

1 VAN NUYS, CALIFORNIA; WEDNESDAY, MARCH 27, 1996

2 9:20 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER)

6 (MARY LU MURPHY, OFFICIAL REPORTER)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD IN OPEN COURT, OUT OF THE

10 PRESENCE OF THE JURY:)

11

12 THE COURT: IN THE TRIAL, THE DEFENDANTS AND

13 THEIR LAWYERS AND THE PEOPLE ARE HERE.

14 WE'RE WAITING FOR THE JURY TO ARRIVE. I

15 ASSUME THEY HAVEN'T ARRIVED YET.

16 THE BAILIFF: THEY'RE HERE.

17 THE COURT: IN A MOMENT WE'LL DEAL WITH

18 ISSUES RELATING TO THE JURY.

19 BEFORE THAT, THE CLERK INFORMED ME THERE

20 WAS SOMETHING COUNSEL WANTED TO DISCUSS.

21 MS. NAJERA: ACTUALLY TWO ISSUES, YOUR

22 HONOR. ONE OF THEM DISCOVERY, AND ONE OF THEM

23 MR. CONN WANTS TO PRESENT CONCERNING CERTAIN

24 PROFFERS OF EVIDENCE.

25 WITH REGARDS TO DISCOVERY, YOUR HONOR --

26 AND I APOLOGIZE FOR NOT BRINGING THIS TO THE COURT

27 IN THE LAST TWO DAYS -- BUT I HAVE BEEN IN CONTACT

28 WITH COUNSEL FOR THE DEFENSE AND WE HAD TRIED TO

1 WORK THIS OUT. BASICALLY, IT DIDN'T GET WORKED
2 OUT. I WAS UNDER THE IMPRESSION WE WOULD BE GETTING
3 THESE THINGS AND WE DIDN'T GET THEM.

4 SPECIFICALLY, YOUR HONOR, THERE ARE SIX
5 REPORTS OR SIX INDIVIDUALS THAT WE WERE NOT GIVEN
6 REPORTS ON. WE WERE GIVEN --

7 THE COURT: ARE THEY TESTIFYING TODAY?

8 MS. NAJERA: THEY ARE NOT TESTIFYING TODAY.

9 THE COURT: LET'S HOLD OFF ON THAT FOR THE
10 MOMENT.

11 WHAT ELSE?

12 MS. NAJERA: THAT'S THE ONLY CONCERN I HAVE.
13 ONE OF THEM STARTS ON FRIDAY. SO IF WE COULD DEAL
14 WITH THIS BEFORE FRIDAY THAT WOULD BE FINE.

15 THE COURT: YES. I JUST WANT TO GET STARTED
16 BEFORE --

17 MR. CONN: THE OTHER ISSUE I WANTED TO RAISE
18 IS IN REGARD TO THE PHOTOGRAPHS THAT COUNSEL HAS
19 INDICATED THAT SHE INTENDS TO USE WITH HER FIRST
20 WITNESS.

21 AND HERE I HAVE IN MY HAND A BUNCH OF
22 PHOTOGRAPHS, AND I WOULD ASK THAT BEFORE THESE
23 PHOTOGRAPHS ARE PRESENTED, THAT COUNSEL MAKE AN

24 OFFER OF PROOF AS TO THE RELEVANCE OF THESE
25 PHOTOGRAPHS. I DON'T THINK SIMPLY BECAUSE WE ARE IN
26 A PENALTY PHASE COUNSEL CAN NOW BREAK OUT THE FAMILY
27 ALBUM AND INTRODUCE ANY PHOTOGRAPHS OF THE
28 DEFENDANTS AS CHILDREN SIMPLY FOR ESTABLISHING THEY

52546

1 WERE ONCE CHILDREN. I THINK IT IS INCUMBENT WITH
2 HOW THIS GOES TO SPECIFIC STATUTORY MITIGATING
3 FACTORS, AND I DON'T THINK THE PHOTOGRAPHS OF THE
4 DEFENDANTS AS CHILDREN ARE AUTOMATICALLY ADMISSIBLE.

5 THE COURT: THESE WERE NOT PHOTOGRAPHS
6 UTILIZED IN THE GUILT PHASE OF THIS TRIAL OR IN THE
7 GUILT PHASE OF THE FIRST TRIAL?

8 MS. ABRAMSON: YES, THEY WERE.

9 THE COURT: WHICH?

10 MS. ABRAMSON: FIRST TRIAL. AND THEY'RE
11 OFFERED TO ILLUSTRATE TESTIMONY OF WITNESSES WHO
12 WILL BE CALLED. YES, YOUR HONOR.

13 THIS IS MS. TOWERY'S OFFER, BUT I'LL
14 ANSWER. IT'S HER WITNESS.

15 THE COURT: IF THEY ARE ILLUSTRATIVE OF THE
16 TESTIMONY, I ASSUME BEFORE THEY ARE SHOWN TO THE
17 JURY THERE WILL BE A FOUNDATION ESTABLISHED THROUGH
18 THE TESTIMONY OF A WITNESS AS TO RELEVANCE, AND IN

19 THAT WAY WE'LL DEAL WITH THESE OBJECTIONS.

20 I WILL ORDER THAT NO PHOTOGRAPHS THAT
21 ARE SUBJECT TO OBJECTION BE SHOWN TO THE JURY UNTIL
22 THERE IS A FOUNDATION ESTABLISHED FOR THEIR USE.
23 AND I DON'T SEE ANY NEED TO DO THAT OUTSIDE THE
24 PRESENCE OF THE JURY AS FAR AS ESTABLISHING A
25 FOUNDATION. I THINK IT CAN BE ESTABLISHED.

26 MS. TOWERY: WITH RESPECT TO THE PHOTOGRAPHS,
27 YOUR HONOR, DOES THE COURT WANT US TO CONTINUE WITH
28 THE NUMBERING SYSTEM OR START ANEW?

52547

1 THE COURT: JUST KEEP GOING WITH THE SAME
2 NUMBERS.

3 MS. TOWERY: THE NEXT ONE WOULD BE 442.

4 THE COURT: WHATEVER THE NEXT NUMBER IS.

5 MS. TOWERY: I SHOW 441 AS THE LAST NUMBER.

6 THE COURT: 442 WILL BE THE NEXT, UNLESS WE
7 MARKED SOMETHING ELSE.

8 WHAT I WANT TO DO AT THIS POINT IS JUST
9 DEAL WITH THE JURY IN TWO RESPECTS. THE FIRST, TO
10 INFORM THEM OF THE TIME FRAME FOR THE COMPLETION OF
11 THE PENALTY PHASE.

12 THE WITNESS SCHEDULE PROVIDED BY THE
13 DEFENSE INDICATES THAT, HOPEFULLY ANYWAY, THE

14 DEFENSE EXPECTS THE TESTIMONY TO BE COMPLETED NEXT
15 WEEK, BUT WITH THE UNDERSTANDING THAT IT COULD TAKE
16 A LITTLE LONGER.

17 AND AT THIS POINT WE'RE STILL OPERATING
18 UNDER THE ASSUMPTION THAT THE PEOPLE DON'T KNOW
19 WHETHER OR NOT YOU'RE GOING TO CALL ANY
20 PENALTY-PHASE WITNESSES; IS THAT CORRECT?

21 MR. CONN: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: BEAR IN MIND THAT IF YOU HAVE ANY
23 STRONG FEELINGS THAT YOU WOULD, IT WOULD BE HELPFUL
24 TO ME AT THIS POINT TO KNOW THEM SO WE CAN INFORM
25 THE JURY AS FAR AS A TIME FRAME.

26 MR. CONN: YES. I WILL DO THAT.

27 THE COURT: AT THIS POINT YOU DON'T KNOW IF
28 YOU'LL CALL ANYBODY?

52548

1 MR. CONN: NO, I DON'T.

2 THE COURT: ALL RIGHT. THE BEST I CAN DO
3 THEN IS TELL THE JURY THERE'S A TIME ESTIMATE OF TWO
4 TO FOUR WEEKS FOR THE COMPLETION OF THE PENALTY
5 PHASE, UNLESS COUNSEL HAS SOME OTHER IDEAS.

6 MS. ABRAMSON: THREE WEEKS IS PROBABLY MORE
7 REALISTIC.

8 THE COURT: I'M INCLUDING DELIBERATIONS AND

9 POTENTIAL REBUTTAL BY THE PROSECUTION OF TWO TO FOUR
10 WEEKS IN THE TIME ESTIMATE.

11 THE SECOND ASPECT OF THE ISSUES TO BE
12 DEALT WITH WITH THE JURY THIS MORNING WOULD BE ANY
13 EXPOSURE THEY'VE HAD TO THE CASE SINCE I LAST SPOKE
14 WITH THEM.

15 SO WHAT WE'LL DO IS DEAL WITH BOTH OF
16 THESE ISSUES IN A CLOSED COURTROOM SO THAT WE CAN
17 ENSURE THE PRIVACY OF THE JURORS DURING THIS PHASE
18 OF THE INQUIRY.

19 SO WE'LL HAVE THE JURY BROUGHT OUT.

20 (PAGES 52549 THROUGH 52594 WERE HELD
21 IN CAMERA AND SEALED BY ORDER
22 OF THE COURT.)

23

24

25

26

27

28

-12941

1 THE COURT: IN THE TRIAL, THE DEFENDANTS AND ALL
2 COUNSEL ARE PRESENT. WE'RE READY TO RESUME WITH THE
3 TRIAL.

4 ANYTHING FURTHER BEFORE WE HAVE THE JURY
5 COME OUT?

6 MR. GESSLER: NO, YOUR HONOR.

7 MR. CONN: YES, YOUR HONOR. I WOULD ASK THAT --

8 I WOULD MAKE A MOTION AT THIS TIME TO EXCLUDE WITNESSES

9 WHO ARE GOING TO BE CALLED DURING THIS PHASE OF THE

10 TRIAL.

11 MY CONCERN AT THIS POINT IN TIME IS WE

12 FILED A MOTION TO EXCLUDE CERTAIN ASPECTS OF TESTIMONY,

13 AND COUNSEL HAS NOT INDICATED PRECISELY WHAT IT IS THAT

14 IS GOING TO BE PRESENTED. SHE ESSENTIALLY SAID ANYTHING

15 AND EVERYTHING THESE PEOPLE EVER TESTIFIED TO OR

16 PRESENTED DURING THE COURSE OF AN INTERVIEW.

17 AND SO I AM CERTAIN THAT WE'RE GOING TO

18 HAVE NUMEROUS AREAS OF OVERLAP BETWEEN THESE WITNESSES

19 TESTIFYING IN REGARD TO THE SAME MATTER, AND I THINK

20 THERE WOULD BE A TENDENCY FOR THESE WITNESSES TO

21 HARMONIZE THEIR TESTIMONY.

22 SO I WOULD ASK THAT WITNESSES WHO ARE GOING

23 TO BE CALLED, OR ARE IN THE COURTROOM, BE EXCLUDED.

24 THE COURT: WELL, CONSISTENT WITH WHAT WAS DONE

25 THROUGHOUT THE TRIAL, ANY WITNESS WHO WILL BE TESTIFYING

26 ABOUT THE SAME MATTER, AS WILL A WITNESS WHO IS ON THE

27 WITNESS STAND, SHOULD BE EXCLUDED DURING THAT PORTION OF

28 THE PROCEEDINGS. BUT OTHERWISE THEY CAN REMAIN.

-12940

1 MS. ABRAMSON: WHAT DOES "MATTER" MEAN? YOU MEAN

2 INCIDENT, EVENT, PERCIPIENT --

3 THE COURT: IF SOMEBODY IS GOING TO BE DESCRIBING

4 THE SAME EVENT OR SITUATION, AND THERE IS AN ISSUE OF

5 POTENTIAL CONFLICT IN TESTIMONY, THEN THEY SHOULD BE

6 EXCLUDED.

7 MS. ABRAMSON: CAN THEY STAY DURING OPENING

8 STATEMENT? NONE OF THEM ARE PERCIPIENT TO EACH OTHER.

9 THE COURT: COUNSEL ARE AWARE OF WHAT YOU'RE

10 GOING TO GO INTO. I HAVE NO KNOWLEDGE OF THIS. IF

11 YOU'RE COMFORTABLE THAT THEY'RE NOT GOING TO BE

12 TESTIFYING ABOUT THE SAME MATTERS . . .

13 ALL RIGHT. THEN NOBODY IS LEAVING.

14 MS. TOWERY: CAN WE HAVE JUST A MOMENT, YOUR

15 HONOR?

16 (DEFENSE COUNSEL CONFER

17 SOTTO VOCE.)

18

19 MR. GESSLER: MY UNDERSTANDING IS, YOUR HONOR,

20 WAS THAT THIS WAS WHEN WITNESSES BEGAN TO TESTIFY, NOT

21 FOR OPENING STATEMENTS.

22 THE COURT: YES. THEY CAN BE HERE FOR OPENING

23 STATEMENTS. I ASSUME WHATEVER YOU'RE SAYING IN OPENING

24 STATEMENT IS SOMETHING THAT HAS BEEN DISCUSSED WITH THEM

25 ANYWAY.

26 MR. GESSLER: THAT'S CORRECT, YOUR HONOR.

27 THE COURT: THEN ARE WE READY TO PROCEED?

28 MR. CONN: YES.

1 THE COURT: LET'S GET THE JURY OUT.

2 (THE JURY ENTERS THE COURTROOM

3 AND THE FOLLOWING PROCEEDINGS

4 WERE HELD:)

5
6 THE COURT: OKAY. THE JURY IS BACK IN COURT, AND

7 WE WILL NOW RESUME WITH THE TRIAL.

8 EACH SIDE HAS AN OPPORTUNITY TO MAKE AN

9 OPENING STATEMENT, TO GIVE YOU A PREVIEW OF WHAT THEY

10 EXPECT TO BE PRESENTED DURING THE PENALTY PHASE OF THE

11 TRIAL.

12 AGAIN, THE COMMENTS OF LAWYERS ARE NOT

13 EVIDENCE. AT THIS POINT, IF THE LAWYERS CHOOSE TO MAKE

14 OPENING STATEMENTS, IT'S SOLELY FOR THE PURPOSE OF

15 GIVING YOU A PREVIEW OF WHAT THEY ANTICIPATE THE

16 EVIDENCE TO BE.

17 DID THE PEOPLE WISH TO MAKE AN OPENING

18 STATEMENT?

19 MR. CONN: YES, YOUR HONOR.

20
21 OPENING STATEMENT

22
23 MR. CONN: GOOD MORNING, LADIES AND GENTLEMEN.

24 AT THIS TIME, LADIES AND GENTLEMEN, THE

25 PROSECUTION HAS NO ADDITIONAL EVIDENCE TO PRESENT TO

26 YOU.

27 YOU WILL BE INSTRUCTED AT THE CONCLUSION OF
28 THE TRIAL TO EVALUATE WHETHER THE AGGRAVATING EVIDENCE;

-12938

1 THAT IS, THE EVIDENCE IN AGGRAVATION OUTWEIGHS THE
2 EVIDENCE IN MITIGATION THAT HAS BEEN PRESENTED TO YOU.
3 YOU WILL LEARN AT THAT TIME THAT THE EVIDENCE IN
4 AGGRAVATION INCLUDES THE CIRCUMSTANCES OF THE CRIME AND
5 THE SPECIAL CIRCUMSTANCES THAT YOU FOUND TO BE TRUE.

6 THUS, THE PROSECUTION WILL ASK YOU AT THE
7 CONCLUSION OF THIS TRIAL TO FIND, BASED UPON THE
8 EVIDENCE THAT HAS ALREADY BEEN PRESENTED TO YOU, THE
9 KILLINGS THEMSELVES, THAT THE AGGRAVATING EVIDENCE
10 SUBSTANTIALLY OUTWEIGHS --

11 MS. ABRAMSON: OBJECTION, YOUR HONOR. IMPROPER
12 OPENING STATEMENT.

13 THE COURT: I ASSUME THIS IS ABOUT TO CONCLUDE;
14 IS THAT CORRECT?

15 MR. CONN: YES, YOUR HONOR.

16 WE WILL ASK YOU TO FIND THAT THE EVIDENCE
17 IN AGGRAVATION OUTWEIGHS THE EVIDENCE IN MITIGATION, AND
18 THAT THE DEATH PENALTY IS THE APPROPRIATE PENALTY IN
19 THIS CASE FOR BOTH OF THE DEFENDANTS.

20 THANK YOU VERY MUCH.

21 THE COURT: OKAY. NOW OPENING STATEMENT ON
22 BEHALF OF LYLE MENENDEZ.

23 MR. GESSLER: YES, YOUR HONOR.

24

25 OPENING STATEMENT

26

27 MR. GESSLER: GOOD MORNING, LADIES AND GENTLEMEN.

28 THIS IS DIFFICULT. I'M NOT GOING TO

-12937

1 PRETEND IT IS NOT, OR THAT WE DID NOT SHOW

2 DISAPPOINTMENT AT THE VERDICTS THAT YOU RENDERED. I

3 COULDN'T HIDE THAT IF I WANTED TO.

4 MS. TOWERY AND I HAVE WORKED ON THIS CASE

5 FOR TWO YEARS WITH LYLE MENENDEZ. MS. ABRAMSON HAS

6 WORKED FOR SIX YEARS ON BEHALF OF ERIK MENENDEZ. AND

7 THE DEFENSE KIND OF BECOMES A PART OF THE LAWYER AT THAT

8 POINT, SO I HOPE YOU UNDERSTAND THE DISPOINTMENT I

9 SHOWED AT THE TIME THE VERDICTS WERE BEING READ. I

10 ACCEPT THAT YOU WORKED HARD TO REACH THOSE VERDICTS. I

11 ACCEPT THOSE VERDICTS. I HAVE TO. AND SO NOW WE GO ON

12 TO THE SECOND PART OF THIS CASE.

13 BUT IT'S IMPORTANT TO START AFRESH, TO

14 START ANEW; THAT LIFE AND DEATH IS DECIDED BY EACH OF

15 YOU AS 12 INDIVIDUALS STARTING NOW, WITH THE EVIDENCE

16 YOU HAVE HEARD.

17 AS MR. CONN SAID, THE CIRCUMSTANCES OF THE

18 CASE WHICH WERE TRIED IN PART ONE IS A PART OF THE

19 EQUATION THAT YOU WORK ON IN DECIDING WHETHER LYLE AND
20 ERIK MENENDEZ GET A DEATH PENALTY OR GET THE PENALTY OF
21 LIFE WITHOUT PAROLE. THAT'S ONLY ONE PART. WE SPENT
22 MONTHS GOING OVER THAT PART WHICH PERTAINED ONLY TO
23 EVIDENCE TO HELP YOU DECIDE THE VERDICTS FOR WHAT
24 HAPPENED ON AUGUST 20TH, 1989, AND YOU HAVE DONE THAT.
25 AND NOW, ALONG WITH THOSE CIRCUMSTANCES OF
26 THE CRIME, THE LAW SAYS THAT YOU CONSIDER A NUMBER OF
27 OTHER FACTORS AND THAT YOU WEIGH THEM, AND THAT WEIGHING
28 THEM DOES NOT SIMPLY MEAN COUNT THEM. IT'S NOT A

-12936

1 NUMERICAL FORMULA. IN FACT, IT'S NO FORMULA AT ALL.
2 BUT YOU CONSIDER ALL OF THE EVIDENCE THAT
3 YOU HEAR, AND YOU WEIGH IT, EACH IN YOUR OWN INDIVIDUAL
4 WAY, AND THAT IF ANYTHING WEIGHS TO YOU FOR LIFE WHICH
5 OUTWEIGHS DEATH, THEN LIFE IS THE VERDICT.
6 BUT IT'S AN INDIVIDUAL DETERMINATION, AND
7 SO IT'S IMPORTANT THAT EACH OF YOU AGAIN BECOME
8 INDIVIDUALS, AND THAT YOU PUT ASIDE FRIENDSHIPS,
9 ALLIANCES, THE PEOPLE THAT YOU SIDED WITH OR THOUGHT HAD
10 A LOT OF WISDOM IN DECIDING THE FIRST PHASE OF THIS
11 CASE; THAT WE ALL START AGAIN AS THOUGH THAT HAD NEVER
12 HAPPENED, AS THOUGH YOU WERE NOT A TEAM WHO HAD COME IN
13 WITH A VERDICT THAT YOU REACHED, AND YOU AGAIN BECOME
14 INDIVIDUALS FOR THIS VERY IMPORTANT DECISION OF LIFE AND

15 DEATH.

16 AND I KNOW THAT CAN BE HARD, BUT YOU CAN
17 SEE HOW IMPORTANT THAT IS TO BEGIN TO APPROACH THIS IN
18 THAT WAY NOW FROM THE VERY BEGINNING, BECAUSE THIS PHASE
19 OF THE TRIAL WILL NOT TAKE NEARLY AS LONG AS WE SPENT ON
20 PHASE ONE, DETERMINING THE GUILT OR INNOCENCE, AND WHAT
21 THE VERDICTS WOULD BE. BUT IT IS CERTAINLY EVEN MORE
22 IMPORTANT.

23 IT'S NOT THE LENGTH OF TIME THAT IS DEVOTED
24 TO ONE ASPECT OF WHETHER SOMEONE SHOULD LIVE OR DIE, NOT
25 JUST THE LENGTH OF TIME THAT WAS DEVOTED TO
26 CIRCUMSTANCES OF THE CRIME. IT IS NO MORE IMPORTANT,
27 EITHER BECAUSE OF THE LENGTH OF THE TIME THAT WAS
28 DEVOTED TO IT, OR FOR ANY OTHER REASON THAN ALL OF THE

-12935

1 REST OF THE FACTORS THAT YOU WILL WEIGH AND CONSIDER IN
2 DECIDING THE LIFE AND DEATH OF THESE TWO YOUNG MEN.

3 AMONG THOSE FACTORS THAT YOU'LL CONSIDER
4 ARE WHETHER THERE'S BEEN ANY EVIDENCE OF PRIOR VIOLENCE
5 OR THREAT OF VIOLENCE BY EITHER LYLE MENENDEZ OR ERIK
6 MENENDEZ AGAINST ANOTHER PERSON.

7 YOU WILL CONSIDER WHETHER OR NOT THEY HAVE
8 EVER BEEN CONVICTED OF AN ADULT FELONY.

9 YOU MAY CONSIDER THE AGE OF ERIK AND LYLE
10 MENENDEZ AT THE TIME ON AUGUST 20TH, 1989 WHEN THE CRIME

11 OCCURRED.

12 AND WHAT THIS PHASE OF THE CASE WILL BE
13 FOCUSING ON, AS FAR AS EVIDENCE PRESENTED IS CONCERNED,
14 WILL BE WHAT IS CALLED FACTOR-K, AND THAT'S SIMPLY
15 BECAUSE IT HAS A SUBDIVISION K IN PARENTHESIS ON THE
16 INSTRUCTION THAT THE JUDGE WILL READ YOU. BUT IT'S A
17 VERY BROAD-BASED DEFINITION, IF YOU WOULD, OF WHAT WE'RE
18 DOING HERE.

19 THE AMERICAN INDIANS HAD A SAYING: "BEFORE
20 YOU JUDGE ME, WALK A MILE IN MY MOCCASINS."

21 THE LAW HAS A LITTLE BIT MORE
22 TECHNICALITIES, PERHAPS, BUT RECOGNIZES THAT AS A VERY
23 IMPORTANT PART OF DECIDING WHETHER SOMEONE SHOULD LIVE
24 OR DIE, AND STATES THAT YOU CONSIDER ANY OTHER
25 CIRCUMSTANCE WHICH EXTENUATES THE GRAVITY OF THE CRIME,
26 EVEN THOUGH IT IS NOT A LEGAL EXCUSE FOR THE CRIME, AND
27 YOU CONSIDER ANY SYMPATHETIC OR OTHER ASPECT OF THE
28 DEFENDANT'S CHARACTER OR RECORD THAT IS OFFERED AS A

-12934

1 BASIS FOR A SENTENCE OF LESS THAN DEATH, WHETHER OR NOT
2 IT RELATES TO THE OFFENSE FOR WHICH HE IS ON TRIAL.

3 THAT'S THE LEGAL DEFINITION OF LOOKING AT
4 EACH OF THESE YOUNG MEN AS INDIVIDUALS, LOOKING AT THEIR
5 LIVES AS PRESENTED TO YOU, WALKING A MILE IN THEIR
6 MOCCASINS, AND THEN DECIDING WHAT YOU FEEL IS THE

7 APPROPRIATE PUNISHMENT IN THIS CASE.

8 THE EVIDENCE PRESENTED AT THIS TIME WILL BE
9 DONE BY -- NOT BY THOSE WHO HAVE SOMETHING TO LOSE. NOT
10 BY THE -- BY LYLE OR ERIK MENENDEZ. IT WILL BE
11 PRESENTED TO YOU BY OTHER PEOPLE WHO SAW THE MENENDEZ
12 FAMILY AS LYLE MENENDEZ AND ERIK MENENDEZ WERE GROWING
13 UP. IT WILL BE PRESENTED TO YOU BY FAMILY MEMBERS AND
14 RELATIVES OF JOSE MENENDEZ AND OF MRS. MENENDEZ, BY
15 COUSINS WHO WERE MORE CONTEMPORARY WITH LYLE AND ERIK
16 MENENDEZ.

17 IT WILL ALSO BE PRESENTED TO YOU BY TOTAL
18 OUTSIDERS, TOTALLY OBJECTIVE PEOPLE. TEACHERS --
19 TEACHERS FROM PRINCETON DAY SCHOOL WHO HAVE COME FROM
20 NEW JERSEY.

21 IT WILL BE PRESENTED TO YOU BY COACHES WHO
22 SAW THE FAMILY INVOLVEMENT AND INTERRELATIONSHIP,
23 PARTICULARLY INTENSE THROUGHOUT THE YEARS THAT LYLE AND
24 ERIK MENENDEZ WERE TAKING LESSONS AND RISING IN THE
25 RANKINGS IN THE EASTERN STATES, AND THE ABSORPTION THAT
26 THE FAMILY HAD WITH TENNIS, TO THE EXCLUSION OF ALL
27 OTHER VALUES.

28 YOU WILL HEAR OF TWO PARENTS, JOSE MENENDEZ

-12933

1 AND MARY LOUISE MENENDEZ, WHO INDIVIDUALLY EXPRESSED
2 THEIR PHILOSOPHY THAT WINNING IS EVERYTHING. IT WAS

3 EXPRESSED ONCE BY JOSE MENENDEZ IN A DEBATE WITH CARLOS
4 BARALT AND TERESITA BARALT ABOUT RAISING CHILDREN. AND
5 MR. BARALT SAID: "BUT TRYING IS WHAT'S IMPORTANT. IF
6 YOU TRY YOUR BEST, THAT'S WHAT YOU CAN BE PROUD OF, AND
7 THAT'S WHAT YOU CAN TAKE SATISFACTION IN."

8 JOSE MENENDEZ SAID: "NO. IF YOU DON'T
9 WIN, YOU MIGHT AS WELL NOT HAVE TRIED AT ALL."

10 AND THAT IS THE PHILOSOPHY WITH WHICH HE
11 RODE -- RAISED THESE TWO YOUNG MEN, AND HIS EXPECTATION
12 FOR THEM IN EVERY FIELD OF LIFE; TENNIS, SOCCER,
13 SWIMMING, ACADEMICS AND EVERYTHING ELSE.

14 AND MRS. MENENDEZ AT OTHER TIMES, TO ONE OF
15 HER CLOSEST FRIENDS -- TO FAITH GOLDSMITH -- EXPRESSED
16 THE SAME PHILOSOPHY: WINNING IS EVERYTHING.

17 THERE WAS AN INCIDENT IN WHICH LYLE
18 MENENDEZ WAS SIX YEARS OLD AND THERE WAS A POOL THAT
19 SEEMED TOO COLD FOR HIM, AND SO HE WAS WITH HIS SWIMMING
20 COACH, AND KEPT TRYING TO GET OUT OF THE WATER, AND
21 MRS. MENENDEZ KEPT PUSHING HIM BACK IN. AND HE WAS
22 CRYING AND SAYING: "IT'S TOO COLD."

23 AND THE COACH SAID: "DON'T MAKE HIM GO
24 BACK IN. DON'T DO THIS. WHAT ARE YOU TRYING TO DO,
25 RAISE AN OLYMPIC CHAMPION?"

26 AND MRS. MENENDEZ SAID, WITHOUT KIDDING:
27 "OF COURSE."

28 WHEN LYLE MENENDEZ WAS ABOUT NINE, HE WAS

1 ON A CHAMPIONSHIP SOCCER TEAM, AND THE COACH OF THAT
2 TEAM SAW JOSE MENENDEZ RUNNING UP AND DOWN THE SIDELINES
3 YELLING -- COACHING, IF YOU WOULD, HIS SON, LYLE, DURING
4 THIS GAME, AND SAYING: "GET THE BALL, GET THE BALL,"
5 WHICH WAS CONTRARY TO THE TEAM EFFORT, AND THE POSITIONS
6 THAT THE COACH WAS TEACHING AND WANTING LYLE MENENDEZ TO
7 DO IN THAT GAME.

8 AND HE WILL TELL YOU THAT DURING THE BREAKS
9 OF THE SOCCER MATCH, JOSE MENENDEZ WOULD TOWEL OFF HIS
10 SON, AS HE DESCRIBES IT, "LIKE A PRIZE THOROUGHBRED,"
11 AND THAT EVEN AT THAT TIME LYLE MENENDEZ DID NOT RIDE
12 WITH THE TEAM. HE WOULD GO TO TOURNAMENTS WITH HIS
13 FAMILY INSTEAD. HE WAS NOT -- HE WAS ON THE TEAM, NOT
14 OF THE TEAM.

15 AND THIS GETS BACK TO A PHILOSOPHY AGAIN
16 EXPRESSED BY MRS. MENENDEZ EARLY ON TO HER FRIEND FAITH
17 GOLDSMITH, IN WHICH SHE SAID THAT: "WE DON'T WANT LYLE
18 TO MAKE FRIENDS NOW. WE DON'T WANT HIM ASSOCIATING WITH
19 OTHER KIDS, BECAUSE IT WOULD DETRACT FROM HIS BECOMING
20 NO. 1 IN TENNIS."

21 AND JOSE MENENDEZ SAID THE SAME THING TO
22 HIM. HE SAID: "DON'T HAVE FRIENDS NOW. IT'S HARD IF
23 YOU MAKE FRIENDS NOW. YOU CAN'T COMPETE AGAINST THEM
24 THE SAME WAY IN TENNIS. WHEN HE GETS TO COLLEGE -- WHEN
25 HE GETS TO COLLEGE, HE CAN MAKE FRIENDS, BECAUSE THEN
26 HE'LL BE NO. 1, AND EVERYBODY WILL WANT TO BE HIS
27 FRIEND."

-12931

1 YOU DON'T DO IT THAT WAY. YOU'VE GOT TO LEARN HOW TO BE
2 A FRIEND AND MAKE A FRIEND WHEN YOU'RE A KID, WHEN
3 YOU'RE YOUNG."

4 AND THEY ARGUED ABOUT IT, BUT IT DIDN'T
5 MAKE ANY DIFFERENCE. JOSE MENENDEZ' AND MARY LOUISE
6 MENENDEZ' PHILOSOPHY PREVAILED, AND THEY WEREN'T ALLOWED
7 TO MAKE FRIENDS.

8 IN FACT, THE TENNIS COACH, BILL KURTAIN,
9 WILL COME IN AND TESTIFY, MAYBE TODAY, THAT WHEN LYLE
10 MENENDEZ WAS HIS PUPIL AT AGE 10 AT A TENNIS CLUB THERE
11 IN THE PRINCETON AREA, MR. MENENDEZ BECAME INVOLVED, AND
12 THE COACH WANTED TO PUT LYLE INTO A PROGRAM WITH OTHER
13 KIDS. IT WAS A GROUP PROGRAM TO SUPPLEMENT THE PRIVATE
14 LESSONS, AND IT WAS KIND OF A SOCIAL THING. YOU KNOW,
15 TENNIS, ENJOY IT, MAKE FRIENDS, AND IMPROVE YOUR GAME,
16 BUT AS A KID.

17 AND JOSE MENENDEZ SAID: "NO, YOU'RE NOT
18 GOING TO DO THAT. I DON'T WANT HIM INVOLVED WITH THE
19 OTHER KIDS. I DON'T WANT HIM MAKING FRIENDSHIPS,
20 BECAUSE THEN YOU DON'T HAVE THAT SAME COMPETITIVE DESIRE
21 TO BEAT THEM."

22 AND HE WILL TELL YOU THAT THIS COMPETITIVE
23 DRIVE OF JOSE MENENDEZ FOR HIS CHILD EXTENDED EVEN ONTO

24 THE COURT, WHERE AT TIMES JOSE MENENDEZ WOULD COME AND
25 TAKE OVER THE LESSONS FROM THE COACH, WOULD COME OUT ON
26 THE COURT; THAT AT ONE POINT WHEN THERE WAS A KIDS'
27 TOURNAMENT, AGE 10 OR 11, AND THEY'RE PLAYING EACH
28 OTHER, JOSE MENENDEZ CAME OUT AND ACCUSED LYLE MENENDEZ'

-12930

1 10-YEAR-OLD OPPONENT OF CHEATING, BECAUSE HE WAS WHAT
2 THEY CALL FOOT FAULT -- HE WAS A LITTLE BIT OVER THE
3 LINE WHEN HE WOULD SERVE THE BALL.

4 NOW, AT 10 YEARS OF AGE THIS COACH WILL SAY
5 THAT DIDN'T MAKE A BIT OF DIFFERENCE TO THE GAME. THIS
6 IS NOT PETE SANFRIS OR SOMEONE SERVING AT A HUNDRED
7 MILES AN HOUR. THIS IS KIDS. AND IT WAS OUT OF LINE
8 FOR MR. MENENDEZ TO DO THIS. IT WAS OUT OF LINE FOR THE
9 PARENTS. THEY WERE JUST SUPPOSED TO BE THERE WATCHING.
10 IF SOMETHING HAPPENED AND A CHILD FELT THAT ONE OF THE
11 OTHERS WAS TAKING ADVANTAGE, HE COULD RAISE HIS HAND,
12 AND A REFEREE OR COACH WOULD COME AND TAKE CARE OF THE
13 PROBLEM.

14 BUT MR. MENENDEZ WAS SO OBSESSED HE GOT
15 INVOLVED THERE, AND FINALLY, AFTER ABOUT THREE YEARS,
16 WHEN JOSE MENENDEZ DIDN'T LIKE THE WAY THAT COACH
17 KURTAIN WAS TEACHING THE LESSON, HE CAME ONTO THE COURT
18 AND SAID: "COACH, I'M GOING TO GO SHOW HIM HOW TO MAKE
19 THOSE STROKES. YOU HIT THE BALL TO HIM."

20 AND THE COACH SAID: "LOOK. EITHER I COACH
21 HIM OR YOU DO."
22 AND JOSE MENENDEZ SAID: "SO BE IT. YOU'RE
23 FIRED," BECAUSE HE HAD THIS DRIVE THAT HIS SONS WOULD
24 BECOME NO. 1, AND NOTHING ELSE MATTERED.

25 ALAN ANDERSEN, WHO YOU'VE SEEN BEFORE,
26 REMEMBERS AN INCIDENT WHEN LYLE WAS ABOUT NINE, AND HIS
27 FATHER WAS SERVING HARD TO HIM, AS YOU WOULD TO AN
28 ADULT. AND HE DID IT SO LONG THAT HE COULD SEE LYLE

-12929

1 MENENDEZ' SHOULDER SWELL UP, AND LYLE MENENDEZ DROPPING
2 THE RACKET AND TRYING NOT TO HIT IT BACK.

3 AND WHEN HIS FATHER LOOKED AT THE SHOULDER
4 AND IT WAS SWOLLEN, THE ONLY THING HE DID -- HE DIDN'T
5 STOP THE LESSON. HE JUST HAD HIS MOTHER SERVE TO HIM A
6 LITTLE BIT SOFTER INSTEAD, AND KEPT HIM PLAYING FOR
7 ANOTHER 20 TO 30 MINUTES.

8 AND AT THAT TIME BILL KURTAIN, THE COACH I
9 MENTIONED, HE WILL TELL YOU THAT AT THIS CLUB, SOMETIMES
10 AT 6:00 IN THE MORNING WHEN IT OPENED, BEFORE SCHOOL,
11 THERE WOULD BE LYLE MENENDEZ AND HIS FATHER PRACTICING.
12 AND SOMETIMES ON THE SAME DAY, AT 10:00 O'CLOCK AT NIGHT
13 WHEN THE CLUB WAS ABOUT TO CLOSE, THERE WOULD BE JOSE
14 MENENDEZ (SIC) AND HIS FATHER PRACTICING.

15 NOW, GRANTED, HE WENT TO SCHOOL IN THE

16 MEANTIME, BUT HE'S THERE OPENING IT UP AND HE'S THERE
17 CLOSING IT DOWN. AND HIS FATHER TOLD THE COACH THERE'S
18 ONLY ONE REASON FOR YOU TO COACH HIM. RANKING. RANKING
19 NO. 1.

20 AND NO MATTER WHAT LYLE MENENDEZ DID, IT
21 DIDN'T MAKE ANY DIFFERENCE. IF HE WON, THERE WERE NO
22 PATS ON THE BACK. THERE WERE NO HUGS. THERE WAS NO
23 LOVE. WHAT HE WOULD DO THEN, THE COACH SAID, WAS GO TO
24 HIS FATHER AND PRACTICE FOR THE NEXT MATCH, WITH HIS
25 FATHER IMMEDIATELY POINTING OUT WHAT HE DID WRONG IN THE
26 MATCH THAT HE WON. NOT WHAT HE DID RIGHT, WHAT HE DID
27 WRONG.

28 AND IF LYLE MENENDEZ LOST, HIS FATHER WOULD

-12928

1 SOMETIMES PUNISH HIM FOR THE SAME THING. HE ONCE
2 STALKED OUT OF THE CLUB AFTER HIS SON LOST. AND PETER
3 CANO, ANOTHER RELATIVE, WILL TELL YOU OF AN OCCASION IN
4 WHICH HE SAW LYLE MENENDEZ PLAY AND LOSE. HE TRIED, HE
5 LOST.

6 AND HIS FATHER KEPT HIM FROM THE CAR AND
7 SAID: "YOU WALK HOME."

8 AND PETER CANO PROTESTED, AND JOSE MENENDEZ
9 SAID: "BUTT OUT."

10 IT'S A FAMILY WHERE THERE WAS ROOM ONLY FOR
11 WINNING, BUT THERE WAS NO ROOM FOR SHOWING VISIBLE

12 AFFECTION. WITNESSES WILL TELL YOU THAT LYLE'S MOTHER,
13 THEY NEVER SAW HER HUG HIM, CALL HIM PET NAMES, ANYTHING
14 OF THAT NATURE. THERE WAS NO ROOM FOR VISIBLE
15 AFFECTION, AND THERE WAS NO ROOM FOR FAILURE. THERE WAS
16 ONLY ROOM TO DRIVE TO SUCCEED, TO BE NO. 1.

17 AND THERE WAS NO ROOM FOR TEARS. THERE WAS
18 NO ROOM FOR TEARS FOR A LITTLE BOY IN THIS FAMILY.

19 PETER CANO AGAIN WILL TELL YOU OF AN
20 INCIDENT WHEN LYLE MENENDEZ WAS ABOUT FIVE, AND PETER
21 CANO WAS STAYING -- HE WAS A BROTHER-IN-LAW OF JOSE
22 MENENDEZ, AND HUSBAND OF MARTA CANO.

