

1 VAN NUYS, CALIFORNIA; WEDNESDAY, FEBRUARY 28, 1996

2 9:15 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER)

6 (MARY LU MURPHY, OFFICIAL REPORTER)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD IN OPEN COURT, OUT OF THE

10 PRESENCE OF THE JURY:)

11

12 THE COURT: ALL RIGHT. WE'RE ON THE RECORD

13 HERE WITH ALL PARTIES PRESENT. THE JURY IS NOT.

14 THE CLERK INDICATES SOMEONE WANTED TO

15 TALK ABOUT SOMETHING?

16 MS. ABRAMSON: YES, YOUR HONOR. I'VE

17 PREPARED SOME CHARTS OF HYPOTHETICAL SECOND-DEGREE

18 MURDER, MANSLAUGHTER, AND NOT GUILTY FACT

19 SITUATIONS, ALONG THE SAME LINES AS WHAT THE

20 PROSECUTION DID IN THEIR OPENING. HE CHOSE TO USE

21 EXAMPLES OF SHOOTING OUT A WINDOW. I CHOSE TO USE

22 DIFFERENT EXAMPLES TO TALK ABOUT WHAT COULD

23 CONSTITUTE THESE DIFFERENT DEGREES OF HOMICIDE.

24 AS THROUGHOUT THIS CASE, THE PROSECUTION

25 IS NOT SATISFIED WITH LIMITING OUR WITNESSES, NOT

26 SATISFIED WITH LIMITING OUR DEFENSE, AND THEY NOW

27 WANT TO STOP OUR ARGUMENT. THEY'RE UNHAPPY WITH MY

28 HYPOTHETICALS, I GATHER.

1 AND WHILE I'M SPEAKING OF UNHAPPINESS,
2 LET ME POINT OUT TO THE COURT THAT IN THEIR -- ASIDE
3 FROM THE MISSPELLING OF "PREMEDITATION" -- IN THEIR
4 SECOND-DEGREE MURDER CHART THEY LEFT OUT A CRUCIAL
5 WORD IN THE DESCRIPTION OF IMPLIED MALICE, WHICH IS
6 THE WORD "AND" COMING BEFORE THE WORDS "CONSCIOUS
7 DISREGARD FOR HUMAN LIFE."

8 I'M SORRY? "AND" WITH CONSCIOUS
9 DISREGARD FOR HUMAN LIFE. AND I WILL BE WRITING
10 THAT IN WHEN I USE THIS CHART TO THE JURORS.

11 MINE ARE MERELY HYPOTHETICALS, AND
12 THAT'S WHAT THE JURY IS GOING TO BE TOLD. AND
13 THEY'RE WORKED UP ABOUT THEM.

14 IF YOU'D LIKE TO SEE WHAT THEY'RE WORKED
15 UP ABOUT, JUDGE...

16 THE COURT: LET ME FIRST SEE WHAT THE
17 PROSECUTION'S OBJECTION IS.

18 MR. CONN: APPARENTLY COUNSEL HAS THREE
19 CHARTS HERE, AND I'LL HOLD IT UP FOR THE COURT TO
20 SEE. I THINK THAT ONE APPEARS TO BE A DUPLICATE, AS
21 FAR AS I CAN SEE, OF THE --

22 MS. ABRAMSON: BETTER NOT BE.

23 MR. CONN: WELL, I THINK SO.

24 MS. ABRAMSON: IF THAT'S TRUE -- I JUST
25 OPENED THEM UP. I THINK THE PRINTER SCREWED UP.
26 MR. CONN: I THINK THESE ARE DUPLICATES.
27 MS. ABRAMSON: I SEE WHAT HAPPENED.
28 THE COURT: AGAIN, THAT WOULDN'T BE MY

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1 CONCERN.

2 WHAT IS IT THAT --

3 MR. CONN: HERE'S WHAT I'M OBJECTING TO.

4 COUNSEL USES EXAMPLES WHICH I THINK ARE
5 MISSTATEMENTS OF THE LAW, AND IT'S PRESENTED -- MY
6 MAIN OBJECTION IS THE WAY THAT IT IS BEING PRESENTED
7 TO THE JURY, AS IF IT IS A STATEMENT OF THE LAW.

8 AND AS THE DEFENSE OBJECTED TO OUR
9 CHARTS, BECAUSE THEY WERE NOT EXACTLY PRECISE
10 STATEMENTS OF THE LAW, WE OBJECT TO THIS.

11 TAKE SITUATION NO. 1. HERE COUNSEL IS
12 REFERRING TO A "HOTHEAD." UNPROVOKED HOTHEAD WALKS
13 INTO A STORE, SEES A MAN --

14 THE COURT: I CAN READ.

15 MR. CONN: MY PROBLEM -- LET ME JUST GET MY
16 NOTES.

17 MY PROBLEM WITH THE CHART IS THE
18 EQUIVALENCY SIGN, THE WAY IT IS SUGGESTED TO THE

19 JURY THAT THIS IS IN FACT A SECOND-DEGREE MURDER.

20 AND WE OBJECT TO THE WAY IT'S BEING PRESENTED TO THE

21 JURY, AS IF THIS IS A STATEMENT OF THE LAW.

22 IT INDICATES THAT THIS IS A SITUATION IN

23 WHICH THERE IS NO PREMEDITATION OR DELIBERATION; AND

24 THAT IS, IN FACT, AS A MATTER OF LAW, SECOND-DEGREE

25 MURDER. WE AGREE WITH THAT.

26 I THINK THAT IS A SITUATION WHERE IT CAN

27 BE ARGUED THAT IT IS A FIRST, JUST AS READILY AS IT

28 CAN BE ARGUED THAT IT IS A SECOND-DEGREE MURDER. I

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1 THINK THAT IS MISLEADING TO THE JURY.

2 I THINK COUNSEL SHOULD NOT BE PERMITTED

3 TO USE THESE CHARTS, USE THESE EQUIVALENCY SIGNS IN

4 EACH OF THESE EXAMPLES AND PRESENT IT TO THE JURY AS

5 IF IT IS A STATEMENT OF THE LAW.

6 THE SECOND EXAMPLE WE OBJECT TO BECAUSE

7 IT'S EXTREMELY MISLEADING; AND THAT IS, IT SAYS THAT

8 VOLUNTARY MANSLAUGHTER APPLIES TO THE HOTHEAD.

9 MS. ABRAMSON: YEAH.

10 MR. CONN: THAT IS EXTREMELY MISLEADING. NOT

11 TO MENTION THE FACT THAT ONCE AGAIN, TURNING TO THE

12 EQUIVALENCY SIGN, THAT IS A SITUATION, I THINK,

13 WHERE THE PROSECUTION CAN ARGUE THAT IS A FIRST IF

14 THERE IS PREMEDITATION; AND THAT IS A SECOND IF

15 THERE'S AN ABSENCE OF PREMEDITATION.

16 AND VOLUNTARY MANSLAUGHTER DOES NOT

17 APPLY AT ALL BECAUSE THE --

18 THE COURT: LET ME STOP YOU. I ASSUME THAT

19 THE DEFENSE ISN'T GOING TO SAY THESE ARE SECOND

20 DEGREE OR THESE ARE VOLUNTARY MANSLAUGHTER, BUT

21 THESE COULD BE --

22 MS. ABRAMSON: EXACTLY. WELL, THE POINT

23 IS --

24 THE COURT: -- RESOLVED BY THE JURY AS SECOND

25 OR MANSLAUGHTER.

26 MS. ABRAMSON: IF YOU BELIEVE THERE IS NO

27 PREMEDITATION OR DELIBERATION.

28 THE COURT: I DON'T WANT TO GET INTO YOUR

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1 ARGUMENT.

2 MS. ABRAMSON: YOU'RE RIGHT.

3 THE COURT: I'M ASKING THE QUESTION, WHEN YOU

4 PUT THE EQUAL SIGN THERE, DOES THAT TRANSLATE INTO

5 YOUR ARGUMENT, YOUR ORAL ARGUMENT, TO A STATEMENT

6 THAT THIS MUST RESULT IN THIS, OR JUST IT COULD

7 RESULT?

8 MS. ABRAMSON: IF THERE IS NO EVIDENCE OF

9 PREMEDITATION AND DELIBERATION, IT IS A SECOND,
10 BECAUSE ALL MURDERS ARE SECONDS, UNLESS THERE'S
11 EVIDENCE OF PREMEDITATION AND DELIBERATION.

12 THE COURT: I'M JUST ADDRESSING MR. CONN'S
13 OBJECTION THAT THIS EQUAL SIGN --

14 MS. ABRAMSON: IT WAS JUST WHAT I COULD DO ON
15 MY COMPUTER TO LEAD THEM FROM ONE END OF THE CHART
16 TO THE OTHER.

17 THE COURT: AGAIN, ARE YOU SAYING THE FACT
18 SITUATION RESULTS IN A PARTICULAR VERDICT, OR JUST
19 ARGUING THESE FACTS THAT IF THE JURY DECIDES -- MAKES
20 CERTAIN FACTUAL DETERMINATIONS, IT COULD RESULT IN
21 SUCH A DETERMINATION?

22 MS. ABRAMSON: THE SECOND, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 WHAT IS YOUR OTHER OBJECTION?

25 MR. CONN: WELL, AS I SAID, IN REGARD TO
26 NO. 2, SHE IS SAYING THAT VOLUNTARY MANSLAUGHTER
27 APPLIES TO THE HOTHEAD.

28 THE COURT: SHE'S SAYING IT COULD. AND

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1 THAT'S --

2 MS. ABRAMSON: HOTHEADS ARE NOT EXCLUDED IF
3 THE PROVOCATION IS WHAT WOULD ALSO AROUSE THE

4 NON-HOT HEAD. THAT'S THE POINT.

5 THE COURT: ARE YOU GOING TO ARGUE THAT A
6 REASONABLE MAN IN THE SAME SITUATION WOULD HAVE
7 REACTED IN THE SAME FASHION, AND BEEN PROVOKED TO
8 THE SAME EMOTIONAL STATE, TO MITIGATE FROM MURDER TO
9 MANSLAUGHTER, THEN THAT WOULD CONSTITUTE
10 MANSLAUGHTER?

11 MS. ABRAMSON: EXACTLY.

12 THE COURT: SHE'S ENTITLED TO ARGUE THAT.

13 MR. CONN: SHE MAY BE ENTITLED TO ARGUE THAT,
14 BUT WE'RE OBJECTING TO THE CHART BECAUSE OF THE
15 EQUIVALENCY SIGN.

16 AND THE COURT WAS CONCERNED -- WHEN I
17 INDICATED TO THE COURT WHAT I WAS GOING TO CLEAR
18 THINGS UP IN MY ARGUMENT, THAT I WAS NOT GOING TO
19 LEAVE THE CHARTS BEFORE THE JURY WITHOUT COMMENT,
20 BECAUSE THAT MIGHT BE MISLEADING; AND, IN FACT, I
21 SAID, "I WILL CLEAR IT UP IN ARGUMENT," THE COURT
22 INDICATED TO THE PROSECUTION, NO, THAT'S NOT
23 ENOUGH. CHANGE THE CHART.

24 SO I WOULD ASK AT THIS TIME THAT COUNSEL
25 CHANGE THE CHART AT THIS TIME. JUST WRITE ON THE
26 CHART: THIS MAY OR MAY NOT BE SECOND-DEGREE MURDER,
27 DEPENDING UPON THE FINDINGS OF THE JURY. THAT'S
28 WHAT THE COURT ORDERED US TO DO. AND I WOULD ONLY

1 ASK COUNSEL TO DO THE SAME.

2 THE COURT: GO ON TO THE OTHER TWO.

3 MR. CONN: THE OTHER TWO ARE ESSENTIALLY THE
4 SAME. IT'S THE EQUIVALENCY SIGN, AND I THINK IT
5 SIMPLY SHOULD BE CHANGED TO ARGUE IT MAY OR MAY NOT
6 BE SECOND-DEGREE MURDER, DEPENDING ON THE FINDINGS
7 OF THE JURY. IF THAT IS WRITTEN IN, I THINK THE
8 COURT WOULD HAVE APPLIED THE RULE EQUALLY TO THE
9 PROSECUTION AND THE DEFENSE.

10 MS. ABRAMSON: THEY HAD MISSTATEMENTS OF SOME
11 FACTUAL MATTERS. THAT IS THE REASON WE OBJECTED TO
12 THEIR CHARTS. I'M OBVIOUSLY USING THESE AS
13 HYPOTHETICALS. WHEN MR. CONN MADE HIS OPENING
14 ARGUMENT ABOUT SHOOTING OUT OF A WINDOW, HE NEVER
15 MADE REFERENCE --

16 THE COURT: OKAY. WHAT I'M GOING TO DO IS
17 ALLOW THESE CHARTS TO BE USED AS THEY'VE BEEN
18 PREPARED, SO LONG AS COUNSEL CLEARLY STATES THAT
19 THESE ARE FACTUAL SCENARIOS THAT COULD RESULT.

20 WHEN YOU USE AN EQUAL SIGN, IT'S NOT A
21 MATHEMATICAL COMPUTATION, BUT IT REQUIRES THE JURY
22 TO MAKE CERTAIN FACTUAL FINDINGS. AND IF THEY MAKE
23 CERTAIN FINDINGS IN A HYPOTHETICAL CASE, THIS COULD
24 RESULT IN A VERDICT SUCH AS THAT; NOT THAT THIS IS
25 ABSOLUTE, OR THAT IT'S A STATEMENT OF LAW.

26 MS. ABRAMSON: THANK YOU.

27 MR. CONN: WE ALSO OBJECT TO THE SECOND

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1 THE COURT: WELL, OKAY. THE PROBLEM WITH
2 THIS SECOND ONE, NO. 5, IS IT TALKS ABOUT IF TOO
3 AROUSED TO THINK ABOUT INTENT OR TOO AROUSED TO KNOW
4 THE CONSEQUENCE OF ACTIONS.

5 THE ISSUE IS WHETHER OR NOT THE PERSON
6 DID THINK, NOT WHETHER THERE WAS AN ISSUE OF
7 CAPACITY, BUT WHETHER A PERSON DID OR DID NOT HAVE
8 AN INTENT TO KILL. INTENT TO KILL IS MALICE
9 AFORETHOUGHT.

10 MS. ABRAMSON: RIGHT.

11 THE COURT: IT IS NOT PREMEDITATION. THERE
12 SEEMS TO BE SOME CONFUSION THAT ARISES IN ARGUMENT,
13 AND OTHER WAYS, THAT SOMEHOW PREMEDITATION AND
14 DELIBERATION AND INTENT TO KILL GET CONFUSED. ALL
15 THAT IS REQUIRED FOR MALICE AFORETHOUGHT, FOR
16 MURDER, IS AN INTENT TO KILL, NOTHING MORE.

17 AND THE WAY THIS IS PHRASED, IT GIVES
18 THE IMPRESSION THAT SOMEONE CANNOT HAVE A CAPACITY
19 HERE, WHICH IS NOT THE ISSUE. THE ISSUE IS WHETHER
20 OR NOT THE PERSON HAD THE INTENT TO KILL. THAT
21 WOULD BE MY CONCERN ABOUT THE WAY IT'S PHRASED.

22 MS. ABRAMSON: INTENT TO KILL IS A THOUGHT,

23 YOUR HONOR. IT ISN'T ANYTHING OTHER THAN A THOUGHT.

24 THE COURT: THAT'S RIGHT. IT'S A VERY SIMPLE
25 THOUGHT.

26 MS. ABRAMSON: IT'S A VERY SIMPLE THOUGHT.
27 BUT NEVERTHELESS, A THOUGHT HAS TO OCCUR. SO I
28 WASN'T GOING TO ARGUE CAPACITY.

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1 I'M SAYING THAT IF THEY WERE TOO
2 AROUSED, THEY DID NOT THINK ABOUT INTENTION, NEVER
3 HAD THAT INTENTIONAL THOUGHT, AND THAT'S HOW I WOULD
4 ARGUE IT.

5 THE COURT: I'M CONCERNED ABOUT THE WAY IT'S
6 WRITTEN THERE. IT GIVES THE IMPRESSION IT'S TALKING
7 ABOUT CAPACITY, WHICH IS NOT THE EVIDENCE AND NOT
8 THE ISSUE. THE ISSUE BEFORE THE JURY IS TO RESOLVE
9 WHETHER THE PERSON HAD THE INTENT.

10 MS. ABRAMSON: I CAN CHANGE THE "TOO AROUSED"
11 TO THINK ABOUT.

12 THE COURT: DID NOT HAVE INTENT TO KILL.

13 MS. ABRAMSON: IF TOO AROUSED, DID NOT --
14 DIDN'T.

15 THE COURT: OR DID NOT HAVE IMPLIED MALICE.

16 MS. ABRAMSON: WELL, I DO THAT FARTHER DOWN,
17 BECAUSE FURTHER DOWN IT SAYS: "IF NO EXPRESS OR

18 IMPLIED MALICE." THE ONE UNDER NO. 6 IS THAT WAY.

19 IF TOO AROUSED, DIDN'T INTEND, OR DIDN'T THINK

20 INTENTION TO KILL.

21 THE COURT: I DON'T KNOW ABOUT "THINK." THE

22 QUESTION IS: DID YOU HAVE THE INTENT TO KILL?

23 THAT'S IT. THE LAW DOESN'T TALK ABOUT THINK ABOUT

24 IT. IT JUST SAYS: DO YOU HAVE THE INTENT TO KILL?

25 MS. ABRAMSON: WHAT ABOUT: IF TOO AROUSED TO

26 HAVE INTENTION?

27 THE COURT: NO. THAT'S NOT THE LAW.

28 MS. ABRAMSON: I THINK IT IS.

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1 THE COURT: THE LAW IS: DID YOU HAVE THE

2 INTENT TO KILL?

3 MS. ABRAMSON: THE REASON YOU WOULDN'T IN

4 THIS FACT SITUATION IS BECAUSE OF YOUR MENTAL STATE.

5 THE COURT: IT'S NOT A "WOULDN'T." IT'S

6 "DID."

7 AGAIN, YOU'RE TALKING ABOUT THE

8 ACTUALITY OF THE BELIEF AS TO WHETHER THE PERSON HAD

9 THE INTENT TO KILL. AND ONE LOOKS AT ALL THE

10 SURROUNDING CIRCUMSTANCES, NOT JUST A DIAGNOSIS, TO

11 MAKE THAT DETERMINATION.

12 MY CONCERN IS THAT THAT'S MISLEADING AS

13 IT'S PHRASED THERE, BECAUSE IT GOES INTO AREAS THAT
14 THE LEGISLATURE HAS CLEARLY STATED IS NOT PERMISSIBLE.

15 MS. ABRAMSON: I'M NOT TALKING HERE ABOUT
16 PREMEDITATION AND DELIBERATION.

17 THE COURT: I UNDERSTAND WHAT YOU'RE TALKING
18 ABOUT.

19 MS. ABRAMSON: I'M TALKING ABOUT INTENT TO
20 KILL.

21 THE COURT: RIGHT. AGAIN --

22 MS. ABRAMSON: AND WHATEVER THE LEGISLATURE
23 DID OR DIDN'T DO -- AS WE KNOW FROM CASES LIKE BOBO
24 AND OTHERS -- NEVERTHELESS, IF A PERSON DOES NOT
25 HAVE MALICE AFORETHOUGHT --

26 THE COURT: DOES NOT HAVE AN INTENT TO KILL.

27 MS. ABRAMSON: EXPRESS OR IMPLIED.

28 THE COURT: DOES NOT HAVE IMPLIED MALICE,

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1 DOES NOT HAVE AN INTENT TO KILL.

2 MS. ABRAMSON: WHICH IS ALL OF THOSE OTHER
3 THINGS. IT'S AN ACT DELIBERATELY PERFORMED WITH
4 KNOWLEDGE OF THE DANGER TO AND WITH CONSCIOUS
5 DISREGARD FOR HUMAN LIFE.

6 IT'S HAVING THAT STATE OF MIND, AND THAT
7 IS IMPLIED MALICE. IF ONE DOESN'T HAVE THAT STATE

8 OF MIND, THEN ONE CANNOT BE FOUND GUILTY OF MURDER.

9 THE COURT: THAT'S THE LAW. YOU HAVE TO HAVE

10 EITHER EXPRESS OR IMPLIED MALICE FOR MURDER.

11 MS. ABRAMSON: RIGHT.

12 THE COURT: BUT AGAIN, THE ISSUE IS DID

13 SOMEONE ACTUALLY HAVE -- DID THE PERSON ACCUSED OF

14 THE CRIME ACTUALLY HAVE THAT BELIEF. NOT CAPACITY,

15 NOT IN A GENERAL SENSE, BUT THE ACTUAL BELIEF.

16 MS. ABRAMSON: JUST TO CUT TO THE CHASE,

17 BECAUSE I'D LIKE TO GET DONE THIS MORNING --

18 THE COURT: I WOULD LIKE TO SEE THAT TOO.

19 MS. ABRAMSON: I'M SORRY IF I'M BORING YOU,

20 JUDGE.

21 THE COURT: YOU'RE NOT.

22 MS. ABRAMSON: LET ME THINK FOR A MINUTE. OR

23 LET ME PERHAPS TAKE A SUGGESTION FROM THE COURT AS

24 TO HOW -- I'LL JUST PUT SOMETHING OVER IT AND WRITE

25 OVER IT. OBVIOUSLY, NO MALICE, NOT GUILTY IS OKAY.

26 THE COURT: THAT'S IT. THEN YOU CAN ARGUE

27 THAT THE PERSON DIDN'T HAVE THE INTENT TO KILL OR

28 DOESN'T HAVE IMPLIED MALICE.

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1 WHY DON'T YOU JUST COVER THAT WHOLE

2 THREE LINES THERE, AND JUST SAY: THE ISSUE IS

3 MALICE.

4 MS. ABRAMSON: WE'LL SEE IF THE STICKY STUFF
5 WILL COVER IT.

6 MR. CONN: WE ALSO OBJECT TO THE EQUIVALENCY
7 SIGN HERE FOR THE REASON WHICH I THINK IS BEYOND THE
8 REASON WHY WE OBJECTED TO THE OTHER EQUIVALENCY
9 SIGNS.

10 HERE THEY'RE GIVEN ONLY ONE OPTION.
11 THEY'RE TOLD IT IS A SECOND-DEGREE MURDER. AND THE
12 COURT INDICATED, WELL, IF YOU CLARIFY THAT IT
13 DOESN'T NECESSARILY MEAN THAT IT IS JUST A
14 SECOND-DEGREE MURDER, THEN THE COURT WILL ALLOW
15 THAT.

16 HOWEVER, I THINK THAT HERE THE PROBLEM
17 IS COMPOUND, BECAUSE HERE SHE IS MENTIONING OPTIONS,
18 AND SHE'S GIVING THE JURY TWO OPTIONS. IT IS EITHER --
19 AND WE HAVE AN "OR" HERE. IT IS SECOND-DEGREE
20 MURDER OR NOT GUILTY. SO AGAIN, WE'RE GETTING --

21 MS. ABRAMSON: IT'S MY ARGUMENT.

22 MR. CONN: I THINK IT IS EXTREMELY MISLEADING
23 TO THE JURY. THEY'RE GOING TO BE LEFT WITH THE
24 IMPRESSION THAT THIS CAN ONLY BE A SECOND OR NOT
25 GUILTY. AND THAT'S NOT THE LAW. IT CAN ALSO BE A
26 FIRST.

27 AGAIN, I DON'T THINK WE SHOULD ALLOW
28 COUNSEL TO CLEAR UP THAT MUCH. HERE SHE HAS CHOSEN

1 TO STATE OPTIONS. IF SHE'S GOING TO STATE OPTIONS
2 AND POSSIBILITIES, I THINK ALL POSSIBILITIES SHOULD
3 BE INCLUDED HERE.

4 THE COURT: SHE CAN ARGUE, YOU CAN RESPOND,
5 AND CERTAINLY USE THAT SAME CHART, AND SAY SHE LEFT
6 SOMETHING OUT.

7 MR. CONN: WE WOULD ALSO OBJECT TO NO. 6,
8 BECAUSE NO. 6 IS MISLEADING. IT SUGGESTS THAT THE
9 PERSON WHO'S SUFFERING FROM P.T.S.D. CAN ESTABLISH
10 HIS OWN STANDARD OF CONDUCT AND STILL INVOKE THE
11 ORDINARILY REASONABLE MAN STANDARD.

12 MS. ABRAMSON: THAT'S NOT WHAT THAT SAYS.
13 THE FACT OF THE MATTER IS, IT'S THE SAME THING I
14 SAID BEFORE. YOU CAN'T PUNISH THE SICK FOR ACTING
15 IN A WAY SIMILAR TO THE WAY THE NON-SICK WOULD ACT.
16 IF THE PROVOCATION IS SUFFICIENT FOR AN ORDINARILY
17 REASONABLE MAN FOR AN ORDINARY LEVEL OF AROUSAL, AND
18 THE DEFENDANT IS MORE AROUSED, CLEARLY, THE
19 PROVOCATION IS SUFFICIENT FOR HIM AS WELL FOR A
20 MANSLAUGHTER THEORY.

21 BUT IF HE IS IN SUCH A STATE OF AROUSAL
22 THAT HE DOES NOT HARBOR MALICE, THEN HE IS ENTITLED
23 TO AN ACQUITTAL.

24 THAT'S ALL THAT SAYS. YOU CAN'T PUNISH
25 HIM BECAUSE HIS ILLNESS MAKES HIM REACT MORE THAN

26 THE ORDINARY PERSON WOULD HAVE BEEN AROUSED TO HEAT
27 OF PASSION; AND, THEREFORE, MALICE WOULD HAVE BEEN,
28 BY OPERATION OF LAW, REMOVED; THEN THE SICK ONE HAS

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1 THE RIGHT TO THE SAME LAW, PARTICULARLY WHEN IT'S
2 THE VICTIMS WHO MADE HIM CRAZY.

3 THE COURT: THAT PARTICULAR ASPECT OF IT IS.

4 MS. ABRAMSON: THAT'S THE MORAL JUSTIFICATION.

5 THE COURT: THAT'S NOT PART OF THE --

6 MS. ABRAMSON: THE LEGAL JUSTIFICATION -- IF
7 THE PROVOCATION WOULD AROUSE AN ORDINARILY
8 REASONABLE MAN TO HEAT OF PASSION, BUT THE ACTUAL
9 LEVEL OF AROUSAL IS EVEN HIGHER THAN THAT -- AND I
10 INTEND TO DRAW AN AROUSAL CHART -- IT'S STILL
11 VOLUNTARY MANSLAUGHTER, EVEN FOR THE P.T.S.D.
12 PERSON.

13 THE COURT: LET ME READ THIS FOR A SECOND.
14 PERHAPS YOU CAN MOVE, SO I DON'T HAVE AN
15 OBSTRUCTION.

16 (COURT READING.)

17

18 THE COURT: WHAT IS YOUR OBJECTION TO NO. 6?
19 AND PERHAPS YOU CAN SPEAK IN A VOICE THAT ISN'T SO
20 LOUD.

21 MR. CONN: OKAY. TO NO. 6, I THINK IT
22 COMBINES ALL THE PROBLEMS I MENTIONED PREVIOUSLY.
23 CERTAINLY, THE EQUIVALENCY OBJECTION; THE WAY IT
24 SUGGESTS THAT THIS IS A STATEMENT OF THE LAW. AND
25 THAT IS COMPOUNDED IN THIS CASE BECAUSE IT, ONCE
26 AGAIN, HAS THE "OR" SUGGESTING THERE ARE ONLY TWO
27 POSSIBILITIES HERE, VOLUNTARY MANSLAUGHTER, OR NOT
28 GUILTY. AND THAT IS CLEARLY NOT THE CASE. IT'S

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1 UNFAIR TO THE PROSECUTION.

2 BUT ALSO HERE WE OBJECT, BECAUSE TO THE
3 SUGGESTION THAT THE PERSON WHO'S, IN FACT, SUFFERING
4 FROM POST-TRAUMATIC STRESS DISORDER, AND HAS A
5 TENDENCY TO RESPOND TO A GREATER EXTENT THAN OTHER
6 PERSON, CAN IN FACT INVOKE THE REASONABLE-MAN
7 STANDARD.

8 I THINK THAT IT IS MISLEADING AND
9 SUGGESTS TO THE JURY THE POSSIBILITY THAT A PERSON
10 CAN, AS A RESULT OF THAT P.T.S.D., ESTABLISH HIS OWN
11 STANDARD OF CONDUCT.

12 THE COURT: ARE YOU GOING TO DRAW A
13 DISTINCTION BETWEEN REASONABLE MAN AND A PERSON WITH
14 P.T.S.D.?

15 MS. ABRAMSON: ONLY WITH RESPECT TO THE LEVEL

16 OF AROUSAL. THE PROVOCATION STILL HAS TO BE THE
17 SAME.

18 THE COURT: NO. BUT I MEAN, ARE YOU GOING TO
19 INDICATE THAT A PERSON WITH P.T.S.D. WOULD
20 CONSTITUTE A REASONABLE MAN?

21 MS. ABRAMSON: CAN BE A REASONABLE MAN?

22 THE COURT: YES.

23 MS. ABRAMSON: OH, CERTAINLY.

24 THE COURT: ARE YOU GOING TO ARGUE, THEN,
25 THERE IS AN EQUIVALENCY HERE OF A PERSON WITH
26 P.T.S.D. AND A REASONABLE MAN, THAT THEY WOULD BE
27 THE SAME?

28 MS. ABRAMSON: WELL, DEPENDS. SOMETIMES THEY

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1 WOULD AND SOMETIMES THEY WOULD NOT.

2 THE COURT: AS FAR AS THE APPLICATION OF THE
3 REASONABLE-MAN STANDARD --

4 MS. ABRAMSON: YES.

5 THE COURT: -- BY THE JURY?

6 MS. ABRAMSON: YES.

7 THE COURT: ARE YOU GOING TO ARGUE THAT A
8 PERSON WITH P.T.S.D. CONSTITUTES A REASONABLE MAN?

9 MS. ABRAMSON: CAN BE, YES.

10 THE COURT: WELL, THAT'S THE PROBLEM.

11 BECAUSE THEN YOU'RE INSERTING INTO THE EQUATION,
12 INTO THE FACT-FINDING PROCESS THE JURY WOULD BE
13 INVOLVED WITH, SOMETHING THAT IS NOT THE LAW. THAT
14 IS NOT THE LAW.

15 MS. ABRAMSON: I CAN'T HEAR YOU.

16 THE COURT: YOU WOULD BE INSERTING SOMETHING
17 IN THEIR FACT-FINDING PROCESS THAT IS NOT THE LAW.

18 AS I SAID YESTERDAY, AS THE CASES MAKE
19 QUITE CLEAR, A PERSON SUFFERING FROM A MENTAL DEFECT
20 OR DISORDER IS NOT THE REASONABLE MAN, AND WOULD
21 CAUSE GREAT CONFUSION FOR THE JURY TO SAY:

22 OH, WELL, SOMEBODY WHO HAS BEEN
23 DIAGNOSED AS SUFFERING FROM A MENTAL DISORDER IS THE
24 A REASONABLE MAN; AND, THEREFORE, SOMEBODY WITH
25 P.T.S.D., WITH A LIFETIME OF PROVOCATION THAT CAUSED
26 THIS DIAGNOSIS AND THIS DISORDER, WOULD REACT THIS
27 WAY, THEN THAT'S HOW A REASONABLE MAN WOULD REACT.

28 MS. ABRAMSON: NO, SIR. YOU'RE GETTING IT

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1 CONFUSED.

2 THE COURT: I'M NOT GETTING IT CONFUSED.
3 THAT'S WHAT YOUR ARGUMENT WOULD DO.

4 MS. ABRAMSON: THAT'S NOT HOW I'M GOING TO
5 ARGUE IT.

6 THE COURT: THAT'S WHAT I ASKED, WHETHER OR
7 NOT YOU ARE GOING TO EQUATE SOMEONE WITH P.T.S.D.
8 WITH THE REASONABLE MAN.

9 MS. ABRAMSON: WHICH IS THE RIGHT ANSWER?
10 I'M CONFUSED, JUDGE.

11 THE COURT: THERE'S NO RIGHT ANSWER. I'M
12 TRYING TO FIND OUT WHAT YOUR ANSWER IS.

13 MS. ABRAMSON: THE REASON I SAY THIS IS
14 ORDINARILY PEOPLE WITH P.T.S.D. ARE NOT UNREASONABLE
15 PEOPLE. THERE'S NOTHING -- IT'S NOT A DELUSIONARY
16 STATE LIKE SCHIZOPHRENIA.

17 WHAT I'M TALKING ABOUT, FOR PROVOCATION
18 PURPOSES -- THE PROVOCATION THAT WILL EITHER
19 ELIMINATE -- WELL, THE PROVOCATION THAT WILL
20 ELIMINATE MALICE FOR THE PERSON WITH P.T.S.D. HAS
21 GOT TO BE EXACTLY THE SAME AS THE PROVOCATION THAT
22 WOULD ELIMINATE MALICE FOR THE ORDINARY REASONABLE
23 MAN.

24 THE COURT: PROVOCATION IS AN OBJECTIVE FACT
25 OR SET OF FACTS.

26 MS. ABRAMSON: BUT THE SUBJECTIVE PART IS, IS
27 PROVOCATION SUFFICIENT TO AROUSE THE ORDINARILY
28 REASONABLE PERSON, AND THE PROVOCATION MUST BE JUST

1 AS SUFFICIENT TO AROUSE --

2 THE COURT: NOW YOU'VE GONE TO A DIFFERENT
3 PHASE HERE. YOU SAID "SUBJECTIVE." YOU CAN'T HAVE
4 SUBJECTIVE WHEN YOU'RE TALKING ABOUT A REASONABLE
5 MAN. THAT'S AN OBJECTIVE STANDARD.

6 MS. ABRAMSON: NO, NO. BUT THE AROUSAL IS
7 WITHIN THE PERSON. THAT'S WHAT I'M TALKING ABOUT.

8 THE COURT: THAT'S A SUBJECTIVE THING.

9 MS. ABRAMSON: EXACTLY.

10 THE COURT: WAIT, WAIT. THE DEFENDANT WAS
11 AROUSED TO A CERTAIN MENTAL STATE. AND A REASONABLE
12 MAN, NOT SUFFERING FROM P.T.S.D., NOT SUFFERING FROM
13 THIS LIFETIME OF EXPERIENCE, BUT PERHAPS EXPERIENCED
14 SPECIFIC INCIDENTS OR THREATS, OR THINGS OF THAT
15 NATURE, WOULD BE PROVOKED TO A SIMILAR MENTAL STATE
16 OF HEAT OF PASSION. THAT IS THE TEST.

17 MS. ABRAMSON: LOOK, LET ME DO THIS FOR YOU,
18 JUDGE.

19 THE COURT: YOU HAVE TWO THINGS. A
20 SUBJECTIVE --

21 MS. ABRAMSON: ALL RIGHT.

22 THE COURT: DID THE DEFENDANT HAVE THIS
23 MENTAL STATE IS A SUBJECTIVE ELEMENT.

24 MS. ABRAMSON: LOOK, JUDGE. HERE'S HOW I SEE
25 IT. I DON'T THINK I'M WRONG ON THIS. OKAY?

26 HEAT OF PASSION IS NOT, AS WE KNOW, A
27 DISORDERED MENTAL STATE. IT'S JUST AROUSAL. IT'S
28 AN EMOTIONALISM. THAT IS HEAT OF PASSION.

1 LET'S SAY, HYPOTHETICALLY, WITH
2 MR. REASONABLE MAN BEING PROVOKED, HE WOULD GET
3 THERE (DRAWING). AND THAT, UNDER THE LAW, WOULD
4 CONSTITUTE WHATEVER IT IS, HEAT OF PASSION, AS
5 DESCRIBED IN THE INSTRUCTION. THAT'S HEAT OF
6 PASSION AROUSAL. OKAY?

7 WELL, HERE'S MY --

8 THE COURT: THAT'S THE OBJECTIVE --

9 MS. ABRAMSON: THAT'S IT.

10 THE COURT: -- ANALYSIS, RIGHT.

11 MS. ABRAMSON: THAT'S LIKE WHEN YOU CATCH
12 YOUR WIFE IN BED WITH ANOTHER GUY. BOOM.

13 THE COURT: I'M SAYING THAT'S AN OBJECTIVE
14 ANALYSIS.

15 MS. ABRAMSON: RIGHT. OKAY.

16 AND IN THAT CONDITION, OKAY, IN AN
17 AROUSAL OF HEAT OF PASSION, THIS PERSON IS ENTITLED
18 TO A MANSLAUGHTER IF THE JURY FINDS THAT LEVEL.
19 OKAY? NOW, HERE'S MY PERSON WITH P.T.S.D. OKAY?
20 SAME PROVOCATION.

21 LET'S USE TWO P.T.S.D. PEOPLE, ONE AND
22 TWO. SAME PROVOCATION. HE GETS THERE (DRAWING).

23 SUBJECTIVELY THEY DETERMINE FACTUALLY
24 HE'S HERE (DRAWING). THAT'S THE OBJECTIVE

25 STANDARD. HE'S THERE. HE'S ALSO ENTITLED TO THE
26 MANSLAUGHTER.
27 NOW, HERE'S MY OTHER P.T.S.D. HYPO. HE
28 GOES HERE (DRAWING). DOES IT MATTER FOR

51959

1 MANSLAUGHTER THAT HE'S HERE? NO. BECAUSE HE'S
2 ENTITLED TO IT HERE (INDICATING).

3 THE COURT: YOU COULD HAVE A THIRD, WHICH
4 WOULD NOT GET TO THAT.

5 MS. ABRAMSON: WELL, RIGHT, SURE. SURE. BUT
6 WE HAVE HIM UP HERE (INDICATING).

7 NOW, UP HERE WE MAY BE IN -- WE'RE NO
8 LONGER -- THERE IS ENOUGH FOR THE MANSLAUGHTER. THIS
9 IS ENOUGH FOR THE MANSLAUGHTER.

10 BUT UP HERE WE MAY BE IN -- LET'S SAY
11 WE'RE IN DISSOCIATION -- WHICH I'M NOT GOING TO
12 ARGUE -- BUT LET'S SAY WE ARE.

13 NOW, IT COULD BE ARGUED THAT IF YOU ARE
14 IN A DISSOCIATIVE STATE YOU DID NOT HARBOR MALICE.

15 AS A MATTER OF FACT, NOT AS AN OPERATION
16 OF LAW, WHICH IS -- MALICE DISAPPEARS HERE BY
17 OPERATION OF LAW. HERE THERE'S NO MALICE IN FACT.
18 YOU JUST DON'T HAVE THOSE THOUGHTS.

19 THE COURT: IF YOU'RE UNCONSCIOUS OR

20 SOMETHING LIKE THAT.

21 MS. ABRAMSON: IF YOU'RE --

22 THE COURT: IF YOU'RE SO UNCONSCIOUS THAT YOU
23 HAVEN'T GOT THE INTENT TO KILL WHEN YOU'RE PULLING
24 THE TRIGGER ON A WEAPON --

25 MS. ABRAMSON: I UNDERSTAND HOW YOU WOULD
26 DECIDE IT.

27 THE COURT: THAT'S THE WAY THE APPELLATE
28 COURT LOOKS AT IT. PEOPLE VERSUS SAILLE AND PEOPLE

51960

1 VERSUS BOBO, THOSE CASES YOU CITE, THAT'S THE WAY
2 THEY LOOK AT IT.

3 MS. ABRAMSON: THERE IS NO MALICE BY
4 OPERATION OF LAW, WHICH IS A SOCIAL -- A MATTER OF
5 POLICY.

6 THE COURT: RIGHT. HEAT OF PASSION IS A
7 MATTER OF POLICY, REDUCING CERTAIN TYPES OF MURDER
8 THAT HAVE INTENT TO KILL TO MANSLAUGHTER, VOLUNTARY
9 MANSLAUGHTER.

10 MS. ABRAMSON: PRECISELY. AND THIS IS NO
11 FACTUAL MALICE. THIS IS ALL I'M TALKING ABOUT. DID
12 MY P.T.S.D. PERSON GET HERE, OR DID MY P.T.S.D.
13 PERSON GET THERE? EITHER WAY, HE'S ENTITLED TO THE
14 MANSLAUGHTER WHERE IT'S GIVEN, AND WHERE IT ISN'T

15 GIVEN, THEY HAVE TO SHIFT TO A MENTAL STATE
16 ANALYSIS.
17 THAT'S HOW I INTEND TO ARGUE. I'M GOING
18 TO DO THIS FOR THE JURY, AND ALSO A TWO-STREAM
19 ANALYSIS.
20 THE COURT: I DON'T HAVE A PROBLEM WITH THAT
21 APPROACH, BUT THE BOARD IS MISLEADING AND LUMPING
22 THINGS TOGETHER, AND WILL CAUSE A JURY TO LUMP THE
23 REASONABLE MAN WITH THE PERSON WITH P.T.S.D.
24 MS. ABRAMSON: WELL, I INTEND TO DRAW THIS AS
25 WELL. SO I'M GOING TO ARGUE IT APPROPRIATELY, YOUR
26 HONOR. THE WORDS DON'T SAY ONE WAY OR THE OTHER --
27 THE COURT: OKAY.
28 MS. ABRAMSON: -- WHAT THAT MEANS.

51961

1 THE COURT: THE PROBLEM WITH DIAGRAMS AND
2 CHARTS IS THAT JURORS TEND TO WRITE DOWN WHAT'S ON A
3 CHART AND DON'T NECESSARILY WRITE DOWN WHAT'S SAID
4 BY COUNSEL, AND IT SOMEHOW --
5 MS. ABRAMSON: THAT'S WHY WE USE CHARTS.
6 THE COURT: IT SOMEHOW BECOMES, OR HAS THE
7 POTENTIAL OF HAVING GREATER WEIGHT THAN YOUR
8 ARGUMENT, JUST BECAUSE IT'S IN PRINT, AND DOES TEND
9 TO CONFUSE. SO...

10 MS. ABRAMSON: WE MAKE CHARTS SO THEY CAN
11 FOLLOW ALONG WITH THE ARGUMENT.

12 THE COURT: I UNDERSTAND.

13 MS. ABRAMSON: I DON'T THINK THERE'S ANYTHING
14 MISLEADING. IT'S THE SAME PROVOCATION AS WOULD
15 AROUSE AN ORDINARILY REASONABLE MAN TO HEAT OF
16 PASSION.

17 THE COURT: YES.

18 MS. ABRAMSON: AND HE EXPERIENCES AT LEAST
19 THAT. BUT THE ACTUAL LEVEL OF AROUSAL IS GREATER
20 BECAUSE OF P.T.S.D. NOW IT COULD BE VOLUNATARY
21 MANSLAUGHTER, BECAUSE IT'S AT LEAST WHERE THE
22 REASONABLE MAN IS, OR IT SHOULD BE NOT GUILTY IF THE
23 AROUSAL LEVEL IS SO HIGH. THAT'S ALL THAT SAYS.

24 AND IT SAYS BELOW: IF IT FORMULATES
25 SPECIFIC INTENT TO KILL, VOLUNTARY MANSLAUGHTER. IF
26 NO EXPRESS OR IMPLIED MALICE, NOT GUILTY.

27 I DON'T KNOW HOW MUCH CLEARER -- WHEN I
28 ORIGINALLY DID THESE HYPOS THEY INCLUDED INVOLUNTARY

51962

1 MANSLAUGHTER. I SAID, "OOPS, BETTER TAKE THAT OUT."

2 .

3 AN ARGUMENT COULD BE MADE THAT WITHOUT
4 SPECIFIC INTENT TO KILL -- WELL, YOU CAN'T MAKE THAT

5 ARGUMENT. THAT IS AN ARGUMENT YOU CAN'T MAKE.

6 THAT'S WHY I TOOK THE OTHER MANSLAUGHTER OUT.

7 IT'S A TWO-STREAM APPROACH. ONE PURE

8 MANSLAUGHTER, AND THE OTHER ONE IS DONE FOR

9 VOLUNTARY. I DON'T THINK IT'S MISLEADING.

10 I THINK THIS IS THE BOX WE'VE BEEN PUT

11 IN BY THE WAY THE INSTRUCTIONS ARE BEING GIVEN. YOU

12 KNOW WE DISAGREE WITH THOSE DECISIONS, BUT

13 NEVERTHELESS, WE DO HAVE THIS EVIDENCE OF MENTAL

14 STATE THE JURY HAS TO CONSIDER.

15 THE COURT: I'M NOT FORECLOSING THE

16 ARGUMENT. YOU'RE ENTITLED MAKE IT.

17 MS. ABRAMSON: IT'S VERY COMPLICATED, AS YOU

18 CAN IMAGINE, AND THAT'S WHY IT NEEDS SOMETHING IN

19 WRITING.

20 THE COURT: I'M NOT ARGUING WITH THAT

21 EITHER. ALL I'M CONCERNED ABOUT IS THE POTENTIAL

22 FOR CONFUSION BY THE WAY THE CHART IS PREPARED.

23 MS. ABRAMSON: I FRANKLY WOULD ASK THE COURT

24 TO ALLOW ME TO USE IT AND SEE HOW I ARGUE IT. AND

25 IF I MISSTATE IT, I'M CONFIDENT YOU WILL JUMP IN AND

26 STRAIGHTEN IT OUT. BUT I DON'T BELIEVE I WILL.

27 THE COURT: I REALLY DON'T WANT TO DO THAT.

28 I WANT TO LET BOTH SIDES ARGUE WITHOUT

1 INTERRUPTION. AND I APPRECIATE THE FACT, FOR THE
2 MOST PART, COUNSEL HAVEN'T BEEN OBJECTING. THAT'S
3 REALLY THE WAY IT SHOULD BE, UNLESS SOMETHING OCCURS
4 THAT REALLY RAISES AN OBJECTION.

5 WHAT I WOULD SUGGEST THEN, ON NO. 6, IS
6 AT THE VERY LEAST, REMOVE THE TITLE, P.T.S.D.,
7 MENTALLY DISORDERED, EXTRA-FAIRFUL DASH PROVOKED,
8 WHICH TENDS TO GIVE THE IMPRESSION IT'S ALL ONE
9 CONCEPT. AND THEN YOU CAN IDENTIFY -- AND YOU SAID
10 YOU'RE GOING TO USE THIS CHART SIMILAR TO WHAT YOU
11 JUST READ AND DRAW AND EXPLAIN THAT ONE.

12 IF YOU WOULD TAKE OFF THAT TITLE, THAT
13 WOULD NEGATE SOME OF MY CONCERNS.

14 THESE CHARTS WILL BE AVAILABLE FOR THE
15 PROSECUTION TO USE IN THEIR ARGUMENT, THEIR
16 RESPONSE, THAT YOU'VE LEFT OFF CERTAIN CONCEPTS IN
17 DESCRIBING THIS IN YOUR CHARTS, SUCH AS THE PEOPLE
18 ARE GOING TO ARGUE THAT YOU LEFT OFF NO. 5,
19 FIRST-DEGREE MURDER; NO. 6 YOU LEFT OFF
20 SECOND-DEGREE MURDER AND FIRST-DEGREE MURDER,
21 AND --

22 MS. ABRAMSON: WELL, I'M ASSUMING FOR THAT
23 HYPOTHETICAL, AS I'LL EXPLAIN TO THEM, IF A JURY
24 FINDS THAT THE FACTS ARE SUCH THAT IT'S CONSIDERED
25 SUFFICIENT PROVOCATION TO REDUCE TO VOLUNTARY
26 MANSLAUGHTER, THE NATURE OF THE PROVOCATION AND THE
27 NATURE OF THE AROUSAL IS SUFFICIENT TO REDUCE IT TO

51964

1 THE COURT: OKAY. THAT'S THE WHOLE POINT.

2 AGAIN, THE PEOPLE ARE RESPONDING AS THEY
3 CHOOSE. I DON'T FIND THE USE OF THESE EQUAL SIGNS,
4 IF IT'S EXPLAINED, THAT THIS IS JUST A SHORTHAND WAY
5 OF SAYING THAT IF THE JURY MAKES THESE
6 DETERMINATIONS, THE JURY COULD THEN FIND. IF THAT
7 IS HOW IT'S EXPLAINED, I DON'T SEE THERE'S A PROBLEM
8 WITH IT. THE PEOPLE HAVE A RIGHT TO RESPOND. THIS
9 IS NOT A MATHEMATICAL EQUATION.

