

1 VAN NUYS, CALIFORNIA; THURSDAY, FEBRUARY 29, 1996

2 9:10 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER.)

6 (MARY LU MURPHY, OFFICIAL REPORTER.)

7

8 THE COURT: OKAY. IN THE TRIAL, THE

9 DEFENDANTS ARE IN COURT, ALL COUNSEL.

10 DO YOU NEED A FEW MINUTES?

11 MR. GESSLER: I THINK I NEED ONE MINUTE, YOUR

12 HONOR.

13 (PAUSE IN THE PROCEEDINGS.)

14

15 MR. GESSLER: I THINK NOW WE'RE READY, YOUR

16 HONOR. THANK YOU.

17 THE COURT: OKAY. LET'S GET THE JURY OUT,

18 PLEASE.

19 (THE JURY ENTERED THE COURTROOM

20 AND THE FOLLOWING PROCEEDINGS

21 WERE HELD:)

22

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

24 GOOD MORNING, LADIES AND GENTLEMEN.

25 WE'RE READY TO RESUME WITH THE TRIAL.

26 WE'RE IN ARGUMENT, THE ARGUMENT OF COUNSEL FOR LYLE

27 MENENDEZ, MR. GESSLER.

28 MR. GESSLER: THANK YOU, YOUR HONOR.

1 CLOSING ARGUMENT (CONTINUED)

2 BY MR. GESSLER:

3 GOOD MORNING.

4 YESTERDAY WHEN WE LEFT OFF WE WERE
5 TALKING ABOUT SOME OF THE THEORIES AND MOTIVES THAT
6 THE PEOPLE ARE CLAIMING CAUSED THIS PARTICULAR
7 KILLING; THAT THERE WOULD HAVE TO BE A MOTIVE,
8 OBVIOUSLY, FOR A CONSPIRACY TO KILL AND PLAN TO
9 KILL, AND THEIR NEED TO SHOW YOU A MOTIVE IN ORDER
10 TO TRY TO MAKE THIS INTO A MURDER INSTEAD OF A
11 RESPONSE TO FEAR, WHICH IS EXACTLY WHAT ERIK
12 MENENDEZ HAS TESTIFIED HERE, AND THAT THE EVIDENCE
13 SHOWS.

14 THE LAST THEORY THAT THEY HAD WAS
15 CONTROL, SO CALLED. AND THE IDEA BEHIND THIS ONE IS
16 THAT LYLE MENENDEZ AND ERIK MENENDEZ JUST HAD ENOUGH
17 AND UP AND KILLED THEIR PARENTS ON THE NIGHT OF
18 AUGUST THE 20TH.

19 WHEN YOU LOOK AT THIS, THOUGH, IF IT WAS
20 DONE FOR CONTROL, AT THAT POINT, ON AUGUST 20TH,
21 LYLE MENENDEZ, INSTEAD OF TUITION, CONDO, CAR,
22 EXPENSES, EVERYTHING THAT HE HAD AT PRINCETON
23 UNIVERSITY, A VERY COMFORTABLE LIFE-STYLE, IF HIS

24 PARENTS ARE KILLED, AND HE BELIEVES HE'S OUT OF THE
25 WILL, IN ONE FELL SWOOP, ALL GONE. THERE IS NO MORE
26 TUITION, CONDO, CAR, EXPENSES, BECAUSE HE'S BROKE.
27 THE ONLY EVIDENCE THAT THE PROSECUTION
28 HAS PRESENTED FOR THIS CONTROL THEORY IS THE POOL

52118

1 MAN, MR. WALKER, WHO STATES THAT IN HIS MIND, AUGUST
2 19TH, SATURDAY, THAT LYLE AND ERIK WERE OUT ON THE
3 TENNIS COURT AND LYLE CURSED. AND HE FELT IT WAS
4 DIRECTED AT HIS PARENTS, AS HE'S WALKING BACK AND
5 FORTH ACROSS AN OPENING TO THE TENNIS COURT.

6 AND APPARENTLY HE'D NEVER HEARD OF JOHN
7 MC ENROE, OR ANY OF THE OTHER TENNIS YOUNG PEOPLE
8 WHO PLAY, TEND TO THINK NOTHING OF CURSING IF THEY
9 MISREAD A SHOT OR LIFE IS NOT GOING WELL ON THE
10 TENNIS COURT.

11 MARK HEFFERNAN, WHO KNEW LYLE AND ERIK
12 MENENDEZ QUITE WELL FROM COACHING SAID HE NEVER --
13 AND HE WAS OVER THERE A LOT OF TIMES -- NEVER EVER
14 HEARD EITHER OF THEM DIRECT A CURSE WORD TOWARD
15 EITHER JOSE MENENDEZ OR MARY LOUISE MENENDEZ ON ANY
16 OF THE OCCASIONS HE WAS THERE. HE DID SAY THAT IF
17 THEY'D MISREAD A SHOT, THEY WOULD OCCASIONALLY CURSE
18 THEMSELVES, KIND OF AS SOME OF THE TENNIS PLAYERS OF

19 THIS GENERATION DO.

20 THAT IS AWFULLY THIN EVIDENCE UPON WHICH
21 THE PROSECUTION TRIES TO TELL YOU THAT THE ONLY
22 REASONABLE INTERPRETATION YOU CAN PLACE ON THIS CASE
23 IS THAT THE DEFENDANTS KILLED THEIR PARENTS TO TRY
24 TO GET RID OF CONTROL.

25 LET'S LOOK AT SOME OF THE PEOPLE.
26 YOU'VE GOT FRIENDS OF LYLE MENENDEZ, PEOPLE OF HIS
27 OWN AGE GROUP, HIS PEERS, EVEN THOSE CALLED BY THE
28 PROSECUTION.

52119

1 YOU HAVE GLENN STEVENS, DONOVAN
2 GOODREAU, JAMIE PISARCIK, PEOPLE WHO HAVE KNOWN
3 HIM. DID YOU HEAR HERE A SINGLE ONE OF THEM -- AND
4 THESE ARE PROSECUTION WITNESSES TRYING TO PROVIDE
5 THEIR BEST CASE TO YOU -- DID YOU HEAR A SINGLE ONE
6 OF THEM SAY THEY'D EVER HEARD LYLE OR ERIK MENENDEZ
7 SAY A BAD WORD ABOUT THEIR PARENTS?
8 AND YOU LOOK AT COACHES. NOW, THESE
9 COACHES WERE CLOSE TO LYLE MENENDEZ. THESE WERE
10 COACHES IN THEIR MORE ADOLESCENT YEARS, NOT THE ONES
11 THAT WERE GOING IN AND OUT ON A ROTATION BASIS.
12 SOME OF THEM WERE ABLE TO STAY AROUND FOR A WHILE.
13 AGAIN, MARK HEFFERNAN.

14 YOU HAVE ROBBIE CLOUSE, WHO WENT WITH
15 LYLE MENENDEZ ON A TRIP TO AUSTRALIA. GOT TO KNOW
16 HIM QUITE WELL. THEY WERE TOGETHER THERE.
17 YOU HAVE PERRY BERMAN.
18 NOT A ONE OF THEM EVER SAID THEY HEARD
19 LYLE MENENDEZ OR ERIK MENENDEZ SAY A DISPARAGING
20 WORD ABOUT THEIR PARENTS. NOT A TIME DID THEY SAY:
21 I'VE GOT TO GET OUT FROM UNDER THIS. I CAN'T TAKE
22 THIS ANYMORE. THIS IS STIFLING ME. THIS IS
23 SUFFOCATING ME." NONE OF THAT.
24 AND THESE ARE THE PEOPLE YOU'D CONFIDE
25 IN, YOUR FRIENDS. ISN'T THAT WHO YOU'D TELL, YOUR
26 PEERS, WHEN THINGS AREN'T GOING WELL FOR YOU OR YOU
27 DON'T CONCEIVE THINGS ARE GOING WELL FOR YOU? OR
28 YOU'D TELL PEOPLE SPENDING TIME WITH YOU AND CLOSE

52120

1 TO YOU. THAT'S THE PEOPLE THAT YOU WOULD CONFIDE IN
2 AND SAY: "I CAN'T TAKE IT ANYMORE." AND THERE'S NOT
3 A WORD OF THAT TYPE EVIDENCE.

4 WE HAVE THE FAMILY, YOU KNOW. WE'VE
5 TALKED ABOUT THE FAMILY, ABOUT JOSE MENENDEZ'
6 SISTERS, MARTA CANO AND TERESITA BARALT. EVEN BRIAN
7 ANDERSEN, WHO CAME IN AS A PROSECUTION WITNESS AND
8 WAS A BROTHER OF MARY LOUISE MENENDEZ. HE DIDN'T

9 SAY ANYTHING ABOUT LYLE MENENDEZ OR ERIK MENENDEZ
10 BAD-MOUTHING THEIR PARENTS IN ANY WAY, NEVER.
11 IN FACT, WHAT THEY SAID WAS, THOSE WHO
12 WERE ASKED -- PARTICULARLY MARK HEFFERNAN, ROBBIE
13 CLOUSE, AND PERRY BERMAN -- NOT ONLY DID LYLE
14 MENENDEZ NOT SAY BAD THINGS ABOUT HIS FATHER, HE
15 ADMIRED HIM AND HE RESPECTED HIM. HE TALKED ABOUT
16 WHAT A SUCCESSFUL MAN HE WAS. EXACTLY THE OPPOSITE
17 THAN THE TYPE THING YOU'D EXPECT SOMEBODY TO SAY IF
18 THEY WERE SEETHING UNDER WHAT THEY CONSIDERED TO BE
19 CONTROL AND THEY WERE GOING TO KILL THEIR PARENTS TO
20 GET OUT FROM UNDER IT.
21 AND YOU HAVE THE FATHER, MR. JOSE
22 MENENDEZ. HE SAYS: "YOU'VE GOT TO KICK DONOVAN
23 GOODREAU OUT." LYLE MENENDEZ CRIED ABOUT IT. HE
24 DIDN'T WANT TO DO IT, BUT HE DID DO IT.
25 AND MR. MENENDEZ SAID: "YOU'VE GOT TO
26 GET RID OF CHRISTY," AND LYLE MENENDEZ BROKE UP WITH
27 HER. AND THE WORST THAT PERRY BERMAN COULD SAY
28 ABOUT HIM WAS HE WAS UPSET.

52121

1 BUT NEVER DID HE SAY BAD THINGS ABOUT
2 HIS FATHER FOR CAUSING HIM TO HAVE TO BREAK UP WITH
3 THIS YOUNG LADY.

4 THEN WE HAVE THE EVIDENCE IN MAY, FROM
5 TERRY BARALT. THEY WERE HAVING A GREAT RELATIONSHIP
6 AT THAT TIME, WHEN MR. AND MRS. MENENDEZ CAME BACK
7 TO PRINCETON AND SAW HOW LYLE WAS DRESSED, AND HOW
8 HE WAS CONDUCTING HIMSELF.

9 SO THIS THEORY OF KILLED FOR FREEDOM
10 FROM CONTROL DOESN'T MAKE ANY SENSE EITHER. IT IS
11 NOT A THEORY PROVED BEYOND A REASONABLE DOUBT. IT
12 IS NOT A THEORY WHERE THE EVIDENCE POINTS -- THE
13 ONLY REASONABLE EVIDENCE POINTS THAT THAT'S THE
14 REASON FOR THIS.

15 IN FACT, IT'S UNREASONABLE TO THINK THAT
16 GETTING RID OF CONTROL IS THE REASON FOR THE DEATHS
17 OF JOSE AND MARY MENENDEZ.

18 SO WHY DIDN'T LYLE MENENDEZ JUST LEAVE?
19 THAT'S WHAT WE STARTED TO TALK ABOUT YESTERDAY.

20 HE WAS 21. HE HAD BEEN GOING TO
21 PRINCETON. HE'D LIVED IN THE EAST. HE'D TOURED TO
22 AUSTRALIA. HE WAS A TENNIS PLAYER. WHY DIDN'T HE
23 JUST LEAVE? LEAVE HOME. THAT'S WHAT THE DISTRICT
24 ATTORNEY HAS SAID ALL ALONG. ADULTS LEAVE HOME. WE
25 ALL LEAVE HOME. SOMETIME IN OUR LIVES, WHETHER IT'S
26 16 AND WE RUN AWAY, WHETHER IT'S 18 AND WE JOIN THE
27 ARMY, OR WE GO TO SCHOOL, OR WE GET MARRIED, WE ALL,
28 SOMETIME IN OUR LIVES, LEAVE HOME.

1 IN ESSENCE, LYLE MENENDEZ, TO THAT
2 EXTENT HAD LEFT HOME. BUT HOME NEVER LEAVES US.
3 YOU NEVER EVER GET AWAY FROM HOME IN THE SENSE THAT
4 IT IS NOT A PART OF YOU, WHETHER IT'S GOOD MEMORIES,
5 WHETHER IT'S BAD MEMORIES, WHETHER IT'S A MIXTURE OF
6 BOTH. HOME IS ALWAYS A TREMENDOUSLY BIG PART OF
7 EVERY ONE OF US. AND FOR SOME, HOME WAS A VERY
8 WARM, LOVING PLACE, BASED ON REAL LOVE, AND YOU HAVE
9 FOND MEMORIES OF HOME WHEN YOU GO BACK FOR THE
10 HOLIDAYS, WHATEVER, ANY TIME YOU GET THE CHANCE,
11 BECAUSE YOU ENJOY IT. AND IT'S A PLACE YOU LOOK
12 FORWARD TO AND YOU HAD GOOD RELATIONSHIPS.

13 AND FOR OTHERS HOME WAS A DESTRUCTIVE
14 PLACE, WHERE YOU TRY TO FORGET, OR EVEN WHAT
15 PSYCHOLOGISTS WOULD CALL REPRESS THE MEMORIES OF
16 WHAT YOUR RELATIONSHIP WITH YOUR PARENTS WAS LIKE,
17 BECAUSE IT WAS TOO PAINFUL. AND THE WAY SOME PEOPLE
18 DEAL WITH THAT IS JUST TO PUT IT OUT OF THEIR MIND
19 AND PRETEND IT DIDN'T HAPPEN, TO FORGET IT.

20 FOR OTHER PEOPLE IT TAKES YEARS OF
21 THERAPY TO COME TO GRIPS TO WHAT HOME HAD DONE TO
22 THEM AND WHAT THEIR PARENTS HAD DONE TO THEM. AND
23 THEN THE BEST YOU CAN DO, AFTER YEARS OF THERAPY, IS
24 TO COPE WITH WHAT YOUR LIFE IS NOW. BUT YOU NEVER
25 EVER GET HOME OUT OF YOUR LIFE.

26 NEITHER DID LYLE MENENDEZ, NOR DID ERIK
27 MENENDEZ. AND WHAT THEIR HOME WAS A FEARFUL

52123

1 ERIK MENENDEZ THOUGHT WAS LOVE, BUT WAS REALLY BASED
2 ON FEAR. AND THAT'S A VERY BAD WAY TO BUILD A
3 RELATIONSHIP.

4 LET'S LOOK AT WHAT THAT LIFE WAS LIKE A
5 LITTLE BIT.

6 WE HEARD FROM ERIK MENENDEZ AT PAGE
7 45,756.

8 "I REMEMBER WHEN I WAS A CHILD
9 THAT HE WOULD GRAB ME AND LOOK AT ME,
10 AND I WOULD GO TO THE BATHROOM IN MY
11 PANTS. IT HAPPENED WITH LYLE. IT
12 WAS -- IT WAS JUST THE FEAR THAT WAS
13 CONVEYED WAS OVERWHELMING."

14 AND THIS WAS BECAUSE OF A STARE FROM
15 THEIR FATHER. THIS IS A VERY POOR WAY TO BRING UP A
16 CHILD, OR TO BUILD A RELATIONSHIP, TO MAKE HIM SO
17 AFRAID OF YOU, WHEN HE GIVES YOU A LOOK OR GIVES
18 YOU A STARE, YOU WET YOUR PANTS.

19 CAN YOU IMAGINE THAT AS A WAY OF
20 BRINGING UP A CHILD AND WHAT YOU'RE CONVEYING TO
21 THAT CHILD AS TO A RELATIONSHIP THAT IS GOING TO BE
22 WITH HIM THROUGHOUT HIS LIFE?

23 AND THEN WE HAVE EVIDENCE OF SEXUAL
24 MOLESTATION, NOT ONLY ERIK MENENDEZ, BUT OF LYLE
25 MENENDEZ. YOU REMEMBER THAT ERIK MENENDEZ TESTIFIED
26 THAT ON FRIDAY -- AND THIS IS WHEN THEY'RE DRIVING
27 DOWN TO SAN DIEGO WHERE THEY ULTIMATELY BOUGHT THE
28 SHOTGUNS. AND AFTER ERIK MENENDEZ HAS EXPRESSED

52124

1 WHAT HAD HAPPENED TO HIM IN SOME DETAIL OF THE
2 SEXUAL CONTACTS WITH HIS FATHER -- THIS IS LYLE.

3 "HE TOLD ME ABOUT, IN VAGUE
4 TERMS, SOME OF THE THINGS THAT HAD
5 HAPPENED TO HIM WITH DAD, THAT IT ALSO
6 HAPPENED TO HIM FOR A PERIOD IN HIS
7 CHILDHOOD."

8 SOME OF THE TESTIMONY THAT THE FAMILY
9 MEMBERS AND OTHERS HAVE TOLD US MAKES SENSE:

10 ALAN ANDERSEN AND DIANE VANDERMOLLEN AND
11 KATHY SIMONTON, ABOUT NOT BEING ALLOWED TO WALK DOWN
12 THE HALLWAY WHERE THE ROOM WAS FOR LYLE MENENDEZ OR
13 ERIK MENENDEZ IF HIS FATHER WAS WITH HIM THERE.

14 I THINK MRS. MENENDEZ WOULD TURN UP THE
15 TV VOLUME SO THAT YOU COULDN'T HEAR. IT WASN'T JUST
16 THE SMACK WITH THE BELT, BUT OTHER THINGS GOING ON
17 AT THAT TIME.

18 AND WE HAVE OTHER EVIDENCE. WE HAVE
19 WHAT ERIK MENENDEZ TOLD YOU OF THE TOOTHBRUSH
20 INCIDENT WITH HIS BROTHER, AND HOW DR. WILSON STATED
21 THAT THIS IS -- KIND OF EMULATING, IMITATING THE
22 CONDUCT OF SOMETHING THAT HAS BEEN DONE TO A YOUNG
23 CHILD WHEN THEY ACT OUT THAT WAY WITH A YOUNGER
24 BROTHER.

25 AND WE HAVE THE TREMENDOUS RETICENCE
26 EXPRESSED BY LYLE MENENDEZ TO EVER TALK ABOUT THE
27 SEXUAL ABUSE HIS FATHER HAD DONE TO HIM. HE DIDN'T
28 WANT TO TALK ABOUT IT TO DR. OZIEL. HE DIDN'T WANT

52125

1 TO TALK ABOUT IT IN THE FIRST TRIAL. AND ALL THE
2 THINGS THAT HE DID. HE TRIED TO AVOID EVER HAVING
3 TO COME AND TESTIFY AS TO WHAT HAD HAPPENED TO HIM.

4 SO WE HAVE A LOOK THAT IS SO FEARSOME TO
5 THIS YOUNG BOY THAT HE WILL WET HIS PANTS.

6 WE HAVE SEXUAL MOLESTATION AT A YOUNG
7 AGE.

8 WE HAVE THE PRESSURES THAT YOU'VE HEARD
9 FROM THE WITNESSES THAT YOU'VE GOT TO BE NUMBER
10 ONE. WINNING IS EVERYTHING. SECOND PLACE IS FOR
11 LOSERS.

12 THAT WASN'T JUST TOLD TO YOU BY ERIK

13 MENENDEZ, BUT YOU HEARD THAT FROM CARLOS BARALT,
14 ANOTHER PROSECUTION WITNESS, WHO CAME IN HERE.
15 EVERYBODY WHO WAS ASKED TESTIFIED THAT THIS WAS JOSE
16 MENENDEZ' WAY OF LIFE.

17 WHEN LYLE MENENDEZ WOULD LOSE A TENNIS
18 MATCH IN A TOURNAMENT -- GOOD ENOUGH TO GET INTO
19 TOURNAMENTS -- WHEN HE WOULD LOSE, DIANE VANDERMOLLEN
20 WOULD TELL YOU HOW HIS FATHER WOULD RUN OUT ONTO THE
21 COURT AND CHEW HIM OUT FOR LOSING, AND HOW LYLE
22 MENENDEZ WOULD JUST KIND OF HANG HIS HEAD AND
23 DROOP. THIS IS A RELATIONSHIP BUILT ON FEAR, NOT ON
24 LOVE. FEAR THAT WILL STAY WITH YOU ALL YOUR LIFE.

25 WHAT ELSE DID WE DO? WELL, WE HAD
26 EVIDENCE ABOUT THE BELT. ALAN ANDERSEN AND DIANE
27 VANDERMOLLEN TALKED ABOUT THE BELT THAT SOMETIMES
28 WOULD BE JUST LEFT OUT, A BELT THAT MR. MENENDEZ

52126

1 WOULD POINT AT IT, AND LYLE AND ERIK MENENDEZ
2 COWER.

3 AND THEN WE HAD HIM USING THE BELT. AND
4 ALAN ANDERSEN TOLD YOU ABOUT HEARING THE SLAPS WITH
5 THE BELT AND THE DIFFICULTY THAT LYLE MENENDEZ WOULD
6 HAVE WALKING THE NEXT DAY.

7 WE HAVE ANOTHER INTERESTING THING THAT

8 CERTAINLY CAUSES FEAR, AND THAT IS BEING HIT WITH
9 THE BELT, BEING BEATEN FOR THINGS YOU DIDN'T EVEN
10 DO, AND HIS FATHER KNEW HE HADN'T DONE IT.

11 ALAN ANDERSEN TOLD YOU ABOUT AN INCIDENT
12 IN WHICH ALAN ANDERSEN -- WHO WAS ABOUT 15 AT THE
13 TIME -- HE GOT MAD AND HE CUT THE TOPS OFF SOME
14 FLOWERS THAT MRS. MENENDEZ WAS LIKING AND CARING
15 FOR, AND HE TOLD MRS. MENENDEZ: "I DID IT."

16 SHE KNEW THAT. BUT SHE TOLD MR. MENENDEZ
17 THAT LYLE MENENDEZ DID IT, AND ALAN ANDERSEN HEARD
18 LYLE MENENDEZ GETTING THE BELT THAT NIGHT FOR
19 SOMETHING THAT HIS FATHER EVEN KNEW, AND HIS MOTHER
20 KNEW, THAT LYLE MENENDEZ HAD NOT DONE.

21 AND WHAT WAS MR. MENENDEZ ANSWER TO
22 THAT? "WELL, I HAVE TO TAKE YOUR MOTHER'S WORD."

23 CAN YOU IMAGINE THE FEAR AND THE
24 UNCERTAINTY THAT THIS CAUSES IN A CHILD GROWING UP
25 IN THE HOME AND THE TYPE RELATIONSHIP THAT HE NOW
26 HAS WITH HIS FATHER?

27 THEN HE GETS HIT IN THE EYE WITH A
28 ROCK. MOST PEOPLE PROBABLY GET HIT IN THE EYE WITH

52127

1 A ROCK SOMETIME IN THEIR LIFE. IT'S CLOSED BY THE
2 TIME MR. MENENDEZ COMES HOME, AND MRS. MENENDEZ,

3 WHEN SHE HEARS ABOUT IT -- THIS WAS WHEN ALAN
4 ANDERSEN RICOCHETED IT OFF THE DOG HOUSE AND CLOSED
5 LYLE MENENDEZ' EYE. SHE'S TRYING TO GET A RAZOR
6 BLADE IN ORDER TO SLICE IT OPEN, AND LYLE MENENDEZ
7 IS CRYING, SAYING "NO, NO." AND AT LEAST SHE
8 DOESN'T DO THAT.

9 SHE ALSO DOESN'T TAKE HIM TO A DOCTOR.

10 WHEN MR. MENENDEZ COMES HOME, WHAT'S HIS REACTION TO
11 THIS? DOES HE SAY: "GEE, LYLE. I'M SORRY ABOUT
12 THAT. WE'LL SEE IF WE CAN'T GET IT TREATED." AND
13 MAYBE THE OLD TRADITIONAL WAY OF PUTTING SOME BEEF
14 STEAK ON IT TO DRAW OUT SOME OF THE SWELLING.

15 DOESN'T DO ANY OF THAT. HE SITS HIM
16 DOWN AND PUTS HIS FACE A FEW INCHES FROM LYLE
17 MENENDEZ AND CHEWS HIM OUT BECAUSE HE ENGAGED IN
18 THIS, WHERE HE LET HIMSELF GET HIT WITH A ROCK. AND
19 WHY WAS HE UPSET? NOT BECAUSE HIS SON WAS HURT.
20 NOT BECAUSE OF THE PAIN AND THE SHUT EYE. HE WAS
21 UPSET BECAUSE HE SAID:

22 "YOU'RE REALLY GOING TO BE IN
23 TROUBLE FOR THIS, ALAN, IF I LOSE MY
24 TENNIS INVESTMENT IN HIM, THE YEARS WE
25 PUT IN TO MAKE HIM A GOOD TENNIS
26 PLAYER, IF THIS HURTS HIS VISION AND
27 HE CAN'T GO ON."

28 THAT'S HIS CONCERN. HIS SON IS AN

1 INVESTMENT.

2 HE GOES ALONG WITH THE RUNNING OUT ON
3 THE TENNIS COURT AND CHEWING HIM OUT IF HE LOSES.

4 YOU KNOW, A MAJOR THING THOUGH -- AND WE
5 HAVEN'T TALKED MUCH ABOUT THAT SINCE OPENING
6 STATEMENT -- ONE THAT YOU CAN REALLY VISUALIZE WHAT
7 THIS RELATIONSHIP WAS LIKE BETWEEN MR. MENENDEZ AND
8 HIS SONS, IS THE TIME THAT HE TOOK THEM OUT TO THE
9 LAKE IN A BOAT. REMEMBER THAT ONE?

10 THEY'RE OUT HERE ON THE LAKE. THEY'RE
11 IN THE MIDDLE. MR. MENENDEZ SAYS: "OKAY, GUYS.
12 SWIM FOR IT."

13 LYLE IS TWO YEARS OLDER. LYLE IS A
14 PRETTY POWERFUL KID, AND THEY'RE SWIMMING TO SHORE.
15 THEY'RE OFF THE BOAT AND ERIK IS STRUGGLING. HE'S
16 GULPING WATER. HE'S HAVING A HARD TIME BECAUSE HE'S
17 TWO YEARS YOUNGER AND HE'S PANICKING. HE BELIEVED
18 THE LAKE HAD SNAPPING TURTLES. WHETHER IT DID OR
19 NOT, HE BELIEVED IT DID. AND HE'S PANICKING. AND
20 LYLE MENENDEZ MADE IT TO SHORE. SO HE COMES BACK
21 OUT AND HE PULLS ERIK IN.

22 NOW, MAYBE, OR MAYBE NOT, ERIK'S LIFE
23 WAS REALLY AT RISK AT THAT POINT. MAYBE OR MAYBE
24 NOT HE REALLY COULD HAVE DROWNED. HIS FATHER DIDN'T
25 CARE. LYLE PULLED HIM IN BECAUSE IT CERTAINLY

26 LOOKED LIKE HE WAS IN DANGER. AND WHAT'S HIS

27 FATHER'S REACTION?

28 "GOOD BOY, LYLE. THANKS, LYLE.

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1 I'M REALLY GLAD YOU WERE THERE TO HELP

2 OUT YOUR BROTHER. GOSH, THAT COULD

3 HAVE BEEN A REAL TRAGEDY IF HE HAD

4 DROWNED. GOOD WORK."

5 HUH-UH. THAT'S NOT WHAT HE SAID. WHAT

6 HE SAID WAS: "LYLE, YOU HAD TO MAKE HIM DO IT FOR

7 HIMSELF. HE'S GOT TO LEARN." BACK OUT INTO THE

8 MIDDLE OF THE LAKE. AND HE TAKES HIM BACK OUT AND

9 THROWS HIM OFF THE BOAT AGAIN AND MAKES THEM EACH

10 SWIM IN A DIFFERENT DIRECTION SO LYLE COULDN'T HELP

11 HIS BROTHER AT THAT TIME.

12 NOW, ERIK MADE IT. BUT DOESN'T THAT

13 GIVE YOU AN IDEA, IF YOU'RE LYLE MENENDEZ OR ERIK

14 MENENDEZ AT THAT AGE, WHAT HIS FATHER FEELS ABOUT

15 THE LIFE AND THE WORTH OF ERIK MENENDEZ? HE'S

16 WILLING TO RISK HIS LIFE IN THIS WATER, WHERE PEOPLE

17 DO DROWN, CHILDREN DO DROWN IN WATER, WILLING TO

18 RISK HIS LIFE IN ORDER TO MAKE HIM A STRONGER

19 SWIMMER, AND DISCOURAGE LYLE MENENDEZ FROM PUTTING

20 ANY VALUE ON HIS BROTHER'S LIFE AT ALL.

21 LET'S JUST TAKE A LOOK AT THAT FOR A
22 MINUTE. I DON'T HAVE A CHART CREATED FOR THIS, BUT
23 LET'S JUST CREATE ONE THE SAME WAY WE HAVE THE
24 OTHERS HERE. WE'LL PUT "PROSECUTION EVIDENCE" OVER
25 HERE, "LYLE MENENDEZ" OVER HERE, AND WE'LL TALK
26 ABOUT FEAR.
27 AND WHAT IS THE CIRCUMSTANTIAL EVIDENCE
28 THAT HAS COME OUT TO SHOW THAT LYLE MENENDEZ WAS IN

52130

1 FEAR OF HIS FATHER?
2 WELL, WE HAVE THE LOOK, WHICH WOULD
3 CAUSE HIM TO WET HIS PANTS.
4 AND THEN WE HAVE THE SEXUAL ABUSE.
5 THEN WE HAVE THE PRESSURE TO WIN, MUST
6 WIN. MUST WIN.
7 WE HAVE THE BELT.
8 WE HAVE SOMETHING ELSE THAT'S VERY
9 REVEALING THAT WE HAVEN'T TALKED ABOUT YET. DIANE
10 VANDERMOLLEN EXPRESSED IT VERY ARTICULATEDLY. THAT
11 WHEN JOSE MENENDEZ CAME HOME, WHEN HE'D COME HOME IN
12 THE EVENING, A Demeanor, THE LOOK, THE ATTITUDE OF
13 LYLE AND ERIK MENENDEZ WOULD CHANGE DRAMATICALLY.
14 THEY'D BECOME ALMOST AT ATTENTION, AS SHE PUT IT,
15 WHEN THEIR FATHER WALKED IN THE DOOR.

16 WHAT DOES THAT TELL YOU? WHAT DOES THAT
17 TELL YOU ABOUT THE RELATIONSHIP THAT JOSE MENENDEZ
18 HAD DEVELOPED WITH HIS SONS?

19 WE HAVE THE EYE INJURY.

20 THE LAKE.

21 THAT'S THE WAY THE RELATIONSHIP BUILT.

22 THAT'S THE CIRCUMSTANTIAL EVIDENCE OF FEAR. DID IT

23 END THERE? WHAT HAPPENED THE ONE TIME THAT LYLE

24 MENENDEZ LET IT SLIP WHEN HE WAS ON THE TENNIS

25 COURT, AND HIS FATHER WAS TALKING TO HIM, AND HE

26 SAID: "SHUT UP."

27 HIS FATHER DRAGGED HIM OUT TO A

28 LIMOUSINE, PUNCHED HIM IN THE MOUTH, SPLIT HIS LIP,

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1 AND SAID: "DONT EVER SAY ANYTHING LIKE THAT AGAIN OR

2 I'LL KILL YOU."

3 THAT'S THE REACTION TO ONE TIME THAT

4 LYLE MENENDEZ HAD HAD ENOUGH.

5 WELL, THIS DIDN'T JUST END WHEN HE WAS A

6 YOUNGSTER, WHEN HE WAS A CHILD. IT WAS CONTINUING.

7 WHAT HAPPENED WHEN LYLE MENENDEZ WENT TO AUSTRALIA

8 AND STARTED TO SUCCEED IN TENNIS?

9 HE WAS DOING WELL. ROBBIE CLOUSE TOLD

10 YOU. HE HAD THE POTENTIAL TO BE ONE OF THE TOP

11 HUNDRED TENNIS PLAYERS IN THE WORLD. THAT MIGHT NOT
12 BE WIMBLETON. IT MIGHT NOT BE JOHN MC ENROE, BUT DO
13 YOU KNOW HOW MANY PEOPLE ARE TRYING TO BECOME THAT
14 GOOD?

15 AND MARK HEFFERNAN TOLD YOU THE SAME
16 THING. TREMENDOUS TALENT, TREMENDOUS DEDICATION.

17 SO WHAT HAPPENED WHEN JOSE MENENDEZ
18 THOUGHT THAT MAYBE LYLE MENENDEZ WOULD GO OFF AND
19 TRY TENNIS FOR A WHILE INSTEAD OF GOING TO
20 PRINCETON? BECAUSE AFTER ALL, JOSE MENENDEZ WANTED
21 THE IMAGE OF A PRINCETON MAN FOR HIS SON AND FOR
22 HIMSELF.

23 SO HE HAS ROBBIE CLOUSE -- ROBBIE CLOUSE
24 IS THERE AT DINNER, AND HE GETS HIM UP AFTER THE
25 DINNER TABLE, AND MARY LOUISE MENENDEZ IS STANDING
26 RIGHT THERE LISTENING, AND HE BASICALLY SAYS THAT IF
27 HE DOES ANYTHING TO HIS SON'S FUTURE IT'S GOING TO
28 BE BAD FOR HIS HEALTH.

52132

1 SO ROBBIE CLOUSE, LATER ON, TALKS TO
2 LYLE MENENDEZ ABOUT IT. THEY'RE AT A TENNIS
3 TOURNAMENT. REMEMBER, THIS IS 1987, SPRING OF 1987,
4 TWO AND A HALF YEARS BEFORE WHAT WE'RE TALKING ABOUT
5 HERE. LYLE MENENDEZ SAYS: "YEAH, YOU KNOW," WHEN

6 HE TELL US HIM ABOUT IT, "YOU BETTER TAKE THAT
7 SERIOUSLY." AND ROBBIE CLOUSE WAS NEVER HIS COACH
8 AGAIN.

9 SO HOW DOES JOSE MENENDEZ DEAL WITH
10 ANYTHING THAT HE THINKS MIGHT BE INDEPENDENCE BY HIS
11 SON? THE SAME MANNER HE ALWAYS HAS. FEAR. AND
12 THIS GUY'S PUTTING FEAR INTO ROBBIE CLOUSE, A TENNIS
13 COACH. THIS IS NO WIMP. YOU SAW ROBBIE CLOUSE.
14 HE'S BEEN A TENNIS COACH FOR YEARS. PEOPLE WHO ARE
15 REALLY GOOD TENNIS PLAYERS, YOU DON'T GET THAT WAY
16 IF YOU'RE A WIMP, IF YOU WALK AWAY EVERY TIME
17 SOMETHING HAPPENS. BUT HE FELT STRONG ENOUGH ABOUT
18 THE THREAT MADE TO HIM BY JOSE MENENDEZ TO TALK
19 ABOUT IT WITH LYLE MENENDEZ, TO QUIT. THAT'S THE
20 KIND OF POWER THAT THIS THREAT HAD FROM THIS MAN.

21 SO WE'RE NOT JUST LOOKING AT LYLE
22 MENENDEZ AND ERIK MENENDEZ. WE'VE GOT INDEPENDENT
23 VERIFICATION FROM ROBBIE CLOUSE ABOUT WHAT HE WOULD
24 BE LIKE AND HOW HE USED FEAR TO TRY TO GET HIS OWN
25 WAY.

26 AND IF THAT WASN'T ENOUGH, MR. MENENDEZ
27 USED TO BRAG, IF YOU WOULD. WHETHER IT WAS TRUE OR
28 NOT MAKES NO DIFFERENCE. IT'S THE PERCEPTION. IT'S

1 THE IMAGE. HE WAS BRAGGING ABOUT BEING CONNECTED,
2 KNOWING PEOPLE OR ASSOCIATING WITH PEOPLE OR DEALING
3 WITH PEOPLE WHO WERE IN THE MOB, OR WHATEVER YOU
4 WANT TO CALL IT. BUT HE'D BRAG ABOUT IT TO HIS
5 SONS. WHY? BECAUSE HE WAS PROUD OF IT? PROBABLY
6 NOT. SO THAT THEY'D KNOW WHAT HE COULD DO AND WAS
7 CAPABLE OF DOING IF HE EVER HAD TO.

8 SO WHAT HAPPENED WHEN ROBBIE CLOUSE
9 CALLED ERIK MENENDEZ AND ERIK MENENDEZ SAID: "WHY
10 AREN'T YOU COACHING LYLE ANYMORE?"

11 AND YOU REMEMBER ROBBIE CLOUSE TESTIFIED
12 TO THIS. HE SAYS: "WELL, I TALKED TO ERIK, AND I
13 EXPLAINED WHAT HIS FATHER HAD SAID. AND HE SAID:
14 "YEAH, THAT SOUNDS SERIOUS. MY FATHER IS
15 CONNECTED."

16 THIS IS 1987, NOT 1989. IF ERIK
17 MENENDEZ TOLD ROBBIE CLOUSE HIS FATHER WAS CONNECTED
18 TWO AND A HALF YEARS BEFORE, YOU KNOW THAT CAME FROM
19 JOSE MENENDEZ MAKING ERIK MENENDEZ BELIEVE THAT.
20 MORE FEAR.

21 WHAT EVIDENCE DID THE PROSECUTION PUT ON
22 TO OVERCOME FEAR, TO PROVE TO YOU BEYOND A
23 REASONABLE DOUBT THAT FEAR DID NOT PLAY A PART IN
24 WHAT HAPPENED ON AUGUST 20TH, 1989? THEY PUT ON
25 ZILCH.

26 THIS TRAGEDY THAT I EXPLAINED YESTERDAY,
27 THIS TRAGEDY IS BROUGHT ON BY LYLE MENENDEZ (SIC)
28 RAISING HIS SONS IN AN ATMOSPHERE OF FEAR, FEAR THAT

1 IS MISTAKEN FOR LOVE. WE TALKED ABOUT HOW LYLE
2 MENENDEZ ADMIRERD HIS FATHER. RESPECTED HIS FATHER.
3 NEVER SAID A BAD WORD ABOUT HIM. OBVIOUSLY LOVED
4 HIS FATHER.

5 YOU LOOK AT IT AS AN OBJECTIVE PERSON,
6 YOU LOOK AT IT AS WE CAN LOOK AT IT HERE, YOU LOOK
7 AT IT AS DR. WILSON WAS ABLE TO WITH HIS BACKGROUND
8 AS A PSYCHOLOGIST AND KNOWLEDGE OF P.T.S.D., AND YOU
9 KNOW THIS WAS A TERRIBLE WAY TO BRING UP A CHILD.
10 YOU KNOW, MOST OF US IN THE WORLD DON'T KNOW HOW
11 WELL WE ARE OFF, HOW GOOD WE HAVE IT. LYLE MENENDEZ
12 DIDN'T KNOW HOW BAD HE HAD IT, BECAUSE HE TRULY DID
13 LOVE, RESPECT, AND ADMIRE HIS FATHER. AND HE DIDN'T
14 UNDERSTAND WHAT HAD BEEN DONE TO HIM.

15 BUT FEAR IS WITH US. THAT'S THE
16 RELATIONSHIP THAT WE HAVE. IT DOESN'T GO AWAY.

17 WHAT ABOUT THE MOTHER? IN A LOT OF
18 HOMES THE MOTHER CAN MODIFY THIS. SHE STANDS
19 BETWEEN THE CHILDREN AND AN ABUSIVE FATHER OR
20 FEARFUL FATHER. SHE MAKES HIM KIND OF LAY OFF A
21 LITTLE BIT OR SOOTHES THE CHILDREN AND SAYS: "IT'S
22 ALL RIGHT, HONEY, IT'S GOING TO BE OKAY."

23 NOT MRS. MENENDEZ. SHE WAS TOO CONSUMED
24 WITH IMAGE.

25 TWO EXAMPLES:
26 ONE IS THAT WE HEARD FROM, AGAIN, ERIK
27 MENENDEZ ABOUT THE TIMES WHEN LYLE WAS A BED-WETTER,
28 AND MRS. MENENDEZ WOULD PUT THE SHEETS ON THE DINING

52135

1 ROOM TABLE AND RUB LYLE'S FACE IN IT, CALL HIM A
2 SISSY. BUT HER MAJOR PROBLEM, SHE SAID, IF ANYBODY
3 KNEW ABOUT THIS, IT WOULD BE EMBARRASSING. NOT
4 CONCERN FOR HER SON. NOT CONCERN TO TRY TO OVERCOME
5 THIS PROBLEM HIM, NOT GOING TO A DOCTOR. "JUST
6 DON'T EMBARRASS ME."

7 MR. CONN SAID: "GEE, ALL FAMILIES TRY
8 TO KEEP SECRETS. WHO WANTS TO LET PEOPLE KNOW THEIR
9 SON IS REPEATING FIFTH GRADE, OR ERIK MENENDEZ HAD A
10 LEARNING DISABILITY, OR SOMETHING LIKE THAT? THAT'S
11 JUST NORMAL FAMILY PRIVACY. WELL, THAT MAY BE.

12 THE INCIDENT OF NOT HAVING ANYBODY KNOW
13 THAT YOUR SON WETS THE BED, MAYBE. RUBBING HIS FACE
14 IN THE SHEETS IS NOT A SOLUTION TO THE PROBLEM. BUT
15 MAYBE THAT'S NOT SOMETHING THAT YOU'D TELL EVEN YOUR
16 BROTHER OR YOUR IN-LAWS.

17 BUT THE REAL EXAMPLE OF HOW MUCH IMAGE
18 MEANT TO MRS. MENENDEZ IS WHEN DIANE VANDERMOLLEN WAS
19 THERE AND SHE'D LEFT THE HOME. SHE WAS ABOUT 22

20 YEARS OF AGE, AND SHE WAS WORKING AT R.C.A., WHERE
21 JOSE MENENDEZ WORKED. HE DIDN'T GET HER THE JOB.
22 SHE GOT JOB THE HERSELF. BUT SHE WAS WORKING THERE,
23 AND JOSE MENENDEZ WAS A HIGH-UP EXECUTIVE. AND SHE
24 GOT PREGNANT. AND MRS. MENENDEZ TOLD HER: "YOU OWE
25 IT TO JOSE MENENDEZ TO HAVE AN ABORTION."

26 NOW, THAT IS CARRYING IMAGE BEYOND WHAT
27 I THINK ANYBODY WE KNOW WOULD CARRY IT. HER IMAGE
28 AND HER HUSBAND'S IMAGE WAS SO IMPORTANT TO HER THAT

52136

1 SHE WOULD TELL HER NIECE TO ABORT THIS CHILD IN
2 ORDER TO SAVE THE FAMILY EMBARRASSMENT.

3 YOU SAW DIANE VANDERMOLLEN. YOU SAW HER
4 UNDERGO THERAPY ON THE STAND HERE WHEN SHE WAS BEING
5 QUESTIONED BY MR. CONN. SHE ALSO WAS STRONG ENOUGH
6 TO HAVE THAT CHILD, WHO TODAY'S AN ALIVE, WELL,
7 ALERT 14-YEAR-OLD.

8 BUT IT SHOWS YOU THE EXTENT TO WHICH
9 MARY MENENDEZ WOULD GO IN ORDER TO TRY TO PROTECT
10 THE FAMILY. THE FAMILY HONOR. THE FAMILY NAME.
11 THE FAMILY IMAGE. THEY WERE A GREAT TEAM.

12 BUT THAT IS WHAT CONTRIBUTED TO THE
13 WHOLE SITUATION AND TO WHAT IT WAS ON AUGUST 20TH,
14 1989, THE FEARFUL RELATIONSHIP THAT THEY HAD ALWAYS

15 INSTILLED IN LYLE AND ERIK MENENDEZ. AND THE
16 KNOWLEDGE THAT BOTH LYLE AND ERIK MENENDEZ HAD, THAT
17 IMAGE IN THIS HOUSEHOLD WAS SO IMPORTANT TO BOTH
18 MR. AND MRS. MENENDEZ THAT THEY WOULD INDEED KILL
19 THEM IN ORDER TO KEEP THE SECRET OF THE SEXUAL
20 MOLESTATION FROM EVER BEING REVEALED.

21 NOW, WHAT ELSE DOES THE PROSECUTION HAVE
22 TO SAY? WELL, THIS WAS MURDER. THEY HAVE WHAT THEY
23 CALL THE EFFORTS BY LYLE MENENDEZ, FIRST, TO ESCAPE.
24 AND THEY BLEW THAT UP FOR YOU. I HAVE THE EXHIBIT
25 HERE. IT'S GOING TO BE EXHIBIT 142 WHEN YOU GO INTO
26 THE JURY ROOM. THESE SO-CALLED ESCAPE PLANS.

27 THE PROSECUTION SAYS: "WELL, THAT'S
28 CONSCIOUSNESS OF GUILT. CONSCIOUSNESS OF GUILT OF

52137

1 WHAT? GUILTY OF MURDER? GUILTY OF MANSLAUGHTER?
2 THIS WAS DONE IN JUNE 1990, ABOUT THREE MONTHS AFTER
3 LYLE MENENDEZ WAS ARRESTED. WHEN YOU READ THEM --
4 AND BY THE WAY, THESE WERE NOT STAPLED TOGETHER
5 NEATLY LIKE THEY ARE NOW. THEY WERE AMONG A WHOLE
6 BAGFUL OF PAPERS THAT WAS IN HIS CELL. THIS WAS NOT
7 THE HANDY-DANDY ESCAPE PLANS THAT YOU PUT IN YOUR
8 POCKET AND CARRY AROUND WITH YOU ALL DAY IN THE
9 JAIL. THESE WERE AMONG PAPERS IN THE CELL, LOOSE,

10 GATHERED BY THE SHERIFFS, AND NOW STAPLED HERE AS
11 THIS EXHIBIT.

12 AND THEY HAVE ALL THE WONDERFUL DREAMS
13 AND RUMINATIONS OF A TRAVEL AGENT OR SOMEBODY, ALL
14 KINDS OF PLACES TO GO. COLUMBIA. GO TO MEXICO. GO
15 TO LONDON. GO TO LEBANON. ANYPLACE IN THE WORLD
16 EXCEPT L.A. COUNTY JAIL AND A COURTROOM.

17 CAN YOU THINK OF ANYBODY, ESPECIALLY A
18 21-YEAR-OLD MAN, BEHIND BARS ALL DAY WHO WOULDN'T
19 DREAM OF FREEDOM AND WHAT THEY'D DO IF THEY HAD IT
20 AGAIN TO AVOID HAVING TO GO THROUGH THIS? AND HE
21 DID. THAT'S WHAT YOU'VE GOT HERE. YOU'VE GOT SOME
22 PLACES TO BE, ALL OF WHICH ARE BETTER THAN COUNTY
23 JAIL.

24 BELGIUM. THAT SOUNDS GOOD. CANADA.
25 LONDON. YOU HAVE SOMETHING ABOUT A SMALL PLANE TO
26 CANADA, OR BRIAN'S HOME TO GRAND DAD'S CAMP.

27 YOU HAVE SOME NAMES OF SOME PEOPLE.
28 ASKED IF COULD HIDE IN NEW JERSEY. WHERE THEY

52138

1 EXTRADITE FROM.

2 REALLY GREAT DREAMS AND GREAT PLANS.

3 YOU KNOW, THE PROBLEM WITH IT IS, TO

4 ESCAPE YOU NEED TO GET OUT THE DOOR. THE EASY PART

5 IS WHAT YOU DO ONCE YOU'RE OUT OF COUNTY JAIL AND
6 YOU CATCH A PLANE TO GO TO LEBANON, LONDON, OR
7 WHEREVER YOU WANT TO GO. BUT THERE'S NOT A WORD IN
8 HERE, NOT A DIAGRAM, NOT A WORD OF HOW HE'S GOING TO
9 GET OUT OF HIS CELL PAST THE DOUBLE DOORS AND ALL
10 THE GATES AND LOCKS, PASSED ALL THE PEOPLE IN
11 UNIFORM, LIKE THE BAILIFFS WE HAVE IN COURT HERE,
12 PASSED ALL THE PEOPLE IN THE COUNTY JAIL TO DO
13 THIS.

14 THAT'S WHAT AN ESCAPE PLAN REALLY IS,
15 WHEN YOU'VE GOT SOMETHING THAT WILL WORK, OR EVEN
16 THINK IT WILL WORK. BUT NOT DREAMS OF WHERE YOU'RE
17 GOING TO. THE ONLY THING IN HERE THAT AT ALL TIES
18 INTO THAT. THIS KIND OF FUNNY DIAGRAM, REALLY
19 HELPFUL. IT SAYS: "PORSCHÉ, HERE."

20 AND I GUESS THIS IS WHAT'S SUPPOSED TO
21 BE THE PORSCHÉ, AND WE HAVE KIND OF A FUNNY SQUIGGLE
22 AND TWO MORE THINGS. IT HAS NOTHING DO WITH HOW
23 HE'S GOING TO GET OUT OF THERE TO GET TO HIS PORSCHÉ
24 TO RIDE AWAY TO THESE MAGICAL KINGDOMS WHERE HE'D
25 LIKE TO BE. THE ESCAPE PLAN, AS THEY CALL IT,
26 REALLY PROVES NOTHING.

27 THEN WE HAVE WHAT'S CALLED EFFORTS TO
28 FABRICATE, EFFORTS TO PRESENT FALSE EVIDENCE,

1 EFFORTS TO GET OUT FROM UNDER THIS. THAT STARTS
2 WITH JAMIE PISARCIK, AT THAT TIME FIANCÉE.

3 NOW, JAMIE IS AN INTERESTING PERSON
4 TOO. WE TALKED ABOUT HER A LITTLE BIT EARLIER.
5 JAMIE PISARCIK APPARENTLY MEETS LYLE BACK IN
6 PRINCETON WHEN THEY'RE TENNIS PLAYERS, AND SHE
7 ALREADY HAS A BOYFRIEND IN GERMANY WHO'S GIVEN HER A
8 RING, ACCORDING TO, I THINK IT WAS -- I THINK THAT
9 WAS ROBBIE CLOUSE. YEAH. HE TALKED ABOUT THAT. IN
10 COURT SHE SAID: "NO, I WASN'T GOING WITH ANYBODY IN
11 GERMANY. I WASN'T ENGAGED TO ANYBODY."

12 BUT ROBBIE CLOUSE SAID: "SHE TOLD ME SHE
13 HAD A BOYFRIEND IN GERMANY AND A RING." BUT SHE
14 DUMPED HIM BECAUSE LYLE WAS BETTER. LYLE HAD
15 MONEY. HE'S THERE. SO SHE STARTS WITH LYLE.

16 AND SHE STAYS WITH HIM AS HIS
17 GIRLFRIEND. THEY GET ENGAGED. ROBBIE CLOUSE TELLS
18 YOU SHE ASKED FOR PRESENTS AND LYLE MENENDEZ GAVE
19 THEM TO HER. SHE ASKED FOR QUITE A BIT, AND SHE GOT
20 A LOT OF PRESENTS. HE'D CALL HER UP FROM AUSTRALIA
21 ALMOST EVERY NIGHT, BUT SHE DOESN'T SEEM TO HAVE
22 REMEMBERED THAT. IT WASN'T WORTH THAT MUCH TO HER.

23 WHEN THEY BREAK UP, IN THE SPRING OF
24 1989, SHE HAS THIS WATTS CARD YOU'VE HEARD ABOUT
25 THAT LYLE MENENDEZ HAD GIVEN FOR HER OCCASIONAL USE,
26 AND SHE KIND OF MINIMIZES THAT, EVEN THOUGH THERE
27 WERE 11 CALLS A DAY MADE ON IT AT ONE TIME, AND HER

52140

1 SHE'S CALLING THIS GUY SHE USED TO KNOW AT MERCER
2 COLLEGE.

3 THEY BREAK UP AGAIN IN JANUARY 1990.
4 SHE SAYS THE KIND OF EMOTIONAL ROLLER COASTER AT
5 THAT POINT WAS TOO MUCH FOR HER. LYLE IS REALLY
6 DEPRESSED. LYLE IS SPENDING MONEY AS A PART OF HIS
7 DEPRESSION. THIS IS TOO MUCH FOR HER, SO SHE
8 DECIDES TO CALL IT OFF IN JANUARY 1990.

9 IT'S FUNNY. THIS IS BOTHERING HER SO
10 MUCH SHE KEEPS THE SAAB, THE CAR THAT LYLE MENENDEZ
11 HAD GIVEN HER AS A CHRISTMAS PRESENT JUST A MONTH
12 BEFORE. SHE DOESN'T SAY: "OH, NO, LYLE. DON'T
13 SPEND MONEY ON ME. SAVE IT AND INVEST IT AND DO
14 SOMETHING BETTER WITH IT."

15 SHE DOESN'T SAY THAT. SHE SAID: "OH,
16 WHERE'S THE KEY?"

17 AND WHEN SHE LEAVES HIM SHE DOESN'T SAY:
18 "GEE, LYLE, I WANT TO TAKE THIS SAAB BACK BECAUSE
19 WE'RE NOT TOGETHER ANYMORE."

20 NO. SHE KEPT IT. AND THEN SHE COMES
21 BACK WHEN HE'S IN COUNTY JAIL, AND HE PROPOSES TO
22 HER. GETS DOWN ON ONE KNEE IN FRONT OF ALL THESE

23 HARDENED GUYS IN COUNTY JAIL. AND YOU KNOW WHAT
24 KIND OF A RIDING THEY'RE GOING TO GIVE HIM FOR DOING
25 IT, DOWN ON ONE KNEE BECAUSE SHE ASKED HIM TO, AND
26 PROPOSES. SHE SAYS HOW HAPPY SHE WAS TO TIM CUSTER
27 AND TERRY BARALT, AND SHE TAKES THE \$4500 ENGAGEMENT
28 RING BACK, AND THEN SHE COMES DOWN TO JAIL THAT DAY

52141

1 AND LYLE MENENDEZ SAYS: "I WANT YOU TO SAY THAT
2 WHAT HAPPENED IN THAT SEAN PENN MOVIE, THAT MY DAD
3 DID IT TO YOU."

4 AND SHE TELLS THE POLICE. SHE SAYS HE
5 MADE A PASS AT HER. THAT'S WHAT LYLE MENENDEZ
6 APPARENTLY WAS ASKING HER TO SAY. IT GREW INTO A
7 RAPE HERE BECAUSE THEN SHE WENT AND SAW THE MOVIE
8 AGAIN.

9 BUT HER ORIGINAL STATEMENT WAS HE WANTED
10 ME TO SAY THAT HIS DAD HAD MADE A PASS AT HER. AND
11 SHE SAID HE SAID HE'D PUT MONEY IN AN ACCOUNT FOR
12 HER, AND SHE SAID: "OH, HORRORS, NO. I CAN'T BE A
13 PART OF THIS."

14 SHE LEAVES, BUT SHE COMES BACK. AND NOW
15 LYLE MENENDEZ, TRUSTING LYLE, AS HE ALWAYS IS, WITH
16 A FIANCEE WHO HAS ALREADY SAID, "I WON'T DO
17 SOMETHING LIKE THAT FOR YOU, LYLE, NOT ME."

18 HE CONFIDES IN HER, THE ONLY PERSON THAT
19 HE TELLS. HE CONFIDES THAT HE KILLED HIS PARENTS TO
20 THIS LADY WHO'S ALREADY SAID, "I'M NOT GOING TO HELP
21 YOU OUT." AND HE'S WRITTEN IT ALL OUT AND HE'S
22 CRYING, AND SHE'S CRYING, AND HE TELLS HER IT'S
23 BECAUSE "GEE, MY MOTHER MOLESTED ME. MY FATHER
24 MOLESTED ERIK."

