

1 VAN NUYS, CALIFORNIA; THURSDAY, MARCH 28, 1996

2 9:10 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD OUT OF THE PRESENCE OF

10 THE JURY:)

11

12 THE COURT: IN THE TRIAL, THE DEFENDANTS AND ALL

13 COUNSEL ARE PRESENT, AND WE HAVE THE WITNESS BACK, AND

14 YOU MAY PROCEED.

15 MS. ABRAMSON: JUDGE, CAN YOU REMIND ME ON -- I

16 REALIZE I SHOULD REMEMBER THIS, BUT WHAT IT WAS YOU

17 STOPPED ME ON AT 4:15 YESTERDAY, THE HEARSAY OBJECTION,

18 AND --

19 THE COURT: WHATEVER IT WAS, YOU INDICATED THAT

20 YOU HAD RESOLVED IT BY FURTHER QUESTIONING.

21 MS. ABRAMSON: THEN I THOUGHT I HADN'T WHEN I WAS

22 LEAVING TO GO HOME. BUT YOU DON'T RECALL WHAT IT WAS?

23 OBVIOUSLY IT WAS THE EVIDENCE THAT WOULD MAKE OR BREAK

24 THE CASE.

25 THE COURT: I DON'T RECALL THE SPECIFIC OBJECTION

26 AND THE RULING. I'M SORRY.

27 ARE WE READY TO PROCEED?

28 MS. ABRAMSON: EXCUSE ME, YOUR HONOR, BUT THE

1 PEOPLE HAVE JUST SLID OVER PHOTOGRAPHS OF THE VICTIMS
2 THAT THEY SAY THEY'RE GOING TO USE IN CROSS. I GUESS
3 THAT MEANS THEY WOULD LIKE TO USE THEM IN CROSS, BUT WE
4 WILL OBJECT. THEY HAVE NO RELEVANCE OR EVIDENTIARY
5 PURPOSE WHATSOEVER. THEY'RE JUST SYMPATHY.

6 THE COURT: OKAY. THE PHOTOGRAPHS ARE OF THE
7 DECEASED?

8 MS. ABRAMSON: YES.

9 THE COURT: OKAY.

10 MR. GESSLER: THEY ARE PHOTOGRAPHS OF THE
11 DECEASED. YES, YOUR HONOR.

12 THE COURT: AND DO THE PEOPLE WISH TO BE HEARD ON
13 IT?

14 MR. CONN: YES. THE CASE LAW ALLOWS, IN THE
15 PENALTY PHASE, THE PROSECUTION TO PRESENT PHOTOGRAPHS OF
16 THE VICTIMS, SO THE JURY CAN FINALLY HAVE A CHANCE TO
17 SEE WHO THE VICTIMS ARE IN THIS CASE.

18 MS. ABRAMSON: FINALLY?

19 THE COURT: DO YOU DISPUTE THAT THAT'S THE LAW?

20 MS. ABRAMSON: WE HAVE SEEN WHAT THE VICTIMS LOOK
21 LIKE THROUGH MANY PHOTOGRAPHS. NOT JUST CRIME SCENE
22 PHOTOGRAPHS, PHOTOGRAPHS THAT WE HAVE PUT INTO EVIDENCE.

23 THE COURT: WELL, DOESN'T THE PROSECUTOR HAVE A
24 RIGHT TO SELECT THE PHOTOGRAPHS THAT THE JURY SEES, AND
25 NOT THE DEFENSE? WHY IS IT THAT YOU HAVE THE RIGHT TO

26 PICK ALL THE PHOTOGRAPHS?

27 MS. ABRAMSON: WHAT'S THE PURPOSE? THESE AREN'T

28 RELEVANT TO ANYTHING. WE DON'T KNOW WHEN THEY WERE

-12780

1 TAKEN, OR WHO TOOK THEM, OR WHAT THE OCCASION WAS.

2 THE COURT: AS FAR AS THE OCCASION -- THE ISSUE

3 WOULD BE AS TO HOW THEY LOOKED IN LIFE, ASSUMING THEY

4 CAN AUTHENTICATE THOSE PHOTOGRAPHS.

5 WHAT IS YOUR LEGAL OBJECTION AS FAR AS CASE

6 LAW? THE PEOPLE SAY THERE IS CASE LAW SUPPORTING THE

7 ADMISSIBILITY FOR THE PHOTOGRAPHS.

8 MS. ABRAMSON: LET THEM CITE THE CASE LAW, SINCE

9 ALL THEY DID WAS SLIDE THESE ACROSS THE TABLE BEFORE THE

10 JURY COMES OUT.

11 WE'LL CITE THE LAW THAT GOT THEM 90 PERCENT

12 OF OUR EVIDENCE WITHHELD, 352 OF THE EVIDENCE CODE, AND

13 IF THEY HAVE A CASE THAT SAYS THEY CAN DO THIS, WE WOULD

14 LIKE TO READ IT.

15 THE COURT: YOUR OBJECTION IS A VERY SIMPLE

16 OBJECTION. YOU ARE OBJECTING UNDER 352 OF THE EVIDENCE

17 CODE THAT THE PROBATIVE VALUE IS OUTWEIGHED BY UNDUE

18 PREJUDICE.

19 MR. GESSLER: WE WILL JOIN IN THAT OBJECTION.

20 THE COURT: THAT IS VERY SIMPLY THE OBJECTION OF

21 THE DEFENSE, VERY EASILY SAID.

22 AND THE PEOPLE'S POSITION IS THAT IT HAS
23 CASE LAW SUPPORTING ITS ADMISSIBILITY.

24 DO YOU HAVE THE CASE LAW?

25 MR. CONN: I DON'T HAVE THAT HERE. WE WILL
26 SUPPLY IT TO THE COURT, YOUR HONOR.

27 THE COURT: BEFORE THE PHOTOGRAPHS ARE SHOWN TO
28 THE JURY AND DISPLAYED TO THE JURY, THE COURT WILL

-12779

1 CONDUCT A FURTHER HEARING.

2 ALL RIGHT. ANYTHING ELSE NOW BEFORE WE
3 RESUME WITH THE TESTIMONY OF THE WITNESS?

4 MS. ABRAMSON: NO, YOUR HONOR.

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

6 (THE JURY ENTERED THE COURTROOM

7 AND THE FOLLOWING PROCEEDINGS

8 WERE HELD:)

9

10 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. MAY WE
11 APPROACH?

12 THE COURT: ALL RIGHT. RATHER THAN APPROACHING,
13 LET'S STOP. THE LAWYERS HAD SOMETHING ELSE HERE,
14 SO . . .

15 MS. NAJERA: YOUR HONOR --

16 THE COURT: ONE SECOND. JUST RELAX. JUST RELAX.
17 EVERYBODY CALM DOWN.

18 (THE JURY ENTERED THE JURY ROOM
19 AND THE FOLLOWING PROCEEDINGS
20 WERE HELD:)
21
22 THE COURT: YES.
23 MS. ABRAMSON: I ASKED COUNSEL TO TURN THE
24 PHOTOGRAPHS OVER, AND SHE SAID NO.
25 SO THAT'S WHY I STOPPED, BECAUSE THE
26 PHOTOGRAPHS WERE PROMINENTLY DISPLAYED ON THE
27 PROSECUTION'S TABLE. AND, OF COURSE, THEY SIT CLOSE TO
28 THE JURY, AND I ASKED MS. NAJERA TO TURN THEM OVER, AND

-12778

1 SHE SAID: "NO, YOU DON'T TURN YOUR PHOTOGRAPHS OVER."
2 SO I WANTED THEM COVERED UP.
3 THE COURT: AS OF NOW, UNTIL THERE IS A RULING ON
4 THE ADMISSIBILITY OF THE PHOTOGRAPHS, THE DISTRICT
5 ATTORNEY IS TO TURN THEM OVER.
6 MS. NAJERA: THAT'S FINE, YOUR HONOR.
7 AND FOR THE RECORD, YOUR HONOR, WE WOULD
8 ASK THAT ANY -- THAT COUNSEL BE INSTRUCTED THEY HAVE NO
9 RIGHT OR AUTHORITY TO ORDER THE PEOPLE TO DO ANYTHING.
10 THE COURT: I AM NOT GOING TO GET INTO THIS SORT
11 OF DISCUSSION.
12 MS. NAJERA: OKAY.
13 THE COURT: IT'S NOT MEANINGFUL. LET'S GET THE

14 JURY OUT.

15 (THE JURY ENTERED THE COURTROOM

16 AND THE FOLLOWING PROCEEDINGS

17 WERE HELD:)

18

19 THE COURT: OKAY. THE JURY IS BACK. GOOD

20 MORNING, LADIES AND GENTLEMEN.

21 WE ARE READY TO RESUME WITH THE WITNESS.

22 WE ARE STILL ON THE DIRECT EXAMINATION OF THIS WITNESS.

23 YOU MAY CONTINUE, PLEASE.

24 MS. ABRAMSON: THANK YOU, YOUR HONOR.

25

26

27 ///

28 ///

-12777

1 DIRECT EXAMINATION (CONT'D)

2 BY MS. ABRAMSON:

3 Q. MRS. BARALT, YOU TESTIFIED YESTERDAY THAT

4 UNTIL A CERTAIN POINT YOU HAD ATTENDED CERTAIN SPORTING

5 MATCHES. I BELIEVE YOU WERE TALKING YESTERDAY ABOUT

6 TENNIS MATCHES?

7 A. YES.

8 Q. WITH YOUR BROTHER AND SISTER-IN-LAW?

9 A. YES.

10 Q. JUST FOR THE JURY'S EDUCATION, IF YOU WILL,
11 BACK EAST THERE ARE BOTH INDOOR AND OUTDOOR TENNIS CLUBS
12 AND TENNIS COURTS WHERE PEOPLE COMPETE, CORRECT?

13 A. WELL, THE WEATHER DOESN'T ALLOW OUTDOOR
14 TENNIS ALL YEAR LONG, SO . . .

15 Q. SO THERE ARE TENNIS COMPETITIONS AND TENNIS
16 TOURNAMENTS THAT ARE HELD IN INDOOR TENNIS FACILITIES,
17 CORRECT?

18 A. ALL OF PRINCETON UNIVERSITY MATCHES ARE
19 INDOORS.

20 Q. WE'RE TALKING ABOUT TOURNAMENTS OR MATCHES
21 THAT LYLE AND ERIK MENENDEZ COMPETED IN, AND DID YOU
22 ATTEND SUCH MATCHES?

23 A. YES.

24 Q. IN INDOOR SETTINGS?

25 A. YES.

26 Q. AND WHEN YOU'RE AN OBSERVER, LIKE YOURSELF
27 AND YOUR BROTHER AND SISTER-IN-LAW IN THESE MATCHES,
28 WHERE ARE YOU PHYSICALLY IN RELATION TO THE ACTUAL

-12776

1 TENNIS COURT WHERE YOU WOULD BE PLAYING?

2 A. OKAY. THIS IS THE TENNIS COURTS. I WOULD
3 BE THERE, AND THERE WOULD BE A GLASS (INDICATING).

4 Q. YOU WOULD BE BEHIND A GLASS ENCLOSURE?

5 A. BEHIND A GLASS, EXACTLY.

6 Q. AND WAS IT TOTALLY ENCLOSED TO THE CEILING?

7 A. WELL, IT WOULD BE THE CLUB, AND THEN YOU
8 COULD SEE. IT WOULD BE ALL GLASS, AND YOU COULD SEE
9 DOWN INTO THE TENNIS COURTS.

10 Q. SO YOU WERE SOME DISTANCE AWAY FROM THE
11 COURTS.

12 AND WOULD IT BE FAIR TO SAY THAT YOU COULD
13 NOT COMMUNICATE VERBALLY WITH THE PEOPLE ON THE TENNIS
14 COURT WHEN THEY'RE PLAYING IN ONE OF THESE INDOOR TENNIS
15 FACILITIES?

16 A. NOT IN THE ONES THAT I ATTENDED.

17 Q. AND IN THE -- AND AT THESE MATCHES THAT YOU
18 ATTENDED, WOULD YOU BE SITTING NEXT TO YOUR
19 SISTER-IN-LAW AND YOUR BROTHER?

20 A. THEY WERE ABOUT THE ONLY PEOPLE I KNEW
21 THERE.

22 Q. AND YOU INDICATED -- AND THERE WOULD BE
23 OTHER PEOPLE THERE OBSERVING MATCHES?

24 A. A LOT OF PARENTS AND MANY TENNIS LOVERS,
25 LET ME PUT IT THAT WAY.

26 Q. AND WAS IT IN THIS SETTING THAT YOU SAW THE
27 BEHAVIOR THAT YOU DESCRIBED WHERE YOUR BROTHER WOULD BE
28 PACING AND SMOKING, AND MRS. MENENDEZ WOULD BE VERY,

2 MR. CONN: OBJECTION. IRRELEVANT AND LEADING.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER THE QUESTION.

5 THE WITNESS: YES.

6 Q. BY MS. ABRAMSON: DID YOU ALSO ATTEND
7 OUTDOOR TENNIS COMPETITIONS THAT EITHER ERIK OR LYLE
8 WERE COMPETING IN?

9 A. YES.

10 Q. AND AT THE OUTDOOR ONES, DID YOUR BROTHER
11 HAVE VERBAL COMMUNICATION, OR ATTEMPT TO HAVE VERBAL
12 COMMUNICATION, WITH HIS SONS?

13 A. IN TENNIS, IT'S NOT REALLY ALLOWED. YOU'RE
14 KICKED OUT. I KNOW HE TRIED A COUPLE OF TIMES THAT I
15 SAW, BUT HE WAS TOLD BY THE REFEREE: "THAT'S IT. CUT
16 IT OUT OR YOU GO."

17 Q. SO HE WAS TRYING TO GIVE THEM ORDERS OR
18 COMMANDS WHILE THEY WERE COMPETING OUTDOORS?

19 A. YES.

20 Q. NOW, DID YOU -- YOU HAD JUST INDICATED THAT
21 YOUR YOUNGEST CHILD, ANAMARIE, WAS NATIONALLY -- A
22 COMPETITIVE SWIMMER ON THE NATIONAL LEVEL?

23 A. HER TIMES WERE NATIONALLY RANKED.

24 Q. SO SHE WAS A NATIONALLY-RANKED CHILD
25 SWIMMER?

26 A. FROM THE TIME SHE WAS 10 AND UNDER, YES.

27 Q. AND DID SHE TRAIN AT VARIOUS FACILITIES IN
28 THE PRINCETON AREA?

1 A. YES.

2 Q. AND DID ERIK MENENDEZ TRAIN AT THE SAME
3 FACILITIES, OR SOME OF THE SAME FACILITIES?

4 A. WHEN THEY WERE YOUNG, YES.

5 Q. AND DID ERIK MENENDEZ AND YOUR DAUGHTER
6 EVER COMPETE AT THE SAME -- FOR EXAMPLE, AT THE
7 BEIDENSBROOK COUNTRY CLUB?

8 A. NO. BEIDENSBROOK COUNTRY CLUB WAS A
9 PRIVATE CLUB, AND THAT'S WHERE ERIK BELONGED. WE
10 COULDN'T AFFORD IT. I COULD SAY THAT WE DIDN'T BELONG,
11 BUT WE COULDN'T AFFORD IT. SO WE HAD ANOTHER TENNIS
12 FACILITY -- I MEAN SWIMMING PLACE.

13 Q. FACILITY?

14 A. YES.

15 Q. AND THAT'S WHERE ANAMARIE WOULD TRAIN?

16 A. BUT WE TRAINED AT THE PEDDY SCHOOL. WE
17 BOTH TRAINED DURING THE YEAR AT THE PEDDY SCHOOL,

18 Q. PEDDY IS SPELLED P-E-D-D-Y?

19 A. IT'S A PRIVATE SCHOOL, A NATIONALLY KNOWN
20 SWIMMING SCHOOL.

21 Q. AND SO BOTH CHILDREN TRAINED THERE?

22 A. BOTH CHILDREN TRAINED THERE, YES.

23 Q. AND DID YOU THEN, OVER THE YEARS, HAVE AN
24 OPPORTUNITY TO OBSERVE ERIK MENENDEZ' SWIM TRAINING AND
25 SWIM COMPETITION?

26 A. YES.

27 Q. AND DID YOU ALSO HEAR AND TALK TO ERIK
28 DURING THOSE YEARS THAT HE WAS TRAINING IN SWIMMING?

-12773

1 A. YES.

2 Q. AND FIRST OF ALL, DID YOUR DAUGHTER ENJOY
3 THE SWIMMING AND THE SWIM COMPETITION?

4 A. WELL, MY DAUGHTER ENJOYED TRAINING, TOO.

5 Q. AND YOU COULD TELL THAT FROM HER ATTITUDE,
6 THE WAY SHE LOOKED, THE THINGS SHE SAID?

7 MR. CONN: OBJECTION. LEADING AND IRRELEVANT.

8 THE COURT: ALL RIGHT. SHE'S ALREADY SAID THAT
9 SHE ENJOYED IT.

10 MS. ABRAMSON: FOUNDATION.

11 THE COURT: SO LET'S MOVE ON TO THE ISSUE.

12 Q. BY MS. ABRAMSON: DID ERIK MENENDEZ ENJOY
13 SWIMMING, OR TRAINING FOR SWIMMING?

14 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR
15 SPECULATION.

16 THE COURT: OVERRULED ON THE FIRST GROUND.

17 PERHAPS YOU CAN REPHRASE THE QUESTION SO IT
18 WOULDN'T CALL FOR A CONCLUSION.

19 Q. BY MS. ABRAMSON: WELL, COULD YOU TELL FROM
20 THINGS HE SAID AND THINGS HE DID AND HOW HE LOOKED AND
21 HOW HE BEHAVED WHETHER HE WAS ENJOYING HIMSELF?

22 A. HE HATED IT.

23 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND
24 SPECULATION. NO FOUNDATION.
25 THE COURT: IT STILL CALLS FOR SPECULATION. ASK
26 "DID IT APPEAR."
27 MS. ABRAMSON: ALL RIGHT.
28 Q. DID HE APPEAR TO HATE IT?

-12772

1 A. YES.
2 Q. DID YOU HEAR HIM PROTESTING?
3 A. I HEARD HIM --
4 MR. CONN: OBJECTION. CALLS FOR HEARSAY.
5 THE COURT: OVERRULED.
6 THE WITNESS: I SAW HIM NOT GET IN THE POOL.
7 Q. BY MS. ABRAMSON: DID YOU SEE HIM RESISTING
8 HAVING TO TRAIN AND HAVING TO COMPETE?
9 A. HE HAD NO CHOICE.
10 Q. WHY DID HE HAVE NO CHOICE?
11 MR. CONN: OBJECTION. IT CALLS FOR HEARSAY AND
12 SPECULATION.
13 THE COURT: REPHRASE THE QUESTION.
14 Q. BY MS. ABRAMSON: WHAT DID YOU SEE THAT
15 INDICATED THAT HE HAD NO CHOICE?
16 MR. CONN: OBJECTION. CALLS FOR A CONCLUSION.
17 NO FOUNDATION.
18 THE COURT: OVERRULED.

19 THE WITNESS: WHEN YOU'RE EIGHT AND YOU ARE TAKEN
20 TO A POOL AND YOU ARE TOLD, "PUT YOUR BATHING SUIT ON
21 AND GET INTO THE WATER" --

22 MR. CONN: OBJECTION. NO FOUNDATION. IT CALLS
23 FOR SPECULATION AND HEARSAY.

24 THE COURT: OKAY.

25 DID YOU SEE THESE THINGS?

26 THE WITNESS: YES, SIR. I SAW IT.

27 THE COURT: OKAY. OVERRULED.

28 THE WITNESS: I TALKED TO HIM. I TALKED TO THE

-12771

1 COACHES.

2 THE COURT: NOT TALKING ABOUT IT, BUT IF YOU
3 ACTUALLY SAW THE EVENT. NOT WHAT SOMEONE TOLD YOU, BUT
4 WHAT YOU SAW YOURSELF.

5 THE WITNESS: I WAS THERE EVERY PRACTICE.

6 THE COURT: OKAY. OVERRULED.

7 Q. BY MS. ABRAMSON: DID YOU SEE PEOPLE
8 PRESSURING HIM TO COMPETE AND PRESSURING HIM TO SWIM?

9 A. YES.

10 Q. WHO WAS PRESSURING HIM?

11 A. ON A DAILY BASIS, KITTY.

12 Q. AND DID YOU SEE YOUR BROTHER PRESSURING
13 HIM?

14 A. YES. THEY WANTED HIM TO WIN, AND THE

15 PRESSURE WAS THERE.

16 Q. WHEN YOUR BROTHER WAS THERE?

17 A. WHEN THEY BOTH WERE THERE, YES.

18 Q. AND DID ERIK HAVE A PARTICULAR PHYSICAL

19 COMPLAINT ABOUT SWIMMING AND PRACTICING AND TRAINING?

20 A. HE WAS ALWAYS COLD.

21 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

22 THE COURT: OVERRULED.

23 MS. ABRAMSON: THAT YOU HEARD?

24 THE COURT: OVERRULED.

25 THE WITNESS: HE WAS ALWAYS COLD. ERIK HAD NO

26 FAT. ERIK WAS ALWAYS FREEZING.

27 Q. BY MS. ABRAMSON: AND YOU WOULD SEE THAT IN

28 TREMBLING BEHAVIOR AND PROTEST BEHAVIOR?

-12770

1 A. YES.

2 Q. AND DID YOU SEE AND HEAR BOTH OR EITHER

3 PARENT ORDER HIM BACK INTO THE POOL EVEN WHEN HE WAS

4 PROTESTING THAT HE WAS FREEZING AND COLD?

5 A. YES.

6 Q. WAS THIS SOMETHING YOU SAW INFREQUENTLY, OR

7 WAS IT A REGULAR OCCURRENCE?

8 A. DAILY.

9 Q. WITH RESPECT TO THESE SPORTING EVENTS THAT

10 YOU DID ATTEND, THE COMPETITIVE EVENTS, DID YOU ON

11 OCCASION SEE EITHER OF YOUR NEPHEWS LOSE?

12 A. OH, DEFINITELY.

13 Q. AND DID YOU EVER SEE ANY BEHAVIOR BY EITHER
14 OF THEIR PARENTS THAT WAS CONSOLING; ANY EFFORTS TO
15 CONSOLE THEM IN LOSING?

16 A. NO.

17 Q. DID YOU SEE BEHAVIOR WHEN EITHER OF THEM
18 WOULD LOSE THAT WOULD BE CRITICAL AND ANGRY, OR CRITICAL
19 OR HARSH?

20 A. YES.

21 Q. AND WHAT WAS THAT BEHAVIOR?

22 A. OKAY. I CAN GIVE YOU AN INSTANCE WHEN ERIK
23 WAS EIGHT OR UNDER, AND WE WERE AT THE MERCER COUNTY
24 CHAMPIONSHIPS.

25 Q. THIS IS SWIMMING?

26 A. THIS IS ONE OF THE EVENTS THAT I MAINLY
27 ATTENDED, BECAUSE I HAD AN EIGHT AND UNDER, TOO.

28 Q. WHEN YOU SAY EIGHT AND UNDER, THOSE ARE

-12769

1 CATEGORIES OF JUNIOR COMPETITION?

2 A. OH, I MEAN, WE HAD -- I HAD A LITTLE GIRL
3 THE SAME AGE COMPETING IN THE GIRLS' CATEGORY IN THE
4 SAME AGE BRACKET, SO I ATTENDED THOSE SPECIFIC MEETS.

5 AND HE LOST ONE EVENT AND HE WAS VERY
6 UPSET. ALL LITTLE ONES ARE UPSET. SO I SAID TO HIM, I

7 SAID: "ERIK, YOU HAVE THREE OTHER EVENTS. IT DOESN'T
8 MATTER."

9 AND KITTY AND JOSE WERE THERE. THEY WERE
10 VERY UPSET WITH ME, BECAUSE HE -- THEY FELT HE HAD TO BE
11 UPSET ABOUT LOSING. HE LOST, AND I SAID IT DOESN'T
12 MATTER.

13 Q. DID THEY TRY TO CONSOLE HIM? DID THEY SEEM
14 SYMPATHETIC THAT HE WAS SO UPSET?

15 A. NO. HE WAS TOLD EVERYTHING HE DID WRONG.

16 Q. SO THEY CRITICIZED HIM?

17 A. MAYBE, YES.

18 Q. NOW, WERE YOU FAMILIAR WITH THE
19 AFTER-SCHOOL ACTIVITIES THAT ERIK WAS REQUIRED TO
20 PARTICIPATE IN?

21 A. WELL, FIRST IT WAS SWIMMING, AND THEN IT
22 WAS TENNIS. THAT'S -- AND SOCCER ALSO. BUT SOCCER WAS
23 MAINLY SATURDAYS AND SUNDAYS, I THINK A COUPLE OF
24 AFTERNOONS IN A WEEK. SWIMMING IS AN EVERY-DAY
25 OCCURRENCE, AND THEN TENNIS BECAME THEIR LIFE.

26 Q. WHEN YOU SAY IT BECAME THEIR LIFE, TO YOUR
27 KNOWLEDGE, WAS ERIK -- WAS ERIK MENENDEZ INVOLVED IN
28 TENNIS PRACTICING EVERY SINGLE DAY?

-12768

1 A. AND ONE OF THE REASONS THEY WERE AT P.D.S.
2 IS BECAUSE P.D.S. ALLOWED THEM TO TAKE THEM OUT OF

3 SCHOOL WHENEVER IT WAS NECESSARY FOR PRACTICE AND
4 MATCHES, WHICH PUBLIC SCHOOLS WOULD NOT ALLOW YOU. AND
5 THE LAURENCEVILLE SCHOOL, WHICH WAS THE OTHER SCHOOL
6 THEY CONSIDERED, WOULD NOT ALLOW IT.

7 THE COURT: OKAY. YOU'RE WELL BEYOND THE
8 QUESTION THAT WAS ASKED OF YOU.

9 SO NEXT QUESTION, PLEASE.

10 Q. BY MS. ABRAMSON: WERE YOU AWARE OF ERIK
11 BEING TAKEN OUT OF SCHOOL AND MISSING SCHOOL FOR TENNIS
12 PRACTICE AND TENNIS COMPETITIONS?

13 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

14 THE COURT: SUSTAINED.

15 Q. BY MS. ABRAMSON: WERE YOU AWARE THAT ERIK
16 WAS COMPETING IN TENNIS MATCHES AND PRACTICES THAT YOU
17 OBSERVED DURING SCHOOL TIME?

18 A. NO, NOT THE ONES THAT I OBSERVED.

19 Q. AND WERE YOU AWARE OF THE DIFFERENT -- I'M
20 SORRY. DID YOU WANT TO CHANGE THAT?

21 A. COULD I EXPLAIN SOMETHING?

22 THE COURT: NO. NO. YOU HAVE TO JUST LISTEN TO
23 THE QUESTION AND TRY TO RESPOND TO THE EXACT QUESTION
24 THAT'S ASKED OF YOU.

25 THE WITNESS: BUT I GAVE AN ANSWER THAT WAS NOT
26 ACCURATE.

27 Q. BY MS. ABRAMSON: OKAY. DID YOU WANT TO
28 CORRECT A PREVIOUS ANSWER?

1 A. NOT NECESSARILY. I WANTED TO EXPLAIN
2 SOMETHING ON MY ANSWER, SO IT'S --

3 Q. DO YOU WANT TO FURTHER EXPLAIN THE ANSWER?

4 THE COURT: THE ANSWER IS REGARDING WHETHER YOU
5 WERE PRESENT WHEN SUCH AN EVENT OCCURRED.

6 THE WITNESS: WELL, SHE ASKED ME IF HE WAS TAKEN
7 OUT OF SCHOOL TO TENNIS MATCHES WHILE HE WAS IN SCHOOL.
8 HE WASN'T AT THE --

9 THE COURT: WHILE YOU WERE THERE AT THE TENNIS
10 TOURNAMENTS OR YOU SAW IT, THAT WAS THE QUESTION.
11 THAT'S THE QUESTION, IS WHETHER YOU SAW SOMETHING, NOT
12 WHAT SOMEONE ELSE MIGHT HAVE TOLD YOU.

13 THE WITNESS: OKAY.

14 Q. BY MS. ABRAMSON: DID YOU HAVE FIRSTHAND
15 KNOWLEDGE THAT HE MISSED SCHOOL IN ORDER TO PLAY TENNIS
16 OR SWIM?

17 THE COURT: FIRSTHAND MEANS YOU SAW IT, NOT
18 SOMEONE ELSE TELLING YOU ABOUT IT.

19 THE WITNESS: YES, BECAUSE HE HAD TO TRAVEL. NOT
20 BECAUSE THE ACTUAL EVENT TOOK PLACE DURING SCHOOL HOURS,
21 BECAUSE THE OTHER KIDS HIS AGE WERE ALSO IN SCHOOL. HE
22 HAD TO TRAVEL AND GO TO DIFFERENT AREAS OF THE COUNTRY
23 IN ORDER TO HAVE -- TO ATTEND THESE MATCHES.

24 Q. BY MS. ABRAMSON: SO YOU WERE AWARE THAT HE
25 WAS TRAVELING AT TIMES DURING THE SCHOOL WEEK?

26 A. THAT'S WHAT I MEANT, YES.

27 MR. CONN: OBJECTION. NO FOUNDATION. CALLS FOR

-12766

1 THE COURT: OVERRULED.

2 THE ANSWER WILL STAND.

3 Q. BY MS. ABRAMSON: NOW, WERE YOU AWARE OF
4 THE FACT THAT THERE WERE NUMEROUS TENNIS COACHES OVER
5 THE YEARS THAT ERIK AND LYLE TRAINED WITH?

6 A. OH, YES.

7 Q. AND THAT THEY WERE GOING TO NUMEROUS
8 DIFFERENT FACILITIES TO DO THAT TRAINING?

9 A. YES.

10 Q. AND THAT THERE WOULD BE DAYS WHEN EACH BOY
11 HAD TO GO TO A DIFFERENT FACILITY FOR TRAINING?

12 A. YES.

13 Q. AND THAT THEIR MOTHER WOULD TAKE THEM TO
14 THESE DIFFERENT FACILITIES?

15 A. YES.

16 Q. AND WERE YOU AWARE OF THE TIME OF THE
17 EVENING ON AVERAGE WHEN THEY WOULD GET HOME?

18 A. ANYWHERE BETWEEN 8:30 AND 9:00 O'CLOCK.

19 Q. AND THAT WAS AFTER SPENDING ALL THEIR
20 POST-SCHOOL TIME IN THIS SPORTS TRAINING?

21 MR. CONN: OBJECTION. CALLS FOR SPECULATION. NO
22 FOUNDATION.

23 THE COURT: SUSTAINED.

24 Q. BY MS. ABRAMSON: WAS THIS SOMETHING THAT
25 YOU WERE TOLD BY EVERY SINGLE MEMBER OF THE MENENDEZ
26 FAMILY; THAT THE BOYS WERE --
27 MR. CONN: OBJECTION.
28 MS. ABRAMSON: COULD I FINISH THE QUESTION, YOUR

-12765

1 HONOR, BEFORE THE OBJECTION?
2 THE COURT: WELL, THE QUESTION CLEARLY CALLS FOR
3 HEARSAY.
4 THE WITNESS: NO, IT ISN'T, BECAUSE I DROVE THEM.
5 I DROVE THEM A FEW TIMES.
6 THE COURT: WE CAN'T ALL TALK AT THE SAME TIME.
7 SO THE OBJECTION IS SUSTAINED TO THE
8 QUESTION.
9 ASK THE NEXT QUESTION.
10 Q. BY MS. ABRAMSON: DID YOU EVER PICK UP THE
11 CHILDREN AND TAKE THEM --
12 A. YES.
13 Q. -- TO THESE PLACES THEY WERE REQUIRED TO
14 GO?
15 A. YES, IN BRUNSWICK, WHICH WAS 45 MILES AWAY.
16 Q. WERE THERE TIMES, FOR WHATEVER REASON, YOUR
17 SISTER-IN-LAW COULDN'T PICK THEM UP AND TAKE THEM?
18 A. YES.
19 Q. AND YOU COULDN'T DO THAT?

20 A. YES.

21 Q. SO YOU KNEW FROM THE END OF THE SCHOOL DAY

22 UNTIL 8:30 AT NIGHT THEY WERE INVOLVED IN THIS?

23 A. YES.

24 MR. CONN: OBJECTION. NO FOUNDATION.

25 THE COURT: SUSTAINED.

26 Q. BY MS. ABRAMSON: DID YOU KNOW THAT, AT

27 LEAST ON THE DAYS YOU WERE DOING THAT, FROM THE END OF

28 SCHOOL UNTIL 8:00, 8:30 AT NIGHT, THEY WERE TIED UP IN

-12764

1 SPORTS TRAINING?

2 A. YES.

3 Q. AND DID YOU EVER TAKE THEM HOME AFTER THAT

4 AND SEE THEM START THEIR HOMEWORK AT THAT HOUR OF THE

5 NIGHT?

6 A. NO, I DIDN'T PERSONALLY DO IT.

7 Q. NOW, YOU ARE AWARE THAT AT THE PENNINGTON

8 HOME THEY HAD A TENNIS COURT?

9 A. YES.

10 Q. AND WERE YOU AWARE DURING THE TIMES WHEN

11 THE WEATHER WOULD PERMIT IT, WHETHER THEY WERE REQUIRED

12 TO PRACTICE BEFORE THEY WENT TO SCHOOL ON THE HOME

13 TENNIS COURT?

14 MR. CONN: OBJECTION. NO FOUNDATION.

15 THE COURT: PERHAPS YOU CAN ESTABLISH THE

16 FOUNDATION THAT SHE SAW IT.

17 Q. BY MS. ABRAMSON: DID YOU EVER SEE THAT,
18 THEM --

19 A. NO, BECAUSE I WAS NOT AT THEIR HOUSE AT
20 6:30 OR 7:00 O'CLOCK IN THE MORNING.

21 Q. DID YOU EVER PICK THEM UP FROM HOME TO TAKE
22 THEM TO SCHOOL FOR ANY REASON?

23 A. YES. WHEN WE LIVED IN THE HOPEWELL AREA,
24 WHEN WE WERE RENTING, AND I HAD TO HAVE ERIK IN SCHOOL.

25 Q. BUT THAT WAS BEFORE THEY HAD THE -- DID
26 THEY HAVE THE TENNIS COURT?

27 A. BEFORE THE TENNIS. NOT AFTER THAT.

28 Q. NOW, YOU HAVE FOUR CHILDREN OF YOUR OWN

-12763

1 THAT YOU WERE BUSY WITH?

2 A. THAT I'M BUSY WITH, YES.

3 Q. THAT YOU WERE BUSY WITH THEN?

4 A. YES.

5 Q. AND WAS JUST THE ONE, THE YOUNGEST,
6 ANAMARIE, ATHLETIC, OR WERE THE OTHER ONES INVOLVED IN
7 ATHLETICS, TOO?

8 A. SHE IS THE ONLY ONE THAT CHOSE A SPORT.
9 THE OTHER ONES WERE MUSICALLY TALENTED, AND THEY WANTED
10 TO DO THAT, AND THEY DIDN'T WANT TO BE INVOLVED IN
11 SPORTS, AND THEY DIDN'T HAVE TO.

12 Q. NOW YOU LIVED FAIRLY CLOSE TO THE MENENDEZ
13 FAMILY WHEN THEY WERE LIVING IN THE PENNINGTON HOUSE,
14 CORRECT?

15 A. YES.

16 Q. DID YOU GET A CHANCE TO SEE THEM EVERY DAY?

17 A. NOT EVERY DAY. THE KIDS DIDN'T HAVE THE
18 TIME FOR ME TO SEE THEM EVERY DAY.

19 Q. WHOSE KIDS?

20 A. THESE TWO KIDS.

21 Q. AND APART FROM THE FACT THERE WASN'T TIME
22 TO SEE THEM, WERE YOU ALSO TIED UP WITH YOUR OWN
23 CHILDREN?

24 A. YES. I SAW ERIK A LOT, BECAUSE HE WAS
25 SWIMMING.

26 Q. SO YOU SAW HIM AT THE SWIMMING
27 COMPETITIONS?

28 A. AT THE SWIMMING POOL ALMOST DAILY FOR A

-12762

1 COUPLE --

2 Q. I'M SORRY?

3 A. WHEN HE WAS AROUND SEVEN, EIGHT, NINE AND
4 TEN. AFTER THAT, IT WAS TENNIS FULL-TIME, AND HE
5 DROPPED SWIMMING.

6 Q. AND WHEN HE SHIFTED TO TENNIS FULL-TIME,
7 DID YOU SEE A GOOD DEAL LESS OF HIM?

8 A. A LOT LESS.

9 Q. AND WOULD IT BE FAIR TO SAY THAT THE --

10 AFTER ERIK WAS 10 AND THEN OLDER, THE TIMES WHEN YOU'D
11 MOST LIKELY SEE HIM WERE AT HOLIDAY FAMILY GATHERINGS,
12 THANKSGIVING, CHRISTMAS, EASTER?

13 A. ON WEEKENDS, ON SATURDAY NIGHTS WHEN WE'D
14 GO AND PLAY CARDS WITH JOSE AND KITTY.

15 Q. WHEN YOU'D GO TO PLAY CARDS WITH JOSE AND
16 KITTY, FIRST OF ALL, DID THE BOYS PARTICIPATE IN THE
17 CARD GAMES?

18 A. NO. THEY HAD TO BE IN BED BY 8:30, 9:00
19 O'CLOCK, BECAUSE THEY HAD PRACTICE THE NEXT MORNING. SO
20 THEY HAD TO BE IN BED, AT THE LATEST, 9:00 O'CLOCK.

21 Q. SO DID YOU EVER SPEND ANY TIME INTERACTING
22 WITH THEM WHEN YOU'D GO OVER THERE TO PLAY CARDS?

23 A. FIFTEEN, TWENTY MINUTES, YOU KNOW. JUST
24 THE GOOD NIGHT, AND THAT'S IT.

25 Q. AND THEN THEY'D BE GONE TO BED?

26 A. BECAUSE I DIDN'T GET THERE EARLY ENOUGH. I
27 HAD MY OWN CROWD TO SETTLE.

28 Q. PUT TO BED?

-12761

1 A. WELL, MINE WERE TEENAGERS AT THE TIME, THE
2 OLDER ONES. SO IT'S JUST A MATTER OF LEAVING THE LITTLE
3 ONE ORGANIZED AND MAKING SURE THAT EVERYTHING WAS IN

4 ORDER BEFORE I LEFT.

5 Q. AND AS THE YEARS WENT ON, DID YOU SEE ERIK

6 AND LYLE MENENDEZ EVEN LESS AND LESS AT THE BIG FAMILY

7 GATHERINGS BECAUSE OF TOURNAMENTS THAT THEY'D BE

8 COMPETING IN AT THOSE TIMES?

9 MR. CONN: OBJECTION. CALLS FOR SPECULATION. NO

10 FOUNDATION.

11 THE COURT: IT'S A COMPOUND QUESTION.

12 Q. BY MS. ABRAMSON: DID YOU SEE THEM LESS AND

13 LESS AT FAMILY GATHERINGS?

14 A. WELL, THEY TOOK TURNS.

15 Q. WHAT DO YOU MEAN "THEY TOOK TURNS"?

16 A. YES. ERIK AND KITTY WOULD BE AT

17 THANKSGIVING. LYLE AND JOSE WOULD BE AWAY AT A TENNIS

18 TOURNAMENT, BECAUSE THERE WAS A TENNIS TOURNAMENT AT

19 THAT TIME.

20 MR. CONN: OBJECTION. NONRESPONSIVE. CALLS FOR

21 HEARSAY.

22 MS. ABRAMSON: WELL --

23 THE COURT: IT'S RESPONSIVE TO THE POINT OF

24 DESCRIBING WHO WAS PRESENT. THE REST OF IT IS

25 NONRESPONSIVE, AND THE BALANCE WILL BE STRICKEN, THAT

26 PORTION OF THE ANSWER THAT SAYS PEOPLE WERE PRESENT.

27 Q. BY MS. ABRAMSON: DID YOU START SEEING LESS

28 AND LESS OF EACH OF THE BOYS?

1 A. TOGETHER, YES.

2 Q. WELL, IF ONE WOULD BE THERE FOR

3 THANKSGIVING, WHEREAS TWO HAD BEEN THERE FOR

4 THANKSGIVING BEFORE, THAT'S ONE LESS OCCASION WHEN

5 YOU'RE SEEING ONE OF THEM, CORRECT?

6 A. EXACTLY.

7 Q. AND WERE THERE TIMES WHEN ONE OR BOTH OF

8 THEM WOULD BE MISSING AT CHRISTMAS GATHERINGS AS WELL?

9 A. NOT TOO OFTEN, BECAUSE IT WAS HELD AT THEIR

10 HOUSE.

11 Q. SO CHRISTMAS WAS USUALLY AT THEIR HOUSE?

12 A. MM-HMM.

13 Q. AND WERE THERE TIMES THEN WHEN AT EASTER

14 TIME ONE OR BOTH OF THEM WOULD BE GONE PLAYING IN AN

15 EASTER TOURNAMENT?

16 MR. CONN: OBJECTION. CALLS FOR SPECULATION AND

17 HEARSAY.

18 THE COURT: SUSTAINED.

19 Q. BY MS. ABRAMSON: WERE YOU AWARE OF

20 TOURNAMENTS THAT ARE HELD EVERY EASTER, JUNIOR TENNIS

21 TOURNAMENTS?

22 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

23 THE COURT: WELL --

24 MS. ABRAMSON: WELL, YOUR HONOR, LET ME JUST DO

25 THIS.

26 Q. WERE YOU TOLD -- AND IT'S NOT OFFERED FOR

27 THE TRUTH -- THAT ONE OR THE OTHER WAS AT A TENNIS

28 TOURNAMENT AT EASTER WHEN YOU DIDN'T SEE THEM?

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: WELL, IF IT'S NOT OFFERED FOR THE
3 TRUTH, IT IS IRRELEVANT.

4 Q. BY MS. ABRAMSON: WELL, WHAT IS RELEVANT IS
5 YOU WOULDN'T SEE ONE OF THEM, RIGHT?

6 THE COURT: LET'S GO BACK TO WHAT THE QUESTION
7 IS.

8 Q. BY MS. ABRAMSON: WERE THERE EASTERBEGGERS WHEN
9 YOU WOULDN'T SEE ONE OF THEM?

10 A. NOT MAINLY. THE MAJORITY OF THE EASTERBEGGERS
11 WHILE THEY WERE ON THE EAST COAST THEY WERE THERE,
12 BECAUSE WE WOULD GO TO MASS IN THE MORNING AND THEN GO
13 OUT TO BREAKFAST.

14 AFTER THAT, THERE WAS QUALIFYING FOR THE
15 EASTER BOWL IN MIAMI, AND THEN --

16 Q. SO THEY'D LEAVE?

17 A. YES.

18 MR. CONN: OBJECTION. NONRESPONSIVE. MOTION TO
19 STRIKE.

20 Q. BY MS. ABRAMSON: WOULD THE FAMILY BE GONE
21 FROM THE NEW JERSEY AREA --

22 THE COURT: WAIT A MINUTE. THERE IS AN
23 OBJECTION, AND THE COURT HAS TO BE GIVEN THE OPPORTUNITY
24 TO RULE BEFORE WE HAVE ANOTHER QUESTION.

25 MS. ABRAMSON: I AM GOING TO WITHDRAW AND ASK

26 ANOTHER QUESTION.

27 THE COURT: THEN THE ENTIRE ANSWER IS STRICKEN.

28 Q. BY MS. ABRAMSON: YOU ARE AWARE THAT ALL

-12758

1 CHILDREN GET OFF SCHOOL FOR WHAT'S CALLED EASTER BREAK?

2 A. YES.

3 Q. AND TO THE BEST OF YOUR KNOWLEDGE, DO YOU

4 REMEMBER OCCASIONS WHEN DURING THAT EASTER BREAK THE

5 MENENDEZ FAMILY WOULD NOT BE IN THE PENNINGTON AREA, YOU

6 COULDN'T REACH THEM, OR YOU KNEW THEY WEREN'T THERE?

7 A. AFTER A CERTAIN AGE, YES.

8 Q. AND WERE YOU ALSO AWARE THAT THERE WAS A

9 TOURNAMENT IN FLORIDA AT THAT TIME THAT YOUR

10 SISTER-IN-LAW, FOR EXAMPLE, WOULD OCCASIONALLY ATTEND?

11 A. THE EASTER BOWL.

12 MR. CONN: OBJECTION. CALLS FOR HEARSAY. MOTION

13 TO STRIKE.

14 THE COURT: OVERRULED.

15 THE ANSWER WILL STAND.

16 Q. BY MS. ABRAMSON: NOW, I WANT TO JUST

17 BRIEFLY ASK YOU, MRS. BARALT, AFTER YOUR BROTHER AND

18 SISTER-IN-LAW WERE KILLED, YOU SAW ERIK MENENDEZ BACK

19 EAST, CORRECT?

20 A. YES.

21 Q. THE FIRST TIME YOU SAW HIM AFTER THEY WERE

22 KILLED, WAS THAT A DAY AND A HALF AFTER YOU CAME TO

23 CALIFORNIA?

24 A. TUESDAY NIGHT.

25 Q. AND CAN YOU DESCRIBE WHAT -- AND CAN YOU

26 DESCRIBE WHAT ERIK WAS LIKE WHEN YOU SAW HIM TUESDAY

27 NIGHT?

28 A. ERIK WAS A WRECK.

-12757

1 Q. I AM SORRY?

2 A. ERIK WAS A WRECK. NO EYE CONTACT WITH ANY

3 OF US. HE JUST CRIED AND CRIED. THAT'S ALL I SAW OF

4 ERIK.

5 Q. AND WHEN YOU SAW HIM BACK EAST AFTER THAT,

6 WERE THERE OCCASIONS WHEN YOU SAW HIM AT YOUR HOME?

7 A. HE ALWAYS STAYED AT MY HOME.

8 Q. AND DID HE EVER STAY FOR MORE THAN ONE DAY?

9 A. NO. I THINK THE LONGEST HE STAYED WAS THE

10 ONE WEEK WHEN I HAD TO TAKE HIM TO THE DOCTOR BECAUSE HE

11 HAD SEVERE STOMACH CRAMPS -- PAINS.

12 Q. AND HAD HE LOST A GREAT DEAL OF WEIGHT BY

13 THEN?

14 A. IF POSSIBLE, A GOOD 20 POUNDS. AND LOOK AT

15 HIM.

16 Q. AND DID HE APPEAR TO AVOID YOU AND TRY TO

17 AVOID CONVERSATIONS WITH YOU WHEN HE WAS BACK EAST AFTER

18 THEY WERE KILLED?

19 A. YES.

20 Q. AND DID HE APPEAR TO BE GRIEVING?

21 A. YES.

22 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

23 HONOR.

24 THE COURT: CROSS-EXAMINATION.

25 MR. CONN: YES.

26 MS. ABRAMSON: MAY I HAVE A MOMENT, YOUR HONOR,

27 BEFORE HE BEGINS? I NEED TO INDICATE SOMETHING TO

28 MR. GESSLER.

-12756

1 (DEFENSE COUNSELS ABRAMSON

2 AND GESSLER CONFER SOTTO

3 VOCE.)

4

5 THE COURT: ALL RIGHT.

6

7 CROSS-EXAMINATION

8 BY MR. CONN:

9 Q. MRS. BARALT, IN AUGUST OF '94 DID YOU

10 RECEIVE A CALL FROM DETECTIVE ZOELLER INDICATING TO YOU

11 THAT THE NEW PROSECUTORS ON THE CASE WERE ON THE EAST

12 COAST AND WANTED TO SPEAK TO YOU?

13 A. YES.

14 Q. AND DID YOU AGREE TO SPEAK WITH THE

15 PROSECUTORS ABOUT THE CASE?

16 A. MAY I EXPLAIN EXACTLY WHAT HAPPENED THERE

17 WHEN DETECTIVE ZOELLER CALLED ME AND WHEN I ANSWERED

18 BACK? I CAN'T SAY YES OR NO. I NEED TO EXPLAIN.

19 Q. GO AHEAD, EXPLAIN.

20 A. DETECTIVE ZOELLER CALLED ME, AND HE SAID

21 THERE WERE NEW PROSECUTION ON THE CASE, YOU AND

22 MS. NAJERA, AND YOU WERE IN NEW YORK, AND HE WANTED TO

23 KNOW IF CARLOS AND I WOULD AGREE TO MEET WITH YOU.

24 HE SAID WE'RE NOT DISCUSSING THE CASE, THEY

25 JUST WANT A DRINK, AND I SAID --

26 Q. I'M SORRY, THEY JUST WANT?

27 A. THEY JUST WANT TO HAVE A DRINK AND JUST

28 MEET YOU.

-12755

1 Q. A DRINK?

2 A. A DRINK, D-R-I-N-K. JUST TO SIT DOWN AND

3 MEET US, OKAY. THAT WAS MY CONVERSATION.

4 Q. DETECTIVE ZOELLER TOLD YOU THAT THE

5 PROSECUTORS WANTED TO HAVE A DRINK WITH YOU?

6 A. HE DIDN'T MEAN IT TO DRINK. I MEAN, JUST

7 TO SIT DOWN. HE MEANT CASUALLY.

8 I SAID TO DETECTIVE ZOELLER AT THE TIME, I

9 SAID: "I FEEL VERY UNCOMFORTABLE ABOUT MEETING THEM,

10 BUT I CAN'T TALK FOR CARLOS. I WILL TALK TO CARLOS."

11 I WENT AWAY, BECAUSE ONE OF MY

12 GRANDCHILDREN WAS SICK. WE CAME BACK, AND HE HAD GIVEN

13 ME HIS VOICE NUMBER IN HIS HOTEL.

14 I CALLED HIM BACK AND I SAID: "LES, I

15 TALKED TO CARLOS. CARLOS THINKS THAT IT'S ONLY FAIR

16 THAT WE MEET WITH THEM."

17 I SAID, "I FEEL UNCOMFORTABLE ABOUT IT, BUT

18 I AM WILLING TO DO IT, BECAUSE THIS IS CARLOS' WISH." I

19 SAID, "HE COMES HOME FROM WORK BETWEEN 6:30 AND 7:00,

20 AND WE ARE WILLING TO MEET THEM."

21 HE CALLED ME BACK. HE SAID: "LET ME TALK

22 TO THEM, AND I'LL CALL YOU BACK."

23 HE RETURNED MY CALL, AND HE SAID YOU AND

24 MS. NAJERA HAD AN APPOINTMENT, AND YOU WERE LEAVING THE

25 NEXT DAY, AND WE WILL MEET AT ANOTHER TIME.

26 THAT'S WHAT HAPPENED IN THAT CONVERSATION.

27 Q. ISN'T IT TRUE, MRS. BARALT, THAT WHAT YOU

28 TOLD DETECTIVE ZOELLER IN AUGUST OF 1994 WAS THAT YOU

-12754

1 WOULD MEET WITH THE PROSECUTORS, BUT YOU WOULD NOT

2 DISCUSS THE CASE?

3 A. I TOLD HIM I DIDN'T WANT TO DISCUSS THE

4 CASE, AND HE SAID: "ALL THEY WANT TO DO IS MEET YOU,"

5 AND THAT IS TRUE.

6 Q. HE TOLD YOU THAT WE JUST WANTED TO MEET
7 YOU, THAT WE DID NOT WANT TO DISCUSS THE CASE?

8 A. I TOLD HIM I FELT VERY UNCOMFORTABLE
9 DISCUSSING THE CASE, AND HE SAID: "TERRY, ALL THEY WANT
10 TO DO IS MEET YOU AND GET TO KNOW YOU."

11 AND I SAID: "LET ME TALK TO CARLOS, AND IT
12 WILL BE UP TO CARLOS. I CAN'T SPEAK FOR HIM."

13 Q. DID DETECTIVE ZOELLER TELL YOU THAT WE
14 WANTED TO DISCUSS THE CASE WITH YOU, AND THAT'S THE ONLY
15 REASON WHY WE WANTED TO MEET WITH YOU?

16 A. NO. DETECTIVE ZOELLER TOLD ME YOU WERE NEW
17 IN THE CASE AND YOU WANTED TO MEET WITH CARLOS AND ME.

18 Q. WHY DID YOU TELL DETECTIVE ZOELLER THAT YOU
19 WOULD NOT THE DISCUSS THE CASE WITH US?

20 A. I DIDN'T WANT TO DISCUSS THE CASE,
21 MR. CONN, THE SAME WAY THAT I TOLD THE DEFENSE. I
22 WANTED TO -- I NEEDED A BREAK. IT'S GOING TO BE SEVEN
23 YEARS FOR US SINCE JOSE AND KITTY'S DEATH. THIS HAS
24 BEEN AN ONGOING THING. DO YOU KNOW THE DISRUPTION OF
25 OUR LIVES? DO YOU KNOW HOW -- WHAT WE HAVE GONE
26 THROUGH?

27 I HAVE MET TWO SETS OF PROSECUTIONS. I
28 HAVE MET HOW MANY DEFENSE ATTORNEYS? DO YOU KNOW WHAT

2 FAMILY, AS PEOPLE? IT'S DESTROYING US.

3 Q. YOU MET WITH THIS PROSECUTION TEAM; IS THAT
4 WHAT YOU'RE SAYING?

5 A. I DIDN'T MEET WITH YOU. I SAW -- I TALKED
6 TO MS. BOZANICH AND I MET MR. KURIYAMA. THAT'S ONE SET
7 OF PROSECUTION. YOU ARE THE SECOND ONE. HOW MANY
8 DEFENSE ATTORNEYS?

9 EVERY TIME SOMEBODY MEETS WITH US, THEY
10 WANT TO GO THROUGH EVERYTHING, AND OVER AND OVER. WE
11 LIVE THAT. THAT'S OUR AGONY, OUR PAIN.

12 Q. DID YOU EVER REFUSE TO MEET WITH
13 MS. ABRAMSON?

14 A. YES, I HAVE REFUSED TO MEET WITH THEM WHEN
15 THEY HAVE CALLED, AND I SAID I NEED A BREAK. I AM AT
16 THE VERGE OF A BREAKDOWN. I NEED A BREAK. YES. THEY
17 ALL KNOW THAT.

18 AND, IN FACT, THE LAST TIME I WAS HERE,
19 WHEN I CAME WITH CARLOS, I DIDN'T MEET WITH THE DEFENSE,
20 BECAUSE I COULDN'T HANDLE IT.

21 Q. AND IS THE REASON WHY YOU DIDN'T WANT TO
22 MEET WITH THE PROSECUTION BECAUSE YOU DIDN'T WANT TO
23 PROVIDE THE PROSECUTION WITH INFORMATION --

24 A. YOUR WORDS, NOT MINE.

25 Q. ALLOW ME TO FINISH THE QUESTION.

26 A. YES.

27 Q. IS THE REASON WHY YOU DID NOT WANT TO MEET
28 WITH THE PROSECUTION IS BECAUSE YOU DO NOT WANT THE

1 PROSECUTORS TO HAVE ANY POSITIVE INFORMATION ABOUT KITTY
2 AND JOSE MENENDEZ?

3 A. MR. CONN, I'LL GIVE YOU ANYTHING THAT YOU
4 WANT TO KNOW ABOUT JOSE AND KITTY. I LOVE THEM. I LOVE
5 JOSE AND KITTY, AND I HAVE ABSOLUTELY NOTHING TO HIDE
6 ABOUT THEM.

7 I LOVE THEM, AND I -- THEY WERE GREAT
8 PEOPLE. THAT THEY MADE A MISTAKE IN RAISING THEIR KIDS,
9 THAT WAS THEIR PROBLEM, NOT MINE. BUT I LOVED THEM.

10 Q. BUT YOU WERE UNWILLING TO GIVE INFORMATION
11 TO THE PROSECUTION IN AUGUST OF 1994 WHEN WE WANTED TO
12 MEET WITH YOU; IS THAT RIGHT?

13 A. MR. CONN, YOU WANT TO KILL MY NEPHEWS.
14 THIS IS THE OTHER SIDE OF MY FAMILY. DO YOU THINK I
15 WANT TO GIVE YOU MORE AMMUNITION AND REALLY BACK YOU ON
16 THAT?

17 Q. AND THAT IS THE REASON WHY YOU DID NOT WANT
18 TO MEET WITH THE PROSECUTION, BECAUSE YOU DO NOT WANT TO
19 PROVIDE US WITH INFORMATION THAT MIGHT LEAD TO THE
20 DEFENDANTS BEING -- RECEIVING THE DEATH PENALTY; IS THAT
21 CORRECT?

22 A. YOU OBVIOUSLY DIDN'T MEET ME, BUT YOU DON'T
23 SEE ANY FAMILY MEMBERS BEHIND YOU. THERE HAS TO BE A
24 REASON FOR THAT.

25 Q. AND IT'S BECAUSE THE FAMILY MEMBERS HAVE NO
26 INTEREST IN PROVIDING THE PROSECUTION WITH ANY POSITIVE

27 INFORMATION CONCERNING KITTY AND JOSE MENENDEZ; ISN'T
28 THAT CORRECT?

-12751

1 A. NO. THE FAMILY MEMBERS DO NOT WANT ANY
2 MORE BLOOD, ANY MORE SHEDDING. THIS IS THE OTHER HALF
3 OF THAT FAMILY. THIS IS OUR FAMILY. NOT YOUR FAMILY,
4 MY FAMILY. AND I AM THE ONE THAT'S HURTING, NOT YOU.

5 Q. AND THE FAMILY MEMBERS ARE COOPERATING ONLY
6 WITH ONE SIDE IN THIS CASE; IS THAT CORRECT?

7 A. NO, NOT NECESSARILY. WE ARE -- WE DON'T
8 WANT THESE BOYS DEAD. THAT -- IT'S OBVIOUS FOR ANYBODY
9 TO SEE, AND I AM CERTAINLY NOT GOING TO SIT HERE AND
10 HELP YOU PUT THEM THERE.

11 Q. DID YOU LOVE YOUR BROTHER?

12 A. I LOVE MY BROTHER MORE THAN YOU CAN EVEN
13 BEGIN TO KNOW. WE WERE RETIRING TOGETHER. MY LIFE HAS
14 ALSO BEEN DISRUPTED. DON'T THINK FOR ANY MINUTE THAT
15 THIS IS NOT TOUCHING ANY OF US.

16 Q. DO YOU CARE AT ALL ABOUT THE WAY YOUR
17 BROTHER IS PORTRAYED IN THIS COURTROOM?

18 A. NO, I DON'T LIKE THE WAY IT'S PORTRAYED IN
19 SOME INSTANCES. IN OTHERS, HE HAS SOME RESPONSIBILITY
20 FOR WHAT HAS HAPPENED HERE.

21 Q. WHAT DO YOU MEAN YOU DON'T LIKE THE WAY HE
22 IS PORTRAYED IN SOME INSTANCES?

23 MS. ABRAMSON: YOUR HONOR, AT THIS POINT I AM
24 GOING TO OBJECT. IT'S GOING BEYOND THE SCOPE, AND I
25 THINK IT'S IMPROPER.
26 THE COURT: WELL, IT'S NOT BEYOND THE SCOPE.
27 WHAT IS YOUR SPECIFIC OBJECTION?
28 MS. ABRAMSON: I THINK THIS KIND OF QUESTIONING

-12750

1 ABOUT WHETHER SHE LIKES THE WAY THINGS ARE PORTRAYED OR
2 NOT IS IRRELEVANT. IT CALLS FOR HEARSAY. IT IS
3 IMPROPER OPINION, AND I'D LIKE AN OFFER OF PROOF.
4 THE COURT: IT DOES CALL FOR A CONCLUSION ON THE
5 PART OF THE WITNESS. THERE IS OBVIOUSLY NO WAY THERE
6 COULD BE AN OFFER OF PROOF, BUT THERE IS CLEARLY A VALID
7 OBJECTION ON THE BASIS THAT IT WOULD CALL FOR A
8 CONCLUSION.
9 THE WITNESS: OKAY. YOU WOULD LIKE TO KNOW --
10 THE COURT: WAIT. WAIT FOR ANOTHER QUESTION.
11 YOUR NEXT QUESTION?
12 Q. BY MR. CONN: ARE YOU INTERESTED AT ALL IN
13 SEEING YOUR BROTHER PORTRAYED FAIRLY IN THIS COURTROOM?
14 A. I WANT THE TRUTH.
15 Q. AND HAVE YOU EVER OFFERED TO SIT WITH THE
16 PROSECUTION TO ENSURE THAT THE PROSECUTION WILL BRING
17 OUT POSITIVE ASPECTS CONCERNING YOUR BROTHER?
18 A. I HAVEN'T SAT WITH YOU, BECAUSE I HAVE SEEN

19 YOU TURN THINGS, AND I AM NOT INTERESTED IN THAT. AND
20 YOUR END RESULT FOR YOU IS KILLING THESE TWO KIDS. I
21 HAVE A DIFFERENT AGENDA. I DON'T WANT THEM DEAD. AND I
22 AM THE ONE THAT IS HURTING ON BOTH SIDES. I AM IN THE
23 SMACK MIDDLE, AND IF YOU DON'T SEE THAT, THEN WE HAVE A
24 PROBLEM.