10 IF YOU COULD ADD TO YOUR ARTWORK,
11 MR. LEVIN, BY REMOVING THAT TITLE.

12 MS. ABRAMSON: WELL, I HAVE TO DISTINGUISH
13 THIS FROM THE ORDINARILY REASONABLE MAN, ONLY WITH
14 RESPECT TO THE LEVEL OF AROUSAL, AND TO SHOW THE
15 MENTAL DISORDER DEFENSE. THAT'S THE POINT OF THIS;
16 THAT THIS IS WHERE THEY CAN GO.

17 IN ORDER TO GET TO NOT GUILTY ON EITHER
18 ONE OF THESE THEY HAVE TO FOLLOW THE MENTAL DISORDER
19 STREAM AND NOT THE PROVOCATION THEORY. THE
20 PROVOCATION THEORY WILL GET THEM TO SECOND OR
21 VOLUNTARY, BUT IT WON'T GET THEM BELOW. THAT'S WHY
22 I'M USING IT HERE.

23 SHOULD I JUST DO "MENTALLY DISORDERED",
24 IF THAT'S THE BUZZ WORD?
25 THE COURT: NO. I GUESS IT'S ON THE TOP
26 TOO. I DIDN'T NOTICE THIS.
27 MS. ABRAMSON: THAT'S THE DIFFERENCE.
28 THE COURT: I UNDERSTAND WHAT YOU'RE TRYING

51965

1 TO DO. I'M JUST CONCERNED ABOUT THE POTENTIAL FOR
2 CONFUSION.
3 MS. ABRAMSON: OKAY.
4 THE COURT: I'M JUST GOING TO LEAVE IT THE
5 WAY IT IS. NOW THAT I LOOK AT IT WITH A TITLE ON
6 THE TOP AND A TITLE DOWN BELOW, THERE IS THAT
7 DISTINCTION. AND IF YOU BLUR THE LINES BETWEEN
8 REASONABLE MAN AND A PERSON SUFFERING FROM A MENTAL
9 DISORDER, I WILL HAVE TO STEP IN, BECAUSE THERE
10 CLEARLY HAS TO BE A DISTINCTION DRAWN, AND CLEARLY
11 UNDERSTOOD BY THE JURY, SO THEY DON'T CONCLUDE THAT
12 A PERSON SUFFERING FROM A MENTAL DISORDER
13 CONSTITUTES WHAT THEY HAVE TO USE AS THE REASONABLE
14 MAN IN MAKING THE DETERMINATION OF SUFFICIENT
15 PROVOCATION TO PROVOKE A REASONABLE MAN.
16 MS. ABRAMSON: I'M GOING TO MAKE IT VERY
17 CLEAR IT HAS TO BE THE SAME PROVOCATION AS WOULD

18 PROVOKE A REASONABLE MAN.

19 THE COURT: AND THE REASONABLE MANS IS NOT A
20 PERSON SUFFERING FROM A MENTAL DISORDER.

21 MS. ABRAMSON: HE COULD BE, BUT HE ALSO COULD
22 NOT BE.

23 THE COURT: IN THIS ANALYSIS IT IS NOT,
24 BECAUSE IT WOULDN'T MAKE SENSE FOR THEM TO USE, TO
25 SUBSUME A PERSON WITH A MENTAL DISORDER IN THEIR
26 ANALYSIS, THEIR ANALYSIS OF REASONABLE MAN.

27 MS. ABRAMSON: BUT CERTAIN MENTAL DISORDERS
28 CAN STILL LEAVE YOU AS A REASONABLE MAN.

51966

1 THE COURT: IT DOESN'T MATTER IN THEIR
2 ANALYSIS. THEY'RE USING A REASONABLE MAN AND NOT
3 SOMEBODY WITH A MENTAL DISORDER. YOU'RE CONFUSING
4 THE SUBJECTIVE AND THE OBJECTIVE ANALYSIS, AND YOU
5 HAVE TO MAKE IT CLEAR THAT IS THEIR APPROACH, THAT
6 THEY CAN -- AND IT HAS TO BE MADE CLEAR TO THEM --
7 WHEN THEY USE A REASONABLE MAN ANALYSIS, THAT
8 THEY'RE NOT REFERRING TO SOMEONE SUFFERING FROM A
9 MENTAL DISORDER.

10 MS. ABRAMSON: RIGHT. I AGREE WITH THAT.

11 NOW, WHAT I WANTED TO PUT -- WHAT AM I
12 PERMITTED TO PUT NOW ON MY PASTE-OVER?

13 THE COURT: I THINK YOU JUST ARGUE IT.
14 MS. ABRAMSON: NO INTENT TO KILL?
15 THE COURT: JUST ARGUE IT. YOU DON'T HAVE TO
16 PUT ANYTHING IN. THE DEFINITION OF EXPRESS OR
17 IMPLIED MALICE. I THINK YOU HAVE THOSE.
18 MS. ABRAMSON: I HAVE THEM.
19 THE COURT: LET'S GET THE JURY OUT.
20 MS. ABRAMSON: COULD I HAVE A BRIEF BREAK,
21 YOUR HONOR?
22 THE COURT: OKAY. WE'LL START UP AT 10:00
23 O'CLOCK.
24 MS. ABRAMSON: OKAY. THANK YOU, JUDGE.
25 (A RECESS WAS TAKEN FROM
26 9:50 A.M. TO 10:05 A.M.)
27
28 THE COURT: ONE ADDITIONAL THOUGHT HERE.

51967

1 MS. ABRAMSON: DID YOU WANT TO SEE THAT
2 AGAIN?
3 THE COURT: THE ONLY THING I COULD SAY IS THE
4 PEOPLE HAVE A STRONG OBJECTION TO THE EQUIVALENCY
5 SIGN. PERHAPS YOU COULD JUST MAKE A DASH INSTEAD OF
6 TWO -- USING A MAGIC MARKER -- AND JUST MAKE A BIG
7 DASH.

8 MS. ABRAMSON: I'LL MAKE IT TWO LINES LEADING
9 TO IT, SO IT WON'T LIKE AN EQUAL. IT WILL JUST LOOK
10 LIKE AN EMPHASIS.

11 THE COURT: JUST MAKE IT A BIG DASH BY
12 PUTTING BLACK BETWEEN THE TWO LINES.

13 MS. ABRAMSON: HOW'S THAT?

14 THE COURT: PERFECT.

15 MS. ABRAMSON: PERFECT? GOD, JUDGE YOU SAID
16 I WAS PERFECT, FIRST TIME EVER.

17 THESE TWO, THOUGH, JUDGE, I THINK I HAVE
18 A RIGHT TO LEAVE, BECAUSE THAT'S REALLY THE
19 INSTRUCTION. THAT'S AN ULTIMATE CONCLUSION. OKAY?

20 THE COURT: ALL RIGHT. YOU CAN LEAVE THAT.

21 MS. ABRAMSON: THANKS.

22 THE COURT: OKAY. LET'S GET THE JURY OUT
23 PLEASE.

24 (THE JURY ENTERED THE COURTROOM
25 AND THE FOLLOWING PROCEEDINGS
26 WERE HELD:)

27

28 THE COURT: AND THE JURY IS BACK IN COURT.

51968

1 GOOD MORNING. I'M SORRY FOR THE DELAY.

2 THE LAWYERS AND I HAD SOME DISCUSSIONS. IT TOOK A

3 LITTLE LONGER THAN ANTICIPATED.

4 WE'RE NOW READY TO PROCEED. WE'LL

5 CONTINUE WITH ARGUMENT BY MS. ABRAMSON.

6 MR. CONN: THANK YOU, YOUR HONOR.

7

8 CLOSING ARGUMENT (CONTINUED)

9 BY MS. ABRAMSON:

10 GOOD MORNING, LADIES AND GENTLEMEN. I

11 WILL FINISH TODAY. I WAS HOPING THIS MORNING, BUT

12 WE JUST LOST ABOUT AN HOUR, AND IT MAY BE MORE THAN

13 THAT ANYWAY.

14 ONE OF THE NICE THINGS FOR ME IN GOING

15 ON FROM DAY TO DAY -- MAYBE THE ONLY NICE THING --

16 IS YOU REMEMBER WHAT YOU FORGOT, YOU KNOW, THAT

17 NIGHT OR THE NEXT MORNING IN THE SHOWER.

18 HERE'S WHAT I FORGOT TO POINT OUT TO YOU

19 CONCERNING TUESDAY. THE HAIRPIECE ISSUE IN THE

20 CASE, IF YOU WILL, ANOTHER SET OF FACTS WITH WHICH

21 TO EVALUATE THE TESTIMONY OF JAMIE PISARCIK, WHO

22 CLAIMS THAT ERIK MENENDEZ BLURTED OUT THIS STATEMENT

23 ABOUT THE HAIRPIECE TO HER.

24 WE CALLED ED FENNO TO TESTIFY AGAIN,

25 BECAUSE HE WAS LIVING WITH THE MENENDEZ FAMILY,

26 LIVING WITH AND PLAYING TENNIS WITH AND FRIENDS WITH

27 LYLE AND ERIK MENENDEZ FOR MONTHS AND MONTHS AND

28 MONTHS. AND HE TESTIFIED THERE WERE MANY OCCASIONS

1 WHEN, AFTER HE AND ERIK MENENDEZ BECAME GOOD
2 FRIENDS, THAT THEY WOULD TALK ALONE, NO ONE ELSE
3 AROUND. AND NEVER WAS HE TOLD BY EITHER LYLE
4 MENENDEZ OR ERIK MENENDEZ, THAT LYLE MENENDEZ HAD A
5 HAIRPIECE, TO THIS GUY WHO'S LIVING IN THEIR HOME.

6 MARK HEFFERNAN, WAY BACK TO THE
7 BEGINNING OF THE CASE. HE TESTIFIED HE WAS THEIR
8 TENNIS COACH. HE WAS AROUND THEM A GREAT DEAL. HE
9 DIDN'T KNOW. AND LOOK, HE'S THE PERSON THEY CALL.
10 MR. CONN HAS A THEORY OF WHY.

11 I THINK THE FACT OF THE MATTER IS THEY
12 CALLED MARK HEFFERNAN ON THAT SUNDAY NIGHT, AFTER
13 THEY CAME BACK, BECAUSE THEY HAD NOBODY ELSE TO TALK
14 TO, AND THEY WERE HYSTERICAL. HE WAS CLOSE TO THEM
15 AND HE DIDN'T KNOW. NO ONE HAS EVER MENTIONED IT TO
16 HIM, NEITHER ERIK MENENDEZ, NOR LYLE MENENDEZ.

17 AND FINALLY, TERRY BARALT TESTIFIED THAT
18 LYLE MENENDEZ LIVED IN HER HOUSE, AND SHE DIDN'T
19 KNOW THAT HE HAD A HAIRPIECE.

20 SO THIS WAS NOT SOMETHING THAT WAS
21 TALKED ABOUT, AND IT IS EXTREMELY UNLIKELY THAT ERIK
22 MENENDEZ WOULD, WITH NO PROMPTING WHATSOEVER, BLURT
23 THIS STATEMENT OUT TO JAMIE PISARCIK, OF ALL PEOPLE,
24 AND TO NO ONE ELSE ON EARTH. IT'S JUST NOT
25 BELIEVABLE. MAYBE SHE'S JUST MISTAKEN, SOMETHING
26 SHE HEARD LATER. BUT IT CERTAINLY CAN'T BE RELIED

27 UPON AS SOMETHING THAT SHE HEARD BEFORE.

28 NOW, BACK TO THE WEEK OF CRISIS. I WAS

51970

1 TALKING YESTERDAY ABOUT THE EVENTS OF THAT
2 WEDNESDAY. THERE ISN'T MUCH HAPPENING, EXCEPT THAT
3 ERIK MENENDEZ AND LYLE MENENDEZ ARE AT LUNCH. BUT
4 WHAT IS SIGNIFICANT ABOUT THIS WAS SIGNIFICANT TO
5 DR. DIETZ, AND THAT IS THAT BOTH TUESDAY NIGHT, WHEN
6 ERIK MENENDEZ FIRST TELLS LYLE MENENDEZ ABOUT WHAT
7 HAS BEEN HAPPENING IN HIS PAST AND PRESENT.

8 AND ON WEDNESDAY THERE ARE FURTHER
9 DISCUSSIONS HOW LYLE IS GOING TO APPROACH THEIR
10 FATHER. ERIK MENENDEZ DOES NOT TELL LYLE ABOUT THE
11 EXPLICIT THREATS TO KILL LYLE MENENDEZ IF ERIK
12 SHOULD EVER TELL HIM, THREATS THAT WERE MADE BY HIS
13 FATHER. HE DOESN'T TELL HIM ABOUT THE REINFORCEMENT
14 OF THE THREATS THAT IS ACTED OUT IN THEIR
15 RITUALISTIC WAY, USING THIS MIRROR THAT ERIK
16 MENENDEZ TESTIFIED TO.

17 AND DR. DIETZ FOUND THAT SIGNIFICANT,
18 BECAUSE IT INDICATED TO HIM ONE OF THE ASPECTS OF
19 ERIK MENENDEZ' PERSONALITY, WHICH WAS THIS FEAR OF
20 BEING ABANDONED, HAVING HAD THIS VERY ISOLATED LIFE,
21 WHERE THE LAST PERSON HE COULD TURN TO WAS HIS

22 BROTHER. HIS FEAR OF BEING ABANDONED KEPT HIM FROM
23 TELLING LYLE ALL THE SCARIEST ASPECTS OF WHAT HAD
24 HAPPENED, BECAUSE HE WAS AFRAID AT THAT POINT HIS
25 BROTHER WOULD SAY, "I CAN'T DEAL WITH THIS. I'M
26 GOING BACK TO NEW JERSEY. GOOD-BYE."

27 NOW, HE WASN'T GOING TO GO BACK TO NEW
28 JERSEY, FROM WHAT WE CAN GATHER, FOR A MONTH, AND

51971

1 THAT'S THE FACT THAT THE PROSECUTION OVERLOOKS,
2 BECAUSE THEY CAN'T GIVE YOU ANY EXPLANATIONS
3 WHATSOEVER FOR WHY THIS HAPPENED WHEN IT HAPPENED.
4 THEY OFFER NO REAL CRISIS. AND WHAT WE
5 KNOW HAPPENED THAT WEEK IS THE ONLY EXPLANATION FOR
6 WHY IT'S HAPPENING ON SUNDAY, AUGUST 20TH, WHEN LYLE
7 MENENDEZ WASN'T GOING ANYWHERE, WHILE ERIK MENENDEZ
8 ISN'T STARTING SCHOOL EITHER. NOTHING IS IMPENDING,
9 EXCEPT WHAT IS SET IN MOTION BY ACTUALLY, ULTIMATELY,
10 THE THURSDAY-NIGHT CONFRONTATION BETWEEN LYLE MENENDEZ
11 AND HIS FATHER.

12 NOW, MY CLIENT TESTIFIED THAT HE STAYED
13 AWAY FROM THE HOUSE ON THURSDAY IN THE LATE
14 AFTERNOON. HE SAYS -- I DON'T RECALL SPECIFICALLY
15 WHAT HE SAID HE DID EARLIER THAT DAY -- BUT AS THE
16 TIME WAS APPROACHING WHEN HIS FATHER WAS ORIGINALLY

17 EXPECTED, WHICH WAS AT 6:00, HE DECIDES TO LEAVE THE
18 HOUSE BECAUSE HE DOESN'T WANT TO BE THERE FOR ANY
19 FALL-OUT.

20 HE INDICATES FROM HIS TESTIMONY, AS I
21 READ TO YOU IN THE BEGINNING, THERE WERE SEVERAL
22 PHONE CALLS, MORE THAN ONE, WHERE HE'S TRYING TO
23 FIND OUT WHAT'S HAPPENED. AND HE LEARNS THAT THE
24 FLIGHT WAS DELAYED, AND IT ISN'T UNTIL HE RETURNS
25 HOME, AFTER THE TIME THAT LYLE MENENDEZ TOLD HIM HIS
26 FATHER WAS SUPPOSED TO BE COMING HOME, THAT HE
27 EVENTUALLY LEARNS WHAT HAPPENED.

28 NOW, HOW HE LEARNS THAT THINGS DIDN'T GO

51972

1 WELL WAS INDIRECT, BUT VERY GRAPHIC. AND THAT IS
2 THAT HE'S IN HIS ROOM. HE SAYS WHEN HE GETS HOME HE
3 LOOKS AND HE CAN'T SEE LIGHTS ON IN THE GUESTHOUSE.

4 AND IF YOU LOOK AT THE CHARTSC, AT SOME
5 POINT YOU WILL SEE HOW YOU CAN'T SEE -- YOU WON'T BE
6 ABLE TO SEE THAT FROM IN FRONT OF THE HOUSE. YOU
7 WON'T BE ABLE SEE LIGHTS ON IN THE GUESTHOUSE
8 BEDROOM, THE UPSTAIRS CENTER, THE FRONT OF THE
9 HOUSE, FROM WHERE HE'S PARKING HIS CAR.

10 BUT IF YOU GO UP INTO ERIK MENENDEZ'
11 BEDROOM AND YOU LOOK OUT THE WINDOWS THAT DO

12 OVERLOOK THE POOL AREA AND THE GUESTHOUSE, YOU'D BE
13 ABLE TO SEE LIGHTS ON UPSTAIRS FROM THAT VANTAGE
14 POINT. AND HE GETS UPSTAIRS, AND HE IS SURPRISED BY
15 HIS FATHER.

16 NOW, THE WAY THIS CHART IS WRITTEN IN --
17 YOU WON'T HAVE THIS CHART WITH YOU. IT'S AN ARGUING
18 CHART. I USED IT IN MY OPENING, AND I'M USING IT
19 HERE. THIS IS SET UP CHRONOLOGICALLY.

20 IT INDICATES, OBVIOUSLY, THE FIRST THING
21 THAT HAPPENED THAT THURSDAY NIGHT AFTER MR. MENENDEZ
22 COMES HOME IS THAT THERE'S A MEETING BETWEEN LYLE
23 MENENDEZ AND MR. MENENDEZ IN THE STUDY, THE PANELED
24 ROOM DOWNSTAIRS; AND THAT'S WHERE THERE'S A
25 CONFRONTATION OVER LYLE TELLING HIS FATHER THAT HE
26 IS NOT TO CONTINUE THIS BEHAVIOR WITH HIS BROTHER.
27 AND THE FATHER, BEING UNREPENTANT AND BELLIGERENT,
28 SELF-RIGHTEOUS ABOUT HIS RIGHT TO DO WHATEVER HE

51973

1 WANTS TO DO WITH HIS OWN SON.

2 AND WHEN CONFRONTED WITH THAT STATEMENT,
3 LYLE MENENDEZ THEN THREATENS TO EXPOSE HIM.

4 MR. CONN KEEPS MAKING -- IN HIS
5 CROSS-EXAMINATION, IN HIS ARGUMENT, HE SUGGESTS TO
6 YOU THAT THE THREAT WAS TO GO TO THE POLICE. BUT

7 THAT'S NOT WHAT ERIK MENENDEZ TESTIFIED TO. THE
8 THREAT WAS EXPOSURE, PERIOD. TELL THE RELATIVES OR
9 THE POLICE OR THE WORLD. SOMEHOW TAKE SOME ACTION
10 TO PREVENT HIS FATHER FROM CONTINUING THIS. AND
11 EXPOSURE IS THE ACTION THAT WAS BEING THREATENED.
12 IT WASN'T SPECIFICALLY GOING DOWN TO THE POLICE
13 STATION AND MAKING OUT A COMPLAINT.

14 ADDITIONALLY, ERIK MENENDEZ TESTIFIED
15 THAT HE WAS AWARE THAT HIS BROTHER HAD SAID TO HIS
16 FATHER: "IF IT CONTINUES, IF IT GOES ON, I THREATEN
17 TO EXPOSE YOU." OTHERWISE, NO.

18 AND, IN FACT, WHEN MR. MENENDEZ COMES
19 INTO ERIK'S ROOM, THAT'S WHAT ERIK MENENDEZ SAYS TO
20 HIM. HIS FATHER IS VERY ANGRY. "I TOLD YOU NEVER TO
21 TELL LYLE. NOW HE'S GOING TO TELL THE WORLD."

22 AND ERIK TELLS HIS FATHER. "NO, NO. HE
23 ISN'T GOING TO TELL. HE ISN'T GOING TO TELL." HE
24 DOESN'T EVEN KNOW WHAT THE CONVERSATION IS. HE'S
25 GOING TO REASSURE HIS FATHER, THOUGH, THAT HE ISN'T
26 GOING TO TELL.

27 AND HIS FATHER IS VERY ANGRY, AS YOU
28 COULD IMAGINE HE WOULD BE, HAVING THREATENED ACTION

2 BEEN. AND HE ASSAULTS ERIK MENENDEZ, AND THERE'S A
3 STRUGGLE. ERIK MENENDEZ HAS RETREATED INTO THE
4 CORNER OF HIS ROOM. AND YOU WILL SEE -- THERE ARE
5 PHOTOGRAPHS OF HIS ROOM -- YOU WILL SEE HOW THE BED
6 IS ARRANGED. THE WAY THE BED IS ARRANGED, THERE'S A
7 DESK NEXT TO IT ON THAT SIDE. THERE'S A
8 DIAMOND-SHAPED CORNER THAT YOU CAN GET YOURSELF
9 INTO, WHERE IT'S HARD TO GET AT YOU. AND THAT'S THE
10 PLACE WHERE ERIK MENENDEZ RETREATED TO AFTER HE
11 UNLOCKED THE DOOR, BEFORE HIS FATHER CAME INTO THE
12 ROOM.

13 AND HIS FATHER GRABS HIM THERE, BUT
14 DOESN'T GET A GOOD HOLD ON HIM, AND ERIK MENENDEZ IS
15 ABLE TO ESCAPE FROM HIS GRASP AND GET OUT OF THE
16 ROOM.

17 NOW, YOU MAY RECALL -- I HAVE A WHOLE
18 BUNCH HERE OF DR. WILSON'S TESTIMONY. OH, GOD,
19 YOU'RE SAYING, NOT THAT AGAIN. A WHOLE BUNCH OF HIS
20 TESTIMONY ABOUT THE DIFFERENT WAYS IN WHICH PEOPLE,
21 ALL PEOPLE, AND PEOPLE WITH POST-TRAUMATIC STRESS
22 DISORDER, REACT TO THE PERCEPTION OF A THREAT.

23 AND THE THREE BASIC WAYS THAT THEY DO
24 IS: TO FIGHT, TO FREEZE, TO FLEE. THEY ARE REALLY
25 THE THREE F'S. WE TALK ABOUT FIGHT OR FLIGHT.
26 FREEZING CAN BE CONSIDERED A FORM OF FLIGHT, BUT
27 THERE ARE REALLY THREE DIFFERENT WAYS.

28 ON THIS OCCASION, HAVING VOWED THE

1 WEEKEND BEFORE THAT HE WAS NOT GOING TO ALLOW
2 HIMSELF TO BE ASSAULTED BY HIM ANY FURTHER, ERIK
3 MENENDEZ FLEES. AND THAT'S AN INSTINCTIVE
4 REACTION. HE FLEES. HE ESCAPES FROM HIS FATHER.
5 HE RUNS DOWNSTAIRS. HE GOES INTO THE DEN. AND HIS
6 MOTHER CALLS OUT TO HIM. SHE SAYS SOMETHING TO
7 HIM.

8 UP AND UNTIL THIS POINT IN HIS LIFE,
9 WHATEVER ELSE HIS MOTHER MAY HAVE DONE, SHE WAS, AT
10 LEAST, A SYMBOL TO HIM OF THE NON-MOLESTER OF HIS
11 PARENTS. AND HERE SHE CALLS OUT TO HIM.

12 AND THIS, I THINK -- THIS IS MY PERSONAL
13 OPINION AND YOU ARE FREE TO MAKE UP YOUR OWN -- I
14 THINK THIS IS THE SINGLE MOST SIGNIFICANT THING THAT
15 HAPPENED IN ERIK MENENDEZ' LIFE, WHAT HAPPENS
16 BETWEEN HIMSELF AND HIS MOTHER IN THAT DEN. BECAUSE
17 HE HAD YEARS TO FIGURE OUT -- YEARS TO FIGURE OUT
18 THAT THERE WAS SOMETHING WRONG WITH HIS FATHER. HE
19 HAD YEARS TO UNDERSTAND THE THREAT THAT HIS FATHER
20 POSED TO HIM. AND AS DANGEROUS AS HIS FATHER WAS,
21 HE KNEW HIM. HE KNEW WHAT HE WAS THAT WEEK.

22 WHAT HE DIDN'T KNOW WAS WHAT HIS MOTHER
23 WAS UNTIL THIS OCCASION. AND HE LOVED HER. HE
24 CLUNG TO THIS NOTION THAT SHE LOVED HIM, THAT SHE

25 WAS A REAL MOTHER. THAT SHE WOULD NEVER HAVE LET
26 THIS HAPPEN HAD SHE KNOWN. ALL OF THOSE NECESSARY
27 DELUSIONS, IF YOU WILL, NECESSARY FOR HIM TO BE ABLE
28 TO GO ON IN LIFE.

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1 BUT WHEN SHE REVEALS TO HIM -- AND
2 THERE'S NO REAL QUIBBLE THAT THAT'S WHAT SHE WAS
3 SAYING -- WHEN SHE REVEALS TO HIM SHE HAS KNOWN ALL
4 ALONG WHAT'S GOING ON IN HIS LIFE, MY VIEW OF IT IS
5 THAT IS THE SINGLE MOST MENTALLY DISORIENTING THING
6 THAT HAPPENS TO HIM IN THIS WHOLE WEEK, MOST
7 PROVOCATIVE THING THAT HAPPENS IN THAT WHOLE WEEK.

8 AND THAT IS WHY HE USES SOME DRAMATIC
9 LANGUAGE WHEN HE TALKS TO DR. WILSON. AND HE'S
10 TRYING TO DESCRIBE NOW HOW HE IS TRYING, FROM THAT
11 MOMENT ON, HOW HE CONCEPTUALIZES HIS MOTHER.

12 I MEAN, HE USED THE TERM "VAMPIRE." IF
13 HE HAD READ MORE FOLKLORE, HE MIGHT HAVE USED THE
14 TERM "CHANGELING" OR "SHAPE-SHIFTER."

15 THE FACT IS, SHE IS NOT WHAT YOU SEE.
16 SHE'S A COMPLETE STRANGER THEN. SHE'S NOT THE
17 MOTHER HE THOUGHT HE HAD. WHATEVER WE MAY THINK OF
18 THE KIND OF MOTHER SHE WAS, SHE WAS THE ONLY MOTHER
19 HE KNEW, AND HE HAD AN ASSUMPTION THAT HIS MOTHER

20 LOVED HIM. AND IT'S COMPLETELY UNDONE BY THAT
21 CONVERSATION, AND NOT -- OF COURSE IT DOESN'T EVEN
22 END THERE.

23 SHE THEN ENGAGED IN BEHAVIOR ALL TOO
24 TYPICAL FOR HER, WHICH IS SHE BLAMES -- SHE BLAMES
25 THE VICTIM. HE IS UPSET BY HER TELLING HIM THAT SHE
26 KNOWS. HE IS ANGRY ABOUT IT. HE IS BETRAYED. HE
27 TELLS HER HE HATES HER. SHE GETS ENRAGED. AND WE
28 KNOW IT DOESN'T TAKE MUCH, IF ANYTHING, TO SET HER

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1 OFF. I DON'T UNDERSTAND ALL OF HER MENTAL
2 MECHANISMS AT ALL. BUT WE KNOW FROM OTHER WITNESSES
3 THAT IT DOES NOT TAKE MUCH TO GET HER COMPLETELY
4 ENRAGED. AND SHE IS.

5 AND SHE FOLLOWS HIM, SCREAMING AT HIM,
6 TO THE GUESTHOUSE. AND AT THE GUESTHOUSE, WHEN LYLE
7 CONFRONTS HER AND SAYS: "HOW COULD YOU LET THIS
8 HAPPEN?" IT'S OBVIOUS EVERYBODY NOW KNOWS WHAT
9 EVERYBODY NOW KNOWS. SHE SAYS NOBODY EVER HELPED
10 HER IN HER LIFE. MAYBE THAT'S TRUE. I DON'T KNOW
11 WHY SHE EXPECTED HELP FROM HER CHILDREN, BUT THAT'S
12 WHAT SHE'S ACCUSING THEM OF. THEY HAD TRIED.
13 YOU'LL SEE FROM THE 12/11 TAPE EVEN, THEY TRIED.
14 AND SHE BLAMES THEM FOR ALL OF HER PROBLEMS, AND

15 THROUGHOUT THE COURSE OF THAT WEEKEND, FOR ALL OF
16 THE PROBLEMS IN THE FAMILY THEN. THEM. NOT HER
17 HUSBAND. NOT HERSELF. THEM.

18 AND THAT IS REALLY -- THAT IS REALLY
19 WHAT UNDOED -- WHAT UNDOED THIS FAMILY, THE MOTHER'S
20 COMPLICITY ALL ALONG IN THE MOLESTATION, AND THE WAY
21 THAT SHE DEALT WITH THIS CRISIS.

22 NOW, AFTER SHE LEAVES, THAT'S WHEN ERIK
23 MENENDEZ FIRST LEARNS HOW DANGEROUS THE SITUATION
24 IS, BECAUSE THAT'S WHEN HE FIRST LEARNS THAT HIS
25 BROTHER HAD, IN FACT, THREATENED HIS FATHER. AND
26 THEN THEY START GOING THROUGH -- THEY HAVE THIS
27 DISCUSSION ABOUT WHAT CAN THEY DO.

28 NOW, ALL THE TESTIMONY YOU HEARD -- AND

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1 I'M NOT GOING TO REPEAT IT -- BUT ALL THE TESTIMONY
2 YOU HEARD ABOUT ISOLATION AND DEPENDENCY, AND
3 HELPLESSNESS, WHETHER YOU CALL IT LEARNED
4 HELPLESSNESS OR WHETHER YOU SEE IT JUST AS THE WAY
5 IN WHICH SOMEONE'S LIFE IS SO CONSTRICTED ALL OF
6 THEIR LIFE THAT THEY DON'T HAVE ANY EXPERIENCE OF
7 MAKING DECISIONS FOR THEMSELVES, THEY DON'T HAVE ANY
8 AREA OF THEIR OWN LIFE IN WHICH THEY'RE ALLOWED TO
9 BE RESPONSIBLE FOR WHAT THEY DO. THEY DON'T

10 DEVELOP, IF YOU WILL, THE MUSCLE REFLEX TO FIGURE

11 THEIR WAY OUT OF THIS KIND OF A LIFE CRISIS.

12 ALL OF THAT TESTIMONY WAS OFFERED TO

13 HELP YOU UNDERSTAND -- I HOPE IT HELPED YOU

14 UNDERSTAND -- WHY IT IS THAT THURSDAY NIGHT ERIK

15 MENENDEZ IS CONVINCED THAT HE CANNOT LEAVE THIS

16 FAMILY TO SOLVE THE PROBLEM. THAT'S WHAT THE WHOLE

17 PURPOSE OF IT WAS, BECAUSE I KNEW WE WERE GOING TO

18 HEAR, BOTH ON THE ISSUE OF HIS CREDIBILITY AS TO

19 WHETHER OR NOT HE'S BEING MOLESTED, AND THE ISSUE

20 OF, QUOTE, WHY THEY DON'T JUST, YOU KNOW, HOP IN THE

21 CAR AND LEAVE THAT THURSDAY NIGHT.

22 I KNEW THAT WAS GOING TO BE THE MAIN

23 THEME OF THE PROSECUTION, TO TRY TO REFUTE THE

24 ENTIRE DEFENSE. AND I THINK IT'S IMPORTANT THAT YOU

25 CONSIDER THAT HIS EXPERIENCES AS A PERSON IN A

26 DOMESTIC VIOLENCE SITUATION ARE NO DIFFERENT THAN

27 THOUSANDS UPON THOUSANDS OF OTHER WOMEN AND CHILDREN

28 AND OTHER PEOPLE. THERE'S NOTHING IDIOSYNCRATIC

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1 ABOUT HIM THAT MADE IT IMPOSSIBLE FOR HIM TO

2 CONCEIVE OF HOW TO GET OUT OF THIS SITUATION, AND

3 WHICH LED TO ALL OF HIS THINKING ABOUT IT ON A

4 PURELY SURVIVAL LEVEL. HOW DO I SURVIVE THIS?

5 THAT'S WHAT HE'S THINKING ABOUT.

6 AND THEY COME TO THE CONCLUSION AFTER
7 THIS DISCUSSION THAT THEY DON'T KNOW HOW TO GET THEM
8 OUT OF THIS SITUATION, BECAUSE ALL THE POWER AND ALL
9 THE CONTROL OVER THE SITUATION IS IN THE HANDS OF
10 THE PARENTS, JUST LIKE ALL COMMUNICATION IN THIS
11 FAMILY IS FROM THE TOP DOWN. IT'S ALL UP TO THE
12 PARENTS. WHAT ARE THEY GOING TO? WHAT ARE THEY
13 GOING TO SAY?

14 AND IN THEIR PERSPECTIVE, ALL THEY CAN
15 DO IS PLAN FOR THE WORST. AND THAT'S WHAT THEY DO.
16 THEY PLAN FOR THE WORST.

17 NOW, THIS MAY SEEM LIKE I'M SWITCHING
18 HERE, BUT I WANT TO TELL YOU THERE IS A PACK OF
19 INSTRUCTIONS, I THINK IT'S ABOUT THIS BIG (INDICATING),
20 THAT'S GOING TO BE READ TO YOU, HOPEFULLY TOMORROW,
21 BUT MAYBE NOT UNTIL FRIDAY. HUGE.

22 IN CALIFORNIA WE GIVE A LOT OF
23 INSTRUCTIONS. I'VE TRIED CASES IN OTHER STATES
24 WHERE THEY DON'T TELL THE JURY HARDLY ANYTHING.
25 IT'S REAL SCARY. HERE WE TELL YOU A LOT, BUT WE
26 DON'T TELL YOU ABSOLUTELY EVERYTHING IN THE
27 INSTRUCTIONS. YOU'RE GOING TO HAVE THEM IN THE JURY
28 ROOM. YOU'RE GOING TO GO OVER THEM. IF YOU'RE LIKE

1 EVERY OTHER JURY I'VE EVER KNOWN, YOU'RE GOING TO

2 SAY. "OH, THIS ISN'T ENGLISH."

3 NEVERTHELESS, THERE ARE SOME THINGS THAT

4 ARE NOT IN THE INSTRUCTIONS THAT ARE SIMPLY A MATTER

5 OF YOUR NEEDING TO UNDERSTAND HOW THE LAW OPERATES.

6 I'M GOING TO TELL YOU SOMETHING NOW. AND IF I WERE

7 WRONG, THE JUDGE WOULD STOP ME.

8 PLANNING TO DEFEND YOURSELF IS NOT

9 PREMEDITATING MURDER. PERIOD. THE FACT THEY WENT

10 AND BOUGHT GUNS DOES NOT EQUAL PREMEDITATING MURDER.

11 IT SIMPLY MEANS, AS IT WOULD MEAN FOR ANY ONE OF US

12 WHO HAVE SOME CONCERN ABOUT OUR SAFETY, IF WE WENT

13 OUT AND BOUGHT GUNS OR TOOK GUNS INTO OUR HOUSE

14 BECAUSE WE WERE CONCERNED ABOUT PEOPLE BREAKING IN;

15 OR WE WERE CONCERNED BECAUSE WE THOUGHT SOMEONE WAS

16 THREATENING US.

17 THAT IS NOT THE STATE OF MIND OF

18 PREMEDITATION AND DELIBERATION FOR FIRST-DEGREE

19 MURDER. THAT IS SIMPLY PLANNING TO DEFEND YOURSELF,

20 AND YOU HAVE A RIGHT TO DO THAT.

21 SO THAT'S NOT IN THE INSTRUCTIONS; AS

22 MUCH OF WHAT MR. CONN SAID AND MUCH OF WHAT I SAY IS

23 NOT WRITTEN IN THE INSTRUCTIONS. THERE IS ROOM HERE

24 FOR US TO JUST APPLY COMMON UNDERSTANDING. AND

25 THAT'S ONE OF THOSE THINGS.

26 SO THE DECISION THEY MAKE THAT NIGHT IS

27 NOT A DECISION TO KILL ANYBODY. IT'S A DECISION TO

28 DEFEND THEMSELVES IF IT COMES DOWN TO THAT. EVEN

1 HAVING MADE THAT DECISION, THERE WAS A TREMENDOUS
2 AMOUNT OF UNCERTAINTY IN ERIK MENENDEZ' MIND AS TO
3 WHETHER OR NOT HE COULD EVER DEFEND HIMSELF THAT WAY
4 AGAINST HIS OWN PARENTS, PARTICULARLY HIS MOTHER.

5 HIS SENSE OF LETHALITY FROM THESE
6 PARENTS, HIS FEAR, HIS HISTORY OF THREAT HAD MADE
7 HIS FATHER THE BIG SCARY PERSON. HIS MOTHER DOES
8 NOT BECOME THE TERRIBLE SCARY PERSON UNTIL THAT VERY
9 THURSDAY NIGHT, AND IT HASN'T REALLY PERCOLATED ALL
10 THE WAY DOWN AS TO WHAT IT MEANS FOR HER TO HAVE
11 KNOWN ALL THIS.

12 I MEAN, HE KNEW HIS WHOLE LIFE, AS HE
13 TESTIFIED, THAT SHE WAS DAD'S ALLY, MORE SO IN THE
14 LAST FEW YEARS THAN EVER BEFORE; THAT SHE CARRIED
15 OUT HIS PROGRAM; THAT SHE AGREED WITH HIS VALUES;
16 THAT SHE AGREED WITH MANAGEMENT OF THE CHILDREN, THE
17 WAY THEY WERE MANAGED. BUT SHE HAD HER OWN
18 PROBLEMS, WHICH LED TO HER OWN EXPRESSIONS OF
19 HOSTILITY AND ANGER AND ALL THE REST OF IT.

20 BUT THE BIG EVIL IN HIS LIFE WAS THE
21 SEXUAL MOLESTATION, AND SHE DIDN'T JOIN THAT LEVEL
22 OF EVIL AND FEAR IN HIS LIFE UNTIL THAT NIGHT.

23 AND IF WE'RE GOING TO ASCRIBE ANY

24 MEANING WHATSOEVER TO THAT ONE SENTENCE OF 33 PAGES
25 OF TRANSCRIPT IN THE 12-11 TAPE, THE ONE SENTENCE
26 THAT MR. CONN IS RELYING ON ABOUT HAVING TO SLEEP ON
27 WHETHER HE COULD KILL HIS MOTHER, THIS IS WHAT IS
28 BEING TALKED ABOUT, IF ANYTHING, HAVING TO DO WITH

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1 TRUTH. IF ANY TRUTH IS CONTAINED IN THAT PHRASE,
2 IT'S THE FACT, AS ERIK MENENDEZ TESTIFIED, THAT EVEN
3 THE NEXT DAY, FRIDAY, WHEN THEY'RE IN THE CAR
4 DRIVING, HE'S TELLING LYLE -- EVEN AFTER THEY BOUGHT
5 THE GUNS -- HE'S TELLING LYLE: "I DON'T KNOW THAT I
6 COULD EVER DO THIS. I DON'T KNOW THAT I COULD EVER
7 DO THIS TO MOM." AND THAT'S ALL THAT MEANS.
8 NOW, THERE'S SOMETHING ELSE THAT'S GOING
9 ON, AND IT'S GOING ON BACK TO THE SUNDAY. BUT IT'S
10 CERTAINLY GOING ON THROUGH THIS THURSDAY NIGHT. AND
11 THAT IS THE CONSTANT NIGHTMARES, THE VERY LITTLE
12 SLEEP THAT ERIK MENENDEZ GETS THE WHOLE WEEK. AND
13 SLEEP DEPRIVATION IS A FACTOR THAT WE HAVE TO
14 CONSIDER IF YOU'RE GOING TO ASSESS: DOES HE GO
15 THROUGH ALL THE PERFECTLY LOGICAL THINGS THAT
16 MR. CONN HAS HAD TWO YEARS TO THINK UP MAYBE HE
17 SHOULD ASK HIM ABOUT.

1 NOW, ON FRIDAY, MY CLIENT TESTIFIED HE
2 WANTED TO PUT IT OUT OF HIS MIND. A CLASSIC DENIAL
3 REACTION. WE ALL HAVE THEM. SCARLETT O'HARA HAD IT.
4 "I'LL THINK ABOUT THAT TOMORROW."

5 AND IT IS NOT INCONSISTENT WITH SOMEONE
6 WITH POST-TRAUMATIC STRESS DISORDER, OR SOMEONE WITH
7 GENERALIZED ANXIETY DISORDER, BECAUSE IT HAPPENED. BUT
8 IT'S JUST ANOTHER FORM OF COPING. ONE WAY OF COPING IS
9 YOU HAVE RESCUE FANTASIES. ANOTHER WAY OF COPING IS YOU
10 FOCUS ON THE FEAR, WHICH HAPPENS LATER.

11 ANOTHER WAY OF COPING IS YOU DENY IT. YOU
12 TRY NOT TO DEAL WITH IT.

13 NOW, MARK HEFFERNAN, I FIND THIS VERY
14 INTERESTING, AND SIX YEARS ON THIS CASE, THIS ONLY
15 OCCURRED TO ME A DAY AGO. SO HERE WE GO.

16 MARK HEFFERNAN TESTIFIED THAT ALTHOUGH HE
17 DOESN'T HAVE ANY RECORDS LEFT AT ALL, HE USED TO KEEP
18 VERY DETAILED SCHEDULES AND DIARIES AND DAY PLANNERS.
19 HE BELIEVES THAT HE GAVE ERIK MENENDEZ A TENNIS LESSON
20 THAT FRIDAY MORNING. ERIK MENENDEZ BELIEVES THE TENNIS
21 LESSON WAS THE DAY BEFORE, ON THURSDAY.

22 WHAT OCCURRED TO ME THE OTHER DAY IS THIS:

23 MARK HEFFERNAN HAS NEVER INDICATED WHETHER
24 OR NOT HE GAVE ANY TENNIS LESSONS EARLIER THAT WEEK TO
25 EITHER ERIK OR LYLE MENENDEZ.

26 AND THE FACT OF THE MATTER IS, I THINK WE
27 ESTABLISHED DURING HIS TESTIMONY, DURING THAT PERIOD OF
28 TIME WHEN HE WAS EMPLOYED BY THE PARENTS, HE NEVER GAVE

1 JUST ONE LESSON A WEEK. THERE WERE ALWAYS NUMEROUS
2 LESSONS A WEEK. WE WENT THROUGH THE FREQUENCY OF HIS
3 BILLING, AT LEAST I THINK WE DID, THIS TRIAL. WE WENT
4 THROUGH THE FREQUENCY OF HIS BILLING TO SHOW HOW MUCH HE
5 WAS BEING PAID ANYWAY. AND YET HE DOESN'T TALK ABOUT
6 ANY OTHER DAY THAT WEEK HE GAVE A LESSON.

7 I MEAN, WHICH TELLS ME, RATIONALLY ENOUGH,
8 HE DOESN'T REMEMBER. ALL HE REMEMBERS IS ONE DAY FROM
9 THAT WEEK. AND I SUBMIT TO YOU THAT IT'S MORE THAN
10 LIKELY HE GAVE MORE THAN ONE LESSON, BUT THAT'S THE ONLY
11 THING THAT STANDS OUT IN HIS MIND. AND IF HIS MEMORY IS
12 IN THAT KIND OF STATE, I DON'T THINK HE CAN ABSOLUTELY
13 ESTABLISH, ESPECIALLY WITHOUT RECORDS, WHETHER THE
14 LESSON WAS ON THURSDAY OR THE LESSON WAS ON FRIDAY.

15 BUT TO ARGUE, AS MR. CONN DID, THAT MY
16 CLIENT IS LYING AND IS IMPEACHED BY MARK HEFFERNAN -- I
17 MEAN, MY CLIENT KNOWS VERY WELL WHAT MARK HEFFERNAN
18 TESTIFIED TO. HE HAS NO REASON TO LIE ABOUT IT. HE
19 COULD HAVE JUST AS EASILY HAVE SAID: "WELL, MARK
20 HEFFERNAN WAS THERE. I TOOK MY LESSON THAT FRIDAY
21 MORNING."

22 AND THE FACT THAT MARK HEFFERNAN TESTIFIED
23 EVERYTHING SEEMED PERFECTLY ORDINARY, WELL, SO WHAT?

24 ERIK MENENDEZ HAS BEEN KEEPING A HORRIBLE

25 SECRET FOR YEARS. HE KNOWS IN FRONT OF OTHER PEOPLE
26 THAT YOU DON'T LET THEM KNOW WHAT THE SECRETS OF THE
27 FAMILY ARE. I MEAN, THAT DOESN'T MEAN ANYTHING ONE WAY
28 OR THE OTHER.

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1 SO FOR HIM TO TAKE THE STAND, MY CLIENT,
2 AND TELL YOU WHAT HIS BEST MEMORY IS -- AGAIN, IT'S
3 ANOTHER THING HE DIDN'T HAVE TO SAY. HE DIDN'T HAVE TO
4 SAY: "OH, MARK WAS THERE. I THOUGHT IT WAS THURSDAY."
5 HE COULD HAVE DOVETAILED BEHIND THE TESTIMONY OF HIS
6 COACH. THAT DOESN'T HAPPEN TO BE THE WAY HE REMEMBERS
7 IT.

8 IN ANY EVENT, HE IS ON THE TENNIS COURT
9 TRYING TO FORGET ABOUT ALL THIS, AND HIS BROTHER
10 APPROACHES HIM AND SAYS: "THIS ISN'T GOING AWAY. THE
11 DANGEROUS SITUATION STILL EXISTS."

12 THE FACT THAT YOU KNOW THEIR FATHER HAS
13 TOLD THEM OVER THE COURSE OF THEIR LIFE, IF YOU'RE GOING
14 TO GET SOMEBODY, YOU DON'T KNOW WHEN IT'S COMING. YOU
15 DON'T TELEGRAPH YOUR BLOWS. YOU DON'T SHOW YOUR HAND.
16 WHICH MAY ALSO EXPLAIN WHY MR. MENENDEZ, WHEN ERIK
17 MENENDEZ ESCAPES FROM HIM ON THURSDAY, HE ISN'T GOING TO
18 GO RUNNING ALL OVER THE HOUSE CHASING HIM. HE DOESN'T
19 KNOW WHAT HIS WIFE IS GOING TO SAY DOWNSTAIRS, AND HE IS
20 NOT THE KIND OF PERSON THAT REVEALS HIS THINKING.

