

1 VAN NUYS, CALIFORNIA; TUESDAY, FEBRUARY 27, 1996

2 9:20 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 THE COURT: ALL THE PARTICIPANTS ARE PRESENT.

9 ARE WE READY TO PROCEED?

10 MS. ABRAMSON: YES, YOUR HONOR.

11 THE COURT: OKAY.

12 MS. ABRAMSON: I MAY ASK FOR A BREAK SOONER THAN  
13 AN HOUR, BECAUSE I HAVE BEEN SITTING IN THE COURTROOM  
14 FOR 25 MINUTES. SO I MAY NEED BREAK -- DRINKING COFFEE.

15 THE COURT: LET'S GET THE JURY OUT, PLEASE.

16 (THE JURY ENTERS THE COURTROOM

17 AND THE FOLLOWING PROCEEDINGS

18 WERE HELD:)

19

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

21 GOOD MORNING, LADIES AND GENTLEMEN.

22 AND WE'RE READY TO RESUME WITH THE  
23 ARGUMENT. YOU MAY CONTINUE YOUR CLOSING ARGUMENT.

24 MS. ABRAMSON: THANK YOU, YOUR HONOR.

25 GOOD MORNING, LADIES AND GENTLEMEN.

26 I'M IN A HURRY, BUT IT ISN'T GOING TO END  
27 VERY SOON, I'M AFRAID.

28 YESTERDAY I WAS TALKING ABOUT CONTROVERTED

1 EVIDENCE AND CORROBORATED EVIDENCE, UNCONTROVERTED  
2 EVIDENCE, SO THAT YOU HAVE SOME IDEA OF HOW TO WEIGH THE  
3 INFORMATION THAT YOU HAVE, AND I WAS TALKING ABOUT THE  
4 EVIDENCE OF MOLESTATION.

5 NOW, I MEAN, IT'S OFTEN SAID BY PEOPLE IN  
6 MR. CONN'S POSITION: "OH, IT'S EASY TO MAKE AN  
7 ALLEGATION OF MOLESTATION."

8 YEAH, THAT'S WHAT HAPPENS WHEN YOU SAY  
9 SOMEONE WAS MOLESTED. THAT'S EASY TO DO.

10 BUT TO BACK IT UP, TO TELL A HISTORY OF  
11 MOLESTATION THAT HAS THE LEVEL OF DETAIL AND THE KIND OF  
12 ACTIVITIES THAT ERIK MENENDEZ HAS BEEN TALKING ABOUT FOR  
13 SIX YEARS, THAT IS NOT EASY TO DO.

14 AND YOU HAVEN'T HEARD ANY EVIDENCE, EVEN  
15 FROM DR. DIETZ, THAT -- AND HE COULD HAVE SAID IT. HE  
16 COULD HAVE SAID IT IF HE HAD THE OPINION THAT THE SEXUAL  
17 ABUSE HISTORY THAT WAS GIVEN IN THIS CASE WAS COMPLETELY  
18 OUT OF THE KNOWN RESEARCH, OR IT WAS COMPLETELY  
19 INCONSISTENT WITH WHAT MOLESTED CHILDREN WOULD NOT ONLY  
20 EXPERIENCE, BUT WHAT THEY WOULD FEEL ABOUT IT, WHAT THEY  
21 WOULD THINK ABOUT IT, AND WHAT KIND OF CHANGES IT WOULD  
22 MAKE IN THEIR CHARACTER, THEIR PERSONALITY, AND THEIR  
23 LIVES. AND HE DIDN'T ADDRESS IT AT ALL.

24 "I AM NOT GOING TO DO THAT," HE SAID.

25 WELL, OF COURSE HE'S NOT GOING TO DO THAT.

26 HE CAN'T EARN THE \$40,000 BY AGREEING WITH US TOTALLY.  
27 HE AGREED WITH US HALFWAY. AND THAT'S WHAT HIS  
28 TESTIMONY REALLY AMOUNTED TO.

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1 BUT I WAS GOING OVER WITH YOU YESTERDAY  
2 THIS PROBLEM THAT EVERYBODY HAS, WHETHER YOU ARE A  
3 PROSECUTOR PROSECUTING A CHILD MOLESTING CASE, OR YOU'RE  
4 A DEFENSE ATTORNEY WHERE CHILD MOLESTATION IS AN ISSUE  
5 THAT BEARS ON STATE OF MIND AT A TIME OF SOME OTHER  
6 EVENT. IT IS NOT AN EASY THING TO PROVE, BECAUSE IT  
7 ISN'T SOMETHING THAT ORDINARILY GOES ON IN PUBLIC.

8 BUT I SUBMIT TO YOU THAT THE PROOF THAT WE  
9 HAVE, BESIDES MY CLIENT'S TESTIMONY -- AND IF YOU DON'T  
10 WANT TO BELIEVE HIM -- IF YOU DON'T WANT TO BELIEVE HIM,  
11 OF COURSE, YOU'RE VIOLATING YOUR OATH OF JURORS, YOU  
12 KNOW. BUT WE TAKE YOU AS WE GET YOU. I CAN'T FORCE YOU  
13 TO DO WHAT THE LAW SAYS YOU'RE SUPPOSED TO DO.

14 BUT IF YOU DON'T BELIEVE HIM, LET US SAY,  
15 ON HIS OWN WORD ALONE, SURELY YOU CANNOT IGNORE THE  
16 EVIDENCE THAT CORROBORATES HIM.

17 THIS PHOTOGRAPHIC EVIDENCE IS VERY  
18 INTERESTING. IT'S SORT OF LIKE A LITTLE MYSTERY NOVEL.  
19 MR. CONN TALKED TO YOU ABOUT LOOKING AT THE PROOF  
20 SHEETS.

21 OH, YES, I WANT TO YOU LOOK AT THE PROOF

22 SHEETS, TOO. BUT I WANT TO YOU EXAMINE THIS EVIDENCE  
23 VERY CAREFULLY, BECAUSE IT IS VERY UNUSUAL, AND WE ARE  
24 VERY LUCKY TO HAVE IT, TO HAVE FOUND IT.

25         ERIK MENENDEZ TESTIFIED, CONTRARY TO THE  
26 IMPLICATION MR. CONN WAS TRYING TO SUGGEST, THAT HIS  
27 LAWYERS FOUND THESE PHOTOGRAPHS AND NEGATIVES IN BOXES  
28 OF FAMILY BELONGINGS. MY PRINTS ARE ALL OVER THIS

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1 MATERIAL, FOLKS. LET ME TELL YOU WHAT'S SIGNIFICANT  
2 ABOUT IT.

3         FIRST OF ALL, NO ONE COULD CLAIM THAT THESE  
4 ARE NORMAL PHOTOGRAPHS THAT YOU TAKE OF YOUR CHILDREN.  
5 AND THE FACT THAT THERE ARE ON THE PROOF SHEETS SOME  
6 PHOTOGRAPHS THAT ARE CLEARLY OUT OF FOCUS TELLS YOU THAT  
7 THESE WERE NOT TAKEN -- I MEAN, REMEMBER, THESE GO BACK  
8 TO 1976. THESE WERE NOT TAKEN WITH ONE OF THESE MODERN  
9 AUTO-FOCUS CAMERAS THAT ANYONE, INCLUDING A CHILD, COULD  
10 AIM AND SHOOT AND GET A GOOD PICTURE OUT OF.

11         THIS IS A CAMERA THAT HAS TO BE FOCUSED  
12 MANUALLY, AND A SIX YEAR-OLD, WHICH IS ALL HE WAS,  
13 CANNOT TAKE THIS. YOU HAVE TO SEE THE LITTLE ONES.

14         THE ENLARGEMENTS WERE DONE, QUITE HONESTLY,  
15 BECAUSE I ORDERED THEM DONE FOR IMPACT, SO A JURY COULD  
16 ACTUALLY SEE IT DURING THE COURSE OF A TRIAL, AND NOT  
17 ONLY IN THE JURY ROOM WHEN THESE THINGS ARE HANDED OUT.

18 BUT IT'S THE SMALL ONES THAT TELL THE STORY. AND THE  
19 SMALL PHOTOGRAPH -- THIS IS THE ONE OF LYLE MENENDEZ  
20 THAT MR. CONN SAYS MY CLIENT TOOK AT SIX, OKAY?  
21 THIS IS A PERFECTLY CLEAR, FOCUSED  
22 PHOTOGRAPH. CRYSTAL CLEAR WATER. YOU CAN SEE THE  
23 CHILD'S -- HALF THE CHILD'S BODY, THE ONLY PART OF THE  
24 BODY THAT WAS PHOTOGRAPHED. THE HEAD WAS PURPOSELY LEFT  
25 OFF.  
26 CLEAR AS A BELL. AND YOU CAN SEE IT'S  
27 TAKEN FROM ABOVE. FROM ABOVE.  
28 NOW, YOU WILL SEE IN THE OTHER PHOTOGRAPHS

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1 OF THE BIRTHDAY PARTY -- LET ME SEE IF I HAVE ONE. HERE  
2 IS ONE OF THE ENLARGEMENTS OF THE ACTUAL PARTY SHOT.  
3 THE PERSON IN THE STRIPES AND THE PLAIDS IS ERIK  
4 MENENDEZ, AND THE LITTLE GUY HERE WITH THE BLUE AND BLUE  
5 SHIRT, THAT'S LYLE MENENDEZ.  
6 MR. CONN RAISES THE SPECTER THAT THIS NAKED  
7 CHILD IN THE BATHTUB IS NOT LYLE MENENDEZ. SURE. SOME  
8 OTHER CHILD GOT INTO THEIR BATHTUB NAKED.  
9 BUT THE KEY IS TO EXAMINE HIS HAND. YOU  
10 CAN'T SEE FROM THIS PHOTOGRAPH -- THERE IS ANOTHER  
11 PHOTOGRAPH AS WELL. I THINK IT'S ONLY A SMALL ONE. NO,  
12 IT'S A BIG ONE, TOO. AND THIS IS INTERESTING. THIS  
13 IS -- I WILL TELL YOU ABOUT THE SEQUENCE IN A MINUTE.

14 BUT I AM GOING TO ASK YOU, IF YOU HAVE ANY  
15 DOUBT AT ALL THAT THIS IS LYLE MENENDEZ, LOOK AT THE  
16 HAND OF THE CHILD WHO WAS IDENTIFIABLE AS LYLE MENENDEZ  
17 IN THESE OTHER PHOTOGRAPHS. IT'S THIS LITTLE SQUARE  
18 MITT, LIKE A LITTLE SQUARE HAND. AND YOU CAN SEE THIS  
19 IS A LITTLE SQUARE HAND. THE LITTLE SQUARE FEET YOU  
20 CAN'T SEE OBVIOUSLY FROM ANY OF THE OTHER PHOTOGRAPHS,  
21 BUT YOU CAN TELL THIS IS THE SAME PERSON, AND WHO ELSE  
22 WOULD IT BE?

23 THE SEQUENCE IS CRUCIAL. AND HERE IS WHERE  
24 THE SEQUENCE COMES FROM, SO THAT THERE'S NO QUESTION AS  
25 TO THE LEGITIMACY OF THIS EVIDENCE.

26 THIS IS THE ENVELOPE, THE KODAK ENVELOPE IN  
27 WHICH THE NEGATIVES WERE LOCATED. AND HERE THEY ARE.

28 NOW, THESE ARE NOT -- THIS LITTLE SLEEVE

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1 CAME LATER, BUT THIS IS NOT A COMPLETE ROLL OF  
2 NEGATIVES. THESE ARE JUST PIECES, INDIVIDUAL STRIPS OF  
3 NEGATIVES THAT WERE INSIDE THIS ENVELOPE, OKAY. AND WE  
4 HAD THEM MADE UP AS A PROOF SHEET, WHATEVER WAS THERE.  
5 NOW, THERE ARE PARTS MISSING, THAT COULD NOT BE FOUND,  
6 OKAY.

7 BUT OF THE PARTS WE HAVE OF THE THREE  
8 SEPARATE STRIPS, THEY RUN IN SEQUENCE. THERE IS A  
9 MISSING PART, 9 TO 12, WHICH WOULD HAVE BEEN -- WOULD

10 HAVE GONE FROM HERE TO HERE, AND THE FRONT END IS

11 MISSING AS WELL.

12 BUT ON THE SEQUENCE WE HAVE, THE ALLEGATION

13 IS THAT ERIK MENENDEZ TOOK THE PHOTOGRAPH OF LYLE

14 MENENDEZ. WELL, HERE'S THE PHOTOGRAPH OF LYLE MENENDEZ

15 ON THE PROOF SHEET. THAT COMES FIRST. THEN THERE IS

16 THE PHOTOGRAPH OF ERIK MENENDEZ IN BED, SLEEPING, WAKING

17 UP. YOU CAN SEE ON HIS FACE HE'S SLEEPY.

18 SO THE ALLEGATION IS HE WENT AND TOOK THIS

19 PICTURE OF HIS BROTHER AND HOPPED BACK INTO BED. THAT'S

20 RIDICULOUS.

21 NOW, YOU GO ALONG. THERE ARE SOME

22 PHOTOGRAPHS HERE THAT ARE OUT OF FOCUS, THAT ARE FUZZY.

23 THIS ONE IN PARTICULAR. AND THAT'S BECAUSE THIS IS A

24 CAMERA THAT HAS TO BE AIMED.

25 BUT I WANT TO SHOW YOU, THIS IS THE

26 PHOTOGRAPH OF ERIK MENENDEZ. THAT'S HIM ALSO, STRIPED

27 SHIRT, BEFORE THE NAKED ONE.

28 AND IT'S IMPORTANT -- WE CAN'T LOCATE THEM

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1 ALL RIGHT NOW, BUT WE ARE LOOKING FOR THE REST -- THAT

2 YOU TAKE A LOOK AT EITHER THE PROOF SHEET CAREFULLY OR

3 THE SMALL ONE, BECAUSE WHEN YOU MAKE ENLARGEMENTS,

4 THINGS GET CHOPPED OFF. AND IT'S TRUE ON THE NAKED

5 PHOTOGRAPHS AS WELL AS ON THE OTHERS. IF YOU ENLARGE,

6 YOU LOSE A CERTAIN AMOUNT OF DETAIL.

7 SO FOR EXAMPLE, ON THE NAKED ONE OF ERIK

8 MENENDEZ, REALLY THE SHOT GOES UP MUCH HIGHER THAN IS

9 SUGGESTED BY THE ENLARGEMENT. IT JUST CUTS OFF HIS HEAD

10 VERY PERFECTLY, CAREFULLY. IT IS A PERFECTLY FOCUSED,

11 CLEAR PHOTOGRAPH OF THIS CHILD. AND YOU CAN TELL EVEN

12 BETTER FROM THE SMALLER ONE THAT IT'S TAKEN FROM A HIGH

13 ANGLE.

14 AND THE SAME IS TRUE OF THIS ONE THAT'S

15 LESS IN FOCUS, OF WHAT THEY CALL THE DISHWASHER. BUT

16 ACTUALLY STANDING NEXT TO THE DISHWASHER, AGAIN, IS ERIK

17 MENENDEZ. AGAIN A SHOT FROM ON HIGH NOW.

18 WHAT'S INTERESTING HERE IS, WHO HAS THE

19 CAMERA? WE CAN'T KNOW FOR SURE. BUT THIS IS RIGHT

20 BEFORE THIS ONE. RIGHT BEFORE THE NAKED ONE, OKAY.

21 KITTY MENENDEZ DID NOT TAKE THIS PICTURE,

22 BECAUSE THIS IS KITTY MENENDEZ. SHE IS IN THIS PICTURE.

23 IF YOU LOOK AT THE OTHER PHOTOS, YOU WILL SEE THE PERSON

24 WHO IS WEARING THESE COLORED PANTS, WHICH ARE SORT OF

25 PURPLISH WITH THE DARK TOP, IS MRS. MENENDEZ. FROM THE

26 OTHER PHOTOS YOU CAN SEE THAT. ERIK MENENDEZ IS HERE,

27 AND THEN THE NEXT SHOT IS ERIK MENENDEZ NAKED.

28 I SUBMIT TO YOU THAT JOSE MENENDEZ TOOK

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1 THESE NAKED PHOTOGRAPHS OF HIS SONS. AND TO CORROBORATE



2 THAT, I WANT TO SHOW YOU SOMETHING ON THE ENVELOPE THAT  
3 HAS NOT BEEN MENTIONED BEFORE, BUT IT'S INTERESTING.

4 ERIK MENENDEZ IDENTIFIED THE HANDWRITING ON  
5 THE BACK AS HIS MOTHER. "ERIK'S BIRTHDAY. NOVEMBER,  
6 1976" IS WHAT SHE WROTE.

7 SO SHE KNEW THAT THERE WERE NAKED  
8 PHOTOGRAPHS; THESE STRANGE, NAKED PHOTOGRAPHS BEING  
9 TAKEN OF HER SONS. SHE KNEW.

10 BUT WHO IS THE ENVELOPE ADDRESSD TO? YOU  
11 PEEL BACK THE PRICE STICKER. IT'S J. MENENDEZ. JOSE  
12 MENENDEZ IS WHO THE ENVELOPE WAS SENT TO.

13 AND IF THESE STRANGE LITTLE PHOTOGRAPHS HAD  
14 BEEN TAKEN BY THEIR CHILDREN, WHY DID THEY KEEP THEM?

15 NOW, I SUBMIT TO YOU THAT THAT IS MORE THAN  
16 YOU GET IN MOST CHILD MOLESTATION PROSECUTION CASES, AND  
17 YET WE PROSECUTE PEOPLE AND WE CONVICT PEOPLE FOR CHILD  
18 MOLESTATION EVERY DAY. AND PROPERLY SO, BECAUSE YOU  
19 CAN'T LET THE SECRECY OF THE MOLESTER SUCCEED IN  
20 PROTECTING THEM FROM PROSECUTION.

21 SO TAKE A LOOK VERY CAREFULLY, IF YOU WILL,  
22 AT ALL OF THESE PHOTOGRAPHS, AT THE SEQUENCE OF  
23 PHOTOGRAPHS, AT THE INVOLVEMENT OF BOTH PARENTS IN THE  
24 PRODUCTION AND RETAINING OF THESE PHOTOGRAPHS BEFORE YOU  
25 DECIDE THAT THE ALLEGATION OF MOLESTATION HERE IS EASILY  
26 MADE AND UNBELIEVABLE.

27 SEE, IN GOING DOWN THIS LIST OF HOW YOU  
28 PROVE INCEST, THE NINTH ITEM IS TESTIMONY BY QUALIFIED

1 EXPERT EVALUATOR, AND OBSERVATIONS OF NUMEROUS WITNESSES  
2 THAT THE CHILD, AFTER THE ONSET -- AFTER THE ONSET OF  
3 MOLESTATION, DEVELOPED THE SYMPTOMS OF A MENTAL DISORDER  
4 COMMONLY ASSOCIATED WITH MOLESTATION. AND WE CERTAINLY  
5 HAVE THAT.

6 NOW, WE PRESENTED YOU WITH THE TESTIMONY OF  
7 ALAN ANDERSON -- ACTUALLY BRIAN ALAN ANDERSEN, BRIAN  
8 ANDERSEN'S SON, ERIK AND LYLE MENENDEZ' COUSIN, WHO  
9 VISITED THE FAMILY WHEN HE WAS A TEENAGER.

10 AND FOR THESE PURPOSES, WHAT WAS MOST  
11 SIGNIFICANT ABOUT HIS TESTIMONY IS THAT HE SAW THIS  
12 DRAMATIC CHANGE, WHICH IS OFTEN ASSOCIATED WITH CHILD  
13 ABUSE, AND PARTICULARLY MOLESTATION, OCCUR IN HIS  
14 COUSIN, ERIK MENENDEZ, BETWEEN THE TIME THAT ERIK  
15 MENENDEZ AS A CHILD WAS FOUR-AND-A-HALF YEARS-OLD AND  
16 THE TIME THAT HE WAS SIX-AND-A-HALF YEARS OLD. HE SAW  
17 HIM BECOME WITHDRAWN. HE SAW HIM BECOME NERVOUS. HE  
18 SAW HIM BECOME FEARFUL. HE SAW HIM NOT PARTICIPATING,  
19 WHERE HE HAD BEFORE.

20 NOW, IT'S POSSIBLE THAT THAT WAS THE RESULT  
21 OF ALL THE OTHER ABUSIVE TREATMENT HE WAS RECEIVING IN  
22 THE HOME. THE CONSTANT PRESSURE, THE PHYSICAL YANKING  
23 AROUND -- AND I WILL TALK ABOUT PHYSICAL ABUSE IN A  
24 MINUTE. HIS MOTHER'S RAGES, HIS FATHER'S CONSTANT  
25 HOSTILITY AND CRITICISM AND THREATENING, OVERBEARING,  
26 SCARY PRESENCE. IT'S POSSIBLE IT'S JUST THAT.

27           BUT IT IS ALSO POSSIBLE THAT IT WAS BECAUSE  
28 THE OTHER STUFF WAS ALWAYS GOING ON. THE OTHER STUFF

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1 WAS GOING ON WITH RESPECT TO HIS FATHER FROM THE MINUTE  
2 HE WAS BORN, AND WITH RESPECT TO HIS MOTHER, PROBABLY  
3 FROM ABOUT TWO-AND-A-HALF ON.

4           SHE WAS SOMEWHAT MOTHERLY TOWARDS HIM FOR  
5 THE FIRST COUPLE OF YEARS WHEN HE WAS A BABY, AND THERE  
6 ARE PEOPLE -- IT MAY BE SAD, BUT IT'S STILL TRUE --  
7 THERE ARE MOTHERS WHO CAN ONLY SEEM TO RELATE TO BABIES  
8 AND INFANTS. AND BABIES AND INFANTS ARE EASY, THEY'RE  
9 ADORABLE. THEY'RE VERY EASY TO CONNECT WITH.

10          BUT THERE ARE PEOPLE AND WOMEN WHO HAVE A  
11 GREAT DEAL OF DIFFICULTY CONNECTING WITH KIDS ONCE THEY  
12 STOP BEING LITTLE DOLLIES, ONCE THEY START BEING REAL,  
13 ONCE THEY START BEING PEOPLE AND AREN'T JUST TOTALLY  
14 DEPENDENT, THOSE LOVE YOU NO-MATTER-WHAT-YOU-DO LITTLE  
15 CREATURES. AND MRS. MENENDEZ MAY HAVE BEEN ONE OF THOSE  
16 PEOPLE.

17          WE KNOW SHE WAS A TROUBLED PERSON. THERE  
18 WERE PROBLEMS IN HER LIFE. SHE DRANK, SOMETIMES MORE  
19 THAN OTHER TIMES. SHE TOOK A GREAT DEAL OF PILLS. SHE  
20 WAS UNHAPPY. AND WE CAN SYMPATHIZE WITH HER FOR THOSE  
21 THINGS. BUT THAT'S NOT AN ISSUE IN THE CASE, WAS SHE  
22 HAPPY OR NOT HAPPY; WAS SHE A GOOD PERSON OR NOT A GOOD

23 PERSON?

24           THAT ISN'T THE ISSUE. WE ARE NOT HERE TO  
25 SETTLE ALL THESE MORAL ISSUES. THE ONLY THING WE CAN  
26 SETTLE IS WHAT HAPPENED TO HER SON SO THAT HE FORMED A  
27 STATE OF MIND ABOUT HER THAT CAUSED THIS TO HAPPEN. AND  
28 THERE IS NOTHING ABOUT MORAL JUDGMENT INVOLVED IN THAT.

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1 WE ARE HERE TO DO LEGAL JUDGMENT. OTHER PLACES, OTHER  
2 FORUMS, TAKE CARE OF MORAL JUDGMENT.

3           THE SAME IS TRUE OF HER, AND THE SAME IS  
4 TRUE OF MR. MENENDEZ. HE WAS A SICK MAN, OBVIOUSLY, AND  
5 ALL KNOW HIS TREATMENT OF HIS CHILDREN WAS AWFUL, AND  
6 NOBODY WOULD WANT TO LIVE IN THAT FAMILY, EVEN IF WE'RE  
7 NOT HERE TO JUDGE.

8           HE WAS A SICK MAN. I DON'T KNOW WHAT MADE  
9 HIM THAT WAY. I DON'T KNOW MADE HIM THAT WAY. IT  
10 DOESN'T MATTER.

11           SHE WAS THE MOTHER IN THIS FAMILY, AND SHE  
12 NOT ONLY DID NOTHING -- NOTHING, TO STOP WHAT HER  
13 HUSBAND WAS DOING; BUT HAVING HER OWN PROBLEMS, SHE TOOK  
14 THEM OUT ON HER KIDS AS WELL.

15           AND THE SOLE ISSUE IS WHAT HAPPENS TO THE  
16 KID IN THAT SITUATION? NOT FOR SYMPATHY, AS MR. CONN  
17 WOULD HAVE YOU SUGGEST, BUT TO UNDERSTAND WHAT HAPPENS  
18 TO A CHILD'S VIEW OF THE WORLD. AND MOST IMPORTANT, TO

19 THE CHILD'S VIEW OF THOSE TWO POWERFUL PEOPLE WHO RUN  
20 HIS LIFE, WHO ARE HIS LIFE, IN THESE ENCLOSED FAMILIES.  
21 WHAT HAPPENS TO HIS ABILITY TO FIGURE THESE PEOPLE OUT  
22 AND UNDERSTAND WHAT THEY'RE DOING TO HIM, AND WHAT  
23 THEY'RE GOING TO DO TO HIM? THAT'S THE POINT.  
24         AND THAT'S WHAT ALL THE EVIDENCE IS ABOUT,  
25 YOU KNOW, HOW BALANCED THEY WERE, HOW BADLY THEY TREATED  
26 HIM. IT'S NOT TO TRY TO GET YOUR SYMPATHY. I WOULDN'T  
27 MIND HAVING YOUR SYMPATHY, FRANKLY, IT WOULD BE NICE.  
28 BUT IT'S NOT THE POINT, AND IT'S NOT WHAT YOU CAN VOTE

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1 ON. IT HAS TO DO WITH UNDERSTANDING PSYCHOLOGICALLY  
2 WHAT HAPPENS TO LITTLE PEOPLE WHEN BIG PEOPLE TREAT THEM  
3 A CERTAIN WAY, SO THAT YOU CAN UNDERSTAND WHY AT 18 --  
4 MY CLIENT IS STILL A CHILD OF THESE PEOPLE. HE WILL  
5 ALWAYS BE A CHILD OF THESE PEOPLE. I WISH WE COULD GO  
6 IN THERE AND REWIRE IT ALL, FOR HIS SAKE. BUT WE CAN'T.  
7 WE ARE ALL THE CHILDREN OF OUR PARENTS.  
8         OKAY. THE LAST THING THAT WE HAVE HERE IS  
9 TESTIMONY BY A QUALIFIED EXPERT THAT THE FAMILY  
10 DISPLAYED THE CHARACTERISTICS OF INCEST FAMILIES, AND  
11 YOU HAVE THAT FROM DR. WILSON AS WELL. SECRETIVE. AND  
12 THEY WEREN'T JUST SECRETIVE ABOUT GRADES. I MEAN, IF  
13 THEY ARE SECRETIVE ABOUT GRADES -- THEY ARE SECRETIVE  
14 ABOUT THE BIG SECRETS.

15           WHAT'S INTERESTING IS WHEN THEIR UNCLE,  
16 CARLOS BARALT, TESTIFIED. HE WAS CALLED AS A WITNESS  
17 FOR THE PROSECUTION. YOU REMEMBER, HE WAS ONE OF THE  
18 CO-EXECUTORS, ALONG WITH TERESITA BARALT, WITH THE  
19 BUSINESS. HE WAS CALLED TO TALK ABOUT THE WILLS AND THE  
20 ESTATE AND THE SAFE AND THE REST OF THAT.

21           BUT HE ALSO TALKED ABOUT THE FACT THAT JOSE  
22 MENENDEZ TOLD HIM IN THE SPRING -- AND ACTUALLY,  
23 MRS. BARALT, WHEN SHE TESTIFIED, WAS ABLE TO PIN THAT  
24 DATE DOWN MUCH BETTER -- THAT THE LAST TIME THAT JOSE  
25 MENENDEZ CAME EAST, AND SHE OR HER HUSBAND SAW HIM, WAS  
26 MAY OF 1989 -- APRIL OR MAY OF 1989.

27           SO DURING THAT LAST TRIP, HE SAID HE WAS  
28 FRUSTRATED OR DISGUSTED WITH HIS SONS, AND GAVE A LIST

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1 OF THINGS -- ONE OR TWO ACTUALLY, ABOUT LYLE MENENDEZ.  
2 OF COURSE, HE SAID NOTHING ABOUT WHY HE WAS UNHAPPY WITH  
3 ERIK MENENDEZ.

4           BUT MAYBE HE HAD IN MIND WHAT WAS CALLED IN  
5 THAT FAMILY, OBVIOUSLY, THE "CALABASAS ISSUE", WHICH IS  
6 IN FACT THE SUMMER BEFORE. DOES HE TELL CARLOS BARALT  
7 ABOUT THAT? NO. IT WAS A SECRET, THE WAY HIS AFFAIRS  
8 WERE A SECRET. THIS IS A FAMILY -- AND YOU KNOW, PEOPLE  
9 KEEP AFFAIRS SECRET. MAYBE THEY EVEN KEEP THAT THEIR  
10 KIDS GET INTO TROUBLE SECRET.

11 BUT EVERYTHING ABOUT THIS FAMILY IS  
12 SUPPOSED TO BE KEPT A SECRET. AND THE BIGGEST SECRET OF  
13 ALL, OF COURSE, IS THE INCEST SECRET. AND THEY MONITOR  
14 ERIK MENENDEZ TO MAKE SURE THAT SECRET DOES NOT GET OUT.  
15 WE DON'T KNOW FOR HOW MANY YEARS THEY  
16 TAPPED HIS PHONE. HE FOUND IT, AND IT'S IN EVIDENCE, AN  
17 ADAPTOR DEVICE THAT WENT INTO THE PHONE LINE TO THE TAPE  
18 RECORDER IN THEIR BEDROOM, WHERE THEY'RE TAPE-RECORDING  
19 ALL OF HIS TELEPHONE CALMS.  
20 AND THERE IS NO DISPUTE ABOUT THAT  
21 EVIDENCE. THAT IS UNCONTROVERTED. AND EVEN NOEL NEDLI,  
22 WHO WAS ERIK MENENDEZ' ROOMMATE AT THE APARTMENT HE  
23 RENTED AT THE MARINA CITY CLUB, HE HEARD ONE OF THOSE  
24 TAPES. AND ERIK MENENDEZ SAID HIS OTHER FRIEND, DANNY  
25 ROBERTS, HEARD ONE OF THOSE TAPES.  
26 IF THERE WAS ANY CONTROVERSY ABOUT THAT,  
27 THE PEOPLE COULD HAVE PUT ON A WITNESS TO SAY "NO."  
28 THEY COULD HAVE CALLED DANNY ROBERTS TO REFUTE IT.

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1 BUT OF COURSE THEY DIDN'T, FOR THE OBVIOUS  
2 REASON.  
3 SO THEY SPY. THEY KEEP CLOSE REIN ON ERIK  
4 MENENDEZ. THEY SPY ON HIM TO MAKE SURE HE DOESN'T GET  
5 TOO CLOSE TO ANYBODY, TO MAKE SURE THAT HE DOESN'T START  
6 HINTING AROUND THE BIG FAMILY SECRET.

7            THAT'S WHY, WHEN THEY SEND HIM TO A  
8 THERAPIST, THEY HAVE TO GET A WAIVER OF CONFIDENTIALITY,  
9 WHICH IS WHAT THEY DID WITH OZIEL. THAT'S WHY HE COULD  
10 GET NO REAL THERAPY. THAT'S WHY -- I MEAN, HOW ARE YOU  
11 GOING TO DEAL WITH ADOLESCENT ACTING OUT FROM AN  
12 OPPRESSIVE FAMILY IF THE OPPRESSORS ARE GOING TO FIND  
13 OUT WHAT'S GOING ON IN THERAPY? THAT'S OBVIOUSLY A  
14 TOPIC THAT CAN NEVER COME UP.

15           THAT WAS LIKE ALL OF THE POSSIBLE AVENUES  
16 OF -- NORMAL AVENUES OF ESCAPE MR. CONN CLAIMS ERIK  
17 MENENDEZ SHOULD HAVE TAKEN. ALL THE POSSIBLE AVENUES.

18           FOR HIM, NOW ON THE WEST COAST, AWAY FROM  
19 THE BITS OF FAMILY HE EVER HAD ANY CONNECTION TO, NO  
20 FAMILY HERE AT ALL, KEPT AWAY, DISCOURAGED FROM MAKING  
21 FRIENDSHIPS HIS WHOLE LIFE, HE DOESN'T HAVE THOSE NORMAL  
22 AVENUES THAT OUR KIDS HAVE, OR THAT WE HAD AS KIDS, THAT  
23 MOST FAMILIES HAVE. HE HAS A VERY NARROW LIFE.

24           SO WHAT IS THE LAST EXIT, IF YOU WILL? THE  
25 LAST EXIT, YOU'D THINK, THE LAST RECOURSE FOR ONE IN HIS  
26 SITUATION, WOULD BE: "OH, YOU GET A COUNSELOR. YOU GET  
27 A THERAPIST." RIGHT? AND THEN THAT DOOR IS SLAMMED  
28 SHUT, BECAUSE HE'S JUST A PIPELINE TO MOM AND DAD.

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1           SO THERE IS NO EXIT. THERE IS NOWHERE YOU  
2 GO FOR HELP.



3           OF COURSE, IN NORMAL FAMILIES YOU MIGHT NOT  
4 NEED THAT KIND OF HELP. BUT EVEN IN SEMI-NORMAL  
5 FAMILIES, THIS ONE IS LOCKED DOWN, A CLOSED CLUB. JUST  
6 ABSOLUTELY TYPICAL OF INCEST FAMILIES. AND THIS IS  
7 WHAT'S SO INTERESTING, AND THIS -- I KNOW THIS IS KIND  
8 OF SUBTLE, AND PEOPLE ARE, YOU KNOW, SUSPICIOUS OF  
9 PSYCHOLOGICAL ANALYSES -- BUT GOD, THIS IS A FAMILY THAT  
10 RESULTED IN VIOLENCE. YOU CAN'T DO THE SAME ANALYSIS AS  
11 YOUR LIQUOR STORE ROBBERY/KILLING CASE. EVERYTHING  
12 ABOUT HOW THESE PEOPLE DEALT WITH EACH OTHER BECOMES  
13 CRUCIAL.

14           SO, EVEN LOOK AT THE 12-11 TAPE. I MEAN,  
15 THEIR WHOLE UNIVERSE ARE THEIR PARENTS. THEY ARE SO  
16 OVER-INVOLVED, ALL FOUR OF THEM, WITH EACH OTHER. THE  
17 WAY THEY TALK ABOUT IT -- PARTICULARLY LYLE MENENDEZ IS  
18 DOING MOST OF THE TALKING ON THAT TAPE.

19           THE WAY HE TALKS ABOUT HIS CONCERN -- AND  
20 THIS IS A HISTORICAL FACT, REMEMBER. THIS IS NOT GOING  
21 ON IN '89, DESPITE THE FACT THAT THAT'S THE GAME THAT'S  
22 BEING PLAYED HERE WITH OZIEL.

23           THIS IS GOING ON IN '86 AND '87, HIS  
24 CONCERN ABOUT HIS MOTHER'S UNHAPPINESS, HIS CONCERN  
25 ABOUT HIS FATHER NOT ACTING LIKE A NICE HUSBAND TO HER.  
26 THERE IS A SEGMENT ON THAT TAPE THAT'S VERY INTERESTING,  
27 TALKING ABOUT HOW THE BOND ISSUES, AND THE BONDS BETWEEN  
28 PARENTS AND CHILDREN IN THIS FAMILY ARE ALL MESSED UP,

1 WHICH HAPPENS WHEN A CHILD IS BEING MOLESTED. HE  
2 SOMEHOW WINDS UP TAKING CARE OF THE MOLESTER. HE IS  
3 TAKING CARE OF THE MOLESTER'S PERVERTED NEEDS. THAT'S  
4 HOW THAT SETS UP AS WHO'S THE CARETAKER, WHO'S THE ONE  
5 BEING TAKEN CARE OF.

6 AND IT SHOWS IN OTHER WAYS IN THIS FAMILY  
7 HOW MRS. MENENDEZ BLAMES HER CHILDREN FOR HER  
8 UNHAPPINESS, AND SHE IS THE VICTIM IN THIS FAMILY.  
9 THAT'S HOW SHE PRESENTED HERSELF. AND SHE MAY WELL HAVE  
10 FELT THAT WAY.

11 BUT TELLING YOUR CHILDREN THEY'RE THE  
12 SOURCE OF ALL YOUR PROBLEMS, AND YOU'RE THE REAL VICTIM,  
13 AND NO MATTER WHAT IS HAPPENING TO THEM, IT'S NOT NEARLY  
14 AS BAD AS WHAT'S HAPPENING TO YOU, WHEN YOU CAME INTO  
15 THIS RELATIONSHIP AS AN ADULT, AND THEY CAME IN AS AN  
16 INFANT, YOU KNOW, YOU CAN SEE HOW THE CHILDREN GET  
17 IGNORED. YOU CAN SEE HOW THEIR NEEDS ARE OVERLOOKED  
18 COMPLETELY IN SUCH A FAMILY.

19 BUT THERE IS A FASCINATING LITTLE PART ON  
20 THAT TAPE, AND IT'S WHERE LYLE MENENDEZ IS TALKING ABOUT  
21 HOW HE HAD A CONVERSATION ONCE WITH HIS FATHER, WHERE HE  
22 WAS TALKING ABOUT HOW UNHAPPY HIS MOTHER WAS, HOW HIS  
23 FATHER WORKED SO MUCH AND WAS AWAY SO MUCH. THIS IS IN  
24 THE EARLIER YEARS. IN CALIFORNIA, OF COURSE, HE'S  
25 WORKING RIGHT THERE.

26 I MEAN, YOU KNOW, I DON'T KNOW HOW MANY OF  
27 YOU -- I DON'T REMEMBER NOW IF ANY OF YOU ARE FROM THE

28 EAST COAST. THEY THINK WE'RE ALL CRAZY WITH OUR

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1 FREEWAYS TO GET PLACES. BUT THEY LIVE IN CONNECTICUT

2 AND NEW JERSEY AND WORK IN MANHATTEN, AND YOU CAN

3 IMAGINE -- WELL, MAYBE YOU CAN'T IMAGINE.

4 IT'S UNBELIEVABLE TO GET FROM CONNECTICUT

5 TO NEW JERSEY, IN AND OUT OF MANHATTEN EVERY DAY.

6 PEOPLE WHO WORK, THEY ARE GONE FROM DAWN TO DUSK. THEY

7 ARE GONE FROM DAWN TO DARK, IN FACT.

8 GIVEN HIS WORK THEN, APPARENTLY HE WAS OUT

9 OF THE HOUSE A GREAT DEAL DURING THOSE YEARS WHEN THE

10 FAMILY LIVED IN NEW JERSEY.

11 HERE IN CALIFORNIA, YOU KNOW, HOP ON A

12 FREEWAY, YOU'RE HOME IN 30 MINUTES. AND HE IS HOME A

13 LOT. UNLESS YOU LIVE IN ORANGE COUNTY AND COMMUTE, YOU

14 KNOW, WHICH NO ANGELENO SHOULD EVER DO.

15 BUT ANYWAY, THE POINT IS -- SO IN THIS

16 CONVERSATION IN THE 12-11 TAPE, LYLE MENENDEZ IS TALKING

17 ABOUT THE FACT THAT IN THE PAST HIS FATHER WORKED SO

18 MUCH AND HIS MOTHER WAS UNHAPPY, AND HIS FATHER WOULD

19 COME HOME, AND HIS MOTHER WOULD WANT TO PARTICIPATE IN

20 SOCIAL FUNCTIONS. AND I GUESS THIS HOOKS INTO HER IMAGE

21 ISSUES, YOU KNOW. SHE WANTS STATUS, SHE WANTS TO BE --

22 HER FAMILY TO BE PERCEIVED AS A CERTAIN KIND OF FAMILY,

23 A HIGH-STATUS FAMILY.

24 BUT MAYBE IT'S EVEN SIMPLER. SHE JUST  
25 WANTS TO GO OUT. SHE WANTS TO GO TO PARTIES. SHE WANTS  
26 TO GO OUT. AND HIS FATHER IS TOO TIRED OR TOO BUSY OR  
27 TOO DISINTERESTED, AND IT MAKES HER VERY, VERY UNHAPPY.  
28 LYLE MENENDEZ IS RELAYING HOW HE HAS THIS

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1 CONVERSATION WITH HIS FATHER, SAYING: "YOU KNOW, YOU  
2 SHOULD TRY, DAD, TO DO WHAT SHE WANTS SOMETIMES. YOU  
3 KNOW, THESE THINGS ARE IMPORTANT TO HER."

4 AND HIS FATHER TELLS HIM: "THAT'S NOT MY  
5 IDEA OF MARRIAGE. I WOULDN'T BE MARRIED, BASICALLY,  
6 EXCEPT TO GET MY OWN WAY, YOU KNOW, AND IF I HAVE TO  
7 GIVE INTO WHAT SOMEBODY ELSE WANTS IN ORDER TO BE  
8 MARRIED, I DON'T WANT TO BE MARRIED."

9 AND LYLE MENENDEZ IS TALKING ABOUT THIS  
10 WHILE MY COLLEAGUES HERE ARE MUGGING, AS THEY DID  
11 THROUGHOUT THE ENTIRE TRIAL, AND ACTING OUT FOR YOU IN A  
12 RATHER JUVENILE WAY.

13 BUT IN ANY EVENT, LYLE MENENDEZ IS TALKING  
14 ABOUT THIS, AND IT SHOWS HOW HE HAS TAKEN ON THE ROLE,  
15 EVEN BACK THEN WHEN HE WAS A TEENAGER, OF TRYING TO  
16 MEDIATE WHAT HE SEES AS THIS AWFUL RELATIONSHIP, BECAUSE  
17 THIS IS HOW HIS FATHER RELATES TO EVERYBODY. "I DO WHAT  
18 I WANT, AND WHAT YOU NEED IS TOUGH."

19 AND IT'S JUST ONE LITTLE VIEW, A LITTLE

20 WINDOW INTO A VERY EMESHED FAMILY.

21 AND THEN WE HAVE HAD THE EVIDENCE OF --

22 BESIDES ERIK MENENDEZ TELLING IT'S TRUE -- AND, YOU

23 KNOW, EVERY SINGLE THING HE SAID ABOUT HIS CHILDHOOD AND

24 HOW HE WAS TREATED IS UNCONTROVERTED. THERE IS NO

25 DISPUTE ABOUT IT. WE BROUGHT IN SOME WITNESSES WHO

26 CORROBORATED IT DIRECTLY.

27 BUT THE FACT IS, HE WASN'T CHALLENGED ON

28 IT. NO ONE CAME IN HERE TO SAY ANY OF IT WAS UNTRUE.

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1 THE FACT THAT HE WAS ISOLATED, THE FACT THAT HE WASN'T

2 ALLOWED TO HAVE FRIENDS OVER, THE FACT THAT HE NEVER

3 WENT TO FRIENDS', THE FACT THAT ANY ADULT WHO GOT TOO

4 CLOSE TO THEM WAS FIRED.

5 THIS WAS ONE OF THE TENNIS COACHES, DR.

6 WILSON TESTIFIED. THE ONLY PERSON WHO TRIED TO GO TO

7 BAT FOR THEM WAS FIRED. TEACHERS WERE INTIMIDATED.

8 THEY ARE KEPT TOTALLY WITHIN THE FRAMEWORK AND UNDER THE

9 CONTROL OF THEIR PARENTS. AND THAT IS -- THAT'S YOUR

10 TYPICAL INCEST FAMILY.

11 NOW, WHAT I DIDN'T WRITE DOWN, BUT WHAT

12 SHOULD BE ABSOLUTELY OBVIOUS, IS YOU DON'T HAVE INCEST

13 BY ONE PARENT WITHOUT ENABLING -- WHAT'S KNOWN AS

14 ENABLING BY THE OTHER.

15 NOW, IN SOME FAMILIES --

16 MR. CONN: I WOULD OBJECT TO THIS. THERE'S  
17 NOTHING IN THE RECORD TO SUPPORT THIS.  
18 THE COURT: OKAY. THIS IS JUST COUNSEL'S  
19 ARGUMENT, HER INTERPRETATION OF THE EVIDENCE. SHE CAN'T  
20 ARGUE, AND NEITHER SO CAN THE PROSECUTOR, ANYTHING THAT  
21 IS OUTSIDE THE EVIDENCE. BUT BOTH SIDES CAN CERTAINLY  
22 COMMENT ON THE EVIDENCE THAT WAS PRESENTED.  
23 YOU MAY CONTINUE.  
24 MS. ABRAMSON: THANK YOU, YOUR HONOR.  
25 YOU DON'T GET TO DO THIS (INDICATING),  
26 WITHOUT KNOWING THIS DOES HAPPEN IN FAMILIES.  
27 NOW, MAYBE SHE IS IN DENIAL. OKAY. SHE  
28 DOESN'T WANT TO KNOW. SO SHE PRETENDS SHE DOESN'T SEE

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1 IT.  
2 SO WHAT IS THE EVIDENCE HERE THAT  
3 MRS. MENENDEZ WAS WELL AWARE THAT THESE THINGS WERE  
4 GOING ON, AND FOR WHATEVER REASON WOULDN'T OR COULDN'T  
5 STOP IT?  
6 SHE WOULDN'T OR COULDN'T DIVORCE A MAN WHO  
7 HAD BEEN HAVING AN AFFAIR FOR YEARS THAT MADE HER  
8 SUICIDAL. THAT'S HOW UNHAPPY SHE WAS WHEN SHE  
9 DISCOVERED HE WAS CHEATING ON HER. BUT SHE COULDN'T  
10 DIVORCE HIM, OR WOULDN'T DIVORCE HIM. AND WE DON'T KNOW  
11 WHY. MAYBE THAT WAS FOR THE MONEY.

12 BUT I THINK IT'S MORE COMPLICATED THAN  
13 THAT. WHY PEOPLE IN RELATIONSHIPS DON'T JUST PACK UP  
14 ONE MORNING AND WALK OUT THE DOOR IS MORE COMPLICATED  
15 THAN FOR THE MONEY.

16 MAYBE SHE LOVED HIM. MAYBE SHE DIDN'T HAVE  
17 A GOOD SENSE OF HERSELF. MAYBE SHE DIDN'T THINK SHE  
18 COULD MAKE IT ALONE IN THE WORLD. MAYBE SHE DIDN'T WANT  
19 THE SHAME OF IT, OR THE SCANDAL OF IT. MAYBE LOTS OF  
20 THINGS THAT WE DON'T KNOW AT THIS POINT.

21 BUT IN ANY EVENT, KNOWING THAT, THAT HE DID  
22 THIS, SHE COULDN'T LEAVE, RIGHT? SO CLEARLY, SHE HAS AN  
23 ENORMOUS STAKE IN STAYING MARRIED TO THIS MAN.

24 AND WHAT IS THE EVIDENCE THAT WE HAVE THAT  
25 SHE HAD EVERY REASON TO KNOW BESIDES -- I MEAN, PUT  
26 ASIDE THAT ERIK MENENDEZ TELLS YOU THAT ON THURSDAY  
27 NIGHT BEFORE THE HOMICIDES SHE COMES OUT. SHE TELLS HIM  
28 EXPLICITLY WHAT? IF HE HAD WANTED TO KNOW ALL OF HIS

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1 CHILDHOOD, HE COULD HAVE KNOWN ABOUT THAT HIS MOTHER  
2 KNEW WHAT WAS BEING DONE TO HIM.

3 BUT WHAT CHILD WANTS TO KNOW THAT? WHAT  
4 CHILD WANTS TO BELIEVE THEIR MOTHER WOULD BE GOING ALONG  
5 WITH THIS?

6 NOW, IF ANYBODY IS IN DENIAL ABOUT DOES MOM  
7 KNOW, IT'S ERIK MENENDEZ. BECAUSE LOOK WHAT'S GOING ON.

8 SHE CHECKS OUT HIS GENITALS. SHE BURSTS BLISTERS.

9 DO YOU THINK HE MADE THAT UP? COME ON.

10 SHE BURSTS BLISTERS. SHE NEVER -- AND WE KNOW FROM THE  
11 COUSINS SHE NEVER GOES TO HIM; NOT ONLY WHEN JOSE  
12 MENENDEZ IS IN HIS ROOM ALONE. WE KNOW ABOUT THE FAMILY  
13 RULE: DON'T GO NEAR THE BOYS' ROOMS WHEN THEIR FATHER  
14 IS THERE.

15 AND IT IS NOT TRUE THAT THE ONLY OCCASIONS  
16 WHEN THEIR FATHER IS THERE IS WHEN YOU CAN HEAR THE  
17 SMACKING SOUND OF THE BELT. THAT'S NOT THE ONLY TIME  
18 THAT YOU CAN'T GO THERE.

19 YOU CAN'T GO THERE AT ALL WHEN HE'S THERE.  
20 KATHY SIMONTON TESTIFIED THAT SHE'S SITTING IN THE  
21 LIVING ROOM WITH MRS. MENENDEZ AT A TIME WHEN JOSE  
22 MENENDEZ TAKES -- I THINK IT WAS ERIK, DOWN TO HIS ROOM,  
23 AND MRS. MENENDEZ -- AND ON ONE OCCASION MRS. MENENDEZ  
24 TURNS UP THE TELEVISION SET. NOW, MAYBE INDICATING WHAT  
25 IS GOING TO GO ON AT THAT POINT.

26 BUT SHE GETS UP AT ONE POINT, WHETHER THAT  
27 OCCASION OR THE ANOTHER, TO GO TO THE BATHROOM, AND YOU  
28 HAVE TO GO SOMEWHAT DOWN THE HALLWAY TO THE BOYS' ROOM

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1 TO GO TO THE BATHROOM.

2 SHE IS NOT ALLOWED TO GO DOWN THE HALLWAY  
3 TO GO TO THE BATHROOM WHEN DAD IS IN THE ROOM WITH THE



4 BOY OR BOYS.

5           AND DIANE VANDERMOLLEN, WHO LIVED WITH THIS  
6 FAMILY AND DEVELOPED POST-TRAUMATIC STRESS DISORDER IN  
7 SIX MONTHS WITH LIVING WITH THIS FAMILY, SHE TALKS ABOUT  
8 A RULE YOU CAN'T EVEN GO ONTO THE FLOOR OF THE HOUSE IN  
9 PENNINGTON WHEN MR. MENENDEZ IS UP THERE WITH EITHER ONE  
10 OF HIS BOYS.

11           NOW, THIS ISN'T JUST PRIVACY. THIS IS  
12 BIZARRE. THESE ARE BIG HOUSES. YOU'VE SEEN THE  
13 PICTURES. THERE'S LOTS OF PLACES YOU CAN GO TO. YOU  
14 CAN GO OUTSIDE TO TALK TO YOUR KIDS. YOU DON'T HAVE TO  
15 DO THAT. YOU CAN SAY, "WE'RE TALKING, DON'T INTERRUPT."

16           SOMETHING VERY PECULIAR IS GOING ON BETWEEN  
17 THIS FATHER AND SONS, AND YOU DON'T THINK MOM KNOWS WHAT  
18 IT IS?

19           HERE WE HAVE THIS BUSINESSMAN, WHO MR. CONN  
20 CALLS SUCCESSFUL. HE MAKES MONEY. GOING UP THE  
21 CORPORATE LADDER. OKAY. THIS GREAT AMERICAN DREAM.

22           AND ERIK MENENDEZ TESTIFIES HE IS BUSY WITH  
23 TELEPHONE CALLS, BUSY WITH BUSINESS.

24           BUT NEVER WHEN HE IS ALONE IN THE ROOM WITH  
25 ERIK MENENDEZ -- NEVER DOES HIS MOTHER COME AND SAY  
26 "IMPORTANT PHONE CALL, BIGSHOT BUSINESSMAN." NEVER.  
27 NEVER. NOW, CAN WE REALLY BELIEVE THE PHONE NEVER RINGS  
28 FOR HIM?