25 Q. AND TO ENSURE THAT THE DEFENDANTS DO NOT
26 RECEIVE THE DEATH PENALTY, YOU WILL SEE TO IT THAT ONLY
27 HALF THE TRUTH COMES OUT; IS THAT CORRECT?

28 A. I DON'T LIE.

-12749

1 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

2 THE WITNESS: I DON'T LIE. I DON'T LIE. THAT
3 ANYBODY WHO KNOWS ME WILL TELL YOU, AND DETECTIVE
4 ZOELLER WILL BE THE FIRST ONE TO TELL YOU. I DON'T LIE.

5 Q. BY MR. CONN: MY QUESTION IS: TO ENSURE
6 THAT THE DEFENDANTS DO NOT RECEIVE THE DEATH PENALTY,
7 YOU WILL SEE TO IT THAT ONLY HALF THE TRUTH COMES OUT
8 BEFORE THIS JURY, CORRECT?

9 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

10 THE COURT: SUSTAINED AS TO THE FORM OF THE
11 QUESTION.

12 Q. BY MR. CONN: DID IT OCCUR TO YOU THAT
13 UNLESS YOU MEET WITH THE PROSECUTION, THE PROSECUTION
14 WILL NOT BE ABLE TO BRING OUT BEFORE THIS JURY POSITIVE

15 ASPECTS OF JOSE MENENDEZ AND KITTY MENENDEZ?

16 MS. ABRAMSON: OBJECTION. CALLS FOR A

17 CONCLUSION, AND ARGUMENTATIVE AND UNTRUE.

18 THE COURT: OVERRULED.

19 YOU CAN ANSWER THE QUESTION.

20 THE WITNESS: REPEAT THE QUESTION. BY NOW, I

21 DON'T EVEN KNOW WHAT YOU'RE SAYING.

22 Q. BY MR. CONN: DID IT OCCUR TO YOU UNLESS

23 YOU MEET WITH THE PROSECUTION, PERHAPS THE PROSECUTION

24 MIGHT NOT BE ABLE TO BRING OUT POSITIVE ASPECTS OF YOUR

25 BROTHER AND KITTY MENENDEZ?

26 A. THERE IS A LOT OF POSITIVE THINGS ABOUT

27 JOSE AND KITTY, OKAY. THERE IS A LOT OF NEGATIVE

28 THINGS, AND THERE IS A LOT OF DAMAGE HAVING BEEN DONE

-12748

1 HERE.

2 Q. AND YOU HAVE NO INTEREST IN PROVIDING THE

3 PROSECUTION WITH THOSE POSITIVE THINGS, DO YOU?

4 A. LIKE WHAT? GIVE ME AN EXAMPLE OF WHAT --

5 IF I AM NOT HELPING YOU TO PROVIDE SOMETHING HERE THAT

6 YOU HAVEN'T BROUGHT OUT.

7 Q. WERE YOU EVER INTERESTED IN SITTING DOWN

8 WITH THE PROSECUTION AND PROVIDING THE PROSECUTION WITH

9 INFORMATION CONCERNING THE POSITIVE ASPECTS OF JOSE

10 MENENDEZ?

11 A. I WAS NOT INTERESTED IN SITTING DOWN WITH
12 YOU AT ALL TO DISCUSS THIS CASE, BECAUSE YOU HAVE ONE
13 AGENDA AND ONE AGENDA ONLY, AND IT WAS TO CONVICT THEM
14 AND KILL THEM, AND I COULD NOT SUPPORT THAT.

15 MY HUSBAND SAT WITH YOU. SO YOU HAD HALF
16 OF IT. I DIDN'T. I COULDN'T -- I COULDN'T, BECAUSE I
17 DO NOT -- YOUR AGENDA IS DIFFERENT THAN MINE. I WANT TO
18 SAVE THESE TWO BOYS. YOU WANTED THEM DEAD. NOW YOU'RE
19 GETTING YOUR WISH. WHAT MORE DO YOU WANT FROM ME? TO
20 TELL YOU FINE? YOU'RE NOT GOING TO GET IT.

21 Q. WELL, YOUR BROTHER CAME OUT HERE TO TESTIFY
22 WHEN CALLED BY THE PROSECUTION?

23 A. MY HUSBAND.

24 Q. I'M SORRY, YOUR HUSBAND.

25 A. MY BROTHER IS DEAD.

26 Q. YOUR HUSBAND, YOU CAME WITH HIM ON THAT
27 TRIP; IS THAT CORRECT?

28 A. I CAME ON THAT TRIP, AND I WAS SUFFERING

-12747

1 FROM LYME DISEASE, AND I HAD AN I.V. ON. YOU DIDN'T
2 KNOW THAT, DID YOU? WELL --

3 Q. AND ONCE AGAIN, AT THE TIME OF THAT TRIP,
4 DETECTIVE ZOELLER INDICATED TO YOU THAT THE PROSECUTION
5 WOULD LIKE TO SPEAK TO YOU; IS THAT CORRECT?

6 A. AND I DID NOT TALK TO YOU, AND I DID NOT

7 TALK TO THE DEFENSE EITHER. I WAS VERY SICK, VERY SICK.

8 AND SINCE THEN I HAVE LOST 35 POUNDS, IN CASE YOU

9 HAVEN'T NOTICED.

10 Q. YOU PREVIOUSLY MET WITH THE DEFENSE; IS

11 THAT CORRECT, PRIOR TO THAT TRIP?

12 A. I HAVE MET WITH THE DEFENSE FOR MANY YEARS.

13 MS. ABRAMSON: I AM GOING TO OBJECT TO THIS AS

14 HARASSING THE WITNESS.

15 I WOULD ALSO OBJECT THAT IT WAS PREVIOUSLY

16 ASKED AND ANSWERED IN THE PREVIOUS CASE.

17 THE COURT: OVERRULED. OVERRULED.

18 Q. BY MR. CONN: YOU PREVIOUSLY MET WITH THE

19 DEFENSE AND PROVIDED THEM WITH BACKGROUND INFORMATION TO

20 PROVIDE THEM WITH INFORMATION; IS THAT CORRECT?

21 A. I HIRED THE DEFENSE IN 1989, 1990.

22 Q. YOU PREVIOUSLY MET WITH THE DEFENSE AND

23 PROVIDED THEM --

24 A. YES.

25 Q. -- WITH BACKGROUND INFORMATION CONCERNING

26 THE MENENDEZ FAMILY PRIOR TO THAT TRIP, CORRECT?

27 A. FOR YEARS. LESLIE HAS BEEN IN THE CASE

28 SINCE 1990.

-12746

1 Q. AND WHEN YOU WERE ASKED ON THAT TRIP TO LOS

2 ANGELES AT THE TIME OF THE GUILT PHASE TO MEET WITH THE

3 PROSECUTION, YOU ONCE AGAIN TOLD DETECTIVE ZOELLER THAT
4 YOU WERE NOT GOING TO MEET WITH THE PROSECUTION; IS THAT
5 CORRECT?

6 A. AND I EXPLAINED TO DETECTIVE ZOELLER AT THE
7 TIME, AND LES WILL TELL YOU, WHEN HE ASKED ME IF I WOULD
8 MEET WITH YOU, I SAID: "I AM IN A COMPLETELY WRECKED --
9 I AM A WRECK. I WAS IN A NERVOUS STATE."

10 I HAVE BEEN THROWING UP. I DIDN'T HAVE THE
11 STRENGTH TO DEAL WITH YOU OR MISS NAJERA, AND THAT'S --
12 IT'S THE PLAIN TRUTH.

13 BUT I DIDN'T MEET WITH THE DEFENSE EITHER,
14 BECAUSE I ALSO DIDN'T HAVE THE STRENGTH TO MEET WITH
15 THEM.

16 Q. DID YOU SUGGEST TO DETECTIVE ZOELLER THAT
17 PERHAPS THE PROSECUTION COULD SPEAK TO YOU ON ANOTHER
18 OCCASION?

19 A. NO, I DIDN'T SUGGEST THAT, AND I TELL YOU
20 HONESTLY I DIDN'T THINK OF IT, AND DIDN'T WANT TO.

21 Q. AND YOU HAVE NO INTENTION OF EVER SPEAKING
22 TO THE PROSECUTION; IS THAT CORRECT?

23 A. AT THIS MOMENT, NO INCLINATION.

24 Q. OKAY. SO DID YOU LOVE JOSE MENENDEZ?

25 A. VERY MUCH SO, MR. CONN.

26 Q. WHY?

27 A. MAY I EXPLAIN A LITTLE BACKGROUND ON MY
28 LIFE WITH JOSE?

1 THE COURT: WELL, HE'S ASKED YOU A VERY BROAD
2 QUESTION, SO YOU CAN ANSWER IT ANY WAY YOU WANT.

3 THE WITNESS: OKAY.

4 WHEN JOSE CAME TO SCHOOL IN THE UNITED
5 STATES AT THE AGE OF 14, OKAY, I WAS AT THE UNIVERSITY
6 IN HAVANA. I DROPPED MY STUDIES AND I CAME TO SCHOOL --
7 TO A BOARDING SCHOOL JUST TO BE TWO MILES AWAY SO THAT
8 HE DIDN'T BE HOMESICK, AND ON WEEKENDS HE COULD COME AT
9 LEAST AND SEE ME. I WAS 18 YEARS OLD, OKAY.

10 AFTER THAT, CARLOS BROUGHT HIM OUT AT THE
11 AGE OF 16. HE CAME TO LIVE WITH ME TWO WEEKS AFTER I
12 WAS MARRIED. NOW, YOU KNOW HOW MUCH YOU NEED AN
13 18-YEAR-OLD WHEN YOU JUST GOT MARRIED?

14 WELL, HE CAME TO LIVE WITH US. HE WENT
15 AWAY, AND WE HAVE ALWAYS CHOSEN TO LIVE CLOSE BY. YOU
16 CAN SEE, ACROSS THE STREET.

17 NOW, DOES THAT COUNT FOR LOVING? YES. HE
18 MARRIED KITTY. I TOOK A LIKING TO KITTY. WE DID THINGS
19 TOGETHER BY CHOICE. BY CHOICE.

20 WE HAD PLANS AFTERWARDS TO RETIRE TOGETHER.
21 THAT WAS GOING TO BE THE END OF OUR LIVES. WE ENJOYED
22 BEING TOGETHER. IT WAS NOT A MATTER OF, WELL, HE'S MY
23 BROTHER. NO. HE BECAME CARLOS' BEST FRIEND.

24 I ENJOYED HIM AS A PERSON. I LOVED HIM. I
25 DIDN'T -- I DIDN'T AGREE WITH THE WAY OF RAISING KIDS,
26 AND I HAVE SAID BEFORE, WE WERE JUST STARTING. I HAD MY
27 PHILOSOPHY, THEY HAVE THEIRS. I DIDN'T KNOW WHICH ONE

28 WAS GOING TO WORK. I HAD GIRLS, HE HAD BOYS. AND HE

-12744

1 KEPT ON SAYING TO ME: "TERRY, YOU HAVE GIRLS. I HAVE
2 BOYS. YOU RAISE BOYS DIFFERENTLY."

3 I DIDN'T AGREE WITH HIM, BUT I HAD NO PROOF
4 THAT IT WAS GOING TO BE THAT WAY.

5 THESE TWO BOYS HAVE BEEN RAISED NEXT TO ME.
6 THEY'RE LIKE MINE.

7 Q. BY MR. CONN: MY QUESTION IS: WHAT WAS IT
8 ABOUT JOSE MENENDEZ THAT YOU LOVED?

9 A. JOSE WAS CHARISMATIC. HE WAS FUNNY. TO
10 ME, WITH ME, HE WAS VERY GENTLE, WITH ME PERSONALLY.

11 Q. GENTLE IN WHAT WAY?

12 A. HE ALWAYS HAD TO ME A NICE WAY. HE COULD
13 COME INTO A ROOM, HE WILL HUG ME AND SAY, "HI,
14 BEAUTIFUL." THAT WAS -- JOSE AND I HAD A RAPPORT. I
15 NEVER HAD THE RUTHLESS SIDE OF JOSE THAT EXISTED, THAT I
16 SAW IN ACTION, BUT NEVER WITH ME.

17 Q. YOU SAW A RUTHLESSNESS?

18 A. YES. JOSE WAS A RUTHLESS INDIVIDUAL.

19 Q. WHAT DID YOU SEE?

20 A. IF YOU GOT INTO JOSE'S BAD GRACE, HE COULD
21 PUT YOU -- HE DIDN'T HAVE TO HIT YOU, BUT BOY, BY THE
22 TIME HE FINISHED WITH YOU, YOU FELT LIKE CRAWLING AND
23 DYING. HE WAS FANTASTIC WITH WORDS, AND HE COULD REALLY

24 CUT YOU DOWN TO SHREDS.

25 BUT I -- THAT ANGER AND THAT PART OF JOSE

26 WAS NEVER DIRECTED AT ME.

27 Q. DID OTHER MEMBERS OF YOUR FAMILY LOVE JOSE

28 MENENDEZ?

-12743

1 A. ALL MY KIDS AND MY HUSBAND, YES. BUT

2 THAT'S -- THEY ONLY SAW THAT SIDE OF HIM. THEY SAW THE

3 GENTLE SIDE OF HIM, WITH MY FAMILY. BUT I HAD GIRLS.

4 HE TREATED GIRLS DIFFERENTLY. THEY WERE -- EVERYTHING

5 WAS, "HI, BEAUTIFUL, HOW ARE YOU?" AND THAT WAS WITH

6 THE GIRLS. WITH THE BOYS IT WAS DIFFERENT. THEY HAD TO

7 BE TOUGH.

8 Q. SO WHEN YOU SAY "RUTHLESS", YOU MEAN

9 VERBALLY -- VERBALLY RUTHLESS; IS THAT WHAT YOU MEAN?

10 A. I MEAN VERBALLY RUTHLESS. THAT'S WHAT I

11 SAW IN HIM.

12 Q. OKAY. YOU NEVER SAW ANY PHYSICAL ABUSE BY

13 JOSE MENENDEZ, DID YOU?

14 A. WHICHEVER KIND IT WAS, IT WAS NEVER DONE IN

15 FRONT OF ME, BECAUSE HE KNEW I WOULDN'T HAVE APPROVED OF

16 ANY KIND OF ABUSE. EXCEPT THE PSYCHOLOGICAL, THAT I

17 COULD NOT STOP.

18 Q. AND YOU AND YOUR HUSBAND WERE PROBABLY THE

19 CLOSEST FAMILY MEMBERS TO THE MENENDEZ FAMILY, CORRECT?

20 A. BUT WE DIDN'T LIVE WITH THEM. YES.

21 Q. AND YOU WERE CLOSER THAN MARTHA CANO; IS
22 THAT CORRECT?

23 A. YES.

24 Q. YOU WERE CLOSER THAN ANY OF THE RELATIVES
25 ON KITTY'S SIDE OF THE FAMILY; IS THAT CORRECT?

26 A. YES.

27 Q. AND YOU NEVER ONCE SAW JOSE MENENDEZ RAISE
28 HIS HAND TO HIS SONS, CORRECT?

-12742

1 A. I DIDN'T SEE IT. AND I HAVE TESTIFIED THE
2 TRUTH, AND THAT HAS BEEN THE TRUTH, AND FROM THE OTHER
3 TRIAL. I NEVER SAW IT. BUT IN FRONT OF ME HE WOULDN'T
4 HAVE DARED, BECAUSE HE KNEW HOW I FELT ABOUT THAT.

5 Q. AND YOU NEVER ONCE SAW KITTY MENENDEZ RAISE
6 HER HAND TO HER SONS; IS THAT CORRECT?

7 A. I DIDN'T SEE THAT. I SAW HER BERATING
8 THEM, BUT I DIDN'T SEE THE PHYSICAL, BECAUSE KITTY KNEW
9 ALSO HOW I FELT ABOUT THAT.

10 Q. AND, IN FACT, YOU PREVIOUSLY TESTIFIED THAT
11 YOU DID NOT REGARD JOSE AND KITTY MENENDEZ AS ABUSIVE,
12 BUT ONLY AS HAVING DIFFERENT PARENTING TECHNIQUES; IS
13 THAT CORRECT?

14 A. THAN MINE, YES. AND THE ONE THAT HURTS THE
15 MOST, WHICH IS THE PSYCHOLOGICAL PART, THAT'S THE ONE

16 THAT CAUSES THE MOST DAMAGE.

17 Q. I'M SORRY?

18 A. THE PSYCHOLOGICAL ABUSE CAUSES MORE DAMAGE
19 THAN ANY OTHER ABUSE YOU CAN THINK OF, BECAUSE YOU DON'T
20 RECOVER FROM THAT.

21 Q. DO YOU FEEL IT IS YOUR JOB TO ADD
22 INFORMATION --

23 A. NO.

24 Q. -- THAT WILL ASSIST THE DEFENDANTS AS I ASK
25 YOU THESE QUESTIONS?

26 A. NO, BUT YOU DON'T KNOW ME. IF YOU KNEW ME,
27 YOU WOULD KNOW THAT I GIVE YOU AN ANSWER WITH BACKGROUND
28 AND DETAILS, AND THAT'S THE WAY I AM.

-12741

1 Q. SO YOU FEEL THAT YOUR BROTHER WAS
2 PSYCHCOLOGICALLY ABUSIVE TO HIS SONS?

3 A. I THINK SO. MR. CONN, YOU HAVE BEEN
4 COMPLAINING THAT I DON'T TALK TO YOU. I AM TRYING TO
5 TALK TO YOU NOW, AND I AM TRYING TO EXPLAIN YOUR
6 QUESTIONS IN DETAIL, AND NOW YOU ARE TAKING OFFENSE.

7 Q. I AM NOT -- DON'T DRAW ANY CONCLUSIONS,
8 MA'AM.

9 A. WELL --

10 THE COURT: JUST ANSWER A QUESTION RATHER THAN
11 GETTING INTO A SPEECH HERE.

12 SO YOUR NEXT QUESTION.

13 Q. BY MR. CONN: IN WHAT WAY WAS YOUR BROTHER

14 PSYCHOLOGICALLY ABUSIVE TO HIS SONS?

15 A. OKAY. WHEN YOU HAVE A LITTLE BOY THAT IS

16 HURTING, FOR WHATEVER REASON, EVEN AFTER LOSING AN

17 EVENT, FOR WHATEVER REASON, AND YOU TELL THEM "YOU HAVE

18 TO BE TOUGH, BOYS DON'T CRY," YOU'RE ABUSING THAT CHILD.

19 THAT CHILD NEEDS A PARENT. HE DOESN'T NEED

20 A TEACHER.

21 MR. CONN: IS THAT IT?

22 MS. ABRAMSON: EXCUSE ME. IF HE WANTS THE

23 QUESTION ANSWERED, CAN HE NOT INTERRUPT THE ANSWER?

24 THE COURT: OKAY. LET'S NOT INTERRUPT BY YOUR

25 SPEECHES.

26 THE WITNESS: DO YOU THINK YOU GET TO THIS

27 WITHOUT A REASON, MR. CONN?

28 Q. BY MR. CONN: I AM ASKING YOU WHAT YOU SAW,

-12740

1 AND THE JURY WILL DECIDE WHAT HAPPENED IN THIS CASE.

2 A. THAT'S WHAT I SAW. THAT'S WHAT I SAW.

3 Q. BY MR. CONN: DO YOU SEE YOUR BROTHER

4 PSYCHOLOGICALLY ABUSIVE IN ANY OTHER WAY OTHER THAN

5 TELLING HIS SONS TO BE TOUGH?

6 A. I CAN'T COME NOW TO ANY DETAILS. I CAN'T

7 ANSWER THAT QUESTION IN ANY OTHER WAY. I MEAN, THERE IS

8 A LOT OF PSYCHOLOGICAL ABUSE IN YOUR DAY-TO-DAY HANDLING
9 OF A CHILD, OKAY, AND THAT'S WHAT MAKES THAT PERSON A
10 PERSON LATER ON.

11 I CAN'T GIVE YOU ANYMORE -- ANYMORE OF
12 ANYTHING. I SAW THAT, LIKE THE SAME WAY I AM TELLING
13 YOU I DIDN'T SEE HIM STRIKE THE KIDS. I SAW HIM COMMIT
14 THAT KIND OF PSYCHOLOGICAL ABUSE THAT HURTS A CHILD,
15 BOTH OF THEM. THAT ONE I DID WITNESS. THAT ONE DID
16 HURT.

17 AND WE TALKED ABOUT IT. WE TALKED ABOUT
18 HIS PHILOSOPHY, AND THEY BOTH SHARED IT. AND WHEN YOU
19 HAVE TWO PARENTS WHO SHARE AN UPBRINGING OF A CHILD, WHO
20 AM I TO TELL THEM THAT MY WAY IS THE WAY.

21 THE COURT: OKAY. YOUR NEXT QUESTION, PLEASE.

22 Q. BY MR. CONN: YOU SAW YOUR BROTHER INTERACT
23 WITH HIS SONS DURING WHAT AGES OF THEIR LIVES?

24 A. WELL, AS YOU CAN SEE -- WELL, WE LIVED WITH
25 THEM, NOT AS MUCH AS TWO AND THREE, BUT LATER ON WHEN
26 THEY WERE -- ERIK SIX AND LYLE NINE, AND THEY MOVED TO
27 THE EAST COAST THROUGHOUT HIGH SCHOOL.

28 Q. WELL, YOU SAW HIM INTERACT WITH THEM EVEN

-12739

1 WHEN THEY WERE INFANTS, RIGHT AFTER THEY WERE BORN,
2 DIDN'T YOU?

3 A. YES, I DID. BUT NOT REALLY. JOSE AT THE

4 TIME WHEN THEY WERE BORN, AND THAT FIRST YEAR THEY WERE
5 IN THE HOUSE IN HINSDALE, I THINK ERIK SAW MORE OF
6 CARLOS THAN HE DID OF JOSE. JOSE WAS TRAVELING ALL THE
7 TIME.

8 Q. AND YOU SAW YOUR BROTHER INTERACTING WITH
9 THEM DURING THEIR ADOLESCENT YEARS AND TEENAGE YEARS;
10 IS THAT CORRECT?

11 A. YES, I DID.

12 Q. AND THE ONLY PSYCHOLOGICAL ABUSE YOU CAN
13 TELL US ABOUT WAS THAT JOSE MENENDEZ TOLD HIS SONS TO BE
14 TOUGH?

15 A. BOY, YOU'RE GOOD WITH WORDS.

16 ONE OF THEM. I CAN'T THINK OF ANY OTHER.
17 YOU CAN GIVE ME WAYS EVERY BEING PSYCHOLOGICALLY ABUSED.
18 IF I SAW IT, I WILL TELL YOU. IF I DIDN'T, I WILL TELL
19 YOU ALSO.

20 Q. DID YOU EVER SEE YOUR SISTER-IN-LAW BEING
21 PSYCHOLOGICALLY ABUSIVE TO HER SONS?

22 A. YES.

23 Q. IN WHAT WAY?

24 A. KITTY WAS A LITTLE MORE INSULTING. "YOU'RE
25 BEING A CRYBABY. YOU'RE -- YOU ACTED STUPIDLY."

26 LITTLE THINGS. MIND YOU, I AM NOT
27 COMPLETELY FREE OF GUILT ON THAT EITHER, BECAUSE ANY
28 PARENT CAN BE THAT WAY. BUT WHEN IT'S DONE WITH BOTH

1 PARENTS -- SEE, NORMALLY YOU HAVE ONE PARENT THAT CAN BE
2 TOUGH, WHILE THE OTHER ONE PICKS UP THE PIECES. IT'S
3 WHEN THEY'RE BOTH THE SAME WAY.

4 Q. I AM JUST ASKING YOU WHAT YOU SAW KITTY
5 MENENDEZ DO THAT YOU WOULD DESCRIBE AS PSYCHOLOGICALLY
6 ABUSIVE TOWARD HER SONS.

7 A. I TOLD YOU. I JUST TOLD YOU.

8 Q. IS THAT IT?

9 A. I SAW THE SAME THING. ISN'T THAT ENOUGH?

10 Q. IN ALL OF THE YEARS THAT YOU HAD AN
11 OPPORTUNITY TO OBSERVE KITTY MENENDEZ INTERACT WITH HER
12 SONS, THE ONLY THING YOU CAN RECALL, AS YOU SIT HERE
13 TODAY, IS THAT SHE SOMETIMES USED NAMES SUCH AS THOSE?

14 A. AND SHE WASN'T THERE FOR THEM TO PICK UP
15 THE PIECES AS THEY WERE GROWING UP.

16 Q. NOT THERE TO PICK UP THE PIECES?

17 A. YES.

18 Q. AND WHAT DO YOU MEAN BY THAT?

19 A. WELL, WHEN YOU HAVE A KID IN SPORTS, THERE
20 IS A LOT OF DOWNS, AND THERE IS A LOT OF TEARS, AND
21 THERE IS A LOT OF PAIN.

22 Q. AND SHE WASN'T CONSOLING?

23 A. SHE WASN'T CONSOLING.

24 Q. IS THERE ANYTHING ELSE YOU CAN THINK OF AS
25 YOU SIT THERE TODAY?

26 A. NO.

27 Q. PREVIOUSLY YOU TESTIFIED THAT JOSE MENENDEZ
28 LOVED HIS SONS; IS THAT CORRECT?

1 A. AND I STILL BELIEVE SO.

2 Q. WHAT CAUSES YOU TO CONCLUDE THAT JOSE
3 MENENDEZ LOVED HIS SONS?

4 A. OKAY. AND IT'S NOT ONLY JOSE. KITTY, TOO,
5 OKAY? THEY HAD THEIR WAY OF LOVING THOSE KIDS.

6 THE FACT THAT JOSE'S OBSESSION WAS WITH
7 THESE KIDS. HIS SUPPORT, THAT WAS HIS WAY OF LOVING.
8 THAT WAS HIS WAY OF SHOWING IT. I WISH HE HADN'T LOVED
9 THEM THAT MUCH. BUT THAT WAS HIS WAY OF SHOWING HIS
10 LOVE, OKAY.

11 SO WAS KITTY. KITTY IS DRIVING BACK AND
12 FORTH, GIVING THESE KIDS NOT A MINUTE. THAT WAS A WAY
13 OF LOVING.

14 I'M NOT TELLING YOU THEY DIDN'T LOVE THE
15 KIDS. I AM TELLING YOU THE TRAGEDY IS THAT EVEN THESE
16 TWO KIDS LOVED THE PARENTS, TOO. THAT'S THE TRAGEDY OF
17 THIS SITUATION. WHY DO YOU THINK WE'RE STILL HERE?

18 Q. IS THERE ANYTHING ELSE THAT YOU RECALL
19 SEEING ON THE PART OF JOSE MENENDEZ THAT CAUSES YOU TO
20 CONCLUDE THAT HE LOVED HIS SONS?

21 A. SEE, I CAN'T COME UP WITH THAT EITHER.
22 THESE ARE FEELINGS. THESE ARE THINGS THAT YOU WATCH
23 THROUGHOUT A LIFE, AND YOU COME OUT WITH A FEELING. NOT
24 DETAILS. I WASN'T TAKING NOTES. THESE ARE FEELINGS
25 THAT YOU HAVE.

26 HE LOVED HIS KIDS. THE KIDS LOVED HIM, AND
27 YOU STILL HAVE THIS TRAGEDY. I DIDN'T SEE THE -- HIM
28 STRIKE THE KIDS. I SAW HIM ABUSE THE KIDS MENTALLY, AND

-12736

1 THE MORE YOU KNOW LATER ON IN LIFE AS TO HOW YOU HAVE A
2 CHILD, LIKE I SEE THINGS ON MY KIDS NOW THAT WERE
3 PROVOKED BY ME.

4 Q. WHAT CAUSES YOU TO CONCLUDE THAT KITTY
5 MENENDEZ LOVED HER SONS?

6 A. THE SAME WAY. KITTY DID NOT WORK. KITTY
7 WAS THERE TAKING THESE KIDS BACK AND FORTH TO ALL THE --
8 TO ALL THE THINGS. THE FACT THAT THERE WAS NO -- THE
9 NURTURING, THE LOVING, THE THIS OR THAT, IT DOESN'T
10 MATTER. THAT WAS HER WAY OF LOVING. SHE WAS SHOWING
11 LOVE THAT WAY. THE KIDS WOULD FEEL ASPHYXIATED, BUT
12 THAT WAS THE KIDS' PROBLEM. THAT DIDN'T MEAN THAT SHE
13 DIDN'T LOVE THEM.

14 Q. DID KITTY MENENDEZ SACRAFICE ALL OF HER
15 TIME TRANSPORTING ALL OF HER SONS TO SPORTS EVENTS AND
16 SO FORTH?

17 A. ALL AFTER SCHOOL TIMES. THESE KIDS WERE
18 NOT DRIVING, AND THEY WERE TAKING LESSONS 45 TO AN HOUR
19 AWAY FROM EACH OTHER.

20 Q. WHEN LYLE MENENDEZ WENT BACK TO SCHOOL AT
21 PRINCETON, DID KITTY MENENDEZ CALL YOU EVERY SINGLE DAY

22 TO CHECK ON HIS PROGRESS AT PRINCETON?

23 MS. ABRAMSON: OBJECTION. CALLS FOR HEARSAY.

24 THE COURT: SUSTAINED.

25 Q. BY MR. CONN: DID YOU RECEIVE CALLS FROM

26 KITTY MENENDEZ EVERY SINGLE DAY DURING THE TIME THAT

27 LYLE MENENDEZ WENT BACK TO PRINCETON?

28 A. YES, I DID.

-12735

1 Q. DID YOU RECEIVE CALLS FROM JOSE MENENDEZ

2 ONCE OR TWICE A WEEK DURING THE TIME THAT LYLE MENENDEZ

3 WENT BACK TO PRINCETON?

4 A. I DID.

5 Q. AND DID THE PARENTS COME TO VISIT LYLE

6 MENENDEZ OCCASIONALLY WHEN HE WAS BACK AT PRINCETON?

7 A. YES, THEY DID.

8 Q. AND DID JOSE MENENDEZ STAY AT THE NASSAU

9 INN TO BE CLOSE TO HIS SON WHEN HE VISITED HIM AT

10 PRINCETON?

11 A. YES, HE DID.

12 Q. WAS KITTY MENENDEZ GOING TO SET LYLE UP IN

13 PRINCETON BY FURNISHING HIS --

14 A. HIS CONDO? YES.

15 Q. -- HIS CONDO?

16 A. YES. I WAS THE ONE, BY THE WAY, WHO CALLED

17 KITTY AND TOLD HER LYLE WANTED HER TO COME AND SET UP

18 HIS CONDO. THAT WAS MY CALL.

19 Q. AND WAS THERE A PLAN AFTER SHE DID THAT,
20 THAT AFTER SHE DID THAT SHE WAS GOING TO RETURN TO LOS
21 ANGELES TO SET UP ERIK MENENDEZ AT U.C.L.A.?

22 A. YES.

23 MS. ABRAMSON: I AM GOING TO OBJECT TO THIS AS
24 HEARSAY.

25 THE COURT: SUSTAINED.

26 THE ANSWER IS STRICKEN.

27 Q. BY MR. CONN: AND DID KITTY MENENDEZ APPEAR
28 TO KEEP HER SONS WELL-CLOTHED AND WELL-FED?

-12734

1 A. YES.

2 Q. ARE YOU TRYING TO SUGGEST THAT ERIK
3 MENENDEZ WAS HUNGRY WHEN HE WOULD COME TO YOUR DOOR AS A
4 BABY BECAUSE HE WAS NEGLECTED AND NOT FED?

5 A. NO. BECAUSE A BABY AT 7:00 O'CLOCK IN THE
6 MORNING IS HUNGRY.

7 Q. AND YOU ARE THE GODMOTHER OF LYLE MENENDEZ?

8 A. I AM LYLE'S GODMOTHER, AND I COULD HAVE
9 BEEN ERIK'S, TOO, FOR THAT MATTER. I LOVE HIM JUST THE
10 SAME.

11 Q. AND THE PARENTS BAPTIZED BOTH THEIR SONS?

12 A. THEY DID.

13 Q. AND THEY MADE THEIR COMMUNION?

14 A. AND THEIR CONFIRMATION.

15 Q. AND THEY ATTENDED CHURCH WITH THEIR SONS ON
16 EASTER?

17 A. ONLY ON EASTER.

18 Q. AND YOU ATTENDED, TOO, WITH THEM?

19 A. WE ATTENDED, AND WE WENT TO BREAKFAST AFTER
20 THAT, AND WE HAD A LOVELY TIME EVERY TIME.

21 Q. DID YOU EVER SEE KITTY MENENDEZ RAGEFUL
22 TOWARD HER SONS?

23 A. RAGEFUL, YOU MEAN ANGRY?

24 Q. YES.

25 A. OH, YES.

26 Q. AND HOW WOULD SHE APPEAR WHEN SHE WAS
27 ANGRY?

28 A. (INDICATING)

-12733

1 Q. CLENCH HER FISTS?

2 A. THAT WAS --

3 Q. AND HOW OFTEN DID YOU SEE THAT?

4 A. OFTEN.

5 Q. AND HOW OFTEN?

6 A. OKAY. MR. CONN, I CAN'T TELL YOU.

7 WHENEVER THE OCCASION AROSE. I DON'T KNOW. ONE TIME,

8 TWO TIMES, THREE TIMES. THAT DOESN'T MATTER. THAT WAS

9 HER WAY.

10 Q. PLEASE ANSWER THE QUESTION THE BEST YOU

11 CAN.

12 HOW OFTEN DID YOU SEE --

13 A. I CAN'T TELL YOU.

14 Q. -- KITTY MENENDEZ ANGRY AT HER SONS?

15 A. WHENEVER THEY DID ANYTHING THAT SHE DIDN'T

16 APPROVE OF --

17 Q. WHAT TYPE OF THINGS --

18 A. OR LOSE AN EVENT.

19 Q. WHAT TYPE OF THINGS WOULD CAUSE HER TO BE

20 LIKE THAT?

21 A. YOU WANT ME TO BE SPECIFIC AND DON'T LIE,

22 AND I CAN'T -- I CAN INVENT SOMETHING, IF YOU WANT ME

23 TO, BUT I CAN'T RECALL EXACTLY.

24 Q. WE ARE NOT ASKING YOU TO INVENT ANYTHING.

25 IF YOU CAN'T ANSWER THE QUESTION, DON'T ANSWER IT.

26 A. THEN I CAN'T REMEMBER. I CAN'T REMEMBER A

27 SPECIFIC OCCASION OF WHEN I SAW IT. IT COULD HAVE BEEN

28 WHEN SHE SAID: "DON'T GO OUT," AND THEY WENT OUT. IT

-12732

1 COULD HAVE BEEN --

2 THE COURT: OKAY. YOU SAID YOU DON'T REMEMBER,

3 SO LET'S NOT ANSWER IT THEN.

4 THE WITNESS: EXACTLY.

5 Q. BY MR. CONN: OKAY. AND DURING THE TIMES

6 THAT YOU SAW HER BECOME ANGRY AT HER SONS, SHE STILL

7 NEVER STRUCK HER SONS; IS THAT CORRECT?

8 A. I NEVER SAW HER STRIKE THE BOYS, THAT IS

9 TRUE.

10 Q. YOU SPOKE TO HER EVERY DAY AFTER SHE MOVED

11 TO CALIFORNIA?

12 A. NO. WHILE LYLE WAS AT PRINCETON. IT'S TWO

13 DIFFERENT THINGS.

14 Q. DID YOU CALL HER WHEN -- AFTER SHE MOVED TO

15 CALIFORNIA?

16 A. DID I CALL HER?

17 Q. YES. DID YOU SPEAK TO HER ON THE PHONE?

18 A. MAINLY THE CALLS WERE MADE BY KITTY,

19 BECAUSE THE CALLS TO CALIFORNIA, SHE LIKED TO TALK FOR

20 AN HOUR, AND I COULDN'T AFFORD THOSE TELEPHONE BILLS,

21 AND SHE COULD. SO SHE WAS THE ONE WHO DID MOST OF THE

22 CALLING. IF YOU LOOK ON THE TELEPHONE THINGS, THERE

23 WILL BE VERY FEW CALLS FROM ME, BUT THAT DOESN'T MEAN

24 THAT I DIDN'T TALK TO HER.

25 Q. DID YOU EVER KNOW KITTY MENENDEZ TO HAVE A

26 PROBLEM WITH ALCOHOL?

27 A. NO, I DID NOT.

28 MS. ABRAMSON: OBJECTION -- EXCUSE ME. I AM

2 SPECULATION.

3 MS. TOWERY: ALSO BEYOND THE SCOPE.

4 MS. ABRAMSON: AND BEYOND THE SCOPE.

5 THE COURT: SUSTAINED ON THE GROUNDS IT'S BEYOND
6 THE SCOPE.

7 THE ANSWER IS STRICKEN.

8 Q. BY MR. CONN: AND YOU PREVIOUSLY DESCRIBED
9 KITTY MENENDEZ AS BEING VERY BRIGHT; IS THAT CORRECT?

10 A. YES, SHE WAS BRIGHT.

11 MS. ABRAMSON: I AM GOING TO OBJECT TO THE FORM
12 OF THE QUESTION AS CALLING FOR HEARSAY.

13 THE COURT: OVERRULED.

14 Q. BY MR. CONN: YOU DESCRIBED HER AS --

15 THE COURT: WELL, THE NATURE OF THESE
16 QUESTIONS -- IF YOU'RE JUST ASKING DID SHE SAY SOMETHING
17 ON A PRIOR OCCASION, IT IS CALLING FOR HEARSAY.

18 SO REPHRASE THE QUESTION.

19 Q. BY MR. CONN: WAS KITTY MENENDEZ FUN TO BE
20 AROUND?

21 A. I ENJOYED HER.

22 Q. AND WHY IS THAT?

23 A. BECAUSE I ENJOYED HER. SHE WAS WITTY, SHE
24 WAS PLEASANT. SHE LOVED ME AND I LOVED HER.

25 Q. DID ERIK MENENDEZ CRY VERY MUCH AS A CHILD?

26 A. MY RECOLLECTION OF ERIK WAS NOT OF CRYING
27 THAT MUCH. HE CRIED WHEN HE HURT. HE CRIED WHEN HE
28 LOST, OR WHEN -- WHEN HE HAD A FIGHT WITH LYLE OR WITH

1 ANYBODY ELSE, YEAH. BUT I REMEMBER ERIK AS A VERY SUNNY
2 DISPOSITION AS A CHILD.

3 Q. AND YOU PREVIOUSLY --

4 A. ALWAYS JUMPING AND ALWAYS HAPPY.

5 Q. YOU PREVIOUSLY TESTIFIED THAT YOU DON'T
6 THINK HE CRIED VERY MUCH AS A CHILD; IS THAT CORRECT?

7 A. NO. THAT'S WHAT I AM SAYING. I SAW HIM
8 CRY SOMETIMES, BUT NOT -- HE HAD A SUNNY DISPOSITION.

9 Q. AND HE REMAINED THAT WAY THROUGHOUT HIS
10 CHILDHOOD?

11 A. CHILDHOOD, YES. HE BECAME AN INTROSPECTIVE
12 TEENAGER.

13 Q. UP UNTIL THE TIME HE BECAME A TEENAGER HE
14 HAD A SUNNY DISPOSITION; IS THAT CORRECT?

15 A. THAT'S WHAT I REMEMBER.

16 Q. AND WHEN HE BECAME A TEENAGER, HE HAD AN
17 INTROSPECTIVE DISPOSITION; IS THAT WHAT YOU SAID?

18 A. MORE QUIET. MORE INTO HIMSELF THE TIMES
19 THAT I SAW HIM. REMEMBER, HE WAS ALREADY IN CALIFORNIA.
20 I DID NOT SEE THAT MUCH OF ERIK.

21 Q. NOW, YOU SPOKE ABOUT AN INCIDENT IN WHICH
22 KITTY MENENDEZ WAS PAGED WHILE SHOPPING AFTER HER SONS
23 HAD GONE AWAY FROM HER SOMEWHERE; IS THAT CORRECT?

24 A. NOT ONCE, A FEW TIMES. YES.

25 Q. IT HAPPENED A FEW TIMES?

26 A. YES, SIR. IT HAPPENED MOST OF THE TIME

27 THAT WE WENT OUT WITH THE KIDS.

28 Q. AND SHE WOULD BE PAGED ON ALL OF THOSE

-12729

1 OCCASIONS WHEN SOMEONE FOUND HER CHILDREN?

2 A. YES.

3 Q. AND WHERE WOULD THIS OCCUR?

4 A. OKAY. MOST OF THE TIME THAT THAT OCCURRED
5 WAS WHILE I WAS VISITING THE EAST COAST AND THEY WERE
6 LIVING IN MONSEY, WHICH WERE THE YEARS WHEN ERIK WAS
7 AROUND THREE, FOUR.

8 Q. AND HOW MANY TIMES WERE YOU WITH HER THAT
9 SHE WAS PAGED WHEN THE CHILDREN HAD BECOME LOST?

10 A. OKAY. WHEN I CAME -- I WOULD COME. I
11 WOULD COME FOR A TWO-WEEK VACATION, AND I WOULD SPEND
12 MOST OF THE TIME AT HER HOUSE. SO WE WOULD GO SHOPPING
13 OFTEN, MAYBE TWO, THREE, FOUR TIMES IN A WEEK, JUST FOR
14 SHORT PERIODS OF TIMES.

15 SO IN THOSE TWO WEEKS -- I AM NOT TELLING
16 YOU IT WAS A YEAR. IN THOSE TWO WEEKS THAT I WOULD
17 COME -- AND I WOULD COME NORMALLY AROUND VACATION TIME,
18 SCHOOL VACATION TIME, BECAUSE I HAD KIDS AND THEY WERE
19 IN SCHOOL.

20 SO IT WOULD BE LIKE A COUPLE OF WEEKS
21 AROUND THE CHRISTMAS TIME, AND THEN THERE WOULD BE
22 SOMETIMES -- I NORMALLY TRIED TO MAKE IT BACK EAST

23 FOR -- DURING THE SPRING BREAK, AND ALSO THE SUMMERS.

24 Q. WERE YOU SAYING THAT TWO, THREE OR FOUR

25 TIMES A WEEK KITTY MENENDEZ --

26 A. A COUPLE TIMES, YEAH.

27 Q. KITTY MENENDEZ WOULD HAVE TO BE PAGED

28 BECAUSE HER SONS WOULD STRAY AWAY FROM HER WHILE

-12728

1 SHOPPING?

2 A. MR. CONN, EVERY TIME WE WENT OUT.

3 Q. DID YOU PREVIOUSLY TESTIFY THAT THIS ONLY

4 OCCURRED ONCE?

5 A. DID I TESTIFY TO THAT?

6 Q. YES.

7 A. THEN YOU HAVE ONE OVER ME. BUT IT DID

8 HAPPEN MORE THAN ONCE.

9 Q. WERE YOU PREVIOUSLY ASKED THE QUESTION --

10 DIRECTING COUNSEL'S ATTENTION TO VOLUME 78, PAGE 13,168.

11 MS. ABRAMSON: WAIT, COUNSEL.

12 EXCUSE ME? OKAY.

13 Q. BY MR. CONN: DO YOU REMEMBER BEING ASKED

14 THE QUESTION:

15 "QUESTION: NOW, ON ANY OF THESE

16 INSTANCES WHEN YOU WENT SHOPPING, DID YOU

17 TAKE ALONG ERIK AND LYLE WHEN THEY WERE

18 YOUNG?

19 "ANSWER: YES, I DID.

20 "QUESTION: AND WERE THERE ANY

21 SITUATIONS IN WHICH KITTY WAS PAGED WHILE

22 YOU WERE SHOPPING?

23 "ANSWER: ONLY ONCE."

24 THE WITNESS: SO WHAT ARE YOU TRYING TO SAY, THAT

25 I'M LYING?

26 Q. BY MR. CONN: DO YOU REMEMBER BEING ASKED

27 THAT QUESTION?

28 A. MR. CONN, I'VE BEEN ASKED A LOT OF

-12727

1 QUESTIONS IN SIX AND A HALF YEARS, AND IF YOU LOOK AT MY

2 TESTIMONY, AND IF YOU LOOK AT EVERYTHING I HAVE SAID, I

3 HAVE SAID THE SAME THING. SO MAYBE THIS TIME I ADDED A

4 WORD HERE AND THERE. BUT LET ME TELL YOU ONE THING.

5 THERE IS NO -- I DON'T LIE, AND AS MUCH AS I LOVE THESE

6 KIDS, I WILL NOT LIE.

7 Q. MY QUESTION TO YOU IS: DO YOU REMEMBER

8 BEING --

9 A. NO, I DON'T RECALL IF I SAID IT. I WOULD

10 HAVE SAID IT NOW. I REMEMBER IT HAPPENING A FEW TIMES.

11 SO I SAID IT WAS ONE TIME THERE, ONE TIME THAT I RECALL.

12 MAYBE THE QUESTION I UNDERSTOOD, "DID YOU SEE IT HAPPEN

13 ONE TIME?" I SAID YES, IT HAPPENED ONE TIME.

14 IT COULD HAVE HAPPENED TWO TIMES, IT COULD

15 HAVE HAPPENED THREE TIMES. I AM TELLING YOU IT WAS AN
16 OCCURRENCE -- AN OCCURRENCE EVERY TIME WE WENT OUT.

17 Q. LISTEN TO THE QUESTION I AM ASKING YOU.

18 A. I ALSO TOLD YOU ONE TIME, LYLE, WE COULDN'T
19 FIND HIM. HE WAS AROUND FIVE YEARS OLD, AND WE FIND HIM
20 EATING ICE CREAM OUTSIDE.

21 Q. WHEN YOU WERE ASKED THIS QUESTION ON
22 SEPTEMBER THE 1ST OF 1993 --

23 A. YES.

24 Q. -- IT WAS NOT --

25 A. THREE YEARS AGO, YES.

26 Q. IT WAS NOT SUGGESTED TO YOU THAT THIS
27 OCCURRED ONLY ONCE. YOU WERE THE ONE WHO VOLUNTEERED
28 THAT.

-12726

1 A. I'M SURE.

2 Q. PLEASE ALLOW ME TO FINISH THE QUESTION.

3 A. YES, SIR. SORRY.

4 Q. YOU WERE THE ONE WHO VOLUNTEERED THAT THIS
5 OCCURRED ONLY ONE TIME; IS THAT CORRECT?

6 MS. ABRAMSON: YOUR HONOR, THAT'S AN
7 ARGUMENTATIVE QUESTION.

8 THE COURT: OVERRULED.

9 THE WITNESS: I HAVE NO IDEA. I IMAGINE IF
10 YOU'RE READING IT -- OH, NO. I DON'T HAVE MY GLASSES.

11 IF YOU'RE READING IT, I AM SURE I SAID IT.
12 I TRULY BELIEVE YOU. I AM NOT SAYING -- REALLY, IT'S
13 POINTLESS. IT HAPPENED. IT COULD HAVE HAPPENED ONE
14 TIME. IT COULD HAVE HAPPENED TWO TIMES. IT COULD HAVE
15 HAPPENED THREE TIMES. IF I REMEMBER IT CORRECTLY, IT
16 HAPPENED EVERY TIME WE WENT OUT, BUT IT'S OKAY.

17 Q. CAN YOU TELL US WHY YOU PREVIOUSLY SAID --

18 A. NO, I CAN'T TELL YOU.

19 Q. PLEASE ALLOW ME TO FINISH THE QUESTION.

20 A. BUT I KNOW WHAT YOU'RE GOING TO ASK ME.

21 THE COURT: WELL, IT HAS TO GET IN THE RECORD SO
22 THAT YOUR ANSWER MAKES SOME SENSE.

23 LET HIM ASK THE QUESTION.

24 Q. BY MR. CONN: CAN YOU TELL US WHY YOU
25 PREVIOUSLY TESTIFIED THAT THIS OCCURRED ONLY ONCE, AND
26 TODAY YOU ARE TELLING THIS JURY, NOW THAT THE DEFENDANTS
27 ARE FACING THE DEATH PENALTY, THAT THIS OCCURRED ALL THE
28 TIME?

-12725

1 A. BECAUSE IT DID.

2 Q. IS IT BECAUSE THEY'RE FACING THE DEATH
3 PENALTY?

4 A. NO.

5 Q. THEN WHY WAS IT THAT IN SEPTEMBER OF 1993
6 YOU SPECIFICALLY STATED THAT THIS ONLY OCCURRED ONCE?

7 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT

8 AS ASKED AND ANSWERED.

9 THE COURT: OVERRULED.

10 THE WITNESS: MR. CONN, WHAT ARE YOU TRYING TO

11 SAY, THAT I AM INVENTING IT NOW?

12 Q. BY MR. CONN: I AM JUST ASKING YOU TO

13 ANSWER THE QUESTION, PLEASE.

14 A. I CAN'T ANSWER YOU. I CAN'T ANSWER YOU WHY

15 I SAID ONCE, AND I AM SAYING MORE TIMES NOW. I AM NOT

16 LYING. I DIDN'T LIE THEN, AND I AM NOT LYING NOW.

17 Q. ISN'T IT A FACT --

18 A. THE FACT REMAINS THAT IT HAPPENED.

19 Q. IT HAPPENED ONCE?

20 A. OKAY.

21 Q. AND THAT IS A FACT; IS THAT CORRECT?

22 A. NO, NOT NECESSARILY. WHAT I AM TELLING YOU

23 NOW IS THAT IT HAPPENED EVERY TIME IT HAPPENED. IT

24 HAPPENED.

25 Q. AND ISN'T IT ALSO A FACT, MRS. BARALT, THAT

26 NOW THAT THE DEFENDANTS ARE FACING THE DEATH PENALTY,

27 YOU ARE WILLING TO SAY THAT IT HAPPENED ALL THE TIME,

28 WHEN IN FACT IT DID NOT HAPPEN ALL THE TIME?

-12724

1 A. NO, SIR. NO, SIR. NO, SIR. THEY MAY BE

2 FACING THE DEATH PENALTY, AND I DO NOT WANT THEM TO BE

3 KILLED, THAT IS TRUE. I STILL HAVE TO GO HOME AND FACE
4 MY FAMILY, AND I DON'T LIE. AND IF I LIE HERE, I HAVE
5 TO GO HOME AND LOOK AT MY KIDS IN THE FACE, AND THEY
6 WILL NEVER FORGIVE ME FOR LYING. I DON'T LIE.

7 ONE DAY, TWO DAYS, THREE DAYS. DOESN'T
8 ALTER THE FACT THAT IT HAPPENED. IF I SAID THAT AT THE
9 TIME, IT'S BECAUSE I TRULY BELIEVED -- OR SOMETHING LED
10 ME TO SAY THAT.

11 IF I AM SAYING NOW THAT IT HAPPENED -- IT
12 WAS A NORMAL OCCURRENCE. DON'T ASK ME, ASK OTHER
13 WITNESSES. THEY WERE THERE. IT WAS A NORMAL
14 OCCURRENCE.

15 AND I WILL ALSO TELL YOU IT HAD NOTHING DO
16 WITH KITTY BEING BAD. IT HAD TO DO WITH KITTY -- THIS
17 WAS THE WAY KITTY WAS. IT'S THE SAME PHILOSOPHY. IT'S
18 THE SAME PHILOSOPHY. I WAS OVER-PROTECTIVE OF MY KIDS.
19 THAT'S THE WAY SHE LOOKED AT IT. AND SHE DIDN'T DO IT
20 TO BE BAD. IT WAS JUST THE WAY SHE WAS.

21 Q. IS IT YOUR TESTIMONY THEN THAT IN 1993,
22 WHEN YOU SAID IT ONLY HAPPENED ONCE, THAT WAS BECAUSE AT
23 THE TIME YOU FORGOT OF ALL THESE OTHER INSTANCES WHEN IT
24 HAPPENED?

25 A. NO. I DON'T KNOW WHAT -- YOU WANT THE
26 TRUTH FROM ME, AND I CAN'T GIVE YOU ANYMORE TRUTH THAN I
27 HAVE GIVEN YOU NOW. YOU WANT ME -- I CAN SAY WHATEVER
28 YOU WANT ME TO SAY, BUT I CAN'T -- DOESN'T MATTER

1 WHETHER IT WAS ONE TIME OR THREE TIMES, MR. CONN, WHEN
2 IT ACTUALLY HAPPENED. DOES IT REALLY MAKE A DIFFERENCE,
3 OR ARE YOU PICKING ON A LITTLE EVENT, AND ONE DIFFERENT
4 ANSWER THAT YOU'VE BEEN ABLE TO FIND IN THOSE WHATEVER
5 THOUSANDS OF PAGES OF TESTIMONY YOU I HAVE, THE ONLY
6 THING I'VE BEEN ABLE TO SAY LITTLE DIFFERENT.

7 Q. AND WHEN YOU SAID THAT ERIK MENENDEZ WOULD
8 COME ACROSS THE FIELD AS A CHILD --

9 A. YES.

10 Q. -- AND GO OVER TO YOUR HOME, HOW MANY TIMES
11 DID THAT HAPPEN?

12 A. AND IF I REMEMBER, THEN I SAID AROUND 15,
13 20 TIMES, AND IT HAPPENED OVER A PERIOD OF TIME. AND
14 YOU KNOW SOMETHING, IT REALLY DIDN'T MATTER WHETHER IT
15 HAPPENED FIVE TIMES OR 20 TIMES.

16 MR. CONN: I WOULD MAKE A MOTION TO STRIKE AS
17 NONRESPONSIVE.

18 THE WITNESS: IT ACTUALLY HAPPENED.

19 THE COURT: THE ANSWER IS STRICKEN AS
20 NONRESPONSIVE.

21 PLEASE ASK ANOTHER QUESTION.

22 BY MR. CONN: PLEASE ANSWER THE QUESTIONS I ASK
23 YOU, MRS. BARALT.

24 A. I TRIED.

25 Q. CAN YOU TELL US HOW MANY TIMES ERIK
26 MENENDEZ CROSSED THE FIELD TO COME TO YOUR HOUSE?

27 A. I WASN'T COUNTING AND KEEPING A LOG. AND I

-12722

1 INTO THAT LITTLE BOOK, AND YOU WILL SAY: "YOU SAID 20
2 TIMES, AND NOW YOU'RE SAYING A MONTH."

3 Q. DO YOU KNOW YOU HAVE BEEN INCONSISTENT
4 REGARDING THAT ANSWER?

5 A. I HAVEN'T BEEN --

6 MS. ABRAMSON: YOUR HONOR, I OBJECT AS CALLING
7 FOR A CONCLUSION.

8 THE COURT: SUSTAINED.

9 THE ANSWER IS STRICKEN.

10 Q. BY MR. CONN: DO YOU KNOW HOW MANY TIMES
11 THAT HAPPENED WITH ERIK MENENDEZ?

12 A. IT HAPPENED OVER A PERIOD OF TIME. LONG
13 ENOUGH.

14 Q. WHAT WAS THE PERIOD OF TIME OVER WHICH IT
15 HAPPENED?

16 A. IT COULD HAVE BEEN 15, 20 TIMES A MONTH.
17 IT HAPPENED MANY TIMES. IT WAS NOT ONE INCIDENT.

18 Q. OVER WHAT TIME PERIOD?

19 A. IT HAPPENED FROM THE TIME -- SOMETIME
20 AROUND MARCH OR APRIL UNTIL THE END OF MAY. IT
21 HAPPENED -- IT MAY HAVE HAPPENED MAYBE ONE MONTH. IT
22 MAY HAVE HAPPENED -- IT WAS -- I REMEMBER OCCASIONS WHEN
23 IT WAS RAINING. SO RAINING IN CHICAGO, IT'S NORMALLY

24 AROUND APRIL TIME. IT COULD HAVE HAPPENED THREE WEEKS
25 IN APRIL, ONE WEEK IN MAY. I CAN'T TELL YOU. I KNOW IT
26 WAS A DAILY OCCURRENCE. IT WAS A JOKE IN MY HOUSE.
27 "HERE COMES ERIK AGAIN."

28 Q. YOU TESTIFIED IN THIS PROCEEDING THAT IT

-12721

1 HAPPENED EVERY DAY DURING A ONE-MONTH TIME PERIOD; IS
2 THAT CORRECT?

3 A. I SAID IT HAPPENED JUST ABOUT EVERY DAY.
4 AND IT HAPPENED -- IT HAPPENED MOSTLY EVERY DAY OVER A
5 PERIOD OF TIME. IT WASN'T A WEEK, IT WASN'T TWO DAYS.
6 IT WAS A PERIOD OF TIME.

7 Q. DID YOU PREVIOUSLY TESTIFY THAT IT OCCURRED
8 15 TIMES OVER A THREE-MONTH PERIOD?

9 A. PICK YOUR ANSWER. IT'S ABOUT THE SAME.

10 Q. IS THAT WHAT YOU'RE DOING, JUST GUESSING
11 EVERY TIME YOU COME TO COURT?

12 A. NO, I AM NOT GUESSING.

13 Q. CAN YOU TELL US WHY YOU PREVIOUSLY
14 TESTIFIED DIFFERENTLY IN REGARD TO THIS?

15 A. SO THE LAST TIME I TESTIFIED THAT OVER A
16 PERIOD OF TWO OR THREE MONTHS HE DID IT 15, 20 TIMES.
17 THIS TIME I SAID I RECALL AROUND A MONTH ALMOST DAILY.
18 BIG DIFFERENCE IN ANSWER, ISN'T IT? IT STILL IS THE
19 SAME THING.

20 Q. CAN YOU TELL US WHY THERE IS A DIFFERENCE
21 IN THE ANSWER?
22 A. BECAUSE I WASN'T PLANNING IT.
23 Q. ARE YOU GUESSING?
24 A. NO, I'M NOT GUESSING. IF I HAD HAD THIS
25 PLANNED, DON'T YOU THINK THAT I WOULD GIVE YOU TO THE
26 EXTREME, THE SAME INCH BY INCH, IF I WERE LYING? OF
27 COURSE I WOULD.
28 Q. NOW, DID YOU FEEL THAT ERIK MENENDEZ WAS IN

-12720

1 DANGER BECAUSE HE HAD TO CROSS THAT STREET TO GET TO
2 YOUR HOME?
3 THE COURT: YOU'RE ASKING HER PRESENT OPINION OR
4 HER OPINION THEN?
5 Q. BY MR. CONN: AT THE TIME DID YOU FEEL THAT
6 THAT WAS A DANGEROUS SITUATION?
7 A. I THOUGHT THE FACT THAT THAT CHILD COULD
8 GET OUT OF HIS HOUSE UNSEEN BY ADULTS AT A TIME WHEN HE
9 WAS MAYBE 15, 16, 17, 18 -- MAYBE LESS THAN THAT --
10 BECAUSE THIS WAS THE SPRING, AND HE DIDN'T TURN UNTIL
11 NOVEMBER.
12 THAT HE WAS ALLOWED TO GET OUT OF HIS CRIB,
13 OPEN THE FRONT DOOR, GET OUT, THAT WAS DANGER ENOUGH.
14 IT DIDN'T -- HE CROSSED THE STREET, TRUE ENOUGH. HE
15 ALSO HAD TO CROSS A FIELD; A FIELD WITH ANIMALS, A FIELD

16 WITH ALL KIND OF DEBRIS; THAT THERE WAS A DANGER IN THE
17 ACTION.

18 Q. AND DID YOU TELL YOUR BROTHER, JOSE
19 MENENDEZ?

20 A. YES, I DID.

21 Q. THAT HE WAS ENDANGERING HIS SON?

22 A. I TOLD HIM. FIRST OF ALL, THEY HAD TO PICK
23 HIM UP. THEY HAD EYES. THEY COULD SEE THAT.

24 Q. AND DID YOU TELL THEM THAT YOU FELT IT WAS
25 A DANGEROUS SITUATION?

26 A. YES, I DID. AND I TOLD HIM TO GO AND GET
27 ONE OF THOSE LOCKS AT THE TOP OF THE DOOR SO THAT ERIK
28 COULDN'T GO.

-12719

1 Q. AND HOW DID YOUR BROTHER, JOSE MENENDEZ,
2 RESPOND TO YOUR ACCUSATION TO HIM THAT HE WAS ALLOWING
3 HIS SON TO BE ENDANGERED BY THE SITUATION?