21 SO, IN ANY EVENT, ON THIS FRIDAY, LYLE
22 MENENDEZ CONVINCES ERIK MENENDEZ THAT THEY, IN FACT, DO
23 HAVE TO GO BUY GUNS, BECAUSE BY NOW ERIK HAD GONE BACK
24 INTO TOTAL PASSIVITY, TOTAL HELPLESSNESS, DON'T DO
25 ANYTHING, JUST RETREAT, WHICH IS THE WAY HE HAS SURVIVED
26 ALL THESE YEARS, AND THAT'S HIS NATURAL TENDENCY, IS TO
27 JUST BE PASSIVE, GO LIMP, DO NOTHING.
28 BUT HIS BROTHER IS CONVINCING HIM THAT

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1 ISN'T GOING TO SUFFICE IN THAT SITUATION. SO THEY GO
2 OFF ON THIS SEARCH FOR GUNS.
3 AND THAT'S WHEN, AS I POINTED OUT, HE TELLS
4 YOU ABOUT THREE DIFFERENT GUN STORES THAT THEY WENT TO
5 THAT DAY. AND AS THAT STORY COMES OUT, IT'S OBVIOUS
6 THAT THERE IS A LOT OF UNCERTAINTY AND CONFUSION HERE.
7 A LOT OF AMBIVALENCE ABOUT WHAT THEY SHOULD DO.
8 AND AGAIN, IF THIS WAS A PLAN TO KILL,
9 WHAT'S THE HURRY? WAIT TWO WEEKS. YOU'VE GOT THE FAKE
10 I.D. GET YOUR HANDGUNS AND SNEAK UP ON PEOPLE WITH
11 HANDGUNS. THEY'RE MUCH QUIETER THAN SHOTGUNS, YOU KNOW.
12 YOU CAN TAKE ADVANTAGE OF PEOPLE IN ALL SORTS OF PLACES.
13 THEY'RE EASY TO CONCEAL AND THEY'RE EASY TO GET RID OF.
14 IN ANY EVENT, THEY DON'T DO THAT. THEY BUY
15 THE SHOTGUNS, AND THEY BUY ONE BOX OF DOVE AMMUNITION,
16 WHICH I THINK IS -- THE FACT THAT THEY DON'T EVEN ASK

17 AND DON'T EVEN FIND OUT WHAT KIND OF AMMUNITION DO YOU
18 USE, SHOWS THAT THIS IS A LAST-MINUTE THING. IT IS A
19 DECISION THAT'S MADE WITHOUT CLEAR THINKING, A DECISION
20 THAT'S MADE WITHOUT REAL INTENTION TO KILL ANYBODY. AND
21 THEY ARE TOTALLY INEXPERIENCED IN THE AREA OF GUNS.
22 THEY DON'T KNOW ANYTHING ABOUT IT, AND THEY DON'T TAKE
23 STEPS TO FIND OUT MUCH ABOUT IT EITHER.

24 AND THAT IS THE REASON WHY ON SATURDAY THEY
25 STILL HAVE DOUBTS ABOUT WHETHER OR NOT THEY ARE IN A
26 POSITION TO PROTECT THEMSELVES.

27 NOW, WHAT WOULD MAKE THEM CONCERNED ABOUT
28 THOSE DOUBTS ON SATURDAY? WELL, WHAT HAPPENED FRIDAY

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1 NIGHT?

2 WHAT HAPPENED FRIDAY NIGHT -- I HAVE TO
3 APOLOGIZE, I HAVE THE WORST HEADACHE THIS MORNING. SO
4 IF I REPEAT MYSELF, FORGIVE ME.

5 WHAT HAPPENS THAT FRIDAY NIGHT IS THAT
6 THEIR MOTHER TELLS THEM THAT THE TIME FOR THIS
7 SHARK-FISHING TRIP, JUST A TYPICAL FAMILY OUTING, TO GO
8 SHARK FISH -- HAS BEEN CHANGED. AND THEY READ A GREAT
9 DEAL OF SIGNIFICANCE INTO THAT, BECAUSE THEY'VE HAD THIS
10 HORRIBLE CONFRONTATION, EACH OF THEM, WITH BOTH PARENTS
11 THE NIGHT BEFORE.

12 AND THE PARENTS ARE IN NON-COMMUNICATION

13 MODE, WHICH IS THEIR NORMAL MODE. NOBODY TALKS ABOUT
14 ANYTHING HERE. AND ALL THEY LEARN IS THAT THE TIME FOR
15 THE TRIP HAS BEEN CHANGED, AND THAT IS ALARMING. I
16 MEAN, EVERYTHING GOING ON HERE IS ALARMING.

17 WEDNESDAY IS NOT A PARTICULARLY ALARMING
18 DAY, BUT THURSDAY IS TREMENDOUSLY SO. AND NOW, FRIDAY
19 NIGHT, AFTER THEY HAVE TAKEN THESE STEPS IN
20 CONSIDERATION OF SURVIVING, THEIR MOTHER TELLS THEM
21 THIS.

22 WE WENT THROUGH A WHOLE BUNCH OF STUFF WITH
23 DR. WILSON ALSO, WHICH I WON'T READ TO YOU, ABOUT FROM
24 MY CLIENT'S PERSPECTIVE AND FROM THE PERSPECTIVE OF
25 ABUSED AND BATTERED PEOPLE, HOW YOU SCAN YOUR
26 ENVIRONMENT CONSTANTLY FOR CUES OF WHAT'S TO COME. YOU
27 ARE DEALING WITH PEOPLE WHO ARE NON-COMMUNICATIVE. YOU
28 ARE DEALING WITH A PERSON, AT LEAST, WHO TAKES PRIDE IN

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1 BEING THE MASTER OF THE SNEAK ATTACK. AND SO YOU ARE
2 TRYING TO FIGURE OUT WHAT'S ON THEIR MIND. TYPICAL
3 HYPERVIGILANT BEHAVIOR.

4 AND THIS IS SOMETHING I NOTED THAT
5 DR. DIETZ IGNORED COMPLETELY IN HIS ANALYSIS, WHICH
6 DR. WILSON EMPHASIZED OVER AND OVER AGAIN.
7 HYPERVIGILANCE DOESN'T MEAN TAKING PREVENTIVE ACTION.
8 THAT'S NOT WHAT IT MEANS. HYPERVIGILANCE DOESN'T MEAN

9 TAKING LOADED SHOTGUNS ON A FISHING BOAT.

10 HYPERVIGILANCE MEANS BEING EXTREMELY ALERT
11 TO POTENTIAL THREAT, AND CONSTANTLY SCANNING, LIKE I AM
12 HYPERVIGILANT ABOUT ALL OF YOU NOW. I WANT TO SEE IF
13 THERE'S ANY REALLY HORRIBLE, ANGRY LOOKS, OKAY. THANK
14 YOU. I NEEDED THAT.

15 SCANNING YOUR ENVIRONMENT, SCANNING YOUR
16 ENVIRONMENT. CHECKING FOR CUES -- ACTUALLY, I AM NOT
17 CHECKING YOU FOR CUES. DON'T FEEL THAT YOU HAVE TO HAVE
18 A CERTAIN --

19 MR. CONN: I WILL OBJECT TO THIS COMMENT AS NOT
20 BASED UPON THE EVIDENCE, YOUR HONOR.

21 THE COURT: OVERRULED.

22 YOU MAY CONTINUE.

23 MS. ABRAMSON: BUT THAT'S WHAT IT REALLY MEANS.
24 IT MEANS CONSTANTLY LOOKING OVER YOUR ENVIRONMENT TO SEE
25 WHERE IS IT COMING FROM, WHEN IS IT COMING, AND WHAT
26 WILL IT DO?

27 AND THAT'S WHY VERBAL CUES ARE SO IMPORTANT
28 IN ANALYZING WHAT HAPPENED IN THOSE LAST FEW DAYS.

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1 AND THIS ONE, TO THEM, IS A VERY
2 SIGNIFICANT EVENT; THAT THE TIME FOR THIS -- THEY ARE
3 GOING TO BE OUT ON THE OCEAN, YOU KNOW, FISHING FOR
4 SHARKS WITH DANGEROUS PARENTS. AND IT ALARMS THEM. AND

5 THAT'S WHAT STIMULATES THEM TO BE CONCERNED THE NEXT DAY
6 ABOUT WHETHER OR NOT WE CAN PROTECT OURSELF ON A FISHING
7 BOAT.

8 IT'S RIDICULOUS TO THINK YOU WOULD TAKE
9 THESE HUGE GUNS ON THE BOAT. I MEAN, I WAS KIND OF
10 EMBARRASSED FOR HIM WHEN DR. DIETZ SUGGESTED THAT, BUT
11 ALL RIGHT.

12 BUT THE POINT IS TO TRY TO FIGURE OUT HOW
13 BAD IS THIS. AND IT HAS THEM TOTALLY FOCUSED THAT WHOLE
14 WEEK, TOTALLY FOCUSED ON CONCERNS ABOUT THEIR PARENTS
15 AND ON FEARS ABOUT WHAT THEY'RE GOING TO DO TO THEM.

16 AND THAT SATURDAY, LYLE MENENDEZ' CONCERN
17 IS: "DID I PICK OUT THE RIGHT AMMUNITION?" BECAUSE
18 NOBODY HELPED HIM PICK THE AMMUNITION. HE JUST TOOK A
19 BOX. FOR ALL HE KNEW, IT ISN'T EVEN THE RIGHT GAUGE.
20 IT WON'T FIT THE GUN.

21 AND THAT'S WHAT ERIK MENENDEZ SAYS. IT
22 WASN'T WHETHER THE LOAD WAS RIGHT, WHETHER THE SIZE OF
23 THE PELLETS WAS RIGHT. IT WAS WHETHER THE SHELL WOULD
24 EVEN FIT INTO THE GUN AND FIRE.

25 I MEAN, HE KNEW IT COULD GO IN, BECAUSE HE
26 PUT TWO IN. BUT WOULD IT FIRE, WOULD IT WORK?

27 SO THEY GO TO A GUN STORE. THIS GUN STORE
28 REALLY EXISTS. I THINK I BROUGHT THAT OUT WITH

1 DETECTIVE ZOELLER, THAT SUCH A PLACE REALLY EXISTS IN
2 VAN NUYS. IT'S GOT AN INDOOR TARGET RANGE ON ONE SIDE
3 OF THE STREET, AND THEN A LITTLE STORE WHERE THEY SELL
4 GUNS AND AMMUNITION ON THE OTHER SIDE.

5 AND IF THEY HAD WANTED TO, THEY COULD BRING
6 IN THE CLERKS FROM THAT STORE TO SAY: "OH, WE DIDN'T
7 SELL THIS KIND OF AMMUNITION," OR "NO, WE DON'T HAVE A
8 TARGET RANGE." BUT OF COURSE THEY DID, AND THEY DO.

9 AND SO THAT'S UNCONTROVERTED, THAT THERE IS
10 THIS BUSINESS HERE IN VAN NUYS, JUST AS MY CLIENT
11 DESCRIBED IT, WHERE THEY WENT. AND THEY COULD HAVE
12 ASKED, AND THEY COULD HAVE BROUGHT IN, IF THEY COULD
13 DISPROVE IT, THE CLERKS IN THAT STORE. "DID YOU EVER
14 TELL ANYBODY THAT IF YOU'RE SEEKING TO PROTECT YOURSELF,
15 YOU SHOULD BE BUYING NO. 4 BUCKSHOT INSTEAD OF SEVEN AND
16 A HALF DOVE LOAD?"

17 THEY MIGHT HAVE GOTTEN THEIR ANSWER, RATHER
18 THAN SPECULATING THAT IT WAS NOT THE CLERKS IN THE STORE
19 THAT SUGGESTED TO THEM THAT THEY NEEDED BETTER
20 AMMUNITION.

21 SO THEY HAVE A DISCUSSION ABOUT WHAT DOES
22 IT TAKE TO PROTECT YOURSELF WITH A MOSSBERG 500-SERIES
23 SHOTGUN, WHICH, AS DEPUTY VAN HORN TESTIFIED, IS A
24 PROTECTION WEAPON AND NOT A HUNTING WEAPON.

25 AND IT IS SUGGESTED TO THEM THAT THEY NEED
26 BUCKSHOT, NOT BIRD SHOT, AND THAT IS WHEN THEY BUY --
27 ONE BOX IS WHAT ERIK MENENDEZ RECALLS -- WHICH ONLY HAS
28 TEN SHELLS IN IT. THAT'S ALL THERE IS. THERE'S ONLY

1 TEN AVAILABLE.

2 AND SO THEY BUY IT, AND THEY WANT TO MISS
3 THE FISHING TRIP, BUT THEY DON'T WANT TO MISS IT IN SO
4 BLATANT A WAY THAT IT'S GOING TO BRING DOWN THE WRATH
5 THAT THEY'RE EXPECTING FROM THEIR PARENTS. SO THEY ARE
6 AN HOUR LATE. AND THAT IS CONFIRMED BY THE CAPTAIN.

7 NOW, IT IS SIGNIFICANT, GIVEN THE WAY THIS
8 PROSECUTION IS BEING CONDUCTED -- AND MY POSITION, WHICH
9 I HAVE MADE VERY CLEAR TO YOU, THAT IT'S A DESPERATION
10 MOVE HERE -- THAT THEY DON'T CALL THE FISHING BOAT
11 PEOPLE. HERE'S THE DAY BEFORE -- THE DAY BEFORE THIS
12 HOMICIDE THAT THEY ARE PROSECUTING, AND THEY DON'T WANT
13 TO LET YOU KNOW ANYTHING AT ALL ABOUT WHAT'S GOING ON
14 WITH THIS FAMILY.

15 WHY? BECAUSE THAT IS NOT YOUR NORMAL
16 FAMILY OUTING FISHING TRIP. WHAT IS VERY CLEAR FROM THE
17 TESTIMONY OF MS. GASKILL AND MR. ANDERSON IS THAT THERE
18 IS TENSION IN THIS FAMILY. IF THEY REALLY WERE GOING ON
19 THE THEORY OF TENSION IN THE FAMILY, THEY WOULD HAVE PUT
20 ON THE FISHING BOAT PEOPLE. IF THEY REALLY BELIEVED
21 THAT ERIK MENENDEZ AND LYLE MENENDEZ ARE AT THE FRONT OF
22 THE BOAT GETTING SOAKING WET FOR SIX HOURS, PLOTTING
23 MURDER, THEY WOULD HAVE PUT THEM ON. THIS IS JUST THEIR
24 COME-BACK, BECAUSE WE CALLED THOSE WITNESSES.

25 AND WE CALLED THOSE WITNESSES TO

26 CORROBORATE ERIK MENENDEZ' TESTIMONY, FIRST OF ALL, THAT
27 THEY WENT ON A FISHING TRIP, WHICH IS ALSO REFERRED TO
28 ON THE 12-11 TAPE.

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1 AND SECOND OF ALL, THAT HE WAS TERRIFIED;
2 THAT THEY STAYED AWAY FROM THEIR PARENTS; THAT THEY
3 HUDDLED TOGETHER AT THE FRONT OF THE BOAT.
4 NOW, LET'S TALK ABOUT THE PROSECUTION
5 NOTION THAT THEY'RE PLOTTING MURDER AT THE FRONT OF THE
6 FISHING BOAT. THERE ARE SO MANY CHARTS BACK THERE, I
7 CAN'T GET ANYTHING OUT OF THERE. BUT YOU DID SEE THE
8 PICTURE OF THE FISHING BOAT. IT'S A DINKY BOAT. OKAY.

9 MORE IMPORTANTLY, IF THEY WERE NOT AFRAID
10 OF THEIR PARENTS, IF THEY WERE SO INDEPENDENT OF THEIR
11 PARENTS, WHY DID THEY GO ON THE FISHING TRIP AT ALL? IF
12 YOU WANT TO PLOT MURDER, WHY NOT STAY HOME AND PLOT
13 MURDER? YOU'RE NOT AN AFRAID OF THESE PEOPLE. YOU'RE
14 INDEPENDENT OF THESE PEOPLE. SAY "WE'RE NOT GOING ON
15 THE FISHING TRIP. GET OUT OF HERE." THEY GO OFF, AND
16 YOU CAN TALK WITHOUT GETTING SOAKING WET FOR SIX HOURS.

17 THERE IS NO REASON FOR THEM TO BE ON THAT
18 BOAT EXCEPT THEY ARE AFRAID OF THESE PEOPLE. THEY DON'T
19 DARE DEFY THEM. THEY CANNOT STAND UP FOR THEMSELVES.
20 THEY CANNOT REFUSE TO GO ONCE THEY SHOW UP AT HOME AND
21 THE PARENTS ARE STILL THERE. I MEAN, THAT'S THE POINT.

22 AND THE TESTIMONY OF MR. ANDERSON AND
23 MS. GASKILL MAKE IT CLEAR THAT THEY ARE ACTING IN A WAY
24 THAT CAN ONLY BE ASCRIBED TO FEAR. THEY ARE STAYING
25 AWAY FROM THE PARENTS. IF NOT, HOW COME MOM AND DAD
26 AREN'T SAYING: "OH, BOYS, BOYS, DON'T GET WET UP THERE.
27 COME BACK HERE. BOYS, BOYS. IT MUST BE COLD. HERE,
28 LET ME HELP YOU PUT ON YOUR JACKET."

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1 WHAT DO WE HEAR? THEY NEVER SAY A WORD TO
2 THEM. THEY KNOW WHY THEIR SONS ARE AT THE FRONT OF THE
3 BOAT AWAY FROM THEM. THEY KNOW THEIR OWN MISDEEDS.
4 THEY KNOW THEY'VE GOT THEM SCARED TO DEATH. THEY WANT
5 THEM SCARED TO DEATH. THAT'S HOW THEY'VE CONTROLLED
6 THEM THEIR ENTIRE LIFE. THEY ARE HOPING THAT THEIR
7 WHOLE TRACK RECORD OF SCARING THEM TO DEATH WILL
8 CONTINUE TO CONTROL THEM.

9 THAT'S WHAT THE PARENTS REALLY BELIEVE.
10 NOW, THE SONS DON'T KNOW THAT. THE SONS THINK THEY'RE
11 GOING TO MAKE GOOD ON THE THREATS.

12 BUT THE FACT OF THE MATTER IS, THESE
13 PARENTS HAVE BEEN CONTROLLING -- THEY HAVEN'T NOTICED
14 THAT THEY'RE GETTING OLDER. THEY HAVE BEEN CONTROLLING
15 THEM THROUGH FEAR THEIR ENTIRE LIFE. THEY THINK THEY'RE
16 STILL COMPLETELY IN CHARGE. THEY WOULDN'T DARE. THAT'S
17 THEIR THINKING.

18 BUT FOR THE KID WHO'S NOW BEEN THREATENED
19 BEYOND THE POINT WHEN HE CAN CONTINUE TO COPE, HE
20 BELIEVES THEY'RE REALLY GOING TO SPRING INTO ACTION.
21 THEY DON'T THINK IT'S NECESSARY. THEY FIGURE THEY'RE
22 GOING TO CONTROL THEM FOREVER.
23 WHAT KIND OF FAMILY IS ON A FISHING TRIP
24 WHERE THE KIDS ARE OBVIOUSLY THIS UNCOMFORTABLE,
25 OBVIOUSLY THIS STRANGE, AND THEY NEVER SAY A WORD ABOUT
26 IT? THEY DON'T GO TO THEM, ASK THEM: "COME BACK HERE,
27 IT'S WARMER." NOTHING.
28 BECAUSE THEY KNOW THEY'VE GOT THEM SCARED,

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1 AND THEY WANT TO KEEP THEM SCARED, AND THAT'S WHAT
2 THEY'RE DOING IN THE FRONT OF THE BOAT. TO CONSPIRE
3 MURDER -- THEY WERE TOGETHER ALL DAY SATURDAY. THEY
4 NEED SIX HOURS IN THE DARK, IN THE WET, TO FORMULATE A
5 PLAN? A PLAN OF WHAT? THERE IS NO PLAN. THAT'S THE
6 MOST OBVIOUS THING OF ALL. TO FORMULATE -- NOT BUY
7 MOVIE TICKETS? TO FORMULATE -- NOT TO HAVE AN ALIBI?
8 NO. THAT WON'T DO.
9 SO THEY GET BACK FROM THE FISHING TRIP, AND
10 THEY ARE RELIEVED. YOU REMEMBER THEIR TESTIMONY THAT
11 THE TENSION SEEMS TO DIMINISH SOMEWHAT AT THE END. AND
12 IT ISN'T CLEAR, BUT WE CAN ASSUME, OR WE CAN AT LEAST
13 LOGICALLY INFER THAT IT'S THE DEFENDANTS' FEAR THAT IS

14 WHAT IS PERCEIVED AS THE TENSION, AND IT DIMINISHES SOME
15 BY THE END OF THE TRIP, BECAUSE THEY DIDN'T GET KILLED.
16 AND THEY WERE CONCERNED AT FIRST THAT THEY COULD HAVE
17 BEEN.

18 SO THEY COME BACK HOME, AND THEY WANT TO
19 TALK ABOUT NOW WHAT? WHAT'S GOING TO HAPPEN NEXT?
20 "THEY DIDN'T KILL US. DOES THAT MEAN EVERYTHING'S
21 OKAY?"

22 AND THEY DECIDE THAT THE FACT THAT THEY
23 WEREN'T KILLED MEANS EVERYTHING MIGHT NOT BE OKAY, BUT
24 MAYBE NOW IS THE TIME -- MAYBE NOW IT'S RIPE, TO
25 CONTINUE SCANNING, BUT TRY TO GET THEM TO TALK.

26 LET'S HEAR WHERE THEIR THINKING IS. LET'S
27 FIND OUT IF THE REASON NOTHING BAD HAS HAPPENED TO US IS
28 BECAUSE THEY HAVE FORGIVEN US FOR THREATENING TO GO

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1 PUBLIC. THAT'S ONE POSSIBILITY. OR WHETHER IT'S
2 BECAUSE, AS DAD ALWAYS SAID, THEIR PLANS ARE MADE AND
3 THEY'RE NOT GOING TO TELL US ABOUT THEM.

4 THEY ACTUALLY COME TO THE FORMER
5 CONCLUSION.

6 "WELL, THINGS MIGHT BE BETTER NOW. OKAY.
7 YOU TALK TO THEM TOMORROW. LET'S STAY APART, BECAUSE
8 WHEN WE'RE TOGETHER IT'S MOST DANGEROUS. LET'S STAY
9 APART, SEE IF YOU CAN ENGAGE THEM IN CONVERSATION

10 TOMORROW."

11 THAT'S WHAT ERIK MENENDEZ IS TELLING HIS
12 BROTHER. THAT'S WHAT HIS BROTHER VOLUNTEERS TO BE, THE
13 ONE TO DO THAT, AND THEY MAKE THAT DECISION AT U.C.L.A.,
14 AND THEY COME BACK HOME.

15 AND WHEN THEY COME BACK HOME, THE DOOR IS
16 NOW LOCKED AGAINST THEM. THEY DON'T HAVE KEYS. THEY
17 HAVE TO RING THE BELL. THEIR MOTHER COMES DOWN, AND SHE
18 IS ANGRY, AND THERE IS A DISCUSSION WITH LYLE MENENDEZ
19 ABOUT THE KEY AND NO KEY, AND WHY THEY DON'T HAVE A KEY,
20 WHY THEY DIDN'T TAKE THE KEY, WHATEVER.

21 AND WHEN ERIK MENENDEZ CHIMES IN, OR TRIES
22 TO CHIME IN ON THE DISCUSSION, SHE TURNS ON HIM AND
23 SAYS: "SHUT UP. YOU KNOW, IF YOU HAD KEPT YOUR MOUTH
24 SHUT, THIS FAMILY MIGHT HAVE WORKED OUT."

25 WHICH TELLS HIM -- THIS IS A HYPERVIGILANT
26 PERSON SCANNING FOR CUES -- TELLS HIM, NOT UNREASONABLY,
27 MIND YOU, THAT SHE IS BLAMING HIM THAT THE FAMILY HAS
28 NOT WORKED OUT.

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1 AND IN HIS MIND WHAT DOES IT MEAN WHEN THE
2 FAMILY HAS NOT WORKED OUT? SOMEONE'S GOT TO GO. AND
3 FROM THE PARENTS' PERSPECTIVE, IT AIN'T GOING TO BE THE
4 PARENTS. IT'S GOING TO BE THE KIDS.

5 AND THIS IS HOW HE INTERPRETS THAT REMARK,

6 RIGHT OR WRONG. THIS IS HOW HE INTERPRETS IT. NOT

7 IRRATIONAL, GIVEN THIS FAMILY HISTORY, TO INTERPRET IT

8 THAT WAY.

9 SO HE IS VERY ALARMED AND HE WANTS TO GO

10 SLEEP IN THE GUESTHOUSE, AS HE DID THURSDAY NIGHT. BUT

11 HIS BROTHER INSISTS "NO, LET'S NOT -- LET'S NOT DEFY

12 THEM OR DO ANYTHING UNUSUAL IN ANY WAY. THERE IS STILL

13 HOPE THAT THIS IS GOING TO WORK OUT. SO SLEEP IN YOUR

14 OWN ROOM."

15 AND HE DOES, AND THEN HE GOES UP TO HIS OWN

16 ROOM, AND HE IS MULLING OVER WHAT DOES THIS STATEMENT

17 FROM HIS MOTHER MEAN? AND IT'S VERY ALARMING. AND THEN

18 HIS FATHER COMES POUNDING ON THE DOOR. BUT THIS TIME HE

19 DOESN'T OPEN THE DOOR. THIS TIME HE IS TOO AFRAID.

20 NOW, HE KNOWS WHAT HE DIDN'T KNOW THURSDAY.

21 IF HE HAD KNOWN, HE WOULDN'T HAVE OPENED THE DOOR THEN

22 EITHER, I SUBMIT. BUT IN ANY EVENT, SATURDAY NIGHT HE

23 IS NOT OPENING THE DOOR.

24 AND HE THEN REACTS TO THE THREAT OF HIS

25 FATHER AT THE DOOR WITH THE SECOND "F". HE FREEZES. HE

26 IS SITTING THERE FROZEN. HE CAN'T MOVE. HE'S GOT A

27 GUN. HE DOESN'T BELIEVE HE COULD USE IT EVEN IF HIS

28 FATHER BREAKS IN THE DOOR IN THAT FROZEN STATE. IT'S

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1 LIKE -- IT'S LIKE SLEEP PARALYSIS. YOU WANT TO WAKE UP,

2 BUT YOU CAN'T.

3 AND HE DOESN'T FEEL HE COULD USE THE GUN,
4 AND HE PICTURES, EVEN IF HE DID, HIS MOTHER WOULD BE IN
5 WITH THE RIFLE, AND HE'D HAVE TO LEAP OUT THE WINDOW.

6 THAT'S AS FAR AS HIS THINKING GOES. JUST
7 THAT KIND OF CONCRETE THINKING, WHICH IS SO TYPICAL OF
8 SOMEONE WHOSE FOCUSED ON FEAR, WHO IS NOT DELIBERATING
9 AND WEIGHING AND LOOKING AT CONSEQUENCES.

10 WE ARE NOT TALKING HERE ABOUT WHAT IS MEANT
11 IN THE LAW BY REFLECTIVE THOUGHT, AND WE'RE ON SATURDAY
12 NIGHT NOW BEFORE EVERYTHING BECOMES OVERT.

13 IN ANY EVENT, HIS FATHER GOES AWAY SAYING:
14 "YOU'VE GOT TO COME OUT OF THERE AT SOME POINT."

15 NOW, MR. CONN MADE A BIG DEAL IN HIS
16 CROSS-EXAMINATION OF MY CLIENT ABOUT HOW THE NEXT
17 MORNING, SUNDAY MORNING, MY CLIENT ACTUALLY LEAVES HIS
18 ROOM, DOESN'T JUMP OUT THE WINDOW. HE GOES OUT THE
19 DOOR. AND HOW THIS THING SATURDAY NIGHT COULDN'T HAVE
20 HAPPENED IF HE LEAVES HIS BEDROOM SUNDAY MORNING. HE
21 TESTIFIES HE LEAVES QUITE EARLY. I AM NOT SURE IF HE
22 GAVE THE EXACT TIME, BUT EARLY IN THE MORNING.

23 TAKE A LOOK AT HIS STATEMENT OF SEPTEMBER
24 17, 1989, LONG BEFORE HE WAS ARRESTED. HE TELLS THE
25 POLICE -- HE TELLS ZOELLER AND LINEHAN, CONCERNING HIS
26 FAMILY'S HABITS, THAT HIS FATHER ON THE WEEKEND IS A
27 VERY LATE RISER. HE USUALLY DOESN'T GET UP UNTIL 10:00
28 OR 11:00 IN THE MORNING, HE TELLS HIM. THAT'S HIS

1 FATHER'S HABIT AND CUSTOM.

2 SO IT IS NOT AT ALL EXTRAORDINARY THAT
3 EARLY ON A SUNDAY MORNING HE COULD WALK OUT OF HIS
4 BEDROOM, KNOWING HIS FATHER WOULD STILL BE IN HIS OWN
5 BEDROOM ASLEEP, BECAUSE HE DOESN'T ROLL OUT OF THERE ON
6 THE WEEKEND UNTIL 10:00 OR 11:00 IN THE MORNING.

7 IN ANY EVENT, ON SUNDAY HE STAYS AWAY. HE
8 COMES BACK AROUND MIDDAY TO FIND OUT WHAT'S BEEN GOING
9 ON. HYPERVIGILANT. SCANNING FOR CUES.

10 HE FINDS OUT THAT HIS BROTHER HAS NOT DONE
11 HIS PART, HAS NOT GONE INTO THE MAIN HOUSE AND TRIED TO
12 ELICIT ANY KIND OF FEEDBACK OR INSIGHT INTO HIS PARENTS'
13 THINKING, AND HE THEN LEAVES THE HOUSE AGAIN, INDICATING
14 THAT HE'S GOING TO CONTINUE TO STAY AWAY.

15 AND HE'S OBVIOUSLY SUPPOSED TO BE HOME
16 EARLIER THAN WHEN HE DOES GET HOME THAT NIGHT, IN ORDER
17 TO KEEP A SOCIAL PLAN WITH HIS BROTHER TO GO TO THE
18 MOVIES. THAT WAS THE ORIGINAL PLAN FOR THAT EVENING.
19 THEY WERE GOING TO GO TO THE MOVIES THAT NIGHT, BECAUSE
20 HIS BROTHER HAD MADE THIS ARRANGEMENT WITH HIS FRIEND,
21 CAREY PARKER, A PERSON YOU'VE ONLY HEARD ABOUT. BUT
22 CAREY PARKER WAS SUPPOSED TO MEET THEM AT "BATMAN" THAT
23 NIGHT.

24 SO HE STAYS AWAY. AND WHEN HE COMES BACK,
25 HE FINDS OUT THAT THERE HAVE BEEN THINGS SAID DURING THE
26 COURSE OF THE DAY THAT HE AND HIS BROTHER INTERPRET VERY

27 OMINOUSLY, AND THEY DO INDEED WANT TO LEAVE.

28 NOW, I AM GOING TO STOP HERE ON THE

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1 EVALUATION OF SUNDAY, BECAUSE I WANT TO TALK A LITTLE
2 BIT -- ACTUALLY, I DON'T WANT TO TALK AT ALL. I WANT TO
3 GO HOME AND GO TO BED. BUT I WANT TO TALK A LITTLE
4 BIT -- I AM SORRY -- ABOUT MENTAL STATE AND THE LAW
5 BEFORE I COMPLETE WHAT HAPPENS THAT SUNDAY NIGHT.

6 SOMEWHERE AROUND HERE -- LET ME GET THIS.

7 YOU'VE HEARD MR. CONN GIVE SOME DEFINITIONS OF HOMICIDE.

8 THE LAW OF HOMICIDE IS VERY COMPLEX, AND IT
9 IS FOR LAWYERS AS WELL AS FOR JURORS. AND ONE OF THE
10 THINGS I HAVE SEEN OVER THE YEARS IS JURORS GET VERY
11 INVOLVED IN TRYING TO INTERPRET THESE TERMS, AND YOU DO
12 HAVE TO DO IT. IT'S VERY HARD WORK.

13 BUT MY OWN EXPERIENCE -- AND I'VE BEEN
14 DOING HOMICIDE FOR 20 YEARS -- AND EVERY SINGLE CASE,
15 EVERY SINGLE TIME, I HAVE TO RETHINK MY WAY THROUGH THE
16 LAW OF HOMICIDE. TO CONCEPTUALIZE IT IS REALLY
17 DIFFICULT.

18 SO EVEN THOUGH I AM GOING TO BE TALKING TO
19 YOU ABOUT IT, YOU'RE GOING TO HAVE TO WRESTLE WITH THIS
20 THING ON YOUR OWN DURING DELIBERATIONS.

21 BUT BASICALLY, AS I SAID BEFORE, THERE HAS
22 TO BE A COMBINATION OF A PARTICULAR STATES OF MIND --

23 MENTAL STATE, INTENTIONALITY, IF YOU WILL, AND ACTION IN
24 ORDER FOR A CRIME TO BE COMMITTED. NEITHER ONE BY
25 ITSELF, THE THINKING, NOR THE OTHER BY ITSELF, THE
26 ACTION, CONSTITUTES THE CRIME. THERE HAS TO BE A
27 COMBINATION. OKAY.

28 FOR FIRST-DEGREE MURDER -- WELL, FIRST OF

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1 ALL, IT'S TYPICALLY ARGUED, AND I AM WILLING TO ARGUE IT
2 THIS WAY, IF IT HELPS YOU TO CONCEPTUALIZE IT.

3 IF YOU'RE TALKING ABOUT THEORIES OF MURDER,
4 YOU START OUT WITH SECOND-DEGREE MURDER. NOT BECAUSE
5 IT'S ORDINARY, BUT BECAUSE IT'S THE SECOND DEGREE OF
6 MURDER. IT'S NOT PREMEDITATED AND IT'S NOT DELIBERATED.
7 THAT'S SECOND-DEGREE MURDER, OKAY.

8 YOU NEED ADDITIONAL INFORMATION ABOVE THE
9 DESCRIPTION OF MURDER, WHICH IS SECOND-DEGREE MURDER, TO
10 GET YOURSELF TO FIRST-DEGREE MURDER.

11 NOW, I CAN READ YOU -- I HAVE THEM ALL --
12 THE DESCRIPTIONS. THESE ARE THE -- THIS IS SOME OF THE
13 INSTRUCTIONS THAT ARE GOING TO BE GIVEN. "MURDER -
14 DEFINED." THIS IS THE DEFINITION. I KNOW THERE'S A
15 CHART SOMEONE HERE, BUT I LIKE IT IN THE ACTUAL LANGUAGE
16 OF THE INSTRUCTION.

17 "EVERY PERSON WHO UNLAWFULLY KILLS
18 A HUMAN BEING WITH MALICE AFORETHOUGHT" --

19 MALICE AFORETHOUGHT IS THE CRUCIAL ISSUE
20 FROM OUR PERSPECTIVE IN THIS CASE.
21 "EVERY PERSON WHO UNLAWFULLY KILLS
22 A HUMAN BEING WITH MALICE AFORETHOUGHT IS
23 GUILTY OF THE CRIME OF MURDER IN VIOLATION
24 OF SECTION 187 OF THE PENAL CODE.
25 "IN ORDER TO PROVE SUCH CRIME, EACH
26 OF THE FOLLOWING ELEMENTS MUST BE PROVED:
27 "A HUMAN BEING WAS KILLED;
28 "THE KILLING WAS UNLAWFUL;

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1 "THE KILLING WAS DONE WITH MALICE
2 AFORETHOUGHT.
3 NOW, THAT'S MURDER. THAT IS SECOND-DEGREE
4 MURDER.
5 FOR YOU TO GET TO PREMEDITATED AND
6 DELIBERATED MURDER, YOU NEED A DIFFERENT INSTRUCTION,
7 AND HERE IT IS.
8 "ALL MURDER WHICH IS PERPETRATED BY
9 ANY KIND OF WILLFUL, DELIBERATE AND
10 PREMEDITATED KILLING, WITH EXPRESS MALICE
11 AFORETHOUGHT, IS MURDER OF THE FIRST
12 DEGREE."
13 AND THEN IT GOES ON TO DEFINE THOSE THINGS.
14 BUT HERE IS WHERE WE GET TO.

15 NOW, YOU HEARD JUST NOW WHEN I TALKED ABOUT
16 FIRST-DEGREE MURDER -- THIS IS SECOND-DEGREE MURDER, AND
17 I WILL GET TO IT IN A MINUTE.

18 BUT WHEN WE TALKED ABOUT FIRST-DEGREE
19 MURDER, YOU NEED PREMEDITATION, YOU NEED DELIBERATION.
20 AND YOU NEED NOT JUST MALICE AFORETHOUGHT, BUT EXPRESS
21 MALICE AFORETHOUGHT.

22 NOW, WHAT IS EXPRESS MALICE?

23 EXPRESS MALICE. THIS IS DEFINING
24 SECOND-DEGREE, BUT THE DEFINITION IS THE SAME. IT'S
25 8.11. HERE IT IS.

26 "MALICE IS EXPRESS WHEN THERE IS
27 MANIFESTED AN INTENTION, UNLAWFULLY, TO
28 KILL A HUMAN BEING."

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1 AND THE SHORTHAND FOR THIS IS A SPECIFIC
2 INTENT TO KILL. OKAY. THAT IS EXPRESS MALICE.

3 SO, FOR FIRST-DEGREE MURDER YOU NEED
4 PREMEDITATION, YOU NEED DELIBERATION, AND YOU NEED THE
5 SPECIFIC INTENT TO KILL.

6 FOR SECOND-DEGREE MURDER, THIS IS MURDER
7 WHERE THERE IS NO EVIDENCE BEYOND A REASONABLE DOUBT OF
8 PREMEDITATION, NO EVIDENCE BEYOND A REASONABLE DOUBT, OR
9 INSUFFICIENT EVIDENCE -- EVIDENCE THAT DOES NOT PERSUADE
10 BEYOND A REASONABLE DOUBT OF DELIBERATION, THEN YOU'RE

11 IN SECOND-DEGREE MURDER.

12 AND THE MALICE COMPONENT OF SECOND-DEGREE
13 MURDER CAN EITHER BE EXPRESS, AS WE JUST -- AS I JUST
14 EXPLAINED IT TO YOU, THE SPECIFIC INTENTION TO KILL
15 SOMEONE, OR IT CAN BE WHAT'S KNOWN AS IMPLIED MALICE,
16 WHICH DOESN'T MEAN NO INTENT TO KILL, AS THE PROSECUTION
17 HAS PUT IT HERE. IT MEANS NO SPECIFIC INTENTION TO KILL
18 SOMEONE.

19 BUT THIS IS WHAT IT DOES INVOLVE, WHICH IS
20 THE FUNCTIONAL EQUIVALENT FOR SECOND-DEGREE MURDER OF
21 SPECIFIC INTENT TO KILL A PERSON.

22 "A KILLING RESULTING FROM AN
23 INTENTIONAL ACT, THE NATURAL CONSEQUENCES
24 OF WHICH ARE DANGEROUS TO HUMAN LIFE, AND
25 THE ACT WAS DELIBERATELY PERFORMED --
26 DELIBERATELY PERFORMED WITH KNOWLEDGE OF
27 THE DANGER TO AND" -- THE PROSECUTION LEFT
28 A WORD OUT HERE, WHICH I AM GOING TO PUT

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1 IN -- "AND WITH CONSCIOUS DISREGARD FOR
2 HUMAN LIFE."

3 THAT IS IMPLIED MALICE.

4 NOW, IF YOU DO NOT HAVE EXPRESS MALICE OR
5 IMPLIED MALICE, YOU DO NOT HAVE MURDER, PERIOD. IT
6 DOESN'T MATTER WHAT ELSE YOU HAVE. IF DO YOU NOT HAVE

7 MALICE, YOU DO NOT HAVE MURDER.

8 HAVING SAID THAT, IT BECOMES VERY

9 IMPORTANT, OBVIOUSLY, TO TRY TO FIGURE OUT WHAT IS THE

10 STATE OF MIND OF THE PERSON DOING THE ACT, WHICH IS

11 FIRING A SHOTGUN IN THE DIRECTION OF OTHER PEOPLE. WHAT

12 IS THE STATE OF MIND OF THAT PERSON, IF YOU'RE GOING TO

13 TRY TO DECIDE WHETHER OR NOT HE'S GUILTY OF HOMICIDE?

14 NOW, I WANT TO MAKE SOMETHING CLEAR,

15 BECAUSE IN THE PUBLIC PERCEPTION IT ISN'T -- IT SEEMS

16 WE'VE LOST SIGHT OF THINGS THAT WE USED TO KNOW AS A

17 SOCIETY, AND THIS IS WHAT WE SEEM TO HAVE LOST SIGHT OF.

18 A VERDICT IN A CRIMINAL CASE OF NOT GUILTY

19 DOES NOT EQUAL A FINDING OF INNOCENCE. THEY ARE NOT THE

20 SAME THING.

21 IF IT EQUALS ANYTHING, IT EQUALS A FINDING

22 OF NOT PROVEN. AND THAT IS AN ENORMOUS DISTINCTION.

23 BECAUSE WE DON'T HAVE TO PROVE INNOCENCE, AND YOU DON'T

24 HAVE TO FIND INNOCENCE BEYOND A REASONABLE DOUBT, OR

25 BEYOND ANY STANDARD, OR TO ANY STANDARD, IN ORDER TO

26 VOTE TO ACQUIT.

27 THE VERDICT FORM THAT YOU ARE GIVEN DOES

28 NOT SAY "INNOCENT." IT DOESN'T EVEN SAY "AQUITTAL." IT

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1 SAYS "NOT GUILTY," AND IT DOESN'T MEAN MORALLY GUILTY.

2 IT MEANS LEGALLY GUILTY. LEGALLY GUILTY OF WHAT HE OR

3 SHE IS CHARGED WITH. THAT'S WHAT IT MEANS.

4 IN THIS CASE, YOU'RE GOING TO GET THE -- I

5 AM GOING TO TELL YOU NOW WHAT YOU'LL GET, BECAUSE THE

6 ARGUMENT CONCERNING THE CHARGES HERE IS COMPLICATED BY

7 THE -- NOT SO MUCH BY THE INSTRUCTIONS, BUT BY THE

8 VERDICT FORMS. SO I WANT TO TELL YOU WHAT YOU'RE GOING

9 TO GET.

10 "J.M." IS FOR JOSE MENENDEZ. "M.M." IS FOR

11 MARY LOUISE MENENDEZ.

12 YOU ARE GOING TO GET VERDICT FORMS FOR

13 MR. MENENDEZ, AND THIS JUST HAPPENS TO DO WITH THE

14 HOMICIDES THEMSELVES, FOR FIRST DEGREE, FOR SECOND

15 DEGREE, AND THIS IS MURDER. I WILL USE THE CODE. 187

16 IS THE SECTION OF THE PENAL CODE THAT DESCRIBES MURDER.

17 YOU ARE ALSO GOING TO GET A VERDICT FORM

18 FOR MR. MENENDEZ FOR VOLUNTARY MANSLAUGHTER.

19 AND YOU ARE GOING TO GET A VERDICT FORM,

20 "NOT GUILTY."

21 NOW, FOR MRS. MENENDEZ, YOU'RE GOING TO GET

22 FIRST DEGREE, SECOND DEGREE, AND NOT GUILTY. YOU ARE

23 NOT GOING TO GET A VERDICT FORM FOR MRS. MENENDEZ FOR

24 VOLUNTARY MANSLAUGHTER.

25 SO IN ANALYZING, AS I WILL DO SHORTLY, THE

26 EVIDENCE AND THE LAW, THERE IS AN ANALYSIS -- I CAN'T

27 PUT IT HERE. THERE IS AN ANALYSIS CONCERNING

28 PROVOCATION THEORY THAT APPLIES TO BOTH.

1 IN THE CASE OF MRS. MENENDEZ, PROVOCATION
2 THEORY STOPS HERE AT SECOND-DEGREE MURDER.

3 IN THE CASE OF MR. MENENDEZ, PROVOCATION
4 THEORY STOPS HERE UNDER VOLUNTARY MANSLAUGHTER.

5 AND THEN THE ARGUMENT THAT I WILL BE MAKING
6 HAS TO DO WITH WHAT'S KNOWN AS MENTAL STATE/MENTAL
7 DISORDER, WHICH NEGATES -- WELL, WHICH -- LET ME MAKE
8 THIS CLEAR.

9 MENTAL DISORDER AND PROOF THAT THE PERSON
10 DID NOT, IN FACT, HARBOR MALICE.

11 AND IF YOU FIND THAT, THAT MY CLIENT DID
12 NOT IN FACT HAVE EITHER OF THESE STATES OF MIND, EITHER
13 EXPRESS MALICE OR IMPLIED MALICE, THEN YOU MUST RENDER A
14 VERDICT OF NOT GUILTY. YOU HAVE NO CHOICE. THERE IS NO
15 MANSLAUGHTER IN BETWEEN. IF IT ISN'T SECOND-DEGREE
16 MURDER, THEN THE CHARGE MADE AGAINST HIM WITH RESPECT TO
17 MRS. MENENDEZ, WHICH IS ONLY MURDER, HAS BEEN NOT
18 PROVEN. AND THAT IS WHY I AM ASKING YOU, AND WILL BE
19 ASKING YOU, TO VOTE FOR ACQUITTAL, BECAUSE HE DID NOT IN
20 FACT HARBOR MALICE.

21 NOW, YOU MAY RECALL, AND I'M SURE YOU DO,
22 THAT IN THE TESTIMONY OF DR. WILSON AND DR. VICARY,
23 DR. WILSON TALKING ABOUT POST-TRAUMATIC STRESS DISORDER,
24 DR. VICARY TALKING ABOUT GENERALIZED ANXIETY DISORDER.

25 AND HE WAS TALKING ABOUT THAT TO SHOW HOW,
26 EVEN WITH THE DIAGNOSIS THAT DR. DIETZ MADE, DR. DIETZ
27 WAS MISREPRESENTING WHAT THE IMPACT OF GENERALIZED

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1 CRITICAL EVENTS, SUCH AS WHAT WAS GOING ON THIS
2 PARTICULAR WEEK. AND CERTAINLY THAT SUNDAY NIGHT, AND
3 DEFINITELY DURING THE MINUTE AND A HALF TO TWO MINUTES
4 FROM THE TIME THAT THE ARGUMENT ENDED AND THE SHOOTING
5 ENDED.

6 SO BOTH OF THEM, WHEN TALKING ABOUT WHAT
7 HAPPENS TO PEOPLE, WHAT THE QUALITY OF THEIR THINKING IS
8 WHEN THEY ARE IN THIS STATE OF EXTREME AROUSAL BROUGHT
9 ON BY FEAR OF -- LET ME DO THIS. AS I SAY, THESE THINGS
10 ARE SOMEWHAT HARD EVEN FOR LAWYERS TO CONCEPTUALIZE. SO
11 I SIT AT MY COMPUTER AND THINK OF HYPOTHETICALS TO TRY
12 TO EXPLAIN IT, AND I THOUGHT I'D SHARE THEM WITH YOU.

13 NOW, THE LAW DOES THIS, OKAY. DON'T READ
14 THAT RIGHT NOW, BECAUSE YOU WON'T UNDERSTAND WHAT I'M
15 TALKING ABOUT. YOU WON'T UNDERSTAND THAT UNTIL I DO
16 THIS FIRST.

17 THIS HAS TO DO WITH PROVOCATION THEORY, AS
18 I CALL IT. IT'S JUST SHORTHAND. LET ME SEE IF I HAVE
19 THAT INSTRUCTION HERE. I THINK I DO. I THINK I HAVE
20 THE RIGHT ONE. OKAY.

