

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 PLAINTIFFS, )

7 VS. ) NO. BA 068880

8 ERIK GALEN MENENDEZ, AND )

9 JOSEPH LYLE MENENDEZ, )

10 DEFENDANTS. )

11  
12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 MONDAY, FEBRUARY 26, 1996

14 VOLUME 303

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18  
19  
20 APPEARANCES:

21 (SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI  
3 DISTRICT ATTORNEY  
BY: DAVID CONN, DEPUTY  
4 AND  
CAROL NAJERA, DEPUTY  
5 18000 CRIMINAL COURTS BLDG.  
210 WEST TEMPLE STREET  
6 LOS ANGELES, CA 90012

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

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FOR THE DEFENDANT  
15 ERIK GALEN MENENDEZ: LESLIE ABRAMSON  
ATTORNEY AT LAW  
16 4929 WILSHIRE BOULEVARD  
SUITE 940  
17 LOS ANGELES, CA 90010

18

BARRY LEVIN, ESQ.  
11661 SAN VICENTE BOULEVARD  
19 LOS ANGELES, CA 90049

20

21

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

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51564

1 VAN NUYS, CALIFORNIA; MONDAY, FEBRUARY 26, 1996  
2 9:10 A.M.  
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE  
4 (APPEARANCES AS HERETOFORE NOTED.)  
5 (MARILYN A. FADALE, OFFICIAL REPORTER.)  
6 (MARY LU MURPHY, OFFICIAL REPORTER.)  
7  
8 (THE FOLLOWING PROCEEDINGS WERE  
9 HELD IN OPEN COURT, OUT OF THE  
10 PRESENCE OF THE JURY:)  
11  
12 THE COURT: IN THE TRIAL, THE PARTICIPANTS  
13 ARE HERE.  
14 SOMETHING YOU WANTED TO TALK ABOUT?  
15 MR. CONN: YES. WE HAD AN OPPORTUNITY TO  
16 LOOK AT THE EXHIBITS THAT COUNSEL IS GOING TO BE  
17 USING THIS MORNING, AND WE DON'T HAVE ANY OBJECTION  
18 TO THE MAJORITY OF THEM. HOWEVER, THERE IS ONE THAT  
19 WE OBJECTED TO PREVIOUSLY DURING THE TRIAL, AND WE  
20 WOULD, ONCE AGAIN, MAKE AN OBJECTION TO THE SAME  
21 EXHIBIT THIS TIME.

22           AND THE COURT WILL RECALL, BEHIND THE  
23 LARGE EXHIBIT THERE ON THE BOARD, THERE'S A  
24 SO-CALLED "WEEK IN CRISIS" IN WHICH YOU CAN JUST SEE  
25 THE CORNER IN THE BACK THERE, IN WHICH COUNSEL GOES  
26 THROUGH A DAY-BY-DAY DESCRIPTION OF WHAT ALLEGEDLY  
27 HAPPENED THAT WEEK, I BELIEVE, FROM THE PREVIOUS  
28 SUNDAY UP UNTIL THE SUNDAY OF THE SHOOTING.

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1           AND THE COURT WILL RECALL THAT AS  
2 COUNSEL SOUGHT TO USE THAT DURING THE COURSE OF THE  
3 TRIAL, WE TOOK A RECESS, AND FOLLOWING THE RECESS  
4 THE COURT CAME BACK, AND I SAID WE HAD AN ENORMOUS  
5 NUMBER OF OBJECTIONS. I FORGET WHAT IT WAS.  
6 SOMETHING IN THE ORDER OF TWO DOZEN OBJECTIONS TO  
7 THAT EXHIBIT.

8           WE BEGAN TO GO THROUGH IT, AND BEFORE WE  
9 EVEN GOT INTO ONE THIRD OF THE OFFER OF PROOF, THE  
10 COURT AT THAT POINT AGREED WITH THE PROSECUTION THAT  
11 THE DEFENSE WOULD NOT BE ABLE TO USE THAT.

12          WE WOULD OBJECT AT THIS TIME. THE  
13 PROBLEM WITH THE EXHIBIT IS IT MISSTATES THE  
14 TESTIMONY IN THIS CASE. IN PUTTING THAT TOGETHER I  
15 THINK THAT COUNSEL RELIED UPON THE TESTIMONY OF LYLE  
16 MENENDEZ FROM THE FIRST TRIAL, AND THERE ARE MANY,

17 MANY REFERENCES IN THERE, WHICH ARE EITHER TO THE  
18 TESTIMONY OF LYLE MENENDEZ IN THE FIRST TRIAL, OR  
19 THINGS WHICH JUST DIDN'T PAN OUT IN THIS TRIAL, OR  
20 WHICH IS CONTRARY TO THE EVIDENCE IN THIS TRIAL.

21 SO THERE'S AN ENORMOUS NUMBER OF  
22 OBJECTIONS THAT WE HAVE TO THAT EXHIBIT. AND IF  
23 WE'RE GOING TO GO THROUGH IT OBJECTION BY OBJECTION,  
24 I CAN DO THAT AT THIS TIME.

25 MS. ABRAMSON: IT'S NOT AN EXHIBIT. IT'S A  
26 CHART I'M USING FOR ARGUMENT, AS I USED IT IN MY  
27 OPENING, TO JUST OUTLINE THE BASIC EVENTS OF THE  
28 WEEK. AND IT WAS BASED ON THE TESTIMONY OF MY

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1 CLIENT, AND MY CLIENT ALONE, FROM THE FIRST TRIAL.

2 BUT THESE ARE ARGUMENT POINTS, AND I'M  
3 GOING TO -- I MEAN, IF I'M GOING TO STATE OR ASK THE  
4 JURY TO ACCEPT SOMETHING ON THAT CHART THAT IS  
5 FACTUALLY INACCURATE, WHAT A BONANZA FOR THE  
6 PROSECUTOR. THEN HE CAN GET UP AND DO WHAT I'M  
7 ABOUT TO DO, WHICH IS TO SHOW THAT I LIED TO THE  
8 JURY BY MISSTATING THE FACTS.

9 IT IS NOT AN EXHIBIT. IT IS MERELY AN  
10 ARGUMENT SUMMARY.

11 MR. CONN: I DON'T THINK THAT COUNSEL SHOULD

12 FEEL SHE HAS A RIGHT TO STATE TO THE JURY, WHICH IS

13 EXACTLY WHAT SHE WOULD BE DOING --

14 MS. ABRAMSON: I DON'T THINK THERE'S --

15 MR. CONN: IF I MAY PLEASE CONTINUE.

16 THE COURT: ONE SIDE AT A TIME.

17 MR. CONN: AS I INDICATED, THERE ARE MANY

18 THINGS ON THAT CHART WHICH SIMPLY CANNOT BE

19 JUSTIFIED, THAT ARE SIMPLY CONTRARY TO THE EVIDENCE

20 IN THIS TRIAL. AND I DON'T THINK THAT COUNSEL

21 SHOULD BE PERMITTED TO SHOW THAT TO THE JURY UNDER

22 THE ASSUMPTION IT IS FROM THIS TRIAL, WHEN WE ALL

23 KNOW THERE ARE MANY, MANY ERRORS TO THAT CHART WHICH

24 ARE CONTRARY TO THE EVIDENCE IN THIS TRIAL.

25 MS. ABRAMSON: THEY'RE NOT CONTRARY. THE

26 OBJECTION BEFORE WAS THIS WAS CONCLUSIONARY LANGUAGE

27 ABOUT MY CLIENT'S STATE OF MIND, WHICH I WASN'T

28 PERMITTED TO ARGUE AS A REASONABLE INFERENCE FROM

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1 THE EVIDENCE.

2 THE COURT: JUST GIVE ME AN EXAMPLE, MR.

3 CONN, OF WHAT IT IS THAT JUST STANDS OUT.

4 MR. LEVIN: DAVID, PULL THE TOP CLIP AND THAT

5 WILL --

6 (COUNSEL READING CHART.)

7

8 THE COURT: IT LEAPS OUT AT YOU.

9 MS. ABRAMSON: JUST WHAT I WAS THINKING.

10 MR. CONN: THERE'S SO MUCH DETAIL, LIKE I  
11 SAID. I CAN TELL THE COURT THAT THERE ARE AT LEAST  
12 A HALF DOZEN INACCURACIES. IT'S GOING TO TAKE A FEW  
13 MINUTES TO GO THROUGH IT.

14 THE COURT: JUST GIVE ME ONE EGREGIOUS  
15 EXAMPLE.

16 MR. CONN: I HAVE TO READ IT LINE BY LINE. I  
17 WAS PREPARED TO MAKE A PRESENTATION TO THE COURT  
18 WHEN COUNSEL FIRST WISHED TO PRESENT THIS.

19 THE COURT: IT WAS AT A DIFFERENT PHASE OF  
20 THE TRIAL, DURING TESTIMONY.

21 MR. CONN: I UNDERSTAND. I UNDERSTAND.

22 THE COURT: OBVIOUSLY, THIS IS A DIFFERENT  
23 PURPOSE.

24 MR. CONN: I UNDERSTAND. I JUST NEED A  
25 COUPLE OF MINUTES.

26 (COUNSEL READING CHART.)

27

28 THE COURT: I THINK, BY THE WAY, I

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1 MISINFORMED THE JURY ON FRIDAY ABOUT THE 4:00

2 O'CLOCK. I GUESS THE 27TH IS THE DAY THE JURORS  
3 NEEDED 4:00 O'CLOCK, NOT THE 26TH. I THOUGHT TODAY  
4 WAS THE 27TH WHEN I SPOKE ON FRIDAY. I GUESS IT'S  
5 TOMORROW THEY HAVE TO LEAVE AT 4:00.

6 MS. ABRAMSON: I DIDN'T MAKE UP ENOUGH  
7 ARGUMENT TO GO THAT EXTRA 15 MINUTES.

8 THE COURT: I BET.

9 (COUNSEL READING CHART.)

10

11 MS. NAJERA: YOUR HONOR, ON WEDNESDAY -- JUST  
12 WHAT I'M FOCUSING ON -- AUGUST 16TH, 1989, THE FIRST  
13 STATEMENT: "LYLE TALKS TO HIS MOTHER AND TELLS HER  
14 THAT HE IS GOING TO TALK TO HIS FATHER AND PERSUADE  
15 HIM TO STOP MOLESTING ERIK."

16 I BELIEVE THAT ERIK MENENDEZ TESTIFIED  
17 THAT ALL LYLE TOLD HIM WAS HE WAS GOING TO TALK TO  
18 HIS FATHER.

19 LYLE MENENDEZ TESTIFIED IN THE TRIAL  
20 WHAT IT WAS HE DISCUSSED WITH HIS MOTHER ABOUT WHAT  
21 HE WAS GOING TO TALK TO HIS FATHER ABOUT. THAT WAS  
22 NEVER ELICITED IN THIS TRIAL. THAT WHOLE FIRST  
23 SECTION IS WRONG.

24 FURTHER DOWN ON THAT SAME DAY IT  
25 STATES: LYLE MENENDEZ DIDN'T TELL ERIK MENENDEZ  
26 THEIR MOTHER KNOWS THAT LYLE IS GOING TO CONFRONT  
27 THEIR FATHER ABOUT THE MOLESTATION."

28 IF LYLE DIDN'T TELL ERIK THAT, THERE'S



1 NO WAY THAT TESTIMONY COULD HAVE COME IN IN THIS  
2 TRIAL. IT DIDN'T COME IN, AND IT'S CLEARLY  
3 SOMETHING ONLY LYLE MENENDEZ COULD HAVE TESTIFIED  
4 TO.

5 OF THE FOUR POINTS ON WEDNESDAY, AUGUST  
6 16TH, 1989 THE FIRST ONE AND THE LAST ONE ARE  
7 CLEARLY WRONG, AND THEN HE ASKS HIS MOTHER FOR  
8 HELP. SHE REFUSES ON WEDNESDAY, AUGUST THE 16TH.

9 THEY DON'T SAY WHO "HE" IS, BUT I DON'T  
10 BELIEVE THERE'S ANY TESTIMONY THAT ANYBODY ASKED THE  
11 MOTHER FOR HELP AND SHE REFUSED.

12 SO THIS IS -- THREE OUT OF THE FOUR  
13 POINTS ARE WRONG.

14 AND THE ONLY ONE THAT IS EVEN CLOSE IS  
15 THE FOURTH POINT THAT: "LYLE AND ERIK AT LUNCH  
16 DISCUSSED HOW LYLE WOULD TALK TO HIS FATHER AS SOON  
17 AS HE RETURNED FROM HIS BUSINESS TRIP ON THURSDAY  
18 EVENING."

19 THAT'S THE ONLY THING OUT OF THAT WHOLE  
20 DAY THAT'S RIGHT. AND THAT'S JUST THE FIRST ONE I  
21 LOOKED AT.

22 MS. ABRAMSON: DOES THE COURT WANT A  
23 RESPONSE?

24 THE COURT: WE'LL LET THEM FIND OTHERS HERE

25 FIRST.

26 MR. CONN: ON THURSDAY, AUGUST THE 17TH,  
27 THERE'S A GREAT DEAL OF DETAIL WHICH CAN ONLY BE  
28 ATTRIBUTED TO LYLE MENENDEZ, AND IT IS NOT SOMETHING

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1 THAT LYLE MENENDEZ TOLD ERIK MENENDEZ ABOUT.

2 FOR EXAMPLE, THE FATHER MAKES LYLE  
3 MENENDEZ WAIT 45 MINUTES FOR HIM IN THE STUDY BEFORE  
4 HE WILL TALK TO HIM.

5 THERE'S NO EVIDENCE WHATSOEVER AS TO HOW  
6 MUCH TIME LYLE MENENDEZ WAS KEPT WAITING IN THE  
7 BEFORE TALKING TO THE FATHER.

8 IT SAYS THAT THE FATHER, AT THE TIME OF  
9 THAT MEETING ON SUNDAY, WARNED LYLE MENENDEZ NOT TO  
10 THROW HIS LIFE AWAY.

11 THAT WAS NEVER TESTIFIED BY ERIK  
12 MENENDEZ. I THINK ERIK MENENDEZ SIMPLY TESTIFIED  
13 THAT THERE WAS A CONVERSATION THAT HE BECAME AWARE  
14 OF BETWEEN LYLE MENENDEZ AND JOSE MENENDEZ, NOT THE  
15 DETAILS OF THAT CONVERSATION.

16 MS. NAJERA: ON FRIDAY, AUGUST 18TH, 1989 THE  
17 STATEMENT: "BOTH BROTHERS BELIEVED THAT THE TIME  
18 CHANGE HAD BEEN MADE TO FACILITATE THE TIME TO KILL  
19 THEM."

20 I BELIEVE ERIK MENENDEZ TESTIFIED HE  
21 THOUGHT THAT THE SHARK FISHING TRIP HAD BEEN  
22 CHANGED, AND THAT MADE HIM NERVOUS, BUT THERE WAS NO  
23 TESTIMONY AS TO WHAT LYLE MENENDEZ THOUGHT ABOUT THE  
24 WHOLE THING.

25 (COUNSEL READING CHART.)

26

27 MR. CONN: ON FRIDAY, AUGUST THE 18TH, IT  
28 MAKES REFERENCE TO WHAT BOTH BROTHERS BELIEVED --

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1 MS. NAJERA: THAT WAS THE ONE I JUST TOLD  
2 THEM ABOUT.

3 YOU LOOK AT SATURDAY, I'LL LOOK AT  
4 SUNDAY.

5 (COUNSEL READING CHART.)

6

7 MR. CONN: ON SATURDAY, AUGUST THE 19TH, ONCE  
8 AGAIN, REFERRING TO THE STATE OF MIND OF BOTH  
9 DEFENDANTS, IT SAYS THAT THEY BELIEVED THAT THEY  
10 WILL BE KILLED THE NEXT DAY.

11 NOT ONLY IS THAT UNSUPPORTED BY THE  
12 TESTIMONY OF LYLE MENENDEZ, BUT THAT IS CONTRARY TO  
13 THE TESTIMONY OF ERIK MENENDEZ. HE NEVER  
14 SPECIFICALLY SAID THAT HE, IN FACT, BELIEVED HE

15 WOULD BE KILLED THE NEXT DAY.

16 (COUNSEL READING CHART.)

17

18 MR. CONN: I THINK THAT'S THE MAJORITY OF IT.

19 THE COURT: OKAY. WHAT IS YOUR RESPONSE?

20 MS. ABRAMSON: MY RESPONSE IS, FIRST OF ALL

21 AND MOST IMPORTANTLY, THE JURY CAN'T READ THAT

22 CHART. SO IT'S ONLY I WHO WILL BE MAKING REFERENCE

23 TO IT.

24 CONCERNING THE WEDNESDAY CONVERSATION

25 WITH THE MOTHER, I DID NOT INTEND TO ARGUE THAT LYLE

26 MENENDEZ TOLD HER THAT HE WANTED TO HAVE A

27 CONVERSATION WITH JOSE MENENDEZ CONCERNING

28 MOLESTATION. WHAT I INTENDED TO SAY IS WHAT MY

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1 CLIENT TESTIFIED TO, THAT WHEN HE WAS HAVING LUNCH

2 WITH HIS BROTHER AT THE "OLIVE GARDEN" THAT DAY --

3 THE COURT: YOU DON'T HAVE TO GO INTO THE

4 DETAILS.

5 MS. ABRAMSON: OKAY. THE POINT WAS MY CLIENT

6 TOLD TO LYLE MENENDEZ -- WHO TESTIFIED: "DID YOU

7 TELL MOM WHY?" AND HE CLAIMED NO.

8 THURSDAY, THE 45-MINUTE WAIT, I HAD NO

9 INTENTION OF REFERRING TO. I BELIEVE THAT THE

10 EVIDENCE DOES INCLUDE WHEN MY CLIENT RECITED WHAT HE  
11 WAS TOLD BY HIS BROTHER ABOUT THE CONFRONTATION. I  
12 BELIEVE THE THROW-THE-LIFE-AWAY PART OF WHAT LYLE  
13 MENENDEZ TOLD HIM HIS FATHER HAD SAID. IF I'M WRONG  
14 IN THAT, I'M SURE MR. CONN WILL FIND THE RIGHT CITE  
15 IN THE TRANSCRIPT FOR REBUTTAL.

16 WITH RESPECT TO THE CHANGE IN THE TIME  
17 OF FISHING TRIP, MY CLIENT TESTIFIED THAT HE DID  
18 DISCUSS WITH HIS BROTHER, AND THEY AGREED THAT IT  
19 WAS A VERY OMINOUS SIGN THAT THE TIME OF THE FISHING  
20 TRIP WAS CHANGED.

21 NOW, I DON'T INTEND TO READ THESE  
22 THINGS. THIS IS JUST A GUIDE OF EVENTS.

23 WITH RESPECT TO SATURDAY: "BELIEVED  
24 WOULD BE KILLED NEXT DAY." MY CLIENT TESTIFIED THAT  
25 THEY HAD DECIDED TO BE SEPARATE THE NEXT DAY IN  
26 ORDER TO AVOID BEING KILLED.

27 SO I MEAN, IT'S ARGUMENT.

28 THE COURT: OKAY.

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1 YOU WANT TO RESPOND TO THAT, MR. CONN?

2 MR. CONN: VERY BRIEFLY, YES.

3 AS WITH THE PROSECUTION'S CHARTS, WE  
4 WERE GOING TO USE CHARTS WHICH COUNSEL OBJECTED TO,

5 AND I BELIEVE THAT COUNSEL ARGUED THAT IF IT IS  
6 GOING TO BE IN PRINT, IF IT IS GOING TO BE IN FRONT  
7 OF THE JURY IN PRINT, IT SHOULD BE ACCURATE. AND WE  
8 SIMPLY ASK FOR THE SAME RECOGNITION AT THIS TIME.

9 ON SUNDAY, AUGUST THE 20TH, FOR EXAMPLE,  
10 THERE'S MORE REFERENCES TO THE STATE OF MIND OF LYLE  
11 MENENDEZ AT THE TIME OF THE COMMISSION OF THE  
12 CRIME.

13 IT SAYS, FOR EXAMPLE, THAT THE  
14 CONVERSATION THAT LYLE MENENDEZ HAS ON THAT DAY WITH  
15 HIS FATHER FURTHER ALARMS HIM. IT SPEAKS ABOUT HOW  
16 HE LEARNS THAT HIS FATHER HAS LIED TO PERRY BERMAN.

17 IT TALKS HOW LYLE MENENDEZ -- FINALLY, AT  
18 THE CRITICAL MOMENT, THE MOMENT OF THE KILLING, IT  
19 SAYS THAT LYLE MENENDEZ BELIEVED THAT THE PARENTS  
20 ARE IMPLEMENTING A PLAN TO KILL LYLE AND ERIK.

21 THERE WAS NO EVIDENCE OF THAT  
22 WHATSOEVER. THAT MAY BE INFERRED, BUT THAT IS NOT  
23 THE STATE OF THE RECORD AT THIS TIME.

24 SO, AGAIN, I THINK THERE ARE NUMEROUS  
25 ERRORS IN THIS CHART THAT ARE SIMPLY NOT SUPPORTED  
26 BY THE EVIDENCE.

27 IF IT'S NOT BEING USED -- WHEN COUNSEL  
28 IS SAYING THE JURY CAN'T SEE IT, WHAT'S THE PURPOSE

1 FOR THE EXHIBIT THEN?

2 MS. ABRAMSON: IT HELPS ME.

3 MR. CONN: IF I MAY FINISH.

4 IF THE JURY CAN'T SEE IT, THAT IS

5 SOMETHING THAT COUNSEL CAN'T COMPLAIN PREJUDICE FROM

6 ANYWAY. IF IT'S GOING TO HELP COUNSEL, SHE CAN PUT

7 THE EXHIBIT HERE ON TOP OF THESE EXHIBITS THAT -- IN

8 FRONT OF THE JURY BOX, SO SHE CAN REFER TO IT AS

9 SHE'S MAKING HER ARGUMENT.

10 IF THE JURY DOESN'T SEE IT, I THINK SHE

11 HAS STATED THE REASON WHY NO PREJUDICE COULD EVER

12 POSSIBLY RESULT FROM THE FAILURE TO USE THIS

13 EXHIBIT.

14 THE COURT: OKAY. THE LAST REMARK OF THE

15 PROSECUTION DOES MAKE SENSE. IF THE JURY CAN'T READ

16 IT ANYWAY, WHAT DOES IT MATTER?

17 MS. ABRAMSON: IT HELPS ME. IT'S A GUIDE FOR

18 ME IN ARGUING THE CASE, THAT I CAN INDICATE DAY BY

19 DAY WHAT HAPPENED. AND MOST OF WHAT'S ON THERE, BY

20 CONCESSION, WE KNOW IS ABSOLUTELY ACCURATE.

21 AND IT'S SIMPLY A WAY TO GUIDE ME

22 THROUGH MY ARGUMENT AND TO IMPRESS UPON THE JURY

23 THAT THERE WAS AN ENTIRE WEEK OF CRITICAL EVENTS

24 THAT LED TO THE HOMICIDES IN THIS CASE.

25 COUNSEL CONCEDES WHAT'S ON THERE CAN BE

26 INFERRED FROM THE EVIDENCE. THAT'S THE WHOLE

27 PURPOSE OF ARGUMENT, TO INFER FROM THE EVIDENCE.

28 THE COURT: YOU'RE SAYING THERE ARE SOME

1 THINGS ON THERE THAT ARE NOT SUPPORTED BY THE  
2 EVIDENCE.

3 MS. ABRAMSON: THE ONLY THINGS CONCEDED ARE  
4 THE 45 MINUTES TO WAIT AND THE CONVERSATION WITH  
5 MOTHER ON WEDNESDAY. EVERYTHING ELSE IS, SO I'M NOT  
6 GOING TO REFER TO THOSE THINGS.

7 WHEN WE OBJECTED TO THE PROSECUTION'S  
8 CHARTS AND ASKED FOR CHANGES, IT WAS BECAUSE THEY  
9 WERE MISSTATING THE LAW. THEY WERE MISSTATING -- OR  
10 THEY WERE MISSTATING A CRUCIAL ELEMENT IN THE CASE,  
11 SUCH AS TALKING ABOUT SELF-DEFENSE WHEN FEAR WAS THE  
12 ISSUE, BECAUSE OF THE CHANGE IN WHICH LAW IS GOING  
13 TO BE APPLICABLE.

14 I DON'T THINK IT MAKES ANY SENSE TO  
15 ARGUE THAT IF THIS IS USEFUL TO ME, AND USEFUL  
16 SIMPLY AS AN ILLUSTRATION TO THE JURY, THAT THERE  
17 WERE MANY DAYS OF CRISIS HERE, AS I GO THROUGH IT;  
18 THAT, THEREFORE, IT'S NOT USEFUL BECAUSE THEY CAN'T  
19 ACTUALLY READ THE WORDS. SOME OF THEM MAY BE ABLE  
20 TO, BUT I DOUBT IT.

21 THE COURT: WHAT I WOULD SUGGEST, THEN, IN  
22 ORDER TO UTILIZE THE CHART, THAT THOSE THINGS THAT  
23 YOU CONCEDED ARE NOT SUPPORTED BY THE EVIDENCE BE



24 COVERED UP.

25 MS. ABRAMSON: I CAN JUST BLACK THEM OUT

26 RIGHT NOW, YOUR HONOR.

27 THE COURT: WHICH INCLUDES THE REFERENCE TO

28 THE TIME PERIOD WAITING.

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1 MS. ABRAMSON: UH-HUH. YEAH. THIS WORKS.

2 THE COURT: THE REFERENCE TO THE AUGUST 16TH,

3 LYLE MENENDEZ INDICATING WHAT HE TALKED ABOUT,

4 THAT'S NOT IN THE RECORD.

5 MS. ABRAMSON: MR. LEVIN IS BLACKING OUT AS

6 WE SPEAK --

7 MR. LEVIN: REDACTING.

8 THE COURT: -- THOSE THINGS THAT REFER TO THE

9 BELIEF OF LYLE MENENDEZ THAT ARE NOT DIRECTLY IN THE

10 RECORD THAT YOU CAN ARGUE. BUT SINCE HE DIDN'T

11 TESTIFY, HIS PERSONAL BELIEFS ARE NOT BEFORE THE

12 JURY AS THEY WERE REFLECTED IN YOUR CLIENT'S

13 TESTIMONY.

14 MS. ABRAMSON: GIVE ME A MINUTE.

15 MR. LEVIN: WHAT ELSE?

16 MS. ABRAMSON: COME OVER HERE. JUST TAKE

17 THAT PART OUT. HE IS GOING TO TALK TO HIS FATHER

18 ABOUT -- JUST THAT PART.

19 MS. NAJERA: THE SECOND LINE, THAT LINE  
20 SHOULD COME OUT TOO.  
21 MS. ABRAMSON: THAT'S OKAY, CAROL. WE HAVE  
22 ENOUGH EDITORS HERE.  
23 MS. NAJERA: OKAY. ARE YOU GOING TO TAKE OUT  
24 THE SECOND LINE?  
25 MS. ABRAMSON: NO. HE TESTIFIED TO THAT.  
26 MS. NAJERA: WHO TESTIFIED TO THAT?  
27 MS. ABRAMSON: MY CLIENT.  
28 MS. NAJERA: HE ASKS FOR HIS MOTHER --

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1 MS. ABRAMSON: THAT LYLE ASKED FOR MOTHER'S  
2 HELP.  
3 MS. NAJERA: THAT WASN'T TESTIFIED TO.  
4 MS. ABRAMSON: I BELIEVE IT WAS.  
5 MS. NAJERA: NO, IT WASN'T.  
6 MS. ABRAMSON: I'M NOT GOING TO ARGUE.  
7 MS. NAJERA: THERE'S SOME STUFF WE STILL HAVE  
8 DISPUTES OVER, YOUR HONOR.  
9 THE COURT: LET'S FIRST FINISH OFF ONE THING  
10 AT A TIME.  
11 MS. ABRAMSON: LET'S SEE. WHAT WAS IT HERE?  
12 (BRIEF PAUSE WHILE COUNSEL  
13 BLACK OUT PORTIONS OF CHART.)

14

15 THE COURT: THAT'S ENOUGH. I THINK WE'VE  
16 COVERED AS MUCH HERE AS NECESSARY.

17 MS. ABRAMSON: THANK YOU, YOUR HONOR.

18 THE COURT: LET'S PROCEED.

19 MS. NAJERA: THAT ONE IS DEAD WRONG ON  
20 WEDNESDAY.

21 THE COURT: OKAY.

22 MS. NAJERA: HE ASKED HIS MOTHER FOR HELP.  
23 SHE REFUSES. THAT DOESN'T EXIST.

24 THE COURT: IT'S NOT READABLE FROM THAT  
25 DISTANCE, AND COUNSEL CAN ARGUE. IF IT'S NOT  
26 SUPPORTED BY THE RECORD, THEN COUNSEL CAN RESPOND.

27 LOOKING AT ONE OF THOSE CHARTS, I DON'T  
28 KNOW IF IT WAS USED -- UP AGAINST THE JURY RAILING --

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1 EXPRESS MALICE, THE FOURTH LINE, IT SAYS "PREMEDIATION,"  
2 SO...

3 MS. ABRAMSON: WHAT ARE YOU TALKING ABOUT?

4 THE COURT: JUST A MISSPELLING.

5 MS. ABRAMSON: THESE ARE PROSECUTION CHARTS.

6 THE COURT: I KNOW. I'M JUST --

7 MS. ABRAMSON: "PREMEDIATION" IS A VERY  
8 TRICKY CONCEPT IN THE LAW, JUDGE.

9           LET ME JUST PULL THIS. I THINK THIS IS  
10 REASONABLE DOUBT; AND HOPEFULLY, THIS IS NEW  
11 REASONABLE DOUBT AND NOT THE KIND WE LIKE.  
12           WHERE IS REASONABLE DOUBT? HERE IT IS.  
13 HERE IT IS. I HARDLY KNEW IT WITHOUT THAT MORAL  
14 CONVICTION, MORAL CERTAINTY.  
15       THE COURT: OKAY. LET'S GET THE JURY OUT,  
16 PLEASE.  
17       (THE JURY ENTERED THE COURTROOM  
18       AND THE FOLLOWING PROCEEDINGS  
19       WERE HELD:)  
20  
21       THE COURT: OKAY. THE JURY IS IN THE JURY  
22 BOX.  
23       GOOD MORNING, LADIES AND GENTLEMEN.  
24       ONE THING. ON FRIDAY, I BELIEVE -- I  
25 KNOW I DID -- I SAID TODAY WE'D BE BREAKING AT 4:00  
26 O'CLOCK, BECAUSE TWO JURORS NEEDED TO BE OFF. I  
27 THINK THAT WAS TOMORROW, THE 27TH, NOT THE 26TH.  
28       SO UNLESS THAT'S CREATED SOME PROBLEM

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1 FOR YOU, BY MY TELLING YOU WE'D BE BREAKING AT 4:00,  
2 WE'LL GO UNTIL 4:30 TODAY.  
3       TOMORROW IS THE TIME WE'LL BE BREAKING

4 AT 4:00 O'CLOCK, BECAUSE A COUPLE OF JURORS HAVE A  
5 PROBLEM. IF WHAT I SAID FRIDAY HAS CAUSED YOU TO  
6 CHANGE PLANS AND WE HAVE TO BREAK AT 4:00 NOW  
7 BECAUSE OF WHAT I SAID FRIDAY, LET ME OR THE BAILIFF  
8 KNOW AT THE BREAK, AND WE'LL CERTAINLY ACCOMMODATE  
9 THAT SITUATION.

10 OKAY. WE'RE NOW STILL IN ARGUMENT. AT  
11 THIS POINT THE DEFENSE ARGUMENT IS TO BEGIN.

12 FIRST, FROM THE DEFENDANT, ERIK  
13 MENENDEZ, BY MS. ABRAMSON.

14 MS. ABRAMSON: THANK YOU, YOUR HONOR.

15

16 CLOSING ARGUMENT

17 BY MS. ABRAMSON:

18 GOOD MORNING, LADIES AND GENTLEMEN. I  
19 DIDN'T WRITE ENOUGH ARGUMENT TO GO FROM 4:00 TO  
20 4:30.

21 YOU'RE LOOKING AT THIS LITTLE NOTEBOOK  
22 AND SAYING, "GEE, THAT DOESN'T LOOK TOO BAD," BUT  
23 GUESS WHAT? I HAVE ANOTHER NOTEBOOK. SO...

24 THE LAST TIME, IN THE FIRST TRIAL IN  
25 THIS CASE, I ARGUED FOR TWO AND A HALF DAYS, AND I  
26 TOOK A RIBBING FOR IT FOR YEARS. "WHY WOULD YOU EVER  
27 HAVE TO ARGUE SO LONG?" I WAS ASKED.

28 NOW MR. CONN HAS SET THE RECORD, I

1 THINK, FOR ARGUMENT IN CRIMINAL CASES. AND BEING A  
2 VERY COMPETITIVE SPIRIT YOU'D THINK NOW I'VE GOT TO  
3 GO LONGER, BUT I'M NOT GOING TO DO THAT TO YOU. I  
4 DON'T FEEL THAT MY CASE IS SO WEAK THAT IT NEEDS  
5 THREE AND A HALF DAYS TO ARGUE.

6 LAWYERS LIKE TO THINK THAT WHAT THEY DO  
7 MATTERS, ESPECIALLY TRIAL LAWYERS. WE THINK EVERY  
8 QUESTION WE ASK IS, YOU KNOW, BRILLIANT; AND EVERY  
9 ARGUMENT WE MAKE IS DETERMINATIVE OF THE OUTCOME OF  
10 THE CASE.

11 NOW, I'VE BEEN PRACTICING CRIMINAL  
12 DEFENSE FOR 27 YEARS, AND I HAVE TALKED TO A LOT OF  
13 JURIES, AND THEY KEEP ASSURING ME THEY HAD THEIR  
14 MIND MADE UP BEFORE ARGUMENT. THEY DIDN'T NEED ME  
15 TO TELL THEM WHAT WAS OBVIOUS TO THEM. IT WAS A  
16 WASTE OF TIME.

17 AND BASED ON THAT, YOU'D THINK I'M NOW  
18 GOING TO SIT DOWN AND GO AWAY. BUT I CAN'T DO THAT,  
19 BECAUSE I'M NOT -- I'M TOO INSECURE, NUMBER ONE; AND  
20 NUMBER TWO, I DO THINK THAT TO BE REALISTIC, IN  
21 SPITE OF WHAT YOU'RE TOLD ABOUT KEEPING AN OPEN MIND  
22 FOREVER, IT IS IMPOSSIBLE FOR PEOPLE TO SIT THROUGH  
23 THE UNRAVELING OF A COMPLICATED STORY AND NOT DRAW  
24 SOME CONCLUSIONS AS THEY GO ALONG. THE HUMAN MIND  
25 NEEDS TO UNDERSTAND WHAT IT'S HEARING, AND PEOPLE  
26 SIFT THROUGH INFORMATION AS THEY GET IT, FORM

27 CERTAIN OPINIONS AND CONCLUSIONS, AND THAT'S FINE.

28 THERE'S NOTHING VIOLATIVE OF THE JUROR' OATH IN

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1 DOING THAT.

2 WHAT I STILL THINK FINAL ARGUMENT MAY BE  
3 USEFUL FOR IS TO GIVE YOU A BROADER PICTURE OF HOW  
4 THINGS FIT TOGETHER; AND MORE IMPORTANTLY, TO TRY TO  
5 TAKE THE FACTS AS YOU HAVE, OR WILL, DECIDE THEM,  
6 AND APPLY THEM TO THE LAW THAT'S BEING GIVEN BY THE  
7 JUDGE IN THIS CASE, SO THAT YOU CAN RENDER A JUST  
8 VERDICT.

9 AND I BELIEVE THAT IT IS YOUR DESIRE,  
10 EVERY ONE OF YOU, TO RENDER A JUST VERDICT IN THIS  
11 CASE, IN ANY CASE IN WHICH YOU WOULD SERVE AS A  
12 JUROR.

13 NOW, I MUST SAY, IN LISTENING TO  
14 MR. CONN'S FINAL ARGUMENT, I FOUND A NEW PURPOSE FOR  
15 FINAL ARGUMENT, ONE THAT I MUST ADMIT, IN ALL THESE  
16 YEARS I HAVE NEVER BEFORE BEEN EXPOSED TO. AND THAT  
17 WAS THE NOTION THAT YOU COULD COMPLETELY  
18 MISREPRESENT SIX MONTHS OF TRIAL, THAT YOU COULD  
19 FLAT OUT TELL THE JURY THINGS THAT WERE FALSE, AND  
20 SOMEHOW EXPECT THEM TO FORGET EVERYTHING THEY'VE  
21 HEARD, EVERYTHING THEY'VE THOUGHT FOR SIX MONTHS,

22 AND IMPOSE YOUR OWN EXTREMELY BIASED AND DISTORTED  
23 VIEW OF THINGS ON THEM.  
24 IT'S NOT MY GENERAL PRACTICE TO START  
25 OUT MY CLOSING ARGUMENT BY REBUTTING WHAT THE  
26 PROSECUTION HAS SAID. I HAVE MY OWN AGENDA. I HAVE  
27 THINGS I WANT TO TELL YOU, AND CAST THEM IN A  
28 FRAMEWORK THAT I THINK IS MEANINGFUL, AND CERTAINLY

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1 MEANINGFUL FOR THE DEFENSE CASE.

2 BUT I AM GOING TO TAKE A FEW MINUTES--  
3 AND THIS IS THE NOTEBOOK THAT I'M DOING IT WITH --  
4 TO SHOW YOU HOW YOU WERE DECEIVED.

5 AND OF EVERYTHING I CITE TO YOU, I WILL  
6 GIVE YOU THE PAGE, AND I WILL GIVE YOU THE DATE,  
7 WHEN I HAVE IT, AND I WILL TELL YOU WHOSE TESTIMONY  
8 IT IS.

9 MR. CONN ARGUED AT 51,029:

10 "THEY DISCUSSED AN ALIBI. THEY  
11 DISCUSSED ALL OF THESE OTHER THINGS,  
12 AND YET A VERY IMPORTANT PART OF THEIR  
13 STORY, HOW THEY WOULD SOUND TO THE  
14 POLICE, WHAT THEY WOULD SAY TO THE  
15 POLICE, THEY DIDN'T DISCUSS THAT."

16 MY CLIENT'S TESTIMONY, CROSS-EXAMINATION,



17 PAGE 45,107:

18 "BY MR. CONN: "ARE YOU SAYING  
19 THAT THE POSSIBILITY OF TELLING THE  
20 POLICE THAT YOUR PARENTS HAD BEEN  
21 ARMED WAS NEVER CONSIDERED?  
22 "ANSWER: ACTUALLY, IT WAS JUST  
23 THE OPPOSITE. IT WAS AFTER -- AFTER I  
24 TOLD LYLE THAT I DIDN'T WANT TO TALK  
25 TO THE POLICE AND TELL THEM WHAT  
26 HAPPENED. IT WAS -- WE WERE TRYING TO  
27 DO JUST THE OPPOSITE, AND SAY THAT WE  
28 WERE NOT HOME.

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1 "I REMEMBER BEING WORRIED AND  
2 LYLE BEING WORRIED AND SAYING: 'ARE  
3 YOU GOING TO BE ABLE TO TELL THE  
4 POLICE THAT YOU WERE AT THE MOVIES  
5 INSTEAD OF -- INSTEAD OF AT HOME AT THE  
6 SHOOTING,' AND BEING UNSURE WHETHER OR  
7 NOT I WAS GOING TO BE ABLE TO SAY  
8 SOMETHING DIFFERENT THAN WHAT  
9 HAPPENED."  
10 MY CLIENT'S TESTIMONY AT PAGE 45,098:  
11 "I DIDN'T THINK THAT FAR AHEAD.

12 I JUST THOUGHT --" THAT'S LINE 25 --  
13 "I JUST THOUGHT IT WAS SOMETHING  
14 TO SHOW THE POLICE, TO SHOW THAT WE  
15 WENT THERE.  
16 "QUESTION: YOU GOT FAR ENOUGH TO  
17 KNOW THAT THIS IS SOMETHING THAT YOU  
18 MIGHT HAVE TO SHOW THE POLICE, CORRECT?  
19 "ANSWER: RIGHT."  
20 PAGE 45,113. THIS IS MY CLIENT'S ANSWER:  
21 "NO. I REMEMBER THAT THE NEXT  
22 TIME I SAW HIM WAS HIM SAYING THAT WE  
23 HAD TO GO OUTSIDE, THAT THE POLICE  
24 WANTED US TO GO OUTSIDE. AND THEN HIM  
25 ASKING ME IN THE BACK OF THE POLICE  
26 CAR WHETHER OR NOT I WAS GOING TO BE  
27 ABLE TO -- WHETHER OR NOT I WAS GOING  
28 TO BREAK DOWN AND TELL THE POLICE WHAT

51584

1 HAPPENED."  
2 THESE ARE IN NO PARTICULAR ORDER, BY THE  
3 WAY. YOU SEE THE NUMBERS, HOW HUGE THIS RECORD IS.  
4 "SO OVER THE WEEKEND WE JUST TOOK A REPRESENTATIVE  
5 SAMPLE, A DROP IN THE OCEAN, OF THE DECEPTION THAT  
6 YOU WERE FACED WITH HERE.

7 MR. CONN ARGUED AT PAGE 50,998.

8 "NOW HE WANTS YOU TO BELIEVE THAT  
9 HE MADE THIS ADMISSION TO DR. OZIEL,  
10 ADMITTED THE KILLINGS TO HIM, BUT THAT  
11 DR. OZIEL NEVER ASKED HIM WHY HE DID  
12 THE KILLINGS. HE WANTS YOU TO BELIEVE  
13 THAT."

14 AND AT 50,999:

15 "WITH ALL OF THE QUESTIONS  
16 DR. OZIEL ASKED HIM, ERIK MENENDEZ IS  
17 ASKING YOU TO BELIEVE THAT DR. OZIEL  
18 NEVER SAID: 'WHY YOU'D DO IT?'

19 "THAT IS BE ABSURD. THE FIRST  
20 QUESTION THAT DR. OZIEL WOULD HAVE  
21 ASKED IS 'WHY YOU'D DO IT?'"

22 AND ON AND ON.

23 MY CLIENT'S TESTIMONY, PAGE 45,324:

24 "QUESTION: AT WHAT POINT DID HE  
25 SAY TO YOU, 'TELL ME WHY YOU KILLED  
26 YOUR PARENTS'?

27 "ANSWER: BACK IN THE OFFICE. I  
28 BELIEVE IT WAS AFTER HE HAD CALLED

51585

1 LYLE.

2 "QUESTION: AND WHEN HE ASKED  
3 YOU, 'TELL ME WHY YOU KILLED YOUR  
4 PARENTS,' WHAT DID YOU TELL HIM?

5 "ANSWER: I TOLD HIM THAT I  
6 DIDN'T KNOW WHY. I WASN'T EXPECTING  
7 THE QUESTION, AND AT THIS POINT HE HAD  
8 CALLED LYLE."

9 PAGE 45,325:

10 "HE WAS SAYING, 'I UNDERSTAND  
11 THAT YOU DON'T KNOW WHY. I WOULD BE  
12 SURPRISED IF YOU KNEW WHY.'".

13 PAGE 45,328:

14 "QUESTION BY MR. CONN: AT WHAT  
15 POINT DID DR. OZIEL GET BACK TO THE  
16 ISSUE OF WHY DID YOU KILL YOUR  
17 PARENTS, MR. MENENDEZ?

18 "ANSWER: NOVEMBER 2ND."

19 PAGE 43,873, MY CLIENT'S ANSWER:

20 "HE KEPT ASKING ME WHY I THINK I  
21 DID IT. I SAID I DIDN'T KNOW. HE  
22 SAID THAT HE WOULDN'T EXPECT ME TO  
23 KNOW, THAT I NEEDED TO DO EXTENSIVE  
24 THERAPY."

25 PAGE 51,021, MR. CONN'S ARGUMENT:

26 "ERIK MENENDEZ WANTS YOU TO  
27 BELIEVE THAT HE NEVER HAD THAT  
28 DISCUSSION WITH HIS BROTHER, LYLE

1 MENENDEZ. ABSOLUTELY INCREDIBLE.  
2 COULDN'T HAPPEN. THAT WOULD BE THE  
3 FIRST THING YOU WOULD SAY TO YOUR  
4 BROTHER: 'HOW ARE WE GOING TO PUT  
5 DR. OZIEL AT EASE?'

6 "THE ONE WAY WE COULD DO IT IS  
7 BY TELLING HIM WE KILLED IN FEAR.  
8 DOCTOR, DON'T GO TO POLICE. WE'RE NOT  
9 AS DANGEROUS AS YOU MAY THINK.'

10 "ONE OF THE MANY REASONS WHY ERIK  
11 MENENDEZ' STORY IS TOTAL NONSENSE."

12 PAGE 43,863, MY CLIENT'S TESTIMONY:

13 "AND WE DISCUSSED WHAT TO DO. I  
14 SUGGESTED THAT MAYBE WE SHOULD TELL  
15 DR. OZIEL EVERYTHING, THE TRUTH OF  
16 WHAT HAPPENED, SO THAT HE WOULDN'T NO  
17 LONGER FEEL UNCOMFORTABLE, KNOWING THE  
18 INFORMATION. LYLE THOUGHT THAT WAS A  
19 HORRIBLE IDEA, AND I PROMISED NOT TO  
20 TELL. AND I WASN'T SO KEEN ON TELLING  
21 ANYWAY, BUT THAT WAS DISCUSSED."

22 PAGE 45,356, MY CLIENT'S TESTIMONY:

23 "BUT THE WAY TO CALM DR. OZIEL  
24 DOWN, I TOLD LYLE, WAS TO HAVE HIM  
25 THINK THAT I WASN'T A BAD PERSON,

26 WHICH IS WHAT I WANTED HIM TO TELL ME,  
27 THAT I WASN'T A BAD PERSON, WAS TO  
28 TELL HIM WHAT HAPPENED. I DIDN'T HAVE

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1 ANY DESIRE TO DO IT, AND I DIDN'T  
2 REALLY WANT TO DO IT. BUT I BROUGHT  
3 THAT UP TO LYLE, AND HE SAID, 'NO,  
4 WE'LL CALM HIM DOWN, AND HE WON'T GO  
5 TO THE POLICE, AND WE WILL GIVE HIM  
6 WHAT HE WANTS AND SATISFY HIM,' BUT HE  
7 DID NOT WANT TO GET INTO THOSE ISSUES,  
8 AND HE WAS ADAMANT ABOUT IT. AND I  
9 AGREED."

10 MR. CONN'S ARGUMENT, PAGE 51,241:

11 "ERIK MENENDEZ SIMPLY DOESN'T  
12 WANT TO ADDRESS HIS OWN MORAL  
13 RESPONSIBILITY IN ANY WAY. HE DOESN'T  
14 WANT TO ADDRESS HIS MORAL  
15 RESPONSIBILITY FOR THE BURGLARY, ANY  
16 MORE THAN HE WANTS TO ADDRESS HIS  
17 MORAL RESPONSIBILITY FOR THE  
18 KILLINGS. THIS IS WHY HE PRETENDS HE  
19 DOESN'T KNOW."

20 MY CLIENT'S TESTIMONY AT PAGE 43,997:

21 "QUESTION BY MR. CONN: YOU BLAME  
22 YOUR FATHER FOR THIS BURGLARY, MR. MENENDEZ?  
23 "ANSWER: NOT IN ANY WAY.  
24 "QUESTION: ISN'T THAT WHAT YOU  
25 WERE TRYING TO SUGGEST TO THE JURY,  
26 THAT YOU WERE TAUGHT TO CHEAT BY YOUR  
27 FATHER; AND, THEREFORE, YOUR FATHER IS  
28 SOMEHOW RESPONSIBLE FOR THIS -- THESE

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1 BURGLARIES?  
2 "ANSWER: MY FATHER IS NOT  
3 RESPONSIBLE FOR THESE BURGLARIES.  
4 "QUESTION: IS HE RESPONSIBLE FOR  
5 HIS DEATH IN ANY WAY?  
6 "ANSWER: I'M RESPONSIBLE FOR HIS  
7 DEATH.  
8 "QUESTION: AND HE IS NOT,  
9 CORRECT?  
10 "ANSWER: YES.  
11 "QUESTION: AND YOUR MOTHER IS  
12 NOT, CORRECT?  
13 "ANSWER: SHE IS NOT.  
14 "QUESTION: AND YOUR BROTHER IS  
15 RESPONSIBLE ALONG WITH YOU; IS THAT

16 CORRECT?

17 "ANSWER: YES."