4 A. I DIDN'T ACCUSE HIM. I TOLD HIM.

5 Q. HOW MANY TIMES DID YOU TELL HIM?

6 A. EVERY TIME HE WOULD COME. KITTY WOULD COME
7 AND JOSE WOULD COME, AND I WOULD SAY: "DON'T YOU HAVE A
8 LOCK ON THAT DOOR YET? THIS KID IS GOING TO GET INTO
9 TROUBLE."

10 BECAUSE AT THAT TIME, MR. CONN, THERE WAS
11 ANOTHER DANGER IN THAT AREA. THERE WERE HOUSES BEING

12 BUILT. THERE WAS EXCAVATIONS. THERE WAS A LOT OF
13 MATERIALS OUT. INSTEAD OF COMING TO MY HOUSE, ERIK
14 COULD HAVE GONE TO ANY OF THOSE PLACES. IN FACT, IT
15 HAPPENED ONE DAY.

16 Q. DO YOU RESENT YOUR BROTHER FOR ENDANGERING
17 HIS SON IN THAT WAY?

18 A. OF COURSE I DON'T RESENT HIM.

19 Q. WHY NOT?

20 A. BECAUSE THAT WAS HIS WAY OF RAISING HIS
21 KIDS. AND LIKE I TELL YOU, AT THE TIME HE HAD HIS WAY
22 OF RAISING HIS KIDS, AND I HAD MY WAY OF RAISING MINE.
23 BUT MY WAY WASN'T PROVEN.

24 Q. AND ON THE OCCASION THAT KITTY MENENDEZ WAS
25 PAGED WHILE SHE WAS SHOPPING AT THE MALL, DID YOU FEEL
26 THAT SHE HAD ENDANGERED HER SONS BY ALLOWING THAT
27 SITUATION TO DEVELOP?

28 A. NOT REALLY. I THOUGHT SHE WAS BEING

-12718

1 CARELESS, AND AT THE TIME WE DIDN'T HAVE THE DAILY
2 KIDNAPPINGS THAT YOU HAVE NOW, OKAY.

3 Q. WERE YOU AWARE OF THE FACT THAT THE SONS
4 WERE MISSING BEFORE THE PAGE WAS RECEIVED?

5 A. OF COURSE WE KNEW THEY WERE MISSING. KITTY
6 WOULD SAY: "WHERE ARE THE KIDS?"

7 AND I'D SAY: "KITTY, I DON'T KNOW WHERE

8 THEY ARE."

9 AND SHE SAID, "WELL, WAIT A MINUTE."

10 Q. WERE YOU AT THAT TIME CONCERNED ABOUT THEIR
11 SAFETY?

12 A. I COULDN'T ANSWER THAT, BECAUSE I DON'T
13 RECALL SITTING THERE AND JUST SAYING: "OH, THEY'RE IN
14 DANGER." I JUST --

15 Q. SO YOU DIDN'T FEEL ANY NEED --

16 A. I CAN'T THINK OF IT. I CAN GIVE YOU
17 WHATEVER ANSWER YOU WANT TO HEAR, BUT THE TRUTH IS THAT
18 I CAN'T TELL YOU.

19 Q. HOW OLD WERE THE DEFENDANTS AT THE TIME?

20 A. VERY YOUNG. THEY WERE -- ERIK -- IT WAS IN
21 MONSEY, AND THIS HAPPENED -- THEY MOVED OUT OF MONSEY
22 WHEN ERIK WAS SIX, AND THEY MOVED TO MONSEY WHEN ERIK
23 WAS TWO. SO YOU HAVE FOUR YEARS' SPAN THERE.

24 Q. IT WAS SOMETIME WITHIN THOSE YEARS?

25 A. WITHIN THOSE YEARS. SO HE COULD HAVE BEEN
26 FOUR OR FIVE. NOT THREE. FOUR OR FIVE.

27 Q. AND HIS BROTHER, LYLE MENENDEZ, WOULD HAVE
28 BEEN?

-12717

1 A. THREE YEARS OLDER.

2 Q. ABOUT SEVEN OR EIGHT?

3 A. EXACTLY.

4 THE COURT: HOW MUCH LONGER DO YOU HAVE TO GO

5 HERE, BY THE WAY?

6 MR. CONN: OH, PROBABLY ANOTHER 20 MINUTES, I

7 THINK.

8 THE WITNESS: OH, JESUS.

9 THE COURT: ALL RIGHT. WE'LL TAKE A RECESS AND

10 RESUME IN 15 MINUTES.

11 DON'T DISCUSS THE MATTER WITH ANYONE.

12 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME

13 IF 15 MINUTES.

14 (A RECESS WAS TAKEN FROM

15 10:30 A.M. TO 10:45 A.M.)

16

17

18

19

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52820

1 THE COURT: ALL RIGHT. WE'RE BACK IN

2 SESSION.

3 APROPOS OF THE WITNESS' LAST REMARK AND

4 TO ASSIST COUNSEL IN SCHEDULING, WE'LL BE IN RECESS

5 FRIDAY, APRIL THE 5TH, IN THE AFTERNOON FOR GOOD

6 FRIDAY. SO IF COUNSEL CAN KEEP THAT IN MIND WHEN

7 SCHEDULING WITNESSES.

8 ALL RIGHT. WE'LL HAVE THE JURY OUT,

9 PLEASE.

10 MS. ABRAMSON: BEFORE WE BREAK FOR LUNCH,

11 AFTER THE JURY, I NEED TO ASK A QUESTION THROUGH THE

12 COURT OF COUNSEL REGARDING SOME RECORDS, BECAUSE

13 THAT HAS TO DO WITH SCHEDULING WITNESSES.

14 (THE JURY ENTERED THE COURTROOM

15 AND THE FOLLOWING PROCEEDINGS

16 WERE HELD:)

17

18 THE COURT: OKAY. WE'RE BACK IN SESSION.

19 JUST TO FOLLOW UP ON DISCUSSIONS THAT

20 YOU FOLKS HAVE HAD WITH THE BAILIFF THIS MORNING, WE

21 WILL BE IN SESSION -- TO ACCOMMODATE GOOD FRIDAY, WE

22 WILL NOT BE IN SESSION FRIDAY, APRIL THE 5TH IN THE

23 AFTERNOON. WE'LL BREAK AT NOON.

24 ALL RIGHT. YOU MAY CONTINUE YOUR DIRECT

25 EXAMINATION.

26 MR. CONN: THANK YOU.

27 Q IN REGARD TO THE OCCASIONS THAT ERIK

28 MENENDEZ WOULD COME TO YOUR HOME IN THE MORNING, YOU

1 INDICATED THAT YOU SPOKE TO YOUR BROTHER, JOSE
2 MENENDEZ, AND YOU TOLD HIM THAT IT WAS A DANGEROUS
3 SITUATION; IS THAT CORRECT?

4 A NO. I DIDN'T TELL YOU THAT.

5 Q OKAY. THAT YOU POINTED OUT THE FACT
6 THAT IF HE WERE TO PUT LOCKS ON THE DOOR THAT WOULD
7 BE A SOLUTION TO THE PROBLEM; IS THAT CORRECT?

8 A I SUGGESTED.

9 Q AND HOW DID YOUR BROTHER, JOSE MENENDEZ,
10 RESPOND TO YOUR SUGGESTION?

11 A JOSE LAUGHED. KITTY THOUGHT -- KITTY
12 DIDN'T REALLY ANSWER. JOSE LAUGHED. HE THOUGHT IT
13 WAS FUNNY.

14 Q AND DID YOU REMIND HIM OF THAT
15 REPEATEDLY?

16 A I CAN'T HONESTLY ANSWER THAT QUESTION,
17 MR. CONN. I DON'T KNOW. I REMEMBER SAYING IT. I
18 DON'T KNOW WHETHER --

19 Q PERHAPS IT WAS JUST ON ONE OCCASION YOU
20 DID THAT; IS THAT CORRECT?

21 A NO. I DON'T REMEMBER HOW MANY TIMES I
22 SAID IT, OR WHETHER IT WAS EVERY TIME. BUT I DOUBT
23 IF IT WAS EVERY TIME, BECAUSE I COULDN'T HAVE SAID
24 IT TO HIM EVERY TIME, BECAUSE HE DIDN'T COME TO PICK
25 UP ERIK EVERY TIME.

26 Q YOU SAID THE STREET THAT YOU LIVED ON AT
27 THE TIME WAS A HORSESHOE-SHAPED STREET; IS THAT

52822

1 A YES.

2 Q AND HOUSES WERE STILL BEING BUILT IN
3 THAT AREA; IS THAT CORRECT?

4 A YES.

5 Q AND, IN FACT, EVEN IN THE PHOTOGRAPHS
6 THAT YOU LOOKED AT YESTERDAY, YOU CAN SEE THAT THERE
7 ARE VERY FEW HOUSES IN THAT AREA, AND MOST OF THE
8 AREA IS STILL COVERED BY VACANT LOTS; IS THAT
9 CORRECT?

10 A THAT ONE. THE HOUSE NEXT TO THEM WAS
11 BEING BUILT.

12 Q BUT THERE ARE MANY VACANT LOTS THAT WERE
13 EVEN APPARENT IN THE PHOTOGRAPH THAT YOU LOOKED AT
14 YESTERDAY; IS THAT CORRECT?

15 A THERE WAS SOME VACANT LOTS, YES.

16 Q AND THAT HORSESHOE-SHAPED STREET, WAS
17 THAT STREET BUILT ALL AT ONCE, OR WAS ONLY SECTIONS
18 OF THAT STREET BUILT?

19 A ALL AT ONCE.

20 Q AND THE ONLY TRAFFIC INTO THAT -- ON THAT
21 STREET WOULD BE FOR PEOPLE LIVING IN THAT PARTICULAR
22 COMPLEX?

23 A AND CONSTRUCTION.

24 Q NOW, ON THE OCCASION THAT KITTY MENENDEZ
25 WAS PAGED ABOUT HER MISSING CHILDREN --

26 A YES.

27 Q -- CAN YOU TELL US HOW LONG HER SONS WERE
28 MISSING BEFORE YOU RECEIVED THE PAGE?

52823

1 A I CAN MAKE A GUESS, BUT I CANNOT TELL
2 YOU ACCURATELY.

3 Q CAN YOU GIVE US YOUR BEST ESTIMATE?

4 MS. ABRAMSON: I'M GOING TO OBJECT TO
5 SPECULATION, YOUR HONOR.

6 THE COURT: HE'S NOT ASKING FOR SPECULATION.
7 HE'S ASKING FOR HER BEST ESTIMATE.

8 THE WITNESS: I THINK SHE NOTICED WITHIN 10,
9 15 MINUTES THAT THEY WERE NOT AROUND HER.

10 Q BY MR. CONN: WELL, I'M ASKING YOU IF
11 YOU NOTICED.

12 A SHE MUST HAVE NOTICED IT FIRST, MR. CONN,
13 BECAUSE THEY WERE HER CHILDREN, NOT MINE.

14 Q WERE YOUR CHILDREN WITH YOU AT THE TIME?

15 A I DON'T REMEMBER HAVING MY CHILDREN
16 ALONG AT THE TIME. IF MY CHILDREN HAD BEEN ALONG,
17 THE KIDS WOULDN'T HAVE BEEN LOST.

18 Q SO SHE NOTICED THE CHILDREN WERE MISSING
19 AND MENTIONED IT TO YOU, AND 10 OR 15 MINUTES LATER
20 YOU RECEIVED A PAGE; IS THAT RIGHT?

21 MS. ABRAMSON: OBJECTION. MISSTATES THE
22 TESTIMONY.

23 THE COURT: REPHRASE THE QUESTION.

24 MR. CONN: YES.

25 Q HOW LONG AFTER KITTY MENENDEZ MENTIONED
26 TO YOU THAT THE CHILDREN WERE MISSING DID YOU
27 RECEIVE THE PAGE?

28 A NOW, REMEMBER, YOU'RE ASKING FOR A

52824

1 GUESS, BECAUSE I DON'T HAVE ACCURATE INFORMATION.

2 I WOULD SAY SHE WOULD NOTICE THAT THE
3 KIDS WERE NOT THERE -- "TERRY, HAVE YOU SEEN THE
4 KIDS?"

5 AND I SAID, "NO. I WAS BUSY LOOKING AT
6 SOMETHING HERE."

7 AND THEN SHE SAYS, "OH, WE'LL BE PAGED."
8 AND THEN A LITTLE WHILE LATER, FIVE MINUTES, TEN
9 MINUTES, I DON'T RECALL, THE ANNOUNCEMENT WOULD
10 COME. AND SHE'D SAY, "NOW WE CAN CONTINUE
11 SHOPPING. WE KNOW WHERE THEY ARE."

12 Q DURING THAT FIVE TO TEN MINUTES, DID YOU

13 SUGGEST TO HER THAT THEY WERE SMALL CHILDREN, THEY

14 MIGHT BE IN DANGER, AND IT WOULD BE APPROPRIATE --

15 A NO.

16 Q -- FOR YOU -- ALLOW ME TO FINISH THE

17 QUESTION, PLEASE.

18 THAT IT WOULD BE APPROPRIATE FOR YOU AND

19 HER TO IMMEDIATELY DROP WHAT YOU'RE DOING AND GO

20 LOOK FOR THE CHILDREN?

21 A I DID.

22 Q OKAY. AND HOW DID SHE RESPOND TO THAT?

23 A SHE SAID, "NEVER MIND. WE WILL BE PAGED

24 AND SOMEBODY WILL FIND THEM."

25 Q BUT YOU RECOGNIZED THE DANGER; IS THAT

26 CORRECT?

27 A I RECOGNIZED THE FACT THAT I DON'T LIKE

28 TO SEE A THREE-YEAR-OLD WITHOUT MY VIEW, YES. OUT

52825

1 OF MY VIEW, YES. I DID RECOGNIZE THAT.

2 Q IN LIGHT OF THE FACT THAT YOU RECOGNIZED

3 THE DANGER, TELL US WHAT YOU DID TO FIND ERIK AND

4 LYLE MENENDEZ?

5 A WELL, WHAT DO YOU DO WHEN YOU'RE IN A

6 DEPARTMENT STORE? YOU GO AROUND LOOKING AND ASKING

7 THE SALES CLERK, "HAVE YOU SEEN TWO LITTLE BOYS?"

8 Q SO IS THAT WHAT YOU DID AT THAT TIME?

9 A YEAH, THAT'S WHAT I DID.

10 Q SO YOU WEREN'T ABLE TO SEE WHAT KITTY
11 MENENDEZ WAS DOING AT THAT TIME; IS THAT CORRECT?

12 A NO, I WAS NOT.

13 Q AND FOR ALL YOU KNOW KITTY MENENDEZ WAS
14 LOOKING FOR HER SONS; IS THAT CORRECT?

15 A YES. FOR ALL I KNOW, YES.

16 Q NOW, YOU SAID THAT THERE WAS ANOTHER
17 OCCASION WHEN YOU SAW ERIK AND LYLE MENENDEZ ON THE
18 ROOF OF THE PENNINGTON HOME; IS THAT CORRECT?

19 A UH-HUH.

20 Q HOW OLD WERE THEY AT THE TIME?

21 A WELL, THAT HOUSE WAS BUILT, AND THEY
22 MOVED IN THERE WHEN ERIK WAS AROUND -- CLOSE TO
23 EIGHT. ERIK -- LYLE WAS THREE YEARS OLDER. SO IT
24 WAS SOMEWHERE -- ERIK MAY HAVE BEEN AT THE TIME
25 AROUND NINE OR TEN.

26 THEY DID NOT HAVE A KEY TO FRONT HOUSE --
27 TO THE FRONT DOOR, AND IN ORDER FOR THEM TO GET INTO
28 THE HOUSE THEY HAD TO CLIMB TO THE SECOND-STORY

52826

1 BALCONY TO GET INTO KITTY'S AND JOSE'S ROOM, BECAUSE
2 THE SLIDING DOORS WERE BROKEN IN THERE, AND

3 SOMETIMES THEY WENT UP TO THE ROOF TO GO IN THROUGH

4 ONE OF THE OTHER WINDOWS.

5 Q SO YOU'RE SAYING THAT YOU SAW ERIK

6 MENENDEZ ON THE ROOF WHEN HE WAS BETWEEN THE AGE OF

7 NINE AND TEN; IS THAT CORRECT?

8 A YES, I DID.

9 Q AND LYLE MENENDEZ WAS WITH HIM AT THE

10 TIME?

11 A YES.

12 Q AND HE WOULD HAVE BEEN SOMEWHERE BETWEEN

13 THE AGES OF TWELVE TO THIRTEEN; IS THAT CORRECT?

14 A IF ERIK WAS NINE, LYLE WOULD HAVE BEEN

15 THREE YEARS OLDER, YES.

16 Q AND YOU REGARDED THAT AS A DANGEROUS

17 SITUATION; IS THAT CORRECT?

18 A WOULDN'T YOU? YES.

19 Q AND YOU POINTED THAT OUT TO YOUR BROTHER

20 OR KITTY MENENDEZ OR BOTH?

21 A KITTY. I WAS NORMALLY WITH KITTY AT THE

22 TIME.

23 Q HOW DID KITTY MENENDEZ RESPOND TO THAT?

24 A "THEY'LL BE ALL RIGHT, TERRY."

25 Q WOULD YOU AGREE AT THAT TIME THAT THE

26 DEFENDANTS, DURING THAT TIME PERIOD, COULD HAVE BEEN

27 DESCRIBED AS WILD AND RAMBUNCTIOUS?

28 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR

1 HONOR, AS IRRELEVANT. CALLS FOR A CONCLUSION OF THE
2 WITNESS.

3 THE COURT: OVERRULED.

4 THE WITNESS: OKAY. YOU'RE ASKING FOR MY
5 OPINION.

6 WOULD YOU DESCRIBE WILD FOR ME. TELL ME
7 WHAT DO YOU UNDERSTAND BY WILD, BECAUSE YOU AND I
8 MAY HAVE A DIFFERENCE OF OPINION ON WILD.

9 YOU MEAN A LITTLE OUT OF CONTROL? I
10 MEAN, THEY DID NOT DO THINGS -- THEY WERE NOT QUIET
11 LITTLE BOYS, YES.

12 MR. CONN: UH-HUH.

13 THE WITNESS: THEY WERE DOING THINGS LIKE
14 THAT, GOING ON THE ROOF.

15 Q BY MR. CONN: AND DID YOU EVER SEE ERIK
16 AND LYLE MENENDEZ FALL FROM THAT ROOF?

17 A NO, I DID NOT.

18 Q AND KITTY MENENDEZ TOLD YOU THAT THEY
19 WOULD NOT FALL; IS THAT CORRECT?

20 A SHE SAID THEY WOULD BE OKAY.

21 Q AND SHE WAS RIGHT; IS THAT CORRECT?

22 A OBVIOUSLY. THEY'RE STILL HERE.

23 Q AND YOU NEVER RAISED BOYS. YOU ONLY HAD
24 FOUR GIRLS; IS THAT CORRECT?

25 A I ONLY HAD GIRLS, AND MY GIRLS DID NOT

26 DO THAT. BUT I DON'T THINK I WOULD HAVE ALLOWED
27 THAT OF BOYS EITHER.
28 Q NOW, YOU SAID THERE WAS ANOTHER OCCASION

52828

1 WHEN ERIK MENENDEZ WAS AN INFANT THAT HIS PARENTS
2 LEFT TOWN TO GO IN SEARCH OF A HOUSE SOMEWHERE; IS
3 THAT CORRECT?

4 A YES.

5 Q AND HOW LONG WERE THEY GONE?

6 A WELL, THEY WERE SUPPOSED TO BE GONE FOR
7 HOWEVER LONG IT TOOK. KITTY CAME BACK WITHIN A WEEK
8 BECAUSE I CALLED HER.

9 Q UH-HUH. AND HOW OLD WAS ERIK MENENDEZ
10 AT THE TIME?

11 A ONE AND A HALF.

12 Q AND HOW LONG AFTER SHE AND HER HUSBAND
13 LEFT TO GO IN SEARCH OF A HOME DID ERIK MENENDEZ
14 REACH THE POINT IN HIS CRYING WHERE YOU REGARDED HIM
15 AS INCONSOLABLE?

16 A AS SOON AS HE REALIZED HIS MOTHER WAS
17 GONE.

18 Q SO FROM THE VERY FIRST DAY?

19 A FROM THE VERY FIRST DAY. BUT I THOUGHT
20 HE WOULD ADJUST. MANY KIDS DO. ERIK DIDN'T.

21 Q DID YOU CALL KITTY AND TELL KITTY TO
22 COME HOME IMMEDIATELY?
23 A I CALLED KITTY AND TOLD HER WHAT THE
24 SITUATION WAS, AND SHE SAID, "OKAY. LET'S GIVE HIM
25 ANOTHER DAY OR TWO AND SEE IF HE ADJUSTS."
26 HE DIDN'T. SO I CALLED HER BACK, AND I
27 SAID, "KITTY, HE STILL CRIES MOST OF THE TIME. HE'S
28 STILL A VERY UNHAPPY LITTLE BOY."

52829

1 SO SHE CAME HOME AND PICKED HIM UP.
2 Q DID YOU FEEL IT WAS A SITUATION THAT YOU
3 COULD HANDLE UP UNTIL THE TIME YOU GAVE HIM A FEW
4 MORE DAYS AND YOU SAW THAT HE WAS INCONSOLABLE?
5 A WHAT DO YOU MEAN? I COULD HANDLE -- I
6 COULD HAVE HANDLED WHATEVER SITUATION CAME. MY
7 HEART BLED FOR HIM.
8 Q DID YOU INSIST, WHEN YOU FIRST CALLED
9 KITTY --
10 A I NEVER INSISTED. I TOLD HER --
11 Q YOU TOLD HER WHAT WAS GOING ON?
12 A THE DECISION WAS HERS.
13 Q YOU DIDN'T TELL HER, "COME HOME RIGHT
14 NOW"?
15 A I DID NOT TELL HER TO COME HOME. I DID

16 NOT TELL HER ANYTHING. SHE WOULD CALL TO FIND OUT

17 HOW ERIK WAS, AND THIS IS WHAT I'M ENCOUNTERING.

18 Q HOW OFTEN WOULD SHE CALL?

19 A I TALKED TO KITTY DAILY.

20 Q SHE CALLED EVERY DAY TO FIND OUT HOW HER

21 SON WAS?

22 A YES.

23 Q WHEN YOU TOLD HER TO COME HOME, SHE CAME

24 HOME; IS THAT CORRECT?

25 A I DIDN'T TELL HER TO COME HOME. I TOLD

26 HER THAT ERIK WAS NOT ADJUSTING. HE WAS NOT GETTING

27 BETTER. THE DECISION TO COME HOME WAS HERS.

28 Q SO SHE VOLUNTEERED TO COME HOME; IS THAT

52830

1 CORRECT?

2 A YES.

3 Q AND THAT WAS BECAUSE SHE REALIZED THAT

4 ERIK WAS UPSET AND NEEDED HER AT HOME; IS THAT

5 CORRECT?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

7 FOR SPECULATION AS TO WHAT SHE REALLY FELT.

8 THE COURT: SUSTAINED. OBJECTION SUSTAINED.

9 Q BY MR. CONN: DID JOSE MENENDEZ COME

10 BACK WITH HER?

11 A NO. JOSE WAS ALREADY WORKING.
12 Q DID LYLE MENENDEZ COME BACK WITH HER?
13 A NO. HE WAS AT MY MOTHER'S.
14 Q DO YOU RECALL PREVIOUSLY TESTIFYING THAT
15 "THEY" CAME BACK FOR HIM?
16 A JOSE DID NOT. JOSE HAD A JOB AT HERTZ.
17 Q DO YOU RECALL PREVIOUSLY TESTIFYING: "I
18 CALLED HER AND THEY CAME BACK FOR HIM"?
19 A NO, I DON'T RECALL. I DON'T REMEMBER
20 TESTIFYING TO THAT, MR. CONN. AND THAT COULD HAVE
21 BEEN A LANGUAGE PROBLEM, USING "IT," "THEY,"
22 WHATEVER. IT WAS NOT MEANT TO BE MISGUIDED HERE OR
23 THERE.
24 JOSE HAD STARTED A JOB, AND HE DID NOT
25 COME BACK. HE COULDN'T. YOU DON'T LEAVE A JOB A
26 WEEK AFTER YOU START, OR TWO WEEKS.
27 Q WAS THE FAMILY DEVASTATED WHEN KITTY AND
28 JOSE MENENDEZ WERE KILLED?

52831

1 A OH, YES.
2 MR. CONN: THANK YOU.
3 I HAVE NO FURTHER QUESTIONS.
4 THE COURT: ANY REDIRECT?
5 MS. ABRAMSON: JUST ONE.

6

7 REDIRECT EXAMINATION

8 BY MS. ABRAMSON:

9 Q WAS THE FAMILY DEVASTATED WHEN ERIK
10 MENENDEZ AND LYLE MENENDEZ WERE CONVICTED LAST WEEK?

11 A IT WAS WORSE.

12 MS. ABRAMSON: THANK YOU.

13 I HAVE NOTHING FURTHER.

14 THE COURT: OKAY. ANYTHING ELSE?

15 MS. ABRAMSON: NOTHING FURTHER AT THIS TIME.

16 THE COURT: OKAY. THANK YOU. YOU MAY STEP
17 DOWN.

18 I ASSUME YOU HAD NOTHING ELSE, MS. TOWERY;
19 IS THAT RIGHT?

20 MS. TOWERY: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: YOU MAY STEP DOWN. YOU'RE
22 EXCUSED.

23 MR. CONN: WELL, YOUR HONOR, THERE MAY BE
24 SOME ADDITIONAL QUESTIONS FOR OUR REBUTTAL CASE. I
25 WOULD ASK THAT SHE REMAIN ON CALL.

26 THE WITNESS: I'M LEAVING TONIGHT ON THE
27 9:45, SO REMAIN ON CALL HAS TO BE TODAY. I HAVE TO
28 BABY-SIT FOR MY GRANDCHILDREN TOMORROW.

1 THE COURT: OKAY. WHY DON'T YOU STAY HERE.

2 YOU'LL BE HERE THIS AFTERNOON?

3 THE WITNESS: I WILL BE HERE ALL DAY TODAY.

4 THE COURT: WE'LL TALK ABOUT IT ONE WAY OR
5 ANOTHER.

6 YOUR NEXT WITNESS, PLEASE.

7 MS. TOWERY: YOUR HONOR, THE DEFENSE WOULD
8 CALL WILLIAM KURTAIN.

9

10 WILLIAM KURTAIN,
11 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
12 SWORN, AND TESTIFIED AS FOLLOWS:

13 THE CLERK: RAISE YOUR RIGHT HAND TO BE
14 SWORN.

15 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
16 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
17 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
18 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

19 THE WITNESS: I DO.

20 THE CLERK: PLEASE BE SEATED.

21 PLEASE STATE AND SPELL YOUR NAME FOR THE
22 RECORD.

23 THE WITNESS: WILLIAM KURTAIN,
24 K-U-R-T-A-I-N.

25 THE COURT: ALL RIGHT.

26 MS. TOWERY: THANK YOU, YOUR HONOR.

27 ///

28 ///

1 DIRECT EXAMINATION

2 BY MS. TOWERY:

3 Q MR. KURTAIN, WHAT IS YOUR OCCUPATION?

4 A I'M THE OWNER OF HOPEWELL VALLEY TENNIS
5 CLUB IN PENNINGTON, NEW JERSEY.

6 Q HOW LONG HAVE YOU OWNED THAT TENNIS
7 CLUB?

8 A SINCE 1991. BUT I'VE BEEN WORKING THERE
9 SINCE 1975.

10 Q AND BEFORE YOU BECAME THE OWNER OF THE
11 CLUB, WHAT WAS YOUR JOB AT THE TENNIS CLUB?

12 A I WAS A TENNIS TEACHING PROFESSIONAL.

13 Q WHEN DID YOU START TEACHING TENNIS?

14 A ABOUT 22 YEARS AGO.

15 Q AND AFTER YOU BEGAN TEACHING TENNIS, DID
16 YOU TEACH ANY PARTICULAR NUMBER LESSONS A YEAR, OR
17 CAN YOU GIVE US AN ESTIMATE OF HOW MANY TENNIS
18 LESSONS A YEAR YOU GAVE, COMMENCING IN 1975?

19 A YES. I'VE BEEN A FULL-TIME TENNIS
20 TEACHER FOR MOST OF THE 22 YEARS. SO IT AVERAGES
21 BETWEEN 12 AND 1500 LESSONS A YEAR.

22 Q AND AMONG YOUR STUDENTS, DID YOU TEACH
23 JUNIOR PLAYERS?

24 A YES.

25 Q AND CAN YOU GIVE AN ESTIMATE OF HOW
26 MANY -- DURING THE YEARS 1975 TO 1978, HOW MANY
27 JUNIOR PLAYERS YOU COACHED AS A PERCENTAGE OF YOUR
28 TOTAL COACHING ROSTER, I SUPPOSE?

52834

1 A I GUESS PERCENTAGE-WISE IT WAS ABOUT 60
2 PERCENT.

3 Q ALL RIGHT. AND DID YOU COACH LYLE
4 MENENDEZ?

5 A YES.

6 Q WHAT YEAR DID YOU COACH LYLE MENENDEZ,
7 OR YEARS?

8 A IT BEGAN IN 1978. AND I COACHED HIM FOR
9 ALMOST THREE YEARS.

10 Q AND DO YOU REMEMBER HOW OLD HE WAS WHEN
11 YOU STARTED COACHING HIM?

12 A I BELIEVE HE WAS ABOUT 10.

13 Q AND DID YOU KNOW LYLE MENENDEZ' PARENTS?

14 A YES.

15 Q HOW DID YOU KNOW -- OR WHAT DID YOU CALL
16 MR. MENENDEZ?

17 A WE REFERRED TO HIM AT OUR CLUB AS "JOE,"
18 AS OPPOSED TO "JOSE."

19 Q AND WHAT ABOUT MRS. MENENDEZ?

20 A KITTY.

21 Q WERE THEY MEMBERS OF YOUR CLUB?

22 A YES. THEY JOINED AS A FAMILY.

23 Q NOW, YOU SAID THAT 60 PERCENT OF YOUR

24 STUDENTS WERE JUNIORS.

25 WHAT WERE YOUR GOALS AT THAT TIME WHEN

26 YOU WOULD GIVE LESSONS TO A 10-YEAR-OLD CHILD?

27 A MEANING MY PERSONAL PHILOSOPHIES?

28 Q YES.

52835

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: SUSTAINED.

3 Q BY MS. TOWERY: WHEN YOU'RE TEACHING A

4 10-YEAR-OLD CHILD, AS A PROFESSIONAL, ARE THERE

5 CERTAIN THINGS THAT YOU SEEK TO INSTILL IN THAT

6 CHILD?

7 MR. CONN: OBJECTION. IRRELEVANT.

8 THE COURT: PERHAPS WE CAN FOCUS ON THE

9 DEFENDANT IN THIS CASE.

10 Q BY MS. TOWERY: WERE YOUR GOALS IN

11 TEACHING LYLE MENENDEZ DIFFERENT FROM YOUR USUAL

12 GOALS IN GIVING LESSONS TO A 10-YEAR-OLD CHILD?

13 MR. CONN: OBJECTION. IRRELEVANT.

14 THE COURT: SUSTAINED.

15 Q BY MS. TOWERY: DID YOU HAVE A GOAL IN
16 TEACHING LYLE MENENDEZ WHEN HE WAS 10 YEARS OLD?

17 A YES.

18 Q WHAT WAS THAT GOAL?

19 A TO ACHIEVE A NO. 1 RANKING IN REGIONAL
20 AND NATIONAL TENNIS TOURNAMENTS.

21 Q AND WAS THAT -- DID THAT GOAL ORIGINATE
22 WITH YOU?

23 A NO.

24 Q DID YOU AGREE WITH THAT GOAL IN TEACHING
25 LYLE MENENDEZ?

26 A NO.

27 Q HOW WOULD YOU HAVE TAUGHT LYLE MENENDEZ
28 HAD IT BEEN YOUR CHOICE?

52836

1 A FIRST, THAT HE LEARNED TO HAVE FUN AND
2 ENJOY THE GAME.

3 SECONDLY, THAT HE DEVELOP A
4 SPORTSMAN-LIKE CONDUCT AND A GOOD WORK ETHIC ON THE
5 COURT; AND THAT, OF COURSE, THAT HE LEARNED TO PLAY
6 THE GAME PROPERLY.

7 Q AND IS THAT SOMETHING YOU GENERALLY TRY
8 TO TEACH TO YOUR STUDENTS WHEN THEY WERE ABOUT THAT
9 AGE?

10 A ABSOLUTELY.

11 MR. CONN: OBJECTION. IRRELEVANT.

12 THE COURT: OVERRULED.

13 THE WITNESS: ABSOLUTELY.

14 Q BY MS. TOWERY: AND WHY WAS YOUR GOAL

15 DIFFERENT WITH RESPECT TO LYLE MENENDEZ THAN IT WAS

16 WITH RESPECT TO YOUR OTHER STUDENTS HIS AGE?

17 A IT WAS DICTATED TO ME.

18 Q BY WHOM WAS IT DICTATED?

19 A JOSE MENENDEZ.

20 Q AND WHAT DID JOSE MENENDEZ TELL YOU HE

21 EXPECTED YOU TO ACHIEVE WITH RESPECT TO HIS SON?

22 A THAT LYLE BECOME NO. 1 IN OUR REGION,

23 WHICH WAS THE MIDDLE STATES TENNIS ASSOCIATION; AND

24 THEN ATTAIN A NO. 1 RANKING IN THE NATION.

25 Q NOW, AT THE TIME YOU WERE TEACHING LYLE

26 MENENDEZ TENNIS, DID YOUR TENNIS CLUB OFFER GROUP

27 LESSONS FOR CHILDREN OF HIS AGE?

28 A YES.

52837

1 Q AND DID YOU RECOMMEND TO JOSE MENENDEZ

2 THAT LYLE MENENDEZ PARTICIPATE IN GROUP LESSONS?

3 MR. CONN: OBJECTION. IRRELEVANT.

4 THE COURT: SUSTAINED.

5 Q BY MS. TOWERY: DID LYLE MENENDEZ
6 PARTICIPATE IN THE GROUP LESSONS THAT WERE OFFERED
7 BY YOUR CLUB?

8 A NO, HE DID NOT.

9 Q WHY WAS THAT?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: SUSTAINED.

12 Q BY MS. TOWERY: DID JOSE MENENDEZ
13 INSTRUCT YOU AS TO LYLE MENENDEZ' ABILITY TO
14 SOCIALIZE WITH OTHER PLAYERS AT THE CLUB?

15 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND
16 IRRELEVANT.

17 THE COURT: IT'S VAGUE WHAT YOU MEAN BY
18 "ABILITY."

19 Q BY MS. TOWERY: JOSE MENENDEZ -- WHEN YOU
20 TALKED TO JOSE MENENDEZ ABOUT WHAT HE EXPECTED YOU
21 TO DO WITH HIS SON IN THE TENNIS LESSONS --

22 A YES.

23 Q -- WAS LYLE MENENDEZ PRESENT?

24 A YES.

25 Q DID YOU HAVE PRIVATE CONFERENCES WITH
26 JOSE MENENDEZ APART FROM LYLE MENENDEZ, OR WOULD YOU
27 SPEAK TO MR. MENENDEZ WHEN HE WOULD COME TO THE CLUB
28 WITH HIS SON?

1 A IT WAS MOSTLY THE LATTER. I HAD VERY
2 FEW PRIVATE CONSULTATIONS WITH HIM.

3 Q AND DID JOSE MENENDEZ INDICATE TO YOU IN
4 ANY OF YOUR CONVERSATIONS WITH HIM, IN THE PRESENCE
5 OF LYLE MENENDEZ, THAT HE DID NOT WANT LYLE MENENDEZ
6 TO MAKE FRIENDS WITH OTHER TENNIS PLAYERS AT THE
7 CLUB?

8 A YES, HE DID.

9 Q WHAT WAS THE REASON FOR THAT?

10 A BECAUSE IF YOU DEVELOP A FRIENDSHIP WITH
11 THE OTHER KIDS, THEN IT BECOMES HARD TO REMAIN
12 COMPETITIVE WITH THEM UNDER TOURNAMENT SITUATIONS.

13 Q AND WAS THAT -- WAS THAT DESIRE ON THE
14 PART OF MR. MENENDEZ CARRIED OUT WITH RESPECT TO
15 LYLE MENENDEZ; THAT IS, HE DID NOT MAKE FRIENDS WITH
16 OTHER KIDS WHEN HE WAS PARTICIPATING IN TENNIS AT
17 YOUR CLUB?

18 A YES, THAT'S TRUE.

19 Q HE TOOK INDIVIDUAL LESSONS WITH YOU
20 ALONE?

21 A YES.

22 Q NOW, DID LYLE MENENDEZ INDICATE TO YOU
23 THAT HIS GOAL WAS TO BE RANKED NO. 1 NATIONALLY?

24 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

25 THE COURT: OVERRULED.

26 THE WITNESS: NO, HE DID NOT.

27 Q BY MS. TOWERY: DID HE GIVE YOU ANY

52839

1 WAS ENTHUSIASTIC ABOUT?

2 A NO.

3 Q WHEN YOU GAVE LESSONS TO LYLE MENENDEZ --

4 LET ME ASK YOU THIS: HOW OFTEN DID YOU

5 GIVE LESSONS TO LYLE MENENDEZ?

6 A AVERAGED, I GUESS, ABOUT TWICE A WEEK.

7 Q AND HOW LONG WERE LESSONS GENERALLY?

8 A AN HOUR.

9 Q AND DURING THE TIME THAT YOU GAVE

10 LESSONS TO LYLE MENENDEZ, DID HE APPEAR TO YOU TO BE

11 ENJOYING HIMSELF, HAVING FUN?

12 A NO. NOT ON A REGULAR BASIS, NO.

13 Q DID MR. MENENDEZ PERIODICALLY

14 PARTICIPATE IN THE LESSONS THAT YOU GAVE TO LYLE

15 MENENDEZ?

16 A YES, HE DID.

17 Q WAS THAT EVERY LESSON OR EVERY OTHER

18 LESSON OR OCCASIONALLY?

19 A IT WAS --

20 Q IF YOU CAN RECALL.

21 A YOU KNOW, HE TRAVELED A LOT. BUT WHEN

22 HE WAS IN TOWN HE WOULD ALWAYS BE PRESENT AT THE

23 LESSON. I GUESS IT WAS ABOUT 40 PERCENT OF THE

24 TIME.

25 Q WHEN MR. MENENDEZ WOULD COME TO THE

26 LESSON THAT YOU WERE GIVING TO LYLE MENENDEZ, WOULD

27 HE COME WEARING TENNIS CLOTHES OR --

28 A NO.

52840

1 Q HOW WOULD HE BE DRESSED?

2 A IN MOST CASES HE WAS IN A SUIT.

3 Q AND DID HE PARTICIPATE IN THE LESSONS?

4 A YES, HE DID.

5 Q HOW DID HE DO SO?

6 A HE OFTEN WOULD PHYSICALLY COME ON THE

7 COURT AND INTERRUPT THE LESSON, WHICH WAS UNUSUAL.

8 HE WAS CORDIAL. HE WOULD EXCUSE HIMSELF, BUT GO TO

9 THE OTHER SIDE OF THE COURT WHERE LYLE WAS AND --

10 Q YOU WOULD BE ON THE OPPOSITE SIDE

11 HITTING TENNIS BALLS WITH LYLE?

12 A YES, THAT'S RIGHT. AND HE WOULD PRETTY

13 MUCH TAKE OVER THE INSTRUCTION OF LYLE. SOMETIMES

14 HE WOULD ACTUALLY TAKE THE RACKET OUT OF HIS HAND

15 AND DEMONSTRATE PROPER STROKES TO LYLE. AND HE

16 WOULD ACTUALLY ASK ME TO HIT HIM SOME BALLS SO HE

17 COULD DEMONSTRATE HOW TO HIT THE BALL PROPERLY.

18 Q WAS JOSE MENENDEZ AS GOOD A TENNIS

19 PLAYER AS YOU WERE?

20 A NO.

21 Q WAS HE A PARTICULARLY EXCELLENT TENNIS

22 PLAYER IN YOUR VIEW?

23 A NO. HE WAS AN AVERAGE CLUB TENNIS

24 PLAYER, AND HE READ A LOT ABOUT TENNIS, BUT HE

25 DIDN'T HAVE A BACKGROUND ON TEACHING OR COACHING,

26 FROM WHAT I COULD TELL.

27 Q WHEN HE WOULD GIVE -- TAKE THE RACKET

28 FROM LYLE AND GIVE INSTRUCTIONS TO HIM DURING THE

52841

1 LESSON, DID HE -- DID HE GIVE THOSE INSTRUCTIONS IN

2 ANY PARTICULAR TONE OF VOICE?

3 A YES, HE DID. HE SPOKE -- I MEAN, HE HAD

4 A VERY DEEP VOICE, AND HE SPOKE VERY STERNLY AND IN

5 SHORT, QUICK, LIKE BARKING-TYPE INSTRUCTIONS.

6 Q AND DID LYLE MENENDEZ SEEM TO BE HAVING

7 FUN WHEN HIS FATHER WOULD COME AND INTERVENE IN

8 THESE LESSONS?

9 A NO. HE SEEMED TO BE EMBARRASSED AND

10 ALMOST RESENT THE SITUATION AS --

11 MR. CONN: I WOULD OBJECT. CALLS FOR

12 SPECULATION.

13 THE COURT: OVERRULED.

14 THE ANSWER WILL STAND.

15 YOUR NEXT QUESTION.

16 Q BY MS. TOWERY: TO YOUR KNOWLEDGE, WERE

17 YOU THE ONLY PERSON WHO WAS COACHING LYLE MENENDEZ

18 DURING THAT PERIOD OF TIME?

19 A NO, I WAS NOT.

20 Q WERE THERE SEVERAL OTHER PEOPLE COACHING

21 HIM AT THAT TIME?

22 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND

23 SPECULATION. NO FOUNDATION.

24 THE COURT: SUSTAINED AS TO THE FORM OF THE

25 QUESTION.

26 Q BY MS. TOWERY: HOW DID YOU KNOW THAT

27 YOU WERE NOT LYLE MENENDEZ' ONLY COACH AT THAT TIME?

28 A KITTY WOULD ACTUALLY TELL ME.

52842

1 MR. CONN: OBJECTION. HEARSAY. MOTION TO

2 STRIKE.

3 THE COURT: SUSTAINED.

4 THE ANSWER IS STRICKEN.

5 Q BY MS. TOWERY: WAS THERE ANY OTHER

6 BASIS UPON WHICH YOU WERE AWARE YOU WERE NOT THE

7 ONLY COACH THAT WAS COACHING LYLE MENENDEZ AT THAT

8 TIME?

9 A ONLY FROM MY CONVERSATIONS WITH OTHER
10 COACHES IN THE AREA.

11 MR. CONN: OBJECTION. MOTION TO STRIKE.

12 CALLS FOR HEARSAY.

13 THE COURT: SUSTAINED.

14 THE ANSWER IS STRICKEN.

15 Q BY MS. TOWERY: IS IT A USUAL PRACTICE
16 FOR A 10-YEAR-OLD BOY TO HAVE A NUMBER OF COACHES?

17 MR. CONN: OBJECTION. IRRELEVANT.

18 THE COURT: OVERRULED.

19 THE WITNESS: NOT IN MY EXPERIENCE -- I'M
20 SORRY. WOULD YOU PLEASE REPEAT THE QUESTION. IS IT
21 UNUSUAL OR USUAL?

22 Q BY MS. TOWERY: IS IT UNUSUAL FOR A
23 10-YEAR-OLD BOY TO HAVE SEVERAL DIFFERENT COACHES
24 FOR TENNIS?

25 A OH.

26 MR. CONN: I WOULD OBJECT ON THE GROUNDS IT
27 ASSUMES A FACT NOT IN EVIDENCE.

28 THE COURT: RIGHT. ASSUMING THERE WAS MORE

52843

1 THAN ONE COACH AT A PARTICULAR TIME, FOR A
2 10-YEAR-OLD, WAS THAT A USUAL SITUATION OR UNUSUAL?

3 THE WITNESS: THAT WAS UNUSUAL.

4 Q BY MS. TOWERY: ALTHOUGH YOU WERE
5 COACHING LYLE MENENDEZ, DID YOU TRAVEL WITH HIM TO
6 ANY TOURNAMENTS THAT HE PLAYED IN WHEN HE WAS 10
7 YEARS OLD?

8 A NOT OFF-SITE. I ONLY SAW HIM
9 PARTICIPATE IN THE TOURNAMENTS AT OUR CLUB.

10 Q AND YOU DID SEE HIM PARTICIPATE IN
11 TOURNAMENTS AT YOUR CLUB; IS THAT RIGHT?

12 A YES, I DID.

13 Q DID MR. MENENDEZ ATTEND ANY OF THOSE
14 TOURNAMENTS?

15 A YES, HE DID.

16 Q AND DID LYLE MENENDEZ ALWAYS WIN WHEN HE
17 PLAYED IN THOSE TOURNAMENTS?

18 A NO, HE DID NOT.

19 Q DID HE WIN SOMETIMES?

20 A YES.

21 Q AND WHEN HE -- WHEN LYLE MENENDEZ WON IN
22 A TOURNAMENT AND HIS FATHER WAS PRESENT, DID YOU
23 EVER SEE HIS FATHER COMPLIMENT HIM OR PRAISE HIM FOR
24 WINNING?

25 A NO, I DIDN'T.

26 Q AND DID YOU SEE WHAT HIS FATHER DID IF
27 LYLE MENENDEZ WON IN A TOURNAMENT AT YOUR CLUB?

28 A YES. IN MOST CASES HE WOULD BE VERY

1 ANALYTICAL ABOUT LYLE'S PERFORMANCE. AND MOST OF
2 THE TIME IT WAS ON THE THINGS HE HADN'T DONE WELL
3 ENOUGH OR HADN'T DONE PROPERLY.

4 AND IN MOST CASES RIGHT AFTER THE MATCH
5 HE WOULD TAKE HIM ON TO ANOTHER COURT AND THEY WOULD
6 BEGIN TO PRACTICE AGAIN.

7 Q AND THAT WOULD HAPPEN WHEN LYLE WON?

8 A YES.

9 Q WHAT IF LYLE MENENDEZ LOST IN A
10 TOURNAMENT, HOW DID MR. MENENDEZ BEHAVE TOWARDS HIM?

11 A SOME OF THE RESPONSES WERE SIMILAR; THAT
12 HE WOULD AGAIN, ANALYZE HIS PERFORMANCE. IT WAS NOT
13 ALWAYS IN A CONSTRUCTIVE WAY. IT WAS OFTEN
14 CONDESCENDING, AND SOMETIMES YOU COULD SEE THAT HE
15 WAS UPSET OR ANGRY WITH HIM.

16 Q DID YOU EVER HAVE OCCASION TO SEE
17 MR. MENENDEZ BEHAVE IN A FASHION THAT CAUSED YOU TO
18 BELIEVE THAT HE WAS UPSET OR ANGRY WITH LYLE
19 MENENDEZ?

20 A THERE WAS ONE PARTICULAR OCCASION THAT
21 LYLE HAD LOST, AND JOSE WAS NOT VERBAL. AS A MATTER
22 OF THE FACT, HE WAS ACTUALLY VERY QUIET, AND THEY
23 JUST LEFT THE CLUB VERY, VERY QUICKLY AND IN A VERY
24 STERN MANNER.

25 Q YOU JUST REFERRED TO HIM AS "JOSE." IS
26 THAT BECAUSE YOU'VE HEARD HIS NAME, JOSE, IN THIS

27 COURTROOM?

28 A YES.

52845

1 Q DID YOU CALL HIM JOE OR DID YOU CALL HIM
2 MR. MENENDEZ?

3 A I CALLED HIM JOE.

4 Q WHAT TIME DID YOUR CLUB OPEN IN THE
5 MORNING?

6 A 6:00 A.M.

7 Q AND WHAT TIME DID IT CLOSE IN THE
8 EVENING?

9 A ABOUT 11:00.

10 Q DID YOU EVER SEE LYLE MENENDEZ AND HIS
11 FATHER PLAYING TENNIS AT THE CLUB RIGHT WHEN IT
12 OPENED?

13 A YES. SEVERAL TIMES.

14 Q AND DID YOU EVER SEE LYLE MENENDEZ AND
15 HIS FATHER PLAYING TENNIS AT THE CLUB WHEN IT CLOSED
16 AT 11:00?

17 A YES, I DID.

18 Q AND WERE THERE OCCASIONS WHEN YOU SAW
19 LYLE MENENDEZ AND HIS FATHER PLAYING TENNIS AT THE
20 CLUB ON BOTH OF THOSE TIMES WHEN IT OPENED AND WHEN
21 IT CLOSED?

22 A YES, I DID. THERE WAS A -- SORRY.

23 THE COURT: GO AHEAD. YOU WERE GOING TO
24 DESCRIBE A PARTICULAR INCIDENT.

25 THE WITNESS: THERE WAS A PARTICULAR
26 INCIDENT. I CAN REMEMBER IT BECAUSE I WORKED VERY,
27 VERY LONG HOURS BACK THEN. AND I HAD GOTTEN TO THE
28 CLUB EARLY, AND THEY PRACTICED FROM ROUGHLY 6:00 TO

52846

1 7:30 IN THE MORNING, AND THEN LEFT FOR SCHOOL.

2 AND THAT NIGHT I HAD TO TEACH AN ADULT
3 EDUCATION CLASS, THAT THEY ACTUALLY FINISHED PLAYING
4 AT 11:00 THAT NIGHT, SO THEY HAD GOTTEN SOME COURT
5 TIME FROM 10:00 TO 11:00, THE SAME NIGHT THAT THEY
6 HAD STARTED AT 6:00 IN THE MORNING.

7 Q WHEN YOU SAY "THEY," YOU MEAN
8 MR. MENENDEZ AND HIS SON, LYLE?

9 A YES. AND IT SEEMED UNUSUAL TO ME, THAT,
10 YOU KNOW -- LYLE WAS 10 AT THE TIME -- THAT THEY
11 WOULD SPEND THAT MUCH TIME ON BOTH ENDS OF THE DAY.
12 AND I JOKINGLY SAID TO HIM AS HE WAS LEAVING: "ARE
13 YOU LEAVING SO SOON?"

14 AND HE SAID, "YES. LYLE HAS HOMEWORK TO
15 DO."

16 Q WAS THAT -- WAS IT UNUSUAL, IN YOUR

17 EXPERIENCE, FOR A 10-YEAR-OLD BOY TO BE PLAYING

18 TENNIS THAT RIGOROUSLY?

19 A YES.

20 Q DID YOU EVER SEE MR. MENENDEZ INTERFERE

21 IN A TENNIS TOURNAMENT THAT LYLE MENENDEZ WAS

22 PLAYING IN AT YOUR CLUB?

23 A YES, I DID.

24 Q CAN YOU DESCRIBE THAT INCIDENT FOR US.

25 A WELL, I WAS THE TOURNAMENT DIRECTOR AT

26 THIS PARTICULAR TOURNAMENT. AND OUR CLUB IS SET UP

27 WHERE THERE'S A LOBBY AREA THAT'S GLASSED IN WHERE

28 PEOPLE CAN WATCH. AND LYLE WAS PLAYING HIS MATCH

52847

1 RIGHT NEXT TO THE COURT THAT WAS JUST ADJACENT TO

2 THE LOBBY AND --

3 Q LET ME STOP YOU HERE. HOW OLD WAS LYLE

4 AT THIS TIME?

5 A I GUESS IT WAS A 10 AND UNDER

6 TOURNAMENT. THE KIDS WERE VERY -- THE KIDS WERE

7 YOUNG.

8 LYLE WAS LOSING THIS PARTICULAR MATCH,

9 AND JOSE WAS VERY UNCOMFORTABLE WITH THAT. AND AT

10 ONE POINT HE LEFT THE LOBBY AREA AND WENT OUT ONTO

11 THE TENNIS COURT AND STOPPED THE MATCH, AND

12 CRITICIZED THE OTHER BOY FOR FOOT-FAULTING.

13 Q WHAT IS FOOT-FAULTING?

14 A IT'S WHEN YOU'RE SERVING, IF YOU STEP

15 OVER THE BASELINE BEFORE YOU SERVE THE BALL. IT'S

16 AGAINST THE RULES.

17 Q AND THE OTHER BOY WAS 10 YEARS OLD OR

18 YOUNGER, AS WELL --

19 A YES.

20 Q -- AS LYLE MENENDEZ? IS A FOOT-FAULT BY

21 A 10-YEAR-OLD A PARTICULARLY CRUCIAL THING TO HAPPEN

22 IN A TENNIS MATCH, OR DOES IT NOT MAKE MUCH

23 DIFFERENCE?

24 A IT DOESN'T MAKE MUCH DIFFERENCE. I

25 MEAN, IT IS AGAINST THE RULES. BUT THEY DON'T SERVE

26 HARD ENOUGH THAT IT WOULD HAVE ANY SIGNIFICANT

27 CHANGE IN HIS SERVE.

28 Q WHAT DID MR. MENENDEZ SAY TO THIS BOY

52848

1 WHO WAS FOOT-FAULTING, IF YOU CAN RECALL?

2 A WELL, HE -- IT WAS DIFFICULT TO ACTUALLY

3 HEAR WHAT HE SAID, BECAUSE, LIKE I SAY, HE LEFT THE

4 LOBBY AREA, WHICH WAS ALL GLASSED IN. SO WE

5 COULDN'T HEAR. HE WENT DIRECTLY UP TO THE BOY AND

6 SPOKE TO HIM IN A STERN FASHION THAT UPSET THE OTHER

7 BOY. I MEAN, HE WAS ONLY 10 YEARS OLD, AND HE WAS
8 SOMEWHAT SURPRISED WITH IT. AND IT DID UPSET THE
9 OTHER BOY.

10 Q YOU COULD SEE THAT THE OTHER BOY WAS
11 UPSET?

12 A YES. I HAD TO ACTUALLY GO ONTO THE
13 COURT AND BRING HIM BACK OFF THE COURT. AND THERE'S
14 NO PARENTAL INVOLVEMENT IN THESE TOURNAMENTS.
15 THAT'S NOT ALLOWED. SO I HAD TO BRING HIM BACK.

16 Q WHEN YOU SAY YOU BROUGHT HIM BACK, YOU
17 MEAN MR. MENENDEZ?

18 A MR. MENENDEZ. I'M SORRY.

19 Q YOU SAID THE OTHER BOY WAS WINNING THE
20 MATCH?

21 A UP TO THAT POINT.

22 Q AND DID HE ULTIMATELY WIN THE MATCH?

23 A NO, HE DIDN'T.

24 Q NOW, WHEN MR. -- YOU INDICATED EARLIER
25 MR. MENENDEZ DID NOT ATTEND ALL THE LESSONS THAT YOU
26 GAVE TO LYLE MENENDEZ; IS THAT RIGHT?

27 A THAT'S CORRECT.

28 Q DID MRS. MENENDEZ ATTEND LESSONS WHEN

2 A MOST OF THE TIME, YES.

3 Q AND WAS THERE ANYTHING UNUSUAL WITH
4 RESPECT TO MRS. MENENDEZ' BEHAVIOR WHEN SHE WOULD
5 ATTEND THE LESSONS YOU WERE GIVING TO HER SON?

6 A ONLY THAT SHE OFTEN TIMES WOULD BRING A
7 WRITTEN LIST, LIKE AN AGENDA OR OUTLINE OF WHAT I
8 WAS SUPPOSED TO WORK ON THAT PARTICULAR DAY WITH
9 LYLE.

10 Q AND DID SHE INDICATE TO YOU THAT THAT
11 WAS HER AGENDA, OR DID SHE INDICATE SOMETHING ELSE?

12 A NO. IT WAS NOT HERS. IT WAS FROM JOSE.

13 Q AND SHE INDICATED THAT TO YOU; IS THAT
14 RIGHT?

15 A YES, SHE DID.

16 Q AND DID SHE JUST GIVE YOU THE LIST AND
17 SAY, "HERE, THIS IS SOMETHING I WANT YOU TO WORK
18 ON"?

19 A NO. SHE WOULD -- WE WOULD HAVE A BRIEF
20 CONSULTATION BEFORE THE LESSON STARTED, AND WE WOULD
21 GO OVER THIS LIST OF THINGS THAT JOSE THOUGHT I
22 SHOULD ADDRESS THAT PARTICULAR LESSON.

23 Q AND DID SHE GIVE YOU THE LIST, OR DID
24 SHE KEEP IT?

25 A SHE KEPT IT.

26 Q AND WOULD MRS. MENENDEZ THEN GO ABOUT
27 HER BUSINESS WHILE YOU WERE GIVING THE LESSON?

28 A NO.

1 Q OR REMAIN?

2 A NO. SHE REMAINED. SHE TYPICALLY STAYED
3 COURT-SIDE AND OBSERVED THE WHOLE LESSON.

4 Q AND KEPT THE LIST WITH HER?

5 A YES.

6 Q AND DID SHE INTERFERE IN THE SAME
7 FASHION AS MR. MENENDEZ WITH YOUR LESSONS?

8 A NO. SHE WOULDN'T PHYSICALLY COME ON THE
9 COURT, THOUGH SHE DID VERBALLY REFER BACK TO THE
10 LIST FROM TIME TO TIME AND SUGGEST I MOVE ON TO
11 OTHER THINGS, YOU KNOW, WITH THE LIST.

12 Q WAS THAT UNUSUAL FOR A PARENT TO WATCH
13 THE ENTIRE LESSON OF A 10-YEAR-OLD CHILD?

14 MR. CONN: OBJECTION. IRRELEVANT.

15 THE COURT: OVERRULED.

16 YOU CAN ANSWER THE QUESTION.

17 THE WITNESS: YES. MOST PARENTS WATCH FOR A
18 CERTAIN PERIOD OF AN HOUR LESSON, BUT THEN THEY
19 OFTEN TIMES -- I THINK THEY GET BORED, SO THEY WATCH
20 TV OR READ THE PAPER.

21 Q BY MS. TOWERY: AND SOME PARENTS DROP
22 THEIR CHILDREN OFF TO HAVE THEIR LESSON AND PICK
23 THEM UP?

24 A THAT OFTEN HAPPENS, YES.

25 Q YOU STOPPED COACHING LYLE MENENDEZ AT
26 SOME POINT; IS THAT RIGHT?
27 A ROUGHLY THREE YEARS AFTER I STARTED.
28 Q AND WHY DID YOU STOP COACHING HIM?