25 HE'S LAYING IT OUT. SHE DOESN'T WANT TO
26 HEAR IT. SHE DOESN'T WANT TO WAIT UNTIL THE END OF
27 THIS. SHE SAYS: "I DON'T BELIEVE IT." AND SHE'S
28 CRYING AND LYLE NEVER GETS TO TELL ANYMORE. ONLY

52142

1 THING SHE SAYS IS: "WELL, WHY DIDN'T YOU LEAVE?"

2 AND HE SAID: "I WANTED TO LEAVE, BUT
3 ERIK COULDN'T."

4 HE TELLS HER THAT WAY BACK IN 1990. "I
5 WANTED TO LEAVE, BUT ERIK COULDN'T." SHE DOESN'T
6 WANT TO HEAR ANY MORE REASONS AS TO WHAT HAPPENED.
7 SHE LEAVES. SHE DUMPS HIM FOR A NEW GUY SHE'S
8 ALREADY GOING WITH. AND TRUE TO FORM, WHEN SHE
9 DUMPS HIM, AT THIS PARTICULAR TIME, SHE KEEPS THE
10 \$4500-ENGAGEMENT RING, AND GOES, AND I GUESS
11 ULTIMATELY MARRIES THE GUY THAT HAS NOW COME INTO
12 HER LIFE, WHILE LYLE MENENDEZ IS SITTING IN JAIL.

13 THAT'S THE FIRST EFFORT THAT THE
14 PROSECUTION BRINGS UP AS TO TRYING TO MAKE UP SOME
15 EVIDENCE IN THIS CASE.
16 THEN WE GET TO BRIAN ESLAMINIA. AMIR
17 ESLAMINIA, I GUESS, IS THE RIGHT NAME. COMES IN AND
18 TESTIFIES. HE SAYS HE GOT A LETTER FROM LYLE
19 MENENDEZ. YOU'LL HAVE THE LETTER. AND IT LAYS OUT
20 AGAIN, THE MOVIE, THE SEAN PENN MOVIE AND HIS FATHER
21 BEING LIKE THAT. AND HE SAYS: "AND I WANT YOU TO
22 TESTIFY ABOUT ME OR ERIK TRYING TO GET A GUN ON
23 SATURDAY." AND HE LAYS OUT HOW THIS SHOULD BE DONE,
24 FURTHER DETAILS. "WE'LL TALK LATER."
25 IT'S AN EFFORT TO GET SOMEBODY TO COME
26 IN.
27 BUT YOU KNOW WHY HE DID THAT? WE'RE NOW
28 TALKING JULY, 1991. HE'S ALREADY TOLD JAMIE

52143

1 PISARCIK WHAT HAPPENED, AND SHE SAYS: "I DON'T
2 BELIEVE YOU." AND STORMS OUT AND LEAVES HIM.
3 DOESN'T GIVE YOU A LOT OF CONFIDENCE THAT PEOPLE ARE
4 GOING TO BELIEVE YOU AS TO SEXUAL MOLESTATION AND
5 WHAT THIS HOME WAS LIKE. HIS FIANCEE WOULDN'T EVEN
6 LISTEN TO HIM.
7 SO HE TRIES TO GET AROUND IT AND TRIES

8 TO SAY, "WELL, MAYBE THERE'S A DIFFERENT WAY." SO
9 HE WRITES THIS LETTER TO BRIAN ESLAMINIA.
10 NOW, WE KNOW THE TENSION THAT WAS GOING
11 ON AT THAT TIME BETWEEN ERIK MENENDEZ AND LYLE
12 MENENDEZ, BECAUSE ERIK MENENDEZ WANTED TO TALK ABOUT
13 THE MOLESTATIONS. AND LYLE MENENDEZ WANTED TO
14 PROTECT THE IMAGE OF HIS FATHER. EVEN NOW, JULY
15 1991, HE'S STILL WANTING TO PROTECT THE IMAGE OF HIS
16 FATHER, BECAUSE HE KNEW HOW IMAGE-CONSCIOUS THAT
17 FAMILY WAS. HE DIDN'T WANT TO DO ANYTHING HIMSELF
18 TO DESTROY IT, EVEN THOUGH HIS OWN LIFE WAS IN
19 JEOPARDY AND HE WAS IN JAIL.
20 AND WE HAVE SOME OF THE CONVERSATIONS.
21 WE HAVE ERIK'S TESTIMONY HERE AS TO THAT ASPECT.
22 I THINK THIS PARTICULAR TESTIMONY CAME
23 UP ON CROSS-EXAMINATION IN A QUESTION ASKED BY
24 MR. CONN OF ERIK MENENDEZ WHEN HE WAS ON THE STAND.
25 AND HE'S ASKING HIM ABOUT WHETHER THEY TALKED ABOUT
26 ALLEGATIONS AGAINST THE PARENTS, AND WHAT EFFECT IT
27 MIGHT HAVE ON THE VERDICT. AND ERIK MENENDEZ SAYS:
28 "FOR MANY YEARS THERE WAS A

52144

1 STRUGGLE BETWEEN MY BROTHER AND I, I
2 GUESS FOR TWO YEARS, ABOUT WHETHER WE

3 WOULD TALK SPECIFICALLY ABOUT THE
4 MOLESTATION AND HIM NOT WANTING TO THE
5 EXTREME, AND GOING TO GREAT EFFORTS TO
6 AVOID THAT, AND ME TRYING TO PRESSURE
7 HIM, TRYING TO KNOCK SOME SENSE INTO
8 HIM, SAYING THIS IS WHAT WE HAVE TO
9 DO, AND TRYING TO GET HIM INTO THERAPY
10 AND SEEING DIFFERENT PEOPLE SO HE
11 WOULD FEEL BETTER.

12 "WE -- THERE WERE CONSTANT -- I
13 WOULDN'T SAY CONSTANT, BECAUSE I
14 DIDN'T SEE HIM FOR A WHILE -- AND
15 CERTAINLY WE HAD DISCUSSED THOSE
16 THINGS."

17 MR. CONN'S SAYS:

18 "YOU SAID YOU AND YOUR BROTHER
19 MADE GREAT EFFORTS TO AVOID TESTIFYING
20 TO THE ALLEGATIONS OF MOLESTATION.

21 "YES.

22 "WHEN THE TIME CAME FOR HIM TO
23 TELL THAT STORY TO A JURY, HE TOLD IT,
24 DIDN'T HE?

25 AND ERIK MENENDEZ SAYS: "IT WAS
26 DIFFICULT. AND I TOLD HIM THAT I WAS
27 SORRY THAT I PRESSURED HIM INTO TO
28 DOING IT, AND THAT I WOULD NEVER DO

1 THAT AGAIN."

2 IT SHOWS THE TREMENDOUS RELUCTANCE THAT
3 LYLE MENENDEZ HAS ALWAYS HAD TO TALK ABOUT THE
4 MOLESTATIONS THAT OCCURRED TO HIM. AND IT EXPLAINS
5 WHY HE WENT TO THE LENGTHS -- AND IT WAS A STUPID
6 DUMB THING TO DO TO WRITE THAT LETTER TO
7 MR. ESLAMINIA. IT WAS A STUPID, DUMB THING TO DO TO
8 TRY TO GET SOMEBODY TO COME IN AND LIE ABOUT WHAT
9 HAPPENED. BUT AT LEAST IT BECOMES UNDERSTANDABLE
10 WHEN YOU UNDERSTAND THE REASON THAT IT WAS DONE.

11 THAT REASON IS HERE, WHEN HE'S TALKING
12 ABOUT ALL THE EFFORTS TO AVOID HAVING TO TALK ABOUT
13 BEING MOLESTED; THAT IT WAS JUST TOO HARD FOR LYLE
14 MENENDEZ TO DO.

15 AND WE KNOW THAT MR. ESLAMINIA NEVER
16 COMES IN TO TRIAL TO TESTIFY TO ANY OF THAT. DIDN'T
17 HAPPEN. THE PERJURY NEVER HAPPENED. WHY? BECAUSE
18 LYLE MENENDEZ CALLED HIM UP AND SAID: "CALL IT
19 OFF. I'VE BEEN WORKING WITH FATHER KEN. AND NOW I
20 KNOW I SHOULD TELL THE TRUTH, AND THAT'S WHAT I'M
21 GOING TO DO. SO DON'T COME IN, DON'T GO THROUGH
22 WITH THIS."

23 SO IT NEVER HAPPENED. AMIR ESLAMINIA
24 NEVER DID GO IN AND TESTIFY IN THAT FIRST TRIAL,
25 BECAUSE LYLE MENENDEZ SAW, AFTER WORKING IT THROUGH,
26 THAT HE SHOULD GO AHEAD AND TELL IT THE WAY IT

27 REALLY OCCURRED.

28 THEN WE HAVE DR. OZIEL. AGAIN, WE GOT

52146

1 INTO DR. OZIEL AND WHY THEY MADE UP THIS RIDICULOUS
2 STUPID STORY ON DECEMBER 11TH THAT THEY TOLD HIM ON
3 THE TAPE. HE'S BEING ASKED AGAIN, I BELIEVE, BY
4 MR. CONN:

5 "NO. AFTER THE 31ST, AFTER LYLE
6 COMES TO THE SESSION, I THEN WENT BACK
7 TO THE HOUSE WITH LYLE AND HE ASKED ME
8 WHAT I TOLD DR. OZIEL. AND I TOLD HIM
9 WHAT I HAD TOLD HIM.

10 "AND HE ASKED ME IF I HAD TOLD
11 HIM MORE SPECIFICALLY ABOUT THE
12 MOLESTATION, THE SEX WITH DAD, AND I
13 SAID NO. HE WAS ADAMANT THAT HE DID
14 NOT WANT THAT TO BE DISCUSSED. HE DID
15 NOT WANT TO GET INTO THAT AREA. HE
16 DID NOT WANT TO TALK ABOUT HIS OWN --
17 THE SEX BETWEEN HIM AND DAD. HE DID
18 NOT WANT TO TALK ABOUT THAT.

19 "HE SAID, 'IF YOU'RE HAVING
20 DIFFICULTY LIVING, I UNDERSTAND. WE
21 CAN TALK ABOUT IT. OUR RELATIONSHIP

22 WITH MOM AND DAD AND WHAT WE KNEW
23 ABOUT MOM AND DAD AND SO ON,' BUT HE
24 DID NOT WANT TO GET INTO THAT AND I
25 AGREED, AND WE WENT BACK TO MEETING
26 WITH DR. OZIEL AT THAT POINT BECAUSE
27 IT WAS FOR SEVERAL DIFFERENT REASONS.
28 "QUESTION: SO ARE YOU SAYING ON

52147

1 OCTOBER 31ST THAT YOU DECIDED WHEN YOU
2 WENT BACK ON NOVEMBER THE 2ND YOU WERE
3 JUST GOING TO PLAY IT BY EAR? SEE
4 WHAT HE WANTED TO HEAR?
5 "ANSWER: NO. HE DID TALK ABOUT
6 THAT SINCE WE WEREN'T TELLING HIM WHAT
7 WAS GOING TO HAPPEN. WHAT WERE THE
8 PARAMETERS OF THINGS WE COULD TELL
9 HIM.
10 "AND LYLE SAID, 'YOU KNOW, TALK
11 ABOUT YOUR RELATIONSHIPS AND EVEN YOUR
12 RELATIONSHIP WITH DAD IF THAT MAKES
13 YOU FEEL BETTER.'
14 "WELL, HE DIDN'T REALLY TRUST
15 DR. OZIEL, BUT IF IT MADE ME FEEL
16 BETTER, THAT'S WHAT WE COULD TALK

17 ABOUT. HE JUST DID NOT -- HE JUST
18 WANTED TO AVOID GETTING INTO THE SEX,
19 AND HIS MOLESTATION IN PARTICULAR, AT
20 ALL COST. HE DID NOT WANT TO DISCUSS
21 IT. SO THAT WAS THE ONLY THING THAT
22 WAS OFF BOUNDS."
23 NOW, THAT IS THE WAY THAT THEY WERE
24 GOING INTO DR. OZIEL. IT CARRIED OVER INTO DECEMBER
25 11TH. THIS TREMENDOUS NEED BY LYLE MENENDEZ NOT TO
26 TALK ABOUT WHAT HAD HAPPENED, NOT TO TALK ABOUT THE
27 SEX.
28 WHEN YOU LOOK AT THE TAPE YOU WILL HAVE

52148

1 THE TRANSCRIPT OF THE TAPE.
2 THE COURT: MR. GESSLER, IF YOU'RE GOING TO
3 GO INTO THE CONTENTS OF THAT, I DON'T KNOW IF YOU
4 ARE. PERHAPS IT WOULD BE A GOOD TIME TO TAKE A
5 BREAK.
6 MR. GESSLER: THAT'S FINE, YOUR HONOR.
7 THE COURT: WE'LL TAKE A RECESS AND WE'LL
8 RESUME AT 25 AFTER THE HOUR.
9 DON'T DISCUSS THE MATTER WITH ANYONE,
10 AND DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND
11 WE'LL RESUME IN 15 MINUTES.

12 (A RECESS WAS TAKEN FROM
13 10:10 A.M. TO 10:35 A.M.)
14
15 THE COURT: EVERYBODY READY? GET THE JURY
16 OUT, PLEASE.
17 (THE JURY ENTERED THE COURTROOM
18 AND THE FOLLOWING PROCEEDINGS
19 WERE HELD:)
20
21 THE COURT: OKAY. THE JURY IS BACK.
22 OKAY, MR. GESSLER, YOU MAY CONTINUE YOUR
23 ARGUMENT.
24 MR. GESSLER: THANK YOU, YOUR HONOR.
25 WHAT YOU WILL SEE WHEN YOU GET READY AND
26 WHICH YOU HAVEN'T GOTTEN TO SEE, THE RIDICULOUSNESS
27 -- IF THAT'S A WORD -- OF THE DECEMBER 11 TAPE, AND
28 THE TRANSCRIPT OF IT IN WHICH DR. OZIEL IS TALKING

52149

1 TO LYLE AND ERIK MENENDEZ ABOUT THEORIES AS TO WHY
2 THIS HAPPENED, AND THE GREAT LENGTHS TO WHICH LYLE
3 MENENDEZ INSISTED ON GOING TO AVOID TALKING ABOUT
4 HIS OWN SEXUAL MOLESTATION. WE HAVE ONE MORE
5 EXCERPT FROM THAT.
6 AGAIN, ERIK MENENDEZ TALKING ABOUT --

7 THIS WAS TALKING ABOUT THE BRIAN ESLAMINIA LETTER,
8 BUT IT GOES INTO THE TOTAL STATE OF MIND OF LYLE
9 MENENDEZ AT THAT TIME AS TO WHY HE WAS DOING THESE
10 THINGS.

11 AND HE SAYS:

12 "I TOLD HIM THAT THE FALSE
13 TESTIMONY IN FRONT OF A JURY WAS NOT
14 WHAT I WAS FOC -- I WAS FOCUSED ON.
15 THE FACT THAT LYLE WAS NOT DEALING
16 WITH THE FACT THAT HE HAD BEEN
17 MOLESTED AND THAT HE WAS GOING TO HAVE
18 TO TALK ABOUT THESE THINGS AND THAT
19 THESE THINGS WERE GOING ON AND WHAT --
20 I WANTED HIM TO COME TO TERMS WITH
21 THAT. AND I HAD MANY CONVERSATIONS
22 WITH DIFFERENT PEOPLE, FATHER KEN,
23 ASKING THEM TO HELP LYLE BECAUSE LYLE
24 WAS NOT COMING TO TERMS WITH IT AND
25 WAS DOING THESE OTHER THINGS --

26 "WELL, THIS THING, AND I THINK
27 JAMIE -- AND TO TRY TO GET OUT OF
28 TALKING ABOUT MOLESTATION. AND I WAS

52150

1 HAVING A LOT OF FRUSTRATION WITH LYLE

2 AT THE TIME, AND HE WEREN'T ABLE TO --

3 "MR. CONN: YOU'VE TOLD US ABOUT
4 YOUR FEELINGS ABOUT NOT TALKING ABOUT
5 MOLESTATION; IS THAT CORRECT?

6 "ANSWER: AND THAT'S WHAT I WAS
7 TALKING ABOUT BACK AND FORTH WITH
8 LYLE. HOW HE NEEDED TO TALK TO THE
9 PEOPLE THAT WERE HELPING AT THE TIME,
10 TALK TO FATHER KEN, A PSYCHIATRIST,
11 AND DEAL WITH THIS ISSUE. AND HE WAS
12 SAYING THAT HE DIDN'T WANT TO TALK
13 ABOUT THAT, THAT WE CARRIED DAD'S
14 PRIDE; AND WHENEVER I WOULD GET INTO
15 THAT, IT WOULD BE AN ARGUMENT WITH HIM
16 ABOUT WHETHER OR NOT, YOU KNOW, HE
17 SAID THAT HE WOULD RATHER DIE OR
18 ESCAPE THAN HAVE TO TALK ABOUT THESE
19 SECRETS."

20 THAT'S THE STATE OF MIND THAT LYLE
21 MENENDEZ WAS HAVING BACK IN DECEMBER 1989, THAT HE
22 WAS HAVING THROUGH THE FIRST YEAR IN JAIL, IN 1990,
23 AND ON UP WHEN HE WROTE THE LETTER TO BRIAN
24 ESLAMINIA. HIS FATHER'S PRIDE HAD BEEN DRUMMED INTO
25 HIM, THE IMAGE, AND HAD MEANT MORE THAN TELLING WHAT
26 HAD HAPPENED TO HIM, THAN COMING OUT WITH THE TRUTH
27 OF THE MOLESTATION.

28 AND THAT IS WHAT WAS HAPPENING ON

1 DECEMBER 11TH, WHEN YOU GET TO READ THE TOTAL TAPE.

2 MR. CONN HAS TAKEN SOME PARTS, A PAGE
3 HERE AND A PAGE THERE. THIS IS A WHOLE DOCUMENT
4 THAT YOU'LL HAVE TO READ AND TO LISTEN TO AS YOU
5 READ. IT IS ABOUT 35 PAGES. IT'S ABOUT AN HOUR
6 TAPE. AND YOU REALLY HAVE TO LISTEN TO IT AND READ
7 IT TWO OR THREE TIMES TO UNDERSTAND HOW NONSENSICAL
8 IT IS. BECAUSE IF YOU LOOK AT ONE PAGE OR TWO
9 PAGES, WELL, MAYBE. BUT WHEN YOU LOOK AT THE WHOLE
10 THING, YOU REALIZE IT'S TOTAL IDIOCY. IT'S TOTALLY
11 TRYING TO AVOID TALKING ABOUT WHAT THE TRUTH WAS.

12 AS EXAMPLES, WHEN YOU GET INTO PAGE 9,
13 AND THIS IS WHEN, AFTER DR. OZIEL HAS TWICE ADVANCED
14 THE THEORY THAT THEIR MOM'S DEATH WAS REALLY KIND OF
15 SUICIDE. AND THAT THEY WERE HELPING OUT AND LYLE
16 MENENDEZ SAYS THERE:

17 "AH, YOU KNOW, I KEPT THINKING IT
18 OVER. ALMOST AS IF IT WAS TRUE.
19 ALMOST AS IF I WAS LIKE AN INSTRUMENT
20 OF HERS IN KILLING HERSELF. THAT'S
21 WHERE WE SORT OF FEEL, LIKE YOU
22 MENTIONED BEFORE, THAT WE WERE DOING
23 HER AND US A FAVOR, IN PUTTING HER OUT
24 OF HER MISERY REALLY, THAT SHE WOULD

25 KILL HERSELF AT ANY MOMENT. AND OUR
26 REACTION WAS WE KNEW THAT IF SHE HAD
27 KILLED HERSELF MY FATHER WAS IN
28 TROUBLE. HE WOULD NOT PHYSICALLY BE

52152

1 ABLE TO HANDLE THAT BECAUSE SHE WAS
2 REALLY A HELPLESS VICTIM."

3 WHAT NONSENSE. WHEN YOU THINK OF ALL
4 THE EVIDENCE YOU'VE HEARD FROM THIS FAMILY, AND HERE
5 LYLE MENENDEZ IS TWICE SAYING, ALMOST AS IF IT WAS
6 TRUE. HE'S TRYING TO GO THROUGH WITH THIS CHARADE,
7 EVEN THEN HE'S SAYING --"ALMOST AS IF IT WAS TRUE,
8 ALMOST AS IF I WAS AN INSTRUMENT. WE FEEL, LIKE YOU
9 MENTIONED BEFORE," TAKING ON FROM DR. OZIEL AND
10 GOING ALONG WITH THIS.

11 DO YOU REALLY THINK -- DO YOU REALLY
12 THINK BEYOND A REASONABLE DOUBT AND THE
13 CIRCUMSTANTIAL EVIDENCE INSTRUCTION, THAT
14 MRS. MENENDEZ WAS KILLED BECAUSE SHE WAS KIND OF
15 SUICIDAL? THEN AT PAGE 30, AS MS. ABRAMSON SAID,
16 ERIK MENENDEZ ALMOST LOST IT. HE'S ALMOST TOLD THE
17 TRUTH. HE'S CRYING. HE'S TALKS ABOUT "AS IF I HAD
18 NO CHOICE."

19 SO LYLE MENENDEZ GOES ON AND SAYS: "OH,

20 SORT OF LIKE SHE HAD GIVEN ME PERMISSION TO CARRY
21 OUT HER SUICIDE." PLEASE. CARRY OUT HER SUICIDE?
22 "IT WAS OBVIOUS THAT SHE HAD DECIDED IN HER OWN
23 MIND THAT SHE WANTS TO DIE. SHE CAN'T DO IT. SHE
24 DOESN'T WANT TO TALK ABOUT IT. THERE'S NOTHING I
25 CAN DO TO HELP."
26 ANYTHING IN HERE THAT MAKES YOU THINK
27 THIS WAS A KILLING TO HELP HER COMMIT SUICIDE? THIS
28 IS TWO YEARS AFTER SHE WAS SUICIDAL. IT WAS 1987

52153

1 WHEN SHE FOUND OUT ABOUT THE AFFAIR THAT HER HUSBAND
2 WAS HAVING. WAS ALMOST SUICIDAL. IT CERTAINLY
3 WASN'T 1989, AS MRS. CANO SAID, WHEN SHE CAME. NO.
4 MRS. CANO SAID THEN THEY WERE ACTING LIKE LOVE BIRDS
5 BACK IN 1989. EVERYTHING WAS FINE.

6 THE REASON YOU CAN SHOW IT'S RIDICULOUS
7 -- YOU JUST DON'T HAVE TO PAY ATTENTION TO MY WORD
8 ON IT. BUT LYLE MENENDEZ ALREADY TALKED TO THE
9 POLICE. THAT'S THE IMPORTANT PEOPLE. HE'D ALREADY
10 TALKED TO THE POLICE ON AUGUST 21ST, AND WHEN HE
11 TALKED TO THEM ON AUGUST 21ST, WHAT HE SAID WAS --

12 THIS IS AT PAGE 12 FROM THE STATEMENT HE
13 MADE TO DETECTIVE EDMONDS:

14 HE SAID: "ONLY MY BROTHER AND I

15 KNOW THIS, BUT SHE WAS ON THE VERGE OF
16 CONTEMPLATING SUICIDE. SHE WAS VERY
17 EDGY AND SUICIDAL IN THE LAST FEW
18 YEARS, BUT SHE SEEMED VERY STABLE
19 RECENTLY."

20 NOW, IF HE'S TRYING TO MAKE UP -- TELL A
21 STORY HERE, THE REAL TRUTH ABOUT SUICIDAL -- AND
22 HE'S TOLD THE POLICE SHE WAS STABLE, THAT DOESN'T
23 HELP HIM IN ANY WAY. HE'S TRYING TO AVOID THE
24 TRUTH. AND THAT'S WHY HE TOLD GLENN STEVENS: "IF
25 THEY GET THAT TAPE I'M IN TROUBLE," HE TOLD HIM.

26 HE KNEW THIS TAPE WASN'T TO HELP HIM,
27 THAT IT WAS ABSOLUTE NONSENSE, WHAT HE WAS SAYING ON
28 THAT TAPE. BUT ANYTHING TO KEEP OZIEL HAPPY SO HE

52154

1 WOULDN'T TO GO THE POLICE. AND ANYTHING, ANYTHING,
2 TO AVOID TALKING ABOUT THE SEXUAL MOLESTATION THAT
3 OCCURRED TO HIM.

4 AND THE REAL PART IN HERE IS WHY JOSE
5 MENENDEZ -- A COUPLE OF TIMES DR. OZIEL
6 SAYS: "OKAY. WHY DAD?" AND HE'S NEVER EVEN THEN
7 ABLE TO FISH UP AN ANSWER WHICH MAKES ANY SENSE
8 WHATSOEVER. HE ASKS: "WHY DAD?"

9 AND THIS IS AT PAGE 12. AND HE SAYS:

10 "BASED ON WHAT HE'S --"

11 THIS IS PAGE 13.

12 "BASED ON WHAT HE'S DOING TO MY
13 MOTHER."

14 AND OZIEL SAYS: "BASED ON WHAT?"
15 WHAT WERE THE THINGS THAT HE WAS
16 DOING? THERE'S A LOT OF STUFF YOUR
17 DAD WAS DOING."

18 AND THIS IS WHERE HE TALKS ABOUT BEING
19 DISINHERITED. LYLE SAID: "THAT DIDN'T ENTER INTO IT
20 TOO MUCH." HE NEVER ANSWERS THE QUESTION. AND THEN
21 FINALLY HE TRIES TO COME UP WITH SOMETHING.

22 AND HE SAYS -- LET'S GET BACK TO WHY
23 DAD? "WHY DID YOUR DAD HAVE TO DIE?"

24 AND HE SAYS: "I FELT THE BOND, THOUGH,
25 YOU KNOW."

26 "WHY DID YOUR DAD HAVE TO DIE?"

27 HE SAYS: "BUT I STILL DON'T THINK IT HAD
28 ANYTHING TO DO WITH -- KILLING HIM HAD NOTHING TO DO

52155

1 WITH US. IT HAD TO DO WITH ME REALIZING A NUMBER OF
2 THINGS THAT ALL CULMINATED, WHICH WAS AND COULD HAVE
3 CULMINATED AT ANY POINT."

4 "WHAT DOES THAT MEAN?

5 "MY FATHER HAD A DREAM OF GOING INTO
6 POLITICS. AND IT WAS BECOMING APPARENT MY MOTHER
7 WOULDN'T BE ABLE TO HANDLE THAT. SHE WOULD AGAIN BE
8 THAT SHELL OF A SHOWCASE FOR HIM. IT WOULD BECOME
9 TIME-CONSUMING. THAT WOULD BE HIS NEW LOVE,
10 POLITICS INSTEAD OF HER."

11 THAT'S THE BEST HE COULD DO IN TRYING TO
12 GET AWAY FROM TALKING ABOUT THE SEX. KILLING DAD
13 BECAUSE HE WAS GOING TO BECOME A POLITICIAN AND
14 LEAVE MOM. SO IT WAS A MERCY KILLING FOR BOTH OF
15 THEM.

16 THAT'S THE STUPIDEST THEORY OF ANY THAT
17 HAVE BEEN ADVANCED HERE, THIS SO-CALLED CONFESSION,
18 THIS SO-CALLED TAPE TO DR. OZIEL, THAT IT WAS REALLY
19 SUICIDE OF THE MOTHER AND GETTING RID OF DAD BECAUSE
20 HE WAS GOING TO GO INTO POLITICS AND LEAVE HER. SO
21 YOU TAKE OUT BOTH YOUR PARENTS?

22 AGAIN, WE APPLY THE CIRCUMSTANTIAL
23 EVIDENCE INSTRUCTION HERE ON MOTIVE, ON INTENT, ON
24 PREMEDITATION, DELIBERATION AND MALICE.

25 YOU CANNOT FIND THE
26 DEFENDANT GUILT OF THE CRIMES CHARGED,
27 OR ANY LESSER CRIMES, UNLESS THE
28 PROVED CIRCUMSTANCE IS NOT ONLY

1 CONSISTENT WITH THE THEORY THE
2 DEFENDANT HAD THE REQUIRED SPECIFIC
3 INTENT OR MENTAL STATE, BUT CANNOT BE
4 RECONCILED WITH ANY OTHER RATIONAL
5 CONCLUSION.

6 WE GET INTO THE SECOND PART ABOUT IF
7 THERE'S TWO REASONABLE INTERPRETATIONS, YOU HAVE TO
8 ADOPT THE REASONABLE ONE. IN THIS CASE THE MOST
9 UNREASONABLE INTERPRETATION YOU COULD PUT ON THAT
10 DECEMBER 11TH TAPE IS THAT THESE KILLINGS TOOK PLACE
11 BECAUSE HIS MOTHER WAS SUICIDAL AND HIS FATHER WAS
12 GOING TO GO INTO POLITICS. MAKES NO SENSE AT ALL.
13 IT ISN'T REASONABLE.

14 AND WHEN YOU LOOK AT IT THAT WAY, YOU
15 KNOW THAT THE WAS TAPE MADE FOR EXACTLY THE REASONS
16 THAT ERIK MENENDEZ TOLD YOU IT WAS. IT WAS TO GET
17 DR. OZIEL OFF THEIR BACKS AND TO AVOID HAVING TO
18 TALK ABOUT THE REAL ISSUES OF SEX AND FEAR AND
19 SELF-DEFENSE AND THE THINGS THAT LYLE MENENDEZ WAS
20 CONSTITUTIONALLY UNABLE TO TALK ABOUT.

21 WHAT'S THE HALLMARK OF THE PROSECUTION'S
22 CASE? THE GREAT REBUTTAL WITNESS THEY CALLED IN
23 HERE THAT WAS GOING TO SEW EVERYTHING UP FOR 'EM.
24 CRAIG CIGNARELLI.

25 NOW, CRAIG CIGNARELLI, HE'S MORE RECENT.
26 SO IT'S EASY TO REMEMBER WHAT HE LOOKED LIKE ON THE
27 STAND AND TO REMEMBER HIS DEMEANOR AND WHO HE WAS.
28 HE'S LESSENERED HIS AMBITIONS NOW FROM SENATOR TO

1 CONGRESSMAN, I THINK.

2 BUT HE REALLY DIDN'T WANT TO TALK AT ALL
3 ABOUT RECEIVING MONEY FROM "HARD COPY," DIDN'T WANT
4 TO ESPECIALLY TALK ABOUT THE AMOUNT OF MONEY OR THE
5 CONTRACT THAT HE'D ENTERED INTO, AND FLAT OUT LIED
6 ABOUT WHAT HE DID FOR CHARITY.

7 I MEAN, HERE'S A MAN WHO'S ON THE STAND,
8 AND HE TELLS YOU, UNDER OATH -- THIS IS RIGHT IN
9 FRONT OF YOUR VERY EYES AND EARS -- THAT HE DIDN'T
10 WANT TO TAKE THE WHOLE 25,000 THAT THEY STARTED --
11 GEE, THEY WERE TRYING TO MAKE HIM TAKE 35,000. BUT
12 HE DIDN'T WANT TO DO THAT. HE SAID. "NO. ALL I
13 NEED IS 25,000. PLEASE DON'T GIVE ME THAT EXTRA
14 MONEY."

15 WE'VE SHOWN THAT'S A LIE. COMMON SENSE
16 TELLS YOU THAT'S A LIE. WHAT TV SHOW PRODUCER, OR
17 ANYBODY ELSE, IS EVEN GOING TO SUGGEST MORE MONEY
18 THAN THEY'RE ASKING FOR? THEY'D HAVE HIM WORK FOR
19 NOTHING IF THEY COULD. ANYWAY, HE TRIES TO MAKE US
20 PROVE THAT.

21 WE BRING IN A WITNESS IN SHOWING IT WAS
22 A FLAT-OUT LIE FROM HIS EXALTED SENSE OF EGO, OR
23 WHATEVER, TRYING TO MAKE YOU BELIEVE WHAT HE'S

24 WORTH, AND THEN SAYS: "WELL, AND I DIDN'T KEEP ALL
25 THAT. I WAS GIVING 5,000 TO CHARITY. REALLY ABUSED
26 KIDS. AND I WANTED THAT ANNOUNCEMENT MADE ON
27 NATIONAL T.V."

28 WELL, IT TURNS OUT THAT WAS A LIE TOO.

52158

1 HE DIDN'T GIVE \$5,000. THAT'S WHY HE WAS VARY
2 EVASIVE ABOUT WHERE HIS CHECKING ACCOUNTS WERE AND
3 EVERYTHING ELSE. IT TURNED OUT WE COULD PROVE IT
4 WAS \$3,000 AND NOT \$5,000. SO THAT'S THE SECOND LIE
5 HE TOLD.

6 BUT THE BIGGEST ONE, THE MOST RIDICULOUS
7 LIE HE TOLD WAS HIS ANONYMITY. HE WANTED TO BE
8 ANONYMOUS, SO HE WROTE THIS -- WHAT HE SAYS WAS
9 \$5,000, BUT REALLY \$3,000-CHECK, AND HE DID IT
10 BECAUSE HE WANTED TO BE ANONYMOUS, AND HE DIDN'T
11 WANT ANYBODY TO KNOW WHAT A GOOD FELLOW HE WAS. HE
12 DIDN'T WANT THE PEOPLE ON THE STREETS OF SANTA
13 BARBARA COMING UP TO HIM SLAPPING HIM ON THE
14 SHOULDER AND SAYING: "CRAIG, THAT WAS A GOOD THING
15 YOU DID. I'M SO PROUD OF YOU."

16 HOW HE WRITES A CHECK ANONYMOUSLY, I'M
17 NOT SURE. HE'S TALKING ABOUT SLIPPING IT ON THE
18 DESK AND SAYING: "I DON'T WANT ANY CREDIT FOR IT"

19 IN SANTA BARBARA.

20 HE CERTAINLY WASN'T ANONYMOUS ON
21 "HARD COPY" WHEN HE HAD THEM ANNOUNCE AT THE END OF
22 THE SEGMENT: "AND CRAIG CIGNARELLI HAS MADE A
23 SUBSTANTIAL CONTRIBUTION TO CHARITY OF THE MONEY
24 THAT HE'S RECEIVING HERE."

25 WHAT DOES HE THINK, THEY DON'T GET
26 "HARD COPY" IN SANTA BARBARA? IF HE REALLY WANTED
27 TO NOT BE SEEN AS A GOOD GUY IN SANTA BARBARA, BE
28 ANONYMOUS AND BE THIS BENEFACTOR -- HE THINKS NOBODY

52159

1 IN SANTA BARBARA SEES HIS MUG ON "HARD COPY" AND IS
2 GOING TO COME UP AND TELL HIM THE SAME THING?

3 "WHAT A GOOD THING YOU DID, CRAIG."

4 IT'S RIDICULOUS. BUT HE, UNDER OATH, TRIES TO
5 MAKE YOU SWALLOW THAT.

6 NOW, IN AND OF ITSELF, THAT MIGHT NOT BE
7 VERY IMPORTANT. I DON'T THINK ANYBODY BELIEVED WHAT
8 HE SAID ON THERE. IT MIGHT NOT BE VERY IMPORTANT,
9 EXCEPT HE'S TAKEN AN OATH TO TELL THE TRUTH ON
10 EVERYTHING. AND THE WITNESS INSTRUCTION YOU'LL
11 RECEIVE IS: ANYBODY WILLFULLY FALSE IN A MATERIAL
12 POINT, YOU CERTAINLY HAVE TO BE SUSPICIOUS OF
13 ANYTHING ELSE THAT THEY'RE GOING TO TELL YOU,

1 BUT YOU KNOW WHAT IT DOES. AND IT REALLY,
2 AS I SAY, IT DOESN'T MAKE ANY DIFFERENCE IF \$3,000 OR
3 ALL \$25,000 WENT TO CHARITY. IT DOESN'T MAKE ANY
4 DIFFERENCE AS TO THE CASE, PERHAPS, BUT IT SURE MAKES A
5 DIFFERENCE AS TO WHO THIS FELLA IS THAT THE PROSECUTION
6 IS RELYING ON TO TRY TO CONVINCE YOU BEYOND A REASONABLE
7 DOUBT THAT THIS IS A MURDER. IT TELLS YOU SOMETHING
8 ABOUT WHO THAT PERSON IS, AND HOW LOOSE HE IS WITH THE
9 TRUTH, AND HOW HE FEELS ABOUT HIMSELF AND HOW HE FEELS
10 ABOUT LIFE.

11 BUT YOU GO A LITTLE FURTHER INTO THE --
12 WHAT HE'S SUPPOSED TO HAVE TOLD THE POLICE BACK IN
13 NOVEMBER OF 1989, AND THE FIRST STORY HE GIVES THEM, AND
14 THAT'S WHERE ERIK COULDN'T SHOOT MOM, AND HE HAS A
15 NOTEBOOK THAT HE SAYS HE HAS WRITTEN IT DOWN IN.

16 SO WHEN DETECTIVE ZOELLER GOES -- AND HE
17 DOESN'T GO OUT THERE FOR NOTHING -- HE GOES AND GETS A
18 SEARCH WARRANT BASED ON THAT, FILES AN AFFIDAVIT UNDER
19 OATH, GOES TO ALL THE TROUBLE TO GET THE NOTEBOOK.

20 AND THE NOTEBOOK DOESN'T HAVE A WORD ABOUT
21 ALL THESE DETAILS THAT ERIK MENENDEZ IS SUPPOSED TO HAVE
22 GIVEN. NOT A WORD. HE WINGS IT.

23 LET'S TAKE A LOOK. JUST A SEGMENT OF CRAIG
24 CIGNARELLI, CROSS-EXAMINATION BY MR. LEVIN:

25 "QUESTION: NOW FOLLOWING -- NOW

26 LET ME GO BACK.

27 ON NOVEMBER THE 17TH, 1989 YOU
28 ATTRIBUTED TO ERIK MENENDEZ THE STATEMENT

-13375

1 THAT ERIK COULD NOT SHOOT HIS MOTHER,
2 CORRECT?

3 "ANSWER: CORRECT.

4 "QUESTION: AND HE DIDN'T SAY THAT
5 TO YOU, DID HE?

6 "ANSWER: NO.

7 "QUESTION: AND YOU KNEW WHEN YOU
8 WERE TELLING THE POLICE ON NOVEMBER THE
9 17TH, 1989 THAT THAT WAS NOT TRUE?

10 "ANSWER: YES."

11 SO HE LIED TO THE POLICE ABOUT THAT.

12 AND THEN THE STATEMENT:

13 "AFTER IT LOOKED LIKE MOM WAS DEAD,
14 ERIK SHOT HER TWICE. DID ERIK MENENDEZ
15 TELL YOU THAT?

16 "ANSWER: NOT THAT I RECALL, NO.

17 "QUESTION: YOU MADE THAT UP, TOO?

18 "ANSWER: YEAH. I TOLD YOU I WAS
19 TRYING TO PROTECT HIM, YEAH."

20 THAT IS AS RIDICULOUS AS THE STATEMENTS HE
21 WAS MAKING UP HERE ON THE STAND ABOUT WANTING TO REMAIN
22 ANONYMOUS AND NOT BE SEEN AS BEING A GOOD GUY.

23 HOW WOULD YOU POSSIBLY PROTECT ERIK
24 MENENDEZ BY TELLING THE POLICE THAT HE HAD MADE ALL
25 THESE STATEMENTS ABOUT SHOOTING MOM AND DAD, AND THEN
26 GOING OUT WITH A BODY WIRE 10 DAYS LATER TRYING TO GET
27 SOME KIND OF A CONFESSION FROM HIM? PROTECT HIM? THE
28 OLD SAYING: "WITH FRIENDS LIKE THAT, WHO NEEDS

-13374

1 ENEMIES," WAS NEVER TRUER.
2 BUT THAT DOESN'T PROTECT ERIK MENENDEZ IN
3 ANY WAY, AND IT LIES ABOUT LYLE MENENDEZ.
4 BUT THIS IS THE KIND OF LOOSENESS WITH THE
5 TRUTH TO THE POLICE, TO YOU, TO EVERYBODY, THAT CRAIG
6 CIGNARELLI DISPLAYS. HIS WHOLE STORY WAS WINGING IT.
7 BACK IN THE GRAND JURY TESTIMONY THAT HE
8 GAVE, HE SAYS AT THAT TIME TO THE GRAND JURY -- AND THIS
9 WAS A GRAND JUROR WHO ASKED THE QUESTION:
10 "DID HE SAY WHAT KIND OF GUNS WERE
11 USED?"
12 AND CRAIG CIGNARELLI SAID:
13 "NO. I READ ABOUT SHOTGUNS IN THE
14 PAPER, BUT ERIK MENENDEZ DIDN'T SAY WHAT
15 KIND OF GUNS WERE USED."
16 BUT NOW ALSO AFTER TESTIFYING TO THAT, IN
17 HIS STORY HE TELLS YOU: "ERIK MENENDEZ SAID THEY USED
18 SHOTGUNS, WENT IN WITH SHOTGUNS."

19 HE DOESN'T KNOW. HE WINGS IT. AND HE
20 WINGS IT IN A CAPITAL CASE WITH LIFE AT STAKE. HOW CAN
21 YOU PUT CREDIBILITY -- HOW CAN YOU PUT CREDENCE INTO A
22 WITNESS LIKE THAT FOR A CASE AS SERIOUS AS THIS?
23 HE ADMITS HIS LIES, HE'S MADE IT UP, WHEN
24 HE GETS CAUGHT, BECAUSE HE'S TOLD TWO DIFFERENT THINGS.
25 HE SAYS -- AND YOU WILL REMEMBER THE BIG
26 PICTURE -- I WON'T GET IT OUT NOW. THE ONE OF THE
27 LIVING ROOM AND THE COUCH, THE DIAGRAM THAT WE'VE BEEN
28 WORKING WITH HERE.

-13373

1 HE PUTS THE MOTHER WAY AT THE END OF THE
2 COUCH. IT'S AN L-COUCH WITH YELLOW STICKERS, AND I
3 THINK THEY'RE STILL ON IT. AND WHEN YOU GET IN THE JURY
4 ROOM -- BUT YOU CAN REMEMBER.
5 HE PUT YELLOW STICKERS WAY DOWN AT THE END
6 OF THE YELLOW COUCH, NOT WHERE MRS. MENENDEZ WAS AT ALL.
7 THAT'S WHAT THE NEWSPAPER HAD SAID, THAT SHE WAS AT THE
8 OTHER END OF AN L-COUCH. NOT WHERE SHE REALLY WAS.
9 BECAUSE HE WINGS IT. MAKES IT UP. TAKE
10 SOMETHING HERE THAT YOU'VE READ, TAKE SOMETHING THERE,
11 MAKE UP A GOOD STORY. HE JUST CAN'T KEEP THE STORY
12 STRAIGHT, BECAUSE THE STORY ISN'T TRUE. ALL THAT ERIK
13 MENENDEZ TOLD CRAIG CIGNARELLI IS WHAT ERIK MENENDEZ
14 TOLD YOU HE TOLD HIM.

15 YOU KNOW, THERE WAS NO FURNITURE -- YOU
16 KNOW THAT NO-FURNITURE STORY WAS NOT TRUE. YOU KNOW THE
17 YELLOW TAPE WASN'T STILL UP. ALL THOSE DETAILS THAT HE
18 MADE UP.

19 BUT WHAT ELSE DO WE HAVE? WHY SHOULD YOU
20 TOTALLY DISBELIEVE CRAIG CIGNARELLI IN THIS
21 EVER-CHANGING STORY THAT HE TELLS YOU? AND THE WAY THAT
22 IT'S SUPPOSED TO COME ABOUT -- THE BIGGEST REASON, AMONG
23 OTHERS -- BUT CULMINATING WITH ALL THE REST OF THE
24 REASONS TO KNOW THAT CIGNARELLI IS WINGING IT AND HAS NO
25 IDEA WHAT HE'S TALKING ABOUT, IS WHEN HE SAID THAT ERIK
26 MENENDEZ SAID AFTER THEY HAD SHOT THEIR PARENTS, THEY
27 RAN OUT THE BACK AND INTO THE ALLEY AND TO THE CAR.
28 AND THE CAR WAS IN FRONT. AND YOU HAVE

-13372

1 HEARD FROM DETECTIVE ZOELLER, AND YOU HAVE SEEN THE
2 PICTURES HERE; THAT THERE IS ABSOLUTELY NO WAY FOR ERIK
3 AND LYLE MENENDEZ TO GET FROM THE BACK -- FROM THE
4 ALLEY -- WHICH GOES BACK HERE (INDICATING), TO GET FROM
5 THAT ALLEY AROUND AND BACK TO THE CAR, UNLESS THEY RUN
6 ALL THE WAY AROUND THE BLOCK. THERE'S NO SIDE YARDS,
7 THERE'S NO INTERSECTING ALLEYS. THERE'S NOTHING ELSE.
8 THEY'D HAVE TO RUN ALL THE WAY AROUND THIS BLOCK, BACK
9 UP HERE AND BACK TO THE CAR.
10 OR EQUALLY DISTANT THIS WAY, PAST

11 MRS. KROM'S HOUSE AND THE OTHER HOUSES, PRESUMABLY, OF
12 NEIGHBORS WHO WOULD BE CURIOUS, WHETHER THEY THOUGHT IT
13 WAS FIRECRACKERS OR SHOTS GOING OFF AT 10:00 O'CLOCK IN
14 THE EVENING; AND THIS WAY, AND THEN BACK OUT TO THE CAR.
15 WITH TWO SHOTGUNS PRESUMABLY HELD OVER THEIR HEADS OR
16 SOMEPLACE, AND RUNNING ALL THE WAY.

17 WHAT WOULD IT TAKE, EVEN FOR TWO YOUNG
18 ATHLETES? IT WOULD TAKE PROBABLY AT LEAST TWO MINUTES
19 TO ACCOMPLISH THAT JOURNEY, CARRYING THE SHOTGUNS AND
20 ATTRACTING THE ATTENTION OF ABSOLUTELY ANY CURIOUS
21 NEIGHBORS, PASSERS-BY, POLICE OFFICERS, OR ANYBODY ELSE.

22 IT'S ABSOLUTELY ABSURD. AND YET -- AND
23 VISUALIZE IT. AND YET CRAIG CIGNARELLI SAYS: "YEAH,
24 THAT'S WHAT HE TOLD ME."

25 YOU KNOW HE DIDN'T TELL HIM THAT.
26 CIGNARELLI HAS MADE EVERYTHING UP, AND YOU CAN'T BELIEVE
27 ANYTHING HE'S SAYING, BECAUSE IT ISN'T CONSISTENT.
28 DOESN'T MAKE SENSE. AND HE HAS ALREADY DEMONSTRATED TO

-13371

1 YOU HIS ABILITY TO LIE TO MAKE HIMSELF LOOK GOOD RIGHT
2 THERE ON THE STAND IN FRONT OF YOU WHEN HE STARTS TO
3 TALK ABOUT WHAT HE WAS GOING TO DO WITH THE MONEY THAT
4 HE GOT FROM "HARD COPY," AND OTHER THINGS IN HIS LIFE.

5 YOU THINK THAT CIGNARELLI HAS THE
6 CREDIBILITY FOR EACH OF YOU TO BELIEVE BEYOND A

7 REASONABLE DOUBT THAT THIS IS A MURDER CASE?

8 ONE OTHER THING WE NEED TO TALK ABOUT, AND

9 THAT'S THE MAFIA THING. MS. ABRAMSON COVERED IT. BUT

10 THE IDEA THAT THESE PEOPLE WERE KILLED IN A WAY TO MAKE

11 IT LOOK LIKE ORGANIZED CRIME DID IT.

12 THAT NIGHT AT THE POLICE STATION WHEN LYLE

13 MENENDEZ WAS ASKED ABOUT IT, AND SERGEANT EDMONDS ASKED

14 HIM TWO OR THREE TIMES: "WE'VE GOT TO FIND OUT WHAT

15 HAPPENED. TELL US WHAT HAPPENED."

16 LYLE MENENDEZ SAID HE DIDN'T WANT BAD PRESS

17 ABOUT HIS FATHER, AND AT ONE POINT HE SAID IT MIGHT BE

18 BUSINESS-RELATED, AND HE TALKS ABOUT HIS FATHER'S

19 BUSINESSES. NOTHING ABOUT MAFIA, NOTHING OF THAT

20 NATURE.

21 THEN THE PRESS COMES OUT A DAY OR TWO LATER

22 WITH STORIES ATTRIBUTING IT TO ORGANIZED CRIME.

23 DETECTIVE ZOELLER GOES TO NEW JERSEY IN SEPTEMBER, TALKS

24 TO HIM. LYLE MENENDEZ IS INCENSED ACTUALLY ABOUT THIS

25 ORGANIZED-CRIME STUFF THAT'S COME OUT, AND HE SAYS:

26 "WHERE'D THAT COME FROM?"

27 "IT CAME FROM THE CORONER," DETECTIVE

28 ZOELLER SAYS. "WE DIDN'T PUT IT OUT FROM BEVERLY

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1 HILLS."

2 AND LYLE MENENDEZ IS UPSET ABOUT IT,

3 BECAUSE HIS GRANDMOTHER IS UPSET ABOUT IT, HIS FAMILY IS
4 UPSET ABOUT IT, HE IS UPSET ABOUT IT.

5 NOW, YOU KNOW THE ONLY PEOPLE THAT COUNT IN
6 A HOMICIDE INVESTIGATION LIKE THIS, THE ONLY PEOPLE THAT
7 COUNT WHEN YOU TALK TO THEM ARE THE POLICE, BECAUSE THEY
8 ARE THE ONES INVESTIGATING THE LEADS, AND THEY ARE THE
9 ONES WHO ARE GOING TO DECIDE WHETHER TO ARREST YOU OR
10 NOT.

11 THEY COUNT. BUT WHAT YOU TELL FRIENDS -- I
12 MEAN, OKAY. YOU'VE GOT JAMIE AND WENSKOSKI AND GLENN
13 STEVENS, AND A WEEK AFTERWARD -- AFTER IT'S ALL HIT THE
14 PRESS, AND THEY'RE ASKING LYLE MENENDEZ ABOUT THIS. HE
15 SAYS: "YEAH. I GUESS IT WAS MAFIA OR BUSINESS-RELATED,
16 OR SOMETHING LIKE THAT." THAT KEEPS HIM FROM HAVING TO
17 ANSWER EMBARRASSING QUESTIONS TO HIS FRIENDS.

18 BUT WHAT COUNTS IS THE POLICE. IF YOU'RE
19 REALLY TRYING TO MAKE IT LOOK LIKE A MAFIA HIT OR AN
20 ORGANIZED-CRIME HIT, YOU'RE DOING IT BECAUSE YOU WANT TO
21 GET THE POLICE OFF YOUR BACK AND GOING DOWN ANOTHER
22 TRAIL.

23 SO THE ONE HE WOULD BE TRYING TO CONVINCE
24 WOULD BE DETECTIVE ZOELLER. HE IS THE GUY, IF YOU'VE
25 DONE THIS AND WANT TO GET AWAY WITH IT, THAT YOU WANT TO
26 SEND OFF ON A WILD GOOSE CHASE. "GO LOOK AT THE MAFIA.
27 GO LOOK AT BLOOM." GO LOOK AT ALL THOSE PEOPLE.

28 SO WHAT DOES LYLE MENENDEZ SAY WHEN THEY'RE

1 TALKING BACK THERE IN NEW JERSEY? HE SAYS: "I DON'T
2 BELIEVE THIS ORGANIZED-CRIME STUFF."

3 ZOELLER SAYS: "WHAT AREAS TO LOOK AT
4 (SIC)?

5 AND LYLE SAYS: "YEAH, BECAUSE, YOU KNOW, I
6 DON'T BELIEVE THE ORGANIZED-CRIME THING UNTIL I SEE
7 SOMETHING, YOU KNOW."

8 LYLE MENENDEZ SAYS: "IT COULD BE THE WORST
9 THING MY DAD COULD IMAGINE, TO HAVE HIS DEATH ASSOCIATED
10 WITH ORGANIZED-CRIME."

11 NOW, ACCORDING TO THE PROSECUTION'S THEORY,
12 YOU GO TO ALL THE TROUBLE OF SHOOTING KNEES IN ORDER TO
13 MAKE IT LOOK LIKE A CRIME HIT, A MAFIA HIT. YOU GO TO
14 ALL THAT WORK.

15 AND THEN WHEN THE POLICE, THE ONES THAT YOU
16 REALLY NEED TO CONVINCE COME, YOU SAY YOU DON'T BELIEVE
17 THAT. THAT'S RIDICULOUS. AND WHAT ELSE IS RIDICULOUS
18 IS THAT YOU KNOW THAT THIS THING DIDN'T HAPPEN THAT WAY,
19 BECAUSE THERE WASN'T TIME.

20 EVERY WITNESS WHO'S TESTIFIED ABOUT THE
21 SHOTS: MRS. KROM, HER SON JOSHUA, MRS. WILLIAMS, THEY
22 ALL CAME IN AND THEY SAID IT WAS POP-POP-POP-POP-POP.

23 THERE IS NO TIME TO GO AIMING AT PEOPLE AND
24 SHOOTING KNEES WHEN IT'S THAT FAST. IT'S OVER. IT
25 HAPPENED IN ABOUT 10 SECONDS OR SO, JUST EXACTLY AS
26 MRS. KROM AND OTHERS SAID. UNLOAD THOSE GUNS AND SHOOT,
27 AND THAT'S WHAT THE POP-POP-POP-POP-POP EVERYBODY HEAR

28 WAS. NO TIME TO DO ALL THIS TO MAKE IT LOOK LIKE

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1 SOMETHING OTHER THAN WHAT IT WAS.

2 AND IF IT WERE, YOU CERTAINLY WOULD WANT
3 THE POLICE TO GO THAT WAY, AND LYLE MENENDEZ DID NOT.
4 IN FACT, HE TOLD THEM: "I DON'T BELIEVE IT."

5 SO THAT STORY JUST DOESN'T MAKE ANY SENSE
6 AT ALL.

7 THE OTHER THING THAT HAPPENED WAS BACK
8 THERE IN NEW JERSEY, LYLE MENENDEZ HAD WENSKOSKI AND THE
9 BODYGUARDS, AND HE TELLS DETECTIVE ZOELLER THAT HE
10 DIDN'T WANT TO PAY THEM ANYMORE. BECAUSE WHILE THE
11 COMPANY WAS PAYING THEM, THAT'S ONE THING, AND THERE'S
12 NOT MUCH YOU CAN DO WHEN THE COMPANY IS PAYING IT, SAY,
13 "GEE, I DON'T NEED BODYGUARDS." THAT WOULD KIND OF LAY
14 YOU OUT.

15 BUT WHAT HE SAYS IS HE DIDN'T WANT TO PAY
16 FOR IT HIMSELF, BECAUSE IT'S EXPENSIVE. HE'S NOT USING
17 THE ESTATE MONEY. HE IS NOT WASTING MONEY ON THE
18 BODYGUARDS.

