TO SUSPEND MY
19 DISBELIEF, AND I AM GOING TO IGNORE THE INCONSISTENCIES,
20 AND I AM GOING TO -- I AM GOING TO GO THROUGH MENTAL
21 GYMNASTICS TO TRY TO FIND THIS WITNESS TO BE TRUTHFUL."
22 NO.

23 THE PRESUMPTION OF INNOCENCE DOESN'T
24 REQUIRE YOU TO DO THAT. THERE IS NO PRESUMPTION OF
25 TRUTHFULNESS, JUST A PRESUMPTION OF INNOCENCE, YOU SEE.

26 THERE IS AN INSTRUCTION THAT YOU WILL BE
27 GIVEN ABOUT A WITNESS WHO IS WILLFULLY FALSE, AND HOW
28 YOU ARE TO VIEW THE TESTIMONY OF A WITNESS WHO YOU FIND

1 TO BE WILLFULLY FALSE, AND THIS IS WHAT THAT INSTRUCTION
2 SAYS:

3 "A WITNESS WHO IS WILLFULLY FALSE
4 IN ONE MATERIAL PART OF HIS OR HER
5 TESTIMONY IS TO BE DISTRUSTED IN OTHERS."
6 IN OTHER PARTS OF HIS TESTIMONY.

7 "YOU MAY REJECT THE WHOLE TESTIMONY
8 OF A WITNESS WHO WILLFULLY HAS TESTIFIED
9 FALSELY AS TO A MATERIAL POINT, UNLESS
10 FROM ALL OF THE EVIDENCE, YOU BELIEVE THE
11 PROBABILITY OF TRUTH FAVORS HIS OR HER
12 TESTIMONY IN OTHER PARTICULARS."

13 NOW, THIS INSTRUCTION, LADIES AND
14 GENTLEMEN, DOESN'T APPLY TO JUST WITNESSES OTHER THAN
15 THE DEFENDANT. THIS INSTRUCTION APPLIES TO THE
16 DEFENDANT, JUST AS IT APPLIES TO ALL OF THE OTHER
17 WITNESSES IN THIS CASE.

18 SO IF YOU FIND THAT THE DEFENDANT WAS
19 WILLFULLY FALSE JUST IN REGARD TO ONE THING, THIS
20 INSTRUCTION TELLS YOU YOU OUGHT TO DISTRUST HIM, AND YOU
21 MAY DECIDE TO REJECT HIS TESTIMONY IN ITS ENTIRETY.

22 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU
23 THAT ERIK MENENDEZ WAS WILLFULLY FALSE TIME AND TIME AND
24 TIME AGAIN. THERE'S NO WAY YOU CAN GO THROUGH THE STORY
25 AND REACH ANY CONCLUSION OTHER THAN HE IS WILLFULLY

26 FALSE. AND I ASK YOU, BASED UPON THAT, TO REJECT HIS
27 STORY. REJECT HIS STORY IN ITS ENTIRETY. THIS
28 INSTRUCTION GIVES YOU THE AMMUNITION TO DO THAT, AND

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1 THAT IS WHAT YOU SHOULD DO, BECAUSE THAT IS THE
2 REASONABLE THING TO DO.

3 IF WE WERE TO CALL A WITNESS -- LOOK AT IT
4 THIS WAY. HERE'S ANOTHER WAY OF LOOKING AT IT.

5 SUPPOSE THE PROSECUTION CALLED A WITNESS
6 LIKE ERIK MENENDEZ, WITH THIS LONG, ELABORATE TALE, WITH
7 DOZENS AND DOZEN, HUNDREDS AND HUNDREDS OF PROBLEMS WITH
8 HIS STORY. IF WE WERE WERE TO CALL A WITNESS LIKE THIS,
9 I AM SURE YOU WOULD SAY: "NO WAY WOULD I CONVICT A
10 PERSON BASED ON THE TESTIMONY OF SOMEONE LIKE THIS. I
11 DON'T BELIEVE IT. I REJECT IT."

12 WELL, LADIES AND GENTLEMEN, JUST BECAUSE HE
13 IS THE DEFENDANT ON TRIAL, THAT DOESN'T MEAN THAT YOU
14 SHOULD LOOK AT HIS TESTIMONY ANY LESS CRITICALLY. YOU
15 SHOULD LOOK AT IT JUST AS CRITICALLY.

16 AND I ASK YOU, LADIES AND GENTLEMEN, THAT
17 YOU REJECT HIS TESTIMONY AS IF HE WERE A WITNESS CALLED
18 BY THE PROSECUTION, WHICH I AM SURE YOU WOULD DO IN A
19 HEARTBEAT.

20 AND I ASKED HIM: "WHERE WAS THE EVIDENCE?
21 LET'S TALK ABOUT THE HARD-CORE EVIDENCE. WHERE IS THE

22 EVIDENCE THAT YOUR PARENTS WERE ARMED?"
23 "THE EVIDENCE," HE SAID, "WAS IN MY MIND."
24 NO, IT'S NOT REALLY IN HIS MIND, IT'S IN
25 HIS STORY. THAT'S ALL.
26 "WHAT IS YOUR BELIEF BASED UPON?" I SAID.
27 AGAIN, REFERRING TO SOME SORT OF PHYSICAL EVIDENCE, SOME
28 SORT OF SOLID PROOF.

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1 "JUST KNOWING MY MOTHER AND MY FATHER."
2 AGAIN, ALL OF THE UNSUPPORTABLE
3 PROPOSITIONS FOR BEING IN FEAR OF HIS PARENTS, WHEN HE
4 HAS NO EVIDENCE TO WARRANT A FEAR OF HIS PARENTS.
5 I SAID: "ISN'T IT TRUE THAT YOU MADE A
6 DECISION TO GO INSIDE THE HOUSE?"
7 AGAIN, THIS WAS PART OF MY EFFORT JUST TO
8 GET HIM TO CONCEDE THE OBVIOUS, THAT HE INTENDED TO GO
9 INSIDE THE HOUSE AND SHOOT HIS PARENTS TO DEATH.
10 AND IN RESPONSE TO THAT QUESTION, HE SAID:
11 "I CAN'T SAY YES AND I CAN'T SAY NO."
12 AGAIN, IS THAT AN HONEST ANSWER, OR AN
13 EVASIVE ANSWER? SOMEONE WHO JUST DOESN'T WANT TO SAY
14 YES OR NO, BECAUSE THEY DON'T WANT TO DEAL WITH THE
15 CONSEQUENCES OF THEIR ANSWER.
16 I ASKED HIM ABOUT IMMINENT DANGER,
17 BECAUSE -- AND I ASKED HIM: "WHERE WAS THE IMMINENT

18 DANGER IN YOUR MIND?"

19 AND HE SAID, "WELL, THE IMMINENT DANGER WAS
20 WHERE MY PARENTS WERE, AND THAT WAS INSIDE THE HOUSE."

21 HE NEVER SAID THERE WAS DANGER OUT THERE IN
22 THE STREET, AS HE WAS OUT THERE WITH HIS BROTHER, LYLE
23 MENENDEZ, AND HE WAS HOLDING ALL THE CARDS. HE HAD THE
24 GUNS FULLY LOADED. HE HAD THE GAS IN THE CAR, AND CAR
25 KEYS IN HIS POCKET. THE DANGER, HE SAID, WAS INSIDE.

26 SO HE RECOGNIZED AT THAT POINT IN TIME --
27 AT THAT POINT IN TIME, LADIES AND GENTLEMEN, HE
28 RECOGNIZED THAT THE DANGER WAS INSIDE THE HOUSE.

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1 WELL, IF THE DANGER WAS INSIDE THE HOUSE,
2 LADIES AND GENTLEMEN, HOW CAN YOU JUSTIFY GOING INTO THE
3 HOUSE AND SHOOTING YOUR PARENTS TO DEATH? THERE IS NO
4 DANGER. THERE IS NO IMMINENT DANGER. THERE IS NO
5 APPARENT DANGER. THERE IS NO REASON FOR HIM TO HAVE
6 THIS FEAR THAT HE WAS CLAIMING. THE FACTS JUST DON'T
7 SUPPORT IT. A REASONABLE MAN WOULD NOT HAVE THAT FEAR.
8 IT JUST DOESN'T MAKE SENSE.

9 HE EVEN USED THE WORD "FUTURE."

10 "THE DANGER WAS IN THE FUTURE," HE SAID.

11 I ASKED HIM: "ISN'T IT TRUE THE DANGER WAS
12 IN THE FUTURE?"

13 HE SAID: "YES, THE DANGER WAS IN THE

14 FUTURE, WHEN THEY CAME OUT OF THE ROOM."

15 IF THE DANGER IS IN THE FUTURE, LADIES AND

16 GENTLEMEN, YOU HAVE NO RIGHT TO GO IN THERE AND SHOOT

17 YOUR PARENTS TO DEATH, AND NO REASON TO BELIEVE --

18 MS. ABRAMSON: OBJECTION, YOUR HONOR.

19 THE COURT: THIS IS ARGUMENT BASED ON THE

20 EVIDENCE PRESENTED, AND COUNSEL IS PERMITTED TO DO THAT.

21 MR. CONN: THANK YOU.

22 MS. ABRAMSON: YOUR HONOR, I WOULD LIKE TO BE

23 HEARD.

24 THE COURT: OKAY. ALL RIGHT. WE'LL HAVE YOU --

25 ALL COUNSEL APPROACH THE SIDE.

26 (THE FOLLOWING PROCEEDINGS WERE

27 HELD OUT OF THE PRESENCE OF

28 THE JURY:)

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1 THE COURT: YES. YES.

2 MS. ABRAMSON: SINCE WE ARE NOT ENTITLED,

3 ACCORDING TO THIS COURT, TO IMPERFECT SELF-DEFENSE

4 INSTRUCTIONS ON IMMINENT DANGER, AND SINCE PROVOCATION

5 THEORY DOES NOT REQUIRE IMMINENT DANGER, I THINK IT IS

6 INAPPROPRIATE FOR COUNSEL TO BE ABLE TO ARGUE ABOUT

7 IMMINENT AND FALSELY MISLEAD THE JURY INTO BELIEVING

8 THAT THERE IS AN IMMINENCE REQUIREMENT FOR PROVOCATION.

9 THE COURT: HE HAS NEVER REFERRED TO THAT. HE IS

10 REFERRING TO THE DEFENDANT'S STATE OF MIND, AND AS TO
11 WHAT MOTIVATED HIM, AND THE UNREASONABLENESS AND THE
12 LACK OF CREDIBILITY IN WHAT HIS STORY WAS, AS I
13 UNDERSTAND IT.

14 MS. ABRAMSON: DOESN'T MAKE ANY DIFFERENCE WITH
15 RESPECT TO IMMINENCE AT THIS POINT.

16 THE COURT: WELL, IT SURE HAS TO DO WITH WHETHER
17 THE JURY BELIEVES THE DEFENDANT'S STORY THAT HE THOUGHT
18 THESE THINGS, AND IT DOESN'T MAKE SENSE TO THE AVERAGE
19 PERSON THAT HE THOUGHT THESE THINGS. IT'S SOMETHING
20 THAT YOU CAN CONSIDER AS TO WHETHER OR NOT THE STORY IS
21 CREDIBLE.

22 THAT'S HOW THE ARGUMENT IS BEING PRESENTED.
23 IT'S NOTHING TO DO WITH THE LAW --

24 MS. ABRAMSON: I THINK COUNSEL KNOWS PRECISELY
25 WHAT HE'S DOING.

26 THE COURT: THIS HAS NOTHING TO DO WITH
27 APPLICATION OF LAW IN REFERENCE TO THOSE ISSUES.

28 MS. ABRAMSON: YOUR HONOR, I DIDN'T WANT TO

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1 OBJECT AT THAT POINT, BECAUSE I DON'T LIKE TO OBJECT TO
2 COUNSEL'S ARGUMENT.

3 BUT HIS WHOLE ARGUMENT IS YOU WEIGH THE
4 TESTIMONY OF THE DEFENDANT THE SAME AS ANY OTHER
5 WITNESS, AND THE BURDEN OF PROOF DOESN'T HAVE ANY IMPACT

6 ON IT IS, OF COURSE, ALSO FALSE. BECAUSE WHEN THE
7 DEFENSE DEPENDS UPON THE CREDIBILITY OF THE DEFENDANT,
8 THEY HAVE TO PROVE THAT HE'S LYING BEYOND A REASONABLE
9 DOUBT. IT'S THE SAME AS ANY OTHER PIECE OF EVIDENCE IN
10 THE CASE. THEY STILL HAVE THE BURDEN.

11 THE COURT: AS FAR AS EVALUATING WITNESSES, ONCE
12 THE DEFENDANT TAKES THE WITNESS STAND, HE IS TREATED THE
13 SAME AS ANYBODY ELSE.

14 MS. ABRAMSON: BUT IT DOES IMPACT WITH THE BURDEN
15 OF PROOF, AND COUNSEL TRIED TO MAKE IT -- THAT'S FINE.
16 BUT HE MADE THE ARGUMENT THIS HAS NOTHING TO DO WITH
17 PRESUMPTION OF INNOCENCE, AND IT HAS NOTHING TO DO WITH
18 THE CONCEPT OF PROOF BEYOND A REASONABLE DOUBT, AND OF
19 COURSE IT DOES.

20 THE COURT: OKAY. I DON'T FIND THERE WAS
21 ANYTHING IMPROPER IN THE WAY THE ARGUMENT WAS PRESENTED.

22 (THE FOLLOWING PROCEEDINGS WERE
23 HELD IN OPEN COURT IN THE
24 PRESENCE OF THE JURY:)

25

26 THE COURT: OKAY. YOU MAY PROCEED.

27 MR. CONN: THANK YOU.

28 SO, ERIK MENENDEZ SAID THE DANGER WAS IN

1 THE FUTURE WHEN THEY CAME OUT OF THE ROOM. HE SAID: "I

2 KNEW AT THE TIME," AND HE REALIZED AT THE TIME THAT HE
3 COULD NOT SHOOT THROUGH WALLS.

4 "THEY COULD NOT KILL ME UNTIL THEY EXITED
5 THE DEN. WHEN THEY CAME OUT OF THE DEN, THEY WOULD BE A
6 DANGER TO ME," AND THAT POINT IN TIME HE SAID WAS STILL
7 IN THE FUTURE.

8 SO AGAIN, WHERE IS THE BASIS FOR THIS FEAR
9 THAT HE WAS RELYING UPON? THERE WAS NO BASIS FOR THIS
10 FEAR.

11 LET'S TALK ABOUT THE DEFENDANT'S ENTRY INTO
12 THE -- INTO THE DEN.

13 THE DEFENDANT WOULD HAVE YOU BELIEVE THAT
14 IT WAS DARK WHEN HE ENTERED THE ROOM, AND HE WASN'T ABLE
15 TO SEE HIS PARENTS VERY CLEARLY. AND I THINK HE CALLED
16 THEM SHADOWS, RATHER THAN SILHOUETTES, SHADOWS WHEN HE
17 ENTERED THE ROOM.

18 BUT, LADIES AND GENTLEMEN, THERE IS REASON
19 TO BELIEVE THAT, NUMBER ONE, THERE WERE LIGHTS ON AT THE
20 TIME HE ENTERED.

21 BUT NUMBER TWO, IF THE LIGHTS WEREN'T ON,
22 THE LIGHTS FROM THE FOYER FLOODED THE DEN.

23 HE SAID, FOR EXAMPLE, THAT -- WELL, FIRST
24 OF ALL, CONSIDER THE ACCURACY OF THE SHOTS. I MEAN, YOU
25 SAW ALL THE PHOTOS IN THIS CASE OF THE WOUNDS THAT WERE
26 INFLICTED TO THE VICTIMS, AND YOU KNOW THAT OF ALL THE
27 SHOTS FIRED, THERE WAS PROBABLY ONE FULL, COMPLETE MISS.
28 ONE SHOT WENT INTO THE SHUTTERS. THE OTHER DAMAGE THAT

1 WAS DONE TO THE OTHER SHUTTER WAS PROBABLY A PARTIAL
2 MISS; THAT IS, SOME BODY PART WAS STRUCK, SOME PELLETS
3 WENT ON TO STRIKE THAT OTHER PART OF THE SHUTTERS.

4 SO WHAT YOU HAVE, LADIES AND GENTLEMEN, MAY
5 VERY WELL BE 11 OUT OF 12 SHOTS HIT THE TARGETS. AND
6 YOU KNOW HOW CLOSE SOME OF THEM WERE. THEY WERE
7 ACTUALLY CONTACT WOUNDS.

8 BUT EVEN FOR THE REMAINDER, LADIES AND
9 GENTLEMEN, YOU HAVE VERY, VERY ACCURATE SHOOTING.

10 NOW, ERIK MENENDEZ AGAIN WANTS YOU TO
11 BELIEVE THAT HE HAD NEVER FIRED A SHOTGUN BEFORE, AND
12 YET HE RUSHED INTO THAT ROOM. AND DO YOU REMEMBER THE
13 WAY HE WAS DESCRIBING IT? HE DESCRIBED IT AS SORT OF
14 SHOOTING FROM THE HIP, AND HE EVEN SAID THE GUN WAS
15 BOUNCING.

16 WELL, LADIES AND GENTLEMEN, HE MUST HAVE
17 BEEN AN AWFULLY, AWFULLY LUCKY SHOT IN ORDER TO GET THAT
18 TYPE OF A -- TO GET THAT TYPE OF ACCURACY IN HIS
19 SHOOTING IF HE IS RUSHING INTO THE ROOM, RUNNING WHILE
20 HE WAS SHOOTING. THE GUN IS BOUNCING. HE NEVER FIRED A
21 SHOTGUN BEFORE, AND HE IS SHOOTING IN THE DARK, TOO.

22 THERE IS A PROBLEM WITH THAT STORY, LADIES
23 AND GENTLEMEN. I THINK YOU CAN REASONABLY CONCLUDE THAT
24 YOU WOULD NOT GET THE TYPE OF ACCURACY BASED UPON THE
25 FACTS THAT WERE GIVEN TO YOU BY ERIK MENENDEZ.

26 SO THERE IS REASON TO BELIEVE THAT ONE OR

27 MORE OF THOSE ELEMENTS IS MISSING, AND ONE OF THE
28 ELEMENTS MAY BE THAT MR. MENENDEZ WAS NOT EXACTLY

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1 RUNNING INTO THAT ROOM. MR. MENENDEZ WAS AIMING.
2 MR. MENENDEZ DID NOT HAVE THE GUN BOUNCING IN HIS HANDS.
3 MR. MENENDEZ WAS HOLDING IT UP AND SHOOTING AT HIS
4 TARGETS.

5 AND THIRD, MR. MENENDEZ MAY VERY WELL HAVE
6 HAD MORE THAN ENOUGH LIGHT TO SEE WHAT HE WAS SHOOTING
7 AT, OR SURELY THERE WOULD HAVE BEEN MORE MISSES, LADIES
8 AND GENTLEMEN.

9 HE SAID THAT HIS PARENTS NORMALLY WATCHED
10 TELEVISION WITH THE LIGHTS ON. HE ADMITS THAT HE HAD
11 BEEN TAUGHT AS A CHILD THAT IT IS BAD FOR HIS EYES TO
12 WATCH TELEVISION WHEN THE LIGHTS ARE OFF. HE SAID THOSE
13 THINGS TO DETECTIVE ZOELLER ON SEPTEMBER THE 17TH IN NEW
14 JERSEY.

15 WELL, IF THAT IS THE CASE, LADIES AND
16 GENTLEMEN, THEN WHY WOULD THE PARENTS BE BREAKING THEIR
17 OWN RULE AND WATCHING T.V. IN THE DARK?

18 AND HE WANTS US TO BELIEVE THEY WERE
19 STANDING THERE WATCHING T.V. IS THAT THE WAY YOU
20 NORMALLY WATCH T.V. ON SUNDAY NIGHT AT 10:00 O'CLOCK,
21 STANDING IN FRONT OF A TELEVISION?

22 I WOULD SUBMIT, LADIES AND GENTLEMEN, THAT

23 KITTY AND JOSE MENENDEZ WERE SEATED. THEY WERE WATCHING
24 T.V. AND THE LIGHTS WERE ON.
25 AND EVEN IF THE LIGHTS WERE NOT ON, LADIES
26 AND GENTLEMEN, WE KNOW THAT THE LIGHTS FROM THE FOYER
27 WERE ON WHEN THE POLICE ARRIVED. WE KNOW THAT ERIK
28 MENENDEZ ADMITTED THAT THE LIGHTS WERE ON, WHEN THE

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1 FOYER LIGHTS WERE ON WHEN THE POLICE ARRIVED.
2 AND WHEN I ASKED HIM: "ISN'T IT TRUE THAT
3 THE LIGHTS, WHEN YOU OPENED THOSE DOORS, THE LIGHTS FROM
4 THE FOYER FLOODED THE ROOM?"
5 AND HE SAID: "YES, THEY,MUST HAVE. I
6 NEVER THOUGHT ABOUT IT."
7 SO I WOULD SUBMIT TO YOU, LADIES AND
8 GENTLEMEN, ERIK MENENDEZ, WHEN HE ENTERED THAT ROOM,
9 ALONG WITH HIS BROTHER, LYLE MENENDEZ, WAS PERFECTLY
10 ABLE TO SEE WHAT WAS GOING ON IN THAT ROOM. HE SAW THAT
11 HIS PARENTS WERE UNARMED AND DEFENSELESS. HE SAW THAT
12 HIS PARENTS POSED NO THREAT WHATSOEVER TO HIM.
13 HE SHOT HIS PARENTS TO DEATH BECAUSE THAT
14 WAS PART OF A PRE-EXISTING PLAN TO SHOOT HIS PARENTS TO
15 DEATH, NOT BECAUSE HE BELIEVED HE WAS IN ANY DANGER.
16 AND THEN HE WANTS US TO BELIEVE -- AS FAR
17 AS THE RELOAD IS CONCERNED -- HE WANTS US TO BELIEVE
18 THAT HE DOESN'T KNOW WHY HE WENT OUT TO THE CAR. HOW

19 COULD THAT POSSIBLY BE?
20 AGAIN, WE'RE GETTING BACK INTO HIS -- HIS
21 CLAIM OF JUST ENDING UP PLACES. DO YOU SEE THAT PATTERN
22 IN HIS TESTIMONY, HOW HE JUST ENDS UP IN CERTAIN PLACES?
23 HE DOESN'T HAVE ANY PARTICULAR INTENT TO GO THERE, OR
24 ANY PARTICULAR PURPOSE, BUT HE JUST KIND OF ENDS UP
25 THERE.
26 ISN'T THAT KIND OF LIKE ENDING UP IN THE
27 JEWELRY STORE? "REMEMBER THAT FOUR DAYS AFTER THE
28 KILLING YOU WENT TO THE JEWELRY STORE AND BOUGHT

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1 JEWELRY?"
2 "NO. WE DIDN'T GO TO THE JEWELRY STORE AND
3 BUY JEWELRY. WE WERE OUT SHOPPING TO BUY CLOTHING, AND
4 WE JUST -- WE JUST WENT TO THE JEWELRY STORE." SO IT'S
5 KIND OF LIKE JUST ENDING UP THERE. KIND OF LIKE SAN
6 DIEGO.
7 "ISN'T IT TRUE YOU WENT TO SAN DIEGO TO BUY
8 GUNS?"
9 "NO. WE DIDN'T GO TO SAN DIEGO TO BUY
10 GUNS. WE JUST GOT ON THE FREEWAY AND ENDED UP THERE."
11 "ISN'T IT TRUE YOU WENT TO THE DEN TO SHOOT
12 YOUR PARENTS?"
13 "NO. WE DIDN'T INTEND TO GO TO THE DEN TO
14 SHOOT OUR PARENTS. WE JUST ENDED UP THERE."

15 AND IT'S THE SAME THING WITH THE CAR. "WHY
16 DID YOU RUN OUT TO THE CAR TO RELOAD?"
17 "I DON'T KNOW WHY I RAN OUT TO THE CAR."
18 OBVIOUSLY HE WENT OUT FOR THE RELOAD. HE DOESN'T WANT
19 TO ADMIT IT. HE AVOIDS OBVIOUS -- HE AVOIDS THE OBVIOUS
20 FACTS OF THIS CASE, THE UNDENIABLE FACTS OF THIS CASE,
21 ACCORDING TO HIS OWN STORY.
22 HE SAID HE WAS SCRAMBLING FOR SHELLS. HE
23 GOT A SHELL, HE GAVE A SHELL TO LYLE MENENDEZ, BUT HE
24 CLAIMS THAT HE WAS STILL IN FEAR AT THAT POINT IN TIME.
25 AND THEN HE RAN, FOLLOWING LYLE MENENDEZ,
26 BACK INTO THE HOUSE. BUT HE DIDN'T GO INTO THE DEN, AND
27 HE DIDN'T LOAD HIS OWN GUN.
28 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU

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1 THAT ERIK MENENDEZ KNEW AT THAT POINT IN TIME THAT HIS
2 FATHER WAS DEAD, AND THAT HIS MOTHER WAS DYING, BECAUSE
3 IF HE THOUGHT THERE WAS REAL FEAR -- IF HE THOUGHT THERE
4 WAS REAL DANGER AT THAT POINT, IF HE WAS TRULY IN FEAR,
5 WOULD HE HAVE RUN INSIDE THE HOUSE WITH AN UNLOADED GUN
6 AT THAT POINT IN TIME? OF COURSE NOT. IF HE THOUGHT
7 THAT THERE WAS DANGER AT THAT POINT IN TIME, HE WOULD
8 HAVE LOADED UP HIS OWN GUN, AS WELL AS GIVEN AMMUNITION
9 TO HIS BROTHER, LYLE MENENDEZ.
10 BUT HE TESTIFIED, LADIES AND GENTLEMEN,

11 THAT HE PREVIOUSLY TESTIFIED THAT HE INSTINCTIVELY KNEW
12 THAT HIS BROTHER WOULD RETURN TO FINISH KILLING HIS
13 MOTHER. IT'S A VERY INTERESTING CHOICE OF WORDS THERE.
14 HE INSTINCTIVELY KNEW THAT HIS BROTHER WAS GOING TO
15 RETURN TO FINISH KILLING HIS MOTHER, NOT HIS FATHER.

16 WHY NOT HIS FATHER? I WOULD SUBMIT TO YOU,
17 BECAUSE HE KNEW HIS FATHER WAS DEAD AT THAT POINT. HE
18 KNEW WHAT THE SITUATION WAS BEFORE HE LEFT THAT ROOM,
19 AND HE KNEW AT THAT POINT IN TIME, LADIES AND GENTLEMEN,
20 THERE WAS NO REASON FOR LYLE MENENDEZ TO GO BACK INTO
21 THAT ROOM EXCEPT TO KILL THE DYING WITNESS LYING ON THE
22 FLOOR.

23 NOW, IN THIS TRIAL HE TRIED TO GO TO GREAT
24 LENGTHS -- HE TRIED TO AVOID THAT CONCESSION IN THE
25 FIRST TRIAL THAT HE INSTINCTIVELY KNEW THAT HIS BROTHER
26 WOULD RETURN TO FINISH HIS MOTHER -- FINISH KILLING HIS
27 MOTHER.

28 WHAT DOES "FINISH KILLING" MEAN? FINISH

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1 KILLING MEANS HE KNOWS SHE'S ALREADY DYING. AND NO
2 MENTION OF THE FATHER. AND ONLY HANDING LYLE ONE SHELL.
3 WHY JUST ONE SHELL? BECAUSE OBVIOUSLY HE KNEW THE
4 FATHER WAS DEAD.

5 SO HE TRIED TO AVOID THAT PRIOR CONCESSION
6 FROM THE FIRST TRIAL, AND I HAD TO GO OVER IT WITH HIM A

7 COUPLE OF TIMES. BUT EVENTUALLY HE GAVE IT UP. HE
8 YIELDED. HE CONCEDED. "YES, I TESTIFIED TO THAT IN THE
9 FIRST TRIAL." HE DIDN'T WANT TO. I HAD TO HIT ON IT
10 SEVERAL TIMES, BECAUSE IT IS A VERY IMPORTANT POINT. IT
11 TELLS YOU THAT THE ONLY REASONABLE INFERENCE TO BE DRAWN
12 FROM THAT WAS THAT HE KNEW HIS FATHER WAS DEAD. ONLY
13 ONE MORE SHELL WAS NEEDED, AND IT WAS BECAUSE HIS MOTHER
14 WAS DYING.

15 I ASKED HIM, "WHY DIDN'T YOU PREVIOUSLY
16 TESTIFY THAT YOU INSTINCTIVELY KNEW THAT YOUR BROTHER
17 WOULD RETURN TO FINISH KILLING YOUR MOTHER?"

18 "ANSWER: I THINK THOSE ARE THE WORDS I USED,
19 YES."

20 SO, HE YIELDED.

21 THEN LATER HE STARTED SAYING -- HE STARTED
22 PLAYING A LITTLE BIT WITH THE TIME. "WELL, I'M SAYING
23 MAYBE AT SOME DIFFERENT POINT IN TIME I KNEW THAT," AND
24 I HAD TO CLARIFY THAT FOR HIM.

25 I SAID: "I'M TALKING ABOUT AT THE TIME OF
26 THE INCIDENT. I AM NOT TALKING ABOUT SOMETHING YOU PUT
27 TOGETHER LATER."

28 I ASKED HIM THE FOLLOWING:

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1 "I AM TALKING ABOUT AT THE TIME OF
2 THE INCIDENT, DIDN'T YOU PREVIOUSLY

3 TESTIFY THAT YOU INSTINCTIVELY KNEW AT
4 THAT TIME THAT YOUR BROTHER WOULD RETURN
5 TO FINISH KILLING YOUR MOTHER?"

6 "ANSWER: I THINK I REMEMBER USING
7 THE WORD 'INSTINCT.' I DON'T REMEMBER
8 SAYING THE REST, BUT I TRUST THAT THAT'S
9 WHAT I SAID."

10 AND THEN I SAID: "MR. MENENDEZ, I
11 AM ASKING YOU IF THOSE ARE YOUR WORDS.
12 DID YOU PREVIOUSLY TESTIFY THAT YOU
13 INSTINCTIVELY KNEW THAT YOUR BROTHER WOULD
14 RETURN TO FINISH KILLING YOUR MOTHER?

15 "ANSWER: YES."

16 SEE, HE ADMITTED THAT IN THE FIRST TRIAL.
17 AND THEN HE TRIED TO SAY -- WELL, A LITTLE WHILE LATER
18 HE WAS TRYING TO BLAME IT ON THE PROSECUTOR, DO YOU
19 REMEMBER THAT, THE PROSECUTOR FROM THE FIRST TRIAL WHO
20 ASKED HIM THAT QUESTION, AND HE WAS TRYING TO SUGGEST,
21 "WELL, I WAS JUST SAYING YES IN RESPONSE TO A QUESTION."

22 WELL, WHAT ARE YOU SAYING? WHEN YOU SAY
23 YES IN RESPONSE TO A QUESTION, THAT DOESN'T MEAN THAT
24 YOUR ANSWER IS TRULY YES? SHOULD WE GO THROUGH THE
25 TRIAL TRANSCRIPT NOW AND DELETE ALL THOSE QUESTIONS THAT
26 YOU ANSWERED YES TO, BECAUSE IT'S UNRELIABLE BECAUSE IT
27 WASN'T YOUR OWN WORDS, IT WAS JUST YES IN RESPONSE TO A
28 QUESTION FROM THE PROSECUTOR?

1 OF COURSE NOT. SO, HE WAS TRYING TO BLAME
2 IT ON MR. KURIYAMA, THE FORMER PROSECUTOR IN THIS CASE.

3 BUT THEN I SAID: "MR. MENENDEZ, ARE YOU
4 SAYING THAT YOU DIDN'T MEAN THIS WHEN YOU TESTIFIED TO
5 THIS IN THE FIRST TRIAL?"

6 AND HE SAID: "I MEANT EVERYTHING THAT I
7 TESTIFIED TO."

8 AND I SAID: "AND ONE OF THE THINGS THAT
9 YOU MEANT TO TESTIFY TO, AND DID TESTIFY TO, WAS THAT
10 WHEN YOU HANDED THAT SHELL TO YOUR BROTHER, YOU
11 INSTINCTIVELY KNEW THAT YOUR BROTHER WOULD RETURN TO
12 FINISH KILLING YOUR MOTHER; IS THAT CORRECT?

13 "ANSWER: YES."

14 LADIES AND GENTLEMEN, THE DEFENSE AT
15 VARIOUS TIMES TRIED TO GET SYMPATHY FOR THE DEFENDANTS,
16 AND I ASK YOU NOT TO RELY UPON SYMPATHY FOR EITHER
17 DEFENDANT.

18 AND IN REGARD TO ERIK MENENDEZ IN
19 PARTICULAR, WHEN HE TESTIFIED, THERE WERE VARIOUS WAYS
20 IN WHICH HIS DEFENSE COUNSEL SOUGHT TO ELICIT SYMPATHY
21 FROM YOU FOR THE DEFENDANT.

22 FOR EXAMPLE, THE QUESTIONS CONCERNING AGE.
23 HOW MANY TIMES DID COUNSEL FOR ERIK MENENDEZ INQUIRE:
24 "NOW, YOU WERE 18 WHEN THIS HAPPENED? AND YOU WERE HOW
25 OLD WHEN YOU GOT OUT OF SCHOOL, AND YOUR BROTHER WAS
26 21," AND IT -- AGAIN, HARPING ON THE AGE ISSUE AGAIN AND
27 AGAIN AND AGAIN.

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1 AND EVEN THE -- YOU WILL RECEIVE A JURY INSTRUCTION
2 WHICH SAYS DO NOT DECIDE THIS CASE BASED UPON SYMPATHY.
3 YOU SHOULDN'T DECIDE THIS CASE BASED UPON
4 AGE, BECAUSE THE DEFENDANTS WERE 18 YEARS OLD AT THE
5 TIME OF THE KILLING. IT DOESN'T MATTER WHETHER THEY
6 WERE 18 OR 38. THIS KILLING IS AS RUTHLESS AS THE
7 PHOTOGRAPHS DEPICT, LADIES AND GENTLEMEN, AND IT DOESN'T
8 MAKE A DIFFERENCE WHETHER THEY WERE YOUNG MEN OR OLDER
9 MEN.

10 WE HEARD ABOUT PHYSICAL PROBLEMS. THE
11 DEFENDANTS WERE SUFFERING -- THE DEFENDANT WAS SUFFERING
12 FROM DYSLEXIA, OR SOMETHING LIKE THAT. AND ONE OF THE
13 FIRST QUESTIONS I ASKED HIM IS: "WHAT DOES THAT HAVE TO
14 DO WITH THE FACTS OF THIS CASE? WHAT DOES THAT HAVE TO
15 DO WITH WHY YOU SHOT YOUR MOTHER AND YOUR FATHER TO
16 DEATH?"

17 AND HE HAD TO ADMIT IT HAD NOTHING TO DO
18 WITH WHY HE SHOT HIS MOTHER AND FATHER TO DEATH.

19 WHY WAS THAT BROUGHT OUT? SYMPATHY. TO
20 TRY TO GET YOUR SYMPATHY. ALL OF THIS TALK ABOUT
21 MEDICATION, DRUGS THAT HE'S ON IN ORDER TO TESTIFY, HE
22 IS SUFFERING FROM DEPRESSION,

23 AND I ASKED HIM: "DOES THAT AFFECT YOUR

24 TESTIMONY IN ANY WAY?

25 "NO," HE SAID.

26 WELL, IF IT DOESN'T AFFECT HIS TESTIMONY IN
27 ANY WAY, THEN WHY DID THEY HARP SO MUCH ON THE
28 MEDICATION?

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1 THEY SLIPPED IN THE FACT THAT HE'S IN
2 THERAPY NOW. I GUESS THEY WANT TO SHOW YOU SOME SORT OF
3 REHABILITATION EFFORT HERE. MAYBE WE'RE SUPPOSED TO
4 FEEL HE IS REDEEMING HIMSELF IN SOME WAY BECAUSE HE IS
5 IN THERAPY.

6 DON'T DECIDE THIS CASE BASED UPON SYMPATHY.
7 ERIK MENENDEZ AND LYLE MENENDEZ SHOULD BE HELD
8 RESPONSIBLE FOR THEIR ACTION, AND THIS IS THE ONE AND
9 ONLY OPPORTUNITY THE JURY IS GOING TO HAVE TO BE ABLE TO
10 DO THAT.

11 AND THEN THERE WAS REFERENCES TO GREATER
12 APPRECIATION FOR HIS SUPPORTERS. "ONLY NOW DO I REALIZE
13 HOW MUCH PEOPLE LOVE ME," OR SOMETHING LIKE THAT.

14 AGAIN, TRYING TO PORTRAY ERIK MENENDEZ IN A
15 FAVORABLE LIGHT. AND ONCE AGAIN, I ASK YOU NOT TO
16 DECIDE THIS CASE BASED UPON SUCH FACTORS.

17 A GREAT DEAL OF EVIDENCE WAS PRESENTED
18 CONCERNING THE ALLEGATIONS OF SEXUAL ABUSE, AND AS I
19 INDICATED, THERE IS NO EVIDENCE WHATSOEVER THAT THE

20 SEXUAL ABUSE EVER TOOK PLACE.
21 A GREAT DEAL OF EFFORTS WERE MADE TO TRY TO
22 GET YOU TO BELIEVE THAT THERE WAS FEAR OF PHYSICAL ABUSE
23 OF ERIK MENENDEZ. AND ONCE AGAIN, THAT WASN'T
24 DEMONSTRATED. I WILL GO THROUGH THE REST OF THE DEFENSE
25 WITNESSES, AND YOU WILL SEE HOW THAT REALLY WASN'T
26 DEMONSTRATED THROUGH THOSE WITNESSES EITHER.
27 ONE OF THE PIECES OF EVIDENCE THAT WAS
28 PRESENTED IN THIS CASE WERE THE SO-CALLED NUDE

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1 PHOTOGRAPHS. YOU RECALL THOSE, THE PHOTOGRAPHS.
2 THE COURT: MR. CONN, LET'S TAKE A BREAK, SINCE
3 YOU'RE GOING ON TO ANOTHER SUBJECT HERE.
4 WE WILL RESUME AT FIVE MINUTES AFTER THE
5 HOUR. DON'T DISCUSS THE MATTER WITH ANYONE. DON'T FORM
6 ANY FINAL OPINIONS. WE WILL RESUME AT FIVE MINUTES
7 AFTER THE HOUR.
8 (A RECESS WAS TAKEN FROM
9 9:55 A.M. TO 10:15 A.M.)
10
11 THE COURT: OKAY, WE WILL HAVE THE JURY OUT.
12 (THE JURY ENTERS THE COURTROOM
13 AND THE FOLLOWING PROCEEDINGS
14 WERE HELD:)
15

16 THE COURT: OKAY. THE JURY IS BACK.
17 YOU MAY CONTINUE.
18 MR. CONN: THANK YOU.
19 THERE IS NO CORROBORATION OF SEXUAL ABUSE.
20 ONE OF THE ALLEGATIONS IN THIS CASE IS THAT
21 JOSE MENENDEZ WOULD TAKE PHOTOGRAPHS OF HIS SONS IN THE
22 NUDE.
23 LADIES AND GENTLEMEN, THAT IS A VERY EASY
24 ALLEGATION TO MAKE, WHEN TWO SUCH PHOTOGRAPHS DO EXIST.
25 BUT THE QUESTION IS JUST BECAUSE THOSE PHOTOGRAPHS
26 EXIST, DOES THAT MEAN THAT THAT'S PROOF THAT JOSE
27 MENENDEZ WAS THE ONE WHO TOOK THOSE PHOTOGRAPHS?
28 THE TWO PHOTOGRAPHS THAT I AM REFERRING TO

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1 IS ONE PHOTOGRAPH OF A CHILD IN A BATHTUB, AND THE
2 SECOND PHOTOGRAPH OF A CHILD IN A ROBE. AND THE
3 DEFENDANTS WANT YOU TO LOOK AT THOSE PHOTOGRAPHS.
4 BUT WHAT I WOULD LIKE YOU TO LOOK AT IS THE
5 PROOF SHEET FOR THOSE PHOTOGRAPHS, AS WELL AS THE OTHER
6 PHOTOGRAPHS THAT ARE ASSOCIATED WITH THAT ROLL OF FILM.
7 THE ACTUAL NEGATIVES ARE IN EVIDENCE AS WELL, AND YOU
8 CAN LOOK AT THE OTHER PHOTOGRAPHS AND ASK YOURSELF, WHO
9 DO YOU THINK REALLY TOOK THESE PHOTOGRAPHS? IS THERE
10 ANY EVIDENCE THAT JOSE MENENDEZ REALLY TOOK THESE
11 PHOTOGRAPHS?

12 HERE IS JOSE MENENDEZ AND KITTY MENENDEZ,
13 WHO ARE IDENTIFIED AT A PARTY.
14 AND HERE IS ANOTHER PHOTOGRAPH. JOSE
15 MENENDEZ IS STANDING HERE. AND SO THESE PHOTOGRAPHS
16 SHOW THAT JOSE MENENDEZ IS OBVIOUSLY NOT THE CAMERAMAN
17 FOR AT LEAST THOSE PHOTOGRAPHS.
18 SO WHO TOOK THE PHOTOGRAPHS OF THE TWO
19 CHILDREN IN THE BATHTUB?
20 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU
21 THAT THERE IS EVERY REASON TO BELIEVE THAT THOSE
22 PHOTOGRAPHS WERE NOT TAKEN BY AN ADULT, BUT WERE TAKEN
23 BY A CHILD PLAYING WITH A CAMERA.
24 TAKE A LOOK AT THE OTHER PHOTOGRAPHS THAT
25 SURROUND THEM. AND WHEN I SAY "SURROUND," I AM
26 REFERRING TO THE PROOF SHEET. BECAUSE ON THE PROOF
27 SHEET, OF COURSE, YOU CAN SEE THE SEQUENCE OF THE
28 PHOTOGRAPHS, THE SEQUENCE IN WHICH THEY'RE TAKEN, AND

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1 THEY'RE NUMBERED ALONG THE SIDE. YOU KNOW THE EXACT
2 SEQUENCE.
3 YOU KNOW, FOR EXAMPLE, THAT SOME OF THE
4 PHOTOGRAPHS FROM THIS PARTICULAR ROLL OF NEGATIVES ARE
5 MISSING. WE DON'T KNOW WHAT HAPPENED TO 9 THROUGH 12
6 FROM THIS STRIP. WHERE ARE THEY?
7 THERE WAS NEVER ANY FOUNDATION LAID FROM

8 ANY WITNESS AS TO WHERE THESE WERE RECOVERED FROM.
9 WHERE WERE THEY OBTAINED FROM? FOR ALL WE KNOW, THESE
10 WERE PHOTOGRAPHS IN POSSESSION OF ONE OF THE RELATIVES.

11 MS. ABRAMSON: OBJECTION, YOUR HONOR.

12 THE COURT: AND YOUR OBJECTION?

13 MS. ABRAMSON: MY OBJECTION IS THE FOUNDATION WAS
14 STIPULATED TO, THAT'S WHY THERE WAS NO TESTIMONY ABOUT
15 WHERE THEY WERE FROM.

16 THE COURT: LET'S NOT GET BEYOND WHAT IT WAS, AND
17 I DON'T RECALL THE NATURE OF ANY STIPULATION.

18 MR. CONN: LADIES AND GENTLEMEN, A STIPULATION IS
19 SOMETHING THAT BOTH SIDES AGREE UPON, AND YOU ARE TO
20 ACCEPT THAT AS TRUE, IF BOTH SIDES AGREE.

21 FOR EXAMPLE, WE DID HAVE A STIPULATION
22 CONCERNING THE FACT THAT THE HANDWRITING FOR THE
23 ESLAMINIA LETTER IS, IN FACT, THE HANDWRITING OF LYLE
24 MENENDEZ.

25 BUT THERE WAS NO STIPULATION CONCERNING
26 THESE. WHERE WERE THESE OBTAINED FROM? FROM THE HOME
27 OF THE CANOS? FROM THE HOME OF THE BARALTS? FROM THE
28 HOME OF THE MENENDEZES?

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1 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
2 TO THIS, AND ASK TO BE HEARD.

3 THE COURT: OKAY. LET'S ASK THE JURY GO INTO THE

4 JURY ROOM FOR A MOMENT SO THAT WE CAN TALK, AND WE WILL
5 HAVE YOU RIGHT OUT. DON'T TALK ABOUT THE MATTER.

6 (THE JURY ENTERS THE JURY ROOM
7 AND THE FOLLOWING PROCEEDINGS
8 WERE HELD:)

9
10 THE COURT: YES.

11 MS. ABRAMSON: WE HAD A HEARING ABOUT THE
12 FOUNDATION OF THESE PHOTOGRAPHS, IF I REMEMBER
13 CORRECTLY, AND THE COURT KNOWS, FROM PREVIOUS TESTIMONY
14 AND STATEMENTS, THAT THESE PHOTOGRAPHS WERE FOUND IN THE
15 POSSESSION OF MR. AND MRS. MENENDEZ IN CALABASAS IN
16 BOXES; THAT MS. LANSING FOUND ONE, AND THAT I FOUND THE
17 OTHER, AND THE REST OF THE -- AND THE NEGATIVES IN THE
18 ENVELOPE WERE TAKEN FROM THE CALABASAS HOUSE, AND THEY
19 HAVE THE HANDWRITING OF MRS. MENENDEZ ON THE ENVELOPE.

20 THE PEOPLE OBJECTED TO IT. WE HAD A
21 HEARING ABOUT IT, AND THE COURT FOUND THERE WAS A
22 SUFFICIENT FOUNDATION FOR RELEVANCE.

23 NOW, THE PEOPLE NEVER CHALLENGED THE
24 FOUNDATION, OR THAT THEY CAME FROM ANYWHERE ELSE.

25 I DO NOT BELIEVE IT'S APPROPRIATE FOR THEM
26 TO RAISE IN ARGUMENT THE NOTION THAT THEY WERE ANYWHERE
27 ELSE, WHEN (A), THEY KNOW THAT'S FALSE, AND (B), ONCE
28 THE FOUNDATION FOR THESE DOCUMENTS WAS LAID, THERE IS NO

1 REASON TO QUESTION THAT FOUNDATION IN ARGUMENT.

2 THE PEOPLE NEVER INDICATED THEY WERE
3 CHALLENGING THAT THESE PHOTOGRAPHS CAME FROM THE
4 MENENDEZ FAMILY, OR WE WOULD HAVE GONE ON AND PUT ON THE
5 PROOF WHERE THEY CAME FROM. IT'S JUST IMPROPER FOR THEM
6 TO ARGUE THAT THEY CAME FROM ANYWHERE ELSE, WHEN WE KNOW
7 WHERE THEY CAME FROM.

8 THE COURT: WELL, YOU SAY "WE KNOW," BUT THERE
9 HAS BEEN NO EVIDENCE OF THAT.

10 MS. ABRAMSON: BECAUSE NO EVIDENCE WAS REQUIRED.

11 FINE. THEN I WILL SAY IN MY ARGUMENT THAT
12 I FOUND ONE OF THEM.

13 THE COURT: STOP ARGUING, COUNSEL. IF YOU WANTED
14 TO DO THAT, YOU COULD HAVE TAKEN THE WITNESS STAND AND
15 HAD MS. LANSING TESTIFY. THAT IS NOT THE ISSUE. THE
16 ISSUE IS THE D.A. IS COMMENTING ON THE EVIDENCE
17 PRESENTED HERE. THAT'S ALL HE'S DOING.

18 MS. ABRAMSON: YOUR HONOR, THE LOCATION OF THESE
19 PHOTOGRAPHS WAS NOT CHALLENGED. THEY WOULDN'T HAVE BEEN
20 RELEVANT IF THEY WEREN'T IN THE HOME OF THE MENENDEZES.

21 WE HAD A HEARING ABOUT IT. THE COURT FOUND
22 THERE WAS AN ADEQUATE FOUNDATION OF WHERE THEY CAME FROM
23 TO MAKE THEM RELEVANT.

24 THE COURT: NO, I FOUND THERE WAS ADEQUATE
25 FOUNDATION AS TO THE PICTURES BEING OF THE DEFENDANTS
26 AND A CONNECTION TO THE -- MR. MENENDEZ BASED UPON THE
27 DEFENDANT'S TESTIMONY AND OFFER OF PROOF THAT NO ONE
28 ELSE WAS TAKING PHOTOGRAPHS OF ANY OF THEM.

1 MS. ABRAMSON: AND WHEN I TRIED TO EXAMINE
2 WITNESSES ABOUT PHOTOGRAPHS BEING IN BOXES --

3 THE COURT: YOU'RE SHOUTING, COUNSEL.

4 MS. ABRAMSON: I AM SORRY I AM SHOUTING. I'M
5 ANGRY, SO MY VOICE IS LOUD.

6 THE COURT: I DON'T CARE IF YOU'RE ANGRY OR NOT.
7 YOUR VOICE IS LOUD.

8 MS. ABRAMSON: WHEN I TRIED TO PRESENT --

9 THE COURT: JUST TALK IN A NORMAL VOICE, SO I CAN
10 HEAR YOU. I GUARANTEE YOU, YOU'RE NOT GOING TO BE ANY
11 MORE PERSUASIVE BY SHOUTING.

12 MS. ABRAMSON: I'M NOT PERSUASIVE TO THIS COURT,
13 WHETHER OR NOT I'M SHOUTING.

14 THE COURT: THE RECORD DOESN'T REFLECT YOUR
15 SHOUTING. SO AGAIN, DON'T SHOUT.

16 MS. ABRAMSON: WHEN I WAS TRYING TO ELICIT
17 INFORMATION CONCERNING BOXES OF PHOTOGRAPHS AT THAT
18 HOUSE IN THE CLOSET, WHEN I TRIED TO ELICIT INFORMATION
19 ABOUT THE BOXES IN CALABASAS, IT WAS OBJECTED TO.

20 IT IS IMPROPER AND UNFAIR FOR THEM TO
21 RAISE THE SPECTER THAT THESE PICTURES CAME FROM ANYWHERE
22 OTHER THAN WHERE THEY CAME FROM, WHEN WE WERE FORECLOSED
23 FROM LAYING THAT FOUNDATION, FORECLOSED FROM ASKING
24 QUESTIONS ABOUT PHOTOGRAPHS.

25 THE COURT: SHOW ME WHERE IN THE RECORD YOU WERE

26 PREVENTED FROM LAYING A FOUNDATION AS TO THE
27 AUTHENTICITY OF THESE PHOTOGRAPHS, OR AS TO WHERE THEY
28 WERE FOUND OR ANYTHING.

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1 MS. ABRAMSON: I RECALL --

2 THE COURT: DON'T YOU RECALL THE PEOPLE
3 CHALLENGING, THROUGH CROSS-EXAMINATION OF THE -- OF YOUR
4 CLIENT, THE -- HOW THE PHOTOGRAPHS WERE TAKEN?

5 MS. ABRAMSON: YES, OF COURSE. AND HE INDICATED
6 HE DIDN'T TAKE THEM, HIS BROTHER DIDN'T TAKE THEM. HIS
7 FATHER TOOK THEM, PERIOD. HE REMEMBERED THAT.

8 THAT HAS NOTHING TO DO WITH WHERE THE
9 PHOTOGRAPHS WERE FOUND. THERE WAS NO CHALLENGE TO WHERE
10 THE PHOTOGRAPHS WERE FOUND.

11 THE COURT: OKAY.

12 WELL, AGAIN, IS THERE SOME REQUIREMENT THAT
13 THE PEOPLE CHALLENGE SOMETHING, OR THAT THEY DO --

14 MS. ABRAMSON: YOU KNOW, THERE IS A REQUIREMENT
15 ABOUT TRUTH.

16 THE COURT: YES.

17 MS. ABRAMSON: IT MAY NOT BE A TECHNICAL
18 REQUIREMENT, BUT THERE IS A REQUIREMENT OF TRUTH.

19 THE COURT: WHERE IS THE EVIDENCE OF WHERE IT WAS
20 FOUND?

21 MS. ABRAMSON: WE HAVE MADE IT ON THE RECORD TIME

22 AND TIME AGAIN, YOUR HONOR.

23 THE COURT: ALL YOU'VE DONE IS MADE AN OFFER OF
24 PROOF THAT THIS IS WHAT YOU WOULD SAY, AND THIS IS WHAT
25 MS. LANSING WOULD SAY, AND THAT'S ALL.

26 MS. ABRAMSON: THAT SHOULD BE ENOUGH, AS OFFICERS
27 OF THE COURT, WHEN WE'RE TELLING THE COURT THIS IS WHERE
28 THESE PHOTOGRAPHS CAME FROM, AND THE PROSECUTOR HAS NO

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1 EVIDENCE TO SUPPORT THE ARGUMENT HE IS MAKING.

2 IF THE COURT IS RIGHT, THERE IS NO EVIDENCE
3 THAT THEY CAME FROM ANYWHERE. HE IS ASKING THE JURY TO
4 SPECULATE ABOUT SOMETHING HE KNOWS ISN'T TRUE. HE KNOWS
5 THEY DIDN'T COME FROM THE BARALTS.

6 THE COURT: HE IS ASKING THE JURY TO SPECULATE
7 AND CONSIDER THE FACT THAT THERE HAS BEEN NO EVIDENCE
8 PRESENTED BY THE DEFENSE, THAT'S ALL.