23 HE WILL TELL OF AN INCIDENT WHEN HE WAS IN
24 THE FAMILY HOME, AND LYLE MENENDEZ WAS RUNNING AROUND.
25 THIS EVENING I THINK HE WAS RUNNING OFF SOME EXCESS
26 ENERGY OF LITTLE KIDS. JOSE MENENDEZ TOLD HIM TO STOP,
27 AND HE DIDN'T RIGHT AWAY, AND HE GRABBED HIM BY THE
28 SHOULDER AND MR. MENENDEZ JUST GAVE HIM A LOOK, AND AT

-12927

1 THAT POINT LYLE MENENDEZ WET HIS PANTS FROM THE LOOK.

2 AND THEN MR. MENENDEZ TOOK LYLE MENENDEZ
3 DOWN TO HIS BEDROOM, AND PETER CANO FOLLOWED IN THE
4 HALLWAY, AND SAW MR. MENENDEZ PUNCH THE FIVE-YEAR-OLD
5 LYLE SO HARD IN EITHER THE CHEST OR STOMACH -- HE
6 COULDN'T TELL WHICH FROM HIS VANTAGE POINT -- THAT HE
7 KNOCKED THE WIND OUT OF HIM. AND THERE WERE NO TEARS.

8 AND YOU WILL HEAR FROM JESSICA GOLDSMITH, A
9 GOOD FRIEND, FAITH GOLDSMITH'S DAUGHTER, WHO WAS A YEAR
10 YOUNGER THAN LYLE MENENDEZ AND A YEAR OLDER THAN ERIK
11 MENENDEZ, THAT WHEN LYLE MENENDEZ WAS ABOUT SOMEWHERE IN
12 THE RANGE OF SEVEN, EIGHT, NINE, HE WAS HANGING FROM THE
13 STAIRCASE AND GOT HIMSELF IN A POSITION OF DANGER, WHERE
14 HE WANTED OUT. HE WANTED TO BE HELPED DOWN.

15 AND MR. MENENDEZ REFUSED AND STARTED
16 JABBING HIM IN THE STOMACH, AND SAID: "NOW YOU'RE GOING
17 TO STAY UP THERE UNTIL YOU LEARN NOT TO CRY." AND MRS.
18 MENENDEZ WAS THERE AND SAW THIS AND DID NOT INTERVENE.

19 WHEN THE GOLDSMITHS HAD A CONVERSATION
20 AGAIN WITH -- I'M SORRY, EITHER GOLDSMITHS OR TERESITA
21 BARALT, BUT A CONVERSATION -- I THINK IT WAS FAITH
22 GOLDSMITH WITH HER FRIEND. SHE WAS FRIENDS WITH BOTH
23 MARY MENENDEZ AND JOSE MENENDEZ, CARED DEEPLY FOR THEM.

24 SHE WAS TALKING TO THEM ABOUT THIS NEED FOR
25 PERFECTION, THE NEED TO HAVE A SON WHO IS NO. 1, AND SHE
26 SAID: "GEE, WHAT IF -- WHAT IF YOUR SON WASN'T AN
27 ATHLETE? WHAT IF HE DIDN'T HAVE THAT ABILITY?"

28 AND JOSE MENENDEZ SAID: "IMPOSSIBLE. HE'S

-12926

1 MY SON, AND HE'S MARY LOUISE'S SON, AND WE'RE BOTH
2 ATHLETES. HE HAS TO BE AN ATHLETE. WHAT A SILLY
3 QUESTION."

4 AND SHE SAID: "WELL, WHAT IF YOU HAD A SON
5 WITH A LEARNING DISABILITY?"

6 AND AGAIN, JOSE MENENDEZ CAST IT OFF WITH:
7 "THAT'S IMPOSSIBLE. I COULDN'T HAVE A SON WITH A
8 LEARNING DISABILITY."

9 THIS IS THE ENVIRONMENT, THE FAMILY, IN
10 WHICH LYLE MENENDEZ AND ERIK MENENDEZ WERE RAISED, AND
11 THE EXPECTATIONS PUT UPON THEM.

12 AT AGE 14, WHEN LYLE MENENDEZ WOULD GO
13 SPEND TIME WITH HIS AUNT TERRY, AND COME OVER TO THE
14 HOUSE, HE BROUGHT HIS FRIENDS WITH HIM. HIS FRIENDS WAS
15 A SUITCASE FULL OF STUFFED ANIMALS.

16 THIS IS AS A HIGH SCHOOL TENNIS PLAYER,
17 ATHLETE, HERO. HIS ONLY FRIENDS THAT HE COULD HAVE WERE
18 STUFFED ANIMALS, BECAUSE HE DIDN'T HAVE TO COMPETE IN
19 TENNIS WITH THEM, OR BEAT THEM. AND HE HAD
20 PERSONALITIES FOR THEM, AND HE TALKED TO THEM, AND
21 FILLED UP THE BED WITH THEM, BECAUSE IF HE CAN'T HAVE
22 REAL FRIENDS, YOU HAVE TO HAVE SOMETHING.

23 AND HE'D GO TO SCHOOL, AND THE TEACHERS
24 WILL TELL YOU THAT AT THE SCHOOL -- THIS IS PRINCETON
25 DAY SCHOOL. THIS IS A PRETTY GOOD ACADEMIC SCHOOL FOR
26 PEOPLE GOING ON TO IVY LEAGUE AND MAJOR UNIVERSITIES.
27 GOOD CURRICULUM, GOOD TEACHERS, RULES.

28 THAT WHEN LYLE MENENDEZ WAS ABOUT 16, HE

1 FOUND A YOUNG LADY NAMED STACY FELDMAN, AND THEY WERE A
2 REAL ITEM. EVERYWHERE THEY'D BE ARM AND ARM, HAND IN
3 HAND, ANYWHERE IN THE SCHOOL. THIS WAS LYLE'S SOLE
4 FRIEND.

5 AND THE SCHOOL RULES WERE KIND OF AGAINST
6 THIS. YOU KNOW, YOU DIDN'T GO AROUND TOUCHING AND
7 HOLDING HANDS AND ARM AND ARM AT PRINCETON DAY SCHOOL.

8 BUT EVERYBODY LET IT GO FOR LYLE, BECAUSE
9 THEY SAID: "THAT'S LYLE AND STACY," AND THESE WERE THE
10 TWO MOST NEEDY KIDS THERE. NEEDY, NOT FINANCIALLY;
11 NEEDY OF EMOTIONAL UPLIFT, NEEDING EACH OTHER.

12 AND THE TEACHERS LET IT GO. THEY TALKED
13 ABOUT IT, AND THEY KNEW IT WAS THE RIGHT THING FOR THESE
14 TWO KIDS.

15 AND YOU WILL HEAR FROM THE TEACHERS AGAIN
16 THAT IF LYLE MENENDEZ WAS IN THEIR FIRST CLASS OF THE
17 DAY, HE'D USUALLY BE UP TO 15 MINUTES LATE, AND HE'D
18 COME IN WITH HIS TENNIS TOGS AND OFTEN HIS TENNIS
19 RACKETS, BECAUSE THAT'S WHERE HE'D BEEN PRACTICING
20 TENNIS.

21 AND IF HE HAD AFTERNOON CLASSES, HE'D OFTEN
22 HAVE EXCUSED ABSENCES FOR TOURNAMENTS AND MATCHES. NOT
23 JUST SCHOOL MATCHES AND THINGS, BUT ALL THE TOURNAMENTS
24 THAT HE WAS INVOLVED WITH TO BECOME NO. 1.

25 ALICIA HERCZ WILL TESTIFY. SHE IS A PERSON
26 WHO WAS BOTH A SOCIAL FRIEND OF JOSE AND MARY LOUISE
27 MENENDEZ, BECAUSE SHE LIVED NEAR THEM. THEY PLAYED
28 CANASTA. THEY PLAYED GAMES TOGETHER. THEY WERE

1 FRIENDS, GOOD FRIENDS.

2 AND THEN AFTER ABOUT FIVE YEARS OF
3 FRIENDSHIP, IN 1984, SHE ALSO WENT AND TAUGHT AT
4 PRINCETON DAY SCHOOL. SHE HAD BEEN A TEACHER, BUT THAT
5 WAS HER FIRST YEAR THERE.

6 AND SHE HAD LYLE MENENDEZ AS A STUDENT IN A
7 SMALL KIND OF A SPANISH SEMINAR, AND SHE HAD A -- SHE
8 WAS A NEW PERSON ON THE BLOCK, YOU KNOW, THE NEW TEACHER
9 THERE. SHE DIDN'T GET THE BEST FACILITY. SO SHE HAD
10 THIS LITTLE OFFICE THAT WAS RIGHT OFF THE ENTRYWAY TO
11 WHERE EVERYBODY WALKED BY ON THEIR WAY INTO THE SCHOOL,
12 AND YOU COULD SEE -- EVERYBODY COULD SEE AS THEY WALKED
13 BY THE LOCKERS OR INTO THE OFFICE OR OUT OF THE
14 BUILDING, THEY COULD SEE SOMEBODY SITTING IN HER OFFICE.

15 AND ONE DAY LYLE MENENDEZ CAME AND JUST SAT
16 THERE. SAID NOTHING. AND SHE WOULD ASK HIM: "GEE,
17 LYLE, WHAT'S WRONG? IS THERE SOMETHING YOU WANT TO TALK
18 ABOUT? LYLE, DO YOU NEED SOMETHING TODAY? DID YOU NEED
19 SOME HELP IN YOUR WORK? WHAT CAN I DO FOR YOU?"

20 AND LYLE WAS TOTALLY SILENT. SHE FELT IT
21 WAS LYLE NEEDED SANCTUARY, AND HE'D COME TO HER TO JUST
22 SIT. EVEN THOUGH ALL THE KIDS COULD WALK BY AND SEE HIM
23 THERE, THIS WAS NOT COOL, BUT HE NEEDED IT AND HE WAS
24 THERE.

25 SO THEN ABOUT A MONTH LATER HE CAME AGAIN.

26 SAME THING HAPPENED. AND SHE SAID: "GEE, LYLE, IS IT
27 ANYTHING WITH STACY OR CLASS OR ANYTHING?" SHE WAS KIND
28 OF PREPARED FOR IT, AND SHE WAS TRYING TO DRAW HIM OUT.

-12923

1 AND NO RESPONSE. AND HE STAYED AGAIN A
2 HALF HOUR. KIDS WALKING BY, SEEING HIM THERE.

3 SO SHE WENT TO HER FRIEND, MARY LOUISE
4 MENENDEZ. NOT JUST LYLE'S MOTHER, BUT HER FRIEND, AND
5 SAID: "GEE, IS SOMETHING WRONG WITH LYLE? HE'S BEEN IN
6 MY OFFICE TWICE, AND I'D KIND OF LIKE YOUR ADVICE. I'D
7 LIKE TO COUNSEL SELL HIM. I'D LIKE TO HELP HIM." KIND
8 OF, "WHAT DO YOU THINK IT'S ABOUT?" OR "HOW SHOULD I GO
9 ABOUT IT?"

10 SHE WANTED THE HELP OF THE MOTHER FOR A
11 YOUNG MAN WHO OBVIOUSLY NEEDED HELP.

12 AND INSTEAD OF HELPING, MARY LOUISE
13 MENENDEZ SAID, IN EFFECT: "YOU'RE LYING. LYLE MENENDEZ
14 DOESN'T TALK TO ANYBODY. THIS DIDN'T HAPPEN."

15 AND LYLE NEVER CAME BACK AND SOUGHT
16 SANCTUARY IN THE OFFICE AGAIN. MS. HERCZ REGRETS TO
17 THIS DAY HAVING TOLD MARY LOUISE MENENDEZ OF THIS,
18 BECAUSE IT CUT OFF WHAT MIGHT HAVE BEEN A COMMUNICATION
19 THAT WAS NEEDED.

20 TEACHERS KNEW THAT THE HOMEWORK WAS BEING
21 DONE FOR LYLE MENENDEZ. THE ESSAYS THAT HE'D BRING IN

22 FROM HOME, PARTICULARLY IN SPANISH, WERE BEAUTIFUL.
23 ALICIA HERCZ SAID SOME OF THE ESSAYS HAD TO BE DONE BY A
24 NATIVE SPEAKER, NOT SOMEBODY WHO HAD LEARNED IT.
25 AND THE EXAM WORK -- LYLE TRIED IT. HE WAS
26 ADEQUATE, BUT IT DIDN'T MEASURE UP TO WHAT WAS BEING
27 BROUGHT IN AS HOMEWORK. AND THEY TRIED TO SUBTLELY
28 HANDLE IT WITH KIND OF PARENT CONFERENCES WHEN THEY'D

-12922

1 COME IN AND THINGS, BUT IT DIDN'T DO ANY GOOD. STILL
2 HOMEWORK WAS NOT BEING DONE BY LYLE.
3 SO AT AGE 18, FOR LYLE MENENDEZ, HIS
4 PARENTS MOVED TO CALIFORNIA. STACY FELDMAN WENT OFF TO
5 COLLEGE, BROKE UP WITH HIM, AND LYLE AT THAT TIME, HE
6 WAS THE NO. 1 TENNIS PLAYER IN ALL OF NEW JERSEY. HE
7 HAD REACHED HIS PARENTS' EXPECTATIONS IN TENNIS, AND HE
8 WAS ONE OF THE TOP FOUR RANKED PLAYERS IN THE ENTIRE
9 NORTHEASTERN STATES OF THE UNITED STATES FOR THE AGE
10 GROUP OF 18 AND UNDER.
11 AND HE HAD NO CIRCLE OF FRIENDS, AND STACY
12 WENT AWAY TO COLLEGE AND BROKE UP. NO CIRCLE OF FRIENDS
13 TO FALL BACK ON. ALL HE HAD WAS STUFFED ANIMALS.
14 HE HAD NO SOCIAL SKILLS. HADN'T HAD TIME
15 TO DEVELOP THEM. HE DIDN'T KNOW HOW TO MAKE FRIENDS.
16 HE DIDN'T KNOW HOW TO ASK SOMEBODY FOR A DATE. HE HAD
17 NO PREPARATION FOR A COLLEGE LIKE PRINCETON UNIVERSITY,

18 WHICH WAS HIS FATHER'S CHOICE FOR HIM.

19 THAT'S THE PICTURE OF THE HOME OF LYLE

20 MENENDEZ AND THE PARENTING OF JOSE AND MARY LOUISE

21 MENENDEZ.

22 NOW, I DO NOT WANT YOU TO THINK THAT I'M

23 TELLING YOU THIS TO PARENT BASH OR TO VICTIM BASH. I AM

24 NOT DOING THIS TO SAY THAT JOSE MENENDEZ AND MARY LOUISE

25 MENENDEZ WERE TERRIBLE PEOPLE. I AM NOT DOING THAT.

26 BUT BECAUSE THE LAW SAYS WE SHOULD LOOK AT

27 THE MAN WHO IS BEING ASKED FOR YOU TO DECIDE LIFE AND

28 DEATH, WE SHOULD LOOK AT HIS LIFE. WE SHOULD LOOK AT

-12921

1 WHO HE IS AS AN INDIVIDUAL, AND HOW HE BECAME THAT WAY.

2 WE SHOULD WALK A MILE IN HIS MOCCASINS, WE HAVE TO DO

3 IT, AS TO WHAT HIS DEVELOPMENT AND CHILDHOOD WAS LIKE,

4 AND WHAT HE WAS TAUGHT TO VALUE, BEING NO. 1. NO ROOM

5 FOR NO. 2, NO ROOM FOR FAILURE.

6 SO THIS ISN'T DONE TO BASH THE PARENTS.

7 I'M NOT SAYING THEY DID OR DID NOT LOVE THEIR CHILDREN.

8 I AM NOT SAYING THEY'RE TERRIBLE MONSTERS. BUT THEY DID

9 A TERRIBLE JOB OF PARENTING. THE VALUES WERE WRONG,

10 WITHOUT ANY ROOM TO DEVELOP IN OTHER WAYS.

11 IT'S NOT OFFERED AS AN ABUSE EXCUSE. THIS

12 IS OFFERED UNDER THE LAW, AS I READ IT TO YOU, OF THE

13 LIFE OF LYLE MENENDEZ, AND WHO HE IS THAT YOU ARE BEING

14 ASKED TO EXECUTE. IT WOULD BE OFFERED IF HE WERE ON
15 TRIAL FOR KILLING TWO STRANGERS. AND IT WOULD BE
16 RELEVANT THEN, AND IT'S CERTAINLY RELEVANT HERE, WHERE
17 IT WAS NOT TWO STRANGERS THAT HE KILLED, BUT THE PEOPLE
18 WHO TAUGHT THESE VALUES THAT WE ARE BRINGING TO YOU.
19 SO IN WALKING THIS MILE IN LYLE MENENDEZ'
20 MOCCASINS AND IN ERIK'S, THE EVIDENCE THAT YOU WILL BE
21 ASKED TO JUDGE HERE, YOU CAN'T AVOID SEEING CONSEQUENCES
22 OF THE TERRIBLE MISJUDGMENTS MADE BY THEIR PARENTS AS TO
23 WHAT THEY VALUED.
24 AND I ASK YOU, PLEASE EVALUATE THE EVIDENCE
25 THAT WE PRESENT IN THIS FRAMEWORK. GIVE IT CAREFUL
26 CONSIDERATION, AS YOU HAVE EVERYTHING ELSE IN THE CASE,
27 BECAUSE THIS IS AS IMPORTANT AS ANYTHING YOU'VE HEARD.
28 AND IN DECIDING LIFE AND DEATH, PROBABLY MORE IMPORTANT

-12920

1 BECAUSE OF THE WAY IT SHOULD HAPPEN.
2 AND THEN ASK YOURSELVES, ARE LYLE AND ERIK
3 MENENDEZ, ARE THEY PEOPLE FOR WHOM THE DEATH PENALTY IS
4 THE ONLY ANSWER, OR IS LIFE WITHOUT PAROLE THE RIGHT
5 ANSWER IN THIS CASE?
6 THANK YOU.
7 THE COURT: THANK YOU, MR. GESSLER.
8 ON BEHALF OF ERIK MENENDEZ, AN OPENING
9 STATEMENT?

10 MS. ABRAMSON: SORT OF, YOUR HONOR.

11

12 OPENING STATEMENT

13

14 MS. ABRAMSON: I HAVE BEEN SAYING TO MYSELF FOR

15 THE LAST WEEK: "WHAT AM I GOING TO SAY TO THESE

16 PEOPLE?"

17 IT IS -- IT'S A VERY UNUSUAL THING, EVEN

18 FOR CRIMINAL DEFENSE LAWYERS, TO BE TALKING TO JURORS

19 AND NOT BE INVOLVED WITH TECHNICAL RULES OF EVIDENCE,

20 NOT BE ABLE TO MAKE POSTERS AND CHARTS THAT DIAGRAM OUT

21 LOGICAL THEORIES. BECAUSE IN THIS KIND OF TRIAL, LOGIC

22 IS NOT GOING TO DO THE TASK THAT YOU AS INDIVIDUALS HAVE

23 TO DO, AND IT'S AN EXTRAORDINARY TASK THAT OUR LAW PUTS

24 IN THE HANDS OF ORDINARY CITIZENS.

25 I GUESS IN BEING A WOMAN, AND JUST GIVEN

26 THE TIME THAT I GREW UP THERE WAS NO WAR TO FIGHT, EVEN

27 IF WOMEN WERE IN COMBAT, I DON'T KNOW WHAT IT'S LIKE. I

28 DON'T HAVE ANY IDEA WHAT IT'S LIKE TO MAKE A DECISION TO

-12919

1 TAKE ANOTHER PERSON'S LIFE. HAVEN'T A CLUE.

2 I'VE NEVER SAT ON A JURY. OBVIOUSLY, GIVEN

3 MY PROFESSION, I NEVER WILL. AND, IN FACT, IN MY CAREER

4 I WANT YOU TO KNOW THIS IS ONLY THE SECOND TIME I HAVE

5 EVER HAD A PENALTY TRIAL. I'M A MURDER LAWYER AND

6 THAT'S WHAT I DO. AND THE LAST ONE WAS IN 1981. SO I
7 AM NOT PARTICULARLY EXPERT IN EVEN ARGUING THIS.
8 JUST TO SHOW YOU WHAT A TOTAL IDIOT I AM
9 TODAY, WHICH IS SORT OF THE MENTAL STATE I HAVE BEEN IN
10 THE PAST WEEK, I WROTE AN OUTLINE OF WHAT I WAS GOING TO
11 SAY TO YOU. I WROTE AN OUTLINE THIS MORNING AT 5:30,
12 AND I LEFT IT IN MY OFFICE AT 8:00.

13 AND I DON'T CARE HOW SLICK AND FAST-TALKING
14 AND HOW EXPERT A LAWYER YOU ARE, THIS IS NOT A LAWYER'S
15 TASK. IN SOME SENSE, THIS IS GOD'S TASK, AND GOD ISN'T
16 HERE TO DECIDE IT FOR US.

17 I DON'T KNOW WHAT IS GOING ON IN LAW SCHOOL
18 THESE DAYS, BUT WHEN I WAS THERE THEY DIDN'T TEACH DEATH
19 PENALTY 101. THEY DIDN'T TEACH US HOW TO TALK TO JURORS
20 IN COURTROOMS, IN ANY CASE.

21 SO THERE ISN'T ANY TRAINING. THIS ISN'T
22 LIKE BRAIN SURGERY, WHERE LIFE AND DEATH IS SOMETHING
23 YOU'RE TAUGHT. THERE'S NO MECHANICAL, TECHNICAL WAY TO
24 DO IT. FRANKLY, WHEN WE GET TO THE CLOSING PART OF THIS
25 ARGUMENT, WHAT WE TELL OURSELVES, DEFENSE LAWYERS, ABOUT
26 HOW TO DO THIS, IS SPEAK FROM YOUR HEART.

27 AND AS I HAVE BEEN AGONIZING THIS WHOLE
28 WEEK OVER WHAT AM I SUPPOSED TO SAY TO THESE PEOPLE WHO

1 HAVE BASICALLY REJECTED EVERYTHING I HAVE SAID TO THEM

2 THUS FAR, AND PROBABLY DON'T LIKE ME VERY MUCH, AND HAVE
3 REJECTED VIRTUALLY EVERYTHING MY CLIENT HAS SAID TO
4 THEM, AND PROBABLY DON'T LIKE HIM VERY MUCH, WHAT DO I
5 SAY TO CONVINCE THEM NOT TO KILL HIM? AND PEOPLE SAY TO
6 ME: "WELL, JUST SPEAK FROM YOUR HEART."

7 I THINK MY HEART, FRANKLY, IS TOO FULL OF
8 ERIK MENENDEZ. I HAVE BEEN HIS LAWYER FOR SIX YEARS. I
9 CARE ABOUT HIM. I MAKE NO BONES ABOUT IT. AND IF I
10 JUST LET MY HEART SPEAK, I THINK I WOULDN'T TALK VERY
11 EFFECTIVELY. AND IN THIS PART I AM VERY GLAD THAT TODAY
12 IT'S ONLY BEEN A WEEK SINCE THE VERDICT, AND I AM
13 RECOVERING FROM IT. MAYBE I AM COMPLETELY UNREALISTIC,
14 AND PERHAPS I SHOULDN'T HAVE BEEN AS UPSET AS I AM ABOUT
15 IT --

16 THE COURT: PERHAPS WE COULD GET INTO THE OPENING
17 STATEMENT, BECAUSE WE WILL GET TO THE ARGUMENT PHASE,
18 WHICH IS AT THE END OF THE TRIAL.

19 BUT RIGHT NOW, LET'S CONFINE OURSELVES TO
20 WHAT YOU EXPECT THE EVIDENCE TO BE IN THIS PHASE OF THE
21 TRIAL.

22 MS. ABRAMSON: BEYOND THAT, I WOULD LIKE YOU TO
23 UNDERSTAND PROCEDURALLY WHAT WE ARE DOING IN A PENALTY
24 TRIAL. WE ARE NOT JUST PULLING OUT ANY KIND OR ANY
25 PIECE OF SYMPATHETIC OR POTENTIALLY SYMPATHETIC
26 INFORMATION FROM A PERSON'S PAST AND SLAPPING IT UP ON A
27 CHART AT SOME POINT, AND SAYING: "HERE. FEEL SORRY FOR
28 HIM." THAT'S NOT WHAT WE'RE DOING.

1 WHAT WE'RE DOING IS WE'RE FOLLOWING WHAT
2 THE LAW IN THIS STATE INDICATES ARE THOSE CIRCUMSTANCES,
3 AND ONLY THOSE CIRCUMSTANCES, WHEN A JURY EVER COULD
4 TAKE ANOTHER CITIZEN'S LIFE. AND WHAT OUR TASK IS, IS
5 TO SHOW YOU THAT IN THIS CASE, BASED ON THE FACTS AND
6 CIRCUMSTANCES OF EVERYTHING YOU'RE ALLOWED TO
7 CONSIDER -- IN FACT, EVERYTHING THAT YOU MUST
8 CONSIDER -- THIS IS NOT A CASE WHERE THE INTERESTS OF
9 SOCIETY OR THE INTERESTS OF ANYONE HARMED BY THIS CRIME,
10 OR THE INTERESTS OF YOUR OWN CONSCIENCE, YOUR OWN
11 CONSCIENCE, WOULD BE SERVED BY IMPOSING A DEATH VERDICT.

12 AND YOUR CONSCIENCE IS CRUCIAL. WE DON'T
13 HAVE THESE THINGS DECIDED BY COMPUTERS. WE HAVE THEM
14 DECIDED BY PEOPLE. THE LAW TELLS YOU THESE ARE --

15 THE COURT: LET'S GET ON TO THE OPENING --

16 MS. ABRAMSON: YOUR HONOR, COULD I BE HEARD?

17 THE COURT: NO. NO. WE HAVE TO GET TO THE
18 PURPOSE OF THE OPENING STATEMENT.

19 MS. ABRAMSON: I AM ONLY GOING OVER THE SAME --

20 THE COURT: THE LAW COMES FROM THE COURT AT THE
21 END, AND COUNSEL CAN REFER TO IT. WE'VE HAD ENOUGH
22 REFERENCE TO MATTERS OUTSIDE OF THE PURPOSE OF THE
23 OPENING STATEMENT.

24 I WANT YOU TO GET TO WHAT YOU EXPECT THE
25 EVIDENCE TO BE, PLEASE.

26 MS. ABRAMSON: WELL, YOUR HONOR, I AM TRYING TO

27 TALK ABOUT THE FACTORS AND WHAT THE JURY'S ROLE WITH THE
28 FACTORS ARE, AS MR. GESSLER DID.

-12916

1 THE COURT: ACTUALLY, AT THIS POINT YOU'VE GONE
2 WELL BEYOND THAT TO ALL SORTS OF EXTRANEIOUS MATTERS.

3 SO LET'S CONFINE IT TO WHAT YOU EXPECT THE
4 EVIDENCE TO BE.

5 MS. ABRAMSON: I WOULD LIKE TO BE HEARD IN THE
6 BACK, YOUR HONOR.

7 THE COURT: NO, NOT AT THIS POINT.

8 MS. ABRAMSON: I AM ASKING TO BE HEARD AT THIS
9 TIME.

10 THE COURT: YOU EITHER MAKE YOUR OPENING
11 STATEMENT IN CONFORMITY WITH MY DIRECTION, OR YOU DON'T

12 MS. ABRAMSON: CAN I HAVE A MOMENT?

13 (ATTORNEYS ABRAMSON AND GESSLER
14 CONFER SOTTO VOCE.)

15

16 MS. ABRAMSON: THANK YOU, YOUR HONOR.

17 ONE OF THE THINGS THAT YOU WILL BE TOLD AT
18 THE END, AND THAT WE WILL HIGHLIGHT AGAIN THROUGH THIS
19 STAGE OF THE CASE, ARE FACTS THAT HAVE ALREADY BEEN
20 PRESENTED IN THE PREVIOUS PHASE OF THE TRIAL THAT ARE
21 LISTED AS FACTORS TO BE CONSIDERED IN THE PENALTY
22 DECISION.

23 AS YOU HEARD IN THE PREVIOUS PART OF THE
24 TRIAL, MY CLIENT HAS BEEN DIAGNOSED WITH A MENTAL
25 DISORDER -- IN FACT, WITH TWO DIFFERENT ONES; ONE BY THE
26 PROSECUTION PSYCHIATRIST, ONE BY THE DEFENSE
27 PSYCHOLOGIST.

28 UNDER THE LAW, THE FACT THAT HE SUFFERED AT

-12915

1 THE TIME OF THE OFFENSE FROM A MENTAL DISORDER IS A
2 FACTOR IN MITIGATION THAT YOU CAN CONSIDER, AND YOU CAN
3 CONSIDER THAT ENOUGH IN YOUR OPINION TO JUSTIFY NOT
4 IMPOSING THE DEATH PENALTY.

5 AS MR. GESSLER INDICATED TO YOU, ALTHOUGH
6 YOU WILL BE TOLD WHAT THE FACTORS ARE, HOW YOU WEIGHT
7 THE FACTORS AND EACH INDIVIDUAL PIECE OF INFORMATION
8 ADMITTED UNDER THESE FACTORS OR CATEGORIES IS ENTIRELY
9 UP TO YOU.

10 BUT ONE OF THEM IS THE FACT THAT HE
11 SUFFERED FROM A MENTAL DISORDER. AND THERE IS NO
12 DISPUTE IN THIS CASE THAT HE DID, INDEED, SUFFER FROM A
13 MENTAL DISORDER, ALTHOUGH THERE MAY BE SOME DISPUTE OVER
14 WHICH ONE.

15 YOU WILL BE HEARING ADDITIONAL TESTIMONY
16 ABOUT THAT FROM SOMEONE YOU HAVE SEEN BEFORE, BUT HAVE
17 NOT HEARD ON THIS TOPIC BEFORE, AND THAT IS DR. WILLIAM
18 VICARY.

19 YOU ALSO WILL BE HEARING TESTIMONY ON
20 BEHALF OF ERIK MENENDEZ FROM SOMEONE -- IN FACT, YOU'RE
21 GOING TO BE HEARING TESTIMONY FROM A NUMBER OF PEOPLE
22 WHO YOU HAVE HEARD ABOUT, BUT HAVE NOT YET SEEN -- AND
23 ONE OF THOSE PEOPLE IS ANOTHER EXPERT WITNESS NAMED
24 DR. STUART HART. AND I BELIEVE YOU HEARD THAT
25 DR. STUART HART IS A LEADING EXPERT IN WHAT'S CALLED
26 "PSYCHOLOGICAL MALTREATMENT".

27 NOW, HE IS GOING TO TESTIFY ABOUT THINGS IN
28 ERIK MENENDEZ' LIFE THAT CONSTITUTED PSYCHOLOGICAL

-12914

1 MALTREATMENT. WHY? NOT -- AS MR. GESSLER HAS TOLD YOU
2 AND AS I WILL AFFIRM AS WELL -- NOT IN ORDER TO PORTRAY
3 MR. AND MRS. MENENDEZ AS BAD PEOPLE. THE POINT IS TO
4 SHOW THAT, CONTRARY TO THE WAY UNTHINKING AND UNFEELING
5 PEOPLE MAY CHOOSE TO CHARACTERIZE MY CLIENT, HE WAS NOT
6 A SPOILED, RICH KID. HE MAY HAVE BEEN RICH, BUT HE WAS
7 ANYTHING BUT SPOILED.

8 AND WHAT DR. HART WILL TESTIFY TO IS HOW A
9 CHILD WHO IS PSYCHOLOGICALLY MALTREATED SUFFERS. IT IS
10 PAIN INDUCING; EMOTIONAL PAIN, PSYCHOLOGICAL PAIN. IT
11 MAKES FOR A VERY UNHAPPY AND UNPLEASANT LIFE.

12 SO THAT WHEN YOU GET TO THE POINT WHERE
13 YOU'RE GOING TO DECIDE WHETHER OR NOT TO TAKE THAT LIFE,
14 YOU'RE GOING TO WANT TO KNOW IN YOUR OWN MINDS WHETHER

15 THIS IS SOMEONE WHO -- AS THE HEADLINES MIGHT WANT TO
16 SAY -- HAD EVERYTHING. OR YOU MAY WANT TO DECIDE THAT
17 MATERIAL THINGS ARE NOT EVERYTHING.

18 IN FACT, AS I AM SURE MOST OF YOU KNOW IN
19 YOUR OWN LIVES, THEY REALLY AREN'T ANYTHING. WHAT A
20 CHILD NEEDS IS VALUES, NURTURANCE, SUPPORT, LOVE,
21 RESPECT FOR WHO HE IS. HE NEEDS TO BE ACCEPTED BY THE
22 PEOPLE AROUND HIM WHO HE LOOKS TO FOR ALL OF THOSE
23 THINGS. HE NEEDS TO BE VALUED FOR WHO HE IS.

24 AND IF HE ISN'T, IT'S NOT JUST THAT IT MAY
25 TURN HIM INTO SOMEONE WHO BEHAVES IN EXTREME WAYS UNDER
26 CRISIS, IT'S THAT THROUGH THAT WHOLE PERIOD OF HIS
27 CHILDHOOD HE IS UNHAPPY, HE IS IN PAIN, AND HE IS
28 SUFFERING. HE IS BEING PUNISHED.

-12913

1 YOUR TASK IN A PENALTY TRIAL IS TO DECIDE
2 HOW MUCH TO PUNISH. YOU ALL KNOW THAT RIGHT NOW, IF
3 THIS WHOLE PROCEEDING ENDED TODAY, AND THE JUDGE WERE TO
4 SENTENCE ERIK MENENDEZ, HIS SENTENCE WOULD BE LIFE IN
5 PRISON WITHOUT THE POSSIBILITY OF PAROLE. THAT IS WHAT
6 WAS DECIDED BY YOUR PREVIOUS VERDICT. THAT'S IT. IT
7 DOESN'T GO ANY LOWER THAN THAT. THAT'S WHERE WE ARE.

8 THE ONLY QUESTION TO BE DETERMINED IN THIS
9 PENALTY TRIAL IS WHETHER IT IS NECESSARY TO DO WORSE;
10 WHETHER IT IS NECESSARY, FOR WHATEVER THE LEGITIMATE

11 REASONS ARE FOR THE DEATH PENALTY, AND I WILL TALK ABOUT
12 THOSE AT THE END, TO IMPOSE THE DEATH PENALTY.

13 MR. CONN: I WILL OBJECT AS A MISSTATEMENT OF THE
14 LAW, YOUR HONOR.

15 THE COURT: I'M SORRY?

16 MR. CONN: I WILL OBJECT AS THAT BEING A
17 MISSTATEMENT OF THE LAW.

18 THE COURT: OKAY. ALL COMMENTS BY THE LAWYERS ON
19 THE LAW AND THE FACTORS IN AGGRAVATION AND MITIGATION,
20 AND THE PROCEDURES BY WHICH THE JURY REACHES ITS
21 DECISION, ALL OF THOSE THINGS WILL BE COVERED, FIRST OF
22 ALL, BY THE COURT'S INSTRUCTIONS AT THE END OF THE
23 PENALTY PHASE. I WILL GIVE YOU INSTRUCTIONS ON THE LAW,
24 AND THEN AT THAT POINT THE LAWYERS WILL COMMENT ON HOW
25 THEY FEEL THE EVIDENCE FITS IN WITH THE LAW. AND THAT'S
26 CALLED ARGUMENT AT THE END OF THE CASE.

27 AT THIS POINT THE LAWYERS ARE GIVING YOU A
28 PREVIEW OF WHAT THEY EXPECT THE EVIDENCE TO BE, THE

-12912

1 TESTIMONY OF WITNESSES, AND WHAT THE EVIDENCE WILL BE
2 DURING THIS PHASE OF THE TRIAL. AND THE PHASE OF THE
3 CASE AT THE END OF THE PENALTY PHASE -- THE PART OF THE
4 TRIAL AT THE END IS ARGUMENT, WHERE THE LAWYERS CAN
5 ARGUE THE CASE TO THE JURY.

6 BUT AS FAR AS THE LAW, I WILL TELL YOU WHAT

7 THE LAW IS, AND IF THE LAWYERS SAY IT DIFFERENTLY THAN I
8 TELL YOU, THEN OBVIOUSLY YOU'RE GOING TO BE OBLIGATED TO
9 FOLLOW THE LAW AS I TELL YOU AND ADVISE YOU IN THIS
10 CASE.

11 SO LET'S AGAIN CONTINUE WITH OPENING
12 STATEMENT, NOT ARGUMENT, AND RELATED TO WHAT THE
13 EVIDENCE WILL BE THAT IS GOING TO BE PRESENTED HERE,
14 PLEASE.

15 MS. ABRAMSON: NOW, WE'RE GOING TO BE CALLING A
16 NUMBER OF WITNESSES WHO YOU HEARD ABOUT, EITHER BY
17 CATEGORY OR BY NAME, PARTICULARLY DURING THE TESTIMONY
18 OF DR. WILSON.

19 YOU MAY RECALL THAT DR. WILSON -- AND YOU
20 CAN CONSIDER THE TESTIMONY OF DR. WILSON FROM THE FIRST
21 PART OF THE CASE IN REACHING YOUR DECISION IN THIS PART
22 OF THE CASE, AS THE JUDGE WILL INSTRUCT YOU.

23 AND YOU MAY RECALL, HE TESTIFIED ABOUT AN
24 ENVIRONMENT NOT IN WHICH SPECIFIC ACTS WERE DONE, BUT A
25 PERVASIVE ENVIRONMENT IN THIS FAMILY THAT LED TO THE
26 DEVELOPMENT ON ERIK MENENDEZ' PART OF THIS MENTAL
27 DISORDER.

28 AND SOME OF THE PEOPLE HE TALKED ABOUT, FOR

-12911

1 EXAMPLE, WERE TEACHERS THAT SAW THE SYMPTOMS -- YOU MAY
2 RECALL THERE WAS A LOT OF TESTIMONY, BOTH BY DR. WILSON,

3 AND THEN THERE WAS SOME TESTIMONY BY DR. DIETZ ABOUT THE
4 UNCONTROVERTED FACT THAT THERE WERE SYMPTOMS THAT ERIK
5 MENENDEZ SUFFERED FROM AN ANXIETY DISORDER BEFORE THE
6 TIME OF THE HOMICIDES. AND THE SOURCE OF THAT
7 INFORMATION WAS NOT ERIK MENENDEZ, BUT OTHER PEOPLE WHO
8 SAW HIM. AND PROMINENT AMONG THOSE OTHER PEOPLE WERE
9 CERTAINLY TEACHERS.

10 AND ONE OF THOSE WE EXPECT WILL TESTIFY --
11 I EXPECT MORE THAN ONE -- BUT THE FIRST ONE WILL BE
12 TESTIFYING PROBABLY TOMORROW, AND HER NAME IS SANDRA
13 SHARP, AND SHE WAS A SPANISH TEACHER. YOU MAY HAVE
14 HEARD REFERENCE TO THAT. I AM NOT GOING INTO DETAIL,
15 BECAUSE WE ARE TALKING ABOUT SOMETHING LIKE TWO WEEKS OF
16 TESTIMONY, AND I AM NOT GOING TO DETAIL EVERYTHING THAT
17 ALL THE WITNESSES ARE GOING TO TESTIFY TO, BUT I AM
18 GOING TO TELL YOU WHAT THE CATEGORIES ARE.