19 HE SAYS, "YOU KNOW, I JUST FELT LIKE THE
20 COMPANY WAS NOT GOING TO PAY FOR IT AFTER A CERTAIN
21 AMOUNT OF TIME. BUT YOU KNOW, IT'S ONE HELLUVA EXPENSE.
22 I WASN'T GOING TO PAY FOR IT. I WASN'T GOING TO PAY FOR
23 IT. I FIGURED WHILE THE COMPANY WAS GOING TO BE ABLE TO

24 PAY FOR IT, I'D GET SOME SECURITY."
25 BUT HE DIDN'T GO PAYING THESE BODYGUARDS
26 HIMSELF.
27 HE DEVELOPED, AS YOU SAW, A KIND OF A
28 FATHER/SON TYPE RELATIONSHIP WITH WENSKOSKI, WHERE HE

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1 SAW HIM AS AN ADVISOR AND A FIGURE HE NEEDED.
2 SO WHAT IS HE GOING TO TELL WENSKOSKI WHEN
3 HE DOESN'T NEED HIM ANYMORE? HE TELLS HIM: "WELL,
4 WE'VE GOT IT TAKEN CARE OF. I KNOW THEY'RE NOT AFTER ME
5 ANYMORE." HE HAS TO MAKE UP SOME STORY. THIS MAN HAS
6 BECOME HIS FRIEND. HE DOESN'T WANT TO HURT HIS
7 FEELINGS, SO HE LETS HIM GO.
8 BUT HE DOESN'T WANT TO PAY FOR IT ANYMORE.
9 HE DOESN'T WANT TO PAY IT OUT OF HIS OWN POCKET, AND SO
10 HE LETS HIM GO.
11 THIS MAFIA THING IS REALLY STRETCHING,
12 REALLY REACHING. IT HAS NOTHING TO DO WITH THE FACTS OF
13 THIS PARTICULAR CASE. IT HAS NOTHING TO DO WITH THE
14 MOTIVATIONS, WITH THE INTENTS, WITH ANY OF THE MENTAL
15 STATES THAT ARE IMPORTANT HERE.
16 LET'S TALK A LITTLE BIT ABOUT THE MENTAL
17 STATES OF MANSLAUGHTER.
18 THIS MIGHT BE A LITTLE HARD TO READ,
19 BECAUSE IT'S A SMALLER PRINT THAN SOME OF THE THINGS WE

20 HAVE HAD TO DO. BUT IT SAYS:
21 "TO REDUCE AN INTENTIONAL FELONIOUS
22 HOMICIDE FROM THE OFFENSE OF MURDER TO
23 MANSLAUGHTER UPON THE GROUND 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 SMART OF THAT SUDDEN

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1 QUARREL OR HEAT OF PASSION."
2 NOW, HERE IS WHERE WE GET INTO WHAT IS HEAT
3 OF PASSION.
4 "THE HEAT OF PASSION WHICH WILL
5 REDUCE A HOMICIDE TO MANSLAUGHTER MUST BE
6 SUCH A PASSION AS NATURALLY WOULD BE
7 AROUSED IN THE MIND OF AN ORDINARILY
8 REASONABLE PERSON IN THE SAME
9 CIRCUMSTANCES. A DEFENDANT IS NOT
10 PERMITTED TO SET UP HIS OWN STANDARD OF
11 CONDUCT TO JUSTIFY OR EXCUSE HIMSELF
12 BECAUSE HIS PASSIONS WERE AROUSED UNLESS
13 THE CIRCUMSTANCES IN WHICH HE WAS PLACED
14 AND THE FACTS THAT CONFRONTED HIM WERE
15 SUCH AS ALSO WOULD HAVE AROUSED THE

16 PASSION OF THE ORDINARILY REASONABLE MAN
17 FACED WITH THE SAME SITUATION."
18 LEGALLY ADEQUATE PROVOCATION MAY OCCUR IN A
19 SHORT OR OVER A CONSIDERABLE PERIOD OF TIME.
20 PROVOCATION JUST DOESN'T HAVE TO BE THAT MOMENT, BUT
21 IT'S ALL THE FACTORS THAT HAVE PRECEDED IT THAT MAKE IT
22 WORSE THAN IT MIGHT BE IF IT WERE JUST AN ISOLATED
23 INCIDENT. PROVOCATION CAN BE BUILT UP OVER A LONG
24 PERIOD OF TIME.
25 BUT HERE'S THE HEART OF IT. YOU KNOW
26 YOU'VE BEEN HEARING ABOUT REFLECTIVE THINKING AND
27 THOUGHT, AND ALL OF THOSE THINGS FROM DR. DIETZ AND FROM
28 THE OTHER DOCTORS WHO HAVE TESTIFIED.

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1 THE QUESTION TO BE ANSWERED IS WHETHER OR
2 NOT, AT THE TIME OF THE KILLING, THE REASON OF THE
3 ACCUSED WAS OBSCURED OR DISTURBED BY PASSION TO SUCH AN
4 EXTENT AS WOULD CAUSE THE ORDINARILY REASONABLE PERSON
5 OF AVERAGE DISPOSITION TO ACT RASHLY AND WITHOUT
6 DELIBERATION AND REFLECTION, AND FROM SUCH PASSION,
7 RATHER THAN FROM JUDGMENT.
8 EVEN DR. DIETZ TOLD YOU THAT JUDGMENT TAKES
9 A HOLIDAY. JUDGMENT IS GONE IN A FIGHT OR FLIGHT-TYPE
10 SITUATION.
11 AND WHAT WE HAVE HERE -- AND THIS IS A LOT

12 OF FANCY WORDS -- BUT WHAT IT REALLY BOILS DOWN TO IS
13 SOMEBODY LOSING IT. EMOTION TAKES OVER, AND IT TAKES
14 OVER FROM REASON.

15 NOW, IT DOESN'T MEAN THAT YOU'RE SO -- THAT
16 THE AVERAGE REASONABLE MAN IS SO INFLAMED BY PASSION
17 THAT HE WOULD KILL. THAT'S NOT WHAT'S REQUIRED. TO BE
18 SO INFLAMED BY PASSION THAT YOU KILL IS STILL A CRIME.

19 THE LAW DOESN'T CONDONE THAT. THE LAW SAYS
20 THAT'S A CRIME. WE DON'T EXPECT THE AVERAGE REASONABLE
21 MAN TO GET SO ANGRY, SO CONSUMED WITH PASSION, HE KILLS.
22 AND IF YOU DO, YOU PAY THE PENALTY FOR MANSLAUGHTER.

23 WHAT IT TALKS ABOUT IS WHAT IS THE
24 CONDITION THAT WOULD PUT THE AVERAGE REASONABLE PERSON
25 INTO SUCH A STATE THAT THEY BECOME MORE DRIVEN BY
26 EMOTION THAN THEY DO BY REASON?

27 IT CAN HAPPEN BY SAYING A LOT OF VERY HARSH
28 WORDS IN AN ARGUMENT THAT YOU WISH YOU'D NEVER SAID AND

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1 COULD TAKE BACK. IT CAN BE FROM GETTING INTO A FIST
2 FIGHT. IT CAN BE ANY OF THE TIMES IN LIFE WHERE EMOTION
3 TAKES OVER, AND YOU DO THINGS THAT LATER ON, WHEN YOU
4 COME BACK TO RATIONALITY TAKING OVER AND REASON TAKING
5 OVER, YOU SAY: "I'M SORRY. I SHOULDN'T HAVE DONE THAT.
6 MY EMOTIONS GOT THE BETTER OF ME."

7 THAT'S WHAT IT MEANS. IF YOU'RE IN THAT

8 STATE THAT EMOTION HAS TAKEN OVER AND THEN YOU KILL, THE
9 LAW RECOGNIZES, NOT THAT THAT'S OKAY; THE LAW RECOGNIZES
10 THAT THAT'S A CRIME, BUT IT'S NOT AS BAD A CRIME AS
11 MURDER.

12 WE HAVE TO RECOGNIZE HUMAN FRAILITY. WE
13 HAVE TO RECOGNIZE HUMAN NATURE. AND WHEN EMOTION --
14 WHEN A STATEMENT HAS BEEN MADE OR SOMETHING THAT CAUSES
15 THAT EMOTION TO COME UP AND TAKE OVER, THEN WE RECOGNIZE
16 THAT AS BEING SOMETHING LESS THAN MURDER.

17 MR. CONN TALKED ABOUT WHAT'S PROVOCATION,
18 WHAT'S EMOTION AND WHAT'S MENTAL STATES. AND YOU KNOW,
19 HE GAVE AN EXAMPLE OF JAYWALKING WHICH SEEMS TO BE
20 RATHER TRIVIALIZING THE OFFENSES THAT WE'RE TALKING
21 ABOUT HERE, BUT HE USED IT AS AN EXAMPLE OF INTENTIONAL
22 JAYWALKING.

23 AND INTENTIONAL JAYWALKING, THE EQUIVALENT
24 OF MURDER WOULD BE, HE SAYS, SOMEBODY NOT PARTICULARLY
25 INTENDING TO CROSS THE STREET, AND THEN SUDDENLY DECIDED
26 TO JAYWALK. THEN THE ISSUE BECOMES DID HE JUST JAYWALK
27 WITHOUT CONSIDERING HIS ACTIONS, OR DID HE JAYWALK AFTER
28 PONDERING THE RIGHTNESS OR THE WRONGFULNESS OF THESE

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1 ACTIONS? THAT IS THE KEY.

2 IN OTHER WORDS, IF HE LOOKS TO THE LEFT AND
3 HE LOOKS TO THE RIGHT, AND THERE'S NO POLICE OFFICERS

4 THERE, AND HE CAN SAFELY GET AWAY WITH IT, AND HE
5 JAYWALKS ACROSS THE STREET, THAT'S AN INTENTIONAL
6 JAYWALKING.

7 WELL, YOU KNOW, LET'S TAKE THE POSITION OF
8 SOMEBODY -- A SITUATION OF SOMEBODY WALKING DOWN THE
9 SIDEWALK. YOU LOOK ACROSS THE STREET, AND THERE IS THIS
10 WOMAN THAT YOU -- YOU'VE LOVED ALL YOUR LIFE, AND YOU
11 HAVEN'T SEEN FOR A YEAR AND A HALF. AND WHEN YOU BROKE
12 UP WITH HER, THERE WAS THIS QUARREL, AND IT WAS UNDER
13 BAD CIRCUMSTANCES, AND YOU'VE BEEN WAITING TO SEE HER
14 AND EXPLAIN AND APOLOGIZE.

15 AND ALL OF A SUDDEN YOU SEE HER THERE
16 ACROSS THE STREET. AND YOUR PASSION, YOUR EMOTION TAKES
17 OVER, AND YOU RUN ACROSS THE STREET TO SAY, "I'VE BEEN
18 WAITING SO LONG TO SEE YOU."

19 AND SOMETIMES IN THAT SITUATION A CAR MIGHT
20 EVEN HAVE TO BRAKE OR SWERVE, BECAUSE YOUR EMOTION HAS
21 TAKEN OVER, YOUR ANXIOUSNESS TO GET TO THIS PERSON THAT
22 YOU WANT TO SEE SO MUCH.

23 THAT'S NOT INTENTIONAL JAYWALKING. THAT
24 WOULD BE THE STATE OF MIND THAT WE WOULD TALK ABOUT
25 BEING EQUAL TO MANSLAUGHTER. THE EMOTION IS IN CONTROL,
26 AND EVEN THOUGH YOU DO THE ACTION, YOU DO THE ACTION OF
27 YOUR LEGS RUNNING AND GOING ACROSS THE STREET, IT
28 DOESN'T TAKE AWAY FROM THE EMOTION HAVING TAKEN OVER THE

1 SITUATION.

2 AND THAT'S WHAT WE HAVE HERE. WHEN EMOTION
3 IS STRONG, AND WE HAVE ALL BEEN IN SITUATIONS IN OUR
4 LIFE WHEN EMOTION IS STRONG, AND WE DO THOSE THINGS
5 BECAUSE OF OUR EMOTIONALITY WE REGRET, BE IT BAD WORDS
6 OR A BLOW STRUCK, OR ANY NUMBER OF THINGS THAT WE DO,
7 AND WE FEEL SORRY ABOUT IT THE NEXT DAY, THAT'S WHAT
8 WE'RE TALKING ABOUT HERE. THAT'S THE STATE OF MIND THAT
9 BRINGS UP PROVOCATION AND BRINGS UP MANSLAUGHTER.

10 THAT'S WHAT WE'RE DEALING WITH. NOT ENOUGH
11 TO MAKE SOMEBODY KILL, WE'RE NOT SAYING THAT. WE'RE
12 SAYING YOU'VE LOST IT. AND IF YOU'VE LOST IT AND YOU
13 KILL, THAT'S MANSLAUGHTER.

14 AND YOU CAN LOSE IT UNDER ANY NUMBER OF
15 SITUATIONS. IT CAN BE RAGE, RIGHTEOUS INDIGNATION,
16 FEAR. IT CAN BE A COMBINATION OF ALL THOSE THINGS.

17 HOW MANY TIMES, WHEN YOU HAVE BEEN AFRAID
18 OF SOMETHING, HAVE YOU NOT ALSO BEEN ANGRY AT THE PERSON
19 THAT IS CAUSING YOU TO BE AFRAID? AND WHEN THESE THINGS
20 TAKE OVER, THAT'S NOT MURDER.

21 THAT'S WHAT WE'RE TALKING ABOUT HERE. NOT
22 AN INTENTIONAL -- INTENTIONAL JAYWALKING.

23 THE OTHER THING THAT WE HAVE TALKED ABOUT
24 SOME, AND I HATE TO GET TOO TIED UP IN THE LAW, BECAUSE
25 MOST OF THAT WAS TAKEN CARE OF BY MS. ABRAMSON. BUT YOU
26 GET INTO THE IDEA OF MALICE AND INTENTIONAL, EXPRESS
27 MALICE THAT SHE TALKED ABOUT.

28 AND WHAT YOU HAVE TO THINK OF HERE WHEN YOU

1 APPLY ALL THE FACTS OF THIS CASE AND ALL THE LAW OF THIS
2 CASE, IS WHETHER OR NOT YOU'RE CONVINCED BEYOND A
3 REASONABLE DOUBT AND BY THE CIRCUMSTANCIAL EVIDENCE THAT
4 THERE IS NO OTHER EXPLANATION FOR THIS.

5 YOU HAVE TO FIND THAT LYLE MENENDEZ HAD AN
6 INTENTION TO UNLAWFULLY KILL MRS. MENENDEZ IN ORDER TO
7 FIND THAT COUNT TRUE OF MURDER. THAT HAS TO BE PROVEN
8 BEYOND A REASONABLE DOUBT FOR EXPRESS MALICE, OR YOU
9 HAVE TO FIND THAT HE WAS ACTING WITH CONSCIOUS DISREGARD
10 FOR HER LIFE WHEN HE WAS INVOLVED IN HIS ARGUMENT AND
11 THE SHOOTING OF JOSE MENENDEZ; THAT AT THAT TIME HE WAS
12 ACTING WITH A CONSCIOUS DISREGARD FOR HER LIFE.

13 WITHOUT THAT, THERE IS NO MALICE. AND WITH
14 NO MALICE, HE IS NOT GUILTY ON THAT COUNT.

15 AND THE OTHER THING THAT HAS NOT BEEN
16 TALKED ABOUT MUCH HERE, BECAUSE IT REALLY DOESN'T APPLY,
17 EVEN THOUGH YOU WILL BE INSTRUCTED ON IT, THERE IS JUST
18 NO EVIDENCE OF IT, AND THAT'S LYING IN WAIT. THAT IF
19 YOU FOUND MURDER, THEN IS IT A FIRST DEGREE BECAUSE THEY
20 LIED IN WAIT?

21 BUT THE LYING-IN-WAIT INSTRUCTION WILL TELL
22 YOU THAT IF THE KILLING IS DONE WITHOUT A PERIOD OF
23 WAITING, WATCHING AND CONCEALMENT, LYING IN WAIT IS NOT
24 PRESENT.

25 IN OTHER WORDS, WHAT THEY TALK ABOUT IS

26 CONCEALMENT BY AMBUSH, OR SOMETHING EQUIVALENT TO THAT,
27 AS LYING IN WAIT. THAT DIDN'T HAPPEN HERE. SO THAT'S
28 JUST NOT REALLY SOMETHING THAT YOU SHOULD HAVE TO WORRY

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1 ABOUT IN THIS PARTICULAR CASE.

2 SO NOW LET'S GET INTO THE -- WHAT'S CALLED
3 THE LAST WEEK.

4 WE HAVE TUESDAY, WHEN MRS. MENENDEZ RIPPED
5 THE HAIRPIECE OFF LYLE AND SENT HIM CRYING UP TO THE
6 GUESTHOUSE. THEY HAD THEIR ARGUMENT. THAT'S WHEN HE
7 HEARS THAT ERIK HAS BEEN MOLESTED ALL THESE YEARS, AND
8 THEY TALK ABOUT IT.

9 AND THEN WE GET TO THURSDAY. AND ON
10 THURSDAY IS WHEN LYLE MENENDEZ IS GOING TO TALK TO HIS
11 FATHER, BECAUSE HE THINKS MAYBE HE CAN END THIS.

12 SO HE SCREWS UP HIS COURAGE AND HE TALKS TO
13 HIS FATHER ON THURSDAY, AND HE COMES BACK AND RELATES TO
14 ERIK MENENDEZ WHAT HAPPENED. HE SAYS HE WAS IN THE
15 STUDY WITH DAD, AND HE TOLD DAD THAT HE WANTED THIS TO
16 STOP, AND IT WAS -- SEX WAS NEVER TO CONTINUE WITH MY
17 DAD. WHATEVER WAS HAPPENING WAS TO END.

18 AND AT THAT POINT HIS DAD TOLD HIM: "GO TO
19 PRINCETON. FORGET THIS CONVERSATION EVER HAPPENED.
20 DON'T RUIN YOUR LIFE OVER THIS, DON'T GET INVOLVED OVER
21 THIS."

22 AND LYLE SAID: "NO, IT'S GOING TO
23 STOP."
24 AND HIS DAD SAID: "YOU'VE MADE
25 YOUR DECISION AND ERIK'S MADE HIS, AND NOW
26 I HAVE TO MAKE MINE."
27 "AND MY DAD WAS AT THE DOOR. HE
28 WAS TELLING HIM NOT TO TELL ANYONE. HE

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1 DIDN'T WANT TO TELL ANYONE. LYLE SAID:
2 'I'M NOT GOING TO TELL ANYONE,' AND MY DAD
3 SAID SOMETHING ALONG THE LINES OF:
4 'YOU'RE GOING TO TELL EVERYONE ANYWAY.'"
5 SO NOW LYLE AND ERIK MENENDEZ DISCUSS THAT
6 CONVERSATION AND HIS FATHER'S REACTION OF, "JUST GET OUT
7 OF HERE. LEAVE THIS ALONE. DON'T MAKE THIS YOUR
8 BUSINESS."
9 AND THEN WE HAVE ERIK MENENDEZ IN HIS ROOM,
10 AND THE FATHER NOW HAS TALKED TO LYLE AND COME STORMING
11 UP TO THE ROOM. AND YOU KNOW HE'D ALREADY WARNED ERIK
12 MANY TIMES: "DON'T EVER TELL LYLE ABOUT THIS."
13 AND HE SAID:
14 "HE'D WARNED ME NEVER TO TELL LYLE,
15 AND HE'D TOLD ME NEVER TO TELL LYLE. AND
16 IT WAS ALL MY FAULT, AND NOW LYLE WAS
17 GOING TO TELL EVERYONE, AND HE WASN'T

18 GOING TO LET THAT HAPPEN. AND I WAS
19 SAYING: 'NO, HE'S NOT GOING TO TELL
20 EVERYONE. HE'S NOT GOING TO TELL ANYONE.'
21 "AND HE WAS SAYING: 'YES, HE IS,'
22 OR SOMETHING ALONG THOSE LINES, AND THEN
23 HE JUST TOLD ME TO SHUT UP, AND RACED
24 TOWARD ME."
25 THAT'S WHEN ERIK GOT AWAY AND WENT UP TO
26 SEE LYLE IN THE GUESTHOUSE.
27 MR. CONN CROSS-EXAMINED HIM AND SAID IN
28 ARGUMENT: "WHY DIDN'T YOU JUST TAKE STEPS TO TELL YOUR

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1 FATHER: 'GEE, WE'LL LEAVE FOR A WHILE, AND WE WON'T
2 TELL ANYONE, AND WE CAN ALWAYS COME BACK AND THINGS
3 WOULD BE HUNKY-DORY.'"
4 THE PROBLEM IS THEY DID TELL HIM THAT.
5 LYLE MENENDEZ TOLD THE FATHER: "I AM NOT GOING TO TELL
6 ANYONE." ERIK MENENDEZ TOLD THE FATHER: "LYLE MENENDEZ
7 ISN'T GOING TO TELL ANYONE."
8 AND JOSE MENENDEZ DIDN'T BELIEVE THEM.
9 THAT'S WHAT THEY KNEW WHEN THEY TALKED TO
10 EACH OTHER ON THURSDAY, TALKING ABOUT WHAT THEY SHOULD
11 DO WITH THIS SITUATION, "HOW CAN WE GET OUT FROM UNDER
12 THIS TERRIBLE SITUATION THAT WE'VE BEEN PLACED IN?"
13 SO NOW WE'RE AT THURSDAY, AND NOW ERIK

14 MENENDEZ HAS RUN OUT AND KNOWS THAT HIS MOTHER KNOWS
15 ABOUT THE MOLESTATIONS AND ALL THESE YEARS, HAS DONE
16 NOTHING TO HELP HIM.

17 SO HE COMES UP AND HE TALKS TO HIM, HE
18 TALKS TO LYLE. "WHAT ARE WE GOING TO DO?"

19 AND THE MOTHER COMES UP CHASING HIM.

20 "NOW, WHAT HAPPENED WHEN YOU SAW
21 LYLE MENENDEZ, AND YOU SAID TO HIM: 'MOM
22 KNOWS, MOM KNOWS.' WHAT WAS LYLE
23 MENENDEZ' REACTION?

24 "ANSWER: I DON'T THINK HE HAD TIME
25 TO REACT. MY MOTHER WAS COMING UP THE
26 STAIRS, AND HE WAS STILL SCREAMING FOR ME
27 TO GET BACK THERE, AND HE SAID TO HER, YOU
28 KNOW, 'HOW CAN YOU KNOW? WHY HAVEN'T YOU

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1 DONE ANYTHING?'

2 "AND SHE SAID -- SHE WAS IN A RAGE
3 AT THAT POINT. I DON'T REMEMBER THE FIRST
4 WORDS. I KNOW SHE SAID: 'NO ONE'S EVER
5 HELPED ME. WHY SHOULD I HELP YOU?'.

6 "SHE SAID: 'I HATE YOU. I HATE
7 YOU. I WISH YOU WERE NEVER BORN. YOU
8 WERE THE CAUSE OF ALL MY MISERY.'"

9 AND SHE WENT INTO THE SAME TYPES OF THINGS

10 THAT SHE WOULD SAY GENERALLY WHEN SHE WAS LIKE THAT.

11 AND SHE LEFT SOON AFTER.

12 THIS WAS THE MOTHER'S REACTION, NOT TO

13 PROTECT HIM, TO COME UP AND SAY: "NO ONE EVER HELPED

14 ME. WHY SHOULD I HELP YOU, JUST BECAUSE YOU'RE MY SON?

15 I HATE YOU. I WISH YOU WERE NEVER BORN."

16 YOU REMEMBER OTHER WITNESSES WHO SAID THAT

17 SHE USED TO SAY THAT, EVEN WHEN THEY WERE YOUNGSTERS.

18 SHE WAS NEVER THE PROTECTOR.

19 SO NOW WE HAVE THE FATHER BELIEVING LYLE

20 MENENDEZ IS GOING TO TELL EVERYBODY, AND NOT LISTENING

21 TO HIM OR ERIK WHEN THEY SAID NO, THEY'RE NOT GOING TO

22 TELL, THEY JUST WANT IT TO STOP. AND WE HAVE THE MOTHER

23 NOT TAKING ANY STEPS TO INTERCEDE, NOT SOMEBODY YOU

24 COULD GO TO, BUT SAYING: "NOBODY HELPED ME. WHY SHOULD

25 I HELP YOU?"

26 TOTALLY TAKING THE SIDE OF THE FATHER, THE

27 IMAGE SIDE, AND NOT THE SIDE OF THE SONS, WHO NEED HER

28 AT THAT PARTICULAR POINT MORE THAN THEY EVER DID IN

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1 THEIR LIVES.

2 SO WHAT ARE THEIR OPTIONS, AND WHAT CAN

3 THEY DO? TALK ABOUT LEAVING. THAT'S WHAT THE DISTRICT

4 ATTORNEY SAID. THAT'S THE NATURAL THING TO TALK ABOUT,

5 RIGHT? WHY DIDN'T THEY LEAVE?

6 THEY DID TALK ABOUT IT. THEY TALKED ABOUT
7 IT THAT NIGHT, IN THEIR FEAR. THEY LOCKED THE DOOR WHEN
8 MRS. MENENDEZ LEFT, AND THEY TALKED, AND HE SAID WHAT
9 KIND OF THINGS THEY WERE REBOUNDED OFF EACH OTHER. HE
10 WANTED TO LEAVE THE HOUSE RIGHT AWAY. THIS IS LYLE NOW.

11 "HE WANTED TO GET THINGS TOGETHER
12 AND GO, AND I WAS SAYING: 'WE CAN'T GO.
13 WHERE ARE WE GOING TO GO? WE'RE NOT
14 LEAVING.'"

15 "HE SAID: "NO, WE'VE GOT TO GET
16 OUT OF HERE NOW."

17 "HE DIDN'T KNOW WHAT WAS GOING TO
18 HAPPEN, WHAT DAD WAS GOING TO DO AT THAT
19 POINT RIGHT THEN, AND HE WANTED TO GET OUT
20 OF THE HOUSE THAT INSTANT.

21 "AND I WAS SAYING: 'I CAN'T GO.
22 WHERE ARE WE GOING TO GO? WHAT ARE YOU
23 TALKING ABOUT?'"

24 "AND I HAD HAD CONVERSATION WITH
25 HIM ON TUESDAY OR WEDNESDAY, YOU KNOW,
26 TALKING ABOUT THE FACT THAT BASICALLY IF
27 HE LEFT ME, THAT I WOULD KILL MYSELF, AND
28 ASKING HIM NOT TO LEAVE ME, AND THAT'S

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1 WHAT I WAS SAYING IN THIS CONVERSATION TO

2 HIM.

3 "DID YOU GET THE FEELING FROM LYLE
4 MENENDEZ AT THAT POINT IN TIME HE WAS
5 GOING TO ABANDON YOU AND JUST LEAVE?

6 "I WAS WORRIED THAT HE MIGHT. I
7 KNEW LYLE FELT ABOUT ME STRONGLY AND THAT
8 HE LOVED ME, AND ESPECIALLY ABOUT THIS
9 ISSUE, IT WAS VERY SORE FOR HIM, AND SO I
10 DIDN'T THINK HE WOULD, NO. IT WAS A FEAR,
11 BUT I DIDN'T REALLY THINK HE WOULD AT THAT
12 POINT ON THURSDAY NIGHT."

13 BUT THEY DID THE LOGICAL STEP. THEY TALKED
14 ABOUT LEAVING. JUST LIKE LYLE MENENDEZ TOLD JAMIE
15 PISARCIK WAY BACK, HE WANTED TO LEAVE, BUT ERIK
16 COULDN'T.

17 HE GOES ON TO SAY IN HIS QUESTIONING:

18 "QUESTION: YOU DON'T REMEMBER ANY
19 SPECIFIC CONVERSATION BETWEEN YOU AND YOUR
20 BROTHER CONCERNING THE FEASIBILITY OF YOU
21 GOING TO ANOTHER CITY?"

22 "AND ERIK MENENDEZ SAYS: "I DON'T
23 REMEMBER THE WORD CITY, COUNTRY. I
24 REMEMBER HIM SAYING, 'LET'S GET OUT OF
25 HERE. LET'S GO. WE CAN GET AWAY.'

26 "AND ME SAYING: 'IT'S IMPOSSIBLE,
27 IT CAN'T HAPPEN. WE'LL NEVER GET AWAY.
28 HE'LL FIND US. HE'LL KILL US.'

1 "I DON'T REMEMBER HIM SAYING:
2 'LET'S GO TO BALTIMORE OR LET'S GO TO
3 SPAIN.' I DON'T REMEMBER THOSE THINGS."

4 WHY WOULD ERIK MENENDEZ FEEL HE COULDN'T
5 LEAVE?

6 WELL, WE'VE HEARD FROM DR. WILSON THE
7 HELPLESSNESS-TYPE THEORY THAT THIS LIFE HE HAD CAUSED
8 HIM TO FEEL, AND WE KNOW OTHER THINGS. WE KNOW THAT HIS
9 MOTHER WAS EXPRESSING THINGS TO HIM THAT SHE HAD NO WAY
10 TO KNOW. WE HAVE A -- IT'S OVER HERE.

11 WE HAVE AN EXHIBIT. IT -- LET'S SEE. I
12 GUESS IT'S 365. BUT IT'S IN THIS LITTLE ENVELOPE.

13 AND WHAT IT IS IS THE PHONE DEVICE THAT WAS
14 USED THERE, BECAUSE WE KNOW NOW THAT MRS. MENENDEZ HAD
15 HER SON'S PHONE BUGGED. AND THAT'S A TERRIBLE THING TO
16 DO TO A CHILD. IT'S A TERRIBLE THING TO DO TO ANY CHILD
17 AT ANY AGE. IT'S A TERRIBLE THING IN JUNIOR HIGH
18 SCHOOL, HIGH SCHOOL, TO LISTEN IN AND TAKE AWAY YOUR
19 CHILD'S PRIVACY.

20 BUT WHAT'S WORSE IN THIS CASE, AND WHAT'S
21 TRAGIC IN THIS CASE IS THAT MRS. MENENDEZ DIDN'T ONLY
22 LISTEN IN ON HER SON'S TELEPHONE CONVERSATIONS, BUT SHE
23 MADE HIM FEEL THAT HE COULDN'T HAVE ANY SECRETS, THAT
24 SHE KNEW THINGS.

25 NOW, I AM NOT SAYING THIS IS WITCHCRAFT OR
26 SUPERNATURAL OR E.S.P. HE DIDN'T KNOW HOW SHE KNEW, HE

27 JUST KNEW SHE KNEW.

28 HE WAS ASKED: "DO YOU BELIEVE AT THE TIME

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1 THAT YOUR MOTHER WAS EXPRESSING TO YOU KNOWLEDGE OF
2 THINGS THAT WERE GOING ON IN YOUR LIFE, THAT YOU KNEW
3 SHE COULDN'T KNOW ANY OTHER WAY, DO YOU BELIEVE SHE HAD
4 SUPERNATURAL POWERS?"

5 HE SAID: "I BELIEVED SHE HAD THE ABILITY
6 TO KNOW THINGS WHICH I COULD NOT EXPLAIN, AND SHE HAD
7 SOME SORT OF ABILITY OR POWER THAT WAS -- I DON'T WANT
8 TO USE THE WORD, BUT ALMOST MAGICAL."

9 IT JUST SEEMED INCREDIBLE, BECAUSE SHE KEPT
10 TELLING HIM THESE THINGS.

11 "AND WHAT KIND OF THINGS WAS IT
12 THAT YOUR MOTHER KNEW?

13 "SHE KNEW WHEN I DIDN'T GO TO
14 SCHOOL ONE DAY, AND INSTEAD WENT TO TRAIN
15 WITH SOMEONE WHO PLAYED TENNIS. SHE KNEW
16 A GIRL THAT I LIKED THAT I HADN'T STARTED
17 DATING YET. SHE WOULD BRING UP THE NAME
18 AND SAY 'WHO'S SO AND SO?' AND SHE WOULD
19 HAVE ABSOLUTELY NO WAY OF KNOWING THIS
20 INFORMATION.

21 "SHE KNEW THINGS ABOUT LYLE FROM
22 WHEN HE WAS AT PRINCETON, AND I HAD

23 DISCUSSED ON THE PHONE -- THAT LYLE AND I
24 HAD DISCUSSED ON THE PHONE. HOW I DID ON
25 A CERTAIN TEST BEFORE I TOLD HER. BY
26 BRINGING IT UP, JUST THINGS THAT SHE COULD
27 NOT KNOW, THAT I THOUGHT MAYBE THE
28 RELATIVES WERE TELLING HER. I JUST -- I

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1 DIDN'T KNOW. IT WAS VERY WEIRD."
2 NOW, WE ALSO HAVE THE -- THE KNOWLEDGE THAT
3 I TOLD YOU FROM ROBBIE CLOUSE THAT MR. MENENDEZ -- JOSE
4 MENENDEZ HAD BRAGGED TO HIS SONS ABOUT BEING CONNECTED.
5 SO JUST THINK ABOUT THURSDAY NIGHT, AND
6 WHAT LYLE MENENDEZ AND ERIK MENENDEZ KNEW ABOUT THEIR
7 PARENTS, WHAT HAD BEEN GOING ON IN THAT PARTICULAR WEEK.
8 AND THE IDEA OF TRAGEDY THAT I BROUGHT UP
9 YESTERDAY AND WHAT TRAGEDY REALLY MEANS, WHICH IS THE
10 FLAWS OF THE CENTRAL CHARACTERS WHICH LEAD TO THEIR
11 ULTIMATE DEATH. AND THE LAW HERE FROM JOSE MENENDEZ WAS
12 THIS CONTROLLING FEAR HE HAD PLACED IN HIS SONS ALL
13 THEIR LIVES, AND THIS IDEA, AS PART OF THAT, THAT HE HAD
14 CONNECTIONS. HE COULD FIND THEM ANYWHERE THEY WENT,
15 BECAUSE HE HAD THESE CONNECTIONS. ORGANIZED CRIME,
16 MAFIA, WHATEVER IT IS. "YOU CAN'T GET AWAY FROM ME SON,
17 BECAUSE I HAVE A WAY TO GET YOU."
18 THAT IS WHAT HE CONVEYED TO THEM. IF HE

19 HADN'T DONE THAT -- IF HE HADN'T MADE ERIK MENENDEZ
20 BELIEVE THAT, LYLE MENENDEZ BELIEVE THAT, DO YOU THINK
21 THAT ERIK MENENDEZ MIGHT THEN HAVE TOLD LYLE: "YES,
22 LET'S GO. WE CAN GET AWAY. WE CAN GET AWAY FROM THIS."
23 BUT HE COULDN'T DO THAT BECAUSE OF HIS
24 FATHER'S OWN ACTIONS IN MAKING HIM FEEL THAT HE COULDN'T
25 GET AWAY.
26 AND THEN WE HAVE MRS. MENENDEZ USING THIS
27 INFORMATION SHE HAD GOTTEN FROM THE BUGGED TELEPHONE, IN
28 HER WAY MAKING LYLE -- ERIK MENENDEZ FEEL THAT HE

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1 COULDN'T GET AWAY. SHE KNEW THINGS.
2 SO YOU HAVE ALL OF THAT WORKING ON ERIK
3 MENENDEZ ON THURSDAY WHEN LYLE IS SAYING: "LET'S GO,
4 LET'S LEAVE. WHY CAN'T WE GO?"
5 AND ERIK MENENDEZ IS SAYING: "NO, I CAN'T.
6 THEY'LL FIND US. WE CAN'T GET AWAY."
7 AND NOW ASK WHY LYLE MENENDEZ DIDN'T JUST
8 LEAVE AND GO BACK TO PRINCETON? WHY HE DIDN'T JUST
9 DIVORCE HIMSELF FROM THIS SITUATION AND LEAVE TOWN.
10 BECAUSE HE HAD A GOOD LIFE TO GO BACK TO. HE DIDN'T
11 NEED THIS. WHY DIDN'T HE JUST SPLIT AND LEAVE HIS
12 BROTHER?
13 WOULD YOU? IS THAT WHAT YOU'D DO? THAT'S
14 WHAT MR. CONN KEEPS SUGGESTING. BUT IS THAT WHAT YOU'D

15 DO TO YOUR BROTHER IN THAT SITUATION, KNOWING WHAT YOU
16 KNOW ABOUT THIS FAMILY, REMEMBERING THE INCIDENT IN THE
17 LAKE WHEN HIS FATHER DIDN'T CARE IF ERIK LIVED OR DIED?
18 IS THAT HOW YOU'D TREAT YOUR BROTHER?
19 WOULD YOU JUST LEAVE? WOULD YOU JUST SPLIT? OR WOULD
20 YOU STAY AND SAY: "I'M WITH YOU, BROTHER, AND WE'RE
21 GOING TO TRY AND WORK OUR WAY OUT OF THIS. THIS IS A
22 TOUGH SITUATION, BUT THE ONLY THING WE CAN DO IS GO GET
23 GUNS IN CASE THEY COME AFTER US."
24 AND THAT'S WHAT THEY DID. THEY WENT DOWN
25 ON FRIDAY AND THEY GOT THE SHOTGUNS BECAUSE OF
26 EVERYTHING THEY KNEW ON THURSDAY NIGHT.
27 AND ON SATURDAY WE HAVE THE FISHING TRIP,
28 WHEN THEY TRY NOT TO GO, BUT THEY'RE NOT SUCCESSFUL.

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1 AND THEY COME BACK AND THEY GO ON THE SHARK-FISHING
2 TRIP. IT SURE WASN'T THEIR IDEA.
3 AND THEY SIT IN THE FRONT OF THE BOAT AND
4 GET SWAMPED BY WAVES; COLD, DARK. WHY? THEY HAVE ALL
5 THE TIME IN THE WORLD, IF THEY WANTED TO PLOT THEIR
6 PARENTS' DEATH, IF THAT'S WHAT THEY WERE OUT THERE
7 DOING. BUT IT ISN'T.
8 THEY WERE THERE GETTING SOAKING WET BECAUSE
9 THEY WERE SCARED TO DEATH WHEN THEY GOT ON THAT BOAT.
10 AND THE SAFEST PLACE WAS IN THAT BOW, BECAUSE IT WAS

11 VERY DANGEROUS AND SLIPPERY FOR FATHER OR ANYBODY TO TRY
12 TO GET ON THAT LITTLE NARROW DECK, UP ON THAT SLIPPERY
13 DECK, AND TRY TO KILL THEM OR PUSH THEM OVERBOARD AND
14 MAKE IT LOOK LIKE AN ACCIDENT ON THAT DARK NIGHT.

15 IT WAS THE SAFEST PLACE THEY COULD BE. AND
16 THEY WENT AND TOOK THE WAVES OVER THEM, COLD WITH CHILL,
17 HUGGING EACH OTHER FOR WARMTH, FOR SAFETY.

18 THAT'S WHY THOSE PEOPLE CAME IN, ROBERT
19 ANDERSON AND LESLIE GASKILL. THEY HAVE NO AX TO GRIND
20 IN THIS CASE. THEY HAVE NOTHING TO GAIN OR LOSE.

21 BUT THEY TOLD YOU WHAT IT WAS LIKE ON THAT
22 TRIP. AND THERE IS NO OTHER RATIONAL EXPLANATION FOR
23 THEM BEING THERE OTHER THAN BEING AFRAID. AND IF THEY
24 WERE AFRAID THEN, IT CERTAINLY SHOWS WHY THEY WERE
25 AFRAID ON SUNDAY NIGHT, WHY FEAR AND EMOTION WAS TAKING
26 OVER.

27 AND THE OTHER THING IS WHY, IF IT WAS TENSE
28 WHEN THEY LEFT, WHEN THEY GOT ON THE BOAT -- AND THIS IS

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1 WHAT CAPTAIN ANDERSON AND LESLIE GASKILL SAID. IT WAS
2 TENSE. THE TENSION WAS THERE. BUT IT DISSIPATED. IT
3 WAS ALMOST GONE BY THE END OF THE TRIP.

4 IT WAS GONE BY THE END OF THE TRIP BECAUSE
5 THEY WERE STILL ALIVE. THEY WEREN'T IN THE OCEAN, THEY
6 HADN'T BEEN KILLED.

7 AND SO WHAT DANGER THERE WAS, IT WAS STILL
8 THERE, BUT IT WAS POSTPONED TO ANOTHER DAY. THEY HAD
9 GOTTEN THROUGH A VERY DANGEROUS SITUATION IN THEIR MIND,
10 AND THEY HAD GOTTEN THROUGH ALIVE. AND THEN IT MAKES
11 SENSE THAT THE TENSION WOULD HAVE BEEN LESS THAN IT WAS
12 AT THE BEGINNING. IT FITS.

13 AND THESE WITNESSES OWE NO ALLEGIANCE TO
14 ANYBODY. MR. ANDERSON, MS. GASKILL, TOTALLY INDEPENDENT
15 WITNESSES WHO CAN TELL ABOUT THE FEAR THAT LYLE MENENDEZ
16 DISPLAYED ON THAT SATURDAY NIGHT.

17 WE GET TO SUNDAY. THIS IS THE EVIDENCE
18 THAT ERIK MENENDEZ NOW, AT THE TIME THAT WE HAVE SPENT
19 ALL THIS TIME GOING OVER, 10:00 O'CLOCK IN THE EVENING,
20 AUGUST 20TH, 1989 IN THE HOME IN BEVERLY HILLS.

21 "AS I LINGERED ON THE STAIRS TO SEE
22 WHAT WAS GOING TO HAPPEN WITH MY DAD AND
23 MY BROTHER, I WAS INTENSELY HOPING THAT MY
24 BROTHER WOULD WIN THIS CONVERSATION,
25 BECAUSE THE LAST THING I WAS GOING TO DO
26 WAS GO TO MY BEDROOM.

27 "AND I REMEMBER AFTER MY DAD TOLD
28 ME TO GET UP TO MY ROOM THAT MY BROTHER

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1 SAID 'NO, YOU'RE NOT GOING TO TOUCH ERIK.
2 YOU'RE NOT GOING TO TOUCH MY LITTLE

3 BROTHER. YOU'RE NEVER GOING TO TOUCH HIM

4 AGAIN."

5 IS THAT A SITUATION THAT AROUSES EMOTION?

6 IS THAT A SITUATION THAT AROUSES RIGHTEOUS INDIGNATION

7 AND RAGE IN ANYBODY WHO WAS PLACED IN THE SITUATION THAT

8 LYLE MENENDEZ WAS THAT NIGHT WHEN HIS FATHER IS

9 THREATENING TO GO RAPE HIS BROTHER AGAIN?

10 WOULD ANYBODY NOT BE ANGRY AND ENRAGED AND

11 HAVE RIGHTEOUS INDIGNATION, AND LOSING IT, AT THAT

12 PARTICULAR CONVERSATION, KNOWING THE HISTORY THAT HAD

13 HAPPENED IN THIS HOME, AND KNOWING EVERYTHING THAT HAD

14 HAPPENED IN THAT WEEK, AND KNOWING THAT HIS MOTHER RACED

15 UP ON THURSDAY AND SAID: "I'M NOT GOING TO HELP YOU.

16 NOBODY HELPED ME."

17 "AND I REMEMBER HIM TELLING ME NOT

18 TO GO UP THE STAIRS, TO GET BACK

19 DOWNSTAIRS.

20 "WHO TOLD YOU TO COME BACK DOWN THE

21 STAIRS?

22 "MY BROTHER.

23 "WHEN YOUR BROTHER WAS TALKING AND

24 TELLING YOUR FATHER THAT HE WASN'T GOING

25 TO TOUCH YOU AGAIN, WHERE WAS YOUR MOTHER?

26 "MY MOTHER WAS NEARER TO ME THAN MY

27 FATHER OR MY BROTHER.

28 "WAS SHE SAYING ANYTHING AT THIS

1 TIME?

2 "NO.

3 "AND WHAT, IF ANYTHING, DID JOSE
4 MENENDEZ SAY AFTER ERIK MENENDEZ TOLD YOUR
5 FATHER -- AFTER LYLE MENENDEZ TOLD YOUR
6 FATHER THAT HE WAS NOT GOING TO TOUCH YOU
7 AGAIN?

8 "I REMEMBER FEELING LIKE, 'JESUS,
9 WHAT ARE YOU DOING, LYLE?' IT WAS NOT A
10 GOOD TIME TO GET INTO AN ARGUMENT WITH MY
11 DAD, AND I REMEMBER MY DAD WALKING TOWARD
12 MY BROTHER, SAYING, 'I DO WHAT I WANT IN
13 THIS FAMILY. HE IS NOT YOUR LITTLE
14 BROTHER, HE'S MY SON, AND I SAY WHAT GOES
15 ON HERE.'"

16 IS THAT THE KIND OF RESPONSE FROM THE
17 FATHER? IS THAT THE KIND OF WORDS THAT WOULD AROUSE
18 EMOTION IN ANYBODY? WOULD NOT EMOTION BE TAKING OVER AT
19 THIS POINT? FEAR, ANGER, OUTRAGE. ALL OF THOSE THINGS
20 AT ONCE.

21 "MY BROTHER BACKED AWAY TOWARD THE
22 DOORS AS MY DAD WAS RUSHING, MOVING TOWARD
23 HIM, AND AT THAT POINT HE TOLD ME TO GET
24 BACK UP TO MY ROOM. MY DAD SAW ME
25 LINGERING ON THE STAIRS, AT WHICH POINT I
26 HAD NO CHOICE BUT TO HEAD UP THE STAIRS.

27 "WHAT HAPPENED NEXT?

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1 GOING TO TOUCH ERIK.' I'M NOT SURE IF HE
2 TOLD ME TO GET BACK DOWN THE STAIRS OR
3 NOT. I JUST KEPT THINKING THAT LYLE
4 SHOULD NOT BE GETTING INTO THIS ARGUMENT.

5 "MY DAD KEPT COMING TOWARDS MY
6 BROTHER, AND SAID, 'YOU'RE NOT GOING OUT
7 TONIGHT,' AND HE TOLD ME TO GET UP TO MY
8 ROOM, AND LEFT THE FOYER AREA. MY MOM WAS
9 STILL IN THE FOYER NEAR THE STAIRS.

10 "COULD YOU CLEARLY SEE YOUR MOTHER?

11 "FROM MY POSITION, I COULD SEE HER
12 FACE.

13 "WHAT, IF ANYTHING, DID YOU NOTICE
14 FROM THE EXPRESSION ON HER FACE?

15 "SHE JUST HAD A STONY, RESOLVED
16 LOOK ON HER FACE. VERY STILL.

17 "WHAT ABOUT YOUR FATHER? COULD YOU
18 TELL ANYTHING ABOUT THE EXPRESSION ON HIS
19 FACE?

20 "I COULDN'T SEE HIS FACE. I COULD
21 SEE HIS MOVING IN, RUSHING, MOVING TOWARD
22 MY BROTHER AND YELLING AT HIM.

23 "DID YOU DRAW ANY IMPRESSIONS OR

24 CONCLUSIONS CONCERNING YOUR DAD AT THAT
25 TIME, HOW HE FELT, WAS HE ANGRY?
26 "HE WAS VERY ANGRY."
27 SUDDEN QUARREL, HEAT OF PASSION. THAT'S
28 WHAT MANSLAUGHTER IS ALL ABOUT. YOU COULDN'T HAVE MORE

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1 OF A SUDDEN QUARREL OR HEAT OF PASSION -- IT'S IN THE
2 DISJUNCTIVE -- THAN YOU HAVE AT THIS PARTICULAR POINT IN
3 TIME AT THE BOTTOM OF THE STAIRS BETWEEN LYLE MENENDEZ
4 AND HIS FATHER, WHO WAS ABOUT TO GO RAPE HIS BROTHER.

5 "WHAT ABOUT LYLE MENENDEZ? WHAT
6 WAS HIS DEMEANOR?

7 "WHENEVER MY DAD WOULD MOVE TOWARD
8 HIM, HE WOULD GET TIMID AND HE WAS SORT OF
9 BACKING AWAY FROM MY DAD, SAYING: 'NO,
10 YOU'RE NOT GOING TO TOUCH ERIK.' AND MY
11 DAD WAS SAYING: 'DON'T TELL ME WHAT TO DO
12 IN THIS FAMILY.' AND MY BROTHER WAS
13 JUST -- I DON'T KNOW HOW TO DESCRIBE IT.
14 I DON'T KNOW HOW TO DESCRIBE HIS VOICE.

15 "WHEN YOUR FATHER ORDERED YOU TO
16 YOUR ROOM THE SECOND TIME, WHAT DID YOU
17 THINK WOULD HAPPEN WHEN YOU GOT TO YOUR
18 ROOM?

19 "I KNEW WHAT WOULD -- WHAT WAS

20 GOING TO HAPPEN. HE WAS GOING TO COME UP
21 TO MY ROOM, AND THERE WAS GOING TO BE SEX.
22 "WHY DID YOU THINK THAT?
23 "BECAUSE MY DAD WAS ANGRY, AND HE
24 TOLD ME HE'D BE THERE IN A MINUTE, AND I
25 JUST KNEW THAT THAT'S WHAT WAS GOING TO
26 HAPPEN."
27 THAT'S WHAT ALWAYS HAPPENED.
28 "WHAT WAS THE NEXT THING THAT

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1 HAPPENED?
2 "MY DAD LEFT THE FOYER, AND I WAS
3 ON THE TOP OF THE BALCONY AT THIS POINT,
4 AND MY MOTHER WAS STILL INSIDE THE FOYER.
5 "WHEN YOU SAY YOUR DAD LEFT THE
6 FOYER, WHERE DID HE GO?
7 "BACK INTO THE DEN.
8 "HOW DID HE MOVE FROM THE FOYER
9 INTO THE DEN? DID HE JUST WALK?
10 "HE WAS VERY ANGRY. HE DIDN'T RUN,
11 HE WALKED. HE JUST WALKED BACK FROM THE
12 FOYER INTO THE DEN.
13 "AND WHERE DID YOUR MOTHER GO?
14 "MY MOTHER STAYED INSIDE THE FOYER,
15 AND MY BROTHER CAME CLOSER TO MY MOTHER

16 AFTER MY DAD LEFT.
17 "AND YOU STAYED IN YOUR POSITION ON
18 THE STAIRS?
19 "NO. I WAS ON THE BALCONY AT THAT
20 POINT.
21 "LOOKING DOWN ON THEM AT THE TOP OF
22 THE STAIRS?
23 "YES.
24 "WAS THERE ANY FURTHER DISCUSSION
25 BETWEEN YOUR BROTHER AND YOUR MOTHER?
26 "I REMEMBER MY BROTHER SAYING:
27 'ARE YOU GOING TO LET THIS HAPPEN?' AND MY
28 MOTHER SAYING TO HIM -- I DIDN'T HEAR ALL

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1 THE WORDS. SHE SAID: 'YOU RUINED THIS
2 FAMILY.'"
3 IS THAT RESPONSE, WHEN A FATHER IS ABOUT TO GO
4 RAPE ERIK MENENDEZ? HE SAYS: "I AM GOING TO DO WHAT I
5 WANT IN THIS FAMILY. HE'S NOT YOUR BROTHER, HE'S MY
6 SON."
7 AND THE MOTHER, ALL SHE CAN SAY TO LYLE
8 MENENDEZ AT THAT POINT, IN THIS PASSIONATE TIME: "YOU
9 RUINED THIS FAMILY."
10 LYLE MENENDEZ DIDN'T RUIN THIS FAMILY.
11 JOSE MENENDEZ RUINED THIS FAMILY, AND MARY MENENDEZ,

12 WITH HER IMAGE PROBLEMS, IS GOING ALONG WITH IT. ALL
13 LYLE MENENDEZ TRIED TO DO WAS THE RIGHT THING, AND TO
14 PREVENT THIS RAPE FROM TAKING PLACE. AND THAT'S WHEN HE
15 RAN UPSTAIRS.

16 "AT THIS POINT MY DAD CAME BACK OUT
17 OF THE DEN, GRABBED MY MOM, AND SAID:
18 'LET'S GO, KITTY. COME BACK TO THE DEN,'
19 OR SOMETHING ALONG THOSE LINES.

20 "YOUR FATHER CAME BACK OUT OF THE
21 DEN, AND YOUR MOTHER WAS STILL IN THE
22 FOYER?

23 "SHE WAS NEXT TO THE STAIRS. HE
24 GRABBED MY MOM BY THE ARM, AND SAID:
25 'LET'S GO, KITTY.' THEY CLOSED THE DEN
26 DOORS. BECAUSE I REMEMBER LOOKING AT
27 LYLE, AND LYLE SORT OF STARING AT THE
28 DOORS, AND WASN'T MOVING, AND I REMEMBER

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1 THINKING IF HE WAS GOING TO MOVE, AND
2 EVENTUALLY HE RAN UP THE STAIRS, AND I RAN
3 OVER TO THE TOP OF THE STAIRS TO MEET HIM
4 AT THE TOP OF THE STAIRS.

5 "WHAT WAS GOING THROUGH YOUR MIND
6 AT THAT PARTICULAR POINT?

7 "JUST THAT MY DAD WAS GOING TO COME

8 UP TO MY ROOM. MY PARENTS HAD CLOSED THE
9 DOORS. I WAS JUST BEGINNING TO PANIC, AND
10 AS SOON AS I HEARD MY MOTHER SAY: 'YOU'RE
11 NOT GOING OUT TONIGHT,' I FELT CHILLS,
12 BECAUSE I REALIZED WE HAD MADE A MISTAKE
13 IN EVEN ASKING TO GO OUT. WE SHOULD HAVE
14 JUST LEFT.

15 "WHAT WAS THE NEXT THING THAT
16 HAPPENED?

17 "MY BROTHER CAME TO THE TOP OF THE
18 STAIRS, AND I SAID TO HIM: 'I'M NOT GOING
19 TO MY ROOM TONIGHT. I CAN'T LET HIM COME
20 TO MY ROOM. I CAN'T LET THIS HAPPEN.'
21 HE TOLD ME NOT TO WORRY ABOUT THAT, 'IT'S
22 HAPPENING NOW. THEY WERE WAITING FOR ME
23 TO GET HOME, AND IT'S HAPPENING NOW.'

24 "WHAT DID YOU UNDERSTAND THAT TO
25 MEAN?

26 "WE WERE GOING TO DIE.

27 "WHY DID YOU FEEL THAT?

28 "FROM THE LOOK ON THIS FACE AND HOW

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1 HE LOOKED, JUST THE SITUATION. I KNEW
2 ALREADY, AS SOON AS THEY CLOSED THOSE
3 DOORS TO THE DEN, AFTER MY DAD ORDERED ME

4 TO MY ROOM, THAT IT WAS GOING TO HAPPEN
5 NOW, AND I HADN'T SEEN LYLE LIKE THAT,
6 LOOKING LIKE THAT BEFORE, AND IT WAS JUST
7 FREAKING ME OUT. VERY DRAWN, VERY PALE,
8 SCARED, SHAKING.
9 "WHAT WAS THE NEXT THING THAT YOU
10 DID?
11 "I TOLD LYLE THAT: 'I GOT TO GET
12 TO THE CAR,' AND I RAN TOWARD MY ROOM."
13 AND THAT'S WHEN THEY WENT AND GOT THE
14 SHOTGUNS AND AUGUST 20TH, 1989 HAPPENED.
15 CAN YOU IMAGINE THE EMOTION? CAN YOU
16 IMAGINE THE COMBINATION OF FEAR AND OUTRAGE GOING
17 THROUGH THESE YOUNG MENS' MINDS AT THE TIME THAT THIS
18 OCCURRED AND THEY WENT AND GOT THE SHOTGUNS?
19 AND DO YOU REALLY THINK THAT IN THE MINUTE
20 IT TOOK TO LOAD THEM AND GET BACK IN THE HOUSE, THAT
21 THIS DIED OUT? THAT THERE WAS NO MORE ALL THE RAGE,
22 THERE WAS NO MORE INDIGNATION, THERE WAS NO MORE FEAR
23 GOVERNING WHAT THESE YOUNG MEN DID?
24 IT DOESN'T WORK THAT WAY. WHEN YOU REALLY
25 LOSE IT, WHEN YOU REALLY BECOME INVOLVED IN EMOTIONS,
26 SUCH AS HAPPENED HERE, IT TAKES OVER, AND IT DOESN'T
27 JUST GO AWAY.
28 YES, YOU CAN HAVE THE MOVEMENT TO GO TO A

1 CAR AND TO LOAD A GUN, AND TO KNOW WHERE YOU'RE WALKING
2 OR RUNNING.

3 THERE WAS SOME STATEMENT MADE BY MR. CONN
4 ABOUT LYLE MENENDEZ: "GEE, WHY DIDN'T HE JUST LOOK IN
5 THE WINDOW? HE COULD HAVE LOOKED IN THE WINDOW WHEN HE
6 RAN BACK FROM THE GUESTHOUSE WITH HIS SHOTGUN."

7 HE COULDN'T LOOK IN THE WINDOW. IT WAS
8 LIGHT OUTSIDE AND DARK INSIDE. HIS PARENTS WOULD HAVE
9 SEEN HIM. HE WOULDN'T HAVE SEEN WHAT THEY WERE DOING,
10 THEY WERE HIDDEN BY THE COUCH. YOU'RE NOT GOING TO SEE
11 WHAT THEY'RE DOING BY GOING INTO THAT ROOM. YOU THINK
12 THEY'RE GOING TO BE LOADING THE GUNS OUT IN THE OPEN?

13 HE ACTED IN THIS HEAT OF PANIC, IN THIS
14 HEAT OF PASSION; AND THE RAGE, THE OUTRAGE, THE
15 INDIGNATION AND THE FEAR ALL WORKING TOGETHER, RAN
16 AROUND TO THE CAR, AND THEY WENT IN AND THESE SHOTS
17 HAPPENED.

18 AND MR. CONN MADE A BIG POINT ABOUT THE
19 LAST SHOT, THE RELOAD.

20 HE SAYS -- WELL, HE KNOWS HE DOESN'T HAVE
21 MANSLAUGHTER. HE DOESN'T HAVE MURDER OF MRS. MENENDEZ
22 AT THAT POINT. SO HE SAYS: "BUT LOOK AT THE LAST SHOT.
23 HE HAD TIME TO COOL OFF FOR THE LAST SHOT. THE LAST
24 SHOT YOU CAN HOLD AGAINST HIM, AND PIN EVERYTHING ON
25 LYLE MENENDEZ FOR THAT LAST SHOT AS BEING THE ONE THAT
26 MURDERED HIS MOTHER."

27 DOESN'T WORK THAT WAY. LET'S TAKE A LOOK
28 FOR JUST A MINUTE AT THE LAST SHOT, AND THE TESTIMONY OF

1 DR. WECHT, WHO YOU WILL RECALL IS ONE OF THE LEADING
2 CORONER'S IN THE NATION, WHO CAME IN AND TESTIFIED IN
3 THIS MATTER, REVIEWED EVERYTHING.