9 MS. ABRAMSON: BECAUSE THERE WAS NO REQUIREMENT
10 FROM FOUNDATION THAT THAT BE PRESENTED.

11 THE COURT: NO ONE SAID THAT THERE WAS.

12 MR. GESSLER?

13 MR. GESSLER: YES, YOUR HONOR. I THINK THAT PART
14 OF WHAT'S HAPPENED HERE -- AND THIS COURT WAS PRIOR A
15 DISTRICT ATTORNEY AND HANDLED MANY CASES, BIG CASES,
16 ORDINARY CASES. YOU, YOURSELF, DEALT WITH DEFENSE
17 COUNSEL OVER THE YEARS.

18 I THINK ALL OF US AS LAWYERS, DISTRICT
19 ATTORNEYS, DEFENSE COUNSEL, OFFICERS OF THE COURT, THAT
20 THERE IS A CERTAIN RESPECT FOR ONE ANOTHER. WHEN A
21 LAWYER HIMSELF OR HERSELF SAYS "LOOK, I FOUND THIS," OR
22 "LOOK, I DID THIS," AND IN YEARS PAST, AND I AM SURE
23 THROUGH THE PRACTICE THAT YOU DID, A LAWYER'S WORD WAS
24 TAKEN ON SOMETHING LIKE THAT AS A MATTER OF COURSE,
25 BECAUSE WE'RE NOT LYING TO ONE ANOTHER ON THINGS. IT'S
26 ONE THING WHEN WE TALK ABOUT WHAT OUR CLIENTS HAVE SAID
27 OR WITNESSES HAVE SAID. IT'S ANOTHER THING WHEN WE SAY
28 "I DID THIS," OR "I SAW THIS," OR "I HEARD THIS."

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1 AND THROUGH THE YEARS, WITH VERY RARE
2 EXCEPTIONS, THIS HAS BEEN ACCEPTED BY THE OPPOSING
3 COUNSEL, AND IF IT IS NOT ACCEPTED BY OPPOSING COUNSEL,
4 IT HAS BEEN MY EXPERIENCE THAT OPPOSING COUNSEL HAS
5 SAID, "COUNSEL, I CAN'T TAKE YOUR WORD FOR THIS. YOU'RE
6 GOING TO HAVE TO PROVE IT."
7 NOW, THE COURT KNOWS THE PROBLEMS WITH A
8 LAWYER TAKING THE STAND IN THE CASE IN WHICH THE LAWYER
9 IS INVOLVED, HOW THIS LOOKS TO THE JURY, HOW IT LOOKS TO
10 THE PEOPLE IN THE COMMUNITY. WE CAN'T ALWAYS, BUT WE
11 CERTAINLY TRY TO AVOID THAT NORMALLY, BY WHENEVER ONE
12 ATTORNEY TELLS ANOTHER AS AN OFFICER OF THE COURT, "THIS
13 IS WHAT I HAVE DONE."

14 I THINK WE RELIED ON THAT IN THIS CASE, AS
15 WE HAVE IN MOST CASES THROUGH MY 30 YEARS OF PRACTICE;
16 THAT THE DISTRICT ATTORNEY WAS NOT GOING TO MAKE A POINT
17 OF WHERE THE EVIDENCE WAS RECOVERED, HAVING KNOWN FROM
18 COUNSEL HERSELF SAYING: "I FOUND IT."

19 AND IF NOT, THAT THEY SHOULD HAVE BEEN
20 GIVEN THE COURTESY OF TELLING MS. ABRAMSON, "LOOK,
21 YOU'RE GOING TO HAVE TO TESTIFY TO PROVE THIS, OR I AM
22 GOING TO MAKE A POINT OF IT IN ARGUMENT."

23 AND I THINK THAT'S WHAT HAS HAPPENED HERE
24 IS RELIANCE ON CUSTOM AND USAGE THROUGH THE YEARS OF
25 CRIMINAL LAW PRACTICE IN THE SUPERIOR COURT AS TO HOW WE
26 TREAT ONE ANOTHER AS LAWYERS.

27 AND NOW FOR THE DISTRICT ATTORNEY TO TAKE
28 ADVANTAGE OF A SITUATION THAT WE ALL RELIED UPON, THAT

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1 WE HAVE DONE THROUGH THE YEARS, I THINK IS UNFAIR.

2 AT THIS POINT IT WOULD TAKE ONLY A COUPLE
3 OF MINUTES, BUT PERHAPS, SINCE WE HAD NO KNOWLEDGE THEY
4 WERE GOING TO TAKE ADVANTAGE OF THIS, IT'S TIME TO
5 REOPEN THE CASE AND PUT MS. ABRAMSON ON THE STAND TO
6 TESTIFY TO THAT LIMITED EVIDENCE.

7 BUT ABSENT THAT, I FIND THIS VERY
8 APPALLING, THAT COUNSEL FOR THE OPPOSITION WOULD TAKE
9 ADVANTAGE OF THIS LACK OF PROOF, WHICH WE CERTAINLY

10 DIDN'T FEEL WE HAD TO PUT ON WHEN ONE LAWYER TELLS

11 ANOTHER, "LOOK, THIS IS WHAT I FOUND."

12 I THINK THIS IS WHAT'S HAPPENED HERE, AND I

13 AM APPALLED.

14 MR. LEVIN: YOUR HONOR, I THINK IT'S WORSE THAN

15 HOW MR. GESSLER CHARACTERIZES THINGS.

16 SINCE I WAS THE PROPONENT OF THE EVIDENCE,

17 IF THE SITUATION WERE SLIGHTLY DIFFERENT AND MR. CONN

18 HAD OFFERED OR ATTEMPTED TO OFFER A PIECE OF EVIDENCE

19 THAT HAD BEEN FOUND BY A POLICE OFFICER, AND I HAD MADE

20 IT EXPRESSLY CLEAR THAT I WAS NOT GOING TO CHALLENGE

21 WHERE THAT PIECE OF EVIDENCE WAS RECOVERED FROM, I THINK

22 IT WOULD BE ABSOLUTELY INAPPROPRIATE FOR ME TO GET UP

23 AND ARGUE THAT THE PEOPLE HAVE NOT PROVEN HOW THIS PIECE

24 OF EVIDENCE GOT BEFORE THE JURY. AND I THINK THAT IS

25 PRECISELY WHAT OCCURRED IN THIS CASE.

26 THE COURT: BELIEVE ME, I AGREE WITH YOU, IF

27 THERE HAS BEEN A REPRESENTATION MADE AND RELIANCE BY THE

28 DEFENSE THAT SOME ISSUE WOULD NOT ARISE AND WOULD NOT BE

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1 COMMENTED UPON BY THE PROSECUTION IN ARGUMENT, I AGREE

2 WITH YOU.

3 MY CONCERN AND QUESTION OF YOU IS: HAS

4 THERE BEEN SUCH A REPRESENTATION?

5 MY RECOLLECTION IS DURING THE PRETRIAL

6 HEARINGS THE PEOPLE WERE CHALLENGING THE RIGHT OF THE
7 COURT TO EVEN CONSIDER DECLARATIONS OF DEFENSE COUNSEL,
8 AND ULTIMATELY THE COURT'S RULING WAS NOT BASED UPON
9 WHAT DEFENSE COUNSEL SAID, BUT IT WAS BASED UPON THE
10 PHOTOGRAPHS THEMSELVES, AND THE OFFER OF PROOF OF THE
11 DEFENDANTS, ONLY A PORTION OF WHICH WAS PROVIDED IN THIS
12 TRIAL, ACTUALLY, BY THE DEFENDANT, ERIK MENENDEZ;

13 THAT THE OFFER WAS BEFORE TRIAL THAT BOTH
14 DEFENDANTS WOULD TESTIFY THAT NO ONE ELSE BUT THEIR
15 FATHER TOOK PHOTOGRAPHS OF THEM IN THE NUDE. WE ONLY
16 HAVE HALF OF THAT OFFER FULFILLED IN THE TRIAL.

17 BUT THAT WAS THE NATURE OF THE RULING
18 BEFORE THE TRIAL. IT HAS NOTHING TO DO WITH THE --

19 MR. LEVIN: I UNDERSTAND THAT.

20 THE COURT: -- REPRESENTATIONS OF COUNSEL AS TO
21 WHERE SUCH THINGS WERE FOUND.

22 AND I THINK -- QUITE FRANKLY, MY
23 RECOLLECTION WAS, AND CORRECT ME IF I AM WRONG, IT'S
24 BEEN A WHILE SINCE THOSE HEARINGS -- IT WAS BEFORE THE
25 TRIAL STARTED THAT THERE WAS SOME INDICATION THAT
26 COUNSEL MIGHT TESTIFY, OR THAT MS. LANSING AT LEAST
27 MIGHT COME IN AND TESTIFY THAT SHE WAS THERE WHEN
28 PHOTOGRAPHS WERE FOUND, AND SHE WAS THERE WHEN

1 MS. ABRAMSON FOUND SOME PHOTOGRAPHS, AND THAT THAT'S HOW

2 THEY WERE UNCOVERED.

3 I THOUGHT THAT WAS GOING TO BE PRESENTED.

4 MAYBE I AM WRONG. MAYBE THAT WAS MY MISRECOLLECTION OF
5 THE HEARING, BUT I THINK THAT'S WHAT OCCURRED.

6 MR. LEVIN: I WOULD HAVE BEEN LOATHE TO HAVE
7 CALLED MS. ABRAMSON OR MS. LANSING TO THE STAND TO
8 CHALLENGE THAT.

9 I JUST AGREE WITH MR. GESSLER, THAT OVER
10 THE YEARS IT JUST SEEMS THAT THERE IS SUCH A
11 DETERIORATION IN THE WAY THAT WE, AS LAWYERS, TREAT EACH
12 OTHER.

13 AND WHEN WE ARE ADVOCATES, I RESPECT WHEN I
14 SEE COUNSEL DILIGENTLY AND ZEALOUSLY REPRESENTING THEIR
15 SIDE OF THE CASE, AND THEY SHOULD EXPECT NO LESS FROM US
16 WHEN WE DO SO.

17 BUT WHEN CERTAIN MATTERS ARISE WHEN THERE
18 IS NO NEED TO BE ADVERSARIES, TO THEN WAIT UNTIL THE
19 APPROPRIATE TIME WHEN WE HAVE OUR HANDS TIED BEHIND OUR
20 BACK BECAUSE THE EVIDENCE IS IN, AND WE HAVE CONCLUDED
21 OUR CASE, AND TAKE ADVANTAGE OF THIS TYPE OF SITUATION,
22 IS BEYOND THE ROLE OF AN ADVOCATE, AND I THINK THAT'S
23 WHAT WE'RE ASKING THIS COURT, IS TO ACKNOWLEDGE THE FACT
24 THAT WE HAVE LAID THIS ISSUE OUT IN FRONT OF THE COURT
25 SEVERAL TIMES.

26 IT WAS VERY CLEAR THAT WHILE MR. CONN COULD
27 CHALLENGE WHO TOOK THE PHOTOGRAPHS, AND ANY ISSUE THAT
28 REASONABLY ARISES FROM THAT, THERE WAS NEVER AN ISSUE

1 MADE BY THE PROSECUTION AS TO WHERE THOSE ITEMS WERE
2 RECOVERED FROM OR HOW THEY WERE RECOVERED, AND TO NOW
3 SUGGEST TO THE JURY THAT THEY SOMEHOW MYSTERIOUSLY
4 APPEARED BEFORE THEM, AND BECAUSE OF THAT YOU CANNOT
5 TRUST THE AUTHENTICITY OF THOSE PHOTOGRAPHS, IS REALLY
6 PURPOSELY MISLEADING THE JURY.

7 AND BEYOND THAT, IT'S JUST THAT IT'S
8 EXCEEDINGLY UNFAIR, BECAUSE IT UNFOLDED RIGHT BEFORE
9 THIS COURT'S EYES, AND WE -- PERHAPS MAYBE EVERY SINGLE
10 ISSUE OF LIKE KIND WE SHOULD HAVE GOTTEN WRITTEN
11 STIPULATIONS AND ORDERS FROM THE COURT.

12 BUT I THINK TO DO THAT IS WAY BEYOND WHAT
13 SHOULD BE NECESSARY IN OUR SYSTEM OF ADVOCACY. WE
14 SHOULD FIGHT DILIGENTLY AND ZEALOUSLY ON THOSE ISSUES
15 THAT WE NEED TO, AND WE SHOULD CONCEDE THOSE THAT WE
16 DON'T.

17 I WOULDN'T MAKE MR. CONN BRING IN 14
18 CHAIN-OF-CUSTODY WITNESSES TO PUT ON A PIECE OF EVIDENCE
19 THAT I KNOW HE CAN DO DIRECTLY. NO MATTER HOW
20 DISTASTEFUL I FEEL THE PROSECUTION MIGHT BE IN THIS
21 CASE, AND I THINK THAT'S THE SITUATION WE HAVE HERE.

22 MS. ABRAMSON: THE REAL ISSUE, YOUR HONOR, IS
23 WE'RE ALLOWING SOMETHING THAT WE KNOW ISN'T TRUE. WE
24 KNOW IT'S NOT TRUE TO BE ARGUING TO THE JURY.

25 THE COURT: WELL, THEY ARE ARGUING THAT THERE IS
26 NO EVIDENCE BEFORE THE JURY.

27 MS. ABRAMSON: NO. HE IS SUGGESTING THAT IT
28 COULD HAVE BEEN AT THE BARALTS' HOUSE. IT COULDN'T HAVE

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1 BEEN AT THE BARALTS' HOUSE. IT COULDN'T HAVE BEEN IN
2 SOMEONE ELSE'S HOUSE. IT WAS WHERE IT WAS. THAT'S IT.
3 PERIOD.

4 THE COURT: WHAT IS YOUR RESPONSE?

5 MR. CONN: YES.

6 YOUR HONOR, I FIND IT DIFFICULT TO BELIEVE
7 THAT COUNSEL IS NOW MAKING THE ARGUMENT THAT THEY ARE
8 MAKING. ARE THEY FORGETTING THE MOTION THAT I FILED
9 WITH THIS COURT?

10 THE WORDS THAT I AM USING RIGHT NOW IN
11 FRONT OF THIS JURY ARE THE VERY SAME WORDS THAT I PUT IN
12 MY MOTION, AND I SAID: "WE HAVE NO IDEA WHERE THIS
13 MATERIAL WAS FOUND. WE HAVE NO IDEA FROM WHICH BOXES IT
14 WAS RECOVERED FROM, AND WHO RECOVERED THIS MATERIAL."

15 AND I RAISED THE VERY SAME ISSUE WHICH I AM
16 NOW RAISING, AND I SAID THAT THIS EVIDENCE SHOULD BE
17 TOTALLY INADMISSIBLE, UNLESS AND UNTIL THE DEFENSE CAN
18 PUT A WITNESS ON THE STAND WHO CAN ESTABLISH THROUGH
19 CROSS-EXAMINATION WHERE THIS MATERIAL WAS RECOVERED
20 FROM.

21 I INVITED THEM TO DO SO. I OBJECTED TO
22 THIS EVIDENCE EVER COMING BEFORE THE JURY UNLESS THEY

23 WERE ABLE TO DO SO.

24 THEY WERE PUT ON NOTICE OF THIS ISSUE, AND

25 THE COURT RULED THAT THERE WAS SUFFICIENT CIRCUMSTANCIAL

26 EVIDENCE TO ALLOW THE EVIDENCE IN.

27 WELL, COUNSEL SHOULD HAVE BEEN AWARE THAT

28 JUST BECAUSE THE COURT RULED THAT THERE WAS SUFFICIENT

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1 CIRCUMSTANCIAL EVIDENCE WHERE ONE OF THE DEFENDANTS

2 SAYS: "THAT IS ME IN THE PHOTOGRAPH," JUST BECAUSE THAT

3 IS SUFFICIENT TO GET THE PHOTOGRAPH INTO EVIDENCE, THAT

4 DOES NOT MEAN THAT WE ARE NOT GOING TO CHALLENGE THE

5 BASIS FOR PUTTING THAT PHOTOGRAPH INTO EVIDENCE.

6 COUNSEL STILL SHOULD HAVE KNOWN THAT I WAS

7 GOING TO CHALLENGE IT, BECAUSE WE STILL, TO THIS DAY, DO

8 NOT KNOW THE CIRCUMSTANCES UNDER WHICH THOSE PHOTOGRAPHS

9 WERE RECOVERED, WHO RECOVERED THEM, HOW THEY WERE

10 RECOVERED, WHERE THOSE BOXES CAME FROM, WHO PUT THOSE

11 BOXES THERE, AND SO ON AND SO FORTH.

12 THERE ARE ALL SORTS OF UNANSWERED QUESTIONS

13 THAT WE HAVE WANTED ANSWERS TO FOR A LONG, LONG TIME.

14 AND COUNSEL HAS NEVER ANSWERED.

15 SHE HAD THE OPPORTUNITY TO TESTIFY, OR TO

16 CALL OTHER PEOPLE TO TESTIFY AT THE TIME OF THE HEARING,

17 OR AT THE TIME OF THE TRIAL, AND SHE ELECTED NOT TO DO

18 SO.

19 THERE WAS A GAP IN THE DEFENDANT'S CASE.
20 THEY WERE AWARE OF THAT GAP. THEY WERE PUT ON NOTICE OF
21 THAT GAP BY THE PROSECUTION, AND THEY WERE PUT ON NOTICE
22 THAT WE WOULD BE POINTING OUT THAT GAP TO THE JURY.
23 EVEN WHEN ERIK MENENDEZ TESTIFIED, I ASKED
24 HIM SEVERAL QUESTIONS ALONG THESE LINES, SAYING: "YOU
25 HAVE NO PERSONAL KNOWLEDGE AS TO WHERE THESE PHOTOGRAPHS
26 WERE RECOVERED FROM, DO YOU?"
27 SO COUNSEL WAS WELL AWARE OF THIS ISSUE.
28 SHE DECIDED TO LEAVE A GAP IN HER CASE, AND NOW SHE HAS

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1 TO PAY THE PRICE OF THE GAP IN THE CASE.
2 MS. ABRAMSON: AND MY CLIENT ANSWERED THAT BY
3 SAYING: "MY LAWYER FOUND IT IN A BOX," AND THAT WAS THE
4 ANSWER.
5 THE COURT: WELL, IF THAT'S THE EVIDENCE, THEN
6 THAT IS YOUR RESPONSE IN ARGUMENT.
7 MS. ABRAMSON: AND THAT'S WHAT I WILL ARGUE, THAT
8 I FOUND IT IN A BOX.
9 THE COURT: IF THAT'S YOUR CLIENT'S TESTIMONY, IF
10 THAT'S WHAT HE SAID. I DON'T RECALL THE SPECIFIC
11 QUESTION AND ANSWER, BUT THAT IS BEFORE THE JURY, AND
12 THE PEOPLE HAVEN'T REFUTED IT IN ANY WAY.
13 MS. ABRAMSON: WELL, BUT THE POINT IS, THEY ARE
14 ARGUING ON SOMETHING THEY DIDN'T TRY TO PROVE OR

15 DISPROVE. THEY DIDN'T FOLLOW UP WITH QUESTIONS. THEY
16 JUST WANT TO ARGUE A THEORY THAT THEY KNOW IS NOT TRUE.
17 I MEAN, JUST LOOK AT THE EVIDENCE ITSELF.
18 IT HAS AN ADDRESS ON IT. THE PHOTOGRAPHIC ENVELOPE IS
19 ADDRESSED TO MRS. MENENDEZ AT HARLOW LANE, MONSEY, NEW
20 YORK.
21 THE COURT: WELL, YOUR RESPONSE OF WHERE IT WAS
22 FOUND REALLY DOESN'T MATTER. THE FACT IS WHAT THE
23 PHOTOGRAPHS ARE, WHEN THEY WERE TAKEN, AND THINGS OF
24 THAT NATURE ARE WHAT IS SIGNIFICANT.
25 SO THE PEOPLE ARE JUST ARGUING SOMETHING
26 THAT DOESN'T MATTER.
27 MS. ABRAMSON: THEN LET'S OBJECT TO THEM ARGUING
28 SOMETHING THAT DOESN'T MATTER.

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1 MR. LEVIN: YOUR HONOR, I HAVE NEVER SEEN A CASE,
2 AND I DON'T KNOW IF THE COURT CAN RECALL ONE, WHERE BOTH
3 COUNSELS' CREDIBILITY HAS BEEN PLACED AT ISSUE BY THE
4 PROSECUTION.
5 MS. ABRAMSON MUST NOW GET UP AND ARGUE TO
6 THE JURY THAT SHE FOUND THEM, IN ANSWER TO MR. CONN'S
7 COMMENTS.
8 THE COURT: WELL, SHE CAN ARGUE THAT IF THERE IS
9 EVIDENCE IN THE RECORD OF IT, IF HER CLIENT SAID THAT.
10 MS. ABRAMSON: MR. CONN HAD --

11 MR. LEVIN: IF MR. CONN HAD SAID SOMETHING,
12 MS. ABRAMSON WOULDN'T HAVE TO SAY ANYTHING.
13 THE COURT: SHE CAN RESPOND BY ARGUING WHAT'S IN
14 THE RECORD THAT HER CLIENT SAID.
15 MR. LEVIN: BUT MS. ABRAMSON, IN ORDER TO RESPOND
16 TO MR. CONN'S ARGUMENTS, MUST SAY THAT YOU MUST ACCEPT
17 THE TRUTH OF MR. MENENDEZ' STATEMENTS, AND THE TRUTH IS,
18 MS. ABRAMSON FOUND THOSE PHOTOGRAPHS. SHE MUST CONVINC
19 THE JURY, NOT ONLY THE FACT THAT SHE WAS THE ONE THAT
20 FOUND THEM, BUT CONVINC THE JURY THAT SHE IS TELLING
21 THEM THE TRUTH WHEN SHE SAYS THAT.
22 ALSO, MR. CONN HAS SUGGESTED IN FRONT OF
23 THIS JURY THAT I SOMEHOW, BECAUSE OF MY BACKGROUND,
24 CONCOCTED A POST-TRAUMATIC STRESS DISORDER DEFENSE ALONG
25 WITH -- IN CONSPIRACY WITH ERIK MENENDEZ AND JOHN
26 WILSON.
27 THAT WE HAVE BECOME ISSUES IN THIS CASE
28 PLACES US IN A VERY, VERY --

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1 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. I WANT TO
2 GET A TRANSCRIPT FROM THE LOCK-UP ON THIS POINT.
3 THE COURT: LET'S DO THIS. BEFORE WE WASTE ANY
4 MORE TIME, AND BEFORE YOU DO THAT, WE WILL HOLD OFF
5 FURTHER DISCUSSION ON THIS AND COME BACK TO IT, AND LET
6 THE PROSECUTION CONTINUE ARGUING ON OTHER ISSUES, AND WE

7 CAN FIND THE TRANSCRIPT, BOTH OF THE DEFENDANT'S
8 TESTIMONY ON THAT SUBJECT, AND HIS TESTIMONY BEFORE THE
9 JURY, AS WELL AS FIND THE TRANSCRIPT INVOLVING THE
10 HEARING ITSELF.

11 MS. ABRAMSON: I DON'T HAVE THAT TRANSCRIPT IN
12 THE LOCK-UP, BUT WE CAN GET IT OVER LUNCH.

13 THE COURT: I AM SURE WE HAVE IT HERE. AND I
14 COULD MAKE A BETTER -- OR I HAVE A BETTER FEEL FOR IT
15 ONCE I LOOK AT IT AGAIN.

16 I DON'T RECALL ANY MORE THAN WHAT I'VE SAID
17 OF MY IMPRESSION OF WHAT HAPPENED DURING THAT HEARING,
18 AND I DON'T RECALL THAT MY IMPRESSION NOW IS THAT THERE
19 WAS ANY REPRESENTATIONS BY THE PROSECUTION THAT THEY
20 WERE JUST GOING TO LET IT LIE, AND NOT ARGUE ISSUES
21 RELATING TO WHERE IT WAS FOUND; THAT PERHAPS IT WASN'T
22 TALKED ABOUT AT ALL.

23 ALL RIGHT. WE WILL RESUME WITH ARGUMENT,
24 AND WE WILL KEEP THIS ISSUE SO THAT WE CAN RESOLVE IT
25 AFTER LUNCH.

26 MR. CONN: YOUR HONOR, ASIDE FROM WHERE THE
27 PHOTOGRAPHS WERE FOUND, CAN I CONTINUE WITH MY ARGUMENT
28 CONCERNING THE SIGNIFICANCE OF THE PHOTOGRAPHS?

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1 THE COURT: OF COURSE.

2 MR. CONN: OKAY.

3 THE COURT: OKAY. LET'S GET THE JURY OUT.

4 (THE JURY ENTERS THE COURTROOM

5 AND THE FOLLOWING PROCEEDINGS

6 WERE HELD:)

7

8 THE COURT: OKAY. THE JURY IS BACK, AND YOU MAY

9 CONTINUE YOUR ARGUMENT.

10 MR. CONN: THANK YOU.

11 LADIES AND GENTLEMEN, THE PROSECUTION WANTS

12 YOU TO LOOK AT THIS -- THESE STRIPS OF NEGATIVES. THE

13 PROSECUTION WANTS YOU TO LOOK AT THE SEQUENCE OF THE

14 PHOTOS THAT ARE SHOWN IN THIS PROOF SHEET, AND LOOK AT

15 THE PHOTOGRAPHS THAT SURROUND THE PHOTOGRAPHS THAT ARE

16 IN ISSUE HERE.

17 AND ONE OF THE PHOTOGRAPHS THAT YOU WILL

18 SEE IS A PHOTOGRAPH OF A DOG. WHO TOOK THIS PHOTOGRAPH,

19 AN ADULT OR A CHILD?

20 ANOTHER PHOTOGRAPH THERE THAT SURROUNDS

21 THOSE PHOTOGRAPHS IS THIS ONE, A PHOTOGRAPH OF A

22 DISHWASHER.

23 WHO TOOK THIS PHOTOGRAPH, AN ADULT OR A

24 CHILD? IS THIS THE TYPE OF PHOTOGRAPH THAT ADULTS

25 NORMALLY TAKE, OR IS THIS THE TYPE OF PHOTOGRAPH THAT A

26 CHILD IS MORE LIKELY TO TAKE?

27 AND FINALLY, WHO TOOK THIS PHOTOGRAPH?

28 WHAT IS THAT, A DOORJAMB, THE CARPET? I'M NOT EVEN SURE

1 HOW YOU WOULD HOLD THIS, YOU HOLD IT LIKE THAT OR THIS.

2 IS THIS A CHILD PLAYING WITH A CAMERA, OR

3 IS THIS JOSE MENENDEZ' IDEA OF PHOTOGRAPHY?

4 I SUBMIT, LADIES AND GENTLEMEN, JOSE

5 MENENDEZ DID NOT TAKE THIS PHOTOGRAPH. AND IF JOSE

6 MENENDEZ DID NOT TAKE THIS PHOTOGRAPH, LADIES AND

7 GENTLEMEN, THEN WHY SHOULD WE BELIEVE THAT JOSE MENENDEZ

8 TOOK THIS PHOTOGRAPH?

9 I ASKED ERIK MENENDEZ IF HE HAS ANY

10 KNOWLEDGE AS TO WHO TOOK THOSE PHOTOGRAPHS. ERIK

11 MENENDEZ DOESN'T EVEN RECALL THOSE PHOTOGRAPHS. HE

12 CANNOT SAY WHO TOOK THOSE PHOTOGRAPHS.

13 AND IF HIS FATHER DID TAKE PHOTOGRAPHS OF

14 HIM, LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU THAT

15 THIS IS AN ALLEGATION THAT IS EASILY MADE, JUST LIKE AN

16 ALLEGATION OF SEXUAL ABUSE, BECAUSE YOU CAN ALWAYS SAY:

17 "WELL, HE MOLESTED ME, BUT IT OCCURRED BEHIND CLOSED

18 DOORS, AND THAT'S WHY I DON'T HAVE ANY WITNESSES."

19 AND SO, TOO, THIS IS AN ALLEGATION THAT IS

20 VERY EASILY MADE, BUT JUST CANNOT BE PROVEN.

21 IF JOSE MENENDEZ DID TAKE PHOTOGRAPHS OF

22 HIM, AND THAT'S WHAT HE SAID, HE TOOK PHOTOGRAPHS OF HIM

23 ALL THE TIME. THEN WHERE ARE THOSE PHOTOGRAPHS? WHY

24 WEREN'T THEY EVER FOUND?

25 DID HE GIVE HIM ADVANCE NOTICE THAT HE WAS

26 GOING TO KILL HIM SO THAT JOSE MENENDEZ COULD DESTROY

27 THE PHOTOGRAPHS OR PUT THEM IN A HIDING PLACE WHERE NO

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1 HAVE BEEN FOUND, LADIES AND GENTLEMEN.

2 BUT NO SUCH PHOTOGRAPHS WERE EVER FOUND,

3 AND I WOULD SUBMIT IT'S BECAUSE NO SUCH PHOTOGRAPHS

4 EXIST.

5 WHAT ERIK MENENDEZ HAS, IS HE HAS TWO

6 PHOTOGRAPHS OF -- AND IT MAY VERY WELL BE HIMSELF IN THE

7 PHOTOGRAPH, SOMEONE PLAYING WITH A CAMERA. THAT'S ALL

8 HE HAS. AND FROM THAT HE USES IT AS A BASIS TO BUILD AN

9 ALLEGATION AGAINST HIS FATHER.

10 AND THEN, IN REGARD TO WHETHER OR NOT THIS

11 IS EVEN LYLE MENENDEZ, ERIK MENENDEZ WOULD WANT US TO

12 BELIEVE THAT HE IS IN ONE OF THE PHOTOGRAPHS AND LYLE

13 MENENDEZ IS THE CHILD IN THE OTHER PHOTOGRAPH.

14 WHY IS HE NOW SAYING THAT, LADIES AND

15 GENTLEMEN, WHEN HE PREVIOUSLY TESTIFIED THAT HE NEVER

16 SAW HIS FATHER TAKE PHOTOGRAPHS OF LYLE MENENDEZ? HE

17 ADMITTED TO THAT ON THE WITNESS STAND. HE SAID THAT HE

18 SO PREVIOUSLY TESTIFIED.

19 AND YET IN THIS TRIAL, FOR WHATEVER REASON,

20 HE HAS ONCE AGAIN DECIDED TO CHANGE THE FACTS, CHANGE

21 HIS RECOLLECTION, GET THE FACTS TO SUIT HIS PURPOSES IN

22 THIS TRIAL. AND NOW SUDDENLY HE RECALLS THAT HIS FATHER

23 TOOK PHOTOGRAPHS OF LYLE MENENDEZ, AND HE SAW HIS FATHER

24 TAKE PHOTOGRAPHS OF LYLE MENENDEZ.
25 WELL, HOW DOES HE EXPLAIN THAT, LADIES AND
26 GENTLEMEN? WHY IS IT IN THE FIRST TRIAL HE DIDN'T
27 REMEMBER THAT, AND NOW IN THIS TRIAL HE REMEMBERS IT. I
28 ASKED HIM ABOUT THAT, AND WHAT WAS HIS ANSWER? AS YOU

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1 MIGHT EXPECT. "I DON'T KNOW."
2 THAT'S ALL HE COULD SAY: "I DON'T KNOW WHY
3 I PREVIOUSLY TESTIFIED TO THAT, AND NOW I AM TESTIFYING
4 DIFFERENTLY."
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1 SO LADIES AND GENTLEMEN, I WOULD SUGGEST
2 TO YOU, ONCE AGAIN, YOU HAVE EVERY REASON TO BELIEVE
3 THAT ERIK MENENDEZ IS JUST MAKING IT UP AS HE GOES
4 ALONG, AS THE NEEDS MAY REQUIRE.

5 NOW, YOU KNOW, IN THIS CASE WHAT, OF
6 COURSE, THEY TRIED TO DO IS PRESENT SOME SORT OF A
7 MENTAL DEFENSE, SOME WAY OF EXPLAINING AWAY THE
8 ACTIONS OF THE DEFENDANTS, BECAUSE AFTER ALL, WHEN
9 YOUR MOTHER TELLS -- WHEN YOUR MOTHER TELLS YOU YOU
10 CAN'T GO TO THE MOVIES AND YOUR FATHER TELLS YOU TO
11 GO TO YOUR ROOM, THAT'S NO GOOD REASON TO BREAK OUT
12 SHOTGUNS AND SHOOT THEM TO DEATH.

13 SO HE HAS TO MAKE THAT LEAP. HE HAS TO
14 MAKE THAT LOGICAL -- ENORMOUS, LOGICAL LEAP IN THE
15 EVIDENCE TO TRY TO GET YOU TO AGREE SOMEHOW THAT HIS
16 RESPONSE FOLLOWED FROM THOSE ACTIONS. AND THAT'S AN
17 INCREDIBLY WIDE CHASM TO LEAP.

18 AND SO THE ONLY WAY HE CAN DO THAT,
19 LADIES AND GENTLEMEN, IS BY PRESENTING SOMEONE IN
20 THE MENTAL HEALTH PROFESSION, BECAUSE LOGIC IS NOT
21 GOING TO MAKE THAT LEAP. COMMON SENSE IS NOT GOING

22 TO ALLOW YOU TO MAKE THAT LEAP, SO HE NEEDS TO
23 BUTTRESS IT WITH A LITTLE PSYCHIATRIC MUMBO-JUMBO.
24 AND IN RELATION TO THE PSYCHIATRIC MUMBO-JUMBO, I
25 WANTED TO NAIL DOWN SOME OF THESE ISSUES BEFORE WE
26 EVEN HEARD FROM THE MAN HE WAS GOING TO BE RELYING
27 UPON, DR. WILSON.

28 SO I ASKED HIM SOME QUESTIONS CONCERNING

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1 HIS STATE OF MIND AT THE TIME OF THE CRIME, AND HIS
2 STATE OF MIND THAT DAY, SO THAT YOU WOULD HAVE SOME
3 BACKGROUND UPON WHICH YOU CAN EVALUATE THE TESTIMONY
4 OF HIS MENTAL HEALTH EXPERT. AND WHAT HE SAID
5 SPECIFICALLY -- AND HE MADE IT VERY CLEAR THAT THE
6 ONLY THING THAT MOTIVATED HIM THAT DAY, IN HIS OWN
7 WORDS, WAS FEAR. SO WE DON'T HAVE ANY -- BEAR IN
8 MIND-- AS YOU GO BACK AND START THINKING ABOUT THE
9 PSYCHIATRIC TESTIMONY, BEAR IN MIND THAT WE DON'T
10 HAVE ANY CLAIMS FROM ERIK MENENDEZ OF DELUSIONAL
11 STATES OR DISSOCIATION STATES OR BEING OUT OF TOUCH
12 WITH REALITY IN ANY WAY. I COVERED ALL OF THESE
13 AREAS WITH ERIK MENENDEZ BY ASKING HIM: "WHAT WAS
14 YOUR STATE OF MIND THAT DAY? WERE YOU ACTING
15 DIFFERENT, FEELING DIFFERENT?"

16 AND I EVEN DIRECTED IT TOWARDS HIS

17 BROTHER, LYLE MENENDEZ. "TO THE EXTENT THAT YOU CAN
18 SEE LYLE MENENDEZ AND OBSERVE HIM, WHAT DIFFERENCE,
19 IF ANY, DID YOU NOTICE?"

20 AND HERE'S WHAT HE SAID. HE SAID THAT
21 CURRENTLY HE IS SUFFERING FROM NO EMOTIONAL PROBLEM
22 OTHER THAN DEPRESSION. HE TAKES DRUGS JUST TO
23 MELLOW HIM OUT, HE SAID; AND THAT ALLOWS HIM TO
24 SPEAK ABOUT THINGS THAT HE WANTS. HE SAID: "I DON'T
25 THINK THAT I WAS SUFFERING FROM ANY EMOTIONAL
26 PROBLEM WHEN I SHOT MY PARENTS TO DEATH." BUT THEN
27 HE QUALIFIES IT: "I DON'T KNOW."

28 IN OTHER WORDS, LEAVING AN OPENING FOR

51402

1 HIS MENTAL HEALTH EXPERT TO COME IN AND FILL IN THE
2 GAP HOWEVER HE CHOOSES. HE SAID: "THE ONLY REASON I
3 KILLED THEM WAS IN FEAR THAT THEY WERE ABOUT TO KILL
4 ME, IN FEAR THAT MY FATHER WAS GOING TO COME UP TO
5 MY ROOM."

6 AND THAT'S GOOD, LADIES AND GENTLEMEN,
7 BECAUSE YOU CAN EVALUATE FEAR. FEAR IS NOT ONE OF
8 THESE TECHNICAL TERMS THAT, WELL, WE REALLY DON'T
9 KNOW WHAT IT IS, AND WE HAVE TO LOOK INTO THE DSM
10 AND FIGURE IT OUT. IF WE'RE DEALING WITH A
11 DELUSIONAL OR DISSOCIATIVE STATE, OR SOMETHING LIKE

12 THAT, THEN WE HAVE TO TURN TO THE EXPERTS AND ASK
13 THEM. GIVE US A LITTLE HELP WITH THESE CONCEPTS.
14 GIVE US A LITTLE HELP TO EVALUATE THE TESTIMONY OF
15 ERIK MENENDEZ.

16 BUT ERIK MENENDEZ MADE IT CLEAR, LADIES
17 AND GENTLEMEN. HE WAS IN FEAR, NOTHING MORE. THAT
18 ALLOWS YOU -- YOU ARE NOT TO ACCEPT THE FEAR JUST
19 BECAUSE HE'S CLAIMING IT. IT'S NOT YOUR JOB JUST TO
20 ACCEPT IT. BUT AT LEAST IT ALLOWS YOU TO BE IN A
21 POSITION TO EVALUATE THE CLAIM IN LIGHT OF ALL OF
22 THE EVIDENCE IN THIS CASE, NOW THAT YOU KNOW WE'RE
23 NOT DEALING WITH SOME COMPLEX PSYCHOLOGICAL ISSUE
24 HERE.

25 HE SAID HE DID NOT KILL HIS PARENTS AS A
26 RESULT OF ANY EMOTION OTHER THAN FEAR. HE
27 SAID: "THERE WAS NOTHING UNUSUAL ABOUT MY STATE OF
28 MIND THAT DAY."

51403

1 HE SAID: "THERE WAS NOTHING UNUSUAL
2 ABOUT MY BEHAVIOR THAT DAY."

3 AND HE SAID: "THE ONLY STRANGE THING OR
4 UNUSUAL THING THAT I NOTED WAS MY EMOTIONAL
5 CONDITION, AND THE ONLY THING STRANGE ABOUT MY
6 EMOTIONAL CONDITION WAS THAT I WAS FEARFUL THAT MY

7 PARENTS WERE GOING TO KILL ME."

8 AND HE SAID: "I WAS LONGING TO GO BACK
9 IN TIME."

10 HE SAID: "THE ONLY THING STRANGE ABOUT
11 LYLE MENENDEZ THAT DAY IS HE WAS FEARFUL LATER IN
12 THE DAY AND ANXIOUS TO GET OUT OF THE HOUSE EARLY IN
13 THE DAY."

14 SO WHEN YOU LOOK AT THE TESTIMONY OF
15 DR. WILSON, WHO I'LL BE TURNING TO IN A MINUTE, YOU
16 CAN ANALYZE IT AGAINST THAT BACKGROUND. PLAIN OLD
17 FEAR, SOMETHING THAT YOU AND I CAN ALL UNDERSTAND
18 AND EVALUATE IN LIGHT OF ALL OF THE EVIDENCE IN THIS
19 CASE.

20 BUT YOU KNOW THAT ERIK MENENDEZ HAD VERY
21 STRONG FEELINGS AGAINST HIS FATHER, AND HAD THOUGHTS
22 AND FANTASIES ABOUT KILLING HIS FATHER FOR SOME
23 PERIOD OF TIME. HE ADMITTED THAT AT TIMES. FROM
24 THE AGES OF 13 AND 17 HE WANTED HIS FATHER TO DIE.
25 HE SAID HE WAS HOPING, IN 1988 WHEN HIS MOTHER
26 PURCHASED THAT RIFLE, THAT HIS MOTHER WOULD USE THE
27 RIFLE TO SHOOT HIS FATHER. HE SAID THAT IN MAY OF
28 1989 THAT IT FLASHED THROUGH HIS MIND, HE SAID, TO

51404

1 KILL HIS FATHER.

2 HE SAID: "IF I HAD A GUN, I WOULD HAVE
3 SHOT HIM." HE WAS REFERRING TO A PRIOR ALLEGATION
4 OF MOLESTATION.

5 LADIES AND GENTLEMEN, IS THIS A PERSON
6 WHO REALLY DIDN'T WANT TO KILL HIS PARENTS UP UNTIL
7 AUGUST THE 20TH OF 1989? THIS IS A PERSON, LADIES
8 AND GENTLEMEN, WHO WANTED TO KILL HIS FATHER, WHO
9 THOUGHT ABOUT KILLING HIS FATHER FOR SOME PERIOD OF
10 TIME.

11 HE SAID, LADIES AND GENTLEMEN, THAT --
12 TURNING TO SOME OF THE -- TURNING TO SOME OF THE
13 BACKGROUND HERE. ONCE AGAIN, TRYING TO LIMIT OR PUT
14 INTO PERSPECTIVE THE TESTIMONY OF SOME OF THE MENTAL
15 HEALTH EXPERTS, I ASKED HIM QUESTIONS LIKE:

16 "WELL, YOU TOLD US ABOUT THE
17 GREEN MASK, AND HOW THE GREEN MASK
18 USED TO FRIGHTEN YOU, OR YOUR MOTHER
19 PUTTING YOU IN COLD WATER.

20 "WHAT DID THAT HAVE TO DO WITH
21 WHY YOU KILLED YOUR PARENTS?"

22 HE MADE IT VERY CLEAR. "I DON'T
23 KNOW HOW SUCH INCIDENTS OF ABUSE HAS
24 ANYTHING TO DO WITH WHY I KILLED MY
25 PARENTS."

26 SO I WOULD SUBMIT TO YOU, LADIES AND
27 GENTLEMEN, IF THE DEFENDANT CAN'T TIE IN SUCH
28 INCIDENTS TO HIS ACTIONS ON AUGUST THE 20TH OF 1989,

1 NEITHER SHOULD YOU.

2 ERIK MENENDEZ WOULD HAVE US BELIEVE THAT
3 THIS WAS A SECRETIVE FAMILY. THAT'S ONE OF THE
4 THEMES THAT THEY ARE TRYING TO PRESENT TO YOU, THEY
5 ARE TRYING TO CONVINCE YOU OF, THAT THIS IS AN
6 UNUSUALLY SECRETIVE FAMILY.

7 LADIES AND GENTLEMEN, THE FACTS REALLY
8 DON'T SUPPORT THAT. AS I'LL POINT OUT LATER, AS WE
9 GO THROUGH SOME OF THE RELATIVES, SOME OF THE
10 COUSINS WHO CAME TO LIVE THERE, THEY HAD PLENTY OF
11 PEOPLE OVER THEIR HOUSE ALL THE TIME. THEY HAD
12 COUSINS OVER DURING THE SUMMERTIME, MORE THAN ONE
13 COUSIN. THEY EVEN HAD FRIENDS OF THE COUSINS OVER,
14 DESPITE THE FACT THEY MAY TRY TO PROP IT UP THAT WAY
15 AND MAKE IT APPEAR IT WAS UNUSUALLY SECRETIVE.

16 HE SAID: "WELL, WE WERE TOLD BY OUR
17 PARENTS THAT THERE WERE THINGS THAT WE SHOULDN'T
18 TALK ABOUT WHEN WE WENT SOMEWHERE, WHEN WE VISITED
19 WITH THE RELATIVES."

20 AND I ASKED HIM: "WHAT WERE THE THINGS
21 THAT YOU WERE TOLD NOT TO TALK ABOUT?"

22 AND SOME OF THE THINGS THAT HE
23 MENTIONED, ASIDE FROM, OF COURSE, -- WELL, HE SAID
24 THINGS SUCH AS -- "WELL, THE FACT THAT WE WERE

25 GETTING BAD GRADES IN SCHOOL, OR THAT MY MOTHER WAS
26 TUTORING ME, OR MY MOTHER'S DRINKING, OR GETTING
27 LEFT BACK, OR DOING POORLY IN TENNIS, OR ANYONE
28 GETTING HIT. THESE WERE THINGS THAT WE WERE TOLD

51406

1 NOT TO TALK ABOUT."

2 LADIES AND GENTLEMEN, DO YOU FIND THAT
3 UNUSUAL? HOW MANY FAMILIES REALLY WANT TO AIR ALL
4 OF THEIR PROBLEMS IN PUBLIC? HOW MANY FAMILIES
5 REALLY WANT THEIR SONS TO BE GOING OVER TO VISIT THE
6 RELATIVES AND TALKING ABOUT EVERYTHING NEGATIVE THAT
7 EVER HAPPENS IN THE FAMILY?

8 I THINK THE ONLY DIFFERENCE BETWEEN WHAT
9 ERIK MENENDEZ WAS TELLING US AND WHAT WE ALL KNOW TO
10 BE TRUE, IS NORMALLY YOU DON'T HAVE TO TELL YOUR
11 KIDS TO DO THAT. YOUR KIDS EITHER DON'T WANT TO, OR
12 TAKE IT FOR GRANTED THEY'RE NOT TO GO AROUND TELLING
13 THINGS IN THE FAMILY. JUST BECAUSE HE SAYS KITTY
14 MENENDEZ SAID NOT TO TALK ABOUT ALL THESE THINGS,
15 DOES THAT MAKE THEM UNUSUAL?

16 I SUBMIT, THE UNUSUAL FAMILY, LADIES AND
17 GENTLEMEN, MIGHT BE THE FAMILY THAT GOES AROUND
18 VOLUNTEERING SUCH NEGATIVE INFORMATION ABOUT GRADES
19 IN SCHOOL AND SO ON AND SO FORTH.

20 ANOTHER WAY IN WHICH THEY TRIED TO PROVE
21 THE MEDICAL -- OR THE SEXUAL ABUSE WAS THROUGH
22 MEDICAL RECORDS.
23 AGAIN, WAS THERE ANY MEDICAL RECORDS TO
24 SUPPORT ANYTHING, ANY OF THESE ALLEGATIONS THAT
25 THEY'RE MAKING? IT'S THINGS LIKE THAT THAT THEY
26 CRITICIZED DR. DIETZ FOR: "OH,
27 DR. DIETZ, ISN'T IT TRUE YOU DIDN'T EVEN REVIEW THE
28 MEDICAL RECORDS IN THIS CASE?" WHAT DO THE MEDICAL

51407

1 RECORDS SHOW?

2 I COULD SKIP AHEAD RIGHT NOW TO KERRY
3 ENGLISH AT THIS POINT. REMEMBER KERRY ENGLISH? HE
4 WAS A DOCTOR, A MEDICAL DOCTOR, WHO EXAMINED THE
5 DEFENDANTS, AND WHAT DID HE SAY? KERRY ENGLISH SAID
6 THAT HE PHYSICALLY EXAMINED THE DEFENDANT TO LOOK
7 FOR SIGNS OF SEXUAL ABUSE. AND HE FOUND NO SIGN OF
8 SEXUAL ABUSE ON EITHER DEFENDANT.

9 NOW, LADIES AND GENTLEMEN, DOES THAT
10 TELL YOU ANYTHING? THE DEFENSE WILL ARGUE, WELL,
11 ALL THAT MEANS IS THAT IT DOESN'T PROVE ANYTHING ONE
12 WAY OR THE OTHER, BECAUSE AFTER SO MANY YEARS, HE
13 SAID, YOU WOULDN'T EXPECT TO FIND SIGNS OF SEXUAL
14 ABUSE; AND INDEED, HE SAID SOMETIMES YOU DON'T SEE

15 SIGNS OF SEXUAL ABUSE EVEN AFTER -- RIGHT AFTER IT
16 OCCURS.

17 BUT STILL, WHAT WAS THE PURPOSE OF
18 CALLING THIS WITNESS? HE DIDN'T PROVE ANYTHING. HE
19 DIDN'T PROVE THAT ANYONE WAS ABUSED IN THIS CASE.
20 HE HAS NO INFORMATION WHICH PROVIDES ANYTHING OF
21 SUBSTANCE TO THE TRIAL OF THIS MATTER.

22 THEY EVEN TRIED TO USE DR. ENGLISH TO
23 ENHANCE SOMEWHAT THAT ONE MEDICAL RECORD THAT WAS
24 MARKED HERE IN EVIDENCE. WHAT DID THAT MEDICAL
25 RECORD SHOW? IT SIMPLY SHOWS AN INJURY TO THE BACK
26 OF THE THROAT. THAT'S ALL. AN INJURY TO THE BACK
27 OF THE THROAT. IT DIDN'T EVEN SPEAK ABOUT THE TYPE
28 OF INJURY. IT WAS A FOLLOW-UP VISIT; NOT THE

51408

1 ORIGINAL DAY, NOT THE FIRST VISIT, BUT A FOLLOW-UP
2 VISIT, AND IT SIMPLY INDICATES THAT THE INJURY IS
3 DOING WELL. IT'S A DAY AFTER THE ORIGINAL VISIT, I
4 BELIEVE.

5 THAT MEDICAL RECORD DOESN'T PROVE
6 ANYTHING, ALTHOUGH THEY ASKED HIM: "WELL, IS THAT
7 CONSISTENT? IS THAT CONSISTENT?"

8 THEY SAID: "DOCTOR, COULD IT BE FROM AN
9 ERECT PENIS BEING PUSHED INTO THE CHILD'S MOUTH?"

10 IT'S JUST AN INJURY. SO WHAT DID HE
11 SAY? "SURE, IT'S CONSISTENT WITH THAT."
12 HE WAS ALSO ASKED: "ISN'T IT CONSISTENT
13 WITH A CHILD WITH A POPSICLE IN HIS MOUTH AND
14 FALLING ON THE POPSICLE?"
15 "YES, IT'S CONSISTENT WITH THAT."
16 "ISN'T IT CONSISTENT WITH A CHILD WITH A
17 TOY IN HIS MOUTH AND FALLING ON A TOY?"
18 "YES, IT IS CONSISTENT."
19 "IS IT CONSISTENT A CHILD HOLDING A TOY
20 IN HIS MOUTH, AND ANOTHER CHILD COMES OVER AND
21 PUSHES THE TOY IN HIS MOUTH?"
22 "OF COURSE."
23 ALL IT IS IS AN INJURY TO THE BACK OF
24 THE THROAT. THAT'S ALL. IT DIDN'T PROVE ANYTHING.
25 THEY TAKE THIS NON-EVIDENCE, NEUTRAL EVIDENCE -- IT
26 DOESN'T PROVE ANYTHING ONE WAY OR THE OTHER. THEY
27 TAKE THIS NON-EVIDENCE AND TRY TO MAKE A CASE OUT OF
28 IT. THERE'S NO MEDICAL EVIDENCE.

51409

1 DO YOU RECALL HOW THEY TRIED TO USE THAT
2 AGAINST PARK DIETZ? "HAVE YOU EVER LOOKED AT ANY
3 MEDICAL RECORDS IN THIS CASE?"
4 AND THEY ASK DR. VICARY: "DON'T YOU

5 THINK THAT IF SOMEONE IS GOING TO TESTIFY IN A CASE
6 SUCH AS THIS THEY SHOULD LOOK AT THE MEDICAL
7 RECORDS?"

8 AND DR. VICARY SAYS: "YES, HE SHOULD."
9 LOOK AT WHAT? WHAT IS THERE TO LOOK AT? IF THERE
10 WAS ANYTHING HE OVERLOOKED, YES, BRING IT OUT. BUT
11 THAT'S NON-EVIDENCE.

12 ERIK MENENDEZ EVEN SAID HE HAD NO IDEA
13 HOW HE RECEIVED THE INJURY TO THE BACK OF THE
14 THROAT. SO IT'S NOT EVEN TALKED ABOUT WITH AN
15 ALLEGATION BY ERIK MENENDEZ THAT, YES, THIS WAS
16 CAUSED BY A PENIS. SO IT'S NON-EVIDENCE.

17 ANOTHER AREA, LADIES AND GENTLEMEN,
18 WHICH ERIK MENENDEZ OBVIOUSLY WANTS TO TRY TO SWEEP
19 UNDER THE RUG AT THIS POINT IN TIME IS THE WHOLE
20 AREA CONCERNING HIS MOTHER POISONING HIM. AND WHY,
21 LADIES AND GENTLEMEN? BECAUSE, I SUBMIT, ONCE
22 AGAIN, BECAUSE THIS IS PART OF THE WHACKIER PART OF
23 THE MENENDEZ DEFENSE THAT NOW ERIK MENENDEZ WOULD
24 JUST AS SOON FORGET ABOUT. IT'S INCONSISTENT WITH
25 OTHER TESTIMONY THAT HE GAVE HERE. AND SO THIS IS
26 ANOTHER AREA WHERE HE SORT OF SUGGESTED THAT THE
27 PROSECUTION WAS BLOWING IT OUT OF PROPORTION.

28 ONCE AGAIN, THE PROSECUTION IS JUST

1 REMINDING HIM OF HIS TESTIMONY. WE'RE NOT BLOWING
2 ANYTHING OUT OF PROPORTION. HIS TESTIMONY SPEAKS
3 FOR ITSELF. IT'S HIS WORDS, NOT MINE.

4 AND HERE'S WHAT HE SAID. HE SAID THAT
5 HIS MOTHER APPARENTLY USED TO TRY TO POISON HIM.

6 NOW, WHY WOULD YOU LOVE A WOMAN WHO'S
7 TRYING TO POISON YOU? YET THAT IS WHAT HE IS
8 CLAIMING. AND THAT'S PRECISELY THE REASON WHY HE
9 WANTS TO FORGET THE ALLEGATION NOW, BECAUSE THERE'S
10 QUITE AN INCONSISTENCY THERE. IT INVITES A GREAT
11 DEAL OF INTERESTING CROSS-EXAMINATION. WHY WOULD
12 YOU LOVE A WOMAN WHO'S TRYING TO POISON YOU?