18 MR. CONN'S ARGUMENT, PAGE 51,254:

19 "THEN I ASKED THE QUESTION: 'WHAT

20 MADE YOU BELIEVE THAT YOUR FATHER

21 WOULD NO LONGER SEXUALLY ABUSE YOU

22 ONCE YOU BEGAN TO GO TO U.C.L.A., JUST

23 A FEW MILES AWAY?'

24 "AND ONCE AGAIN, IN RESPONSE TO

25 THAT HE SAID, 'I DON'T KNOW.'"

26 PAGE 44,326, MY CLIENT'S TESTIMONY:

27 ANSWER TO A QUESTION: "I WAS

28 HOPING IT WOULD END RIGHT AFTER HIGH

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1 SCHOOL. THEN I THOUGHT IT WOULD

2 CERTAINLY END WHEN I WENT AND STARTED

3 AT U.C.L.A.

4 "QUESTION: THESE --" THESE ARE NOT IN

5 DIRECT ORDER. I'M LEAPING.

6 44,327:

7 "QUESTION: YOU WERE CONVINCED

8 THAT ONCE YOU WENT TO U.C.L.A., THAT

9 THE SEXUAL ABUSE BY YOUR FATHER WAS

10 GOING TO STOP; IS THAT CORRECT?



11 "ANSWER: IT WAS MY FANTASY THAT  
12 IT WOULD, MY STRONG HOPE.  
13 "QUESTION: AND YOU THOUGHT THAT  
14 YOUR FATHER, WHO TOLD YOU THAT HE  
15 WOULD KILL YOU IF YOU LEFT THE HOME,  
16 WAS GOING TO STOP SEXUALLY ABUSING YOU  
17 BECAUSE YOU WERE A FEW MILES AWAY?"  
18 YOU CAN TELL WHO'S ASKING THIS  
19 QUESTION.  
20 "ANSWER: NO. THIS WAS A FANTASY  
21 THAT I DEVELOPED AND THE DREAM THAT I  
22 GRASPED ONTO WHEN IT STARTED UP AGAIN  
23 IN CALIFORNIA; AND SO I HAD IT FOR  
24 YEARS UP TO THIS POINT. IN MY MIND IT  
25 DIDN'T MATTER WHETHER I WENT TO  
26 U.C.L.A. OR TO BROWN."  
27 ON AND ON, ERIK AND HIS RESCUE FANTASY.  
28 "QUESTION: BUT ONCE YOU FOUND

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1 OUT THAT YOUR FATHER WAS GOING TO --  
2 WOULD PREFER YOU IN U.C.L.A., YOU  
3 STILL THOUGHT THAT THE SEXUAL ABUSE  
4 WAS GOING TO STOP BECAUSE YOU WERE A  
5 FEW MILES AWAY?

6 "ANSWER: YES.

7 "QUESTION: THAT MADE SENSE TO

8 YOU?

9 "ANSWER: IT DID IN MY WORLD.

10 "QUESTION: AND WHY IN YOUR WORLD

11 DID THAT MAKE SO MUCH SENSE, TO THINK

12 YOUR FATHER, WHO HAD THE POWER TO

13 CHASE YOU AROUND THE WORLD, COULDN'T

14 DRIVE A FEW MILES AWAY AND SEXUALLY

15 ASSAULT YOU IN U.C.L.A.?"

16 IN THE DORM?

17 "NO. I THINK IT WAS A DREAM. IT

18 WAS A HOPE THAT I NEEDED TO HAVE, AND

19 WITHOUT IT I DON'T THINK THAT I WOULD

20 HAVE LIVED UNTIL I WAS 18."

21 SKIPPING A FEW. 44,329:

22 "MAYBE IT WASN'T BUILT ON

23 RATIONAL OR SENSE, EVEN THOUGH IT MADE

24 SENSE TO ME. IT MADE SENSE IN MY

25 WORLD. I DON'T REMEMBER READING

26 THAT."

27 MR. CONN'S ARGUMENT, 51,257:

28 "HE HAD NO INTEREST IN GOING TO

1 SCHOOL. HE DID NOT GO TO SCHOOL. HE  
2 PLAYED TENNIS."

3 MY CLIENT'S TESTIMONY, 45,256:

4 "QUESTION: AND DID YOU TELL  
5 DETECTIVE ZOELLER ON SEPTEMBER 17TH,  
6 THAT 'I DON'T WANT TO GO TO SCHOOL  
7 THIS YEAR'?"

8 "ANSWER: I TALKED ABOUT SCHOOL.  
9 I THINK I TOLD HIM THAT I HAD --  
10 SEPTEMBER 17TH WAS JUST AFTER I HAD  
11 TALKED TO THE DEAN AT PRINCETON  
12 UNIVERSITY, AND FOUND OUT THAT I WOULD  
13 NOT BE ABLE TO GO TO PRINCETON, WHICH  
14 IS WHAT I THINK I SAID, AND THAT AS A  
15 RESULT, I WAS NOT GOING TO GO TO  
16 SCHOOL. I WAS PROBABLY GOING TO GO ON  
17 TO PLAY TENNIS."

18 MR. CONN'S ARGUMENT, 51,286:

19 "HE DOES NOT RECALL WHETHER THEY  
20 DISCUSSED HOW THEIR PARENTS MIGHT KILL  
21 THEM AND GET AWAY WITH IT. HE SAID  
22 'I'M SURE WE DID.' I'M SURE THAT WE  
23 DID, AS JUST A WAY OF AVOIDING FURTHER  
24 CROSS-EXAMINATION ON THE TOPIC. OH  
25 I'M SURE WE TALKED ABOUT IT.'

26 "WELL, WHAT DID YOU DISCUSS --

27 "WELL, TO -- BECAUSE, LIKE I  
28 SAID, I DON'T REMEMBER TALKING ABOUT

1        THAT."

2            HE DOES NOT RECALL A DISCUSSION  
3 CONCERNING WHERE IT WAS LIKELY TO HAPPEN OR WHEN IT  
4 WAS LIKELY TO HAPPEN."

5            HIS TESTIMONY, 44,563:

6            "QUESTION: DID YOU REACH ANY  
7 CONCLUSIONS CONCERNING WHETHER YOUR  
8 FATHER WOULD DO IT PERSONALLY OR GET  
9 SOMEONE TO DO IT FOR HIM?

10          "ANSWER: LYLE THOUGHT THAT DAD  
11 WOULD NOT GET OTHER PEOPLE INVOLVED.

12          "QUESTION: WHAT WAS YOUR  
13 THOUGHTS ON THAT SUBJECT?

14          "ANSWER: I DIDN'T KNOW MY FATHER  
15 WELL ENOUGH TO KNOW. ALL I KNOW IS  
16 THAT -- WAS THAT I HAD FEAR OF HIM. I  
17 DIDN'T KNOW WHETHER HE WOULD HIRE  
18 PEOPLE OR NOT. LYLE THOUGHT THAT HE  
19 WOULD DO IT MORE LIKELY PERSONALLY  
20 THAN GET OTHER PEOPLE INVOLVED.

21          "QUESTION: DID YOU REACH ANY  
22 CONCLUSIONS CONCERNING WHERE IT WAS  
23 LIKELY TO HAPPEN?

24 "ANSWER: NO.  
25 "QUESTION: DID YOU REACH ANY  
26 CONCLUSIONS CONCERNING WHAT TIME OF  
27 DAY IT WAS LIKELY TO HAPPEN?" .  
28 PAGE 44,566:

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1 "I REMEMBER BELIEVING, FOR  
2 EXAMPLE, THAT IT WOULD HAPPEN WHEN WE  
3 WERE TOGETHER. I DON'T KNOW HOW I  
4 CAME TO THAT CONCLUSION. I KNOW THAT  
5 LYLE AND I WERE DISCUSSING SUCH  
6 THINGS. I DON'T REMEMBER HOW I  
7 ARRIVED AT THAT CONCLUSION."  
8 MR. CONN'S ARGUMENT, 51,268:  
9 HE'S TALKING ABOUT HIS CLAIM THAT ERIK  
10 MENENDEZ NEVER TRIED TO CONTACT HIS BROTHER ON  
11 THURSDAY TO FIND OUT IF HE HAD HAD THE CONVERSATION  
12 YET WITH HIS FATHER, IF THAT CONFRONTATION HAD  
13 OCCURRED.  
14 AND MR. CONN ARGUES:  
15 "AND YET, WHILE HE WANTED ADVANCE  
16 NOTICE IF HIS BROTHER WAS STILL ALIVE  
17 AND HIS FATHER WAS UPSET, HE DOESN'T  
18 EVEN BOTHER TO MAKE CONTACT WITH LYLE

19 MENENDEZ BEFORE HIS FATHER CAME HOME.  
20 WOULDN'T IT BE A WISE THING TO CALL  
21 LYLE MENENDEZ ON THE PHONE AND  
22 SAY,'HOW DID THE MEETING GO? IS THE  
23 COAST CLEAR? CAN I COME HOME? IS  
24 EVERYTHING OKAY?"  
25 "NO. HE DIDN'T MAKE ANY EFFORTS  
26 TO ENSURE HIS SAFETY."  
27 MIND YOU, HE'S TALKING ABOUT MAKING  
28 CONTACT BEFORE HIS FATHER CAME HOME.

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1 43,044, MY CLIENT'S TESTIMONY:  
2 "WHEN I CALLED IN -- I BELIEVE IT  
3 WAS ON THE PHONE WHEN I CALLED IN,  
4 AFTER 6:00, BUT I DON'T REMEMBER. I  
5 KNOW I FOUND OUT AT SOME POINT.  
6 "QUESTION: WHY DID YOU CALL AT  
7 6:00 CLOCK?  
8 "ANSWER: THAT WAS WHAT MY  
9 RECOLLECTION IS, THAT MY DAD WAS GOING  
10 TO BE COMING HOME.  
11 "QUESTION: WHAT WAS THE PURPOSE  
12 OF CALLING BACK TO YOUR HOUSE?  
13 "ANSWER: TO FIND OUT HOW THE

14 CONVERSATION WITH MY BROTHER WENT."

15 43,445 -- HE TESTIFIES HE MAKES SEVERAL  
16 PHONE CALLS THAT DAY.

17 "WELL, I KNEW FROM PREVIOUS  
18 CONVERSATIONS THAT MY DAD'S FLIGHT HAD  
19 BEEN DELAYED UNTIL LATE THAT NIGHT,  
20 AND HE WOULD BE ARRIVING BACK AT THE  
21 HOUSE SOMETIME AFTER 11:00."

22 NOW, THAT'S NOT AN OUTRIGHT FABRICATION,  
23 JUST A STORY.

24 51,327, MR. CONN ARGUES:

25 "IF THAT WERE TRUE, LADIES AND  
26 GENTLEMEN, IF THEY REALLY WANTED TO  
27 REASSURE THEIR FATHER THAT THEY WERE  
28 NOT GOING TO GO TO THE POLICE, DON'T

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1 YOU THINK THEY WOULD HAVE DONE  
2 SOMETHING TO FACILITATE THAT GOAL?  
3 DON'T YOU THINK AT SOME POINT THEY  
4 WOULD HAVE TOLD THEIR FATHER, 'HEY,  
5 WE'RE NOT GOING TO GO TO THE POLICE?'"

6 MR. MENENDEZ' TESTIMONY, 43,454:

7 "QUESTION: DID YOU TRY TO  
8 EXPLAIN OR TELL YOUR FATHER ANYTHING

9 AFTER HE EXPRESSED HIS REACTION TO  
10 LYLE MENENDEZ?  
11 "ANSWER: I JUST TOLD MY DAD THAT  
12 LYLE WASN'T GOING TO TELL ANYONE.  
13 "MY DAD SAID SOMETHING ALONG THE  
14 LINES OF 'YOU'VE MADE YOUR DECISION,  
15 AND ERIK MADE HIS,' AND NOW HE HAD TO  
16 MAKE HIS."  
17 THIS IS REFERRING TO WHAT LYLE MENENDEZ  
18 TOLD ERIK MENENDEZ OCCURRED IN THE CONVERSATION WITH  
19 HIS FATHER.  
20 "MY DAD WAS AT THE DOOR. HE WAS  
21 TELLING HIM HE WAS NOT GOING TO TELL  
22 ANYONE. HE DIDN'T WANT TO TELL ANYONE."  
23 MR. CONN'S ARGUMENT AT 51,287, HE'S  
24 TALKING ABOUT THAT THEY NEVER HAD A DISCUSSION ABOUT  
25 LEAVING, ABOUT GOING SOMEWHERE ELSE. AND HE SAYS:  
26 "DON'T YOU THINK THAT LYLE  
27 MENENDEZ, UNDER THOSE CIRCUMSTANCES,  
28 WOULD HAVE SAID, 'WAIT A MINUTE. WHY

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1 ARE WE DOING THIS? LET'S CONSIDER  
2 SOME OPTIONS HERE. LET MOVE AWAY.  
3 LET'S AVOID KILLING OUR PARENTS."



4 MY CLIENT'S TESTIMONY AT 44,525:

5 "SO SINCE THAT WAS A POSSIBILITY,  
6 THAT YOUR FATHER WAS GOING TO COME AND  
7 KILL YOU THURSDAY NIGHT, DID YOU AND  
8 YOUR BROTHER LEAVE THE HOUSE?

9 "ANSWER: THAT'S WHAT LYLE WANTED  
10 TO DO.

11 "QUESTION: AND DID YOU GIVE YOUR  
12 BROTHER A REASON WHY YOU DIDN'T WANT  
13 TO LEAVE?

14 "ANSWER: I TOLD HIM THAT I  
15 COULDN'T, AND THAT IF HE LEFT HE WOULD  
16 HAVE TO LEAVE ME HERE, AND THAT I  
17 WOULD DIE. IN FACT, I EVEN TOLD HIM  
18 THAT I WOULD KILL MYSELF. I TOLD HIM  
19 THAT HE HAS TO STAY, AND THAT THERE'S  
20 NO WHERE WE CAN GO; THAT ANYWHERE WE'D  
21 GO DAD WILL FIND US, AND THAT WE CAN'T  
22 LEAVE."

23 PAGE 44,538:

24 "QUESTION: WELL, DID YOUR  
25 BROTHER, LYLE MENENDEZ, SAY TO YOU,  
26 'WHY DON'T WE JUST GO TO THE POLICE?

27 "ANSWER: THAT'S PRETTY MUCH WHAT  
28 HE SAID.

1 "QUESTION: WHAT DID YOU SAY?

2 "ANSWER: I SAID, 'THAT'S

3 IMPOSSIBLE. WHAT ARE THEY GOING TO

4 DO?" SOMETHING ALONG THESE LINES.

5 AND HE AGREED TOO, THAT THE POLICE --

6 WE WERE MUCH BETTER OFF RUNNING AWAY,

7 NOT GOING TO ANYONE, THAN GOING TO THE

8 POLICE."

9 THIS IS 44,540:

10 "QUESTION: SO YOU HAD NO FURTHER

11 CONVERSATION WITH YOUR BROTHER, LYLE

12 MENENDEZ, CONCERNING GOING TO THE

13 POLICE, OTHER THAN WHAT YOU JUST TOLD

14 US HERE TODAY; IS THAT CORRECT?

15 "ANSWER: I DON'T REMEMBER ANY

16 FURTHER DISCUSSIONS ABOUT GOING TO THE

17 POLICE. I REMEMBER DISCUSSIONS ABOUT

18 HIM WANTING TO GET AWAY, EVEN ON

19 FRIDAY. I DON'T REMEMBER SPECIFICALLY

20 GOING TO THE POLICE."

21 MR. CONN'S ARGUMENT AT 51,265, HE'S

22 TALKING ABOUT WEDNESDAY, AND THE FACT THAT AT LUNCH

23 THAT DAY ERIK MENENDEZ TESTIFIED HIS BROTHER

24 INFORMED HIM THAT HE, LYLE MENENDEZ, HAD HAD SOME

25 CONVERSATION WITH THEIR MOTHER CONCERNING LYLE'S

26 INTENTION OF TALKING TO JOSE MENENDEZ ON THURSDAY

27 NIGHT.

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1 "WELL, HE CERTAINLY SHOULD HAVE  
2 SAW IT AS ODD --" MEANING GOING TO THE  
3 POLICE -- "HE CERTAINLY SHOULD HAVE  
4 DISCUSSED IT WITH LYLE. HE COULD HAVE  
5 SAID, 'LYLE, WHAT DID YOU DO THAT  
6 FOR? WHY DID YOU TELL OUR MOTHER?  
7 HOW DOES IT ADVANCE OUR CAUSE IN ANY  
8 WAY?'

9 "IT JUST MAKES NO SENSE, LADIES  
10 AND GENTLEMEN."

11 MY CLIENT'S TESTIMONY AT 43,429, ALSO,  
12 ERIK MENENDEZ TALKING ABOUT WEDNESDAY.

13 "I KNEW, THAT HE," MEANING LYLE  
14 MENENDEZ, "WAS DEFINITELY PLANNING ON  
15 ASSISTING ME. HE TOLD ME THAT HE HAD  
16 HAD A CONVERSATION EARLIER IN THE DAY  
17 WITH MY MOTHER. AND I SAID, 'YOU  
18 DIDN'T TELL HER -- TELL HER WHAT I TOLD  
19 YOU, DID YOU?'

20 "AND HE SAID, 'NO.'

21 "HE JUST TOLD HER THAT HE WANTED  
22 TO TALK TO DAD WHEN DAD GOT HOME,

23       SOMETHING TO DO WITH ME."  
24       "QUESTION BY MR. CONN AT THE 44,427:  
25       "AND YOU DIDN'T ASK HIM, 'WHAT  
26       DID YOU DO THAT FOR LYLE'? YOU'RE  
27       JUST GOING TO TIP MY FATHER OFF THAT  
28       SOMETHING IS UP.

51599

1       "ANSWER: I DIDN'T SAY THAT. I  
2       SAID OTHER THINGS.  
3       "QUESTION: DID YOU THINK THAT?  
4       "ANSWER: NO. I WAS MORE  
5       CONCERNED ABOUT HOW MUCH HE HAD TOLD  
6       HER."  
7       I'M SKIPPING A FEW.  
8       MR. CONN'S ARGUMENT AT 51,320. HE'S  
9       TALKING ABOUT THE FACT THAT ERIK MENENDEZ TOOK HIS  
10       GUN ON SATURDAY AND HAD LOOKED UP A RIFLE RANGE  
11       WHICH HAD A GUN STORE AFFILIATED WITH IT. AND ALL  
12       OF THIS IS HIS ARGUMENT THAT EVERYTHING THAT MY  
13       CLIENT SAID IS A LIE. IT'S SORT OF A CLEAN WAY FOR  
14       THE PROSECUTION TO ARGUE A CASE.  
15       IN ANY EVENT, THIS IS WHAT HE SAYS.  
16       "NOW, DOES THAT MAKE ANY SENSE?  
17       HE DOESN'T KNOW WHY HE TOOK HIS GUN

18 WITH HIM ON SATURDAY. HE JUST ENDS UP  
19 IN A RIFLE RANGE FOR THE PURPOSE OF  
20 TARGET PRACTICE. AND YET HE DOESN'T  
21 KNOW WHY HE TOOK THE GUN WITH HIM ON  
22 SATURDAY."

23 TESTIMONY AT 43,557.

24 "QUESTION: DID YOU TAKE YOUR  
25 SHOTGUN ANYWHERE ON SATURDAY?

26 "ANSWER: YES.

27 "QUESTION: WHERE DID YOU TAKE  
28 IT?

51600

1 "ANSWER: I PUT IT IN MY CAR.

2 "QUESTION: HOW DID YOU GET IT TO  
3 YOUR CAR?

4 "ANSWER: I CARRIED IT TO MY CAR  
5 IN MY TENNIS BAG.

6 "QUESTION: WHY DID YOU TAKE YOUR  
7 SHOTGUN AND PUT IT IN YOUR CAR?

8 "ANSWER: BECAUSE IN MY MIND I  
9 WANTED TO KNOW MORE ABOUT IT. I WAS  
10 UP LATE THAT NIGHT, AND I JUST DECIDED  
11 I WANTED TO KNOW MORE. I'D NEVER  
12 FIRED IT BEFORE. AND I DIDN'T KNOW

13 WHAT WAS GOING TO HAPPEN ON THE  
14 FISHING TRIP, AND I JUST WAS TAKING  
15 THE GUN WITH ME.

16 "QUESTION: WELL, WHAT DO YOU  
17 MEAN WHEN YOU SAY YOU WANTED TO KNOW  
18 MORE?

19 "ANSWER: I'D NEVER FIRED A GUN.  
20 AT SOME POINT, I DON'T REMEMBER IF IT  
21 WAS FRIDAY NIGHT OR SATURDAY MORNING,  
22 LYLE WASN'T SURE IF THESE SHELLS WERE  
23 ACTUALLY SUPPOSED TO BE USED IN THIS  
24 GUN. HE WANTED TO CHECK THAT OUT.

25 "AND AT SOME POINT I WANTED TO  
26 SEE IF THERE WAS A FIRING RANGE WHERE  
27 I COULD SEE HOW YOU FIRED THIS GUN."

28 I DON'T HAVE THE ACTUAL CITE HERE IN MY

51601

1 NOTES, BUT IT INDICATES THAT IN HIS ARGUMENT,  
2 MR. CONN CLAIMED THAT MR. MENENDEZ HAD NO REACTION  
3 WHEN HE WENT INTO THE ROOM AND SAW THERE WERE NO  
4 GUNS.

5 MY CLIENT'S TESTIMONY, 44,185:

6 "NO. I GOT OVERLY EMOTIONAL WHEN  
7 I REALIZED AND SAW MY PARENTS, AND SAW

8       THERE WERE NO GUNS IN THE ROOM, AND  
9       SAW THE SIGHT THAT HORRIFIED ME. AND  
10      THAT'S WHEN I COMPLETELY LOST  
11      CONTROL."  
12      45,072:  
13      "I KNOW I SAW THAT THERE WERE NO  
14      GUNS THAT I COULD SEE, WEAPONS OF ANY  
15      KIND. I REMEMBER STARING AT THEM. I  
16      REMEMBER MY EMOTIONS OVERWHELMING ME."  
17      NOW, MR. CONN MADE A GREAT DEAL OUT OF  
18 THE FACT THAT WHILE TESTIFYING MY CLIENT OFTEN ASKED  
19 FOR CLARIFICATION OF THE QUESTION OR ASKED FOR  
20 CLARIFICATION OF HOW A WORD OR A PHRASE IS BEING  
21 USED. AND MR. CONN ARGUED THAT THIS WAS PROOF OF  
22 EVASION ON MY CLIENT'S PART; THAT THIS WAS SOMETHING  
23 DONE TO MR. CONN TO FRUSTRATE HIM AS A  
24 CROSS-EXAMINER.  
25      I WANT TO READ YOU SOME OF MY CLIENT'S  
26 TESTIMONY, JUST BRIEF BITS.  
27      THIS IS FROM PAGE 43,171:  
28      "QUESTION: DID YOU HAVE ANY

51602

1       FRIENDS AT THE TIME YOUR FATHER  
2       MOLESTED YOU?

3 "ANSWER: I HAD -- WHAT DO YOU  
4 MEAN BY FRIENDS? KIDS THAT I KNEW, OR  
5 KIDS THAT I WOULD INVITE OVER TO MY  
6 HOUSE?"

7 PAGE 43,297:

8 "QUESTION: WOULD IT BE A  
9 SITUATION WHERE NIGHTTIME SEX WOULD  
10 OCCUR AFTER YOU WENT TO BED AND WHEN  
11 YOUR FATHER WAS NOT HOME?

12 "ANSWER: I DON'T UNDERSTAND WHAT  
13 YOU'RE ASKING.

14 "QUESTION: IN OTHER WORDS, THOSE  
15 TIMES WHEN NIGHTTIME SEX TOOK PLACE,  
16 WOULD THE SITUATION GENERALLY BE --"

17 AND ON AND ON. THEN HE ANSWERS, AFTER  
18 CLARIFICATION, PAGE 43,304:

19 "NOW DURING THE TIME THAT YOUR  
20 FATHER WAS SODOMIZING YOU, DID HE EVER  
21 HIT YOU?

22 "ANSWER: WHAT DO YOU MEAN BY  
23 'HIT'?"

24 AND THEN THE QUESTION IS LATER CLARIFIED.

25 "WELL, DID HE EVER SLAP YOU?"

26 PAGE 43,351:

27 "AND YOU INDICATED THAT YOU HAD  
28 TOLD ANDY CANO SOMETHING. DID ANDY



1 CANO EVER SAY ANYTHING BACK TO YOU  
2 AFTER YOU TOLD HIM THE INFORMATION YOU  
3 TOLD THE JURY?

4 "ANSWER: WHAT DO YOU MEAN BY  
5 'BACK TO ME'?

6 "QUESTION: WELL, DID HE SAY  
7 ANYTHING IN RETURN TO YOU LIKE, WHAT  
8 SHOULD HE DO?

9 "ANSWER: HE WANTED ME TO TALK TO  
10 HIS MOTHER."

11 AND ON AND ON.

12 PAGE 43,372:

13 "DID THINGS START TO COME INTO  
14 YOUR MIND THAT CAUSED YOU TO  
15 REEVALUATE YOUR POSITION WITH RESPECT  
16 TO YOUR FATHER'S DESIRES WITH YOU?

17 "ANSWER: I DON'T UNDERSTAND WHAT  
18 YOU MEAN."

19 NOW, WHAT I'M READING TO YOU, LADIES AND  
20 GENTLEMEN, IS HIS DIRECT EXAMINATION BY MR. LEVIN,  
21 WHICH JUST GOES TO SHOW YOU, MR. LEVIN DOESN'T  
22 ALWAYS ASK TOTALLY UNDERSTANDABLE QUESTIONS EITHER.

23 THIS IS NOT AN EFFORT ON MY CLIENT'S  
24 PART.

25 AND I HAVE MORE. I COULD KEEP GOING.

26 ALL OF THEM FROM DIRECT. THIS IS NOT AN EXAMPLE OF  
27 HIS BEING EVASIVE. THIS IS HIS ANXIOUS DESIRE TO BE  
28 ACCURATE IN HIS ANSWER AND TO MAKE SURE HE

51604

1 UNDERSTANDS THE QUESTION. AND IT DOESN'T BEAR ON  
2 HIS CREDIBILITY, ALTHOUGH IT MAY TELL SOMETHING  
3 ABOUT THE SERIOUSNESS WITH WHICH HE REGARDS THESE  
4 PROCEEDINGS.

5 NOW, I REALIZE THAT ORDINARILY IT'S VERY  
6 RUDE TO BE DRINKING SOMETHING IN FRONT OF PEOPLE WHO  
7 THEMSELVES ARE NOT. THIS IS THE LONG-RANGE  
8 AFTER-EFFECTS OF PNEUMONIA, WHICH NEVER, I'M AFRAID,  
9 COMPLETELY LEAVES YOU. THIS IS TO AVOID COUGHING,  
10 WHICH IS FAR MORE OFFENSIVE. SO FORGIVE ME.

11 MR. CONN'S RATHER REMARKABLE ARGUMENT,  
12 LADIES AND GENTLEMEN, I THINK, WAS MAINLY GEARED TO  
13 MAKING YOU CONFUSE THE ROLE OF THE PROSECUTION AND  
14 THE ROLE OF THE DEFENSE IN A CRIMINAL CASE. THE  
15 PROSECUTION IN THIS CASE, AS IN EVERY OTHER CASE,  
16 HAS THE BURDEN OF PROOF.

17 WE MAKE THAT BURDEN IN THIS COUNTRY VERY  
18 HIGH. THAT REVEALS A BELIEF OF VALUE THAT I HOPE WE  
19 STILL ALL HOLD, ALTHOUGH SOMETIMES I'M NOT TOO SURE,  
20 BUT THAT WE CERTAINLY HELD AT THE TIME THAT WE

21 ADOPTED THIS NOTION OF ENGLISH COMMON LAW; THAT IT  
22 IS FAR WORSE TO CONVICT AN INNOCENT PERSON THAN TO  
23 LET A GUILTY ONE GO FREE. AND A RECOGNITION THAT  
24 VERY FEW CITIZENS -- AND WE ALL CAN THINK OF THE  
25 NOTABLE EXCEPTION -- BUT VERY FEW CITIZENS HAVE THE  
26 RESOURCES, THE MONEY, THE PEOPLE, THE HELP, TO PROVE  
27 THEMSELVES INNOCENT.

28 SO WE REQUIRE THE PROSECUTION TO PROVE

51605

1 SOMEONE GUILTY AND TO PROVE IT TO AN EXTREMELY HIGH  
2 LEVEL, GUILT BEYOND A REASONABLE DOUBT.

3 NOW, ON THE BOARD RIGHT NOW IS THE  
4 DEFINITION OF REASONABLE DOUBT, COINED, AS I'M  
5 AFRAID ALL THE INSTRUCTIONS ARE, IN A LANGUAGE  
6 SPOKEN NOWHERE ELSE BUT AT THE END OF A TRIAL IN A  
7 COURTROOM. AND THE REASON WE USE THESE VERY  
8 TECHNICAL TERMS IS BECAUSE THEY HAVE BEEN THRASHED  
9 OUT OVER THE YEARS IN COURTS AND IN COMMITTEES; AND  
10 THIS ONE IN PARTICULAR, YOU CANNOT DEVIATE FROM.  
11 AND IT TALKS ABOUT PRESUMPTION OF INNOCENCE UNTIL  
12 THE CONTRARY IS PROVEN.

13 AND I WOULD SUBMIT, UNLESS THE CONTRARY  
14 IS PROVEN, AND IN A CASE OF A REASONABLE DOUBT  
15 WHETHER HIS GUILT IS SATISFACTORILY SHOWN, HE IS

16 ENTITLED TO A VERDICT OF NOT GUILTY.

17       NOW, BEING ENTITLED TO A VERDICT OF NOT  
18 GUILTY DOES NOT MEAN YOU HAVE TO LIKE SOMEONE TO  
19 VOTE TO ACQUIT THEM. YOU DON'T HAVE TO LIKE THEM.  
20 YOU DON'T HAVE TO LIKE WHAT THEY DID. YOU DON'T  
21 EVEN HAVE TO BE COMFORTABLE WITH YOUR VERDICT. BUT  
22 YOU ARE DUTY BOUND TO FOLLOW THIS RULE, AND THIS  
23 RULE GOES THROUGHOUT ALL OF YOUR DELIBERATIONS. IN  
24 EVERY ASPECT OF YOUR DECISION-MAKING, THIS RULE IS  
25 SUPPOSED TO BE THE GUIDING LIGHT, THE BEACON, TO  
26 MAKE SURE THAT INJUSTICE DOES NOT OCCUR, WHETHER YOU  
27 LIKE IT OR NOT.

28       BECAUSE HE IS PRESUMED INNOCENT, THE

51606

1 PRESUMPTION PLACES UPON THE PEOPLE THE BURDEN OF  
2 PROVING HIM GUILTY BEYOND A REASONABLE DOUBT.

3       NOW, THE REST TELLS YOU HOW TO EVALUATE  
4 REASONABLE DOUBT. BUT THE SIMPLEST WAY TO  
5 UNDERSTAND IT IS A DOUBT, A HESITATION, A SECOND  
6 THOUGHT, A CONCERN, A WONDER EVEN, BASED ON LOGIC,  
7 BASED ON REASON.

8       WHEN A CASE SUCH AS THIS ONE DEPENDS IN  
9 SUCH A LARGE PART ON YOUR BELIEVING THE PERSON WHO'S  
10 ACCUSED, THAT RULE DOES NOT EVAPORATE. THAT IS

11 STILL THE LAW.

12 MR. CONN ARGUED THERE IS NO PRESUMPTION  
13 OF TRUTHFULNESS. TECHNICALLY SPEAKING, THAT'S  
14 RIGHT. THERE'S NO PRESUMPTION OF TRUTHFULNESS  
15 EITHER FOR WITNESSES CALLED BY THE PROSECUTION.  
16 HAVING THAT LABEL, "PROSECUTION WITNESS," DOESN'T  
17 MEAN HONEST, DOESN'T MEAN QUALIFIED, DOESN'T MEAN  
18 TRUTHFUL, DOESN'T MEAN RELIABLE.

19 AND THE SAME IS TRUE FOR WITNESSES  
20 CALLED BY THE DEFENSE. THERE IS NO PRESUMPTION THAT  
21 ANYBODY IS GOING TO TELL YOU THE TRUTH. THAT'S WHY  
22 WE NEED YOU. YOU'RE SUPPOSED TO DECIDE WHO'S  
23 TRUTHFUL, WHO'S BELIEVABLE.

24 BUT WHEN ELEMENTS OF THE DEFENSE, WHEN  
25 THAT INFORMATION WHICH DEFEATS THE PROSECUTION'S  
26 CASE, IF YOU WILL, COMES FROM THE MOUTH OF THE  
27 ACCUSED -- WE USE THE LABEL DEFENDANT FOR IT -- THE  
28 BURDEN OF PROOF DOES NOT SHIFT OVER TO THE DEFENSE.

51607

1 THIS IS SOMETHING I KNOW IT'S HARD FOR  
2 PEOPLE TO CONCEPTUALIZE. WE ALL IMAGINE THE CASE  
3 WHERE THE PROSECUTION PUTS ON ALL THEIR EVIDENCE AND  
4 THE DEFENSE DOES NOTHING, AND SAYS:

5 "THE BURDEN OF PROOF IS BEYOND A

6 REASONABLE DOUBT. I SHALL SIT HERE AT  
7 THE COUNSEL TABLE LOOKING CUTE AND SAY  
8 NOTHING. NO ONE WILL PUT ON ANY  
9 EVIDENCE ABOUT WHETHER I WAS INVOLVED  
10 OR NOT. AND YOU HAVE TO STRUGGLE WITH  
11 THE PROSECUTION'S CASE AND LOOK AT THE  
12 PRESUMPTION OF INNOCENCE AND THE  
13 BURDEN OF PROOF, AND UNLESS THEY'VE  
14 PROVEN ME GUILTY BEYOND A REASONABLE  
15 DOUBT, I GET OUT OF HERE."  
16 THAT'S HOW MOST PEOPLE THINK OF HOW TO  
17 APPLY REASONABLE DOUBT AND THE PRESUMPTION OF  
18 INNOCENCE, AND IT GETS CONFUSING SOMETIMES WHEN THE  
19 DEFENSE PUTS ON AN AFFIRMATIVE DEFENSE AS WE HAVE.  
20 THE FACT OF THE MATTER IS, THAT DOES  
21 NOTHING TO CHANGE THE BURDEN OF PROOF. AND TO PUT  
22 IT IN THE SHORTEST HAND POSSIBLE, MY CLIENT DOES NOT  
23 HAVE TO CONVINCING YOU BEYOND A REASONABLE DOUBT. HE  
24 DOES NOT HAVE TO BE BELIEVED BY YOU BY A  
25 PREPONDERANCE OF THE EVIDENCE, WHICH IS THE CIVIL  
26 STANDARD, WHICH MEANS MORE ON HIS SIDE THAN ON THE  
27 OTHER SIDE. HE DOESN'T, IN FACT, HAVE TO CONVINCING  
28 YOU AT ALL FOR YOU TO STILL BE ABLE TO ACQUIT HIM,

1 BECAUSE HE DOES NOT HAVE THE BURDEN OF PROOF.  
2 THE PROSECUTION HAS TO HAVE PRESENTED  
3 EVIDENCE THAT CONVINCES YOU BEYOND A REASONABLE  
4 DOUBT THAT MY CLIENT LIED ABOUT EVERYTHING MATERIAL  
5 IN HIS TESTIMONY, OR ELSE YOU CANNOT ACCEPT THEIR  
6 THEORY OF THE CASE. ALL HIS TESTIMONY HAS TO DO IS  
7 RAISE A DOUBT BASED ON REASON IN YOUR MIND.

8 WHAT THAT MEANS IS, UNLESS YOU CAN SAY  
9 HE IS LYING BEYOND A REASONABLE DOUBT: "I DON'T HAVE  
10 THE SLIGHTEST HESITATION. ALL OF THIS IS ABSOLUTE  
11 BOLOGNA."

12 UNLESS YOU CAN SAY THAT, YOU CANNOT  
13 CONVICT HIM, AS MR. CONN HAS ARGUED THAT YOU  
14 SHOULD.

15 NOW, TO BE REALISTIC, SOME OF YOU MAY  
16 THINK THAT. I'M NOT NAIVE. I'VE BEEN HERE FOR SIX  
17 YEARS TRYING TO GET A RESOLUTION FOR THIS CASE.  
18 SOME OF YOU MAY BELIEVE HE'S LYING. HE'S LYING  
19 BEYOND A REASONABLE DOUBT. IF YOU BELIEVE THAT,  
20 YOU'RE GOING TO BE VERY BORED WITH THE NEXT DAY AND  
21 A HALF OR SO AS I ARGUE TO YOU.

22 SOME OF YOU MAY BELIEVE THE OTHER.  
23 THERE IS TRUTH IN WHAT HE SAYS. YOU DON'T HAVE TO  
24 BE CONVINCED BEYOND A REASONABLE DOUBT. YOU DON'T  
25 HAVE TO BE CONVINCED BY A PREPONDERANCE THAT THERE  
26 IS TRUTH IN WHAT HE SAYS; AND, THEREFORE, I CANNOT  
27 ACCEPT THE PROSECUTION'S VERSION OF THIS CASE.

28 AND SOME OF YOU MAY STILL BE ON THE

1 FENCE, AND THOSE ARE THE PEOPLE I'M TALKING TO.

2 NOW, THE REPORTER CHANGING HER PAPER  
3 REMINDS ME OF SOMETHING ELSE I WANTED TO TELL YOU.

4 YOU KNOW THAT THE JUDGE HAS TOLD YOU ALL  
5 ALONG THAT THE ARGUMENTS OF COUNSEL ARE NOT  
6 EVIDENCE, AND THEY'RE NOT. OTHERWISE, I COULD GET  
7 UP HERE AND LIE TO YOU, MR. CONN COULD GET UP HERE  
8 AND LIE TO YOU, AND YOU'D BE COMPLETELY CONFUSED AS  
9 TO WHAT TO WEIGH AND MEASURE IN MAKING YOUR  
10 DECISION.

11 BUT THROUGH BEAUTY OF MODERN TECHNOLOGY  
12 EVERY WORD THAT WAS TESTIFIED TO ON THE WITNESS  
13 STAND WAS TAKEN DOWN AND THE RECORD IS MADE. THERE  
14 ARE TRANSCRIPTS OF EVERY SINGLE DAY. NOW, YOU DON'T  
15 GET TO LOOK AT THEM. BUT IF YOU ARE UNSURE ABOUT  
16 ANY FACT OF ANY IMPORTANCE TO ANY PART OF YOUR  
17 DECISION-MAKING, YOU CAN ASK TO HEAR THE TESTIMONY  
18 AGAIN.

19 AND IF -- YOU DON'T HAVE TO KNOW AT WHAT  
20 PAGE IT WAS GIVEN OR WHAT DAY. IF THERE'S AN AREA,  
21 AN ISSUE, OR A TOPIC THAT YOU'RE NOT CLEAR ON, ALL  
22 YOU HAVE TO DO IS SEND A NOTE OUT TO THE JUDGE  
23 INDICATING WHAT IT IS YOU NEED TO HEAR AGAIN, AND  
24 ALL OF US THEN GO THROUGH THE RECORD AND FIND THE



25 AREAS WHERE THAT WAS DISCUSSED, AND THE REPORTER CAN  
26 READ IT BACK TO YOU.  
27 SHE GETS TO SIT ON THE STAND AND ROLE  
28 PLAY. IT'S VERY CUTE.

51610

1 IN ANY EVENT, IT'S ALL THERE. THAT'S  
2 WHY IT DOESN'T MATTER WHAT WE SAY, UNLESS IT HELPS  
3 YOU UNDERSTAND THE EVIDENCE, HELPS YOU APPLY THE  
4 LAW.

5 NOW, ANOTHER AREA IN WHICH I THINK  
6 MR. CONN WAS TRYING TO MISLEAD YOU, OR AT LEAST DID  
7 SAY MISLEADING THINGS IN HIS ARGUMENT, IS THE NOTION  
8 THAT THE ISSUE OF MENTAL STATE IS SOMEHOW DIFFERENT  
9 WHEN WE'RE TALKING ABOUT AN AIDING AND ABETTING, OR  
10 A CONSPIRACY THEORY, VERSUS WHEN WE'RE TALKING ABOUT  
11 WHAT THE PERSON HIMSELF DID. AND THAT TOO IS NOT  
12 TRUE.

13 AT THE END OF MY ARGUMENT I'M GOING TO  
14 TALK MORE SPECIFICALLY ABOUT THE INSTRUCTIONS AND  
15 THE LAW. BUT FOR RIGHT NOW LET ME JUST TELL YOU  
16 THIS BASIC PREMISE:

17 IN OUR SYSTEM OF JUSTICE, AND MOST  
18 SYSTEMS OF JUSTICE, IN TRUE -- IN COUNTRIES WHERE  
19 THERE IS JUSTICE -- WE DO NOT PUNISH PEOPLE FOR

20 MERELY WHAT THEY THINK, OR WE'D ALL BE GUILTY OF  
21 SOMETHING ALL THE TIME. WE DO NOT PUNISH PEOPLE  
22 SOLELY FOR WHAT THEY DO. WE ONLY JUDGE PEOPLE UNDER  
23 THE CRIMINAL LAW, AND PUNISH PEOPLE IF THERE'S A  
24 COMING TOGETHER OF WHAT WE CALL A CERTAIN MENTAL  
25 STATE AND AN ACT.

26 NOW, IN LAW SCHOOL WE KNOW IT'S CALLED  
27 MENS REA AND ACTUS REUS, WHICH IS THE LATIN. BUT IN  
28 REAL LIFE IT MEANS YOU HAVE TO HAVE A PARTICULAR

51611

1 STATE OF MIND WHILE YOU'RE DOING SOMETHING FOR YOU  
2 TO BE GUILTY OF THE CRIME.

3 THERE ARE SOME TINY EXCEPTIONS, BUT NOT  
4 IN THE AREA OF HOMICIDE. HOMICIDE IS THAT ONE AREA  
5 WHICH AT EVERY LEVEL OF POTENTIAL CRIMINAL  
6 RESPONSIBILITY THERE MUST BE A COMING TOGETHER OF  
7 PARTICULAR MENTAL STATE AND THE DOING OF THE ACT.  
8 AND THAT IS, FOR THE ERIK MENENDEZ DEFENSE, THE  
9 CRUCIAL DECISION YOU HAVE TO MAKE, THE KEY ISSUE.

10 THE MAIN ISSUE IN THIS CASE IS WHAT WAS  
11 MY CLIENT'S MENTAL STATE AT THE TIME HE FIRED THOSE  
12 GUNS -- THAT GUN. AND WHATEVER HIS BROTHER'S MENTAL  
13 STATE WAS AT THAT TIME IS HIS BROTHER'S MENTAL  
14 STATE, BECAUSE HE IS A PRINCIPAL, MY CLIENT. HE IS

15 ACTING HIMSELF. HE IS DOING THINGS HIMSELF, AND HIS  
16 STATE OF MIND IS WHAT GUIDES THE DECISION CONCERNING  
17 WHAT HIS RESPONSIBILITY SHOULD BE.

18 I DON'T WANT YOU TO LOSE SIGHT OF THAT  
19 SIMPLY BECAUSE YOU'RE GOING TO BE INSTRUCTED ON  
20 AIDING AND ABETTING, AND YOU'RE GOING TO BE  
21 INSTRUCTED ON A CONSPIRACY TO COMMIT MURDER. AND  
22 ALL THE FUN OF TALKING ABOUT THOSE THINGS I'M GOING  
23 TO PUT OFF UNTIL LATER. MAYBE TOMORROW MORNING WHEN  
24 WE'RE ALL FRESH AGAIN.

25 NOW, IT IS TRUE, THAT MOTIVE PER SE --  
26 AND YOU'RE GOING TO BE GIVEN AN INSTRUCTION ON THIS --  
27 IS NOT AN ELEMENT OF THE CRIME. YOU'LL BE  
28 INSTRUCTED ON WHAT THE ELEMENTS, FOR EXAMPLE, OF

51612

1 MURDER ARE, WHAT THE ELEMENTS OF MANSLAUGHTER ARE.  
2 AND MOTIVE ISN'T ONE OF THEM. AND THERE ARE MANY  
3 CASES IN WHICH YOU SIMPLY CANNOT FIGURE OUT WHAT  
4 SOMEONE'S REASON WAS FOR DOING SOMETHING, BUT YOU  
5 CAN FIGURE OUT WHAT DID THEY DO UNDER THE LAW? WHAT  
6 ARE THEY RESPONSIBLE FOR?

7 THIS IS NOT ONE OF THOSE CASES. THE  
8 ENTIRE PROSECUTION THEORY OF THIS CASE, THAT THIS IS  
9 A PREMEDITATED, PLANNED, COLD-BLOODED HOMICIDE, IS

10 DEPENDENT ON FIGURING OUT A REASON. WHY? BECAUSE  
11 USUALLY KIDS DON'T KILL THEIR PARENTS. THAT'S  
12 PRETTY OBVIOUS.  
13 WHAT'S PRETTY OBVIOUS, IF YOU STEP BACK  
14 FROM ALL THE TALK IN THIS TRIAL AND ALL THE EVIDENCE,  
15 IS THIS: FOR A FAMILY TO WIND UP IN THIS DISASTER  
16 THERE HAS TO BE A REASON WHY THIS HAPPENED. AND  
17 WHERE DO YOU LOOK FOR REASONS? WE LOOK IN ONE  
18 PLACE, THE NATURE OF THE RELATIONSHIP BETWEEN THESE  
19 PEOPLE, WHAT THE IMPACT WAS ON MY CLIENT AND WHO HE  
20 IS, WHAT KIND OF PERSON HE IS, AND WHAT POSSIBLY  
21 COULD HAVE COMPELLED SOMEONE LIKE HIM TO DO THIS.  
22 IF OUR REASONS ARE THE RIGHT REASONS, HE  
23 IS NOT GUILTY OF MURDER AT ALL.  
24 MR. CONN HAS HIS THEORY, HIS REASONS,  
25 AND THE CHIEF REASON -- AND I SAY IT'S CHIEF BECAUSE  
26 OF HOW MUCH TIME WAS SPENT IN TRYING TO PROVE IT --  
27 IS THEY DID IT FOR THE MONEY.  
28 NOW, PEOPLE DO THINGS, PRETTY ROTTEN

51613

1 THINGS, FOR MONEY.  
2 I'M GOING TO PUT THIS LOW JUST BECAUSE  
3 IT REALLY DOESN'T MATTER THAT YOU SEE THEM ALL. I  
4 JUST WANT TO SHOW YOU SOMETHING HERE.

5           NOW, ONE OF THE WAYS WE IN THE LAW,  
6 TALKING ABOUT THEY DID IT FOR MONEY, AS WE CALL IT,  
7 IS FINANCIAL GAIN AS THE MOTIVE. AND I HAVE A CHART  
8 THAT I WILL SHOW YOU LATER ABOUT FINANCIAL GAIN AS  
9 MOTIVE. BUT I JUST WANT TO SHOW YOU HOW DESPERATE  
10 THIS PROSECUTION WAS TO TRY TO COME UP WITH A  
11 MOTIVE, OTHER THAN THE OBVIOUS ONE, THAT THERE WAS  
12 SOMETHING VERY, VERY BAD GOING ON INSIDE THIS  
13 FAMILY; THAT THE CHILDREN OF THIS FAMILY WERE BEING  
14 TREATED VERY BADLY BY THE PARENTS OF THIS FAMILY.  
15 AND SO THEIR THEORY IS, THEIR DESPERATE THEORY IS  
16 MONEY.

17           AND HERE ARE THE WITNESSES THAT THEY  
18 CALLED TO TRY TO SHOW A MONEY THEORY.

19           WE HAVE KLARA WRIGHT. WE HAVE RANDY  
20 WRIGHT. WE HAVE CARLOS BARALT. WE HAVE HOWARD  
21 WITKIN. WE HAVE MARY MAHAR. WE HAVE AMANDA GEIER.  
22 WE HAVE VALERIE HART. WE HAVE RICHARD WENSKOSKI.  
23 WE HAVE LARRY COHEN. WE HAVE VICKI RIVAS. WE HAVE  
24 MARK SLOTKIN. WE HAVE GLENN STEVENS, BRIAN  
25 ANDERSEN.