4 AND HE SAYS -- THE QUESTION WAS:

5 "LET'S FORGET NO. 1. NO. 1 IS THAT
6 LAST SHOT WITH THE BIRD SHOT TO THE FACE
7 OF MRS. MENENDEZ. LET'S ASSUME NO. 1
8 NEVER HAPPENED. WERE 2 AND 3 BY
9 THEMSELVES FATAL?"

10 THAT'S TWO OF THE BUCKSHOT WOUNDS THAT HAD
11 ALREADY BEEN ATTRIBUTED, ALREADY GIVEN TO MRS. MENENDEZ.

12 "OH, YES. THERE'S NO WAY SHE COULD
13 HAVE BEEN SALVAGED, IF 2 OR 3 WERE
14 SEPARATE, OR 2 AND 3 WERE COMBINED. THOSE
15 WERE FATAL WOUNDS. NOTHING COULD HAVE
16 BEEN DONE MEDICALLY OR OTHERWISE TO SAVE
17 MRS. MENENDEZ AFTER THOSE FATAL BUCKSHOT
18 WOUNDS HAD BEEN ADMINISTERED.

19 "NOW, WITH RESPECT TO NO. 1 TO THE
20 LEFT CHEEK, WAS THERE SOMETHING DIFFERENT
21 ABOUT THAT WOUND WITH RESPECT TO -- IN
22 YOUR OPINION, BASED ON LOOKING AT IT, AND
23 ALSO BASED ON THE AMENDMENT THAT
24 DR. GOLDEN FILED IN SEPTEMBER OF 1995, AS
25 COMPARED TO THE OTHER WOUNDS OF

26 MRS. MENENDEZ? WAS THAT WOUND DIFFERENT
27 ON THE ISSUE OF WHETHER IT WAS BEFORE
28 DEATH, DURING DEATH, OR AFTER DEATH?

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1 "IT APPEARS THAT WOUND OCCURRED
2 AROUND THE TIME OF DEATH. THAT'S A PERIOD
3 OF TIME WE REFER TO AS PERIMORTEM, WHICH
4 MEANS AROUND DEATH. IT'S POSSIBLE IT'S
5 POSTMORTEM, BECAUSE YOU'RE NOT SEEING AS
6 MUCH HEMORRHAGING IN THAT AREA AS WE MIGHT
7 HAVE FOUND.

8 " ALSO, BECAUSE IT COMES AFTER 2
9 AND 3, AND IT WAS A CONTACT WOUND, THEN,
10 AS WE'VE ALREADY DISCUSSED, SINCE 2 AND/OR
11 3 WOULD HAVE BEEN FATAL, THEN IT FOLLOWS
12 THAT SHE WAS NOT GOING TO SURVIVE THOSE
13 WOUNDS. THEY WERE ALMOST INSTANTLY
14 FATAL."

15 IT WAS DISCUSSED: "IF 2 AND 3
16 WOULD HAVE BEEN FATAL, THEN IT FOLLOWS
17 WHAT DR. GOLDEN CALLED NO. 1, THE WOUND TO
18 THE LEFT CHEEK AREA, WAS INFLICTED AS
19 MRS. MENENDEZ WAS DYING OR ALREADY DEAD.
20 THIS DIDN'T SHORTEN HER LIFE. THIS WAS OF
21 NO EFFECT WHATSOEVER, THIS PARTICULAR

22 WOUND. UNFORTUNATELY, SHE WAS ALREADY
23 GONE."
24 SO BECAUSE OF WHAT HAD HAPPENED IN THE ROOM
25 EARLIER. NOW THIS WILL BE BROUGHT OUT BY THE
26 PROSECUTOR, I'M SURE AGAIN. WE TALKED ABOUT USING MARZI
27 EISENBERG TO INFLAME YOU. THIS LAST WOUND CERTAINLY
28 DOESN'T MAKE LYLE MENENDEZ LOOK REAL GOOD. BUT IT

-13337

1 DIDN'T HAVE ANY EFFECT ON MRS. MENENDEZ' LIFE.
2 YOU CANNOT THINK THAT JUST BECAUSE THIS
3 HORRIBLE SHOOTING -- THIS SHOOTING IN THE 10 SECONDS IT
4 OCCURRED, THESE INSTANTS WHEN THIS OCCURRED, THAT ALL OF
5 A SUDDEN IT'S GONE, AND AGAIN, IN A SECOND, YOU'RE BACK
6 TO YOUR RATIONAL SELF.
7 THINK ABOUT WHAT LYLE MENENDEZ DID. HE HAD
8 SHELLS IN HIS POCKET. ALL HE HAD TO DO WAS TAKE THE
9 SHELLS OUT OF HIS POCKET, RELOAD THE GUN RIGHT THERE, IF
10 HE WAS THINKING RATIONALLY, IF REASON WAS WHAT WAS
11 DRIVING HIM. BUT THAT'S NOT WHAT HE DID. HE WAS STILL
12 IN THIS HEAT OF PASSION, IN THIS STATE OF FEAR, AND --
13 THE COURT: LET'S TAKE OUR BREAK RIGHT NOW,
14 MR. GESSLER.
15 WE WILL PRESUME AT 1:30. SORRY TO
16 INTERRUPT YOU. WE WILL PRESUME AT 1:30.
17 DON'T DISCUSS THE MATTER WITH ANYONE.

18 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL SEE YOU

19 ALL BACK HERE AT 1:30.

20 (THE JURY ENTERS THE JURY ROOM

21 AND THE FOLLOWING PROCEEDINGS

22 WERE HELD:)

23

24 THE COURT: OKAY. AS SOON AS THE JURY IS GONE, I

25 WILL DISCUSS IT WITH COUNSEL.

26

27 (THE JURY EXITS THE COURTROOM

28 AND THE FOLLOWING PROCEEDINGS

-13336

1 WERE HELD:)

2

3 THE COURT: OKAY. THE JURORS HAVE LEFT.

4 THE REASON I ASKED COUNSEL TO STOP THE

5 ARGUMENT SO THAT WE CAN TAKE A BREAK WAS TO DISCUSS THE

6 ISSUE OF HEAT OF PASSION AS TO MRS. MENENDEZ.

7 THE ARGUMENT YOU'RE PRESENTING,

8 MR. GESSLER, IS ONE OF MITIGATION AS TO THE DEATH OF

9 MRS. MENENDEZ ON THE BASIS OF HEAT OF PASSION, AS I

10 UNDERSTAND THE WAY YOU'RE ADDRESSING THE JURY.

11 AND THE COURT HAS ALREADY RULED THAT THERE

12 WAS INADEQUATE EVIDENCE OF PROVOCATION TO JUSTIFY THAT

13 INSTRUCTION AS TO THAT.

14 MR. GESSLER: THERE IS A SECOND-DEGREE HEAT OF
15 PASSION, YOUR HONOR, WHICH REDUCES A FIRST TO A
16 SECOND-DEGREE. SO HEAT OF PASSION IS STILL AN ISSUE.
17 THE COURT: I UNDERSTAND THAT, AND I DON'T WANT
18 TO FORECLOSE THAT IN ANY WAY. BUT THE WAY IT'S BEING
19 PRESENTED, IT GIVES THE IMPRESSION -- MISIMPRESSION THAT
20 THE ARGUMENT YOU'RE PRESENTING IS ONE THAT WOULD
21 ELIMINATE MALICE AS TO MRS. MENENDEZ ON A THEORY OF HEAT
22 OF PASSION.
23 MR. GESSLER: NO. IF MALICE IS ELIMINATED AS TO
24 MRS. MENENDEZ, YOUR HONOR, IT'S ON THE GROUNDS OF NO
25 INTENT TO KILL, OR NO CONSCIOUS DISREGARD, AND I DID
26 TALK ABOUT THE SECOND-DEGREE INSTRUCTION IN THAT
27 RESPECT.
28 THE COURT: BUT THE REASON I INTERRUPTED WAS THAT

-13335

1 THE NATURE OF YOUR ARGUMENT WAS SUCH THAT I DREW THE
2 IMPRESSION THAT WHAT YOU WERE ARGUING WAS THAT THERE WAS
3 NO MALICE AS TO THE DEATH OF MS. MENENDEZ BECAUSE OF
4 HEAT OF PASSION.

5 MR. GESSLER: NO. THE MALICE FOR MRS. MENENDEZ
6 IS ON THE OTHER GROUNDS, YOUR HONOR, OF LACK OF PROOF OF
7 THE STATUTORY ELEMENTS.

8 THE COURT: OKAY. THEN I WOULD ASK THAT YOU
9 CLARIFY THAT TO BEING YOUR POSITION DURING YOUR

10 ARGUMENTS. OTHERWISE, AS I SAID, THERE IS THIS
11 MISIMPRESSION THAT YOU'VE GIVEN, THE WAY I LOOK AT IT.

12 MR. GESSLER: I WILL CERTAINLY CLARIFY THE
13 MISIMPRESSION, YOUR HONOR, BECAUSE THAT'S NOT THE
14 ARGUMENT THAT I AM MAKING.

15 THE COURT: ALL RIGHT. I WANTED TO DISCUSS IT
16 OUTSIDE THE PRESENCE OF THE JURY SO THAT IT WOULDN'T
17 CAUSE THE COURT TO INTERFERE WITH YOUR ARGUMENT ANY MORE
18 THAN I DID BY INTERRUPTING IT AT THAT POINT.

19 I ASSUMED YOU WERE GETTING FAIRLY CLOSE TO
20 THE END, AND I APOLOGIZE FOR THAT, BUT I WANTED TO MAKE
21 SURE THAT THIS ISSUE WAS CLARIFIED.

22 ALL RIGHT. WE WILL RESUME AT 1:30.

23 MR. GESSLER: THANK YOU, YOUR HONOR.

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

27

52202

1 VAN NUYS, CALIFORNIA; THURSDAY FEBRUARY 29, 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: ARE WE READY TO PROCEED?

9 MR. GESSLER: THANK YOU, YOUR HONOR.

10 THE COURT: GET THE JURY OUT.

11 (THE JURY ENTERED THE COURTROOM

12 AND THE FOLLOWING PROCEEDINGS

13 WERE HELD:)

14

15 THE COURT: OKAY. THE JURY IS BACK. AND

16 WE'LL CONTINUE WITH THE ARGUMENT.

17 MR. GESSLER.

18 MR. GESSLER: THANK YOU, YOUR HONOR.

19 GOOD AFTERNOON.

20 LET ME TALK JUST A COUPLE MINUTES ABOUT

21 THE LAW BEFORE I CONCLUDE, BECAUSE THE LAW IS ONE OF

22 THE THINGS THAT YOU WILL BE DEALING WITH, AS WELL AS

23 THE FACTS YOU HEARD, WHEN YOU ARE DELIBERATING ABOUT

24 THIS CASE IN THE JURY ROOM.

25 EVERYBODY THAT KNOWS ME KNOWS I'M A

26 BASEBALL FAN, AND I CAN'T GO THROUGH AN ARGUMENT

27 WITHOUT SOME ANALOGY TO BASEBALL. I'M SURE, OUT OF

28 THE GROUP OF 12 PEOPLE, SOMEBODY IS A BASEBALL FAN,

52203

1 AND WILL UNDERSTAND WHAT I MEAN.

2 IN BASEBALL THERE'S A TERM KNOWN AS A

3 GRAND-SLAM HOMERUN. AND WHAT'S REQUIRED FOR A

4 GRAND-SLAM HOMERUN IS AT LEAST FOUR THINGS. YOU

5 HAVE TO HAVE SOMEBODY ON FIRST BASE, SOMEBODY ON
6 SECOND BASE, SOMEBODY ON THIRD BASE AND A BATTER AT
7 THE PLATE WHO HITS THE HOMERUN. WITHOUT ALL FOUR OF
8 THOSE THINGS IT MIGHT BE SOMETHING, BUT IT'S NOT A
9 GRAND-SLAM HOMERUN.

10 IF THERE'S NOBODY ON SECOND, SAY, JUST
11 TWO RUNNERS ON BASE, OR NOBODY ON THIRD, IT'S NOT A
12 GRAND-SLAM HOMERUN.

13 AND THE SAME THING IS TRUE HERE AS TO
14 FIRST-DEGREE MURDER. IF IT DOESN'T HAVE ALL FOUR OF
15 THESE THINGS, IT IS NOT DELIBERATE AND PREMEDITATED
16 FIRST-DEGREE MURDER. YOU HAVE TO HAVE IT TO BE
17 WILLFUL, WHICH IS INTENTIONAL. IT HAS TO BE
18 DELIBERATE. IT HAS TO BE PREMEDITATED, CONSIDERED
19 BEFOREHAND, AND THERE HAS TO BE THE EXPRESS MALICE
20 AFORETHOUGHT. WITHOUT THAT IT'S NOT THERE.

21 AND IF THERE IS THE HEAT OF PASSION --
22 AND THIS PERTAINS TO JOSE MENENDEZ -- IF THERE IS THE
23 HEAT OF PASSION, THE SUDDEN QUARREL, THEN THIS
24 EXPRESS MALICE IS NOT THERE. THERE IS NO
25 FIRST-DEGREE MURDER. THERE IS NO MURDER, BECAUSE
26 IT'S WITHOUT THE MALICE, AND IT'S MANSLAUGHTER.

27 NOW, AS TO MRS. MENENDEZ, IT'S A LITTLE
28 BIT DIFFERENT BECAUSE THERE IS NO MANSLAUGHTER

1 VERDICT ON MRS. MENENDEZ. YOU CONSIDER ALL OF THE
2 FACTS REGARDING MRS. MENENDEZ AS TO HOW IT AFFECTED
3 THE EVENTS ON THAT LAST NIGHT AND ON THE MENTAL
4 STATES THAT WERE GOING ON. YOU CONSIDER ALL OF
5 THAT, BUT IT'S NOT FOR THE MANSLAUGHTER ASPECT ON
6 MRS. MENENDEZ.

7 IN ORDER FOR THE DISTRICT ATTORNEY TO
8 PROVE MURDER ON MRS. MENENDEZ, THEY HAVE THESE TWO
9 TYPES OF SECOND-DEGREE MURDER, EXPRESS MALICE OR
10 IMPLIED MALICE.

11 AGAIN, ON EXPRESS MALICE, JUST LIKE IN
12 BASEBALL, IF YOU'RE GOING TO HIT A SINGLE, YOU GET
13 TO FIRST BASE. BUT IF THE SHORTSTOP GETS IT THERE
14 FIRST, YOU'RE OUT. IF THEY HAVEN'T PROVEN AN INTENT
15 TO KILL MRS. MENENDEZ, IT'S NOT A HIT. IT'S NOT
16 MALICE. WAS LYLE MENENDEZ INTENDING, THINKING AND
17 INTENDING TO KILL MRS. MENENDEZ? OTHERWISE, IF
18 THERE'S REASONABLE DOUBT TO THAT, IT'S NOT GUILTY.

19 AND ON THE IMPLIED MALICE THEORY, WHAT
20 IS REQUIRED, IN ORDER TO GET TO FIRST BASE FOR THE
21 DISTRICT ATTORNEY, THEY HAVE TO PROVE THAT THE ACT
22 WAS NOT ONLY DELIBERATELY PERFORMED, BUT IT WAS DONE
23 WITH THE KNOWLEDGE OF THE DANGER TO MRS. MENENDEZ
24 AND WITH CONSCIOUS DISREGARD FOR HER HUMAN LIFE,
25 RECKLESS INDIFFERENCE TO HER.

26 IF THERE'S REASONABLE DOUBT AS TO THAT,
27 THEN IT'S NOT GUILTY ON THE MURDER OF

52205

1 AND YOU APPLY THAT WITH THE
2 CIRCUMSTANTIAL EVIDENCE RULES THAT WE HAVE TALKED
3 ABOUT, AND THE FACT THAT THERE ARE TWO REASONABLE
4 INTERPRETATIONS OF THE MENTAL STATE, ONE POINTS TO
5 THE ABSENCE OF THE SPECIFIC INTENT OR MENTAL STATE,
6 AND ONE POINTS TO THE EXISTENCE OF IT. YOU HAVE TO
7 ADOPT THE ONE THAT GOES TO THE ABSENCE OF THE
8 SPECIFIC INTENT OR MENTAL STATE.

9 THAT'S FOR PREMEDITATION AND
10 DELIBERATION, MALICE, ALL OF THOSE MENTAL STATES,
11 INTENTION. IN THIS ONE, TO GIVE THE BASEBALL
12 ANALOGY, IN BASEBALL, AS YOU KNOW, THE TIE GOES TO
13 THE RUNNER. IN THE LAW, WITH CIRCUMSTANTIAL
14 EVIDENCE, THE TIE DOES NOT GO TO THE RUNNER, THE
15 RUNNER, BEING THE DISTRICT ATTORNEY.

16 IF IT'S A TIE, HE LOSES. HE HAS TO HAVE
17 THE ONLY REASONABLE INTERPRETATION THAT HE CAN PUT
18 ON THAT EVIDENCE. YOU HAVE TO BELIEVE IT'S THE ONLY
19 REASONABLE INTERPRETATION IN ORDER TO REACH A MENTAL
20 STATE. IF THERE'S ANY OTHER REASONABLE EXPLANATION,
21 IT'S OUT.

22 WE WERE TALKING ABOUT THE LAST SHOT WHEN

23 WE BROKE AT LUNCH. LET ME READ AGAIN A PORTION OF
24 MR. CONN'S ARGUMENT TO YOU. HE TALKED ABOUT THE
25 TESTIMONY AND HE SAID THAT DR. LAWRENCE ALSO
26 TESTIFIED -- HE'S TALKING ABOUT WHY HE NEEDS YOU TO
27 FIND THIS IN ORDER TO GET PREMEDITATION ON THAT
28 MURDER, ON THAT KILLING.

52206

1 AND HE SAYS DR. LAWRENCE ALSO TESTIFIED
2 IN REGARD TO THE WOUNDS TO KITTY MENENDEZ. THAT
3 TOOK MUCH MORE DISCUSSION BECAUSE OF THE NUMBER OF
4 WOUNDS INVOLVED.
5 AND HE SAID, UNLIKE THE WOUND TO THE LEG
6 OF JOSE MENENDEZ, NO WOUND TO KITTY MENENDEZ WAS
7 CLEARLY POSTMORTEM. ALL WOUNDS, HE SAID, COULD BE
8 EITHER ANTEMORTEM OR PERIMORTEM, THAT IS, THEY COULD
9 BE BEFORE DEATH, THEY COULD BE AT DEATH, AND THEY
10 CAN BE POSTMORTEM. THEY JUST WEREN'T CLEARLY
11 POSTMORTEM. AND YOU REMEMBER DR. LAWRENCE'S ACTUAL
12 TESTIMONY, WHAT HE SAID ON THE STAND. AND YOU CAN
13 LOOK AT YOUR NOTES OR HAVE IT REREAD. WHAT HE
14 REALLY SAID IS:
15 "I CAN'T TELL. IT MIGHT BE AFTER
16 DEATH, MIGHT BE BEFORE DEATH, MIGHT BE
17 RIGHT AT THE TIME OF DEATH. I DON'T

18 KNOW. I CANNOT TELL YOU."

19 AND WE HAVE DR. GOLDEN'S REPORT, THAT
20 YOU WILL HAVE, AND WHAT HE'S SAYING IS THAT IT WAS
21 EITHER POSTMORTEM OR PERIMORTEM, BECAUSE OF THE LACK
22 OF HEMORRHAGING. THAT'S WHAT HE SAID IN HIS FINAL
23 REPORT IN 1995. AND IN HIS ORIGINAL REPORT HE
24 BASICALLY SAID THE WOUND TRACKS WERE SO MIXED UP
25 THAT IT WAS HARD TO TELL.

26 THEN WE HAVE DR. WECHT, WHICH I SHOWED
27 YOU, WHO SAYS PERIMORTEM OR POSTMORTEM. SO WHEN YOU
28 ANALYZE THE EVIDENCE FROM THE MEDICAL PEOPLE,

52207

1 THERE'S NOBODY WHO SAYS: IN MY OPINION IT WAS
2 BEFORE DEATH. THERE IS NO SUCH OPINION. ALL THE
3 OPINIONS ARE POSSIBLY, BUT PROBABLY NOT.

4 AND YOU LOOK AT MR. LINHART, AN
5 EXPERIENCED CRIMINALIST FROM THE SHERIFF'S
6 DEPARTMENT, WHO, ALTHOUGH HE'S NOT A DOCTOR, HAS
7 SEEN MANY HOMICIDE SCENES. AND HE SAID HE THOUGHT
8 ORIGINALLY, FROM LOOKING AT IT, IT WAS POSTMORTEM.

9 NOW HE LOOKS AT THE DISTRICT ATTORNEY'S
10 ARGUMENT. FIRST HE'S SAYING -- FROM COULD BE
11 ANTEMORTEM OR POSTMORTEM.

12 HE SAYS THERE'S A THIRD REASON FOR YOU

13 TO REJECT THAT POSITION, THAT COUNSEL FOR LYLE
14 MENENDEZ WILL ASK YOU TO ACCEPT, IS THAT THAT LAST
15 SHOT TO KITTY MENENDEZ WAS A FREE SHOT, BECAUSE SHE
16 WAS DEAD AT THAT TIME.

17 WE HAVE THE TESTIMONY FROM DR. LAWRENCE
18 IN THIS REGARD SAYING THAT NO WOUNDS WERE CLEARLY
19 POSTMORTEM. IF ANYTHING, IT WAS BEFORE DEATH OR
20 PERIMORTEM, AT THE TIME OF THE DEATH. THAT'S NOT
21 WHAT HE SAID. HE SAID "I CAN'T TELL."

22 YOU CAN'T TAKE EVIDENCE OF AN "I CAN'T
23 TELL" OR "IT CAN BE ANY OF THE THREE" AND TURN IT
24 AROUND AND SAY, WELL, THE DEFENSE HASN'T DISPROVED
25 IT; AND, THEREFORE, WE WIN.

26 THAT IS TAKING THAT BURDEN OF PROOF WE
27 TALKED ABOUT, CHANGING THAT PRESUMPTION, FROM THE
28 PRESUMPTION OF INNOCENCE THAT LYLE MENENDEZ AND ERIK

52208

1 MENENDEZ ARE ENTITLED TO, IT'S TURNING IT AROUND AND
2 SAYING, "WELL, WE HAVE SOME DOCTORS WHO SAY I CAN'T
3 SAY FOR SURE THAT THIS WOUND CAME AFTER DEATH; THEREFORE,
4 YOU HAVE TO FIND THEM GUILTY OF PREMEDITATION ON
5 THAT COUNT, BECAUSE THEY HAVEN'T GOT ANYBODY WHO CAN
6 SAY FOR ABSOLUTELY SURE THAT IT WAS BEFORE DEATH --
7 OR AFTER DEATH.

8 THAT'S NOT THE WAY IT WORKS. THE BURDEN
9 IS ON THE PROSECUTION. THE BURDEN IS NOT ON THE
10 DEFENSE. AND THIS IS ONE OF THE LATEST EXAMPLES OF
11 WHERE THAT OCCURRED IN MR. CONN'S ARGUMENT, SUBTLY
12 SHIFTING THE BURDEN, THAT IF WE HAVEN'T DISPROVEN
13 SOMETHING, THEN HE MUST HAVE PROVEN IT.

14 NOW, IN CASES, ALL CASES, BE THEY
15 HOMICIDE CASES OR ANYTHING ELSE, THE DISTRICT
16 ATTORNEY GETS TO GO LAST. MR. CONN WILL GET TO
17 STAND UP AND ANSWER EVERYTHING THAT MS. ABRAMSON AND
18 I HAVE BEEN SAYING ABOUT THIS CASE DURING THE PAST
19 WEEK. THAT'S HIS RIGHT, BECAUSE HE HAS THE BURDEN
20 OF PROOF.

21 AND I ASK YOU, WHEN YOU'RE LISTENING TO
22 HIM, TO PAY VERY CLOSE ATTENTION TO HOW HE'S ARGUING
23 THE CASE AND WHETHER OR NOT WHAT HE IS SAYING IS
24 BORNE OUT TO YOU BY YOUR RECOLLECTION AND YOUR NOTES
25 OF WHAT THE ACTUAL EVIDENCE WAS IN THE CASE. AND
26 THAT HE'S NOT USING THIS "SHIFT THE BURDEN OF PROOF"
27 AS TO WHAT THE DEFENSE DIDN'T DISPROVE AS HE SAYS
28 IT. THE BURDEN IS ON HIM.

52209

1 AND SINCE I DON'T GET A CHANCE TO
2 RESPOND TO WHAT HE SAYS, I'M ASKING YOU TO LOOK AT

3 HIS ARGUMENT WITH THAT IN MIND.

4 NOW, WE'RE ABOUT TO CONCLUDE. WE HAVE
5 THE EVIDENCE OF THIS TRAGEDY OCCURRING. JOSE
6 MENENDEZ AND MARY MENENDEZ ARE DEAD IN THE DEN.

7 MR. CONN ASKS YOU TO DECIDE THAT LYLE
8 MENENDEZ NOW PREMEDITATES WHEN HE FIRES THAT LAST
9 SHOT BECAUSE NOW HE'S CLEAR OF MIND. BUT HE HAS A
10 SHELL IN HIS POCKET, AND HE DOESN'T EVEN TAKE IT
11 OUT. HE DOESN'T THINK OF THAT, BECAUSE HE'S NOT
12 THINKING RATIONALLY. HE'S STILL UNDER HEAT OF
13 EMOTION. HE'S NOT PREMEDITATING. HE'S NOT
14 DELIBERATING. INSTEAD, HE RUNS OUTSIDE TO THE CAR
15 TO GET A SHELL, INSTEAD OF WHATEVER HE HAD IN HIS
16 POCKET.

17 AND YOU THINK ABOUT THE DANGER TO
18 HIMSELF OF DOING THAT. WHAT A DUMB THING TO DO, RUN
19 OUT TO THE CAR AFTER FIRING ALL THOSE SHOTS IN
20 BEVERLY HILLS ON A SUMMER NIGHT AT 10:00 O'CLOCK,
21 THAT THE NEIGHBORS HEARD. AND YOU KNOW THAT IN MOST
22 SITUATIONS THERE'S GOING TO BE NEIGHBORS GATHERING.
23 THERE'S GOING TO BE PEOPLE AT THEIR WINDOWS OR
24 LOOKING OUT OR WALKING ALONG SAYING: "WHAT WAS
25 THAT? WHAT IS GOING ON?"

26 AND HERE WE HAVE LYLE MENENDEZ RUNNING
27 RIGHT OUT TO THE FRONT WHERE THE CAR IS IN PLAIN
28 SIGHT OF PEOPLE DRIVING BY, POLICE CARS ATTRACTED TO

1 THE SHOTS, OR NEIGHBORS, TO GET ANOTHER SHELL,
2 INSTEAD OF REACHING INTO HIS POCKET FOR THE ONE HE
3 ALREADY HAD.

4 WHAT BETTER EVIDENCE COULD WE HAVE THAT
5 HE WAS NOT THINKING RATIONALLY AT THAT PARTICULAR
6 TIME, BUT WAS STILL ACTING UNDER ALL OF THE EMOTION
7 OF THE MOMENT THAT BROUGHT THIS ABOUT?

8 YOU KNOW, YOU THINK ABOUT IT. HE'S JUST
9 FORTUNATE THAT HE WASN'T ARRESTED RIGHT AT THE SPOT,
10 BECAUSE JOSH KROM, WHO WAS 14 YEARS OF AGE, HE KNEW
11 WHAT WAS GOING ON. HE WAS ON THE PHONE TO 911, AND
12 HIS MOTHER SAYS, "NAH, IT'S CHINESE FIRECRACKERS.
13 DON'T MAKE A FOOL OUT OF YOURSELF," AND MADE HIM
14 HANG UP THE PHONE. IF HE HAD GOTTEN THROUGH ON THAT
15 PHONE CALL, AS HE SHOULD HAVE, THEY'D HAVE BEEN
16 ARRESTED RIGHT AT THE SPOT. THE POLICE WOULD HAVE
17 BEEN THERE RIGHT AT THE TIME.

18 SO THINK OF THE RISK HE WAS RUNNING IF
19 HE'D BEEN THINKING, IF HE'D BEEN RATIONAL, IN
20 RUNNING BACK OUT AND RELOADING AT THAT PARTICULAR
21 TIME, AFTER ALL OF THESE SHOTS HAD ALREADY BEEN
22 FIRED.

23 THEN WE GET TO THE END. I SAID THIS WAS
24 LIKE THE GREEK TRAGEDY WRITERS 2500 YEARS AGO,
25 BECAUSE THIS CASE IS NOT A MURDER. THIS IS NOT A
26 CASE WHERE ERIK MENENDEZ OR LYLE MENENDEZ SHOULD BE

27 BRANDED AS MURDERERS, BRANDED AS MURDERERS FOR
28 SECOND DEGREE OR FIRST DEGREE; BECAUSE INSTEAD, THIS

52211

1 REALLY IS A TRAGEDY IN WHICH IT WAS THE MORAL
2 SHORTCOMINGS OF JOSE MENENDEZ AND OF MARY MENENDEZ
3 THAT LED TO THIS TRAGIC END.

4 IF JOSE MENENDEZ HAD NOT BEEN SO INTO
5 FEAR-PRODUCING, INTO A RELATIONSHIP OF INDUCING FEAR
6 IN HIS SON SO THAT THE STARE MADE HIM WET HIS PANTS
7 WHEN HE WAS A CHILD, AND RIGHT ON UP TO THE PUNCH IN
8 THE MOUTH AT THE TENNIS MATCH IN LATER YEARS;

9 IF HE HAD NOT BEEN A SEXUAL ABUSER,
10 CAUSING THEM TO FEAR HIM;

11 IF JOSE MENENDEZ HAD NOT BRAGGED ABOUT
12 HIS CONNECTIONS SO THAT ERIK MENENDEZ BELIEVED THAT
13 IN TALKING TO ROBERT CLOUSE;

14 IF JOSE MENENDEZ HAD NOT DONE ALL OF
15 THESE THINGS;

16 IF HE HAD NOT USED FEAR AND THREATS, AS
17 HE DID TO ROBERT CLOUSE, AND TELLING THE BOYS: "I
18 CAN FIND YOU WHEREVER YOU GO," YOU'D THINK THAT THEY
19 WOULD HAVE LEFT ON SUNDAY NIGHT INSTEAD OF THIS
20 TRAGEDY HAPPENING.

21 BUT INSTEAD, JOSE MENENDEZ MADE THEM

22 BELIEVE THAT HE COULD DO THESE THINGS. AND JOSE
23 MENENDEZ MADE THEM BELIEVE THERE WAS NO ALTERNATIVE
24 THAT NIGHT, AND JOSE MENENDEZ MADE THEM BELIEVE THAT
25 WHEN HE MADE A THREAT HE COULD CARRY IT OUT.

26 AND MRS. MENENDEZ, DO YOU THINK IF SHE
27 HAD BEEN THE PROTECTOR, THE MOTHER, THAT SHE WAS
28 SUPPOSED TO BE, INSTEAD OF BEING SO IMAGE-CONSCIOUS

52212

1 THAT SHE'D TELL A YOUNG WOMAN TO GO HAVE AN ABORTION
2 RATHER THAN TO EMBARRASS HER HUSBAND.

3 SO IMAGE-CONSCIOUS SHE'D RUB LYLE
4 MENENDEZ' FACE IN THE SHEETS WHEN HE WAS A
5 BED-WETTER.

6 SO IMAGE-CONSCIOUS THAT SHE MADE THEM
7 FEEL THAT THAT WAS MORE IMPORTANT TO HER THAN THEIR
8 VERY LIVES, AND HAD NOT MISUSED THIS TELEPHONE BUG,
9 LISTENED INTO THE CALLS AND MADE ERIK MENENDEZ
10 BELIEVE THAT SHE KNEW EVERYTHING HE WAS DOING, AND
11 THERE WAS NO PLACE HE COULD GO.

12 AND IF SHE HADN'T SAID ON SATURDAY NIGHT
13 WHEN THEY CAME HOME, AFTER TALKING AT U.C.L.A.,
14 "IF YOU'D KEPT YOUR MOUTH SHUT, THINGS WOULD HAVE
15 WORKED OUT IN THIS FAMILY."

16 IF SHE HADN'T TOLD ABOUT THE SEX AND

17 "JUST LET IT GO ON, ERIK," EVERYTHING WOULD BE ALL
18 RIGHT.

19 "THAT'S MORE IMPORTANT THAN WRECKING THE
20 FAMILY, ERIK." THAT'S WHAT SHE'S SAYING.

21 AND IF SHE HADN'T SAID TO LYLE MENENDEZ,
22 WHEN JOSE MENENDEZ IS SAYING: "I'M COMING UPSTAIRS,"
23 AND LYLE MENENDEZ IS SAYING: "YOU'RE NOT GOING TO
24 TOUCH MY BROTHER AGAIN." TURNING TO HIM AND
25 SAYING: "YOU RUINED THIS FAMILY," INSTEAD OF
26 SAYING: "IT'S ALL RIGHT, LYLE. I'LL CALM HIM DOWN.
27 THIS WON'T HAPPEN."

28 IF SHE'D ACTED LIKE A MOTHER, DO YOU

52213

1 REALLY THINK THIS TRAGEDY ON SUNDAY NIGHT WOULD HAVE
2 HAPPENED, AND THAT LYLE AND ERIK MENENDEZ WOULD HAVE
3 FELT THAT THEY HAD NO ALTERNATIVE IN THEIR FEAR AND
4 ANGER AND OUTRAGE THAN TO GO GET THE SHOTGUNS AND
5 COME INTO THE DEN?

6 DO YOU FEEL BEYOND A REASONABLE DOUBT
7 THAT THESE EVENTS WOULD HAVE OCCURRED HAD IT NOT
8 BEEN FOR THOSE MANY FLAWS OF JOSE AND MARY MENENDEZ
9 THROUGHOUT THEIR LIVES, AND MOST PARTICULARLY ON
10 AUGUST 20TH OF 1989?

11 I ASK YOU FOR VERDICTS. MANSLAUGHTER IS

12 ALL RIGHT ON JOSE MENENDEZ. OF NOT GUILTY ON MARY
13 MENENDEZ. AND I THINK WHEN YOU SEE ALL THE
14 EVIDENCE, LOOK AT EVERYTHING, THINK ABOUT
15 EVERYTHING, THIS WILL BE YOUR VERDICT.

16 AND I THANK YOU VERY MUCH FOR YOUR
17 ATTENTION.

18 THE COURT: ALL RIGHT. THANK YOU,
19 MR. GESSLER.

20 LET ME INQUIRE. DO YOU NEED EXHIBITS,
21 OR ARE YOU READY TO PROCEED?

22 MR. CONN: I'M READY TO PROCEED.

23 THE COURT: PEOPLE MAY BEGIN THEIR CLOSING
24 ARGUMENT.

25

26 CLOSING ARGUMENT

27 BY MR. CONN:

28 GOOD AFTERNOON, LADIES AND GENTLEMEN.

52214

1 BLAME THE VICTIM. ISN'T THAT WHAT THE
2 DEFENSE IS ALL ABOUT? I THINK IT WAS REALLY
3 APPROPRIATE THAT MR. GESSLER ENDED THE WAY HE DID,
4 BECAUSE THAT'S REALLY THE WAY THE DEFENSE STARTED.
5 BLAME THE VICTIMS. FIND SOME FAULT WITH THE VICTIMS
6 AND PUT EVERYTHING ON THEM. PUT ALL THE BLAME ON

7 THEM. THAT'S WHAT THIS WHOLE DEFENSE HAS BEEN ABOUT
8 FROM THE START.

9 IT BEGAN ACCUSING THE VICTIMS OF
10 PHYSICAL ABUSE AND SEXUAL ABUSE. AND IT FINALLY
11 ENDED WITH BLAMING THEM FOR THEIR OWN DEATHS.
12 THAT'S EXACTLY WHAT THEY WANT YOU TO DO IN THIS
13 CASE. THEY WANT YOU TO FIND SOME FAULT WITH KITTY
14 AND JOSE MENENDEZ AND MAKE THEM RESPONSIBLE FOR
15 THEIR OWN DEATH.

16 THIS WAS INEVITABLE. IT'S INEVITABLE
17 FROM THE TYPE OF DEFENSE THAT WAS CHOSEN IN THIS
18 CASE, BECAUSE IT WAS, AS I INDICATED TO YOU, AN
19 ABUSE EXCUSE, A CAREFULLY CONTRIVED ONE, AN
20 ELABORATE ONE, FILLED WITH A LOT OF DETAILS.

21 THIS WAS CLEAR FROM DAY ONE THAT THIS IS
22 WHAT THIS CASE IS ALL ABOUT. I TRIED TO PREVENT
23 MR. GESSLER FROM MAKING THE TYPE OF ARGUMENT THAT HE
24 JUST MADE HERE TODAY BY ASKING ERIK MENENDEZ
25 QUESTIONS ABOUT THAT WHEN HE WAS ON THE WITNESS
26 STAND.

27 I ASKED HIM: "DO YOU BLAME YOUR FATHER
28 FOR THIS? DO YOU BLAME YOUR MOTHER?"

52215

1 AND ERIK MENENDEZ SAID: "OH, NO, I

2 DON'T. I DON'T BLAME THEM."

3 OF COURSE HE'S NOT GOING TO ACCUSE HIS
4 PARENTS DIRECTLY. INSTEAD, AS I INDICATED, HE'LL
5 HAVE EXPERTS DO IT FOR HIM; AND FINALLY, IN THE END
6 HE'LL HAVE ATTORNEYS STAND UP HERE AND DO IT FOR
7 HIM.

8 BUT THAT'S ALWAYS BEEN WHAT THIS CASE
9 HAS BEEN ABOUT. SHIFTING OF RESPONSIBILITY. DON'T
10 BLAME ME. BLAME SOMEONE ELSE. WHETHER IT'S THE
11 PURCHASE OF THE GUNS, WHETHER IT'S THE PURCHASE OF
12 THE AMMUNITION, WHETHER IT'S THE BURGLARIES, WHETHER
13 IT'S GOING TO SAN DIEGO TO BUY WEAPONS, WHETHER IT'S
14 ENDING UP IN THE DEN, NO MATTER WHAT IT IS, BLAME
15 SOMEONE ELSE. SHIFT RESPONSIBILITY.

16 THE TIME HAS COME, LADIES AND GENTLEMEN,
17 TO REJECT THE ARGUMENT OF MR. GESSLER AND TO HOLD
18 THE DEFENDANTS ACCOUNTABLE AND TO MAKE THE
19 DEFENDANTS TAKE RESPONSIBILITY IN THIS CASE. I
20 WOULD SUBMIT TO YOU, THAT IT'S A LITTLE BIT TOO LATE
21 TO BE SHIFTING RESPONSIBILITY AND SAYING THAT THE
22 VICTIMS IN THIS CASE ARE THE ONES WHO ARE
23 RESPONSIBLE HERE.

24 THE MENENDEZ DEFENSE, THAT WE'VE HEARD
25 SO MUCH TESTIMONY -- AND I HAVE A TON OF NOTES, AND
26 I'M NOT EVEN GOING TO START WHERE I THOUGHT I WOULD
27 START, BECAUSE SO MUCH WAS SAID THAT SOMETIMES IT
28 BECOMES NECESSARY TO START SOMEWHERE ELSE.

1 THE MENENDEZ DEFENSE FAILED FOR TWO
2 FATAL REASONS. I THINK THAT'S THE WAY I'LL START,
3 TO GIVE YOU THE OVERVIEW. AS I BEGAN MY OPENING
4 ARGUMENT WITH YOU WITH AN OVERVIEW, LET ME GIVE MY
5 CLOSING ARGUMENT TO YOU WITH AN OVERVIEW.

6 THE MENENDEZ DEFENSE CASE FAILED FOR TWO
7 FATAL REASONS. NUMBER ONE, IT IS A SCENARIO WHICH
8 IS GIVEN TO YOU AGAINST A BACKDROP OF ALLEGATIONS.
9 IT IS A SCENARIO OF WHAT OCCURRED ON AUGUST THE 20TH
10 OF 1989. AND IT FAILS IN BOTH SENSES. THE BACKDROP
11 FAILED, THE ALLEGATIONS IN THE BACKDROP, THE
12 ALLEGATIONS UPON WHICH THEY FRAME THEIR DEFENSE
13 FAILED. AND THE ACTUAL DEFENSE ITSELF, OF AUGUST
14 THE 20TH OF 1989, ALSO FAILS.

15 NOW, WHY DOES THE BACKDROP FAIL?
16 BECAUSE WHAT ARE THEY ALLEGING IN THIS CASE?
17 THEY'RE SAYING THAT KITTY AND JOSE MENENDEZ WERE
18 THESE ABUSIVE PARENTS WHO THEY WANT TO PUT ON
19 TRIAL. AND THE SUBSTANCE OF THE ALLEGATIONS COMES
20 DOWN TO, AS MS. ABRAMSON STATED, JOSE MENENDEZ WAS A
21 SICK MAN. AND THE WHOLE CASE, THE WHOLE DEFENSE IS
22 ARGUED ON THAT PREMISE, THAT JOSE MENENDEZ WAS A
23 SICK MAN; AND KITTY MENENDEZ WAS ALSO AN EVIL
24 WOMAN.

25 AND WHERE IS THE EVIDENCE OF THAT,

26 LADIES --

27 MS. ABRAMSON: OBJECTION, YOUR HONOR.

28 THE COURT: OVERRULED.

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1 MR. CONN: THE ALLEGATIONS IN THIS CASE ARE

2 PREMISED ON --

3 MS. ABRAMSON: YOUR HONOR, I'D LIKE TO BE

4 HEARD.

5 MR. CONN: -- SEXUAL ABUSE.

6 THE COURT: NOT AT THIS POINT.

7 MR. CONN: AND WHERE, LADIES AND GENTLEMEN,

8 DO WE HAVE EVIDENCE OF PHYSICAL AND SEXUAL ABUSE?

9 IT ALL COMES DOWN TO ERIK MENENDEZ. ALL OF THE

10 ALLEGATIONS IN THIS CASE COME DOWN TO ERIK

11 MENENDEZ.

12 SO AS MUCH AS THESE DEFENSE ATTORNEYS

13 WANT TO STAND IN FRONT OF YOU AND ARGUE VERY

14 STRENUOUSLY HE WAS A SICK MAN, DON'T, LADIES AND

15 GENTLEMEN, SAY, WELL, IF MS. ABRAMSON SAID HE WAS A

16 SICK MAN, I'M GOING TO GO BACK TO THAT JURY ROOM AND

17 I'M GOING TO ANALYZE THIS STARTING WITH THAT

18 PREMISE, THAT JOSE MENENDEZ WAS SICK MAN.

19 ASK YOURSELF, LADIES AND GENTLEMEN,

20 WHERE IS THE EVIDENCE?

21 NOW, I MADE THIS POINT IN MY OPENING

22 STATEMENT, AND I WAITED TO HEAR HOW COUNSEL WAS

23 GOING TO PHRASE IT WHEN THEY GOT UP AND MADE THEIR

24 ARGUMENT TO YOU.

25 AND DID THEY POINT OUT PHYSICAL

26 EVIDENCE, ANY EVIDENCE OF PHYSICAL OR SEXUAL ABUSE

27 THAT I DIDN'T REFER TO IN MY OPENING STATEMENT?

28 THEY HAD NOTHING MORE TO SAY. THEY SHOWED YOU

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1 CHARTS OF THE -- THIS PYRAMID -- I'LL SHOW YOU THE

2 PYRAMID LATER -- OF WHAT THE TESTIMONY OF ERIK

3 MENENDEZ IS BACKED UP BY.

4 LADIES AND GENTLEMEN, WHERE WAS THE

5 EVIDENCE OF PHYSICAL AND SEXUAL ABUSE IN THAT WHOLE

6 PYRAMID THAT'S SIGNIFICANT?

7 MS. ABRAMSON: OBJECTION, YOUR HONOR.

8 THE COURT: OVERRULED. HE'S JUST RESPONDING

9 TO THE ARGUMENT PRESENTED BY THE DEFENSE.

10 OVERRULED.

11 MS. ABRAMSON: HE'S MAKING --

12 THE COURT: WAIT, WAIT. OVERRULED.

13 YOU MAY PROCEED.

14 MR. CONN: THERE IS A QUESTION I ASKED

15 DR. WILSON, AND I ASKED HIM SPECIFICALLY: WHERE IS
16 THE EVIDENCE OF PHYSICAL AND SEXUAL ABUSE? HE
17 DIDN'T COME UP WITH ANYTHING YOU HADN'T HEARD.
18 SO DON'T THINK THAT SOMEWHERE IN THAT
19 BIG PYRAMID UNDERNEATH -- REMEMBER THAT BIG PYRAMID
20 WITH ERIK MENENDEZ AT THE TOP? THERE'S ALL SORTS OF
21 ALLEGATIONS OF PHYSICAL ABUSE OR SEXUAL ABUSE
22 AGAINST ERIK MENENDEZ THAT YOU HAVEN'T HEARD ABOUT.
23 THERE'S NO EVIDENCE.
24 IT'S INFURIATING TO SIT HERE AND TO HAVE
25 COUNSEL GO ON FOR FOUR DAYS TELLING YOU JOSE
26 MENENDEZ WAS A SICK MAN BECAUSE HE PHYSICALLY AND
27 SEXUALLY ABUSED HIS SONS, KNOWING THAT IN THIS WHOLE
28 TRIAL YOU DID NOT HEAR ANY EVIDENCE, OTHER THAN FROM

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1 ERIK MENENDEZ, OF SUCH PHYSICAL AND SEXUAL ABUSE.
2 MARTA CANO WAS ONE WITNESS WHO
3 DR. WILSON SAID HE RELIED UPON. WHAT DID SHE HAVE
4 TO SAY? SIMPLY THAT IN THE FIRST TRIAL SHE RECALLED
5 THAT JOSE MENENDEZ ONCE STRUCK ERIK MENENDEZ IN THE
6 ARM? THAT'S WHAT IT WAS, IN THE ARM. AND IN THIS
7 TRIAL IT GOT A LITTLE BETTER. NOW IT'S TWO STRIKES
8 IN THE HEAD. THAT'S IT. THAT'S IT. THAT'S ALL THE
9 PHYSICAL ABUSE OF ERIK MENENDEZ IN THIS TRIAL.

10 AND THE SEXUAL ABUSE, IT'S IRONIC HOW
11 COUNSEL STILL RELIES UPON THE MEDICAL REPORT THAT
12 SAYS AT ONE TIME WHEN HE WAS YOUNG HE WAS EXAMINED
13 BY A DOCTOR AND HE HAD THE INJURY TO THE BACK OF HIS
14 THROAT. AND SHE FALSELY REPRESENTED TO YOU THAT THE
15 DOCTOR SAID THAT WAS INCONSISTENT WITH A POPSICLE.

16 DR. ENGLISH SAID JUST THE OPPOSITE. HE
17 SAID THAT IT COULD HAVE BEEN CAUSED BY A POPSICLE.
18 SO THERE'S NO EVIDENCE AT ALL OF PHYSICAL ABUSE.

19 SO LADIES AND GENTLEMEN, IT IS EXTREMELY
20 IMPORTANT, THAT JUST BECAUSE A DEFENSE ATTORNEY
21 STANDS IN FRONT OF YOU AND TELLS YOU DAY AFTER DAY
22 AFTER DAY THAT JOSE MENENDEZ WAS A SICK MAN BECAUSE
23 HE PHYSICALLY AND SEXUALLY ABUSED HIS SONS, THAT YOU
24 NOT GO BACK INTO THAT JURY ROOM AND ASSUME THAT THAT
25 IS TRUE, BECAUSE IT WASN'T PROVEN HERE IN COURT.

26 YOU'LL BE INSTRUCTED BY THE COURT THAT
27 YOU ARE TO MAKE YOUR DECISION IN THIS CASE -- YOU
28 ARE TO BASE YOUR DECISION IN THIS CASE UPON THE

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1 EVIDENCE PRESENTED IN COURT. AND I TOLD YOU WHY
2 THEY WERE GOING TO DO IT. I TOLD YOU WHY THEY WERE
3 GOING TO DO THIS, TO PUT THE PARENTS ON TRIAL,
4 BECAUSE THEY WANT YOU TO HATE THE PARENTS. THEY DID

5 THAT FROM THE VERY FIRST WITNESS THEY CALLED. UP,
6 UNTIL MR. GESSLER JUST SAT DOWN A COUPLE OF MINUTES
7 AGO, TO GET YOU TO HATE THE PARENTS. THAT IS THE
8 STRATEGY. THEY WANT YOU TO HATE KITTY AND JOSE
9 MENENDEZ.

10 ARE YOU CONVINCED? DO YOU HATE THEM
11 NOW? AND ARE YOU GOING TO GO INTO THAT ROOM FILLED
12 WITH HATE FOR KITTY AND JOSE MENENDEZ, CONVINCED
13 THEY ARE TERRIBLE PARENTS WHO GOT WHAT THEY
14 DESERVED? THAT'S WHAT THEY'RE DOING. THEY GOT WHAT
15 THEY DESERVED.

16 THAT'S WHAT THEY'RE TRYING TO SAY TO
17 YOU. THEY WON'T COMMUNICATE IT THAT BLUNTLY BECAUSE
18 THEY MIGHT OFFEND YOU. IN SO MANY WORDS, THAT'S
19 EXACTLY WHAT THEY'RE DOING. IT'S WHAT THEY
20 DESERVED, EVEN THOUGH THERE IS NOT A WITNESS IN THIS
21 WORLD WHO CAN ESTABLISH THAT ERIK MENENDEZ WAS EVER
22 SEXUALLY ABUSED BY HIS FATHER, OR A WITNESS IN THIS
23 WORLD WHO COULD EVER ESTABLISH THAT JOSE MENENDEZ
24 EVER PHYSICALLY ABUSED HIS SON.

25 SO LADIES AND GENTLEMEN, THE BACKDROP
26 FOR THE MENENDEZ DEFENSE FAILS. IT'S SIMPLY NOT
27 ESTABLISHED. IT ALL COMES DOWN TO ERIK MENENDEZ.

28 AND THEN YOU TURN -- YOU TURN TO THE

1 EVENTS OF AUGUST THE 20TH OF 1989, AND IT FAILS IN
2 THAT REGARD TOO, BECAUSE OF LEAPS THAT THEY WANT YOU
3 TO MAKE IN THIS CASE, THE LEAP IN LOGIC, THE LEAP IN
4 THOUGHT THAT THEY WANT YOU TO MAKE, WHICH IS NOT
5 SUPPORTED BY ANY EVIDENCE, AND THAT IS WHY THE
6 DEFENDANTS -- HOW COULD THEY DO THIS TO THEIR
7 MOTHER? HOW COULD THEY SHOOT THEIR MOTHER LIKE
8 THIS? WHAT IS THE DEFENSE? WHAT IS THE MENTAL
9 STATE DEFENSE IN THIS CASE?

10 IS IT BATTERED-PERSON'S SYNDROME?
11 LADIES AND GENTLEMEN, THE MENTAL STATE DEFENSE IN
12 THIS CASE IS WHEREVER THE DEFENSE ATTORNEYS HAVEN'T
13 BEEN PINNED DOWN IN THE LAST 10 MINUTES. THAT'S
14 WHAT IT IS. BECAUSE AS YOU GO THROUGH THIS LIST OF
15 TERMS THAT THEY ARE THROWING OUT AT THE JURY THAT
16 THEY WANT THIS JURY TO ACCEPT, YOU CAN SEE THAT IT
17 IS DESIGNED TO SIMPLY SEND OUT SMOKE, TO KEEP
18 CHANGING THE PLAYING FIELD, TO NEVER PIN DOWN
19 EXACTLY WHAT THE DEFENSE IS IN THIS CASE, BECAUSE
20 THE DEFENSE DOESN'T MAKE ANY SENSE.

21 WHETHER IT'S GENERALIZED ANXIETY
22 DISORDER OR IT'S POST-TRAUMATIC STRESS DISORDER, IT
23 DOESN'T MAKE YOU DO THIS. P.T.S.D. IS STRESS.
24 DOESN'T MAKE YOU DO THIS TO YOUR MOTHER. THEY CAN'T
25 MAKE THAT LEAP. THEY HAVE TO GET YOU TO MAKE THAT
26 LEAP FROM -- JUST BECAUSE THE DEFENDANT HAD
27 GENERALIZED ANXIETY DISORDER, WHY DID HE DO THIS?

28 AND THAT'S WHERE THE PSYCHIATRIC

1 MUMBO-JUMBO COMES IN. AND I USED THAT TERM
2 "PSYCHIATRIC MUMBO-JUMBO" AND MS. ABRAMSON
3 SAID: "OH, MR. CONN DOESN'T LIKE PSYCHIATRY."

4 IT'S GREAT WHEN IT'S FAIRLY PRESENTED,
5 WHEN IT'S HONESTLY PRESENTED, WHEN IT MAKES SENSE,
6 WHEN IT'S RATIONAL, WHEN IT EXPLAINS. BUT NOT WHEN
7 IT'S USED AS A SMOKE SCREEN DESIGNED TO CONFUSE AND
8 TO AVOID RESPONSIBILITY. AND THAT'S PRECISELY WHAT
9 WAS DONE IN THIS CASE.

10 SO WHAT IS THE DEFENSE IN THIS CASE? IS
11 IT BATTERED-PERSON'S SYNDROME? IS THAT THE PLAYING
12 FIELD? IS THAT WHAT WE'RE TALKING ABOUT HERE? DOES
13 BATTERED-PERSON'S SYNDROME MAKE YOU DO THIS?

14 AND THEN I BROUGHT OUT THE FACT, WELL,
15 BATTERED-PERSON'S SYNDROME REALLY DOESN'T EXIST.
16 IT'S NOT IN THE LITERATURE. YOU COULDN'T FIND IT IN
17 THE DSM. DR. DIETZ ESTABLISHED THAT.

18 WELL, IT'S NOT REALLY -- IT'S NOT REALLY
19 BATTERED-PERSON'S SYNDROME, MR. CONN. DON'T YOU
20 UNDERSTAND?

21 IT'S REALLY P.T.S.D. WELL, IT'S
22 P.T.S.D. P.T.S.D. DOESN'T MAKE YOU DO THAT.

23 WELL, IT'S NOT P.T.S.D. PER SE. I MEAN,

24 WE'RE TALKING ABOUT FIGHT OR FLIGHT RESPONSE. DID
25 YOU THINK WE WERE TALKING ABOUT P.T.S.D.?
26 IT WOULD BE INTERESTING TO HAVE EACH ONE
27 OF YOU GO BACK IN THE JURY ROOM RIGHT NOW AND TO
28 WRITE DOWN ON A PIECE OF PAPER WHAT YOU THINK THE

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1 MENTAL DEFENSE WAS IN THIS CASE, THE MENTAL STATE
2 DEFENSE, BECAUSE IF YOU ALL COME UP WITH DIFFERENT
3 THINGS, AND I THINK YOU CAN, BECAUSE I HAVE A LIST
4 OF AT LEAST 13 HERE, THEN THE DEFENSE WILL HAVE MADE
5 THEIR POINT AND ACCOMPLISHED WHAT THEY WANTED TO
6 ACCOMPLISH, WHICH IS TO CLOUD, TO CREATE THE SMOKE.

7 SO IS IT P.T.S.D.? IT'S NOT REALLY
8 P.T.S.D. IT'S REALLY FIGHT OR FLIGHT. IS IT FIGHT
9 OR FLIGHT? BUT FIGHT OR FLIGHT DIDN'T WORK, BECAUSE
10 DR. DIETZ SAID YOU DON'T LOSE YOUR ABILITY TO HAVE
11 RATIONAL THOUGHT. YOU DON'T LOSE YOUR ABILITY TO
12 EVALUATE THE SITUATION.

13 WELL, IT'S NOT REALLY FIGHT OR FLIGHT,
14 MR. CONN. DON'T YOU UNDERSTAND? IT'S REALLY
15 SURVIVAL MODE. WHAT? SURVIVAL MODE? IT'S NOT
16 REALLY SURVIVAL MODE.

17 "MR. CONN STOOD BEFORE YOU,"
18 MS. ABRAMSON SAID, "AND SAID IT WAS PANIC STATE."