13 AND THERE'S OTHER PROBLEMS WITH THE
14 STORY TOO. FIRST, HERE'S WHAT HE SAYS ABOUT THE
15 POISONING. HE SAID THAT THERE WERE TIMES IN THE
16 BEVERLY HILLS HOME WHEN HIS FATHER WOULD REFUSE TO
17 EAT THE FOOD PREPARED BY HIS MOTHER, AND PUSH IT
18 AWAY. HE SAID -- FIRST HE TELLS US: "I CAN'T RECALL
19 IF IT HAPPENED MORE THAN ONCE."

20 BUT THEN, I GOT HIM TO CONCEDE THAT HE
21 PREVIOUSLY TESTIFIED THAT IT HAPPENED MORE THAN
22 ONCE. AGAIN, ANOTHER AREA THAT HE'S TRYING TO
23 DOWNPLAY, UNTIL I POINTED OUT HIS PRIOR TESTIMONY,
24 AND HE CONCEDED: "OKAY. I PREVIOUSLY TESTIFIED IT
25 HAPPENED MORE THAN ONCE."

26 SOMETIMES HE SAID HIS MOTHER WOULD SAY
27 THAT SHE WAS GOING TO POISON THE FAMILY. AND THERE
28 WERE TIMES WHEN HE WOULD NOT EAT THE FOOD FOR FEAR

1 THAT SHE HAD POISONED IT. HE SAID THAT HIS FATHER
2 WOULD TASTE THE FOOD FIRST TO SEE IF IT WAS
3 POISONED, AND SOMETIMES HE WOULD WONDER ABOUT THE
4 FOOD, EVEN ON DAYS WHEN HIS MOTHER DID NOT MAKE
5 THREATENING REMARKS.

6 AND THE ODD PART ABOUT ALL OF THIS,
7 LADIES AND GENTLEMEN, IS THAT IT NATURALLY FOLLOWS,
8 IF YOU THINK YOUR MOTHER IS TRYING TO POISON YOU,
9 OBVIOUSLY, YOUR MOTHER IS TRYING TO KILL YOU,
10 RIGHT?

11 AND HE SAID: "I DIDN'T BELIEVE MY MOTHER
12 WAS TRYING TO KILL ME."

13 THAT MAKES ABSOLUTELY NO SENSE. HOW CAN
14 YOU SAY ON THE ONE HAND YOU FELT YOUR MOTHER WAS
15 TRYING TO POISON YOU, AND YET YOU DIDN'T BELIEVE
16 YOUR MOTHER WAS TRYING TO KILL YOU? HE ADMITTED:
17 "I SOMETIMES REFUSED TO EAT, BECAUSE I FELT SHE WAS
18 POISONING ME."

19 AND THEN THE OTHER PROBLEM WITH THE
20 STORY, LADIES AND GENTLEMEN, IS THE PURCHASE OF THE
21 RIFLE. DO YOU RECALL THAT? ABOUT A YEAR BEFORE THE
22 SHOOTINGS TOOK PLACE IN THIS CASE, KITTY MENENDEZ,
23 IN FACT, PURCHASED A RIFLE. AND HE CLAIMS THAT AT

24 THE TIME OF THE PURCHASE HIS MOTHER SAID TO HIM,
25 WHEN HE ASKED WHAT IT WAS FOR, SHE SAID: "I'M GOING
26 TO USE THAT TO SHOOT SOMEONE."

27 AND HE SAID HE UNDERSTOOD THAT TO BE --
28 THAT HE THOUGHT -- HE THOUGHT THAT IT MIGHT BE HIS

51412

1 FATHER. AND I BELIEVE THAT HE SAID HE HOPED THAT IT
2 WOULD BE HIS FATHER. HE SAID: "I WAS HOPING," IN
3 1988, THAT HIS MOTHER WOULD USE THE RIFLE TO SHOOT
4 HIS FATHER.

5 LADIES AND GENTLEMEN, HERE'S ANOTHER
6 AREA WHERE THE STORY STARTS TO FALL APART, BECAUSE
7 WHEN YOU PUT TOGETHER DIFFERENT PARTS OF THE
8 STORY -- HE CAN THROW OUT THESE VARIOUS CLAIMS. BUT
9 WHEN YOU PUT THEM TOGETHER, THEY DON'T MAKE SENSE.
10 THAT'S THE REASON WHY HE WOULD NOW LIKE TO DOWNPLAY
11 SOME OF THE ANSWERS IN THE STORY.

12 IF HIS MOTHER HAD A RIFLE, AND IF HIS
13 MOTHER WAS TALKING ABOUT KILLING SOMEONE -- AND HE
14 SUGGESTED THROUGH HIS TESTIMONY THAT HE BELIEVED
15 THAT HIS MOTHER MIGHT WANT TO KILL SOMEONE, AND HE
16 WAS HOPING THAT IT WAS HIS FATHER THAT SHE WOULD
17 KILL -- WOULDN'T HE BE CONCERNED THAT HIS MOTHER WAS
18 GOING TO USE THE RIFLE AGAINST HIM? AFTER ALL,

19 SHE'S POISONING HIM, ISN'T SHE? SHE'S POISONING THE
20 FAMILY, ISN'T SHE? ISN'T THAT HIS STORY?
21 YET HE DOESN'T WANT TO ACKNOWLEDGE THAT
22 SHE WOULD EQUALLY BE LIKELY TO SHOOT HIM. IF SHE'S
23 GOING TO POISON THEM, WHY WOULDN'T SHE SHOOT HIM?
24 IT LOGICALLY FALLS. HE DOESN'T WANT YOU TO DRAW
25 THAT CONNECTION. SO HE TRIES TO DOWNPLAY IT.
26 I SAID: "DID YOU EVER ASK YOUR FATHER
27 WHY WOULD HE ALLOW YOUR MOTHER TO KEEP RIFLES IN THE
28 HOME?"

51413

1 AND HE SAID HE NEVER DID SO. WHY
2 WOULDN'T HE? WHY WOULDN'T HE ASK HIS FATHER THAT?
3 WOULDN'T HE BE CONCERNED ABOUT HIS SAFETY, IF AFTER
4 ALL, SHE WAS TRYING TO POISON HIM?
5 I SUBMIT, LADIES AND GENTLEMEN, THAT
6 THIS IS AN AREA WHERE THE DEFENDANT -- AS I POINTED
7 OUT TO YOU PREVIOUSLY -- EVEN THE DEFENDANT SAID
8 THAT HE KNOWS THAT PART OF HIS STORY SOUNDS
9 RIDICULOUS. HE CONCEDED THAT ON THE WITNESS STAND.
10 HERE TOO, IN REGARD TO THIS, HE SAID: AT THE TIME
11 -- HE'S REFERRING TO HIS STATE OF MIND AT THE
12 TIME.
13 AND HE SAID: "I KNOW IT SOUNDS

14 INCREDIBLE."

15 SO AGAIN, EVEN THE DEFENDANT, ONCE
16 AGAIN, LADIES AND GENTLEMEN, IS TELLING YOU THAT HIS
17 STORY SOUNDS INCREDIBLE WHEN HE TELLS YOU, QUOTE, IT
18 NEVER CROSSED HIS MIND THAT HIS MOTHER WOULD SHOOT
19 HIM. THAT'S HARD TO BELIEVE, IF HE BELIEVED HIS
20 MOTHER WAS TRYING TO POISON HIM.

21 I ASKED HIM WHY NOT, BECAUSE I WANTED
22 HIM TO TRY TO RECONCILE THAT INCONSISTENCY FOR YOU.
23 I WANTED HIM TO SHOW YOU THAT THAT INCONSISTENCY
24 CANNOT BE RECONCILED. AND SO I ASKED HIM: "WHY NOT?
25 WHY DIDN'T YOU BELIEVE THAT YOUR MOTHER WOULD SHOOT
26 YOU?"

27 "WELL, I JUST DID NOT BELIEVE THAT MY
28 MOTHER WANTED ME DEAD," HE SAID. HOW DOES THAT

51414

1 FOLLOW?

2 "YOUR MOTHER WAS POISONING YOU, WASN'T
3 SHE?"

4 THE STORY, AGAIN, JUST MAKES NO SENSE.
5 AND HE DIDN'T KNOW WHAT TO STICK TO AND WHAT TO
6 ABANDON.

7 HE EVEN TRIES TO SUGGEST THAT HIS FATHER --
8 THAT THIS FEAR THAT HIS FATHER WAS GOING TO KILL HIM

9 DIDN'T START THEN. IT DIDN'T START THAT WEEK IN
10 CRISIS. IT STARTED SOMETIME EARLIER. AND SO HE
11 CAME UP WITH ANOTHER WHACKY STORY, WHICH IS THIS
12 NOTION ABOUT HIS MOTHER. ONLY HE SAID HE LEARNED
13 FROM HIS MOTHER THAT HIS FATHER SAID THAT HE WAS
14 GOING TO DISOWN HIM. AND HE SAID THAT HE UNDERSTOOD
15 THAT TO MEAN, WELL, MY FATHER WOULDN'T JUST LET
16 ME -- JUST LET ME LEAVE THE HOUSE.

17 "SO WHEN MY MOTHER TOLD ME THAT MY
18 FATHER WAS GOING TO DISOWN ME, I CONCLUDED THAT MY
19 FATHER WAS GOING TO KILL ME."

20 HE ACTUALLY CONCLUDED HIS FATHER WAS
21 GOING TO KILL HIM? DO YOU BELIEVE THAT? WE'RE NOT
22 EVEN TALKING ABOUT THIS WEEK IN CRISIS, THIS PANIC
23 STATE, THE DEFENSE WITNESSES WANT YOU TO BELIEVE.

24 HE BELIEVED HIS FATHER IS GOING TO KILL
25 HIM WAY BACK WHEN? WHY WOULD HE CONTINUE TO LIVE IN
26 THIS HOUSE? WHAT WAS HIS FATHER GOING TO KILL HIM
27 OVER? BECAUSE OF HIS TENNIS? HE SAID THAT: "IT WAS
28 MY UNDERSTANDING THAT HE WAS TO DISOWN ME FOR NOT

51415

1 KEEPING HIM ABREAST OF MY TENNIS."

2 ERIK MENENDEZ WANTS YOU TO BELIEVE THAT
3 HE TRULY BELIEVED THAT HIS FATHER WAS GOING TO KILL

4 HIM FOR NOT KEEPING HIM ABREAST OF HIS TENNIS. I

5 MEAN, WHERE DOES THE ABSURDITY IN THIS STORY STOP,

6 LADIES AND GENTLEMEN? DOES IT KNOW NO BOUNDS?

7 LET ME GO BACK TO THE STORY. LET'S GO

8 BACK TO SUNDAY AND WHAT IS HAPPENING.

9 LYLE MENENDEZ COMES TO THE TOP OF THE

10 STAIRS AND SAYS TO HIM: "IT'S HAPPENING NOW."

11 ERIK MENENDEZ DID NOT EVEN ASK

12 HIM: "WHY? WHY DO YOU SAY THAT?"

13 LYLE MENENDEZ DID NOT VOLUNTEER ANYTHING

14 ABOUT THE FACT THAT HE HAD JUST BEEN INSIDE THE DEN;

15 AND OBVIOUSLY, HE HADN'T SEEN ANY GUNS IN THERE.

16 WHY IS LYLE MENENDEZ TELLING HIM IT'S HAPPENING

17 NOW? LYLE MENENDEZ JUST LEFT THE DEN A FEW MINUTES

18 EARLIER, AFTER INFORMING THE PARENTS THAT THEY WERE

19 GOING TO THE MOVIES. LYLE MENENDEZ KNEW THERE WERE

20 NO GUNS INSIDE THAT ROOM. YET THERE'S NO

21 CONVERSATION BETWEEN ERIK AND LYLE MENENDEZ ABOUT

22 WHY THEY BELIEVE THE PARENTS ARE GOING TO KILL THEM

23 ALL OF A SUDDEN?

24 HE CLAIMS THAT AFTER HE GOES INTO THE

25 ROOM, NOW WITH THE LOADED GUNS HE'S GOING TO FIRE

26 INTO HIS PARENTS -- HE SAID: "I ASSUMED THAT MY

27 FATHER WAS COMING TOWARD YOU" (SIC). MUCH OF THE

28 DEFENSE WANTS YOU TO BELIEVE THAT JOSE MENENDEZ WAS

1 COMING TOWARD HIM. WHEN YOU PIN HIM DOWN ON THIS,
2 HERE'S WHAT HE SAYS: "I ASSUMED THAT HE WAS COMING
3 TOWARD ME."

4 AND WHY IS HE NOW SAYING THAT HE ONLY
5 ASSUMES THAT HIS FATHER IS COMING TOWARD HIM?
6 BECAUSE WHEN YOU LOOK AT THOSE PHOTOGRAPHS, LADIES
7 AND GENTLEMEN, YOU COULD SEE THERE'S NO BLOOD ANY
8 DISTANCE FROM THE SOFA. THERE IS ONLY BLOOD RIGHT
9 THERE, WHERE JOSE MENENDEZ WAS FOUND SEATED, AND
10 PERHAPS A FEW DROPS IN FRONT OF HIS FEET. THAT'S
11 ALL.

12 SO HE KNOWS -- HE REALLY CAN'T SAY NOW
13 HIS FATHER WAS COMING TOWARD HIM, BECAUSE IF HIS
14 FATHER WAS COMING TOWARD HIM A COUPLE OF STEPS,
15 YOU'RE GOING TO FIND BLOOD MORE TOWARD THE CENTER OF
16 THE ROOM. HE CAN'T SAY THAT NOW. SO NOW HE TRIES
17 TO TAKE THAT BACK.

18 WELL, I ASSUME HE SAID THAT MY FATHER
19 WAS COMING TOWARD HIM (SIC).

20 WHAT IS THE NEXT AREA OF
21 CROSS-EXAMINATION FOR THE PROSECUTION? THE BASIS
22 FOR THE ASSUMPTION. SO, AS I BEGIN TO CROSS-EXAMINE
23 HIM CONCERNING THE BASIS FOR THAT ASSUMPTION, WHAT
24 DOES HE SAY? AS I BEGIN TO ASK HIM ABOUT SPECIFIC
25 THINGS THAT HE OBSERVED, EVIDENCE, VISUAL EVIDENCE,
26 OF STEPS BEING TAKEN. WHAT DOES HE SAY?

27 "I HAVE AN EMOTION OF HIM COMING TOWARD
28 ME."

51417

1 SO NOW HE'S BASING IT UPON AN EMOTION,
2 YOU SEE, BECAUSE HE KNOWS HE CAN'T MAKE AN
3 ALLEGATION THAT HE SAW STEPS, OR HE HAS A
4 RECOLLECTION OF STEPS BEING TAKEN. SO NOW HE HAS TO
5 BASE IT UPON SOME EMOTION. WHAT IS THAT, AN EMOTION
6 OF MOVEMENT? HAVE YOU EVER HEARD OF THAT BEFORE?

7 HE FINALLY SAID: "I HAVE NO IDEA IF HE
8 TOOK A STEP IN MY DIRECTION."

9 AND HE CONCEDED THAT HE HAS NO BASIS
10 UPON WHICH TO CONCLUDE, BASED UPON VISUAL
11 OBSERVATIONS, THAT HIS FATHER WAS COMING TOWARD
12 HIM.

13 SO THERE'S NO EVIDENCE WHATSOEVER.
14 THERE'S NO CLAIM, MUCH LESS EVIDENCE -- THERE'S NO
15 CLAIM FROM THE DEFENDANT THAT HIS FATHER WAS COMING
16 TOWARD HIM.

17 I DID GET HIM TO CONCEDE THAT HE WAS
18 INTENDING TO SHOOT HIS PARENTS AT THAT POINT IN
19 TIME. AND I WANTED HIM SPECIFICALLY TO SAY THE
20 OBVIOUS, THAT YOU CAN CONCLUDE FROM LOOKING AT THE
21 PHOTOGRAPHS, FROM LOOKING AT THE EVIDENCE. THE

22 OBVIOUS FACT IS THAT HE INTENDED TO KILL HIS PARENTS
23 AT THAT POINT IN TIME.
24 AND I SAID TO HIM: "AS YOU SIT THERE
25 TODAY, YOU DO NOT DENY YOUR INTENT AT THAT TIME WAS
26 TO KILL YOUR PARENTS, DO YOU?"
27 AND HE SAID: "NO, I DON'T DENY THAT."
28 SO HE SPECIFICALLY SAID HE DOES NOT DENY

51418

1 AN INTENT TO KILL. AND I'LL BE REMINDING YOU OF
2 THAT LATER AS WE DISCUSS THE LAW AGAIN IN MY
3 CONCLUDING ARGUMENT.
4 HE SAID THAT HIS FATHER -- HE DID NOT
5 SEE HIS FATHER SPIN. SO MUCH FOR THE SPINNING
6 THEORY SUGGESTED BY THE DEFENSE EXPERTS.
7 HE DID NOT SEE HIS MOTHER FALL, HE
8 SAID. HE SAID HE ONLY RECALLS HEARING ONE SHOT
9 AFTER HE FINISHED FIRING AND BEFORE HE BEGAN
10 RUNNING.
11 HE SAYS HE DOES NOT RECALL HEARING ANY
12 SHOTS AFTER HE BEGAN RUNNING. HE CLAIMS THAT HE
13 DOESN'T KNOW WHY HE WENT TO THE CAR.
14 LADIES AND GENTLEMEN, OBVIOUSLY, THERE
15 WAS ONLY ONE REASON WHY HE COULD HAVE GONE TO THE
16 CAR, WANTED TO GO TO THE CAR, TO GET MORE

17 AMMUNITION. THE WITNESS WAS NOT DEAD YET. SHE HAD
18 TO BE DEAD. NOT ONLY WAS SHE A WITNESS, BUT THEY
19 WOULDN'T HAVE INHERITED IF THAT WITNESS HAD
20 SURVIVED. SHE WAS THE NEXT TO INHERIT.

21 ALTHOUGH HE CONCEDES: "I WAS PROBABLY AT
22 THE CAR TO RELOAD THE GUN," HE TELLS US HE WAS
23 PROBABLY THERE TO DO SOMETHING, THAT WE SHOULD ALL
24 CONCLUDE, BASED ON THE EVIDENCE HERE IN COURT.

25 AND THEN I ASKED HIM -- HE SAID THAT HE
26 SPRINTED AFTER LYLE MENENDEZ, AFTER LYLE MENENDEZ
27 TOOK THAT ONE SHELL AND WAS GOING TO GO BACK INTO
28 THE HOUSE. HE SAID HE SPRINTED AFTER HIM. AND I

51419

1 SAID "WHY?"

2 AND HE SAID: "I DON'T KNOW WHY."

3 HE SAID: 'I DIDN'T WANT TO ABANDON HIM."

4 WHAT DO YOU MEAN, NOT ABANDON HIM? YOU
5 HAD JUST ABANDONED HIM WHEN YOU LEFT THE HOUSE, AND
6 RAN OUT TO THE CAR, BEFORE HE WENT OUT TO THE CAR.
7 THIS SHOULD HAVE NOTHING TO DO WITH ABANDONING HIM,
8 LADIES AND GENTLEMEN.

9 SO HE HAS TO EXPLAIN WHY HE WAS RUNNING
10 AFTER LYLE MENENDEZ AT THAT POINT IN TIME. BUT THEN
11 HE DIDN'T GO INTO THE HOUSE, OR RATHER, HE DIDN'T GO

12 INTO THE DEN.

13 SO HE CLAIMS THAT HE WAS SPRINTING AFTER
14 LYLE MENENDEZ. BUT AFTER HE GOT INSIDE THE FOYER,
15 FEAR ONCE AGAIN OVERWHELMED HIM, AND HE DIDN'T GO
16 INTO THE DEN. BUT THEN, IF FEAR OVERWHELMED HIM,
17 WHY DIDN'T HE GO BACK OUTSIDE AND RELOAD? THAT
18 DOESN'T MAKE ANY SENSE EITHER. SHOULDN'T HE RELOAD
19 IF HE WAS TRULY IN FEAR AT THAT TIME?

20 AGAIN, THE STORY DOESN'T MAKE SENSE, AND
21 HE'S JUST GIVING WHATEVER ANSWERS SATISFY THAT ONE
22 QUESTION. YOU HAVE TO LOOK AT THE OVERALL PICTURE.
23 THE OVERALL PICTURE MAKES NO SENSE.

24 AND THEN AFTER THE SHOOTING, HERE'S WHAT
25 HAPPENED. HE SAID, AFTER THREE OR FOUR MINUTES --
26 THINK ABOUT THAT PERIOD OF TIME, LADIES AND
27 GENTLEMEN. IF THERE IS ANYTHING THAT TELLS YOU
28 SOMETHING ABOUT COLD-BLOODED STATES OF MINDS OF BOTH

51420

1 OF THESE TWO DEFENDANTS SITTING HERE ON TRIAL, IT IS
2 THIS.

3 "AFTER SITTING DOWN FOR ABOUT THREE OR
4 FOUR MINUTES, I SAID 'MAYBE THE POLICE AREN'T
5 COMING,' AND WE DECIDED TO LEAVE. LYLE MENENDEZ GOT
6 HIS GUN. WE WERE WALKING TOWARD THE DOOR, AND THEN

7 I SAID 'WHAT ABOUT THE SHELLS?'".

8 THREE OR FOUR MINUTES, LADIES AND

9 GENTLEMEN. HE GOES INTO ALIBI MODE AFTER THREE OR

10 FOUR MINUTES? IS THAT WHAT YOU WOULD DO AFTER YOU

11 JUST -- BEAR IN MIND THE TIME-TABLE.

12 COMES HOME AT 9:30. NO REASON TO

13 BELIEVE THAT HE'S GOING TO HAVE TO SHOOT HIS PARENTS

14 TO DEATH. STILL HOPEFUL THAT THINGS MIGHT WORK

15 OUT. ABOUT 10:00 O'CLOCK, LEAVES THE GUESTHOUSE,

16 GOES TO THE MAIN HOUSE. NO REAL FEAR. IF THERE WAS

17 ANY REAL FEAR AT THIS POINT IN TIME, HE WOULDN'T

18 HAVE GONE INTO THE HOUSE ACCOMPANIED -- IN THE

19 COMPANY OF HIS BROTHER. BECAUSE AFTER ALL, WEREN'T

20 THEY IN THE GREATEST DANGER WHEN THEY WERE

21 TOGETHER?

22 THEY JUST GO IN THE HOUSE AND TELL THE

23 PARENTS THEY WERE GOING TO THE MOVIES. NO INTENT TO

24 SHOOT THE PARENTS TO DEATH. 10:00 O'CLOCK. OKAY?

25 MRS. KROM HEARS SHOTS ABOUT 10:10. NOW,

26 WHAT IS IT, 10:15 AT THE LATEST?

27 FIFTEEN MINUTES EARLIER, LADIES AND

28 GENTLEMEN, ERIK MENENDEZ DID NOT INTEND TO SHOOT HIS

51421

1 PARENTS TO DEATH. NOW, HERE HE IS, AFTER A FEW

2 MINUTES OF RUNNING AROUND THE HOUSE, AND THREE
3 MINUTES OF SITTING THERE ON THE STAIRS, AND NOW HE'S
4 IN ALIBI MODE? OKAY.

5 "LET'S LEAVE THE HOUSE, BUT BEFORE WE
6 LEAVE THE HOUSE LET'S PICK UP SHELLS."

7 IS THAT WHAT YOU WOULD DO, LADIES AND
8 GENTLEMEN, IF YOU HAD TRULY SHOT YOUR PARENTS TO
9 DEATH JUST LIKE THAT (SNAPPING FINGERS,) WITHOUT ANY
10 PREVIOUS INTENTION OF DOING SO? YOU WOULD BE A
11 BASKET CASE. ANY REASONABLE PERSON WOULD BE A
12 BASKET CASE. YOU WOULD NOT BE GOING INTO ALIBI MODE
13 AFTER THREE MINUTES. BUT THAT IS WHAT ERIK MENENDEZ
14 DID, HE SAID.

15 BUT WHAT THAT TELLS YOU, LADIES AND
16 GENTLEMEN, IS THAT THIS WAS NOT TRULY A SPONTANEOUS
17 SHOOTING, AS HE PLANNED -- AS HE CLAIMS, BUT A
18 PLANNED SHOOTING.

19 AND THEN HE SAYS: "WELL, WHAT ABOUT THE
20 SHELLS?" THINK OF THE CONNECTION HE'S ALREADY
21 MAKING. HE WANTS US TO BELIEVE THAT HE GOES THROUGH
22 THIS RUNNING THROUGH THE HOUSE WITH NO THOUGHTS.

23 "ALL I COULD THINK OF WAS HURRY, HURRY,
24 HURRY, HURRY." YET HE TOTALLY LOST HIS MIND AT THIS
25 PERIOD OF TIME, AND THEN AT THE ONE PERIOD OF TIME
26 WHEN YOU WOULD EXPECT HIM TO BE TRULY TRAUMATIZED,
27 RIGHT AFTER DOING THIS HORRIBLE ACT, WHEN HE SHOULD
28 TRULY BE TRAUMATIZED, LOOK AT THE CONNECTIONS HE'S

1 MAKING. "OH, FINGERPRINTS. FINGERPRINTS ON THE
2 SHELLS. WE TOUCHED THE SHELLS. SHELLS ARE IN
3 THERE. THERE WILL BE FINGERPRINTS ON THE SHELLS.
4 WE HAVE TO GET SHELLS, TAKE THEM WITH US BEFORE WE
5 LEAVE THE HOUSE."

6 WHAT A COOL -- WHERE WAS THE TRANSITION
7 HERE? HOW DO YOU GO FROM THIS HELPLESS PANIC TO
8 SUDDENLY COLD, CALCULATING DESTRUCTION OF EVIDENCE
9 MODE? YOU SEE, IT JUST DOESN'T MAKE ANY SENSE.

10 ERIK MENENDEZ, IN THAT STATE OF MIND,
11 STARTS THINKING ABOUT FINGERPRINTS? WHAT A GOOD
12 DETECTIVE. HE DIDN'T WANT TO ADMIT THAT HE HAD A
13 DISCUSSION ABOUT FINGERPRINTS.

14 THIS GOES BACK INTO PLAYING WITH THE
15 LANGUAGE. DON'T LET THE JURY -- DON'T LEAVE THE
16 JURY WITH THE IMPRESSION THAT HE WAS THINKING, USING
17 HIS MIND, DELIBERATING, THINKING CLEARLY. SO HE
18 PLAYS WITH THE LANGUAGE AGAIN. HE TELLS ME:

19 "MR. CONN, WE DIDN'T HAVE A DISCUSSION
20 ABOUT THE FINGERPRINTS. WE JUST HAD A BRIEF
21 EXCHANGE. THAT'S WHAT HE CALLS IT.

22 I ASKED HIM: "DID YOU DISCUSS OR HAVE A
23 BRIEF EXCHANGE WITH YOUR BROTHER ABOUT WHETHER OR
24 NOT YOUR PARENTS WERE DEAD BEFORE YOU WERE GOING TO
25 LEAVE?"

26 "NO."
27 NOW, HOW WOULD HE KNOW THAT HIS PARENTS
28 WERE EVEN DEAD AT THAT POINT IN TIME? BECAUSE,

51423

1 REMEMBER, HE CLAIMS, ACCORDING TO THE STORY, IF YOU
2 REVIEW HIS STORY, HE RETURNED INTO THE ROOM, FIRED
3 ALL THOSE SHOTS, RAN OUT OF THE ROOM STILL IN FEAR.
4 GAVE ONE SHOT TO JOSEPH LYLE MENENDEZ, GOES INTO THE
5 ROOM, AND FIRES ONE MORE SHELL.

6 ERIK MENENDEZ DIDN'T KNOW WHAT'S GOING
7 ON. ERIK MENENDEZ DIDN'T EVEN KNOW IF HIS FATHER IS
8 EVEN SHOT ONE TIME. ACCORDING TO HIS STORY, HE
9 DIDN'T KNOW THAT.

10 HE DIDN'T KNOW HOW MANY TIMES HIS FATHER
11 IS SHOT.

12 HE DIDN'T KNOW IF THEY'RE STILL ALIVE.

13 HE DIDN'T KNOW IF THEY'RE STILL
14 BREATHING, DO THEY NEED HELP, OR ARE THEY STILL
15 ALIVE.

16 HE DOESN'T KNOW ANY OF THOSE THINGS,
17 BECAUSE HE HASN'T GONE IN THE ROOM TO CHECK; AND YET
18 HE'S READY TO LEAVE THE HOUSE WITH LYLE MENENDEZ?

19 AGAIN, LADIES AND GENTLEMEN, IT'S NOT A
20 TRUE STORY. IT'S NOT A TRUE STORY. IT JUST

21 WOULDN'T HAPPEN THAT WAY IF THIS WERE TRUE. IF THIS
22 WERE TRUE, HE WOULD SAY TO HIS BROTHER: "ARE THEY
23 DEAD? DO YOU THINK THEY'RE DEAD? DID YOU SHOOT
24 THEM? I'M NOT SURE I DID. DID YOU? WHERE DID YOU
25 SHOOT THEM? ARE YOU SURE YOU HIT THEM? ARE THEY
26 STILL BREATHING? DID YOU CHECK THEM?"
27 THOSE ARE THE DISCUSSIONS THAT WOULD
28 TAKE PLACE IF THIS WERE A TRUE STORY. NONE OF THOSE

51424

1 DISCUSSIONS TOOK PLACE, BECAUSE IT'S NOT A TRUE
2 STORY.
3 AND THEN HE WOULD HAVE US BELIEVE THAT
4 HE THEN GOES INSIDE, INTO THAT ROOM, AND AS HE GOES
5 IN THERE HE SAID THAT: "I WAS NOT HAVING A DIFFICULT
6 TIME EMOTIONALLY DEALING WITH THE FACT MY PARENTS
7 WERE DEAD." HE CLAIMS THAT LATER, WHEN HE BEGINS
8 TALKING TO SERGEANT EDMONDS, HE WAS HAVING A
9 DIFFICULT TIME EMOTIONALLY DEALING WITH THE FACT
10 THAT THEY WERE DEAD, BECAUSE HE WANTS TO EXPLAIN WHY
11 HE WAS SO EMOTIONAL AT THAT POINT IN TIME.
12 BUT WE KNOW IN THIS PERIOD OF TIME,
13 RIGHT AFTER THE SHOOTING, HE'S EXTREMELY PRODUCTIVE,
14 ISN'T HE? GETTING THINGS DONE, GETTING READY TO
15 DESTROY THE EVIDENCE AND HIDE THE WEAPONS.

16 HE SAYS: "THE DIFFICULTY CAME WHEN THE
17 SHOCK WAS WEARING OFF AND I BEGAN THINKING OF THEM
18 AGAIN AS PEOPLE, RATHER THAN AS SOMEONE WHO MIGHT
19 KILL ME."
20 WHAT WERE THEY UP 'TIL THAT TIME,
21 ANIMALS? HE SAID IT WAS ONLY LATER IN THE EVENING
22 WHEN HE BEGAN THINKING OF THEM AS PEOPLE.
23 LADIES AND GENTLEMEN, IF THAT WERE YOU,
24 FROM THE SECOND THAT YOU FINISHED FIRING YOUR GUN,
25 YOU WOULD NOT FORGET THAT THEY WERE PEOPLE THAT YOU
26 HAD SHOT; THAT THEY WERE YOUR PARENTS. YOU WOULD
27 NEVER MAKE THAT COLD, CALLOUS STATEMENT HERE THAT
28 ERIK MENENDEZ TOLD US, THAT HE WAS NOT THINKING OF

51425

1 THEM AS PEOPLE AT THAT TIME. AND IT WASN'T UNTIL
2 LATER IN THE EVENING THAT HE BEGAN TO THINK OF THEM
3 AS PEOPLE.
4 HE WANTS US TO BELIEVE, OF COURSE, THAT
5 HE WAS STILL IN SHOCK. BECAUSE SHOULDN'T HE BE IN
6 SHOCK? THIS IS JUST AN EXCITING EVENT FOR HIM, AND
7 SO HE CONCEDES YES, I WAS IN SHOCK. BUT THEN HE
8 KNOWS HE WAS THINKING ABOUT FINGERPRINTS. SO HE
9 MAKES THE STATEMENT, WHICH IS SOMEWHAT DIFFICULT TO
10 SWALLOW: "THAT YES, WHILE I WAS IN A STATE OF SHOCK,

11 I THOUGHT ABOUT THE FINGERPRINTS."

12 AND THEN I SAID: "DID YOU THINK ABOUT

13 AN AMBULANCE AT THAT POINT IN TIME?"

14 AFTER ALL, HE NEVER CONFIRMED HIS

15 PARENTS WERE DEAD. "DID YOU THINK ABOUT AN

16 AMBULANCE?

17 HE SAID: "NO. I DON'T KNOW WHY I

18 DIDN'T THINK ABOUT AN AMBULANCE AT THAT POINT IN

19 TIME."

20 I SUBMIT, LADIES AND GENTLEMEN, THAT HE

21 DIDN'T THINK ABOUT AN AMBULANCE BECAUSE HE KNEW HIS

22 PARENTS WERE DEAD. HE KNEW HIS FATHER WAS DEAD

23 BEFORE HE LEFT THAT ROOM, AND HE KNEW HIS MOTHER WAS

24 DEAD BY THIS POINT IN TIME. HE HAD NO NEED FOR AN

25 AMBULANCE. HE WANTED THEM TO BE DEAD.

26 HE ADMITS THAT THEY TURNED ON THE

27 LIGHT. HE SAID THE DIMMER SWITCH WAS TURNED ALL THE

28 WAY UP. NOW WE KNOW THE ROOM WAS FULLY LIT BY THE

51426

1 TIME THEY GO BACK INSIDE NOW TO RECOVER THE SHELLS.

2 HE CLAIMS THAT HE COLLECTED ALL THE

3 SHELLS FROM AN AREA NEAR THE ENTRANCE OR THE CARD

4 TABLE.

5 I WOULD SUBMIT, LADIES AND GENTLEMEN,

6 THAT CAN'T BE TRUE. IF THESE TWO DEFENDANTS ARE
7 RUNNING AROUND SHOOTING SHOTS INSIDE THAT ROOM,
8 YOU'RE GOING TO HAVE THOSE SHELLS FLYING ALL OVER
9 THE PLACE. WHY DIDN'T HE WANT TO ADMIT THERE WERE
10 SHELLS FLYING ALL OVER THE PLACE? THEN HE HAS TO
11 DEAL WITH THE FACT HE'S STEPPING AROUND THOSE BODIES
12 OF HIS MOTHER AND FATHER, WALKING AROUND THOSE AREAS
13 RECOVERING SHELLS, AND HE DOESN'T WANT TO GIVE YOU
14 THAT HORRIBLE THOUGHT, HOW HE CAN DO THAT SO COLD
15 AND CALCULATING. SO HE WANTS YOU TO BELIEVE THEY'RE
16 ALL OVER ON ONE SIDE OF THE ROOM VERY CONVENIENTLY.

17 AS FAR AS THE SMOKE IN THE ROOM, HE
18 SAID: "WELL, THERE WAS A THICK HAZY YELLOW SMOKE IN
19 THE ROOM." BUT HE SAID IT WAS NOT HARDER TO SEE
20 AFTER THE SHOOTING.

21 LADIES AND GENTLEMEN, I WAS ABLE TO
22 IMPEACH HIM WITH HIS PRIOR TESTIMONY HERE, BECAUSE
23 PREVIOUSLY HE TESTIFIED THAT THE SMOKE MADE IT
24 HARDER TO SEE, YOU SEE. BUT NOW WHAT WE HAVE, WE
25 HAVE THE TESTIMONY OF DWIGHT VAN HORN. DWIGHT VAN
26 HORN SAYS THAT THE SMOKE OR -- THIS IS A SMOKELESS
27 POWDER. AND SO THE USE OF THIS AMMUNITION DOES NOT
28 IMPAIR VISION. THAT WAS THE TESTIMONY OF DWIGHT VAN

1 HORN.

2 SO THE DEFENDANT, FOR PURPOSES OF THIS
3 TRIAL, HE WANTS TO PLAY DOWN HIS PREVIOUS TESTIMONY,
4 YOU SEE. AND SO IN THIS TRIAL HE SAID IT WAS NOT
5 HARDER TO SEE AFTER THE SHOOTING. BUT HE SAID,"YES,
6 I DID PREVIOUSLY TESTIFY THAT THE SMOKE MADE IT
7 HARDER TO SEE."

8 SO, AGAIN, LADIES AND GENTLEMEN, HE JUST
9 CLEANS UP HIS TESTIMONY, CLEANS UP HIS TESTIMONY TO
10 MEET THE EVIDENCE OF THE PROSECUTION. THE
11 PROSECUTION BRINGS IN THIS EVIDENCE, AND THE STORY
12 CHANGES. THE STORY KEEPS CHANGING AS THE NEEDS
13 REQUIRE.

14 HE DID NOT CHECK HIS PARENTS' PULSES, HE
15 SAID, NOR DID HE LOOK AT THEM LONG ENOUGH TO SEE IF
16 THEY WERE BREATHING. WHY NOT? HE DIDN'T KNOW FOR
17 SURE THAT THEY WERE DEAD? LYLE MENENDEZ MADE -- HAD
18 NO SUCH CONVERSATION WITH HIM. WOULDN'T YOU DO
19 THAT? WOULDN'T YOU CHECK? IF YOU TRULY DID NOT
20 WANT TO KILL YOUR PARENTS, IF YOU DID SO ONLY
21 BECAUSE YOU FELT IT WAS NECESSARY, IF YOU DID SO
22 ONLY BECAUSE YOU WERE IN FEAR, WOULDN'T YOU CHECK?

23 AND THEN HE SAID SOMETHING THAT WAS
24 EXTREMELY COLD-BLOODED, WHEN HE SAID -- I RAISED THE
25 POSSIBILITY THAT: "ISN'T IT POSSIBLE THAT YOUR
26 FATHER STILL MIGHT HAVE HAD A PULSE?"

27 AND WHAT DID HE SAY ABOUT THAT? "I
28 DON'T KNOW WHAT I WOULD HAVE DONE IF HE HAD HAD A

1 PULSE."

2 SO WHAT IS HE TELLING US THERE? HE IS
3 TELLING US THAT EVEN IF HIS FATHER WAS IN THAT
4 CONDITION, EXTREMELY DISABLED OR DYING, HE WOULDN'T
5 KNOW WHAT HE WOULD HAVE DONE. WHAT ARE THE OPTIONS?
6 SHOOT HIM AGAIN? LET HIM DIE? THOSE ARE THE VERY
7 OPTIONS THAT HE WAS SUGGESTING TO YOU, LADIES.

8 SO IS THIS A MAN WHO LOVED HIS FATHER,
9 WHO DIDN'T WANT TO SHOOT HIS FATHER? ABSOLUTELY
10 NOT. THIS WAS A MAN WHO WANTED HIS FATHER DEAD, AND
11 EVERYTHING HE DID, ALL OF THE EVIDENCE PRESENTED TO
12 YOU, DEMONSTRATES THAT.

13 LADIES AND GENTLEMEN, IF THERE IS
14 ANYTHING THAT TELLS YOU THE TRUE INTENT OF THE
15 DEFENDANTS, THAT REVEALS THE TRUE INTENT OF THE
16 DEFENDANTS ON THAT DAY, IT WAS IN REGARD TO WHETHER
17 THERE WAS ANY EFFORT ON THEIR PART TO CHECK FOR
18 WEAPONS.

19 LADIES AND GENTLEMEN, IF YOU HAD SHOT
20 YOUR PARENTS TO DEATH AND YOU WERE NOW IN THE FOYER,
21 AND JUST A FEW MINUTES EARLIER YOU HAD SHOT YOUR
22 PARENTS TO DEATH, YOU HAD NO INTENTION OF DOING THIS
23 PREVIOUSLY, WOULDN'T YOU BE RACKED WITH GUILT?

24 WOULDN'T YOU BE STRUGGLING WITH THE RIGHTFULNESS OR
25 THE WRONGFULNESS OF YOUR BEHAVIOR? WOULDN'T YOU BE
26 SAYING TO YOURSELF: "MY, GOD. DID I DO THE RIGHT
27 THING?"
28 AND WHAT IS THE ONE THING THAT YOU WANT

51429

1 TO KNOW ABOVE ALL OTHER THINGS IN THE WORLD AT THAT
2 POINT IN TIME? "WERE MY PARENTS ARMED? WAS THIS
3 NECESSARY? DID I DO THE RIGHT THING? SOMEBODY
4 PLEASE TELL ME IF I DID THE RIGHT THING." WOULDN'T
5 YOU FEEL THAT?
6 ERIK MENENDEZ WOULD HAVE YOU BELIEVE
7 THAT HE WAS NOT EVEN CURIOUS ABOUT WHETHER HIS
8 PARENTS WERE ARMED. THIS IS AN IMPOSSIBLE STORY.
9 IMPOSSIBLE, BECAUSE NOBODY, NOBODY WITH EMOTIONS,
10 WITH A CONSCIENCE, WITH LOVE, COULD EVER DO THIS AND
11 THEN SAY:
12 "I'M NOT CONCERNED WITH WHETHER OR NOT
13 THEY WERE ARMED. I THOUGHT THEY WERE ARMED AT THE
14 TIME OF THE SHOOTING. AND THAT'S ALL THAT MATTERS.
15 IF THEY'RE ARMED RIGHT NOW OR NOT, WHO CARES? THE
16 IMPORTANT POINT HERE IS I THOUGHT THEY WERE ARMED."
17 SEE HOW HE'S TESTIFYING? HE'S
18 TESTIFYING FROM A LEGAL POINT OF VIEW. THE

19 EMOTIONAL PART OF THE STORY MAKES NO SENSE. HE'S

20 POINTING TO THE LEGAL ISSUE.

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

22 OBJECT. THERE IS NO SUCH TESTIMONY.

23 THE COURT: OVERRULED.

24 MR. CONN: SEE, THE LEGAL ISSUE IS: WHAT WAS

25 HIS STATE OF MIND AT THE TIME OF THE CRIME, AND

26 THAT'S WHAT HE'S TOTALLY FOCUSED ON. HE'S NOT

27 FOCUSED ON WHAT HAPPENED AFTERWARDS. BUT AFTERWARDS

28 TELLS YOU THE STORY. IT TELLS YOU THE HUMAN DRAMA.

51430

1 IT TELLS YOU THE REALITY OF THE EMOTIONS. IT PROVES

2 WHAT HE DID PREVIOUSLY WAS EITHER TRUE OR FALSE.

3 AND FOR HIM TO SAY HE WASN'T EVEN

4 CONCERNED WITH WHETHER HIS PARENTS WERE ARMED PROVES

5 BEYOND ANY QUESTION WHATSOEVER, LADIES AND

6 GENTLEMEN, THAT THIS STORY DID NOT TAKE PLACE. IF

7 IT DID, HE'S A ROBOT WITH NO FEELINGS, WITH NO HUMAN

8 EMOTIONS; A COLD ROBOT, IMPERVIOUS TO LOVE OR

9 FEELINGS OR EMOTIONS. EITHER THAT, OR HE'S LYING.

10 NOT ONLY WASN'T HE CURIOUS, BUT THERE

11 WAS NO DISCUSSION ABOUT THAT AS HE'S GOING AROUND

12 WITH LYLE MENENDEZ AND HE'S PICKING UP THESE

13 SHELLS.

14 SO WHAT DOES THAT TELL YOU ABOUT LYLE
15 MENENDEZ? AGAIN, HE'S PROVIDING US WITH
16 CIRCUMSTANTIAL EVIDENCE CONCERNING LYLE MENENDEZ.
17 DID LYLE MENENDEZ AT THAT POINT IN TIME SAY: "OH, MY
18 GOD. MY PARENTS ARE NOT ARMED AFTER ALL. WE KILLED
19 THEM FOR NOTHING. IT WAS A MISTAKE. LOOK, THERE'S
20 NO GUNS IN HERE."

21 DID LYLE MENENDEZ SAY THAT? NO. HE
22 MADE IT VERY CLEAR. "WE JUST PICKED UP THE SHELLS
23 SILENTLY, COLLECTED THEM ALL, AND SCURRIED OUT OF
24 THE HOUSE." WHAT DOES THAT TELL YOU ABOUT LYLE
25 MENENDEZ? IT TELLS YOU THE SAME THING ABOUT LYLE
26 MENENDEZ THAT I JUST SAID ABOUT ERIK MENENDEZ.
27 EITHER HE'S A ROBOT WITH NO FEELINGS, A MACHINE, OR
28 ERIK MENENDEZ IS LYING.

51431

1 AND THEY DID NOT KILL THEIR PARENTS IN
2 FEAR. IT WAS PART OF A PLAN. AND ALL OF THE OTHER
3 EVIDENCE IN THIS CASE, LADIES AND GENTLEMEN, THAT I
4 PRESENTED TO YOU IN MY CASE-IN-CHIEF SHOWS THAT IT
5 WAS PART OF A PLAN. THE CONFESSION TO CIGNARELLI
6 SHOWS IT. THE CONFESSION TO DR. OZIEL SHOWS IT.
7 THAT'S THE ONLY REASONABLE CONCLUSION, LADIES AND
8 GENTLEMEN. THERE ARE NOT TWO REASONABLE CONCLUSIONS

9 IN THIS CASE. THERE ARE NOT. FIRST-DEGREE MURDER,
10 PREMEDITATED MURDER, IS THE ONLY REASONABLE
11 CONCLUSION.

12 HE WANTS YOU TO BELIEVE THAT TWO MINUTES
13 AFTER PULLING OUT OF THE DRIVEWAY THEY DECIDED TO GO
14 TO THE MOVIES FOR AN ALIBI. NOTICE HOW WELL THEIR
15 MINDS ARE FUNCTIONING IN THE ALIBI MODE.

16 AND HE CLAIMS WHEN HE CAME BACK HE
17 LOOKED AT HIS PARENTS AT THAT TIME. AFTER GOING
18 AROUND THAT LONG ROUTE THAT I DEMONSTRATED TO YOU ON
19 THE MAP, HE CAME BACK AND LOOKED AT HIS PARENTS AND
20 SAW THAT THEY LOOKED LIKE WAX FIGURES. IS THAT HOW
21 YOU WOULD DESCRIBE YOUR FAMILY MEMBER WHEN YOU SEE
22 THEM IN THAT CONDITION, LIKE A WAX FIGURE? THAT'S
23 HOW ERIK MENENDEZ DESCRIBES HIS PARENTS, LIKE WAX
24 FIGURES.

25 HOW DETACHED, HOW COLD, HOW IMPERSONAL.

26 WHEN DID HE FINALLY GET AROUND TO
27 DISCUSSING WITH LYLE MENENDEZ THE FACT THAT HIS
28 PARENTS WERE NOT ARMED?

51432

1 DID THEY DISCUSS IT AS THEY WERE DRIVING
2 TO THE MOVIES? NO.

3 DID THEY DISCUSS IT AS THEY WERE COMING

4 BACK HOME AND WAITING TO CALL THE POLICE IN THE 911

5 CALL? NO.

6 DID THEY DISCUSS IT WHEN -- AFTER THEY

7 CAME BACK INSIDE AND LOOKED AT THE PARENTS AND

8 BEFORE THEY MADE THE 911 CALL? NO.

9 DID THEY DISCUSS IT AT THE POLICE

10 STATION? NO.

11 AND THEN AFTER THE POLICE STATION, THEY

12 WENT TO THE HOME OF MARK HEFFERNAN. AND YOU RECALL

13 THAT THEY STAYED THERE FOR A COUPLE OF HOURS OR AN

14 HOUR BEFORE THEY LEFT TO GO TO THE CRIME SCENE, AND

15 GOT BACK AT THE CRIME SCENE AT APPROXIMATELY 5:30 IN

16 THE MORNING, AND DETECTIVE ZOELLER TOLD THEM THAT:

17 "WE'RE NOT GOING TO TURN OVER THE CRIME SCENE TO YOU

18 AT THIS TIME."

19 WELL, EVEN ASSUMING THERE WAS NOT A LOT

20 OF TIME TO TALK ABOUT THIS, THEY WERE BUSY TALKING

21 TO THE POLICE, AND SO FORTH, WHEN THEY WERE IN THE

22 HOME OF MARK HEFFERNAN. THEY ARE NOW IN THE BEDROOM

23 ALONE. THEY FINISHED TALKING TO THE POLICE.

24 THEY'RE NOW RESTING IN THE HOME OF MARK HEFFERNAN.

25 IS THIS THE TIME TO SAY ONCE AND FOR ALL: "HEY, BY

26 THE WAY, I DON'T KNOW IF YOU NOTICED IT OR NOT, BUT

27 DID YOU NOTICE THAT MOM AND DAD WERE NOT ARMED? WE

28 SHOT THEM FOR NO GOOD REASON? DID YOU NOTICE THAT?"

1 THEY STILL DON'T HAVE THAT
2 CONVERSATION? HOW COULD THAT BE? HOW COULD THAT
3 BE? THEY JUST DIDN'T TALK ABOUT IT? IF THIS WERE A
4 TRUE STORY, LADIES AND GENTLEMEN, THESE TWO
5 DEFENDANTS, ANY PERSON IN THAT SITUATION WOULD HAVE
6 BEEN SHOCKED AND HORRIFIED. THEY WOULD HAVE BEEN
7 IMMOBILIZED WITH GUILT, CONSUMED WITH GUILT AND
8 REMORSE, AND THAT WOULD HAVE BEEN THE ONLY THING
9 THAT THEY COULD THINK ABOUT. BUT EVEN IN MARK
10 HEFFERNAN'S HOUSE THEY DON'T HAVE THAT CONVERSATION.

11 AND ERIK MENENDEZ SAYS: "SOMETIME BACK
12 AT THE CRIME SCENE, AFTER WE GOT BACK TO THE CRIME
13 SCENE, AND WE'RE SITTING THERE --" I THINK HE
14 DESCRIBED HIMSELF SITTING OUT THERE ON THE CURB OR
15 SOMETHING, AND THEN AT THAT TIME THEY DO HAVE THE
16 CONVERSATION: "OH, BY THE WAY, NO GUNS. I GUESS
17 THERE WAS NO REASON TO KILL 'EM AFTER ALL."

18 AND THEN I ASKED HIM THIS QUESTION:
19 "WHAT WAS YOUR REACTION TO FACT THAT, THERE WERE NO
20 GUNS IN THE ROOM?"

21 AND WHAT DID HE SAY? "I DON'T REMEMBER
22 MY SPECIFIC REACTION TO THE FACT THAT THERE WERE NO
23 GUNS IN THE ROOM."

24 YOU KNOW, PEOPLE -- THEY TALK ABOUT
25 WHERE WERE YOU THE DAY THAT KENNEDY WAS
26 ASSASSINATED? THERE ARE THOSE MOMENTS IN OUR LIFE
27 THAT WE ALL REMEMBER, WHERE WE WERE, WHAT WE WERE

51434

1 IF THERE WAS ANY ONE MOMENT IN THEIR LIFE, IN ERIK
2 MENENDEZ' LIFE THAT HE SHOULD REMEMBER, IT IS THE
3 MOMENT WHEN HE SHOT TO DEATH THE TWO PEOPLE WHO
4 BROUGHT HIM INTO THIS WORLD.

5 HE WALKED BACK INTO THAT ROOM AN HOUR
6 LATER AFTER THE ALIBI ROUTE, AND SEES HIS PARENTS
7 ARE UNARMED, AND WHAT WERE HIS THOUGHTS AT THAT
8 TIME? "I SHOT MY PARENTS FOR NO GOOD REASON." AND
9 WHAT DID HE SAY? I DON'T REMEMBER MY SPECIFIC
10 REACTION TO THAT FACT."

11 HE WANTS YOU TO BELIEVE THAT HE PICKED
12 UP THE SHELLS IN THE ROOM, BUT THAT HE WASN'T INTENT
13 ON GETTING ALL OF THE SHELLS IN THE ROOM. HE SAID:

14 "I THOUGHT THERE MIGHT BE MORE
15 SHELLS IN THE ROOM, EVEN AFTER I
16 LEFT. I WASN'T GOING TO GO CHECK NEAR
17 MY PARENTS, EVEN THOUGH I REALIZED
18 THERE MIGHT BE SHELLS THERE. I WAS
19 SURPRISED WHEN I LEARNED IN THE
20 NEWSPAPER THAT ALL OF THE SHELLS HAD
21 BEEN PICKED UP."

22 AGAIN, THAT STORY DOESN'T MAKE ANY

23 SENSE. WHY IS HE TELLING THAT STORY? HE DOESN'T
24 WANT TO ADMIT TO YOU, LADIES AND GENTLEMEN, THAT HE
25 OBVIOUSLY HAD TO WALK UP TO THE BODIES AND LOOK FOR
26 SHELLS, AND COUNT THE SHELLS AND MAKE SURE THEY GOT
27 ALL OF THE SHELLS WITH FINGERPRINTS ON THEM. IF
28 THAT WAS HIS INTENT, LADIES AND GENTLEMEN, TO ENSURE

51435

1 THAT HE RECOVERED ALL THE EVIDENCE -- AND OBVIOUSLY
2 THAT WAS HIS INTENT, BECAUSE THAT'S REASON THEY WENT
3 BACK IN THERE, TO PICK UP THE SHELLS -- IF THAT WAS
4 HIS INTENT, YOU WOULD BET, LADIES AND GENTLEMEN,
5 THAT THEY WOULD WALK AROUND AND MAKE SURE THEY
6 PICKED UP ALL THE SHELLS, LOOKING HERE, LOOK THERE,
7 COUNTING SHELLS. BUT HE DIDN'T WANT TO ADMIT THAT
8 HE DID SUCH A GORY THING. SO HE GIVES YOU A HALF
9 STORY, WHICH DOESN'T MAKE ANY SENSE.