1           THIS IS FURTHER PROOF THAT SHE KNEW ALL  
2 ALONG WHAT WAS GOING ON.

3           NOW, I DON'T KNOW HOW PEOPLE RATIONALIZE  
4 THESE THINGS, BUT INCEST HAPPENS ALL THE TIME, AND THEY  
5 DO RATIONALIZE THESE THINGS SOMEHOW.

6           NOW, AS I HAVE INDICATED, THE PSYCHOLOGICAL  
7 ABUSE IS UNCONTROVERTED IN THIS CASE. THIS IS NOT A  
8 CASE WHERE WE ARE ARGUING THAT POST-TRAUMATIC STRESS  
9 DISORDER WAS CAUSED -- OR THE DESTRUCTION OF A GOOD  
10 SELF-IMAGE, SELF-REFERENCE, WHICH IS THAT EXTRA PIECE  
11 THAT BATTERED-PERSON'S SYNDROME EXPLAINS -- WAS CAUSED  
12 BY PHYSICAL ABUSE. THERE WAS SOME, BUT CERTAINLY NOT  
13 EXTREME OR EXTRAORDINARY, GIVEN THE ANALYSIS OF CHILD  
14 ABUSE. I MEAN, THERE ARE CASES WITH CHILDREN BURNED  
15 WITH CIGARETTES -- YOU DON'T NEED TO KNOW THE HORRIBLE  
16 THINGS THAT PEOPLE DO TO CHILDREN. THAT'S NOT WHAT THIS  
17 IS ABOUT.

18          THE FACT OF THE MATTER IS, THE LAW AND THE  
19 PSYCHOLOGY DON'T NECESSARILY MESH. SO WE ARE PERMITTED  
20 TO PUT ON EVIDENCE OF PHYSICAL INTERACTION. AND SO WE  
21 PUT ON WHAT WE'RE ALLOWED TO PUT ON, EVIDENCE OF ANY  
22 KIND OF PHYSICALLY ABUSIVE BEHAVIOR.

23          BUT WHAT'S MORE IMPORTANT ABOUT THE  
24 TESTIMONY OF THE COUSINS THAN THE ACTUAL PHYSICAL ACTS  
25 IS THE PSYCHOLOGICAL HARM THAT'S GOING ON, THE  
26 ENVIRONMENT OF FEAR, THE ENVIRONMENT OF PRESSURE. AND  
27 THE COMBINATION OF A VERY HIGH PRESSURE -- FOR KIDS,  
28 HIGH-STRESS, HIGH-PRESSURE ENVIRONMENT IS RULED BY

1 TERROR.

2 I MEAN, IT'S ONE THING FOR PEOPLE TO  
3 PRESSURE THEIR CHILDREN: "SUCCEED, SUCCEED." IT'S  
4 ANOTHER THING TO BACK IT UP WITH THREATS AND VIOLENCE  
5 AND HOSTILITY AND ANGER AND RAGES, AND TELLING THEM YOU  
6 WISH THEY WERE NEVER BORN, AND THREATENING TO KILL THEM.  
7 THAT'S DIFFERENT. THAT GOES BEYOND THE PALE.

8 BUT AS DR. WILSON EXPLAINED, THE DAMAGE  
9 THAT'S CAUSED BY A TRAUMATIC EVENT IS AMPLIFIED, IF YOU  
10 WILL, IF IT OCCURS IN AN ENVIRONMENT THAT IS ALSO  
11 ABUSIVE. AND THE PSYCHOLOGICAL ABUSE IN THIS FAMILY --  
12 WHAT WE MEAN BY PSYCHOLOGICAL ABUSE IS THE KIND OF  
13 THINGS NOW WE'RE ALL PRETTY SOPHISTICATED ABOUT. YOU  
14 DON'T TALK TO KIDS THE WAY THESE KIDS WERE TALKED TO.  
15 YOU DON'T YELL AND SCREAM AND CALL THEM NAMES. YOU  
16 DON'T CALL THEM SISSIES. YOU DON'T MAKE FUN OF THEM.  
17 YOU DON'T TORTURE THEM VERBALLY OR PHYSICALLY.  
18 AND YOU DON'T MAKE THEIR LIFE A LIVING HELL  
19 WHERE THEY HAVE TO CLIMB THE MOUNTAIN EVERY DAY TO GET  
20 YOUR LOVE, AND THEY STILL DON'T GET IT, BECAUSE HE'S NOT  
21 NUMBER ONE IN THE NATION. AND THAT WAS THE WAY THIS  
22 FAMILY WAS. WE BROUGHT THAT TO YOU.

23 WE ALL KNOW YOU DON'T DO THAT TO KIDS.  
24 IT'S NOT GOOD, AND IT MESSES THEM UP.

25 BUT IT PARTICULARLY MESSES THEM UP IN AN

26 ENVIRONMENT WHERE SOMETHING AS BAD AS MOLESTATION IS  
27 INVOLVED. THEN YOU CAN'T HOPE TO SALVAGE THAT CHILD  
28 FROM DEVELOPING A MENTAL DISORDER, AND I REALLY DON'T

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1 CARE IF YOU WANT TO CALL IT GENERALIZED ANXIETY  
2 DISORDER, TO MINIMIZE IT ON THE SIDE OF THE PROSECUTION,  
3 OR POST-TRAUMATIC STRESS DISORDER. IT'S THERE. THAT WE  
4 HAVE PROVEN.

5 NOW, FINALLY -- AND THIS IS MY OPINION, SO  
6 I AM GOING TO DRAW A LINE ACROSS. MY OPINION OF WHY WE  
7 HAVE ABSOLUTE PROOF OF INCEST IN THIS CASE.

8 "KILLING OF THE MOLESTER AND HIS ACCOMPLICE  
9 BY THE ADOLESCENT CHILD." AND THAT SOUNDS A LITTLE  
10 SMARTY OF ME, BUT THE FACT OF THE MATTER IS, AS  
11 DR. WILSON TESTIFIED, PARRICIDE DOESN'T HAPPEN FOR  
12 MONEY. IT HAPPENS BECAUSE ABUSE IS HAPPENING, AND THERE  
13 IS AN EFFORT TO TRY TO ESCAPE IT. AND THAT'S WHAT  
14 HAPPENED HERE.

15 AND IF YOU TAKE THE LONG VIEW, WHICH EVERY  
16 TIME I -- YOU KNOW, SIX YEARS I'VE BEEN ON THIS CASE,  
17 AND I HAVE LISTENED TO OTHER PROSECUTORS AND THESE  
18 PROSECUTORS, AND I'VE LISTENED TO THE MEDIA AND ALL THE  
19 BALONEY THAT GOES ON OUTSIDE THIS COURTROOM ABOUT THIS  
20 CASE, AND I ALWAYS COME DOWN TO THIS FIRST PRINCIPLE.  
21 WHY?

22 DON'T TELL ME THAT MOLESTATION IS MADE UP  
23 WHEN SOMETHING THIS HORRENDOUS HAPPENS IN THIS FAMILY.  
24 A FAMILY THAT YOU WOULD HAVE THOUGHT HAD OPPORTUNITIES,  
25 A FAMILY WITH CHILDREN WITH -- YOU KNOW, WHATEVER ERIK  
26 MENENDEZ' LEARNING DISABILITIES, HE CLEARLY COULD WORK  
27 HARD ENOUGH, AND DID OVERCOME THEM ENOUGH TO GET INTO  
28 COLLEGE. LYLE MENENDEZ GOT INTO PRINCETON. THESE

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1 PARENTS ARE EDUCATED. THERE IS MONEY.

2 WHAT -- WHAT HAPPENED? AND I AM TELLING  
3 YOU, THE ONLY THING THAT EXPLAINS THIS IS SOMETHING THIS  
4 PERVERTED, SOMETHING THIS DAMAGING TO THE MINDS OF  
5 CHILDREN.

6 AND LET ME TALK ABOUT MINDS OF CHILDREN FOR  
7 ONE MOMENT HERE.

8 ERIK MENENDEZ TESTIFIED THAT HIS BROTHER  
9 DID WHAT DR. WILSON CALLS "MIMICKING BEHAVIOR," WHICH  
10 IS HE INSERTED A TOOTHBRUSH IN HIS ANUS WHEN HE WAS FIVE  
11 YEARS OLD. OKAY.

12 WELL, THAT DOES NOT MAKE LYLE MENENDEZ A  
13 CHILD MOLESTER. LYLE MENENDEZ IS A CHILD THAT THIS IS  
14 HAPPENING TO. BUT WHY IS HE DOING THIS?

15 AND DR. WILSON TOLD YOU WHAT IS ESTABLISHED  
16 IN THE RESEARCH ON CHILD MOLESTING, WHICH IS SOMETIMES  
17 MOLESTED CHILDREN PLAY-ACT THE MOLESTATION WITH OTHER

18 CHILDREN.

19           AND ERIK MENENDEZ TOLD YOU THAT ON THE  
20 FRIDAY WHEN HE IS DRIVING WITH HIS BROTHER TO SAN DIEGO,  
21 LYLE MENENDEZ -- AND HE IS TELLING LYLE MENENDEZ MORE  
22 DETAILS OF HIS OWN MOLESTATION, LYLE MENENDEZ IS TELLING  
23 HIM THAT THE SAME THING HAPPENED TO LYLE MENENDEZ.

24           AND THERE IS EVIDENCE HERE THAT BOTH OF  
25 THEM WERE MOLESTED BY THEIR FATHER. FIRST LYLE  
26 MENENDEZ, AND THEN HE MOVED ON --

27       MR. CONN: I WOULD OBJECT TO THAT.

28       MS. ABRAMSON: -- MOVED ON TO ERIK MENENDEZ.

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1       MR. CONN: THAT IS NOT SUPPORTED BY THE EVIDENCE  
2 IN THIS CASE.

3       THE COURT: COUNSEL IS JUST REFERRING TO EVIDENCE  
4 THAT'S BEEN PRESENTED. IF EITHER SIDE MISSTATES THE  
5 EVIDENCE, AS I HAVE TOLD YOU BEFORE, YOU ARE THE JUDGES  
6 OF THE EVIDENCE. NOTHING THE LAWYERS SAY IN ARGUMENT,  
7 OR ANY OTHER TIME DURING THE TRIAL, IS EVIDENCE. YOU  
8 DECIDE WHAT THE EVIDENCE IS. AT THIS POINT THE LAWYERS  
9 FOR EACH SIDE, IN ARGUMENT, ARE JUST COMMENTING ON THE  
10 EVIDENCE THAT YOU HAVE HEARD.

11       MS. ABRAMSON: IF YOU HAVE ANY DOUBT ABOUT THAT,  
12 ASK TO HAVE READ BACK TO YOU THE TESTIMONY OF ERIK  
13 MENENDEZ CONCERNING THE CONVERSATIONS WITH HIS BROTHER

14 ON THAT FRIDAY. WE WILL GET THE CITES AND THE REPORTER  
15 WILL READ IT TO YOU. THEY DON'T WANT TO HEAR THIS.

16 BUT THE FACT OF THE MATTER IS, THERE IS  
17 EVIDENCE HERE THAT BOTH OF THEM, IN SERIES, FIRST  
18 STARTING WITH THE OLDEST SON, AND THEN SHIFTING TO THE  
19 THROW-AWAY KID, AND THEN NEVER LETTING GO OF THE  
20 THROW-AWAY KID. THAT'S WHAT HAPPENED IN THIS FAMILY.

21 AND YOU KNOW, I MEAN, ASKING CARLOS BARALT,  
22 AS MR. CONN DID, YOU KNOW, "WAS JOSE MENENDEZ HOMOSEXUAL  
23 OR INTERESTED IN HOMOSEXUALITY?" THAT'S RIDICULOUS.

24 CHILD ABUSE ISN'T HOMOSEXUAL. CHILD ABUSE  
25 ISN'T REALLY EVEN ABOUT SEX. IT'S ABOUT POWER. IT'S  
26 ABOUT TREATING THE WEAKEST PEOPLE THE WORST, WHICH IS A  
27 TRAIT THAT, WE UNDERSTAND FROM DR. WILSON, MR. MENENDEZ  
28 HAD.

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1 IT HAS TO DO WITH GETTING WHAT YOU WANT  
2 WITHOUT HAVING TO PAY THE PRICE OF DEALING WITH ANOTHER  
3 PERSON'S NEEDS, OR ANOTHER PARTNER'S WANTS. THAT'S WHAT  
4 CHILD SEXUAL ABUSE IS. MOLESTED -- I MEAN, INCEST  
5 VICTIM BOYS -- HERE IS THE LOGIC OF IT. BOYS WHO ARE  
6 MOLESTED BY THEIR FATHERS, THAT EQUALS INCEST.

7 OBVIOUSLY THEIR FATHERS HAVE HETEROSEXUAL  
8 RELATIONSHIPS, OR THEY WOULDN'T HAVE BEEN BORN.

9 SO THE FACT OF THE MATTER IS, THAT BECAUSE

10 A PARENT HAS INCEST SEX WITH HIS SON DOES NOT MAKE HIM  
11 HOMOSEXUAL, NOR DOES IT MAKE HIM INTERESTED NECESSARILY  
12 IN HOMOSEXUALITY. IN FACT, THEY MAY BE THE PEOPLE WHO  
13 MOST DECRY HOMOSEXUALITY, BECAUSE THEY DON'T WANT TO  
14 THINK OF THEMSELVES THAT WAY.

15 NOW, I WANT TO TALK A LITTLE BIT ABOUT ANDY  
16 CANO.

17 AGAIN, EVERYONE CALLED BY THE DEFENSE IS A  
18 LIAR, BUT THE THEORY HERE IS REALLY REMARKABLE. ANDY  
19 CANO, YOU SEE, IS LYING BECAUSE ERIK MENENDEZ SOLD HIS  
20 MOTHER HIS CAR.

21 NOW, MR. CONN CLAIMS ERIK MENENDEZ DIDN'T  
22 SELL MRS. CANO HIS CAR. HE GAVE IT TO HER. BUT OF  
23 COURSE, SHE SAYS OTHERWISE. NOW, SHE IS A LIAR. JOSE  
24 MENENDEZ' OLDER SISTER IS A LIAR HERE. SHE IS LYING ON  
25 BEHALF OF THE NEPHEWS WHO KILLED HER BROTHER, WHO SHE  
26 LOVED, WITH HER MOTHER SITTING IN THE COURTROOM. SURE.  
27 SURE. THAT'S HOW THINGS ARE WORKING OUT.

28 ERIK MENENDEZ SOLD HER THE CAR FOR \$500

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1 LESS THAN MARKET VALUE. SHE SAID HE WANTED TO GIVE IT  
2 TO HER, AND SHE WOULDN'T TAKE IT AS A GIFT. SHE  
3 INSISTED ON PAYING.

4 SO SHE PAID HIM. AND THAT IS WHY HER SON,  
5 ANDY, COMES INTO COURT YEARS LATER AND TELLS A LIE?



6 THAT'S WHAT MR. CONN -- THAT'S HOW DESPERATE THEY ARE TO  
7 TRY TO DISPROVE THE MOLESTATION IN THIS CASE, THAT HE  
8 MAKES THAT RIDICULOUS ARGUMENT.

9 NOW, YOU ARE THE JUDGE OF THE CREDIBILITY  
10 OF THE WITNESSES. YOU ARE THE JUDGE OF THEIR BIAS. YOU  
11 ARE THE JUDGE OF THEIR CREDENTIALS. YOU ARE THE JUDGE  
12 OF THEIR TRUTHFULNESS AND THEIR CONSISTENCY.

13 AND HERE IS ANDY CANO ON THE WITNESS STAND,  
14 TELLING YOU THAT WHEN HE WAS TEN YEARS OLD, OVER THE  
15 SPACE OF A FEW MONTHS, HIS COUSIN ERIK IS TELLING HIM  
16 THINGS -- NOT GRAPHIC, DRAMATIC THINGS LIKE YOU WOULD  
17 EXPECT FROM A MADE-UP STORY. I MEAN, HE DIDN'T COME IN  
18 HERE AND SAY: "YES, ERIK TOLD ME THAT HIS FATHER WAS  
19 STICKING TACKS IN HIS BUTT, AND USING A KNIFE ON HIS  
20 THIGH, AND TYING UP HIS PENIS," AND ALL THE HORRIBLE  
21 STUFF THAT WAS GOING ON BETWEEN 13 AND 15.

22 NO. THIS WAS NOT THIS MADE-UP STORY. HE  
23 DIDN'T COME IN HERE WITH A HUGE AMOUNT OF DETAIL. HE  
24 CAME IN HERE AND TOLD YOU PRECISELY WHAT YOU WOULD  
25 EXPECT A MOLESTED CHILD TO SAY TO THE ONLY FRIEND ON  
26 EARTH THAT HE HAD, WHICH WAS ANDY CANO.

27 "IS THIS NORMAL, ANDY? DOES THIS HAPPEN TO  
28 YOU?"

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1 AND THE THINGS THAT ERIK MENENDEZ DESCRIBED

2 TO HIM WAS THE MOST MINOR ILLUSIONS OF SEXUAL

3 MOLESTATION.

4 NOW, IF THEY WERE GOING TO CONCOCT A STORY,

5 WHY NOT CONCOCT THE WHOLE BIG STORY? "YES, MY DAD IS

6 DOING THIS TO ME, AND MY DAD IS DOING THAT TO ME," AND

7 BLAH-BLAH-BLAH.

8 NO. WHAT ANDY SAYS IS PRECISELY THE THING

9 THAT CHILDREN GOING FROM CHILDHOOD TO ADOLESCENCE, WHO

10 ARE BEING MOLESTED, IS LIKELY TO SAY. BECAUSE REMEMBER,

11 FOR A CHILD, WHAT GOES ON INSIDE THEIR OWN FAMILY IS

12 WHAT GOES ON INSIDE FAMILIES. THAT'S NORMAL.

13 WHEN YOU GET OLDER AND YOU START GETTING

14 OUT IN SCHOOL, AND YOU START GETTING T.V., RADIO, YOU

15 START FIGURING OUT MAYBE THIS ISN'T NORMAL, WHAT'S GOING

16 ON HERE. I AM NOT SEEING IT REPRESENTED ANYWHERE IN THE

17 PUBLIC, YOU KNOW. I AM NOT HEARING PEOPLE TALK ABOUT

18 THIS ASPECT OF A PARENT/CHILD RELATIONSHIP."

19 AND WHEN YOU SCREW UP THE COURAGE -- EITHER

20 THAT, OR WHEN YOU'RE SO MISERABLE ABOUT WHAT'S GOING ON,

21 YOU DO THIS KIND OF EXPLORATORY QUESTIONING.

22 HE IS NOT ASKING ANDY CANO FOR ADVICE. HE

23 IS NOT ASKING ANDY CANO TO RESCUE HIM. HE IS A CHILD.

24 HE IS TRYING FIGURE OUT WHAT THE HECK IS GOING ON IN THE

25 WORLD. "WHAT IS GOING ON IN MY WORLD? WHAT IS MY

26 FATHER? WHAT IS HE, AND WHAT AM I?"

27 AND THAT'S ALL IT WAS. AND IF IT WAS A

28 MADE-UP STORY, THAT'S SUPPOSED TO CORROBORATE EVERY

1 DETAIL. IT WOULD HAVE BEEN A DETAILED STORY, BUT IT  
2 ISN'T.

3 WHAT ELSE DO THEY HAVE TO IMPEACH ANDY CANO  
4 WITH? NOTHING. DID HE TELL THE STORY ANY DIFFERENTLY  
5 WHEN HE TESTIFIED LAST TIME? THEY HAD THE TRANSCRIPT.

6 DID THEY IMPEACH HIM? NO. DID HE GIVE ANY  
7 STATEMENTS THAT WERE INCONSISTENT? THEY HAD THE  
8 STATEMENTS. DID THEY IMPEACH HIM? NO.

9 WHAT ELSE DOES HE REMEMBER? HE REMEMBERED  
10 THAT THERE WAS ALWAYS A JAR OF VASELINE IN ERIK  
11 MENENDEZ' BEDROOM. AND WHEN HE TRIED TO USE IT FOR AN  
12 INJURY HE HAD, ERIK SAID: "NO, IT'S NOT FOR THAT."  
13 ALWAYS A JAR OF VASELINE. AND IT'S STILL IN HIS BEDROOM  
14 IN BEVERLY HILLS. AND WE HAVE THE PHOTOGRAPHS TO PROVE  
15 IT, TAKEN COURTESY OF THE BEVERLY HILLS POLICE  
16 DEPARTMENT.

17 THAT'S WHAT ANDY CANO PROVED. AN  
18 ABSOLUTELY CORROBORATING WITNESS. IT DOESN'T DO ANY  
19 GOOD TO SAY IN THIS CASE: "OH, HE'S A RELATIVE OF THE  
20 DEFENDANT." HE IS A RELATIVE OF THE VICTIMS, TOO.  
21 THAT'S THE WAY IT IS. THE ONLY PEOPLE WHO KNOW ANYTHING  
22 AT ALL ABOUT THIS FAMILY THAT WE COULD PUT ON FOR YOU  
23 HERE, ARE RELATIVES.

24 AND HE HAS NO DISPUTE WITH JOSE MENENDEZ,  
25 HIS UNCLE. AND HE HAS NO DISPUTE WITH MARY LOUISE  
26 MENENDEZ, HIS AUNT. HE JUST HAPPENED TO BE THE ONE AND

27 ONLY PERSON THAT ERIK MENENDEZ COULD SAY ANYTHING TO.

28 AND HE SAID IT TO HIM.

-13763

1 NOW WHAT ELSE CORROBORATED MY CLIENT AND  
2 HIS TESTIMONY? THIS NOTION OF EMESHMENT EXPLAINS WHY HE  
3 SEES U.C.L.A. AS GOING AWAY TO SCHOOL. IN HIS LIFE,  
4 LIVING IN A DORM IS SEPARATION.

5 BUT DOES HE WANT TO BE COMPLETELY SEPARATED  
6 FROM THESE PARENTS? UNFORTUNATELY FOR HIM, NO. HE HAS  
7 GROWN UP IN THIS FAMILY WHERE THEY ARE EVERYTHING TO  
8 EACH OTHER. BAD THOUGH IT MAY BE, THAT'S IT. THEY'RE  
9 THE UNIVERSE. AND HE DOESN'T WANT TO GO FARTHER AWAY  
10 THAN THAT.

11 AND THAT'S WHAT HE TELLS ED FENNO. HE  
12 WOULD RATHER GO TO U.C.L.A. THAN BERKELEY, IF HE CAN'T  
13 GET INTO BROWN, WHERE HIS FRIEND IS GOING. AND WE DON'T  
14 KNOW WHAT HAPPENED TO THE BROWN APPLICATION, WHETHER HE  
15 WAS ACCEPTED OR NOT.

16 BUT THE FACT OF THE MATTER IS, THIS  
17 AMBIVALENCE, WANTING TO BE PART OF THEIR LIFE, BUT  
18 WANTING TO GET AWAY FROM THE ABUSE. IT'S NOT HARD TO  
19 UNDERSTAND WHAT DR. DIETZ TESTIFIED TO AS PERSONALITY  
20 TRAITS, AS HE CALLED THEM, AND SOME WERE AND SOME  
21 WEREN'T.

22 BUT I FOUND MOST INTERESTING -- MOST

23 INTERESTING OF ALL IS HIS CHARACTERIZING ERIK MENENDEZ  
24 AS SUGGESTIBLE AND COMPLIANT, AND THAT HE EXPLAINS IS  
25 WHY, WHEN HE -- AS I READ TO YOU WHEN I WAS GOING OVER  
26 THE MISCHARACTERIZATIONS THAT WERE GIVEN TO YOU BY  
27 MR. CONN IN HIS OPENING -- THAT IS WHY, WHEN HE SAID:  
28 "YEAH, IT WOULD BE BETTER IF WE KEEP OZIEL HAPPY, AND

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1 LET'S JUST TELL HIM THE TRUTH, LYLE."

2 THAT'S WHAT HE SAYS HE WANTS TO DO. IT'S  
3 EASY FOR LYLE MENENDEZ TO TALK HIM OUT OF IT AT THAT  
4 POINT BECAUSE HE IS SUGGESTIBLE, BECAUSE HE IS  
5 COMPLIANT. HE IS PASSIVE. HE'S LIVED HIS WHOLE LIFE  
6 WITH STRONGER PEOPLE TELLING HIM WHAT TO DO AND GOING  
7 ALONG WITH IT.

8 BUT HE'S EASY FOR OZIEL TO MANIPULATE, AND  
9 HE WILL TAKE HIS BROTHER'S ADVICE, BECAUSE HIS BROTHER  
10 IS THE ONLY PERSON IN THE WORLD THAT HE COULD EVER RELY  
11 ON FOR ANY HELP. SO HE ISN'T GOING TO CROSS HIM.  
12 AND I SUSPECT HE FEELS A TREMENDOUS GUILT FOR HAVING  
13 GOTTEN HIS BROTHER INVOLVED IN THIS MESS TO BEGIN WITH.

14 SO HE'S NOW GOING TO GO ALONG WITH WHAT HIS  
15 BROTHER NEEDS TO DO OUT OF HIS OWN SENSE OF GUILT, OUT  
16 OF LYLE MENENDEZ' SENSE OF GUILT, TO PROTECT THE  
17 REPUTATION, THE PUBLIC IMAGE, THE HONOR, AS JOSE  
18 MENENDEZ PORTRAYED IT TO HIS CHILDREN, OF THE FAMILY.

19           AND, OF COURSE, THE MOST SIGNIFICANT THING  
20 THAT WAS CORROBORATED IN THIS CASE -- AND HERE, TOO,  
21 CORROBORATED BY THE PROSECUTION WITNESS -- WAS THE FACT  
22 THAT HE DOES INDEED HAVE -- SUFFER FROM AN ANXIETY  
23 MENTAL DISORDER.

24           AND THIS IS -- YOU KNOW, THIS -- I MEAN, I  
25 WAS DELIGHTED WHEN DR. DIETZ TESTIFIED. WHY? BECAUSE  
26 IT IS SO EASY, AS MR. CONN WANTS TO SUGGEST, THAT  
27 DR. WILSON, WHO I KEPT UP HERE FOR SEVERAL DAYS, NOT AS  
28 FILLER, BUT SO THAT YOU COULD UNDERSTAND THE WHOLE ISSUE

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1 OF WHAT IS POST-TRAUMATIC STRESS DISORDER, WHAT IS ALL  
2 THIS RESEARCH THAT'S BEEN DONE IN THAT FIELD, AND IN THE  
3 FIELD OF STUDYING DIFFERENT POPULATION GROUPS OF  
4 BATTERED PEOPLE; WHETHER THEY'RE CHILDREN OR WOMEN OR  
5 ELDERLY OR ANYTHING ELSE, I CALL THEM PERSONS, AND HE  
6 CALLS THEM PERSONS, AND THE LAME ARGUMENT THAT ENSUED IS  
7 A JOKE.

8           BUT THE BOTTOM LINE IS, I WANTED YOU TO  
9 UNDERSTAND THAT DR. WILSON HAS AN ENORMOUS REPUTATION IN  
10 THE FIELD OF POST-TRAUMATIC STRESS DISORDER THAT HE  
11 ISN'T ABOUT TO PUT ON THE LINE BY LYING IN A HIGH  
12 VISIBILITY CRIMINAL CASE. HE ISN'T GOING TO RUIN HIS  
13 REPUTATION BY MAKING SOMETHING UP FOR ERIK MENENDEZ FOR  
14 \$13,000. THAT'S RIDICULOUS.

15 SO HE CAME HERE TO EXPLAIN TO YOU WHAT WE  
16 KIND OF ALL SORT OF KNOW, AND I'LL GET BACK TO LATER,  
17 WHICH IS WHEN YOU'RE FRIGHTENED AND YOU'RE RUSHED,  
18 YOU'RE NOT THINKING THE SAME WAY AS WHEN YOU'RE NOT  
19 FRIGHTENED AND YOU'RE NOT RUSHED. THAT'S THE THRESHOLD.  
20 THAT'S WHERE WE BEGIN.

21 AND DR. DIETZ SAID EXACTLY THE SAME THING.  
22 EXACTLY THE SAME THING. AND OF COURSE HE WOULD. THAT'S  
23 COMMON SENSE. OKAY.

24 BUT MORE IMPORTANTLY, THEY ROLL IN THE \$400  
25 AN HOUR PSYCHIATRIST. YOU KNOW, I DON'T CARE IF THEY  
26 WANTED TO PAY HIM \$400 AN HOUR. I JUST WISH IT WASN'T  
27 COMING OUT OF MY POCKET FOR WHAT HE GAVE THEM IN RETURN.  
28 AND HE COULD HAVE SAID ONE OF TWO THINGS; ONE OF TWO

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1 THINGS THAT YOU TYPICALLY GET FROM PROSECUTION  
2 PSYCHIATRISTS AFTER YOU'VE PUT ON A MENTAL STATE  
3 DEFENSE.

4 HE COULD HAVE SAID: "AIN'T NOTHING WRONG  
5 WITH HIM. NO MENTAL DISORDER."

6 THAT'S A BLOW TO THE DEFENSE. NOW, WHETHER  
7 YOU BELIEVE IT OR NOT IS ANOTHER STORY, BUT HE COULD  
8 HAVE SAID THAT. WHY NOT?

9 OR HE COULD HAVE DROPPED THE POISON PILL.  
10 WHAT'S THE POISON PILL? ANTISOCIAL PERSONALITY

11 DISORDER. DR. WILSON, HE DESCRIBED WHAT THAT IS.

12 BECAUSE YOU HAVE TO ELIMINATE THAT AS A POSSIBILITY IF

13 YOU DIAGNOSE POST-TRAUMATIC STRESS DISORDER.

14 ANTISOCIAL PERSONALITY DISORDER IS THE WAY

15 THE PSYCHIATRISTS CALL A CRIMINAL.

16 MR. CONN: OBJECTION. THERE'S NO EVIDENCE OF

17 THIS BEFORE THIS JURY.

18 MS. ABRAMSON: YES, THERE IS.

19 THE COURT: OKAY. REGARDING THE PHRASE

20 ANTISOCIAL PERSONALITY DISORDER, THAT WAS REFERRED TO TO

21 SOME EXTENT IN DR. WILSON'S TESTIMONY. BUT THIS ASPECT

22 OF CRIMINAL I DON'T BELIEVE WAS. PERHAPS THAT GOES

23 BEYOND THE REALM.

24 MS. ABRAMSON: WELL, I DON'T THINK SO, YOUR

25 HONOR. IT TALKS ABOUT SOMEONE WHO --

26 THE COURT: OKAY. BUT THE ACTUAL PHRASE I DON'T

27 RECALL BEING USED.

28 BUT YOU MAY CONTINUE YOUR ARGUMENT.

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1 MS. ABRAMSON: OKAY. THANK YOU. THANK YOU.

2 THAT IS WHAT YOU DESCRIBE THE PERSON WHO

3 LIVES A LAWLESS LIFE, HAS NO CONSCIENCE, IS PITILESS,

4 HAS NO REMORSE, EXPLOITS OTHER PEOPLE. THAT'S THE BASIC

5 CRIMINAL. THAT'S THE COLD-BLOODED KILLER THAT MR. CONN

6 CLAIMS ERIK MENENDEZ IS.



7           AND HERE WAS DR. DIETZ, THE BIG GUN. HE IS  
8 THE 16-INCHER, FOLKS. THE BIG GUN. THE WITNESS FOR THE  
9 PROSECUTION.

10           OUT OF 21 OF HIS NOTABLE CASES, AND HE  
11 PROMOTES HIMSELF CLEARLY THE WAY HE WRITES HIS C.V., HE  
12 PROMOTES HIMSELF AS THIS BIG PROSECUTION EXPERT, BECAUSE  
13 HE LISTS 21 CASES. NINETEEN OF THEM WERE FOR THE  
14 PROSECUTION. THAT'S WHO HE IS CATERING TO, IF YOU WILL.  
15 THAT'S WHERE HIS SYMPATHIES LIE, IF YOU WILL. SO THAT'S  
16 WHO THEY ROLL IN, DR. DIETZ.

17           AND WHAT DOES HE SAY? HE DOESN'T SAY  
18 ANTISOCIAL PERSONALITY, BECAUSE HE ISN'T. AND DR. DIETZ  
19 IS HONEST ABOUT IT. AND HE DOESN'T SAY THERE IS NOTHING  
20 WRONG WITH HIM, BECAUSE THERE IS, AND HE IS HONEST ABOUT  
21 IT.

22           AND WHAT HE SAYS IS WRONG WITH HIM IS THE  
23 MIRROR IMAGE OF POST-TRAUMATIC STRESS DISORDER, AND  
24 CLEARLY, THE ONLY -- HE DID NOT SAY ERIK MENENDEZ DOES  
25 NOT SUFFER FROM POST-TRAUMATIC STRESS DISORDER. HE DID  
26 NOT SAY THERE IS NO STRESSOR HERE. HE ABSTAINED. "I  
27 DON'T THINK I SHOULD GIVE THAT OPINION. THAT'S FOR THE  
28 JURY TO DECIDE."

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1           WELL, GREAT. FINE. THANK YOU, DR. DIETZ.  
2 WHAT DOES THAT TELL US? I MEAN, HE ADMITTED FORENSIC

3 PSYCHIATRISTS, JUST AS GOOD AS HE IS -- MAYBE THEY  
4 CHARGE LESS, BUT THEY'RE JUST AS GOOD AS HE IS -- MAKE  
5 THE DIAGNOSIS OF POST-TRAUMATIC STRESS DISORDER WHEN  
6 IT'S THERE ALL THE TIME.

7 DR. VICARY, WHO IS EXTRAORDINARILY THOROUGH  
8 WHEN HE MAKES AN EVALUATION, YOU DO WHAT THE CASE  
9 REQUIRES. HE WILL NOT MAKE AN EVALUATION JUST BASED ON  
10 WHAT THE PATIENT TELLS HIM. HE WANTS RECORDS, AND HE  
11 WILL READ THEM; WHEREAS DR. DIETZ, HE DOESN'T WANT TO  
12 LOOK AT THE RECORDS. GOD, WHAT'S HE GOING TO SEE THAT'S  
13 GOING TO MAKE HIM TOTALLY USELESS FOR THE PROSECUTION?

14 THAT'S WHY HE DOESN'T READ ALL THAT STUFF  
15 HE GAVE HIM. IT'S NOT BECAUSE HE DIDN'T NEED IT. IT'S  
16 BECAUSE, GOD FORBID, IF HE SAW SOMETHING, TRY TO COME UP  
17 WITH THAT OPINION, TRY TO IGNORE THOSE RECORDS. THEN I  
18 CAN PUT ALL OF THAT INFORMATION IN FRONT OF HIM IN FRONT  
19 OF YOU. SO HE DOESN'T WANT TO READ THEM. STAYS AWAY  
20 FROM IT. BUT WHAT DOES HE WIND UP WITH?

21 HE WINDS UP VALIDATING WHAT WE'VE BEEN  
22 TELLING YOU; THAT MY CLIENT IS NOT A COLD-BLOODED  
23 KILLER. HE WAS A FRIGHTENED, ANXIOUS, TRAUMATIZED  
24 18-YEAR-OLD, IMMATURE BECAUSE OF THE WAY HE WAS RAISED.

25 AND DIETZ, IF HE HAD BEEN DISHONEST RATHER  
26 THAN JUST RELUCTANT, COULD HAVE SAID ANYTHING HE WANTED  
27 TO SAY TO SUPPORT THE PROSECUTION THEORY. HE DIDN'T DO  
28 IT. I DON'T UNDERSTAND TO THIS DAY WHY THEY CALLED HIM

1 AS A WITNESS.

2 I HAD ACTUALLY BEEN NERVOUS ABOUT HIM  
3 BEFORE HE TOOK THE WITNESS STAND. WASN'T BY THE TIME IT  
4 WAS OVER.

5 WHAT DID THEY FINALLY GET FROM DR. DIETZ?  
6 VIRTUALLY NOTHING. AND WHEN WE TALK ABOUT THE ACTUAL  
7 MENTAL STATE AT THE TIME OF THE SHOOTINGS HERE -- I WILL  
8 GET BACK TO THIS IN SOME DETAIL -- BUT ALL HE GAVE  
9 THEM -- AND JUST A LAWYER TRICK: "DR. DIETZ, IS DOING  
10 THIS THIS IS AND THIS AND THIS CONSISTENT OR  
11 INCONSISTENT WITH REFLECTIVE THOUGHT?"

12 "CONSISTENT" -- OR INCONSISTENT, AS THE  
13 CASE MAY BE.

14 WELL, WHAT DID HE MEAN? WHAT DID HE MEAN  
15 BY REFLECTIVE THOUGHT? DIDN'T TELL YOU. WASN'T ASKED.  
16 "WHAT IS REFLECTIVE ABOUT RUNNING TO YOUR CAR,  
17 DR. DIETZ?"

18 WASN'T ASKED. DIDN'T TELL YOU. MR. CONN,  
19 WHO WENT NUTS WITH DR. WILSON, AN ENTIRE DAY OF  
20 CROSS-EXAMINATION OVER WHETHER OR NOT THE LITERATURE  
21 USES THE PHRASE BATTERED-PERSON'S SYNDROME PER SE, VERY  
22 CONCERNED ABOUT LABELS, DOES NOT SEEK AT ALL TO EXPLAIN  
23 THIS WORD THAT DR. DIETZ IS USING.

24 WHAT DOES HE MEAN BY REFLECTIVE THOUGHT?  
25 HE DIDN'T TELL YOU. THAT WAS JUST A TRICK. SAY THE  
26 MAGIC WORD. BUT I HAVE NO IDEA WHAT HE MEANT BY IT. I  
27 CERTAINLY KNOW WHAT DR. WILSON MEANT BY IT, BECAUSE HE

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1 THIS MINUTE AND-A-HALF TO TWO MINUTE JOURNEY. IT'S WHAT  
2 ALL OF THIS IS ABOUT, A MINUTE AND-A-HALF TO TWO  
3 MINUTES, FROM CLOSING THE DEN DOORS. IT'S ALL OVER. A  
4 MINUTE AND-A-HALF TO TWO MINUTES IS WHAT ALL THIS  
5 LITIGATION HAS BEEN ABOUT. OKAY. TERRIBLE THINGS  
6 HAPPEN IN A MINUTE AND-A-HALF TO TWO MINUTES. AND  
7 THAT'S WHAT WE'RE FOCUSED ON.

8 BUT DR. WILSON TOLD YOU WHAT HE MEANT BY  
9 REFLECTIVE THOUGHT. AND DR. VICARY TOLD YOU WHAT HE  
10 MEANT BY REFLECTIVE THOUGHT. AND I READ THE STATEMENT  
11 FROM DR. DIETZ WHICH REFERS AT ONE POINT TO RICHARD  
12 RESTAK -- SOME DOCTOR, RICHARD RESTAK, CONCERNING WHAT  
13 IS REFLECTIVE THOUGHT.

14 AND THEN I READ WITH DR. VICARY WHAT THE  
15 GREAT DR. RESTAK SAYS. WHEN YOU ARE TERRORIZED, THE  
16 BRAIN BYPASSES THINKING, GOES RIGHT TO THE PRIMITIVE  
17 PARTS OF THE INSTINCTIVE RESPONSE, AND BOOM. WHEN YOU  
18 ARE TERRORIZED, THAT'S THE PART OF YOU THAT'S REACTING.  
19 NOT THE CORTEX, WHERE THE THINKING IS GOING ON.

20 THAT'S THE ONE THEY WERE RELYING ON THROUGH  
21 DR. DIETZ, DR. RESTAK.

22 YOUR HONOR, COULD WE TAKE A BREAK?

23 THE COURT: OKAY. WE WILL TAKE A RECESS. WE'VE

24 BEEN GOING FOR ABOUT 55 MINUTES. WE WILL RESUME IN 15  
25 MINUTES, AT 10:30.  
26 DON'T DISCUSS THE MATTER WITH ANYONE.  
27 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME  
28 AT 10:30.

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1 (A RECESS WAS TAKEN FROM  
2 10:15 A.M. UNTIL 10:30 A.M.)

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1 THE COURT: OKAY. EVERYONE IS PRESENT.  
2 GET THE JURY IN, PLEASE.  
3 (THE JURY ENTERED THE COURTROOM  
4 AND THE FOLLOWING PROCEEDINGS  
5 WERE HELD:)

6

7 THE COURT: THE JURY IS BACK.

8 YOU MAY CONTINUE YOUR ARGUMENT.

9 MS. ABRAMSON: THANK YOU, YOUR HONOR.

10 I HAVE A CHECK LIST OF EVIDENCE HERE

11 THAT ERIK MENENDEZ TESTIFIED TO THAT WAS

12 CORROBORATED FROM OTHER SOURCES, AND I'M GOING TO GO

13 DOWN IT PRETTY QUICKLY, BECAUSE I HAVE A WHOLE OTHER

14 SECTION ABOUT HIS CREDIBILITY.

15 YOU'RE GOING TO GET TIRED OF HEARING

16 THIS STUFF OVER AND OVER. YOU'RE GOING TO GO TO

17 SLEEP ON ME OR SOMETHING LIKE THAT.

18 OKAY. HE TESTIFIED TO THE FACT THAT HIS

19 FATHER TREATED HIM BRUTALLY IN MANY WAYS, VERBALLY

20 AND PHYSICALLY, AND THAT WAS CORROBORATED BY SOURCES

21 THAT WERE ACCEPTED, ACCEPTED BY DR. WILSON AND

22 DR. DIETZ.

23 HE WAS CORROBORATED IN HIS DESCRIPTION

24 OF HIS MOTHER AS BEING BASICALLY COLD AND HOSTILE

25 AND NON-PROTECTIVE OF HIM, CORROBORATED BY ALAN, BY

26 DIANE, AND ALL THE SOURCES THAT WERE ACCEPTED, BY

27 DR. WILSON AND DR. DIETZ.

28 HE WAS CORROBORATED IN TALKING ABOUT HIS

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1 PARENTS' SECRECY, THEIR CONCERN FOR IMAGE. THIS WAS

2 CORROBORATED BY ALAN, DIANE, MARTA CANO, BY JOAN

3 VANDERMOLLEN, MARY LOUISE MENENDEZ' SISTER, WHO'S

4 SITTING IN THE COURTROOM NOW.

5 HE HAVE CORROBORATED -- BESIDES WITH THE

6 PICTURES THAT WE'VE TALKED ABOUT, THE PHOTOGRAPHS,

7 HE WAS CORROBORATED IN THE ISSUE OF HIS FATHER'S

8 SEXUAL PERVERSION AND HIS MOTHER'S KNOWLEDGE OF IT

9 BY THE MATERIAL THAT MARY DOMINGUEZ SAW IN THE

10 HOUSE.

11           NOW, THE PROSECUTION TRIED -- I THINK IT  
12 WAS MS. NAJERA WHO WAS EXAMINING MARY DOMINGUEZ --  
13 TRIED TO MAKE IT EVERYBODY ELSE'S MAGAZINES, THE  
14 WORKMEN, MARK SLOTKIN'S. OF COURSE, MARK SLOTKIN  
15 WAS ON THE WITNESS STAND, AND WE KNOW MARY DOMINGUEZ  
16 TESTIFIED IN THE LAST TRIAL, BECAUSE MATERIAL FROM  
17 THAT TRIAL WAS PRESENTED TO HER.

18           THEY DIDN'T ASK MARK SLOTKIN, BY THE  
19 WAY, MR. SLOTKIN, DID YOU LEAVE BEHIND SOME BOXES  
20 FULL OF HOMOSEXUAL PORNOGRAPHIC MAGAZINES? THEY  
21 DIDN'T ASK HIM THAT BECAUSE IT DIDN'T HAPPEN. MARY  
22 DOMINGUEZ MOVED ALL OF HIS STUFF OUT WITH HER SISTER  
23 AND OTHERS, AND THEN IT WAS ALL GONE, ALL OF HIS  
24 BOXES, ALL OF HIS MATERIAL, AND THE MENENDEZES' WERE  
25 MOVING IN. AND THAT'S WHEN SHE SAW THESE STRANGE  
26 MAGAZINES, IN THE MASTER BEDROOM AND IN THE FATHER'S  
27 STUDY DOWNSTAIRS, PERIOD.

28           IT'S NOT A HUGE FACT, BUT WHEN YOU'RE

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1 TRYING TO PROVE SEXUAL MOLESTATION, AS YOU KNOW,  
2 IT'S VERY DIFFICULT. A LITTLE FACT, AND THIS IS A  
3 WITNESS WHO'S NOT RELATED TO EITHER ERIK OR LYLE  
4 MENENDEZ OR TO THEIR PARENTS.

5           THE FACT THAT HE HAD THESE NIGHTMARES,

6 WHICH HAS BEEN AN IMPORTANT ASPECT IN DR. WILSON'S  
7 ANALYSIS OF POST-TRAUMATIC STRESS DISORDER. HE  
8 TALKED ABOUT THE FACT THAT WHAT DISTINGUISHES  
9 POST-TRAUMATIC STRESS DISORDER FROM THIS GENERAL  
10 ANXIETY DISORDER, THAT DR. DIETZ WOULD RATHER TALK  
11 ABOUT, IS REEXPERIENCING THE TRAUMA. AND YOU DON'T  
12 HAVE TO REEXPERIENCE IT IN YOUR WAKING LIFE.

13 WE ALL SORT OF HEARD ABOUT -- PARTICULARLY  
14 WHEN THE INFORMATION ABOUT POST-TRAUMATIC STRESS  
15 DISORDER STARTED TO BE PUBLICIZED -- CONCERNING THE  
16 VETERANS OF THE VIETNAM WAR, THAT WE HEARD ABOUT  
17 THINGS LIKE FLASHBACKS. AND TO SOME EXTENT,  
18 DR. WILSON TALKED ABOUT THAT.

19 YOU KNOW, YOU'RE WALKING DOWN THE STREET  
20 AND A HELICOPTER GOES ABOVE. IT'S LIKE "APOCALYPSE  
21 NOW," (UNREPORTABLE SOUND) AND BINGO. SOME OF THESE  
22 MEN AND WOMEN WHO FOUGHT IN THAT WAR, WHO WERE IN  
23 THAT WAR, REEXPERIENCE THE WAR EXPERIENCE RIGHT THEN  
24 AND THERE IN THEIR WAKING LIFE. IT DOESN'T HAVE TO  
25 BE THAT WAY.

26 REEXPERIENCE THROUGH NIGHTMARES IS ALSO  
27 A WAY, TYPICALLY, THAT PEOPLE WITH POST-TRAUMATIC  
28 STRESS DISORDER MANIFEST THAT SYMPTOM OF



1 REEXPERIENCING. AND DR. WILSON DESCRIBED THAT THE  
2 NIGHTMARES THAT ERIK MENENDEZ HAS BEEN TALKING ABOUT  
3 SINCE 1990 -- AND BECAUSE THE SOURCE OF THAT WAS  
4 ALSO DR. VICARY'S NOTES, THE WRITTEN SOURCE OF  
5 THAT -- ARE NIGHTMARES ABOUT THE TRAUMA.

6       THEY FEATURE HIS FATHER, THIS GREEN  
7 MASK, AND ERIK MENENDEZ DESCRIBED THEM TO YOU. THAT  
8 WAS HIS WAY OF REEXPERIENCING. AND HIS COUSIN,  
9 DIANE, CORROBORATED THAT HE HAD THIS TERRIBLE FEAR  
10 OF THESE NIGHTMARES HAVING TO DO WITH THIS GREEN  
11 MASK.

12       HE TOLD YOU HOW HIS PARENTS CHOSE TO  
13 DEAL WITH THESE NIGHTMARES, WHICH WAS TO TERRIFY HIM  
14 WITH THE GREEN MASK IN THE CLOSET. THE DOOR OPENS.  
15 MASK FALLS OUT. CHILD IS TERRIFIED. FATHER IS  
16 LAUGHING. WHAT DOES THAT TELL YOU? AND DIANE  
17 CORROBORATED THAT HE WAS FEARFUL OF GOING TO SLEEP  
18 AT NIGHT, THAT HE NEEDED THE ROOM TO BE SEARCHED TO  
19 SEE IF MONSTERS WERE THERE, THINGS OF THAT NATURE.

20       LOTS OF KIDS HAVE NIGHTMARES, YES, I  
21 KNOW. BUT THEY DON'T GO ON HAVING THEM ALL THE WAY  
22 FROM 18 THROUGH 25, WHEN YOU'VE BEEN IN JAIL FOR SIX  
23 YEARS, AND HE STILL HAS THEM. THAT IS A SYMPTOM OF  
24 POST-TRAUMATIC STRESS DISORDER. THAT IS NOT A  
25 SYMPTOM OF NORMAL CHILDHOOD NIGHTMARES.

26       IN THE EXISTENCE OF THIS TRAUMA, BY THE  
27 PERMANENCY OF IT, BY THE FACT THAT NOW, EVEN SIX  
28 YEARS LATER, HAVING BEEN IN JAIL ALL THIS TIME,

1 HAVING BEEN TENDED TO BY BOTH DR. VICARY AND THE  
2 CHIEF JAIL PSYCHIATRIST, DR. KUNZMAN, HE IS STILL ON  
3 THIS HIGH DOSAGE OF ALL THESE MEDICATIONS, A HUNDRED  
4 MILLIGRAMS OF PAMELOR. A HUNDRED AND FIFTY  
5 MILLIGRAMS IS A HIGH DOSAGE, 50 MILLIGRAMS IS A LOW  
6 DOSAGE, AND HE IS ON A MODERATE DOSAGE TODAY; PLUS  
7 TWO OTHER MEDICATIONS FOR ANXIETY AND DEPRESSION.  
8 IT'S NOT TRUE THAT EVERYBODY IN JAIL IS DEPRESSED,  
9 AND THEREFORE, THEY ALL NEED SOME KIND OF  
10 MEDICATION. HE'S BEEN IN JAIL SIX YEARS. HE'S USED  
11 TO IT BY NOW, SAD TO SAY.

12 BUT THE FACT HE IS STILL MEDICATED DAY  
13 AND NIGHT TELLS YOU HOW SEVERE HIS MENTAL DISORDER  
14 WAS. AND EVEN DR. DIETZ CONFIRMS HE IS GETTING  
15 BETTER. IT'S A SIGN OF HIS EMERGING HEALTH, THAT  
16 WHEN DR. DIETZ GAVE HIM A VERBAL PUNCH, HE COULD  
17 EXPRESS THE FACT THAT IT HURT 'EM; WHEREAS, WITH HIS  
18 FATHER, YOU JUST TAKE IT. YOU JUST BECOME PASSIVE.

19 WHAT'S FASCINATING ABOUT THAT, OF  
20 COURSE, IS THE EXACT SAME THING YOU SAW ON THE  
21 WITNESS STAND. HE DOES NOT GET ANGRY. HE DOES NOT  
22 FIGHT BACK. MR. CONN SNEERED AND SMIRKED AND  
23 LAUGHED AT HIM, AND QUESTIONED HIM. AND WAS ONE

24 AFTERNOON I WILL NEVER FORGET. HE STOOD HERE AND HE  
25 SCREAMED AT HIM FOR 45 MINUTES, EVERY QUESTION WAS A  
26 SHOUT. EVERY ANSWER THERE WAS A SNEER, 45 MINUTES.  
27 AND ERIK MENENDEZ DID NOT GET ANGRY.  
28 TO ME, THE PROOF -- TO ME, THE PROOF OF

51787

1 HIS ABUSE IS THE WAY HE TAKES ABUSE AND HAS BEEN  
2 TAKING ABUSE ALL THESE YEARS; THAT HE SITS THERE  
3 WHILE, YOU KNOW, THIS LAWYER, THIS LAWYER SKILLED AT  
4 CROSS-EXAMINATION POUNDS AND POUNDS AND POUNDS AND  
5 POUNDS, AND HE NEVER LOSES HIS TEMPER, BECAUSE WHEN  
6 HE GREW UP YOU COULD NOT SHOW ANGER IN THAT FAMILY  
7 OR IT WAS THE END. ANGER WAS NOT ACCEPTABLE. ANGER  
8 WAS NEVER SHOWN BY THE CHILDREN. FEAR IS THE ONLY  
9 EMOTION THAT WAS AN ACCEPTABLE EMOTION IN THAT  
10 FAMILY. THAT'S WHAT THE PARENTS WANTED. THAT'S HOW  
11 THEY CONTROLLED THEIR CHILDREN, THROUGH FEAR AND  
12 TERROR AND THREATS AND INTIMIDATION. FEAR WAS  
13 OKAY. ANYTHING ELSE WAS VERBOTEN.