19 "IT'S NOT PANIC STATE," SHE SAID. IT'S PANIC
20 MODE.
21 IT'S AUTO PILOT IS WHAT IT IS. THAT'S
22 WHAT WE'RE TALKING ABOUT. IT'S AUTOMATIC PILOT.
23 BUT DR. DIETZ SAID ALL OF THE ACTIONS
24 HERE OF THE DEFENDANT ARE INCONSISTENT WITH
25 AUTOMATIC PILOT. IT'S MORE CONSISTENT WITH
26 REFLECTIVE THOUGHT.
27 SO HOW DOES THE DEFENSE RESPOND TO
28 THAT? WELL, GEE, IT'S NOT REALLY REFLECTIVE

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1 THOUGHT. IT'S AUTOMATIC PILOT, MR. CONN. WE'RE
2 TALKING ABOUT LEARNED HELPLESSNESS. DON'T YOU
3 UNDERSTAND?
4 BUT LEARNED HELPLESSNESS DOESN'T EXPLAIN
5 THE ACTIONS OF THE DEFENDANTS, BECAUSE THEY'RE VERY
6 COMPETENT WHEN THEY WANT TO BE. THEY GO OUT
7 SHOPPING FOR SHOTGUNS WHEN THEY WANT TO. LEARNED
8 HELPLESSNESS DOESN'T DO THIS.
9 IT'S NOT LEARNED HELPLESSNESS. IT'S
10 ORDINARY FEAR. IT'S JUST FEAR, MR. CONN. DON'T YOU
11 UNDERSTAND? WE'RE JUST TALKING ABOUT FEAR, ORDINARY
12 FEAR.
13 WELL, THE JURY CAN UNDERSTAND ORDINARY

14 FEAR. AND THE JURY CAN REJECT THIS DEFENSE, BECAUSE
15 THE JURY CAN LOOK AT THIS AND SAY ORDINARY FEAR
16 DOESN'T MAKE YOU KILL YOUR PARENTS AND LOSE RATIONAL
17 THOUGHT.

18 IT'S NOT ORDINARY FEAR, MR. CONN. DON'T
19 YOU UNDERSTAND? IT'S HYPER-AROUSAL, DON'T YOU SEE?
20 WHEN YOU GO INTO HYPER-AROUSAL -- WHAT HAPPENS WHEN
21 YOU GO INTO HYPER-AROUSAL IS YOU HAVE
22 HYPERVIGILANCE, AND HYPERVIGILANCE MAKES YOU
23 MISINTERPRET CUES.

24 BUT EVEN IF YOU MISINTERPRET CUES, WHY
25 WOULD YOU RUSH INSIDE AND SHOOT YOUR MOTHER TO
26 DEATH?

27 YOU DON'T UNDERSTAND, MR. CONN. THERE'S
28 REWIRING, BIOLOGICAL REPROGRAMMING.

52225

1 AND THEN MS. ABRAMSON YESTERDAY
2 SAID: "YOU KNOW, I THINK MAYBE MY CLIENT WAS GOING
3 INTO A DISSOCIATIVE STATE." THAT WAS REALLY
4 INTERESTING, BECAUSE DR. VICARY -- WHEN DR. DIETZ
5 WAS CROSS-EXAMINED, MS. ABRAMSON SAID TO DR. DIETZ:
6 "ISN'T IT TRUE THAT MY CLIENT NEVER CLAIMED THAT HE
7 WAS IN A DISSOCIATIVE STATE?"

8 SHE WAS TRYING TO SHOW THAT ERIK

9 MENENDEZ WAS BEING HONEST AND NOT COMING UP WITH
10 SYMPTOMS. ISN'T IT TRUE THAT MY CLIENT DIDN'T CLAIM
11 HE WAS IN A DISSOCIATIVE STATE?

12 DR. DIETZ SAID: "YES THAT'S TRUE".

13 "AND ISN'T IT TRUE THAT DR. VICARY,
14 IN HIS NOTES, HE DIDN'T INDICATE
15 ANYTHING ABOUT DISSOCIATIVE STATE, DID
16 HE?"

17 DR. DIETZ CONCEDED:

18 "NO, I AGREE. HE DIDN'T INDICATE
19 ANYTHING ABOUT A DISSOCIATIVE STATE.

20 "MY CLIENT COULD HAVE CLAIMED HE
21 WAS IN A DISSOCIATIVE STATE, COULDN'T
22 HE? DON'T YOU THINK HE COULD HAVE
23 MANUFACTURED THOSE SYMPTOMS?"

24 AND DR. DIETZ SAID: "YES."

25 SO MS. ABRAMSON REPEATEDLY POUNDED IN
26 THE PROPOSITION THAT ERIK MENENDEZ WAS NOT IN A
27 DISSOCIATIVE STATE.

28 AND THEN THE OTHER DAY, WHEN SHE ARGUED

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1 IN FRONT OF YOU, SHE STANDS UP IN FRONT OF YOU AND
2 SAYS: "WELL, I THINK MY CLIENT MIGHT HAVE BEEN GOING
3 INTO A DISSOCIATIVE STATE."

4 WHERE IS IT? WHERE'S THE DEFENSE IN

5 THIS CASE?

6 AND BATTERED-PERSON'S SYNDROME.

7 P.T.S.D. FIGHT OR FLIGHT. PANIC STATE. PANIC

8 MODE. SURVIVAL MODE. AUTOMATIC PILOT. LEARNED

9 HELPLESSNESS. ORDINARY FEAR. HYPERVIGILANCE.

10 HYPER-AROUSAL. DISSOCIATIVE STATE. BIOLOGICAL

11 EXPLANATIONS OR FEAR RESPONSE.

12 WHICH ONE IS IT? TAKE YOUR PICK.

13 THAT'S WHAT THE DEFENSE WANTS YOU TO DO. TAKE YOUR

14 PICK. IF YOU THINK THEY ALL APPLY IN SOME STRANGE

15 MYSTERIOUS WAY WE DON'T UNDERSTAND, THEN THE DEFENSE

16 ACHIEVED ITS PURPOSE. THEY MADE YOU FEEL THAT THIS

17 SMOKE THEY'VE BEEN SENDING OUT TO YOU IS REAL.

18 LADIES AND GENTLEMEN, I DON'T THINK YOU

19 HAVE TO BE A PSYCHOLOGIST. YOU DON'T HAVE TO BE A

20 PSYCHIATRIST TO ASK YOURSELF: WHY DID THE

21 DEFENDANTS HAVE TO DO THIS? NOTHING ERIK MENENDEZ

22 SAID HERE IN COURT EXPLAINS THIS. HE DIDN'T HAVE TO

23 DO THIS. ONE'S WAS AN UNNECESSARY ACT. ANYONE IN

24 THAT SITUATION, THE SITUATION THAT HE DESCRIBED TO

25 YOU, WOULD HAVE THOUGHT ABOUT WHAT HE WAS DOING AND

26 WOULD NOT HAVE DONE THIS. THEY CAN'T CHALK IT UP TO

27 FEAR RESPONSE.

28 I WENT OVER THIS WITH PARK DIETZ, AND I

1 ASKED PARK DIETZ, I EXPLAINED, THROUGH HIM, STEP BY
2 STEP, ALL OF THE ACTIONS OF THE DEFENDANTS. AND I
3 ASKED HIM: "IS THAT CONSISTENT WITH REFLECTIVE
4 THOUGHT?"

5 AND HE SAID: "YES."

6 "GOING OUT TO YOUR CAR, LOOKING
7 FOR THE SHELLS, MAKING THE CONNECTION
8 THAT YOU NEED TO GET THE AMMUNITION TO
9 PUT IN YOUR GUN, IS THAT CONSISTENT
10 WITH REFLECTIVE THOUGHT?"

11 AND HE SAID: "YES."

12 I SAID: "IS THAT INCONSISTENT
13 WITH AUTOMATIC PILOT?"

14 AND HE SAID: "YES."

15 AND I ASKED HIM THIS LONG SERIES OF
16 QUESTIONS.

17 NOW, MS. ABRAMSON, IN ORDER TO REJECT
18 THAT, BECAUSE THAT REALLY GOES TO THE HEART OF THE
19 DEFENSE -- YOU HAVE TO EXPLAIN WHY THE DEFENDANTS
20 DID THIS. THAT GOES TO THE HEART OF THE DEFENSE.
21 WHAT DID SHE SAY?

22 WELL, WE DON'T KNOW WHAT DR. DIETZ MEANT
23 WHEN HE SAID REFLECTIVE THOUGHT. WHAT DO YOU MEAN,
24 YOU DON'T KNOW WHAT HE MEANT WHEN HE SAID REFLECTIVE
25 THOUGHT? WE ALL KNOW WHAT A REFLECTIVE THOUGHT IS.
26 THINKING.

27 WAS THERE ANY DOUBT ABOUT WHAT DR. DIETZ
28 WAS SAYING WHEN HE SAID IT IS NOT CONSISTENT WITH

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1 AUTOMATIC PILOT? IT'S CONSISTENT WITH REFLECTIVE
2 THOUGHT. THERE SHOULD BE NO DOUBT. I DON'T THINK
3 THERE WAS ANYONE ON THE JURY WHO WAS CONFUSED ABOUT
4 WHAT DR. DIETZ MEANT WHEN HE WAS SAYING THAT WHEN I
5 WENT THROUGH THAT LONG LIST OF QUESTIONS WITH HIM.

6 AND YET MS. ABRAMSON IS NOW PLAYING
7 DUMB. THAT'S WHAT SHE'S DOING. PLAYING DUMB. GEE,
8 WE DON'T KNOW WHAT HE MEANT BY REFLECTIVE THOUGHT.
9 I DON'T HAVE A CLUE, DO YOU, LADIES AND GENTLEMEN?
10 DO YOU HAVE A CLUE? WE DON'T KNOW WHAT HE MEANT BY
11 THAT. MR. CONN FAILED TO ASK HIM THAT QUESTION,
12 WHAT HE MEANT BY REFLECTIVE THOUGHT.

13 DON'T LET HER PLAY DUMB, LADIES AND
14 GENTLEMEN. DON'T FALL FOR THAT. I THINK YOU
15 UNDERSTOOD WHAT HE MEANT. I THINK HE WAS VERY
16 CLEAR. I THINK EVERYONE IN THIS COURTROOM, PROBABLY
17 EVERYONE IN THE AUDIENCE, KNEW EXACTLY WHAT HE WAS
18 TALKING ABOUT. DON'T LET MS. ABRAMSON CLAIM THAT
19 SHE WAS THE ONLY ONE IN THE COURTROOM WHO DOESN'T
20 UNDERSTAND WHAT HE WAS TALKING ABOUT.

21 SHE SAID: "I DIDN'T EVEN ATTACK DR. DIETZ,"

22 SHE SAID, "BECAUSE DR. DIETZ DIDN'T HURT MY CASE."
23 SHE SAID, "YOU KNOW ME. I'M LIKE A PIT BULL."
24 WELL, WHEN DR. DIETZ WAS ON THE STAND,
25 SHE WAS MORE LIKE A CHIHUAHUA. WHY? BECAUSE
26 DR. DIETZ DESTROYED HER CASE. DR. DIETZ MADE IT
27 VERY CLEAR THAT THE DEFENDANT HAD REFLECTIVE
28 THOUGHT. AND THIS ACTION CANNOT BE EXPLAINED BY THE

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1 PSYCHIATRIC MUMBO-JUMBO SHE TRIED TO PRESENT TO
2 YOU. SIMPLY INEXPLICABLE.
3 SO THE MENENDEZ DEFENSE FAILS FOR BOTH
4 OF THOSE REASONS, BECAUSE THE BACKGROUND ALLEGATIONS
5 ARE TOTALLY UNSUBSTANTIATED, CAN'T BE PROVED.
6 THEY'RE WILD ACCUSATIONS BY ERIK MENENDEZ, WITHOUT A
7 SHRED OF RELIABLE EVIDENCE. AND THE EVENTS OF
8 AUGUST THE 20TH OF 1989 MAKE NO SENSE FACTUALLY,
9 PSYCHOLOGICALLY, LOGICALLY, OR LEGALLY. AND FOR ALL
10 OF THOSE REASONS, THIS DEFENSE FAILS.
11 NOW, AGAINST THAT BACKGROUND, LET ME
12 TALK A LITTLE BIT ABOUT SOME OF THE THINGS THAT I
13 HAD PLANNED TO SAY.
14 IT'S IRONIC, WHEN MS. ABRAMSON STOOD
15 BEFORE YOU AND SHOUTED: "THESE PROSECUTORS HAVE NO
16 LOVE." NO LOVE? I THOUGHT ONE'S WAS A TRIAL. THIS

17 IS SUPPOSED TO BE A MURDER TRIAL. THEY'RE ACCUSING
18 THE PROSECUTORS OF NOT HAVING LOVE? WHAT ARE WE
19 HERE FOR? WE'RE HERE TO DETERMINE THE LEGAL
20 RESPONSIBILITY OF THE DEFENDANTS IN THIS CASE. WHAT
21 DOES SHE EXPECT? WHAT IS SHE LOOKING FOR HERE? WHY
22 WOULD YOU SAY THAT IN A COURTROOM? WHY WOULD YOU
23 SAY THESE ATTORNEYS HAVE NO LOVE?
24 IS THAT AN APPROPRIATE RESPONSE? AN
25 APPROPRIATE COMMENT IN A COURTROOM? AREN'T YOU
26 SUPPOSED TO STAY FOCUSED ON THE EVIDENCE AND TALK
27 ABOUT THE EVIDENCE, INSTEAD OF FOCUSING ON THE
28 PROSECUTORS AND TALKING ABOUT THEIR PERSONALITY? WE

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1 HAVE NO LOVE? WHY WOULD THEY DO THAT?
2 THEN YOU KIND OF DISMISS IT. WELL, IT'S
3 JUST SOMETHING THAT MS. ABRAMSON SAID, AND I'LL JUST
4 IGNORE IT. WHAT DIFFERENCE DOES IT MAKE?
5 BUT THEN MR. GESSLER STANDS UP AND SAID
6 EXACTLY THE SAME THING, WHEN HE WAS TALKING ABOUT
7 KATHY SIMONTON AND THE WAY I CROSS-EXAMINED KATHY
8 SIMONTON. MR. CONN HAS NO LOVE AND NO HUMANITY.
9 WHY WOULD THEY SAY SOMETHING LIKE THAT?
10 I WOULD SUBMIT TO YOU, LADIES AND
11 GENTLEMEN, THAT IS SIMPLY DESIGNED TO GET YOUR

12 SYMPATHY. WHAT THEY'RE SAYING IS MR. CONN IS
13 TALKING TO YOU IN A LOGICAL WAY, BASED UPON THE LAW,
14 BASED UPON -- ROOTED IN YOUR RESPONSIBILITY OF WHAT
15 YOU'RE SUPPOSED TO DO IN THIS CASE. AND THE LAST
16 THING IN THE WORLD THEY WANT YOU TO DO IS TO
17 RECOGNIZE I AM ASKING YOU TO ABIDE BY YOUR
18 RESPONSIBILITY, YOUR DUTIES, IN ACCORDANCE WITH THE
19 LAW, AND DECIDE THE CASE STRICTLY UPON THE LAW.
20 BECAUSE THEN IF YOU DECIDE THIS CASE STRICTLY ON THE
21 LAW, THEY'RE OUT OF THE BALLPARK. THEY DON'T HAVE A
22 CHANCE.

23 SO THEY GO FOR AN EMOTIONAL ATTACK.
24 IT'S THE SAME THING THEY DID WITH KITTY AND JOSE
25 MENENDEZ. CREATE A BACKDROP OF EMOTIONALISM TO
26 CLOUD THE ISSUE, TO GET YOU TO EVALUATE THE EVIDENCE
27 THAT WAY. AND JUST AS THEY MADE ALLEGATIONS AGAINST
28 KITTY AND JOSE MENENDEZ, TO GET YOU TO EVALUATE THAT

52231

1 FACT SCENARIO IN LIGHT OF THOSE UNSUPPORTABLE
2 ALLEGATIONS, SO TOO, THEY WANT YOU TO EVALUATE THE
3 ARGUMENTS THAT I MAKE TO YOU IN LIGHT OF UNSUPPORTED
4 ALLEGATIONS AGAINST ME. YOU SEE?

5 LADIES AND GENTLEMEN, YOU'RE GOING TO BE
6 INSTRUCTED BY THE COURT THAT YOU ARE NOT TO BASE

7 YOUR DECISION UPON SYMPATHY IN THIS CASE, PASSION OR
8 PREJUDICE. YOU'LL BE TOLD THAT IN THIS CASE YOU'RE
9 NOT TO BASE YOUR OPINION UPON SENTIMENT, CONJECTURE,
10 SYMPATHY, PASSION, PREJUDICE, PUBLIC OPINION, OR
11 PUBLIC FEELING.

12 SO I WOULD ASK YOU, LADIES AND
13 GENTLEMEN, TO REJECT THIS UNNECESSARY AND POINTLESS
14 ALLEGATION MADE BY THE DEFENSE THAT THE PROSECUTORS
15 DON'T HAVE LOVE. YOU WANT TO TALK ABOUT LACK OF
16 LOVE, LADIES AND GENTLEMEN, TAKE A LOOK AT THESE
17 PHOTOGRAPHS AND ASK YOURSELVES ABOUT THE TWO
18 DEFENDANTS SITTING IN HERE, IN COURT, WHO SHOT THEIR
19 PARENTS TO DEATH. DO YOU SEE LOVE IN THESE
20 PHOTOGRAPHS?

21 LADIES AND GENTLEMEN, IF THERE'S A LACK
22 OF LOVE, IT'S THERE AT THAT END OF THE TABLE, THESE
23 TWO HEARTLESS KILLERS HAD NO LOVE FOR THEIR
24 PARENTS. BECAUSE IF YOU LOVE YOUR PARENTS, YOU
25 DON'T DO THIS. IF IT'S A LACK OF LOVE, IT'S DOWN
26 THERE AT THAT SIDE OF TABLE.

27 DON'T LET THEM TRY TO USE MISPLACED
28 SYMPATHY FOR THEM, BASED ON NOTHING MORE THAN

52232

1 UNSUPPORTABLE ALLEGATIONS AGAINST THEIR PARENTS, OR

2 UNNECESSARY AND UNWARRANTED ATTACKS UPON THE
3 PROSECUTION. BASE YOUR DECISION UPON THE EVIDENCE
4 IN THIS CASE, NOT ON SYMPATHY.

5 THEIR CLAIMS WOULD BE -- ARE AS
6 INAPPROPRIATE AS IT WOULD BE FOR ME TO SUGGEST THAT
7 YOU SHOULD HAVE SYMPATHY FOR KITTY AND JOSE
8 MENENDEZ. IF THERE'S ANYONE IN THIS CASE WHO
9 WARRANTS SYMPATHY IT IS THEM, NOT THESE TWO
10 HEARTLESS KILLERS.

11 BUT LET'S STAY FOCUSED ON THE EVIDENCE.
12 LET'S NOT MAKE ACCUSATIONS ABOUT WHO HAS LOVE AND
13 WHO DOESN'T. THIS IS ABOUT THE LAW. THIS IS ABOUT
14 JUSTICE. LET'S STAY FOCUSED ON THE ISSUE.

15 AND IT WAS CONSISTENT WITH THAT STRATEGY
16 OF ATTACKING THE PROSECUTION THAT MS. ABRAMSON BEGAN
17 HER OPENING REMARKS WITH A NUMBER OF ALLEGATIONS
18 AGAINST ME ABOUT MISSTATEMENTS THAT I MADE IN MY
19 OPENING ARGUMENT. AND I'D LIKE TO GO OVER SOME OF
20 THOSE REMARKS WITH YOU, AND YOU DECIDE FOR YOURSELF
21 WHETHER YOU THINK THESE ARE MISSTATEMENTS OR NOT.

22 ONE OF THE THINGS THAT SHE CRITICIZES ME
23 FOR IS, FOR EXAMPLE, THAT I SAID THAT THE DEFENDANTS
24 DID NOT TALK ABOUT HOW THEY WERE GOING TO SOUND WHEN
25 THEY CALLED THE POLICE DURING THE 911 CALL. AND I
26 WAS REFERRING TO THE 911 CALL. I SAID THEY DIDN'T
27 DISCUSS IT AT ALL.

28 AND SHE SAYS THAT'S NOT TRUE. MR. CONN

1 IS MISSTATING THE EVIDENCE TO YOU. MR. CONN IS
2 WRONG, BECAUSE THE DEFENDANT, ERIK MENENDEZ,
3 ADMITTED ON THE WITNESS STAND THAT HE DISCUSSED WITH
4 HIS BROTHER WHAT THEY WERE GOING TO TELL THE
5 POLICE.

6 THAT'S NOT WHAT I WAS TALKING ABOUT. I
7 WAS TALKING ABOUT DURING THE 911 CALL. AND YOU WILL
8 RECALL THE TESTIMONY OF ERIK MENENDEZ. HE SAID: "I
9 DIDN'T THINK THAT --" IS WHAT HE SAYS, REFERRING TO
10 LYLE MENENDEZ WHEN HE CALLED THE POLICE.

11 HE SAID: "I DIDN'T THINK THAT WHAT HE
12 SAID WAS IMPORTANT."

13 I SAID: "DIDN'T YOU THINK IT WAS
14 IMPORTANT HOW IT MIGHT SOUND TO THE POLICE IN ORDER
15 TO MAKE THAT BELIEVABLE?"

16 AND HE SAID: "HIS DEMEANOR NEVER EVEN
17 CROSSED MY MIND."

18 SO IT WAS BASED UPON THAT TESTIMONY,
19 LADIES AND GENTLEMEN, THAT I SAID TO YOU VERY
20 ACCURATELY THAT ERIK AND LYLE MENENDEZ DID NOT
21 DISCUSS THE 911 CALL.

22 IT'S UNFORTUNATE FOR MS. ABRAMSON TO
23 STAND UP BEFORE YOU AND MAKE THESE ATTACKS AGAINST
24 ME -- TO START OUT -- TO START OUT HER ARGUMENT,
25 ONCE AGAIN, SO YOU CAN SEE ME IN THAT LIGHT, SEE ME

26 IN THAT LIGHT. YOU SEE? SHE MADE THAT ATTACK
27 AGAINST ME. IT WAS UNWARRANTED. I WAS RELYING ON
28 THE TESTIMONY OF ERIK MENENDEZ.

52234

1 SHE ATTACKED THE ARGUMENT THAT I MADE
2 THAT I SAID ERIK MENENDEZ DOESN'T WANT TO ADDRESS
3 HIS MORAL RESPONSIBILITY FOR THE BURGLARY. AND SHE
4 SAYS THAT'S UNFAIR, BECAUSE HE ADMITTED HE COMMITTED
5 THE BURGLARY. THAT'S NOT WHAT I WAS TALKING ABOUT.
6 I'M TALKING ABOUT WHETHER OR NOT ERIK MENENDEZ WAS
7 STRAIGHTFORWARD WHEN HE WAS ADMITTING TO YOU WHY HE
8 DID THAT BURGLARY.

9 AND I'LL DIRECT YOU TO HIS TESTIMONY
10 WHERE HE SAID:

11 "I'VE NEVER BEEN ABLE TO GIVE A
12 REASON TO MYSELF WHY I DID THAT. I
13 HAVEN'T. I'VE TALKED TO A LOT OF ALL
14 DIFFERENT PSYCHIATRISTS ABOUT WHY I
15 WOULD DO SUCH A THING AND THEY GAVE ME
16 REASONS. BUT I CAN'T ACCEPT THE
17 REASONS BECAUSE -- I DON'T KNOW WHY I
18 DID IT."

19 THAT'S WHAT I WAS REFERRING TO, LADIES
20 AND GENTLEMEN. HE STILL, TO THIS DAY, HAS NOT

21 ACCEPTED RESPONSIBILITY TO THOSE HERE. IF HE DID,
22 HE'D AT LEAST GIVE YOU A REASON. HE DIDN'T WANT TO
23 BE CROSS-EXAMINED ON THAT ISSUE. THAT'S WHAT I WAS
24 REFERRING TO.

25 IT'S UNFORTUNATE TO HEAR MS. ABRAMSON
26 STAND UP BEFORE YOU AND MAKE ALL THESE ALLEGATIONS
27 ABOUT MR. CONN'S DISTORTING THE RECORD IN THIS
28 CASE. I DID NOT DISTORT THE RECORD. I WAS TALKING

52235

1 ABOUT WHAT ERIK MENENDEZ SAID IN THIS COURTROOM.

2 ANOTHER THING SHE COMMENTED UPON IS MY
3 QUESTION TO ERIK MENENDEZ ABOUT WHAT MADE YOU
4 BELIEVE THAT YOUR FATHER WOULD NO LONGER SEXUALLY
5 ABUSE YOU ONCE YOU BEGAN TO GO TO U.C.L.A., JUST A
6 FEW MILES AWAY.

7 AND HE SAID IN RESPONSE TO THAT, HE
8 SAID: "I DON'T KNOW."

9 AND IF YOU LOOK AT HIS TESTIMONY
10 CAREFULLY, LADIES AND GENTLEMEN, THAT IS PRECISELY
11 WHAT HE SAID AT 44,331: "I DON'T KNOW." THAT'S THE
12 ANSWER HE GAVE.

13 MS. ABRAMSON MAY NOT LIKE THAT ANSWER,
14 BUT THAT'S THE ANSWER HE GAVE. DID HE TALK AROUND
15 IT? YEAH. HE SAID OTHER THINGS. BUT HE SAID:

16 "I DON'T KNOW."

17 MS. ABRAMSON CRITICIZED MY REMARK THAT
18 ERIK MENENDEZ TOLD THE POLICE THAT HE HAD NO
19 INTEREST IN GOING TO SCHOOL. AND SHE SAID: "THAT'S
20 NOT TRUE. MR. CONN IS DISTORTING THE RECORD. HE
21 ALWAYS WANTED TO GO TO SCHOOL ON THE EAST COAST AND
22 JUST WASN'T ACCEPTED.

23 WHAT DID HE TELL THE POLICE -- TELL
24 DETECTIVE ZOELLER ON SEPTEMBER THE 17TH?

25 "I DON'T WANNA -- I DON'T -- I'M
26 NOT GOING TO BE ABLE TO GO TO SCHOOL
27 THIS YEAR. I DON'T WANNA GO TO SCHOOL
28 THIS YEAR."

52236

1 THAT'S EXACTLY WHAT HE TOLD THE POLICE,
2 LADIES AND GENTLEMEN. IT'S UNFORTUNATE WE HAVE TO
3 HEAR THESE TYPES OF ALLEGATIONS FROM MS. ABRAMSON.
4 I SAID THAT ERIK MENENDEZ DID NOT CALL
5 HIS BROTHER ON THAT THURSDAY, WHEN HIS BROTHER WAS
6 SUPPOSED TO BE SPEAKING TO HIS FATHER, AND ENSURE
7 HIS BROTHER WAS OKAY BEFORE HE WENT HOME THAT DAY.
8 HE DID NOT CALL HIS BROTHER.

9 I SAID: "WOULDN'T IT BE A WISE THING,"
10 I SAID, "TO CALL LYLE MENENDEZ ON THE PHONE AND SAY,

11 'HOW DID THE MEETING GO? IS THE COAST CLEAR? CAN I
12 COME HOME? IS EVERYTHING OKAY?'"

13 AND HE SAID HE DIDN'T MAKE ANY EFFORTS
14 TO ENSURE HIS SAFETY.

15 THE BOTTOM LINE IS, LADIES AND
16 GENTLEMEN, THAT HE FINALLY DID GO HOME WITHOUT
17 TALKING TO HIS BROTHER ON THE PHONE. HE ADMITTED
18 THAT ON THE WITNESS STAND. HE DID NOT TALK TO HIS
19 BROTHER. HE WALKED IN THAT DOOR WITHOUT EVER
20 FINDING OUT HOW THAT MEETING WENT. MY COMMENT, ONCE
21 AGAIN, WAS BASED ON THE EVIDENCE.

22 AND I CAN GO THROUGH -- THERE'S MORE
23 EXAMPLES I CAN GIVE YOU, LADIES AND GENTLEMEN. I'M
24 NOT GOING TO TAKE UP YOUR TIME TO GO THROUGH ALL OF
25 THEM.

26 I WOULD SUBMIT TO YOU, LADIES AND
27 GENTLEMEN, THAT AS I INDICATED, YOU HAVE TO REALLY
28 EVALUATE WHAT'S BEING DONE IN THIS COURTROOM. YOU

52237

1 HAVE TO RECOGNIZE THAT WHEN ONE ATTORNEY STANDS UP
2 AND TELLS YOU THAT SOMETHING IS THE CASE, THAT YOU
3 SHOULDN'T ACCEPT IT TO BE TRUE. USE YOUR OWN
4 RECOLLECTION OF THE EVIDENCE IN THIS CASE AND BASE
5 YOUR DECISION UPON THE EVIDENCE. DON'T BASE IT UPON

6 THE ALLEGATION OF ONE OF THE ATTORNEYS.

7 NOW, ONE OF THE THINGS THAT THE DEFENSE
8 TRIED TO DO IN THIS CASE, LADIES AND GENTLEMEN, IS
9 TO GET YOU TO FOCUS, NOT ON THE TRUE MENTAL STATE
10 WHICH IS IN ISSUE HERE, BUT TO FOCUS ON THE ISSUE OF
11 MOTIVE, OF THE REASON WHY. AND THIS IS SOMETHING
12 THAT I TOUCHED UPON IN MY OPENING REMARKS. THIS IS
13 SOMETHING THAT THE DEFENSE ATTORNEYS IN THEIR
14 ARGUMENT TO YOU REPEATEDLY RELIED UPON.

15 WHEN WE SAY THAT THE MENTAL STATE OF THE
16 DEFENDANT IS AN ISSUE IN THIS CASE, WHAT ARE WE
17 SAYING EXACTLY? WE ARE NOT SAYING THAT HIS WHOLE
18 PSYCHO-SOCIAL MAKEUP IS WHAT IS IN ISSUE HERE. WE
19 ARE TALKING ABOUT A SPECIFIC MENTAL STATE UNDER THE
20 LAW; THAT IS, PREMEDITATION AND DELIBERATION. AND I
21 SHOWED YOU ON THE CHART WHAT PREMEDITATION AND
22 DELIBERATION IS. AND I DEMONSTRATED FOR YOU THAT
23 PREMEDITATION AND DELIBERATION IS SIMPLY THAT
24 PROCESS OF EVALUATING A PROPOSED COURSE OF ACTION,
25 OF CONSIDERING AND WEIGHING THE ACTION, AND DECIDING
26 TO GO AHEAD AND DO THOSE ACTIONS, FOLLOWING THE
27 MENTAL PROCESS. THAT IS THE MENTAL STATE THAT IS IN
28 ISSUE HERE.

1 SO IT'S VERY IMPORTANT TO BEAR IN MIND,
2 LADIES AND GENTLEMEN, WHEN YOU GO BACK INTO THAT
3 JURY ROOM, THAT YOU ARE NOT MISLED INTO THINKING
4 THAT YOU HAVE TO RECREATE OR ESTABLISH OR CLARIFY IN
5 YOUR OWN MIND THE WHOLE PSYCHOLOGICAL COMPOSITION OF
6 THE DEFENDANTS' HEADS AT THE TIME OF THE COMMISSION
7 OF THE CRIME. THAT IS NOT THE ISSUE HERE. IT'S
8 MUCH MORE LIMITED THAN THAT. IT'S MUCH MORE
9 FOCUSED.

10 THEY WANT YOU TO GO BACK THERE AND ASK
11 QUESTIONS LIKE WHO'S ERIK MENENDEZ? WHAT MAKES ERIK
12 MENENDEZ TICK? THAT'S NOT THE ISSUE. THAT'S NOT
13 THE ISSUE THAT IS BEING PRESENTED TO YOU. YOU'RE
14 HERE TO RESPOND TO A LEGAL QUESTION, THAT IS, THE
15 DEGREE OF HOMICIDE THAT THE DEFENDANTS ARE GUILTY
16 OF. THAT IS THE SOLE ISSUE. DON'T THINK THAT YOU
17 ARE HERE TO DO SOMETHING MUCH MORE COMPLEX THAN
18 THAT. THEY WANT YOU TO BELIEVE THAT BECAUSE THEY
19 KNOW YOUR TASK WILL SEEM MUCH MORE OVERWHELMING.

20 I MEAN, AFTER ALL, WE ARE ONLY HUMAN.
21 HOW CAN WE DETERMINE WHAT A PERSON MUST BE THINKING
22 OR PLANNING, OR HIS LEVEL OF DEVELOPMENT AT ANY
23 SPECIFIC POINT IN HIS LIFE? THAT'S PRECISELY WHAT
24 THEY WOULD LIKE YOU TO DO.

25 THE LEGAL QUESTION BEING PUT TO YOU IS
26 MUCH MORE SIMPLE THAN THAT. DID THE DEFENDANT
27 PREMEDITATE AND DELIBERATE BEFORE HE COMMITTED THE
28 KILLINGS IN THIS CASE? THAT'S THE ISSUE. JUST AS

1 THEY WANT YOU TO GET CAUGHT UP INTO A BROADER
2 PSYCHOLOGICAL ISSUE, THEY ALSO WANT YOU TO GET
3 CAUGHT UP IN THE QUESTION OF MOTIVE.

4 THEY WOULD LIKE YOU TO GO BACK THERE AND
5 TALK ABOUT MOTIVE, OR THE QUESTION WHY, AND THEN GET
6 SO CAUGHT UP IN THAT DISCUSSION THAT YOU CAN NEVER
7 REALLY TURN TO THE LEGAL ISSUE THAT YOU ARE CALLED
8 UPON TO DECIDE HERE. AND YOU REMEMBER THAT THERE
9 IS -- LET ME SEE IF I CAN FIND SOME PAPER. I TOLD
10 YOU PREVIOUSLY THAT YOU WILL BE CALLED UPON -- YOU'LL
11 BE GIVEN AN INSTRUCTION BY THE COURT WHICH SAYS THAT
12 MOTIVE IS NOT AN ELEMENT OF THE OFFENSE. THAT'S
13 PRECISELY WHAT I'M TALKING ABOUT. IT'S A VERY
14 IMPORTANT INSTRUCTION. BECAUSE THE COURT AND THE
15 LAW RECOGNIZES THAT THE ISSUE OF MOTIVE, THE BROAD
16 ISSUE OF MOTIVE, IS SOMETHING THAT IS NOT ONLY
17 DIFFICULT TO DETERMINE, BUT IS SO REMOVED FROM THE
18 LEGAL ISSUE THAT THE JURY MUST DECIDE UPON, THAT IT
19 WOULD BE POINTLESS TO EVEN WASTE YOUR TIME TO TRY TO
20 DECIDE THAT ISSUE.

21 AS I SAID TO YOU, THE ISSUE BEFORE YOU
22 IS ONE OF PREMEDITATION AND OF DELIBERATION. THAT
23 IS THE CHARGED OFFENSE, FIRST-DEGREE MURDER, AND

24 WHETHER THAT LED TO THE KILLINGS IN THIS CASE.

25 WHAT THEY WOULD LIKE YOU TO DO IS TO

26 CONSIDER THIS: WHY? ONCE YOU GET INTO WHY, YOU GET

27 INTO A MORASS OF POSSIBILITIES. WAS IT GREED? WAS

28 IT ANGER? WAS IT HATRED? WAS IT A DESIRE FOR

52240

1 INDEPENDENCE? WAS IT A DESIRE FOR FINANCIAL

2 INDEPENDENCE? WAS IT ABUSE? YOU COULD SUBDIVIDE

3 THAT. WAS IT PHYSICAL ABUSE? WAS IT SEXUAL ABUSE?

4 WAS IT SHAME FOR THEIR FAILURES?

5 AND YOU CAN GO ON AND ON AND ON. YOU

6 CAN MAKE BRANCHES AND SUB-BRANCHES, AND THAT'S

7 EXACTLY WHERE THEY WANT TO KEEP YOU IN THIS CASE,

8 TALKING ABOUT THAT ISSUE, AND THAT IS WHY.

9 IN RESPONSE TO ALL OF THAT, LADIES AND

10 GENTLEMEN, WHAT THE LAW TELLS YOU IS THIS: I'M

11 GOING TO PUT THIS ON TOP FOR A REASON, BECAUSE

12 PUTTING IT ON TOP ILLUSTRATES THE POINT THAT I'M

13 TRYING TO MAKE.

14 MOTIVE IS NOT AN ELEMENT OF THE

15 OFFENSE. SO IF YOU WANT TO TALK ABOUT WHAT IS

16 UNDERNEATH THAT PIECE OF PAPER, YOU CAN GO AHEAD AND

17 TALK ABOUT IT. BUT, REMEMBER, IN THE END, WHEN IT

18 COMES TIME TO MAKE YOUR DECISION TO VOTE ON WHAT HAS

19 BEEN PROVEN IN THIS CASE, GET BACK TO THE LEGAL
20 ISSUE OVER HERE THAT YOU ARE BEING CALLED UPON TO
21 DECIDE: WAS THERE PREMEDITATION AND DELIBERATION?

22 BECAUSE, AS YOU KNOW, ANY ONE OF THOSE
23 REASONS -- THESE ARE JUST THE REASONS WHY -- ANY ONE
24 OF THOSE REASONS COULD LEAD TO PREMEDITATION AND
25 DELIBERATION.

26 IF YOU STAY FOCUSED ON THIS, LADIES AND
27 GENTLEMEN, THE REASON FOR WHICH YOU ARE HERE, I WILL
28 SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT YOU WILL

52241

1 BE ABLE TO ACCOMPLISH THE TASK THAT YOU ARE CALLED
2 UPON TO DECIDE.

3 IF YOU GIVE IN TO THINKING YOU ARE HERE
4 TO DECIDE SOME MUCH BROADER OR SOCIAL OR
5 PSYCHOLOGICAL ISSUES OR COMPLEXITY OF ISSUES, THEN
6 YOU'LL NEVER GET OFF THE GROUND.

7 YOU MAY ALL VIEW THE CASE DIFFERENTLY.
8 YOU MAY ALL SEE THE BACKGROUND DIFFERENTLY. YOU MAY
9 ALL HAVE DIFFERENT FEELINGS, DIFFERENT GUT
10 REACTIONS.

11 LADIES AND GENTLEMEN, IF YOU FOCUS ON
12 THE LEGAL ISSUE, DID THE DEFENDANTS GIVE THOUGHT AND
13 CONSIDERATION TO THEIR ACTIONS BEFORE THEY DID THIS,

14 I THINK YOU WILL CONCLUDE THAT YOU JUST CAN'T DO
15 THIS, LADIES AND GENTLEMEN, WITHOUT GIVING THOUGHT
16 AND CONSIDERATION TO YOUR ACTIONS BEFORE YOU DO
17 THIS; NOT THE KILLING OF YOUR PARENTS.

18 LET'S TALK ABOUT THE HEAT OF PASSION
19 DEFENSE. HEAT OF PASSION IS LIKE IN A PASSIONATE
20 STATE YOU PICK UP AN OBJECT AND YOU FIRE A GUN.
21 THERE'S SOMETHING IMMEDIATE. THERE'S SOMETHING
22 MOMENTARY, AND YOU RESPOND TO IT. THAT IS HEAT OF
23 PASSION.

24 THAT IS NOT THIS CASE. THIS IS A CASE
25 IN WHICH THE DEFENDANTS HAVE MORE -- EVEN IF YOU BUY
26 THIS STORY -- WHICH I SUBMIT TO YOU YOU SHOULD NOT --
27 YOU SHOULD NOT ANALYZE IT ACCORDING TO THE WAY THE
28 DEFENDANTS ARE SUGGESTING YOU SHOULD. BUT EVEN IF

52242

1 YOU WERE, THIS IS NOT A SITUATION WHERE SOMEONE
2 PICKS SOMETHING UP AND SWUNG IT, OR HAD A GUN IN
3 THEIR POCKET AND PULLED OUT THE GUN AND FIRED IT.
4 BECAUSE IN THAT EXCITED MOMENT, OR EXCITED STATE OF
5 PASSION, YOU COULD LOSE YOUR SENSE OF REASON.

6 THAT'S WHAT THE HEAT OF PASSION
7 INSTRUCTION SAYS. THE HEAT OF PASSION INSTRUCTION
8 ALSO SAYS THERE'S SOMETHING CALLED A COOLING-OFF

9 PERIOD. AND THE ORDINARILY REASONABLE MAN APPLIES
10 TO THAT COOLING-OFF PERIOD. THE HEAT OF PASSION
11 DOESN'T APPLY IF THE ORDINARILY REASONABLE MAN IN
12 THAT SAME CIRCUMSTANCE WOULD NOT HAVE BEEN PROVOKED;
13 OR NO. 2, THE ORDINARILY REASONABLE MAN WOULD HAVE
14 HAD A COOLING-OFF PERIOD.

15 LADIES AND GENTLEMEN, I WOULD SUBMIT TO
16 YOU THAT ANYONE IN THE SITUATION DESCRIBED BY ERIK
17 MENENDEZ WOULD NOT, COULD NOT, HAVE GONE UP TO HIS
18 ROOM AS HE DESCRIBES, CONSIDERED LOCKING THE DOOR --
19 AND REMEMBER, MS. ABRAMSON SAID HE DIDN'T SAY THAT.
20 HE JUST SAID THERE WAS AN IMAGE THAT JUST FLASHED IN
21 HIS MIND. IT WAS A VISUAL IMAGE OF BARRICADING
22 HIMSELF, AND HE REJECTED THAT VISUAL IMAGE.

23 DR. DIETZ SAID WHEN HE SPOKE TO HIM --
24 BEAR IN MIND, THIS WAS RECORDED. ONE'S WAS
25 VIDEOTAPED, THIS CONVERSATION. SO MS. ABRAMSON
26 COULD HAVE SAID: "DR. DIETZ, SHOW ME ON THE
27 VIDEOTAPE WHERE HE SAID THAT TO YOU." SHE DIDN'T.

28 DR. DIETZ SAID HE TOLD ME HE CONSIDERED

52243

1 BARRICADING HIMSELF IN HIS ROOM.

2 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT.

3 MISSTATES THE TESTIMONY OF DR. DIETZ.

4 THE COURT: OVERRULED.

5 MR. CONN: HE CONSIDERED IT. HE SAID HE
6 THOUGHT ABOUT IT. THAT WAS THE TESTIMONY OF
7 DR. DIETZ.

8 SO WHEN YOU LOOK AT THE ACTIONS OF THE
9 DEFENDANTS, LADIES AND GENTLEMEN, EVEN GOING DOWN
10 THAT ROAD WITH HIM ABOUT THEIR STORY OF THE EVENTS
11 OF AUGUST THE 20TH, YOU GO DOWN THAT ROAD WITH HIM,
12 AND THE WAY HE DESCRIBES HIS ACTIONS, THAT HE WENT
13 UPSTAIRS TO GET HIS GUN. HE CONSIDERED LOCKING THE
14 DOOR. DECIDED NOT TO DO THAT. LEFT THE ROOM. WENT
15 DOWNSTAIRS. LOOKED BACK TO SEE IF SOMEONE WAS
16 CHASING HIM. WENT OUTSIDE. DECIDED NOT TO GO
17 THROUGH THE FRONT DOORS. INSTEAD, HE WENT THROUGH
18 THE SIDE DOORS IN THE STUDY. WENT UP TO THE CAR.
19 OPENED THE CAR. PULLED THAT LEVER. POPPED THE
20 TRUNK. LOOKED IN THE HATCHBACK. SEARCHED AROUND
21 AMONG THE CLOTHES FOR SHELLS. THOUGHT "WELL, IF
22 LYLE DOESN'T GET HERE PRETTY SOON, I'M GOING TO HAVE
23 TO GO IN BY MYSELF."

24 THIS IS ALL REFLECTIVE THOUGHT, LADIES
25 AND GENTLEMEN. NO ONE IN THIS SITUATION, I WOULD
26 SUBMIT TO YOU, IS GOING TO RUSH INSIDE AND SHOOT
27 THEIR PARENTS TO DEATH. AND THAT IS ONE OF THE VERY
28 MANY REASONS WHY YOU SHOULD REJECT THE TESTIMONY OF

1 ERIK MENENDEZ. BECAUSE NO ONE WOULD DO THAT. THAT
2 STORY SIMPLY IS NOT CONSISTENT WITH OUR KNOWLEDGE,
3 WITH OUR UNDERSTANDING OF HOW PEOPLE RESPOND IN SUCH
4 SITUATIONS. YOU, OR ANYONE ELSE IN THAT SAME
5 SITUATION WOULD HAVE REFLECTED, WOULD HAVE THOUGHT,
6 WOULD HAVE SAID WHAT AM I DOING? WHAT AM I DOING?
7 WHY AM I GOING TO DO THAT? WHY DON'T I DRIVE AWAY?
8 THAT IS THE GAP THEY CANNOT BRIDGE HERE,
9 AND THAT IS THE FATAL FLAW IN THIS DEFENSE.

10 I THINK YOU KNOW, JUST BASED UPON YOUR
11 OWN EXPERIENCE, THAT THAT IS AN UNBELIEVABLE
12 SITUATION. WE'VE ALL EXPERIENCED EMOTION IN THE
13 PAST. WE'VE ALL EXPERIENCED ANGER. WE'VE ALL
14 EXPERIENCED FEAR. BUT WE HAVEN'T ALL KILLED OUR
15 PARENTS. WE DIDN'T RESORT TO MURDER. WE DIDN'T
16 RESORT TO HOMICIDE. THAT BACKGROUND, YOUR
17 EXPERIENCE, YOUR INTUITIVE AWARENESS OF THAT FACT
18 DESTROYS THEIR DEFENSE, ABSOLUTELY DESTROYS THEIR
19 DEFENSE.

20 AND SO THEY NEED SOMETHING. THEY NEED
21 SOMETHING THAT IS GOING TO GET YOU TO PUT ASIDE THAT
22 INTUITIVE AWARENESS, THAT COMMON SENSE, AND MAKE
23 THEIR LOGICAL LEAP THAT SOMEHOW THIS CAN BE
24 EXPLAINED. AND THEY TRY TO DO THAT THROUGH THEIR
25 MENTAL HEALTH PEOPLE.

26 I WOULD SUBMIT TO YOU, LADIES AND
27 GENTLEMEN, THAT IT SHOULD BE REJECTED. YOU SHOULD

52245

1 DEFENSE. YOU SHOULD REJECT THEIR EFFORTS TO HAVE
2 YOU FOCUS ON THE REASON WHY, AND DECIDE THE CASE
3 BASED UPON THE LEGAL ISSUE THAT IS BEFORE YOU, OF
4 PREMEDITATION AND DELIBERATION.

5 NOW, I WANT TO GO THROUGH SOME OF THE
6 SPECIFIC REMARKS THAT THEY MADE DURING THE COURSE OF
7 THEIR ARGUMENTS CONCERNING THE EVIDENCE IN THIS
8 CASE. I WOULD SUBMIT THAT SOME OF IT REQUIRES
9 CLARIFICATION, AND IN THE END, I'LL BE GETTING BACK
10 INTO A BROADER DISCUSSION OF OUR THEORY OF THE
11 CASE.

12 MR. GESSLER ARGUED TO YOU THAT THE
13 PROSECUTOR IS TRYING TO SHIFT THE BURDEN OF PROOF.
14 NO SUCH THING. THE PROSECUTION HAS ACCEPTED THE
15 BURDEN OF PROOF, AND IT'S THROUGH THAT BURDEN OF
16 PROOF, AND AS A RESULT OF THAT BURDEN OF PROOF, THAT
17 WE PRESENTED TO YOU IN OUR CASE-IN-CHIEF THE
18 EVIDENCE WHICH WE SUBMIT IS SUFFICIENT TO PROVE
19 PREMEDITATION AND DELIBERATION BEYOND A REASONABLE
20 DOUBT.

21 THAT IS, THROUGH THE TAPE-RECORDING
22 ITSELF OF DECEMBER 11TH, WHICH HAS NOT BEEN

23 APPROPRIATELY OR ADEQUATELY EXPLAINED TO YOU BY THE
24 DEFENSE, WHICH THEY CANNOT DISMISS AWAY. IT REMAINS
25 NOW, AS IT WAS IN THE BEGINNING OF MY OPENING
26 STATEMENT, THE SMOKING GUN WHICH THEY CANNOT
27 EXPLAIN.

28 THE TESTIMONY OF CRAIG CIGNARELLI

52246

1 CONCERNING THE CONFESSION, AS WELL AS ALL OF THE
2 DEFENDANT'S CLAIMS CONCERNING HIS ACTIVITIES BEFORE,
3 DURING, AND AFTER THE COMMISSION OF THE CRIME, I
4 WOULD SUBMIT TO YOU, IS ALL CONSISTENT WITH ONLY ONE
5 REASONABLE CONCLUSION, AND THAT IS PREMEDITATION AND
6 DELIBERATION.

7 LET'S TURN, FOR A SECOND, TO THE
8 DECEMBER 11TH TAPE. WHAT IS IT THAT YOU WERE TOLD
9 BY THE DEFENSE CONCERNING THIS CRITICAL PIECE OF
10 EVIDENCE?

11 WELL, FIRST OF ALL, THE DEFENSE, I WOULD
12 SUBMIT TO YOU, TRIES TO GET YOU TO LOOK AT THAT
13 PIECE OF EVIDENCE AS IF IT CONTAINS ONLY A SINGLE
14 PHRASE THAT IS OF ANY SUBSTANCE. I BELIEVE THAT
15 MS. ABRAMSON INDICATED IN HER ARGUMENT TO YOU THAT
16 SHE IS RELYING UPON -- THAT THE PROSECUTION'S
17 RELYING UPON A PHRASE, THE PHRASE WHERE HE SAID:

18 "I LET MY BROTHER THINK ABOUT IT FOR A COUPLE OF
19 DAYS."

20 LADIES AND GENTLEMEN, THE DECEMBER 11
21 TAPE IS NOT A PHRASE. IT IS A CONVERSATION THAT
22 GOES ON FOR A VERY LONG PERIOD OF TIME, IN WHICH THE
23 DEFENDANTS SPEAK ABOUT PREMEDITATION AND DELIBERATION
24 IN SO MANY WORDS.

25 THEY TAKE PHRASES IN HERE, FOR EXAMPLE,
26 WHERE LYLE MENENDEZ SAYS -- SAID, FOR EXAMPLE: "WE
27 HAD TO MAKE A DECISION. IT WAS ONE OF THE HARDER
28 ONES. AND IT WAS A SEPARATE ISSUE. HE'S THE REASON

52247

1 MY FATHER SHOULD BE KILLED. THERE'S NO QUESTION."

2 I'M NOT RELYING UPON A PHRASE, LADIES
3 AND GENTLEMEN. I'M RELYING UPON THIS ENTIRE
4 CONVERSATION. OKAY? WHICH IS ONLY CONSISTENT WITH
5 PREMEDITATION AND DELIBERATION. IT IS A CONFESSION
6 OF PREMEDITATION AND DELIBERATION.

7 ERIK MENENDEZ SAID, FOR EXAMPLE,
8 "EVENTUALLY IT HAD TO HAPPEN."

9 HE'S REFERRING TO THE KILLING. HE'S
10 REFERRING TO THE KILLINGS IN THIS CASE.

11 ERIK MENENDEZ SAID: "I HAD TO FACE THE
12 FACT THAT MY MOTHER HAD TO BE KILLED. IT WAS THE

13 ONLY WAY OUT FOR HER."

14 ERIK MENENDEZ TALKS ABOUT -- CONFESSES
15 TO PREMEDITATED AND DELIBERATE KILLINGS IN HERE.

16 LYLE MENENDEZ IN HERE SAYS: "KILLING
17 HIM HAD NOTHING TO DO WITH US. IT HAD TO DO WITH ME
18 REALIZING A NUMBER OF THINGS THAT ALL CULMINATE --
19 WHICH WAS CULMINATED AT ANY POINT."

20 MR. GESSLER SAYS HE DOESN'T UNDERSTAND
21 WHAT THAT MEANS. I THINK IT'S CLEAR FROM THE
22 CONTENT. LYLE MENENDEZ IS SAYING, AND HE EXPLAINS
23 THIS LATER IN THE CONVERSATION, THAT IT WAS JUST AT
24 A CERTAIN POINT HE REALIZED THAT IT WAS WORTH IT.
25 IT'S JUST LIKE, YOU KNOW, A PROFIT AND LOSS
26 ANALYSIS. AT SOME POINT IT SIMPLY BECOMES WORTH IT
27 AND YOU SAY NOW IS THE TIME. LET'S DO IT. IT COULD
28 HAVE CULMINATED AT ANY POINT. AND IT CULMINATED AT

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1 THAT POINT.

2 "IT WAS JUST A QUESTION OF ERIK AND I
3 GETTING TOGETHER AND SOMEONE BRINGING IT UP AND US
4 REALIZING THE VALUE OF IT."

5 THIS IS A PREMEDITATED KILLING, LADIES
6 AND GENTLEMEN, THAT IS CLEARLY ESTABLISHED THROUGH
7 THIS. IN ADDITION TO THE PHRASE: "JUST LET MY

8 BROTHER SLEEP ON IT," HE ALSO MAKES LYLE MENENDEZ
9 MAKE STATEMENTS ABOUT BLANKING OUT. THERE HE
10 SAID -- HE SAID THE REASON WHY IT TOOK SUCH A SHORT
11 PERIOD OF TIME TO FIGURE IT OUT WAS BECAUSE IT COULD
12 HAVE HAPPENED AT ANY MOMENT. ALL THE THINKING
13 BEFOREHAND WAS DONE. SO CLEARLY, HE'S TALKING ABOUT
14 A PREMEDITATED AND DELIBERATE KILLING. THERE'S NO
15 TWO WAYS OF INTERPRETING THIS.

16 YOU KNOW, HE SAID: "IT JUST TOOK A
17 LITTLE WORD HERE AND A LITTLE WORD THERE, ALMOST AS
18 IF A THIRD PARTY WAS DISCUSSING IT. IT WAS JUST A
19 MEETING OF THE MINDS. THE TIME WAS NOW."

20 MR. GESSLER ASKED THE QUESTION: WELL,
21 THE PROSECUTION NEVER ESTABLISHED WHY THEY DID IT AT
22 THEIR THIS POINT IN TIME. GIVEN THAT'S NOT AN
23 ELEMENT OF THE DEFENSE, DOES THE PROSECUTION HAVE TO
24 PROVE WHY THEY DID IT AT THIS PARTICULAR POINT IN
25 TIME? NO. YOU'LL BE INSTRUCTED WHAT THE
26 PROSECUTION HAS TO PROVE AND DOESN'T HAVE TO PROVE.

27 BUT LYLE MENENDEZ TELLS US WHY. HE
28 RECOGNIZES THAT MAYBE IT WASN'T A PERFECT TIME. BUT

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1 THEN AGAIN, WHEN IS THE PERFECT TIME TO KILL YOUR
2 PARENTS? IS THERE EVER A PERFECT TIME? NO. THEY

3 JUST REALIZED THAT NOW WAS AS GOOD A TIME AS ANY,

4 AND LYLE MENENDEZ SAYS AS MUCH IN HERE.

5 HE SAID: IT WAS JUST A MEETING OF THE

6 MINDS. THE TIME IS NOW. "IT'S NOT A GREAT TIME.

7 I'M DOING WELL."

8 BUT IT WAS JUST THE TIME HE SAW TO DO

9 IT, TO GET IT DONE.

10 LADIES AND GENTLEMEN, I WOULD SUBMIT TO

11 YOU THAT THIS DECEMBER 11 TAPE IS A TAPE-RECORDING --

12 NOT A PHRASE, BUT A TAPE-RECORDING OF A PREMEDITATED

13 AND DELIBERATE KILLING, WHICH IS NOT REFUTED BY THE

14 DEFENSE.

15 HOW DO THEY TRY TO EXPLAIN THIS AWAY?

16 THE ONLY WAY THEY TRY TO EXPLAIN THIS AWAY IS BY

17 SAYING THAT DR. OZIEL WAS BLACKMAILING THE

18 DEFENDANTS, AND THE DEFENDANTS TOLD DR. OZIEL WHAT

19 HE WANTED TO HEAR. BUT IN THEIR ARGUMENT DID THEY

20 EVER EXPLAIN TO YOU WHAT GERRY CHALEFF, THE LAWYER,

21 WAS DOING THERE THAT MORNING JUST BEFORE DR. OZIEL

22 PUSHED THE ON SWITCH TO THE TAPE-RECORDING? GERRY

23 CHALEFF WAS GOING TO SIT BACK AND ALLOW A BLACKMAIL

24 TAPE TO BE MADE?

25 LADIES AND GENTLEMEN, THIS TAPE IS THE

26 BEST EXPLANATION THAT ERIK MENENDEZ COULD COME UP

27 WITH AT THE TIME OF THE RECORDING. IT WAS THE MOST

28 SELF-SERVING ACT THAT THEY COULD POSSIBLY MAKE. IF

1 THEY COULD HAVE COME UP WITH SOMETHING BETTER AT THE
2 TIME, THEY WOULD. THEY COULDN'T THINK OF ANYTHING
3 BETTER, AND THAT'S ALL THEY CAME UP WITH.