10 "WELL, I PICKED UP SOME OF THE SHELLS.
11 I DIDN'T THINK THEY WERE ALL OF THE SHELLS. AND
12 WHAT A SURPRISE WHEN I LEARNED IN THE NEWSPAPER.
13 WHO WOULD HAVE KNOWN, BY SOME SHEER LUCK I PICKED UP
14 ALL OF THEM." THAT DOESN'T MAKE ANY SENSE.

15 AND THEN HE TALKED ABOUT -- HE TALKED
16 ABOUT THE MONEY HE RECOVERED. HE TALKED ABOUT THE
17 ESTATE, AND THE PLANS THAT HE HAD, FOLLOWING THE

18 POSITION THAT HE WAS IN OF INHERITING FROM THE
19 ESTATE. HE ADMITS THAT HE SPOKE TO CRAIG CIGNARELLI
20 ABOUT CREATING A GROUP OF FOUR PEOPLE WHO WOULD EARN
21 BETWEEN ONE TO TWO MILLION DOLLARS A YEAR. ALTHOUGH
22 HE CLAIMS HE DIDN'T INTEND TO DO THAT, HE ADMITS HE
23 HAD THOSE CONVERSATIONS. A FAR CRY FROM A HUNDRED
24 AND EIGHTY DOLLARS A MONTH, LADIES AND GENTLEMEN.
25 HE ALSO ADMITS THAT HE SPOKE TO CRAIG
26 CIGNARELLI ABOUT INVESTING MONEY FOR A RETURN OF 30
27 TO 40 MILLION DOLLARS. FAR CRY, LADIES AND
28 GENTLEMEN, FROM A HUNDRED AND EIGHTY DOLLARS A

51436

1 WEEK -- A MONTH, ESPECIALLY WHEN IT COMES WITH
2 STRINGS FROM YOUR FATHER.
3 THEN HE TALKED A LITTLE BIT ABOUT LYLE
4 MENENDEZ, AND LYLE MENENDEZ' EFFORTS TO PRESENT THE
5 PERJURED TESTIMONY OF BRIAN ESLAMINIA. HE SAID HE
6 TOLD HIS BROTHER, LYLE MENENDEZ, THAT IT WAS STUPID
7 TO TRY TO PRESENT SUCH PERJURED TESTIMONY BEFORE A
8 JURY. AND HE SAID HE WAS AWARE THAT LYLE MENENDEZ
9 WANTED TO PRESENT PERJURED TESTIMONY, FALSE
10 TESTIMONY BEFORE A JURY.
11 SO HE CONFIRMED THAT LETTER THAT WE
12 MARKED, WHICH WE KNOW THAT IS THE HANDWRITING OF

13 LYLE MENENDEZ, AND HE CONFIRMED THAT LYLE MENENDEZ
14 DID, IN FACT, HAVE THAT INTENT. OF COURSE, HE TRIES
15 TO EXCLUDE HIMSELF FROM THAT.

16 LADIES AND GENTLEMEN, AS I ARGUED
17 BEFORE, THE ONLY REASONABLE INFERENCE IS HE WAS
18 ACTIVELY INVOLVED IN THAT CONSPIRACY TO PRESENT
19 PERJURED TESTIMONY.

20 BUT HE ADMITTED HE READ THE LETTER AND
21 HE BECAME AWARE THAT IT CALLS FOR AN INCIDENT
22 INVOLVING HIMSELF AS FAR AS BRIAN ESLAMINIA AND LYLE
23 MENENDEZ. AFTER ALL, ALL THREE OF THEM WERE
24 SUPPOSEDLY INVOLVED IN THIS FALSE STORY ABOUT
25 OBTAINING A GUN; AND YET, I SAID:

26 "DID YOU EVER ASK LYLE MENENDEZ,
27 SAY, 'LYLE, WHY DID YOU INCLUDE ME IN
28 A STORY THAT WOULD CALL FOR PERJURED

51437

1 TESTIMONY WITHOUT CHECKING IT OUT WITH
2 ME FIRST? WHY DID YOU INCLUDE MY
3 FRIEND, BRIAN ESLAMINIA, IN SUCH A
4 STORY WITHOUT CHECKING IT OUT FIRST
5 WITH ME? WHY DID NO ONE DISCUSS IT
6 WITH ME? WHY WAS I KEPT IN THE
7 DARK?"

8 AND WHAT DID HE SAY? HE NEVER ASKED
9 LYLE MENENDEZ WHY HE ASSUMED THAT ERIK MENENDEZ
10 WOULD GO ALONG WITH SUCH A PLAN. WELL, LADIES AND
11 GENTLEMEN, WOULDN'T THAT BE THE FIRST THING THAT
12 CAME TO MIND? WOULDN'T YOU ASK YOUR BROTHER:
13 "HEY, I DON'T WANT TO GET
14 INVOLVED WITH PERJURED TESTIMONY. WHY
15 WERE YOU PUTTING TOGETHER A SCENARIO
16 IN WHICH PERJURED TESTIMONY WOULD BE
17 PRESENTED AND WHICH I WOULD
18 NECESSARILY BE INCLUDED, AND STILL,
19 YOU NEVER DISCUSSED IT WITH ME?"
20 OF COURSE, HE WOULD HAVE THIS
21 CONVERSATION WITH LYLE MENENDEZ. HE NEVER HAD THAT
22 CONVERSATION WITH LYLE MENENDEZ, LADIES AND
23 GENTLEMEN, BECAUSE ERIK MENENDEZ WAS ACTIVELY
24 INVOLVED IN THE CONSPIRACY TO PRESENT THE PERJURED
25 TESTIMONY OF BRIAN ESLAMINA. THAT'S THE ONLY
26 REASONABLE CONCLUSION.
27 SO LADIES AND GENTLEMEN, AS YOU WILL SEE
28 AS I GO THROUGH THE REMAINDER OF THE DEFENSE

51438

1 WITNESSES IN THIS CASE, THEY PROVE NOTHING ABOUT THE
2 EVENTS OF AUGUST 20TH OF 1989. NOTHING. WE KNOW

3 FROM SUCH TESTIMONY THAT THE EXPERTS WHO TESTIFIED
4 HAD VERY LITTLE TO SAY.

5 SCIENTIFIC EXPERTS CAN ONLY TALK ABOUT
6 WHETHER OR NOT JOSE MENENDEZ WAS SITTING OR
7 STANDING, OR WHETHER ROGER MC CARTHY WAS RIGHT ABOUT
8 THIS SHOT OR THAT SHOT.

9 THE TWO LAW ENFORCEMENT OFFICERS THAT
10 WERE CALLED IN THE BEGINNING HAD NOTHING TO SAY THAT
11 ASSISTED THE DEFENSE IN ANY WAY.

12 THE TWO PEOPLE ON THE BOAT, LESLIE
13 GASKILL AND ROBERT ANDERSON, HAVE NOTHING OF
14 SIGNIFICANCE TO SAY ABOUT THAT SUNDAY.

15 THE TWO WITNESSES WHO HEARD SHOTS THAT
16 DAY HAVE NOTHING TO CONTRIBUTE.

17 THE ONLY WITNESS OF ANY SUBSTANCE IN
18 THIS WHOLE CASE IS REALLY ERIK MENENDEZ. HE'S THE
19 ONLY ONE WHO PROVIDED KNOWLEDGE OF THE EVENTS OF
20 THAT PARTICULAR DAY. AND HE'S A TOTAL, ABSOLUTE
21 LIAR. THERE'S NO WAY THAT YOU CAN RELY UPON HIS
22 STORY.

23 AND I ASK YOU, INSTEAD, TO RELY UPON THE
24 INSTRUCTION WHICH SAYS: IF A WITNESS IS WILLFULLY
25 FALSE, YOU CAN REJECT ALL OR PART OF HIS TESTIMONY.

26 YOU SHOULD REJECT THE TESTIMONY OF ERIK
27 MENENDEZ AND FIND HIM GUILTY OF FIRST-DEGREE
28 MURDER.

1 LET ME TURN TO JOHN WILSON AND HOW JOHN
2 WILSON TRIED TO BUTTRESS UP THE TESTIMONY ERIK
3 MENENDEZ. JOHN WILSON, LADIES AND GENTLEMEN, IS A
4 HIRED GUN. JOHN WILSON MISLED YOU IN A VERY SERIOUS
5 AND SIGNIFICANT WAY. THE FIRST WAY THAT HE TRIED TO
6 MISLEAD YOU WAS IN REGARD TO HIS TESTIMONY
7 CONCERNING THE BATTERED-PERSON'S SYNDROME. LET ME
8 FIND HIS TESTIMONY.

9 JOHN WILSON MISLED YOU VERY SERIOUSLY
10 WHEN HE SPOKE ABOUT THE BATTERED-PERSON'S SYNDROME,
11 BECAUSE THE SIMPLE FACT OF THE MATTER IS, LADIES AND
12 GENTLEMEN, THAT BATTERED-PERSON'S SYNDROME DOES NOT
13 EXIST. IT SIMPLY DOES NOT EXIST. THAT CONCLUSION
14 IS INESCAPABLE. AND YET THAT IS HIS DIAGNOSIS IN
15 THIS CASE.

16 HE DIAGNOSED THE DEFENDANT AS SUFFERING
17 FROM A NONEXISTENT SYNDROME. AND WHY DO I SAY IT
18 DOESN'T EXIST? IT DOESN'T EXIST, LADIES AND
19 GENTLEMEN, BECAUSE IT IS NOT SOMETHING THAT IS
20 CONTAINED IN THE DIAGNOSTIC AND STATISTICAL MANUAL
21 OF MENTAL DISORDERS, NUMBER ONE; AND YOU HAVE TO
22 UNDERSTAND THE SIGNIFICANCE OF WHAT THIS PUBLICATION
23 IS.

24 YOU'VE HEARD SOME TESTIMONY ABOUT THIS.
25 THIS IS WHAT CLINICIANS THROUGHOUT THIS COUNTRY RELY

26 UPON. THIS IS THE BIBLE. THIS CONTAINS ALL OF THE
27 MENTAL DISORDERS RECOGNIZED BY THE AMERICAN
28 PSYCHIATRIC ASSOCIATION, AND IT IS PUBLISHED

51440

1 PERIODICALLY AND REVISED AND UPDATED PERIODICALLY.
2 IT HAS HUNDREDS OF CONTRIBUTORS TO IT. SOME OF THE
3 BEST MINDS IN THIS COUNTRY IN THE MENTAL HEALTH
4 FIELD CONTRIBUTE TO THIS PUBLICATION.

5 THE BATTERED-PERSON'S SYNDROME IS NOT IN
6 HERE. IT IS NOT A DISORDER. IT IS NOT A PROPER
7 DIAGNOSIS, AND DR. PARK DIETZ TOLD YOU IT IS NOT A
8 PROPER DIAGNOSIS.

9 NOW, DOES IT EVEN EXIST IN THE
10 LITERATURE? BECAUSE ASIDE FROM THIS ONE
11 PUBLICATION, LADIES AND GENTLEMEN, YOU KNOW THAT NO
12 MATTER WHAT FIELD YOU ARE IN, THERE'S A GREAT DEAL
13 OF LITERATURE OUT THERE. NO MATTER WHAT FIELD YOU
14 ARE IN, THERE ARE BOOKS, THERE ARE ARTICLES, THERE
15 ARE JOURNALS IN YOUR PARTICULAR FIELD, SO MUCH
16 MATERIAL IN YOUR PARTICULAR FIELD, THAT I'M SURE
17 IT'S HARD TO KEEP UP WITH IT, BECAUSE THERE'S A
18 TREMENDOUS AMOUNT OF INFORMATION PUBLISHED EVERY
19 YEAR IN EVERY FIELD.

20 LADIES AND GENTLEMEN, YOU CANNOT FIND

21 THOSE THREE WORDS STRUNG TOGETHER,
22 "BATTERED-PERSON'S SYNDROME," IN ANY BOOK, IN ANY
23 JOURNAL, IN ANY PUBLICATION, IN ANY ARTICLE, EXCEPT
24 ONE. SOME LAW STUDENT. THAT'S WHAT DR. WILSON
25 ACKNOWLEDGED. SOME LAW STUDENT WROTE AN ARTICLE
26 SOME TIME AGO PLAYING WITH A CONCEPT CALLED
27 BATTERED-PERSON'S SYNDROME.
28 AND WHAT HE WAS OBVIOUSLY DOING IS

51441

1 MAKING AN ANALOGY TO THE BATTERED-WOMAN'S SYNDROME,
2 AND I'LL SPEAK ABOUT THAT BRIEFLY. BUT THIS IS NOT
3 A DIAGNOSIS. IT IS NOT CONTAINED IN ANY
4 PUBLICATION. IT IS NOT RELIED UPON.
5 DR. PARK DIETZ EXPLAINED A LITTLE BIT
6 ABOUT THE BATTERED-WOMAN'S SYNDROME IN REFERENCE TO
7 THE BATTERED-PERSON'S SYNDROME, AND WHAT HE SAID IS
8 THAT BATTERED-WOMAN'S SYNDROME IS NOT CONTAINED
9 WITHIN THE DSM EITHER, AND HE EXPLAINED TO YOU A
10 LITTLE BIT ABOUT THE TERM "SYNDROME." HE SAID THAT
11 A SYNDROME HAS A MEDICAL CONNOTATION. HE SAID THAT
12 ANYONE WHO UNDERSTANDS THE MEDICAL CONNOTATION OF
13 THE WORD "SYNDROME" WOULD HAVE A PROBLEM DEALING
14 WITH THE TERMS BATTERED-WOMAN'S SYNDROME OR
15 BATTERED-PERSON'S SYNDROME.

16 HE SAYS, BECAUSE THE WAY THAT TERM IS
17 BEING USED IN REFERENCE TO BATTERED-WOMAN'S SYNDROME
18 IS IN REGARD TO A CLUSTER OF EVENTS, NOT A CLUSTER
19 OF SYMPTOMS. AND HE INDICATED TO YOU THAT THE
20 BATTERED-WOMAN'S SYNDROME HAS NEVERTHELESS BEEN
21 RECOGNIZED, BECAUSE IT HAS SOME POLITICAL LEGS TO
22 IT. IT HAS BEEN RECOGNIZED, BECAUSE IT DEALS WITH A
23 VERY REAL PROBLEM IN OUR SOCIETY.

24 DON'T THINK I'M SAYING, OR DR. PARK
25 DIETZ WAS SAYING, THAT THERE IS NOT A PROBLEM WITH
26 BATTERING IN THIS COUNTRY; THAT WOMEN IN THIS
27 COUNTRY ARE NOT SOMETIMES LIVING IN BATTERED
28 SITUATIONS. OF COURSE THEY ARE. THERE ARE WOMEN

51442

1 WHO LIVE IN BATTERED SITUATIONS. THAT IS A VERY
2 REAL PROBLEM IN OUR SOCIETY, VERY SERIOUS PROBLEM
3 THAT NEEDS TO BE ADDRESSED, AND RESOURCES MUST BE
4 DEVOTED TO IT.

5 BUT WHAT THEY HAVE DONE IS THAT PEOPLE,
6 IN ORDER TO HIGHLIGHT THAT PROBLEM, TO FOCUS ON THAT
7 PROBLEM, HAVE REFERRED TO THAT SITUATION AS THE
8 BATTERED-WOMAN'S SYNDROME. AND DR. PARK DIETZ SAID
9 THIS HAS SERVED A VERY USEFUL PUBLIC PURPOSE. IT
10 ACCOMPLISHES SOMETHING. IT DIRECTS POLITICAL

11 ATTENTION TOWARD THE SPECIFIC ISSUES, AND IT'S GREAT
12 TO HIGHLIGHT IT IN THAT WAY BY CALLING IT A
13 BATTERED-WOMAN'S SYNDROME.

14 BUT IS IT REALLY A SYNDROME? NO, IT'S
15 NOT REALLY A SYNDROME IN THE MEDICAL SENSE OF THE
16 TERM. IT'S NOT A MENTAL DISORDER. YOU CAN'T FIND
17 IT IN THE DSM. IT'S A SITUATION. IF YOU WANTED TO
18 BE ACCURATE, YOU KNOW WHAT IT REALLY WOULD BE
19 CALLED? IT WOULD BE CALLED THE BATTERED-WOMEN
20 SITUATION. THAT WOULD BE THE BEST, MOST ACCURATE
21 DESCRIPTION. BUT IT WOULDN'T SERVE THE POLITICAL
22 PURPOSE; AND AS HE SAID, THERE'S NO HARM IN CALLING
23 IT SYNDROME. IF THAT ATTRACTS PEOPLE'S ATTENTION,
24 IF THAT GETS PEOPLE TO RECOGNIZE THAT THIS IS A VERY
25 REAL PROBLEM IN OUR SOCIETY, AND RESOURCES AND
26 ATTENTION SHOULD BE DEVOTED TO IT, THEN GO AHEAD.
27 CALL IT A SYNDROME. THERE'S NO HARM.

28 THE APPARENT HARM, LADIES AND GENTLEMEN,

51443

1 IS THAT WHEN YOU GET IN FRONT OF A JURY AND YOU
2 START TALKING ABOUT PEOPLE WHO COMMIT CRIMES AND YOU
3 START TALKING ABOUT MENTAL STATES, THEN YOU HAVE A
4 PROBLEM, BECAUSE NOW YOU'RE TALKING ABOUT POTENTIAL
5 CONFUSION. YOU START TALKING ABOUT CONFUSING --

6 PEOPLE THINK YOU'RE TALKING ABOUT A CLINICAL
7 DIAGNOSIS. BATTERED-WOMAN'S SYNDROME IS NOT A
8 CLINICAL DIAGNOSIS, AND IT SHOULDN'T BE USED THAT
9 WAY.

10 AND DR. PARK DIETZ SAID HE WOULD NEVER
11 GIVE ANYONE A DIAGNOSIS OF A BATTERED-WOMAN'S
12 SYNDROME, BECAUSE WHAT DOES IT TELL YOU? IT TELLS
13 YOU A WOMAN IS LIVING IN THIS SITUATION AND
14 SOMETIMES WOMEN LIVING IN THAT SITUATION RESPOND
15 SOMEWHAT SIMILAR. THERE'S A SIMILARITY OF
16 BEHAVIOR. THIS IS NOT A DIAGNOSIS OF STATE OF
17 MIND.

18 AND SO WHAT DR. WILSON DID -- DR. WILSON
19 SHOULD KNOW BETTER. WHAT HE DID IS HE COMES INTO
20 THIS COURTROOM, AND HE LEADS YOU TO BELIEVE, IN NO
21 UNCERTAIN TERMS, THAT THIS IS IN THE NATURE OF A
22 DIAGNOSIS, A CLINICAL DIAGNOSIS.

23 I WOULD SUBMIT TO YOU, LADIES AND
24 GENTLEMEN, THAT IS EXTREMELY MISLEADING FOR
25 DR. WILSON TO SUGGEST THAT TO YOU. THERE IS NO
26 BATTERED-WOMAN'S SYNDROME AS A CLINICAL DIAGNOSIS.
27 THERE'S CERTAINLY NO BATTERED-PERSON'S SYNDROME
28 WHICH EXISTS AS A DIAGNOSIS.

1 ONCE AGAIN, DOES THAT MEAN THERE ARE NOT
2 PEOPLE IN OUR SOCIETY, OTHER THAN WOMEN, WHO ARE
3 SOMETIMES BATTERED? OF COURSE NOT. THERE CAN BE
4 AND ARE PEOPLE IN ARE SOCIETY THAT ARE BATTERED;
5 CHILDREN, THE ELDERLY. THERE ARE PEOPLE WHO ARE
6 BATTERED AND WHO MIGHT LIVE IN A RELATIONSHIP THAT
7 INVOLVES BATTERING. DOES IT FOLLOW THAT JUST
8 BECAUSE THERE IS A BATTERED-WOMAN'S SYNDROME, A TERM
9 THAT IS MORE POLITICAL THAN CLINICAL; THAT,
10 THEREFORE, THERE'S BATTERED-PERSON'S SYNDROME? OF
11 COURSE NOT. IT DOESN'T FOLLOW. IT DOESN'T FOLLOW.

12 THERE'S NO MEDICAL BASIS TO MAKE AN
13 ANALOGY, BECAUSE IT'S A NOT A CLINICAL SITUATION TO
14 BEGIN WITH.

15 AND SO, WHILE BATTERED-WOMAN'S SYNDROME
16 HAS CAUGHT ATTENTION, AND THE BATTERED-WOMAN'S
17 SYNDROME IS KNOWN THROUGHOUT THE COUNTRY NOW, IT IS
18 A TERM THAT PEOPLE ARE TOTALLY FAMILIAR WITH, THE
19 BATTERED-PERSON'S SYNDROME, WHICH DOESN'T HAVE THE
20 SAME POLITICAL BACKING, HAS NEVER CAUGHT ON. SO
21 MUCH SO THAT IT'S NOT EVEN CONTAINED IN THE
22 LITERATURE. YOU CAN FIND AT LEAST REFERENCE TO THE
23 BATTERED-WOMAN'S SYNDROME. IT IS WELL WRITTEN
24 ABOUT. THERE'S NO DOUBT ABOUT THAT, EVEN THOUGH
25 IT'S NOT CLINICAL. IT'S MORE SITUATIONAL OR
26 ENVIRONMENTAL THAN CLINICAL. BUT AT LEAST THERE'S
27 LITERATURE ON IT.

28 BUT THE BATTERED-PERSON'S SYNDROME, NO

1 ONE HAS EVEN SAT DOWN AND DRAWN THOSE THREE WORDS
2 TOGETHER AND PUT IT FORWARD AS A SYNDROME, EXCEPT
3 SOME LAW STUDENT PLAYING WITH THE CONCEPT 15 YEARS
4 AGO OR SOMETHING.

5 SO IT DOESN'T EXIST, LADIES AND
6 GENTLEMEN. IT SIMPLY DOESN'T EXIST.

7 FOR DR. WILSON TO COME IN HERE AND TELL
8 YOU HE DIAGNOSED THE DEFENDANT AS SUFFERING FROM
9 BATTERED-PERSON'S SYNDROME IS SIMPLY DISINGENUOUS,
10 TO PUT IT MILDLY.

11 NOW, DR. WILSON ALSO SAID THAT ERIK
12 MENENDEZ SUFFERED FROM POST-TRAUMATIC STRESS
13 DISORDER. NOW, AT LEAST HERE HE HAS SOMETHING HE
14 CAN REFER TO, BECAUSE POST-TRAUMATIC STRESS DISORDER
15 DOES EXIST. NO QUESTION ABOUT IT. IT EXISTS IN THE
16 DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL
17 DISORDERS, AND IT HAS EXISTED IN THIS PUBLICATION
18 SINCE 1980, HE SAID. SO FOR THE PAST, AT LEAST 16
19 YEARS, THIS IS SOMETHING THAT HAS BEEN RECOGNIZED.

20 BUT LADIES AND GENTLEMEN, DO YOU KNOW
21 WHAT POST-TRAUMATIC STRESS DISORDER IS? IT'S A GOLD
22 MINE FOR CRIMINAL DEFENSE ATTORNEYS. IT'S A GOLD
23 MINE. YOU CAN EXPECT YOU'RE GOING TO HEAR A LOT
24 ABOUT POST-TRAUMATIC STRESS DISORDER IN CRIMINAL

25 CASES FROM NOW ON.

26 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR
27 HONOR. THAT'S IMPROPER ARGUMENT.

28 THE COURT: SUSTAINED AS TO THAT LAST

51446

1 REMARK. IT'S STRICKEN AND YOU ARE ORDERED TO
2 DISREGARD IT.

3 CONFINE YOURSELF ONLY TO THE EVIDENCE IN
4 THIS CASE AND THE TESTIMONY IN THIS CASE.

5 MR. CONN: WHAT I WOULD LIKE YOU TO CONSIDER
6 IS HOW POST-TRAUMATIC STRESS DISORDER WAS USED IN
7 THIS CASE, AND HOW EASILY IT IS USED TO SUPPORT
8 ALLEGATIONS OF THE DEFENDANT WHEN THE DEFENDANT
9 SEEKS TO MAKE ALLEGATIONS AGAINST THE VICTIM THAT HE
10 COMMITTED A CRIMINAL ACT AGAINST.

11 YOU SEE, BECAUSE POST-TRAUMATIC STRESS
12 DISORDER SAYS THAT A PERSON WHO HAS COMMITTED A
13 TRAUMATIC EVENT -- OR A PERSON WHO HAS BEEN EXPOSED
14 TO A TRAUMATIC EVENT, SUFFERS CERTAIN EXPERIENCES OR
15 SYMPTOMS. BUT, YOU SEE, THE BEAUTY OF THIS FOR THE
16 DEFENSE ATTORNEYS IN THIS CASE IS THAT WHAT THEY CAN
17 DO IS THEY CAN HAVE SOMEONE TAKE THE WITNESS STAND
18 AND GIVE A DIAGNOSIS, SAY, IN SO MANY WORDS: THE
19 DEFENDANT DID, IN FACT, SUFFER THIS TRAUMATIC

20 EVENT.

21 WELL, YOU SEE, THAT'S DISPUTED IN THIS
22 CASE. THAT'S WHAT WE'RE DISPUTING. DID JOSE
23 MENENDEZ EVER PUT A HAND ON ERIK MENENDEZ? DID HE
24 EVER SEXUALLY TOUCH HIM IN ANY WAY? AND I SUBMIT TO
25 YOU, HE DID NOT. THE DEFENSE IS CLAIMING THAT HE
26 DID. SO HOW DO THEY SUPPORT THAT? THEY PUT AN
27 EXPERT ON THE STAND TO SAY: "I HAVE A PH.D., AND I
28 CAN TELL YOU THAT AS PART OF MY DIAGNOSIS, I

51447

1 DETERMINED THAT JOSE MENENDEZ SEXUALLY ASSAULTED
2 ERIK MENENDEZ."

3 YOU SEE? SO WHAT THEY LACK IN EVIDENCE,
4 WHAT THEY LACK IN PROOF, WHAT THEY LACK IN MEDICAL
5 EVIDENCE, WHAT THEY LACK IN EYEWITNESSES, WHAT THEY
6 LACK IN PHYSICAL EVIDENCE, THEY TRY TO COMPENSATE
7 FOR BY BRINGING IN AN EXPERT WITH A PH.D. TO
8 SAY: "TRUST ME. I HAVE A PH.D., AND I CAN TELL YOU,
9 HE WAS MOLESTED."

10 "HOW CAN YOU TELL US THAT?"

11 "WELL, IT'S PART OF MY DIAGNOSIS."

12 "WELL, HOW CAN YOU TELL THAT?"

13 "WELL, IT'S -- I MADE THAT FINDING THAT
14 HE WAS MOLESTED."

15 LADIES AND GENTLEMEN, WHAT YOU HAVE TO
16 DO IS YOU HAVE TO ASK YOURSELF: IS THIS MAN, A
17 PH.D., ANY MORE QUALIFIED TO MAKE THAT DETERMINATION
18 THAN YOU ARE? AND THE ANSWER IS NO, HE IS NOT.

19 COUNSEL WOULD JUST LOVE IT IF YOU WERE
20 TO SAY: "HE HAS A PH.D., AND I DON'T HAVE A PH.D.
21 SO WHO AM I TO SAY?

22 YOU HAVE TO ASK YOURSELF, LADIES AND
23 GENTLEMEN, WHAT DOES IT MEAN THAT HE HAS A PH.D.?
24 IT MEANS THAT HE IS FAMILIAR WITH SYMPTOMS, THAT'S
25 ALL. HE IS FAMILIAR WITH SYMPTOMS. AND WHEN HE
26 INTERVIEWS SOMEONE, WHEN HE TALKS TO SOMEONE AND HE
27 RECEIVES INFORMATION CONCERNING THOSE SYMPTOMS, HE
28 CAN SAY: THESE SYMPTOMS ARE CONSISTENT WITH A KNOWN

51448

1 DISORDER CONTAINED IN THE DSM. AND BASED UPON THE
2 FACT THAT THE SYMPTOMS ARE THE SAME, IT APPEARS THAT
3 THIS PERSON HAS THE DISORDER.

4 THAT'S ALL HE CAN SAY. HE CANNOT READ
5 MINDS. YOU DON'T STUDY PSYCHOLOGY IN GRADUATE
6 SCHOOL FOR THE PURPOSE OF BECOMING A MIND-READER.
7 HE CAN'T READ MINDS. HE CAN'T TELL THE TRUTH ANY
8 BETTER THAN ANY ONE OF US.

9 MANY OF YOU ARE IN PROFESSIONS WHERE YOU

10 EVALUATE CREDIBILITY OF PEOPLE. THE ATTORNEYS IN
11 THIS CASE HAVE BEEN INVOLVED IN A PROFESSION WHERE
12 WE EVALUATE THE CREDIBILITY OF PEOPLE ALL THE TIME.
13 THE JUDGE IS INVOLVED IN THAT TYPE OF PROFESSION.
14 THE POLICE ARE INVOLVED IN THAT TYPE OF PROFESSION.
15 AND MAYBE SOME OF YOU ARE INVOLVED IN THAT TYPE OF
16 PROFESSION.

17 BUT DO ANY OF US HAVE THE ABILITY TO SAY
18 BEYOND A DOUBT, AS AN EXPERT -- I'M NOT TALKING ABOUT
19 HAVING AN OPINION. WE ALL HAVE OPINIONS. OPINIONS
20 ARE CHEAP. WE ALL HAVE OPINIONS. I'M SAYING: DO
21 ANY OF US, BY VIRTUE OF OUR TRAINING AND OUR
22 ABILITY, CAN WE SAY THAT WE CAN ABSOLUTELY DETERMINE
23 THE TRUTH? NO, WE CAN'T, AND THAT INCLUDES A PH.D.
24 WHO STUDIES PSYCHOLOGY. HE DOESN'T HAVE THAT
25 ABILITY.

26 SO THE QUESTION IS: "DOCTOR, LET ME ASK
27 YOU THIS: DO YOU HAVE PHYSICAL EVIDENCE THAT THIS
28 JURY DID NOT KNOW ABOUT?"

51449

1 "NO."

2 "DO YOU HAVE MEDICAL RECORDS THAT THIS
3 JURY DID NOT KNOW ABOUT?"

4 "NO."

5 "ARE THERE EYEWITNESSES TO SUCH
6 ALLEGATIONS THAT THIS JURY DOES NOT KNOW ABOUT?"

7 "NO."

8 THEN, WHAT YOU HAVE, DOCTOR, IS AN
9 OPINION."

10 AND IT'S A PAID OPINION, LADIES AND
11 GENTLEMEN. HE'S A HIRED GUN. HE'S HIRED BY THE
12 DEFENSE.

13 LADIES AND GENTLEMEN, I ASK YOU, DON'T
14 BELIEVE HIM SIMPLY BECAUSE HE SAYS: "THE DEFENSE IS
15 GIVING ME MONEY, AND NOW WITH THAT MONEY IN MY
16 WALLET, TRUST ME. ERIK MENENDEZ WAS MOLESTED."
17 HE'S A HIRED GUN, AND YOU SHOULD SUSPECT THAT
18 OPINION.

19 IF HE DIDN'T HAVE THE OPINION, LADIES
20 AND GENTLEMEN, HE WOULD NOT BE ON THIS WITNESS
21 STAND. HE WOULD BE REPLACED BY ANY OF THE OTHER
22 THOUSANDS OF PROFESSIONALS ACROSS THIS COUNTRY WHO
23 WOULD COME IN, STUFF THE WALLET, TAKE THE STAND, AND
24 SAY: "YEAH. I BELIEVE IT TO BE P.T.S.D. YOU BET."

25 SO, YOU HAVE TO ASK YOURSELF, LADIES AND
26 GENTLEMEN, WHAT IS HIS OPINION BASED UPON? HIS
27 OPINION IS NO BETTER THAN YOURS. HE HAS NO
28 INFORMATION BETTER THAN YOURS.

1 AND THEN THEY TRIED TO RELY UPON THE
2 PSYCHOLOGICAL TESTS IN THIS CASE. DO YOU RECALL
3 THAT? WHAT WERE THOSE PSYCHOLOGICAL TESTS? THOSE
4 PSYCHOLOGICAL TESTS, LADIES AND GENTLEMEN, WERE MORE
5 IN THE WAY OF A RATE-YOURSELF TEST. KIND OF LIKE
6 WHAT YOU SEE IN THE READER'S DIGEST SOMETIMES.
7 LIKE, ARE YOU A HAPPY PERSON? ANSWER THE FOLLOWING
8 25 QUESTIONS, AND YOU CAN CONCLUDE -- OR DO YOU HAVE
9 A GOOD MARRIAGE? ANSWER THESE FOLLOWING QUESTIONS,
10 AND RATE YOURSELF FROM ZERO TO THREE.

11 OKAY? AND YOU TOTALLY ADD UP YOUR
12 SCORE, AND THEN AT THE END YOU SAY: "WHAT DO YOU
13 KNOW. I HAVE A HAPPY MARRIAGE."

14 THE TYPE OF TESTS THAT WERE GIVEN IN
15 THIS CASE IS PRETTY MUCH THE SAME AS THAT. WHETHER
16 THEY SUFFERED FROM P.T.S.D., HE RATES HIM AS HIGH AS
17 HE WANTS TO RATE HIMSELF, AND HE RELIES UPON THOSE
18 ANSWERS, AND HE RELIED UPON THOSE ANSWERS EVEN
19 WITHOUT QUESTIONING THOSE ANSWERS.

20 FOR EXAMPLE, IN REGARD TO HOMICIDALITY.
21 WASN'T THERE EVIDENCE THAT ERIK MENENDEZ THOUGHT
22 ABOUT KILLING HIS FATHER IN THE PAST? HE WAS ASKED
23 TWO QUESTIONS ABOUT HOMICIDALITY. AND IN THOSE TWO
24 QUESTIONS --"WELL, HAVE YOU HAD THOUGHTS ABOUT
25 KILLING IN THE PAST? AND HOW SERIOUS WERE THOSE
26 THOUGHTS?" AND ERIK MENENDEZ GAVE HIMSELF A PERFECT
27 SCORE. HE NEVER HAD SUCH THOUGHTS, AND HE DIDN'T

51451

1 A PERFECT SCORE.

2 AND YET WE KNOW HE THOUGHT ABOUT KILLING
3 HIS PARENTS. HE ADMITTED IT IN HERE, IN TRIAL. AND
4 EVEN DR. WILSON -- HE TOLD DR. WILSON, AND IT'S
5 CONTAINED IN DR. WILSON'S NOTES.

6 DID THAT STOP DR. WILSON FROM GIVING HIM
7 A PERFECT SCORE? NO. HE JUST WENT BY WHATEVER
8 ANSWERS ERIK MENENDEZ GAVE HIM, TOTALED THEM UP, AND
9 SAID: "WELL, WHAT DO YOU KNOW, YOU'VE GOT P.T.S.D."

10 AND WE KNOW THAT DR. WILSON TESTIFIED IN
11 THIS COURTROOM BEFORE HE EVEN GAVE THAT TEST TO ERIK
12 MENENDEZ. WE KNOW THAT HE TESTIFIED TO WHAT
13 P.T.S.D. IS, AND WHAT THE SYMPTOMS ARE, WHAT IT'S
14 ALL ABOUT.

15 ERIK MENENDEZ WAS SITTING THERE IN
16 COURT. DR. WILSON LAID IT ALL OUT TO HIM. AND
17 AFTER ERIK MENENDEZ LISTENED TO HIS TESTIMONY, HE
18 THEN GOES AND INTERVIEWS HIM IN JAIL, GIVES HIM A
19 SELF-SCORING TEST; AND ARE WE GOING TO BE SURPRISED
20 IF ERIK MENENDEZ NOW GIVES HIMSELF A HIGH P.T.S.D.
21 SCORE? NO. WE SHOULDN'T BE SURPRISED. ERIK
22 MENENDEZ HAD ALL THE INFORMATION HE NEEDED. HE KNEW

23 WHERE THE EVIDENCE IS GOING. HE WANTS THAT
24 VOLUNTARY MANSLAUGHTER. HE KNOWS WHAT HE'S GOT TO
25 DO.

26 THEN WHAT THEY SAID -- WHAT THEY CALLED
27 A VALIDITY SCALE. WAS THE VALIDITY SCALE OF ANY
28 VALUE? REMEMBER THE WAY THAT LESLIE ABRAMSON

51452

1 INTRODUCED THE VALIDITY SCALE? "DOCTOR, ISN'T IT
2 TRUE," SHE SAID, "THAT THIS HAS A VALIDITY SCALE
3 WHICH IS DESIGNED TO BUST LYING?" DO YOU REMEMBER
4 THAT? DOES IT BUST LYING?

5 THIS IS NOT SOMETHING WHICH BUSTS LYING,
6 LADIES AND GENTLEMEN. IT IS A SCALE WHICH DETECTS
7 OBVIOUS PROBLEMS IN THE TEST ITSELF. IT DOES NOT
8 DETECT LYING. AND SOME OF THE OBVIOUS PROBLEMS THAT
9 IT TESTS IS, FOR EXAMPLE, IF A PERSON IS
10 CONSISTENTLY FILLING OUT THE SAME ANSWER, SUCH AS
11 ZEROES; ZERO, ZERO, ZERO, ZERO, ZERO.

12 WELL, IS THAT A TRICKY TEST? NO.
13 THAT'S A PRETTY OBVIOUS PROBLEM WITH THE TEST. THIS
14 PERSON OBVIOUSLY IS NOT BEING VERY COOPERATIVE.
15 THEY'RE NOT TAKING THE TIME AND THE TROUBLE TO
16 CONSIDER THE QUESTIONS. THEY'RE GIVING ALL THE SAME
17 ANSWERS.

18 AND SO THAT VALIDITY SCALE SAYS, IF
19 EVERYONE GIVES A ZERO, IF THIS PERSON GIVES ALL
20 ZEROES, DON'T TRUST THE RESULTS. A VERY REASONABLE
21 PROPOSITION. THAT DOESN'T DETECT LYING.

22 AND THEN THE SECOND ONE, I BELIEVE, WAS
23 ONE WHICH DETECTED PSYCHOTIC RESPONSES, BECAUSE
24 THERE WERE A FEW PSYCHOTIC-TYPE QUESTIONS INCLUDED
25 IN THE TEST, SUCH AS: "I TALKED TO MARTIANS OR I
26 HEAR VOICES."

27 AND IF A PERSON IS ANSWERING "YES" TO
28 THOSE QUESTIONS, THEN YOU'RE DEALING WITH A PERSON

51453

1 WITH PSYCHOTIC SYMPTOMS, AND THAT TELLS YOU, WELL,
2 MAYBE THE REST OF THIS TEST IS SIMPLY NOT VERY
3 VALUABLE. THAT'S ANOTHER MEANS OF REJECTING THE
4 TEST.

5 AND THE THIRD MEANS OF REJECTING THE
6 TEST IS IF A PERSON GIVES OBVIOUSLY INCONSISTENT
7 ANSWERS, BECAUSE THERE ARE SOME QUESTIONS ON THAT
8 TEST WHICH ASK VIRTUALLY THE SAME THING, IF NOT
9 IDENTICALLY THE SAME THING, IN DIFFERENT PARTS OF
10 THE TEST. NOW, IF A PERSON IS BEING TRUTHFUL,
11 OBVIOUSLY, HE'S GOING TO INDICATE THE SAME ANSWER IN
12 DIFFERENT PARTS OF THE TEST. BUT, YOU SEE, IF A

13 PERSON ANSWERS INCONSISTENTLY, THEN YOU COULD SAY:
14 HERE IS A PERSON WHO CAN'T GET THE STORY STRAIGHT.
15 SO YOU SHOULD REJECT IT FOR THAT REASON. BUT THAT'S
16 A PERSON WHO OBVIOUSLY CAN'T EVEN KEEP THE STORY
17 STRAIGHT, WHO CAN'T FOLLOW HIS OWN STORY.
18 WHAT DO YOU DO WITH A PERSON WHO'S
19 REASONABLY INTELLIGENT, WHO HAS THOUGHT THROUGH THE
20 STORY, HOW IS THAT GOING TO DETECT LYING? AND THE
21 ANSWER IS IT DOESN'T DETECT LYING.
22 SO THIS VALIDITY SCALE SIMPLY DOESN'T
23 DETECT LYING AT ALL. IT IS NOT A RELIABLE MEASURE.
24 SO WHAT YOU WOULD END UP WITH BASICALLY IS A
25 SELF-SCORING TEST.
26 SO DO NOT RELY UPON THIS TEST AS PROOF
27 THAT DEFENDANT IN THIS CASE HAD POST-TRAUMATIC
28 STRESS DISORDER.

51454

1 SO WHAT -- ASIDE FROM THE FACT THAT
2 THERE'S NO RELIABLE EVIDENCE THAT THE DEFENDANT HAD
3 POST-TRAUMATIC STRESS DISORDER, WHAT IS
4 POST-TRAUMATIC STRESS DISORDER? WHAT DOES IT DO,
5 ASSUMING HE HAD IT?
6 WELL, THE DIAGNOSTIC AND STATISTICAL
7 MANUAL TELLS US ABOUT POST-TRAUMATIC STRESS

8 DISORDER, AND IT GOES: NO. 1, THE PERSON
9 EXPERIENCES A TRAUMATIC EVENT, WHICH, AS I
10 INDICATED, IS VERY OFTEN GOING TO COME OUT TO
11 WHETHER YOU BELIEVE THE PERSON OR NOT.

12 BEAR IN MIND THAT THE PURPOSE FOR WHICH
13 WE HAVE CLINICIANS AND MANUALS SUCH AS THIS -- AND
14 THAT IS WHAT PSYCHIATRY IS -- PSYCHOLOGY -- THESE
15 ARE BASICALLY HELPING PROFESSIONS, AREN'T THEY, JUST
16 LIKE MEDICINE?

17 WHEN YOU GO TO THE HOSPITAL YOUR DOCTOR
18 DOESN'T SAY TO YOU -- IF YOU WALK IN THERE WITH A
19 BROKEN ARM, YOUR DOCTOR ISN'T GOING TO CROSS-EXAMINE
20 YOU AND SAY: "WELL, HOW DID YOU RECEIVE THIS BROKEN
21 ARM? TELL ME THE TRUTH. DO YOU HAVE ANY
22 WITNESSES?"

23 HE DOESN'T CARE. IF YOU'VE GOT A BROKEN
24 ARM, HE'S GOING TO TREAT YOU. SAME THING IF YOU GO
25 AND SEE THE DOCTOR AND YOU SAY: "DOCTOR, I HAVE A
26 PAIN IN MY STOMACH." HE'S NOT GOING TO SAY: "OH,
27 YEAH. DO YOU HAVE EVIDENCE OF THAT? CAN YOU PROVE
28 IT INDEPENDENTLY OF YOUR STATEMENT TO ME?"

51455

1 OF COURSE, THAT DOESN'T HAPPEN, BECAUSE
2 THESE ARE HELPING PROFESSIONS, BECAUSE THEY ASSUME

3 THE RELIABILITY AND TRUTHFULNESS OF THE PERSON
4 THEY'RE TALKING TO. YOU HAVE NO MOTIVATION TO GO TO
5 A DOCTOR AND SAY YOU HAVE PAINS IN YOUR STOMACH WHEN
6 YOU DON'T. THESE ARE HELPING PROFESSIONS, AND THEY
7 DON'T QUESTION YOUR CREDIBILITY OR RELIABILITY.
8 THIS TYPE OF THING, THIS TYPE OF POST-TRAUMATIC
9 STRESS DISORDER IN HERE IS PREMISED UPON THE SAME
10 CONCEPT.

11 WHEN YOU GO TO SOMEBODY AND YOU SAY:
12 " I WAS INVOLVED" -- OR YOU TELL YOUR
13 PSYCHIATRIST: "I WAS INVOLVED IN A PLANE CRASH, AND
14 NOW I'M EXPERIENCING ALL SORTS OF REEXPERIENCING AND
15 OTHER RESPONSES TO THIS PLANE CRASH."

16 WELL, HE'S NOT GOING TO QUESTION THAT.
17 HE'S GOING TO RELY UPON THAT, AND HE'S GOING TO
18 TREAT YOU ACCORDINGLY.

19 THE PROBLEM THAT YOU RUN INTO IS IN A
20 FORENSIC SETTING. IN A FORENSIC SETTING YOU HAVE A
21 TOTALLY DIFFERENT PROBLEM, BECAUSE NOW YOU'RE
22 DEALING WITH MOTIVATION TO LIE, MOTIVATION TO MAKE
23 UP, MOTIVATION TO FABRICATE, ESPECIALLY WHEN YOU
24 HAVE DEFENDANTS SUCH AS THIS ON TRIAL IN A SERIOUS
25 DEFENSE. HE'S GOING TO HAVE A MOTIVATION TO LIE.

26 SO YOU JUST CAN'T LOOK DOWN THE LIST AND
27 SAY: "WELL, IF YOU WERE MOLESTED OKAY, I'LL ACCEPT
28 THAT," AND GO DOWN TO THE REMAINDER OF THE

1 SYMPTOMS.

2 THAT'S WHY DR. PARK DIETZ SAID THAT YOU
3 LOOK FOR SOMETHING MORE. AND HOW CAN YOU TELL FOR
4 SURE? AND DR. DIETZ TOLD YOU YOU CANNOT TELL. IT
5 COMES DOWN TO A CREDIBILITY DETERMINATION, AND
6 THAT'S A DETERMINATION FOR THE JURY AND NOT FOR
7 DR. WILSON.

8 BUT ASSUMING THE FIRST CLUSTER IS
9 SATISFIED, WHICH IS THE TRAUMATIC EVENT. WHERE DO
10 YOU GO FROM THERE? CLUSTER NO. 2 TELLS YOU THAT
11 BEYOND THAT THE PERSON MUST HAVE THE REEXPERIENCING
12 CLUSTER; THAT IS, IN SOME WAY HE IS GOING TO
13 REEXPERIENCE THE EVENT.

14 ANOTHER CLUSTER IS PRESENTED, SUCH AS
15 THE AVOIDANCE CLUSTER, WHICH IS THAT THE PERSON IS
16 GOING TO AVOID PLACING HIMSELF IN THE SAME SITUATION
17 AGAIN.

18 BUT BEYOND THAT, THEN THERE'S THE ACTUAL
19 PERSISTENT SYMPTOMS OF AROUSAL. THIS IS WHAT IT
20 ACTUALLY DOES TO YOU. THIS IS AROUSAL. THIS IS HOW
21 IT AFFECTS YOU. AND WHAT DOES IT DO?

22 YOU WILL RECALL THAT WHEN HE WAS ON --
23 WHEN DR. WILSON WAS ON THE STAND, AND I PUT THIS
24 CHART UP FOR THE PURPOSE OF GOING THROUGH EACH OF
25 THESE EFFECTS -- WE'RE TALKING ABOUT EFFECTS WHICH
26 ARE MORE BEHAVIORAL IN NATURE. THESE ARE THE

27 EFFECTS, HOW IT ACTUALLY AFFECTS YOU.

28 WHAT DOES P.T.S.D. DO TO YOU? DOES IT

51457

1 MAKE YOU GO OUT AND BUY SHOTGUNS? DOES IT MAKE YOU
2 BELIEVE THAT YOUR PARENTS ARE KILLING YOU WHEN
3 THEY'RE NOT KILLING YOU? DOES IT DISTORT REALITY OR
4 MAKE YOU DELUSIONAL? NO.

5 P.T.S.D. IS JUST STRESS. THAT'S ALL IT
6 IS. THAT'S THE KEY TO P.T.S.D., STRESS. IT'S
7 NOTHING MORE THAN THAT, AND THE EFFECTS OF STRESS.

8 HAVE YOU EVER BEEN IN A STRESSFUL-TYPE
9 OF CONDITION? YOU WILL HAVE EXPERIENCED THESE VERY
10 SAME SYMPTOMS. WHAT DOES P.T.S.D. MAKE YOU DO,
11 LADIES AND GENTLEMEN? YOU'LL HAVE TROUBLE FALLING
12 ASLEEP, MAYBE, OR STAYING ASLEEP. MIGHT CAUSE YOU
13 TO HAVE SOME OUTBURSTS OF ANGER; MIGHT GIVE YOU
14 TROUBLE CONCENTRATING; MIGHT MAKE YOU
15 HYPERVIGILANT.

16 BUT HYPERVIGILANT, HE SAID, SIMPLY MEANS
17 REALLY OR SUPER ALERT. JUST ALERT. THAT'S ALL IT
18 MEANS. AND EXAGGERATED STARTLE RESPONSE,
19 JUMPINESS. YOU RESPOND EXCESSIVELY WHEN SUDDENLY
20 SOMEONE COMES UP BEHIND YOU, TOUCHES YOU ON THE
21 SHOULDER, AND YOU RESPOND EXCESSIVELY. THESE ARE

22 THE EFFECTS OF P.T.S.D.

23 P.T.S.D. DOES NOT MAKE YOU KILL YOUR

24 PARENTS. IT DOES NOT MAKE YOU BELIEVE THAT YOUR

25 PARENTS ARE LOADING GUNS IN THE NEXT ROOM WHEN

26 THERE'S NO EVIDENCE TO SUPPORT THAT.

27 BUT THEY USE THIS PSYCHIATRIST TO

28 STRETCH THIS CONCEPT -- PSYCHOLOGIST, I SHOULD SAY,

51458

1 TO STRETCH THIS CONCEPT, JUST AS FAR AS HE CAN

2 STRETCH IT, LIKE A RUBBER BAND, TO TRY TO EXTEND IT

3 TO THE SITUATION IN THIS CASE.

4 AND THE BIGGEST PROBLEM WITH

5 DR. WILSON'S TESTIMONY, ASIDE FROM HIS DISHONESTY

6 WHEN HE TRIED TO STRESS TO YOU THAT THE DEFENDANT IS

7 SUFFERING FROM POST-TRAUMATIC STRESS DISORDER, A

8 NONEXISTENCE, EVEN IN REGARD TO POST-TRAUMATIC

9 STRESS DISORDER. HE MADE IT SOUND, IN HIS DIRECT

10 EXAMINATION, ALMOST AS IF, YEAH. PEOPLE WITH

11 P.T.S.D. CAN LOSE TOUCH WITH REALITY.

12 I CAN GO THROUGH HIS EXAMINATION

13 QUESTION BY QUESTION, AND I CAN POINT OUT TO YOU

14 VARIOUS TIMES WHEN HE MADE IT SOUND AS IF THAT IS

15 THE CASE. AND IT WAS ONLY ON CROSS-EXAMINATION I

16 SAID TO HIM: "WELL, ARE YOU SAYING THAT ALL PEOPLE

17 WITH P.T.S.D. LOSE TOUCH WITH REALITY?"

18 AND HE SAID: "WELL, NO. I'M JUST

19 SAYING IT CAN HAPPEN."

20 "AND YOU MADE IT SOUND LIKE PEOPLE WITH

21 P.T.S.D. MIGHT BE IN AN EXCITED STATE. ARE YOU

22 SAYING THAT'S A CHARACTERISTIC FEATURE, THAT ALL

23 PEOPLE WITH P.T.S.D. ARE IN EXCITED STATES?"

24 "NO. I'M JUST SAYING THAT CAN HAPPEN."

25 "ARE YOU SAYING THAT ALL PEOPLE WITH

26 P.T.S.D. BECOME MORE HOMICIDAL? IS THERE A

27 CONNECTION THERE THEY BECOME MORE HOMICIDAL?"

28 AND HE SAID: "NO, I'M NOT SAYING THAT.

51459

1 I'M JUST SAYING THAT IT CAN HAPPEN."

2 WELL, LADIES AND GENTLEMEN, THAT'S KIND

3 OF LIKE SAYING, "I HAD A MIGRAINE HEADACHE." CAN

4 PEOPLE WITH A MIGRAINE HEADACHE GET INTO AN EXCITED

5 STATE OF FIGHT OR A FLIGHT? YES. BUT IS THERE A

6 CONNECTION BETWEEN A MIGRAINE HEADACHE AND FIGHT OR

7 FLIGHT? NO.

8 "CAN PEOPLE WITH A MIGRAINE HEADACHE

9 COMMIT HOMICIDE?"

10 "YES."

11 "DOES IT TEND TO PROVE THAT PEOPLE WITH

12 MIGRAINE HEADACHES TEND TO COMMIT MORE HOMICIDES?"

13 "NO."