21 "TO REDUCE INTENTIONAL FELONIOUS
22 HOMICIDE FROM THE OFFENSE OF MURDER TO
23 MANSLAUGHTER, UPON THE GROUNDS OF SUDDEN

24 QUARREL OR HEAT OF PASSION, THE
25 PROVOCATION MUST BE OF SUCH CHARACTER AND
26 DEGREE AS NATURALLY WOULD EXCITE AND
27 AROUSE SUCH PASSION, AND THE ASSAILANT
28 MUST ACT UNDER THE INFLUENCE OF THAT

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1 SUDDEN QUARREL OR HEAT OF PASSION."
2 THAT'S JUST THE INTRO TO WHAT IS REQUIRED
3 BY WAY OF PROVOCATION, THAT IS REQUIRED BY WAY OF
4 EMOTIONAL RESPONSE TO REDUCE A MURDER TO MANSLAUGHTER.
5 MAYBE I CAN DRAW THIS IN A WAY THAT WILL MAKE SENSE.
6 HERE IS MURDER -- OKAY. I JUST WANT TO
7 MAKE SURE. THE CARDINAL SIN IS TO MISSTATE IN ARGUMENT
8 THE ELEMENTS OF OFFENSES.
9 OKAY. THE ELEMENTS. THE FIRST ONE IS REAL
10 EASY.
11 "HUMAN BEING IS KILLED."
12 THE SECOND ONE: "UNLAWFULLY."
13 THE THIRD ONE: "DONE WITH MALICE."
14 WE CALL IT MALICE AFORETHOUGHT, BUT YOU
15 WILL SEE FROM THE DEFINITION OF AFORETHOUGHT THAT THAT
16 DOESN'T ADD OR SUBTRACT ANYTHING.
17 A HUMAN BEING IS KILLED, IT'S UNLAWFUL,
18 WITH MALICE AFORETHOUGHT. IT'S UNLAWFUL UNLESS YOU'RE
19 TOLD WITH SOME OTHER SET OF INSTRUCTIONS THAT IT'S A

20 LAWFUL HOMICIDE, SUCH AS THERE ARE SUCH THINGS AS
21 EXCUSABLE HOMICIDE AND JUSTIFIABLE HOMICIDE, WHERE A
22 HUMAN BEING IS KILLED, BUT IT'S NOT UNLAWFUL.
23 YOU'RE NOT BEING GIVEN THOSE INSTRUCTIONS.
24 THIS CASE DOESN'T FIT THE KIND OF FACTS THAT LEAD TO
25 THOSE.
26 SO THIS ISN'T GOING TO BE AN AREA WHERE
27 THERE IS GOING TO BE ANY ARGUMENT ABOUT. HUMAN BEING
28 KILLED, UNLAWFUL, WITH MALICE AFORETHOUGHT. OKAY.

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1 WHAT PROVOCATION THEORY DOES IT SAY IF
2 THERE IS SUFFICIENT PROVOCATION FROM THE VICTIM TO
3 AROUSE AN ORDINARILY REASONABLE PERSON TO THIS EMOTIONAL
4 STATE THAT THE LAW CALLS HEAT OF PASSION, WHICH IS NOT A
5 VERY MYSTERIOUS STATE, AND THE PERSON ACTS FROM THAT
6 EMOTIONAL PLACE, THE LAW ELIMINATES BY OPERATION OF
7 LAW -- IT'S AUTOMATIC, LIKE YOU CUT OUT A COUPON -- THE
8 LAW TAKES OUT MALICE. IT ISN'T A LOGICAL THING, BECAUSE
9 YOU COULD STILL INTEND TO KILL.
10 REMEMBER, WE JUST TALKED ABOUT SPECIFIC
11 INTENT TO KILL IS EXPRESS MALICE, RIGHT? BUT IF YOU'RE
12 OPERATING UNDER HEAT OF PASSION DUE TO PROVOCATORY WORDS
13 OR ACTS, PROVOCATORY BY THE VICTIM, THE LAW SAYS WE
14 UNDERSTAND HOW HUMAN BEINGS REACT. WE UNDERSTAND THAT
15 SOMEONE ACTING OUT OF THIS KIND OF EMOTION IS NOT THE

16 SAME MORALLY, AND WILL NOT BE THE SAME LEGALLY, AS
17 SOMEONE WHO IS ACTING IN A COLD -- EITHER IN A COLD AND
18 CALM WAY, OR IS AROUSED BECAUSE OF HIS OWN TEMPERMENT,
19 AND NOT BECAUSE OF WHAT THE VICTIM HAS DONE TO HIM.

20 SO IT IS SIMPLY BLANKING OUT OF MALICE THAT
21 REDUCES MURDER TO MANSLAUGHTER ON A PROVOCATION THEORY.
22 ONCE THIS DISAPPEARS, WE DON'T HAVE MURDER ANYMORE. YOU
23 HAVE MANSLAUGHTER.

24 AND THAT'S HOW PROVOCATION THEORY WORKS,
25 AND IT'S PRECISELY HOW YOU CAN EVALUATE THE EVIDENCE
26 CONCERNING MR. MENENDEZ AND HIS ACTIONS, NOT JUST ON
27 THAT SUNDAY NIGHT, BUT THIS WHOLE WEEK OF CRISIS, AND
28 GOING BACK IN TIME FOR A LONGER DURATION. YOU CAN LOOK

-13527

1 FOR PROVOCATORY ACTS THAT ADD UP, WHEN YOU TOTAL THEM
2 UP, TO SUFFICIENT PROVOCATION AT THE MOMENT THAT MY
3 CLIENT STARTS TO REACT.

4 AND YOU HAVE TO EVALUATE WHETHER MY
5 CLIENT'S REACTION TO WHAT HE REASONABLY BELIEVES, BASED
6 ON HIS HISTORY AND HIS KNOWLEDGE, AND WHAT ANYONE ELSE
7 KNOWING THAT HISTORY WOULD BELIEVE, IS A THREAT OF
8 SEXUAL ASSAULT OR ANY KIND OF ASSAULT -- ANY KIND OF
9 GREAT BODILY INJURY, OR ANY KIND OF SEXUAL ASSAULT -- AT
10 THAT POINT HE IS AROUSED TO A STATE THAT CONSTITUTES AT
11 LEAST -- AT LEAST HEAT OF PASSION.

12 SO THE ANALYSIS FOR MR. MENENDEZ IS
13 ACTUALLY VERY STRAIGHTFORWARD, GIVEN WHAT HE DOES ON
14 THURSDAY, GIVEN WHAT HE DOES ON SATURDAY, AND THEN GIVEN
15 WHAT HE IS SAYING IN THIS EXTRAORDINARY CONVERSATION,
16 ARGUMENT, SUDDEN QUARREL. AND THAT'S ANOTHER WAY OF
17 ANALYZING IT. A SUDDEN QUARREL, BY ITSELF, LEADS TO
18 ELIMINATING MALICE.

19 OKAY. SO THIS IS A VERY SIMPLE ANALYSIS
20 DOWN TO MANSLAUGHTER FOR MR. MENENDEZ.

21 THE ANALYSIS FOR MRS. MENENDEZ IS A LITTLE
22 DIFFERENT. IT TAKES TWO TRACKS, IF YOU WILL, AND I WILL
23 SHOW YOU WHAT THE TWO TRACKS ARE. THIS IS PROVOCATION
24 THEORY ON THE LEFT, AND THIS IS MENTAL DISORDER ON THE
25 RIGHT. I AM JUST GOING TO CALL IT, "DISORDER." LET ME
26 SEE IF I CAN DO THIS.

27 OKAY. YOU WILL ALSO BE INSTRUCTED --
28 REMEMBER, I WAS TALKING BEFORE ABOUT SUFFICIENT

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1 PROVOCATION TO LEAD TO HEAT OF PASSION TO REDUCE MURDER
2 TO A MANSLAUGHTER. THAT'S PRETTY STRAIGHTFORWARD.

3 YOU WILL ALSO RECEIVE AN INSTRUCTION THAT
4 THERE CAN BE PROVOCATION THAT IS NOT SUFFICIENT TO
5 REDUCE MURDER TO A MANSLAUGHTER, SLIGHTER PROVOCATION,
6 LESS DIRECT. I THINK THAT'S THE BEST WAY TO LOOK AT IT.
7 LESS DIRECT PROVOCATION.

8 SO LET US ARGUE FOR THE MOMENT THAT
9 MRS. MENENDEZ' PROVOCATION THAT SUNDAY NIGHT WHEN SHE
10 BLAMES LYLE MENENDEZ AT THE END OF THE ARGUMENT IS LESS
11 THAN WHAT'S SUFFICIENT ON ITS OWN TO REDUCE MURDER TO
12 MANSLAUGHTER. OKAY.

13 BUT IT IS PROVOCATORY CONDUCT ON HER PART;
14 THE FACT THAT SHE'S OBVIOUSLY JOINING IN; THE FACT THAT
15 SHE'S NOT PROTESTING WHAT THE FATHER HAS THREATENED TO
16 DO; THE FACT THAT SHE IS ANGRY AND BLAMING THE KIDS.

17 THAT LEVEL OF PROVOCATION IS ENOUGH BY
18 ITSELF TO REDUCE A KILLING FROM FIRST-DEGREE MURDER --
19 ASSUMING FIRST-DEGREE MURDER WAS EVER THERE -- TO
20 SECOND-DEGREE MURDER.

21 SO EVEN IF THE PROVOCATION ISN'T DIRECT
22 ENOUGH TO BE SUFFICIENT FOR HEAT OF PASSION, THAT KIND
23 OF PROVOCATORY BEHAVIOR IS ENOUGH TO GET YOU TO SECOND
24 DEGREE.

25 AND NOW WHAT HAPPENS IS YOU CAN'T STAY AT
26 SECOND DEGREE. NOW YOU HAVE TO ACTUALLY FIND THE
27 ELEMENTS OF MALICE. YOU HAVE TO FIND EITHER THAT
28 SPECIFIC INTENT TO KILL, OR THAT DELIBERATE,

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1 INTENTIONAL -- AN INTENTIONAL ACT DELIBERATELY PERFORMED
2 WITH CONSCIOUS -- KNOWLEDGE OF THE DANGER AND CONSCIOUS
3 DISREGARD FOR HUMAN LIFE. THAT'S IMPLIED MALICE.

4 OR YOU HAVE TO FIND SPECIFIC INTENT TO KILL
5 WITH EITHER EXPRESS OR IMPLIED MALICE. OKAY. THAT'S
6 WHAT YOU NEED. THAT'S PART OF THIS (INDICATING).
7 NOW WE SHIFT TO THE SECOND TRACK. HERE,
8 OKAY, WHERE IT'S SECOND DEGREE, LET'S SAY, BASED ON
9 PROVOCATION THEORY.
10 NOW YOU HAVE TO EVALUATE WHAT WAS -- YOU
11 HAVE TO EVALUATE WHAT WAS THE ACTUAL THOUGHT OR THOUGHTS
12 THAT MY CLIENT HAD AT THE TIME OF THE SHOOTING. THAT'S
13 THE ONLY TIME THAT MATTERS FOR THIS ANALYSIS. WHAT WAS
14 ACTUALLY IN HIS HEAD, BASED ON THE EVIDENCE? WHAT IS
15 THE LOGICAL INFERENCES, AND WHAT IS THE DIRECT EVIDENCE
16 OF WHAT WAS IN HIS HEAD? OKAY.
17 IF THE PROSECUTION CANNOT PROVE THAT WHAT
18 WAS IN HIS HEAD BEYOND A REASONABLE DOUBT CONSTITUTED
19 EITHER EXPRESS MALICE, THAT SPECIFIC INTENT TO KILL; OR
20 IMPLIED MALICE, THIS STATE OF MIND THAT'S DESCRIBED IN
21 THREE SENTENCES; IF THEY CAN'T CONVINCE YOU BEYOND A
22 REASONABLE DOUBT THAT WITH HIS MENTAL DISORDER HE HAD
23 THOSE STATES OF MIND, THEN YOU HAVE TO FIND THERE WAS NO
24 MALICE IN FACT, AND YOU HAVE TO SIGN THE NOT GUILTY
25 VERDICT FORM. EVEN THOUGH YES, HE TOOK THE STAND. HE
26 SAID HE SHOT AT BOTH OF THEM. THEY BOTH DIED.
27 THIS DOESN'T MAKE IT RIGHT. BUT THIS IS
28 THE LAW WHEN SOMETHING IS NOT PROVEN, PERIOD. LIKE IT

1 OR NOT.

2 AND THE WAY YOU HAVE TO ANALYZE WHETHER
3 THERE IS MALICE HERE IS YOU HAVE TO TAKE A LOOK AT --
4 FIRST OF ALL, LET ME JUST TELL YOU WHAT WAS SAID BY THE
5 EXPERT THAT DR. DIETZ WANTED TO RELY ON CONCERNING WHAT
6 THE THOUGHT PROCESS IS REALLY LIKE WHEN YOU ARE IN THAT
7 STATE OF AROUSAL THAT COULD BE CALLED TERROR.

8 AND I SUBMIT TO YOU, MY CLIENT AT THE POINT
9 WHEN HE GOES INTO THAT ROOM IS IN A STATE THAT CAN ONLY
10 BE CALLED TERROR.

11 HERE IS WHAT DR. RESTAK SAID:

12 "TERROR CAN CAUSE ANCIENT BRAIN
13 STRUCTURES THAT COVER RAGE AND
14 AGGRESSION" -- AND THIS IS FIGHT OR
15 FLIGHT -- "TO OVERWHELM MANY OF THE HIGHER
16 REGIONS GUIDING RATIONALITY."

17 NOW, TO TALK ABOUT DOING SOMETHING
18 DELIBERATELY, AND MOST IMPORTANTLY, WITH CONSCIOUS
19 DISREGARD FOR HUMAN LIFE, IMPLIES RATIONALITY. IT
20 DOESN'T HAVE TO BE TERRIBLY SOPHISTICATED RATIONALITY,
21 BUT IT IS RATIONALITY.

22 IF YOU ARE NOT THINKING AT THAT POINT IN
23 ANY WAY RATIONALLY, IF YOU ARE NOT CONSCIOUSLY
24 DISREGARDING LIFE, IF ALL YOU'RE FOCUSED ON IS YOUR OWN
25 TERROR, IF YOU'RE NOT THINKING: "GOSH, I AM PULLING
26 THIS TRIGGER, AND THIS COULD BE KILLING THEM."

27 IF ALL YOU KNOW IS YOU'RE IN THAT ROOM --
28 WE'RE TALKING ABOUT FIVE TO 10 SECONDS. ALL YOU CAN

1 REMEMBER IS THE FLASH OF RED. YOU DON'T RECALL ANY
2 THOUGHT WHATSOEVER, AND YOU NEVER HAVE, AND NO ONE'S
3 EVERY BROUGHT IT BACK TO YOUR ATTENTION. "BUT DIDN'T
4 YOU SAY THIS AT THIS POINT THAT YOU THOUGHT ABOUT THIS
5 AND THAT?"

6 NEVER HAPPENED. HE TESTIFIED HE HAS NEVER
7 HAD ANY MEMORY BEYOND THE HORRIBLE NOISE AND THE FLASH
8 OF THE GUN. AND THAT IS BECAUSE, WITH POST-TRAUMATIC
9 STRESS DISORDER, HOWEVER THE REST OF THE WORLD --
10 HOWEVER HIGH THEIR LEVEL OF AROUSAL MAY BE, HOWEVER HIGH
11 IT MAY BE -- MAYBE YOU OR I OR ANY OF US FACED WITH
12 TERROR, WHICH EVEN RESTAK STAYS ALL OF US, IF FACED WITH
13 TERROR, ARE NOT GOING TO BE RATIONAL. SOMEONE WITH
14 P.T.S.D. JUST KEEPS GOING WHEN THEY REACT AND IS SO
15 AROUSED THAT HE COULD HAVE SAID HE WAS DISSOCIATIVE.

16 I SUBMIT TO YOU HE WAS IN A CONDITION VERY
17 CLOSE TO DISSOCIATION, AND I THINK IT'S CLEAR THAT IF HE
18 WERE IN THAT STATE OF MIND WHERE HE'S NOT AWARE AT ALL
19 WHAT'S GOING ON, HE CLEARLY COULD NOT BE HARBORING
20 MALICE. I THINK IT'S A LITTLE CLOSER THAN THAT.

21 BUT IT ISN'T THAT MUCH DIFFERENT WHEN HE IS
22 IN THAT STATEMENT OF TERROR, WHEN HE CAN'T -- WHEN
23 NOTHING IS GOING THROUGH HIS HEAD AT ALL. HE DOESN'T
24 REMEMBER PUMPING. HE DOESN'T REMEMBER -- THE ONLY TIME
25 HE REMEMBERS PULLING THE TRIGGER IS IN THE END, WHEN

26 THERE'S NOTHING LEFT.

27 AND THEN THE ONLY THOUGHT HE HAS -- HE

28 HEARS THIS SOUND THAT HE BELIEVES IS PAIN, AND HE LATER

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1 FIGURES OUT WAS HIS MOTHER, AND IT -- IT'S JUST INSTANT

2 TERROR, BECAUSE HE FEELS DEFENSELESS NOW. HE HAS NO

3 AMMUNITION IN THE GUN, AND HE RACES OUT.

4 NOW, INTENT TO KILL IS NOT THE MOST

5 COMPLICATED THOUGHT. THIS IS TRUE. BUT HE STILL HAS TO

6 HAVE HAD IT IN ORDER TO FIND EXPRESS MALICE.

7 AND THIS THINKING OF CONSCIOUS DISREGARD

8 FOR HUMAN LIFE IS NOT ALL THAT COMPLICATED A THOUGHT

9 EITHER, BUT HE STILL HAS TO HAVE HAD IT.

10 AND THE QUESTION IS, IS THERE EVIDENCE IN

11 ORDER TO SHOW THAT HE DID IN FACT HAVE IT HERE?

12 AND I SUBMIT TO YOU, THAT BECAUSE OF THE

13 EXTREME AROUSAL THAT HE WENT THROUGH -- AND LET ME SHOW

14 YOU THE DIFFERENCE BETWEEN LEVELS OF AROUSAL. THIS IS

15 VERY CRUDE STUFF, I KNOW. I MEAN, THE DRAWING,

16 HOPEFULLY.

17 THE STANDARD IN THE LAW FOR APPLYING

18 PROVOCATION THEORY, WHICH I HAVE BEEN TALKING ABOUT, IS

19 WHAT'S KNOWN AS THE ORDINARILY REASONABLE PERSON. AND

20 WE DO THAT SO THAT THERE IS NOT A SEPARATE STANDARD FOR

21 PEOPLE WHO ARE IRRATIONAL ALL THE TIME. I MEAN, THE

22 Kinds of crazy people, or otherwise disturbed people,
23 who do not think rationally, who are delusional, who see
24 things wrong, who have extraordinarily short fuses. We
25 do not want in the law to give them a license to hurt
26 other people and escape responsibility because they were
27 screwed up. That's as simple as it gets.
28 So the law is written in terms of the

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1 ordinarily reasonable man. And if there is a situation
2 where the ordinarily reasonable person would react with
3 heat of passion, the fact that a particular defendant
4 may or -- may suffer from a mental disorder, if he is
5 reacting to the exact same situation that the ordinarily
6 reasonable man would react to; he, too, is entitled to
7 the benefit of the law, so long as he is reacting to the
8 exact same situation that the ordinarily reasonable man
9 is allowed to react to.

10 Now, let me just suggest to you, as you
11 will see reading the instructions, this concept of heat
12 of passion, this emotionality that by its very existence
13 negates -- that's the word we use in the law -- negates
14 malice aforethought; wipes it, erases it, if you will,
15 is nothing extraordinary. And I will give you hypos.

16 But just to demonstrate it, this is the
17 line, let us say, of what the law calls heat of passion.

18 IT IS THIS LEVEL OF AROUSAL, THIS LEVEL OF EMOTION,
19 OKAY. AND THAT'S WHAT ALL OF US AS RATIONAL PEOPLE
20 WOULD FIGURE OUT IS THAT LINE WHERE PEOPLE ARE REAL
21 UPSET, OKAY? EMOTIONAL, THOUGH. NOT CRAZED, NOT
22 DISSOCIATED, NOT OVERWHELMED WITH TERROR. NOT
23 IRRATIONAL WITH TERROR, NOT THAT HIGH.
24 PLAIN OLD HEAT OF PASSION APPLIES TO
25 EVERYBODY. AND HERE IS OUR ORDINARILY REASONABLE GUY.
26 OKAY.
27 HE'S OUR O.R.M., OUR ORDINARILY REASONABLE
28 MAN. AND AN EVENT HAPPENS. THIS IS THE EVENT, WHATEVER

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1 IT IS, AND IT IS THE KIND OF EVENT THAT WOULD GET
2 O.R.M., OUR ORDINARILY REASONABLE MAN, INTO THAT EXCITED
3 STATE THAT THE LAW CALLS IT, EXCITED STATE OF HEAT OF
4 PASSION. AND HE IS AROUSED TO HERE. AND AT THIS
5 EMOTIONAL LEVEL, HE REACTS AND KILLS. OKAY.
6 THIS IS THE LINE OF MANSLAUGHTER, RIGHT
7 HERE.
8 NOW WE HAVE A SECOND MAN. THIS MAN HAPPENS
9 TO SUFFER FROM POST-TRAUMATIC STRESS DISORDER, BUT HE IS
10 A REASONABLE PERSON, AND HE IS PROVOKED WITH THE SAME
11 KIND OF EVENT, EXACTLY THE SAME EVENT AS THIS FELLA.
12 AND THIS PARTICULAR INDIVIDUAL, WHO WE WILL
13 CALL P.T.S.D. NO. 1, GIVEN THE SEVERITY AND NATURE OF

14 HIS P.T.S.D., GIVEN THE SPECIFICS OF THE STRESSORS, IF
15 YOU WILL, REACTS JUST LIKE MR. O.R.M. HE DOESN'T GET
16 AROUSED TO THE SAME LEVEL OF HEAT OF PASSION. NOTHING
17 EXTRAORDINARY. OKAY.

18 HE, TOO, IS ENTITLED -- WITH HIS P.T.S.D.
19 OR WITHOUT IT -- HE IS ENTITLED TO THE SAME
20 CONSIDERATION OF THE LAW THAT IN THIS STATE OF
21 EMOTIONALITY, WHICH IS INCONSISTENT WITH OUR NOTIONS OF
22 MURDER, HE IS ONLY GUILTY OF MANSLAUGHTER.

23 NOW WE HAVE ANOTHER PERSON, AND THIS IS
24 P.T.S.D. NO. 2. GIVEN ALL THE THINGS ABOUT -- IT'S THE
25 SAME PROVOCATION EACH TIME, OKAY.

26 GIVEN HIS HISTORY, GIVEN HIS INTERACTION
27 WITH THAT KIND OF PROVOCATION; HE, TOO, GETS AROUSED.

28 NOW, HE IS JUST LIKE O.R.M. AND P.T.S.D.-1

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1 WITH RESPECT TO WHAT THE LAW ALLOWS HIM TO DO AND TO
2 BELIEVE. HE GETS AROUSED, BUT HE DOESN'T STOP AT HEAT
3 OF PASSION. HE GOES PAST IT.

4 AT A MINIMUM, HE, TOO, IS ENTITLED TO THE
5 BENEFIT OF HEAT OF PASSION THEORY, BECAUSE HE IS JUST
6 AS -- HE IS MORE THAN AS UPSET AS THEY ARE. BUT HE'S
7 UPSET BASED ON THE EXACT SAME PROVOCATION. THE SAME
8 THING THAT WOULD UPSET AN ORDINARILY REASONABLE MAN, THE
9 SAME THING THAT WOULD UPSET P.T.S.D. NO. 1, IS UPSETTING

10 HIM. HE IS NOT AN UNREASONABLE PERSON.

11 IT'S THE REACTION THAT WITH HIM IS EXTREME,
12 NOT THE PERCEPTION OF THE PROVOCATION, NOT THE FACT THAT
13 THAT'S PRECISELY THE PROVOCATION THAT WOULD UPSET YOU OR
14 I OR ANYBODY ELSE. BUT HE CAN'T CONTROL THE LEVEL, AND
15 HE GOES ALL THE WAY UP TO HERE.

16 NOW, HE IS NOT GUILTY OF ANYTHING MORE THAN
17 MANSLAUGHTER EITHER. BUT IF HE IS UP SO HIGH IN TERROR,
18 AND IF HE IS AT THAT LEVEL WHERE TERROR OVERWHELMS
19 ANYTHING LIKE REALLY RATIONAL THINKING, OKAY, HE --
20 UNDER THIS LEVEL OF AROUSAL -- HE IS NOT GUILTY OF
21 HOMICIDE. HE IS WAY BEYOND HEAT OF PASSION HERE.

22 AND THIS IS THE ANALYSIS THAT CAN BE
23 APPLIED, BOTH FOR MR. AND MRS. MENENDEZ. YOU COULD LOOK
24 AT IT FROM THE STRICT TERMS OF WHETHER -- IF HE'S UP
25 THERE AND HE DOES NOT IN FACT HARBOR MALICE, YOU DON'T
26 HAVE TO RELY SIMPLY ON THE NEGATION OF MALICE THROUGH
27 PROVOCATION THEORY. YOU CAN GO STRAIGHT TO HE DID NOT
28 HARBOR MALICE TECHNICALLY. IN FACT, YOU COULD VOTE NOT

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1 GUILTY ON BOTH OF THEM.

2 I AM NOT, HOWEVER, GOING TO BE A GREEDY
3 PIG. I RECOGNIZE HOW WE ALL FEEL ABOUT HOMICIDE OF ANY
4 KIND, AND I WILL BE SATISFIED IF, UNLIKE MY CLIENT, WHO
5 WILL BE SATISFIED WITH -- INDICATED HE WOULD BE

6 SATISFIED WITH MANSLAUGHTER, WHEN HE WAS ASKED -- I HAVE
7 NO IDEA WHY THOSE QUESTIONS WERE ASKED, BUT ALL RIGHT.
8 THE PROSECUTION ASKED THEM.

9 I SUBMIT TO YOU THAT NOT GUILTY WOULD BE
10 APPROPRIATE FOR BOTH COUNTS. BUT IN ORDER TO ALLOW YOU
11 TO REACH A CONCLUSION IN THIS CASE, WHICH WOULD BE NICE,
12 BUT NOT MANDATORY, IF YOU WERE TO COME IN WITH
13 MANSLAUGHTER ON MR. MENENDEZ AND NOT GUILTY ON
14 MRS. MENENDEZ, I BELIEVE JUSTICE WOULD BE DONE.

15 NOW, THESE ARE JUST SOME EXAMPLES OF TRYING
16 TO HELP YOU UNDERSTAND WHAT PROVOCATION THEORY IS ALL
17 ABOUT, AND THESE ARE VERY SIMPLISTIC FACT SITUATIONS.
18 AND I WILL TAKE YOU THROUGH THEM TO TRY AND SHOW YOU THE
19 DIFFERENCE BETWEEN THE UNREASONABLE PERSON, THE
20 ORDINARILY REASONABLE PERSON, AND THEN ON THE NEXT CHART
21 WE WILL TALK ABOUT THE PERSON WHO SUFFERS FROM
22 POST-TRAUMATIC STRESS DISORDER. OKAY.

23 THIS IS WHAT I CALL THE HOTHEAD. THIS IS
24 THE NOT ORDINARILY REASONABLE PERSON. THIS IS A PERSON
25 WITH A VERY SHORT FUSE.

26 HE WALKS INTO A STORE. HE SEES A MAN, HIS
27 FORMER SUPERVISOR WHO FIRED HIM MANY YEARS BEFORE.
28 OKAY. HE BECOMES AT THAT POINT -- THIS IS THE KEY HERE,

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1 HE BECOMES ENRAGED. OKAY. SO HE IS -- ALL RIGHT. HE

2 BECOMES ENRAGED. HE IS IN THIS HIGH EMOTIONAL STATE.
3 HE DOES NOT -- GIVEN MY FACT SITUATION, HE DOES NOT
4 PREMEDITATE IT, HE DOES NOT DELIBERATE. HE IS ENRAGED.
5 IT IS THAT EMOTION OF RAGE THAT KEEPS HIM FROM BEING
6 ABLE TO COOLLY AND CALMLY REFLECT AND DELIBERATE.

7 DELIBERATION REQUIRES CALM. DELIBERATION
8 REQUIRES COOL-HEADEDNESS. THAT'S WHY IT'S SIGNIFICANT
9 THAT HE'S ENRAGED. IT WORKS HIM UP SO HE ISN'T COOL AND
10 CALM AND DELIBERATE.

11 BUT HE HAS NO PROVOCATION FROM THE VICTIM
12 HERE, AND HE TAKES OUT HIS GUN AND FIRES.

13 UNDER THAT FACT SITUATION, THAT IS
14 SECOND-DEGREE MURDER. THAT IS YOUR TYPICAL -- YOU KNOW,
15 SOMEBODY GOES OFF WHO HAS NO GOOD REASON TO. BUT YOU
16 CANNOT SAY THAT THEY WENT THROUGH THIS VERY SPECIFIC AND
17 RATIONAL AND CALM PROCESS OF DELIBERATION THAT'S
18 REQUIRED FOR FIRST-DEGREE MURDER. FIRST-DEGREE MURDER
19 IS, AND SHOULD BE, HARD TO PROVE.

20 SO, THAT'S A SECOND-DEGREE MURDER. THAT'S
21 A SIMPLISTIC ANALYSIS OF THE TYPICAL KIND OF
22 SECOND-DEGREE MURDER.

23 NOW, LET'S TALK ABOUT THIS SAME PERSON.
24 HE'S GOT A SHORT FUSE, BUT NOW HE'S PROVOKED. HE WALKS
25 INTO A STORE. HE SEES THE MAN WHO FIRED HIM THE WEEK
26 BEFORE. THE MAN SAYS TO HIM: "BOY, THAT PINK SLIP WILL
27 MAKE IT HARD FOR YOU TO PAY FOR YOUR KID'S SURGERY. I
28 HOPE HE DIES."

1 THESE ARE PROVOCATORY WORDS. PROVOCATORY
2 WORDS ARE ENOUGH, UNDER THE LAW, IF THAT IS SOMETHING
3 THAT YOU COULD EXPECT ANY PERSON, ANY NORMAL PERSON,
4 WOULD GET UPSET, ANGRY, ENRAGED BASED ON THAT, THOSE
5 WORDS, WHICH IS PROVOCATION COMING FROM THE VICTIM.

6 AND IN THAT STATE OF HEAT OF PASSION, WHICH
7 I AM JUST SHORTHANDING AS ENRAGED, WHIPS OUT A GUN AND
8 FIRES.

9 THAT IS VOLUNTARY MANSLAUGHTER. EVEN
10 THOUGH OUR GUY IS A HOTHEAD, THAT DOESN'T DISQUALIFY
11 HIM, IF WHAT HE IS REACTING TO IS WHAT ANYBODY ELSE
12 WOULD REACT TO. SOMEONE WHO SAID SOMETHING LIKE THAT,
13 WHO GOT HIM UPSET, IF AN ORDINARILY REASONABLE PERSON
14 WOULD GET UPSET BY THAT, HE'S GOT A RIGHT TO AVAIL
15 HIMSELF OF THE SAME RULE OF LAW. HE IS ENRAGED. THAT
16 IS THE EMOTIONAL STATE. HE WOULD BE GUILTY.

17 THAT IS -- RAGE CAN BE HEAT OF PASSION.
18 FEAR CAN BE HEAT OF PASSION. JEALOUSY CAN BE HEAT OF
19 PASSION, ANY EMOTION, AND YOU WILL BE INSTRUCTED ON
20 THIS, WHAT CONSTITUTES HEAT OF PASSION.

21 ONE THING YOU DON'T HEAR ABOUT IS LUST
22 BEING HEAT OF PASSION. THEY USE THE WORD "PASSION," BUT
23 THEY DON'T REALLY MEAN THAT KIND OF PASSION. THEY JUST
24 MEAN AN EMOTIONAL STATE. OKAY.

25 RAGE, HATRED, ANGER. ALL OF THESE ARE
26 LEGITIMATE. YOU CAN HATE THE PERSON YOU'RE KILLING.

27 THERE IS NO REQUIREMENT THAT YOU FEAR THEM AT ALL. YOU
28 ARE ENTITLED TO A REDUCTION TO MANSLAUGHTER UNDER

-13515

1 PROVOCATION THEORY IN THIS SITUATION. AND YOU WILL SEE
2 IN THE OTHERS, TOO, IN SITUATIONS WHERE IT IS, IF YOU
3 WILL, THE MORE BASE AND THE LESS OVERWHELMING EMOTION OF
4 ANGER. FEAR IS THE MOST OVERWHELMING EMOTION POSSIBLE.
5 ANGER ISN'T.

6 AND YET THE LAW AND THE TYPICAL EVOLUTION
7 AND -- YOU READ THE CASES WHEN YOU'RE TALKING ABOUT
8 MANSLAUGHTER, WHEN YOU'RE TALKING ABOUT HEAT OF PASSION,
9 THAT SOMEBODY GETS ANGRY AT SOMEBODY ELSE. THAT'S
10 MANSLAUGHTER.

11 THE COURT: LET ME ASK A QUESTION HERE.

12 DOES ANYONE NEED A BREAK? OKAY.

13 MS. ABRAMSON: THANKS, JUDGE.

14 THE COURT: ALL RIGHT. LET'S PICK UP IN 10
15 MINUTES HERE, AND WE'LL WORK UNTIL NOON. SO WE'LL HAVE
16 ABOUT 15 MINUTES MORE WHEN YOU COME BACK.

17 DON'T DISCUSS THE MATTER WITH ANYONE.

18 DON'T FORM ANY FINAL OPINIONS ABOUT IT.

19 (A RECESS WAS TAKEN FROM
20 11:35 A.M. TO 11:50 A.M.)

21

22 MS. ABRAMSON: DO YOU REALLY WANT TO GO FOR 10

23 MINUTES, OR NINE MINUTES, JUDGE?
24 THE COURT: YES.
25 MS. ABRAMSON: OKAY. I CAN DO IT.
26 (THE JURY ENTERS THE COURTROOM
27 AND THE FOLLOWING PROCEEDINGS
28 WERE HELD:)

-13514

1
2 THE COURT: OKAY. THE JURY IS BACK, AND WE WILL
3 NOW CONTINUE WITH THE ARGUMENT.
4 MS. ABRAMSON: THANK YOU.
5 OKAY. NOW WE'RE SHIFTING FROM OUR EXAMPLES
6 ABOUT THE HOTHEAD, WHO NEVERTHELESS CAN AVAIL HIMSELF OF
7 THE PROVOCATION THEORY, IF HE BEHAVES IN A WAY THAT ONE
8 COULD EXPECT ORDINARILY REASONABLE PEOPLE TO BEHAVE.
9 NOW WE GET TO OUR ORDINARILY REASONABLE
10 MAN. THIS IS THE FIGMENT OF THE LEGAL IMAGINATION. I
11 DON'T KNOW WHO THIS PERSON IS, BUT BASICALLY HE IS THE
12 ENTIRE RANGE OF HUMAN BEINGS WHO ARE NOT BASICALLY
13 EITHER HOTHEADS OR IRRATIONAL, AND THAT'S A LOT OF
14 VARIATION.
15 AND BECAUSE THAT IS LOT OF VARIATION, THE
16 LAW DOESN'T REQUIRE A GREAT DEAL TO ALLOW HIM, OR ANYONE
17 ACTING LIKE HIM, TO AVAIL HIMSELF OF THE PROVOCATION
18 THEORY.

19 IN THIS HYPOTHETICAL, OUR ORDINARILY
20 REASONABLE MAN, OR WOMAN, FOR THAT MATTER, OR TEENAGER,
21 WALKS IN A STORE AND SEES A MAN. HE MISTAKES HIM FOR A
22 MAN WHO RAPED HIS DAUGHTER. THAT'S THE ONLY FACTS WE
23 KNOW.

24 THE MAN -- THE VICTIM HAS DONE NOTHING TO
25 BRING ABOUT THIS MISTAKE. IT IS A MOMENTARY DELUSION OF
26 OUR OTHERWISE REASONABLE MAN.

27 HE BECOMES ENRAGED. IT IS NOT
28 PREMEDITATING OR DELIBERATING. HE IS IN THAT EMOTIONAL

-13513

1 STATE THAT WOULD NEGATE DELIBERATION ANYWAY. BUT BEYOND
2 THAT, HE SIMPLY IS ENRAGED. HE HAS A GUN. LET'S SAY
3 HE'S A SECURITY GUARD. THAT'S WHAT HE DOES FOR A
4 LIVING. PULLS OUT HIS GUN, FIRES.

5 THAT IS A TYPICAL FACT SITUATION FOR
6 SECOND-DEGREE MURDER. AGAIN, IT'S SOMEONE WHO IS UPSET,
7 BUT SOMEONE WHO HAS NOT BEEN PROVOKED BY THE VICTIM.

8 NOW, THIS MAN, THIS VICTIM, COULD HAVE SAID
9 SOMETHING TO BRING ABOUT THIS MISTAKE. HE COULD HAVE
10 EITHER KNOWN ABOUT THE RAPE OR SUGGESTED SOMETHING TO
11 OUR ORDINARILY REASONABLE MAN THAT SUPPORTED OUR
12 ORDINARILY REASONABLE MAN'S CONCLUSION THAT THIS VICTIM
13 WAS RESPONSIBLE.

14 IF HE KILLED HIM THEN, THAT COULD WELL BE

15 VOLUNTARY MANSLAUGHTER.

16 LET'S GO ON TO THE NEXT SITUATION, WHICH
17 IS, IN MY ASSESSMENT, VOLUNTARY MANSLAUGHTER, OR COULD
18 BE. AND THIS SIGN HERE DOESN'T MEAN EQUALS, IT MEANS
19 THAT'S THE MOST REASONABLE INTERPRETATION OF THE
20 EVIDENCE, GIVEN THESE LIMITED FACTS I AM GIVING YOU.

21 THIS IS WHAT YOU HAVE TO DO AS A JUROR.
22 YOU HAVE TO INTERRELATE THE FACTS IN THIS CASE TO SEE IF
23 IT FITS THESE HYPOTHETICALS OF SUFFICIENT PROVOCATION
24 AND AN EMOTIONAL STATE SUFFICIENT TO CONSTITUTE HEAT OF
25 PASSION, ON THE ONE HAND, WHEN YOU'RE ANALYZING
26 PROVOCATION THEORY FOR THE MANSLAUGHTER ASPECT
27 CONCERNING MR. MENENDEZ. AND THEN YOU HAVE TO DO
28 ANOTHER LEVEL OF ANALYSIS, I SUBMIT, IN ORDER TO ANALYZE

-13512

1 HOW TO VIEW THE EVIDENCE WITH RESPECT TO MRS. MENENDEZ.

2 BUT IN ANY EVENT, HERE IS OUR ORDINARILY
3 REASONABLE MAN PROVOKED. WALKS INTO A STORE, SEES THE
4 ACTUAL MAN WHO DID RAPE HIS DAUGHTER THE WEEK BEFORE.
5 THAT IS SUFFICIENT PROVOCATION.

6 NOW, THIS VICTIM, CALLED "VICTIM" HERE,
7 RAPIST, WHO DID IN FACT RAPE OUR ORDINARILY REASONABLE
8 MAN'S DAUGHTER, IS NOT DOING ANYTHING AT THAT MOMENT TO
9 OUR ORDINARILY REASONABLE MAN.

10 BUT THE MERE FACT THAT HE RAPED THE

11 DAUGHTER IS PROVOCATION TO OUR ORDINARILY REASONABLE
12 MAN.

13 AND THERE HAVE BEEN CASES, IN FACT, WHERE
14 THE FACT THE DEFENDANT LEARNED THAT HIS BROTHER HAD BEEN
15 KILLED BY SOMEONE TWO HOURS BEFORE, GOES OFF AND KILLS
16 THAT PERSON. THAT PERSON DOESN'T DO ANYTHING TO HIM
17 DIRECTLY.

18 NEVERTHELESS, THE FACT IS THAT IN THE STATE
19 OF MIND OF THAT DEFENDANT -- HIS NAME IS BROOKS, BY THE
20 WAY --

21 MR. CONN: OBJECTION. THERE IS NO EVIDENCE OF
22 THIS BEFORE THE JURY.

23 THE COURT: YES. THERE IS NO EVIDENCE OF THAT,
24 AND WE ARE TALKING JUST IN A GENERAL SENSE. WE ARE NOT
25 TALKING ABOUT ANY CASE AT ALL.

26 MS. ABRAMSON: OKAY. THE FACT THAT YOU HAVE THIS
27 KNOWLEDGE THAT SOMEONE ELSE HARMED SOMEONE NEAR AND DEAR
28 TO YOU IS ENOUGH. THEY DON'T HAVE TO DO ANYTHING

-13511

1 PROVOCATORY TO YOU AT THE TIME, OR AT ANY TIME.

2 THIS WOULD BE SUFFICIENT, IF THESE FACTS
3 ARE TRUE, THAT HE SEES THE MAN WHO RAPED HIS DAUGHTER.
4 THE LAW UNDERSTANDS YOU'RE GOING TO GET VERY WORKED UP,
5 AND YOU ARE GOING TO BE ANGRY, AND YOU ARE GOING TO BE
6 ENRAGED. AND IT'S THE FACT THAT YOU ARE ACTING UNDER

7 THAT EMOTIONAL STATE, AND IT'S BASED ON SOMETHING THE
8 VICTIM DID, NOT JUST A TOTALLY INNOCENT PERSON, YOU
9 KNOW, BUYING A LOAF OF BREAD; SOMETHING HE DID AND DID
10 NOT HAVE TO DO AT THAT TIME THAT CAUSES YOU TO BE
11 ENRAGED.

12 HE THEN GETS THE GUN FROM HIS CAR, COMES
13 BACK, FIRES, WANTS TO KILL THIS GUY, INTENDS THAT HE BE
14 DEAD BECAUSE OF WHAT HE DID TO HIS DAUGHTER.

15 NEVERTHELESS, UNDER THAT FACT SITUATION, IT
16 WOULD BE VOLUNTARY MANSLAUGHTER.

17 THE FACT THAT HE TAKES THE TIME, SAY A
18 MINUTE AND A HALF TO TWO MINUTES, TO GO AND GET HIS GUN
19 FROM HIS CAR DOESN'T MATTER, BECAUSE THE RAGE DOESN'T GO
20 AWAY DURING THAT TIME. THE HEAT OF PASSION DOES NOT
21 SUBSIDE JUST BECAUSE HE WALKS OUT OF THE STORE, AND THE
22 MAN WHO RAPED HIS DAUGHTER IS NOT WITHIN HIS LINE OF
23 VISION FOR THAT PERIOD OF TIME THAT HE GOES TO GET HIS
24 GUN.

25 I MEAN, EVEN IF HE HAD GONE HOME TO GET HIS
26 GUN, SO LONG AS HE IS STILL UPSET AND HE IS ACTING ON
27 THE BASIS OF THAT UPSET, AND THIS SOON-TO-BE-VICTIM IS
28 RESPONSIBLE FOR THAT UPSET, THAT'S VOLUNTARY

-13510

1 MANSLAUGHTER, BECAUSE HE INTENDS TO KILL.

2 NOW, LET'S -- WE'RE NOT GOING TO DEAL WITH

3 THINGS THAT AREN'T IN THIS CASE. SO LET'S GO ON NOW TO
4 ANOTHER SET OF HYPOTHETICALS.

5 THIS WAS BLOCKED OUT BECAUSE I GOT THE LAW
6 WRONG THERE, SO I HAD TO TAKE IT OFF.

7 THIS IS A PERSON WHO HAPPENS TO SUFFER FROM
8 POST-TRAUMATIC STRESS DISORDER. HE IS MORE FEARFUL THAN
9 MOST PEOPLE, BUT HE IS STILL QUITE CAPABLE, AND DOES
10 BEHAVE AS THE ORDINARILY REASONABLE PERSON DOES AND
11 WOULD WITH RESPECT TO PERCEIVING WHETHER OR NOT
12 SOMETHING IS DANGEROUS, AND WITH RESPECT TO BEING
13 PROVOKED BY THE SAME KIND OF THING THAT WOULD PROVOKE
14 OUR O.R.M., OUR ORDINARILY REASONABLE MAN.

15 AND HERE IS -- AND JUST AS THE HOTHEAD CAN
16 TAKE ADVANTAGE OF THE LAW WHEN HE BEHAVES ACCORDING TO
17 THE STANDARD THAT THE LAW IMPOSES, SO CAN THE MENTALLY
18 DISORDERED PERSON WITH P.T.S.D. AVAIL HIMSELF OF THE LAW
19 IF HE BEHAVES IN THE -- ACCORDING TO THE STANDARD THAT
20 THE LAW IMPOSES.

21 HE WALKS INTO A STORE. HE SEES A MAN WHO
22 RESEMBLES A PERSON WHO MOLESTED HIM AS A CHILD. OKAY.
23 HE GETS INTO A FEAR/RAGE REACTION, A COMBINED REACTION.
24 HE IS IN HYPER-AROUSAL. HE IS REEXPERIENCING THE TRAUMA
25 OF HIS MOLESTATION.

26 NOW, THIS POOR SUCKER DID NOTHING TO
27 TRAUMATIZE HIM, DID NOTHING TO CAUSE THE FEAR OR THE
28 RAGE, BUT THE EMOTIONS ARE ABSOLUTELY GENUINE. OKAY.

1 OUR INDIVIDUAL HERE GETS THE GUN FROM HIS
2 CAR AND FIRES. THIS CAN LEAD TO SECOND-DEGREE MURDER.

3 THERE IS NO PROVOCATION, RIGHT? THIS MAN
4 DIDN'T PROVOKE; NOT NOW, NOT A WEEK AGO, NOT NEVER.

5 BUT THERE IS THIS ENORMOUS EMOTION, AND
6 THIS ENORMOUS EMOTION EASILY WILL REDUCE FIRST-DEGREE
7 MURDER -- WELL, EASILY WILL NEGATE ANY NOTION OF
8 PREMEDITATION OR DELIBERATION. SO WE'RE NOT IN
9 FIRST-DEGREE MURDER LAND. IT COULD BE SECOND-DEGREE
10 MURDER.

11 BUT IF HE IS IN SUCH AN EXTREME STATE OF
12 AROUSAL THAT HE DID NOT HAVE THE THOUGHTS THAT
13 CONSTITUTE EITHER EXPRESS MALICE, THE INTENTION
14 UNLAWFULLY TO KILL SOMEONE, OR IMPLIED MALICE, THEN HE'S
15 NOT GUILTY OF MURDER, EVEN THOUGH THIS GUY DIDN'T DO
16 ANYTHING TO PROVOKE HIM.

17 YOU HAVE TO HAVE THAT STATE OF MIND THAT
18 CONSTITUTES MALICE, OR YOU CANNOT BE GUILTY OF MURDER.
19 AND IF THERE IS NO PROVOCATION HERE, THERE IS NO ROOM
20 FOR MANSLAUGHTER. THEREFORE, IT'S EITHER SECOND-DEGREE
21 MURDER, IF THE LEVEL OF AROUSAL IS HERE; IT'S NOT GUILTY
22 IF THE LEVEL OF AROUSAL IS SUCH AS TO INDICATE THAT HE
23 DID NOT IN FACT HARBOR MALICE.

24 NOW WE HAVE --

25 THE COURT: OKAY. LET'S TAKE OUR BREAK NOW.

26 MS. ABRAMSON: -- OUR BREAK FOR LUNCH.

27 THE COURT: WE WILL RESUME AT 1:30.

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1 FINAL OPINIONS ABOUT IT. WE WILL RESUME AT 1:30.