19 ONE OF THE CATEGORIES, A PART OF THE MENTAL
20 DISORDER CATEGORY THAT'S VERY IMPORTANT FOR YOU, AND I
21 THINK IT'S WHAT YOU WOULD WANT TO KNOW ANYWAY, IS WHO
22 WAS ERIK MENENDEZ AT THE TIME THAT THESE OFFENSES
23 OCCURRED.

24 NOW, YOU MAY BELIEVE, BECAUSE YOU SAW HIM
25 ON THE WITNESS STAND FOR A LONG TIME, THAT YOU KNOW WHO
26 HE IS, AND I WOULD ONLY SAY TO YOU THAT THAT IS A VERY
27 ARTIFICIAL WAY TO TRY GET TO INFORMATION ABOUT A PERSON,
28 AND ESPECIALLY WHEN THAT PERSON HAS SO MUCH FACTUAL

1 INFORMATION THEY HAVE TO RELAY TO YOU.

2 BUT WE WILL PUT ON WITNESSES; TEACHERS,
3 COACHES, FAMILY MEMBERS, HIS HIGH SCHOOL SWEETHEART, HER
4 FATHER, FRIENDS OF HIS. ALTHOUGH HE HAD VERY FEW
5 FRIENDS BACK IN PRINCETON, HE HAD TWO, AND WE ARE GOING
6 TO BE CALLING BOTH OF THEM.

7 ONE OF THEM IS NOW IN THE MARINE CORPS, AND
8 HE WILL BE COMING TO TESTIFY. AND ANOTHER ONE IS A
9 YOUNG MAN WHO IS NOW IN A WALL STREET INVESTMENT HOUSE
10 NAMED CHRIS SEMROD, AND HE WILL COME AND TESTIFY.

11 AND FROM ALL OF THESE PEOPLE YOU WILL GET A
12 SENSE OF THE ISOLATION AND THE LONELINESS AND THE
13 UNHAPPINESS AND THE SELF-LOATHING, IF YOU WILL, THAT
14 ERIK MENENDEZ SUFFERED FROM UP UNTIL THE TIME, THROUGH
15 THE TIME OF THESE EVENTS, SO THAT WE CAN DISABUSE, IF
16 EVER ANY OF YOU CHOSE TO BELIEVE, OR WERE TENDING TO
17 BELIEVE THE NOTION THAT HE IS A SPOILED RICH KID. THIS
18 COULDN'T HAPPEN BECAUSE OF SPOILING.

19 AND THEN WE'RE GOING TO PRESENT WITNESSES
20 WHO ARE GOING TO TRY TO DESCRIBE FOR YOU, BASED ON THEIR
21 VERY INTIMATE RELATIONSHIP WITH ERIK MENENDEZ, WHO HE IS
22 NOW, RIGHT NOW, SIX YEARS LATER. SIX YEARS IN CUSTODY.

23 AND DURING THOSE SIX YEARS, HE HAS NOT BEEN
24 IDLE IN HIS HUMAN DEVELOPMENT, AS WELL AS HIS
25 INTELLECTUAL DEVELOPMENT. AND THERE ARE TWO PEOPLE WHO
26 HAVE TRACKED THAT DEVELOPMENT, WHO HAVE SEEN THE CHANGE,
27 WHO UNDERSTAND THAT EVEN NOW -- EVEN AFTER DOING THIS

-12909

1 POTENTIAL TO BE A MEANINGFUL, CONTRIBUTING MEMBER OF
2 SOCIETY, ALTHOUGH THE ONLY SOCIETY HE WILL EVER KNOW IS
3 WITHIN THE WALLS OF A PRISON.

4 AND THOSE TWO PEOPLE ARE AGAIN, DR. VICARY,
5 WHO, AS YOU KNOW, SPENT AN ENORMOUS AMOUNT OF TIME WITH
6 HIM OVER THIS TIME, AND WILL DESCRIBE FOR YOU THE MENTAL
7 AND PSYCHIATRIC CHANGES THAT HAVE OCCURRED IN ERIK
8 MENENDEZ SINCE JUNE OF 1990 WHEN HE STARTED SEEING HIM.

9 AND THE OTHER IS SOMEONE YOU HAVE ONLY SEEN
10 IN THE COURTROOM, BUT HAVE NOT HEARD FROM, AND THAT IS
11 FATHER KENNETH DEASY, WHO IS A ROMAN CATHOLIC PRIEST,
12 WHO KNEW ERIK MENENDEZ BEFORE THIS HAPPENED, WHO KNEW
13 THE FAMILY BRIEFLY. HE WILL TESTIFY THAT AFTER ERIK
14 MENENDEZ WAS ARRESTED, HE REACHED OUT TO FATHER DEASY,
15 WHO STARTED VISITING HIM AND WHO HAS VISITED HIM
16 REGULARLY, WHO IS HIS CONFESSOR, AS WELL AS SOMEONE HE
17 SPEAKS TO OUTSIDE OF CONFESSION.

18 AND HE WILL TESTIFY ABOUT MATTERS, ABOUT
19 OPINIONS HE HAS FORMED AND MATTERS THAT THEY HAVE
20 DISCUSSED OUTSIDE OF CONFESSION, SINCE THAT IS ALL HE IS
21 ALLOWED TO TALK ABOUT, AND HE WILL GIVE YOU HIS
22 IMPRESSION OF THE SPIRITUAL AND RELIGIOUS JOURNEY ERIK
23 MENENDEZ HAS EMBARKED ON, ON HIS OWN INITIATIVE, SINCE

24 HE HAS BEEN INCARCERATED.

25 SO WHO HE WAS THEN AND WHO HE IS NOW, WE'RE
26 GOING TO TRY TO GIVE YOU AS MUCH AS ONE CAN GIVE IN A
27 COURT OF LAW, WHICH IS A RATHER ARTIFICIAL WAY TO
28 PRESENT INFORMATION ABOUT PEOPLE. BUT WE'LL DO THE BEST

-12908

1 WE CAN, WITHIN THE RULES.

2 THE OTHER THING THAT WE'RE GOING TO BE
3 PRESENTING EVIDENCE ABOUT, THROUGH A VARIETY OF
4 WITNESSES, IS SOMETHING THAT YOU HAVE RECEIVED
5 INFORMATION ABOUT. IF FOR ANY REASON YOU DIDN'T BELIEVE
6 THIS PART OF THE EVIDENCE, I AM HOPING TO BOLSTER MY
7 CLIENT'S CREDIBILITY ABOUT THIS AREA, WHICH IS REMORSE;
8 THE FACT THAT HE HAS FELT BADLY ABOUT WHAT WAS DONE, AND
9 WORSE THAN BADLY, FROM THE MOMENT IT WAS DONE UNTIL THIS
10 DAY.

11 AND REMORSE IS SIGNIFICANT, BECAUSE REMORSE
12 TELLS YOU WHETHER SOMEONE IS SO WITHOUT REDEEMING VIRTUE
13 AS TO BE DESTROYED, OR WHETHER THEY SHOULD BE ALLOWED TO
14 LIVE TO MAKE THEIR PEACE WITH GOD FOR WHAT THEY'VE DONE.

15 AND YOU HAVE HEARD SOME REMORSE EVIDENCE,
16 AND YOU WILL HEAR MORE FROM PEOPLE TO WHOM HE WAS
17 SPEAKING WHEN HE HAD NO WAY OF HIS EVER THINKING IT WAS
18 GOING TO WIND UP IN A COURTROOM, OR BE TESTIFIED ABOUT.

19 YOU ALREADY KNOW, AND YOU CAN CONSIDER FROM

20 THE FIRST PART OF THE CASE, THAT IT WAS HIS CONFESSING
21 TO DR. OZIEL BECAUSE OF THE WEIGHT ON HIS CONSCIENCE AND
22 HOW BADLY HE FELT THAT GOT US HERE. WITHOUT ERIK
23 MENENDEZ' CONSCIENCE, HE WOULDN'T BE ON TRIAL IN THIS
24 CASE, BECAUSE IT WAS THE CONFESSION TO DR. OZIEL THAT
25 LED, AS DETECTIVE ZOELLER TESTIFIED, TO HIS BEING
26 ARRESTED. AND ALTHOUGH I DO NOT KNOW WHAT YOU BASED
27 YOUR VERDICT ON, IF THE TAPE-RECORDING OF 12-11 WAS PART
28 OF IT; THAT, TOO, WAS A RESULT OF ERIK MENENDEZ'

-12907

1 CONSCIENCE.

2 AND WHAT YOU ALSO KNOW FROM THE FIRST PART
3 OF THE CASE IS THAT HE VOLUNTARILY SURRENDERED AND CAME
4 BACK TO FACE THE MUSIC, AND THAT IS SOMETHING THAT YOU
5 CAN ALSO CONSIDER IN DECIDING IS THIS SOMEONE SO BAD, SO
6 UNWORTHY OF ANY KIND OF MERCY, THAT HE MUST BE
7 DESTROYED?

8 YOU CAN ALSO CONSIDER FROM THAT FIRST TRIAL
9 THE TESTIMONY OF ALAN ANDERSEN. NOW, ALAN ANDERSEN WILL
10 BE TESTIFYING AGAIN BRIEFLY ABOUT SOME MATTERS THAT,
11 BASED ON THE RULES, WE WERE NOT PERMITTED TO GET INTO
12 DURING THE GUILT PHASE, BUT THAT YOU WILL HEAR NOW, AS
13 SIMPLY EXPANDING AND PAINTING IN PERHAPS MORE VIVID
14 COLORS THE PICTURE OF WHAT ERIK MENENDEZ' HOME LIFE WAS
15 LIKE.

16 YOU CAN ALSO CONSIDER THE TESTIMONY THAT
17 YOU HAVE ALREADY HEARD ABOUT FROM DIANE VANDERMOLLEN, AND
18 HOW EMOTIONALLY DESTRUCTIVE THE ENVIRONMENT IN THE HOME
19 COULD BE FOR HER, EVEN THOUGH SHE WAS AN ADULT AND WAS
20 MORE CAPABLE OF DEALING WITH WHAT -- THE WAY IN WHICH,
21 FOR REASONS ONLY GOD CAN KNOW -- JOSE MENENDEZ AND MARY
22 LOUISE MENENDEZ CHOSE TO TREAT YOUNGER PEOPLE,
23 PARTICULARLY THEIR OWN CHILDREN AND THEIR NEPHEWS AND
24 NIECES. AND YOU CAN CONSIDER THAT TESTIMONY.

25 NOW, MR. GESSLER MENTIONED THAT ONE OF THE
26 FACTORS THAT YOU COULD CONSIDER -- IN FACT, THE
27 PROSECUTION, AS MR. CONN HAS INDICATED, HAS NO
28 INDEPENDENT EVIDENCE OF AGGRAVATION IN THIS CASE

-12906

1 WHATSOEVER.

2 THOSE ARE SUCH THINGS AS PRIOR VIOLENT
3 CONDUCT. YOU WILL NEVER HEAR ANY EVIDENCE ABOUT THAT.
4 THERE IS NONE.

5 IT HAS TO DO WITH CONVICTIONS OF -- AS AN
6 ADULT OF A FELONY. THERE IS NO SUCH EVIDENCE. YOU WILL
7 NEVER HEAR IT.

8 THE ONLY POSSIBLE AGGRAVATING EVIDENCE
9 UNDER THIS LISTING OF FACTORS THAT THE JUDGE WILL GIVE
10 YOU IN THE END ARE FEATURES OF THE CRIME ITSELF AND THE
11 CIRCUMSTANCES AROUND IT THAT YOU WOULD CONSIDER

12 AGGRAVATING, AND THE ACTUAL SPECIAL CIRCUMSTANCES.

13 BUT AS IN EVERY CASE, THE NATURE OF THE
14 CRIME, THE NATURE OF THE PARTICIPANTS, THE NATURE OF THE
15 VICTIMS, THE NATURE OF THE PERPETRATORS CAN BE BOTH
16 AGGRAVATING IN ONE PART AND MITIGATING IN THE OTHER, SO
17 THAT FACTS AND CIRCUMSTANCES OF THE CRIME IS SORT OF A
18 NEUTRAL THING, THAT CAN GO EITHER WAY.

19 I DON'T DOUBT THAT YOU CONSIDER THIS A VERY
20 HEINOUS CRIME. ALL KILLING IS. THERE ARE PEOPLE -- AND
21 I AM SURE THERE ARE PEOPLE AMONG YOU WHO THINK THE
22 KILLING OF A PARENT IS THE WORST THING. THERE ARE
23 OTHERS WHO MAY THINK THE KILLING OF A CHILD IS THE WORST
24 THING. THERE ARE OTHERS WHO MAY THINK ALL KILLINGS ARE
25 BAD.

26 BUT WHEN YOU ARE ASSESSING WHETHER OR NOT
27 SOMEONE SHOULD GET THE DEATH PENALTY, I THINK YOU HAVE
28 TO AT LEAST BE WILLING TO RECOGNIZE CAUSATION.

-12905

1 MR. GESSLER SAID THAT WE ARE NOT BRINGING
2 OUT INFORMATION ABOUT MR. AND MRS. MENENDEZ OF -- LET'S
3 SAY A LESS THAN LAUDATORY NATURE IN ORDER TO BASH THEM,
4 AND THAT'S TRUE. WE ARE NOT DOING IT FOR THAT PURPOSE.

5 BUT WE ARE DOING IT TO TRY TO HELP YOU COME
6 TO TERMS WITH WHAT WE BELIEVE ALL JURORS ASK THEMSELVES
7 IN THESE CASES: DID THIS HAVE TO HAPPEN? WHY DID THIS

8 HAPPEN? WHAT CAUSED THIS TO HAPPEN?

9 I AM FAIRLY CONFIDENT IN MIND-READING AND
10 SAYING YOU CLEARLY DID NOT BELIEVE WHAT ERIK MENENDEZ
11 TOLD YOU WAS THE REASONS. AND I DON'T KNOW WHETHER YOU
12 BELIEVED ANYTHING HE TOLD YOU. AND SO IF YOU DID AND I
13 DON'T KNOW, AND I AM GOING BACK OVER OLD GROUND, YOU
14 WILL FORGIVE ME FOR WASTING TIME.

15 BUT IF YOU DIDN'T, I STILL WANT TO GIVE YOU
16 ENOUGH INFORMATION, INDEPENDENT OF HIM, SO YOU HAVE SOME
17 UNDERSTANDING THAT PARRICIDES DON'T HAPPEN IN NORMAL,
18 HEALTHY, LOVING FAMILIES. AND THAT IS THE REASON, SO
19 THAT YOU WILL UNDERSTAND AT LEAST CAUSATION, IF NOT
20 BLAME. BLAME GETS US NOWHERE AT THIS POINT. BUT YOU
21 WILL UNDERSTAND CAUSATION, SO THAT YOU CAN MAKE A
22 DECISION WHERE YOU CANNOT SAY -- AND I BELIEVE THIS IS
23 PRECISELY WHERE YOU WILL BE, AND THIS IS MY LAST
24 SENTENCE, YOUR HONOR -- WHERE YOU WILL NOT BE ABLE TO
25 SAY AT THE END OF THE DAY, WHEN YOU HAVE HEARD
26 EVERYTHING, THAT ERIK MENENDEZ WAS SOLELY RESPONSIBLE
27 FOR MAKING A DECISION TO DO AN ATROCIOUS THING SUCH AS
28 KILL HIS PARENTS.

-12904

1 WHERE I THINK YOU WILL BE IS THIS IS AN
2 AWFUL WASTE AND TRAGEDY OF FOUR PEOPLE. FOUR LIVES ALL
3 ARE OVER. AND THEY WERE FOUR LIVES OF PROMISE, OF

4 TALENTS, OF POSITIVE AND NEGATIVE ATTRIBUTES. FOUR
5 LIVES THAT COULD HAVE BEEN SUCCESSFUL IN A WAY THAT WE
6 COULD ALL AGREE IS SUCCESSFUL. AND THAT DOESN'T MEAN
7 MONEY TO ME. IT MEANS PEOPLE WHO HAVE ACCOMPLISHED
8 GOOD, HUMAN THINGS WITH THEIR LIVES, FOUR OF THEM, AND
9 ALL FOUR OF THOSE LIVES ARE OVER.

10 AND AT THE END OF THE DAY, I THINK -- I
11 PRAY THAT YOU WILL FEEL THERE HAS BEEN ENOUGH GRIEF TO
12 THE FAMILIES MENENDEZ AND ANDERSEN, AND NO MORE IS
13 NECESSARY.

14 THANK YOU.

15 THE COURT: OKAY. THAT COMPLETES THE OPENING
16 STATEMENTS, AND WE'LL BEGIN WITH TESTIMONY.

17 YOU MAY CALL YOUR FIRST WITNESS.

18 MS. TOWERY: YOUR HONOR, THE DEFENSE CALLS
19 TERESITA BARALT.

20

21 TERESITA BARALT,
22 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
23 TESTIFIED AS FOLLOWS:

24 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
25 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
26 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
27 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

28 THE WITNESS: I DO.

1 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR
2 NAME FOR THE RECORD.

3 THE WITNESS: MY NAME IS TERESITA BARALT.
4 B-A-R-A-L-T.

5 THE COURT: IF YOU COULD MOVE A LITTLE CLOSER TO
6 THAT MIKE AND SPEAK RIGHT INTO IT.

7 THE WITNESS: OKAY.

8 THE COURT: MS. TOWERY.

9 MS. TOWERY: THANK YOU, YOUR HONOR.

10 MAY I APPROACH TO GET A CHART, PLEASE?

11 THE COURT: YES.

12

13 DIRECT EXAMINATION

14 BY MS. TOWERY:

15 Q. MRS. BARALT, CAN YOU SEE THE CHART WHERE
16 I'VE PUT IT? IT WAS HARD FOR ME TO POSITION IT.

17 A. SURE.

18 Q. I CAN'T REMEMBER IF YOU IDENTIFIED YOUR
19 FAMILY WHEN YOU TESTIFIED HERE EARLIER IN THE TRIAL, BUT
20 I WOULD ASK THAT YOU, ON THE CHART, SHOW WHERE YOU AND
21 YOUR FAMILY ARE.

22 A. THIS MY FAMILY, CARLOS AND I AND THE FOUR
23 GIRLS (POINTING).

24 Q. OKAY. AND YOU ARE THE OLDEST SISTER OF
25 JOSE MENENDEZ?

26 A. JOSE -- I AM FOUR YEARS OLDER THAN JOSE. I
27 WAS.

28 Q. AND YOUR SISTER, MARTA CANO?

1 A. IS IN THE MIDDLE.

2 Q. AND HOW OLD ARE YOUR FOUR DAUGHTERS,
3 MRS. BARALT?

4 A. SYLVIA IS 33, 32, 31 AND 25.

5 Q. SO WHEN YOU POINTED AT THE CHART, YOU SAID
6 ANAMARIE --

7 A. IS ERIK'S AGE.

8 Q. IS 25. SHE'S THE ONLY ONE THAT'S CLOSE IN
9 AGE TO YOUR NEPHEWS, ERIK AND LYLE MENENDEZ?

10 A. YES. ALICIA IS THREE YEARS OLDER THAN
11 LYLE.

12 Q. NOW, WHERE WERE YOU AND YOUR BROTHER AND
13 YOUR SISTER BORN?

14 A. WE WERE CUBANS, HAVANA.

15 Q. ALL THREE OF YOU WERE BORN IN HAVANA?

16 A. ALL THREE OF US. WE DIDN'T LEAVE CUBA
17 UNTIL AFTER THE REVOLUTION IN 1960. BY THEN WE WERE --
18 JOSE WAS 16 AND I WAS 20.

19 Q. IS THAT WHEN THE THREE OF YOU CAME TO THE
20 UNITED STATES, IN 1960?

21 A. WELL, JOSE CAME WITH CARLOS, MAINLY BECAUSE
22 THEY NEEDED TO GET HIM OUT OF THERE. HE WAS REACHING A
23 VERY DIFFICULT AGE, AND HE DID NOT AGREE WITH THE
24 GOVERNMENT.

25 SO HE CAME WITH CARLOS AND I FOLLOWED A

26 MONTH LATER. I WAS MARRIED HERE IN THIS COUNTRY.

27 Q. YOU MARRIED YOUR HUSBAND, CARLOS, HERE IN
28 THE UNITED STATES?

-12901

1 A. WE WERE ENGAGED WHEN WE LEFT, AND I WAS
2 MARRIED HERE.

3 Q. AND YOUR SISTER, MARTA, SHE ALSO CAME THAT
4 YEAR?

5 A. YES -- NO. MARTA LEFT, I BELIEVE, IN '61,
6 AND SHE WENT TO MIAMI.

7 Q. AND WHAT ABOUT YOUR MOTHER AND YOUR FATHER,
8 MARIA AND PEPIN MENENDEZ?

9 A. OKAY, YEAH. MOTHER CAME IN '61. IN AUGUST
10 '61 SHE CAME TO LIVE WITH ME. AND MY FATHER COULDN'T
11 LEAVE THE COUNTRY UNTIL THE FOLLOWING AUGUST OF '62.

12 Q. ALL RIGHT. ARE YOU SORT OF THE FAMILY
13 HISTORIAN, WOULD YOU DESCRIBE YOURSELF IN THAT WAY?

14 A. HISTORIAN?

15 Q. YES. ARE YOU THE ONE WHO REMEMBERS THE
16 DATES AND THE INCIDENTS AND IS ABLE TO KEEP THINGS
17 STRAIGHT?

18 A. IT'S NOT DONE ON PURPOSE. IT'S JUST THEY
19 JUST HAPPEN.

20 Q. IT'S JUST THE WAY YOU ARE?

21 A. THAT'S THE WAY I AM. I AM ONE FOR DETAILS.

22 PROBABLY I AM -- I DON'T HAVE THE OVERALL PICTURE, BUT

23 THE DETAILS, I AM PRETTY ACCURATE.

24 Q. OKAY.

25 YOU LIVED A GOOD PORTION OF YOUR ADULT LIFE

26 CLOSE TO JOSE MENENDEZ AND HIS WIFE, KITTY MENENDEZ; IS

27 THAT RIGHT?

28 A. YES.

-12900

1 Q. AND ALSO CLOSE TO THEIR SONS, LYLE AND ERIK

2 MENENDEZ; IS THAT RIGHT?

3 A. DEFINITELY, MM-HMM.

4 Q. HOW MANY YEARS DID YOU LIVE IN CLOSE

5 PROXIMITY TO THE MENENDEZ FAMILY HERE IN THE UNITED

6 STATES?

7 A. OKAY. DURING THE FIRST, I BELIEVE, 28

8 YEARS, WE LIVED EITHER ACROSS THE STREET, HALF A MILE

9 FOR 15 OF THEM. WHEN WE GOT MARRIED IN JUNE OF '61,

10 JOSE CAME TO LIVE WITH US TWO WEEKS LATER. HE SHOWED

11 UP: "HERE I AM." SO HE LIVED WITH US UNTIL JANUARY.

12 THEN HE WENT AWAY TO COLLEGE.

13 WHEN CARLOS FINISHED COLLEGE WE WENT TO

14 INDIANA, AND WE WERE THERE WHEN HE MARRIED KITTY, AND HE

15 THEN SUBSEQUENTLY WENT TO NEW YORK.

16 Q. OKAY. LET ME STOP YOU THERE, MRS. BARALT.

17 WE HAVE SOME PICTURES OF DIFFERENT

18 HOUSES --

19 A. MM-HMM.

20 Q. -- THAT THE MENENDEZ FAMILY LIVED IN, AND
21 THIS MIGHT HELP FOR DATES. I DON'T KNOW. SO LET ME
22 JUST --

23 A. OKAY.

24 Q. CAN YOU SEE THESE IF I PUT THEM HERE? LET
25 ME SEE IF I CAN MOVE IT BACK.

26 A. THAT'S ALL RIGHT.

27 Q. IS THAT ALL RIGHT?

28 A. YEAH, VERY MUCH SO.

-12899

1 EXCUSE ME. IS THIS OKAY IF I TALK OVER
2 HERE?

3 THE COURT: THE PROBLEM IS, WHEN YOU TURN AWAY
4 AND LOOK AT THOSE THINGS, YOU'RE NOT SPEAKING INTO THE
5 MIKE.

6 THE WITNESS: OKAY. THEN YOU'RE GOING TO HAVE MY
7 BACK.

8 THE COURT: THAT'S FINE.

9 THE WITNESS: OKAY.

10 Q. BY MS. TOWERY: MRS. BARALT, YOU SAID THAT
11 JOSE MENENDEZ AND KITTY MENENDEZ LIVED IN NEW YORK; IS
12 THAT RIGHT?

13 A. OKAY. WEXFORD TERRACE, WHEN THEY LIVED

14 THERE. THAT'S WHEN LYLE WAS BORN.

15 Q. AND WHAT YEAR WAS LYLE BORN, IF YOU KNOW?

16 A. LYLE WAS BORN IN '68. JANUARY 10 OF '68.

17 Q. ALL RIGHT.

18 A. THAT'S WHERE LYLE WAS BORN. AT THAT TIME

19 WE WERE IN INDIANA.

20 Q. YOU AND YOUR FAMILY LIVED IN INDIANA?

21 A. WE LIVED IN EVANSVILLE, INDIANA.

22 Q. ALL RIGHT.

23 A. OKAY. THEN CARLOS WAS TRANSFERRED --

24 CARLOS WAS TRANSFERRED TO NEW JERSEY, AND JOSE AND KITTY

25 CAME TO LIVE INTO THAT HOUSE IN CEDAR GROVE. WE MOVED

26 TO CEDAR GROVE, AND THEN BECAUSE WE WERE THERE, THEY

27 BOUGHT THAT HOUSE, AND THEY MOVED INTO THAT HOUSE.

28 Q. OKAY. AND WHEN YOU SAY "THAT HOUSE,"

-12898

1 YOU'RE REFERRING TO?

2 A. THE CEDAR GROVE, NEW JERSEY HOUSE. THE

3 SECOND ONE.

4 Q. THAT'S EXHIBIT 349-B?

5 A. AND THAT WAS HALF A MILE TO A MILE FROM US.

6 THAT WAS THE CLOSEST THEY COULD FIND TO WHERE WE WERE --

7 WE WERE LIVING.

8 Q. ALL RIGHT.

9 A. THEN JOSE WAS TRANSFERRED -- WELL, HE GOT A

10 JOB AS PRESIDENT OF LYON'S CONTAINER SERVICE, AND THEY
11 MOVED TO HINSDALE, ILLINOIS.

12 Q. AND THE HINSDALE HOUSE IS PICTURED AS C ON
13 EXHIBIT 349?

14 A. YES. THEY MOVED THERE TWO WEEKS AFTER ERIK
15 WAS BORN. ERIK WAS BORN NOVEMBER 27 OF 1970, SO THEY
16 MOVED IN TWO WEEKS LATER. I HAD MY YOUNGEST IN MARCH OF
17 '71, AND BY THAT SUMMER JOSE HAD OFFERED CARLOS A
18 POSITION, AND WE MOVED ACROSS THE STREET FROM THAT
19 HOUSE.

20 Q. AND WHEN YOU SAY "THAT HOUSE," YOU'RE
21 REFERRING TO THE HINSDALE HOUSE?

22 A. THE HINSDALE, ILLINOIS HOUSE.

23 Q. OKAY.

24 A. WE LIVED -- IN '72 HE LEFT FOR NEW YORK.
25 HE GOT A JOB WITH HERTZ CORPORATION IN NEW YORK.

26 Q. YOU'RE REFERRING TO YOUR BROTHER, JOSE?

27 A. I AM REFERRING TO MY BROTHER, JOSE. AND WE
28 STAYED IN ILLINOIS UNTIL 1977, AT WHICH TIME CARLOS WAS

-12897

1 TRANSFERRED AGAIN TO THE EAST COAST, AND WE MOVED INTO
2 THE PRINCETON AREA. WHEN THEY MOVED FROM HINSDALE TO
3 NEW YORK, THEY BOUGHT A HOUSE IN MONSEY.

4 Q. AND NOW YOU'RE REFERRING TO D OF EXHIBIT
5 349?

6 A. EXACTLY. AND THE CLOSEST PEOPLE TO THEM
7 THERE WERE FAITH AND PETER GOLDSMITH, AND YOU WILL HEAR
8 FROM THEM.

9 Q. WHEN YOU SAY "THE CLOSEST PEOPLE TO THEM
10 THERE," ARE YOU TALKING ABOUT FRIENDS OF JOSE AND KITTY
11 MENENDEZ?

12 A. FAITH WORKED WITH KITTY AS A TEACHER, AND
13 THEN LATER ON THEY LIVED WITHIN HALF A MILE OF EACH
14 OTHER, AND WE BECAME -- THEY WERE VERY CLOSE FRIENDS,
15 AND WE BECAME, AS AN EXTENSION OF THAT, CLOSE. BUT, YOU
16 KNOW, THEY WERE -- JOSE AND KITTY WERE THE LINK.

17 Q. OKAY. SO BEFORE THE TIME THAT THE MENENDEZ
18 FAMILY MOVED TO MONSEY, NEW YORK, YOU WERE PRETTY MUCH
19 CLOSE TO THEM IN CEDAR GROVE AND HINSDALE?

20 A. YES.

21 Q. IN PROXIMITY AND --

22 A. ACROSS THE STREET IN HINSDALE.

23 Q. RIGHT. AND WOULD YOU SAY THAT YOU WERE
24 BEST FRIENDS WITH YOUR BROTHER AND HIS WIFE?

25 A. WE LIVED CLOSE TO EACH OTHER BECAUSE WE
26 ENJOYED BEING TOGETHER. THIS WAS NOT -- IT'S FAMILY.
27 THIS WAS -- KITTY WAS MY BEST FRIEND.

28 Q. OKAY.

-12896

1 A. AND JOSE -- JOSE -- THERE WERE EIGHT YEARS

2 BETWEEN HIM AND CARLOS. AFTER A CERTAIN AGE THERE IS NO
3 YEARS, AND THERE WAS THAT LIKENESS AND THAT
4 COMPATIBILITY, YOU KNOW. WE ENJOYED BEING TOGETHER.

5 Q. OKAY.

6 A. AND THAT'S WHY WE LIVED -- THEY ALWAYS
7 MOVED. IF WE WERE HERE, THEY WOULD MOVE OVER.

8 Q. ALL RIGHT. AND YOU WOULD DO THINGS
9 TOGETHER, PLAY CARDS TOGETHER?

10 A. YES.

11 Q. GO ON VACATIONS TOGETHER?

12 A. YES.

13 Q. SPEND HOLIDAYS TOGETHER?

14 A. UNTIL THEY WERE -- BECAME TO THE POINT
15 WHERE WE COULDN'T AFFORD TO GO ON THEIR VACATIONS, AND
16 THEN WE DID OTHER THINGS TOGETHER. BUT NOT THE
17 VACATIONS, BECAUSE WE JUST COULDN'T GO TO THE CAYMEN
18 ISLANDS, THAT TYPE OF THING.

19 Q. AFTER THE FAMILY MOVED TO MONSEY, THEN THEY
20 SUBSEQUENTLY MOVED TO PRINCETON JUNCTION; IS THAT RIGHT?

21 A. WE WERE TRANSFERRED TO THE PRINCETON
22 JUNCTION AREA, AND SO THEY SOLD THEIR HOUSE IN MONSEY,
23 AND WE WERE TRANSFERRED THERE IN JUNE OF '77. SO THEY
24 SOLD THEIR HOUSE IN MONSEY, AND IN AUGUST OR SEPTEMBER,
25 SOMEWHERE IN THERE OF '77, THEY MOVED TO THE PRINCETON
26 JUNCTION HOUSE.

27 Q. AND HOW FAR AWAY DID YOU LIVE FROM THE
28 MENENDEZ FAMILY WHEN THEY MOVED TO THE PRINCETON

1 JUNCTION HOUSE?

2 A. WELL, AT THAT TIME WE WERE RENTING AND THEY
3 WERE RENTING THERE, TOO, AND WE WERE LOOKING FOR A PLACE
4 WHERE WE BOTH COULD BUY AND BUILD A HOUSE. AND WE HAD
5 CHOSEN -- I HAD A DIFFICULT SITUATION AT THE TIME
6 BECAUSE I HAD TEENAGE KIDS, AND I -- I CAN'T BE CHANGING
7 TEENAGERS FROM ONE SCHOOL TO THE OTHER. IT DISRUPTS
8 THEIR LIVES TREMENDOUSLY.

9 SO WE LOOKED, AND THERE WERE SEPARATED TWO
10 LOTS, ONE NEXT TO EACH OTHER, IN THE PRINCETON JUNCTION
11 AREA.

12 Q. LET ME PUT THIS --

13 A. YEAH, BUT IT'S NOT THAT ONE. IT'S IN THE
14 PRINCETON JUNCTION AREA. BUT THEY DIDN'T GET THE
15 APPROVAL. THE BUILDER DIDN'T GET THE APPROVAL --
16 THE COURT: LET'S ASK ANOTHER QUESTION, PLEASE.

17 Q. BY MS. TOWERY: OKAY. LET ME ASK YOU THIS,
18 MRS. BARALT.

19 AT SOME POINT THE MENENDEZ FAMILY MOVED TO
20 PENNINGTON; IS THAT RIGHT?

21 A. WE BOUGHT TWO LOTS IN PENNINGTON.

22 Q. OKAY. NOW IN PRINCETON JUNCTION --

23 A. YES.

24 Q. -- HOW CLOSE TOGETHER DID YOU LIVE?

25 A. WELL, IT WAS 10 MINUTES AWAY.

26 Q. ALL RIGHT. AND WHAT ABOUT IN PENNINGTON?

27 YOU SAID YOU BOUGHT TWO LOTS CLOSE TOGETHER?

28 A. WE BOUGHT TWO LOTS, BUT THE SCHOOL SYSTEM

-12894

1 WAS A COMPLETELY NEW SCHOOL SYSTEM, SO I COULDN'T CHANGE
2 MY KIDS. SO I REMAINED IN THE PRINCETON JUNCTION AREA,
3 AND THEY BUILT THE HOUSE IN PENNINGTON. THAT'S ONLY 15
4 MINUTES AWAY FROM US.

5 Q. WHEN THEY LIVED IN THE PENNINGTON HOUSE,
6 YOU LIVED 15 MINUTES AWAY?

7 A. FIFTEEN MINUTES AWAY.

8 Q. AND DID YOU STILL CONTINUE TO SPEND TIME
9 WITH THE FAMILY?

10 A. DEFINITELY, DEFINITELY. THE MAJOR
11 HOLIDAYS, THANKSGIVING WAS AT MY HOUSE, CHRISTMAS WAS AT
12 JOSE AND KITTY'S. AND WE PLAYED CARDS ON SATURDAYS,
13 MAINLY AT THEIR HOUSE, BECAUSE THEIR KIDS WERE TOO
14 LITTLE, AND MINE AT THAT TIME COULD STAY HOME BY
15 THEMSELVES.

16 Q. AND THEN FINALLY THE MENENDEZ FAMILY MOVED
17 TO THE BIG HOUSE, THE BIG PRINCETON HOUSE, FOR A SHORT
18 PERIOD OF TIME?

19 A. DOWNTOWN PRINCETON, YES.

20 Q. AND THEN WHEN THE MENENDEZ FAMILY MOVED TO
21 CALIFORNIA, YOU REMAINED IN NEW JERSEY; IS THAT RIGHT?

22 A. WE ARE STILL IN THE SAME HOUSE, YES.

23 Q. OKAY, THANK YOU.

24 AND WHEN YOU SPENT TIME WITH YOUR BROTHER

25 AND YOUR SISTER-IN-LAW --

26 A. MM-HMM.

27 Q. YOU ALSO SAW THEIR INTERACTION WITH THEIR

28 CHILDREN; IS THAT RIGHT?

-12893

1 A. YES.

2 Q. AND YOU HAVE KNOWN LYLE AND ERIK MENENDEZ

3 FOR THEIR ENTIRE LIVES; IS THAT CORRECT?

4 A. SINCE THEY WERE BORN.

5 Q. ALL RIGHT. LET ME SHOW YOU A PHOTOGRAPH

6 THAT I WOULD ASK BE MARKED NEXT IN ORDER, WHICH I THINK

7 IS 442.

8 THE COURT: 442, YES.

9 Q. BY MS. TOWERY: MRS. BARALT, DO YOU

10 RECOGNIZE THIS PHOTOGRAPH, WHICH IS -- IT'S A BLOW-UP OF

11 A SMALLER PHOTOGRAPH THAT'S ATTACHED, I BELIEVE?

12 A. YEAH. THAT'S LYLE AND THAT'S ERIK, AND

13 THIS IS A CHAIR IN MY MOTHER'S LIVING ROOM, SO THIS WAS

14 TAKEN BEFORE THEY MOVED TO ILLINOIS WITHIN THE --

15 THE COURT: OKAY. YOU HAVE ANSWERED THE

16 QUESTION.

17 NEXT QUESTION, PLEASE.

18 Q. BY MS. TOWERY: YOU SAY THAT THIS WAS A

19 CHAIR IN YOUR MOTHER'S LIVING ROOM?

20 A. IT WAS TAKEN IN MY MOTHER'S LIVING ROOM.

21 Q. AND WAS THAT IN NEW YORK?

22 A. NEW JERSEY, BEFORE THEY MOVED TO ILLINOIS.

23 Q. DID YOUR MOTHER LIVE NEAR THE MENENDEZ

24 FAMILY DURING A PERIOD OF TIME?

25 A. THEY LIVED IN THE HOUSE THEY LIVE NOW, AND

26 IT'S LIKE AN HOUR AWAY.

27 Q. AN HOUR AWAY FROM WHERE THE MENENDEZ FAMILY

28 LIVED?

-12892

1 A. THEY WERE VERY CLOSE TO THE FIRST HOUSE,

2 THE ONE ON WEXFORD TERRACE. THEY LIVED LIKE THREE

3 BLOCKS FROM THEM WHEN THEY WERE IN THAT APARTMENT.

4 Q. ALL RIGHT. I HAVE SOME OTHER PHOTOGRAPHS

5 THAT I'LL JUST ASK YOU TO IDENTIFY NOW.

6 IF I COULD HAVE JUST A MOMENT, YOUR HONOR.

7 I'VE MARKED AS EXHIBIT 443, MRS. BARALT, A

8 PHOTOGRAPH THAT'S ALSO A BLOW-UP. CAN YOU TELL US WHAT

9 THAT DEPICTS?

10 A. THIS IS A PICTURE OF LYLE, SOMEWHERE AROUND

11 THE AGE OF THREE, IN THE FRONT LAWN OF HIS HOUSE IN

12 HINSDALE.

13 Q. OKAY. AND THAT'S WHERE YOU LIVED ACROSS

14 THE STREET?

15 A. EXACTLY.

16 Q. NOW, IS YOUR HOUSE DEPICTED IN THAT
17 PHOTOGRAPH?

18 A. NO. MY HOUSE IS ON THIS SIDE, NEXT TO THIS
19 HOUSE (INDICATING).

20 Q. ALL RIGHT. LET ME SHOW YOU A PHOTOGRAPH
21 THAT I'VE MARKED AS EXHIBIT 444.

22 A. THAT'S MY HOUSE.

23 Q. THAT'S YOUR HOUSE IN HINSDALE?

24 A. THIS HOUSE IS THIS HOUSE (INDICATING).
25 THAT'S MY HOUSE.

26 Q. SO YOUR HOUSE WOULD BE --

27 A. ACROSS THE STREET.

28 Q. HERE IN THE TWO PICTURES?

-12891

1 A. EXACTLY. RIGHT THERE (POINTING).

2 Q. ALL RIGHT. NOW, WHAT IS -- WHAT'S DEPICTED
3 IN EXHIBIT 444?

4 A. WELL, IT'S LYLE.

5 Q. IN ADDITION TO YOUR HOUSE?

6 A. LYLE ON A BICYCLE AROUND THE AGE OF
7 PROBABLY THREE AND A HALF, FOUR, AND MY HOUSE. THE BACK
8 OF MY HOUSE.

9 Q. ALL RIGHT. AND I'LL SHOW YOU A PICTURE
10 THAT'S BEEN MARKED AS EXHIBIT 445.

11 WHAT'S DEPICTED IN THAT PHOTOGRAPH?

12 A. THIS IS LYLE AT THE SAME AGE IN THE BACK OF
13 HIS HOUSE, OF THAT HINSDALE HOUSE.

14 Q. AND THAT'S A FIELD BEHIND HIS HOUSE?

15 A. THERE WAS A FIELD IN THE BACK, YES.

16 Q. ALL RIGHT. I ALSO HAVE A PHOTOGRAPH THAT
17 I'VE MARKED AS EXHIBIT 446.

18 CAN YOU IDENTIFY THAT PHOTOGRAPH?

19 A. YES. THAT'S CARLOS AND ME, KITTY, CARLOS'
20 BROTHER, MY FOUR GIRLS, THE TWO BOYS, AND MY NEPHEW ON
21 CARLOS' SIDE.