4 SO I WOULD ASK YOU TO FIND, LADIES AND
5 GENTLEMEN, THAT THERE'S NO REASON FOR YOU TO REJECT
6 THIS TAPE-RECORDING. IF THE DEFENDANTS HAD BEEN
7 TRULY ABUSED, IF ERIK MENENDEZ HAD TRULY ACTED IN
8 FEAR, THAT WOULD HAVE COME OUT DURING THIS
9 RECORDING. IT DID NOT COME OUT BECAUSE HIS DEFENSE
10 IS A DEFENSE THAT HAS BEEN DREAMED UP LONG AFTER
11 THIS TAPE WAS MADE, LONG AFTER DECEMBER 11TH OF
12 1989. NECESSITY IS THE MOTHER OF INVENTION. HE
13 NEEDS TO EXPLAIN, HE NEEDS TO COME UP WITH SOMETHING
14 BETTER THAN THAT, AND HE NOW HAS A MORE ELABORATE
15 TALE.

16 IT IS BASED UPON EVIDENCE LIKE THAT,
17 LADIES AND GENTLEMEN, THAT I SUBMIT TO YOU, THE
18 PROSECUTION HAS NOT SHIFTED OUR BURDEN OF PROOF. WE
19 DEMONSTRATED TO YOU, THROUGH OUR EVIDENCE, THAT THE
20 DEFENDANTS WENT DOWN TO SAN DIEGO AND BOUGHT THE
21 GUNS DAYS BEFORE THE KILLING. THAT IS HOW WE MET
22 OUR BURDEN OF PROOF, THROUGH THAT EVIDENCE AND
23 THROUGH OTHER EVIDENCE.

24 MR. GESSLER ARGUES THAT MARZI EISENBERG
25 HAS NOW -- DOESN'T MEAN WHAT SHE SAID. SHE DIDN'T

26 MEAN IT. OF COURSE SHE MEANS IT. SHE HEARD LYLE
27 MENENDEZ SAY WHAT HE SAID. HE SAID: "THESE ARE MY
28 FATHER'S SHOES." THE FACT THAT IT COULD BE

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1 INTERPRETED FIGURATIVELY, RATHER THAN LITERALLY,
2 DOESN'T MEAN THAT MARZI EISENBERG IS CHANGING WHAT
3 SHE HEARD. SHE IS NOT SAYING SHE DOESN'T MEAN IT.
4 SHE MEANT IT. LYLE MENENDEZ SAID THAT TO HER. YOU
5 ARE THE ONES WHO ARE TO INTERPRET THE WAY YOU FEEL
6 IS APPROPRIATE. MARZI EISENBERG IS NOT CHANGING HER
7 POSITION.

8 MR. GESSLER ARGUES THAT THIS IS A
9 TRAGEDY, AND BECAUSE IT IS A TRAGEDY, WHAT DOES THAT
10 MEAN? NOW IT'S NOT ROOTED IN GREED? IF IT IS A
11 TRAGEDY, LADIES AND GENTLEMEN, IT IS A TRAGEDY WHICH
12 IS ROOTED IN GREED AND ROOTED IN THE DEFENDANTS'
13 DESIRE TO FREE THEMSELVES OF THEIR PARENTS AND TO
14 SPEND THEIR PARENTS' MONEY.

15 I'D LIKE TO TALK TO YOU ABOUT THE
16 REASONABLE DOUBT INSTRUCTIONS THAT COUNSEL REFERS
17 TO. HE SAID, FOR EXAMPLE -- AND THERE ARE TWO OF
18 THOSE INSTRUCTIONS. ONE REFERS TO SPECIFIC INTENT
19 OR MENTAL STATE, WHICH A PERSON MUST HAVE AT THE
20 TIME OF THE COMMISSION OF THE CRIME; AND THAT

21 INSTRUCTION SAYS THAT IF THERE ARE TWO REASONABLE
22 INTERPRETATIONS OF EVIDENCE, THAT YOU SHOULD THEN GO
23 WITH THE INTERPRETATION WHICH POINTS TOWARD
24 INNOCENCE.

25 BUT THE PROBLEM WITH THE WAY COUNSEL
26 USES THAT INSTRUCTION IS THAT THEY WOULD ASK YOU TO
27 APPLY THAT INSTRUCTION TO ISOLATED PIECES OF
28 EVIDENCE. SO, IN OTHER WORDS, COUNSEL SUGGESTED TO

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1 YOU, I WOULD SUBMIT, WRONGLY, AND INAPPROPRIATELY,
2 THAT BECAUSE OF THIS INSTRUCTION, THAT IF THE
3 EVIDENCE IS SUBJECT TO TWO REASONABLE
4 INTERPRETATIONS, YOU SHOULD REJECT THE ONE THAT
5 POINTS TO GUILT AND ACCEPT THE ONE THAT POINTS TO
6 THE ABSENCE OF THE MENTAL STATE.

7 HE HAS MISAPPLIED THAT INSTRUCTION IN
8 THE WAY THAT HE SAID THAT THIS APPLIES, FOR EXAMPLE,
9 TO THE DECEMBER 11 TAPE. HE WOULD HAVE YOU TAKE
10 THAT DECEMBER 11 TAPE AND SAY: IF YOU CAN LOOK AT
11 THAT TAPE IN TWO DIFFERENT WAYS, ONE OF WHICH IS
12 FAVORABLE TO THE DEFENDANT AND ANOTHER WAY WHICH IS
13 UNFAVORABLE TO THE DEFENDANT, THAT IT IS YOUR DUTY
14 TO INTERPRET THAT TAPE IN A WAY THAT IS FAVORABLE TO
15 THE DEFENDANT. THAT'S NOT WHAT THE INSTRUCTION

16 SAYS.

17 WHAT THE INSTRUCTION SAYS IS LOOK AT THE
18 EVIDENCE AND SEE IF THERE ARE TWO REASONABLE
19 INTERPRETATIONS. IT IS REFERRING TO THE EVIDENCE AS
20 A WHOLE. IT'S VERY IMPORTANT YOU KEEP THAT IN
21 MIND. ALL OF THE WITNESSES THAT WERE CALLED IN THIS
22 CASE -- WHEN YOU ASK YOURSELF WHAT THE EVIDENCE --

23 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT
24 ARGUMENT AS A MISSTATEMENT OF THE LAW.

25 THE COURT: NO, IT'S NOT.

26 OVERRULED.

27 MR. CONN: WHEN YOU LOOK AT THE EVIDENCE IN
28 THIS CASE AND YOU FOLLOW THESE INSTRUCTIONS, IT ASKS

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1 YOU TO LOOK AT ALL THE EVIDENCE AS A WHOLE, NOT JUST
2 LITTLE PIECES OF EVIDENCE. BECAUSE IF THAT WERE THE
3 CASE, EVERY SINGLE PIECE OF EVIDENCE -- YOU COULD
4 ALWAYS SAY THERE'S TWO REASONABLE INTERPRETATIONS,
5 AND THROW OUT A PIECE HERE AND A PIECE THERE. AND
6 WHEN YOU LOOK AT THE EVIDENCE TOGETHER IT MAKES
7 SENSE AND POINTS TO GUILT. IT'S VERY IMPORTANT THAT
8 YOU UNDERSTAND THIS INSTRUCTION.

9 YOU'LL RECEIVE THAT INSTRUCTION, AND
10 ANOTHER ONE JUST LIKE IT, REFERRING TO

11 CIRCUMSTANTIAL EVIDENCE, GENERALLY, AND HOW YOU
12 INTERPRET CIRCUMSTANTIAL EVIDENCE. AND THERE ARE
13 TWO REASONABLE INTERPRETATIONS HOW YOU EVALUATE
14 THAT. BEAR IN MIND, IT'S REFERRING TO THE EVIDENCE
15 AS A WHOLE.

16 MR. GESSLER TALKS ABOUT THE TECHNICAL
17 INSUFFICIENCY OF THE INDICTMENT IN THIS CASE. DO
18 YOU RECALL THAT HE READ TO YOU FROM THE INDICTMENT
19 AND HE SAID THAT, WELL, WE SEE SOME INADEQUACIES IN
20 THIS INDICTMENT, AND HE HAD A BLOW-UP HERE, AND HE
21 SAYS, FOR EXAMPLE, IT SAYS THAT ALTHOUGH IT IS
22 ALLEGED THAT CONSPIRACY TO COMMIT MURDER OCCURRED ON
23 AUGUST THE 20TH OF 1989, THE PROSECUTION HAS ALLEGED
24 THAT ONE OF THE OVERT ACTS OCCURRED TWO DAYS
25 EARLIER, ON AUGUST THE 18TH OF 1989.

26 DON'T GET HUNG UP ON THAT, BECAUSE IF
27 YOU READ IT CAREFULLY, THE ALLEGATION IN THIS CASE
28 IS THAT THE CRIME OCCURRED ON OR ABOUT, AND THAT IS

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1 WHAT MAKES ALL THE DIFFERENCE IN THE WORLD. IF IT
2 IS ALLEGED THAT THE CRIME OCCURRED ON OR ABOUT
3 AUGUST THE 20TH, IT'S NOT NECESSARY TO SHOW THAT ALL
4 THE OVERT ACTS OCCURRED ON THAT DATE OR AFTER THAT
5 DATE.

6 SO THE FACT THAT THE OVERT ACT OCCURRED
7 TWO DAYS EARLIER DOES NOT DEFEAT THE SUFFICIENCY OF
8 THE INDICTMENT. IT'S STILL A VALID INDICTMENT. IT
9 SIMPLY REFERS TO ONE OVERT ACT OCCURRING TWO DAYS
10 EARLIER. AND THAT'S PERMISSIBLE, SINCE WE'RE NOT
11 SAYING THAT THE CONSPIRACY OCCURRED JUST ON THE 20TH
12 AND NOT BEFORE.

13 THE OTHER WAY HE SEEKS TO DISMISS, OR TO
14 DEMONSTRATE THE INSUFFICIENCY OF THE INDICTMENT, IS
15 TO SAY THAT THERE IS LANGUAGE IN THE INDICTMENT
16 WHICH SAYS THAT WITHIN THE COUNTY OF LOS ANGELES THE
17 DEFENDANTS, IT IS ALLEGED, WENT DOWN TO SAN DIEGO
18 AND PURCHASED SHOTGUNS; AND AGAIN, HE ARGUES THAT
19 THIS IS A TECHNICAL INSUFFICIENCY IN THE
20 INDICTMENT.

21 BUT YOU WILL LEARN FROM THE INSTRUCTIONS
22 THAT WILL BE READ TO YOU IN COURT, THE PROSECUTION
23 MUST ONLY PROVE THAT THERE ARE CERTAIN OVERT ACTS
24 WHICH OCCURRED IN THIS STATE, AND ONE OF THE OVERT
25 ACTS WHICH OCCURRED IN THIS STATE IS THAT THE
26 DEFENDANTS WENT DOWN TO SAN DIEGO AND PURCHASED
27 SHOTGUNS.

28 SO AGAIN, THERE IS NO TECHNICAL

1 INSUFFICIENCY IN THE INDICTMENT.

2 HE ARGUES THAT DR. OZIEL WAS OF THE --
3 WAS TOLD BY JOSE MENENDEZ THAT THEY WERE OUT OF THE
4 WILL. THAT'S NOT WHAT THE TRANSCRIPT SAYS. IF YOU
5 LISTEN CAREFULLY TO THAT TRANSCRIPT -- READ THAT
6 TRANSCRIPT CAREFULLY, AND BY THE WAY. DON'T JUST
7 READ THAT TRANSCRIPT. IT'S VERY IMPORTANT THAT YOU
8 LISTEN TO THAT TAPE-RECORDING AS WELL.

9 IT WAS SUGGESTED BY COUNSEL THAT YOU'LL
10 BE ABLE TO READ THE TRANSCRIPT. IT'S IMPORTANT THAT
11 YOU LISTEN TO IT AS WELL, BECAUSE YOU'LL BE ABLE TO
12 GET A FEEL FOR THE DEFENDANTS IN THE WAY THAT
13 THEY'RE TALKING ON THAT TAPE, AND YOU COULD SEE FROM
14 THE WAY THEY'RE TALKING THAT NO ONE IS PUTTING WORDS
15 IN THEIR MOUTH. THE DEFENDANTS ARE TALKING
16 NATURALLY. IT DOES NOT APPEAR TO BE COERCED IN ANY
17 WAY. IT APPEARS TO BE SPONTANEOUS. IT APPEARS THAT
18 THEY ARE DISCUSSING SOMETHING WITH DR. OZIEL. THEY
19 ARE AGREEING. JUST RELY UPON THE TRANSCRIPT.
20 LISTEN TO IT.

21
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1 LISTEN TO IT.

2 HE WOULD HAVE YOU BELIEVE IT WAS DR. OZIEL
3 THAT -- DR. OZIEL WAS SUGGESTING ON THE TAPE THAT HE HAD
4 BEEN TOLD BY JOSE MENENDEZ THAT THE DEFENDANTS WERE OUT
5 OF THE WILL.

6 I SUBMIT TO YOU THAT THE DEFENDANTS WERE

7 NOT. THERE IS NO REASON TO CONCLUDE THAT DR. OZIEL WAS
8 TOLD THAT BY JOSE MENENDEZ. HE DOESN'T SPECIFICALLY SAY
9 THAT ON THE TAPE. HE SAID HE IS AWARE OF JOSE MENENDEZ
10 INDICATING THAT THE DEFENDANTS WERE OUT OF THE WILL.
11 THAT COULD HAVE COME FROM THE DEFENDANTS THEMSELVES.

12 SO THAT IS SIMPLY NOT SUPPORTED BY THE
13 EVIDENCE. WHAT IS SIGNIFICANT ABOUT THAT IS THAT THE
14 DEFENDANTS, WE KNOW, WENT TO KLARA AND RANDY WRIGHT, AND
15 IT WAS THEY WHO WERE ABLE TO TESTIFY TO THE DEFENDANT'S
16 BELIEF THAT THEY WERE STILL IN THE WILL, OR THAT THERE
17 COULD STILL BE -- OR AT LEAST THAT THEY HAD NO REASON TO
18 BELIEVE THAT THEY WERE OUT OF THE WILL.

19 THAT IS THEIR STATE OF MIND RIGHT AFTER THE
20 KILLING. THAT IS WHAT IS CONTROLLING, NOT SO MUCH WHAT
21 DR. OZIEL SAID ON THAT PARTICULAR TAPE-RECORDING. THAT
22 IS MUCH MORE POWERFUL AND MORE PERSUASIVE EVIDENCE, AS
23 IS THE ADMISSION OF ERIK MENENDEZ HERE ON THE WITNESS
24 STAND, WHERE ERIK MENENDEZ ADMITS THAT HE NEVER RULED
25 OUT THE POSSIBILITY THAT HE WAS STILL INSIDE THAT WILL.

26 AND I WOULD LIKE TO GO OVER WITH YOU SOME
27 OF THE WITNESSES WHO TESTIFIED IN THIS CASE. WITNESSES
28 WHO, I SUBMIT TO YOU, ALL CONTRADICT ERIK MENENDEZ.

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1 I TOLD YOU BEFORE THAT THE DEFENSE IN THIS
2 CASE RELIES UPON THE TESTIMONY OF ERIK MENENDEZ TO

3 SUPPORT ALLEGATIONS OF ABUSE, AND I AM GOING TO GIVE
4 YOU, LADIES AND GENTLEMEN, MANY REASONS FOR REJECTING
5 THE TESTIMONY OF ERIK MENENDEZ, MANY REASONS WHICH WERE
6 NOT EXPLAINED BY COUNSEL IN THE COURSE OF THEIR
7 ARGUMENT.

8 MS. ABRAMSON: I AM GOING OBJECT TO THAT, YOUR
9 HONOR, AS IMPROPER REBUTTAL.

10 THE COURT: WELL, HE IS REFERRING TO WHAT WAS
11 REFERRED TO IN ARGUMENT, IS HOW I INTERPRET IT.

12 MS. ABRAMSON: HE SAID WHAT WAS NOT REFERRED TO
13 IN OUR ARGUMENT.

14 THE COURT: I UNDERSTAND THE NATURE OF THE
15 COMMENTS, AND THE OBJECTION IS OVERRULED.

16 PICK A POINT HERE, THOUGH, WE CAN TAKE A
17 BREAK.

18 MR. CONN: YES. THIS WOULD BE APPROPRIATE, YOUR
19 HONOR.

20 THE COURT: OKAY. WE WILL TAKE A RECESS HERE AND
21 RESUME AT 3:15.

22 DON'T DISCUSS THE MATTER, DON'T FORM ANY
23 FINAL OPINIONS ABOUT IT. WE WILL RESUME AT 3:15.

24 I WANT COUNSEL TO REMAIN JUST FOR MINUTE OR
25 TWO.

26 (THE JURY ENTERS THE JURY ROOM
27 AND THE FOLLOWING PROCEEDINGS
28 WERE HELD:)

1 THE COURT: JUST TO INQUIRE, NUMBER ONE, HAS A
2 TRANSCRIPT OF THE DECEMBER 11TH TAPE BEEN FINALIZED?

3 MS. TOWERY: I THINK MS. NAJERA HAS AN OBJECTION
4 TO SOMETHING.

5 MS. NAJERA: NO, ACTUALLY I DON'T. THERE IS JUST
6 ONE QUESTION I WANTED TO ASK MS. TOWERY, AND WE CAN DO
7 IT NOW.

8 THE COURT: AND THE EXHIBIT LIST?

9 MS. TOWERY: NO, YOUR HONOR. I TRIED TO REVISE
10 IT, AND I GOT BACK A LIST OF CHANGES BY THE PROSECUTION.
11 I AM JUST GOING TO INDICATE WHAT WE AGREE TO, AND GIVE
12 THE LIST BACK TO THE COURT.

13 MS. ABRAMSON: THEY ARE TRYING TO ARGUE THE CASE
14 THROUGH THE LIST.

15 THE COURT: WHAT YOU CAN DO PERHAPS IS TO GIVE ME
16 YOUR SUGGESTION AS TO HOW THOSE THINGS YOU OBJECT TO
17 SHOULD BE PHRASED.

18 MS. TOWERY: OKAY. I WILL WRITE THAT IN BLUE
19 PEN.

20 THE COURT: OR HAVE YOU SHOWN YOUR SUGGESTIONS TO
21 THE PROSECUTION?

22 MS. NAJERA: I HAVEN'T SEEN THEIR OBJECTIONS, NO.

23 MS. ABRAMSON: IT WENT THAT WAY ORIGINALLY. THEY
24 MADE UP A LIST, MS. TOWERY CHANGED IT, AND IT WENT BACK,
25 AND THEY WANT TO ARGUE IT.

26 THE COURT: MS. TOWERY, IF YOU CAN GIVE YOUR
27 SUGGESTIONS ON THIS LIST TO THE PROSECUTION, AND SEE IF

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1 MS. TOWERY: I DID, YOUR HONOR, AND THEY CAME
2 BACK RETURNING TO THE ORIGINAL VERSION FOR THE MOST
3 PART.

4 THE COURT: GIVE ME WHAT YOUR SUGGESTIONS ARE
5 THEN.

6 AND THE ONLY OTHER THING, WE HAD THIS
7 DISCUSSION BEFORE ON THE INSTRUCTIONS, 2.20, THE LAST
8 SENTENCE AS TO HOW YOU WANTED TO DEAL WITH THAT,
9 MR. GESSLER, AND WE WERE LOOKING AT IT ON FRIDAY, I
10 BELIEVE.

11 MR. GESSLER: FRANKLY, I HAD FORGOTTEN ABOUT
12 THAT, YOUR HONOR.

13 THE COURT: THE WAY I LEFT IT IN THE PACKAGE THAT
14 I HAVE RIGHT NOW IS THAT THE JURY MAY CONSIDER CONDUCT
15 OF A WITNESS THAT AMOUNTS TO A CRIME -- CRIMINAL
16 CONDUCT, SOMETHING ALONG THOSE LINES.

17 MR. GESSLER: WE DO GET INTO THAT ABSTRACT THING
18 AS TO HOW TO THE BURGLARY, WHICH WAS IN CONTRAVENTION TO
19 THE LIMITED ONE.

20 THE COURT: IF YOU WANT TO TAKE IT OUT
21 ALTOGETHER. . .

22 MR. GESSLER: LET ME TALK FOR A MINUTE. COULD WE
23 PERHAPS, OVER THE RECESS, CONFER ON THAT, AND THEN IF

24 YOU REMIND US AT THE END OF THE DAY, I WANT TO TALK TO
25 CO-COUNSEL, BECAUSE IT AFFECTS US BOTH.
26 THE COURT: I WANTED TO BRING IT UP, BECAUSE I
27 WANT TO FINALIZE ALL THIS STUFF.
28 WE WILL BE IN RECESS THEN.

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1 MS. ABRAMSON: YOUR HONOR, I WANT TO TALK TO THE
2 COURT BEFORE THE COURT INSTRUCTS ABOUT -- GOING BACK,
3 EVEN THE USE NOTES IN CALJIC -- I THINK THAT WE NEED TO
4 HAVE AN INSTRUCTION ON A MENTAL DISORDER, AND HOW IT
5 IMPACTS PREMEDITATION AND DELIBERATION AND MALICE, EVEN
6 IF THAT WASN'T THE ONLY REASON FOR WHICH THIS MENTAL
7 DISORDER EVIDENCE WAS INTRODUCED.

8 THERE IS NOTHING NOW IN THE INSTRUCTION
9 THAT IS DIRECTING THE JURY AS TO HOW TO CONSIDER THE
10 MENTAL DISORDER EVIDENCE.

11 THE COURT: WELL, THAT INSTRUCTION DIDN'T DO IT
12 EITHER. 3.32 DOESN'T DO IT EITHER.

13 MS. ABRAMSON: IT MIGHT BE 4.21, WHICH IS THE
14 VOLUNTARY INTOXICATION ONE. BUT THE USE NOTE UNDER --
15 WHERE DID I FIND THAT BEFORE, TERRY? THERE IS ANOTHER
16 USE NOTE THAT INDICATES 4.21 SHOULD BE USED TO -- HERE
17 IT IS. LET'S LOOK.

18 IF YOU LOOK AT THE NEW PUBLICATION UNDER
19 CALJIC 8.20, THERE IS A USE NOTE TALKING TO --

20 ADDRESSING EVIDENCE, AND IT SAYS THIS:

21 "EVIDENCE OF VOLUNTARY INTOXICATION
22 OR MENTAL DISEASE IS RELEVANT AND MAY
23 NEGATE PREMEDITATION AND DELIBERATION.
24 HOWEVER, THERE IS NO SUA SPONTE DUTY TO
25 GIVE SUCH AN INSTRUCTION."

26 IT REFERS TO CALJIC 4.21, WHICH IS THE
27 VOLUNTARY INTOXICATION INSTRUCTION.

28

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1 "IT'S THE DEFENDANT'S DUTY TO MAKE
2 A REQUEST FOR SUCH AN INSTRUCTION."

3 I AM REQUESTING SUCH AN INSTRUCTION.

4 THE COURT: OKAY.

5 MS. ABRAMSON: SO THE RECORD IS CLEAR. I CAN TRY
6 TO REWORK 4.21.

7 THE COURT: OKAY. COME UP WITH SOMETHING THAT
8 YOU THINK WOULD DEAL WITH THE ISSUE. IT CITES PEOPLE
9 VERSUS SAILLE, SO PERHAPS THERE IS SOMETHING IN THAT
10 CASE THAT TALKS ABOUT IT.

11 MS. ABRAMSON: SAILLE WAS A VOLUNTARY
12 INTOXICATION CASE.

13 THE COURT: OBVIOUSLY WE DON'T HAVE THAT HERE.
14 SO IF YOU HAVE SOMETHING IN MIND, I WILL CERTAINLY
15 CONSIDER IT.

16 MS. ABRAMSON: OKAY.

17 THE COURT: ALL RIGHT. WE WILL BE IN RECESS.

18 (A RECESS WAS TAKEN FROM
19 3:05 P.M. UNTIL 3:25 P.M.)

20

21 THE COURT: ALL RIGHT.

22 IS THERE SOMETHING BEFORE WE START?

23 MS. NAJERA: YES, YOUR HONOR. JUST THREE QUICK
24 OBSERVATIONS, IF I MAY.

25 FIRST AS TO THE TRANSCRIPT, I BELIEVE WE
26 HAVE AGREED UPON IT, AND IT IS THE TRANSCRIPT THAT WAS
27 SUBMITTED TO MS. TINNELL, SO THAT WAS TAKEN CARE OF.

28 SECONDLY, I THINK WITH REGARDS TO THE

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1 WITNESS -- OR THE EXHIBIT LIST, I THINK THAT WE CAN
2 RESOLVE THIS, IF MS. TOWERY OR SOMEONE FROM THE DEFENSE
3 TEAM IS WILLING TO MEET WITH ME FOR ABOUT 20 MINUTES. I
4 HAVE MADE THAT OFFER, AND COUNSEL FOR THE DEFENSE HAS
5 DECLINED.

6 AND THIRDLY, AND THE THING THAT MAKES ME
7 MOST CONCERNED NOW, IS THAT MS. ABRAMSON, MR. LEVIN AND
8 ERIK MENENDEZ SEEM TO BE, APPROPRIATELY ENOUGH, PLAYING
9 HANGMAN DURING MR. CONN'S ARGUMENT, WHICH -- THEY CAN DO
10 WHATEVER THEY WANT DURING THIS ARGUMENT, BUT THEY ARE
11 GETTING LOUD, AND A LOT OF THE PEOPLE IN THE FIRST AND

12 SECOND ROW ARE HEARING THEM. AND I THINK THEY ARE DOING
13 IT TO DISTRACT THE JURY, AND IF THEY'RE NOT DOING IT TO
14 DISTRACT THE JURY, THEY ARE DOING IT A LITTLE BIT LOUD,
15 AND IT IS A DISTRACTION.

16 THE COURT: WELL, MR. LEVIN HASN'T BEEN DOING
17 THIS. IT'S THE DEFENDANT AND MS. ABRAMSON.

18 LET'S TRY TO KEEP THE NOISE DOWN AND THE
19 DISTRACTIONS DOWN.

20 MS. NAJERA: THANK YOU, YOUR HONOR.

21 MS. ABRAMSON: ALL RIGHT.

22 YOUR HONOR, I FOUND ANOTHER USE NOTE THAT
23 SAYS THAT 4.21 SHOULD BE GIVEN.

24 MS. ABRAMSON: IT SAYS IT'S 4.21 THAT SHOULD BE
25 GIVEN. IT'S VERY CONFUSING. I WOULD HAVE THOUGHT THAT
26 3.32, AS WE SUBMITTED IT, IF WE STRIKE THE WORD
27 "SOLELY," WOULD COVER THE SAME NOTION.

28 THE COURT: OKAY. WHILE YOU'RE LOOKING,

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1 MS. TOWERY, ARE YOU AVAILABLE TO SPEND SOME TIME WITH
2 MS. NAJERA?

3 MS. TOWERY: WELL, YOUR HONOR, FRANKLY, I DON'T
4 CARE TO, UNLESS THE COURT ORDERS ME TO. IT SEEMS TO ME
5 THE PROSECUTION SUBMITTED A LIST TO ME, WHICH WAS IN MY
6 OPINION VERY BIASED IN TERMS OF ITS DESCRIPTION OF THE
7 EXHIBITS. I DID MY BEST TO TRY AND NEUTRALIZE THE

8 DESCRIPTIONS. I PROVIDED IT TO THE PROSECUTION, AND
9 MOST OF THE -- MOST OF THE CHANGES, WHICH, I ASSUME,
10 IT'S MS. NAJERA HAS MADE TO THE EXHIBIT LIST THAT I HAVE
11 PROVIDED TO THEM, EITHER RETURNED TO THE ORIGINAL
12 DESCRIPTION OR WATERED IT DOWN TO SOME EXTENT.

13 FOR EXAMPLE, ON THE --

14 THE COURT: OKAY. WELL, I REALLY DON'T WANT TO
15 TAKE AWAY TIME FROM THE JURY.

16 MS. TOWERY: IT JUST SEEMS LIKE A WASTE OF TIME.

17 THE COURT: RATHER YOUR TIME THAN MINE.

18 LET ME SUGGEST YOU SPEND 10 MINUTES AND SEE
19 IF THAT IS ENOUGH OPPORTUNITY TO MAKE SOME QUICK
20 PROGRESS, SO YOU CAN AT LEAST NARROW SOME OF THESE
21 THINGS DOWN. IF YOU CAN'T, REPORT TO ME THAT YOU CAN'T.

22 MS. TOWERY: I HAVE GONE THROUGH AND INDICATED
23 THE CHANGES THE PROSECUTION WANTS ON MY VERSION WHICH
24 ARE OKAY WITH ME, AND EVERYTHING ELSE, IT SEEMS TO ME,
25 THAT THE COURT CAN RESOLVE QUITE QUICKLY.

26 THE COURT: OKAY. BUT IT WILL TAKE SOME TIME,
27 AND IF YOU AND SHE CAN SPEAK, IT MIGHT BE MORE
28 EXPEDITIOUS TO DO IT THAT WAY. SO I WOULD ASK THAT YOU

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1 DO THAT.

2 MS. TOWERY: FINE.

3 THE COURT: AND LET'S RESUME THEN WITH THE

4 ARGUMENT HERE.

5 ARE YOU READY, MR. CONN?

6 MR. CONN: YES, I AM.

7 THE COURT: BRING THE JURY OUT.

8 MS. ABRAMSON: JUDGE, WOULD YOU TAKE A LOOK AT

9 THE USE NOTE UNDER CALJIC 8.47, FOR EXAMPLE.

10 THE COURT: ALL RIGHT.

11 MS. ABRAMSON: THAT ALSO REFERS TO 4.21.

12 THE COURT: ALL RIGHT.

13 MS. ABRAMSON: SO I WILL TRY TO WORK ON 4.21

14 RIGHT NOW.

15 (THE JURY ENTERS THE COURTROOM

16 AND THE FOLLOWING PROCEEDINGS

17 WERE HELD:)

18

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

20 CONTINUE YOUR ARGUMENT.

21 MR. CONN: THANK YOU, YOUR HONOR.

22 LADIES AND GENTLEMEN, I DO WANT TO TRY AND

23 FINISH TODAY SO YOU CAN HAVE THIS CASE BY TOMORROW. SO

24 I AM GOING TO DO MY BEST TO WRAP IT UP. I AM GOING TO

25 BE MOVING THROUGH SOME MATERIAL VERY QUICKLY. I DON'T

26 WANT TO BELABOR THESE ISSUES.

27 BUT VERY QUICKLY, I INDICATED TO YOU

28 PREVIOUSLY THAT ERIK MENENDEZ IS IMPEACHED BY A NUMBER

1 WITNESSES IN THIS CASE, AND THAT IS TO SAY THAT YOU
2 CAN'T BELIEVE BOTH ERIK MENENDEZ AND BELIEVE THESE
3 WITNESSES AT THE SAME TIME.

4 THESE ARE WITNESSES WHO DIRECTLY CONTRADICT
5 ERIK MENENDEZ, ONE OF THE MANY REASONS FOR REJECTING THE
6 TESTIMONY OF ERIK MENENDEZ IN THIS CASE.

7 KLARA WRIGHT, FOR EXAMPLE, IS SOMEONE WHO
8 DIRECTLY CONTRADICTS THE TESTIMONY OF ERIK MENENDEZ.
9 AND MS. ABRAMSON DID HER BEST TO TRY AND EXPLAIN AWAY
10 THE TESTIMONY OF KLARA WRIGHT. AND I WOULD SUBMIT TO
11 YOU THAT SHE JUST DIDN'T ACCOMPLISH THAT.

12 WHAT IS SIGNIFICANT ABOUT WHAT KLARA WRIGHT
13 SAYS IS, FIRST OF ALL, THE ENTHUSIASM THAT ERIK MENENDEZ
14 HAD IN WANTING TO SPEAK TO HER HUSBAND. ERIK MENENDEZ
15 MAKES IT SEEM AS IF HE JUST BUMPED INTO KLARA WRIGHT.
16 BUT DO YOU REMEMBER KLARA WRIGHT TESTIFYING TO THE
17 FOLLOWING:

18 "QUESTION: NOW, WHEN YOU SAW THE
19 DEFENDANT, ERIK MENENDEZ, SITTING IN THE
20 CAR, AND HE CAME UP TO YOU, WHAT WAS THE
21 FIRST THING THAT HAPPENED?

22 "ANSWER: ERIK SAID TO ME:
23 'MRS. WRIGHT, I AM SO GLAD YOU'RE HERE.
24 WE NEED TO SPEAK TO YOUR HUSBAND.'"

25 AND HE SAID HE WAS TRYING GET AHOLD OF HIM,
26 OR WANTED GET AHOLD OF HIM. WHAT DO YOU HAVE, LADIES
27 AND GENTLEMEN?

28 HOW LONG AFTER HE SHOT HIS PARENTS TO DEATH

1 DO YOU HAVE ERIK MENENDEZ PRACTICALLY RUSHING OUT TO THE
2 CAR TO TALK TO KLARA WRIGHT. "WE NEED TALK TO YOUR
3 HUSBAND." THE PROBATE ATTORNEY.

4 LADIES AND GENTLEMEN, WHAT DOES THAT SHOW?
5 IT SHOWS THE ENTHUSIASM OF THE DEFENDANT IS FOCUSED ON
6 THE MONEY WITHIN HOURS OF SHOOTING HIS PARENTS TO DEATH.
7 KLARA WRIGHT REMEMBERS THAT. THERE IS NO AMBIGUITY
8 ABOUT THAT IN HER TESTIMONY.

9 THEY TRY TO SAY THAT KLARA WRIGHT IS
10 UNRELIABLE BECAUSE SHE DOESN'T RECALL THE CONVERSATION,
11 OR SHE DOESN'T RECALL WHEN ERIK MENENDEZ SPOKE ABOUT THE
12 DESIRE TO GET INTO THE COMPUTER AND THE DESIRE TO FIND
13 OUT IF THERE WAS A WILL.

14 THIS IS SOMETHING SHE SAID, EVEN THOUGH SHE
15 WAS NOT SURE ABOUT WHETHER THAT OCCURRED BEFORE OR AFTER
16 HER HUSBAND ARRIVED HOME. SHE SPECIFICALLY SAID,
17 REPEATEDLY IN HER TESTIMONY, THAT ERIK MENENDEZ DID HAVE
18 THAT CONVERSATION WITH HER. SHE SAID, FOR EXAMPLE: "I
19 DON'T KNOW WHEN IT WAS SAID, BUT I KNOW IT WAS SAID THAT
20 NIGHT, AND IT WAS SAID TO ME."

21 AND THEN IT WAS ASKED:

22 "BUT THE SPECIFICS OF THAT
23 DISCUSSION AREN'T CLEAR TO YOU NOW AS YOU
24 SIT HERE, SIX YEARS LATER; IS THAT A FAIR
25 STATEMENT?"

26 "ANSWER: NO. THE DISCUSSION IS
27 CLEAR TO ME. THE STORY IS CLEAR IN MY
28 MIND. IT'S JUST THAT I DON'T KNOW

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1 EXACTLY IN DETAIL WHEN IT WAS SAID,
2 EXCEPT THAT IT WAS SAID THAT EVENING."

3 SO, LADIES AND GENTLEMEN, AS MUCH AS THEY
4 TRIED TO SUGGEST THAT KLARA WRIGHT SHOULD NOT BE RELIED
5 UPON BECAUSE SHE HAS A FAULTY MEMORY, SHE REMEMBERS VERY
6 CLEARLY THE FOCUS OF ERIK MENENDEZ ON THE WILL, ON THE
7 COMPUTER WITHIN HOURS AFTER SHOOTING HIS PARENTS TO
8 DEATH.

9 LADIES AND GENTLEMEN, THAT IS TOTALLY
10 INCONSISTENT WITH A PERSON WHO IS RESPONDING OUT OF FEAR
11 TO HIS PARENTS. THAT IS ONLY CONSISTENT WITH A PERSON
12 WHO IS NOW IN A GREED MODE.

13 RANDY WRIGHT, FOR EXAMPLE, IS ANOTHER ONE
14 WHO SPECIFICALLY IMPEACHES THE TESTIMONY OF THE
15 DEFENDANTS -- THE TESTIMONY OF ERIK MENENDEZ.

16 AND WHY? BECAUSE RANDY WRIGHT MADE IT VERY
17 CLEAR IN HIS TESTIMONY THAT THEY WERE THERE TO PROBATE
18 THE WILL, AND THAT THEY DID NOT BELIEVE THAT THEY WERE
19 OUT OF THE WILL.

20 HE SAID, FOR EXAMPLE -- WELL, HE TESTIFIED
21 IN REGARD TO TWO MATTERS. ONE, WHETHER THEY BELIEVED

22 THEY WERE OUT OF THE WILL. AND THE OTHER WAS THE
23 INSURANCE POLICY; THAT THEY KNEW THAT THERE WAS AN
24 EXISTING INSURANCE POLICY.

25 WE NOW KNOW THAT ERIK MENENDEZ WOULD LIKE
26 TO DENY THAT, AND ERIK MENENDEZ WOULD LIKE TO SAY:
27 "GEE, I DIDN'T KNOW THERE WAS AN INSURANCE POLICY."

28 BUT DO YOU REMEMBER THE TESTIMONY OF RANDY

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1 WRIGHT IN THAT REGARD? HE SAID THE FOLLOWING -- AND A
2 SPECIFIC COMMENT WAS MADE REGARDING LYLE MENENDEZ.

3 "QUESTION: WHEN YOU ASKED THE
4 DEFENDANT, LYLE MENENDEZ, WHETHER OR NOT
5 THERE WAS A LIFE INSURANCE POLICY, DID HE
6 TELL YOU ANYTHING?

7 "ANSWER: YES:

8 "QUESTION: WHAT DID HE TELL YOU?

9 "ANSWER: HE HAD ONE POLICY THAT
10 WAS IN EFFECT, I THINK, FOR \$300,000.

11 AND HE SAID: "BUT I THINK THAT'S
12 THE FIGURE."

13 HE WASN'T EVEN SURE OF THE EXACT AMOUNT.

14 WELL, YOU SEE, THAT WOULD REPRESENT THE
15 SHARE THAT EACH DEFENDANT WAS GOING TO GET, BECAUSE
16 THAT'S WHAT THEY GOT, ABOUT 300,000, OR 300,000 AND
17 CHANGE.

18 SO YOU HAVE RANDY WRIGHT SAYING THEY KNEW
19 ABOUT THAT INSURANCE, CONTRARY TO THE CURRENT CLAIM OF
20 THE DEFENDANT, THAT HE DID NOT KNOW ABOUT THE INSURANCE.
21 AND THEN, AS FAR AS BEING AWARE THAT THEY
22 WERE OUT OF THE WILL OR NOT, HE SAID: "I WAS TOLD BY
23 LYLE THAT HE THOUGHT THAT THE FATHER MIGHT HAVE CHANGED
24 THE WILL, THAT HE THOUGHT THERE MAY BE A WILL ON THE
25 COMPUTER," AND HE WENT OVER THIS REPEATEDLY.
26 HE SAID, FOR EXAMPLE:
27 "QUESTION: LYLE AND ERIK MENENDEZ
28 GAVE YOU THE IMPRESSION THAT THEY BELIEVED

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1 THAT JOSE MENENDEZ HAD CHANGED THE WILL,
2 POSSIBLY TAKEN THEM OUT OF THE WILL.
3 "ANSWER: NO, THAT'S NOT CORRECT.
4 THEY GAVE ME THE IMPRESSION -- DO YOU WANT
5 ME TO ANSWER THIS MORE THAN A YES OR NO,
6 BECAUSE IT CAN'T BE ANSWERED YES OR NO?
7 "QUESTION: ALL RIGHT. GO AHEAD.
8 "ANSWER: THEY GAVE ME THE
9 IMPRESSION THAT THEY THOUGHT THE WILL WAS
10 CHANGED, BUT THEY NEVER GAVE ME THE
11 IMPRESSION, AS FAR AS I REMEMBER, THAT
12 THEY THOUGHT THAT THEY WERE OUT OF THE
13 WILL."

14 AND HE IS REPEATEDLY SUGGESTING HERE THAT
15 THE DEFENDANTS NEVER COMMUNICATED THE SENSE THAT THEY
16 WERE OUT OF THE WILL.

17 SO AGAIN, WE HAVE A DIRECT CONTRADICTION
18 BETWEEN THE CURRENT CLAIM OF ERIK MENENDEZ AND MARTHA
19 CANO, WHO CLAIMS: "OH, YEAH. THE DEFENDANTS KNEW THEY
20 WERE OUT OF THE WILL." THAT WAS THEIR STATE OF MIND
21 RIGHT AFTER THE TIME OF THE KILLING IN THIS CASE.

22 SO THESE ARE WITNESSES, LADIES AND
23 GENTLEMEN, WHO DIRECTLY IMPEACH THE CURRENT CLAIMS OF
24 ERIK MENENDEZ; THAT IS, THAT ERIK MENENDEZ -- IF THESE
25 WITNESSES ARE CORRECT, ERIK MENENDEZ IS LYING, AND
26 CANNOT BE RECONCILED WITH THESE WITNESSES.

27 GRANT WALKER, YOU KNOW, WAS THE POOL MAN
28 WHO SAID THAT ON THAT SATURDAY HE SAW THE DISPUTE

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1 BETWEEN THE DEFENDANTS AND THEIR PARENTS. HE HEARD THE
2 DEFENDANTS USING CURSE WORDS AT THEIR PARENTS.

3 AND WHAT DO THEY SAY ABOUT GRANT WALKER?
4 ALL THEY SAY IS, TO TRY TO EXPLAIN AWAY HIS TESTIMONY,
5 IS: "WELL, THAT COULDN'T HAVE HAPPENED, BECAUSE HE WAS
6 THERE IN THE LATE AFTERNOON, AND THAT WOULD HAVE
7 CONFLICTED WITH THE BOATING TRIP."

8 NO, NOT NECESSARILY. THAT DOESN'T CONFLICT
9 WITH THE BOATING TRIP. THERE WAS STILL PLENTY OF TIME

10 FOR GRANT WALKER TO BE THERE ON SATURDAY, TO SEE THIS
11 DISPUTE BETWEEN THE DEFENDANTS AND THEIR PARENTS, AND
12 THE DEFENDANTS TO LATER GO ON THE BOATING TRIP.

13 SO THERE IS NOTHING INCONSISTENT ABOUT
14 GRANT WALKER. HE IS NOT A MAN WHO WAS SEEKING
15 PUBLICITY, AS THEY SUGGEST, AND YOU SHOULD NOT DISREGARD
16 HIS TESTIMONY.

17 HE DIRECTLY CONTRADICTS -- AND YOU SEE,
18 THESE WITNESSES IF THEY'RE BELIEVED, THEY DESTROY ERIK
19 MENENDEZ. THEY DESTROY HIS CURRENT CLAIM. THEY DESTROY
20 HIS DEFENSE, EVERY SINGLE ONE OF THEM.

21 AND YOU DON'T HAVE TO FIND THAT THEY'RE ALL
22 CORRECT. EVEN IF YOU FIND: "WELL, MAYBE I HAVE SOME
23 DOUBT ABOUT THIS PERSON, OR I HAVE SOME DOUBT ABOUT THIS
24 PERSON."

25 IF YOU FIND THAT ANY ONE OF THESE PEOPLE
26 ARE TELLING THE TRUTH, LADIES AND GENTLEMEN, THAT PROVES
27 THAT ERIK MENENDEZ IS LYING, AND YOU SHOULD REJECT HIS
28 TESTIMONY FOR THAT REASON.

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1 LET'S TAKE A LOOK AT THE TESTIMONY OF PERRY
2 BERMAN.

3 YOU RECALL THAT IT WAS PERRY BERMAN WHO
4 SAID THAT THE DEFENDANT -- HE SPOKE TO LYLE MENENDEZ ON
5 THE PHONE, AND IT WAS HIS UNDERSTANDING FROM TALKING TO

6 LYLE MENENDEZ THAT HE HAD BEEN OUT SHOPPING WITH HIS
7 BROTHER, REMEMBER? IN FACT, IT WAS JUDGE WEISBERG WHO
8 ASKED HIM THIS QUESTION:

9 "QUESTION: DID LYLE MENENDEZ SAY
10 ANYTHING ABOUT HIS WHEREABOUTS DURING THE
11 AFTERNOON YOU CALLED AND SPOKE TO THE
12 FATHER?

13 "ANSWER: I BELIEVE HE SAID HE WAS
14 OUT SHOPPING WITH HIS BROTHER, WITH ERIK.

15 "QUESTION: DID HE SAY WHERE?

16 "ANSWER: AS I RECALL, I THOUGHT HE
17 SAID THE BEVERLY CENTER."

18 YOU KNOW, THEY TRY TO EXPLAIN THIS AWAY BY
19 SAYING, OH, LATER IN THE TESTIMONY HE SAYS: "I'M NOT
20 SURE." AND IT IS TRUE, HE DOES MAKE AN EQUIVOCAL
21 REMARK. BUT THEN CAROL NAJERA THEN ASKED THIS FINAL
22 QUESTION OF HIM:

23 "QUESTION: SIR, YOU TOLD
24 MS. TOWERY IT WAS POSSIBLE THAT YOU GOT
25 CONVERSATIONS MIXED UP.

26 "HOWEVER, AS YOU SAT THERE AND AS
27 YOU ANSWERED THE JUDGE'S QUESTION, IS IT
28 YOUR BEST RECOLLECTION THAT IT WAS THE

1 DEFENDANT, LYLE MENENDEZ, WHO TOLD YOU

2 THAT HE WAS AT THE BEVERLY CENTER SHOPPING
3 THAT DAY?

4 AND THE ANSWER TO THAT WAS: "YES,
5 I BELIEVE SO."

6 AND MS. NAJERA SAID: "THANK YOU, I
7 HAVE NOTHING FURTHER."

8 AND THAT WAS THE END OF THE DISCUSSION. HE
9 LEFT IT THAT THIS WAS HIS BEST RECOLLECTION, HE HAD THIS
10 CONVERSATION WITH LYLE MENENDEZ.

11 ONCE AGAIN, THIS DESTROYS THE CREDIBILITY
12 OF ERIK MENENDEZ, BECAUSE THE WHOLE STORY IS PREMISED
13 UPON THEIR ACTIVITIES THAT WEEK. THERE IS DIRECT
14 CONTRADICTION BETWEEN PERRY BERMAN'S RECOLLECTION AND
15 THE CLAIMS OF ERIK MENENDEZ.

16 JAMIE PISARCIK IS ANOTHER PERSON WHO THEY
17 CANNOT EXPLAIN AWAY. JAMIE PISARCIK IS A PERSON WHO, OF
18 COURSE, SAID ERIK MENENDEZ KNEW THAT HIS BROTHER HAD HIS
19 HAIRPIECE.

20 IF THAT IS SO, THAT IS A DIRECT
21 CONTRADICTION BETWEEN HIS CLAIM THAT GEE, HE WAS TOTALLY
22 SURPRISED WHEN HE SAW THIS FIGHT BETWEEN HIS MOTHER AND
23 HIS BROTHER, AND THAT'S WHAT LED TO THE EVENTS OF THAT
24 WEEK.

25 THEY HAVE NO WAY TO EXPLAIN AWAY JAMIE
26 PISARCIK, EXCEPT BY SAYING WELL, MAYBE SHE IS MISTAKEN
27 ABOUT THE DATE. AND THEY TRY THEIR BEST TO SHOW THAT
28 SHE WAS MISTAKEN ABOUT THE DATE.

1 BUT LADIES AND GENTLEMEN, EVEN IN THE FIRST
2 TRIAL, SHE INDICATED: "I AM NOT SURE WHEN IT HAPPENED."
3 SHE WAS UP FRONT ABOUT THIS. "I AM NOT SURE WHEN IT
4 HAPPENED, BUT I DO KNOW THAT I TALKED TO ERIK MENENDEZ
5 ABOUT THIS. ERIK MENENDEZ KNEW ABOUT THAT HAIRPIECE."

6 SO SHE DIRECTLY CONTRADICTS ERIK MENENDEZ
7 AND HIS CLAIM AS TO WHAT HAPPENED THAT WEEK. SHE HAD NO
8 MOTIVATION TO LIE. AND THEY HAVE NEVER SUGGESTED TO YOU
9 ANY REASON WHY JAMIE PISARCIK WOULD HAVE A REASON TO LIE
10 ABOUT THIS.

11 I WOULD SUBMIT TO YOU, LADIES AND
12 GENTLEMEN, THAT SHE IS ABSOLUTELY RELIABLE FOR THAT
13 REASON.

14 CRAIG CIGNARELLI, OF COURSE, IS A PERSON
15 WHO SAID THAT ERIK MENENDEZ CONFESSED TO HIM. IF YOU
16 BELIEVE WHAT CRAIG CIGNARELLI TESTIFIED TO, IT TOTALLY
17 IMPEACHES ERIK MENENDEZ, BECAUSE ERIK MENENDEZ NOW
18 CLAIMS THAT HE REALLY DIDN'T TELL CRAIG CIGNARELLI VERY
19 MUCH. HE JUST GAVE HIM A FEW DETAILS.

20 BUT THEY NEVER EXPLAINED AWAY IN THEIR
21 CLOSING REMARKS WHY IS IT THAT CRAIG CIGNARELLI HAD
22 INFORMATION BACK IN 1989 WHICH HE COULD NOT POSSIBLY
23 HAVE KNOWN, SUCH AS ERIK MENENDEZ GOING THROUGH THE LEFT
24 DOOR, LYLE MENENDEZ GOING THROUGH THE RIGHT DOOR.

25 THAT WAS NEVER EXPLAINED TO YOU IN THEIR
26 CLOSING ARGUMENTS, LADIES AND GENTLEMEN, BECAUSE THERE

27 ARE CERTAIN FACTS THAT THEY JUST CAN'T EXPLAIN AWAY.
28 CERTAIN FACTS WHICH PROVE JUST TOO CONCLUSIVELY, LADIES

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1 AND GENTLEMEN, THAT ERIK MENENDEZ IS LYING, AND THERE IS
2 NO WAY OF GETTING AROUND IT.

3 BRIAN ESLAMINIA.

4 YOU KNOW, BRIAN ESLAMINIA IS A PERSON WHO
5 IS NOW TRYING TO TAKE BACK WHAT HE TOLD DETECTIVE
6 ZOELLER. IF WHAT HE TOLD DETECTIVE ZOELLER BEFORE IS
7 TRUE, WHICH IS THAT ERIK MENENDEZ WAS IN FACT PART OF
8 THIS CONSPIRACY TO FABRICATE EVIDENCE, THAT TOTALLY
9 DESTROYS THE CREDIBILITY OF THE DEFENDANT, AND IT PROVES
10 TO YOU THAT HE IS HERE FABRICATING EVIDENCE RIGHT BEFORE
11 YOUR EYES.

12 AND WE KNOW FROM THE LETTER THAT HE SENT --
13 THAT LYLE MENENDEZ SENT TO HIM -- THAT HE IS
14 CORROBORATED IN LARGE PART. AND EVEN LYLE MENENDEZ
15 MAKES REFERENCE TO ERIK MENENDEZ IN THAT LETTER.

16 SO I WOULD SUBMIT TO YOU, THE ONLY
17 REASONABLE CONCLUSION TO BE DRAWN IS THAT ERIK MENENDEZ
18 WAS PART OF THAT CONSPIRACY TO FABRICATE EVIDENCE.

19 MARK HEFFERNAN PROVIDES A SMALL DETAIL, BUT
20 AN IMPORTANT DETAIL. THAT IS ON THE FRIDAY HE SAW THE
21 DEFENDANT -- HE SAW THE DEFENDANTS PLAYING TENNIS, AND
22 THERE WAS NOTHING UNUSUAL. CONTRADICTS THEIR STORY THAT

23 FRIDAY WAS A TERRIBLE DAY, BECAUSE THAT FOLLOWED THE
24 CONFRONTATION WITH THEIR FATHER ON THURSDAY.
25 OF COURSE, ERIK MENENDEZ WANTS TO CLAIM
26 THAT MARK HEFFERNAN IS WRONG NOW. BUT IF MARK HEFFERNAN
27 IS RIGHT, IT SHOOTS DOWN THE DEFENDANT'S CLAIM.
28 GABE FRIEDERICHSON IS THE EMPLOYEE FOR THE

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1 BIG-5 SPORTING GOODS STORE, WHO SAYS THAT THE
2 CONVERSATION THAT ERIK MENENDEZ CLAIMS TO HAVE HAD WITH
3 A SALESPERSON IN THE BIG-5 STORE IN SANTA MONICA REALLY
4 COULD NEVER HAVE HAPPENED, BECAUSE THERE NEVER WOULD
5 HAVE BEEN A REASON TO DISCUSS A 15-DAY WAITING PERIOD.
6 AND LESLIE ABRAMSON TRIES TO GLOSS OVER
7 THIS STATEMENT BY SAYING, "WELL, MAYBE THERE WAS JUST
8 SOMETHING SAID ABOUT A 15-DAY WAITING PERIOD."
9 BUT NO. LOOK AT THE TESTIMONY OF ERIK
10 MENENDEZ. HE MAKES IT VERY CLEAR THAT HE HAD A
11 CONVERSATION WITH THE SALESPERSON THERE ABOUT WHICH GUNS
12 WERE REAL AND WHICH GUNS WERE NOT. THAT CONVERSATION
13 NEVER COULD HAVE OCCURRED, ACCORDING TO GABE
14 FRIEDERICHSON, BECAUSE THEY STOPPED SELLING GUNS THREE
15 YEARS EARLIER. AND ERIK MENENDEZ SAID IT WAS IN
16 REFERENCE TO A GUN THAT HE WAS INTERESTED IN, THAT THE
17 SALESPERSON SAID THERE IS A 15-DAY WAITING PERIOD.
18 THAT CONVERSATION NEVER COULD HAVE

19 OCCURRED, LADIES AND GENTLEMEN, BECAUSE THEY STOPPED
20 SELLING GUNS THREE YEARS EARLIER.
21 SO GABE FRIEDERICHSON IS A PERSON WHO
22 TOTALLY, 100 PERCENT, CONTRADICTS ERIK MENENDEZ, PROVED
23 ERIK MENENDEZ TO BE A LIAR IN THE LAST TRIAL WHEN HE
24 TESTIFIED, AND ERIK MENENDEZ -- LESLIE ABRAMSON SAID
25 "WELL, ERIK MENENDEZ COULD JUST CHANGE HIS STORY." THIS
26 IS AN ARGUMENT THAT SHE MADE CONCERNING A NUMBER OF
27 WITNESSES.
28 WELL, IF ERIK MENENDEZ WANTS TO LIE, HE

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1 COULD CHANGE HIS STORY. SURE, HE COULD CHANGE HIS
2 STORY, AND THEN HE IS GOING TO LOSE ALL SORTS OF
3 CREDIBILITY WITH THE JURY, BECAUSE THEN I COULD BRING
4 OUT: "LOOK WHAT YOU'RE DOING, YOU'RE CHANGING YOUR
5 STORY TO MATCH THE FACTS."

6 ERIK MENENDEZ ADMITS WHAT HE ADMITS BECAUSE
7 HE HAS TO, AND HE STICKS TO THE STORY HE STICKS TO
8 BECAUSE HE HAS TO. IF HE CHANGES THE STORY, IT'S JUST
9 GOING TO SHOW HE'S A LIAR. HE CAN'T CHANGE THE STORY.
10 HE STICKS WITH THIS TESTIMONY WHERE THE FORMER
11 PROSECUTOR PROVED HIM TO BE A COMPLETE LIAR.

12 AMANDA GEIER SAYS THE SALE OF THE SHOTGUNS
13 OCCURRED LATE AT NIGHT. IT OCCURRED LIKE AT 8:30.
14 THAT IS IMPORTANT, BECAUSE IT SHOWS THAT

15 THE DEFENDANTS WERE TRAVELING UP AND DOWN THE SAN DIEGO
16 FREEWAY, NO DOUBT AT A VERY INCONVENIENT TIME, DEALING
17 WITH THAT TRAFFIC. AND THEY WOULD NOT HAVE MADE THAT
18 DRIVE JUST FOR FUN.