14 SO HE TAKES THIS CONDITION AND HE STATES

15 IT AS IF IT IS A NECESSARY CAUSAL RELATIONSHIP.

16 DON'T BE FOOLED BY THAT. THERE IS NO

17 NECESSARY CAUSAL RELATIONSHIP. PEOPLE WITH HEAD

18 COLDS CAN KILL. PEOPLE WITH HEAD COLDS CAN BELIEVE

19 THEIR PARENTS ARE LOADING UP WEAPONS IN THE NEXT

20 ROOM WHEN THEY'RE NOT. HEAD COLDS DON'T MAKE YOU

21 CONCLUDE THAT YOUR PARENTS ARE LOADING UP WEAPONS

22 WHEN THEY'RE NOT.

23 MIGRAINE HEADACHES DO NOT MAKE YOU

24 CONCLUDE THAT YOUR PARENTS ARE LOADING UP GUNS WHEN

25 THEY'RE NOT.

26 AND P.T.S.D. DOESN'T MAKE YOU DO IT

27 EITHER. IT'S STRESS. THAT'S ALL IT IS. STRESS.

28 DOES THE COURT WISH TO BREAK AT THIS

51460

1 TIME?

2 THE COURT: OKAY. WE'LL RESUME AT 1:30.

3 DON'T DISCUSS THE MATTER WITH ANYONE.

4 AND DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND

5 WE'LL RESUME AT 1:30.

6 (THE JURY EXITED THE COURTROOM

7 AND THE FOLLOWING PROCEEDINGS

8 WERE HELD:)

9
10 THE COURT: ON THE SUBJECT WE DISCUSSED AT
11 THE RECESS, THE PHOTOGRAPHS. THOSE ISSUES WERE
12 ADDRESSED IN VOLUME 185, 218 AND 219. AND IT'S
13 QUITE CLEAR THAT THE PEOPLE WERE OBJECTING TO THE
14 DEFENSE OFFER OF PROOF AS TO HOW THEY WERE FOUND,
15 AND THE COURT'S RULING ON AUTHENTICATION WAS DERIVED
16 FROM THE OFFER OF PROOF THAT THE DEFENDANTS WOULD
17 TESTIFY AS TO WHO WAS TAKING NUDE PHOTOGRAPHS OF
18 THEM.

19 AND THERE WAS NEVER ANY REPRESENTATIONS
20 BY THE PROSECUTION THAT THEY WERE ACCEPTING WHAT IT
21 WAS THAT WAS REPRESENTED BY THE DEFENSE AS TO HOW
22 THEY WERE FOUND.

23 MS. ABRAMSON'S REPRESENTATION THAT THERE
24 WERE MANY PEOPLE PRESENT AT THE TIME THEY WERE FOUND
25 AND IDENTIFIED THEM. BUT WE NEVER CAME TO A HEARING
26 ON THAT SUBJECT. AND THAT'S WHERE IT WAS LEFT.

27 BUT COUNSEL ARE INVITED TO REVIEW THE
28 TRANSCRIPTS ON THAT SUBJECT. ULTIMATELY IT WAS

2 OBJECTIONS, ON THE GROUNDS OF 352 OBJECTIONS,
3 RELEVANT OBJECTIONS. AGAIN, THEY REFERRED TO THEIR
4 POSITION THAT THERE WAS NO EVIDENCE AS TO WHERE IT
5 WAS FOUND, AND I THINK MR. LEVIN, AT 35,921 MADE THE
6 STATEMENT:

7 "BUT IN ANY EVENT, WHAT I HEAR
8 FROM MR. CONN IS AN ARGUMENT THAT HE
9 IS, OF, COURSE ENTITLED TO MAKE. IT
10 CLEARLY GOES TO THE WEIGHT, AS TO THE
11 ADMISSIBILITY OF THE EVIDENCE."

12 SO COUNSEL ARE INVITED TO REVIEW THE
13 TRANSCRIPT. BUT FROM WHAT OCCURRED, I DON'T SEE THE
14 PROSECUTION'S ARGUMENT WAS IMPROPER IN ANY WAY.

15 MS. NAJERA: I'LL DIRECT THE COURT AND
16 COUNSEL TO PAGE -- I BELIEVE MS. ABRAMSON SAID THAT
17 SHE BELIEVED MR. MENENDEZ STATED THAT HE KNEW WHERE
18 IT WAS FOUND. AND THERE WAS SOME DIALOGUE ABOUT
19 THAT, BUT I DON'T BELIEVE IT WAS LEFT THE WAY
20 MS. ABRAMSON CHARACTERIZED IT.

21 AND I'LL INVITE THE COURT AND COUNSEL TO
22 LOOK AT TWO PAGES: 44,277, STARTING AT LINE 17, TO
23 44,278, ENDING WITH LINE 25.

24 MS. TOWERY: WHAT VOLUME IS THAT?

25 MS. NAJERA: THAT WOULD BE VOLUME 265,
26 MONDAY, DECEMBER 18TH.

27 THE COURT: OKAY. WE'LL BE IN RECESS UNTIL
28 1:30.

1 (AT 12:03 P.M. PROCEEDINGS WERE
2 ADJOURNED UNTIL 1:30 P.M. OF
3 THE SAME DAY.)

-14073

1 THE COURT: OKAY. IN THE TRIAL, WE'RE BACK IN
2 SESSION.

3 ANYTHING BEFORE WE RESUME?

4 MS. ABRAMSON: WE JUST NEED TO KNOW WHAT TIME WE
5 ARE GOING TO END TODAY, YOUR HONOR.

6 THE COURT: 4:15. A JUROR HAS A MEDICAL
7 APPOINTMENT.

8 OKAY. LET'S GET THE JURY OUT.

9 (THE JURY ENTERS THE COURTROOM
10 AND THE FOLLOWING PROCEEDINGS
11 WERE HELD:)

12

13 THE COURT: THE JURY IS BACK, AND WE'LL RESUME
14 WITH CLOSING ARGUMENT -- OR OPENING ARGUMENT, RATHER.

15 MR. CONN: THANK YOU, YOUR HONOR.

16 LADIES AND GENTLEMEN OF THE JURY, BEFORE I
17 MOVE AWAY FROM DR. WILSON, I HAVE JUST A FEW CLOSING
18 REMARKS THAT I WANT TO SAY ABOUT HIM.

19 THAT IS, THAT YOU WILL RECALL THAT WHEN

20 DR. WILSON TESTIFIED, HE TESTIFIED FOR APPROXIMATELY
21 FOUR DAYS ON DIRECT EXAMINATION.

22 NOW, IT WOULD BE ONE THING, LADIES AND
23 GENTLEMEN, IF HE WAS TALKING FOR FOUR DAYS ON DIRECT
24 EXAMINATION ABOUT THIS CASE, ABOUT THE FACTS OF THIS
25 CASE, AND YOU COULD QUARREL WITH HIS OPINION, IF THAT
26 WAS NECESSARY, TO EXPRESS HIS OPINION.

27 BUT LADIES AND GENTLEMEN, WAS HE REALLY
28 TALKING ABOUT THIS CASE FOR FOUR DAYS? ABSOLUTELY NOT.

-14072

1 WHEN HE TESTIFIED HERE, HE WAS TALKING
2 ABOUT TRAUMA GENERALLY. HE TALKED ABOUT, FOR EXAMPLE,
3 THE BATTERED WOMAN, THE BATTERED CHILD, VIETNAM
4 VETERANS, PEOPLE IN ALL SORTS OF TRAUMATIC TYPE OF
5 SITUATIONS.

6 COUNSEL REPEATEDLY ASKED HIM QUESTIONS ON
7 DIRECT EXAMINATION ABOUT ALL SORTS OF TYPES OF TRAUMA,
8 AND PEOPLE INVOLVED IN TRAUMA, THAT HAVE NOTHING TO DO
9 WITH THIS CASE.

10 WHY WAS THAT, LADIES AND GENTLEMEN?

11 WELL, I WOULD SUBMIT TO YOU THAT THAT WAS
12 FILLER. AND WHAT THE DEFENSE WANTS TO DO HERE IS NOT SO
13 MUCH FOCUS ON ERIK MENENDEZ AND FOCUS ON LYLE MENENDEZ
14 AND FOCUS ON THEIR PARTICULAR SITUATION IN THIS CASE.
15 WHAT THEY WANT TO DO IS CREATE THIS KIND OF TRAUMA STEW,

16 AND ALLOW THE DEFENDANT TO GET LOST IN THAT TRAUMA STEW.

17 IF WE HEAR SO MUCH ABOUT THE BACKGROUND --

18 "TELL US WHAT THE BATTERED WOMAN EXPERIENCES," FOR
19 EXAMPLE, AND HE GOES ON AND ON AND TALKS ABOUT HOW THE
20 BATTERED WOMAN EXPERIENCES A HORRENDOUS TYPE OF A LIFE
21 WITH CONSTANT BATTERING, AND YOU LISTEN TO THIS FOR
22 HOURS AT A TIME, AND THEN SUDDENLY HE IS ASKED A SINGLE
23 QUESTION LIKE: "AND DID YOU FIND THAT ERIK MENENDEZ
24 EXPERIENCED A SIMILAR TYPE OF REACTION?"

25 "YES, I DID."

26 AND WITH THAT ONE SWEEPING PHRASE, ERIK
27 MENENDEZ GETS CAUGHT UP INTO THIS TRAUMA STEW.

28 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU

-14071

1 THERE IS NO REASON DR. WILSON SHOULD HAVE BEEN
2 QUESTIONED FOR FOUR DAYS ON DIRECT EXAMINATION, BECAUSE
3 HE DIDN'T HAVE FOUR DAYS OF MATERIAL IN THIS CASE.
4 DR. WILSON COULD HAVE BEEN PUT ON THE STAND AND COULD
5 HAVE BEEN TAKEN OFF THE STAND IN A VERY SHORT PERIOD OF
6 TIME IF HE HAD SIMPLY BEEN ASKED ABOUT HIS INVOLVEMENT
7 IN THIS PARTICULAR CASE.

8 AND I SAY THAT, LADIES AND GENTLEMEN,
9 BECAUSE IT IS IMPORTANT FOR YOU TO STAY FOCUSED ON THE
10 ISSUES IN THIS CASE, THE DEFENDANTS IN THIS CASE, AND
11 THE RELEVANT QUESTIONS THAT YOU ARE BEING CALLED UPON TO

12 DETERMINE, AND NOT GET CAUGHT UP INTO THIS FIRESTORM OF
13 TRAUMA.

14 I AM SURE THAT WHEN COUNSEL GETS UP TO
15 ARGUE, SHE IS GOING TO BE ARGUING ABOUT TRAUMA IN
16 GENERAL, AND BATTERED WOMAN AND THE BATTERED CHILD, AND
17 WHAT THEY EXPERIENCE.

18 YOU HAVE TO ASK YOURSELF, LADIES AND
19 GENTLEMEN, WHAT DOES THAT HAVE TO DO WITH THIS CASE?
20 LET'S TALK ABOUT THIS CASE. LET'S TALK ABOUT THESE
21 DEFENDANTS. LET'S NOT TALK ABOUT TRAUMA IN GENERAL.

22 DR. WILSON MAY NOT HAVE BEEN ENTIRELY
23 HONEST WITH YOU, EVEN WHEN IT CAME DOWN TO HOW MUCH
24 MONEY HE WAS BEING PAID. BECAUSE YOU RECALL I ASKED HIM
25 A QUESTION ABOUT THE MONEY, AND I THINK HE THREW OUT A
26 FIGURE THAT WAS -- I FORGET THE FIRST FIGURE HE THREW
27 OUT, MAYBE IT WAS THE \$8,000 FIGURE, OR THE \$5,000
28 FIGURE, ONE OR THE OTHER.

-14070

1 AND I VERY SPECIFICALLY ASKED HIM: "WHAT
2 WERE YOU BEING PAID FOR YOUR WORK ON THIS CASE?" AND HE
3 THREW OUT THAT FIGURE. AND IT WAS ONLY LATER, AFTER A
4 RECESS, HE CAME BACK AND SAID: "OH, BY THE WAY, THAT
5 WASN'T COUNTING THE OTHER AMOUNT OF MONEY." DR. WILSON
6 DECIDED TO COME CLEAN AND GIVE THE WHOLE AMOUNT, RATHER
7 THAN TRYING TO FOCUS ON ONE SINGLE AREA OF TESTIMONY.

8 IT IS VERY CLEAR THAT DR. WILSON WAS NOT
9 ENTIRELY STRAIGHTFORWARD ABOUT THE AMOUNT OF MONEY HE
10 WAS BEING PAID IN THIS CASE.

11 AND MOVING ON FROM DR. WILSON, WE THEN GET
12 INTO SOME OF THE OTHER WITNESSES WHO TESTIFIED IN THIS
13 CASE.

14 ALAN ANDERSEN. YOU WILL RECALL THAT ALAN
15 ANDERSEN WAS A COUSIN OF THE DEFENDANTS WHO TESTIFIED
16 THAT HE SPENT SUMMERS WITH THEM, AND HE TESTIFIED IN
17 REGARD TO SEVERAL DIFFERENT ISSUES:

18 ONE WAS THAT HE OCCASIONALLY HEARD THE
19 SOUNDS OF A BELT BEING USED, PRESUMABLY AGAINST THE
20 DEFENDANTS, BECAUSE THEIR FATHER WOULD TAKE THEM INTO
21 THE BEDROOM, AND THEN HE WOULD HEAR THE SOUND OF THE
22 BELT BEING USED.

23 WHAT DOES THAT PROVE, LADIES AND GENTLEMEN?
24 WE ARE NOT CLAIMING THAT ERIK OR LYLE MENENDEZ WERE NOT
25 STRUCK BY A BELT BY THEIR FATHER. THERE ARE MANY
26 FATHERS WHO SOMETIMES STRIKE THEIR SONS WITH BELTS. IT
27 DOESN'T WARRANT THEIR SONS TO GO AND GET SHOTGUNS AND
28 SHOOT THEIR PARENTS TO DEATH.

-14069

1 SO, WHETHER OR NOT JOSE MENENDEZ STRUCK HIS
2 SONS WITH A BELT OR NOT IS NOT THE ISSUE IN THIS CASE.
3 YOU HAVE TO WONDER WHETHER OR NOT HE IS EXAGGERATING

4 THOSE INCIDENTS, THOUGH, BECAUSE THERE WASN'T VERY MANY
5 REPORTS CONCERNING THE DEFENDANTS EVER RECEIVING BRUISES
6 OR WELTS ON THEIR BODIES. THE REPORTS THAT WE HAVE HERE
7 ARE VERY MINIMAL AND VERY FEW.

8 WE GET THAT FROM COUSIN ALAN, HE REMEMBERED
9 THAT, AND WE GET THAT FROM ONE OTHER COUSIN, COUSIN ANDY
10 CANO. BOTH OF THOSE PEOPLE RECALL BRUISES TO THE BODY.
11 BOTH OF THOSE PEOPLE ARE ALSO INDEBTED TO THE DEFENDANTS
12 IN A FINANCIAL WAY.

13 ALAN ANDERSEN, YOU WILL RECALL, IS INDEBTED
14 TO LYLE MENENDEZ AND REMAINS IN DEBT TO LYLE MENENDEZ AT
15 THIS TIME TO THE TUNE OF \$8,500, AN OUTSTANDING LOAN.

16 SO AS YOU EVALUATE THE TESTIMONY OF ALAN
17 ANDERSEN, TAKE INTO CONSIDERATION THE EXTENT TO WHICH HE
18 APPRECIATES THAT \$8,500 THAT HE RECEIVED FROM LYLE
19 MENENDEZ, AND WHENEVER HE INTENDS TO PAY THAT \$8,500
20 BACK TO LYLE MENENDEZ. THROW THAT INTO YOUR EVALUATION.

21 AND COUSIN ANDY -- WELL, I WILL GET TO HIM
22 LATER. BUT ASIDE FROM COUSIN ANDY AND COUSIN ALAN,
23 WHERE ARE THE REPORTS OF BRUISES TO THE BODY?

24 DIANE VANDERMOLLEN LIVED AT THE HOME FOR
25 MANY SUMMERS. DID SHE EVER SEE BRUISES TO THE BODY?
26 NO.

27 COUSIN KATHY SIMONTON LIVED AT THE HOME FOR
28 JUST ONE BRIEF VISIT. SHE DIDN'T SEE ANY BRUISES TO THE

1 BODY.

2 BUT DO WE HAVE BRUISES TO THE BODY BEING
3 REPORTED BY ANY TEACHERS, COACHES, FELLOW --

4 MS. ABRAMSON: OBJECTION, YOUR HONOR.

5 THE COURT: ALL RIGHT. WHY DON'T YOU REPHRASE
6 THAT AND STICK TO WHAT IS IN THE RECORD HERE, PLEASE.

7 MR. CONN: YES.

8 I AM REFERRING HERE TO DO WE HAVE ANY
9 TESTIMONY FROM THE WITNESSES WHO TESTIFIED IN THIS CASE
10 OF BRUISES TO THE BODY, AND THE ONLY PEOPLE WHO REFER TO
11 BRUISES TO THE BODY ARE COUSIN ALAN AND COUSIN ANDY.

12 AND THIS IS SOMETHING THAT I QUESTIONED
13 ERIK MENENDEZ ABOUT. WHEN ERIK MENENDEZ WAS ON THE
14 WITNESS STAND, I ASKED HIM ABOUT THIS, AND I SAID: "WHO
15 CAN TESTIFY TO BRUISES TO YOUR BODY?"

16 AND HIS TESTIMONY IN THIS REGARD IS THAT HE
17 COULDN'T COME UP WITH ANY OTHER NAMES. HE SAID: "WELL
18 MAYBE DIANE OR MAYBE ONE OF MY COUSINS." BUT DIANE
19 COULDN'T HELP HIM OUT IN THAT REGARD.

20 AND ERIK MENENDEZ, WHEN I ASKED HIM THAT
21 QUESTION ON THIS WITNESS STAND, HE WAS NOT ABLE TO COME
22 UP WITH ANY OTHER WITNESSES. HE WASN'T ABLE TO COME UP
23 WITH ANY TEACHERS, ANY COACHES, ANY FELLOW STUDENTS WHO
24 HAD ANY KNOWLEDGE OF BRUISES TO HIS BODY.

25 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU
26 THAT, ONCE AGAIN, WHAT YOU HAVE IS AN ALLEGATION OF ALAN
27 ANDERSEN THAT HE USED TO HEAR THE SOUNDS OF A BELT, AND
28 THAT HAS BEEN BUILT UP BY ERIK MENENDEZ INTO A CLAIM OF

1 SOMETHING MORE. THE CLAIM OF SOMETHING MORE STANDS
2 ALONE. IT IS NOT CORROBORATED. THE CLAIMS OF PHYSICAL
3 ABUSE ARE NOT CORROBORATED.

4 ALAN ANDERSEN WAS ALSO CALLED FOR THE
5 PURPOSE OF SAYING THAT HE OBSERVED A DRAMATIC CHANGE IN
6 PERSONALITY IN ERIK MENENDEZ BETWEEN THE AGES OF FOUR
7 AND SEVEN, AND THE DRAMATIC CHANGE OF PERSONALITY THAT
8 HE ALLEGES IS THAT ERIK MENENDEZ USED TO BE MORE
9 OUTGOING AT THE AGE OF FOUR, AND THEN BECAME MORE
10 WITHDRAWN AT THE AGE OF SEVEN.

11 LADIES AND GENTLEMEN, ALAN ANDERSEN IS NINE
12 YEARS OLDER THAN ERIK MENENDEZ, WHICH MEANS HE WOULD
13 HAVE BEEN 13 YEARS OLD AT THE TIME HE OBSERVED ERIK
14 MENENDEZ AT THE AGE OF FOUR, AND THEN LATER 16 YEARS OLD
15 WHEN HE OBSERVED THE DEFENDANT AT THE AGE OF SEVEN.

16 NOW ASK YOURSELF, LADIES AND GENTLEMEN, HOW
17 MANY 13 YEAR-OLDS ARE PREOCCUPIED WITH STUDYING THE
18 PERSONALITY DEVELOPMENTS OF THEIR DISTANT FOUR-YEAR-OLD
19 COUSINS? I THINK IT'S REASONABLE TO CONCLUDE THAT
20 13-YEAR-OLD BOYS ARE MORE CONCERNED WITH THEIR PIMPLES
21 AND THEIR RECORD COLLECTIONS THAN THEY ARE WITH THE
22 PERSONALITIES OF THEIR FOUR-YEAR-OLD COUSINS.

23 IS THIS SOMETHING THAT ALAN ANDERSEN WOULD
24 TRULY BE LIKELY TO REMEMBER? IS HE QUALIFIED? IS HE AN
25 EXPERT WITNESS IN THIS AREA, TO COME IN HERE AND TELL US

26 THAT HE OBSERVED A DRAMATIC CHANGE IN PERSONALITY IN HIS
27 FOUR-YEAR-OLD COUSIN?
28 HE SAID SOMETHING PECULIAR. HE USED THE

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1 WORD -- HE DESCRIBED ERIK MENENDEZ AS A TWO-YEAR-OLD AS
2 BEING AN "UPPITY CHILD." ISN'T THAT A PECULIAR
3 CHARACTERIZATION? HAVE YOU EVER HEARD OF AN UPPITY
4 TWO-YEAR-OLD?

5 HE TRIED TO EXPLAIN IT AWAY BY SAYING,
6 "WELL, ACTUALLY, I DIDN'T MEAN UPPITY. WHAT I REALLY
7 MEANT WAS UP, AND I AM JUST NOT VERY GOOD WITH WORDS."

8 WELL, IF HE'S NOT VERY GOOD AT WORDS,
9 LADIES AND GENTLEMEN, HE DOESN'T KNOW THE DIFFERENCE
10 BETWEEN UP AND UPPITY, HOW RELIABLE IS HE WHEN HE COMES
11 IN HERE AND GIVES US AN EVALUATION OF THE PERSONALITY
12 CHANGES IN A FOUR-YEAR-OLD CHILD? IS HE REALLY
13 QUALIFIED TO DO THIS?

14 AND CONSIDER, LADIES AND GENTLEMEN, WHETHER
15 ALAN ANDERSEN IS A HOSTILE WITNESS, A WITNESS WHO NEVER
16 WISHED TO SPEAK TO THE PROSECUTION, DESPITE OUR DESIRE
17 TO SPEAK TO HIM. HE BLAMES IT ON DETECTIVE ZOELLER, HE
18 SAID, BECAUSE HE LEARNED THAT DETECTIVE ZOELLER WAS
19 TAPING HIM. AND APPARENTLY HE WAS ANGRY AT DETECTIVE
20 ZOELLER.

21 AND I SAID: "WELL, IS THERE ANY REASON WHY

22 YOU WOULD NOT SPEAK TO THE PROSECUTORS, ASIDE FROM
23 DETECTIVE ZOELLER? WOULD YOU SPEAK TO THE PROSECUTORS?"
24 AND APPARENTLY HE INDICATED IN SO MANY WORDS THAT HE HAD
25 NO INTEREST IN SPEAKING TO THE PROSECUTORS.

26 THE FAMILY -- ERIK MENENDEZ, IN HIS
27 DEFENSE, WOULD HAVE YOU BELIEVE THAT THIS IS A SECRETIVE
28 FAMILY. AS I INDICATED, IT'S REALLY A SECRETIVE FAMILY,

-14065

1 WHO HAD PEOPLE LIKE KATHY SIMONTON, ALAN ANDERSEN, DIANE
2 VANDERMOLEN, ANDY CANO VISITING THEM AT THEIR HOME?

3 I WOULD SUBMIT TO YOU, LADIES AND
4 GENTLEMEN, THAT THIS DOES NOT APPEAR TO BE A SECRETIVE
5 FAMILY. IT APPEARS TO BE A PLACE WHERE THE RELATIVES
6 HAD NO PROBLEM SENDING THEIR CHILDREN.

7 ALAN ANDERSEN DESCRIBES HIMSELF AS SOMEWHAT
8 OF A -- AS THE SORT OF PERSON WHO USED TO GET INTO A
9 GREAT DEAL OF TROUBLE AS A CHILD. HE DESCRIBES HIMSELF
10 AS BEING MALICIOUS, ALTHOUGH NOW HE SAID HE WOULD PREFER
11 THE TERM "MISCHIEVOUS". HE TALKED ABOUT HOW HE USED TO
12 CUT OFF ALL THE HEADS OF KITTY MENENDEZ' FLOWERS.

13 BUT HE DID SOMETHING THAT WAS MUCH MORE
14 DESTRUCTIVE WHILE HE WAS VISITING THE FAMILY. HE SPOKE
15 ABOUT AN INCIDENT WHERE HE GOT INTO A ROCK FIGHT WITH
16 LYLE MENENDEZ, AND HE HIT LYLE MENENDEZ IN HIS EYE, OR
17 NEAR HIS EYE, WITH THE ROCK, AND HE ADMITTED THAT HE WAS

18 ATTEMPTING TO HURT HIM.

19 HE SAYS: "WELL, IT WAS A ROCK FIGHT. WE
20 WERE TRYING TO HURT EACH OTHER."

21 TRYING TO HURT EACH OTHER? HE IS NINE
22 YEARS OLDER THAN THE DEFENDANT AT THE TIME -- NOT NINE,
23 BUT HE IS SIX YEARS OLDER THAN LYLE MENENDEZ. AT THE
24 TIME HE WOULD HAVE BEEN APPROXIMATELY 16, AND LYLE
25 MENENDEZ WOULD HAVE BEEN APPROXIMATELY NINE YEARS OLD.

26 SO, HERE YOU HAVE A 16-YEAR-OLD GETTING
27 INVOLVED IN A ROCK FIGHT WITH A 9-YEAR-OLD?

28 AND WHEN LYLE MENENDEZ RECEIVED THIS

-14064

1 INJURY, AND THERE WAS SOME CONCERN ON THE PART OF JOSE
2 MENENDEZ AND KITTY MENENDEZ THAT THEIR MIGHT EVEN BE
3 PERMANENT INJURY TO THE EYE OF LYLE MENENDEZ, WHAT WAS
4 THE RESPONSE OF JOSE MENENDEZ TO THIS? THIS MAN THAT
5 THE DEFENSE WANTS YOU TO REGARD AS A VERY VIOLENT AND
6 HORRIBLE MAN?

7 DID HE EVEN SEND ALAN ANDERSEN BACK HOME TO
8 HIS FATHER, BRIAN ANDERSEN? NO. HE SAID HE THREATENED
9 TO DO SO, BUT THEN SPOKE TO BRIAN ANDERSEN ON THE PHONE,
10 AND APPARENTLY ALLOWED ALAN ANDERSEN TO REMAIN.

11 ALL HE DID WAS HE SENT ALAN ANDERSEN TO HIS
12 HOME -- TO HIS ROOM FOR TWO DAYS, AND ALAN ANDERSEN EVEN
13 COMPLAINS ABOUT THAT, TELLING US HOW HORRIBLE IT WAS,

14 BECAUSE HE HAD TO URINATE IN TUPPERWARE, ALTHOUGH HE WAS
15 BROUGHT MEALS TO HIS ROOM BY THE MENENDEZ FAMILY.

16 IF ANYTHING, LADIES AND GENTLEMEN, THIS
17 SHOWS A REMARKABLY RESTRAINED AND FORGIVING JOSE
18 MENENDEZ, NOT A VIOLENT AND BRUTAL MAN, AS THEY ARE
19 SUGGESTING.

20 SO, LADIES AND GENTLEMEN, I WOULD SUBMIT
21 THAT ALAN ANDERSEN, JUST LIKE THE OTHER WITNESSES IN
22 THIS CASE, DOESN'T SHED ANY LIGHT ON THE EVENTS OF
23 AUGUST THE 20TH OF 1989 AT ALL.

24 ROBBIE CLOUSE DOESN'T SHED VERY MUCH LIGHT
25 ON THOSE INCIDENTS EITHER. ROBBIE CLOUSE IS A TENNIS
26 INSTRUCTOR WHO WORKED WITH LYLE MENENDEZ. HE TRAINED
27 LYLE MENENDEZ AND WENT WITH HIM TO AUSTRALIA. AND AFTER
28 THEY RETURNED FROM AUSTRALIA, HE HAD DINNER AT THE

-14063

1 MENENDEZ RESIDENCE IN 1987, AND THIS WAS JUST BEFORE
2 LYLE MENENDEZ WAS GOING TO GO TO SCHOOL AT PRINCETON.
3 HE RECALLED A DINNER WHERE JOSE MENENDEZ MADE A HOSTILE
4 AND THREATENING REMARK TO HIM. AND THAT WAS THE SOLE
5 PURPOSE WHY HE WAS CALLED, TO TESTIFY TO THAT SINGLE,
6 HOSTILE AND THREATENING REMARK.

7 AND WHAT DID HE SAY? HE SAID AFTER SOME
8 CONVERSATION AT THE DINNER TABLE, JOSE MENENDEZ LATER
9 CALLED HIM ASIDE AND SAID -- AND ONCE AGAIN, EXCUSE MY

10 LANGUAGE, BUT THIS IS WHAT HE SAID. "DON'T YOU FUCK
11 WITH MY SON'S FUTURE."
12 I THINK, LADIES AND GENTLEMEN, WHAT WE
13 LEARNED FROM THIS TESTIMONY IS THAT WE'RE ONLY HEARING
14 HALF THE STORY. I MEAN, WHY WAS IT JOSE MENENDEZ SAID
15 THAT TO HIM? THAT NEVER CAME OUT IN THE STORY. AND I
16 PROBED HIM A LITTLE BIT TO TRY AND FIND OUT WHAT IT WAS
17 PROVOKED THAT, BUT MR. CLOUSE NEVER CAME UP WITH A
18 SATISFACTORY ANSWER.

19 BUT I THINK FROM THE REST OF HIS TESTIMONY,
20 IT SHOULD BE CLEAR THE NATURE OF THE REMARKS THAT MUST
21 HAVE PROVOKED THAT RESPONSE FROM JOSE MENENDEZ.

22 MR. CLOUSE TESTIFIED THAT LYLE MENENDEZ WAS
23 GOING TO GO SCHOOL AT PRINCETON, AND YET MR. CLOUSE WAS
24 VERY PLEASED AND IMPRESSED WITH THE PERFORMANCE OF LYLE
25 MENENDEZ AND THE WAY HE WAS PLAYING TENNIS IN AUSTRALIA,
26 AND HE INDICATED THAT HE ENCOURAGED LYLE MENENDEZ, AND
27 TOLD HIM HE WAS DOING GREAT; HE HAD A GREAT CHANCE OF
28 BECOMING A PROFESSIONAL TENNIS PLAYER.

-14062

1 WELL, I SUBMIT, LADIES AND GENTLEMEN, THAT
2 AFTER LYLE MENENDEZ CAME BACK FROM AUSTRALIA WITH HIS
3 COACH, ROBBIE CLOUSE, AND THEY SAT AT THE DINNER TABLE.
4 THERE MUST HAVE BEEN SOME CONVERSATION ABOUT HOW WELL
5 LYLE MENENDEZ DID, AND MR. CLOUSE'S EXPECTATIONS PERHAPS

6 THAT LYLE MENENDEZ COULD BE A PROFESSIONAL TENNIS
7 PLAYER.

8 AND JOSE MENENDEZ, WHETHER IT WAS BECAUSE
9 OF SOMETHING THAT ROBBIE CLOUSE DIRECTLY SAID OR
10 IMPLIED, OR SOMETHING THAT LYLE MENENDEZ SAID, JOSE
11 MENENDEZ MUST HAVE READ BETWEEN THE LINES AND REALIZED
12 THAT ROBBIE CLOUSE HAD SOME IDEAS FOR LYLE MENENDEZ AND
13 HIS FUTURE THAT WERE NOT ENTIRELY CONSISTENT WITH HIS
14 OWN, AND THAT IS WHAT PROVOKED THE REMARK ON THE PART OF
15 JOSE MENENDEZ NOT TO INTERFERE WITH HIS SON'S FUTURE.

16 LADIES AND GENTLEMEN, WHAT DIFFERENCE DOES
17 IT MAKE? WHAT SIGNIFICANCE DOES THIS PIECE OF EVIDENCE
18 HOLD? THEY WANT YOU TO CONCLUDE THAT BECAUSE JOSE
19 MENENDEZ MADE THAT ONE REMARK TO ROBBIE CLOUSE IN 1987,
20 THIS MAN WAS A KILLER WHO WAS GOING TO KILL HIS SONS.

21 SO HIS SONS REASONABLY CONCLUDED, BASED
22 UPON THAT, THEIR FATHER WAS A KILLER? ALL IT SHOWS IS
23 THAT HE WAS CONCERNED ABOUT HIS SON'S FUTURE. THE
24 REMARK WASN'T A THREAT AGAINST HIS SONS. THE REMARK WAS
25 A THREAT AGAINST SOMEONE WHO WOULD INTERFERE WITH HIS
26 TWO SONS, OR ONE OF HIS SONS.

27 SO, THIS DOESN'T SUPPORT THE DEFENDANT'S
28 CASE IN ANY WAY.

-14061

1 KATHY SIMONTON WAS ANOTHER COUSIN WHO SPENT

2 TIME AT THE HOME, AND YOU WILL RECALL THAT SHE LIVED
3 WITH THE MENENDEZ FAMILY JUST FOR A VERY SHORT PERIOD OF
4 TIME. SHE IS THE SISTER OF DIANE VANDERMOLLEN, AND KATHY
5 SIMONTON REALLY ONLY TESTIFIED TO TWO THINGS.

6 SHE SAID THAT, AS HER SISTER HAD
7 TESTIFIED -- TO AN INCIDENT IN WHICH JOSE MENENDEZ HAD
8 DUNKED ERIK MENENDEZ' HEAD UNDER THE WATER AS PART OF A
9 LUNG EXPANDING EXERCISE. SHE, TOO, SAID THAT SHE HAD
10 WITNESSED SUCH AN INCIDENT, AND SHE SAID SHE OBSERVED
11 THIS ON ONLY ONE OCCASION. AND WHEN ERIK MENENDEZ CAME
12 UP FROM BEING UNDER THE WATER, HE CRIED. AND THAT'S
13 ALL. AND THAT'S ALL SHE TESTIFIED TO CONCERNING THAT
14 INCIDENT.

15 SO WHAT DOES THAT PROVE? THAT THE
16 DEFENDANTS THOUGHT THAT THEIR PARENTS WOULD KILL THEM
17 BECAUSE JOSE MENENDEZ DUNKED ERIK'S HEAD UNDER THE
18 WATER?

19 THAT'S THE NATURE OF THE DEFENSE THAT'S
20 BEING PRESENTED TO YOU, LADIES AND GENTLEMEN. AND YOU
21 HAVE TO WEIGH IN YOUR OWN MIND HOW SIGNIFICANT YOU THINK
22 THAT EVIDENCE IS.

23 WHAT ELSE WAS SHE TOLD?

24 SHE WAS TOLD: "DO NOT WALK DOWN THE
25 HALLWAY WHEN JOSE MENENDEZ IS IN THE BEDROOM TALKING TO
26 ONE OF HIS SONS."

27 WHAT DOES THAT PROVE? WHAT DOES THAT
28 PROVE? THAT JOSE MENENDEZ WANTED SOME PRIVACY WITH HIS

1 SONS, THAT HE WANTED TO SPEAK TO HIS SONS? DOES THAT
2 PROVE THE ALLEGATION OF SEXUAL ABUSE? IS THAT THE
3 SMOKING GUN, THE DEFENSE VERSION OF THE SMOKING GUN;
4 THAT KATHY SIMONTON COULDN'T WALK DOWN THE HALLWAY?

5 KATHY SIMONTON, LADIES AND GENTLEMEN, HAD
6 VERY LITTLE, IF ANYTHING, TO OFFER TO THE TRIAL OF THIS
7 CASE.

8 MS. ABRAMSON: OBJECTION, YOUR HONOR.

9 THE COURT: OVERRULED.

10 MR. CONN: AND THEN YOU HAVE THE TESTIMONY OF
11 DIANE VANDERMOLLEN.

12 DIANE VANDERMOLLEN WAS HER SISTER, AND DIANE
13 SPENT MORE TIME AT THE MENENDEZ HOME. IN FACT, SHE
14 SPENT SEVERAL SUMMERS THERE. THREE MONTHS IN 1976, FOUR
15 MONTHS IN 1978, A COUPLE WEEKS IN 1979, WHEN SHE BROUGHT
16 A FRIEND WITH HER, WHO ALSO STAYED IN THE MENENDEZ
17 RESIDENCE FOR A COUPLE OF WEEKS.

18 AND THEN SHE WENT BACK IN 1982, 1983, AND
19 SHE STAYED A YEAR AND A HALF. SHE WAS 23 YEARS OLD AT
20 THE TIME.

21 WHAT DOES THAT TELL YOU, LADIES AND
22 GENTLEMEN? AS I TOLD YOU, JUDGE PEOPLE BY WHAT THEY DO.
23 DON'T JUDGE PEOPLE BY WHAT THEY CLAIM. JUDGE PEOPLE BY
24 WHAT THEY DO, BECAUSE IT'S EASY TO CLAIM WHATEVER YOU
25 WANT.

26 SHE KEPT GOING BACK TIME AND TIME AGAIN.

27 OBVIOUSLY SHE MUST HAVE LIKED IT AT THE HOUSE.

28 OBVIOUSLY IT MUST HAVE BEEN A GOOD EXPERIENCE, SOMETHING

-14059

1 SHE ENJOYED, OR ELSE SHE WOULDN'T HAVE KEPT GOING BACK
2 TIME AND TIME AGAIN.

3 NOW, APPARENTLY SHE DOES HAVE A PROBLEM
4 WITH KITTY. NOW, APPARENTLY SHE HOLDS A GRUDGE AGAINST
5 KITTY, AND SHE IS UPSET. KITTY DISAPPROVED OF HER
6 PREGNANCY, AND SHE HAD A BIG FALLING OUT, AND SHE IS
7 VERY ANGRY WITH KITTY.

8 MS. ABRAMSON: I WOULD OBJECT, YOUR HONOR, TO
9 COUNSEL NOT USING FULL NAMES FOR PEOPLE.

10 THE COURT: YES. IF YOU COULD REFER TO PEOPLE BY
11 THEIR PROPER NAMES.

12 MR. CONN: SHE IS VERY ANGRY TOWARDS KITTY
13 MENENDEZ AT THIS TIME. SHE IS A VERY HOSTILE AND BIASED
14 WITNESS AT THIS TIME. THIS IS HER ONE WAY TO GET BACK
15 AT KITTY MENENDEZ.

16 SO YOU HAVE TO ASK YOURSELF IF THIS WOMAN
17 IS REALLY BEING FAIR IN HER TESTIMONY, OR WHETHER SHE
18 DOES IN FACT HAVE AN AX TO GRIND. AND SHE BASICALLY
19 TOLD YOU SHE HAD AN AX TO GRIND, BECAUSE SHE WAS SO
20 UPSET WITH KITTY MENENDEZ.

21 AND SHE WANTS YOU TO BELIEVE THAT AT THE
22 AGE OF 23 -- THIS WAS A VERY UNUSUAL AND DRAMATIC, YOU

23 WILL RECALL, STORY FROM THIS WOMAN AS SHE WAS
24 TESTIFYING, AND PUTTING SO MUCH EMOTION INTO IT. AND
25 SHE WANTS YOU TO BELIEVE THAT AFTER SPENDING SEVERAL
26 SUMMERS THERE AT THE HOME, AND THEN NOT HAVING GONE BACK
27 FOR SEVERAL YEARS, SUDDENLY SHE GOES BACK AT THE AGE OF
28 23, AND IMMEDIATELY AFTER GOING BACK TO THE HOME AT THE

-14058

1 AGE OF 23, KITTY MENENDEZ BEGINS TO TREAT HER VERY
2 BADLY, AND SHE FEELS LIKE SHE CAN'T LEAVE.
3 AND I ASKED HER, ALMOST TONGUE IN CHEEK:
4 "WELL, DID YOU WATCH THE FIRST TRIAL ON TELEVISION?"
5 BECAUSE WHAT SHE IS CLAIMING IS THIS
6 LEARNED HELPLESSNESS. SHE IS THE VISITING COUSIN, AND
7 SHE IS HELPLESS TO LEAVE. WHY DON'T YOU GET BACK ON THE
8 SAME PLANE YOU JUST GOT OFF? WHY IS SHE IN THIS LEARNED
9 HELPLESSNESS SITUATION WHERE SHE CAN'T JUST TURN AROUND
10 AND TAKE A BUS BACK?
11 THIS MAKES ABSOLUTELY NO SENSE. THIS
12 23-YEAR-OLD WOMAN, SHE HAS NO REASON TO STAY. IF SHE
13 DIDN'T LIKE IT, SHE SHOULD HAVE LEFT.
14 LADIES AND GENTLEMEN, I SUBMIT THAT SHE
15 DIDN'T LEAVE BECAUSE IT WASN'T THAT BAD. JUDGE PEOPLE
16 BY WHAT THEY DO, NOT BY WHAT THEY SAY.
17 SHE WENT SO FAR -- AND IN A VERY STRANGE
18 CLAIM, AND DRAMATIC CLAIM, SAID: "I EVEN PRAYED FOR A

19 WAY OUT." PRAYED FOR A WAY OUT? WHY DO YOU HAVE TO
20 PRAY FOR A WAY OUT? JUST GO DOWN TO THE CORNER AND GET
21 ON THE BUS.

22 THIS WOMAN HAD ABSOLUTELY NO REASON TO
23 STAY, AND HER TESTIMONY WAS NOTHING SHORT OF LUDICROUS.

24 AND SHE ALSO TESTIFIED, I THINK, TO THE
25 DUNKING INCIDENT, AND OTHER THINGS ABOUT KITTY MENENDEZ
26 THAT DISPLEASED HER.

27 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
28 THAT DIANE VANDERMOLLEN HAS -- DID NOT MAKE MUCH OF A

-14057

1 CONTRIBUTION TO THIS TRIAL IN HER TESTIMONY EITHER.

2 EVEN LESS OF A CONTRIBUTION WAS MADE BY
3 JOAN VANDERMOLLEN, HER MOTHER. THE MOTHER THAT SENT THE
4 DAUGHTER TO LIVE WITH THE MENENDEZ FAMILY. THE ONLY
5 THING SHE REALLY TESTIFIED TO HERE WAS THAT SHE RECALLS
6 THAT ONE TIME AFTER PLAYING TENNIS IN PHOENIX, ARIZONA,
7 I BELIEVE IT WAS, ERIK MENENDEZ LOST THE TENNIS MATCH
8 AND HE DID NOT COME TO DINNER. PERIOD. THAT WAS THE
9 SUM AND SUBSTANCE OF HER TESTIMONY.

10 WHAT DOES THAT PROVE? IS THIS ANOTHER
11 SMOKING GUN, BECAUSE ERIK WENT AND THEN SPOKE TO HIS
12 FATHER ABOUT HIS TENNIS MATCH RATHER THAN COMING TO
13 DINNER? THIS CORROBORATES MOLESTATION? THIS IS NO
14 CORROBORATION.

15 JOAN VANDERMOLLEN DID NOT ASSIST ANY IN YOUR
16 DETERMINATION OF THE ISSUES THAT YOU ARE GOING TO BE
17 CALLED UPON TO DECIDE.

18 NORMAN PULS WAS A TUTOR WHO TESTIFIED THAT
19 HE WOULD TUTOR ERIK MENENDEZ, AND HE TESTIFIED TO AN
20 UNUSUAL BEHAVIOR THAT HE OBSERVED ON THE PART OF ERIK
21 MENENDEZ; THAT SOMETIMES WHEN HE WOULD SPEAK TO ERIK
22 MENENDEZ, HE WOULD BE SORT OF SPACED OUT IN SOME WAY,
23 AND WOULD BE DISTRACTED AND HE WOULD -- HE WOULD HAVE TO
24 BANG ON THE TABLE IN SOME WAY TO TRY TO BRING HIM BACK
25 INTO IT. AND WHAT WAS THIS SUPPOSED TO PROVE? IS THIS
26 THE SURE SIGN OF MOLESTATION?

27 YOU WILL RECALL THE ENTHUSIASM WITH WHICH
28 NORMAN PULS TESTIFIED. VERY NICE MAN, VERY ENTHUSIASTIC

-14056

1 IN HIS STORY-TELLING. MAKES YOU WONDER WHETHER HE WAS
2 JUST EXAGGERATING A TINY BIT. AND EVEN IF HE WASN'T,
3 LADIES AND GENTLEMEN, WHAT DOES IT PROVE? IS THIS
4 EVIDENCE OF MOLESTATION? IS THAT THE ONLY WAY THAT IT
5 CAN BE EXPLAINED, MOLESTATION? NO. NO ONE TESTIFIED TO
6 THAT.

7 DR. DIETZ, IN DESCRIBING THE NATURE OF
8 GENERALIZED ANXIETY DISORDER, EVEN DESCRIBED ONE OF THE
9 CLASSIC SYMPTOMS OF GENERALIZED ANXIETY DISORDER AS
10 DIFFICULTY CONCENTRATING OR MIND GOING BLANK.

11 I WOULD SUBMIT, LADIES AND GENTLEMEN, THAT
12 NORMAN PULS DOESN'T REALLY SHED ANY LIGHT ON THE ISSUES
13 THAT ARE BEFORE YOU. IT DOESN'T PROVE THAT THE
14 DEFENDANT WAS SUFFERING FROM POST-TRAUMATIC STRESS
15 SYNDROM ANYMORE THAN IT PROVES THAT HE WAS SUFFERING
16 FROM GENERALIZED ANXIETY DISORDER.

17 AND EVEN IF IT DID PROVE POST-TRAUMATIC
18 STRESS DISORDER MORE SO THAN GENERALIZED ANXIETY
19 DISORDER, IT DOESN'T PROVE THAT THE STRESSOR WAS
20 MOLESTATION.

21 AND EVEN IF IT COULD PROVE THAT THE
22 STRESSOR WAS MOLESTATION, IT DOESN'T PROVE WHO MOLESTED
23 HIM.

24 AND WHETHER OR NOT HE WAS MOLESTED, IT
25 DOESN'T PROVE THAT HE WAS FEARFUL OF HIS FATHER ON
26 AUGUST THE 20TH OF 1989.

27 SO EVIDENCE SUCH AS THIS IS NOT ONLY
28 INCONCLUSIVE IN REGARD TO A MINOR ISSUE, BUT THE MINOR

-14055

1 ISSUE IS SO FAR REMOVED FROM THE ULTIMATE ISSUES THAT
2 YOU HAVE TO DECIDE THAT IT HAS LITTLE, IF NO VALUE.

3 ANDY CANO IS THE COUSIN WHO TESTIFIED THAT
4 ERIK MENENDEZ TOLD HIM WHEN HE WAS REAL YOUNG THAT HE
5 WAS BEING TOUCHED BY HIS FATHER.

6 HE TESTIFIED THAT ERIK MENENDEZ FIRST BEGAN

7 TO TELL HIM THIS WHEN HE WAS ABOUT -- WHEN ANDY CANO WAS
8 ABOUT 10 YEARS OLD AND ERIK MENENDEZ WAS 13 YEARS OLD.
9 COUSIN ANDY ALSO GOT A CAR FROM ERIK MENENDEZ SHORTLY
10 BEFORE ERIK MENENDEZ WAS ARRESTED. ANDY CANO GOT HIS
11 FIRST CAR, THE FORD ESCORT THAT ERIK MENENDEZ WAS
12 DRIVING, AND HAD BEEN DRIVING UP UNTIL THE TIME HE SHOT
13 HIS PARENTS TO DEATH.

14 CONSIDER THE NATURE OF THE RELATIONSHIP,
15 LADIES AND GENTLEMEN. CONSIDER THE FACT THAT HE IS A
16 COUSIN OF THE DEFENDANT. CONSIDER THE FACT THAT HE IS
17 APPARENTLY CLOSE TO THE DEFENDANT, BECAUSE WE KNOW THAT
18 HE FLEW FROM FLORIDA TO LOS ANGELES WITH THE DEFENDANT
19 JUST TO BE NEARBY, JUST TO ASSIST HIM, JUST TO BE IN HIS
20 COMPANY, JUST TO OFFER HIM MORAL SUPPORT.

21 INDEBTED TO THE DEFENDANT, OR JUST CLOSE TO
22 THE DEFENDANT? EITHER WAY, IT SUGGESTS TO YOU, LADIES
23 AND GENTLEMEN, THAT THIS IS A FAMILY MEMBER. WOULDN'T
24 YOUR FAMILY COME TO YOUR RESCUE IF YOU WERE IN TROUBLE?
25 HOW HARD IS IT FOR ANDY CANO TO COME INTO THIS COURTROOM
26 AND SAY: "YEAH, ERIK TOLD ME THAT STORY YEARS AGO. GO
27 AHEAD, DISPROVE IT."

28 HOW CAN YOU DISPROVE IT? IT'S A CLAIM.

-14054

1 IT'S A CLAIM WITHOUT ANY BACK-UP CORROBORATION. IT'S A
2 CLAIM WITHOUT ANY PROOF.

3 THERE IS NOTHING SUPPORTING THE CLAIM.
4 CONSIDER THE RELATIONSHIP OF THE DEFENDANT AND HIS
5 COUSIN. CONSIDER THE FACT THAT HE STAYED IN TOUCH WITH
6 ANDY CANO AFTER HE WAS ARRESTED. ANDY CANO WOULD TALK
7 TO HIM ON THE TELEPHONE. ANDY CANO ADMITTED THAT HERE
8 IN COURT. HE HAD PLENTY OF OPPORTUNITIES TO TALK TO HIS
9 COUSIN, ANDY. PLENTY OF OPPORTUNITY TO GET HIS COUSIN,
10 ANDY, ON BOARD.

11 BUT THEN TURN TO THE STORY ITSELF, LADIES
12 AND GENTLEMEN, AND ASK YOURSELF IF IT'S A RELIABLE AND
13 REASONABLE STORY. A 13-YEAR-OLD BOY GOING TO A 10
14 YEAR-OLD BOY AND ASKING THE 10-YEAR-OLD BOY: "DO YOU
15 THINK THAT THIS IS NORMAL?"

16 DOES THAT STRIKE YOU AS SOMETHING
17 13-YEAR-OLDS DO? MAYBE 13-YEAR-OLDS TALK TO OTHER
18 13-YEAR-OLDS THEY CONFIDE IN, WHO ARE THEIR FRIENDS, WHO
19 THEY REGARD AS THEIR FRIENDS. BUT DO YOU REMEMBER THE
20 DIFFERENCE BETWEEN A 10-YEAR-OLD AND A 13-YEAR-OLD WHEN
21 YOU WERE 13? DO YOU THINK A 10-YEAR-OLD HAD ANY IDEA
22 WHAT THE WORLD WAS ABOUT WHEN WERE YOU 13?

23 AT THAT YOUNG AGE, YOU THINK THAT 13 IS
24 MORE KNOWLEDGEABLE THAN A 10-YEAR-OLD. WHY WOULD A
25 13-YEAR-OLD GO TO A 10-YEAR-OLD AND ASK HIM THAT KIND OF
26 QUESTION, AND WOULDN'T THE 13-YEAR-OLD AT THAT POINT IN
27 TIME PRETTY MUCH KNOW ABOUT TOUCHING, AND WHETHER
28 TOUCHING IS WRONG OR NOT, AT 13 YEARS OLD? DON'T PEOPLE

1 UNDERSTAND THOSE THINGS ALREADY? WHY WOULD HE BE
2 TURNING TO ANYONE WITH THAT TYPE OF A QUESTION OR ASK
3 ADVICE AS TO THAT TYPE OF AN ISSUE?

4 AND ANDY CANO SAID THAT HE NEVER TOLD
5 ANYONE. HE NEVER TOLD ANYONE ABOUT THIS INCIDENT, ABOUT
6 ERIK MENENDEZ REPORTING THIS TO HIM.

7 NOW, DEFENSE WILL ARGUE, WELL, IT'S VERY
8 REASONABLE THAT HE WANTED TO KEEP IT A SECRET.

9 BUT THE BOTTOM LINE IS, LADIES AND
10 GENTLEMEN, THERE IS NO CORROBORATION FOR IT. THERE IS
11 NO WAY TO CORROBORATE IT. THIS DIDN'T SURFACE UNTIL
12 AFTER ERIK MENENDEZ WAS IN CUSTODY AND NEEDED A HELPING
13 HAND. AND THEN SUDDENLY, THIS STORY SURFACES, JUST IN
14 THE NICK OF TIME TO HELP HIM OUT.

15 ANDY CANO SAID THAT HE DIDN'T GO TO ANYONE
16 BECAUSE ERIK MENENDEZ DIDN'T WANT THIS STORY REVEALED.

17 LADIES AND GENTLEMEN, ANDY CANO COULD HAVE
18 GONE TO AN ADULT AND ASKED AN ADULT THE QUESTION THAT
19 CONCERNED HIM IN THE ABSTRACT, COULDN'T HE? HE DIDN'T
20 DO SO. THERE WAS NO REASON TO REVEAL THAT THIS WAS THE
21 STORY OF ERIK MENENDEZ. HE COULD HAVE SPOKEN ABOUT IT
22 IN THE ABSTRACT WITHOUT REVEALING THE CONFIDENCE OF ERIK
23 MENENDEZ. HE DIDN'T DO SO.

24 ERIK MENENDEZ REPORTED TO HIM THAT HIS
25 FATHER WAS MASSAGING HIM, OR TOUCHING HIM AT THIS PERIOD
26 OF TIME. BUT ACCORDING TO THE TESTIMONY OF ERIK
27 MENENDEZ, WASN'T MUCH MORE THAN THAT GOING ON DURING

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1 FATHER? IF HE WAS SEEKING ADVICE, WHY WOULD HE ONLY BE
2 SEEKING ADVICE IN REGARD TO THAT? IT'S AN INCOMPLETE
3 STORY, AT BEST.

4 AND THEN, HERE IS THE CRITICAL ISSUE. WHY
5 WOULD ANDY CANO KEEP THIS A SECRET EVEN AFTER ERIK
6 MENENDEZ IS ARRESTED?

7 BEAR IN MIND, ANDY CANO HAS SUPPOSEDLY
8 KNOWN THIS FACT SINCE THE TIME ANDY CANO WAS 10 YEARS
9 OLD, AND ERIK MENENDEZ WAS 13.

10 NOW, HE IS IN FLORIDA. ERIK MENENDEZ IS
11 GOING TO SURRENDER HIMSELF IN LOS ANGELES FOR THE
12 KILLING OF HIS FATHER AND HIS MOTHER. AND ANDY CANO
13 GETS ON THE PLANE WITH HIM AND COMES TO LOS ANGELES. HE
14 IS VERY MUCH CONCERNED ABOUT HIM. HE'S THERE FOR MORAL
15 SUPPORT. HE APPRECIATES THE FACT THAT HE GOT THE CAR,
16 AND HE KEEPS IT A SECRET?