52851

1 A THE BIGGEST DIFFICULTY I HAD WAS HIS
2 INVOLVEMENT IN THE LESSONS THAT I WAS HIRED TO
3 TEACH.

4 Q YOU'RE TALKING ABOUT LYLE MENENDEZ OR
5 MR. MENENDEZ?

6 A I'M SORRY. MR. MENENDEZ.

7 Q OKAY.

8 A IT WAS INSULTING TO ME THAT HE WOULD
9 HIRE ME TO GIVE THE INSTRUCTION AND THEN HE WOULD
10 BASICALLY TRY TO CONTROL THIS WHOLE SITUATION. IT
11 WAS EMBARRASSING AND INSULTING.

12 AT SOME POINT I SAID TO HIM -- I ASKED
13 IF I COULD SPEAK WITH HIM ABOUT IT. AND I SAID I
14 DIDN'T MIND, YOU KNOW, A COLLABORATION BETWEEN
15 PARENTS AND COACHES IN TERMS OF THE PROGRESS OF THE
16 KIDS. BUT I DIDN'T SEE THIS WAS A COLLABORATION. I
17 SAW IT MORE AS HIM CONTROLLING THE LESSON. AND I
18 SAID, YOU KNOW, "IF IT'S YOUR DESIRE TO COACH LYLE,
19 THEN YOU COACH HIM AND, YOU KNOW, DON'T ASK FOR MY

20 SERVICES."

21 AND I THOUGHT MAYBE THAT WOULD, YOU KNOW

22 -- WE COULD HAVE SOME CONVERSATION ABOUT THAT. BUT

23 HE BASICALLY SAID, "OKAY. THEN I WILL COACH HIM,"

24 AND THEY LEFT.

25 Q YOU NEVER COACHED LYLE MENENDEZ AGAIN?

26 A NO, I DIDN'T.

27 MS. TOWERY: THANK YOU.

28 I HAVE NOTHING FURTHER, YOUR HONOR.

52852

1 THE COURT: CROSS-EXAMINATION.

2 MR. LEVIN: I HAVE A COUPLE OF QUESTIONS,

3 YOUR HONOR, IF I MAY.

4 THE COURT: OKAY. SURE. FOR DIRECT

5 EXAMINATION.

6

7 DIRECT EXAMINATION

8 BY MR. LEVIN:

9 Q MR. KURTAIN, DID YOU KNOW ERIK MENENDEZ

10 AS WELL?

11 A YES.

12 Q DID YOU, FROM TIME TO TIME, COACH ERIK

13 MENENDEZ?

14 A CERTAINLY NOT ON A REGULAR BASIS. MAYBE

15 ONLY TWO OR THREE TIMES WE GOT OUT ON THE COURT

16 TOGETHER.

17 Q DID YOU EVER SEE ERIK MENENDEZ PLAY IN A

18 TOURNAMENT WHERE MR. MENENDEZ WAS PRESENT?

19 A YES.

20 Q AND DID YOU EVER HAVE ANY CONVERSATIONS

21 WITH MR. MENENDEZ CONCERNING ERIK MENENDEZ, AS FAR

22 AS HIM ACHIEVING THE SAME TYPE OF RANKING THAT HE

23 FELT HE WANTED LYLE MENENDEZ TO ACHIEVE?

24 A YES. IT WAS VERY SIMILAR.

25 Q AND WHAT WAS THAT?

26 A THAT HE TRIED TO ACHIEVE THE HIGHEST

27 RANKING HE POSSIBLY COULD.

28 Q DID ERIK MENENDEZ PLAY TENNIS AND

52853

1 PRACTICE TENNIS AS MUCH AS LYLE MENENDEZ?

2 A IT SEEMED SO. LIKE I SAID, I HAD LESS

3 CONTACT WITH HIM. ERIK WAS BEING COACHED BY ONE OF

4 THE OTHER PROS ON OUR STAFF, AS FAR AS OUR CLUB

5 GOES. BUT IT SEEMED AS IF HE WAS PLAYING AS MUCH,

6 YES.

7 Q DID YOU HAVE AN OPPORTUNITY TO SEE ERIK

8 MENENDEZ AS HE WAS PLAYING IN THE TENNIS -- WHEN HE

9 WAS PLAYING TENNIS?

10 A YES, I DID.

11 Q DID HE APPEAR TO BE HAVING FUN?

12 A NO. HE HAD A LITTLE BIT MORE OF A

13 TEMPER THAN LYLE DID AND, YOU KNOW, HE WAS MORE

14 EXPRESSIVE WITH THAT. LYLE WAS MORE QUIET WHEN I

15 WORKED WITH HIM. AND ERIK SEEMED TO BE A LITTLE BIT

16 MORE EXPRESSIVE WITH HIS EMOTIONS.

17 Q FROM YOUR OBSERVATIONS OF ERIK MENENDEZ

18 WHEN HE PLAYED TENNIS AT THE CLUB, WAS JOSE MENENDEZ

19 INVOLVED WITH ERIK MENENDEZ' TRAINING IN A SIMILAR

20 MANNER THAT YOU TESTIFIED HE WAS INVOLVED WITH LYLE

21 MENENDEZ?

22 A YES.

23 MR. LEVIN: THANK YOU. NOTHING FURTHER.

24 THE COURT: CROSS-EXAMINATION.

25 MR. CONN: YES.

26 ///

27 ///

28 ///

52854

1 CROSS-EXAMINATION

2 BY MR. CONN:

3 Q WHAT DO YOU MEAN WHEN YOU SAY THAT ERIK

4 MENENDEZ HAD A TEMPER?

5 A THERE WAS A SPECIFIC INSTANCE WHEN HE
6 WAS A LITTLE BIT OLDER THAT HE PLAYED IN A
7 TOURNAMENT AT OUR CLUB THAT THE TWO BOYS IN THE
8 MATCH WERE HAVING A LOT OF DIFFICULTY WITH LINE
9 CALLS. AND SO THERE WAS A LOT OF ARGUMENT.

10 SO WE INSTRUCT THE KIDS IN TOURNAMENTS --
11 I MEAN, THERE'S NOT LINES PEOPLE OR UMPIRES ON EACH
12 COURT. WE INSTRUCT THE KIDS IF THEY HAVE A PROBLEM
13 TO STOP THE MATCH AND RAISE THEIR HAND. AND THEY
14 DID, SO I HAD TO GO OUT.

15 AND EITHER WITH LINE CALLS FROM THE
16 OTHER BOY OR HIS OWN PERFORMANCE, HE WOULD SHOW --
17 YOU KNOW, HE'D THROW HIS RACKET OR HIT BALLS UP INTO
18 THE CEILING, OR, YOU KNOW, YELL VERBALLY IN A LOUD
19 WAY.

20 Q THIS WAS THE ONLY OCCASION IN WHICH YOU
21 SAW HIM EXPRESS HIS EMOTIONS?

22 A I SAW IT TWICE.

23 Q WHAT WAS THE OTHER OCCASION?

24 A THERE WAS ANOTHER TIME AT A TOURNAMENT
25 PRIOR TO THAT THAT SOMETHING SIMILAR HAPPENED THAT I
26 ACTUALLY HAD TO GO ON THE COURT AND -- YOU KNOW,
27 THERE ARE PENALTIES ASSESSED FOR THE KIDS WHEN THEY
28 BEHAVE THIS WAY.

1 Q WHY WAS IT YOU HAD TO GO ON THE COURT?

2 A JUST BECAUSE WE DON'T ALLOW THROWING
3 RACKETS AND THAT KIND OF BEHAVIOR. THERE'S A
4 U.S.T.A. CODE OF CONDUCT THAT WE EXPECT THE KIDS TO
5 PERFORM BY.

6 Q IS THAT WHAT YOU SAW ERIK MENENDEZ
7 DOING, THROWING HIS RACKET?

8 A YES.

9 Q WHAT PROVOKED IT ON THE SECOND OCCASION?

10 A WHAT PROVOKED ME TO GO OUT?

11 Q NO, NO. WHAT PROVOKED THE BEHAVIOR ON
12 HIS PART TO THROW HIS RACKET?

13 A AGAIN, I WASN'T ON THE COURT. I COULD
14 ONLY ASSUME IT WAS HIS OWN PERFORMANCE HE WASN'T
15 HAPPY WITH.

16 MR. LEVIN: OBJECTION. CALLS FOR
17 SPECULATION.

18 THE COURT: SUSTAINED.

19 ANSWER IS STRICKEN.

20 Q BY MR. CONN: NOW, YOU AGREE THAT JOSE
21 MENENDEZ TREATED YOU CORDIALLY; IS THAT CORRECT?

22 A YES.

23 Q BUT ALTHOUGH HE TREATED YOU CORDIALLY,
24 YOU STILL FELT INSULTED BY WHAT HE WAS DOING; IS
25 THAT CORRECT?

26 A YES, I DID.

27 Q YOU WERE INSULTED BECAUSE YOU ARE A
28 PROFESSIONAL COACH AND YOU DIDN'T WANT THE

1 INTERVENTION THAT HE WAS ENGAGING IN; IS THAT

2 CORRECT?

3 A THAT'S RIGHT.

4 Q AND HOW SOON AFTER -- LET ME ASK YOU

5 THIS: HE ASKED YOU TO -- OR HE FORCED YOU TO FEED

6 TENNIS BALLS TO HIM SO THAT HE COULD HIT THOSE BALLS

7 AND DEMONSTRATE TO HIS SON HOW BALLS WERE HIT; IS

8 THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND YOU ALSO FOUND THAT TO BE INSULTING;

11 IS THAT CORRECT?

12 A YES.

13 Q AND WHEN WAS IT THAT HE FIRST BEGAN TO

14 ENGAGE IN THAT TYPE OF BEHAVIOR, WHERE HE WOULD

15 FORCE YOU TO DO THAT?

16 A FROM THE VERY BEGINNING OF MY COACHING

17 WITH LYLE.

18 Q UH-HUH. AND SO YOU WERE INSULTED BY HIM

19 FROM THE VERY BEGINNING OF YOUR RELATIONSHIP WITH

20 HIM; IS THAT CORRECT?

21 A YES.

22 Q AND YET YOU CONTINUED TO WORK AND TO

23 TRAIN HIS SON FOR TWO TO THREE YEARS; IS THAT

24 CORRECT?

25 A YES.

26 Q CAN YOU TELL US WHY YOU DID IT FOR SO

27 LONG?

28 MS. TOWERY: OBJECTION. IRRELEVANT.

52857

1 THE COURT: OVERRULED.

2 THE WITNESS: WELL, FIRST OF ALL, AS I SAID,

3 HE WAS ONLY THERE 40 PERCENT OF THE TIME.

4 AND THE SECOND REASON WAS I HAD A

5 GENUINE INTEREST IN LYLE. AND I TRIED TO, AS BEST I

6 COULD -- YOU KNOW -- WE ALWAYS TRY TO COOPERATE WITH

7 PARENTS AS BEST WE CAN. BUT THIS GOT TO A POINT

8 WHERE IT JUST GOT OUT OF HAND.

9 Q WERE YOU DISCUSSING IT WITH HIM, THAT

10 YOU WERE INSULTED BY THE WAY IN WHICH HE WOULD

11 INTERVENE IN YOUR TRAINING?

12 A YES. WELL -- HE WOULDN'T ALLOW MUCH

13 DISCUSSION. HE -- HE WOULD, YOU KNOW -- THE MINUTE HE

14 WOULD TRY TO TEACH LYLE SOMETHING OR GIVE

15 INSTRUCTION, I WOULD TRY TO GRAVITATE TO THAT SIDE

16 OF THE COURT TO PARTICIPATE, BASED ON THE FACT THAT

17 I WAS THE COACH.

18 AND HE HANDLED THE SITUATION IN A WAY

19 THAT HE JUST TRIED TO CONTROL IT, AND ACTED AS IF HE
20 WAS TAKING MY ADVICE. BUT HE REALLY WANTED TO GIVE
21 THE COACHING HIMSELF.

22 SO IT WAS JUST A VERY AWKWARD SITUATION.

23 Q AND ON HOW MANY OCCASIONS WOULD YOU SAY
24 HE ENGAGED IN BEHAVIOR TOWARD YOU THAT YOU FOUND TO
25 BE INSULTING?

26 A ON A REGULAR BASIS.

27 Q AND DID THAT MAKE YOU ANGRY?

28 A NO, NOT ANGRY. I MEAN, AS I SAY, IT

52858

1 WAS -- I FELT IT WAS CONDESCENDING. AND I FELT IT
2 WAS INSULTING.

3 Q SO DID YOU EVER MAKE ANY EFFORTS TO
4 TERMINATE THE RELATIONSHIP PRIOR TO THAT OCCASION
5 THAT YOU TOLD US WHEN YOU FINALLY TOLD HIM THAT YOU
6 WERE NOT GOING TO TRAIN HIS SON ANYMORE?

7 A I DIDN'T SAY I WASN'T GOING TO TRAIN HIS
8 SON ANYMORE.

9 IN THAT LAST OCCASION I WASN'T TRYING TO
10 TERMINATE THE RELATIONSHIP. I WAS TRYING TO MAKE IT
11 VERY CLEAR THAT THERE WAS A PROBLEM HERE, AND I
12 CERTAINLY WANTED TO CONTINUE THE RELATIONSHIP. HE
13 TERMINATED. I DIDN'T.

14 Q UH-HUH. WELL, DID YOU BASICALLY GIVE
15 HIM AN ULTIMATUM, "EITHER YOU DO THE TRAINING OR I
16 DO THE TRAINING"?
17 A YES, I DID.
18 Q AND YOU SAID-- WHEN WERE ASKED WHETHER
19 LYLE MENENDEZ WAS HAVING FUN DURING THE TENNIS. YOU
20 SAID "NOT ON A REGULAR BASIS."
21 DOES THAT MEAN THAT SOMETIMES HE WAS
22 HAVING FUN AND SOMETIMES HE WASN'T?
23 A YES.
24 Q AND DO YOU KNOW -- DO YOU HAVE A
25 BREAKDOWN FOR THAT AS TO HOW OFTEN HE HAD FUN AND
26 HOW OFTEN HE DIDN'T?
27 A YOU MEAN AS A PERCENTAGE, YOU MEAN?
28 Q YES.

52859

1 A I WOULD SAY ABOUT 20 PERCENT OF THE TIME
2 HE ACTUALLY, GENUINELY LOOKED LIKED HE WAS ENJOYING
3 IT. I MEAN, I WANTED HIM TO ENJOY HIS TENNIS,
4 ESPECIALLY WITH ME. BUT THERE WERE -- MOST OF THE
5 TIME I HAD TO MOTIVATE HIM TO WORK HARD. AND IT
6 JUST DIDN'T SEEM LIKE HE HAD THE GENUINE INTEREST TO
7 BE THERE ON HIS OWN INITIATIVE.
8 Q WHAT BEHAVIOR DID YOU OBSERVE THAT

9 CAUSED YOU TO CONCLUDE THAT ON 80 PERCENT OF THE
10 OCCASIONS HE WAS NOT ENJOYING HIMSELF?

11 A OKAY. I USED TO COACH HIM BOTH AT THE
12 CLUB AND AT THEIR HOME IN PENNINGTON. THEY HAD A
13 TENNIS COURT. THERE WERE TIMES WHEN I WOULD GET TO
14 THE HOME FOR THE SCHEDULED LESSON -- AND THEY LIVED
15 ON A LAKE -- AND LYLE WOULD BE OUT ON A BOAT IN THE
16 MIDDLE OF LAKE. AND, YOU KNOW, I HAD -- MY FIRST
17 CHORE WAS TO GET HIM BACK FROM THE LAKE TO THE
18 TENNIS COURT, WHICH TOOK 20 MINUTES OF TIME
19 SOMETIMES.

20 TO ME THAT SEEMED LIKE HE WASN'T ALL
21 THAT EAGER TO GET ON THE TENNIS COURT.

22 THEN THERE WERE TIMES WHEN HE JUST
23 DIDN'T SHOW MUCH INTEREST, AND HE DIDN'T PUT OUT A
24 LOT OF EFFORT.

25 Q SO YOU CONCLUDED, BECAUSE OF LACK OF
26 ENTHUSIASM, THAT HE WASN'T ENJOYING HIMSELF VERY
27 MUCH; IS THAT CORRECT?

28 A YES.

52860

1 Q AND YOU SAID THAT JOSE MENENDEZ WOULD
2 BARK INSTRUCTIONS AT HIS SON?

3 A YES.

4 Q AND WHAT DO YOU MEAN BY THAT?

5 A THAT THEY WERE VERY SHORT, STERN QUOTES,
6 AS OPPOSED TO, YOU KNOW, AN EXPLANATION. I MEAN, IF
7 YOU'RE GOING TO GIVE INSTRUCTION THERE NEEDS TO BE
8 SOME EXPLANATIONS. AND, YOU KNOW, TO ELABORATE ON
9 THE THINGS THAT YOU WANT TO TEACH THE KIDS.

10 SO HE WOULD -- I'M SORRY. DID THAT
11 ANSWER THE QUESTION?

12 Q YES. COULD YOU GIVE US AN EXAMPLE OF
13 WHAT YOU MEAN BY BARK INSTRUCTIONS.

14 A HE -- YOU MEAN AS REGARDS TO TEACHING
15 TENNIS, I ASSUME YOU MEAN?

16 Q WELL, YEAH. ON ANY OCCASION ON WHICH
17 YOU WOULD HEAR HIM BARK INSTRUCTIONS TO HIS SON, CAN
18 YOU GIVE US AN EXAMPLE OF WHAT YOU MEAN BY THAT?

19 A HE -- AT AGE 10, I MEAN, JOSE WATCHED A
20 LOT OF PROFESSIONAL TENNIS, AND PROFESSIONAL TENNIS
21 PLAYERS DO THINGS A LOT DIFFERENTLY THAN
22 10-YEAR-OLDS. AND JOSE WOULD SEE WHAT TOP PLAYERS
23 IN THE WORLD WERE DOING AND BRING THAT TYPE OF
24 INFORMATION TO THE COURT WITH A 10-YEAR-OLD.

25 ONE OF THE THINGS ANDRE AGASSI DOES SO
26 WELL IS HE TAKES THE BALL ON THE RISE, WHICH MEANS
27 WHEN THE BALL BOUNCES AND IT'S COMING UP OFF THE
28 BOUNCE, ANDRE HITS THE BALL VERY EARLY OFF THAT

1 BOUNCE. IT'S SOMEWHAT DIFFICULT FOR A 10-YEAR-OLD
2 KID TO DO. AND JOSE WAS HELL BENT TO HAVE LYLE TAKE
3 THE BALL ON THE RISE.

4 Q MY FOCUS WAS NOT SO MUCH ON THE
5 INFORMATION THAT HE WAS COMMUNICATING, BUT THE
6 MANNER IN WHICH HE COMMUNICATED THE INFORMATION.
7 YOU SAID THAT HE BARKED INSTRUCTIONS.

8 CAN YOU TELL US WHAT YOU MEAN BY THAT?

9 A WOULD YOU LIKE ME TO IMITATE IT?

10 Q IF YOU CAN EXPLAIN.

11 A IT WAS JUST A SHORT QUOTE. "LYLE, TAKE
12 THE BALL ON THE RISE. TAKE THE BALL ON THE RISE."
13 AND HE WOULD JUST KEEP STERNLY -- ALMOST YELLING AT
14 HIM TO DO THESE THINGS.

15 Q NOW, YOU SAID THAT SOMETIMES WHEN HE WON
16 YOU DIDN'T HEAR -- WHEN LYLE WON YOU DIDN'T HEAR HIS
17 FATHER COMPLIMENT HIM.

18 A NO.

19 Q DID YOU EVER SEE HIS FATHER HAPPY WHEN
20 HE WON?

21 A HE OFTEN TIMES DIDN'T SHOW A LOT OF
22 SATISFACTION. I MEAN --

23 Q ARE YOU SAYING YOU NEVER SAW JOSE
24 MENENDEZ HAPPY?

25 A NO. I SAW JOSE MENENDEZ HAPPY. BUT THE
26 FIRST THING HE WOULD DO WHEN LYLE WOULD COME OFF --

27 I MEAN, HE WOULD BE HAPPY AROUND THE CLUBHOUSE AND
28 THE OTHER PEOPLE AROUND, ALMOST BOASTFUL IN TERMS OF

52862

1 HOW LYLE PLAYED.

2 IF YOU'RE TALKING ABOUT HOW HE
3 INTERACTED -- WHEN LYLE CAME OFF THE COURT IT WAS
4 ALL BUSINESS. SO HE WOULD BE HAPPY AND HE WOULD BE,
5 YOU KNOW -- IF LYLE WAS WINNING, HE'D BE PACING THE
6 LOBBY, ALMOST IN A BRAGGING OR BOASTFUL-TYPE WAY.
7 BUT WHEN LYLE CAME OFF THE COURT IT WAS DIFFERENT.

8 Q UH-HUH. SO HE APPEARED TO BE PROUD OF
9 HIS SON'S ACHIEVEMENT?

10 A AS DIRECTED TOWARDS HIS SON?

11 Q AS DIRECTED TOWARDS ANYBODY.

12 A AT TIMES, YES.

13 Q AND YOU SAID THAT WHEN HE WOULD LOSE HE
14 WOULD LEAVE IN A QUIET BUT A STERN MANNER; IS THAT
15 CORRECT?

16 A YES.

17 Q AND WHAT DO YOU MEAN BY "A QUIET BUT A
18 STERN MANNER"?

19 A HE DID NOT LOOK HAPPY AT ALL. HE HAD --
20 YOU KNOW, HE HAD A VERY STERN LOOK ON HIS FACE. HE
21 WOULD LEAVE VERY QUICKLY. HE WOULDN'T SPEAK TO

22 ANYONE. WOULDN'T SAY GOOD-BYE TO THE OTHER PARENTS
23 OR THANK THE TOURNAMENT DIRECTORS OR --
24 Q WHAT DO YOU MEAN BY A STERN LOOK? A
25 PREOCCUPIED LOOK?
26 A NO SMILE. VERY INTENT ON JUST GETTING
27 LYLE OUT OF THE CLUB. ALMOST AS IF HE WAS
28 EMBARRASSED THAT LYLE LOST.

52863

1 Q AND YOU SAID THAT SOMETIMES YOU SAW LYLE
2 MENENDEZ PLAY WITH HIS FATHER IN THE MORNING; IS
3 THAT CORRECT?
4 A THAT'S RIGHT.
5 Q ON HOW MANY OCCASIONS DID YOU SEE HIM
6 PLAYING WITH HIS FATHER IN THE MORNING?
7 A ON A REGULAR BASIS.
8 Q WHAT DO YOU MEAN BY A REGULAR BASIS?
9 A MAYBE TWICE WEEK AT OUR CLUB.
10 Q WOULD THIS BE DURING THE WEEK OR DURING
11 THE WEEKEND?
12 A YES. DURING THE WEEK.
13 Q WHAT TIME OF THE MORNING WOULD YOU SEE
14 HIM PLAYING WITH HIS SON?
15 A ANYWHERE BETWEEN 6:00 AND 7:30 IN THE
16 MORNING.

17 Q DO YOU KNOW HOW LONG HE WOULD PLAY WITH
18 HIS SON TWICE A WEEK?

19 A DURING THOSE HOURS, YOU MEAN?

20 Q YES.

21 A ABOUT AN HOUR, HOUR AND A HALF.

22 Q AND HOW OFTEN -- OVER WHAT TIME PERIOD
23 DID YOU SEE HIM SPENDING THIS MUCH TIME PLAYING
24 TENNIS WITH HIS SON?

25 A THE WHOLE TIME THEY WERE MEMBERS OF MY
26 CLUB, WHICH WAS ABOUT THREE YEARS.

27 Q AND HOW OFTEN DID YOU SEE HIM PLAYING
28 TENNIS WITH HIS SON AT NIGHT?

52864

1 A MAYBE ONCE A WEEK, ONCE OR TWICE A
2 WEEK. SOMETIMES IT WAS ON THE SAME DAY, AND OTHER
3 TIMES IT WAS ON DIFFERENT DAYS.

4 Q WOULD THIS BE LATE AT NIGHT THAT YOU
5 WOULD SEE THIS?

6 A YES. 9:00 OR 10:00 O'CLOCK AT NIGHT.
7 I'M SORRY.

8 Q AND WERE YOU SAYING THAT ON THE
9 OCCASIONS WHEN YOU SAW HIM PLAYING IN THE MORNING,
10 YOU ALSO SAW HIM PLAYING AT NIGHT, THAT THEY WERE
11 NECESSARILY THERE ALL THAT DAY TOGETHER PLAYING

12 TENNIS?

13 A NO. NO.

14 Q YOU HAVE NO KNOWLEDGE AS TO WHETHER THEY

15 WERE THERE ALL THAT DAY OR NOT?

16 A NO. I KNOW THEY WEREN'T THERE ALL THAT

17 DAY. MY POINT IS THEY PRACTICED IN THE MORNING FOR

18 AN HOUR AND A HALF, AND I ASSUME LYLE WENT TO SCHOOL

19 AFTER THAT. AND I'M NOT SURE WHAT HE DID AFTER

20 SCHOOL. BUT THEY RETURNED TO THE CLUB AT 9:00 OR

21 10:00 O'CLOCK AT NIGHT.

22 NO, THEY WEREN'T THERE FOR 15 HOURS.

23 Q WHEN KITTY MENENDEZ WOULD READ FROM A

24 LIST OF THINGS THAT JOSE MENENDEZ WANTED DONE IN

25 REGARD TO LYLE'S TRAINING, DID YOU FIND THAT

26 INSULTING AS WELL?

27 A YES.

28 Q YOU FOUND IT UNUSUAL THAT KITTY MENENDEZ

52865

1 WOULD SPEND SO MUCH TIME WATCHING HER SON'S TENNIS

2 LESSON; IS THAT CORRECT?

3 A YES.

4 Q BECAUSE MOST PARENTS ARE NOT THAT

5 INTERESTED IN THEIR SON'S TRAINING?

6 MS. ABRAMSON: CALLS FOR SPECULATION, YOUR

7 HONOR. I'M SORRY.

8 THE COURT: SUSTAINED.

9 MR. CONN: I HAVE NO FURTHER QUESTIONS.

10 THE COURT: ANYTHING ELSE?

11 MS. TOWERY: MAY I HAVE JUST A MOMENT, YOUR

12 HONOR?

13 (ATTORNEYS TOWERY AND GESSLER

14 CONFER SOTTO VOCE.)

15

16 MS. TOWERY: NO, YOUR HONOR.

17 MR. LEVIN: I HAVE A COUPLE OF QUESTIONS.

18 THE COURT: OKAY.

19

20 REDIRECT-EXAMINATION

21 BY MR. LEVIN:

22 Q MR. KURTAIN, WHEN YOU SAW ERIK MENENDEZ

23 BEHAVE IN THE MANNER YOU DESCRIBED BEFORE, WHEN HE

24 THREW HIS RACKET, HE WASN'T THROWING THAT AT SOMEONE

25 ELSE OR ANOTHER PLAYER, WAS HE?

26 A NO.

27 Q HE APPEARED TO BE UNHAPPY WITH HIS

28 TENNIS PERFORMANCE?

52866

1 A YEAH. OFTEN TIMES IT WOULD -- HE WOULD

2 DROP IT ON THE COURT OR TOSS IT A FEW FEET AWAY FROM
3 HIM.

4 Q TO JOSE MENENDEZ, AS YOU UNDERSTOOD HIM,
5 WITH LYLE MENENDEZ AND ERIK MENENDEZ, TENNIS WAS
6 EXTREMELY SERIOUS?

7 A YES.

8 Q AND WAS THAT ALL IT WAS, WAS EXTREMELY
9 SERIOUS? DID HE EVER INDICATE THAT YOU WERE TO LET
10 THEM HAVE FUN?

11 A NO.

12 Q DID IT APPEAR TO YOU THAT BOTH LYLE AND
13 ERIK MENENDEZ WERE UNDER A TREMENDOUS AMOUNT OF
14 PRESSURE WHEN THEY PLAYED TENNIS, BOTH IN PRACTICE
15 AND IN TOURNAMENTS?

16 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

17 THE COURT: SUSTAINED.

18 Q BY MR. LEVIN: DID -- WHEN YOU SAW ERIK
19 MENENDEZ, DID IT APPEAR AS THOUGH, WHEN HE WAS
20 PLAYING TENNIS, THAT HE WAS UNDER A LOT OF PRESSURE?

21 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

22 THE COURT: DO YOU UNDERSTAND THE QUESTION BY
23 WHAT IS MEANT BY "PRESSURE"?

24 THE WITNESS: YES.

25 THE COURT: OKAY. OVERRULED.

26 THE WITNESS: YES. IT SEEMED LIKE THEY WERE
27 UNDER A LOT OF PRESSURE.

28 Q BY MR. LEVIN: IS THAT WHEN JOSE MENENDEZ

1 WAS PRESENT?

2 A YES.

3 MR. LEVIN: THANK YOU.

4 NOTHING FURTHER.

5 THE COURT: ALL RIGHT. ANYTHING ELSE?

6 MR. CONN: NO.

7 THE COURT: OKAY. THANK YOU. YOU MAY STEP
8 DOWN. YOU'RE EXCUSED.

9 YOUR NEXT WITNESS.

10 MR. GESSLER: CHARLES WADLINGTON.

11 I THINK HE'S IN THE HALLWAY. I'LL GO
12 GET HIM.

13 THE COURT: PLEASE.

14

15

16 CHARLES WADLINGTON,

17 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
18 SWORN, AND TESTIFIED AS FOLLOWS:

19 THE CLERK: RAISE YOUR RIGHT HAND TO BE
20 SWORN.

21 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
22 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
23 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
24 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

25 THE WITNESS: I DO.

26 THE CLERK: PLEASE BE SEATED.
27 PLEASE TAKE THE STAND AND STATE YOUR
28 NAME FOR THE RECORD.

52868

1 THE WITNESS: CHARLES E. WADLINGTON, SR.
2 W-A-D-L-I-N-G-T-O-N.

3 THE CLERK: THANK YOU.

4 THE COURT: OKAY.

5

6 DIRECT EXAMINATION

7 BY MR. GESSLER:

8 Q MR. WADLINGTON, AT SOME TIME DID YOU
9 HAVE OCCASION TO MEET THE MENENDEZ FAMILY?

10 A YES, I DID.

11 Q DO YOU RECALL APPROXIMATELY WHEN THAT
12 WAS?

13 A MAY OF 1981.

14 Q AND WHERE WERE YOU AT THAT TIME? WHAT
15 STATE WERE YOU LIVING IN?

16 A NEW JERSEY.

17 Q WHAT WAS YOUR PROFESSION OR OCCUPATION
18 AT THAT TIME?

19 A TENNIS PROFESSIONAL.

20 Q AND WHAT KIND OF EXPERIENCE DID YOU HAVE

21 AS A TENNIS PROFESSIONAL TO LEAD YOU TO THAT JOB AND

22 CAREER?

23 A I STARTED IN '73. I GUESS, EIGHT YEARS.

24 Q WERE YOU ALSO A PLAYER?

25 A YES, I WAS.

26 Q AND IN 1981 WERE YOU A PLAYER AT THAT

27 TIME AS WELL AS A COACH?

28 A YES, I WAS.

52869

1 Q DID YOU ACHIEVE ANY KIND OF A RANKING IN

2 THE STATE OF NEW JERSEY AT THAT TIME?

3 A YES, I DID.

4 Q WHAT WAS THAT?

5 A NO. 1 OPEN PROFESSIONAL, SINGLES AND

6 DOUBLES.

7 Q AND WHAT DOES THAT MEAN? THAT WAS FOR

8 WHO?

9 A THAT WAS FOR ALL OF THE -- ANYBODY THAT

10 WANTED TO PLAY IN THE PROFESSIONAL LEVEL OF ANY AGE

11 AT ALL.

12 THE COURT: WHY DON'T YOU MOVE CLOSER TO THE

13 MICROPHONE.

14 Q BY MR. GESSLER: NOW, IN ADDITION TO

15 YOUR PLAYING, YOU WERE A TEACHER OF TENNIS?

16 A YES.

17 Q TEACHING PROFESSIONAL. IS THAT WHAT
18 THEY CALL IT?

19 A YES.

20 Q AND WHEN DID YOU BEGIN THAT CAREER AS A
21 TEACHING PROFESSIONAL?

22 A 1973. IN THE SUMMER OF 1973.

23 Q DURING THAT EIGHT YEARS, BETWEEN 1973
24 AND 1981, HAD YOU COACHED ANY PLAYERS WHO HAD
25 OBTAINED RANKING ON THEIR OWN?

26 A YES, I HAD.

27 Q WERE THESE JUNIOR PLAYERS OR OPEN? WHAT
28 KIND OF PLAYERS WERE THEY?

52870

1 A EVERYTHING. JUNIORS AND A FEW THAT WERE
2 WORLD-RANKED.

3 Q WHEN WE SAY JUNIORS, WHAT IS THE CUTOFF
4 AGE THERE FOR A JUNIOR?

5 A EIGHTEEN.

6 Q AND DID YOU HAVE ANY JUNIORS THAT YOU
7 HAD COACHED UP TO 1981 WHO HAD ATTAINED RANKING,
8 LET'S SAY, IN THE TOP FIVE IN THE NORTHEAST OR MID
9 ATLANTIC OR SOMETHING LIKE THAT?

10 A I WASN'T TEACHING IN THE NORTHEAST AT

11 THAT TIME. BUT THEY OBTAINED HIGH RANKING IN THEIR
12 RESPECTIVE AREAS.

13 IN '79 AND '80 I WAS IN SOUTH AMERICA,
14 AND A FEW OF THE KIDS WERE RANKED NO. 1 IN SOUTH
15 AMERICA.

16 Q AND IN THE -- WHAT'S NEW JERSEY, PART OF
17 THE MID EAST STATES? IS THAT WHAT THEY CALL IT?

18 A MIDDLE STATES.

19 Q MIDDLE STATES. IS THAT THE REGION THEY
20 CALLED IT?

21 A UH-HUH.

22 Q DID YOU COACH ANYBODY WHO HAD ATTAINED
23 RANKING IN THE MIDDLE STATES?

24 A LYLE AND ERIK AND A COUPLE OF OTHER KIDS
25 AT THE CLUB.

26 Q NOW, IN 1981 HOW DID YOU HAPPEN TO MEET
27 THE MENENDEZ FAMILY? DID YOU GO TO THEM? DID THEY
28 COME TO YOU?

52871

1 A I WAS BROUGHT UP FROM FLORIDA TO START A
2 PROGRAM AT THE HAMILTON TENNIS CENTER IN HAMILTON,
3 JUST OUTSIDE OF TRENTON. AND I WAS ASSIGNED TO
4 TEACH ALL THE KIDS. IT WAS A GROUP PROGRAM TO START
5 WITH.

6 Q AND DID MR. MENENDEZ THEN APPROACH YOU
7 AS TO BEING A PRIVATE COACH FOR LYLE AND ERIK
8 MENENDEZ?

9 A HE DID AFTER THE PERSON WHO HAD BROUGHT
10 ME UP FROM FLORIDA HAD LEFT THE AREA.

11 Q AND DID YOU HAVE A MEETING THEN WITH
12 JOSE MENENDEZ AS TO HIS EXPECTATIONS FOR HIS SONS IN
13 TENNIS?

14 A YES.

15 Q WAS LYLE MENENDEZ PRESENT AT THAT
16 MEETING?

17 A YES.

18 Q WAS ERIK MENENDEZ PRESENT AT THAT
19 MEETING?

20 A YES.

21 Q AND JOSE MENENDEZ WAS PRESENT?

22 A YES.

23 Q WHAT ABOUT MRS. MENENDEZ, WAS SHE THERE
24 ALSO AT THAT TIME?

25 A YES, SHE WAS.

26 Q AND WHAT DID JOSE MENENDEZ TELL YOU HIS
27 GOAL WAS FOR HIS SONS IN TENNIS?

28 A FOR THEM TO BE RANKED NO. 1.

1 Q AND DID HE SAY WHY THIS WAS HIS

2 EXPECTATION OR DESIRE?

3 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

4 THE COURT: OVERRULED.

5 THE WITNESS: HE SAID IT WAS TO FOLLOW IN

6 FAMILY TRADITION.

7 Q BY MR. GESSLER: AND WHAT TRADITION WAS

8 THAT THAT HE TALKED ABOUT?

9 A HE TOLD ME THAT THEIR GRANDPARENTS, OR

10 SOMEONE IN CUBA, HAD WON A GOLD MEDAL IN HIS

11 SWIMMING.

12 Q AND DID HE SAY ANYTHING ABOUT WHETHER

13 THIS WAS A FAMILY TRADITION TO DO WELL OR SOMETHING?

14 A YES, HE DID.

15 Q WHAT DID HE SAY ABOUT THAT?

16 A HE JUST SAID IT WAS -- THAT HE WANTED

17 THEM TO FOLLOW IN THE FAMILY FOOTSTEPS OF BEING THE

18 BEST.

19 Q AND DO YOU REMEMBER HOW OLD LYLE WAS AT

20 THAT TIME, IN MAY 1981?

21 A THIRTEEN, I THINK.

22 Q AND ERIK WAS 10 OR 11?

23 A I BELIEVE HE WAS 11.

24 Q DID MR. MENENDEZ, IN THAT CONVERSATION,

25 TELL YOU ANYTHING ABOUT A DESIRE TO WIN?

26 A WELL, THAT WAS THE FOCUS.

27 Q WHAT DID HE SAY?

28 A WELL, HE SAID WINNING WAS EVERYTHING,

1 AND THAT HE EXPECTED THEM TO WIN, AND THAT I SHOULD
2 DO EVERYTHING IN MY POWER TO MAKE SURE THAT THEY
3 WON.

4 Q DID HE SAY ANYTHING ABOUT FINISHING
5 SECOND OR NOT WINNING?

6 A HE WOULDN'T ACCEPT LESS THAN BEING
7 NO. 1.

8 Q WHAT DID HE SAY ABOUT THAT?

9 A JUST MADE CLICHES, ANALOGIES. LIKE
10 FINISHING SECOND IS LIKE A FOOTBALL COACH, OR
11 WHOEVER IT WAS -- FINISHING SECOND IS LIKE KISSING
12 YOUR SISTER. IF YOU DON'T WIN, YOU'RE NOTHING. YOU
13 KNOW. THERE'S ONLY ONE NO. 1. NOBODY EVER KNOWS
14 WHO NO. 2 IS. NOBODY KNOWS THEIR NAME, AND YOU HAVE
15 TO FINISH NO. 1.

16 Q AND DID MRS. MENENDEZ -- DID SHE SAY
17 ANYTHING ABOUT THAT? DID SHE AGREE, DISAGREE, KEEP
18 SILENT? WHAT DID SHE DO?

19 A MOST OF THE TIME SHE JUST STAYED SILENT
20 IN JOSE'S PRESENCE.

21 Q THEN OFF AND ON DID YOU COACH BOTH LYLE
22 AND ERIK MENENDEZ FOR A PERIOD OF YEARS?

23 A FOR FIVE YEARS.

24 Q NOW, WAS THAT A CONSTANT FIVE YEARS, OR
25 WERE THERE INTERRUPTIONS IN THAT?

26 A THERE WAS AN INTERRUPTION TOWARD THE END
27 OF THE PERIOD. THEY TOOK LYLE AWAY FROM ME.

28 Q AT ONE POINT DURING THAT PERIOD OF TIME

52874

1 DID ERIK LEAVE YOU ALSO AND COME BACK?

2 A WELL, YES. AT THAT THE SAME PERIOD -- I
3 HADN'T REALLY SPENT THAT MUCH -- YOU KNOW, I HAD
4 SPENT TIME WITH ERIK, BUT MOST OF THE FOCUS WAS ON
5 LYLE. AND THEN I ASSUMED -- I MEAN, I WAS SURE THAT
6 THEY HAD GOTTEN SOME OTHER COACHES IN THE AREA.

7 Q HOW DID YOU KNOW THAT?

8 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

9 THE COURT: SUSTAINED. UNLESS YOU HAVE A
10 FOUNDATION.

11 Q BY MR. GESSLER: IN YOUR CONVERSATIONS
12 WITH JOSE MENENDEZ, IN THE PRESENCE OF LYLE OR ERIK,
13 DID THE CONVERSATION OF WHETHER THERE WERE OTHER
14 COACHES INVOLVED TOO EVER COME UP?

15 A SURE.

16 Q HOW DID THAT COME UP?

17 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

18 THE COURT: YOU'RE ASKING ABOUT CONVERSATIONS

19 WHERE THE DEFENDANTS WERE PRESENT?

20 MR. GESSLER: THAT IS CORRECT, YOUR HONOR.

21 THE COURT: AND THERE WAS DISCUSSION ABOUT
22 HIS OTHER COACHES?

23 MR. GESSLER: YES.

24 THE COURT: DO YOU UNDERSTAND THE NATURE OF
25 THE QUESTION?

26 THE WITNESS: YES.

27 THE COURT: YOU CAN ANSWER THE QUESTION.

28 MR. GESSLER: TELL US THAT CONVERSATION IN

52875

1 THE PRESENCE OF LYLE AND ERIK.

2 THE WITNESS: WELL, HE JUST -- HE TOLD ME THE
3 OTHER COACHES THAT HE WAS TAKING THEM TO.

4 Q BY MR. GESSLER: DID HE GIVE NAMES?

5 A YES.

6 Q WERE THEY PEOPLE KNOWN TO YOU?

7 A YES, THEY WERE.

8 Q IS THERE ANY PROBLEM, FROM YOUR
9 PROFESSIONAL STANDPOINT, FOR SOMEBODY BEING COACHED
10 BY MORE THAN ONE COACH AT THAT PARTICULAR TIME AT
11 THAT --

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: YOU CAN ANSWER THE QUESTION.

14 THE WITNESS: YES.

15 Q BY MR. GESSLER: WHAT'S THAT?

16 A IT'S BETTER TO HAVE ONE COACH, SO THAT

17 YOU DON'T HAVE CONTRADICTIONS IN STYLE OR TECHNICAL

18 TERMS OR PHILOSOPHIES.

19 IF YOU TAKE A CHILD TO MORE THAN ONE

20 COACH THEY GET CONFUSED, AND THEY DON'T KNOW WHAT TO

21 DO WITH A CERTAIN SHOT OR -- IT'S JUST A LOT OF

22 JUMBLE IN THEIR BRAINS. AND THEY HEAR ONE THING

23 FROM ONE GUY, ONE THING FROM ANOTHER GUY.

24 SO IN A TIME WHEN THEY HAVE TO PLAY OR

25 YOU'RE UNDER PRESSURE OR IN A MATCH YOU CAN'T

26 PERFORM, BECAUSE YOU'RE NOT SURE WHAT YOU'RE DOING.

27 AND IT SLOWS DOWN THE PROGRESS, BECAUSE

28 THEN YOU HAVE TO DEFEND WHAT YOU'VE TOLD THE CHILD.

52876

1 AND THIS GUY SAID THIS AND YOU HAVE TO EXPLAIN WHY

2 THAT'S NOT CORRECT. AND SO IT WASTES TIME.

3 Q DID YOU TELL THAT TO MR. MENENDEZ?

4 A YES.

5 Q AND WHAT DID HE RESPOND TO YOU, IN THE

6 PRESENCE OF LYLE AND ERIK MENENDEZ, ABOUT THAT?

7 A WELL, MOST OF THE TIME I TRIED TO TELL

8 HIM ANYTHING, HE TOLD ME I DIDN'T KNOW WHAT I WAS

9 TALKING ABOUT. AND HE THOUGHT HE KNEW EVERYTHING
10 ABOUT TENNIS.

11 Q DID YOU FEEL HE KNEW MORE ABOUT TENNIS
12 THAN YOU DID?

13 A NO. I DON'T THINK HE KNEW ANYTHING.

14 Q AND DID YOU EXPRESS TO HIM FROM TIME TO
15 TIME THE FACT THAT YOU WERE THE COACH AND YOU HAD TO
16 CALL THE SHOTS, SO TO SPEAK?

17 A YES, I DID.

18 Q WHAT DID HE RESPOND TO THAT?

19 A HE DIDN'T LIKE IT. EVENTUALLY, AFTER I
20 STOOD UP TO HIM FIVE OR SIX TIMES, THEN EVENTUALLY
21 WE HAD ONE OF THESE MEETINGS OR CONFRONTATIONS, OR
22 WHATEVER YOU WANT TO CALL IT, ON THE COURT OUT
23 THERE, WITH THE TWO GUYS THERE, WITH LYLE AND ERIK
24 THERE AND --

25 Q LET ME ASK YOU SOMETHING BEFORE WE GET
26 TO THAT.

27 DURING THIS TIME THAT YOU HAD LYLE
28 MENENDEZ AS A PUPIL, DID HE WORK HARD WITH YOU?

52877

1 A YES, HE WORKED VERY HARD.

2 Q AND AT SOMETIMES DID YOU HAVE OCCASION
3 TO TALK WITH MRS. MENENDEZ, IN THE PRESENCE OF LYLE

4 MENENDEZ, ABOUT HIS TENNIS?

5 A YES.

6 Q WOULD SHE EVER BRING ANYTHING TO YOU,
7 LIKE A DAY'S INSTRUCTIONS, OR THINGS LIKE THAT?

8 A EVERY DAY THEY TRIED TO DICTATE WHAT I
9 WOULD TEACH THEM.

10 Q WOULD THIS BE WRITTEN OR VERBAL? HOW
11 WOULD THAT COME ABOUT?

12 A IT WOULD BE WRITTEN. AND THEN SHE WOULD
13 GIVE IT TO ME VERBALLY.

14 Q AT THE SAME TIME, DID YOU ALSO SEE
15 SCHEDULES FOR LYLE MENENDEZ AS TO WHAT HIS DAILY
16 ACTIVITIES WERE TO BE?

17 A THEY HAD TASKS, LISTS, WHATEVER YOU WANT
18 TO CALL IT. BUT I WAS NEVER ALLOWED TO SEE THEM. I
19 SAW THE PAPER, BUT I NEVER SAW WHAT WAS ON THE
20 PAPER.

21 Q WOULD YOU, FROM TIME TO TIME, PICK LYLE
22 MENENDEZ UP FROM SCHOOL TO DO THIS TEACHING THAT YOU
23 DID?

24 A ALL THE TIME.

25 Q DID YOU EVER TALK TO LYLE MENENDEZ -- I'M
26 SORRY -- TO JOSE MENENDEZ IN THE PRESENCE OF LYLE AND
27 ERIK ABOUT THIS PHILOSOPHY HE HAD THAT WINNING IS
28 EVERYTHING, FINISHING SECOND OR LESS THAN WINNING IS

1 LIKE KISSING YOUR SISTER, THINGS OF THAT NATURE?

2 A YES, I DID.

3 Q COULD YOU TELL US ABOUT HOW MANY TIMES

4 YOU TALKED TO HIM ABOUT THAT?

5 A MANY TIMES. SIX, SEVEN TIMES.

6 Q DID YOU AGREE WITH THAT PHILOSOPHY OF

7 HIS?

8 A NO.

9 Q DID YOU TELL HIM YOU DISAGREED?

10 A YES.

11 Q WHAT WOULD HIS ANSWER BE?

12 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND

13 IRRELEVANT.

14 THE COURT: COULD YOU PERHAPS LAY A

15 FOUNDATION AS TO THE CIRCUMSTANCES.

16 Q BY MR. GESSLER: THESE CONVERSATIONS

17 THAT YOU HAD WITH MR. MENENDEZ ABOUT HIS PHILOSOPHY

18 THAT WINNING IS EVERYTHING AND FINISHING SECOND IS

19 NOTHING, WOULD THOSE OCCUR IN THE PRESENCE OF LYLE

20 AND ERIK MENENDEZ?

21 A YES.

22 Q AND WOULD THEY SOMETIMES GET HEATED,

23 WHERE YOU WOULD TALK LOUDLY TO EACH OTHER?

24 A YES.

25 Q YOU AND MR. MENENDEZ?

26 A YES.

27 Q WHAT DID YOU TELL HIM YOUR PHILOSOPHY

52879

1 A THAT HE SHOULDN'T PUT THE FOCUS ON
 2 WINNING OR LOSING, BECAUSE YOU WIN, HOPEFULLY, MORE
 3 THAN YOU LOSE. BUT YOU LOSE A LOT. AND THAT A
 4 STUDENT, WHETHER IT'S A CHILD OR AN ADULT, OR
 5 WHATEVER, SHOULD PLAY TENNIS FOR THE GAME AND THE
 6 LOVE OF THE GAME AND THE ART FORM AND THE EFFORT;
 7 THAT AS LONG AS YOU GAVE IT YOUR ALL, YOU WON,
 8 WHETHER THE SCORE WAS WIN OR LOSE; AND THAT IF YOU
 9 JUST PUT THE FOCUS ON WINNING, THAT THAT CHILD WOULD
 10 NEVER WIN, BECAUSE THEY WOULD BE SO NERVOUS AND
 11 PARANOID; THAT YOU JUST CAN'T PERFORM UNDER THAT
 12 PRESSURE.

13 AND SO, YOU KNOW, I JUST BASICALLY TRIED
 14 TO GET THAT ACROSS TO HIM, THAT HE NEEDED TO CHANGE
 15 HIS EXPECTATIONS AND JUST TRY TO HAVE THEM WORK HARD
 16 AND PLAY THEIR BEST AND SUPPORT THEM, WIN OR LOSE.

17 Q WHEN YOU TOLD THIS TO LYLE AND ERIK
 18 MENENDEZ' FATHER IN THEIR PRESENCE, WHAT DID HE
 19 RESPOND TO YOU ABOUT THAT?

20 A WELL, MOST OF THE TIME -- I MEAN, EVERY
 21 TIME HE TOLD ME THAT I DIDN'T KNOW WHAT I WAS
 22 TALKING ABOUT; THAT HE SAW THEM DO THIS ON TV AND HE

23 SAW THEM DO THAT ON TV; AND THAT HE WANTED HIS KIDS
24 TO DO THAT.
25 AND ULTIMATELY, THE LAST TIME WE
26 REALLY -- I GUESS HE GOT SICK OF ME SAYING THAT.
27 AND THEN THE LAST CONVERSATION WHERE WE MET IN THEIR
28 BACKYARD, I --

52880

1 Q LET ME BACK UP FOR A MINUTE JUST TO SET
2 THE SCENE FOR THAT.

3 THIS IS THE BACKYARD OF THE MENENDEZ
4 HOUSE?

5 A YES. THEY HAD A TENNIS COURT IN THE
6 BACKYARD.

7 Q IS IN NEW JERSEY, THE PRINCETON AREA
8 THERE?

9 A RIGHT.

10 Q AND LYLE AND ERIK WERE PRESENT, WERE
11 THEY?

12 A YES, THEY WERE. WE WERE AT THE NET POST
13 AND THEY WERE IN BACK OF THE COURT.

14 Q AND YOU AND MR. MENENDEZ THEN GOT INTO A
15 DEBATE ABOUT YOUR PHILOSOPHY AND HIS PHILOSOPHY OF
16 WINNING, DID YOU?

17 A RIGHT. I JUST GOT FED UP WITH HIM

18 COMING IN FROM OUT OF TOWN AND THEN, UNDOING
19 EVERYTHING I HAD BEEN WORKING FOR MONTHS, AND SO...

20 Q IN THIS ARGUMENT THAT YOU HAD -- IT WAS
21 AN ARGUMENT, WASN'T IT?

22 A UH-HUH.

23 Q IN THIS ARGUMENT THAT YOU HAD WITH
24 MR. MENENDEZ AT THE BACK HOUSE THERE, WITH LYLE AND
25 ERIK PRESENT, DID YOU TELL HIM ANYTHING ABOUT HOW
26 DESTRUCTIVE THIS WINNING-IS-EVERYTHING THEORY WAS?

27 A YES, I DID.

28 Q TELL US ABOUT THAT.

52881

1 A WELL, I COULDN'T GET THROUGH TO HIM. SO
2 I GAVE HIM EXAMPLES OF KIDS I'D COACHED AND KIDS
3 I'VE KNOWN WHO HAD SIMILAR DOMINANT PARENTS.

4 Q TELL US ABOUT THOSE EXAMPLES.

5 A I'M SORRY?

6 Q TELL US ABOUT THOSE EXAMPLES THAT YOU
7 TOLD MR. MENENDEZ ABOUT AT THAT TIME.

8 A I TOLD ABOUT HIM A GUY FROM MY HOME TOWN
9 NAMED BILLY HARRIS --

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: ALL RIGHT. I DON'T THINK WE HAVE
12 TO GO INTO ALL THIS DETAIL WITH THE CONVERSATION.

13 PERHAPS YOU CAN JUST SUMMARIZE IT --

14 MR. GESSLER: YES.

15 THE COURT: -- WITHOUT GIVING NAMES. PEOPLE
16 WHO WERE INVOLVED.

17 Q BY MR. GESSLER: DID YOU GIVE HIM
18 EXAMPLES OF YOUNG MEN YOU KNEW WHO HAD BEEN
19 DESTROYED BY THIS THEORY OF WINNING IS EVERYTHING?

20 A YES. I KNEW TWO GUYS THAT HAD KILLED
21 THEMSELVES, AND A GIRL WHO HAD BECOME BULIMIC AND
22 ANOREXIC. AND I DON'T KNOW IF SHE LIVED OR DIED.
23 SHE DISAPPEARED.

24 AND SEVERAL OTHER CASES OF PEOPLE I HAD
25 KNOWN THAT HAD FOLDED AND GOTTEN INTO DRUGS AND
26 FOUND OTHER WAYS TO GET AWAY FROM IT.

27 Q AND DID YOU TELL HIM ANYTHING ABOUT THAT
28 THAT HAD OCCURRED FROM THE STRESS OF TRYING TO BE

52882

1 NO. 1 IN EVERYTHING?

2 A YES. AND I WARNED HIM THAT IF HE DIDN'T
3 QUIT PUSHING THE BOYS SO HARD, THAT THERE COULD BE
4 AN ADVERSE CONSEQUENCE WITH THEM, AND THEY MIGHT NOT
5 CONTINUE TO PLAY.

6 Q AND DID HE THEN AGREE WITH YOU AND SAY,
7 "GOSH, THANK YOU, COACH. I'M GLAD YOU BROUGHT THAT

8 TO MY ATTENTION AND I'LL CHANGE MY WAYS"?

9 A NO.

10 Q WHAT DID HE DO?

11 A HE JUST GOT UP IN MY FACE AND

12 SAID, "YOU'RE NAIVE AND YOU DON'T KNOW WHAT YOU'RE

13 TALKING ABOUT, AND YOU'RE FIRED."

14 MR. GESSLER: THANK YOU.

15 NOTHING FURTHER.

16 THE COURT: ANYTHING ON BEHALF OF ERIK

17 MENENDEZ?

18 MR. LEVIN: NO, YOUR HONOR.

19 THE COURT: OKAY. CROSS.

20

21 CROSS-EXAMINATION

22 BY MR. CONN:

23 Q NOW, MR. WADLINGTON, YOU KNEW THAT JOSE

24 MENENDEZ WAS A WEALTHY AND SUCCESSFUL MAN?

25 A YES.

26 Q AND YOU TOLD HIM THAT YOU DISAGREED WITH

27 HIS PHILOSOPHY THAT WINNING IS EVERYTHING?

28 A YES.

52883

1 Q AND HE TOLD YOU THAT YOU WERE THE ONE

2 WHO'S WRONG; IS THAT CORRECT?

3 A YES.

4 Q NOW, YOUR FATHER TRAINED YOU?

5 A YES. WELL, HE PRACTICED WITH ME. I HAD
6 COACHES, BUT HE PRACTICED WITH ME.

7 Q AND YOUR FATHER WAS HARSHER THAN JOSE
8 MENENDEZ; IS THAT CORRECT?

9 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS AS
10 IRRELEVANT.

11 THE COURT: SUSTAINED.

12 MS. ABRAMSON: AND MOVE TO STRIKE THE
13 PREVIOUS QUESTION ALSO.

14 THE COURT: OVERRULED.

15 Q BY MR. CONN: DID YOU PREVIOUSLY
16 DESCRIBE YOUR FATHER AS BEING HARSHER THAN JOSE
17 MENENDEZ?

18 MS. ABRAMSON: I'M GOING TO OBJECT ON THE
19 SAME GROUNDS. IT'S HEARSAY.

20 THE COURT: AT THIS POINT IT'S HEARSAY.

21 Q BY MR. CONN: YOU DIDN'T LIKE JOSE
22 MENENDEZ?

23 A NOT MUCH.

24 Q DID HE REMIND YOU OF ANYONE THAT YOU
25 DISLIKED?

26 A NO.

27 Q DID YOUR FATHER TRAIN YOU HARDER THAN
28 YOU TRAINED THE DEFENDANTS?

1 MS. ABRAMSON: SAME OBJECTION.

2 MR. GESSLER: I'LL ALSO OBJECT AS IRRELEVANT.

3 THE COURT: REPHRASE THE QUESTION.

4 SUSTAINED.

5 Q BY MR. CONN: DID YOU TRAIN HARDER THAN
6 YOU TRAINED THE DEFENDANTS?

7 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT AS
8 IRRELEVANT, YOUR HONOR.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER THE QUESTION.

11 THE WITNESS: I DIDN'T HAVE TO DO SOME OF THE
12 EXTRA CURRICULAR THINGS THAT THEY WERE FORCED TO
13 DO. I PRACTICED AS MUCH. BUT I WASN'T FORCED TO DO
14 EXTRACURRICULAR LONG-DISTANCE RUNNING AND
15 WEIGHT-LIFTING AND THAT KIND OF THING.

16 Q BY MR. CONN: DID YOU PREVIOUSLY TESTIFY
17 THAT YOU TRAINED HARDER, YOU WORKED HARDER, YOU RAN
18 MORE, AND YOU HIT MORE BALLS, AND YOU HAD MORE
19 PHYSICAL TRAINING THAN THE DEFENDANTS IN THIS CASE?

20 A YES.

21 Q AND WHAT DOES IT TAKE TO BECOME A TOP
22 TENNIS PLAYER, MR. WADLINGTON?

23 A A LOT OF PRACTICE AND A LOT OF LOVE AND
24 SUPPORT FROM YOUR FAMILY.

25 Q AND YOU WERE ANGRY WITH MR. MENENDEZ

26 WHEN HE FIRED YOU; IS THAT CORRECT?

27 A I DON'T THINK I WAS ANGRY.

28 Q WELL, YOU TOLD JOSE MENENDEZ TO BE A

52885

1 FATHER AND STOP BEING COACH; IS THAT CORRECT?

2 A THOSE WEREN'T MY EXACT WORDS, BUT THAT'S
3 THE THEME OF WHAT I TOLD HIM.

4 Q WELL, DID YOU PREVIOUSLY TESTIFY UNDER
5 OATH ON AUGUST THE 20TH OF 1993 --

6 MS. ABRAMSON: WAIT, WAIT. SLOW DOWN AND GET
7 THIS PAGE CITE.

8 WHAT PAGE CITE, COUNSEL?

9 MR. CONN: PAGE 12,123.

10 MS. ABRAMSON: WHAT LINE, COUNSEL?

11 MR. CONN: LINES 11 THROUGH 14.

12 MS. ABRAMSON: OBJECTION, YOUR HONOR.

13 HEARSAY. NO FOUNDATION.

14 THE COURT: WHAT WAS THE QUESTION YOU WANTED
15 TO ASK?

16 MR. CONN: THE QUESTION IS:

17 Q DID YOU PREVIOUSLY TESTIFY THAT YOU TOLD
18 JOSE MENENDEZ TO JUST BE A FATHER AND LET YOU BE THE
19 COACH?

20 MS. ABRAMSON: I'M GOING TO OBJECT. IT'S

21 INCOMPLETE, AND I DON'T BELIEVE IT'S INCONSISTENT.
22 THE COURT: OVERRULED. OVERRULED.
23 THE WITNESS: WHEN WE HAD THAT LAST
24 CONFRONTATION, WHAT I BELIEVE LED UP TO HIS GETTING
25 SO MAD AND FIRING ME, WAS THAT I TOLD HIM; "WHY
26 DON'T YOU JUST SIT OVER THERE AND BE THE FATHER, AND
27 LET ME BE THE COACH," I BELIEVE WERE MY EXACT WORDS.
28 Q BY MR. CONN: DO YOU FEEL IT WAS

52886

1 APPROPRIATE FOR YOU TO TELL HIM THAT HE COULD NOT
2 COACH HIS OWN SONS?

3 A YES.

4 Q AND WHY DID YOU FEEL THAT THAT WAS
5 APPROPRIATE, THAT YOU COULD TELL JOSE MENENDEZ
6 WHETHER OR NOT HE CAN COACH HIS OWN SONS?