19 SHE DIRECTLY CONTRADICTS ERIK MENENDEZ, WHO
20 CLAIMS THAT ""OH, NO. IT OCCURRED EARLY IN THE DAY,"
21 LEAVING YOU WITH THE IMPRESSION THAT PERHAPS THERE
22 WOULDN'T BE MUCH TRAFFIC.

23 WELL, IF SHE IS CORRECT THAT IT OCCURRED
24 LATE AT NIGHT, THEN THAT MEANS THEY HAD TO DEAL WITH
25 THAT TRAFFIC. AND IF THEY HAD TO DEAL WITH THAT
26 TRAFFIC, IT MAKES HIS STORY THAT THEY JUST HAPPENED TO
27 BE GOING FOR A PLEASANT DRIVE TO SAN DIEGO VERY
28 UNBELIEVABLE.

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1 AND EVEN DWIGHT VAN HORN, WHO I QUARRELLED
2 WITH ON THE STAND, DWIGHT VAN HORN WAS THE PERSON WHO
3 SAID THAT WAS SMOKELESS POWDER. SMOKELESS POWDER DOES
4 NOT INTERFERE WITH YOUR ABILITY TO SEE. IT DOES NOT
5 IMPAIR VISION.

6 AND YET ERIK MENENDEZ -- I BROUGHT THIS OUT
7 IN MY CROSS-EXAMINATION OF HIM -- THAT AS MUCH AS HE
8 WANTED TO PLAY IT DOWN NOW, IN THE FIRST TRIAL HE TRIED
9 TO CLAIM: OH, THE ROOM WAS FILLED WITH SMOKE AND IT
10 IMPAIRED HIS VISION. AND HE HAD SAID IN THE FIRST TRIAL

11 IT MADE IT MORE DIFFICULT FOR HIM TO SEE.

12 BUT NOW WE HAVE DWIGHT VAN HORN CLARIFYING
13 THAT ISSUE FOR THE JURY. GUESS WHAT HAPPENED TO ERIK
14 MENENDEZ' CLAIM? WELL, THAT JUST WENT OUT THE WINDOW.
15 ERIK MENENDEZ IS NOT GOING TO STICK TO THAT STORY
16 ANYMORE.

17 THIS IS ONE OF THE AREAS WHERE HE DID
18 CHANGE. HE IS TRYING TO WIGGLE AWAY FROM IT. HE IS NOT
19 TOTALLY DENYING IT, BUT HE IS TRYING TO WIGGLE AWAY FROM
20 IT, BECAUSE HE KNOWS THAT THAT TOTALLY IMPEACHES HIS
21 CREDIBILITY.

22 LADIES AND GENTLEMEN, ASIDE FROM THE FLAWS
23 IN THE STORY OF ERIK MENENDEZ, HERE YOU HAVE 11
24 WITNESSES WHO DIRECTLY IMPEACH ERIK MENENDEZ. AND IF
25 THEY'RE TELLING THE TRUTH, IF ANY ONE OF THESE WITNESSES
26 IS TELLING THE TRUTH, ERIK MENENDEZ IS LYING.

27 I WOULD SUBMIT TO YOU, LADIES AND
28 GENTLEMEN, THEY'RE ALL TELLING THE TRUTH, EVERY SINGLE

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1 ONE OF THEM. AND THAT'S JUST 11 MORE REASONS WHY YOU
2 SHOULD REJECT THE TESTIMONY OF ERIK MENENDEZ.

3 THERE WAS A LOT OF TALK ABOUT MARTHA CANO
4 AND WHETHER SHE GOT THE CAR TO GIVE TO HER SON, OR
5 WHETHER SHE PAID FOR THE CAR.

6 DO YOU KNOW THAT ERIK MENENDEZ, EVEN IN

7 THIS TRIAL, ADMITTED THAT HE GAVE THE CAR TO HIS AUNT

8 MARTHA. HE WAS ASKED A QUESTION:

9 "QUESTION: WAS THIS A PARTICULARLY

10 HAPPY EVENT IN YOUR LIFE, TO ACQUIRE A

11 JEEP?

12 "ANSWER: IT WAS A VERY DEPRESSING

13 TIME IN MY LIFE. I WAS GIVING MY CAR TO

14 MY AUNT MARTHA. I BOUGHT A JEEP."

15 SO THERE YOU HAVE IT, DESPITE ALL THIS TALK

16 ABOUT WHETHER ANDY CANO MIGHT HAVE GOTTEN THE CAR FOR

17 FREE, AND AUNT MARTHA CLAIMING THAT SHE BOUGHT IT FOR

18 \$5,500. SHE JUST CAN'T FIND THE SALES RECEIPT. BUT SHE

19 WANTS YOU TO BELIEVE THAT SHE DID IN FACT BUY IT.

20 HERE'S ERIK MENENDEZ THIS TRIAL SAYING: "I

21 GAVE IT TO MY AUNT MARTHA."

22 SO, LADIES AND GENTLEMEN, IN ADDITION TO

23 ALL OF THESE REASONS THAT WE GAVE YOU FOR REJECTING THE

24 TESTIMONY OF ERIK MENENDEZ, I WOULD SUBMIT TO YOU THAT

25 THE IMPROBABLE, THE UNBELIEVABLE STORY TOLD BY ERIK

26 MENENDEZ IN THIS TRIAL WAS ONCE AGAIN PRESSED UPON YOU

27 BY HIS ATTORNEY, WHO WAS ASKING YOU TO BELIEVE THAT

28 STORY, AND INSISTING THAT THE STORY IS TRUE; INSISTING

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1 THAT ERIK MENENDEZ' STORY IS NOT ARBITRARY, DESPITE THE

2 FACT THAT HE HAD SO MANY ARBITRARY ELEMENTS TO IT, LIKE

3 HE THOUGHT HE WAS GOING TO BE KILLED SOON.

4 BUT THEN AGAIN, NOT NECESSARILY THURSDAY.

5 BUT HE COULDN'T GET -- HE DIDN'T WANT TO GET HANDGUNS

6 THAT WOULD TAKE TWO WEEKS TO GET, BECAUSE HE KNEW IT

7 WOULD BE TOO LATE.

8 NEVERTHELESS, COUNSEL WILL ARGUE THAT HIS

9 STORY IS NOT AN ARBITRARY STORY. I WOULD SUGGEST TO YOU

10 THAT THIS STORY IS ENTIRELY ARBITRARY.

11 COUNSEL SUGGESTED TO YOU IN HER ARGUMENT

12 THAT THIS WAS SOMETHING THAT ERIK MENENDEZ DISCUSSED

13 FULLY WITH HIS BROTHER.

14 BUT LADIES AND GENTLEMEN, I TOOK A GREAT

15 DEAL OF TIME TO SHOW YOU THAT ON THURSDAY, ON FRIDAY, ON

16 SATURDAY, WHEN THESE EVENTS WERE GOING ON, ERIK MENENDEZ

17 DID NOT -- ACCORDING TO HIS STORY, DISCUSS WITH HIS

18 BROTHER THINGS THAT ANYONE IN THAT SAME SITUATION WOULD

19 HAVE DISCUSSED, LIKE "UNDER WHAT CIRCUMSTANCE DO WE KILL

20 OUR PARENTS?" THOSE ARE REASONABLE THINGS THAT ANYONE

21 WOULD DISCUSS.

22 AND SHE SAID: "WELL, MR. CONN IS SIMPLY

23 SAYING THAT ERIK MENENDEZ SHOULD HAVE DISCUSSED

24 SOMETHING, AND BECAUSE HE DIDN'T, MR. CONN IS SAYING

25 THAT YOU SHOULD DISBELIEVE HIM."

26 I AM NOT SAYING HE SHOULD DO IT. I AM

27 SAYING, LADIES AND GENTLEMEN, THAT WHEN YOU EVALUATE A

28 PERSON'S CLAIM, YOU EVALUATE IT IN LIGHT OF YOUR OWN

1 EXPERIENCE AND WHAT IS REASONABLE UNDER THOSE
2 CIRCUMSTANCES.

3 IF A PERSON TELLS YOU: "WELL, I WAS
4 DROWNING IN A SWIMMING POOL, AND I REALLY THOUGHT I WAS
5 DROWNING, BUT" --

6 AND YOU ASK HIM:

7 "DID YOU CALL OUT TO THE LIFEGUARD?

8 "WELL, NO.

9 "WHY NOT?

10 "WELL, I DIDN'T THINK ABOUT IT."

11 WHAT WOULD YOU SAY WHEN YOU HEAR THAT
12 STORY? YOU'RE GOING TO SAY: "WAIT A MINUTE. I DON'T
13 BELIEVE THAT STORY."

14 WHEN PEOPLE ARE DROWNING, THEY CALL FOR A
15 LIFEGUARD. YOU DON'T HAVE TO BE A ROCKET SCIENTIST TO
16 FIGURE THIS OUT. THAT'S HOW YOU EVALUATE STORIES.

17 MS. ABRAMSON TOLD YOU: OH, NO. THE WAY
18 YOU EVALUATE CREDIBILITY IS YOU LOOK TO SEE IF THERE IS
19 A PRIOR INCONSISTENT STATEMENT. DID A PERSON SAY
20 SOMETHING ON A DIFFERENT OCCASION THAT IS DIFFERENT?

21 YES, THAT'S ONE WAY YOU CAN DO IT. THE
22 OTHER WAY YOU CAN DO IT IS SEE IF EVERY OTHER WITNESS IN
23 THE CASE CONTRADICTS A PARTICULAR WITNESS. THAT'S
24 ANOTHER WAY YOU CAN TELL IF HE'S TELLING THE TRUTH.

25 BUT ANOTHER WAY STILL IS TO ASK YOURSELF:
26 DOES THE STORY MAKES SENSE? IF A PERSON SAID HE WAS
27 DROWNING IN A POOL AND HE DIDN'T CALL FOR A LIFEGUARD,

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1 TELLING YOU THE TRUTH, BECAUSE ANYONE IN THE SAME
2 SITUATION WOULD HAVE CALLED FOR A LIFEGUARD.

3 AND SO YOU LOOK AT THE STORY AS A WHOLE,
4 AND ASK YOURSELF IF IT MAKES SENSE, LADIES AND
5 GENTLEMEN.

6 VARIOUS THINGS THAT ERIK MENENDEZ DID OR
7 DID NOT DO THAT ENTIRE WEEKEND FROM THURSDAY, FRIDAY,
8 SATURDAY, AND SUNDAY IS TOTALLY INCONSISTENT WITH A
9 PERSON WHO WAS IN FEAR. IT IS ONLY CONSISTENT WITH A
10 PERSON WHO PREMEDITATED AND DELIBERATED THE KILLING IN
11 THIS CASE.

12 SHE TRIES TO MAKE IT SOUND AS IF IT WAS
13 JUST NATURAL THAT WHEN JOSE MENENDEZ WAS CHASING HIM
14 THURSDAY NIGHT, HE RAN DOWNSTAIRS AND STOPPED DEAD IN
15 HIS TRACKS BECAUSE: "OH, MOTHER IS IN THE DEN. I
16 THOUGHT MOTHER WAS IN THE BEDROOM. HOW ODD. I THINK
17 I'LL STOP HERE AND TALK."

18 THERE IS NOTHING REASONABLE ABOUT THAT.
19 THAT IS THE MAJOR PROBLEM IN THEIR STORY, DESPITE THE
20 FACT THAT COUNSEL GLOSSES OVER IT.

21 COUNSEL DENIES THE FACT THAT ERIK MENENDEZ
22 WAS COMPETENT ENOUGH TO GO SHOPPING FOR GUNS, TO THINK
23 ABOUT GOING TO TARGET RANGES, AND COMPETENT ENOUGH AND

24 RECKLESS ENOUGH TO CARRY GUNS IN AND OUT OF THE HOUSE.
25 AND YET SHE CLAIMS THAT HE WAS SUFFERING FROM LEARNED
26 HELPLESSNESS. HOW CAN THAT POSSIBLY BE?
27 SHE DISPUTES THE CONCLUSION OF DR. DIETZ
28 THAT HIS BEHAVIOR IN GOING TO THE BOAT IS INCONSISTENT

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1 WITH HYPERVIGILANCE. SHE SAYS THAT IS NOT
2 HYPERVIGILANCE. HYPERVIGILANCE MEANS REALLY ALERT. YOU
3 CAN BE REALLY ALERT AND STILL GO TO THE BOAT UNARMED.
4 BUT, LADIES AND GENTLEMEN, WHAT DR. DIETZ
5 WAS SAYING WAS MORE THAN THAT. HE WAS SAYING THAT THAT
6 BEHAVIOR IS INCONSISTENT WITH HYPERVIGILANCE, NOT THAT
7 IT IS INCONSISTENT WITH A PHYSICAL REACTION OF BEING
8 REALLY ALERT. BUT THAT IF A PERSON IS TRULY
9 HYPERVIGILANT, THE PERSON IS HYPERVIGILANT FOR A REASON,
10 AND THAT REASON IS HE IS CONCERNED ABOUT HIS
11 ENVIRONMENT. HE IS CONCERNED ABOUT HIS SURROUNDINGS.
12 HE IS FEARFUL OF HIS SURROUNDINGS, APPREHENSIVE ABOUT
13 HIS SURROUNDINGS.
14 GOING TO THE BOAT UNARMED -- ESPECIALLY AS
15 HE NOW CLAIMS -- THAT HE DID THAT WITHOUT EVEN
16 DISCUSSING WITH HIS BROTHER WHETHER OR NOT THEY COULD
17 CARRY GUNS ONTO THE BOAT, IS TOTALLY INCONSISTENT WITH A
18 CLAIM OF HYPERVIGILANCE.
19 AND I WOULD SUBMIT TO YOU THAT DR. DIETZ IS

20 RIGHT. MS. ABRAMSON IS WRONG.

21 SHE WANTS YOU TO BELIEVE THAT THEY JUST

22 ENDED UP IN SAN DIEGO. JUST ENDED UP THERE. EVEN

23 THOUGH HE WOKE UP THAT MORNING TO PURCHASE GUNS, AND YET

24 HE JUST HAPPENED TO END UP THERE, WITHOUT INTENDING TO

25 GO THERE TO PURCHASE GUNS.

26 SHE WANTS YOU TO BELIEVE THAT HIS STORY IS

27 REASONABLE THAT HE HAD NO PROBLEM IN BUYING A SHOTGUN IN

28 LOS ANGELES, AND YET WHEN HE GOT DOWN TO SAN DIEGO, HE

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1 JUST HAPPENED TO DECIDE AT THAT POINT: OH, BUYING A

2 SHOTGUN WOULD BE A GREAT IDEA. SHE ASKS YOU TO BE THAT

3 THAT IS A REASONABLE STORY.

4 AND WHAT ABOUT ALL THIS BUSINESS, HIS

5 MOTHER HAS SUPERNATURAL POWERS.

6 THE PROBLEM -- WHAT I CALL THE BIGGEST

7 PROBLEMS IN HIS STORY, THE MORE EMBARRASSING PROBLEMS IN

8 HIS STORY THAT HE NOW TRIES TO SWEEP UNDER THE RUG; LIKE

9 HIS MOTHER HAVING SUPERNATURAL POWERS AND HIS BELIEF

10 THAT HIS FATHER WAS GOING TO KILL HIM, DISOWN HIM, JUST

11 BECAUSE HE WASN'T REPORTING HIS TENNIS ACTIVITIES TO HIS

12 FATHER, OR HIS MOTHER'S -- HIS BELIEF THAT HIS MOTHER

13 WAS NOT GOING TO KILL HIM WITH A RIFLE, EVEN THOUGH SHE

14 WAS TRYING TO POISON HIM.

15 THESE ARE ALL MATTERS WHICH SHE JUST

16 GLOSSES OVER IN HER EXPLANATION OF ERIK MENENDEZ'
17 BEHAVIOR, AND TRIES TO MAKE IT APPEAR AS IF HIS
18 BEHAVIOR, HIS ACTIONS, HIS BELIEFS, ARE REASONABLE.
19 LADIES AND GENTLEMEN, THESE ARE ALL LIES
20 THAT ARE TOO HARD TO EXPLAIN. THEY DON'T EVEN TRY TO
21 EXPLAIN THEM NOW, BECAUSE THEY ARE SO DIFFICULT TO
22 EXPLAIN.

23 HIS FAILURE TO RELOAD IS SOMETHING THAT IS
24 TOTALLY INCONSISTENT WITH HIS CLAIM OF FEAR. FAILURE TO
25 RELOAD ALL DAY SATURDAY AND SUNDAY. THE SHOOTING, HOW
26 THE SHOOTING, WENT DOWN. HER PERSISTENCE IN SUGGESTING
27 TO YOU THAT YOU JUST SOMEHOW RUSH INTO THE DEN WITHOUT
28 THINKING -- WITHOUT THINKING AT ALL, LADIES AND

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1 GENTLEMEN, IS AN INSULT TO ALL OF OUR INTELLIGENCE,
2 ESPECIALLY IN THE LIGHT OF TESTIMONY FROM DR. DIETZ, WHO
3 EXPLAINED THAT THE BEHAVIOR OF THE DEFENDANTS IS
4 ENTIRELY CONSISTENT WITH A THINKING PROCESS, AND
5 INCONSISTENT WITH THIS NOTION OF AUTOMATIC PILOT.
6 AND THEN THE RELOAD. DID EITHER COUNSEL
7 FOR LYLE MENENDEZ OR COUNSEL FOR ERIK MENENDEZ
8 ADEQUATELY EXPLAIN TO YOU WHY IT WAS NECESSARY TO
9 RELOAD? WHY IT WAS NECESSARY, AFTER KITTY MENENDEZ WAS
10 SHOT IN THE FACE THIS WAY -- AFTER SHE WAS SO BRUTALLY
11 SHOT BY HER SONS -- HOW COULD THE DEFENDANTS POSSIBLY

12 JUSTIFY IN ANY WAY GOING OUTSIDE AND RELOADING, AND
13 COMING BACK IN AND SHOOTING THE MOTHER TO DEATH, WHEN
14 ERIK MENENDEZ ADMITTED -- ADMITTED: "I INSTINCTIVELY
15 KNEW THAT MY BROTHER WAS GOING TO FINISH KILLING MY
16 MOTHER."

17 THAT BEHAVIOR, LADIES AND GENTLEMEN, CANNOT
18 BE EXPLAINED. IT CANNOT BE EXCUSED OR JUSTIFIED,
19 MITIGATED IN ANY WAY. AND NO PSYCHCO-BABBLE, NO JARGON
20 FROM A PSYCHOLOGIST IS GOING TO EXPLAIN OR ACCOUNT FOR
21 THAT TYPE OF BEHAVIOR.

22 MR. GESSLER PERSISTS IN HIS FREE SHOT
23 THEORY. HE WANTS TO GET ONE FREE SHOT. HE WANTS TO
24 TELL YOU -- HE WANTS YOU TO GIVE HIM THIS SHOT TO THE
25 CHEEK AS A FREEBIE, THAT THIS ONE DOESN'T COUNT.

26 WELL, MR. CONN IS ARGUING THAT THERE IS
27 PREMEDITATION AND DELIBERATION AFTER THE FIRST VOLLEY OF
28 SHOTS AND PRIOR TO THAT SHOT TO THE CHEEK, BECAUSE HE

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1 CAN'T PROVE PREMEDITATION AND DELIBERATION PRIOR TO
2 THAT.

3 TO THE CONTRARY, LADIES AND GENTLEMEN.
4 EVERYTHING I AM SAYING IS TO THE CONTRARY.

5 I AM TELLING THAT YOU FROM FRIDAY, WHEN
6 THESE DEFENDANTS WENT SHOPPING FOR THEIR GUNS, THEY ARE
7 PREMEDITATING AND DELIBERATING UPON THE COLD-BLOODED

8 KILLING OF THEIR PARENTS. THAT'S WHEN THE PREMEDITATION
9 AND DELIBERATION BEGAN, AND PERSISTS ALL THROUGH THAT
10 WEEKEND.

11 THERE WAS ALSO -- EVEN IF YOU WERE TO WALK
12 DOWN THIS ROAD, AS I TOLD YOU THAT YOU SHOULDN'T DO,
13 WITH ERIK MENENDEZ, AND BELIEVE THE WEEKEND CRISIS AND
14 THE EVENTS OF AUGUST THE 20TH.

15 BEFORE HE GOES INTO THE HOUSE WITH HIS
16 BROTHER MENENDEZ -- WITH HIS BROTHER, LYLE MENENDEZ,
17 THERE'S PLENTY OF OPPORTUNITY FOR HIM, AS ANYONE IN THAT
18 SITUATION, TO CONTEMPLATE, TO DELIBERATE UPON WHAT THEY
19 ARE DOING, TO SAY: "ARE WE DOING THE RIGHT THING? WHY
20 ARE WE DOING THIS?"

21 I SHOWED YOU THE ROUTE THAT LYLE MENENDEZ
22 WOULD HAVE TO TRAVEL WHEN HE LEFT HIS HOUSE TO GO ALL
23 THE WAY OUT TO THE GUESTHOUSE TO GET HIS GUN, COME BACK.

24 PLENTY OF OPPORTUNITY THERE, LADIES AND
25 GENTLEMEN, TO THINK: "WHAT AM I DOING?"

26 THIS IS NOT A HEAT OF PASSION, LADIES AND
27 GENTLEMEN. THIS IS NOT A PICKING UP A WEAPON AND USING
28 IT. THIS IS AN OPPORTUNITY TO REFLECT, TO DELIBERATE.

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1 AND ESPECIALLY WHEN YOU'RE DOING IT WITH SOMEONE ELSE.
2 YOU'RE WITH SOMEONE ELSE. YOU'RE DOING THE KILLING WITH
3 SOMEONE ELSE.

4 YOU DON'T HEAR OF HEAT OF PASSION IN THE
5 SITUATION WHERE ONE PERSON ARRIVES HOME AND THEY FIND
6 THEIR SPOUSE IN THE ARMS OF ANOTHER, AND THEY'RE ARMED
7 WITH A GUN, OR THERE IS A GUN NEARBY. THAT IS A HEAT OF
8 PASSION SITUATION.

9 NOT A SITUATION WHERE YOU'RE WITH SOMEONE
10 AND YOU'RE PURCHASING GUNS DAYS BEFOREHAND. YOU HAVE AN
11 OPPORTUNITY TO MEET OUTSIDE. YOU LOAD YOUR GUN, HE
12 LOADS HIS GUN. THERE IS NO DANGER PRESENT.

13 THIS IS NOT HEAT OF PASSION. THIS IS NOT
14 AN EXCITED MOMENT. THIS IS AN OPPORTUNITY TO DISCUSS.
15 THIS IS AN OPPORTUNITY TO REFLECT. THIS IS
16 PREMEDITATION AND DELIBERATION.

17 SO I WOULD SUBMIT THERE IS PREMEDITATION
18 AND DELIBERATION EVEN THEN, EVEN AT THAT TIME.

19 BUT THAT CERTAINLY AFTER THEY SHOT THE
20 MOTHER AND THE FATHER, AND THEY NOW GO OUTSIDE AND THERE
21 IS AN OPPORTUNITY TO TALK, THERE IS AN OPPORTUNITY TO
22 DISCUSS. AND ERIK MENENDEZ ADMITS HE INSTINCTIVELY KNEW
23 THAT HIS BROTHER WAS GOING TO FINISH KILLING OFF HIS
24 MOTHER. NOT HIS FATHER. THAT'S NOT A CERTAIN. HE KNEW
25 HIS FATHER WAS ALREADY DEAD.

26 DID THIS WOMAN HAVE TO BE SHOT? IF THERE
27 IS ANY "WHY" THAT HAS TO BE ANSWERED, LADIES AND
28 GENTLEMEN, IT IS NOT THESE QUESTIONS UP HERE.

1 WHY DID KITTY MENENDEZ HAVE TO BE SHOT?
2 WHY DID SHE HAVE TO BE KILLED? THEY CAN'T JUSTIFY THAT.
3 THEY CAN'T EXPLAIN THAT ANY WAY.

4 THE ONLY WAY THEY SEEK TO DO THAT, LADIES
5 AND GENTLEMEN, IS BY ALLEGATIONS ABOUT THE MOTHER, ABOUT
6 WHAT SHE SAID THAT NIGHT. WHAT, THEY CAN'T GO TO THE
7 MOVIES? THEY CAN'T GO TO THE MOVIES, AND THEREFORE,
8 "THAT'S IT, WE'VE GOT TO KILL OUR MOTHER NOW."

9 OR SOMETHING ABOUT THE FAMILY. "YOU RUINED
10 THIS FAMILY." THAT'S IT, SHOOT HER TO DEATH. THAT'S
11 IT.

12 LADIES AND GENTLEMEN, THEIR EFFORTS TO
13 EXPLAIN AWAY THE SHOOTING OF THEIR MOTHER ARE FEEBLE,
14 AND THEY SIMPLY CANNOT DO IT.

15 THERE WAS AN OPPORTUNITY FOR PREMEDITATION
16 AND DELIBERATION, EVEN AFTER THEY SHOT THEIR PARENTS IN
17 THE ROOM, AND THEY WENT OUTSIDE AND HAD FURTHER
18 OPPORTUNITY TO PREMEDITATE AND DELIBERATE, AND THE
19 COMMENTS OF ERIK MENENDEZ ESTABLISHES THAT.

20 BUT STILL, MR. GESSLER SUGGESTS, HE WANTS A
21 FREE SHOT. HE WANTS TO GET THAT SHOT FOR FREE. DON'T
22 HOLD THAT AGAINST HIS CLIENT.

23 AND HE GIVES YOU SEVERAL REASONS FOR DOING
24 THAT. HE SAYS THAT THE EXPERTS BELIEVE THAT SHE WAS
25 ALREADY DEAD AT THE TIME THAT SHOT WAS FIRED.

26 LADIES AND GENTLEMEN, AS I POINTED OUT TO
27 YOU -- AND THIS IS SOMETHING THAT MR. GESSLER REFUSED TO
28 ADDRESS IN HIS CLOSING ARGUMENT -- AND THAT IS SURE, YOU

1 CONSIDER THE TESTIMONY OF THE EXPERTS, INCLUDING THE
2 REPORT OF DR. GOLDEN. THE ONLY ONE, THE ONLY MAN ON
3 EARTH THAT EXAMINED THIS WOUND. THE ONLY MAN ON EARTH
4 THAT EXAMINED THIS WOUND, AND WHO INDICATED THAT IN
5 1989, AFTER HE EXAMINED THIS WOUND, IT WAS ANTEMORTEM,
6 BEFORE DEATH. THE ONLY MAN ON EARTH TO SEE THIS WOUND,
7 HE SAID IT WAS BEFORE DEATH.

8 WHEN YOU TAKE THAT INTO CONSIDERATION, YOU
9 ALSO TAKE INTO CONSIDERATION THE ACTIVITIES OF LYLE
10 MENENDEZ. WHY DIDN'T MR. GESSLER EXPLAIN TO YOU WHY IS
11 HIS CLIENT SHOOTING INTO HIS DEAD MOTHER?

12 IF HIS MOTHER IS REALLY DEAD, WHY IS LYLE
13 MENENDEZ SHOOTING INTO HIS DEAD MOTHER? WHY IS LYLE
14 MENENDEZ RUNNING OUTSIDE TO GET AMMUNITION, TO COME BACK
15 AND SHOOT THAT INTO A DEAD WOMAN?

16 THAT'S SOMETHING THAT YOU CAN CONSIDER
17 TOTALLY INDEPENDENT OF AND ON TOP OF GOLDEN'S REPORT,
18 WHICH SAID THAT THIS WOUND WAS BEFORE DEATH.

19 THE ONLY REASONABLE CONCLUSION, LADIES AND
20 GENTLEMEN, IS THAT JUST AS ERIK MENENDEZ KNEW HIS MOTHER
21 WAS ALIVE, AND KNEW THAT THAT ROUND WAS TO FINISH
22 KILLING OFF HIS MOTHER, LYLE MENENDEZ KNEW HIS MOTHER
23 WAS ALIVE. AND HIS MOTHER WAS INDEED ALIVE WHEN HE WENT
24 BACK INTO THAT ROOM AND HE SHOT HER IN THE FACE.

25 MR. GESSLER MAKES ARGUMENTS TO YOU ABOUT

26 "WELL, YOU KNOW, LYLE MENENDEZ, HE DIDN'T MAKE RECKLESS
27 INVESTMENTS. HE MADE PRETTY GOOD INVESTMENTS, AND HE
28 FOLLOWED THE ADVICE OF OTHERS IN MAKING INVESTMENTS."

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1 DON'T TALK ABOUT THAT, MR. GESSLER. TELL
2 US ABOUT WHY LYLE MENENDEZ SHOT HIS MOTHER IN THE FACE.
3 LET'S NOT TALK ABOUT WHETHER THEY WERE WISE INVESTMENTS
4 OR UNWISE INVESTMENTS.

5 HOW DO YOU SHOOT YOUR MOTHER IN THE FACE
6 WITH A SHOTGUN, WHEN HER FACE IS DOWN ON THE FLOOR
7 PROBABLY ONLY FOUR INCHES OFF THE GROUND, SIX INCHES OFF
8 THE GROUND? YOU HAVE TO TAKE THAT SHOTGUN AND STRADDLE
9 OVER HER LIKE THAT (INDICATING). YOU HAVE TO TAKE THAT
10 SHOTGUN AND POINT IT DOWN AND SHOOT HER IN THE FACE.

11 PICTURE THAT, LADIES AND GENTLEMEN.
12 PICTURE THAT, LADIES AND GENTLEMEN, LEANING OVER HIS
13 MOTHER LIKE THAT, PUTTING THAT SHOTGUN -- IT'S A CONTACT
14 WOUND, RIGHT UP AGAINST THAT CHEEK.

15 THAT IS WHAT THIS CASE IS ABOUT, LADIES AND
16 GENTLEMEN. THAT IS THE HORROR OF THIS CASE, THE TRUE
17 HORROR OF THIS CASE, AND THERE IS NO WAY THAT THAT CAN
18 BE EXPLAINED BY ANY EXPERT.

19 LYLE MENENDEZ DIDN'T EVEN CALL AN EXPERT.
20 HE DIDN'T EVEN TRY TO EXPLAIN THAT AWAY BY USE OF AN
21 EXPERT. ERIK MENENDEZ HAS SOME -- OH, LEARNED

22 HELPLESSNESS, SURVIVAL MODE, PANIC MODE, PANIC STATE.
23 ON AND ON AND ON, TO TRY TO EXPLAIN THAT.
24 WHAT IS LYLE MENENDEZ' EXCUSE? HOW DOES
25 LYLE MENENDEZ EXPLAIN THAT? WAS IT SOMETHING GOING
26 AROUND IN THE AIR? WE ALL GET PANIC MODE IN THE AIR?
27 HOW DOES HE EXPLAIN THAT AWAY? DOES HE --
28 IS HE THE BATTERED PERSON, AS ERIK MENENDEZ CLAIMS HE

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1 WAS; THAT HE, TOO, IS SUFFERING FROM THE SAME THING?
2 THAT HE, TOO, HAD THE --
3 MR. GESSLER: AT THIS POINT, YOUR HONOR, I
4 OBJECT. THIS IS BEYOND THE SCOPE OF ALL THE TESTIMONY
5 IN THE CASE. THE COURT KNOWS THE HISTORY OF THIS.
6 THE COURT: OKAY.
7 YOU ARE REFERRING TO ARGUMENT OF COUNSEL?
8 MR. CONN: YES, YOUR HONOR.
9 THE COURT: AS TO WHAT HIS EXPLANATION WAS, AND
10 YOU ARE RESPONDING TO THAT?
11 MR. CONN: YES, YOUR HONOR.
12 THE COURT: OKAY.
13 MR. GESSLER: I WOULD LIKE TO BE HEARD ON THAT,
14 YOUR HONOR.
15 THE COURT: ALL RIGHT. WE WILL HAVE THE JURY GO
16 INTO THE JURY ROOM JUST FOR A MOMENT.
17 (THE JURY ENTERS THE JURY ROOM

18 AND THE FOLLOWING PROCEEDINGS

19 WERE HELD:)

20

21 MR. GESSLER: THE OBJECTION HERE GOES TO THIS

22 FAILURE TO CALL AN EXPERT TO EXPLAIN THE BEHAVIOR OF A

23 CLIENT WHO DID NOT TESTIFY.

24 I THINK THAT'S AN INDIRECT WAY, BUT A VERY

25 CLEVER WAY, OF BRINGING UP GRIFFIN ERROR HERE, AND

26 REALLY COMMENTING ON THE FAILURE OF THE CLIENT TO

27 TESTIFY.

28 MR. CONN IS THE ONE WHO OBJECTED TO

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1 DR. HART, WHO HE WANTED TO CALL. THE COURT WOULD NOT

2 PERMIT US TO CALL DR. CONTE UNLESS WE CALLED LYLE

3 MENENDEZ.

4 AND SO IT ALL BUILDS ON ONE ANOTHER, THAT

5 THIS IS REALLY COMMENTS ON THE FAILURE OF MYSELF TO CALL

6 LYLE MENENDEZ TO THE STAND, AND CALLING THAT TO THE

7 ATTENTION OF THE JURY BY THEN TALKING ABOUT NO EXPERTS

8 BEING CALLED BY US TO EXPLAIN HIS BEHAVIOR.

9 AND I THINK THAT'S IMPROPER, AND I AM

10 ASKING FOR A MISTRIAL BASED ON THAT, BOTH ON FEDERAL,

11 GRIFFIN GROUNDS, AS WELL AS STATE GROUNDS.

12 THE COURT: OKAY.

13 DID YOU WISH TO RESPOND?

14 MR. CONN: YES. I AM SIMPLY COMMENTING UPON THE
15 FACT THAT THERE IS NO EXPERT TESTIMONY WHICH EXPLAINS IN
16 ANY WAY THE TESTIMONY OF -- OR EXPLAINS IN ANY WAY THE
17 BEHAVIOR OF THE DEFENDANT, LYLE MENENDEZ.

18 THE FACT THAT HE DID NOT PRESENT SUFFICIENT
19 EVIDENCE, WHICH WOULD ALLOW HIM TO PRESENT THAT TYPE OF
20 TESTIMONY; THAT IS, BY FIRST TESTIFYING AND THEN
21 ALLOWING AN EXPERT TO TESTIFY ON TOP OF THAT, DOES NOT
22 PRECLUDE THE PROSECUTION FROM POINTING OUT THAT THERE IS
23 IN FACT IN THIS CASE -- THE PROSECUTOR CAN COMMENT ON
24 THE PRESENCE OR THE ABSENCE OF EVIDENCE -- THAT THERE IS
25 NO EVIDENCE IN THIS CASE OF EXPERT TESTIMONY CONCERNING
26 HIS MENTAL STATE AT THE TIME OF THE COMMISSION OF THE
27 CRIME.

28 MR. GESSLER: NO. WE KNOW THE REASON THAT THERE

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1 IS NO SUCH TESTIMONY IN THIS PARTICULAR CASE, YOUR
2 HONOR, AND THIS IS THE CASE WHERE THAT REALLY IS -- AS I
3 SAY, IT'S AN INDIRECT BRINGING UP OF GRIFFIN ERROR. WE
4 COULD NOT PUT ON AN EXPERT WITHOUT HAVING PUT ON THE
5 DEFENDANT, AND WE CHOSE NOT TO PUT ON THE DEFENDANT.
6 IT'S IMPROPER ARGUMENT TO NOW TALK ABOUT ABSENCE OF AN
7 EXPERT TO DO THAT.

8 THE COURT: WELL, HE CAN CERTAINLY COMMENT ON THE
9 FACT THERE IS NO EVIDENCE, DIRECT EVIDENCE OF YOUR

10 CLIENT'S MENTAL STATE. THERE IS NO EVIDENCE HERE
11 PRESENTED OTHER THAN THROUGH THE TESTIMONY OF ERIK
12 MENENDEZ.

13 MR. GESSLER: YOUR HONOR, IF HE SAYS "DIRECT
14 EVIDENCE," THE ONLY DIRECT EVIDENCE THAT IS BEING
15 PRESENTED IS FOR LYLE MENENDEZ TO TAKE THE STAND.

16 SO IF HE SAYS THERE IS NO DIRECT EVIDENCE
17 OF LYLE MENENDEZ' MENTAL STATE, HE IS SAYING: "I AM
18 COMMENTING ON LYLE MENENDEZ' FAILURE TO TAKE THE STAND."

19 THAT'S THE ONLY WAY THERE COULD BE DIRECT
20 EVIDENCE. A MENTAL EXPERT IS NOT DIRECT EVIDENCE, EVEN
21 IF IT WERE PERMITTED. IT'S INDIRECT EVIDENCE, BASED ON
22 WHAT LYLE MENENDEZ WOULD TELL HIM, WHICH THE COURT
23 WOULDN'T PERMIT. BUT THERE COULD NOT BE DIRECT EVIDENCE
24 UNLESS HE HIMSELF TESTIFIED.

25 AND THAT IS IMPROPER COMMENTS, IMPROPER
26 COMMENTING ON HIS FAILURE TO TAKE THE STAND; AND AGAIN,
27 I ASK FOR A MISTRIAL.

28 THE COURT: ANYTHING FURTHER, MR. CONN?

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1 MR. CONN: NO, YOUR HONOR.

2 THE COURT: OKAY. ON THE STATE OF THE RECORD AND
3 THE STATE OF THE ARGUMENT PRESENTED SO FAR, I DON'T FIND
4 THAT THERE HAS BEEN ANY COMMENT, DIRECTLY OR INDIRECTLY,
5 ON THE DEFENDANT'S FAILURE TO TESTIFY.

6 THEREFORE, THE MOTION FOR MISTRIAL IS
7 DENIED. BUT I WILL INDICATE THAT THE PROSECUTION SHOULD
8 GET AWAY FROM THIS AREA.

9 MR. CONN: YES.

10 MR. GESSLER: I WOULD ASK THAT HE BE CITED FOR
11 MISCONDUCT, YOUR HONOR, BASED ON THE STATEMENT THAT
12 CAUSED ME TO OBJECT TO BEGIN WITH, AND THE ARGUMENT
13 PRESENTED TO THE JURY AT THAT POINT.

14 I ALSO BELIEVE WHAT THEY'RE DOING IS
15 SIMILAR TO THE 1538.5 RULE. THEY ARE TAKING ADVANTAGE
16 OF A SITUATION WHICH THEY CREATED BY PREVENTING US FROM
17 PUTTING EVIDENCE ON.

18 THE COURT: NO, THAT'S NOT TRUE. THE REASON THE
19 EVIDENCE WASN'T PRESENTED WAS BECAUSE THE DEFENDANT
20 HADN'T ESTABLISHED A FOUNDATION FOR ITS ADMISSION.
21 THAT'S THE REASON FOR IT NOT BEING PRESENTED.

22 MR. GESSLER: LET ME GET BACK TO THE REASON THERE
23 WAS NO EVIDENCE PRESENTED FOR A FOUNDATION, WAS BECAUSE
24 WE CHOSE NOT TO CALL THE CLIENT, WHICH GETS BACK TO
25 WHERE WE STARTED, WHICH IS GRIFFIN ERROR.

26 THE COURT: BUT THEN YOU SAY THAT IS THE PEOPLE'S
27 FAULT FOR DOING THAT. IT WASN'T.

28 MR. GESSLER: IT WAS ONE OR THE OTHER. IT'S

1 EITHER WE'RE NOT TALKING ABOUT PUTTING ON AN EXPERT

2 BECAUSE THEY OBJECTED TO IT, OR PREVENTED IT, OR IT'S
3 COMMENTING ON LYLE MENENDEZ NOT TAKING THE STAND AND
4 DIRECTLY TESTIFYING TO HIS STATE OF MIND SO THAT HE
5 COULD PUT ON AN EXPERT. EITHER WAY THE HARM IS DONE.

6 THE COURT: I DON'T SEE THAT THAT HAS OCCURRED,
7 AND THEREFORE THERE IS NO BASIS FOR CITING THE
8 PROSECUTION FOR MISCONDUCT OR ADMONISHING THE JURY.

9 I THINK WHAT CLEARLY HAS OCCURRED IN THE
10 ARGUMENT WAS COMMENT ON YOUR ARGUMENT, AND THAT'S HOW I
11 ASKED THE PROSECUTOR ABOUT IT. THAT'S HOW I PHRASED IT
12 WHEN I ASKED THE PROSECUTOR, AND THAT WAS HIS
13 EXPLANATION. AND THAT WAS DONE IN FRONT OF THE JURY.

14 SO I THINK THAT'S CLEAR, WHAT HE WAS DOING
15 WAS COMMENTING ON YOUR ARGUMENT, AND NOTHING ELSE.

16 MR. GESSLER: MY ARGUMENT, YOUR HONOR, DID NOT
17 TALK ABOUT ANY EXPERTS OF LYLE MENENDEZ. I TALKED ABOUT
18 THE CIRCUMSTANCIAL EVIDENCE THAT WAS IN THE CASE
19 CONCERNING LYLE MENENDEZ, AS PRESENTED BY ERIK MENENDEZ
20 AND OTHER WITNESSES.

21 SO I CAN'T SEE HOW THIS IS PROPER COMMENT
22 ON MY ARGUMENT CONCERNING THE STATE OF MIND OF LYLE
23 MENENDEZ BASED ON THE CIRCUMSTANCIAL EVIDENCE THAT IS IN
24 THE RECORD.

25 THE COURT: OKAY.

26 MR. GESSLER: SO AT ANY RATE, DID THE COURT RULE
27 ON ALL OF MY GROUNDS FOR MISTRIAL?

28 THE COURT: YES.

1 MR. GESSLER: I KNOW YOU RULED ON THE FIRST ONE.

2 THE COURT: ALL THE GROUNDS -- THE BASIS FOR YOUR
3 MOTION. ON ALL GROUNDS, THE MOTION IS DENIED.

4 MR. GESSLER: AND WITH THE UNDERSTAND THAT THE
5 BASIS OF THAT IS NOT ONLY ON STATE EVIDENTIARY LAW, BUT
6 ALSO THE 6TH, 8TH, AN 14TH AMENDMENTS TO THE UNITED
7 STATES CONSTITUTION AS WELL.

8 THE COURT: YES. LET'S GET THE JURY OUT.

9 (THE JURY ENTERS THE COURTROOM
10 AND THE FOLLOWING PROCEEDINGS
11 WERE HELD:)

12

13 MS. ABRAMSON: YOUR HONOR, THERE ARE SOME NEW
14 CHARTS THAT WE HADN'T SEEN THAT WERE NOT SHOWN TO US.

15 MR. CONN: NO, THIS IS THE SAME.

16 MS. ABRAMSON: THAT MAY BE, BUT YOU COULDN'T HAVE
17 SHOWN ME MY OWN QUOTE BEFOREHAND.

18 THE COURT: OKAY. WHY DON'T YOU LOOK AT IT?

19 MS. ABRAMSON: I WOULD PREFER TO DO THIS IN
20 PRIVATE.

21 THE COURT: WELL, UNFORTUNATELY -- IT'S THERE
22 NOW.

23 MS. ABRAMSON: YOUR HONOR, I WOULD LIKE TO
24 APPROACH.

25 THE COURT: OKAY. GUESS WHAT?

26 (THE JURY ENTERS THE JURY ROOM

27 AND THE FOLLOWING PROCEEDINGS
28 WERE HELD:)

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1

2 MS. ABRAMSON: HOW DO YOU LIKE THAT, JUDGE? DO
3 YOU LIKE THAT ONE? (HOLDING UP CHART.)

4 THE COURT: OKAY.

5 MS. ABRAMSON: NOW, I AM OBJECTING TO THAT, GIVEN
6 THE COURT'S AUGUST 1ST RULING, AND WHERE WE THOUGHT WE
7 WERE GOING WITH THIS TRIAL, AND THE FACT THAT IT WASN'T
8 UNTIL --

9 THE COURT: OKAY. I THINK IT WOULD BE
10 INAPPROPRIATE FOR THE PROSECUTOR TO USE THAT IN CLOSING
11 ARGUMENT.

12 MS. ABRAMSON: WE'LL SAVE THIS FOR THE BONFIRE
13 THAT WE'LL HAVE LATER.

14 THE COURT: ANYTHING ELSE NOW AS FAR AS ANY
15 OBJECTIONS?

16 MS. ABRAMSON: YOUR HONOR, I WOULD OBJECT TO THE
17 OTHER ONE, TOO.

18 ONE OF THE PROBLEMS HERE IS THAT INSTEAD OF
19 JUST REBUTTAL, WHICH IS FINE, OR JUMPING ON US, SINCE WE
20 JUMPED ON HIM, MR. CONN IS GOING BACK AND REARGUING
21 IDENTICAL POINTS ABOUT MY CLIENT'S TESTIMONY, IDENTICAL
22 POINTS FROM HIS OPENING.

23 AND HERE NOW BLOWN UP, BUT OF COURSE NOT A
24 COMPLETE STATEMENT, NOT INCLUDING THE REDIRECT IN WHICH
25 MY CLIENT INDICATES THAT HE WAS ONLY ANSWERING FROM HIS
26 PERSPECTIVE NOW IN THE TRIAL, WANTS TO GO BACK AND
27 REQUOTE SOMETHING THAT HE ALREADY QUOTED BEFORE.
28 SO I OBJECT TO THAT.

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1 THE COURT: OKAY. WELL, THAT WAS REFERRED TO IN
2 ARGUMENT, AND IT'S PROPER FOR THE PEOPLE TO COVER THE
3 AREA THAT WAS COVERED BY YOU. THIS WAS AN AREA THAT YOU
4 COVERED.

5 MS. ABRAMSON: WELL, COVERED BY ME BECAUSE HE HAD
6 ALREADY SAID IT.

7 THE COURT: WELL, THAT WAS HIS DECISION, TO BRING
8 OUT THINGS TO PERMIT YOU TO RESPOND. I DON'T KNOW WHY
9 HE DID THAT, BUT HE DID. AND HE CERTAINLY IS ENTITLED
10 TO COVER THE SAME AREAS IN CLOSING THAT WERE DISCUSSED
11 BY YOU IN YOUR ARGUMENT.

12 ALL RIGHT. LET'S GET THE JURY OUT.

13 (THE JURY ENTERS THE COURTROOM
14 AND THE FOLLOWING PROCEEDINGS
15 WERE HELD:)

16

17 THE COURT: OKAY. LET'S CONTINUE WITH THE
18 ARGUMENT.

19 MR. CONN: YES.
20 GETTING BACK TO MR. GESSLER'S REQUEST FOR
21 ONE FREE SHOT TO THE CHEEK OF KITTY MENENDEZ, I WOULD
22 SUBMIT TO YOU THAT THERE IS ANOTHER REASON WHY YOU
23 SHOULD REJECT THAT ARGUMENT, AND THAT IS, BECAUSE AT THE
24 TIME THAT THE SHOT WAS PLACED TO KITTY MENENDEZ, KITTY
25 MENENDEZ WAS IN FACT ALIVE, WHICH IS SOMETHING THAT
26 ALLOWS YOU TO FIND PREMEDITATION AND DELIBERATION BASED
27 UPON THAT PARTICULAR SHOT, REGARDLESS OF THE ARGUMENT OF
28 MR. GESSLER THAT SHE WAS DYING.

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1 DO YOU REMEMBER THAT? MR. GESSLER SEEMED
2 TO SUGGEST TO YOU THAT BECAUSE SHE WAS DYING AT THE TIME
3 THAT THE SHOT WAS FIRED, SOMEHOW I GUESS IT'S NOT SO
4 BAD. SO, I GUESS IT'S OKAY. SOMEHOW THAT ALLOWS HIS
5 CLIENT TO HAVE A FREE SHOT.

6 THERE IS NO EXCEPTION THAT IF SHE WAS GOING
7 TO DIE ANYWAY, THAT HIS CLIENT IS ENTITLED TO A FREE
8 SHOT.

9 I REMEMBER A STORY BEING TOLD OF A JUDGE --
10 OF THE ATTORNEY WHO APPEARED BEFORE THE JUDGE, AND SAID
11 TO THE JUDGE: YOUR HONOR, DON'T HOLD MY CLIENT
12 RESPONSIBLE FOR THIS KILLING, BECAUSE THE TRUTH OF THE
13 MATTER IS THAT THE -- WHEN MY CLIENT STUMBLED UPON THIS
14 PERSON, THIS PERSON HAD ALREADY BEEN SHOT BY SOMEONE

15 ELSE. AND SO HE IS NOT REALLY RESPONSIBLE, BECAUSE THE
16 PERSON WAS DYING ANYWAY. WE HEARD MEDICAL EVIDENCE
17 SAYING THAT THIS PERSON WOULD HAVE DIED ANYWAY, TOTALLY
18 INDEPENDENT OF THE SHOT THAT MY CLIENT PLACED INTO THE
19 VICTIM.

20 AND SO, JUDGE, THE ATTORNEY ARGUED, MY
21 CLIENT REALLY DIDN'T KILL --

22 MR. GESSLER: YOUR HONOR, I OBJECT TO THIS LINE
23 OF EVIDENCE. THIS IS IMPROPER ARGUMENT, THIS LINE OF
24 ARGUMENT.

25 THE COURT: OVERRULED.

26 MR. CONN: AND SO --

27 MR. GESSLER: IS THIS ILLUSTRATIVE, YOUR HONOR?

28 THE COURT: AS I UNDERSTAND, IT IS JUST AN

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1 ILLUSTRATION. IT HAS NOTHING TO DO WITH A CASE OR
2 ANYTHING, JUST AN ANECDOTE.

3 MR. LEVIN: HE SAYS HE REMEMBERS THE CASE.

4 MR. CONN: IT'S A STORY.

5 THE COURT: AN ANECDOTE.

6 MR. GESSLER: AN ANECDOTE, NOT BASED ON LAW OR
7 TRUE FACT?

8 THE COURT: JUST AN ANECDOTE, AS I UNDERSTAND IT.

9 MR. CONN: YES. JUST A STORY.

10 MR. LEVIN: CAN WE START OVER?

11 THAT'S OKAY.

12 MR. CONN: AND THE STORY GOES: THE ATTORNEY SAID
13 TO THE JUDGE: YOUR HONOR, WHY HOLD MY CLIENT
14 RESPONSIBLE, WHEN IN FACT HE DIDN'T REALLY KILL THE
15 PERSON? THE PERSON WAS DYING ANYWAY. ALL HE WAS DOING
16 WAS SPEEDING UP THE INEVITABLE.

17 AND THE JUDGE LOOKED DOWN ON THE ATTORNEY
18 AND SAID: COUNSEL, THAT'S WHAT HOMICIDE ALWAYS IS,
19 SPEEDING UP THE INEVITABLE.

20 LADIES AND GENTLEMEN, THERE IS NO EXCEPTION
21 FOR HOMICIDE WHEN THE PERSON WAS GOING TO DIE ANYWAY.
22 AND YOU WILL RECEIVE INSTRUCTION FROM THE COURT SAYING
23 THAT IF YOU FIRE A SHOT INTO SOMEONE AND THAT SHOT
24 CONTRIBUTES TO DEATH, AND THAT'S ALL IT HAS TO DO IS
25 CONTRIBUTE TO DEATH, THAT YOU ARE RESPONSIBLE FOR THAT
26 HOMICIDE.

27 AND YOU SHOULD EVALUATE THAT ACTION IN
28 LIGHT OF THE MENTAL STATE AT THE TIME. BECAUSE IF YOU

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1 HAD THAT HIGHER MENTAL STATE AT THE TIME THAT THAT SHOT
2 WAS FIRED, YOU SHOULD BE HELD ACCOUNTABLE FOR THAT
3 HIGHER MENTAL STATE WHICH CONTRIBUTED TO DEATH.

4 I WOULD SUBMIT TO YOU, LADIES AND
5 GENTLEMEN, THAT THE PEOPLE HAVE PROVEN OUR CASE BEYOND A
6 REASONABLE DOUBT AS TO EACH ELEMENT OF THE OFFENSE THAT

7 IS CHARGED AGAINST THE DEFENDANTS.

8 HERE YOU HAVE A CHART WHICH ILLUSTRATES THE
9 VARIOUS FINDINGS THAT YOU'RE GOING TO BE CALLED UPON TO
10 MAKE IN THIS CASE.

11 HOW DO YOU DETERMINE HOW ACTUALLY TO GO
12 ABOUT MAKING YOUR FINDINGS IN THIS CASE? WITH JURORS,
13 WE DON'T HAVE A PROCESS IN WHICH WE HAVE ON-THE-JOB
14 TRAINING, WHERE YOU CAN WATCH ANOTHER JURY AND SEE HOW
15 IT'S DONE, EVEN THOUGH THAT IS THE WAY THAT NORMALLY WE
16 LEARN THINGS, ON-THE-JOB TRAINING. WE WATCH OTHERS.

17 YOU DON'T RIDE A BICYCLE JUST BY HAVING
18 SOMEONE EXPLAIN TO YOU THE CONCEPT OF A BICYCLE, AND
19 SEATING YOU ON A BICYCLE, AND YOU DON'T LEARN TO SWIM BY
20 SOMEONE SIMPLY DESCRIBING TO YOU WHAT SWIMMING IS LIKE,
21 AND THROWING YOU IN THE POOL. YOU WATCH A PERSON SWIM
22 FIRST, AND YOU WATCH A PERSON RIDING A BICYCLE.

23 JURORS HAVE A MORE DIFFICULT TIME, BECAUSE
24 THEY DON'T GET TO SEE ANOTHER JURY GO THROUGH THE ACTUAL
25 PROCESS OF DETERMINING HOW THEY ACTUALLY MAKE THEIR
26 FINDINGS.

27 IN THIS PARTICULAR CASE HERE, YOU ARE GOING
28 TO BE ASKED TO DECIDE THESE VARIOUS ISSUES, THE ISSUES

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1 CONCERNING THE THREE COUNTS THAT ARE ALLEGED AGAINST THE
2 DEFENDANTS.

3 COUNT 1, THE FIRST-DEGREE MURDER OF JOSE
4 MENENDEZ, YOU'RE GOING TO BE ASKED TO DECIDE THE GUILT
5 OF THE DEFENDANTS INDIVIDUALLY, AND TO REACH RULINGS
6 CONCERNING THEIR RESPONSIBILITY FOR EACH OF THOSE ACTS.

7 AND IT IS OUR POSITION, LADIES AND
8 GENTLEMEN, THAT THERE IS NO RATIONAL DISTINCTION UPON
9 WHICH YOU CAN MAKE DIFFERENT FINDINGS CONCERNING ERIK
10 MENENDEZ AND LYLE MENENDEZ. IT IS OUR POSITION THAT,
11 ALTHOUGH IT IS YOUR RESPONSIBILITY TO EVALUATE THEM
12 SEPARATELY, AFTER YOU CONDUCT THAT EVALUATION, THE ONLY
13 REASONABLE FINDING IS THAT THEY ARE EQUALLY GUILTY AS
14 CHARGED OF THE THREE COUNTS ALLEGED AGAINST THEM. YOU
15 SHOULD FIND THEM BOTH GUILTY OF MURDER IN THE FIRST
16 DEGREE IN REGARD TO COUNT 1.

17 WHEN YOU LOOK, FOR EXAMPLE, AT LYLE
18 MENENDEZ AS TO COUNT 1 FOR THE KILLING OF JOSE MENENDEZ,
19 WE ASK YOU TO FIND THAT HE IS CRIMINALLY RESPONSIBLE FOR
20 THE SHOOTING OF HIS FATHER.

21 YOU KNOW THAT THAT IS PREMISED UPON
22 PERSONAL RESPONSIBILITY. HE WAS THE ONE WHO ACTUALLY
23 SHOT HIS FATHER IN THE BACK OF THE HEAD. WE KNOW FROM
24 THE TESTIMONY OF ERIK MENENDEZ THAT HE DID NOT DO THAT,
25 AND I THINK HE MADE REFERENCE TO LYLE MENENDEZ
26 TESTIFYING TO THAT IN THE FIRST TRIAL.

27 BASED UPON THEIR PERSONAL RESPONSIBILITY,
28 HE IS RESPONSIBLE FOR THAT ACT.

1 AND THEN ASK YOURSELF, IS MALICE SHOWN --
2 HAS MALICE BEEN SHOWN AS TO COUNT 1 FOR LYLE MENENDEZ?
3 WELL, EXPRESS MALICE IS SHOWN WHERE THERE IS AN INTENT
4 TO KILL.

