

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE

4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)
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PLAINTIFFS,)

VS.) NO. BA 068880

ERIK GALEN MENENDEZ, AND)

JOSEPH LYLE MENENDEZ,)

DEFENDANTS.)

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

FRIDAY, MARCH 29, 1996

VOLUME 317

APPEARANCES:
(SEE APPEARANCE PAGE)

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI
3 DISTRICT ATTORNEY
BY: DAVID CONN, DEPUTY
4 AND
CAROL NAJERA, DEPUTY
5 18000 CRIMINAL COURTS BLDG.
210 WEST TEMPLE STREET
6 LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT
9 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,
PUBLIC DEFENDER
10 BY: CHARLES GESSLER, DEPUTY
AND
11 TERRI TOWERY, DEPUTY
210 WEST TEMPLE
12 LOS ANGELES, CA 90012

13

14

FOR THE DEFENDANT
15 ERIK GALEN MENENDEZ: LESLIE ABRAMSON
ATTORNEY AT LAW
16 4929 WILSHIRE BOULEVARD
SUITE 940
17 LOS ANGELES, CA 90010

18

BARRY LEVIN, ESQ.
11661 SAN VICENTE BOULEVARD
19 LOS ANGELES, CA 90049

20

21

MARY LU MURPHY
22 CSR NO. 5178
MARILYN FADALE,
23 CSR NO. 4547
OFFICIAL REPORTERS

24
25
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53016

1 VAN NUYS, CALIFORNIA; FRIDAY, MARCH 29, 1995
2 9:20 A.M.
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE
4 (APPEARANCES AS HERETOFORE NOTED.)
5 (MARILYN A. FADALE, OFFICIAL REPORTER.)
6
7 (THE FOLLOWING PROCEEDINGS
8 WERE HELD OUT OF THE PRESENCE
9 OF THE JURY:)
10
11 THE COURT: JUST TO LET YOU KNOW, THAT ONE
12 JUROR IS FEELING ILL TODAY, AND WAS FEELING ILL
13 YESTERDAY, AND MIGHT ONLY BE ABLE TO TO MAKE IT
14 THROUGH THE MORNING. JUST WANT TO LET YOU KNOW.
15 MS. ABRAMSON: IT COULDN'T HAPPEN ON A WORSE
16 DAY. WE HAVE A BUNCH OF WITNESSES WHO CAN ONLY BE
17 HERE LIKE -- FOR THE REST OF TIME -- TODAY.
18 THE COURT: ALL I CAN DO IS --
19 MS. ABRAMSON: BONNIE HOWARTH IS ONE OF
20 THEM. SHE'LL GO ON THE RECORD AS BONNIE HUNTER.
21 SHE'S LEGALLY --

22 THE COURT: IF YOU NEED SOME TIME TO WORK ON
23 IT A FEW MINUTES, BUT THAT WILL TAKE -- CUT AWAY FROM
24 THE AMOUNT OF TIME THIS PERSON CAN BE HERE.

25 MAYBE HE'LL MAKE IT THROUGH THE
26 AFTERNOON.

27 MR. GESSLER: IF WE COULD HAVE THREE MINUTES
28 TO FIGURE OUT WHO WE WANT TO PUT ON FIRST IN CASE IT

53017

1 HAPPENS AT NOON.

2 I WANT TO, SINCE WE'RE BACK HERE, ASK
3 ONE -- I BELIEVE THAT THE DISTRICT ATTORNEY HAS
4 OPENED UP BY ASKING FAITH GOLDSMITH ABOUT WHETHER OR
5 NOT MARY LOUISE MENENDEZ WAS RESPONSIBLE A
6 RESPONSIBLE PARENT -- SOMETIMES RESPONSIBLE --
7 SOMETIMES NOT -- AND TELLING ABOUT WHEN SHE WAS;
8 THAT THIS REOPENS THE QUESTIONS THAT I WAS ASKING
9 HER ABOUT WANTING TO LEAVE HER INFANT AND GO SKIING
10 WITH THE GRANDMOTHER DURING THE WEEK. I JUST WANTED
11 TO LET THE COURT KNOW I AM NOW PREPARED TO REASK
12 THAT QUESTION.

13 THE COURT: DO YOU WISH TO BE HEARD ON THAT?

14 MR. CONN: ONCE AGAIN, I THINK THAT IS
15 HEARSAY. I THINK THAT IT IS IRRELEVANT. SIMPLY A
16 PASSING REFERENCE TO THAT IS NOT SIGNIFICANT ENOUGH

17 TO MAKE IT RELEVANT WHEN, IN FACT, SHE DID NOT
18 FOLLOW THROUGH WITH THAT.

19 THE COURT: MY VIEW IS THAT IN THE NATURE OF
20 THE QUESTION, WHAT IS RESPONSIBLE? THAT HAS -- IT
21 DID HAVE TO DO WITH HER OBSERVATIONS OF ACTUAL
22 CONDUCT, NOT THINGS THAT DID NOT MATERIALIZE.

23 I REALLY DON'T SEE THAT THIS IS AN AREA
24 THAT HAS BEEN TOUCHED UPON BY THE CROSS-EXAMINATION
25 THAT WOULD THEN BE WITHIN THE SCOPE OF YOUR
26 REDIRECT.

27 MS. TOWERY: YOUR HONOR, IF I CAN BE
28 BUTTINSKY. I THINK THE WITNESS' ANSWER YESTERDAY

53018

1 WAS THAT SHE OBSERVED BOTH RESPONSIBLE AND
2 IRRESPONSIBLE BEHAVIOR ON THE PART OF MRS.
3 MENENDEZ.

4 WOULD WE BE PERMITTED TO ASK HER TO
5 ENUMERATE "IRRESPONSIBLE"?

6 THE COURT: YES. BUT NOT INTO THIS HEARSAY
7 AREA, WHICH I STILL FIND IS SOMETHING THAT NEVER
8 HAPPENED. IT WAS SOMETHING THAT WAS TALKED ABOUT,
9 BUT DIDN'T ACTUALLY OCCUR.

10 I JUST DON'T SEE THAT AS BEHAVIOR, AND I
11 JUST DON'T SEE THAT.

12 MS. TOWERY: THE WITNESS' OPINION HAS BEEN
13 ASKED, AND APPARENTLY HER OPINION IS THAT THAT WAS
14 HER BEHAVIOR, BECAUSE IT IS BEHAVIOR.

15 THE COURT: IT ISN'T.

16 MS. TOWERY: IT WASN'T FOLLOWED THROUGH. SHE
17 WASN'T ASKED HER OPINION ABOUT WHETHER SHE HAD
18 RESPONSIBLE BEHAVIOR, BUT WHETHER SHE WAS A
19 RESPONSIBLE MOTHER. IN HER OPINION IT'S NOT
20 RESPONSIBLE TO WANT TO LEAVE YOUR CHILD --

21 THE COURT: THAT'S SUCH BOOTSTRAPPING THAT IT
22 STRETCHES IT TOO FAR. I JUST DON'T SEE THAT.

23 MS. TOWERY: I DON'T KNOW WHAT THE WITNESS'
24 ANSWER WILL BE, AND I SUSPECT MR. GESSLER DOESN'T
25 EITHER, TO THAT QUESTION, WHAT WOULD SHE THINK IS
26 NOT RESPONSIBLE. I THINK THE WITNESS SHOULD BE
27 ALLOWED TO ENUMERATE, IN HER OPINION, WHAT IS NOT
28 RESPONSIBLE.

53019

1 THE COURT: WE'VE SEEN A LOT OF THAT
2 THROUGHOUT THIS TRIAL, OF GETTING IN ALL SORTS OF
3 OPINIONS AND THINGS THAT ON ONE THEORY OR ANOTHER --
4 THINGS GET OPENED UP AND WE GET INTO A LOT OF
5 INADMISSIBLE EVIDENCE. AND IT'S OCCURRED IN THE
6 PAST.

7 I JUST DON'T SEE IT AS ONE OF THOSE
8 AREAS. IT'S JUST PURE HEARSAY, CONVERSATIONS OF
9 THINGS THAT NEVER MATERIALIZED. I JUST DON'T SEE
10 THAT AS OPENED UP BY THE NATURE OF THE QUESTION. I
11 REALLY DON'T.

12 MS. ABRAMSON: I WANTED TO RAISE SOMETHING
13 ELSE.

14 THE COURT: WE'RE ALSO CONSUMING TIME YOU
15 MIGHT WANT TO USE TO DEAL WITH THE WITNESS.

16 MS. ABRAMSON: ONE THING BRIEFLY.

17 WE OBJECTED YESTERDAY TO MR. CONN -- THE
18 MANNER IN WHICH HE WAS QUESTIONING THIS WITNESS
19 ABOUT PRIOR STATEMENTS. I WENT BACK AND REREAD THE
20 STATEMENTS HE HAS. AND HIS BEHAVIOR YESTERDAY, I
21 THINK, WAS COMPLETELY INAPPROPRIATE WITH RESPECT TO
22 AT LEAST ONE, AND PERHAPS ONE OR MORE, OF THOSE
23 QUESTIONS.

24 THE STATEMENT HE HAD WAS A JOINT
25 INTERVIEW BETWEEN MR. AND MRS. GOLDSMITH. ONE OF
26 THE STATEMENTS WHERE HE SAID: DIDN'T YOU SAY THIS?
27 WAS MR. GOLDSMITH SPEAKING. AND THAT WAS VERY CLEAR
28 IN THE REPORT. AND I THINK IT'S INAPPROPRIATE TO

53020

1 ASK QUESTIONS THAT WAY.

2 IT HAD TO DO WITH HUGGING AND KISSING
3 THE KIDS WHEN HE CAME HOME FROM WORK. THIS WITNESS
4 SAID, "WELL, I DIDN'T SEE HIM COME HOME FROM WORK,
5 BUT I SAW HIM HUG AND KISS THE KIDS."

6 THAT WAS A STATEMENT BY PETER
7 GOLDSMITH.

8 I WOULD ASK COUNSEL TO -- IF HE WANTS TO
9 ASK THE QUESTION, FINE. BUT TO BOOTSTRAP IT BY
10 MAKING IT SEEM LIKE SHE SAID IT BEFORE IS NOT
11 APPROPRIATE. THE QUESTION, I BELIEVE, WAS: DID YOU
12 SEE HIM HUG AND KISS HIS SONS WHEN HE CAME HOME?
13 WHETHER OR NOT -- THAT HER HUSBAND SAW THAT. SHE
14 SAID SHE OBSERVED HUGGING AND KISSING.

15 MR. CONN: WELL, MAYBE COUNSEL SHOULD REREAD
16 THE REPORT.

17 THE FACT THAT HER HUSBAND OBSERVED IT
18 WHEN JOSE MENENDEZ CAME HOME DOESN'T STOP ME FROM
19 ASKING HER WHETHER THAT WAS THE MOMENT WHEN SHE --

20 MS. ABRAMSON: YOU SAID -- DIDN'T YOU
21 PREVIOUSLY SAY THAT.

22 MR. CONN: NO, I DIDN'T SAY THAT.

23 THE COURT: LET'S NOT DEBATE IT. IT'S VERY
24 CLEAR THAT NEITHER SIDE SHOULD BE ASKING QUESTIONS
25 THAT CANNOT HAVE A GOOD-FAITH BELIEF, UNLESS THE
26 BASIS FOR THE QUESTION -- WHICH IN THIS INSTANCE IS
27 A STATEMENT. IF THERE'S SOME DISPUTE AS TO WHETHER
28 IT WAS MADE BY THE WITNESS, THEN THAT SHOULD BE

1 CLARIFIED BEFORE THE SPECIFIC QUESTION IS ASKED THAT
2 DISCUSSES EVIDENCE OF A FORMER STATEMENT THAT MIGHT
3 NOT HAVE BEEN MADE BY A FORMER WITNESS.

4 THAT'S CLEAR, AND EVERYBODY SHOULD BE
5 AWARE OF THAT AND BE CAUTIOUS OF IT, SO WE DON'T GET
6 INTO DISPUTES AS TO WHETHER A WITNESS MADE A
7 STATEMENT BEFORE WHEN YOU CAN'T PROVE IT.

8 I'LL GIVE YOU A FEW MINUTES HERE TO --

9 MR. GESSLER: JUST A COUPLE MINUTES, IF WE
10 COULD.

11 THE COURT: IF YOU WANT TO TAKE HER OFF THE
12 STAND AND PUT SOMEONE ELSE ON, OBVIOUSLY, YOU CAN DO
13 THAT.

14 THERE'S GOING TO BE A SHORT BREAK.

15 (A RECESS WAS TAKEN FROM
16 9:20 A.M. TO 9:28 A.M.)

17

18 THE COURT: OKAY. WE HAVE THE DEFENDANTS IN
19 COURT WITH THEIR LAWYERS. THE PEOPLE ARE HERE.

20 ARE WE READY TO PROCEED?

21 MR. GESSLER: YES, YOUR HONOR.

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

24 (THE JURY ENTERED THE COURTROOM
25 AND THE FOLLOWING PROCEEDINGS

26 WERE HELD:)

27

28 THE COURT: THE JURY IS BACK IN COURT.

53022

1 GOOD MORNING, LADIES AND GENTLEMEN.

2 WE'RE READY TO RESUME. WE HAVE THE WITNESS ON THE

3 WITNESS STAND AGAIN.

4 WOULD YOU STATE YOUR NAME AGAIN FOR US

5 PLEASE.

6

7 FAITH GOLDSMITH,

8 THE WITNESS AT THE TIME OF ADJOURNMENT, RESUMED THE

9 STAND, AND TESTIFIED FURTHER AS FOLLOWS:

10 THE WITNESS: FAITH GOLDSMITH.

11 THE COURT: YOU'RE STILL UNDER OATH.

12 YOU MAY CONTINUE WITH CROSS-EXAMINATION.

13 MR. CONN: THANK YOU.

14

15 CROSS-EXAMINATION (CONTINUED)

16 BY MR. CONN:

17 Q MRS. GOLDSMITH, YOU TOLD US YESTERDAY

18 THAT AFTER KITTY MENENDEZ SPOKE TO YOU, OR YOU TOLD

19 A STORY ABOUT A CEMETERY INCIDENT, YOU THEN WENT AND

20 SPOKE TO JOSE MENENDEZ ABOUT THE SAME INCIDENT; IS

21 THAT CORRECT?

22 A YES.

23 Q AND HE CONFIRMED IT; IS THAT CORRECT?

24 A YES.

25 Q AND YOU SAID THAT YOU TOLD DEFENSE

26 COUNSEL ABOUT THIS INCIDENT LAST TUESDAY; IS THAT

27 CORRECT?

28 MS. ABRAMSON: OBJECTION. MISSTATES THE

53023

1 TESTIMONY.

2 THE COURT: OVERRULED.

3 Q BY MR. CONN: DO YOU RECALL WHAT DAY IT

4 WAS THAT YOU SPOKE TO DEFENSE COUNSEL ABOUT THIS

5 INCIDENT?

6 A I SPOKE TO THE DEFENSE COUNSEL ABOUT

7 THIS INCIDENT ON TUESDAY. THEY KNEW ABOUT THE

8 INCIDENT PRIOR TO THAT.

9 Q YES. WHAT I'M REFERRING TO IS YOU

10 PREVIOUSLY TESTIFIED THAT YOU HAD A CONVERSATION

11 WITH KITTY MENENDEZ ABOUT THE INCIDENT, BUT YOU

12 NEVER PREVIOUSLY TESTIFIED THAT YOU SPOKE TO JOSE

13 MENENDEZ, AND THAT WAS CONFIRMED WITH JOSE MENENDEZ;

14 IS THAT CORRECT?

15 MS. ABRAMSON: I'M GOING TO OBJECT TO THE

16 FORM OF THE QUESTION, YOUR HONOR. IT ASSUMES FACTS
17 NOT IN EVIDENCE AND MISSTATES THE PRIOR TESTIMONY,
18 AND IT'S ARGUMENTATIVE.

19 THE COURT: IT'S COMPOUND AS STATED.

20 SO PERHAPS YOU CAN BREAK IT DOWN.

21 MR. CONN: OKAY.

22 Q YOU TESTIFIED PREVIOUSLY IN THE LAST
23 TRIAL; IS THAT CORRECT?

24 A YES. THE LAST TRIAL, YES.

25 Q AT THAT TRIAL YOU TOLD A STORY ABOUT THE
26 CEMETERY INCIDENT; IS THAT CORRECT?

27 A CORRECT.

28 Q YOU DID NOT TESTIFY AT THAT TRIAL THAT

53024

1 YOU HAD GONE TO JOSE AND THAT JOSE MENENDEZ
2 CONFIRMED THAT STORY; IS THAT CORRECT?

3 A I KNOW THAT I TESTIFIED -- IF I COULD
4 EXPLAIN IT. I KNOW THAT I TESTIFIED AS TO THE
5 STORY. AS I TRIED TO EXPLAIN, AS TO THE COMPONENTS
6 OF THE STORY, WHICH PART I TOLD WHEN, I DON'T KNOW
7 THAT I CAN DO THAT. I KNOW THAT I TOLD THE STORY
8 OF -- THE CEMETERY STORY.

9 Q DO YOU RECALL WHETHER OR NOT IN THE LAST
10 TRIAL YOU TESTIFIED THAT YOU WENT TO JOSE MENENDEZ,

11 AND YOU ASKED HIM IF THAT WAS TRUE?

12 A TO THE BEST --

13 Q LET ME FINISH THE QUESTION.

14 AND AT THAT TIME JOSE MENENDEZ TOLD YOU

15 THAT THIS WAS, IN FACT, A TRUE STORY.

16 A TO THE BEST OF MY RECOLLECTION, NO.

17 Q OKAY. AND YESTERDAY, DO YOU RECALL THAT

18 THERE WAS A RECESS AND WE WENT OUT IN THE HALLWAY,

19 AND I ASKED YOU, IN THE PRESENCE OF MR. GESSLER AND

20 IN THE PRESENCE OF DETECTIVE ZOELLER: WHEN WAS THE

21 FIRST TIME YOU TOLD DEFENSE ATTORNEYS ABOUT THAT

22 CONVERSATION WITH JOSE MENENDEZ?

23 DO YOU RECALL THAT?

24 MS. ABRAMSON: YOUR HONOR, I'M GOING TO

25 OBJECT TO THIS AS HEARSAY AND NO FOUNDATION.

26 THE COURT: OVERRULED.

27 Q BY MR. CONN: DO YOU RECALL THAT?

28 A YOU WANT ME TO ANSWER?

53025

1 THE COURT: YES.

2 THE WITNESS: I'D LIKE TO JUST EXPLAIN WHAT

3 IT WAS I WAS SAYING.

4 MR. CONN: NO. WHAT I WOULD LIKE TO DO IS

5 ASK YOU A QUESTION AND YOU CAN ANSWER THE QUESTION.

6 Q THE QUESTION IS: DO YOU RECALL THAT WE
7 WENT OUTSIDE IN THE HALLWAY, AND I ASKED YOU AT THAT
8 TIME: WHEN WAS THE FIRST TIME YOU TOLD DEFENSE
9 ATTORNEYS THAT YOU HAD A CONVERSATION WITH JOSE
10 MENENDEZ IN WHICH HE CONFIRMED THAT THE CEMETERY
11 INCIDENT TOOK PLACE?

12 DO YOU RECALL I ASKED YOU THAT IN THE
13 HALLWAY?

14 A YES, I DO. MY ANSWER WAS I DID NOT
15 REMEMBER.

16 Q YOU DID NOT REMEMBER AT ALL?

17 A I DID NOT REMEMBER WHEN I TOLD --

18 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
19 FORM OF THE QUESTION AS ARGUMENTATIVE, AND THE
20 TONE --

21 THE COURT: SUSTAINED AS TO THE FORM OF THE
22 QUESTION.

23 HAD YOU FINISHED YOUR ANSWER, BY THE
24 WAY?

25 THE WITNESS: I THINK SO.

26 THE COURT: YOUR NEXT QUESTION, PLEASE.

27 Q BY MR. CONN: YOU DID NOT REMEMBER
28 TELLING DEFENSE ATTORNEYS THAT; IS THAT CORRECT?

1 A BY "THAT" YOU MEAN WHEN I MENTIONED

2 JOSE, OR "THAT" MEANING THE STORY?

3 Q THE ONLY THING --

4 A I THINK I'M GETTING CONFUSED WITH YOUR

5 QUESTIONS.

6 Q NO. THE ONLY THING I'M ASKING YOU

7 ABOUT, MRS. GOLDSMITH, IS THE CONVERSATION THAT YOU

8 HAD WITH JOSE MENENDEZ.

9 DO YOU UNDERSTAND?

10 A OKAY. YES.

11 Q THAT'S THE ONLY THING I'M TALKING

12 ABOUT.

13 A OKAY.

14 Q AND I ASKED YOU IN THE HALLWAY: WHEN

15 WAS THE FIRST TIME THAT YOU TOLD DEFENSE ATTORNEYS

16 ABOUT THAT; IS THAT CORRECT?

17 A AND I SAID I DID NOT KNOW.

18 Q YOU HAD NO RECOLLECTION WHATSOEVER; IS

19 THAT CORRECT?

20 A YES. WHAT I SAID -- YES, THAT'S TRUE.

21 Q YOU SAID THAT IN THE PRESENCE OF

22 DETECTIVE ZOELLER AND MYSELF; IS THAT CORRECT?

23 A YES.

24 Q AND THEN AFTER LEAVING ME, YOU WENT DOWN

25 TO THE OTHER SIDE OF THE HALLWAY, AND YOU SPOKE TO

26 LESLIE ABRAMSON; IS THAT CORRECT?

27 A YES.

28 Q AND THEN YOU CAME BACK WITH MS. ABRAMSON

1 A COUPLE OF MINUTES LATER, AND THEN YOU RECALLED
2 WHEN YOU HAD THE CONVERSATION WITH THE DEFENSE?

3 A NOT EXACTLY.

4 MS. ABRAMSON: OBJECTION. MISSTATES THE
5 FACTS AS REPRESENTED TO THIS COURT.

6 THE COURT: COUNSEL, LET'S NOT ARGUE, BECAUSE
7 BASICALLY ALL YOU'RE DOING IS MAKING STATEMENTS WHEN
8 YOU MAKE THESE SORTS OF --

9 MS. ABRAMSON: I WOULD OBJECT TO THE QUESTION
10 AS IMPROPER, AND THE COURT KNOWS WHY.

11 THE COURT: AS FAR AS THE FORM OF THE
12 QUESTION, PERHAPS YOU CAN RESTATE IT, SINCE IT
13 ASSUMES FACTS NOT IN EVIDENCE AT THIS POINT.

14 MR. CONN: OKAY.

15 Q YOU SPOKE TO MS. ABRAMSON AT THE OTHER
16 END OF THE HALLWAY; IS THAT CORRECT?

17 A CORRECT.

18 Q AND A COUPLE OF MINUTES AFTER YOU TOLD
19 ME THAT YOU HAD NO RECOLLECTION OF WHEN YOU TOLD
20 DEFENSE ATTORNEYS ABOUT THE CONVERSATION WITH JOSE
21 MENENDEZ, THEN YOU APPROACHED ME IN THE COMPANY OF
22 LESLIE ABRAMSON; IS THAT CORRECT?