14 DO NOT CRY. DO NOT BE SENSITIVE. DO  
15 NOT HAVE FEELINGS. AND DON'T YOU DARE BE ANGRY.  
16 AND HE DOESN'T HAVE IT. HE DOESN'T HAVE THE ANGER.  
17 HE STILL HAS TEARS. HE ALWAYS HAD THE TEARS. AT  
18 FIFTEEN AND A HALF HE'S CRYING IN CLASS.

19 THIS IS NORMAL, FOLKS? THIS ISN'T A KID  
20 WHO'S WORRIED. THIS ISN'T A KID WHO'S NERVOUS.  
21 FIFTEEN AND A HALF, CRYING IN FRONT OF YOUR PEERS IS  
22 A KID WHO'S TERRIFIED, TERRIFIED, POST-TRAUMATIC STRESS  
23 DISORDER TERRIFIED. NOT NERVOUS. NOT UPTIGHT. NOT  
24 JUMPY. MUCH, MUCH WORSE THAN THAT. A 15-AND-A-HALF-  
25 YEAR-OLD BOY WOULD NOT LET THAT HAPPEN UNLESS HE  
26 COULD NOT CONTROL IT. YOU CANNOT CONTROL TERROR.  
27 NOBODY CAN. WE'RE NOT WIRED THAT WAY. IT GETS US,  
28 PERIOD.

51788

1 AND THE LAW RECOGNIZES THAT -- WHEN WE  
2 TALK ABOUT THE LAW, I'M GOING TO SHOW YOU HOW THE  
3 STATUTORY DEFINITION OF MANSLAUGHTER -- NOT  
4 SOMETHING CREATED IN COURTS -- CREATED IN THE  
5 STATUTE, CLASSICAL STATUTORY MANSLAUGHTER,  
6 ACKNOWLEDGES THAT EMOTION INTERFERES WITH REASON,  
7 JUST EMOTION INTERFERES WITH REASON. TERROR, I  
8 SUBMIT TO YOU, MAKES IT IMPOSSIBLE TO FORM ANY OF  
9 THE MENTAL STATES FOR MURDER.  
10 SO I WILL TELL YOU NOW, I'M GOING BACK  
11 ON MY WORD TO YOU IN MY OPENING STATEMENT. IN MY  
12 OPENING STATEMENT I TOLD YOU I'D BE ASKING FOR  
13 MANSLAUGHTER. I AM NOT ASKING FOR MANSLAUGHTER, NOT

14 WITH RESPECT TO MRS. MENENDEZ. I AM ASKING FOR NOT  
15 GUILTY. SHOCK. HORROR. AND I WILL EXPLAIN TO YOU  
16 WHY.

17       THERE IS NO NONSTATUTORY MANSLAUGHTER.  
18 WHEN THE LACK OF INTENT TO COMMIT THE CRIME IS DUE  
19 TO A MENTAL DISORDER, THE ONLY OPTION YOU HAVE, IF  
20 YOU FIND THAT MENTAL DISORDER AND YOU FIND THAT IT  
21 KEPT THE PERSON FROM FORMING THE MENTAL STATE FOR  
22 MURDER, IS ACQUITTAL. THAT'S HOW THE LAW IS  
23 STRUCTURED NOW IN CALIFORNIA; AND, THEREFORE, IF HE  
24 DIDN'T HAVE THE MENTAL STATE FOR MURDER, HE IS  
25 ENTITLED TO AN ACQUITTAL ON THE COUNT INVOLVING HIS  
26 MOTHER.

27       NOW, THERE IS A MANSLAUGHTER  
28 INSTRUCTION -- THIS IS ALL COMPLICATED, BUT YOU'LL

51789

1 SEE THEM ALL --

2       WITH RESPECT TO HIS FATHER -- AND I WILL  
3 ARGUE TO YOU THAT HE'S ENTITLED TO AN ACQUITTAL FOR  
4 HIS FATHER TOO. BUT THERE IS A MANSLAUGHTER OPTION  
5 FOR HIS FATHER. AND THAT HAS TO DO WITH THE MENTAL  
6 DISORDER, THE MENTAL STATE ASPECT OF OUR DEFENSE,  
7 COMPLETELY SEPARATE AND APART FROM WHAT'S KNOWN AS A  
8 PROVOCATION THEORY.

9           AND I HAVE A CHART I'LL SHOW YOU LATER,  
10 A TYPICAL -- MY VERSION. MR. CONN'S IS YOU SHOOT A  
11 RIFLE OUT A WINDOW, WHICH IS HOW HE TRIED TO EXPLAIN  
12 THESE INCREDIBLY SOPHISTICATED CONCEPTS ABOUT  
13 MURDER. I HAVE A CHART OF HYPOTHETICALS TO USE.

14           IN ANY EVENT, THE PERMANENCY OF ERIK  
15 MENENDEZ' SYMPTOMS INDICATES THE SEVERITY OF HIS  
16 TRAUMA. AND THAT IS CORROBORATED BY DR. WILSON, BY  
17 DR. DIETZ WHO KNOWS -- HE CAN SEE RIGHT NOW WITH THIS  
18 HEAVILY MEDICATED PERSON, THAT HE HAS ANXIETY  
19 DISORDER SYMPTOMS. AND HE ACKNOWLEDGED THE  
20 MEDICATION IS MASKING THE SYMPTOMS. WITHOUT THE  
21 MEDICATION, IT'S GOING TO BE MUCH MORE FLORID. HE  
22 WASN'T ON MEDICATION IN AUGUST OF 1989. IT WAS  
23 FULL BLOWN.

24           ERIK MENENDEZ WAS CORRECT WHEN HE SAID  
25 THAT HIS MOTHER BLAMED HIM FOR ALL OF HER PROBLEMS,  
26 THIS BASIC UNNURTURING, UNSUPPORTIVE ATTITUDE  
27 TOWARDS HIM; AND, OF COURSE, BLAMED HIM THURSDAY  
28 NIGHT, BLAMED HIM SATURDAY NIGHT, BLAMED LYLE

51790

1 MENENDEZ SUNDAY NIGHT FOR THIS UNRAVELING CRISIS,  
2 AND HE WAS CORROBORATED IN THAT BY THE TESTIMONY OF  
3 HIS COUSINS, ALAN AND DIANE VANDERMOLLEN.

4 HE WAS ALSO CORROBORATED WHEN HE  
5 DESCRIBES THE WAY HIS MOTHER TREATED HIM. HE  
6 DESCRIBED AT ONE POINT SHE WAS LOSING THEM IN THE  
7 MALL. SHE WOULDN'T COME GET THEM. THAT SHE WAS A  
8 DISTANT, UNPROTECTIVE MOTHER.

9 DR. DIETZ PROVIDES CORROBORATION FOR  
10 THAT. HE DESCRIBED HIM AS HAVING ABANDONMENT  
11 CONCERNS. AND WHEN I WENT OVER WITH DR. DIETZ THE  
12 EVIDENCE IN THE MATERIALS, THAT HE FINALLY GOT  
13 AROUND TO READING, ABOUT ERIK MENENDEZ BEING  
14 ABANDONED IN A CEMETERY BY HIS FATHER SO HE WOULD BE  
15 FRIGHTENED, AT FIVE, BEING ABANDONED IN THESE  
16 SHOPPING MALLS WHEN HE WAS A LITTLE GUY, THIS  
17 NEGLECTFUL RAISING BY HIS MOTHER, HE CONFIRMED, BY  
18 TALKING ABOUT THE FACT THAT HE DIAGNOSED ONE OF HIS  
19 PERSONALITY TRAITS AS HAVING ABANDONMENT CONCERNS,  
20 THAT THIS STUFF HAPPENED.

21 NOW, WE SPENT AN AWFUL LOT OF TIME IN  
22 THIS TRIAL WITH DR. WILSON AND WITH DR. DIETZ  
23 TALKING ABOUT THE EXPERIENCES OF PEOPLE IN DOMESTIC  
24 VIOLENCE SITUATIONS. THE LABELING DISPUTE ASIDE,  
25 WHETHER YOU WANT TO CALL IT BATTERED-PERSON'S  
26 SYNDROME OR NOT, DOESN'T MATTER. THE FACT REMAINS,  
27 THAT PEOPLE IN THESE KINDS OF DOMESTIC VIOLENCE  
28 SITUATIONS, THE VICTIMS OF THEM, DEVELOP SIMILAR

1 PSYCHOLOGICAL PROFILES, PERIOD. THAT'S ALL THAT  
2 MATTERS. THE POINT OF PUTTING THAT ON IS SO YOU  
3 WOULDN'T THINK ERIK MENENDEZ IS UNIQUE IN HIS  
4 INABILITY TO FIGURE OUT WAYS TO GET OUT OF THIS  
5 FAMILY.

6       AND IT IS UNCONTROVERTED, THAT CONTRARY  
7 TO WHAT WE MIGHT THINK -- WHAT'S KNOWN AS A COMMON  
8 MISPERCEPTION -- WE MIGHT THINK IF YOU'RE ABUSED YOU  
9 LEAVE. IF SOMETHING BAD IS HAPPENING, YOU WALK AWAY  
10 FROM IT. YOU AND I WOULD WALK AWAY. WE'RE HEALTHY  
11 FIGHTERS. WE COULD TAKE CARE OF OURSELVES. NO ONE  
12 WOULD EVER THINK I WOULD STAY IN AN ABUSIVE  
13 RELATIONSHIP. I MIGHT BE AN ABUSER. NO. I CAN  
14 FIGHT FOR MYSELF. I WASN'T RAISED THAT WAY. I WAS  
15 RAISED AND ENCOURAGED TO BE INDEPENDENT AND TO FIGHT  
16 BACK. I DIDN'T HAVE OPPRESSIVE PARENTS.

17       BUT OKAY, HERE'S ALL THIS MOUNTAIN OF  
18 RESEARCH THAT'S BEEN GOING ON CONCERNING BATTERED  
19 WOMEN AND BATTERED CHILDREN AND ALL OF THIS STUFF.  
20 IT TELLS US THAT OUR GUT INSTINCT, IF YOU'RE ABUSED  
21 YOU'D LEAVE, IS ABSOLUTELY NOT TRUE. WHETHER IT'S  
22 BECAUSE OF PSYCHOLOGICAL DEPENDENCY, WHICH IS WHAT  
23 LEARNED HELPLESSNESS MEANS -- I'M SURE YOU'RE TIRED  
24 OF HEARING ABOUT THAT, BECAUSE I'M SURE SICK OF  
25 WRITING "L.H." IN MY NOTES. THAT'S WHAT IT MEANS.

26       YOU DEVELOP A PSYCHOLOGICAL DEPENDENCY,  
27 PSYCHOLOGICAL HELPLESSNESS, BECAUSE YOU GIVE UP.



51792

1 YOUR NEEDS DEALT WITH, YOUR WISHES HEARD, YOUR WAY,  
2 YOUR SELF TO YOUR SELF, YOU GIVE UP. RATS DO IT,  
3 DOGS DO IT, PEOPLE DO IT. THAT'S THE POINT.

4       DESPITE ALL THAT LITIGATION -- AND  
5 DR. DIETZ DOESN'T LIKE THE LEARNED HELPLESSNESS  
6 CONSTRUCT. HE'S A DOCTOR. HE'S A PSYCHIATRIST, AND  
7 A PSYCHOLOGIST THOUGHT THAT ONE UP. THOUGHT HE WAS  
8 A BIT OF A SNOB, BUT I FOUND HIM KIND OF  
9 INTERESTING. HE DENIES THE HELPLESSNESS. HE CALLED  
10 DR. VICARY A JAIL PSYCHIATRIST. WELL, HE'S NOT. HE  
11 COULD HAVE LOOKED IT UP TO SEE WHO WORKS AT THE  
12 JAIL.

13       IN ANY EVENT, EVEN DR. DIETZ AGREES THAT  
14 BATTERED WOMEN DON'T LEAVE AND ABUSED CHILDREN DON'T  
15 LEAVE. THEY'RE ABUSED. THAT'S IN THE DEFINITION.  
16 THEY DON'T LEAVE. THEY DON'T GET OUT. THEY'RE TOO  
17 DEPENDENT, IMMERSED, TOO INVOLVED, WHATEVER YOU WANT  
18 TO CALL IT.

19       HE DOESN'T LIKE LEARNED HELPLESSNESS AS  
20 THE REASON. HE TALKS ABOUT OTHER REASONS THAT  
21 ENTRAP PEOPLE, BUT HE DOES NOT, DOES NOT DENIGRATE  
22 THE EXPERIENCE OF BATTERED WOMEN THE WAY MR. CONN

23 DID. IT'S JUST A SITUATION. NOTHING WRONG WITH  
24 THOSE LADIES. JUST A SITUATION.  
25 I EXPECTED TO SEE THEM PICKETING OUTSIDE  
26 THE COURTHOUSE AFTER THAT. N.O.W. PERHAPS, THE  
27 NATIONAL ORGANIZATION FOR WOMEN. ALL RIGHT.  
28 THEY'LL DEAL WITH THEIR POLITICAL ISSUES LATER.

51793

1 I COULD TELL YOU THE WHOLE POLITICAL  
2 HISTORY OF BATTERED WOMEN AND WHY IT'S NOT IN THE  
3 DSM-IV. BUT IT'S NOT IN THE RECORD, SO WE CAN'T  
4 DISCUSS IT.

5 THE FACT OF THE MATTER IS, NOBODY WANTS  
6 TO MAKE BATTERED WOMEN LOOK SICK. BUT THE THINGS  
7 THEY SUFFER FROM -- IN FACT, FOR MANY OF THEM, THEY  
8 DO HAVE POST-TRAUMATIC STRESS DISORDER; AND ONCE  
9 THEY HAVE POST-TRAUMATIC STRESS DISORDER, THEN  
10 THEY'RE IN THE BOOK, LIKE IT OR NOT.

11 THE FACT IS, WHAT POST-TRAUMATIC STRESS  
12 DISORDER DOES NOT DESCRIBE, THAT BATTERED PERSON  
13 CONSTRUCT, SYNDROME CONSTRUCT, DOES DESCRIBE THIS  
14 WHOLE OTHER AREA OF DAMAGE THAT HAPPENS TO PEOPLE,  
15 WHICH IS THIS SELF-REFERENCE THING, THIS LACK OF  
16 CONFIDENCE IN YOUR YOURSELF, REALLY HORRIBLE  
17 SELF-IMAGE. SORT OF LIKE HAVING YOUR EGO

18 DISMANTLED. YOU DON'T REALLY FEEL LIKE AN EFFECTIVE  
19 PERSON.

20 THIS IS APART FROM THE DEPRESSION AND  
21 ANXIETY AND FEARFULNESS WHICH INTERFERES WITH YOUR  
22 ABILITY TO THINK YOUR WAY OUT OF THIS SITUATION.  
23 JUST THIS CONSTANT SORT OF ERASURE OF YOUR PERSON  
24 WHEN YOU'RE IN ONE OF THESE SITUATIONS.

25 SO YOU TAKE THE BLAME FOR EVERYTHING  
26 THAT GOES ON. YOU FEEL IT'S ALL YOUR OWN FAULT,  
27 THAT YOU'RE THE DEFICIENT ONE, AND IT'S VERY HARD  
28 FOR PEOPLE TO EXTRICATE THEMSELVES PSYCHOLOGICALLY.

51794

1 THAT'S WHAT THAT WHOLE AREA INCLUDES. THIS NOTION  
2 OF LEARNED HELPLESSNESS IS PART OF THE RESEARCH IN  
3 WHAT HAPPENS TO BATTERED WOMEN, BATTERED CHILDREN,  
4 BATTERED ANYBODIES. TORTURE VICTIM. HOSTAGES.

5 YOU'VE HEARD OF THE "STOCKHOLM  
6 SYNDROME." THAT'S NOT A MEDICAL SYNDROME EITHER, BUT  
7 IT EXPLAINS WHY PEOPLE BEHAVE IN A CERTAIN WAY WHEN  
8 THEY'VE BEEN EXPOSED TO VARIOUS KINDS OF TRAUMA.  
9 THAT'S WHAT IT WAS ALL ABOUT.

10 IN SPITE OF ALL THAT LITIGATION  
11 MR. CONN STILL STANDS UP THERE AND SAYS: "HE SHOULD  
12 HAVE LEFT."

13           OKAY. HE SHOULD HAVE LEFT. HE SHOULD  
14 HAVE BEEN THE EXCEPTION TO THE RULE OF WHAT HAPPENS  
15 TO ABUSED KIDS. HE SHOULD HAVE JUST GOTTEN UP AND  
16 LEFT. AND THIS IS THE ARGUMENT, THAT HE CAN'T BE  
17 TELLING YOU THE TRUTH. IT COULDN'T BE THIS BAD. HE  
18 COULDN'T HAVE BEEN ABUSED. BECAUSE HE DIDN'T LEAVE,  
19 IN SPITE OF HIS OWN WITNESS SAYING THEY DON'T LEAVE,  
20 WE'RE STILL ARGUING THAT POINT FROM DAY ONE.

21           SEE HOW MUCH I COVERED WITHOUT EVEN  
22 LOOKING DOWN?

23           MY FINAL POINT WAS MR. CONN IS THE ONLY  
24 ONE IN THIS COURTROOM WHO'S STILL LABORING UNDER THE  
25 COMMON MISCONCEPTION THAT PEOPLE WHO ARE ABUSED  
26 LEAVE. AND THE OTHER THINGS, OF COURSE, I THINK,  
27 WHICH WAS ALSO LITIGATED LIKE CRAZY AND ESTABLISHES,  
28 AND IS SORT OF SOMETHING I THINK YOU CAN UNDERSTAND

51795

1 MORE EASILY, IS WHY MOLESTED CHILDREN DON'T RUN  
2 AROUND TELLING EVERYBODY THAT THEY'RE BEING  
3 MOLESTED.

4           IN THIS CASE HE DID LET SOME OF IT OUT  
5 TO HIS COUSIN, ANDY. AND FOR ALL THE USUAL REASONS  
6 WHY CHILDREN DON'T TELL, HE DIDN'T. THEY'RE  
7 ISOLATED. THEY'RE NOT REALLY CLOSE TO ANYBODY THAT

8 THEY COULD GO TO. THEY TAKE THE BLAME FOR WHAT'S  
9 GOING ON ON THEMSELVES. THEY LOVE THE MOLESTING  
10 PARENT AND DON'T WANT TO BREAK UP THE FAMILY. THEY  
11 ARE EMBARRASSED. DEPENDING ON THEIR AGE, THESE  
12 DIFFERENT FACTORS CONTROL THEM. TAKE OUT THE  
13 VIOLENCE, TAKE OUT BEING PLACED IN FRONT OF THAT  
14 MIRROR AND THREATENED WITH DEATH A COUPLE OF HUNDRED  
15 TIMES OVER THE COURSE OF YOUR CHILDHOOD.

16 THE CHILDREN THAT ARE NOT BEING  
17 ASSAULTED VIOLENTLY, JUST MOLESTED. JUST MOLESTED.  
18 OKAY? THEY DON'T TELL EITHER. WITHOUT AN OVERT  
19 THREAT THERE IS NEVERTHELESS FEAR. ANY TIME SOMEONE  
20 ELSE INVADES YOUR BODY WITHOUT YOUR COOPERATION,  
21 USES YOUR BODY FOR THEIR PURPOSES, IT IS  
22 FEAR-INDUCING. IT IS ONE OF THE MAIN COMPONENTS WHY  
23 RAPE VICTIMS, EVEN IF THEY'RE NOT PHYSICALLY HARMED,  
24 ARE SO TRAUMATIZED.

25 THE SAME IS TRUE OF MOLESTED CHILDREN.  
26 EVEN IF IT COMES OUT THAT IT'S NICE, THERE'S NOTHING  
27 NICE ABOUT BEING SIX YEARS OLD AND HAVING TO DEAL  
28 WITH SOMEONE ELSE'S ERECT PENIS. THERE'S NOTHING

51796

1 NICE ABOUT IT. IT DOESN'T HURT, BUT IT'S WRONG, AND  
2 IT'S DIFFERENT, AND IT'S WEIRD, AND IT'S SCARY TO

3 CHILDREN. THAT'S WHAT DR. WILSON TESTIFIED TO.

4 THAT'S A COMMON EXPERIENCE OF MOLESTED CHILDREN.

5 AND THEY DON'T TELL AT VARIOUS AGES FOR VARIOUS

6 REASONS.

7       YOU DON'T REALLY EXPECT AN 18-YEAR-OLD

8 BOY, WITH GIRLFRIENDS, WHO'S ON THE TENNIS TEAM,

9 WITH PEERS, THAT HE'S GOING TO START TELLING PEOPLE

10 WHAT'S BEEN GOING ON IN HIS LIFE? I MEAN, IT'S

11 HORRENDOUSLY EMBARRASSING AND SHAMEFUL AND

12 CONFUSING. IT'S SOMETHING YOU'RE NOT GOING TO TALK

13 ABOUT. AND THAT IS WHY MOST PEOPLE WHO ARE MOLESTED

14 AS CHILDREN DO NOT TALK ABOUT IT UNTIL THEY ARE

15 ADULT SURVIVORS IN THERAPY. THAT'S WHERE MOST OF

16 THE RESEARCH IS.

17       AND WE WENT OVER THIS WITH DR. WILSON

18 AND DR. DIETZ, I BELIEVE. THAT'S WHERE THE RESEARCH

19 IS COMING FROM. WHAT ARE THE EXPERIENCES OF

20 MOLESTED CHILDREN? BECAUSE THE CHILDREN THEMSELVES

21 CAN'T TELL. THEY'RE CONTROLLED, TO BEGIN WITH. THE

22 MOLESTER DOESN'T USUALLY WALK THE KID AROUND TO THE

23 POLICE STATION AND SAY: "TALK TO THESE GUYS. GO

24 MAKE BEST FRIENDS WITH THE COP ON THE BLOCK." IT'S

25 BEEN A LONG TIME SINCE ANY OF US HAVE LIVED IN

26 PLACES WHERE THERE IS A COP ON THE BLOCK, IN ANY

27 EVENT.

28       THAT'S WHY THESE CHILDREN ARE KEPT

1 ISOLATED, JUST IN CASE SOMETHING SPILLS OUT. BUT IT  
2 DOESN'T SPILL OUT. OF COURSE, OZIEL WAS NO USE TO  
3 HIM, SINCE HE WAS A PIPELINE.

4 IN THIS CASE, IN ADDITION TO ALL THE  
5 REASONS WHY, AS A VERY LITTLE GUY, WHEN IT SEEMED  
6 NORMAL, HE WOULDN'T TELL. WHEN IT WAS A LOVING  
7 THING, WHEN LATER ON IT BECAME VIOLENT, AND IT WAS  
8 SHAMEFUL, AND IT WAS SCARY, HE WOULDN'T TELL.

9 IN THIS CASE, OF COURSE, WE HAVE THE  
10 OVERT THREATS. I MEAN, WHEN SOMEONE IS USING  
11 VIOLENCE AGAINST YOU AND HAS BEEN TELLING YOU ALL  
12 ALONG THIS STUFF IS SECRET, YOU DON'T REALLY NEED AN  
13 OVERT THREAT TO FIGURE OUT THAT IF I TELL, I'M  
14 DEAD.

15 BUT HERE WE HAVE IT. AND THAT'S THE  
16 REASON HE DOESN'T TELL.

17 NOW, WHAT ARE THE INDICATIONS, OR, AS WE  
18 LAWYERS LIKE TO SAY, THE INDICIA OF TRUTHFULNESS IN  
19 THIS CASE CONCERNING ERIK MENENDEZ' TESTIMONY?  
20 WELL, LET'S START OUT --

21 FIRST OF ALL, I'M GOING TO SAY IT ONCE  
22 MORE. I MAY SAY IT FIVE OR SIX TIMES MORE BEFORE  
23 I'M FINISHED. IT'S THE BIG LIE, AND IT SO ANNOYS  
24 ME.

25 HE DID NOT TELL THE STORY FOR THE FIRST

26 TIME ON THE BENCH IN THIS COURTROOM, EITHER THIS  
27 TIME OR TWO YEARS AGO. HE DID NOT. HE MAY HAVE HAD  
28 SIX YEARS TO MAKE UP A STORY, BUT HE DIDN'T TAKE SIX

51798

1 YEARS, AND HE DIDN'T MAKE UP A STORY. WHAT HE SAID  
2 FROM THE WITNESS STAND TO YOU, IN 1996, IS WHAT HE  
3 SAID TO DR. VICARY IN 1990. THAT'S WHAT THE RECORD  
4 INDICATES.

5 SO ALL THIS BOLOGNA ABOUT OH, THIS IS  
6 SUCH A SILLY AND RIDICULOUS STORY ON THE ONE HAND,  
7 THAT IT TOOK THEM THREE AND A HALF DAYS TO ARGUE IT  
8 AGAINST HIM; AND ON THE OTHER HAND, OF COURSE, HE  
9 COULD COME UP WITH THIS COMPLEX PERFECT STORY. HE  
10 HAD SIX YEARS. HUH-UH. IT ISN'T SILLY AND  
11 RIDICULOUS. WEIRD FAMILIES HAPPEN. WEIRD THINGS  
12 HAPPEN INSIDE OF THEM. THAT'S THE BOTTOM LINE.

13 WHEN YOU'VE BEEN A CRIMINAL DEFENSE  
14 LAWYER FOR 27 YEARS, YOU REALLY LEARN SOMETIMES  
15 TRUTH IS STRANGER THAN FICTION. YOU CAN'T IMAGINE  
16 THE WEIRDNESS OF PEOPLE UNTIL YOU HAVE DEALT WITH  
17 THE MOST FAILURE-PRONE SIDE OF OUR SOCIETY.

18 LET ME GIVE YOU A TINY EXAMPLE. THIS IS  
19 SOMETHING THAT OCCURRED TO ME IN THE BATHTUB THIS  
20 MORNING. I DIDN'T WRITE IT DOWN, SO BEFORE I FORGET



21 IT...

22 THIS FAMILY IS IN KALAMAZOO, MICHIGAN

23 AND ERIK MENENDEZ IS PARTICIPATING IN THIS TENNIS

24 TOURNAMENT AND HE LOSES. AND I'LL TALK A LITTLE

25 MORE ABOUT THAT LATER, BUT HE LOSES. AND WHO GETS

26 PUNISHED WHEN HE LOSES? HIS MOTHER. JUST LIKE HE

27 SAID ALL THROUGH HIS CHILDHOOD. SHE WOULD MAKE SURE

28 HE GOT PUNISHED, BECAUSE IF HE FAILED IN SOMETHING,

51799

1 SHE WOULD BE LOOKED TO FOR PUNISHMENT. RIGHT.

2 HE TOLD YOU ABOUT THAT, HOW SHE WOULD

3 SHIFT THE BLAME TO MAKE SURE HE'D GET THE BEATING.

4 HE LOSES. SHE WANTS TO GO TO CANADA TO

5 SEE HER FATHER WHO'S DYING OF CANCER, AND JOSE

6 MENENDEZ CANCELS THE TRIP BECAUSE HE'S PISSED OFF AT

7 ERIK MENENDEZ FOR NOT BEING NUMBER ONE, WHEN HE

8 STARTED THE TOURNAMENT AT FORTY-FOUR, BECAUSE HE DID

9 WELL.

10 SEE, THERE'S NO REWARD FOR DOING WELL IN

11 THIS FAMILY. HE DID TOO WELL IN ST. LOUIS ON THE

12 CLAY COURTS. NOW HIS FATHER RACHETS UP THE

13 EXPECTATION TO LEAD. NOW HE'S GOT TO WIN. BE

14 NUMBER ONE. GET TO THE U.S. OPEN. HE'S GOOD, BUT

15 HE'S NOT THAT GOOD. CAN'T HE BE GOOD ENOUGH? NO.

16 NOT IN THIS FAMILY. HE'S GOT TO BE NUMERO UNO.

17         AND UNDER THAT PRESSURE, A KID WITH

18 POST-TRAUMATIC STRESS DISORDER, OR G.A.D. -- I DON'T

19 CARE WHICH -- WHO HAS BEEN PLAYING COMPETITIVE

20 TENNIS ALL SUMMER LONG, DAY IN AND DAY OUT, AND

21 WINNING.

22         I MEAN, LOOK AT THE CRIME-SCENE PHOTOS.

23 YOU'VE SEEN THEM SO MUCH THEY CAN'T HORRIFY YOU ANY

24 LONGER. BUT LOOK AT THE TROPHIES. THERE IS

25 SOMETHING SO IRONIC AND SO TRAGIC, SO TRAGIC, WHEN

26 YOU LOOK AT THAT ROOM WITH THOSE DEAD PEOPLE AND

27 THEIR TROPHY SONS, AND THE WHOLE TOP OF THE BOOKCASE

28 IS LINED WITH THEIR TROPHIES. THESE FAILURES.

51800

1 THEY'RE ALL FAILURES, I SUPPOSE, ALL THEIR TROPHIES

2 THAT THEY WERE SO PROUD OF.

3         SO HE WORKS REAL HARD THAT SUMMER FOR

4 MORE TROPHIES FOR DAD AND MOM, AND HE DOESN'T WIN IN

5 KALAMAZOO, AND MOM GETS PUNISHED BECAUSE SHE CAN'T

6 GO TO CANADA TO SEE HER FATHER THAT'S DYING. THAT'S

7 BIZARRE. THAT'S HOW THIS FAMILY OPERATES. EXTREME

8 REACTIONS. WEIRD.

9         AND THEY NEVER TALK TO THEIR CHILDREN.

10 EVERYTHING IS AN ORDER, FROM TOP TO BOTTOM.

11 DR. WILSON TESTIFIED TO THAT. ALL COMMUNICATION IS  
12 DOWNWARD. IT'S TALKED DOWN. THE PARENTS GIVE THE  
13 ORDERS. THE PARENTS SET THE RULES. THE PARENTS  
14 DECIDE. AND THE KIDS HAVE NO OPTION TO SAY  
15 ANYTHING.

16 MR. CONN GOES THROUGH THIS:

17 "WELL, MR. MENENDEZ, DID IT OCCUR  
18 TO YOU TO SAY TO YOUR DAD, 'GEE, DAD,  
19 I WON'T GO TO THE POLICE AND TELL THEM  
20 HOW YOU'VE BEEN SCREWING ME FOR YEARS.  
21 SO IS IT OKAY?'"

22 OH, SURE, SURE, HE'S GOING TO SAY THAT,  
23 MR. PASSIVE. NO ONE IS GOING TO SAY IT. YOU HOPE  
24 THEY'LL FORGET MAYBE. THINGS ARE GOING TO CALM  
25 DOWN. YOU'RE NOT GOING TO BRING UP THE FAMILY SHAME  
26 AND RUB HIS FACE IN IT IN THE CAR.

27 WHAT IS SO SHOCKING, WHAT CAUSED THESE  
28 SHOOTINGS, IS THAT THE FATHER DOES THAT VERY THING

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1 SUNDAY NIGHT. HE IS TALKING ABOUT IT IN FRONT OF  
2 EVERYBODY.

3 "GO TO YOUR ROOM. I'LL BE RIGHT  
4 THERE."

5 "NO," SAYS LYLE. "I'M NOT GOING

6 TO LET YOU TOUCH MY LITTLE BROTHER.  
7 YOU'RE NOT GOING TO TOUCH MY LITTLE  
8 BROTHER AGAIN."  
9 "GO TO YOUR ROOM, ERIK."  
10 "HE'S MY SON. I'LL DO WHATEVER I  
11 WANT WITH HIM."  
12 HE'S TALKING ABOUT IT IN FRONT OF MOM.  
13 NO WONDER IT SCARED THE HELL OUT OF THEM. THAT'S  
14 THE ONE THING THAT NEVER HAPPENS IN THIS FAMILY.  
15 NOBODY TALKS ABOUT THE DIRTY SECRETS. WHEN THEY DO  
16 IT MEANS IT NO LONGER MATTERS. "IT'S OKAY TO TALK  
17 ABOUT IT NOW, BECAUSE YOU GUYS ARE DEAD CENTRAL.  
18 YOU'RE GONE."  
19 THAT'S HOW THEY INTERPRET IT. THEY WERE  
20 WRONG. WERE THEY UNREASONABLE TO THINK THAT,  
21 THOUGH, GIVEN THIS FAMILY HISTORY? I GOT AHEAD OF  
22 MYSELF. SO TOTALLY BIZARRE.  
23 IF THIS FAMILY IS BIZARRE, MY CLIENT  
24 DIDN'T CREATE IT. THESE ARE THE THINGS HE SAID THAT  
25 HE DIDN'T HAVE TO SAY, HE, WHO WAS CALLED A LIAR  
26 WITH EVERY BREATH BY MR. CONN. HE TOLD YOU THINGS  
27 THAT ARE NOT PRETTY, BUT THEY ARE TRUE, AND THE  
28 PROSECUTION COULD NEVER HAVE PROVEN THEM WITHOUT

1 HIM, NEVER. AND HE TOLD THEM ANYWAY.

2 AND LET'S START WITH NUMBER ONE. LET ME  
3 SHARE SOME LAWYER THINKING WITH YOU, BECAUSE MR. CONN  
4 COMES UP HERE AND TALKS ABOUT STRATEGY AS IF IT'S A  
5 GAME. IT'S NOT A GAME. PEOPLE'S LIVES ARE AT  
6 STAKE. OTHER PEOPLE ARE DEAD. THIS IS NOT A GAME.

7 NOW, HAD THIS CASE NEVER BEEN TELEVISED  
8 ON COURT ROOM TELEVISION, INC. TWO YEARS AGO, HAD  
9 THAT NEVER HAPPENED, YOU ALL WOULD HAVE ANSWERED  
10 YOUR JUROR QUESTIONNAIRES DIFFERENTLY THAN YOU DID,  
11 RIGHT? YOU ALL HAD HEARD ABOUT IT, TO SOME EXTENT  
12 OR ANOTHER. YOU ALL HAD FORMED SOME TENTATIVE  
13 OPINIONS OF ONE KIND OR ANOTHER.

14 IF THIS CASE HAD BEEN TRIED, LIKE  
15 NINETY-NINE POINT NINE, NINE, NINE PERCENT OF THE  
16 CASES ARE TRIED IN COURTROOMS, AND NOT IN THE MEDIA,  
17 YOU WOULDN'T HAVE KNOWN ANYTHING ABOUT IT. AND IF  
18 WE HAD HAD THE LUXURY OF BEING ABLE TO PICK A JURY  
19 THAT TRULY HAD HEARD NOTHING, WHICH 99 POINT  
20 NINE,NINE, NINE, NINE PERCENT OF CRIMINAL DEFENDANTS  
21 HAVE THE LUXURY OF DOING, WE COULD HAVE VERY WELL,  
22 IN THIS CASE, NOT PUT ON ONE SHRED OF EVIDENCE, NOT  
23 ONE, BECAUSE THAT 12/11 TAPE IS BONKERS. IT'S  
24 LUNACY. NOBODY WOULD BELIEVE IT AS A REAL  
25 CONFESSION OF HOMICIDE. NOBODY. AND THAT WAS --  
26 THAT IS THEIR CASE. PERIOD.

27 BUT IN SPITE OF ALL OF YOUR GOOD  
28 INTENTIONS, IN WHICH WE HAVE GREAT FAITH, YOUR

1 DECENCY, IN WHICH WE HAVE GREAT FAITH, YOU CANNOT  
2 ERASE YOUR OWN MINDS, AND WE SAID TO OURSELVES: WHY  
3 PUT ON SOMETHING? THEY DON'T HAVE A CASE.

4 BECAUSE THE JURORS, MOST OF THEM, HAVE  
5 HEARD THAT THEY CONFESSED. AND HOW ARE THEY GOING  
6 TO TAKE THAT OUT OF THEIR MINDS, EVEN IF THEY WANT  
7 TO, WHEN THEY'RE HEARING THIS TAPE? THAT IS GOING  
8 TO GIVE THAT TAPE CREDIBILITY.

9 SO IF WE WERE GAMESTERS, IF THIS WAS ALL  
10 JUST A GAME, YOU KNOW, WE COULD HAVE STILL TAKEN  
11 THAT CHANCE. BUT THAT'S WHAT HAPPENED, THAT'S ONE  
12 OF THE REASONS WHY I DON'T LIKE CAMERAS IN THE  
13 COURTROOM, AND WHY I HATE PUBLICITY ABOUT CRIMINAL  
14 CASES, BECAUSE THEY DON'T ALWAYS RESOLVE AFTER ONE  
15 TRIAL.

16 WE COULD HAVE PLAYED THE O.J. GAME. IT  
17 WASN'T US, SOMEBODY ELSE, WE DIDN'T DO IT. AND WE  
18 DIDN'T DO IT PARTLY BECAUSE IT WAS OUT THERE, YOU  
19 KNOW, IN THE AIR YOU BREATHE, BUT ALSO BECAUSE THERE  
20 IS A REASON TO TELL THE STORY OF THIS FAMILY'S LIFE.

21 FIRST OF ALL, I'M MORE COMFORTABLE WITH  
22 JUST TELLING THE TRUTH. SEE WHAT HAPPENS. PEOPLE  
23 HAVE GOT TO LEARN TO UNDERSTAND WHAT HAPPENS IN  
24 FAMILIES. IT'S GOT TO HAPPEN. WE'VE GOT TO STOP

25 THINKING THE WORLD IS A SOAP OPERA, THAT THE WORLD  
26 IS STEREOTYPES, THAT THE WORLD IS KIND OF A  
27 SUPERFICIAL NAMING AND LABELING OF PEOPLE THAT THE  
28 PROSECUTION ENGAGES IN IN THIS CASE.

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1 SO, HE GOT ON THE WITNESS STAND TWO  
2 YEARS AGO, AND HE GOT ON THE WITNESS STAND NOW, AND  
3 HE TOLD YOU WHAT THEY DID, AND HE DIDN'T HAVE TO DO  
4 IT. HE'S GOT THE PRESUMPTION OF INNOCENCE. THEY'VE  
5 GOT A PIECE OF COCKAMAMIE TAPE THAT MAKES NO SENSE.

6 HE TESTIFIED THAT HE WAS THE ONE THAT  
7 SIGNED FOR THE GUNS. THEIR EXPERT COULDN'T SAY  
8 THAT. IT WAS INCLUSIVE. COULD HAVE PLAYED THAT  
9 GAME TOO. DIDN'T DO IT.

10 HE TOLD YOU THEY WENT TO FOUR DIFFERENT  
11 GUNS STORE. HE DOESN'T HAVE TO DO THAT EITHER. IF  
12 YOU'RE PREPARING TO DEFEND YOURSELF, YOU'RE CREATING  
13 AMBIGUOUS EVIDENCE. IT CAN BE ARGUED YOU'RE  
14 PREPARING TO KILL, LIKE THE BURGLARY IN CALABASAS.  
15 YOU BUY A GUN TO PROTECT YOURS AGAINST A BURGLARY,  
16 ARE YOU PLANNING TO MURDER A BURGLAR? NO. BUT THE  
17 EVIDENCE IS AMBIGUOUS. THE MINUTE YOU DO ANYTHING  
18 IN ADVANCE, AND ULTIMATELY THERE IS A VIOLENT ACT,  
19 IT COULD BE SAID YOU WERE PLANNING TO DO THAT

20 VIOLENT ACT, WHEN, IN FACT, YOUR STATE OF MIND WAS  
21 TOTALLY DEFENSIVE.  
22       HERE THEY ARE GOING TO FOUR DIFFERENT  
23 GUN STORES. YOU COULD SAY THAT SHOWS  
24 DETERMINATION. WHAT I SAY IT SHOWS IS TREMENDOUS  
25 AMBIVALENCE. DO WE REALLY NEED TO DO THIS? DO WE  
26 REALLY WANT TO DO THIS? THIS IS A TIME WHEN THEY  
27 ARE TRYING TO FIGURE OUT, YOU KNOW, HOW BAD, HOW  
28 CRAZY IS THIS ALL?

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1       SO HE TELLS YOU THEY GO TO FOUR  
2 DIFFERENT PLACES, AND HE TELLS YOU HE WANTED TO  
3 PRACTICE WITH THE GUN. OH, AND MR. CONN, "HOW  
4 CALLOUS, HOW COLD."  
5       WELL, IF YOU'VE GOT THE STUPID THING AND  
6 YOU'RE WORRIED ABOUT WHETHER OR NOT YOU'RE GOING TO  
7 BE ABLE TO DEFEND YOURSELF, I DON'T FIND IT CALLOUS  
8 OR COLD TO FIGURE OUT IF YOU PULL THE TRIGGER WHAT  
9 HAPPENS. HOW DO YOU HOLD IT? HOW DOES IT WORK?  
10       AS IT TURNED OUT, HE HOLDS IT THE WRONG  
11 WAY, AND I'LL GET TO THAT, ABOUT WHERE HE HELD IT,  
12 AND WHAT WOUND UP HAPPENING.  
13       OKAY. HE TELLS US ABOUT FOUR GUN  
14 STORES. HE TELLS YOU ABOUT GOING TO THE BIG-5. YOU



15 REALIZE, WHEN HE TALKED ABOUT GOING TO THE BIG-5 IN  
16 SANTA MONICA, AND HAVING THIS CONVERSATION WHERE HE  
17 LEARNED ABOUT THE TWO WEEK WAITING PERIOD, HE KNEW  
18 WHEN HE TOOK THE STAND IN THIS TRIAL THAT THEY HAD  
19 STOPPED SELLING REAL HANDGUNS IN '86. HE KNEW,  
20 BECAUSE IT'S HERE. IT'S BEFORE YOU THAT THAT CAME  
21 UP IN THE LAST TRIAL.

22 SO HE COULD HAVE TOLD A LIE. HE DIDN'T  
23 TELL A LIE ABOUT IT. HE IS THIS ANXIOUS PERSON,  
24 TRYING TO REMEMBER A CONVERSATION GOING BACK YEARS  
25 AGO, AND ALL HE REALLY KNOWS IS WHEN HE LEFT THAT  
26 STORE HE HAD LEARNED SOMETHING HE DIDN'T KNOW  
27 BEFORE. THERE'S A TWO-WEEK WAITING PERIOD, AND YOU  
28 CAN'T TELL ME -- YOU CANNOT TELL ME THAT THE PEOPLE

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1 PROVED THAT WHOEVER IT WAS THEY DEALT WITH THERE  
2 DIDN'T SAY THOSE WORDS TO HIM, WHETHER THEY WERE  
3 NECESSARY FOR THE NON-TRANSACTION -- WHETHER THERE  
4 WAS A TRANSACTION OR NOT -- YOU CAN'T TELL ME THE  
5 EMPLOYEE AT BIG-5 DIDN'T SAY: "IF WHAT YOU'RE  
6 LOOKING FOR IS A REAL GUN, YOU'VE GOT TO WAIT TWO  
7 WEEKS FOR THAT." PERIOD. BUT HE'S THE ONE WHO  
8 TELLS US ABOUT GOING TO ALL THESE STORES.

9 HE'S THE ONE WHO TELLS YOU THAT THEY RAN

10 OUT TO CHANGE AMMUNITION AT THE CAR.

11 NOW, IF THEY WERE PLANNING TO KILL, WHY  
12 NOT HAVE LOADED GUNS READY, AT THE READY? MR. CONN  
13 HAS MADE SO MUCH OUT OF RUNNING OUT; THAT HE HAD IN  
14 HIS MIND TO RUN TO THE CAR, THAT MEANS REFLECTIVE  
15 THOUGHT. ALL THIS NONSENSE. HE'S THE ONE WHO TELLS  
16 YOU THAT HE RAN OUT AND RELOADED AT THE CAR.

17 NOW, MR. CONN USES THIS TO SHOW THEY  
18 WEREN'T REALLY AFRAID. AND I'M TELLING YOU WHAT IT  
19 SHOWS IS HE COULD HAVE MADE UP ANY STORY HE WANTED.  
20 "WE LOADED THE GUN. WE WERE SO TERRIFIED THAT WE  
21 HAD TO KEEP THE GUNS FULLY LOADED." AND NONE OF  
22 THIS WOULD HAVE COME UP FOR THEM TO START TAKING POT  
23 SHOTS AT IT.

24 THE POINT IS, HE'S THE ONE WHO TELLS YOU  
25 THEY DIDN'T LOAD THE GUNS IN ADVANCE BECAUSE THEY  
26 ARE AMBIVALENT. THEY'RE HOPING THAT THE WORST ISN'T  
27 GOING TO HAPPEN. THEY ARE HOPING SOMETHING IS GOING  
28 TO DEFUSE THIS SITUATION, THAT THE PARENTS WHO NEVER

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1 TALK TO THEM WILL TALK, WILL INDICATE THAT THINGS  
2 AREN'T AS BAD AS THEIR FEARS TELL THEM THEY ARE.

3 THIS IS THE MOST SIGNIFICANT THING HE  
4 TELLS YOU. RELOADING. THIS IS THE BASIS OF A WHOLE

5 SEPARATE PREMEDITATION ARGUMENT THAT MR. CONN  
6 MAKES. RELOADING. THERE IS NO PROOF WHATSOEVER IN  
7 THIS CASE THAT THE PERSON OR PERSONS WHO DID THIS  
8 SHOOTING RELOADED, NONE, UNTIL ERIK MENENDEZ  
9 TESTIFIED TO IT.

10 REMEMBER, WE HAVE ROGER MC CARTHY SAYING  
11 12 IS THE MAGIC NUMBER, AND THE GUNS HOLD 12, SIX  
12 AND SIX. NO EVIDENCE FROM HIM OF RELOADING. NO  
13 PATHOLOGY EVIDENCE FROM DR. LAWRENCE OR FROM  
14 GOLDEN'S REPORTS, WHICH YOU'LL SEE. NOTHING ABOUT  
15 RELOADING. IT IS A FACT THAT HE COULD HAVE BURIED  
16 IT LIKE THAT (SNAPPING FINGERS).

17 I MEAN, YOU KNOW, OBVIOUSLY, GOING OUT  
18 AND RELOADING HAS TO BE EXPLAINED. HE TESTIFIED TO  
19 IT UNDER OATH TWO YEARS AGO AND NOW. WHY? BECAUSE  
20 IT'S THE TRUTH. IT HAPPENED.

21 WE HAVE THESE PEOPLE IN A PANIC. HE  
22 DESCRIBES HIS STATE OF MIND. HE'S FIRED EVERYTHING  
23 OFF. BAM-BAM-BAM-BAM-BAM. AND THE GUN'S EMPTY.  
24 ANOTHER SHOT OR SHOTS HAPPEN. HE'S NOT EVEN CLEAR  
25 ON WHO'S SHOOTING. HE HEARS A SOUND. HE SAID HE  
26 FELT DEFENSELESS, AND HE TORE OUT OF THAT ROOM IN  
27 THE SAME STATE OF TERROR IN WHICH HE TORE INTO IT,  
28 AND RAN TO THE CAR FOR MORE AMMUNITION, AND HANDED

1 ONE TO HIS BROTHER; AND HE NEVER HAD TO SAY A WORD  
2 ABOUT IT. AND IF HE'S SUCH A LIAR, WHY IS HE  
3 TELLING YOU THIS? BECAUSE IT HAPPENED. IT'S TRUE.

4 HE TOLD YOU HE WANTED HE TO GO TO THE  
5 FIRING RANGE. WHY? BECAUSE IT HAPPENED. IT'S  
6 TRUE.

7 HE SAID THEY WERE NOT ONE HUNDRED  
8 PERCENT SURE THAT THEY WERE OUT OF THE WILL. HE  
9 COULD HAVE LIED ABOUT THAT. "OH, WE WERE ONE HUNDRED  
10 PERCENT SURE." THEY WEREN'T, BUT IT WAS RISKY. IF  
11 YOU'RE GOING TO KILL SOMEBODY FOR GREED, YOU BETTER  
12 CHECK IT OUT BEFOREHAND, WHICH THEY DIDN'T DO. HE  
13 TELLS YOU THAT AS WELL. WHY DOES HE, BECAUSE HE'S  
14 GOING TO GIVE YOU THE GOOD WITH THE BAD. HE'S GOING  
15 TO TELL IT ALL.

16 AND THIS, OF COURSE, IS HUGE. THE  
17 PARENTS DID NOT MAKE EXPLICIT THREAT TO KILL THEM  
18 SUNDAY NIGHT. OKAY. MR. CONN, IN TYPICAL STYLE:

19 "WELL, WHO ELSE CAN TESTIFY TO THAT BUT YOU?

20 THERE'S FOUR PEOPLE IN THAT ROOM AND TWO  
21 OF THEM ARE DEAD. AND ONE OF THEM ISN'T TAKING THE  
22 STAND, AND THE OTHER ONE IS. HE'S THE ONLY PERSON  
23 WHO CAN TELL YOU WHAT HAPPENED. AND HE COULD HAVE  
24 SAID ANYTHING, ANYTHING ABOUT WHAT WAS SAID IN THAT  
25 FIGHT. HE COULD HAVE MADE UP THE MOST EXPLICIT  
26 THREATS. HE COULD HAVE MADE UP PHYSICAL ASSAULT.  
27 HE COULD HAVE SAID HIS MOTHER PULLED HIS HAIR,

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1 SAID, "HE'S GOING TO SCREW YOU AND I'M GOING TO  
2 WATCH." HE COULD HAVE SAID ANYTHING. ANYTHING.  
3 AND HE MOST SPECIFICALLY COULD HAVE  
4 SAID: "MY FATHER THREATENED, 'NOW YOU'VE DONE IT.  
5 NOW I'M GOING TO KILL YOU.'" AND HIS MOTHER COULD  
6 HAVE BEEN THE ROOTING SECTION TO MAKE IT REAL CLEAR,  
7 TO MAKE YOUR DECISION SIMPLER, AND HE DIDN'T DO IT.  
8 WHY DIDN'T HE DO IT? WHERE'S THE RECORD THAT WOULD  
9 HAVE IMPEACHED HIM? HE COULD HAVE SAID IT. HE  
10 DIDN'T MAKE UP ANYTHING.

11 WHEN WE TALK ABOUT A PROVOCATION THEORY,  
12 AND THE FACT THAT THE BEHAVIOR OF PARENTS WAS  
13 PROVOKING, AND WHAT THE SIGNIFICANCE OF THAT IS  
14 UNDER THE LAW, CERTAINLY, YOU KNOW, IT WOULD BE SO  
15 MUCH SIMPLY TO ARGUE IF HE JUST SAID: "MY FATHER  
16 SAID, 'THIS IS IT. I'M GOING TO KILL YOU. I'M  
17 GOING TO DO IT NOW.'"

18 ALL THE THINGS HE DIDN'T LIE ABOUT ARE  
19 WHAT'S SO SIGNIFICANT ON HIS CREDIBILITY. OKAY?

20 HE SAID HE DIDN'T CLAIM TO HAVE LOST  
21 CONSCIOUSNESS OR COMPLETELY DISSOCIATE DURING THE  
22 SHOOTING INCIDENT, AND HE COULD HAVE LIED ABOUT

23 THAT.

24 DR. DIETZ TESTIFIED THAT HE DESCRIBED --

25 WHEN ERIK MENENDEZ DESCRIBES WHAT HE CALLS "ROUGH

26 SEX," WHICH IS WHAT WENT ON BETWEEN 13 AND 15, AND

27 HE DESCRIBES IT LIKE AN OUT-OF-BODY EXPERIENCE.

28 HE'S ABOVE HIMSELF AND HIS FATHER ON THE BED. HE'S

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1 SEEING IT FROM THE CEILING, AND HE HAS ALL THESE

2 ASSOCIATIONS WITH IT, AND HE DOES NOT HAVE A

3 PERFECTLY LINEAR MEMORY OF IT. THAT IS AN

4 ABSOLUTELY ACCURATE DESCRIPTION OF A DISSOCIATIVE

5 EXPERIENCE, TYPICAL FOR VIOLENT SEXUAL ASSAULT,

6 VIOLENT TRAUMA. DR. WILSON TALKED ABOUT THAT.

7 DR. DIETZ TALKED ABOUT THAT.

8 DR. DIETZ ACKNOWLEDGED THAT ERIK

9 MENENDEZ KNOWS HOW TO DESCRIBE DISSOCIATION, WHICH

10 IS A TOTAL LACK OF BEING THERE, BASICALLY, WHICH IS

11 VERY USEFUL IN THE LAW WHEN YOU HAVE A MENTAL STATE

12 DEFENSE. IF YOU AIN'T THERE MENTALLY, YOU AIN'T

13 THERE. GOOD-BYE. GO HOME. AT THE MOST EXTREME

14 END.

15 AND HE COULD HAVE SAID THAT, BECAUSE HE

16 KNOWS HOW TO DESCRIBE THAT, BECAUSE IT HAPPENED TO

17 HIM BEFORE. HE DIDN'T SAY THAT. AND THIS FACT --

18 JUST AS AN ASIDE, ABOUT HIS INTEGRITY. INTEGRITY.  
19 YES. HE KILLED PEOPLE. HE'S STILL A PERSON. HE IS  
20 AN HONORABLE, HONEST PERSON WITH INTEGRITY. HERE'S  
21 THE PROOF.