7 A ONE, HE HAD NO KNOWLEDGE OF HOW TO
8 COACH; AND, TWO, I'VE NEVER SEEN A SUCCESSFUL
9 PARENT-CHILD COACHING RELATIONSHIP.

10 Q AND WERE YOU SURPRISED WHEN JOSE
11 MENENDEZ FIRED YOU AFTER YOU TOLD HIM THAT HE SHOULD
12 NOT COACH HIS OWN SONS?

13 A BY THAT TIME I DON'T KNOW IF I WAS
14 SURPRISED OR NOT. IT WAS -- I HAD BEEN THROUGH SO
15 MUCH WITH HIM THAT IT DIDN'T REALLY CATCH ME BY

16 SURPRISE.

17 Q AND HOW LONG DID YOU CONTINUE TO RECEIVE
18 PAY FROM JOSE MENENDEZ?

19 MS. ABRAMSON: OBJECTION. ASSUMES FACTS NOT
20 IN EVIDENCE.

21 THE COURT: IT'S UNCLEAR WHAT YOU MEAN. YOU
22 MEAN AFTER HE WAS FIRED?

23 MR. CONN: NO, NO. LET ME REPHRASE IT.

24 Q DID YOU RECEIVE YOUR PAY FROM JOSE
25 MENENDEZ?

26 MS. ABRAMSON: OBJECTION, YOUR HONOR. VAGUE.

27 THE COURT: DURING THE TIME HE WAS TEACHING,
28 DID MR. MENENDEZ PERSONALLY PAY HIM?

52887

1 MR. CONN: YES.

2 Q DID HE PERSONALLY PAY YOU?

3 A KITTY DID THE PAYING.

4 Q AND HOW LONG DID YOU WORK FOR THE
5 MENENDEZ FAMILY TEACHING THEIR SONS?

6 A FIVE YEARS.

7 Q AND WERE YOU HAPPY WORKING FOR THEM
8 DURING THAT ENTIRE TIME PERIOD?

9 A I REALLY ENJOYED WORKING WITH THE BOYS.

10 Q WERE YOU HAPPY WORKING FOR THE MENENDEZ

11 FAMILY DURING THAT ENTIRE TIME PERIOD?

12 A NO. IT WAS A STRUGGLE.

13 Q I'M SORRY?

14 A IT WAS A STRUGGLE.

15 Q WHY DID YOU CONTINUE TO WORK IF YOU WERE

16 UNHAPPY?

17 A I DID IT FOR THE KIDS.

18 Q BECAUSE YOU FELT THAT IT'S SO IMPORTANT

19 THAT THEY LEARN HOW TO PLAY TENNIS PROPERLY?

20 A NO. WE HAD A GOOD RELATIONSHIP, A VERY

21 CLOSE RELATIONSHIP, AND I CARED A LOT ABOUT THEM.

22 AND I FELT SORRY FOR THEM. SO I WANTED TO KEEP

23 WORKING WITH THEM.

24 MR. CONN: NO FURTHER QUESTIONS.

25 THE COURT: ANYTHING ELSE?

26 MR. GESSLER: TWO FURTHER QUESTIONS, YOUR

27 HONOR.

28 THE COURT: OKAY.

52888

1

2 REDIRECT EXAMINATION

3 BY MR. GESSLER:

4 Q MR. WADLINGTON, AS FAR AS YOUR OWN

5 FATHER WAS CONCERNED, WAS THERE ANYTHING THAT SAVED

6 YOU IN THAT RELATIONSHIP SO THAT YOU DIDN'T END UP

7 COMMITTING SUICIDE OR OTHER DESTRUCTIVE HABITS?

8 A I HAD A GOOD MOTHER.

9 Q DID SHE HELP YOU IN THAT?

10 A YES, SHE DID.

11 Q DID SHE STAND BETWEEN YOU AND YOUR

12 FATHER IN SOME OF THESE THINGS?

13 A WHEN SHE COULD. BUT SHE WOULD TAKE ME

14 TO THE SIDE AND EXPLAIN --

15 Q SHE WAS SUPPORTIVE?

16 A -- WHY I HAD BEEN TREATED BADLY AND NOT

17 TO TAKE IT PERSONAL, THAT --

18 Q DID THAT HELP YOU?

19 A YES.

20 Q WHEN YOU WERE FIRED BY JOSE MENENDEZ,

21 DID YOU FEEL SORRY FOR LYLE MENENDEZ AT THAT TIME

22 BECAUSE THIS HAD HAPPENED?

23 A YEAH, I DID.

24 Q WHY WAS THAT?

25 A WELL, SOUNDS VAIN, BUT I THOUGHT I WAS

26 ALL THEY HAD.

27 MR. GESSLER: THANK YOU.

28 NOTHING FURTHER, YOUR HONOR.

1

2 REDIRECT EXAMINATION

3 BY MS. ABRAMSON:

4 Q YOU THOUGHT YOU WERE ALL WHO HAD?

5 A LYLE AND ERIK.

6 Q DID YOU EVER SEE ANYONE BEING SUPPORTING

7 OR NURTURING TOWARDS THEM?

8 A NO.

9 Q WAS THEIR MOTHER LIKE YOUR MOTHER? DID

10 THEIR MOTHER TRY TO SPARE THEM OR COMFORT THEM OR

11 NURTURE THEM, THAT YOU COULD SEE?

12 A NO.

13 Q WAS SHE KIND TO THEM?

14 A NO.

15 Q WAS SHE GENTLE WITH THEM?

16 A NO.

17 Q DID SHE ENFORCE THE TENNIS AGENDA AS

18 WELL AS MR. MENENDEZ?

19 A YES.

20 Q DID YOU HEAR HER BEING HOSTILE AND ANGRY

21 WITH THEM?

22 A SARCASTIC.

23 Q AND CRITICAL?

24 A YES.

25 Q WAS YOUR MOM LIKE THAT?

26 A NO.

27 MS. ABRAMSON: NOTHING FURTHER.

28 THE COURT: ANYTHING ELSE?

1 MR. CONN: YES.

2

3 RECROSS-EXAMINATION

4 BY MR. CONN:

5 Q DID YOU FEEL YOUR TRAINING OF THE
6 DEFENDANTS WAS CRUEL?

7 A NO.

8 Q DID YOU SEE ANY REASON WHY KITTY
9 MENENDEZ WOULD HAVE TO GIVE THEM COMFORT WHILE YOU
10 WERE TRAINING THEM?

11 A NOT FROM WHAT WE DID.

12 Q AND KITTY MENENDEZ WAS -- TREATED YOU
13 WELL, DIDN'T SHE?

14 A NOT REALLY. SHE WAS RUDE AND
15 UNPLEASANT.

16 Q DID YOU PREVIOUSLY TESTIFY THAT KITTY
17 MENENDEZ WAS VERY NICE TO YOU?

18 A I DON'T BELIEVE SO.

19 MR. LEVIN: COULD WE HAVE A PAGE, YOUR
20 HONOR?

21 LINES, MR. CONN?

22 MR. CONN: I DON'T HAVE A PAGE.

23 MS. ABRAMSON: MOVE TO STRIKE THE QUESTION,
24 YOUR HONOR.

25 THE COURT: OVERRULED.
26 YOUR NEXT QUESTION.
27 Q BY MR. CONN: HOW MUCH CONTACT DID YOU
28 HAVE WITH KITTY MENENDEZ?

52891

1 A I SAW HER ALMOST EVERY DAY.
2 THE COURT: HOW MUCH LONGER ARE YOU GOING TO
3 BE WITH THE WITNESS?
4 MR. CONN: JUST TWO MINUTES, YOUR HONOR.
5 Q ALMOST EVERY DAY DURING WHAT PERIOD OF
6 TIME?
7 A '81 TO ABOUT '83 AND THREE QUARTERS, OR
8 THE END OF '83, AND THEN THEY DROPPED OUT FROM ME
9 FOR A WHILE, AND THEN THEY CAME BACK AGAIN LATER,
10 AND -- ERIK CAME BACK. AND I COACHED ERIK UP UNTIL I
11 LEFT NEW JERSEY.
12 Q AND YOU'RE SAYING YOU SAW HER EVERY
13 SINGLE DAY OF THE WEEK, SEVEN DAYS A WEEK DURING
14 THAT TIME PERIOD?
15 A THE DAYS THAT I COACHED THEM.
16 Q AND HOW MANY DAYS WAS THAT?
17 A WELL, USUALLY, IF THEY DIDN'T HAVE A
18 TOURNAMENT, IT WAS SEVEN DAYS A WEEK. AND IF THEY
19 DID HAVE A TOURNAMENT, IT WAS USUALLY FIVE DAYS A

20 WEEK.

21 Q AND HOW OFTEN DID YOU FEEL THAT SHE
22 TREATED YOU INAPPROPRIATELY?

23 A WELL, SHE JUST -- I MEAN, SHE JUST -- IT
24 WAS LIKE YOU WEREN'T THERE. YOU WERE LIKE -- SHE
25 WAS NEVER PLEASANT. SHE WAS JUST KIND OF OBNOXIOUS.

26 Q OBNOXIOUS IN WHAT WAY?

27 A JUST NOT FRIENDLY. YOU EXPECT A PARENT
28 THAT YOU'RE HELPING THEIR CHILDREN TO AT LEAST BE

52892

1 POLITE AND PLEASANT AND BE NICE TO YOU, AND NOT
2 TREAT YOU LIKE A SLAVE.

3 Q AND THAT'S HOW YOU FELT YOU WERE
4 TREATED, LIKE A SLAVE?

5 A UH-HUH.

6 Q DID YOU FEEL THAT YOU HAD A PRETTY GOOD
7 RELATIONSHIP WITH HER?

8 A I HAD NO RELATIONSHIP WITH HER. I JUST
9 KNEW HER.

10 Q DID YOU PREVIOUSLY TESTIFY THAT YOU
11 THOUGHT YOU AND SHE HAD A PRETTY GOOD RELATIONSHIP?

12 A I DON'T REMEMBER THAT.

13 MS. ABRAMSON: COULD WE HAVE A PAGE CITE?

14 MR. CONN: DIRECTING COUNSEL'S ATTENTION TO

15 VOLUME 73, PAGE 12,050.

16 MS. ABRAMSON: LINE CITE, COUNSEL.

17 MR. CONN: LINE 14 AND 15.

18 MS. ABRAMSON: WELL, I WOULD OBJECT, YOUR
19 HONOR, WITHOUT COUNSEL GOING ALL THE WAY BACK TO
20 12,049. YOU HAVE TO GO ALL THE WAY BACK TO PUT THIS
21 IN CONTEXT. 12,048, LINE 18. ANYTHING ELSE IS OUT
22 OF CONTEXT AND NOT IMPEACHING.

23 MR. CONN: I WOULD ASK THE COURT TAKE A LOOK
24 AT IT.

25 THE COURT: I'LL LOOK AT THAT, BUT WE'LL
26 RESUME AT 1:30. THE JURY IS EXCUSED TILL 1:30.

27 DON'T DISCUSS THE MATTER AND DON'T FORM
28 ANY FINAL OPINIONS ABOUT IT, AND WE'LL RESUME AT

52893

1 1:30.

2 WHY DON'T YOU SHOW ME.

3 (THE JURY ENTERED THE JURY ROOM
4 AND THE FOLLOWING PROCEEDINGS
5 WERE HELD:)

6

7 THE COURT: ALL RIGHT. AS FAR AS THE
8 IMPEACHMENT, THIS ONE COMMENT IS IMPEACHING.

9 HOWEVER, IF THE DEFENSE SEEKS TO BRING

10 OUT THE BALANCE OF THAT PORTION OF THE EXAMINATION
11 ON REDIRECT, THEY CAN DO THAT. BUT THAT DOESN'T
12 REQUIRE THAT THE PROSECUTION DO IT IN ITS
13 EXAMINATION.

14 MS. ABRAMSON: BUT THE DIFFERENCE BETWEEN THE
15 QUESTION AND WHAT THE WITNESS SAID WAS --

16 THE COURT: I UNDERSTAND. I READ IT. MY
17 RULING IS THAT THE PEOPLE CAN ASK THE QUESTION.

18 MS. ABRAMSON: IF THAT WAS POSSIBLE.

19 THE COURT: IF YOU CHOOSE TO GO BACK AND
20 COVER THE CONVERSATION AND PUT IT IN A DIFFERENT
21 CONTEXT, YOU MAY DO THAT.

22 MS. ABRAMSON: IT ISN'T THAT, YOUR HONOR.

23 IF THE QUESTION TO THE WITNESS WAS:
24 "DID YOU PREVIOUSLY TESTIFY YOU THOUGHT SHE AND I
25 HAD A PRETTY GOOD RELATIONSHIP, IF THAT WAS
26 POSSIBLE," THAT IS ONE THING. THAT'S NOT THE WAY
27 THE QUESTION IS BEING ASKED.

28 THE COURT: I REALLY DO UNDERSTAND THAT.

52894

1 WE'LL BE IN RECESS UNTIL 1:30.

2 (AT 12:08 P.M. PROCEEDINGS WERE

3 ADJOURNED FOR LUNCH UNTIL 1:30 P.M.

4 THE SAME DAY.)

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1 VAN NUYS, CALIFORNIA; THURSDAY, MARCH 28, 1996

2 1:40 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN FADALE, OFFICIAL REPORTER)

7

8 (THE FOLLOWING PROCEEDINGS WERE

9 HELD OUT OF THE PRESENCE OF

10 THE JURY:)

11

12 MS. ABRAMSON: JUDGE, BEFORE WE START, I JUST

13 HAVE A SIMPLE QUESTION, OKAY?

14 FOR CERTAIN WITNESSES, WE'RE GOING TO HAVE

15 THEM REFER TO THE RECORD -- THE SCHOOL RECORDS FROM

16 PRINCETON DAY SCHOOL, AND ALSO SCHOOL RECORDS FROM THE

17 LEWIS SCHOOL.

18 NOW, I DON'T KNOW IF THE -- IF THE

19 HEARSAY -- IF THE TOLERANCE FOR HEARSAY IN A PENALTY

20 PHASE WOULD EXTEND TO SUCH RECORDS, OR IF THE PEOPLE ARE

21 GOING TO OBJECT TO THEM AND FORCE US TO BRING IN

22 CUSTODIANS OF RECORD.

23 I HAVE CUSTODIANS OF RECORD LINED UP. IT'S

24 TWO ADDITIONAL, YOU KNOW, \$1500 PLANE TICKETS. IF I

25 NEED THEM, WE'LL ORDER THEM UP TODAY.

26 SO THAT'S WHAT I NEED TO KNOW. IF THEY'RE

27 GOING TO OBJECT TO THOSE RECORDS, THEN I HAVE TO BRING
28 IN THE CUSTODIANS.

-12640

1 THE COURT: OKAY. WHEN YOU SAY "OBJECT", YOU
2 MEAN OBJECT TO THE FOUNDATION OF THEIR AUTHENTICITY, NOT
3 TO THEIR ADMISSIBILITY OTHERWISE?

4 MS. ABRAMSON: I DON'T KNOW WHAT THEIR OBJECTION
5 WOULD BE, BUT OUR POSITION IS THEY'RE BUSINESS RECORDS.

6 THE COURT: RIGHT. NOT TALKING ABOUT RELEVANCE
7 OR ANYTHING?

8 MS. ABRAMSON: RIGHT.

9 THE COURT: JUST TALKING ABOUT HEARSAY AND/OR
10 AUTHENTICATION?

11 MS. ABRAMSON: RIGHT.

12 MR. CONN: YES. WE HAVEN'T EVEN SEEN THE
13 RECORDS. COUNSEL HAS NOT SHOWN US WHAT SHE IS REFERRING
14 TO.

15 IF WE HAVE A CHANCE TO EXAMINE THE RECORDS
16 AND PERHAPS DISCUSS WITH THE WITNESS OVER THE TELEPHONE
17 WHETHER A PROPER FOUNDATION CAN BE LAID, PERHAPS IT'S
18 SOMETHING WE CAN STIPULATE TO.

19 UNTIL WE HAVE AN OPPORTUNITY TO DO THAT, WE
20 WILL BE OBJECTING.

21 MS. ABRAMSON: THEY HAVE HAD THE P.D.S. RECORDS
22 FOR FOUR YEARS.

23 THE COURT: OKAY. BUT THEY DON'T KNOW YOU'RE
24 GOING TO USE THEM UNTIL YOU SAY YOU'RE GOING TO USE
25 THEM.
26 MS. ABRAMSON: BUT THEY DO HAVE THEM.
27 THE COURT: WHY DON'T YOU WORK OUT SOME MECHANISM
28 TO DISCUSS IT, AND SEE IF YOU CAN RESOLVE THE DISPUTE.

-12639

1 IT CAN BE DONE.
2 MS. ABRAMSON: FINE. I'LL BRING IN THE
3 CUSTODIANS.
4 THE COURT: WELL, THAT'S A FLIP RESPONSE, BUT THE
5 WAY TO DO IT IS TO TRY TO COMMUNICATE WITH THE
6 OPPOSITION.
7 MS. ABRAMSON: I KNOW, YOUR HONOR, BUT --
8 THE COURT: I DON'T NEED ANY RESPONSE TO THAT.
9 THAT IS A DIRECTION TO COMMUNICATE AND RESOLVE IT.
10 MS. ABRAMSON: I'LL COMMUNICATE.
11 THE COURT: NOW, THERE ARE A COUPLE OTHER ISSUES
12 THAT WERE MENTIONED YESTERDAY. ONE OF THEM HAD TO DO
13 WITH DISCOVERY REGARDING CERTAIN WITNESSES WHO ARE
14 SCHEDULED FOR FRIDAY, AND I DON'T KNOW IF THOSE
15 WITNESSES ARE GOING TO BE TESTIFYING ON FRIDAY, OR
16 DEPENDING ON THE PROGRESS WE'RE MAKING -- BECAUSE OF THE
17 PROGRESS WE'RE MAKING NOW, OR THE LACK OF IT, IF IT CAN
18 BE DONE NEXT WEEK.

19 THE PEOPLE HAVE MENTIONED THIS. I DON'T
20 KNOW IF IT'S BEEN RESOLVED OR NOT.
21 MS. NAJERA: IT HAS NOT, YOUR HONOR.
22 THE COURT: WHICH WITNESSES ARE YOU TALKING
23 ABOUT?
24 MS. NAJERA: FRIDAY THERE IS ONE WITNESS, KIRSTEN
25 SMITH, YOUR HONOR. ACTUALLY, ALTOGETHER, NOT INCLUDING
26 FRIDAY, THERE IS SOMETHING LIKE FOUR WITNESSES WE DON'T
27 HAVE DISCOVERY ON.
28 THE COURT: FRIDAY IS KIRSTEN SMITH.

-12638

1 MS. NAJERA: KIRSTEN SMITH.
2 THE COURT: I DON'T HAVE THAT PERSON ON THE LIST.
3 MS. NAJERA: SHE WAS SCHEDULED FOR TUESDAY, APRIL
4 2ND, AND THE DEFENSE INFORMS US THEY'RE PUTTING HER ON
5 ON FRIDAY.
6 MS. ABRAMSON: SHE HAS TO LEAVE THE COUNTRY
7 TUESDAY.
8 THE COURT: SO, THERE IS SOME STATEMENT FROM HER?
9 MS. ABRAMSON: SHE IS IN THE PROFFER. I DID A
10 SUMMARY OF THE TOPICS SHE WOULD BE TESTIFYING ABOUT
11 BASED ON AN ORAL INTERVIEW, AND I PUT IT IN THE PROFFER
12 THAT WAS FILED IN THIS COURT -- WHEN DID WE FILE THAT?
13 A WEEK AGO, OR LAST FRIDAY.
14 AND THAT'S WHAT SHE'S GOING TO TESTIFY

15 ABOUT, EXCEPT FOR I THINK THE LAST LINE, WHICH I CAN GO
16 OVER WITH COUNSEL.

17 THE COURT: SO YOU FEEL YOU'VE ALREADY PUT IN
18 WRITING WHAT IT IS SHE WILL SAY?

19 MS. ABRAMSON: YES, JUDGE. THE COURT INSTRUCTED
20 US TO DO THAT, AND WE DID.

21 MS. NAJERA: YOUR HONOR, FOR THE RECORD, THE
22 PROFFER THAT COUNSEL IS TALKING ABOUT IS A THREE-PAGE
23 DOCUMENT DEALING WITH SEVEN WITNESSES THAT THE COURT HAS
24 ALREADY REVIEWED AS PART OF THEIR MOTION.

25 I BELIEVE WE DISCUSSED THIS PREVIOUSLY AND
26 BROUGHT THIS TO THE COURT'S ATTENTION, AND THE COURT
27 AGREED THAT THESE WERE VERY, VERY CURSORY, VERY
28 SUPERFICIAL THINGS; THAT IF THEY WANTED TO CALL THESE

-12637

1 PEOPLE -- AND I CAN FIND IT IN THE TRANSCRIPT -- THEY
2 WERE TO GIVE A MORE DETAILED OFFER OF PROOF OR REPORT.
3 THIS WAS THE SUBJECT OF SOME DISCUSSION BEFORE.

4 MS. ABRAMSON: PERHAPS THERE IS SOMETHING WRONG
5 WITH MY MEMORY, WHICH IS CERTAINLY POSSIBLE. BUT I
6 DON'T RECALL THE COURT EVER COMMENTING ON THE DETAIL OF
7 THE PROFFER.

8 I THINK WHAT THE COURT WAS TALKING ABOUT
9 WAS HAVING TO DO WITH INDICATING THAT TESTIMONY WOULD BE
10 BASED ON ALL THE PREVIOUS TESTIMONY OR PREVIOUS

11 INTERVIEWS, AND THEN WHEN THAT CAME UP AGAIN, THE COURT
12 SAID IT WOULD TAKE OBJECTIONS AS THEY AROSE. I DON'T
13 RECALL THE COURT MAKING THE COMMENTS THAT COUNSEL SAID.

14 THE COURT: I ALSO OBSERVED THAT THERE MIGHT BE
15 SOME LACK OF DISCLOSURE OF WHAT IT WAS THAT CERTAIN
16 WITNESSES WOULD SAY.

17 I AM TRYING TO FIND THE PROFFER HERE, SO I
18 CAN BE ON THE SAME WAVE LENGTH AS YOU FOLKS.

19 OKAY. I HAVE IT.

20 MS. NAJERA: I THINK I HAVE A COPY.

21 THE COURT: I HAVE IT. DATED MARCH THE 7TH.

22 MS. NAJERA: THAT'S IT.

23 THE COURT: OKAY. SO THIS IS THE PROFFER AS TO
24 THIS PARTICULAR WITNESS?

25 MS. ABRAMSON: WELL, I'LL BE TALKING TO THE
26 WITNESS AGAIN LATER TODAY. IF THERE IS ANYTHING
27 ADDITIONAL, I WILL CERTAINLY LET COUNSEL KNOW BEFORE I
28 CALL THE WITNESS.

-12636

1 THE COURT: I DON'T RECALL DISCUSSION ON THE
2 RECORD FOLLOWING THE FILING OF THIS DOCUMENT ON MARCH
3 THE 7TH, QUITE FRANKLY.

4 MS. ABRAMSON: HERE IT IS.

5 THE COURT: THE OBSERVATIONS I MADE RELATED TO
6 EARLIER FILINGS AND DISCUSSIONS WHERE THE DEFENSE

7 INDICATED CERTAIN WITNESSES MIGHT BE CALLED, AND MADE A
8 GENERAL STATEMENT THAT THEY WOULD TESTIFY TO WHATEVER IS
9 IN INTERVIEW NOTES OR FORMER TESTIMONY. I WASN'T
10 REFERRING TO THIS PARTICULAR DOCUMENT.

11 SO IF NOW THE DEFENSE IS REPRESENTING THAT
12 THE TESTIMONY OF MS. SMITH WILL BE AS OUTLINED HERE,
13 THEN THAT CERTAINLY IS A SUFFICIENT OFFER FOR THAT
14 WITNESS.

15 MS. ABRAMSON: YES. I WILL MAKE ONE
16 MODIFICATION. I AM GOING TO TAKE SOMETHING OUT OF THIS.
17 BUT OTHER THAN THAT . . .

18 THE COURT: WELL, YOU DO THAT, AND THEN TELL THE
19 D.A. WHAT IT IS THAT YOU'RE REMOVING.

20 ANYTHING ELSE BEFORE THE JURY COMES IN?

21 MR. CONN: YES, I HAVE SOME ADDITIONAL MATTERS.

22 WE PREVIOUSLY INDICATED THAT WE WOULD LIKE
23 TO INTRODUCE PHOTOGRAPHS OF THE VICTIMS IN LIFE, AND WE
24 DO HAVE A CITATION FOR THAT.

25 PEOPLE VERSUS EDWARDS AT 54 CAL.3D 787.

26 MS. ABRAMSON: EXCUSE ME. WOULD YOU SAY THAT
27 AGAIN.

28 MR. CONN: YES. PEOPLE VERSUS EDWARDS, 54 CAL.3D

3 VICTIMS IN LIFE IN THIS CASE WERE CLEARLY ADMISSIBLE."

4 THE COURT GOES ON TO SAY THAT:

5 "ALTHOUGH WE HAVE CAUTIONED AGAINST
6 ADMITTING IRRELEVANT PHOTOGRAPHS OF THE VICTIMS WHILE
7 ALIVE AT GUILT PHASE, THE SAME CONSIDERATIONS DO NOT
8 APPLY AT PENALTY PHASE. EVIDENCE THAT IS IRRELEVANT AND
9 PREJUDICIAL TO DETERMINING GUILT MAY BE RELEVANT TO
10 JUDGE APPROPRIATE PUNISHMENT ONCE GUILT IS ESTABLISHED."

11 THE COURT: YOU DON'T HAVE TO READ THE ENTIRETY
12 OF IT. YOU CITED IT. LET'S LOOK AT IT. AND YOU'RE NOT
13 GOING TO USE IT WITH THIS WITNESS ANYWAY, SO LET'S GET
14 TO THAT LATER. THAT WAS A KIDNAP CASE, AS I RECALL.

15 MR. CONN: THE SECOND THING I WISH TO BRING UP IS
16 WE OBJECT TO QUESTIONS PUT TO ANY WITNESSES -- AND I
17 ANTICIPATE THAT THE QUESTION PUT TO MRS. BARALT
18 CONCERNING THE IMPACT THAT A DEATH SENTENCE WOULD HAVE
19 UPON THE FAMILY IS SOMETHING THAT IS LIKELY TO BE
20 REPEATED TO OTHER WITNESSES.

21 WE WOULD OBJECT TO THAT. I THINK THAT
22 WHILE IN RECENT YEARS THE SUPREME COURT HAS RECOGNIZED
23 SOMETHING THAT HAS BEEN REFERRED TO AS "VICTIM IMPACT
24 EVIDENCE," THAT IS, THE EFFECT OF THE DEATHS OF THE
25 VICTIMS UPON THE SURVIVING MEMBERS OF THE FAMILY, I
26 DON'T FIND ANY BASIS IN THE LAW FOR ALLOWING COUNSEL TO
27 ESTABLISH WHAT THE EFFECT OF A DEATH SENTENCE WOULD BE
28 UPON THE DEFENDANT'S FAMILY.

1 I MEAN, THAT SEEMS TO BE MORE THE NATURE OF
2 DEFENSE IMPACT EVIDENCE. AND WHILE THE JURY MAY
3 PROPERLY CONSIDER SYMPATHETIC ASPECTS OF THE DEFENDANT'S
4 CHARACTER OR RECORD, THERE IS NO PROVISION IN THE LAW
5 WHICH ALLOWS THE JURY TO HAVE SYMPATHY FOR THE
6 DEFENDANT'S FAMILY, AND TO THEN REJECT THE DEATH PENALTY
7 BECAUSE THEY HAVE SYMPATHY FOR SOMEONE IN NEW JERSEY OR
8 SOMEONE IN ILLINOIS.

9 THE COURT: WELL, THIS SITUATION IS A LITTLE
10 DIFFERENT, IN THAT YOU HAVE THE VICTIM'S FAMILY AND THE
11 DEFENDANT'S FAMILY BEING THE SAME FAMILY, NUMBER ONE.

12 NUMBER TWO, THERE ARE AT LEAST TWO
13 REFERENCES IN CALIFORNIA SUPREME COURT CASES TO THIS
14 VERY SUBJECT. ONE OF THEM IS PEOPLE VERSUS COOPER, AND
15 I DON'T, OFF THE TOP OF MY HEAD, RECALL THE OTHER ONE;
16 IN WHICH SUCH EVIDENCE WAS OFFERED BY THE DEFENSE IN THE
17 PENALTY PHASE, AND THE SUPREME COURT INDICATED THAT IT
18 HASN'T REALLY RULED UPON THAT ISSUE.

19 BECAUSE IT WAS ADMITTED IN THOSE TWO CASES,
20 IT WASN'T CALLED UPON TO RULE WHETHER IT WAS OR WAS NOT
21 ADMISSIBLE EVIDENCE.

22 AND THEREFORE, AS FAR AS THE CALIFORNIA
23 SUPREME COURT IS CONCERNED, IT'S AN OPEN QUESTION AS TO
24 WHAT THEY WOULD DO IF PUT TO THE TEST OF A TRIAL COURT
25 NOT ALLOWING THAT EVIDENCE.

26 MY VIEW IS, NUMBER ONE, I DON'T KNOW IF
27 THERE WILL BE ANY MORE SUCH QUESTIONS. SINCE WE HAD ONE

-12633

1 TO ASK ANY MORE ON THAT SUBJECT OF OTHER FAMILY MEMBERS.

2 DID YOU INTEND TO DO THAT?

3 MR. GESSLER: AT LEAST AS TO ONE OTHER. I DON'T
4 KNOW IF I WILL, OR MS. ABRAMSON WILL, BUT I BELIEVE
5 FAITH GOLDSMITH WILL BE ASKED THAT QUESTION.

6 THE COURT: SHE IS NOT A FAMILY MEMBER.

7 MR. GESSLER: NO, SHE IS NOT A FAMILY MEMBER.

8 THE COURT: I WOULDN'T SEE THAT THAT WOULD BE
9 ADMISSIBLE, A FRIEND.

10 MS. ABRAMSON: AT LEAST TWO FAMILY WITNESSES
11 MORE, YES. JOAN VANDERMOLLEN AND MARTHA CANO.

12 THE COURT: IT'S AN OPEN QUESTION, AS I SAID.
13 UNLESS YOU HAVE SOME OTHER AUTHORITY THAT'S MORE RECENT
14 THAN THOSE OF THE CALIFORNIA SUPREME COURT THAT I HAVE
15 READ, THE COOPER CASE IS ONE, AND I BELIEVE THE -- I
16 DON'T REMEMBER THE CITATION TO THE OTHER -- IN WHICH THE
17 SUPREME COURT SAID THEY ARE NOT DECIDING ONE WAY OR THE
18 OTHER. BUT IT WAS ADMITTED IN THOSE TWO CASE.

19 MY VIEW IS THAT THERE IS SOME SYMMETRY AND
20 SHOULD BE SOME SYMMETRY BETWEEN THE VICTIM IMPACT AND
21 THE IMPACT OF A DEATH SENTENCE ON THE DEFENDANT'S
22 FAMILY; AND MORE SO IN A CASE SUCH AS THIS, WHERE THE
23 FAMILY OF BOTH THE DEFENDANT AND THE VICTIM IS THE SAME.

24 AND I THINK IT'S APPROPRIATE THEREIN FOR BRIEF INQUIRY;
25 AND THEREFORE, WHEN THAT QUESTION WAS ASKED YESTERDAY,
26 YOU OBJECTED AND I OVERRULED THE OBJECTION.
27 AND THAT'S HOW WE'LL PROCEED.
28 ANYTHING ELSE THEN?

-12632

1 MR. CONN: YES. THE THIRD AREA IS IN REGARD TO
2 MRS. BARALT, WHICH I BELIEVE THE COURT INDICATED THAT WE
3 SHOULD TAKE UP TODAY BEFORE SHE LEAVES.

4 THE ONLY REMAINING AREA THAT I WANTED TO
5 INQUIRE OF MRS. BARALT WAS IN REGARD TO THE FACT THAT
6 SHE DID NOT OBSERVE KITTY MENENDEZ TO HAVE A PROBLEM
7 WITH ALCOHOL. THAT'S SOMETHING THAT I THINK IS
8 SIGNIFICANT THAT IS LIKELY TO BE RAISED BY THE DEFENSE
9 WITH OTHER WITNESSES. I THINK THAT IT'S SIGNIFICANT FOR
10 US TO ELICIT THAT FACT FROM HER.

11 SO I WOULD ASK THAT UNLESS THERE COULD BE A
12 STIPULATION TO THAT, OR IF THE COURT WOULD ALLOW ME TO
13 REOPEN OR TO TAKE THAT TESTIMONY OUT OF ORDER.

14 THE COURT: YOU MEAN THAT YOU WOULD ASK WHETHER
15 OR NOT THIS WITNESS EVER SAW THAT MRS. MENENDEZ SUFFERED
16 FROM ALCOHOL ABUSE?

17 MR. CONN: YES. I BELIEVE SHE PREVIOUSLY
18 TESTIFIED -- I DON'T HAVE THE EXACT PAGE IN FRONT OF ME
19 NOW, BUT SOMETHING TO THE EFFECT THAT SHE DID NOT KNOW

20 KITTY MENENDEZ TO HAVE A PROBLEM WITH ALCOHOL.

21 MS. ABRAMSON: I DON'T UNDERSTAND THE RELEVANCE
22 OF THAT, NUMBER ONE, FOR PENALTY PHASE. I DON'T EVEN
23 UNDERSTAND THE RELEVANCE OF IT, GIVEN THE POSTURE OF THE
24 CASE.

25 THE COURT: HE'S SAYING THAT HE EXPECTS IT TO
26 SOMEHOW COME OUT IN THE DEFENSE PRESENTATION, AND THAT
27 THIS WOULD BE IN REBUTTAL, WHICH THE PROSECUTION WILL
28 THEN OFFER AFTER THE DEFENSE RESTS.

-12631

1 MS. ABRAMSON: WE DON'T INTEND TO DO THAT, EXCEPT
2 THROUGH DR. COX, IF WE ARE ALLOWED TO PUT ON DR. COX.
3 AND IF WE ARE ALLOWED TO PUT ON DR. COX, THEN WE WILL
4 STIPULATE, IF THAT'S WHAT COUNSEL WANTS, THAT
5 MRS. BARALT, ALTHOUGH SHE DID SEE HER DRINK GALIANO IN
6 HER COFFEE FREQUENTLY, DID NOT SEE HER IN A CONDITION
7 THAT SHE WOULD CALL DRUNK OR ALCOHOLIC.

8 BUT WE ARE ONLY INTENDING TO BRING THAT OUT
9 THROUGH DR. COX. SO IF WE DON'T GET TO DO THAT, THEY
10 DON'T NEED TO DO THIS.

11 THE COURT: SO THE ONLY AREA IN WHICH THAT WOULD
12 COME OUT WOULD BE THROUGH COX?

13 SO ASSUMING COX IS PERMITTED TO TESTIFY,
14 WOULD THAT STIPULATION BE SATISFACTORY?

15 MR. CONN: YES, IF THAT IS -- I WOULD HAVE TO

16 REVIEW THE TESTIMONY.

17 THE COURT: MAYBE YOU CAN DO THAT THIS AFTERNOON,
18 AND FIND THE EXACT REFERENCE IN THE TRANSCRIPT TO WHAT
19 SHE WOULD SAY BEFORE WE EXCUSE HER.

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

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

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

26

27 THE COURT: THE JURY IS BACK, AND WE WILL
28 CONTINUE WITH THE RECROSS-EXAMINATION OF THE WITNESS.

-12630

1 MR. CONN: YES.

2 THE COURT: CROSS-EXAMINATION OF THE WITNESS.

3 MS. ABRAMSON: IS THIS CROSS OR RECROSS, JUDGE?
4 I'M CONFUSED.

5 THE COURT: IT DOESN'T MATTER. IT DOESN'T REALLY
6 MATTER. WHATEVER YOU DO WITHIN THE REDIRECT WOULD BE
7 WITHIN THE SCOPE OF THIS EXAMINATION.

8 MS. ABRAMSON: THANK YOU, JUDGE.

9

10 RECROSS-EXAMINATION

11 BY MR. CONN:

12 Q. MR. WADLINGTON, DID YOU PREVIOUSLY TESTIFY
13 ON AUGUST THE 20TH OF 1993 IN REGARD TO KITTY MENENDEZ:
14 "I THOUGHT SHE AND I HAD A PRETTY GOOD RELATIONSHIP, IF
15 THAT WAS POSSIBLE"?

16 A. I DID SAY IF THAT WAS POSSIBLE.

17 MR. CONN: OKAY, THANK YOU.

18 I HAVE NOTHING FURTHER, YOUR HONOR.

19 THE COURT: OKAY.

20 ANY FURTHER REDIRECT?

21 MS. ABRAMSON: YES.

22

23 REDIRECT EXAMINATION

24 BY MS. ABRAMSON:

25 Q. I WANT TO PUT THAT STATEMENT -- THAT WAS AT
26 THE END OF A WHOLE SERIES OF QUESTIONS, THAT STATEMENT
27 THAT YOU MADE BACK IN 1993, MR. WADLINGTON; WAS IT NOT?

28 A. MM-HMM.

-12629

1 Q. YOU HAVE TO SAY YES OR NO.

2 A. YES.

3 Q. THANK YOU.

4 AND OVER THE LUNCH HOUR DID YOU READ THE
5 PRECEDING TWO PAGES OF TESTIMONY THAT WOUND UP WITH THAT
6 PARTICULAR QUESTION?

7 A. YES, I DID.

8 Q. OKAY. AND DO YOU REMEMBER THEN, STARTING
9 AT PAGE 12,048, STARTING AT LINE 27, IN REFERENCE TO
10 MRS. MENENDEZ, DO YOU REMEMBER THE FOLLOWING QUESTIONS
11 AND ANSWERS:

12 "QUESTION: AND IF YOU COULD, COULD
13 YOU CHARACTERIZE HER OVERALL MOOD WHEN YOU
14 DEALT WITH HER?

15 "ANSWER: USUALLY SARCASTIC AND
16 HOSTILE.

17 "QUESTION: SARCASTIC AND WHAT?

18 "ANSWER: HOSTILE.

19 "QUESTION: AND IN WHAT WAYS WAS
20 SHE HOSTILE?

21 "ANSWER: SHE WAS JUST ANGRY.

22 "QUESTION: AT YOU, AT THE BOYS, OR
23 AT SOMETHING ELSE?

24 "ANSWER: I DON'T KNOW.

25 "QUESTION: LIFE IN GENERAL?

26 "ANSWER: I DON'T KNOW. SHE WAS
27 JUST ANGRY, UPSET.

28 "QUESTION: HOW WOULD SHE EXPRESS

-12628

1 HER HOSTILITY?

2 "ANSWER: USUALLY SARCASM.

3 "QUESTION: TOWARDS YOU?

4 "ANWER: TOWARD ANYBODY, ME
5 INCLUDED.
6 "QUESTION: INCLUDING HER SONS?
7 "ANWER: YES.
8 "QUESTION: AND HOW WOULD SHE
9 EXPRESS THAT SARCASM TO HER SONS? COULD
10 YOU GIVE ME AN EXAMPLE OF THAT?
11 "ANWER: WELL, IF THEY -- A LOT OF
12 TIMES, IF THEY ASKED HER A QUESTION, SHE
13 WOULD HUMILIATE THEM WITH SARCASM,
14 SOMETHING TO THE EFFECT LIKE, YOU KNOW,
15 'IF YOU DON'T KNOW THAT, YOU ARE STUPID.'
16 "QUESTION: AND WHAT KIND OF
17 QUESTIONS WOULD THEY ASK, JUST THE KINDS
18 OF QUESTIONS KIDS AT THAT AGE ASK?
19 "ANWER: ANYTHING. THEY NEVER GOT
20 AN ANSWER.
21 "QUESTION: AND HER RESPONSE WOULD
22 BE, WHEN THEY ASKED THESE QUESTIONS, 'IF
23 YOU DON'T KNOW THAT, YOU ARE STUPID'?
24 "ANWER: YEAH. OR 'IF YOU DON'T
25 KNOW THAT YOU ARE NAIVE'.
26 "QUESTION: YOU WERE STUPID OR
27 NAIVE?
28 "ANWER: YES.

1 "QUESTION: WAS THAT HER BASIC

2 ATTITUDE TOWARD YOU AS WELL?

3 "ANSWER: I DIDN'T THINK SO. I

4 THOUGHT SHE AND I HAD A PRETTY GOOD

5 RELATIONSHIP, IF THAT WAS POSSIBLE."

6 IS THAT THE LINE OF QUESTIONING THAT

7 RESULTED IN THAT ANSWER?

8 A. YES.

9 Q. SHE NEVER TREATED YOU AS IF YOU WERE STUPID

10 OR NAIVE, DID SHE?

11 A. NO.

12 Q. AND WAS YOUR RELATIONSHIP, WHATEVER IT WAS

13 WITH MRS. MENENDEZ, AN IMPROVEMENT OVER YOUR

14 RELATIONSHIP WITH MR. MENENDEZ?

15 A. YES.

16 Q. WAS SHE -- STRIKE THAT.

17 SHE NEVER GOT INTO ARGUMENTS WITH YOU OR

18 DEBATES WITH YOU ABOUT YOUR METHODS?

19 A. NO.

20 Q. WHEN YOU SAID EARLIER THAT SHE WAS NOT

21 FRIENDLY, WAS THAT UNUSUAL OF THE PARENTS OF THE

22 CHILDREN THAT YOU TAUGHT?

23 MR. CONN: OBJECTION. IRRELEVANT.

24 THE COURT: SUSTAINED.

25 Q. BY MS. ABRAMSON: DID YOU ACTUALLY HAVE

26 FRIENDSHIP RELATIONSHIPS WITH OTHER PARENTS OF CHILDREN

27 YOU TAUGHT?

28 A. YES.

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: OVERRULED.

3 THAT ANSWER WILL STAND.

4 Q. BY MS. ABRAMSON: AND WAS YOUR INTERACTION

5 WITH MRS. MENENDEZ MUCH MORE DISTANT THAN WITH THOSE

6 OTHER PARENTS?

7 MR. CONN: OBJECTION. IRRELEVANT.

8 THE COURT: SUSTAINED.

9 Q. BY MS. ABRAMSON: WAS YOUR RELATIONSHIP

10 WITH HER DIFFERENT THAN THAT OF THE RELATIONSHIP YOU HAD

11 WITH OTHER PARENTS?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: SUSTAINED.

14 Q. BY MS. ABRAMSON: WAS YOUR RELATIONSHIP

15 WITH HER NOTABLE TO YOU?

16 MR. CONN: OBJECTION. IRRELEVANT AND VAGUE.

17 THE COURT: SUSTAINED.

18 Q. BY MS. ABRAMSON: NOW, YOU INDICATED THAT

19 THERE WERE PERIODS WHEN YOU COACHED ERIK AND LYLE SEVEN

20 DAYS A WEEK?

21 A. YES.

22 Q. AND ON DAYS -- AMONG THOSE SEVEN DAYS, WERE

23 THERE DAYS WHEN THEY'D COME TO YOU AND THEY HAD -- THEY

24 WERE CLEARLY EXHAUSTED FROM A PREVIOUS TWO-HOUR LESSON?

25 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

26 THE COURT: WELL, SUSTAINED AS TO THE LENGTH OF
27 THE LESSON.
28 BUT AS TO BEING EXHAUSTED, YOU CAN ANSWER

-12625

1 THE QUESTION.

2 Q. BY MS. ABRAMSON: THEY COME TO YOU
3 EXHAUSTED, HAVING JUST PREVIOUSLY TAKEN A LESSON?

4 MR. CONN: OBJECTION.

5 THE COURT: OVERRULED.

6 AS FAR AS YOU KNOW, IF THEY HAD HAD ANOTHER
7 LESSON AS FAR AS COMING TO YOU?

8 THE WITNESS: YES, SIR.

9 Q. BY MS. ABRAMSON: COULD YOU GET CLOSER TO
10 THE MICROPHONE, MR. WADLINGTON.

11 IT WAS TYPICAL THEY HAD ANOTHER LESSON
12 BEFORE THEY EVER SAW YOU?

13 MR. CONN: OBJECTION. VAGUE.

14 THE COURT: CAN YOU BE MORE SPECIFIC BY WHAT YOU
15 MEAN BY "TYPICAL"?

16 Q. BY MS. ABRAMSON: AS FAR AS YOU KNEW, IN
17 CONVERSATIONS WITH THEM AND IN CONVERSATIONS WITH THEIR
18 PARENTS, WERE THEY TAKING ANOTHER LESSON EVERY DAY
19 BESIDES THE ONE THAT YOU WERE GIVING THEM?

20 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES. NOT EVERY DAY, BUT OFTEN THEY
23 WOULD HAVE ANOTHER LESSON BEFORE THEY CAME TO ME.
24 Q. BY MS. ABRAMSON: AND WERE THERE SOME DAYS
25 WHERE THEY WOULD HAVE MORE THAN ONE OTHER LESSON BEFORE
26 THEY CAME TO YOU?
27 MR. CONN: OBJECTION. CALLS FOR SPECULATION.
28 THE COURT: SUSTAINED.

-12624

1 Q. BY MS. ABRAMSON: WELL, COULD YOU TELL THAT
2 THEY WERE TAKING LESSONS ALL DAY LONG BY THEIR PHYSICAL
3 CONDITIONAL.
4 MR. CONN: OBJECTION. NO FOUNDATION.
5 THE COURT: SUSTAINED.
6 Q. BY MS. ABRAMSON: WHEN THEY WOULD COME TO
7 YOU OR WOULD BE BROUGHT TO YOU, EITHER AT -- YOU WERE AT
8 NASSAU RACKET CLUB AT THAT TIME?
9 A. I WAS.
10 Q. OR IF YOU WOULD GO TO THEIR HOUSE IN ORDER
11 TO GIVE THEM A LESSON, WHEN IT WAS OBVIOUS THEY HAD
12 ALREADY HAD A LESSON AND WERE EXHAUSTED, WERE YOU
13 REQUIRED TO TRAIN THEM ANYWAY?
14 A. YES.
15 Q. WERE YOU REQUIRED TO TRAIN THEM EVEN IF
16 THEY WERE SICK?
17 MR. CONN: OBJECTION. CALLS FOR SPECULATION. NO

18 FOUNDATION.

19 THE COURT: OVERRULED.

20 YOU CAN ANSWER THE QUESTION.

21 THE WITNESS: YES.

22 Q. BY MS. ABRAMSON: WERE YOU REQUIRED TO

23 TRAIN -- DID THEY -- AS FAR AS YOU KNEW, DID THEY TRAIN

24 ON HOLIDAYS AS WELL AS OTHER DAYS OF THE WEEK?

25 A. YES.

26 Q. AND WITH RESPECT TO THESE DAYS WHEN THEY

27 WOULD -- STRIKE THAT.

28 WERE THERE OCCASIONS WHEN THE BOYS WOULD BE

-12623

1 BROUGHT TO YOU BY MRS. MENENDEZ TO THE NASSAU RACKET

2 CLUB WHEN IT WAS OBVIOUS TO YOU, FROM THEIR PHYSICAL

3 CONDITION, THAT THEY WERE SO TIRED THEY COULD BARELY

4 MOVE?

5 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

6 THE COURT: SUSTAINED.

7 Q. BY MS. ABRAMSON: COULD YOU SEE THE OBVIOUS

8 EVIDENCE OF WHAT APPEARED TO BE EXTREME FATIGUE, MAKING

9 IT DIFFICULT FOR THEM TO EVEN MOVE?

10 A. YES.

11 Q. AND DID MRS. MENENDEZ -- DID YOU EVER TRY

12 TO CALL OFF THE LESSON?

13 A. NO.

14 Q. AND WHY DIDN'T YOU TRY TO CALL OFF THE

15 LESSON?

16 GO AHEAD. YOU CAN ANSWER, EVEN THOUGH I'M

17 MOVING.

18 A. I DON'T KNOW. IF THEY WERE THAT TIRED,

19 THEN WE JUST TOOK IT EASY.

20 Q. YOU'D MAKE IT AN EASIER LESSON?

21 A. MM-HMM, YES.

22 Q. AND COULD YOU DO THAT WHEN MR. MENENDEZ WAS

23 AROUND?

24 A. NO.

25 Q. DID MR. MENENDEZ INSIST THAT YOU TRAIN THEM

26 AS HARD AS POSSIBLE?

27 A. YES.

28 Q. WERE THEY -- WERE THEY IN GOOD PHYSICAL

-12622

1 SHAPE FOR TENNIS PLAYERS?

2 A. THEY WERE IN PRETTY GOOD SHAPE.

3 Q. DID THEY HAVE THE RIGHT STAMINA FOR TENNIS

4 PLAYING?

5 A. THEY HAD GOOD STAMINA.

6 Q. LET ME JUST ASK YOU THIS:

7 HAVEN'T YOU PREVIOUSLY INDICATED THAT YOU

8 THOUGHT THEY WERE OVER-TRAINED; THAT THEY DIDN'T HAVE

9 ENOUGH STAMINA, BECAUSE THEY WERE DOING TOO MUCH OUTSIDE

10 PHYSICAL TRAINING, LIKE RUNNING AND WEIGHTS AND THAT

11 SORT OF THING?

12 A. I THOUGHT THEY WERE BEING TRAINED

13 IMPROPERLY WITH THE WEIGHTS AND RUNNING, BECAUSE IT

14 DOESN'T BUILD THE STAMINA YOU NEED TO PLAY TENNIS.

15 Q. SO THEY DIDN'T HAVE THE RIGHT STAMINA FOR

16 TENNIS; IS THAT FAIR TO SAY?

17 A. YES.

18 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

19 HONOR.

20 THE COURT: MR. GESSLER, ANYTHING ELSE?

21 MR. GESSLER: NO, YOUR HONOR. THANK YOU.

22 THE COURT: ANYTHING FURTHER FROM THE

23 PROSECUTION?

24 MR. CONN: YES.

25

26

27 ///

28 ///

-12621

1

2 FURTHER RECROSS-EXAMINATION

3 BY MR. CONN:

4 Q. YOU SAID THAT YOU WOULD GIVE THEM TENNIS

5 LESSONS WHEN THEY WERE SO TIRED THAT IT WAS DIFFICULT

6 FOR THEM TO EVEN MOVE?

7 A. YES.

8 Q. HOW DID YOU KNOW IT WAS TOO DIFFICULT FOR
9 THEM TO EVEN MOVE?

10 A. BECAUSE THEY COULDN'T HARDLY WALK.

11 Q. SO YOU WOULD SEE THEM LIMPING ALONG; IS
12 THAT WHAT YOU'RE SAYING?

13 A. STUMBLING. STAGGERING. SO WE'D JUST HIT
14 UP THE MIDDLE. WE WOULDN'T REALLY DO DRILLS AND THE
15 REALLY PHYSICAL EXERCISING-TYPE LESSON.

16 Q. AND DID YOU FEEL YOU WERE BEING CRUEL TO
17 ENGAGE THEM IN TENNIS LESSONS WHEN THEY WERE STUMBLING
18 AND COULDN'T EVEN WALK?

19 A. I FELT IT WAS USELESS, BUT THAT'S WHAT THEY
20 WERE THERE TO DO, SO WE JUST TOOK IT EASY.

21 Q. SO WHY DID YOU DO IT, THEN, IF YOU FELT IT
22 WAS CRUEL?

23 A. IT WAS MY JOB.

24 Q. YOU COULD HAVE SAID NO, AND YOU COULD HAVE
25 SAID: "YOU ARE TOO TIRED. IT WOULD BE CRUEL FOR ME TO
26 DO THIS TO YOU."

27 A. I COULD HAVE. BUT THE WAY WE DID THE
28 LESSON DIDN'T REQUIRE MUCH ENERGY. WE WOULD JUST STAY

-12620

1 IN ONE PLACE AND HIT BACK AND FORTH GENTLY. THAT

2 DOESN'T REQUIRE A LOT OF MOVEMENT OR PHYSICAL EXERCISE.

3 Q. SO THEN YOU DIDN'T SEE ANYTHING CRUEL ABOUT
4 IT THEN?

5 A. I THOUGHT THAT WHAT WAS HAPPENING TO THEM
6 WAS CRUEL, BUT WHEN WE WERE -- WHEN THEY WERE THAT
7 TIRED, IT NEVER CROSSED MY MIND THAT IT WAS CRUEL. IT
8 WAS JUST THAT WE HAD TO HIT UP AND DOWN THE MIDDLE AND
9 TAKE IT EASY, OR THEY WOULD TAKE FREQUENT RESTS, OR
10 WHATEVER I COULD TO HELP THEM GET THROUGH THE TIME.

11 Q. YOU'RE SAYING IT DIDN'T APPEAR TO YOU TO BE
12 CRUEL AT THE TIME?

13 A. I DIDN'T THINK I WAS BEING CRUEL.

14 Q. WELL, YOU WERE THE ONE WHO WAS GIVING THEM
15 THE LESSON, CORRECT?

16 A. YES, SIR.

17 Q. DID YOU FEEL THEY WERE WILLING TO
18 PARTICIPATE IN YOUR LESSON?

19 A. THEY HAD TO.

20 Q. DID YOU FEEL THEY WERE DOING IT OF THEIR
21 OWN FREE WILL?

22 A. NO.

23 Q. AND YET YOU PARTICIPATED IN THAT PROCESS?

24 A. YES.

25 Q. WHY?

26 A. BECAUSE THAT'S WHAT I WAS HIRED TO DO.

27 Q. BECAUSE YOU WERE GETTING PAID?

28 A. RIGHT.

1 Q. AND YOU DIDN'T CARE IF YOU WERE BEING CRUEL
2 TO THEM?

3 A. I DIDN'T THINK I WAS BEING CRUEL.

4 Q. AND THEN YOU SAY YOU WOULD TRAIN THEM WHEN
5 THEY WERE SICK; IS THAT CORRECT?

6 A. YES.

7 Q. WHAT KIND OF SICKNESSES ARE WE TALKING
8 ABOUT, SIR?

9 A. COLDS AND FLUS, AND STUFF LIKE THAT.

10 Q. AND DID YOU REGARD THAT AS CRUEL?

11 A. I SUPPOSE.

12 Q. HAVE YOU EVER PLAYED TENNIS WHEN YOU HAD A
13 COLD OR THE FLU?

14 A. NO.

15 Q. AND DID YOU FEEL THAT YOU WERE BEING CRUEL
16 WHEN YOU MADE THEM PLAY TENNIS EVEN THOUGH THEY HAD A
17 COLD OR THE FLU?

18 A. I WASN'T MAKING THEM PLAY. IT WASN'T UP TO
19 ME.

20 Q. DID YOU FEEL THAT YOU WERE BEING CRUEL BY
21 PARTICIPATING IN THAT?

22 A. I NEVER THOUGHT OF IT THAT WAY, BUT I
23 SUPPOSE.

24 MR. CONN: I HAVE NOTHING FURTHER.

25 THE COURT: ANYTHING ELSE?

26 MR. GESSLER: NO, YOUR HONOR.

27 MS. ABRAMSON: NO, YOUR HONOR.
28 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

-12618

1 YOU'RE EXCUSED.
2 YOUR NEXT WITNESS.
3 MR. GESSLER: CALL FAITH GOLDSMITH.
4
5 FAITH GOLDSMITH
6 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
7 TESTIFIED AS FOLLOWS:
8 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
9 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
10 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
11 NOTHING BUT THE TRUTH, SO HELP YOU GOD.
12 THE WITNESS: I DO.
13 THE CLERK: PLEASE BE SEATED.
14 PLEASE STATE AND SPELL YOUR NAME FOR THE
15 RECORD.
16 THE WITNESS: FAITH GOLDSMITH.
17 G-O-L-D-S-M-I-T-H.
18 THE CLERK: THANK YOU.
19
20 DIRECT EXAMINATION
21 BY MR. GESSLER:
22 Q. MRS. GOLDSMITH, WHERE DO YOU NOW RESIDE?

23 A. IN FREEHOLD, NEW JERSEY.
24 Q. AND DIRECTING YOUR ATTENTION TO THE LATE
25 1960'S, DID YOU KNOW MARY LOUISE AND JOSE MENENDEZ
26 DURING THAT TIME?

27 A. YES, I DID.

28 Q. AND WHERE WERE YOU LIVING WHEN YOU FIRST

-12617

1 MET THEM?

2 A. WHEN I FIRST MET THEM I WAS LIVING IN
3 FOREST HILLS, NEW YORK.

4 Q. AND WHERE WERE THEY LIVING?

5 A. THEY WERE LIVING IN QUEENS. I'M NOT SURE
6 WHICH EXACT LOCATION AT THE MOMENT.

7 Q. AND WHEN YOU FIRST MET THEM, DID THEY HAVE
8 THEIR FIRST CHILD YET, OR WERE THEY MORE NEWLY MARRIED?

9 A. THEY DID NOT HAVE A CHILD.

10 Q. AND DID YOU KNOW THEM WHEN LYLE MENENDEZ
11 WAS BORN?

12 A. YES, I DID.

13 Q. DURING THIS PERIOD OF TIME, WERE YOU --
14 WOULD YOU DESCRIBE YOURSELF AS CLOSE FRIENDS WITH
15 MRS. MENENDEZ?

16 A. I WOULD.

17 Q. WERE YOU HER BEST FRIEND, AS FAR AS YOU
18 KNEW?

19 A. I WAS, AND SHE WAS MINE.

20 Q. AND DO YOU STILL HAVE A LOVE FOR HER AS A
21 FRIEND?

22 A. I WILL ALWAYS HAVE A LOVE FOR HER AND FOR
23 JOSE, YES.

24 Q. AND YOU'RE MARRIED TO PETER GOLDSMITH,
25 AREN'T YOU?

26 A. I AM.

27 Q. AND DID YOU AND PETER AND JOSE MENENDEZ AND
28 MARY LOUISE MENENDEZ, DID YOU KIND OF FORM A SOCIAL

-12616

1 GROUP, COUPLES WHO WERE FAIRLY CLOSE TO EACH OTHER?

2 A. A GROUP THAT WAS VERY CLOSE, YES.

3 Q. DID THINGS TOGETHER?

4 A. YES.

5 Q. NOW, DURING THAT PERIOD OF TIME, WOULD YOU
6 DESCRIBE MARY LOUISE MENENDEZ AS KIND OF WEAK, ATHLETIC?
7 HOW WOULD YOU DESCRIBE HER?

8 A. SHE WAS EXTREMELY -- SHE WAS A STRONG,
9 VERY -- SHE WAS VERY ATHLETIC, VERY STRONG, VERY
10 SELF-ASSURED, POWERFUL PERSON. POWERFUL PHYSICALLY AND
11 POWERFUL IN HER WHOLE DEMEANOR.