26           THEY DID IT FOR THE CAMCORDER.

27           AND THAT -- LOOK AT HOW MANY OF THEIR  
28 WITNESSES THEY USED IN THEIR DESPERATE ATTEMPT TO

1 TRY TO SHOW THEY DID IT FOR THE MONEY.

2 NOW, YOU DID NOT HEAR -- OH. SILLY.

3 MOST OBVIOUS THING I HAVE TO TALK TO YOU ABOUT.

4 YOU ARE EACH TWO PEOPLE. DIDN'T YOU

5 KNOW THAT? ONE OF YOU IS THE PERSON WHO HAS TO

6 JUDGE THE GUILT OR INNOCENCE OF ERIK MENENDEZ. AND

7 THE OTHER ONE IS THE PERSON WHO HAS TO JUDGE THE

8 GUILT OR INNOCENCE OF LYLE MENENDEZ.

9 NOW, TO BE HONEST, I'M NOT SURE YOU

10 REALLY CAN DO THAT. I'M NOT SURE ANYBODY CAN REALLY

11 DO THAT. I'M NOT HAPPY WITH ONE JURY IN THIS CASE,

12 BUT ONE JURY IS ALL WE HAVE, AND THE ONLY HONORABLE,

13 JUST AND DUTIFUL THING FOR YOU TO DO IS, AS THE

14 JUDGE HAS TOLD YOU YOU MUST DO, YOU MUST WEIGH THE

15 EVIDENCE AGAINST EACH OF THEM SEPARATELY.

16 MR. CONN MADE UP A NEW PERSON DURING HIS

17 FINAL ARGUMENT, SOMEONE THAT NONE OF US HAS EVER

18 SEEN. I CALL HIM "LYLRIK." HE IS SOME COMBINATION

19 OF BOTH LYLE AND ERIK MENENDEZ; WHERE MR. CONN TAKES

20 FEATURES OF EACH AND SMUSHES THEM TOGETHER IN ONE

21 PERSON, AND CLAIMS THAT PERSON HAD CERTAIN MOTIVES,

22 AND THAT PERSON BEHAVED IN A CERTAIN WAY.

23 THAT PERSON DOESN'T EXIST. THERE ARE

24 TWO SEPARATE AND DISTINCT PEOPLE HERE, TWO OF THEM

25 WHOSE FATE IS ENTIRELY IN YOUR HANDS, TWO OF THEM

26 WHO YOU MUST JUDGE AND EVALUATE SEPARATELY.

27 SO THAT GETS ME BACK TO "THEY DID IT FOR

51615

1 MY CLIENT'S NAME IS ERIK MENENDEZ. YOU  
2 HAVE NOT HEARD ONE SCINTILLA, AS WE SAY IN LAW,  
3 WHICH MEANS, AS BY BABY SON WOULD SAY, "TINY BIT."  
4 YOU HAVE NOT HEARD ONE TINY BIT OF EVIDENCE THAT MY  
5 CLIENT, ERIK MENENDEZ, HAD ANY NEED FOR MONEY AT  
6 ALL, BEYOND WHAT HE WAS GETTING FROM HIS PARENTS,  
7 AND WAS HAPPY GETTING FROM HIS PARENTS, BEFORE THE  
8 KILLINGS OCCURRED.

9 HE DIDN'T SPEND WILDLY, UNWILDLY. YOU  
10 HEARD NO EVIDENCE AT ALL THAT THERE WAS EVER A  
11 CONFLICT WITH HIM OVER SPENDING MONEY; THAT HE LIVED  
12 A LIFE-STYLE THAT WAS IN ANY WAY EXTRAVAGANT. HE  
13 GOT A HUNDRED AND EIGHTY A MONTH, AND IT WAS  
14 OBVIOUSLY ENOUGH.

15 MR. CONN CLAIMS -- STRANGE REVERSAL OF  
16 LOGIC -- THAT'S NOT ENOUGH FOR A KID LIVING IN  
17 BEVERLY HILLS. IT WOULD BE A ENOUGH FOR MY KID,  
18 BEVERLY HILLS, OR NO BEVERLY HILLS; AND IT WAS  
19 OBVIOUSLY ENOUGH FOR ERIK MENENDEZ.

20 YOU NEVER HEARD ANYONE SAY THAT HE EVER  
21 EXPRESSED A DESIRE FOR MORE MONEY, THAT HE EVER  
22 COMPLAINED THAT HIS PARENTS WERE NOT GENEROUS. THEY

23 WERE GENEROUS. I THINK IT'S VERY OBVIOUS FROM THE  
24 EVIDENCE THAT YOU HEARD THAT THESE PEOPLE WERE  
25 RICH, AND THEY WERE FREE WITH THE MONEY, AND THEIR  
26 KIDS GOT WHAT THEY NEEDED, AND THERE WAS NO BIG  
27 STRUGGLE.

28 YOU ALSO NEVER HEARD OF ANY OF THE KIND

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1 OF ACTIVITIES OR INVOLVEMENTS THAT LEAD SOME KIDS TO  
2 REALLY NEED MONEY. NO DRUG USE, NO ALCOHOL USE, NO  
3 WILD PARTIES, NO CRASHING UP THE FAMILY CAR, NONE OF  
4 THE THINGS -- NO GAMBLING DEBTS. WE'LL TALK ABOUT  
5 GAMBLING AFTER. NOTHING LIKE IT. NOTHING. NO  
6 REASON WHATSOEVER TO BELIEVE THAT HE EVER WOULD HURT  
7 ANYBODY FOR MONEY.

8 YOU ALSO NEVER HEARD, CONCERNING THIS  
9 AFFILIATED ARGUMENT, THAT HE EVER SAID A NEGATIVE  
10 WORD ABOUT HIS PARENTS, EVER. NOT A SOUL CAME INTO  
11 THIS COURT -- WE ALL READ MYSTERY BOOKS AND WATCH  
12 TV. WE HEAR ABOUT OTHER CASES. WE KNOW THAT WHEN  
13 YOU'RE TRYING TO PROVE A PREMEDITATED MURDER, THAT  
14 OFTEN THERE IS EVIDENCE OF A PERSON SAYING: "I WANT  
15 TO KILL HIM. HELP ME KILL 'EM. BOY, I HATE SO AND  
16 SO. HE MESSED ME OVER. I'M GOING TO GET 'EM."  
17 ET CETERA.



18           AND PARTICULARLY IN FAMILY SITUATIONS  
19 WHEN YOU'RE IN CONSTANT CONTACT WITH THE PERSON, YOU  
20 WOULD EXPECT THAT YOU WOULD HAVE HEARD -- IF ERIK  
21 MENENDEZ WAS THIS HEARTLESS, CRUEL CREATURE THAT  
22 MR. CONN TRIES TO TELL YOU HE IS, YOU WOULD HAVE  
23 HEARD FROM ONE HUMAN BEING ON THE PLANET WHO WOULD  
24 HAVE SAID: "YEAH, BOY, HE COMPLAINED ABOUT HIS  
25 PARENTS ALL THE TIME." HE DIDN'T COMPLAIN ABOUT HIS  
26 PARENTS.  
27           HE SHOULD HAVE -- THAT'S THE OTHER THING  
28 THAT'S HELD AGAINST HIM, THAT HE DIDN'T COMPLAIN

51617

1 ABOUT HIS PARENTS ALL THE TIME. IN FACT, HE DID  
2 NOT. AND THAT IS VERY UNUSUAL. SOME OF YOU HAVE  
3 TEENAGERS. ALL OF YOU WERE TEENAGERS. IT'S PRETTY  
4 COMMON TO GRIPE ABOUT THE FOLKS. NOT HERE. BECAUSE  
5 OF THE NATURE OF THIS FAMILY, WHICH I'LL TALK ABOUT  
6 LATER, NOT HERE.  
7           BUT THE POINT IS, THERE IS NO EVIDENCE  
8 OF ANY PREEXISTING DESIRE FOR MONEY OR HATRED OF  
9 THESE PEOPLE. NONE.  
10           AND SO WE SPENT ALL THIS TIME WITH ALL  
11 THESE WITNESSES TO TRY TO PROVE WHAT? THAT THEY HAD  
12 A DESIRE FOR MONEY BEFORE? NO. THIS WAS TO PROVE

13 THAT AN 18-YEAR-OLD AND A 21-YEAR-OLD, WHEN THEY GOT  
14 THEIR HANDS ON \$325,000 APIECE, SPENT IT. THAT'S  
15 ALL IT WAS. IT'S THE SAME MONEY OVER AND OVER  
16 AGAIN.

17 APART FROM THE WATCHES THAT WERE  
18 PURCHASED ON A CREDIT CARD -- THAT WAS ISSUED TO  
19 MR. MENENDEZ BY HIS BUSINESS -- EVERYTHING ELSE THAT  
20 HAD HE CLAIMED ERIK MENENDEZ SPENT WAS THE SAME  
21 MONEY OVER AND OVER AGAIN.

22 FIRST WE PROVED THAT THEY GOT THE LIFE  
23 INSURANCE MONEY FROM THE SUN LIFE POLICY THAT THEIR  
24 AUNT MARTHA CANO WROTE, AND THEN THE PEOPLE GO ON TO  
25 PROVE HOW THEY SPENT IT. I MEAN, TALK ABOUT  
26 MEANINGLESS EVIDENCE OVER AND OVER AGAIN.

27 HE BOUGHT A JEEP. KILLED HIS PARENTS  
28 FOR A JEEP? HE BOUGHT FURNITURE. KILLED HIS

51618

1 PARENTS FOR FURNITURE? HE HIRED AND GOT TO PAY FOR  
2 HALF A YEAR FOR A TENNIS COACH, SAME TENNIS COACH  
3 HIS PARENTS WERE PAYING. HE KILLED HIS PARENTS FOR  
4 A TENNIS COACH?

5 WHAT ELSE DID HE GET? HUM. HE DIDN'T  
6 BUY ANY REAL ESTATE. YOU EVEN HEARD WHEN HE DIDN'T  
7 BUY SOMETHING. DIDN'T BUY A CONDO.

8 BOUGHT A POOL TABLE. THAT PROVES IT.  
9 AND WENT TO TAHOE. AND WHILE UP THERE WITH WHO  
10 SHOULD HAVE BEEN A RESPONSIBLE ADULT, MR. SLOTKIN,  
11 GAMBLED MONEY AND BORROWED FROM MR. SLOTKIN TO PAY  
12 HIS GAMBLING DEBT.

13 AND THAT IS SUPPOSED TO PROVE TO YOU --  
14 I'M SORRY -- THIS MAY HAPPEN (COUGHING). THIS IS  
15 SUPPOSED TO PROVE TO YOU THAT HE KILLED HIS PARENTS  
16 FOR MONEY, THAT HE SPENT THIS \$325,000. IN FACT,  
17 BASED ON THE TESTIMONY WE HEAR, HE DIDN'T SPEND THE  
18 \$325,000. HE STILL HAD A BUNCH OF IT LEFT SO HE  
19 COULD PAY PEOPLE LIKE ME, AND DID IN FACT.

20 THAT MONEY WAS USED, WHAT WAS LEFT OVER --  
21 BECAUSE HE DIDN'T SPEND IT ALL -- WAS USED, WE WERE  
22 TOLD, TO PAY THE INITIAL ROUND OF LEGAL FEES.

23 SO ALL OF THIS EFFORT TO SHOW THEY SPENT  
24 MONEY, WHICH STILL DOESN'T GET YOU ANY CLOSER TO TRY  
25 TO UNDERSTAND WHY THIS HAPPENED.

26 LET ME SHOW YOU -- I SHOULDN'T DO THIS.  
27 I'M SUPPOSED TO GO IN ORDER HERE. I'M GOING TO GO  
28 IN ORDER. I'M GOING TO BE GOOD, OTHERWISE IT WILL

51619

1 TAKE TOO LONG.

2 SO WHAT'S THE NEXT THEORY THAT THE

3 PROSECUTION -- THE THEORIES KEEP SHIFTING ALONG; AND  
4 IN FACT, MR. CONN, RECOGNIZING THAT HE DOES NOT HAVE  
5 A COHERENT THEORY OF A PLANNED, PREMEDITATED  
6 COLD-BLOODED KILLING HERE TELLS YOU: YOU DON'T HAVE  
7 TO AGREE. EACH OF YOU PICK A DIFFERENT ONE.

8 YOUR HONOR, THIS ISN'T A GREAT TIME, BUT  
9 I HAVE TO TAKE MY MEDICINE OR ELSE THIS WILL KEEP  
10 GOING.

11 THE COURT: WE'LL TAKE A RECESS AND WE'LL  
12 RESUME AT 20 MINUTES TO. IT'S ABOUT A 15-MINUTE  
13 RECESS.

14 DON'T DISCUSS THE CASE OR FORM ANY FINAL  
15 OPINIONS ABOUT IT. WE'LL RESUME IN 15 MINUTES.

16 (RECESS WAS TAKEN FROM  
17 10:40 A.M. TO 10:55 A.M.)

18

19

20

21

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28

1 THE COURT: OKAY. WE'LL HAVE THE JURY OUT,  
2 PLEASE.

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

6

7 THE COURT: OKAY. EVERYONE IS BACK, AND YOU MAY  
8 CONTINUE ARGUMENT.

9 MS. ABRAMSON: THANK YOU.

10 I WAS TALKING ABOUT THE FACT THAT THE  
11 PROSECUTION DOES NOT HAVE A COHERENT THEORY IN THIS CASE  
12 TO PROVE MURDER. SO MR. CONN HAS INVITED YOU TO PICK  
13 AMONG A VARIETY OF CHOICES, OR CONVICT WITHOUT ANY  
14 UNDERSTANDING OR ANY DECISION ABOUT WHY THIS HAPPENED.

15 I DON'T BELIEVE FOR A MINUTE YOU WOULD DO  
16 THAT, BECAUSE PEOPLE NEED TO UNDERSTAND, THE LAW NEEDS  
17 TO UNDERSTAND, WHY SOMETHING HAPPENS. BUT PEOPLE NEED  
18 TO UNDERSTAND WHY SOMETHING HAPPENS SO THAT THEY CAN  
19 UNDERSTAND WHAT IS THE LEVEL OF LEGAL RESPONSIBILITY.

20 NOW, I SHOWED YOU THE MONEY THING, AND I  
21 PUT ONE OF MY STICKUMS IN THE WRONG PLACE. AMANDA GEIER  
22 WAS THE LADY WHO SOLD THE SHOTGUNS, MARK HEFFERNAN IS  
23 THE OTHER WITNESS WHO WAS CALLED TO TALK ABOUT SPENDING,  
24 ABOUT THE CONTRACT FOR HIM TO COACH ERIK MENENDEZ 12  
25 HOURS A DAY, EVERY SINGLE DAY.

26 SO, THE MONEY MOTIVE WAS ONE OPTION YOU'VE  
27 BEEN GIVEN. THE OTHER OPTION IS RATHER INTERESTING,  
28 THIS NOTION THAT THIS WAS A BID FOR FREEDOM.

1           NOW, WHERE -- WHERE DOES MR. CONN GET THIS  
2 FROM?

3           WELL, HE SAYS, AND RIGHTLY SO, THAT THERE  
4 HAD TO BE SOME CONFLICT, SOME CRISIS IN THIS FAMILY,  
5 BECAUSE WE KNOW THE PARENTING STYLE OF MR. AND  
6 MRS. MENENDEZ DIDN'T CHANGE OVER THE YEARS. THERE WAS  
7 ALWAYS PLENTY OF MISERY IN THIS HOUSEHOLD.

8           SO WHAT HAPPENED TO BRING THIS ABOUT? WHAT  
9 WAS THE TRIGGERING EVENT?

10          WELL, MR. CONN DOESN'T WANT TO POINT TO THE  
11 TRIGGERING EVENT, BECAUSE OBVIOUSLY THE TRIGGERING  
12 EVENT, WHICH IS THIS CONFRONTATION OVER MOLESTATION,  
13 DOES NOT SUPPORT HIS THEORY; INSTEAD, SUPPORTS OURS.

14          SO HE HAS TO MAKE UP SOME OTHER POSSIBLE  
15 TRIGGERING ISSUE, AND THE ISSUE HE COMES UP WITH IS A  
16 CONFLICT CONCERNING SPENDING MONEY AND IRRESPONSIBILITY  
17 AND A DESIRE FOR FREEDOM.

18          WELL, AS WE KNOW, THERE IS NO CONFLICT OVER  
19 ERIK MENENDEZ SPENDING MONEY, AND THERE IS NO INDICATION  
20 OF HIS BEING IRRESPONSIBLE. AND I WILL GET TO THAT IN A  
21 MOMENT.

22          SO, WHAT IS THIS CONFLICT ABOUT? IT'S A  
23 DESIRE FOR FREEDOM, SAYS MR. CONN. AND HE GETS THAT  
24 FROM WHERE? FROM ERIK MENENDEZ' TESTIMONY THAT HIS  
25 FATHER WAS GOING TO CHOOSE HIS COURSES FOR HIM AT

26 U.C.L.A., AND SAID THERE WAS A POSSIBILITY THAT HE WOULD  
27 NOT BE PLAYING TENNIS.

28 SO HE HAS NOW SELECTED FROM THE TESTIMONY

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1 OF THE PERSON THAT HE CALLED A LIAR 50 TIMES LAST WEEK,  
2 THIS PART THAT HE WANTS TO RELY UPON AS MOTIVE.

3 SO NOW YOU ARE TO BELIEVE THAT ERIK  
4 MENENDEZ KILLED HIS PARENTS BECAUSE HE WANTED TO TAKE  
5 HISTORY INSTEAD OF ECONOMICS; BECAUSE HE WANTED TO PLAY  
6 TENNIS SO BADLY -- TO HAVE THE CONTINUING PRESSURE, THE  
7 SCREAMING AT, THE BELITTLING, THE DENIGRATING, THE  
8 PRESSURE OF TENNIS TO CONTINUE FOR ANOTHER FOUR YEARS OF  
9 HIS LIFE, AS IT HAD GONE ON FROM THE TIME HE WAS 11.  
10 AND THAT NOW IS THE SUPPOSED MOTIVE OR THEORY THAT MR.  
11 CONN GIVES YOU.

12 OF COURSE, THERE IS A SEVERE CRISIS IN THIS  
13 FAMILY THAT WEEK. THERE ALWAYS IS A CRISIS WHEN  
14 PARRICIDE OCCURS, AND DR. WILSON GAVE YOU SOME INSIGHT  
15 AS TO WHEN AND WHY PARRICIDE DOES OCCUR.

16 WHAT IS KNOWN ABOUT CASES WHERE CHILDREN  
17 KILL PARENTS IS THAT THESE ARE, BY AND LARGE, FAMILIES  
18 WHERE THERE HAS BEEN SEVERE ABUSE, AND WHAT IS OCCURRING  
19 IS THERE IS AN EFFORT TO STOP IT OR ESCAPE IT.

20 AND WHAT WE ALL KNOW ABOUT CHILD  
21 DEVELOPMENT IS THAT WHEN A PERSON REACHES ADOLESCENCE,

22 THEY HAVE A NEED TO HAVE A SENSE OF INDEPENDENCE, A  
23 SENSE OF PERSONAL INTEGRITY. AND IF YOU GROW UP IN A  
24 FAMILY WHERE THERE IS NO FREEDOM, WHERE THERE ARE NO  
25 CHOICES THAT HAVE BEEN LEFT TO YOU, WHERE YOU ARE  
26 COMPLETELY MANIPULATED BY PARENTAL AUTHORITARIANISM, IT  
27 IS VERY DIFFICULT IN THOSE FAMILIES TO REBEL. IT IS  
28 VERY DIFFICULT IN THOSE FAMILIES TO SEPARATE IN THE

-13913

1 NORMAL WAY.

2 SO HERE WAS ERIK MENENDEZ, WHO HAD LIVED  
3 WITH HIS FAMILY FOR 18 YEARS, WHOSE COPING MECHANISM,  
4 THE ONLY THING HE HAD TO GET HIM THROUGH, WAS THE NOTION  
5 THAT HE WOULD BE LEAVING THAT HOME, WOULD NOT BE  
6 SLEEPING THERE, WOULD NOT BE AVAILABLE TO HIS FATHER.  
7 AND STAYING AT THE DORMS AT U.C.L.A. AND EVERYTHING, ALL  
8 OF HIS HOPES AND EXPECTATIONS WERE THERE.

9 THAT WAS HOW HE GOT HIMSELF TO AGE 18, AND  
10 AT THAT POINT HE KNEW HE COULD NOT TOLERATE ANY FURTHER  
11 ABUSE FROM HIS FATHER. HE COULD NOT. AND THAT IS  
12 TYPICAL OF HOW AN ADOLESCENT COMES TO TERMS WITH: "I  
13 HAVE TO BE A PERSON NOW. YOU'VE GOT TO LET ME BE A  
14 PERSON." AND THIS WAS THE WORST PART OF THE DEPRIVATION  
15 OF HIS PERSONHOOD, IF YOU WILL, IN THAT FAMILY.

16 SO, WHAT PRECIPITATES THE CRISIS MAKES  
17 PERFECT PSYCHOLOGICAL SENSE.



18 NOW, YOU KNOW, A LOT OF PEOPLE DON'T LIKE  
19 PSYCHOLOGY. THEY THINK IT'S MUMBO-JUMBO, MR. CONN TOLD  
20 US, BUT YOU KNOW WHAT? PEOPLE ARE NOT LOWER FORMS OF  
21 ANIMALS. PEOPLE HAVE MINDS, PEOPLE HAVE FEELINGS, AND  
22 PSYCHOLOGY HELPS TO EXPLAIN A GREAT DEAL OF WHAT GOES ON  
23 IN PEOPLE'S LIVES. AND DEVELOPMENTAL PSYCHOLOGY, THAT  
24 SIMPLY TALKS ABOUT WHAT DO CHILDREN NEED AT VARIOUS  
25 TIMES, IS TOTALLY NON-CONTROVERSIAL. SO THIS IS A  
26 NON-CONTROVERSIAL POINT.

27 HE COULDN'T GO ON BEING TREATED THAT WAY.  
28 SO WHAT DOES HE DO? DOES HE RUN OUT AND BUY A SHOTGUN

-13912

1 TO KILL HIS PARENTS? NO. HE TURNS TO THE ONLY ALLY HE  
2 HAD IN THAT FAMILY -- IN THE WORLD IN FACT -- AND TELLS  
3 HIM. AND HE IS SEEKING HELP, AND IT IS THAT SEEKING OF  
4 HELP THAT STARTS THE SNOWBALL EFFECT THAT WINDS UP IN  
5 THESE SHOOTINGS.

6 AND I HAVE UP THERE, WHICH WE WILL GET TO  
7 LATER, THE CHART OF HOW THAT SNOWBALL ROLLS DOWN THE  
8 HILL THAT WEEK.

9 BUT THERE IS CONFLICT. THERE IS A TENSION  
10 THAT MAKES SOME SENSE AS A TRIGGERING EVENT FOR THE  
11 VIOLENCE THAT ENSUES HERE. NOT "I WANT TO TAKE HISTORY  
12 AND DADDY WANTED ME TO TAKE ECONOMICS."

13 DR. DIETZ, THE PROSECUTION'S \$40,000

14 WITNESS, CONFIRMED THE DEFENSE IN THIS CASE. IT WAS  
15 REALLY QUITE -- AS YOU KNOW -- YOU KNOW ME BY NOW. YOU  
16 KNOW HOW I AM AN ATTACK DOG. IF SOMEONE IS UP THERE AND  
17 HE IS HURTING ME, I AM GOING TO GO AFTER HIM. AND I  
18 THINK YOU NOTICED I HAD NO PROBLEMS WITH DR. DIETZ.

19 AND THAT'S WHAT WAS SO AMAZING ABOUT THE  
20 PROSECUTION'S INVESTMENT IN THIS WITNESS, BECAUSE HOW  
21 DOES HE DESCRIBE ERIK MENENDEZ? PASSIVE, COMPLIANT,  
22 SUGGESTIBLE, WANTING TO BE LIKED, COOPERATIVE.

23 I MEAN, I DIDN'T HAVE THE \$40,000, BUT IF I  
24 HAD, I WOULD HAVE PAID HIM TO SAY IT.

25 SO HERE IS THIS PERSON -- AND, OF COURSE,  
26 DR. WILSON SAYS THE SAME THING. HERE IS THIS PERSON WHO  
27 HAS BEEN PASSIVE, WHO HAS BEEN, WE WOULD SAY, RENDERED  
28 HELPLESS. AND PUT UP WITH THIS SITUATION, HE HAD IN

-13911

1 MIND HOW IT WAS GOING TO END. A RESCUE FANTASY. WHEN  
2 IT'S DESTROYED, THAT'S WHAT STARTS THIS FUSE ON THE  
3 FIRECRACKER THAT WINDS UP IN THE SHOOTINGS.

4 NOW, I FOUND MR. CONN'S DESCRIPTIONS OF MY  
5 CLIENT, DEPENDING ON THE MINUTE OF THE DAY IN WHICH HE  
6 WAS SPEAKING, AMAZING. TO CALL THEM HYPOCRITICAL AND  
7 INCONSISTENT IS ABOUT AS MILD A CRITICISM I CAN GIVE.

8 IF I GOT IT RIGHT, MY CLIENT IS (A), THE  
9 RUTHLESS CRYBABY WEAKLING, OR (B), THE CONFIDENT,

10 COMPETENT CHAMPION WITH STATUS AND SKILLS. HE IS BOTH  
11 OF THOSE THINGS.

12 MR. CONN STOOD HERE IN FRONT OF YOU AND  
13 VALIDATED JOSE MENENDEZ' VICIOUS NOTIONS OF PARENTING.  
14 HE STOOD HERE AND ARGUED TO YOU THAT JOSE MENENDEZ WAS  
15 DISAPPOINTED IN HIS DESPICABLE, FAILURE SONS, AND  
16 THAT -- AND THAT IT WAS APPROPRIATE THAT HE SHOULD BE  
17 DISGUSTED WITH THESE FAILURES. LET'S DESCRIBE THE  
18 FAILURES.

19 LET'S SEE IF YOU WOULD AGREE, IF YOU HAD  
20 SUCH A CHILD, WOULD HE BE A FAILURE.

21 HERE IS SOMEONE WHO IS RANKED 44TH IN THE  
22 UNITED STATES AT THE AGE OF 18 IN AMATEUR JUNIOR TENNIS.  
23 PIFFLE. A FAILURE. HE'S NOT NUMBER ONE. JOSE  
24 MENENDEZ' SON HAS TO BE NUMBER ONE OR DIE. HE'S NOT  
25 NUMBER ONE. HE'S ONLY 44TH.

26 NUMBER TWO, HERE WE HAVE SOMEONE WHO  
27 DR. DIETZ AGREES WAS SHOWING SYMPTOMS OF AN ANXIETY  
28 MENTAL DISORDER. WE'RE NOT TALKING NERVOUS HERE. A

-13910

1 MENTAL DISORDER IN THE MAGIC RED BIBLE BOOK, THE DSM-IV.  
2 MOST OF HIS CHILDHOOD, WHO -- DR. WILSON TOLD YOU IN THE  
3 SCHOOL RECORDS, WHICH DR. DIETZ DIDN'T BOTHER TO READ --  
4 IT IS SHOWN HE WAS DIAGNOSED AS HAVING ATTENTION DEFICIT  
5 DISORDER.

6 NOW, THAT WAS PROBABLY WRONG. IT WAS  
7 P.T.S.D. BUT IT LOOKED LIKE ATTENTION DEFICIT DISORDER.  
8 HE WAS DIAGNOSED WITH DYSLEXIA AND OTHER LEARNING  
9 DISABILITIES, NATURALLY CAUSED, CAUSED BY ABUSE.  
10 DOESN'T MATTER. THIS IS WHO HE WAS.  
11 WE HEARD THE TESTIMONY IN THIS COURTROOM OF  
12 NORMAN PULS, HIS HIGH SCHOOL TUTOR. HE GOES IN THERE TO  
13 BE TUTORED. HE WORKS HARD, RIGHT?  
14 AND WHAT HAPPENS? HE GETS ACCEPTED TO THE  
15 UNIVERSITY OF CALIFORNIA AT BERKELEY. IF MY DAUGHTER  
16 HAD BEEN ACCEPTED AT THE UNIVERSITY OF CALIFORNIA AT  
17 BERKELEY, I WOULD FALL DOWN IN A DEAD FAINT, AND SHE HAS  
18 AN I.Q. OF 165, AND I SWEAR TO GOD I NEVER HIT HER.  
19 THAT IS THE FINEST PUBLIC SCHOOL IN THE  
20 UNITED STATES OF AMERICA, BAR NONE. THIS FAILURE WAS  
21 ACCEPTED TO THE UNIVERSITY OF CALIFORNIA, BERKELEY, AND  
22 AT MY ALMA MATER, U.C.L.A., WHICH IS GOOD, BUT NOT THAT  
23 GOOD. BUT GOOD.  
24 HE DOES NOT USE DRUGS. HE DOES NOT DRINK.  
25 HE DOES NOT GO TO WILD PARTIES. HE DOES NOT CRASH THE  
26 FAMILY CAR. HE IS NEVER ABSENT WITHOUT LEAVE. HE  
27 DOESN'T DISAPPEAR ON HIS PARENTS. HE GOES HOME EVERY  
28 NIGHT. HE DOES WHAT HE'S TOLD. HE PRACTICES TENNIS

-13909

1 FIVE HOURS A DAY. HE WORKS HARD TO PLEASE THESE PEOPLE.

2 HE IS OBEDIENT. HE IS DUTIFUL AT 18. AND THIS IS A

3 FAILURE?

4 WELL, JOSE MENENDEZ THOUGHT HE WAS A

5 FAILURE, AND MR. CONN APPARENTLY HAS SOMETHING IN COMMON

6 WITH MR. MENENDEZ, AND SO HE THINKS HE IS A FAILURE.

7 THIS IS THE KIND OF SON THAT YOU WANT TO

8 WRITE OFF? THIS IS THE KIND OF SON THAT YOU ARE

9 JUSTIFIED IN BEING DISGUSTED WITH? YES. HE COMMITTED

10 TWO CRIMES. HE WAS WITH HIS FRIEND, THE GRANDIOSE, AS

11 DESCRIBED BY MR. CONN, CRAIG CIGNARELLI, AT A FRIEND'S

12 HOUSE IN THE SUMMER OF '88.

13 IT MIGHT HAVE FLOWN RIGHT PAST YOU, BUT

14 ERIK MENENDEZ TESTIFIED THAT IN THE SUMMER OF '88 HE HAD

15 BROKEN HIS ANKLE, AND HAD A FRACTURED ANKLE, AND HE

16 DIDN'T PLAY TENNIS THAT SUMMER. HE DIDN'T TOUR THAT

17 SUMMER, PLAYING IN ONE TOURNAMENT AFTER ANOTHER WITH HIS

18 PARENTS THERE TO WATCH, TO CRITIQUE IT, TO PRESSURE.

19 BUT NOT THE SUMMER OF '88. HE WAS IDLE

20 THAT SUMMER, AND THAT'S THE SUMMER OF IDLENESS WHEN HE

21 AND CRAIG CIGNARELLI ARE STAYING AT THEIR FRIEND, JOHN

22 LIST'S HOUSE, AND THEY ARE GOING TO PLAY A PRANK.

23 NOW, IS HE A FAILURE BECAUSE HE WANTED TO

24 PLAY A PRANK? AND THE PRANK THEY ARE GOING TO PLAY IS

25 TO MOVE JOHN LIST'S VAN. AND THEY GO LOOKING FOR THE

26 KEYS, AND THEY FIND A COMBINATION TO A SAFE, AND THEY

27 OPEN THE SAFE, AND THEY REMOVE THINGS FROM THE SAFE.

28 NOW, ULTIMATELY, WHEN ERIK MENENDEZ GOES TO

1 THE POLICE WITH HIS FATHER AND HIS LAWYER AND THE STOLEN  
2 PROPERTY AND TELLS THEM THAT HE IS RESPONSIBLE, HE DOES  
3 NOT RAT ON CIGNARELLI.

4 CRAIG CIGNARELLI HAS NEVER PAID THE PIPER  
5 FOR THAT LITTLE ESCAPE, BUT HE HAS CERTAINLY  
6 PARTICIPATED IN PAY-BACK IN THIS COURTROOM. HE'S GOING  
7 TO BE A CONGRESSMAN, FOLKS, DON'T YOU KNOW? AND HOW'S  
8 IT GOING TO LOOK FOR THE CONGRESSMAN WHEN HIS FORMER  
9 BEST FRIEND HAS SAID HE WAS INVOLVED IN A BURGLARY? NOT  
10 GOOD. SEX SCANDALS ARE BAD ENOUGH. BURGLARIES ARE A  
11 NO-NO FOR CONGRESSMEN.

12 AND THAT, I SUBMIT TO YOU, IS THE BASIS FOR  
13 HIS OBVIOUS VENGEFUL BIAS. WE'LL GET TO THE REST OF HIM  
14 LATER.

15 BUT THIS IS THEFT NUMBER ONE.

16 THEFT NUMBER TWO, ERIK MENENDEZ SHOWS HIS  
17 BROTHER THESE THINGS THAT HE TOOK, AND BETWEEN THEM, AS  
18 DR. DIETZ DESCRIBES, IS ACTING-OUT BEHAVIOR FROM HAVING  
19 LIVED IN AN OPPRESSIVE FAMILY. THEY COMMIT THE SECOND  
20 BURGLARY, WHICH IS A BAD THING.

21 DOES THAT JUSTIFY WRITING YOUR SONS OFF?  
22 MOREOVER, IT HAPPENED TO HAPPEN A YEAR BEFORE. AND WHEN  
23 IT HAPPENED A YEAR BEFORE, MR. MENENDEZ TOLD HIS  
24 CHILDREN THEY WERE DISINHERITED, A YEAR BEFORE. THAT  
25 WAS ROUND ONE OF DISINHERITING.

26 SO THIS IS THE FAILURE, A KID WHO -- NOW, I

27 REMEMBER, I USED TO LIVE IN A CONDOMINIUM COMMUNITY IN  
28 THE VALLEY, AND THE NEIGHBORHOOD KIDS, MY NEIGHBOR'S

-13907

1 KIDS, BURGLARIZED MY HOUSE. WE HAD A REALLY NICE WINE  
2 COLLECTION AT THAT TIME. THE LITTLE STINKERS TOOK ALL  
3 THE WINE. THEY DIDN'T EVEN DRINK IT. THEY SMASHED ALL  
4 THE WINE BOTTLES, STOLE ALL MY JEWELRY, RIGHT? THAT  
5 FAMILY DIDN'T MOVE OUT. THEY CAME AND APOLOGIZED, OKAY?  
6 THE KID WENT TO JUVENILE COURT. I GOT A RESTITUTION  
7 CHECK FOR 50 BUCKS, THAT WAS IT. AND THAT WAS THAT.

8 AND I DIDN'T THINK THEIR KIDS WERE KILLERS,  
9 AND I DIDN'T THINK THEIR KIDS WERE JUVENILE DELINQUENTS.  
10 I THOUGHT THEY NEEDED SOME -- SOMETHING WAS GOING ON  
11 THERE, AND IT WAS NONE OF MY BUSINESS WHAT.

12 BUT THIS IS NOT UNHEARD OF, TEENAGERS  
13 COMMITTING BURGLARIES. YOU DON'T HAVE TO APPROVE OF IT,  
14 BUT IT DOESN'T MAKE YOU A CRIMINAL. BUT OBVIOUSLY,  
15 ENOUGH FOR JOSE MENENDEZ TO NOT CARE ABOUT HIS KIDS  
16 ANYMORE.

17 NOW, WHEN YOU HAVE BEEN THREATENED WITH  
18 DEATH BY SOMEONE, WHEN YOU HAVE A FATHER WHO IS  
19 DESCRIBED AS BRUTAL AND RUTHLESS AND CONTROLLING, WHO  
20 ENJOYS BEST OF ALL HURTING THE WEAKEST PEOPLE, THEN  
21 MAYBE WHEN HE SAYS HE'S DISOWNING YOU AND WRITING YOU  
22 OFF, IT'S SCARY. NOT JUST DISPOINTING, SCARY. BECAUSE

23 IF YOU ARE INDEED WORTHLESS, WHAT DOES HE CARE IF YOU  
24 ARE ALIVE?

25 NOW, MR. GESSLER IS GOING TO TALK ABOUT  
26 LYLE MENENDEZ, WHO IS HIS CLIENT. BUT JUST ON THE VERY  
27 SURFACE OF THESE TWO FAILURES, HERE IS LYLE MENENDEZ,  
28 WHO IS A REALLY ACCOMPLISHED TENNIS PLAYER, WHO IS AT

-13906

1 PRINCETON UNIVERSITY, WHERE HE DOESN'T WANT TO BE, AND  
2 WHERE HE DOESN'T BELONG, BUT WHERE HIS FATHER IS  
3 INSISTING HE REMAIN. AND HE HAS ALSO PARTICIPATED IN  
4 ONE OF THESE THEFTS.

5 THIS, TOO, IS A FAILURE, A SON YOU WOULD  
6 WRITE OFF? YOU HEARD HIS AUNT TERESITA BARALT TALK  
7 ABOUT HIM, AND HOW SHE FELT ABOUT HIM. SHE WOULD BE  
8 PROUD TO HAVE HIM AS A SON.

9 BUT JOSE MENENDEZ WASN'T PROUD, BECAUSE  
10 JOSE MENENDEZ WAS NOT NORMAL. THERE WAS SOMETHING  
11 SERIOUSLY WRONG WITH THAT MAN. HIS IDEAS OF WHAT  
12 CHILDREN ARE WERE PARTICULARLY PERVERSE.

13 SO, MR. CONN'S THEORY THAT THESE BROKEN  
14 DOWN FAILURE KIDS, KNOWING THEY COULD NEVER BE THEIR  
15 FATHER -- THANK YOU, GOD -- NOW RISE UP TO KILL HIM,  
16 BECAUSE THEY WANT THEIR FREEDOM. FREEDOM FROM WHAT?  
17 FREEDOM FROM GETTING A -- HAVING HIM BUY YOU A  
18 CONDOMINIUM IN NEW JERSEY? FREEDOM FROM HIM PAYING FOR



19 YOUR TENNIS COACHES? FREEDOM FROM HIM SUPPLYING ALL OF  
20 YOUR NEEDS? FREEDOM FROM WHAT?  
21 ALL ERIK MENENDEZ WANTED TO DO WAS TO GET  
22 OUT OF THE HOUSE AND SLEEP SOMEWHERE ELSE. HE DIDN'T  
23 WANT TO DIVORCE HIMSELF FROM THIS FAMILY. HE ADMIRERD  
24 HIS FATHER. YOU CAN HEAR IT IN THAT WEIRD TAPE THAT  
25 WE'VE BEEN TALKING ABOUT. HE IDOLIZED HIM. HE THOUGHT  
26 HE WAS A SUCCESS. MR. CONN STOOD HERE AND ARGUED TO YOU  
27 THAT JOSE MENENDEZ WAS THIS AMERICAN DREAM IMMIGRANT  
28 STORY, A GREAT SUCCESS.

-13905

1 TWO THINGS I WANT TO SAY ABOUT THAT.  
2 FIRST OF ALL, THIS IS AN ENTIRE NATION OF  
3 IMMIGRANTS, AND I DON'T BUY THAT THE AMERICAN DREAM IS  
4 MAKING MONEY, BEING RUTHLESS TO PEOPLE, AND ABUSING YOUR  
5 CHILDREN. THAT'S NOT THE AMERICAN DREAM THAT MY  
6 IMMIGRANT GRANDMOTHER HAD WHEN SHE GOT HERE IN 1905, AND  
7 WORKED IN SWEAT SHOPS AND WATCHED HER FRIENDS DIE AS  
8 THEY LEAPT FROM THE WINDOWS OF THE TRIANGLE SHIRTWAIST  
9 COMPANY, SO SHE BECAME A LABOR ORGANIZER AND WORKED HARD  
10 HER ENTIRE LIFE AND RAISED CHILDREN WHO LOVED HER AND  
11 WHO SHE LOVED AND WAS WONDERFUL TO HER GRANDCHILDREN,  
12 AND NEVER RAISED A HAND IN ANGER, AND NEVER USED A MOUTH  
13 TO BELITTLE. THAT'S THE AMERICAN DREAM, THANK YOU.  
14 AND FOR EVERY IMMIGRANT FAMILY IN THIS

15 COUNTRY WHERE PEOPLE WORK HARD AND ARE GOOD TO THEIR  
16 KIDS AND DON'T HAVE TO BE MR. BIGSHOT, THAT WAS AN  
17 INSULT.

18 MONEY IS NOT SUCCESS. AND WHAT KIND OF  
19 SUCCESS IS A MAN WHO IS KILLED BY HIS OWN CHILDREN? THE  
20 ONLY THING HE WAS SUCCESSFUL AT, HE WAS A VERY  
21 SUCCESSFUL SADIST.

22 HE TOLD YOU, MR. CONN: "I AM NOT GOING TO  
23 CALL THEM TERRIBLE PEOPLE."

24 I DON'T CARE WHAT KIND OF PEOPLE THEY WERE.  
25 HE WAS A MONSTROUS FATHER. THIS WAS NOT A PARENT. WHAT  
26 IS A PARENT? IS IT A BIOLOGICAL CONNECTION, IS THAT IT?  
27 IS THAT WHAT A PARENT IS? OR IS A PARENT THE PERSON WHO  
28 NURTURES YOU, WHO LOVES YOU? FORGET ABOUT LOVE. SOME

-13904

1 PARENTS CAN'T LOVE, THEY CAN'T DO IT. AT LEAST THEY'RE  
2 NICE, THEY'RE KIND, THEY'RE HELPFUL, THEY'RE SUPPORTIVE.  
3 THEY TAKE CARE OF YOU. THEY CARE ABOUT YOU AS A PERSON.  
4 THEY SHOW YOU SOME RESPECT. THEY WANT YOU TO DEVELOP IN  
5 A WAY WHERE YOU WILL BE YOU AND YOU WILL BE HAPPY. IF  
6 THEY CAN'T ACTUALLY LOVE YOU, THEY'RE SUPPOSED TO BE A  
7 SAFE HAVEN FROM THE CRUEL, IMPERSONAL WORLD.

8 THAT IS A PARENT, A REAL PARENT. AND THE  
9 TRAGEDY IS THAT THERE ARE AN AWFUL LOT OF PEOPLE WHO  
10 HAVE CHILDREN IN THIS COUNTRY WHO AREN'T CAPABLE OF

11 BEING REAL PARENTS, FOR WHATEVER REASON.  
12 AND THE REALLY PATHETIC PART OF ALL THAT IS  
13 THAT THEIR CHILDREN LOVE THEM ANYWAY. ABUSED CHILDREN  
14 LOVE THEIR PARENTS. THE LITTLE SUCKERS ARE SO HELPLESS  
15 THEY HAVE NO CHOICE. THEY'RE VULNERABLE. WHO ELSE ARE  
16 THEY GOING TO HOOK UP TO?  
17 SO, HERE IS ERIK MENENDEZ RUNNING AROUND,  
18 LOVING HIS MOTHER, CLINGING TO HER, COLD AND HOSTILE AND  
19 UNGIVING AND UN-NURTURING AS SHE WAS, FOR WHATEVER  
20 REASONS.  
21 DOES THIS MEAN SHE'S A BAD PERSON? SHE AND  
22 GOD HAVE WORKED THAT OUT BY NOW. I DON'T KNOW WHAT KIND  
23 OF PERSON SHE WAS. I KNOW THAT SHE WAS A HORRIBLY  
24 INADEQUATE MOTHER, THAT SHE ALLOWED HER CHILDREN TO BE  
25 TREATED A CERTAIN WAY WITHIN HER OWN HOME WHEN SHE WAS  
26 PHYSICALLY CAPABLE OF STOPPING IT. I KNOW SHE DIDN'T  
27 SHOW THEM ANY LOVE. DID SHE FEEL LOVE? WE'LL NEVER  
28 KNOW.

-13903

1 WHAT DID SHE SHOW? ONCE IN A WHILE SHE  
2 SMILED, AND MY CLIENT WAS EXCORIATED BECAUSE THE ONLY  
3 THING HE CAN REMEMBER THAT LOOKED LIKE AFFECTION FROM  
4 HIS MOTHER WAS A SMILE, AND HE CLUNG TO THAT SMILE.  
5 NOW, THIS, CONTRARY TO WHAT MR. CONN  
6 SUGGESTS, AND SOMETHING I WILL TALK ABOUT A LITTLE BIT

7 LATER ON -- THIS IS NOT A NEW STORY THAT HE MADE UP SIX  
8 YEARS LATER. HIS MOTHER SMILED. IT'S IN THE VICARY  
9 NOTES, AS DR. WILSON REFERRED TO THEM. IT GOES BACK  
10 FOREVER.

11 EVERYBODY WHO HAS EVER WORKED ON THIS CASE  
12 HAS LEARNED SOMETHING ABOUT CHILD-REARING AS A RESULT, I  
13 CAN VOUCH. AND I HAVE A TWO-YEAR-OLD, TWO YEARS,  
14 TWO-MONTH-OLD SON WHO I SMILE AT EVERY SECOND THAT HE'S  
15 LOOKING IN MY DIRECTION, BECAUSE I KNOW -- AND A WHOLE  
16 LOT MORE THAT I WILL NOT DESCRIBE -- BUT EVERY TIME I  
17 KNOW HE'S LOOKING AT ME, I SMILE, BECAUSE I KNOW HOW  
18 IMPORTANT IT IS FOR HIM TO GET SMILED AT, BECAUSE THAT'S  
19 ALL HE EVER HAD.

20 MR. CONN: I WILL OBJECT AT THIS POINT TO COUNSEL  
21 TESTIFYING. SHE IS NOT ARGUING THE EVIDENCE.

22 THE COURT: OKAY. WELL, SHE WAS GOING BEYOND, TO  
23 PERSONAL EXPERIENCE, AND WE CAN REFRAIN FROM PERSONAL  
24 LIFE EXPERIENCE AND ANECDOTES AND GET BACK TO THE FACTS.

25 MS. ABRAMSON: AND EVERY CHILD LOOKS FOR APPROVAL  
26 FROM THEIR PARENTS, AND HOW THE PARENT GIVES IT IS THEIR  
27 HANG UP, NOT THE CHILD'S.

28 NOW, THE THEORY MR. CONN SUGGESTS TO YOU IS

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1 THE SMOKING GUN THEORY. HE HAS TOLD YOU THAT THE TAPE  
2 THAT WAS MADE ON DECEMBER 11TH, 1989 IS THE SMOKING GUN.

3 I GUESS THEY USED SMOKE-FILLED AMMUNITION, NOT SMOKELESS  
4 AMMUNITION, IN THE SMOKING GUN. WHAT DOES A SMOKING GUN  
5 MEAN?

6 IT'S SLANG FOR CAUGHT RED-HANDED. SLANG  
7 FOR THE SPORTS TERM "A SLAM DUNK." THIS IS A SLAM-DUNK  
8 CASE FOR THE PROSECUTION. HE STOOD HERE FOR THREE AND A  
9 HALF DAYS ARGUING ON A SLAM-DUNK CASE, BECAUSE IT ISN'T  
10 A SLAM-DUNK.

11 THIS IS A REAL DESPERATION PROSECUTION.  
12 ROGER MC CARTHY IS THE PROOF OF THAT. AND WHEN WE GET  
13 TO ROGER MC CARTHY, I WILL TELL YOU WHY. BUT HE CLAIMS  
14 HE HAS THE SMOKING GUN, AND YET WHAT IS CONTAINED ON THE  
15 SMOKING GUN HE DOESN'T WANT TO USE, AND HE DIDN'T WANT  
16 TO TALK ABOUT.

17 MR. LEVIN, WOULD YOU TAKE THE BIG ONE DOWN?  
18 I AM GOING TO PROP THIS HIGHER. SO I GET TO ORDER  
19 MR. LEVIN AROUND THE LAST COUPLE OF DAYS. I CAN DO  
20 THAT.

21 NOW, RIGHT AT THE BEGINNING OF THEIR CASE,  
22 THE PROSECUTION PLAYED THE TAPE OF THIS THING, THIS  
23 MEETING, BETWEEN A PERSON YOU HAVE NEVER SEEN, NAMED  
24 JEROME OZIEL, A PSYCHOLOGIST, AND ERIK AND LYLE  
25 MENENDEZ.

26 AND IT IS LIKE ALMOST EVERY OTHER TAPE THAT  
27 WINDS UP IN A COURTROOM. NOT OF THE VERY BEST QUALITY,  
28 AND NOT EASY TO HEAR. SO YOU HAVE A TRANSCRIPT THAT IS

1 ALSO A COBBLED-TOGETHER JOB AT THIS POINT TO FOLLOW  
2 ALONG WITH THAT TAPE.

3 AND YOU WILL HAVE AN OPPORTUNITY WHEN YOU  
4 GO TO DELIBERATE TO SEE OUR BEST -- TO OUR BEST ABILITY,  
5 WE HAVE A TRANSCRIPT THAT'S AS GOOD AS, BELIEVE ME,  
6 EVERYBODY LISTENING TO THAT TAPE COULD MAKE IT. AND IT  
7 IS STILL NOT PERFECT. THERE ARE WORDS THAT ARE  
8 AMBIGUOUS ON THAT TAPE. AND IF YOU WANT, YOU CAN PLAY  
9 THE TAPE. BUT I SUSPECT THAT WHAT YOU WILL DO IS READ  
10 THE TRANSCRIPT, AND YOU WILL BE STRUCK BY THE UTTER AND  
11 COMPLETE MADNESS OF THIS THING.