23 A RIGHT.

24 Q AND AT THE TIME THAT YOU APPROACHED ME
25 IN THE COMPANY OF LESLIE ABRAMSON, DID YOU THEN
26 RECALL WHEN IT WAS THAT YOU HAD THE CONVERSATION
27 WITH DEFENSE ATTORNEYS WHEN YOU TOLD THEM ABOUT THE
28 CONVERSATION WITH JOSE MENENDEZ?

53028

1 A WHAT I SAID WAS -- I'M TRYING TO MAKE IT
2 CLEAR. I GUESS I'M NOT.

3 I KNEW THAT I HAD TOLD THE STORY ABOUT
4 THE CEMETERY PREVIOUSLY. WHEN YOU ASKED ME WHEN I
5 HAD MENTIONED JOSE, I DID NOT KNOW. I COULD NOT
6 EVEN REMEMBER -- AT THAT POINT I DID NOT EVEN
7 REMEMBER THAT I HAD DISCUSSED THAT WHOLE STORY ON
8 TUESDAY.

9 WHEN I WENT BACK MY DAUGHTER WAS THERE.
10 SHE REMINDED ME THAT WE HAD, IN FACT, DISCUSSED IT.

11 AND I SAID THEN, AND I SAY NOW, I CANNOT
12 SEPARATE THE COMPONENTS OF THE STORY, WHEN I TOLD
13 WHAT PART. TO THE BEST OF MY RECOLLECTION, THE JOSE
14 PART OF THE STORY CAME IN ON TUESDAY.

15 BUT I TRIED TO MAKE IT VERY CLEAR TO
16 YOU, THAT I CAN ONLY TELL YOU WHAT I CAN REMEMBER.
17 I CANNOT SEPARATE THE COMPONENT WHEN I TOLD WHICH
18 ASPECT OF THE STORY.

19 Q MY QUESTION TO YOU IS: BY THE TIME YOU

20 APPROACHED ME SEVERAL MINUTES LATER --

21 A I SAID -- I'M SORRY.

22 Q ALLOW ME TO PLEASE COMPLETE THE

23 QUESTION.

24 A I'M SORRY.

25 Q WHEN YOU APPROACHED ME SEVERAL MINUTES

26 AFTER, YOU TOLD ME YOU CANNOT RECALL --

27 A UH-HUH.

28 Q -- TELLING DEFENSE ATTORNEYS ABOUT THIS.

53029

1 A UH-HUH.

2 Q WHEN YOU APPROACHED ME SEVERAL MINUTES

3 LATER, DID YOU THEN RECALL WHEN YOU TOLD THE DEFENSE

4 ATTORNEYS THIS?

5 A I SAID TO YOU THAT MY DAUGHTER HAD

6 REMINDED ME THAT WE HAD DISCUSSED IT ON TUESDAY, AND

7 THAT BROUGHT BACK MY RECOLLECTION OF IT. I DID NOT

8 INDEPENDENTLY REMEMBER IT.

9 Q OKAY.

10 A THERE WAS A LOT OF TALKING GOING ON, AND

11 A LOT OF DISCUSSION NOW, IN THE PAST, AND IT'S HARD

12 TO SEPARATE WHEN EACH PART OF WHAT STORY IS TOLD, OR

13 EVEN WHICH STORY IS TOLD. IT ALL -- IT'S HARD.

14 Q FROM THE TIME THAT YOU COULD NOT RECALL
15 THE CONVERSATION WHEN YOU SPOKE TO ME, TO THE TIME
16 THAT YOU RETURNED SEVERAL MINUTES LATER AND RECALLED
17 TELLING DEFENSE ATTORNEYS ABOUT THE CONVERSATION,
18 DID YOU SPEAK TO ANYONE OTHER THAN MS. ABRAMSON AND
19 YOUR DAUGHTER?

20 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
21 FORM OF THE QUESTION AS VAGUE. ABOUT ANYTHING OR
22 ABOUT THIS ISSUE?

23 THE COURT: OVERRULED.

24 MR. CONN: ABOUT THIS ISSUE.

25 MS. ABRAMSON: THANK YOU, COUNSEL.

26 THE WITNESS: I'M TRYING TO PICTURE. I KNOW I
27 WENT BACK AND I -- I THINK IT WAS -- I THINK IT WAS
28 JUST THE TWO.

53030

1 MR. CONN: ALL RIGHT. THANK YOU.

2 Q NOW, YOU SPOKE ABOUT AN INCIDENT THAT
3 YOU OBSERVED IN THE MONSEY HOUSE WHERE LYLE MENENDEZ
4 WAS STANDING ON A RAILING; IS THAT CORRECT?

5 A YES.

6 Q AND HOW OLD WAS LYLE MENENDEZ AT THE
7 TIME?

8 A WELL, IT WAS IN THE MONSEY HOUSE. I'M

9 GUESSING AT -- I'M GOING TO GUESS BETWEEN FIVE AND

10 SEVEN, FIVE OR -- BETWEEN FIVE AND SEVEN.

11 Q OKAY. AND WAS HE PLAYING ON THE RAILING

12 OR STANDING ON THE RAILING, OR WALKING ON THE

13 RAILING OR WHAT?

14 A HE WAS WALKING ON THE RAILING.

15 Q AND HOW LONG DID YOU SEE HIM ON THE

16 RAILING?

17 A A COUPLE OF MINUTES -- A MINUTE, TWO

18 MINUTES, THREE MINUTES.

19 Q AND THEN WHAT DID HE DO, JUMP OFF THE

20 RAILING ONTO THE TOP --

21 A YOU COULD STEP DOWN -- YEAH. ONTO THE

22 PORCH SIDE.

23 Q AND YOU TOLD KITTY MENENDEZ THAT YOU

24 THOUGHT IT WAS DANGEROUS?

25 A I SAID THAT WHEN HE WAS ON IT. I CALLED

26 OUT AND I SAID, "MARY LOU, GET HIM DOWN."

27 Q AND THEN HOW DID SHE RESPOND?

28 A SHE SAID THERE WAS NO REASON TO. THERE

53031

1 WAS NO PROBLEM, THAT HE WAS FINE.

2 Q DID YOU TELL -- DID SHE SAY TO YOU

3 WHETHER OR NOT HE HAD DONE THIS BEFORE, WHETHER HE

4 DID THIS ALL THE TIME?

5 A I DON'T REMEMBER. I DON'T KNOW.

6 Q SO --

7 A I KNOW SHE WAS NOT ALARMED.

8 Q DID YOU INSIST AND TELL HER THAT SHE WAS

9 WRONG AND GO AND HELP LYLE MENENDEZ DOWN FROM THE

10 RAILING?

11 A NO, I DID NOT.

12 Q WHY NOT?

13 A HIS MOTHER HAD DETERMINED THAT IT WAS

14 ALL RIGHT.

15 Q UH-HUH. DID HE FALL?

16 A NO, HE DID NOT.

17 Q YOU NEVER SAW HIM FALL OFF ANYTHING IN

18 HIS HOUSE?

19 A I MUST HAVE SEEN HIM FALL OFF SOMETHING

20 IN HIS HOUSE. I DIDN'T SEE HIM FALL OFF THE

21 RAILING.

22 Q DO YOU RECALL HIM EVER FALLING FROM

23 ANYTHING IN HIS HOME?

24 A NOTHING COMES TO MIND.

25 Q AND YOU ONLY RAISED GIRLS; IS THAT

26 CORRECT? YOU DIDN'T HAVE ANY SONS?

27 A I RAISED DAUGHTERS, YES.

28 Q DID YOU EVER INDICATE IN AN INTERVIEW

1 THAT PERHAPS YOU WERE OVERLY PROTECTIVE OF YOUR
2 KIDS?

3 A DID I SAY THAT I WAS OVERLY PROTECTIVE?

4 Q YES. HAVE YOU EVER DESCRIBED
5 YOURSELF: "PERHAPS, MAYBE, I WAS OVERLY PROTECTIVE
6 OF MY KIDS"?

7 A I DON'T THINK I WAS OVERLY PROTECTIVE.

8 Q DID YOU EVER SAY --

9 A IF YOU HAVE IT ON THE RECORD, PERHAPS I
10 DID. I DON'T REMEMBER EVER SAYING THAT.

11 Q DO YOU RECALL WHETHER ON MARCH 14TH OF
12 1992 YOU INDICATED TO MS. CECILIA ALFONSO THAT
13 "MAYBE I WAS OVERLY PROTECTIVE OF MY KIDS."

14 A DO I REMEMBER SAYING THAT? NO.

15 Q NOW, YOU RECALLED ANOTHER INCIDENT IN
16 WHICH YOU AND KITTY MENENDEZ AND JOSE MENENDEZ
17 VISITED A REALTY OFFICE; IS THAT CORRECT?

18 A CORRECT.

19 Q WHERE WAS THAT REALTY OFFICE?

20 A IN SPRING VALLEY, NEW YORK.

21 Q AND ERIK MENENDEZ WAS WITH YOU AT THE
22 TIME?

23 A YES, HE WAS.

24 Q HOW OLD WAS ERIK MENENDEZ?

25 A WELL, IT WAS RIGHT BEFORE THEY BOUGHT
26 THE MONSEY HOUSE. SO I THINK THAT WE'VE DETERMINED
27 THAT HE WAS A LITTLE BIT SHY OF TWO; IS THAT

53033

1 Q AND WAS THERE ANYONE ELSE PRESENT DURING
2 THIS INCIDENT, OTHER THAN YOURSELF, KITTY MENENDEZ,
3 JOSE MENENDEZ, AND ERIK MENENDEZ?

4 A MY CHILDREN AND THE REALTORS.

5 Q AND HOW MANY OF YOUR CHILDREN DID YOU
6 HAVE WITH YOU AT THE TIME?

7 A THREE.

8 Q AND WHAT WERE THEIR AGES AT THE TIME?

9 A WELL, IF ERIK WAS TWO, THEN I THINK JOY
10 WAS ONE, JESSICA WAS THREE, FERN WAS FIVE.

11 Q AND DURING THIS VISIT TO THE REALTY
12 OFFICE, WAS ERIK MENENDEZ BEING HELD IN SOMEONE'S
13 ARMS, OR WAS HE WALKING ON HIS OWN?

14 A I DON'T REMEMBER. HE WASN'T BEING HELD
15 IN MY ARMS. I DON'T KNOW.

16 Q YOU DON'T REMEMBER WHETHER HE WAS
17 CARRIED INTO THE OFFICE OR WHETHER HE WASN'T CARRIED
18 INTO THE OFFICE?

19 A NO, I DON'T.

20 Q SO YOU WEREN'T PAYING ATTENTION TO HIM?

21 A WE'RE TALKING 23 YEARS AGO. I CAN'T
22 REMEMBER IF SOMEBODY CARRIED HIM OR IF HE WALKED

23 IN. THE ONLY PART I REMEMBER IS THE PART THAT WAS
24 SIGNIFICANT, WHICH WAS THAT HE WAS CARRIED IN BY
25 SOMEONE. I DON'T REMEMBER IF MY OWN DAUGHTER WAS
26 CARRIED OR WALKED IN.

27 Q DO YOU KNOW WHERE YOUR CHILDREN WERE
28 DURING THE TIME THAT YOU WERE IN THE OFFICE? WERE

53034

1 THEY IN THE OFFICE WITH YOU?

2 A THEY WERE IN THE OFFICE WITH ME.

3 Q ALL THREE WERE IN THE OFFICE WITH YOU?

4 A YES.

5 Q AND DO YOU RECALL ERIK MENENDEZ BEING
6 INSIDE THE OFFICE, AT LEAST AT THE START OF THE
7 VISIT?

8 A DO I ACTUALLY VISUALIZE HIM IN THE
9 OFFICE?

10 Q YES.

11 A NO.

12 Q AND DO YOU RECALL HOW FAR YOU WERE
13 SITTING FROM THE DOOR THAT WOULD LEAD OUTSIDE?

14 MS. ABRAMSON: OBJECTION. ASSUMES FACTS NOT
15 IN EVIDENCE.

16 THE COURT: OVERRULED.

17 THE WITNESS: WHAT WAS THE -- HOW --

18 Q BY MR. CONN: WHEN YOU WENT INSIDE THE
19 OFFICE, DID YOU SIT DOWN AND TALK TO SOME REAL
20 ESTATE PEOPLE?

21 A I REALLY DON'T REMEMBER.

22 Q DO YOU RECALL HOW FAR EVERYONE WAS FROM
23 THE DOOR THAT LEADS OUTSIDE?

24 A NO, I DO NOT.

25 Q DO YOU RECALL HOW LONG EVERYONE WAS
26 INSIDE THE OFFICE BEFORE SOMEONE CAME INTO THE
27 OFFICE CARRYING ERIK MENENDEZ?

28 A NO, I DO NOT.

53035

1 Q IT MIGHT HAVE BEEN SECONDS, AS FAR AS
2 YOU KNOW; IS THAT CORRECT?

3 A COULD -- I DON'T KNOW.

4 Q AND SOMEONE CAME INTO THE OFFICE. AND
5 WAS IT A MALE OR FEMALE THAT CAME INTO THE OFFICE
6 WITH ERIK MENENDEZ?

7 A I DON'T KNOW.

8 Q YOU DON'T RECALL IF IT WAS A MAN OR A
9 WOMAN CARRYING ERIK MENENDEZ?

10 A NO.

11 Q DID THAT PERSON HAVE ERIK MENENDEZ IN
12 HIS ARMS?

13 A YES.

14 Q WHAT DID THAT PERSON SAY?

15 A SOMETHING TO THE EFFECT: DOES THIS

16 CHILD BELONG TO ANYONE IN THIS OFFICE? BECAUSE IT

17 WAS AN ISOLATED OFFICE. THERE WEREN'T ANY OTHER

18 STORES AROUND. SO I THINK -- AS I THINK BACK NOW,

19 IT WAS PROBABLY A NATURAL THING TO GO TO THE ONLY

20 PLACE THAT YOU COULD WALK INTO AND SAY: DOES THIS

21 CHILD BELONG TO SOMEONE IN HERE?

22 FROM WHAT I COULD --

23 Q SO THE ONLY THING THAT WAS SAID BY THAT

24 PERSON IS: DOES THIS CHILD BELONG TO SOMEONE HERE?

25 IS THAT CORRECT?

26 A AND THEN HE SAID, "HE WAS OUT ON ROUTE

27 59. TRAFFIC STOPPED, AND I HAD TO GO" -- AND HERE

28 I AM." THEY INDICATED THAT -- WHERE HE HAD FOUND

53036

1 HIM.

2 Q SO --

3 A HE DIDN'T JUST WALK IN AND SAY: DOES

4 THIS CHILD BELONG TO SOMEONE AND WALK OUT. HE --

5 AFTER HE FOUND OUT TO WHOM HE BELONGED, HE THEN

6 SAID, "HE WAS OUT ON ROUTE 59."

7 Q ROUTE 59 IS A BUSY STREET?

8 A YES.

9 Q HOW FAR WAS -- WERE YOU AT THAT MOMENT
10 FROM ROUTE 59?

11 A I WAS INSIDE THE BUILDING, WHICH WAS ON
12 ROUTE 59.

13 Q AND HOW FAR WOULD YOU HAVE TO GO TO
14 ACTUALLY PUT YOUR FEET ON ROUTE 59?

15 A WELL, I WOULD SAY THE DISTANCE FROM HERE
16 TO THE WALL OVER THERE (POINTING) PERHAPS, I WOULD
17 SAY. WELL -- I WOULD GUESS MAYBE FROM HERE TO THERE,
18 BUT IT'S REALLY A GUESS. IT WASN'T -- IT WASN'T A
19 DISTANCE TO WALK. IT WAS --

20 Q SO THE STREET MIGHT HAVE BEEN ACTUALLY
21 15 FEET AWAY FROM WHERE YOU WERE STANDING AT THAT
22 POINT?

23 A IF WE'RE GUESSING THAT THIS IS 15 FEET.

24 THE COURT: IT IS 15 FEET.

25 THE WITNESS: OKAY.

26 Q BY MR. CONN: AND--

27 A I'M NOT GOOD WITH DISTANCE.

28 Q YOU DID NOT ACTUALLY SEE ERIK MENENDEZ

53037

1 ACTUALLY ON THE STREET; IS THAT CORRECT?

2 A NO, I DID NOT.

3 Q SO YOU DON'T KNOW HOW CLOSE ERIK
4 MENENDEZ WAS ACTUALLY TO THE STREET OR WHETHER HE
5 WAS ACTUALLY ON THE STREET, DO YOU?

6 A I WAS GOING TO SAY HOW THE MAN -- WHICH
7 SEEMS TO ME MUST INDICATE IT WAS A MAN THAT BROUGHT
8 HIM IN -- ALTHOUGH I DIDN'T REMEMBER THAT BEFORE.
9 IT WOULD SEEM, AS I'M TALKING ABOUT IT, IT WAS A MAN
10 THAT SAID HE WAS ON ROUTE 59. TRAFFIC STOPPED. HE
11 INDICATED THAT THE CARS HAD TO STOP, AND HE BROUGHT
12 HIM IN.

13 I DON'T KNOW IF THIS MAN WAS FROM A CAR
14 OR IF HE WAS WALKING. I DON'T REMEMBER THAT.

15 Q NOW, YOU RECALL THAT THE MAN SAID THAT
16 TRAFFIC HAD STOPPED?

17 A OH, YES.

18 Q AND HOW DID KITTY MENENDEZ RESPOND TO
19 THAT?

20 A IN MY OPINION IT WAS NONCHALANTLY.

21 Q HOW DID JOSE MENENDEZ RESPOND TO THAT?

22 A PARDON ME?

23 Q HOW DID JOSE MENENDEZ RESPOND?

24 A I DON'T REMEMBER. I DON'T REMEMBER.

25 Q BUT YOU DID NOT SEE, AT ANY TIME, ERIK
26 MENENDEZ OUTSIDE THE BUILDING DURING THE TIME THAT
27 YOU WERE INSIDE; IS THAT CORRECT?

28 A NO. OBVIOUSLY, HAD I SEEN HIM -- NO, I

1 DIDN'T SEE HIM.

2 Q NOW, YOU INDICATED THAT -- DID KITTY
3 MENENDEZ INDICATE TO YOU OR TELL YOU THAT ERIK
4 MENENDEZ WAS HAVING ACADEMIC PROBLEMS?

5 A SHE SAID TO ME THAT HE WAS DOING WELL,
6 BUT THAT HE WAS NOT AT THE TOP OF HIS CLASS. SHE
7 DID NOT INDICATE THAT IT WAS ACADEMIC PROBLEMS; THAT
8 HE WAS NOT WHERE SHE HAD WANTED HIM TO BE.

9 Q DO YOU RECALL STATING IN AN INTERVIEW,
10 ON MARCH THE 14TH OF 1992, THAT ERIK MENENDEZ WAS
11 PRESENTED AS HAVING MILD PROBLEMS ACADEMICALLY?

12 A DO I REMEMBER THOSE EXACT WORDS?

13 Q YES.

14 A NO, I DON'T REMEMBER THOSE EXACT WORDS.

15 Q WHAT WORDS -- DO YOU REMEMBER SOMETHING
16 TO THAT EFFECT?

17 A I DON'T KNOW WHAT MY WORDS WERE, WHAT I
18 WOULD HAVE BEEN SAYING OR WANTING TO SAY OR THE
19 IMPRESSION I'D BE TRYING TO GIVE WAS THAT SHE HAD
20 INDICATED THAT HE WAS DOING ALL RIGHT. HE WAS DOING
21 NICELY. BUT HE WAS NOT AT THE TOP OF HIS CLASS.
22 AND SHE FELT THAT HE WAS BRIGHT AND SHOULD BE AT THE
23 TOP OF HIS CLASS; THAT IT WAS IMPORTANT FOR HIM TO
24 BE AT THE TOP OF HIS CLASS, AND THAT SHE FELT IT WAS
25 BECAUSE HE WAS YOUNG.

26 Q DO YOU RECALL THAT KITTY MENENDEZ TOLD
27 YOU IT WAS ALSO BECAUSE ERIK MENENDEZ WAS NOT AS
28 QUICK AS HE COULD BE?

53039

1 A NO, I DON'T REMEMBER SAYING THAT.

2 Q DO YOU THINK IT WOULD REFRESH YOUR
3 RECOLLECTION IF I SHOWED YOU A REPORT?

4 A PERHAPS.

5 Q LET ME SHOW YOU A COPY OF THIS REPORT
6 AND ASK YOU TO READ THIS AREA RIGHT HERE (INDICATING).

7 A YOU WANT ME TO READ THIS?

8 Q YES.

9 A "ERIK --

10 Q NO. TO YOURSELF.

11 THE COURT: JUST TO YOURSELF.

12 THE WITNESS: OH. I'M SORRY.

13 (WITNESS READING.)

14 THE WITNESS: WELL, IT CERTAINLY IS WRITTEN
15 HERE AND -- SO I, OBVIOUSLY, I SAID IT OR -- I DON'T
16 EVEN KNOW WHAT I MEAN HERE WHERE I SAID "AS QUICK AS
17 HE CAN BE." I DON'T EVEN KNOW WHAT THAT MEANS
18 EXACTLY.

19 I DON'T KNOW WHAT I MEANT WHEN I SAID
20 "AS QUICK AS HE COULD BE."

21 WHAT I DO MEAN IS SHE FELT HE WAS NOT
22 NO. 1 IN CLASS, IS WHAT SHE SAID.
23 MR. CONN: ALL RIGHT. THANK YOU.
24 THE WITNESS: OKAY.
25 Q BY MR. CONN: NOW, AT THE TIME THAT
26 KITTY MENENDEZ TOLD YOU THAT ERIK MENENDEZ WAS NOT
27 DOING AS WELL AS SHE WANTED HIM TO DO IN SCHOOL, WAS
28 THERE ANY REASON FOR KITTY MENENDEZ TO REVEAL THAT

53040

1 TO YOU?

2 A SHE WAS -- SHE WAS ASKING ME -- SHE SAID
3 THAT SHE WANTED TO HAVE HIM REPEAT A YEAR, THAT SHE
4 THOUGHT IF HE REPEATED A YEAR, AND WOULD THEREFORE
5 BE A YEAR OLDER -- SHE SEEMED TO FEEL IT WAS HIS AGE
6 THAT WAS CAUSING THE PROBLEM. SO THAT IF SHE WOULD
7 HOLD HIM BACK A YEAR HE WOULD DO BETTER.

8 AND SHE WANTED TO KNOW MY OPINION ABOUT
9 THAT.

10 Q UH-HUH. DID SHE SEEM EMBARRASSED OR
11 ASHAMED AT ALL BY HER SON'S PERFORMANCE IN SCHOOL?

12 A NO.

13 Q YOU DESCRIBED YOURSELF AS BEST FRIENDS
14 WITH KITTY MENENDEZ?

15 A YES. AT CERTAIN TIMES, YES.

16 Q AND WHY WERE YOU BEST FRIENDS WITH HER?
17 MS. ABRAMSON: OBJECTION. RELEVANT.
18 THE COURT: SUSTAINED.
19 Q BY MR. CONN: DID YOU -- WOULD YOU
20 DESCRIBE KITTY MENENDEZ AS BEING VERY BRIGHT?
21 A YES.
22 Q IN FACT, YOU PREVIOUSLY SAID THAT YOUR
23 FIRST IMPRESSION OF HER WAS THAT SHE WAS VERY
24 BRIGHT?
25 MS. ABRAMSON: OBJECTION. HEARSAY. NO
26 FOUNDATION, YOUR HONOR.
27 THE COURT: SUSTAINED.
28 MS. ABRAMSON: THANK YOU.