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

3 ADJOURNED UNTIL 1:30 P.M. OF

4 THE SAME DAY.)

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1 VAN NUYS, CALIFORNIA; WEDNESDAY, FEBRUARY 28, 1996

2 1:40 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER.)

6 (MARY LU MURPHY, OFFICIAL REPORTER.)

7

8 THE COURT: ANYTHING BEFORE WE START UP

9 HERE?

10 MS. ABRAMSON: NO, JUDGE.

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

12 (THE JURY ENTERED THE COURTROOM

13 AND THE FOLLOWING PROCEEDINGS

14 WERE HELD:)

15

16 THE COURT: THE JURY IS BACK.

17 HELLO OVER THERE. AND WE'RE READY TO
18 RESUME WITH THE ARGUMENT. ALL PARTIES ARE PRESENT.
19 YOU MAY CONTINUE YOUR ARGUMENT.
20 MS. ABRAMSON: THANK YOU.
21 I HAVE VOWED THAT I SHALL FINISH BEFORE
22 THE BREAK. IN FINISHING, I WILL PROBABLY CAUSE THE
23 BREAK. I'M DETERMINED TO DO THIS.
24 WHERE WAS I? OKAY. WE WERE TALKING
25 ABOUT -- WE HAD FINISHED NO. 5, WHICH IS MY PERSON
26 WITH POST-TRAUMATIC STRESS DISORDER, WHO'S
27 UNPROVOKED AND WHAT THE CONSEQUENCES ARE, DEPENDING
28 ON WHAT THE ACTUAL LEVEL OF AROUSAL IS.

52030

1 AND THE SIXTH EXAMPLE HERE IS THE PERSON
2 WITH POST-TRAUMATIC STRESS DISORDER WHO'S PROVOKED,.
3 IN MY HYPO HERE, MY HYPOTHETICAL, IS
4 THIS PERSON WALKS INTO A STORE AND HE SEES THE
5 ACTUAL MAN WHO DID MOLEST HIM REPEATEDLY AS A
6 CHILD. AND THE MAN -- NOT JUST RELYING ON THE
7 ANCIENT PROVOCATION, BUT THE MAN SAYS: "I CAN HAVE
8 YOU ANY TIME I WANT."
9 OF COURSE, YOU CAN SEE THAT I AM DRAWING
10 SOME PARALLELS IN THIS HYPOTHETICAL WITH THE
11 SITUATION THAT MY CLIENT, ERIK MENENDEZ, ACTUALLY

12 FACED THAT SUNDAY NIGHT. BECAUSE THE BELLIGERENT
13 ATTITUDE OF MY HYPOTHETICAL PERSON HERE IS NOT
14 DIFFERENT THAN THE BELLIGERENT ATTITUDE THAT JOSE
15 MENENDEZ DISPLAYED WHEN HIS SON, LYLE MENENDEZ, WAS
16 BEGGING HIM NOT TO TOUCH ERIK MENENDEZ AGAIN.

17 NOW, MY HYPOTHETICAL PERSON, HOWEVER,
18 RESPONDS WITH A COMBINATION OF FEAR AND RAGE. IT
19 DOESN'T REALLY MATTER FOR THE SAKE OF PROVOCATION
20 THEORY WHETHER THE REACTION IS FEAR OR RAGE, AND I
21 WILL TALK TO YOU WHEN WE TALK ABOUT SOME OTHER
22 EXAMPLES, ABOUT OTHER POSSIBLE EMOTIONS THAT ALSO
23 QUALIFY AS HEAT OF PASSION.

24 IT'S NOT SOPHISTICATED. IT'S NOT
25 COMPLICATED TO RECOGNIZE THAT ANY ORDINARILY
26 REASONABLE PERSON, WHETHER HE HAS P.T.S.D. OR DOES
27 NOT HAVE P.T.S.D., WHO'S VERBALLY PROVOKED THIS WAY,
28 GIVEN THEIR HISTORY, AND GIVEN THIS KIND OF A VERBAL

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1 STATEMENT, WOULD REACT IN A STATE OF WHAT THE LAW
2 CALLS HEAT OF PASSION. IT IS NOT, AS I SAY, AN
3 EXTREMELY HIGH LEVEL OF AROUSAL. IT'S WHAT NORMAL
4 PEOPLE WOULD BE EXPECTED TO HAVE. THAT'S THE
5 THRESHOLD.

6 THIS PERSON REACTS WITH HYPER-AROUSAL,

7 OKAY? HE GETS THE GUN FROM HIS CAR AND HE FIRES.

8 NOW, SINCE AN ORDINARILY REASONABLE

9 PERSON WOULD HAVE REACTED WITH HEAT OF PASSION, IN

10 ANY EVENT, HE AT LEAST IS ENTITLED TO NO MORE THAN A

11 VOLUNTARY MANSLAUGHTER. BUT BECAUSE HE REACTS AT

12 THIS EXTREME LEVEL BECAUSE OF HIS HISTORY, THIS

13 PERSON MAY, DEPENDING ON THE FACTS OF HIS ACTUAL

14 STATE OF MIND, AS THE JURY DETERMINES IT, MAY RESULT

15 IN A VERDICT OF NOT GUILTY; NOT A VERDICT OF

16 INNOCENT, A VERDICT OF NOT GUILTY.

17 AND HERE'S THE ANALYSIS, JUST IN THE

18 SHORT FORM. IT IS THE SAME PROVOCATION AS WOULD

19 AROUSE AN ORDINARILY REASONABLE MAN TO HEAT OF

20 PASSION. BUT AS A MATTER OF FACT, IT AROUSED THIS

21 PERSON TO A GREATER LEVEL BECAUSE OF THE HISTORY OF

22 TRAUMA THAT CREATES THIS EXTREME REACTION IN THIS

23 PERSON WITH POST-TRAUMATIC STRESS DISORDER.

24 NOW, IF HE'S AT A LEVEL OF AROUSAL WHERE

25 HE NEVERTHELESS FORMULATES SPECIFIC INTENT TO KILL,

26 IT COULD BE A VOLUNTARY MANSLAUGHTER. OKAY? WHAT

27 IF YOU'RE IN A SITUATION WHERE THERE IS NO

28 MANSLAUGHTER BEING INSTRUCTED? THEN YOU HAVE TO

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1 TAKE A LOOK AT THE ACTUAL STATE OF MIND AND HOW IT'S

2 EXPRESSED; AND THEN YOU DECIDE IF THERE IS NO
3 EXPRESS OR IMPLIED MALICE, IT RESULTS IN THE ONLY
4 JUST VERDICT -- AND WE'RE TALKING ABOUT LEGAL
5 JUSTICE HERE -- THE ONLY JUST VERDICT WOULD BE A
6 VERDICT OF NOT PROVEN, WHICH ON THE VERDICT FORM IS
7 WRITTEN "NOT GUILTY."

8 NOW, I DIDN'T REALIZE UNTIL THIS MORNING
9 WHEN I UNWRAPPED THESE THAT THE THIRD PAGE -- THERE
10 WERE MORE TYPICAL CASES, AND THE THIRD PAGE -- THE
11 PRINTER DID ME TWO OF THESE, INSTEAD OF THE THIRD
12 PAGE. ISN'T THAT GREAT? THAT'S WHAT HAPPENS WHEN
13 YOU USE CHEAP PRINTERS. BUT I HAVE A LIST.

14 SO I WANTED TO TALK TO YOU ABOUT SOME
15 TYPICAL KINDS OF SITUATIONS WHERE IT'S BEEN
16 UNDERSTOOD IN THE LAW, THIS NOTION OF HEAT OF
17 PASSION MAY APPLY, DEPENDING ON WHAT FACTS THE JURY
18 FINDS TO BE TRUE.

19 TWO OF THE OBVIOUS ONES ARE A MAN FINDS
20 OUT THAT ANOTHER MAN IS HAVING AN AFFAIR WITH HIS
21 WIFE. THAT ENGENDERS A FEELING OF JEALOUSY AND
22 ANGER. GOES OFF AND SHOOTS THE GUY WHO'S HAVING THE
23 AFFAIR WITH HIS WIFE.

24 THAT'S JUST A CLASSIC -- THAT'S WHAT IS
25 KNOWN IN TEXAS AS "TEXAS JUSTICE." THAT'S SORT OF A
26 CLASSIC HEAT OF PASSION.

27 SADLY ENOUGH IN OUR COUNTRY, OFTEN HEAT
28 OF PASSION IS CAUSED BY NO. 2, TAUNTING. VERBAL

1 TAUNTING WITH RACIAL SLURS. VERBAL TAUNTING; PEOPLE
2 CLAIMING TO HAVE RELATIONSHIPS WITH PEOPLE NEAR AND
3 DEAR, CASTING ASPERSIONS ON ONE'S PARENTAGE OR
4 MOTHER, THAT KIND OF BAITING LANGUAGE; OR WHAT'S
5 ALSO KNOWN AS FIGHTING WORDS, CHALLENGING WORDS.

6 THOSE ARE THE KIND OF SITUATIONS,
7 CLASSICALLY, WHERE HEAT OF PASSION IS APPLIED. I
8 HAVE SOME OTHERS.

9 INJURIES THAT ARE DONE TO ONE'S
10 CHILDREN, EVEN IF THEY'RE ONLY THOUGHTS.

11 SITUATIONS WHERE ONE'S DAUGHTER IS
12 INVOLVED IN AN AUTOMOBILE ACCIDENT AND SOMEONE IS
13 RUDE AND THREATENING TO HER, AND THE FATHER GOES
14 AFTER THAT DRIVER, AND AN ARGUMENT ENSUES. THAT'S A
15 SITUATION WHERE HEAT OF PASSION HAS BEEN APPLIED.

16 THE COURT: AGAIN, WE'RE NOT TALKING ABOUT
17 WHERE SOMETHING HAS OR HASN'T BEEN APPLIED, BECAUSE
18 IT'S NOT IN THE RECORD, AND YOU'RE MISSTATING THE
19 FACTS OF SOMETHING. LET'S BACK OFF AND TALK ABOUT
20 HOW YOU ANALYZE THINGS THAT COULD APPLY, RATHER THAN
21 WHAT HAS BEEN APPLIED.

22 MS. ABRAMSON: THIS IS AN INDICATION OF A
23 SITUATION WHERE HEAT OF PASSION CAN APPLY.

24 THE SAME THING, AS I TOLD YOU EARLIER.
25 YOU FIND OUT SOMEONE HAS DONE HARM TO A MEMBER OF

26 YOUR FAMILY, EVEN IF IT'S OUTSIDE YOUR VIEW. THAT'S
27 A SITUATION WHERE HEAT OF PASSION IS AN APPROPRIATE
28 ANALYSIS.

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1 THE SAME THING IF YOU'RE IN AN ARGUMENT
2 WITH SOMEONE AND THEY'RE TAUNTING YOU, CALLING YOU A
3 COWARD, TELLING YOU YOU DON'T HAVE THE GUTS TO DO
4 ANYTHING TO THEM, THOSE KINDS CHALLENGING OR
5 FIGHTING WORDS. THAT'S A SITUATION WHERE HEAT OF
6 PASSION ANALYSIS COULD ALSO APPLY.
7 BUT HERE'S WHAT'S SIGNIFICANT. OKAY?
8 CLASSICALLY -- AND IF YOU SIT AND TRY TO THINK OF
9 HYPOTHETICAL SITUATIONS WHERE HEAT OF PASSION
10 APPLIES -- THE MOST ORDINARY, THE MOST COMMON ARE
11 SITUATIONS WHERE THE EMOTION IS ANGER OR RAGE. AND
12 WE UNDERSTAND THAT THE LAW MAKES THIS ROOM FOR HUMAN
13 FRAILTY. IT UNDERSTANDS PEOPLE GET ANGRY. PEOPLE
14 GET HATE-FILLED. PEOPLE GET ENRAGED. THE FACT THAT
15 IT'S THAT KIND OF NEGATIVE EMOTION DOES NOT DEPRIVE
16 ONE OF HEAT OF PASSION. IT WAS ALMOST WRITTEN FOR
17 THAT. THAT'S THE CLASSIC REACTION; THE FIGHT, THE
18 SUDDEN QUARREL, THESE JEALOUSIES, THESE ABSOLUTES.
19 ALL OF THESE THINGS ARE FOUNDED ON A NOTION THAT IT
20 IS NORMAL FOR PEOPLE TO GET ANGRY. AND IF THEY'RE

21 REACTING FROM THIS ENRAGED, AROUSED STATE, IT IS NOT
22 THE SAME AS BEING A MURDERER. THAT'S THE POINT.
23 IN THIS CASE, I SUBMIT TO YOU, THOUGH,
24 THAT HEAT OF PASSION -- WE GO -- FIRST OF ALL, HEAT
25 OF PASSION IS EVEN EASIER TO ANALYZE. BUT THE
26 REASON WHY YOU CAN ANALYZE THIS CASE TO A VERDICT OF
27 NOT GUILTY IS BECAUSE THE EMOTION IS NOT ANGER. THE
28 MOTION IS A FAR MORE BENIGN EMOTION. IT IS FEAR.

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1 AND THE WHOLE REASON WHY I CAN AND DO
2 ARGUE TO YOU, THAT IF YOU ANALYZE MY CLIENT'S
3 THOUGHTS YOU WILL UNDERSTAND WHY A NOT GUILTY
4 VERDICT IS NOT AN OUTRAGEOUS THING FOR ME TO BE
5 ASKING OF YOU.

6 WHY? BECAUSE MALICE ASSUMES, AT THE
7 LEAST -- IMPLIED MALICE REQUIRES SOME NOTION OF WHAT
8 YOU'RE DOING TO SOMEBODY ELSE, CONSCIOUS DISREGARD
9 FOR HUMAN LIFE.

10 NOW, WHEN YOU GET ANGRY WITH SOMEONE
11 WHEN YOU'RE IN ANY OF THOSE SITUATIONS THAT I TALKED
12 ABOUT AS HEAT OF PASSION, WHAT'S THE THOUGHT IN YOUR
13 HEAD? "I'M GOING TO KILL THAT S.O.B. HOW DARE THEY
14 DO THAT TO MY DAUGHTER. YOU DID THAT TO ME. DO YOU
15 THINK YOU'RE GOING TO GET AWAY WITH THIS?"

16 TYPICAL ANGRY REACTION. AND IT'S
17 TOTALLY FOCUSED ON WHAT YOU'RE GOING TO DO TO THAT
18 PERSON.

19 THAT IS VERY DIFFERENT THAN: "I'M GOING
20 TO DIE. I'M GOING TO DIE."

21 "WHAT'S GOING TO HAPPEN?" OR BLANK, NO
22 THOUGHT AT ALL.

23 OR "HURRY, HURRY. THEY'RE GOING TO COME
24 OUT OF THE DEN."

25 THAT'S TOTALLY FOCUSED ON ONE'S OWN
26 SURVIVAL.

27 AND WHEN YOU ARE COMPLETELY AND TOTALLY
28 FOCUSED ON YOUR OWN SURVIVAL, I SUBMIT TO YOU, YOU

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1 ARE NOT HARBORING MALICE, WHICH ASSUMES A
2 CONSCIOUSNESS THAT YOU'RE DOING SOMETHING TO
3 SOMEBODY ELSE.

4 WHEN YOU ARE SO AROUSED THAT THERE IS NO
5 RATIONAL THOUGHT ABOUT A SITUATION OR ABOUT WHAT THE
6 CONSEQUENCE OF WHAT YOU'RE DOING IS, I SUBMIT TO
7 YOU, THAT IS A STATE THAT GOES BEYOND HEAT OF
8 PASSION. THAT IS A STATE THAT NEGATES MALICE. AT A
9 VERY MINIMUM IT IS HEAT OF PASSION. AND HEAT OF
10 PASSION, FRANKLY, OF A MORE PALATABLE KIND THAN IN

11 THE ORDINARY CASE WHEN YOU'RE ALLOWED TO BE ENRAGED
12 AND ANGRY AND KILL OUT OF RAGE AND ANGER.
13 THE ONLY EVIDENCE WE HAVE HERE IS A
14 KILLING OUT OF TERROR WITH RESPECT TO MY CLIENT.
15 EVERY REASON IN THE WORLD WHY HE SHOULD HAVE BEEN
16 TERRIFIED IS IN THE RECORD. AND THE FACT THAT HE IS
17 OPERATING OUT OF TERROR IS REALLY UNCONTROVERTED.
18 THAT BEING THE CASE, I THINK IT MAKES
19 SENSE TO TAKE THE ANALYSIS ALL THE WAY FROM HEAT OF
20 PASSION ON THE ONE SIDE, THROUGH ACTUALLY HARBORING
21 MALICE ON THE OTHER.
22 NOW, IF YOU WILL THEN, THE FOCUS HERE
23 FOR THE TWO DIFFERENT THEORIES THAT I AM PROPOUNDING
24 TO YOU; ONE BEING FOCUS ON THE MENTAL STATE TO SEE
25 IF THERE REALLY IS MALICE, THE OTHER BEING WHETHER
26 HE CAN AVAIL HIMSELF WITH RESPECT TO THE KILLING OF
27 MR. MENENDEZ BY OPERATION OF LAW UNDER PROVOCATION
28 THEORY THAT ELIMINATES MALICE AUTOMATICALLY.

52037

1 TO COMPARE THE TWO, I GUESS, A SHORTHAND
2 WAY IS THIS: FOR PROVOCATION THEORY YOU LOOK TO THE
3 BEHAVIOR AND THE WORDS OF THE VICTIM.
4 FOR A MENTAL STATE THEORY YOU FOCUS ON
5 THE ACTUAL THOUGHT PROCESS, MENTAL STATE OF THE

6 PERSON DOING THE KILLING. AND YOU FACTOR IN, IN
7 ORDER TO UNDERSTAND THE QUALITY OF THE THINKING,
8 WHICH IS THE KEY -- THE QUALITY OF THE THINKING --
9 YOU HAVE TO FACTOR IN WHAT'S KNOWN ABOUT MY CLIENT,
10 WHICH IS THAT HE SUFFERED FROM POST-TRAUMATIC STRESS
11 DISORDER, AND AT A MINIMUM GENERALIZED ANXIETY
12 DISORDER, WHICH DR. VICARY SAID IN THE EXTREME
13 CASE -- AND WE KNOW HE'S AN EXTREME CASE -- CAN
14 TRIGGER THE SAME KIND OF LACK OF QUALITY THINKING,
15 LACK OF RATIONAL THINKING, THAT DR. WILSON TESTIFIED
16 WAS TRUE OF POST-TRAUMATIC STRESS DISORDER.

17 THEN YOU LOOK AT IS HE NOT HAVING
18 THOUGHTS THAT ACTUALLY AMOUNT TO MALICE BECAUSE OF
19 THE POST-TRAUMATIC STRESS DISORDER? THAT'S THE TWO
20 WAYS TO ANALYZE IT.

21 NOW, WHAT ARE -- WHAT ARE THE THOUGHTS
22 HERE? IN SPITE OF MR. CONN'S EFFORTS TO TRY TO PUT
23 THOUGHTS INTO MY CLIENT'S HEAD-- CONSTANTLY
24 SUGGESTING THINGS THAT MR. CONN SAYS HE SHOULD HAVE
25 THOUGHT ABOUT -- I DON'T KNOW WHERE HE GETS THAT
26 NOTION -- WHAT ARE THE THOUGHTS THAT HE DID HAVE?
27 THIS IS THE STICKY PAPER STUFF.

28 AT THE CRUCIAL TIME -- YOU KNOW WHEN THE

1 CRUCIAL TIME IS? WHEN THE TRIGGER IS BEING PULLED.

2 THAT'S THE CRUCIAL TIME. THAT'S THE TIME THAT

3 MATTERS. THAT'S WHEN THIS ACTUS REUS, THE ACT; AND

4 THE MENS REA, THE MENTAL STATE, COME TOGETHER.

5 THAT'S WHEN IT MATTERS WHAT OUR THOUGHTS ARE. BUT

6 WE'LL GO BACK.

7 LET'S TALK ABOUT THE ONLY THOUGHTS WE

8 KNOW ABOUT DURING THE CRUCIAL MINUTE AND A HALF, AND

9 THAT'S WHAT WE'RE TALKING ABOUT. THE CRUCIAL MINUTE

10 AND A HALF TO TWO MINUTES IN WHICH THIS ENTIRE

11 DISASTER IS PLAYED OUT.

12 WE HAVE ERIK MENENDEZ STANDING ON THE

13 STAIRCASE IN THE FOYER, WHICH IS CALLED "ENTRY" --

14 THIS IS AN EXHIBIT IN EVIDENCE -- THESE THINGS

15 (POINTING) THAT WE'RE DOING HERE ARE NOT EXHIBITS.

16 YOU'RE NOT GOING TO SEE THEM AGAIN. OKAY?

17 HE'S IN THE HALLWAY. HE HAS GONE INTO

18 THE HOUSE WITH HIS BROTHER. HE'S GONE THROUGH THIS

19 DOOR FROM THE KITCHEN INTO THE DINING ROOM. AND THE

20 ARGUMENT OCCURS WITH HIS BROTHER COMING OUT OF THE

21 DEN WITH HIS MOTHER. AND HE IS STANDING THERE. AND

22 THERE'S A BACK AND FORTH ABOUT NOT BEING ABLE TO

23 LEAVE THE HOUSE THAT NIGHT, NOT BEING ABLE TO GO TO

24 THE MOVIES.

25 HIS FATHER COMES OUT OF THE DEN, TELLS

26 HIM THEY'RE NOT LEAVING AND ORDERS ERIK MENENDEZ UP

27 THE STAIRS.

28 HE GOES UPSTAIRS. HE'S EXTREMELY

1 APPREHENSIVE.

2 LYLE GETS INTO AN ARGUMENT WITH HIS
3 FATHER. " NOT GOING TO TOUCH ERIK MENENDEZ."

4 I'M NOT GOING TO REPEAT IT ALL, BECAUSE
5 I THINK YOU'VE HEARD IT NOW MANY TIMES.

6 BUT THE BOTTOM LINE IS THEY'RE HAVING AN
7 ARGUMENT. AND MR. MENENDEZ IS BEING BELLIGERENT AND
8 IS TAKING THE POSITION THAT HE CAN DO WHATEVER HE
9 WANTS TO ERIK MENENDEZ.

10 NOW, THE CLEAR MESSAGE OF THAT, FOR
11 ANYONE WHO HAS BEEN INSIDE THIS FAMILY FOR ANY
12 PERIOD OF TIME, FOR EITHER LYLE MENENDEZ OR ERIK
13 MENENDEZ, IS THAT: "GO TO YOUR ROOM" IS A
14 TRIGGERING DEVICE FOR EITHER PHYSICAL PUNISHMENT OR
15 A SEXUAL ASSAULT. AND THAT'S HOW MY CLIENT
16 INTERPRETS IT. AND THERE IS NOTHING UNREASONABLE
17 ABOUT HIM INTERPRETING IT THAT WAY. THE FACT THAT
18 IT ISN'T BLATANTLY SAID DOESN'T MATTER.

19 LET ME GIVE YOU THE EQUIVALENT. YOU'RE
20 A PERSON WHOSE NATIVE TONGUE IS GREEK. SOMEONE SAYS
21 TO YOU: "I'M GOING TO MOLEST YOU" IN GREEK. OKAY.
22 IT WOULDN'T MEAN ANYTHING TO ME. I DON'T SPEAK
23 GREEK. BUT IT MEANS EVERYTHING TO YOU.

24 BUT IF SOMEONE SAYS TO ME IN ENGLISH:
25 "I'M GOING TO RAPE YOU," THAT MEANS THE SAME THING
26 TO ME IN ENGLISH AS "I'M GOING TO RAPE YOU" IN GREEK
27 MEANS TO YOU, THE GREEK SPEAKER.

28 SO THAT THE FACT THAT HE DOESN'T SAY:

52040

1 "GO TO YOUR ROOM. I'M GOING TO MOLEST YOU,"
2 DOESN'T MEAN THAT ERIK MENENDEZ IS UNREASONABLE IN
3 UNDERSTANDING WHAT IT IS HIS FATHER AND HIS BROTHER
4 ARE ARGUING ABOUT. IT'S HIM. AND IT'S WHAT IS
5 GOING TO BE DONE TO HIM THAT THEY ARE ARGUING ABOUT.

6 NOW, IT'S FOR YOU, AS MEMBERS OF THE
7 COMMUNITY, TO DECIDE -- I MEAN, THIS IS ACTUALLY THE
8 THEORY IN THE LAW. AS MEMBERS OF THE COMMUNITY, IT
9 IS FOR YOU TO DECIDE WHETHER OR NOT THE THREAT OF
10 THE SEXUAL ASSAULT IS THE KIND OF THING THAT WOULD
11 MAKE THE ORDINARILY REASONABLE PERSON REACT IN AN
12 EMOTIONAL STATE. IN AN EMOTIONAL STATE OF FEAR OR
13 AN EMOTIONAL STATE OF ANGER OR ANY COMBINATION;
14 ANYTHING THAT, UNDER THE INSTRUCTIONS YOU WILL BE
15 GIVEN, CONSTITUTES HEAT OF PASSION.

16 I THINK -- I CAN'T IMAGINE THAT YOU WOULD
17 SAY NO. THAT SEEMS TO ME TO BE AS BAD AN AFFRONT
18 AND AS PROVOKING A KIND OF STATEMENT AS ANYTHING

19 ELSE THAT COULD SET PEOPLE OFF.
20 SO HE IS PROVOKED BY THAT, PROVOKED BY
21 HIS FATHER'S BELLIGERENCE, PROVOKED BY THE NATURE OF
22 THIS ARGUMENT. AND HE STARTS TO GO UPSTAIRS, AND
23 HIS FATHER GOES BACK IN THE DEN.
24 AND THEN THE ARGUMENT CONTINUES BETWEEN
25 HIS FATHER -- STRIKE THAT -- BETWEEN HIS MOTHER AND
26 HIS BROTHER. AND HIS MOTHER AGAIN BLAMES -- THIS
27 TIME LYLE -- FOR RUINING THE FAMILY. IT'S ALL HIS
28 FAULT.

52041

1 AND AT THAT POINT ERIK MENENDEZ, FROM
2 THE MINUTE HIS FATHER -- FROM THE MINUTE HE SEES HIS
3 BROTHER ARGUING WITH HIS FATHER AND HIS FATHER'S
4 INSISTENCE THAT HE CAN DO WHAT HE WANTS WITH HIM, HE
5 GOES INTO HYPERSPACE, AND HE TALKS ABOUT HOW
6 OVERWHELMED HE IS AT THAT POINT. ALL HE'S FOCUSING
7 ON IS "HE'S NOT COMING INTO MY ROOM. I CAN'T LET
8 THAT HAPPEN."
9 AND THEN HIS BROTHER COMES UP THE
10 STAIRS, AND IN THAT AROUSED STATE HIS BROTHER TELLS
11 HIM: "IT'S HAPPENING NOW." AND THE WAY HE
12 UNDERSTANDS THAT IS WHAT THEY HAVE BEEN WORRIED
13 ABOUT OVER THE WHOLE COURSE OF THAT WEEK, WHAT THEY

14 HAVE BEEN AROUSED OVER, WHAT THE PARENTS HAVE BEEN
15 SAYING, OTHER PROVOCATORY STATEMENTS ABOUT THAT
16 WHOLE WEEK IS GOING TO HAPPEN THEN. THAT IS HIS
17 SENSE. THAT IS THE PASSION THAT HE IS IN AT THAT
18 POINT. OKAY?

19 NOW, WHAT ARE THE THOUGHTS THAT SO MUCH
20 TIME WAS SPENT ON ELICITING FROM THAT POINT ON? I
21 CAN TELL YOU WHAT THE ACTIONS ARE. THAT MAY BE
22 SIMPLEST.

23 WE'RE TALKING NOW ABOUT A MINUTE AND A
24 HALF TO TWO MINUTES.

25 HE GOES UP THESE STAIRS. I COULDN'T SET
26 UP THE SECOND-STORY AS WELL. HE GOES UP THESE
27 STAIRS, ACROSS THE BALCONY, INTO HIS ROOM, INTO THE
28 CLOSET, DOWN THE STAIRS, OUT THE STUDY. THIS WAY

52042

1 (POINTING), TO THE CAR.

2 LOADS THE GUN. AND HE AND HIS BROTHER
3 COME BACK IN, INTO THE DEN, FIVE SECONDS, MAYBE TEN
4 SECONDS, BACK OUT.

5 THERE'S THE RELOAD, AND HIS BROTHER GOES
6 BACK INTO THE DEN. ONE MORE SHOT.

7 THAT'S ALL THE ACTIVITY. WHAT ARE HIS
8 THOUGHTS THAT HE HAS TOLD US ABOUT?

9 THE ONE MOST PERVASIVE IS -- THIS ISN'T
10 GOING TO SHOW. LET ME DO THE BIG ONE.
11 "HURRY, HURRY." THAT'S WHAT HE'S
12 THINKING WHEN HE RUNS UP TO HIS ROOM. THAT'S WHAT
13 HE'S THINKING WHEN HE RUNS DOWNSTAIRS AND OUT.
14 THAT'S WHAT HE'S THINKING WHEN LYLE COMES, BECAUSE
15 THAT'S WHAT HE SAYS TO LYLE: "HURRY, HURRY," WHICH
16 MR. CONN MADE A BIG DEAL OUT OF. ABSOLUTELY
17 NOTHING.
18 MY CLIENT SAID HE HAD A VISUAL IMAGE
19 THAT FLASHED INTO HIS HEAD WHEN HE GOT UP TO HIS
20 BEDROOM OF BARRICADING HIMSELF IN THE ROOM OR
21 CLOSING THE DOOR. AND THEN THE IMAGE WAS GONE.
22 AND MR. CONN TALKS ABOUT THAT AS THE
23 WEIGHING OF OPTIONS AND CHOICES AND CONSIDERATIONS.
24 THAT'S RIDICULOUS. IT'S A FLASH. THERE'S NO
25 THOUGHT BEHIND IT. AND THAT'S EXACTLY, IN FACT,
26 WHAT DR. WILSON SAID HAPPENS FOR PEOPLE IN EXTREME
27 STATES OF PANIC. VISUAL IMAGES, A FLASH IN THEIR
28 HEAD. BUT THERE'S NO REAL THINKING THAT GOES ON.

52043

1 IT'S JUST THAT; AND THAT'S ALL IT IS, AND IT'S NOT
2 THE DISMISSING OF AN OPTION. IT DOESN'T PROVE
3 DELIBERATION. IT DOESN'T PROVE THINKING AND

4 WEIGHING. IT DOESN'T PROVE COGNATING. IT DOESN'T

5 PROVE RATIONALITY. IT DOESN'T PROVE ANYTHING. IT'S

6 NOTHING. IT'S A FLASH.

7 NOW, WHAT'S THE OTHER THOUGHT THAT HE

8 HAS WHEN HE'S OUT AT THE CAR? HE'S THINKING LYLE'S

9 NOT HERE. AND HE'S THINKING HE MIGHT HAVE TO GO IN

10 ALONE, BECAUSE WHAT'S THE BACKGROUND NOISE WHEN HE

11 GETS DOWN TO THE CAR? " HAVE TO GET TO THE DEN

12 FIRST," MEANING, BEFORE THE PARENTS COME OUT AND

13 SHOOT HIM.

14 "HURRY, HURRY."

15 "LYLE NOT HERE."

16 "I MIGHT HAVE TO GO ALONE."

17 "I HAVE TO GET TO THE DEN FIRST."

18 THIS IS ALL THE THINKING, ALL OF IT,

19 TOTAL, THAT HE GOES THROUGH IN THAT MINUTE AND A

20 HALF TO TWO MINUTES. AND THIS IS ALL BEFORE HE GETS

21 TO THE DOORS OF THE DEN.

22 NOW, AT ONE POINT HE SAYS HE LOOKS

23 BACKWARDS, AFTER MR. CONN ASKS: "DID YOU THINK ABOUT

24 SOMEONE FOLLOWING YOU?"

25 AND HE SAID: "NO."

26 "WELL, DIDN'T YOU LOOK BACK?"

27 THE FACT YOU LOOK BACKWARDS DOESN'T MEAN

28 IT WAS PRECEDED NECESSARILY WITH THE THOUGHT:

1 "SOMEONE IS FOLLOWING ME." BUT EVEN IF IT WAS,
2 WE'RE NOT IN THE DEN YET. THIS -- THIS THINKING,
3 WHICH ISN'T THINKING AT ALL -- IT'S JUST FLASHES OF
4 IDEAS. AND IT ISN'T FOCUSING TO WHAT HE'S GOING TO
5 DO OR NOT DO. THAT'S BEFORE HE GETS TO THE DEN.

6 NOW, YES, HE'S SITTING ON THE WITNESS
7 STAND. HE'S BEING CROSS-EXAMINED ABOUT DIDN'T YOU
8 INTEND TO KILL, AND HE KEEPS SAYING: "I DIDN'T HAVE
9 THOSE THOUGHTS."

10 WHEN HE GOES THROUGH THE DEN THERE ARE
11 NO THOUGHTS AT ALL. HE IS IN SUCH A TERRIFIED STATE
12 THAT HE SAID -- OH, NO. THERE WAS ONE OTHER
13 THOUGHT. AND IT HAD TO DO WITH PERCEPTUAL
14 DISTORTIONS, WHICH IS TREMBLING RIGHT AT THE EDGE OF
15 DISTORTION, AND THAT IS "THE GUN IS HUGE."

16 AND THEN HE'S INSIDE THE DOORS OF THE
17 DEN. AND IN THERE ALL HE REMEMBERS IS THAT HE SAW A
18 RED FLASH. HE REMEMBERS THE LOUD NOISE. HE DOES
19 NOT REMEMBER THINKING ANYTHING, NOT THINKING -- NOT
20 THINKING LIKE OUR TYPICAL GUY IN HEAT OF PASSION
21 THINKS. "I'M GOING TO GET YOU," OR " YOU DESERVE
22 THIS," OR " THAT," NONE OF THAT. NOTHING.
23 JUST AN OVERWHELMING SENSE OF TERROR, AN
24 OVERWHELMING FEELING THAT HE IS GOING TO DIE, NOT
25 KNOWING WHO'S SHOOTING AT WHAT. THE SOUNDS AND
26 FLASH. AND THAT'S IT. THERE IS NO THINKING.

27 AND THAT IS COMPLETELY CONSISTENT WITH

52045

1 POST-TRAUMATIC STRESS DISORDER WHO'S FACED WITH THIS
2 TRULY TRAUMATIC EVENT. BAM. THEY ARE JUST OUT
3 THERE. THEY ARE NOT IN CONTROL OF THEIR THOUGHTS.

4 AS DR. RESTAK SAYS, IT BYPASSES RATIONAL
5 THINKING AND COGNITION, AND THAT'S WHERE THEY ARE,
6 AND THAT'S WHERE HE WAS, AND THERE IS NO OTHER
7 EVIDENCE BUT THAT.

8 NOW, IT'S VERY CONVENIENT TO TALK ABOUT
9 EVENTS SO YOU CAN PIN DOWN DETAILS OF THEM IN TERMS
10 OF A LINEAR PROGRESSION. BUT IT GIVES A FALSE
11 IMPRESSION. IT'S LIKE SLO-MO, A MOVIE. ALL OF THIS
12 TAKES PLACE IN A FLASH, VERY, VERY FAST, WHERE THERE
13 REALLY ISN'T ANY TIME TO THINK ANYWAY IN THE NORMAL
14 SENSE THAT WE THINK OF. IT'S ALL HAPPENING VERY
15 QUICKLY. IT'S ALL HAPPENING IN THIS CONFINED AREA
16 HERE. IT'S ALL HAPPENING ON THE RUN, EVEN INSIDE
17 THE DEN.

18 HE GOES INSIDE THE DEN -- AND THIS IS
19 THE OTHER CRUCIAL FACT. HE DOES NOT START FIRING
20 UNTIL HE SEES HIS FATHER IS STANDING UP, HIS MOTHER
21 IS STANDING UP. HIS FATHER APPEARS TO BE COMING
22 TOWARDS HIM.

23 NOW, MR. CONN ASKS IN THIS WHOLE SERIES
24 OF QUESTIONS ABOUT DID HE TAKE A STEP? DID YOU SEE
25 A STEP? HE HAS NO MEMORY OF SEEING A STEP. HE HAS
26 THE MEMORY ONLY OF THE OVERWHELMING EMOTION. HE'S
27 COMING AT HIM. OKAY. WHICH JUST TELLS YOU THE
28 LEVEL OF TERROR AT THAT POINT. HE CAN ONLY IDENTIFY

52046

1 NOW WITH FEAR. HE'S TOTALLY FOCUSED ON FEAR.
2 AND THE SAME IS TRUE DURING THAT
3 PERIOD -- I MEAN, WE'RE TALKING ABOUT THIS RELOAD
4 ISSUE WHICH HE PUT IN EVIDENCE -- COULD NOT HAVE
5 TAKEN MORE THAN 30 SECONDS ON ITS OWN, BECAUSE THE
6 DISTANCE -- HE IS AN ATHLETE. TENNIS PLAYERS HAVE TO
7 RUN FAST. IT'S PART OF THE TRAINING. ALL OF THIS
8 IS DONE ON A DEAD RUN. RUNNING UP TO HIS ROOM,
9 RUNNING DOWN, LOADING THE GUN, RUNNING IN, RUNNING
10 OUT. IT'S ALL VERY, VERY FAST. AND I THINK YOU
11 HAVE TO KEEP THAT IN MIND WHEN WE TALK ABOUT IT. WE
12 COULD STRETCH IT OUT OVER THREE DAYS, DESCRIBING
13 THESE EVENTS, THAT ACTUALLY TOOK A MINUTE AND A HALF
14 TO TWO MINUTES.
15 I'M GETTING CLOSE TO THAT TERRIBLE POINT
16 WHEN I HAVE TO LET GO. WHAT AM I FORGETTING?
17 SURELY I WASN'T READY TO LET GO YET. LET ME THINK.

18 OKAY. I'LL TELL WHAT YOU I'M THINKING.
19 I SAT HERE AND I LISTENED TO MR. CONN'S
20 FINAL ARGUMENT. IT WAS LIKE PUTTING A KNIFE MADE OF
21 ICE IN MY HEART, BECAUSE WHAT HE WAS DESCRIBING IN
22 THAT COLD AND CALLOUS WAY OF HIS HAD NOTHING TO DO
23 WITH THE TRAGIC STORY OF THIS FAMILY, NOTHING.
24 HE MISCHARACTERIZED MY CLIENT. HE
25 DOESN'T REALLY EVEN WANT TO TALK ABOUT THE VICTIMS
26 HERE AS HUMAN BEINGS. THIS KIND OF MESS CAN'T BE
27 DONE EXCEPT BY HUMAN BEINGS. THIS KIND OF TRAGEDY
28 DOESN'T HAPPEN EXCEPT FOR THE COMPLEXITY OF HUMAN

52047

1 BEINGS, PEOPLE WHO LOVE PEOPLE WHO HURT THEM,
2 PERHAPS EVEN PEOPLE WHO LOVE THE PEOPLE THAT THEY
3 HURT.
4 THE BEAUTY OF OUR SYSTEM OF JUSTICE IS
5 WE'RE STILL ALLOWING DECISIONS TO BE MADE BY HUMAN
6 BEINGS WHO CAN UNDERSTAND THE FULL RANGE OF HUMAN
7 EMOTION, OF HUMAN MOTIVATION, OF HUMAN FRAILTY.
8 WHAT FRIGHTENS ME WHEN I SIT IN A
9 COURTROOM AND I HEAR A PROSECUTOR MAKE THE KIND OF
10 ARGUMENT THAT MR. CONN MADE IS THAT IT APPEALS TO
11 HEARTLESSNESS. I DON'T WANT TO APPEAL TO YOUR
12 SYMPATHY, BELIEVE ME. I HAVE ENOUGH EMOTIONALISM IN

13 THIS CASE THAT I COULD STAND HERE AND SOB FOR AN
14 HOUR, AND I'M NOT GOING TO DO IT, AND I DON'T EVEN
15 CARE WHAT THEY WRITE ABOUT IN THE PAPER, IF I DID DO
16 IT. I DON'T WANT TO APPEAL CHEAPLY THAT WAY.

17 WE PUT ON EVIDENCE FROM EXPERTS IN THE
18 HOPES THAT IT WOULD HELP YOU UNDERSTAND, UNDERSTAND,
19 WHEN MY CLIENT WAS ASKED WHAT DOES HE WANT? DOES HE
20 WANT SYMPATHY? IS HE CRYING TO GET YOUR SYMPATHY?
21 HE SAID HE WANTED YOUR UNDERSTANDING.

22 IT HAS BEEN A VERY LONG ROAD FOR ME, AS
23 IT HAS FOR DETECTIVE ZOELLER. WE HAVE BEEN ON THIS
24 CASE FOR SIX YEARS, EVERYBODY TRYING TO GET
25 UNDERSTANDING, AND WITH IT, JUSTICE FOR THIS YOUNG
26 MAN. THERE IS NOTHING WE CAN DO FOR HIS PARENTS
27 NOW, BELIEVE ME. I HAVE SPENT WEEKS, PROBABLY OVER
28 THESE SIX YEARS IF I ADDED UP EVERY DAY I SAT THERE

52048

1 AND DAYDREAMED, IF I ONLY HAD A TIME MACHINE, HOW
2 GREAT IT WOULD BE IF I COULD ONLY GO BACK IN TIME
3 AND GRAB THEM AWAY AND THIS NEVER WOULD HAVE
4 HAPPENED. IF I COULD HAVE ONLY BEEN THERE A FEW
5 YEARS BEFORE, A YEAR BEFORE, A WEEK BEFORE, KNOWING
6 WHAT I KNOW. HOW MUCH EASIER THAN TRYING TO SORT
7 THIS OUT IN A COURT OF LAW.

8 AND YOU CAN'T DO THAT. THIS IS THE ONLY
9 WAY WE CAN TRY TO SORT IT OUT. ABSOLUTELY NOTHING
10 YOU DO IS GOING TO BRING BACK THEIR PARENTS, AND
11 NOTHING YOU DO IS GOING TO MAKE THEM FEEL ANY WORSE
12 ABOUT WHAT'S BEEN DONE HERE.

13 THE REAL TRAGEDY
14 HERE -- WELL THERE'S MANY -- BUT ONE OF THE REAL
15 TRAGEDIES HERE IS THAT NO ONE FEELS THE LOSS OF
16 THESE TWO PEOPLE MORE THAN ERIK MENENDEZ, AND I'M
17 SURE THE SAME IS TRUE FOR LYLE MENENDEZ. CLEARLY, I
18 KNOW THEM BOTH, AND I KNOW THEM WELL.

19 SIX YEARS AGO I HAD A 19-YEAR-OLD CLIENT
20 WHO, AS DR. VICARY DESCRIBED, WAS VERY SICK AND
21 OBVIOUSLY SO. I HAVE WATCHED HIM GROW UP IN COUNTY
22 JAIL. AND HE SAT ON THE STAND HERE FOR 15 DAYS, AND
23 ALTHOUGH HE AND I AND YOU AND EVERYONE DEPLORES WHAT
24 HE DID IN THE DEN OF THE FAMILY HOME ON AUGUST 20TH,
25 1989, I AM VERY PROUD OF HIM THAT HE COULD SIT ON
26 THE WITNESS STAND AND TAKE THE BEATING THAT HE WAS
27 BEING GIVEN AND STAND UP FOR HIMSELF. I WAS GLAD TO
28 SEE THAT HE WOULD FIGHT FOR HIMSELF AFTER ALL HE HAD

52049

1 BEEN THROUGH, AND I AM PROUD OF HIM. AND IT WILL BE
2 THE ULTIMATE TRAGEDY OF MY LIFE IF I LOSE THIS

3 CASE. NOT FOR MY CAREER, BECAUSE IT DOESN'T
4 MATTER. I'M DONE. I'M READY TO LEAVE. BUT IT WILL
5 BE SO UNJUST.

6 THIS IS A CASE OF FAMILY TRAGEDY, OF
7 FAMILY INJUSTICE, AND IT CAN'T BE SORTED OUT IN ANY
8 OTHER COURTROOM BUT THIS ONE, NOW.

9 I THOUGHT IT WAS OVER THE LAST TIME AND
10 IT WASN'T. AND WHAT I WANT TO URGE ON YOU IS THIS:
11 YOU KNOW WHAT THE HISTORY OF THIS CASE IS. I AM
12 CONCERNED, LEST YOU BELIEVE IT IS ABSOLUTELY YOUR
13 JOB NOW TO RENDER A UNANIMOUS VERDICT, IF ONE CANNOT
14 BE REACHED IN THIS CASE. THIS IS A CASE THAT WE
15 KNOW PUSHES ENORMOUS BUTTONS IN PEOPLE. YOU ARE THE
16 THIRD JURY TO HEAR THIS CASE. YOU ARE NOT SUPER MEN
17 AND WOMEN. YOU ARE JUST LIKE THE OTHER JURIES,
18 ORDINARY CITIZENS, WHICH IS WHAT WE WANT AND WHAT WE
19 NEED. IT MAY BE THIS CASE NEVER CAN BE RESOLVED
20 WITH 12 PEOPLE, EACH VOTING THEIR OWN CONSCIENCE.

21 I WANT TO MAKE SURE, IN URGING YOU, THAT
22 IF YOU CANNOT AGREE, IT IS BETTER TO NOT RENDER A
23 VERDICT, TO HANG, THAN TO RENDER AN UNJUST ONE OR A
24 COMPROMISED ONE. WE HAVE NO ILLUSIONS ABOUT HOW
25 DIFFICULT THIS CASE IS; HOWEVER, A COMPROMISE IS NOT
26 JUSTICE FOR EITHER SIDE.

27 I THANK YOU ALSO FOR YOUR PATIENCE. YOU
28 ARE THE STONIEST-FACED JURY I HAVE EVER SEEN. YOU

1 SHOULD BE PROUD OF YOURSELF. IF WE DID TELEVISE IT
2 AND SHOWED THE JURY, THE PUNDITS WOULDN'T HAVE A
3 CLUE.

4 SO WE AWAIT YOUR DECISION WITH GREAT
5 ANTICIPATION.

6 THANK YOU.

7 THE COURT: OKAY. THANK YOU.

8 MR. GESSLER, DO YOU NEED SOME TIME
9 BEFORE WE START UP?

10 MR. GESSLER: PROBABLY NEED FIVE TO TEN
11 MINUTES JUST TO REARRANGE SOME THINGS, YOUR HONOR.

12 THE COURT: OKAY. LET'S TAKE OUR BREAK SO
13 COUNSEL CAN GET THE EXHIBITS AND CHARTS AND THINGS
14 READY. AND THEN WE'LL PICK UP AT 2:30.

15 DON'T DISCUSS THE MATTER AND DON'T FORM
16 ANY FINAL OPINIONS ABOUT IT. THERE'S MORE ARGUMENT
17 TO COME, AND STILL INSTRUCTIONS.