12 BECAUSE WHAT -- IF YOU READ IT, AND YOU  
13 DON'T NEED TO READ BETWEEN THE LINES. I CAN TELL YOU  
14 WHAT I THINK IS BETWEEN THE LINES. BUT RIGHT ON THE  
15 LINES, WHAT THIS IS ALL ABOUT IS THIS:

16 WHAT DR. OZIEL AND ERIK AND LYLE  
17 MENENDEZ -- ALTHOUGH ERIK, TO A MUCH LESSER EXTENT THAN  
18 LYLE -- ARE TALKING ABOUT IS THAT THEIR MOTHER WAS  
19 KILLED OUT OF MERCY, AND THEIR FATHER WAS KILLED BECAUSE  
20 OF WHAT HE WAS DOING TO THE MOTHER. IT MAKES PERFECT  
21 SENSE, DOESN'T IT? OF COURSE NOT. IT IS ABSOLUTELY  
22 WACKO, WHAT'S ON THAT TAPE.

23 AND WHAT IS OBVIOUS WHEN YOU GO THROUGH THE  
24 TRANSCRIPT, AND I WILL TRY TO GO THROUGH SOME OF IT WITH  
25 YOU NOW, TO POINT OUT WHERE IT IS OBVIOUS THAT THIS  
26 CRAZY IDEA ORIGINATED BEFORE THIS TAPE WAS EVER TURNED  
27 ON.

-13900

1 WERE THREE TAPES PLAYED THAT DAY, AND YOU'VE ONLY GOT  
2 ONE OF THEM. AND THE ONE YOU HAVE STARTS IN THE MIDDLE  
3 AND ENDS IN THE MIDDLE OF A CONVERSATION. AND THERE ARE  
4 REFERENCES IN THAT TAPE, PARTICULARLY LYLE MENENDEZ SAYS  
5 TO DR. OZIEL AT ONE POINT: "WELL, IT'S LIKE YOU SAID  
6 BEFORE," THUS AND SUCH, "CONCERNING MOM BEING KILLED AS  
7 A MERCY KILLING."

8 WELL, HE DOESN'T SAY IT BEFORE ON THE TAPE  
9 THAT YOU HAVE.

10 NOW, WHAT ERIK MENENDEZ TESTIFIED TO WAS  
11 THIS:

12 HE WENT TO SEE DR. OZIEL ON HALLOWEEN,  
13 OCTOBER 31ST, AND AT THAT TIME HE WAS FEELING VERY  
14 SUICIDAL, VERY GUILTY, VERY REMORSEFUL. THAT'S BEEN  
15 TRUE THROUGHOUT. YOU CAN HEAR IT ON THE TAPE. IT WAS  
16 TRUE WHEN HE TALKED TO EDMONDS. IT'S BEEN TRUE -- WELL,  
17 HE GOES TO SEE HIM BECAUSE HE'S FEELING SO GUILTY.

18 HIS WAY OF EXPRESSING HIS HORROR WITH  
19 HIMSELF FOR WHAT HE'S DONE IS TO SAY: "I THOUGHT I WAS  
20 A BAD PERSON. I THOUGHT I WAS A HORRIBLE PERSON." AND  
21 HE COULDN'T LIVE WITH THAT.

22 SO HE GOES TO GET VALIDATION FROM SOMEONE  
23 WHO HE THINKS WILL SAY, "YOU DID A TERRIBLE THING, BUT

24 THAT DOES NOT NECESSARILY MAKE YOU A TERRIBLE PERSON."  
25 AND HE SAYS ALL HE WANTED WAS FOR SOMEONE  
26 TO HELP HIM DEAL WITH THIS EXTREME DEPRESSION. BUT HE  
27 COULDN'T KEEP IT AWAY FROM DR. OZIEL. THEY WALKED, THEY  
28 TALKED. HE TELLS DR. OZIEL HE KILLED HIS PARENTS.

-13899

1 AND WHAT HE IS SEEKING IS "THAT'S A  
2 TERRIBLE THING, BUT I KNOW YOU. YOU'RE NOT A TERRIBLE  
3 PERSON."  
4 INSTEAD, WHAT HE GETS IS 20 QUESTIONS ON  
5 "HOW'D YOU DO IT? AND WHAT HAPPENED? AND WHERE'D YOU  
6 GET THE GUNS?" AND OTHER THINGS.  
7 AND HE SAYS THAT HE ANSWERS -- HE'S  
8 HYSTERICAL WHEN THIS PART OF THE CONVERSATION IS GOING  
9 ON. HE ANSWERS THESE SPECIFIC QUESTIONS ABOUT BUYING  
10 GUNS IN SAN DIEGO, DETAILS ABOUT THE KILLINGS. AND THEN  
11 OZIEL STARTS TO ASK HIM "WHY, WHY, WHY," AS I HAVE  
12 POINTED OUT TO YOU ALREADY. AND MR. MENENDEZ TELLS HIM  
13 "I DON'T KNOW WHY."  
14 AND DR. OZIEL HAS HIS OWN IDEAS.  
15 NOW, WHAT YOU KNOW IS DR. OZIEL KNEW JOSE  
16 AND MARY LOUISE MENENDEZ. HE HAD MET THEM. HE IS THEIR  
17 CHOSEN PIPELINE TO THEIR SON, ERIK MENENDEZ.  
18 FOLLOWING THE BURGLARIES -- AS YOU HAVE  
19 HEARD, IN ORDER TO WHATEVER, GAIN SOME KIND OF



20 UNDERSTANDING IN COURT, ERIK MENENDEZ IS SENT TO  
21 DR. OZIEL, AND HE'S SELECTED BY MRS. MENENDEZ. THERE IS  
22 A CONDITION PLACED ON THIS THERAPY, WHICH IS THAT ERIK  
23 MENENDEZ HAS TO WAIVE HIS RIGHT OF CONFIDENTIALITY,  
24 WHICH WE ALL HAVE WITH THERAPISTS, SO THAT HIS PARENTS  
25 CAN FIND OUT WHAT HE'S TALKING ABOUT.

26         NOW, THIS IS JUST LIKE TAPPING HIS PHONE TO  
27 FIND OUT WHAT HE'S TALKING ABOUT.

28         THIS IS THEIR WAY OF MAKING SURE THAT

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1 NOTHING SECRET IS REVEALED. AND IT'S ABSOLUTELY A  
2 GUARANTEED WAY TO MAKE SURE YOUR KID DOESN'T GET ANY  
3 REAL THERAPY. HE CAN'T GET BETTER WHEN HE CAN'T TALK  
4 ABOUT WHAT THE PROBLEMS ARE.

5         SO HERE HE IS SEEING THIS OZIEL PERSON,  
6 WITH THESE WAIVERS, AND THAT, OF COURSE, IS WHY HE CAN  
7 NEVER TELL DR. OZIEL THAT HE IS ABUSED BY THESE FOLKS IN  
8 ANY WAY, LET ALONE MOLESTED.

9         AND AFTER THE OCTOBER 31ST MEETING WHERE  
10 HE, OZIEL, BRINGS LYLE MENENDEZ INTO SOMEBODY ELSE'S  
11 THERAPY SESSION, WHICH IS PRETTY AMAZING RIGHT THERE,  
12 AND LYLE MENENDEZ IS, OF COURSE, SHOCKED TO FIND OUT  
13 WHAT'S BEEN GOING ON HERE BEHIND HIS BACK, THERE IS  
14 ANOTHER MEETING ON NOVEMBER 2ND.

15         AND ERIK MENENDEZ TELLS YOU THAT OZIEL IS

16 BEHAVING IN A WAY THAT'S VERY UNETHICAL FOR A THERAPIST.  
17 HE IS TALKING ABOUT MONEY AND INVESTMENTS. HE'S  
18 CLAIMING TO FEEL THREATENED, BECAUSE HE KNOWS THAT THEY  
19 KILLED PEOPLE, AND HE'S THE ONLY ONE WHO KNOWS -- OF  
20 COURSE, HE ISN'T. CRAIG CIGNARELLI ALREADY KNOWS. BUT  
21 HE DOESN'T KNOW THAT.  
22 SO HE IS CLAIMING HE FEELS THREATENED, AND  
23 THEY HAVE TO DO SOMETHING NOW TO KEEP HIM FROM FEELING  
24 THREATENED AND GOING TO THE POLICE.  
25 CAN YOU IMAGINE A THERAPIST THREATENING TO  
26 GO TO THE POLICE? I CAN NOW.  
27 IN ANY EVENT, WHAT ULTIMATELY COMES OUT OF  
28 THIS IS THEY'RE GOING TO MAKE A TAPE-RECORDING SO THAT

-13897

1 DR. OZIEL HAS SOMETHING TO HOLD OVER THEIR HEADS FOR HIS  
2 PROTECTION. WELL, THAT'S WHAT HE CLAIMS.  
3 BUT ERIK MENENDEZ TOLD YOU HE DIDN'T REALLY  
4 BELIEVE THAT DR. OZIEL FELT THREATENED. WHY WOULD THEY  
5 HURT DR. OZIEL?  
6 SO, THE IDEA WAS ACTUALLY THIS WAS GOING TO  
7 BE OZIEL'S LITTLE ACE IN THE HOLE, SO HE COULD GET HIS  
8 HANDS ON WHAT HE THOUGHT AND WHAT WAS EARLY-BELIEVED TO  
9 BE 14 MILLION DOLLARS.  
10 NOW, MR. CONN ATTACKS ERIK MENENDEZ --  
11 WELL, HE ATTACKS HIM THROUGHOUT HIS 11 DAYS OR 12 DAYS

12 OF CROSS-EXAMINATION. THE ATTACK MODE WAS THE ONLY MODE  
13 WE SAW. HE ATTACKS HIM AND SAYS: "YOU DON'T -- YOU'RE  
14 TRYING TO TELL US THAT HE WAS BLACKMAILING YOU FOR 14  
15 MILLION DOLLARS? WHERE IS THE PROOF OF THAT?"

16 AND ERIK MENENDEZ TELLS HIM, IN THE FIRST  
17 TRIAL A TAPE-RECORDING WAS PLAYED IN WHICH DR. OZIEL  
18 ADMITTED WANTING THE 14 MILLION DOLLARS.

19 ERIK MENENDEZ ANSWERED: "DETECTIVE  
20 ZOELLER'S GOT THE TAPE."

21 HAS THAT BEEN DISPROVEN? NO.

22 SO HERE'S THE WORLD ACCORDING TO OZIEL. HE  
23 KNEW THE PARENTS, AND AS I WILL SHOW YOU FROM SOME  
24 TESTIMONY FROM DR. WILSON, THE NATURE OF THIS FAMILY  
25 DYNAMIC WAS NOT A MYSTERY. THE FACT THAT MR. MENENDEZ  
26 WAS CONTROLLING AND OVERBEARING AND RUTHLESS AND  
27 INSENSITIVE, AND ALL THE REST OF THAT, IS A GIVEN,  
28 UNCHALLENGED IN THIS TRIAL BY ANYBODY.

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1 AND OZIEL GETS INTO HIS MIND, BECAUSE THIS  
2 TAPE IS THE PROOF THAT ERIK MENENDEZ DID NOT GIVE HIM  
3 ANY KIND OF REASON WHY THE PARENTS WERE KILLED.  
4 THROUGHOUT THE TAPE -- THROUGHOUT THE TRANSCRIPT, OZIEL  
5 IS POSITING HYPOTHESES, THE HYPOTHETICAL QUESTIONS THAT  
6 I AM SURE YOU ARE ALL SICK OF HEARING THAT WE HAVE TO DO  
7 WITH EXPERT WITNESSES UNDER THE RULES. "IMAGINE THIS,

8 IMAGINE THAT. COULD IT HAVE BEEN THIS? COULD IT HAVE  
9 BEEN THAT?"

10 I MEAN, IT STARTS OUT WITH HIS VERY FIRST  
11 SPEECH -- AND HE IS DOING AN AWFUL LOT OF SPEECHIFYING  
12 ON THIS THING.

13 "THE OTHER SENSE I FELT, OR I HAD, IS THAT  
14 YOU FELT TOTALLY TRAPPED. I REALLY THINK THAT THERE  
15 JUST -- YOU KNOW, THERE REALLY WASN'T A FAMILY,"  
16 BLAH-BLAH-BLAH-BLAH-BLAH-BLAH-BLAH.

17 HE IS PUTTING OUT HIS INTERPRETATION OF WHO  
18 WAS JOSE MENENDEZ, WHO WAS MARY LOUISE MENENDEZ, WHAT  
19 WAS THE NATURE OF THE RELATIONSHIP.

20 NOW, THIS ISN'T WHAT THERAPISTS ARE  
21 SUPPOSED TO DO, FOLKS. YOU'RE SUPPOSED TO TELL THEM  
22 WHAT'S GOING ON. THEY DON'T LIVE IN YOUR HOME, AND THEY  
23 DON'T LIVE IN YOUR HEAD.

24 AND AS ANY OF YOU WHO DEAL WITH PEOPLE  
25 KNOW, IF YOU WANT TO FIND OUT THE TRUTH, JUST ASK. YOU  
26 DON'T TELL.

27 BUT THE WAY THIS TAPE UNFOLDS IS OZIEL IS  
28 DOING ALL THE TELLING. IT'S HE WHO POSITS: "OH, YOUR

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1 MOTHER WAS A SHELL OF A PERSON. SHE WAS SUCH A WRECK."

2 OF COURSE, WE HAVEN'T HEARD ANY EVIDENCE

3 THAT THAT WAS TRUE AT ALL. AND ON AND ON AND ON. "AND

4 YOUR FATHER WAS THIS, AND THEN YOU COULDN'T LET THAT GO  
5 ON." AND THEY SIGN ON.

6 THE DIALOGUE IS PLAINLY BETWEEN DR. OZIEL  
7 AND LYLE MENENDEZ. BUT PERIODICALLY ERIK CHIRPS IN WITH  
8 A WORD OR TWO, SIGNING ONTO THIS PICTURE THAT OZIEL IS  
9 PAINTING OF A MERCY KILLING, AND OF A FATHER KILLED  
10 BECAUSE OF WHAT HE WAS DOING TO MOM.

11 NOW, THAT MAY SEEM COMPLETELY CRAZY TO US,  
12 BUT THE BOTTOM LINE IS IT REALLY DIDN'T MATTER TO OZIEL  
13 WHAT VERSION, OR WHAT REASONS THEY GAVE. HE JUST NEEDED  
14 A CONFESSION TO PUT IN HIS SAFE DEPOSIT BOX SO HE COULD  
15 GET HIS HANDS ON THE MONEY.

16 IT DIDN'T MATTER. HE CAME UP WITH A THEORY  
17 BECAUSE THEY WOULDN'T GIVE HIM AN ANSWER, AND THEY WENT  
18 ALONG WITH IT BECAUSE WHAT ERIK MENENDEZ SAID WAS  
19 DR. OZIEL HAD THIS THEORY THAT: "MY MOM WAS SUCH A  
20 WRECK, WE WERE DOING HER A FAVOR BY KILLING HER. AND MY  
21 DAD WAS SUCH A MONSTER, AND WE KILLED HIM BECAUSE OF  
22 WHAT HE DID TO MOM." AND WE WENT ALONG WITH IT.

23 AND WHAT HE ASKED US TO DO WAS TO MAKE THIS  
24 TAPE SOUND BELIEVABLE SO THAT HE COULD USE IT FOR HIS  
25 PURPOSES, WAS TO GIVE HIM THINGS -- EXPERIENCES, EVENTS  
26 FROM THE PAST THAT WOULD SUPPORT THIS TOTALLY DISTORTED  
27 PICTURE OF THE PARENTS THAT OZIEL WAS HELPING TO PAINT.

28 SO WHAT DO THEY GIVE HIM?

1           THEY GIVE HIM HER MISERY OVER HER HUSBAND  
2 HAVING AN AFFAIR, WHICH SHE -- WE UNDERSTAND FROM ERIK  
3 MENENDEZ' TESTIMONY, AND FROM WHAT'S RIGHT INSIDE THE  
4 TAPE, THAT SHORTLY AFTER THE FAMILY MOVED TO CALIFORNIA,  
5 WHICH WAS IN 1986, MRS. MENENDEZ DISCOVERED THAT HER  
6 HUSBAND HAD BEEN HAVING A LENGTHY AFFAIR, AND IT THREW  
7 HER FOR A MAJOR LOOP. SHE WAS DEPRESSED. SHE WAS  
8 MISERABLE. SHE CRIED ALL THE TIME. ALL OF WHICH WE CAN  
9 UNDERSTAND. THESE THINGS HAPPEN. AND SHE DWELLED ON  
10 THIS, AND SHE WAS SUICIDAL.

11           THERE IS STUFF IN THE TRANSCRIPT OF THE  
12 TAPE THAT TALKS ABOUT HER BEING HOSPITALIZED FOR AN  
13 OVERDOSE. THERE IS TESTIMONY THAT WE HEARD FROM ERIK  
14 MENENDEZ, AND IT'S ON THIS TAPE, THAT SHE LEFT A SUICIDE  
15 LETTER AROUND THAT HE SAW, AND THERE HAS BEEN NO  
16 CONTROVERSY OVER THAT FACT; THAT SHE WAS IN THAT  
17 CONDITION AT THAT TIME HISTORICALLY.

18           AND AS ERIK MENENDEZ SAID, EVERYTHING  
19 THAT'S ON THAT TAPE IS TALKING ABOUT THINGS THAT  
20 HAPPENED THREE YEARS BEFORE, NOT AT THE TIME OF THE  
21 HOMICIDES.

22           WE ALSO HEARD THE TESTIMONY OF MARTA CANO  
23 THAT THERE WAS A BIG CHANGE SUDDENLY. SHE GOES THROUGH  
24 THIS BAD PERIOD OF DEPRESSION, ACCORDING TO WHAT'S HERE,  
25 AND WHAT ERIK MENENDEZ HAS SAID. AND THEN THERE IS THIS  
26 BIG CHANGE WHERE SHE AND JOSE MENENDEZ ARE ALL  
27 LOVEY-DOVEY, AND THEY HAVE A WONDERFUL RELATIONSHIP NOW,  
28 AND HE IS NOT BEING MEAN AND NASTY TO HER.

1 NONE OF THOSE THINGS THAT OZIEL IS CLAIMING  
2 ARE TRUE WERE TRUE BY FEBRUARY OF '87, AT THE TIME OF  
3 THE FUNERAL OF JOSE MENENDEZ' FATHER, WHEN JOSE MENENDEZ  
4 AND MARY LOUISE MENENDEZ WENT BACK EAST, AND THE REST OF  
5 THE FAMILY SAW THEM. LOVEBIRDS SHOWED UP.

6 AND I'VE ALWAYS WONDERED ABOUT LOVEBIRDS,  
7 WHAT THAT REALLY MEANS. I THINK WHEN THREATENED WITH  
8 DIVORCE AND EXPOSURE, MR. MENENDEZ STARTED TO TREAT HER  
9 BETTER.

10 BUT THE POINT IS THAT THE EVENTS AND THE  
11 RELATIONSHIP BETWEEN THE PARENTS THAT IS TALKED ABOUT ON  
12 THIS TAPE IS ANCIENT HISTORY. IT IS NOT AT ALL WHAT WAS  
13 GOING ON IN 1989 AT THE TIME OF THE HOMICIDES.

14 NOW, MR. CONN OBVIOUSLY DOESN'T LIKE THAT  
15 THEORY, THE MERCY KILLING THEORY, AND THE "KILL DAD  
16 BECAUSE OF WHAT HE WAS DOING TO MOM."

17 I MEAN, OBVIOUSLY IF MOM'S DEAD, WHAT DOES  
18 IT MATTER, OR WHY KILL MOM? WHY NOT JUST KILL DAD?

19 IT MAKES NO SENSE, THIS THEORY, TO ANYBODY.  
20 THEY HAD THEIR BIG GUNS ON THE WITNESS STAND HERE.  
21 "DR. DIETZ, DO PEOPLE DO THIS? DOES THIS MAKE SENSE,  
22 THESE KIND OF MOTIVES FOR KILLING?" AND THEY DIDN'T ASK  
23 HIM THIS, BECAUSE YOU CAN PRETTY MUCH FIGURE OUT WHAT  
24 THE ANSWER WOULD BE. IT'S INSANITY. BUT IT'S NOT THE  
25 INSANITY OF THE MENENDEZ BROTHERS.

26 IT'S THE INSANITY OF THE MYSTERIOUS

27 DR. OZIEL.

28 WHEN THE PEOPLE PUT THE TAPE ON, THEY PUT

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1 THE TAPE ON WITHOUT THE PERSON WHO MADE IT. THEY DIDN'T  
2 GIVE YOU ANY INFORMATION, AND YOU DIDN'T EVEN KNOW THE  
3 DATE. RIGHT OUT OF NOWHERE, THE BOLT OF LIGHTENING,  
4 WHEN THERE ISN'T EVEN A THUNDERSTORM GOING ON. AND THEY  
5 PUT IT ON BECAUSE IT SPEAKS FOR ITSELF. YES, IT SPEAKS  
6 GIBBERISH BY ITSELF, AND THEY NEVER BROUGHT IN OZIEL TO  
7 EXPLAIN ANY OF IT.

8 NOW, MR. CONN SAYS WE COULD HAVE CALLED  
9 HIM. WE DON'T HAVE THE BURDEN OF PROOF. WE ARE NOT THE  
10 PROPONENTS OF THIS LUNACY. THIS IS THEIR EVIDENCE.  
11 THIS IS THEIR SMOKING GUN. IT FIRES BLANKS, THIS  
12 SMOKING GUN.

13 THERE IS ONE PHRASE IN THIS WHOLE TAPE THAT  
14 IS USEFUL TO THE PROSECUTION, SO THEY RIP IT RIGHT OUT  
15 OF CONTEXT, AND THAT'S WHAT THEY WANT YOU TO THINK THIS  
16 TAPE IS ABOUT; HOW THEY PLANNED AND PREMEDITATED THIS  
17 KILLING, AND THAT IS NOT WHAT THIS TAPE IS ABOUT. IT'S  
18 ABOUT CRAZINESS.

19 IT'S ABOUT THIS THEORY FOR WHY THE KILLINGS  
20 HAPPENED. AND ALSO, WHEN YOU READ THE TRANSCRIPT -- AND  
21 I WANT YOU TO DO SO, AND I HOPE YOU WILL -- IT IS VERY



22 CLEAR WHAT MOTIVES THEY'RE ALL DISMISSING, INCLUDING  
23 OZIEL, WHO KNEW THE PARENTS. NOT BECAUSE OF CONTROL.  
24 AND LYLE MENENDEZ, WHO IS DOING MOST OF THE  
25 TALKING, SAYS THIS A NUMBER OF TIMES. "IT HAD NOTHING  
26 TO DO WITH US. IT HAD TO DO WITH MOM." NOT BECAUSE OF  
27 MONEY. OZIEL STATES ON THE TAPE HE KNOWS FROM THE PAST  
28 THAT THEY HAVE BEEN DISINHERITED; THAT HE HAD

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1 INFORMATION THEY HAD BEEN IN THE PAST DISINHERITED.  
2 NOT BECAUSE OF HATRED. THERE IS NO HATRED  
3 TOWARDS THESE PARENTS DESCRIBED ANYWHERE ON THIS TAPE.  
4 BUT WHAT HAPPENS TOWARDS THE END OF -- GOD KNOWS HOW  
5 MANY HOURS THEY WERE ACTUALLY TAPING AT THIS POINT --  
6 WHAT HAPPENS AT THE END OF THE FRAGMENT OF THIS SESSION  
7 THAT WE HAVE ON THIS TAPE, IS ERIK MENENDEZ' BREAKING  
8 DOWN. ACTING, I SUPPOSE MR. CONN WOULD CALL IT. BUT  
9 THERE WAS NO AUDIENCE FOR THIS ACTING.  
10 HE IS CRYING. HE IS SOBBING. HE IS UPSET.  
11 YOU CAN HEAR IT. AND HE STARTS TALKING ABOUT, IN VERY  
12 MYSTERIOUS TERMS: "IT WAS RUINING MY LIFE. I HAD NO  
13 CHOICE."  
14 HE DOESN'T SAY: "I ALMOST HAD NO CHOICE."  
15 THAT'S THE LAST TIME HE SAID IT. SIX TIMES, HE SAID:  
16 "I HAD NO CHOICE."  
17 ONE OF THEM HE PHRASES: "I ALMOST HAD NO

18 CHOICE," AND THAT'S THE ONLY PART THAT MR. CONN MENTIONS  
19 TO YOU. HAD NO CHOICE ABOUT WHAT? WHAT WAS RUINING HIS  
20 LIFE?

21 WHEN YOU SEE HOW THIS SUPPOSED THERAPY  
22 SESSION IS CONDUCTED, YOU WILL SEE THAT OZIEL MISSES ALL  
23 THE HINTS, NEVER FOLLOWS UP IN THE WAY THAT ANY  
24 PERSON -- OR LET ALONE, ANY THERAPIST, WOULD.

25 "WHAT ARE YOU TALKING ABOUT? TELL ME."

26 UH-HUH. HE IS SETTING THE STAGE. HE IS  
27 DOING ALL THE TALKING. NOW, HERE ARE THE -- I THINK THE  
28 TRANSCRIPT IS ABOUT -- I AM NOT SURE. THERE'S SO MANY

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1 DIFFERENT VERSIONS, I'M NOT SURE I HAVE THE LATEST BEST,  
2 BUT HERE IS PAGES 27 AND 28 FROM MY COPY, OR A COPY.  
3 AND THIS IS THE PART WHEN ERIK MENENDEZ STARTS TO FALL  
4 APART, AND HERE IS OZIEL SAYING ALL THESE ROTTEN THINGS,  
5 AND EXAGGERATED THINGS AND SILLY THINGS, ABOUT THE  
6 PARENTS, AND TALKING ABOUT HIS FATHER.

7 AND ERIK HAS BEEN SILENT FOR PAGES AND  
8 PAGES AND PAGES OF THIS DIALOGUE BETWEEN LYLE MENENDEZ  
9 AND DR. OZIEL. ERIK IS SAYING ABSOLUTELY NOTHING.

10 WELL, THIS ISN'T GOING TO HELP OZIEL'S  
11 BLACKMAIL PURPOSES, IF ERIK IS QUIET. SO HE HAS TO GET  
12 HIM TO TALK.

13 NOW, YOU ARE GOING TO GET AN INSTRUCTION AT

14 THE END ABOUT SOMETHING CALLED "ADOPTIVE ADMISSIONS".  
15 WHETHER YOU COULD USE, FOR EXAMPLE, AGAINST MR. LEVIN  
16 SOMETHING THAT I SAY, RIGHT? AND THE NOTION IS IF  
17 IT'S -- IF SOMETHING I SAY IS AN ACCUSATION, MR. LEVIN  
18 AND I COMMITTED A HIGHJACKING THREE YEARS AGO IN CUBA,  
19 AND HE IS NEXT TO ME, AND HE DOESN'T SAY: "NO, WE  
20 DIDN'T," THEORETICALLY IF IT'S AN ACCUSATORY STATEMENT  
21 THAT A PERSON WOULD HAVE DENIED, DEPENDING ON THE  
22 CIRCUMSTANCES, AND HE DOESN'T DENY IT, HE IS ADOPTING IT  
23 AS HIS OWN, AND IT BECOMES HIS ADMISSION.

24 THAT'S THE BASIC RULE, BUT THE INSTRUCTION  
25 IS MORE COMPLICATED.

26 AND THAT'S EASY TO KNOW IF YOU'RE WATCHING  
27 ME AND LEVIN, ME AND MR. LEVIN, AND I SAY THIS THING TO  
28 YOU AND HE HEARS ME, AND HE'S GOING LIKE THIS

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1 (INDICATING), OR HE'S GOING LIKE THAT. THEN YOU KNOW HE  
2 IS NOT ADOPTING IT, BUT WHEN ALL YOU HAVE IS A TAPE AND  
3 YOU CAN'T SEE ERIK MENENDEZ, AND YOU DON'T EVEN KNOW IF  
4 HE'S IN THE ROOM FOR ALL THIS, AND YOU DON'T KNOW IF  
5 HE'S CRYING, AND YOU DON'T KNOW IF HE'S GOING LIKE THIS  
6 (INDICATING), YOU DON'T KNOW ANYTHING ABOUT WHAT HIS  
7 REACTION IS.

8 I SUBMIT TO YOU THE ONLY THINGS YOU CAN  
9 RELY UPON IN THIS TAPE AND CAN ATTRIBUTE TO HIM ARE THE

10 THINGS HE SAYS; OR THERE ARE A FEW TIMES WHEN HE CLEARLY  
11 IS RESPONDING TO WHAT HIS BROTHER IS SAYING. HE'S  
12 ADDING SOMETHING TO A PART OF WHAT HIS BROTHER IS  
13 SAYING. AND FOR THAT PURPOSE YOU HAVE TO FIGURE OUT  
14 WHAT PART IS HE ACCEPTING, WHAT PART IS HE ADDING ON TO?  
15 BUT ANYWAY, HERE IS OZIEL TRYING TO GET  
16 ERIK INTO THE STEW, AND HE SAYS: "WHAT DO YOU THINK  
17 ERIK? HOW ABOUT YOU SAYING SOMETHING HERE. YOU HAVEN'T  
18 SAID A WHOLE LOT. WHAT DO YOU THINK?"  
19 AND WHAT DOES ERIK SAY?  
20 "I JUST DON'T LIKE HEARING IT."  
21 "WHAT DOES THAT MEAN?"  
22 "I DON'T LIKE HEARING IT."  
23 "YOU DON'T LIKE HEARING WHAT?"  
24 "I DON'T LIKE HEARING THESE THINGS ABOUT MY  
25 FATHER."  
26 THIS IS A PERSON WHO SUPPOSEDLY KILLED FOR  
27 A JEEP? THIS IS THE PERSON WHO SUPPOSEDLY KILLED FOR  
28 HATRED? THIS IS THE PERSON WHO SUPPOSEDLY KILLED

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1 BECAUSE HE MUCH WANTED TO TAKE HISTORY INSTEAD OF  
2 ECONOMICS?  
3 "I DON'T LIKE HEARING THESE THINGS ABOUT MY  
4 FATHER." HE LOVES HIS FATHER.  
5 LYLE SAYS THE SAME THING.

6 "OZIEL: WHAT ARE YOU FEELING?"

7 "ERIK MENENDEZ: UPSET."

8 OZIEL, AGAIN, SUGGESTING THINGS RATHER THAN

9 JUST ASKING. "HURT, SAD, WHAT? WANT TO TELL ME?"

10 AND ERIK SAYS: "WELL, I HAD PUSHED HIM OUT

11 OF MY MIND, AND UH, MY FATHER AND MY MOTHER WERE -- WERE

12 TWO PEOPLE THAT I LOVED, AND I JUST DON'T WANT TO HEAR

13 ANYTHING ABOUT IT."

14 NOW, ARE THESE EXPRESSIONS OF HIS FEELINGS

15 TOWARDS HIS PARENTS -- WHICH ARE REALLY THE ONLY ONES

16 THAT YOU WILL SEE ON THIS TAPE -- IS THIS A LIE ALSO?

17 MR. CONN WANTS TO SUGGEST THIS -- THIS TAPE

18 WAS MADE TO CREATE A DEFENSE. WHAT KIND OF DEFENSE IS

19 IT THAT YOU KILLED YOUR MOTHER OUT OF MERCY, AND YOU

20 KILLED YOUR FATHER BECAUSE OF WHAT HE DID TO THE MOTHER?

21 ANY IDIOT WOULD KNOW THAT'S NOT A DEFENSE. AND IF ANY

22 IDIOT DIDN'T KNOW IT, WHAT DID GLENN STEVENS TESTIFY TO?

23 HE SAID THAT LYLE MENENDEZ MADE A STATEMENT TO HIM JUST

24 BEFORE LYLE MENENDEZ GOT ARRESTED CONCERNING OZIEL AND

25 THESE TAPES. "IF THE POLICE GET THEIR HANDS ON THOSE

26 TAPES, I AM FUCKED."

27 NOW, YOU THINK HE'S GOING TO SAY THAT ABOUT

28 A TAPE THAT HE BELIEVES IS GOING TO SAVE HIM IN COURT?

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1 IS IT GOING TO BE USEFUL FOR LEGAL PURPOSES? OF COURSE

2 NOT.

3 THIS IS OZIEL'S BLACKMAIL TAPE. THIS  
4 SERVES NO USEFUL PURPOSE FOR THEM BUT TO KEEP OZIEL FROM  
5 GOING TO THE POLICE.

6 SO THEY DON'T EXPECT THIS TO COME OUT IN  
7 COURT. THEY NEVER IMAGINED I'D BE STANDING HERE WITH  
8 THIS HIGHLIGHTED IN BLUE TALKING TO YOU ALL ABOUT WHAT  
9 WAS SAID THAT DAY, DECEMBER 11TH, 1989 IN THE PRESENCE  
10 OF OZIEL.

11 OKAY. HE SAID: "I JUST DON'T WANT TO HEAR  
12 ANYTHING ABOUT IT. IT DOESN'T MATTER WHAT THEY WERE.  
13 SEE -- OR WHAT THEY ACTUALLY WERE. I -- WHETHER IT'S A  
14 FANTASY."

15 HOW MUCH MORE DO YOU NEED TO KNOW TO KNOW  
16 THAT THE PICTURE ISN'T CLEAR HERE, OR IT WASN'T.

17 "UM, I -- THEY WERE VERY APPARENT IN MY  
18 MIND"-- INTERESTING TERM -- "BEFORE THIS LED UP TO THE  
19 FACT WHERE I HAD NO OTHER CHOICE. I WOULD HAVE TAKEN  
20 ANY OTHER CHOICE."

21 NOW, WHAT IS HE TALKING ABOUT? HE  
22 CERTAINLY HAD A CHOICE NOT TO KILL HIS MOTHER FOR A  
23 MERCY KILLING, WHICH IS THE THEME OF THIS THING. HE  
24 CERTAINLY HAD A CHOICE NOT TO KILL HIS FATHER, BECAUSE  
25 HE WAS CRUEL TO HIS MOTHER. BUT WHAT HE HAD NO CHOICE  
26 ABOUT WAS SURVIVAL.

27 "AND BECAUSE I LOOKED BACK ON IT, AND  
28 REALIZING WHAT PEOPLE ARE WORTH, I VERY MUCH REGRET IT.

1 I MAY NOT HAVE HAD A CHOICE AT THE TIME, BUT I REGRET IT  
2 NOW. AND I AM SIMPLY -- UM, I'M LIKE -- THE MEMORIES  
3 THAT I HAD FROM WHEN I WAS 14 YEARS OLD, YOU KNOW, I HAD  
4 A MOTHER AND A FATHER THAT LOVED EACH OTHER AND LOVED  
5 ME."

6 NOW, THAT'S PART OF THE FANTASY IN HIS  
7 HEAD.

8 BECAUSE CHILDREN BELIEVE THEIR PARENTS LOVE  
9 THEM, EVEN WHEN THERE'S NO EVIDENCE TO PROVE IT. YOU  
10 HAVE TO BELIEVE THAT; THAT YOUR OWN PARENTS LOVE YOU.

11 "IT WAS THAT KIND OF RELATIONSHIP,  
12 AND I TRY TO BRING THAT BACK IN MY MIND.  
13 IT WAS KIND OF LIKE -- IT WAS LIKE THAT,  
14 AND I LIKED THAT, PLAIN AND SIMPLE, AND  
15 FEELING -- AND I DON'T LIKE HEARING MY  
16 FATHER PUT IN THIS SORT OF WAY."

17 THIS IS A PERSON WHO HATES HIM, REMEMBER,  
18 KILLED HIM FOR MONEY.

19 AND OZIEL SAYS: "IT'S TOO PAINFUL," AND  
20 ERIK SAYS "YES."

21 AND OZIEL SAYS: "TALK ABOUT IT," AND ERIK  
22 SAYS HE CAN'T.

23 AND THEN ERIK MENENDEZ SAYS: "HE WAS  
24 SOMEBODY THAT I LOVED, AND ALMOST HAD NO CHOICE TO DO  
25 WHAT I DID."

26 WELL, NOW, OF COURSE, HE REALIZES BY THEN

27 HE DID HAVE A CHOICE. HE COULD HAVE DIED. HE COULD  
28 HAVE, I GUESS, BEEN SOMEONE ELSE, SOMEONE CAPABLE OF

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1 RUNNING AWAY, OF DOING SOMETHING ELSE.  
2 EVERY OTHER TIME HE MENTIONS IT, HE'S  
3 TALKING ABOUT NOT HAVING A CHOICE. AND EVEN HAD YOU HAD  
4 NO CHOICE BUT TO KILL YOUR MOTHER OUT OF MERCY, COME ON.  
5 THIS PART IS WHAT WE CALL COGNITIVE DISSIDENCE. DOES  
6 NOT FIT ANYTHING THAT CAME BEFORE. IT CLEARLY IS -- THE  
7 TRUTH IS CREEPING OUT; AND, IN FACT, YOU WILL NOTICE,  
8 WHEN YOU READ THIS TRANSCRIPT FROM THIS POINT OUT, WHEN  
9 ERIK IS BREAKING DOWN AND STARTING TO GET VERY CLOSE TO  
10 THE TRUTH, LYLE SUDDENLY STARTS AGREEING WITH WHATEVER  
11 OZIEL SAYS. "YEAH, YOU'RE RIGHT. YOU'RE RIGHT. YOU'RE  
12 RIGHT. AND LET'S GET OUT OF HERE," BECAUSE ERIK CAN'T  
13 KEEP IT TOGETHER.  
14 AND HE TALKS ABOUT HATING HIMSELF, WHICH WE  
15 KNOW IS WHY HE'S WITH THIS PERSON, AND TALKS ABOUT THE  
16 LOVE THAT HE HAD FOR HIS PARENTS. THAT'S THE SMOKING  
17 GUN.  
18 THERE IS SO MANY WEIRD THINGS ABOUT THIS  
19 TAPE THAT YOU WILL SEE. MR. CONN TALKED ABOUT HOW -- I  
20 MEAN, I DON'T KNOW. EVEN HIS DESCRIPTION OF JOSE  
21 MENENDEZ SEEMS TO GO AROUND IN CIRCLES. BUT THERE IS A  
22 PART IN HERE WHERE LYLE MENENDEZ IS TALKING, AND I



23 NOTICE ERIK MENENDEZ IS NOT JOINING IN ON THIS PART OF  
24 THE CONVERSATION.

25 SO I DON'T KNOW THAT YOU COULD EVEN USE  
26 THIS AS AN ADOPTIVE ADMISSION AGAINST ERIK MENENDEZ.  
27 AND IF IT ISN'T, YOU CAN'T USE IT AT ALL.

28 BUT ON THE CHANCE YOU DECIDE YOU CAN, LYLE

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1 MENENDEZ IS TALKING ABOUT JOSE MENENDEZ CRYING. THIS IS  
2 THE PERSON WHO WE KNOW THOUGHT EMOTION WAS WEAKNESS, WHO  
3 CHIDED ERIK MENENDEZ FOR CRYING.

4 I MEAN, MY LORD, LOOK AT THIS. LOOK AT  
5 THIS THING. THIS IS A POSTCARD. THIS IS A XEROX OF A  
6 POSTCARD. HERE IS A PARENT, HE'S OFF IN HAMBURG,  
7 GERMANY. HE IS GOING TO WRITE HOME TO HIS LITTLE SON.  
8 "HAVING A WONDERFUL TIME, WISH YOU WERE HERE?" OH, NO.

9 "DEAR ERIK --" AND HE MISSPELLS HIS SON'S  
10 NAME. "I TRUST THAT YOU ARE NOT CRYING MUCH."

11 RIGHT HERE. I MEAN: "YOU LITTLE WEAKLING.  
12 YOU BETTER NOT BE," IS THE PARENTHETICAL.

13 AND YOU WANT -- THEY WANT YOU TO BELIEVE  
14 THAT JOSE MENENDEZ CRIED WHEN HIS SONS COMMITTED THE  
15 CALABASAS BURGLARIES? NO. WHAT HE DID WAS TOLD THEM  
16 THEY WERE STUPID, BECAUSE THEY GOT CAUGHT. HE NEVER GOT  
17 CAUGHT. AND HE WAS COMMITTING CRIMES ON ERIK MENENDEZ  
18 FROM THE TIME HE WAS SIX UNTIL THE TIME HE WAS 18, AND

19 HE NEVER GOT CAUGHT. SO WHY COULDN'T HIS KIDS BE AS  
20 CLEVER AS HE WAS?  
21 THAT'S WHAT HE WRITES TO A LITTLE KID ABOUT  
22 CRYING.  
23 BUT HERE ON THIS TAPE, I HAVE NO IDEA WHAT  
24 WAS GOING THROUGH LYLE MENENDEZ' MIND. ON THE ONE HAND,  
25 HE TALKS ABOUT HOW HIS DAD CRIED, AND THEN HE SAYS, ON  
26 THE VERY NEXT PAGE: "BUT WITH ME HE WAS VERY COLD. I'D  
27 CRY. I NEVER SAW HIM. HE WOULD BE VERY UPSET IF I SAW  
28 HIM CRYING, OR ANYTHING." COMPLETELY CONTRADICTS WHAT'S

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1 ON THE PRECEDING PAGE.  
2 AND THERE ARE SEGMENTS HERE, FOR EXAMPLE,  
3 ON PAGE 29, AND THAT IS HERE'S OZIEL PONTIFICATING,  
4 GOING ON AND ON. BUT HE TALKS ABOUT THE FACT, AS ERIK  
5 MENENDEZ SAID HE TOLD DR. OZIEL, THAT ERIK HAS ALL KIND  
6 OF PROBLEMS WITH HAVING ANYTHING TO DO WITH THE MONEY.  
7 AND THIS MEANS THE INSURANCE MONEY, AND THE  
8 FUTURE ESTATE MONEY. HE IS FEELING VERY GUILTY, VERY  
9 BAD ABOUT IT. HE IS HAVING DIFFICULTIES OF SPENDING ANY  
10 OF THESE AMOUNTS OF MONEY. HE HAS A GUILTY CONSCIENCE.  
11 HE SHOULD HAVE A GUILTY CONSCIENCE. HE DOES HAVE A  
12 GUILTY CONSCIENCE.  
13 SO THE BIG -- THE SMOKING GUN PART OF ALL  
14 THIS COMES ON MY VERSION OF THE TRANSCRIPT, WHICH I

15 THINK WILL BE THE SAME PAGINATION AS YOURS, ON PAGE 31,  
16 WHERE LYLE MENENDEZ IS TALKING IN THE MIDDLE OF A HUGE  
17 SPEECH THAT ACTUALLY BEGINS ON 30, AND SAYS: "LETTING  
18 ERIK SLEEP ON IT FOR A COUPLE OF DAYS," THE QUOTE,  
19 "DECISION TO KILL HIS MOTHER." AND THIS IS SUPPOSED TO  
20 BE SO OMINOUS AND SUCH PROOF OF PREMEDITATION, AND SO  
21 CALLOUS AND SO COLD, AND ON AND ON.

22 WELL, WHAT IS HE REALLY TALKING ABOUT HERE,  
23 BECAUSE THERE ARE BITS SURFACING THROUGH THIS THING;  
24 JUST LIKE WHEN ERIK MENENDEZ STARTS TO FALL APART.  
25 THERE'S LITTLE BITS THAT FIT IN WITH THE TRUTH.

26 YOU MAY REMEMBER OR YOU MAY NOT, AND I HOPE  
27 THAT I CAN REMIND YOU NOW, THAT ERIK MENENDEZ SAID FROM  
28 THE MINUTE THEY STARTED TALKING ABOUT THEY MIGHT NEED TO

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1 BUY GUNS TO PROTECT THEMSELVES, THERE WAS THE OBVIOUS  
2 QUESTION OF COULD YOU EVER REALLY USE THEM?

3 AND HE TALKED ABOUT HOW IN THE CAR ON  
4 FRIDAY, COMING BACK FROM SAN DIEGO, THERE WAS  
5 PARTICULARLY CONCERN ABOUT, "COULD I EVER SHOOT MY  
6 MOTHER? EVEN IF SHE'S COMING AT ME, EVEN IF SHE'S  
7 TRYING TO KILL ME. COULD I SHOOT MY MOTHER?"

8 AND HE DOESN'T KNOW. HE DOESN'T KNOW THAT  
9 HE COULD EVER DO THAT. THAT'S SATURDAY NIGHT. HE'S  
10 SITTING THERE WITH A GUN ACROSS HIS LAP. HIS DAD IS

11 POUNDING ON THE DOOR. HE DOESN'T EVEN KNOW THEN IF HE  
12 COULD SHOOT HIS FATHER, WHO WAS VIOLENT TOWARDS HIM ALL  
13 THOSE YEARS.

14 SO THE SHOOTINGS DON'T OCCUR UNTIL SUNDAY,  
15 WHEN THERE HAS BEEN ADDITIONAL REASONS TO BELIEVE THAT  
16 MOTHER HAS LETHAL INTENTIONS, AND THAT IS ALL THIS  
17 REFERENCE IS. TWO DAYS LATER, OBVIOUSLY, IN THE PANIC  
18 STATE THAT WE'LL TALK ABOUT, HE COULD SHOOT HIS MOTHER.  
19 THAT'S IT.

20 THAT'S THE WHOLE SMOKING GUN THEORY FROM  
21 THIS TAPE. AND READ IT. IT'S ABSOLUTELY BIZARRE.

22 NOW, MY CLIENT HAS SAT ON THE WITNESS STAND  
23 IN THIS TRIAL THAT'S COVERED BY THE MEDIA, AND MAKING A  
24 FORMAL RECORD ACCUSING THIS MAN, DR. OZIEL, OF  
25 BLACKMAIL; OF SETTING UP THIS FAKE STORY, OF THREATENING  
26 TO GO TO THE POLICE. AND WE KNOW FROM DETECTIVE  
27 ZOELLER, THEY GOT ARRESTED BECAUSE OF DR. OZIEL'S MOUTH,  
28 BECAUSE HE TOLD SOMEONE. AND THAT'S WHY THEY GOT

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1 ARRESTED. THIS IS A THERAPIST WHO DOESN'T KNOW ANYTHING  
2 ABOUT CONFIDENTIALITY, THAT MUCH WE KNOW. AND THEY  
3 DON'T CALL HIM EVEN IN REBUTTAL TO DENY IT.

4 NOW, DRAW YOUR OWN CONCLUSIONS FROM THAT.  
5 IT IS TRUE, NEITHER SIDE HAS TO CALL EVERY POSSIBLE  
6 WITNESS WHO MAY KNOW SOMETHING, AND NEITHER SIDE CAN

7 CALL EVERY POSSIBLE WITNESS WHO KNOWS SOMETHING. THERE  
8 ARE RULES ABOUT WHAT YOU CAN PUT ON DIRECTLY WITH  
9 WITNESSES VERSUS WHAT YOU HAVE TO PUT ON THROUGH  
10 EXPERTS, FOR EXAMPLE.

11 BUT DO YOU MEAN TO TELL ME THAT IT WASN'T  
12 IMPORTANT, IF WHAT ERIK MENENDEZ WAS SAYING ABOUT OZIEL  
13 WASN'T TRUE, TO CALL OZIEL AND LET HIM DENY IT IF HE  
14 WOULD? IT IS VERY CLEAR THEY DON'T WANT YOU TO LAY EYES  
15 ON THE VOICE ON THAT TAPE.

16 SO I SUBMIT TO YOU THAT THE SMOKING GUN IS  
17 A CAP PISTOL, AND DOESN'T GET YOU ANYWHERE ON THE  
18 JOURNEY TO TRY AND FIND OUT WHY THIS HAPPENED.

19 SO WHAT OTHER EVIDENCE DO THEY HAVE TO  
20 SUPPORT MURDER OF EITHER DEGREE, BUT PARTICULARLY THE  
21 BIG ONE, FIRST-DEGREE MURDER? NOT ORDINARY MURDER, AS  
22 MR. CONN TALKED ABOUT. THERE IS NO SUCH THING AS  
23 ORDINARY MURDER. MURDER IS AS BAD AS IT GETS.