53041

1 Q BY MR. CONN: WOULD YOU DESCRIBE HER AS
2 A SWEET PERSON?
3 A AS A SWEET PERSON?
4 Q YES.
5 A WELL, I'M TRYING TO THINK WHAT MY
6 INTERPRETATION OF SWEET IS. THAT'S SORT OF A VAGUE
7 ADJECTIVE. I'M TRYING TO THINK.
8 Q DID YOU EVER USE THAT VAGUE ADJECTIVE IN
9 REFERENCE TO KITTY MENENDEZ?
10 A I MAY. I MEAN, SHE WAS -- IF YOU THINK

11 OF SWEET AS BEING PLEASANT, SHE WAS PLEASANT. SHE
12 WAS VERY KIND TO ME, VERY GENEROUS TO ME. YES, THAT
13 WOULD BE SWEET.

14 Q AND WOULD YOU DESCRIBE HER AS BEING A
15 VERY SWEET LADY?

16 A YES, I COULD. YES. VERY DEFINITELY.
17 I'D SAY THAT.

18 Q WOULD YOU DESCRIBE HER AS BEING A FUN
19 PERSON TO BE WITH?

20 A YES.

21 Q WHY IS THAT?

22 MS. ABRAMSON: OBJECTION. RELEVANCE.

23 THE COURT: SUSTAINED.

24 Q BY MR. CONN: WOULD YOU DESCRIBE HER AS
25 BEING A GOOD FRIEND?

26 A YES.

27 Q WHY IS THAT?

28 MS. ABRAMSON: OBJECTION. RELEVANCE.

53042

1 THE COURT: SUSTAINED.

2 WE'VE ALREADY BEEN THROUGH THAT.

3 Q BY MR. CONN: AND DID YOU EVER GO
4 DRIVING WITH KITTY MENENDEZ?

5 A YES.

6 Q AND WOULD YOU SAY THAT YOU HAD FUN
7 DRIVING WITH HER?

8 MS. ABRAMSON: OBJECTION. RELEVANCE.

9 THE COURT: SUSTAINED.

10 Q BY MR. CONN: DID YOU EVER SEE HER DO
11 ANYTHING DANGEROUS WHILE DRIVING?

12 A SHE DROVE VERY QUICKLY, YES.

13 Q WOULD YOU DESCRIBE THAT AS BEING FUN?

14 MS. ABRAMSON: OBJECTION. RELEVANCE.

15 THE COURT: SUSTAINED.

16 Q BY MR. CONN: DID YOU FEEL THAT SHE
17 ENDANGERED OTHER PEOPLE WHEN SHE DROVE?

18 A ACTUALLY, SHE DROVE VERY, VERY QUICKLY,
19 VERY QUICKLY; AND YET I ALWAYS FELT COMFORTABLE.
20 THERE WAS A CERTAIN -- YOU FELT CONFIDENCE IN HER, SO
21 THAT EVEN WHEN -- YOU JUST FELT CONFIDENT WHEN YOU
22 WERE WITH HER. SO I DIDN'T FEEL THE DANGER, WHICH,
23 AS I LOOK BACK NOW AND I THINK IF I WERE DRIVING
24 WITH SOMEONE ELSE AT THAT SPEED, I WOULD BE VERY
25 FRIGHTENED. BUT I WASN'T WITH HER.

26 Q DID YOU PREVIOUSLY DESCRIBE THAT
27 EXPERIENCE AS BEING FUN?

28 MS. ABRAMSON: OBJECTION. RELEVANCE.

1 THE COURT: SUSTAINED.

2 Q BY MR. CONN: AND THEN YOU SAID THAT YOU
3 RECALLED AN INCIDENT IN WHICH LYLE MENENDEZ DIDN'T
4 WANT TO GO INTO A COLD SWIMMING POOL; IS THAT
5 CORRECT?

6 A RIGHT.

7 Q AND YOUR DAUGHTERS WERE THERE AT THAT
8 TIME?

9 A YES.

10 Q WHERE WERE YOUR DAUGHTERS?

11 A TWO OF MY DAUGHTERS -- TWO OF MY
12 DAUGHTERS WERE IN THE LARGER POOL.

13 Q IS THAT --

14 A THE SAME --

15 Q IS THAT THE SAME POOL THAT LYLE MENENDEZ
16 DIDN'T WANT TO GO INTO?

17 A CORRECT.

18 Q WERE YOUR DAUGHTERS COLD?

19 A THEY DIDN'T INDICATE THAT THEY WERE.
20 THEY WERE IN SWIMMING.

21 Q WERE THERE OTHER CHILDREN INSIDE THE
22 POOL?

23 A YES.

24 Q DO YOU RECALL HOW MANY CHILDREN WERE
25 INSIDE THE POOL WHEN LYLE MENENDEZ WAS STANDING
26 OUTSIDE THE POOL CRYING ABOUT HOW COLD IT IS?

27 A I WOULD HAVE NO IDEA.

28 MR. CONN: THANK YOU.

1 I HAVE NO FURTHER QUESTIONS.

2 THE COURT: REDIRECT.

3

4 REDIRECT EXAMINATION

5 BY MR. GESSLER:

6 Q MRS. GOLDSMITH, GETTING BACK TO THE POOL

7 INCIDENT, WOULD YOU HAVE PUSHED YOUR DAUGHTERS BACK

8 INTO THE WATER IF THEY HAD SAID THEY WERE COLD?

9 MS. ABRAMSON: OBJECTION. IRRELEVANT.

10 THE COURT: OVERRULED.

11 THE WITNESS: DEFINITELY NOT. NO.

12 Q BY MR. GESSLER: WHY NOT?

13 A WELL, FOR MANY REASONS. NUMBER ONE --

14 NUMBER ONE, THAT THEY WOULDN'T HAVE ENJOYED IT.

15 THEY WERE THERE TO HAVE A GOOD TIME. THEY WOULD NOT

16 HAVE ENJOYED BEING PUSHED BACK INTO THE POOL. IT

17 WOULD HAVE SERVED NO PURPOSE. JUST WOULD HAVE MADE

18 IT AN UNHAPPY EXPERIENCE FOR NO REASON. THERE WAS

19 NO PURPOSE TO IT.

20 Q DID YOU WANT THEM TO HAVE A HAPPY

21 EXPERIENCE?

22 A THAT WAS THE PURPOSE.

23 MR. CONN: OBJECTION. IRRELEVANT.

24 THE COURT: OVERRULED.

25 THE ANSWER WILL STAND.
26 MR. GESSLER: YES.
27 Q MRS. GOLDSMITH, IT HAS BEEN HARD FOR YOU
28 TO COME OUT HERE AND TESTIFY, HASN'T IT?

53045

1 MR. CONN: OBJECTION. LEADING.
2 THE COURT: REPHRASE THE QUESTION.
3 MR. GESSLER: YES.
4 Q HAS IT BEEN DIFFICULT FOR YOU TO COME
5 AND TESTIFY?
6 A IT'S BEEN VERY DIFFICULT.
7 Q IS THAT BECAUSE OF YOUR FRIENDSHIP THAT
8 YOU HAD YEARS AGO WITH MARY LOUISE MENENDEZ?
9 A YES.
10 Q HAS ANYBODY, ANY OF THE ATTORNEYS HERE,
11 OR ANYONE ELSE, TOLD YOU TO LIE FOR LYLE MENENDEZ?
12 A NO.
13 Q HAS ANY OF THE ATTORNEYS HERE TOLD YOU
14 TO LIE FOR ERIK MENENDEZ?
15 A NO.
16 Q HAVE ANY OF THE ATTORNEYS, OR ANYONE
17 ELSE, TOLD YOU TO EXAGGERATE ANY INCIDENT FOR LYLE
18 MENENDEZ?
19 A NO.

20 Q OR FOR ERIK MENENDEZ?
21 A NO.
22 Q HAVE ANY OF THE ATTORNEYS, OR ANYONE
23 ELSE, SUGGESTED TO YOU TO MAKE UP ANY INCIDENT, OR
24 ANYTHING OF THAT NATURE, TO HELP LYLE MENENDEZ?
25 A NO.
26 Q NOR ERIK MENENDEZ?
27 A NO.
28 Q ARE THESE INCIDENTS THAT YOU HAVE

53046

1 RELATED ABOUT YOUR FRIEND -- ARE THEY ALL TRUE?
2 A ABSOLUTELY.
3 Q HAVE YOU IN ANY WAY LIED FOR EITHER LYLE
4 OR ERIK MENENDEZ IN ANY OF THE TESTIMONY THAT YOU'VE
5 GIVEN YESTERDAY OR TODAY?
6 A NO, I HAVE NOT LIED.
7 MR. GESSLER: THANK YOU VERY MUCH.
8 THE COURT: FURTHER REDIRECT?
9 MS. ABRAMSON: YES. THANK YOU, YOUR HONOR.
10
11 REDIRECT EXAMINATION
12 BY MS. ABRAMSON:
13 Q MRS. GOLDSMITH, ARE YOU RECALLING THE
14 CONVERSATION WITH MRS. MENENDEZ WHERE SHE TALKED

15 ABOUT ERIK'S ACADEMIC ABILITY AND THE FACT THAT HE
16 WAS YOUNG; THAT THAT OCCURRED AT A TIME WHEN SHE WAS
17 THINKING OF HOLDING HIM BACK A GRADE?

18 A YES.

19 Q AND DO YOU KNOW THAT, IN FACT, ERIK
20 WAS -- WHEN HE WAS SWITCHED FROM THE 5TH GRADE AT
21 HOPEWELL VALLEY SCHOOL AND STARTED P.D.S.-- HE WAS
22 PUT BACK IN 5TH GRADE AT P.D.S.

23 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND
24 IRRELEVANT.

25 THE COURT: SUSTAINED.

26 Q BY MS. ABRAMSON: DO YOU RECALL THERE
27 WAS A TIME WHEN YOU REALIZED THAT ERIK WAS NO LONGER
28 A YEAR AHEAD OF JOY?

53047

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: I THINK WE'VE ALREADY HAD THIS IN
3 THE DIRECT EXAMINATION.

4 Q BY MS. ABRAMSON: IN THIS CONVERSATION
5 THAT YOU HAD WITH MRS. MENENDEZ ABOUT ERIK, DID SHE
6 TELL YOU THAT WHEN ERIK WAS 10 YEARS OLD, ON MAY
7 23RD, 1980, HE HAD BEEN EVALUATED AS HAVING AN
8 AUDITORY PROCESSING LEARNING DISABILITY.

9 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

10 THE COURT: SUSTAINED.

11 Q BY MS. ABRAMSON: DID SHE EVER MENTION
12 KNOWING AS EARLY AS 1980 THAT HE HAD A LEARNING
13 DISABILITY?

14 A NO.

15 MR. CONN: OBJECTION. IRRELEVANT.

16 THE COURT: OVERRULED. THE ANSWER WILL
17 STAND.

18 Q BY MS. ABRAMSON: DID SHE EVER TELL YOU
19 AT ANY TIME, AFTER THE SUMMER OF 1986, THAT HE HAD
20 BEEN EVALUATED OVER THE COURSE OF THAT SUMMER BY THE
21 LEWIS SCHOOL AS HAVING MULTIPLE LEARNING
22 DISABILITIES?

23 A NO.

24 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

25 THE COURT: OVERRULED.

26 THE ANSWER IS NO; IS THAT CORRECT?

27 THE WITNESS: THE ANSWER IS NO.

28 THE COURT: OVERRULED.

53048

1 THE ANSWER WILL STAND.

2 Q BY MS. ABRAMSON: DID SHE EVER TELL YOU,
3 DURING THE TIME THAT ERIK WAS ATTENDING PRINCETON
4 DAY SCHOOL, THAT NUMEROUS TEACHERS INDICATED TO HER

5 THAT HE HAD LEARNING DISABILITIES?

6 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
7 EVIDENCE. HEARSAY. IRRELEVANT.

8 THE COURT: SUSTAINED.

9 Q BY MS. ABRAMSON: DID SHE EVER MENTION
10 TO YOU THAT ANY TEACHER HAD EVER TOLD HER THAT HE
11 HAD LEARNING DISABILITIES?

12 MR. CONN: OBJECTION. IRRELEVANT AND
13 HEARSAY.

14 THE COURT: SUSTAINED.

15 Q BY MS. ABRAMSON: DID SHE EVER DISCUSS
16 WITH YOU ANY LEARNING DISABILITIES OF ERIK'S AT ALL?

17 MR. CONN: OBJECTION. IRRELEVANT AND
18 HEARSAY.

19 THE COURT: OVERRULED.

20 YOU CAN ANSWER THAT QUESTION.

21 THE WITNESS: NO, SHE DID NOT.

22 Q BY MS. ABRAMSON: NOW, GOING BACK FOR A
23 MOMENT TO THE CEMETERY STORY.

24 WHEN YOU TESTIFIED IN THE TRIAL, THAT
25 WAS DURING THE GUILT PHASE; IS THAT CORRECT?

26 A CORRECT.

27 Q AND DO YOU RECALL BEING ASKED WHETHER
28 THERE WAS AN INCIDENT INVOLVING A CEMETERY?

1 A AT THE TRIAL?

2 Q AT THE TRIAL WHEN YOU TESTIFIED.

3 A YES.

4 MS. ABRAMSON: AND CALLING COURT AND
5 COUNSEL'S ATTENTION TO PAGE 12,729.

6 Q DO YOU RECALL BEING ASKED:

7 "WAS THERE AN INCIDENT INVOLVING

8 ERIK --

9 MR. CONN: MAY WE HAVE A MOMENT, PLEASE?

10 MS. ABRAMSON: (CONTINUING)"...IN THE
11 CEMETERY WHEN HE WAS QUITE YOUNG?"

12 AND YOU ANSWERED "YES"?

13 A YES.

14 Q AND THEN WERE YOU ASKED: "WHAT WAS THE
15 INCIDENT WITH THE CEMETERY?"

16 A YES.

17 MR. CONN: I WOULD OBJECT TO THIS. THIS IS
18 NOT PRIOR INADMISSIBLE HEARSAY, AND NO EXCEPTION
19 APPLIES.

20 MS. ABRAMSON: I'LL MAKE AN OFFER, IF
21 NECESSARY. I'M TRYING TO BRING OUT HOW THE
22 INFORMATION WAS TESTIFIED TO.

23 THE COURT: IT'S JUST NOT OFFERED FOR THE
24 TRUTH OF THE MATTER ASSERTED, JUST TO CLARIFY --

25 MS. ABRAMSON: EXACTLY.

26 THE COURT: -- WHAT SHE TESTIFIED IN THE
27 FIRST TRIAL VERSUS --

53050

1 THE COURT: -- VERSUS WHAT SHE SAID HERE.

2 MS. ABRAMSON: THANK YOU.

3 Q DO YOU REMEMBER BEING ASKED THE
4 FOLLOWING QUESTIONS:

5 "QUESTION: WAS THERE AN INCIDENT
6 INVOLVING ERIK AND A CEMETERY WHEN HE
7 WAS QUITE YOUNG?

8 "ANSWER: YES.

9 "QUESTION: HOW OLD WOULD HE HAVE
10 BEEN?

11 "ANSWER: I'M NOT CERTAIN.

12 "QUESTION: LESS THAN 10?

13 "ANSWER: I WOULD THINK. I WOULD
14 THINK SO.

15 "QUESTION: AND WHAT WAS THE
16 INCIDENT WITH THE CEMETERY?

17 "ANSWER: JOSE HAD TAKEN LYLE AND
18 ERIK TO A CEMETERY WHEN IT WAS DARK
19 AND -- AND THEN ON SOME SIGNAL,
20 APPARENTLY, HE AND LYLE RAN OUT OF THE
21 CEMETERY AND LEFT ERIK THERE, AND ERIK
22 WAS CRYING. THEY WOULDN'T GO BACK AND

23 TAKE HIM OUT FOR A WHILE.
24 "QUESTION: AND WAS THERE ANY
25 EXPLANATIONS GIVEN FOR WHY THIS WOULD
26 HAVE BEEN GOOD BEHAVIOR FOR PARENTING?
27 "ANSWER: BECAUSE THEY SAID HE
28 HAD TO LEARN, THAT ERIK HAD TO LEARN

53051

1 NOT TO BE AFRAID."
2 Q DO YOU RECALL THAT TESTIMONY?
3 A YES, I DO.
4 Q AND WAS THAT THE ENTIRE SUM AND
5 SUBSTANCE OF WHAT YOU TESTIFIED TO ABOUT THE
6 CEMETERY IN THE TRIAL?
7 A YES.
8 Q AND ISN'T IT TRUE THAT NOBODY ASKED YOU
9 IF YOU SAW THIS VERSUS HEARD IT FROM SOMEONE?
10 A RIGHT.
11 Q AND THEREFORE NO ONE ASKED YOU: DID YOU
12 HEAR THIS FROM MRS. MENENDEZ OR MR. MENENDEZ?
13 A CORRECT.
14 Q BUT WHEN YOU ANSWERED, "THEY SAID HE HAD
15 TO LEARN," IN YOUR MIND YOU WERE THINKING OF BOTH
16 PARENTS?
17 MR. CONN: OBJECTION. LEADING.

18 THE COURT: SUSTAINED.

19 Q BY MS. ABRAMSON: WHO WERE YOU THINKING

20 OF, IF YOU CAN REMEMBER NOW, WHEN YOU TESTIFIED:

21 "BECAUSE THEY SAID HE HAD TO LEARN THAT ERIK HAD TO

22 LEARN NOT TO BE AFRAID"?

23 A I PROBABLY MEANT BOTH, SINCE THEY BOTH

24 CONFIRMED THAT OPINION.

25 Q NOW, YOU'RE AWARE, ARE YOU NOT, THAT IN

26 THE ORIGINAL INTERVIEW THAT YOU GAVE TO THE ORIGINAL

27 DEFENSE INVESTIGATOR, MS. ALFONSO, YOU SAID IN THAT

28 INTERVIEW THAT MARY LOUISE MENENDEZ HAD TOLD YOU

53052

1 THIS STORY ABOUT THE CEMETERY?

2 A COULD YOU JUST REPEAT THE QUESTION.

3 Q I'M SORRY. I'LL MAKE THAT A SIMPLER

4 QUESTION.

5 A OKAY.

6 Q DO YOU RECALL, IN THE INTERVIEW THAT WAS

7 PREPARED FOR 1991, BY MS. ALFONSO, IT APPEARS THAT

8 YOU TOLD HER THAT STORY WAS TOLD BY MARY LOUISE

9 MENENDEZ?

10 A I IMAGINE.

11 Q YOU HAVE SEEN AN INTERVIEW WHERE YOU

12 INDICATE THAT THE WAY YOU KNEW THIS STORY WAS TRUE

13 WAS BECAUSE MRS. MENENDEZ TOLD YOU?

14 A RIGHT.

15 Q AND THAT INTERVIEW DOES NOT CONTAIN,
16 DOES IT, THE INFORMATION THAT MR. MENENDEZ ALSO
17 CONFIRMED IT?

18 A RIGHT.

19 Q OKAY. SO THIS WHOLE ISSUE THEN THAT
20 MR. CONN BROUGHT UP YESTERDAY HAD TO DO WITH WHEN
21 DID YOU FIRST TELL ME THAT THE STORY WAS CONFIRMED
22 BY MR. MENENDEZ HIMSELF?

23 A RIGHT.

24 Q AND WHEN MR. CONN ASKED YOU THAT, I
25 BELIEVE IT'S YOUR TESTIMONY THAT YOU COULDN'T
26 REMEMBER WHEN YOU TOLD --

27 THE COURT: LET'S JUST ASK A QUESTION.

28 Q BY MS. ABRAMSON: IS IT YOUR TESTIMONY

53053

1 THAT YOU COULDN'T REMEMBER WHEN HE FIRST ASKED YOU
2 WHICH PIECE YOU TOLD US WHEN?

3 A CORRECT.

4 Q IS THERE ANY DOUBT IN YOUR MIND THAT
5 JOSE MENENDEZ REPEATED THE STORY TO YOU AND LAUGHED
6 ABOUT IT?

7 A THAT IS THE TRUTH.

8 Q IN THE MANY INTERVIEWS THAT YOU'VE HAD
9 WITH VARIOUS PEOPLE, HAVE ANY OF US EVER ASKED YOU
10 IF ERIK MENENDEZ, AT THE AGE OF FOUR, DID ANYTHING
11 HEROIC?

12 A NO.

13 Q AND, IN FACT, DID WE ASK YOU ALONG THOSE
14 LINES ABOUT WHETHER EITHER OF THE CHILDREN DID ANY
15 GOOD DEEDS OR ANYTHING HEROIC OR ANYTHING LIKE THAT?

16 A NO.

17 Q WOULD IT BE FAIR TO SAY THAT IN OUR
18 INTERVIEWS WE HAVE TRIED TO FOCUS ON HOW EVERYBODY
19 INTERACTED WITH EVERYBODY ELSE?

20 A YES.

21 MR. CONN: OBJECTION. LEADING.

22 THE COURT: OVERRULED.

23 THE ANSWER WILL STAND.

24 Q BY MS. ABRAMSON: AND, IN FACT, THE
25 OTHER NIGHT -- YOU'RE STAYING AT A PARTICULAR MOTEL
26 HERE IN THE VALLEY, RIGHT?

27 A YES.

28 Q AND ALL THE DEFENSE WITNESSES ARE HOUSED

53054

1 BY THE COUNTY AT THE SAME PLACE, CORRECT?

2 A YES.

3 Q AND YOU WERE --

4 THE COURT: LET'S NOT LEAD THE WITNESS.

5 Q BY MS. ABRAMSON: ON WEDNESDAY, WAS THAT
6 THE NIGHT THAT YOU APPROACHED ME IN THE COFFEE SHOP?

7 A TODAY BEING FRIDAY?

8 Q RIGHT.

9 A I THINK IT WAS WEDNESDAY NIGHT.

10 Q OKAY. AND THAT'S WHEN -- THAT'S WHEN
11 YOU MENTIONED IT TO --

12 THE COURT: YOU'RE LEADING. LET'S JUST ASK
13 IT IN A DIFFERENT WAY.

14 MS. ABRAMSON: YOU KNOW WHY. I'M TRYING TO
15 MOVE FAST.

16 Q IS THAT WHEN YOU FIRST --

17 THE COURT: WHEN WAS IT THAT YOU FIRST TOLD
18 MS. ABRAMSON, IS WHAT SHE'S ASKING, ABOUT THE
19 SWIMMING INCIDENT WITH ERIK AND JOY?

20 THE WITNESS: WEDNESDAY NIGHT.

21 Q BY MS. ABRAMSON: NOW, I WANT TO TURN
22 YOUR ATTENTION TO THAT SWIMMING INCIDENT.

23 WHEN YOU TURNED BACK AND SAW JOY FACE
24 DOWN, WERE THERE TWO PEOPLE WHO WERE YELLING AT YOU
25 IN A VERY EXCITED MANNER?