22 Q. AND WHERE WAS THAT PHOTOGRAPH TAKEN, IF YOU
23 KNOW? DO YOU RECOGNIZE IT?

24 A. YEAH, DEFINITELY. IT WAS IN THE FAMILY
25 ROOM OF KITTY'S HOUSE IN MONSEY.

26 Q. ALL RIGHT. AND ABOUT HOW OLD ARE LYLE AND
27 ERIK MENENDEZ IN THAT PHOTOGRAPH, IF YOU KNOW?

28 A. WELL, ERIK IS AROUND THREE, AND LYLE IS

-12890

1 AROUND SIX.

2 Q. AND THE PHOTOGRAPH I'VE MARKED AS EXHIBIT
3 447, CAN YOU IDENTIFY THAT PHOTOGRAPH?

4 A. THESE ARE MY FOUR GIRLS AND ERIK IN THEIR
5 HOUSE, TOO.

6 Q. IS THAT -- DOES THAT SEEM TO BE THE SAME

7 DAY, FROM WHAT THEY'RE WEARING, CAN YOU TELL?

8 A. IT'S THE SAME DAY.

9 Q. AND THEY'RE SITTING ON A COUCH?

10 A. MM-HMM.

11 Q. AND LAST I HAVE A PHOTOGRAPH THAT'S BEEN

12 MARKED AS EXHIBIT 448.

13 CAN YOU IDENTIFY THAT PHOTOGRAPH?

14 A. YES. THESE ARE LYLE AND ERIK ON THE FRONT

15 STEPS OF ST. PAUL'S CATHOLIC CHURCH IN PRINCETON, NEW

16 JERSEY.

17 Q. OKAY.

18 A. AND --

19 Q. WHAT ARE THEIR AGES IN THAT PHOTOGRAPH, IF

20 YOU CAN TELL?

21 A. WELL, THIS PHOTOGRAPH MUST HAVE BEEN

22 TAKEN -- I THINK THIS -- BECAUSE OF THE OUTFITS, IT WAS

23 EASTER OF '78.

24 Q. ALL RIGHT.

25 A. AND ERIK WAS BORN IN '70, SO THIS WAS

26 BEFORE HE TURNED EIGHT, AND LYLE WAS --

27 Q. LYLE WOULD BE 10?

28 A. TEN.

-12889

1 Q. OKAY.

2 A. YEAH.

3 Q. YOUR HONOR, DOES THE COURT WISH TO TAKE A

4 BREAK AT THIS TIME?

5 THE COURT: ALL RIGHT. WE WILL TAKE A RECESS.

6 WE WILL RESUME AT 1:30. DON'T DISCUSS THE

7 MATTER WITH ANYONE. DON'T FORM ANY FINAL OPINIONS ABOUT

8 IT. WE WILL RESUME AT 1:30.

9 (AT 12:05 P.M. PROCEEDINGS

10 WERE ADJOURNED TO 1:30 P.M.

11 THE SAME DAY.)

52648

1 VAN NUYS, CALIFORNIA; WEDNESDAY, MARCH 27, 1995

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: ALL RIGHT. WE HAVE EVERYBODY IN

9 COURT.

10 WE'LL HAVE THE JURY OUT.

11 (THE JURY ENTERED THE COURTROOM

12 AND THE FOLLOWING PROCEEDINGS

13 WERE HELD:)

14

15 THE COURT: THE JURY IS BACK IN THE JURY

16 BOX.

17 YOU MAY CONTINUE YOUR DIRECT

18 EXAMINATION.

19 MS. TOWERY: THANK YOU, YOUR HONOR.

20

21 DIRECT EXAMINATION (CONTINUED)

22 BY MS. TOWERY:

23 Q MRS. BARALT, DID YOU LOVE YOUR BROTHER?

24 A VERY MUCH SO.

25 Q AND DID YOU LOVE YOUR SISTER-IN-LAW?

26 A YES.

27 Q AND DO YOU LOVE LYLE MENENDEZ?

28 A OF COURSE. VERY MUCH.

52649

1 Q AND DO YOU LOVE ERIK MENENDEZ?

2 A I'VE ALWAYS LOVED HIM VERY MUCH.

3 Q WHEN LYLE MENENDEZ WAS BORN --

4 A UH-HUH.

5 Q -- AND WHEN HE WAS BECOMING A TODDLER,

6 DID YOU GET REPORTS FROM HIS PARENTS, JOSE AND KITTY

7 MENENDEZ, ABOUT HIS PROGRESS?

8 A LYLE WAS A SENSE OF PRIDE TO THEM. HE

9 STOOD UP --

10 THE COURT: WAIT, WAIT. THE ANSWER IS YES OR

11 NO.

12 THE WITNESS: YES.

13 Q BY MS. TOWERY: AND WERE THEY PROUD OF
14 HIM?

15 A YES, THEY WERE.

16 Q HOW DID THEY EXPRESS THAT PRIDE TO YOU
17 IN TERMS OF LYLE MENENDEZ' PROGRESS AS A TODDLER?

18 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

19 THE COURT: SUSTAINED.

20 MS. TOWERY: ALL RIGHT. YOUR HONOR, GOES TO
21 STATE OF MIND AND THE RELATIONSHIP.

22 THE COURT: I THINK IT'S STILL HEARSAY.

23 SUSTAINED.

24 Q BY MS. TOWERY: ARE YOU AWARE OF WHEN
25 LYLE MENENDEZ WAS FIRST LEARNING TO STAND ALONE AS A
26 CHILD?

27 A YES.

28 Q HOW OLD WAS HE?

52650

1 A FIVE MONTHS.

2 Q AND HOW OLD WAS HE WHEN HE FIRST BEGAN
3 TO WALK?

4 A SHORT OF EIGHT MONTHS.

5 Q AND WERE HIS PARENTS PROUD OF THESE
6 ACCOMPLISHMENTS?

7 A VERY MUCH.

8 Q AND DO YOU KNOW THE FIRST TIME THAT HE
9 WAS ABLE TO RIDE A BICYCLE?

10 A I THINK HE WAS AROUND THREE, AND NO
11 TRAINING WHEELS.

12 Q AND IN THE PICTURE THAT YOU'VE
13 IDENTIFIED OF LYLE MENENDEZ --

14 A UH-HUH.

15 Q -- RIDING A BIKE, IS THAT APPROXIMATELY
16 THE AGE?

17 A AROUND THREE, THREE AND A HALF.

18 Q OKAY. AND ARE THERE TRAINING WHEELS ON
19 THAT BICYCLE?

20 A I DON'T THINK HE EVER HAD TRAINING
21 WHEELS.

22 Q IS IT FAIR TO SAY THAT JOSE AND KITTY
23 MENENDEZ WERE PROUD OF HIS COORDINATION AND ATHLETIC
24 ABILITY EVEN AT THAT YOUNG AGE?

25 A YES, THEY WERE.

26 Q YOU MENTIONED IN EARLIER TESTIMONY IN
27 THIS TRIAL THAT MRS. MENENDEZ, KITTY MENENDEZ, LIKED
28 TO GO SHOPPING.

52651

1 A YES, I DID.

2 Q DID YOU HAVE OCCASION TO GO SHOPPING

3 WITH KITTY MENENDEZ?

4 A MANY TIMES.

5 Q AND WHEN LYLE MENENDEZ AND ERIK MENENDEZ
6 WERE LITTLE BOYS, WOULD THEY ACCOMPANY YOU AND KITTY
7 MENENDEZ WHEN YOU WOULD GO SHOPPING?

8 A YES, THEY DID.

9 Q WAS THERE EVER ANYTHING THAT COMES TO
10 YOUR MIND THAT OCCURRED ON SOME OF THESE SHOPPING
11 TRIPS WITH RESPECT TO LYLE AND ERIK MENENDEZ?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: YOU CAN ANSWER THAT YES OR NO AT
14 THIS POINT.

15 THE WITNESS: YES.

16 THE COURT: CAN YOU PERHAPS FOCUS ON A
17 PARTICULAR INCIDENT RATHER THAN THE WITNESS --

18 Q BY MS. TOWERY: YES. COULD YOU DESCRIBE
19 AN INCIDENT IN WHICH MRS. MENENDEZ WAS PAGED IN A
20 SHOPPING MALL? DO YOU HAVE THAT INCIDENT IN MIND?

21 A YES, I DO. MANY TIMES.

22 Q OKAY. WELL, CAN YOU TELL THE JURY WHAT
23 WOULD HAPPEN WHEN MRS. MENENDEZ WOULD BE PAGED IN
24 SHOPPING MALLS WHEN YOU WERE WITH HER.

25 A OKAY. WE WOULD GO INTO THE STORE. THE
26 CHILDREN WILL GO INTO THEIR OWN DIRECTIONS. SO THEN
27 THE ANNOUNCEMENT WILL COME. THERE'S TWO LITTLE BOYS
28 THAT ARE LOST. WOULD THE MOTHER COME OVER AND PICK

1 THEM UP. AND KITTY WOULD SAY, "WELL, GOOD. NOW WE
2 CAN FINISH OUR SHOPPING. WE KNOW WHERE THEY ARE."

3 Q AND HOW OLD WERE LYLE AND ERIK MENENDEZ
4 WHEN THESE THINGS WOULD HAPPEN?

5 A ERIK, TWO; LYLE, THREE YEARS OLDER,
6 FIVE.

7 Q AND AFTER MRS. MENENDEZ FINISHED
8 SHOPPING, THEN WOULD SHE GO PICK THE BOYS UP?

9 A YES.

10 Q NOW, DID YOU HAVE A DIFFERENT PHILOSOPHY
11 FROM YOUR BROTHER AND YOUR SISTER-IN-LAW REGARDING
12 HOW TO RAISE CHILDREN?

13 A OH, WE DID.

14 Q DID YOU DISCUSS YOUR DIFFERENT
15 PHILOSOPHY WITH YOUR BROTHER AND YOUR SISTER-IN-LAW?

16 A MANY TIMES.

17 Q AND DID THESE DISCUSSIONS BEGIN WHEN
18 LYLE AND ERIK MENENDEZ WERE YOUNG CHILDREN?

19 A TODDLERS.

20 Q AND DID YOU ALSO HAVE THESE DISCUSSIONS
21 WITH YOUR HUSBAND, CARLOS BARALT?

22 A YES.

23 Q WHAT IS THE DIFFERENCE IN YOUR
24 PHILOSOPHY FROM THAT OF YOUR BROTHER AND
25 SISTER-IN-LAW REGARDING HOW TO RAISE CHILDREN?

26 MR. CONN: OBJECTION. IRRELEVANT.
27 THE COURT: SUSTAINED.
28 Q BY MS. TOWERY: DID YOUR BROTHER EVER

52653

1 ARTICULATE TO YOU HIS PHILOSOPHY OF HOW CHILDREN
2 SHOULD BE RAISED?

3 A YES, HE DID.

4 Q WHAT WAS THAT ARTICULATION BY YOUR
5 BROTHER?

6 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

7 THE COURT: DID YOU WISH TO BE HEARD?

8 MS. TOWERY: YES, PLEASE, YOUR HONOR.

9 THE COURT: OKAY. WHAT WE'LL DO IS ASK THE
10 JURY TO GO INTO THE JURY ROOM FOR A MOMENT. THE
11 LAWYERS AND I WILL TALK.

12 DON'T DISCUSS THE MATTER, AND WE'LL HAVE
13 YOU OUT SHORTLY.

14 (THE JURY ENTERED THE JURY ROOM
15 AND THE FOLLOWING PROCEEDINGS
16 WERE HELD:)

17

18 THE COURT: YES.

19 MS. TOWERY: WELL, FIRST OF ALL, YOUR HONOR,
20 I THINK THAT IT'S A STATEMENT OF THE STATE OF MIND

21 OF BOTH JOSE AND KITTY MENENDEZ REGARDING HOW THEIR
22 RELATIONSHIP WITH THEIR CHILDREN SHOULD BE, AND
23 SHOULD BE ALLOWED TO COME IN AS EITHER A HEARSAY
24 EXCEPTION; OR ALTERNATIVELY, NOT REALLY OFFERED FOR
25 THE TRUTH, BUT AS FOUNDATION FOR OBSERVATIONS THAT
26 THIS WITNESS MADE REGARDING THE TREATMENT OF LYLE
27 AND ERIK MENENDEZ BY THEIR PARENTS DURING THEIR
28 FORMATIVE YEARS.

52654

1 THE COURT: WHAT IS THE RELEVANCE OF THE
2 STATE OF MIND OF THE PARENTS?

3 MS. TOWERY: WELL, I THINK THAT IT'S AGAIN
4 BACKGROUND INFORMATION, YOUR HONOR, TO SHOW WHY THE
5 MENENDEZ BROTHERS WERE RAISED IN THE MANNER THAT
6 THEY WERE RAISED. IT'S ALSO VERY IMPORTANT EVIDENCE
7 WITH RESPECT TO A LATER WITNESS, DR. STUART HART,
8 WHO WILL TALK ABOUT THE EFFECTS OF THIS TYPE OF
9 PHILOSOPHY ON THE DEVELOPMENT OF A YOUNG CHILD, AND
10 HOW THOSE EFFECTS CARRY ON INTO ADULTHOOD.

11 SO, I THINK IT'S VERY RELEVANT EVIDENCE,
12 YOUR HONOR, AND I DON'T BELIEVE THAT, IF HEARSAY,
13 IT'S EXCLUDABLE AND SHOULD COME IN AS A HEARSAY
14 EXCEPTION.

15 THE COURT: PEOPLE WISH TO BE HEARD?

16 MR. CONN: YES. I THINK THAT CLEARLY IT'S
17 BEING OFFERED FOR THE TRUTH OF THE MATTER. AND
18 COUNSEL'S UNABLE TO ARTICULATE ANY HEARSAY
19 EXCEPTIONS THAT WOULD APPLY TO THIS MATERIAL. AND
20 IT IS NO EXCUSE OR JUSTIFICATION THAT COUNSEL WISHES
21 TO INCORPORATE THAT AS A MATTER OF EXPERT OPINION,
22 WHETHER OR NOT THAT CAN BE RELIED UPON OR WHETHER OR
23 NOT IT CAN BE REFERRED TO BY THE EXPERT, IS A
24 SEPARATE ISSUE WHICH WE WILL ADDRESS WHEN WE GET TO
25 THAT PORTION OF THE TRIAL.

26 AS FAR AS THIS PARTICULAR WITNESS IS
27 CONCERNED, I JUST DON'T SEE ANY APPLICABLE HEARSAY
28 EXCEPTION.

52655

1 MS. TOWERY: YOUR HONOR, IF I COULD BE HEARD
2 BRIEFLY.

3 MS. ABRAMSON: I'D LIKE TO BE HEARD.

4 MS. TOWERY: THERE'S ANOTHER BASIS ON WHICH
5 THE EVIDENCE IS RELEVANT, AND THAT IS TO SHOW THE
6 LACK OF INTERVENTION BY OTHER ADULTS INTO THE FAMILY
7 UNIT AND THE DISCUSSIONS THAT WERE HAD BETWEEN
8 MR. AND MRS. MENENDEZ, BOTH TOGETHER AND SEPARATELY,
9 WITH VARIOUS DIFFERENT ADULTS WHO DID SEEK TO
10 INTERVENE AND DID -- AND DID FEEL THAT SOME OF THE

11 PARENTING METHODS AND SOME OF THE PHILOSOPHIES WHICH
12 WERE BEING UTILIZED IN RAISING LYLE AND ERIK
13 MENENDEZ WERE WRONG AND WERE POTENTIALLY HARMFUL TO
14 THE CHILDREN AS THEY WERE GROWING UP.

15 SO I THINK THAT'S IMPORTANT EVIDENCE FOR
16 THE JURY TO HEAR AND TO UNDERSTAND WHY THERE WAS NO
17 INTERVENTION, WHY THESE VARIOUS PEOPLE WHO SAW
18 THINGS THAT THEY THOUGHT WERE WRONG, SAW THINGS THAT
19 THEY THOUGHT WERE DAMAGING TO THE CHILDREN, BUT
20 EITHER DID NOT SEEK TO INTERVENE OR WERE UNABLE TO
21 INTERVENE.

22 THE COURT: OKAY. YOU HAD SOMETHING YOU
23 WANTED TO SAY?

24 MS. ABRAMSON: IF THE COURT NEEDS ANY FURTHER
25 INPUT ON THE ISSUE --

26 THE COURT: YES.

27 MS. ABRAMSON: -- FROM THE ERIK MENENDEZ
28 STANDPOINT, YOUR HONOR, MY CLIENT HAS ALREADY

52656

1 TESTIFIED THAT THERE WERE ACTIONS BY HIS PARENTS IN
2 CONFORMITY WITH THE PHILOSOPHY OR STATE OF MIND, IF
3 YOU WILL, THAT MRS. BARALT WILL TESTIFY TO. SO FOR
4 OUR PURPOSES -- AND THAT TESTIMONY OF HIS IS OF THE
5 TYPE AND NATURE THAT THE JURY SHOULD BE ABLE TO

6 CONSIDER IN THIS, THE PENALTY TRIAL OF THE CASE.

7 SO WE WOULD SUBMIT THAT IT IS A STATE OF
8 MIND EXCEPTION IN ORDER TO PROVE ACTIONS AND
9 CONFORMITY WITH THAT STATE OF MIND WHICH MY CLIENT
10 HAS TESTIFIED TO, BUT WHICH MIGHT NOT BE UNDERSTOOD
11 BY THE JURY WITHOUT UNDERSTANDING THAT -- JUST TO
12 GIVE AN ANALOGY -- IF THE EVIDENCE WAS AN INDIVIDUAL
13 SAYING MY PHILOSOPHY OF CHILD-REARING IS TO KICK
14 THEM IN THE BUTT EVERY NIGHT, AND THE CHILD HAD
15 TESTIFIED HE WAS KICKED IN THE BUTT, I THINK THAT
16 COMES IN AS STATE OF MIND IN ACTION AND CONFORMITY.
17 THIS IS NO DIFFERENT THAN THAT. IT'S JUST MORE
18 SUBTLE.

19 THE PHILOSOPHY THAT WOULD BE INDICATED
20 BY THE WITNESS IS THAT THEY FELT THE CHILDREN HAD TO
21 BE CHAMPIONS AND HAD TO BE NUMBER ONE AND HAD TO
22 WIN, AND WERE NOT ACCEPTED AND WERE NOT REGARDED OR
23 LOVED IF THEY WEREN'T. AND I THINK THAT'S CRUCIAL
24 DEVELOPMENT EVIDENCE FOR UNDER FACTOR-K IN A PENALTY
25 CASE.

26 THE COURT: PEOPLE WISH TO RESPOND TO THAT?

27 MR. CONN: YES. I THINK THAT THE FOCUS OF
28 COUNSEL IS MORE ON RELEVANCE THAN --

1 THE COURT: WAS ON WHAT? THERE WAS A COUGH
2 THERE.

3 MR. CONN: THE FOCUS OF COUNSEL FOR LYLE
4 MENENDEZ IS MORE ON RELEVANCE RATHER THAN THE
5 HEARSAY OBJECTION.

6 COUNSEL FOR ERIK MENENDEZ ADDRESSED THE
7 HEARSAY EXCEPTION, BUT I WOULD SUBMIT THAT THAT IS
8 NOT A PROPER HEARSAY EXCEPTION. THE STATE OF MIND
9 EXCEPTION TO THE HEARSAY RULE IS NOT SATISFIED BY
10 SUCH A BROAD GENERAL PHILOSOPHY THAT THE HEARSAY
11 EXCEPTION APPLIES ONLY WHERE THERE'S A SPECIFIC ACT
12 WHICH COUNSEL WISHES TO OFFER UPON A SPECIFIC
13 STATEMENT IN REFERENCE TO THAT ACT.

14 SO I THINK THAT THE ARTICULATION OF THE
15 GENERAL PHILOSOPHY SIMPLY DOESN'T SATISFY THE
16 REQUIREMENT OF THE HEARSAY CODE SECTION.

17 MS. TOWERY: IF I MAY RESPOND BRIEFLY, YOUR
18 HONOR.

19 IT IS OFFERED AS STATE OF MIND TO
20 EXPLAIN SUBSEQUENT CONDUCT; NOT ONLY SUBSEQUENT
21 CONDUCT WHICH WILL BE OFFERED THROUGH THIS WITNESS,
22 BUT BY A NUMBER OF WITNESSES WHO WILL BE CALLED IN
23 THE PENALTY PHASE.

24 THE COURT: WELL, WE HAVE DIFFERENT ISSUES
25 HERE.

26 ONE OF IS RELEVANCE AS TO WHY IT IS
27 RELEVANT WHAT THE PARENTS SAID THEIR PHILOSOPHY WAS,
28 VERSUS WHAT ACTUALLY OCCURRED. AND YOU'VE INDICATED

1 THAT THERE IS EVIDENCE OF WITNESSES AND TESTIMONY OF
2 WITNESSES WHO WILL DESCRIBE WHAT ACTUALLY HAPPENED
3 AND THE INTERACTION OF THE DEFENDANTS WITH THE
4 PARENTS. AND THAT HAS PREVIOUSLY BEEN THE SUBJECT
5 OF DISCUSSIONS, AND I'VE INDICATED CLEARLY THAT THAT
6 IS RELEVANT EVIDENCE AND ADMISSIBLE EVIDENCE IN A
7 PENALTY PHASE OF THIS TRIAL.

8 THE ISSUE HERE IS WHY IS IT RELEVANT AS
9 FAR AS WHAT THE PARENTS SAID VERSUS WHAT THEY
10 ACTUALLY DID. THEY'RE TWO DIFFERENT ISSUES. JUST
11 BECAUSE SOMETHING WAS SAID DOESN'T MEAN THAT THAT IS
12 WHAT OCCURRED. YOU HAVE SPECIFIC INCIDENTS OF WHAT
13 OCCURRED, AND THAT IS WHAT IS BEING OFFERED HERE.

14 SECONDLY, THAT CORRESPONDS OR RELATES TO
15 THE PEOPLE'S OBJECTION THAT WHAT, IN ESSENCE, IS
16 BEING OFFERED HERE IS STATE OF MIND, TO JUSTIFY THE
17 INTRODUCTION OF WHAT OTHERWISE IS CLEARLY HEARSAY
18 STATEMENTS. THE PARENTS SAID THIS IS THEIR
19 PHILOSOPHY; THEREFORE, THIS WAS THEIR PHILOSOPHY.
20 THEREFORE, THEY DID WHAT THEY DID OR DIDN'T DO IN
21 CONFORMITY WITH HIS PHILOSOPHY.

22 ALL THAT IS BASICALLY OFFERED TO EXPLAIN
23 A LIFETIME OF EXPERIENCES, IS HOW I UNDERSTAND IT,
24 AND DOESN'T REALLY QUALIFY AS AN EXCEPTION TO THE

25 HEARSAY RULE AS YOU'VE ARTICULATED IT. BECAUSE THE
26 STATE OF MIND OF THE VICTIMS REALLY IS NOT RELEVANT
27 HERE AS AN ISSUE IN THIS CASE.

28 THERE ARE OTHER ISSUES THAT YOU'VE

52659

1 BROUGHT OUT IN YOUR ARGUMENT THAT ARE SEPARATE FROM
2 THAT.

3 FIRST OF ALL, LET ME GO BACK TO THE
4 DISCUSSION OF HEARSAY. THERE IS AUTHORITY FOR THE
5 PROPOSITION THAT HEARSAY EVIDENCE IS ADMISSIBLE IN A
6 PENALTY PHASE UNDER CERTAIN CIRCUMSTANCES. ONE OF
7 THE CIRCUMSTANCES IS THAT IT HAS TO BE RELEVANT
8 EVIDENCE, HIGHLY RELEVANT TO AN ISSUE OF
9 MITIGATION. THIS PARTICULAR SUBJECT WE'RE
10 DISCUSSING RIGHT HERE DOESN'T FIT THAT CATEGORY.

11 HOWEVER, THERE IS ANOTHER ISSUE THAT YOU
12 BRING UP IN YOUR ARGUMENT WHICH RELATES TO, IN
13 ESSENCE, THE CREDIBILITY OF THIS WITNESS AND OTHER
14 WITNESSES AS TO WHY THEY DIDN'T INTERVENE, WHICH IS
15 A SEPARATE ISSUE WHICH CAN BE ADDRESSED IN SOME
16 OTHER WAY, BY ASKING A WITNESS SPECIFICALLY THAT
17 QUESTION, AND WHY SHE, OR WHOEVER ELSE YOU'RE GOING
18 TO BRING TO THE WITNESS STAND ON THESE SUBJECTS,
19 DIDN'T INTERVENE. IF THEY DESCRIBE CERTAIN EVENTS

20 AND DESCRIBE CERTAIN THINGS THAT ARE PUT FORTH AS
21 EVIDENCE OF ABUSIVE CONDUCT IN SOME FASHION IN THE
22 BACKGROUND OF EITHER DEFENDANT, THEN PERHAPS THIS
23 EVIDENCE MIGHT BE ADMISSIBLE ALONG THOSE LINES. BUT
24 NOT ON THE THEORY OF SHOWING THE STATE OF MIND OF
25 THE VICTIMS, OR AS TO THE TRUTH OF THE ISSUES
26 ASSERTED IN WHAT WAS SAID.

27 MS. TOWERY: WELL, YOUR HONOR, I WOULD
28 RESPECTFULLY DISAGREE WITH THE COURT AS TO THE

52660

1 COURT'S ANALYSIS REGARDING THE RELEVANCY IN THE
2 FIRST INSTANCE OF THE STATE OF MIND OF THE VICTIMS
3 IN THIS CASE, VIS-A-VIS THE DEFENDANTS.

4 I THINK -- I WOULD SUBMIT TO THE COURT
5 THAT IN THIS PENALTY PHASE IT'S HIGHLY RELEVANT,
6 BECAUSE THEY ARE IN A FAMILIAL RELATIONSHIP. THE
7 VICTIMS RAISED THE DEFENDANTS, AND THE VICTIMS
8 INSTILLED THE VALUES AND THE MORALS AND THE
9 TEACHINGS IN THE DEFENDANTS THAT THEY HAD WHEN THEY
10 BECAME YOUNG MEN AND WHEN THEY KILLED THEIR
11 PARENTS.

12 SO EVEN THOUGH WE'RE TALKING ABOUT THE
13 EARLY YEARS OF LYLE AND ERIK MENENDEZ, I THINK THE
14 RELATIONSHIP BETWEEN THE DEFENDANTS AND THE VICTIMS

15 AND THE ARTICULATED PHILOSOPHIES AND GOALS OF THE
16 VICTIMS WITH RESPECT TO THE DEFENDANTS, OVER WHOSE
17 LIVES THEY HAD ABSOLUTE CONTROL FOR MANY, MANY YEARS
18 AS THEIR PARENTS, ARE HIGHLY RELEVANT AS MITIGATING
19 EVIDENCE IN THIS PENALTY PHASE.

20 THE COURT: IF THEY SAID THESE THINGS AND
21 NEVER FOLLOWED THROUGH ON WHAT THEY SAID, THEY'D
22 HAVE NO MEANING AND WOULD JUST BE WORDS. THE ISSUE
23 IS WHAT THEY DID, NOT WHAT THEY SAID. THAT'S HOW --

24 MS. TOWERY: I'M OFFERING TO SHOW WHAT THEY
25 DID, FIRST AS A FOUNDATION TO SHOW WHAT THE
26 PHILOSOPHY OF MR. AND MRS. MENENDEZ WAS, THE JOINT
27 PHILOSOPHY AS TO HOW CHILDREN SHOULD BE RAISED; AND
28 THEN I'M OFFERING TO SHOW SPECIFIC INSTANCES

52661

1 THROUGHOUT THE COURSE OF THE LIVES OF LYLE MENENDEZ
2 AND ERIK MENENDEZ TO SHOW HOW THEY IMPLEMENTED THAT
3 PHILOSOPHY. AND WE HAVE A NUMBER OF SPECIFIC
4 INSTANCES WHICH WE'RE OFFERING, AND WHICH MR. GESSLER
5 OUTLINED IN HIS OPENING STATEMENT, TO SHOW TO THE
6 JURY JUST HOW THAT PHILOSOPHY WAS IMPLEMENTED.

7 THE COURT: IT OCCURS TO ME WHAT WE'RE REALLY
8 DISCUSSING HERE IS SOMETHING THAT PROBABLY WILL COME
9 OUT IN ONE WAY OR ANOTHER BY WAY OF CONVERSATIONS

10 THAT WERE OVERHEARD BETWEEN THE DEFENDANTS AND THEIR
11 PARENTS. AND REALLY, THERE'S REALLY NOTHING
12 DIFFERENT BETWEEN THAT AND WHAT YOU'RE TALKING
13 ABOUT, OTHER THAN THE FACT WHAT YOU'RE NOW TALKING
14 ABOUT IS HEARSAY, BECAUSE IT WAS OUTSIDE OF THE
15 PRESENCE OF THE DEFENDANTS. THERE'S NO EVIDENCE
16 THAT THEY OVERHEARD THESE CONVERSATIONS. THEY WERE
17 TOO YOUNG TO HAVE UNDERSTOOD WHAT WAS BEING SAID;
18 AND THERE'S, THEREFORE, NO RELEVANCE TO IT.

19 ALTHOUGH HEARSAY CONVERSATIONS OCCURRED
20 BETWEEN THE DEFENDANTS AND THEIR PARENTS, IT WOULD
21 BE ADMISSIBLE ON THE BASIS THAT IT'S PART OF THE
22 DEFENDANTS' BACKGROUND AND THAT THEY WERE PERCIPIENT
23 TO IT, AND IT HAD AN IMPACT UPON THEIR BACKGROUND
24 AND CHARACTER, AND WOULD PROBABLY BE RECEIVED AS
25 MITIGATING EVIDENCE.

26 MS. ABRAMSON: COULD I BE HEARD, YOUR HONOR?

27 THE COURT: YES.

28 MS. ABRAMSON: I THINK WHAT WE'RE -- THAT THE

52662

1 COURT ISN'T CONSIDERING THE FACT THAT ONE OF THE
2 COMPONENTS OF MALTREATMENT THAT MY CLIENT HAS
3 TESTIFIED TO ALREADY, THAT DR. WILSON TESTIFIED TO,
4 THAT DR. DIETZ MADE ALLUSION TO, ALSO IS, GIVEN MY

5 CLIENT HAVING THIS ANXIETY SYNDROME -- WHICHEVER
6 KIND OF ANXIETY DISORDER -- THIS PRESSURE TO BE
7 NUMBER ONE, THIS PRESSURE TO BE PERFECT. AND THIS
8 PRESSURE TO COMPETE IS ONE OF THE KEY COMPONENTS OF
9 THE MISERY OF HIS CHILDHOOD.

10 NOW, THIS WITNESS AND OTHER WITNESSES
11 COULD SAY IT WAS A CONSTANT THEME OF THESE PARENTS
12 THAT THEIR CHILDREN HAD TO BE NUMBER ONE, THAT THEIR
13 CHILDREN HAD TO BE THE BEST, REPEATED OVER AND OVER
14 AGAIN OVER THE YEARS; NOT AN ISOLATED STATEMENT OF
15 PHILOSOPHY THAT MAY OR MAY NOT HAVE BEEN ACTED ON
16 SOMETIME LATER ON.

17 NOW, THESE PEOPLE, HOWEVER, DID NOT SEE
18 EACH AND EVERY INCIDENT WHERE THE PARENTS PUT
19 PRESSURE ON THE KIDS TO COMPETE AND TO WIN AND TO DO
20 ALL THOSE OTHER THINGS. AND SO THE WEIGHT OF, OR
21 THE PERVASIVE NATURE OF THIS KIND OF PRESSURE, IS
22 REALLY THE ONLY DEMONSTRABLE WAY, THROUGH OTHER
23 WITNESSES OTHER THAN THE DEFENDANT, BY THE FACT THAT
24 IT WAS A STATEMENT OF INTENT, IF YOU WILL, OR A
25 STATEMENT OF PHILOSOPHY THAT WAS OFT REPEATED BY THE
26 VICTIM, THE FACT THEY SAID IT OVER AND OVER AGAIN.

27 IF WE COULD FORGET THAT THEY'RE THE DEAD
28 PEOPLE IN THIS CASE --

1 THE COURT: BELIEVE ME, I'M NOT FOCUSING ON
2 THAT ASPECT OF IT. I'M FOCUSING ON THE FACT THAT
3 IT'S HEARSAY UNLESS IT WAS ACTED UPON. PEOPLE CAN
4 SAY WHATEVER THEY WANT. BUT UNLESS WHAT WAS SAID --

5 MS. ABRAMSON: SHE SAW IT ACTED UPON.

6 THE COURT: THAT'S HOW SHE CAN BRING OUT HER
7 TESTIMONY.

8 MS. ABRAMSON: YOU DON'T KNOW WHAT THEY'RE
9 DOING UNLESS YOU UNDERSTAND WHY THEY'RE DOING IT.

10 BY THAT I MEAN THE VICTIMS. IF YOU
11 UNDERSTAND WHAT THEIR PHILOSOPHY IS, THEN YOU THEN
12 UNDERSTAND WHY IT IS THEY DON'T LET THE KIDS
13 SOCIALIZE. THEY'RE RUNNING THEM AROUND TO ALL THESE
14 SPORTING EVENTS.

15 THE COURT: THAT'S YOUR CONCLUSION. THAT'S
16 YOUR CONCLUSION AS TO HOW YOU TAKE ONE STATEMENT,
17 AND FROM THERE YOU GO INTO A LIFETIME OF BEHAVIOR.

18 BUT THE ISSUE IS THE INTERACTION OF THE
19 VICTIMS AND THE PARENTS AND THE EFFECT ALL OF THIS
20 HAD ON THE DEFENDANTS, NOT THESE ISOLATED STATEMENTS
21 OF THE PARENTS.

22 MS. ABRAMSON: THEY'RE NOT ISOLATED. IT'S A
23 CONSTANT REFRAIN. AND PEOPLE ARE TRYING TO
24 INTERVENE WITH THEM BECAUSE THEY SEE THE HARM IT'S
25 DOING, AND THEY RESTATE THIS CONSTANT REFRAIN.

26 THE MERE FACT THEY BELIEVE THESE THINGS
27 AND ARE RIGID ABOUT THESE THINGS, ANY EXPERT COULD

52664

1 DEMONSTRATES AN ATTITUDE TOWARDS THEIR CHILDREN THAT
2 UNDOUBTEDLY PLAYED OUT IN NUMEROUS WAYS, WHETHER WE
3 COULD PROVE EVERY SINGLE INCIDENT IN WHICH THIS
4 ATTITUDE OR PHILOSOPHY IS BEING PLAYED OUT. NOBODY
5 COULD.

6 THE COURT: OKAY. AGAIN, THAT WOULD COME OUT
7 THROUGH THE TESTIMONY OF EXPERTS.

8 MS. ABRAMSON: LET'S SAY WE HAD A PENALTY
9 TRIAL WHERE THE EVIDENCE ABOUT A PARENT, NON-VICTIM
10 PARENT, WAS THEY ENCOURAGED -- THAT THEY HAD A
11 PHILOSOPHY THAT STEALING WAS OKAY. OKAY. AND THAT
12 THEY ENCOURAGED THEIR CHILDREN TO STEAL. THAT OTHER
13 PEOPLE SAID THEY SAID, "I'M GOING TO ENCOURAGE MY
14 CHILDREN TO STEAL. STEALING IS OKAY."

15 NOW, YOU WOULDN'T BE ABLE TO SHOW THAT
16 EACH AND EVERY TIME THOSE KIDS STOLE THAT IT WAS
17 BECAUSE THE PARENTS MADE A STATEMENT TO THEM. BUT I
18 THINK IN THAT CONTEXT YOU WOULD UNDERSTAND WHY THE
19 CHILDREN BECAME THIEVES.

20 AND I CAN'T IMAGINE THAT IN A
21 PENALTY-PHASE TRIAL, AS A CORRUPTING IMMORAL LESSON
22 FROM PARENTS, THAT WOULDN'T BE ADMISSIBLE TO SHOW

23 THE COURT THE RESULTING ENVIRONMENT IN WHICH THE
24 DEFENDANTS LIVED.

25 IN THIS CASE IT IS A DIFFERENT KIND OF
26 CORRUPTION. IT IS BEING TOLD THAT THEY'RE ONLY
27 VALUED IF THEY WIN. BUT IT CREATES A PERVASIVE
28 ENVIRONMENT IN THEIR LIFE THAT IS CORRUPTING THEM,

52665

1 THAT IS MAKING THEM THE IMPERFECT CREATURES THEY
2 BECOME, WHETHER THEY KILL, WHOEVER THEY KILL.

3 THE COURT: OKAY. I'VE SAID HOW I ANALYZE
4 IT.

5 MS. TOWERY: CAN I ADD SOMETHING? IN THE
6 EVIDENCE THAT WAS PRESENTED IN THE GUILT PHASE, AND
7 IN THE ARGUMENTS THAT MR. CONN MADE, HE SUGGESTED TO
8 THIS JURY THAT THE DRIVE AND THE DESIRE AND THE
9 AMBITION WHICH CAUSED LYLE MENENDEZ AND ERIK
10 MENENDEZ TO EXCEL IN ATHLETICS AND SEEK TO EXCEL IN
11 OTHER AREAS OF LIFE PERHAPS WERE SELF-GENERATED, AND
12 PERHAPS WERE NOT BECAUSE OF EXPECTATIONS AND
13 PRESSURES PUT ON THEM BY THEIR PARENTS.

14 AND IT SEEMS TO ME THAT IT'S ALSO
15 RELEVANT TO DISPEL THAT NOTION HERE IN THE PENALTY
16 PHASE. AND I THINK WE'RE ENTITLED TO DO SO, BECAUSE
17 THE JURY IS ABLE TO LOOK AT ALL OF THE EVIDENCE THAT

18 WAS OFFERED IN THE GUILT PHASE IN CONNECTION WITH
19 THEIR DETERMINATION AS TO PUNISHMENT.
20 THE COURT: WELL, AS I UNDERSTAND IT, YOU
21 HAVE WITNESSES WHO WILL DO THAT. YOU HAVE PEOPLE
22 SPECIFICALLY WHO DESCRIBE INCIDENTS DESCRIBING THE
23 DEFENDANTS AND THE PARENTS. THAT'S HOW I UNDERSTOOD
24 THE OFFER BY MR. GESSLER.