22 HE IS TELLING DR. DIETZ AT THE BEVERLY  
23 HILLS JAIL, DR. DIETZ, YOU KNOW, WITH HIS  
24 REPUTATION, IS INTERVIEWING HIM. HE COOPERATES,  
25 DIDN'T REFUSE. KNOWS DR. DIETZ IS NOT ON HIS SIDE;  
26 NEVERTHELESS, HE'S THERE. HE TELLS DR. DIETZ THAT  
27 THESE SPECIFIC MEMORIES OF THE ROUGH SEX FROM 13 TO  
28 15 ARE SPOTTY. IN FACT, DR. WILSON TESTIFIED THAT

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1 THE WHOLE -- HIS WHOLE YEAR, AGE 15, THE YEAR OF THE  
2 WORST OF THE WORST OF THE WORST VIOLENT MOLESTATION,  
3 HE HAS NO MEMORY OF THAT ENTIRE YEAR. THAT'S HOW  
4 BAD IT WAS.

5 BUT HE TELLS DR. DIETZ THE MEMORIES OF  
6 THIS ROUGH SEX, BECAUSE THEY'RE SO SPOTTY, BECAUSE  
7 THEY'RE VISUAL IMAGES, RATHER THAN KNOWING. AND  
8 THEN HE CAME TO THE ROOM AND THEN IT HAPPENED, AND  
9 THIS IS WHAT HAPPENED LATER. HE WOULDN'T FEEL  
10 COMFORTABLE -- BECAUSE DIETZ IS ASKING HIM ABOUT  
11 THAT -- "ARE YOU A HUNDRED PERCENT CERTAIN OF THIS  
12 OR LESS CERTAIN OF THIS?"

13 HE SAYS, "I'M CERTAIN IT HAPPENED, BUT I  
14 WOULDN'T FEEL COMFORTABLE GOING INTO A COURT OF LAW,  
15 IF I WAS PROSECUTING SOMEBODY, IF SOMEONE WAS BEING  
16 PROSECUTED FOR DOING THIS TO ME, AND ALL WE HAD TO  
17 GO ON WAS THIS MEMORY OF MINE. I WOULDN'T WANT TO  
18 DO THAT. I WOULDN'T FEEL COMFORTABLE DOING THAT."

19 AND THAT'S WHEN DIETZ GIVES HIM THE  
20 CHALLENGE: "OH, BUT YOU'LL SAY IT IN FRONT OF THE  
21 JURY TO SAVE YOUR ASS." THAT'S HOW PSYCHIATRISTS  
22 TALK WHEN WE'RE NOT WATCHING? OKAY.

23 BUT THAT TELLS YOU SOMETHING ABOUT ERIK  
24 MENENDEZ AND HIS CONSCIENCE AND HIS SENSE OF RIGHT  
25 AND WRONG. OKAY? HE COULD HAVE MADE THIS UP, THAT  
26 HE DISSOCIATED DURING THE SHOOTING.

27 HE ALSO DIDN'T HAVE TO TELL YOU THAT HE  
28 FANTASIZED KILLING HIS FATHER DURING ASSAULTS IN THE

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1 PAST. HE COULD HAVE PRETENDED NEVER TO HAVE HAD --  
2 HE'S JUST LITTLE MARY SUNSHINE, NEVER HAD A NEGATIVE  
3 THOUGHT IN HIS LIFE. THAT'S NOT REALLY BELIEVABLE.  
4 MY GOD, IF SOMEONE WAS DOING TO ME WHAT JOSE  
5 MENENDEZ WAS DOING TO HIM, I'D THINK ABOUT KILLING  
6 HIM ALL THE TIME. THEN, I'M THE ANGRY HOSTILE-TYPE,  
7 AND HE'S A PASSIVE. SO, IF ONCE IN AWHILE, WHEN HE



8 HEARD HIS FATHER'S FOOTSTEPS COMING TOWARDS HIS ROOM  
9 AND HE WANTED TO PICK UP A TENNIS RACKET AND SMACK  
10 HIM ONE, SO WHAT? I'M SORRY HE DIDN'T DO IT RIGHT  
11 THEN AND THERE. WE WOULDN'T BE HERE IF HE HAD  
12 KILLED HIM IN THE MIDDLE OF A SEXUAL ASSAULT. END  
13 OF STORY.

14 THE FACT IS, THERE'S NOTHING-- HE DIDN'T  
15 HAVE TO SAY THAT, BECAUSE LOOK AT HOW MR. CONN MAKES  
16 SUCH A BIG DEAL OUT OF IT. FANTASIZING KILLING  
17 SOMEONE WHO'S HURTING YOU IS NOT INCONSISTENT WITH  
18 ANYTHING WE HAVE PUT ON IN THIS CASE.

19 AND FINALLY, AGAIN, IF HE WANTED TO BE  
20 LITTLE MR. PERFECT, THE MOTHER THERESA OF  
21 DEFENDANTS, HE DIDN'T HAVE TO ADMIT THAT HE WAS  
22 ENRAGED BY HIS MOTHER'S ADMISSION ON THURSDAY NIGHT  
23 THAT SHE KNEW. HE SAID HE REACTED, YES, WITH AN  
24 OVERWHELMING SENSE OF BETRAYAL. BUT HE WAS ALSO  
25 ANGRY. HE SAID TO HER "I HATE YOU." THOSE ARE HIS  
26 OWN WORDS. I'D HATE MY MOTHER TOO, AT LEAST FOR  
27 THAT MOMENT, AND MAYBE FOR MANY MOMENTS THEREAFTER,  
28 IF SHE HAD SAID TO ME: "I KNOW WHAT'S BEEN HAPPENING

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1 TO YOU ALL ALONG, AND I DON'T GIVE A DAM." THANKS,  
2 MOM. THAT'LL MAKE YOU FEEL GOOD.

3           NOW, THE OTHER THING, OF COURSE, THAT  
4 HAS TO DO WITH HIS CREDIBILITY -- THE SINGLE MOST  
5 SIGNIFICANT THING IS THIS: THERE'S AN INSTRUCTION  
6 THAT YOU'RE GOING TO GET. IT'S THE STANDARD  
7 INSTRUCTION THAT'S GIVEN IN EVERY SINGLE CASE ON THE  
8 CREDIBILITY OF WITNESSES. HOW DO YOU JUDGE THE  
9 CREDIBILITY OF WITNESSES? AND I CAN TELL YOU WHAT  
10 ALL TRIAL LAWYERS KNOW, THAT THE TWO MAIN WAYS TO  
11 PROVE SOMEBODY IS A LIAR IS THAT THEY HAVE TOLD  
12 INCONSISTENT STORIES, THAT THE FACTS KEEP CHANGING,  
13 BECAUSE THE THEORY IS -- AND I THINK IT'S ABSOLUTELY  
14 TRUE -- IT'S MUCH HARDER TO HOLD ON TO A LIE THAN TO  
15 HOLD ON TO THE TRUTH. THE TRUTH IS ALWAYS THERE FOR  
16 YOU TO FALL BACK ON. A LIE IS SOMETHING YOU HAVE TO  
17 CREATE. YOU DON'T HAVE REAL MEMORY TO SUPPORT IT.  
18 YOU HAVE TO TRY TO REMEMBER THE LIE. IT IS MUCH,  
19 MUCH HARDER TO HOLD ON TO A LIE.

20           AND SO THERE'S A COMMON UNDERSTANDING,  
21 AND THE LAW RECOGNIZES IT, THAT AN INCONSISTENT  
22 STATEMENT BY A WITNESS IS ONE OF THE THINGS YOU CAN  
23 USE TO DECIDE WHETHER THEY'RE BEING TRUTHFUL WITH  
24 YOU OR NOT.

25           AND THAT'S WHY, WHEN I TALK ABOUT SOME  
26 OF THE WITNESSES THE PROSECUTION'S RELYING ON, I'M  
27 GOING TO TALK ABOUT THE FACT THAT THEY TELL  
28 DIFFERENT STORIES, DEPENDING ON WHETHER THEY GET

1 CAUGHT IN A LIE THE FIRST TIME, AND HAVE TO MAKE UP  
2 A NEW STORY THE SECOND TIME, OR WHETHER THEY JUST  
3 HAVEN'T REHEARSED THE FICTION LONG ENOUGH TO HOLD ON  
4 TO IT, SO IT CHANGES OVER TIME.

5 SO INCONSISTENCY, A PRIOR INCONSISTENT  
6 STATEMENT IS MOST OFTEN USED, AND YOU'VE SEEN IT  
7 WITH WITNESS AFTER WITNESS IN THIS CASE. THE WAY TO  
8 DEMONSTRATE TO THE FINDER OF FACT THAT SOMEONE ISN'T  
9 RELIABLE, THEY'RE NOT TELLING THE TRUTH. WHETHER  
10 THEY'RE MISTAKEN OR WILLFULLY FALSE, THAT'S  
11 SOMETHING FOR THE JURY TO DECIDE.

12 THAT'S ONE WAY. THE OTHER WAY IS THE  
13 ISSUE OF BIAS.

14 NOW, MR. CONN MAKES A GREAT DEAL OUT OF  
15 BIAS, BECAUSE ERIK MENENDEZ IS THE ACCUSED. BUT HE  
16 WOULD TURN THE WHOLE BURDEN OF PROOF UPSIDE DOWN,  
17 AND WANTS TO, BY SUGGESTING TO YOU THAT BECAUSE HE'S  
18 THE ACCUSED, HE MUST BE LYING.

19 WELL, THERE WAS A REASON HE KILLED HIS  
20 PARENTS. HE'S HERE TO TELL YOU WHAT IT IS. TO  
21 JUDGE HIS CREDIBILITY YOU HAVE TO WEIGH: DOES THAT  
22 REASON MAKE SENSE COMPARED TO THE REASONS THE  
23 PROSECUTION GIVES YOU? AND THAT'S THE WAY I SUGGEST  
24 YOU APPROACH HIS TESTIMONY.

25 BUT HERE IS THE MOST IMPORTANT FACT. HE  
26 HAS TESTIFIED UNDER OATH, AND SUBJECT TO THE

27 CROSS-EXAMINATION OF MEMBERS OF THE DISTRICT

28 ATTORNEY'S OFFICE, FOR 25 DAYS; 10 IN THE FIRST

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1 TRIAL, AND 15 IN THIS ONE, 25 DAYS. AND YOU SAW --

2 YOU SAW 15 DAYS OF TESTIMONY IN THIS CASE, 11 OR 12

3 OF WHICH WERE CROSS-EXAMINATION.

4 NOW, ANOTHER ONE OF THE THINGS LAWYERS

5 LIKE TO BELIEVE, WHEN THEY LIKE TO BELIEVE THAT THEY

6 MAKE A DIFFERENCE, IS THAT CROSS-EXAMINATION IS A

7 TOOL TO DISCERN THE TRUTH. AND IF IT'S DONE WELL,

8 YOU CAN SOMETIMES LEARN TRUTH THROUGH

9 CROSS-EXAMINATION. YOU GET TO ASK POINTED

10 QUESTIONS. YOU GET TO PUSH ON PEOPLE, AND SOMETIMES

11 THE TRUTH COMES OUT THROUGH CROSS-EXAMINATION, OR AT

12 LEAST YOU CAN REVEAL LYING.

13 SOME PEOPLE, HOWEVER, USE

14 CROSS-EXAMINATION AS ANOTHER WAY TO ARGUE THEIR CASE

15 TO THE JURY. THEY JUST MAKE THEIR ARGUMENTS TO THE

16 WITNESS, AND IT DOESN'T MATTER IF THE WITNESS KEEPS

17 SAYING, NO, NO, NO, NO, NO, NO. THE JURY GETS TO

18 HEAR THEIR ARGUMENTS. THAT'S BASICALLY WHAT

19 MR. CONN DID WITH ERIK MENENDEZ.

20 AND HE STANDS HERE NOW AND SAYS TO YOU:

21 "ISN'T THIS RIDICULOUS? ISN'T THIS SILLY? HE

22 DIDN'T BUY INTO MY RIDICULOUS AND SILLY QUESTIONS."  
23 MR. CONN'S HAD TWO YEARS, HE AND HIS LAW  
24 CLERKS THAT SIT IN THE FRONT SECTION, AND EVERYBODY  
25 ELSE, I SUPPOSE, WHO'S IN THE D.A.'S OFFICE WHO'S  
26 INVOLVED IN THIS, TWO YEARS TO GO THROUGH, LINE BY  
27 LINE AND WORD BY WORD, EVERYTHING ERIK MENENDEZ SAID  
28 ON 10 DAYS ON THE WITNESS STAND LAST TIME, AND TO

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1 SAY: "NOW, LET'S SEE, HOW MANY QUESTIONS CAN I ASK  
2 HIM ABOUT THIS SEGMENT AND THAT SEGMENT AND THE NEXT  
3 SEGMENT? HOW MANY WAYS CAN I SUGGEST TO HIM THAT HE  
4 SHOULD HAVE OR COULD HAVE OR DID THINK OF OTHER  
5 THINGS THAN WHAT HE, IN FACT, THOUGHT OF?"  
6 AND SO THEY COME UP WITH THIS WHOLE  
7 SERIES OF QUESTIONS. "WELL, MR. MENENDEZ, DIDN'T  
8 YOU THINK THIS AND DIDN'T YOU THINK THAT?"  
9 "I DIDN'T. I THOUGHT WHAT I THOUGHT."  
10 "WELL, WHY DIDN'T YOU THINK ABOUT THINGS  
11 YOU DIDN'T THINK ABOUT?"  
12 HOW CAN YOU POSSIBLY ANSWER THAT  
13 QUESTION?  
14 "WHY DIDN'T YOU THINK ABOUT THIS?  
15 "BECAUSE I'M NOT YOU AND I DIDN'T HAVE  
16 TWO YEARS TO THINK OF ASKING ME THESE QUESTIONS. I

17 THOUGHT ABOUT WHAT I THOUGHT ABOUT."

18 THAT'S THE ANSWER. ERIK MENENDEZ SITS

19 UP THERE AND SAYS: "I DON'T KNOW WHY I DIDN'T THINK

20 OF THAT. I DIDN'T THINK OF THAT."

21 AND SO HE'S ACCUSED OF BEING EVASIVE FOR

22 SAYING HE DOESN'T KNOW WHY HE DIDN'T HAVE THE

23 THOUGHTS THAT MR. CONN THOUGHT TO ASK HIM ABOUT TWO

24 YEARS LATER. IT'S RIDICULOUS. HE THOUGHT ABOUT

25 WHAT HE THOUGHT ABOUT.

26 WHAT HE WAS TRYING TO DO, BECAUSE THE

27 ISSUE IN THIS CASE NOW IS WHAT WAS THE QUALITY OF

28 HIS THINKING DURING THIS MINUTE AND A HALF, TWO

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1 MINUTES OF THINKING, WHAT WAS THE QUALITY? IF IT

2 FITS ONE CATEGORY, HE'S GUILTY OF A CRIME. IF IT

3 FITS ANOTHER CATEGORY, HE ISN'T.

4 AND SO THAT'S THE FOCUS. SO I SUPPOSE

5 THE STRATEGY WAS THEY COULD SUCKER HIM TO SEEM

6 AGREEABLE, BECAUSE THEY KNOW HE HAS A COMPLIANT

7 NATURE, IF THEY COULD SUGGEST TO HIM, BECAUSE THEY

8 KNOW HE HAS A SUGGESTIVE NATURE, A WHOLE SERIES OF

9 THOUGHTS THAT HE NEVER HAD, IF HE SIGNED ON TO THEM,

10 THEN MR. CONN CAN SAY: "LOOK WHAT HE'S THINKING

11 ABOUT. LOOK, HE CONSIDERED THIS; AND LOOK, HE

12 CONSIDERED THAT."

13 WELL, IT DIDN'T WORK. ELEVEN DAYS OF  
14 POUND, POUND, POUND, POUND, AND IT DIDN'T WORK. HE  
15 WASN'T ABLE TO TRICK HIM INTO SAYING "YES, I THOUGHT  
16 THIS, AND YES, I THOUGHT THAT," WHEN HE DIDN'T.

17 HE'S IN A PANIC STATE. NOT HAVING A  
18 PANIC ATTACK, BY THE WAY, A PANIC STATE. AND HE  
19 ISN'T REFLECTING AND DELIBERATING AND WEIGHING AND  
20 ASSESSING AND REALITY-CHECKING AND FIGURING OUT, OR  
21 DOING ANY OF THOSE THINGS, BECAUSE THAT'S HOW PEOPLE  
22 OPERATE, HOW THEY THINK WHEN THEY'RE TERRORIZED.  
23 AND NO MATTER HOW MANY TIMES MR. CONN SUGGESTED:  
24 "WELL, DIDN'T YOU THINK ABOUT THIS, AND DIDN'T YOU  
25 THINK ABOUT THAT?"

26 THE ANSWER IS "NO, I DIDN'T."

27 THE FOLLOW-UP QUESTION: "WELL, WHY  
28 DIDN'T YOU?"

51818

1 IT'S JUST AN ARGUING POINT, BECAUSE YOU  
2 CAN'T ANSWER THAT QUESTION.

3 BUT THE POINT IS, WHAT WAS HE IMPEACHED  
4 WITH? WHERE WAS HE INCONSISTENT IN THESE 15 DAYS,  
5 COMPARED TO THE PREVIOUS 10?

6 WELL, WHILE HE WAS ON THE STAND MR. CONN

7 MADE SOME VERY FEEBLE EFFORTS. I THINK THERE WERE  
8 THREE OR FOUR THINGS FROM THE PREVIOUS TRIAL WHERE  
9 THE WORDING MIGHT HAVE BEEN SLIGHTLY DIFFERENT, AND  
10 HE CLAIMS IT IMPEACHED HIM. AND I THINK ONE FACT  
11 ABOUT WHETHER HE CLEARLY TESTIFIED THE LAST TIME --  
12 AND "HE," BEING HIS BROTHER, TESTIFIED THE LAST  
13 TIME, SO HE'S -- WHETHER HE CLEARLY TESTIFIED LAST  
14 TIME THAT HE SPECIFICALLY REMEMBERED HIS FATHER  
15 TAKING NAKED PICTURES OF HIS BROTHER OR NOT, IN THIS  
16 TRIAL HE SAYS HE DID REMEMBER. IN THE LAST TRIAL,  
17 PERHAPS. I HAVEN'T EVEN LOOKED AT THE RECORD. I  
18 HAVEN'T EVEN READ HIS ARGUMENT AGAIN. PERHAPS IN  
19 THE LAST TRIAL HE WASN'T THAT EXPLICIT. THAT'S IT.  
20 TWENTY-FIVE DAYS OF TESTIMONY AND THAT IS IT. THERE  
21 ISN'T A SINGLE OTHER WITNESS IN THIS CASE, NOT EVEN  
22 DR. WILSON, NOR DR. DIETZ, WHO WAS THAT CONSISTENT.  
23 NO ONE WAS THAT CONSISTENT.

24       NOW, YOU WANT TO TELL ME FOR 15 DAYS HE  
25 WAS LYING AND COULD KEEP IT TOGETHER? WHAT IS HE?  
26 A GENIUS? HE IS A PERSON THAT DR. DIETZ HAS  
27 DIAGNOSED AS SUFFERING FROM A MENTAL DISORDER, AND  
28 HE WAS STILL ABLE TO DO THAT. WHY? BECAUSE THE



2 MEMORY. BECAUSE HE ISN'T MAKING IT UP. AND THERE  
3 IS NO OTHER WAY YOU COULD DO THAT. I MEAN, MY GOD.  
4 JAMIE PISARCIK DOESN'T KNOW WHAT TIME OF YEAR IT  
5 IS.

6 BY THE WAY, I DID MEAN TO WISH YOU ALL  
7 THE GREATEST PLEASURE IN LAST WEEK'S SPRING-LIKE  
8 WEATHER, PARTICULARLY THE INCH OF RAIN THAT FELL ONE  
9 DAY AND THE COLD WE'VE BEEN LIVING WITH EVER SINCE.

10 THERE WERE PEOPLE IN THIS TRIAL WHO  
11 DON'T KNOW THE DIFFERENCE BETWEEN SUMMER AND FALL,  
12 WINTER AND SPRING; AND YET, HE ARGUES THEY'RE  
13 CREDIBLE.

14 AND ERIK MENENDEZ SAT THERE FOR 15 DAYS  
15 AND WAS NEVER IMPEACHED ON ANYTHING MATERIAL, AND  
16 THAT'S THE KEY. NEVER.

17 AND ALONG COMES DR. DIETZ, WHO HAS HIS  
18 TESTIMONY FROM THIS TRIAL AND HIS 15 HOURS OF  
19 INTERVIEWING, AND HE CANNOT POINT OUT A SINGLE  
20 INCONSISTENCY BETWEEN WHAT WAS TESTIFIED TO HIM AND  
21 WHAT HE, THE BRILLIANT PSYCHIATRIST, WITH ALL HIS  
22 WILY WAYS, CAN GET ERIK MENENDEZ TO SAY. NOTHING.

23 NOW, I READ TO YOU IN THE VERY BEGINNING  
24 -- BEFORE I EVEN STARTED MAKING MY ARGUMENT, I  
25 DEMONSTRATED TO YOU HOW MR. CONN MISCHARACTERIZED  
26 MR. MENENDEZ' WILLINGNESS TO ANSWER QUESTIONS  
27 DIRECTLY AND NOT BE EVASIVE. NOW, HE DOES TALK TOO  
28 MUCH. YOU ASK HIM, YOU KNOW: "WAS THE SUN UP?" AND

1 HE'LL TELL YOU WHAT THE TEMPERATURE WAS AND WHETHER  
2 THE BIRDS WERE SINGING IN THE TREES, AND HE GOES ON  
3 AND ON AND ON. AND DR. DIETZ GAVE THE REASON FOR  
4 THAT. I JUST SIT THERE SAYING, "JUST ANSWER THE  
5 QUESTION, IN MY HEAD, JUST ANSWER THE QUESTIONS.  
6 LET'S MOVE ON."

7         RIGHT. AND HE'S TALKING AND TALKING.  
8 DR. DIETZ EXPLAINED IT. HE SAID PEOPLE WHO HAVE  
9 THIS KIND OF ANXIETY TALK A LOT. THEY GIVE YOU BIG  
10 LONG ANSWERS TO QUESTIONS. THEY'RE NERVOUS.  
11 THEY'RE FILLING UP -- HE ALSO SAID HE FILLS UP ANY  
12 SILENCE WITH WORDS, AND IT'S PART OF THE  
13 NERVOUSNESS. AND IT'S PART OF THE SYNDROME. AND  
14 THAT'S WHY HE'S DOING IT, NOT BECAUSE HE'S TRYING TO  
15 SELL YOU ANYTHING. HE CAN'T HELP BUT EXPLAIN.

16         AND I SUBMIT TO YOU, WHEN YOU GROW UP IN  
17 A FAMILY WITH A PARENT FOR WHOM YOU'VE GOT TO BE  
18 PERFECT, AND YOU'VE GOT TO GIVE THE RIGHT ANSWERS,  
19 AND YOU'VE GOT TO BE RIGHT ON, YOU WILL TRY ALL  
20 POSSIBILITIES TO AVOID BEING PUNISHED FOR BEING  
21 WRONG. SO THE COMBINATION OF THE GENERAL TENDENCY  
22 OF NERVOUS PEOPLE TO DO THAT AND THE SPECIFIC  
23 EXPERIENCES THAT HE HAD, EVEN EXPLAINS HIS  
24 DEMEANOR.

25 THE OTHER THING I THINK THAT MAKES HIM  
26 CREDIBLE, DESPITE -- I DON'T KNOW IF YOU CAN IMAGINE  
27 FOR EVERY WITNESS HOW TOUGH IT IS TO BE A WITNESS.  
28 HOW SCARY IT IS TO HAVE, YOU KNOW, ONE OF US SMARTY

51821

1 PANTS GETTING UP ABOUT TO QUESTION YOU. IT'S NO  
2 FUN. WE KNOW IT.  
3 IMAGINE IF YOUR LIFE IS AT STAKE. IT'S  
4 YOUR TRIAL, YOURSELF AND YOUR BROTHER'S, WHO YOU  
5 LOVE, AND YOU'RE UP THERE, AND YOU'RE UP THERE THOSE  
6 MANY DAYS, AND YOU'VE DONE SOMETHING TERRIBLE THAT  
7 YOU FEEL GUILTY ABOUT, WHERE YOUR GUILTY CONSCIENCE  
8 HAS DRIVEN YOUR MOUTH, AND THAT'S WHY YOU GOT  
9 ARRESTED TO BEGIN WITH, BECAUSE YOU COULDN'T KEEP IT  
10 QUIET; AND YOU'RE THE PERSON WHO'S SITTING THERE  
11 WITH ALL THESE THINGS THAT HAVE HAPPENED TO YOU,  
12 BEING DIAGNOSED AS HAVING A PSYCHIATRIC DISORDER,  
13 AND YOU'RE THE ONE UP THERE. OKAY?  
14 YOU HAVE TO PUT HIM IN CONTEXT. I DON'T  
15 HAVE ANY IDEA WHAT YOU THINK OF HIM. IT DOESN'T  
16 REALLY MATTER WHAT YOU THINK OF HIM. WHAT MATTERS  
17 IS WHAT YOU THINK ABOUT THE INFORMATION. BUT THE  
18 FACT OF THE MATTER IS, YOU CAN'T KNOW SOMEBODY, YOU  
19 CANNOT -- IT'S LIKE MY THINKING I KNOW YOU OR LIKE

20 YOU KNOW ME. WE COULDN'T POSSIBLY KNOW EACH OTHER  
21 WITH THIS ONE-SIDED NON-DIALOGUE. IT DOESN'T  
22 HAPPEN. THIS IS NOT HOW YOU GET CLOSE. FIGURE IT  
23 OUT. THIS IS SO FALSE. IT'S MADDENING.

24 AND I WILL TELL YOU, I DON'T LOOK TO  
25 YOUR LOOKS FOR ANY CLUE. I HAVE BEEN MISLED BY  
26 JURORS' LOOKS FOR SO MANY YEARS. I JUST KEEP  
27 SCANNING AROUND JUST TO KEEP MY EYES MOVING. BUT  
28 THE FACT IS, THIS IS NOT A NORMAL WAY TO LEARN ABOUT

51822

1 PEOPLE, AND NEITHER IS THAT.

2 AND IT'S INTERESTING THAT DR. DIETZ SAID  
3 THAT ALTHOUGH HE READ HIS TESTIMONY, THE INTERVIEW  
4 IS IMPORTANT BECAUSE IT'S A DIFFERENT KIND OF  
5 EXCHANGE. YEAH. IF YOU COULD SIT DOWN IN A ROOM  
6 WITH HIM -- IF THIS IS HOW WE COULD DO IT -- IF HE  
7 COULD GO BACK THERE WITH YOU AND SIT IN THAT  
8 HORRIBLE LITTLE BLUE ROOM WITH NO WINDOWS, AND HE  
9 SAT IN THE MIDDLE AND YOU COULD TALK TO HIM, YOU'D  
10 KNOW MORE THAN YOU WOULD BE ABLE TO KNOW ABOUT HIM,  
11 ABOUT THE INFORMATION, ABOUT HOW YOU FEEL ABOUT HIM,  
12 THAN YOU CAN DO IN A COURTROOM IN THIS ARTIFICIAL  
13 SETTING. BUT THIS IS THE LAW, THIS IS HOW IT WORKS,  
14 THIS IS HOW WE HAVE TO DO IT.

15 SO I SAY THAT TO YOU SO YOU NEITHER PUT  
16 TOO MUCH EMPHASIS ON WHAT YOU THINK YOU SAW BY  
17 DEMEANOR OR TOO LITTLE FROM THE WITNESS STAND. IT  
18 IS ARTIFICIAL. ALL YOU CAN DO IS GET SOME GENERAL  
19 IMPRESSIONS OF PEOPLE, AND THE GENERAL IMPRESSION OF  
20 HIM, APART FROM THE QUALITY OF HIS INFORMATION, IS  
21 HE ANSWERED QUESTIONS AS BEST HE COULD. AND THERE  
22 WERE TIMES WHEN HE GOT EMOTIONAL, AND MR. CONN  
23 CLAIMS HE'S FAKING. BUT HE WAS SO DISTURBED BY IT  
24 THAT WHEN ERIK MENENDEZ STARTED TO CRY HE JUMPED UP  
25 SCREAMING FOR A RECESS. DIDN'T WANT YOU TO SEE THAT  
26 HE'S A HUMAN BEING. HE'S THE DEFENDANT. THAT'S NOT  
27 HUMAN. HE DID THIS TERRIBLE THING. HE'S NOT  
28 HUMAN. HE'S NOT TO BE UNDERSTOOD. AND HE CERTAINLY

51823

1 IS NOT TO BE EMPATHIZED WITH.

2 SO LET'S GET THE JURY OUT OF HERE FAST,  
3 BEFORE HE GETS TO THEM, BECAUSE HE'S MISERABLE AND  
4 FRIGHTENED AND CRYING AND IN PAIN. HUH-UH. MUSN'T  
5 LET DEFENDANTS BE PERCEIVED THAT WAY, OR THE GAME  
6 DOESN'T GO ON AS A GAME.

7 I THINK THE OTHER THING YOU HAVE TO  
8 CONSIDER, AND YOU SHOULD CONSIDER IN EVALUATING HIM  
9 AND HIS CREDIBILITY, IS HIS FAMILY CAME TO TESTIFY

10 FOR HIM, AND THEY ARE STILL HERE.

11 YOU ALSO SHOULD CONSIDER THAT DR. DIETZ,  
12 IN LOOKING FOR SYMPTOMS BACK IN HIS CHILDHOOD, FOUND  
13 RELIABLE INFORMATION WHICH CONFIRMS WHAT HE SAID.  
14 THAT'S THEIR PSYCHIATRIST.

15 ALL OF THE SYMPTOMS THAT HE REPORTED --  
16 AND MR. CONN TRIED TO TRASH ALL THE TEST RESULTS  
17 THAT DR. WILSON PRESENTED YOU WITH, INCLUDING THE  
18 GRAPH THAT SHOWED HOW SEVERELY HE MEASURED UP AS  
19 SOMEONE WITH P.T.S.D. TRIED TO TRASH THOSE TESTS.  
20 WELL, IT DIDN'T SUCCEED ENTIRELY, BECAUSE DR. DIETZ  
21 ADMITTED, I THINK IT'S THE SCL-90, ONE OF THOSE FOUR  
22 TESTS, IS A COMMONLY USED TEST TO SCREEN FOR  
23 PSYCHIATRIC SYMPTOMS. THEY ALL USE IT. IT ISN'T  
24 JUST DR. WILSON, THE DEFENSE HIRED GUN.

25 BUT THE FACT OF THE MATTER IS, THAT IT  
26 JUST DOESN'T WORK TO SAY: "OH, DR. WILSON'S JUST  
27 RELYING ON WHAT ERIK MENENDEZ SAID," BECAUSE HE  
28 ISN'T. DR. WILSON HAS EXAMINED 10 -- SOUNDS LIKE AN

51824

1 IMPOSSIBLE NUMBER, BUT I'M SURE IT'S TRUE -- 10,000  
2 PEOPLE, LOOKING FOR WHETHER OR NOT THEY MEET THE  
3 DIAGNOSES OF POST-TRAUMATIC STRESS DISORDER. I AM  
4 SURE HE KNOWS THE DIFFERENCE BETWEEN SOMEONE WHO IS

5 AND SOMEONE WHO'S NOT. THAT'S WHAT HE DOES. HE'S A  
6 RESEARCHER AND A CLINICIAN AND A TEACHER, AND HE HAS  
7 DONE THESE HUGE RESEARCH PROJECTS, AND HE TREATS  
8 PEOPLE WHO HAVE BEEN MOLESTED AND HAVE DEVELOPED  
9 POST-TRAUMATIC STRESS DISORDER. IT ISN'T JUST, YOU  
10 KNOW, BASED ON WHAT ERIK MENENDEZ SAID.

11       AND MR. CONN MADE IT SEEM, OR WANTED YOU  
12 TO BELIEVE, THAT ERIK MENENDEZ MADE UP THESE  
13 SYMPTOMS TO GIVE HIS RESPONSES TO THE TEST, AFTER  
14 DR. WILSON TESTIFIED IN THIS HEARING. THAT WAS LAST  
15 SUMMER, A HEARING HAVING TO DO WITH JUST THE BASICS  
16 OF GENERAL POST-TRAUMATIC STRESS DISORDER. IT HAD  
17 NOTHING TO DO WITH THE FACTS OF THIS CASE. THAT'S  
18 WHAT DR. WILSON SAID. HE DIDN'T KNOW ANYTHING ABOUT  
19 WHAT ERIK MENENDEZ WOULD SAY. HE HADN'T READ  
20 ANYTHING SPECIFIC ABOUT THIS CASE EXCEPT THE  
21 TESTIMONY OF ONE EXPERT WITNESS FROM THE FIRST  
22 TRIAL. AND IT HAD TO DO WITH WHETHER OR NOT THERE  
23 WAS SUCH A THING AS BATTERED-PERSON'S SYNDROME, TO  
24 ALLOW HIM TO TESTIFY ABOUT IT, OKAY? I WON'T GET  
25 INTO THE TECHNICALITY ABOUT IT.

26       THE FACT OF THE MATTER IS, THAT'S ALL  
27 THAT HEARING WAS FOR. MR. CONN WANTS YOU TO BELIEVE  
28 THAT ERIK MENENDEZ, THEN INSPIRED LAST SUMMER, MADE

1 UP ALL THESE SYMPTOMS. THESE ARE THE SYMPTOMS THAT  
2 EXIST IN THE RECORDS THAT GO BACK TO HIS CHILDHOOD.  
3 HE DIDN'T MAKE UP ANY SYMPTOMS SINCE. THIS IS THE  
4 STUFF YOU DON'T EVEN NEED HIM TO FIND. DR. DIETZ  
5 ISN'T GOING TO RELY ON HIM. HE'S LOOKING BACK INTO  
6 THE RECORDS. I'M NOT SURE WHERE HE'S GETTING THE  
7 RECORD FROM. MAYBE HE'S JUST RELYING ON WILSON.  
8 THEN HE READS THE SUMMARIES AND IT'S IN THERE.

9 ALL THAT EXISTED IN CHILDHOOD. IT  
10 EXISTED 20 YEARS AGO, IN THE RECORDS, IN THE WITNESS  
11 OBSERVATIONS. HE DIDN'T MAKE UP ANYTHING. HE  
12 DIDN'T NEED DR. WILSON TO COME ALONG AND TALK ABOUT  
13 THE SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER. HE  
14 KNOWS THEM WELL. HE'S LIVED WITH THEM SINCE HE WAS  
15 SIX YEARS OLD.

16 THAT'S HOW THEN TO DISTORT THE SEQUENCE  
17 OF THINGS.

18 AND I THINK IT'S ALSO VERY IMPORTANT FOR  
19 HIS CREDIBILITY, AND CORROBORATING HIS CREDIBILITY,  
20 THAT DR. DIETZ HIMSELF SAID THAT HE IS GETTING  
21 BETTER; THAT IT'S A SIGN OF HIS HEALTH THAT HE COULD  
22 COME BACK, THE DAY AFTER DR. DIETZ ASSAULTED HIM,  
23 AND TELL HIM HOW HE FELT ABOUT IT. AND THAT WAS A  
24 SIGN OF HIS INCREASING HEALTH. AND IT'S CLEAR,  
25 DR. VICARY BASICALLY SAID THE SAME THING; THAT HE'S  
26 BEEN ON THIS MEDICATION A LONG TIME. HE WAS IN  
27 THERAPY WITH DR. VICARY FOR ABOUT A YEAR AND A HALF,  
28 AND HE WAS MUCH SICKER THEN THAN NOW. YOU DON'T GET



1 BETTER UNLESS YOU WERE WORSE; AND IF THE THERAPY IS  
2 GEARED AT DEALING WITH POST-TRAUMATIC STRESS  
3 DISORDER DEALING WITH THIS TRAUMA, THEN YOU GET  
4 BETTER. IF IT ISN'T GEARED TO THE TRAUMA, YOU  
5 DON'T. HE HASN'T BEEN RECEIVING THERAPY FOR GENERAL  
6 ANXIETY DISORDER. THAT'S JUST A WAY THAT DR. DIETZ  
7 CAN GO HALFWAY AND DEAL WITH HIS OWN CONSCIENCE IN  
8 HIS OWN TIME. BUT HE COULD GO HALFWAY. HE  
9 SUPPORTED OUR DEFENSE. HE CERTAINLY DID NOT ATTACK  
10 IT OR UNDERMINE IT. BUT HE WOULDN'T GO WHOLE HOG.  
11 INSTEAD, HE HID OUT. HE HID OUT BEHIND USING THE  
12 LABEL IS THAT CONSISTENT OR INCONSISTENT WITH  
13 REFLECTIVE THOUGHT, AND NEVER EXPLAINED ANYTHING  
14 ABOUT IT. TOTALLY USELESS TESTIMONY.

15 OKAY. NOW MR. -- JUST VERY BRIEFLY I  
16 WANT TO DEAL WITH THIS MAFIA NON-ISSUE JUST FOR A  
17 MINUTE.

18 HERE'S MR. CONN'S THESIS, IF YOU WILL.  
19 THAT THE REASON WHY ERIK AND LYLE MENENDEZ WERE  
20 TELLING PEOPLE THAT THE MAFIA WAS RESPONSIBLE --  
21 THIS IS HYPOTHETICALLY THAT THEY WERE -- THAT THE  
22 MAFIA WAS RESPONSIBLE, WAS BECAUSE THEY PLANNED  
23 THIS -- I'M LOOKING AT THE CARTOONS TILTING HERE.

24 THIS SILLINESS STARES AT ME ALL THE TIME. THEY  
25 PLANNED THIS TO LOOK LIKE A MAFIA HIT.  
26 NOW, REMEMBER, THIS IS ROGER MC CARTHY'S  
27 CROSS-FIRE VERSION OF THE WORLD. OKAY. SO LET'S  
28 BLOW UP, IF WE CAN, THAT MYTH. APART FROM THE

51827

1 OBVIOUS, THAT I'VE NEVER HEARD OF THE MAFIA USING  
2 SHOTGUNS, OR DOING ANYTHING LIKE THIS, AND THERE'S  
3 NO EVIDENCE THAT THEY EVER DID, THERE'S NO EVIDENCE  
4 WHATSOEVER THAT THEY HAD IN MIND THAT THE MAFIA USES  
5 SHOTGUNS ON PEOPLE. NONE.  
6 SO THERE'S NONE TO SHOW -- THIS IS  
7 SUPPOSED TO BE SPECULATION AS TO WHAT'S IN THEIR  
8 HEAD. THERE'S NONE TO SHOW THAT. OKAY? THERE'S NO  
9 EVIDENCE WHATSOEVER THAT THEY EVEN HEARD OF THE TERM  
10 "KNEE-CAPPING," OR THERE'S NO EVIDENCE OF A  
11 KNEE-CAPPING. IT MEANS TO SHOOT IN THE CAP OF THE  
12 KNEE, THIS PART. AND WHAT I'VE HEARD ABOUT IN THE  
13 PRESS IS THAT IT'S SOMETHING THAT DRUG DEALERS DO TO  
14 PEOPLE WHO OWE THEM MONEY, WHO WON'T PAY. SO YOU  
15 SHOOT THEM AND CRIPPLE THEM AND HURT THEM SO THEY  
16 PAY YOU. IT'S NOT SOMETHING YOU DO TO DEAD PEOPLE.  
17 IT'S NOT SOMETHING YOU DO IN THE COURSE OF KILLING  
18 SOMEBODY. IF YOU'RE GOING TO KILL SOMEBODY, YOU

19 KILL THEM. THAT'S WHAT ALL THAT NONSENSE IS ABOUT.

20 OKAY.

21 THIS WHOLE CRAZY THING IS UNDERMINED BY

22 TWO THINGS: NUMBER ONE, WHAT IS THEIR EVIDENCE THAT

23 ERIK MENENDEZ EVER POINTED THE FINGER AT THE MAFIA?

24 OKAY? MR. CONN SAYS -- I'VE PARSED OUT SOME

25 STATEMENTS HERE.

26 MR. CONN SAYS HE SUGGESTS THAT TO

27 DETECTIVE EDMONDS. NOW, YOU HAVE, AGAIN, A

28 TRANSCRIPT AND A TAPE OF AUGUST 21ST, 1989, THE

51828

1 STATEMENT THAT ERIK MENENDEZ MADE TO SERGEANT

2 EDMONDS, WHERE HE IS ASKED THE FOLLOWING QUESTION:

3 "DO YOU HAVE ANY IDEAS ABOUT WHO MAY

4 HAVE DONE THIS?"

5 NOW, HE IS LYING TO SERGEANT EDMONDS

6 BECAUSE, OF COURSE, HE HAS A VERY GOOD IDEA ABOUT

7 WHO WOULD HAVE DONE THIS. AND IF HE IS GOING TO BE

8 TELLING SERGEANT EDMONDS THE TRUTH, HE WOULD HAVE

9 SAID: "YES, I DO AND IT IS US."

10 HE'S NOT DOING THAT. HE'S NOT

11 CONFESSING ON THIS OCCASION. THAT TAKES A FEW

12 DAYS.

13 ON THIS OCCASION HE SAYS: "NO,"MY

14 FAMILY HAS NO ENEMIES."

15 HE DOESN'T SAY, "WELL, MAYBE IT'S THE

16 MAFIA."

17 "NO." NO, TO ME, STILL -- EVEN IN A

18 COURTROOM NO IS NO. THE WHOLE WORLD DOESN'T GET

19 TURNED UPSIDE DOWN TO SUIT THE PROSECUTION'S THEORY

20 OF THE UNIVERSE. "NO. MY FAMILY HAS NO ENEMIES."

21 NOW, I'M NOT CLEAR THAT MY COPY -- ALL

22 THESE TRANSCRIPTS HAVE HAD STRUGGLES AS TO WHAT THEY

23 REALLY SAY. YOU'LL HAVE TO LISTEN TO IT. THE

24 TRANSCRIPT IS NOT THE EVIDENCE. THE TAPE IS THE

25 EVIDENCE. IT'S NOT CLEAR TO ME WHETHER THE TAPE

26 SAYS "MY DAD DOES" OR IT SAYS "MY DAD DOESN'T KNOW A

27 LOT OF FRIENDS IN HIS BUSINESS." FRIENDS. HE'S

28 NOT TALKING ABOUT ENEMIES. HE'S TALKING ABOUT

51829

1 FRIENDS. THAT'S IT. PERIOD. NO COSA NOSTRA, NO

2 ORGANIZED CRIME, NO MAFIA, NOTHING. HE SAYS "NO."

3 ANOTHER MISREPRESENTATION.

4 NOW, THEY ROLL IN PERRY BERMAN. PERRY

5 BERMAN CLAIMS THAT ERIK MENTIONED, "OH, THEY THINK

6 THE MAFIA DID IT," WHEN HE COMES TO THE BEVERLY

7 HILLS POLICE STATION THAT MORNING. PROBLEMA.

8 SERGEANT EDMONDS TESTIFIES THAT ONLY

9 AFTER HE HAS INTERVIEWED ERIK MENENDEZ, LYLE  
10 MENENDEZ, AND MARK HEFFERNAN, ALL THREE OF THEM --  
11 HEFFERNAN WAS VERY, VERY BRIEF -- THAT HE EVEN CALLS  
12 PERRY BERMAN, WHO'S HOME, ON THE TELEPHONE, AND ASKS  
13 HIM TO COME DOWN TO THE BEVERLY HILLS POLICE  
14 DEPARTMENT TO BE TALKED TO, BECAUSE ERIK AND LYLE  
15 MENENDEZ TOLD HIM ABOUT PERRY BERMAN; THAT THEY WERE  
16 SUPPOSED TO MEET HIM, AND PERRY BERMAN HAD GONE TO  
17 THE SCENE LOOKING FOR THEM WHEN THEY DIDN'T SHOW UP  
18 AT THE CHEESECAKE FACTORY. THAT'S WHEN HE GETS THE  
19 PHONE CALL. AND IT TAKES HIM SOME TIME TO GET TO  
20 THE BEVERLY HILLS POLICE DEPARTMENT.

21 MARK HEFFERNAN TESTIFIES THAT AS SOON AS  
22 HE IS FINISHED TALKING TO EDMONDS, THEY LEAVE. THEY  
23 ARE OUT OF THERE. THEY, ERIK AND LYLE MENENDEZ AND  
24 MARK HEFFERNAN, ARE OUT OF THAT POLICE STATION,  
25 SOMETHING LIKE AN HOUR BEFORE PERRY BERMAN EVER  
26 SHOWS UP. PERIOD.

27 THAT WAS NEVER SAID TO PERRY BERMAN AT  
28 THAT POLICE STATION.

51830

1 NOW, DETECTIVE ZOELLER -- HERE YOU ARE.  
2 DETECTIVE ZOELLER TESTIFIES THAT THE CORONER'S  
3 OFFICE, WHO CERTAINLY HAS BEEN KICKED AROUND A LOT

4 RECENTLY IN THIS COURTROOM, APART FROM DR. GOLDEN,  
5 THE WHOLE CORONER'S OFFICE HAS BEEN KICKED AROUND,  
6 BECAUSE THEY RELEASED INFORMATION. I THINK HE MAY  
7 HAVE SAID THE VERY DAY, THE 21ST, THAT THIS LOOKS  
8 LIKE AN ORGANIZED CRIME HIT. THAT'S THE CORONER'S  
9 OFFICE. AND BELIEVE ME, THEY DID NOT GO DOWN TO THE  
10 CORONER'S OFFICE AND TELL THEM ANYTHING. THE  
11 CORONER'S OFFICE IS PUTTING THIS WORD OUT. THIS IS  
12 SPECULATION, AND IT'S ALL OVER THE MEDIA, ACCORDING  
13 TO DETECTIVE ZOELLER, IMMEDIATELY.

14 IS THAT WHERE PERRY BERMAN GOT IT FROM,  
15 OR IS THAT WHERE ERIK MENENDEZ GOT IT FROM SOMETIME  
16 LATER, TO SAY TO PERRY BERMAN: "LOOKS LIKE THEY'RE  
17 LOOKING AT ORGANIZED CRIME," BECAUSE THAT'S WHAT THE  
18 CORONER'S OFFICE RELEASED TO THE MEDIA.

19 THAT'S ERIK MENENDEZ' TOTAL INVOLVEMENT,  
20 NONINVOLVEMENT IN A MAFIA STORY. BUT THE ULTIMATE  
21 YOU KNOW, DOING, THE NUMBER TWO OF THIS COCKAMAMIE  
22 THEORY, IS ON SEPTEMBER 17TH -- I MEAN, IF THEY'RE  
23 TELLING THE MAFIA STORY BECAUSE THEY TRIED TO MAKE  
24 THIS LOOK LIKE A MAFIA HIT, THERE'S NEVER ANY REASON  
25 TO BACK OFF THAT STORY, IS THERE? YOU SET THIS UP  
26 TO LOOK LIKE A MAFIA HIT. THEREFORE, TELL THE MAFIA  
27 STORY AND BE DONE WITH IT.

28 OH, NO. ON SEPTEMBER 17TH, LYLE

1 MENENDEZ TELLS ZOELLER AND LINEHAN HE DOES NOT  
2 BELIEVE ORGANIZED CRIME HAD ANYTHING TO DO WITH IT.  
3 NOW, WHY IN THE WORLD WOULD HE BACK OFF IF THIS  
4 WHOLE THING WAS SUPPOSEDLY STAGED? BECAUSE IT'S  
5 CRAZINESS. IT'S NONSENSE. IT'S DESPERATION. IT'S  
6 WHY YOU BRING IN AN ENGINEER.

7 I HAVE GREAT RESPECT FOR ENGINEERING,  
8 WHEN THEY'RE DOING ENGINEERING OR BEING JUST  
9 PEOPLE. IT'S WHEN YOU BRING AN ENGINEER IN INSTEAD  
10 OF A MEDICAL PERSON, SO HE CAN SAY SOMETHING THAT A  
11 MEDICAL PERSON WOULD BLUSH TO THE ROOTS OF HIS HAIR  
12 TO SAY OR DO, SOMETHING A REAL EXPERT WOULD NEVER BE  
13 CAUGHT DEAD DOING. AND WHAT ULTIMATELY DOES  
14 MR. CONN FALL BACK ON? BECAUSE HE KNOWS ROGER  
15 MC CARTHY WAS COMPLETELY BLOWN OUT OF THE WATER IN  
16 THIS TRIAL. HE WANTS YOU TO DO WHAT ROGER MC CARTHY  
17 DID, USE YOUR COMMON SENSE. YOU CAN'T USE COMMON  
18 SENSE ABOUT SCIENCE. YOU CAN USE SCIENCE WITH  
19 SCIENCE, AND YOU CAN USE COMMON SENSE WITH WHETHER  
20 YOU TRUST THE SCIENTIST. YOU CAN USE YOUR  
21 INTUITION; AND CERTAINLY USE THE INSTRUCTION ABOUT  
22 HOW TO QUESTION THE CREDIBILITY OF EXPERT WITNESSES,  
23 WHICH YOU WILL GET.

24 BUT ULTIMATELY HE PUTS ROGER MC CARTHY  
25 ON, WHO WAS NO MORE THAN A HIGHFALUTIN LAYMAN WHEN  
26 IT COMES TO ALL THIS. WHEN THE SCIENTISTS BLOW HIM

27 OUT OF THE WATER, HE TELLS US, YOU BE THE LAYMAN,

28 /// /// ///

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1 AND YOU FIGURE IT OUT, WHAT IT MEANS TO HAVE THAT

2 BLOOD HERE OR THAT BLOOD THERE?

3 OF COURSE, THAT'S RIDICULOUS. YOU'RE

4 NOT GOING TO DO THAT. YOU DON'T HAVE -- AT LEAST YOU

5 ALL, I SUSPECT, HAVE THE HUMILITY TO KNOW WHAT YOU

6 DON'T KNOW. ROGER MC CARTHY DOESN'T.

7 ONE OTHER THING I WANTED TO SAY ABOUT

8 PERRY BERMAN. IT'S ON A SLIGHTLY DIFFERENT TOPIC.

9 IT'S ON THE TOPIC OF WHAT WITNESSES DO THEY CLAIM

10 THEY HAVE THAT IMPEACH THE STATEMENTS THAT ERIK

11 MENENDEZ MADE? AND I JUST HAVE TO FIND HIS LITTLE

12 SECTION OF THIS LITTLE BOOK.

13 TRULY, ON OUR SIDE, IF YOU WANT TO TALK

14 SIDES, PERRY BERMAN TESTIFIED AT PAGE 37,041, LINE

15 12, THAT LYLE MENENDEZ -- HE'S RELATING THE

16 CONVERSATION TO MS. TOWERY THAT LYLE MENENDEZ -- THAT

17 HE HAD WITH LYLE MENENDEZ. SHE HAS ASKED HIM THE

18 SPECIFICS, THE SPECIFICS OF THE CONVERSATION THAT HE

19 HAD WITH LYLE MENENDEZ AT AROUND 4:00 OR 5:00 IN THE

20 AFTERNOON.

21 AND HERE'S WHAT PERRY BERMAN TESTIFIED



22 TO.

23 "THAT HE WAS GOING TO GO TO SEE  
24 'BATMAN' WITH HIS BROTHER, AND DID I  
25 WANT TO JOIN HIM." WHATEVER. "I SAID I  
26 ALREADY HAD PLANS TO GO TO THE 'TASTE  
27 OF L.A.' WITH MY FRIEND, TODD HALL,  
28 AND HE SAID THAT SOUNDED LIKE FUN.