26 A YES. THERE WERE TWO WOMEN IN THAT AREA.

27 Q WHAT WERE THE WOMEN YELLING AT YOU IN A
28 VERY EXCITED MANNER?

1 A WELL, FIRST -- THEIR FIRST THING WAS
2 THAT -- WE WERE ALSO MOVING TOWARDS JOY TO GET HER,
3 BUT IT WAS ERIK WHO GOT HER. SO THE WOMEN WERE NOW
4 IN THIS POOL AREA, RIGHT IN THIS WADING POOL. AND
5 THEY WERE YELLING AT ME FOR LEAVING SUCH A YOUNG
6 CHILD.

7 Q WHAT DID THEY SAY TO YOU?

8 A SOMETHING TO THE EFFECT: "HOW COULD YOU
9 LEAVE SUCH A YOUNG CHILD THERE? DO YOU REALIZE WHAT
10 ALMOST HAPPENED?"

11 Q DID THEY TELL YOU -- WERE THEY YELLING
12 WHAT THEY HAD SEEN HAPPEN?

13 A THEY SAID THAT -- THEY WERE YELLING
14 THAT --

15 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

16 THE COURT: OVERRULED.

17 THE WITNESS: WELL, FIRST THEY WERE YELLING --
18 THEY WERE OBVIOUSLY VERY EXCITED, BECAUSE IT WAS A
19 MINI PANIC SCENE, THE WAY THEY WERE YELLING AT ME
20 FOR LEAVING HER, FOR LEAVING JOY, AND THEY WERE
21 SAYING: "DO YOU REALIZE IF IT WAS NOT FOR THIS
22 LITTLE BOY WHAT COULD HAVE HAPPENED? DO YOU REALIZE
23 WHAT COULD HAVE HAPPENED IF HE HADN'T PULLED HER
24 OUT? HOW COULD YOU HAVE LEFT HER THERE?"

25 Q BY MS. ABRAMSON: DID THEY TELL YOU THAT
26 THEY HAD SEEN HER TRIP?

27 A THAT THERE WAS -- LIKE SLIPPED DOWN,

28 YEAH.

53056

1 Q THEY SAID SHE SLIPPED DOWN?

2 A SLIPPED DOWN IN, DOWN.

3 Q NOW, DID MRS. MENENDEZ SAY SOMETHING TO
4 YOU ABOUT THESE WOMEN WHO WERE YELLING AT YOU?

5 A WELL, SHE SAID -- WELL, I HAD RESPONDED
6 TO THE WOMEN BY SAYING: "I DON'T KNOW WHY I DID SUCH
7 A CRAZY THING."

8 AND MARY LOU THEN SAID, "WHY DIDN'T YOU
9 YELL BACK?"

10 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

11 THE COURT: OVERRULED.

12 THE WITNESS: SHE WOULD SAY: "WHY DID YOU
13 LET THEM YELL AT YOU? WHY DIDN'T YOU ANSWER THEM,
14 MIND YOUR OWN BUSINESS?"

15 I DON'T KNOW HER EXACT WORDS. BUT THAT
16 IT WASN'T THEIR BUSINESS. "WHY DIDN'T YOU RESPOND
17 TO THEM?"

18 AND I SAID, "BECAUSE THEY WERE RIGHT. I
19 SHOULD NOT HAVE DONE THAT." AND SHE LAUGHINGLY
20 SAID, "I TOLD YOU ERIK WAS THERE TO WATCH HER, AND
21 HE DID. THERE WAS NOTHING TO WORRY ABOUT."

22 Q BY MS. ABRAMSON: WITH RESPECT TO
23 MRS. MENENDEZ BEING RESPONSIBLE, A RESPONSIBLE OR
24 IRRESPONSIBLE MOTHER, DID YOU EVER LEAVE YOUR
25 CHILDREN WITH HER FOR HER TO WATCH?
26 A NO, I DID NOT.
27 Q WHY NOT?
28 A I JUST FELT THAT IT WOULD HAVE BEEN

53057

1 IRRESPONSIBLE OF ME TO LEAVE THEM WITH HER, BECAUSE
2 I DID NOT FEEL THAT SHE ADEQUATELY SUPERVISED THEM,
3 AND THAT -- I HAD SEEN HER LEAVING HER CHILDREN IN
4 SITUATIONS THAT I THOUGHT SHOULD HAVE BEEN BETTER
5 SUPERVISED. AND I FELT IT WOULD BE IRRESPONSIBLE ON
6 MY PART. IT'S SOMETHING THAT BOTHERED HER, THAT I
7 WOULD NOT LEAVE THEM.

8 Q IT BOTHERED HER?

9 A YES. BECAUSE I OFTEN TOOK CARE OF THEIR
10 CHILDREN. AND SHE WOULD ALWAYS SAY: "HOW COME YOU
11 NEVER LEAVE YOUR DAUGHTERS WITH ME?"

12 Q YOU TOOK CARE OF ERIK AND BABY-SAT THEM?

13 A I ONE TIME TOOK CARE OF THEM FOR A WEEK
14 WHEN MARY LOUISE AND JOSE WENT ON VACATION. AND
15 THEN I WOULD TAKE CARE OF THEM -- YOU KNOW, THEY
16 MIGHT BE OVER MY HOUSE PLAYING. SHE MIGHT NOT HAVE

17 BEEN THERE. THAT WOULD HAPPEN OFTEN.

18 (MR. LEVIN ENTERS COURTROOM

19 AT THIS POINT IN THE PROCEEDINGS.)

20

21 Q AND DO YOU THINK THEY WERE SWEET LITTLE

22 BOYS?

23 A YES.

24 Q AND YOU SAID THAT THEY WERE SOMETIMES

25 RAMBUNCTIOUS --

26 A YES.

27 Q -- AS IN THE SUPERMARKET. HOW OLD WERE

28 THESE TWO CHILDREN WHEN THE SUPERMARKET -- WHEN THEY

53058

1 WERE RUNNING AROUND MAKING NOISE AND BEING

2 RAMBUNCTIOUS?

3 A WELL, IT HAPPENED OFTEN.

4 Q ON THIS OCCASION WHEN --

5 A I'M SORRY?

6 Q WHEN IT CAME OVER THE LOUD SPEAKER

7 SYSTEM.

8 A I'M GOING TO GUESS THAT MAYBE ERIK WAS

9 THREE, THREE OR FOUR. LYLE --

10 Q LYLE SIX OR SEVEN?

11 A FIVE OR SIX.

12 Q ON THESE OCCASIONS WHEN THIS WOULD
13 HAPPEN, WHEN THEY STARTED RUNNING AROUND, IS THIS
14 BECAUSE THEIR MOTHER DIDN'T TRY TO STOP THEM?

15 A YES.

16 Q SHE NEVER TRIED TO STOP THEM?

17 A CORRECT.

18 Q IT'S NOT THAT THEY BROKE AWAY FROM HER?

19 A CORRECT.

20 Q THERE WERE OCCASIONS LIKE THAT, I
21 BELIEVE YOU TESTIFIED, WHERE MR. MENENDEZ WOULD BE
22 THERE ALSO, AND THE BOYS WOULD BE DOING SOMETHING
23 AND NEITHER PARENT TRIED TO STOP THEM.

24 A I DON'T REMEMBER JOSE EVER BEING IN THE
25 SUPERMARKET, BUT OTHER LOCATIONS --

26 Q LIKE THE RESTAURANT?

27 A YES.

28 Q DID YOU SEE, HOWEVER, WHEN JOSE MENENDEZ

53059

1 WENT TO STOP THEM?

2 A YES.

3 Q AND DID HE?

4 A YES.

5 Q AND WHAT DID HE HAVE TO DO TO STOP THEM?

6 A USUALLY HE JUST SAID "LYLE" OR "ERIK."

7 Q AND THEY STOPPED?

8 A YEAH. YES.

9 Q DID HE ALSO SNAP HIS FINGERS?

10 A I MORE REMEMBER JUST HIM STATING THE

11 NAME. "LYLE." "ERIK."

12 Q AND THEY STOPPED DEAD IN THEIR TRACKS?

13 A YEAH. YES.

14 Q SO THEY WERE OBEDIENT WHEN SOMEONE TRIED

15 TO DISCIPLINE THEM?

16 A YES, YES.

17 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

18 HONOR.

19 THE COURT: ANYTHING ELSE?

20 MR. CONN: YES.

21

22 RECROSS-EXAMINATION

23 BY MR. CONN:

24 Q YOU NOW REMEMBER ONE OF THE WOMEN SAYING

25 SOMETHING ABOUT "IF NOT FOR THIS LITTLE BOY" --

26 A YES.

27 Q WHAT SPECIFICALLY DO YOU RECALL IN THAT

28 REGARD?

53060

1 A WHAT DO I RECALL THEY SAID?

2 Q YES. THAT WAS SAID SPECIFICALLY.

3 A SOMETHING TO THE EFFECT OF: "DO YOU
4 REALIZE IF THIS LITTLE BOY WASN'T HERE WHAT COULD
5 HAVE HAPPENED."

6 Q AND WHEN DID YOU FIRST RECALL THAT PART
7 OF THE STORY?

8 A PROBABLY WHEN I WAS SITTING IN THE
9 RESTAURANT THE OTHER NIGHT.

10 Q DID YOU TELL MS. ABRAMSON ABOUT THAT
11 PART OF THE STORY BEFORE MS. ABRAMSON QUESTIONED YOU
12 ABOUT THIS INCIDENT YESTERDAY?

13 A DID I TELL MRS. ABRAMSON THIS WEDNESDAY
14 NIGHT? I THINK, AGAIN, IT'S THE SAME THING. IT'S
15 HARD TO TELL WHEN I TOLD WHAT. I DON'T KNOW. I -- I
16 DON'T KNOW.

17 Q IS THERE ANY OTHER DETAILS THAT YOU
18 REMEMBER ABOUT THE STORY NOW?

19 A WELL, I'LL THINK ABOUT IT.

20 MR. CONN: I HAVE NOTHING FURTHER.

21 MS. ABRAMSON: I'M SORRY. HAS THE WITNESS
22 FINISHED ANSWERING?

23 THE COURT: ANY OTHER DETAILS YOU REMEMBER?

24 THE WITNESS: NO.

25 THE COURT: OKAY. ANYTHING ELSE?

26 MS. ABRAMSON: NO, YOUR HONOR.

27 THE COURT: OKAY. THANK YOU. YOU MAY STEP
28 DOWN. YOU'RE EXCUSED.

1 YOUR NEXT WITNESS.

2 MS. TOWERY: YOUR HONOR, THE DEFENSE CALLS
3 JESSICA GOLDSMITH.

4

5 JESSICA GOLDSMITH,
6 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
7 SWORN, AND TESTIFIED AS FOLLOWS:

8 THE CLERK: RAISE YOUR RIGHT HAND TO BE
9 SWORN.

10 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
11 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
12 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
13 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

14 THE WITNESS: YES, I DO.

15 THE CLERK: PLEASE TAKE THE STAND AND STATE
16 YOUR NAME FOR THE RECORD.

17 THE WITNESS: JESSICA GOLDSMITH.

18 THE CLERK: PLEASE SPELL YOUR NAME FOR THE
19 RECORD.

20 THE WITNESS: G-O-L-D-S-M-I-T-H.

21 THE COURT: OKAY.

22 MS. ABRAMSON: THANK YOU.

23

24 DIRECT EXAMINATION

25 BY MS. TOWERY:

26 Q MS. GOLDSMITH, HOW OLD ARE YOU?

27 A I'M 26.

28 Q AND YOUR MOTHER JUST GOT OFF THE STAND

53062

1 TESTIFYING; IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q WHAT'S YOUR OCCUPATION?

4 A PROJECT DIRECTOR AND A SOCIAL WORKER.

5 Q AND HOW LONG HAVE YOU BEEN DOING THAT?

6 A OVER THREE YEARS.

7 Q YOU LIVED FOR A PERIOD OF TIME WHEN YOU

8 WERE A CHILD IN MONSEY, NEW YORK; IS THAT RIGHT?

9 A I LIVED IN A NEIGHBORING TOWN, IN

10 SUFFERN.

11 Q AND JOSE AND KITTY MENENDEZ WERE FRIENDS

12 OF YOUR PARENTS WHEN YOU WERE A LITTLE GIRL; IS THAT

13 RIGHT?

14 A YES. THEY WERE THEIR BEST FRIENDS.

15 Q I WANT TO ASK YOU ABOUT AN INCIDENT THAT

16 OCCURRED WITH RESPECT TO LYLE MENENDEZ AND A

17 STAIRCASE.

18 A ALL RIGHT.

19 Q DO YOU HAVE THE INCIDENT IN MIND?

20 A YES, I DO.

21 Q AND DID THAT INCIDENT OCCUR AT YOUR
22 HOUSE OR AT THE MENENDEZ HOME?

23 A AT THE MENENDEZ HOME.

24 MS. TOWERY: YOUR HONOR, IF I COULD APPROACH.

25 THE COURT: SURE.

26 Q BY MS. TOWERY: WHEN YOU TOLD ME ABOUT
27 THIS INCIDENT, MS. GOLDSMITH, I HAD TROUBLE
28 INDIVIDUALIZING THE STAIRCASE THAT YOU WERE TALKING

53063

1 ABOUT. SO I'M GOING TO TRY TO DRAW A LITTLE PICTURE
2 WHILE YOU'RE TALKING.

3 CAN YOU SEE THE --

4 A NO.

5 Q IS THAT BETTER?

6 A THAT'S FINE.

7 Q NOW, THE INCIDENT REGARDING THE
8 STAIRCASE, CAN YOU TELL THE JURY BRIEFLY WHAT THE
9 STAIRCASE LOOKED LIKE.

10 A OKAY. WHEN YOU ENTERED INTO THE
11 MENENDEZ HOME, YOU ENTERED IN AND THERE WAS A LITTLE
12 LANDING RIGHT OVER HERE (POINTING).

13 Q LET ME STOP YOU THERE. AND I'M NOT VERY
14 GOOD AT THIS, BUT I'M GOING TO TRY TO DRAW JUST A --

15 THIS WOULD BE THE FRONT DOOR OF THE HOME; IS THAT

16 RIGHT?

17 A THE FRONT DOOR.

18 Q AND THEN THERE WAS A LANDING THAT YOU

19 WALKED INTO IN THE INSIDE OF THE HOUSE; IS THAT

20 CORRECT?

21 A CORRECT. AND STRAIGHT AHEAD OF YOU WAS

22 THE STAIRCASE GOING UP TO THE SECOND FLOOR OF THE

23 HOUSE.

24 MR. CONN: I WOULD ASK THAT THE WITNESS MAKE

25 THE DRAWING, IF THERE'S GOING TO BE A DRAWING,

26 RATHER THAN COUNSEL LEADING THE WITNESS THROUGH THE

27 DRAWING.

28 THE COURT: THIS IS ADEQUATE.

53064

1 OBJECTION OVERRULED.

2 MS. TOWERY: THANK YOU, YOUR HONOR.

3 Q YOU SAID THERE WAS A STAIRCASE GOING UP

4 THAT WAS DIRECTLY IN FRONT OF YOU AFTER YOU WALKED

5 FROM THE LANDING?

6 A CORRECT. UH-HUH.

7 Q CORRECT ME IF I'M DOING THIS WRONG,

8 PLEASE.

9 A I WILL.

10 Q I'M JUST TRYING TO GET A VISUAL PICTURE
11 FOR MYSELF AND FOR THE JURY. (DRAWING.)
12 AND THIS STAIRCASE IN FRONT OF THE
13 LANDING WENT UP TO THE SECOND FLOOR; IS THAT RIGHT?

14 A CORRECT.

15 Q NOW, WAS THERE ANY OTHER STAIRCASE THAT
16 LED FROM THE LANDING?

17 A THERE WAS ALSO A STAIRCASE DIRECTLY TO
18 YOUR LEFT, GOING TO THE BASEMENT FLOOR, TO THE FIRST
19 FLOOR.

20 Q LET ME DRAW THAT CHART.

21 SO THE STAIRCASE TO YOUR LEFT AS YOU
22 ENTERED WENT DOWN; IS THAT RIGHT?

23 A CORRECT.

24 Q AND THE STAIRCASE IN FRONT OF YOU WENT
25 UP; IS THAT RIGHT?

26 A THAT'S RIGHT.

27 Q OKAY. NOW, THE SECOND LEVEL, DID THAT
28 COVER THE ENTIRE LANDING OR PART OF THE LANDING?

53065

1 HOW DID THAT WORK?

2 A THE SECOND LEVEL OF THE HOUSE DIDN'T
3 COVER THE LANDING, BUT IT WAS OVER THE SECOND
4 STAIRCASE THERE.

5 Q THE STAIRCASE GOING DOWN?

6 A THE STAIRCASE GOING DOWN TO THE LIVING
7 ROOM ON THE SECOND FLOOR WAS ABOVE THE STAIRWELL
8 GOING DOWNSTAIRS.

9 Q SO IT WAS KIND OF LIKE A BALCONY
10 ARRANGEMENT?

11 A EXACTLY.

12 Q LET ME JUST DRAW A LINE HERE TO
13 REPRESENT THE LIVING ROOM UPSTAIRS.

14 IS THAT FAIR?

15 A THAT'S FAIR.

16 Q OKAY. NOW, WAS LYLE MENENDEZ, IN THIS
17 INCIDENT THAT YOU RECALL -- WHY DON'T YOU TELL ME
18 WHERE LYLE MENENDEZ WAS IN THIS AREA.

19 A LYLE WAS HANGING ABOVE THE STAIRWELL
20 THAT WAS GOING DOWNSTAIRS TO THE BASEMENT, AND HE
21 WAS HANGING -- HE HAD HIS HANDS UPSTAIRS IN THE
22 LIVING ROOM ON THE FLOOR, AND HE WAS HANGING ABOVE
23 THE STAIRWELL LIKE THIS (DEMONSTRATING).

24 Q SO HE WAS HANGING FROM THE LIP OF THE
25 UPPER FLOOR?

26 A RIGHT. ON THE LEDGE OF THE STAIRWELL UP
27 ABOVE.

28 Q SO IF I PUT AN "X" OVER THE STAIRWELL,

1 WOULD THAT BE APPROXIMATELY ACCURATE IN MY POOR
2 DRAWING?

3 A YES, IT WOULD.

4 Q DO YOU KNOW HOW HE GOT THERE?

5 A I DON'T REMEMBER HOW HE GOT UP THERE.

6 Q WHERE WERE YOU WHEN YOU SAW LYLE HANGING
7 FROM THE UPPER FLOOR?

8 A I WAS STANDING ON THE LANDING.

9 Q OKAY.

10 A I WAS RIGHT IN FRONT OF THE STAIRCASE,
11 GOING UP.

12 Q RIGHT HERE (POINTING)?

13 A YEP.

14 Q AND WERE LYLE MENENDEZ' PARENTS PRESENT?

15 A YES.

16 Q WHERE WERE THEY, IF YOU RECALL?

17 A WELL, JOSE WAS ACTUALLY STANDING ON THE
18 STAIRCASE -- THE STAIRCASE THAT WAS GOING DOWN IN
19 FRONT OF WHERE LYLE WAS HANGING.

20 Q SO IF I PUT AN "X" HERE, WOULD THAT
21 REPRESENT --

22 A UH-HUH.

23 Q I'LL JUST PUT A "J" ABOVE THAT AND AN
24 "L" ABOVE THIS "X," AND I'LL PUT YOUR INITIALS FOR
25 WHERE YOU WERE. OKAY?

26 A OKAY.

27 Q AND WAS MRS. MENENDEZ PRESENT AS WELL?

28 A I BELIEVE MARY LOUISE WAS STANDING ON

1 THE LANDING CLOSER TO THE FRONT DOOR.

2 Q SOMEWHERE OVER HERE (POINTING)?

3 A YES.

4 Q ALL RIGHT. AND DID YOU -- DID YOU HEAR
5 OR SEE LYLE MENENDEZ DOING ANYTHING AS HE WAS
6 HANGING FROM THE LANDING OR HANGING FROM THE
7 STAIRCASE?

8 A YES. HE WAS HANGING THERE, AND HE GOT
9 SCARED, AND HE STARTED TO CRY, AND HE WANTED TO BE
10 TAKEN DOWN FROM THE LEDGE THERE.

11 Q ABOUT HOW OLD WAS HE AT THAT TIME?

12 A WELL, HE STILL LIVED IN MONSEY, AND I
13 KNOW I WAS EIGHT WHEN HE MOVED OUT OF MONSEY. SO HE
14 WAS NINE. SO HE HAD TO BE -- HE HAD TO BE YOUNGER
15 THAN NINE. I DON'T REMEMBER EXACTLY HOW OLD.

16 Q AND HE WAS HANGING FROM THIS LIP OF THE
17 UPPER FLOOR AND TRYING -- AND WANTED TO BE TAKEN
18 DOWN. IS THAT WHAT YOU SAID?

19 A YES.

20 Q AND WAS HE -- WAS HE ASKING HIS FATHER
21 TO TAKE HIM DOWN, OR JUST ANYONE TO TAKE HIM DOWN?

22 A WELL, JOSE WAS STANDING RIGHT IN FRONT
23 OF HIM. SO I BELIEVE HE WAS SAYING IT TO HIS

24 FATHER. "TAKE ME DOWN. I'M SCARED."

25 Q AND WHAT DID MR. MENENDEZ RESPOND?

26 A JOSE SAID, "YOU HAVE TO STAY UP THERE

27 UNTIL YOU LEARN NOT TO BE AFRAID AND UNTIL YOU LEARN

28 NOT TO CRY."

53068

1 AND THEN JOSE STARTED TO POKE LYLE IN

2 THE STOMACH LIKE THIS (DEMONSTRATING) TO MAKE IT A

3 LITTLE BIT HARDER FOR HIM TO STAY UP THERE, AND LYLE

4 KEPT CRYING.

5 AND HE SAID TO LYLE, "YOU'LL STAY UP

6 THERE UNTIL YOU LEARN TO BE A MAN."

7 Q DID MR. MENENDEZ SEEM TO BE TRYING TO

8 HURT LYLE WHEN HE WAS POKING HIM IN THE STOMACH?

9 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: HE WASN'T TRYING TO HURT HIM.