25 MS. TOWERY: WE DO HAVE WITNESSES WHO WILL
26 OFFER SPECIFIC INTERACTIONS BETWEEN THE DEFENDANTS
27 AND THEIR PARENTS. BUT WE ALSO HAVE SPECIFIC
28 STATEMENTS BY THE PARENTS TO THOSE WITNESSES; NOT

52666

1 JUST MRS. BARALT, BUT OTHER WITNESSES, INDICATING
2 WHY THE PARENTS WERE ENGAGING IN THAT BEHAVIOR.
3 AND I THINK THAT IT CLEARLY IS RELEVANT,
4 YOUR HONOR. IF THE INCIDENTS THEMSELVES ARE
5 RELEVANT, THEN THE EXPLANATIONS AS TO WHY THE
6 PARENTS ARE ENGAGING IN THAT BEHAVIOR UNQUESTIONABLY
7 IS RELEVANT.

8 AND AGAIN, IT'S OFFERED TO SHOW THE
9 STATE OF MIND OF THE PARENTS IN ORDER TO EXPLAIN
10 SUBSEQUENT CONDUCT BY THE PARENTS TOWARDS THE
11 DEFENDANTS -- NOT TOWARDS SOMEBODY ELSE IN THE
12 WORLD -- TOWARDS THE DEFENDANTS, AND A CHILD-REARING

13 PHILOSOPHY THAT WAS TO SHAPE WHAT THESE TWO YOUNG
14 MEN WERE TO BECOME.

15 MS. ABRAMSON: MY CLIENT WAS ATTACKED IN
16 FINAL ARGUMENT AND DURING CROSS-EXAMINATION ON THE
17 BASIS THAT HE DIDN'T HAVE A SIGNIFICANT ATTACHMENT
18 TO HIS MOTHER, AND THAT WAS SOMEHOW HIS FAULT. AND
19 IF YOU COULD UNDERSTAND THE FACT THAT THE PARENTS
20 DIDN'T VALUE THE CHILDREN UNLESS THEY PERFORMED,
21 THAT THEY ARE SPURNING THEM UNLESS THEY WERE NUMBER
22 ONE, THEN YOU CAN UNDERSTAND WHAT THE MEANING IS
23 WHEN MY CLIENT TESTIFIED THAT HE COULDN'T COME UP
24 WITH EXAMPLES OF LOVING OR ACCEPTING BEHAVIOR BY HIS
25 PARENTS, BECAUSE HE WASN'T SUCCESSFUL ENOUGH FOR
26 THEM.

27 NOW, THEIR STATE OF MIND, VIS-A-VIS
28 THEIR CHILDREN, AS EVIDENCE OF THEIR -- OF THE

52667

1 MEANING OF THEIR BEHAVIORS HAS GOT TO BE RELEVANT,
2 APART FROM AN ORDINARY PENALTY TRIAL WHEN THEY WERE
3 THE ONES WHO ARE KILLED, BECAUSE MUCH WAS MADE OF
4 MOTIVE AND ATTITUDE BY THE DEFENDANTS TOWARDS THEIR
5 PARENTS. THE FACT THAT THE PARENTS HAD THESE
6 ATTITUDES TOWARDS THEM HAD TO HAVE BEEN COMMUNICATED
7 TO THEM, WHETHER WE HAVE A SPECIFIC EXAMPLE OF -- YOU

8 KNOW, IF IT'S SO PERVASIVE ONE CAN ASSUME THAT THE

9 DEFENDANTS WOULD HAVE HEARD IT.

10 I MEAN, DO WE HAVE TO HAVE WITNESSES TO

11 SAY, "OH, YEAH. I NOTICED THE BOYS WERE IN THE ROOM

12 WHEN THIS WAS SAID"? I'M SURE MRS. BARALT CAN THINK

13 OF INSTANCES WHEN SHE HEARD THIS WHEN THE BOYS WERE

14 PRESENT. THAT'S NOT WHAT SHOULD MAKE IT RELEVANT.

15 YOU CAN NEVER SAY FOR SURE THEY HEARD IT. AND WE'RE

16 NOT GOING TO PUT THEM ON IN ORDER TO GET THIS

17 EVIDENCE IN. IT'S SOMETHING THAT PERVADES THEIR

18 WHOLE LIVES; AND SO LOGICALLY, OF COURSE, THEY'RE

19 AWARE OF IT.

20 IN FACT, ERIK MENENDEZ TESTIFIED HE WAS

21 TOLD THESE THINGS SPECIFICALLY. BUT IT SHOULDN'T

22 HAVE TO REST JUST ON HIS CREDIBILITY, WHICH

23 CERTAINLY AT THIS POINT IS NOT THE HIGHEST WITH THIS

24 JURY.

25 MS. TOWERY: IT'S ALSO EXCEEDINGLY RELIABLE

26 BECAUSE THIS PHILOSOPHY WAS EXPRESSED OVER AND OVER

27 TO DIFFERENT PEOPLE. IT WAS EXPRESSED TO

28 MRS. BARALT. IT WAS EXPRESSED TO FAITH GOLDSMITH.

52668

1 THE COURT: THE PROBLEM IS, WHAT DOES IT

2 MEAN? YOU HAVE THESE GRAND PHRASES THAT YOU HAVE.

3 "WINNING IS EVERYTHING," ALL THESE THINGS. WHAT
4 DOES IT MEAN? HOW IS IT IMPLEMENTED? THAT'S THE
5 ISSUE. NOT THESE PHRASES THAT SOUND VERY CATCHY,
6 BUT WHAT DOES IT ACTUALLY MEAN, AND HOW DOES IT HAVE
7 AN IMPACT ON THE DEFENDANTS AND THEIR BACKGROUND AND
8 CHARACTER, WHICH IS THE ISSUE FOR THE JURY TO
9 DECIDE?

10 MS. TOWERY: WHAT IT MEANS IS HOW THE
11 DEFENDANTS LIVED THEIR LIVES FROM EARLY CHILDHOOD.
12 WHAT IT MEANS IS THAT EVEN AS SMALL CHILDREN, FROM
13 THE TIME THAT THEY WERE ABLE TO WALK, THEY WEREN'T
14 PERMITTED TO PLAY. THEY WEREN'T PERMITTED TO HAVE
15 FUN. THEY WERE REQUIRED TO HAVE A VERY STRICT AND
16 REGIMENTED GOAL-ORIENTED --

17 THE COURT: LET ME ASK YOU THIS: IF SOMEBODY
18 WENT UP TO YOU AND SAID: MY PHILOSOPHY IS WINNING
19 IS EVERYTHING. WOULD YOU, FROM THAT, SAY THAT THAT
20 PERSON'S PHILOSOPHY IS AS YOU'VE JUST ARTICULATED IT
21 IN RAISING CHILDREN OR LIVING HIS OR HER LIFE?

22 MS. ABRAMSON: NOT IF THAT'S ALL THEY SAID.

23 THE COURT: WHAT YOU NEED IS THE ACTUAL
24 BEHAVIOR OF THE PERSON. YOU NEED THE ACTUAL
25 BEHAVIOR OF THE PERSON, NOT THE STATEMENT.

26 MS. ABRAMSON: WE HAVE TO GIVE AN
27 INTERPRETATION TO WHAT THEY MEANT BY IT, BECAUSE THE
28 PROSECUTION, I GUARANTEE, WILL GET UP AT THE END AND

1 SAY THESE PARENTS JUST WANTED WHAT WAS BEST FOR
2 THEIR KIDS. THEY MADE ALL THESE ATHLETIC
3 OPPORTUNITIES AVAILABLE TO THEM. THEY SPENT ALL
4 THIS MONEY.

5 WHEN THE FACT OF THE MATTER IS, THE
6 REASON THEY DID ALL THOSE THINGS WAS FOR THEIR OWN
7 SELF-AGRANIZEMENT AND BECAUSE THEY WANTED NUMBER
8 ONE CHILDREN. THEIR CHILDREN COULDN'T COME IN LESS
9 THAN NUMBER ONE TO PLEASE THE PARENTS. IT'S THE
10 SPIN THE PROSECUTION WILL PUT ON AND WOULD WANT TO
11 PUT ON JUST THE ACTIVITIES THAT GIVES THOSE -- WHY
12 ARE THESE CHILDREN IN ALL THIS TRAINING? BECAUSE
13 THE KIDS WANT TO BE TRAINED THIS WAY? NO. IT ISN'T
14 JUST WINNING IS EVERYTHING. MY CHILDREN ARE TO BE
15 NUMBER ONE. THAT'S THE IMPORTANT PART.

16 IF SOMEONE CAME OVER TO ME AND SAID MY
17 CHILDREN HAVE TO BE NUMBER ONE, I'D SAY GET THEM
18 INTO THERAPY, PAL, BECAUSE YOU'RE HURTING THEM.
19 IT'S DIFFERENT THAN WINNING IS EVERYTHING AS A
20 PERSONAL PHILOSOPHY.

21 THE COURT: THE PROBLEM WITH ALL THAT
22 ARGUMENT IS IT DOESN'T FALL WITHIN THE FACTOR OF
23 MITIGATION, EVEN FACTOR-K, WHICH IS --

24 MS. ABRAMSON: PRESSURING YOUR CHILDREN, NOT
25 LOVING THEM DOESN'T?

26 THE COURT: NO. I'M TALKING ABOUT THE

27 BEHAVIOR OF THE PARENTS DOESN'T -- NOT THE BEHAVIOR
28 OF THE PARENTS, BUT THE VERBAL EXPRESSIONS THAT

52670

1 YOU'VE REFERRED TO HERE. THE ACTUAL BEHAVIOR IS
2 WHAT IS SIGNIFICANT AND WHAT IT IS THAT ACTUALLY
3 OCCURRED BETWEEN THE PARENTS AND THE DEFENDANTS.

4 MR. GESSLER: IF I MAY, YOUR HONOR.

5 THE COURT: YES.

6 MR. GESSLER: AGAIN, THE BEHAVIOR IS THE
7 PRODUCT OF THE PARENTING PHILOSOPHY OF THOSE WHO HAD
8 IT, AND IT TAKES AWAY THE AMBIGUITY THAT THE
9 PROSECUTION SEEKS TO EXPLOIT AS TO THE EXCELLENCE OF
10 THE ATHLETIC ABILITIES OF LYLE MENENDEZ AND ERIK
11 MENENDEZ, AS TO WHERE IT CAME FROM, THAT IT WAS NOT
12 SIMPLY A SELF DESIRE TO DITCH SCHOOL BECAUSE TENNIS
13 IS MORE FUN, OR TO DITCH SCHOOL BECAUSE, FOR HIS OWN
14 REASONS, HE WANTED TO BE CAPTAIN OF THE TENNIS
15 TEAM. IT IS IMPOSED UPON HIM FROM WITHOUT.

16 AGAIN, AS I TOLD THE JURY, WHETHER OR
17 NOT MR. AND MRS. MENENDEZ WERE THE DECEASED, THIS
18 EVIDENCE WOULD BE OFFERED, IF THEY HAD KILLED TWO
19 STRANGERS. IT WOULD BE OFFERED NOT ONLY UNDER
20 FACTOR-K, BUT UNDER FACTOR-K AS IT EXPRESSES THE
21 UNITED STATES CONSTITUTIONAL LAW UNDER THE 6TH, 8TH,

22 AND 14TH AMENDMENTS, AND THE FACTORS AS WRITTEN
23 ABOUT BY JUSTICE O'CONNOR, AS WELL AS OTHERS, IN THE
24 UNITED STATES SUPREME COURT THAT WE ALWAYS LOOK TO.
25 WHAT WAS THE CHILDHOOD? WAS THERE
26 PHYSICAL ABUSE? WAS THERE EMOTIONAL DEPRIVATION?
27 WERE THESE THINGS ACTING UPON THE CHILD WHO HAS NOW
28 BECOME THE ADULT WHO'S BEING JUDGED FOR HIS LIFE?

52671

1 WE ARE OFFERING IT BOTH UNDER THE UNITED
2 STATES CONSTITUTION, SUMNER VERSUS SCHUMAN, THE
3 WHOLE LINE OF CASES THAT TALK ABOUT THE UNIQUENESS
4 OF THE INDIVIDUAL. THIS IS THE WAY YOU PROVE THE
5 UNIQUENESS OF THE INDIVIDUAL, AND THIS IS THE WAY
6 YOU PROVE THE INFLUENCE THE PARENTS HAD IN SHAPING
7 THE INDIVIDUAL; THAT IT WAS NOT FROM WITHIN THE
8 SELF, BUT WAS IMPOSED FROM WITHOUT.
9 MS. ABRAMSON: YOUR HONOR, FOR EXAMPLE --
10 THE COURT: LET ME CUT IT OFF HERE. THIS WAS
11 CLEARLY AN ISSUE THAT WAS GOING TO ARISE DURING THE
12 PENALTY PHASE. WE DISCUSSED IT EARLIER. ALL I
13 WOULD DO IS SUGGEST THAT SINCE THERE'S SO MANY
14 ABUNDANT CASES THAT DEAL WITH THIS SUBJECT, BOTH
15 FEDERAL AND STATE, THAT YOU JUST CITE THEM TO ME,
16 AND SPECIFICALLY ON THIS ISSUE OF WHAT WE'RE TALKING

17 ABOUT HERE. AND IF THEY ARE ON POINT AND RELEVANT

18 TO THE SUBJECT, THEN WE WILL --

19 MR. GESSLER: I BELIEVE EDMOND VERSUS

20 OKLAHOMA WAS CERTAINLY ONE IN WHICH THEY WERE

21 LOOKING AT THE YOUTH OF THE YOUNG MAN.

22 THE COURT: I'M TALKING ABOUT THIS HEARSAY

23 ISSUE, JUST THIS ONE ISSUE. OBVIOUSLY, THE

24 BACKGROUND IS RELEVANT AND ADMISSIBLE. JUST THE

25 RELEVANCE OF THE HEARSAY AND STATEMENTS --

26 MS. ABRAMSON: WE DON'T HAVE CASES ON THAT.

27 WE'RE WRITING ONE RIGHT NOW. WE DON'T HAVE ANY

28 CASES ON THAT.

52672

1 THE COURT: GIVE ME THE CASE THAT WOULD

2 RELATE TO THIS SUBJECT.

3 MR. GESSLER: THERE IS NO CASE DIRECTLY ON

4 POINT TALKING ABOUT HOW YOU PROVE UP THE FACTORS OF

5 PARENTAL ABUSE OF THE CHILDREN. IT'S ASSUMED THAT

6 YOU WILL DO IT WITH THE BEST EVIDENCE THAT IS

7 AVAILABLE. NORMALLY THAT'S NOT THE PARENT, WHETHER

8 THEY'RE DEAD OR ALIVE, BECAUSE NORMALLY THE PARENTS

9 WOULD NOT ADMIT SUCH A THING, NOR HAVE VOICED IT

10 WHEN IT HAPPENED. IT USUALLY COMES IN THROUGH

11 SOCIAL WORKERS, PSYCHOLOGISTS, OR EXACTLY AS HERE,

12 PEOPLE, REAL WITNESSES WHO WERE PRIVY TO THE
13 CONVERSATIONS AND TO THE ACTIONS THAT OCCURRED, IN
14 ORDER TO EXPLAIN THEM, TO SAY WHEN THEY HEARD THEM
15 AND WHAT THEY SAW.

16 I THINK PROBABLY THE REASON THERE'S NO
17 CASE RIGHT ON POINT IS THERE IS NO CASE IN WHICH
18 ANYBODY HAS TRIED TO PREVENT IT FROM COMING IN WHEN
19 IT IS SO OBVIOUSLY RELEVANT AND SO OBVIOUSLY
20 TRUSTWORTHY BY THE WITNESSES WHO ARE PRESENTING IT,
21 BECAUSE THEY ARE THE ONES WHO HEARD IT AND SAW IT.

22 THE COURT: YOU READ ALL SORTS OF CASES ON
23 PENALTY-PHASE EVIDENCE WHERE SUBJECTS SUCH AS THIS
24 ARISE.

25 WHAT I WILL DO IS SUSTAIN THE OBJECTION,
26 AND BETWEEN NOW AND TOMORROW, IF YOU HAVE AUTHORITY
27 THAT YOU WANT ME TO LOOK AT, I'LL CONSIDER IT,
28 CONSIDER IT FURTHER.

52673

1 MS. ABRAMSON: COULD I INQUIRE? HOW IS THE
2 PROSECUTION IN THIS CASE, HAVING GOTTEN THIS FAR,
3 HARMED BY HAVING THE TRUTH ABOUT WHAT JOSE MENENDEZ
4 THOUGHT THEY WERE ENTITLED TO DO TO THEIR CHILDREN
5 COME IN? HOW ARE THEY HARMED IN THE GREAT BALANCE
6 OF THINGS? HOW IS THE GOVERNMENT-- HOW IS THE STATE

7 HARMED BY ALLOWING THE TRUTH TO COME IN ABOUT WHAT
8 THESE PEOPLE INTENDED TO DO AND DID, IN FACT, DO
9 WITH THEIR KIDS, FOR WHATEVER REASONS THEY MAY HAVE
10 HAD, THIS CONSTANTLY OFT-REPEATED ATTITUDE OF
11 NONACCEPTANCE SHORT OF PERFORMANCE? HOW DOES IT
12 HURT ANYTHING?

13 THE COURT: OKAY. AS FAR AS HURT OR NOT, YOU
14 CAN INQUIRE AT SOME LATER TIME OF THE PROSECUTION AS
15 TO THEIR REASON FOR OBJECTING AT THIS POINT.

16 MS. ABRAMSON: THEIR REASON FOR OBJECTING IS
17 ALL THEY CARE ABOUT IS WINNING, NOT TRUTH; AND YOU
18 KNOW THAT.

19 THE COURT: I DON'T KNOW THAT. THE COURT IS
20 RULING ON THE ISSUE PRESENTED BY THE OBJECTION, AND
21 THAT'S ALL I AM ADDRESSING HERE. AND AS TO THE
22 LEGAL MERITS OF THE OBJECTION, I'M OPEN TO FURTHER
23 CITATION TO AUTHORITY.

24 MS. ABRAMSON: AS THE COURT KNOWS, THIS
25 EVIDENCE CAME IN IN THE FIRST TRIAL.

26 THE COURT: I'M NOT --

27 MS. ABRAMSON: IN THE GUILT PHASE.

28 THE COURT: I'M CONCERNED ABOUT THIS --

52674

1 MS. ABRAMSON: SAME PROSECUTORS' OFFICE,

2 HOWEVER.

3 THE COURT: -- PROCEEDING RIGHT HERE. WE'RE
4 GETTING INTO ALL SORTS OF EXTRANEIOUS MATERIAL THAT
5 HAS NOTHING TO DO WITH THE DISCUSSION AT HAND. AND
6 IF WE CAN JUST FOCUS ON THAT WE'LL PROCEED MUCH MORE
7 EFFICIENTLY. SO...

8 MR. GESSLER: I WOULD LIKE TO ANSWER THE
9 COURT'S QUESTION --

10 THE COURT: YES.

11 MR. GESSLER: -- ABOUT OTHER CASES. AND YOU
12 SAID ALL KIND OF CASES DEALING WITH ISSUES LIKE THIS
13 IN PENALTY.

14 IN TRUTH, I THINK I HAVE READ ALMOST ALL
15 OF THE PENALTY CASES THAT HAVE COME DOWN IN
16 CALIFORNIA AND THROUGH THE UNITED STATES SUPREME
17 COURT, AND I HAVE NOT SEEN ANY THAT DEALT WITH A
18 SITUATION SUCH AS THIS, WHERE WE ARE OFFERING FAMILY
19 HISTORY OF THE CHILDHOOD OF THE DEFENDANT ON TRIAL
20 THROUGH PERCIPIENT WITNESSES TO THE CONVERSATIONS OF
21 THE PARENTS, WHERE THE ISSUE IS THE PARENTING AND
22 HOW IT AFFECTED THE DEFENDANTS WHO GOT HERE, WHETHER
23 OR NOT THE PARENTS WERE THE DECEASED IN THE
24 PARTICULAR CASE. IT IS TRADITIONALLY DONE. THIS IS
25 A VERY GOOD AND PERFECT WITNESS TO DO IT, A VERY
26 TRUSTWORTHY WITNESS. WHAT SHE HAS TO SAY IS
27 CERTAINLY RELIABLE, WHICH IS ONE OF THE INDICIA TO
28 WHETHER OR NOT SUCH EVIDENCE SHOULD COME BEFORE THE

1 TRIER OF FACT.

2 I DON'T THINK, IF WE ALL SPENT ALL
3 NIGHT, WE WOULD FIND A CASE ON POINT DETERMINING
4 THIS PARTICULAR ISSUE WHICH THE COURT HAS RAISED ON
5 THIS PARTICULAR OBJECTION. ALL WE CAN REITERATE IS
6 THAT THE NORMAL RULES OF WHAT ARE EXCEPTIONS TO
7 HEARSAY APPLY.

8 FIRST, THE COURT HAS AGREED WITH THE
9 RELEVANCE, IS MY UNDERSTANDING, THAT IT IS RELEVANT
10 AS TO -- NO?

11 THE COURT: NO. I DIDN'T SAY THAT. JUST THE
12 OPPOSITE. I SAID AS FAR AS WHAT THE PARENTS SAID,
13 IT'S NOT RELEVANT. THERE'S NO CONNECTION BETWEEN
14 WHAT THEY SAID AND WHAT ACTUALLY HAPPENED.

15 MR. GESSLER: YOUR HONOR, THERE IS EVERY
16 CONNECTION BETWEEN WHAT A PARENT SAYS AND DOES TO A
17 YOUNG CHILD AND HOW THAT CHILD GROWS AND ACTS. THIS
18 IS THROUGHOUT THE ADOLESCENCE, THE YOUTH, AND
19 ADOLESCENCE OF ERIK AND LYLE MENENDEZ. BOTH
20 TERESITA BARALT AND FAITH GOLDSMITH, OF THE YOUNGER
21 AGES, ARE PERCIPIENT WITNESSES TO WHAT WAS GOING ON
22 AS THE CHILDREN WERE GROWING AT THAT TIME. TERESITA
23 BARALT IS A RELATIVE, BOTH OF THE DECEASED AND OF
24 THE DEFENDANTS.

25 THE COURT: ALL OF THAT --

26 MR. GESSLER: WHICH PUTS HER IN A VERY UNIQUE
27 POSITION TO KNOW WHAT THAT LIFE WAS LIKE AND THE
28 PROCESS CONCERNING IT.

52676

1 THE COURT: ALL OF THAT IS ADMISSIBLE AS FAR
2 AS WHAT SHE SAW.

3 MR. GESSLER: BUT WE'RE GETTING INTO THE
4 RELEVANCE THEN OF THE PARENTS' EXPRESSED PHILOSOPHY
5 FOR THEIR CHILDREN, WHICH IS EXTREMELY RELEVANT, I
6 THINK, TO MOST OBSERVERS, CERTAINLY TO
7 PSYCHOLOGISTS, AND I BELIEVE TO JURORS AND
8 UNEDUCATED PEOPLE ALIKE, THAT WE ALL KNOW THAT, I
9 THINK, SOMEONE ONCE SAID: "AS THE TWIG IS BENT, SO
10 WILL THE TREE GROW," OR SOMETHING OF THAT NATURE.

11 IT MEANS THAT CERTAINLY THE PARENTS'
12 PHILOSOPHY -- AND IT IS IN THEIR HANDS TO IMPLEMENT
13 IT ON THE CHILDREN -- IS OF PARAMOUNT IMPORTANCE AS
14 TO HOW THOSE CHILDREN WILL GROW AND WHAT THEIR
15 VALUES WILL BECOME. WE'RE NOT OFFERING THAT IN THE
16 ABSTRACT. WE'RE OFFERING THEN LATER FACTS IN LIFE
17 TO SHOW THAT THE PARENTS CARRIED OUT THAT
18 PHILOSOPHY, AND THAT WE'RE DOING THROUGH COACHES,
19 TEACHERS, PEOPLE WHO SAW THE DEVELOPMENT OF LYLE AND

20 ERIK MENENDEZ AS A RESULT OF THIS PHILOSOPHY. THEY
21 SAW HIM BECOME A NO. 1 TENNIS PLAYER.
22 THE COURT: LET ME STOP YOU. I WON'T
23 FORECLOSE THIS EVIDENCE ABSOLUTELY. I'LL THINK
24 ABOUT IT AND GIVE YOU A CHANCE TO COME UP WITH ANY
25 FURTHER AUTHORITY, AND WE'LL DISCUSS IT TOMORROW
26 MORNING.
27 AT THIS POINT MY RULING IS TO HEARSAY
28 COMING IN THAT THIS WITNESS WOULD RELATE, STATEMENTS

52677

1 MADE BY THE VICTIMS THAT ARE SUBJECT TO A HEARSAY
2 OBJECTION, UNLESS THERE'S AN EXCEPTION THAT WOULD
3 MAKE IT ADMISSIBLE.
4 MR. GESSLER: IT'S OUR POSITION THAT THE
5 QUESTION ASKED IS AN EXCEPTION TO THE HEARSAY RULE,
6 IN THAT WHAT WAS EXPRESSED BY JOSE MENENDEZ WAS IN
7 FACT THE PHILOSOPHY ACTED UPON, AND EXPLAINS THE
8 CONDUCT, HIS CONDUCT, LATER ON WITH COACHES AND WITH
9 TEACHERS, AND THE CONDUCT OF LYLE AND ERIK MENENDEZ
10 GROWING IN THE WAY THAT THE FATHER IMPOSED UPON
11 THEM; THAT IT IS, THEREFORE, AN EXCEPTION TO THE
12 HEARSAY RULE.
13 FOR THOSE REASONS IT WAS STATE OF MIND
14 TO INFER SUBSEQUENT CONDUCT ON BEHALF OF JOSE

15 MENENDEZ AS IT'S SHOWN THROUGH THE COACHES,
16 TEACHERS, AND THROUGH LYLE MENENDEZ AND ERIK
17 MENENDEZ. AND THAT IT IS TOTALLY RELEVANT UNDER THE
18 UNITED STATES SUPREME COURT CASES, AS WELL AS
19 FACTOR-K, AS SHOWING THE EMOTIONAL DEPRIVATION THAT
20 THE CHILDREN RECEIVED AT THAT TIME BECAUSE OF THIS
21 MISGUIDED PHILOSOPHY WITH WHICH THEY LED THEIR
22 LIVES.

23 THE COURT: OKAY.

24 MS. TOWERY: YOUR HONOR, COULD I HAVE ONE
25 MOMENT WITH MR. GESSLER?

26 THE COURT: YES.

27 (ATTORNEYS GESSLER AND TOWERY CONFER
28 SOTTO VOCE.)

52678

1

2 MS. TOWERY: YOUR HONOR, AFTER CONSULTING
3 WITH MR. GESSLER AND MRS. ABRAMSON, THREE OF OUR
4 WITNESSES WE WOULD BE CALLING TODAY, INCLUDING THE
5 WITNESS ON THE STAND NOW, THOSE EXPRESSED STATEMENTS
6 OF PHILOSOPHY ARE THE LINCHPIN OF THE SUBSEQUENT
7 TESTIMONY OF THOSE WITNESSES.

8 SO SINCE IT'S ALMOST 2:30, I WOULD ASK
9 THAT THE COURT, IN LIEU OF HAVING THIS TESTIMONY

10 COMING OUT IN A DISJOINTED AND INCOMPREHENSIBLE WAY,
11 I WOULD ASK THAT THE COURT PERMIT US TO RECESS EARLY
12 SO WE CAN SEEK TO PERSUADE THE COURT REGARDING THE
13 ADMISSIBILITY OF THIS EVIDENCE AND CONTINUE WITH
14 MRS. BARALT AND THE OTHER WITNESSES TOMORROW.

15 THE COURT: I DON'T SEE HOW THAT WOULD
16 PREVENT HER TESTIMONY COMING OUT IN A COHESIVE
17 FASHION IF I ULTIMATELY RULE THIS IS ADMISSIBLE.
18 YOU HAVE SPECIFIC INSTANCES -- WHAT I'M AT THIS
19 POINT DOING IS DRAWING A DISTINCTION BETWEEN WHAT
20 WAS SAID BY THE PARENTS TO THIS WITNESS OUTSIDE THE
21 PRESENCE AND UNDERSTANDING OF THE DEFENDANTS AND
22 WHAT THE PARENTS ACTUALLY DID THAT SHE SAW.

23 THAT'S THE DISTINCTION I'M DRAWING. AND
24 IT'S A DISTINCTION BASED ON THE FACT THAT I HAVEN'T
25 SEEN ANY CONNECTION BETWEEN THESE STATEMENTS THAT
26 YOU'RE ALLUDING TO, THAT SHE WILL TESTIFY ABOUT, AND
27 WHAT THE PARENTS ACTUALLY DID IN RELATIONSHIP TO
28 THEIR CHILDREN.

52679

1 MR. GESSLER: MAY I HAVE A MOMENT, YOUR
2 HONOR?

3 THE COURT: I'LL CERTAINLY CONSIDER THIS
4 MATTER FURTHER, BUT WE HAVE TO PROCEED WITH THE

5 TRIAL.

6 (ATTORNEYS GESSLER AND TOWERY

7 CONFER SOTTO VOCE.)

8

9 MS. TOWERY: COULD WE HAVE A BRIEF RECESS,

10 YOUR HONOR, SO WE CAN TALK TO EACH OTHER?

11 MR. GESSLER: FIVE MINUTES, YOUR HONOR.

12 THE COURT: OKAY. MAKE IT 25 MINUTES TO THE

13 HOUR, BUT EVERYBODY BACK HERE SO WE DON'T HAVE

14 ANOTHER LENGTHY WAIT.

15 MR. GESSLER: YES.

16 (A RECESS WAS TAKEN FROM

17 2:28 P.M. TO 2:40 P.M.)

18

19 THE COURT: OKAY. EVERYBODY IS BACK. WE'LL

20 HAVE THE JURY OUT, PLEASE.

21 THE COURT: THE JURY IS BACK. YOU MAY

22 CONTINUE YOUR DIRECT EXAMINATION.

23 MS. TOWERY: THANK YOU, YOUR HONOR.

24 Q MRS. BARALT, YOUR NEPHEWS WERE ACTIVE IN

25 SPORTS FROM THE TIME THEY WERE VERY YOUNG; IS THAT

26 RIGHT?

27 A YES, THEY WERE.

28 Q AND THEY PLAYED SOCCER; IS THAT RIGHT?

1 A YES.

2 Q AND THEY SWAM; IS THAT CORRECT?

3 A UH-HUH.

4 Q AND THEY PLAYED TENNIS?

5 A AND THEY PLAYED TENNIS, YES.

6 Q DID YOU EVER HEAR YOUR BROTHER TELL
7 EITHER LYLE OR ERIK MENENDEZ WHAT HIS EXPECTATIONS
8 OF THEM WERE IN CONNECTION WITH THEIR SPORT
9 ACTIVITIES?

10 A YES, I DID. MANY TIMES.

11 Q WHAT DID YOU HEAR HIM SAY TO HIS SONS?

12 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

13 THE COURT: OVERRULED.

14 THE WITNESS: JOSE AND KITTY, OKAY -- AND
15 THEY SHARED JOINTLY THESE BELIEFS -- WAS THAT --

16 THE COURT: NO, SIR. LISTEN. THE QUESTION
17 HAD TO DO WITH WHAT YOU HEARD --

18 A WHAT I HEARD.

19 THE COURT: -- YOUR BROTHER SAY TO THE
20 DEFENDANTS?

21 A OKAY. GOD LOVES WINNERS. NOBODY
22 REMEMBERS SECOND PLACE. EXACTLY LIKE THAT.

23 Q BY MS. TOWERY: DID YOU HEAR YOUR
24 BROTHER SAY THIS TO HIS SONS MANY TIMES?

25 A MANY TIMES. ESPECIALLY AFTER LOSING.

26 Q AND YOU MENTIONED THAT YOUR
27 SISTER-IN-LAW FELT THE SAME WAY; IS THAT RIGHT?

28 A YES.

1 Q AND DID YOU HEAR HER SAY THE SAME TYPES
2 OF THINGS TO HER SONS IN CONNECTION WITH THEIR
3 SPORTS ACTIVITIES?

4 A YES.

5 Q AND IS THE SAME TRUE WITH RESPECT TO
6 OTHER THINGS THAT LYLE AND ERIK MENENDEZ WOULD DO
7 LATER IN LIFE, SUCH AS SCHOOL?

8 THE COURT: WHAT IS TRUE?

9 MS. TOWERY: THE SAME STATEMENTS.

10 Q DID YOU HEAR --

11 A NO. THE SAME EMPHASIS WAS NOT IN THE
12 SCHOOL, NOT THE SAME WAY. LET ME PUT IT THAT WAY.

13 Q BY MS. TOWERY: OKAY. TELL US ABOUT THE
14 WAY THAT THIS EMPHASIS WAS PLACED BY MR. AND MRS.
15 MENENDEZ WITH RESPECT TO SWIMMING.

16 CAN YOU GIVE US AN EXAMPLE IN WHICH THIS
17 WAS EXPRESSED BY MR. MENENDEZ TO ERIK OR LYLE
18 MENENDEZ.

19 A I CAN GIVE YOU A SPECIFIC EXAMPLE.

20 Q ALL RIGHT.

21 A ESPECIALLY ON THE SWIMMING, BECAUSE I
22 WAS THERE.

23 Q ALL RIGHT.

24 A IT WAS THE "EIGHT AND UNDER," SO ERIK
25 WAS NOT EVEN EIGHT YEARS OLD. AND HE HAD COME IN
26 SECOND, AND HE WAS UPSET. SO I WENT TO HIM AND I
27 SAID, "ERIK, THERE'S A LOT OF MEETS. YOU'RE ONLY
28 EIGHT."

52682

1 AND JOSE SAID, "DON'T SAY THAT. HE
2 LOST."

3 I SAID, "BUT HE'S ONLY A LITTLE BOY. HE
4 HAS THREE MORE EVENTS TODAY."

5 HE SAID, "IT DOESN'T MATTER. THIS ONE
6 HE LOST."

7 Q DID YOU DISAGREE WITH THE THINGS THAT
8 YOUR BROTHER WAS SAYING TO HIS SON?

9 A STRONGLY. AND I VOICED IT TOO.

10 Q YOU VOICED IT TO YOUR BROTHER?

11 A UH-HUH.

12 Q AND DID YOU VOICE IT TO YOUR
13 SISTER-IN-LAW?

14 A UH-HUH. DIDN'T GET ME ANYWHERE.

15 Q WHAT WAS THEIR RESPONSE?

16 A WELL, THIS WAS THEIR BELIEF. THIS WAS
17 THE WAY.

18 MR. CONN: OBJECTION. NONRESPONSIVE. CALLS

19 FOR HEARSAY.

20 THE COURT: SUSTAINED.

21 THE ANSWER IS STRICKEN.

22 Q BY MS. TOWERY: CAN YOU TELL US WHAT
23 THEY -- HOW THEY RESPONDED TO YOU WHEN YOU SAID THAT
24 YOU DIDN'T THINK THAT WAS RIGHT?

25 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR
26 HEARSAY.

27 THE COURT: SUSTAINED.

28 Q BY MS. TOWERY: DID YOU SEE IN YOUR

52683

1 BROTHER, IN HIS OWN BEHAVIOR IN TERMS OF HIS WORK,
2 THIS WINNING PHILOSOPHY?

3 MR. CONN: OBJECTION. IRRELEVANT.

4 THE COURT: SUSTAINED.

5 Q BY MS. TOWERY: WAS YOUR BROTHER A
6 FOCUSED PERSON WHEN IT CAME TO HIS CHILDREN?

7 A DRIVEN. THAT'S THE WORD I WOULD USE.
8 FOCUSED, YES.

9 Q AND IN WHAT WAY WAS YOUR BROTHER DRIVEN
10 WHEN IT CAME TO HIS TWO SONS?

11 A I CAN'T ANSWER THIS YES OR NO. CAN I
12 EXPLAIN?

13 THE COURT: WELL, THE QUESTION ASKS FOR A YES

14 OR NO.

15 MS. TOWERY: YES.

16 Q IN WHAT WAY? DESCRIBE HOW YOUR BROTHER
17 WAS DRIVEN. YOU SAID HE WAS DRIVEN WITH RESPECT TO
18 HIS SONS.

19 A OKAY. JOSE DID NOT LEAVE THINGS TO
20 CHANCE. OKAY. HE GOT TO WHERE HE WAS AT AN EARLY
21 AGE BY BEING EXTREMELY FOCUSED ON EVERYTHING HE
22 DID. HE DIDN'T ALLOW FOR ANYTHING BUT PERFECTION.
23 HE EXPECTED IT OF HIMSELF AND HE EXPECTED IT OF THE
24 KIDS. BUT IN HIS CASE, IT'S OKAY IF HE EXPECTED IT
25 OF HIMSELF, BECAUSE IT WAS HIM. BUT THESE WERE
26 LITTLE KIDS. HE WAS --

27 MR. CONN: I WOULD OBJECT AT THIS POINT.
28 CALLS FOR A NARRATIVE.

52684

1 THE COURT: WELL, IT REALLY ISN'T RESPONSIVE
2 TO THE QUESTION.

3 PERHAPS YOU CAN REASK THE QUESTION.

4 Q BY MS. TOWERY: WHEN LYLE AND ERIK
5 MENENDEZ WERE VERY YOUNG, WHEN THEY TOOK UP A SPORT,
6 HOW -- DID THEY DO THAT SPORT ALL THE TIME? DID THEY
7 DO IT ONCE A WEEK? HOW DID ERIK AND LYLE MENENDEZ
8 ENGAGE IN SPORTING ACTIVITIES WHEN THEY WERE LITTLE

9 BOYS?

10 A OKAY. I'LL GIVE YOU A SPECIFIC
11 INSTANCE.

12 Q OKAY.

13 A SOCCER. OKAY. THEY SLEPT WITH A SOCCER
14 BALL. THEY WALKED WITH A SOCCER BALL. THEY ARRIVED
15 AT MY HOUSE WITH A SOCCER BALL. THEY PLAYED SOCCER,
16 INSIDE, OUTSIDE, DESTROYING HALF THE HOUSE IF
17 NECESSARY. I MEAN, IT WAS OBSESSIVE.

18 Q AND WAS THAT BECAUSE THEY WANTED TO PLAY
19 SOCCER ALL THE TIME?

20 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

21 THE COURT: PERHAPS YOU CAN REPHRASE THE
22 QUESTION.

23 Q BY MS. TOWERY: DID YOUR BROTHER
24 INDICATE TO ERIK AND LYLE MENENDEZ THAT HE EXPECTED
25 THEM TO PLAY SOCCER ALL THE TIME IF THAT WAS THE
26 SPORT IN WHICH THEY WERE ENGAGED IN?