17 HE KEEPS IT A SECRET FROM THE TIME ERIK
18 MENENDEZ SURRENDERS HIMSELF IN MARCH OF 1990, KEEPS IT A
19 SECRET UP UNTIL JANUARY OF '91, WHEN HE BEGINS TO TALK
20 TO THE DEFENSE ABOUT THIS SECRET.

21 WHY WOULD HE KEEP IT A SECRET? WOULDN'T
22 THAT BE THE TIME TO SAY: "HEY, ISN'T THIS AMAZING. I
23 REMEMBER MY COUSIN, ERIK MENENDEZ, TOLD ME WHEN I WAS

24 JUST 10 YEARS OLD THAT HE WAS BEING MOLESTED BY HIS
25 FATHER. NOW HE IS CHARGED WITH KILLING HIS FATHER. IT
26 SEEMS TO ME THERE IS A RELATIONSHIP HERE. IT SEEMS TO
27 ME IT MIGHT HAVE SOMETHING TO DO WITH IT. MAYBE I
28 SHOULD TELL SOMEONE ABOUT IT. MAYBE I SHOULD TELL THE

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1 ATTORNEYS. OR MAYBE, AT THE VERY LEAST, I SHOULD JUST
2 TELL MY MOTHER, OR TELL SOMEONE ELSE. AFTER ALL, WHAT'S
3 THE BIG SECRET NOW? ERIK MENENDEZ HAS MUCH MORE TO
4 WORRY ABOUT THESE DAYS THAN TELLING THIS SECRET. AFTER
5 ALL, HE IS GOING TO BE ON TRIAL FOR THE KILLING OF HIS
6 PARENTS."

7 WOULDN'T ANDY CANO, AT THAT POINT, IN TIME
8 GO AND TELL HIS MOTHER, MARTHA CANO, "DO YOU KNOW WHAT
9 ERIK MENENDEZ TOLD ME? HE TOLD ME THIS MANY YEARS AGO,
10 AND I MIGHT AS WELL TELL YOU NOW, BECAUSE HE'S IN
11 CUSTODY FACING CHARGES"?

12 NO. ANDY CANO WANTS US TO BELIEVE THAT
13 EVEN AFTER THE ARREST OF ERIK MENENDEZ, HE CONTINUED TO
14 SIT ON THIS INFORMATION FOR ANOTHER NINE MONTHS. WHY?
15 WHY WOULD HE DO THAT?

16 I WOULD SUBMIT TO YOU, LADIES AND
17 GENTLEMEN, HE DID THAT FOR ONE REASON. HE DIDN'T HAVE
18 THE INFORMATION, AND ERIK MENENDEZ WAS STILL TRYING TO
19 FIGURE OUT WHAT HIS TESTIMONY WAS GOING TO BE IN THIS

20 CASE.

21 AND ONCE HE FIGURED OUT WHAT HIS DEFENSE
22 WAS GOING TO BE, HE CALLED ANDY, AND HE SAID: "OKAY,
23 ANDY, YOU APPRECIATE THAT CAR. WE'RE CLOSE. WE'VE
24 ALWAYS BEEN CLOSE."

25 THE DEFENSE DOESN'T WANT YOU TO BELIEVE
26 THAT IT WAS A GIFT FROM ERIK MENENDEZ TO ANDY. THE
27 DEFENSE WANTS YOU TO BELIEVE THAT AUNT MARTHA PAID FOR
28 THAT CAR, AND IT WENT TO HER SON, ANDY.

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1 SURE, AUNT MARTHA CAME IN HERE AND CLAIMED
2 THAT, BUT IS THERE ANY PROOF OF THAT? A \$5,500 CAR, I
3 BELIEVE SHE SAID. NO PAPERWORK HAS EVER BEEN SHOWN FOR
4 THAT PURCHASE.

5 AND ALSO CONSIDER THIS: WASN'T MARTHA CANO
6 RUNNING AROUND LOS ANGELES DOING ALL SORTS OF THINGS FOR
7 ERIK MENENDEZ RIGHT AFTER THE TIME OF THE KILLINGS? SHE
8 WAS ASSISTING WITH THE ESTATE AND HELPING WITH THIS AND
9 HELPING WITH THAT, AND MAKING PHONE CALLS, AND BEING THE
10 VERY SUPPORTIVE AUNT TO THE DEFENDANT DURING THIS PERIOD
11 OF TIME.

12 AND THEN SHE WANTS US TO BELIEVE THAT ERIK
13 MENENDEZ THEN TURNED AROUND AND CHARGED HER \$5,500 FOR
14 THAT CAR? AFTER ALL, HE IS STANDING TO INHERIT MILLIONS
15 OF DOLLARS. WHY WOULD HE DO THAT? IS HE THAT GREEDY?

16 I WOULD SUBMIT, LADIES AND GENTLEMEN, HE IS
17 NOT THAT GREEDY. IF MARTHA CANO WAS RUNNING AROUND
18 DOING ALL THE THINGS IN LOS ANGELES SHE CLAIMS, AND THE
19 DEFENDANTS STOOD TO INHERIT MILLIONS OF DOLLARS, AND SHE
20 IS PRACTICALLY RUNNING THE ESTATE FOR HIM, AND GIVING
21 HIM FINANCIAL ADVICE, HE SAID: "KEEP THE CAR. GIVE THE
22 CAR TO COUSIN ANDY."

23 THERE WOULD BE NO REASON FOR ERIK MENENDEZ
24 TO MAKE MARTHA CANO CASH OUT \$5,500 OUT OF HER OWN
25 POCKET AFTER DOING ALL THESE FAVORS FOR ERIK MENENDEZ.

26 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
27 THAT WE STILL HAVEN'T SEEN ANY PROOF OF THAT PAPERWORK,
28 PROOF OF THAT PURCHASE.

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1 THE FACT OF THE MATTER IS, ANDY CANO GOT
2 THE CAR FOR FREE. HE IS INDEBTED TO THE DEFENDANT. HIS
3 STORY IS NOT TRUSTWORTHY. IT'S NOT RELIABLE. IT'S
4 HIGHLY SUSPECT, FOR ALL THE REASONS I HAVE GIVEN YOU,
5 AND IT TELLS US NOTHING ABOUT THE PREMEDITATION ON
6 AUGUST THE 20TH OF 1989.

7 AS I TOLD YOU, EVEN IF IT WERE COMPLETELY
8 TRUE THAT MENENDEZ MOLESTED HIS SON, IF IT WAS A REVENGE
9 KILLING, IT COULD VERY WELL BE A PREMEDITATED KILLING,
10 AND ALL OF THE FACTS IN THIS CASE POINT TOWARD
11 PREMEDITATION.

12 THAT'S WHY I SAY, DON'T GET CAUGHT UP IN
13 THE "WHY" QUESTION. KEEP RETURNING TO THE ISSUE OF WHY
14 YOU ARE HERE. NOT WHY, BUT STATE OF MIND,
15 PREMEDITATION.

16 NOEL NEDLI WAS A WITNESS WHO TESTIFIED THAT
17 HE IS A ROOMMATE, OR HE WAS A ROOMMATE OF ERIK MENENDEZ,
18 AND I THINK HE WAS CALLED BECAUSE INSOFAR AS THE
19 PROSECUTION PRESENTED EVIDENCE OF SPENDING BY ERIK
20 MENENDEZ, NOEL NEDLI WAS CALLED IN REBUTTAL TO SORT OF
21 MINIMIZE OR TO CLARIFY SOME OF THAT SPENDING.

22 HE SAID THAT WHEN HE LIVED WITH THE
23 DEFENDANT AT THE MARINA, HE SHARED THE RENT WITH HIM.
24 SO I SUPPOSE THAT SHOWS THAT ERIK MENENDEZ DID NOT SPEND
25 AS MUCH MONEY AS ONE MIGHT THINK.

26 HOWEVER, HE TESTIFIED THAT ERIK MENENDEZ
27 PAID FOR MOST OF THE FURNISHINGS, AND WHETHER OR NOT HE
28 SHARED THE RENT, THAT DOESN'T CHANGE THE FACT THAT ERIK

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1 MENENDEZ DID, IN FACT, STAND TO INHERIT THE MONEY HE
2 DID, AND THE FACT THAT HE DID, NEVERTHELESS, STILL HAVE
3 THE SAME MOTIVATION TO KILL HIS PARENTS.

4 LET ME JUMP DOWN TO TIM CUSTER. TIM CUSTER
5 WAS A CHAPLAIN WHO BEGAN VISITING THE DEFENDANTS IN JAIL
6 ON A WEEKLY BASIS AFTER THEIR ARREST, AND HE WAS CALLED
7 TO IMPEACH JAMIE PISARCIK.

8 JAMIE PISARCIK WAS CALLED TO TESTIFY ON
9 CROSS-EXAMINATION THAT SHE DIDN'T RECALL LYLE MENENDEZ
10 GETTING DOWN ON HIS KNEE IN COUNTY JAIL AND PROPOSING TO
11 HER IN FRONT OF OTHER INMATES, WHO HAD ALLEGEDLY
12 RESPONDED WITH LAUGHTER TO THIS INCIDENT.

13 CUSTER WAS CALLED TO TESTIFY THAT HE
14 RECALLS SEEING JAMIE PISARCIK AFTER SHE CAME OUT OF
15 COUNTY JAIL ONE DAY, AT WHICH TIME SHE TOLD HIM THAT THE
16 MARRIAGE -- THAT THERE HAD BEEN A MARRIAGE PROPOSAL, AND
17 THE REACTION OF THE INMATES. THAT'S THE REASON WHY TIM
18 CUSTER WAS CALLED, TO IMPEACH JAMIE PISARCIK.

19 BEAR IN MIND, LADIES AND GENTLEMEN, THAT
20 WHEN JAMIE PISARCIK ALLEGEDLY RELATED THIS INCIDENT TO
21 TIM CUSTER, SHE DID NOT EVEN, ACCORDING TO THE TESTIMONY
22 OF TIM CUSTER, SAY WHETHER IT OCCURRED THAT DAY OR NOT,
23 OR WHETHER IT WAS IN REFERENCE TO SOMETHING IN THE PAST.

24 AND BEAR ALSO IN MIND THE POSSIBILITY THAT
25 THIS WAS PERHAPS AN INNOCENT MISCOMMUNICATION, BECAUSE
26 WHY WOULD JAMIE PISARCIK -- WHAT REASON WOULD JAMIE
27 PISARCIK HAVE TO LIE ABOUT THIS? CONSIDER THAT, THE
28 MOTIVATION. WHAT DOES THIS GO TO? WHAT BIAS DOES THIS

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1 SHOW ON HER PART?

2 IS SHE TRYING TO ACCUSE LYLE MENENDEZ OF
3 SOMETHING HERE, ACCUSING HIM OF GETTING DOWN ON ONE KNEE

4 AND PROPOSING TO HER?

5 IF THAT ACTUALLY HAPPENED, OR IF SHE TRULY
6 SAW THAT AND ACCURATELY RELATED THAT STORY TO TIM
7 CUSTER, WHAT REASON WOULD SHE HAVE TO DENY THAT NOW?
8 JAMIE PISARCIK HAS NO REASON TO TESTIFY FALSELY AGAINST
9 LYLE MENENDEZ.

10 AND SO I WOULD SUBMIT THAT IF SHE DOES NOT
11 RECALL THIS INCIDENT, IT'S MORE LIKELY THE RESULT OF AN
12 INNOCENT MISCOMMUNICATION OR A MISUNDERSTANDING RATHER
13 THAN SOMETHING THAT SHE WOULD KNOWINGLY AND
14 INTENTIONALLY LIE ABOUT. IT'S SUCH A TRIVIAL INCIDENT
15 WHICH HAS NOTHING TO DO WITH THE FACTS OF THIS CASE.
16 THERE IS SIMPLY NO REASON WHY SHE WOULD LIE ABOUT THAT.

17 SHE TESTIFIED FULLY AND FORTHRIGHTLY ABOUT
18 THE ENTIRE HISTORY OF HER RELATIONSHIP WITH LYLE
19 MENENDEZ. SHE DOESN'T HOLD BACK AND CLAIM THAT THEY
20 WEREN'T CLOSE, OR THAT THEY DIDN'T HAVE THIS STRONG,
21 INTENSE RELATIONSHIP. IT WOULD BE ONE THING IF SHE HAD
22 A MOTIVATION TO LIE ABOUT THE FACT THAT THEY DID HAVE
23 THAT TYPE OF RELATIONSHIP.

24 BUT BECAUSE THERE WAS NO MOTIVATION
25 WHATSOEVER, EITHER THERE WAS A REAL MISUNDERSTANDING, OR
26 IT WAS SOMETHING THAT WAS SO TRIVIAL THAT SHE SIMPLY
27 FORGOT.

28 BUT IN THE ABSENCE OF A REASON SHOWING WHY

1 SHE WOULD LIE ABOUT THAT, HOW MUCH RELIABILITY CAN WE
2 PLACE ON THAT INCIDENT?

3 AND THEN MARY DOMINGUEZ. YOU WILL RECALL
4 THAT MARY DOMINGUEZ WAS A WOMAN WHO HELPED CLEAN OUT THE
5 MENENDEZ RESIDENCE. MARK SLOTKIN HAD LIVED THERE BEFORE
6 THE MENENDEZ FAMILY MOVED IN, AND SHE SAID THAT SHE
7 HELPED MOVE OUT SLOTKIN'S BOXES ONE WEEK, AND THE
8 FOLLOWING WEEK SHE WAS HIRED BY THE MENENDEZ FAMILY TO
9 ASSIST THEM IN UNPACKING, AND THAT WHILE SHE WAS MOVING
10 THE MATERIAL IN, SHE CAME ACROSS SOME MAGAZINES WHICH
11 SHE DESCRIBED AS PORNOGRAPHIC.

12 AND I THINK THIS IS BEING OFFERED TO SHOW
13 THAT IF THERE WERE PORNOGRAPHIC MAGAZINES IN THAT HOUSE,
14 THEN THEREFORE THEY MUST HAVE BEEN POSSESSED BY JOSE
15 MENENDEZ. AND IF IT WAS POSSESSED BY JOSE MENENDEZ, IT
16 MUST HAVE BEEN POSSESSED FOR SOME LEWD PURPOSE. AND IF
17 IT WAS POSSESSED FOR A LEWD PURPOSE, THEN THEREFORE HE
18 MUST HAVE BEEN MOLESTING HIS SONS. AND IF HE MUST HAVE
19 BEEN MOLESTING HIS SONS, THEN, THEREFORE, I GUESS THE
20 DEFENDANTS KILLED THEM IN FEAR ON AUGUST 20TH OF 1989.

21 ONCE AGAIN, THIS IS A VERY TENUOUS CHAIN
22 THEY ARE SEEKING TO PRESENT TO YOU. THIS CHAIN OF
23 EVIDENCE IS VERY TENUOUS.

24 YOU HAVE TO ASK YOURSELF SEVERAL QUESTIONS
25 CONCERNING THE TESTIMONY THAT SHE GAVE TO YOU IN THIS
26 COURTROOM.

27 FIRST OF ALL, ASK YOURSELF WHETHER SHE
28 REALLY EVER TRULY SAW WHAT SHE CLAIMED TO HAVE SEEN, AND

1 THERE ARE SEVERAL ASPECTS OF THE STORY THAT ARE SOMEWHAT
2 SUSPICIOUS.

3 NUMBER ONE, THIS IS A STORY THAT OCCURRED
4 FIVE YEARS -- WHEN SHE FIRST COMES FORWARD, SHE IS
5 RELATING A STORY THAT OCCURRED FIVE YEARS EARLIER. THIS
6 IS NOT AS IF SHE WAS -- SHE WENT OUT AND REPORTED THIS
7 RIGHT AFTER IT OCCURRED.

8 SHE SAID THAT IN 1993, AFTER THIS CASE IS
9 IN PROGRESS, IN TRIAL, ON TELEVISION, SHE COMES FORWARD
10 AND REPORTS THIS TO MARK SLOTKIN. HER SISTER WORKS FOR
11 MARK SLOTKIN.

12 SO LOOK AT THE CLOSENESS OF THE
13 RELATIONSHIP HERE. MARK SLOTKIN, YOU KNOW, IS A FRIEND
14 OF ERIK MENENDEZ, WHO LOANED ERIK MENENDEZ MONEY UP IN
15 TAHOE. HE EMPLOYS THE SISTER OF MARY DOMINGUEZ, AND
16 THEN MARY DOMINGUEZ, AS SHE'S WATCHING THE CASE ON T.V.,
17 SHE THEN SAYS THAT -- SHE GOES TO HER SISTER, AND I
18 THINK HER SISTER GOES TO MARK SLOTKIN, OR WHATEVER, OR
19 HER SISTER TAKES IT FROM THERE, AND THE NEXT THING YOU
20 KNOW SHE IS TALKING TO THE DEFENSE. SHE TESTIFIED THAT
21 SHE SPOKE TO THE DEFENSE, SHE SAID, ON SEPTEMBER THE 6TH
22 OF 1993, AND SHE TESTIFIED FOUR DAYS LATER ON SEPTEMBER
23 10TH OF 1993, JUST IN THE NICK OF TIME TO ASSIST THE
24 DEFENSE.

25 SO LOOK AT THE NATURE OF THAT RELATIONSHIP,

26 LADIES AND GENTLEMEN, AND ASK YOURSELF WHETHER SHE'S
27 TRULY AN IMPARTIAL WITNESS IN REGARD TO THIS MATTER.
28 SHE SAID THAT SHE DOESN'T RECALL WHETHER

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1 SHE TESTIFIED IN 1988 OR 1993. I SPECIFICALLY ASKED HER
2 THAT: "WHEN WAS IT THAT YOU TESTIFIED, WAS IT 1988 OR
3 1993?" AND SHE HAS NO RECOLLECTION WHATSOEVER.

4 WELL, THAT'S A PRETTY BIG GAP, LADIES AND
5 GENTLEMEN. IF YOU DON'T REMEMBER WHETHER YOU TESTIFIED
6 IN '88 OR '93, THAT SORT OF SUGGESTS THAT YOU HAVE A
7 MAJOR FAILURE IN YOUR RECOLLECTION.

8 AND YET WHEN IT COMES TO THE DETAILS OF THE
9 CASE, SHE REMEMBERS VERY SPECIFIC DETAILS. TAKE FOR
10 EXAMPLE HOW SHE REMEMBERS A THREE-INCH STACK OF
11 PORNOGRAPHIC MATERIAL INSIDE THE HOME.

12 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
13 HER RECOLLECTION IS SOMEWHAT SUSPECT IN LIGHT OF HER
14 PROBLEMS WITH OTHER AREAS OF RECOLLECTION.

15 SHE SAID THAT SHE JUST FELT SORRY FOR THE
16 DEFENDANTS, AND THAT'S THE REASON WHY SHE CAME FORWARD.

17 BUT ASIDE FROM THE QUESTION OF WHETHER SHE
18 TRULY REMEMBERS THIS, LADIES AND GENTLEMEN, WHO DID THE
19 MATERIAL BELONG TO? SHE HAS NO PERSONAL KNOWLEDGE AS TO
20 WHO THIS MATERIAL BELONGS TO.

21 MARK SLOTKIN WAS MOVING OUT, AND THE

22 MENENDEZ FAMILY WAS MOVING IN, AND SHE SAID THAT SHE DID
23 NOT SEE ALL OF THE BOXES REMOVED FROM THE HOME BEFORE
24 THE MENENDEZ BOXES WERE BEING BROUGHT IN, NOR DID SHE
25 SEE ALL THE MENENDEZ BOXES BEING BROUGHT IN. ALL SHE
26 KNOWS IS THAT THE ONE DAY SHE WAS THERE, ONE OF THE DAYS
27 THAT SHE WAS THERE, SHE REMEMBERS SEEING A BOX WITH THIS
28 MATERIAL IN IT.

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1 NOW, WHO DID IT BELONG TO? DID IT BELONG
2 TO SLOTKIN? DID IT BELONG TO THE MENENDEZ FAMILY? AND
3 WHERE DID IT COME FROM? WHO BROUGHT IT IN?
4 SHE TESTIFIED SHE DID NOT INSPECT ALL OF
5 THE STORAGE AREAS IN THE HOUSE. THERE WERE A LOT OF
6 WORKMEN THERE, GOING IN AND OUT.
7 WHO DID IT BELONG TO? THERE IS NO WAY OF
8 TELLING WHO IT BELONGED TO, LADIES AND GENTLEMEN. YOU
9 CAN'T TELL JUST BASED ON THE ROOM IT WAS FOUND IN. SHE
10 SAID SOME OF THE MATERIAL WAS FOUND DOWN IN THE STUDY,
11 AND SOME WAS FOUND UP IN THE MASTER BEDROOM. WHAT DOES
12 THAT TELL YOU?
13 DO MOVERS ALWAYS PUT EVERY BOX IN PLACE
14 WHERE IT BELONGS? THERE IS NO REASON TO DETERMINE,
15 BASED ON WHERE THE BOX IS FOUND, WHO IT BELONGED TO, NOR
16 IS SHE FAMILIAR WITH THE TYPE OF BOXES INVOLVED IN THE
17 MOVE. CAN SHE SAY JUST FROM THE BOX ALONE SHE CAN TELL

18 THAT IT WAS A MENENDEZ BOX OR A SLOTKIN BOX, OR IT
19 DIDN'T BELONG TO SOMEONE ELSE WHO HAD BEEN IN THE HOME
20 PRIOR TO THE TIME SLOTKIN LIVED THERE AND IS NOW BEING
21 THROWN OUT?

22 SHE HAS NO KNOWLEDGE WHO THIS MATERIAL
23 BELONGED TO, LADIES AND GENTLEMEN. IT COULD HAVE
24 BELONGED TO ANYONE. WE KNOW ONE DAY AFTER A LUNCH
25 BREAK, THE BOX DISAPPEARS. IT'S GONE. WHO TOOK IT?
26 WHERE DID IT GO? THE WORKMEN MIGHT HAVE BEEN THERE THAT
27 DAY. BUT THERE IS NO TESTIMONY THAT KITTY MENENDEZ OR
28 JOSE MENENDEZ OR ANY OF THE DEFENDANTS WERE THERE THAT

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1 DAY.

2 THERE IS NO TESTIMONY, LADIES AND
3 GENTLEMEN, WHO TOOK THAT BOX, AND WHY THEY TOOK THAT
4 BOX. SHE CAN'T TIE THAT BOX INTO JOSE MENENDEZ, LADIES
5 AND GENTLEMEN, AND I WOULD SUBMIT THAT YOU SHOULDN'T DO
6 SO IN HER PLACE.

7 AND THEN WE HEARD FROM MARTHA CANO, AND
8 MARTHA CANO TESTIFIED THAT SHE IS ERIK MENENDEZ'
9 GODMOTHER, AND SHE TESTIFIED TO A NUMBER OF THINGS WHICH
10 I WOULD SUBMIT TO YOU ARE VERY SUSPECT.

11 ONE OF THE MAIN THINGS THAT SHE TESTIFIED
12 TO THAT WAS SUSPECT WAS CLAIMS OF THE DEFENDANTS THAT
13 THEY WERE NOT IN THE WILL, AND I HAVE ALREADY DISCUSSED

14 THIS ISSUE WITH YOU, AND YOU KNOW THAT IS REFUTED BY THE
15 TESTIMONY OF RANDY WRIGHT AND HIS WIFE, KLARA WRIGHT,
16 WHO SPECIFICALLY RECALLS THE DEFENDANTS SPEAKING ABOUT
17 THE WILL. SO, SHE IS CONTRADICTED BY THAT.

18 HER CLAIMS CONCERNING THAT THE DEFENDANTS
19 DID NOT KNOW THAT THEY HAD THE INSURANCE POLICY -- THE
20 SUN LIFE INSURANCE POLICY IN EFFECT IS ALSO REFUTED BY
21 THE TESTIMONY OF RANDY WRIGHT, WHO SPECIFICALLY RECALLS
22 LYLE MENENDEZ SPEAKING ABOUT THE \$300,000 INSURANCE
23 POLICY.

24 AND THAT WAS DAYS BEFORE MARTHA CANO HAD
25 SUCH DISCUSSION WITH THE DEFENDANTS. SHE SAID SHE
26 DIDN'T HAVE SUCH DISCUSSION WITH THEM UNTIL LATER IN THE
27 WEEK. IT WAS WEDNESDAY OR SO IN THE WEEK WHEN THEY HAD
28 THIS DISCUSSION. THEY HAD ALREADY SPOKEN TO THE WRIGHTS

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1 ON MONDAY.

2 MARTHA CANO WAS ALSO CALLED AS WHAT YOU
3 MIGHT CALL AN EXCUSE WITNESS, WHO WAS OFFERED TO --
4 PRESENTED TO EXCUSE AWAY CERTAIN CONDUCT ON THE PART OF
5 THE DEFENDANTS. THIS IS SOMETHING THAT I REFERRED TO
6 EARLIER, HOW THERE SEEMS TO BE A PATTERN ON THE PART OF
7 THE DEFENSE IN THIS CASE TO EXCUSE AWAY BEHAVIOR ON THE
8 PART OF THE DEFENDANTS BY POINTING THE FINGER AT OTHER
9 PEOPLE.

10 SPECIFICALLY IN REGARD TO MARTHA CANO, WHAT
11 DID THEY SAY? WELL, MARTHA CANO APPROVED ALL OF THE
12 PURCHASES OF ERIK MENENDEZ.

13 WELL, WHAT IS THIS SUPPOSED TO PROVE? IS
14 THIS SUPPOSED TO PROVE THAT ERIK MENENDEZ DID NOT WANT
15 TO MAKE PURCHASES? IS THIS SUPPOSED TO PROVE THAT ERIK
16 MENENDEZ COULD NOT HAVE BEEN MOTIVATED BY MONEY?

17 THE MERE FACT THAT MARTHA CANO APPROVED
18 CERTAIN PURCHASES DOESN'T PROVE THAT ERIK MENENDEZ WAS
19 NOT MOTIVATED BY POSSIBLE FINANCIAL GAIN IN KILLING HIS
20 PARENTS.

21 THE QUESTION IS WOULD MARTHA CANO
22 APPROVE -- DOES IT MAKE IT RIGHT, IS THAT WHAT THEY'RE
23 TRYING TO SUGGEST FROM THIS TESTIMONY? SINCE MARTHA
24 CANO SAID IT WAS OKAY TO MAKE THAT TYPE OF A PURCHASE,
25 THEN, THEREFORE, THAT PURCHASE IS JUSTIFIED IN SOME WAY.

26 WELL, DID MARTHA CANO KNOW THEY HAD SHOT
27 THEIR PARENTS TO DEATH? WOULD SHE HAVE APPROVED THE
28 PURCHASES IF SHE HAD KNOWN THEY HAD SHOT THEIR PARENTS

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1 TO DEATH, AND THEY WERE USING THEIR DEAD PARENTS' MONEY
2 IN ORDER TO MAKE THIS PURCHASE? PERHAPS SHE WOULD HAVE,
3 AND SHE'S MORE BIASED THAN SHE LETS ON.

4 THE INTERESTING THING ABOUT MARTHA CANO IN
5 THE WAY SHE TESTIFIED, AND OTHER WITNESSES TESTIFIED, IS

6 THE PATTERN OF THE DEFENDANTS TO EXCUSE THEIR BEHAVIOR,
7 TO PLACE THE BLAME ELSEWHERE. LITTLE AND GREAT, ALL
8 THINGS BIG AND SMALL, ARE EXPLAINED BY MEANS OF: "DON'T
9 BLAME US. WE DIDN'T DO THIS. WE GOT THE APPROVAL. WE
10 GOT THE APPROVAL FAROM AUNT MARTHA TO DO THIS."

11 YOU SEE, IT'S JUST A WAY OF SHIFTING
12 RESPONSIBILITY, SHIFTING BLAME.

13 AND IF IT WERE JUST ONE THING, IT COULD BE
14 EXPLAINED AWAY AS A REASONABLE ARGUMENT.

15 BUT, LADIES AND GENTLEMEN, THERE IS SUCH A
16 PATTERN IN THIS CASE, THAT IT REVEALS THE POSITION OF
17 THE DEFENDANTS, THE ULTIMATE POSITION OF THE DEFENDANTS
18 IN BLAMING SOMEONE ELSE FOR EVERYTHING THAT HAPPENED IN
19 THIS CASE. BECAUSE IF YOU BELIEVE THE DEFENSE, THEY'RE
20 THE INNOCENT VICTIMS OF EVERYTHING, AND THEY'RE
21 RESPONSIBLE FOR NOTHING.

22 YOU START OUT, FOR EXAMPLE, WITH A MAN AT
23 THE GUN STORE. WHY DID THEY PURCHASE THE AMMUNITION ON
24 SATURDAY, THE BUCKSHOT?

25 WHAT DID THE DEFENDANT SAY ABOUT THAT?

26 WELL, THE MAN SAID: "THIS IS WHAT YOU
27 NEED." THAT'S THE REASON WHY THEY PURCHASED THAT
28 AMMUNITION. "SO, IF YOU WANT TO BLAME SOMEONE FOR THAT

1 AMMUNITION, BLAME HIM. HE SAID THIS IS WHAT I NEED."

2 THIS IS JUST A WAY OF AVOIDING THE OBVIOUS
3 FACT THAT "I MADE A DECISION. I MADE A CHOICE. I
4 WANTED TO BUY AMMUNITION, I BOUGHT AMMUNITION."
5 TO AVOID THAT RESPONSIBILITY, THEY'RE
6 SAYING IN EFFECT: "BLAME THE MAN AT THE GUN STORE. HE
7 SAID, 'THIS IS WHAT YOU NEED,' AND THAT'S WHAT WE DID."
8 AND AS FAR AS THAT WATCH IS CONCERNED:
9 "WHY DID YOU BUY THE JEWELRY?"
10 "WELL, DON'T YOU REMEMBER THERE WAS A PHONE
11 CALL THAT WAS MADE, AND WE DISCUSSED IT WITH OUR UNCLE,
12 AND MY UNCLE SAID, 'OH, THAT MIGHT BE OKAY.' SO BLAME
13 MY UNCLE FOR THAT JEWELRY PURCHASE. DON'T BLAME US FOR
14 THAT JEWELRY PURCHASE. MY UNCLE SAID IT WAS OKAY.
15 DON'T BLAME US FOR AN AMMO PURCHASE. DON'T BLAME US FOR
16 THAT PURCHASE."
17 AND LYLE MENENDEZ HAD A CREDIT CARD, AND
18 RAN UP A \$40,000 DEBT IN CREDIT CARDS. AND HE MIGHT
19 HAVE BEEN SPENDING MONEY LIKE A DRUNKEN SAILOR, BUT:
20 "IT WAS MY FATHER WHO GAVE ME THE CREDIT CARD, SO BLAME
21 MY FATHER FOR THAT." DON'T BLAME LYLE MENENDEZ.
22 "AND MY MOTHER, AFTER ALL, SHE SPENT MONEY
23 FROM THAT BURGLARY. SO DON'T BLAME US FOR ENJOYING THE
24 FRUITS OF THAT BURGLARY. SHE WAS THE ONE WHO SPENT THE
25 MONEY. DON'T BLAME US."
26 AND LYING. "WHY DO I LIE? MY FATHER
27 TAUGHT ME HOW TO LIE. DON'T BLAME ME FOR THE LIES,
28 BLAME MY FATHER."

1 PERFECT EXAMPLE OF THE ABUSE EXCUSE, LADIES
2 AND GENTLEMEN. BLAME SOMEONE ELSE FOR EVERYTHING.

3 "MY MOTHER, AS FAR AS GETTING THAT
4 IDENTIFICATION, THAT FALSE IDENTIFICATION FROM DMV, MY
5 MOTHER TOLD ME HOW TO DO THAT."

6 AND ALL OF THIS IS, OF COURSE,
7 UNCORROBORATED. WHERE IS THE EVIDENCE THAT KITTY
8 MENENDEZ TOLD ERIK MENENDEZ GO TO DMV AND GET A FALSE
9 IDENTIFICATION, OR THAT SHE SPENT THE MONEY FROM THE
10 BURGLARY? THESE ARE JUST MORE ALLEGATIONS HEAPED ON
11 ALLEGATIONS.

12 BUT THAT'S THE WAY THEY TRY TO SHIFT
13 EVERYTHING THEY EVER DID IN THEIR LIFE, SHIFT IT TO THE
14 PARENTS OR SHIFT IT TO SOMEONE ELSE. SO BLAME HER FOR
15 THE FALSE IDENTIFICATION.

16 AND AUNT MARTHA. "AUNT MARTHA APPROVED ALL
17 OF OUR PURCHASES. SO IF YOU ARE GOING TO BLAME SOMEONE
18 FOR THOSE PURCHASES, BLAME THEM. BLAME AUNT MARTHA."

19 AND DIDN'T STEVE GOLDBERG ADVISE ERIK
20 MENENDEZ CONCERNING THE PURCHASE OF A CAR? HE SAID IT
21 WAS OKAY.

22 ONCE AGAIN, DID STEVE GOLDBERG KNOW THAT
23 ERIK MENENDEZ HAD SHOT HIS PARENTS TO DEATH AND WAS
24 USING HIS DEAD PARENTS' MONEY? NO. THAT'S NOT THE
25 ISSUE. THEY ARE TRYING SUGGEST NOW, IN SO MANY WORDS,
26 BLAME STEVE GOLDBERG. HE APPROVED OF THE CAR.

27 AND LYLE MENENDEZ USED THIS TACT, TOO,
28 WITH WENSKOSKI. WHAT DID WENSKOSKI SAY? DO YOU

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1 REMEMBER THE POINT THAT MR. GESSLER BROUGHT OUT IN HIS
2 CROSS-EXAMINATION OF WENSKOSKI?

3 "NOW, ISN'T IT TRUE, MR. WENSKOSKI, THAT
4 LYLE MENENDEZ WANTED YOUR APPROVAL FOR THESE VARIOUS
5 PURCHASES THAT HE WAS MAKING?"

6 "YES."

7 "AND HE WANTED YOUR ADVICE ABOUT THE
8 PORSCHE?"

9 "YES."

10 AGAIN, WHAT ARE THEY SHOWING? BLAME
11 WENSKOSKI FOR THE PURCHASE OF THE PORSCHE. BLAME
12 WENSKOSKI FOR THE PURCHASE OF THE CLOTHING.

13 IT'S JUST SHIFTING BLAME. IT'S AMAZING HOW
14 EVERY SINGLE THING THE DEFENDANTS DO IN THIS CASE, THEY
15 ARE TRYING TO SHIFT BLAME TO SOMEONE ELSE. DON'T BLAME
16 THEM, BLAME SOMEONE ELSE.

17 WHEN IT COMES TO THE POLICE INVESTIGATION,
18 DON'T THEY TRY TO SHIFT THE BLAME, TOO? THE POLICE
19 DIDN'T RESPOND TO THE HOUSE QUICKLY ENOUGH AFTER THE
20 TIME OF THE SHOOTING. THE POLICE DIDN'T SHOW UP FAST
21 ENOUGH.

22 DURING THE TESTIMONY OF DETECTIVE ZOELLER,

23 SOMEBODY SAID THAT DETECTIVE ZOELLER DIDN'T ASK THE
24 RIGHT QUESTIONS IN THE INTERVIEW HE SHOULD HAVE ASKED.
25 WHY DIDN'T HE? BLAME DETECTIVE ZOELLER. HE DIDN'T DO
26 THE INTERVIEW CORRECTLY. HE DIDN'T ASK THE QUESTIONS HE
27 SHOULD HAVE ASKED.

28 SERGEANT EDMONDS. SERGEANT EDMONDS MIGHT

-14036

1 HAVE ARRESTED THE DEFENDANTS THAT VERY NIGHT IF HE HAD
2 GIVEN A GUN RESIDUE TEST, AND NOTED THAT THERE WAS GUN
3 RESIDUE ON THEIR HANDS OR CLOTHING. HE DIDN'T GIVE A
4 GUN RESIDUE TEST, SO THAT'S WHY THE DEFENDANTS WEREN'T
5 ARRESTED THAT NIGHT. BLAME SERGEANT EDMONDS.

6 SOMETIMES ERIK MENENDEZ TRIES TO SHIFT
7 BLAME BY LAYING THE BLAME ON HIS GOOD INTENTIONS. "WHY
8 WAS I SO INTERESTED IN BUYING THIS PLACE IN THE MARINA
9 AND CONSIDERING THESE VARIOUS PURCHASES TO BUY? WELL,"
10 HE SAID, "MY GRANDMOTHER NEEDED A PLACE TO LIVE. SO
11 BLAME IT ON MY GENEROSITY. BLAME IT ON HOW MUCH I LOVED
12 MY GRANDMOTHER."

13 "AND WHY DID YOU LIE TO YOUR FAMILY? WHY
14 DID YOU CONCEAL THE TRUTH FROM YOUR FAMILY? WHY DID YOU
15 PRETEND THAT YOU HAD NOTHING TO DO WITH THIS KILLING?"

16 DO YOU REMEMBER WHAT ERIK MENENDEZ' ANSWER
17 WAS TO THAT?

18 "WELL, I DIDN'T WANT TO LET MY FAMILY DOWN.

19 SO ONCE AGAIN, BLAME IT ON HOW GOOD I AM."
20 NOTICE HOW HE TAKES SOMETHING NEGATIVE AND
21 HE TURNS IT AROUND. HE TAKES SOMETHING NEGATIVE AND
22 TURNS IT AROUND AND MAKES IT SOMETHING POSITIVE. "OH, I
23 DIDN'T WANT TO LET MY FAMILY DOWN," TO TRY TO EXCUSE
24 AWAY HIS OWN LYING AND DENYING.
25 "AND WHY DIDN'T YOU ADMIT," I ASKED HIM,
26 "WHY DIDN'T YOU ADMIT TO DETECTIVE EDMONDS THAT YOU HAD
27 DONE THE KILLING IN THIS CASE?"
28 AND HE SAID, "WELL, I COULDN'T BEAR TO TELL

-14035

1 DETECTIVE EDMONDS THE TRUTH. HE WAS SUCH A NICE GUY."
2 DO YOU BELIEVE THAT, THAT ONE OF THE
3 MOTIVATING REASONS WHY HE DIDN'T ADMIT TO THE KILLING IS
4 BECAUSE THE DETECTIVE WHO WAS INTERVIEWING HIM WAS SUCH
5 A NICE GUY?
6 I WOULD SUBMIT, LADIES AND GENTLEMEN,
7 THAT'S A TOTAL LIE. BUT AGAIN, "BLAME IT ON I JUST
8 DIDN'T WANT TO LET THIS POOR, NICE POLICE OFFICER DOWN."
9 SOMETIMES HE BLAMES IT ON HAPPENSTANCE,
10 LIKE WHEN HE JUST HAPPENS TO END UP SOMEPLACE. "WE
11 DIDN'T GO TO SAN DIEGO TO PURCHASE GUNS. WE JUST ENDED
12 UP THERE. WE DIDN'T GO TO THE DEN TO SHOOT MY PARENTS,
13 WE JUST HAPPENED TO END UP THERE."
14 AND WHAT IT ALL COMES DOWN TO, LADIES AND

15 GENTLEMEN, IS BLAMING IT ULTIMATELY ON THE REAL CULPRITS
16 IN THIS CASE. THEY WANT TO BLAME IT ON THE PARENTS.
17 THEY WANT TO BLAME IT ON THEIR PSYCHOLOGICAL CONDITION.
18 THOSE ARE JUST DIFFERENT WAYS TO SHIFT BLAME.

19 BUT THE SHIFTING BLAME IS WHAT YOU SEE
20 THROUGHOUT THAT TESTIMONY. I THINK PARK DIETZ SUMMED IT
21 UP FAIRLY WELL WHEN HE EXPRESSED THE OPINION THAT WHAT
22 HE OBSERVED ON THE PART OF THE DEFENDANT WAS A PATTERN
23 OF DISRESPECT FOR THE LAW.

24 WHEN HE WAS ASKED BY DEFENSE COUNSEL:
25 "WELL, DIDN'T YOU KNOW THAT KITTY MENENDEZ WANTED HIM TO
26 GO TO DMV AND TO GET A FALSE IDENTIFICATION?" AND PARK
27 DIETZ JUST HIT THE NAIL ON THE HEAD IN RESPONSE WHEN HE
28 SAID THAT WHETHER OR NOT KITTY MENENDEZ WANTED HIM TO DO

-14034

1 THAT, OR AGREED THAT HE SHOULD DO THAT, DOESN'T CHANGE
2 THE FACT THAT HE HIMSELF PARTICIPATED IN THAT, AND HE
3 HIMSELF HAD DISRESPECT FOR THE LAW.

4 LADIES AND GENTLEMEN, IN YOUR VERDICT IN
5 THIS CASE, YOU'RE GOING TO BE CALLED UPON TO MAKE A
6 DETERMINATION AS TO THE RESPONSIBILITY OF THE
7 DEFENDANTS. DO NOT LET THE DEFENDANTS SHIFT
8 RESPONSIBILITY TO OTHER PEOPLE, AS THEY ARE TRYING TO
9 DO. ULTIMATELY THEY HAVE TO OWN UP FOR THEIR OWN
10 RESPONSIBILITY, AND YOU ARE THE ONES WHO MUST HOLD THEM

11 ACCOUNTABLE FOR THEIR ACTIONS.

12 MARTHA CANO WAS ALSO CALLED IN TO TESTIFY
13 TO PHYSICAL ASSAULTS UPON ERIK MENENDEZ. YOU RECALL
14 THAT DR. WILSON, I SPECIFICALLY ASKED HIM: "WHERE IS
15 THE EVIDENCE OF PHYSICAL ASSAULTS? WHERE IS THE ACTUAL
16 EVIDENCE? WHICH WITNESSES ARE YOU AWARE OF, EITHER FROM
17 PRIOR TESTIMONY, FROM REPORTS, FROM ANYWHERE. TELL US
18 ANY WITNESS IN THE WORLD YOU KNOW WHO WAS AN EYEWITNESS
19 TO A PHYSICAL ASSAULT OF JOSE MENENDEZ ON ERIK MENENDEZ,
20 EVER."

21 AND DR. WILSON COULDN'T EVEN COME UP WITH A
22 SINGLE WITNESS, DESPITE ALL THE TIME HE PUT ON THIS
23 CASE. HE COULDN'T COME UP WITH A SINGLE WITNESS. HE
24 SAID, "I'LL THINK ABOUT IT."

25 AND THEN HE CAME BACK, I THINK IT WAS THE
26 AFTERNOON OR THE NEXT DAY, AND HE SAID: "OKAY. I DID
27 CHECK MY NOTES, AND HERE'S WHAT I HAVE."

28 ONE WAS MEREDITH GEISLER. AND WHAT DID SHE

-14033

1 TESTIFY TO? WHAT DID SHE KNOW? WHAT DID SHE SEE THAT
2 WAS AN ACTUAL PHYSICAL ASSAULT?

3 AND HE DESCRIBED WELL, THE WAY JOSE
4 MENENDEZ USED TO PULL HIS SON OUT OF THE POOL, ERIK
5 MENENDEZ OUT OF THE POOL. AND WHEN I ACTUALLY SHOWED
6 HIM THE PASSAGE FROM THE REPORT, IT WASN'T A PHYSICAL

7 ASSAULT AT ALL. IF ANYTHING, IT WAS KIND OF A ROUGH
8 TREATMENT. HE WOULD PULL HIM OUT OF THE POOL ROUGHLY.
9 THAT'S IT. THAT'S THE EVIDENCE OF PHYSICAL ASSAULT IN
10 THIS CASE. THAT'S THE EVIDENCE OF PHYSICAL ASSAULT.

11 THE ONLY OTHER WITNESS HE COULD COME UP
12 WITH WAS MARTHA CANO, AND I HAD TO EXPLORE THAT A LITTLE
13 BIT FURTHER WITH MARTHA CANO. THE INTERESTING THING
14 WITH MARTA CANO, WHEN SHE TESTIFIED IN THE FIRST TRIAL,
15 IN ALL OF THE OPPORTUNITIES SHE HAD TO OBSERVE THE
16 INTERACTIONS IN THIS FAMILY, SHE ONLY OBSERVED ONE
17 PHYSICAL ASSAULT. AND WHAT DID THAT ASSAULT CONSIST OF?

18 JOSE MENENDEZ ONCE STRUCK HIS SON, ERIK
19 MENENDEZ, IN THE ARM. THAT'S IT, LADIES AND GENTLEMEN.
20 THAT'S IT. THAT'S THE FULL HISTORY OF PHYSICAL
21 ASSAULT -- ACTUAL PHYSICAL ASSAULT THAT CAN BE PROVEN BY
22 JOSE MENENDEZ AGAINST ERIK MENENDEZ. THAT'S WHAT SHE
23 TESTIFIED TO IN THE FIRST TRIAL.

24 BUT OF COURSE FOR THE PURPOSES OF THE
25 SECOND TRIAL, SHE GOT A LITTLE BIT BETTER. IN THE
26 SECOND TRIAL, SHE SAID THAT SHE RECALLED TWO HITS -- AND
27 THE TWO HITS WERE BOTH TO THE HEAD, SLAPS TO THE HEAD.
28 BUT THAT WASN'T HER TESTIMONY IN THE FIRST TRIAL.

-14032

1 IS HER TESTIMONY JUST GETTING BETTER FOR
2 THE SECOND TRIAL? SHE WAS UNDER OATH IN THE FIRST

3 TRIAL, JUST AS SHE WAS UNDER OATH HERE. THAT WAS HER
4 BEST RECOLLECTION, LADIES AND GENTLEMEN. ONE BLOW TO
5 THE ARM. WHAT HAPPENED BETWEEN THE FIRST TRIAL AND THE
6 SECOND TRIAL THAT NOW SHE REMEMBERS TWO STRIKES TO THE
7 HEAD?

8 I SUBMIT, LADIES AND GENTLEMEN, SHE SEES A
9 LITTLE MORE NEED FOR THE TESTIMONY, AND NECESSITY IS THE
10 MOTHER OF INVENTION.

11 OF COURSE, WHEN SHE SPOKE TO DETECTIVE
12 ZOELLER BACK IN 1989, SHE DESCRIBED THE MENENDEZ FAMILY
13 AS CLOSE AND LOVING. SHE DIDN'T DESCRIBE ANY OF THIS.
14 BUT NOW SHE ADMITS BASICALLY THAT SHE LIED TO THE POLICE
15 BACK THEN. YOU HAVE TO DECIDE FOR YOURSELF WHEN SHE WAS
16 LYING AND WHEN SHE WAS TELLING THE TRUTH.

17 AND THEN FINALLY, THE LAST DEFENSE WITNESS
18 WE HAVE IS TERRY BARALT. TERRY BARALT WAS CALLED AND
19 TESTIFIED IN REGARD TO LYLE MENENDEZ. AND WHAT DID SHE
20 TESTIFY TO? JUST KIND OF GENERAL BACKGROUND. "LYLE WAS
21 AN OKAY KIND OF GUY" EVIDENCE, IT SEEMED, AND SHE
22 TESTIFIED ABOUT THE SPENDING OF -- SHE TESTIFIED IN
23 REGARD TO THE SPENDING OF LYLE MENENDEZ, AND I BELIEVE
24 THAT SHE SAID THAT SHE PERSUADED HER HUSBAND, CARLOS
25 BARALT, TO LOAN HIM A HALF MILLION DOLLARS FROM THE
26 ESTATE THAT WAS USED TO PURCHASE THE SPRING STREET CAFE,
27 AND THEY TALKED ABOUT OH, HOW THEY THOUGHT THIS WOULD BE
28 GOOD FOR LYLE MENENDEZ, AND THEY APPROVED IT, AND SO ON

1 AND SO FORTH.

2 SO I GUESS THIS IS ANOTHER EFFORT TO SAY:

3 "DON'T BLAME LYLE MENENDEZ FOR SPENDING HALF A MILLION
4 DOLLARS OF HIS DEAD PARENTS' MONEY, BECAUSE WE APPROVED
5 OF THE PURCHASE." IT JUST DOESN'T CHANGE THE FACT THAT
6 LYLE MENENDEZ WAS SPENDING THAT MONEY. IT DOESN'T
7 CHANGE HIS MOTIVATION FOR KILLING HIS PARENTS.

8 AND THAT, BASICALLY, LADIES AND GENTLEMEN,
9 WAS THE DEFENSE CASE.

10 AND I ASK YOU, LADIES AND GENTLEMEN, LOOK
11 AT THAT DEFENSE CASE. DOES IT SHED ANY LIGHT UPON THE
12 ISSUES THAT YOU ARE CALLED UPON TO DECIDE IN THIS CASE?

13 THE ONLY WITNESS, AS I INDICATED, THAT HAS
14 ANYTHING TO SAY IS ERIK MENENDEZ. HE IS THE ONLY
15 WITNESS WHO HAD ANYTHING OF ANY TRUE SIGNIFICANCE TO
16 SAY, AND HE IS A LIAR.

17 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
18 BASED UPON THE EVIDENCE THAT WE PRESENTED IN OUR
19 CASE-IN-CHIEF OF ACTUAL PREMEDITATION, YOU SHOULD FIND
20 THAT THIS WAS A PREMEDITATED MURDER.

21 NOW, BOTH SIDES HAD AN OPPORTUNITY TO CALL
22 SOME WITNESSES IN REBUTTAL.

23 DID THE COURT HAVE A TIME IT WAS GOING TO
24 TAKE THE AFTERNOON RECESS?

25 THE COURT: OKAY. WE WILL TAKE A RECESS UNTIL
26 3:00 O'CLOCK, WITH THE UNDERSTANDING WE ARE BREAKING AT
27 4:15.

-14030

1 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME

2 AT 3:00 O'CLOCK.

3 (AT 2:45 P.M. A RECESS WAS

4 TAKEN UNTIL 3:20 P.M.)

51506

1 THE COURT: WE'LL RESUME.

2 WE'LL HAVE THE JURY OUT, PLEASE.

3 (THE JURY ENTERED THE COURTROOM

4 AND THE FOLLOWING PROCEEDINGS

5 WERE HELD:)

6

7 THE COURT: OKAY. THE JURY IS BACK.

8 YOU MAY CONTINUE YOUR ARGUMENT.

9 MR. CONN: THANK YOU, YOUR HONOR.

10 THAT BRINGS US, LADIES AND GENTLEMEN, TO

11 THE LAST PART OF MY PRESENTATION TO YOU. I WANT TO

12 SPEAK ABOUT THE REBUTTAL WITNESSES BEFORE I CONCLUDE

13 WITH MY OPENING ARGUMENT TODAY.

14 I'VE ALREADY SPOKEN TO YOU ABOUT GABE

15 FRIEDERICHSON, AND I'VE IDENTIFIED HERE ON THIS

16 CHART THAT IS IN FRONT OF YOU NOW THE VARIOUS

17 REBUTTAL WITNESSES THAT WERE CALLED BY BOTH SIDES.
18 THE SEQUENCE IS -- HAS BEEN A LITTLE BIT SKEWED FOR
19 THE PURPOSE OF A LINING UP CERTAIN WITNESSES WHO
20 TESTIFIED IN REGARD TO OTHER WITNESSES. SO THE
21 SEQUENCE ON THE RIGHT-HAND SIDE IS OUT ORDER.

22 WHAT THIS CHART DEMONSTRATES IS THAT
23 CRAIG CIGNARELLI WAS A WITNESS WHO WE CALLED IN OUR
24 REBUTTAL CASE, AND THEY CALLED THREE WITNESSES
25 CONCERNING CRAIG CIGNARELLI IN RESPONSE TO, IN
26 REBUTTAL TO CRAIG CIGNARELLI.

27 BUT DETECTIVE ZOELLER ALSO WAS CALLED
28 REGARDING HIS CREDIBILITY. SO THAT'S WHY THESE FIVE

51507

1 ARE ALIGNED LIKE THAT, ALL RELATING TO THE TESTIMONY
2 OF CRAIG CIGNARELLI.

3 SIMILARLY, JAMIE PISARCIK, THESE
4 WITNESSES ON THE RIGHT-HAND SIDE, THESE THREE
5 WITNESSES WERE CALLED IN REBUTTAL TO IMPEACH JAMIE
6 PISARCIK IN SOME WAY. SO I'VE LINED THEM TOGETHER
7 FOR YOUR CONVENIENCE.

8 AND THEN OUR MENTAL HEALTH REBUTTAL
9 WITNESS TO DR. WILSON, DR. PARK DIETZ, AND THEY
10 CALLED DR. VICARY IN RESPONSE.

11 SO THAT CONCLUDES THE REBUTTAL WITNESSES

12 IN THIS CASE. I'VE ALREADY DISCUSSED MR. FRIEDERICHSON,
13 THE WITNESS FROM THE BIG-5 SPORTING GOODS STORE, WHO
14 SAID, IN ESSENCE, THAT THE TRANSACTION ALLEGED BY
15 ERIK MENENDEZ IN SANTA MONICA COULD NEVER HAVE
16 OCCURRED BECAUSE THEY HAD STOPPED SELLING GUNS.