18 BY THE WAY, YOU'VE SEEN CHARTS AND
19 THINGS. YOU'LL PROBABLY SEE MORE OF THEM ON VARIOUS
20 THINGS HERE.

21 FIRST OF ALL, YOU SEE CHARTS SHOWING YOU
22 BLOWUPS OF TRANSCRIPTS. IT'S ALREADY BEEN MENTIONED
23 IN ARGUMENT, AND I'LL SAY THIS AT THE END OF MY
24 INSTRUCTIONS TO YOU. THE TRANSCRIPTS OF TESTIMONY
25 THAT YOU'VE HEARD IN THE TRIAL DO NOT GO TO THE

26 JURY, BECAUSE THEY HAVE OFTEN LOTS OF EXTRANEOUS
27 MATERIAL IN THEM, AND THE RULE IS THAT IF THE JURY
28 WANTS TESTIMONY READ BACK, ALL OR A PORTION OF A

52051

1 WITNESS' TESTIMONY -- AND I'LL DISCUSS THE PROCEDURE
2 WITH YOU LATER WHEN I READ THE INSTRUCTIONS TO YOU
3 -- THE REPORTER READS THE TESTIMONY TO THE JURY,
4 WHETHER OR NOT IT'S IN OPEN COURT OR IN THE JURY
5 ROOM, HOWEVER THE LAWYERS WANT TO DO IT. THE COURT
6 REPORTER THEN READS BACK QUESTIONS AND ANSWERS TO
7 THE JURY. YOU DON'T ACTUALLY GET THE TRANSCRIPTS
8 THEMSELVES.

9 THERE'S ANOTHER TYPE OF TRANSCRIPT
10 THAT'S BEEN REFERRED TO ALSO. THAT'S THE TRANSCRIPT
11 OR TRANSCRIPTS OF VARIOUS TAPE-RECORDINGS, AND
12 YOU'VE ALREADY SEEN THOSE. THEY'VE BEEN GIVEN TO
13 YOU DURING THE TIME TAPES WERE PLAYED IN COURT.
14 THOSE TAPE-RECORDINGS WILL GO INTO THE JURY AS WELL
15 AS A TRANSCRIPT OF TAPE-RECORDINGS.

16 I'VE ALREADY INSTRUCTED YOU THAT THE
17 EVIDENCE OF THE CONVERSATIONS INVOLVED, THE BEST
18 EVIDENCE OF THOSE CONVERSATIONS ARE THE
19 TAPE-RECORDINGS THEMSELVES, AND THE TRANSCRIPTS OF
20 THOSE TAPE-RECORDINGS ARE TO BE USED BY YOU, NOT

21 JUST DURING THE TIME THEY WERE PLAYED HERE IN COURT,
22 BUT DURING THE DELIBERATIONS, TO ASSIST YOU IN
23 UNDERSTANDING THE WORDS ON THE TAPES, IF THERE WAS
24 SOME PROBLEM IN UNDERSTANDING WHAT THEY WERE.

25 ONE ADDITIONAL THING AS FAR AS THESE
26 CHARTS THAT ARE BEING USED, AND HAVE BEEN USED, AND
27 WILL BE USED, SHOWING YOU THINGS ABOUT THE LAW,
28 DISCUSSING WITH YOU VARIOUS LEGAL PRINCIPLES. I

52052

1 WILL GIVE YOU THE LAW THAT APPLIES IN THIS CASE IN
2 MY INSTRUCTIONS.

3 AND THE FACT THAT LAWYERS TALK ABOUT THE
4 LAW IS APPROPRIATE. THEY HAVE TO TALK ABOUT THE LAW
5 AS IT RELATES TO FACTS IN THEIR ARGUMENT TO YOU.

6 BUT BEAR IN MIND THAT THE RULES OF LAW
7 THAT APPLY IN THIS CASE ARE THOSE RULES THAT I GIVE
8 YOU AT THE END OF THE CASE IN MY ORAL INSTRUCTIONS
9 TO YOU, AND THEY WILL BE GIVEN TO YOU IN WRITING AS
10 WELL. THEY'LL BE PRINTED OUT, AND YOU'LL HAVE THEM
11 TO REVIEW DURING YOUR WORK AS WELL.

12 SO BEAR THAT IN MIND, THAT THE LEGAL
13 RULES WILL BE GIVEN TO YOU IN WRITING. SO YOU DON'T
14 HAVE TO BE CONCERNED ABOUT TAKING NOTES AND WRITING
15 DOWN WHAT IT IS THAT'S DISPLAYED ON THESE DIAGRAMS,

16 BECAUSE ULTIMATELY THE LEGAL RULES WILL BE SENT OUT
17 TO YOU IN WRITING, AND YOU CAN TAKE THEM IN WITH YOU
18 DURING YOUR DELIBERATIONS.

19 OKAY. WE'LL RESUME AT 2:30.

20 (A RECESS WAS TAKEN FROM

21 2:15 P.M. TO 2:35 P.M.)

22

23 THE COURT: ARE YOU READY, MR. GESSLER?

24 MR. GESSLER: I'M READY, YOUR HONOR.

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

26 (THE JURY ENTERED THE COURTROOM

27 AND THE FOLLOWING PROCEEDINGS

28 WERE HELD:)

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1

2 THE COURT: THE JURY IS BACK.

3 AND NOW WE'LL HAVE ARGUMENT FROM COUNSEL

4 FOR LYLE MENENDEZ, MR. GESSLER.

5 MR. GESSLER: THANK YOU, YOUR HONOR.

6

7 CLOSING ARGUMENT

8 BY MR. GESSLER:

9 GOOD AFTERNOON, LADIES AND GENTLEMEN.

10 JUST WHEN YOU THOUGHT YOU'D HEARD

11 EVERYTHING THERE WAS TO HEAR ABOUT THIS CASE, AND
12 MORE THAN YOU PROBABLY WANTED TO KNOW IN A LIFETIME,
13 NOW YOU GET TO HEAR FROM ME TOO. BUT THERE ARE SOME
14 THINGS THAT WE STILL NEED, I THINK, TO TALK ABOUT IN
15 THIS CASE THAT WE HAVEN'T GONE INTO YET.

16 ONE OF THOSE THINGS THAT PEOPLE ASK
17 CONSTANTLY IS: WHY DIDN'T LYLE MENENDEZ JUST
18 LEAVE? HE WAS 21 YEARS OF AGE. HE'D LIVED ON HIS
19 OWN. WHY DIDN'T HE JUST LEAVE?

20 ANOTHER QUESTION THAT PEOPLE ASK IS: IF
21 HE DIDN'T DO THIS FOR THE MONEY, WHY DID HE SPEND SO
22 MUCH SO FAST?

23 AND THE THIRD QUESTION IS: WHY DO WE
24 CARE ABOUT TWO RICH KIDS FROM BEVERLY HILLS WHO
25 KILLED THEIR PARENTS? WHAT DO WE CARE WHAT THE
26 REASON IS? ISN'T THIS ALL JUST AN ABUSE EXCUSE
27 ANYWAY?

28 THOSE ARE THE THINGS THAT I WANT TO

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1 ADDRESS IN MY REMARKS TO YOU. I WISH THAT WE COULD
2 JUST TALK BACK AND FORTH INSTEAD OF YOUR BEING
3 TALKED AT, BECAUSE WE HAVE TO GUESS WHAT'S IMPORTANT
4 TO YOU. WE HAVE NO IDEA WHAT YOU'RE THINKING, WHAT
5 YOU FEEL YOU'D LIKE TO HAVE COVERED. SO ALL WE CAN

6 DO IS OUR BEST SHOT.

7 PLEASE FORGIVE US WHEN WE MISS SOMETHING

8 THAT'S IMPORTANT TO YOU. IF IT'S IMPORTANT TO YOU,

9 THEN IT IS IMPORTANT TO THE CASE. AND PLEASE GO

10 AHEAD AND CONSIDER IT IN YOUR DELIBERATIONS, EVEN IF

11 WE, AS LAWYERS, AREN'T SMART ENOUGH TO TOUCH ON THAT

12 VERY THING THAT YOU FIND IMPORTANT.

13 BUT, YOU KNOW, THE PROSECUTION HAS

14 PRESENTED THIS CASE VERY ARTFULLY, AND PARTICULARLY

15 IN THEIR OPENING STATEMENT TO YOU, AS A MURDER FOR

16 GREED. HAS A GOOD RING TO IT, DOESN'T IT? BUZZ

17 WORDS THAT YOU CAN GRAB ONTO. GETS YOU MAD BEFORE

18 WE EVEN START.

19 AND THEN THE CASE HAS BEEN TRIED, AND

20 PARTICULARLY ARGUED, IN THAT TIMELESS MANNER, OF THE

21 INSTRUCTION THAT'S BEEN WITH US EVER SINCE WE

22 STARTED CRIMINAL LAW. IT'S THE ONE THAT'S ON THE

23 BOARD HERE.

24 A DEFENDANT IN A CRIMINAL

25 ACTION IS PRESUMED TO BE GUILTY UNTIL

26 THE CONTRARY IS PROVED. AND IN CASE

27 OF A REASONABLE DOUBT WHETHER

28 INNOCENCE IS SATISFACTORILY SHOWN, HE

1 IS ENTITLED TO A VERDICT OF GUILTY.

2 THIS PRESUMPTION PLACES UPON

3 THE DEFENDANT THE BURDEN OF PROVING

4 HIMSELF INNOCENT BEYOND A REASONABLE

5 DOUBT.

6 NOW THAT ISN'T EXACTLY THE WAY THAT IT

7 READS HERE, OR THE JUDGE WILL INSTRUCT YOU, OR THAT

8 OUR CRIMINAL LAW HAS BEEN CARRIED OUT FOR 200

9 YEARS. BUT IT'S THE WAY THAT THE PROSECUTION HAS

10 ARGUED THE CASE.

11 LET'S PRESUME THEM GUILTY. LET'S

12 PRESUME THAT EVERY PEOPLE'S WITNESS IS TELLING THE

13 TRUTH, AT LEAST FOR THE PART THAT THE PROSECUTION

14 ASKS THEM; AND NOT TELLING THE TRUTH, OR NOT GIVING

15 ANY HELPFUL INFORMATION FOR THE PARTS THAT THE

16 DEFENDANT CROSS-EXAMINES THEM ON.

17 AND LET'S PRESUME THAT ALL THE DEFENSE

18 WITNESSES ARE EITHER LYING OR HAVE NOTHING TO ADD TO

19 THIS CASE ANYWAY BECAUSE, AFTER ALL, THEY'RE NOT

20 PROVING THE DEFENDANT'S INNOCENCE.

21 LADIES AND GENTLEMEN, I ASK YOU TO USE

22 THE LAW AS IT'S REALLY WRITTEN IN ANALYZING THIS

23 CASE, AND NOT THE WAY THAT THE PROSECUTION HAS

24 PRESENTED IT IN ITS ARGUMENT AND IN ITS

25 CHARACTERIZATION OF EVERY WITNESS WHO HAD ANYTHING

26 HELPFUL TO SAY FOR THE DEFENSE IN THIS MATTER.

27 BECAUSE THIS IS THE LAW, AND IT DOES PUT THE ENTIRE

28 BURDEN ON THE PROSECUTION, NOT ON LYLE MENENDEZ OR

1 ERIK MENENDEZ.

2 THIS BURDEN IS TO PROVE BEYOND A
3 REASONABLE DOUBT ALL CHARGES THAT THEY HAVE BROUGHT
4 IN THIS CASE BEFORE ANY VERDICT OF GUILTY CAN BE
5 BROUGHT IN. IT IS NOT A BURDEN THAT IS PLACED AT
6 ANY TIME ON EITHER DEFENDANT, WHETHER A DEFENDANT
7 TAKES THE STAND OR NOT. ALL THE EVIDENCE THAT YOU
8 HAVE HEARD, DIRECT EXAMINATION, CROSS-EXAMINATION,
9 EVERY WITNESS, EXCEPT THOSE THAT WERE LIMITED, AND
10 THEN YOU USE THEM FOR WHAT THEY WERE LIMITED FOR, AS
11 A PART OF YOUR THINKING IN THIS CASE, IN DECIDING
12 WHETHER THESE CHARGES ARE PROVED BEYOND A REASONABLE
13 DOUBT OR NOT PROVEN.

14 THE NOT PROVEN COMES FROM THE SCOTTISH
15 THAT WE HAVE TAKEN PART OF INTO OUR JURISPRUDENCE.
16 I DON'T KNOW IF THEY STILL DO, BUT THEY USED TO HAVE
17 THREE VERDICTS IN SCOTLAND. THEY HAD GUILTY, WHICH
18 MEANS PROOF BEYOND A REASONABLE DOUBT; AND THEY HAD
19 INNOCENCE, WHICH MEANS, GEE, WE DON'T THINK THE GUY
20 DID IT. WE'RE GIVING HIM A VERDICT OF INNOCENT.
21 AND THEN THEY HAD THE MIDDLE GROUND, THE LARGEST
22 GROUP, WHICH IS NOT PROVEN.

23 THAT'S WHAT WE TALK ABOUT IN OUR NOT
24 GUILTY VERDICTS. WE TALK ABOUT THOSE WHERE THE

25 PROSECUTION HAS NOT PROVEN WHAT THEIR CHARGE IS, OR
26 AN ELEMENT OF THE CHARGE, OR A MENTAL ELEMENT, SOME
27 MENTAL STATE THAT THEY HAVE TO PROVE. AND IF THEY
28 HAVEN'T, IF THEY HAVEN'T PROVEN IT BEYOND A

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1 REASONABLE DOUBT TO EACH OF YOUR SATISFACTIONS, THEN
2 THE DEFENDANT IS ENTITLED TO THAT VERDICT OF NOT
3 GUILTY.

4 IN THIS CASE PARTICULARLY, IT'S
5 IMPORTANT TO KNOW THAT NOT GUILTY GOES BEYOND: DO
6 THEY HAVE THE RIGHT GUY OR THE GUY THAT DID IT? IT
7 GOES TO THE CHARGE ITSELF AND ANY OF THE LESSER
8 CHARGES.

9 IF YOU'RE SATISFIED BEYOND A
10 REASONABLE DOUBT THAT THE KILLING WAS
11 UNLAWFUL, BUT YOU HAVE A REASONABLE
12 DOUBT WHETHER THE CRIME IS MURDER OR
13 MANSLAUGHTER, YOU MUST GIVE THE
14 DEFENDANT THE BENEFIT OF THAT DOUBT
15 ALSO AND FIND IT MANSLAUGHTER, RATHER
16 THAN MURDER.
17 IT'S ALSO TRUE, IF YOU HAVE A REASONABLE
18 DOUBT AS TO WHETHER ANY FORM OF HOMICIDE, MURDER OR
19 MANSLAUGHTER, IS COMMITTED, THEN THE DEFENDANT IS

20 ENTITLED TO THAT REASONABLE DOUBT, AND A VERDICT OF
21 NOT GUILTY ALSO, AS MS. ABRAMSON EXPRESSED THIS
22 MORNING.

23 SO THE THEORY OF REASONABLE DOUBT GOES
24 BEYOND WHAT WE OFTEN THINK WHEN WE SEE TELEVISION
25 MOVIES OR SOMETHING AS TO GETTING THE WRONG MAN. IT
26 GOES TO EVERY ASPECT OF THE CASE THAT THE
27 PROSECUTION'S TRYING TO PROVE.

28 YOU MIGHT ASK: WHY ARE THE PEOPLE

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1 TRYING THE CASE THAT WAY? WHY ARE THEY ARGUING IT
2 THAT WAY? WHY ARE THEY PRESENTING FACTS AS THOUGH
3 THE BURDEN WAS ON THE DEFENDANT TO DISPROVE THINGS,
4 INSTEAD OF THE PROSECUTION TO PROVE IT? WHY DO THEY
5 HAVE IT TWISTED? THE REASON IS BECAUSE IT WORKS SO
6 WELL.

7 IT WORKS REAL WELL IF YOU COME IN
8 PRESUMING THAT A DEFENDANT IS GUILTY AND MAKE THE
9 BURDEN SHIFT TO HIM TO TRY TO NEGATE DEGREE OR TO
10 PROVE THAT HE'S NOT GUILTY. IT WORKS SO WELL THAT
11 THEY'RE USING IT IN THIS CASE OVER AND OVER.

12 LET ME GIVE YOU AN EXAMPLE. THERE'S AN
13 OLD GAME THAT MY GRANDFATHER USED TO PLAY WITH ME
14 WHEN I WAS FIVE. AND HE USED TO GIVE ME A NICKEL.

15 AND HE'D SAY:

16 "NOW, I'LL FLIP YOU, DOUBLE OR NOTHING."

17 HE'D FLIP THE COIN AND HE'D SAY, "AH, HEADS. I
18 WIN."

19 THERE WOULD GO MY NICKEL. SO OKAY.
20 BETTER LUCK NEXT TIME.

21 AND A COUPLE OF DAYS LATER HE'D GIVE A
22 ANOTHER NICKEL.

23 "I'LL FLIP YOU, DOUBLE OR NOTHING."

24 LUCK'S GOTTA CHANGE. I'VE GOTTA TO WIN
25 ONE OF THESE.

26 FLIP THE NICKEL, AND HE SAYS, "AH, TAILS.
27 YOU LOSE."

28 THERE GOES MY NICKEL.

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1 YOU CAN'T WIN THAT GAME, CAN YOU?

2 FINALLY, AFTER A YEAR OR SO -- I WAS A

3 LITTLE BIT SLOW -- I ASKED MY MOTHER WHY MY NICKELS

4 WERE ALWAYS DISAPPEARING, AND SHE TALKED TO HER DAD

5 AND SAID: "DAD, YOU'VE GOT TO QUIT THAT." NO HARM.

6 YOU KNOW, THIS IS A CAPITAL CASE, AND

7 THE DISTRICT ATTORNEY HAS BEEN PLAYING "HEADS, I

8 WIN, TAILS, YOU LOSE" WITH THE DEFENDANTS' FREEDOM

9 AND LIVES.

10 LET ME GIVE YOU AN EXAMPLE.

11 IN HIS ARGUMENT MR. CONN TALKED ABOUT

12 KATHY SIMONTON. NOW, KATHY SIMOMTON, YOU MAY

13 RECALL, WAS DIANE VANDERMOLLEN'S SISTER. THEY WENT

14 TO SPEND A SUMMER WITH THE MENENDEZES BACK -- I

15 THINK IT WAS IN THE NEW YORK HOME IN MONSEY -- BUT

16 IT WAS IN ONE OF THEIR HOMES BACK IN THE EAST. THEY

17 WERE BOTH LOOKING FORWARD TO IT. IT WAS GOING TO BE

18 A REAL GREAT ADVENTURE FOR THEM.

19 KATHY SIMONTON STAYED THERE LIKE TWO OR

20 THREE WEEKS, I THINK. AND SHE'S THE ONE WHO WAS

21 DOWNSTAIRS WATCHING TELEVISION, AND WHEN JOSE

22 MENENDEZ WOULD TAKE ONE OF HIS SONS TO THEIR ROOM

23 MRS. MENENDEZ WOULD TURN THE VOLUME UP ON THE TV AND

24 WOULD TELL KATHY, "YOU CAN'T GO DOWN THE HALL."

25 KATHY GOT UP TO GO TO THE BATHROOM ONE

26 NIGHT AND MRS. MENENDEZ SAYS: "WHERE ARE YOU

27 GOING?"

28 SHE SAYS: "I'M GOING TO THE BATHROOM."

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1 SHE SAYS: "NO, YOU'RE NOT. YOU WANT TO

2 GO TO THE BATHROOM, YOU GO DOWNSTAIRS."

3 WELL, IT TOOK KATHY SIMONTON ABOUT TWO

4 OR THREE WEEKS TO FIGURE OUT THERE WERE BETTER

5 PLACES TO SPEND THE SUMMER. SHE BEAT IT OUT OF
6 THERE. SHE CALLED HER MOTHER AND SAID: "WHETHER OR
7 NOT YOU WANT ME, I'M COMING HOME."

8 BUT HER SISTER, DIANE VANDERMOLLEN,
9 STAYED. SHE WAS BEING TREATED A LITTLE BETTER, AND
10 SHE STAYED. SHE CAME BACK FOR ANOTHER SUMMER, AND
11 CAME BACK AND LIVED FOR A WHOLE YEAR WHEN SHE WAS
12 ABOUT 23, I THINK, 1982 AND 1983.

13 AND SHE GAVE A TREMENDOUS DESCRIPTION OF
14 LIFE IN THE MENENDEZ HOME, OF MRS. MENENDEZ' TEMPER
15 TANTRUMS IN 1982 AND 1983, WHERE SHE SAID SHE FELT
16 "FEAR TO THE CORE."

17 SHE WAS CROSS-EXAMINED AT LENGTH BY
18 MR. CONN, WHO WAS SHOUTING AT HER ON THE STAND: "IF
19 IT WAS SO BAD, WHY DIDN'T YOU JUST LEAVE?"

20 AND DIANE VANDERMOLLEN SAID: "YOU DON'T
21 UNDERSTAND. I WAS TRYING TO RECAPTURE THAT
22 RELATIONSHIP WITH MRS. MENENDEZ. SHE WAS MY IDOL.
23 I LOVED HER."

24 SO MR. CONN WENT ON AND SAID: "WELL,
25 AFTER YOU WERE THERE FOR A MONTH, WHY DIDN'T YOU
26 LEAVE?"

27 DIANE VANDERMOLLEN REPEATED: "I LOVED
28 HER. I WAS TRYING TO MAKE IT BETTER."

1 AT ONE POINT IT GOT TO WHERE EVENTUALLY
2 HER ONLY ANSWER WAS CONTEMPLATING SUICIDE. AND
3 STILL, MR. CONN SAID: "WHY DIDN'T YOU LEAVE?"

4 YOU SEE, THERE'S NO CONCEPT WITH THE
5 PROSECUTION IN THIS CASE OF LOVE, OF HUMANITY, OF
6 STAYING WITH IT. IT'S JUST: WHY DIDN'T YOU LEAVE?

7 BUT THEN IN ARGUMENT HE SAID AN
8 INTERESTING THING. HE SAID: "YOU KNOW, KATHY
9 SIMONTON, SHE'S NO HELP. SHE WAS ONLY THERE TWO OR
10 THREE WEEKS. WHAT DOES SHE KNOW? SHE LEFT. SHE
11 DOESN'T DISPROVE ANYTHING."

12 NOW, THERE'S TWO VERY SUBTLE THINGS.
13 FIRST HE'S SAYING DISPROVE IT, WHICH OF COURSE YOU
14 KNOW NOW IS NOT THE LAW. REASONABLE DOUBT IS THE
15 LAW. THE PROOF PROBLEM, THAT'S ON THE PROSECUTION.

16 THEN HE SAID: "AND DIANE VANDERMOLLEN,
17 SHE DOESN'T ADD ANYTHING TO IT BECAUSE SHE STAYED.
18 AND IF IT HAD BEEN BAD, SHE WOULD HAVE LEFT."

19 WELL, IT'S HEADS, I WIN, WITH KATHY
20 SIMONTON. HE IS JUDGING HER BY HER ACTIONS. SHE
21 SPLITS. SHE GOT OUT OF THERE AS FAST AS HER LEGS
22 WOULD CARRY HER. HE SAYS, "NO GOOD. DISCOUNT HER."

23 DIANE VANDERMOLLEN STAYED FOR THE
24 DURATION AND CAME BACK, AND HE SAYS: "NO GOOD.
25 DISCOUNT HER. SHE CAME BACK. IT COULDN'T HAVE BEEN
26 TOO BAD."

27 THAT'S HEADS, I WIN, TAILS, YOU LOSE.

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1 'EM OUT. VERY CLEVER, VERY EFFECTIVE, BUT NOT THE
2 LAW.

3 THEN WE HAVE DWIGHT VAN HORN, WHO YOU'LL
4 REMEMBER. THAT'S THE OTHER WITNESS THAT MR. CONN
5 SHOUTED AT CONSIDERABLY WHILE HE WAS ON THE STAND.
6 AND DWIGHT VAN HORN IS THE BALLISTICS EXPERT FOR THE
7 SHERIFFS WHO WHEN ASKED: "WHICH SIDE ARE YOU ON?"
8 SAID: "THE SIDE OF TRUTH," WHO MADE THE MISTAKE OF
9 TELLING THE DISTRICT ATTORNEY, AT LEAST A MISTAKE IN
10 THEIR EYES, THAT DR. MC CARTHY WAS JUNK SCIENCE AND
11 DON'T GO FOR THAT.

12 BUT MR. VAN HORN COMMITTED THE REAL
13 CARDINAL SIN IN THE EYES OF THE PROSECUTION.
14 MR. VAN HORN TALKED WITH THE DEFENSE COUNSEL. HE
15 LET US CONSULT WITH HIM. HE TALKED WITH US. AND HE
16 GOT CHEWED OUT FOR IT, BASICALLY, BOTH IN ARGUMENT
17 AND ON THE STAND: "HOW DARE YOU DO SUCH A THING?"

18 YET, WHEN ALAN ANDERSEN, WHO WAS A
19 DEFENSE WITNESS, SAID: "MR. CONN, I DON'T CARE TO
20 TALK WITH YOU," HE EXPLODED AT HIM AND CHEWED HIM
21 OUT. "WHAT DO YOU MEAN YOU DON'T WANT TO TALK WITH
22 US? WHAT KIND OF WITNESS ARE YOU?"

23 SO YOU SEE, AGAIN, IT'S HEADS, I WIN,
24 TAILS, YOU LOSE. IF THE PROSECUTION WITNESS -- IF
25 IT'S A CRIMINALIST WORKING FOR THE SHERIFF'S
26 DEPARTMENT, AN HONEST MAN WITH TECHNICAL KNOWLEDGE,
27 AND HE TALKS TO THE DEFENSE, HE'S NO GOOD. HE'S
28 BIASED. YOU THROW HIM OUT AS A WITNESS.

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1 AND IF IT'S A DEFENSE WITNESS WHO
2 DOESN'T WANT TO BE LOCKED IN A ROOM WITH MR. CONN
3 FOR AN HOUR OR SO, AND HE SAYS: "I DON'T WANT TO
4 TALK TO YOU," YOU THROW HIM OUT BECAUSE HE'S
5 BIASED. CAN'T WIN THAT WAR EITHER.

6 NOW, LET'S TALK ABOUT ONE MORE
7 INTERESTING ASPECT. WE'VE GOT THAT. HEADS I WIN,
8 TAILS, YOU LOSE.

9 YET ANOTHER WITNESS. AFTER WE'VE DONE
10 THAT FOR A WHILE, WE THROW INTO THE MIX A HEALTHY
11 DOES OF PREJUDICE, BECAUSE THE PRESUMPTION OF GUILT,
12 THAT WORKS PRETTY GOOD. BUT YOU'VE GOT TO NOT LIKE
13 THE DEFENDANT. YOU'VE GOT TO HATE THE DEFENDANT.
14 AND SO THEY FLEW IN MARZI EISENBERG.

15 MARZI EISENBERG WAS JOSE MENENDEZ'
16 SECRETARY, VERY LOYAL. SHE WAS COMING BACK FROM THE
17 MEMORIAL SERVICE IN A LIMOUSINE, I THINK, WITH LYLE

18 MENENDEZ. AND SHE REPORTED SHE HAD A CONVERSATION
19 WITH LYLE IN WHICH HE SAID: "HEY, MARZI, WHO SAID I
20 COULDN'T FILL MY FATHER'S SHOES?"

21 AND HER RESPONSE WAS: "DON'T FILL HIS
22 SHOES. MAKE YOUR OWN TRACKS IN LIFE."

23 THEN LYLE MENENDEZ WAS SUPPOSED TO HAVE
24 SAID: "YOU DON'T UNDERSTAND. THESE ARE MY FATHER'S
25 SHOES." AND HE WAS FLEXING HIS SHOE BACK AND
26 FORTH. THAT'S WHAT SHE REPORTED ON THE STAND WHEN
27 SHE TESTIFIED UNDER OATH.

28 AND SHE WAS CROSS-EXAMINED. AND SHE WAS

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1 ASKED TO DESCRIBE THE SHOE, AND SHE DESCRIBED IT AS
2 A LOAFER WITH A TASSLE. I ASKED: "DO YOU REMEMBER
3 WHERE THE TASSLE WAS?"

4 AND SHE SAID: "ON THE LOAFER."

5 EVERYBODY LAUGHED BECAUSE THAT WAS A
6 PRETTY GOOD RETORT TO A SMART LAWYER ASKING THIS
7 QUESTION. SHE LAUGHED. EVERYBODY THOUGHT, YEAH.
8 OKAY. THAT GOT THAT STUPID QUESTION OUT OF THE
9 WAY.

10 AND MR. CONN, NOW THAT SHE'S BEEN
11 CAUGHT, TOLD YOU IN HIS OPENING STATEMENT: "WELL,
12 YOU KNOW, MARZI EISENBERG DIDN'T MEAN IT LITERALLY.

13 SHE WASN'T REALLY TRYING TO TELL YOU THAT LYLE
14 MENENDEZ WAS DRESSED WITH HIS FATHER'S ACTUAL SHOES
15 ON HIS FEET. SHE WAS JUST BEING FIGURATIVE."

16 WELL, YOU KNOW WHAT HER NEXT ANSWER
17 WAS? IT WAS "NO. I WOULDN'T HAVE THOUGHT ANYTHING
18 OF IT, AS FAR AS BEING HIS FATHER'S SHOES, UNTIL HE
19 SAID WHAT HE SAID."

20 THIS EVIDENCE WAS PRESENTED TO YOU,
21 LADIES AND GENTLEMEN, TO MAKE YOU MAD, TO MAKE YOU
22 MAD AT JOSEPH LYLE MENENDEZ, WHO WOULD WEAR HIS OWN
23 FATHER'S SHOES, A FEW DAYS AFTER SHOOTING HIM, TO A
24 MEMORIAL SERVICE. AND IT'S ONLY BECAUSE OF THE VERY
25 GOOD FORTUNE THAT THERE WERE TV CLIPS OF THAT DAY,
26 TV FILM BROADCASTS ON THE LOCAL NEWS, THAT WERE
27 STILL IN EXISTENCE, THAT WE WERE ABLE TO BLOW UP AND
28 STOP AND SHOW VERY CLEARLY THAT THIS WAS NOT A

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1 LOAFTER. IT DIDN'T HAVE A TASSLE.

2 AND WE ALSO BROUGHT IN OTHER EVIDENCE
3 THAT LYLE MENENDEZ COULD NOT HAVE WORN HIS FATHER'S
4 SHOES, BECAUSE LYLE MENENDEZ' FOOT IS TOO BIG. HIS
5 FOOT IS LONGER AND MUCH WIDER THAN HIS FATHER'S
6 WAS.

7 AND ONLY THEN DID THE PROSECUTOR BACK

8 DOWN IN OPENING STATEMENT TO YOU, AND SAY: "WELL,
9 SHE DIDN'T MEAN IT."

10 SO YOU ADD A LITTLE SHIFT TO THE BURDEN
11 OF PROOF. YOU ADD A LITTLE PREJUDICE. THE D.A. IS
12 WAY AHEAD, RIGHT? ESPECIALLY IN A CASE LIKE THIS
13 WHERE THERE'S PUBLIC FEELING, AND PEOPLE WHO ARE
14 PEOPLE WHO ARE SEEN AS TWO RICH KIDS WHO HAD IT
15 GOOD.

16 YOU KNOW, THIS CASE IS NOT WHAT THE
17 PROSECUTORS ARE TRYING TO MAKE IT OUT TO BE. THIS
18 IS NOT A MURDER FOR GREED. WHAT THIS CASE TRULY IS
19 IS A TRAGEDY.

20 NOW, IN TODAY'S SOCIETY WE USE THE TERM
21 "TRAGEDY" VERY LOOSELY. WE TALK ABOUT THE OKLAHOMA
22 CITY BOMBING AS BEING A TRAGEDY, PLANE CRASHES AS
23 BEING A TRAGEDY. AND CERTAINLY, THEY HAVE TRAGIC,
24 TERRIBLE CONSEQUENCES FOR THOSE WHO MET AN UNTIMELY
25 DEATH, AND THEIR LOVED ONES. BUT THOSE WERE JUST
26 INNOCENT PEOPLE AT THE WRONG PLACE AT THE WRONG
27 TIME.

28 THE REAL MEANING OF TRAGEDY, AS

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1 DEVELOPED BY AESCHYLUS AND SOPHOCLES 2500 YEARS AGO
2 IN GREECE -- A TRAGEDY IS WHEN YOUR CENTRAL

3 CHARACTER HAS SUCH FLAWS, USUALLY MORAL FLAWS, IN
4 HIS CHARACTER THAT THEY LEAD TO HIS DEMISE. THAT'S
5 THE TRUE MEANING OF TRAGEDY.

6 AND THAT'S WHAT THIS CASE IS. THIS CASE
7 IS A TRUE TRAGEDY, AS WRITTEN ABOUT IN GREEK TIMES.

8 YOU KNOW, THE GREEKS WERE PRETTY SMART
9 PEOPLE. THEY GAVE US A LOT OF THINGS. AND ONE OF
10 THE THINGS THEY KNEW, WELL BEFORE WE HAD
11 PSYCHIATRISTS AND PSYCHOLOGISTS TO HELP US
12 UNDERSTAND THE HUMAN MIND, THEY KNEW HUMAN NATURE.
13 THEY KNEW WHAT MAKES PEOPLE TICK, AND THEY KNEW HOW
14 PEOPLE REACT, THE INNER DYNAMICS OF PEOPLE REACTING
15 TO ONE ANOTHER. THAT'S WHAT THEY WROTE ABOUT IN
16 THEIR PLAYS. THAT'S WHAT THEY WROTE ABOUT IN THEIR
17 TRAGEDIES AND THAT'S WHAT THEY UNDERSTOOD.

18 IN THESE TRAGEDIES, THE PLAYS THAT THEY
19 WROTE, WHAT THEY SAW AND EXPLAINED WAS THE REASONS
20 FOR HUMAN BEHAVIOR, THE REASONS THE INTERACTION
21 OCCURS AND SOMETIMES TERRIBLE RESULTS ENSUE. AND
22 THEY DIDN'T CALL IT AN ABUSE EXCUSE.

23 YOU SEE, REASONS FOR HUMAN BEHAVIOR ARE
24 WHAT WE'RE ALL ABOUT. STUDYING THE REASONS,
25 LEARNING THE REASONS, IS WHAT'S IMPORTANT.

26 WE TALK ABOUT THE PRESUMPTION OF GUILT
27 THAT THE DISTRICT ATTORNEY HAS TRIED THIS CASE
28 UNDER, AND I'VE SAID IT WORKS. THINK ABOUT THE

1 TIMES YOU'VE READ IN THE PAPER, OR LISTENED ON TV,
2 AND SOMEBODY HAS BEEN ARRESTED FOR WHATEVER CRIME IS
3 NEWSWORTHY ENOUGH TO MAKE THE PAPER. HOW MANY TIMES
4 HAVE YOU HAD THE RESPONSE, EITHER TO YOURSELF OR TO
5 A LOVED ONE, "BOY I'M GLAD THEY CAUGHT THAT GUY."

6 AND HOW MANY TIMES, INSTEAD, HAVE YOU
7 THOUGHT "GEE I HOPE THEY DIDN'T GET THE WRONG GUY?"

8 BUT YOU SEE, THE PRESUMPTION OF
9 INNOCENCE THAT WE BELIEVE IN, THE PRESUMPTION OF
10 INNOCENCE IS: I HOPE THEY DON'T GET THE WRONG GUY.
11 THEY'RE GOING TO HAVE TO SHOW ME AND SHOW ME
12 CONVINCINGLY, AND BEYOND A REASONABLE DOUBT, BEFORE
13 I'M SURE THEY DID.

14 THE SAME THING IS TRUE IN A CASE SUCH AS
15 THIS, WHERE YOU HAVE PEOPLE ARRESTED, AND YOU READ
16 ABOUT IT. JOE SMITH WAS ARRESTED TODAY FOR A MURDER
17 CHARGE AND GAVE A FULL CONFESSION TO THE POLICE.

18 NOW, YOU THINK, GOD I'M GLAD THEY GOT
19 THAT GUY AND THEY GOT A CONFESSION. OF COURSE, I
20 SURE HOPE THEY HANG HIM SOON.

21 ISN'T THAT WHAT YOU THINK? HOW OFTEN DO
22 YOU THINK, GEE, I WONDER WHY HE DID IT? I'D LIKE TO
23 KNOW THE DYNAMICS OF THE SITUATION. I'D LIKE TO
24 KNOW WHAT CAUSED THIS KILLING TO COME ABOUT.

25 THAT'S WHAT THIS CASE IS ABOUT. THAT'S
26 WHAT THE TRAGEDIANS WERE ABOUT WHEN THEY WROTE IN

27 GREEK TIMES. IT'S NOT AN ABUSE EXCUSE. IT'S NOT

28 TRYING TWO DECEASED PEOPLE WHO AREN'T HERE TO DEFEND

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1 THEIR ACTIONS. IT'S EXPLAINING REASONS FOR HUMAN

2 CONDUCT THAT RESULTED IN THE TRAGEDY THAT WE'VE NOW

3 BEEN SPENDING FOUR AND A HALF MONTHS LISTENING TO

4 EVIDENCE TO, COMING UP TO THIS DAY WHEN WE COULD

5 TALK ABOUT IT.

6 AND I WANT TO EXPLORE SOME OF THE FACTS

7 OF THIS CASE WITH YOU WITH THOSE THINGS IN MIND.

8 LET'S START WITH AN INSTRUCTION WE

9 HAVEN'T TALKED ABOUT YET.

10 MR. LEVIN: MIDDLE ONE.

11 MR. GESSLER: AH. GOT IT. I'M GOING TO TALK

12 ABOUT THE CIRCUMSTANTIAL EVIDENCE INSTRUCTION AS IT

13 PERTAINS TO STATE OF MIND, INTENT, MALICE,

14 PREMEDITATION, DELIBERATION, ALL OF THESE WORDS THAT

15 HAVE BEEN TOSSED AT YOU IN THE LAST WEEK AND A HALF,

16 THAT HAVE TO DO WITH THIS CASE.

17 AND AGAIN, CONSISTENT WITH THAT

18 PRESUMPTION OF INNOCENCE THAT WE'VE USED IN OUR

19 JUSTICE SYSTEM, SO SUCCESSFULLY THROUGH THE YEARS,

20 IS THE UNDERSTANDING THAT CIRCUMSTANTIAL EVIDENCE

21 CAN BE WRONG. IT CAN BE WRONG WHEN WE TRY TO FIGURE

22 OUT WHAT SOMEBODY HAD IN THEIR MIND. AND SO IT

23 READS THAT:

24 SPECIFIC INTENT OR MENTAL

25 STATE WITH WHICH AN ACT IS DONE, MAY

26 BE SHOWN BY THE CIRCUMSTANCES

27 SURROUNDING THE COMMISSION OF THE

28 ACT. HOWEVER, YOU MAY NOT FIND THE

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1 DEFENDANT GUILTY OF THE CRIMES

2 CHARGED, NOR ANY LESSER CRIMES, UNTIL

3 THE PROVED CIRCUMSTANCES ARE NOT ONLY

4 CONSISTENT WITH THE THEORY THAT THE

5 DEFENDANT HAD THE REQUIRED SPECIFIC

6 INTENT OR MENTAL STATE, BUT CANNOT BE

7 RECONCILED WITH ANY OTHER RATIONAL

8 CONCLUSION.

9 SO YOU'VE GOT JUST TWO REASONABLE

10 ANSWERS TO SOME ASPECT OF HUMAN BEHAVIOR THAT DEALS

11 WITH WHAT WAS GOING ON IN THE MINDS OF LYLE MENENDEZ

12 OR ERIK MENENDEZ AT THE TIME THAT THESE SHOOTINGS

13 OCCURRED. IF THERE'S TWO REASONABLE ONES, YOU'VE

14 GOT TO LOOK AT THAT. YOU CAN'T JUST SAY, OH, THE

15 PEOPLE'S THEORY SOUNDS REASONABLE. THAT'S GOOD

16 ENOUGH FOR ME. BECAUSE THE SECOND PART OF THIS --

17 IF THE EVIDENCE AS TO ANY
18 SUCH SPECIFIC INTENT OR MENTAL STATE
19 IS SUSCEPTIBLE OF TWO REASONABLE
20 INTERPRETATIONS, ONE OF WHICH POINTS
21 TO THE EXISTENCE OF THE SPECIFIC
22 INTENT OR MENTAL STATE, AND THE OTHER
23 TO THE ABSENCE OF SPECIFIC INTENT OR
24 MENTAL STATE, YOU MUST ADOPT THAT
25 INTERPRETATION WHICH POINTS TO THE
26 ABSENCE OF THE SPECIFIC INTENT OR
27 MENTAL STATE.
28 IF, ON THE OTHER HAND, ONE

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1 INTERPRETATION OF THE EVIDENCE AS TO
2 SUCH SPECIFIC INTENT OR MENTAL STATE
3 APPEARS TO BE REASONABLE AND THE OTHER
4 INTERPRETATION TO BE UNREASONABLE, YOU
5 MUST ACCEPT THE REASONABLE
6 INTERPRETATION AND REJECT THE
7 UNREASONABLE.
8 ANY TIME THAT THERE'S TWO OR MORE
9 REASONABLE INTERPRETATIONS THAT YOU CAN GIVE TO THE
10 EVIDENCE -- JUST HAS TO BE REASONABLE -- YOU DON'T
11 WEIGH IT AND SEE WHICH ONE I LIKE THE BEST. IF IT'S

12 REASONABLE, THEN THAT MENTAL STATE IS NOT PROVEN BY
13 THE PROSECUTION. THEY HAVE NOT MET THEIR BURDEN FOR
14 MENTAL STATE. YOU CAN READ IN, AS I SAY, IN THIS
15 CASE, MALICE, WHICH IS VERY IMPORTANT. YOU CAN READ
16 IN INTENT TO KILL. YOU CAN READ IN PREMEDITATION,
17 DELIBERATION, ALL OF THOSE STATES WHICH GO TO
18 WHETHER OR NOT A MURDER, OR ANY DEGREE OF MURDER,
19 HAS BEEN COMMITTED IN THIS CASE.

20 NOW, LET'S START WITH COUNT 3. START AT
21 THE BACK.

22 COUNT 3 IS CONSPIRACY, A VERY -- MURDER
23 IS COMPLICATED, BUT CONSPIRACY IS WORSE. BUT THE
24 CONSPIRACY THAT THE PROSECUTION HAS CHARGED IN COUNT
25 3 IS THAT:

26 "ON OR ABOUT AUGUST 20TH, 1989,
27 IN THE COUNTY OF LOS ANGELES, STATE OF
28 CALIFORNIA, THE SAID DEFENDANTS, ERIK

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1 MENENDEZ AND JOSEPH LYLE MENENDEZ, DID
2 WILLFULLY AND UNLAWFULLY CONSPIRE
3 TOGETHER TO COMMIT THE CRIME OF MURDER
4 OF JOSE MENENDEZ AND MARY LOUISE
5 MENENDEZ, IN VIOLATION OF PENAL CODE
6 SECTION 187, A FELONY."

7 HERE WE HAVE A MENTAL STATE, THAT THEY
8 WERE WILLFULLY AND LAWFULLY CONSPIRING TOGETHER. IT
9 MEANS A MEETING OF THE MINDS AND AN AGREEMENT BY THE
10 TWO PEOPLE TO COMMIT MURDER. IT DOESN'T MEAN TWO
11 PEOPLE AGREEING TO KILL IN SELF-DEFENSE, BECAUSE
12 THIS HAS TO BE AN UNLAWFUL CONSPIRACY, AND IT'S NOT
13 UNLAWFUL TO ACT IN SELF-DEFENSE OR TO PREPARE TO ACT
14 IN SELF-DEFENSE AGAINST ANOTHER PERSON.

15 SO THIS IS WHAT THE PEOPLE HAVE THE
16 BURDEN OF PROVING HERE, THE CIRCUMSTANTIAL EVIDENCE
17 I JUST READ YOU; THAT THE ONLY REASONABLE
18 INTERPRETATION TO BE PLACED ON THE EVIDENCE, AS
19 YOU'VE HEARD IT, IS THAT LYLE MENENDEZ AND ERIK
20 MENENDEZ AGREED TOGETHER TO COMMIT THE MURDER OF
21 JOSE MENENDEZ AND MARY LOUISE MENENDEZ.

22 THEN THEY HAVE TO PROVE ONE MORE THING.
23 EVEN IF YOU WERE TO ACCEPT THAT -- AND THERE'S NO
24 EVIDENCE WHATSOEVER THAT THESE TWO YOUNG MEN AGREED
25 TO MURDER THEIR PARENTS. THE ONLY EVIDENCE THEY HAD
26 IS THEY AGREED TO ARM THEMSELVES WITH SHOTGUNS FOR
27 SELF-DEFENSE.

28

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1 BUT IF YOU WERE TO ACCEPT THAT, THEY STILL
2 HAVE ONE MORE THING TO PROVE. THEY HAVE TO PROVE WHAT'S

3 CALLED AN OVERT ACT; THAT IS, AN ACT IN FURTHERANCE OF
4 THIS UNLAWFUL AGREEMENT TO MURDER.

5 AND THEY HAVE LISTED THREE DIFFERENT THINGS
6 THAT THEY FEEL ARE OVERT ACTS.

7 "IT WAS ALLEGED THE FOLLOWING OVERT
8 ACTS WERE COMMITTED AT AND IN THE COUNTY
9 OF LOS ANGELES BY ONE OR MORE OF THE
10 DEFENDANTS, FOR THE PURPOSE OF FURTHERING
11 THE OBJECT OF THE CONSPIRACY."

12 NOW, I DIDN'T WRITE THIS. THIS IS FROM THE
13 PROSECUTION, WHAT THEY DRAFTED AS COUNT 3.

14 BUT IT HAS TO BE IN FURTHERANCE OF THE
15 OBJECT OF THE CONSPIRACY. OKAY.

16 ACT NO. 1. ON AUGUST 18TH, 1989,
17 DEFENDANTS PURCHASED TWO MOSSBERG SHOTGUNS IN SAN DIEGO.

18 DO YOU SEE ANYTHING WRONG WITH THAT?

19 FIRST, THE CONSPIRACY, THE UNLAWFUL
20 AGREEMENT WAS SUPPOSED TO BE AUGUST 20, ON SUNDAY. AND
21 SOMEHOW THEY'RE SUPPOSED TO HAVE, TWO DAYS BEFORE THEY
22 MADE THE AGREEMENT, PURCHASED THE SHOTGUNS IN
23 FURTHERANCE OF A CONSPIRACY THAT HADN'T EVEN BEEN MADE
24 YET. DOES THAT MAKE SENSE?

25 THEN, THEY'RE PURCHASING SHOTGUNS IN SAN
26 DIEGO. AND HERE IT SAYS THE FOLLOWING OVERT ACTS WERE
27 COMMITTED IN THE COUNTY OF LOS ANGELES.

28 NOW, I THINK WE ALL KNOW SAN DIEGO COUNTY

1 IS A SEPARATE PLACE THAN THE COUNTY OF LOS ANGELES. YOU
2 CAN'T COMMIT AN ACT IN THE COUNTY OF LOS ANGELES IN
3 PURCHASING TWO SHOTGUNS IN SAN DIEGO TWO DAYS BEFORE ANY
4 AGREEMENT IS SUPPOSED TO HAVE BEEN MADE.

5 AND THE SECOND OVERT ACT.

6 "ON OR ABOUT AUGUST 20TH, DEFENDANTS
7 ACQUIRED SHOTGUN AMMUNITION."

8 THE ONLY EVIDENCE THAT WE'VE HEARD FROM
9 ANYONE IS THAT ON FRIDAY THEY GOT SOME SHOTGUN
10 AMMUNITION WHEN THEY PURCHASED THE SHOTGUNS IN SAN
11 DIEGO, AND ON SATURDAY THEY GOT SOME DIFFERENT SHOTGUN
12 AMMUNITION WHEN THEY FOUND OUT WHAT THEY HAD WAS NOT
13 SUFFICIENT.