27 A HE DID IT WITH THEM, I MEAN, ALL THE
28 TIME. HE FELT -- AND THIS IS NOT HEARSAY -- HE FELT

52685

1 THAT IN ORDER FOR YOU TO BE GOOD AT SOMETHING YOU
2 HAVE TO DO IT ALL THE TIME, ALL THE TIME UNTIL YOU
3 PERFECT IT.

4 Q AND DID HE ASK THAT OF HIS SONS WHEN
5 THEY WERE LITTLE BOYS?

6 A YES, HE DID. LITTLE BOYS AND BIG BOYS.

7 Q THE SAME EXPECTATION WAS --

8 A YES.

9 Q -- WENT THROUGHOUT THEIR DEVELOPMENT?

10 A YES.

11 Q WHAT ABOUT -- DID YOU HAVE A SWIMMING
12 POOL AT YOUR HOUSE?

13 A YES, I DID. I DO.

14 Q AND YOU HAVE A DAUGHTER WHO IS A
15 SWIMMER; IS THAT RIGHT?

16 A YES.

17 Q WHICH DAUGHTER IS THAT?

18 A MY YOUNGEST. THE ONE ERIK'S AGE.

19 Q ANAMARIA?

20 A ANAMARIA.

21 Q WAS SHE A GOOD SWIMMER?

22 A SHE WAS.

23 MR. CONN: OBJECTION. IRRELEVANT.

24 THE COURT: OVERRULED.

25 YOU CAN ANSWER THE QUESTION.

26 THE WITNESS: HE WAS NATIONAL LEVELS ATHLETE.

27 Q BY MS. TOWERY: AND DID SHE PRACTICE
28 SWIMMING IN THE POOL AT YOUR HOME?

1 A NO. THE POOL AT MY HOME WAS STRICTLY
2 FUN. I DON'T KNOW HOW MANY -- HOW MUCH YOU KNOW
3 ABOUT A SWIMMER, BUT A SWIMMER PRACTICES LONG
4 HOURS. IT'S TEDIOUS. IN MY HOUSE, THE HOME IS A
5 HAVEN. YOU JUST ENJOY HOME. WHEN YOU GO OUT YOU
6 PRACTICE.

7 Q AND YOUR DAUGHTER WOULD PLAY IN THE POOL
8 WHEN SHE WAS AT HOME?

9 A THE POOL WAS STRICTLY HER FUN PLACE.

10 Q WAS THE POOL A FUN PLACE FOR ERIK AND
11 LYLE MENENDEZ, THE POOL AT YOUR HOME?

12 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

13 THE COURT: PERHAPS YOU CAN REPHRASE THE
14 QUESTION.

15 Q BY MS. TOWERY: WHEN ERIK AND LYLE
16 MENENDEZ CAME TO YOUR HOME DID THEY PLAY IN THE
17 POOL?

18 A ERIK COULDN'T. ERIK HAD TO PRACTICE.

19 Q AND WHY WAS THAT?

20 A ERIK WAS A SWIMMER. SO HE HAD TO BE
21 DRILLED AND TAUGHT HOW TO DO THINGS PERFECT.

22 Q AND BY WHOM WAS HE DRILLED AND TAUGHT
23 HOW TO DO THINGS PERFECT?

24 A THAT WAS JOSE.

25 Q AND WAS ERIK EVER ALLOWED TO PLAY IN THE
26 POOL AT YOUR HOME?

27 A THERE WAS VERY LITTLE TIME. HE WOULD
28 ARRIVE. HE HAD TO DRILL AND THEN YOU GO HOME.

52687

1 Q DID YOU SEE YOUR BROTHER GIVING HIS
2 CHILDREN ORDERS AS TO HOW THEY SHOULD PERFORM SPORTS
3 ACTIVITIES?

4 A YES.

5 Q AND IS THAT TRUE WITH RESPECT TO BOTH
6 ERIK AND LYLE MENENDEZ?

7 A VERY MUCH SO WITH BOTH.

8 Q IS THAT TRUE WITH RESPECT TO THEIR
9 TENNIS PLAYING?

10 A TENNIS, SOCCER, SWIMMING.

11 Q WAS YOUR BROTHER A COMPETITIVE PERSON?

12 A COMPETITIVE AND AN EXTREMELY GIFTED
13 ATHLETE.

14 Q AND WHAT ABOUT YOUR SISTER-IN-LAW, WAS
15 SHE ALSO A COMPETITIVE PERSON?

16 A KITTY WAS EVEN MORE COMPETITIVE THAN
17 JOSE, IF THAT WOULD HAVE BEEN POSSIBLE.

18 Q AND DID MRS. MENENDEZ TELL HER SONS THAT
19 SHE ALSO EXPECTED THEM TO WIN IN THEIR ATHLETIC
20 ENDEAVORS?

21 A YES. THEY HAD -- THEY WERE UNITED IN

22 THEIR BELIEFS.

23 Q AND YOU DISAGREED WITH THOSE BELIEFS?

24 A YES AND NO. I DISAGREED WITH THE WAY IT

25 WAS ENFORCED. AND I ALSO THINK THAT THERE NEEDS TO

26 BE A BALANCE. IF ONE OF THE PARENTS IS EXTREMELY

27 PUSHY, OR WHATEVER WORD YOU WANT TO USE,

28 COMPETITIVE, THERE'S GOT TO BE ANOTHER PARENT TO DRY

52688

1 UP THE TEARS AND SAY, "IT'S OKAY, HONEY."

2 BUT IF YOU HAVE TWO FORCES LIKE THAT,

3 THE KID IS IN THE MIDDLE. YOU DESTROY HIM. YOU

4 KNOW, IT'S THAT SIMPLE.

5 Q DID YOU EVER SEE EITHER YOUR BROTHER OR

6 YOUR SISTER-IN-LAW DRY THE TEARS OF LYLE OR ERIK

7 MENENDEZ --

8 A NO. THAT'S WEAKNESS.

9 Q -- WHEN THEY WERE LITTLE GUYS?

10 A THAT'S CONSIDERED WEAKNESS.

11 Q IS THAT CONSIDERED WEAKNESS BY YOU?

12 A NO. BY THEM. YOU DON'T SHOW EMOTION,

13 NOT LIKE THAT.

14 MR. CONN: OBJECTION. NONRESPONSIVE. MOTION

15 TO STRIKE.

16 THE COURT: WELL, IT IS RESPONSIVE.

17 OBJECTION OVERRULED. THE ANSWER WILL
18 STAND.
19 Q BY MS. TOWERY: DID YOU EVER GO TO
20 TENNIS TOURNAMENTS THAT YOUR NEPHEWS PLAYED IN WHEN
21 THEY WERE YOUNGSTERS?
22 A FOR A WHILE.
23 Q DID YOU STOP GOING AT SOME POINT?
24 A YES, I DID.
25 Q WHY WAS THAT?
26 MR. CONN: OBJECTION. IRRELEVANT.
27 THE COURT: SUSTAINED.
28 Q BY MS. TOWERY: WHEN YOU WENT TO THE

52689

1 TENNIS TOURNAMENTS THAT LYLE AND ERIK MENENDEZ
2 PLAYED IN AS CHILDREN, DID YOUR BROTHER AND YOUR
3 SISTER-IN-LAW ALSO ATTEND THOSE TOURNAMENTS?
4 A YES, THEY DID.
5 Q AND DID THEY BEHAVE IN ANY PARTICULAR
6 FASHION WITH RESPECT TO THEIR SONS AT THOSE TENNIS
7 TOURNAMENTS?
8 A THE TENSION AND THE EMPHASIS, IT COULD
9 HAVE BEEN THE OLYMPICS. AND I JUST COULDN'T TAKE --
10 AND I'M A COMPETITIVE PERSON, AND I'M AN ATHLETE. I
11 COULDN'T TAKE THAT.

12 Q WHAT KINDS OF THINGS WOULD YOUR BROTHER
13 OR YOUR SISTER-IN-LAW DO TO SHOW TENSION AT THE
14 TENNIS TOURNAMENTS?

15 A JOSE WOULD PACE AND SMOKE AND YOU
16 COULDN'T TALK TO HIM.

17 KITTY WOULD SIT THERE AND WHENEVER YOU
18 MADE A COMMENT ABOUT A PLAY, "TERRY, NOT NOW. NOT
19 NOW."

20 SO I JUST -- I STOPPED GOING. IT WASN'T
21 FUN ANYMORE. IT WASN'T FUN, AND IT HURT TO SEE THIS
22 EMPHASIS, SO MUCH OF IT.

23 Q HOW OLD WERE LYLE AND ERIK MENENDEZ
24 APPROXIMATELY WHEN YOU STOPPED ATTENDING THEIR
25 TENNIS TOURNAMENTS?

26 A WELL, WITH JOSE AND KITTY?

27 Q YES.

28 A I STOPPED WHEN THEY WERE SOMEWHERE

52690

1 AROUND 12 OR 13. I DID GO TO LYLE'S COLLEGE MEETS,
2 BECAUSE THEY WERE NOT THERE. SO I DID GO TO THAT.

3 AND I WENT TO ONE OF THE MERCY COUNTY
4 CHAMPIONSHIPS WHEN ERIK WAS PLAYING, BECAUSE THEY
5 WERE OUTDOORS, AND I JUST COULD STAY AWAY. IT'S
6 WHEN THEY WERE INDOORS THAT -- THE TENSION WAS

7 UNBELIEVABLE.

8 Q YOU SAID THAT IT HURT TO WATCH. DID YOU
9 DO ANYTHING TO TRY TO INTERVENE, TO TRY TO TALK TO
10 YOUR BROTHER OR YOUR SISTER-IN-LAW ABOUT THEIR
11 BEHAVIOR AT THESE TENNIS TOURNAMENTS?

12 A I VOICED MY OPINION. BUT REMEMBER, WE
13 ARE ALL IN OUR EARLY TWENTIES. WE'RE RAISING KIDS.
14 AT THE TIME THE PHILOSOPHY -- I HAD MINE.

15 MR. CONN: OBJECTION. NONRESPONSIVE.

16 MS. TOWERY: I THINK IT'S RESPONSIVE, YOUR
17 HONOR.

18 THE COURT: WELL, IT COULD HAVE BEEN ANSWERED
19 YES OR NO. SO SHE'S GONE BEYOND THAT. SO
20 SUSTAINED.

21 NEXT QUESTION, PLEASE.

22 Q BY MS. TOWERY: WHY DIDN'T YOU TRY TO
23 INTERVENE?

24 A BECAUSE THEY WERE ENTITLED TO RAISE
25 THEIR KIDS AND I WAS NOT -- I COULDN'T PROVE THAT
26 THEIR METHOD WAS WRONG. OBVIOUSLY IT WAS. BUT I
27 HAD -- I HADN'T RAISED MY KIDS -- AND SAY WELL, MY
28 METHOD WORKS. I WAS STILL RAISING MINE. THEY HAD

1 THEIR WAYS OF THINKING. I HAD MINE.

2 Q AND YOU DISAGREED WITH THOSE WAYS; IS
3 THAT RIGHT?

4 A I DISAGREED WITH THEIRS, YES.

5 Q DID YOU EVER SEE ANY DEMONSTRATIONS OF
6 AFFECTION BY MRS. MENENDEZ, YOUR SISTER-IN-LAW,
7 TOWARDS LYLE MENENDEZ DURING THE TIME HE WAS A
8 LITTLE BOY?

9 A NO. NO.

10 Q DID YOU EVER SEE HER CUDDLE HIM OR CALL
11 HIM PET NAMES?

12 A NO. THEY WERE BOYS, AND YOU DON'T DO
13 THAT TO BOYS.

14 Q AND IS THAT WHAT MRS. MENENDEZ TOLD YOU?

15 A (WITNESS NODDING HEAD).

16 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

17 THE COURT: SUSTAINED.

18 Q BY MS. TOWERY: DID YOU TELL MRS. MENENDEZ
19 THAT BOYS NEEDED CUDDLING AS WELL AS GIRLS?

20 A YES, I DID. BUT THERE'S --

21 MR. CONN: OBJECTION.

22 THE WITNESS: LATER.

23 MR. CONN: NONRESPONSIVE.

24 THE COURT: EVERYTHING AFTER "YES" IS
25 STRICKEN.

26 YOUR NEXT QUESTION, PLEASE.

27 Q BY MS. TOWERY: WHEN LYLE MENENDEZ WAS A
28 TEENAGER, DID HE STAY AT YOUR HOUSE FROM TIME TO

1 TIME?

2 A FROM TIME TO TIME. ESPECIALLY WHEN THE
3 PARENTS WERE GOING ANYWHERE.

4 Q WHEN THEY WERE GOING OUT OF TOWN?

5 A WHEN THEY WERE GOING -- NO. NOT
6 NECESSARILY. TO A FUNCTION THAT WOULD BE A VERY
7 LATE FUNCTION, AND THE KIDS JUST WOULD COME OVER FOR
8 DINNER, AND THEY STAYED, AND THEY WOULD PICK THEM UP
9 ON THE WAY HOME. COULD BE 2:00 OR 3:00 O'CLOCK IN
10 THE MORNING.

11 Q WHEN HE WAS ABOUT 14, DO YOU REMEMBER
12 HIM COMING OVER TO YOUR HOUSE TO SLEEP OVER?

13 A YES.

14 Q AND DO YOU REMEMBER HIM BRINGING A
15 SUITCASE?

16 A YES, HE DID.

17 Q AND WHAT DID HE BRING IN THE SUITCASE?

18 A STUFFED ANIMALS.

19 Q HOW MANY?

20 A OSCAR, KERMIT, YOU NAME IT.

21 Q WERE THERE A LOT OF STUFFED ANIMALS?

22 A I COULDN'T COUNT THEM. BUT AT LEAST
23 EIGHT OR NINE.

24 Q AND WHAT DID -- HE WAS 14 YEARS OLD AT
25 THIS TIME?

26 A UH-HUH.

27 Q WHAT DID HE DO WITH THE STUFFED ANIMALS?

28 A THEY SLEPT WITH HIM.

52693

1 Q IN HIS BED AT YOUR HOUSE?

2 A UH-HUH.

3 THE COURT: IS THAT YES?

4 THE WITNESS: YES. YES, SIR. I'M SORRY.

5 Q BY MS. TOWERY: AND DID THESE STUFFED

6 ANIMALS THAT HE BROUGHT OVER WITH HIM -- DID THEY

7 SEEM TO BE IMPORTANT TO HIM?

8 A WELL, THEY HAD NAMES. THEY WERE HIS

9 FRIENDS.

10 Q DID THEY HAVE PERSONALITIES?

11 A YES.

12 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

13 THE COURT: OBJECTION SUSTAINED.

14 THE ANSWER'S STRICKEN.

15 PERHAPS YOU CAN JUST REPHRASE IT SO IT'S

16 NOT JUST A STATEMENT OF FACT BY THE WITNESS, BUT THE

17 BASIS FOR INFORMATION PERHAPS.

18 MS. TOWERY: YES, YOUR HONOR.

19 Q DID LYLE MENENDEZ INDICATE TO YOU -- DID

20 HE TELL YOU THAT HIS STUFFED ANIMALS THAT HE BROUGHT

21 WITH HIM HAD PERSONALITIES?

22 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

23 THE COURT: OVERRULED.

24 YOU CAN ANSWER THE QUESTION.

25 THE WITNESS: HE INTRODUCED ME TO HIS

26 ANIMALS.

27 Q BY MS. TOWERY: DID YOU THINK THAT WAS

28 ODD FOR A 14-YEAR-OLD BOY TO BE SLEEPING WITH LOTS

52694

1 OF STUFFED ANIMALS?

2 MR. CONN: OBJECTION. IRRELEVANT.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER THE QUESTION.

5 THE WITNESS: VERY IMMATURE, I THOUGHT.

6 Q BY MS. TOWERY: IS THAT WHAT YOU

7 ATTRIBUTED TO BE THE REASON, WAS THAT HE WAS

8 IMMATURE?

9 A I THOUGHT IT WAS A VERY IMMATURE

10 BEHAVIOR OF A 14-YEAR-OLD BOY.

11 Q DID YOU THINK LYLE MENENDEZ WAS IMMATURE

12 AT AGE 14?

13 A YES. YES, HE WAS.

14 Q NOW, HE WENT TO PRINCETON DAY SCHOOL?

15 A UH-HUH.

16 Q CORRECT? DURING HIS TEENAGE YEARS --
17 DID HE GO TO HIGH SCHOOL AT PRINCETON DAY SCHOOL?

18 A HE GRADUATED FROM HIGH SCHOOL FROM
19 THERE; FROM THE 5TH GRADE ALL THE WAY TO HIGH
20 SCHOOL.

21 Q AND WHAT WAS PRINCETON DAY SCHOOL?

22 A IT'S A PRIVATE SCHOOL IN THE PRINCETON
23 AREA. KIDS GO THERE ARE -- WHAT DO -- I MEAN, FROM
24 THERE YOU GO INTO PRINCETON UNIVERSITY, DARTMOUTH,
25 CORNELL. I MEAN, THESE KIDS -- STEPPING STONE FOR
26 IVY LEAGUE.

27 Q IT WAS A GOOD SCHOOL, I TAKE IT?

28 A YES. IT'S A TOP SCHOOL.

52695

1 Q AND DID LYLE MENENDEZ HAVE FRIENDS THAT
2 YOU KNEW WHEN HE WAS GOING TO SCHOOL AT PRINCETON
3 DAY SCHOOL WHEN HE WAS A TEENAGER?

4 A NOT MANY. HE HAD A GIRLFRIEND AND SHE
5 WAS IT.

6 Q WHAT WAS HER NAME?

7 A STACY.

8 Q AND HOW LONG WAS STACY -- WHAT WAS
9 STACY'S LAST NAME?

10 A FELDMAN.

11 Q FELDMAN?
12 A FELDMAN.
13 Q HOW LONG WAS STACY LYLE'S GIRLFRIEND?
14 A I THINK AROUND THREE YEARS.
15 Q AND SO WHEN HE GRADUATED -- WOULD HE BE
16 17 WHEN HE GRADUATED FROM P.D.S.?
17 A EIGHTEEN. HE HAS A JANUARY BIRTHDAY
18 SO...
19 Q SO HE JUST TURNED 18?
20 A HE HAD JUST TURNED 18.
21 Q AND TO YOUR KNOWLEDGE, HIS ONLY FRIEND
22 WHEN HE WAS AT PRINCETON DAY SCHOOL WAS STACY?
23 MR. CONN: OBJECTION. CALLS FOR SPECULATION.
24 THE COURT: OVERRULED.
25 THE WITNESS: HIS BEST FRIEND AND PRETTY MUCH
26 ONLY FRIEND. LYLE MENENDEZ DIDN'T HAVE TIME TO
27 PLAY.
28 MR. CONN: OBJECTION. NONRESPONSIVE.

52696

1 THE COURT: OVERRULED. THE ANSWER WILL
2 STAND.
3 YOUR NEXT QUESTION, PLEASE.
4 Q BY MS. TOWERY: LYLE DIDN'T HAVE TIME TO
5 PLAY WHEN HE WAS IN HIGH SCHOOL, AS WELL AS WHEN HE

6 WAS A LITTLE BOY; IS THAT RIGHT?

7 A HE HAD ACTIVITIES SCHEDULED FOR
8 IMMEDIATELY AFTER SCHOOL ALL THE WAY TILL DINNER
9 TIME.

10 Q AND WHEN LYLE HAD THIS GIRLFRIEND, STACY
11 FELDMAN, HOW DID HE HAVE TIME TO SPEND WITH HER?

12 MR. CONN: OBJECTION. CALLS FOR HEARSAY,
13 SPECULATION.

14 THE COURT: SUSTAINED.

15 Q BY MS. TOWERY: DID YOU EVER HEAR YOUR
16 BROTHER OR YOUR SISTER-IN-LAW, OR BOTH OF THEM, MAKE
17 ANY COMMENT TO LYLE MENENDEZ ABOUT HIS FRIENDSHIP
18 WITH STACY FELDMAN?

19 A YES, I DID.

20 Q WHAT COMMENT DID YOU HEAR?

21 A SHE WAS A DISTRACTION. HIS MIND SHOULD
22 HAVE BEEN ON TENNIS ONE HUNDRED PERCENT.

23 Q DID YOUR BROTHER AND YOUR SISTER-IN-LAW
24 DISAPPROVE OR TELL LYLE MENENDEZ THAT THEY
25 DISAPPROVED OF HIM HAVING THIS GIRLFRIEND FOR THAT
26 REASON?

27 A I'M SURE THEY DID. I WASN'T THERE IF
28 THEY DID. THEY DID TELL ME.

1 MR. CONN: OBJECTION. MOTION TO STRIKE.

2 THE COURT: SUSTAINED.

3 THE ANSWER'S STRICKEN.

4 Q BY MS. TOWERY: AT SOME POINT DID LYLE
5 MENENDEZ AND STACY FELDMAN STOP BEING BOYFRIEND AND
6 GIRLFRIEND?

7 A YES. WHEN THEY GRADUATED. NOT WHEN
8 THEY GRADUATED. WHEN STACY -- THEY GRADUATED IN
9 JUNE, AND THAT SEPTEMBER STACY WENT AWAY TO COLLEGE.
10 AND LYLE HAD -- BEFORE JOINING PRINCETON UNIVERSITY
11 HE HAD A YEAR OFF. PRINCETON UNIVERSITY, IN OTHER
12 WORDS, ACCEPTED HIM FOR THE YEAR AFTERWARDS.

13 AND STACY WENT AWAY TO COLLEGE AND SHE
14 TOLD LYLE BEFORE SHE WENT AWAY THAT SHE WANTED
15 FREEDOM.

16 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

17 THE WITNESS: STACY TOLD ME.

18 THE COURT: ALL RIGHT. OBJECTION SUSTAINED.

19 THE ANSWER'S STRICKEN.

20 Q BY MS. TOWERY: BEFORE SHE WENT AWAY TO
21 COLLEGE, TO YOUR KNOWLEDGE, STACY FELDMAN STOPPED
22 SEEING LYLE. SHE BROKE UP WITH HIM?

23 A YES. SHE BROKE UP WITH HIM.

24 Q DID LYLE TELL YOU THAT?

25 A STACY TOLD ME THAT.

26 Q AFTER STACY AND LYLE BROKE UP, DID LYLE
27 START GOING OUT WITH OTHER GIRLS?

28 A LYLE HAD A TIME BECAUSE --

1 MR. CONN: OBJECTION. NONRESPONSIVE.

2 THE COURT: SUSTAINED.

3 THE ANSWER'S STRICKEN.

4 Q BY MS. TOWERY: YOU CAN ANSWER THAT
5 QUESTION YES OR NO. IMMEDIATELY AFTER STACY AND
6 LYLE BROKE UP, DID LYLE START TO DATE SOMEONE ELSE?

7 A YES. A MONTH LATER.

8 Q WHO WAS THAT?

9 A JAMIE.

10 Q AND YOU SAID THAT LYLE HAD A HARD TIME?

11 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
12 EVIDENCE.

13 THE COURT: SUSTAINED.

14 Q BY MS. TOWERY: DID LYLE HAVE A HARD
15 TIME AFTER HE AND STACY BROKE UP?

16 MR. CONN: OBJECTION. CALLS FOR
17 SPECULATION. NO PERSONAL KNOWLEDGE.

18 THE COURT: IT'S VAGUE AS TO WHAT IS MEANT BY
19 HARD TIME.

20 Q BY MS. TOWERY: DID YOU SEE LYLE
21 MENENDEZ UPSET?

22 A DEVASTATED.

23 Q AND IN WHAT WAYS DID HE SHOW THAT HE WAS

24 DEVASTATED TO YOU AFTER STACY BROKE UP WITH HIM?

25 A I SAW HIM CRY.

26 Q DID LYLE MENENDEZ HAVE OTHER FRIENDS TO
27 SPEND TIME WITH AFTER STACY BROKE UP WITH HIM?

28 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

52699

1 THE COURT: PERHAPS YOU CAN REPHRASE THE
2 QUESTION.

3 Q BY MS. TOWERY: TO YOUR KNOWLEDGE, DID
4 LYLE MENENDEZ, AFTER STACY BROKE UP WITH HIM, HAVE
5 OTHER FRIENDS TO SPEND TIME WITH?

6 A NO. BECAUSE MOST OF HIS --

7 MR. CONN: OBJECTION. CALLS FOR NARRATIVE AT
8 THIS POINT.

9 THE COURT: THE ANSWER "NO" WILL STAND.

10 YOUR NEXT QUESTION.

11 Q BY MS. TOWERY: DID HE APPEAR TO YOU TO
12 BE LONELY?

13 A VERY MUCH SO.

14 Q AT THAT TIME HE WAS 18; IS THAT RIGHT?

15 A HE WAS 18 AND A HALF.

16 Q WAS HE A MATURE YOUNG MAN AT THE AGE OF
17 18, IN YOUR OPINION?

18 A NO, HE WAS NOT.

19 Q DID HE HAVE A LOT OF SOCIAL SKILLS?
20 A HE HAD NONE. I WOULD CALL HIM SOCIALLY
21 INEPT.
22 Q WAS HE -- HE WAS A VERY HANDSOME YOUNG
23 MAN, WASN'T HE?
24 A STILL IS.
25 Q AND WHEN HE WAS A STUDENT AT PRINCETON
26 DAY SCHOOL, DID HE PLAY ANY SPORTS?
27 A TENNIS.
28 Q WAS HE A GOOD TENNIS PLAYER AT

52700

1 PRINCETON?
2 A HE WAS THEIR TOP TENNIS PLAYER.
3 Q I'M SORRY. THEIR TOP TENNIS PLAYER?
4 A UH-HUH.
5 Q SO HE WAS THE BEST TENNIS PLAYER IN THE
6 SCHOOL?
7 A UH-HUH. IN THE COUNTY.
8 Q WAS HE A GOOD STUDENT AT PRINCETON DAY
9 SCHOOL OR AVERAGE OR POOR?
10 MR. CONN: OBJECTION. NO FOUNDATION.
11 MS. TOWERY: TO YOUR KNOWLEDGE.
12 MR. CONN: OBJECTION. CALLS FOR
13 SPECULATION. NO FOUNDATION.

14 THE WITNESS: I WAS LIED TO.
15 THE COURT: WAIT, WAIT.
16 SUSTAINED. THE ANSWER'S STRICKEN.
17 YOU HAVE TO ESTABLISH SOME SORT OF
18 FOUNDATION.
19 Q BY MS. TOWERY: DO YOU HAVE ANY
20 KNOWLEDGE AS TO HOW WELL LYLE MENENDEZ DID IN SCHOOL
21 DURING THE TIME THAT HE WAS IN HIGH SCHOOL AT
22 PRINCETON DAY SCHOOL?
23 A I CAN ONLY TELL YOU WHAT HIS MOTHER TOLD
24 ME.
25 Q AND WHAT WAS THAT?
26 MR. CONN: OBJECTION. CALLS FOR HEARSAY.
27 THE COURT: SUSTAINED.
28 Q BY MS. TOWERY: DID YOU EVER

52701

1 SUBSEQUENTLY FIND OUT WHAT KIND OF A STUDENT LYLE
2 MENENDEZ WAS AT PRINCETON DAY SCHOOL?
3 A YES, MA'AM, I DID.
4 Q WAS HE A GOOD STUDENT, AVERAGE STUDENT?
5 MR. CONN: OBJECTION. NO FOUNDATION.
6 THE COURT: SUSTAINED.
7 Q BY MS. TOWERY: HOW DID YOU FIND OUT
8 SUBSEQUENTLY?

9 A WHEN I SAW HIM PERFORM AT PRINCETON
10 UNIVERSITY.

11 Q NOW, MRS. BARALT, YOU SAID EARLIER TODAY
12 THAT YOU LOVED YOUR BROTHER.

13 A VERY MUCH.

14 Q AND YOU SAID THAT YOU LOVED YOUR
15 SISTER-IN-LAW?

16 A YES, I DID.

17 Q AND YOU MISS THEM?

18 THE COURT: YOU NEED A BREAK?

19 THE WITNESS: (WITNESS NODDING HEAD.)

20 THE COURT: WE'LL TAKE A RECESS AND WE'LL
21 RESUME AT 20 MINUTES AFTER THE HOUR.

22 DON'T DISCUSS THE CASE. DON'T FORM ANY
23 FINAL OPINIONS ABOUT IT, AND WE'LL RESUME AT 20
24 AFTER.

25 (A RECESS WAS TAKEN FROM

26 3:05 P.M. TO 3:25 P.M.)

27

28

-12834

1 THE COURT: OKAY. LET'S GET THE JURY OUT,
2 PLEASE.

3 (THE JURY ENTERED THE COURTROOM

4 AND THE FOLLOWING PROCEEDINGS

5 WERE HELD:)

6

7 THE COURT: OKAY. WE HAVE EVERYBODY BACK, AND

8 YOU MAY CONTINUE DIRECT EXAMINATION.

9 MS. TOWERY: THANK YOU, YOUR HONOR.

10 Q. MRS. BARALT.

11 A. YES.

12 Q. YOU ARE LYLE MENENDEZ' GODMOTHER; IS THAT

13 RIGHT?

14 A. I AM LYLE'S GODMOTHER, YES.

15 Q. AND YOU SAID EARLIER THAT YOU LOVE LYLE

16 MENENDEZ; IS THAT RIGHT?

17 A. I DO.

18 Q. AND DO YOU ALSO LOVE ERIK MENENDEZ?

19 A. LYLE AND ERIK ARE THE CHILDREN -- THE BOYS

20 THAT I DIDN'T HAVE.

21 Q. AND DO YOU MISS LYLE AND ERIK MENENDEZ

22 SINCE THEY'VE BEEN IN JAIL?

23 A. I DO.

24 Q. AND DO YOU GO TO VISIT THEM AT THE JAIL

25 WHEN YOU COME?

26 A. AS MUCH AS I CAN, BUT I LIVE IN NEW JERSEY,

27 AND IT'S TOUGH.

28 Q. DO YOU TALK TO THEM ON THE TELEPHONE WHEN

1 YOU COME?

2 A. WHEN THEY ARE ABLE TO GET PHONE TIME AND

3 CALL, YES.

4 Q. AND YOU KNOW WHAT LYLE AND ERIK DID TO JOSE

5 AND KITTY MENENDEZ, DON'T YOU?

6 A. YES.

7 Q. AND YOU'VE KNOWN THAT FOR A LONG TIME,

8 HAVEN'T YOU?

9 A. I HAVE.

10 Q. AND HOW WOULD YOU FEEL IF EITHER LYLE

11 MENENDEZ OR ERIK MENENDEZ RECEIVED THE DEATH PENALTY?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: OVERRULED.

14 YOU CAN ANSWER THE QUESTION.

15 THE WITNESS: IT'S WIPING OUT THE REST OF MY

16 FAMILY. I CAN'T SEE HOW NOBODY CAN SEE THAT WHAT

17 HAPPENED, THERE HAD TO BE POWERFUL REASONS FOR IT TO

18 HAVE HAPPENED. THESE KIDS -- THESE ARE NOT KILLERS.

19 MR. CONN: OBJECTION. NONRESPONSIVE. CALLS FOR

20 SPECULATION.

21 THE WITNESS: I AM SORRY. IT'S MY BELIEF.

22 THE COURT: OKAY. YOUR ANSWER WILL STAND.

23 YOUR NEXT QUESTION, PLEASE.

24 Q. BY MS. TOWERY: IF LYLE OR ERIK MENENDEZ

25 RECEIVED THE DEATH PENALTY, HOW WOULD THAT MAKE YOU

26 FEEL?

27 MR. CONN: OBJECTION. ASKED AND ANSWERED.

28 THE COURT: OVERRULED.

1 THE WITNESS: NOT ONLY ME, MY WHOLE FAMILY. IT'S
2 DESTRUCTION OF THAT -- THAT SIDE OF THE FAMILY. IT'S
3 JOSE, KITTY AND THE TWO KIDS.

4 Q. BY MS. TOWERY: AND WHEN YOU SAY THAT, DO
5 YOU SPEAK FOR YOUR FAMILY, YOUR HUSBAND AND YOUR
6 DAUGHTERS?

7 A. DEFINITELY. AND I AM NOT SPEAKING WITHOUT
8 HAVING ASKED THEM FIRST.

9 Q. AND DO YOU SPEAK FOR YOUR MOTHER?

10 A. YES.

11 Q. AND IF THAT WERE TO HAPPEN, WOULD THAT
12 CAUSE YOU MORE PAIN?

13 A. OF COURSE. IT WOULD CAUSE ME A TREMENDOUS
14 AMOUNT OF PAIN. IT'S THE TYPE OF PAIN THAT YOU JUST
15 DON'T GET OVER. IT'S VERY FINAL. IT'S OVER.

16 Q. AND DO YOU WANT LYLE AND ERIK MENENDEZ TO
17 LIVE?

18 A. YES.

19 MS. TOWERY: THANK YOU.

20 I HAVE NOTHING FURTHER, YOUR HONOR.

21 THE COURT: OKAY, THANK YOU.

22 EXAMINATION ON BEHALF OF ERIK MENENDEZ?

23 MS. ABRAMSON: YES, YOUR HONOR.

24

25

26 ///

27 ///

28

-12831

1 DIRECT EXAMINATION

2 BY MS. ABRAMSON:

3 Q. MRS. BARALT, ARE THE PHOTOGRAPHS IN FRONT
4 OF YOU?

5 A. YES.

6 Q. YOU POINTED TO A PHOTOGRAPH. I GUESS -- IS
7 IT THIS ONE, THAT SHOWED YOUR HOUSE IN HINSDALE?

8 A. THIS IS MY HOUSE (POINTING). THIS IS MY
9 HOUSE.

10 Q. AND --

11 A. OKAY.

12 MS. ABRAMSON: YOUR HONOR, I INTEND TO PUT THIS
13 PHOTOGRAPH UP, BECAUSE IT ILLUSTRATES SOMETHING THAT MY
14 CLIENT DID, ALL RIGHT?

15 THE COURT: WELL, WHY DON'T YOU IDENTIFY THE
16 EXHIBIT NUMBER.

17 MS. ABRAMSON: IT'S 444.

18 THE COURT: OKAY. 444.

19 MS. ABRAMSON: MR. LEVIN, DO YOU KNOW WHERE THE
20 ATTACHMENT DEVICES WENT?

21 THE COURT: OH, HE HAS THEM IN HIS POCKET.

22 MS. ABRAMSON: WELL, HE'S OUR MR. FIX-IT, SO HE
23 WOULD.
24 JUDGE, DO YOU KNOW WHERE THE BLACKBOARD
25 WENT?
26 THE COURT: THOSE CLIPS AND THINGS? WELL, THE
27 BLACKBOARD, I AM SURE, IS IN THE JURY ROOM. THE BAILIFF
28 WILL GET IT.

-12830

1 MR. LEVIN: I'LL GET IT.
2 MS. ABRAMSON: YOU'RE NOT GOING IN THE JURY ROOM.
3 MR. LEVIN: WHY NOT?
4 MS. ABRAMSON: OFF LIMITS.
5 Q. BY MS. ABRAMSON: LET ME GO BACK WITH YOU
6 TO CLARIFY SOME THINGS, AND THEN WE WILL GET BACK TO
7 THAT PHOTOGRAPH.
8 IS IT YOUR TESTIMONY THAT JOSE AND KITTY
9 AND THE CHILDREN, LYLE AND ERIK, MOVED TO ILLINOIS
10 BEFORE YOUR FAMILY MOVED TO ILLINOIS?
11 A. THEY DID.
12 Q. AND AT THAT TIME YOUR BROTHER HAD GOTTEN A
13 NEW JOB AS THE PRESIDENT OF LYON'S CONTAINER
14 CORPORATION?
15 A. CONTAINER SERVICES, YES.
16 Q. AND YOUR HUSBAND, CARLOS BARALT, WENT TO
17 WORK FOR YOUR BROTHER, CORRECT?

18 A. HE DID.

19 Q. YOUR BROTHER GAVE YOUR HUSBAND THAT JOB,
20 RIGHT?

21 A. HE DID.

22 Q. AND SO YOUR FAMILY MOVED TO ILLINOIS, TO
23 THE SAME DEVELOPMENT THAT MR. AND MRS. MENENDEZ MOVED
24 TO, CORRECT?

25 A. YES.

26 Q. AND THAT DEVELOPMENT WAS LIKE A BIG HOUSING
27 TRACT THAT HAD STREETS THAT WENT THROUGH IT?

28 A. IT WAS LIKE A HORSESHOE.

-12829

1 Q. THE STREET UPON WHICH CARS WOULD DRIVE WAS
2 A HORSESHOE-SHAPED STREET?

3 A. YEAH. THERE WERE HOUSES.

4 Q. AND YOUR HOUSE WAS ON ONE PART OF THE
5 HORSESHOE, CORRECT?

6 A. YEAH. THEY LIVED ON HAMPSHIRE LANE EAST,
7 AND I LIVED ON HAMPSHIRE LANE WEST.

8 Q. LET'S SEE IF WE HAVE SOME BLANK PAPER SO WE
9 CAN ILLUSTRATE WHAT WE'RE GOING TO TALK ABOUT.

10 OKAY. I AM GOING TO DRAW SOMETHING HERE
11 AND ASK YOU IF THAT'S THE SHAPE OF THE HORSESHOE, AND IF
12 YOUR HOUSES ARE IN THE RIGHT RELATIVE POSITION.

13 THE COURT: PERHAPS WE CAN MOVE THAT BACK SO THE

14 WITNESS CAN SEE IT.

15 MS. ABRAMSON: YES. I WAS GOING TO HAVE HER SEE

16 IT AFTER I HAD DONE MY SCRIBBLING. OKAY.

17 DO YOU HAVE A MARKER? TOTALLY HELPLESS.

18 THE BAILIFF IS GETTING IT.

19 THANK YOU, JUDGE.

20 Q. OKAY. NOW, THERE IS A STREET, AND I WILL

21 DRAW A DOUBLE LINE THAT'S INSIDE THE DEVELOPMENT THAT'S

22 SHAPED LIKE A HORSESHOE; CORRECT, LIKE I'M DRAWING HERE?

23 A. YEAH.

24 Q. AND YOUR HOUSE WAS SAY HERE (INDICATING)?

25 A. UH-HUH.

26 Q. AND THEIR HOUSE?

27 A. WAS RIGHT THERE (POINTING).

28 Q. WAS HERE?

-12828

1 A. MM-HM.

2 Q. SO THIS WAS THE MENENDEZ HOUSE AND THIS WAS

3 THE BARALT HOUSE.

4 MS. ABRAMSON: AND I HAVE MARKED THIS, YOUR

5 HONOR, AND I WOULD LIKE TO MARK THIS NEXT IN ORDER.

6 THE COURT: 449.

7 MS. ABRAMSON: THANK YOU, YOUR HONOR.

8 THE WITNESS: AND THAT WAS AN EMPTY LOT.

9 Q. BY MS. ABRAMSON: YES. I WAS GOING TO GET

10 TO THAT PART.

11 IN BETWEEN THE MENENDEZ HOUSE, WITH AN "M"
12 AND A BARALT HOUSE WITH A "B" THERE WAS A LOT, AND I AM
13 MAKING LITTLE MARKS ON HERE LIKE IT WAS COVERED WITH
14 GRASS.

15 A. YES.

16 Q. NOW, HAVE YOU SEEN A PICTURE TAKEN OF THIS
17 MORE RECENTLY BY JILL LANSING AND MYSELF WHEN WE WERE
18 INVESTIGATING THIS CASE?