5 LADIES AND GENTLEMEN, WHEN YOU PUT A
6 SHOTGUN UP AGAINST THE BACK OF A PERSON'S HEAD AND YOU
7 SQUEEZE THAT TRIGGER, I WOULD SUBMIT TO YOU THAT EXPRESS
8 MALICE IS SHOWN. THERE WAS AN INTENT TO KILL, AND YOU
9 CAN CONCLUDE THAT THAT WAS MURDER BASED UPON THAT.

10 MALICE IS NEGATED BY HEAT OF PASSION.

11 AND SO YOU WOULD THEN ASK YOURSELF: IS IT
12 NEGATED IN THIS CASE? IS IT NEGATED AS TO JOSE
13 MENENDEZ?

14 AND I WOULD ASK YOU TO FIND THAT IT IS NOT
15 NEGATED IN THIS CASE. THE HEAT OF PASSION DOES NOT
16 APPLY.

17 AND WHY? BECAUSE THE WHOLE HEAT OF PASSION
18 STORY COMES FROM ERIK MENENDEZ. AND I INDICATED TO YOU,
19 I DEMONSTRATED TO YOU, I BELIEVE, THROUGH THE 11
20 WITNESSES THERE ON THE BOARD, AND THROUGH THE ANALYSIS
21 OF HIS STORY, HOW HE IS TOTALLY UNWORTHY OF YOUR BELIEF.

22 NOT ONLY BECAUSE HE HAS A MOTIVE TO LIE,
23 NOT ONLY BECAUSE HE HAS HISTORY OF LYING, NOT ONLY
24 BECAUSE THERE WERE SO MANY WITNESSES THAT CONTRADICT
25 HIM, BUT BECAUSE HIS STORY IS INCONSISTENT, ARBITRARY
26 AND TOTALLY UNBELIEVABLE.

27 FOR ALL OF THOSE REASONS, LADIES AND

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1 MENENDEZ. THE LAW ALLOWS ME, INSTRUCTS ME THAT I MAY DO
2 SO WHEN I FIND THAT TESTIMONY TO BE UNRELIABLE. AND SO
3 I FIND THAT THERE IS NO EVIDENCE OF HEAT OF PASSION IN
4 THIS CASE WHATSOEVER. AND SO I FIND THAT MALICE IS NOT
5 NEGATED, THAT THAT SHOT TO THE BACK OF THE HEAD OF JOSE
6 MENENDEZ IS EXPRESS MALICE, INTENT TO KILL, AND THAT IS
7 MURDER.

8 AND THEN YOU HAVE TO ASK YOURSELF: WAS
9 THERE PREMEDITATION AND DELIBERATION, OR LYING IN WAIT
10 THAT WOULD ALLOW YOU TO GO UP THAT ONE STEP TO
11 FIRST-DEGREE MURDER? AND I WOULD SUBMIT TO YOU THAT
12 THAT IS DEMONSTRATED IN THIS CASE BY THE ACTION OF THE
13 DEFENDANT BEFORE, DURING, AND AFTER THE KILLINGS, WHICH
14 ARE ONLY CONSISTENT WITH PREMEDITATION AND DELIBERATION.

15 THEIR BEHAVIOR IN PURCHASING THE GUNS TWO
16 DAYS EARLIER, REPEATEDLY RETURNING TO A PLACE THAT IS
17 SUPPOSEDLY A PLACE OF DANGER, IS NOT CONSISTENT WITH
18 SOMEONE IN FEAR. THAT IS CONSISTENT WITH SOMEONE WHO
19 WAS ACTING WITH PREMEDITATION AND DELIBERATION.

20 GOING ON A FISHING TRIP UNARMED, NOT
21 DISCUSSING MATTERS CONCERNING THEIR SAFETY THAT YOU
22 WOULD HAVE DISCUSSED IN THAT SITUATION, ARE FACTS WHICH
23 SHOULD INDICATE TO YOU THAT THIS TOOK PLACE BECAUSE THE

24 DEFENDANTS WERE NEVER IN DANGER, AND THEY NEVER BELIEVED
25 THEMSELVES TO BE IN DANGER.
26 FAILURE TO LOAD THEIR GUNS IS ANOTHER
27 INDICATION THAT THE DEFENDANTS NEVER BELIEVED THEMSELVES
28 TO BE IN DANGER. THERE WAS NO DANGER THAT WEEKEND. AND

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1 EVEN ON THE DAY OF SHOOTING WHEN THEY GO INTO THE HOUSE
2 TOGETHER, THEY GO IN BECAUSE THERE WAS NO DANGER.
3 THE BEHAVIOR OF THE DEFENDANTS DURING THE
4 KILLINGS, AT THE TIME OF THE KILLINGS, I WOULD SUBMIT TO
5 YOU, ARE ONLY CONSISTENT WITH PREMEDITATION, RATHER THAN
6 SOMEONE WHO WAS ACTING IN SUDDEN FEAR, RUNNING IN TO
7 SHOOT THEIR PARENTS. I TOLD YOU THAT WAS SOMETHING THAT
8 CANNOT BE EXPLAINED FROM ANY PSYCHOLOGICAL EXPLANATIONS.
9 IT CANNOT BE EXPLAINED FROM COMMON FEAR. NOBODY WOULD
10 DO THAT. ANYONE WOULD THINK.
11 THE REPEATED SHOOTING IN THIS CASE. WHY
12 WOULD YOU DO THAT? IF YOU WERE IN FEAR, YOU WOULD GO IN
13 THERE -- WELL, YOU WOULDN'T GO IN THERE.
14 BUT IF YOU WERE IN A SITUATION WHERE YOU
15 HAD TO USE YOUR GUN, YOU WOULD USE IT ONCE TO STOP THE
16 PERSON. YOU WOULD NOT REPEATEDLY SHOOT AT YOUR PARENTS,
17 AND GO OUTSIDE AND RELOAD. YOU WOULD CHECK -- AND IF
18 YOU DID THAT, YOU WOULD CERTAINLY CHECK TO SEE IF YOUR
19 PARENTS WERE ARMED IN THAT SITUATION.

20 YOU WOULD NOT, AS ERIK MENENDEZ SAID, JUST
21 WALK IN THERE AND PICK UP THE SHELLS AND NOT EVEN SEE IF
22 YOUR PARENTS -- AND NOT EVEN SEE IF YOUR PARENTS ARE
23 ARMED.
24 THAT IS NOT AN INDICATION OF SOMEONE WHO
25 BELIEVED THAT HE WAS IN FEAR, LADIES AND GENTLEMEN,
26 BECAUSE ANYONE IN THAT SITUATION WOULD HAVE LOOKED, AT
27 LEAST TO SEE IF HIS PARENTS WERE ARMED.
28 THE BEHAVIOR OF THE DEFENDANTS SHORTLY

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1 AFTER THE KILLINGS SUGGESTS PREMEDITATION RATHER THAN
2 KILLING IN SUDDEN FEAR. THE WAY THAT THEY QUICKLY
3 ENTERED THEIR ALIBI MODE AFTER THREE MINUTES IS
4 SOMETHING WHICH SUGGESTS THAT THE DEFENDANTS HAD A
5 PRE-EXISTING PLAN. THAT IS NOT CONSISTENT WITH SOMEONE
6 ACTING IN FEAR. THE DESTRUCTION OF EVIDENCE AND
7 CONCEALMENT OF EVIDENCE FOLLOWING THE KILLINGS IS ONLY
8 CONSISTENT WITH PREMEDITATION.
9 A PERSON WHO WAS FORCED INTO THAT SITUATION
10 WOULD NOT GO INTO SUCH A QUICK ALIBI MODE SO QUICKLY,
11 THINK ONLY OF HIMSELF, AND PROTECT HIMSELF SO
12 EFFECTIVELY FROM THE POLICE, LYING TO THE POLICE, IN
13 CONCERT, TELLING SIMILAR LIES TO THE POLICE, ACCORDING
14 TO A PREARRANGED PLAN ENTERED INTO ON THE SPUR OF THE
15 MOMENT. THOSE ARE ALL MATTERS WHICH DO NOT SUGGEST

16 KILLING IN FEAR, BUT ARE ONLY CONSISTENT WITH A PLANNED
17 KILLING.

18 AND THEIR BEHAVIOR THE NEXT DAY WITH THE
19 WRIGHTS, GOING TO THE HOME OF THE WRIGHTS, AND THEIR
20 PREOCCUPATION WITH THE WILL AND THE SAFE INDICATES ONLY
21 GREED AND PREMEDITATION.

22 THE FABRICATION OF EVIDENCE THROUGH JAMIE
23 PISARCIK AND BRIAN ESLAMINIA ALL INDICATES A -- SOMEONE
24 WHO IS NOT BEING HONEST WITH YOU, SOMEONE --

25 MS. ABRAMSON: OBJECTION, YOUR HONOR. ARGUING
26 EVIDENCE THAT WAS NOT ADMISSIBLE AGAINST MY CLIENT.

27 THE COURT: OVERRULED. OVERRULED.

28 MR. CONN: THE MOTIVATION IN THIS CASE, THE

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1 DISPUTE WITHIN THE FAMILY OVER MONEY, PERSONAL
2 RESPONSIBILITY AND THEIR FUTURE, THE DESIRE FOR THAT
3 INDEPENDENCE, ALL SUGGESTS A DESIRE TO OR A MOTIVATION
4 TO KILL THE PARENTS.

5 MS. ABRAMSON ARGUES THAT THE EVENT OF THAT
6 PREVIOUS SUNDAY WAS A THRESHOLD EVENT, IT WAS A
7 WATERSHED EVENT WHEN THE DEFENDANT LEARNED ABOUT WHAT
8 WAS GOING TO HAPPEN IN REGARD TO U.C.L.A.

9 WELL, I SUBMIT TO YOU THAT IT WAS A
10 WATERSHED EVENT FOR HIM, BUT AS MS. ABRAMSON WOULD HAVE
11 YOU BELIEVE, IT DOESN'T MAKE MUCH DIFFERENCE TO HIM. HE

12 WAS RELIEVED THAT HE WOULDN'T HAVE TO DO CERTAIN THINGS.

13 I WOULD SUBMIT TO YOU THAT ERIK MENENDEZ --

14 FOR HIM, THAT WAS THE STRAW THAT BROKE THE CAMEL'S BACK.

15 THE CONFESSION TO OZIEL, THE CONFESSION TO

16 CIGNARELLI, ARE ALL MATTERS WHICH STRONGLY INDICATE THAT

17 THE ONLY REASONABLE VERDICT IN THIS CASE IS A VERDICT OF

18 FIRST-DEGREE PREMEDITATED MURDER, BECAUSE THOSE

19 CONFESSIONS ARE ONLY CONSISTENT WITH PREMEDITATED

20 MURDER.

21 NOW, WHEN YOU EVALUATE THAT EVIDENCE,

22 LADIES AND GENTLEMEN, AND YOU CONCLUDE THAT BASED UPON

23 THAT THERE IS SUFFICIENT EVIDENCE TO FIND THAT THE

24 DEFENDANT, LYLE MENENDEZ, KILLED HIS PARENTS AS A RESULT

25 OF PREMEDITATION, YOU CONSIDER THE EVIDENCE PRESENTED BY

26 THE DEFENSE AND ASK YOURSELF: DOES THAT RAISE ANY

27 REASONABLE DOUBT?

28 AND I WOULD SUBMIT TO YOU THAT THE

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1 WITNESSES CALLED BY THE DEFENSE DO NOT RAISE ANY

2 REASONABLE DOUBT, BECAUSE THEY HAVE NO PERSONAL

3 KNOWLEDGE OF THE EVENTS OF AUGUST THE 20TH OF 1989.

4 THEY ARE WITNESSES WHO PROVIDE BACKGROUND INFORMATION,

5 AND WHO WERE FILLERS, AND YOU CAN GO THROUGH EACH AND

6 EVERY WITNESS IN THIS CASE, EACH AND EVERY DEFENSE

7 WITNESS WHO WERE FILLERS, OR TRYING TO RESPOND TO

8 EVIDENCE PRESENTED BY THE PROSECUTION. THEY HAVE NO
9 KNOWLEDGE WHATSOEVER.

10 THIS WHOLE CASE BOILS DOWN TO THE
11 CREDIBILITY OF ERIK MENENDEZ FOR THE DEFENSE, WHO, I
12 WOULD SUBMIT TO YOU, IS UNBELIEVABLE.

13 AND THEN ASK YOURSELF, CONSISTENT WITH THE
14 INSTRUCTION THAT WAS SHOWN TO YOU BY CHARLIE GESSLER, IS
15 THE EVIDENCE SUBJECT TO TWO REASONABLE INTERPRETATIONS?

16 I WOULD SUBMIT TO YOU THAT THE ONLY
17 REASONABLE INTERPRETATION OF THIS EVIDENCE, WHEN YOU
18 LOOK AT IT ALL TOGETHER -- AND THAT'S THE KEY, ALL
19 TOGETHER -- THE ONLY REASONABLE CONCLUSION IN THIS CASE
20 IS THAT THIS WAS A PREMEDITATED AND DELIBERATE KILLING,
21 AND THEY ARE GUILTY -- AND LYLE MENENDEZ IS GUILTY OF
22 MURDER IN THE FIRST DEGREE BASED UPON THAT. YOU CAN SAY
23 TO YOURSELF THAT YOU HAVE NO REASONABLE DOUBT WHATSOEVER
24 THAT THE DEFENDANT IS GUILTY OF MURDER IN THE FIRST
25 DEGREE.

26 HAVING FOUND HIM GUILTY OF MURDER IN THE
27 FIRST DEGREE, YOU THEN -- YOU THEN ASK YOURSELF IF THE
28 PROSECUTION HAS THEN PROVEN THAT THE SPECIAL

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1 CIRCUMSTANCE OF LYING IN WAIT IS TRUE.

2 I WOULD SUBMIT TO YOU THAT THAT HAS BEEN
3 PROVEN TRUE BY THE TESTIMONY OF CRAIG CIGNARELLI, WHO

4 DESCRIBED TO YOU A LYING-IN-WAIT TYPE OF SITUATION. IT
5 IS ALSO DEMONSTRATED BY THE RECORDING OF -- WITH
6 DR. OZIEL, IN WHICH THE DEFENDANTS DESCRIBE A
7 PREMEDITATED TYPE OF A SITUATION WHICH WOULD ALLOW THEM
8 TO LIE IN WAIT, AND WAIT FOR THE RIGHT OPPORTUNITY TO
9 STRIKE THEIR PARENTS. AND IT'S ALSO DEMONSTRATED BY THE
10 EVIDENCE AT THE CRIME SCENE ITSELF, WHERE YOU SEE JOSE
11 MENENDEZ APPARENTLY TAKEN UNAWARES AND BY SURPRISE AS A
12 RESULT OF LYING IN WAIT.

13 I WOULD SUBMIT TO YOU THAT YOU -- ONCE
14 AGAIN, ASK YOURSELF, IS IT SUBJECT TO TWO REASONABLE
15 INTERPRETATIONS? I WOULD SUBMIT TO YOU IT IS ONLY
16 SUBJECT TO ONE REASONABLE INTERPRETATION, AND YOU CAN
17 FIND THAT THAT, TOO, HAS BEEN PROVEN BEYOND A REASONABLE
18 DOUBT.

19 YOU THEN GO THROUGH THE SAME PROCESS FOR
20 ERIK MENENDEZ, AND ASK YOURSELF, HAS THAT BEEN PROVEN AS
21 TO ERIK MENENDEZ? AND ALL OF THE SAME REASONS THAT I
22 JUST MENTIONED IN REGARD TO LYLE MENENDEZ APPLIES TO
23 ERIK MENENDEZ, AND THAT HE IS A PERSON WHO IS GUILTY OF
24 FIRST-DEGREE MURDER FOR ALL OF THE REASONS THAT I
25 SUGGESTED TO YOU; AND THAT THE SPECIAL CIRCUMSTANCE IS
26 TRUE AS TO HIM AS WELL.

27 AND THEN HAVING DETERMINED THAT, YOU GO
28 THROUGH THE SAME PROCESS IN REGARD TO THIS COUNT 2,

1 FIRST-DEGREE MURDER, SPECIAL CIRCUMSTANCES, FOR EACH
2 DEFENDANT, AND THEN YOU ASK YOURSELF, IN REGARD TO BOTH
3 OF THOSE COUNTS, HAS THE DEFENDANT, LYLE MENENDEZ, BEEN
4 CONVICTED OF MORE THAN ONE COUNT OF MURDER IN THE -- ONE
5 COUNT OF MURDER IN THIS CASE?

6 AND BECAUSE YOU FOUND THE DEFENDANT ALREADY
7 GUILTY OF A MURDER IN THE FIRST DEGREE, THAT FOLLOWS
8 AUTOMATICALLY. YOU WOULD SAY "YES" AUTOMATICALLY, SINCE
9 YOU FOUND HIM GUILTY OF MORE THAN ONE COUNT OF MURDER,
10 INCLUDING ONE COUNT OF MURDER IN THE FIRST DEGREE, THAT
11 AUTOMATICALLY FOLLOWS.

12 SO, TOO, WITH ERIK MENENDEZ. IT
13 AUTOMATICALLY FOLLOWS, ONCE YOU FIND HIM GUILTY OF
14 MURDER IN THE FIRST DEGREE AND A SECOND COUNT OF MURDER.

15 AND FINALLY, IN REGARD TO A CONSPIRACY TO
16 COMMIT MURDER, I WOULD ASK YOU TO FIND THAT ALL THE
17 OVERT ACTS ARE TRUE. AND YOU ONLY NEED ONE OR MORE
18 OVERT ACTS TO BE TRUE IN ORDER FIND THAT CHARGE TO BE
19 TRUE, AND YOU CAN FIND THAT THE DEFENDANTS DID IN FACT
20 CONSPIRE TO MURDER THEIR PARENTS.

21 AND THESE ARE THE 12 FINDINGS THAT WE ASK
22 YOU TO MAKE IN THIS CASE, LADIES AND GENTLEMEN.

23 I SUBMIT TO YOU, LADIES AND GENTLEMEN THAT
24 THE DEFENDANTS IN THIS CASE HAVE IN FACT RECEIVED A FAIR
25 TRIAL. AND WHAT IS A FAIR TRIAL?

26 MS. ABRAMSON: OBJECTION, YOUR HONOR. I THINK
27 THAT'S IMPROPER ARGUMENT.

28 THE COURT: OVERRULED.

1 MR. CONN: A FAIR TRIAL, LADIES AND GENTLEMEN --

2 MS. ABRAMSON: WELL, I'D LIKE TO BE HEARD.

3 THE COURT: NO, YOU WON'T BE HEARD.

4 YOU MAY CONTINUE AND COMPLETE YOUR
5 ARGUMENT, PLEASE.

6 MR. CONN: A FAIR TRIAL, LADIES AND GENTLEMEN,
7 MEANS THAT YOU LISTEN TO THE EVIDENCE PRESENTED BY BOTH
8 SIDES, THAT YOU CAREFULLY CONSIDER THE ARGUMENTS OF BOTH
9 SIDES FROM THE ATTORNEYS, THAT YOU EVALUATE THAT
10 EVIDENCE CAREFULLY AND IN ACCORDANCE WITH THE LAW THAT
11 IS GIVEN TO YOU BY THE JUDGE.

12 THAT IS WHAT A FAIR TRIAL MEANS. A FAIR
13 TRIAL DOESN'T MEAN YOU HAVE TO TRY TO FIND THE DEFENDANT
14 NOT GUILTY, THAT YOU SHOULD BEND OVER BACKWARDS OR
15 DISTORT YOUR VIEW OF THE EVIDENCE IN ORDER TO FIND IN
16 HIS FAVOR, AND IN SOME WAY TO FIND HIM NOT GUILTY, OR TO
17 FIND HIM GUILTY OF A LESSER CHARGE.

18 A FAIR TRIAL MEANS YOU GIVE BOTH SIDES A
19 FAIR OPPORTUNITY TO BE HEARD. THAT YOU START A TRIAL
20 WITH AN IMPARTIAL STATE OF MIND, AND YOU REMAIN IN THAT
21 IMPARTIAL STATE OF MIND UP UNTIL THE TIME YOU GO OUT AND
22 BEGIN YOUR DELIBERATIONS, AND YOU BEGIN TO DISCUSS THIS
23 WITH OTHER MEMBERS OF THE JURY.

24 I SUBMIT TO YOU THAT THEY HAVE RECEIVED A
25 FAIR TRIAL, AND THAT THE STORY IN THIS CASE PRESENTED TO

26 YOU BY ERIK MENENDEZ IS JUST SO PREPOSTEROUS, IS JUST SO
27 UNBELIEVABLE, THAT YOU SHOULD REJECT IT, AND CALL IT AS
28 YOU SEE IT. AND CALLING IT AS YOU SEE IT DOES MEAN IN

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1 THIS CASE, I WOULD SUBMIT, THAT YOU SHOULD FIND THE
2 DEFENDANT -- BOTH DEFENDANTS GUILTY AS CHARGED. THAT IS
3 THE REASONABLE RESULT FROM THE FAIR TRIAL THAT YOU HAVE
4 GIVEN THE DEFENDANTS IN THIS CASE.

5 I WOULD SUBMIT TO YOU, LADIES AND
6 GENTLEMEN, THAT THE -- THAT THE DEFENSE PRESENTED BY THE
7 DEFENDANTS MAKES ABSOLUTELY NO SENSE; THAT THE
8 PROSECUTION HAS IN FACT PROVEN FIRST-DEGREE MURDER.

9 THE PROSECUTION WOULD SUBMIT TO YOU -- EVEN
10 ERIK MENENDEZ IN HIS OWN STATEMENT, IN HIS OWN STATEMENT
11 HERE IN COURT, HIS OWN ADMISSION, INDICATED THAT HE DID
12 IN FACT HARBOR MALICE. HE SAID THE FOLLOWING. HE WAS
13 ASKED A QUESTION BY ME IN HIS TESTIMONY IN THIS TRIAL:

14 "QUESTION: AS YOU SIT THERE TODAY,
15 YOU DO NOT DENY YOUR INTENT AT THAT TIME
16 WAS TO KILL YOUR PARENTS, DO YOU?

17 "ANSWER: NO, I DON'T DENY THAT."

18 LADIES AND GENTLEMEN, REMEMBER, I TALKED TO
19 YOU ABOUT TYPES OF FIRST-DEGREE MURDER AND EXPRESS
20 MALICE AND IMPLIED MALICE.

21 EXPRESS MALICE IS THAT INTENTION UNLAWFULLY

22 TO KILL A HUMAN BEING WITH SUFFICIENT EVIDENCE OF
23 DELIBERATION, BUT INSUFFICIENT EVIDENCE OF DELIBERATION
24 AND PREMEDITATION.

25 WHEN YOU HAVE THE DEFENDANT, ERIK MENENDEZ,
26 OUT OF HIS OWN MOUTH TELLING YOU, LADIES AND GENTLEMEN,
27 THAT HE DOES NOT DENY AT THAT TIME, AT THE TIME OF THE
28 SHOOTING, THAT HIS INTENT WAS TO KILL HIS PARENTS,

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1 LADIES AND GENTLEMEN, THAT IS EXPRESS MALICE RIGHT OUT
2 OF HIS OWN MOUTH.

3 I WOULD SUBMIT TO YOU, LADIES AND
4 GENTLEMEN, THAT THAT IS THE REASON WHY THE ABSURD
5 SUGGESTION TO YOU BY MS. ABRAMSON THAT NOT GUILTY COULD
6 POSSIBLY APPLY TO THIS CASE IS LUDICROUS ON ITS FACE.
7 IT COULD ONLY APPLY TO A CASE WHERE MALICE IS NOT SHOWN.

8 BUT HERE, LADIES AND GENTLEMEN, THE
9 PROSECUTION HAS CLEARLY SHOWN MALICE. IT SHOWED EXPRESS
10 MALICE, I WOULD SUBMIT TO YOU, THROUGHOUT THE TESTIMONY;
11 THE ADMISSION OF ERIK MENENDEZ, BUT IT ALSO SHOWED
12 IMPLIED MALICE, EVEN THROUGH THE TESTIMONY OF ERIK
13 MENENDEZ.

14 WHAT IS IMPLIED MALICE? IMPLIED MALICE,
15 YOU WILL RECALL, IS WHERE THERE IS NO INTENT TO KILL,
16 BUT A KILLING RESULTED FROM AN INTENTIONAL ACT, THE
17 NATURAL CONSEQUENCES OF THE ACT ARE DANGEROUS TO HUMAN

18 LIFE, AND THE ACT WAS DELIBERATELY PERFORMED WITH
19 KNOWLEDGE OF THE DANGER TO, AND WITH CONSCIOUS DISREGARD
20 FOR HUMAN LIFE.

21 SO IN OTHER WORDS, IF YOU GO INTO A ROOM
22 AND YOU FIRE IN THE VICINITY -- IN THE AREA OF A HUMAN
23 BODY, AT A PERSON, YOU KNOW THAT YOU ARE DOING AN
24 INTENTIONAL ACT. YOU KNOW THAT THE NATURAL CONSEQUENCE
25 OF THAT ACT IS DANGEROUS TO HUMAN LIFE. AND IF YOU DO
26 THAT ACT DELIBERATELY, WITH KNOWLEDGE OF THE DANGER TO
27 AND CONSCIOUS DISREGARD FOR HUMAN LIFE.

28 AND HOW IS CONSCIOUS DISREGARD DETERMINED?

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1 WELL, IF YOU'RE FIRING IN THE DIRECTION OF THE PERSON,
2 IT CAN BE REASONABLY INFERRED, REASONABLY CONCLUDED THAT
3 YOU HAVE CONSCIOUS DISREGARD FOR THE LIFE OF THAT PERSON
4 AS DETERMINED BY THE CIRCUMSTANCIAL EVALUATION OF THE
5 EVIDENCE.

6 SO I WOULD SUBMIT TO YOU THAT EVEN ERIK
7 MENENDEZ ADMITS, IN SO MANY WORDS, IN THE SITUATION THAT
8 HE DESCRIBES TO YOU -- HE DESCRIBES IMPLIED MALICE,
9 WHICH PROVIDES A BASIS FOR SECOND-DEGREE MURDER.

10 BUT BEYOND THAT, HE ALSO ADMITS TO, AS I
11 QUOTED HIM HERE, EXPRESS MALICE. HIS INTENT WAS TO
12 KILL. AND THAT EXPRESS MALICE, COUPLED WITH
13 PREMEDITATION, COUPLED WITH DELIBERATION, IF YOU FEEL

14 THAT THE PROSECUTION HAS PROVED THAT, IS SUFFICIENT FOR
15 A FINDING OF MURDER IN THE FIRST DEGREE.

16 SO WHILE ERIK MENENDEZ ESSENTIALLY PROVIDES
17 YOU ON A SILVER PLATTER WITH SECOND-DEGREE MURDER IN
18 THIS CASE, I AM NOT SAYING I AM SATISFIED WITH THAT. I
19 SUBMIT TO YOU THAT THAT WOULD BE A TERRIBLE INJUSTICE IF
20 ERIK MENENDEZ WERE ONLY CONVICTED OF SECOND-DEGREE
21 MURDER IN THIS CASE. IT WOULD BE A TRAVESTY FOR THIS
22 BRUTAL, HORRIBLE KILLING, WHICH IS ONLY CONSISTENT WITH
23 PREMEDITATION AND DELIBERATION -- IT WOULD BE A TRAVESTY
24 TO ALLOW THESE DEFENDANTS TO BE CONVICTED ONLY OF
25 SECOND-DEGREE MURDER.

26 I TOLD YOU IN MY OPENING STATEMENT, AND I
27 REPEAT IT AGAIN NOW, LADIES AND GENTLEMEN. THIS CASE IS
28 A CLASSIC CASE OF FIRST-DEGREE, PREMEDITATED AND

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1 DELIBERATE MURDER, AND THE ONLY REASONABLE VERDICT IN
2 THIS CASE IS TWO COUNTS OF FIRST-DEGREE MURDER AS TO
3 EACH DEFENDANT, AND A FINDING OF A CONSPIRACY TO COMMIT
4 MURDER.

5 LADIES AND GENTLEMEN, MS. ABRAMSON SAID TO
6 YOU THAT YOU WERE THE THIRD JURY TO HEAR THIS CASE. SHE
7 IS REFERRING TO THE FACT THAT THERE WAS ONE PRIOR TRIAL
8 INVOLVING TWO JURIES.

9 LADIES AND GENTLEMEN, YOU ARE THE JURY, AS

10 YOU KNOW, WHO IS THE ONLY JURY TO HEAR FROM ROGER
11 MC CARTHY. HE SAID HE NEVER PREVIOUSLY TESTIFIED IN
12 REGARD TO THIS MATTER.

13 YOU ARE THE ONLY JURY, LADIES AND
14 GENTLEMEN, TO HEAR ABOUT A RECONSTRUCTION OF THE
15 EVIDENCE IN THIS CASE, TO LOOK THROUGH THE EYES OF ROGER
16 MC CARTHY AT WHAT HAPPENED IN THAT ROOM.

17 THE FIRST JURY TO HEAR THROUGH THE EYES
18 OF -- AND SEE THROUGH THE EYES OF ROGER MC CARTHY THAT
19 THERE ARE REASONABLE CONCLUSIONS THAT CAN BE DRAWN
20 CONCERNING HOW BRUTALLY KITTY MENENDEZ AND JOSE MENENDEZ
21 WERE SHOT TO DEATH ON AUGUST THE 20TH OF 1989, AND YOU
22 KNOW THAT YOU ARE THE FIRST JURY TO HEAR THE TESTIMONY
23 OF KLARA WRIGHT AND RANDY WRIGHT, WHO DID NOT COME
24 FORWARD UNTIL AFTER THE FIRST TRIAL.

25 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
26 TO THIS.

27 THE COURT: OVERRULED.

28 MS. ABRAMSON: I WOULD LIKE TO BE HEARD.

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1 THE COURT: NOT RIGHT NOW.

2 YOU MAY PROCEED.

3 MR. CONN: KLARA WRIGHT AND RANDY WRIGHT, WHO
4 PROVIDED EVIDENCE OF THE GREED MOTIVE OF DEFENDANTS
5 WITHIN HOURS OF SHOOTING THEIR PARENTS TO DEATH.

6 AND YOU KNOW THAT YOU ARE THE FIRST JURY TO
7 HEAR EVIDENCE FROM BRIAN ESLAMINIA, WHO NEVER CAME
8 FORWARD BEFORE.

9 YOU KNOW THAT YOU ARE THE FIRST JURY TO
10 HEAR THAT THERE WAS, IN FACT, A PLAN ON THE PART OF BOTH
11 DEFENDANTS, ACCORDING TO THE PRIOR STATEMENT OF BRIAN
12 ESLAMINIA, TO FABRICATE AND TRICK A JURY IN THIS CASE.

13 AND LADIES AND GENTLEMEN, YOU KNOW THAT YOU
14 ARE THE FIRST JURY TO HEAR FROM PARK DIETZ. PARK DIETZ,
15 WHO TOLD YOU IN SO MANY WORDS THAT THIS CRIME -- THAT
16 THE ACTIONS OF THE DEFENDANT, ERIK MENENDEZ, AT THE TIME
17 OF THE COMMISSION OF THE CRIME, IS ONLY CONSISTENT WITH
18 DELIBERATE BEHAVIOR THAT IS REFLECTIVE THOUGHT, AND IS
19 INCONSISTENT WITH SOME NOTION OF AUTOMATIC BEHAVIOR.

20 THIS VALUABLE INFORMATION, LADIES AND
21 GENTLEMEN, WHICH I SUBMIT PROVIDES YOU WITH MORE THAN
22 SUFFICIENT RELIABLE EVIDENCE TO KNOW THAT YOUR VERDICT
23 OF MURDER IN THE FIRST DEGREE IS THE CORRECT VERDICT IN
24 THIS CASE.

25 BUT MOST IMPORTANT, LADIES AND GENTLEMEN,
26 WHAT WE HAVE HERE BEFORE US IS A JURY OF INTELLIGENT
27 PEOPLE WHO HAVE PAID ATTENTION CAREFULLY TO THIS
28 EVIDENCE, WHO WILL BE ABLE TO EVALUATE IT FAIRLY AND

1 OBJECTIVELY. AND THAT, LADIES AND GENTLEMEN, MAKES ALL

2 OF THE DIFFERENCE IN THE WORLD.

3 LADIES AND GENTLEMEN, I SUBMIT THAT THE
4 EVIDENCE PRESENTED TO YOU PROVIDES A SUFFICIENT BASIS
5 FOR YOU TO SAY THAT THE DEFENDANTS ARE GUILTY AS
6 CHARGED, AND THAT AS YOU LOOK BACK UPON THIS EVIDENCE
7 THROUGHOUT YOUR LIVES, YOU WILL KNOW THAT YOU DID THE
8 RIGHT THING, BECAUSE THE EVIDENCE PRESENTED IN THIS
9 COURTROOM WAS PRESENTED FAIRLY, AND WAS PRESENTED WITH
10 SUFFICIENT PERSUASIVE FORCE TO ALLOW YOU TO CONCLUDE
11 BEYOND ANY DOUBT WHATSOEVER, IN YOUR MIND, THAT YOU ARE
12 ABSOLUTELY DOING THE RIGHT THING WHEN YOU FIND THESE TWO
13 DEFENDANTS GUILTY OF MURDER IN THE FIRST DEGREE.

14 I SUBMIT TO YOU THAT THE MENENDEZ DEFENSE
15 IS A HOAX. IT IS ONE BIG HOAX TO WHICH ERIK MENENDEZ
16 HAS TESTIFIED. HE HAS DONE HIS BEST TO PUT HIS PARENTS
17 ON TRIAL.

18 YOU SHOULD REJECT THAT HOAX. YOU SHOULD
19 REJECT HIS EFFORTS TO PUT HIS PARENTS ON TRIAL, AND YOU
20 SHOULD FIND THAT THE PROSECUTION HAS, IN FACT, PROVEN
21 ITS CASE BEYOND A REASONABLE DOUBT, AND NO REASONABLE
22 DOUBT WAS RAISED IN THIS CASE.

23 ON BEHALF OF DEPUTY DISTRICT ATTORNEY CAROL
24 NAJERA AND I, I WOULD LIKE TO THANK YOU FOR THE
25 ATTENTION THAT YOU HAVE PAID TO THIS CASE THROUGHOUT
26 THIS ENTIRE TRIAL. AS I TOLD YOU BEFORE, YOU SHOULD BE
27 APPLAUDED FOR YOUR EFFORTS AND YOUR DEDICATION TO THIS
28 PROCEEDING.

1 I SUBMIT TO YOU THAT IT IS OUR
2 UNFORGETTABLE PRIVILEGE TO HAVE PRESENTED THIS CASE TO
3 YOU, AND I BELIEVE, AND WE KNOW, THAT THE CASE IS NOW IN
4 GOOD HANDS, AND THAT YOU WILL MAKE THE RIGHT DECISION.

5 THANK YOU VERY MUCH, LADIES AND GENTLEMEN.

6 THE COURT: OKAY. THANK YOU.

7 AND THAT COMPLETES THE ARGUMENT PHASE, AND
8 TOMORROW I WILL INSTRUCT ON THE LAW AND YOU WILL BEGIN
9 YOUR DELIBERATIONS.

10 AGAIN, IT'S PREMATURE TO DISCUSS THE CASE
11 AMONG YOURSELVES. WAIT UNTIL YOU GO INTO THE JURY ROOM
12 TO BEGIN YOUR DELIBERATIONS AFTER THE INSTRUCTIONS.

13 DON'T DISCUSS THIS CASE WITH ANYONE. DON'T
14 FORM ANY FINAL OPINIONS ABOUT IT. DON'T PERMIT YOURSELF
15 TO BE EXPOSED TO ANYTHING ABOUT THE CASE OUTSIDE OF THE
16 COURTROOM. WE WILL ASK THAT YOU RETURN TOMORROW AT
17 8:30. SEE YOU BACK HERE TOMORROW.

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

21
22 THE COURT: FOR THE RECORD, EXHIBIT 60 OF THE
23 CLERK'S EXHIBITS, THAT'S THE TRANSCRIPT, THE NEW
24 TRANSCRIPT. WHAT WE'LL DO IS MAKE THAT 60-A. WELL,
25 LET'S JUST MAKE IT 60-A. THE OTHER ONE WAS USED DURING
26 THE TRIAL ALREADY.

27 SO THE EXHIBIT THAT WILL GO TO THE JURY IS
28 60-A, RATHER THAN EXHIBIT 60.

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1 MS. ABRAMSON: JUDGE, I AM GOING TO WITHDRAW 411.

2 THE COURT: WHAT IS THAT?

3 MS. ABRAMSON: I MENTIONED THIS BEFORE. IT'S A
4 FINANCIAL STATEMENT. IT'S AN INACCURATE FINANCIAL
5 STATEMENT.

6 THE COURT: OKAY. IT'S NOT BEING OFFERED THEN?

7 MS. ABRAMSON: RIGHT.

8 THE COURT: ANY OBJECTION BY THE PROSECUTION?

9 MR. CONN: NO, YOUR HONOR.

10 THE COURT: OKAY. THEN EXHIBIT 411 WILL BE
11 WITHDRAWN.

12 MS. ABRAMSON: YOUR HONOR, DID YOU SEE THE --

13 MS. NAJERA: YOUR HONOR, THERE WAS ONE OTHER
14 THING THAT THE CLERK INFORMED ME OF, AND I CAN'T FIND
15 THE NUMBER TO THE MOSSBERG SHOTGUN.

16 BUT WHATEVER NUMBER THAT IS, I WOULD LIKE
17 TO MARK THE CASE AND THE TWO PACKAGES OF BULLETS THAT
18 WERE IN IT. THE COURT SAID THAT THAT PROBABLY WOULD BE
19 SOMETHING WE SHOULD ALL KEEP TOGETHER.

20 THE COURT: I DON'T UNDERSTAND WHAT YOU MEAN BY
21 BULLETS.

22 MS. ABRAMSON: YOU MEAN THE SHELLS?

23 MS. NAJERA: THE SHELLS.
24 MS. ABRAMSON: LIVE ROUNDS?
25 MS. NAJERA: I'M NOT SURE. MS. TINNELL CAN
26 PROBABLY HELP US.
27 THE COURT: I DON'T KNOW ABOUT THESE THINGS.
28 THEY HAVE NOT BEEN UTILIZED HERE, SO THEY WOULD NOT GO

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1 TO THE JURY.
2 MS. NAJERA: NO, THEY WOULD NOT, YOUR HONOR, AT
3 ALL. THAT WAS MY UNDERSTANDING OF IT.
4 THE COURT: ALL RIGHT. THE ITEMS THAT --
5 WHATEVER THEY ARE THAT WERE IN THE CASE THAT CONTAINED
6 THE SHOTGUN, THE CASE AND THE SHOTGUN -- AND THESE
7 APPEAR TO BE DUMMY SHELLS, WILL BE -- WHAT IS THE
8 EXHIBIT FOR THE SHOTGUN?
9 MS. NAJERA: THAT'S WHAT I WAS TRYING TO FIND,
10 YOUR HONOR.
11 THE COURT: THAT WILL BE MARKED AS 127-A, BUT IT
12 WON'T GO TO THE JURY, JUST SO THE CLERK CAN KEEP
13 POSSESSION OF IT.
14 MS. NAJERA: RIGHT. GOOD ENOUGH.
15 THE COURT: OKAY.
16 MR. GESSLER, YOU WANTED TO SAY SOMETHING?
17 MR. GESSLER: YES, I DID, YOUR HONOR.
18 I TAKE IT THAT THE COURT, WHEN I WAS MAKING

19 MY GRIFFIN OBJECTION EARLIER, UNDERSTOOD THAT WAS BASED
20 ON 5TH AMENDMENT GROUNDS, THAT PART OF THE OBJECTION?

21 THE COURT: RIGHT.

22 MR. GESSLER: AND WAS CONSIDERING THAT IN DENYING
23 THE MOTION. LATER I MENTIONED THE 6TH, 8TH AND 14TH
24 AMENDMENTS TO THE UNITED STATES CONSTITUTION FOR THE
25 OTHER PART, WHICH WAS THE PROSECUTION TAKING ADVANTAGE
26 OF THEIR OWN OBJECTION. BUT GRIFFIN, OF COURSE, WAS A
27 5TH AND 14TH AMENDMENT.

28 THE COURT: YES.

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1 MR. GESSLER: I JUST WANT TO MAKE SURE FOR THE
2 RECORD THAT THAT WAS CLEAR.

3 THE COURT: YES, IT WAS CLEARLY STATED AS WELL IN
4 THE CONTENTS OF WHAT YOU SAID.

5 MS. ABRAMSON: YOUR HONOR, I SUBMITTED TO THE
6 COURT A REWORKED VERSION OF WHAT I HAD SUBMITTED BEFORE
7 AS 3.32. THIS TIME I AM NOT SURE WHAT TO CALL IT,
8 WHETHER IT'S 3.32 OR 4.21, BUT IT IS AN AMALGAMATION, IF
9 YOU WILL, OF BOTH. I THINK THERE IS A NEED FOR A
10 PINPOINT INSTRUCTION DEALING WITH THE MENTAL DISORDER.

11 THE COURT: LET ME DO THIS --

12 MS. ABRAMSON: DO YOU WANT TO THINK ABOUT IT OVER
13 NIGHT?

14 THE COURT: NO. I WANT TO GIVE THE PROSECUTION A

15 CHANCE TO REVIEW WHAT YOU HAVE PRESENTED TO ME, SINCE
16 YOU GAVE ME THE ORIGINAL.

17 SO WHAT I WILL DO IS GIVE THESE BACK TO
18 YOU. I HAVE KEPT ONE COPY, AND WE HAVE MADE SOME COPIES
19 TO BE GIVEN TO THE PROSECUTION, AND YOU CAN HAVE A COPY
20 AS WELL.

21 MS. ABRAMSON: I JUST HANDWROTE ON THE OLD 3.32
22 WHICH YOU HAD. I HANDWROTE SOME CHANGES WHILE YOU WERE
23 ARGUING TO THE COURT.

24 THE COURT: SO WE'LL HEAR THE PEOPLE'S POSITION
25 ON THAT IN THE MORNING.

26 MS. ABRAMSON: DO YOU WANT ME TO TYPE THIS UP,
27 JUDGE?

28 THE COURT: YES. ULTIMATELY IT WILL BE PUT IN A

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1 DIFFERENT FORM ANYWAY. SO IF YOU WANT TO LEAVE IT LIKE
2 THIS FOR NOW, IT'S FINE.

3 MS. ABRAMSON: YOU HAVE A COPY, RIGHT? BECAUSE
4 YOU JUST GAVE ME BACK THE ORIGINAL.

5 THE COURT: YES, I HAVE A COPY.

6 WHAT DID YOU WANT TO DO WITH THE ISSUE OF
7 OTHER CRIMES AND CREDIBILITY?

8 MR. GESSLER: MAY I HAVE JUST A MOMENT, YOUR
9 HONOR?

10 THE COURT: SURE.

11 MR. GESSLER: WE AGREE TO TAKE THAT OUT.
12 THE COURT: THEN THE LAST SENTENCE OF 2.20 WILL
13 BE REMOVED.
14 MS. ABRAMSON: RIGHT. THAT'S THE EASIEST WAY TO
15 DEAL WITH IT.
16 THE COURT: OKAY.
17 SO THE ONLY LOOSE END, AS I SEE IT, RELATES
18 TO THIS NEW PROPOSAL OF THE DEFENDANT, ERIK MENENDEZ.
19 MS. ABRAMSON: YES, YOUR HONOR, AND THE LIST,
20 WHICH HAS BEEN WORKED ON.
21 MS. TOWERY: AND THE VERDICT FORM.
22 THE COURT: WELL, THE VERDICT FORMS WERE SHOWN TO
23 COUNSEL, AND THE CLERK INDICATED THAT THE DEFENSE
24 POSITION IS LEGALLY IT'S CORRECT THAT THERE SHOULD BE
25 ONLY ONE FINDING OF THE SPECIAL CIRCUMSTANCE REGARDING
26 MULTIPLE MURDER.
27 MY QUESTION WAS AS TO WHERE IT SHOULD BE
28 PLACED.

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1 MR. GESSLER: I THINK AT THE END OF COUNT 2.
2 THAT'S HOW WE HAVE DONE IT IN THE PAST.
3 THE COURT: YES.
4 DID THE PEOPLE WISH TO BE HEARD ON THAT?
5 MR. CONN: NO.
6 THE COURT: OKAY. THEN THE VERDICT FORMS WILL BE

7 MODIFIED TO SHOW THAT ONLY COUNT 2 WILL HAVE THAT
8 FINDING AS TO THE MULTIPLE MURDERS, AND COUNT 1 WILL
9 NOT. THE LYING IN WAIT IS A SEPARATE CHARGE FINDING AS
10 TO EACH.

11 ALL RIGHT. THE ONLY MODIFICATIONS THAT I
12 HAVE DONE, OTHER THAN TAKING OUT INAPPROPRIATE PRONOUNS
13 AND THINGS OF THAT SORT, RELATE TO 8.40 AND 8.72 DEALING
14 WITH MANSLAUGHTER.

15 AND 8.40 WHAT I HAVE WRITTEN IN THE
16 MODIFIED INSTRUCTION, IT WOULD READ:

17 "IN COUNT 1, THE KILLING OF JOSE
18 MENENDEZ, EVERY PERSON WHO UNLAWFULLY
19 KILLS ANOTHER HUMAN BEING WITHOUT MALICE
20 AFORETHOUGHT," ET CETERA.

21 AND THEN THE SECOND PARAGRAPH:

22 "THERE IS NO MALICE AFORETHOUGHT IF
23 THE KILLING OF JOSE MENENDEZ OCCURRED UPON
24 A SUDDEN QUARREL OR HEAT OF PASSION."

25 AND THEN 8.72:

26 "IF YOU ARE SATISFIED BEYOND A
27 REASONABLE DOUBT THAT THE KILLING OF JOSE
28 MENENDEZ WAS UNLAWFUL, BUT YOU HAVE A

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1 REASONABLE DOUBT AS TO WHETHER THE CRIME
2 IS MURDER OR MANSLAUGHTER, YOU MUST GIVE

3 THE DEFENDANT THE BENEFIT OF SUCH DOUBT,
4 AND FIND IT TO BE MANSLAUGHTER RATHER THAN
5 MURDER."

6 THOSE ARE THE TWO MODIFICATIONS THAT I HAVE
7 MADE, AND I AM TELLING YOU NOW BECAUSE IT MIGHT BE
8 DIFFICULT FOR YOU TO SPOT THEM IN THE INSTRUCTIONS IN
9 THE WHOLE PACKAGE. SO I WANTED TO COMMENT ON THOSE.

10 MS. ABRAMSON: IF YOU ARE DOING THAT TO HIGHLIGHT
11 THAT, WOULD THE COURT CONSIDER ON 8.73 TALKING ABOUT
12 PROVOCATION WHICH PLAYED A PART, OF INDICATING THAT
13 COULD BE BOTH 1 AND 2?

14 THE COURT: YOU MEAN REDUCING FROM PREMEDITATION?

15 MS. ABRAMSON: RIGHT.

16 MR. GESSLER: THAT'S CORRECT, YOUR HONOR.

17 MS. ABRAMSON: THEN WE SHOULD SAY THAT SO THEY
18 DON'T THINK ALL PROVOCATION THEORY ONLY APPLIES TO JOSE
19 MENENDEZ.

20 THE COURT: WHAT I CAN DO ON 8.73 IS WRITE:
21 "WHEN THE EVIDENCE SHOWS THE EXISTENCE OF PROVOCATION
22 PLAYED A PART IN REDUCING THE UNLAWFUL KILLING OF A
23 HUMAN BEING IN EITHER COUNT 1 OR 2."

24 MS. ABRAMSON: OKAY. THANK YOU, JUDGE.

25 THE COURT: THAT DOESN'T WORK, BECAUSE THEN THE
26 NEXT PHRASE ONLY RELATES TO -- IT CUTS AWAY FROM THAT
27 AND REFERS TO PROVOCATION NOT SUFFICIENT TO REDUCE
28 HOMICIDE TO MANSLAUGHTER. SO IT GETS CONFUSING IN THAT

1 REGARD.

2 MS. ABRAMSON: 8.72 -- NO, 8.73.

3 THE COURT: SO GIVE ME ANOTHER SUGGESTION HERE.

4 MS. ABRAMSON: WE NEED AN 8.73 FOR COUNT 2.

5 OKAY. I DON'T KNOW. IS THIS ALL OF WHAT 8.73 REALLY

6 LOOKS LIKE? OKAY.

7 YOU DON'T WANT TO USE SOMETHING AS

8 PRAGMATIC AS: "YOU HAVE NOT BEEN INSTRUCTED THAT

9 MANSLAUGHTER APPLIES TO A PARTICULAR COUNT."

10 I MEAN, THAT'S JUST PRAGMATIC.

11 THE COURT: WHY DON'T YOU BE MORE SPECIFIC?

12 MS. ABRAMSON: SO IT WOULD BE: "THE PROVOCATION

13 WAS NOT SUFFICIENT TO REDUCE THE HOMICIDE TO

14 MANSLAUGHTER FOR COUNT 1, OR YOU ARE NOT BEING -- OR

15 WHERE THERE IS NO INSTRUCTION ON MANSLAUGHTER AS IN

16 COUNT 2, YOU SHOULD CONSIDER THE PROVOCATION FOR SUCH

17 BEARING," BLAH-BLAH-BLAH.

18 THE COURT: WELL, WHY DON'T YOU PUT IT IN WRITING

19 SO I CAN SEE IT? IT'S KIND OF HARD TO VISUALIZE IT.

20 MS. ABRAMSON: SEE, JUDGE, IF YOU HAD KNOWN IT

21 WOULD HAVE BEEN THIS CONFUSING, YOU WOULD HAVE GIVEN US

22 THAT OTHER MANSLAUGHTER INSTRUCTION.

23 THE COURT: BUT 8.73 IS A DEFENSE-REQUESTED

24 INSTRUCTION, SO IF YOU WANT IT TO COVER --

25 MS. ABRAMSON: YES. I DON'T HAVE THE MOST RECENT

26 VERSION OF IT. I HAVE THE VERSION THAT WAS ACTUALLY

27 GIVEN IN THE LAST TRIAL, AND I KNOW WHEN WE SUBMITTED IT

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1 THE COURT: YES, I UNDERSTAND. BUT IT IS THE
2 STANDARD INSTRUCTION. IT HASN'T CHANGED.

3 MS. ABRAMSON: I'LL SEE IF WE CAN DO IT.

4 MR. GESSLER: YOUR HONOR, WHY IS IT IT DOESN'T
5 WORK TO SAY, "IN EITHER COUNT 1 AND 2," ON 8.73?

6 THE COURT: BUT THEN IT SAYS, "ALSO SHOWS THAT
7 SUCH PROVOCATION WAS NOT SUCH AS TO REDUCE THE HOMICIDE
8 TO MANSLAUGHTER," WHICH IT DOESN'T APPLY TO COUNT 2, AND
9 IT WOULD BE CONFUSING TO SAY IT.

10 MS. TOWERY: WHAT IF WE SAY, "BUT THE PROVOCATION
11 WAS NOT SUFFICIENT TO REDUCE THE HOMICIDE TO
12 MANSLAUGHTER IN COUNT 1"?

13 MS. ABRAMSON: YES, WE CAN DO THAT. "YOU SHOULD
14 CONSIDER IT."

15 THE COURT: OKAY. PEOPLE WISH TO BE HEARD ON
16 THAT ONE?

17 MR. CONN: NO, YOUR HONOR.

18 THE COURT: OKAY. I WILL PUT THAT -- I WILL
19 PRINT IT UP AND SEE HOW IT LOOKS.

20 OKAY. ARE YOU READY NOW TO TALK ABOUT THE
21 PROPOSED INSTRUCTION THAT MS. ABRAMSON HAS SUBMITTED,
22 4.21 AND 3.32?

23 MR. CONN: NO. I WOULD LIKE TO HAVE JUST A

24 LITTLE MORE TIME. PERHAPS WE CAN DISCUSS IT IN THE
25 MORNING.
26 THE COURT: OKAY. SHE IS CITING --
27 MS. ABRAMSON: THE USE NOTES.
28 THE COURT: -- THE USE NOTES. IT'S REALLY PEOPLE

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1 VERSUS SAILLE, WHICH IS REFERRED TO IN BOTH THOSE USE
2 NOTES, AND IT REFERS TO THE FACT THAT THIS WOULD BE AN
3 INSTRUCTION THAT WOULD HAVE TO BE REQUESTED BY THE
4 DEFENSE.
5 MS. ABRAMSON: THE USE NOTE IS FOR 8.47.
6 THE COURT: MY INCLINATION IS TO GO BACK AND
7 RETHINK THE ISSUE AS FAR AS 3.32 IS CONCERNED, AND JUST
8 ELIMINATE THAT, ADD IT TO THE TERM YOU PUT ON HERE, AND
9 SAY "YOU MAY CONSIDER SUCH EVIDENCE," AND I WROTE IN ON
10 THE COPY I GAVE YOU, "IN DETERMINING WHETHER THE
11 DEFENDANT ACTUALLY. . ."
12 MS. ABRAMSON: RIGHT. YES, THAT'S WHAT I HAD
13 SUGGESTED AT THE TIME. THE ADDITIONAL PARAGRAPH IS
14 SIMPLY TO PINPOINT THE REASONABLE DOUBT PARAGRAPH.
15 THE COURT: YES.
16 MS. ABRAMSON: WHICH I WOULDN'T MIND.
17 THE COURT: OKAY.
18 MR. CONN, I AM THINKING OF MODIFYING IT, OR
19 JUST USING 3.32 WITH THE MODIFICATION THAT I WROTE IN

20 THERE IN THE SECOND PARAGRAPH, FIRST LINE, AND NOT
21 PUTTING IN THE LAST HANDWRITTEN PARAGRAPH OF
22 MS. ABRAMSON, WHICH IS REALLY COVERED BY THE OTHER
23 INSTRUCTIONS.

24 MR. CONN: OKAY.

25 THE COURT: BUT I'LL HEAR YOUR POSITION.

26 MS. ABRAMSON: IS THERE A REASONABLE DOUBT MENTAL
27 STATE INSTRUCTION, JUDGE, PER SE?

28 THE COURT: WELL, THERE IS, YES. MENTAL STATE IS

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1 A CRIME. THE PEOPLE HAVE THE BURDEN OF PROVING ALL OF
2 THE ELEMENTS OF THE CRIME.

3 MS. ABRAMSON: BUT THERE IS NOT ONE THAT
4 PINPOINTS TOWARD MENTAL STATE, AS THIS DOES?

5 THE COURT: I DON'T RECALL THAT THERE IS. THERE
6 IS 3.31 AND 3.31.5, WHICH CERTAINLY REFER TO MENTAL
7 STATE.

8 MR. CONN: I DON'T SEE ANY PROBLEM WITH IT OFF
9 THE TOP OF MY HEAD.

10 THE COURT: OKAY. WE WILL BE IN RECESS UNTIL
11 TOMORROW MORNING AT 8:30.

12 MS. ABRAMSON: JUDGE, WE NEED TO GO IN CAMERA.
13 NOT IN CAMERA, BUT OUT OF THE PRESENCE OF THE PUBLIC.

14 THE COURT: OKAY.

15 MS. ABRAMSON: HAVE YOU SEEN WHAT CAME THROUGH

16 THE FAX?

17 THE COURT: NO.

18 MS. ABRAMSON: ALL RIGHT.

19 MR. GESSLER: YOUR HONOR, BOTH DEFENDANTS WOULD

20 REQUEST TO BE EXCUSED FROM THIS PARTICULAR IN CAMERA

21 HEARING. THEY UNDERSTAND WHAT IT'S ABOUT, AND I THINK

22 IT'S NOT A PROBLEM FOR THEIR CONSTITUTIONAL RIGHTS TO BE

23 EXCUSED AT THIS TIME.

24 THE COURT: ALL RIGHT.

25 BOTH DEFENDANTS WISH TO BE EXCUSED FOR THE

26 BALANCE OF THIS DISCUSSION?

27 DEFENDANT LYLE MENENDEZ: YES, YOUR HONOR.

28 DEFENDANT ERIK MENENDEZ: YES, YOUR HONOR.

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1 THE COURT: OKAY. WE ARE CLEARING THE COURTROOM.

2 WE HAVE A MATTER TO DISCUSS.

3 (THE FOLLOWING PAGES, 52327

4 THROUGH 52332, WERE HELD IN

5 CAMERA AND SEALED BY ORDER

6 OF THE COURT:)

7

8 (AT 5:10 P.M. PROCEEDINGS WERE

9 ADJOURNED UNTIL 8:30 A.M. THE

10 FOLLOWING DAY.)