12 I THINK HE WAS JUST TRYING TO MAKE IT MORE DIFFICULT

13 FOR HIM TO STAY HANGING UP THERE.

14 Q BY MS. TOWERY: DO YOU REMEMBER HOW LYLE

15 MENENDEZ GOT DOWN?

16 A I DON'T REMEMBER THAT.

17 Q AND YOU -- IF HE WAS UNDER NINE, THEN

18 YOU WOULD HAVE BEEN UNDER EIGHT YEARS OLD; IS THAT

19 RIGHT?

20 A CORRECT.

21 Q HAD YOU EVER SEEN LYLE MENENDEZ CRY

22 BEFORE THAT INCIDENT?

23 A IT WAS THE FIRST AND THE ONLY TIME I

24 EVER SAW HIM CRY.

25 Q AND MRS. MENENDEZ WAS -- I ASSUME THIS

26 WAS A FEW FEET AWAY, IS THAT RIGHT, ON THE LANDING?

27 A UH-HUH, CORRECT.

28 Q DID SHE DO ANYTHING IN CONNECTION WITH

53069

1 THIS INCIDENT?

2 A I DON'T REMEMBER HER DOING ANYTHING.

3 MS. TOWERY: THANK YOU.

4 I HAVE NOTHING FURTHER.

5 THE COURT: ANY EXAMINATION BY ERIK

6 MENENDEZ?

7 MS. ABRAMSON: NO, YOUR HONOR.

8 THE COURT: CROSS.

9

10 CROSS-EXAMINATION

11 BY MR. CONN:

12 Q NOW, DID YOU SEE HOW LYLE MENENDEZ GOT

13 IN THAT POSITION?

14 A NO, I DIDN'T. OR I DON'T REMEMBER.

15 Q I'M SORRY?

16 A OR I DON'T REMEMBER HOW HE GOT INTO THAT
17 POSITION.

18 Q WHAT WERE YOU DOING JUST BEFORE YOU GOT
19 IN THE POSITION WHERE YOU INDICATED YOU WERE ON THAT
20 DIAGRAM?

21 A I DON'T REMEMBER WHAT HAPPENED BEFORE.

22 Q DO YOU REMEMBER WHERE YOU WERE COMING
23 FROM OR WHERE YOU WERE GOING?

24 A NO, I DON'T.

25 Q DO YOU KNOW WHY YOU STOOD THERE TO WATCH
26 THIS?

27 A NO.

28 Q DO YOU RECALL KITTY MENENDEZ WAS

53070

1 STANDING THERE BEFORE YOU GOT THERE?

2 A I DON'T REMEMBER WHAT HAPPENED BEFORE,
3 NO.

4 Q SO LYLE MENENDEZ -- WHAT WAS HE HOLDING
5 ONTO AS HE WAS HANGING THERE?

6 A HE WAS ACTUALLY HOLDING ONTO THE FLOOR
7 OF THE LIVING ROOM ABOVE.

8 Q UH-HUH.

9 A I DON'T KNOW IF THAT MAKES SENSE. HE
10 WAS HOLDING ON LIKE THIS TO THE LIVING ROOM FLOOR.
11 Q AND HE WAS ABOUT NINE YEARS OLD AT THE
12 TIME; IS THAT CORRECT?
13 A HE COULDN'T HAVE BEEN OLDER THAN NINE.
14 BUT I DON'T REMEMBER EXACTLY HOW OLD HE WAS.
15 Q AND HOW FAR WAS HIS FEET FROM THE FLOOR?
16 A I THINK HE WAS A FEW -- I THINK HIS FEET
17 WERE A FEW FEET ABOVE THE STAIRS.
18 Q WHAT DO YOU MEAN, A FEW FEET ABOVE? HOW
19 FAR ABOVE THE STAIRS?
20 A WELL, I DON'T REMEMBER EXACTLY. I KNOW
21 HE WAS HANGING. A FEW FEET ABOVE. MAYBE IT WAS
22 THREE FEET. BUT THAT'S A GUESS.
23 Q SO HIS FEET WERE ABOUT THREE FEET FROM
24 THE STAIRS?
25 A IT MAY HAVE BEEN HIGHER. I JUST DON'T
26 REMEMBER. I JUST DON'T REMEMBER. THERE WAS ENOUGH
27 ROOM SO A GROWN PERSON COULD STAND ON THE STAIRS AND
28 THEY WOULDN'T HIT THEIR HEAD ON THE LANDING ABOVE.

53071

1 SO I KNOW THE FLOOR ABOVE HAD TO BE PRETTY HIGH,
2 BECAUSE YOU HAD TO BE ABLE TO STAND ON THE STAIRS.
3 BUT I DON'T REMEMBER HOW FAR HIS FEET

4 WERE FROM THE STAIRWELL.

5 Q SO IF LYLE MENENDEZ HAD FALLEN OR
6 DROPPED, HE WOULD HAVE DROPPED ABOUT THREE FEET
7 BEFORE HE HIT THE FLOOR?

8 A I THINK HE WOULD HAVE DROPPED AND FALLEN
9 DOWN THE REMAINING STAIRS, I GUESS.

10 Q YOU SAID THAT THIS LINE HERE REPRESENTS
11 THE SECOND STORY; IS THAT CORRECT? IN OTHER WORDS,
12 WE'RE LOOKING DOWN AT THIS DIAGRAM; IS THAT CORRECT?

13 A CORRECT.

14 Q AND THIS IS A STAIRWAY GOING DOWN; IS
15 THAT CORRECT?

16 A RIGHT. AND CAN I JUST -- THE SECOND
17 STORY ISN'T ABOVE THE LANDING. IT'S ABOVE THE
18 ACTUAL STAIRS. I DON'T KNOW IF YOU CAN TELL THAT
19 FROM THE DRAWING WHERE HE WAS HANGING WAS ABOVE THE
20 STAIRS, NOT ABOVE THE LITTLE LANDING, THAT I WAS
21 STANDING ON.

22 Q UH-HUH. OKAY. AND YOUR BEST ESTIMATE
23 IS THAT IF HE HAD LET GO, HE WOULD HAVE FALLEN ABOUT
24 THREE FEET BEFORE HE HIT THE STAIRS; IS THAT
25 CORRECT?

26 A THAT'S A GUESS. CORRECT.

27 Q AND HOW CLOSE WAS JOSE MENENDEZ STANDING
28 TO LYLE MENENDEZ?

1 A HE WAS -- HE WASN'T FAR AWAY, BECAUSE HE
2 WAS STANDING ON THE STAIRS. HE WAS NEARBY.

3 Q HE WAS CLOSE ENOUGH TO CATCH HIM IF HE
4 FELL; IS THAT CORRECT?

5 A POSSIBLE, YES.

6 Q AND WAS HE SMILING OR LAUGHING, OR WHAT
7 WAS THE DEemeanOR OF JOSE MENENDEZ AT THAT POINT IN
8 TIME?

9 A IF I REMEMBER CORRECTLY -- I'M TRYING TO
10 THINK. HE MAY HAVE BEEN ANGRY THAT LYLE WAS
11 CRYING. I DON'T REMEMBER HIM LAUGHING.

12 Q YOU DON'T REMEMBER HIS DEemeanOR AT THAT
13 POINT IN TIME?

14 A I DON'T REMEMBER.

15 Q AND DO YOU REMEMBER THE DEemeanOR OF
16 KITTY MENENDEZ AT THIS POINT IN TIME?

17 A NOPE.

18 Q AND WERE YOU STANDING THERE FOR THE
19 PURPOSE OF WATCHING THIS INCIDENT TAKE PLACE?

20 A I MUST HAVE BEEN STANDING THERE DOING
21 SOMETHING PROBABLY, PLAYING WITH LYLE; AND SO AS THE
22 INCIDENT TOOK PLACE, I WAS STILL STANDING THERE. I
23 DIDN'T RUN AWAY FROM THE INCIDENT.

24 Q YOU WERE PLAYING WITH LYLE AT THAT TIME?

25 A I SAID I DON'T REMEMBER EXACTLY WHAT I
26 WAS DOING BEFORE.

27 Q DID YOU SAY YOU WERE PROBABLY PLAYING
28 WITH LYLE?

53073

1 A POSSIBLY WOULD BE MORE ACCURATE.

2 Q WELL, THEN, DO YOU KNOW HOW HE GOT UP
3 THERE?

4 A NO, I DO NOT. I DON'T REMEMBER.

5 Q DID YOU HAVE ANY ROLE IN PUTTING HIM UP
6 THERE?

7 A NO. I CERTAINLY DID NOT.

8 Q AND HOW OLD WERE YOU AT THE TIME?

9 A WE LIVED -- HE LIVED IN MONSEY, SO I
10 COULDN'T HAVE BEEN OLDER THAN EIGHT, BUT I DON'T
11 REMEMBER EXACTLY HOW OLD I WAS.

12 Q YOU WERE CLOSE TO THE SAME AGE AS HE
13 WAS?

14 A UH-HUH. I'M A YEAR YOUNGER THAN LYLE.

15 Q WERE YOU PLAYING WITH LYLE MENENDEZ THAT
16 DAY?

17 A I THINK I SAID THAT I MAY HAVE BEEN. I
18 DON'T REMEMBER WHAT HAPPENED BEFORE. I JUST
19 REMEMBER THE INCIDENT.

20 Q AND DO YOU RECALL WHETHER KITTY MENENDEZ
21 STOOD THERE DURING THIS ENTIRE INCIDENT?

22 A IT'S HARD TO REMEMBER NOW, BUT I THINK
23 SHE WAS STANDING -- I THINK SHE WAS STANDING NEXT TO
24 THE DOOR, AS I INDICATED.

25 Q AND THEN YOU INDICATED THAT JOSE
26 MENENDEZ WAS POKING HIM WITH HIS FINGERS STRAIGHT
27 OUT LIKE THIS (DEMONSTRATING); IS THAT CORRECT?

28 A SOMETHING LIKE THIS (DEMONSTRATING),

53074

1 YES.

2 Q HE WAS POKING IN WHAT PART OF HIS BODY?

3 A IN HIS STOMACH.

4 Q AND HOW MANY TIMES DID HE POKE HIM IN
5 THE STOMACH?

6 A I KNOW THAT IT WAS MORE THAN ONCE,
7 BECAUSE I REMEMBER IT BEING A REPEATED MOTION. BUT
8 I DON'T REMEMBER HOW MANY TIMES.

9 Q IT MIGHT HAVE BEEN JUST TWO TIMES?

10 A I BELIEVE IT WAS OVER AND OVER, BECAUSE
11 I BELIEVE HE WAS POKING HIM AS HE SAID (DEMONSTRATING)
12 "YOU'LL STAY UP THERE UNTIL YOU LEARN TO BE A MAN,
13 AND UNTIL YOU LEARN NOT TO CRY."

14 HE WAS SAYING IT AS HE POKED HIM. I
15 DON'T REMEMBER HOW MANY TIMES HE ACTUALLY JABBED
16 HIM.

17 Q UH-HUH. AND LYLE MENENDEZ -- DID IT
18 APPEAR HE WAS POKING HIM HARD?
19 A NOT HARD ENOUGH TO HURT HIM.
20 Q NOT HARD ENOUGH TO MAKE HIM FALL EITHER;
21 IS THAT CORRECT?
22 A HE DID NOT FALL.
23 Q UH-HUH. AND THEN WHAT FINALLY
24 HAPPENED? HOW DID HE GET DOWN?
25 A I DON'T KNOW. I DON'T REMEMBER.
26 Q WELL, WERE YOU INTERESTED IN THE OUTCOME
27 OF THIS INCIDENT?
28 MS. TOWERY: OBJECTION. IRRELEVANT.

53075

1 THE WITNESS: IT WAS A LONG TIME AGO.
2 THE COURT: OVERRULED.
3 THE WITNESS: IT WAS A LONG TIME AGO, AND I
4 DON'T REMEMBER WHAT LED UP TO THE INCIDENT, AND I
5 DON'T REMEMBER WHAT HAPPENED AFTER THE INCIDENT. I
6 JUST REMEMBER THE INCIDENT, BECAUSE IT JUST STOOD
7 OUT IN MY MIND AS A STRANGE INCIDENT. I HADN'T SEEN
8 LYLE CRY BEFORE.
9 IT SEEMED KIND OF LIKE A SCARY SITUATION
10 TO ME. SO I REMEMBER JUST THE INCIDENT.
11 Q BY MR. CONN: WERE YOU CONCERNED ABOUT

12 HIS SAFETY AT THAT POINT IN TIME?

13 A I THOUGHT --

14 MS. TOWERY: OBJECTION. IRRELEVANT.

15 THE COURT: OVERRULED.

16 THE WITNESS: I THOUGHT -- I THOUGHT HE COULD

17 FALL AND GET HURT. I WAS PROBABLY MORE CONCERNED

18 WITH THE FACT THAT HE WAS SCARED AND CRYING MORE

19 THAN THE FACT THAT HE WAS GOING TO FALL AND DO GREAT

20 HARM TO HIMSELF.

21 I WAS YOUNG. I DON'T REMEMBER EXACTLY

22 WHAT IT WAS THAT I WAS THINKING AT THE MOMENT.

23 Q BY MR. CONN: DO YOU RECALL PLAYING WITH

24 LYLE MENENDEZ LATER THAT DAY?

25 A NO, I DO NOT.

26 Q DO YOU RECALL LYLE MENENDEZ BEING

27 INJURED LATER THAT DAY?

28 A NO, I DO NOT.

53076

1 Q AND SO YOU DON'T KNOW WHETHER OR NOT

2 LYLE MENENDEZ FELL THE THREE FEET OR WHETHER JOSE

3 MENENDEZ HELPED HIS SON DOWN; IS THAT CORRECT?

4 A THAT IS CORRECT.

5 MR. CONN: ALL RIGHT.

6 I HAVE NO FURTHER QUESTIONS.

7 THE COURT: ANYTHING ELSE?

8 MS. TOWERY: NO QUESTIONS.

9 THE COURT: THANK YOU. YOU MAY STEP DOWN.

10 YOU'RE EXCUSED.

11 WE'LL TAKE A RECESS. HE'LL RESUME AT

12 QUARTER TO THE HOUR.

13 DON'T DISCUSS THE MATTER WITH ANYONE.

14 AND DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND

15 WE'LL RESUME IN 15 MINUTES.

16 FOR COUNSEL'S BENEFIT, THE JUROR

17 INDICATED HE THINKS HE PROBABLY COULD WORK PAST THIS

18 MORNING.

19 MS. ABRAMSON: HE CAN?

20 THE COURT: YES. PROBABLY.

21 MS. ABRAMSON: THANK YOU, JUDGE.

22 (A RECESS WAS TAKEN FROM

23 10:28 TO 10:50 A.M.)

24

25

26

27

28

-12459

1 THE COURT: ALL RIGHT. WE HAVE EVERYBODY

2 PRESENT. WE'LL HVE THE JURY OUT, PLEASE.

3 (THE JURY ENTERS THE COURTROOM

4 AND THE FOLLOWING PROCEEDINGS

5 WERE HELD:)

6

7 THE COURT: THE JURY IS BACK, AND YOU MAY CALL
8 YOUR NEXT WITNESS.

9 MR. LEVIN: THANK YOU, YOUR HONOR. THE DEFENSE
10 CALLS BONNIE HUNTER.

11

12 BONNIE HUNTER,
13 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND
14 TESTIFIED AS FOLLOWS:

15

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

20 THE WITNESS: I DO.

21 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR
22 NAME FOR THE RECORD.

23 THE WITNESS: BONNIE HUNTER.

24 THE CLERK: AND SPELL YOUR LAST NAME, PLEASE.

25 THE WITNESS: H-U-N-T-E-R.

26

27 ///

28 ///

1 DIRECT EXAMINATION

2 BY MR. LEVIN:

3 Q. MRS. HUNTER, YOU HAVE SOMEWHAT OF A SOFT
4 VOICE. I WOULD ASK YOU EITHER SPEAK LOUDLY OR DIRECTLY
5 IN THE MICROPHONE.

6 A. OKAY.

7 Q. COMFORTABLE?

8 A. BETTER.

9 Q. BETTER. WHAT DO YOU DO FOR A LIVING?

10 A. I'M A TEACHER.

11 Q. AND WHAT IS IT THAT YOU TEACH?

12 A. I TEACH ENGLISH AT PRINCETON DAY SCHOOL.

13 THIS YEAR I AM ALSO TEACHING LOWER SCHOOL COMPUTER.

14 Q. HOW LONG HAVE YOU BEEN A TEACHER?

15 A. I HAVE BEEN A TEACHER FOR A LITTLE OVER 33
16 YEARS.

17 Q. AND HOW LONG HAVE YOU TAUGHT AT THE
18 PRINCETON DAY SCHOOL?

19 A. ABOUT 23 OF THOSE YEARS.

20 Q. HAVE YOU TAUGHT BOTH IN THE PUBLIC SCHOOLS
21 AND PRIVATE SCHOOLS, LIKE P.D.S.?

22 A. I HAVE.

23 Q. DO YOU HAVE ANY TRAINING OR SPECIALIZED
24 TRAINING IN THE AREA OF LEARNING DISABILITIES?

25 A. YES. I WORKED WITH BETTY TRAVIS AND MARCIA
26 LEWIS AT THE EDUCATIONAL THERAPY CLINIC OF PRINCETON. I
27 TRAINED WITH THEM FOR ONE SEMESTER AND THREE SUMMERS.

28 Q. AND YOU MENTIONED THE NAME MARCIA LEWIS.

1 IS THAT MARCIA LEWIS -- DOES SHE NOW HAVE A
2 SCHOOL CALLED THE LEWIS SCHOOL WHICH SPECIALIZES IN
3 TEACHING LEARNING-DISABLED STUDENTS?

4 A. SHE DOES.

5 Q. AND WHEN DID YOU -- WHEN DID YOU GO THROUGH
6 THIS TRAINING?

7 A. IT WAS ABOUT FIVE OR SIX YEARS BEFORE I
8 TAUGHT ERIK.

9 Q. WHAT TYPES OF LEARNING DISABILITIES WERE
10 YOU TRAINED IN?

11 A. BOTH READING AND WRITING DISABILITIES, SOME
12 AUDITORY PROCESSING. AND I WAS LEARNING TECHNIQUES FOR
13 BOTH DIAGNOSING THESE DISABILITIES AND FOR HELPING
14 STUDENTS FINDING WAYS OF COMPENSATING FOR DISABILITIES.

15 Q. BACK IN 1985 WAS ERIK MENENDEZ A STUDENT OF
16 YOURS?

17 A. HE WAS.

18 Q. AND WHAT WAS IT -- WHAT CLASS WAS ERIK
19 MENENDEZ IN?

20 A. HE WAS IN THE 9TH GRADE ENGLISH CLASS,
21 WHICH RUNS FOR AN ENTIRE YEAR.

22 Q. HOW LARGE WAS THAT CLASS?

23 A. THERE WERE ABOUT 15 STUDENTS, BOYS AND
24 GIRLS IN THAT GROUP.

25 Q. AND HOW OFTEN DID THAT CLASS MEET?

26 A. THE CLASS MEETS FOUR DAYS A WEEK. THE
27 AMOUNT OF TIME VARIES FROM 40 MINUTES TO 55 MINUTES,
28 DEPENDING ON THE DAY.

-12456

1 Q. COULD YOU DESCRIBE ERIK MENENDEZ AS A
2 STUDENT THAT POSSESSED SOME UNUSUAL BEHAVIORS?

3 A. YES. ERIK WAS WHAT I SAW AS A VERY ANXIOUS
4 STUDENT. HE WAS QUIET, TRIED TO DO WHAT HE WAS SUPPOSED
5 TO DO, BUT HAD PROBLEMS IN FOLLOWING DIRECTIONS.

6 MR. CONN: I WOULD OBJECT AT THIS POINT. CALLING
7 FOR SPECULATION.

8 THE COURT: OVERRULED.

9 YOU MAY CONTINUE.

10 MR. LEVIN: YOU MAY ANSWER THE QUESTION.

11 THE WITNESS: HE HAD PROBLEMS FOLLOWING
12 DIRECTIONS. HE WAS VERY CONCERNED ABOUT GRADES, ABOUT
13 DOING WELL IN CLASS, AND VERY ANXIOUS WHEN HE DID NOT DO
14 WELL.

15 Q. BY MR. LEVIN: WHEN YOU SAY THAT ERIK
16 MENENDEZ WAS ANXIOUS AND CONCERNED ABOUT GRADES, DID HE
17 EXHIBIT SOME TYPE OF BEHAVIOR THAT CAUSES YOU TO SAY
18 THIS NOW IN COURT?

19 A. YES. HE -- HE WOULD OFTEN CRY IN CLASS IN
20 FRONT OF HIS PEERS, WHICH IT IS UNUSUAL FOR A 9TH GRADE
21 BOY.

22 HE WOULD CRY WHEN HE WOULD -- WHEN I WOULD
23 RETURN PAPERS IF HE HAD NOT DONE WELL. AND IT DIDN'T
24 MATTER IF IT WAS NOT DOING WELL ON A SMALL QUIZ OR ON A
25 LARGE, IMPORTANT PAPER. SOMETIMES HE WOULD TEAR UP AND
26 GET VERY TENSE, EVEN WHEN I WOULD ANNOUNCE A MAJOR TEST
27 COMING UP.

28 Q. WHEN YOU SAY HE WOULD CRY IN FRONT OF HIS

-12455

1 PEERS, WOULD THIS BE IN OPEN -- HE WOULD OPENLY CRY?

2 A. IN A WAY THAT OTHERS WOULD NOTICE. THEY
3 WERE NOT HISTRIONICS, BUT IT'S A SMALL CLASS. WE SIT
4 MOST OF THE TIME IN A CIRCLE. PEOPLE -- PEOPLE WOULD
5 NOTICE.

6 Q. AND THIS CRYING BEHAVIOR THAT YOU OBSERVED,
7 THIS WOULD OCCUR AT THE TIME WHEN YOU WERE ANNOUNCING
8 THAT THERE WAS GOING TO BE SOME TYPE OF A TEST COMING
9 UP?

10 A. SOMETIMES, AND OTHER TIMES WHEN I WAS
11 RETURNING PAPERS.

12 Q. WOULD ERIK MENENDEZ CRY WHETHER YOU
13 ANNOUNCED THAT THERE WOULD BE A MAJOR TEST OR A MINOR
14 TYPE OF A POP QUIZ? DID IT SEEM TO MATTER TO HIM?