19 A. NO, BUT I WENT BACK THERE, AND I CAN'T
20 RECOGNIZE IT.

21 Q. WHEN YOU WENT BACK THERE ARE NOW HOUSES
22 ACTUALLY BUILT ON THE LOT?

23 A. YES.

24 Q. NOW, THERE WAS DRIVEWAY ON THIS SIDE OF THE
25 MENENDEZ HOUSE LEADING TO THE STREET?

26 A. YES.

27 Q. AND WAS THERE A SIDE DOOR?

28 A. NO. THERE WAS -- THE MAIN DOOR WAS HERE,

-12827

1 AND THERE WAS A KIND OF STEPS LIKE -- YOU KNOW, HOW YOU
2 GO DOWN. I DON'T KNOW. I CAN'T THINK OF THE NAME OF
3 IT.

4 Q. WAS THERE A LITTLE GLASS-ENCLOSED ENTRYWAY,
5 FIRST OF ALL?

6 A. IT WAS A VERY MODERN HOUSE, AND THEY HAD
7 GLASS ALL THE WAY UP TO THE ROOF.

8 Q. AND THEN THERE WERE STEPS LEADING DOWN TO
9 THE SIDEWALK, OR TO THE STREET?

10 A. TO THE STREET.

11 Q. AND DID YOU HAVE A BACK DOOR ON YOUR HOUSE?

12 A. I HAD A PATIO DOOR.

13 Q. SO THERE WAS LIKE A PATIO BEHIND YOUR
14 HOUSE?

15 A. YEAH. NOT THAT BIG.

16 Q. SORRY.

17 A. THE BACK HAD A SLIDING DOOR, YEAH.

18 Q. OKAY. SO THERE WERE SLIDING DOORS TO THE
19 BACK OF YOUR HOUSE?

20 A. TO THE PATIO, YES.

21 Q. AND WHEN YOU MOVED TO THIS NEIGHBORHOOD --

22 A. UH-HUH.

23 Q. AT THE TIME WHEN YOU MOVED THERE, HOW OLD
24 WAS ERIK?

25 A. WELL, ERIK WAS BORN NOVEMBER 1970, AND WE
26 MOVED ON OCTOBER OF '71. SO ERIK WAS 11 MONTHS, AND
27 ANAMARIA WAS SIX.

28 Q. AND AT 11 MONTHS, WAS ERIK WALKING?

-12826

1 A. OH, YEAH.

2 Q. WAS HE WALKING EVEN EARLIER THAN THAT?

3 A. I THINK ERIK WALKED AT NINE MONTHS.

4 Q. AND AT SOME POINT AFTER YOU MOVED THERE,
5 DID ERIK START TO ENGAGE IN A REPETITIVE BEHAVIOR
6 INVOLVING YOURSELF?

7 A. YES, YES.

8 Q. AND WHAT WAS IT THAT ERIK MENENDEZ WAS
9 DOING WHILE YOUR TWO FAMILIES WERE LIVING IN THIS
10 DEVELOPMENT IN HINSDALE?

11 A. WELL --

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: OVERRULED.

14 THE WITNESS: ERIK WOULD WAKE UP EARLY, GET UP --
15 GET OUT OF HIS CRIB, GO DOWN, OPEN THE FRONT DOOR, CROSS
16 THE LAWN, CROSS THE STREET, GO TO MY BACK -- CROSS THE
17 FIELD AND START BANGING ON MY GLASS DOOR AROUND 7:00.

18 Q. SO, EARLY IN THE MORNING --

19 A. MM-HMM.

20 Q. -- YOU WOULD FIND ERIK MENENDEZ, WHO WAS
21 UNDER TWO YEARS OLD, I TAKE IT, WHEN ALL OF THIS WAS
22 GOING ON?

23 A. AROUND 15, 16 MONTHS.

24 Q. AT YOUR BACK DOOR?

25 A. MM-HMM.

26 Q. AND WHAT WAS HE WEARING WHEN HE'D BE THERE?

27 A. DIAPERS AND A SHIRT.

28 Q. JUST DIAPERS AND A SHIRT?

1 A. YEAH.

2 Q. AND WOULD YOU FIND HIM THERE ON COLD
3 MORNINGS AS WELL AS MORE TEMPERATE ONES?

4 A. WELL, CHICAGO HAPPENS TO BE A LITTLE ON THE
5 COLD SIDE. IT REALLY DOESN'T GET WARM UNTIL MAY.

6 Q. SO HE WOULD DO THIS IN THE FALL AND IN THE
7 WINTER?

8 A. HE DID THAT IN THE SPRING AND THE SUMMER.

9 Q. AND WOULD HE BE THERE ON MORNINGS WHEN IT
10 WAS CHILLY AND COLD OUT?

11 A. YEAH, A LITTLE ICICLE.

12 Q. WAS HE WEARING SHOES?

13 A. NO. HE HAD GOTTEN HIMSELF OUT OF HIS CRIB.

14 Q. WOULD HE BE THERE ON WET MORNINGS?

15 A. YES.

16 Q. AND HOW MANY TIMES DID YOU FIND ERIK BY
17 HIMSELF AT YOUR BACK DOOR?

18 A. IT WAS A RECURRENT EVENT. I MEAN, IT WAS
19 HAPPENING -- I THINK IT HAPPENED LIKE FOR A MONTH.

20 Q. EVERY DAY FOR A MONTH?

21 A. YES.

22 Q. AND THIS HORSESHOE-SHAPED THING THAT
23 WE'VE -- THAT I'VE DRAWN ON THAT CHART, THAT IS A PUBLIC
24 STREET; IS IT NOT?

25 A. YEAH.

26 Q. CARS DRIVE ON THAT STREET?

27 A. MM-HMM, YES.

28 Q. AND THERE --

-12824

1 A. WELL, THERE ARE HOUSES ON THE HORSESHOE.

2 Q. THERE'S HOUSES ALL THE WAY AROUND THE
3 HORSESHOE?

4 A. YES.

5 Q. AND THERE'S NO LIGHT ON THAT STREET?

6 A. NO, THERE WEREN'T AT THE TIME.

7 Q. SO A BABY CROSSING A STREET BY ITSELF COULD
8 GET HIT BY A CAR?

9 A. YES.

10 Q. AND WHEN YOU WOULD FIND ERIK AT YOUR BACK
11 DOOR, YOU LET HIM IN, I ASSUME?

12 A. OH, YEAH. I WOULD LET HIM IN AND FEED HIM.

13 Q. WOULD HE EXPRESS HUNGER?

14 A. WELL, IT WAS 7:00 O'CLOCK IN THE MORNING,
15 AND HE WAS HUNGRY. ERIK WAS ALWAYS HUNGRY, TOO.

16 Q. AND AFTER YOU WOULD FEED HIM, WOULD YOU
17 CALL HIS HOUSE?

18 A. I WOULD CALL KITTY.

19 Q. AND WHAT WOULD YOU SAY TO HER?

20 A. I'D SAY: "KITTY, I HAVE ERIK HERE."

21 Q. AND WHAT WOULD SHE SAY?

22 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

23 THE COURT: OVERRULED.
24 THE WITNESS: SHE WOULD DENY IT. "TERRY, ERIK IS
25 IN BED."
26 AND I WOULD SAY: "WELL, THEN I HAVE
27 SOMEBODY ELSE'S CHILD IN HERE."
28 Q. AND WOULD SHE THEN ACCEPT THAT HE WAS

-12823

1 THERE?
2 A. SHE HAD NO CHOICE. THERE WAS AN EMPTY
3 CRIB.
4 Q. SO SHE WOULD GO AND SHE WOULD SEE THAT HE
5 WASN'T THERE?
6 A. MM-HMM.
7 Q. AND THIS HAPPENED -- AND DID SHE HAVE THE
8 SAME RESPONSE DAY AFTER DAY WHEN YOU'D CALL HER?
9 A. WELL, NOT ALWAYS THE SAME RESPONSE.
10 ANOTHER RESPONSE WOULD BE "AGAIN?"
11 Q. AND DID YOU EVER NOTICE WHETHER YOUR
12 BROTHER AND SISTER-IN-LAW CHANGED THE LOCK ON THEIR DOOR
13 SO THAT THIS BABY COULD NOT GET OUT OF THE HOUSE?
14 A. NO, THEY DIDN'T.
15 Q. AND DID YOU DISCUSS WITH THEM WHY DON'T
16 THEY DO THAT, SO THE CHILD DOESN'T GET KILLED?
17 A. NO, I DIDN'T. I THINK THAT'S SOMETHING
18 THAT I DON'T HAVE TO TELL A PARENT, DO I?

19 Q. IT WAS OBVIOUS, WASN'T IT?
20 A. TO ME IT WAS.
21 Q. AND AFTER ACKNOWLEDGING THAT THE BABY
22 WASN'T IN THE HOUSE, DID YOU SEE YOUR SISTER-IN-LAW OR
23 YOUR BROTHER AT YOUR HOUSE TO CLAIM HIM?
24 A. YES, ONE OF THE -- ONE OF THEM WOULD COME
25 OVER AND GET HIM, NORMALLY JOSE.
26 Q. AND YOU SAY "NORMALLY JOSE." WOULD HE SAY
27 ANYTHING TO THE CHILD, OR DO ANYTHING WITH THE CHILD
28 WHEN HE CAME TO GET HIM?

-12822

1 A. WELL, IF IT WAS KITTY, SHE WOULD SAY:
2 "ERIK, YOU CAN'T LEAVE THE HOUSE WITHOUT TELLING MOMMY,"
3 AND JOSE WOULD JUST LOOK AT ME KIND OF AMUSED.
4 Q. JOSE WOULD LAUGH, FIND IT FUNNY?
5 A. FIND IT FUNNY.
6 Q. NOW, AT THIS -- DURING THIS SAME PERIOD, I
7 TAKE IT YOU HAD FOUR CHILDREN?
8 A. FOUR DAUGHTERS, YES.
9 Q. AND HOW OLD WAS YOUR OLDEST AT THIS POINT
10 WHEN YOU'RE LIVING A BLOCK -- WELL, A VACANT LOT AWAY
11 FROM THE MENENDEZ FAMILY?
12 A. OKAY. MY OLDEST ONE WAS BORN IN '62, AND
13 WE'RE TALKING '71, SO IT'S NINE YEARS.
14 Q. SO YOU HAD FOUR CHILDREN NINE AND UNDER?

15 A. NINE AND UNDER.

16 Q. NOW, I JUST WANT TO GO BACK TO THE

17 PHOTOGRAPH THAT I PREVIOUSLY PUT UP.

18 DOES THAT PHOTOGRAPH SHOW THE VACANT LOT

19 AND YOUR HOUSE?

20 A. THAT'S MY HOUSE.

21 Q. SO IT SHOWS THIS AREA THAT I'VE MARKED AND

22 THE BACK OF YOUR HOUSE?

23 A. MM-HMM.

24 Q. AND THAT'S WHAT ERIK MENENDEZ WOULD WALK

25 THROUGH TO GET TO YOUR BACK DOOR?

26 A. YES. IN FACT THEY HAD -- THE KIDS HAD

27 CROSSED THAT FIELD SO MUCH THEY HAD A PATH FROM THEIR

28 HOUSE TO MY HOUSE.

-12821

1 Q. AND THAT WOULD BE ALONG THAT PATH THAT ERIK

2 WOULD COME?

3 A. MM-HMM, YES.

4 Q. NOW, YOU SAID THAT LYLE MENENDEZ WAS RIDING

5 A BICYCLE THAT NEVER HAD HAD TRAINING WHEELS ON IT BY

6 THE TIME HE WAS THREE TO THREE AND A HALF?

7 A. I NEVER SAW THE TRAINING WHEELS.

8 Q. AND IN YOUR EXPERIENCE WITH YOUR OWN FOUR

9 CHILDREN, IS THREE AND A HALF VERY EARLY TO BE RIDING A

10 TWO-WHEELER?

11 A. I THINK ANYBODY WOULD AGREE WITH ME ON

12 THAT.

13 Q. NOW, YOU WERE ASKED BY MS. TOWERY IF YOU

14 HAD EVER SEEN ANY MANIFESTATIONS OF AFFECTION BY KITTY

15 MENENDEZ TOWARDS LYLE, AND YOU SAID YOU NEVER SAW

16 ANYTHING.

17 A. NO.

18 Q. DID YOU EVER HEAR ANYTHING?

19 A. NO.

20 Q. DID YOU EVER HEAR A TONE OF VOICE THAT

21 INDICATED SOOTHING OR NURTURING?

22 A. NO, BECAUSE BOYS -- YOU HAD TO BE TOUGH

23 WITH BOYS.

24 Q. DID SHE SAY THAT IN FRONT OF THE BOYS:

25 "YOU HAVE TO BE TOUGH WITH BOYS"?

26 A. YES. BOYS DON'T CRY, AND BOYS -- YOU KNOW,

27 YOU JUST TREAT THEM DIFFERENTLY. YES.

28 Q. AND DID YOU SEE, IN FACT, MRS. MENENDEZ

-12820

1 INTERACTING WITH YOUR LITTLE GIRLS?

2 A. KITTY WAS VERY LOVING WITH THEM AND VERY

3 AFFECTIONATE.

4 Q. MRS. BARALT, IF YOU TURN THE MICROPHONE

5 WE'LL HEAR YOU BETTER.

6 A. OKAY. KITTY WAS VERY AFFECTIONATE WITH MY

7 GIRLS.

8 Q. AND WAS SHE OPENLY AFFECTIONATE TOWARDS
9 YOUR DAUGHTERS WHEN HER SONS WERE PRESENT?

10 A. YES.

11 Q. DID SHE TALK TO YOUR DAUGHTERS IN SOOTHING
12 AND SOFT AND NURTURING TONES?

13 A. AND COOING TO ANAMARIE, WHICH WAS THE
14 LITTLE ONE.

15 Q. AND DID SHE HUG YOUR CHILDREN AND KISS YOUR
16 CHILDREN?

17 A. YES.

18 Q. AND YOU NEVER SAW HER DO THAT TO LYLE AT
19 ALL, CORRECT?

20 A. NO.

21 Q. AND DID YOU SEE HER, WHEN ERIK WAS VERY
22 SMALL, SHOW HIM SOME SIGNS OF AFFECTION THAT SHE HAD
23 NEVER SHOWN TO LYLE?

24 A. A LITTLE. KITTY WAS NOT OVERLY
25 AFFECTIONATE WITH HER KIDS, BECAUSE THEY WERE BOYS.

26 Q. SO IN FRONT OF ERIK, DID YOU SEE HER COOING
27 AND HUGGING AND KISSING ANAMARIE IN FRONT OF ERIK?

28 A. YES.

-12819

1 Q. AND IN FRONT OF LYLE?

2 A. YES.

3 Q. AND DID SHE SAY TO YOU IN FRONT OF HER
4 CHILDREN THAT SHE WISHED SHE HAD HAD GIRLS INSTEAD OF
5 BOYS?

6 MR. CONN: OBJECTION. LEADING, AND CALLS FOR
7 HEARSAY.

8 THE COURT: OVERRULED.

9 THE WITNESS: I HAD TO BUY BOYS' CLOTHES WHEN
10 KITTY HAD ERIK.

11 THE COURT: ALL RIGHT. THE ANSWER IS STRICKEN.
12 THE ANSWER IS STRICKEN. IT'S NONRESPONSIVE.

13 Q. BY MS. ABRAMSON: WE'LL GET THERE. I
14 REMEMBER THAT.

15 BUT THE QUESTION IS DID YOU HEAR HER SAY IN
16 FRONT OF HER OWN CHILDREN THAT SHE WOULD RATHER HAVE HAD
17 GIRLS THAN BOYS?

18 A. I HEARD HER SAY SHE WANTED A GIRL.

19 Q. WHEN SHE WAS PREGNANT WITH ERIK?

20 A. THROUGHOUT THE WHOLE TIME.

21 Q. SHE ALWAYS SAID SHE WANTED A GIRL?

22 A. MM-HMM. VERY MUCH SO.

23 Q. AND WHEN SHE WAS PREGNANT WITH ERIK, DID
24 SHE BUY GIRL CLOTHES FOR HER BABY?

25 A. WELL, SHE HAD -- SHE THOUGHT -- OR I DON'T
26 KNOW WHY -- THAT SHE WAS GOING TO HAVE A GIRL, AND SO IT
27 NEVER OCCURRED TO HER THAT SHE COULD HAVE A BOY.

28 Q. DID SHE BUY GIRL CLOTHES?

1 A. AND PAINTED THE ROOM PINK.

2 Q. AND DID SHE EXPRESS DISAPPOINTMENT THAT SHE
3 HAD HAD A BOY INSTEAD OF A GIRL?

4 A. SORRY, ERIK.

5 A LITTLE, YES.

6 Q. WAS ERIK A VERY PRETTY BABY?

7 A. HE WAS BEAUTIFUL, BREATHTAKING.

8 Q. BLOND HAIR, BLUE EYES?

9 A. BREATHTAKING. HE WAS BEAUTIFUL. THEY BOTH
10 WERE. SHE HAD BEAUTIFUL CHILDREN. WELL --

11 Q. WERE YOU AFFECTIONATE TOWARDS ERIK WHEN HE
12 WAS A BABY?

13 A. YES.

14 Q. WAS HE OPEN AND AFFECTIONATE TOWARDS YOU?

15 A. ERIK HAD A SUNNY DISPOSITION. HE ALWAYS
16 LAUGHED AND SMILED. HE -- I DON'T REMEMBER ERIK UNLESS
17 HE WAS SMILING.

18 Q. THIS IS WHEN HE IS A BABY AND A TODDLER,
19 RIGHT?

20 A. YES.

21 Q. YOU DO REMEMBER ERIK LATER IN LIFE NOT
22 SMILING, DON'T YOU?

23 MR. CONN: OBJECTION. LEADING.

24 THE COURT: REPHRASE THE QUESTION.

25 Q. BY MS. ABRAMSON: DO YOU REMEMBER ERIK
26 LATER IN LIFE NO LONGER SO SMILEY AND SUNNY?

27 A. NOT AS OFTEN.

28 Q. AND WHEN HE WAS AROUND YOU AND YOUR FAMILY,

-12817

1 WERE THERE TIMES WHEN ERIK APPEARED HAPPY?

2 A. THEY LOVED BEING AT MY HOUSE.

3 Q. "THEY" BEING BOTH OF THE CHILDREN?

4 A. BOTH OF THEM, YES. AND I LOVED HAVING THEM
5 THERE.

6 Q. DID YOU EVER GET TO KNOW ERIK AS WELL AS
7 YOU GOT TO KNOW LYLE?

8 A. NO, BECAUSE THEY MOVED WHEN ERIK WAS A
9 TEENAGER, AND HE WAS NOT DRIVING YET.

10 Q. YOU ACTUALLY ONLY GOT TO KNOW LYLE WELL
11 WHEN HE WAS LIVING BACK THERE BY HIMSELF AND HIS PARENTS
12 WERE NO LONGER AROUND?

13 A. AND HE WAS ALWAYS AT MY HOUSE.

14 Q. WHEN HE WAS A TEENAGER LIVING BACK THERE?

15 A. WHEN HE WAS 18 AND OVER.

16 Q. AND THAT'S AFTER HIS PARENTS AND BROTHER
17 HAD MOVED AWAY?

18 A. HAD MOVED TO CALIFORNIA, YES.

19 Q. DURING THE YEAR --

20 A. AND LET ME CLARIFY SOMETHING.

21 WHAT DO YOU MEAN, REALLY KNOW HIM WELL?

22 Q. KNOW HIM BY HIMSELF, KNOW HIM ONE-ON-ONE?

23 A. YES.

24 Q. YOU NEVER REALLY GOT A CHANCE --
25 A. NO.
26 Q. -- TO KNOW ERIK ONE-ON-ONE, DID YOU?
27 A. NOT THE SAME WAY.
28 Q. WAS ERIK EVER -- BEFORE THEY KILLED THEIR

-12816

1 PARENTS, WAS ERIK EVER ALONE AT YOUR HOUSE?
2 A. NO.
3 Q. ANY TIME THAT HE WAS AT YOUR HOUSE, WERE
4 HIS PARENTS THERE?
5 A. IT WAS A FAMILY GATHERING.
6 Q. IS THAT YES?
7 A. I'M SORRY.
8 Q. OKAY. NOW, DURING THE -- AFTER -- STRIKE
9 THAT.
10 HOW LONG AFTER YOU MOVED WITH YOUR HUSBAND
11 AND YOUR FOUR GIRLS TO ILLINOIS, TO THIS NEIGHBORHOOD,
12 DID YOU LIVE THERE WITH THE MENENDEZ FAMILY A BLOCK AWAY
13 BEFORE THEY LEFT?
14 A. BEFORE HE GOT A POSITION WITH HERTZ
15 CORPORATION IN NEW YORK, YES.
16 Q. HOW LONG WAS THAT WHOLE PERIOD FROM CARLOS,
17 YOUR HUSBAND, GOING THERE TO WORK WITH JOSE MENENDEZ, TO
18 JOSE MENENDEZ LEAVING LYONS AND GOING TO HERTZ?
19 A. A YEAR.

20 Q. AND DID HE TAKE YOUR HUSBAND WITH HIM TO
21 HERTZ?

22 A. NO. WE STAYED IN THE CHICAGO AREA UNTIL
23 '77, THEN WE MOVED TO PRINCETON.

24 Q. AND DID YOUR HUSBAND FIND WORK WITH ANOTHER
25 COMPANY BESIDES LYONS?

26 A. HE DID.

27 Q. AND TO THE BEST OF YOUR UNDERSTANDING, WAS
28 THERE A POWER STRUGGLE AT LYONS THAT JOSE LOST?

-12815

1 A. THERE WAS A PROXY FIGHT, AND THE JAPANESE
2 TOOK OVER THE COMPANY, YES.

3 Q. AND SO JOSE WAS PUSHED OUT?

4 A. BOTH OF THEM. CARLOS WAS VICE-PRESIDENT.
5 THEY WERE BOTH DISMISSED, LIKE OVERNIGHT.

6 Q. AND BEFORE -- AFTER THEY WERE DISMISSED
7 OVERNIGHT AND BEFORE THE MENENDEZ FAMILY LEFT HINSDALE,
8 DID KITTY AND JOSE MENENDEZ LEAVE WITH LYLE IN ORDER TO
9 GO LOOK FOR A HOUSE BACK EAST?

10 A. YES, THEY DID.

11 Q. AND WHEN THEY LEFT WITH LYLE, WHAT DID THEY
12 DO WITH ERIK?

13 A. THEY LEFT ERIK WITH ME.

14 Q. AND HOW DID ERIK BEHAVE AFTER HIS MOTHER
15 LEFT HIM WITH YOU?

16 A. ERIK WAS DEVASTATED. HE WAS A LITTLE BOY,

17 AND HE WANTED HIS MOMMY.

18 Q. AND HOW DID HE DEMONSTRATE THAT HE WANTED

19 HIS MOMMY?

20 A. HE WOULD CRY AND CRY, AND THE ONLY WAY HE

21 WOULD BE SOOTHED IS WHEN CARLOS GOT HOME, BECAUSE HE WAS

22 VERY USED TO CARLOS. AND SO CARLOS WOULD GIVE HIM THE

23 BATH AND PUT HIM TO BED AT NIGHT. BUT HE WAS MISERABLE.

24 Q. AND HAD HE EVER, IN FACT, STAYED OVER NIGHT

25 OR STAYED ALONE AT YOUR HOUSE BEFORE THEY JUST LEFT TO

26 GO EAST TO LOOK?

27 A. NO. NO.

28 Q. AND WHEN THEY WENT EAST, THEY TOOK LYLE

-12814

1 WITH THEM?

2 A. YES, THEY DID. LYLE STAYED AT MY MOTHER'S.

3 Q. AND AT SOME POINT DID YOU INFORM YOUR

4 SISTER-IN-LAW, KITTY, THAT ERIK WAS DISCONSOLATE AND SHE

5 HAD TO COME BACK AND GET HIM?

6 A. YES, I DID.

7 Q. AND DID HE CRY EVERY DAY DURING THE TIME

8 THAT SHE LEFT HIM WITH YOU?

9 A. HE DID.

10 Q. AND WAS IT OVER A WEEK THAT HE WAS WITH YOU

11 BEFORE SHE CAME BACK AND GOT HIM?

12 A. IT WAS AROUND A WEEK.

13 Q. AND THEN THEY FOUND -- AS FAR AS YOU KNOW,

14 YOU WERE TOLD THAT THEY HAD LOCATED A HOME IN NEW YORK?

15 A. IN MONSEY, THE HOUSE IN MONSEY. THEY

16 BOUGHT THE HOUSE IN MONSEY.

17 Q. AND BEFORE THEY MOVED INTO THAT HOUSE, DID

18 MR. AND MRS. MENENDEZ AND LYLE RETURN TO ILLINOIS FOR

19 SOME PERIOD OF TIME TO ARRANGE FOR THE MOVE?

20 A. THEY DID. IN FACT, ERIK'S SECOND BIRTHDAY

21 WAS CELEBRATED THERE, AND THAT WAS NOVEMBER.

22 Q. AND THEN RIGHT AFTER ERIK'S SECOND BIRTHDAY

23 IN NOVEMBER, DID THEY MOVE TO MONSEY?

24 A. THEY MOVED TO MONSEY.

25 Q. AND TO THE BEST OF YOUR KNOWLEDGE, WERE

26 THEY IN MONSEY FOR CHRISTMAS OF THAT YEAR?

27 A. I BELIEVE SO. THEY WERE NOT IN ILLINOIS.

28 YES.

-12813

1 Q. AND THAT WOULD HAVE BEEN 1972, CORRECT?

2 A. NO. THAT WAS -- YES. YES, SORRY. 1972.

3 Q. AND THEN A PERIOD OF YEARS WENT BY BEFORE

4 YOUR TWO FAMILIES WERE LIVING CLOSE TO EACH OTHER AGAIN?

5 A. 1977.

6 Q. AND '77 YOUR FAMILY MOVED TO PRINCETON

7 JUNCTION, NEW JERSEY?

8 A. WE MOVED INTO THE PRINCETON AREA.

9 Q. OKAY.

10 A. YES.

11 Q. AND THEN YOU HAD SOME CONTACT WITH YOUR
12 BROTHER AND SISTER-IN-LAW, URGING THEM TO MOVE THERE AS
13 WELL?

14 A. NO. I CALLED KITTY, AND I SAID: "KITTY, I
15 FOUND A TOWN THAT YOU WOULD LOVE." AND I WAS IN A HOTEL
16 LOOKING FOR HOUSES, AND SHE CAME OVER FOR THE DAY.

17 Q. AND THEY EVENTUALLY ALSO SETTLED IN THE
18 SAME NEIGHBORHOOD, CORRECT?

19 A. YES. THIS WAS JUNE, AND THEY WERE IN THE
20 PRINCETON AREA BY SEPTEMBER.

21 Q. SO JUNE OF '77 IS WHEN SHE CAME TO
22 PRINCETON, AND --

23 A. YES.

24 Q. -- IN SEPTEMBER THAT'S WHEN THEY RENTED THE
25 HOUSE? IS IT MILL -- I NEVER REMEMBER IF IT'S SOUTH OR
26 NORTH MILL?

27 A. SOUTH MILL ROAD.

28 Q. OKAY. AND SOUTH MILL ROAD IS ABOUT FIVE

-12812

1 MINUTES AWAY FROM WHERE YOU CURRENTLY LIVE, CORRECT?

2 A. YES.

3 Q. AND WHEN -- THEY LIVED AT THAT SOUTH MILL

4 ROAD HOUSE FOR ONE YEAR?

5 A. ONE YEAR, WHILE THEY BUILT THE OTHER HOUSE

6 WHERE THEY MOVED, THE PENNINGTON HOUSE.

7 Q. AND DO YOU KNOW WHEN THEY MOVED TO THE

8 PENNINGTON HOUSE, DO YOU RECALL WHAT SCHOOL -- WHAT

9 GRAMMAR SCHOOL IT WAS THAT ERIK WENT TO?

10 A. HE WENT TO HOPEWELL.

11 Q. HOPEWELL VALLEY SCHOOL?

12 A. HOPEWELL VALLEY SCHOOL, YES.

13 Q. NOW, DO YOU REMEMBER A TIME WHEN IT -- DO

14 YOU REMEMBER IN 1980 TO 1981, DID YOU GO INTO A BUSINESS

15 VENTURE WITH YOUR SISTER-IN-LAW, KITTY MENENDEZ?

16 A. WE DID.

17 Q. AND WHAT WAS THE TYPE OF BUSINESS THAT YOU

18 TWO WENT INTO?

19 A. PROVIDING CARPET CLEANING SERVICES.

20 Q. AND DID YOU AND YOUR SISTER-IN-LAW WORK OUT

21 OF AN OFFICE OF THIS CARPET CLEANING BUSINESS?

22 A. WE DID. WE HAD AN OFFICE.

23 Q. AND AT SOME POINT WHEN YOU WERE AT THAT

24 OFFICE WITH YOUR SISTER-IN-LAW, WAS THERE A CALL

25 CONCERNING ERIK FROM THE HOPEWELL VALLEY SCHOOL?

26 A. YES.

27 Q. AND WHAT WAS THE NATURE OF THE CALL?

28 A. ERIK HAD FALLEN PLAYING -- I BELIEVE

1 SOCCER, OR PLAYING OUTSIDE IN THE SCHOOL, AND THEY
2 HAD -- HE HAD KIND OF A CONCUSSION. HE WAS A LITTLE
3 DIZZY, AND THEY HAD TAKEN HIM TO THE EMERGENCY ROOM AT
4 THE PRINCETON MEDICAL CENTER.

5 Q. SO HE WAS IN A HOSPITAL EMERGENCY ROOM?

6 A. YES.

7 Q. AND WAS YOUR OFFICE AT THAT TIME -- AT THAT
8 TIME OF DAY, OPEN FOR BUSINESS?

9 A. YEAH. WE WOULD CLOSE AT 6:00 WHEN THE
10 PEOPLE IN CHARGE OF DOING THE SERVICES WOULD RETURN AND
11 LEAVE THEIR MACHINES THERE.

12 Q. THE ACTUAL CLEANING CREWS?

13 A. THE CLEANING CREW, YES.

14 Q. AND WHEN THIS INFORMATION CAME FROM THE
15 SCHOOL THAT ERIK WAS AT THE EMERGENCY ROOM, DID KITTY
16 DROP EVERYTHING, RUN OUT THE DOOR, GET IN HER CAR AND
17 GO?

18 A. NO. I DID.

19 Q. YOU DID?

20 A. IT WAS HER DECISION.

21 Q. SHE TOLD YOU TO GO, CORRECT?

22 A. I SAID: "KITTY, I'LL STAY. WHY DON'T YOU
23 GO?"

24 SHE SAYS: "NO, I'LL CLOSE THE OFFICE. YOU
25 GO."

26 Q. AND DID YOU GO TO THE HOSPITAL?

27 A. YES.

28 Q. AND WHEN YOU GOT THERE, DID YOU -- WERE YOU

1 MET BY A MEDICAL PROVIDER?

2 A. I TALKED TO THE DOCTORS, YES.

3 Q. AND DID YOU LEARN AT THAT POINT THAT ERIK
4 WAS OKAY?

5 A. HE WAS ALL RIGHT.

6 Q. AND DID YOU SEE ERIK?

7 A. HE WAS THERE.

8 Q. AND DID HE APPEAR GLAD TO SEE YOU?

9 A. HE WAS VERY HAPPY TO SEE ME.

10 Q. DID HE ASK WHERE HIS MOTHER WAS?

11 A. NO. I OFFERED THE INFORMATION. I SAID:
12 "YOUR MOMMY IS COMING."

13 Q. AND DID SHE LATER GET TO THE HOSPITAL?

14 A. SHE GOT THERE AROUND 6:30.

15 Q. NOW, DID YOU OBSERVE A TIME -- LET ME
16 STRIKE THIS.

17 DURING THE TIME THAT YOUR BROTHER AND
18 SISTER-IN-LAW LIVED IN MONSEY, NEW YORK, WHILE YOU WERE
19 STILL LIVING IN ILLINOIS, DID YOU EVER SEE THEM ON
20 HOLIDAYS?

21 A. CHRISTMAS.

22 Q. AND ON CHRISTMAS DID YOU GO BACK EAST?

23 A. I WENT BACK EAST WITH THE GIRLS AND CARLOS.

24 Q. AND DID YOU BECOME AWARE OF A TIME WHEN
25 ERIK HAD HAD AN ACCIDENT WHILE KITTY MENENDEZ WAS

26 SHOPPING FOR SHOES?

27 A. WELL, I SAW THIS SCAR.

28 Q. AND DID HE HAVE A SCAR ON HIS FACE?

-12809

1 A. RIGHT HERE, ABOVE THE EYEBROW. BUT ERIK
2 HEALS BEAUTIFULLY. THERE IS NO --

3 Q. ABOVE THE RIGHT EYEBROW?

4 A. I DON'T KNOW WHICH ONE. IT WAS EITHER THE
5 RIGHT OR THE LEFT. BUT I REMEMBER IT WAS THERE.

6 Q. AND DID HIS MOTHER TELL YOU THAT THE SCAR
7 REQUIRED FIVE STITCHES?

8 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

9 THE COURT: SUSTAINED.

10 Q. BY MS. ABRAMSON: COULD YOU TELL WHETHER OR
11 NOT THE SCAR HAD BEEN STITCHED?

12 A. YES.

13 Q. DID IT HAVE THAT CROSS-TYPE OF STITCHES?

14 A. IT HAD THE LITTLE DOTS. WHATEVER.

15 Q. YOU WEREN'T THERE WHEN THAT HAPPENED,
16 CORRECT?

17 A. NO, I WAS NOT.

18 Q. AND TO THE BEST OF YOUR KNOWLEDGE, DID THAT
19 HAPPEN WHILE THE FAMILY WAS LIVING IN MONSEY?

20 A. YES.

21 Q. NOW, DID YOU KNOW FAITH AND PETER

22 GOLDSMITH?

23 A. VERY MUCH SO.

24 Q. AND DID YOU KNOW WHETHER OR NOT THEY WERE
25 FRIENDS WITH YOUR BROTHER AND SISTER-IN-LAW?

26 A. FAITH WAS KITTY'S BEST FRIEND.

27 Q. AND SHE'S HERE, IS SHE NOT?

28 A. SHE IS HERE, YES.

-12808

1 Q. BY THE WAY, JUST GOING BACK FOR A MOMENT,
2 DO YOU REMEMBER THE DATE, ACTUAL DATE WHEN YOU AND YOUR
3 FAMILY ARRIVED IN HINSDALE?

4 A. I WENT TO LOOK FOR THE HOUSE OCTOBER 10TH.

5 Q. OKAY.

6 A. I ARRIVED --

7 Q. NO, THAT'S THE DAY I WAS LOOKING FOR.
8 OCTOBER 10TH, 1971?

9 A. 1971.

10 Q. AND YOU SAID YOU WENT TO LOOK FOR A HOUSE.
11 THAT'S BEFORE YOU MOVED IN THERE?

12 A. YES.

13 Q. AND HOW DID YOU GET TO ILLINOIS ON THAT
14 OCCASION?

15 A. I FLEW.

16 Q. AND DID ANYONE PICK YOU UP AT THE AIRPORT?

17 A. KITTY DID.

18 Q. AND WAS SHE ALONE, OR WAS SOMEONE WITH HER?
19 A. NO, SHE HAD ERIK WITH HER.
20 Q. AND HE WAS, ON OCTOBER 10, 1971, HE WAS 10
21 MONTHS OLD, CORRECT?
22 A. YEAH, 10 MONTHS OLD, EXACTLY.
23 Q. TEN AND A HALF.
24 AND WHEN SHE PICKED YOU UP, DID SHE DRIVE
25 YOU TO THE NEIGHBORHOOD SO YOU COULD LOOK FOR A HOUSE?
26 A. I STAYED AT HER HOUSE, SO WE DROVE TO HER
27 HOUSE.
28 Q. AND --

-12807

1 A. CARLOS WAS STAYING THERE, BY THE WAY.
2 Q. AND DURING THE DRIVE TO HER HOUSE, WHAT WAS
3 ERIK DOING?
4 A. HE WAS IN THE FRONT SEAT OF THE CAR
5 STANDING.
6 Q. STANDING UP?
7 A. MM-HMM.
8 Q. WAS HE -- DID HE HAVE A BELT OR A CAR SEAT
9 OR ANY KIND OF TETHER ON HIM OR ANYTHING?
10 A. THEY DIDN'T OWN CAR SEATS.
11 Q. WHO DIDN'T OWN CAR SEATS?
12 A. JOSE AND KITTY.
13 Q. AND WAS SHE DRIVING EXTRA SLOW BECAUSE THE

14 BABY WAS STANDING IN THE FRONT OF THE CAR?

15 A. IF YOU LOOK AT THE RECORDS, THEY WERE LOUSY
16 DRIVERS. BUT NO. THEY WERE DRIVING VERY FAST.

17 Q. WAS SHE DRIVING VERY FAST WITH THE BABY
18 STANDING IN THE FRONT SEAT OF THE CAR?

19 A. YES.

20 Q. AND DID THE BABY DO ANYTHING TO KEEP FROM
21 BEING THROWN THROUGH THE WINDSHIELD.

22 A. THEY WERE VERY GOOD AT HOLDING ON,
23 AMAZINGLY GOOD.

24 Q. WHAT WAS HE HOLDING ON TO?

25 A. THE SEAT.

26 Q. SO HE WAS STANDING THERE HOLDING ON TO THE
27 SEAT?

28 A. MM-HMM. MM-HMM, YES.

-12806

1 Q. AND WAS THIS A PATTERN THAT YOU SAW
2 REPEATED THROUGHOUT HIS TODDLERHOOD?

3 A. YES.

4 Q. BEING DRIVEN IN A CAR WITH NO RESTRAINTS?

5 A. BOTH OF THEM.

6 Q. AND YOU SAW THE SAME THING WHEN LYLE WAS A
7 TODDLER AS WELL?

8 A. YES.

9 Q. AND DID YOU EVER COMMENT TO YOUR

10 SISTER-IN-LAW OR YOUR BROTHER THAT THAT WAS DANGEROUS?

11 A. I DID, BUT I WAS CONSIDERED AN

12 OVER-PROTECTIVE MOTHER.

13 Q. YOU WERE OVER-PROTECTIVE?

14 YOU HAD CAR SEATS FOR YOUR GIRLS?

15 A. YES.

16 Q. THERE WERE SUCH THINGS BACK IN THE

17 SEVENTIES, WERE THERE NOT?

18 A. AND IN THE SIXTIES, TOO.

19 Q. DID YOU EVER OFFER TO LOAN THEM CAR SEATS?

20 A. NO. THEY COULD AFFORD THEM IF THEY WANTED

21 THEM.

22 Q. DID YOU EVER HEAR YOUR SISTER-IN-LAW SAY,

23 IN THE PRESENCE OF ERIK MENENDEZ, THAT HE COULD TAKE

24 CARE OF HIMSELF, EVEN WHEN HE WAS VERY SMALL?

25 A. YES.

26 Q. AND IN REFERENCE TO WHAT KIND OF ACTIVITIES

27 OR WHAT KIND OF NEEDS ON HIS PART DID SHE SAY THAT?

28 A. I DON'T UNDERSTAND THE QUESTION. I DON'T

-12805

1 KNOW WHAT YOU MEAN.

2 Q. ALL RIGHT. LET ME GET SOMETHING SPECIFIC.

3 LATER ON WAS THERE AN OCCASION WHEN YOU SAW

4 LYLE AND ERIK MENENDEZ ON THE ROOF OF THEIR HOUSE?

5 A. OH, YES. KITTY BELIEVED THAT YOU HAD TO

6 ALLOW --

7 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

8 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN.