14 AGAIN, WE HAVE SOMETHING THAT'S OCCURRING,
15 UNDER THIS DOCUMENT, BEFORE ANY AGREEMENT IS ALLEGED TO
16 HAVE BEEN MADE. THAT CANNOT BE AN ACT IN FURTHERANCE OF
17 THE OBJECT OF A CONSPIRACY THAT SO FAR HASN'T BEEN
18 DEVELOPED YET, ACCORDING TO THE PROSECUTION.

19 AND THE THIRD ACT THAT THEY'RE ALLEGING IS
20 ON AUGUST 20TH, 1989, LYLE MENENDEZ CONTACTED HIS
21 FRIEND, PERRY BERMAN, BY TELEPHONE TO ARRANGE A MEETING
22 LATER THAT MIGHT TO SERVE AS AN ALIBI.

23 THAT DOESN'T MAKE ANY SENSE EITHER. FIRST
24 HE ASKED HIM TO GO TO A MOVIE. SUPPOSE PERRY BERMAN HAD
25 ACCEPTED? LYLE MENENDEZ DOESN'T SHOW UP, ERIK MENENDEZ
26 DOESN'T SHOW UP. THAT'S NO ALIBI. IT'S EVIDENCE
27 AGAINST HIM.

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1 L.A.", WHICH WAS OCCURRING AT AROUND, OH, 10:00 OR 10:30
2 OR 11:00, OR WHATEVER IT WAS THAT NIGHT, IF THAT WAS
3 SUPPOSED TO BE THE ALIBI, THAT'S NOT AN ALIBI. THAT
4 DOESN'T COVER THE TIME OF THE SHOOTINGS AT ALL. HOW CAN
5 YOU THINK THAT SOMEBODY WOULD CONSPIRE TO COMMIT AN
6 ALIBI THAT HAPPENS AFTER THE FACT?

7 THIS WHOLE PLEADING, THIS WHOLE THEORY DOES
8 NOT MAKE SENSE.

9 NOW, THERE WILL BE AN INSTRUCTION GIVEN TO
10 YOU THAT THIS ON OR ABOUT AUGUST 20TH, WELL, THAT CAN BE
11 ALMOST ANY TIME. THEY PICKED AUGUST 20TH, NOT ME.

12 BUT YOU STILL HAVE TO HAVE THAT MEETING OF
13 THE MINDS, AND YOU HAVE TO HAVE PROOF OF BEYOND A
14 REASONABLE DOUBT THAT THERE WAS A MEETING OF THE MINDS
15 OF ERIK AND LYLE MENENDEZ TO MURDER THEIR PARENTS; THAT
16 THEY AGREED TO DO THIS.

17 HOW DO YOU GET AROUND THE CIRCUMSTANCIAL
18 EVIDENCE INSTRUCTION AS TO WHAT'S REQUIRED IN ORDER TO
19 DO THAT?

20 AGAIN, APPLYING THAT TO THESE FACTS, THAT
21 IF THE MENTAL STATE IS SUSCEPTIBLE OF TWO REASONABLE
22 INTERPRETATIONS, AND ONE OF THEM POINTS TOWARD
23 INNOCENCE, YOU HAVE TO ADOPT THAT.

24 AND CERTAINLY EVERY MEETING OF THE MINDS OF
25 LYLE AND ERIK MENENDEZ REASONABLY POINTS TOWARD THE FACT
26 THAT THEY WERE AGREEING TO DO SOMETHING OTHER THAN TO
27 MURDER THEIR PARENTS.
28 AND THIS INSTRUCTION GOES TO EVERYTHING

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1 THAT WE'RE GOING TO TALK ABOUT, BECAUSE THIS WHOLE
2 CASE -- THIS WHOLE TRAGIC SET OF EVENTS IS BASED ON THE
3 MENTAL STATES, AND WHETHER OR NOT THE PEOPLE HAVE PROVEN
4 GUILTY MENTAL STATES FOR MURDER OF LYLE MENENDEZ AND
5 ERIK MENENDEZ. THAT'S WHAT THIS IS ABOUT. AND THIS
6 RULE APPLIES ALL THE WAY THROUGH. IT NEVER LEAVES THIS
7 CASE. IT'S JUST AS MUCH A PART OF THIS CASE AS THE
8 PRESUMPTION OF INNOCENCE IS.

9 SIDE BY SIDE, THESE ARE THE TWO HALLMARKS
10 THAT YOU JUDGE ALL OF THIS BY. WHATEVER DISCUSSION YOU
11 HAVE IN THE JURY ROOM, WHAT EVIDENCE YOU'RE DISCUSSING,
12 THIS IS WITH YOU.

13 WHAT ELSE DID THE PROSECUTION DO TO TRY TO
14 PACK IT IN? THEY PLAYED HEADS I WIN, TAILS YOU LOSE.
15 THAT ILLUSTRATES ONE PART OF WHAT THEY DID DURING
16 ARGUMENT. WE TALKED ABOUT THE PREJUDICE OF BRINGING ON
17 MARZI EISENBERG FOR A FLAT-OUT, PROVABLE LIE TO
18 PREJUDICE YOU.

19 WE HAVE TO LOOK AT HOW THEY PUT ON SOME OF

20 THEIR WITNESSES. ONE EXAMPLE -- AND I KNOW WE'RE GOING
21 WAY BACK EARLY IN THE CASE -- WAS A YOUNG MAN NAMED
22 DONOVAN GOODREAU, WHO GOT ON THE STAND, AND IN DIRECT
23 EXAMINATION MADE IT SOUND FOR ALL THE WORLD LIKE HE WAS
24 A PRINCETON STUDENT WHO HAD A FIGHT WITH LYLE MENENDEZ
25 AND LEFT HIS ROOM AND HAD HIS LICENSE STOLEN.

26 THAT'S MOST LIKELY THE IMPRESSION YOU GOT
27 WHEN YOU FIRST HEARD HIM TESTIFY THERE, BECAUSE HE SAID
28 "WELL, I LIVED IN THE DORM AT PRINCETON, AND I LEFT IN

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1 MAY WHEN MY ROOMMATE, LYLE MENENDEZ AND I, HAD A FIGHT,
2 AND I LEFT MY LICENSE THERE." IT WAS A PRETTY GOOD
3 IMPRESSION. IMPRESSION OF GUILT.

4 THEN YOU GET INTO THE REAL FACTS ON
5 CROSS-EXAMINATION, AND YOU FIND OUT THAT DONOVAN
6 GOODREAU, THAT PORTRAIT THAT WAS PAINTED OF HIM WAS NOT
7 THE TRUTH. DONOVAN GOODREAU WAS NEVER A STUDENT AT
8 PRINCETON UNIVERSITY. HE NEVER INTENDED TO BE A STUDENT
9 AT PRINCETON UNIVERSITY.

10 HE HAD BEEN SHARING AN APARTMENT, OR A
11 LIVING ACCOMMODATION, NOT AS BOYFRIEND/GIRLFRIEND, BUT
12 WITH JAMIE PISARCIK AT THE TIME THAT LYLE MENENDEZ MET
13 HIM. AND DONOVAN GOODREAU PRETENDED FOR ALL THE WORLD
14 THAT HE WAS GOING TO BE A PRINCETON STUDENT. JAMIE
15 PISARCIK WAS KICKING HIM OUT BECAUSE SHE FELT HE HAD

16 STOLEN MONEY FROM HER, AND LYLE MENENDEZ BEFRIENDED HIM
17 AND SAID: "OH, I DON'T THINK SO, JAMIE."
18 AND THAT'S WHAT JAMIE AND LYLE MENENDEZ
19 BROKE UP OVER THAT FIRST TIME, WAS BECAUSE LYLE MENENDEZ
20 BELIEVED DONOVAN GOODREAU, AND TOOK HIM IN TO HIS DORM
21 ROOM AT PRINCETON UNIVERSITY, AND BEFRIENDED HIM. ON
22 MANY OCCASIONS LYLE MENENDEZ GAVE HIS STUDENT I.D. TO
23 DONOVAN GOODREAU, WHO USED IT FOR MEALS, THINGS ON
24 CAMPUS. AND IT TURNS OUT DONOVAN GOODREAU, ON OCCASION,
25 GAVE HIS LICENSE TO LYLE MENENDEZ TO USE.
26 THEN SOMEBODY GOT SUSPICIOUS, AND I THINK,
27 AGAIN, IT WAS JAMIE PISARCIK. BUT SOMEBODY TOLD LYLE
28 MENENDEZ, THEY SAID: "LYLE, THIS GUY IS NOT GOING TO BE

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1 A STUDENT HERE. HE IS A FRAUD."
2 AND LYLE MENENDEZ CONFRONTED DONOVAN
3 GOODREAU, AND DONOVAN SAID: "NO, I AM GOING TO BE A
4 STUDENT HERE. I REALLY AM, BELIEVE ME." AND LYLE
5 MENENDEZ TRUSTED HIM, AND HE SAID, "OKAY," AND THEY
6 BECAME BEST FRIENDS.
7 AND THEN LYLE MENENDEZ' FRIENDS CAME TO
8 HIM, HAYDEN ROGERS AND OTHERS WHO WERE STUDENTS THERE,
9 AND THEY SAID: "LYLE, THIS GUY IS A FRAUD. YOU'VE GOT
10 TO KICK HIM OUT. HE'S NOT WHAT HE SAYS HE IS. HE'S NOT
11 ONE OF US."

12 AND LYLE MENENDEZ WAS LOYAL, AND HE SAID
13 "NO, I DON'T WANT TO DO THAT. HE'S MY FRIEND. I DON'T
14 WANT TO DO THAT. I BELIEVE HIM."
15 AND SO THE FRIENDS THEN WENT TO TERRY
16 BARALT, AND THEY MADE A CALL TO MR. MENENDEZ.
17 NOW, BEFORE THIS YOU REMEMBER THAT DONOVAN
18 GOODREAU HAD COME OUT TO CALIFORNIA TO MEET MR.
19 MENENDEZ, CAME OUT TO THE HOUSE. LYLE MENENDEZ PREPPED
20 HIM, TRIED TO HELP HIM WITH THE ANSWERS TO THE QUESTIONS
21 THAT HE KNEW MR. MENENDEZ WOULD ASK HIM OVER THE DINNER
22 TABLE, BECAUSE HE WANTED DONOVAN TO PASS. HE WANTED HIS
23 FATHER TO APPROVE OF HIS FRIEND.
24 DONOVAN FLUNKED. HE COULDN'T STAND UP TO
25 MR. MENENDEZ FOR MORE THAN A FEW MINUTES. AND
26 MR. MENENDEZ SAID TO HIMSELF, "I DON'T THINK YOU'RE A
27 PRINCETON MAN."
28 SO WHEN THE BARALTS CALLED, JOSE MENENDEZ

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1 GOT ON THE PHONE, AND WE KNOW FROM GLENN STEVENS THAT HE
2 ORDERED LYLE MENENDEZ TO KICK HIM OUT.
3 SO AT THAT POINT, LYLE MENENDEZ CRIED. HE
4 WAS SEEN CRYING BY HIS FRIENDS. BUT HE SAID: "DONOVAN,
5 YOU'VE GOT TO GO." THEY BACKED THE TRUCK UP, LOADED HIS
6 STUFF OUT THROUGH THE WINDOW, AND SENT HIM ON HIS WAY.
7 NOW, WHEN DESCRIBED BY MR. CONN IN OPENING

8 STATEMENT, HE SAYS: "WELL, HE FORGOT ALL THIS."

9 BUT HE SAID LYLE MENENDEZ LAUGHED LATER

10 WHEN HE FOUND HIS LICENSE AND WALLET THERE. HE FORGOT

11 THE TEARS. HE FORGOT THE CRYING THAT TOOK PLACE WHEN

12 LYLE MENENDEZ FINALLY GAVE IN TO HIS FATHER'S WILL, AND

13 THAT OF HIS FRIENDS, AND TOLD DONOVAN GOODREAU, "YOU'VE

14 GOT TO GO."

15 AND WE ALSO HEARD THAT THE LICENSE -- THE

16 ONE THAT WAS USED TO BUY THE SHOTGUNS -- WASN'T REALLY

17 STOLEN. THE WALLET AND LICENSE WERE FOUND THERE IN THE

18 APARTMENT. BECAUSE REMEMBER, LYLE MENENDEZ HAD ACCESS

19 TO THE LICENSE, JUST AS DONOVAN GOODREAU DID TO LYLE

20 MENENDEZ' STUDENT I.D.

21 THE COURT: MR. GESSLER, LET'S TAKE A SHORT BREAK

22 HERE. WE'LL MAKE IT A 10 MINUTE BREAK, AND WE WILL

23 RESUME AT 25 MINUTES TO THE HOUR.

24 (A RECESS WAS TAKEN FROM

25 3:25 P.M. TO 3:40 P.M.)

26

27 THE COURT: OKAY, LET'S GET JURY OUT.

28

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1 (THE JURY ENTERS THE COURTROOM

2 AND THE FOLLOWING PROCEEDINGS

3 WERE HELD:)

4

5 THE COURT: OKAY. EVERYBODY IS BACK.

6 YOU MAY CONTINUE, MR. GESSLER.

7 MR. GESSLER: THANK YOU, YOUR HONOR.

8 MR. CONN TALKED TO YOU SOME ABOUT MOTIVE,

9 AND IT'S TRUE THAT THE PROSECUTION DOES NOT HAVE TO

10 PROVE MOTIVE AS AN ELEMENT OF MURDER. IT'S NOT

11 ESSENTIAL TO THEM TO PROVE.

12 BUT WE DON'T LOSE OUR COMMON SENSE WHEN WE

13 COME INTO THE COURTROOM ARENA, OR INTO THE JURY ROOM

14 EITHER, AND THE INSTRUCTIONS YOU WILL GET WILL BASICALLY

15 SAY PRESENCE OF A MOTIVE CAN BE USED AS CIRCUMSTANCIAL

16 EVIDENCE OF THE MENTAL STATES, AND ABSENCE OF A MOTIVE

17 CAN BE USED TO DISPROVE THEM. BECAUSE WE KNOW YOU HAVE

18 TO HAVE REASONS FOR WHAT YOU DO, AND PARTICULARLY WHEN

19 YOU LOOK AT THE CONSPIRACY INSTRUCTION THAT WE TALKED

20 ABOUT EARLIER, YOU HAVE TO HAVE A REASON TO PLAN TO KILL

21 ANYBODY, AND ESPECIALLY YOUR PARENTS. THERE HAS TO BE

22 SOMETHING THAT MAKES SENSE.

23 AND THAT'S WHY THE PROSECUTION SPENT SO

24 MUCH TIME TALKING ABOUT SPENDING, TALKING ABOUT A WILL.

25 THEY HAVE TO FIND SOMETHING THAT WILL CONVINCE YOU

26 BEYOND A REASONABLE DOUBT THAT THESE YOUNG MEN HAD SUCH

27 A POWERFUL REASON TO KILL THEIR PARENTS THAT THEY DID.

28 THAT IT WAS SOMETHING OTHER THAN FEAR AND RAGE AND HUMAN

1 EMOTION WORKING, BUT THAT THERE WAS SOME TERRIBLE
2 MOTIVE, SOME PROFIT FOR THEM.

3 THEY HAVE TO -- THEY KNOW THEY HAVE TO
4 PROVE THAT TO YOU IF YOU'RE GOING TO CONVICT, BECAUSE
5 IT'S THE ONLY THING THAT MAKES SENSE. YOU HAVE TO HAVE
6 A REASON TO KILL SOMEBODY.

7 AND SO LET'S TALK A LITTLE BIT, USING THAT
8 CIRCUMSTANCIAL EVIDENCE INSTRUCTION THAT I'M LEAVING ON
9 THE BOARD, LET'S TALK A LITTLE BIT ABOUT SOME OF THESE
10 MOTIVES THAT THE PROSECUTION HAS BROUGHT OUT AS PERHAPS
11 SHOWING YOU WHY YOU SHOULD CONVICT OF MURDER.

12 THE FIRST THING WE HAVE HERE IS A TIME
13 LINE, IS HOW I'VE TITLED IT. IT BASICALLY SETS FORTH
14 THE LAST YEAR AND A HALF, AS WE KNOW IT, OF THE
15 RELATIONSHIP BETWEEN LYLE MENENDEZ AND HIS FATHER.

16 AND WE START WITH THE SPRING OF 1988; THAT
17 IS, JUST AFTER THE FALL SEMESTER WAS ENDING, PROBABLY
18 ABOUT FEBRUARY.

19 AND WE KNOW AT THAT TIME THAT LYLE MENENDEZ
20 GOT INVOLVED IN THIS PLAGERISM INCIDENT IN WHICH HE TOOK
21 TOO LITERALLY HIS LAB TEACHER'S ADMONITION: "GO TAKE A
22 LOOK AT YOUR PARTNER'S LAB NOTES," AND HE COPIED THEM
23 AND TURNED THEM IN.

24 AND THEY HAD A HEARING, AND HE GOT
25 SUSPENDED. HE GOT A CHANCE, AS TERRY BARALT TOLD YOU,
26 TO EITHER TAKE A "B" IN THE COURSE AND A YEAR OUT OF
27 SCHOOL, OR SCRUB THE SEMESTER AND START OVER.

28 AND LYLE MENENDEZ FIGURED, "WELL, I'VE GOT

1 ONE SEMESTER DOWN. I DON'T WANT TO GO THROUGH THAT
2 AGAIN." SO HE DECIDED TO TAKE THE "B", WHICH IS NOT A
3 BAD GRADE FOR PRINCETON, AND SEE YOU IN A YEAR.

4 AND STRANGELY ENOUGH, ON THIS OCCASION HIS
5 FATHER WAS SUPPORTIVE OF HIM. LYLE MENENDEZ, AS YOU'VE
6 HEARD, WAS KIND OF TREATING IT LIGHTLY UNTIL CARLOS AND
7 TERRY BARALT SAID: "NO. YOU'VE GOT TAKE THIS
8 SERIOUSLY," AND CALLED JOSE MENENDEZ, WHO CAME OUT. AND
9 IN THIS CASE, HE THOUGHT THAT THE UNIVERSITY HAD
10 OVERREACTED AND SUPPORTED LYLE MENENDEZ.

11 NOW, THIS IS THE ONE OCCASION WHEN MAYBE HE
12 SHOULD HAVE LECTURED HIS SON MORE SEVERELY AS TO WHAT IS
13 EXPECTED AT A UNIVERSITY, BUT HE WAS SUPPORTIVE, AND HE
14 WENT TO BAT FOR HIM, AND HE SAYS: "OKAY, WE'LL COME
15 BACK IN A YEAR."

16 NOW, IN THE SUMMER OF 1988 WE HAVE THE
17 BURGLARIES. YOU HAVE HEARD ABOUT THEM.

18 AND SOMETIME IN '88, WE DON'T KNOW EXACTLY
19 WHEN, BUT WE KNOW SOMETIME IN 1988 JOSE MENENDEZ TOLD
20 HIS SONS THEY WERE OUT OF THE WILL. DIDN'T SAY: "YOU'RE
21 GOING TO BE OUT." HE DIDN'T SAY: "I'M THINKING ABOUT
22 TAKING YOU OUT." HE SAID: " YOU'RE OUT."

23 NOW, HE DIDN'T DO IT. BUT ERIK MENENDEZ
24 DIDN'T KNOW THAT. LYLE MENENDEZ DID NOT KNOW THAT.
25 THEY BELIEVED THEIR FATHER.

26 NOW, HE NEVER DISCUSSED WITH CARLOS BARALT
27 OR ANYBODY ELSE REALLY THE REASON THAT HE DID THAT. BUT
28 HE DID TELL CARLOS BARALT EARLY IN 1989, PROBABLY IN THE

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1 APRIL TIME WHEN HE WAS THERE, WHEN CARLOS BARALT SAID:
2 "HOW ARE YOU GOING TO TELL LYLE AND ERIK THAT THEY'RE
3 OUT OF THE WILL?"

4 AND HE SAYS: "I'VE ALREADY DONE THAT."

5 BUT WE DON'T JUST HAVE CARLOS BARALT FOR
6 THAT, STRONG A WITNESS AS HE IS, THAT LYLE MENENDEZ AND
7 ERIK MENENDEZ THOUGHT THEY WERE OUT OF THE WILL. WE
8 ALSO HAVE EVIDENCE LATER FROM MARTA CANO, WHEN SHE TOLD
9 THEM THEY WERE IN THE WILL, AND "LET'S TALK ABOUT YOUR
10 FATHER'S ASSETS," AND LYLE MENENDEZ WAS TOTALLY
11 DISINTERESTED, AND SAYS: "AUNT MARTA, WE'RE OUT."

12 THAT COMES FROM EXACTLY WHAT CARLOS BARALT
13 SAID THAT JOSE MENENDEZ HAD TOLD BOTH YOUNG MEN, THAT
14 THEY WERE OUT.

15 AND WE HAVE EVEN FURTHER EVIDENCE OF THAT,
16 AND THAT IS FROM THE DECEMBER 11TH TAPE THAT HAS BEEN
17 TALKED ABOUT HERE THAT IS WITH THE INVISIBLE DR. OZIEL.

18 AND DR. OZIEL ON THAT TAPE -- AND YOU WILL
19 HAVE A TRANSCRIPT THAT YOU CAN READ, A REAL TRANSCRIPT
20 OF THAT TAPE THAT'S EASIER TO READ THAN IT IS TO LISTEN
21 TO.

22 BUT AT PAGE 13 OF THAT TRANSCRIPT,
23 DR. OZIEL SAYS: "THERE IS LOTS OF STUFF THAT YOUR DAD
24 WAS DOING, UH, INCLUDING" -- TALKING ABOUT
25 DISINHERITING -- "ACTUALLY HAVING SAID THAT HE DID
26 DISINHERIT YOU, I GUESS, AT A COUPLE OF POINTS."
27 YOU DON'T HAVE TO RELY ON THE MEMORY OF
28 CARLOS BARALT ALONE. WE DON'T HAVE TO RELY ON THE

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1 CREDIBILITY OF MARTA CANO ALONE, ALTHOUGH CERTAINLY SHE
2 WAS CREDIBLE. WE ALSO HAVE ON A TAPE DR. OZIEL SAYING
3 THAT JOSE MENENDEZ HAD TOLD HIM THAT HE DISINHERITED
4 THEM.
5 SO EVERY EVIDENCE IS THAT AFTER -- SOMETIME
6 AFTER THE BURGLARIES, BOTH LYLE MENENDEZ AND ERIK
7 MENENDEZ FELT THEY WERE OUT OF THE WILL.
8 AND THAT'S MUCH MORE IMPORTANT THAN WHETHER
9 THEY EVER REALLY WERE OUT OF THE WILL, ISN'T IT?
10 BECAUSE EVERYTHING WE'VE BEEN DOING HERE FOR THESE FOUR
11 AND-A-HALF MONTHS OF EVIDENCE NOW IS TALKING ABOUT WHAT
12 HAPPENED, AND WHY IT HAPPENED ON AUGUST 20TH, 1989. AND
13 IF LYLE AND ERIK MENENDEZ FELT THEY WERE DISINHERITED,
14 THAT THEY WERE OUT OF THE WILL, THEY HAD EVERYTHING TO
15 LOSE AND NOTHING TO GAIN BY KILLING THEIR PARENTS.
16 AND EVEN THOUGH THEY FELT THEY WERE OUT OF
17 THE WILL, THEY HAD BEEN TOLD THEY WERE OUT OF THE WILL

18 BACK SOMETIME IN LATE '88. THE PARENTS WEREN'T KILLED,
19 WERE THEY? JOSE MENENDEZ WASN'T KILLED. MARY LOUISE
20 MENENDEZ WAS NOT KILLED IN LATE 1988, AS FAR AS MOTIVE
21 IS CONCERNED; EVEN THOUGH AS FAR AS THE STATE OF MIND OF
22 EACH OF THESE YOUNG MEN IS CONCERNED, THEY FELT THEY
23 WERE DISINHERITED. THEY FELT THEY WERE OUT OF THE WILL.
24 NOW WE COME TO APRIL, 1989. THIS IS THE
25 TIME REALLY THAT CARLOS BARALT WAS TALKING ABOUT. HE
26 SAID HE COULDN'T REALLY PIN THE MONTH, BUT WE KNOW FROM
27 TERRY BARALT THAT JOSE MENENDEZ WAS BACK IN THE
28 PRINCETON AREA IN APRIL 1989. WE KNOW THAT HE WAS

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1 UNHAPPY WITH LYLE MENENDEZ, WHOM HE HAD ALREADY TOLD HE
2 WAS DISINHERITING. BUT HE'S UNHAPPY WITH HIM BECAUSE
3 HE'S GOING WITH CHRISTY, WHO WAS TEN YEARS OLDER, I
4 THINK, THAN HIM, BECAUSE HE HAD THIS -- AS JOSE MENENDEZ
5 SAW IT -- DEADBEAT DONOVAN GOODREAU HANGING AROUND HIS
6 ROOM, AND BECAUSE HE WASN'T, AS CARLOS BARALT PUT IT,
7 "BREEZING THROUGH SCHOOL."
8 HE DIDN'T SAY HE WAS DOING POORLY AT
9 SCHOOL. DIDN'T SAY HE WAS FLUNKING SCHOOL. HE SAID:
10 "I CAN'T UNDERSTAND WHY LYLE MENENDEZ ISN'T JUST
11 BREEZING THROUGH. I WENT TO SCHOOL AT NIGHT. WHY CAN'T
12 HE BE LIKE ME. WHY CAN'T HE GET GOOD GRADES?"
13 OF COURSE, WHERE JOSE MENENDEZ WENT TO

14 SCHOOL WAS NOT PRINCETON UNIVERSITY.
15 BUT NONETHELESS, THAT'S WHAT HE WAS SAYING
16 IN APRIL OF 1989. THERE IS NO DISPUTE. AS ALL FAMILIES
17 DO, YOU GO UP AND DOWN KIND OF IN HOW CLOSE YOU ARE, HOW
18 HAPPY YOU REMEMBER WITH YOUR OFF2SPRING.
19 BUT IN APRIL OF 1989 JOSE MENENDEZ WAS NOT
20 HAPPY WITH HIS SON, JOSEPH LYLE MENENDEZ.
21 BUT IN MAY, ONE MONTH LATER, WE HEARD AGAIN
22 FROM HIS SISTER, TERRY BARALT, THAT JOSE MENENDEZ AGAIN
23 CAME TO PRINCETON, AND HE WAS ON TOP OF THE WORLD. AND
24 WHY WAS THAT?
25 BECAUSE LYLE MENENDEZ HAD GOTTEN RID OF
26 DONOVAN. HE HAD OBEYED HIS FATHER'S WILL. HE HAD
27 GOTTEN RID OF CHRISTY, AND HE HAD A NEW IMAGE. HE HAD
28 THE POLO SHIRTS, THE CLOTHES. HE LOOKED LIKE THE

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1 PRINCETON MAN.
2 AND REMEMBER, JOSE MENENDEZ WAS VERY MUCH
3 ABOUT IMAGE, AS WAS MARY LOUISE MENENDEZ. IMAGE WAS WHY
4 THEY WANTED LYLE TO GO TO PRINCETON TO BEGIN WITH.
5 IMAGE WAS WHAT WAS IMPORTANT.
6 AND JOSE WAS -- JOSE MENENDEZ WAS VERY
7 HAPPY IN MAY, BECAUSE LYLE HAD THESE POLO SHIRTS AND HE
8 HAD THIS COLLEGE-STYLE HAIRCUT, AND HE LOOKED LIKE A
9 PRINCETON MAN, AND HE ACTED LIKE A PRINCETON MAN.

10 AND HE SPENT THE WHOLE WEEKEND, TERRY
11 BARALT SAID, WITH HIS PARENTS, SHOWING THEM AROUND.
12 THEY KNEW PRINCETON, BECAUSE THEY HAD LIVED THERE. HE
13 SHOWED THEM AROUND ANYWAY, AND THEY WERE DELIGHTED.

14 AND TERRY BARALT SAID: "WELL, YOU SHOULD
15 LIKE THOSE POLO SHIRTS. THEY COST YOU AN INCREDIBLE
16 AMOUNT OF MONEY." I THINK HE HAD SPENT THREE OR \$4,000
17 ON CLOTHING, OR SOMETHING LIKE THAT.

18 AND JOSE MENENDEZ SAYS: "I DON'T CARE WHAT
19 IT COSTS, IF IT MAKES HIM LOOK LIKE THAT."

20 THE IMAGE THAT JOSE MENENDEZ WANTED FOR HIS
21 SON HAD BEEN ACCOMPLISHED IN MAY, 1989. THERE WAS A
22 RECONCILIATION. WHATEVER HAD HAPPENED IN APRIL, MAY WAS
23 A DIFFERENT TIME.

24 NOW WE ARE IN AN UPSWING IN THAT
25 RELATIONSHIP. HE DIDN'T REINSTATE HIM IN THE WILL. HE
26 DIDN'T TELL HIM ANYTHING ABOUT THE WILL. HE IS STILL
27 OUT OF THE WILL. BUT THEY'RE GETTING ALONG. HE'S PROUD
28 OF LYLE AT THAT POINT. FOR ONCE, HE'S GOT THE IMAGE

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1 THAT HE WANTED HIM TO HAVE.

2 SO IN JUNE 1989, PROBABLY LATE JUNE, WE
3 HEAR FROM PERRY BERMAN THAT THERE'S GOING TO BE A FAMILY
4 MEETING, AND THIS IS WHEN LYLE TOOK THE BLAME FOR THE
5 POOL TABLE THAT HAD BEEN DESTROYED -- DESTROYED

6 APPARENTLY BY SOMEBODY WHO WAS ALREADY ON PROBATION AT
7 PRINCETON. I THINK IT WAS HAYDEN ROGERS THAT HE NAMED.

8 SO HE TOOK THE RAP SO THAT HIS FRIEND
9 WOULDN'T GET KICKED OUT, AND TOLD HIS DAD ABOUT THAT.

10 BUT THAT DIDN'T CAUSE ANY RUPTURE IN THE
11 FAMILY THAT WE KNOW OF. YOU DON'T KILL YOUR FATHER
12 BECAUSE YOU'VE TAKEN THE BLAME FOR A POOL TABLE.

13 JULY 1989 WE HAVE THE PURCHASE OF THE
14 CAMCORDER. \$900 CAMCORDER THAT WE'VE HEARD ABOUT THAT
15 MARK HEFFERNAN BOUGHT WITH LYLE MENENDEZ, AND THAT HAD A
16 PURPOSE.

17 MARK HEFFERNAN WAS A TENNIS COACH, A VERY
18 GOOD ONE. AND HE SAID, YOU KNOW, A CAMCORDER WILL
19 REALLY HELP. YOU CAN SEE YOUR STROKES, YOU CAN SLOW IT
20 DOWN. YOU CAN STOP IT. YOU CAN SEE WHAT YOU'RE DOING.
21 YOU CAN ANALYZE YOUR GAME. YOU CAN IMPROVE. IT'S A
22 GOOD COACHING TOOL.

23 SO LYLE MENENDEZ BOUGHT IT. AND ACTUALLY,
24 \$900 FOR A CAMCORDER IS NOT OUT OF LINE. THAT'S NOT A
25 TOP OF THE LINE, T.V. NEWS-TYPE CAMCORDER.

26 AND YOU KNOW, THE INTERESTING THING IS
27 NOBODY TRIED TO HIDE THIS CAMCORDER. LYLE MENENDEZ GAVE
28 IT TO ERIK MENENDEZ TO TAKE WITH HIM, BECAUSE ERIK

1 MENENDEZ HAD IT IN KALAMAZOO, DIDN'T HE?

2 AND IN THE NATIONALS TOURNAMENT IN AUGUST,
3 HE FORGOT AND LEFT IT ON THE PLANE. BUT HE HAD IT WITH
4 HIM. CERTAINLY IT WAS GOING TO BE SEEN BY HIS FAMILY
5 WHEN HE BROUGHT IT WITH HIM, BECAUSE THAT'S WHAT IT WAS
6 THERE FOR.

7 SO HE TOOK IT TO KALAMAZOO. NO HIDING OF
8 IT. AND AS A MATTER OF FACT, WE KNOW THAT MARY LOUISE
9 MENENDEZ USED THE CAMCORDER FOR 12 REELS, OR WHATEVER
10 YOU CALL THE LITTLE CASSETTES THAT YOU TAKE WITH THAT.
11 SHE ENJOYED USING IT.

12 NOW, THIS IS THE TIME WHEN SUPPOSEDLY
13 MR. MENENDEZ, JOSE MENENDEZ, TALKED TO BRIAN ANDERSEN
14 AND SAID: "MY SON, LYLE, IS SPENDING TOO MUCH MONEY.
15 MY SONS ARE GOING TO HAVE TO REALIZE I AM NOT GOING TO
16 SUPPORT THEM FOREVER," OR SOMETHING OF THAT NATURE. BUT
17 HE WASN'T CUTTING THEM OFF.

18 ON AUGUST 20TH, 1989, WHICH IS THE
19 IMPORTANT DATE, WHAT DID LYLE MENENDEZ HAVE TO LOOK
20 FORWARD TO?

21 THE CONDO IN PRINCETON WAS GOING TO CLOSE
22 SEPTEMBER 4TH. THIS IS THE ONE THAT JOSE MENENDEZ WAS
23 ENTHUSIASTIC ABOUT FOR LYLE TO USE TO LIVE IN. TERRY
24 BARALT HELPED HIM FIND IT, BECAUSE THERE WAS NO PLACE TO
25 RENT IN TOWN THAT WAS WORTH IT. SHE HELPED HIM FIND THE
26 CONDO, HELPED HIM PICK IT OUT.

27 THEN JOSE MENENDEZ SAID: "WELL, I WANT
28 CARLOS TO GO TAKE A LOOK AT IT, TOO, BECAUSE CARLOS WILL

1 KNOW IF IT'S A GOOD INVESTMENT."

2 SO CARLOS WENT AND LOOKED AT THAT CONDO AND

3 PASSED ONTO JOSE MENENDEZ: "YEAH, IT'S A GOOD BUY."

4 SO THAT WAS AWAITING CLOSURE. THIS WAS

5 WAITING FOR LYLE MENENDEZ WHEN HE WENT BACK TO SCHOOL,

6 ALONG WITH THE CAR AND HIS MOTHER PLANNING TO GO ON

7 SEPTEMBER 9TH, FIRM PLANS, TO GO AND HELP FURNISH THE

8 CONDO.

9 SO ON AUGUST 20TH, 1989 AT 10:00 O'CLOCK IN

10 THE MORNING, LYLE MENENDEZ HAD EVERYTHING TO GAIN WITH

11 HIS PARENTS BEING ALIVE, WHETHER THEY WERE GOING TO CUT

12 BACK ON A CREDIT CARD OR PUT HIM ON AN ALLOWANCE OR

13 WHATEVER. WHO CARES? HE HAD A CONDO, HE HAD

14 FURNISHINGS, HE HAD PRINCETON TUITION. HE HAD

15 EVERYTHING GOING FOR HIM, AND CERTAINLY HE WAS GOING TO

16 HAVE CLOTHES AND ENOUGH TO GET ALONG.

17 AND THE ONLY WAY HE COULD LOSE ALL THAT WAS

18 TO KILL HIS PARENTS, BECAUSE IN HIS MIND HE WAS OUT OF

19 THE WILL, AND IF HIS PARENTS WERE DEAD, HE WAS BROKE.

20 NO CONDO. NO FURNISHINGS. NO PRINCETON

21 TUITION.

22 DOES THAT MAKE SENSE? DOES IT MAKE SENSE

23 THAT LYLE MENENDEZ AND ERIK MENENDEZ KILLED THEIR

24 PARENTS ON AUGUST 20TH, 1989 BECAUSE OF A WILL OR

25 BECAUSE OF A CAMCORDER, OR ANY OF THOSE THINGS?

26 AND ESPECIALLY DOES IT MAKE SENSE WHEN YOU

27 COMPARE THE WORDS OF THE CIRCUMSTANCIAL EVIDENCE
28 INSTRUCTION THAT: "UNLESS THE PROVED CIRCUMSTANCES ARE

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1 NOT ONLY CONSISTENT WITH THE THEORY THE DEFENDANT HAD
2 THE REQUIRED SPECIFIC INTENT OR MENTAL STATE OF MALICE,
3 PREMEDITATION" -- IN THIS CASE A MOTIVE -- "BUT CANNOT
4 BE RECONCILED WITH ANY OTHER RATIONAL CONCLUSION."

5 LADIES AND GENTLEMEN, THIS -- THAT THIS
6 HOMICIDE, THESE DEATHS OCCURRED OVER AN ARGUMENT WITH
7 THE FAMILY OR A WILL OR ANYTHING LIKE THAT IS THE MOST
8 UNREASONABLE THEORY IMAGINABLE, WHEN YOU CONSIDER WHAT
9 LYLE MENENDEZ HAD TO LOSE BY KILLING HIS PARENTS ON THAT
10 NIGHT.

11 SO THIS IS THE -- AGAIN, ON AUGUST 20TH.
12 AND THE ONLY PERSON WE HAVE WHO SAID HE THOUGHT HE MAY
13 BE OUT OF THE WILL WAS RANDY WRIGHT. THAT'S THE
14 PEOPLE'S ONLY EVIDENCE. THIS SIDE (POINTING) IS THE
15 PEOPLE'S EVIDENCE THAT THEY'RE ASKING YOU TO CONSIDER,
16 THAT HE MAY BE OUT OF THE WILL, AND WASN'T SURE IF THEY
17 SAID: "WE'RE OUT OF THE WILL, OR MAY BE OUT OF THE
18 WILL," OR HE WAS CHANGING HIS WILL. HE WAS BEING ASKED
19 TO REMEMBER WHATEVER THIS WAS FIVE YEARS LATER.

20 WHEN YOU COMPARE THAT WITH, AGAIN, THE FACT
21 THAT HE HAD BEEN TOLD HE WAS OUT BY JOSE MENENDEZ, WHO
22 TOLD CARLOS BARALT THAT; THAT BOTH LYLE MENENDEZ AND

23 ERIK MENENDEZ TOLD MARTA CANO THEY WERE OUT. "DON'T
24 BOTHER US WITH DETAILS OF THE ESTATE. WE'RE NOT GOING
25 TO GET ANY OF IT."

26 JOSE MENENDEZ HAD TOLD OZIEL THEY WERE OUT,
27 AS RELATED BY OZIEL IN THE TAPE. THIS FIVE MILLION
28 DOLLAR POLICY THAT WAS BEING TAKEN OUT OF THE BUSINESS

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1 WAS INVALID. LYLE MENENDEZ KNEW THAT. HE KNEW HE
2 HADN'T TAKEN THE PHYSICAL. ERIK MENENDEZ KNEW THAT. I
3 THINK THEY EVEN TOLD THAT, SUPPOSEDLY, TO MR. WRIGHT THE
4 NEXT DAY. THEY KNEW THEY WEREN'T GOING TO GET FIVE
5 MILLION IF THEY KILLED THEIR PARENTS.

6 IF YOU'RE REALLY THINKING OF KILLING THEM,
7 IF YOU'RE REALLY CONSPIRING TO KILL YOUR PARENTS THE WAY
8 THE PROSECUTION THEORY IS, IF YOU'RE REALLY GETTING
9 TOGETHER WITH A MEETING OF THE MINDS, PRETTY STUPID NOT
10 TO WAIT A COUPLE MORE WEEKS UNTIL HE TOOK THE PHYSICAL,
11 AND YOU'D BE FIVE MILLION DOLLARS RICHER.

12 AND LYLE AND ERIK MENENDEZ ARE NOT STUPID
13 YOUNG MEN. THIS THEORY DOESN'T MAKE ANY SENSE.

14 AND THEN THE LAST THING, THEY HAD NO
15 KNOWLEDGE OF THIS \$650,000 SUN LIFE INSURANCE POLICY.
16 THAT'S WHAT THEY TOLD MARTA CANO. THEY SAID: "WHAT ARE
17 YOU TALKING ABOUT? WHAT INSURANCE POLICY?"

18 AND MARTA CANO SAYS: "I WROTE IT. I KNOW

19 ABOUT IT." THEY DIDN'T.

20 AND THE PROSECUTION SAYS WELL, THEY'RE

21 LYING. MARTA CANO IS LYING. SHE KNEW -- THE BOYS KNEW,

22 BECAUSE THEY TOLD MR. WRIGHT ON MONDAY ABOUT THE

23 \$300,000 POLICY.

24 AND SO IF THEY TOLD MR. WRIGHT ON MONDAY

25 ABOUT A \$300,000 POLICY, MARTA CANO IS LYING TO YOU WHEN

26 SHE SAYS THAT LYLE AND ERIK MENENDEZ TOLD HER THEY HAD

27 NO KNOWLEDGE OF IT. ERIK MENENDEZ HAS TOLD YOU THAT ANY

28 KNOWLEDGE MR. WRIGHT HAD OF THE \$300,000 MIGHT HAVE COME

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1 FROM HIM WHEN HE MADE A LATER VISIT, AND MR. WRIGHT

2 SAID: "WHAT ARE YOU GOING TO LIVE ON?"

3 SO WHO ARE YOU GOING TO BELIEVE?

4 WELL, YOU KNOW, THE INTERESTING THING IS

5 THAT THERE WAS NO \$300,000 LIFE INSURANCE POLICY. NEVER

6 EXISTED. THE LIFE INSURANCE POLICY -- AND WHEN YOU

7 SEE -- I THINK IT'S EXHIBIT 100 THAT YOU CAN LOOK AT

8 WHEN YOU'RE IN THE JURY ROOM, IT'S NOT FOR \$300,000 AT

9 ALL. IT'S FOR \$400,000, WITH A \$250,000 RIDER FOR

10 ACCIDENTAL DEATH. THAT'S HOW IT BECAME \$650,000, AND

11 THAT'S HOW EACH OF THE YOUNG MEN ENDED UP WITH HALF,

12 RECEIVING \$325,000.

13 SO, USING THE CIRCUMSTANCIAL EVIDENCE

14 STANDARD, IT CERTAINLY IS MORE REASONABLE THAT ERIK

15 MENENDEZ IS TELLING THE TRUTH WHEN HE SAYS HE NEVER TOLD
16 RANDY WRIGHT ABOUT A \$300,000 POLICY ON AUGUST 21ST,
17 BECAUSE HE DIDN'T EVEN KNOW IT EXISTED. ANY KNOWLEDGE
18 MR. WRIGHT HAD OF \$300,000 CAME LATER, EITHER ASKING
19 ERIK MENENDEZ: "HOW ARE YOU GOING TO LIVE?" OR
20 WATCHING COURT T.V. OR ANY OF THE OTHER SOURCES OF
21 INFORMATION THAT HAVE BEEN AVAILABLE THROUGH THE YEARS
22 ON THIS PARTICULAR CASE.

23 NOW, I AM NOT SAYING THAT RANDY WRIGHT IS
24 LYING ABOUT IT, BUT SOMETIMES IT'S HARD FOR US TO KEEP
25 IN MIND WHERE WE LEARN FACTS, AND WE SOMETIMES MIX THEM
26 UP FIVE YEARS LATER.

27 BUT THE TRUTH IS HE COULD NOT HAVE HEARD
28 ABOUT A \$300,000 POLICY FROM ERIK MENENDEZ, BECAUSE IT

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1 DIDN'T EXIST. THAT JUST HAPPENS TO BE WHAT HE GOT LATER
2 ON, BUT HAD NO REASON TO BELIEVE ANYTHING ABOUT IT, JUST
3 AS HE'S TOLD YOU, ON AUGUST 21ST.

4 THEN WE GET TO THE FAMOUS COMPUTER WILL. I
5 SHOULD HAVE PUT THAT IN QUOTES. THERE IS NO COMPUTER
6 WILL. THERE IS NO SUCH THING AS A COMPUTER WILL,
7 BECAUSE WILLS, AS YOU KNOW, HAVE TO BE SIGNED. THEY
8 HAVE TO BE WITNESSED.

9 SO WHAT'S THEIR EVIDENCE AS AN EFFORT TO
10 DESTROY A COMPUTER WILL? THEY WANT YOU TO BELIEVE THAT

11 LYLE MENENDEZ KILLED FOR GREED BECAUSE HE WAS INTERESTED
12 IN WHATEVER THERE MIGHT BE CONCERNING A WILL ON A
13 COMPUTER.

14 SO THEY SAY THAT THERE WAS A CONVERSATION
15 ON THIS, THAT HE ATTRIBUTES FROM ERIK TO MRS. WRIGHT:
16 "WE NEED TO SEARCH THE COMPUTER. WE NEED TO SEE IF
17 THERE IS A WILL ON THE COMPUTER."

18 WELL, IN THE FIRST PLACE, SHE'S UNSURE WHEN
19 THIS IS SUPPOSED TO HAVE BEEN SAID. SHE CHANGES HER
20 MIND FROM SAYING BEFORE HER HUSBAND GOT HOME TO SAYING
21 AFTER HER HUSBAND GOT HOME. GIVE ME THE TIME OF DAY AND
22 I'LL -- SHE'LL CHANGE HER MIND AS TO WHAT IT IS
23 APPARENTLY.

24 READING FROM HER TESTIMONY FOR A MOMENT,
25 AND THIS IS AT PAGE 37,230.

26 "QUESTION: WAS THAT DISCUSSION
27 ABOUT A WILL BEFORE OR AFTER YOUR HUSBAND
28 CAME HOME?

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1 HER ANSWER AT THAT TIME WAS

2 "AFTER."

3 "WHY ARE YOU CHANGING YOUR
4 TESTIMONY TODAY, AFTER TESTIFYING TO IT
5 UNDER OATH JUST A FEW MONTHS AGO, AND JUST
6 A COUPLE DAYS HAVING REVIEWED IT WHEN IT

7 WAS SENT TO YOU?"

8 HER ANSWER: "BECAUSE I KEEP

9 GOING BACK AND FORTH ON IT. I'M NOT SURE

10 IF IT WAS BEFORE OR AFTER. ONE MINUTE I

11 THINK IT COULD HAVE BEEN BEFORE HE GOT

12 HOME, AND THEN I THINK: 'WELL, GEE, MAYBE

13 I WAS TALKING TO ERIK AFTER.'

14 IT WAS SAID, BUT WHETHER IT

15 WAS BEFORE OR AFTER, I CAN'T RECALL."

16 AND THIS IS THE IMPORTANT QUESTION HERE BY

17 MS. TOWERY:

18 "WHEN YOU'RE NOT SURE OR WHEN YOU

19 FEEL, YOU KNOW . . . "

20 HER ANSWER: "I GUESS."

21 A CAPITAL CASE, DOUBLE MURDER, AND THIS

22 WITNESS SAYS IF SHE'S NOT SURE OF SOMETHING, SHE

23 GUESSES.

24 LADIES AND GENTLEMEN, THAT IS NOT THE

25 QUALITY OF EVIDENCE UPON WHICH CASES LIKE THIS TURN.

26 THAT IS NOT THE QUALITY OF EVIDENCE THAT MEETS THE

27 CIRCUMSTANCIAL EVIDENCE STANDARD.

28 BUT JUST TO EMPHASIZE IT, SHE WAS ASKED

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1 AGAIN AT PAGE 37,246, AND THIS SHOWS THE QUALITY OF HER

2 WITNESSING:

3 "QUESTION: YOU'RE TESTIFYING TODAY
4 TO AN ASSUMPTION; IS THAT RIGHT?

5 "ANSWER: RIGHT.

6 "QUESTION: BECAUSE YOU DON'T
7 REMEMBER, DO YOU?

8 "ANSWER: I REMEMBER. I REMEMBER
9 EXACTLY. THE SAFE WAS OPENED A DAY OR TWO
10 AFTER IT CAME TO MY HOUSE. THAT'S WHAT I
11 REMEMBER.