15 A. THE MAJOR TESTS WERE WHAT CAUSED HIM MOST
16 ANXIETY. THE QUIZZES WERE OFTEN UNANNOUNCED, AND HE
17 WOULD JUST PUSH THROUGH THOSE, AND THEN IF HE HADN'T

18 DONE WELL, BE UPSET.

19 Q. DID YOU, YOURSELF, DEVELOP ANY STRATEGIES

20 IN DEALING WITH ERIK'S CRYING BEHAVIOR AND ANXIOUSNESS

21 REGARDING TESTS AND QUIZZES, PAPERS BEING RETURNED?

22 A. YES. I TRIED TO GIVE HIM HIS PAPERS EITHER

23 BEFORE OR AFTER CLASS SO THAT HE WOULD HAVE TIME TO

24 ABSORB THE BAD NEWS WITHOUT SPECTATORS.

25 Q. DID YOU MAKE AN EFFORT TO DETERMINE WHAT

26 WAS WRONG WITH ERIK?

27 A. YES, I DID.

28 Q. AND HOW DID YOU DO THAT?

-12454

1 A. I WOULD USE -- I WOULD TRY TO LOOK FOR

2 PATTERNS IN WHAT HE WAS DOING SO THAT I COULD FIND

3 WHATEVER IT WAS THAT WAS BLOCKING HIS PERFORMANCE, SO

4 THAT HE AND I TOGETHER COULD WORK IN CONFERENCE ON WAYS

5 THAT HE COULD MOVE AROUND THAT BLOCK.

6 BUT I NEVER -- THERE WAS NOT A CONSISTENCY

7 IN THE TYPE OF PROBLEMS THAT HE SEEMED TO BE HAVING.

8 Q. DID YOU TRY TO FIND OUT DIRECTLY FROM ERIK

9 WHAT WAS BOTHERING HIM?

10 A. YES, I DID. I WOULD ASK HIM IN CONFERENCE

11 IF HE KNEW WHAT WAS GIVING HIM TROUBLE ON THIS

12 ASSIGNMENT, WHAT IT WAS THAT HE DIDN'T UNDERSTAND, AND

13 HE WAS NOT --

14 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

15 THE COURT: I ASSUME THIS IS NOT OFFERED FOR THE

16 TRUTH, JUST TO INDICATE WHAT IT WAS THAT CAUSED HER TO

17 FORM CERTAIN OPINIONS?

18 MR. LEVIN: THAT'S CORRECT. YES, YOUR HONOR.

19 THE COURT: OVERRULED.

20 Q. BY MR. LEVIN: YOU MAY ANSWER.

21 A. AND HE WAS NOT ABLE TO ARTICULATE WHAT THE

22 PROBLEM WAS.

23 Q. NOW, DID YOU NOTICE, MS. HUNTER, BASED ON

24 YOUR BACKGROUND AND YOUR TRAINING AND EXPERIENCE,

25 BEHAVIOR ON BEHALF OF ERIK THAT CAUSED YOU TO BELIEVE

26 THAT HE HAD LEARNING DISABILITIES?

27 A. YES.

28 Q. AND WHAT WAS IT THAT YOU OBSERVED?

-12453

1 A. THERE WERE SEVERAL AREAS. HE HAD A GREAT

2 DEAL OF TROUBLE FOLLOWING DIRECTIONS, ORGANIZING HIMSELF

3 AND HIS WORK. THE CLASS MET AT DIFFERENT TIMES DURING

4 THE DAY AND OFTEN IN A DIFFERENT PLACE, AND HE HAD

5 TROUBLE REMEMBERING WHERE HE WAS TO BE WHEN.

6 Q. LET ME STOP YOU. THIS IS A FRESHMAN HIGH

7 SCHOOL ENGLISH CLASS?

8 A. THAT'S RIGHT.

9 Q. AND THE CLASS WOULD MEET AT DIFFERENT

10 LOCATIONS AT DIFFERENT TIMES?

11 A. RIGHT. NO CLASS AT P.D.S. MEETS AT THE
12 SAME TIME EVERY DAY.

13 Q. WOULD THE STUDENTS BE TOLD BEFOREHAND WHERE
14 IT WAS THEY WERE SUPPOSED TO MEET THE NEXT DAY?

15 A. IT WOULD BE A REGULAR SCHEDULE. SO MONDAY
16 IT WOULD ALWAYS BE AT THE SAME TIME IN THE SAME PLACE,
17 BUT TUESDAY IT WOULD BE A DIFFERENT TIME AT A DIFFERENT
18 PLACE, ET CETERA. AND HE HAD A SCHEDULE WITH ALL THAT
19 MARKED.

20 Q. AND YOU FOUND THAT ERIK HAD TROUBLE
21 REMEMBERING WHERE HE WAS SUPPOSED TO BE?

22 A. AND WHAT HE WAS SUPPOSED TO BRING WITH HIM.
23 HE ALSO HAD TROUBLE IN FOLLOWING
24 DIRECTIONS, ESPECIALLY IF IT WAS A COMPLEX OPTIONAL
25 TASK. THAT'S WHERE YOU HAVE TO DO MANY TASKS AT THE
26 SAME TIME. YOU HAVE TO DECIDE WHAT YOU'RE GOING TO SAY,
27 HOW YOU'RE GOING TO ORGANIZE IT, HOW YOU'RE GOING TO SAY
28 IT, IN WRITING ESPECIALLY, AND AT THAT POINT HE WOULD

-12452

1 SEEM TO HIT AN OVERLOAD, SO HE WOULD HAVE MAJOR TROUBLE
2 WITH WHAT WE OFTEN THINK OF AS THE LITTLE THINGS.
3 PUNCTUATION, SPELLING, SENTENCE STRUCTURE.

4 AND FOR ERIK, IN ADDITION, HE WOULD
5 OFTEN -- IF HE WERE SUPPOSED TO BRING THREE CHARACTERS

6 INTO THE DISCUSSION, HE WOULD BRING TWO. HE WOULD NOT
7 FOLLOW THE DIRECTIONS.

8 Q. WAS HE THE TYPE OF STUDENT THAT TRIED HARD
9 TO FOLLOW INSTRUCTIONS?

10 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

11 THE COURT: WHY DON'T YOU PHRASE IT ALONG THE
12 LINE OF "DID IT APPEAR?"

13 MR. LEVIN: I'M SORRY, YOUR HONOR?

14 THE COURT: DID IT APPEAR TO HER THAT HE WAS
15 TRYING HARD?

16 Q. BY MR. LEVIN: DID IT APPEAR TO YOU THAT
17 ERIK WAS TRYING HARD TO FOLLOW INSTRUCTIONS, AND THAT HE
18 WAS NOT RESISTING THE SCHOOL POLICIES, THE INSTRUCTIONS
19 THAT WERE GIVEN TO HIM, THOSE KIND OF THINGS?

20 A. HE SEEMED TO BE TRYING TO FOLLOW
21 DIRECTIONS. HE SEEMED TO WANT VERY MUCH TO DO WHAT HE
22 WAS SUPPOSED TO DO. HE -- HE WAS GOOD ABOUT COMING TO
23 CONFERENCES FOR EXTRA HELP. HE SEEMED TO BE TRYING, BUT
24 IT DIDN'T -- IT WAS NOT WORKING.

25 Q. WAS HE POLITE TO YOU?

26 A. VERY.

27 Q. WAS HE RESPECTFUL?

28 A. VERY.

1 Q. NOW, IN P.D.S., ARE THERE RECORDS THAT ARE

2 KEPT ON THE STUDENTS?

3 A. YES.

4 Q. AND WOULD YOU, FROM TIME TO TIME, BE

5 REQUIRED TO WRITE REPORTS ON THE PROGRESS OF YOUR

6 STUDENTS?

7 A. YES.

8 Q. AND THAT WOULD INCLUDE ERIK MENENDEZ?

9 A. YES.

10 Q. WHEN A STUDENT STARTS IN YOUR CLASS, WOULD

11 YOU TYPICALLY REVIEW THEIR FILE AND ANY RECORD JUST

12 BECAUSE THEY'RE A STUDENT IN YOUR CLASS?

13 A. YES. I READ THE RECORDS, THE FILE ON EACH OF

14 MY STUDENTS AT THE BEGINNING OF THE YEAR AFTER ABOUT TWO

15 WEEKS OF CLASS HAS GONE BY.

16 Q. AND WAS THERE ANY INDICATION IN ERIK

17 MENENDEZ' RECORDS THAT DISCLOSED THAT HIS PARENTS WERE

18 RESISTANT TO GETTING ERIK MENENDEZ HELP FOR LEARNING

19 DISABILITIES?

20 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

21 THE COURT: SUSTAINED.

22 Q. BY MR. LEVIN: DID YOU EVER -- DID YOU EVER

23 MEET MR. MENENDEZ?

24 A. NO, I NEVER MET MR. MENENDEZ.

25 Q. DID YOU EVER MEET MRS. MENENDEZ?

26 A. YES, I DID.

27 Q. AND HOW FREQUENTLY WOULD YOUR CONTACT BE

28 WITH HER?

1 A. NOTHING ON A REGULAR BASIS. SHE CAME TO
2 THE PARENT CONFERENCES, WHICH ARE OFFERED TO ALL PARENTS
3 AT THE BEGINNING OF THE YEAR. SHE CAME TO
4 BACK-TO-SCHOOL NIGHT, AND THEN SHE NEVER -- ALTHOUGH SHE
5 NEVER RESPONDED TO THE GRADES AND COMMENTS THAT I WROTE,
6 SHE -- DIRECTLY -- SHE WOULD OFTEN BE AT SCHOOL TO -- I
7 ASSUME TO PICK THE BOYS UP AND TAKE THEM TO THEIR
8 AFTER-SCHOOL ACTIVITIES.

9 Q. OKAY. JUST WE'RE TALKING ABOUT ERIK
10 MENENDEZ.

11 A. OKAY. SO SHE WOULD BE IN THE BUILDING,
12 COMING TO PICK ERIK UP. SEVERAL OF MY CLASSES MET AT
13 THE END OF THE DAY, AND SHE WOULD BE OUTSIDE THE CLASS,
14 OR SOMETIMES EVEN AFTER THE BELL COME INTO THE CLASS AND
15 READ THE BULLETIN BOARDS AND WAIT.

16 Q. DID YOU FIND THAT BEHAVIOR SOMEWHAT
17 UNUSUAL?

18 A. YES.

19 Q. AND THE BULLETIN BOARD, WAS THAT LOCATED IN
20 YOUR CLASSROOM?

21 A. THERE WERE BULLETIN BOARDS IN THE CLASSROOM
22 SOMETIMES OF STUDENT WORK, BUT SOMETIMES JUST THE KIND
23 OF EXTRA TEACHING YOU TRY TO SNEAK IN BY PUTTING
24 INFORMATION ON THE BULLETIN BOARD FOR THE STUDENTS.

25 Q. DID SHE APPEAR TO JUST BE HANGING AROUND
26 AFTER THE CLASS WAS OVER?

27 A. YES.

28 Q. DID IT MAKE YOU UNCOMFORTABLE?

-12449

1 A. IT MADE ME UNCOMFORTABLE, BECAUSE I WASN'T
2 CLEAR WHAT -- IF THERE WAS A PURPOSE, OR WHAT HER
3 PURPOSE WAS. AND THEN FREQUENTLY SHE WOULD ENGAGE IN
4 CONVERSATION ABOUT HOW WELL --

5 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

6 THE COURT: ALL RIGHT. SHE'S ANSWERED THE
7 QUESTION.

8 Q. BY MR. LEVIN: YOU MENTIONED BEFORE, JUST A
9 MOMENT AGO IN YOUR TESTIMONY, THAT MRS. MENENDEZ DID NOT
10 RESPOND TO YOUR GRADES AND COMMENTS.

11 DID YOU MAKE HER AWARE, OR WAS IT -- WAS IT
12 IN SOME FASHION COMMUNICATED TO THE PARENTS OF ERIK
13 MENENDEZ THAT HE WAS NOT PERFORMING THAT WELL IN P.D.S.
14 WITH THE PROBLEMS THAT YOU HAVE NOTICED, SUCH AS
15 CONCENTRATION AND THE OTHER THINGS THAT YOU'VE TESTIFIED
16 TO?

17 MR. CONN: OBJECTION. IRRELEVANT.

18 THE COURT: OVERRULED.

19 YOU CAN ANSWER THE QUESTION.

20 THE WITNESS: YES. AT THE END OF EACH MARKING
21 PERIOD EVERY TEACHER WRITES A COMMENT, IN ADDITION TO
22 THE GRADE THAT WE GIVE THE STUDENT, AND I MENTIONED MY

23 CONCERNS IN THE COMMENTS.

24 IN ADDITION, IF THERE ARE ANY STUDENTS THAT

25 WE ARE PARTICULARLY WORRIED ABOUT, WE WRITE WHAT'S

26 CALLED AN INTERIM, WHICH CAN OCCUR ANY TIME IN THE

27 MARKING PERIOD. AND I WROTE SEVERAL INTERIMS ON ERIK.

28 I THINK THAT I PROBABLY WROTE MORE PARAGRAPH COMMENTS ON

-12448

1 ERIK THAT YEAR THAN ANY OTHER STUDENT THAT I TAUGHT. AT

2 THAT TIME I WAS TEACHING FOUR ENGLISH CLASSES.

3 Q. AND IN THOSE COMMENTS, DID YOU WRITE THAT

4 ERIK SEEMED CONFUSED ABOUT WHEN AND WHERE HIS CLASS

5 MEETS?

6 A. YES.

7 Q. DID YOU INCLUDE THAT HE DOESN'T FOLLOW

8 INSTRUCTIONS EVEN WHEN -- ON HOMEWORK, EVEN WHEN IT'S

9 BEEN REINFORCED TO HIM AFTER THE INITIAL INSTRUCTIONS

10 HAVE BEEN GIVEN?

11 A. YES.

12 Q. DID YOU INDICATE THAT HIS THOUGHTS APPEAR

13 TO BE SCATTERED?

14 A. I BELIEVE SO.

15 Q. AND DID YOU SAY THAT HE HAD -- THAT HE IS

16 AN ANXIOUS STUDENT?

17 A. YES, I DID.

18 Q. AND DID YOU ALSO PUT IN THERE THAT YOU JUST

19 DON'T UNDERSTAND WHAT IT IS THAT'S BLOCKING ERIK FROM
20 LEARNING?
21 A. YES, I DID.
22 Q. TO ANY OF THESE COMMENTS, DID YOU EVER
23 RECEIVE A RESPONSE FROM MRS. MENENDEZ OR MR. MENENDEZ?
24 A. NO, I DID NOT.
25 Q. DID YOU EVER HAVE CONVERSATIONS WITH
26 MRS. MENENDEZ WHERE SHE SEEMED TO LACK UNDERSTANDING
27 ABOUT ERIK'S PERFORMANCE IN THE 9TH GRADE?
28 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

-12447

1 THE COURT: SUSTAINED.
2 Q. BY MR. LEVIN: DID ERIK MENENDEZ HAVE ANY
3 STRENGTHS AS A STUDENT, THAT YOU SAW?
4 A. YES, HE DID. I DON'T THINK HE KNEW THAT,
5 BUT HE DID.
6 CAN I SAY MORE?
7 Q. YOU MAY ANSWER THE QUESTION, CERTAINLY.
8 THE COURT: SHE DID. YOU HAVE TO ASK ANOTHER
9 QUESTION.
10 Q. BY MR. LEVIN: YOU'RE MAKING THIS MORE
11 DIFFICULT.
12 WHERE WERE HIS PARTICULAR STRENGTHS?
13 A. HIS STRENGTHS WERE IN DISCUSSION, IN
14 UNDERSTANDING AND TALKING ABOUT CHARACTER, IN MANY OF

15 THE AREAS WHERE A STUDENT DOES NOT GET A GRADE WRITTEN
16 ON A PIECE OF PAPER FOR WHAT HE'S JUST DONE.
17 SO HE DID NOT GET AS MUCH REINFORCEMENT
18 THAT HE COULD TAKE HOME AND SHOW OFF FOR HIS STRENGTHS,
19 AS I'M AFRAID THAT HIS WEAKNESSES WERE OFTEN THE THINGS
20 THAT RECEIVED THAT IMMEDIATE GRADE.

21 Q. YOU, FROM TIME TO TIME, WOULD REVIEW ERIK'S
22 HOMEWORK?

23 A. YES.

24 Q. AND WOULD SOME OF THAT HOMEWORK INCLUDE
25 WRITTEN PROJECTS?

26 A. YES.

27 Q. DID YOU NOTICE A DIFFERENCE BETWEEN THE
28 QUALITY OF THE WORK THAT WAS TURNED IN TO YOU THAT ERIK

-12446

1 HAD BEEN GIVEN AS HOMEWORK AND WHAT HE HAD DONE IN
2 CLASS?

3 A. YES.

4 Q. AND WAS THAT A MARKED DIFFERENCE?

5 A. IT WAS.

6 Q. COULD YOU EXPLAIN THAT DIFFERENCE, PLEASE.

7 A. WHAT HE ACCOMPLISHED AT HOME WAS MUCH
8 STRONGER THAN WHAT HE ACCOMPLISHED IN CLASS.

9 Q. AND IN WHAT WAYS DID YOU COME TO THAT
10 CONCLUSION?

11 A. THE DIFFERENCE IN THOSE MINOR THINGS THAT I
12 TALKED ABOUT BEFORE, SPELLING AND PUNCTUATION. BUT EVEN
13 THE DIFFERENCE IN VOCABULARY USEAGE AND ORGANIZATION.
14 IT WAS STRONGER WHEN IT WAS DONE AT HOME.

15 Q. IN YOUR OPINION -- WELL, AS AN ENGLISH
16 TEACHER FOR TEACHING 30 YEARS OR SO, DO YOU HAVE AN
17 ABILITY TO DISCERN A STUDENT'S OWN WORK? CAN YOU TELL?

18 A. I THINK I CAN.

19 Q. AND DID YOU THINK THIS WAS ERIK'S WORK?

20 A. QUITE HONESTLY, NO, I DID NOT. BUT --

21 MR. CONN: OBJECTION. NO QUESTION PENDING.

22 THE COURT: SHE HAS ANSWERED THE QUESTION.

23 Q. BY MR. LEVIN: TOWARD THE END OF THE 9TH
24 GRADE, WAS THERE AN INCIDENT THAT OCCURRED WHERE YOU
25 LATER HAD A MEETING WITH MRS. MENENDEZ AND ERIK?

26 A. THERE WAS.

27 Q. AND COULD YOU EXPLAIN, BEFORE YOU PERHAPS
28 TALK ABOUT WHAT HAPPENED AT THE MEETING, WHAT THE

-12445

1 INCIDENT WAS THAT OCCURRED.

2 WAS THERE SOME TYPE OF ASSIGNMENT THAT
3 BEGAN THIS INCIDENT?

4 A. THERE WAS AN ASSIGNMENT. ERIK, AS WELL AS
5 THE OTHER STUDENTS IN THE CLASS, HAD TO GIVE A TWO TO
6 FIVE-MINUTE ORAL REPORT ON SOMETHING THAT CONNECTED WITH

7 THE BOOK THAT THE WHOLE CLASS WAS READING AT THE TIME.

8 THEY WERE TO USE TWO SOURCES, TO TAKE NOTES ON NOTE

9 CARDS, AND TO SPEAK FROM THE NOTE CARDS.

10 AND WHEN ERIK GAVE HIS REPORT, I SAW THAT

11 HE WAS READING DIRECTLY FROM THE NOTE CARDS. HE DID NOT

12 KNOW HOW TO PRONOUNCE SOME OF THE WORDS THAT HE WAS

13 USING. HE DIDN'T SEEM TO UNDERSTAND -- IN THE QUESTION

14 AND ANSWER, HE DIDN'T SEEM TO UNDERSTAND THE -- WHAT HE

15 HAD JUST PRESENTED TO THE GROUP.

16 Q. AND DID THAT CAUSE YOU SOME CONCERN?

17 A. YES. I TALKED TO ERIK AFTER CLASS AND TOLD

18 HIM THAT I THOUGHT HE WAS NOT USING HIS OWN WORDS, AND

19 THAT THAT WAS NOT THE ASSIGNMENT; THAT HE WAS NOT

20 FULFILLING THE ASSIGNMENT.

21 Q. AND DID YOU DO SOME FOLLOW-UP INVESTIGATION

22 ON YOUR OWN?

23 A. YES.

24 Q. WHAT DID YOU DO?

25 A. I TOOK THE NOTE CARDS AND I WENT TO THE

26 LIBRARY, AND THE FIRST SOURCE THAT I LOOKED AT AS A

27 POSSIBILITY WAS THE WORLD BOOK, AND IT WAS ERIK'S

28 REPORT. IT WAS WORD FOR WORD FROM THE WORLD BOOK.

-12444

1 SO I WENT TO THE HEAD OF THE UPPER SCHOOL

2 AND EXPLAINED THE INCIDENT TO HIM.

3 Q. DID YOU XEROX THAT COPY OF THE WORLD BOOK?

4 A. YES, I DID.

5 Q. AND FROM YOUR MEETING WITH THE HEAD OF THE
6 SCHOOL, WAS THERE A MEETING SET UP WITH MRS. MENENDEZ?

7 A. YES.

8 Q. AND DO YOU HAVE A VIVID RECOLLECTION OF
9 WHAT OCCURRED AT THAT MEETING?

10 A. I DO.

11 Q. AND WHO WAS PRESENT AT THAT MEETING?

12 A. ERIK WAS THERE, I WAS THERE, THE HEAD OF
13 THE UPPER SCHOOL WAS THERE, AND MRS. MENENDEZ WAS THERE.

14 Q. AND WHAT WAS THE PURPOSE, OR THE INTENDED
15 PURPOSE, OF THAT MEETING?

16 A. I HOPED TO SHOW ERIK ESPECIALLY THAT TAKING
17 A SHORT-CUT WAS NOT THE RIGHT WAY TO GO ABOUT AN
18 ASSIGNMENT; THAT HE WASN'T GIVING HIMSELF A CHANCE TO
19 KNOW WHAT HE REALLY COULD DO AND TO LEARN, AND THAT THE
20 PROCESS WAS WHAT WAS IMPORTANT, NOT JUST GETTING THE
21 ASSIGNMENT FINISHED. AND THAT EVEN THOUGH HE HAD HAD A
22 HISTORY OF NOT BEING ABLE TO FOLLOW DIRECTIONS, THIS
23 CROSSED A LINE, AND HE WAS NOT TO DO IT AGAIN.

24 Q. NOW, AFTER YOU SAT DOWN AT THAT MEETING,
25 WHO WAS THE FIRST PERSON THAT SPOKE?

26 A. MRS. MENENDEZ.

27 Q. AND WHAT WAS IT THAT SHE SAID?

28 A. SHE WAS -- SHE SAID THAT I HAD BEEN PICKING

1 ON ERIK ALL YEAR; THAT I WAS ALWAYS ON HIS CASE; THAT HE
2 WOULD NEVER DO SOMETHING LIKE THAT; THAT I WAS JUST
3 GIVING HIM A HARD TIME, AND SHE HAD HAD ENOUGH.

4 Q. DID SHE MAKE IT CLEAR TO YOU THAT SHE
5 DIDN'T BELIEVE YOU WHEN YOU REPORTED THAT ERIK HAD
6 COPIED THE REPORT FROM THE WORLD BOOK?

7 A. YES, SHE DID.

8 Q. AND WHAT HAPPENED AFTER SHE SAID THAT TO
9 YOU?

10 A. MR. BING, THE HEAD OF THE UPPER SCHOOL,
11 SAID: "WAIT. LET'S START THIS MEETING AGAIN. SHOW
12 MRS. MENENDEZ WHAT YOU HAVE SHOWN ME."

13 AND SO I SHOWED HER THE XEROX AND THE NOTE
14 CARDS.

15 Q. AND DID THAT THEN CAUSE MRS. MENENDEZ TO
16 REACT IN SOMEWHAT OF A DIFFERENT WAY?

17 A. YES.

18 Q. AFTER SEEING THE NOTE CARDS AND THE XEROX,
19 WHAT DID SHE THEN SAY OR DO?

20 A. WELL, SHE CONTINUED TO BE VERY ANGRY, BUT
21 THE ANGER WAS DIRECTED AT ERIK. SHE EXPLODED AND SAID:
22 "HOW COULD YOU DO THIS TO THE FAMILY NAME? HOW COULD
23 YOU LOWER THE FAMILY HONOR?"