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1 "WE'LL MEET YOU THERE AFTER THE  
2 MOVIE."  
3 THESE ARE PEOPLE SUPPOSEDLY PLANNING ON  
4 KILLING SOMEBODY. RIGHT.  
5 "I SAID GREAT."  
6 "AND HE SAID HE'D BE THERE AROUND  
7 9:30, 9:45. I SAID GREAT. WE'LL WAIT  
8 FOR YOU."  
9 NOW, THAT WAS HIS -- MS. TOWERY SAYS,.  
10 "THAT'S YOUR BEST RECOLLECTION OF  
11 WHAT YOU AND LYLE MENENDEZ TALKED  
12 ABOUT IN THAT CONVERSATION?"  
13 AND THE WITNESS SAYS: "THAT'S  
14 CORRECT."  
15 SO THEN -- I HAVE THIS PAGE OUT OF  
16 ORDER. I WANT TO MAKE SURE I HAVE IT RIGHT.

17 THEN MS. TOWERY SAYS THIS TO HIM:  
18 AND MY QUESTION -- SHE SAYS:  
19 "AND THAT'S YOUR BEST  
20 RECOLLECTION OF WHAT YOU AND LYLE  
21 MENENDEZ TALKED ABOUT?"  
22 "THAT'S CORRECT."  
23 SHE SAYS:  
24 "AND MY QUESTION TO YOU" --  
25 SHE SAYS:  
26 "AND I DON'T WANT TO BEAT A DEAD  
27 HORSE, BUT MY QUESTION TO YOU IS:  
28 WHEN THE COURT ASKED YOU A QUESTION".

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1 THE JUDGE HAD ASKED HIM A QUESTION.  
2 "YOU ALSO, JUST NOW, SAID  
3 THAT LYLE ALSO TOLD YOU HE HAD BEEN  
4 OUT SHOPPING AT THE BEVERLY CENTER IN  
5 THAT CONVERSATION. YOU'VE NEVER SAID  
6 THAT BEFORE NOW."  
7 THEN THE COURT ASKS MS. TOWERY TO  
8 REPHRASE THE QUESTION.  
9 SHE SAID: "HAVE YOU EVER SAID  
10 THAT BEFORE, THAT LYLE MENENDEZ TOLD  
11 YOU THAT HE HAD BEEN OUT SHOPPING AT

12 THE BEVERLY CENTER IN THAT  
13 CONVERSATION, ON AUGUST 20TH?  
14 "ANSWER: LATE IN THE AFTERNOON.  
15 "QUESTION: RIGHT. HAVE YOU EVER  
16 SAID THAT BEFORE?  
17 "ANSWER: HAVE I EVER SAID THAT  
18 BEFORE?  
19 "QUESTION: YES.  
20 "ANSWER: WHEN? AT THIS --  
21 "QUESTION: AT ANY OF THOSE  
22 INTERVIEWS THAT I JUST MENTIONED TO  
23 YOU."  
24 SHE JUST TOLD HIM ABOUT ALL THE PREVIOUS  
25 INTERVIEWS WITH THE POLICE.  
26 AND HE SAYS: "MENTIONED?"  
27 AND THE QUESTION:  
28 "BY THE POLICE AND THE D.A.'S AND

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1 YOUR PRIOR TESTIMONY."  
2 AND HE SAID: "I DON'T RECALL. I  
3 MEAN -- I THOUGHT I MIGHT HAVE, BUT  
4 NOW YOU'RE TELLING ME I NEVER DID. SO  
5 I DIDN'T."  
6 AND THEN MS. TOWERY SAYS:

7 "IF I TOLD YOU THAT YOU HAD NEVER  
8 SAID THAT BEFORE, IS IT POSSIBLE THAT  
9 YOU ARE CONFUSING YOUR CONVERSATION  
10 WITH LYLE MENENDEZ IN THE AFTERNOON  
11 WITH YOUR EARLIER CONVERSATION WITH  
12 JOSE MENENDEZ, WHEN YOU RETURNED LYLE  
13 MENENDEZ' PHONE CALL IN WHICH YOU  
14 TESTIFIED THAT LYLE MENENDEZ TOLD YOU  
15 THAT --" THAT'S A MISQUOTE -- "IN WHICH  
16 YOU HAD TESTIFIED THAT JOSE MENENDEZ  
17 TOLD YOU THAT LYLE AND ERIK WERE OUT  
18 SHOPPING AT THE BEVERLY CENTER? IS IT  
19 POSSIBLE YOU HAVE CONFUSED YOUR  
20 CONVERSATION WITH LYLE WITH THAT  
21 EARLIER CONVERSATION?"  
22 HIS ANSWER: "I DON'T KNOW. I  
23 MIGHT HAVE. I DON'T KNOW."  
24 THAT'S SUPPOSED TO BE -- ON THE STRENGTH  
25 OF GEE, I DON'T KNOW, THAT'S SUPPOSED TO BE ONE OF  
26 THEIR FEW ARGUABLY IMPEACHING WITNESSES, PERRY  
27 BERMAN.  
28 I'LL GET BACK TO -- YES. I KNOW. IT'S SO

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1 BORING.

2 I'M SORRY. NOW, MY CLIENT IS  
3 EXCORIATED, OF COURSE, FOR SUPPOSEDLY DOING ALL OF  
4 THIS LYING. WHAT DOES IT BOIL DOWN TO? HE DOESN'T  
5 CONFESS TO THE POLICE, TRUE. HE DOESN'T CONFESS ON  
6 AUGUST 21ST, AND HE DOESN'T CONFESS ON SEPTEMBER  
7 17TH. BUT HE SURE DROPS A FEW WEIRD HINTS ON  
8 SEPTEMBER 17, 1989.

9 FOR EXAMPLE, YOU KNOW, HE KEEPS TALKING  
10 ABOUT -- HE SAYS IT EVEN ON THE 21ST -- ABOUT  
11 SMELLING SMOKE. I THINK THAT'S ON THE 21ST, AND  
12 THEN ABOUT SEEING SMOKE IN THE ROOM. AND OBVIOUSLY,  
13 WHATEVER SMOKE THERE MAY HAVE BEEN, AND WHATEVER  
14 SMELL THERE MAY HAVE BEEN IS GOING TO DISSIPATE VERY  
15 QUICKLY. THE WINDOWS ARE BLOWN OUT. AND I THINK WE  
16 HAD TESTIMONY -- I'M NOT SURE WHO -- MAYBE FROM KURT  
17 KUHN. BUT THE SMELL AND SMOKE DISAPPEARS  
18 IMMEDIATELY.

19 SO WHEN HE AND HIS BROTHER COME BACK AN  
20 HOUR LATER, THERE ISN'T ANY SPOKE OR SMELL; AND YET,  
21 HE KEEPS TALKING ABOUT IT, WHETHER THAT'S BECAUSE  
22 HE'S NOT THINKING CLEARLY, WHICH IS MORE THAN  
23 LIKELY, OR WHETHER THAT'S BECAUSE SUBCONSCIOUSLY  
24 HE'S WANTING TO BE CAUGHT, BUT HE'S DROPPING THIS  
25 HINT ABOUT SMOKE.

26 MR. CONN SAYS HE'S PLAYING WITH  
27 DETECTIVE ZOELLER. I DON'T THINK SO. HE DOESN'T  
28 HAVE THAT ARROGANT CHIP ON YOUR SHOULDER TYPE, THAT

1 HE'S PLAYING WITH DETECTIVE ZOELLER. THINGS JUST  
2 KEEP POPPING OUT.

3 IT'S JUST LIKE WHAT HAPPENS ON THE  
4 DECEMBER 11TH TAPE. THE TRUTH KEEPS POPPING OUT.  
5 THIS BUSINESS, ABOUT SEEING OR SMELLING SMOKE -- AND  
6 BY THE WAY, AS I TOLD YOU, VAN HORN TESTIFIED THERE  
7 WOULD BE SOME SMOKE. IT'S JUST GIVE AWAY THAT THE  
8 POLICE DON'T REALLY FOLLOW-UP ON. I'M NOT SURE WHAT  
9 THEY COULD HAVE DONE, ALTHOUGH I'VE LONG SUSPECTED  
10 THAT IF THEY HAD GOTTEN ERIK MENENDEZ INTO THE  
11 POLICE STATION, AND I THINK DETECTIVE ZOELLER  
12 INDICATED THAT AS WELL, BY HIMSELF, IT WOULDN'T HAVE  
13 TAKEN MUCH TO GET HIM TO CONFESS. I THINK MR. CONN  
14 ARGUED THAT ON THE SEPTEMBER 17TH TAPE TO ZOELLER.

15 AND ERIK MENENDEZ SAID THAT HIS PARENTS  
16 HAD HAD A HABIT OF FALLING ASLEEP IN FRONT OF THE  
17 TV. THIS IS ALL THE WAY AROUND THE MOUNTAIN FOR  
18 YOU. HERE'S WHAT HIS ANSWER WAS. HE'S ANSWERING  
19 THAT QUESTION.

20 "NO, NO. WELL, MY MOM WENT --  
21 ACTUALLY THEY BOTH -- BUT ONLY FOR AN  
22 HOUR. DAD WOULD BE WATCHING A MOVIE.  
23 MOM WOULD FALL ASLEEP IN HIS LAP, OR  
24 MOM WOULD BE UP WATCHING A MOVIE, AND  
25 DAD WOULD BE FALLING ASLEEP IN THE

26 CHAIR."

27 I DON'T KNOW WHAT HE'S TALKING ABOUT.

28 THERE'S NO CHAIR IN THAT ROOM. THERE'S NO CHAIR.

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1 IT'S ALL COUCH. "THEY'D WAKE UP WHEN THE MOVIE IS

2 OVER." AND THAT'S ALL HE SAYS ABOUT THAT. HE SAYS

3 THEY USUALLY WATCH UPSTAIRS.

4 AND THE FACT OF THE MATTER IS, THESE

5 PEOPLE WERE NOT SLEEPING WHEN THEY WERE SHOT,

6 BECAUSE THEY WERE STANDING UP.

7 WHAT'S INTERESTING, TOO, IS IN THE

8 SEPTEMBER 17TH STATEMENT, HOW MANY THINGS THAT HE

9 SAYS ARE HINTS ABOUT THE TRUTH? FOR EXAMPLE,

10 MR. CONN TALKS ABOUT THE FACT THAT HE ASKS A

11 QUESTION. HE ASKS ZOELLER AND LINEHAN IF THEY THINK

12 IT COULD HAVE BEEN SOMEONE THEY KNEW.

13 NOW, MR. CONN SAYS HE'S PLAYING WITH

14 HIM. WELL, I THINK THERE'S A MUCH SIMPLER

15 INTERPRETATION, VERY STRAIGHT FORWARD. HE'S TRYING

16 TO FIND OUT WHETHER OR NOT HE'S A SUSPECT. I MEAN,

17 HE'S EITHER DOING THAT, OR HE'S TRYING TO TELL HIM

18 THAT HE'S THE SUSPECT. COULD IT BE SOMEBODY THEY

19 KNEW? AFTER ALL, HE AND HIS BROTHER HAVE RULED OUT

20 BURGLARY AND ROBBERY. HIS BROTHER IS RULING OUT THE

21 MAFIA THAT VERY DAY. SO HE'S ASKING: "COULD IT  
22 HAVE BEEN SOMEONE THEY KNEW?"  
23 AND THE POLICE TELL THEM: "YEAH.  
24 YEAH. LOOKS LIKE IT COULD HAVE BEEN."  
25 SO WHETHER HE'S ASKING TO FIND OUT HOW  
26 CLOSE THEY ARE TO BEING ARRESTED, WHICH, AS I SAID,  
27 HE ALWAYS EXPECTED WOULD HAPPEN, OR TO TELL THEM,  
28 BECAUSE WHATEVER THIS NEED IS THAT HE HAS APPARENTLY

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1 TO CONFESS, IT'S THERE.  
2 WITH RESPECT TO HIS TELLING THEM ABOUT  
3 NOT GOING TO SCHOOL THAT YEAR, I THINK MR. CONN  
4 SAID -- AS I SAID, I HAVEN'T REREAD HIS ARGUMENT,  
5 BUT I THINK HE SAID MR. MENENDEZ TOLD THE POLICE HE  
6 DIDN'T WANT TO GO SCHOOL THAT YEAR. HERE'S WHAT HE  
7 SAID, AND IT'S ON THE TRANSCRIPT, ON THE TAPE.  
8 "I'M NOT GOING TO BE ABLE TO GO  
9 TO SCHOOL THIS YEAR."  
10 AND HE TESTIFIED HE HAD JUST TALKED TO  
11 THE PEOPLE AT PRINCETON, AND HE WASN'T GOING TO BE  
12 ABLE TO GO THERE. BUT I THINK NOT BEING ABLE TO GO  
13 TO SCHOOL HAD A GREAT DEAL TO DO WITH HIS MENTAL  
14 STATE AT THAT POINT AS WELL. HOW IN THE WORLD DO  
15 YOU GO TO SCHOOL, TO BE IN AN ATMOSPHERE WHERE



16 YOU'RE FREE TO RUMINATE AFTER WHAT YOU'VE DONE,  
17 AFTER TO POUNDING THE TENNIS COURTS FOR 12 HOURS A  
18 DAY, WHICH IS AN ACTIVITY WHICH HE WAS ALWAYS ABLE  
19 TO DO WHEN HE WAS TRAUMATIZED? THIS IS A WAY TO GET  
20 YOUR MIND OFF OF THIS TERRIBLE THING YOU'VE DONE.

21       HERE'S WHAT HE SAYS:

22       "I'M NOT GONNA BE ABLE TO GO TO  
23       SCHOOL THIS YEAR. I DON'T WANT TO GO  
24       SCHOOL THIS YEAR. I WON'T BE ABLE TO  
25       GO TO SCHOOL THIS YEAR."

26       THAT'S HIS ANSWER. AND THEN HE TELLS  
27 HIM HE WANTED TO LIVE UP TO THINGS THAT HIS DAD  
28 WANTED HIM TO LIVE UP TO. I WANT TO TELL YOU HOW

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1 THAT COMES OUT, BECAUSE IT'S A REAL INSIGHT INTO  
2 WHAT THE FAMILY WAS LIKE.

3       "I WANT TO LIVE UP TO THINGS THAT  
4       MY DAD WANTED ME TO LIVE UP TO."

5       AND DETECTIVE ZOELLER SAYS:

6       "SURE."

7       AND THEN ERIK SAYS: "I GUESS, YOU  
8       KNOW, THEY SAY, YOU KNOW, LIVE YOUR  
9       OWN LIFE. BUT MY OWN LIFE WAS PART OF  
10      HIS DREAM."

11 HIS OWN LIFE BELONGS TO HIS FATHER.  
12 IT'S ALSO IN THIS CONVERSATION THAT HE  
13 MENTIONED, AND THAT'S WHY I CAN TALK ABOUT IT,  
14 BECAUSE ANYTHING IN THESE TAPES IS EVIDENCE. HE  
15 MENTIONED THAT HE HAD FRACTURED HIS ANKLE THE SUMMER  
16 BEFORE, '88, AND HE WASN'T PLAYING TENNIS, AND HE  
17 WAS IDLE. AND THAT'S, OF COURSE, WHEN HE GOT INTO  
18 TROUBLE.  
19 HE ALSO TELLS THEM, CONFIRMING THAT HE  
20 WAS SUPPOSED TO BE LIVING AT THE DORM AT U.C.L.A.  
21 THAT WAS THE FAMILY PLAN, UNTIL, AS WE KNOW, IT WAS  
22 DESTROYED THE SUNDAY BEFORE THE SHOOTINGS. AND HE  
23 ALSO TELLS DETECTIVE ZOELLER BACK THEN, WHEN HE'S  
24 NOT ARRESTED -- AND HE'S NOT SUPPOSEDLY IN A  
25 POSITION TO MAKE ANYTHING UP, AND HE HAD NO REASON  
26 TO LIE ABOUT THIS -- HE TOLD DETECTIVE ZOELLER THAT  
27 HE DIDN'T HAVE A KEY TO THE HOUSE. HE NEVER HAD A  
28 KEY TO THE HOUSE; THAT THE KEYS TO HOUSE WERE JUST

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1 LEFT LYING AROUND, WHICH IS PRECISELY WHAT HE  
2 TESTIFIED TO. AND THEN ALSO, WHAT I THINK, YOU  
3 KNOW, IS A CLUE THAT HE REALLY WANTED TO TELL THEM,  
4 AND WAS IN HIS OWN WAY TRYING TO TELL THEM THAT HE  
5 WAS INVOLVED WITH THIS.

6 MR. LEVIN READ A SECTION OF THE TAPE  
7 THAT WAS EDITED OUT, FOR WHATEVER REASON, AND DIDN'T  
8 APPEAR IN THE TRANSCRIPT, AND UNFORTUNATELY, IT  
9 DOESN'T APPEAR ON THE TAPE ITSELF THAT YOU'RE GOING  
10 TO GET EITHER.

11 SO IF IT MATTERS TO YOU, TO MAKE A NOTE  
12 THAT IT IS IN THE TESTIMONY THAT ERIK MENENDEZ  
13 STARTS TO RUMINATE THEN WITH THE POLICE ABOUT HOW  
14 HIS VIEW OF LIFE CHANGED. HE TALKS ABOUT WHEN HE  
15 WAS YOUNGER. HE LOVED EVERYTHING, I THINK HE SAID.  
16 HE WOULDN'T HAVE HURT A LEAF OFF OF A TREE; AND NOW  
17 THAT HE'S OLDER, HE REALIZES THE WORLD IS COLDER, OR  
18 LIFE SEEMS COLDER. AND I THINK HE'S MAKING A REAL  
19 SUGGESTION THERE ABOUT HOW HE ISN'T THE PERSON  
20 THAT -- HE HAS DONE SOMETHING THAT MAKES HIM THINK  
21 HE'S NOT THE PERSON THAT HE THOUGHT HE WAS, AND THIS  
22 IS AN EXAMPLE OF HIS GUILTY CONSCIENCE.

23 WE CAN BREAK NOW, YOUR HONOR.

24 THE COURT: ALL RIGHT. IT'S A LITTLE AFTER  
25 12:00. WE'LL RECESS UNTIL 1:30.

26 AGAIN, DON'T DISCUSS THE CASE WITH  
27 ANYONE. DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND  
28 WE'LL SEE YOU BACK HERE AT 1:30.

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

1 VAN NUYS, CALIFORNIA; TUESDAY, FEBRUARY 27, 1996

2 1:40 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 THE COURT: IN THE TRIAL, EVERYONE IS PRESENT.

9 ARE WE READY FOR THE JURY?

10 ALL RIGHT. LET'S HAVE THE JURY OUT,

11 PLEASE.

12 (THE JURY ENTERS THE COURTROOM

13 AND THE FOLLOWING PROCEEDINGS

14 WERE HELD:)

15

16 THE COURT: ALL RIGHT. THE JURY IS BACK, AND YOU

17 MAY CONTINUE YOUR ARGUMENT.

18 MS. ABRAMSON: THANK YOU, YOUR HONOR.

19 GOOD AFTERNOON, LADIES AND GENTLEMEN.

20 I WAS TALKING TO YOU ABOUT SOME OF THE

21 THINGS THAT WERE MENTIONED ON THE SEPTEMBER 17TH, 1989

22 TAPE BY MY CLIENT THAT CORROBORATE BASICALLY THINGS THAT

23 HE SAID DURING HIS TESTIMONY.

24 TWO THINGS IN PARTICULAR THAT ARE

25 INTERESTING; THAT, FOR WHATEVER REASONS, DETECTIVE  
26 ZOELLER AND LINEHAN NEVER FOLLOWED UP ON WHEN THEY WERE  
27 TALKING TO ERIK MENENDEZ AT HIS AUNT, TERRY BARALT'S  
28 HOUSE IN NEW JERSEY, WAS THAT ERIK MENENDEZ TELLS HIM --

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1 I THINK I HAVE A NOTE HERE. IT'S PAGE 30. TELLS HIM  
2 ABOUT TWO THINGS.

3       YOU MAY RECALL, YOU MAY NOT RECALL, THAT  
4 MR. MENENDEZ TESTIFIED THAT THE PREVIOUS SPRING -- AND  
5 THIS IS ANOTHER EXAMPLE OF THE EXTREME WAY IN WHICH  
6 MR. MENENDEZ EXPRESSES HIS UNHAPPINESS WITH RELATIVELY  
7 ORDINARY THINGS.

8       HE TESTIFIED THAT IN THE SPRING -- OR MAY  
9 OF 1989, HIS FATHER THREATENED TO DISOWN HIM BECAUSE HE  
10 WASN'T REPORTING HIS TENNIS PRACTICE DETAILS. YOU KNOW,  
11 HE DIDN'T SAY HOW MANY BACK STROKES, I GUESS, HE TOOK,  
12 OR WHERE THE BALL WENT ON EACH SERVE IN THE KIND OF  
13 MINUTE, CONTROLLING DETAIL THAT MR. MENENDEZ WANTED.  
14 AND I THINK THAT'S SOMETHING MR. CONN ALSO SCOFFED AT,  
15 OR WAS SARCASTIC ABOUT.

16       BUT HERE -- HERE IT IS. IT'S SITTING HERE,  
17 SEPTEMBER 17TH, 1989 ON PAGE 30 OF THE TRANSCRIPT. AND  
18 HE IS TELLING -- HE IS TELLING THE DETECTIVES: "MY DAD  
19 IN LAST MAY OR APRIL THOUGHT THAT I WASN'T OPENING UP,  
20 OPENING UP IN TENNIS."

21 SO HE'S MENTIONING IT EVEN IN -- AND TRIED  
22 TO TALK ABOUT PAST THINGS IN THEIR RELATIONSHIP EVEN IN  
23 THIS INTERVIEW WITH THE POLICE. AND YOU MAY RECALL THE  
24 WAY THE TESTIMONY CAME OUT, ERIK MENENDEZ SAID THAT IT'S  
25 DR. OZIEL WHO TELLS HIM THAT HIS MOTHER TOLD OZIEL THAT  
26 JOSE MENENDEZ WAS SO ANGRY ABOUT THIS, NOT OPENING UP,  
27 THAT HE WAS THREATENING TO DISOWN ERIK MENENDEZ.  
28 AND YOU WILL SEE ON THE 12-11 TAPE, THERE

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1 IS OZIEL TALKING ABOUT "YOU WERE DISINHERITED."  
2 THAT MAY BE REFERRING BACK TO THIS OR MAY  
3 EVEN BE REFERRING BACK TO THE PREVIOUS YEAR, '88, WHEN  
4 SUCH CONVERSATIONS WERE OCCURRING.  
5 I WANT TO SAY ONE THING, AND I FORGOT TO  
6 SAY THIS YESTERDAY, AND IT'S OCCURRED TO ME.  
7 WHEN WE TALK ABOUT WHAT THEY'RE DOING  
8 AFTERWARDS, QUOTE, LOOKING FOR A WILL, AS I POINTED OUT,  
9 I THINK THE OBVIOUS -- I MEAN, JUST LOGICALLY WHAT  
10 THEY'RE DOING IS LOOKING FOR THE THING THAT COULD  
11 POTENTIALLY DISINHERIT THEM, WHICH IS NOT SHOWING A  
12 GREED MOTIVE.  
13 BUT THE OTHER THING MR. CONN CALLED HOW  
14 CALLOUS, HOW HORRIBLE, IS THAT THEY'RE EVEN TALKING  
15 ABOUT THESE FINANCIAL ISSUES AFTER THEIR PARENTS ARE  
16 KILLED.

17           AND YET WHAT WE KNOW IS -- FROM WHAT YOU  
18 CAN GATHER ABOUT THE FAMILY, THEY'RE VERY MATERIALISTIC  
19 PEOPLE. THAT'S A REALITY. THAT'S IN THE AMERICAN  
20 CULTURE. MANY PEOPLE ARE.

21           BUT WHAT WE FIND OUT IS EVEN THE UNCLES AND  
22 AUNTS, WHEN THEY COME HERE AFTER THESE PEOPLE ARE  
23 KILLED, THEY'RE ALL SCURRYING AROUND LOOKING FOR WILLS,  
24 LOOKING FOR ASSETS. THEY'RE ALL FOCUSED ON MONEY. AND  
25 THAT SEEMS TO BE SOME KIND OF THING IN THIS FAMILY  
26 THAT -- FINDING OUT WHERE THE ASSETS ARE, FINDING OUT  
27 WHO HAS THE WILL. AND I DON'T KNOW WHY IT'S SO, BUT  
28 THEY ALL HAVE IT.

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1           SO I DON'T THINK THAT NOTION THAT THEY HAVE  
2 NO PARENTS, THEY HAVE NO WAY OF SUPPORTING THEMSELVES.  
3 THEY ARE LOOKING FOR -- TO PUT THE FINANCIAL THINGS IN  
4 ORDER, HAS ANY RELATION BACK TO ANY MOTIVE. IF IT SEEMS  
5 CALLOUS, SO IT SEEMS.

6           BUT THEN IS IT CALLOUS FOR AUNT MARTHA, ON  
7 TUESDAY, TO GO DOWN TO JOSE MENENDEZ' OFFICE AND START  
8 PULLING OUT HIS FINANCIAL STATEMENTS?

9           IS IT CALLOUS FOR JOAN VANDERMOLEN AND ALL  
10 THE OTHER MEMBERS OF THE FAMILY TO BE SITTING THERE IN  
11 THE BEDROOM PLUGGING INTO THE FAMILY COMPUTER, TRYING TO  
12 FIND WILLS? MAYBE THAT'S ALL THEY COULD ALL THINK OF TO



13 DO -- FOR THEIR DIFFERING REASONS, MIND YOU -- AT THAT  
14 POINT IN TIME.

15 NOW, THE OTHER THING THAT'S IN THIS  
16 SEPTEMBER 17TH, 1989 STATEMENT, WHICH IS INTERESTING, IS  
17 ERIK MENENDEZ TELLING THE POLICE: "WE WANTED TO GO TO  
18 COLLEGE REALLY BAD. WE WERE GETTING AWAY FROM HIM, YOU  
19 KNOW. WE'RE TRYING TO STAY AWAY AND DO OTHER THINGS."

20 AND THAT'S JUST A HINT, JUST A CLUE THAT  
21 WHAT HE'S TELLING YOU HERE IS THAT COLLEGE AND GETTING  
22 AWAY TO COLLEGE WAS WHAT HE HAD FOCUSED ON FOR, I THINK  
23 HE SAID THREE YEARS, AS THE WAY TO END WHAT WAS GOING ON  
24 BETWEEN HIMSELF AND HIS FATHER. IT WAS INDEED THE FOCUS  
25 OF HIS RELATIONSHIP WITH HIS FATHER IN THE LAST MONTHS  
26 UNTIL THAT RESCUE FANTASY WAS BLOWN UP.

27 NOW, MR. CONN ARGUED TO YOU THAT ERIK  
28 MENENDEZ LIED TO EVERYBODY. I HAVE GONE OVER WITH YOU

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1 THE TWO STATEMENTS WHERE HE CLEARLY LIED TO THE POLICE.

2 EVEN IF HE HAD SAID NOTHING, REMAINING MUTE  
3 WHEN THEY'RE INVESTIGATING A HOMICIDE THAT YOU  
4 PARTICIPATED IN, BY REMAINING MUTE YOU ARE LYING. IT'S  
5 A SIN OF OMISSION. YOU'RE NOT TELLING THEM THE TRUTH,  
6 AND THERE IT IS.

7 HOWEVER, MR. CONN ALSO ARGUES THAT HE LIED  
8 ABOUT THE BURGLARIES, AND THERE IS NO EVIDENCE OF THAT.

9 THERE IS NO EVIDENCE HE SAID ANYTHING ABOUT THE  
10 BURGLARIES.

11 THE ONLY EVIDENCE WE HAVE IS THAT WHEN HIS  
12 FATHER CONFRONTED HIM ABOUT THE BURGLARIES, WHAT DID HE  
13 DO? HE ADMITTED THEM. AND THAT'S WHAT STARTED THE BALL  
14 ROLLING TO GET A LAWYER AND GET THE PROPERTY BACK, AND  
15 ALL THE REST OF IT.

16 SO THERE IS NO EVIDENCE HERE THAT HE LIED  
17 ABOUT THE BURGLARIES AT ALL. HE COMMITTED THEM. ONE  
18 WAS TECHNICALLY GRAND THEFT, BECAUSE HE DIDN'T BREAK IN.  
19 THAT'S THE DIFFERENCE BETWEEN -- THAT'S WHY WE SOMETIMES  
20 TALK ABOUT THEM AS THE THEFTS, SOMETIMES THE BURGLARIES.  
21 HE WAS ALREADY LAWFULLY INSIDE THE LIST RESIDENCE WHEN  
22 HE WENT LOOKING, HE AND CIGNARELLI, WHEN THEY WENT  
23 LOOKING AND FOUND THE SAFE.

24 THAT'S NOT TECHNICALLY A BURGLARY, BUT IT  
25 MAKES NO DIFFERENCE WHATSOEVER FROM THE STANDPOINT OF  
26 EITHER LEGAL OR MORAL RESPONSIBILITY.

27 HOWEVER, THERE IS NO LYING ABOUT THAT.  
28 OKAY. AND HE CERTAINLY ISN'T FOBGING OFF RESPONSIBILITY

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1 FOR THAT HERE.

2 THE OTHER THING THAT MR. CONN TALKED ABOUT  
3 IS HE LIED TO HIS RELATIVES. THERE IS NO EVIDENCE OF  
4 THAT EITHER, UNLESS WE TALK ABOUT A SIN OF OMISSION. HE

5 CLEARLY DID NOT TELL THEM THAT HE WAS RESPONSIBLE.

6 BUT YOU HAVEN'T HEARD ANYTHING, ANYBODY  
7 COME IN AND TESTIFY THAT THEY ASKED HIM ABOUT WHAT  
8 HAPPENED, OR THAT THEY DISCUSSED EVEN THAT NIGHT AND  
9 WHERE THEY WERE, OR ANYTHING LIKE THAT, THAT INDICATED  
10 THAT HE LIED TO ANY OF THEM.

11 I WOULD SUSPECT, GIVEN THIS FAMILY, AND HOW  
12 ERIK AND LYLE MENENDEZ WERE VIEWED IN THIS FAMILY,  
13 NOBODY IN THIS FAMILY COULD HAVE CONCEIVED THAT THEY  
14 WOULD HAVE DONE THIS. NO ONE IN THIS FAMILY WOULD HAVE  
15 HAD ANY REASON IN THE WORLD, KNOWING WHAT THEY WERE  
16 LIKE, WHAT THE SONS WERE LIKE, TO ASK THEM IF THEY WERE  
17 RESPONSIBLE FOR THIS.

18 AND I THINK THAT'S WHY THERE IS NO EVIDENCE  
19 THAT HE EVER LIED TO ANY RELATIVE ABOUT THIS.

20 BUT WHAT'S INTERESTING TO ME ABOUT MY  
21 CLIENT'S TESTIMONY, IS FAR FROM TRYING TO MINIMIZE  
22 RESPONSIBILITY, I THINK HE ACCEPTS MORE THAN HE  
23 NECESSARILY HAS TO. WHEN MR. CONN ASKED HIM: "AND YOU  
24 LIED TO YOUR RELATIVES, AND YOU LIED TO THE POLICE," ALL  
25 IN ONE BIG QUESTION, HE SAID: "YES." HE WASN'T GOING  
26 TO QUIBBLE AND NITPICK.

27 DID HE TECHNICALLY LIE ABOUT THE  
28 BURGLARIES? DID HE TECHNICALLY LIE TO RELATIVES?

1 WHAT'S THE DIFFERENCE? HE WASN'T HONEST THEN, AND HE  
2 REALIZES HIS CREDIBILITY IS A BIG ISSUE IN THIS TRIAL,  
3 AND SO HE ISN'T GOING TO QUIBBLE OR NITPICK ABOUT THAT.

4 NOW, MR. CONN ALSO PICKED UP ON THIS LITTLE  
5 PHRASE THAT DR. DIETZ USED, AND I AM SURE WHAT THE  
6 AGENDA WAS, BUT I AM NOT SURE PSYCHIATRICALY WHAT IT  
7 MATTERED TO TALK ABOUT HIS LAW -- I CALL IT HIS, QUOTE,  
8 LAWLESS LIFE, THIS EXAGGERATED IMPORTANCE THAT'S BEING  
9 PLACED ON THE THINGS THAT HE DID BEFORE THIS THAT WERE  
10 IN SOME WAY ILLEGAL.

11 AND OF COURSE WHAT IS DR. DIETZ TALKING  
12 ABOUT? THIS FAKE I.D. TO GET INTO CLUBS. AND I HAVE  
13 SORT OF TALKED TO YOU ABOUT THAT BEFORE. IT DOESN'T  
14 TELL YOU ANYTHING ABOUT WHY THIS OCCURRED.

15 WHEN I SUGGESTED TO DR. DIETZ THAT  
16 OBTAINING THE FALSE I.D. WAS WITH THE APPROVAL AND  
17 ASSISTANCE OF HIS MOTHER, HE SAID: "WELL, THAT DOESN'T  
18 MAKE ANY DIFFERENCE THAT SOMEONE ELSE KNEW ABOUT IT.  
19 THE DOING OF THE ACT STILL SHOWS A WILLINGNESS TO  
20 VIOLATE THE LAW."

21 BUT I SUBMIT TO YOU WHEN YOU'RE 17 AND  
22 18 -- AND WE NEVER DID PIN DOWN WHEN HE GOT RICHARD  
23 STEVEN'S IDENTIFICATION.

24 WHEN YOU'RE 17 OR 18, AND YOU'RE DOING  
25 SOMETHING LIKE THIS, GETTING A FAKE I.D., WHICH  
26 UNFORTUNATELY MOST OF THE KIDS I KNOW OF OUT THERE HAVE  
27 THEM --

28 MR. CONN: OBJECTION.

1 THE COURT: ALL RIGHT. THAT IS BEYOND THE  
2 RECORD, SO THAT REMARK IS STRICKEN.

3 YOU MAY CONTINUE.

4 MS. ABRAMSON: WELL, DR. DIETZ CONCEDED THAT  
5 MANY, MANY KIDS WOULD DO THIS, AND DO DO THIS; THAT IT'S  
6 A COMMON THING TO HAVE FAKE I.D. TO GET INTO CLUBS.

7 I SUBMIT TO YOU THAT IF THEY DO IT AND  
8 THEIR PARENTS KNOW, AND THEIR PARENTS APPROVE, THEN IT  
9 IS NOT THAT IMMORAL TO THEM TO DO IT. IF THEY'RE  
10 GETTING APPROVAL FROM ONE AUTHORITY FIGURE, IT IS NOT AN  
11 ACT OF ANTI-AUTHORITY BEHAVIOR. IT IS NOT THE SAME KIND  
12 OF ACT OF REBELLIOUSNESS AS IF THEY'RE DOING SOMETHING  
13 LIKE THAT ON THEIR OWN.

14 SO I SAY THAT DOES DIMINISH WHETHER THIS  
15 SHOWS SOMETHING ABOUT HIS LAWFULNESS, HIS MORALITY OR  
16 HIS CONSCIENCE.

17 THEN DR. DIETZ ALSO CHIDES HIM FOR BUYING  
18 THE GUNS WITH FALSE I.D., AND HE HAS A PERFECTLY  
19 INNOCENT EXPLANATION FOR WHY HE'S BUYING THE GUNS WITH A  
20 FALSE I.D. BECAUSE HE NEEDS I.D., AND HE DOESN'T HAVE  
21 HIS OWN. I MEAN, THAT'S SUCH A SILLY, TECHNICAL POINT.  
22 BUT THEY'RE TRYING TO SUGGEST TO YOU THAT HE IS WHAT  
23 THEY CAN'T SAY HE IS, WHAT THEY KNOW HE ISN'T, THIS  
24 ANTISOCIAL PERSON. AND THEY KNOW HE ISN'T THAT, SO  
25 THEY'RE PULLING OUT THIS TO TRY TO GIVE YOU THE FEELING

26 THAT HE IS THE KIND OF PERSON WHO COMMITS CRIMES.  
27 AND I'VE TALKED BEFORE ABOUT THE NATURE OF  
28 THE BURGLARIES AND WHERE THEY FIT INTO THIS, AND I WILL

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1 ACCEPT DR. DIETZ' EXPLANATION FOR THEM, THAT THEY ARE  
2 THE KIND OF ACTING OUT YOU CAN EXPECT WHEN CHILDREN ARE  
3 COMING OUT OF AN OPPRESSIVE FAMILY AND THEY AREN'T  
4 GETTING ANY HELP FOR THE REAL PROBLEMS.

5 NOW, MR. CONN ALSO ACCUSES ERIK MENENDEZ IN  
6 ENGAGING IN EFFORTS TO FABRICATE, AND I DO NOT BELIEVE  
7 THERE IS ANY EVIDENCE OF THAT, EFFORTS ON HIS PART TO  
8 FABRICATE ANYTHING IN THIS TRIAL, THE LAST TRIAL, OR AT  
9 ANY TIME.

10 NOW, YOU HAVE TO UNDERSTAND, AND I HAVE  
11 THIS CHART HERE -- EXCUSE ME, YOUR HONOR.

12 THE COURT: YES.

13 MS. ABRAMSON: AM I SICK, OR IS IT REALLY WARM IN  
14 HERE RIGHT NOW?

15 THE COURT: IT'S OKAY, I GUESS.

16 MS. ABRAMSON: CAN WE --

17 THE COURT: ANYBODY HAVE A PROBLEM WITH THE  
18 TEMPERATURE RIGHT NOW? TOO HOT, COLD?

19 MS. ABRAMSON: IT FEELS VERY HOT TO ME.

20 THE COURT: ALL RIGHT. THIS IS UNUSUAL.  
21 NORMALLY I'M THE GUY THAT FEELS IT.

22 MS. ABRAMSON: RIGHT. THAT'S WHY I ASKED YOU.

23 THE COURT: WE WILL SEE IF WE CAN DO SOMETHING  
24 ABOUT IT.

25 MS. ABRAMSON: I'LL JUST HOLD THIS UP, BECAUSE IT  
26 WON'T TAKE LONG.

27 PART OF THE PROBLEM WITH YOUR HAVING TO BE  
28 SPLIT PERSONALITIES IN ORDER TO EVALUATE THE EVIDENCE IN

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1 THIS CASE IS THAT SOME ENTIRE WITNESSES WERE ONLY  
2 INTRODUCED, OR ALL OF THEIR TESTIMONY, ALL OF THEIR  
3 EVIDENCE IS ONLY ADMISSIBLE AND THEREFORE USABLE BY YOU  
4 AGAINST ONE OF THE DEFENDANTS. AND THEN THERE IS OTHER  
5 WITNESSES WHERE ONLY SOME OF THEIR TESTIMONY IS  
6 ADMISSIBLE AGAINST BOTH, AND SOME ADMISSIBLE AGAINST  
7 ONE, AND IT'S REALLY VERY CONFUSING.

8 BUT IF WHEN YOU ARE IN DELIBERATIONS YOU  
9 HAVE ANY CONFUSION ABOUT WHETHER A PIECE OF EVIDENCE IS  
10 PROPERLY WEIGHABLE ON THE SCALES OF REASONABLE DOUBT  
11 AGAINST ONE OR THE OTHER OF THE MENENDEZ BROTHERS, THEN  
12 I SUGGEST YOU SIMPLY ASK, "WAS THIS EVIDENCE ADMITTED,  
13 CAN WE USE THIS AGAINST ONE OR THE OTHER?"

14 BUT GENERALLY WHAT THIS TELLS YOU IS THE  
15 EVIDENCE -- WITNESSES AND EVIDENCE THAT WAS LIMITED  
16 SOLELY TO LYLE MENENDEZ. AND I THINK I'VE GOT THIS  
17 RIGHT, BECAUSE IT'S EVEN CONFUSING TO ME.

18 THE FIRST ONE WAS GLENN STEVENS. AND  
19 MR. GESSLER WILL BE TALKING ABOUT HIM.  
20 THE SECOND WAS RICHARD WENSKOSKI, THE  
21 BODYGUARD PERSON.  
22 THE THIRD WAS THAT PORTION OF BRIAN  
23 ANDERSEN, THEIR UNCLE, BRIAN ANDERSEN'S TESTIMONY THAT  
24 HAD TO DO WITH THE STATEMENT JOSE MENENDEZ MADE THAT HE  
25 WAS GOING TO GO TALK TO LYLE MENENDEZ, NOT TO ERIK  
26 MENENDEZ, ABOUT SPENDING.  
27 ALL OF THE TESTIMONY OF JAMIE PISARCIK WHEN  
28 SHE WAS CALLED IN THE PEOPLE'S CASE-IN-CHIEF.

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1 AND IF I REMEMBER CORRECTLY, MOST OF THAT  
2 HAD TO DO WITH WHAT SHE CLAIMS WAS AN EFFORT ON THE PART  
3 OF LYLE MENENDEZ TO HAVE HER MAKE UP A STORY OF SEXUAL  
4 ASSAULT, WHICH IS VERY PECULIAR IN ANY EVENT, BUT I AM  
5 NOT GOING TO ARGUE ABOUT THAT EVIDENCE, BECAUSE IT  
6 CANNOT BE USED AGAINST MY CLIENT, AND I HAD NOTHING DO  
7 WITH EXAMINING HER ON THAT POINT. SO I WILL SKIP RIGHT  
8 OVER IT.

9 MICHAEL DULLA AND MICHAEL GUTHRIE ARE  
10 SHERIFF'S DEPUTIES, AND THEY DID WHAT WE UNDERSTAND ARE  
11 ROUTINE JAIL SEARCHES OF INMATES' CELLS, AND THEY DID  
12 THE JAIL SEARCH ON THE LYLE MENENDEZ CELL THAT WOUND UP  
13 PRODUCING NO. 7, WHICH IS THOSE PAPERS THAT MR. CONN



14 CHARACTERIZED IN A PARTICULAR WAY THAT YOU WILL SEE, AND  
15 THAT MR. GESSLER WILL TALK ABOUT IN HIS FINAL COMMENTS  
16 TO YOU.

17         AND THEN FINALLY, ALL THAT STUFF THAT I  
18 THINK CAME IN BY STIPULATION, AND SOME TESTIMONY ABOUT  
19 LYLE MENENDEZ' LOOKING AT CONDOS AND PATIO HOMES AND ALL  
20 THE REST OF THAT STUFF BACK IN NEW JERSEY.

21         NOW, IF I HAVE IT RIGHT, THE WITNESS'  
22 EVIDENCE THAT WAS LIMITED TO JUST ERIK MENENDEZ WAS  
23 VICKIE RIVAS, WHICH IS THE LADY WHO SOLD HIM THE JEEP.  
24 AND SHE INDICATED THAT STEVE GOLDBERG, THE LAWYER WITH  
25 THE JEWISH NAME, WAS WITH HIM. AND WE KNOW STEVE  
26 GOLDBERG, FROM THE TESTIMONY OF CARLOS BARALT, WAS THE  
27 LAWYER FOR MR. AND MRS. BARALT AS EXECUTORS OF THE  
28 ESTATES. HE IS THE ESTATE LAWYER.

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1         SO HE GOES WITH ERIK MENENDEZ, HELPS  
2 NEGOTIATE THE PURCHASE PRICE OF THE JEEP.

3         THAT'S JUST ANOTHER EXAMPLE OF SPENDING.  
4 BUT NOT WILD SPENDING, NOT SECRETIVE SPENDING, NOT CRAZY  
5 SPENDING.

6         AND THEN LARRY COHEN WAS THE REAL ESTATE  
7 AGENT WHO CLAIMS THAT ERIK MENENDEZ MADE AN OFFER TO HIM  
8 TO BUY A HOUSE, AND HE NEVER HAD THE OFFER. HE DOESN'T  
9 HAVE THE PAPERWORK.

10           HOW ERIK MENENDEZ COULD BE OFFERING TO BUY  
11 A HOUSE IN JANUARY OR FEBRUARY, WHEN THE ESTATE, AS OF  
12 RIGHT NOW, FIVE TO 2:00 ON FEBRUARY 27TH, 1996, HAS  
13 NEVER CLOSED, AND NOTHING HAS EVER BEEN DISTRIBUTED, AND  
14 CERTAINLY IT WASN'T ANYWHERE CLOSE TO BEING CLOSED OR  
15 DISTRIBUTED, ACCORDING TO CARLOS BARALT'S TESTIMONY AT  
16 THAT TIME.

17           HOW HE COULD REALLY BE SUBMITTING A SIGNED  
18 OFFER FOR A PIECE OF PROPERTY WHEN HE ONLY HAD THE  
19 \$325,000, AND WHEN OVER A HUNDRED THOUSAND OF IT WAS  
20 LEFT AT THE TIME OF HIS ARREST, BEATS ME.

21           BUT WHAT THAT WAS PUT ON FOR WAS TO SHOW  
22 THAT HE WAS THINKING ABOUT BUYING A HOUSE. AND THE  
23 EVIDENCE HERE IS THAT STEVE GOLDBERG, AGAIN, REFERRED  
24 ERIK MENENDEZ TO THIS REAL ESTATE PERSON, AND ERIK  
25 MENENDEZ' COUSIN, HENRY LLANIO, ACCOMPANIED HIM AND HAD  
26 SOMETHING TO DO WITH THE NEGOTIATIONS.

27           SO, I AM NOT SURE WHOSE IDEA ALL THIS WAS.  
28 BUT THE FACT OF THE MATTER IS THAT'S SOMETHING THAT

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1 WASN'T BOUGHT.

2           NOW, I WENT THROUGH THIS TO JUST BE ABLE TO  
3 TELL YOU AGAIN THAT MY CLIENT HAD NOTHING TO DO WITH ANY  
4 EFFORTS WITH RESPECT TO MS. PISARCIK FOR HER TO SAY  
5 ANYTHING ABOUT ANYTHING. NOTHING WHATSOEVER TO DO WITH

6 THAT.

7           AND WITH RESPECT TO THE OTHER ALLEGATION  
8 AGAINST HIM, THAT HAS TO DO WITH AMIR ESLAMINIA, AND WE  
9 HAVE CALLED HIM BRIAN ESLAMINIA, BECAUSE THAT'S THE --  
10 HIS ANGLICIZED NAME.

11           HE IS ONE HECK OF A WITNESS, AMIR  
12 ESLAMINIA.

13           WHAT I THINK HE WAS SAYING -- HE IS VERY  
14 TRICKY -- BUT WHAT I THINK HE WAS SAYING IN THIS TRIAL  
15 IS THAT HE DIDN'T KNOW ERIK MENENDEZ WELL IN HIGH  
16 SCHOOL. HE KNEW HIM. THEY DIDN'T REALLY BECOME CLOSE  
17 FRIENDS THEN.

18           HE WENT TO VISIT HIM AT THE JAIL BECAUSE HE  
19 HAS A BROTHER IN PRISON. I AM NOT SURE HOW MUCH  
20 INFORMATION ABOUT HIS BROTHER IN PRISON CAME OUT, BUT I  
21 THINK WE KNOW TWO THINGS: HE HAS BROTHER IN PRISON, AND  
22 I THINK WE KNOW HIS FATHER WAS KILLED.

23           IN ANY EVENT, HE GOES TO VISIT ERIK AND  
24 LYLE MENENDEZ, AND WHAT HE TESTIFIES TO FROM THE WITNESS  
25 STAND IS THAT HE IS PREPARED, BEFORE ANYBODY EVER SAYS A  
26 WORD TO HIM, TO SAY OR DO ANYTHING -- ANYTHING.  
27 PERJURY. ANYTHING TO HELP THEM, BECAUSE HE IS CONVINCED  
28 THAT THEY'RE INNOCENT, JUST LIKE HIS BROTHER, AND

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1 THEREFORE HE'LL HELP THEM BY ANY MEANS, FAIR OR FOUL.

2           THAT'S HIS STATE OF MIND, NOT ERIK  
3 MENENDEZ'. HE IS COMING INTO THE JAIL WITH THAT STATE  
4 OF MIND.

5           AND HE SAYS ON THE WITNESS STAND UNDER  
6 OATH, WHEN HE IS NO LONGER TRYING TO MAKE A DEAL FOR  
7 BENEFITS FROM DETECTIVE ZOELLER OR THE PROSECUTION, HE  
8 SAYS THAT THE ONLY THING ERIK MENENDEZ EVER ASKED HIM TO  
9 DO MAYBE WAS BE A CHARACTER WITNESS IF HE NEEDED HIM.  
10 AND HE SAYS ON THE WITNESS STAND THAT HE DID NOT EVER  
11 DISCUSS WITH ERIK MENENDEZ, AS COMPARED TO LYLE  
12 MENENDEZ, EVER OFFERING A STORY OF ANY KIND IN THE  
13 TRIAL.

14          NOW, DETECTIVE ZOELLER HAS A STATEMENT FROM  
15 HIM IN WHICH HE SAYS DIFFERENTLY. AND IT'S VERY HARD TO  
16 FIGURE OUT WHY -- I MEAN, MR. ESLAMINIA WILL NOT ADMIT  
17 WHY HE TOLD A DIFFERENT STORY ON ONE OCCASION THAN  
18 ANOTHER. IT MAKES HIM, ON BOTH OCCASIONS, AN UNRELIABLE  
19 WITNESS. BUT THE BOTTOM LINE IS YOU HAVE TO PUT THIS IN  
20 PERSPECTIVE.

21          ERIK MENENDEZ TESTIFIED THAT HE DID FIND  
22 OUT AT SOME POINT THAT HIS BROTHER AND BRIAN ESLAMINIA  
23 HAD BEEN TALKING. HE SAID HE FOUND -- HE DIDN'T FIND  
24 OUT UNTIL MUCH LATER THAT THERE HAD ACTUALLY EVER BEEN A  
25 LETTER, NOT UNTIL THE LETTER ITSELF SURFACED, WHICH I  
26 THINK WAS '94.

27          SO HE DIDN'T KNOW THAT, AND DIDN'T SEE IT  
28 UNTIL IT CAME TO US FROM DETECTIVE ZOELLER, FROM THE

1 PROSECUTION, THROUGH THE DISCOVERY CHANNELS.

2 BUT HE SAYS HE KNEW THAT HIS BROTHER HAD  
3 REAL RESERVATIONS ABOUT EVER PUTTING THE TRUTH OF THE  
4 FAMILY OUT IN PUBLIC. I MEAN, THIS WAS HIGHLY  
5 PUBLICIZED FROM THE TIME -- AS YOU KNOW, FROM THE  
6 NEWSPAPER ACCOUNTS THAT WERE REFERRED TO HERE, THIS  
7 KILLING WAS HIGHLY PUBLICIZED FROM THE MINUTE IT  
8 HAPPENED, AND THERE WAS PUBLICITY ABOUT IT FROM THE VERY  
9 BEGINNING. AND WHEN THE SONS WERE ARRESTED AND THE  
10 PROCEEDINGS BEGAN, WHOLE NEW WAVES OF PUBLICITY.

11 SO IT WAS NOT SOMETHING THAT, AS YOU  
12 KNOW -- I MEAN, YOU KNOW WHAT YOU KNEW BEFORE YOU EVEN  
13 CAME HERE. THIS WAS A SITUATION WHERE THINKING THAT WAS  
14 GOING TO BE SAID IN THIS COURTROOM, PARTICULARLY AT THAT  
15 FIRST TRIAL, WAS GOING TO BE BLABBED TO THE ENTIRE  
16 WORLD.

17 AND, OF COURSE, HERE IS THE FAMILY THAT  
18 THEY WERE TRYING TO PROTECT, OR LYLE MENENDEZ WAS  
19 PARTICULARLY TRYING TO PROTECT, WHO HAVE HAD TO LIVE  
20 THROUGH THIS STORM OF ALL THE UGLINESS AND SCANDAL ON  
21 EVERY SIDE OF THIS.

22 AND THAT WAS ONE OF THE THINGS THAT LYLE  
23 MENENDEZ WAS TRYING TO PREVENT HAVING TO DO, TO --  
24 BECAUSE WHAT YOU HEAR STILL ON THE 12-11 TAPE IS JUST  
25 WHAT ERIK MENENDEZ TESTIFIED TO.