12 Q. NOW, SOMETIME WHEN YOU WERE KNOWING HER
13 THEN, DID SHE AND MR. MENENDEZ BEGIN TO LEARN SKIING?

14 A. YES.

15 Q. THERE ARE SOME PLACES YOU CAN SKI IN THE

16 EAST AS WELL AS CALIFORNIA, AREN'T THERE?

17 A. YES.

18 Q. NOW, DURING THAT TIME, DID YOU HAVE A

19 CONVERSATION WITH HER IN WHICH SHE WANTED TO LEAVE LYLE

20 AS A BABY WITH HER GRANDMOTHER THE WHOLE WEEK AND VISIT

21 HIM ON WEEKENDS?

22 MR. CONN: OBJECTION. HEARSAY. I WOULD OBJECT

23 TO THIS AS HEARSAY.

24 THE COURT: OKAY. REGARDING A CONVERSATION WITH

25 MRS. MENENDEZ, THE NATURE OF THAT QUESTION, THE

26 OBJECTION IS SUSTAINED ON THE GROUNDS OF HEARSAY.

27 MS. ABRAMSON: CAN WE BE HEARD ON THIS, YOUR

28 HONOR?

-12615

1 THE COURT: SURE. OKAY. LET'S DO IT RIGHT NOW,

2 BECAUSE THERE ARE A COUPLE OF AREAS THAT WE PERHAPS NEED

3 TO DISCUSS. WE WILL DO IT OVER ON THE SIDE HERE.

4

5 (THE FOLLOWING PROCEEDINGS WERE

6 HELD OUT OF THE PRESENCE OF

7 THE JURY:)

8

9 THE COURT: YES.

10 MS. ABRAMSON: DO YOU WANT TO ARGUE IT, OR DO YOU

11 WANT ME TO ARGUE IT?

12 MR. GESSLER: NO. GO AHEAD.

13 MS. ABRAMSON: ONE OF THE KEY COMPONENTS OF THE
14 PSYCHOLOGICAL MALTREATMENT EVIDENCE THAT WE HAVE
15 ARTICULATED AND WILL CONTINUE TO ARTICULATE WITH THESE
16 WITNESSES, THAT DR. HART WILL TALK ABOUT, IS WHAT'S
17 KNOWN AS "SPURNING," WHICH IS ABANDONMENT, WHICH IS
18 NEGLECT, WHICH IS LACK OF AFFECTION OR CARETAKING.

19 NOW, HERE'S THE CLEAREST EVIDENCE OF STATE
20 OF MIND OF A PARENT REJECTING A CHILD.

21 THE COURT: DID SHE ACTUALLY DO THIS?

22 MS. ABRAMSON: SHE WAS TALKED OUT OF IT BY OTHER
23 PEOPLE. IT WAS HER INTENTION.

24 THE COURT: IT'S IRRELEVANT. IT'S IRRELEVANT.
25 HER STATE OF MIND IS NOT RELEVANT. WE'VE BEEN THROUGH
26 THIS.

27 MS. ABRAMSON: AS A PARENT OF THE DEFENDANTS, HER
28 ATTITUDES TOWARDS THEM IS RELEVANT. AS A PARENT, NOT AS

-12614

1 A VICTIM. THE FACT THAT SHE WAS WILLING TO GIVE UP HER
2 KIDS SO SHE COULD GO SKI INDICATED PRECISELY HOW
3 IMPORTANT -- OR UNIMPORTANT -- HER CHILDREN, OR THIS
4 CHILD IN PARTICULAR, WAS IN HER LIFE.

5 AND THE FACT WHERE WE HAVE INCIDENT AFTER
6 INCIDENT WHERE THAT SAME ATTITUDE OF HERS IS DISPLAYED

7 IN BEHAVIOR, THIS GIVES THE JURY THE ADDITIONAL
8 INFORMATION OF HOW EARLY THAT ATTITUDE WAS FORMED.
9 WE'VE ALREADY HAD TESTIMONY THAT SHE WAS
10 REJECTING OF LYLE. SHE NEVER SHOWED HIM THE SLIGHTEST
11 AFFECTION. AND THE JURY SHOULD NOT BE FREE TO
12 SPECULATE: "OH, SHE WAS JUST NOT DEMONSTRATIVE."
13 HERE SHE WANTED TO GET RID OF HIM, AND THAT
14 WAS HER DESIRE. THAT WAS HER STATE OF MIND.
15 THE COURT: ALL RIGHT. I HAVE HEARD YOU SAY
16 THIS, AND IT'S BEEN THE SUBJECT OF TESTIMONY IN THE
17 FIRST TRIAL, AND IT WAS THE SUBJECT OF OBJECTION BY THE
18 PROSECUTION. I UNDERSTAND YOUR OFFER OF PROOF.
19 NUMBER ONE, IT'S HEARSAY.
20 NUMBER TWO, ANY MENTAL STATE THAT YOU REFER
21 TO AS REFLECTED BY THIS INCIDENT IS IRRELEVANT.
22 THEREFORE, THE OBJECTION IS SUSTAINED.
23 MR. GESSLER: AND MY STANDPOINT -- MAY I ARGUE
24 THIS, YOUR HONOR, AT THIS POINT?
25 THE COURT: YES.
26 MR. GESSLER: FROM MY STANDPOINT, THIS IS AN
27 INTRODUCTORY QUESTION. THE IMPORTANT QUESTION IS THE
28 NEXT ONE TO FOLLOW, WHICH IS THAT FAITH GOLDSMITH

-12613

1 EXPLAINED TO HER AT THAT TIME THE DANGERS OF LEAVING A
2 SMALL CHILD IN THE HANDS OF A CARETAKER ALL WEEK, AND

3 ONLY VISITING THAT CHILD ON THE WEEKEND TO HER, SO THAT
4 SHE HAD KNOWLEDGE OF THE MANY PROBLEMS THAT SPURNING
5 WOULD CAUSE.

6 IN OTHER WORDS, SHE WAS NOT JUST AN
7 UNKNOWING MOTHER WHO COULD MAKE MISTAKES, AS ANYONE CAN,
8 BUT HAD THE KNOWLEDGE FROM FAITH GOLDSMITH, BECAUSE SHE
9 TOLD HER AT THAT TIME THE DANGERS OF THIS, AND YET WENT
10 ON ANYWAY -- NOT IN THIS INSTANCE, BUT OTHER INSTANCES
11 TO NEGLECT THEM WITHOUT THE EMOTIONAL COMFORT AND NEEDS
12 THAT THE CHILDREN HAD.

13 THE COURT: OKAY. I AM NOT FORECLOSING IN ANY
14 WAY INCIDENTS AND DESCRIPTIONS OF EVENTS. WHAT I AM
15 DOING IS SUSTAINING OBJECTIONS TO THESE ISSUES THAT ARE
16 RELATED BY THIS QUESTION AS HEARSAY.

17 IT'S IRRELEVANT WHAT HER STATE OF MIND WAS,
18 WHAT HER KNOWLEDGE WAS. WHAT SHE DID AND HOW IT
19 AFFECTED THE DEFENDANTS IS THE ISSUE. THAT'S THE
20 BACKGROUND OF THE DEFENDANTS, THE CHARACTER OF THE
21 DEFENDANTS, NOT THE KNOWLEDGE OF THE PARENT.

22 IF THIS WAS A CASE WHERE THE VICTIM WAS NOT
23 THE PARENT OF THE DEFENDANT, THIS WOULD NOT BE
24 ADMISSIBLE, AND IT'S NO MORE ADMISSIBLE IN THIS CASE
25 BECAUSE THE VICTIM IS THE PARENT OF THE DEFENDANTS.

26 MS. ABRAMSON: I DON'T THINK THAT'S CORRECT.

27 MR. GESSLER: WELL, YOUR HONOR, I WOULD ASK
28 THAT -- I BELIEVE, AND WE'VE GONE THROUGH THIS BEFORE,

1 BUT I WANT TO STATE MY POSITION -- THAT THE KNOWLEDGE OF
2 THE PARENTS IS ALL IMPORTANT; THAT IF THIS WERE SOMEBODY
3 ELSE, IT WOULD NOT MATTER.

4 BUT SINCE IT IS THE PARENTS AND THESE ARE
5 THE PEOPLE CHARGED WITH THE UPBRINGING OF THE CHILDREN,
6 WHETHER THE PARENTS WERE VICTIMS OR WHETHER THEY WERE
7 NOT IN THIS CASE, THIS WOULD BE RELEVANT AND IMPORTANT
8 EVIDENCE TO PUT ON.

9 IT IS PUT ON FOR THE STATE OF MIND AND THE
10 KNOWLEDGE OF MARY LOUISE MENENDEZ. THAT IS ITS
11 IMPORTANCE; THAT EVEN WITH THIS KNOWLEDGE SHE CONTINUED
12 TO NEGLECT THAT KNOWLEDGE FOR HER OWN SELF-INTERESTS AT
13 THE EXPENSE OF HER CHILDREN.

14 I THINK THIS IS A VERY IMPORTANT
15 PSYCHOLOGICAL COMPONENT LEADING UP TO DR. HART'S
16 TESTIMONY COMING NEXT WEEK.

17 THE COURT: WELL, IF THERE WAS AN ISSUE HERE
18 WHERE THE JURY HAD TO DECIDE THE CULPABILITY OF
19 MRS. MENENDEZ AS FAR AS CHILD ABUSE OR CHILD ENDANGERING
20 OR SOMETHING ALONG THOSE LINES, YES, THIS INFORMATION
21 WOULD BE RELEVANT.

22 BUT SHE IS NOT THE SUBJECT OF THE DECISION
23 THE JURY HAS TO MAKE. THE DECISION THE JURY HAS TO MAKE
24 IS ONE OF PUNISHMENT AS TO THE DEFENDANTS, BASED UPON
25 THEIR BACKGROUND, THEIR CHARACTER, AND ALL THE FACTORS
26 THAT THEY ARE ALLOWED TO CONSIDER; NOT WHAT THE MOTHER
27 WAS AWARE OF, WHAT THE MOTHER THOUGHT, OR WHAT SHE

-12611

1 REACTION AND INTERACTION WITH THE DEFENDANTS IS THE
2 ISSUE.

3 MS. ABRAMSON: THIS IS WHAT SHE DID, JUDGE. WE'VE
4 ALREADY HAD TESTIMONY.

5 THE COURT: THEN YOU WILL HAVE MORE OF THAT.

6 MS. ABRAMSON: JUDGE, JUST BE PATIENT WITH ME FOR
7 A MINUTE.

8 THE COURT: I AM BEING PATIENT. BUT WE CAN'T
9 KEEP GOING OVER THIS. WE'VE GONE OVER THIS BEFOARE.

10 MS. ABRAMSON: I REALIZE THAT WE HAVE ENORMOUS
11 THEORETICAL DIFFERENCES WITH THE COURT, AND ONCE IN
12 AWHILE -- SHE WHO ARGUES LAST -- ONCE IN FOUR YEARS.
13 MAYBE THIS WILL BE ONE OF THOSE TIMES.

14 REMEMBER, MY CLIENT TESTIFIED, AND OTHER
15 WITNESSES TESTIFIED, THAT MRS. MENENDEZ STATED SHE HATED
16 HER CHILDREN AND WISHED THEY HADN'T BEEN BORN. THIS
17 APPLIES TO THAT. THIS ATTITUDE BY A PARENT GETS
18 COMMUNICATED TO THE KID. THIS CORROBORATES MY CLIENT.
19 SHE IS TRYING TO GET RID OF THIS KID.

20 NOW, WHAT IF SHE HAD SAID TO MRS.
21 GOLDSMITH, "I WANT TO DROWN THEM," AND WAS TALKING ABOUT
22 THAT. IS THAT ALSO IRRELEVANT?

23 THE COURT: WE'RE TALKING ABOUT THIS, AND --

24 MS. ABRAMSON: IT'S SIGNIFICANT.
25 THE COURT: IT ISN'T.
26 MS. ABRAMSON: IT'S SIGNIFICANT IF YOU WANT TO
27 GET RID OF YOUR SIX-WEEK-OLD KID AND ONLY VISIT HIM ON
28 THE WEEKENDS, JUDGE.

-12610

1 THE COURT: IF SHE HAD DONE THAT, AND IT WAS
2 BROUGHT OUT IN THAT FASHION IN THIS TRIAL, IT IS. BUT
3 IT WAS NOT.
4 MS. ABRAMSON: THEN THE ONLY REASON SHE DIDN'T DO
5 IT IS BECAUSE SOMEONE TALKED HER OUT OF IT.
6 THE COURT: BUT SHE DIDN'T DO IT.
7 YOUR THEORY IS ANY THOUGHT THAT MIGHT HAVE
8 PASSED THROUGH MRS. MENENDEZ' HEAD OR MR. MENENDEZ' HEAD
9 IS OPEN, FAIR GAME IN THIS TRIAL, AND IT'S NOT.
10 MS. ABRAMSON: NO, ONLY THINGS THEY DISCUSSED
11 WITH OTHER PEOPLE AND SERIOUSLY CONSIDERED DOING. WHAT
12 PASSED THROUGH THEIR HEADS, GOD ONLY KNOWS.
13 WHAT WE ONLY KNOW IS WHAT THESE SECRETIVE
14 PEOPLE ARE WILLING TO SHARE, THESE FEW GLIMPSES AS TO
15 HOW THEY REALLY THOUGHT.
16 THE COURT: THE OBJECTION IS SUSTAINED.
17 MR. CONN: THE OTHER THING IS THE CEMETERY
18 INCIDENT. I BELIEVE IT IS THE NEXT QUESTION, A QUESTION
19 AWAY.

20 THIS WITNESS WAS NOT IN THE CEMETERY.
21 KITTY MENENDEZ TOLD HER ABOUT THE CEMETERY. AND IF
22 COUNSEL WANTS TO RETELL THE STORY, IT'S TOTALLY HEARSAY.
23 MR. GESSLER: I AM NOT GOING TO ASK A QUESTION
24 ABOUT THE HEARSAY. IT IS NOT A QUESTION AWAY. IT COULD
25 BE 30 QUESTIONS AWAY.
26 THE COURT: ANYTHING SHE IS NOT PERCIPIENT TO IS
27 HEARSAY.
28 MS. ABRAMSON: SHE WAS TOLD THIS BY KITTY

-12609

1 MENENDEZ, THAT JOSE AND LYLE HAD ABANDONED ERIK IN THE
2 CEMETERY, AND THAT ERIK WAS TERRIFIED OF IT.
3 AND THEN SHE -- TO VERIFY, SHE ASKED JOSE,
4 AND HE AGREED THAT HE HAD DONE THAT, AND HE LAUGHED
5 ABOUT IT. HE THOUGHT IT WAS FUNNY THAT THE CHILD WAS
6 SCREAMING IN FEAR.
7 NOW, I THINK THAT THAT'S RELEVANT.
8 THE COURT: OKAY. ASSUMING IT WAS RELEVANT, HOW
9 IS IT NOT HEARSAY?
10 MR. GESSLER: A DECLARATION AGAINST INTEREST,
11 YOUR HONOR, SETTING YOURSELF UP TO PUBLIC RIDICULE.
12 THIS IS SOMETHING THAT ADMITTING IT REALLY IS ADMITTING
13 CHILD NEGLECT AND CHILD ABUSE; AND, THEREFORE, SHOULD
14 COME IN AS AN EXCEPTION TO THE HEARSAY RULE, BECAUSE THE
15 STATEMENT WOULD NOT BE MADE AGAINST THE INTERESTS IF NOT

16 TRUE.

17 THE COURT: OKAY. SO THE THEORY IS IT IS
18 ADMISSIBLE AS A DECLARATION AGAINST INTEREST.

19 WHAT IS THE PEOPLE'S RESPONSE TO THAT?

20 MR. CONN: FIRST OF ALL, YOU'RE SAYING THAT JOSE
21 MENENDEZ ADMITTED THIS TO THIS WITNESS?

22 MS. ABRAMSON: ABSOLUTELY.

23 MR. CONN: WE HAVE NO DISCOVERY OF THIS. THIS IS
24 BRAND NEW.

25 MS. ABRAMSON: I DIDN'T KNOW ABOUT IT UNTIL I
26 TALKED TO HER ABOUT IT YESTERDAY.. WE RAISED IT --

27 MS. NAJERA: IT DOES NOT COMPLY WITH THE
28 DISCOVERY RULES.

-12608

1 MS. ABRAMSON: SINCE WE ALREADY KNEW THAT IT
2 WASN'T FIRSTHAND, WE ASKED HER: "HOW DID YOU KNOW?"
3 AND WE ASKED HER, "DID YOU ASK JOSE?"

4 AND SHE SAID HE SAID YES, AND HE LAUGHED.

5 THE COURT: NOW WE'RE GETTING INTO A DIFFERENT
6 ISSUE OF DISCOVERY.

7 YOU SAY YOU DIDN'T KNOW THIS UNTIL JUST
8 THIS MOMENT?

9 MR. CONN: YES.

10 MS. ABRAMSON: WE DIDN'T KNOW IT UNTIL LAST
11 NIGHT.

12 THE COURT: BUT THEN YOU DIDN'T TELL THEM UNTIL
13 NOW.

14 MS. ABRAMSON: I FORGOT THIS UNTIL JUST NOW. I
15 FORGOT THIS TINY DETAIL THAT SHE ASKED JOSE.

16 THE COURT: WE WILL TAKE A BREAK BEFORE ANY
17 DISCUSSIONS ON THIS SUBJECT.

18 MS. ABRAMSON: SO NOW THEY KNOW.

19 MR. CONN: WE STILL HAVE AN ARGUMENT IT'S NOT A
20 DECLARATION AGAINST PENAL INTEREST.

21 THE COURT: THAT'S WHAT I WANT TO ADDRESS.

22 (THE FOLLOWING PROCEEDINGS WERE
23 HELD IN THE PRESENCE AND HEARING
24 OF THE JURY:)

25

26 THE COURT: OKAY. WE'RE GOING TO RESUME.

27 THE NEXT TIME IT'S GOING TO BE YOUR TURN TO
28 GO IN THERE.

-12607

1 OKAY. YOU MAY CONTINUE THE EXAMINATION.

2 Q. BY MR. GESSLER: MRS. GOLDSMITH, DID YOU
3 EVER SEE ANY OCCASIONS IN WHICH YOU FELT THAT
4 MRS. MENENDEZ LET HER CHILDREN TAKE UNNECESSARY RISKS?

5 A. YES, I DID.

6 Q. AND WAS THAT WITH LYLE MENENDEZ?

7 A. YES.

8 Q. COULD YOU TELL US ABOUT THAT, PLEASE.

9 A. DO YOU WANT EXAMPLES?

10 Q. YES.

11 A. THERE WAS ONE INSTANCE WHEN THEY WERE

12 LIVING IN MONSEY WHEN I SAW LYLE WALKING ON A NARROW

13 LEDGE OF THEIR PATIO, WHICH HAD A DEEP DROP TO IT, AND

14 MY INSTINCT WAS I JUST SCREAMED OUT, YOU KNOW, "GRAB

15 HIM," AND MARY LOU SAID, "NO, IT'S FINE. HE CAN WALK

16 THERE."

17 AND I WARNED HER THAT WERE HE TO FALL, HE

18 COULD HURT HIMSELF.

19 AND SHE SAID, "HE WON'T FALL. HE CAN WALK

20 ON THE LEDGE."

21 Q. DO YOU REMEMBER ABOUT HOW HIGH THE LEDGE

22 WAS FROM THE GROUND?

23 A. I DON'T -- I COULD NOT GIVE YOU AN EXACT

24 MEASUREMENT. I KNOW THAT THE LEDGE MUST HAVE BEEN

25 ABOUT -- I WOULD SAY THREE FEET ABOVE THE PORCH, AND THE

26 PORCH WAS ELEVATED OFF THE GROUND, BUT I DO NOT KNOW HOW

27 HIGH.

28 Q. DID IT APPEAR TO YOU, AS A MOTHER, THAT

-12606

1 THIS WAS A DANGEROUS SITUATION FOR THE CHILD TO BE IN?

2 A. YES.

3 Q. AND WHEN YOU TOLD MRS. MENENDEZ ABOUT IT

4 BEING A RISK, DID SHE TAKE ANY STEPS TO TAKE HIM OFF THE
5 LEDGE, OR THINGS OF THAT NATURE?

6 A. NO, SHE DID NOT.

7 Q. HOW LONG WAS HE ON THE LEDGE, TO YOUR
8 KNOWLEDGE?

9 A. HE WALKED JUST ACROSS THE LEDGE AND THEN
10 CAME OFF OF IT.

11 Q. AND ON THAT OCCASION HE DID NOT FALL?

12 A. NO, HE DID NOT.

13 Q. BUT DID YOU, IN YOUR OPINION, FEEL IT WAS A
14 RISK?

15 A. I FELT THAT IT WAS.

16 Q. AND DID YOU FEEL, IN YOUR OPINION, THAT IT
17 WAS A RISK THAT HE COULD HAVE HURT HIMSELF?

18 A. YES.

19 Q. NOW, ARE YOU FAMILIAR WITH AN INCIDENT WHEN
20 LYLE MENENDEZ WAS ABOUT SIX IN WHICH HE WAS RECEIVING
21 SOME SWIMMING TEACHING?

22 A. YES.

23 Q. AND WAS THIS AT A POOL SOMEPLACE WITH A
24 TEACHER?

25 A. IT WAS.

26 Q. AND WAS THAT IN YOUR OWN NEIGHBORHOOD, OR
27 WAS IT A HOME POOL, OR WAS IT LIKE A Y.M.C.A., OR WHERE
28 WAS IT?

1 A. I BELIEVE IT WAS THE TOWN POOL.

2 Q. AND WHAT DID THIS TEACHING CONSIST OF?

3 A. THE TOWN WAS OFFERING ELEMENTARY SWIMMING
4 LESSONS, AND IT WAS -- IN FACT, TO THE BEST OF MY
5 RECOLLECTION, IT WAS THE FIRST SWIMMING LESSONS THAT
6 LYLE TOOK. HE WAS PARTICIPATING IN IT, AS WERE TWO OF
7 MY DAUGHTERS. THE CLASS WAS THE FIRST CLASS OF THE
8 MORNING. IT WAS VERY EARLY IN THE MORNING. IT WAS A
9 VERY ELEMENTARY-LEVEL SWIMMING CLASS.

10 Q. AND WAS THERE AN INCIDENT IN WHICH LYLE
11 MENENDEZ APPEARED TO BE TRYING TO GET OUT OF THE POOL?

12 A. THAT HAPPENED EVERY DAY. WHEN WE WENT
13 THERE, THE WATER WAS VERY COLD. THE LESSONS WERE
14 PERHAPS OF TWO OR THREE WEEK DURATION, AND EVERY DAY
15 LYLE CRIED WHEN HE WAS PUT IN THE POOL, AND EN ROUTE TO
16 THE POOL HE KEPT SAYING: "I DON'T WANT TO GO. THE
17 WATER'S TOO COLD," AND HE WOULD COME OUT OF THE WATER,
18 AND MARY LOU WOULD FORCE HIM TO GO BACK IN. HE WOULD
19 COME OUT CRYING AND SHIVERING, AND MARY LOU FORCED HIM
20 TO GO BACK IN.

21 Q. HOW WOULD SHE FORCE HIM? DID SHE TOUCH HIM
22 OR PUSH HIM IN?

23 A. YES.

24 Q. WAS THERE AN OCCASION IN WHICH THE TEACHER
25 SAID ANYTHING IN YOUR PRESENCE AND MARY LOUISE'S AND
26 LYLE'S ABOUT THAT?

27 A. WELL, THE INSTRUCTOR SAID THAT HE SEEMED SO
28 UNHAPPY AND SO COLD, AND POINTED OUT HIS LIMBS WERE BLUE

1 AND HE WAS SHIVERING, AND THAT HE DIDN'T THINK IT WAS
2 NECESSARY FOR HIM TO KEEP GOING BACK IN LIKE THAT.

3 Q. DID HE MAKE ANY COMMENT TO MARY LOUISE AT
4 THAT TIME ABOUT HIS SWIMMING?

5 A. AT ONE POINT HE SAID: "ARE YOU TRYING TO
6 MAKE A CHAMPION OUT OF HIM?"

7 Q. AND WHAT DID SHE RESPOND?

8 A. WELL, SHE SEEMED TO TAKE OFFENSE, AND SHE
9 SAID: "YES, I AM TRYING TO MAKE A CHAMPION OUT OF HIM."

10 Q. DID SHE SEEM TO BE KIDDING?

11 A. OH, NO.

12 Q. AND DID YOU DISCUSS THAT WITH HER THEN AS
13 TO THESE EXPECTATIONS SHE HAD, AND WHETHER THIS WAS GOOD
14 FOR LYLE MENENDEZ OR NOT?

15 A. WELL, I TOLD HER THAT IT WAS A LITTLE EARLY
16 TO BE PLANNING FOR HIM TO BECOME A CHAMPION; THAT THESE
17 WERE ELEMENTARY LESSONS. SINCE MY DAUGHTERS WERE THERE,
18 TOO, I SAID: "I REALLY THINK THE PURPOSE OF THIS IS
19 JUST FOR THEM TO HAVE FUN AND LEARN THE BASICS OF
20 SWIMMING."

21 Q. WHAT DID SHE RESPOND?

22 A. THAT LYLE'S GOAL WAS TO BE A CHAMPION, AND
23 REFERRED TO THE FACT THAT HIS GRANDPARENTS -- OR HIS
24 GRANDMOTHER WAS A SWIMMING CHAMPION, AND LYLE WOULD BE,
25 TOO.

26 Q. DID SHE SAY IT WAS LYLE'S GOAL, OR HER GOAL
27 FOR LYLE?

28 A. WELL, SHE SAID IT WAS HER GOAL; THAT SHE

-12603

1 AND JOSE WANTED HIM TO BE A CHAMPION JUST LIKE HIS
2 GRANDMOTHER.

3 Q. AND DID YOU HAVE ANY FURTHER DISCUSSIONS AS
4 TO MAYBE WHETHER LYLE MIGHT NOT HAVE THE ATHLETIC
5 ABILITY TO JUST SUDDENLY BECOME A CHAMPION?

6 A. IN RELATIONSHIP TO THE SWIMMING, OR IN
7 GENERAL?

8 Q. IN GENERAL?

9 A. IT WAS A DISCUSSION THAT WE HAD MANY TIMES,
10 WHETHER THAT SHOULD BE THE GOAL AT EACH ACTIVITY;
11 WHETHER THE GOAL SHOULD ALWAYS BE TO BE THE CHAMPION,
12 AND WHERE DOES THE FUN OF IT COME INTO IT? WAS SHE
13 NEGATING THE FACT THAT IT COULD ALSO BE A FUN ACTIVITY?

14 Q. WHAT DID SHE SAY?

15 MR. CONN: OBJECTION. HEARSAY. NO FOUNDATION.

16 THE COURT: PERHAPS YOU CAN ESTABLISH A
17 FOUNDATION.

18 Q. BY MR. GESSLER: DURING THIS DISCUSSION --
19 OR DID ONE OF THESE DISCUSSIONS TAKE PLACE DURING THIS
20 TIME THAT SHE WAS TRYING TO PUSH LYLE BACK INTO THE POOL
21 OR THE RIDE HOME, SOMETIME AROUND IN THERE?

22 A. THE FACT THAT HE WAS GOING TO BE A
23 CHAMPION?
24 Q. YES.
25 A. YES.
26 Q. AND IS THAT WHEN SHE SAID: "HE IS GOING TO
27 BE A CHAMPION, BECAUSE IT'S IN THE MENENDEZ LINE," OR
28 SOMETHING OF THAT NATURE?

-12602

1 A. SHE DID SAY THAT, YES.
2 Q. DID YOU EVER HAVE A DISCUSSION WHERE --
3 WHEN YOU SUGGESTED THAT HE MIGHT NOT BE AN ATHLETE, NOT
4 EVERYBODY IS, AND SHE SAID, "YES, HE'S GOT TO BE. HE'S
5 MY SON"?
6 A. THAT WAS SOMETHING THAT SHE AND I DISCUSSED
7 AT VARIOUS TIMES; SOMETHING THAT I DISCUSSED WITH JOSE
8 AT A VARIETY OF DIFFERENT TIMES, THAT HE MIGHT -- THAT
9 EITHER LYLE OR ERIK MIGHT BE AN ATHLETE, BUT MIGHT NOT
10 BE CHAMPION CALIBER, OR WHAT WOULD HAPPEN IF THEY HAD NO
11 ATHLETIC ABILITY, AND --
12 Q. DID HE SAY --
13 MR. CONN: OBJECTION. HEARSAY. NO FOUNDATION.
14 THE COURT: LAY A FOUNDATION AS TO THIS.
15 Q. BY MR. GESSLER: DID ANY OF THESE
16 CONVERSATIONS WITH MARY LOUISE OR JOSE TAKE PLACE IN
17 FRONT OF THE BOYS, IF YOU RECALL?

18 A. I'M SORRY?

19 Q. DID ANY OF THESE CONVERSATIONS WITH MARY

20 LOUISE MENENDEZ OR JOSE MENENDEZ TAKE PLACE WITHIN THE

21 HEARING OF THE BOYS?

22 MR. CONN: OBJECTION. COMPOUND.

23 THE COURT: OVERRULED.

24 DO YOU UNDERSTAND THE QUESTION?

25 THE WITNESS: YES, I DO.

26 THE COURT: WERE THE DEFENDANTS PRESENT WHEN

27 THESE CONVERSATIONS TOOK PLACE?

28 THE WITNESS: OFTEN THEY WERE. THEY WERE NOT

-12601

1 ALWAYS PRESENT. BUT THEY WERE PRESENT, YES.

2 Q. BY MR. GESSLER: THAT'S BOTH LYLE AND ERIK?

3 A. BOTH LYLE AND ERIK.

4 Q. AND WHAT WOULD THESE CONVERSATIONS BE, AS

5 FAR AS JOSE MENENDEZ WAS CONCERNED?

6 A. THAT THEY WOULD BE NUMBER ONE IN THAT

7 ACTIVITY, AND THAT IT WOULD BE UNREASONABLE TO THINK

8 THAT THEY WOULD NOT BE; THAT THEY WERE HIS SONS AND THEY

9 WOULD BE.

10 Q. DID YOU ALSO HAVE A CONVERSATION WITH

11 MRS. MENENDEZ ABOUT THE BOYS BEING ALLOWED TO HAVE

12 FRIENDS?

13 A. YES.

14 Q. AND WHAT DID SHE SAY ABOUT THAT?

15 MR. CONN: OBJECTION, HEARSAY. NO FOUNDATION.

16 THE COURT: AGAIN, PERHAPS WE CAN HAVE A
17 FOUNDATION.

18 Q. BY MR. GESSLER: DID YOU HAVE ANY
19 CONVERSATIONS WITH MRS. MENENDEZ IN THE EARSHOT OF LYLE
20 OR ERIK MENENDEZ CONCERNING, "GEE, WHY DON'T THEY HAVE
21 MORE FREE TIME, OR MORE FRIENDS"?

22 A. YES. MARY LOU AND JOSE SAID THAT THEY FELT
23 THAT FRIENDSHIP WOULD BE A NEGATIVE IN THEIR LIVES, AND
24 THAT NUMBER ONE, IF THEY TOOK THE TIME TO BE WITH
25 FRIENDS, THEY WOULD BE TAKING TIME AWAY FROM MORE
26 IMPORTANT THINGS, SUCH AS PRACTICING FOR SOME SPORT.
27 AND IF THEY DID HAVE FRIENDS WHO WERE ALSO PARTICIPATING
28 IN A SPORT, THEIR SONS WOULD LOSE THE COMPETITIVE EDGE.

-12600

1 THEY MIGHT NOT PLAY AS HARD AGAINST A FRIEND. AND SO
2 THEY WERE BETTER OFF NOT HAVING FRIENDS.

3 Q. DID SHE SAY ANY TIME WHEN THEY WOULD BE
4 ABLE TO MAKE FRIENDS?

5 A. YES. WHEN THEY GOT TO COLLEGE AND THEY
6 WERE NUMBER ONE, THEN PEOPLE WOULD WANT TO BE THEIR
7 FRIENDS.

8 Q. DID YOU TELL HER IN THESE CONVERSATIONS
9 THAT THAT WASN'T A WISE POLICY?

10 A. WELL, WE DISCUSSED IT, AND I SAID THAT
11 FIRST OF ALL YOU HAVE TO DEVELOP A SKILL OF MAKING A
12 FRIEND, THAT IT DOESN'T JUST HAPPEN AT A CERTAIN AGE,
13 AND AS THEY WENT THROUGH THEIR YEARS, THEY WOULDN'T KNOW
14 WHEN THEY GOT TO BE 20, 21, HOW TO HAVE A FRIEND.

15 AND I ALSO SAID THAT FRIENDS OFFER A CHILD
16 SO MUCH, AND THEIR CHILDREN WOULD BE MISSING SO MUCH IF
17 THEY DIDN'T HAVE A FRIEND; THAT LIFE COULD NOT ONLY BE
18 AIMED TOWARDS BEING NUMBER ONE.

19 Q. AND AFTER THAT CONVERSATION, DID EITHER
20 MARY LOUISE MENENDEZ OR JOSE MENENDEZ CHANGE AND SAY:
21 "YES, ALL RIGHT. WE'LL LET THEM HAVE FRIENDS"?

22 A. NO.

23 Q. WAS MRS. MENENDEZ, IN YOUR OPINION, WAS SHE
24 COMPETITIVE OR PASSIVE IN GAMES? HOW DID SHE REACT?

25 A. SHE WAS VERY COMPETITIVE.

26 Q. DID YOU AND MR. AND MRS. MENENDEZ AND YOUR
27 HUSBAND ENGAGE IN GAMES FROM TIME TO TIME?

28 A. WE DID.

-12599

1 Q. CARD GAMES, BOARD GAMES, THINGS LIKE THAT?

2 A. YES.

3 Q. AND IN AN EFFORT TO WIN, DID YOU EVER
4 NOTICE MRS. MENENDEZ CHEAT?

5 A. YES.

6 MR. CONN: OBJECTION. IRRELEVANT.

7 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN.

8 Q. BY MR. GESSLER: WERE THERE EVER OCCASIONS
9 WHEN YOU WERE PLAYING THESE TYPE BOARD GAMES OR CARD
10 GAMES WITH MRS. MENENDEZ THAT LYLE MENENDEZ AND ERIK
11 MENENDEZ WOULD BE PRESENT?

12 A. YES.

13 Q. AND WOULD THEY BE IN THE ROOM THERE WHERE
14 YOU WERE PLAYING?

15 A. YES.

16 Q. AND DURING ANY OF THOSE OCCASIONS, DID YOU
17 EVER CALL TO MRS. MENENDEZ' ATTENTION THE FACT THAT SHE
18 WAS CHEATING?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED.

21 THE WITNESS: YES, I DID.

22 Q. BY MR. GESSLER: AND DID THAT OCCUR ONCE,
23 OR MORE THAN ONCE?

24 A. MANY TIMES.

25 Q. AND AT THESE TIMES WHEN YOU WOULD CALL IT
26 TO HER ATTENTION THAT SHE WAS CHEATING, WHAT WOULD HER
27 RESPONSE BE?

28 A. SHE WOULD LAUGH. SHE WOULD DENY IT.

1 Q. AND EVEN THOUGH SHE LAUGHED AND DENIED IT,

2 WAS IT TRUE THAT SHE WAS REALLY CHEATING?

3 A. SHE WAS CHEATING.

4 MR. CONN: OBJECTION. IRRELEVANT.

5 THE COURT: OVERRULED.

6 THE ANSWER WILL STAND.

7 Q. BY MR. GESSLER: WAS THERE ANOTHER OCCASION

8 LATER WHEN MRS. MENENDEZ ASKED YOU TO GET AN ADVANCE

9 COPY OF A PLACEMENT TEST SO THAT SHE COULD LOOK AT IT

10 AND TELL THE BOYS HOW TO SCORE ON IT?

11 A. YES.

12 Q. AND DID YOU DO THAT?

13 A. NO, I DID NOT.

14 Q. WHY NOT?

15 A. NUMBER ONE, IT MAY VERY WELL BE ILLEGAL,

16 AND IS UNETHICAL.

17 Q. DID YOU TELL HER THAT?

18 A. YES.

19 Q. AND DID SHE RESPOND?

20 A. WELL, SHE TOLD ME THAT I SHOULD GET IT FOR

21 HER, THAT IT WOULD NOT BE -- IF IT WAS UNETHICAL, IT

22 WOULD NOT BE I WHO WOULD BE UNETHICAL, BUT IT WAS SHE,

23 AND IT WAS ALL RIGHT WITH HER.

24 MR. GESSLER: THANK YOU.

25 I HAVE NOTHING FURTHER, YOUR HONOR.

26 THE COURT: EXAMINATION BY COUNSEL FOR ERIK

27 MENENDEZ.

28 MS. ABRAMSON: YES.

1 THANK YOU, YOUR HONOR.

2

3 ///

4 ///

5 DIRECT EXAMINATION

6 BY MS. ABRAMSON:

7 Q. DO YOU REMEMBER, MRS. GOLDSMITH, WHEN

8 MRS. MENENDEZ CAME BACK FROM ILLINOIS ON A TRIP WHERE

9 SHE WAS LOOKING FOR A HOUSE IN NEW YORK?

10 A. YES.

11 Q. IF YOU COULD DROP THE MIKE DOWN, THEN YOU

12 WOULDN'T HAVE TO DO THIS WHILE YOU'RE TESTIFYING. IT'LL

13 TILT. JUST PULL IT DOWN.

14 A. OKAY. HOW'S THAT?

15 Q. ARE YOU MORE COMFORTABLE NOW?

16 A. OKAY.

17 Q. OKAY, GOOD.

18 DO YOU REMEMBER GOING WITH MRS. MENENDEZ ON

19 ONE OCCASION WHEN ERIK WAS ALONG TO A REALTY OFFICE

20 BECAUSE SHE WAS LOOKING FOR A HOUSE IN NEW YORK?

21 A. YES.

22 Q. AND DO YOU REMEMBER -- AND WAS THIS A TIME

23 WHEN ERIK WAS GOING ON TWO?

24 A. YES.

25 Q. AND DO YOU REMEMBER A PARTICULAR OFFICE

26 THAT WAS ON A MAJOR HIGHWAY?

27 A. YES.

28 Q. WHAT ROAD WAS IT ON?

-12596

1 A. IT'S ROUTE 59 IN -- IT WAS IN SPRING

2 VALLEY, NEW YORK.

3 Q. AND IS SPRING VALLEY -- IS IT NEAR WHERE

4 THEY EVENTUALLY BOUGHT A HOUSE, WHICH WAS CALLED MONSEY?

5 A. YES.

6 Q. AND WHEN YOU AND MRS. MENENDEZ WERE INSIDE

7 THIS REALTY OFFICE, WHAT WAS SHE DOING ACTUALLY IN THE

8 OFFICE?

9 A. THEY WERE SPEAKING TO A REALTOR DISCUSSING

10 POSSIBILITIES FOR HOUSES THAT THEY WOULD LOOK AT AND

11 THEN EVENTUALLY BUY.

12 Q. WHEN YOU SAY "THEY," WAS MR. MENENDEZ THERE

13 ALSO?

14 A. YES.

15 Q. SO THEY WERE BOTH THERE?

16 A. YES.

17 Q. WAS LYLE THERE?

18 A. YES.

19 Q. AND YOU WERE THERE?

20 A. YES.

21 Q. ANYONE ELSE?

22 A. MY HUSBAND AND MY CHILDREN, AND -- YEAH, MY

23 CHILDREN WERE THERE.

24 Q. AND AT SOME POINT DID SOMEONE CALL THE
25 MENENDEZ' ATTENTION TO THE EXISTENCE OF ERIK?

26 A. SOMEONE CAME INTO THE REALTOR'S OFFICE
27 CARRYING ERIK, WHO HAD WANDERED OUT ONTO ROUTE 59.

28 Q. AND WAS ROUTE 59 A BUSY HIGHWAY?

-12595

1 A. YES.

2 Q. AND WHAT RESPONSE, IF ANY, DID FIRST
3 MRS. MENENDEZ HAVE THAT THE CHILD HAD BEEN ON THE
4 HIGHWAY?

5 A. TO MY RECOLLECTION --

6 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
7 EVIDENCE, THAT THE CHILD WAS ON THE HIGHWAY.

8 THE COURT: SUSTAINED. REPHRASE THE QUESTION.

9 Q. BY MS. ABRAMSON: LET'S PUT IT THIS WAY:

10 DID SOMEONE COME IN AND SAY THE CHILD HAD
11 BEEN OUT ON THE HIGHWAY?

12 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

13 MS. ABRAMSON: IT'S NOT OFFERED FOR THE TRUTH.

14 THE COURT: OVERRULED. OVERRULED.

15 THE WITNESS: SOMEBODY CAME IN WITH ERIK, WHO HAD
16 TAKEN HIM OFF THE HIGHWAY.

17 Q. BY MS. ABRAMSON: THE PERSON SAID: "I JUST
18 TOOK THIS BABY OFF THE HIGHWAY"?

19 A. THE PERSON CAME IN AND SAID: "DOES THIS
20 BABY BELONG TO ANYONE IN HERE?"

21 Q. WAS THE HIGHWAY RIGHT OUTSIDE THE DOOR OF
22 THE REALTY OFFICE?

23 A. YES.

24 Q. AND WAS THERE ANY REACTION BY EITHER MR. OR
25 MRS. MENENDEZ?

26 A. THEY LAUGHED. THEY THOUGHT IT WAS FUNNY.

27 Q. AND DID YOU FEEL THAT WAS INAPPROPRIATE?
28 MR. CONN: OBJECTION. IRRELEVANT.

-12594

1 THE COURT: WHAT WAS INAPPROPRIATE?

2 Q. BY MS. ABRAMSON: THINKING IT WAS FUNNY
3 THAT THE BABY WAS ON THE HIGHWAY.

4 THE COURT: SUSTAINED.

5 Q. BY MS. ABRAMSON: WELL, DID YOU SAY
6 ANYTHING TO THEM ABOUT WHAT YOU THOUGHT ABOUT WHETHER IT
7 WAS FUNNY THAT THE BABY WAS ON THE HIGHWAY?

8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: OVERRULED.

10 THE WITNESS: WHAT I SAID WAS THAT I'D TAKE CARE
11 OF THE KIDS, AND THAT SHE COULD GO ON WITH HER BUSINESS,
12 AND THAT IT WAS IN FACT A VERY BUSY HIGHWAY, AND WE
13 COULD NOT LET THE KIDS OUTSIDE.

14 Q. BY MS. ABRAMSON: AND THEN DID YOU THEN

15 START WATCHING OVER HER CHILDREN AS WELL AS YOUR OWN?

16 A. YES.

17 Q. DID YOU KNOW ERIK HAD WANDERED -- I MEAN,
18 HAD YOU NOTICED THAT HE WAS MISSING?

19 A. NO.

20 Q. DID YOU -- I'LL GET TO THAT.

21 NOW, YOU HAD INDICATED THIS OCCASION WHEN
22 YOU SAW LYLE WALKING ALONG THE LEDGE. THIS WAS A WOODEN
23 RAILING THAT WAS ON THE BACK PORCH OF THE HOUSE IN
24 MONSEY?

25 A. YES.

26 Q. AND WASN'T IT ABOUT 12 FEET OFF THE GROUND?

27 MR. CONN: OBJECTION. LEADING.

28 Q. BY MS. ABRAMSON: WELL, WAS IT ABOUT 12

-12593

1 FEET OFF THE GROUND?

2 MR. CONN: OBJECTION. LEADING AND SUGGESTIVE.

3 THE COURT: HOW HIGH WAS IT, IS THE QUESTION.

4 HOW HIGH WAS IT?

5 THE WITNESS: I WOULD TAKE A GUESS AT 10 TO 12
6 FEET, BUT THAT IS A GUESS.

7 Q. BY MS. ABRAMSON: AND IT WAS JUST -- HOW
8 NARROW -- WELL, IF I COULD, YOUR HONOR, I THINK THERE IS
9 A PHOTOGRAPH.

10 YOUR HONOR, I HAVE A PHOTOGRAPH THAT WAS

11 MARKED EXHIBIT 154, OLD 154 FROM THE OLD FIRST TRIAL.
12 THE COURT: OKAY. IT'S 450.
13 MS. ABRAMSON: THANK YOU.
14 Q. IT'S NOT THE BEST QUALITY PHOTOGRAPH, BUT
15 DOES THAT APPEAR TO BE THE RAILING ON THE PORCH AT THE
16 BACK OF THE MONSEY HOUSE?
17 A. IT DOES.
18 Q. AND DOES THAT SHOW THAT IT'S A RELATIVELY
19 NARROW PIECE OF WOODEN RAILING MATERIAL?
20 A. YES.
21 Q. IF I COULD PUT IT UP.
22 AND AT THE TIME THAT YOU RECALL IT, WAS
23 THERE THESE -- IT WAS THIS SERIES OF WOODEN-LIKE FENCE
24 POSTS AND SPACING BETWEEN?
25 A. THAT'S THE WAY I REMEMBER IT.
26 Q. OKAY. NOW, IT WAS YOUR OPINION THAT
27 MRS. MENENDEZ WAS NOT A VERY PHYSICALLY PROTECTIVE
28 MOTHER?

-12592

1 A. YES.
2 Q. AND WERE THERE MORE OCCASIONS THAN JUST
3 LYLE WALKING ON THE RAILING OR ERIK -- OR HER LAUGHING
4 AT ERIK BEING IN TRAFFIC THAT LED YOU TO THAT OPINION?
5 A. YES.
6 Q. AND WERE THERE TIMES THAT YOU SAW BOTH BOYS

7 IN SITUATIONS THAT LOOKED PHYSICALLY DANGEROUS WHERE SHE
8 WOULDN'T RESPOND?

9 A. YES, I DID.

10 Q. AND WAS THERE A PARTICULAR EPISODE THAT YOU
11 RECALL WHEN ERIK WAS APPROXIMATELY FOUR AT A -- AT THE
12 SWIMMING POOL IN NEW YORK?

13 A. YES.

14 Q. WAS THERE AN OCCASION WHEN YOU AND YOUR
15 CHILDREN AND MRS. MENENDEZ AND ERIK AND LYLE WERE AT
16 THIS AREA WHERE THERE WERE SWIMMING POOLS?

17 A. YES.

18 Q. AND WOULD YOU DESCRIBE WHERE THE VARIOUS
19 CHILDREN WERE AT THIS SWIMMING -- WAS IT A CLUB OR WAS
20 IT A COMMUNITY POOL?

21 A. IT WAS A TOWN POOL. IT WAS A COMMUNITY
22 POOL.

23 Q. WAS THERE MORE THAN ONE POOL AT THIS
24 COMMUNITY POOL?

25 WAS THIS THE RAMOPO (PHOENETIC) POOL?

26 A. I DON'T KNOW.

27 Q. WAS RAMOPO ONE OF THE TOWNSHIPS?

28 A. RAMOPO WAS ONE OF THE TOWNSHIPS, AND IT MAY

-12591

1 VERY WELL HAVE BEEN. RINGS A BELL. IT MIGHT BE.

2 Q. GOES BACK AWHILE?

3 A. YES, IT DOES.

4 Q. WHERE WERE THE VARIOUS CHILDREN INSIDE THIS
5 TOWN POOL AREA?

6 A. OKAY. THERE WAS A LARGE POOL WHICH WAS THE
7 MAIN POOL, AND AT THAT TIME THESE WERE THE SAME SWIMMING
8 LESSONS THAT I HAD SPOKEN ABOUT BEFORE.

9 SO LYLE AND MY TWO OLDER DAUGHTERS WERE IN
10 THE LARGE POOL TAKING THE LESSONS.

11 Q. AND WHAT ARE THE NAMES OF YOUR TWO OLDER
12 DAUGHTERS, JUST SO THE JURY CAN KEEP TRACK OF THEM?

13 A. FERN AND JESSICA.

14 Q. FERN IS THE ELDEST?

15 A. YES.

16 Q. JESSICA IS THE MIDDLE?

17 A. CORRECT.

18 Q. AND YOU HAD A THIRD DAUGHTER, DID YOU NOT?

19 A. AND JOY. JOY IS A YEAR YOUNGER THAN ERIK.

20 THERE WAS A KIDDIE POOL. AND I HAD SAID TO
21 MARY LOU: "LET'S TAKE ERIK AND JOY OVER TO THE KIDDIE
22 POOL WHILE THE BIGGER GUYS ARE TAKING THE LESSONS," AND
23 WE WALKED OVER THERE. IT WAS A VERY, VERY SHALLOW POOL
24 AREA. MARY LOU SAID --

25 MR. CONN: I WILL OBJECT AT THIS POINT, YOUR
26 HONOR, AND ASK THAT WE APPROACH BEFORE ANY FURTHER
27 DISCUSSION OF THIS TAKES PLACE.

28 THE COURT: OKAY. WELL, LET'S TAKE OUR RECESS,

1 AND THIS WILL BE OUR AFTERNOON RECESS.

2 DON'T DISCUSS THE MATTER WITH ANYONE.

3 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME

4 AT 3:00 O'CLOCK WITH THE JURY, OR THEREABOUTS, AND HAVE

5 EVERYBODY ELSE REMAIN. BUT THE JURY EXCUSED TO GO BACK

6 TO THE JURY ROOM.

7 (THE JURY ENTERS THE JURY ROOM

8 AND THE FOLLOWING PROCEEDINGS

9 WERE HELD:)

10

11 THE COURT: OKAY. WHAT'S THE OBJECTION?

12 MR. CONN: YES. I'M NOT AWARE THAT WE HAVE

13 DISCOVERY. I DON'T KNOW WHERE COUNSEL IS GOING WITH

14 THIS, BUT WE DON'T HAVE DISCOVERY OF THIS INCIDENT.

15 THE COURT: WHAT'S THE DEFENSE RESPONSE?

16 MS. ABRAMSON: I JUST LEARNED OF THIS INCIDENT,

17 YOUR HONOR, LAST NIGHT, AND I DON'T THINK IT'S ANY

18 DIFFERENT THAN ANY OF THE OTHER NEGLECTFUL MOTHER

19 INCIDENTS THAT WE HAVE ELICITED FROM THIS WITNESS. I

20 CAN'T KEEP TRACK OF EVERY SINGLE WORD FROM EVERY SINGLE

21 WITNESS.

22 THE COURT: WELL, YOU'RE ABLE TO KEEP TRACK OF IT

23 WELL ENOUGH TO BRING IT OUT DURING THE EXAMINATION OF

24 THE WITNESS.

25 MS. ABRAMSON: I MADE A NOTE ABOUT IT LAST NIGHT.

26 THE COURT: WELL THEN, IT COULD HAVE EASILY BEEN

27 TRANSFERRED TO A NOTE TO BE GIVEN TO THE PROSECUTION SO

-12589

1 MS. ABRAMSON: WHAT THE WITNESS SAID AND WHAT SHE
2 TOLD ME LAST NIGHT WAS MRS. MENENDEZ WAS EXTREMELY
3 PERSISTENT, RELENTLESS, THAT THEY LEAVE THE TWO YOUNG
4 CHILDREN IN THE SMALL POOL, IN SPITE OF THE FACT
5 MRS. GOLDSMITH THOUGHT IT WOULD BE DANGEROUS.

6 BUT EVENTUALLY MRS. MENENDEZ PERSUADED THE
7 WITNESS TO DO THAT. THEY TURNED THEIR BACK ON THE SMALL
8 POOL. THE WITNESS THEN HAD SECOND THOUGHTS, WENT BACK
9 TO THE LITTLE POOL, AND SAW HER CHILD LYING IN THE POOL
10 FACE DOWN, AND THEN ERIK MENENDEZ RESCUED HER CHILD.

11 THE COURT: AT WHAT AGE WAS THIS?

12 MS. ABRAMSON: HE WAS FOUR.

13 THE COURT: AND THIS WAS AN INCIDENT THAT THE
14 PEOPLE ARE OBJECTING TO, OR JUST OBJECTING TO THIS LACK
15 OF DISCOVERY?

16 MR. CONN: WE OBJECT TO ITS RELEVANCE, AND WE
17 OBJECT ON GROUNDS OF DISCOVERY.

18 APPARENTLY COUNSEL FEELS THAT SHE DOESN'T
19 HAVE TO COMPLY WITH DISCOVERY ANYMORE. THIS IS THE
20 SECOND INCIDENT TODAY IN WHICH SHE CLAIMS TO HAVE
21 OBTAINED NEW INFORMATION JUST LAST NIGHT, AND HAS NOT
22 PROVIDED THE PROSECUTION WITH ANY DISCOVERY, AND HAS
23 MADE NO EFFORT TO DO SO, AND APPARENTLY FEELS THAT SHE

24 IS FREE TO VIOLATE THE COURT'S DISCOVERY ORDER.

25 I WOULD ASK THAT COUNSEL BE PRECLUDED FROM
26 GOING INTO THE INCIDENT ENTIRELY AS A VIOLATION OF
27 DISCOVERY.

28 THE COURT: OKAY.

-12588

1 ANY OTHER INCIDENTS THAT YOU HAVE NOT
2 DISCLOSED TO THE PROSECUTION?

3 MS. ABRAMSON: NO. THE ONLY OTHER MATTER THAT
4 WE WERE DISCUSSING OUT IN THE HALLWAY WAS THIS WITNESS
5 AT THE FIRST TRIAL HAD TESTIFIED CONCERNING THE FACT
6 THAT ERIK MENENDEZ HAD BEEN LEFT IN A CEMETERY BY HIS
7 FATHER, AND ERIK MENENDEZ TESTIFIED DURING HIS TESTIMONY
8 IN THE GUILT PHASE TO THE SAME INCIDENT.

9 NOW, THE PEOPLE INDICATED IN THE HALLWAY
10 THAT THEY UNDERSTOOD THAT MRS. GOLDSMITH HAD BEEN TOLD
11 THAT STORY BY MRS. MENENDEZ.

12 I WASN'T EVEN -- I DIDN'T EVEN REALIZE THAT
13 UNTIL I TALKED TO HER ABOUT THIS JUST IN THE LAST DAY,
14 AND I HAD ASKED HER TO GO OVER THAT STORY TO FIND OUT IF
15 SHE HAD PERSONAL KNOWLEDGE OF IT. THAT'S WHEN I FIRST
16 LEARNED THAT SHE HEARD THE STORY THE FIRST TIME FROM
17 MRS. MENENDEZ.

18 NOW, I DON'T KNOW IF IT WAS IN A PREVIOUS
19 STATEMENT THAT WE TURNED OVER TO THE PROSECUTION, OR

20 WHETHER THE PROSECUTION INTERVIEWED THE WITNESS THEMSELF
21 AND LEARNED THAT HER SOURCE OF INFORMATION ABOUT IT WAS
22 MRS. MENENDEZ. I ACTUALLY THOUGH IT WAS PERSONAL
23 KNOWLEDGE UNTIL SHE TOLD ME RECENTLY, AND SHE --
24 THE COURT: WHAT DID SHE SAY IN THE FIRST TRIAL?
25 MS. ABRAMSON: THE FIRST TRIAL, I THOUGHT IT WAS
26 HER PERSONAL KNOWLEDGE.
27 THE COURT: SHE TESTIFIED THAT THIS WAS HER OWN
28 PERSONAL KNOWLEDGE THAT SHE WAS THERE?

-12587

1 MS. ABRAMSON: SHE DIDN'T SAY IT EITHER WAY. SHE
2 JUST TOLD THE STORY, AND I ASSUMED SHE KNEW FIRST HAND.
3 AT LEAST IN GOING BACK OVER IT NOW, I
4 DIDN'T HAVE ANY OTHER RECOLLECTION, AND IN GOING BACK
5 OVER THE MATERIALS SHE TESTIFIED TO, I THOUGHT IT WAS A
6 FIRSTHAND KNOWLEDGE STORY UNTIL SHE TOLD ME OTHERWISE,
7 AND SHE TOLD ME SHE HAD HEARD THE STORY FROM
8 MRS. MENENDEZ, AND THEN SHE WASN'T SURE SHE BELIEVED IT,
9 THAT MR. MENENDEZ HAD DONE THIS, HAD LEFT ERIK INSIDE
10 AND HAD RUN OUT WITH LYLE.
11 SO SHE WENT TO MR. MENENDEZ AND ASKED HIM
12 IF IN FACT HE HAD DONE THAT, AND HE TOLD HER HE HAD, AND
13 HE LAUGHED ABOUT IT, AND HE INDICATED TO HER THAT HE
14 THOUGHT IT WAS A GREAT WAY TO GET A KID TO STOP BEING SO
15 FEARFUL.

16 AND THAT INFORMATION ABOUT -- IN FACT, BOTH
17 ASPECTS OF THAT I JUST LEARNED. SO APPARENTLY THE
18 PROSECUTION EITHER KNOWS MORE OR READS BETTER THAN I DO.

19 MR. CONN: PERHAPS COUNSEL SHOULD HAVE READ HER
20 DEFENSE REPORT DATED NOVEMBER 16TH, 1991, A DEFENSE
21 INTERVIEW THAT WAS GIVEN TO US BY THE DEFENSE, WHICH
22 INDICATES ON THE LAST PAGE OF A SEVEN PAGE REPORT:

23 "FAITH THEN RECALLED MARY LOU
24 TELLING HER THAT JOSE, WHILE WALKING WITH
25 LYLE AND ERIK THROUGH A CEMETERY, LEFT
26 ERIK IN IT CRYING AS A MEANS OF TOUGHENING
27 UP."

28 SO WE GOT THIS INFORMATION FROM THE

-12586

1 DEFENSE.

2 MS. ABRAMSON: OH, I DON'T DOUBT IT. IT'S JUST
3 THAT I DIDN'T REMEMBER IT THAT WAY. I THOUGHT IT WAS
4 FIRSTHAND KNOWLEDGE, OR THAT SHE TESTIFIED TO IT WITHOUT
5 OBJECTION LAST TIME, BECAUSE OBVIOUSLY THE PROSECUTORS
6 LAST TIME HAD THE SAME REPORT THAT MR. CONN HAS JUST
7 READ TO THE COURT, AND THE FACT THAT THEY DIDN'T
8 OBJECT -- I DIDN'T GO BACK OVER HER REPORTS. I ONLY
9 WENT BACK OVER HER TESTIMONY.

10 BUT THAT'S WHEN I REALIZED IT WAS
11 SECONDHAND, AND THAT'S WHY I ASKED THE FOLLOW-UP ABOUT

12 HOW DID SHE VERIFY, AND SHE TOLD ME FOR THE FIRST TIME
13 THAT JOSE HAD ADMITTED IT AND LAUGHED ABOUT IT, AND WAS
14 VERY PROUD OF HIMSELF FOR HAVING DONE IT.

15 THE COURT: ALL RIGHT. YOU DIDN'T RESPOND TO MY
16 QUESTION.

17 MY QUESTION IS WHETHER OR NOT THERE IS
18 ANYTHING ELSE THAT WAS DISCLOSED BY THIS WITNESS THAT
19 YOU HAVE NOT PROVIDED TO THE PROSECUTION?

20 MS. ABRAMSON: NO. I WAS JUST TELLING YOU WHAT
21 ELSE HADN'T BEEN PROVIDED, THE STATEMENT BY
22 MR. MENENDEZ. THERE IS NOTHING ELSE THAT I INTENDED TO
23 ELICIT THAT WASN'T CONTAINED IN HER PREVIOUS TESTIMONY.

24 THE COURT: AND JUST SO IT'S CLEAR, WHICHEVER
25 SIDE CALLS A WITNESS, IF THERE IS ADDITIONAL INFORMATION
26 THAT THIS WITNESS OR ANY WITNESS WILL BE ASKED TO
27 PROVIDE THAT HAS NOT BEEN PREVIOUSLY DISCLOSED TO THE
28 OPPOSITION, IT IS REQUIRED TO BE DISCLOSED AS SOON AS

-12585

1 COUNSEL BECOMES AWARE OF IT. AND IF THERE IS FAILURE ON
2 DISCOVERY, THEN THE COURT WILL IMPOSE AN APPROPRIATE
3 SANCTION, WHATEVER THAT SANCTION HAPPENS TO BE,
4 DEPENDING ON THE CIRCUMSTANCES.