24 AND SHE KEPT GOING ON ABOUT THE FAMILY, AND
25 I -- I FOUND MYSELF SWITCHING TO TRY TO DIRECT THE
26 CONVERSATION TO THIS WAS A MISTAKE. IT'S NOT THAT HE'S
27 A TERRIBLE PERSON. HE'S MADE A MISTAKE. HE CAN LEARN

28 FROM IT. BUT SHE WOULD NOT LET UP.

-12442

1 Q. WHEN YOU SAY SHE WOULDN'T LET UP, SHE
2 WOULDN'T LET UP ON WHO?

3 A. ON ERIK.

4 Q. AND WHEN SHE SPOKE TO ERIK AND IN THE WAY
5 SHE DID, DID THAT CAUSE YOU TO CHANGE YOUR FOCUS AS TO
6 WHAT THE EXPERIENCE, OR THE LEARNING EXPERIENCE, FOR
7 ERIK SHOULD BE?

8 A. VERY MUCH SO.

9 Q. AND THEN YOU EXPLAINED TO ERIK ABOUT WHAT
10 HE HAD DONE?

11 A. AND TRIED TO MOVE THE -- I WANTED ERIK TO
12 HAVE A VOICE IN THIS, AND SO BOTH MR. BING AND I
13 DIRECTLY TALKED TO ERIK, ASKING HIM IF HE UNDERSTOOD WHY
14 THIS WAS AN IMPORTANT ISSUE, AND TRIED TO GET HIM TO
15 RESPOND TO US, AND WE JUST SORT OF TRIED TO IGNORE
16 MRS. MENENDEZ AT THIS POINT.

17 Q. WAS THAT POSSIBLE, TO IGNORE MRS. MENENDEZ?

18 A. IT WAS VERY DIFFICULT.

19 Q. NOW, IN THE GRAND SCHEME OF THINGS, WHAT
20 ERIK HAD DONE IN PLAGIARIZING THIS REPORT, IS THAT A
21 SERIOUS OFFENSE IN TERMS OF AN ENGLISH ASSIGNMENT?

22 A. PLAGERISM IS A MAJOR ISSUE, BUT THIS WAS A
23 MINOR ASSIGNMENT, AND BECAUSE OF HIS HISTORY OF HAVING

24 TROUBLE FOLLOWING DIRECTIONS, IT WAS A JUDGMENT CALL ON
25 MY PART.
26 I TOOK THE CASE TO THE HEAD OF THE
27 MIDDLE -- UPPER SCHOOL RATHER THAN TAKING IT TO A
28 JUDICIARY HEARING. WHAT I WANTED TO HAVE HAPPEN WAS FOR

-12441

1 THE -- THE ACT ITSELF TO BE THE FOCUS, RATHER THAN ON
2 THE -- ANY KIND OF FEAR OF CONSEQUENCES OR THE EXPOSURE.
3 I WANTED TO HAVE HIM LOOK AT WHAT HE'D DONE AND NOT DO
4 IT AGAIN.

5 Q. WHAT WAS ERIK REQUIRED TO DO AS A RESULT OF
6 THIS?

7 A. HE HAD TO CONTINUE WITH THE PROCESS. HE
8 HAD TO WRITE THE PAPER AGAIN, WRITE -- DO THE TWO
9 SOURCES, PREPARE NOTE CARDS. AND THE ONLY VARIATION WAS
10 THAT HE GAVE THE REPORT TO ME RATHER THAN TO THE CLASS,
11 BECAUSE THE CLASS HAD MOVED ON, SO THAT HE FULFILLED HIS
12 RESPONSIBILITIES AS A STUDENT, LEARNED THE PROCESS SO HE
13 HE COULD USE IT LATER ON.

14 Q. AND DID ERIK DO IT?

15 A. HE DID. HE DID A VERY GOOD JOB.

16 Q. I TAKE IT OVER THE YEARS YOU'VE HAD CONTACT
17 WITH THOUSANDS OF STUDENTS LIKE ERIK, HAVE YOU NOT?

18 A. I'VE HAD CONTACT WITH THOUSANDS OF
19 STUDENTS, NOT -- NOT THOUSANDS LIKE ERIK.

20 Q. I MEAN OF ERIK'S AGE?
21 A. YES.
22 Q. POSITION, THINGS LIKE THAT?
23 A. YES.
24 Q. HAVE YOU EVER, MS. HUNTER, HAD A STUDENT AS
25 ANXIOUS, AS NERVOUS, AS ERIK MENENDEZ, THAT CRIED IN
26 CLASS AND DID THE KIND OF THINGS THAT YOU TESTIFIED HERE
27 TO THIS JURY, EVER IN YOUR CAREER?
28 A. NO.

-12440

1 MR. LEVIN: THANK YOU.
2 I HAVE NOTHING FURTHER.
3 THE COURT: EXAMINATION ON BEHALF OF LYLE
4 MENENDEZ?
5 MR. GESSLER: NO, YOUR HONOR.
6 THE COURT: CROSS-EXAMINATION?
7 MR. CONN: YES.
8
9 CROSS-EXAMINATION
10 BY MR. CONN:
11 Q. NOW, WHEN ERIK MENENDEZ WAS FIRST
12 CONFRONTED ABOUT HIS PLAGERISM, HE LIED ABOUT IT; IS
13 THAT CORRECT?
14 A. THAT'S RIGHT.
15 Q. AND HOW DID THAT COME ABOUT THAT HE LIED

16 ABOUT IT?

17 A. I MET HIM IN THE HALL AND TOLD HIM MY
18 SUSPICIONS, AND HE IS NOT, IN MY OPINION, A VERY GOOD
19 LIAR. HE SAID: "I DIDN'T DO IT," AND HIS FACE TENSED
20 UP.

21 Q. AND AFTER HE SAID HE DIDN'T DO IT, DID YOU
22 HAVE FURTHER DISCUSSIONS WITH HIM AT THAT TIME?

23 A. I SAID I WAS GOING TO FOLLOW UP ON IT, AND
24 THAT I WOULD TALK TO HIM ABOUT IT AGAIN LATER.

25 Q. AND THEN DID YOU IN FACT SPEAK TO HIM ABOUT
26 IT FURTHER BEFORE YOU SET UP AN APPOINTMENT WITH KITTY
27 MENENDEZ?

28 A. I TOLD HIM THAT I HAD FOUND A SOURCE IN THE

-12439

1 WORLD BOOK, AND HE DID NOT SAY ANYTHING.

2 Q. SO AFTER YOU -- WHEN YOU FIRST CONFRONTED
3 HIM WITH THE PLAGERISM, WAS THAT BEFORE OR AFTER YOU HAD
4 FOUND THAT SOURCE IN THE WORLD BOOK?

5 A. IT WAS BEFORE.

6 Q. OKAY. AND THEN YOU WENT BACK AND YOU
7 CONFRONTED HIM A SECOND TIME AFTER YOU HAD FOUND THE
8 SOURCE?

9 A. THAT'S CORRECT.

10 Q. AND YOU INDICATED TO HIM AT THAT TIME THAT
11 YOU WERE NOW ABLE TO PROVE THAT HE HAD COMMITTED

12 PLAGERISM; IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND AT THAT POINT, WHAT WAS HIS RESPONSE?

15 A. HE HAD NO RESPONSE.

16 Q. HE SAID NOTHING?

17 A. HE SAID NOTHING.

18 Q. DID HE JUST WALK AWAY?

19 A. NO, HE JUST STOOD THERE AND -- UNTIL I TOLD
20 HIM THAT HE HAD TO GO TO HIS NEXT CLASS AND THAT WE
21 WOULD BE TALKING FURTHER ABOUT IT.

22 Q. SO, AGAIN HE REFUSED TO ADMIT HIS GUILT IN
23 THAT INCIDENT?

24 MS. ABRAMSON: OBJECTION, YOUR HONOR.

25 THE COURT: REPHRASE THE QUESTION.

26 Q. BY MR. CONN: HE REFUSED TO ACCEPT
27 RESPONSIBILITY FOR HIS ACTIONS AT THAT TIME?

28 MR. LEVIN: OBJECTION, YOUR HONOR. CALLS FOR

-12438

1 SPECULATION.

2 THE COURT: REPHRASE THE QUESTION.

3 Q. BY MR. CONN: HE REFUSED TO ADMIT THAT HE
4 HAD COMMITTED PLAGERISM?

5 MR. LEVIN: OBJECTION. SAME OBJECTION, YOUR
6 HONOR.

7 THE COURT: DID HE ADMIT IT?

8 THE WITNESS: HE DID NOT RESPOND.

9 Q. BY MR. CONN: OKAY.

10 SO THEN AT THAT POINT DID YOU SET UP AN
11 INTERVIEW WITH KITTY MENENDEZ?

12 A. YES. I DON'T REMEMBER HOW IT WAS SET UP,
13 BUT AT THAT POINT I WENT TO MR. BING, THE HEAD OF THE
14 UPPER SCHOOL, AND --

15 Q. AND DID YOU -- I'M SORRY. GO AHEAD.

16 A. AND THEN THE NEXT THING THAT I REMEMBER IN
17 CONNECTION WITH THIS IS THAT THERE WAS AN INTERVIEW SET
18 UP.

19 Q. OKAY. SO YOU DON'T KNOW WHETHER KITTY
20 MENENDEZ WAS GIVEN ANY INFORMATION REGARDING THE
21 PLAGERISM BEFORE SHE ATTENDED THE MEETING?

22 A. SHE WOULD NOT BE JUST CALLED IN TO A
23 MEETING. SHE WOULD KNOW THE TOPIC OF THE MEETING.

24 Q. IN OTHER WORDS, THAT IT WAS ABOUT
25 PLAGERISM?

26 A. YES.

27 Q. AND YET WHEN SHE ARRIVED AT THE MEETING, IT
28 WAS YOUR UNDERSTANDING THAT SHE WAS DENYING THAT THE

-12437

1 INCIDENT COULD HAVE TAKEN PLACE; IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. SO DID YOU GET THE IMPRESSION FROM THAT

4 MEETING THAT ERIK MENENDEZ HAD EVEN ADMITTED TO HIS

5 MOTHER THAT HE HAD PLAGIARIZED?

6 MR. LEVIN: OBJECTION. CALLS FOR SPECULATION.

7 IT'S ALSO IRRELEVANT.

8 THE COURT: IT DOES CALL FOR A CONCLUSION ON THE

9 PART OF THE WITNESS.

10 Q. BY MR. CONN: WELL, AT THE MEETING DID YOU

11 HEAR ERIK MENENDEZ -- WHEN YOU FIRST EXPLAINED THE

12 INCIDENT TO KITTY MENENDEZ -- DID ERIK MENENDEZ AT THAT

13 POINT IN TIME SAY: "GEE, YES. I DID IN FACT

14 PLAGIARIZE"?

15 A. MRS. MENENDEZ DID ALL THE TALKING. ERIK

16 DID NOT SAY ANYTHING.

17 Q. AND SHE SAID THAT THIS COULD NOT HAVE

18 HAPPENED. SO IT APPEARED TO YOU SHE WAS IN THE DARK AS

19 TO WHETHER OR NOT PLAGERISM HAD TAKEN PLACE; IS THAT

20 CORRECT?

21 MR. LEVIN: OBJECTION. CALLS FOR A CONCLUSION

22 AND SPECULATION.

23 THE COURT: SUSTAINED.

24 Q. BY MR. CONN: SHE DID SAY THAT IT WAS HER

25 BELIEF THAT THIS COULD NOT HAVE HAPPENED?

26 A. SHE SAID ERIK WOULD NOT DO SOMETHING LIKE

27 THIS.

28 Q. AND THEN THAT'S WHEN YOU CONFRONTED HER

1 WITH THE EVIDENCE AGAINST ERIK MENENDEZ?

2 A. THAT'S WHEN MR. BING TOLD ME TO GIVE HER
3 THE MATERIAL.

4 Q. OKAY. AND THEN ONCE KITTY MENENDEZ FINALLY
5 SAW THE EVIDENCE AGAINST HER SON, HOW DID SHE RESPOND TO
6 THAT?

7 A. THAT'S WHEN SHE KEPT TALKING ABOUT THE --
8 NOT "OUR FAMILY NAME," OR "OUR FAMILY HONOR," BUT "THE
9 FAMILY NAME. THE FAMILY HONOR."

10 Q. AND THEN YOU SAID THAT WHEN YOU FIRST
11 CONFRONTED HER, SHE ACCUSED YOU OF GIVING HER SON A HARD
12 TIME; IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND DID YOU ASK HER WHAT WAS HER SOURCE OF
15 INFORMATION FOR THE ALLEGATION THAT YOU HAD BEEN GIVING
16 HER SON A HARD TIME?

17 A. WHAT I ASSUMED IT WAS, WAS THAT IT WAS ALL
18 OF THE COMMENTS AND INTERIMS THAT I HAD SENT HOME, WHICH
19 SHE HAD -- SHE HAD EXPERIENCE WITH THE DAY SCHOOL. SHE
20 KNEW THAT INTERIMS WERE NOT USUAL.

21 Q. OKAY. SO SHE NEVER EXPLAINED WHY SHE WAS
22 ACCUSING YOU OF GIVING HER SON A HARD TIME?

23 A. NO.

24 Q. NOW, DID YOU SAY THAT WHEN YOU SENT HER
25 THE -- THAT YOU DID NOT MEET WITH MRS. MENENDEZ ON A
26 REGULAR BASIS?

27 A. NO, I DID NOT.

28 Q. DID YOU PREVIOUSLY GIVE A STATEMENT IN

1 WHICH YOU SAID THAT YOU HAD CONFERENCES ALMOST EVERY
2 OTHER WEEK WITH KITTY MENENDEZ?

3 A. NOT WITH KITTY MENENDEZ. THAT WAS WITH --
4 NOT WITH MRS. MENENDEZ. I HAD CONFERENCES EVERY OTHER
5 WEEK WITH ERIK. I MEET ALL MY STUDENTS FOR 15 MINUTES
6 OF ONE-ON-ONE -- THEY'RE CALLED CONFERENCES. THEY'RE
7 LIKE TUTORING OR SPECIAL SESSIONS, AND THAT WAS PART OF
8 THE CLASS. THAT'S WHY THE CLASS ONLY MEETS FOUR DAYS A
9 WEEK.

10 Q. AND WHAT GRADE DID YOU FINALLY GIVE ERIK
11 MENENDEZ FOR HIS PERFORMANCE IN THAT CLASS?

12 A. I BELIEVE HE EARNED THREES AND FOURS FROM
13 ME, WHICH IS NOT TERRIBLE, BUT CLEARLY NOT UP TO ERIK'S
14 POTENTIAL. THERE WERE SOME DAYS WHEN HE WAS A VERY GOOD
15 STUDENT.

16 Q. NOW, SO HOW DOES THAT GRADING SYSTEM WORK
17 THAT YOU GAVE HIM THREES AND FOURS?

18 A. LET'S SEE. THE GRADING SCALE AT PRINCETON
19 DAY SCHOOL GOES FROM ONE, WHICH IS OUTSTANDING, DOWN TO
20 A SIX, WHICH IS THE STUDENT DOESN'T COME TO CLASS OR
21 TURN ANYTHING IN. AND THREE IS ACCEPTABLE. IT USUALLY
22 INDICATES STRENGTHS IN SOME AREAS, WEAKNESSES IN OTHERS.
23 FOUR IS A FLAGRANT WEAKNESS IN A PARTICULAR AREA.

24 Q. SO DID YOU GIVE HIM AN OVERALL GRADE FOR
25 THE ENTIRE YEARS' PERFORMANCE?

26 A. YES.
27 Q. AND DO YOU REMEMBER WHAT THAT WAS?
28 A. I'M NOT SURE. IT WAS EITHER A THREE OR A

-12434

1 FOUR. HE WAS A DIFFICULT PERSON TO ASSESS AS FAR AS
2 GRADING, BECAUSE HIS PERFORMANCE WAS VERY ERRATIC.

3 Q. AND WHAT DO YOU MEAN BY "ERRATIC"?

4 A. SOMETIMES IT WAS VERY GOOD, AND SOMETIMES
5 IT WAS NOT VERY GOOD.

6 Q. AND WOULD THAT BE IN REGARD TO BOTH HIS
7 HOMEWORK AND HIS IN-CLASS PERFORMANCE?

8 A. THAT'S CORRECT.

9 Q. AND WHAT DID YOU FIND LACKING IN HIS
10 IN-CLASS PERFORMANCE?

11 A. THE IN-CLASS PERFORMANCE WAS IN-CLASS
12 WRITING AND QUIZZES, BUT ALSO DISCUSSION. A VERY LARGE
13 PART OF THE ENGLISH CLASS IS DISCUSSION. HIS DISCUSSION
14 SKILLS WERE VERY GOOD, AND THE QUALITY OF WHAT HE
15 PRESENTED WAS VERY GOOD MOST OF THE TIME. SOMETIMES HE
16 HADN'T PREPARED.

17 Q. AND WHAT DID YOU FIND LACKING IN HIS
18 HOMEWORK?

19 A. SOMETIMES NOTHING. OTHER TIMES THE
20 ORGANIZATION AND THE WRITING SKILLS. THE BIGGEST LACK
21 THAT I SAW IN HIS HOMEWORK WAS HIS PREPARATION.

22 SOMETIMES HE EITHER HAD NOT DONE THE READING, OR HE HAD
23 NOT DONE THE READING CAREFULLY.

24 Q. AND WHEN YOU WOULD CONFRONT HIM ABOUT HIS
25 FAILURE TO DO HIS HOMEWORK, HOW WOULD HE RESPOND TO
26 THAT?

27 A. WOULD YOU REPEAT THAT?

28 Q. YES. WHEN YOU WOULD CONFRONT HIM IN REGARD

-12433

1 TO HIS FAILURE TO DO HIS HOMEWORK, HOW WOULD HE RESPOND
2 TO THAT?

3 MR. LEVIN: OBJECTION, YOUR HONOR. MISSTATES THE
4 TESTIMONY. HE NEVER FAILED TO DO HIS HOMEWORK.

5 THE COURT: REPHRASE THE QUESTION.

6 Q. BY MR. CONN: DID YOU SAY HE DIDN'T DO THE
7 READING SOMETIMES?

8 A. SOMETIMES HE DID NOT SEEM TO HAVE DONE THE
9 READING. BUT IT'S VERY HARD -- I BELIEVE HE ALSO HAS
10 SOME SORT OF LEARNING DISABILITY THAT INTERFERES WITH
11 HIS READING, SO THAT HE CAN HAVE READ THE WORDS AND NOT
12 TAKEN IN THE CONTEXT OF WHAT HE'S READ.

13 SO ONE OF THE THINGS THAT WAS FRUSTRATING
14 FOR ME IN DEALING WITH ERIK IS THAT I COULDN'T FIND WHAT
15 WAS WAS GETTING IN HIS WAY. SO I NEVER KNEW WHY HIS
16 PERFORMANCE WAS WHAT IT WAS.

17 Q. DID YOU FEEL HE WAS PERHAPS JUST

18 MALINGERING?

19 A. NO, I DIDN'T THINK THAT. I HAVE SEEN THAT,
20 BUT NOT ERIK.

21 Q. AND YOU FOUND THAT -- DID HE SOMETIMES MISS
22 CLASSES OR ARRIVE LATE FOR CLASSES?

23 A. HE SOMETIMES ARRIVED LATE TO CLASSES FOR
24 REASONS THAT WERE NOT ACCEPTABLE. HE SOMETIMES MISSED
25 CLASSES BECAUSE OF SPORTS COMMITMENTS.

26 Q. ON THE OCCASIONS THAT HE WOULD MISS -- BE
27 LATE FOR UNACCEPTABLE REASONS, WHAT REASONS DID YOU FIND
28 TO BELIEVE UNACCEPTABLE?

-12432

1 A. HE FORGOT THAT IT WAS IN THE COMPUTER ROOM.
2 HE HAD LOST TRACK OF TIME. HE HAD GONE BACK TO HIS
3 LOCKER TO GET HIS BOOK. HE WAS NOT ORGANIZED.

4 Q. THESE WERE EXCUSES THAT HE WOULD GIVE YOU?

5 A. THESE WERE THE REASONS HE GAVE ME.

6 Q. YES. AND YOU ACCEPTED THOSE REASONS AS
7 TRUTHFUL?

8 A. BECAUSE I HAD SEEN THE PATTERNS IN HIS
9 OTHER WORK. THERE WERE TIMES WHEN THINGS WERE IN HIS
10 NOTEBOOK, BUT HE COULDN'T FIND IT, BECAUSE IT WASN'T IN
11 THE LOGICAL SECTION OF HIS NOTEBOOK WHERE YOU'D EXPECT
12 IT.

13 SO I DIDN'T THINK HE WAS -- HE WAS NOT A

14 DEVIOUS STUDENT. HE WAS NOT SOMEONE WHO TRIED TO GET
15 OUT OF WORK. HE WAS NOT SOMEONE WHO WOULD -- IN THE
16 SMALL GROUP WORK HE DID HIS PART, AND THERE ARE STUDENTS
17 WHO LET THE REST OF THE GROUP CARRY THE LOAD.

18 Q. WHEN HE WOULD MISS HIS CLASSES, WOULD HE
19 BRING SOME PROOF AS TO THE FACT THAT HE WAS ENGAGED IN
20 SPORTS AT THE TIME OF THE CLASSES?

21 A. THERE IS A LIST. WE KNOW.

22 Q. AND DID YOU SAY THAT HE FAILED TO FOLLOW
23 DIRECTIONS?

24 A. YES.

25 Q. WHAT TYPE OF DIRECTIONS DID HE FAIL TO
26 FOLLOW?

27 A. HE WOULD -- IF HE WAS SUPPOSED TO BRING IN
28 HIS ESSAY -- IF HE WAS SUPPOSED TO BRING IN MATERIAL

-12431

1 FROM TWO OR THREE BOOKS, HE WOULD NOT MEET THE NUMBER OF
2 BOOKS.

3 SOMETIMES IF HE WAS SUPPOSED TO BE WRITING
4 A PERSONAL NARRATIVE, HE WOULD WRITE A SORT OF
5 ANALYTICAL ESSAY INSTEAD, AND IT DID NOT SEEM -- I
6 THOUGHT AT FIRST THAT THERE WAS AN AUDITORY PROCESSING
7 PROBLEM. SO FOR ERIK'S CLASS I WOULD HAND THE WORK --
8 THE HOMEWORK OUT ON A TYPED SHEET OF PAPER, AND THEN WE
9 WOULD GO OVER IT ORALLY ALSO, SO THAT I COULD SEE THAT

10 HE AT LEAST HAD A CHANCE, AND OTHERS IN THE CLASS HAD A
11 CHANCE, TO RECEIVE THE INFORMATION FROM SEVERAL
12 MODALITIES. IT DIDN'T SEEM TO MATTER.

13 Q. AND AFTER YOU -- DO YOU REMEMBER WHEN IN
14 THE YEAR IT WAS THAT YOU CAUGHT HIM IN THE PLAGERISM
15 INCIDENT?

16 A. YES. IT WAS DURING THE LAST, PROBABLY,
17 THREE WEEKS OF SCHOOL.

18 Q. AND DO YOU REMEMBER IF, AFTER THAT, HE
19 STILL CONTINUED TO BRING HOMEWORK IN THAT SEEMED TO BE
20 ABOVE HIS LEVEL?