26 THEY IDOLIZED THIS MAN. HE TREATED THEM

27 HORRIBLY, BUT THEY IDOLIZED HIM. THEY BOUGHT INTO HIS  
28 NOTION OF HOW IMPORTANT FAMILY IMAGE IS, HOW IMPORTANT

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1 THE MENENDEZ NAME WAS. THEY CAME FROM A FAMILY OF  
2 CHAMPIONS. THEY DIDN'T BUY INTO BEING RUTHLESS, WHICH  
3 IS WHAT MR. CONN WANTED YOU TO BELIEVE. THEY WERE THE  
4 VICTIMS OF RUTHLESS. THEY KNEW BETTER. THEY KNEW  
5 RUTHLESS WAS NOT NICE.

6 BUT THEY DID BUY INTO THIS NOTION OF GLORY,  
7 CERTAINLY. AND FROM WHAT ERIK MENENDEZ TESTIFIED TO,  
8 FROM WHAT TERESITA BARALT TESTIFIED TO, IT IS CLEAR  
9 THERE WAS A VERY INTENSE RELATIONSHIP BETWEEN LYLE  
10 MENENDEZ AND HIS FATHER. LYLE WAS SUPPOSED TO BE THE  
11 HEIR. HE WAS IN A SITUATION WHERE NOBODY COULD HAVE  
12 EVER PLEASED HIS FATHER. NOBODY COULD HAVE EVER LIVED  
13 UP TO THOSE STANDARDS.

14 BUT NEVERTHELESS, HERE THEY ARE IN JAIL.  
15 ERIK MENENDEZ HAS TOLD FATHER KEN, HIS PRIEST, WHAT  
16 REALLY HAPPENED, AND WHY IT HAPPENED. HE HAS TOLD  
17 DR. VICARY, HIS PSYCHIATRIST, WHAT HAPPENED AND WHY IT  
18 HAPPENED.

19 BUT LYLE MENENDEZ IS NOT CONVINCED THAT  
20 THEY SHOULD TELL THE WORLD. BECAUSE WHAT YOU TELL YOUR  
21 PRIEST AND WHAT YOU TELL YOUR PSYCHIATRIST, UNLESS IT  
22 HAPPENS TO BE JEROME OZIEL, USUALLY STAYS CONFIDENTIAL.

23           SO WHAT ERIK MENENDEZ SAYS IS HE FINDS OUT  
24 ABOUT LYLE MENENDEZ' RELUCTANCE TO HAVE TO TESTIFY ABOUT  
25 HIS OWN MOLESTATION, AS WELL AS ALL THE ABUSE THAT WAS  
26 GOING ON IN THIS FAMILY, HAS LED LYLE, WITH -- GOSH  
27 KNOWS, THE MOST WILLING ACCOMPLICE IN THE WORLD IN BRIAN  
28 ESLAMINIA -- TO COME UP WITH A SCHEME TO CREATE SOME

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1 EVIDENCE FOR THE CASE.

2           BUT THIS IS HAPPENING WAY BACK YONDER  
3 FOLKS, LONG BEFORE -- TWO YEARS BEFORE THERE'S EVER A  
4 TRIAL.

5           WE ALSO KNOW THAT WAY BACK YONDER, LONG  
6 BEFORE THE TRIAL, TWO THINGS HAPPENED, AND ESLAMINIA  
7 TESTIFIES TO THIS.

8           WHAT HAPPENS IS HE HAS CONTACT WITH LYLE  
9 MENENDEZ WHO SAYS: "FORGET IT. I AM GOING TO TESTIFY.  
10 IT'S GOING TO COME OUT. SO BE IT."

11          AND MOREOVER, HE HAS A MEETING WITH ME,  
12 WHERE HE TELLS ME THIS RIDICULOUS STORY, AND HE  
13 TESTIFIED I TELL HIM: "YOU ARE LYING." OKAY.

14          HE BRINGS ME THIS STORY, AND THEN WE HAVE  
15 ANOTHER MEETING, AND THEN I TELL HIM: "YOU ARE LYING,  
16 BECAUSE ERIK MENENDEZ HAS TOLD ME THAT'S A LIE."

17          NOW, SO THROUGH TWO DIFFERENT ROUTES HE  
18 HEARS: "YOU'RE NOT GOING TO BE A WITNESS. YOU'RE A

19 LIAR." AND ONE OF THOSE ROUTES IS HE IS TOLD BY ME THAT  
20 MY CLIENT HAS TOLD ME THIS IS A LIE.  
21 NOW, HOW DOES THAT MAKE ERIK MENENDEZ  
22 SOMEONE PARTICIPATING IN FABRICATING EVIDENCE?  
23 JUST AS LYLE MENENDEZ MENTIONING IN THE  
24 LETTER THAT ERIK IS GOING TO BUST THE LIE. IT'S IN THE  
25 LETTER. IT'S THAT PART -- I SAW ONE OF YOU SMILED WHEN  
26 THAT PART WAS READ, BECAUSE IT REFERRED TO MY TRICKS.  
27 "WATCH IT, DON'T LET LESLIE PLAY HER TRICKS ON YOU, AND  
28 LET HER TELL YOU ERIK SAID IT'S A LIE. INSIST ON THE

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1 STORY."  
2 THAT'S EXACTLY WHAT HAPPENED. AND THERE  
3 WAS NO WAY THAT WITNESS WAS EVER GOING TO HIT THE  
4 WITNESS STAND. NO WAY MY CLIENT WOULD LET HIM. NO WAY  
5 LYLE MENENDEZ WOULD LET IT ULTIMATELY HAPPEN, AND NO WAY  
6 I WAS GOING TO LET IT HAPPEN. AND IT DIDN'T HAPPEN.  
7 SO THAT'S IT, END OF STORY.  
8 IF THAT'S ANOTHER EFFORT TO FABRICATE,  
9 THAT'S ANOTHER DESPERATE EFFORT OF THE PEOPLE WHO HAD TO  
10 KEEP A SECRET ALL OF THEIR LIFE, WHO ARE STILL OPERATING  
11 UNDER THE NOTION THAT ANYTHING ON EARTH IS BETTER THAN  
12 REVEALING THAT SECRET.  
13 AND THEN THERE IS THE ACCUSATION THAT HE  
14 DESTROYED EVIDENCE, AND THAT HAS TO DO WITH DUMPING THE



15 GUNS AND DUMPING THE SHELLS. I WON'T EVEN COMMENT ON  
16 THAT.

17 YES, FINE. THEY DUMP THE GUNS. I DON'T  
18 KNOW WHY THEY WERE NEVER FOUND. I DON'T KNOW HOW  
19 CAREFULLY THE POLICE EVEN LOOKED. I DON'T THINK THERE  
20 WAS ANY TESTIMONY ABOUT THAT ACTUALLY.

21 OKAY. NOW, LET ME ADDRESS THE SO-CALLED  
22 IMPEACHING WITNESSES.

23 I HAVE ALREADY TALKED ABOUT KLARA WRIGHT.  
24 AND REALLY, ALL SHE IMPEACHES IS ERIK MENENDEZ SAID HE  
25 DIDN'T KNOW ANYTHING ABOUT WILLS AND COMPUTER TERMS AT  
26 THAT STAGE OF THE GAME. AND SHE, WHO WATCHED COURT  
27 T.V., SAID OTHERWISE.

28 AND I CAN GO THROUGH ALL THE WITNESSES, BUT

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1 IF YOU WANT TO HEAR IT AGAIN, IT'S VERY CLEAR AFTER SHE  
2 IS EXAMINED THAT SHE IS THE WITNESS WHO SAYS SOMETHING,  
3 EVEN WHEN THE ANSWER SHOULD BE: "I DON'T KNOW," OR "I  
4 DON'T REMEMBER." AND THAT SHE WAS COMPLETELY  
5 CONTAMINATED BY MEDIA COVERAGE, AND CAME UP WITH HER  
6 INFORMATION FIVE YEARS AFTER THE FACT.

7 AND HER TESTIMONY APPEARS SOMEWHERE AROUND  
8 THE FIRST PAGE THAT I PULLED, TOWARDS THE END OF IT.  
9 PAGE 37,126.

10 SHE, OF COURSE, IS IMPEACHED BY HER

11 HUSBAND, RANDY WRIGHT. AND HIS TESTIMONY APPEARS AROUND  
12 37 IN THE 280'S, WHO SAYS THAT THE CONVERSATION WITH THE  
13 WILL IS ONLY A VERY SMALL PART OF THE CONVERSATION HE  
14 HAD WITH THE MENENDEZ BROTHERS MONDAY AFTERNOON; THAT HE  
15 IS THE ONE WHO BROUGHT UP THE ISSUE, "DOES YOUR FATHER  
16 HAVE A WILL?" HE IS THE ONE WHO IS ASKING WHERE WOULD  
17 IT BE. HE IS THE ONE WHO GETS A RESPONSE:

18 "MAYBE THERE'S ONE IN THE COMPUTER."

19 HE ASKS: "IS THERE A SAFE?"

20 THEY SAY: " YEP. SHOULD WE GET IT?"

21 I MEAN, THIS IS HOW YOU'RE GOING TO LOOK TO  
22 DESTROY A WILL, BY BRINGING IT TO THE LAWYER? OKAY.

23 SO THAT'S WHAT MR. WRIGHT SAYS. AND HE  
24 ADDS AS A TAG LINE, ALMOST AS AN AFTERTHOUGHT AT THE  
25 END, THAT LYLE MENENDEZ MENTIONED A \$300,000 LIFE  
26 INSURANCE POLICY, WHICH WE KNOW FROM MARTHA CANO THEY  
27 DIDN'T KNOW ABOUT UNTIL WEDNESDAY.

28 NOW, IT IS POSSIBLE, AS ERIK MENENDEZ

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1 TESTIFIED -- HE SAYS HE WENT BACK. REMEMBER, THE  
2 WRIGHTS WERE KIND OF MIXED UP AT VARIOUS TIMES; WHEN IT  
3 WAS THE SAFE WAS BROUGHT OVER, AND WHEN IT WAS THE  
4 UNCLES CAME AND THE SAFE WAS REMOVED. MRS. WRIGHT HAS  
5 GIVEN VARIOUS DIFFERENT ANSWERS ABOUT THAT IN THE PAST.  
6 AT ONE POINT SHE SAID THEY PICKED UP THE SAFE THE NEXT

7 DAY. AT ANOTHER POINT SHE SAYS IT WAS A COUPLE OF DAYS  
8 LATER.

9 AND ERIK MENENDEZ SAYS HE WENT BY THERE  
10 AGAIN AFTER THIS TRIP WITH THE SAFE. AND REMEMBER,  
11 NEITHER UNCLE BRIAN ANDERSEN, NOR UNCLE CARLOS BARALT,  
12 EVER QUITE REMEMBER WHAT HAPPENED TO THE SAFE. THEY  
13 DON'T REMEMBER TAKING IT WITH THEM OR WHAT.

14 ERIK MENENDEZ SAYS HE WENT BY THERE LATER  
15 IN THE WEEK, AND HE DOES HAVE HIS MEETING WITH HIS AUNT  
16 MARTHA ON WEDNESDAY NIGHT. MAYBE AT THAT POINT, AFTER  
17 HAVING SOME FINANCIAL INPUT AND TALKING TO MR. WRIGHT,  
18 HE TELLS HIM ABOUT INSURANCE THEN.

19 BUT I DON'T THINK SO. I THINK THIS IS  
20 SOMETHING THAT WAS GLOMMED RIGHT OFF OF THE AIRWAVES,  
21 ONE OF THOSE PIECES OF INFORMATION THAT'S OUT THERE THAT  
22 MAKES IT IMPOSSIBLE LATER TO EVER REALLY TRACK BACK HOW  
23 DOES A WITNESS KNOW SOMETHING.

24 AND I WILL SHOW YOU IN A LITTLE WHILE,  
25 CONCERNING CIGNARELLI, THAT YOU CAN SHOW WHERE VIRTUALLY  
26 HIS ENTIRE FIRST STATEMENT TO THE POLICE ON AUGUST 24TH  
27 IS RIPPED FROM THE HEADLINES OF THE NEWSPAPER, OR FROM  
28 THE CONTENT OF THE NEWSPAPER REPORTS.

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1 SO THAT'S THE WRIGHTS FOR THE MOMENT.  
2 NOW, THE OTHER SO-CALLED IMPEACHING

3 WITNESSES.

4 I TALKED ABOUT GRANT WALKER BEFORE, AND I  
5 WILL TALK ABOUT HIM AGAIN WHEN I GO THROUGH THE LAST  
6 WEEK. SO I WILL WITHHOLD DOING IT NOW.

7 JUST KEEP IN MIND HE HAS CHANGED HIS STORY  
8 MANY TIMES AS TO WHICH BROTHER SAYS WHAT, AND WHAT THEY  
9 WERE ACTUALLY SAYING.

10 AND WHAT DID HE ACTUALLY SAY? ON THAT  
11 SATURDAY HE SEEMS TO HAVE SEEN THEM CURSING WHILE  
12 PLAYING TENNIS. OR ONE OF THEM IS PLAYING TENNIS, AND  
13 THE OTHER ONE IS STANDING. HE SAID THEY BOTH ORIGINALLY  
14 WERE THERE. AND THERE WAS AN INSTRUCTOR THERE. AND  
15 THEY ARE CURSING, MAKING THE SHOTS. CURSING AT  
16 THEMSELVES, BUT STILL DIRECTING IT AT THEIR MOTHER.

17 I DON'T KNOW IF IT EVER HAPPENED, BUT IF IT  
18 DID, IT COULDN'T HAVE HAPPENED THAT PARTICULAR SATURDAY,  
19 GIVEN WHAT WE KNOW ABOUT THE PLANS FOR THE FISHING TRIP  
20 AND WHAT THE TIME WAS SUPPOSED TO BE, AND THE FACT THEY  
21 WERE LATE, AND WHY THEY WERE LATE, AND ALL THE REST OF  
22 IT.

23 NOW, I WILL TALK ABOUT HERE HOW THE -- I AM  
24 GOING TO DO THIS, BECAUSE THESE ARE WITNESSES -- I WANT  
25 TO FINISH UP WITH MY CLIENT'S CREDIBILITY BEFORE I SHIFT  
26 TO WHAT DR. WILSON CONTRIBUTED, AND DR. DIETZ  
27 CONTRIBUTED, AND DR. VICARY CONTRIBUTED TO STATE OF MIND  
28 AT THE TIME, WHICH IS WHERE WE'RE GOING TO END UP.

1           HERE IS WHERE WE ARE NOW.

2           THE PEOPLE PUT ON CERTAIN WITNESSES IN  
3 SUPPOSED REBUTTAL, WHO ARE SUPPOSED TO UNDO MAINLY MY  
4 CLIENT'S TESTIMONY IN OUR CASE-IN-CHIEF.

5           AND THE FIRST OF THEM WAS  
6 MR. FREIDERICHSON, WHO, OF COURSE, DOESN'T KNOW WHO  
7 WAITED ON THEM AT THE BIG-5, OR WHAT WAS SAID. HE HAD  
8 QUITE AN ATTITUDE, THOUGH. I WAS KIND OF SURPRISED. HE  
9 WAS SO HOSTILE TO ME. FOR GOODNESS SAKE, HE DOESN'T  
10 HAVE ANY PERSONAL KNOWLEDGE OF THIS CASE, NO PERSONAL  
11 STAKE. I THINK YOU SAY THE WORD "MENENDEZ" IN SOME  
12 CIRCLES AND PEOPLE START POLARIZING ON YOU FOR NO  
13 REASON.

14          BUT WHAT HE DID SAY, WHICH I THOUGHT WAS  
15 VERY SIGNIFICANT, IS THAT TO SOMEONE WHO IS NOT USED TO  
16 GUNS, THE FAKE GUNS -- WHICH AREN'T FAKE, THEY'RE B.B.  
17 GUNS. THEY'RE AIR PISTOLS. THEY DO GO BOOM -- THOSE  
18 GUNS WOULD LOOK REAL. AND HE SAID THAT IN HIS  
19 TESTIMONY. I CAN GET YOU THE CITE.

20          HE WAS VERY CLEAR ON THAT POINT, AND YOU  
21 CAN SEE THE PHOTOGRAPHS WE PUT IN. IF YOU'RE FAMILILAR  
22 WITH GUNS, IF YOU HAVE NEVER HANDLED HANDGUNS -- AND  
23 THERE IS NO EVIDENCE EITHER OF OUR CLIENTS EVER DID --  
24 THOSE GUNS IN THAT GLASS CASE, AS THEY ARE DISPLAYED,  
25 LOOKED REAL.

26          SO THAT'S WHAT HE HAD TO CONTRIBUTE. HE  
27 EXPLAINED THAT BIG-5 WASN'T SELLING GUNS SINCE '86.

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1 PROSECUTION CALLED HIM, BUT HE WAS CALLED AS A REBUTTAL  
2 WITNESS, AND WE CALLED HIM -- SEE, THEY LEFT HIM OUT.  
3 WE CALLED HIM BACK IN SURREBUTTAL AS A WITNESS  
4 AGAINST -- HERE HE IS -- AS A WITNESS AGAINST JAMIE  
5 PISARCIK.

6 AND THEN THERE WAS CRAIG CIGNARELLI.  
7 DETECTIVE ZOELLER DIDN'T REALLY BEAR ON CREDIBILITY, IF  
8 I RECALL.

9 THEN THE CREDIBILITY OF CRAIG CIGNARELLI.

10 BUT I WANT TO TALK FIRST ABOUT JAMIE  
11 PISARCIK, WHEN SHE WAS -- FOR ROUND TWO, AS I CALL IT,  
12 WHEN SHE CAME IN ON REBUTTAL. WHAT DID SHE SAY?  
13 SHE SAYS ON A DAY, IN A MONTH, DURING A  
14 TIME OF YEAR, SHE IS AT THE DOORWAY OF ERIK MENENDEZ'  
15 BEDROOM. SHE HAS NO REASON WHY SHE IS THERE. SHE HAS  
16 NO IDEA WHERE SHE'S COMING FROM. SHE DOESN'T KNOW WHY  
17 SHE IS GOING TO HIS ROOM. SHE AIN'T HIS BEST FRIEND.  
18 SHE'S NEVER INDICATED THEY HAD ANY RELATIONSHIP OF ANY  
19 KIND.

20 BUT SHE IS STANDING IN THE DOORWAY, AND  
21 ERIK MENENDEZ IS SITTING AT HIS DESK, AND OUT OF THE  
22 BLUE -- THIS IS THE BOLT OF LIGHTENING. OUT OF THE  
23 BLUE, HE SAYS TO HER: "GEE, I DIDN'T KNOW LYLE HAD A

24 WIG. NO WONDER HIS HAIR ALWAYS LOOKS SO PERFECT."  
25 BING. THAT'S IT.  
26 WHAT DOES SHE DO AFTER THAT? SHE DOESN'T  
27 KNOW. WHERE DID SHE GO? SHE DOESN'T KNOW. WHAT WAS HE  
28 WEARING? SHE DOESN'T KNOW. WHERE DID SHE GO AFTER

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1 THAT? SHE DOESN'T KNOW. WHAT WAS SAID AFTER THAT? SHE  
2 DOESN'T KNOW. MAYBE SMALL TALK, SHE'S GUESSING. WAS IT  
3 EVER BROUGHT UP AGAIN? NO.  
4 THAT'S ALL SHE CAN TELL US. SHE WON'T TELL  
5 US ANY OF THE SURROUNDING CIRCUMSTANCES THAT MR. CONN  
6 MAKES SUCH A BIG DEAL OF WHEN WE'RE TALKING ABOUT ERIK  
7 MENENDEZ. DOES HE HAVE EVERY SINGLE, MINUTE DETAIL DOWN  
8 JUST RIGHT SO WE CAN EVALUATE HIS CREDIBILITY? IF NOT,  
9 HE'S A LIAR, AND A MURDERER TO BOOT.  
10 BUT HERE IS THIS WOMAN, OUT OF THE BLUE, NO  
11 REASON OR NO TRIGGERING ANYTHING, CLAIMS THAT MY CLIENT  
12 MAKES THIS STATEMENT.  
13 WHY? BECAUSE THE TRIAL WAS PUBLICIZED.  
14 THE TRIAL WAS TELEVISED. DETECTIVE ZOELLER TESTIFIED.  
15 ERIK AND LYLE MENENDEZ HAD ALREADY TESTIFIED, AND THEY  
16 HAD TESTIFIED ABOUT THE TUESDAY NIGHT INCIDENT --  
17 TUESDAY AFTERNOON INCIDENT WHEN MRS. MENENDEZ RIPS OFF  
18 LYLE MENENDEZ' HAIRPIECE.  
19 NOW, ERIK MENENDEZ TESTIFIED IN THIS TRIAL

20 HE KNEW HIS BROTHER HAD DONE SOMETHING TO HIS HAIR, BUT  
21 HE WASN'T GOING TO EMBARRASS HIM BY ASKING WHAT. HE  
22 DIDN'T THINK IN TERMS OF A REMOVABLE THING. HE KNEW  
23 SOMETHING HAD HAPPENED, BECAUSE HIS HAIR IS FULLER.  
24 FINE. MAYBE THAT'S ALL SHE'S TALKING ABOUT, BUT SHE  
25 WON'T ADMIT THAT. SHE WANTS TO GO FARTHER.  
26         AND CERTAINLY AFTER OUR CLIENTS HAVE  
27 TESTIFIED, DETECTIVE ZOELLER, DOING HIS JOB, TRYING TO  
28 LOOK FOR REBUTTAL EVIDENCE WHEREVER HE CAN FIND IT, IS

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1 TALKING TO MS. PISARCIK, AND SPECIFICALLY ASKED HER:  
2 "YOU KNOW, WE COULD USE SOME HELP HERE. DO YOU KNOW  
3 ANYTHING ABOUT LYLE MENENDEZ' HAIRPIECE, WHICH HAS NOW  
4 BECOME AN ISSUE IN THE TRIAL, AND SPECIFICALLY DO YOU  
5 KNOW WHETHER OR NOT ERIK MENENDEZ KNEW ABOUT IT BEFORE  
6 THE HOMICIDES?"

7         SO WHAT DOES SHE SAY? SHE SAYS: "OH,  
8 YEAH. OH, YEAH. SOMETIME" -- AND DETECTIVE ZOELLER  
9 SAYS IT TOOK QUITE AWHILE, AND SHE WAS REAL UNCERTAIN  
10 ABOUT THE TIME. BUT SHE COMES UP WITH SPRING SOMETIME.  
11 "ERIK MENENDEZ, HAVING OVERHEARD HIS MOTHER TALKING  
12 ABOUT IT, SAID HE FOUND OUT ABOUT IT," AND  
13 BLAH-BLAH-BLAH.

14         NOW, HIS MOTHER FEATURES VERY MUCH, IN  
15 FACT, ON HOW IT WAS ON THAT TUESDAY -- I NEED MY WEEK OF



16 CRISIS CHART HERE -- HOW IT WAS ON THAT TUESDAY THAT  
17 ERIK MENENDEZ, IN FACT, FOUND OUT THAT WHAT HIS BROTHER  
18 HAD DONE TO HIS HAIR WAS ACTUALLY A HAIRPIECE, SOME PART  
19 THAT AFFIXED AND CAME OFF.

20 AND YOU HAVE TO BE SUSPICIOUS WHEN SHE  
21 LATER BACKS OFF OF THAT STATEMENT, WHEN SHE CONNECTS IT  
22 TO HIS LEARNING ABOUT IT FROM HIS MOTHER. YOU HAVE TO  
23 WONDER IF, IN FACT, THE TESTIMONY AT THE TRIAL ABOUT  
24 THAT TUESDAY WAS THE INSPIRATION FOR WHAT SHE SAID.

25 THAT'S THE MORE SINISTER VIEW OF WHY SHE  
26 ISN'T TELLING THE TRUTH ABOUT THIS CONVERSATION. THERE  
27 IS A MORE BENIGN VIEW.

28 AND THAT IS THAT AFTER THE KILLINGS, IN

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1 OCTOBER/NOVEMBER SHE IS LIVING WITH LYLE MENENDEZ IN HIS  
2 APARTMENT AT THE MARINA CITY CLUB, WHICH IS RIGHT NEXT  
3 DOOR TO ERIK MENENDEZ' APARTMENT AT THE MARINA CITY  
4 CLUB, A PLACE WHERE SHE IS GOING TO COME IN CONTACT WITH  
5 HIM FAR MORE FREQUENTLY THAN ANY TIME OF THE YEAR IN  
6 1989 BEFORE MR. AND MRS. MENENDEZ ARE KILLED.

7 AND SO I SUPPOSE ONE COULD SAY THAT MAYBE  
8 THAT'S WHEN SHE HEARD THIS CONVERSATION, IF SHE EVER  
9 HEARD THIS CONVERSATION.

10 BUT SHE IS NOT TO BE TRUSTED AS A WITNESS  
11 ON THIS POINT. WHY? BECAUSE SHE LIED OVER AND OVER

12 AGAIN AT THE FIRST TRIAL ABOUT THE ONLY DETAIL SHE WILL  
13 GIVE US. IT'S NOT LIKE SHE WASN'T ASKED: "GIVE US THE  
14 REST." THE ONLY DETAIL SHE WILL GIVE US IS WHEN. "IT  
15 WAS ON A TRIP TO L.A." OBVIOUSLY. SHE DIDN'T LIVE  
16 HERE.

17 WHEN WAS IT? THIS IS THE ONLY FACT SHE  
18 WILL GIVE US, BECAUSE YOU CAN'T MAKE SOMEONE -- I MEAN,  
19 IT'S NOT JUST LIKE PERRY MASON. AND EVEN IN PERRY  
20 MASON, YOU DON'T JUST GET UP AND CROSS-EXAMINE THEM AND  
21 SAY: "AREN'T YOU LYING?" AND THEY SAY: "OH, YES. OH,  
22 YES," AND THAT'S HOW IT ENDS.

23 THE ONLY WAY YOU CAN GET SOMEONE ON LYING  
24 IS IN THE DETAILS. GOD IS IN THE DETAILS. AND THE ONLY  
25 DETAIL SHE GIVES US IS TIME OF THE YEAR. SHE SAYS 50  
26 DIFFERENT THINGS.

27 IN THE FIRST TRIAL, SHE GETS UP THERE AND  
28 DOES WHAT SHE DID WITH DETECTIVE ZOELLER. "IT WAS THE

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1 SPRING OF '89." AND I TOOK HER THROUGH WHAT HAPPENED AT  
2 THE FIRST TRIAL. "THE SPRING OF 1989," SHE CLAIMS.

3 AND THEN SHE REALIZED THAT SHE HAD ALSO  
4 TESTIFIED THAT SHE BROKE UP WITH LYLE MENENDEZ IN THE  
5 SPRING OF 1989, AND YOU MAY REMEMBER WAY, WAY BACK, OR  
6 YOU MAY NOT, DONOVAN GOODREAU.

7 DO YOU REMEMBER HIM? HE USED TO BE HER

8 ROOMMATE, AND THEN LYLE AND JAMIE BREAK UP, AND HE  
9 BECOMES LYLE'S FRIEND. HE COMES BACK TO CALIFORNIA IN  
10 THE SPRING BREAK OF 1989, AND LYLE AND JAMIE ARE BROKEN  
11 UP AT THAT POINT. THAT'S WHAT HE CONTRIBUTES TO THIS  
12 TIME LINE.

13 SHE FIRST SAYS, THOUGH, IT WAS IN THE  
14 SPRING -- FIRST I THINK SHE TESTIFIES LATE SPRING, EARLY  
15 SUMMER.

16 THEN SHE IS CONFRONTED WITH HER OWN  
17 STATEMENT THAT SHE BROKE UP WITH LYLE MENENDEZ IN THE  
18 SPRING. SO SHE BACKS IT UP TO APRIL.

19 AND THEN SHE STARTS BEING TAKEN THROUGH HER  
20 WORK RECORDS, BECAUSE SHE CLAIMS SHE WAS HERE FOR AT  
21 LEAST A FOUR-DAY BLOCK OF TIME. AND SHE'S TAKEN THROUGH  
22 ALL OF HER WORK RECORDS, AND IT'S SHOWN SHE DIDN'T HAVE  
23 A FOUR-DAY BLOCK OF TIME IN THE SPRING WHEN SHE COULD  
24 HAVE BEEN HERE TO HEAR THIS SUPPOSED STATEMENT.

25 SO THEN SHE SAYS FEBRUARY. AND I REMEMBER  
26 READING THAT TRANSCRIPT OF MS. LANSING, WHO WAS LYLE  
27 MENENDEZ' LAWYER IN THE FIRST TRIAL, AND SHE SAYS TO  
28 HER: "AND IF I" -- SHE BACKS IT UP TO FEBRUARY, AND

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1 THERE IS AN EXCHANGE BETWEEN THEM, WHICH I READ IN THIS  
2 TRIAL, WHERE MS. LANSING SAYS: "AND IF I TELL YOU I'VE  
3 GOT YOUR WORK RECORDS FOR FEBRUARY, AND YOU DIDN'T HAVE

4 ANY TIME IN FEBRUARY EITHER."

5 OKAY. THEN SHE BACKS IT UP TO JANUARY.

6 THIS IS NOT SOMEONE WHO IS JUST UNCLEAR AND  
7 IS CHANGING HER MIND ON HER OWN. YOU'VE GOT TO FORCE IT  
8 ON HER. YOU'VE GOT TO CONFRONT HER WITH THE WORK  
9 RECORDS, SHOW HER SHE'S LYING. AND THEN SHE BACKS UP  
10 AND LIES ABOUT THE NEXT MONTH. THEN SHE BACKS UP AND  
11 LIES ABOUT THE NEXT MONTH. AND NOW WE HAVE HER ALL THE  
12 WAY BACK IN THIS TRIAL TO DECEMBER, OKAY?

13 NOW, WHENEVER A WITNESS CAN'T GIVE YOU ANY  
14 CONTEXT, YOU SHOULD BE SUSPICIOUS ANYWAY. BUT THEN WHEN  
15 THE ONE AND ONLY DETAIL THEY GIVE YOU THEY ARE ALL OVER  
16 THE MAP ABOUT, AND CAN'T GIVE YOU A REASONABLE  
17 EXPLANATION FOR WHY THEY CAN'T BE ACCURATE ABOUT IT,  
18 THEN YOU CAN'T BELIEVE THAT WITNESS' TESTIMONY.

19 BUT, HERE IS WHAT SHE SAYS HERE.

20 THE REASON THAT SHE SAID SPRING WHEN IT WAS  
21 ACTUALLY DECEMBER WAS BECAUSE OF THE SPRING-LIKE  
22 WEATHER, WHICH WAS SO PLEASANT.

23 NOW, IT WOULD BE ONE THING IF SHE HAD MADE  
24 THIS STATEMENT IN -- IF SHE HAD ACTUALLY GONE TO THE  
25 POLICE, GONE TO DETECTIVE ZOELLER IN 1989, OKAY, BEFORE  
26 SHE STARTED LIVING HERE AND SAID TO HIM: "THIS HAPPENED  
27 IN THE SPRING." AND THEN SHE IS LIVING IN PITTSBURGH.  
28 AND OUR WINTERS ARE SPRING TO PITTSBURGH, OKAY.

1           BUT WHEN SHE MAKES THIS STATEMENT TO  
2 DETECTIVE ZOELLER FOR THE FIRST TIME, THE DATE IS  
3 NOVEMBER 2ND, 1993, AND SHE HAS BEEN LIVING CONTINUOUSLY  
4 IN LOS ANGELES, CALIFORNIA, FOR FOUR YEARS.

5           NOW, WHEN YOU'RE LIVING HERE, WE'RE SO HIP,  
6 WE KNOW THE DIFFERENCE BETWEEN WINTER AND SPRING, IF YOU  
7 LIVE HERE. YOU KNOW SPRING-LIKE WEATHER IS ONE THING,  
8 WINTER-LIKE WEATHER IS ANOTHER.

9           AND YOU PARTICULARLY KNOW IT DOESN'T -- IT  
10 ISN'T IN THE THIRTIES AND FORTIES AND RAINING IN MAY AND  
11 JUNE IN LOS ANGELES.

12          SO THIS WAS HER LAME EXCUSE FOR WHY, HAVING  
13 BEEN CONFRONTED REPEATEDLY WITH EVIDENCE THAT SHE  
14 COULDN'T HAVE BEEN HERE TO HEAR THIS CONVERSATION, SHE  
15 BACKS IT UP TO THE ONE TRIP SHE CLAIMS SHE REMEMBERS  
16 BEING HERE, AND CLAIMS THAT IT WAS THE SPRING.

17          I DON'T DOUBT THAT SHE WAS HERE IN DECEMBER  
18 OF '88. BUT WE KNOW IT WASN'T SPRING-LIKE WEATHER. AND  
19 THAT'S NOT WHAT'S CONFUSING. SHE NEVER HEARD THIS. AT  
20 LEAST SHE NEVER HEARD THIS BEFORE THE PARENTS WERE  
21 KILLED.

22          AND THAT'S WHY WE BROUGHT IN THE  
23 METEOROLOGIST. IT'S NOT OFTEN YOU CAN USE THE WEATHER  
24 TO IMPEACH A WITNESS. THAT HAPPENS ONCE IN A CAREER.  
25 WE KNOW IT'S THE LAST HALF OF DECEMBER, BECAUSE ED  
26 FENNO -- THE REASON WE CALLED HIM BACK WAS BECAUSE HE  
27 REMEMBERED GOING BACK HOME MID-DECEMBER. HE REMEMBERED  
28 WHEN HE LEFT THERE WERE NO CHRISTMAS DECORATIONS UP.

1 SHE REMEMBERS WHEN SHE WAS HERE THERE WERE.

2 SO WE'RE TALKING ABOUT THE SECOND HALF OF  
3 THE MONTH, AND IT'S JUST EXTRAORDINARY THAT OF ALL THE  
4 CHRISTMAS SEASONS, THAT WAS THE REAL RAINY AND COLD ONE.

5 AND THUS SHE IS IMPEACHED ON THE WEATHER. I  
6 DON'T KNOW HOW MUCH BETTER A JOB YOU CAN DO THAN IMPEACH  
7 A WITNESS WITH METEOROLOGY. YEAH, METEOROLOGY.

8 AND MIND YOU, IT WAS NOT AT THE FIRST  
9 TRIAL, BUT AFTER THE FIRST TRIAL, WHEN SHE HAD MORE TIME  
10 TO THINK ABOUT IT, THAT SHE FIRST CAME UP WITH THE ALIBI  
11 FOR HER HAVING THE DATE ALL WRONG BY CLAIMING IT WAS THE  
12 SPRING-LIKE WEATHER.

13 SO IT WAS -- IN FACT, I TAKE THAT BACK.  
14 SHE HAD BEEN LIVING HERE FIVE YEARS AT THE POINT WHEN  
15 SHE MADE THE CLAIM IT WAS THE SPRING-LIKE WEATHER THAT  
16 DECEIVED HER. IF YOU WENT OUTSIDE RIGHT NOW, YOU WOULD  
17 SWEAR IT WAS SPRING.

18 ALL RIGHT. NOW WE'LL TALK ABOUT  
19 MR. CIGNARELLI.

20 MR. CIGNARELLI WAS CALLED AS A WITNESS TO  
21 TRY AND REFUTE -- WELL, I AM NOT EXACTLY SURE WHERE THE  
22 PROSECUTION STANDS ON MR. CIGNARELLI'S STORIES AT THIS  
23 POINT. AND HERE'S WHY.

24 WE KNOW THAT THEY WERE -- WHERE THEY STAND  
25 ON THE 12-11 TAPE IS THEY REJECT THE MOTIVE THEORY OF

26 THAT TAPE. AND YOU HAVE NOT HEARD MR. CONN ARGUE THAT  
27 WHAT IS ON THAT TAPE IS REAL. HE KNOWS IT'S A LIE. HE  
28 JUST WANTS TO SELECT OUT OF IT THE ONE PIECE THAT HE

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1 LIKES.

2 NOW, ARE THEY SAYING THE CRAIG CIGNARELLI  
3 STORY IS THE TRUTH?

4 OF COURSE, IT DEPENDS WHICH STORY. BUT THE  
5 GENERAL GIST OF IT IS THAT THE VERSION OF HOMICIDE THAT  
6 MR. CIGNARELLI BRINGS US IS THAT ERIK MENENDEZ AND HIS  
7 BROTHER WERE AT THE MOVIES, AND THEY GO HOME TO GET  
8 I.D., AND ERIK MENENDEZ GOES IN THE HOUSE, AND HE COMES  
9 OUT OF THE HOUSE, AND HIS BROTHER IS STANDING OUTSIDE  
10 HOLDING TWO SHOTGUNS, AND SAYS: "LET'S DO IT."

11 AND THEY GO BACK TO THE HOUSE, AND ONE GOES  
12 THROUGH THE LEFT DOOR, AND ONE GOES THROUGH THE RIGHT  
13 DOOR.

14 AND THEN HIS STORY CHANGES OVER TIME WITH  
15 RESPECT TO WHO SHOOTS WHO, AND IS THE MOTHER SHOT BY  
16 LYLE, IS THE MOTHER SHOT BY ERIK. DOES LYLE TELL ERIK:  
17 "SHOOT MOM," OR WHATEVER. ANYWAY, THE INTERNAL STUFF IS  
18 INCONSISTENT, OKAY.

19 AND WE ARE SUPPOSED TO BELIEVE THAT THIS IS  
20 WHAT ERIK MENENDEZ TOLD HIM, BECAUSE ERIK MENENDEZ DID  
21 TELL HIM SOMETHING. HE DID CONFESS TO DOING THIS IN

22 SOME FORM OR ANOTHER. BUT IT IS VERY IMPORTANT IN WHAT  
23 FORM. EXACTLY WHAT DID HE SAY?  
24 AND THE FACT THAT CRAIG CIGNARELLI'S  
25 VERSION CHANGES, PARTICULARLY BETWEEN -- I THINK HIS  
26 FIRST STATEMENT IS NOVEMBER 19, 1989. THEN HE GIVES  
27 ANOTHER BIG STATEMENT ON MARCH 7TH, WHICH IS  
28 TAPE-RECORDED, 1990. BETWEEN THOSE TWO DATES, THE

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1 VERSION CHANGES. AND THE SIGNIFICANT THING THAT  
2 CHANGES, OF COURSE -- THERE'S TWO SIGNIFICANT THINGS  
3 THAT CHANGE.  
4 ONE OF THEM IS THIS WHOLE BUSINESS ABOUT  
5 WHO SHOT MOM, AND WAS THERE A DECISION IN ADVANCE AS TO  
6 WHO WAS GOING TO SHOOT WHOM, OR WAS IT LYLE MENENDEZ  
7 TELLING ERIK: "YOU SHOOT MOM," OR "SHOOT MOM," OR  
8 WHATEVER. HE CHANGES THAT. AND YOU KNOW, IT ISN'T A  
9 VERY COMPLICATED STORY.  
10 SO HE CHANGES INTERNAL DETAILS. TELLS YOU  
11 SOMETHING ABOUT WHETHER HE'S TELLING THE TRUTH OF WHAT  
12 WAS TOLD TO HIM, OR WHETHER HE HAS MADE UP ONE VERSION  
13 ONE TIME AND ANOTHER VERSION ANOTHER TIME.  
14 THE OTHER THING THAT ALSO CHANGES AS OF  
15 MARCH 7TH, 1990, BUT NOT BEFORE THAT, IS THAT WHEN HE  
16 FIRST TELLS THE POLICE ABOUT THIS STATEMENT ON NOVEMBER  
17 19TH, HE SAYS THAT ALTHOUGH ERIK MENENDEZ CONFESSED THAT



18 HE DID IT, HE ALSO MADE IT SEEM LIKE HE RETRACTED IT.

19 IN OTHER WORDS, ERIK SAID SOMETHING THAT  
20 LED CRAIG TO BELIEVE HE WAS ONLY JOKING. HE SAID:  
21 "WELL, IT COULD HAPPEN." CASTING DOUBT UPON THE  
22 CONFESSION ITSELF.

23 NOW, ERIK MENENDEZ TESTIFIED THAT IS  
24 PRECISELY TRUE, THAT HE DID GIVE A CONFESSION. AND I  
25 WILL GO OVER WHAT IT WAS ERIK MENENDEZ SAID HE TOLD  
26 CRAIG CIGNARELLI. HE DID GIVE HIM A CONFESSION.

27 AND THEN WHEN CRAIG'S REACTION WAS: "YOU  
28 COULDN'T DO ANYTHING LIKE THAT," WHEN HE WASN'T GETTING

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1 THE REACTION OF "WHY?" OR, YOU KNOW: "HOW COULD YOU DO  
2 THAT?"

3 YOU KNOW, HE GETS THIS REAL NEGATIVE  
4 REACTION TO IT. HE THEN TAKES IT BACK. "I WAS ONLY  
5 KIDDING. I DIDN'T MEAN IT. WE REALLY DIDN'T DO IT."

6 THAT'S PART OF THE STATEMENT, THE  
7 RETRACTION PART, ON NOVEMBER 19TH, 1989.

8 ON MARCH 7TH, CRAIG CIGNARELLI TELLS THE  
9 DISTRICT ATTORNEY AND THE OTHER PEOPLE WHO ARE  
10 INTERVIEWING HIM THAT THAT RETRACTION PART NEVER  
11 HAPPENED.

12 NOW, THAT'S ANOTHER LIE, BECAUSE IT DID  
13 HAPPEN. AND, IN FACT, ON NOVEMBER 29TH THERE IS A

14 DINNER AT A RESTAURANT CALLED GLADSTONE'S THAT CRAIG  
15 CIGNARELLI AND ERIK MENENDEZ ARE HAVING DINNER TOGETHER,  
16 AND ON THE TAPE OF THAT ERIK MENENDEZ TELLS CRAIG  
17 CIGNARELLI: "YOU KNOW, I WAS ONLY JOKING," CONCERNING  
18 THE CONFESSION.

19         AND ERIK MENENDEZ EXPLAINS TO YOU THAT HE  
20 HAD HEARD THAT CRAIG CIGNARELLI WAS TALKING TO THE  
21 POLICE, AND WAS TRYING TO RETRACT THE CONFESSION THAT HE  
22 HAD MADE TO HIM, WHICH HE HAD PREVIOUSLY RETRACTED  
23 ANYWAY ON THE DAY THAT IT OCCURED.

24         THIS IS ALL VERY CONVOLUTED, BUT THE BOTTOM  
25 LINE IS THE PROSECUTION IS ACTUALLY RELYING ON THAT MAN  
26 TO PROVE LYING IN WAIT. THAT'S WHY HE'S HERE. HE IS  
27 THEIR LYING IN WAIT WITNESS. LOOKING THROUGH THE DOOR,  
28 SEEING THE PARENTS SITTING ON THE COUCH. THAT'S HOW

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1 SIGNIFICANT HE IS TO THEM, THAT WITNESS.

2         AND SO THE FACT THAT HE HAS CHANGED HIS  
3 STORY OVER TIME, THE FACT THAT HE HAS A MOTIVE TO LIE,  
4 THE FACT THAT HIS OWN MOTIVES ARE SO CLEAR, IS VERY  
5 IMPORTANT.

6         BECAUSE REMEMBER, I TOLD YOU BEFORE THERE  
7 IS TWO WAYS YOU QUESTION THE CREDIBILITY OF A WITNESS.  
8 ONE IS INCONSISTENCY, AND WE HAVE THAT. HERE IS A VERY  
9 SMALL STATEMENT, AND YET THE INTERNAL DETAILS HAVE

10 CHANGED IN THIS WITNESS' STATEMENT.

11 SO WE HAVE INCONSISTENCY, WHICH MAKES YOU  
12 QUESTION IT. AND WE HAVE THE MOST OBVIOUS CASE OF BIAS  
13 THAT I'VE EVER SEEN IN MY LIFE. I HAVE NEVER HAD A  
14 WITNESS TAKE \$25,000 AND SIT ON THE WITNESS STAND. HE  
15 IS NOT ONLY GRANDIOSE, AS MR. CONN DESCRIBED HIM, HE'S  
16 REALLY FULL OF HIMSELF, ISN'T HE? HE IS SO  
17 SELF-RIGHTEOUS.

18 AND YET THAT SAME PERSON SITS THERE SO  
19 SELF-RIGHTEOUS AND TELLS US THAT WHEN HE PUT THE  
20 RETRACTION INTO THE STORY ON NOVEMBER 19TH, HE DID IT  
21 BECAUSE HE DIDN'T WANT TO TAKE A FRIEND DOWN.

22 TEN DAYS LATER HE'S WEARING A BODY WIRE.  
23 THIS JUNIOR G-MAN, MR. CONGRESSMAN, IS WEARING A BODY  
24 WIRE TO TRY TO TRAP HIS ONCE BEST FRIEND, WHO HE DOESN'T  
25 WANT TO TAKE DOWN, INTO REPEATING A CONVERSATION SO  
26 DETECTIVE ZOELLER, WHO IS OUT IN THE PARKING LOT, I  
27 SUPPOSE, IN A VAN, CAN HEAR IT WITH HIS OWN EARS.

28 NOW, IT DOESN'T WORK. ERIK MENENDEZ DENIES

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1 CONFESSING TO HIM. AND ON HIS WAY OUT, MR. CIGNARELLI  
2 ADMITS HE TALKS TO HIS -- THE JUNIOR G-MAN TALKS TO THE  
3 POLICE AND SAYS: "GEE, SORRY, FELLAS. I GUESS THAT  
4 DIDN'T HELP."

5 THIS IS THE GUY THAT DOESN'T WANT TO TAKE

6 HIS FRIEND DOWN. YOU BET HE WANTS TO TAKE HIS FRIEND  
7 DOWN, BECAUSE HIS FRIEND HAS GONE PUBLIC, LETTING THE  
8 WORLD KNOW THAT CRAIG CIGNARELLI TOOK PART IN THIS  
9 THEFT. AND FOR WHATEVER OTHER REASONS THAT STRIKE HIS  
10 GRANDIOSITY, HIS FEELING OF IMPORTANCE. YOU BET HE  
11 WANTS TO TAKE HIS FRIEND DOWN.

12 I MEAN, WHY IN THE WORLD WOULD YOU GO TO A  
13 SHOW LIKE "HARD COPY"? I MEAN, MS. ELLMAN, THANK YOU  
14 VERY MUCH, YOU'RE VERY NICE. BUT IT'S THE SLEAZIEST  
15 SHOW ON TELEVISION, BY FAR.

16 WHY WOULD YOU GO IN AND TAKE THIS MONEY IF  
17 YOU WERE A DECENT PERSON, IF YOU WERE AN HONORABLE  
18 PERSON? TAKE THIS MONEY OFF THIS TRAGEDY?

19 AND YOU DIDN'T HEAR MY CLIENT EVER GOT A  
20 NICKEL, OR WANTED TO. AND YOU KNOW WHAT THOSE SHOWS ARE  
21 LIKE. THE JOEY BUTTAFUCOS AND THE AMY FISCHERS. AND  
22 THEY GET PAID HUGE, ENORMOUS AMOUNTS OF MONEY TO TELL  
23 THEIR LITTLE STORIES ON T.V.

24 I HAVEN'T SEEN HIM (INDICATING) DO IT. AND  
25 YOU KNOW FROM OUR EXPERTS, WHO AREN'T BEING PAID, WE  
26 SURE COULD USE SOME MONEY.

27 HE WOULDN'T DO IT. BUT CRAIG CIGNARELLI  
28 WILL MAKE MONEY OFF OF THIS GRIEF AND TRAGEDY, OFF THE

1 DEAD PARENTS OF HIS SUPPOSED ONCE BEST FRIEND.

2           AND THEN HE COMES IN HERE AND COMMITS  
3 PERJURY. IT'S LIKE TOO GOOD TO BE TRUE. YOU GET A  
4 WITNESS WHO TAKES FROM "HARD COPY", AND THEN HE LIES  
5 ABOUT WHAT HE DOES WITH THE MONEY. HE TELLS US --  
6 FIRST, HE SAYS -- TALK ABOUT SOMEBODY PLAYING GAMES WITH  
7 HIS QUESTIONER. MR. LEVIN WAS QUESTIONING HIM.

8           "YOU HAD A CONTRACT WITH 'HARD COPY'?"

9           YOU WILL SEE IT.

10          "YOU HAD A CONTRACT WITH 'HARD COPY',  
11 DIDN'T YOU? AND WHAT WERE THE TERMS OF THAT CONTRACT?"

12          AND THAT'S WHEN OUT POPPED \$25,000.

13          "AND DID YOU GET THAT?"

14          AND HE SAYS "NO."

15          SO NOW HE'S TRYING TO MAKE IT LOOK LIKE  
16 WELL, "HARD COPY" CHEATED HIM. THEY DIDN'T PAY HIM HIS  
17 \$25,000. HE SAYS NO.

18          IF YOU ARE NOT CLEAR ABOUT THIS, YOU REALLY  
19 SHOULD HAVE HIS TESTIMONY REREAD TO YOU. BECAUSE LIKE  
20 JAMIE PISARCIK, YOU CATCH HIM IN THIS LIE, HE JUMPS BACK  
21 TO THIS. IT'S LIKE SELF-JUMPING CHECKERS. YOU CATCH  
22 HIM IN THE NEXT ONE, HE BACKS UP AGAIN.

23          NO, HE DIDN'T GET IT. RIGHT.

24          WELL THEN, SCURRY, SCURRY, SCURRY, SCURRY,  
25 AND EVENTUALLY YOU SEE "HARD COPY" IS HERE. MAYBE HE  
26 FIGURED OUT, YOU KNOW WHAT, THE WORLD IS STILL WATCHING.  
27 MAYBE "HARD COPY" ISN'T GOING TO LET YOU SAY THAT THEY  
28 WELCHED ON THEIR CONTRACT TO YOU.

1 IN ANY EVENT, FIRST HE DIDN'T GET THE  
2 \$25,000. MAKES IT SOUND LIKE HE DIDN'T GET ANYTHING.

3 THEN FURTHER QUESTIONING, THE NEXT DAY.  
4 YEAH, HE GOT 20,000.

5 WELL THEN, BECAUSE 5,000 WENT TO CHARITY,  
6 THAT'S WHAT HE SAYS. WAIT A MINUTE. DID YOU GET -- DID  
7 THEY SEND THE 5,000? DID YOU GET 5,000?

8 ACTUALLY IT COMES OUT HE GOT THE 25,000,  
9 NOT 20, DIRECTLY TO HIM. 25,000. BUT 5,000 HE GAVE TO  
10 CHARITY. AND HE LIED ABOUT THAT.

11 SO DON'T GIVE ME THIS MATCHING FUNDS  
12 BALONEY. HE ISN'T SAYING THAT 5,000 WOUND UP IN THE  
13 CHARITY, OR SIX. NO. HE SAYS HE ONLY GOT TO KEEP  
14 \$20,000. FIVE THOUSAND WENT TO TREAT THESE GENUINELY  
15 ABUSED KIDS.

16 THAT'S HOW HE TREATS THOSE GENUINELY ABUSED  
17 KIDS. THIS IS HOW HE TREATS THESE GENUINELY ABUSED  
18 KIDS.

19 IN ANY EVENT, WE THEN BRING IN THE PEOPLE  
20 FROM THE CHARITY, AND HE ONLY GAVE THEM \$3,000. IT ONLY  
21 TOOK \$3,000 TO WASH THE STAIN OF "HARD COPY" OFF OF HIM,  
22 INSTEAD OF \$5,000, AS HE TESTIFIED TO.

23 HE IS A LIAR. HE IS THE MOST OBVIOUS LIAR.  
24 YOU KNOW, OF ALL THE PEOPLE HERE WHO I HAVE A QUARREL  
25 WITH THEIR TESTIMONY, HE IS ABSOLUTELY THE MOST-PROVEN  
26 WORST. SO I AM NOT GOING TO -- OH, AND JUST A MINOR

27 POINT. I MEAN, HE IS JUST INCAPABLE OF TELLING THE  
28 TRUTH ABOUT ANY ASPECT OF THIS. A MINOR POINT.

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1 HE CLAIMS THAT WHEN ERIK MENENDEZ IS  
2 SHOWING HIM WHERE THINGS WERE, OR WHERE THINGS HAPPENED,  
3 DEPENDING ON WHICH ONE OF THEM YOU BELIEVE, ERIK SAID HE  
4 WAS SHOWING HIM WHERE THINGS WERE WHEN HE GOT BACK THERE  
5 THAT NIGHT. BUT ANYWAY.. .