17 MR. FENNO WAS CALLED BY THE PROSECUTION
18 BECAUSE HE'S A FRIEND OF LYLE MENENDEZ WHO
19 OVERHEARD, OR WAS SPOKEN TO BY ERIK MENENDEZ,
20 SOMETIME IN JANUARY OF 1989, AND HIS CONVERSATION
21 WITH ERIK MENENDEZ IS RELEVANT. HE SAID THAT HE
22 LIVED AT THE MENENDEZ RESIDENCE AND HE RECALLED THAT
23 IN JANUARY OF '89 HE WAS PRESENT WHEN ERIK MENENDEZ
24 HAD APPARENTLY BEEN ACCEPTED TO GO TO U.C. BERKELEY.
25 AND SOMETIME AFTER A DINNER THAT THEY HAD AT THE
26 RESIDENCE ON THAT OCCASION, ERIK MENENDEZ SPOKE TO
27 HIM AND TOLD HIM THAT HE WOULD PREFER TO GO TO
28 U.C.L.A. RATHER THAN TO U.C.L.A. BERKELEY -- I'M

51508

1 SORRY -- U.C. BERKELEY.

2 THAT WAS ESSENTIALLY THE REASON WHY WE
3 CALLED HIM, LADIES AND GENTLEMEN, ONCE AGAIN, TO
4 SHOW THAT ERIK MENENDEZ APPARENTLY HAD NO PROBLEM
5 GOING TO U.C.L.A.

6 WE ALREADY ESTABLISHED THAT SOMEWHAT

7 THROUGH THE TESTIMONY OF MARK HEFFERNAN, BECAUSE YOU
8 KNOW THAT MARK HEFFERNAN, AS I PREVIOUSLY INDICATED,
9 MADE CONSIDERABLE EFFORTS WITH ERIK MENENDEZ ABOUT
10 GOING U.C.L.A. AND FINDING OUT WHETHER OR NOT HE
11 COULD GET ON THE TEAM, THE TENNIS TEAM AT U.C.L.A.

12 WELL, THIS WITNESS, ED FENNO, JUST
13 CORROBORATES WHAT MARK HEFFERNAN HAD TO SAY; THAT
14 IS, THAT ERIK MENENDEZ APPARENTLY WANTED TO GO TO
15 U.C.L.A.

16 ONCE AGAIN, LADIES AND GENTLEMEN, WOULD
17 THE DEFENDANT, IF IT TRULY WAS HIS GOAL IN LIFE TO
18 GET AWAY FROM THE HOME BECAUSE HE WAS BEING ABUSED
19 BY HIS FATHER -- WOULD HE TRULY HAVE BEEN SO
20 INTERESTED IN GOING TO U.C.L.A.? THERE'S NO REASON
21 TO BELIEVE THAT THE MOLESTATION WOULD HAVE STOPPED
22 IF HE WAS JUST A FEW MILES WAY. THAT DOESN'T MAKE
23 ANY SENSE. EVEN ERIK MENENDEZ, WHEN HE WAS ASKED
24 ABOUT THAT ON THE WITNESS STAND, COULD NOT EXPLAIN
25 WHY HE WOULD THINK THAT THE MOLESTATION WOULD STOP.

26 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
27 THAT ED FENNO, ONCE AGAIN, ESTABLISHES THAT ERIK
28 MENENDEZ HAD NO DESIRE TO GET AWAY FROM HIS FATHER.

51509

1 CRAIG CIGNARELLI WAS CALLED AFTER ERIK

2 MENENDEZ HAD TESTIFIED BECAUSE HE IMPEACHES ERIK
3 MENENDEZ IN REGARD TO A STORY THAT HE TOLD IN THIS
4 COURTROOM. THE STORY TOLD BY CRAIG CIGNARELLI IS
5 VERY CONSISTENT WITH THE CONFESSION THAT WAS GIVEN
6 TO DR. OZIEL.

7 CRAIG CIGNARELLI SAID HE WAS THE ONE
8 CLOSEST FRIEND OF THE DEFENDANT, IF NOT HIS CLOSEST
9 FRIEND. AND ERIK MENENDEZ ACKNOWLEDGED THAT IN HIS
10 TESTIMONY. HE COULDN'T THINK OF ANYONE WHO WAS
11 CLOSER TO HIM THAN CRAIG CIGNARELLI.

12 HE KNEW HIM FROM HIGH SCHOOL, AND HE
13 SAID THAT HE RECALLED THAT SOMETIME AFTER THE
14 KILLINGS HE HAD A CONVERSATION WITH ERIK MENENDEZ IN
15 WHICH ERIK MENENDEZ WALKED HIM THROUGH THE CRIME
16 SCENE, SO TO SPEAK, AND POINTED OUT TO HIM
17 ESSENTIALLY WHAT HAD HAPPENED AND WHERE IT HAD
18 HAPPENED. AND WHAT HE TOLD HIM WAS THE FOLLOWING:

19 PRIMARILY CIGNARELLI -- I'LL GO THROUGH
20 THE DETAILS WHICH ARE SIGNIFICANT. BUT THE KEY
21 SIGNIFICANCE OF THE CONFESSION TO CRAIG CIGNARELLI,
22 HOWEVER, IS THAT IT IS, IN ESSENCE, A PREMEDITATED
23 KILLING. THERE'S NO ALLEGATION OF FEAR, NO
24 ALLEGATION OF A NECESSITY TO KILL OR A BELIEF THAT
25 HE WAS ABOUT TO BE KILLED.

26 HE SAID THAT ERIK MENENDEZ TOLD CRAIG
27 CIGNARELLI THAT HE HAD GONE TO A MOVIE THAT NIGHT
28 WITH HIS BROTHER, LYLE MENENDEZ. THEY CAME HOME,

1 THEY PARKED IN THE DRIVEWAY, AND THEN ERIK MENENDEZ
2 CAME IN TO GET FALSE OR FAKE IDENTIFICATION. HE
3 CAME BACK OUTSIDE.

4 LYLE MENENDEZ WAS STANDING THERE WITH
5 TWO SHOTGUNS. LYLE MENENDEZ SAID: "LET'S DO IT."

6 LYLE MENENDEZ WAS SUPPOSED TO SHOOT HIS
7 FATHER, AND ERIK MENENDEZ WAS SUPPOSED TO SHOOT HIS
8 MOTHER. THOSE WERE THE WORDS, "SUPPOSED TO," WHICH
9 INDICATES PLAN.

10 THEY WALKED INSIDE. ERIK MENENDEZ WENT
11 TO THE LEFT-HAND DOOR OF THE DEN, WHICH WAS SLIGHTLY
12 OPEN. LYLE MENENDEZ WENT TO THE RIGHT-HAND DOOR.
13 ERIK MENENDEZ LOOKED IN, SAW HIS FATHER ON THE
14 COUCH. HE SAID HIS MOTHER WAS ON THE SIDE OF THE
15 COUCH WHERE HIS FATHER WAS SITTING. HE SAID: "I
16 CAN'T SAY ANYTHING, EXCEPT THAT SHE WAS ON THIS SIDE
17 OF THE COUCH. I CAN'T GIVE YOU AN EXACT POSITION."

18 THAT IS BECAUSE AT FIRST HE INDICATED,
19 YOU WILL RECALL WHEN HE WAS QUESTIONED, THAT KITTY
20 MENENDEZ WAS RIGHT HERE, AND HE POINTED TO A PLACE
21 ON THE SOFA, AS IF HE HAD BEEN THERE WHEN SHOTS HAD
22 BEEN FIRED. AND WE HAD TO CLARIFY THROUGH FURTHER
23 EXAMINATION WHAT IS THAT TESTIMONY BASED ON. AND
24 THEN HE INDICATED: "WELL, THE FURNITURE WASN'T EVEN
25 THERE WHEN ERIK MENENDEZ WAS GIVING ME THE

26 WALK-THROUGH."

27 HE SAID: "I POINTED THERE ONLY BECAUSE

28 THAT WAS MY UNDERSTANDING FROM TALKING TO ERIK

51511

1 MENENDEZ, THAT KITTY WAS OVER THERE, TOWARD THAT

2 END."

3 AND HE WAS ASKED TO DESCRIBE HOW THAT

4 WAS EXPRESSED TO HIM. HE EXPRESSED IT AS A

5 GESTURE. ERIK MENENDEZ INDICATED LIKE THIS,

6 (DEMONSTRATING) GESTURING, THAT HIS MOTHER WAS OVER

7 THERE. SO THAT IS WHY CRAIG CIGNARELLI

8 INDICATED: "I CANNOT GIVE YOU AN EXACT POSITION."

9 HE SAID HE GESTURED TO THAT AREA, AND HE

10 SAID HE DIDN'T RECALL ANY FURNITURE BEING THERE.

11 AND I BELIEVE HE SAID ON

12 CROSS-EXAMINATION THAT TO THE BEST OF HIS

13 RECOLLECTION THERE WAS NO FURNITURE THERE.

14 IN ANY EVENT, HE SAID THAT LYLE MENENDEZ

15 SWUNG THE RIGHT-HAND DOOR OPEN AND STARTED BLASTING

16 AWAY. LYLE MENENDEZ SHOT HIS FATHER. HE SAID: "I

17 BELIEVE THAT ERIK MENENDEZ SAID HE SHOT HIM IN THE

18 HEAD, BUT I DON'T RECALL THAT AT THIS TIME."

19 HE SAID THAT LYLE MENENDEZ TOLD ERIK

20 MENENDEZ: "SHOOT MOM."

21 AND AS ERIK MENENDEZ SWUNG OPEN THE
22 DOOR, OR AT THE TIME THAT HE SWUNG OPEN THE DOOR, HE
23 SAID THAT HIS MOTHER WAS STANDING AND SCREAMING WHEN
24 HE ACTUALLY SHOT HER.

25 HE SAID THAT HE SHOT HER AFTER HE --
26 AFTER SHE HAD STOOD UP.

27 HE SAID THAT THEY WENT OUT THE BACK
28 BEHIND THE TENNIS COURT, THROUGH THE FENCE, BACK

51512

1 AROUND THE ALLEY, CAME AROUND TO THE FRONT, AND GOT
2 IN THE CARS (SIC) AND DROVE OFF."

3 LADIES AND GENTLEMEN, YOU HAVE TO
4 REMEMBER THE SEQUENCE OF STATEMENTS THAT WERE GIVEN
5 TO THE POLICE. BECAUSE ON THE CROSS-EXAMINATION
6 THIS ISSUE WAS RAISED BY THE DEFENSE AS A BASIS FOR
7 IMPEACHING THE CREDIBILITY OF CRAIG CIGNARELLI.

8 HE SPOKE TO THE POLICE ON AUGUST THE
9 24TH, OF 1989, AND THAT WOULD BE JUST APPROXIMATELY
10 FOUR DAYS AFTER THE KILLING. AND HE INDICATED AT
11 THAT TIME, OR HE INDICATES NOW THAT HE BELIEVES THAT
12 HE DID TALK TO ERIK MENENDEZ BEFORE THAT DAY. "BUT I
13 CAN'T RECALL IT."

14 NOW, HE MUST HAVE SPOKEN TO ERIK
15 MENENDEZ BEFORE THAT TIME, BECAUSE HE SPOKE TO THE

16 POLICE ABOUT THE FACT THAT HE MADE STATEMENTS -- ERIK
17 MENENDEZ MADE STATEMENTS TO HIM ABOUT BLOOD BEING
18 ALL OVER THE PLACE. SO, CLEARLY, HE MUST HAVE HAD
19 SOME CONVERSATION WITH ERIK MENENDEZ PRIOR TO
20 SPEAKING TO THE POLICE ON AUGUST THE 24TH.

21 I WOULD SUBMIT TO YOU, THAT THIS
22 CONVERSATION WAS MORE LIKELY A TELEPHONE
23 CONVERSATION, BECAUSE HE DOES NOT RECALL ANY
24 FACE-TO-FACE CONTACTS WITH HIM AS OF THAT DATE.
25 HE GAVE ANOTHER STATEMENT TO THE POLICE
26 ON NOVEMBER THE 17TH, AFTER THE POLICE HAD CONTACTED
27 HIM. AND THAT IS WHEN HE TOLD THE POLICE ABOUT --
28 FOR THE FIRST TIME HE TOLD THE POLICE ABOUT THIS

51513

1 CONFESSION GIVEN TO HIM BY ERIK MENENDEZ.
2 HE TOLD THE POLICE AT THAT TIME -- HE
3 WAS TELLING THE POLICE ABOUT THAT. BUT ON THE OTHER
4 HAND, "ERIK MENENDEZ," HE SAID, "WAS MY BEST
5 FRIEND." HE WANTED TO TELL THE POLICE, BUT HE FELT
6 A SENSE OF CONFLICT BECAUSE ERIK MENENDEZ WAS HIS
7 BEST FRIEND. HE FELT HE WANTED TO TELL, BUT ON THE
8 OTHER HAND, HE DIDN'T WANT TO BE THE ONE TO, QUOTE,
9 BRING ERIK MENENDEZ DOWN, I BELIEVE ARE THE WORDS
10 THAT HE USED.

11 SO WHAT HE TOLD THE POLICE WAS THAT --
12 HE QUALIFIED THIS ADMISSION TO THE POLICE. HE SAID
13 THAT ERIK MENENDEZ SAID IT COULD HAVE HAPPENED. IT
14 COULD HAVE HAPPENED. IN OTHER WORDS, SO IT WASN'T
15 AN OUTRIGHT CONFESSION, "I DID IT." HE SAID ERIK
16 MENENDEZ SAID "IT COULD HAVE HAPPENED."
17 SO THAT WAS UNTRUTHFUL, AND HE ADMITS
18 THAT WAS UNTRUTHFUL. HE SAID HE DIDN'T WANT TO BE
19 THE ONE TO BRING ERIK MENENDEZ DOWN.
20 LATER HE BEGAN TO COOPERATE WITH THE
21 POLICE, AND HE WENT SO FAR AS TO WEAR A BODY WIRE
22 AND WENT TO A RESTAURANT AND MET WITH ERIK MENENDEZ
23 IN AN EFFORT TO DISCUSS THIS WITH ERIK MENENDEZ AND
24 SEE IF HE COULD GET SOME OF ERIK MENENDEZ'
25 STATEMENTS RECORDED THAT COULD BE USED AS EVIDENCE.
26 NO STRONG INCRIMINATING REMARKS WERE MADE EXCEPT THE
27 FOLLOWING: ERIK MENENDEZ AT ONE POINT IN THE
28 CONVERSATION SAID TO HIM: "YOU SURELY DIDN'T TELL

51514

1 THE POLICE WHAT I HAD TOLD YOU, DID YOU?"
2 AND CRAIG CIGNARELLI RESPONDED
3 SARCASTICALLY: "YEAH. LIKE I TOLD THE POLICE ABOUT
4 THAT."
5 SO IN TERMS OF -- THAT MEETING WAS NOT A

6 VERY PRODUCTIVE MEETING, BECAUSE THE ONLY THING THAT
7 CAME OUT OF THAT WAS THE SUGGESTION THERE THAT ERIK
8 MENENDEZ HAD TOLD CRAIG CIGNARELLI SOMETHING, WHICH
9 SHOULD NOT BE LATER REPEATED TO THE POLICE, OR HE
10 DID NOT WANT REPEATED TO THE POLICE.

11 THEN, FINALLY, CRAIG CIGNARELLI GAVE
12 ANOTHER STATEMENT TO THE POLICE ON MARCH THE 7TH OF
13 1989.

14 NOW, CRAIG CIGNARELLI INDICATED IN HIS
15 TESTIMONY THAT HE HOLDS NO GRUDGES AGAINST
16 DEFENDANT, AND HE HAS NO REASON TO TELL STORIES
17 ABOUT IT. HE SAID: "I NO LONGER CAN REGARD HIM AS A
18 FRIEND, IN LIGHT OF ALL OF THIS." HE SAID HE HAS NO
19 REASON TO LIE.

20 AND SO YOU ASK YOURSELF, LADIES AND
21 GENTLEMEN, WHETHER CRAIG CIGNARELLI HAS ANY REASON
22 TO LIE, TO MAKE THIS UP.

23 NOW, ONE THING THAT THEY GOT OUT WAS
24 MONEY MOTIVE, AND WHETHER OR NOT CRAIG CIGNARELLI
25 HAS A REASON TO MANUFACTURE THIS BECAUSE OF THE
26 MONEY MOTIVE, OR WHETHER HE EXPLOITED THIS IN SOME
27 WAY FINANCIALLY.

28 NOW, CRAIG CIGNARELLI DID APPEAR ON

1 "HARD COPY" IN 1994, AND THE DATE IS SIGNIFICANT
2 BECAUSE THE MONEY INVOLVED IN THIS DOESN'T OCCUR
3 UNTIL MUCH, MUCH LATER THAN HE GOES TO THE POLICE.

4 HE APPEARED ON "HARD COPY" AND HE GOT
5 \$25,000 -- THE CONTRACT WAS FOR \$25,000. HE SAID HE
6 SIGNED THE CONTRACT A COUPLE YEARS AGO. SO ONCE
7 AGAIN, THE NEGOTIATIONS, THE SIGNATURE TO THE
8 CONTRACT, ALL OF THIS OCCURRED YEARS AFTER HE WENT
9 TO THE POLICE, YEARS AFTER HE TOLD THE POLICE WHAT
10 ERIK MENENDEZ HAD TOLD HIM.

11 AND HE SAID THAT -- THEY, THE PEOPLE WHO
12 WERE DOING THIS NEGOTIATION ON THE CONTRACT, THEY
13 WERE THE FIRST ONES TO BRING UP THE AMOUNT OF
14 \$25,000, ALTHOUGH HE ADMITS THAT HE WAS THERE FOR
15 THE PURPOSE OF OBTAINING MONEY.

16 HE SAID THAT HE ALSO ADMITTED THAT THE
17 POLICE CAME TO HIS HOME AND SPOKE TO HIS MOTHER. IT
18 WAS HIS UNDERSTANDING FROM DETECTIVE ZOELLER THAT HE
19 WOULD NOT DO THAT, SO WHEN HE LEARNED THAT THE
20 POLICE HAD COME TO HIS HOME AND HAD SPOKEN TO HIS
21 MOTHER, HE BECAME ANGRY AT DETECTIVE ZOELLER, AND HE
22 SENT HIM THIS FAX, WHICH IS A VERY -- ADMITTEDLY, A
23 VERY SILLY FAX, SAYING GRANDIOSE THINGS ABOUT, OH,
24 YOU KNOW, HE VIOLATED THE RULES OF THE UNIVERSE OR
25 SOMETHING SILLY LIKE THAT.

26 HE SAID THAT HE DID IT IN A STATE OF
27 ANGER. HE WAS ANGRY ABOUT DETECTIVE ZOELLER
28 CONTACTING HIS MOTHER AND KIND OF BRINGING HIS

1 MOTHER INTO THE MIDDLE OF ALL OF THIS.

2 NOW, HERE'S HOW THEY TRIED TO DISCREDIT
3 CRAIG CIGNARELLI THROUGH THE VARIOUS WITNESSES THAT
4 THEY CALLED.

5 FIRST THEY CALLED TERRY BARALT, AND
6 TERRY BARALT TESTIFIED THAT THERE WAS NO SOFA IN THE
7 DEN AT THE TIME THAT ERIK MENENDEZ WAS GIVING CRAIG
8 CIGNARELLI THE WALK-THROUGH.

9 MS. ABRAMSON: OBJECTION, MISSTATES THE
10 TESTIMONY. IT'S BACKWARDS.

11 THE COURT: OVERRULED. THIS IS JUST
12 MR. CONN'S INTERPRETATION OF WHAT IT WAS THAT WAS
13 SAID.

14 MR. CONN: SHE TESTIFIED IN REGARD TO THE
15 FURNITURE. THE FURNITURE -- CRAIG CIGNARELLI
16 TESTIFIED THAT THERE WAS NO SOFA IN THE DEN AT THE
17 TIME THAT ERIK MENENDEZ WAS GIVING HIM THE
18 WALK-THROUGH. SHE WAS CALLED TO IMPEACH CRAIG
19 CIGNARELLI IN THAT SHE SUGGESTED THAT THERE SHOULD
20 HAVE BEEN FURNITURE IN THE ROOM AT THE TIME.

21 BEAR IN MIND, SHE WASN'T THERE THAT DAY,
22 THE DAY OF THE WALK-THROUGH. SHE WAS NOT THERE
23 ANYWHERE NEAR THAT TIME THAT ERIK MENENDEZ AND CRAIG

24 CIGNARELLI HAD THIS CONVERSATION.

25 ALSO BEAR IN MIND, ERIK MENENDEZ DOES
26 ADMIT THAT HE HAD A CONVERSATION WITH CRAIG
27 CIGNARELLI. ERIK MENENDEZ DOES ADMIT THAT HE
28 ADMITTED TO CRAIG CIGNARELLI THAT HE HAD KILLED HIS

51517

1 PARENTS. BUT HE CLAIMS THAT IT IS NOT AS CRAIG
2 CIGNARELLI EXPLAINS IT. ERIK MENENDEZ CLAIMS THAT
3 ALL HE DID WAS SAY -- HE ADMITTED TO CRAIG
4 CIGNARELLI: "I KILLED MY PARENTS." WHEN CRAIG
5 CIGNARELLI SAID SOMETHING IN DISAPPROVAL, IN
6 RESPONSE TO THAT, SUCH AS "NO, YOU WOULDN'T," ERIK
7 MENENDEZ CLAIMS THAT HE CLAMMED UP AFTER THAT AND
8 MADE NO FURTHER STATEMENTS.

9 I WOULD SUBMIT, LADIES AND GENTLEMEN,
10 THAT YOU SHOULD QUESTION THAT STORY, BECAUSE IF
11 CRAIG CIGNARELLI WAS TRULY AS CLOSE TO HIM AS HE
12 ADMITS HE WAS, AND IF ERIK MENENDEZ WANTED TO
13 DISCUSS THIS WITH SOMEONE -- AND THAT IS ONE OF THE
14 REASONS WHY HE ALLEGEDLY WENT TO DR. OZIEL AND
15 ADMITTED THE STORY TO DR. OZIEL AND LAID OUT THE
16 DETAILS TO DR. OZIEL -- THEN IT IS EQUALLY LIKELY
17 THAT HE WOULD HAVE BEEN WILLING AND ABLE TO RELATE
18 ALL OF THE DETAILS TO HIS FRIEND, CRAIG CIGNARELLI.

19 SO HIS STORY ABOUT JUST RAISING THE
20 SUBJECT AND THEN JUST DROPPING IT IS QUESTIONABLE.
21 BUT THERE'S MORE REASONS TO BELIEVE THE
22 TESTIMONY OF CRAIG CIGNARELLI, AND I'LL GET INTO
23 THOSE.
24 BUT STAY ON FOCUS, FIRST OF ALL, ON
25 TERRY BARALT. TERRY BARALT INDICATED THAT SHE WENT
26 TO LOS ANGELES IMMEDIATELY FOLLOWING THE KILLINGS.
27 SHE SAID THAT INSIDE THE ROOM, AFTER SHE ARRIVED IN
28 LOS ANGELES, APPARENTLY THE BLOODY SOFA HAD ALREADY

51518

1 BEEN REMOVED, BUT THERE WAS A RUG AND A SOFA, A
2 TABLE AND TWO CHAIRS. SHE LEFT CALIFORNIA THAT
3 FRIDAY WITH THE BODIES BEING TRANSPORTED BACK TO
4 PRINCETON. SHE DID NOT RETURN UNTIL MID OCTOBER.

5 AND THEN SHE SAID SHE OBSERVED THE SAME
6 FURNITURE IN THAT ROOM; THAT UPON HER RETURN SHE
7 OBSERVED THE SAME FURNITURE IN THAT ROOM.

8 SO WHAT THE DEFENSE IS SUGGESTING
9 THROUGH THE TESTIMONY OF TERRY BARALT IS THAT SINCE
10 SHE SAW THE FURNITURE BEFORE SHE LEFT CALIFORNIA,
11 AND SHE SAW THE SAME FURNITURE IN THE ROOM IN MID
12 OCTOBER, THAT, THEREFORE, THIS NEVER COULD HAVE
13 TAKEN PLACE.

14 LADIES AND GENTLEMEN, SHE WASN'T IN
15 CALIFORNIA WHEN THE WALK-THROUGH ACTUALLY TOOK
16 PLACE. SO IT IS CERTAINLY POSSIBLE THAT, FOR ONE
17 REASON OR ANOTHER, THE FURNITURE COULD HAVE BEEN
18 MOVED FOR THAT DAY, FOR THAT WEEK, OR FOR ANY PERIOD
19 OF TIME FOR WHICH SHE IS UNAWARE.

20 CRAIG CIGNARELLI DID NOT TESTIFY AS TO
21 WHETHER THERE WAS OTHER FURNITURE IN OTHER ROOMS OF
22 THE HOUSE, AND HE HAS NO PERSONAL KNOWLEDGE OF
23 THAT. IT CERTAINLY ALLOWS FOR THE POSSIBILITY THAT
24 THE FURNITURE COULD HAVE BEEN MOVED. SHE WOULD TRY
25 TO SUGGEST IN HER TESTIMONY THAT SHE WAS IN TOUCH
26 WITH THE GUARDS, WHO WERE THE BEL-AIR PATROL, AND IF
27 THERE HAD BEEN SOME CHANGES, SHE WOULD HAVE BECOME
28 AWARE OF THOSE CHANGES.

51519

1 WHY WOULD IT NECESSARILY FOLLOW THAT IF
2 ERIK MENENDEZ OR LYLE MENENDEZ DID MOVE THE
3 FURNITURE INSIDE THE RESIDENCE THAT THE BEL-AIR
4 PATROL WOULD GET ON THE HOT LINE AND CALL MARTA CANO
5 IN FLORIDA? I DON'T THINK THAT WOULD NECESSARILY
6 FOLLOW. THERE'S NO REASON TO BELIEVE IT WOULD
7 FOLLOW.

8 SO, LADIES AND GENTLEMEN, I WOULD SUBMIT

9 TO YOU, THAT THE FURNITURE, HER RECOLLECTION
10 CONCERNING THE FURNITURE, ISN'T SOMETHING THAT
11 NECESSARILY DISPROVES THE TESTIMONY OF CRAIG
12 CIGNARELLI.

13 LINDA ELLMAN WAS CALLED BECAUSE SHE WAS
14 A PRODUCER FOR THE TELEVISION SHOW, "HARD COPY," AND
15 SHE WAS CALLED TO TESTIFY TO ALLEGEDLY INCONSISTENT
16 STATEMENTS OF CRAIG CIGNARELLI REGARDING HIS
17 NEGOTIATION WITH "HARD COPY". BUT I WOULD SUBMIT
18 THAT SHE REALLY DIDN'T HAVE VERY MUCH TO SAY WHICH
19 IMPEACHES CRAIG CIGNARELLI. SHE SAID ONLY THAT,
20 CONTRARY TO CRAIG CIGNARELLI'S CLAIM THAT HIS
21 CONTRIBUTION TO ABUSED CHILDREN WAS TO BE KEPT
22 ANONYMOUS, CRAIG CIGNARELLI WANTED AN ANNOUNCEMENT
23 MADE OF THIS ON THE TELEVISION SHOW. MY
24 RECOLLECTION OF HIS TESTIMONY WAS THAT WAS SOMETHING
25 HE CONCEDED DURING THE COURSE OF HIS TESTIMONY.
26 IT'S NOT AS IF HE HAD DENIED THAT.

27 SHE ALSO SAID THAT CRAIG CIGNARELLI WAS
28 NEVER OFFERED MORE THAN \$25,000 AND NEVER TURNED

51520

1 DOWN THE OFFER. BUT CRAIG CIGNARELLI TESTIFIED,
2 HOWEVER, THAT IT WAS LINDA BELL-BLUE, ANOTHER
3 PERSON, WHO DID NOT TESTIFY IN THIS CASE, WHO HAD

4 SUGGESTED TO HIM THAT THEY MIGHT BE WILLING TO PAY
5 \$35,000. AND HE SAID IT WAS TO HER THAT HE
6 INDICATED THAT HE ONLY NEEDED \$25,000.

7 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
8 THAT IF SHE REALLY DOESN'T CONTRADICT CRAIG
9 CIGNARELLI, THEN SHE IS THE WRONG WITNESS. THEY
10 SHOULD HAVE BROUGHT IN LINDA BELL BLUE TO FIND OUT
11 WHETHER SHE CAN SHED ANY LIGHT ON CRAIG CIGNARELLI
12 AND HIS STATEMENTS HERE. SO SHE DOESN'T REALLY
13 IMPEACH CRAIG CIGNARELLI.

14 AND THEN, AS FAR AS CRAIG CIGNARELLI'S
15 INDICATION THAT HE WANTED AN ANNOUNCEMENT MADE ABOUT
16 THEIR CONTRIBUTION TO ABUSED CHILDREN, IT DOESN'T
17 INDICATE, LADIES AND GENTLEMEN, SO MUCH THAT HE WAS
18 SEEKING TO OBTAIN MILEAGE OUT OF THE CONTRIBUTION,
19 BUT HE WAS ENGAGING IN WHAT MIGHT BE CALLED "DAMAGE
20 CONTROL," MORE THAN ANYTHING ELSE. HE IS A PERSON
21 WHO, RIGHTFULLY OR WRONGFULLY, HAS HIGH ASPIRATIONS,
22 AND HE ENVISIONS HIMSELF AS ACCOMPLISHING SOME GREAT
23 POLITICAL THINGS IN THE COURSE OF HIS LIFE. HE WAS
24 CONCERNED THAT TAKING THIS MONEY, \$25,000 FROM
25 "HARD COPY," IN EXCHANGE FOR GIVING INFORMATION
26 ABOUT HIS FRIEND, ERIK MENENDEZ, MIGHT IMPACT ON HIM
27 NEGATIVELY IN THE FUTURE.

28 SO I WOULD SUBMIT TO YOU, LADIES AND

1 GENTLEMEN, THAT IT WASN'T SO MUCH THAT HE WAS TRYING
2 TO PUFF HIMSELF UP AS A GREAT PERSON FOR GIVING THE
3 MONEY TO THE ABUSED CHILDREN, BUT THAT HE WAS TRYING
4 TO CONTROL ANY DAMAGE OR NEGATIVE IMPACT THAT ONE
5 MIGHT DRAW FROM THIS IN THE FUTURE.

6 AND THEN YOU HAVE THE TESTIMONY OF ANNA
7 KOKOTOVIC, WHO TESTIFIED THAT SHE WORKS FOR AN
8 ORGANIZATION, C.A.L.M. C-A-L-M, WHICH DEALS WITH
9 ABUSED CHILDREN. AND CRAIG CIGNARELLI HAD TESTIFIED
10 THAT HE GAVE A \$5,000-CONTRIBUTION TO C.A.L.M.
11 AND, IN FACT, SHE SAID THAT THE ACTUAL CONTRIBUTION
12 WAS THREE THOUSAND. THERE IS A MATCHING FUND WHICH
13 MAKES IT \$6,000, BUT THE AMOUNT OF MONEY THAT HE
14 GAVE WAS ACTUALLY THREE, NOT \$5,000.

15 NEVERTHELESS, THE FACT OF THE MATTER IS
16 THAT HE INDICATED HE DID GIVE \$5,000. SO HE DID
17 GIVE THE CONTRIBUTION, WHETHER IT WAS \$5,000 OR
18 \$3,000, HE NEVERTHELESS GAVE THAT CONTRIBUTION, AS
19 HE INDICATED. AND AGAIN, WHAT REASON WOULD HE HAVE
20 TO LIE ABOUT \$2,000? DOES IT MAKE IT APPEAR MUCH
21 BETTER THAT HE GAVE \$5,000 RATHER THAN \$3,000, OR
22 WAS THAT A MISTAKE THAT HE MADE?

23 THOSE ARE THE THREE WITNESSES WHO WERE
24 CALLED TO IMPEACH CRAIG CIGNARELLI. AS YOU CAN SEE,
25 THEY ALL WENT TO COLLATERAL ISSUES. IT DIDN'T
26 REALLY GO TO THE HEART OF HIS TESTIMONY, THE
27 STATEMENTS MADE TO HIM BY ERIK MENENDEZ.

51522

1 GENTLEMEN, THAT IMMEDIATELY AFTER PUTTING ERIK
2 MENENDEZ -- PUTTING CRAIG CIGNARELLI ON THE WITNESS
3 STAND, WE THEN PRESENTED THE TESTIMONY OF DETECTIVE
4 ZOELLER. DETECTIVE ZOELLER, I THINK, CONFIRMED THE
5 RELIABILITY OF ERIK MENENDEZ -- I'M SORRY -- OF CRAIG
6 CIGNARELLI'S TESTIMONY, MUCH MORE SO THAN ANY OF THE
7 DEFENSE WITNESSES WOULD CAUSE YOU TO QUESTION THE
8 RELIABILITY OF CRAIG CIGNARELLI, AND FOR THE
9 FOLLOWING REASON:

10 BEAR IN MIND THAT WHEN CRAIG CIGNARELLI
11 MADE THIS STATEMENT TO THE POLICE -- THIS STATEMENT
12 WAS MADE BACK IN 1989. THIS STATEMENT WAS MADE
13 PRIOR TO THE TIME THAT ERIK MENENDEZ EVER TESTIFIED
14 IN REGARD TO THIS MATTER. SO WHAT YOU HAVE TO ASK
15 YOURSELF, LADIES AND GENTLEMEN, IS DID CRAIG
16 CIGNARELLI HAVE INFORMATION WHICH HE PROVIDED BACK
17 TO DETECTIVE ZOELLER BACK IN 1989 WHICH WAS LATER
18 CONFIRMED TO BE AN ACCURATE ACCOUNT OF WHAT ERIK
19 MENENDEZ IS NOW CLAIMING TO BE TRUE ON THE WITNESS
20 STAND? AND THE FACT OF THE MATTER IS, LADIES AND
21 GENTLEMEN, THAT CRAIG CIGNARELLI DID HAVE SUCH
22 INFORMATION WHICH HE GAVE TO DETECTIVE ZOELLER.

23 NOW, HOW WOULD CRAIG CIGNARELLI HAVE
24 THIS INFORMATION UNLESS HE RECEIVED THE INFORMATION
25 FROM ERIK MENENDEZ? THE DEFENSE WOULD HAVE YOU
26 BELIEVE THAT PERHAPS HE JUST PICKED THIS UP FROM THE
27 NEWSPAPER. BUT HE DIDN'T, LADIES AND GENTLEMEN,
28 BECAUSE THERE'S CERTAIN PIECES OF INFORMATION WHICH

51523

1 CRAIG CIGNARELLI TESTIFIED TO WHICH COULD NOT BE
2 OBTAINED FROM NEWSPAPERS, BECAUSE ONLY ERIK MENENDEZ
3 OR LYLE MENENDEZ WOULD HAVE KNOWN THESE FACTS.

4 SO SINCE HE KNEW THESE FACTS BACK IN
5 1989, THAT TENDS TO PROVE THAT WHAT HE TOLD
6 DETECTIVE ZOELLER BACK THEN IS, IN FACT, INFORMATION
7 THAT HE RECEIVED FROM ERIK MENENDEZ, AND THAT HE IS
8 NOT JUST MAKING UP.

9 TAKE A LOOK AT SOME OF THE FACTS THAT HE
10 SAID.

11 HE KNEW THAT BOTH ERIK MENENDEZ AND LYLE
12 MENENDEZ HAD SHOT THEIR PARENTS. THAT WAS NOT
13 PUBLIC INFORMATION BACK IN 1989. THAT WAS SOMETHING
14 THAT HE KNEW.

15 ERIK MENENDEZ ADMITS THAT HE TOLD HIM
16 THAT FACT. CRAIG CIGNARELLI SAID ERIK AND LYLE
17 MENENDEZ SHOT THEIR PARENTS AFTER THEY ENTERED FROM

18 THE FOYER DOORS.

19 NOW, LADIES AND GENTLEMEN, IT DOESN'T
20 NECESSARILY FOLLOW -- IT DOESN'T NECESSARILY FOLLOW
21 THAT TO SHOOT THEIR PARENTS THEY HAD TO COME THROUGH
22 THE FOYER DOORS. THERE ARE OTHER MEANS OR OTHER
23 WAYS OF ENTERING THAT ROOM. THESE DOORS HERE BY
24 WHICH THE DEFENDANT ENTERED INTO THE ROOM AND GOT
25 INTO THE DEN ARE NOT THE ONLY WAYS INTO THE ROOM.
26 THEY COULD ALSO COME IN THROUGH, AS YOU KNOW, THE
27 DOORS HERE, THAT LEAD TO THE OUTSIDE. YOU CAN COME
28 IN THROUGH THE KITCHEN. THERE ARE DIFFERENT WAYS OF

51524

1 GETTING INTO THAT ROOM.

2 BUT CRAIG CIGNARELLI KNEW IN 1989 THAT
3 THAT IS HOW THEY CAME INTO THE ROOM. NOW, HOW DID
4 HE KNOW THAT FACT UNLESS HE HAD BEEN TOLD THAT BY
5 ERIK MENENDEZ? THERE WAS NOTHING IN THE NEWSPAPERS,
6 NOTHING IN THE CRIME SCENE, NOTHING THAT WARRANTED
7 THAT CONCLUSION THAT THAT WAS THE ONLY WAY IT COULD
8 HAVE HAPPENED.

9 THEY SHOT THEIR PARENTS AFTER BURSTING
10 THROUGH THE DOORS. THIS WAS A DESCRIPTION THAT HE
11 GAVE TO DETECTIVE ZOELLER, THAT THEY BURST THROUGH
12 THE DOORS AND SHOT THEIR PARENTS. AND ISN'T THAT

13 THE WAY ERIK MENENDEZ DESCRIBED IT HERE IN COURT?
14 IT DIDN'T HAVE TO HAPPEN THROUGH A BURSTING THROUGH
15 THE DOORS. IT COULD HAVE HAPPENED THAT THE
16 DEFENDANTS WALKED IN THE DOOR AND JUST HELD THEIR
17 PARENTS AT BAY FOR AN HOUR, OR TALKED TO THEM, OR
18 SHOT THEM SLOWLY, OR TALKED TO THEM FOR A MINUTE OR
19 TWO BEFORE SHOOTING THEM.

20 THEY COULD HAVE WALKED IN THE DOOR
21 SEPARATELY. ONE DEFENDANT COULD HAVE COME IN
22 THROUGH THE FOYER DOOR; ONE DEFENDANT COULD HAVE
23 COME IN THROUGH THE BACK. ONE COULD HAVE COME IN
24 THROUGH THE KITCHEN AREA. THERE'S ALL SORTS OF
25 POSSIBILITIES THAT COULD HAVE OCCURRED HERE.

26 BUT CRAIG CIGNARELLI KNEW BACK IN 1989,
27 WHEN HE TALKED TO DETECTIVE ZOELLER, THAT BOTH
28 DEFENDANTS BURST THROUGH THE FOYER DOORS.

51525

1 WELL, HOW DID HE KNOW THAT? CLEARLY,
2 LADIES AND GENTLEMEN, SPEAKING TO ERIK MENENDEZ AS
3 HE CLAIMS. ERIK MENENDEZ MUST HAVE TOLD HIM THAT.
4 THERE WAS NO OTHER WAY BY WHICH HE COULD HAVE
5 OBTAINED THAT INFORMATION.

6 THE TELEVISION WAS ON AT THE TIME OF THE
7 SHOOTING. THERE'S A QUESTION AS TO WHETHER SOME OF

8 THIS INFORMATION WAS CONTAINED IN THE NEWSPAPERS OR
9 NOT. I THINK THAT THE TELEVISION WAS ON WAS A FACT
10 THAT MIGHT HAVE BEEN INCLUDED IN THE NEWSPAPERS.

11 HE SAID ERIK MENENDEZ CAME THROUGH THE
12 LEFT DOOR AND LYLE MENENDEZ CAME THROUGH THE RIGHT
13 DOOR.

14 NOW, LOOK AT THE DETAIL. LOOK AT THE
15 DETAIL THAT CRAIG CIGNARELLI HAD BACK IN 1989,
16 PRECISELY THE WAY THAT ERIK MENENDEZ IS NOW
17 DESCRIBING THIS IN COURT. HOW WOULD CRAIG
18 CIGNARELLI KNOW THAT BACK IN 1989? CLEARLY, CRAIG
19 CIGNARELLI WAS TOLD THIS BY ERIK MENENDEZ.

20 AND SO ERIK MENENDEZ' CLAIM IN COURT
21 UNDER OATH IN FRONT OF YOU: "I TOLD CRAIG
22 CIGNARELLI NOTHING, EXCEPT WE SHOT OUR PARENTS,"
23 COULDN'T POSSIBLY BE TRUE. IT CAN'T POSSIBLY BE
24 TRUE. CRAIG CIGNARELLI COULD NOT HAVE IMAGINED THIS
25 SO CORRECTLY WHEN YOU CONSIDER ALL THE
26 POSSIBILITIES.

27 THAT TWO GUNS WERE USED IN THE
28 COMMISSION OF THE CRIME. I BELIEVE THAT THERE WAS

51526

1 SOME SPECULATION IN THE NEWSPAPER THAT PERHAPS TWO
2 GUNMEN, TWO -- THE NEWSPAPER SAID TWO MEN ARMED WITH

3 SHOTGUNS. LET'S JUST LOOK FOR A WAY THAT CRAIG
4 CIGNARELLI COULD HAVE GOTTEN INFORMATION OUT OF THE
5 NEWSPAPER. THAT'S SOMETHING THEORETICALLY HE COULD
6 HAVE GOTTEN OUT OF THE NEWSPAPER.

7 JOSE MENENDEZ WAS SITTING INSIDE THE
8 DEN. LYLE MENENDEZ SHOT HIS FATHER -- THERE WAS NO
9 INDICATION IN THE NEWSPAPER AS TO WHO SHOOT WHO, OF
10 COURSE, BECAUSE THERE WAS NO INDICATION. THEY HAD
11 NO INFORMATION ABOUT THAT.

12 AND YET CRAIG CIGNARELLI KNEW BACK IN
13 1989 THAT LYLE MENENDEZ HAD SHOT HIS FATHER. IT
14 DIDN'T HAVE TO BE THAT WAY. IT COULD HAVE BEEN THAT
15 ERIK MENENDEZ DID ALL THE SHOOTING IN THIS CASE. IT
16 COULD HAVE BEEN THAT LYLE MENENDEZ DID ALL THE
17 SHOOTING IN THIS CASE.

18 IT COULD HAVE BEEN THAT LYLE MENENDEZ
19 ONLY SHOT HIS MOTHER. IT COULD HAVE BEEN THAT ERIK
20 MENENDEZ ONLY SHOT HIS FATHER. THERE'S ALL SORTS OF
21 POSSIBILITIES. BUT CRAIG CIGNARELLI KNEW THAT BACK
22 IN 1989.

23 AND THEN HE SAID THAT THE DEFENDANTS
24 DROVE AWAY AFTER THE SHOOTING AND RETURNED BEFORE
25 CALLING THE POLICE. DO YOU RECALL THAT? THERE WAS
26 TESTIMONY THAT THE DEFENDANTS WENT OUT THE BACK DOOR
27 AND LEFT AND DROVE OFF. AND WE DO KNOW THAT THE
28 DEFENDANTS APPARENTLY CALLED THE POLICE. THAT WAS

1 IN THE NEWSPAPERS, THAT THE DEFENDANTS CALLED THE
2 POLICE.

3 SO CRAIG CIGNARELLI KNEW THAT THE
4 DEFENDANTS HAD LEFT THE SCENE, LEFT THE CRIME SCENE,
5 CAME BACK, AND THEN CALLED THE POLICE.

6 NOW, HOW DID HE KNOW THAT? IT DIDN'T
7 HAVE TO HAPPEN THAT WAY. IT COULD BE THAT THE
8 DEFENDANTS KILLED THEIR PARENTS RIGHT THEN AND
9 THERE, TOOK THE SHOTGUNS, HID THE SHOTGUNS IN THE
10 BASEMENT, AND CALLED THE POLICE.

11 BUT CRAIG CIGNARELLI KNEW BACK IN 1989
12 THAT THE DEFENDANTS HAD DRIVEN AWAY AFTER THE
13 SHOOTING, RETURNED, AND CALLED THE POLICE. HOW
14 WOULD HE HAVE KNOWN THAT UNLESS ERIK MENENDEZ HAD
15 TOLD HIM?

16 AND EVEN THE ROLE THAT THE MOVIES PLAY
17 IN CONNECTION WITH THIS. IT MAY NOT BE WHAT ERIK
18 MENENDEZ IS NOW SAYING, BUT NOTICE HOW MOVIES PLAY A
19 ROLE IN CONNECTION WITH THIS STORY. ACCORDING TO
20 CRAIG CIGNARELLI, THEY WENT TO THE MOVIES FIRST, AND
21 THEN THEY CAME BACK FOR FAKE IDENTIFICATIONS, AND
22 SHOT THEIR PARENTS. NOTICE NOW, MOVIES AND FAKE
23 I.D. BOTH PLAY A ROLE IN KILLING THESE PARENTS.

24 NOW, THE STORY IS SLIGHTLY DIFFERENT,
25 BUT BOTH MOVIES AND FAKE I.D. PLAY A ROLE IN THE

26 CONNECTION WITH THIS STORY. ONCE AGAIN, SOMETHING
27 THAT CRAIG CIGNARELLI KNEW BACK IN 1989. AND HOW
28 WOULD HE KNOW THAT UNLESS ERIK MENENDEZ TOLD HIM

51528

1 THOSE FACTS?

2 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
3 THAT ERIK MENENDEZ SIMPLY LIED TO YOU WHEN HE SAID
4 HE DID NOT HAVE A CONVERSATION WITH CRAIG
5 CIGNARELLI, OTHER THAN TO SAY: "I SHOT MY PARENTS,"
6 PERIOD. "WE SHOT OUR PARENTS," PERIOD.

7 IT'S IMPOSSIBLE, BECAUSE CRAIG
8 CIGNARELLI KNEW TOO MUCH BACK IN 1989, AND THAT
9 PROVES THAT CRAIG CIGNARELLI WAS TELLING THE TRUTH
10 AND NOT ERIK MENENDEZ.

11 AND THEN WE HAVE THE TESTIMONY OF JAMIE
12 PISARCIK. JAMIE PISARCIK WAS CALLED IN OUR REBUTTAL
13 CASE TO TESTIFY TO THE FACT THAT ERIK MENENDEZ'
14 STORY ABOUT BEING SHOCKED WHEN HIS MOTHER TORE OFF
15 THE HAIRPIECE OF LYLE MENENDEZ ESSENTIALLY COULDN'T
16 BE TRUE, BECAUSE SHE SAID THAT SHE RECALLED THAT SHE
17 HAD A CONVERSATION WITH ERIK MENENDEZ MUCH EARLIER
18 THAN THAT, IN WHICH ERIK MENENDEZ ADMITTED TO HER
19 THAT HE DID IN FACT KNOW THAT HIS BROTHER HAD A
20 HAIRPIECE.

21 THIS UNDERMINES HIS STORY TREMENDOUSLY,
22 BECAUSE PART OF THE MOTIVATION FOR HIS WHOLE STORY
23 IS THAT ON TUESDAY HIS MOTHER RIPPED OFF LYLE
24 MENENDEZ' HAIRPIECE, AND THIS WAS SUCH A SHOCKING
25 EVENT TO EVERYONE THAT HE THEN COMMISERATED WITH
26 LYLE AND FELT HE HAD TO SHARE HIS BACKGROUND, HIS
27 ABUSE WITH LYLE MENENDEZ, AND THAT EVENTUALLY LED TO
28 THE WHOLE DESIRE TO CONFRONT THE FATHER ABOUT THE

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1 ABUSE AND ALL OF THAT. BUT THE STORY FALLS SHORT IF
2 ERIK MENENDEZ KNEW ABOUT THE HAIRPIECE SOMETIME
3 EARLIER.

4 AND SHE SAID THAT SHE HAD SUCH A
5 CONVERSATION WITH ERIK MENENDEZ. HE WAS IN HIS
6 BEDROOM AT HIS DESK. SHE GOT INTO SMALL TALK WITH
7 HIM, AND HE SAID THAT -- HE SAID HE KNEW ABOUT IT.

8 NOW, LADIES AND GENTLEMEN, ONCE AGAIN,
9 DOES JAMIE PISARCIK HAVE ANY AXE TO GRIND HERE?
10 THEY TRIED AT THAT POINT TO IMPEACH HER IN A VERY
11 TECHNICAL WAY. AND IF I HAVE TIME I'M GOING TO TRY
12 TO GET THAT IN. IN A VERY TECHNICAL WAY THEY TRIED
13 TO SHOW THAT THIS CONVERSATION COULD NOT HAVE
14 OCCURRED.

15 I WOULD SUBMIT TO YOU THAT THEY WERE NOT

16 SUCCESSFUL IN SHOWING THAT THE CONVERSATION COULD
17 NOT HAVE OCCURRED. SHE PREVIOUSLY TESTIFIED IN
18 REGARD TO THIS MATTER IN THE FIRST TRIAL. SHE SAID
19 PREVIOUSLY -- SHE SAID THE CONVERSATION TOOK PLACE
20 IN THE SPRING OF 1989. NOW, AS SHE THINKS ABOUT IT,
21 SHE THINKS IT WAS MORE LIKELY THE FALL OF 1988. SHE
22 TESTIFIED THAT THE ONLY THING THAT SHE RECALLS ABOUT
23 THAT PARTICULAR VISIT TO LOS ANGELES IN WHICH THIS
24 CONVERSATION TOOK PLACE WAS THAT SHE WENT TO SEE
25 "HURLEY-BURLEY" AT THE WESTWOOD PLAYHOUSE.
26 NOW SHE SAID, SINCE THE TIME OF THE
27 FIRST TRIAL -- THE REASON WHY SHE IS NOW CHANGING
28 HER POSITION CONCERNING WHEN THIS CONVERSATION TOOK

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1 PLACE, WAS SINCE THE TIME OF THE FIRST TRIAL SHE HAS
2 LOOKED AT A DOCUMENT, AN ADVERTISEMENT, AND THAT HAS
3 REFRESHED HER RECOLLECTION AS TO WHEN IT WAS THAT
4 SHE SAW THAT PLAY. SO NOW SHE SAID IT WASN'T SPRING
5 OF '89. IT WAS FALL OF '88.
6 NOW, SHE ALSO TESTIFIED IN THE FIRST
7 TRIAL THAT IT MAY HAVE BEEN DURING THE CHRISTMAS
8 SEASON, BECAUSE SHE WAS EVEN UNCERTAIN IN THE FIRST
9 TRIAL AS TO WHEN THIS TOOK PLACE, ALTHOUGH SHE SAID
10 IT WAS THE SPRING OF '88 -- '89, SHE WAS NOT RULING

11 OUT THE CHRISTMAS SEASON OF '88. SHE WAS UNCERTAIN
12 IN THE FIRST TRIAL, AND SHE ADMITTED THE FACT THAT
13 SHE WAS UNCERTAIN AS TO EXACTLY WHEN IT OCCURRED.
14 THAT STANDS TO REASON. WHY WOULD SHE NECESSARILY
15 RECALL THE EXACT TIME? WHAT SHE RECALLS IS THE
16 CONVERSATION. THERE WAS NO REASON TO WRITE IT
17 DOWN. THERE WAS NO REASON TO REMEMBER THE EXACT
18 DATE AT THE TIME.

19 THEY CALLED ED FENNO TO TRY TO IMPEACH
20 HER IN THIS REGARD, AND ED FENNO SAID THAT HE WAS --
21 HE WAS HERE IN LOS ANGELES, LIVING AT THE MENENDEZ
22 HOME DURING THE FALL OF '88, AND THE HOUSE WAS NOT
23 YET ADORNED WITH CHRISTMAS DECORATIONS PRIOR TO THE
24 TIME THAT HE LEFT. JAMIE PISARCIK SEEMS TO RECALL
25 THAT IT MIGHT HAVE BEEN DURING THE CHRISTMAS
26 DECLARATION SEASON. AND THE SUGGESTION IS THAT WHEN
27 YOU VIEW THE TESTIMONY WITH ED FENNO CONCERNING THE
28 CHRISTMAS DECLARATION, IN CONJUNCTION WITH TESTIMONY

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1 IRWIN CAUPER, WHO TESTIFIED IN REGARD TO WHAT THE
2 WEATHER WAS LIKE, THAT SOMEHOW PROVES THAT JAMIE
3 PISARCIK IS NOT TELLING THE TRUTH.

4 MR. FENNO SAID THAT WHEN HE LEFT FOR
5 HOME, ABOUT MID DECEMBER, THE DECORATIONS WERE NOT

6 UP. JAMIE PISARCIK SAID THAT SHE DID NOT KNOW WHICH
7 DAYS IN DECEMBER SHE WAS IN CALIFORNIA. SHE SAID
8 THAT SHE DID LEAVE TO RETURN HOME FOR CHRISTMAS, AND
9 MAY HAVE BEEN HOME AS EARLY AS THE 23RD OF THE
10 MONTH. SHE SAID THAT CHRISTMAS DECORATIONS WERE UP
11 AT SOME POINT DURING THIS VISIT, AND SHE ALSO SAID
12 THE WEATHER WAS PLEASANT.

13 THE DEFENSE REASONS THAT JAMIE PISARCIK
14 COULD NOT HAVE BEEN IN CALIFORNIA DURING THE FIRST
15 HALF OF DECEMBER, BECAUSE IF SHE HAD BEEN, SHE WOULD
16 HAVE SEEN THE CHRISTMAS DECORATIONS; AND A FURTHER
17 REASON THAT JAMIE COULD NOT HAVE BEEN IN CALIFORNIA
18 DURING THE LAST HALF OF DECEMBER IS BECAUSE IT WAS
19 RAINING AND; THEREFORE, IT COULD NOT HAVE BEEN
20 PLEASANT, AS SHE HAD DESCRIBED.

21 LADIES AND GENTLEMEN, PLEASANT IS
22 RELATIVE. SHE'S FROM PITTSBURG, AND SHE MAY HAVE
23 DESCRIBED -- PLEASANT TO HER IS NOT PLEASANT TO US.