5 AT THIS POINT, THERE ARE TWO ISSUES.

6 FIRST AS TO THIS SWIMMING INCIDENT AND ITS
7 NON-DISCLOSURE. I'M NOT GOING TO FORECLOSE IT BEING

8 USED ON THE GROUNDS OF FAILURE TO PROVIDE DISCOVERY.

9 THAT IS NOT TO SAY THAT IN THE FUTURE, IF A SIMILAR

10 INCIDENT ARISES, THE COURT WOULD NOT PERMIT IT TO BE

11 USED.

12 AS TO THE OBJECTION ON GROUNDS OF

13 RELEVANCY, IT DOES SEEM TO HAVE THE SAME RELEVANCY AS

14 OTHER AREAS THAT HAVE BEEN ELICITED FROM THIS AND OTHER

15 WITNESSES REGARDING ENDANGERMENT OF THE DEFENDANTS, ONE

16 OR THE OTHER DEFENDANT, BY THE PARENTS, AND FALLS WITHIN

17 THE BACKGROUND AND CHARACTER EVIDENCE THAT IS ADMISSIBLE

18 IN A PENALTY PHASE OF A TRIAL.

19 AS TO THE ISSUE OF HEARSAY ON THE SUBJECT

20 OF THIS INCIDENT IN THE CEMETERY, THE PEOPLE WISH TO BE

21 HEARD AS TO WHETHER OR NOT THERE IS AN EXCEPTION TO THE

22 HEARSAY RULE FOR ITS ADMISSION?

23 MR. CONN: YES. OF COURSE, SINCE THIS WAS JUST

24 SPRUNG ON US WE HAVEN'T HAD A CHANCE TO LOOK INTO IT,

25 BUT I WOULD SUBMIT THAT IT DOESN'T QUALIFY AS A

26 DECLARATION AGAINST PENAL INTERESTS.

27 PERHAPS IF WE HAD AN OPPORTUNITY TO

28 INTERVIEW THE WITNESS CONCERNING THE ISSUE, WE WOULD BE

-12584

1 ABLE TO GET SUFFICIENT INFORMATION CONCERNING THAT.

2 MS. ABRAMSON: WHY DON'T WE DO THAT?

3 THE COURT: WE WILL LET YOU DO THAT RIGHT NOW.

4 WE WILL TAKE RECESS, AND WE WILL RESUME AT

5 10 MINUTES AFTER 3:00.

6 (A RECESS WAS TAKEN FROM

7 2:50 P.M. UNTIL 3:10 P.M.

8 OF THE SAME DAY.)

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1 THE COURT: ALL RIGHT. IN THE TRIAL, THE

2 DEFENDANTS AND ALL COUNSEL ARE HERE.

3 WE LEFT OFF DISCUSSING THE INCIDENT OF

4 THE STATEMENTS RELATED BY BOTH DECEDENTS TO THIS

5 WITNESS. THE PEOPLE WANTED TO INTERVIEW THE

6 WITNESS.

7 DID YOU DO THAT?

8 MR. CONN: YES, YOUR HONOR, WE DID. AND IN

9 DISCUSSING THIS WITH THE WITNESS IT RAISED AN ISSUE,

10 NOT ONLY AS TO WHETHER OR NOT THE STATEMENT

11 QUALIFIES AS A DECLARATION AGAINST PENAL INTEREST,

12 BUT IT ALSO SHEDS SOME ADDITIONAL LIGHT IN REGARD TO

13 THE MATTER OF DISCOVERY.

14 AND I THINK THAT I WOULD ASK THAT WHILE

15 WE DISCUSS THE WITNESS, AS WE DISCUSS THE ISSUE OF

16 DISCOVERY FURTHER -- AND IT MAY BE NECESSARY --

17 THE COURT: OKAY. WHY DON'T YOU JUST WAIT

18 OUT IN THE HALL, PLEASE.

19 (WITNESS EXITS THE COURTROOM.)

20

21 MR. CONN: I WOULD ALSO ASK THAT THE WITNESS'

22 DAUGHTER BE EXCUSED. SHE APPARENTLY HAS SOME

23 INFORMATION CONCERNING THE DISCOVERY AS WELL.

24 MS. ABRAMSON: BOTH THE WITNESS AND THE

25 WITNESS' DAUGHTER DISCUSSED THE DISCOVERY ISSUES

26 WITH THE PROSECUTION.

27 THE COURT: WELL, I DON'T KNOW WHAT HAS BEEN

28 SAID, SO WE'LL LET THEM WAIT IN THE HALLWAY.

1 MR. CONN: JUST NOW WE DID HAVE A CHANCE TO
2 DISCUSS THE INCIDENT WITH THE WITNESS, AND
3 SPECIFICALLY, WE FOCUSED UPON A CONVERSATION WHICH
4 SHE NOW CLAIMS THAT SHE HAD WITH JOSE MENENDEZ IN
5 WHICH HE CONFIRMED THAT THE INCIDENT DID, IN FACT,
6 TAKE PLACE.

7 AND FOLLOWING OUR DISCUSSION OF THAT
8 INCIDENT, I INQUIRED OF THE WITNESS WHETHER SHE
9 RECENTLY DISCLOSED THIS MATTER TO THE DEFENSE, AND
10 SHE INDICATED THAT SHE HAS NO RECOLLECTION OF WHEN
11 SHE DISCLOSED THIS MATTER TO THE DEFENSE. THIS IS
12 SOMETHING WE WENT OVER REPEATEDLY WITH HER, AND SHE
13 SPECIFICALLY SAID -- MR. GESSLER WAS PRESENT,
14 INVESTIGATING OFFICER ZOELLER WAS PRESENT -- AND SHE
15 REPEATEDLY SAID THAT SHE HAS NO RECOLLECTION OF WHEN
16 SHE DISCUSSED THE CONVERSATION WITH JOSE MENENDEZ
17 WITH THE DEFENSE.

18 AFTER -- FOLLOWING THAT CONVERSATION
19 MR. GESSLER AND THE WITNESS WALKED AWAY. THE
20 WITNESS HAD AN OPPORTUNITY TO SPEAK TO LESLIE
21 ABRAMSON. AND A FEW MINUTES LATER SHE RETURNED WITH
22 HER DAUGHTER, SAYING THAT THIS MATTER WAS DISCUSSED
23 IN THE PRESENCE OF MR. GESSLER, LESLIE ABRAMSON, HER
24 DAUGHTER, AS WELL AS OTHER PEOPLE, IN THE OFFICE OF

25 DEFENSE COUNSEL A COUPLE OF DAYS AGO.

26 SO I THINK THAT THERE'S AN ISSUE HERE

27 CONCERNING THE CREDIBILITY OF THE WITNESS AND

28 WHETHER THERE WAS, IN FACT, DISCOVERY COMPLIANCE IN

52955

1 THIS CASE. I WOULD ASK -- INVITE THE COURT TO

2 INQUIRE OF THE WITNESS, IF THE COURT WISHES TO MAKE

3 A DETERMINATION, AS TO WHETHER OR NOT THERE HAS BEEN

4 COMPLIANCE WITH DISCOVERY. IT MAY BE NECESSARY FOR

5 THE COURT TO QUESTION THE WITNESS.

6 MR. GESSLER: ONE THING I'D ADD -- SINCE I'VE

7 BEEN NAMED -- THE ONE THING -- IN FAIRNESS, WHAT THE

8 WITNESS SAID IS "I CAN'T TELL YOU WHEN I TOLD THE

9 COMPONENTS OF THIS TO THE DEFENSE," AND SHE USED THE

10 WORD "COMPONENTS"; THAT THERE WERE SO MANY DIFFERENT

11 THINGS IN IT SHE COULDN'T REMEMBER EXACTLY WHEN SHE

12 MENTIONED JOSE MENENDEZ AS OPPOSED TO TELLING THE

13 INCIDENT ITSELF. I THINK THAT SHE USED THE WORD

14 "COMPONENTS" TWO OR THREE TIMES.

15 MR. CONN: THAT IS CORRECT. AFTER SHE SAID

16 THAT, I SPECIFICALLY DIRECTED HER ATTENTION TO THE

17 COMPONENTS OF THE STORY RELATING TO THE CONVERSATION

18 WITH JOSE MENENDEZ; AND ONCE AGAIN, SPECIFICALLY

19 ASKED HER: DO YOU HAVE ANY RECOLLECTION WHATSOEVER

20 OF WHEN YOU TOLD THE DEFENSE ABOUT THAT COMPONENT OF
21 THE STORY? AND SHE INDICATED SHE HAD NO
22 RECOLLECTION WHATSOEVER; ONLY TO THEN COME BACK TO
23 ME A COUPLE MINUTES LATER AND SAY SHE NOW RECALLS,
24 AND HER DAUGHTER NOW RECALLS, THAT IT WAS DISCUSSED
25 IN THE OFFICE OF THE DEFENSE ATTORNEY A COUPLE OF
26 DAYS AGO.

27 MS. ABRAMSON: WELL, YOUR HONOR, I WILL
28 EXPLAIN WHAT MY ROLE IN THIS TEMPEST IN A TEAPOT IS,

52956

1 BECAUSE THE PEOPLE NOW HAVE DISCOVERY OF THE
2 INFORMATION THAT THE WITNESS HAD.

3 I SPOKE TO THE WITNESS ON TWO DAYS, TWO
4 CONSECUTIVE DAYS, IN DIFFERENT VENUES; FIRST, ON
5 TUESDAY WE HAD A VERY LONG INTERVIEW WITH FOUR
6 DIFFERENT WITNESSES AT ONCE. WE HAVE ALL THESE
7 PEOPLE COMING IN FROM OUT OF TOWN. WE'RE
8 INTERVIEWING FOUR TO SIX WITNESSES A DAY.

9 WE HAD A MEETING IN MR. GESSLER'S OFFICE
10 WITH ALL DEFENSE COUNSEL AND FOUR OF OUR WITNESSES,
11 AND WE WENT OVER -- THAT'S WHEN WE WENT OVER A NUMBER
12 OF ISSUES WITH THIS WITNESS. AND THEN I SAW HER
13 AGAIN LAST NIGHT. SHE APPROACHED ME IN THE COFFEE
14 SHOP AT THE MOTEL WHERE THE WITNESSES ARE BEING

15 HOUSED BY THE COUNTY, AND SHE GAVE ME ADDITIONAL
16 INFORMATION.

17 NOW, I WENT OUTSIDE DURING THE BREAK, AS
18 I ALWAYS DO, AND MR. GESSLER ACCOMPANIED THE
19 WITNESS. WHEN I CAME BACK FROM THE BREAK THE
20 WITNESS CAME OVER TO ME AND INDICATED THAT SHE DID
21 NOT REMEMBER; WHEN DID SHE TELL ME THE PART ABOUT
22 JOSE MENENDEZ? AND I SAID, "ASK JESSICA," WHICH IS
23 HER DAUGHTER, "AND SEE IF SHE WAS PRESENT WHEN WE
24 TALKED ABOUT THE CEMETERY SINCE YOU'VE COME TO
25 CALIFORNIA THIS TRIP."

26 SO HER DAUGHTER CAME OVER AND THE
27 WITNESS ASKED HER DAUGHTER: "DO YOU RECALL ME
28 TALKING ABOUT THE CEMETERY?" AND THE DAUGHTER

52957

1 ACKNOWLEDGED, "YES." IT WAS WHEN WE WERE ALL
2 SITTING AROUND IN MR. GESSLER'S OFFICE THAT I
3 INTERVIEWED HER ABOUT THE CEMETERY ISSUE. THAT'S
4 WHAT SHE TOLD HER.

5 I DON'T KNOW WHAT THE BIG MYSTERY IS.
6 THAT'S WHEN IT WAS.

7 THE COURT: THE MYSTERY IS NOT SO MUCH A
8 MYSTERY, BUT THE FACT THAT THIS TEMPEST IN A TEAPOT
9 AROSE SOLEY BECAUSE YOU DIDN'T PROVIDE IT TO THE

10 PROSECUTION IN A TIMELY FASHION. SO TO NOW COMPLAIN
11 THAT THE PEOPLE ARE MAKING AN ISSUE OF IT STRAINS
12 THE PROCESS QUITE A BIT.

13 NOW WE HAVE TO DISCUSS THAT, WHICH IS
14 REALLY A WASTE OF TIME. IT'S REALLY -- AT THIS
15 POINT IT SHOULD BE MEA CULPA ON YOUR PART, RATHER
16 THAN TAKING THE APPROACH YOU SEEM TO TAKE ALL THE
17 TIME. IT WAS YOUR FAULT FOR DOING THIS.

18 MS. ABRAMSON: FINE. THE PEOPLE WE TOLD --
19 THE COURT: FINE? YOU HAVE SOME DOUBT ABOUT
20 IT?

21 MS. ABRAMSON: I AGREE. I AGREE. I SHOULD
22 HAVE TOLD THEM YESTERDAY, IF THERE HAD BEEN AN
23 OPPORTUNITY.

24 THE COURT: THERE CERTAINLY WAS AN
25 OPPORTUNITY. THERE WAS ALL DAY.

26 MS. ABRAMSON: WE'VE BEEN BUSY.

27 THE COURT: IT'S A QUESTION THAT YOU DIDN'T
28 DO IT.

52958

1 MS. ABRAMSON: THE PEOPLE DID HEAR ABOUT IT
2 IN THE BACK HALLWAY BEFORE THE INFORMATION WAS
3 ELICITED. THEY'VE HAD A CHANCE TO INTERVIEW THE
4 WITNESS BEFORE THE INFORMATION WAS ELICITED, AND

5 THAT'S THE INFORMATION. THE REAL ISSUE IS WHETHER
6 THE TESTIMONY IS ADMISSIBLE UNDER 1230 OF THE
7 EVIDENCE CODE.

8 THE COURT: THAT'S A SEPARATE ISSUE, NOT THE
9 REAL ISSUE. THERE'S TWO ISSUES. AND LET'S DEAL
10 WITH ONE ISSUE AT A TIME BEFORE WE SLIP OFF ON THE
11 ISSUE YOU WANT TO ADDRESS.

12 FIRST OF ALL, WE CAN DEAL WITH THE ISSUE
13 OF DISCOVERY. I DON'T SEE THAT IT'S MUCH DIFFERENT
14 THAN WHAT YOU'VE TOLD ME, MR. CONN, THAN WHAT I KNEW
15 BEFORE THE RECESS.

16 MR. CONN: I JUST WANTED TO BRING THAT TO THE
17 COURT'S ATTENTION.

18 THE COURT: MY FEELING IS THE SAME. I DON'T
19 SEE THIS IS THE TYPE OF ISSUE THAT AT THIS POINT
20 WOULD CAUSE ME TO FORECLOSE THE USE OF THIS EVIDENCE
21 BECAUSE OF FAILURE TO DISCLOSE. BUT WE'VE CONSUMED
22 A GREAT DEAL OF TIME ON SOMETHING THAT THE
23 NEGLIGENCE OF COUNSEL FOR THE DEFENSE HAS CREATED
24 HERE.

25 ALL RIGHT. THE OTHER ISSUE HAS TO DO
26 WITH THE DECLARATION AGAINST INTEREST.

27 MR. CONN: YES. TURNING TO THE SUBSTANCE OF
28 THE MATTER, THE WITNESS INDICATED THAT KITTY

1 MENENDEZ DID, IN FACT, TELL HER OF THE CEMETERY
2 INCIDENT AND SHE DESCRIBED IT AS A SITUATION WHICH
3 ERIK, LYLE, AND JOSE WERE WALKING BY THE CEMETERY.
4 JOSE MENENDEZ SAID, "LET'S GO IN." AFTER GOING
5 INSIDE LYLE AND JOSE RAN, LEAVING ERIK ALONE AT
6 NIGHTTIME. THEY HEARD HIM CRYING. THEY LEFT HIM IN
7 THERE FOR A LITTLE BIT, AND THEN THEY APPARENTLY
8 TOOK HIM OUT OF THE CEMETERY.

9 SHE INDICATED THAT FOLLOWING THAT STORY,
10 ON THE VERY SAME DAY, SHE THEN SPOKE TO JOSE
11 MENENDEZ. SHE RELATED THE STORY TO HIM, AND HE
12 INDICATED THAT THAT WAS TRUE, THAT THAT, IN FACT,
13 HAD OCCURRED.

14 I THINK WHAT IS SIGNIFICANT ABOUT THE
15 MANNER IN WHICH SHE RECALLS THIS INCIDENT IS THAT
16 JOSE MENENDEZ WAS LAUGHING ABOUT IT. HE SEEMED TO
17 SUGGEST IN HIS RESPONSE THAT THIS WAS NO BIG DEAL,
18 THAT THIS WAS -- NO ONE WAS REALLY HURT AS A RESULT
19 OF THIS INCIDENT. HE FOUND IT HUMOROUS. AND SHE
20 ASKED HIM: "WHY DID YOU DO THIS?"

21 AND HE SAID, "AH, TO MAKE HIM TOUGH."

22 THE QUESTION NOW IS WHETHER THAT IS A
23 DECLARATION AGAINST PENAL INTEREST UNDER THE THEORY
24 THAT ADMISSION BY JOSE MENENDEZ WAS SUCH THAT IT
25 WOULD CREATE SUCH A RISK OF MAKING HIM AN OBJECT OF
26 HATRED, RIDICULE, OR SOCIAL DISGRACE IN THE
27 COMMUNITY, THAT THE REASONABLE MAN IN HIS POSITION

52960

1 IT TO BE TRUE.

2 AND I WOULD ASK THE COURT TO FIND THAT
3 THE NATURE OF THE STORY AND THE MANNER IN WHICH JOSE
4 REACTED TO THE STORY SUGGESTS THAT IT WAS NOT THE
5 HORRENDOUS INCIDENT IN THE WAY THAT THE DEFENSE IS
6 NOW SEEKING TO CHARACTERIZE IT. IT WAS INTENDED,
7 AS -- NOT TO TERRORIZE ERIK MENENDEZ; AND AS SUCH, I
8 WOULD ASK THE COURT TO FIND THAT THE INCIDENT WAS --
9 OR THE ADMISSION WAS NOT SUCH THAT IT WOULD HAVE
10 CREATED THE RISK OF MAKING HIM AN OBJECT OF HATRED,
11 RIDICULE AND SOCIAL DISGRACE IN THE COMMUNITY.

12 MS. ABRAMSON: I DON'T THINK THAT THE
13 STANDARD IS JOSE MENENDEZ' VIEW OF WHAT MAKES HIM A
14 SOCIAL DISGRACE, BUT THE REASONABLE MAN'S VIEW OF
15 WHETHER THAT WOULD MAKE HIM A SOCIAL DISGRACE.

16 MOREOVER, THE FACT HE'S LAUGHING ABOUT
17 IT. THERE'S SUCH A THING AS GUILTY LAUGHTER AS WELL
18 AS HUMOROUS LAUGHTER. WHEN CONFRONTED BY SOMEONE
19 WHO CLEARLY DISAPPROVES OF IT, HE LAUGHS IT OFF. HE
20 ADMITS HIS PURPOSE WAS TO FRIGHTEN THE CHILD INTO
21 NOT BEING FEARFUL. AND THAT'S PRECISELY WHAT
22 TERRORIZING IS.

23 BEYOND THAT, WHETHER HE'S MAKING EXCUSES
24 FOR IT THAT IT WAS OKAY, OR THAT IT WAS FUNNY, DOES
25 NOT -- ONE COULD LAUGH ABOUT KILLING SOMEONE AS
26 WELL. THAT DOESN'T MEAN A DECLARATION YOU'VE DONE
27 THAT IS NOT ADMISSIBLE AGAINST YOU.
28 I DON'T THINK HIS DEMEANOR WHEN

52961

1 CONFRONTED IS THE GUIDING PRINCIPLE. IT'S THE
2 NATURE OF THE CONDUCT THAT HE'S ADMITTING TO WHEN HE
3 KNOWS SOMEONE IS DISAPPROVING. THAT'S WHY THEY'RE
4 ASKING.

5 THE COURT: THIS WAS AN INCIDENT THAT HAS
6 ALREADY BEEN TESTIFIED TO OR TESTIFIED ABOUT BY THE
7 DEFENDANT IN THIS TRIAL?

8 MS. ABRAMSON: YES, YOUR HONOR.

9 THE COURT: IS THAT CORRECT.

10 MR. CONN: I'M NOT SURE THAT IS CORRECT?

11 MS. ABRAMSON: YES.

12 MR. CONN: I DON'T BELIEVE HE DID.

13 MS. ABRAMSON: I BELIEVE HE DID THIS TIME
14 AROUND. HE DIDN'T THE FIRST TIME. AND THE REASON I
15 BELIEVE THAT IS BECAUSE I THEN FOLLOWED UP AND THEN
16 ASKED DR. DIETZ ABOUT IT, BECAUSE MY CLIENT HAD
17 TESTIFIED ABOUT IT AND IT WAS BEFORE THE JURY. I

18 ASKED DR. DIETZ WHETHER OR NOT LEAVING HIM IN A
19 CEMETERY WAS SIGNIFICANT.
20 THE COURT: WAS THIS ALSO BROUGHT OUT IN THE
21 TESTIMONY OF DR. DIETZ, YOU'RE SAYING?
22 MS. ABRAMSON: AND DR. WILSON ALSO.
23 THE COURT: DO YOU HAVE ANY RECOLLECTION
24 ABOUT THOSE?
25 MS. ABRAMSON: NO, I DON'T, YOUR HONOR.
26 MS. TOWERY: IF YOU WANT, I CAN RUN
27 "CEMETERY" ON MY COMPUTER.
28 THE COURT: WHY DON'T YOU DO THAT AND SEE IF

52962

1 YOU CAN COME UP WITH THE SPECIFIC REFERENCE. I
2 SIMPLY DON'T HAVE ANY RECALL.
3 DO YOU HAVE OTHER AREAS OF INQUIRY OF
4 THIS WITNESS, OR IS THAT ABOUT IT?
5 MS. ABRAMSON: WELL, JUST TO FINISH THE
6 SWIMMING POOL INCIDENT, WHICH WE HADN'T FINISHED.
7 THE COURT: THEN THAT'S IT?
8 MS. ABRAMSON: YEAH.
9 THE COURT: HER DAUGHTER IS THE NEXT
10 WITNESS?
11 MS. ABRAMSON: YES, YOUR HONOR.
12 THE COURT: WHY DON'T WE PUT HER ON AND THEN

13 CALL THIS WITNESS BACK IF THESE ISSUES ARISE.

14 MS. ABRAMSON: THERE'S ONE OTHER INCIDENT
15 WITH THIS WITNESS. I'M NOT SURE -- IT HAS TO DO WITH
16 MY CLIENT BEING INJURED IN A SHOE STORE AND NEEDING
17 FIVE STITCHES.

18 THE COURT: WE'LL STOP THE TESTIMONY OF THIS
19 WITNESS. WE UNDERSTAND SHE STILL HAS TO BE
20 CROSS-EXAMINED. AND IF WE CAN -- I DON'T KNOW HOW
21 LONG THE DAUGHTER'S TESTIMONY WILL BE. I DON'T
22 THINK IT WILL BE VERY LONG. PERHAPS WE CAN DO THAT
23 WHILE MS. TOWERY'S DOING HER SEARCH.

24 MS. TOWERY: MS. TOWERY'S DOING THAT WITNESS,
25 SO THAT MIGHT NOT REALLY WORK.

26 THE COURT: I SUPPOSE MR. GESSLER CAN STEP IN
27 AND DO THE COMPUTER WORK.

28 MS. ABRAMSON: OH, SURE. YOU WANT TO SEE A

52963

1 COMPUTER JUST CRASH, YOUR HONOR? MR. GESSLER'S
2 THE --

3 MS. TOWERY: I DON'T WANT MR. GESSLER
4 TOUCHING MY COMPUTER.

5 MR. GESSLER: I'LL GET LEPROSY ANYWAY.

6 MS. TOWERY: IF YOU'LL JUST GIVE ME A MINUTE,
7 I CAN SEE IF I CAN RUN IT. THAT MIGHT BE A MORE

8 EFFICIENT WAY TO --

9 THE COURT: OKAY.

10 (PAUSE IN THE PROCEEDINGS.)

11

12 THE COURT: MR. LEVIN SHOULD REMEMBER IF IT

13 CAME UP IN THE DEFENDANT'S TESTIMONY. YOU DON'T

14 RECALL?

15 MR. LEVIN: I DON'T REMEMBER.

16 MR. GESSLER: I THOUGHT I DID.

17 MR. LEVIN: CAN I REOPEN IF IT DIDN'T?

18 THE COURT: YOU WANT TO EXPOSE YOUR CLIENT TO

19 THAT?

20 MR. LEVIN: YES. THEN THEY HAVE TO

21 DELIBERATE AGAIN. WE HAVE TO ALL BE FAIR.

22 MS. TOWERY: I'VE BEEN ADVISED BY THE BAILIFF

23 I SPELLED WRONG IN MY SEARCH, ALTHOUGH IT'S SPELLED

24 WRONG ONCE IN THE TRANSCRIPT TOO SO...

25 THE COURT: OKAY.

26 MS. TOWERY: I CAN SEARCH IT BOTH WAYS, E-R-Y

27 AND A-R-Y.

28 (PAUSE IN THE PROCEEDINGS.)

52964

1

2 THE COURT: HOW ARE YOU DOING?

3 MS. TOWERY: I FOUND REFERENCES TO IT WITH
4 THE WRONG SPELLING, AND NOW I'M GETTING SOME
5 REFERENCES WITH ANOTHER SPELLING. SO IT'S NOT
6 FINISHED WITH THE SECOND SEARCH.

7 THE COURT: WHAT DID THE FIRST SEARCH
8 DISCLOSE?

9 MS. TOWERY: NOT REFERENCES TO THE CEMETERY
10 INCIDENT. JUST TO THE WORD SPELLED WRONG AND THAT
11 WAS WITH REFERENCE TO THE HEADSTONES --

12 THE COURT: SOMETHING ELSE?

13 MS. TOWERY: -- FOR MR. AND MRS. MENENDEZ.

14 THE COURT: WHEN IS THIS WITNESS DUE TO
15 DEPART?

16 MS. ABRAMSON: OH, YESTERDAY, YOUR HONOR.

17 THE COURT: WHEN IS SHE NOW DUE TO DEPART?

18 MS. ABRAMSON: WELL, TONIGHT.

19 MS. NAJERA: WHILE WE'RE WAITING ON THAT, IF
20 I CAN BRING UP ANOTHER MATTER.

21 FIRST OF ALL, WE HAVE A STIPULATION WE'D
22 LIKE COUNSEL TO REVIEW CONCERNING THE TESTIMONY OF
23 TERRY BARALT.

24 THE COURT: GIVE IT TO THEM IN WRITING.

25 MS. NAJERA: IT IS IN WRITING. I'M JUST
26 GOING TO HAND IT DOWN AND LET THE COURT KNOW.

27 SECONDLY, ON THE SUBJECT OF THE
28 WITNESSES WE'VE BEEN GIVEN A PROFFER OF, I WOULD

1 LIKE THE COURT TO INQUIRE OF COUNSEL FOR THE DEFENSE
2 IF SOMETHING IN WRITING EXISTS AS TO THEM; AND IF
3 SO, IF THEY REFUSE TO TURN IT OVER, IF THE COURT
4 WOULD TAKE A LOOK AT IT AND DETERMINE WHETHER OR NOT
5 IT'S DISCOVERABLE.

6 THE COURT: WELL, YOU'RE SAYING THAT THERE IS
7 AN INVESTIGATOR'S REPORT OF THESE INTERVIEWS?

8 MS. NAJERA: EVEN A REPORT BY THE ATTORNEYS I
9 BELIEVE IS DISCOVERABLE. BECAUSE WHEN WE TOOK NOTES
10 WITH OUR WITNESSES, THOSE WERE DISCOVERABLE.

11 THE COURT: WHAT IS THE DEFENSE POSITION?

12 MS. ABRAMSON: WE'RE ONLY REQUIRED TO TURN
13 OVER TO THE PROSECUTION THAT WHICH WE INTEND TO
14 PROVE. WHAT WE INTEND TO PROVE IS NOT THE SAME
15 THING AS EITHER ROUGH NOTES OF AN INTERVIEW OR AN
16 OUTLINE.

17 I DON'T HAVE ANY REPORT FROM THIS
18 WITNESS. I DO HAVE MY OWN ROUGH NOTES OF AN
19 INTERVIEW WITH THE WITNESS THAT GOES BEYOND WHAT WE
20 INTEND TO PROVE IN THIS PROCEEDING. AND I INDICATED
21 TO COUNSEL, IF SHE WILL WAIT TILL THE END OF THE
22 SESSION I WILL GO OVER THOSE NOTES TO SEE IF THERE'S
23 ANYTHING IN ADDITION TO WHAT WAS IN THE PROFFER FROM
24 THE NOTES THAT I WOULD WANT TO BRING OUT WITH THE
25 WITNESS. THAT'S WHAT I TOLD HER.

26 I'M NOT TURNING OVER MY ROUGH NOTES OF

27 INTERVIEWS WITH THE WITNESS THAT AREN'T NECESSARILY

28 WHAT I INTEND TO PROVE OR EVEN ON POINT.

52966

1 THE COURT: OKAY. WHY IS IT THAT THE
2 PROSECUTION FEELS YOU'RE ENTITLED TO WHATEVER IT IS
3 THE WITNESS TOLD COUNSEL IN AN INTERVIEW?

4 MS. NAJERA: YOUR HONOR, IT'S NOTES FROM AN
5 INTERVIEW WITH THE WITNESS THEY INTEND TO CALL TO
6 THE WITNESS STAND. THAT WOULD MAKE IT
7 DISCOVERABLE.

8 THE COURT: CLEARLY, ANYTHING THE WITNESS
9 SAID ON ANY SUBJECT THAT WOULD BE BROUGHT OUT DURING
10 THE EXAMINATION OF THE WITNESS IS DISCOVERABLE.

11 MS. NAJERA: RIGHT.

12 THE COURT: IF THERE ARE MATTERS THAT ARE NOT
13 GOING TO BE BROUGHT OUT, I DON'T THINK THAT THEY'RE
14 THE SUBJECT OF DISCOVERY. IT'S NOT AN OPEN-ENDED
15 PROCESS BY WHICH THE PROSECUTION CAN OBTAIN ALL
16 SORTS OF OTHER INFORMATION FROM A WITNESS THAT IS
17 NOT GOING TO BE BROUGHT OUT. IF THERE'S ANYTHING
18 THE WITNESS SAID ON A PARTICULAR SUBJECT THAT IS
19 GOING TO BE BROUGHT OUT DURING THAT WITNESS'
20 EXAMINATION, IT IS DISCOVERABLE, WHETHER IT'S GOOD
21 OR BAD, FOR THE PROPONENT OF THAT EVIDENCE.

22 MS. ABRAMSON: I AGREE. ONE OF THE PROBLEMS,
23 THOUGH, IS BECAUSE WE'RE UNDER -- THERE'S A LARGE
24 NUMBER OF WITNESSES THAT WE'VE BEEN TRYING TO SCREEN
25 FOR THIS PROCESS. WHAT I WOULD WRITE UP BY WAY OF A
26 REPORT WOULDN'T BE THE WITNESS' OWN WORDS WHEN I'M
27 JUST TAKING NOTES. THEY'RE NOT NECESSARILY THE
28 STATEMENT OF THE WITNESS. THEY'RE MY IMPRESSIONS OR

52967

1 THEY'RE CONCLUSIONARY OR THEY'RE PARTIAL.

2 AND THE PROBLEM WITH TURNING OVER SUCH
3 MATERIAL IS THAT IT CAN BE MISINTERPRETED, OR THE
4 WITNESS CAN BE ASKED: DIDN'T YOU SAY THIS, WHEN
5 THESE AREN'T THE WITNESS' WORDS. THESE ARE JUST MY
6 NOTES.

7 SO THAT'S THE PROBLEM. AS FAR AS
8 TOPICS, OR ANY INCIDENT THAT SHE WOULD DESCRIBE, I
9 INDICATED TO COUNSEL THAT I WILL GIVE HER ORALLY
10 DISCOVERY OF WHAT I BELIEVE THE WITNESS WILL SAY;
11 AND NOT WORD FOR WORD, BUT THE THINGS THE WITNESS
12 WILL TALK ABOUT, BECAUSE I DON'T HAVE VERBATIM NOTES
13 OF AN INTERVIEW WITH THAT WITNESS. IN FACT, WE
14 DON'T USUALLY HAVE VERBATIM NOTES WITH ANYBODY, BUT
15 WE TRY.

16 THE COURT: MS. TOWERY, HOW ARE YOU DOING?

17 MS. TOWERY: I THINK IT'S DR. WILSON RATHER
18 THAN DR. DIETZ. IT'S VOLUME 275, 46,188. I THINK
19 IT'S WILSON. I CAN'T TELL, BUT I JUST HIT THE PAGE
20 FROM MY COMPUTER. THE CONTENT AND THE VOLUME NUMBER
21 I THINK IS DR. WILSON.

22 THE REPORTER: YOUR HONOR, I CAN CHECK MY LOG
23 HERE AND TELL YOU IN A MINUTE WHO IT IS.

24 THE COURT: ALL RIGHT.

25 THE REPORTER: IT IS DR. WILSON.

26 MS. TOWERY: THE TESTIMONY IS:

27 "YOU'RE ALSO AWARE OF AN INCIDENT
28 WHERE MR. MENENDEZ PURPOSELY ABANDONED

52968

1 ERIK MENENDEZ IN A CEMETERY WHEN HE
2 WAS QUITE YOUNG SO THAT JOSE MENENDEZ
3 COULD FRIGHTEN THE CHILD?

4 "ANSWER: YES.

5 "QUESTION: IS THAT THE KIND OF
6 THING THAT'S LIKELY TO INCREASE A
7 CHILD'S ANXIETY?

8 "ANSWER: IT SURE IS."

9 MS. ABRAMSON: I SEEM TO RECALL MY CLIENT
10 ALSO SAID SOMETHING ABOUT IT IN HIS CROSS.

11 MS. TOWERY: I'M MISSING SOME PORTIONS OF THE

12 TESTIMONY IN MY COMPUTER. SO IT'S POSSIBLE.

13 THE COURT: IT DID COME OUT DURING WILSON'S
14 TESTIMONY?

15 MS. TOWERY: RIGHT.

16 THE COURT: ALL RIGHT. AS TO THE OBJECTION
17 ON THE GROUNDS OF HEARSAY, THAT OBJECTION WILL BE
18 OVERRULED. I THINK THERE IS A SUFFICIENT BASIS FOR
19 THE ADMISSIBILITY OF THE -- THIS SPECIFIC STATEMENT
20 AS A DECLARATION AGAINST INTEREST UNDER SECTION 1230
21 OF THE EVIDENCE CODE, BEARING IN MIND THE CASE OF
22 GREEN VERSUS GEORGIA 442 U.S. 95.

23 AS FAR AS THE ISSUE OF DISCOVERY IS
24 CONCERNED, THE COURT WILL ORDER THAT ONCE THE
25 OUTLINE IS TURNED OVER TO THE PROSECUTION, THAT THE
26 DEFENSE PROVIDE THE COURT WITH THE ROUGH NOTES SO
27 THAT ANY ISSUE OF DISCOVERY THEN BE RESOLVED SO
28 THERE WON'T BE LINGERING PROBLEMS ON THAT SUBJECT.

52969

1 MS. ABRAMSON: I DIDN'T INTEND TO TURN AN
2 OUTLINE OVER. IF I HAD HAD TIME, I COULD HAVE
3 WRITTEN IT UP.

4 THE COURT: WHAT ARE YOU GOING TO DO?

5 MS. ABRAMSON: I'M GOING TO ORALLY -- SIT
6 DOWN AND TELL THE PROSECUTION WHAT, BEYOND THE

7 PROFFER, THE WITNESS IS GOING TO BE ASKED ABOUT.

8 THE COURT: DO THAT WITH SOMEONE, A THIRD
9 PARTY PRESENT, OR DO IT WITH A TAPE-RECORDER OR
10 SOMETHING SO WE DON'T HAVE A DISPUTE AS TO WHAT YOU
11 TOLD THE PROSECUTION; AND THEN PROVIDE ME WITH YOUR
12 NOTES, SO IF THERE IS A DISPUTE THAT ARISES DURING
13 THE TESTIMONY, THEN I'LL AT LEAST HAVE SOME ADVANCE
14 NOTICE OF WHAT THE SUBJECT IS.

15 MS. ABRAMSON: ALL RIGHT.

16 THE COURT: ALL RIGHT. LET'S THEN HAVE THE
17 JURY OUT.

18 WE NEED THE WITNESS BACK AS WELL.

19 (THE JURY ENTERED THE COURTROOM
20 AND THE FOLLOWING PROCEEDINGS
21 WERE HELD:)

22

23 THE COURT: THE JURY IS BACK.

24 I'M SORRY FOR THE DELAY. THERE WERE
25 SEVERAL ISSUES THAT AROSE ALL AT ONCE HERE, AND IT
26 TOOK US A LITTLE TIME TO RESOLVE IT.

27 WE'RE NOW READY TO RESUME.

28 YOU MAY CONTINUE YOUR DIRECT

2

3 DIRECT EXAMINATION (CONTINUED)

4 BY MS. ABRAMSON:

5 Q I BELIEVE, MRS. GOLDSMITH, WE WERE

6 TALKING ABOUT THE TOWNSHIP POOL.

7 A YES.

8 Q OKAY. IF YOU LINE YOURSELF UP WITH THE

9 MICROPHONE.

10 A HOW'S THAT?

11 Q THANK YOU.

12 A OKAY.

13 Q ALL RIGHT. SO I BELIEVE WHAT YOU

14 TESTIFIED TO WAS THAT THERE WAS A SMALL WADING POOL?

15 A YES.

16 Q AND YOU WERE GOING TO TELL US SOMETHING

17 THAT MRS. MENENDEZ WAS SAYING TO YOU ABOUT THE SMALL

18 WADING POOL.

19 A OKAY. I'M NOT EXACTLY SURE WHERE WE

20 LEFT OFF.

21 BUT TO CONTINUE, MARY LOU WAS ANXIOUS TO

22 GO BACK TO THE LARGER POOL WHERE THE OLDER CHILDREN

23 WERE TAKING THE SWIMMING LESSONS. SHE WANTED TO

24 MAKE CERTAIN THAT LYLE STAYED IN THE POOL AND DIDN'T

25 COME OUT. SHE WANTED TO WATCH THE LESSONS.

26 AND SO SHE SAID THAT WE SHOULD LEAVE

27 ERIK AND JOY IN THE SMALLER POOL AND GO OVER AND

28 WATCH THE LESSONS.

1 AND I SAID NO, THAT IT WILL BE DANGEROUS
2 TO LEAVE THE TWO LITTLE ONES IN THE POOL. AND WE
3 SORT OF ARGUED IT A LITTLE BACK AND FORTH. SHE KEPT
4 INSISTING THAT I WAS BEING FOOLISH, OVER-PROTECTIVE,
5 THAT WE SHOULD GO TO THE BIG POOL; THAT WE COULD
6 LEAVE THE TWO LITTLE ONES. AND THEN SHE SAID ERIK
7 WOULD KEEP AN EYE ON JOY, AND IT WOULD BE OKAY.

8 AND FOR SOME REASON I GAVE IN. I
9 STARTED TO WALK AWAY FROM THE LITTLE POOL TO GO TO
10 THE LARGER POOL WHEN I REALIZED THAT THIS WAS AN
11 INSANE THING TO BE DOING AND QUICKLY TURNED AROUND,
12 SAW JOY LYING FACE DOWN IN THE POOL. AND AS I WENT
13 TO RUN OVER, ERIK QUICKLY PULLED HER UP OUT OF THE
14 POOL.

15 Q SO ERIK RESCUED HER?

16 A YES, HE DID.

17 Q DID JOY KNOW HOW TO SWIM?

18 A OH, NO.

19 Q DO YOU KNOW IF ERIK KNEW HOW TO SWIM AT
20 THAT TIME?

21 A I DON'T THINK SO. NO, HE DID NOT.

22 Q NOW, AT SOME POINT DURING YOUR
23 FRIENDSHIP WITH MR. AND MRS. MENENDEZ DID
24 MRS. MENENDEZ TELL YOU ABOUT AN INCIDENT WHERE

25 MR. MENENDEZ HAD LEFT ERIK ALONE IN A CEMETERY AT

26 NIGHT?

27 A YES, SHE DID.

28 Q AND WHEN APPROXIMATELY WAS IT THAT THIS

52972

1 HAD OCCURRED THAT HE WAS LEFT IN THE CEMETERY AT

2 NIGHT?

3 A COULD YOU JUST REPEAT THE QUESTION

4 PLEASE.

5 Q WHEN WAS IT THAT THIS HAPPENED, HOW OLD

6 WAS ERIK?

7 A I'M REALLY TAKING A GUESS. I WOULD SAY

8 SEVEN OR EIGHT. THAT'S A GUESS. TO THE BEST OF MY

9 RECOLLECTION.

10 Q WAS IT DURING THE TIME THAT THEY WERE

11 STILL LIVING IN MONSEY, OR WAS IT SOMETHING THAT

12 HAPPENED AFTER THEY HAD MOVED?

13 A I BELIEVE IT WAS MONSEY.

14 Q IF I WERE TO TELL YOU THAT THEY MOVED

15 FROM MONSEY IN THE SUMMER OF 1977, WHICH IS WHEN

16 ERIK WAS GOING ON SEVEN, WOULD THAT HELP YOU FIGURE

17 OUT HOW OLD HE WAS?

18 A I KNOW THAT -- I CANNOT TELL YOU EXACTLY

19 HOW OLD. I SAID SEVEN OR EIGHT. IT COULD VERY WELL

20 HAVE BEEN SIX. WITHIN THAT RANGE. BUT I'M NOT

21 CERTAIN OF THE AGE.

22 Q BUT YOUR BEST RECOLLECTION IS THAT IT

23 WAS BEFORE THE FAMILY LEFT MONSEY?

24 A YES.

25 Q OKAY. AND YOU CONTINUED TO BE FRIENDS

26 WITH THE MENENDEZ FAMILY AFTER THEY MOVED AWAY FROM

27 YOU, DIDN'T YOU?

28 A YES.

52973

1 Q YOU STAYED IN MONSEY FOR SOME TIME AFTER

2 THEY MOVED AWAY?

3 A WE STAYED, ACTUALLY, IN FREEHOLD, WHICH

4 WAS A TOWN RIGHT NEXT TO MONSEY. I BELIEVE IT WAS

5 ONLY MAYBE HALF A YEAR, AND THEN WE ALSO MOVED TO

6 JERSEY, TO NEW JERSEY.

7 Q SO YOU MOVED TO AN AREA IN NEW JERSEY

8 THAT WAS FAIRLY CLOSE TO THEM?

9 A IT WAS A FURTHER DISTANCE THAN WE HAD

10 LIVED IN NEW YORK, AND I SAW THEM LESS FREQUENTLY

11 WHEN WE MOVED TO NEW JERSEY.

12 Q NOW, WHAT DID -- WHAT WAS THE STORY THAT

13 YOU WERE TOLD ABOUT WHAT HAD BEEN DONE WITH ERIK AND

14 THE CEMETERY?

15 A I WAS TOLD THAT JOSE HAD TAKEN LYLE AND
16 ERIK TO A CEMETERY. IT WAS NIGHT. IT WAS DARK.
17 AND THEN LYLE AND JOSE RAN FROM THE CEMETERY,
18 LEAVING ERIK WITHIN THE CEMETERY. THEY WERE
19 OUTSIDE. ERIK WAS CRYING AND CALLING FOR THEM, AND
20 THEY REMAINED OUTSIDE THE CEMETERY FOR A WHILE.

21 Q AND DID YOU -- WHEN YOU HEARD THIS STORY,
22 DID YOU BELIEVE IT?

23 A NO.

24 Q DID YOU THEN GO TO JOSE MENENDEZ AND ASK
25 HIM IF THIS WAS TRUE?

26 A YES, I DID. I JUST FOUND IT SO HARD TO
27 BELIEVE. I THOUGHT IT WAS JUST A JOKE.

28 Q WHY DID YOU FIND IT HARD TO BELIEVE?

52974

1 A I CANNOT IMAGINE ANYONE INFLECTING THAT
2 KIND OF FEAR INTO A CHILD WITHOUT -- THERE WOULD BE
3 NO PURPOSE. IT JUST WOULD SEEM TOO CRUEL.

4 Q AND WHEN --

5 A IT'S BEYOND MY COMPREHENSION THAT A
6 PARENT COULD DO THAT.

7 Q WHEN YOU WENT AND ASKED JOSE MENENDEZ
8 ABOUT IT, WHAT DID HE TELL YOU?

9 A HE LAUGHED. HE SAID IT WAS TRUE, AND

10 THAT IT WAS A GOOD IDEA. IT WOULD TOUGHEN ERIK UP.

11 Q HE SAID HE DID IT TO TOUGHEN ERIK UP, HE
12 WAS TOO FEARFUL?

13 A IT WAS FUNNY. IT WAS FUNNY, AND IT
14 WOULD TOUGHEN HIM UP.

15 Q AND DID HE TELL YOU, IN FACT, WHAT IT
16 WAS HE WAS DOING WHILE ERIK WAS CRYING INSIDE THE
17 CEMETERY AND CALLING TO HIM? DID HE TELL YOU WHAT
18 HE WAS DOING OUTSIDE THE CEMETERY?

19 A HE SAID THAT HE AND LYLE WERE LAUGHING.

20 Q AND DID MRS. MENENDEZ, WHEN SHE FIRST
21 TOLD YOU THIS STORY, TELL IT TO YOU AS IF SHE WERE
22 SHOCKED OR UPSET BY IT?

23 A NO.

24 Q IN FACT, DID SHE INDICATE THAT SHE
25 APPROVED OF THIS METHOD OF TOUGHENING ERIK UP?

26 A YES, SHE DID.

27 Q EXCUSE ME?

28 A SHE DID.

52975

1 Q YOU SAID THAT YOU WERE BEST FRIENDS WITH
2 MRS. MENENDEZ, AT LEAST IN THE EARLY YEARS OF YOUR
3 FRIENDSHIP?

4 A YES.

5 Q WERE YOU AND ARE YOU A SCHOOL TEACHER?

6 A YES.

7 Q AND SHE WAS A SCHOOL TEACHER ALSO?

8 A YES, SHE WAS.

9 Q AND YOU TAUGHT AT SOME POINT AT THE SAME
10 SCHOOL?

11 A YES. THAT'S HOW WE MET.

12 Q AND WAS THERE A TIME WHEN -- FIRST OF
13 ALL, WAS ERIK MENENDEZ AT ANY TIME -- STRIKE THAT.
14 IT WON'T WORK.

15 WERE YOU EVER TOLD BY MRS. MENENDEZ THAT
16 ERIK MENENDEZ HAD BEEN MADE TO REPEAT A CERTAIN
17 GRADE?

18 A NO.

19 Q DID YOU BECOME AWARE AT SOME POINT THAT
20 HE SEEMED TO BE IN THE WRONG GRADE, VIS-A-VIS WHAT
21 GRADES YOUR CHILDREN WERE IN?

22 A YES.

23 Q WAS -- HAD YOU BEEN AWARE THAT HE WAS
24 ONE GRADE AHEAD OF JOY FOR A LONG TIME?

25 A HE HAD ALWAYS BEEN ONE YEAR AHEAD OF
26 JOY. THAT WAS JUST SOMETHING THAT WE KNEW.

27 AND THEN AT ONE POINT WHEN MARY LOU AND
28 I WERE SPEAKING AND JUST SORT OF CATCHING UP ON WHAT

1 OUR KIDS WERE DOING, AND SHE MENTIONED WHAT GRADE
2 ERIK WAS IN, WHICH AT THAT POINT WAS THE SAME GRADE
3 THAT JOY WAS. AND SO I CORRECTED HER. I SAID -- I
4 BELIEVE IT WAS THE FIFTH-SIXTH GRADE RANGE, THOUGH
5 I'M NOT EXACTLY POSITIVE. AND SHE DISAGREED. SHE
6 SAID JOY AND ERIK HAVE ALWAYS BEEN IN THE SAME
7 GRADE.

8 AND SINCE MARY LOU HAD PREVIOUSLY ASKED
9 MY OPINION AS TO WHETHER SHE SHOULD HOLD ERIK BACK
10 SO THAT HE COULD BE AT THE TOP OF HIS CLASS, I
11 REALIZED THEN THAT THIS WAS EXACTLY WHAT SHE HAD
12 DONE, AND I DIDN'T --

13 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

14 THE COURT: SUSTAINED. THAT PORTION OF THE
15 ANSWER STARTING WITH "I REALIZED," THE BALANCE IS
16 STRICKEN.

17 Q BY MS. ABRAMSON: SO SHE HAD INDICATED
18 TO YOU AT SOME POINT THAT SHE WAS CONSIDERING
19 HOLDING HIM BACK SO HE COULD BE AT THE TOP OF HIS
20 CLASS?

21 A YES. SHE SAID THAT HE HAD BEEN DOING
22 WELL, BUT WAS NOT AT THE TOP. SHE FELT IF SHE HELD
23 HIM BACK HE WOULD BE A LITTLE BIT OLDER AND COULD BE
24 AT THE TOP OF HIS CLASS. SHE, IN FACT, ASKED MY
25 OPINION ABOUT WHETHER SHE SHOULD DO THAT OR NOT.

26 Q WHAT DID YOU OFFER HER BY WAY OF AN
27 OPINION?

28 A I TOLD HER THAT IT WAS MY OPINION THAT

1 IT WAS A BAD IDEA.

2 Q AND THEN YOU LEARNED THAT HE WAS, IN
3 FACT, REPEATING A GRADE?

4 A WELL, I FOUND OUT THAT HE WAS IN THE
5 SAME GRADE AS JOY. JOY HADN'T MOVED AHEAD. SO I
6 FIGURED HE MUST HAVE BEEN HELD BACK.

7 Q DID YOU AT SOME POINT BECOME AWARE THAT
8 ERIK HAD MOVED FROM PUBLIC SCHOOL TO HOPEWELL VALLEY
9 PUBLIC SCHOOL TO PRINCETON DAY SCHOOL, A PRIVATE
10 SCHOOL?

11 A I KNEW HE HAD GONE FROM PUBLIC SCHOOL TO
12 PRIVATE SCHOOL. I KNEW THE NAME OF THE PRIVATE
13 SCHOOL. I DID NOT KNOW THE NAME OF THE PUBLIC
14 SCHOOL, OR I DON'T REMEMBER IT NOW.

15 Q AND DID MRS. MENENDEZ EVER EXPLAIN TO
16 YOU THAT THEY HAD APPLIED NUMEROUS TIMES TO GET ERIK
17 INTO PRINCETON DAY SCHOOL?

18 A NO.

19 Q DID SHE EVER INDICATE TO YOU THAT HE HAD
20 EVER FAILED TO BE ACCEPTED AT A PRIVATE SCHOOL?

21 A NO.

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: SUSTAINED.

24 THE ANSWER IS STRICKEN.

25 Q BY MS. ABRAMSON: SO SHE NEVER DISCUSSED
26 WITH YOU HER EFFORTS TO GET HIM INTO PRIVATE SCHOOL
27 AT ALL; IS THAT A FAIR STATEMENT?

28 A CORRECT.

52978

1 Q AND DID SHE EVER INDICATE TO YOU ANY
2 KNOWLEDGE ON HER PART THAT ERIK HAD ANY LEARNING
3 DISABILITIES?

4 A NO.

5 Q AND DID YOU, IN FACT, EVER HAVE A
6 CONVERSATION WITH MR. AND MRS. MENENDEZ, AT A TIME
7 WHEN YOUR FAMILIES WERE TOGETHER, HAVING TO DO WITH
8 LEARNING DISABILITIES AND WHAT THEY WOULD DO IF A
9 CHILD OF THEIRS HAD A LEARNING DISABILITY?

10 A YES. JOSE HAD BEEN TALKING ABOUT HIS
11 CHILDREN BEING -- THAT THEY WOULD BE NO. 1 IN SCHOOL
12 AND NO. 1 IN THEIR CLASS. AND I DISCUSSED WITH THEM
13 WELL, YOU KNOW, YOU CAN'T PREDICT THAT. EVEN IF
14 THEY SEEM BRIGHT NOW, YOU CAN'T PREDICT WHERE
15 THEY'RE GOING TO END UP IN THEIR ACADEMIC ABILITY.
16 AND HE SAID YES, HE COULD; THAT THEY WOULD BE NO. 1.
17 THAT THEY -- THAT'S WHAT HE WOULD WANT, AND THAT'S
18 WHAT THEY WOULD BE.

19 WE BEGAN TO DISCUSS EXPECTATIONS OF
20 CHILDREN, AND I ASKED HIM: "WHAT WOULD YOU DO IF YOU
21 HAD A CHILD WITH A LEARNING DISABILITY?"

22 MR. CONN: OBJECTION AFTER THIS AS HEARSAY.

23 THE COURT: SUSTAINED.

24 Q BY MS. ABRAMSON: WELL, DID HE ANSWER
25 WHAT HE WOULD DO ABOUT A CHILD WITH A LEARNING
26 DISABILITY IN THE PRESENCE OF ERIK MENENDEZ?

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE WITNESS: HE SAID --

52979

1 THE COURT: YOU'RE TALKING ABOUT WHO NOW?

2 MS. ABRAMSON: MR. MENENDEZ.

3 THE WITNESS: MR. MENENDEZ.

4 THE COURT: AND HOW OLD WAS THE DEFENDANT?

5 MS. ABRAMSON: DON'T KNOW.

6 THE COURT: WELL, LET'S PERHAPS HAVE A
7 FOUNDATION AND SEE WHETHER OR NOT HE WAS ABLE TO
8 UNDERSTAND WHAT WAS BEING SAID.

9 HOW OLD WAS HE?

10 Q BY MS. ABRAMSON: HOW OLD WAS ERIK?

11 A LET ME JUST THINK, BECAUSE I CAN PLACE
12 IT IN TIME.

13 I WOULD SAY THAT -- I WOULD GUESS THAT

14 LYLE WAS ABOUT SIX.

15 Q SO ERIK WOULD HAVE BEEN ONLY THREE?

16 A YES.

17 Q WAS THIS SAID IN LYLE'S PRESENCE AS

18 WELL?

19 A YES.

20 MS. ABRAMSON: I'D ASK THAT --

21 THE WITNESS: IT WAS SAID MORE THAN ONCE, I

22 SHOULD ALSO INDICATE. IT WAS NOT A ONE-TIME

23 CONVERSATION.

24 Q BY MS. ABRAMSON: WERE YOU TALKING IN

25 TERMS OF LEARNING DISABILITIES OR WERE YOU TALKING

26 IN TERMS OF KIDS NOT BEING AS SMART OR AS GOOD AS

27 YOU WANT?

28 A BOTH. BUT I DID SPECIFICALLY SAY: "WHAT

52980

1 WOULD YOU DO IF YOU HAD A CHILD WITH A LEARNING

2 DISABILITY?"

3 Q AND DID HE INDICATE THAT COULD NEVER

4 HAPPEN?

5 A HE SAID: "THAT COULD NEVER HAPPEN."

6 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

7 HONOR.

8 THE COURT: OKAY. CROSS-EXAMINATION.

9 MR. CONN: YES.

10

11 CROSS-EXAMINATION

12 BY MR. CONN:

13 Q MRS. GOLDSMITH, THIS STORY ABOUT ERIK
14 MENENDEZ AND YOUR DAUGHTER AND PULLING HER FACE OUT
15 OF THE WATER, WHAT WAS THE FIRST TIME YOU TOLD ANY
16 ATTORNEY ABOUT THAT STORY?

17 A I TOLD IT TO MRS. ABRAMSON LAST NIGHT.

18 Q LAST NIGHT. NOW, YOU WERE INTERVIEWED
19 BY THE DEFENSE SOME TIME AGO, WEREN'T YOU?

20 A YES.

21 Q WHEN WERE YOU FIRST INTERVIEWED BY THE
22 DEFENSE?

23 A THE FIRST TIME?

24 Q YES.

25 A ARE YOU TALKING ABOUT THIS TRIAL NOW
26 OR --

27 Q WHEN WAS THE FIRST TIME YOU WERE EVER
28 INTERVIEWED BY DEFENSE ATTORNEYS?

52981

1 A WELL, IT WAS BEFORE THE FIRST TRIAL.

2 Q DO YOU RECALL ABOUT NOVEMBER 16TH, 1991
3 YOU WERE INTERVIEWED BY THE DEFENSE?

4 A THAT SOUNDS LIKE A POSSIBLE DATE.

5 Q CAN YOU TELL US HOW MANY TIMES YOU WERE
6 INTERVIEWED BY DEFENSE ATTORNEYS OR DEFENSE
7 INVESTIGATORS?

8 A FIVE, SIX TIMES. FOUR, FIVE.

9 Q AND WHAT WERE THE SUBJECTS OF THOSE
10 INTERVIEWS?

11 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
12 OBJECT TO THIS AS HEARSAY.

13 THE COURT: OVERRULED.

14 THE WITNESS: WHAT DID WE DISCUSS?

15 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
16 OBJECT.

17 THE COURT: JUST GENERAL SUBJECT MATTERS.

18 THE WITNESS: WE DISCUSSED RECOLLECTIONS THAT
19 I HAD OF THE INTERACTIONS BETWEEN MARY LOU AND JOSE
20 AND LYLE AND ERIK. WE DISCUSSED THE DIFFERENT
21 PHILOSOPHIES THAT MARY LOU AND JOSE HAD AS COMPARED
22 TO MY HUSBAND AND MYSELF.

23 WE DISCUSSED -- REALLY, WE WENT OVER THE
24 YEARS THAT WE SPENT TOGETHER AND DIFFERENT
25 RECOLLECTIONS THAT I HAD.

26 Q BY MR. CONN: AND YOU --

27 A I'M SORRY.

28 Q YOU BASICALLY TOLD THEM ALL OF YOUR

1 RECOLLECTIONS CONCERNING THE MENENDEZ FAMILY; IS
2 THAT CORRECT?

3 A I DOUBT THAT. I THINK THAT I WILL -- I
4 HAVE DOZENS OF MORE RECOLLECTIONS AS TIME GOES ON.
5 SPENDING SO MUCH TIME TOGETHER, IT WOULD HAVE BEEN
6 IMPOSSIBLE TO REMEMBER EVERY INCIDENT.

7 Q YOU WERE TRYING TO RECALL, AS MUCH AS
8 YOU COULD, EVERYTHING YOU COULD ABOUT THE
9 DEFENDANTS; IS THAT CORRECT?

10 A YES.

11 MS. ABRAMSON: OBJECTION, YOUR HONOR. WELL,
12 NEVER MIND.

13 Q BY MR. CONN: DID YOU ALSO SPEAK TO ANY
14 DEFENSE EXPERTS?

15 A WHOM DO YOU MEAN BY DEFENSE EXPERTS?

16 Q WELL, WERE YOU INTERVIEWED BY ANYONE
17 OTHER THAN DEFENSE INVESTIGATORS?

18 A YES, YES.

19 Q WHO WERE YOU INTERVIEWED BY?

20 A I WAS INTERVIEWED BY -- I'M NOT GOING TO
21 REMEMBER THEIR NAMES. I WAS INTERVIEWED BY, I
22 BELIEVE, A PSYCHOLOGIST. BY A PSYCHOLOGIST. BY
23 ATTORNEYS.

24 THAT'S WHAT COMES TO MIND.

25 Q AND YOU WERE INTERVIEWED, NOT ONLY ON
26 NOVEMBER 16TH, 1991, BUT DO YOU RECALL YOU WERE

27 INTERVIEWED AGAIN ABOUT MARCH 14TH OF 1992?

28 A ANY DATE -- I MEAN, THAT'S A POSSIBLE

52983

1 DATE. I CERTAINLY CANNOT GIVE YOU THE DATES.

2 Q AND YOU REALIZED THAT THE DEFENDANTS
3 WERE ON TRIAL IN A CAPITAL CASE; IS THAT CORRECT?

4 A CORRECT.

5 Q AND YOU KNEW AT SOME POINT YOU MIGHT BE
6 CALLED UPON TO GIVE BACKGROUND INFORMATION
7 CONCERNING THEM AND THEIR FAMILIES; IS THAT CORRECT?