12 "QUESTION: OKAY. AND WHEN YOU
13 WERE ASKED THAT QUESTION IN JUNE, DID YOU
14 REMEMBER EXACTLY?

15 "ANSWER: NO. I THOUGHT IT WAS A
16 DAY. NOW I AM SAYING A DAY OR TWO. IT
17 COULD HAVE BEEN A DAY, COULD HAVE BEEN TWO
18 DAYS. I DON'T KNOW. IT WAS SHORTLY AFTER
19 IT CAME. IT WAS OPENED, AND THEY LEFT.

20 "QUESTION: WHEN YOU WERE ASKED
21 THAT QUESTION, YOU DIDN'T SAY, 'I DON'T
22 KNOW,' DID YOU?

23 "ANSWER: NO. I USUALLY TRY TO GIVE
24 AN ANSWER THE BEST I CAN. I DON'T LIKE TO
25 SAY, 'I DON'T KNOW.'"

26 NOW, THAT MAY BE A HUMAN FAILING THAT MANY
27 OF US HAVE THAT WE DON'T LIKE TO SAY, "I DON'T KNOW. I
28 DON'T REMEMBER." BUT IT'S NOT THE TYPE OF CREDIBLE

1 EVIDENCE FROM A WITNESS IN A CAPITAL CASE THAT YOU
2 SHOULD PUT CREDENCE IN.

3 IT GOES ON.

4 "QUESTION: SO IF YOU'RE ASKED A
5 QUESTION, YOU TRY TO GIVE AN ANSWER?

6 "ANSWER: THE BEST I CAN.

7 "QUESTION: AND THAT ANSWER MIGHT
8 BE RIGHT OR WRONG, BUT YOU'RE STILL GOING
9 TO GIVE AN ANSWER, BECAUSE YOU DON'T LIKE
10 TO SAY: 'I DON'T KNOW'; IS THAT RIGHT?

11 "ANSWER: I'LL TELL YOU IF I DON'T
12 KNOW. BUT IF I'M -- IF I KNOW AND IF I
13 MAYBE NOT KNOW EXACTLY, I'LL TRY TO GET AS
14 CLOSE AS I CAN FOR YOU.

15 "QUESTION: I SEE. AND THAT'S WHAT
16 YOU'VE DONE WHEN YOU'VE TESTIFIED HERE
17 TODAY, ISN'T IT?

18 "ANSWER: IN SOME CASES."

19 THIS IS A WITNESS WHO MAKES ASSUMPTIONS,
20 WHO WON'T SAY: "I DON'T KNOW."

21 ONE MINOR EXAMPLE. IT MAKES NO DIFFERENCE
22 TO THE CASE AT ALL, EXCEPT IT GIVES YOU A CLUE AS TO
23 WHERE SHE'S COMING FROM, IS THAT SHE WAS ASKED BY
24 DETECTIVE ZOELLER ABOUT DINNER, AND SHE TOLD DETECTIVE
25 ZOELLER: "YEAH, THEY STAYED FOR DINNER."

26 AND THEN WHEN SHE WAS ASKED ON THE WITNESS
27 STAND, SHE SAYS: "I DON'T REMEMBER IF THEY STAYED FOR

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1 MUST HAVE."

2 SEE, THAT'S TOO LOOSE. THAT'S TOO LOOSE TO
3 BASE A CONVICTION ON IN A CASE LIKE THIS, OR TO
4 DETERMINE THE MENTAL STATES OF LYLE OR ERIK MENENDEZ.

5 SHE CAN'T SAY: "I DON'T KNOW." SHE
6 GUESSES. SHE ASSUMES. SHE FILLS IN THE BLANKS.

7 AND THEN, SHE ALSO WAS AN AVID COURT T.V.
8 WATCHER ON THE FIRST CASE. SHE SAID SHE WATCHED IT ALL
9 SHE COULD. SOMETIMES WHEN HER HUSBAND CAME HOME, HE WAS
10 THE MASTER OF THE HOUSE AND CHANGED THE CHANNELS, BUT
11 HER PREFERENCE WAS TO FOLLOW THIS TRIAL.

12 AND AGAIN, EVEN THE MOST WELL-INTENTIONED
13 PEOPLE CAN OFTEN MIX UP SOMETHING THEY'VE HEARD ON T.V.,
14 SOMETHING SOMEBODY ELSE HAS SAID, AND MISPLACE THE
15 CONTEXT OF IT AND THINK THEY HEARD IT FROM SOMEBODY
16 ELSE.

17 AND RANDY WRIGHT, WHEN BEING CROSS-EXAMINED
18 ABOUT THE TIME HE CAME HOME IN THE AFTERNOON SAID: "NO,
19 IT WASN'T LYLE MENENDEZ OR ERIK MENENDEZ WHO BROUGHT UP
20 THE SUBJECT OF A WILL. I AM THE ONE WHO BROUGHT UP
21 PROBATE, AND THEN WE STARTED TO TALK ABOUT A WILL."

22 THEN WE HAVE THE SAFE AND THE BANK DEPOSIT
23 BOX THAT WE HEARD ABOUT FROM CARLOS BARALT AND BRIAN

24 ANDERSEN.

25 FUNNY THING ABOUT THE SAFE IS, AND

26 MS. ABRAMSON TOUCHED ON THAT, TOO, WAS THAT THEY HAD NO

27 NEED TO BRING THAT SAFE OVER TO THE HOUSE AT ALL. THEY

28 DIDN'T HAVE TO EVEN MENTION A SAFE. LYLE AND ERIK

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1 MENENDEZ ON AUGUST 21ST, 1989, STILL BELIEVE THEY'RE OUT

2 OF THE WILL; THAT SOMEPLACE THERE'S A WILL THAT'S GOING

3 TO DISINHERIT THEM. THAT'S WHAT THEY THINK.

4 HOW STUPID TO THEN TAKE A SAFE THAT MIGHT

5 HAVE THAT WILL IN IT OVER TO A LAWYER'S HOUSE WHO IS

6 GOING TO OPEN IT AND SEE WHAT'S THERE. HOW STUPID.

7 IF THEY REALLY WERE DOING THIS FOR MONEY

8 AND FOR A WILL, THEY WOULD HAVE TAKEN THAT SAFE

9 SOMEPLACE ON THEIR OWN OUT IN THE HILLS, OR WHATEVER.

10 FOUND A WAY TO OPEN IT AND SEE, NOT TAKEN IT TO A LAWYER

11 WHERE IT'S GOING TO BE OPENED.

12 AND THEN THEY OPEN THE SAFE. THEY FOUND

13 OUT HOW IT WAS DONE IN THE GARAGE, AND THE PEOPLE WERE

14 ASKED TO STEP OUTSIDE FOR A MINUTE, OR STEP TO THE BACK

15 OF THE GARAGE, I THINK. THEY WEREN'T QUITE SURE. BUT

16 JUST STEP AWAY SO THAT LYLE AND ERIK MENENDEZ COULD

17 EXAMINE THE CONTENTS OF THE SAFE TO SEE IF THERE WAS

18 ANYTHING THERE THAT WOULD EMBARRASS THEIR PARENTS.

19 NOW, GENERALLY YOU MIGHT THINK THAT'S KIND

20 OF A STRANGE, BUT IN THIS THING THERE WERE POSSIBLY
21 THINGS THAT COULD EMBARRASS THE PARENTS. WHO KNOWS WHAT
22 SPECIAL PORNOGRAPHY MIGHT HAVE BEEN THERE? WE KNOW THAT
23 THERE WAS PORNOGRAPHY IN THE HOUSE.

24 WHO KNOWS WHETHER THERE MIGHT HAVE BEEN
25 ANOTHER PRIVATE LETTER, SUICIDE-TYPE LETTER LIKE
26 DR. OZIEL WAS TALKING ABOUT WITH MARY LOUISE MENENDEZ?
27 THERE COULD HAVE BEEN THINGS THERE THAT
28 REALLY LYLE AND ERIK MENENDEZ DID NOT WANT THE WORLD TO

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1 SEE.
2 BUT THEY WEREN'T GOING TO BE ABLE TO
3 DESTROY A WILL, IF IT WAS THERE. AND WHAT THEY FOUND
4 WAS A SAFE DEPOSIT KEY AND INSTRUCTIONS AS TO WHERE THE
5 SAFE DEPOSIT KEY FIT.
6 NOW AGAIN, IF THEY WERE TRYING TO PULL A
7 FAST ONE, TRYING TO DESTROY IT, HOW STUPID TO TAKE THAT
8 KEY AND SAY: "WELL, HERE'S WHAT WAS IN THERE. HERE IS
9 THE KEY TO THE SAFE DEPOSIT BOX. I'LL BET THAT'S WHERE
10 THE WILL IS THAT DISINHERITS ME. LET'S GO FIND IT."
11 BECAUSE THAT'S WHAT THEY DID, ISN'T IT?
12 THEY WENT DOWN TO THE BANK EXPECTING TO FIND THE WILL.
13 THEY DIDN'T, BUT THEY EXPECTED TO. WITH MR. ANDERSEN,
14 MR. BARALT. A LOGICAL ASSUMPTION THAT THAT'S WHERE A
15 WILL WOULD BE, WHETHER IT'S AN OLD WILL OR A NEW WILL.

16 THEY DIDN'T HAVE TO REVEAL THAT KEY. THAT
17 IS SOMETHING. DO YOU KNOW HOW LITTLE SAFE DEPOSIT KEYS
18 ARE? THAT IS SOMETHING THEY COULD HAVE PALMED, IF THEY
19 WERE TRYING TO HIDE IT, AND PUT IT IN THEIR POCKET AND
20 SAID: "I DON'T WANT ANYBODY TO SEE THIS. THAT MIGHT BE
21 WHERE THE WILL IS."

22 BUT THEY DIDN'T. THEY GAVE IT TO CARLOS
23 BARALT AND TROOPED DOWN TO THE BANK.

24 SO THEN THERE WAS THIS: "WELL, GEE. I
25 WANT TO GO IN AND SEE THE SAFE DEPOSIT BOX FIRST."

26 SO LYLE MENENDEZ WENT IN, AGAIN TO PROTECT
27 WHATEVER FAMILY SECRETS MIGHT BE THERE. BUT HE WASN'T
28 THERE TO DESTROY THE WILL. THERE IS A BANK OFFICER

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1 THERE. THIS WAS A -- THIS WAS A DECEASED. A BANK
2 OFFICER HAD TO BE AND WAS PRESENT WHEN THAT SAFE DEPOSIT
3 BOX WAS OPENED. WE KNOW THAT FROM CARLOS BARALT. WE
4 KNOW THAT FROM BRIAN ANDERSEN. NO CHANCE TO SECRETE OR
5 HIDE OR TEAR UP A WILL.

6 AND ALL OF THIS IS SENSELESS ANYWAY, ISN'T
7 IT? BECAUSE IF THERE WERE TRULY A NEW WILL, WHERE WOULD
8 IT BE? IT WOULD BE IN THE LAWYER'S OFFICE. JOSE
9 MENENDEZ WASN'T THE KIND OF GUY TO GO TO THE STATIONERY
10 STORE AND FILL OUT A WOLCOTT'S FORM WILL. HE WAS GOING
11 TO GO TO A LAWYER AND HAVE IT DONE, JUST AS HE DID THE

12 WILL THAT WE HAVE.

13 AND CARLOS BARALT KNEW THAT, AND HE KNEW HE
14 WAS LOOKING FOR A NEW WILL. SO HE CALLED EVERY LAWYER
15 HE COULD THINK OF THAT JOSE MENENDEZ HAD BEEN ASSOCIATED
16 WITH TO FIND OUT, "DO YOU HAVE A WILL? DID HE CHANGE
17 HIS WILL? DO YOU HAVE IT?"

18 IN FACT, THE NAME OF THE FIRST LAWYER,
19 MR. MASON, WAS GIVEN TO HIM BY LYLE MENENDEZ. WHAT A
20 CHANCE TO TAKE. WHAT AN ABSURD RISK TO TAKE, TO GIVE
21 HIM THE NAME OF A LAWYER WHO MOST LIKELY WOULD HAVE THE
22 WILL, IF IN FACT IT WERE IN EXISTENCE, AS LYLE MENENDEZ
23 THOUGHT IT WAS.

24 THEN WE GET TO THE EFFORTS TO ERASE THE
25 FILE. WE KNOW THAT LYLE MENENDEZ FLEW BACK FROM NEW
26 JERSEY ABOUT THIS COMPUTER THAT HAD FILES: "WILL,
27 MENENDEZ, LYLE, ERIK," SOMETHING LIKE THAT. THREE NAMES
28 THERE.

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1 IN THE FIRST PLACE, HE KNEW ANY SUCH WILL,
2 IF IT EXISTED IN THE COMPUTER, WAS INVALID, BECAUSE
3 CARLOS BARALT TOLD HIM THAT ON THE DAY WHEN ALL THE
4 FAMILY WAS THERE HACKING AND PLAYING WITH THE COMPUTER,
5 TRYING TO BRING IT UP.

6 SO THERE WAS NO VALID WILL THAT LYLE
7 MENENDEZ HAD TO WORRY ABOUT IN THAT COMPUTER. IT DIDN'T

8 EXIST.

9 HE ALSO KNEW THERE WEREN'T ENOUGH
10 CHARACTERS. THERE WERE HARDLY ENOUGH CHARACTERS THERE
11 TO MAKE IT THROUGH THREE OR FOUR WORDS, IF THAT.
12 CERTAINLY NOT ENOUGH TO BE A WILL. OR EVEN A CLUE TO A
13 WILL.

14 AND THEN WE KNOW THAT WHEN HE WENT TO BRING
15 MR. WITKIN IN, HE DIDN'T ASK HIM ORIGINALLY TO DESTROY
16 IT, ERASE IT. WHAT HE FIRST DID WAS: "SEE -- GEE, YOU
17 KNOW," MR. WITKIN SAID, "IT COULD BE ON THE HARD DRIVE.
18 MIGHT BE THERE, EVEN IF THE TOP PART WAS ERASED OUT."

19 LYLE MENENDEZ SAID: "WELL, TRY TO FIND
20 OUT." HE DIDN'T SAY ERASE THAT HARD DRIVE WITHOUT EVER
21 LOOKING AT IT. HE SAID: "TRY TO FIND IT."

22 SO MR. WITKIN TRIED TO FIND IT, AND HE
23 SAYS: "NO. GEE, LYLE, THERE'S NOTHING HERE EITHER."

24 SO THEN LYLE MENENDEZ SAID: "OKAY. CAN
25 YOU ERASE IT?" AND HE DID. ONLY AFTER THE SEARCH WAS
26 MADE, AND A SEARCH WHICH WAS FOR NOTHING, REALLY.

27 AND THE REAL FUNNY PART ABOUT IT IS THAT
28 THE SO-CALLED FILES THAT WE'RE TALKING ABOUT PROBABLY

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1 WERE MADE BY THE PEOPLE SEARCHING TO SEE IF THERE WAS A
2 FILE THERE TO BEGIN WITH.

3 MS. TOWERY EXPLAINED, AND WE HAD THE

4 WITNESS EXPLAIN EXACTLY HOW THAT COULD COME ABOUT. BY
5 USING ONE WRONG SIGN OR SOMETHING, YOU CAN CREATE WHAT
6 YOU THINK YOU'RE LOOKING FOR. NEVER EXISTED.

7 AND THE OTHER THING ABOUT IT IS THE
8 COMPUTER, THE GREAT EVIDENCE ABOUT THE GREAT COMPUTER
9 SEARCH IS THAT ALL OF THAT, WHATEVER HAPPENED, HAPPENED
10 AFTER AUGUST 23RD.

11 NOW, WE KNOW THAT BECAUSE AUGUST 23RD IS
12 THE DATE, THAT'S WEDNESDAY, THAT LYLE AND ERIK MENENDEZ
13 FOR THE FIRST TIME REALIZED THEY MIGHT BE IN THE WILL,
14 BECAUSE THAT'S WHEN THEY TALKED TO AUNT MARTA. THAT'S
15 WHEN AUNT MARTA SAT THEM DOWN AND TALKED WITH THEM AND
16 SAID: "NO, THAT'S SILLY. YOU ARE IN THE WILL."

17 DOESN'T HAVE ANYTHING TO DO WITH WHAT THEY
18 THOUGHT ON AUGUST 20TH.

19 SO EVEN IF THERE WAS SOMETHING TO THIS WILL
20 IN THE COMPUTER AND ALL THAT -- WHICH THERE ISN'T -- BUT
21 EVEN IF THERE WAS SOMETHING TO IT, AUGUST 23RD IS FAR
22 DIFFERENT.

23 NOW LYLE MENENDEZ KNOWS HE IS PROBABLY IN
24 THE WILL. SO HE WOULD BE VERY CURIOUS, I'M SURE, AS TO
25 ANY DOCUMENT THAT WOULD TAKE HIM OUT OF IT. BUT THAT
26 HAS NOTHING TO DO WITH HIS INTENT ON AUGUST 20TH. IT
27 HAS NOTHING TO DO WITH WHAT HE FELT HE STOOD TO LOSE ON
28 AUGUST 20TH IF HE TOOK THE STEP OF SHOOTING HIS PARENTS.

1 NOW WE GET TO THE SO-CALLED SPENDING
2 EVIDENCE.

3 LYLE MENENDEZ SPENT MONEY LIKE A DRUNKEN
4 SAILOR, SUPPOSEDLY, ON ALL THE THINGS THAT WE HAD
5 EVIDENCE ABOUT THAT HE BOUGHT AFTER HE LEARNED THAT HE
6 WAS INHERITING UNDER THE WILL AND UNDER THE INSURANCE
7 POLICY.

8 NOW, WHAT DO THE PEOPLE HAVE? WELL, FIRST
9 THEY HAVE JOSE MENENDEZ TELLING BRIAN: "I'M NOT GOING
10 TO SUPPORT THEM FOREVER," OR SOMETHING LIKE THAT.

11 BUT ON THE OTHER HAND, WE HAVE LYLE -- AS
12 WE HAVE GONE THROUGH -- PRINCETON TUITION, CONDO,
13 FURNISHINGS, CAR AND CLOTHES ALL BEING PROVIDED FOR HIM,
14 DEPENDENT UPON JOSE MENENDEZ BEING ALIVE.

15 SO WHETHER HE WAS GOING TO SUPPORT HIM
16 FOREVER OR NOT, HE CERTAINLY WAS GOING TO SUPPORT HIM
17 FOR THE NEAR FUTURE, AND SUPPORT HIM QUITE WELL IN THE
18 PRINCETON UNIVERSITY AREA.

19 WE HAVE THE CAMCORDER. WE HAVE TALKED
20 ABOUT THAT. IT WAS \$900. IT WAS FOR TENNIS, AND
21 MRS. MENENDEZ USED IT. THOSE ARE THINGS THAT HAPPENED
22 BEFORE AUGUST 20TH.

23 NOW WE GET TO AFTER AUGUST 20TH.

24 LYLE MENENDEZ BUYS A ROLEX WHEN HE IS
25 COMING FROM BULLOCKS, I THINK, FROM GETTING SOME CLOTHES
26 TO GO BACK TO THE PRINCETON FUNERAL SERVICE.

27 AND AT ONE POINT IT'S REPORTED BY ERIK
28 MENENDEZ: "YEAH, THAT WAS MY BROTHER'S LIFELONG

1 AMBITION, TO OWN A ROLEX."

2 YOU DON'T REALLY BELIEVE HE MEANT THAT, DO
3 YOU? DO YOU THINK THAT WHEN JOSEPH LYLE MENENDEZ WAS
4 THREE YEARS OLD HE THOUGHT ABOUT A ROLEX, OR THOUGHT
5 ABOUT IT WHEN HE WAS 12 OR 16?

6 AND HE BOUGHT A PORSCHE, AND HE BOUGHT
7 CLOTHES BACK IN THE PRINCETON AREA. HE GOT THE PORSCHE
8 I THINK THE DAY HE GOT THE SUN LIFE INSURANCE MONEY. HE
9 HAD BEEN DRIVING IT, LOOKING AT IT, AND HE WENT AND
10 BOUGHT IT.

11 WELL, YOU KNOW SEVERAL THINGS. IT'S ALWAYS
12 BEEN SAID YOU GET WHAT YOU PAY FOR. THE MENENDEZ FAMILY
13 BELIEVED THAT, AND WENT FOR THE BEST. I THINK WE'VE
14 HEARD HIS FATHER HAD A MERCEDES.

15 SO HE WENT AND BOUGHT A VERY GOOD, HIGHLY
16 RECOMMENDED CAR, A PORSCHE. NOW, THAT'S NOT WASTING
17 \$67,000, OR WHATEVER IT COST, ON SOMETHING THAT IS GONE
18 FOREVER LIKE WINE, WOMEN AND SONG, OR THE PRODIGAL SON
19 IN BIBLICAL DAYS.

20 THIS IS SOMETHING THAT IS REAL. IT'S
21 TANGIBLE. IT'S WELL THOUGHT OF.

22 MR. CONN SAID: "WELL, WE BROUGHT OUT ALL
23 THIS EVIDENCE ABOUT LYLE MENENDEZ ASKING PEOPLE'S
24 ADVICE, AND HE IS LAYING IT OFF ON THEM. THAT'S THE OLD
25 ABUSE-EXCUSE AGAIN."

26 WASN'T BROUGHT OUT FOR THAT REASON AT ALL.
27 BUT YOU KNOW, YOU HEARD FROM MR. WENSKOSKI, HE WAS THE
28 SECURITY MAN BACK THERE FROM PRINCETON, ONE OF THE

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1 BODYGUARDS FOR LYLE, WHO GOT TO KNOW HIM, AND WENT OUT
2 WITH HIM ON SOME OF THESE THINGS, AND WENT WITH HIM WHEN
3 HE WENT TO LOOK AT THE PORSCHE. AND LYLE ASKED HIS
4 ADVICE, AND HE SAYS: "WHAT DO YOU THINK?"

5 NOW, THIS ISN'T LAYING IT OFF ON
6 MR. WENSKOSKI.

7 BUT LYLE WAS VERY NEEDY AT THAT TIME. MR.
8 WENSKOSKI KNEW AND TOLD YOU THAT LYLE MENENDEZ WAS
9 LOOKING AT HIM AS A FATHER FIGURE. IN FACT, YOU CAN SEE
10 FROM LOOKING AT HIM ON THE STAND, MR. WENSKOSKI HAD A
11 FONDNESS IN HIS HEART. HE TESTIFIED HE HAD A FONDNESS
12 IN HIS HEART FOR LYLE MENENDEZ.

13 LYLE MENENDEZ LOOKED AT HIM AS A FATHER
14 FIGURE. HE KNEW FROM TALKS THEY HAD IN THE EVENING, AND
15 HE SAID: "WHAT DO YOU THINK?"

16 NOW, AS A FATHER FIGURE -- MR. WENSKOSKI IS
17 20 OR SO YEARS OLDER -- HE REALLY COULD HAVE SAID:
18 "LYLE, I DON'T THINK YOU SHOULD DO THIS. IT'S TOO CLOSE
19 AFTER YOUR FATHER'S DEATH. YOU MIGHT NOT BE THINKING
20 REALLY CLEARLY RIGHT NOW. WHY DON'T YOU WAIT THREE OR
21 FOUR MONTHS, SEE HOW YOU FEEL ABOUT IT THEN? MAYBE

22 YOU'LL WANT TO GET SOMETHING A LITTLE LESS EXPENSIVE.
23 MAYBE YOU'LL WANT TO GET ANOTHER MODEL OR SOMETHING:
24 HE COULD HAVE SAID THAT, BUT HE DIDN'T. HE
25 SAID, "THAT'S A GOOD DEAL."
26 NOW, LYLE MENENDEZ IS THE ONE WHO SPENT THE
27 MONEY. LYLE MENENDEZ ISN'T THE ONE WHO BID IT. BUT HE
28 DID TALK TO MR. WENSKOSKI AT A TIME WHEN MR. WENSKOSKI

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1 COULD HAVE SAID: "GO SLOW. HOLD UP."
2 AND HE ALSO BOUGHT CLOTHES. MR. WENSKOSKI
3 TALKED ABOUT THAT. BUT OF COURSE, IMAGE. THAT HE
4 LEARNED FROM HIS FATHER. HE BOUGHT GOOD CLOTHES LIKE
5 HIS FATHER HAD APPRECIATED SO MUCH WHEN HE CAME TO SEE
6 HIM IN MAY.
7 BUT YOU KNOW AT THIS TIME, WHEN HE'S DOING
8 THESE PURCHASES, LYLE MENENDEZ TRULY IS DEALING WITH
9 DEPRESSION. HE IS EMOTIONAL. WE KNOW THAT FROM TERRY
10 BARALT, WHO KNEW HIM PROBABLY BETTER THAN ANYBODY. SHE
11 SAID: "I CAN LOOK AT HIS EYES, AND I KNEW WHAT HE WAS
12 LIKE, WHAT HE WAS FEELING."
13 HE'D BEEN TOLD YOU NEVER SHOW YOUR EMOTIONS
14 ON THE OUTSIDE, SO LIKE "LAUGH, CLOWN, LAUGH," HE
15 PRETENDED THINGS WEREN'T BOTHERING HIM.
16 MR. WENSKOSKI SAID: "I DIDN'T SEE ANY
17 REMORSE IN HIM. HE LAUGHED."

18 WELL, THAT'S HOW HE WAS TAUGHT TO DEAL WITH
19 THE PUBLIC. BUT THE TRUE LYLE MENENDEZ WAS SUFFERING A
20 GREAT DEAL. HE LOST 25 POUNDS IN A PERIOD OF A LITTLE
21 OVER A WEEK, MRS. BARALT TOLD YOU. HE WAS DEPRESSED.
22 SHE COULD SEE IT IN HIS EYES.

23 "HE CRIED ALL NIGHT," JAMIE PISARCIK SAID.
24 HE PUT ON A FRONT AT DINNER, AND THEN SHE SAW HIM ALL
25 NIGHT, AND SHE HAD A VERY DIFFICULT NIGHT PUTTING UP
26 WITH HIM, BECAUSE HE WAS CRYING.

27 AND ALL OF THIS EVIDENCE SHOWS THAT THIS
28 SPENDING, PARTICULARLY AT THIS TIME BACK IN THE

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1 PRINCETON AREA, IS A PRODUCT OF HIS OWN DEPRESSION. AND
2 AS TERRY BARALT TOLD YOU, THIS IS HOW HE DEALT WITH
3 DEPRESSION. THIS IS HOW HE DEALT WITH THINGS WHEN HE
4 WAS DOWN, WAS HE SPENT MONEY.

5 AND EVEN JAMIE PISARCIK TOLD YOU THE SAME
6 THING. SHE SAID AT PAGE 39,303:

7 "QUESTION: AND HE WAS VERY
8 GENEROUS IN GIVING YOU GIFTS; ISN'T THAT A
9 FAIR STATEMENT?

10 SHE SAID: "WELL, YEAH. LYLE WAS
11 VERY GENEROUS. HE ALSO GAVE A LOT OF
12 GIFTS AS HIS WAY OF TRYING TO MAKE THINGS
13 BETTER A LOT OF TIMES. THAT WAS HIS WAY

14 OF TRYING TO SOLVE A LOT OF PROBLEMS."
15 WE HAVE TWO INDEPENDENT WITNESSES TALKING
16 ABOUT LYLE'S DEPRESSION, AND HOW HE DEALT WITH IT. THIS
17 WAS AN EMOTIONAL NEED ON HIS PART AT THAT TIME, NOT
18 GREED. NOT: "LET'S GET THE MONEY AND GO SEE HOW FAST
19 WE CAN SPEND IT, AND HOW MUCH FUN WE CAN HAVE WITH THE
20 MONEY THAT WE GOT FROM OUR DECEASED PARENTS."
21 AND THERE IS ONE OTHER ASPECT OF THAT, TOO.
22 UNEXPECTED MONEY. HERE YOU GOT A 21 YEAR-OLD WHO HAS
23 JUST RECEIVED THE FIRST PART OF \$300,000 THAT HE HAD
24 ABSOLUTELY NO IDEA EXISTED UNTIL HE WAS TOLD THAT BY HIS
25 AUNT MARTA ABOUT A WEEK AND A HALF BEFORE.
26 AND SO WITH HIS DEPRESSION AND HIS
27 EMOTIONAL NEEDS AND THIS UNEXPECTED MONEY, HE WENT OUT
28 AND HE BOUGHT THESE ITEMS.

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1 AND THEN HE BOUGHT -- WE HEARD ABOUT A
2 PATIO HOME AND A CONDO. NOW THIS IS A DIFFERENT CONDO
3 FROM THE ONE THAT HAD BEEN BOUGHT BY HIS FOLKS, AND THE
4 PURCHASE WAS COMPLETED LATER ON.
5 BUT NEITHER OF THOSE SALES WERE COMPLETED.
6 ONE OF THE PLACES STILL HAD TO BE BUILT. THE SALES WERE
7 NOT COMPLETED. IT WAS A DOWN PAYMENT. DIDN'T GO
8 THROUGH. LYLE MENENDEZ ENDED UP GETTING ARRESTED A FEW
9 MONTHS LATER.

10 BUT YOU KNOW, THE PATIO HOME AND THE CONDO,
11 THAT'S REAL ESTATE. THAT DOESN'T LOSE ITS VALUE, EXCEPT
12 SOMETIMES IN AN UP-AND-DOWN MARKET.

13 BUT THAT'S AN INVESTMENT. ERIK MENENDEZ
14 TOLD YOU THAT THE ONE OF THEM, IT WAS A GOOD BUY.

15 THAT'S NOT A WILD SPENDING SPREE, WHEN YOU
16 INVEST IN PROPERTY.

17 IN THE MARINA CITY CLUB, THE SPREE WAS:

18 "LET'S GO GET THE PENTHOUSE."

19 WELL, HE DIDN'T. HE MADE A DOWNPAYMENT.
20 THE CONDITIONS HE WANTED WEREN'T MET. HE AND HIS LAWYER
21 WENT BACK AND SCRUBBED THAT DEAL IN ABOUT TWO DAYS.

22 AND WHAT HE ENDED UP DOING AT THE MARINA
23 CIATY CLUB WAS RENTING. AND HE RENTED THERE, NOT
24 BECAUSE IT WAS THE RITZIEST PLACE IN TOWN. HE RENTED
25 THERE BECAUSE THEY HAD WONDERFUL SPORTS FACILITITES,
26 BECAUSE HE WAS WORKING EIGHT, TEN HOURS A DAY AT THAT
27 TIME TO SEE IF HE WANTED TO GO BACK ON THE TENNIS
28 CIRCUIT.

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1 YOU HEARD MARK HEFFERNAN TALK ABOUT HOW
2 HARD HE WORKED. THE BICYCLING, THE WEIGHT TRAINING, THE
3 SWIMMING, THE TENNIS PLAYING. THAT WAS THE REASON HE
4 RENTED AT THE MARINA CITY CLUB.

5 AND IT'S FUNNY HOW IN THE PROSECUTION'S

6 TALK ABOUT SPENDING, THEY NEVER MENTION THE \$8,500 THAT
7 HE SENT ALAN ANDERSON. AND THAT'S INTERESTING, BECAUSE
8 HE SENT IT TO HIM, I THINK ALAN ANDERSEN SAID, \$8,050 IN
9 A CHECK, AND THE OTHER \$450 IN CASH.

10 WHEN YOU THINK ABOUT IT, IT'S PROBABLY
11 BECAUSE LYLE MENENDEZ DIDN'T HAVE ENOUGH TO WRITE THE
12 FULL CHECK AT THAT TIME, BUT HE WANTED HIS COUSIN TO
13 HAVE THE MONEY THAT HIS COUSIN DESPERATELY NEEDED TO PAY
14 HIS HOSPITAL BILL FOR THE SURGERY HE HAD UNDERGONE.

15 THIS IS IN FEBRUARY, 1990. ALAN ANDERSEN
16 TOLD YOU HE GOT THAT MONEY, AND HE DESPERATELY NEEDED
17 IT. HE EVEN HAD A DAUGHTER WHO HAD BEEN DIAGNOSED WITH
18 A FATAL ILLNESS. HE WAS OUT OF WORK, AND LYLE MENENDEZ
19 CAME TO HIS RESCUE.

20 NOW THEY MADE AN AGREEMENT, PAY BACK WHAT
21 YOU CAN, A HUNDRED DOLLARS A MONTH IF THAT'S WHAT YOU
22 CAN DO. OKAY.

23 DO YOU KNOW HOW LONG IT TAKES TO PAY BACK
24 \$8,500 AT A HUNDRED DOLLARS A MONTH, EVEN WITHOUT ANY
25 INTEREST? WE'RE TALKING ABOUT SEVEN YEARS. THAT'S 84
26 MONTHS, A HUNDRED DOLLARS A MONTH. SEVEN YEARS AT A
27 HUNDRED DOLLARS A MONTH, IF THAT HAD GONE THROUGH,
28 BEFORE LYLE MENENDEZ WOULD HAVE GOTTEN BACK EVEN THE

1 MONEY THAT HE LENT ALAN ANDERSEN.

2 HE DIDN'T EXPECT TO GET PAID THAT MONEY
3 BACK. AND IT HAS NOTHING TO DO WITH THIS CASE. IT HAS
4 NOTHING TO WITH: "I'LL BRIBE A WITNESS WHO WILL COME IN
5 AND SAY GOOD THINGS ABOUT ME." IT HAD TO DO WITH
6 HELPING OUT A COUSIN WHO WAS IN DESPERATE NEED BEFORE
7 LYLE WAS ARRESTED OR EVEN KNEW HE WAS GOING TO BE
8 ARRESTED.

9 AND THEN WE HAD THE CHICKEN WING BUSINESS,
10 "CHUCK'S." THE PRICE, INCIDENTALLY, THAT WAS PAID OR
11 BORROWED FROM THE ESTATE WAS \$300,000. THE OTHER
12 \$200,000 WAS TO BE PAID LATER OUT OF PROCEEDS. BUT
13 \$300,000 IS WHAT WAS ACTUALLY BORROWED BY LYLE MENENDEZ
14 SO THAT HE COULD GO INTO THIS CHUCK'S CHICKEN WING
15 BUSINESS AND WORK IT. AND HE WORKED HARD. CARLOS
16 BARALT SAID HE WORKED HARD. HE WAS MANAGER THERE. HE
17 WAS WORKING THERE. HE WAS TAKING CARE OF THE PLACE.

18 TERRY BARALT TESTIFIED HE WAS WORKING HARD
19 THERE. HE WAS TAKING CARE OF THE PLACE. HE EVEN
20 SCRUBBED FLOORS. HE REALLY PUT OUT, UNTIL HE GOT
21 ARRESTED.

22 AND THEN HE MADE HIS NEXT MISTAKE, IN
23 TRUSTING THE WRONG PERSON. HE TRUSTED GLENN STEVENS,
24 COLLEGE FRIEND, TO MANAGE THE BUSINESS FOR HIM, AND HE
25 GOT TOOK. HE GOT TOOK TO WHERE ULTIMATELY THEY LOST THE
26 BUSINESS.

27 GLENN STEVENS, YOU WILL REMEMBER -- AND
28 AGAIN, WE'RE GOING BACK IN HISTORY A LONG TIME IN THIS

1 CASE -- BUT GLENN STEVENS IS THE YOUNG MAN WHO CAME IN
2 WHO HAD THE RESUME THAT PUFFED UP HIM BEING A
3 VALEDICTORIAN, AND WINNING BOOK AWARDS AND SUPERVISING
4 EMPLOYEES AND MANAGING MILLION DOLLAR PAYROLLS.

5 AND THEN ON THE STAND HE TRIED TO SAY:

6 "WELL, I DIDN'T WRITE THAT RESUME, MY GIRLFRIEND DID,
7 AND I DON'T THINK I EVER PRESENTED IT TO ANYBODY."

8 SO THEN HE GOT IMPEACHED. INDEED, HE HAD
9 PRESENTED THE RESUME. HE WAS ASKED -- AND THIS IS AT
10 PAGE 39,188 FROM THE LAST TRIAL, READING HIS TESTIMONY:

11 "QUESTION: DID YOU GIVE IT TO
12 PEOPLE WHEN YOU WERE SEEKING EMPLOYMENT?

13 "ANSWER: YES, I DID.

14 "QUESTION: DID YOU READ IT BEFORE
15 YOU GAVE IT TO THEM?

16 "ANSWER: YES, I DID.

17 "QUESTION: DID YOU KNOW YOU WERE
18 PRESENTING A FALSE PICTURE OF YOURSELF?

19 "ANSWER: YES, THAT'S CORRECT. I
20 PROBABLY WOULD HAVE BEEN STUPID NOT TO."

21 THAT'S AFTER HE HAD LIED TO YOU, LADIES AND
22 GENTLEMEN, TRYING TO SAY HE DIDN'T KNOW, HE DIDN'T DO
23 THE RESUME, HE WASN'T RESPONSIBLE FOR IT, HE NEVER USED
24 IT.

25 THEN WE HAVE GLENN STEVENS FEELING THAT
26 LYLE MENENDEZ OWED HIM \$8,000, OR SOMETHING. WHY GLENN

27 STEVENS FELT HE WAS WORTH \$50,000 A YEAR WITH NO
28 EXPERIENCE IN ANYTHING, NOBODY KNOWS. HE WAS PLANNING

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1 ON LEAVING PRINCETON BECAUSE HE WAS BURNED OUT AND HE
2 WANTED TO TAKE A YEAR OFF, SO HE ACCELERATEAD IT BY A
3 MONTH TO JOIN LYLE MENENDEZ IN HIS BUSINESSES. HE FELT
4 HE HAD \$8,000 COMING, ALTHOUGH WE DON'T REALLY KNOW WHY
5 HE FELT THAT.

6 BUT WHAT HE REALLY DID WAS HE GAVE UP \$2000
7 IN NON-REFUNDABLE TUITION THAT HE HAD PAID. THAT'S WHAT
8 HE REALLY LOST BY LEAVING PRINCETON, WHICH HE WANTED TO
9 DO ANYWAY, AND GOING IN TO HELP LYLE MENENDEZ IN HIS
10 BUSINESSES.

11 SO AFTER LYLE MENENDEZ GOT ARRESTED,
12 MR. STEVENS IS BENT OUT OF SHAPE. SO WHAT DOES HE DO TO
13 GET BACK HIS \$2,000?

14 WELL, FIRST HE KEEPS THE ROLEX WATCH THAT
15 LYLE MENENDEZ HAD GIVEN HIM TO WEAR, AND HE KEEPS THE
16 BETTER PART OF \$2000 THAT LYLE MENENDEZ HAD GIVEN HIM
17 AND I THINK HAYDEN ROGERS TO MAKE BAIL. AND HE USES THE
18 AMOUNT THAT HE HAD USE FOR. AND HE TAKES THE CAR ON
19 WHICH THE DOWNPAYMENTS, I THINK -- IT WAS A VERY NICE
20 VOLVO -- THE DOWN PAYMENT HAD BEEN MADE FOR HIM TO USE
21 IN THE BUSINESS.

22 WELL, HE KEEPS THE CAR, AND THEN WHEN IT

23 GETS WRECKED HE RECOVERS THE FULL INSURANCE ON IT, BUT
24 HE DOESN'T GIVE ANY OF THAT BACK TO THE BARALTS OR TO
25 THE ESTATE OR TO LYLE MENENDEZ.

26 HE RECOUPED HIS MONEY THAT HE THOUGHT HE
27 HAD COMING SEVERAL TIMES OVER, IT WOULD SEEM.

28 AND THEN THE LAST STRAW IS HE STOLE FROM

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1 THE TILL. FIRST HE PUTS I.O.U.S IN, FIGURING HE'LL PAY
2 IT BACK, BECAUSE HE'S MAD AT LYLE MENENDEZ.

3 SO THEN HE WAS ASKED HERE IN COURT IN FRONT
4 OF YOU: "WELL, DIDN'T YOU TAKE SOME MONEY, TOO, WITHOUT
5 I.O.U.S? DIDN'T YOU TAKE THE PROCEEDS THERE TO HELP
6 YOURSELF OUT FINANCIALLY?"

7 HE SAYS: "NO, NO. JUST I.O.U.S."

8 SO THEN HE'S IMPEACHED FROM THE LAST TRIAL.

9 "QUESTION: AND OTHER TIMES YOU
10 TOOK MONEY AND DIDN'T WRITE I.O.U.S; IS
11 THAT CORRECT?

12 "ANSWER: YEAH. WELL, I JUST
13 ADMITTED TO THAT.

14 "QUESTION: SO YOU FELT JUSTIFIED
15 IN TAKING THE MONEY ON YOUR OWN?

16 "ANSWER: I NEVER FELT JUSTIFIED IN
17 TAKING ANY MONEY. I JUST TOOK THE MONEY
18 BECAUSE I WAS -- I GOT VINDICTIVE.

19 "THE WITNESS: ALL RIGHT. THAT WAS
20 MY TESTIMONY."
21 THAT'S GLENN STEVENS, JUST IN CASE YOU HAD
22 FORGOTTEN WHO THIS WAS.
23 AND THIS WAS THE MAN THAT LYLE MENENDEZ
24 ENTRUSTED HIS BUSINESS TO, THAT THEN WENT -- WENT BROKE.
25 AND HE WAS ARRESTED AND GLENN STEVENS DIDN'T DO WHAT HE
26 WAS SUPPOSED TO BE DOING, AND NEITHER DID THE OTHER
27 FRIENDS THAT LYLE MENENDEZ TRUSTED THERE.
28 ONE LAST THING ABOUT THAT ASPECT OF IT

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1 THAT'S INTERESTING ON THE SPENDING EVIDENCE.
2 YOU KNOW, LYLE MENENDEZ COULD HAVE BEEN
3 EXECUTOR OF THE WILL HIMSELF, IF HE HAD WANTED TO BE.
4 THAT WAS PROVIDED FOR IN THE WILL. AND CARLOS BARALT
5 TOLD YOU THAT. BUT HE DIDN'T NAME HIMSELF EXECUTOR. HE
6 COULD HAVE HAD MUCH MORE CONTROL OF THAT MONEY IF HE
7 WERE ALSO THE EXECUTOR. BUT HE DIDN'T. HE SAID, "NO,
8 CARLOS, YOU DO IT. THAT'S FINE."
9 AND JUST ONE LAST THING, AND THEN IT MIGHT
10 BE GOOD TO BREAK FOR THE DAY, YOUR HONOR.
11 THE COURT: YES.
12 MR. GESSLER: THERE WAS A LETTER ON THIS THAT WAS
13 WRITTEN BY JAMIE PISARCIK TO LYLE MENENDEZ WHILE HE WAS
14 IN JAIL, AND SHE SAID:

15 "LAST TIME WE SPOKE WE KIND OF
16 FOUGHT, OR DISCUSSED I GUESS, OUR
17 DIFFERENT OPINIONS ON ERIC'S SALARY."
18 NOW WE'RE TALKING ABOUT A MAN NAMED ERIC
19 TAMM WHO TOOK OVER THE BUSINESS AFTER GLENN STEVENS.
20 "I AM STILL ADAMANT ABOUT YOU
21 PAYING HIM NO MORE THAN 22 WITH BONUSES,
22 IF HE PRODUCES. DO YOU REALIZE THAT THE
23 RESTAURANT HAS TO COME UP WITH \$100,000 BY
24 JANUARY, OR YOU'LL HAVE TO SELL? I KNOW
25 YOU MAY NOT CARE, BUT I DO. VERY MUCH SO.
26 I WON'T LET YOU GIVE HIM MORE THAN THAT.
27 I DON'T CARE IF YOU SAY IT'S NONE OF MY
28 BUSINESS, IT IS. I THOUGHT WE WERE A

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1 TEAM. PLEASE TAKE MY ADVICE. TRY IT.
2 MAYBE YOU CAN GIVE HIM A PERCENTAGE OR
3 SOMETHING. BUT BE A REAL BUSINESSMAN, NOT
4 SOMEONE THAT GETS TAKEN ADVANTAGE OF TIME
5 AND TIME AGAIN. AND DON'T ARGUE THAT HE'S
6 YOUR FRIEND. IF HE IS, HE WOULD BE GLAD
7 TO WORK FOR YOU FOR PEANUTS AND PROVE
8 HIMSELF. FIND OUT WHAT REAL FRIENDS ARE,
9 LYLE. MAYBE YOU SHOULDN'T EVEN HIRE HIM
10 IF YOU CAN'T DISTINGUISH BETWEEN AN

11 EMPLOYEE AND A FRIEND. I AM SICK OF
12 HAVING PEOPLE, FRIENDS OR NOT, TAKE
13 ADVANTAGE OF YOU."
14 THAT \$300,000 THAT WAS PUT OUT FOR THE
15 CHUCK'S CHICKEN WING BUSINESS, THAT WASN'T WASTED. IT
16 WASN'T SPENT OR LOST BY A GREEDY LYLE MENENDEZ. IT WAS
17 LOST BECAUSE LYLE MENENDEZ WAS TOO TRUSTING TO GLENN
18 STEVENS AND TO HIS FRIENDS.
19 IF HE HAD STILL BEEN THERE TO MANAGE THAT
20 BUSINESS AND WORKED HARD, AS CARLOS BARALT AND TERRY
21 BARALT TOLD YOU, HE PROBABLY WOULD HAVE MADE IT. BUT IT
22 DIDN'T, BECAUSE HE HAD TO LEAVE IT TO THE OTHER PEOPLE,
23 AND THEY LET HIM DOWN.
24 THAT'S NOT A MOTIVE FOR MURDER, AND THE
25 BUYING OF THE CHICKEN WING BUSINESS IS NO PROOF AT ALL
26 THAT LYLE MENENDEZ ON AUGUST 20TH, 1989 KILLED HIS
27 PARENTS FOR GREED AND FOR MONEY.
28 IF THIS IS A GOOD TIME, YOUR HONOR.

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1 THE COURT: OKAY. WE'LL TAKE OUR RECESS. WE
2 WILL RESUME TOMORROW AT 8:30.
3 DON'T DISCUSS THE CASE WITH ANYONE. DON'T
4 FORM ANY FINAL OPINIONS ABOUT IT. SEE YOU ALL BACK HERE
5 TOMORROW AT 8:30.
6

(AT 4:45 P.M. PROCEEDINGS WERE
ADJOURNED UNTIL 8:30 A.M. THE
FOLLOWING DAY.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

)
PLAINTIFFS,)

)
)
VS.) NO. BA 068880

)
ERIK GALEN MENENDEZ, AND)
JOSEPH LYLE MENENDEZ,)

)
DEFENDANTS.)
)

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, FEBRUARY 28, 1996

VOLUME 305

APPEARANCES:
(SEE APPEARANCE PAGE)

24
25
26
27
28

1 APPEARANCES:

2
3 FOR THE PEOPLE: GIL GARCETTI
4 DISTRICT ATTORNEY
5 BY: DAVID CONN, DEPUTY
6 AND
7 CAROL NAJERA, DEPUTY
8 18000 CRIMINAL COURTS BLDG.
9 210 WEST TEMPLE STREET
10 LOS ANGELES, CA 90012
11

12
13 FOR THE DEFENDANT
14 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,
15 PUBLIC DEFENDER
16 BY: CHARLES GESSLER, DEPUTY
17 AND
18 TERRI TOWERY, DEPUTY
19 210 WEST TEMPLE
20 LOS ANGELES, CA 90012
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MARILYN FADALE,

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22 LEGEND:

23 A = MS. ABRAMSON

C = MR. CONN

24 G = MR. GESSLER

K = MS. TOWERY

25 L = MR. LEVIN

N = MS. NAJERA

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