24 ALL RIGHT. WE HAVE TALKED ABOUT THEIR  
25 FIRST THEORY, THIS "SLEEP ON IT" REMARK IN THE 12-11  
26 TAPE. THAT'S WHAT THEY'VE GOT TO SUPPORT THE NOTION  
27 THAT THERE WAS AN AGREEMENT TO KILL.

28 NOW, WHAT ARE THE OTHER FACTS THAT MAY BEAR

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1 ON THIS? OF COURSE, I CAN ALWAYS THINK OF SOMETHING  
2 ELSE. I HAVE A FEW MORE ON MY VERSION THAN WHAT'S UP

3 THERE, SO I WILL TALK ABOUT THE EXTRAS. BUT FIRST I  
4 WILL GO THROUGH WHAT'S THERE.  
5 THE AMBIGUOUS FACTS. THE AMBIGUOUS FACTS,  
6 WHICH ARE FACTS THAT CAN EITHER WEIGH ON THE ISSUE OF  
7 PLANNING AHEAD, PREMEDITATING AHEAD, WANTING TO KILL  
8 THEIR PARENTS, INTENDING TO KILL THEIR PARENTS.

9 ANYWAY YOU CONSTRUCT IT, THIS IS THE CORE  
10 OF THE PROSECUTION'S THEORY. THEY PLANNED TO DO IT. IT  
11 WAS NOT THIS SUDDEN, EMOTIONAL CRISIS SITUATION.

12 SO, WHO HAVE THEY GOT?

13 THEY'VE GOT CRAIG CIGNARELLI, WHO TELLS  
14 THIS STORY IN VARIOUS FORMS OVER DIFFERENT PERIODS OF  
15 TIME, THAT ERIK MENENDEZ SAID TO HIM THEY CAME BACK --  
16 HE SAID -- I'M NOT GOING TO TRY AND QUOTE IT DIRECTLY,  
17 JUST THE GENERAL GIST HERE -- ERIK MENENDEZ TOLD HIM  
18 THEY CAME BACK FROM GOING TO THE MOVIES TO GET SOME  
19 FALSE I.D.

20 THAT'S NOT WHAT ERIK MENENDEZ TOLD THE  
21 POLICE. SO HE IS OBVIOUSLY NOT TELLING CRAIG CIGNARELLI  
22 THE TRUTH AT THAT TIME.

23 CAME BACK FROM THE MOVIES TO GET SOME I.D.  
24 HE WENT IN THE HOUSE, HE COMES OUTSIDE, AND HIS BROTHER,  
25 LYLE, IS STANDING THERE WITH TWO SHOTGUNS AND SAYS:  
26 "LET'S DO IT."

27 AND YOU'RE SUPPOSED TO NOW BELIEVE THAT  
28 THAT'S THE TRUE STORY OF WHAT HAPPENED: "LET'S DO IT."

1 AND TWO YOUNG MEN GO OFF AND KILL THEIR PARENTS. "LET'S  
2 DO IT."

3 OR MAYBE IT'S UNPLANNED. I MEAN, THE  
4 THEORY IS THEY BOUGHT THE GUNS WAITING FOR THE MOMENT TO  
5 "LET'S DO IT," AND THAT'S ALL IT TOOK: "LET'S DO IT."

6 OR MAYBE WHAT THIS MEANS, WHY THIS IS  
7 AMBIGUOUS, IS THAT IT NEVER OCCURRED TO THEM. THEY  
8 BOUGHT THE GUNS TO GO DOVE HUNTING. IT NEVER OCCURRED  
9 TO THEM TO KILL THEIR PARENTS. BECAUSE CRAIG CIGNARELLI  
10 TESTIFIES HE DOESN'T ASK WHY. HE HAS NO INFORMATION  
11 WHATSOEVER OF WHAT LED UP TO THIS. THIS IS JUST A SPUR  
12 OF THE MOMENT, "LET'S DO IT." SURE.

13 THE OTHER FACTS: THEY PURCHASE THE GUNS ON  
14 AUGUST 18TH, AND THEY PURCHASED ADDITIONAL AMMUNITION ON  
15 AUGUST 19TH. AND THOSE ARE AMBIGUOUS FACTS. WHY?  
16 BECAUSE PLANNING TO DEFEND YOURSELF IS NOT THE SAME  
17 THING AS PLANNING TO MURDER SOMEONE ELSE.

18 YOU CAN EASILY IMAGINE A SITUATION, LET'S  
19 SAY, WHERE PEOPLE ARE IN THEIR HOME, AND A BURGLAR TRIES  
20 TO BREAK IN, AND THEY'RE TERRIFIED.

21 AND FOR WHATEVER REASON, THE BURGLAR  
22 REALIZES THEY'RE THERE. THEY RUN TO THE DOOR. THEY  
23 MAKE NOISES. THE BURGLAR RUNS AWAY. AND THESE PEOPLE  
24 DECIDE THAT: "IT WAS A CLOSE ONE. I AM NOT GOING TO BE  
25 HERE LYING IN BED WITH NOTHING TO DEFEND MYSELF THE NEXT  
26 TIME THIS HAPPENS. LET'S GO GET GUNS SO WE CAN PROTECT  
27 OURSELVES IN OUR HOME."

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1 HANDGUNS, SHOTGUNS, WHATEVER THE PEOPLE AT THE GUN STORE  
2 TELL THEM IS BEST TO PROTECT THEMSELF FROM BURGLARS.

3 NOW, ARE THEY PLANNING TO KILL THE NEXT  
4 BURGLAR WHO COMES? ARE THEY PLANNING MURDER? OR ARE  
5 THEY GETTING THESE GUNS BECAUSE THEY MIGHT HAVE TO USE  
6 THEM IF A REALLY THREATENING SITUATION OCCURS?

7 NOW, I KNOW PEOPLE -- WE ALL KNOW PEOPLE  
8 WHO HAVE GUNS IN THEIR HOMES FOR PROTECTION, WHO ASK  
9 THEMSELVES ALL THE TIME: "AM I REALLY GOING TO USE  
10 THIS? WHAT IF IT'S MY NEIGHBOR'S KID BREAKING IN?" I  
11 MEAN, HOW DO YOU KNOW IN ADVANCE WHAT THE NATURE AND  
12 QUALITY OF YOUR BURGLAR IS GOING TO BE?

13 BUT WE ALL KEEP THESE GUNS IN OUR HOUSES,  
14 AND WHEN THE TIME COMES THAT WE'RE FACED WITH THE  
15 THREAT, THAT'S WHEN WE REALLY KNOW FOR THE FIRST TIME,  
16 ARE WE GOING TO USE IT OR NOT?

17 SO, GOING TO BUY GUNS IS NO MORE CONSISTENT  
18 WITH THE PROSECUTION THEORY OF THE CASE THAN THE DEFENSE  
19 THEORY OF THE CASE. AND I WOULD SUBMIT TO YOU, DOWN THE  
20 RIGHT-HAND COLUMN, THAT THE WAY IN WHICH THIS IS DONE IS  
21 INCONSISTENT WITH PREMEDITATION AND DELIBERATION. AND  
22 HERE IS THE MAIN REASON WHY.

23 IF THEY WERE PLANNING ON KILLING THEIR



24 PARENTS -- I MEAN, I DON'T HAVE TO BE A PRINCETON  
25 UNIVERSITY STUDENT OR SOMEONE COMPETENT ENOUGH TO GET  
26 INTO U.C. BERKELEY TO FIGURE OUT THAT HANDGUNS ARE  
27 BETTER. THEY'RE BETTER FOR MURDER, JUST AS THEY'RE  
28 BETTER FOR SELF-DEFENSE. THEY'RE BETTER. THEY'RE

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1 SMALL. THEY'RE CONCEALABLE. THEY DON'T MAKE AS MUCH  
2 NOISE. HANDGUNS ARE BETTER.

3 SO WHY DIDN'T THEY GET HANDGUNS IF THEY'RE  
4 PLANNING ON KILLING THEIR PARENTS? BECAUSE THERE IS A  
5 TWO-WEEK WAITING PERIOD? WHY DIDN'T THEY WAIT TWO  
6 WEEKS, IF YOU WANT TO BUY THEM AT A GUN STORE.

7 BUT YOU DON'T HAVE TO BUY THEM AT A GUN  
8 STORE. THERE ARE -- HOW MANY GUNS? I HAD THIS NUMBER  
9 ONCE. TWENTY MILLION IN THE STATE OF CALIFORNIA ALONE,  
10 HANDGUNS OUT THERE. EVERY GANG BANGER SEEMS TO GET  
11 THEIR HANDS ON AS MANY AS THEY WANT. YOU DRIVE UP  
12 SOMEWHERE AND YOU BUY GUNS. IT'S NOT HARD, TWO RICH  
13 KIDS FROM BEVERLY HILLS, TO BUY A GUN ON THE STREETS.

14 UNFORTUNATELY, IT'S NOT HARD FOR ANYBODY TO  
15 BUY A GUN ON THE STREET IF YOU CAN'T WAIT. BUT WHY  
16 CAN'T THEY WAIT? THE ONE THING THE PROSECUTION NEVER  
17 ADDRESSES, IF THIS IS A PREMEDITATED KILLING, IS WHY  
18 NOW -- WHY DOES IT HAVE TO BE RIGHT THEN AND THERE?  
19 WHAT'S THE PROBLEM? LYLE MENENDEZ ISN'T GOING BACK TO

20 PRINCETON FOR A MONTH. WHAT'S THE HURRY? AND EVEN WHEN  
21 HE DOES, HE'S ON AIRPLANES ALL THE TIME. HE'S IN  
22 CALIFORNIA, EVEN WHEN HE'S GOING TO SCHOOL IN PRINCETON.  
23 JAMIE PISARCIK, OF ALL PEOPLE, ESTABLISHED THAT. HE'S  
24 BACK HERE EVEN WHEN HE'S IN SCHOOL.  
25 SO WHAT IS THE URGENCY HERE? WHAT IS IT,  
26 IF IT ISN'T WHAT THE DEFENSE SAYS IT IS. WHY NO  
27 HANDGUNS? WHAT'S THE HURRY?  
28 AND THE ANSWER, OF COURSE, IS THEY'RE

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1 OPERATING IN A PANIC. THEY DON'T KNOW WHAT'S GOING TO  
2 HAPPEN TO THEM, OR HOW SOON. THAT'S WHY IT'S URGENT.  
3 THAT'S WHY IT'S QUICK. AND THAT'S WHY THERE IS NO  
4 HANDGUNS.

5 SO HERE ARE THE FACTS ABOUT HOW THIS  
6 OCCURRED THAT INDICATE THIS COULDN'T HAVE BEEN  
7 PREMEDITATED. THEY'RE JUST NOT THAT STUPID.

8 FIRST OF ALL, THE NATURE OF THE KILLING  
9 ITSELF. WE WILL TALK ABOUT WHY ROGER MC CARTHY WAS A  
10 DESPERATE MOVE BROUGHT INTO THIS CASE AT THIS POINT.

11 BUT WHAT'S OBVIOUSLY APPARENT IS IT DOESN'T  
12 TAKE THIS MANY ROUNDS TO KILL PEOPLE, IT JUST DOESN'T.  
13 AND WHEN YOU ARE ACTING IN A PANIC, AND WHEN YOU ARE  
14 ACTING IN A HIGHLY EMOTIONAL STATE, YOU FIRE OFF  
15 EVERYTHING YOU HAVE IN YOUR GUN. WHEN YOU ARE AFRAID OF

16 THE PERSON THAT YOU'RE KILLING, WHEN YOU SEE THEM AS  
17 LARGER THAN LIFE, AS POWERFUL PEOPLE, WHICH IS CERTAINLY  
18 HOW THEIR CHILDREN SAW THEM, YOU FIRE OFF EVERYTHING IN  
19 YOUR GUN, AND THAT IS WHAT'S CALLED "OVERKILL", AND IT  
20 DEMONSTRATES A HIGH LEVEL OF EMOTIONALITY.

21 I MEAN, I DON'T KNOW WHAT FOLKLORE ABOUT  
22 THE MAFIA MR. CONN HAS BEEN EXPOSED TO, BUT I COULD  
23 SWEAR WHAT I HEAR IS THEY GO IN THERE WITH A .22  
24 CALIBER, ONE SHOT TO THE BACK OF THE HEAD. NEAT, CLEAN,  
25 QUIET. THAT'S HOW THE MAFIA KILLS PEOPLE. THAT'S HOW  
26 PROFESSIONALS KILL PEOPLE.

27 AND PEOPLE WHO PLAN CRIMES DO NOT STAND IN  
28 THEIR DEN IN BEVERLY HILLS ON A HOT SUMMER NIGHT FIRING

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1 OFF 11 OR 12 ROUNDS FROM LOUD SHOTGUNS IF THEY HAD A  
2 PLAN. BECAUSE WHAT IS THE PURPOSE OF A PLAN? THE  
3 PURPOSE OF A PLAN IS TO GET AWAY WITH IT. THE PURPOSE  
4 OF A PLAN IS TO AVOID DETECTION. AND THE BEST WAY TO  
5 BRING DOWN DETECTION IS TO SHOOT UP A HOUSE IN BEVERLY  
6 HILLS ON A SUNDAY NIGHT.

7 NOW, MR. CONN HAS THIS NOTION THAT THEY DID  
8 A SURVEY TO SEE HOW OFTEN IS THERE GUNFIRE IN BEVERLY  
9 HILLS. THAT'S CRAZINESS, SILLINESS.

10 I'LL TELL YOU WHAT, THOUGH. IF HE'S RIGHT,  
11 THAT THIS IS A KILLING BECAUSE THERE WERE SOME FAMILY

12 DISPUTES ABOUT ONE OF THE KIDS SPENDING TOO MUCH MONEY,  
13 AND THE OTHER ONE WANTING TO TAKE DIFFERENT COURSES, IF  
14 THAT WAS ENOUGH TO RESULT IN THESE KILLINGS, THERE WOULD  
15 BE GUNFIRE IN BEVERLY HILLS EVERY NIGHT OF THE WEEK.

16 THESE ARE ORDINARY, NORMAL FAMILY ISSUES. THOSE KIND OF  
17 ISSUES DON'T RESULT IN HOMICIDE.

18 SO WE HAVE THE OVERKILL. NO HANDGUNS. USE  
19 OF THESE HORRIBLY LOUD WEAPONS. THE FACT THAT -- I  
20 MEAN, THIS IS SUPPOSED TO BE PLANNED, AND THEY COULDN'T  
21 FIGURE OUT WHAT KIND OF AMMUNITION TO BUY? THEY'RE NOT  
22 RESEARCHING AMMUNITION, OBVIOUSLY. IF THEY INTEND TO  
23 KILL SOMEBODY, YOU'RE GOING TO ASK THEM QUESTIONS WHEN  
24 YOU FIRST BUY AMMUNITION.

25 THAT DOESN'T HAPPEN, BECAUSE THEY ARE NOT  
26 INTENDING TO KILL. THEY ARE AFRAID. THEY ARE TRYING TO  
27 DEFEND THEMSELVES, AND THEY ARE EXTREMELY AMBIVALENT.  
28 WILL THEY DO THIS? DO THEY WANT TO DO THIS? THEY DON'T

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1 KNOW.

2 IT'S LIKE THE ON AND ON OFF SWITCH, YOU  
3 KNOW. THAT'S WHY HE DIDN'T LOAD THE GUN. YOU TELL  
4 YOURSELF YOU'RE GOING TO DO SOMETHING AWFUL, THAT YOU  
5 DON'T WANT TO DO. THAT'S WHY HE DOESN'T LOAD THE GUN  
6 UNTIL THE LAST MINUTE. AND FOR HEAVEN'S SAKE, HOW WOULD  
7 YOU HAVE KNOWN HE DIDN'T LOAD THE GUN UNTIL THE LAST

8 MINUTE, UNLESS HE TOLD YOU? THAT'S A FACT YOU COULD  
9 HAVE HIDDEN.

10 OKAY. SO, WE HAD THIS MIXED AMMUNITION.  
11 NOT ONLY DID THEY NEVER FIGURE IT OUT, THEY FIGURE OUT  
12 BY TALKING TO SOMEBODY THE NEXT DAY THAT BIRD SHOT IS  
13 NOT AN EFFECTIVE ROUND OF AMMUNITION. AND, OF COURSE,  
14 IT ISN'T. SO THEY BUY MORE.

15 HOW MUCH DO THEY BUY? THEY BUY 10 ROUNDS.  
16 THAT'S ALL THEY BUY. SO WHEN IT HAPPENS, THEY'RE USING  
17 MIXED AMMUNITION, BECAUSE THERE IS A LACK OF THINKING  
18 THROUGH. THERE IS A LACK OF CALM, DELIBERATE,  
19 PREMEDITATED THOUGHT HERE.

20 AND, OF COURSE, THE LOCATION. IS THIS THE  
21 ONLY PLACE -- IF THEY WERE PLANNING TO KILL THEIR  
22 PARENTS -- IS THIS THE ONLY PLACE THEY COULD HAVE DONE  
23 IT; IN A PLACE WHERE THERE'S BOUND TO BE WITNESSES, EAR  
24 WITNESSES IF NOT EYEWITNESSES?

25 AND, OF COURSE, WHERE DO THEY DO THIS  
26 LOADING AND UNLOADING THAT MR. CONN HAS MADE SO MUCH OF?  
27 RIGHT IN THE FRONT. THERE IS LOTS OF PICTURES OF THE  
28 HOUSE. WE ARE TALKING ABOUT -- THIS ISN'T A CARPORT

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1 THAT MY CLIENT USES. THIS IS THE DRIVEWAY. IT'S GOT A  
2 CIRCULAR-LIKE PULL-IN DRIVEWAY. IT'S RIGHT ADJACENT TO  
3 THE SIDEWALK ON A PUBLIC STREET. THERE ARE NO BIG, HIGH

4 WALLS AROUND THE HOUSE. IN THIS PART OF BEVERLY HILLS,  
5 YOU CAN BE SEEN. THAT'S WHERE THEY ARE DOING THEIR  
6 LOADING AND UNLOADING. THAT'S SUPPOSED TO SHOW A PLAN?  
7 THEN THERE IS THIS: NOT MAKING THE HOUSE  
8 LOOK BURGLARIZED. TECHNICALLY, THAT'S CALLED A LACK OF  
9 POST-CRIME STAGING. THAT'S WHAT THE F.B.I CALLS THAT.  
10 MR. CONN: OBJECTION. NO EVIDENCE OF THAT IN  
11 THIS TRIAL.  
12 THE COURT: ALL RIGHT. OVERRULED.  
13 ARE YOU ABOUT READY TO TAKE A BREAK?  
14 MS. ABRAMSON: LET ME JUST FINISH THIS LITTLE  
15 PIECE ABOUT THIS, JUDGE, AND THEN I DON'T HAVE TO GO  
16 BACK TO THAT.  
17 I MEAN, THE EASIEST THING IN THE WORLD  
18 HERE, TO HAVE AVOIDED ANY SUSPICION FALLING ON THEM,  
19 WOULD HAVE BEEN TO STEAL A FEW THINGS. NOW THERE ARE  
20 BURGLARIES IN BEVERLY HILLS, YOU KNOW, AS COMPARED TO  
21 HOMICIDES, AS COMPARED TO GUNFIRE.  
22 SO MAKE THE HOUSE LOOK BURGLARIZED. THEN  
23 IT'S -- YOU'VE GOT THE EASIEST EXCUSE IN THE WORLD WHEN  
24 THE POLICE ASK YOU: "WELL" -- AS THEY DID -- "WAS  
25 ANYTHING MISSING?"  
26 AND WHAT DO THEY SAY? NO, HM-MM.  
27 I MEAN, ALL OF THIS EFFORT ON THE  
28 PROSECUTION'S PART TO SAY OH, WHAT ROTTEN PEOPLE THEY

1 ARE. THEY'RE POINTING THE FINGER AT SOMEONE ELSE.  
2 THEY'RE POINTING THE FINGER AT THE MAFIA. THAT'S  
3 USEFUL, WHEN THE EASIEST THING WOULD BE TO POINT THE  
4 FINGER AT THE BURGLAR. AND YOU DON'T HAVE TO DO MUCH.  
5 YOU DON'T HAVE TO TAKE OUT THE T.V. JUST TAKE THE  
6 JEWELRY. JUST SAY SOMETHING IS MISSING. YOU DON'T EVEN  
7 HAVE TO DO THAT. OH, NO, IT WASN'T A BURGLARY.

8 OKAY, YOUR HONOR. I CAN STOP THERE NOW.

9 THE COURT: OKAY, WE WILL TAKE A RECESS, IT'S  
10 NOON, AND WE WILL RESUME AT 1:30.

11 DON'T DISCUSS THE MATTER WITH ANYONE.

12 DON'T FORM ANY FINAL OPINIONS.

13 (AT 12:00 P.M. PROCEEDINGS WERE  
14 ADJOURNED UNTIL 1:30 P.M OF THE  
15 SAME DAY.)

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1 VAN NUYS, CALIFORNIA; MONDAY, FEBRUARY 26, 1996

2 1:45 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER.)

6 (MARY LU MURPHY, OFFICIAL REPORTER.)

7

8 THE COURT: OKAY. EVERYONE IS PRESENT.

9 WE'LL HAVE THE JURY OUT, PLEASE.

10 (THE JURY ENTERED THE COURTROOM

11 AND THE FOLLOWING PROCEEDINGS

12 WERE HELD:)

13

14 THE COURT: OKAY. THE JURY IS BACK. AND YOU

15 MAY CONTINUE YOUR ARGUMENT.

16 MS. ABRAMSON: THANK YOU, YOUR HONOR.

17 I WAS GOING THROUGH THIS CHART THAT

18 INDICATES SOME OF THE ISSUES. I HAVE SOME MORE ON A

19 HANDWRITTEN VERSION OF IT THAT POINTS AWAY FROM THE

20 NOTION OF PREMEDITATION AND PLANNING, WHICH IS THE

21 PROSECUTION'S BASIC THEORY FOR WHATEVER MOTIVE.

22 I THINK WHEN WE BROKE FOR LUNCH WE WERE

23 TALKING ABOUT THE FACT THAT THEY DIDN'T MAKE THE

24 HOUSE LOOK BURGLARIZED.

25 THERE WAS SOMETHING ELSE THAT COULD HAVE

26 BEEN DONE HERE, AND THAT WAS TO HAVE STAGED A



27 SELF-DEFENSE SCENARIO. THERE WERE GUNS IN THE  
28 HOUSE. WE KNOW, BASED ON THE RECEIPT THAT IS IN

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1 EVIDENCE, THAT AT THE TIME THAT MRS. MENENDEZ  
2 PURCHASED THE NEWER OF THE TWO RIFLES, IN JUNE OF  
3 1988, SHE ALSO PURCHASED AMMUNITION. SO THERE WERE  
4 GUNS AND AMMUNITION IN THE HOUSE THAT THEY COULD  
5 HAVE LOADED UP AND STAGED AN ENTIRE SELF-DEFENSE  
6 SCENARIO, BUT THEY DIDN'T DO THAT.

7 THE NEXT ITEM HERE IS PICKING UP THE  
8 SHELLS. THE PROSECUTION ARGUES THAT THAT'S SOME  
9 KIND OF EVIDENCE OF CALCULATION, POST-CRIME  
10 CALCULATION, IF YOU WILL.

11 BUT I SUBMIT TO YOU THAT THE FACT THAT  
12 THEY STAYED AROUND SAYS TWO THINGS. FIRST OF ALL,  
13 THE FACT THAT THEY NEEDED TO PICK UP THE SHELLS IS  
14 IMPORTANT, AND THAT LINKS UP WITH THIS ITEM HERE, NO  
15 GLOVES. ACTUALLY, YOU DON'T NEED TO USE GLOVES TO  
16 KEEP FROM GETTING FINGERPRINTS ON A SHELL. YOU CAN  
17 USE A PIECE OF TISSUE TO PUT IT IN THE GUN.

18 THE FACT THE GUNS WERE NOT LOADED IN  
19 ADVANCE, WHEN YOU WOULD HAVE HAD PLENTY OF TIME TO  
20 PUT SHELLS IN THE GUN. THERE WOULD HAVE BEEN NO  
21 FINGERPRINTS LEFT TO TRACE IN CONNECTION WITH THAT

22 KIND OF EVIDENCE. THAT WOULD HAVE INDICATED  
23 PREMEDITATION AND PLANNING.  
24 THE FACT THAT THE GUNS WERE NOT LOADED  
25 IN ADVANCE, THE FACT THAT THE SHELLS WERE PUT IN  
26 WITH BARE HANDS, THUS LEAVING FINGERPRINTS,  
27 INDICATES THERE WAS NO PREMEDITATION.  
28 NOW, MR. CONN MAKES A BIG THING OUT OF

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1 THE FACT THAT WHEN RACING OUT OF THE HOUSE LATER ON,  
2 ONE OR THE OTHER OF THE MENENDEZ BROTHERS  
3 SAID: "OOPS, THE SHELLS."  
4 NOW, ERIK MENENDEZ TESTIFIED THAT HE'S  
5 TAKING RESPONSIBILITY FOR A LOT OF THINGS HERE,  
6 INCLUDING THAT. BUT HE SAYS THAT HIS BROTHER  
7 CLAIMED THAT HE, LYLE MENENDEZ, WAS THE ONE WHO  
8 THOUGHT OF IT; AND IF YOU REMEMBER, ERIK MENENDEZ  
9 TESTIFIED THAT WHEN HIS BROTHER HAD GONE BACK INTO  
10 THE DEN AND THE LAST SHOT -- WE ALL KNOW WHICH ONE  
11 IT WAS -- WAS FIRED, HIS BROTHER LEFT HIS GUN, FOR  
12 SOME REASON, IN THE DEN; AND, THEREFORE, HAD TO GO  
13 BACK IN THE DEN WHEN THEY DECIDED, AFTER WAITING  
14 AROUND AND THE POLICE DIDN'T COME, LYLE MENENDEZ HAD  
15 TO GO BACK INTO THE DEN TO PICK UP THE GUN, BECAUSE  
16 THEY ALREADY DECIDED AT THIS POINT TO GET OUT OF

17 THERE.

18       AND SO WHEN HE WENT BACK IN THE DEN,  
19 ARGUABLY HE SAW THE SHELLS. MOREOVER, LYLE MENENDEZ  
20 HAD, ACCORDING TO ERIK MENENDEZ' TESTIMONY,  
21 UNEXPENDED ROUNDS, LIVE ROUNDS IN HIS POCKET, THAT,  
22 FOR SOME REASON, ERIK MENENDEZ DIDN'T KNOW ABOUT  
23 BEFORE THE SHOOTING. AND LYLE MENENDEZ DIDN'T  
24 REMEMBER IT BECAUSE HE WAS IN SUCH A PANIC AT THE  
25 TIME THEY RAN OUT TO DO THE RELOAD. THE RUNNING OUT  
26 TO DO THE RELOAD WAS COMPLETELY UNNECESSARY, BECAUSE  
27 LYLE MENENDEZ HAD SHELLS IN HIS POCKET. BUT  
28 OBVIOUSLY, IN THIS STATE HE DIDN'T THINK OF THAT.

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1       SO, I SUBMIT THAT IT'S MOST LIKELY -- I  
2 CAN'T SAY IT'S FOR SURE -- BUT IT'S MOST LIKELY THAT  
3 LYLE MENENDEZ IS THE ONE WHO SUGGESTED THE SHELLS,  
4 BECAUSE HE HAD JUST BEEN IN THE DEN AND THE SHELLS  
5 WERE RIGHT THERE NEAR THE ENTRY WAY.

6       AND WITH RESPECT TO RIGHT THERE NEAR THE  
7 ENTRY WAY, MR. CONN GAVE YOU A SPECULATIVE THEORY  
8 THAT THE REASON WHY ERIK MENENDEZ IS SAYING THE  
9 SHELLS, THE EXPENDED ROUNDS, WERE RIGHT NEAR THE  
10 ENTRY WAY IS BECAUSE HE DOESN'T WANT TO ADMIT THAT  
11 HE WENT NEAR THE BODIES OF HIS PARENTS. THAT'S

12 RIDICULOUS.

13 THE REASON IS -- IF YOU REMEMBER THE  
14 TESTIMONY OF DEPUTY VAN HORN, THE MUCH MALIGNED  
15 DEPUTY VAN HORN, AND I WILL SPEND SOME TIME TALKING  
16 LATER ABOUT DEPUTY VAN HORN -- HE INDICATED THAT, FOR  
17 ONE THING, ON THIS KIND OF A WEAPON THE SHELLS EJECT  
18 TO THE RIGHT. AND IF YOU ARE NOT SKILLED THE WAY HE  
19 IS -- HE SAID HE COULD STAND THERE, STAND ANYWHERE,  
20 TAKE THAT GUN, AND BECAUSE HE IS AN EXPERT, HE COULD  
21 EJECT IT IN SUCH A WAY AS ALL THE SHELLS WOULD DROP  
22 STRAIGHT DOWN, BECAUSE HE'S AN EXPERT AND KNOWS HOW  
23 TO DO THAT.

24 BUT IF YOU DO IT VERY FAST, THEY FLY  
25 WHERE? TO THE RIGHT. WHERE WAS ERIK MENENDEZ  
26 STANDING? HE SHOWED YOU WHERE HE WAS STANDING. HE  
27 RAN IN, HE FIRED AS HE RUNS, HE WINDS UP HALFWAY  
28 INTO THE ROOM. ALL THE CASINGS WOULD HAVE GONE TO

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1 THE RIGHT, WHICH IS AWAY FROM WHERE MR. AND MRS.  
2 MENENDEZ' BODIES WERE.

3 AND THE SAME IS TRUE -- YOU MAY RECALL  
4 ERIK MENENDEZ ALSO SAID THAT SOME OF THE SHELL  
5 CASINGS WERE UNDERNEATH THE OCTAGONAL TABLE, WHICH  
6 IS OFF IN THE CORNER, AND THAT'S THE AREA THAT TABLE

7 WOULD HAVE BEEN, TO THE RIGHT OF WHERE LYLE MENENDEZ  
8 WAS WHEN HE WAS FIRING.

9 SO, THE LOCATION OF THE SHELL CASING  
10 CORROBORATES ERIK MENENDEZ' TESTIMONY ABOUT WHAT  
11 HAPPENED INSIDE THE ROOM WHEN HE WENT IN.

12 THE NEXT FACTOR HERE SHOWING A LACK OF  
13 PREMEDITATION IS THERE WAS NO DISPOSAL PLAN. IF  
14 YOU'RE PLANNING TO DO THIS, THEN ONE WOULD THINK  
15 YOU'D HAVE IN MIND: HOW ARE WE GOING TO GET RID OF  
16 EVIDENCE LATER? THE FACT THEY HAD TO GO BACK AND  
17 BUY MORE AMMUNITION SHOWS A LACK OF PLAN, BUT IN  
18 FACT THEY DID DO THAT.

19 SO THERE WERE BOXES, AS YOU SAW HERE, AS  
20 IS IN EVIDENCE. I DON'T THINK YOU'RE GOING TO BE  
21 ALLOWED BY THE BAILIFF TO PLAY AROUND WITH THE LIVE  
22 AMMUNITION. THERE IS, AS TESTIFIED TO, A BOX OF  
23 LIVE AMMUNITION. IT COMES IN A CARDBOARD BOX.

24 HERE THEY HAD SCRAMBLED THROUGH THE BACK  
25 OF THE CAR TO LOAD THE GUNS ORIGINALLY, AND THEN  
26 WHEN THEY WENT BACK AND ERIK MENENDEZ, SCRAMBLING,  
27 CAME UP WITH A SHELL AND HANDED IT TO HIS BROTHER.  
28 THERE'S A MESS IN THE BACK OF THAT CAR.

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1 YOU WOULD HAVE THOUGHT THAT THEY WOULD

2 HAVE HAD A PLAN, AND PART OF THAT PLAN WOULD HAVE  
3 BEEN TO LOAD EARLIER. BUT APART FROM THAT, TO  
4 DISPOSE OF ALL OF THESE MATERIALS IN A RATIONAL AND  
5 SIMPLE WAY.

6         INSTEAD, THEY WIND UP GOING TO  
7 MULHOLLAND, CLIMBING HALFWAY DOWN THE MOUNTAIN,  
8 LEAVING THE GUNS ON A MOUNTAIN, WHERE IT IS MERE  
9 FORTUITY THEY HAVE NEVER BEEN FOUND. THE SERIAL  
10 NUMBERS ARE NOT TAKEN OFF THE GUNS. THE GUNS ARE  
11 NOT WIPE TO REMOVE FINGERPRINTS.

12         IN FACT, IN REGARD TO THAT, AND EVEN  
13 WITH RESPECT TO WIPING THE SHELL CASINGS, ERIK  
14 MENENDEZ TESTIFIED THAT CONCERNING THE BURGLARIES,  
15 WHEN HIS FAMILY WAS PREPARING TO RETURN ALL THE  
16 STOLEN PROPERTY, HIS MOTHER INSISTED THAT THEY WIPE  
17 EVERYTHING DOWN TO TAKE THE FINGERPRINTS OFF OF IT.  
18 AND THAT'S EVEN HIS FINGERPRINTS. EVEN THOUGH HE IS  
19 ADMITTING IT, HE'S GOING TO THE SHERIFF'S  
20 DEPARTMENT, GOING TO TAKE THE BLAME FOR THESE  
21 BURGLARIES, HIS MOTHER INSISTED THAT NONE OF THEIR  
22 FINGERPRINTS BE ON IT.

23         SO THERE'S ALREADY SOMEWHERE, STORED IN  
24 THE BACK OF HIS HEAD, THE NOTION THAT YOU WIPE OFF  
25 FINGERPRINTS, WHICH MAY HAVE ALSO COME INTO PLAY AT  
26 THE TIME THAT IT OCCURS TO THEM TO PICK UP SHELLS.

27         BUT IN SUCH A RACE NOW, THEY DON'T EVEN  
28 THINK TO WIPE OFF THE GUNS, TAKE OFF THE SERIAL

1 NUMBERS. THEY JUST DON'T DO IT.

2 SIMILARLY, WHEN THEY STOP AT THE GAS  
3 STATION IN SANTA MONICA, I BELIEVE HE THOUGHT IT  
4 WAS, AND DUMP THE REST OF THE MATERIAL, INCLUDING  
5 HIS PANTS AND PROBABLY SHOES; EVEN THEN THERE IS NO  
6 THOROUGH SEARCH TO GET RID OF ALL POTENTIAL  
7 EVIDENCE.

8 AND SO THE NEXT MORNING, HERE THEY ARE,  
9 AT THE HOUSE. THE POLICE HAVE GOT YELLOW TAPE  
10 AROUND HIS CAR, RIGHT? AND THEY MANAGE TO GET  
11 INSIDE THE CAR AND REMOVE THINGS, INCLUDING, HE  
12 SAID, THERE WAS ONE, HE BELIEVED, LIVE ROUND ON THE  
13 FRONT FLOORBOARD OF THE CAR.

14 NOW, WHAT MUST BE PERFECTLY OBVIOUS TO  
15 ALL OF YOU, IS THAT IT WAS NOTHING BUT THE WILDEST  
16 OF LUCK, SHEER CHANCE, NOT PLAN, THAT THEY DIDN'T  
17 GET ARRESTED THAT VERY MORNING.

18 DETECTIVE ZOELLER -- DON'T BLUSH.

19 DETECTIVE ZOELLER TESTIFIED THAT  
20 DETECTIVE EDMONDS WAS THE SENIOR DETECTIVE, THAT IF  
21 GUNSHOT RESIDUE SIMPLY HAD BEEN DONE ON THE MENENDEZ  
22 BROTHERS' HANDS, IT WOULD HAVE BEEN DETECTIVE  
23 EDMONDS WHO WOULD HAVE REQUESTED IT.

24 DETECTIVE ZOELLER WAS AT THE SCENE,  
25 AND EDMONDS NEVER DID REQUEST IT. AND I SUBMIT TO

26 YOU THAT IF THAT TESTING HAD BEEN DONE AND GUNSHOT  
27 RESIDUE WAS THERE, IT WOULD HAVE BEEN FOUND. THEY  
28 WOULD HAVE BEEN ARRESTED THAT VERY NIGHT, AND THIS

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1 WOULD HAVE BEEN A MUCH SHORTER TRIAL, WITH A LOT  
2 FEWER ISSUES WE HAVE TO DISCUSS.

3 THE FACT IS, THEY WERE NOT ARRESTED THAT  
4 NIGHT. THE FACT IS THAT THEY WERE BEING TREATED BY  
5 THE POLICE AS WITNESSES, VICTIMS, AND I THINK THE  
6 REASON FOR THAT IS OBVIOUS. ERIK MENENDEZ'  
7 EMOTIONAL STATE INDICATED THAT HE WAS HORRIFIED BY  
8 THE DEATH OF HIS PARENTS, AND THAT IS NOT  
9 INCONSISTENT WITH THE FACT THAT HE KILLED THEM.

10 BECAUSE OF THE WAY IN WHICH THIS  
11 SHOOTING CAME ABOUT, THE FACT THAT HE WAS HORRIFIED  
12 BY WHAT HE FELT HE HAD NO CHOICE TO DO, IS NOT  
13 INCONSISTENT.

14 MR. CONN WOULD HAVE YOU BELIEVE ALL THAT  
15 EMOTION WAS ACTING, AND THAT ALL THOSE POLICE  
16 OFFICERS WERE STUPID. I MEAN, HE'S AT THE SCENE, HE  
17 IS HYSTERICAL. THERE IS HYSTERIA ON THE 911 CALL.  
18 CHRISTINE NYE TESTIFIED IT SOUNDED LIKE GENUINE  
19 UPSET.

20 DETECTIVE EDMONDS, WHO HAS INTERVIEWED



21 NUMEROUS PEOPLE, WHO HAS BEEN A DETECTIVE FOR A LONG  
22 TIME, SAW WHAT HE BELIEVED WAS GENUINE GRIEVING. HE  
23 DESCRIBED HIM AS -- IN FACT, I HAVE IT. THIS ISN'T  
24 ALL MY WORDS, YOU'LL BE HAPPY TO KNOW. THIS IS  
25 TRANSCRIPT.

26 HE SAID HIS EMOTIONAL CONDITION MADE IT  
27 IMPOSSIBLE TO CONTINUE THE INTERVIEW. HE SAID IT  
28 WAS APPROPRIATE TO SAY HE APPEARED DISTRAUGHT. HE

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1 DESCRIBED HIM AS SOBBING AND HIS BODY WAS SHAKING  
2 FROM THE SOBBING AT THE END OF THE INTERVIEW, AND  
3 THAT'S WHY THE INTERVIEW STOPPED.

4 THAT'S NOT FAKING. THAT'S REAL. AND  
5 BECAUSE THERE'S REAL EMOTION HERE, THE POLICE DID  
6 NOT THINK IN TERMS OF SEXUAL MOLESTATION AND CHILD  
7 ABUSE IN BEVERLY HILLS. THEY WEREN'T THINKING IN  
8 TERMS OF A FAMILY CRISIS, SUCH AS WE KNOW HAPPENED  
9 HERE.

10 AND THAT'S THE ONLY REASON THEY DIDN'T  
11 GET ARRESTED THAT VERY MORNING. THAT'S THE REASON  
12 WHY PATROL OFFICERS DIDN'T SCRUTINIZE THEM  
13 CAREFULLY. IT DOESN'T TAKE ANY GREAT DERRING-DO, IF  
14 YOU'RE BEING TREATED LIKE THE GRIEVING SONS WHEN  
15 THEY ARE THE GRIEVING SONS, NOTWITHSTANDING WHAT

16 THEY DID. AND SO THEY GOT INTO THE CAR AND WERE  
17 ABLE TO REMOVE THAT SHELL AND BOXES, I BELIEVE, ERIK  
18 MENENDEZ SAID.

19 THIS IS A SUBTLE POINT, THE NOTION  
20 THAT -- THE FACT IS, AS I REMEMBER THE TESTIMONY,  
21 THEY WAITED AROUND. THEY WERE IN THAT NUMB STATE  
22 THAT DR. WILSON HAS TESTIFIED FOLLOWS A  
23 HYPER-REACTIVE, HYPER-AROUSSED STATE IN P.T.S.D.

24 ERIK MENENDEZ TESTIFIED HE'S IN THAT  
25 NUMB STATE. THEY'RE SITTING AROUND IN THE FOYER  
26 AREA. MR. CONN SAYS THEY ONLY WAITED THREE OR FOUR  
27 MINUTES. MR. MENENDEZ TESTIFIED, YOU KNOW, THEY  
28 WEREN'T WATCHING THEIR WATCHES. IT SEEMED LIKE A

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1 LONG TIME. MAYBE IT WAS THREE OR FOUR MINUTES. WE  
2 HAVE NO WAY OF KNOWING EXACTLY HOW LONG.

3 BUT THE BOTTOM LINE IS THE POLICE DIDN'T  
4 COME. THE POLICE DIDN'T COME.

5 AND SO, THEY WENT AND PICKED -- LYLE  
6 MENENDEZ PICKED UP HIS GUN. THEY DECIDED TO PICK UP  
7 THE SHELLS. BUT THIS ALL MEANS THEY DIDN'T RACE  
8 RIGHT OUT THE DOOR. THE FACT THEY PICKED UP SHELLS  
9 AT ALL MEANS THEY DID NOT RACE RIGHT OUT THE DOOR.  
10 THE POLICE WERE NOT RIGHT UPON THEM, EVEN THOUGH THE

11 STATION'S A MINUTE AWAY, ONE MINUTE AWAY.

12 AND THEN, OF COURSE, THERE IS THE FACT  
13 THAT, ALTHOUGH THE WORD HAS BEEN USED VERY LOOSELY  
14 IN THIS TRIAL, THERE WAS NO ALIBI. AN ALIBI MEANS  
15 THAT YOU CAN PUT YOURSELF SOMEWHERE ELSE AT THE TIME  
16 THAT A CRIME IS OCCURRING.

17 NOW, THEY COULD SAY WE WERE AT THE  
18 MOVIES, AND THEY DID SAY WE WERE AT THE MOVIES.  
19 BUT, OF COURSE, THEY HAD NO PROOF THAT THEY WERE AT  
20 THE MOVIES, AND IT WAS THE EASIEST THING IN THE  
21 WORLD TO GET. YOU GO TO THE MOVIE, IF YOU'RE  
22 PLANNING TO DO THIS, EARLIER THAT DAY, AND YOU BUY  
23 TICKETS, AND YOU GO INTO THE MOVIE. YOU GO IN.  
24 THEY LIVE FIVE MINUTES AWAY FROM THIS MOVIE  
25 THEATRE. YOU GO INTO THE MOVIE. YOU LET THEM TEAR  
26 THE TICKETS. YOU BUY POPCORN. BE SEEN BY PEOPLE.  
27 AND THEN YOU LEAVE AFTER THE MOVIE BEGINS.

28 AND THEN YOU HAVE YOUR PROOF THAT YOU

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1 WENT TO THE MOVIES. I MEAN, AT THE CENTURY-14, YOU  
2 CAN EVEN CALL UP AND RESERVE TICKETS IN ADVANCE.  
3 YOU DON'T EVEN HAVE TO WAIT IN LINE TO DO THIS.  
4 WILL-CALL, AMERICAN EXPRESS AT THE MOVIE THEATERS,  
5 EVEN IN '89.

6 BUT NONE OF THAT WAS DONE. IF THEY WERE  
7 PLANNING TO DO THIS, IF THE PROSECUTION IS RIGHT, IF  
8 TALKING TO PERRY BERMAN -- AND I'LL SHOW YOU WHY  
9 THAT'S A FALLACIOUS THEORY -- BUT IF TALKING TO PERRY  
10 BERMAN IS AN EFFORT TO SATISFY AN ALIBI, GO GET  
11 YOURSELF A MOVIE TICKET. IT ONLY COST SEVEN BUCKS.  
12 BUT THEY DIDN'T DO IT. SO THEY'RE LEFT  
13 AFTERWARDS, WHEN SURVIVAL HAS OVERWHELMED THEM AND  
14 THEY WANT TO ESCAPE RESPONSIBILITY AT THAT POINT, TO  
15 THE LAW, AT LEAST -- THEY RUSH TO THE MOVIE THEATER  
16 AND FIND OUT THEY CAN'T GET TICKETS TO THE MOVIE  
17 THAT WAS PLAYING AT THE TIME OF THE SHOOTINGS, WHICH  
18 IS THE ONLY MOVIE TICKET THAT'S GOING TO GIVE THEM  
19 AN ALIBI. THEY BUY A TICKET. THEY SEE IT'S THE  
20 WRONG TIME. THROW IT AWAY.  
21 SO THAT CERTAINLY, SAYING, "I WAS AT THE  
22 MOVIES," IS NOT TOO TERRIFIC, ESPECIALLY WHEN YOU  
23 COULD HAVE EASILY COME UP WITH SOMETHING TO PROVE  
24 THEY WERE AT THE MOVIES.  
25 NOW, THIS BUSINESS OF PERRY BERMAN AS AN  
26 ALIBI. YOU DON'T TELL SOMEONE YOU'RE GOING TO MEET  
27 THEM AT A PARTICULAR TIME AFTER YOU HAVE COMMITTED A  
28 CRIME AND THINK THAT PERSON IS GOING TO PROVIDE YOU

1 WITH AN ALIBI FOR WHEN YOU DID COMMIT THE CRIME.

2 THAT'S PART ONE.

3 PART TWO: IF YOU DO SET SOMEONE UP TO  
4 BE A WITNESS THAT YOU DIDN'T SHOW UP, OKAY -- THAT'S  
5 WHAT PERRY BERMAN WOUND UP -- TRY TO GET THERE IN  
6 TIME TO TALK TO HIM. GET THERE IN TIME TO TALK TO  
7 HIM AND SAY, "BOY, WE'VE BEEN DRIVING AROUND FOR AN  
8 HOUR TRYING TO FIND THIS PLACE." AT LEAST HE COULD  
9 SAY YOU SAID THAT, AND THAT WOULD COVER THE TIME OF  
10 YOUR CRIME.

11 BUT IN THIS CASE ALL THEY DO IS TIP  
12 SOMEBODY OFF THAT THEY WEREN'T WHERE THEY WERE  
13 SUPPOSED TO BE AT THE CRUCIAL TIME THAT THIS OFFENSE  
14 IS HAPPENING.

15 SO THEY SET UP PERRY BERMAN TO BE A  
16 WITNESS AGAINST THEM. THAT'S NOT AN ALIBI. THE  
17 WHOLE DISCUSSION WITH PERRY BERMAN THAT AFTERNOON,  
18 FOLKS, WAS A SOCIAL PLAN. THEY WERE GOING TO MEET  
19 PERRY BERMAN, AND HERE'S THE PROOF.

20 PERRY BERMAN TESTIFIED TO THIS. THEY  
21 ASKED HIM TO GO TO THE MOVIES WITH THEM THAT  
22 AFTERNOON, AND HE TESTIFIED TO IT. I'VE GOT THE  
23 TESTIMONY. THEY ASKED HIM TO GO TO THE MOVIES WITH  
24 THEM. THEIR ONLY PLAN WAS TO GO TO THE MOVIES THAT  
25 DAY, AND PERRY BERMAN WOULD HAVE BEEN WITH THEM.  
26 THEY WEREN'T PLANNING ON KILLING THEIR PARENTS.  
27 THEY WERE GOING TO GO TO THE MOVIES WITH PERRY  
28 BERMAN, AND HE SAID: "NO, I'VE GOT OTHER PLANS.

1 I'M GOING TO BE AT THE "TASTE OF L.A." SO WHAT IS  
2 MADE IS A SOCIAL PLAN. OKAY?

3 "AFTER WE GO TO THE MOVIES, WE'LL MEET  
4 YOU AT "TASTE OF L.A." THAT'S NOT AN ALIBI. THAT'S  
5 A SOCIAL PLAN THAT THEY DIDN'T KEEP, WHICH IS PROOF  
6 AGAINST THEM.

7 AND THE SAME THING IS TRUE ABOUT THIS  
8 PERSON NAMED CAREY PARKER. WHAT ERIK MENENDEZ SAID  
9 IS THAT FOR A WEEK HIS BROTHER HAD A DATE TO GO SEE  
10 "BATMAN" WITH CAREY PARKER, THAT 8:00 SHOWING,  
11 RIGHT? WELL, THEY DIDN'T SHOW UP. FOR ALL THEY  
12 KNEW, CAREY PARKER WAS INSIDE THAT THEATRE WAITING  
13 FOR THEM, AND THEY DIDN'T SHOW UP. AND AS HE  
14 EXPLAINED IT, WHEN THEY DID GET TO THE MOVIE THEATRE  
15 LATER, AFTER THE SHOOTINGS, THEY TRIED TO BUY  
16 TICKETS FOR A DIFFERENT SHOW, BECAUSE THEY DIDN'T  
17 WANT TO WALK INTO THE "BATMAN" SHOW AND HAVE CAREY  
18 PARKER SAY, "I BEEN WAITING FOR YOU GUYS FOR TWO  
19 HOURS," AND ANOTHER WITNESS WOULD HAVE BEEN READY TO  
20 SAY THEY ABSOLUTELY DIDN'T SHOW UP, ANOTHER WITNESS  
21 THAT COULD HAVE PROVEN THAT THEY WERE THE PEOPLE WHO  
22 KILLED THEIR PARENTS, RATHER THAN BEING PEOPLE WHO  
23 WERE SOMEWHERE ELSE AT THE TIME.