8 A YES.

9 Q DO YOU RECALL THAT YOUR DAUGHTER HAD
10 ALMOST DROWNED IN THAT POOL?

11 A DID I --

12 Q DID YOU --

13 A DID I THINK THAT SHE ALMOST DROWNED?

14 Q RIGHT.

15 A YES.

16 Q HOW OLD WAS YOUR DAUGHTER AT THE TIME?

17 A ABOUT THREE.

18 Q AND HOW OLD WAS ERIK MENENDEZ?

19 A ABOUT FOUR.

20 Q AND YOU LEFT YOUR THREE-YEAR-OLD NEAR A
21 POOL TO GO WITH KITTY SOMEWHERE ELSE; IS THAT WHAT

22 YOU'RE SAYING?

23 A THAT'S WHAT I SAID, YES.

24 Q HOW DEEP WAS THAT WATER IN THAT POOL?

25 A NOT DEEP AT ALL.

26 Q APPROXIMATELY HOW MANY INCHES ARE WE

27 TALKING ABOUT?

28 A I WOULD SAY WITH INCHES -- I WOULD

52984

1 IMAGINE, SIX, SEVEN, EIGHT, NINE INCHES PERHAPS. IT

2 WAS A WADING POOL, I THINK IS WHAT THEY CALL IT.

3 Q AS MUCH AS NINE INCHES?

4 A SIX, SEVEN, EIGHT. SOMETHING LIKE

5 THAT. YEAH. COULD BE.

6 Q YOU RECOGNIZE -- HOW MANY CHILDREN DO

7 YOU HAVE?

8 A THREE.

9 Q AND THIS DAUGHTER, WHERE DOES SHE FIT IN

10 THE --

11 A SHE'S MY YOUNGEST.

12 Q SO YOU HAD TWO PREVIOUS CHILDREN?

13 A UH-HUH, YES.

14 Q AND HOW MUCH OLDER WERE YOUR OLDER

15 CHILDREN?

16 A THEY'RE TWO YEARS APART. SO IT WOULD BE

17 THREE, FIVE, AND SEVEN.

18 Q WERE YOUR OTHER CHILDREN WITH YOU THAT
19 DAY?

20 A MY TWO OLDER DAUGHTERS WERE IN THE
21 LARGER POOL WITH ERIK -- WITH LYLE.

22 Q AND HOW FAR APART WAS THE LARGER POOL
23 FROM THE WADING POOL?

24 A I WOULD SAY POSSIBLY FROM HERE TO THE
25 BACK OF THE ROOM HERE. IF THIS WAS THE WADING POOL,
26 MAYBE THE LARGER POOL WOULD HAVE BEEN AT THE BACK OF
27 THIS ROOM.

28 Q AND YOU DECIDED --

52985

1 A OR PERHAPS A LITTLE FURTHER. SOMETHING
2 LIKE THAT.

3 Q OKAY. AND YOU DECIDED TO LEAVE YOUR
4 THREE-YEAR-OLD ALONE IN NINE INCHES OF WATER BECAUSE
5 YOU WANTED TO GO SOMEWHERE AND HAVE A CONVERSATION
6 WITH KITTY; IS THAT WHAT YOU'RE SAYING?

7 A MARY LOU WAS VERY PERSISTENT THAT I WAS
8 BEING FOOLISH IN MAINTAINING THAT IT WOULD BE UNSAFE
9 TO STAY THERE; AND SO SHE WAS A VERY PERSISTENT
10 PERSON. AND YES, MOMENTARILY I THOUGHT I'LL GO
11 ALONG. AND I DON'T THINK I GOT FROM HERE TO THERE

12 (POINTING). I JUST WALKED A COUPLE OF FEET WHEN I
13 SAID "THIS IS INSANE," TURNED QUICKLY BACK, AND
14 WITHIN THOSE FEW SECONDS JOY WAS IN THE WATER.

15 HAD I MADE A FOOLISH MISTAKE? YES.

16 Q YOU DON'T NORMALLY LEAVE A --

17 A I DON'T REMEMBER LEAVING, NO.

18 Q -- YOUR THREE-YEAR-OLD IN NINE INCHES OF
19 WATER IN A BATH TUB, DO YOU?

20 A NO, I WOULD NOT.

21 Q SO WHAT YOU'RE SAYING IS IT WAS NOT
22 SOMETHING THAT YOU WOULD NORMALLY DO, BUT KITTY
23 MENENDEZ WAS SO PERSISTENT THAT YOU FELT IT WAS
24 WORTH THE RISK?

25 A SHE MADE ME FEEL SO FOOLISH THAT I
26 FOOLISHLY FOLLOWED HER. BUT SHE JUST MADE ME FEEL
27 SO FOOLISH THAT I MADE A POOR DECISION.

28 Q AND THEN YOU DECIDED TO COME BACK AND

52986

1 CHECK ON YOUR DAUGHTER?

2 A VERY QUICKLY REALIZED IT WAS A STUPID
3 THING I HAD DONE.

4 Q YOU TURNED AROUND, CAME BACK, AND WHAT
5 DID YOU SEE?

6 A JOY LYING IN THE POOL FACE DOWN.

7 Q HOW LONG HAD YOU BEEN AWAY FROM HER AT
8 THAT POINT IN TIME?

9 A I WOULD SAY I WAS AWAY LESS THAN TWO
10 MINUTES. TWO, THREE MINUTES.

11 Q WAS SHE MOTIONLESS LYING IN THE POOL?

12 A THE PICTURE THAT I HAVE-- AND IT'S AN
13 UNPLEASANT PICTURE -- IS OF JOY LYING THERE AND ERIK
14 GRABBING HER UP. WHEN I GOT THERE SHE WAS DOWN.
15 ERIK GRABBED HER. AND THAT'S THE PICTURE THAT I
16 HAVE, AND IT'S NOT A PLEASANT PICTURE.

17 Q DID YOU SEE HER LYING IN THE POOL BEFORE
18 THE TIME THAT ERIK MENENDEZ TOUCHED HER?

19 A IT WAS SIMULTANEOUS. I SAW HER DOWN
20 THERE, AND ERIK WAS GOING TOWARDS HER AT THAT
21 MOMENT.

22 Q SO WAS HE TOUCHING HER WHEN YOU SAW HER
23 LYING IN THE POOL?

24 A NO, NO.

25 Q SO WAS SHE MOTIONLESS?

26 A NO. SHE WAS NOT MOTIONLESS.

27 Q SHE WAS MOVING?

28 A YES, SHE WAS.

52987

1 Q SO HER FACE WAS SIMPLY UNDER THE WATER;

2 IS THAT CORRECT?

3 A HER FACE WAS UNDER THE WATER, AND SHE
4 WAS NOT ABLE TO PULL -- IT WAS OBVIOUS, BECAUSE AT
5 THE SAME TIME THAT ERIK HAD -- WAS GRABBING AT HER
6 THERE WERE TWO WOMEN WHO WERE ALSO NOW RUNNING TO
7 THE POOL TO GRAB HER, ALSO REPRIMANDING ME FOR
8 HAVING LEFT HER, AND IT WAS OBVIOUS TO ME. IT WAS
9 OBVIOUS TO THESE TWO WOMEN THAT SHE WAS NOT PLAYING
10 IN THE POOL; THAT IT WAS A SERIOUS SITUATION.

11 Q SO YOU FELT THAT ERIK MENENDEZ HELPED
12 SAVE HER; IS THAT CORRECT?

13 A YES.

14 Q THAT MUST BE SOMETHING THAT YOU WERE
15 EXTREMELY HAPPY ABOUT; IS THAT CORRECT?

16 A YES.

17 Q AND I'M SURE YOU FELT THAT YOU WOULD
18 NEVER FORGET ERIK MENENDEZ FOR THE FACT THAT HE
19 HELPED SAVE YOUR DAUGHTER FROM DROWNING; IS THAT
20 CORRECT?

21 A I'M SURE I WOULD NEVER FORGET ERIK
22 MENENDEZ, PERIOD.

23 Q BUT FOR THAT REASON IN PARTICULAR,
24 WOULDN'T YOU AGREE?

25 A I WOULD REMEMBER THAT SITUATION, YES.

26 Q SO AS YOU WERE BEING INTERVIEWED BY
27 DEFENSE ATTORNEYS AND DEFENSE INVESTIGATORS AND
28 PSYCHOLOGISTS --

1 MS. ABRAMSON: OBJECT, YOUR HONOR.

2 MISSTATES THE WITNESS TESTIMONY ABOUT WHO SHE

3 RECALLS INTERVIEWED HER.

4 THE COURT: OVERRULED.

5 Q BY MR. CONN: AS YOU WERE BEING

6 INTERVIEWED IN 1991, IN 1992, AND YOU ALSO TESTIFIED

7 IN 1993; IS THAT CORRECT?

8 A IF YOU SAY SO. I HAVE NO IDEA OF THE

9 DATES.

10 Q AND YOU KNEW THAT ERIK MENENDEZ WAS

11 POTENTIALLY FACING THE DEATH PENALTY; IS THAT

12 CORRECT?

13 MS. ABRAMSON: OBJECTION, YOUR HONOR. THERE

14 WAS NO PENALTY TRIAL IN THAT TRIAL.

15 THE COURT: OVERRULED.

16 THE WITNESS: YES, I DID.

17 Q BY MR. CONN: OKAY. SO IN ALL OF THESE

18 INTERVIEWS DID YOU EVER TELL ANYONE: BY THE WAY,

19 ERIK MENENDEZ SAVED MY DAUGHTER'S LIFE. YOU JUST

20 MIGHT WANT TO KNOW THAT SINCE HE'S FACING DEATH

21 PENALTY CHARGES?

22 A IS YOUR QUESTION HAVE I EVER TOLD THIS?

23 Q YES.

24 A NO, I DID NOT.

25 Q WHY DIDN'T YOU TELL ANYONE WHEN THEY

26 CAME AND ASKED YOU TO GIVE YOUR FULL RECOLLECTION OF
27 THE BACKGROUND OF THE MENENDEZ FAMILY? CAN YOU TELL
28 US WHY YOU NEVER TOLD THIS STORY OF ERIK MENENDEZ,

52989

1 THE HERO?

2 MS. ABRAMSON: OBJECT TO THE FORM OF THE
3 QUESTION. ASSUMES FACTS NOT IN EVIDENCE.

4 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.

5 MS. ABRAMSON: AND ARGUMENTATIVE, AND THE
6 TONE IS ARGUMENTATIVE, YOUR HONOR.

7 THE COURT: I'VE ALREADY SUSTAINED THE
8 OBJECTION.

9 Q BY MR. CONN: CAN YOU TELL US WHY, IN
10 ALL OF THESE INTERVIEWS THAT WERE CONDUCTED WITH YOU
11 IN WHICH PEOPLE WANTED TO KNOW YOUR RECOLLECTIONS OF
12 ERIK MENENDEZ AND HIS FAMILY, WHY YOU NEVER TOLD
13 THIS STORY UNTIL YOU SPOKE TO LESLIE ABRAMSON ON THE
14 PHONE LAST NIGHT?

15 MS. ABRAMSON: OBJECTION.

16 THE WITNESS: I DIDN'T SPEAK TO HER ON THE
17 PHONE.

18 MS. ABRAMSON: MISSTATES HER TESTIMONY.
19 CALLS FOR A CONCLUSION. MISSTATES PRIOR HEARSAY AND
20 IS ARGUMENTATIVE.

21 THE COURT: ALL RIGHT. IT ASSUMES FACTS NOT
22 IN EVIDENCE AS PHRASED.
23 MR. CONN: YES.
24 Q YOU RECALLED THIS STORY LAST NIGHT AS
25 YOU WERE SPEAKING TO MS. ABRAMSON IN A COFFEE SHOP?
26 MS. ABRAMSON: OBJECTION. MISSTATES --
27 GO AHEAD.
28 I'LL WITHDRAW THE OBJECTION.

52990

1 THE WITNESS: WHICH QUESTION DO YOU WANT ME
2 TO ANSWER?
3 Q BY MR. CONN: THE QUESTION IS IN --
4 A I CAN ANSWER BOTH.
5 Q WHERE WERE YOU WHEN YOU FIRST TOLD THIS
6 STORY TO THE DEFENSE?
7 A THE DEFENSE -- IF I CAN JUST TELL HOW IT
8 CAME ABOUT, IT MIGHT BE EASIER.
9 Q FIRST, JUST TELL ME WHERE YOU WERE WHEN
10 YOU FIRST TOLD THIS STORY?
11 A I WAS IN A COFFEE SHOP LAST NIGHT.
12 Q AND WHO WERE YOU WITH?
13 A I WAS WITH MY DAUGHTER AND MRS. BARALT.
14 Q AND WAS THERE A DEFENSE ATTORNEY
15 PRESENT?

16 A I WAS SPEAKING TO LESLIE.

17 Q SO IT WAS THE FOUR OF YOU THEN IN A

18 COFFEE SHOP?

19 A I WALKED INTO THE COFFEE SHOP

20 SPECIFICALLY TO TELL HER THE STORY. I KNEW THAT SHE

21 WAS THERE. I REMEMBERED THE STORY, AND I WENT IN TO

22 HER, AND I SAID: "THIS STORY HAS COME TO MIND."

23 I HAD BEEN TALKING TO MRS. BARALT AND MY

24 DAUGHTER. WE WERE GOING OVER A LOT OF OUR HAPPY

25 MEMORIES OF THE MENENDEZ FAMILY. WE SPENT THE

26 EVENING TOGETHER. WE WERE TALKING ABOUT ALL OF THE

27 HAPPY THINGS THAT WE COULD -- THAT WE HAD SHARED.

28 AND SOMEHOW IN THAT TIME OF RECOLLECTION THE STORY

52991

1 ABOUT ERIK CAME UP, AND JOY; AND, IN FACT, IT WAS

2 TERRY WHO SAID, "I THINK THAT MAYBE THIS WOULD BE

3 SOMETHING THE DEFENSE ATTORNEYS WOULD WANT TO KNOW."

4 AND WE KNEW THEY WERE IN THE COFFEE

5 SHOP, WHICH WAS RIGHT NEXT DOOR TO WHERE WE WERE.

6 SO WE WENT AND TOLD THEM THE STORY. AND I REMEMBER

7 SAYING: "I DON'T KNOW IF YOU WANT TO HEAR THIS OR

8 NOT, BUT THIS IS SOMETHING THAT JUST CAME TO MIND."

9 Q ARE YOU TELLING US THAT IT NEVER

10 OCCURRED TO YOU PRIOR TO YESTERDAY THAT THE DEFENSE

11 ATTORNEYS IN THIS CASE MIGHT WANT TO KNOW THAT ERIK
12 MENENDEZ WAS INVOLVED IN THAT INCIDENT?

13 A I DON'T KNOW THAT I WOULD SAY IT NEVER
14 CAME TO MY MIND THAT THEY WOULDN'T BE INTERESTED IN
15 IT. WHAT I WOULD SAY IS THAT I DON'T KNOW WHY ONE
16 STORY COMES TO MIND AT A CERTAIN TIME, THEN ANOTHER
17 STORY COMES TO MIND AT ANOTHER TIME. YOU TALK ABOUT
18 THINGS. AND IT'S REALLY A FREE TALKING, JUST A
19 RECOLLECTION OF THINGS.

20 AND WHY THIS STORY DIDN'T COME TO MIND
21 UNTIL LAST NIGHT, I DON'T KNOW WHAT BRINGS STORIES
22 TO MIND. MAYBE, IN FACT, IT WAS BECAUSE, AS THE
23 STORY -- AS I RETOLD IT AND I SAW JOY LYING IN THE
24 WATER, IT WAS SO HORRIFIC TO ME -- MAYBE IT'S
25 SOMETHING I DON'T WANT TO REMEMBER. I DON'T KNOW
26 WHY. I DIDN'T LIKE REMEMBERING IT LAST NIGHT. IT
27 WAS AN UNPLEASANT MEMORY.

28 Q UH-HUH. OKAY.

52992

1 NOW, AND YOU DIDN'T TESTIFY IN REGARD TO
2 THAT STORY THEN WHEN YOU TESTIFIED IN THE FIRST
3 TRIAL IN 1993; IS THAT CORRECT?

4 A I DID NOT.

5 Q OKAY. NOW, TURNING TO THE CEMETERY

6 STORY, THIS WAS A STORY THAT WAS TOLD TO YOU BY

7 KITTY MENENDEZ; IS THAT CORRECT?

8 A YES.

9 Q AND IT IS NOW YOUR TESTIMONY THAT JOSE

10 MENENDEZ CONFIRMED THAT THIS WAS A TRUE INCIDENT; IS

11 THAT CORRECT?

12 A YES.

13 Q WERE THERE ANY OTHER WITNESSES

14 CONFIRMING THAT THIS TOOK PLACE?

15 A I THINK THAT MY HUSBAND WAS THERE.

16 Q WHEN YOU HAD THE CONVERSATION WITH KITTY

17 OR WHEN YOU HAD THE CONVERSATION WITH JOSE MENENDEZ?

18 A THEY WERE REALLY ONE ON TOP OF THE

19 OTHER. IT WAS IN THE SAME HOUSEHOLD AT THE SAME

20 TIME. ONE FOLLOWED THE OTHER. SO IT WAS -- IT WAS

21 NOT IN THE SAME ROOM, BUT -- AS I'M TRYING TO

22 REMEMBER IT, I THINK THAT MY HUSBAND WAS THERE WHEN

23 I ASKED TO CONFIRM THE STORY, NOT -- I'M JUST

24 THINKING.

25 Q YOUR HUSBAND WAS THERE AT THE TIME?

26 A I BELIEVE SO.

27 Q NOW, WHEN YOU TESTIFIED IN THE FIRST

28 TRIAL YOU TESTIFIED IN REGARD TO THE CEMETERY STORY;

1 IS THAT CORRECT?

2 A YES.

3 Q BUT YOU DIDN'T TESTIFY TO THE FACT THAT
4 JOSE MENENDEZ CONFIRMED THE STORY, DID YOU?

5 A I DON'T KNOW IF ANYONE ASKED ME.

6 Q WHEN WAS THE FIRST TIME YOU EVER TOLD
7 ANYONE THAT YOU HAD A CONVERSATION WITH JOSE
8 MENENDEZ IN WHICH JOSE MENENDEZ CONFIRMED THAT THIS
9 STORY DID, IN FACT, TAKE PLACE?

10 A WOULD YOU REPEAT THAT QUESTION.

11 Q YES. WHEN WAS THE FIRST TIME YOU EVER
12 REPORTED TO ANYONE THAT YOU HAD A CONVERSATION WITH
13 JOSE MENENDEZ IN WHICH JOSE MENENDEZ CONFIRMED THAT
14 THIS INCIDENT DID, IN FACT, TAKE PLACE?

15 A I REMEMBER TELLING THAT -- TODAY IS
16 THURSDAY -- I BELIEVE IT WAS ON TUESDAY, I REMEMBER
17 TELLING IT TO THE DEFENSE ATTORNEYS.

18 Q THIS WEEK?

19 A YES.

20 Q SO THIS IS ANOTHER STORY THAT YOU JUST
21 RECALLED THAT IS A CONVERSATION WITH JOSE MENENDEZ,
22 IS SOMETHING YOU JUST RECALLED FOR THE VERY FIRST
23 TIME THIS WEEK?

24 A NO. THE CEMETERY STORY I RECALLED A
25 LONG TIME AGO.

26 Q I'M TALKING ABOUT THE FACT THAT YOU HAD
27 A CONVERSATION WITH JOSE MENENDEZ IN WHICH HE
28 SUPPOSEDLY CONFIRMED THAT THIS INCIDENT DID, IN

1 FACT, TAKE PLACE. I THINK IT PROBABLY CAME OUT
2 BECAUSE IT WAS ELICITED. I DON'T KNOW THAT
3 EVERYTHING THAT I SAID I -- IN ALL OF THE TIMES THAT
4 I'VE BEEN TALKING TO DIFFERENT DEFENSE PEOPLE, BE IT
5 ATTORNEYS OR WHOEVER, AS I SAID, IT WAS A LOT OF
6 RECOLLECTIONS, A LOT OF TELLING OF STORIES. AND I
7 DON'T KNOW IF EACH TIME -- A LOT OF THE INFORMATION
8 CAME FROM QUESTIONS. AND I DON'T KNOW IF SOMEONE
9 HAD NOT CONTINUED TO QUESTION ME, IF I WOULD HAVE --
10 YOU KNOW WHAT I'M TRYING TO SAY?

11 IN OTHER WORDS, YOU TELL A STORY. YOU
12 DON'T NECESSARILY TELL ALL OF THE PERIPHERAL
13 INFORMATION.

14 Q AS FAR AS THAT ASPECT OF THE STORY --

15 MS. ABRAMSON: I DON'T THINK THE WITNESS HAD
16 FINISHED HER ANSWER, YOUR HONOR.

17 THE COURT: HAD YOU FINISHED YOUR ANSWER?

18 THE WITNESS: WELL, I WAS JUST GOING TO SAY
19 IT'S SOMETIMES VERY HARD TO -- YOU'RE BEING ASKED A
20 LOT OF QUESTIONS.

21 THE COURT: LET ME -- THE QUESTION WAS --

22 THE WITNESS: OKAY.

23 THE COURT: MAYBE I'M WRONG. I THINK THE

24 QUESTION WAS WHEN WAS THE FIRST TIME YOU TOLD
25 ANYBODY ABOUT MR. MENENDEZ HAVING THIS CONVERSATION
26 WITH YOU?
27 THE WITNESS: I ANSWERED THAT QUESTION.
28 THE COURT: WHEN WAS THE FIRST TIME THAT YOU

52995

1 DID THAT?
2 THE WITNESS: I BELIEVE IT WAS TUESDAY.
3 THE COURT: YOU NEVER TOLD ANYBODY ELSE
4 BEFORE THAT?
5 THE WITNESS: NOT TO MY RECOLLECTION.
6 Q BY MR. CONN: OKAY. NOW, WOULD YOU
7 DESCRIBE JOSE MENENDEZ AS A GOOD FATHER?
8 MS. ABRAMSON: OBJECTION. IRRELEVANT.
9 THE WITNESS: WELL --
10 MS. ABRAMSON: BEYOND THE SCOPE.
11 THE COURT: WHY DON'T YOU REPHRASE THE
12 QUESTION.
13 MR. CONN: YES.
14 Q DID YOU PREVIOUSLY DESCRIBE JOSE
15 MENENDEZ AS A GOOD FATHER?
16 A I DON'T KNOW IF I DESCRIBED HIM AS A
17 GOOD FATHER. I WOULD ASK YOU TO BE MORE SPECIFIC.
18 MS. ABRAMSON: COULD WE HAVE A CITE, YOUR

19 HONOR?

20 THE WITNESS: I DON'T KNOW WHAT YOU MEAN BY A
21 GOOD FATHER. HE WAS A VERY ACTIVELY INVOLVED
22 FATHER.

23 MR. CONN: UH-HUH.

24 Q AND DID YOU OBSERVE JOSE MENENDEZ TO BE
25 AN AFFECTIONATE FATHER?

26 A I SAW HIM WITH HIS ARM AROUND LYLE OR
27 ERIK AT TIMES, YES, FOOLING AROUND WITH THEM.

28 Q IN FACT, YOU USED TO OBSERVE JOSE

52996

1 MENENDEZ HUGGING AND KISSING HIS SONS; ISN'T THAT
2 TRUE?

3 A HUGGING. YES, KISSING, YEAH. YES.

4 Q AND ON WHAT OCCASIONS DID YOU SEE JOSE
5 MENENDEZ HUG AND KISS HIS SONS?

6 A ON A SPECIFIC OCCASION IS WHAT YOU'RE
7 ASKING?

8 Q YES.

9 A I DON'T KNOW -- I DON'T KNOW IF I COULD
10 GIVE A SPECIFIC OCCASION, EXCEPT I KNOW THAT IT'S A
11 PICTURE THAT I HAVE. SO I KNOW THAT I HAVE SEEN
12 IT. AND YET I CAN'T SEEM TO GIVE A SPECIFIC
13 OCCASION. AND YET I HAVE THAT PICTURE IN MY MIND,

14 SO THAT I KNOW IT HAPPENED.

15 Q DID HE HUG AND KISS HIS SONS WHEN HE

16 CAME HOME FROM WORK?

17 A I WAS PROBABLY RARELY THERE WHEN HE CAME

18 HOME FROM WORK.

19 Q AND YOU DON'T RECALL WHAT OCCASIONS IT

20 WAS THAT YOU SAW HIM HUG AND KISS HIS SONS; IS THAT

21 CORRECT?

22 A I REALLY CAN'T.

23 Q WOULD YOU SAY THAT JOSE MENENDEZ WAS A

24 FRIENDLY PERSON AND A FUN PERSON?

25 A YES.

26 Q AND YOU NEVER SAW HIM EVER RAISE HIS

27 HAND TO HIS SONS; IS THAT CORRECT?

28 A NO.

52997

1 Q IN FACT, YOU FELT THAT THAT JOSE AND

2 KITTY MENENDEZ SOMETIMES FAILED TO DISCIPLINE THEIR

3 SONS; IS THAT CORRECT?

4 A CORRECT.

5 Q WHY IS THAT?

6 A WHY DID I FAIL TO SEE IT, OR WHY DID

7 THEY FAIL TO DISCIPLINE HIM?

8 Q WHAT MAKES YOU SAY THAT THEY FAILED TO

9 DISCIPLINE THEIR SONS?

10 A BECAUSE IN CERTAIN SITUATIONS WHERE I
11 FELT DISCIPLINE WOULD HAVE BEEN APPROPRIATE, THEY
12 DID NOT DISCIPLINE THEM.

13 Q WHAT TYPE OF SITUATIONS DID YOU FEEL
14 WARRANTED DISCIPLINE, AND YET KITTY AND JOSE
15 MENENDEZ WOULD NOT DISCIPLINE THEIR SONS?

16 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
17 OBJECT AS BEYOND THE SCOPE.

18 THE COURT: OVERRULED.

19 THE WITNESS: WELL, AS ONE EXAMPLE, WE WERE
20 IN A RESTAURANT. IT WAS A CHINESE RESTAURANT, AND I
21 BELIEVE IT WAS LYLE -- NO. IT WAS LYLE AND ERIK.
22 LYLE AND ERIK WENT OVER TO ANOTHER TABLE AND STARTED
23 EATING SOME OF THE FOOD OFF SOMEONE ELSE'S TABLE. I
24 THOUGHT THAT WAS INAPPROPRIATE AND SHOULD HAVE BEEN
25 ADDRESSED. IT WAS NOT.

26 IN FACT, MY HUSBAND GOT UP TO STOP THEM,
27 AND I TOLD HIM THAT IT WAS NOT HIS PLACE TO DO
28 THAT. THAT'S JUST ONE EXAMPLE.

52998

1 Q BY MR. CONN: CAN YOU GIVE US OTHERS?

2 A SURE. IF I CAN THINK.

3 DID YOUR QUESTION JUST SAY JOSE OR MARY

4 LOU AND --

5 Q BOTH OF THEM.

6 A I WAS ONCE IN A SUPERMARKET WITH MARY
7 LOU AND LYLE AND ERIK WERE RUNNING AROUND VERY
8 WILDLY, TO THE POINT THAT AN ANNOUNCEMENT WAS MADE,
9 IF PARENTS OF TWO BOYS WHO WERE RAMPAGING THROUGH
10 THE STORE WOULD PLEASE COME AND GET THEIR TWO SONS.

11 I FELT SHE SHOULD HAVE DONE SOMETHING
12 PRIOR TO THAT.

13 YOU WANT OTHER INSTANCES?

14 Q IN FACT, THE DEFENDANTS, WHEN THEY WERE
15 YOUNG WERE NOISY, WILD AND RAMBUNCTIOUS; IS THAT
16 CORRECT?

17 A YES.

18 Q WHAT MAKES YOU SAY THAT?

19 A WELL, THAT'S MY OPINION, I GUESS, IS WHY
20 I SAY IT.

21 Q WHAT OBSERVATION DID YOU SEE THAT CAUSED
22 YOU TO CONCLUDE THAT ERIK AND LYLE MENENDEZ WHEN
23 THEY WERE YOUNG WERE NOISY, WILD AND RAMBUNCTIOUS?

24 A WELL, I THINK THE INSTANCE IN THE
25 SUPERMARKET -- NOW, THERE WERE MANY INSTANCES IN THE
26 SUPERMARKET WHEN THEY MAY HAVE BEEN RUNNING AROUND
27 LIKE THAT. THERE WAS ONLY ONE INSTANCE WHERE AN
28 ANNOUNCEMENT WAS MADE FOR THE MOTHER TO COLLECT HER

1 CHILDREN. THAT WAS NOT THE ONLY TIME THAT THEY HAD
2 DONE THAT.

3 IN A RESTAURANT ONE TIME THEY WERE IN
4 THE BATHROOM AND THEY WERE CLIMBING UP AND --
5 SOMEBODY ELSE -- IT WAS POINTED OUT THAT THE BOYS
6 HAD TO BE TAKEN OUT OF THE BATHROOM. THEY WERE --

7 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
8 OBJECT TO THIS AS HEARSAY.

9 THE COURT: SUSTAINED.

10 THE ANSWER STRICKEN, UNLESS THERE'S A
11 FOUNDATION FOR HER KNOWLEDGE.

12 MR. CONN: YES.

13 Q NOW, YOU REFUSED TO TALK TO THE
14 PROSECUTION; IS THAT CORRECT?

15 A WELL, I DIDN'T REFUSE.

16 Q WELL, DO YOU RECALL THAT IN AUGUST OF
17 '94 -- WHERE WERE YOU LIVING IN AUGUST OF '94?

18 A IN FREEHOLD. FREEHOLD, NEW JERSEY.

19 Q AND DO YOU RECALL IN THAT MONTH
20 RECEIVING A CALL FROM DETECTIVE ZOELLER TELLING YOU
21 THAT THE NEW PROSECUTORS ON THE CASE WERE ON THE
22 EAST COAST AND WANTED TO SPEAK TO YOU ABOUT THE
23 MENENDEZ FAMILY?

24 A I REMEMBER RECEIVING A LETTER, THAT IF I
25 WANTED TO SPEAK TO SOMEONE FROM THE PROSECUTION TO
26 CONTACT THEM.

27 Q DID YOU EVER RECEIVE A TELEPHONE CALL

53000

1 A IF I DID, I DON'T REMEMBER IT. ARE YOU
2 SUGGESTING THAT I SPOKE TO SOMEONE, OR THERE WAS A
3 MESSAGE ON MY ANSWERING MACHINE, BECAUSE I DON'T
4 REMEMBER SPEAKING TO SOMEONE.

5 Q WELL, DID YOU EVER EITHER SPEAK TO
6 DETECTIVE ZOELLER OR RECEIVE A MESSAGE FROM
7 DETECTIVE ZOELLER IN WHICH HE INDICATED THAT THE
8 PROSECUTORS ON THE CASE WERE IN NEW YORK AND WANTED
9 TO SPEAK TO YOU?

10 A I REMEMBER RECEIVING A LETTER.

11 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
12 ANSWER AS NOT RESPONSIVE. THE QUESTION HAD TO DO
13 WITH A TELEPHONE CALL.

14 THE COURT: LET'S NOT ARGUE. IT'S JUST A
15 VERY SIMPLE OBJECTION. NONRESPONSIVE.

16 OBJECTION SUSTAINED.

17 Q BY MR. CONN: DO YOU RECALL YOUR HUSBAND
18 INDICATING TO YOU THAT DETECTIVE ZOELLER WAS ON THE
19 PHONE, HANDING YOU THE PHONE, AND THAT YOU SPOKE TO
20 DETECTIVE ZOELLER AND TOLD DETECTIVE ZOELLER THAT
21 YOU WERE NOT INTERESTED IN SPEAKING TO THE
22 PROSECUTORS?

23 MS. ABRAMSON: OBJECTION. CALLS FOR
24 HEARSAY. COMPOUND.
25 THE COURT: OVERRULED.
26 THE WITNESS: I DON'T REMEMBER THAT.
27 Q BY MR. CONN: YOU DON'T REMEMBER THAT.
28 NOW, WOULD YOU SAY THAT KITTY MENENDEZ

53001

1 WAS A RESPONSIBLE MOTHER?

2 A IN SOME WAYS SHE WAS AND IN SOME WAYS
3 SHE WAS NOT.

4 Q WELL, YOU PREVIOUSLY DESCRIBED HER AS
5 BEING A RESPONSIBLE MOTHER.

6 A ARE YOU SAYING "RESPONSIBLE" OR
7 "IRRESPONSIBLE"?

8 Q RESPONSIBLE.

9 A RESPONSIBLE, NO.

10 Q YES.

11 A I WOULD SAY SOMETIMES SHE WAS AND
12 SOMETIMES SHE WAS NOT.

13 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
14 OBJECT TO THIS QUESTIONING AND ASK TO BE HEARD.

15 THE COURT: ALL RIGHT. DO YOU HAVE SOME
16 OTHER AREAS TO GO INTO OR --

17 MR. CONN: NO. THIS IS -- MOST OF THE

18 FOLLOWING QUESTIONS GO INTO THIS CATEGORY.

19 THE COURT: OKAY. THEN LET'S TAKE A SHORT --

20 OR HAVE COUNSEL APPROACH THE SIDE HERE, AND WE'LL

21 DISCUSS IT VERY BRIEFLY.

22 (THE FOLLOWING PROCEEDINGS

23 WERE HELD AT THE BENCH:)

24

25 THE COURT: OKAY. YES.

26 MS. ABRAMSON: OKAY. I'M OBJECTING BECAUSE

27 BASICALLY WHAT COUNSEL IS DOING -- AND I'M NOT EVEN

28 SURE WHERE HE'S GETTING IT FROM -- HE'S PICKING A

53002

1 WORD OUT HERE AND THERE AND A -- I ASSUME IT'S FROM A

2 VARIETY OF INTERVIEWS, ONE OR TWO INTERVIEWS THAT I

3 THINK THE PROSECUTION HAS. AND HE'S NOT IN ANY

4 POSITION TO PROVE UP A NEGATIVE ANSWER WITH THIS

5 WITNESS.

6 SO I DON'T THINK THESE QUESTIONS ARE

7 BEING ASKED IN GOOD FAITH. THEY'RE JUST BEING ASKED

8 TO GET THE INFORMATION IN FRONT OF THE JURY. I'M

9 NOT SURE I HAVE A COMPLETE -- THIS IS OUR PENALTY

10 PHASE FILE, WHICH IS DIFFERENT THAN OUR REGULAR

11 WITNESS FILE. SO I'M NOT SURE WHAT HE'S QUOTING

12 FROM. HE'S NOT QUOTING FROM HER TESTIMONY BECAUSE

13 THAT'S SOMETHING HE CERTAINLY CAN PROVE. IF HE'S
14 QUOTING, FOR EXAMPLE, FROM INTERVIEWS DONE IN 1991,
15 I'M NOT EVEN SURE THE FIRST INTERVIEW -- WE FIRST
16 INTERVIEWED THIS WITNESS IN 1991.

17 THE COURT: IF IT'S IN AN INTERVIEW NOTE HE
18 CAN ASK THE QUESTION AND SHE CAN SAY YES OR NO.
19 IT'S CERTAINLY ASKED IN GOOD FAITH.

20 MS. ABRAMSON: AND IF SHE SAYS NO, HE'S NOT
21 IN A POSITION TO PROVE THESE UP.

22 THE COURT: THAT MIGHT BE TRUE OR NOT BE
23 TRUE. WE DON'T KNOW IF THE PERSON WHO DID THE
24 INTERVIEW WAS AVAILABLE. BUT AT THIS POINT --

25 MS. ABRAMSON: I KNOW WHO THE PERSON WAS.
26 THE PERSON LIVES IN NEW JERSEY.

27 THE COURT: THAT DOESN'T MAKE THE PERSON
28 UNAVAILABLE. AND SIMPLY BECAUSE WE DON'T KNOW WHAT

53003

1 THE WITNESS' ANSWER IS, YOU CAN'T FORECLOSE
2 CROSS-EXAMINATION ON THAT BASIS BECAUSE OF THE FACT
3 THAT YOU'VE DONE INTERVIEWS WITH A WITNESS.

4 MS. ABRAMSON: I HAVEN'T. THESE WEREN'T MY
5 INTERVIEWS.

6 THE COURT: I ASSUME THEY WERE DONE AT THE
7 DEFENSE DIRECTION, AND NOW THE DISTRICT ATTORNEY IS

8 USING THE NOTES THAT WERE PROVIDED IN DISCOVERY.

9 IT'S CERTAINLY PROPER. I DON'T KNOW HOW ELSE A

10 WITNESS COULD BE CROSS-EXAMINED BY PRIOR STATEMENTS.

11 MS. ABRAMSON: TO ASK -- TO PULL OUT OF

12 INTERVIEWS: DID YOU PREVIOUSLY SAY THIS AND DID YOU

13 PREVIOUSLY SAY THAT, TO PULL THAT OUT OF CONTEXT AND

14 NOT EVEN TELL HER WHICH -- OR WHEN OR WHICH

15 INTERVIEW I THINK IS --

16 THE COURT: THAT'S CERTAINLY PROPER

17 CROSS-EXAMINATION.

18 MR. GESSLER: YOUR HONOR, I WOULD INTERJECT

19 THAT IT MIGHT BE PROPER CROSS-EXAMINATION TO SAY:

20 DID YOU SAY RESPONSIBLE OR IRRESPONSIBLE OR

21 SOMETHING LIKE THAT. BUT IF THE WITNESS SAYS NO, OR

22 I DON'T RECALL SAYING IT, IT WOULD BE IMPROPER TO GO

23 FURTHER, GIVING THE NAME OF THE WITNESS SUPPOSEDLY

24 THAT THIS WAS SAID TO, OR THE DATE, BECAUSE ALL WE

25 HAVE IS THIS INVESTIGATOR'S -- WHOEVER THE PERSON IS

26 -- NOTES UNAUTHENTICATED, UNSIGNED. IT'S THAT

27 PERSON'S RECOLLECTION OF WHAT THE WITNESS SAID. AND

28 IF THEY'RE NOT PREPARED TO BRING THAT PERSON IN TO

53004

1 SAY "YES, THIS IS WHAT WAS SAID," I DON'T THINK THEY

2 CAN GO BEYOND THE SIMPLE QUESTION AND TAKE A YES OR

3 NO ANSWER.

4 IN OTHER WORDS, THEY CAN'T MAKE IT LOOK
5 BETTER THAN IT IS.

6 THE COURT: ONE THING AT A TIME. THEY
7 CERTAINLY CAN ASK THE QUESTION. IT'S NOT CONFINED
8 JUST TO A GENERAL QUESTION: DID YOU USE A
9 PARTICULAR WORD? IT CAN BE PHRASED MORE
10 SPECIFICALLY AND SEE WHAT THE WITNESS' ANSWER IS.
11 SHE MIGHT SAY YES; SHE MIGHT SAY NO. BUT AT THIS
12 POINT IT'S -- WE'RE TALKING IN THE ABSTRACT HERE.
13 I HAVE NO WAY OF KNOWING HOW IT'S GOING TO PROCEED.

14 AND I'M NOT GOING TO FORECLOSE
15 EXAMINATION WHICH IS PROPER. IT'S PROPER
16 EXAMINATION.

17 MR. GESSLER: THAT PART MAY BE. THE
18 FOLLOW-UP IS, THAT IS, IF I SHOW YOU THIS DOCUMENT
19 OR SOMETHING LIKE THAT --

20 THE COURT: SOMETHING CAN BE SHOWN TO REFRESH
21 HER RECOLLECTION.

22 MR. GESSLER: AGAIN, THIS CAN'T BE READ IN AS
23 THOUGH IT WAS A FACT THAT'S WHAT SHE SAID, BECAUSE
24 THAT'S WHERE THE AUTHENTICATION FAILS. THERE'S NO
25 AUTHENTICATION SHE ACTUALLY SAID IT.

26 THE COURT: FIRST THINGS FIRST. SEE WHAT SHE
27 SAYS.

28 SECOND THING WOULD BE IT MIGHT REFRESH

1 HER RECOLLECTION.

2 MR. GESSLER: ONLY IF SHE SAYS SHE HAS NO
3 RECOLLECTION. YOU CAN'T REFRESH A RECOLLECTION
4 WHERE SHE SAYS --

5 THE COURT: OR SHE COULD BE SHOWN THE
6 DOCUMENT TO SEE IF IT IS SOMETHING, ONCE SHE SEES
7 IT, DOES REFRESH HER RECOLLECTION THAT SHE MADE THE
8 PRIOR STATEMENT.

9 MR. GESSLER: YOUR HONOR, THAT'S THE
10 PROBLEM. WE DON'T KNOW THAT THE PRIOR STATEMENT WAS
11 MADE, AND YOU CAN'T REFRESH RECOLLECTION WHEN THE
12 WITNESS SAYS "I HAVEN'T LOST THE RECOLLECTION." IN
13 OTHER WORDS, THERE'S A PREREQUISITE TO A REFRESHED
14 RECOLLECTION OF SAYING "I DON'T REMEMBER."

15 THE COURT: I KNOW THAT. WE'RE NOT ASKING AT
16 THIS POINT TO REFRESH HER RECOLLECTION. WE'RE IN
17 THE ABSTRACT. I DON'T WANT TO TALK ANYMORE ABOUT
18 IT.

19 MR. GESSLER: I KNOW WE'RE IN THE ABSTRACT,
20 BUT I THINK IT BECOMES IMPORTANT IF THE DISTRICT
21 ATTORNEY TRIES TO MAKE IT LOOK LIKE THERE IS A
22 STATEMENT THAT WAS MADE, BECAUSE HE HAS A DOCUMENT
23 BY SOME THIRD PARTY NOT BEING CALLED.

24 IT ISN'T -- WE DON'T KNOW WHETHER THAT
25 THE STATEMENT WAS MADE OR NOT, EXCEPT WHEN THIS

26 WITNESS SAYS "YES, I SAID THAT," OR "NO, I DID NOT."
27 AND IT REALLY CAN'T GO FURTHER BECAUSE IT'S GIVING
28 AN IMPRESSION TO THE JURY THAT IS UNTRUE; THAT IS,

53006

1 THAT WE HAVE SOME KNOWLEDGE YOU DID MAKE THIS
2 STATEMENT. WE DON'T.

3 THE COURT: WELL, IF IT'S IN THE REPORT, THEN
4 YOU DO HAVE KNOWLEDGE OF IT.

5 MR. GESSLER: BUT IT'S NOT A REPORT REALLY.
6 IT'S AN INVESTIGATOR'S IMPRESSION OF WHAT WAS SAID
7 TO THE INVESTIGATOR.

8 THE COURT: WELL --

9 MR. GESSLER: UNLESS WE WANT TO BRING IN THE
10 INVESTIGATOR TO SAY "YES, THIS IS WHAT WAS SAID."

11 THE COURT: THAT CLEARLY IS NOT THE LAW.
12 THEY CAN CERTAINLY ASK QUESTIONS ABOUT --

13 MR. GESSLER: I WOULD RAISE PEOPLE VERSUS
14 LO CIGNO IF THEY TRY TO GO FURTHER THAN SIMPLY
15 ASKING THE WITNESS: DID YOU SAY IT, OR DID YOU NOT
16 SAY IT, UNLESS THEY ARE READY TO PROVE THE OPPOSITE.

17 THE COURT: OKAY. WELL, THIS CLEARLY IS
18 BASED ON GOOD FAITH. AND THIS IS A REPORT PREPARED
19 AT THE DEFENSE DIRECTION. THEY'RE ASKING THIS IN
20 GOOD FAITH, IF THEY ASK IT.

21 MS. ABRAMSON: LET ME JUST SAY ONE THING.
22 THE COURT: THEY'VE ASKED A QUESTION, AND I'M
23 TRYING TO FIND THIS. I'M TRYING -- THEY ASKED A
24 QUESTION ABOUT WHETHER SHE THOUGHT -- WHETHER SHE
25 SAID JOSE WAS A GOOD FATHER. I'M LOOKING AT THE
26 REPORT, AND IT WAS PETER GOLDSMITH. THEY WERE
27 INTERVIEWED JOINTLY ON A NUMBER OF THESE OCCASIONS.
28 WHO SAID HE WAS A GOOD FATHER.

53007

1 I DON'T KNOW IF THEY HAVE A SEPARATE
2 STATEMENT WHERE FAITH GOLDSMITH SAID HE'S A GOOD
3 FATHER. I SEE THEM MISREPRESENTING, OR POTENTIALLY
4 MISREPRESENTING WHAT'S IN THESE JOINT INTERVIEW
5 REPORTS.

6 THE COURT: THAT QUESTION WAS ASKED IN A
7 DIFFERENT FASHION AS TO WHETHER OR NOT SHE EVER SAID
8 THAT BEFORE AND SHE WAS -- SHE GAVE HER ANSWER,
9 WHATEVER HER ANSWER WAS.

10 OKAY. LET'S PROCEED.

11 (THE FOLLOWING PROCEEDINGS WERE
12 RESUMED IN OPEN COURT IN THE
13 PRESENCE OF THE JURY:)

14

15 THE COURT: OKAY. LET'S PROCEED.

16 MR. CONN: YES.

17 Q DID YOU PREVIOUSLY DESCRIBE KITTY
18 MENENDEZ AS BEING A RESPONSIBLE MOTHER?

19 A I'M SURE I MAY HAVE.

20 Q AND WHY IS IT THAT YOU CONCLUDED THAT
21 KITTY MENENDEZ WAS A RESPONSIBLE MOTHER?

22 A SHE WAS VERY INVOLVED IN THEIR
23 ACTIVITIES, IN TAKING THEM TO AND FROM THEIR SPORTS
24 ACTIVITY. I THINK THAT INDICATES RESPONSIBILITY.

25 THERE WAS A PERIOD OF TIME THAT SHE WAS
26 VERY INVOLVED IN A HEALTHY -- A PRESCRIBED DIET TO
27 INCREASE THEIR ATHLETIC OR ACADEMIC ABILITIES.

28 I THINK THAT INDICATES RESPONSIBILITY.

53008

1 Q AND --

2 THE COURT: WE HAVE TO BREAK AT 4:30 HERE
3 BECAUSE A JUROR NEEDS TO LEAVE TO TAKE CARE OF A
4 PERSONAL MATTER.

5 SO WE'LL HAVE TO RESUME TOMORROW AT
6 8:30.

7 DON'T DISCUSS THE MATTER WITH ANYONE,
8 AND DON'T FORM ANY FINAL OPINIONS ABOUT THE CASE.

9 WE'LL SEE YOU ALL BACK HERE TOMORROW AT
10 8:30.

11 (THE JURY ENTERED THE JURY ROOM
12 AND THE FOLLOWING PROCEEDINGS
13 WERE HELD:)

14

15 THE COURT: ANY MATTERS THAT COUNSEL WANT TO
16 DISCUSS THAT WILL EXPEDITE PROCEEDINGS TOMORROW
17 MORNING?

18 MS. NAJERA: THE ORDER OF WITNESSES.

19 MR. CONN: I WOULD LIKE TO JUST KNOW WHAT THE
20 SEQUENCE OF WITNESSES ARE GOING TO BE.

21 THE COURT: WHO ARE THE WITNESSES YOU'RE
22 CALLING AFTER THIS WITNESS?

23 MS. TOWERY: JESSICA GOLDSMITH AFTER
24 MRS. GOLDSMITH. THEN ALAN ANDERSEN, AND THEN I
25 THINK WE HAVE TO HAVE A CONFERENCE, BECAUSE WE'VE
26 GOT PEOPLE WHO ARE VERY MUCH BEHIND SCHEDULE, AND
27 SEE.

28 MS. ABRAMSON: I'VE GOT TO GET KIRSTEN ON.

53009

1 SHE'S LEAVING THE COUNTRY.

2 WITH RESPECT TO ALAN ANDERSEN, WE'RE
3 SEEKING TO ELICIT, YOUR HONOR, THE BICYCLE AND --
4 YOUR FAVORITE TOPIC -- AND JUST TWO INCIDENTS WITH
5 HIM, THE BICYCLE, WHICH EVERYBODY HAS DISCOVERY ON,

6 AND THE INCIDENT WITH JOSE TRAINING LYLE MENENDEZ TO
7 THE POINT WHERE HIS SHOULDER WAS SWOLLEN, WHICH HE
8 TESTIFIED TO AT THE PREVIOUS TRIAL.

9 SO THERE'S NO DISCOVERY ISSUE WITH
10 RESPECT TO HIM.

11 THE COURT: OKAY. SO YOU HAVE JESSICA
12 GOLDSMITH, MR. ANDERSEN, MS. SMITH.

13 AND THE REST OF THESE ARE UP IN THE AIR?

14 MS. ABRAMSON: NO. WE ALSO HAVE PROBABLY
15 SANDRA SHARP WITH RESPECT TO MATTERS THAT SHE
16 TESTIFIED TO IN THE LAST TRIAL. ALICIA HERCZ, AND
17 SHE WILL BE CALLED TO TESTIFY TO ONLY SOME OF THE
18 MATTERS SHE TESTIFIED TO IN THE LAST TRIAL AND
19 NOTHING BEYOND. SO THERE'S NO DISCOVERY ISSUES.

20 WE ALSO HAVE ANOTHER WITNESS -- I'M NOT
21 GOING TO GET TO HIM BEFORE MONDAY. CHRIS SEMROD
22 WE'LL HOLD UNTIL MONDAY.

23 I THINK WE HAVE BONNIE OR BARBARA
24 HOWARTH. BONNIE HOWARTH. THAT'S ANOTHER TEACHER
25 WHO'S OUT HERE. I'VE GOT TO GET HER ON TOMORROW.
26 AND SHE TESTIFIED BEFORE, AND THERE'S NOTHING BEYOND
27 HER PREVIOUS TESTIMONY.

28 MR. CONN: I HAVE THEN SIX WITNESSES FOR

1 TOMORROW. JESSICA GOLDSMITH, ALAN ANDERSEN,
2 CHRISTIAN SMITH, SANDRA SHARP, ALICIA HERCZ AND
3 MS. HOWARTH.

4 MS. ABRAMSON: DID YOU SAY MR. ANDERSEN, ALAN
5 ANDERSEN?

6 MR. CONN: YES.

7 THE COURT: I WOULD SUGGEST YOU HAVE
8 ADDITIONAL WITNESSES JUST IN CASE THINGS MOVE MORE
9 QUICKLY THAN THEY HAVE SO FAR.

10 MS. ABRAMSON: WE HAVE TOO MANY, NOT TO FEW.
11 WE HAVE THREE MORE.

12 THE COURT: ANYTHING ELSE THEN AS FAR AS ANY
13 ISSUES THAT RELATE TO MATTERS THAT WE CAN RESOLVE
14 NOW, RATHER THAN WAITING UNTIL TOMORROW MORNING WHEN
15 THE JURY IS HERE?

16 MS. NAJERA: WE HAVE TO RESOLVE THE ISSUE OF
17 THE STIPULATION. I'VE SHOWN IT TO BOTH COUNSEL.

18 MS. ABRAMSON: WHERE DID YOU GET THE
19 INFORMATION FROM? I'D WANT TO ASK THE WITNESS IF
20 THIS IS WHAT SHE TESTIFIED TO.

21 THE COURT: WHY DON'T YOU DO THAT RIGHT NOW.

22 MS. ABRAMSON: SINCE THIS IS SUPPOSED TO BE A
23 STIPULATION OF THE WITNESS --

24 (BRIEF PAUSE.)

25 (THE JURY EXITED THE COURTROOM AND

26 THE FOLLOWING PROCEEDINGS WERE HELD:)

27

28 THE COURT: OKAY. IS THIS RESOLVED NOW?

1 MS. ABRAMSON: ONE MOMENT, YOUR HONOR.

2 (ATTORNEY ABRAMSON AND TERESITA

3 BARALT CONFER SOTTO VOCE.)

4

5 MS. ABRAMSON: ALL RIGHT. YES. THE WITNESS

6 SAYS THIS IS ACCURATE FOR THAT PERIOD.

7 MS. NAJERA: I BELIEVE WE HAVE A STIPULATION.

8 THE COURT: WOULD BOTH SIDES --

9 MS. ABRAMSON: I'M NOT GOING TO STIPULATE TO

10 IT, THOUGH, UNLESS WE CALL DR. COX.

11 THE COURT: ONLY IF IT'S AN ISSUE, BOTH SIDES

12 WILL STIPULATE.

13 MR. GESSLER: IF IT BECOMES AN ISSUE, WE WILL

14 STIPULATE TO THAT.

15 THE COURT: HAVE YOU DELETED ANY WITNESSES

16 FROM YOUR LIST, SO THAT I KNOW?

17 MS. ABRAMSON: JUDGE, WE'RE DELETING ALL THE

18 TIME.

19 THE COURT: JUST TELL ME WHO'S NOT COMING IN

20 SO I HAVE SOME IDEA.

21 MS. ABRAMSON: WE'RE NOT CALLING LOIS HECTOR.

22 THE COURT: WHO?

23 MS. ABRAMSON: LOIS HECTOR, WHO WAS ON FOR

24 THURSDAY, MARCH 28TH.

25 THE COURT: SHE IS OFF THE LIST?
26 MS. ABRAMSON: OFF THE LIST. JOHN BURNETT,
27 WHO WAS SCHEDULED FOR TOMORROW, IS OFF THE LIST, AND
28 BRENDAN MALYK, WHO WAS SCHEDULED FOR TOMORROW, IN

53012

1 FACT, IS ON FOR MONDAY.

2 THE COURT: OKAY:

3 MS. ABRAMSON: PETER CANO, IS HE MONDAY OR
4 TUESDAY, MR. GESSLER?

5 MR. GESSLER: TO THE BEST OF MY KNOWLEDGE,
6 HE'S MONDAY.

7 MS. ABRAMSON: PETER CANO HAS BEEN MOVED TO
8 MONDAY, YOUR HONOR.

9 RIGHT NOW WE DON'T HAVE TRAVEL
10 ARRANGEMENTS FOR MARTA CANO. WE WILL SEE. SHE'S ON
11 HOLD. WE ALSO DON'T HAVE -- WE HAVEN'T MADE A FINAL
12 DECISION ON WILLIAM STOLTZFUS, SO HE'S ON HOLD.

13 THE COURT: I JUST WANT TO KNOW IF YOU MADE
14 FIRM DECISIONS TO DELETE PEOPLE.

15 MS. ABRAMSON: I'M JUST GOING DOWN THE REST
16 OF THE LIST TO -- I REALLY HAVEN'T FINALLY DELETED
17 ANDY PIERCE. HE'S CALLING ME.

18 WE'RE NOT FINALLY DELETING ANYBODY AT
19 THE MOMENT.

20 THE COURT: I DON'T WANT TO HAVE YOUR THOUGHT
21 PROCESS. I JUST WANT TO KNOW IF YOU'VE MADE A FINAL
22 DECISION.

23 MS. ABRAMSON: WE GO UP AND BACK. SOME DAYS
24 WE CHANGE OUR MINDS.

25 THE COURT: ANY OTHER THINGS THAT COUNSEL
26 WANT TO DISCUSS BEFORE WE BREAK?

27 MS. ABRAMSON: COUNSEL KNOWS -- BECAUSE WE
28 HAVE THE P.D.S. RECORDS, WHAT THE P.D.S. RECORDS

53013

1 LOOK LIKE. A PORTION, I THINK, ON BEHALF OF EACH
2 DEFENDANT, WAS ADMITTED IN THE PREVIOUS TRIAL AS
3 FORMER EXHIBIT 198. THESE ARE WRITTEN BY THE
4 WITNESS, SANDRA SHARP, CONCERNING ERIK MENENDEZ
5 9TH-GRADE SPANISH CLASS.

6 BUT WHAT WE'RE INTERESTED IN IS ALL OF
7 THE RECORDS SO THAT DR. HART CAN INDICATE WHICH ONES
8 HE RELIED ON, WITHOUT THE NECESSITY OF BRINGING IN
9 THE CUSTODIAN OF RECORDS OF PRINCETON DAY SCHOOL TO
10 INDICATE THAT THESE RECORDS -- AN ENTIRE FULL COPY
11 OF WHICH THE PROSECUTION HAS --

12 THE COURT: OKAY.

13 MS. ABRAMSON: -- WERE KEPT IN THE ORDINARY
14 COURSE. THAT'S WHAT I NEED TO KNOW.

15 THE COURT: THE BOTTOM LINE IS THEY NEED TO
16 KNOW WHO IT IS THAT THEY SHOULD BE TALKING TO TO
17 DETERMINE WHETHER OR NOT THERE IS A FOUNDATION THAT
18 THEY CAN -- I DON'T HAVE THE ANSWER FOR THEM, YOUR
19 HONOR. I MEAN, ALL I CAN SAY IS THAT WE REQUESTED
20 THOSE RECORDS ON OUR AUTHORIZATION AND RELEASE AND
21 THEY WERE SENT TO US.

22 NOW, MY INVESTIGATOR IS TRYING TO
23 ARRANGE TO HAVE THE SCHOOL MAKE AVAILABLE TO US, IF
24 NECESSARY, FOR NEXT WEEK, THE CUSTODIAN OF RECORDS.
25 I'VE NEVER TALKED TO THE CUSTODIAN OF RECORDS, BUT I
26 DO KNOW FROM THE TEACHERS, WHO HAVE PREVIOUSLY
27 TESTIFIED, THAT THIS IS THE WAY RECORDS ARE KEPT.

28 THE COURT: OKAY. WHATEVER MECHANISM CAN BE

53014

1 WORKED OUT SO THE PROSECUTION CAN SPEAK WITH
2 SOMEONE, IF THAT'S WHAT THEY WANT TO DO, TO SATISFY
3 THEMSELVES --

4 MS. ABRAMSON: CALL THE SCHOOL.

5 THE COURT: -- THAT THESE ARE OFFICIAL
6 BUSINESS RECORDS KEPT IN THE ORDINARY COURSE OF
7 BUSINESS, AND SATISFY THE REQUIREMENTS SO THAT IT
8 GETS BEYOND HEARSAY AND AUTHENTICATION ISSUES.
9 THAT'S WHAT THEY'VE ASKED.

10 SO IT'S UP TO YOU. IF YOU HAVE
11 SOMEONE -- YOU SAID YOU'RE GOING TO SUBPOENA
12 SOMEBODY. IF YOU'RE GOING TO SUBPOENA SOMEONE, YOU
13 OBVIOUSLY MUST KNOW WHO IT IS.

14 MS. ABRAMSON: I DON'T KNOW THE PERSON RIGHT
15 NOW BUT --

16 MS. ABRAMSON: WITH RESPECT TO THE OTHER
17 RECORDS, YOUR HONOR, WE HAVE THE RECORDS OF THE
18 LEWIS SCHOOL. I THINK I'M JUST GOING TO GO AHEAD
19 AND BRING IN THAT CUSTODIAN. IT'S TOO HARD TO TRACK
20 THOSE PEOPLE DOWN TO TALK TO THEM. IT'S TAKEN ME A
21 WEEK AND A HALF TO DETERMINE WHO THE CUSTODIAN OF
22 RECORDS OF THE LEWIS SCHOOL IS. I THINK IT'S JUST
23 EASIER TO BRING THEM OUT.

24 THE COURT: WOULD THE PEOPLE BE WILLING TO
25 STIPULATE TO THESE THINGS IF YOU HAD A CHANCE TO
26 TALK TO THEM?

27 MR. CONN: YES, WE WOULD.

28 THE COURT: IT SEEMS TO ME, BEFORE YOU OBTAIN

53015

1 ANY AUTHORIZATION TO TRANSPORT SOMEBODY HERE, OR
2 HAVE SOMEBODY BROUGHT HERE TO TESTIFY ABOUT
3 SOMETHING THAT COULD BE STIPULATED TO, IT'S YOUR
4 OBLIGATION TO SEE IF YOU CAN GET THAT STIPULATION.

5 SO IT'S UP TO THE DEFENSE TO GET --

6 MS. ABRAMSON: I WILL TALK TO THE WOMAN WHO
7 CALLED.

8 THE COURT: UNLESS YOU WANT TO TAKE IT OUT OF
9 YOUR OWN POCKET AND PAY FOR THE TRANSPORTATION OF
10 THE WITNESS.

11 MS. ABRAMSON: OH, YEAH. THE EXCESS FUNDS.

12 THE COURT: IF YOU DON'T WANT TO DO THAT,
13 WORK OUT OUT A STIPULATION, IF IT COULD BE DONE.

14 ANYTHING ELSE NOW BEFORE WE BREAK?

15 WE'LL BE IN RECESS UNTIL TOMORROW AT
16 8:30.

17 (AT 4:40 P.M. PROCEEDINGS WERE
18 ADJOURNED UNTIL 8:30 A.M. THE
19 FOLLOWING DAY.)

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