9 IT'S ALSO NONRESPONSIVE.

10 THE WITNESS: YES, I DID SEE THEM ON THE ROOF OF

11 THEIR HOUSE.

12 Q. BY MS. ABRAMSON: AND WERE YOU ALARMED?

13 THIS IS A THREE-STORY HOUSE, IT HAD THREE LEVELS?

14 A. LET ME THINK. THIS WAS THE PENNINGTON

15 HOUSE. YES.

16 Q. IT HAD THREE LEVELS?

17 A. YEAH, IT HAD THREE LEVELS.

18 Q. AND IT HAD A PITCHED ROOF, NOT A FLAT ROOF,

19 CORRECT?

20 A. YES.

21 Q. AND YOU SAW THE BOYS UP ON THE SLOPING

22 ROOF?

23 A. YES.

24 Q. AND DID YOU SAY ANYTHING TO YOUR

25 SISTER-IN-LAW ABOUT THIS?

26 A. I WAS HORRIFIED.

27 Q. YOU WERE AFRAID THAT THE CHILDREN WOULD

28 FALL?

-12804

1 A. MM-HMM.

2 Q. AND IF THEY HAD FALLEN, WERE THEY HIGH
3 ENOUGH UP THAT THEY COULD HAVE DIED?

4 A. OH, DEFINITELY.

5 Q. AND DID SHE SAY ANYTHING IN RESPONSE TO
6 YOUR EXPRESSION OF CONCERN?

7 A. SHE SAID --

8 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: SHE SAID: "TERRY, THEY'LL BE OKAY.
12 YOU WORRY TOO MUCH. THEY'LL BE FINE."

13 Q. BY MS. ABRAMSON: AND HAD YOU HEARD HER
14 SAY -- WHEN YOU WOULD EXPRESS CONCERN ABOUT DANGEROUS
15 CONDITIONS EARLIER, HAD YOU HEARD HER SAY: "THEY CAN
16 TAKE CARE OF THEMSELVES"?

17 A. YES, SHE DID.

18 Q. NOW, TO GO FOR A MOMENT TO SOMETHING YOU'VE
19 TESTIFIED TO UNDER DIRECT EXAMINATION BY MS. TOWERY.

20 YOU SAID THERE WERE NUMEROUS OCCASIONS WHEN
21 YOU WOULD GO SHOPPING WITH KITTY MENENDEZ WHEN THE
22 CHILDREN WOULD WIND UP IN THE CARE OF THE SECURITY
23 GUARDS.

24 A. YES.

25 Q. HOW'D THEY GET THERE?

26 A. WELL, THEY WERE LITTLE BOYS, VERY YOUNG,
27 LOOSE IN THE STORE.

28 Q. AND SO THEY -- THEY WOULD START MOVING ON

1 THEIR OWN THROUGH THE STORE; IS THAT RIGHT?

2 A. YEAH. GOING THROUGH THE DRESSES.

3 Q. DID SHE EVER GO LOOKING FOR THEM?

4 A. NO.

5 Q. DID SHE EVER GO LOOKING FOR THEM ON ANY OF
6 THOSE OCCASIONS WHEN THEY WOUND UP IN THE CUSTODY OF THE
7 SECURITY GUARDS IN THE STORE?

8 A. NO. SHE FELT THE SECURITY GUARDS WOULD
9 FIND THEM, WHEREVER THEY WERE.

10 Q. AND WERE THESE INSIDE OR OUTSIDE STORES?

11 A. THEY WERE INSIDE STORES, BUT THERE WERE
12 OUTSIDE DOORS.

13 Q. AND SO WOULD THEY BE PICKED UP IN THE STORE
14 OR OUTSIDE WANDERING AROUND IN THE STREET AREA?

15 A. NO, MAINLY INTO THE STORE.

16 Q. SO A SECURITY GUARD IN A STORE WOULD FIND
17 THEM?

18 A. WELL, YOU KNOW, THEY WOULD TAKE THEM. THE
19 ATTENDANTS WOULD FIND THEM, THE SALESPeOPLE, AND THEY
20 TAKE THEM WHEREVER YOU TAKE KIDS. I DON'T KNOW.
21 MINE -- I NEVER HAD TO PICK MINE UP.

22 Q. IF YOURS WANDERED OFF, YOU WOULD LOOK FOR
23 THEM, WOULDN'T YOU?

24 A. MINE WOULDN'T WANDER OFF.

25 Q. MY QUESTION IS: DID SHE EVER LOOK FOR
26 THEM?

27 A. NO.

28 Q. DID SHE EVER SHOW CONCERN ABOUT WHETHER

-12802

1 THEY WERE THERE OR NOT?

2 A. WELL, SHE THOUGHT THEY COULD TAKE CARE OF
3 THEMSELVES.

4 Q. AT TWO AND FIVE?

5 A. THAT WAS KITTY'S MENTALITY.

6 Q. I UNDERSTAND THAT. BUT THE QUESTION IS:

7 WAS IT AT TWO AND FIVE THAT SHE WOULDN'T EVEN GO LOOK TO
8 GO SEE WHERE THEY WERE?

9 A. YEAH.

10 Q. AND THE STORES WE ARE TALKING ABOUT, ARE WE
11 TALKING ABOUT DEPARTMENT STORES, OR IN A MALL?

12 A. I AM TALKING ABOUT DEPARTMENT STORES.

13 Q. MULTIPLE LEVEL STORES?

14 A. YES.

15 Q. WITH MANY DIFFERENT DEPARTMENTS?

16 A. MM-HMM.

17 Q. AND LOTS OF PEOPLE IN THEM?

18 A. AND LOTS OF PEOPLE.

19 Q. AND AT TWO AND FIVE, WERE ERIK AND LYLE
20 MENENDEZ ATTRACTIVE LITTLE BOYS?

21 A. THEY WERE BEAUTIFUL.

22 Q. DID YOU EVER SAY ANYTHING TO YOUR

23 SISTER-IN-LAW ABOUT THE RISK OF THESE ATTRACTIVE LITTLE
24 BOYS BEING KIDNAPPED?
25 A. IT WAS BROUGHT UP. BUT LIKE I SAID TO YOU,
26 I WAS AN OVER-PROTECTIVE MOTHER. I WAS TOLD I WAS AN
27 OVER-PROTECTIVE MOTHER.
28 Q. THAT'S WHAT SHE SAID?

-12801

1 DID SHE THINK BOYS WERE NEVER KIDNAPPED OR
2 SEXUALLY RAPED OR KILLED OR ANYTHING LIKE THAT?

3 THE COURT: THAT CALLS FOR A CONCLUSION ON THE
4 PART OF THE WITNESS.

5 Q. BY MS. ABRAMSON: DID SHE SAY: "OH, BOYS
6 NEVER GET PICKED UP BY CHILD MOLESTERS"?

7 A. NO, SHE DIDN'T. NO, SHE DIDN'T.

8 Q. DID YOU NOTICE HOW YOUR SISTER-IN-LAW --
9 WELL, FIRST OF ALL, DID THEIR FAMILY ALWAYS HAVE AT
10 LEAST ONE, AND SOMETIMES MORE THAN ONE, PET ANIMAL?

11 A. ONE. NORMALLY A DOG.

12 Q. DID YOU KNOW AT ONE TIME THEY HAD DOGS AND
13 FERRETS?

14 A. OH, FERRETS. THE STORY OF THE FERRETS,
15 YES. THEY HAD FERRETS, ONE AFTER THE OTHER.

16 Q. WE'RE NOT GOING TO TELL THE STORY OF THE
17 FERRETS. I JUST WANTED TO KNOW.

18 DID YOUR SISTER-IN-LAW INTERACT WITH THE

19 ANIMALS?

20 A. OH, KITTY WAS AN ANIMAL LOVER, AND SHE WAS

21 GREAT WITH THEM, I WOULD HAVE TO SAY.

22 Q. WAS SHE SWEET AND COOING AND NURTURING?

23 A. AND CUDDLY AND NURTURING. SHE WAS

24 WONDERFUL, I'LL TELL YOU, WONDERFUL. SHE SHOULD HAVE

25 BEEN A VET.

26 Q. WITH ANIMALS?

27 A. YES.

28 Q. AND DID YOU HEAR HER USE TERMS OF

-12800

1 ENDEARMENT AND A COOING TONE OF VOICE WITH THE ANIMALS?

2 A. YES.

3 Q. AND WAS THAT A TONE OF VOICE AND A DISPLAY

4 OF ATTITUDE TOWARDS THE ANIMALS THAT YOU NEVER SAW HER

5 USE TOWARDS HER OWN CHILDREN?

6 A. NO, BECAUSE THEY WERE BOYS.

7 Q. OKAY. BUT THE POINT IS SHE TREATED THE

8 ANIMALS MORE LIKE CHILDREN?

9 A. YES. YES.

10 Q. AND SHE DID THIS IN FRONT OF THE BOYS,

11 DIDN'T SHE?

12 A. YES.

13 Q. NOW, WAS THERE -- YOU HAD INDICATED -- DO

14 YOU NEED WATER?

15 A. NO.

16 Q. YOU HAD INDICATED THAT YOU FELT THAT, IF

17 POSSIBLE, KITTY MENENDEZ WAS EVEN MORE COMPETITIVE THAN

18 YOUR BROTHER.

19 A. SHE WAS.

20 Q. AND WAS SHE COMPETITIVE AS A MOTHER WITH

21 YOU?

22 A. YES.

23 Q. AND WAS YOUR LITTLE GIRL, ANAMARIA, A

24 PRECOCIOUS CHILD?

25 A. SHE WAS THE YOUNGEST ONE OF FOUR, YES, AND

26 SHE WAS FAST.

27 Q. WAS SHE, NUMBER ONE, A VERY ACCOMPLISHED

28 SWIMMER?

-12799

1 A. YES, SHE WAS.

2 Q. WAS SHE A VERY GOOD STUDENT IN SCHOOL?

3 A. YES.

4 Q. AND BEFORE SHE EVEN STARTED GRAMMAR SCHOOL,

5 COULD YOUR ANAMARIE READ?

6 A. ANAMARIA LEARNED TO READ BY HERSELF AT

7 FOUR.

8 Q. AND WAS THERE AN INCIDENT INVOLVING

9 MRS. MENENDEZ, KITTY MENENDEZ, CONCERNING ANAMARIA

10 READING AND HER BEING UPSET BY IT?

11 A. WELL --

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: SUSTAINED.

14 Q. BY MS. ABRAMSON: COULD ERIK READ AT FOUR?

15 A. NO.

16 Q. DID YOUR --

17 A. MOST KIDS CAN'T.

18 Q. WAS THERE AN OCCASION WHEN ANAMARIA AND

19 ERIK AND YOU AND KITTY MENENDEZ WERE TOGETHER?

20 A. YES.

21 Q. AND ON THIS OCCASION DID -- IN FRONT OF

22 ERIK -- DID ANAMARIE SHOW KITTY MENENDEZ THAT SHE COULD

23 READ?

24 A. SHE DID.

25 Q. AND WHAT WAS KITTY MENENDEZ' REACTION? DID

26 SHE DO SOMETHING WITH RESPECT TO ERIK AFTER ANAMARIA

27 SHOWED HER THAT SHE COULD READ?

28 A. SHE CALLED ERIK AND SHOWED HIM THE BOOK.

-12798

1 Q. YES.

2 A. ERIK HAD NO INTEREST, AND THAT WAS NORMAL.

3 BUT IT WASN'T THERE. I MEAN --

4 Q. WELL, WHAT DID SHE WANT HIM TO DO? DID SHE

5 WANT ERIK TO READ THE BOOK?

6 A. "ERIK, COME OVER. LET ME SHOW YOU THE A,

7 THE B, THE C."

8 ERIK WAS NOT INTERESTED IN THE BOOK.

9 Q. AND WHAT WAS KITTY MENENDEZ -- DID SHE SAY
10 OR DO ANYTHING WITH RESPECT TO ERIK WHEN HE SHOWED NO
11 INTEREST?

12 A. SHE WAS VISIBLY UPSET.

13 Q. DID SHE CRITICIZE HIM IN ANY WAY?

14 A. NO. SHE JUST TURNED RED, AND YOU KNOW WHEN
15 SOMEBODY IS VERY UPSET. SO I TOLD MY YOUNGEST TO
16 NEVER --

17 MR. CONN: OBJECTION. IRRELEVANT.

18 THE COURT: ALL RIGHT. AFTER THE WORD "UPSET,"
19 EVERYTHING ELSE IS STRICKEN.

20 YOUR NEXT QUESTION, PLEASE.

21 Q. BY MS. ABRAMSON: FROM WHAT YOU OBSERVED,
22 WAS -- IS THE VERY RED THAT YOU SAW, DID IT LOOK LIKE
23 EMBARRASSMENT?

24 A. ANGER.

25 Q. ANGER AT ERIK?

26 A. I DON'T KNOW IF DIRECTED AT ERIK, BUT
27 TRYING TO CONTROL THE FACT THAT SOMEBODY ELSE WAS A
28 LITTLE MORE ADVANCED THAN YOUR CHILD.

-12797

1 Q. AS A CONSEQUENCE OF THAT EPISODE, WITHOUT
2 GIVING US THE SPECIFICS, DID YOU INSTRUCT YOUR CHILD

3 ABOUT HOW SHE SHOULD BEHAVE WITH RESPECT TO AUNT KITTY?

4 A. NEVER --

5 MR. CONN: OBJECTION. IRRELEVANT.

6 THE COURT: WHAT WAS YOUR ANSWER?

7 THE WITNESS: I DIDN'T ANSWER IT.

8 MS. ABRAMSON: DON'T TELL US WHAT THE INSTRUCTION

9 IS, JUST ANSWER YES OR NO.

10 THE WITNESS: YES, I DID INSTRUCT HER.

11 THE COURT: OKAY.

12 THE WITNESS: YES.

13 THE COURT: OVERRULED.

14 THAT ANSWER WILL STAND.

15 Q. BY MS. ABRAMSON: THANK YOU.

16 OVER THE YEARS, DID MRS. MENENDEZ TRY TO

17 DETERMINE HOW YOUR CHILDREN WERE DOING IN SCHOOL, HOW

18 YOUR CHILDREN WERE DOING IN SPORTS?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: SUSTAINED.

21 Q. BY MS. ABRAMSON: WOULD SHE TELL YOU

22 ABOUT -- WELL, LET ME ASK YOU THIS:

23 WOULD SHE BRAG TO YOU ABOUT ERIK'S

24 ACHIEVEMENTS IN SPORTS AND IN SCHOOL?

25 MR. CONN: OBJECTION. IRRELEVANT.

26 THE COURT: SUSTAINED.

27 MS. ABRAMSON: WELL, YOUR HONOR, I'LL MAKE AN

28 OFFER ON THIS. IF I CAN MAKE IT MORE SPECIFIC, MAYBE I

1 WON'T HAVE TO MAKE THE OFFER.

2 DID SHE TELL YOU THAT ERIK WAS DOING
3 WONDERFUL IN SCHOOL?

4 A. SHE --

5 MR. CONN: OBJECTION. IRRELEVANT AND CALLS FOR
6 HEARSAY.

7 MS. ABRAMSON: IT'S NOT OFFERED FOR THE TRUTH,
8 YOUR HONOR.

9 THE COURT: THEN IT'S IRRELEVANT.

10 SUSTAINED.

11 Q. BY MS. ABRAMSON: DID SHE EVER TELL YOU
12 THAT ERIK HAD LEARNING DISABILITIES?

13 A. NO.

14 MR. CONN: OBJECTION. IRRELEVANT.

15 THE COURT: WHY DON'T YOU REPHRASE THE QUESTION.

16 SUSTAINED. YOU CAN ASK WHETHER SHE WAS
17 AWARE -- THE WITNESS WAS AWARE OF THE DISABILITIES.

18 Q. BY MS. ABRAMSON: WELL, AT THAT TIME WERE
19 YOU AWARE THAT ERIK HAD LEARNING DISABILITIES?

20 A. NO.

21 Q. HAVE YOU LEARNED IT SINCE?

22 A. YES.

23 MR. CONN: OBJECTION. IRRELEVANT.

24 THE COURT: SUSTAINED AS TO "HAVE YOU LEARNED IT
25 SINCE?"

26 MS. ABRAMSON: ALL RIGHT. PERHAPS I'D LIKE TO BE
27 HEARD, YOUR HONOR, SO I CAN GET TO IT.

-12795

1 YOU CAN JUST GO ON TO SOMETHING ELSE.

2 MS. ABRAMSON: OKAY. I CAN GO ON TO SOMETHING

3 ELSE, AND WE CAN DO THIS LATER.

4 Q. DID YOU EVER HEAR OF THE LEWIS SCHOOL IN

5 THE PRINCETON AREA?

6 A. YES.

7 Q. DID YOU HAVE A DAUGHTER WHO, IN FACT,

8 WORKED AT A SIMILAR SCHOOL?

9 A. IN COMPETITION WITH THE LEWIS SCHOOL. SHE

10 HAS A MASTERS ON LEARNING DISABILITIES.

11 Q. AND THAT'S YOUR DAUGHTER, ALICIA?

12 A. ALICIA.

13 Q. AND EVEN AT THE TIME THAT ERIK -- THE LAST

14 SUMMER THAT ERIK WAS LIVING IN PRINCETON, 1986, AT THAT

15 TIME WAS YOUR DAUGHTER, ALICIA, WORKING AT A DIFFERENT

16 SCHOOL INVOLVING LEARNING DISABILITIES?

17 A. SHE HAD BEEN WORKING THERE FOUR YEARS, AND

18 THAT WAS THE YEAR SHE GRADUATED FROM COLLEGE.

19 Q. AND TO YOUR KNOWLEDGE, BASED ON THINGS THAT

20 YOU PERSONALLY OBSERVED, DID YOUR SISTER-IN-LAW, KITTY

21 MENENDEZ, KNOW THAT HER NIECE, ALICIA, WAS A TEACHER OF

22 CHILDREN WITH LEARNING DISABILITIES?

23 A. SHE KNEW.

24 Q. AND DID YOU EVER HEAR YOUR SISTER-IN-LAW,
25 KITTY MENENDEZ, TELLING THIS TEACHER, ALICIA, YOUR
26 DAUGHTER, THAT ERIK HAD LEARNING DISABILITIES?
27 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR
28 HEARSAY.

-12794

1 THE COURT: SUSTAINED.

2 Q. BY MS. ABRAMSON: DID MRS. MENENDEZ TRY TO
3 PORTRAY ERIK TO YOU AS PERFECT?

4 A. YES.

5 Q. AND DID YOU DISCOVER OVER THE YEARS THAT
6 SOMETIMES SHE WOULD TELL YOU THINGS ABOUT HIS
7 PERFORMANCE THAT, WHEN YOU THEN CHECKED THE RECORDS OR
8 SPOKE TO OTHER PEOPLE, WERE FALSE?

9 MR. CONN: OBJECTION. IRRELEVANT. NO
10 FOUNDATION.

11 THE COURT: SUSTAINED.

12 Q. BY MS. ABRAMSON: DID SHE BRAG ABOUT HIS
13 PERFORMANCE -- LET ME ASK: DID SHE GIVE YOU FALSE
14 INFORMATION, OR INFORMATION THAT YOU LATER DETERMINED TO
15 BE FALSE ABOUT HIS PERFORMANCE IN FRONT OF HIM?

16 MR. CONN: OBJECTION. CALLS FOR A CONCLUSION AND
17 SPECULATION. NO FOUNDATION.

18 THE COURT: I ASSUME YOU HAVE A SPECIFIC INCIDENT
19 OR INCIDENTS IN MIND THAT YOU WILL REFER TO?

20 MS. ABRAMSON: SHE WILL HAVE IT, RATHER THAN I,
21 YES.
22 THE COURT: WELL, WITH THAT UNDERSTANDING, THAT
23 THERE WILL BE SOME FOUNDATION FOR IT, OBJECTION
24 OVERRULED.
25 YOU CAN ANSWER THE QUESTION.
26 THE WITNESS: YES. IT WAS SPOKEN IN FRONT OF
27 ERIK.
28 Q. BY MS. ABRAMSON: AND WAS IT -- IS THERE

-12793

1 SOME SPECIFIC INCIDENT OR INCIDENTS THAT YOU HAVE IN
2 MIND WHERE SHE TOLD YOU HE DID ONE THING WHEN, IN FACT,
3 YOU FOUND OUT HE DID SOMETHING ELSE?
4 A. YES.
5 Q. AND COULD YOU TELL US WHAT THAT WAS?
6 A. CONFERENCE WITH THE TEACHERS, HOW WONDERFUL
7 HE HAD DONE.
8 Q. HOW WONDERFUL HE HAD DONE IN SCHOOL?
9 A. IN SCHOOL. HE NEVER HAD A PROBLEM. HE WAS
10 JUST OUTSTANDING.
11 Q. AND DID YOU LATER LEARN, IN TALKING TO
12 THESE TEACHERS, THAT THAT WASN'T TRUE?
13 A. NO. I READ THE REPORTS FROM THE SCHOOLS.
14 Q. YOU READ THE SCHOOL RECORDS?
15 A. YES.

16 Q. AND ACCORDING TO THE SCHOOL RECORDS, DID IT
17 SHOW THAT AT THE TIME THAT SHE'S CLAIMING HE'S DOING
18 WONDERFULLY, HE'S ACTUALLY GETTING C'S AND D'S?

19 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

20 THE COURT: SUSTAINED.

21 Q. BY MS. ABRAMSON: DO YOU REMEMBER AN
22 OCCASION WHEN YOU WENT WITH ANAMARIA AND KITTY MENENDEZ
23 AND ERIK MENENDEZ TO AN AMUSEMENT PARK?

24 A. YES.

25 Q. AND HOW OLD WAS ERIK AT THAT TIME?

26 A. AROUND SIX.

27 Q. AND I TAKE IT ANAMARIE WAS ABOUT THE SAME
28 AGE, A LITTLE BIT YOUNGER THAN THAT?

-12792

1 A. THREE MONTHS YOUNGER.

2 Q. AND WERE THERE OTHER CHILDREN ALONG ON THAT
3 TRIP, OR JUST THE TWO YOUNGEST?

4 A. NO, ALL THE KIDS WERE ON THAT TRIP. IT WAS
5 AT "GREAT ADVENTURE".

6 Q. GREAT ADVENTURE IN NEW JERSEY?

7 A. LIKE SIX FLAGS.

8 Q. LIKE MAGIC MOUNTAIN?

9 A. EXACTLY.

10 Q. ALL OF YOUR CHILDREN, ALL FOUR OF YOUR
11 GIRLS?

12 A. ALL OF MY GIRLS, PLUS LYLE.
13 Q. PLUS LYLE AND ERIK?
14 A. YES.
15 Q. AND WAS THERE A PARTICULAR ATTRACTION -- I
16 GUESS THAT'S WHAT THEY CALL THEM -- ATTRACTION WHERE
17 THERE WAS AN INCIDENT INVOLVING ERIK AND YOUR
18 SISTER-IN-LAW?
19 A. YES.
20 Q. AND WOULD YOU TELL US WHAT THAT WAS?
21 A. ONE OF THE -- ONE OF THE THINGS THEY HAD,
22 IT'S LIKE A BIG TENT, AND THE KIDS GO IN. AND NOW THEY
23 HAVE BALLS, BUT THEY USED TO HAVE -- I MEAN, THERE WAS
24 IMBALANCE. THERE WAS NO STABILITY. THEY JUMPED IN
25 THERE. I DON'T KNOW WHAT THEY CALL IT. LIKE A
26 TRAMPOLINE-TYPE.
27 Q. BUT IT'S INSIDE LIKE A BALLOON-TYPE THING?
28 A. INSIDE A BALLOON. AND ERIK REFUSED TO GO

-12791

1 IN.
2 Q. HAD ANAMARIA GONE IN?
3 A. BECAUSE IT DIDN'T BOTHER HER. SHE LOVED
4 IT. ERIK DIDN'T WANT TO GO.
5 Q. AND HOW DID ERIK EXPRESS THAT HE DIDN'T
6 WANT TO GO IN?
7 A. JUST CRIED. "I DON'T WANT TO GO IN. I

8 DON'T WANT TO GO IN."

9 Q. HE DID NOT WANT TO GO IN? DID HE INDICATE
10 HE WAS AFRAID?

11 A. HE WAS AFRAID. HE DIDN'T WANT TO GO IN.

12 Q. DID HE SAY: "I'M SCARED," OR "I'M AFRAID"?

13 A. I DON'T REMEMBER IF HE SAID "I'M SCARED."
14 HE DIDN'T WANT TO GO IN. HE CRIED.

15 Q. AND -- ALL RIGHT. AND WHAT WAS
16 MRS. MENENDEZ' REACTION WHEN HE BEHAVED THAT WAY?

17 A. KITTY WAS VERY UPSET AND ANGRY, BECAUSE IF
18 ANAMARIE WAS THE SAME AGE AND WAS A GIRL -- A GIRL, MIND
19 YOU -- SHE WAS NOT AFRAID, HOW COULD ERIK, BEING A BOY,
20 BE AFRAID?

21 Q. IS THAT WHAT SHE SAID TO HIM: "HOW CAN YOU
22 BE AFRAID? THIS LITTLE GIRL ISN'T AFRAID"?

23 A. EXACTLY.

24 Q. DID SHE CALL HIM NAMES?

25 A. I THINK ONE OF THE NAMES WAS "CRYBABY,"
26 AND -- YOU KNOW.

27 Q. AND SHE SAID THAT TO HIM AT THE TIME?

28 A. OH, YES. ALL THE WAY TO THE CAR.

-12790

1 Q. SHE WAS BERATING HIM ALL THE WAY TO THE
2 CAR?

3 A. SHE WAS FURIOUS.

4 Q. ANGRY WITH HIM?

5 A. VERY ANGRY.

6 Q. AND DID SHE TAKE HIM TO THE CAR?

7 A. WELL, WE ALL WENT.

8 Q. SO THIS IS WHEN YOU WERE LEAVING?

9 A. WHEN WE WERE LEAVING. THAT WAS THE LAST

10 STOP THAT WE HAD MADE.

11 Q. AND WHEN SHE WAS BERATING HIM AND HE WAS

12 OUTSIDE THIS ATTRACTION, WERE THE OTHER CHILDREN INSIDE?

13 A. THEY WERE ALONG. THEY HEARD IT.

14 Q. IT WAS LOUD?

15 A. IT WAS LOUD.

16 Q. SHE WAS -- SHE HAD A RAISED VOICE?

17 A. SHE WASN'T YELLING, BUT SHE -- IT WAS AN

18 ANGRY PERSON.

19 Q. AND WAS YOUR BROTHER THERE?

20 A. NO.

21 Q. AND DID SHE SAY ANYTHING -- APART FROM

22 CALLING HIM A CRYBABY, DID SHE SAY ANYTHING TO ERIK

23 ABOUT FEAR OR TEARS, OR ANYTHING LIKE THAT?

24 A. YOU KNOW, HE WASN'T SUPPOSED TO BE AFRAID,

25 ESPECIALLY IF THERE WAS A LITTLE GIRL ALONG AND SHE WAS

26 NOT AFRAID.

27 MR. CONN: OBJECTION. NONRESPONSIVE.

28 THE COURT: SUSTAINED.

1 THE ANSWER IS STRICKEN.

2 Q. BY MS. ABRAMSON: DID SHE SAY THINGS TO HIM
3 THAT YOU WOULD CHARACTERIZE AS HUMILIATING?

4 A. YES.

5 Q. AND DID HE REACT -- DID HE BECOME MORE
6 UPSET WHEN SHE STARTED TO BERATE HIM?

7 A. HE WAS -- YOU KNOW WHEN YOU HUMILIATE A KID
8 THEY GET THEIR HEAD DOWN AND THEY CRY, AND YOUR HEART
9 GOES OUT TO THEM?

10 Q. YES, I DO.

11 IS THAT HOW HE LOOKED?

12 A. THAT'S HOW HE LOOKED TO ME. I WILL NEVER
13 FORGET.

14 Q. AND WHEN HE DID THAT, DID SHE STOP?

15 A. NO. ONE OF MY GIRLS, I THINK, WENT OVER
16 AND PUT HER ARM AROUND HIM.

17 Q. ONE OF YOUR OLDER GIRLS?

18 A. ONE OF MY OLDER GIRLS.

19 Q. AND SPEAKING OF THAT, WAS THERE AN OCCASION
20 ALSO WHEN YOU'RE LIVING IN PRINCETON JUNCTION AND THE
21 MENENDEZ FAMILY IS LIVING IN PENNINGTON, WHEN ONE OF
22 YOUR -- YOUR OLDEST GIRL, IN FACT, SYLVIA --

23 A. YES.

24 Q. WAS SENT BY YOU TO KEEP ERIK COMPANY WHEN
25 HE WAS LEFT ALONE IN THE DARK IN A STORM?

26 A. YES.

27 Q. IS SYLVIA -- WHAT DOES SYLVIA DO FOR A
28 LIVING NOW?

1 A. SHE IS A DOCTOR.

2 Q. A MEDICAL DOCTOR?

3 A. FAMILY PRACTICE, YES.

4 Q. AND SHE IS ALSO A MOTHER?

5 A. SHE HAS TWO LITTLE ONES.

6 Q. AND AT THAT TIME HOW OLD WAS SYLVIA?

7 A. SEVENTEEN. SHE WAS THE ONLY ONE IN THE

8 HOUSE DRIVING, THE ONLY GIRL THAT COULD DRIVE AT THE

9 TIME.

10 Q. WHO HAD A LICENSE?

11 A. WHO HAD A LICENSE.

12 Q. APART FROM YOU?

13 A. EXACTLY. BUT I HAD THE OTHER THREE GIRLS.

14 Q. SO YOU DIDN'T WANT TO GO?

15 A. SO WHEN HE CALLED AND HE SAID: "AUNT

16 TERRY, IT'S DARK. I'M ALONE."

17 SO I SAID: "ERIK, JUST STAY THERE. SYLVIA

18 WILL BE OVER." AND SO SYLVIA WENT OVER.

19 Q. HOW OLD WAS HE?

20 A. THERE IS NINE YEARS DIFFERENCE BETWEEN HIM

21 AND SYLVIA. SO HE WAS EIGHT.

22 Q. AND WAS IT -- TO THE BEST OF YOUR

23 RECOLLECTION, WAS THIS DURING A STORM?

24 A. IT WAS A STORM THAT THEY HAD LOST POWER.

25 Q. IT WAS A THUNDERSTORM?

26 A. YES.
27 Q. THUNDER AND LIGHTENING?
28 A. YES.

-12787

1 Q. THEY LOST POWER, BUT THE PHONES WERE STILL
2 WORKING?
3 A. YEAH.
4 Q. THAT'S COMMON?
5 A. THAT'S COMMON, UNLESS IT'S A PORTABLE.
6 Q. AND THE PORTABLES GO OUT?
7 A. THEY GO OUT.
8 Q. BUT THIS IS BACK IN 1979?
9 A. WELL, EXACTLY.
10 Q. SO, YOUR DAUGHTER SYLVIA LEFT AND WENT --
11 IT'S ABOUT 15, 20 MINUTES AWAY TO THE MENENDEZ HOUSE?
12 A. IT WAS AROUND 20 MINUTES AWAY.
13 Q. ESPECIALLY IN A STORM?
14 A. YEAH.
15 Q. AND DID SHE -- TO THE BEST OF YOUR
16 KNOWLEDGE, WAS SHE GONE FOR SOME PERIOD OF TIME?
17 A. I TOLD HER TO STAY THERE UNTIL KITTY GOT
18 HOME.
19 Q. WHAT TIME WAS IT WHEN ERIK CALLED AND SAID
20 HE WAS ALONE IN THE HOUSE?
21 A. IT WAS DARK, SO -- BUT PROBABLY AROUND

22 6:00, 6:30. IT WAS ALREADY -- IT WAS WINTER TIME.

23 Q. AND WHAT TIME WAS IT THAT -- WELL, FIRST OF

24 ALL, DID SYLVIE JUST COME BACK HOME, OR DID SHE CALL YOU

25 TO TELL YOU THAT KITTY HAD GOTTEN HOME?

26 A. I TOLD HER TO CALL ME BEFORE SHE LEFT THE

27 HOUSE, SO I KNEW SHE WOULD BE ON THE ROAD.

28 Q. WHAT TIME WAS IT SHE CALLED YOU?

-12786

1 A. IT WAS AROUND 8:00, 8:30.

2 Q. AND WAS THAT WHEN KITTY HAD GOTTEN HOME?

3 A. YES.

4 Q. AND SUBSEQUENT TO THAT -- AND THEN SYLVIE

5 CAME BACK TO YOUR HOUSE?

6 A. SYLVIE CAME HOME.

7 Q. AND SUBSEQUENT TO THAT, DID YOU HAVE A

8 CONVERSATION WITH YOUR SISTER-IN-LAW CONCERNING LEAVING

9 ERIK ALONE?

10 FIRST YOU ANSWER YES.

11 A. YES.

12 Q. OR NO. THEN I GET TO ASK YOU THE NEXT

13 QUESTION, OKAY?

14 A. YES.

15 Q. ALL RIGHT.

16 AND DID YOU OFFER SOMETHING TO HER DURING

17 THE COURSE OF THAT CONVERSATION?

18 A. I TOLD HER THAT ANY OF THE GIRLS COULD GO
19 THERE AND STAY WITH HIM ANY TIME THAT SHE NEEDED TO GO
20 OUT SO THAT HE DIDN'T STAY BY HIMSELF.

21 Q. AND THIS HOUSE, THIS PENNINGTON HOUSE WAS
22 ON A LAKE, WAS IT NOT?

23 A. IT WAS ON A LAKE.

24 Q. AND IT WAS IN THE WOODS?

25 A. YES.

26 Q. AND IT WAS VERY DARK IN THE WOODS IN THAT
27 HOUSE, WAS IT NOT?

28 A. HE WAS EIGHT.

-12785

1 Q. I UNDERSTAND THAT. BUT BESIDES BEING EIGHT
2 OR NINE --

3 A. YES.

4 Q. -- IT WAS DARK?

5 A. YES.

6 Q. AND THE NEAREST NEIGHBOR WAS SOME DISTANCE
7 AWAY?

8 A. THERE WERE VERY EXPENSIVE HOMES WITH A
9 TREMENDOUS AMOUNT OF YARD, LIKE YOU HAVE IN THE EAST
10 COAST. IT'S NOT LIKE IN CALIFORNIA WHERE ONE HOUSE IS
11 NEXT TO THE OTHER.

12 Q. SOME HOUSES IN CALIFORNIA.

13 A. SORRY. BUT YOU KNOW WHAT I MEAN.

14 Q. SO AFTER YOU SAID TO HER THAT HE COULD STAY
15 WITH YOU ANY TIME SHE HAD TO BE OUT, WHAT WAS HER
16 RESPONSE?

17 A. HE SHOULD NEVER HAVE CALLED. THERE WAS NO
18 REASON FOR HIM TO BE AFRAID, AND HE HAD TO GET OVER IT.

19 Q. DID HE EVER CALL AGAIN?

20 A. NEVER CALLED AGAIN.

21 Q. AND DID YOU HAVE REASON TO BELIEVE THAT HE
22 WAS LEFT ALONE AGAIN?

23 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

24 THE COURT: SUSTAINED.

25 Q. BY MS. ABRAMSON: WERE THERE TIMES THAT
26 YOUR SISTER-IN-LAW INDICATED THAT SHE WAS OUT AND HE WAS
27 HOME ALONE?

28 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

-12784

1 THE COURT: SUSTAINED.

2 Q. BY MS. ABRAMSON: THEY DIDN'T HAVE A
3 HOUSEKEEPER, DID THEY?

4 A. NO. THEY HAD A CLEANING LADY.

5 Q. THAT CAME WHAT, ONCE A WEEK, TWICE A WEEK?

6 A. ONCE A WEEK.

7 Q. AND WERE YOU AWARE OF -- LET'S START
8 WITH -- WE WON'T START WITH ANYTHING.

9 WE'VE GOT ONE MINUTE BEFORE 4:30, YOUR

10 HONOR, UNLESS YOU WANT TO GO LATER. BUT I AM NOT GOING

11 TO FINISH WITH THE WITNESS TODAY.

12 THE COURT: HOW MUCH LONGER TO YOU THINK YOU'VE

13 GOT?

14 MS. ABRAMSON: ABOUT 20, 25 MINUTES. BUT I CAN'T

15 SPEAK FOR CROSS-EXAMINATION.

16 THE COURT: OKAY. ALL RIGHT.

17 WE'LL TAKE OUR RECESS, AND WE'LL RESUME

18 TOMORROW AT 9:00 O'CLOCK.

19 DON'T DISCUSS THIS CASE WITH ANYONE. DON'T

20 FORM ANY FINAL OPINIONS ABOUT IT, AND WE WILL RESUME

21 TOMORROW. WE'LL ASK THAT YOU BE HERE AT 8:30, AND THEN

22 WE WILL START AT 9:00 O'CLOCK.

23 (THE JURY EXITS THE COURTROOM

24 AND THE FOLLOWING PROCEEDINGS

25 WERE HELD:)

26

27 THE COURT: ALL RIGHT. THE JURY HAS LEFT.

28 THERE WAS SOME ISSUE THAT YOU WANTED TO

-12783

1 DISCUSS, MS. ABRAMSON?

2 MS. ABRAMSON: I THINK I GOT IT IN ANYWAY, JUDGE.

3 IT USUALLY WORKS THAT WAY. PATIENCE. PATIENCE WILL

4 OUT, JUDGE.

5 THE COURT: OKAY. THEN WE WILL BE IN RECESS. I

6 WANT TO START PROMPTLY AT 9:00 O'CLOCK. SO I WANT

7 EVERYBODY HERE NO LATER THAN QUARTER TO, TO SEE IF WE

8 CAN GET GOING AT 9:00 O'CLOCK.

9 (AT 4:30 P.M. PROCEEDINGS WERE.

10 ADJOURNED UNTIL 9:00 A.M. THE

11 FOLLOWING DAY)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE

4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)
6)
7 PLAINTIFFS,)
8)
9 VS.) NO. BA 068880
10)
11 ERIK GALEN MENENDEZ, AND)
12 JOSEPH LYLE MENENDEZ,)
13)
14 DEFENDANTS.)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS
13 WEDNESDAY, MARCH 27, 1996
14 VOLUME 315
15 (SEALED PAGES 52549 THROUGH 52594)

19 APPEARANCES:
(SEE APPEARANCE PAGE)

1 APPEARANCES:

2

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

7

8

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

13

14

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

18

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

20

21

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

24
25
26
27
28

1 INDEX FOR VOLUME 315 PAGES 52544 THROUGH 52753

2

DAY	DATE	SESSION	PAGE	VOL.
-----	------	---------	------	------

3

4 WEDNESDAY, MARCH 27, 1996 A.M. 52544 315
WEDNESDAY, MARCH 27, 1996 P.M. 52648 315

5

6

PROCEEDINGS

7

8 OPENING STATEMENT
BY THE PEOPLE 52597 315

9

OPENING STATEMENT
10 BY MR. GESSLER 52598 315

11 OPENING STATEMENT
BY MS. ABRAMSON 52616 315

12

13 CHRONOLOGICAL INDEX OF WITNESSES

14

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

15

BARALT,
16 TERESITA 52633-T 315
(CONT'D) 52648-T 315
17 52705-A 315

18

19

20

21

22

23

24

LEGEND:

25

A = MS. ABRAMSON

26 C = MR. CONN

G = MR. GESSLER

27 K = MS. TOWERY

L = MR. LEVIN

28 N = MS. NAJERA

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 442- PHOTOGRAPH 52642 315

4 443- PHOTOGRAPH 52643 315

5 444- PHOTOGRAPH 52644 315

6 445- PHOTOGRAPH 52644 315

7 446- PHOTOGRAPH 52645 315

8 447- PHOTOGRAPH 52645 315

9 448- PHOTOGRAPH 52646 315

10 449- PHOTOGRAPH 52708 315