24            THAT'S NOT ALIBI-MAKING.  
25            AND HERE'S ANOTHER PIECE. DETECTIVE  
26 ZOELLER TESTIFIED THAT HE TRACED THE PHONE CALLS  
27 THAT WERE MADE FROM THE SANTA MONICA CIVIC -- YOU MAY  
28 RECALL THEY GOT TO THE SANTA MONICA CIVIC TOO LATE

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1 TO FIND PERRY BERMAN THERE. THE PLACE WAS CLOSING  
2 DOWN. LYLE MENENDEZ MADE A PHONE CALL, OR PHONE  
3 CALLS, CAME BACK, AND TOLD ERIK MENENDEZ: "WE'RE  
4 GOING TO MEET PERRY AT THE CHEESECAKE FACTORY."

5            AND THEY LEAVE. AND THAT'S THEIR  
6 INTENTION. AND ON THE WAY BACK, ERIK MENENDEZ  
7 CANNOT KEEP IT TOGETHER. HE CANNOT GO OUT IN PUBLIC  
8 AND SEE ANYBODY. HE IS TOO DISTRAUGHT. HE IS TOO  
9 UPSET.

10           AND SO THEY DECIDED AT THAT POINT TO  
11 JUST GO HOME AND CALL THE POLICE, WHICH IS ALL THEY  
12 THOUGHT TO DO, GO HOME AND CALL THE POLICE; NOT  
13 LEAVE TOWN, NOT HIDE OUT, NOT GO SOMEWHERE AND HAVE  
14 TIME TO MAKE UP A STORY THAT "WE WERE ON VACATION  
15 WHEN THIS THING HAPPENED," NONE OF THAT.

16           AND, YOU KNOW -- WELL, I'LL GET BACK TO  
17 THIS IN A MINUTE ABOUT WHO SAW THIS ISOLATED FAMILY  
18 THAT WHOLE WEEK, THAT WHOLE WEEK THIS STUFF IS GOING

19 ON. THERE'S NOBODY, REALLY, AROUND THEM, AND THIS  
20 BESPEAKS THIS ISOLATION. BUT ANYWAY...  
21       THEY ARE AT THE SANTA MONICA CIVIC.  
22 HERE'S LYLE MENENDEZ, ACCORDING TO THE PROSECUTION'S  
23 THEORY, TRYING TO MAKE AN ALIBI. THEY GOT TO THE  
24 MOVIES AND THE SANTA MONICA CIVIC AT 11:00  
25 SOMETHING. AT THIS POINT A LONG TIME HAS GONE BY.  
26 SO HE PLACES THESE CALLS TO CAREY PARKER ON HIS  
27 CREDIT CARD.  
28       REMEMBER, DETECTIVE ZOELLER TALKED ABOUT

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1 HE GOT THE SPRINT RECORDS? THESE ARE CREDIT CARD  
2 CALLS. THIS WILL SHOW EXACTLY WHAT TIME HE MADE  
3 THOSE CALLS AND SHOW EXACTLY THAT HE HAD THE  
4 OPPORTUNITY TO COMMIT THESE SHOOTINGS, BECAUSE HE  
5 WASN'T IN SANTA MONICA UNTIL THE TIME THAT THESE  
6 CALLS WERE MADE. EVEN IF PERRY BERMAN DISAPPEARED  
7 OFF THE FACE OF THE EARTH, HERE WE HAVE LYLE  
8 MENENDEZ USING A PHONE OUT THERE WELL AFTER THE TIME  
9 THAT HE NEEDED TO COVER HIM FOR AN ALIBI.  
10       I WANT TO TALK A LITTLE BIT ABOUT THE  
11 GUN PURCHASE, IF I CAN FIND MY NOTES ON THE GUN  
12 PURCHASE. BACK TO HERE. AND WHY THE WHOLE WAY THAT  
13 THAT WAS DONE DOES NOT INDICATE PREMEDITATION.



14 I REMEMBER WHAT I WAS GOING TO SAY.  
15 IT'S CALLED "BUYING THE GUNS IN SAN DIEGO AND THE  
16 FAKE I.D."  
17 ALL RIGHT. NOW, WHAT'S THE  
18 PROSECUTION'S THEORY? IT'S SUSPICIOUS AND SINISTER  
19 THAT THEY WENT TO SAN DIEGO TO BUY THESE GUNS.  
20 WHY? WHY DOES BUYING THESE GUNS IN SAN DIEGO  
21 SUPPORT A PREMEDITATION OR PLANNING THEORY? IF YOU  
22 ARE GOING TO USE FAKE -- I MEAN, IF YOU'RE GOING TO  
23 USE FAKE IDENTIFICATION, WHAT DIFFERENCE DOES IT  
24 MAKE WHAT CITY YOU BUY THE GUNS IN? WHAT POSSIBLE  
25 DIFFERENCE COULD IT MAKE?  
26 WELL, YOU MAY SAY THEY DIDN'T WANT TO BE  
27 SEEN. THEY DIDN'T WANT TO BE SEEN. BUT THEY WENT  
28 TO THE BIG-5 IN SANTA MONICA. THEY DIDN'T WANT TO

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1 BE SEEN BUYING ANYTHING, SO THEY WENT TO THE TARGET  
2 PLACE HERE IN VAN NUYS. I MEAN, IT DOESN'T MATTER  
3 WHERE YOU BUY GUNS IF YOU'RE BUYING THEM WITH A FAKE  
4 I.D.  
5 BUT IT MAKES NO SENSE TO SAY THEY DROVE  
6 DOWN TO SAN DIEGO TO HIDE OUT TO BUY GUNS, WHEN THE  
7 VERY NEXT DAY THEY HIDE OUT ALL THE WAY IN VAN NUYS  
8 AND BUY AMMUNITION, AND EXPECT WHEN THEY GO THERE

9 THAT THEY'RE GOING TO BE -- AT LEAST ERIK MENENDEZ  
10 EXPECTED THAT HE'S GOING TO GET AN OPPORTUNITY TO  
11 FIGURE OUT HOW THIS GUN WORKS, AND HOW IT FEELS AND  
12 WHETHER OR NOT HE CAN DO THAT, AND ALL THAT THOSE  
13 OTHER ISSUES. AND HE'S GOING TO DO THAT IN  
14 LOS ANGELES COUNTY, BE SEEN WITH A GUN IN  
15 LOS ANGELES COUNTY.

16 SO WHAT POSSIBLE DIFFERENCE DOES IT MAKE  
17 THAT THEY BOUGHT THE GUNS IN SAN DIEGO?

18 I MEAN, THE FACT THAT THEY ARE IN SAN  
19 DIEGO SIMPLY CORROBORATES WHAT ERIK MENENDEZ IS  
20 SAYING, WHICH IS THEY WANTED TO GET OUT OF THE  
21 HOUSE, AND THEY STARTED DRIVING, AND THEY WERE  
22 TALKING A GREAT DEAL ABOUT THE PAST, WHAT ERIK  
23 MENENDEZ WAS TELLING HIS BROTHER, ALL THE GRUESOME  
24 DETAILS ABOUT THE RELATIONSHIP WITH HIS FATHER, THE  
25 SEXUAL RELATIONSHIP, THE THREATS, WHY IT WAS SO  
26 SCARY. ALL OF THAT IS HAPPENING ON THIS LONG DRIVE  
27 TO SAN DIEGO.

28 THERE'S NO OTHER REASON TO GO TO SAN

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1 DIEGO EXCEPT TO TAKE THAT LONG DRIVE.

2 AND, IN FACT, BEING TOTALLY UNFAMILIAR

3 WITH SAN DIEGO, IT MAKES IT HARDER TO COME UP WITH A

4 FAKE ADDRESS. AND, IN FACT, WHAT HAPPENED WAS, AS  
5 ERIK MENENDEZ TESTIFIED, HE COULDN'T REMEMBER THE  
6 FAKE ADDRESS HE LOOKED UP IN THE PHONE BOOK AT  
7 MCDONALD'S, OR WHEREVER IT WAS HE HAD LUNCH. HE  
8 FORGOT IT, SO HE USED AUGUST STREET, WHICH IS THE  
9 MONTH.

10       HERE'S THE OTHER THING. IF YOU'RE  
11 PLANNING ON BUYING GUNS AND YOU'RE PLANNING ON USING  
12 FAKE I.D., WHY USE THE I.D. OF YOUR BROTHER'S FORMER  
13 ROOMMATE, WHEN YOU HAVE A TOTALLY FICTITIOUS FAKE  
14 I.D.?

15       REMEMBER DR. DIETZ MADE A BIG DEAL OUT  
16 OF THE FACT THAT OH, IT WAS A TERRIBLE, TERRIBLE  
17 CRIME. THAT ERIK MENENDEZ WENT TO THE D.M.V. WITH A  
18 BIRTH CERTIFICATE, GOT A TOTALLY FAKE I.D. IN THE  
19 NAME OF RICHARD STEVENS.

20       WELL, THERE'S NO RICHARD STEVENS. IF  
21 YOU ARE PLANNING ON BUYING GUNS AND YOU UNDERSTAND  
22 YOU NEED I.D., WHICH YOU'D THINK CONSPIRATORS WOULD  
23 FIGURE OUT, WHY NOT USE THE TOTALLY UNTRACEABLE I.D.  
24 OF RICHARD STEVENS, INSTEAD OF A REALLY COMMON NAME,  
25 DONOVAN GOODREAU, YOUR BROTHER'S FORMER ROOMMATE?

26       MR. CONN ALSO ATTACHES SINISTER  
27 CONNOTATIONS TO THE FACT THAT THEY USED A FAKE I.D.  
28 ERIK MENENDEZ EXPLAINED HE CARRIED DONOVAN

1 GOODREAU'S I.D. TO GET INTO CLUBS. IT WAS ONE OF  
2 THE FAKE I.D.'S HE USED, AND HE DIDN'T HAVE A  
3 CALIFORNIA DRIVER'S LICENSE. THE RICHARD STEVENS  
4 WAS NOT A DRIVER'S LICENSE. IT WAS AN I.D.

5         SO HE DIDN'T HAVE HIS CALIFORNIA  
6 DRIVER'S LICENSE. MR. CONN WILL NOT CONCEDE A  
7 SINGLE POINT IN THIS CASE, BECAUSE OF A DESPERATE  
8 NEED FOR A CONVICTION IN THIS CASE, FOR ALL SORTS OF  
9 POLITICAL REASONS. HE WON'T EVEN CONCEDE WHEN WE  
10 HAVE PROOF HE GOT A TICKET IN JULY FOR DRIVING  
11 WITHOUT A LICENSE, AND THEN HE'S WITH HIS AUNT  
12 MARTHA CANO, AND HE HAS NO LICENSE.

13         WHY WOULD HE HIDE HIS DRIVER'S LICENSE  
14 FROM HIS AUNT MARTHA CANO IF HE HAD ONE? HE DIDN'T  
15 HAVE ONE. SO SHE TAKES HIM TO THE D.M.V. IN FLORIDA  
16 AND HE GETS ONE. BUT THEY CAN'T EVEN CONCEDE THAT  
17 POINT, THAT HE DIDN'T HAVE A LICENSE IN HIS  
18 POSSESSION.

19         THE OTHER THING ABOUT THIS PARTICULAR  
20 GUN PURCHASE IS THEY CHOSE A PLACE TO BUY THESE  
21 GUNS, THESE SUPPOSED CONSPIRATOR-PLANNERS, THAT HAD  
22 A VIDEO CAMERA VISIBLE; IN FACT, TWO OF THEM VISIBLE  
23 IN PHOTOGRAPHS. YOU CAN SEE THEM YOURSELVES. THEY  
24 DIDN'T KNOW, BECAUSE IT WAS NOT ADVERTISED, THAT THE  
25 VIDEO CAMERA WASN'T WORKING.

26         NOW, YOU DON'T HAVE ANY INFORMATION  
27 ABOUT WHETHER THE OTHER GUN STORE IN SAN DIEGO OR

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1 CAMERA. I'VE BEEN IN A LOT GUN STORES, AND THEY  
2 DON'T ALL HAVE VIDEO CAMERAS. THEY DIDN'T EVEN  
3 CARE. THEY DIDN'T EVEN SHOP FOR ONE WITHOUT A VIDEO  
4 CAMERA.

5       AND FINALLY, ALTHOUGH THIS IS A  
6 STATEMENT MADE AFTER THE SHOOTING, IT SHOWS A STATE  
7 OF MIND OF ERIK MENENDEZ HAVING TO DO WITH WHAT HE  
8 TOLD DR. WILSON. AND THERE'S SOMETHING ELSE HERE  
9 TOO HAVING TO DO WITH CREDIT CARDS.

10       WE KNOW LYLE MENENDEZ HAD CREDIT CARDS.  
11 ERIK MENENDEZ TESTIFIED THERE WAS A VISA CARD THAT  
12 BELONGS TO HIS MOM THAT LYLE MENENDEZ WAS NOT  
13 SUPPOSED TO USE. AND THE REASON WHY HIS MOTHER GOT  
14 UPSET OVER THE PURCHASE OF THE CAMCORDER IS BECAUSE  
15 SHE THOUGHT IT WAS ON HER VISA CARD, WHEN THIS WAS,  
16 IN FACT, THE JUMBO AMERICAN EXPRESS CARD, THE ONE  
17 WITH THE \$250,000 LIMIT THAT JOSE MENENDEZ GAVE LYLE  
18 MENENDEZ TO USE FOR PURCHASES.

19       SO THEY HAVE TWO CREDIT CARDS,  
20 SUPPOSEDLY THAT THEY COULD USE. BUT THEY DON'T USE  
21 THEM.

22       NOW, IF THEY THINK THEIR PARENTS ARE

23 GOING TO BE DEAD WITHIN A DAY OR TWO, WHY NOT?  
24 THEY'RE NOT GOING TO GET THE BILL. THEY'RE NOT  
25 GOING TO SEE IF YOU BOUGHT GUNS. IT'S THE SAME MIND  
26 SET AS WHAT ERIK MENENDEZ TOLD DR. WILSON.  
27 EVEN IF HE HAD HAD HIS OWN I.D., HE  
28 WOULDN'T HAVE USED IT BECAUSE HE THINKS THE GUN

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1 STORE -- ONCE YOU BUY A GUN, MAYBE THE N.R.A. GETS  
2 THE LIST OF PEOPLE WHO BUY GUNS. I DON'T KNOW IF  
3 THEY DO OR NOT. IT WOULD MAKE SENSE. AND THEY MAY  
4 GET LITERATURE. AND THAT WOULD TIP JOSE MENENDEZ  
5 OFF THAT HIS SONS HAD BOUGHT GUNS, WHICH HE PROBABLY  
6 WOULDN'T LIKE.

7 WELL, WHY WOULD YOU BE CONCERNED ABOUT  
8 YOUR FATHER GETTING THE BILL IF YOU'RE PLANNING ON  
9 KILLING HIM IN A DAY OR TWO? OBVIOUSLY, YOU  
10 WOULDN'T.

11 I JUST WANT TO SEE IF I'M LEAVING  
12 ANYTHING OUT. I DON'T WANT TO HAVE TO GO BACK.

13 ALL RIGHT. NOW, MORE SPECIFICALLY, I  
14 WANT TO DEAL WITH THE SUPPOSED GREED EVIDENCE IN  
15 THIS CASE. AND LOGICALLY ENOUGH, WE CALL THIS CHART  
16 "EVIDENCE OF GREED AS MOTIVE."

17 NOW, I'VE ALREADY MENTIONED THIS TO YOU,

18 BUT WITH RESPECT TO THAT TIME PERIOD BEFORE THE  
19 SHOOTINGS, THERE WAS ABSOLUTELY NO EVIDENCE  
20 WHATSOEVER PRESENTED THAT ERIK MENENDEZ HAD ANY  
21 FINANCIAL-BASED MOTIVE TO KILL HIS PARENTS, NO  
22 TROUBLE OVER MONEY, NO ARGUMENTS OVER MONEY. BUT  
23 THERE IS SOMETHING VERY INSIGHTFUL, I THINK, ON THE  
24 WAY THIS FAMILY OPERATED THAT YOU CAN GLEAN FROM THE  
25 TESTIMONY OF BRIAN ANDERSEN.

26         ANDERSEN IS MARY LOUISE MENENDEZ'  
27 BROTHER, AND HE TESTIFIED -- HE WAS ONE OF THE FIRST  
28 WITNESSES CALLED -- HE TESTIFIED HE LIVES IN

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1 ILLINOIS, YOU MAY RECALL. HE HAS HIS OWN PLANE. HE  
2 IS THE UNCLE BRIAN THAT ERIK MENENDEZ TESTIFIED WAS  
3 A REAL ESTATE INVESTOR, AND HE TALKED TO ERIK  
4 MENENDEZ ABOUT INVESTING WITH HIM IN THE FUTURE,  
5 AFTER THE INHERITANCE, AND MAKING A 30-MILLION-DOLLAR  
6 RETURN. THAT'S WHERE THAT CAME FROM. OKAY?

7         HERE'S UNCLE BRIAN ANDERSEN ON THE  
8 WITNESS STAND, AND HE TESTIFIES THAT IN AUGUST HE  
9 SEES HIS SISTER AND HIS NEPHEW AT HIS HOME IN  
10 DOWNERS GROVE, ILLINOIS. THEY'RE GOING TO BE GOING  
11 TO THE FINALS OF THE JUNIOR AMATEUR TENNIS  
12 TOURNAMENT IN KALAMAZOO.

13           AND HE DISCOVERS, AFTER ERIK MENENDEZ  
14 AND MARY LOUISE MENENDEZ HAVE ARRIVED AT HIS HOME,  
15 THAT ERIK MENENDEZ WANTS TO USE THE PHONE. HE'S  
16 CONCERNED BECAUSE HE HAS LEFT SOMETHING ON THE  
17 AIRPLANE THAT HE CAME IN ON. OBVIOUSLY, HE CAME IN  
18 SEPARATELY FROM HIS MOTHER. AND HE'S CONCERNED  
19 ABOUT THIS, THE RECKLESS, IRRESPONSIBLE PERSON THAT  
20 HE WAS. HE IS CONCERNED ABOUT THIS.

21           SO HE'S CALLING THE AIRLINE TO FIND OUT  
22 IF -- IT TURNED OUT IT WAS A VIDEO CAMERA, CAMCORDER,  
23 THAT HE LEFT IN THE BAGGAGE DEPARTMENT, THIS IS  
24 SOMETHING MR. CONN LIKES TO LABEL AS IRRESPONSIBLE  
25 AND RECKLESS, BUT HE'S TRYING TO FIND THIS  
26 \$900-CAMERA, WHICH HE THINKS IS A GREAT DEAL OF  
27 MONEY, HIS UNCLE BRIAN ANDERSEN TESTIFIED TO.

28           HOWEVER, THE EVIDENCE COMES OUT ALSO

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1 THAT ERIK MENENDEZ DIDN'T BUY THIS. MARK HEFFERNAN  
2 TESTIFIED HE SUGGESTED THAT LYLE MENENDEZ PURCHASE  
3 THIS CAMCORDER WHEN HE AND LYLE MENENDEZ WERE IN NEW  
4 YORK EARLIER THAT SUMMER, BECAUSE IT IS A USEFUL  
5 TOOL FOR TRAINING, SO YOU CAN SEE PLAYBACKS OF HOW  
6 YOU'RE PLAYING SO YOUR COACH CAN COACH YOU MORE  
7 EFFECTIVELY. THIS IS NOT A FRIVOLOUS THING. THIS



8 IS NOT BEING DONE TO MAKE HOME MOVIES. IT'S FOR,  
9 YOU KNOW, THEIR WORK, TENNIS. TENNIS IS THEIR JOB.  
10 SO THIS IS ALL EXPLAINED, THAT LYLE  
11 MENENDEZ PURCHASED IT WITH MARK HEFFERNAN FOR A  
12 LEGITIMATE PURPOSE. AND WHAT DOES MRS. MENENDEZ  
13 DO? WHAT SHE DID HER WHOLE LIFE. SHE TURNED ON  
14 ERIK MENENDEZ. "YOU KIDS HAVE TO STOP DOING THIS."  
15 DOING WHAT? LEAVING CAMCORDERS ON AIRPLANES? SHE'S  
16 BLAMING HIM AND JUMPING ON HIM.  
17 NOW, THE PEOPLE WANTED TO TRY TO USE  
18 THAT EVIDENCE TO SHOW STOP SPENDING, BUT THERE'S NO  
19 EVIDENCE ERIK MENENDEZ EVER EXCEEDED HIS ALLOWANCE.  
20 SO SHE JUST TURNED ON HIM. IT'S HIS FAULT THAT LYLE  
21 MENENDEZ AND MARK HEFFERNAN, WHEN HE WASN'T EVEN  
22 THERE, BOUGHT A CAMCORDER, AND SHE BLAMES HIM.  
23 SHE TENDED TO BLAME HER CHILDREN FOR  
24 EVERYTHING THAT MADE HER UNHAPPY, AND HERE SHE'S  
25 BLAMING ERIK MENENDEZ FOR SOMETHING HE DIDN'T DO.  
26 YES, HE WAS NOT CAREFUL. HE LEFT THE CAMCORDER ON  
27 THE AIRPLANE, BUT IT'S THERE. IT'S NOT LOST. AND  
28 HE'S CONCERNED ABOUT IT. AND THEY GO BACK TO THE

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1 AIRPORT, AND THEY GET THE CAMCORDER.

2 NOW, WAS SHE REALLY UPSET OVER THE

3 SPENDING OF THIS MONEY? THERE'S NOT A MENTION MADE,  
4 ACCORDING TO BRIAN ANDERSEN, OF RETURNING IT AND  
5 GETTING THE MONEY BACK. INSTEAD SHE USES IT. SHE  
6 TAKES 12 VIDEOS WITH THAT CAMCORDER THAT WEEKEND.

7 SO ALTHOUGH SHE'S VERY HOSTILE TO HER  
8 SONS, THE BASIS OF THAT HOSTILITY, I SUBMIT TO YOU,  
9 HAS NOTHING TO DO WITH ANYTHING BAD THAT THEY ARE  
10 ACTUALLY DOING.

11 OKAY. SO THERE IS NO EVIDENCE THAT ERIK  
12 MENENDEZ HAD ANY EXTRAORDINARY NEED FOR MONEY OR  
13 SPENT MONEY RECKLESSLY, OR IN ANY OTHER WAY, OR  
14 EXCEEDED HIS ALLOWANCE. NONE OF THAT, NOTHING, OR  
15 SAID ANYTHING, NOTHING, BEFORE THE SHOOTING.

16 NOW, AFTER THE SHOOTINGS THERE'S  
17 EVIDENCE THAT, AS I'VE SAID BEFORE, HE SPENT PART OF  
18 THE \$325,000, AND HE ALLOWED HIS BROTHER TO PAY FOR  
19 A ROLEX WATCH FOR HIM AT THE JEWELRY STORE.

20 NOW, HE TAKES RESPONSIBILITY FOR THAT  
21 WATCH TOO. HE SAID, "I BOUGHT IT." BUT YOU HEARD  
22 THE TESTIMONY OF MS. MAHAR. AND LYLE MENENDEZ WAS  
23 DOING MOST OF THE TALKING; AND AGAIN, IT'S  
24 INTERESTING. LYLE MENENDEZ SPEAKS TO CARLOS BARALT  
25 WHILE AT THE JEWELRY STORE ABOUT THE FACT THAT THESE  
26 WATCHES ARE BEING PURCHASED.

27 NOW, THAT EVIDENCE IS NOT INTRODUCED TO  
28 BLAME UNCLE CARLOS BARALT FOR PURCHASE OF THESE

1 WATCHES. IT'S INTRODUCED TO SHOW THAT THEY ARE NOT  
2 ON SOME WILD SPREE. IT'S NOT SOME PENT-UP DESIRE,  
3 BECAUSE IF THAT WERE TRUE, YOU WOULDN'T TELL PEOPLE  
4 WHAT YOU'RE DOING. I'D KEEP IT A SECRET, AND  
5 THERE'S NO SECRET ABOUT ANYTHING THAT WAS SPENT  
6 HERE.

7       IN ANY EVENT, WHAT WE HAVE -- THE WATCH  
8 IS NOT ON THERE, SO I'LL BE FAIR. I'LL PUT IT ON.  
9 ERIK MENENDEZ WANTS TO TAKE RESPONSIBILITY FOR IT.  
10 NOW HE'S GOT IT.

11       HOWEVER, AGAIN, MR. CONN TALKS ABOUT THE  
12 MONEY CLIPS. HE'S BLAMING THE STORE FOR SELLING  
13 THEM. THAT'S NOT WHAT HE SAID. "WHY DID YOU BUY  
14 MONEY CLIPS?"

15       "BECAUSE I WAS CARRYING AROUND MONEY, A  
16 LOT OF MONEY, FOR THE FIRST TIME IN MY LIFE, BECAUSE  
17 I HAD TO PAY FOR ALL MY OWN EXPENSES. AND THEY SOLD  
18 MONEY CLIPS THERE, SO I BOUGHT IT." PERIOD.

19       OKAY. THEN HE SPENT PART, AS WE'VE  
20 SAID, AND AS YOU HEARD AD NAUSEAM, PART OF THE MONEY  
21 ON A JEEP, ON FURNITURE, ON A TENNIS COACH, ALL OF  
22 THAT. FINE.

23       NOW, WHAT CONTRADICTS THE NOTION THAT  
24 THIS WAS DONE FOR MONEY? HOW ABOUT FIVE MILLION  
25 DOLLARS? FIVE MILLION SMACKERS. IF YOU WANT TO

26 KILL YOUR FATHER, AND AS WE KNOW, THERE IS NO HURRY  
27 HERE. ACCORDING TO THIS THEORY, NOTHING IS  
28 HAPPENING, FOLKS. OKAY?

51689

1 HE'S GOING TO TAKE A PHYSICAL, AND ONCE  
2 HE TAKES -- I THINK ERIK MENENDEZ SAID IN TWO WEEKS  
3 HE'S SUPPOSED TO TAKE THIS PHYSICAL. HE'S THEN  
4 GOING TO BE INSURED FOR FIVE MILLION DOLLARS. WHY  
5 NOT WAIT? IF YOU'RE GOING TO KILL 'EM, WAIT FOR THE  
6 FIVE MILLION. THAT'S BIG MONEY. THAT'S THE KIND OF  
7 MONEY THAT SENDS MY HUSBAND TO THE 7-ELEVEN TO BUY  
8 LOTTERY TICKETS. WE LOST AGAIN.

9 THAT JUST CUTS COMPLETELY AGAINST THE  
10 NOTION OF A PLANNED KILLING FOR MONEY.

11 MOREOVER -- AND THIS IS WHERE THE MIND  
12 BOGGLES WITH THE WAY THE PROSECUTION ARGUES THEIR  
13 CASE. ALL THIS EVIDENCE ABOUT WILLS, WILLS, WILLS.

14 WE KNOW FROM CARLOS BARALT THAT CARLOS  
15 BARALT TESTIFIES JOSE MENENDEZ HIMSELF, A VOICE FROM  
16 THE GRAVE, TOLD HIM THAT JOSE MENENDEZ TOLD HIS  
17 SONS, "YOU'RE OUT OF THE WILL." THIS MAN USES MONEY  
18 AS POWER. POWER AS POWER. HE'S VERY MATERIALISTIC.  
19 IN MY FAMILY WE DON'T TALK ABOUT THE WILL. WE GET  
20 MAD AT THE KIDS, WE DON'T TALK ABOUT THE WILL. THIS

21 FAMILY, IT'S PART OF THE PARENTING STYLE. THEY TALK  
22 ABOUT THE WILL.

23 OKAY. "I'LL SHOW YOU. YOU'RE OUT."

24 OKAY. FINE. HE TELLS THAT TO HIS BROTHER-IN-LAW,  
25 AND TELLS HIM HE'S ALREADY TOLD HIS SONS THAT  
26 THEY'RE OUT OF THE WILL. ALL RIGHT. SO YOU GOT  
27 THIS INFORMATION. "YOU'RE OUT OF THE WILL."

28 NOW, YOU'RE KILLING SOMEBODY FOR MONEY

51690

1 WHEN YOU BELIEVE YOU'RE OUT OF THE WILL? OKAY.

2 ERIK MENENDEZ TESTIFIES HE WASN'T

3 A-HUNDRED-PERCENT CERTAIN HE WAS OUT OF THE WILL.

4 HE COULD HAVE LIED ABOUT THAT, AND I'LL GET TO THAT

5 WHEN WE TALK ABOUT THINGS HE COULD HAVE LIED ABOUT,

6 BUT DIDN'T. HE'S BEING HONEST.

7 HE DIDN'T KNOW ONE HUNDRED PERCENT FOR

8 SURE. HOW ABOUT FINDING OUT BEFORE YOU KILL THEM,

9 FOLKS? IF THIS IS DONE FOR MONEY, WHY DON'T YOU GO

10 LOOKING FOR THIS WILL BEFORE THEY ARE DEAD? BECAUSE

11 WILLS ARE USUALLY WRITTEN BY LAWYERS, AND LAWYERS

12 ARE SUPPOSED TO KEEP ORIGINAL COPIES OF WILLS IN

13 SAFE PLACES FOR CLIENTS. EVEN I, A CRIMINAL LAWYER,

14 HAVE A SAFETY DEPOSIT BOX WITH SOME WILLS IN IT FOR

15 CLIENTS, BECAUSE PEOPLE LOSE THINGS. LAWYERS ARE

16 THE REPOSITORY OF WILLS, USUALLY; AND THEN, USUALLY,  
17 CLIENTS GET THE COPY.

18 SO WHY NOT FIND OUT BEFORE YOU DO THIS,  
19 IF YOU'RE DOING THIS FOR MONEY, WHETHER OR NOT THERE  
20 REALLY HAS BEEN A NEW WILL WRITTEN? BUT THERE'S NO  
21 EVIDENCE THAT THAT WAS DONE.

22 NOW, THEY DID NOT KNOW ABOUT THE SUN  
23 LIFE POLICY. THAT WAS ERIK MENENDEZ' TESTIMONY.  
24 THAT WAS THE TESTIMONY OF HIS AUNT, MARTHA CANO.  
25 THERE WASN'T EVEN A COPY OR A REFERENCE TO THAT  
26 POLICY HERE IN CALIFORNIA IN ANY OF THE PARENTS'  
27 PAPERS, NOTHING AT THE HOUSE, NOTHING AT JOSE  
28 MENENDEZ' OFFICE, WHICH SHE WENT THROUGH. OKAY.

51691

1 NOTHING.

2 WHAT IS THE EVIDENCE TO COUNTER THAT?  
3 I'LL GET TO THAT A LITTLE LATER. THAT'S RANDY  
4 WRIGHT. MR. CONN MADE EXCUSES ABOUT JAMIE PISARCIK  
5 NOT KNOWING WHAT TIME OF YEAR IT WAS, BECAUSE HER  
6 INWARD CALLING UPON IS FIVE YEARS OLD.

7 WELL, PEOPLE, WITH THE WRIGHTS WE'RE  
8 CALLING UPON A SIX-YEAR-OLD MEMORY. AFTER THEY'VE  
9 WATCHED COURT TV AND TELEVISION MOVIES ABOUT THIS  
10 CASE, THEN RANDY WRIGHT CLAIMS THAT LYLE MENENDEZ

11 MADE MENTION TO HIM OF A \$300,000-LIFE INSURANCE  
12 POLICY. I DON'T BELIEVE IT. AND YOU SHOULD NOT  
13 BELIEVE IT EITHER.

14 FIRST OF ALL, THERE WAS NO  
15 \$300,000-POLICY. IT WAS \$650,000.

16 AND SECOND OF ALL, THERE IS NO EVIDENCE  
17 WHATSOEVER THAT ANYBODY KNEW ABOUT THAT POLICY  
18 EXCEPT MARTHA MENENDEZ CANO.

19 THEY ALSO WERE TOLD A YEAR BEFORE THAT  
20 THEY WERE DISINHERITED, IN 1988, AND THERE'S  
21 REFERENCE TO THAT IN THE 12/11 TAPE. ALL OF THOSE  
22 THINGS WOULD MAKE YOU THINK THIS ISN'T A GOOD TIME  
23 TO GET GREEDY. "WE SHOULD WAIT UNTIL WE'RE BACK IN  
24 DAD'S GOOD GRACES, AND THEN IF WE HATE HIM AND WANT  
25 TO KILL HIM, THAT'S WHEN WE SHOULD DO IT."

26 ALL OF THIS CONTRADICTS THEIR MOTIVE OF  
27 GREED. THAT'S ALL THE PRE-THINGS THAT THEY KNEW  
28 BEFOREHAND, THINGS THAT WERE TRUE BEFOREHAND.

51692

1 NOW, LET'S LOOK AT THINGS THAT  
2 CONTRADICT IT THAT ARISE AFTER THE SHOOTINGS.

3 THE DECEMBER 11TH TAPE, THERE'S  
4 DR. OZIEL TALKING ABOUT THE FACT THAT ERIK MENENDEZ  
5 HAS TOLD HIM BEFORE DECEMBER 11 EVEN, THAT HE HAS

6 GUILT ABOUT SPENDING THE MONEY; THE FACT THAT AFTER  
7 HE GOT THE INSURANCE MONEY, ERIK MENENDEZ GAVE IT TO  
8 HIS AUNT TO MANAGE.

9       YOU KNOW, HE DOESN'T BLAME HIS AUNT.  
10 THIS DOESN'T MEAN HE WASN'T KEEPING IT. YES, HE WAS  
11 KEEPING IT. HE WASN'T GIVING IT AWAY TO CHARITY,  
12 WHICH HIS FATHER WOULDN'T HAVE APPROVED OF, HE  
13 TESTIFIED TO. HE WAS KEEPING IT.

14       BUT HE'S NOT -- YOU KNOW, I MEAN, WHEN  
15 YOU THINK THAT SOMEBODY, YOU KNOW, YOUNG PEOPLE KILL  
16 FOR MONEY. THEY GET THEIR HANDS ON THE MONEY AND  
17 RUN OFF TO JAMAICA AND LIE ON THE BEACH.

18       THAT'S NOT WHAT'S GOING ON HERE.  
19 THERE'S NO SECRETIVENESS ABOUT THIS. HE'S NOT  
20 HAVING THE THRILL ABOUT THROWING LARGE AMOUNTS OF  
21 MONEY AROUND. HE GAVE IT TO HIS AUNT, WHO WAS A  
22 BROKER WHO WAS HANDLING IT FOR HIM.

23       BUT THIS IS WHAT'S REALLY INTERESTING,  
24 AND HOW THE PROSECUTION HAS DISTORTED ALL THIS  
25 EVIDENCE ABOUT WILLS AND COMPUTERS AND SAFES AND  
26 SAFETY DEPOSIT BOXES. OKAY?

27       THEY ARE THE ONES WHO ARE TELLING PEOPLE  
28 THERE IS PROBABLY A SECOND WILL, A WILL THAT WE HAVE



1 EVERY REASON TO BELIEVE HAD EXISTED, ACCORDING TO  
2 CARLOS BARALT, WOULD HAVE DISINHERITED THEM. WHY  
3 ARE THEY RINGING THAT BELL IF THEY KILLED FOR  
4 MONEY? WHY TELL ANYBODY? "LOOK FOR A SECOND WILL."  
5 THEY TELL THIS TO RANDY WRIGHT.

6       NOW, I DON'T CARE IF YOU DON'T BELIEVE  
7 ANYTHING RANDY WRIGHT SAYS. IF YOU'RE GOING TO  
8 BELIEVE SOMETHING HE SAYS, HOW ABOUT THIS ONE? THEY  
9 TELL HIM THERE'S A SECOND WILL. "LET'S GO LOOK FOR  
10 THE THING THAT WILL LEAVE US PENNILESS, BECAUSE WE  
11 ARE GREEDY, KILLING LIARS." IT'S RIDICULOUS.

12       THE PROSECUTION TALKS ABOUT WANTING TO  
13 DESTROY A WILL. OKAY, FINE. YOU WANT TO DESTROY A  
14 WILL, SO YOU TAKE THE SAFE THAT MAY HAVE THE WILL  
15 INSIDE OF IT TO A LAWYER, TO SOMEONE -- YOU GET A  
16 WITNESS?

17       I MEAN, IT'S THE SAME THING WITH THE  
18 BUSINESS ABOUT THE COMPUTER, WHICH I'LL GET TO IN A  
19 MINUTE.

20       THEY TAKE THE SAFE TO A LAWYER. THERE  
21 IS A KEY AND DIRECTIONS TO A SAFE DEPOSIT BOX INSIDE  
22 THE SAFE. THEY DO NOT SECRETE IT, AND TAKE IT AND  
23 PUT IT IN THEIR POCKET AND KEEP IT A SECRET. NO,  
24 SIREE. THEY TAKE ANOTHER LAWYER, STEVE GOLDBERG,  
25 AND BOTH OF THEIR UNCLES TO THE BANK, TO THE SAFE  
26 DEPOSIT BOX WHERE THE NEW WILL MAY BE, SINCE IT  
27 WASN'T IN THE SAFE. MORE WITNESSES TO THE EXISTENCE  
28 OF THE THING THAT WILL DISINHERIT YOU.

1           SO THEY TAKE THEIR UNCLES -- ACTUALLY,  
2 BRIAN ANDERSEN TESTIFIED BOTH ERIK AND LYLE MENENDEZ  
3 WENT TO THE BANK. CARLOS BARALT SAID NO, IT WAS  
4 STEVE GOLDBERG AND LYLE MENENDEZ. BUT EITHER WAY,  
5 COME ALONG UNCLES. COME SEE THE SECOND WILL THAT  
6 DISINHERITS US. COME ALONG, UNCLES, AND COME TO  
7 MR. WRIGHT'S HOUSE AND SEE THE SECOND WILL THAT  
8 DISINHERITS US.

9           I'M NOT GOING TO SAY ANYTHING MORE ABOUT  
10 THE SILLINESS ABOUT THE PROSECUTION'S ARGUMENT, THAT  
11 ERIK MENENDEZ STAYED AT THE WRIGHTS' HOUSE TO SLEEP  
12 ON THE SAFE. OKAY. THEY'RE THE ONES SETTING UP THE  
13 ALARM BELL THAT THERE'S POSSIBLY A SECOND WILL.

14          NOW, WHAT DO WE KNOW ABOUT WILLS AND  
15 COMPUTERS? WELL, WE'VE GOT GOOD REASON TO BELIEVE A  
16 WILL ON A COMPUTER IS NOT A VALID WILL, SINCE YOU  
17 NEED WITNESSES TO SIGN ONE, OR IF YOU WENT TO LAW  
18 SCHOOL YOU KNOW THERE'S SOMETHING CALLED A  
19 HOLOGRAPHIC WILL THAT YOU CAN SIGN YOURSELF, BUT YOU  
20 HAVE TO WRITE IT IN YOUR OWN HANDWRITING. NEITHER  
21 OF THOSE EXISTED ON A COMPUTER. OKAY?

22          BEYOND THAT, BEYOND ALL OF THAT,  
23 MR. WITKIN LOOKED AT THE COMPUTER. HE'S THE  
24 FELLOW -- THIS IS KIND OF CONFUSING, WITH THE WAY

25 THE EVIDENCE WAS PRESENTED IN THIS TRIAL. SO LET ME  
26 MAKE SURE I'M STAYING WITHIN WHAT WAS PRESENTED IN  
27 THIS TRIAL. I HAVE TOO BIG A MEMORY FOR THINGS THAT  
28 GO WAY BEFORE THIS. I'M GOING TO STAY WITHIN WHAT I

51695

1 BELIEVE WAS PROVEN HERE. OKAY.

2 BETWEEN THE TESTIMONY -- THIS COMES FROM  
3 THE TESTIMONY, IN COMBINATION WITH ERIK MENENDEZ, ON  
4 THE ONE HAND, AND MR. WITKIN ON THE OTHER.

5 MR. WITKIN GETS A CALL ON AUGUST 31ST TO  
6 GO TO THE HOUSE ON ELM DRIVE; NOT STREET, DRIVE.  
7 AND HE GETS THERE AND HE MEETS LYLE MENENDEZ. AND  
8 HE'S ASKED TO LOOK UP CERTAIN FILES IN THIS I.B.M.  
9 COMPUTER THAT'S IN THE PARENTS' BEDROOM. AND ONE OF  
10 THE FILE NAMES -- AND I DON'T KNOW HOW MANY OF YOU  
11 ARE COMPUTER LITERATE OR NOT. BUT YOU HIT THE  
12 SCREEN AND UP COMES A LIST OF THINGS. OKAY? ONE OF  
13 THE FILE NAMES, OR NAMES, TURNED OUT IT ISN'T EVEN A  
14 FILE NAME. A NAME. A WORD. A WORK. "WILL" SHOWS  
15 UP. AND THERE'S AN INDICATION ON THE SCREEN OF THE  
16 COMPUTER OF HOW MANY CHARACTERS, IT'S CALLED, OR  
17 BYTES, ACTUALLY. BUT HOW MANY CHARACTERS ARE  
18 AFFILIATED, IF YOU WILL, WITH THIS WORD "WILL."

19 NOW, I DIDN'T LOOK WHEN I TYPED THIS HOW

20 MANY CHARACTERS THIS THING HAS. BUT WHEN I CREATED  
21 THIS DOCUMENT, WHICH THEN GOT BLOWN UP ON MY  
22 COMPUTER, THEN I WENT BACK AND -- I SAVED IT. SO  
23 WHEN I GO BACK, IF YOU WANT TO CALL IT UP AGAIN,  
24 IT'S LISTED ON THE SCREEN UNDER -- I WON'T GIVE YOU  
25 MY WHOLE CODE, BUT IT'S IN THE MENENDEZ FILE IN MY  
26 COMPUTER UNDER THE "FINAL ARGUMENT DIRECTORY," AND  
27 UP POPS ALL THE FINAL ARGUMENT BYTES, MOST OF WHICH  
28 YOU SEE HERE, THAT ARE IN THERE. AND IT SAYS RIGHT

51696

1 NEXT TO THIS ONE, I THINK I CALLED -- I KNOW WHAT I  
2 CALLED THIS. FINE -- "FINE-ARG DOLLAR SIGN."  
3       NEXT TO "FINE-ARG DOLLAR SIGN" ON MY  
4 SCREEN YOU WOULD SEE HOW MANY CHARACTERS, AND  
5 CHARACTERS ARE EVERY LETTER, EVERY SPACE, EVERY  
6 SPACING DOWN. THIS IS LIKE A HARD RETURN, IT'S  
7 CALLED, TO GET DOWN TO HERE. AND YOU WOULD SEE HOW  
8 MANY BYTES OF COMPUTER THINGS ARE TAKEN UP BY THAT  
9 DOCUMENT. OKAY?

10       NOW, MR. WITKIN TESTIFIED THERE WERE  
11 VERY, VERY FEW OF THESE BYTES THAT WERE TAKEN UP  
12 NEXT TO THIS WORD "WILL." THIS WAS NOT A WILL.  
13 THIS WAS PROBABLY NOT EVEN A SENTENCE. COULDN'T  
14 HAVE BEEN A SENTENCE WITH THAT MANY BYTES.

15 BUT WHATEVER THAT LOOKED LIKE ON THE  
16 SCREEN, WHAT ULTIMATELY BECAME OBVIOUS TO THOSE OF  
17 YOU WHO UNDERSTAND COMPUTERS, AND THOSE OF YOU WHO  
18 UNDERSTAND, FOLLOWED WHAT OUR COMPUTER LITERATE  
19 CO-COUNSEL, MS. TOWERY, DID HERE. SHE IS OUR  
20 HACKER.

21 IN ANY EVENT, WHAT SHE DEMONSTRATED IN  
22 HER EXAMINATION OF MR. WITKIN IS THAT IN ALL  
23 LIKELIHOOD THE EFFORT OF THE RELATIVES, SOME OF WHOM  
24 ARE IN COURT, TO FIND A WILL, CREATED THAT WORD  
25 "WILL" ON THE COMPUTER.

26 IN SEARCHING, TELL ME, COMPUTER "WILL."  
27 FIND ME, COMPUTER, "WILL," WHATEVER THE DYNAMICS  
28 WERE. I HAVE NO -- I'M NOT NEARLY AS GOOD AS SHE IS

51697

1 WITH COMPUTERS. WHATEVER IT WAS, SHE DEMONSTRATED  
2 VERY CLEARLY, AND THERE'S A CHART THAT DEMONSTRATED  
3 WITH MR. WITKIN THAT MERE EFFORT, IN THE HANDS OF  
4 NOT VERY SKILLED PEOPLE, TO FIND A WILL, CREATED  
5 THIS ENTRY THAT CAUSED SO MUCH CONFUSION LATER,  
6 PERIOD. END OF STORY.

7 THERE NEVER WAS A WILL ON THE COMPUTER.  
8 THERE WASN'T A WILL ON THE COMPUTER. NO WILL WAS  
9 ERASED FROM THE COMPUTER, PERIOD.

10 MR. WITKIN'S THERE. HE COMES UP WITH  
11 THIS THING. IT CLEARLY ISN'T A WILL, AND LYLE  
12 MENENDEZ TELLS HIM TO ERASE IT. I'M SORRY HE DID  
13 THAT, BECAUSE WE COULD HAVE SAVED A LOT OF TIME AND  
14 EFFORT IN LITIGATION IF HE HADN'T DONE IT. HE DID  
15 DO IT. HE DID NOT DESTROY A WILL. THERE WASN'T  
16 ONE.

17 NOW, LATER THAT DAY, AFTER THIS IS DONE,  
18 ERIK MENENDEZ COMES TO CALIFORNIA. REMEMBER, HE AND  
19 LYLE MENENDEZ WERE IN NEW JERSEY. THE PARENTS'  
20 FUNERAL WAS HELD IN NEW JERSEY. THEY REMAINED THERE  
21 SOME DAYS AFTER THE FUNERAL, AND THEN LYLE MENENDEZ,  
22 BEING ON HIS OWN, ACCORDING TO WENSKOSKI, WAS TAKEN  
23 TO NEWARK AIRPORT EARLY IN THE MORNING THAT DAY.  
24 AND OFF HE GOES TO CALIFORNIA, WHERE WE LATER SEE HE  
25 HAS CALLED MR. WITKIN. HE HAS DONE THIS SILLINESS  
26 WITH THE COMPUTER.

27 LATER THAT DAY ERIK MENENDEZ SHOWS UP.  
28 HE COMES TO CALIFORNIA. NOW, HE'S COMING TO

51698

1 CALIFORNIA TO TRY TO FIND A WILL ON THE COMPUTER,  
2 BECAUSE HE HAS LEARNED, WHILE IN NEW JERSEY, THAT  
3 RELATIVES -- NOW WE KNOW -- PROBABLY CREATED, BUT  
4 THOUGHT THEY FOUND A FILE NAME OF "WILL," AND HIS

5 COUSIN, CARLOS MENENDEZ, HAS ARRANGED WITH SOMEONE  
6 HERE WHO WORKS FOR CARLOS MENENDEZ COMPANY, TO HELP  
7 ERIK MENENDEZ FIND THE WILL ON THE COMPUTER. AND SO  
8 ERIK MENENDEZ FLIES ACROSS THE COUNTRY, NOT TO  
9 DESTROY SOMETHING; AGAIN, TO FIND THE THING THAT  
10 MIGHT COMPLETELY DISINHERIT HIM.

11 WHEN HE GETS HERE AND THE COMPUTER  
12 PERSON THAT HIS COUSIN, CARLOS MENENDEZ, HAS SET UP  
13 GETS HERE, HE FINDS OUT THAT THE COMPUTER HAS BEEN  
14 ERASED, FROM HIS -- THE COMPUTER EXPERTS OF CARLOS  
15 MENENDEZ, SOMEONE NAMED HAYMAN.

16 AND HE IS SURPRISED, AND HE SAYS HE  
17 LATER FOUND OUT WHAT HE DIDN'T KNOW, WHICH IS THAT  
18 LYLE HAD PRECEDED HIM OUT HERE AND ARRANGED FOR THE  
19 COMPUTER TO BE ERASED. THAT'S THE WHOLE STORY.