24 SO YOU REALLY CAN'T SAY THAT BECAUSE IT
25 WAS RAINING DURING SOME OF THE DAYS IN LATE
26 DECEMBER, THAT THEREFORE SHE'S NECESSARILY WRONG
27 ABOUT THAT.

28 EVEN IN THE TIME PERIOD THAT THEY'RE

1 REFERRING TO, IT WAS ONLY RAINING ON A FEW OF THE
2 DAYS.

3 WITHOUT GETTING FURTHER INTO THAT, I
4 WOULD SUBMIT, THAT WAS SIMPLY A DEAD-END THAT
5 DOESN'T PROVE ANYTHING.

6 LES ZOELLER WAS CALLED TO TESTIFY THAT
7 JAMIE PISARCIK MADE AN INCONSISTENT STATEMENT, THAT
8 WHEN HE CALLED HER IN THE FIRST TRIAL TO FIND OUT IF
9 SHE HAD ANY INFORMATION ABOUT THE HAIRPIECE, THAT IS
10 WHEN SHE TOLD HIM ABOUT IT. IT WAS AFTER ERIK
11 MENENDEZ TESTIFIED. AND IN RESPONSE TO ERIK
12 MENENDEZ' TESTIMONY, DETECTIVE ZOELLER THEN CALLED
13 JAMIE PISARCIK AND SAID: "DO YOU HAVE ANY
14 INFORMATION ABOUT THE HAIRPIECE?"

15 AND SHE TOLD HIM AT THAT TIME WHAT SHE
16 KNEW ABOUT THE HAIRPIECE. THAT WAS DECEMBER OF
17 '93.

18 HE WAS CALLED BY THE DEFENSE TO SHOW
19 THAT SHE IS NOW INCONSISTENT. DETECTIVE ZOELLER
20 TESTIFIED THAT JAMIE PISARCIK SAID THAT SHE WAS
21 PRESENT AT THE HOME IN BEVERLY HILLS WHEN ERIK
22 MENENDEZ LEARNED ABOUT THE HAIRPIECE FROM HIS
23 MOTHER. ERIK MENENDEZ LAUGHED AND SAID: "I CAN'T
24 BELIEVE IT. THAT IS WHY HIS HAIR IS NEVER OUT OF
25 PLACE."

26 I WOULD SUBMIT, LADIES AND GENTLEMEN,
27 THAT THAT DOESN'T NECESSARILY DISAPPROVE JAMIE
28 PISARCIK, FOR THE FOLLOWING REASONS:

1 NUMBER ONE, JAMIE DID NOT CLARIFY
2 WHETHER THIS WAS A CONVERSATION THAT SHE HAD
3 OVERHEARD, OR WHETHER IT WAS SOMETHING THAT SHE WAS
4 TOLD BY ERIK MENENDEZ; IN OTHER WORDS, SHE WAS IN
5 THE HOUSE AT THE TIME, BUT WAS IT SOMETHING SHE
6 ACTUALLY HEARD WITH HER OWN TWO EARS, OR WAS IT
7 SOMETHING SHE WAS TOLD? JAMIE PISARCIK IS NOT
8 SAYING THIS DIDN'T HAPPEN. SHE'S SIMPLY SAYING SHE
9 DOESN'T RECALL THAT.

10 AND FINALLY, JAMIE PISARCIK HAS NO
11 REASON TO FABRICATE AN ALLEGATION AGAINST ERIK
12 MENENDEZ.

13 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,
14 THAT THOSE WITNESSES REALLY DO -- SHOULD NOT CAUSE
15 YOU TO REJECT THE TESTIMONY OF JAMIE PISARCIK.

16 MARTA CANO TESTIFIED TO THE FACT THAT
17 ERIK MENENDEZ HAD A DRIVER'S LICENSE FROM FLORIDA.
18 AS I SAID, THAT DOESN'T PROVE ANYTHING. HE RENEWED
19 HIS CALIFORNIA DRIVER'S LICENSE, AND THAT HAS NEVER
20 BEEN PRODUCED. WHETHER OR NOT HE HAD A FLORIDA
21 DRIVER'S LICENSE PROVES NOTHING.

22 AND DOUGLAS LOVE WAS AN INVESTIGATOR WHO
23 WAS CALLED TO TESTIFY TO THE FACT THAT HE OBTAINED
24 THE FAILURE ANALYSIS CALENDAR. WHAT IS THAT

25 SUPPOSED TO PROVE, THAT FAILURE ANALYSIS IS SPEAKING
26 FREELY ABOUT THE WORK THAT IT HAS DONE IN CONNECTION
27 WITH THIS CASE? I DON'T THINK THAT ANY PERSON, ANY
28 WITNESS WHO TESTIFIED IN THIS CASE, IS GOING TO KEEP

51534

1 IT A SECRET THAT THEY TESTIFIED IN THE MENENDEZ
2 CASE.

3 DR. VICARY, FOR EXAMPLE, TESTIFIED HE'S
4 MADE TELEVISION APPEARANCES IN REGARD TO HIS ROLE TO
5 THE MENENDEZ CASE. THE FACT THAT FAILURE ANALYSIS
6 FREELY ADMITS THAT THEY WORKED ON THE MENENDEZ CASE
7 DOES NOT IMPEACH THEM.

8 FINALLY, PARK DIETZ AND DR. VICARY. LET
9 ME SAY THIS ABOUT PARK DIETZ: PARK DIETZ IS A
10 NATIONALLY RENOWNED FORENSIC PSYCHIATRIST, WHO HAS
11 BEEN A CLINICAL PROFESSOR AT U.C.L.A. SINCE 1988,
12 AND HAS SERVED AS PRESIDENT OF THE AMERICAN ACADEMY
13 OF PSYCHIATRY AND LAW, THE PRINCIPLE PROFESSIONAL
14 ORGANIZATION FOR PEOPLE INTERESTED IN FORENSIC
15 PSYCHIATRY, WITH 1600 MEMBERS, ALL OF WHOM ARE
16 PSYCHIATRISTS, AND TO WHOM FORENSIC PSYCHIATRY IS
17 THE PRIMARY PART OF THEIR PRACTICE.

18 HE IS A PSYCHIATRIST WHO HAS WORKED ON
19 MANY HIGH-PROFILE CASES. PROBABLY THE MOST FAMOUS

20 CASE THAT HE WORKED ON IS THAT HE TESTIFIED ON
21 BEHALF OF THE UNITED STATES GOVERNMENT IN THE
22 PROSECUTION OF JOHN HINCKLEY FOR THE ATTEMPTED
23 ASSASSINATION OF PRESIDENT RONALD REAGAN.

24 SO THIS IS A MAN WHO COMES TO YOU WITH
25 OUTSTANDING CREDENTIALS, LADIES AND GENTLEMEN, ONE
26 OF THE TOP FORENSIC PSYCHIATRISTS IN THE COUNTRY.
27 HE IS A PERSON, AS A RESULT OF HIS BACKGROUND AND
28 EXPERTISE, WHO CHARGES \$400 AN HOUR. AND THAT IS

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1 MORE THAN THE DEFENSE EXPERTS WERE PAID IN THIS
2 CASE.

3 BUT I WOULD SUBMIT TO YOU THAT HE IS
4 ALSO WORTH THE \$400 AN HOUR THAT HE IS PAID. HE
5 WORKED ON THIS CASE FOR A HUNDRED HOURS, AND SPENT
6 15 HOURS INTERVIEWING THE DEFENDANT, AND AS MUCH AS
7 IT WAS SUGGESTED TO YOU, LADIES AND GENTLEMEN, THAT
8 PERHAPS HE SHOULD HAVE DONE MORE WORK, THAT HE
9 DIDN'T SPEND AS MUCH TIME AS SOME OF THE DEFENSE
10 EXPERTS, I WOULD SUBMIT TO YOU THAT THE AMOUNT OF
11 TIME THAT HE SPENT ON THIS CASE WAS MORE THAN
12 SUFFICIENT FOR HIM TO TESTIFY IN REGARD TO THE
13 MATTERS FOR WHICH HE WAS CALLED.

14 DR. VICARY, FOR EXAMPLE, WHO WAS CALLED

15 IN RESPONSE TO DR. DIETZ TO CRITICIZE THE WORK OF
16 DR. DIETZ, TESTIFIED THAT HE CAN DO A DIAGNOSIS IN
17 AS LITTLE AS A HALF HOUR IN A NON-FORENSIC
18 SITUATION. AND THAT'S TRUE. THERE IS NO REASON WHY
19 HE CAN'T DO A DIAGNOSIS IN A HALF AN HOUR. HE SAID
20 THAT IN A FORENSIC SITUATION HE DOES WORK MORE. HE
21 DOES SPEND MORE TIME. BUT THEN AGAIN, EVEN
22 DR. VICARY SAID THAT HE HAS GIVEN TESTIMONY IN
23 MURDER PROSECUTIONS, AFTER INTERVIEWING A DEFENDANT
24 FOR AS LITTLE AS FOUR TO FIVE HOURS, AND COMING UP
25 WITH A DIAGNOSIS BASED UPON THAT INTERVIEW.

26 SO, I WOULD SUBMIT TO YOU, LADIES AND
27 GENTLEMEN, THAT DR. DIETZ SPENT MORE THAN SUFFICIENT
28 TIME IN HIS WORK ON THIS CASE, AND WAS PROVIDED WITH

51536

1 SUFFICIENT INFORMATION BY WHICH HE CAN REACH LIABLE
2 CONCLUSIONS CONCERNING THE DEFENDANT AND HIS STATE
3 OF MIND AT THE TIME OF THE COMMISSION OF THE CRIME.

4 BEAR IN MIND THAT HE TOLD US A VERY
5 IMPORTANT PRINCIPLE, THAT THERE'S A DISTINCTION
6 BETWEEN MENTAL STATE AND DIAGNOSIS. YOU SEE, A
7 DIAGNOSIS REFERS TO WHAT ARE YOU SUFFERING FROM AT
8 THE TIME OF THE COMMISSION OF THE CRIME? IS IT A
9 SPECIFIC DISORDER THAT YOU ARE SUFFERING FROM?

10 MENTAL STATE AT THE TIME OF THE CRIME
11 MEANS WHAT WAS OPERATIONAL IN YOUR MIND AT THE TIME;
12 WAS IT IMPACTING UPON YOU OR NOT AT THE TIME OF THE
13 COMMISSION OF THE CRIME?
14 AND ONE OF THE THINGS HE POINTED OUT IS
15 JUST BECAUSE SOMEONE IS SUFFERING FROM A PARTICULAR
16 DIAGNOSIS, THAT TELLS YOU NOTHING ABOUT TO WHAT
17 EXTENT IT MAY HAVE IMPACTED UPON THEM AT THE TIME OF
18 THE COMMISSION OF THE CRIME.
19 SO IF SOMEONE IS SUFFERING FROM
20 GENERALIZED ANXIETY DISORDER OR POST-TRAUMATIC
21 STRESS DISORDER, THAT DOESN'T NECESSARILY MEAN THAT
22 EITHER OF THOSE CONDITIONS AFFECTED THEM AT THE TIME
23 OF THE COMMISSION OF THE CRIME.
24 NOW, HE TESTIFIED, IN ESSENCE, THAT
25 POST-TRAUMATIC STRESS DISORDER IN THIS CASE CANNOT
26 BE JUSTIFIED. THAT DIAGNOSIS CANNOT BE JUSTIFIED
27 HERE IN THIS FORENSIC SETTING. WHY?
28 I ALREADY EXPLAINED TO YOU THE VERY

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1 UNUSUAL NATURE OF POST-TRAUMATIC STRESS DISORDER
2 DIAGNOSIS; THAT IT INCLUDES A DETERMINATION AS TO
3 THE EXISTENCE OF A STRESSOR, AND A STRESSOR CANNOT
4 BE DETERMINED BASED UPON, VERY OFTEN, OBJECTIVE

5 CRITERIA. THE QUESTION, HE SAID, COMES DOWN VERY
6 OFTEN TO A MATTER OF CREDIBILITY. DO YOU BELIEVE
7 THE PERSON WHO'S REPORTING IT TO YOU OR NOT?

8 NOW, IN A NON-FORENSIC SETTING, IN A
9 CLINICAL SETTING, THERE'S NO REASON TO QUESTION THE
10 CLAIM OF A STRESSOR. BUT IN A FORENSIC SETTING IT
11 BECOMES MORE QUESTIONABLE BECAUSE THE DEFENDANT HAS
12 REASON TO CLAIM THE EXISTENCE OF THAT STRESSOR. HE
13 SAID THAT IS SOMETHING THAT IS BEST LEFT FOR THE
14 JURY.

15 HE WAS THE ONE WHO EXPLAINED THE
16 BATTERED-PERSON'S SYNDROME AND EXPLAINED WHY THE
17 BATTERED-PERSON'S SYNDROME CANNOT BE FOUND HERE. IT
18 IS NOT A DIAGNOSIS. IT IS NOT A CLINICAL DIAGNOSIS.
19 AND HE SAID THAT HE WOULD NEVER GIVE ANYONE THAT
20 DIAGNOSIS OF BATTERED-PERSON'S SYNDROME OR
21 BATTERED-WOMAN'S SYNDROME.

22 HE ALSO POINTED OUT THAT ANOTHER REASON
23 WHY POST-TRAUMATIC STRESS DISORDER CANNOT BE RELIED
24 UPON HERE IS BECAUSE THE CLUSTERS OF SYMPTOMS WHICH
25 ARE INVOLVED IN POST-TRAUMATIC STRESS DISORDER, SUCH
26 AS THE REEXPERIENCING CLUSTER OR THE AVOIDANCE
27 CLUSTER, AVOIDING THE REEXPERIENCE, IS SOMETHING
28 THAT IS NORMALLY BASED UPON SELF-REPORT.

1 FOR EXAMPLE, IF A PERSON REPORTS THAT
2 THEY'RE HAVING NIGHTMARES ABOUT BEING MOLESTED, CAN
3 YOU RELY UPON THAT? NO. IT'S A SELF-REPORT.

4 IN A CLINICAL SETTING, YES, YOU CAN RELY
5 UPON THAT. THERE'S NO REASON TO QUESTION IT.

6 BUT IN A FORENSIC SETTING, HOW DO YOU
7 KNOW IF THAT'S TRUE OR NOT? YOU HAVE NO WAY TO
8 DETERMINE WHETHER THE PERSON IS HAVING A NIGHTMARE.

9 HE ALSO INDICATED THAT HE REJECTED
10 PSYCHOLOGICAL TESTS AS A BASIS FOR COMING UP WITH
11 POST-TRAUMATIC STRESS DISORDER FOR THE VERY REASONS
12 THAT I POINTED OUT TO YOU: IT DOESN'T REALLY COME
13 DOWN TO A DETERMINATION OF TRUTHFULNESS. YOU CANNOT
14 DETERMINE A PERSON IS BEING TRUTHFUL OR NOT. IT IS
15 A SELF-REPORTING TYPE OF TEST, AND THE VALIDITY
16 SCALES DO NOT DETERMINE WHETHER OR NOT A PERSON IS
17 INTENTIONALLY LYING.

18 FINALLY, HE SAID THAT THE ONLY THING
19 THAT HE CAN REALLY CONCLUDE IN THIS CASE IS THAT THE
20 DEFENDANT WAS SUFFERING FROM GENERALIZED ANXIETY
21 DISORDER.

22 NOW, IS THERE A BIG DIFFERENCE, LADIES
23 AND GENTLEMEN, BETWEEN GENERALIZED ANXIETY DISORDER
24 AND POST-TRAUMATIC STRESS DISORDER? AND I WOULD
25 SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT THERE IS
26 NOT A TREMENDOUS AMOUNT OF DIFFERENCE. IN FACT, HE
27 SAID THERE IS A CERTAIN AMOUNT OF OVERLAP.

51539

1 THAT HE REFERRED TO AS PART OF THE GENERALIZED
2 ANXIETY DISORDER, YOU CAN SEE THAT THEY CORRESPOND
3 SOMEWHAT TO THOSE VERY SYMPTOMS I SHOWED YOU ON THE
4 CHART FOR POST-TRAUMATIC STRESS DISORDER.

5 FOR EXAMPLE, IRRITABILITY, TROUBLE
6 CONCENTRATING, SLEEP-DISTURBANCE. ALL THOSE
7 SYMPTOMS, WHICH ARE CHARACTERISTIC OF POST-TRAUMATIC
8 STRESS DISORDER, ARE ALSO CHARACTERISTIC OF
9 GENERALIZED ANXIETY DISORDER. ONE OF THE KEY
10 DIFFERENCES, WHETHER OR NOT THERE IS A STRESSOR, IS
11 SOMETHING THAT SHOULD BE LEFT TO BE DETERMINED BY
12 THE JURY.

13 AND THE IMPORTANT PART OF HIS TESTIMONY,
14 HOWEVER, IS THAT WHETHER -- WHAT IS THE ESSENCE OF
15 GENERALIZED ANXIETY ORDER? IT IS BASICALLY ANXIETY,
16 JUST AS THE ESSENCE OF POST-TRAUMATIC STRESS
17 DISORDER IS BASICALLY STRESS AND THE EFFECTS OF
18 STRESS. GENERALIZED ANXIETY DISORDER IS BASICALLY
19 ANXIETY AND THE EFFECTS OF ANXIETY. AND YOU CAN SEE
20 THE SIMILARITY BETWEEN ANXIETY AND STRESS, AND HOW
21 THEY WOULD HAVE OVERLAPPING-TYPE SYMPTOMS AND HOW
22 THEY ARE SIMILAR TO EACH OTHER.

23 BUT THE KEY ISSUE, LADIES AND GENTLEMEN,
24 IS THAT ONE DOES NOT -- WHETHER YOU ARE SUFFERING
25 FROM POST-TRAUMATIC STRESS DISORDER OR YOU'RE
26 SUFFERING FROM GENERALIZED ANXIETY DISORDER, IT DOES
27 NOT CAUSE YOU TO GO SHOPPING FOR SHOTGUNS. IT DOES
28 NOT CAUSE A BREAK WITH REALITY. IT DOES NOT CAUSE

51540

1 YOU TO BE DELUSIONAL.

2 WHILE YOU MAY GO INTO SOMETHING CALLED
3 THE FIGHT OR FLIGHT RESPONSE, WHICH HE INDICATED IS
4 A VERY UNUSUAL TYPE OF INTENSE EXPERIENCE, THERE IS
5 NOTHING ABOUT POST-TRAUMATIC STRESS DISORDER OR
6 GENERALIZED ANXIETY DISORDER WHICH MAKES YOU GO INTO
7 THAT TYPE OF RESPONSE. THAT CAN HAPPEN TO ANYONE.
8 IT CAN HAPPEN WITH A PERSON WITH A MIGRAINE
9 HEADACHE. IT CAN HAPPEN WITH A PERSON, HE SAID, IN
10 VARIOUS TYPES OF SITUATIONS. THEY CAN GO INTO AN
11 INTENSE EXPERIENCE, SOMETIMES REFERRED TO AS FIGHT
12 OR FLIGHT.

13 THE MOST IMPORTANT THING TO REMEMBER
14 ABOUT FIGHT OR FLIGHT IS THAT IT DOES NOT IMPAIR AND
15 DOES NOT INVOLVE A LOSS OF REFLECTIVE THOUGHT. YOU
16 ARE STILL ABLE TO THINK. THIS IS A VERY IMPORTANT
17 CONCEPT, LADIES AND GENTLEMEN, BECAUSE IF YOU JUST

18 LOOK AT THE TESTIMONY OF DR. WILSON ALONE, YOU MIGHT
19 HAVE BEEN LEFT WITH THE IMPRESSION THAT THE
20 DEFENDANT WAS IN SOME SORT OF ROBOTIC TYPE OF
21 AUTOMATIC RESPONSE TO THE SITUATION, INCAPABLE OF
22 HAVING REFLECTIVE THOUGHT OR USING REFLECTIVE
23 THOUGHT; AND, THEREFORE, INCAPABLE OF HARBORING
24 PREMEDITATION AND DELIBERATION.

25 BUT WHEN YOU LOOK AT THE TESTIMONY OF
26 PARK DIETZ, LADIES AND GENTLEMEN, I WOULD SUBMIT
27 THAT HE CLARIFIES WHAT POST-TRAUMATIC STRESS
28 DISORDER IS AND WHAT GENERALIZED ANXIETY DISORDER

51541

1 IS, AND MAKE IT CLEAR THAT NONE OF THOSE THINGS ARE
2 A NECESSARY RESULT FROM THE CONDITIONS THAT ARE
3 BEING DISCUSSED HERE. HE SAID THAT -- HE WENT SO
4 FAR AS TO SAY THAT THE ESSENCE OF GENERALIZED
5 ANXIETY DISORDER MAKES A PERSON NERVOUS. THAT'S THE
6 EFFECT OF ANXIETY. MORE NERVOUSNESS. THAT'S ALL.
7 A PERSON WHOSE ONLY DEFICIT WAS GENERALIZED ANXIETY
8 DISORDER MAY HAVE NO EFFECTS OF THAT CONDITION AT
9 THE TIME OF THE CRIME. HE SAID THEY MAY BE MORE
10 ANXIOUS THAN THE AVERAGE PERSON AT THE TIME OF THE
11 CRIME, BUT THEY CANNOT POSSIBLY SUFFER AS A RESULT
12 OF THAT CONDITION. THAT'S THE KEY WORDS. THEY

13 CANNOT POSSIBLY SUFFER, AS A RESULT OF THAT
14 CONDITION, SUCH A MARKED CHANGE OF MENTAL
15 FUNCTIONING AS TO BE LESS RATIONAL, INCAPABLE OF
16 REFLECTIVE THOUGHT, IMPAIRED IN THE ABILITY TO
17 CONTROL IMPULSES, OR IMPAIRED IN WHAT WE REFERRED TO
18 AS THE HIGHER CORTICAL FUNCTIONS, THE CORTICAL
19 REASONING ASPECTS OF THE BRAIN.

20 SO GENERALIZED ANXIETY DISORDER DOES NOT
21 MAKE YOU DO THAT. IT DOESN'T PUT YOU IN THAT
22 CONDITION, NOR DOES P.T.S.D. HE SAID IT IS NOT
23 WITHIN THE POWER OF GENERALIZED ANXIETY DISORDER TO
24 MAKE A PERSON INCAPABLE OF REFLECTIVE THOUGHT. IT'S
25 SIMPLY NOT TIED INTO EITHER OF THOSE DISORDERS THAT
26 ARE BEING DISCUSSED IN THIS CASE, LADIES AND
27 GENTLEMEN.

28 HE SAID IT COULD MAKE A PERSON EXERCISE

51542

1 POOR JUDGMENT, BUT THEN HE CLARIFIED WHAT HE MEANT
2 BY POOR JUDGMENT. HE'S NOT TALKING ABOUT A LOSS OF
3 IMPULSE CONTROL OR LESS RATIONALITY, ONLY BAD
4 DECISIONS.

5 WELL, LADIES AND GENTLEMEN, BAD
6 DECISIONS DON'T MAKE YOU RUSH INSIDE AND SHOOT YOUR
7 PARENTS TO DEATH. IT'S STILL A DECISION.

8 HE TALKED ABOUT OTHER PERSONALITY TRAITS
9 EXHIBITED BY THE DEFENDANT. HE SAID, FOR EXAMPLE,
10 ERIK MENENDEZ HAS THE FOLLOWING PERSONALITY TRAITS:
11 SELF-DRAMATIZATION, A DRAMATIC WAY OF RELATING TO
12 THE WORLD.

13 DIDN'T YOU SEE THAT IN HIS TESTIMONY,
14 WHEN ERIK MENENDEZ WAS TESTIFYING HERE IN COURT?
15 DIDN'T YOU SEE A CERTAIN AFFECTATION OF AN OVERLY
16 DRAMATIC-TYPE OF PRESENTATION? I THINK THAT WHAT
17 YOU SAW IN COURT IS CONSISTENT WITH WHAT DR. DIETZ
18 WAS TESTIFYING TO HERE.

19 HE SAID THAT HE HAD A RAPIDLY SHIFTING
20 AND SHALLOW EXPERIENCE OF EMOTION, A CONCERN ABOUT
21 ABANDONMENT, DISRESPECT FOR THE LAW, DISREGARD FOR
22 THE TRUTH, AND HE IS SUGGESTIBLE.

23 HE SPOKE ABOUT DISSOCIATIVE
24 EXPERIENCING, HOW A DISSOCIATIVE EXPERIENCE CAN
25 SOMETIMES RESULT IN SOME SORT OF AN ALTERED
26 CONSCIOUSNESS. BUT HE INDICATED VERY CLEARLY THAT
27 HERE THERE IS NO INDICATION OF A DISSOCIATIVE
28 EXPERIENCE BEING DESCRIBED BY THE DEFENDANT.

51543

1 HE DESCRIBED DISSOCIATIVE EXPERIENCE AS
2 SORT OF AN OUT-OF-BODY EXPERIENCE, WHERE YOU FEEL

3 LIKE YOUR MIND LEAVES YOUR BODY, AND YOU ARE
4 WATCHING YOURSELF FROM SOME HIGHER PLACE. YOU'RE
5 UNABLE TO CONTROL YOUR BEHAVIOR, AND YOU'RE FLOATING
6 ABOVE YOUR BEHAVIOR. HE SAID THAT SOMETIMES THAT
7 HAS BEEN ASSOCIATED WITH PEOPLE IN AN EXTREME FORM
8 OF P.T.S.D. BUT THERE IS NONE OF THAT HERE, LADIES
9 AND GENTLEMEN. IT IS NOT CLAIMED BY THE DEFENDANT
10 IN HIS TESTIMONY. IT WAS NOT CLAIMED BY DR. WILSON,
11 AND THERE'S NO EVIDENCE OF THAT.

12 AND HE EXPLAINED HYPERVIGILANCE AND
13 INDICATED THAT HYPERVIGILANCE IS SIMPLY AN
14 ALERTNESS, SIMPLY A HIGHER STATE OF ALERTNESS TO
15 YOUR ENVIRONMENT. HE SAID HERE -- AND THERE'S A
16 HYPER-ALERTNESS WHICH COMES AS A RESULT OF FEAR,
17 FEAR OF YOUR ENVIRONMENT AND FEAR OF THE
18 SURROUNDINGS.

19 AND HERE HE SAID THAT THERE IS EVIDENCE
20 INCONSISTENT WITH HYPERVIGILANCE, SUCH AS PERIODS OF
21 HOPEFULNESS, WHEN THE DEFENDANT WAS HOPEFUL, THAT IS
22 INCONSISTENT WITH HYPERVIGILANCE. HYPERVIGILANCE IS
23 CHARACTERIZED BY DESPAIR.

24 PLAYING TENNIS. REMEMBER WHAT ERIK
25 MENENDEZ SAID? "I WENT DOWN TO PLAY TENNIS ON
26 FRIDAY, AND TOTALLY PUT EVERYTHING OUT OF MY MIND."

27 DR. DIETZ SAID THAT IS ENTIRELY
28 INCONSISTENT WITH HYPERVIGILANCE. THAT DOES NOT

1 REFLECT HYPERVIGILANCE AT ALL.

2 GOING ON THE BOAT TRIP WITHOUT A GUN IS

3 INCONSISTENT WITH HYPERVIGILANCE.

4 AND FAILURE TO RELOAD HIS GUN IS TOTALLY

5 INCONSISTENT WITH HYPERVIGILANCE. A HYPERVIGILANT

6 PERSON WOULD BE VERY MUCH CONCERNED ABOUT THEIR

7 SAFETY AT ALL TIMES. THIS IS NOT CONSISTENT WITH

8 HYPERVIGILANCE.

9 SO APPARENTLY, LADIES AND GENTLEMEN,

10 THERE IS NO REASON TO BELIEVE THAT ERIK MENENDEZ WAS

11 HYPERVIGILANT. THERE IS NO EVIDENCE OF THAT. AND

12 HE PARTICULARLY DISPUTED WHAT JOHN WILSON DID.

13 DO YOU RECALL WHAT JOHN WILSON SAID? HE

14 LOOKED OVER AT THE DEFENDANT AND SAID: "THERE, RIGHT

15 NOW. I JUST SAW IT IN THIS COURTROOM. HE'S

16 HYPERVIGILANT."

17 AND I ASKED THAT QUESTION: "CAN YOU SEE

18 IT RIGHT NOW?"

19 AND PARK DIETZ SAID YOU CAN'T DO THAT,

20 LOOK AT A PERSON SITTING HERE IN THE COURTROOM AND

21 SAY: "THERE IT IS. I JUST SAW THE HYPERVIGILANCE."

22 THERE'S NO WAY TO DO THAT.

23 LEARNED HELPLESSNESS. HE BASICALLY

24 INDICATED THERE'S A WHOLE SERIES OF BEHAVIOR ON THE

25 PART OF ERIK MENENDEZ THAT IS INCONSISTENT WITH

26 LEARNED HELPLESSNESS. THAT'S SOMETHING I WENT OVER

27 WITH YOU, SUCH AS PURCHASING GUNS AND SHOPPING FOR
28 AMMUNITION. TOTALLY INCONSISTENT WITH LEARNED

51545

1 HELPLESSNESS.

2 THESE TWO DEFENDANTS, LADIES AND
3 GENTLEMEN, WERE NOT HELPLESS BY ANY STRETCH OF THE
4 IMAGINATION.

5 AND IT WAS SUGGESTED TO YOU THAT PERHAPS
6 THERE'S A BIOLOGICAL CHANGE IN RESPONSE TO ABUSE,
7 AND DR. DIETZ TESTIFIED THAT THERE IS REALLY NO
8 EVIDENCE OF THAT. HE SAID THERE IS NO BIOLOGICAL
9 EVIDENCE THAT POST-TRAUMATIC STRESS DISORDER IMPAIRS
10 BRAIN FUNCTION; NO BIOLOGICAL EVIDENCE THAT IT
11 IMPAIRS THE ABILITY TO CONTROL IMPULSES, AND NO
12 BIOLOGICAL EVIDENCE THAT POST-TRAUMATIC STRESS
13 IMPAIRS YOUR BEHAVIOR OR PREDICTS YOUR BEHAVIOR IN
14 ANY NECESSARY WAY.

15 BASICALLY, THERE IS NO CORRELATION
16 BETWEEN POST-TRAUMATIC STRESS DISORDER AND
17 IMPAIRMENT IN YOUR LEVEL OF FUNCTIONING.

18 FINALLY I ASKED DR. DIETZ, I SAID --
19 THIS IS IN REGARD TO AUTOMATIC -- THIS NOTION OF
20 AUTOMATIC PILOT. "I WOULD LIKE TO GO OVER THE
21 FOLLOWING WITH YOU, AND YOU TELL ME IF THIS IS

22 CONSISTENT WITH OR INCONSISTENT WITH AUTOMATIC PILOT
23 OR REFLECTIVE THOUGHT."
24 AND WE WENT THROUGH A NUMBER OF ITEMS.
25 AND HE SAID THAT AWARENESS ABOUT RELOADING, THE NEED
26 TO RELOAD, THAT IS NOT AUTOMATIC PILOT. THAT'S MORE
27 CONSISTENT WITH REFLECTIVE THOUGHT.
28 CONSIDERING LOCKING HIMSELF IN HIS ROOM,

51546

1 THAT IS NOT AUTOMATIC PILOT. THAT'S REFLECTIVE
2 THOUGHT.
3 LOOKING FOR AMMUNITION IN THE CAR,
4 THAT'S NOT AUTOMATIC PILOT BEHAVIOR. THAT IS MORE
5 CONSISTENT WITH REFLECTIVE THOUGHT.
6 UNLOADING HIS GUN AND RELOADING HIS
7 GUN. THAT IS NOT EVIDENCE OF AUTOMATIC PILOT. THAT
8 IS EVIDENCE OF REFLECTIVE THOUGHT.
9 THOUGHTS ABOUT HAVING TO RUSH IN AND
10 PERHAPS SHOOT HIS PARENTS WITHOUT HIS BROTHER'S
11 PARTICIPATION AND COOPERATION IS INDICATIVE OF
12 REFLECTIVE THOUGHT, NOT AUTOMATIC PILOT.
13 AND RECOVERY OF MORE AMMUNITION FROM THE
14 CAR AND GIVING IT TO HIS BROTHER. THAT IS MORE
15 CONSISTENT WITH REFLECTIVE THOUGHT THAN AUTOMATIC
16 PILOT.

17 HE SAID THAT HIS BEHAVIOR AT THE TIME OF
18 THE CRIME IS CONSISTENT WITH REFLECTIVE THOUGHT,
19 LADIES AND GENTLEMEN.

20 SO WHETHER OR NOT THE DEFENDANT WAS
21 THEORETICALLY IN A CLAIM OF FEAR, THAT IS SOMETHING
22 THAT YOU CAN ANALYZE. THAT IS SOMETHING YOU CAN
23 ANALYZE. I WOULD SUBMIT TO YOU, LADIES AND
24 GENTLEMEN, THAT CLAIM OF FEAR IS TOTALLY
25 INCONSISTENT WITH ALL OF THE EVIDENCE, AND SHOULD BE
26 REJECTED.

27 AND HE SAID THAT THE DEFENDANT, IN
28 SHORT, WAS NOT SUFFERING FROM ANY MENTAL DISORDER

51547

1 THAT PRECLUDED HIS ABILITY TO EXERCISE REFLECTIVE
2 THOUGHT.

3 SO I THINK THAT DR. DIETZ CLEARED UP THE
4 TESTIMONY TO A GREAT DEAL OF DR. WILSON.

5 SO IN CONCLUSION, LADIES AND GENTLEMEN,
6 I ASK YOU TO FIND BOTH DEFENDANTS GUILTY OF
7 CONSPIRACY TO COMMIT MURDER, AND TO FIND BOTH
8 DEFENDANTS GUILTY OF FIRST-DEGREE PREMEDITATED AND
9 DELIBERATE MURDER.

10 I WOULD SUBMIT TO YOU, LADIES AND
11 GENTLEMEN, THAT THE EVIDENCE IN SUPPORT OF THAT HAS

12 BEEN DEMONSTRATED BY THE PROSECUTION IN THE
13 PRESENTATION OF OUR CASE-IN-CHIEF, AND WAS NOT
14 REFUTED BY THE DEFENSE IN THE EVIDENCE THAT THEY
15 PRESENTED TO YOU. THIS EVIDENCE WAS DEMONSTRATED
16 FIRST BY EVIDENCE OF MOTIVATION THAT THE DEFENDANTS
17 WERE MOTIVATED TO RID THEMSELVES OF THEIR PARENTS
18 AND THE CONTROL THAT THE PARENTS EXERCISED OVER
19 THEIR LIFE; BY MOTIVE TO END THE FRUSTRATION AND THE
20 HOSTILITY THAT WAS EXISTING INSIDE THE HOUSE, WHICH
21 WAS BECOMING UNBEARABLE, AND WHICH WAS CREATING
22 PRESSURE UPON EVERY MEMBER OF THE FAMILY.

23 AND FINALLY, TO ACHIEVE THE FINANCIAL
24 INDEPENDENCE AND POWER THAT THE DEFENDANTS FELT THAT
25 THEY WERE INCAPABLE OF ACHIEVING BY THEMSELVES, OR
26 WERE JUST TOO LAZY TO ACHIEVE BY THEMSELVES.

27 A VERDICT OF FIRST-DEGREE MURDER AND
28 CONSPIRACY TO COMMIT MURDER IS SUPPORTED, NOT ONLY

51548

1 BY THE EVIDENCE OF MOTIVATION, BUT BY THE CONFESSION
2 TO DR. OZIEL, WHICH I INDICATED TO YOU IS, IN
3 ESSENCE, A SMOKING GUN, AND WHICH ALLOWS FOR NO
4 OTHER INTERPRETATION, UPON CAREFUL EXAMINATION OF
5 THE TAPE, THAT THE DEFENDANTS PREMEDITATED AND
6 DELIBERATED THE COLD-BLOODED KILLING OF THEIR

7 PARENTS.

8 IT IS SUPPORTED BY THE CONFESSION TO
9 CRAIG CIGNARELLI, WHICH CORROBORATES THE STATEMENT
10 GIVEN TO DR. OZIEL, AND WHICH MUST HAVE BEEN SAID TO
11 CRAIG CIGNARELLI BACK IN 1989, OR ELSE HE WOULD NOT
12 HAVE THAT INFORMATION.

13 AND IT IS ALSO SUPPORTED BY THE ACTIONS
14 OF THE DEFENDANTS; THE ACTIONS OF THE DEFENDANTS,
15 BOTH BEFORE THE CRIME, DURING THE CRIME, AND AFTER
16 THE COMMISSION OF THE CRIME, ACTIONS WHICH ARE ONLY
17 CONSISTENT WITH A FINDING OF PREMEDITATION AND
18 DELIBERATION, AND INCONSISTENT WITH FEAR AND
19 KILLING.

20 IN RESPONSE TO FEAR AND THOSE ACTIONS,
21 INCLUDING THE PURCHASE OF THE GUNS TWO DAYS BEFORE
22 THE KILLING; THE CARRYING OF THE GUNS OR HOLDING
23 ONTO THE GUNS FOR A COUPLE OF DAYS, UP UNTIL SUCH
24 TIME AS THE DEFENDANTS CAN TAKE THEIR PARENTS BY
25 SURPRISE AND SHOOT THEM TO DEATH IN A BLOODY AND
26 BRUTAL AMBUSH, AND BY THE RAPID AND EFFECTIVE
27 COVER-UP WHICH BEGAN THAT VERY NIGHT, WHICH
28 CONSISTED OF THE DESTRUCTION AND CONCEALMENT OF

2 FALSE STATEMENTS GIVEN TO THE POLICE, AND BY THEIR
3 PREOCCUPATION WITH THE WILL IN THIS CASE, AND THEIR
4 PREOCCUPATION TO GET THEIR HANDS ON THE MONEY, THEIR
5 HANDS ON THE WILL; AND THE DESIRE TO DESTROY A WILL,
6 IF A NEW WILL EXISTED; BY THE EVIDENCE OF
7 FABRICATION, FABRICATION OF A FALSE DEFENSE, AS
8 DEMONSTRATED BY THE TESTIMONY OF JAMIE PISARCIK, AND
9 STATEMENTS THAT LYLE MENENDEZ MADE TO HER IN HIS
10 EFFORTS TO PERSUADE HER TO GIVE A FALSE DEFENSE; AND
11 BY THE FABRICATION OF A NEW FALSE DEFENSE, AS
12 DEMONSTRATED BY THE TESTIMONY OF AND IN THE LETTER
13 TO BRIAN ESLAMINIA, WHICH SHOWS A CLEAR INTENT ON
14 THE PART OF THE DEFENDANTS TO PRESENT A FALSE
15 DEFENSE.

16 AND FINALLY, BY THE SPENDING THAT THE
17 DEFENDANTS ENGAGED IN, BY THE WAY IN WHICH THEY
18 SPENT THE WEALTH THAT THEY OBTAINED FROM THEIR
19 PARENTS.

20 I WOULD SUBMIT, THAT NOTHING PRESENTED
21 BY THE DEFENSE TENDS TO REFUTE THIS EVIDENCE. THE
22 ALLEGATION OF PHYSICAL AND SEXUAL ABUSE IS SIMPLY
23 NOT CORROBORATION TO -- WAS NOT CORROBORATED IN ANY
24 WAY, WAS NOT CORROBORATED IN ANY RELIABLE WAY, AND
25 ALL YOU HAVE IS ALLEGATIONS WHICH COME FROM ERIK
26 MENENDEZ, AND WHICH CANNOT BE SUBSTANTIATED.

27 AND FINALLY, THE TESTIMONY OF ERIK
28 MENENDEZ, WHICH DOES NOT REFUTE THE EVIDENCE

1 PRESENTED BY THE PROSECUTION, AND IS SO UNRELIABLE,
 2 INHERENTLY UNRELIABLE, AND NOT WORTHY OF YOUR BELIEF
 3 BECAUSE IT IS SO INCONSISTENT, IT IS SO
 4 UNREASONABLE, AND IT IS CONTRADICTED BY SO MANY
 5 WITNESSES, THAT YOU CANNOT POSSIBLY PLACE YOUR FAITH
 6 IN THAT TESTIMONY.

7 I WOULD ASK YOU, LADIES AND GENTLEMEN,
 8 BASED UPON ALL OF THE EVIDENCE THAT WE PRESENTED TO
 9 YOU, TO FIND BOTH DEFENDANTS GUILTY OF MURDER IN THE
 10 FIRST DEGREE OF BOTH OF THEIR PARENTS, AND TO FIND
 11 THEM GUILTY OF CONSPIRACY TO COMMIT THE MURDER, AND
 12 TO FIND THE SPECIAL CIRCUMSTANCES TO BE TRUE.

13 THANK YOU VERY MUCH.

14 THE COURT: OKAY. THANK YOU. AND ON MONDAY
 15 WE'LL HAVE THE ARGUMENT OF THE DEFENSE.

16 DON'T DISCUSS THE MATTER WITH ANYONE.
 17 DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T LOOK
 18 AT ANY OF THE NEWS COVERAGE IN ANY FASHION
 19 WHATSOEVER, AND DON'T PERMIT YOURSELF TO BE IN ANY
 20 PLACE WHERE ANYONE MIGHT BE TALKING ABOUT THIS
 21 CASE.

22 AND AGAIN, IT'S PREMATURE TO FORM ANY
 23 FINAL OPINIONS ABOUT THE CASE. THERE'S MORE
 24 ARGUMENT TO BE HEARD, INSTRUCTIONS OF THE COURT, AND

25 BEFORE YOU CAN FORM ANY FINAL OPINIONS OR START
26 DISCUSSIONS IN THE CASE AT ALL, YOU HAVE TO WAIT
27 UNTIL ALL THAT HAPPENS, AND THEN WHEN ALL THAT
28 HAPPENS, YOU CAN GO IN THE JURY ROOM AND START

51551

1 TALKING ABOUT THE CASE AND FORMING OPINIONS ABOUT
2 IT.

3 ALL RIGHT. HAVE A GOOD WEEKEND. SEE
4 YOU ALL BACK HERE MONDAY AT 8:30.

5 WE HAVE TWO PEOPLE WITH MEDICAL
6 APPOINTMENTS, SO WE'LL BE BREAKING AT 4:00 O'CLOCK
7 MONDAY.

8 SEE YOU BACK HERE MONDAY AT 8:30.

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

12

13 THE COURT: THERE WERE SOME LOOSE ENDS HERE
14 THAT I WANTED TO TALK ABOUT, EXHIBITS AND THINGS.
15 WE'LL TAKE A SHORT BREAK, AND THEN WE'LL DO THAT.
16 WE'LL PICK UP AGAIN AT 4:15.

17 (A RECESS WAS TAKEN FROM
18 4:10 P.M. TO 4:15 P.M.)

19

20 (THE FOLLOWING PROCEEDINGS WERE
21 HELD IN OPEN COURT, OUT OF THE
22 PRESENCE OF THE JURY:)
23
24 THE COURT: OKAY. IN THE TRIAL, THE
25 PARTICIPANTS ARE HERE WITHOUT THE JURY. JUST A FEW
26 MATTERS TO DEAL WITH ON EXHIBITS.
27 FIRST OF ALL, AS FAR AS THIS EXHIBIT
28 LIST IS CONCERNED, HAS IT BEEN AGREED TO YET, OR IS

51552

1 THERE STILL SOME NEGOTIATIONS GOING ON?
2 MS. TOWERY: WELL, YOUR HONOR, I REVIEWED THE
3 PROSECUTION'S DRAFT LIST. I ASSUME IT WAS A DRAFT.
4 AND IT CONTAINS A NUMBER OF REFERENCES WHICH, IN MY
5 OPINION, ARE INAPPROPRIATE TO GO TO THE JURY, SUCH
6 AS DESCRIBING JOSE AND KITTY MENENDEZ AS "THE VICTIMS,"
7 AND DESCRIBING THE DECEMBER 11 TAPE AS "THE
8 CONFESSION," AND DESCRIBING THE ESCAPE PLANS AS
9 "ESCAPE PLANS," WITHOUT "SO-CALLED" IN FRONT OF
10 THEM.
11 SO I HAD TO DO A LOT OF REVISION, AND I
12 HAD IT RETYPED, SINCE IT WAS DONE ON A MACINTOSH,
13 AND I DON'T HAVE A MACINTOSH.
14 THE COURT: HAVE YOU SHOWN IT TO --

15 MS. TOWERY: NO.

16 THE COURT: ALL I WANTED TO DO IS FIND OUT IF
17 IT'S STILL IN NEGOTIATIONS. DISCUSS IT BETWEEN
18 YOURSELVES, AND IF YOU CAN'T RESOLVE IT, THEN WE'LL
19 TAKE SOME TIME AT A BREAK EARLY NEXT WEEK TO GET IT
20 DONE.

21 MS. TOWERY: I'LL GO THROUGH AND MAKE SURE
22 THE CHANGES THAT I HAD MADE ARE WHAT I WANTED DONE,
23 AND THEN I'LL GIVE THE PROSECUTION A LIST ON MONDAY
24 MORNING FIRST THING.

25 THE COURT: ALL RIGHT. THE PURPOSE OF HAVING
26 THIS LIST IS JUST FOR THE JURY TO USE DURING
27 DELIBERATIONS. SO WE HAVE TIME TO GET IT FINISHED,
28 BUT I DON'T WANT TO WAIT UNTIL THE LAST MINUTE AND

51553

1 START RUNNING AROUND TRYING TO GET IT RESOLVED.

2 A COUPLE OF OTHER THINGS REGARDING
3 EXHIBITS. ONE OTHER THING REGARDING EXHIBITS.

4 THERE WAS A CONTRACT MR. CIGNARELLI'S
5 CONTRACT.

6 MS. NAJERA: RIGHT. YES.

7 THE COURT: THE PEOPLE WERE GOING TO HAVE
8 SOME OBJECTIONS, OR NOT HAVE OBJECTIONS?

9 MS. NAJERA: I READ THE CONTRACT. AND

10 BASICALLY, MY ONLY CONCERN IS IT DOES TALK ABOUT
11 SOME THINGS WE NEVER TOOK TESTIMONY ABOUT. WE DID
12 TAKE SOME TESTIMONY ABOUT THE EXCLUSIVITY CLAUSE,
13 WHICH I READ. AND I'M NOT QUITE SURE THERE'S
14 ANYTHING THERE THAT MEANS ANYTHING TO THIS CASE ONE
15 WAY OR THE OTHER.

16 AND THEN THERE ARE LIKE FOUR OTHER
17 CLAUSES IN THERE THAT WE NEVER HAD ANY REFERENCE
18 TO. SO I DON'T KNOW THAT THEY HAVE ANY RELEVANCE TO
19 THIS CASE.

20 THE COURT: WELL, IT'S A CONTRACT. I DON'T
21 SEE ANY PROBLEM WITH IT GOING TO THE JURY, UNLESS
22 YOU CAN ARTICULATE SOME OBJECTION TO IT.

23 MS. NAJERA: OKAY. MY ONLY CONCERN IS IT
24 CONTAINS SUPERFLUOUS MATERIAL. APART FROM THAT,
25 THERE'S NOTHING ELSE THERE THAT I SPECIFICALLY HAVE
26 ANY OBJECTION TO.

27 THE COURT: IN LOOKING AT IT, I DON'T SEE
28 THERE'S ANYTHING THAT WOULD CAUSE ANY PREJUDICE TO

51554

1 EITHER SIDE. IT'S BEING OFFERED AND IT WILL BE
2 RECEIVED. ALSO, IN REGARD TO JURY INSTRUCTIONS, ONE
3 INSTRUCTION.

4 THE REPORTER: COULD I HAVE THE NUMBER OF THE

5 CONTRACT, YOUR HONOR?

6 THE COURT: YES. IT'S ONE OF THE LAST

7 EXHIBITS, 444.

8 I PRETTY MUCH FINALIZED THE VERSION OF

9 THE INSTRUCTIONS THAT WILL BE GIVEN TO THE JURY IN

10 CONFORMITY WITH OUR EARLIER DISCUSSIONS.

11 THE ONLY THING THAT I WOULD LIKE TO TALK

12 ABOUT AT THIS POINT IS 2.21, CREDIBILITY OF

13 WITNESSES, THE LAST SENTENCE THAT THE DEFENSE WANTED

14 IN REGARDING CRIMINAL CONDUCT NOT AMOUNTING TO A

15 MISDEMEANOR.

16 IN ORDER TO REALLY GIVE THAT INSTRUCTION

17 WITH REFERENCE TO MISDEMEANOR, YOU HAVE TO DEFINE

18 MISDEMEANOR AND REFER TO WHAT THE CONDUCT IS. IF

19 YOU WANT TO JUST SHORTEN THAT TO "THE PAST CRIMINAL

20 CONDUCT OF A WITNESS," PERIOD, THEN WE WON'T HAVE TO

21 DO ALL THAT.

22 MR. GESSLER: THAT'S FINE, YOUR HONOR.

23 THE COURT: IS THAT AGREEABLE?

24 MS. NAJERA: THAT'S FINE, YOUR HONOR.

25 MS. ABRAMSON: EXCEPT THE DEFENDANT --

26 THE COURT: WELL, THEY'RE COVERED SEPARATELY

27 WITH THE INSTRUCTION ON OTHER CRIMES, SAYING THAT

28 THE EVIDENCE CAN ONLY BE USED FOR A CERTAIN LIMITED

1 PURPOSE.

2 MS. ABRAMSON: EXCEPT THAT DIDN'T INCLUDE
3 GETTING A FALSE DRIVER'S LICENSE, WHICH THE PEOPLE
4 HAVE MADE SO MUCH OF.

5 THE COURT: WELL, THAT'S A MISDEMEANOR TOO,
6 SO -- OR AN INFRACTION, WHATEVER IT IS. IT'S A
7 MISDEMEANOR.

8 SO YOU WANTED THIS. THAT'S WHY I'M
9 ASKING.

10 MS. ABRAMSON: WHAT WE WANTED IS A THEFT.

11 THE COURT: THAT REQUIRES MORE INSTRUCTIONS
12 DEFINING MISDEMEANOR AND EVERYTHING ELSE, BURDEN OF
13 PROOF, AND ALL SORTS OF THINGS.

14 SO IF YOU WANT TO PROVIDE ME WITH
15 WHATEVER ELSE THAT YOU WANT ON THAT SUBJECT, AND WE
16 CAN DISCUSS IT FURTHER. BUT AS IT STANDS, MY
17 PROPOSAL WAS JUST TO DELETE THAT PHRASE PERTAINING
18 TO A MISDEMEANOR AND PUT A PERIOD AFTER "WITNESS."
19 AND IT SHORTENS THE WHOLE PROCESS.

20 YOU CONSIDER IT AND LET ME KNOW WHAT YOU
21 WANT TO DO. IT HAS TO BE DONE SO WE CAN GIVE IT TO
22 THE JURY.

23 ANYTHING ELSE NOW BEFORE WE RECESS?

24 MS. TOWERY: HAS THE COURT HAD A CHANCE TO
25 REVIEW --

26 THE COURT: OH, YES. I'M SORRY. THE
27 TRANSCRIPT. I HAVE THE TAPE-RECORDING THAT YOU GAVE
28 ME AND MR. LEVIN'S TAPE. I'VE LISTENED TO IT

1 AGAIN. I CAN'T DO ANY BETTER. THE THING I CAN SAY
2 IS THE PEOPLE IN THEIR ARGUMENT REFERRED TO "THE
3 BED."

4 MS. TOWERY: EXACTLY.

5 THE COURT: I GUESS THEY'RE CONCEDING THAT
6 ONE. THE OTHER ONE I JUST CAN'T HEAR IT ONE WAY OR
7 THE OTHER, YOUR VERSION OR THE OTHER. IF YOU WANT
8 TO PUT THEM BOTH IN.

9 MS. TOWERY: WHY DON'T WE PUT THEM BOTH IN.

10 MR. LEVIN: THERE IS ONE OTHER MATTER I URGE
11 THE COURT TO HEAR IN CAMERA. IT'S AN URGENT MATTER.
12 IT WILL ONLY TAKE ABOUT FIVE MINUTES.

13 THE COURT: WHEN YOU SAY IN CAMERA, DO YOU
14 WANT IT WITH OR WITHOUT THE PROSECUTION?

15 MS. ABRAMSON: I THINK THE PROSECUTION'S
16 PROBABLY ENTITLED TO BE HERE FOR THIS.

17 THE COURT: OKAY. WE'LL JUST CLEAR THE
18 COURTROOM.

19 (PAGES 51557 THROUGH 51563 WERE
20 HELD IN CAMERA, AND SEALED
21 BY ORDER OF THE COURT.)

22

23

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 FRIDAY, FEBRUARY 23, 1996

18 VOLUME 302

19 (PAGES 51557 THROUGH 51563 SEALED)

20

21

22

23

24

25

26 APPEARANCES:
(SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

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FOR THE DEFENDANT

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JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

PUBLIC DEFENDER

10

BY: CHARLES GESSLER, DEPUTY

AND

11

TERRI TOWERY, DEPUTY

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LOS ANGELES, CA 90012

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MARY LU MURPHY

22 CSR NO. 5178
23 MARILYN FADALE,
24 CSR NO. 4547
25 OFFICIAL REPORTERS
26
27
28

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3

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5 FRIDAY, FEBRUARY 23, 1996 P.M. 51463 302

6
7 PROCEEDINGS

8 OPENING ARGUMENT BY
9 THE PEOPLE (CONTINUED) 51338 302

10
11
12 CHRONOLOGICAL INDEX OF WITNESSES
13

14 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.
15 (NONE THIS VOLUME.)
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.

3 444- CIGNARELLI CONTRACT 51103 302

4 405-C & D- DR. WILSON'S NOTES 51557 302-A