6 HE CLAIMS THERE WAS -- YOU KNOW, HE STARTS  
7 TO TALK ABOUT THE MOTHER BEING ON THE END OF THE COUCH  
8 IS THE FIRST WAY HE DESCRIBES IT. AND AS MR. LEVIN  
9 STARTS TO CROSS-EXAMINE HIM ABOUT IT, HE THEN CLAIMS  
10 THERE WASN'T A COUCH IN THE ROOM WHEN HE WAS THERE. HE  
11 SAYS THERE WAS NO FURNITURE IN THE ROOM WHEN HE WAS  
12 THERE.

13 NOW, WE KNOW THE EARLIEST HE COULD BE  
14 THERE. HOW DO WE KNOW THIS? BECAUSE ERIK MENENDEZ IS  
15 IN NEW JERSEY -- HE IS IN NEW JERSEY FROM THE 25TH UNTIL  
16 THE 31ST. REMEMBER, HE GOES TO NEW JERSEY, THEN HE  
17 FLIES BACK HERE. HE IS NOT EVEN CLEAR WHETHER IT IS THE  
18 31ST OR THE 1ST, BUT ONE OF THOSE TWO DAYS.

19 AND THEN WHEN HE GETS BACK HERE, HE FINDS  
20 OUT THAT LYLE MENENDEZ HAD THE COMPUTER ERASED. THAT  
21 COMPUTER ERASURE HAPPENED ON THE 31ST. ERIK MENENDEZ IS  
22 HERE RIGHT AFTER THAT.

23 SO, THE EARLIEST DAY THAT THIS CONVERSATION  
24 WITH MR. CIGNARELLI COULD HAVE OCCURRED WAS THE 31ST OR  
25 THE 1ST, AND ERIK MENENDEZ HAS JUST FLOWN IN FROM THE  
26 EAST COAST.

27 NOW, MRS. BARALT -- I MEAN, THEY ARE EVEN  
28 TRYING TO ACCUSE MRS. BARALT, DURING HER

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1 CROSS-EXAMINATION, TRYING TO ACCUSE MRS. BARALT OF  
2 COMING IN HERE TO LIE. IT'S ASTONISHING.

3 SHE TESTIFIES THAT THE FURNITURE WAS ALL  
4 BACK IN THE ROOM. THERE WAS FURNITURE IN THE ROOM ON  
5 WEDNESDAY, BEFORE THEY EVER LEFT TOWN. THAT'S THE 23RD.  
6 FURNITURE IS THERE.

7 NOW, WE'RE SUPPOSED TO NOW BELIEVE, IN  
8 ORDER TO PROP UP THE CREDIBILITY OF MR. "HARD COPY",  
9 MR. CONGRESSMAN, WE ARE NOW SUPPOSED TO BELIEVE THAT  
10 ERIK MENENDEZ FLIES BACK FROM NEW JERSEY AND MOVES THE  
11 FURNITURE SO THAT HE CAN THEN TELL THE STORY TO CRAIG  
12 CIGNARELLI.

13 I MEAN, IT'S RIDICULOUS. WHY WOULD HE DO  
14 THAT?

15 THE FACT IS, MR. CIGNARELLI ISN'T HONEST,  
16 YOU SEE, AND HE CHANGES DETAILS IF HE THINKS HE'S  
17 GETTING CAUGHT.

18 HERE IS WHAT HAPPENED WITH MR. CIGNARELLI,



19 ACCORDING TO ERIK MENENDEZ.

20 HE WAS AT THE HOUSE. HE SAID HE WAS

21 WALKING CIGNARELLI THROUGH THE ROOM, SHOWING HIM WHERE

22 HIS PARENTS' BODIES WERE WHEN THEY CAME BACK -- WHEN HE

23 AND LYLE MENENDEZ CAME BACK. THAT'S WHEN HE WAS TELLING

24 HIM THE POLICE ALIBI STORY. "WE WENT TO THE MOVIES. WE

25 CAME TO THE HOUSE TO GET FALSE I.D. WE WENT INSIDE. WE

26 SAW OUR PARENTS. MY DAD WAS SEATED HERE ON THE COUCH,

27 MY MOM WAS LYING THERE ON THE FLOOR."

28 EXACTLY THE PLACE, BY THE WAY, THAT

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1 CIGNARELLI MOTIONS ON THE DIAGRAM ERIK MENENDEZ TELLS

2 HIM HIS MOTHER WAS. THAT'S WHERE SHE'S LYING IN THE

3 END.

4 AND THE POLICE THINK THAT THEY MAY HAVE

5 COME IN THIS WAY, BUT I THINK THEY ACTUALLY CAME THROUGH

6 THESE DOORS, WHICH ARE THE FOYER DOORS.

7 AND AFTER TELLING HIM THAT, HE THEN TELLS

8 HIM: "AND WE DID IT." THAT'S THE CONFESSION. IT'S A

9 WALK-THROUGH, 90 PERCENT OF WHICH IS: "WHAT WE SAW WHEN

10 WE CAME BACK," PLUS THE OFFICIAL VERSION THEY GAVE THE

11 POLICE, AND THEN HE DROPS THE BOMB.

12 AND CIGNARELLI'S REACTION TO THE BOMB MAKES

13 HIM RETRACT IT. AND THAT IS THE LONG AND THE SHORT OF

14 WHAT HE TOLD CRAIG CIGNARELLI. AND THAT IS CONSISTENT

15 WITH THE AMALGAMATION OF INFORMATION THAT CIGNARELLI  
16 HAS, AND THE OTHER LITTLE DETAILS HE HAD TO DO TO  
17 SUPPORT IT.

18 BUT IT'S -- EVEN IF I HAD MADE IT HUGE, IT  
19 WOULD HAVE BEEN HARD FOR YOU TO FOLLOW -- A CHART OF  
20 ERIK MENENDEZ' TESTIMONY OF WHAT HE TOLD CIGNARELLI,  
21 NEWSPAPER FACTS, AND THEN CIGNARELLI'S STORY TO THE  
22 POLICE.

23 AND YOU CAN JUST SEE WHERE HE AMALGAMATES  
24 THINGS THAT HE GOT -- THAT ERIK MENENDEZ SAID HE TOLD  
25 HIM WITH FACTS THAT HE COULD HAVE GOTTEN FROM THE  
26 NEWSPAPER, AND PUTS THEM ALL TOGETHER IN A NICE, LITTLE  
27 PACKAGE TO MAKE HIMSELF IMPORTANT -- AND BEING IMPORTANT  
28 IS IMPORTANT TO HIM -- TO THE POLICE.

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1 OKAY. THAT'S MR. CIGNARELLI.

2 NOW -- YOUR HONOR, IF WE'RE GOING TO TAKE A  
3 BREAK, THIS WOULD BE A BETTER TIME THAN LATER, BECAUSE I  
4 AM ABOUT TO HAVE A LONG SEGMENT.

5 THE COURT: OKAY. WE WILL RESUME AT FIVE MINUTES  
6 TO THE HOUR, 15 MINUTES FROM NOW.

7 DON'T DISCUSS THE MATTER. DON'T FORM ANY  
8 FINAL OPINIONS. WE WILL RESUME IN 15 MINUTES.

9 (A RECESS WAS TAKEN FROM  
10 2:40 P.M. TO 3:00 P.M.)

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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1 THE COURT: ANYTHING FURTHER BEFORE WE  
2 RESUME?  
3 LET'S HAVE THE JURY.  
4 (THE JURY ENTERED THE COURTROOM  
5 AND THE FOLLOWING PROCEEDINGS

6 WERE HELD:)

7

8 THE COURT: THE JURY IS BACK.

9 YOU MAY CONTINUE YOUR ARGUMENT.

10 MS. ABRAMSON: THANK YOU VERY MUCH, YOUR  
11 HONOR.

12 DURING THE RECESS WE HAD A COMMITTEE  
13 MEETING, AND MY CO-COUNSEL HAVE URGED ME TO TALK TO  
14 YOU A LITTLE BIT MORE ABOUT JAMIE PISARCIK. SO I  
15 WILL.

16 I INDICATED TO YOU BEFORE THAT DURING  
17 THE FIRST ROUND OF HER TESTIMONY, THE CRUX OF HER  
18 EVIDENCE HAVING TO DO WITH THIS SUPPOSED FABRICATION  
19 IS NOT ADMISSIBLE AGAINST MY CLIENT, THAT'S TRUE.  
20 WHAT WAS IMPORTANT, THOUGH, ABOUT THE FIRST ROUND OF  
21 HER TESTIMONY IS THAT SHE WAS IMPEACHED ON A NUMBER  
22 OF DIFFERENT ISSUES, NOT JUST WHAT I IMPEACHED HER  
23 WITH CONCERNING WHEN ERIK MENENDEZ SUPPOSEDLY MADE  
24 THE STATEMENT TO HER, BUT ON OTHER TOPICS AS WELL.

25 NOW, THE PROSECUTION ARGUES -- IT'S ONE  
26 OF THESE BUZZ WORDS THAT SURROUND A LOT OF CRIMINAL  
27 CASES THESE DAYS -- FAILING TO TAKE RESPONSIBILITY.  
28 THIS IS A VERY POPULAR POLITICAL BUZZ WORD THESE

1 DAYS, AS WELL. IT DOESN'T MEAN ANYTHING IN A COURT  
2 OF LAW, FRANKLY, EXCEPT TO RILE PEOPLE UP OR MAKE  
3 THEM DISLIKE SOMEONE OR WANT TO PUNISH THEM MORE,  
4 BECAUSE THE LAW DEFINES WHAT RESPONSIBILITY IS IN A  
5 COURTROOM.

6 SO WHATEVER IS BEING TALKED ABOUT IN NEW  
7 HAMPSHIRE OR ARIZONA OR WHERE EVERYBODY IS PRIMARY  
8 STUMPING AT THE MOMENT, FAILURE TO TAKE  
9 RESPONSIBILITY IS NOT A CRIME. FAILURE TO TAKE  
10 RESPONSIBILITY DOESN'T ANSWER THE QUESTIONS THAT  
11 CRIMINAL LAW POSES. BUT THERE'S AN ACCUSATION  
12 THAT'S HURLED CONSTANTLY AT OUR CLIENTS, ALONG WITH  
13 HIS USING THIS MEDIA BUZZ WORD, "ABUSE EXCUSE."

14 THAT'S HOW DESPERATE THIS PROSECUTION  
15 IS. THEY'RE NOT COMFORTABLE WITH THE LAW. THEY  
16 WANT "HARD COPY" LANGUAGE. OKAY.

17 WHAT'S INTERESTING, THOUGH, ABOUT THE  
18 WITNESSES WHO TESTIFIED IN THIS CASE IS THIS: MY  
19 CLIENT TOOK RESPONSIBILITY OVER AND OVER AGAIN, EVEN  
20 FOR THINGS HE DIDN'T NECESSARILY DO, LIKE LYING TO  
21 HIS RELATIVES.

22 BUT THE MOST CHALLENGEABLE OF THE  
23 PROSECUTION'S WITNESSES, THE ONE I HAVE BEEN  
24 ATTACKING, MS. PISARCIK, FOR EXAMPLE,  
25 MR. CIGNARELLI, AND EVEN TO SOME EXTENT,  
26 MRS. WRIGHT, HAVE DEMONSTRATED A FAILURE TO EITHER  
27 BE RESPONSIBLE ABOUT THE FACTS, OR TO TAKE  
28 RESPONSIBILITY FOR WHEN THEY HAVE BEEN EITHER LYING

1 OR SLOPPY OR WRONG IN THE PAST. AND THEY HAVE BEEN  
2 CONFRONTED, PARTICULARLY CIGNARELLI AND JAMIE  
3 PISARCIK, WITH PREVIOUS STATEMENTS THEY MADE. AND  
4 THEY WILL NEVER EVER ADMIT THAT THEY HAVE EITHER  
5 LIED ON OTHER OCCASIONS, OR BEEN MISTAKEN ON OTHER  
6 OCCASIONS. THEY JUST MAKE EXCUSES. THEY ARE THE  
7 EXCUSE-MAKERS. AND WITH RESPECT TO MS. PISARCIK,  
8 THERE WERE OTHER AREAS IN WHICH SHE BEHAVED THE SAME  
9 WAY, AS SHE DID CONCERNING THE DATE, THE MONTH, THE  
10 TIME OF YEAR. THERE ARE A COUPLE OF THINGS  
11 SPECIFICALLY.

12 ONE THING ON WHICH SHE WAS IMPEACHED BY  
13 ANOTHER WITNESS THAT'S EASY ENOUGH TO DISCUSS --  
14 THESE AREN'T HUGE THINGS. SHE'S NOT A WITNESS THAT  
15 TALKED ABOUT A GREAT MANY THINGS. VIRTUALLY  
16 EVERYTHING SHE TALKED ABOUT SHE WAS IMPEACHED ON.

17 SHE WAS ASKED WHETHER OR NOT AT THE TIME  
18 THAT SHE FIRST TOOK UP WITH LYLE MENENDEZ, WHETHER  
19 SHE WAS NOT, IN FACT, ENGAGED TO ANOTHER YOUNG MAN  
20 IN GERMANY AT THE TIME, AND SHE SAID NO. SHE DIDN'T  
21 EVEN HAVE A BOYFRIEND IN GERMANY, IS WHAT SHE  
22 TESTIFIED TO.

23 BUT ROBBIE CLOUSE CAME IN LATER, WHO

24 KNEW HER, WHO WAS FRIENDLY WITH HER AND WITH LYLE  
25 MENENDEZ WHEN THE THREE OF THEM FIRST BECAME  
26 FRIENDS. I MEAN, BACK IN NEW JERSEY IN 1986. AND  
27 ROBBIE CLOUSE SAYS, NOT ONLY DID SHE TELL ROBBIE  
28 CLOUSE THAT SHE WAS ENGAGED TO BE MARRIED TO A YOUNG

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1 MAN IN GERMANY, BUT SHE SHOWED HIM THE RING. SHE  
2 DENIES THAT HERE TO MAKE HERSELF LOOK LIKE SHE'S NOT  
3 THE KIND OF PERSON WHO WOULD DUMP SOMEONE SHE'S  
4 ENGAGED TO FOR SOMEONE RICHER.  
5 THE OTHER THING SHE WAS IMPEACHED ON --  
6 THERE ARE A COUPLE OF THINGS THAT ARE -- FOR EXAMPLE,  
7 LYLE MENENDEZ' DEFENSE CALLED THIS WITNESS, TIM  
8 CUSTER, WHO WAS THIS MINISTER WHO WAS MINISTERING AT  
9 THE JAIL, WHO TESTIFIED TO A VERY SMALL POINT, THAT  
10 JAMIE PISARCIK DENIED THAT LYLE MENENDEZ PROPOSED TO  
11 HER IN THE JAIL BY KNEELING DOWN AND GETTING ON HIS  
12 KNEES, EVEN THOUGH HE WAS SHACKLED, IN THE JAIL TO  
13 DO THAT. SHE DENIED IT. BUT SHE WAS IMPEACHED ON  
14 THAT POINT. SHE TOLD TIM CUSTER THAT THAT  
15 HAPPENED. AND I BELIEVE THAT EVEN MRS. BARALT  
16 TESTIFIED THAT SHE TOLD HER THAT THAT HAPPENED.  
17 SO IS SHE LYING, OR DOES SHE JUST HAVE  
18 THE WORLD'S WORST MEMORY? EITHER WAY, YOU CANNOT

19 RELY, THEN, ON THE INFORMATION THAT THE  
20 PROSECUTION'S RELYING ON TO IMPEACH MY CLIENT.  
21       HERE'S THE THING THAT'S MOST  
22 INTERESTING. THIS HAS TO DO WITH USING THE MENENDEZ  
23 FAMILY TELEPHONE CREDIT CARD. THE WAY IT CAME OUT  
24 IN THE TESTIMONY -- AND I'M GOING TO READ IT  
25 BACKWARD FORWARD -- THIS WHOLE AREA IS ADDRESSED AT  
26 39,486, THE PART I'M GOING TO READ, TO 39,490.  
27       FIRST OF ALL, THERE'S THIS THING WHERE  
28 WHEN MS. TOWERY IS CROSS-EXAMINING HER SHE'S TAKING

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1 HER THROUGH HOW OFTEN IT WAS THAT SHE AND EVERY  
2 OTHER MEMBER OF HER FAMILY WERE FREELOADING ON THIS  
3 CREDIT CARD, AND MS. TOWERY SAYS:  
4       "THERE WERE ALSO POTENTIAL CALLS,  
5       QUITE A NUMBER OF PHONE CALLS, TO A  
6       MAN NAMED RICHARD GARRETT; IS THAT  
7       RIGHT?  
8       "ANSWER: YES."  
9       AND MS. TOWERY SAYS: "AND WHEN  
10      YOU TESTIFIED AT THE PREVIOUS TRIAL  
11      ABOUT THESE PHONE RECORDS, YOU SAID  
12      THAT YOU DIDN'T RECOGNIZE THAT NAME,  
13      DIDN'T YOU?"



14 "ANSWER: WELL, ON THE PHONE  
15 RECORDS IT SAYS 'RICHARD GARRETT,' AND  
16 HE DIDN'T GO BY RICHARD."  
17 EXCUSES.  
18 "QUESTION: YOU SAID THAT YOU  
19 DIDN'T RECOGNIZE THE NAME RICHARD  
20 GARRETT; IS THAT RIGHT?  
21 "ANSWER: NOT AS RICHARD GARRETT,  
22 NO.  
23 "QUESTION: AND YOU HAD TO BE  
24 REMINDED THAT RICHARD GARRETT WAS YOUR  
25 ROOMMATE AT MERCER COLLEGE, DIDN'T  
26 YOU?  
27 "ANSWER --"  
28 THIS IS EVASIVE.

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1 "HE WASN'T MY ROOMMATE AT MERCER  
2 COLLEGE, NO.  
3 "QUESTION: NOT YOUR ROOMMATE AT  
4 MERCER COLLEGE?  
5 "ANSWER: NO, HE WASN'T. HE WAS  
6 MY ROOMMATE. I RENTED A ROOM FROM HIM  
7 IN LAWRENCEVILLE. HE DIDN'T GO TO  
8 COLLEGE."

9            THEN SHE'S CONFRONTED WITH THE  
10 IMPEACHMENT FROM THE PREVIOUS TRIAL, AND  
11 PARTICULARLY AT THIS QUESTION:  
12            "RICHARD GARRETT WAS YOUR  
13 ROOMMATE WHEN YOU WERE ATTENDING  
14 MERCER COLLEGE. DO YOU REMEMBER THAT?  
15            "ANSWER: RICK, YES.  
16            "QUESTION: IS THAT RICHARD  
17 GARRETT?  
18            "ANSWER: YES. HE WAS A  
19 ROOMMATE."  
20            THAT'S HOW SHE WAS IMPEACHED WITH THIS  
21 AT THE PREVIOUS TRIAL. AND HERE IN THIS TRIAL SHE  
22 MAKES EXCUSES AFTER SHE'S CONFRONTED WITH WHAT I  
23 JUST READ YOU.  
24            "WELL, YES, BUT YOU JUST ASKED ME  
25 IF HE WAS MY COLLEGE ROOMMATE."  
26            THAT WASN'T THE QUESTION.  
27            "I WAS ATTENDING SOME CLASSES AT  
28 MERCER. HE NEVER WENT TO MERCER

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1            COLLEGE. I'M SORRY. I  
2 MISUNDERSTOOD."  
3            SHE TALKS ABOUT SHE RENTED A ROOM FROM

4 HIM.

5 NOW, MS. TOWERY SAYS TO HER:

6 "AND YOU WERE SHOWN RECORDS THAT  
7 HAD AS MANY AS 11 LONG-DISTANCE CALLS  
8 PER DAY ON THE CARD THAT YOU WERE  
9 PROVIDED, BY YOU AND YOUR FAMILY  
10 MEMBERS; ISN'T THAT RIGHT?"

11 AND SHE SAYS: "I GUESS SO. YES."

12 "AND YOU SAID THAT YOU DIDN'T KNOW  
13 THAT IT WAS THE MENENDEZ FAMILY PHONE  
14 CARD THAT YOU WERE USING; IS THAT  
15 RIGHT?

16 "ANSWER: YES, I DID. AS I  
17 STATED, LYLE SAID IT WAS A WATTS LINE  
18 OF SOME KIND.

19 "AND DO YOU THINK THAT NO ONE  
20 PAYS FOR A WATTS LINE?

21 "ANSWER: I GUESS AT THE TIME I  
22 REALLY WASN'T THINKING ABOUT IT.

23 "QUESTION: DID YOU THINK THAT  
24 THIS WAS JUST SOMETHING THAT PEOPLE  
25 COULD MAKE FREE LONG-DISTANCE  
26 TELEPHONE CALLS ON?

27 "ANSWER: I DON'T KNOW.

28 "QUESTION: YOU NEVER OFFERED TO

1     PAY FOR THE CALLS THAT YOU MADE, DID  
2     YOU?

3         "ANSWER: NO, I DID NOT.

4         "QUESTION: AND YOU NEVER DID PAY  
5     FOR THE CALLS THAT YOU MADE, DID YOU?

6         "ANSWER: I GUESS I WAS NEVER  
7     GIVEN A BILL.

8         "QUESTION: NO ONE EVER ASKED YOU  
9     TO PAY FOR CALLS.

10        "ANSWER: NO, THEY DID NOT.

11        "QUESTION: NOW, IN YOUR  
12     TESTIMONY YESTERDAY YOU SAID THAT LYLE  
13     GAVE YOU THIS CARD FOR YOU AND YOUR  
14     SISTERS TO USE ON A CASUAL BASIS;  
15     ISN'T THAT RIGHT?

16        "ANSWER: UH-HUH, YES.

17        "QUESTION: AND YOU PREVIOUSLY  
18     TESTIFIED THAT LYLE MENENDEZ USED THE  
19     CARD ON A CASUAL BASIS, DIDN'T YOU?

20        "ANSWER: THAT'S THE ONLY WAY I  
21     EVER SAW LYLE MAKE A PHONE CALL, WITH  
22     A PHONE CARD OR WITH THAT NUMBER.

23        "QUESTION: ALWAYS USED A PHONE  
24     CALL OR THAT PHONE CARD; IS THAT  
25     RIGHT?

26        "ANSWER: I'M ASSUMING IT WAS  
27     THAT PHONE CARD. I DON'T KNOW FOR

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1 "QUESTION: AND YOU USED IT ON A  
2 CASUAL BASIS; IS THAT CORRECT?

3 "ANSWER: YES, IT IS."

4 NOW WE GET TO THE POINT.

5 NOW THIS IS A QUESTION.

6 "QUESTION: NOW, FIRST YOU TOLD  
7 THE PROSECUTOR THAT YOU DIDN'T THINK  
8 YOU USED THE CARD, WHEN THEY FIRST  
9 CAME TO YOUR HOUSE.

10 "ANSWER: WELL --"

11 AND THEN MS. TOWERY SAYS:

12 "YES OR NO?"

13 AND THEN THERE'S A COLLOQUY, AND THEN  
14 THE WITNESS SAYS:

15 "CAN YOU RESTATE THE QUESTION."

16 AND HERE'S WHAT MS. TOWERY SAYS. SHE  
17 SAYS:

18 "WHEN THE PROSECUTORS --"

19 THIS IS THE FORMER PROSECUTOR.

20 " --FIRST CAME TO YOUR HOUSE AND  
21 ASKED YOU ABOUT THE PHONE CALL TO  
22 KELLY IN PENNSYLVANIA --"

23           THIS IS A PHONE CALL MADE, I BELIEVE,  
24 THE DAY OF THE HOMICIDES.  
25           "YOU SAID THAT YOU DIDN'T THINK  
26 YOU USED THE CARD, BECAUSE AT THE TIME  
27 OF THE HOMICIDE YOU WEREN'T SEEING  
28 LYLE; ISN'T THAT WHAT YOU SAID?

51893

1           "ANSWER: IT IS.  
2           "QUESTION: AND THEN LATER, A  
3 MONTH LATER, YOU SAID YOU HAD THOUGHT  
4 ABOUT IT, AND YOU DID USE THE CARD,  
5 BECAUSE MRS. MENENDEZ HAD GIVEN YOU  
6 PERMISSION TO USE THE CARD TO ARRANGE  
7 FOR THE TOURNAMENT IN VERMONT; ISN'T  
8 THAT RIGHT?  
9           "ANSWER: CORRECT.  
10          "QUESTION: AND THEN AFTER YOU  
11 WERE CONFRONTED WITH PHONE RECORDS,  
12 SHOWING USE OF THE CARD BY YOU AND  
13 YOUR FAMILY FOR THAT ENTIRE PERIOD, AS  
14 MANY AS 11 TIMES A DAY, THAT'S WHEN  
15 YOU SAID THAT LYLE MENENDEZ SAID YOU  
16 COULD USE THAT CARD AT ANY TIME; ISN'T  
17 THAT RIGHT?

18 "ANSWER: YES, IT IS.  
19 "QUESTION: AND THE FIRST TIME  
20 YOU DESCRIBED IT AS A WATTS LINE WAS  
21 WHEN YOU TALKED TO THE PROSECUTORS ON  
22 OCTOBER 12TH, 1995; ISN'T THAT  
23 CORRECT?"  
24 SHE AGREED WITH THAT.  
25 SO, HERE'S SOMEONE WHO TELLS US  
26 SOMETHING FALSE. THERE IS A TELEPHONE CALL THAT THE  
27 POLICE ARE TRYING TO TRACK DOWN, BECAUSE THEY HAVE  
28 THE FAMILY PHONE RECORDS FROM THE DATE OF THE

51894

1 HOMICIDE, AND THEY TRACK IT TO A GIRL -- I THINK  
2 ZOELLER TESTIFIED TO THIS, OR JAMIE DID -- TO THIS  
3 GIRL WHO'S A FRIEND OF JAMIE PISARCIK. AND THEY  
4 FIGURED OUT, SO THEY TALKED TO JAMIE PISARCIK, SINCE  
5 THIS IS HER FRIEND, AND THEY ASKED HER -- THIS IS WAY  
6 BACK WHEN, FOLKS, BEFORE THE FIRST TRIAL.  
7 "DID YOU EVER USE THIS CARD?"  
8 "NO, NOT ME."  
9 ELEVEN TIMES A DAY, IT TURNS OUT, SHE  
10 AND HER FAMILY MEMBERS ARE USING THIS CARD, AND SHE  
11 COMES UP WITH THE WATTS LINE AFTER HER TESTIMONY IN  
12 THE FIRST TRIAL.

13           NOW, THIS IS SOMEONE WHO WILL NOT TAKE  
14 RESPONSIBILITY FOR HAVING TOLD A FIB BEFORE, AND SHE  
15 HAS TO BE CONSTANTLY BACKED UP WITH RECORDS THAT SHE  
16 CANNOT EXPLAIN AWAY BEFORE SHE WILL ADMIT ANYTHING.  
17 AND THAT IS THE PERSON THEY WANT YOU TO RELY UPON  
18 FOR THIS NOTION THAT ERIK MENENDEZ IS LYING WHEN HE  
19 SAYS HE SAW HIS MOTHER REMOVE THE HAIRPIECE FROM HIS  
20 BROTHER ON TUESDAY, AND DIDN'T KNOW UP TO THAT DATE  
21 THAT HIS BROTHER WORE A HAIRPIECE. THAT WAS THE  
22 POINT OF ALL OF THIS.

23           THE CONFERENCE COMMITTEE ALSO TOLD ME TO  
24 POINT OUT TO YOU THAT IN THIS TRIAL SHE MAKES A BIG  
25 DEAL OUT OF HER CERTAINTY ABOUT HER TRIP TO  
26 CALIFORNIA IN WHICH SHE SUPPOSEDLY HAD THE  
27 CONVERSATION WITH ERIK MENENDEZ, BECAUSE SHE KNOWS  
28 FOR SURE NOW IT WAS THE TIME SHE SAW THE PLAY

51895

1 "HURLEY-BURLEY." I READ TO HER THE TESTIMONY FROM  
2 THE FIRST TRIAL, MY QUESTIONING FROM THE PREVIOUS  
3 TRIAL, WHERE SHE ADMITTED SHE WASN'T AT ALL SURE  
4 WHETHER THE TRIP WHEN SHE SAW "HURLEY-BURLEY" WAS  
5 THE SAME TRIP IN WHICH THE STATEMENT WAS MADE.

6           ONE FINAL WORD ABOUT CRAIG CIGNARELLI.  
7 I DO INVITE YOU TO READ THE FAX THAT HE SENT TO THE



8 BEVERLY HILLS POLICE DEPARTMENT. IT WILL GIVE YOU  
9 MORE INSIGHT INTO HIS CHARACTER AND MOTIVATION THAN  
10 ANYTHING ELSE. HE TALKS ABOUT IN THIS FAX THAT  
11 LYING IS AN ART. I WILL GIVE HIM A "C"  
12 IN-LYING-AS-AN-ART, MYSELF. BUT HE TALKS ABOUT  
13 LYING AND HIS ABILITY TO DO IT.

14 SO I WOULD TAKE A LOOK AT THAT VERY  
15 STRANGE FAX. IT'S ONE OF THE ITEMS IN EVIDENCE THAT  
16 HE SENT TO THE BEVERLY HILLS POLICE DEPARTMENT.  
17 NOW, I'VE MADE UP -- I STARTED TO DO THIS  
18 AND REALIZED IT'S SO CUMBERSOME. YOU CAN  
19 TAKE -- THIS IS WHAT THE TRANSCRIPTS LOOK LIKE THAT  
20 THE REPORTERS ARE MAKING AS WE SPEAK. WE GET THEM  
21 EVERY DAY; AND THEN, OF COURSE, YOU HAVE TO READ  
22 THEM. BUT WE GET THEM, AND THEN ONE OF THE THINGS  
23 WE LIKE TO DO -- AND I THINK MR. GESSLER IS GOING TO  
24 DO A FAIR AMOUNT OF IT WITH YOU -- IS BLOW THEM UP  
25 TO HIGHLIGHT CERTAIN TESTIMONY.

26 THIS IS DR. WILSON, WHO'S ON THE STAND,  
27 AND I STARTED TO DO IT, AND I REALIZED, TO MAKE IT  
28 BIG ENOUGH FOR YOU ACTUALLY TO SEE, THEY HAVE TO BE

51896

1 THIS BIG, AND THEY'RE VERY CUMBERSOME TO HANDLE. SO  
2 I DID VERY, VERY LITTLE OF IT.

3           AND I DO HAVE A FAIR AMOUNT OF  
4 DR. WILSON'S TESTIMONY, BECAUSE WE'RE GETTING TO  
5 THAT POINT WHERE I'M GOING TO BE DISCUSSING WHAT  
6 HAPPENED THAT WEEK AND MENTAL STATE. BUT THIS PART  
7 OF HIS TESTIMONY HAD TO DO WITH THE ENVIRONMENT OF  
8 THE FAMILY, THE ENVIRONMENT IN THIS HOME, AND WHY  
9 ERIK MENENDEZ WOULD BE DEMONSTRATING SUCH SEVERE  
10 SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER BEHIND  
11 SEXUAL MOLESTATION. IT HAD TO DO WITH SURROUNDING  
12 CIRCUMSTANCES. HERE IS WHERE -- I DON'T KNOW WHERE  
13 MY PYRAMID WENT.

14           BUT HERE DR. WILSON IS GIVING  
15 CONCLUSIONARY LANGUAGE WHICH ISN'T -- I KNOW THAT'S  
16 NOT ALWAYS THE MOST PERSUASIVE WAY TO CONVINCE  
17 PEOPLE THAT SOMETHING IS SO, BUT IT'S THE WAY THAT  
18 WE HAD TO DO IT.

19           HE'S GIVING CONCLUSIONARY LANGUAGE AT  
20 THE TOP OF THE PYRAMID HERE BASED ON EVERYTHING THAT  
21 HE HAS READ AND HEARD AND SEEN FROM BELOW HIM ON THE  
22 PYRAMID, AND THAT IS THE BASIS OF HIS OPINION.

23           OKAY. AND FROM ALL THAT BASE OF THE  
24 PYRAMID HE HAS THESE WORDS THAT HE USES TO  
25 CHARACTERIZE WHAT JOSE MENENDEZ AND MARY LOUISE  
26 MENENDEZ WERE LIKE AS PARENTS.

27           AGAIN, NOT AS PEOPLE. MR. CONN GETS UP  
28 AND TALKS ABOUT WE'RE PUTTING THE VICTIMS ON TRIAL.

1 THAT'S AN INTERESTING PHRASE WHEN YOU'RE DEALING  
2 WITH A DOMESTIC VIOLENCE SITUATION.

3 IN FACT, WHEN YOU'RE DEALING WITH ANY  
4 SITUATION WHERE PEOPLE HAVE HAD A LONG-STANDING  
5 RELATIONSHIP, AND THE NATURE OF THAT RELATIONSHIP IS  
6 IMPORTANT IN ORDER TO UNDERSTAND WHAT HAPPENED, YOU  
7 KNOW. YOU CAN SAY "PUTTING THE VICTIMS ON TRIAL."

8 ALL WE'RE TRYING TO DO IS EXPLAIN WHO  
9 WAS DOING WHAT TO WHOM, AND WHETHER OR NOT WHAT THEY  
10 WERE DOING CONSTITUTED PROVOCATION FOR STATUTORY  
11 MANSLAUGHTER OR CONSTITUTED TRIGGERING THAT KIND OF  
12 MENTAL STATE THAT ELIMINATES MALICE AFORETHOUGHT.  
13 AND THOSE ARE BOTH OF THE THEORIES UPON WHICH I'M  
14 GOING TO BE ARGUING AND URGING YOU TO RENDER CERTAIN  
15 VERDICTS.

16 AND SO IT'S CRUCIAL TO TALK ABOUT WHAT  
17 WAS THE LONG-STANDING RELATIONSHIP BETWEEN THESE  
18 PEOPLE. AND HOW DOES THAT INFLUENCE ERIK MENENDEZ'  
19 STATE OF MIND DURING THIS WEEK?

20 SO HERE IS JUST ONE OF THE PLACES ON THE  
21 TRANSCRIPT IN HIS TESTIMONY WHERE DR. WILSON IS  
22 TRYING TO SYNTHESIZE FROM ALL THIS MATERIAL WHAT  
23 THEY WERE LIKE.

24 AND HE TALKS ABOUT THE FATHER, JOSE  
25 MENENDEZ, WAS AN AUTHORITARIAN. DOMINATING,

26 CONTROLLING, TYRANNICAL, THREATENING; THAT HE RARELY  
27 USED REWARDS OR POSITIVE AFFIRMATION OR POSITIVE  
28 CONFIRMATION OR NURTURING ACTS OR ACTS OF KINDNESS

51898

1 THAT WERE DEVELOPMENTALLY OR OTHERWISE APPROPRIATE  
2 IN CARING FOR CHILDREN.

3 HIS BASIC POSTURE TOWARDS HIS CHILDREN  
4 WAS THAT OF THREAT, THREAT WITH HIGH EXPECTATION AS  
5 WELL FOR PERFORMANCE. HIS BEHAVIOR WAS  
6 FEAR-INDUCING.

7 NOW, WE'RE NOT TALKING ABOUT A STRICT  
8 PARENT HERE. STRICT IS FINE. WE'RE NOT TALKING  
9 ABOUT A TASKMASTER. TASKMASTER IS ALSO FINE. WE'RE  
10 TALKING ABOUT SOMETHING WAY BEYOND THE REALM, AND  
11 THERE'S A WIDE LIMIT. WE ALL HAVE DIFFERENT  
12 ATTITUDES ABOUT PARENTING. THERE'S A WIDE SPAN, ALL  
13 OF WHICH IS ACCEPTABLE. WE'RE BEYOND THOSE BORDERS  
14 WITH THIS FAMILY.

15 AND THEN HE TALKS ABOUT MOTHER;  
16 LIKEWISE, ALSO WAS HOSTILE, COLD, UNAVAILABLE,  
17 HERSELF THREATENING, UNPREDICTABLE AND ERRATIC IN  
18 HER BEHAVIOR; UNSTABLE, NON-NURTURING,  
19 NON-AFFECTIONATE, NON-INTERVENING, NON-SUPPORTIVE.

20 IT'S KIND OF LIKE THE OPPOSITE OF WHAT A

21 MOTHER'S BEHAVIOR SHOULD BE.  
22 NOW, THAT HAS AN IMPACT ON CHILDREN. IN  
23 THIS FAMILY, WHAT HE'S TRYING TO SAY HERE, DR.  
24 WILSON, IS THE COMBINATION -- SEE, THIS IS NOT  
25 ALWAYS SO IN ABUSIVE FAMILIES. I'M SURE WE CAN  
26 ENVISION THERE MUST BE MANY FAMILIES WHERE THERE IS  
27 ONE ABUSIVE PARENT AND THE OTHER ONE TRIES TO HELP.  
28 EVEN IF THEY CAN'T FREE THE CHILDREN FROM THIS

51899

1 ABUSIVE ENVIRONMENT, THEY AT LEAST COMMISERATE.  
2 THEY AT LEAST TELL YOU: "KID, I'M ON YOUR SIDE, EVEN  
3 IF I CAN'T HELP YOU," OR PROVIDE SOME NURTURING, OR  
4 TAKE THEM TO THE DOCTOR, AND NOT REFUSE TO TAKE THEM  
5 TO THE DOCTOR BECAUSE SOMEONE MIGHT FIND OUT WHAT'S  
6 GOING ON.

7 ERIK MENENDEZ TESTIFIED WHAT HAPPENED  
8 HERE. LYLE MENENDEZ SUSTAINED AN INJURY, GIVEN TO  
9 HIM BY JOSE MENENDEZ, AND MRS. MENENDEZ WOULD NOT  
10 LET THEM TAKE HIM TO THE EMERGENCY ROOM. WHAT IF  
11 THEY ASKED QUESTIONS? SHE IS A VERY ACTIVE PARTNER,  
12 CONSPIRATOR-ACCOMPLICE IN ALL OF THE ABUSE THAT'S  
13 GOING ON, AS WELL AS INFLECTING HER OWN.

14 WE STILL HAVE TO LIVE WITH THE FACT THAT  
15 THERE ARE GENDER STEREOTYPES, AND SOME OF THEM ARE

16 STILL OKAY. A MOTHER SHOULD BE A MOTHER, AND  
17 CHILDREN DO LOOK TO THEIR MOTHERS IN MOST FAMILIES,  
18 ALTHOUGH NOT ALL. THERE ARE SOME VERY WARM AND  
19 SNUGLY AND NURTURING FATHERS, WHICH IS GOOD. IN  
20 MOST FAMILIES, IF YOU'RE GOING TO LOOK FOR WARMTH  
21 AND EMOTION AND THE TENDERNESS AND KINDNESS, IT'S  
22 GOING TO BE TO MOM.

23 WHEN YOU'VE GOT THIS VERY TYRANNICAL AND  
24 MEAN FATHER, AND YOU'VE GOT A MOTHER WHO'S COLD AND  
25 UNAVAILABLE AND THREATENING, WHERE DOES A KID GO?

26 WELL, HE GOES INTO P.T.S.D., I'M  
27 AFRAID. HE GOES INTO ANXIETY DISORDER. HE GOES  
28 INTO LIVING WITH CONSTANT FEAR AND WITH A HORRIBLE

51900

1 LOW OPINION OF HIMSELF.

2 NOW, THIS SAME THING, THIS SAME KIND OF  
3 TREATMENT THAT DR. WILSON TALKED ABOUT AS CREATING  
4 AN ENVIRONMENT WHERE YOU'RE GOING TO GET SEVERE  
5 SYMPTOMS OF POST-TRAUMATIC DISORDER IS ALSO PART OF  
6 WHAT CONTRIBUTES TO THIS NOTION OF HELPLESSNESS,  
7 THAT WHEN YOU HAVE THIS MANAGEMENT STYLE THAT  
8 INCLUDES ALL THIS DOMINATION AND CONTROL, CONSTANTLY  
9 MANAGING EVERYTHING YOUR CHILDREN DO, WHO THEY'RE  
10 EXPOSED TO, WHAT THEY DO WITH THEIR TIME, AND

11 INTIMIDATING THEM AND COERCING THEM, ALL OF THESE  
12 THINGS; VERBAL DENIGRATION, STATEMENTS TO THE EFFECT  
13 THAT THE BEHAVIORS AND PERFORMANCES OF MR. ERIK  
14 MENENDEZ DON'T MEASURE UP. THEY'RE NOT GOOD ENOUGH  
15 IN TERMS OF WHAT MR. JOSE MENENDEZ IS EXPECTING IN  
16 HIS SON. HE'S SAYING THE COMBINATION OF THIS  
17 PARENTING STYLE, IF YOU WILL, LEADS NOT ONLY TO  
18 PASSIVITY, PASSIVE ACCEPTANCE ON THE PART OF THE  
19 CHILD.

20       YOU SAW A GOOD EXAMPLE OF THAT EVEN ON  
21 THE WITNESS STAND ABOUT LEARNED HELPLESSNESS.  
22 THEY'RE CRIPPLING; AN INABILITY TO THINK YOUR WAY  
23 OUT OF THESE THINGS.

24       NOW, I REALIZE THAT YOU KNOW MR. CONN  
25 HAS ATTACKED DR. WILSON. YOU SAW HIM. AND YOU'RE  
26 IN A MUCH BETTER POSITION TO DECIDE WHETHER HE'S  
27 SOMEONE YOU WOULD RELY ON THAN MR. CONN. AND  
28 MOREOVER, I THINK IT WOULD BE FAIR TO SAY THAT

51901

1 DR. WILSON KNOWS MORE ABOUT ANXIETY DISORDERS THAN  
2 DR. DIETZ HAS FORGOTTEN. WHAT HE'S TRYING TO TELL  
3 YOU ABOUT AND WHAT IS THE SIGNIFICANT ASPECT OF  
4 POST-TRAUMATIC STRESS DISORDER FOR THIS CASE IS  
5 THIS:

6 IT IS UNDERSTOOD THAT THERE'S A  
7 BIOLOGICAL COMPONENT WITH RESPECT TO LOTS OF  
8 EMOTIONS, BUT PARTICULARLY THE FEAR RESPONSE. IT IS  
9 UNDERSTOOD THAT BUILT INTO US, GOING WAY BACK IN THE  
10 EVOLUTIONARY SCALE, AND REPEATED AGAIN EVERY TIME  
11 ONE OF US IS BORN, THIS WIRING SYSTEM THAT IS KEYED  
12 TO OUR SURVIVAL. THAT'S WHY IT'S THERE. PEOPLE WHO  
13 HAVE BEEN TRAUMATIZED, WHO DEVELOP THESE ANXIETY  
14 DISORDERS, OKAY, ARE OPERATING -- AS DR. WILSON  
15 CALLED IT -- THEIR IDLE SCREW IS TURNED UP. THEY'RE  
16 OPERATING AT A MUCH HIGHER LEVEL IN PREPARATION FOR  
17 THREAT AND THE RESPONSE TO THREAT. THEY'RE AROUSED  
18 ORDINARILY. BUT CERTAINLY, ONCE THEY'RE IN A  
19 SITUATION THAT POSES FOR THEM, GIVEN THE HISTORY OF  
20 THEIR TRAUMA, THE POTENTIAL OF THREAT, THEY ARE UP  
21 THERE SORT OF READY BIOLOGICALLY.

22 WE'RE NOT TALKING MENTALLY THINKING,  
23 COGNITIVELY. WE'RE TALKING TOTAL UNCONSCIOUSLY AND  
24 BEYOND THEIR CONTROL, AT THIS LEVEL WHERE THEY ARE  
25 HYPER-AROUSSED.

26 NOW, WHAT HAPPENS WHEN YOU'RE  
27 HYPER-AROUSSED IS SOMETHING -- YOU KNOW, THE FIRE  
28 ALARM GOES OFF IN THE HOTEL AND BAM. YOU'RE INTO AN



1 EXTREME LEVEL OF REACTIVITY, OF RESPONSE, AND IT IS

2 AUTOMATIC. IT IS BIOLOGICAL.

3 THAT'S WHY WE TALK ABOUT THIS RESEARCH;

4 AND THIS, OF COURSE, IS WHAT THAT DR. RESTAK -- THAT

5 QUOTE I READ TO DR. VICARY -- IS WHAT YOU'RE TALKING

6 ABOUT. WHEN YOU'RE TERRORIZED, THERE IS NO TIME FOR

7 THINKING. THERE IS NO THINKING THAT GOES ON. YOU

8 GO FROM PERCEPTION OF THE DANGER TO TERROR TO

9 REACTING, AND THAT REACTION IS NOT A PRODUCT OF

10 THINKING. IT ISN'T EVEN A DECISION.

11 FIGHT OR FLIGHT IS NOT A DECISION. YOU

12 DON'T DECIDE: I THINK I'LL FIGHT TODAY. I THINK

13 I'LL FLEE TODAY. I THINK I'LL FREEZE TODAY. IT

14 JUST HAPPENS, AND YOU FIND YOURSELF IN THE MIDDLE OF

15 ONE OF THOSE BEHAVIORS, EITHER FROZEN ON YOUR BED

16 WITH A GUN ACROSS YOUR KNEES, FLEEING OUT OF A ROOM

17 WHEN SOMEONE HAS ATTACKED YOU, OR RUNNING INTO ONE

18 TO END A THREAT. YOU ARE SIMPLY DOING IT. THAT MAY

19 BE COUNTER INTUITIVE TOO, BUT THAT'S WHAT ALL THIS

20 RESEARCH AND THE BIOLOGY OF THE FEAR RESPONSE IS ALL

21 ABOUT. IT COMES FROM RESEARCH ON POST-TRAUMATIC

22 STRESS DISORDER. WHY? BECAUSE PEOPLE WITH

23 POST-TRAUMATIC STRESS DISORDER, BECAUSE THEY ARE

24 STARTING OUT AT THIS HIGHER LEVEL OF AROUSAL, ARE

25 KNOWN TO HYPER-REACT, EXTREMELY REACT TO THINGS THAT

26 MIGHT CAUSE AN EMOTIONAL REACTION IN OTHER PEOPLE,

27 BUT NOT AT THAT LEVEL.

28 AND THERE'S THIS HUGE BODY, THIS HUGE

1 PATIENT POOL OF PEOPLE WHO HAVE BEEN TRAUMATIZED,  
2 WHO ARE NOW BEING STUDIED, BECAUSE BY STUDYING THEM  
3 YOU CAN UNDERSTAND HOW THEIR WHOLE FEAR RESPONSE  
4 WORKS FOR EVERYBODY.

5       SO IT IS OUR CONTENTION THAT WHAT  
6 HAPPENED HERE IS THAT THE BEHAVIOR -- LET ME JUST  
7 GIVE IT TO YOU SIMPLY. I'M GOING TO ARGUE THIS  
8 TOMORROW. I'M KIND OF TIRED TODAY, AND I'M NOT  
9 GOING TO MAKE AS MUCH SENSE TODAY, AND YOU'RE ALL  
10 TIRED AT THE END OF THE DAY, AND PROBABLY SICK OF  
11 HEARING ME. SO I'LL SAVE THAT 'TIL TOMORROW MORNING  
12 WHEN WE'RE ALL FRESH.

13       WHAT IS HAPPENING OVER THE COURSE OF  
14 THIS WEEK, AS AN OVERVIEW, IS WE HAVE SOMEONE WHO'S  
15 ALREADY SUFFERING FROM POST-TRAUMATIC STRESS  
16 DISORDER, VERY, VERY SENSITIVE TO PERCEPTIONS OF  
17 THREAT, VERY SENSITIVE TO REENACTMENTS OF HIS  
18 TRAUMA. AND HE'S HAD LOTS OF DIFFERENT TRAUMAS IN  
19 HIS LIFE, NOT JUST THE SEXUAL ABUSE, BUT  
20 PARTICULARLY THIS BRUTAL TREATMENT AND THREATENING  
21 BEHAVIOR AND HOSTILITY FROM HIS FATHER, AND TO A  
22 LESSER EXTENT FROM HIS MOTHER.

23       AND YOU WILL SEE IN THE INSTRUCTIONS  
24 THAT YOU GET, THAT FOR THE PURPOSE OF PROVOCATION

25 THEORY, WHICH IS THE CORE OF MANSLAUGHTER, THE  
26 HISTORY OF TRAUMA CAN BE CONSIDERED. THE  
27 PROVOCATION DOESN'T HAVE TO BE WHAT HAPPENS JUST ON  
28 SUNDAY OR EVEN THAT WEEK. THE PROVOCATION COULD

51904

1 HAVE BEEN OF A LONG DURATION. IT CAN COME FROM A  
2 SERIES OF EVENTS OCCURRING OVER TIME. OKAY?  
3 NOW, YOU'LL SEE FROM THE INSTRUCTIONS  
4 THAT IT ISN'T ENOUGH THAT SOMEONE DID SOMETHING BAD  
5 TO YOU 10 YEARS AGO, AND YOU DON'T SEE THEM, AND  
6 EVERYTHING IS HUNKY-DORY, AND YOU SEE THEM AGAIN,  
7 AND YOU CLAIM YOU'RE PROVOKED. WHEN IT'S  
8 PROVOCATION, THAT CONTINUES IN A CONTINUUM UP UNTIL  
9 THAT POINT, AND PROVOCATORY ACTS OF SOME DEGREE ARE  
10 STILL HAPPENING. THAT'S WHAT THE LAW IS TALKING  
11 ABOUT WHEN YOU WEIGH SUFFICIENT PROVOCATION.

12 SO HERE WE HAVE SOMEONE WHO'S BASICALLY  
13 AROUSED, WHO HAS THIS LONG HISTORY OF PROVOCATORY --  
14 WHAT WE CALL IN THE LAW, PROVOCATORY ACTS; AND THEN  
15 HE PERCEIVES -- GIVEN HIS HISTORY, HE REASONABLY  
16 PERCEIVES THAT HE IS BEING THREATENED WITH A SEXUAL  
17 ASSAULT. I THINK THERE'S NO QUESTION THAT ANYBODY  
18 THREATENED, ANYBODY THREATENED WITH A SEXUAL ASSAULT  
19 IS GOING TO BE AROUSED. IT'S GOING TO UPSET, IT'S

20 GOING TO FRIGHTEN OR ANGER. DOESN'T MAKE ANY  
21 DIFFERENCE FOR THE LAW WHAT THE EMOTION IS. COULD  
22 BE FEAR, COULD BE ANGER, COULD BE HATRED, COULD BE  
23 JEALOUSY.  
24 AS I SAID, I HAVE A CHART I'LL TAKE YOU  
25 THROUGH TOMORROW OF HYPOTHETICALS. IT DOES NOT  
26 MATTER WHAT THE EMOTION IS, SO LONG AS IT'S AN  
27 AROUSED EMOTION. AND THAT'S WHEN THE LAW CLICKS IN  
28 AND RECOGNIZES THAT PEOPLE DO NOT ATTACK IN WAYS WE

51905

1 CALL PREMEDITATED AND DELIBERATE, WITH EXPRESS  
2 INTENTIONS, WHEN THEY ARE AROUSED.  
3 SO, WHAT THE LAW BASICALLY SAYS: IN  
4 SOMEONE IS PROVOKED, WHETHER FROM IMMEDIATE EVENTS  
5 OR AS THE CULMINATION OF A LONG HISTORY OF EVENTS;  
6 IF THEY'RE PROVOKED, IF THEY'RE AROUSED, IF THEY ACT  
7 FROM THAT EMOTIONAL STATE, THEY ARE NOT ACTING WITH  
8 MALICE. AND THE MOST THEY CAN BE CONVICTED OF IS  
9 MANSLAUGHTER.  
10 THAT, IN A NUTSHELL, IS WHAT YOU'RE  
11 GOING TO BE INSTRUCTED ON IN THIS CASE.  
12 AND WHAT WE WERE TRYING TO SHOW, WHAT I  
13 THINK WE HAVE PROVEN AGAIN AND AGAIN -- AND EVEN  
14 DR. DIETZ IN THE THINGS HE TESTIFIED TO AGREES WITH

15 THIS BASIC POSTURE -- WHEN YOU ARE AROUSED YOU'RE  
16 NOT THINKING AS CLEARLY, YOU'RE NOT THINKING AS  
17 QUICKLY. I MEAN, JUST -- IT'S EVEN -- BY COMMON  
18 LINGO, YOU'RE RUSHED. DIDN'T TAKE TIME TO THINK.  
19 DIDN'T STOP TO THINK. THAT'S ALL THE LAW IS TALKING  
20 ABOUT. IT ISN'T REAL SOPHISTICATED. IT'S NORMAL,  
21 HUMAN, EMOTIONAL REACTION.  
22 SO LONG AS THERE IS PROVOCATION, THERE  
23 IS NO MURDER. THAT'S THE PROVOCATION-THEORY PART OF  
24 THE CASE. AND IT DOESN'T MATTER FOR THAT THEORY OF  
25 THE CASE THAT ERIK MENENDEZ ACTUALLY HAD  
26 POST-TRAUMATIC STRESS DISORDER, THAT HIS REACTION  
27 WAS EXTREME, BECAUSE SO LONG AS ANY ORDINARILY  
28 REASONABLE PERSON WOULD OBJECT WHEN FACED WITH THE

51906

1 THREAT OF A SEX -- WOULD GET UPSET -- SEE, I'M TIRED  
2 -- AT THE THREAT OF A SEXUAL ASSAULT, AND BE  
3 AROUSED TO AN EMOTIONAL STATE, IT DOESN'T MATTER  
4 THAT HIS AROUSAL WAS HIGHER THAN YOURS OR MINE WOULD  
5 BE, JUST SO LONG AS PROVOCATION IS OF A KIND --  
6 MR. CONN: I WILL OBJECT TO THAT AS A  
7 MISSTATEMENT OF THE LAW, YOUR HONOR.  
8 THE COURT: OKAY. WE CAN DISCUSS THE  
9 MATTER. HOW MUCH LONGER DO YOU HAVE TO GO TODAY?