20 AND, I ASSURE YOU, ON THE DAYS WHEN THAT  
21 STORY WAS TESTIFIED TO IN THE FIRST TRIAL, JUST LIKE  
22 EVERY OTHER DAY, IT WAS TELEVISED ON COURT TV.

23 HERE IS MRS. WRIGHT.

24 NOW, MR. CONN'S BASIC POSTURE IS THAT  
25 EVERYONE WHO TESTIFIED FOR THE DEFENSE IS A LIAR.  
26 EVERYONE WHO TESTIFIED FOR THE DEFENSE SWORE UNDER  
27 OATH TO TELL THE TRUTH, AND IF THEY LIED, THEY  
28 COMMITTED A FELONY CALLED PERJURY. THAT DOESN'T

1 STOP THEM. THEY'RE ALL LIARS, BECAUSE THEY ALL  
2 TESTIFIED -- I MEAN, EVEN THE RELATIVES OF THE  
3 DEFENDANTS ARE LIARS. AFTER ALL, THEY'RE JUST THE  
4 RELATIVES OF THE DEFENDANTS, RIGHT? WRONG.  
5 THEY'RE THE RELATIVES OF THE VICTIMS. THEY'RE THE  
6 RELATIVES OF THE VICTIMS WHO HAVE BEEN SITTING ON  
7 OUR SIDE, IF YOU WILL, OF THE CHAPEL, SINCE THIS  
8 BEGAN.

9 THE WITNESSES WHO TESTIFIED FOR THE  
10 DEFENSE ARE JOSE MENENDEZ' SISTERS. THE WITNESSES  
11 WHO TESTIFIED FOR THE DEFENSE ARE MARY LOUISE  
12 MENENDEZ' SISTER AND NIECES AND NEPHEWS. THAT'S WHO  
13 THEY ARE. THEY ARE NOT LIARS. THEY ARE THE ONLY  
14 PEOPLE IN THIS COURTROOM, BESIDES ERIK AND LYLE  
15 MENENDEZ, WHO CARED A FIG ABOUT THESE PEOPLE, WHO  
16 LOVED THEM, WHO MISSED THEM, WHO ARE DESTROYED BY  
17 THEIR DEATHS. THE FOUR LIVES DESTROYED HERE, THE  
18 ONLY PEOPLE WHO CARE ABOUT THEM ARE THERE, NOT  
19 HERE.

20 THESE PEOPLE CARE ABOUT WINNING. THEY  
21 DON'T CARE ABOUT TRAGEDY. THEY DON'T CARE ABOUT  
22 LOVE. THEY DON'T CARE ABOUT FAMILY BETRAYAL. THEY  
23 JUST GET UP HERE AND CALL THOSE PEOPLE LIARS.

24 NOW, LET'S TALK ABOUT LIARS. YOU CAN  
25 TALK ABOUT CRAIG CIGNARELLI, IF YOU WANT TO TALK  
26 ABOUT LIARS.

27 NOW, LET'S TALK ABOUT MRS. WRIGHT.



51700

1 THAT IF SHE DOESN'T KNOW THE ANSWER, SHE MAKES IT  
2 UP. THAT'S WHAT SHE SAID. I'LL READ IT TO YOU.

3 MR. CONN SAID THESE ARE THE PERFECT  
4 WITNESSES, MR. AND MRS. WRIGHT. THE PERFECT  
5 WITNESSES.

6 THERE'S BEEN A DEBATE IN THE CRIMINAL  
7 JUSTICE COMMUNITY -- IN FACT, THE ENTIRE LEGAL  
8 COMMUNITY -- FOR YEARS ABOUT THE IMPACT OF CAMERAS  
9 IN THE COURTROOM, AND I'M SURE YOU HEARD A LOT ABOUT  
10 THAT DEBATE DURING SIMPSON. AND I HOPE YOU DON'T  
11 CONSIDER ME HYPOCRITICAL, GIVEN SIMPSON. BUT I'VE  
12 ALWAYS BEEN OPPOSED TO CAMERAS IN THE COURTROOM, AND  
13 THE REASON IS WHAT WE SEE HAPPENING IN THIS TRIAL.

14 IT TAINTS PEOPLE. PEOPLE COME THROUGH  
15 HERE; GOOD PEOPLE, NOT LIARS, AND THEY TESTIFY TO  
16 THINGS THEY DON'T REALLY KNOW. THEY'VE BEEN TAINED  
17 BY THE MEDIA, AND IT'S IMPOSSIBLE FOR MEMORY TO  
18 SEPARATE THESE THINGS OUT FIVE YEARS LATER.

19 AND THAT'S WHAT HAPPENED, I BELIEVE,  
20 WITH KLARA WRIGHT, CLAIMING THAT ERIK MENENDEZ, ON  
21 MONDAY MORNING TALKED TO HER ABOUT WILLS ON  
22 COMPUTERS. WILLS ON COMPUTERS WAS LARGE IN THE TV

23 AND MOVIES, WHICH SHE SAW AND CERTAINLY TALKS ABOUT  
24 ON COURT TV.  
25 SO SHE COMES ROLLING OUT -- WHEN WAS IT  
26 THEY TALKED TO THEM -- MAY OF '94, FOR THE FIRST  
27 TIME, AND SHE SAID -- SHE'S INCONSISTENT ABOUT A  
28 NUMBER OF THINGS. LET ME TELL YOU WHAT SHE'S

51701

1 PLAINLY INCONSISTENT ABOUT.

2 FIRST, SHE CLAIMS THEIR CONVERSATION  
3 ABOUT A WILL PRECEDES HER HUSBAND COMING HOME. THEN  
4 SHE CONCEDES THAT THE CONVERSATION ABOUT A WILL IS  
5 BROUGHT UP BY HER HUSBAND, AND ONLY HAPPENS AFTER  
6 HE'S COME HOME.

7 SO WHEN SHE'S CONFRONTED WITH THE FACT  
8 THAT HER RECOLLECTION ABOUT THE SPECIFICS OF THE  
9 CONVERSATION THAT SHE HAD WITH ERIK MENENDEZ ABOUT A  
10 WILL ON A COMPUTER HAS CHANGED, THIS IS HOW -- AND  
11 WHEN IT HAPPENED -- THIS IS HOW THE COLLOQUY GOES.  
12 IT GOES ON FOR PAGES. LET ME SEE IF I CAN MAKE IT  
13 SHORTER. IT GETS TOO COMPLICATED. LET'S CUT TO THE  
14 CHASE.

15 THE POINT IS, SHE'S CONFRONTED ABOUT THE  
16 FACT SHE'S CHANGING HER STORY ABOUT THIS, AND THEN  
17 SHE SAYS -- OKAY. AT THIS POINT, TOWARD THE END OF

18 HER TESTIMONY, WHEN SHE'S CONCEDED THAT THE  
19 CONVERSATION ABOUT THE WILL PROBABLY HAPPENED AFTER  
20 HER HUSBAND CAME HOME, AND WHEN IT'S POINTED OUT TO  
21 HER THAT HER HUSBAND'S THE ONE WHO'S TALKING TO ERIK  
22 AND LYLE MENENDEZ, AND NOT HER, SHE'S JUST AN  
23 OBSERVER OF IT; AND, THEREFORE, SHE WOULDN'T BE PART  
24 OF ANY EXCHANGE ABOUT A WILL.

25 SHE THEN SAYS:

26 "WELL, I HAVE THIS IMAGE THAT ERIK WAS SITTING NEXT  
27 TO ME, AND MAYBE HE LEANED OVER AND WE HAD THIS  
28 CONVERSATION BY OURSELVES."

51702

1 SO MR. LEVIN -- THIS IS THE 37,233:  
2 "WHY DID YOU JUST NOW CONJURE UP  
3 THE IMAGE, THE VISION THAT MY CLIENT  
4 WAS LEANING OVER ON THE COUCH AND  
5 SAYING SOMETHING TO YOU ABOUT THE WILL  
6 BEING POSSIBLY IN THE COMPUTER WHILE  
7 RANDY WRIGHT WAS HAVING ANOTHER  
8 CONVERSATION WITH LYLE MENENDEZ?  
9 "ANSWER: BECAUSE I SORT OF  
10 REMEMBER SOMETHING LIKE THAT. I  
11 REMEMBER TALKING TO ERIK, JUST THE TWO  
12 OF US, SOMETIME WHEN RANDY WAS TALKING

13 TO LYLE."

14 AND YOU MAY RECALL, WE -- THERE WAS A  
15 HEARING WHERE THE WRIGHTS TESTIFIED BEFORE THE TRIAL  
16 EVER STARTED, SO WE REFERRED IN THEIR EXAMINATION TO  
17 PRIOR TESTIMONY. IT WASN'T FROM THE FIRST TRIAL.  
18 IT WAS FROM A PRETRIAL HEARING. AND HERE MR. LEVIN  
19 BRINGS THAT UP TO HER.

20 "HAVE YOU EVER TESTIFIED BEFORE,  
21 BEFORE JUST NOW, OF THAT INFORMATION,  
22 OF ERIK LEANING OVER AND HAVING A  
23 CONVERSATION WITH YOU WHILE RANDY  
24 WRIGHT WAS TALKING TO LYLE IN THE  
25 MANNER THAT YOU --"

26 SHE INTERRUPTS AND SAYS:

27 "NO. BECAUSE I --"

28 "MR. LEVIN: I'M SORRY. HAVE YOU

51703

1 EVER SAID THAT BEFORE?

2 "ANSWER: NO. I WASN'T SURE  
3 ABOUT IT.

4 "MR. LEVIN: OKAY. NOW, THAT  
5 INFORMATION THAT YOU JUST GAVE US  
6 TODAY WAS AFTER YOU WERE INTERVIEWED  
7 BY THE POLICE ON MARCH THE 1ST, 1994,

8 CORRECT? YOU WERE INTERVIEWED BY  
9 DETECTIVE ZOELLER ON MARCH THE 1ST,  
10 1994?

11 "ANSWER: YES.

12 "QUESTION: AND YOU WERE AGAIN  
13 INTERVIEWED BY THE DISTRICT ATTORNEYS  
14 IN MAY OF 1994, CORRECT?

15 "ANSWER: YES.

16 "QUESTION: AT BOTH THOSE  
17 OCCASIONS YOU WERE ASKED SPECIFICALLY  
18 TO RECALL EVERY DETAIL OF THE EVENTS  
19 THAT YOU'VE BEEN TESTIFYING TO HERE  
20 TODAY?

21 "ANSWER: AND I DID.

22 "QUESTION: AND DURING THOSE TWO  
23 CONVERSATIONS --" SKIPPING A LITTLE  
24 AHEAD.

25 "YOU HAVE NEVER RECALLED OR  
26 STATED ANYTHING ABOUT THIS  
27 CONVERSATION CONCERNING ERIK MENENDEZ  
28 AND YOURSELF WHILE ON THE COUCH, AND

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1 RANDY WRIGHT WAS PRESENT?"

2 SHE SAID: "NO, BECAUSE I'M STILL

3 NOT SURE THAT'S HOW IT HAPPENED."

4 NOT SURE IT'S HAPPENED, BUT SHE'S

5 TESTIFIED TO IT UNDER OATH.

6 LET ME JUST MOVE A LITTLE BIT AHEAD TO

7 SEE WHERE THIS ALL WINDS UP.

8 THEN MR. LEVIN ASKS AT PAGE 37,243,

9 CONCERNING THE DISCUSSION SHE HAD WITH ERIK MENENDEZ

10 ABOUT THIS:

11 "BUT THE SPECIFICS OF THAT

12 DISCUSSION AREN'T CLEAR TO YOU NOW

13 THAT YOU SIT HERE, SIX YEARS LATER; IS

14 THAT A FAIR STATEMENT?

15 "ANSWER: NO. THE DISCUSSION IS

16 CLEAR TO ME. THE STORY IS CLEAR IN MY

17 MIND. IT'S JUST THAT I DON'T KNOW

18 EXACTLY IN DETAIL WHEN IT WAS SAID,

19 EXCEPT THAT IT WAS SAID THAT EVENING."

20 WELL, THERE'S A BIG DIFFERENCE HERE AND

21 SIGNIFICANCE ABOUT WHEN IT WAS SAID, BECAUSE RANDY

22 WRIGHT TESTIFIES THAT HE'S THE ONE WHO BROUGHT UP

23 WITH ERIK AND LYLE MENENDEZ: "DID YOUR FATHER HAVE A

24 WILL? WHERE COULD IT BE?"

25 AND THAT'S WHEN ONE OR THE OTHER OF THEM

26 SAID: "WELL, THEY HAVE A COMPUTER. MAYBE THERE'S A

27 WILL ON THE COMPUTER. THERE'S A SAFE. MAYBE IT'S

28 IN THE SAFE."

1           THAT'S HOW IT HAPPENED. WHEN THE LAWYER  
2 IS ASKING THE LAWYER-LIKE QUESTIONS. OKAY?

3           SO HERE SHE'S ADMITTING: "I DON'T KNOW  
4 EXACTLY IN DETAIL WHEN IT WAS SAID, EXCEPT THAT IT  
5 WAS SAID THAT EVENING."

6           "QUESTION: WELL, YOU ALSO DON'T  
7 KNOW EXACTLY IN DETAIL WHAT WORDS WERE  
8 USED, DO YOU? "

9           THAT'S ALREADY BEEN PROVEN IN HER  
10 EXAMINATION.

11          "ANSWER: NO. BUT --

12          "MR. LEVIN: AND YOU DON'T KNOW  
13 EXACTLY IN DETAIL WHO SAID WHAT, DO  
14 YOU?

15          "ANSWER: WELL, YES. I WOULDN'T  
16 BE HERE --

17          "QUESTION: YOU DO?

18          "ANSWER: I WOULDN'T BE HERE IF I  
19 DIDN'T KNOW WHAT I'M SAYING.

20          "QUESTION: WHEN YOU WERE ASKED  
21 THAT QUESTION, YOU DIDN'T SAY, 'I  
22 DON'T KNOW,' DID YOU?

23          "ANSWER: NO. I USUALLY TRY TO  
24 GIVE AN ANSWER THE BEST I CAN. I  
25 DON'T LIKE TO SAY 'I DON'T KNOW.'

26          "QUESTION: SO IF YOU'RE ASKED A

27 QUESTION, YOU TRY TO GIVE AN ANSWER?

28 "ANSWER: THE BEST I CAN."

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1 I MEAN, DON'T YOU GET THE DRIFT OF THIS?

2 YOU KNOW, SHE JUST GIVES WHATEVER ANSWER POPS INTO

3 HER HEAD, BASED ON A CONVERSATION SHE HAD FIVE YEARS

4 BEFORE SHE EVER TALKED TO THE POLICE, WHERE SHE TOOK

5 NO NOTES, WHERE SHE'S BEEN EXPOSED TO ALL OF THIS

6 PRETRIAL PUBLICITY, AND THIS IS WHO MR. CONN CALLS

7 THE PERFECT WITNESS.

8 SO, THAT'S ALL I HAVE TO SAY FOR THE

9 MOMENT ABOUT EVIDENCE OF GREED AS A MOTIVE.

10 JUDGE, THIS WOULD BE A GOOD TIME TO

11 BREAK. DO YOU WANT TO BREAK NOW, OR I CAN KEEP

12 GOING?

13 THE COURT: WE'LL TAKE A RECESS, BECAUSE I'VE

14 LEARNED THAT ONE OF THE JURORS WILL HAVE TO LEAVE AT

15 4:00 O'CLOCK. WE'LL GO BACK UNTIL 4:00. WE'LL TAKE

16 OUR BREAK NOW. WE'LL RESUME AT 3:00.

17 DON'T DISCUSS THE MATTER WITH ANYONE AND

18 DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND WE'LL

19 RESUME AT 3:00 O'CLOCK.

20 (A RECESS WAS TAKEN FROM

21 2:45 P.M. TO 3:00 P.M.)



22  
23  
24  
25  
26  
27  
28

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1 THE COURT: OKAY. EVERYBODY IS PRESENT.

2 LET'S GET THE JURY OUT.

3 (THE JURY ENTERS THE COURTROOM

4 AND THE FOLLOWING PROCEEDINGS

5 WERE HELD:)

6

7 THE COURT: OKAY. EVERYBODY IS BACK, AND WE WILL

8 CONTINUE WITH ARGUMENT.

9 MS. ABRAMSON: THANK YOU, YOUR HONOR.

10 THIS IS MY PYRAMID. I DON'T COLLECT THEM.

11 I ACTUALLY DID THIS ONE.

12 AND THE PURPOSE OF THIS PYRAMID IS TO

13 CONVEY GRAPHICALLY WHAT IS HARD SOMETIMES TO UNDERSTAND

14 IN THE WAY THAT TESTIMONY COMES OUT IN A TRIAL, AND THAT

15 IS CONTRARY TO THE APPLICATIONS OF THE PROSECUTION'S

16 THEORY. ERIK MENENDEZ DOES NOT STAND ALONE HERE ON THE

17 ISSUE OF HIS CREDIBILITY. HE IS NOT JUST ONE WITNESS

18 WHO CAN BE DISMISSED OUT OF HAND CONCERNING THE ENTIRE

19 DEFENSE THEORY OF THIS CASE.

20 HE IS ONLY THE TOP OF A PYRAMID OF  
21 INFORMATION AND EXPERTISE THAT SUPPORTS EVERYTHING HE  
22 SAID.

23 AND LET'S START AT THE VERY BASE OF THIS  
24 PYRAMID AND TELL YOU HOW ALL THIS CONNECTS UP.

25 DR. WILSON'S FUNCTION IN THIS CASE WAS  
26 BASICALLY TO EXPLAIN TO YOU THAT ERIK MENENDEZ SUFFERED  
27 FROM A MENTAL DISORDER CALLED POST-TRAUMATIC STRESS  
28 DISORDER; TO EXPLAIN HOW HE GOT IT, AND WHY HE GOT IT,

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1 AND WHAT IT IS, AND HOW IT AFFECTED HIM IN HIS LIFE,  
2 EVERY DAY OF HIS LIFE FROM THE TIME HE DEVELOPED IT.  
3 AND MOST PARTICULARLY, HOW IT AFFECTED HIM AT THE TIME  
4 OF THE SHOOTINGS.

5 BUT DR. WILSON COULD NOT KNOW ALL THESE  
6 THINGS HIMSELF, AND WOULD NOT RELY, BECAUSE HE IS A  
7 CONSCIENTIOUS EXPERT WITNESS, ON JUST TALKING TO ERIK  
8 MENENDEZ.

9 SO HE RELIED ON EVERYTHING THAT'S BELOW HIM  
10 IN THIS PYRAMID. AND IT IS NOT NECESSARY, IN ORDER TO  
11 SUPPORT DR. WILSON'S CREDIBILITY, OR THE CREDIBILITY OF  
12 ERIK MENENDEZ THAT ALL OF THIS ALSO SUPPORTS; THAT WE  
13 ACTUALLY CALLED ALL THE PEOPLE, OR SHOWED YOU ALL THE  
14 DOCUMENTS THAT SUPPORTED DR. WILSON'S CONCLUSIONS.

15 WE STARTED OUT WITH THE BIGGEST PART OF

16 THIS INFORMATION PYRAMID, IF YOU WILL, WHAT ARE THE  
17 THINGS THAT DR. WILSON RELIED UPON, AND THAT WAS WRITTEN  
18 STATEMENTS OF PEOPLE -- REAL PEOPLE. NOT RESEARCH. NOT  
19 THE STUFF IN THE BIBLE, THE DSM-IV BIBLE, BUT REAL  
20 STATEMENTS OF REAL PEOPLE WHO ARE RELATIVES OF THE  
21 MENENDEZ FAMILY, ALL FOUR OF THEM. FRIENDS OF THEIR'S,  
22 COACHES FOR THEIR SONS, TEACHERS OF THEIR SONS, BUSINESS  
23 ASSOCIATES OF MR. MENENDEZ. AND THAT TOTALED 49  
24 DIFFERENT PEOPLE WHOSE WITNESS STATEMENTS DR. WILSON  
25 SAID HE RELIED ON.

26         NOW, THOSE SAME EXACT IDENTICAL 49 PEOPLE  
27 WHO DR. WILSON RELIED UPON, THOSE STATEMENTS WERE  
28 PROVIDED TO DR. DIETZ, AND HE DIDN'T READ THEM.

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1         MOVING UP THE PYRAMID WAS THE NUMBER OF --  
2 NUMBER OF WITNESSES. YOU WERE NOT TOLD EXACTLY HOW  
3 MANY, BUT YOU WERE TOLD THEY WERE MULTIPLE WITNESSES,  
4 CONSISTING AGAIN OF RELATIVES OF THE MENENDEZ FAMILY,  
5 TEACHERS OF THE MENENDEZ SONS, COACHES OF THE MENENDEZ  
6 SONS, AND FRIENDS OF THAT FAMILY, ALL OF WHOM TESTIFIED  
7 IN THE PREVIOUS TRIAL.

8         AND I KNOW IT HAS OCCURRED TO SOME OF YOU,  
9 "WELL, WHY DIDN'T THEY TESTIFY HERE?" AND I CAN'T GIVE  
10 YOU THE ANSWER. YOU'RE JUST GOING TO HAVE TO TRUST ME  
11 THAT THERE IS A REASON, AND THEY DIDN'T TESTIFY HERE.

12 BUT ALL THEIR TESTIMONY FROM THE FIRST  
13 TRIAL WAS VIDEOTAPED, THANKS TO COURT TELEVISION,  
14 TRANSCRIBED, AS OUR REPORTER RIGHT NOW IS TRANSCRIBING  
15 IT. AND IT WAS SWORN TESTIMONY, JUST AS THE TESTIMONY  
16 YOU HAVE SEEN HERE WAS.

17 AND DR. WILSON WATCHED THOSE VIDEOTAPES,  
18 READ THAT TESTIMONY OF ALL OF THOSE WITNESSES FROM THE  
19 PREVIOUS TRIAL. AND HE WATCHED THE VIDEOTAPES, BECAUSE  
20 IT IS SO MUCH BETTER IF YOU'RE GOING TO RELY ON  
21 INFORMATION FROM PEOPLE THAT YOU SEE -- WHAT DO THEY  
22 LOOK LIKE? HOW DO THEY SOUND?

23 HE SAID HE WANTED TO DETERMINE ARE THEY  
24 CREDIBLE? ARE THEY RELIABLE? WHAT DEemeanOR DO THEY  
25 SHOW? WHAT EMOTION DO THEY CONVEY IN TELLING THEIR  
26 STORIES ABOUT THE MENENDEZ FAMILY?

27 AND SO THAT WAS A HUGE AMOUNT OF MATERIAL.  
28 IT TOOK A GREAT DEAL OF TIME FOR HIM TO REVIEW IT.

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1 DR. DIETZ WAS NOT GIVEN THIS TESTIMONY BY  
2 THE PROSECUTION, AND FORMULATED, HE TOLD US, HIS  
3 OPINIONS BEFORE HE EVER EVEN CONDUCTED HIS 15 HOURS OF  
4 INTERVIEW WITH ERIK MENENDEZ.

5 AFTER THE INTERVIEWS WERE OVER, HE WAS  
6 GIVEN AND READ SUMMARIES PREPARED BY THE PROSECUTION OF  
7 THE TESTIMONY OF THESE SAME PEOPLE.

8           AND MIND YOU, DR. DIETZ TESTIFIED THAT HE  
9 RELIED UPON THE FACT -- I MEAN, HE WAS RELYING UPON THE  
10 INFORMATION THAT PROVED THAT ERIK MENENDEZ SUFFERED FROM  
11 THE SYMPTOMS OF AN ANXIETY DISORDER OVER THE COURSE OF  
12 HIS CHILDHOOD.

13           NOW, WHERE DID HE GET THAT FROM IF HE  
14 WASN'T RELYING ON ERIK MENENDEZ, BECAUSE HE MADE UP HIS  
15 MIND BEFORE HE EVER MET HIM? AND I AM NOT EVEN CLEAR ON  
16 WHAT THE HECK HE WAS RELYING ON BEFORE HE GOT THESE  
17 SUMMARIES. BUT HE HAD NO PROBLEM IN ACCEPTING THE  
18 SYMTOMATOLOGY, BASICALLY, THAT DR. WILSON TESTIFIED TO,  
19 WITH TWO EXCEPTIONS, WHICH I'LL GET TO WHEN WE TALK MORE  
20 ABOUT DR. DIETZ.

21           SO, THESE TWO AT THE BASE OF THE PYRAMID,  
22 INFORMATION FROM PEOPLE WHO KNEW ALL OF THE FAMILY  
23 MEMBERS.

24           THEN THERE WERE EXPERT WITNESSES: ANN  
25 BURGESS AND ANN TYLER AND DR. VICARY, WHO TESTIFIED AT  
26 THE FIRST TRIAL, AND THEIR TESTIMONY WAS TRANSCRIBED,  
27 AND DR. WILSON READ THAT, AND HE TESTIFIED THAT THEIR  
28 CONCLUSIONS AND OPINIONS WERE ENTIRELY CONSISTENT --

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1 HAVING TO DO WITH ERIK MENENDEZ' HISTORY AND HIS STATE  
2 OF MIND -- ENTIRELY CONSISTENT WITH DR. WILSON'S  
3 OPINIONS AND CONCLUSIONS.

4 HE ALSO TESTIFIED THAT HE READ THOSE 101  
5 PAGES OF NOTES THAT DR. VICARY COMPILED, AND HE  
6 TESTIFIED THAT DR. VICARY'S NOTES, THE CONTENTS OF HIS  
7 NOTES, WHICH WERE NOTES OF HIS INTERVIEWS, DR. VICARY'S  
8 INTERVIEWS WITH ERIK MENENDEZ, WERE ENTIRELY CONSISTENT  
9 WITH THE INFORMATION THAT DR. WILSON GOT FROM ERIK  
10 MENENDEZ HIMSELF. AND THOSE NOTES WERE WRITTEN, LADIES  
11 AND GENTLEMEN, IN 1990. AND THAT INFORMATION WAS THERE,  
12 THE INFORMATION YOU HEARD FROM THE WITNESS STAND, IN  
13 1990.

14 THEN ALSO CONTRIBUTING TO THIS PYRAMID ARE  
15 THE TESTIMONY OF THE WITNESSES AT THIS TRIAL WHO  
16 CORROBORATED ERIK MENENDEZ, AND I WILL TELL YOU WHO THEY  
17 ARE IN A FEW MINUTES.

18 RECORDS AND DOCUMENTS OF ALL KINDS YOU'VE  
19 SEEN. THERE'S BEEN A GAZILLION PHOTOGRAPHS. DR. WILSON  
20 SAW CRIME-SCENE PHOTOGRAPHS. THERE ARE SCHOOL RECORDS,  
21 THERE ARE MEDICAL RECORDS, THERE ARE DOCUMENTS OF ALL  
22 SORTS THAT YOU'VE HEARD ABOUT THAT DR. WILSON RELIED  
23 UPON THAT SUPPORT THE TESTIMONY OF ERIK MENENDEZ.

24 THEN THERE'S DR. WILSON'S TESTIMONY; HIS  
25 OPINIONS, HIS EXPERTISE.

26 AND THEN THE LAST PIECE OF THE PYRAMID,  
27 THERE IS ERIK MENENDEZ' TESTIMONY.

28 NOW, I WANT TO POINT SOME THINGS OUT TO YOU

1 ABOUT THIS PYRAMID.

2 THIS WHOLE BASE OF THE PYRAMID THAT  
3 DR. WILSON RELIED ON THAT YOU WERE TOLD WAS CONSISTENT;  
4 EVERYTHING, IN FACT, FROM DR. VICARY'S NOTES ON DOWN,  
5 WAS COMPLETELY UNCONTESTED BY THE PROSECUTION IN THIS  
6 CASE. AND THAT IS A VERY SIGNIFICANT FACT. THAT'S  
7 CALLED UNCONTROVERTED TESTIMONY. UNCONTROVERTED  
8 EVIDENCE.

9 THEY COULD HAVE CHALLENGED DR. WILSON IN  
10 HIS OPINION BY POINTING OUT, IF IT EXISTED,  
11 INCONSISTENCIES AT ANY ONE OF THESE LEVELS, OR ANYTHING  
12 AT ANY ONE OF THESE LEVELS THAT SUPPORTED THEIR THEORY  
13 OF THE CASE, RATHER THAN THE DEFENSE THEORY OF THE CASE,  
14 AND THEY DIDN'T DO IT.

15 THEY DID NOT CAST ANY CREDIBILITY  
16 ASPERSIONS ON ANY OF THESE 49 PEOPLE, OR ON ANY OF THE  
17 PEOPLE WHO TESTIFIED AT THE TRIAL, OR ON THE OPINIONS OF  
18 THE EXPERTS FROM THE FIRST TRIAL, OR ON DR. VICARY'S  
19 NOTES. AND DR. VICARY SAT HERE, AND THEY HAVE HIS  
20 NOTES, AND THEY DIDN'T ASK HIM A SINGLE QUESTION.

21 AND THEY DIDN'T CONFRONT DR. WILSON WITH  
22 ANY INCONSISTENCIES. THAT IS UNCONTROVERTED EVIDENCE IN  
23 SUPPORT OF WHAT ERIK MENENDEZ TESTIFIED TO. NO CONTEST.

24 NOW, ALSO UNCONTROVERTED, BECAUSE IT IS  
25 BASED ON THIS PYRAMIDAL MOUNTAIN, WAS THE WAY DR. WILSON  
26 CHARACTERIZED THE NATURE OF THE FAMILY DYNAMIC, IF YOU  
27 WILL, IN THE MENENDEZ FAMILY, AND I HAVE THOSE  
28 CHARACTERIZATIONS. I DON'T KNOW IF I WILL GET TO THEM

1 TODAY. BUT HOW JOSE MENENDEZ PARENTED, HOW MARY LOUISE  
2 MENENDEZ PARENTED, HOW THEY TREATED THEIR CHILDREN.  
3 UNCONTESTED IN THIS TRIAL.

4 NOW, CONTINUING THE MODE OF CHARACTER  
5 ASSASSINATION THAT THE PROSECUTION HAS ENGAGED IN IN  
6 THIS CASE, DR. WILSON WAS ATTACKED. HE IS OUR "HIRED  
7 GUN."

8 WELL, ACTUALLY, I'D LIKE TO HAVE DR. WILSON  
9 IN ANY FIGHT, IF YOU'D LIKE TO KNOW THE TRUTH. BUT HE  
10 IS SUPPOSED TO BE UNBELIEVABLE BECAUSE WE PAID HIM  
11 \$13,000 FOR HUNDREDS OF HOURS WORTH OF WORK.

12 AND IN THE ARGUMENTS THAT MR. CONN MAKES  
13 ABOUT THIS ISSUE, PAYING OR NOT PAYING EXPERTS, I MUST  
14 TELL YOU, I FEEL LIKE ALICE THROUGH THE LOOKING GLASS.  
15 LET ME SEE IF I FOLLOW THE LOGIC.

16 IF YOU'RE PAID \$13,000, YOU'RE A HIRED GUN,  
17 YOU'RE A LIAR, YOU CAN'T BE BELIEVED, BECAUSE YOU'RE  
18 BOUGHT AND PAID FOR, OKAY?

19 IF YOU'RE PAID \$40,000, YOU TELL THE TRUTH.

20 I DON'T GET IT. OH, I FORGOT. THAT'S  
21 BECAUSE THE \$40,000 WAS PAID OUT OF TAXPAYER MONEY TO  
22 DR. DIETZ, WHO WAS A PROSECUTION WITNESS. THAT GOES  
23 ALONG WITH THE BASIC THEORY -- THE PROSECUTION CALLS A  
24 WITNESS, THEY'RE TELLING THE TRUTH. IF THE DEFENSE  
25 CALLS A WITNESS, THEY'RE LYING.



26            THAT'S HOW THEY ATTACK DR. WILSON, BECAUSE  
27 HE'S PAID. BUT DR. DIETZ IS OKAY, BECAUSE HE'S WORTH  
28 IT.

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1            THEN WE GET TO ROGER MC CARTHY. HE WASN'T  
2 PAID ANYTHING AT ALL. RIGHT.

3            NOW THAT'S SUPPOSED TO MAKE HIM A GREAT  
4 WITNESS, IF YOU'RE NOT PAID ANYTHING AT ALL. OF COURSE,  
5 ROGER MC CARTHY SAT UP HERE AND TOLD YOU HE HAD NOTHING  
6 TO GAIN BY BEING ON THIS CASE. HE LAUGHED: "HA, HA,  
7 HA," WHEN I SUGGESTED HE WAS SEEKING CRIMINAL LAW  
8 BUSINESS. "OH, NO, I WOULDN'T DO THAT," HE SAID. "I'M  
9 NOT INTERESTED IN PROMOTING MY PARTICIPATION IN CRIMINAL  
10 CASES," AND OUT POPS THE NEXT ANNUAL EDITION OF THE  
11 FAILURE ANALYSIS CALENDAR.

12           AND WHAT ARE THEY PROMOTING THEMSELVES ON?  
13 THE MENENDEZ CASE AND THE SIMPSON CASE.

14           NOW, AS SOME OF YOU KNOW, I KIND OF WATCHED  
15 THE SIMPSON CASE, AND SOME OF YOU DID, TOO. AND HE IS  
16 PROMOTING A COMPUTER ANIMATION THAT FAILURE ANALYSIS  
17 SUPPOSEDLY DID OF THE SIMPSON CASE. THIS WASN'T IN THE  
18 SIMPSON TRIAL.

19           MR. CONN: OBJECTION. THERE IS NO EVIDENCE OF  
20 THAT.

21           THE COURT: SUSTAINED AS TO THE LAST REMARK.

22 MS. ABRAMSON: ONE CAN ASSUME THAT PROSECUTORS  
23 WITH INTEGRITY DON'T USE FRAUDULENT ANALYSIS.  
24 BUT RETURNING FOR A MOMENT TO  
25 UNCONTROVERTED EVIDENCE. THERE WAS NOT A SINGLE WITNESS  
26 CALLED IN THIS CASE WHO DESCRIBED JOSE AND MARY LOUISE  
27 MENENDEZ' STYLE OF PARENTING ANY DIFFERENTLY THAN THE  
28 WAY ERIK MENENDEZ DESCRIBED IT, FROM THE WAY DR. WILSON

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1 DESCRIBED IT.  
2 NO ONE WAS CALLED, BECAUSE I SUBMIT TO YOU,  
3 NO ONE EXISTS WHO COULD SAY THAT WITH RESPECT TO THEIR  
4 CHILDREN, THEY WERE KIND OR SUPPORTIVE OR LOVING OR  
5 NURTURING. EVEN MRS. MENENDEZ' BROTHER, AS I HAVE TOLD  
6 YOU, POINTED OUT AN INCIDENT WHERE MRS. MENENDEZ IS  
7 BLAMING ERIK MENENDEZ FOR SOMETHING THAT WASN'T HIS  
8 FAULT, FOR BEING CONCERNED ABOUT SOMETHING.  
9 NOT A SINGLE WITNESS WAS EVER CALLED,  
10 BECAUSE I SUBMIT TO YOU, NONE EXIST, TO SAY THAT ERIK  
11 MENENDEZ EVER EXPRESSED ANY KIND OF NEGATIVE FEELINGS  
12 TOWARDS HIS PARENTS, OR ANY NEED FOR MONEY. AND IT IS  
13 UNCONTROVERTED IN THIS CASE THAT, AT A MINIMUM, THERE  
14 WAS EXTENSIVE AND PERVASIVE PSYCHOLOGICAL MALTREATMENT  
15 AND ABUSE EVERY DAY OF ERIK MENENDEZ' LIFE BY HIS  
16 PARENTS.  
17 WHY IS THAT UNCONTROVERTED? WELL, WE HEARD

18 THAT TESTIMONY FROM ALAN ANDERSEN. WE HEARD THAT  
19 TESTIMONY FROM DIANE VANDERMOLLEN. WE HEARD THAT KIND OF  
20 TESTIMONY FROM KATHY SIMONTON. BUT MORE IMPORTANTLY, WE  
21 KNOW THAT, BECAUSE DR. DIETZ BELIEVES IT TO BE TRUE.

22         WHAT DID DR. DIETZ TELL YOU HE DID DURING  
23 THE COURSE OF HIS INTERVIEW WITH ERIK MENENDEZ? HE  
24 CHALLENGED HIM. HE CALLED IT A CHALLENGE, AND HE SAID  
25 WHAT HE WAS DOING WAS RE-ENACTING FOR ERIK MENENDEZ  
26 SOMETHING THAT HAD HAPPENED OVER AND OVER AGAIN IN HIS  
27 LIFE. HE WAS BELITTLED HIM AND Demeaned HIM, AND  
28 WANTED TO SEE HIS REACTION.

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1         AND IT'S CLEAR THAT DR. DIETZ ACCEPTED THAT  
2 IN THAT HOUSEHOLD ERIK MENENDEZ WAS BELITTLED AND  
3 Demeaned AND DENIGRATED, AND ALL THE OTHER THINGS YOU  
4 HAVE HEARD, ON A ROUTINE BASIS. AND DR. DIETZ DOES THE  
5 SAME THING WHEN HE IS INTERVIEWING ERIK MENENDEZ, AND  
6 GETS, I SUBMIT TO YOU, THE SAME KIND OF REACTION. NOT  
7 ANGER, BUT HURT.

8         NOW, APART FROM THIS MOUNTAIN OF EVIDENCE  
9 THAT IS UNCONTROVERTED, WHAT IS THE CORROBORATED  
10 EVIDENCE? EVIDENCE THAT THE PEOPLE DO CHALLENGE, AT  
11 LEAST IN ARGUMENT, ALTHOUGH THEY COULD NOT DISPROVE.  
12 FIRST OF ALL, HERE IS AN INTERESTING FACT THAT MAY HAVE  
13 GONE BY YOU.

14           ERIK MENENDEZ TESTIFIED THAT THE PARENTS --  
15 THAT HE AND HIS BROTHER STAYED AWAY THAT SATURDAY  
16 BECAUSE THEY WANTED TO MISS THE FISHING TRIP. THEY GOT  
17 BACK AN HOUR LATE.  
18           WHAT DID THE FISHING CAPTAIN TELL YOU?  
19 THEY WERE LATE BY AN HOUR TO AN HOUR AND A HALF FROM  
20 WHEN THE FISHING TRIP WAS SUPPOSED TO START. THAT IS  
21 CORROBORATION. THE PROSECUTION DIDN'T EVEN WANT TO TELL  
22 YOU ABOUT THE FISHING TRIP THAT SATURDAY.  
23           HERE IS WHAT I HAVE CALLED "THE WEEK IN  
24 CRISIS." HERE IS MR. CONN SAYING NONE OF THIS HAPPENED.  
25 THERE WAS NO WEEK IN CRISIS. AND WERE THEY ABLE TO COME  
26 UP WITH ANY EVIDENCE CONCERNING WHAT HAPPENED THAT WEEK?  
27 YES.  
28           THEY CAME UP WITH GRANT WALKER, THE POOL

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1 REPAIR GUY. GRANT WALKER, WHO CLAIMS THAT HE WAS AT THE  
2 HOUSE THAT SATURDAY AT 2:00 O'CLOCK, FROM HALF AN HOUR  
3 TO 45 MINUTES, FIXING SOMETHING. AND EVERYBODY WAS  
4 THERE. THE BROTHERS WERE PLAYING TENNIS WITH A COACH OR  
5 AN INSTRUCTOR, THE MYSTERY INSTRUCTOR, AND THERE WAS  
6 THIS CURSING GOING ON.  
7           I AM NOT GOING TO GO INTO ALL OF HIS  
8 TESTIMONY NOW. I'LL GET BACK TO IT LATER.  
9           BUT THE POINT IS, HE CLAIMS HE'S THERE AT

10 2:00 O'CLOCK, AND THESE PEOPLE ARE SUPPOSED TO BE ON A  
11 FISHING TRIP AT 3:00 O'CLOCK, AND THEY WERE ALL  
12 TOGETHER. AND IF HE WAS TELLING THE TRUTH, THEY  
13 WOULDN'T HAVE BEEN LATE. THEY'RE ALL THERE. BUT, OF  
14 COURSE, THEY HEAR NOTHING FROM THESE PEOPLE ABOUT, "TIME  
15 TO PACK THE COOLER UP, WE'RE GOING ON THE FISHING TRIP."  
16 NOTHING WHATSOEVER ABOUT IT.

17 THE BOAT CAPTAIN TELLS YOU THEY WERE INDEED  
18 LATE, JUST AS ERIK MENENDEZ SAID THEY WERE, THEREFORE  
19 CORROBORATING ERIK MENENDEZ' VERSION AND DISPUTING GRANT  
20 WALKER, BY THE WAY, THAT THAT IS WHAT HAPPENED ON THAT  
21 SATURDAY.

22 NOW, WHERE ELSE IS ERIK MENENDEZ  
23 CORROBORATED?

24 HIS ACCOUNT OF THE ACTUAL SHOOTINGS AND THE  
25 POSITIONS OF HIS PARENTS WERE COMPLETELY AND TOTALLY AND  
26 THOROUGHLY CORROBORATED BY DR. MARTIN FACKLER, BY  
27 DR. CYRIL WECHT, BUT MR. RON LINHART, BY MR. CHARLES  
28 MORTON, AND BY DEPUTY DWIGHT VAN HORN.

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1 WE SPENT A MONTH -- I'M SURE IT SEEMED  
2 LONGER -- BUT IT WAS A MONTH LITIGATING FRAUDULENT  
3 ANALYSIS' (SIC) VERSION OF THIS SHOOTING SO THAT I COULD  
4 CORROBORATE MY CLIENT'S TESTIMONY, BECAUSE I KNEW THAT  
5 WHAT WOULD HAPPEN EVENTUALLY IS THE PROSECUTOR WOULD GET

6 UP AND SAY: "HE IS THE ACCUSED. HE IS FACING THE DEATH  
7 PENALTY. THEREFORE, HE'S LYING. DISCOUNT EVERYTHING HE  
8 SAYS."

9 AND THE WHOLE CASE IS GOING TO STAND OR  
10 FALL -- THEY WANT YOU TO BELIEVE THE WHOLE CASE STANDS  
11 OR FALLS ON ERIK MENENDEZ' TESTIMONY, INSTEAD OF THIS  
12 MOUNTAIN THAT IS HOLDING HIM UP, THIS FIRM BASE UPON  
13 WHICH HE GAVE HIS TESTIMONY.

14 AND SO THEY BRING IN ROGER MC CARTHY TO  
15 COME UP WITH A LAST DITCH, DESPERATE EFFORT TO FORMULATE  
16 SOME KIND OF THEORY OF PREMEDITATION.

17 AND WHAT IS THE THEORY OF PREMEDITATION  
18 THAT MR. CONN USES ROGER MC CARTHY FOR NOW IN ARGUMENT?  
19 THE MAFIA THEORY. THEY WANTED TO MAKE IT LOOK LIKE THE  
20 MAFIA, INVOLVING SHOTGUNS, WHICH WE ALL KNOW THE MAFIA  
21 USE -- OF COURSE, WE ALL KNOW THEY DON'T -- AND  
22 KNEE-CAPPING. AND WHAT KNEE-CAPPING HAS TO DO WITH  
23 THIS, I HAVEN'T A CLUE. BUT I WILL TELL YOU WHAT I  
24 BELIEVE THE FOLKLORE ABOUT KNEE-CAPPING IS IN A FEW  
25 MINUTES.

26 SO THEY BRING IN ROGER MC CARTHY. THIS IS  
27 HIS JOB, TO SHOW THE PARENTS WERE SEATED, TO MAKE ERIK  
28 MENENDEZ A LIAR. TO SHOW WHAT? THAT THEY WERE SHOT IN

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1 THE KNEE, WHEN THEY'RE NOT SHOT IN THE KNEE? HE'S GOING

2 TO TRY AND SAY THAT.

3 TO SHOW AN AMBUSH FOR THEIR LYING-IN-WAIT  
4 THEORY. AGAIN, HAVING TO DO WITH THE PARENTS BEING  
5 SEATED.

6 SO THEY BRING IN THIS MAN WHO HAS  
7 ABSOLUTELY NOT ONE SINGLE CREDENTIAL TO SUPPORT THE KIND  
8 OF TESTIMONY THEY ELICITED FROM HIM. HE MAY BE THE  
9 WORLD'S GREATEST MECHANICAL ENGINEER, BUT I AM NOT GOING  
10 TO LET HIM DO BRAIN SURGERY.

11 I AM A PRETTY GOOD LAWYER. I'M NOT GOING  
12 TO GO OUT AND RECONSTRUCT BRIDGE BURNINGS.

13 HE HAS -- I DON'T CARE HOW MANY  
14 PRESIDENTIAL MEDALS HE HAS. HE DOESN'T HAVE THEM IN THE  
15 FIELDS THAT MATTER HERE. WHAT MATTERS HERE, FOR  
16 ANALYZING THIS CRIME SCENE, OR ANY CRIME SCENE, IS  
17 MEDICINE, FIRST AND FOREMOST.

18 SO, WHO DID WE BRING IN? MARTIN FACKLER,  
19 WHO ROGER MC CARTHY SAID IS THE LEADING EXPERT IN THE  
20 U.S. OF A. IN WOUND BALLISTICS. THAT'S WHAT ROGER  
21 MC CARTHY SAID.

22 MR. CONN TRASHED DR. FACKLER ALSO. I ASK  
23 YOU FOLKS, IF YOU HAD A RELATIVE, SOMEONE NEAR AND DEAR  
24 TO YOU WHO HAD A GUNSHOT WOUND, WHO WOULD YOU LIKE TO  
25 HAVE OPERATE ON THAT PERSON, MARTIN FACKLER OR ROGER  
26 MC CARTHY, JUST FOR OPENERS? WOUND BALLISTICS IS THE  
27 KEY TO THIS KIND OF RECONSTRUCTION.

28 SECONDLY, CONCERNING THESE ISSUES OF

1 ANTEMORTEM AND POSTMORTEM WITH WHICH MR. MC CARTHY HAS  
2 NO EXPERTISE, BUT NEVERTHELESS OFFERS OPINIONS ABOUT  
3 WOUNDS BEING ANTEMORTEM AND POSTMORTEM.

4 WE BRING IN DR. CYRIL WECHT, WHO, AS YOU  
5 KNOW, IS THE ONLY PERSON WHO KNOWS WHETHER ELVIS IS  
6 ALIVE OR NOT. HE IS UNQUESTIONABLY ONE OF THE LEADING  
7 FORENSIC PATHOLOGISTS IN THE UNITED STATES, AND HE CAME  
8 HERE AND TESTIFIED IN THIS CASE, AND YOU TELL ME IF YOU  
9 CAN FIND FAULT WITH THE TESTIMONY OF DR. CYRIL WECHT.  
10 AND HE DESTROYED ROGER MC CARTHY.

11 AND WE CALLED MR. CHARLES MORTON FROM THE  
12 INSTITUTE OF FORENSIC SCIENCE, THE MAN WHO TAUGHT THE  
13 MAN WHO IS DWIGHT VAN HORN'S BOSS.

14 NOW, MR. CONN ARGUED THAT -- I MEAN, TALK  
15 ABOUT HIS ARGUMENTS ABOUT VAN HORN. BUT ONE OF THE  
16 THINGS HE SAID ABOUT DEPUTY VAN HORN IS HE IS MORE  
17 EXPERIENCED IN BALLISTICS THAN MR. MORTON, AND I DON'T  
18 THINK HE GOT THAT RIGHT. MR. MORTON TRAINED THE HEAD OF  
19 THE LABORATORY, THE CRIMINALISTIC HEAD OF THE  
20 LABORATORY. HE WAS ONE OF HIS STUDENTS.

21 BUT THIS IS ALSO THE EFFORT, YOU KNOW, TO  
22 JUST TRASH WHATEVER THE DEFENSE DOES.

23 SO FACKLER COMPLETELY DESTROYED MC CARTHY'S  
24 OPINIONS. WECHT DESTROYED THEM, LINHART DESTROYED THEM,  
25 MORTON DESTROYED THEM, AND VAN HORN DESTROYED THEM.

26 NOW FOLKS, LIKE I HAVE TOLD YOU, I HAVE



27 BEEN DOING THIS FOR 27 YEARS. IF ROGER MC CARTHY WAS  
28 NOT COMPLETELY DISCREDITED AS A WITNESS, IT CANNOT BE

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1 DONE, AND THAT IS ALL I AM GOING TO SAY ABOUT THE  
2 PHYSICAL EVIDENCE. ONE MONTH WE DID THIS IN FRONT OF  
3 YOU, ONE MONTH IN EXCRUCIATING DETAIL. I AM CONFIDENT  
4 THAT YOU GOT IT.

5 BUT I WANT TO TALK ABOUT DEPUTY VAN HORN,  
6 BECAUSE THE ATTACK -- THE ASSAULT ON DEPUTY VAN HORN  
7 TELLS YOU EVERYTHING YOU NEED TO KNOW ABOUT THE  
8 INTEGRITY OF THIS PROSECUTION. IT TELLS YOU HOW  
9 DESPERATE THEY ARE FOR A CONVICTION, AND IT SHOULD  
10 UNDERMINE YOUR CONFIDENCE IN MR. CONN'S ANALYSIS OF THE  
11 EVIDENCE.

12 HERE IS WHAT DEPUTY VAN HORN ACTUALLY  
13 TESTIFIED TO. I HAVE A FEW PAGES OF TRANSCRIPT. THESE  
14 ARE MY NOTES, MY SUMMARIES.

15 NUMBER ONE, HE SAYS THAT NO. 4 BUCKSHOT  
16 COMES 27 TO THE LOAD, PERIOD. ROGER MC CARTHY TESTIFIED  
17 THAT HE CUT OPEN 10 OF THEM, AND THE COUNT WAS OFF.

18 THAT'S A LIE. THAT'S A LIE. THEY ARE  
19 PACKED 27 -- HE DREW A DIAGRAM, YOU WILL SEE IT, OF HOW  
20 THEY STACK INSIDE THE SHELL. SO HE DID THAT. THAT MUST  
21 HAVE BEEN SOMETHING FROM MR. CONN.

22 HE TALKED ABOUT THE ONLY RELIABLE EVIDENCE,

23 ACTUAL SCIENTIFIC EVIDENCE THAT YOU COULD RELY ON  
24 CONCERNING HOW MANY SHOTS WERE FIRED, AND THAT A REAL  
25 SCIENTIST, SUCH AS HIMSELF, WOULD NOT SPECULATE AND COME  
26 UP WITH AN ABSOLUTE NUMBER OUTSIDE OF THAT REAL PHYSICAL  
27 EVIDENCE, AND THE SHOT COUNT WAS BASED ON THE GATHERED  
28 EVIDENCE THAT THE BEVERLY HILLS POLICE DEPARTMENT PICKED

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1 UP, WHICH IS SIX OVER-POWDER WADS, INDICATING SIX  
2 BUCKSHOT FOR SURE, AND TWO BIRD SHOT CUPS.

3 HE THEN POINTED OUT THAT ROGER MC CARTHY  
4 USED THE WRONG AMMUNITION FOR HIS EXPERIMENT, WHICH I  
5 POINTED OUT WHILE MC CARTHY WAS ON THE STAND. YOU WILL  
6 SEE -- AND I KNOW THIS IS A LONG TIME AGO, AND YOU  
7 DIDN'T HAVE ALL THE FUN OF DOING IT, AS I DID -- BUT THE  
8 AMMUNITION, THE FIOCCHI AMMUNITION USED HERE DOES NOT  
9 COME IN A SHOT CUP.

10 THE FIOCCHI AMMUNITION USED HERE -- AND I  
11 AM TALKING ABOUT THE BUCKSHOT -- DOES NOT COME  
12 COPPER-PLATED. IF YOU USE COPPER-PLATED AMMUNITION, AND  
13 YOU USE IT IN A SHOT CUP, YOU'RE GOING TO GET A  
14 COMPLETELY DIFFERENT KIND OF SHOT PATTERN THAN IF YOU'RE  
15 USING JUST THE LEAD PELLETS SITTING LOOSELY IN THE SHOT  
16 SHELL. THAT WAS ATTESTED TO BY BOTH VAN HORN AND MR.  
17 MORTON.

18 SO DEPUTY VAN HORN TESTIFIED ROGER

19 MC CARTHY USED THE WRONG AMMUNITION. HE TOOK THIS  
20 COPPER-PLATED STUFF IN A SHOT CUP TO MAKE HIS CHARTS,  
21 AND HE DECIDED IT WAS SO VARIABLE, THE AMMUNITION HE WAS  
22 USING WAS SO VARIABLE, THAT HE COULDN'T DO ANY DISTANCE  
23 SHOTS FROM IT. AND THAT WAS THE END OF HIS  
24 DISSERTATION.

25 MR. MORTON, TO FAST FORWARD AHEAD, USED THE  
26 RIGHT AMMUNITION WITH THE SAME KIND OF GUN, AND HE GOT  
27 SOME PATTERNS WITHIN A WIDE RANGE HE WAS COMFORTABLE  
28 WITH.

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1 THEN DEPUTY VAN HORN TESTIFIED THAT THIS  
2 PARTICULAR MODEL MOSSBERG. CONTRARY TO THE TESTIMONY OF  
3 THE YOUNG WOMAN FROM THE BIG-5, IT IS NOT USUALLY SOLD  
4 WITH A DOWEL IN IT, THAT THING THAT HAS TO BE PULLED  
5 OUT, BECAUSE IT'S NOT DESIGNED AS A HUNTING GUN. IT'S A  
6 CHEAP DEFENSE WEAPON.

7 SO HE IS NOW CASTING SOME IMPEACHMENT ON  
8 ANOTHER PROSECUTION WITNESS.

9 THEN DEPUTY VAN HORN TESTIFIED THAT YOU  
10 COULD FIRE OFF FIVE SHOTS -- WHICH IS WHAT MY CLIENT  
11 SAID HE HAD LOADED IN HIS GUN -- IN FIVE SECONDS, USING  
12 THIS GUN. BUT TO BE GENEROUS, CERTAINLY IN 10 SECONDS.  
13 AND I AM SURE THAT WAS NOT APPRECIATED BY THE  
14 PROSECUTION, BECAUSE THEY WANT YOU TO PICTURE THIS

15 SHOOTING AS IF IT WERE A SLOW, DELIBERATE SET OF  
16 ACTIVITIES, WHEN IN FACT IT'S "BOOM-BOOM-BOOM-BOOM-BOOM.  
17 BOOM."

18 THAT'S ALL IT IS. THAT'S ALL IT IS TO  
19 WRECK HAVOC. THAT'S ALL IT IS TO KILL PEOPLE AND  
20 DESTROY YOUR OWN LIFE. THAT'S ALL IT IS. FAST. AND  
21 THAT'S WHAT VAN HORN TESTIFIED TO.

22 AND HE DREW A DIAGRAM FOR YOU, A SHOT  
23 DISPERSAL DIAGRAM THAT SHOWS THAT THE SHOT FROM A  
24 SHOTGUN SHELL EXPANDS IN SPACE, AND THE FARTHER AWAY YOU  
25 GET, THE WIDER IT IS.

26 THE SHERIFF'S DEPARTMENT POLICY IS NOT TO  
27 GIVE ESTIMATES; BUT NEVERTHELESS, IT GETS WIDER AND  
28 WIDER THE FARTHER AWAY YOU GO. AND WHAT HE TESTIFIED TO

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1 IS ONCE IT STARTS EXPANDING, IT DOES NOT COME BACK  
2 TOGETHER AGAIN, AS ROGER MC CARTHY TRIED TO CLAIM, IN  
3 ORDER TO SUPPORT ROGER MCCARTHY'S SHOT 1 SCENARIO, WHERE  
4 YOU HAVE A WIDE SPREAD FROM THE ELBOW, AND IT ALL FORMS  
5 BACK AGAIN TO GO INTO THE WRONG SIDE OF MR. MENENDEZ'  
6 ARM, AND COME OUT THE OTHER SIDE AND THEN SPREAD OUT  
7 AGAIN. IT DOESN'T HAPPEN THAT WAY.

8 SO THAT, NO DOUBT, MADE MR. CONN UNHAPPY  
9 WITH DEPUTY VAN HORN.

10 AND THEN DEPUTY VAN HORN ESTIMATED, BASED

11 ON THE FACT THAT THERE ARE AN EXTENSIVE NUMBER -- A  
12 LARGE NUMBER OF WOUNDS HERE, AND WOUND LOCATIONS, AND  
13 BASED ON HIS EXPERIENCE AS A LAW ENFORCEMENT OFFICER --  
14 AGAIN, THAT ROGER MC CARTHY DOESN'T HAVE -- THAT GIVEN  
15 THE WAY AMATEURS, AS COMPARED TO POLICE OFFICERS, LOAD  
16 WEAPONS, HE ESTIMATED 11 SHOTS HERE AS THE MOST LIKELY;  
17 THAT INEXPERIENCED PEOPLE WOULD LOAD FIVE AND NOT GO  
18 THROUGH THE COMPLEXITY -- AND I STILL CAN'T FIGURE OUT  
19 HOW TO DO IT -- OF OPENING UP THE GUN AND GETTING THE  
20 SIXTH ONE IN. AND SINCE THERE WAS, BY THE ADMISSION OF  
21 ERIK MENENDEZ, AND WITH NO OTHER POSSIBLE PROOF, A  
22 RELOAD. SO HE CAME UP WITH AN ESTIMATE OF 11 SHOTS.

23         AND THEN HE TESTIFIED AS FOLLOWS: THAT  
24 ROGER MC CARTHY DID NOT DO A SCIENTIFICALLY RELIABLE  
25 RECONSTRUCTION;

26         THAT ROGER MC CARTHY'S RECONSTRUCTION --  
27 AND IF YOU BOTHER TO LOOK AT THESE THINGS NOW, THESE  
28 CARTOONS, YOU WILL SEE THAT THE RECONSTRUCTION HAS GOT

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1 PEOPLE SHOOTING FROM BOTH SIDES OF THE ROOM,  
2 BAM-BAM-BAM-BAM-BAM. THAT'S WHAT THE EAR WITNESSES  
3 HEARD. AND HE'S GOT IT COMING FROM TWO DIFFERENT  
4 DIRECTIONS. AND IF THAT HAD HAPPENED, THEY'D BE DEAD  
5 AND YOU WOULDN'T BE HERE, AND NONE OF THIS WOULD BE  
6 HAPPENING.

7 SO HE TALKED ABOUT DEPUTY VAN HORN'S  
8 CROSS-FIRE AND THE PROBLEMS OF CROSS-FIRE, ROGER  
9 MC CARTHY.  
10 AND BY THE WAY, MR. CONN SAYS: "OH,  
11 FORGIVE ROGER, IT'S THE ILLUSTRATOR'S FAULT."  
12 ROGER MC CARTHY IS THE ILLUSTRATOR. HE IS  
13 THE PERSON WHO SAID WHERE THE FIGURES GO AND WHERE THE  
14 LINES GET DRAWN, AND THAT'S WHAT HE TESTIFIED TO. THESE  
15 ARE HIS CARTOONS. SO THAT THIS SCENARIO THAT HE'S  
16 WRITTEN WOULD HAVE RESULTED IN CROSS-FIRE AND DEATH FOR  
17 THE PEOPLE DOING THE SHOOTING.  
18 I'VE ALREADY TOLD YOU WHAT HE SAID ABOUT  
19 HOW TO EJECT, THAT THEY EJECT TO THE RIGHT, AND THEY CAN  
20 FLY VERY FAR, PARTICULARLY IF YOU'RE DOING IT VERY, VERY  
21 FAST. THE FASTER, THE FARTHER THEY FLY TO THE RIGHT.  
22 THEN HE TESTIFIED -- IMPEACHING SOME RATHER  
23 EXTRAORDINARY TESTIMONY FROM DR. LAWRENCE -- THAT A SHOT  
24 COLUMN GOING ACROSS SOMEONE'S CHEST CAN COMPRESS TWO  
25 INCHES, AND YET MAKE NO HOLES IN THE SHIRT. AND MORE  
26 IMPORTANTLY, NO HOLES IN THE CHEST.  
27 AND THAT'S WHAT DR. LAWRENCE TESTIFIED TO.  
28 YOU MAY NOT REMEMBER THAT FAR BACK. THE SHOT COLUMN

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1 COMPRESSED THIS CHEST TWO INCHES. DIDN'T SCRATCH THE  
2 SKIN. EVEN VAN HORN, WITH HIS ASSOCIATE OF ARTS DEGREE

3 AND HIS TEN YEARS AT THE SHERIFF'S DEPARTMENT, KNOWS  
4 THAT THAT'S RIDICULOUS.

5 THEN HE TESTIFIED THAT, ALTHOUGH THIS TYPE  
6 OF AMMUNITION IS TECHNICALLY CALLED SMOKELESS POWDER,  
7 THAT DOES NOT MEAN, CONTRARY TO WHAT MR. CONN JUST  
8 ARGUED TO YOU THE OTHER DAY, THAT THERE IS NO SMOKE AT  
9 ALL. HE SAYS THERE MAY WELL BE SMOKE, PARTICULARLY IF  
10 YOU'VE GOT 12 ROUNDS BEING FIRED RAPIDLY. BECAUSE IN  
11 ADDITION TO SMOKE, THERE IS LEAD DUST. AND SO THERE IS  
12 GOING TO BE SOMETHING VISIBLE IN THE AIR THAT YOU CAN  
13 SEE.

14 NOW, IT WON'T MAKE IT IMPOSSIBLE TO SEE,  
15 AND MY CLIENT DIDN'T TESTIFY THAT HE WAS BLINDED BY THE  
16 SMOKE. HE TESTIFIED THAT HE SAW SMOKE IN THE ROOM AT  
17 SOME POINT -- IN FACT, HE WENT AND TOLD THE POLICE THAT  
18 HE SAW SMOKE IN THE ROOM AT A TIME WHEN YOU SHOULDN'T  
19 HAVE SEEN SMOKE IN THE ROOM, LONG AFTER THE SHOOTING.  
20 THE FACT OF THE MATTER IS, VAN HORN IS CORROBORATED BY  
21 MY CLIENT ON THAT POINT. HE SAID AT PAGE 42,188, AFTER  
22 12 ROUNDS THERE WOULD BE PERCEPTIBLE SMOKE, PARTICULARLY  
23 ONCE HE WAS GIVEN THE ROOM DIMENSIONS, AND HE SAID IN A  
24 DARKENED ROOM IT WOULD BE MORE NOTICEABLE THAN IN A  
25 BRIGHTLY LIT ONE. HE SAID THAT AT 42,246.

26 NOW, HERE'S THE REAL BONE OF CONTENTION FOR  
27 THE DISTRICT ATTORNEY'S OFFICE WITH THIS LAW ENFORCEMENT  
28 OFFICER. AND MOST OF THIS CAME OUT ON

1 CROSS-EXAMINATION.

2 HE TOLD THE PROSECUTORS IN THIS CASE,  
3 BEFORE THE DEFENSE EVER SPOKE TO HIM, BEFORE THE DEFENSE  
4 EVER SUBPOENAED HIM, THAT WHAT ROGER MC CARTHY WAS  
5 PROMOTING WAS JUNK SCIENCE; BOGUS, FAKE, FRAUDULENT.  
6 AND HE ASKED THEM: "DON'T DO THAT. DON'T SET BACK  
7 FORENSIC SCIENCE."

8 AND YOU SAW THE REAL FORENSIC SCIENTISTS IN  
9 MARTY FACKLER AND IN CHARLES MORTON AND IN RON LINHART  
10 AND IN VAN HORN. "DON'T PUT THIS CHARLETON ON THE  
11 WITNESS STAND AND SET A PRECEDENT THAT UNDERMINES ALL  
12 THE SCIENCE THAT WE'VE BEEN TRYING -- ALL THE CARE THAT  
13 WE HAVE PUT IN THIS WORK." AND THAT'S WHAT MOST UPSET  
14 MR. CONN. AND THEN HE ATTACKED HIM.

15 NOW, MR. CONN HAS THE SAME KIND OF  
16 EXTRAORDINARILY BIASED ATTITUDE ABOUT THE ROLE OF LAW  
17 ENFORCEMENT AS HE DOES ABOUT THE HONESTY OF WITNESSES.  
18 ALONG WITH HIS THEORY THAT ALL DEFENSE WITNESSES LIE,  
19 AND THAT ALL PROSECUTION WITNESSES ARE TO BE PRESUMED  
20 TRUTHFUL, WHICH OF COURSE TURNS THE PRESUMPTION OF  
21 INNOCENCE, REASONABLE DOUBT UPSIDE DOWN, IS THE NOTION  
22 THAT THE LAW ENFORCEMENT AGENCIES WORK FOR THE  
23 POLITICALLY-ELECTED PROSECUTOR'S OFFICE. NOW THAT  
24 DOESN'T HAPPEN, I HOPE AND PRAY, TO BE TRUE.

25 HIS NOTION IS DEPUTY VAN HORN DID SOMETHING  
26 WRONG BECAUSE HE TOLD THE TRUTH. MR. CONN GOT UP HERE  
27 AND SAID: "YES, I ASKED HIM WHOSE SIDE WAS HE ON."



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1 ANSWERED. HIS ANSWER WAS: "THE SIDE OF THE TRUTH."

2 AND IF MR. CONN WANTS TO ARGUE THAT THAT MEANS THAT  
3 DEPUTY HORN IS ON THE DEFENSE SIDE, I AGREE, BECAUSE WE  
4 ARE THE SIDE OF THE TRUTH IN THIS CASE.

5 NOW, HE TRIES TO MAKE DWIGHT VAN HORN A  
6 REBEL -- YOU KNOW, HE IS A WILD ELEPHANT CUT LOOSE FROM  
7 THE HERD IN THE SHERIFF'S DEPARTMENT.

8 UH-HUH. NO, HE'S NOT. HIS CAPTAIN WAS  
9 SITTING IN THE AUDIENCE WHEN HE TESTIFIED. HIS CAPTAIN  
10 ATTENDED THE FIRST MEETING WITH THE DEFENSE. RON  
11 LINHART WAS SITTING IN THE AUDIENCE, THE ASSISTANT  
12 DIRECTOR OF THE LABORATORY WHEN HE TESTIFIED. RON  
13 LINHART ATTENDED THE SECOND MEETING WITH THE DEFENSE.  
14 HE HAD PERMISSION FROM HIS SUPERVISORS TO TESTIFY FOR  
15 THE DEFENSE. HE HAD PERMISSION FROM HIS SUPERVISORS TO  
16 TESTIFY -- TO TALK TO US BEFORE WE PUT HIM ON THE  
17 WITNESS STAND. AND HE DID NOT HELP ME PREPARE TO  
18 CROSS-EXAMINE ROGER MC CARTHY.

19 AND YOU DIDN'T REALLY THINK, WHEN I WAS  
20 CROSS-EXAMINING ROGER MC CARTHY, THAT I NEEDED ANY  
21 FURTHER HELP AT THAT POINT, DID YOU? I HAD MARTY  
22 FACKLER, I HAD CHARLES MORTON, I HAD CYRIL WECHT. I  
23 DIDN'T NEED TO BE COACHED BY DWIGHT VAN HORN.

24 BUT HE, LIKE ANY RESPONSIBLE WITNESS, DID  
25 NOT WANT TO TAKE THE WITNESS STAND WITHOUT ADEQUATELY  
26 PREPARING BY KNOWING WHAT I WAS GOING TO ASK HIM. AND  
27 HE TESTIFIED THAT THESE MEETINGS THAT SO OFFENDED  
28 MR. CONN'S BIASED VIEW OF THE WORLD -- AT THESE MEETINGS

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1 ALL I DID WAS ASK HIM QUESTIONS, AND HE GAVE ME ANSWERS,  
2 AND THOSE WERE THE SAME QUESTIONS I ASKED HIM ON THE  
3 WITNESS STAND, AND I GOT THE SAME ANSWERS.

4 NOW, WHERE -- IF YOU LOGICALLY PLAY OUT  
5 MR. CONN'S VIEW OF LAW ENFORCEMENT, WHAT DOES THAT MAKE  
6 DETECTIVE ZOELLER, IN HIS VIEW?

7 NOW, YOU SAW WE CALLED DETECTIVE ZOELLER TO  
8 THE STAND. I MEAN, I AM GLAD I'VE KNOWN DETECTIVE  
9 ZOELLER FOR SIX YEARS. I KNEW HIM BEFORE MR. CONN GOT  
10 TO KNOW HIM. BECAUSE I WOULD BE VERY SUSPICIOUS NOW OF  
11 ANY OFFICER WHO IS WORKING WITH MR. CONN, GIVEN MR.  
12 CONN'S VIEW THAT LAW ENFORCEMENT IS SUPPOSED TO LIE FOR  
13 THE PROSECUTION. I DON'T BELIEVE DETECTIVE ZOELLER LIED  
14 AT ALL.

15 BUT I KNEW HIM FOUR YEARS EARLIER THAN  
16 MR. CONN DID, AND WE CALLED DETECTIVE ZOELLER AS A  
17 WITNESS TWO OR THREE TIMES IN THIS CASE. DON'T YOU  
18 THINK I ASKED HIM: "DETECTIVE ZOELLER, I AM GOING TO  
19 ASK YOU THIS QUESTION. WHAT'S YOUR ANSWER?" DON'T YOU

20 THINK HE TOLD ME BEFORE I PUT HIM ON THE WITNESS STAND?  
21 DO YOU THINK I'M AN IDIOT? DO YOU THINK WE PUT  
22 WITNESSES UP THERE WITHOUT LETTING HIM KNOW THAT IS WHAT  
23 WE'RE GOING TO ASK HIM?  
24 I DIDN'T SEE THIS ASSAULT ON DETECTIVE  
25 ZOELLER, WHO WE CALLED AS A WITNESS, ONLY ON DWIGHT VAN  
26 HORN.  
27 THIS WAS AN EFFORT TO DESTROY DEPUTY VAN  
28 HORN'S REPUTATION, WITH HIS OWN CAPTAIN SITTING IN THE

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1 AUDIENCE.  
2 SO NOW THE SHERIFF'S DEPARTMENT, SINCE WE  
3 KNOW HE WAS AUTHORIZED, IS ON THE SIDE OF THE DEFENSE IN  
4 THIS CASE.  
5 WELL, I WOULD BE VERY HAPPY IF THAT WERE  
6 TRUE. AFTER ALL, THE SHERIFF'S DEPARTMENT HAS KEPT MY  
7 CLIENT ALIVE AND WELL FOR SIX YEARS IN SHERIFF'S  
8 CUSTODY. THE SHERIFF'S DEPARTMENT, WHICH MR. CONN IS  
9 ATTACKING, AND THE SHERIFF'S DEPUTIES, ARE SITTING IN  
10 THIS COURTROOM. THESE ARE THE GENTLEMEN WHO TAKE CARE  
11 OF YOU. AND HE HAS CAST ASPERSIONS UPON THE ENTIRE  
12 SHERIFF'S DEPARTMENT BY ATTACKING DWIGHT VAN HORN, WHO  
13 WAS JUST A BALLISTICS EXPERT.  
14 AND WHAT IS THE REASON WHY DWIGHT VAN HORN  
15 WOULD TURN -- THAT HE WASN'T GOING TO BE CALLED AS A

16 WITNESS? OH, I AM SURE IT JUST BROKE HIS HEART THAT HE  
17 DOESN'T HAVE ANOTHER SUBPOENA TO ANSWER TO, AND GET ON  
18 THE WITNESS STAND IN THIS CASE. NO.

19 FIRST OF ALL, ROGER MC CARTHY AND WHAT HE  
20 WAS USED TO DO, CREATED AN ISSUE IN THIS CASE WHERE  
21 THERE WASN'T REALLY ONE. THERE WAS NEVER ANY QUESTION  
22 THAT THE SHOOTING HAPPENED EXACTLY THE WAY THAT ERIK  
23 MENENDEZ DESCRIBED IT. THEY HAD TO CREATE THIS ISSUE IN  
24 ORDER -- IN THEIR DESPERATION TO GET THIS CONVICTION --  
25 TO CREATE A THEORY OF PREMEDITATION THAT WOULD WORK FOR  
26 THEM.

27 VAN HORN WAS CALLED BY THE PROSECUTION IN  
28 THE LAST TRIAL. DR. GOLDEN WAS CALLED BY THE

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1 PROSECUTION IN THE LAST TRIAL. THE CORONER.

2 IT DIDN'T MATTER. NONE OF THAT EVIDENCE  
3 MATTERED. IT ONLY MATTERS WHEN YOU'RE GOING TO TRY TO  
4 FABRICATE SOME NEW THEORY OF PREMEDITATION. IT ONLY  
5 MATTERS WHEN YOU'RE THE KIND OF PROSECUTOR WHO HAS TO  
6 CALL THE DEFENDANT A LIAR 50 TIMES IN HIS FINAL  
7 ARGUMENT.

8 THIS CASE WASN'T MADE OR NOT MADE ON THE  
9 BALLISTICS EVIDENCE. SO IT DIDN'T MATTER TO DWIGHT VAN  
10 HORN WHETHER HE WAS CALLED OR NOT.

11 BUT IT DEFINITELY MATTERED TO THE

12 SELF-PROMOTING ROGER MC CARTHY THAT HE BE FEATURED IN  
13 THIS TRIAL. AND YET ON THIS FLIMSY NOTION THAT VAN HORN  
14 WAS -- "GEE, WE FELT SO REJECTED," THAT HE THEN MAKES  
15 SOMETHING UP FOR THE DEFENSE.

16 THAT'S ABSOLUTELY LUDICROUS. THE REAL AX  
17 TO GRIND WITH VAN HORN IS THAT HE TOLD HIM THEY WERE  
18 DOING SOMETHING IMPROPER, AND THEY DID IT ANYWAY.

19 AND LET ME TELL YOU, WITH RESPECT TO VAN  
20 HORN AND HIS MEETING WITH US, HE CALLS HIM UP AFTER OUR  
21 MEETINGS AND TELLS THEM EXACTLY WHAT WENT ON IN THEM,  
22 WHICH IS FINE WITH ME. HE DIDN'T TELL ME HE WAS GOING  
23 TO DO IT, BUT HE DID IT. NOW, I NEVER GET CALLS FROM  
24 SHERIFF'S EXPERTS AFTER THEIR MEETINGS WITH THE  
25 PROSECUTORS.

26 HE IS BEING VERY CAREFUL TO BE NEUTRAL.  
27 BUT HE GETS ATTACKED. I HAVE NEVER SEEN ANYTHING LIKE  
28 THAT ATTACK ON DEPUTY VAN HORN, AND I HOPE YOU

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1 UNDERSTAND THAT IT SHOWS HOW DESPERATE, HOW BIASED THIS  
2 PROSECUTION IS.

3 YOU KNOW, THERE IS A RULE THAT PROSECUTORS  
4 ARE SUPPOSED TO SEEK JUSTICE. THEY'RE NOT SUPPOSED TO  
5 JUST WANT TO WIN. IN THIS CASE, THEY JUST WANT TO WIN,  
6 BAD.

7 NOW, ASIDE FROM, OF COURSE, ATTACKING VAN

8 HORN, THE PROSECUTION KEEPS UP THE DRUM-BEAT THAT  
9 EVERYBODY WHO TESTIFIED FOR THE DEFENSE IS BAD NEWS AND  
10 ATTACKS MARTY FACKLER.

11 MARTY FACKLER IS THE HEAD OF THE ARMY  
12 RESEARCH LABORATORY IN WOUNDS. HE CLAIMS MARTY FACKLER  
13 ONLY TREATED ONE SHOTGUN WOUND; THEREFORE, HE'S NOT  
14 QUALIFIED.

15 ROGER MC CARTHY NEVER SAW A WOUND. HE  
16 ADMITTED IT. HE'S NEVER SEEN A BODY WITH A WOUND. HE'S  
17 NEVER SEEN A WOUND, NOTHING. IT'S DESPICABLE. THE  
18 ATTACK ON THOSE WITNESSES IS DESPICABLE. WE EITHER  
19 PROVED THAT ROGER MC CARTHY WAS A FRAUD, OR WE DIDN'T.

20 I HAVE A LITTLE POINT HERE THAT I WANT TO  
21 MAKE. I HAVE NO IDEA IF IT'S GOING TO HAVE ANY  
22 SIGNIFICANCE TO YOU, BUT I WANT TO CLEAR UP THE RECORD  
23 ABOUT ONE THING.

24 MR. CONN TESTIFIED -- TESTIFIED -- ALMOST.  
25 MR. CONN ARGUED THAT, IN GOING OVER DETECTIVE ZOELLER'S  
26 TESTIMONY, AND HE WENT OVER LITTLE BITS OF IT, THAT WHEN  
27 DETECTIVE ZOELLER ARRIVED AT THE CRIME SCENE, THE LIGHTS  
28 IN THE DEN WERE OFF.

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1 I JUST WANT TO REMIND YOU THAT THERE IS AN  
2 OFFICER NAMED BUTKUS WHO TESTIFIED HERE, WHO WAS THE  
3 FIRST ONE INSIDE THE HOUSE, IF I HAVE IT RIGHT, OR AT

4 LEAST WITH THE FIRST TEAM, LONG BEFORE DETECTIVE ZOELLER  
5 GOT THERE.

6 AND HE INDICATED IN A STATEMENT THAT WAS  
7 WRITTEN DOWN BY THE PREVIOUS PROSECUTORS THAT WHEN HE  
8 ENTER THE HOUSE, THE LIGHTS IN THE DEN WERE ON.

9 AND I JUST WANT YOU TO KNOW THAT, BECAUSE I  
10 DON'T WANT YOU TO THINK THAT MY CLIENT LIED IN ANY WAY  
11 ABOUT THE FACT THAT THEY TURNED THE LIGHTS ON WHEN THEY  
12 WENT IN TO PICK UP THE CASINGS, AND WHEN THEY CAME BACK  
13 HOME THE LIGHTS WERE STILL ON, AND THEY DIDN'T DO  
14 ANYTHING TO THOSE LIGHTS BEFORE THE POLICE GOT THERE.

15 SO I JUST WANTED TO POINT THAT OUT. I  
16 DON'T KNOW WHY MR. CONN MENTIONED THAT ASPECT OF  
17 DETECTIVE ZOELLER'S TESTIMONY, BUT SINCE HE DID, I  
18 WANTED YOU TO KNOW THE OTHER SIDE OF IT.

19 IT'S VERY -- I MEAN, IT'S QUITE LIKELY THE  
20 LIGHTS WERE TURNED DOWN AFTER BUTKUS GOT THERE. BUT IN  
21 ANY EVENT, THAT'S WHAT WAS SEEN FIRST.

22 NOW, HE CAN CALL MY CLIENT A LIAR ALL HE  
23 LIKES. LET ME ASK YOU THIS. BEAR WITH ME. LET'S JUST  
24 PLAY A LITTLE GAME HERE FOR A SECOND:

25 ASSUME -- ASSUME I'M NOT EVEN TALKING ABOUT  
26 THE PRESUMPTION OF INNOCENCE. ASSUME THAT EVERYTHING HE  
27 TOLD YOU WAS TRUE, JUST FOR A SECOND. NOW, HOW WOULD HE  
28 GO ABOUT PROVING IT?

1           EVERYTHING IS TRUE. HOW DO YOU PROVE IT?

2           AND LET'S START WITH THE UNDERLYING CAUSE  
3 OF THE CRISIS.

4           MR. CONN WANTS YOU TO NOT PAY ATTENTION TO  
5 THESE THINGS. DON'T GET TIED UP IN THE DETAILS, HE  
6 SAYS. WE'RE TALKING ABOUT A CRISIS. WE'RE TALKING  
7 ABOUT A RATIONAL NOTION OF WHY TWO YOUNG MEN WOULD KILL  
8 THEIR OWN PARENTS. THERE HAS TO BE A REASON. AND WE'RE  
9 TALKING ABOUT A CRISIS THAT LED TO THAT, AND WHAT IS AT  
10 THE BASE OF THAT CRISIS, WHAT IS THE FOUNDATION OF THAT  
11 CRISIS?

12          WE ARE TELLING YOU INCEST. IF THAT IS  
13 TRUE, IF IT IS INCEST -- IF THAT IS TRUE, THEN YOU  
14 CANNOT CONVICT MY CLIENT OF MURDER. THAT'S -- YOU KNOW,  
15 IT'S VERY EASY TO SHOW YOU WHY, BUT YOU CANNOT.

16          NOW, HOW WOULD YOU PROVE IT? HOW WOULD YOU  
17 GO ABOUT PROVING IT? WE ARE EXCORIATED. MY CLIENT IS  
18 CALLED A LIAR A ZILLION TIMES. THERE IS NO PROOF OF  
19 LYING. IT'S THE ALLEGATION. IT'S THE BIG LIE. HE SAYS  
20 IT OVER AND OVER AND OVER AGAIN. MAYBE YOU WILL BELIEVE  
21 IT.

22          HOW WOULD YOU GO ABOUT PROVING IT IF IT  
23 WERE TRUE? WELL, I AM SURE THAT YOU ARE AWARE THAT  
24 PEOPLE ARE PROSECUTED FOR MOLESTING CHILDREN EVERYWHERE  
25 IN THIS COUNTRY EVERY DAY.

26          WHAT KIND OF EVIDENCE CAN YOU HAVE THAT  
27 PROVES THAT A CHILD WAS MOLESTED? LET'S GO DOWN THE  
28 LIST OF POSSIBILITIES. I PUT DOWN ELEVEN POSSIBILITIES.



1           NUMBER ONE, THIS IS MR. CONN'S ARGUMENT,  
2 "WELL, WE DON'T HAVE ANY EYEWITNESSES."

3           OH, RIGHT. PEOPLE WHO WITNESS SEX ACTS  
4 BETWEEN A PARENT AND A CHILD. HOW OFTEN DO YOU THINK  
5 THAT HAPPENS? MAYBE ONCE, TWICE. PEOPLE DON'T DO THIS  
6 TO THEIR CHILDREN IN FRONT OF WITNESSES, UNLESS THE  
7 WITNESSES ARE IN ON IT THEMSELVES.

8           SO, I AM SORRY, I DON'T HAVE THAT. I CAN'T  
9 PROVE IT THAT WAY.

10          TWO, YOU CAN PLAY VIDEOTAPES MADE BY THE  
11 MOLESTER OF SEX ACTS WITH THE CHILD.

12          NOW, THERE ARE A FEW CASES, STRANGELY  
13 ENOUGH, WHERE SUCH THINGS EXIST. THERE ARE CHILD  
14 PORNOGRAPHY CASES WHERE THERE HAVE BEEN VIDEOTAPES MADE  
15 OF CHILDREN IN SEX ACTS.

16          THIS WAS NOT THAT KIND OF CASE. SO I DON'T  
17 HAVE THE VIDEOTAPES TO PLAY FOR YOU. JOSE MENENDEZ  
18 WASN'T TAPING IN ERIK'S BEDROOM.

19          I FORGOT TO PUT SOMETHING ON HERE THAT  
20 REALLY WOULD WORK, BUT UNFORTUNATELY THERE IS NO SCIENCE  
21 FOR IT YET. WE SHOULD ASK ROGER MC CARTHY TO INVENT IT,  
22 A TIME MACHINE, AND WE COULD ALL GET IN IT AND GO BACK  
23 TO ERIK'S BEDROOM AND WATCH.

24          NOW LET'S GO TO THREE. SHOW BIZARRE NAKED  
25 PHOTOGRAPHS OF CHILD'S GENITALS TAKEN BY MOLESTER.

26            THAT WE HAVE. WELL, TALK ABOUT THE  
27 PICTURES. IN THIS THEORY, THE CHILDREN DID IT. NOW THE  
28 CHILDREN ARE PERVERTS, NOT THE FATHER. THAT'S THE IDEA.

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1            FOUR. TESTIMONY OF PEOPLE WHO SAW OVERLY  
2 SECRETIVE BEHAVIOR BETWEEN MOLESTER AND CHILD, AND THE  
3 DEVELOPMENT OF BEHAVIORAL SYMPTOMS -- SYMPTOMS OF  
4 MOLESTATION IN THE CHILD. THAT WE HAVE.

5            INTRODUCE MEDICAL EVIDENCE THAT  
6 CONCLUSIVELY PROVES, OR CONCLUSIVELY PROVING A SEX ACT.

7            YOU HEARD THE TESTIMONY OF DR. KERRY  
8 ENGLISH, WHO IS A PEDIATRICIAN WHO SPECIALIZED IN SEXUAL  
9 MOLESTATION, RUNS PROGRAMS DEALING WITH IT. HE TOLD YOU  
10 EVEN RIGHT AFTER, WITH SMALL CHILDREN, THERE RARELY -- I  
11 THINK IT'S LESS THAN FIVE PERCENT OF THE CASES -- THERE  
12 RARELY IS PHYSICAL EVIDENCE THAT POINTS DIRECTLY AT  
13 SEXUAL MOLESTATION.

14           IT'S A SHAME. IT SHOULD SHOW MORE, SO THAT  
15 CHILDREN WOULD BE BETTER PROTECTED. SOME MARK SHOULD BE  
16 RAISED ON THEM TO SAY THEY'VE BEEN TOUCHED IMPROPERLY,  
17 SO THAT WE COULD PROTECT THEM.

18           BUT UNFORTUNATELY NATURE DOESN'T WORK THAT  
19 WAY, SO WE COULDN'T DO THAT. BUT WE DID PUT AN EXPERT  
20 ON TO EXPLAIN TO YOU WHY THERE CERTAINLY WOULDN'T BE  
21 PHYSICAL EVIDENCE SO MANY YEARS LATER, AND WE HAD THEM

22 EXAMINE ERIK MENENDEZ, NOTHING TO HIDE, TO SEE IF -- WHO  
23 KNOWS -- MAYBE SOMETHING STRANGE ABOUT HIS ANATOMY WOULD  
24 POINT TO IT. BUT IT DIDN'T.

25 INTRODUCE MEDICAL EVIDENCE CONSISTENT WITH  
26 SEX ACT.

27 WE DID THAT. MR. CONN DENIGRATES THAT  
28 ALSO. WHAT DR. ENGLISH TALKED ABOUT AT AGE SEVEN, THE

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1 MEDICAL RECORD IS IN. AT AGE SEVEN ERIK MENENDEZ IS  
2 TAKEN TO HIS OWN PEDIATRICIAN, TOLD -- HE IS TOLD  
3 APPARENTLY THAT THERE WAS A PREVIOUS VISIT TO AN  
4 EMERGENCY ROOM, AND THE PEDIATRICIAN DESCRIBES SOMETHING  
5 AT THE BACK OF HIS THROAT THAT HE DESCRIBES AS: "HURT  
6 BACK OF THROAT, UVULA AND SOFT PALATE" -- THE LITTLE  
7 DINGLE-DANGLE, AND THE PALATE ABOVE IT.

8 AND DR. ENGLISH TESTIFIED THAT THAT IS  
9 CONSISTENT -- CONSISTENT WITH A BRUISE FROM A PENIS  
10 BEING FORCIBLY INSERTED.

11 NOW, HE SAID IT WAS NOT A POPSICLE STICK.  
12 THE AREA THAT'S INVOLVED, TOP OF THE PALATE AND THE  
13 UVULA IS NOT -- A POPSICLE STICK IS TOO NARROW, TOO  
14 SMALL. IT HAS TO BE SOMETHING MUCH LARGER, AND IT ISN'T  
15 DESCRIBED AS A CUT, AND IT ISN'T DESCRIBED AS A SCRAPE,  
16 AND IT ISN'T DESCRIBED AS A BURN.

17 SO IT DOES NOT, BY ITSELF, PROVE

18 MOLESTATION. BUT IT IS CONSISTENT WITH IT.

19 TESTIMONY OF A WITNESS TO WHOM THE CHILD

20 REVEALED MOLESTATION BEFORE THE CHILD'S CREDIBILITY WAS

21 AT STAKE. BEFORE THE CHILD'S CREDIBILITY IS AT STAKE.

22 HERE WE HAVE THAT. THAT'S HIS COUSIN, ANDY

23 CANO.

24 AND I WANT TO TALK A LITTLE BIT ABOUT ANDY

25 CANO. I'VE GOT ABOUT FOUR MINUTES TO TALK ABOUT ANDY

26 CANO. I THINK I'LL GO DOWN THE CHECKLIST, AND GO BACK,

27 AND THAT MAY TAKE UP THE FOUR MINUTES ANYWAY.

28 TESTIMONY OF CHILD, NOW AN ADULT, THAT IS

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1 DETAILED, COHERENT, CONSISTENT OVER TIME, AND RELIABLE

2 TO AN EXPERT EVALUATOR.

3 THIS IS TESTIMONY ABOUT THE MOLESTATION.

4 NOW, YOU KNOW VERY WELL THAT DR. WILSON IS

5 NOT THE FIRST EXPERT EVALUATOR TO TALK TO ERIK MENENDEZ.

6 DR. VICARY DID.

7 DR. ANN BURGESS, WHO DR. DIETZ DOESN'T

8 LIKE, I AM SORRY TO SAY, BUT WHO NEVERTHELESS WAS

9 DESCRIBED BY DR. JOHN WILSON AS ONE OF THE LEADING

10 RESEARCHERS IN SEXUAL ASSAULT VICTIMIZATION, SHE

11 TESTIFIED AT THE FIRST TRIAL. DR. WILSON SAID HER

12 FINDINGS WERE CONSISTENT WITH HIS FINDINGS, VICARY'S

13 FINDINGS, AND NOTES WERE CONSISTENT WITH HIS FINDINGS.

14 DO YOU UNDERSTAND WHAT THAT MEANS? THAT  
15 MEANS THAT WHAT ERIK MENENDEZ HAS TOLD ALL THOSE PEOPLE  
16 OVER ALL THESE YEARS, STARTING IN 1990, ABOUT THE SEXUAL  
17 MOLESTATION IS CONSISTENT AND COHERENT.

18 CONSISTENT WITH WHAT? CONSISTENT WITH WHAT  
19 MOLESTED CHILDREN SAY. CONSISTENT WITH PATTERNS OF  
20 MOLESTATION.

21 THESE PEOPLE EVALUATE PEOPLE ALL THE TIME.

22 THEY CAN TELL A FAKE STORY. HIS HAS BEEN --

23 MR. CONN: I WILL OBJECT TO THIS, YOUR HONOR.

24 THIS IS IMPROPER ARGUMENT NOT SUPPORTED BY THE EVIDENCE  
25 RECEIVED IN THIS TRIAL.

26 THE COURT: OBJECTION SUSTAINED AS TO THE LAST  
27 REFERENCE TO OTHER WITNESSES WHO HAVE NOT TESTIFIED.

28 MS. ABRAMSON: NO. DR. WILSON TESTIFIED THEY

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1 WERE CONSISTENT, YOUR HONOR.

2 THE COURT: AS FAR AS WHAT THESE OTHER PEOPLE DO  
3 AND THEIR CONVERSATIONS AND THINGS OF THAT NATURE, WHICH  
4 ARE NOT BEFORE THE JURY, IT'S BEYOND THE RECORD.

5 MS. ABRAMSON: IT WAS, YOUR HONOR.

6 THE COURT: IT'S BEYOND THE RECORD.

7 MS. ABRAMSON: ALL RIGHT, FINE. I WILL CITE TO  
8 YOU TOMORROW EXACTLY WHERE DR. WILSON DESCRIBED  
9 DR. BURGESS' EXPERIENCE.

10 IN ANY EVENT, WE HAVE THAT, AND WE HAVE IT  
11 MULTIPLE TIMES.

12 NEXT -- I MEAN, LET ME GIVE YOU AN EXAMPLE  
13 OF SOMETHING. IT'S VERY EASY TO SAY: "OH, HE MADE IT  
14 ALL UP.

15 NOW, YOU MAY RECALL THERE'S TESTIMONY IN  
16 THIS CASE, THE SPECIFICS OF WHICH ARE LIMITED TO LYLE  
17 MENENDEZ ALONE. AND THAT'S THE TESTIMONY OF TWO DEPUTY  
18 SHERIFFS WHO WORK THE JAIL WHO SEARCHED THE CELL,  
19 REMEMBER THAT? THAT'S DEPUTY DULLA AND DEPUTY GUTHRIE,  
20 AND THEY TOOK SOME PAPERS FROM THAT CELL THAT MR. CONN  
21 HAS TALKED ABOUT, AND MR. GESSLER WILL TALK ABOUT.

22 THEY TALKED ABOUT A JAIL SEARCH. THEY  
23 SEARCHED BOTH OF THEIR CELLS IN JUNE OF 1990, OKAY.

24 NOW, DON'T YOU THINK -- AND THEY TOOK ALL  
25 THESE PAPERS AWAY.

26 NOW, I AM ASKING YOU JUST TO USE YOUR  
27 LOGICAL POWERS HERE. IF THERE WAS MATERIAL IN ERIK  
28 MENENDEZ' CELL, JUST AT THIS TIME WHEN HE'S STARTING TO

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1 TALK TO DR. VICARY ABOUT SEXUAL MOLESTATION, OR  
2 P.T.S.D., OR ANYTHING ELSE, DON'T YOU THINK YOU WOULD  
3 HAVE HEARD THAT?

4 CLEARLY, THERE WAS NO SUCH MATERIAL FROM  
5 WHICH HE COULD HAVE FABRICATED A STORY SO DETAILED, AND

6 OF THE RIGHT TEXTURE TO BE CONSIDERED RELIABLE BY  
7 SOMEONE LIKE DR. WILSON, OR ANYBODY ELSE WHO IS AN  
8 EXPERT EVALUATOR.

9 LET ME TALK TO YOU ABOUT JUST SOME ASPECTS  
10 OF THAT STORY. HE TALKED ABOUT HOW WHEN IT BEGAN, WHEN  
11 THE MOLESTATION BEGAN, IT BEGAN AS MESSAGES, AND HIS  
12 AUNT, MARTHA CANO, TESTIFIED THAT SHE SAW JOSE MENENDEZ  
13 MASSAGING ERIK MENENDEZ AFTER SPORTING EVENTS.

14 AND ERIK SAID IT ESCALATED FROM SOMETHING  
15 THAT HAD STARTED OUT AT A SPORTING-RELATED THING TO  
16 SOMETHING THAT BECAME INTIMATE AND SEXUAL. AND HE  
17 TESTIFIED THAT HE LIKED IT. THAT HE ENJOYED IT. THAT  
18 HE THOUGHT IT WAS LOVE. THAT IT WAS SPECIAL ATTENTION  
19 FOR HIM.

20 AND HE WAS -- AS I THINK DR. WILSON EVEN  
21 EXPRESSED IT, HE WAS THE THROW-AWAY KID IN THIS FAMILY.  
22 HE WAS THE WEAK ONE THAT JOSE MENENDEZ DIDN'T APPROVE  
23 OF. HE WAS TOO SENSITIVE. HE WAS TOO EMOTIONAL. HE  
24 HAD TOO MANY FEELINGS FOR HIS FATHER, TO SUIT HIS  
25 FATHER. HE WAS THE SECOND SON, NOT THE HEIR APPARENT.

26 SO, HE WASN'T GETTING THE ATTENTION, AND I  
27 THINK ALAN ANDERSEN MAY HAVE SAID THE SAME THING. HE  
28 WASN'T GETTING THE ATTENTION THAT HIS BIG BROTHER WAS

1 GETTING, SO HE WELCOMED THESE ATTENTIONS OF HIS FATHER.

2           NOW, IF YOU WERE GOING TO MAKE UP A STORY  
3 OF SEXUAL MOLESTATION, AND IF IT HAD NEVER HAPPENED TO  
4 YOU, WOULD YOU KNOW TO SAY YOU LIKED IT? WOULDNT YOU  
5 MAKE UP A STORY OF RAPE AND PAIN RIGHT OFF THE BAT?  
6 WOULDNT YOU TRY TO MAKE -- I MEAN, THE SORT OF THING  
7 DR. WILSON SAYS TO HIM WHEN SOMEONE SAYS: "OH, DR.  
8 WILSON, I'M SO MISERABLE. I'VE GOT P.T.S.D. AND HERE'S  
9 WHAT I'VE GOT." JUST EXACTLY THE OPPOSITE OF THE KIND  
10 OF THING THAT ERIK MENENDEZ TOLD DR. WILSON.

11           IT'S TIME, YOUR HONOR.

12       THE COURT: OKAY. IT'S 4:00 O'CLOCK, AND WE WILL  
13 RECESS UNTIL TOMORROW AT 8:30.

14           DON'T DISCUSS THE MATTER WITH ANYONE.  
15 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL SEE YOU  
16 BACK HERE TOMORROW AT 8:30.

17       (AT 4:00 P.M. PROCEEDINGS WERE  
18       ADJOURNED UNTIL 8:30 A.M THE  
19       FOLLOWING DAY.)

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1 INDEX FOR VOLUME 303 PAGES 51564 THROUGH 51741

2	DAY	DATE	SESSION	PAGE	VOL.
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4	MONDAY, FEBRUARY 26, 1996	A.M.	51564	303
5	MONDAY, FEBRUARY 26, 1996	P.M.	51665	303

6 PROCEEDINGS

7	CLOSING ARGUMENT BY			
8	MS. ABRAMSON		51579	303

12 CHRONOLOGICAL INDEX OF WITNESSES

13	WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.
14	(NONE THIS VOLUME.)

21 LEGEND:

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

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 (NONE THIS VOLUME.)

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