10 MS. ABRAMSON: I WAS GOING TO GO UNTIL 4:00  
11 O'CLOCK.

12 THE COURT: WE'LL TALK ABOUT IT. SO WE'LL  
13 HAVE THE JURY GO INTO THE JURY ROOM AND THE LAWYERS  
14 AND I WILL HAVE A CHANCE TO TALK.

15 (THE JURY ENTERED THE JURY ROOM  
16 AND THE FOLLOWING PROCEEDINGS WERE  
17 HELD:)  
18

19 THE COURT: OKAY. THE PEOPLE WISH TO BE  
20 HEARD?

21 MR. CONN: YES. JUST RELYING UPON THE  
22 INSTRUCTION FOR SUDDEN QUARREL, HEAT OF PASSION, AS  
23 OUTLINED IN CALJIC 8.42 --

24 MS. ABRAMSON: EXCUSE ME. I WANT TO TAKE MY  
25 NOTEBOOK AWAY.

26 MR. CONN: I BELIEVE THAT IT MAKES IT CLEAR  
27 THAT TO REDUCE INTENTIONAL FELONIOUS HOMICIDE FROM  
28 THE OFFENSE OF MURDER TO MANSLAUGHTER UPON THE

51907

1 GROUNDS OF SUDDEN QUARREL OR HEAT OF PASSION, THE  
2 PROVOCATION MUST BE OF SUCH CHARACTER AND DEGREE AS  
3 NORMALLY WOULD EXCITE AND AROUSE SUCH PASSION. AND  
4 THE ASSAILANT MUST ACT UNDER THE INFLUENCE OF THAT

5 SUDDEN QUARREL, HEAT OF PASSION.

6 I THINK WHAT COUNSEL IS SUGGESTING TO  
7 THE JURY IS CONTRARY TO THE LAW. SHE IS SUGGESTING  
8 THAT, AS A RESULT OF THE PROVOCATION, THAT THE  
9 DEFENDANT, ASSUMING THAT THE SAME PASSION WOULD HAVE  
10 AROUSED THE PASSION OF THE ORDINARY REASONABLE MAN,  
11 THAT THE DEFENDANT IS THEREBY ENTITLED TO  
12 ESSENTIALLY SET UP HIS OWN STANDARD OF CONDUCT AND  
13 TO RESPOND IN THE MANNER THAT HE CHOOSES.

14 I THINK THAT CALJIC 8.42 INSTRUCTS JUST  
15 TO THE CONTRARY. IT SAYS THAT THE PASSION THAT IS  
16 AROUSED IN THE ORDINARY REASONABLE MAN MUST BE OF  
17 THE SAME NATURE THAT IS AROUSED IN THE DEFENDANT,  
18 AND THE DEFENDANT CANNOT SET UP HIS OWN STANDARD OF  
19 CONDUCT.

20 MS. ABRAMSON: THAT'S NOT WHAT IT SAYS.

21 THE COURT: DID YOU WISH TO BE HEARD?

22 MS. ABRAMSON: COUNSEL IS COMPLETELY WRONG.

23 I'M ARGUING THAT THE PROVOCATION MUST BE SUFFICIENT  
24 UNDER THE LAW TO AROUSE HEAT OF PASSION IN THE  
25 ORDINARILY REASONABLE MAN. I'M NOT SAYING MY CLIENT  
26 IS ANY DIFFERENT THAN THAT. ALL I'M SAYING IS MY  
27 CLIENT MIGHT -- THAT IF THE ORDINARILY REASONABLE  
28 MAN WOULD HAVE HAD A RIGHT TO REACT, GIVEN THE

1 NATURE OF HIS PASSION, THE FACT THAT MY CLIENT MIGHT  
2 BE EVEN MORE UPSET, DOESN'T TAKE AWAY HIS RIGHT TO  
3 RELY ON THIS RULE.

4 THAT'S ALL I'M SAYING. THAT'S PERFECTLY  
5 TRUE.

6 THE COURT: OKAY. AND AS TO PROVOCATION, THE  
7 PROBLEM WITH THE ARGUMENT IS THAT IT DOESN'T  
8 SEPARATE OUT THE SOURCE OF PROVOCATION.

9 MS. ABRAMSON: I MEAN, WHEN WE TALK ABOUT --  
10 IN FACT, MY HYPOTHETICAL CHART DEFINITELY INDICATES  
11 THE VICTIM MUST BE THE SOURCE OF THE PROVOCATION.

12 THE COURT: ARE YOU INTENDING TO ARGUE THAT  
13 FOR SOME REASON THERE WAS PROVOCATION FROM  
14 MRS. MENENDEZ?

15 MS. ABRAMSON: SUFFICIENT TO REDUCE IT FROM  
16 FIRST TO SECOND.

17 THE COURT: OKAY. NOT TO ELIMINATE MALICE?

18 MS. ABRAMSON: NO, YOUR HONOR. I'M NOT GOING  
19 TO ARGUE PROVOCATION ON HER PART TO ELIMINATE  
20 MALICE. I'M GOING TO ARGUE MENTAL STATE TO  
21 ELIMINATE MALICE.

22 THE COURT: OF WHAT?

23 MS. ABRAMSON: LACK OF MALICE.

24 THE COURT: LACK OF INTENT TO KILL?

25 MS. ABRAMSON: YES.

26 THE COURT: LACK OF EXPRESS OR IMPLIED  
27 MALICE?



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1 THE COURT: NOT BASED ON PROVOCATION?

2 MS. ABRAMSON: CORRECT.

3 THE COURT: OR UNREASONABLE OR IMPERFECT  
4 SELF-DEFENSE?

5 MS. ABRAMSON: HOW COULD I ARGUE THAT,  
6 JUDGE?

7 THE COURT: I JUST WANT TO FIND OUT WHERE  
8 YOU'RE GOING.

9 MS. ABRAMSON: STRAIGHT DOWN TO SECOND DEGREE  
10 TO NOT GUILTY.

11 THE COURT: OKAY. BUT THE ARGUMENT HERE --  
12 AT THIS STAGE IT'S A LITTLE EARLY TO ADDRESS. THERE  
13 CERTAINLY IS FURTHER ARGUMENT TO BE PRESENTED.

14 MS. ABRAMSON: YES.

15 THE COURT: BOTH AS TO THE PEOPLE'S POSITION  
16 AND THE FURTHER ISSUE OF SEPARATING OUT WHAT IS AND  
17 WHAT IS NOT A BASIS FOR ESTABLISHING WHAT IS A  
18 REASONABLE MAN. WHAT YOU'VE DONE SO FAR IS PRETTY  
19 MUCH LUMPED TOGETHER A LIFE HISTORY AS PROVOCATION,  
20 AND EVERYTHING THAT OCCURRED DURING --

21 MS. ABRAMSON: I TALKED ABOUT PROVOCATORY  
22 ACTS OVER A LONG PERIOD OF TIME.

23 THE COURT: OKAY. WITHOUT HEARING WHAT IT IS  
24 YOU'RE GOING TO REFER TO, THE IMPRESSION ONE HAS IS  
25 THAT PROVOCATIVE ACTS THAT CAUSE SOMEBODY TO BECOME  
26 ANXIOUS OR SUFFER FROM POST-TRAUMATIC STRESS  
27 DISORDER, BY ITSELF, IS PROVOCATION --  
28 MS. ABRAMSON: NO, SIR.

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1 THE COURT: -- WHICH IT IS NOT. AS THE LAW  
2 MAKES CLEAR, AS I'VE INDICATED BEFORE, SOMEBODY WHO  
3 SUFFERS FROM A MENTAL DISORDER, WHETHER IT'S  
4 POST-TRAUMATIC STRESS DISORDER OR SOMETHING ELSE,  
5 DOES NOT CONSTITUTE THE REASONABLE MAN. THERE'S AN  
6 OBJECTIVE TEST OF REASONABLE MAN.

7 MS. ABRAMSON: THERE'S -- I WAS JUST ARGUING  
8 ANYBODY WOULD BE AROUSED, I'M SAYING, BY THE THREAT  
9 OF A SEXUAL ASSAULT. THE PROVOCATION I'M POINTING  
10 TO IS A THREAT OF A SEXUAL ASSAULT. ANY REASONABLE  
11 -- ORDINARILY REASONABLE PERSON WOULD BE UPSET BY  
12 THAT AND WOULD BE AROUSED TO A STATE OF PASSION BY  
13 THAT, AND THAT'S WHAT HE WAS. AND THAT'S ALL I NEED  
14 TO ARGUE, FRANKLY, FOR PROVOCATION THEORY.

15 BUT THAT'S EXACTLY WHAT I'M SAYING.

16 THE COURT: I'M NOT GETTING INTO ANY MORE  
17 THAN WHAT I'VE SAID AT THIS POINT, BECAUSE I HAVEN'T

18 HEARD YOUR ARGUMENT. BUT JUST AS THIS PROGRESSES,  
19 IF THE PEOPLE HAVE FURTHER OBJECTIONS, OR IF THE  
20 COURT HAS FURTHER OBSERVATIONS, WE'LL ADDRESS THEM  
21 AS IT OCCURS.

22 MS. ABRAMSON: OKAY.

23 THE COURT: LET'S GET THE JURY BACK.

24 (THE JURY ENTERED THE COURTROOM

25 AND THE FOLLOWING PROCEEDINGS

26 WERE HELD:)

27

28 THE COURT: OKAY. WE HAVE THE JURY BACK.

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1 YOU MAY CONTINUE YOUR ARGUMENT.

2 MS. ABRAMSON: OKAY.

3 AS I WAS SAYING, FOR PROVOCATION THEORY,

4 WHICH I WILL EXPLAIN MORE TOMORROW MORNING, THE

5 STANDARD -- I WILL READ THE STANDARD FOR YOU, SO

6 THERE CAN'T BE A QUIBBLE ABOUT WHETHER I USE THE

7 RIGHT OR WRONG MAGIC WORD. THE POINT IS, IF THE

8 PROVOCATORY ACT, OKAY, OR ACTS THAT YOU'RE POINTING

9 TO -- AND I WILL TELL YOU WHAT ARE THE SPECIFIC

10 PROVOCATORY ACTS FROM THE SPECIFIC VICTIM, ARE SUCH

11 THAT WOULD AROUSE IN THE MIND OF THE ORDINARILY

12 REASONABLE PERSON THAT STATE THAT THE LAW CALLS HEAT

13 OF PASSION, OKAY, MY CLIENT IS ENTITLED, IF YOU FIND  
14 THAT HE WAS AROUSED TO THAT STATE OF PASSION, OR  
15 EVEN A HIGHER STATE OF PASSION, BY THE SAME  
16 PROVOCATORY ACTS, TO A FINDING THAT THERE IS NO  
17 MALICE AFORETHOUGHT AND TO A VERDICT OF  
18 MANSLAUGHTER. OKAY?

19 NOW SEPARATE AND APART FROM THAT, WHICH  
20 IS THE PROVOCATION THEORY. THIS IS THE BASIC THEORY  
21 IN THE LAW THAT BEFORE YOU CAN FIND SOMEONE GUILTY  
22 OF A CRIMINAL OFFENSE YOU MUST FIND THAT THEY HAD  
23 THE SPECIFIC MENTAL STATES OR THE SPECIFIC INTENT  
24 THAT THAT CRIME REQUIRES. AND AS YOU WERE TOLD BY  
25 MR. CONN WHEN HE WAS READING OUT THE ELEMENTS OF  
26 MURDER, WHETHER OF THE FIRST OR SECOND DEGREE,  
27 REQUIRES CERTAIN SPECIFIC INTENT AND CERTAIN MENTAL  
28 STATES.

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1 AND JUST TO CUT TO THE CHASE QUICKLY,  
2 SECOND-DEGREE MURDER DOES NOT REQUIRE PREMEDITATION  
3 OR DELIBERATION, AND DOES NOT REQUIRE A SPECIFIC  
4 INTENT TO KILL. BUT IT DOES REQUIRE MALICE. AND  
5 IF, BECAUSE OF MY CLIENT'S MENTAL DISORDER, HE IS IN  
6 SUCH A STATE OF MIND THAT HE IS NOT HARBORING  
7 MALICE, HE DOES NOT MEET THE DEFINITION IN THE WAY

8 HE IS THINKING THAT FITS MALICE, THEN YOU CANNOT  
9 FIND HIM GUILTY OF MURDER.  
10 AND UNDER THAT ANALYSIS YOU CANNOT FIND  
11 HIM GUILTY OF ANY CRIME AT ALL. YOU HAVE TO FIND  
12 HIM NOT GUILTY. AND THE REASON FOR THAT -- THE  
13 REASON FOR THAT IS STATUTORY MANSLAUGHTER IS BASED  
14 ON PROVOCATION. IF YOU GO DOWN THE ROOT OF THE  
15 PROVOCATION THEORY AND GET TO STATUTORY  
16 MANSLAUGHTER, YOU ARE ONLY GOING TO BE INSTRUCTED ON  
17 STATUTORY MANSLAUGHTER FOR MR. MENENDEZ IN THIS  
18 CASE.

19 AND AGAIN, THAT'S ONE OF THOSE THINGS I  
20 CANNOT EXPLAIN TO YOU. I CAN, BUT I'M NOT PERMITTED  
21 TO EXPLAIN THAT TO YOU.

22 SO WITH RESPECT TO HIM, YOU CAN EITHER  
23 FIND UNDER THE PROVOCATION THEORY, MANSLAUGHTER, OR  
24 YOU CAN FIND, UNDER MENTAL STATE THEORY, NOT  
25 GUILTY. THERE IS NO -- I KNOW THIS ALL SOUNDS LIKE  
26 GOBBLEDYGOOK TO ALL BUT ONE OF YOU, BUT THERE IS NO  
27 NONSTATUTORY MANSLAUGHTER BASED ON A MENTAL DEFENSE  
28 IN CALIFORNIA ANYMORE. THAT'S THE BOTTOM LINE.

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1 THE COURT: WE DON'T HAVE TO WORRY ABOUT  
2 ANYTHING BEFORE NOW, OR STATUTORY OR ANYTHING ELSE.

3 WE'RE TALKING ABOUT WHAT THE INSTRUCTIONS WILL BE,  
4 WHICH I WILL GIVE THE JURY --

5 MS. ABRAMSON: CORRECT.

6 THE COURT: -- AT THE END OF THE CASE. YOU  
7 DON'T HAVE TO WORRY ABOUT SUCH PHRASES AS  
8 "STATUTORY, NONSTATUTORY --"

9 MS. ABRAMSON: IT JUST MAKES IT EASIER.

10 THE COURT: -- ANYTHING BEFORE OR AFTER.

11 YOU MAY PROCEED.

12 MS. ABRAMSON: THE POINT IS, WITH RESPECT TO  
13 MRS. MENENDEZ, AS I TOLD YOU EARLIER, IF YOU FIND  
14 THAT MY CLIENT, BECAUSE OF HIS MENTAL DISORDER,  
15 OKAY, WAS -- DID NOT, IN FACT, HARBOR MALICE, THEN  
16 HE IS SIMPLY NOT GUILTY OF MURDER, AND MURDER'S ALL  
17 HE IS CHARGED WITH.

18 MANSLAUGHTER. IF YOU WERE, FOR EXAMPLE,  
19 TO FIND MANSLAUGHTER FOR MR. MENENDEZ, THAT IS  
20 WHAT'S KNOWN AS A LESSER-INCLUDED OFFENSE. IT'S NOT  
21 WHAT'S IN THE INDICTMENT, BUT IT'S SOMETHING YOU'RE  
22 GOING TO BE INSTRUCTED ON THAT YOU CAN FIND. ALL  
23 HE'S REALLY CHARGED WITH HERE IS MURDER. IN FACT,  
24 HE'S CHARGED WITH FIRST-DEGREE MURDER. SO EVEN  
25 SECOND-DEGREE MURDER, AS YOU WILL BE INSTRUCTED, IS  
26 A SECONDARY VERDICT THAT YOU CAN COME TO, AND YOU'LL  
27 BE GIVEN VERDICT FORMS FOR THAT.

28 THAT'S BASICALLY THE OUTLINE.

1           OKAY. AND WE WENT THROUGH A LOT OF TIME  
2 AND EFFORT TO TRY TO EXPLAIN TO YOU THE DEVELOPMENT,  
3 OVER THE COURSE OF THIS WEEK, OF THAT MENTAL STATE  
4 IN MY CLIENT'S MIND THAT, I SUBMIT TO YOU, INDICATED  
5 AN ABSENCE OF MALICE.

6           NOW, I WANT TO GO OVER JUST THIS WEEK OF  
7 CRISIS WITH YOU TO MAKE SURE WE ALL UNDERSTAND WHAT  
8 THE FACTS ARE AND WHAT THE IMPACT OF THESE EVENTS  
9 WERE ON MY CLIENT'S STATE OF MIND, SO THAT BY THE  
10 TIME WE GET SEVEN DAYS LATER, TO THE SHOOTING, WHEN  
11 WE REALIZE IT JUST DID NOT COME OUT -- IT WASN'T LIKE  
12 JAMIE PISARCIK, A BOLT OF LIGHTENING. THIS WAS  
13 SOMETHING THAT WAS EVOLVING OVER THE COURSE OF A  
14 WEEK, BASED ON REPEATED PROVOCATORY ACTS BY BOTH  
15 MR. AND MRS. MENENDEZ.

16          LET US START -- I'VE TALKED NOW ABOUT THE  
17 HISTORY OF THE FAMILY, AND I'VE TALKED ABOUT THE  
18 TRAUMA EVENTS, AS DR. WILSON TESTIFIED, FROM  
19 MR. MENENDEZ, MY CLIENT'S PAST. AND PARTICULARLY,  
20 THE FACT THAT HIS POST-TRAUMATIC STRESS DISORDER IS  
21 A PRODUCT OF THESE YEARS OF SEXUAL MOLESTATION. AND  
22 THIS WHOLE CRISIS HAS TO DO WITH TRYING TO END THE  
23 SOURCE OF THAT TRAUMA IN HIS LIFE. IT IS ALL  
24 RELATED TO THAT MOLESTATION, TO ITS IMPACT ON HIM,  
25 TO ITS FEAR OF IT, TOWARDS ITS FEAR THAT IT'S GOING  
26 TO RECUR, TOWARDS HIS NEED TO SURVIVE; AND TO

27 SURVIVE HE NEEDS IT TO END. AND SO HE HAD FOCUSED  
28 FOR YEARS ON THE FACT THAT GETTING TO COLLEGE IS

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1 GETTING AWAY.

2       OKAY. NOW, I WANT TO BACK UP A LITTLE  
3 TO THE WEEK BEFORE THIS, WHICH ISN'T CHARTED. I  
4 MADE REFERENCE EARLIER TODAY TO THE FACT THAT THE  
5 ENTIRE SUMMER HERE ERIK MENENDEZ WAS PLAYING  
6 COMPETITIVE TENNIS IN THE HIGHEST POSSIBLE LEVEL, IN  
7 THE JUNIOR NATIONAL CHAMPIONSHIPS. HIS PARENTS WERE  
8 TRAVELING WITH HIM. THE PRESSURE WAS ON. WHEN HE  
9 WON, HIS FATHER RAISED HIS EXPECTATIONS. WHEN HE  
10 LOST, THERE WERE THESE ACTS OF "KNEES" AS HE  
11 DESCRIBES ORAL SEX WITH HIS FATHER. THAT WAS HIS  
12 PUNISHMENT FOR LOSING. THAT'S A REMARKABLE WAY TO  
13 TRY TO INSPIRE A KID. BUT THAT'S WHAT WAS GOING ON  
14 HERE.

15       IN ANY EVENT, AT THE END OF THAT HIS  
16 FATHER GOES FROM KNOWING THAT HIS SON IS RANKED  
17 ABOUT, I DON'T KNOW, FORTIETH OR SOMETHING IN THE  
18 NATION, AND THEN HIS SON MAKES THE TERRIBLE MISTAKE  
19 OF DOING TOO WELL IN PART OF THIS TOURNAMENT, AND  
20 HIS FATHER RACHETS UP THE EXPECTATION LEVEL.

21       WHAT HAPPENS?. IN KALAMAZOO HE LOSES



22 EARLY ON, WHEN, ACCORDING TO HIS FATHER, HE WAS  
23 SUPPOSED TO WIN. AND NOW IT APPEARS THAT HIS FATHER  
24 JUST GOES TO WAR AGAINST HIM, BECAUSE HE SETS UP,  
25 YOU KNOW -- HIS METHOD OF RUNNING THIS FAMILY, BASED  
26 ON THE THINGS THE MOTHER WOULD SAY, AND THE MOTHER'S  
27 BEHAVIOR AND THINGS THAT HE WOULD SAY, WAS DIVIDE  
28 AND CONQUER. PIT EVERYBODY AGAINST EACH OTHER IF

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1 YOU CAN.

2 AND THAT'S WHAT THIS PUNISHING MOTHER  
3 FOR THE CHILDREN'S FAILURES ARE. SO SHE WILL SIT ON  
4 THEM AND SHE WILL BE THE ENFORCER. SO THAT SHE CAN  
5 AVOID PUNISHMENT. SO WHEN HE DECIDES THE FAMILY  
6 ISN'T GOING TO GO TO CANADA, AND SHE ISN'T GOING TO  
7 GET TO VISIT, THAT MAKES HER ANGRY AND UPSET.

8 SO NOW HE'S MANAGED -- HE'S ANGRY AT ERIK  
9 MENENDEZ. HE MANAGES TO MAKE SURE HIS WIFE WILL BE  
10 ANGRY AT HIM AS WELL, BECAUSE HE TAKES SOMETHING  
11 AWAY FROM HER IN ORDER TO PUNISH HIS SON.

12 SO THEY GET BACK HOME, AND NOW DAD'S  
13 GOING TO SHOW MORE OF HIS UNHAPPINESS WITH HIS SON  
14 FOR HAVING THE NERVE TO NOT BE BETTER THAN HIS VERY  
15 BEST EFFORTS WOULD MAKE HIM BE.

16 SO THEY HAVE THIS DISCUSSION, FIRST ON

17 SATURDAY, WHERE MR. MENENDEZ TELLS ERIK MENENDEZ  
18 ABOUT HIS FUTURE, THAT HE IS CONSTRUCTING FOR HIM,  
19 THIS FUTURE IN BUSINESS THAT THEY'LL HAVE, AND  
20 LIVING TOGETHER ON THIS FLORIDA COMPOUND, AND WHAT  
21 KIND OF ULTIMATE DEGREE HE WANTS HIM TO GET FROM  
22 U.C.L.A.; AND THAT'S ALL PRETTY MUCH PAR FOR THE  
23 COURSE, AS FAR AS ERIK MENENDEZ' LIFE IS CONCERNED.  
24         SO THAT DOESN'T PRODUCE ANY EXTREME  
25 REACTION ON HIS PART. AND WHEN HIS FATHER SAYS THAT  
26 AFTER THIS SUMMER HE'S JUST BEEN THROUGH, OF TENNIS  
27 PRESSURE AND TENNIS PUNISHMENT, THAT MAYBE HE WON'T  
28 LET HIM PLAY TENNIS AT U.C.L.A.

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1         I THINK IT'S UNDERSTANDABLE WHY ERIK  
2 MENENDEZ WOULD SAY THAT WAS MORE A RELIEF THAN  
3 DISAPPOINTMENT AT THAT POINT, BECAUSE HE DIDN'T HAVE  
4 A TENNIS SCHOLARSHIP AT U.C.L.A.. HE WAS NOT  
5 PRE-ENTERED ON THE TENNIS TEAM. AS HE INDICATED, HE  
6 WOULD HAVE TO NOW -- THERE WOULD BE PRESSURE ON HIM  
7 TO MAKE THE TEAM AND THEN PRESSURE ONCE ON THE TEAM  
8 TO WIN; NOT THE PRESSURE FROM U.C.L.A., BUT THIS  
9 EXTRAORDINARY, UNREALISTIC, EXTREME PRESSURE FROM  
10 HIS FATHER, WHO WAS, IN HIS OWN RIGHT, DISPLAYING A  
11 CERTAIN AMOUNT OF MAGICAL THINKING IN THINKING THAT

12 BECAUSE THE KID DOES WELL IN ONE TOURNAMENT, HE'S  
13 GOING TO TAKE THE BIG PRIZE IN THE NEXT.  
14 IN ANY EVENT, THAT'S WHAT HAPPENED ON  
15 THE SATURDAY. BUT ON THE SUNDAY IS WHEN THINGS  
16 BEGIN TO UNRAVEL. ON THAT SUNDAY, AUGUST 13TH, WHEN  
17 ERIK MENENDEZ IS HAVING THIS MEETING WITH HIS  
18 FATHER, HIS FATHER HAS TOLD HIM WHAT COURSES HE'S  
19 GOING TO TAKE, AND THAT HE HAS TO CALL HOME FROM  
20 U.C.L.A. REGISTRATION IN CASE A CLASS IS FILLED OUT,  
21 SO THAT THE ALTERNATE CLASS HAS TO BE CHOSEN BY HIS  
22 FATHER.  
23 AND THEN HE TELLS HIM HE'S GOING TO  
24 MONITOR HIS SCHOOLWORK. AND SO HE'S GOT TO BE HOME  
25 AND STAY AT THE HOUSE AT LEAST THREE TIME A WEEK  
26 BECAUSE THEY'RE GOING TO RACHET DOWN -- THIS IS ALL  
27 PUNISHMENT FOR NOT HAVING WON IN KALAMAZOO. I'M  
28 SURE HE WOULD HAVE PICKED HIS CLASSES ANYWAY.

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1 THAT'S WHAT ERIK MENENDEZ EXPECTED.  
2 BUT THIS THREAT OF THIS SEXUAL  
3 MOLESTATION GOING TO CONTINUE, THIS IS JUST AN  
4 EXTENDED FORM OF TORTURE FOR HAVING GOTTEN HIS  
5 FATHER'S HOPES UP AND DASHED THEM IN KALAMAZOO. I  
6 WOULDN'T BE SURPRISED IF WHAT HAPPENED IN KALAMAZOO

7 WAS NOT JUST THE EXHAUSTION ERIK MENENDEZ TESTIFIED  
8 TO, HE HAD BEEN PLAYING SO MUCH TENNIS, BUT WHAT'S  
9 KNOWN AS "TANKING". YOU UNCONSCIOUSLY GIVE UP. YOU  
10 JUST CAN'T HANDLE THE PRESSURE ANYMORE, AND YOU JUST  
11 GIVE UP. THAT'S SOMETHING THAT HAPPENS WITH  
12 ATHLETES QUITE A FAIR AMOUNT. IT MAY ALSO HAVE TO  
13 DO WITH WHEN YOUR FATHER -- THIS IS ONE OF THOSE  
14 PASSIVE REBELLIONS.

15       IT'S LIKE LYLE MENENDEZ ALMOST FLUNKING  
16 OUT OF PRINCETON, WHICH IS WHERE HE DIDN'T BELONG TO  
17 BEGIN WITH. IT'S SORT OF A PASSIVE REBELLION. YOU  
18 CANNOT REBEL AGAINST A PARENT LIKE THIS IN ANY  
19 DIRECT, MEANINGFUL WAY. MAYBE YOU COMMIT A BURGLARY  
20 IN CALABASAS. THAT'S YOUR REBELLION. PASSIVELY YOU  
21 REBEL BY FAILING TO WIN THE PRIZE THAT WOULD MEAN SO  
22 MUCH TO HIM, WHEN HE HAS TREATED YOU SO BADLY OVER  
23 ALL THESE YEARS. THAT'S WHAT THAT KIND OF BEHAVIOR  
24 COULD BE.

25       ANYWAY, ON THIS SUNDAY HE'S TOLD HE'S  
26 GOING TO HAVE TO COME HOME. THIS IS WHAT HAS KEPT  
27 HIM GOING, THE IDEA THAT HE'LL SLEEP IN THE DORM.  
28 HIS FATHER IS NOT GOING TO DRIVE TO U.C.L.A. TO

2 AROUND. HE ISN'T GOING TO GET A WHOLE CONSPIRACY OF  
3 ALL HIS DORM MATES TO KEEP THE SECRET. IF HE COULD  
4 HAVE SLEPT AT U.C.L.A., IN HIS MIND THAT WOULD HAVE  
5 PROVIDED SAFETY. IN FACT, IT WOULD HAVE. PARENTS  
6 DON'T COME AND SLEEP IN KIDS' ROOMS IN U.C.L.A. YOU  
7 HAVE ROOMMATES. WHO ARE NOT COCONSPIRATORS, AS YOUR  
8 MOTHER MAY WELL BE.

9 IN ANY EVENT, THE WAY ERIK MENENDEZ  
10 INTERPRETS THIS IS THAT THIS THING THAT HE WANTED  
11 OUT OF HIS LIFE THAT WAS PREVENTING HIM FROM BEING  
12 ABLE, EMOTIONALLY, TO GO ON, IS NOT GOING TO END,  
13 AND HE'S VERY UPSET. AND HE GOES TO HIS ROOM, AND  
14 HE DOES THIS FEEBLE ACT OF PACKING. HE THINKS HE'LL  
15 GO TO A FRIEND'S HOUSE. HE DIDN'T EVEN CALL A  
16 FRIEND.

17 IT'S LIKE A CHILD, YOU KNOW, HAVING A  
18 TEMPER TANTRUM REACTION TO SOMETHING HE CAN'T  
19 CONTROL. HE PACKS UP SOME CLOTHES, AND HIS  
20 MOTHER -- HIS MOTHER COMES INTO HIS ROOM AND UNPACKS  
21 THEM AND TELLS HIM HE'S NOT GOING ANYWHERE. SHE  
22 DOESN'T SAY, "HONEY --" SHE NEVER USED "HONEY."

23 SHE NEVER USED ANYTHING BUT "ERIK."

24 SHE DOESN'T EVEN SAY: "ERIK, WHY WERE  
25 YOU PACKING? WHAT'S WRONG?"

26 SHE WOULDN'T SAY, "WHAT'S WRONG, DEAR?"  
27 SHE'D JUST SAY "WHAT'S WRONG? WHY ARE YOU GOING  
28 SOMEWHERE? IS SOMETHING BOTHERING YOU?"

1           OH, NO. FEELINGS ARE NOT ENCOURAGED IN  
2 THIS FAMILY, LET ALONE TALKING ABOUT FEELINGS. AND  
3 SHE'S THE LAST PERSON IN THE WORLD WHO'S GOING TO  
4 ASK HIM WHAT'S WRONG WHEN HE'S PACKING TO LEAVE.

5           THE ONLY TIME SHE EVER SAYS THAT IS WHEN  
6 HE NEARLY RUNS HER OVER THURSDAY NIGHT. HE'S  
7 RUNNING THROUGH THE DEN AND SHE LOOKS UP AND SAYS,  
8 "WHAT'S WRONG WITH YOU?" HE'S HYSTERICAL AT THAT  
9 POINT.

10          WHEN HE'S PACKING THESE THINGS SHE SAYS  
11 NOTHING. "WHAT DO YOU THINK YOU'RE DOING? YOU'RE  
12 NOT GOING ANYWHERE."

13          HE SAYS,"I WANT TO LEAVE FOR A FEW  
14 DAYS."

15          "YOU'RE NOT GOING ANYWHERE," AND TAKES  
16 STUFF OUT AND CALLS IN DAD. AND DAD COMES IN AND  
17 SAYS, "YOU HAVE A PROBLEM? SOMETHING GOING ON HERE?  
18 DON'T THINK YOU'RE GOING ANYWHERE."

19          AND HE TELLS ERIK MENENDEZ THAT HE'S  
20 GOING TO BE TAKING A BUSINESS TRIP FOR A FEW DAYS,  
21 AND THAT ERIK HAD BETTER BE HOME WHEN HIS FATHER  
22 RETURNS FROM HIS IMMINENT BUSINESS TRIP. OKAY?

23          AND ERIK MENENDEZ, COMPLIANT AND PASSIVE  
24 AND NOT IN CHARGE OF HIS OWN LIFE, STAYS.

25           NOW, WHERE IS HE SUPPOSED TO GO, EVEN IF  
26 HE WANTED TO GO SOMEWHERE? BEATS ME.  
27           THAT MONDAY IS A BLANK. AND THE FACT  
28 THAT MONDAY IS A BLANK -- ERIK MENENDEZ SAYS HE

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1 CANNOT REMEMBER WHAT WENT ON THAT MONDAY.  
2           NOW, LOOK AT THIS OPPORTUNITY HERE TO  
3 LIE, AS MR. CONN SAYS HE'S DOING. WHY, HE COULD  
4 HAVE WRITTEN IN ANY NUMBER OF PROVOCATORY EVENTS ON  
5 THAT DAY. HIS FATHER DOESN'T LEAVE ON THE BUSINESS  
6 TRIP UNTIL TUESDAY. BUT HE DOESN'T. HE WAS SO  
7 UPSET BY WHAT HAPPENED ON SUNDAY, HE DOESN'T EVEN  
8 REMEMBER WHAT ALL HE DID THAT MONDAY, WHETHER  
9 ANYTHING AT ALL HAPPENED. HE'S SO DEEPLY INVOLVED  
10 IN HIS DEPRESSION AT THIS POINT, BECAUSE HE WANTS TO  
11 KILL HIMSELF. HE DOESN'T KNOW HOW HE'S EVER GOING  
12 TO AFFECT HIS LIFE.  
13           SO MONDAY, NOTHING. NOTHING THAT HE CAN  
14 RECALL.  
15           TUESDAY HIS FATHER LEAVES FOR THE  
16 BUSINESS TRIP, AND IT'S UNDERSTOOD BY ERIK MENENDEZ  
17 THAT HIS FATHER IS GOING TO RETURN ON THURSDAY. AND  
18 THIS IS THE DAY HE OBSERVES HIS MOTHER GOING TO WAR  
19 AGAINST LYLE MENENDEZ. AND THIS IS WHEN SHE HAS

20 THIS ARGUMENT WITH HIM, AND SHE TEARS OFF THE  
21 HAIRPIECE, AND LYLE IS IN TEARS. AND HE GOES OFF TO  
22 HIS BEDROOM IN THE GUESTHOUSE.

23         AND NOW, HERE ERIK MENENDEZ HAS BEEN  
24 FEELING SAD AND DEPRESSED AND SUICIDAL AND DOES NOT  
25 KNOW HOW HE'S GOING TO DEAL WITH CHANGE IN HIS  
26 EXPECTATIONS, AND HE SEES HIS BROTHER EMOTIONALLY  
27 UPSET. AND IT IS THAT WHICH TRIGGERS HIS GOING TO  
28 TALK TO HIS BROTHER. IT'S NOT THAT HE WANTS TO TALK

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1 ABOUT "GEE, YOU HAVE A HAIRPIECE. I DIDN'T KNOW YOU  
2 HAD A HAIRPIECE." THAT'S NOT THE IMPORTANT PART.  
3 WHAT'S IMPORTANT IS THAT HE SEES HIS BIGGER,  
4 STRONGER, SMARTER, MORE REGARDED-IN-THE-FAMILY,  
5 OLDER BROTHER EMOTIONALLY UPSET, WHICH IS VERY RARE;  
6 WHEREAS, ERIK MENENDEZ MAY HAVE BEEN THE CRIER, THE  
7 EVIDENCE WE HAVE HERE IS THAT LYLE MENENDEZ WAS THE  
8 STOIC ONE. HIS FATHER DIDN'T WANT HIM TO CRY. THAT  
9 CHILD LEARNED HOW NOT TO SHOW ANYTHING. HE LEARNED  
10 HOW NOT TO CRY.

11         WHEN ERIK MENENDEZ WAS FRIGHTENED HE  
12 CRIED. WHEN LYLE MENENDEZ WAS FRIGHTENED HE DROPPED  
13 HIS HEAD AND BECAME TIMID. THAT'S THE TESTIMONY OF  
14 ERIK MENENDEZ. SO WHEN HE SEES HIS BROTHER, WHO



15 DEALS BETTER WITH THESE PEOPLE, UPSET, HE FOLLOWS  
16 HIM. AND THAT'S WHAT TRIGGERS HIS OWN EMOTION, HIS  
17 OWN NEED TO TELL.  
18       AND SO WHEN HE GETS TO THE GUESTHOUSE ON  
19 TUESDAY, HE STARTS TELLING LYLE MENENDEZ WHAT'S BEEN  
20 GOING ON ALL THESE YEARS. AND HE TRIES TO REMIND  
21 LYLE THAT LYLE KNEW AT ONE TIME, OR SEEMS TO KNOW,  
22 OR MIGHT HAVE KNOWN AT ONE TIME WHAT WAS GOING ON  
23 BETWEEN ERIK AND HIS FATHER, BECAUSE ERIK MENENDEZ  
24 SAYS WHEN HE WAS 11 OR SO HE GOT A BEATING FROM HIS  
25 FATHER, AND AN ACCUSATION FROM HIS FATHER THAT HE,  
26 ERIK MENENDEZ, HAD TOLD LYLE MENENDEZ. AND ERIK  
27 MENENDEZ SAYS HE NEVER DID TELL HIS BROTHER WHEN HE  
28 WAS YOUNGER.

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1       BUT SOMEHOW HE'S FIGURED OUT THAT LYLE  
2 MENENDEZ MUST HAVE FIGURED IT OUT, AND MUST HAVE  
3 SAID SOMETHING TO THEIR FATHER BACK THEN, AND THAT  
4 BROUGHT DOWN A BEATING ON ERIK MENENDEZ.  
5       SO NOW, ON THIS TUESDAY, ERIK IS SAYING  
6 TO HIS BROTHER LYLE:  
7       "DON'T YOU REMEMBER BACK THEN SOMETHING  
8 HAPPENING BETWEEN ME AND DAD? YOUR TALKING TO DAD  
9 ABOUT IT?"

10 AND LYLE HAS EITHER REPRESSED IT OR  
11 DENIED IT OR WON'T ADMIT IT. AND "NO."  
12 SO WHEN ERIK MENENDEZ DESCRIBES TO LYLE  
13 MENENDEZ WHAT HAPPENED, HE SAYS LYLE'S REACTION AT  
14 FIRST IS NOT SYMPATHY AND BROTHERLY LOVE, BUT  
15 ANGER. HOW COULD YOU -- SAME KIND OF STUFF YOU GET  
16 FROM MR. CONN, HE WAS GETTING FROM HIS OWN BROTHER.  
17 "HOW CAN YOU LET THIS HAPPEN? WHAT, DO YOU ENJOY  
18 IT? DO YOU LIKE THIS?"  
19 ALL THAT. OBVIOUSLY, HE WAS UPSET AND  
20 IN SHOCK. AND THAT WAS HIS INITIAL REACTION. AND  
21 THEN WHEN ERIK MENENDEZ EXPLAINS TO HIM: "OF COURSE,  
22 NOT. IT'S HORRIBLE. IT'S RUINING MY LIFE. YOU  
23 KNOW. IT'S THE WORST THING IN THE WORLD," THEN LYLE  
24 MENENDEZ BECOMES SYMPATHETIC. AND IN BIG BROTHERLY  
25 FASHION SAYS:  
26 "I'M GOING TO TAKE CARE OF YOU.  
27 I'M GOING TO DO SOMETHING ABOUT THIS.  
28 I'M GOING TO TALK TO HIM. I'M GOING

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1 TO TELL HIM THIS CAN'T GO ON. I'M  
2 GOING TO TELL HIM YOU WANT TO LIVE  
3 WITH ME. MAYBE WE'LL GO BACK TO  
4 PRINCETON TOGETHER. MAYBE WE'LL

5 GO TO U.C.L.A. TOGETHER. WHATEVER IT  
6 IS, LITTLE BROTHER, I'M NOT GOING TO  
7 LET THIS HAPPEN TO YOU."  
8 NOW, WHAT'S INTERESTING IS, THIS IS A  
9 PIECE OF LYLE MENENDEZ' DEALINGS WITH THIS FAMILY.  
10 THIS IS WHY THERE'S GOOD AND BAD IN EVERYTHING,  
11 USUALLY, AND EVEN IN EVIDENCE.  
12 AND NOW THAT 12-11 TAPE. THERE'S LYLE  
13 MENENDEZ AND ERIK MENENDEZ TALKING ABOUT HOW WHEN  
14 THEY THOUGHT THEIR MOTHER WAS SUICIDAL -- THIS WAS  
15 HISTORICALLY IN 1986 -- IT IS LYLE WHO GOES TO HER  
16 AND SAYS: "MOM, WE'LL TAKE CARE OF YOU. LEAVE 'EM,  
17 GO BACK TO NEW JERSEY. WE'LL LIVE WITH YOU."  
18 IT'S ON THE TAPE.  
19 "WE'LL LIVE WITH YOU. LEAVE 'EM. WE'LL  
20 TAKE CARE OF YOU."  
21 MAYBE HE SEES HIMSELF, IF HE'S THE HEIR  
22 APPARENT, THEN HE'S THE SECOND DADDY IN THE FAMILY.  
23 HE'S A BETTER DADDY THAN THE ONE THAT NATURE GAVE  
24 HIM. AND THE SAME KIND OF THING WHERE HE OFFERED TO  
25 RESCUE HIS MOTHER, OFFERED TO PROTECT HER, AND HE  
26 WAS REBUFFED. SHE TOLD HIM IT WAS ALL HIS FAULT.  
27 THERE WAS NOTHING REALLY WRONG WITH HER AND DAD, IF  
28 YOU KIDS DIDN'T MAKE SO MUCH TROUBLE. THE STANDARD

1 REACTION.

2 HE'S DOING EXACTLY THE SAME THING HERE.

3 HIS BROTHER IS IN TROUBLE. HE WANTS TO HELP HIM.

4 HE WANTS TO BE PROTECTIVE. AND SO HE TELLS ERIK

5 THAT HE WILL DEAL WITH THIS. HE WILL HELP HIM OUT.

6 BUT NOW, REMEMBER WHAT THE SIGNIFICANCE

7 OF THIS IS, THOUGH, EMOTIONALLY, MENTALLY, ON ERIK

8 MENENDEZ. THIS IS THE TELLING OF THE SECRET. IT IS

9 NOW OUT. AND IT'S OUT, NOT WITH A PROMISE THAT HE'LL

10 KEEP IT, THAT HE, LYLE MENENDEZ, WILL KEEP IT A

11 SECRET FOREVER. HE IS GOING TO ACT ON IT.

12 THIS IS NOT LIKE TELLING ANDY CANO. "OH,

13 MY DADDY IS TOUCHING ME. DOES YOUR DAD DO THAT TO

14 YOU? DON'T TELL ANYBODY. DON'T ASK YOUR MOTHER,"

15 WHICH IS HOW HE DEALS WITH IT. THIS IS TELLING IT

16 TO GET HELP, AND THIS IS VERY DANGEROUS. THIS IS

17 SCARY. YOU'VE BEEN TOLD YOUR WHOLE LIFE, "DON'T

18 EVER TELL. IF YOU TELL I'LL KILL YOU," AND THIS IS

19 SCARY.

20 HE DOES IT BECAUSE HE NEEDS TO DO IT.

21 HE CANNOT TAKE IT ANYMORE. YOU KNOW, YOU CAN'T KEEP

22 FOOLING YOURSELF AT 18 THE WAY MAYBE YOU CAN AT 13

23 OR 14. HE CAN'T TAKE IT ANYMORE.

24 AND SO HE TELLS HIS BROTHER, BUT NOW THE

25 FIRE ALARM BELL'S STARTING TO GO OFF, AND THEY NEVER

26 RETURN. I MEAN, SUNDAY WAS BAD ENOUGH, BUT THAT

27 RESULTED IN A DEPRESSION. I MEAN, WHAT HAPPENS HERE

28 WINDS UP WITH MAKING HIM THINK SUICIDE, WHICH IS

1 THAT LITTLE WORD I CIRCLED.

2       WHAT THAT STARTS HERE IS THE ALARM BELL  
3 GOES OFF, AND THE AROUSAL LEVEL GOES OFF AND NEVER  
4 GOES DOWN AT THAT POINT AGAIN.

5       THERE ARE OTHER TIMES WHEN IT GETS EVEN  
6 HIGHER. CERTAINLY HERE IT'S OFF THE CHART. BUT IT  
7 NEVER GOES BACK DOWN TO THAT, BECAUSE HE HAS DONE  
8 THE FORBIDDEN THING. HE HAS TOLD.

9       THERE'S NO WAY WITH THIS TRAUMA HISTORY,  
10 NO WAY WITH THE MENTAL DISORDER HE HAS -- EVEN IF HE  
11 DIDN'T, JUST THE FACT HE HAS BEEN THREATENED -- AND  
12 THIS IS ALSO A VERY IMPORTANT FACT.

13       EVEN PEOPLE WHO DON'T HAVE  
14 POST-TRAUMATIC STRESS DISORDER, IF THEY HAVE BEEN  
15 THREATENED BY SOMEONE, AND THEN THAT SOMEONE  
16 THREATENS AGAIN, OR THAT SOMEONE APPEARS TO BE  
17 MAKING GOOD ON A THREAT, THEY'RE GOING TO GET  
18 UPSET. THEY'RE GOING TO BELIEVE IT. IT'S SOMETHING  
19 YOU'RE GOING TO REACT TO VERY DIFFERENT THAN WHEN  
20 YOU'RE FACED WITH SOMEONE FOR THE VERY FIRST TIME,  
21 AND THEY'VE NEVER THREATENED YOU BEFORE, AND YOU'VE  
22 GOT NO HISTORY WITH HIM. THEN REASONABLE PEOPLE  
23 WOULD ACT DIFFERENTLY. THIS IS THE THING HE WAS

24 TOLD NEVER TO TELL, AND THIS IS THE THING, IN  
25 DESPERATION, HE'S GOT NOWHERE ELSE TO GO. THIS IS  
26 WHAT HE TELLS US.

27       AND NOW HIS BROTHER IS OFFERING THE  
28 POSSIBILITY OF HELPING HERE. NOW, HE'S VERY

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1 CONFLICTED, MY CLIENT, ABOUT WHETHER OR NOT THIS  
2 COULD EVER WORK. BUT HIS BIG BROTHER IS TRYING TO  
3 REASSURE HIM THAT IT WILL, AND THOSE EFFORTS TO  
4 REASSURE HIM CONTINUE ON WEDNESDAY WHEN THEY GO TO  
5 LUNCH. AND AT LUNCH LYLE MENENDEZ TELLS HIM THAT HE  
6 HAS MENTIONED TO THEIR MOTHER THAT HE, LYLE  
7 MENENDEZ, WANTS TO TALK TO THEIR FATHER WHEN HE GETS  
8 HOME ON THURSDAY.

9       NOW, THIS IS SOMETHING THAT MR. CONN  
10 ALSO MOCKED. WELL, THIS IS A FAMILY WHERE  
11 COMMUNICATING CLEARLY GOES THROUGH THE MOTHER.  
12 COMMUNICATING WITH THE FATHER GOES THROUGH THE  
13 MOTHER. THAT'S WHAT THAT WHOLE BUSINESS WAS WITH  
14 OZIEL. THE MOTHER TELLS OZIEL TO TELL ERIK THAT  
15 FATHER WANTS TO DISINHERIT HIM. COMMUNICATION GOES  
16 THAT WAY. THE KING DOES NOT COMMUNICATE DIRECTLY  
17 WITH THE SUBJECTS. IT HAS TO GO THROUGH THE  
18 CHANCELLOR.

19 BUT HERE, THE CHILDREN, OBVIOUSLY, ALSO  
20 LEARN THAT TO GET THE WORD TO THEIR FATHER ABOUT  
21 ANYTHING, THEY HAVE TO GO THROUGH MOM. SO LYLE  
22 MENENDEZ TELLS THEIR MOTHER: "WHEN DAD GETS BACK  
23 THURSDAY NIGHT, IT'S IMPORTANT. I NEED TO TALK TO  
24 HIM."

25 NOW, HE TELLS US -- ERIK MENENDEZ IS VERY  
26 CONCERNED. "DID YOU TELL HER WHAT YOU WANT TO TALK  
27 TO DAD ABOUT?"

28 AND LYLE SAYS "NO." BUT ONE WONDERS

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1 WHETHER OR NOT HE DID, AND WHETHER OR NOT SHE,  
2 THEREFORE, TIPPED JOSE MENENDEZ OFF THAT THIS  
3 CONVERSATION WAS COMING.

4 AT THIS POINT, YOUR HONOR, WE COULD  
5 BREAK.

6 THE COURT: OKAY. AS I INDICATED YESTERDAY,  
7 WE DO HAVE A JUROR WHO HAS A MEDICAL APPOINTMENT.  
8 SO WE'LL RESUME TOMORROW AT 8:30.

9 IT WAS RAINING OUT THERE A LITTLE WHILE  
10 AGO. I DON'T KNOW IF IT STILL IS. TRY TO STAY  
11 DRY. DRIVE SAFELY. AND WE'LL SEE YOU ALL BACK HERE  
12 AT 8:30.

13 DON'T DISCUSS THE MATTER AND DON'T FORM

14 ANY FINAL OPINIONS ABOUT IT, AND WE'LL SEE YOU ALL

15 BACK HERE TOMORROW AT 8:30.

16 (THE JURY ENTERED THE JURY ROOM

17 AND THE FOLLOWING PROCEEDINGS

18 WERE HELD:)

19

20 THE COURT: MR. LEVIN, YOU HAD SOMETHING YOU

21 WANTED TO SAY?

22 MR. LEVIN: YES, YOUR HONOR, I DO.

23 THE COURT: WAIT A SECOND.

24 (THE JURY EXITED THE COURTROOM AND

25 THE FOLLOWING PROCEEDINGS WERE HELD:)

26

27 THE COURT: OKAY. WE HAVE A MATTER THAT THE

28 LAWYERS WANT TO DISCUSS WITH THE COURT. SO WE'LL

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1 HEAR IT. AND IT DOESN'T INVOLVE THE PUBLIC, SO

2 WE'LL CLEAR THE COURTROOM.

3 (PAGE 51930 THROUGH 51939 WERE HELD IN

4 CAMERA AND SEALED BY ORDER OF THE

5 COURT.)



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 TUESDAY, FEBRUARY 27, 1996

14 VOLUME 304

15 (SEAL PAGES 51930 THROUGH 51939)

16  
17  
18  
19  
20  
21 APPEARANCES:

(SEE APPEARANCE PAGE)

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2

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MARILYN FADALE,  
23 CSR NO. 4547  
OFFICIAL REPORTERS

24

28

19

20

21

LEGEND:

22

A = MS. ABRAMSON

23 C = MR. CONN

G = MR. GESSLER

24 K = MS. TOWERY

L = MR. LEVIN

25 N = MS. NAJERA

26

27

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1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 (NONE THIS VOLUME.)