21 A. I AM SORRY. I DON'T RECALL. AT THE END --
22 THE LAST THREE WEEKS OF SCHOOL ARE VERY HECTIC, AND I AM
23 NOT -- I COULDN'T SAY WITH CERTAINTY IF WE HAD ANY MAJOR
24 PAPERS DUE AFTER THAT TIME. THERE ARE ALL THESE
25 REHEARSALS AND POETRY CONTESTS. IT'S JUST UNBELIEVABLY
26 HECTIC FOR ANY KIND OF FOLLOW-UP ON REGULAR ASSIGNMENTS.
27 SO I'M NOT SURE ABOUT THAT.

28 Q. DO YOU REMEMBER WHETHER, AFTER YOU CAUGHT

-12430

1 HIM IN THE PLAGERISM INCIDENT, YOU COMPARED ANY OF HIS
2 HOMEWORK WITH THE HOMEWORK OF OTHER STUDENTS TO SEE IF
3 HE WAS COPYING FROM OTHER STUDENTS?

4 A. THAT DIDN'T COME UP.

5 Q. DO YOU REMEMBER IF, PRIOR TO THE PLAGERISM

6 INCIDENT, YOU COMPARED HIS HOMEWORK WITH THE HOMEWORK OF
7 OTHER STUDENTS TO SEE IF HE WAS COPYING FROM OTHER
8 STUDENTS?

9 A. MOST OF THE ASSIGNMENTS ARE NOT THAT
10 GENERAL, SO THAT DIRECT COPYING IN MY CLASS -- DIRECT
11 COPYING FROM ANOTHER STUDENT WOULD POP OUT AT YOU.

12 MR. CONN: THANK YOU.

13 I HAVE NO FURTHER QUESTIONS.

14 THE COURT: ANYTHING ELSE?

15

16 REDIRECT EXAMINATION

17 BY MR. LEVIN:

18 Q. YOU SUSPECTED THAT KITTY MENENDEZ WAS DOING
19 ERIK MENENDEZ' HOMEWORK?

20 MR. CONN: OBJECTION. SPECULATION.

21 THE COURT: SUSTAINED.

22 Q. BY MR. LEVIN: DID YOU EVER SAY ANYTHING TO
23 KITTY MENENDEZ OR ERIK MENENDEZ ABOUT THE FACT THAT YOU
24 THOUGHT HIS HOMEWORK MIGHT HAVE BEEN PREPARED BY SOMEONE
25 ELSE OUTSIDE OF CLASS?

26 A. NO, I DID NOT DIRECTLY SAY THAT.

27 Q. WAS THERE A REASON FOR THAT?

28 WERE YOU INTIMIDATED BY MRS. MENENDEZ?

-12429

1 A. I WAS.

2 Q. WERE YOU AFRAID OF HER?

3 A. I WASN'T AFRAID. I WAS LEERY OF HER.

4 Q. WERE YOU AFRAID THAT TALKING TO

5 MRS. MENENDEZ ABOUT ERIK'S PERFORMANCE MIGHT SOMEHOW

6 WORK TO THE DETRIMENT OF ERIK?

7 A. I WAS CONCERNED THAT THAT MIGHT HAPPEN,

8 BECAUSE MRS. MENENDEZ, FROM MY DEALING WITH HER, ONLY

9 HEARD WHAT SHE WANTED TO HEAR. THERE WAS, FOR EXAMPLE,

10 EVIDENCE IN HIS FILE THAT THEY KNEW --

11 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

12 THE COURT: SUSTAINED. IT'S ALSO NARRATIVE AT

13 THIS POINT.

14 Q. BY MR. LEVIN: DID ERIK EVER COMPLAIN TO

15 YOU THAT HE THOUGHT THAT YOU WERE UNFAIR TO HIM, OR THAT

16 HE THOUGHT YOU WERE PICKING ON HIM?

17 A. NO, ERIK NEVER DID.

18 Q. YOU GOT ALONG WITH HIM, DIDN'T YOU?

19 A. YES.

20 Q. YOU LIKED HIM?

21 A. YES. I -- YES. I LIKE MY STUDENTS.

22 Q. AND AS HIS TEACHER, MAKING THE OBSERVATIONS

23 ABOUT HIM THAT YOU DID, DID YOU BELIEVE THAT THERE WERE

24 MORE PROBLEMS WITH ERIK'S PERFORMANCE IN SCHOOL THAN HIS

25 LEARNING DISABILITIES?

26 A. I COULD NOT FIND THE REASON FOR HIS

27 DOING -- PERFORMING THE WAY HE WAS WITH JUST THOSE

28 LEARNING DISABILITIES.

1 MR. LEVIN: THANK YOU.

2 I HAVE NOTHING FURTHER.

3 THE COURT: ANYTHING ELSE?

4 MR. CONN: NOTHING FURTHER.

5 THE COURT: OKAY. THANK YOU, MA'AM. YOU MAY

6 STEP DOWN. YOU'RE EXCUSED.

7 YOUR NEXT WITNESS.

8 MS. ABRAMSON: CALL BRIAN ALAN ANDERSEN, JR.

9 THE COURT: OKAY.

10

11 BRIAN ANDERSEN, JR.,

12 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND

13 TESTIFIED AS FOLLOWS:

14 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE

15 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE

16 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND

17 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

18 THE WITNESS: I DO.

19 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR

20 NAME FOR THE RECORD.

21 THE WITNESS: BRIAN ALAN ANDERSON, JR. ANDERSEN,

22 A-N-D-E-R-S-E-N.

23

24 DIRECT EXAMINATION

25 BY MS. ABRAMSON:

26 Q. MR. ANDERSEN, YOU PREVIOUSLY TESTIFIED IN

27 THIS TRIAL CONCERNING THE VISITS THAT YOU MADE TO YOUR
28 AUNT MARY LOUISE MENENDEZ' HOME OVER THE COURSE OF THREE

-12427

1 DIFFERENT SUMMERS.

2 DO YOU REMEMBER?

3 A. CORRECT.

4 Q. AND I WANT TO FOCUS YOUR ATTENTION ON THE
5 VISITS THAT YOU MADE AFTER ERIK MENENDEZ WAS BORN WHEN
6 THE FAMILY WAS LIVING, DURING YOUR VISITS, IN MONSEY,
7 NEW YORK.

8 A. OKAY.

9 Q. NOW, YOU RECALL A TIME WHEN ERIK MENENDEZ
10 WAS INJURED IN THE COURSE OF BEING ASSISTED BY HIS
11 FATHER IN LEARNING TO RIDE A BICYCLE?

12 A. CORRECT.

13 Q. AND WHICH -- JUST TO REMIND YOU, THE TWO
14 VISITS THAT YOU MADE TO THE MONSEY HOUSE, ONE WAS THE
15 SUMMER OF '75 AND THE OTHER THE SUMMER OF '77; IS THAT
16 RIGHT?

17 A. CORRECT.

18 Q. AND DURING WHICH VISIT WAS THIS OCCASION
19 WHEN ERIK MENENDEZ WAS INJURED?

20 A. '77.

21 Q. AND AT THAT TIME HE WAS SIX AND A HALF?

22 A. CORRECT.

23 Q. AND DURING THAT SUMMER WHEN HE WAS SIX AND
24 A HALF, COULD YOU TELL THAT HE DID NOT KNOW HOW TO RIDE
25 A TWO-WHEELER WITHOUT TRAINING WHEELS?
26 A. YES, I DID.
27 Q. DID YOU KNOW THAT -- AT WHAT AGE LYLE
28 MENENDEZ HAD MASTERED THAT PARTICULAR TASK?

-12426

1 A. NO, I DO NOT.
2 Q. AND DID YOU SEE SOMETHING -- STRIKE THAT.
3 DID YOU SEE MR. MENENDEZ AND ERIK AND A
4 BICYCLE AND ACTIVITY BETWEEN THEM?
5 A. YES, I DID.
6 Q. AND ON HOW MANY OCCASIONS DID YOU OBSERVE A
7 SIMILAR ACTIVITY WITH MR. MENENDEZ, ERIK AND A BICYCLE?
8 A. THREE.
9 Q. AND WERE THESE THREE OCCASIONS ALL WITHIN
10 THAT SAME SUMMER?
11 A. YES.
12 Q. WERE THEY ALL WITHIN THE SAME MONTH?
13 A. YES.
14 Q. WERE THEY ALL WITHIN THE SAME WEEK?
15 A. YES.
16 Q. AND WOULD YOU DESCRIBE -- FIRST OF ALL, I'D
17 LIKE TO SHOW YOU A PHOTOGRAPH THAT'S BEEN MARKED 361 FOR
18 IDENTIFICATION ONLY UP TO THIS POINT, AND ASK YOU IF YOU

19 RECOGNIZE WHAT THE PHOTOGRAPH DEPICTS?

20 A. THAT'S THE STREET THEY LIVED ON. IT'S THE
21 CUL-DE-SAC TO THE RIGHT OF THE HOUSE.

22 Q. THE STREET THAT THEY LIVED ON IN MONSEY?

23 A. YES.

24 Q. AND ON EITHER END OF THIS STREET -- LET'S
25 PRETEND I'M THE HOUSE.

26 A. OKAY.

27 Q. ON EITHER END OF THIS STREET, DOES THE
28 STREET END IN A CIRCULAR CUL-DE-SAC?

-12425

1 A. CORRECT.

2 Q. AND THE ACCESS TO THE STREET WHERE THE
3 HOUSE WAS ON WAS ANOTHER STREET THAT RAN ALONGSIDE THEIR
4 HOUSE?

5 A. CORRECT, YES. THEY LIVED ON THE CORNER.

6 Q. SO IT WAS LIKE A T-INTERSECTION?

7 A. RIGHT.

8 Q. AND THERE WAS A CUL-DE-SAC THIS WAY AND A
9 CUL-DE-SAC THAT WAY (INDICATING)?

10 A. CORRECT.

11 Q. WAS ONE OF THESE CUL-DE-SACS DOWNHILL?

12 A. CORRECT.

13 Q. AND DID YOU OBSERVE MR. MENENDEZ DOING
14 SOMETHING WITH ERIK AND THE BICYCLE ON THE DOWNHILL

15 CUL-DE-SAC?

16 A. PUSHING HIM ALONG. HE WOULD PUT HIM
17 PHYSICALLY ON THE BIKE, AND THEN WOULD JUST GIVE HIM,
18 I'D SAY, MAYBE MORE THAN 20 FEET OF A PUSH, AND THEN
19 HE'D BE OFF, AND HE'D JUST GO DOWN THE STREET WOBBLING
20 AND FALL DOWN.

21 Q. JUST WAIT ONE SECOND.

22 YOU SAW MR. MENENDEZ PUSH THE BICYCLE WITH
23 ERIK ON IT?

24 A. CORRECT.

25 Q. AND HE PUSHED IT ON A DOWNHILL STREET?

26 A. CORRECT.

27 Q. INTO A CUL-DE-SAC?

28 A. CORRECT.

-12424

1 Q. AND WHAT WAS ERIK'S DEMEANOR WHEN HIS
2 FATHER WAS DOING THIS?

3 A. OH, HE HAD -- HE HAD FEAR ON HIS FACE. HE
4 WAS NOT A HAPPY CAMPER.

5 Q. DID YOU HEAR ANY PROTESTS?

6 A. HE DID NOT WANT TO DO THIS.

7 Q. DID YOU HEAR HIM SAY THAT?

8 A. AFTER HE FELL DOWN THE FIRST TIME.

9 Q. AND WHEN YOU SAW HIM BEING PUSHED THE FIRST
10 TIME, WHAT HAPPENED TO HIM AND THE BICYCLE IN THE

11 CUL-DE-SAC?

12 A. IT JUST CRASHED. HE COULD NOT SLOW DOWN
13 ENOUGH TO COORDINATE THE BIKE TO TURN TO COME BACK UP
14 THE HILL.

15 Q. AND WHEN IT CRASHED, WAS HE INJURED?

16 A. YES.

17 Q. AND DID YOU SEE WHERE HE WAS INJURED?

18 A. HIS LEG.

19 Q. AND DID YOU SEE ANYTHING THAT APPEARED TO
20 BE BLEEDING?

21 A. HIS PANTS LEG WAS DARKENED IN THE AREA AND
22 WAS ALSO RIPPED, SO TO ME IT LOOKED LIKE BLOOD. IT
23 DIDN'T LOOK LIKE ROAD ASPHALT OR ANYTHING. IT WAS
24 LIQUIDY.

25 Q. AND WHERE WERE YOU IN RELATION TO
26 MR. MENENDEZ AND THE BIKE AND ERIK WHEN YOU OBSERVED
27 THIS PUSH, AND THEN HIM FALLING DOWN IN THE CUL-DE-SAC?

28 A. IN THE FRONT YARD.

-12423

1 Q. AND WAS THERE ANYONE ELSE IN THE FRONT YARD
2 WITH YOU?

3 A. KITTY AND LYLE.

4 Q. AND WHEN ERIK FELL DOWN, DID ANY OF YOU GO
5 TO HIM?

6 A. NOT AT THAT TIME.

7 Q. DID MR. MENENDEZ GO TO HIM?

8 A. HE DIDN'T GO ALL THE WAY DOWN, BECAUSE ERIK
9 HAD GOTTEN UP AND WAS PUSHING THE BIKE BACK UP, AND THEY
10 MET IN THE MIDDLE. AND HE THEN ASSISTED ERIK TO THE TOP
11 OF THE HILL, WHERE HE PLACED HIM RIGHT BACK ON THE BIKE
12 AND PROCEEDED TO PUSH HIM AGAIN DOWN THE HILL.

13 Q. AND WHEN MR. MENENDEZ PLACED ERIK BACK ON
14 THE BIKE, WAS IT AT THAT POINT THAT ERIK SAID SOMETHING?

15 A. HE JUST DID NOT WANT TO DO THIS.

16 Q. DON'T TELL ME WHAT HE WANTED TO DO. IF YOU
17 COULD, MR. ANDERSEN, TELL ME WHAT HE SAID.

18 WHAT DID YOU HEAR?

19 A. "DADDY, I DO NOT WANT TO DO THIS ANYMORE."

20 Q. AND WAS HE CRYING?

21 A. YES.

22 Q. AND DID DADDY SAY ANYTHING? DID
23 MR. MENENDEZ SAY ANYTHING IN RESPONSE?

24 A. NO.

25 Q. AND DID HE PUSH HIM AGAIN?

26 A. YES.

27 Q. AND WHAT HAPPENED THE SECOND TIME AS
28 THEY'RE GOING INTO THE -- AS ERIK IS GOING INTO THE

-12422

1 CUL-DE-SAC ON THE BIKE?

2 A. IT WAS THE SAME SCENARIO. IT WAS JUST A

3 WOBBLY BIKE GOING DOWN THE HILL, AND CRASH.

4 Q. AND COULD YOU SEE, WHEN IT CRASHED THIS
5 TIME, WAS THERE ANY FURTHER INJURY THAT YOU COULD
6 DETERMINE?

7 A. AT THAT TIME, NO. IT WAS THE THIRD TIME
8 THAT HE PUT IT DOWN THE HILL.

9 Q. THAT SAME DAY THAT --

10 A. SAME DAY, CORRECT.

11 Q. NOW, AFTER THE -- DURING THE TIME OF THE
12 SECOND TRIP DOWN THE HILL, WAS ERIK -- HAD HE QUIETED
13 DOWN, OR WAS HE CRYING, OR WHAT?

14 A. OH, NO. HE WAS HYSTERICAL.

15 Q. AND HE FELL AGAIN?

16 A. YES.

17 Q. AND THEN WHAT HAPPENED?

18 A. SAME SCENARIO AGAIN. ERIK PICKED HIS BIKE
19 UP, WAS WALKING IT BACK UP THE HILL. JOSE MET HIM,
20 ASSISTED HIM BACK TO THE TOP OF THE HILL, PUT HIM BACK
21 ON TOP OF THE BIKE, AND OFF HE WENT.

22 Q. AND WAS HE STILL HYSTERICAL?

23 A. YES. HE JUST KEPT REPEATING, "DADDY, I
24 DON'T WANT TO DO THIS."

25 Q. CRYING?

26 A. CRYING -- I MEAN HIS FACE WAS RED AND HE
27 WAS -- IT WAS JUST -- HE MADE IT -- LIKE HE JUST TOLD
28 HIS FATHER, "I JUST DON'T WANT TO DO THIS."

1 Q. AND DID MR. MENENDEZ SAY ANYTHING, THAT YOU
2 CAN REMEMBER?

3 A. THAT I CAN REMEMBER, NO.

4 Q. AND ON THE THIRD OCCASION -- DID YOU EVER
5 RIDE A BIKE DOWN THIS CUL-DE-SAC?

6 A. YES.

7 Q. WAS IT A TIGHT TURN?

8 A. NOT NECESSARILY. WELL, FOR MYSELF, NOT FOR
9 WHERE I WAS AT MY AGE AND WHATNOT, NO. FOR ME IT
10 WASN'T, BECAUSE I WAS VERY HEAVILY INTO MOTORCYCLES AT
11 THE TIME, SO IT WAS EASY FOR ME. FOR ME IT WAS
12 EXTREMELY EASY.

13 Q. WAS IT HARD FOR A SIX-AND-A-HALF-YEAR-OLD
14 WHO DIDN'T KNOW HOW TO RIDE A BIKE?

15 A. FIRST THING, YES.

16 Q. IS THERE ANY WAY THAT YOU WOULD HAVE TAUGHT
17 A CHILD TO RIDE A BIKE INTO A TIGHT CIRCLE?

18 A. NO, MA'AM.

19 Q. AFTER THE THIRD TIME, DID ERIK FALL AGAIN?

20 A. YES.

21 Q. WAS THERE ANY ADDITIONAL INJURY ON THAT
22 OCCASION?

23 A. YES.

24 Q. AND WHERE WAS THAT?

25 A. HIS LEFT ARM, ELBOW AREA.

26 Q. AND COULD YOU TELL HOW EXTENSIVE THAT
27 INJURY WAS WHEN YOU SAW HIM UP CLOSE?

28 A. IT WAS -- IT WAS AS IF YOU WERE TO -- I

-12420

1 CALL IT ROAD RASH, OKAY, BECAUSE THAT'S IN RELATION TO
2 MOTORCYCLES. IT WAS AS IF YOU WERE TO TAKE A MOTORCYCLE
3 AND JUST AT A RATE OF SPEED WOULD FALL ON A PAVEMENT AND
4 BE DRAGGED ACROSS THAT PAVEMENT FOR A CERTAIN AMOUNT OF
5 FEET.

6 IT WAS CONSIDERABLY BIG AND LARGE, AND IT
7 WAS DEEP AND BLEEDING, HAD ASPHALT IN IT, AND IT WAS --
8 IT WAS UGLY-LOOKING.

9 Q. HAVE YOU EVER SEEN A SCAR ON YOUR COUSIN'S
10 ARM TO THIS DAY IN THAT AREA?

11 A. NO. I HAVEN'T SEEN HIM OR TALKED TO HIM OR
12 ANYTHING.

13 Q. AND AFTER HE FELL THE THIRD TIME, DID
14 ANYBODY GO TO HIM?

15 A. JOSE DID.

16 Q. AND WHAT DID HE DO WHEN HE WENT TO HIM?

17 A. HE PICKED THE BIKE UP AND GRABBED ERIK ON
18 THE OPPOSITE ARM, WHICH WOULD HAVE BEEN HIS RIGHT BICEP,
19 AND WALKED HIM BACK UP TO THE TOP OF THE HILL, TURNED
20 THE BIKE AROUND, LOOKED AT THE BIKE, HAD TO STRAIGHTEN
21 OUT THE HANDLEBARS A LITTLE BIT, PUT HIM BACK ON THE
22 BIKE, AND OFF HE WENT.

23 Q. A FOURTH TIME?

24 A. A FOURTH TIME.

25 Q. NOW, HAD YOU MADE ANY EFFORT TO GO TO ERIK
26 UP UNTIL THIS POINT?

27 A. AT THAT POINT I WENT TO GET UP TO GO TO
28 ERIK, AND KITTY STOPPED ME.

-12419

1 Q. WHAT DID SHE SAY?

2 A. JOSE WAS TAKING CARE OF THE SITUATION, TO
3 SIT DOWN.

4 Q. AND WAS THE FOURTH TIME THE LAST TIME?

5 A. NO.

6 Q. WAS IT THE LAST TIME THAT DAY?

7 A. THAT DAY, NO.

8 Q. HOW MANY MORE TRIPS DOWN THE HILL WERE
9 THERE AFTER THE SECOND INJURY?

10 A. IT WAS A COUPLE MORE TIMES, BECAUSE ERIK
11 WAS SHOWING THAT HE COULD NOT USE THE ARM. IT WAS -- IT
12 WAS A SOURCE OF PAIN.

13 Q. SO DID HE FALL AGAIN?

14 A. YES, HE DID.

15 Q. AND FROM THE TIME THAT HE HAD FIRST FALLEN
16 ALL THROUGH THIS, HAD THE CHILD STOPPED CRYING?

17 A. NO.

18 Q. HOW DID IT END?

19 A. WHEN HE FELL THE LAST TIME, HIS FATHER

20 AGAIN WENT DOWN THE HILL, HAD BIKE IN ONE HAND, ERIK'S
21 RIGHT BICEP. HE WALKED OUT TO THE EDGE OF THE PROPERTY,
22 LET THE BOY GO. THE BOY RAN TO HIS MOTHER. JOSE WENT
23 UP TO THE FRONT DOOR -- THE GARAGE DOOR WAS OPEN -- TOOK
24 THE BIKE AND JUST PHYSICALLY -- I MEAN, YOU COULD HEAR
25 IT HIT WHATEVER IT HIT IN THE GARAGE. THE BIKE WAS JUST
26 PHYSICALLY THROWN IN THE GARAGE, AND HE WAS VERY UPSET.

27 Q. WHO IS "HE"?

28 A. JOSE WAS.

-12418

1 Q. WHEN YOU SAY UPSET. . .

2 A. HE WAS VERY -- HIS COMMENTS AT THE TIME OF
3 WALKING PAST US IN THE FRONT YARD WAS: "THE BOY WILL
4 NEVER LEARN TO RIDE A BICYCLE, AND I DON'T KNOW WHY I'M
5 WASTING MY TIME."

6 Q. SO HE WAS ANGRY?

7 A. YES.

8 Q. AT THE BOY?

9 A. YES.

10 Q. DURING THAT SUMMER DID YOU EVER SEE ERIK

11 MASTER THE TWO-WHEELER?

12 A. NO, MA'AM.

13 Q. DID YOU SEE FURTHER ATTEMPTS ON HIS

14 FATHER'S PART TO HAVE HIM MASTER IT DOWN THE CUL-DE-SAC?

15 A. WELL, THERE WAS TWO OTHER TIMES AFTER THAT,

16 AND FROM THAT POINT, FOR THE REST OF MY TRIP THERE,

17 NEVER AGAIN AFTER THE THIRD TIME.

18 Q. AND ON THE TWO OTHER TIMES, WERE THEY AS
19 INJURIOUS AS THIS FIRST OCCASION?

20 A. IT WAS -- THE FIRST OCCASION STARTED OUT TO
21 BE VERY HAPPY AND ENDED VERY SAD. THE SECOND TIME
22 STARTED OUT VERY HESITANT. THE THIRD TIME WAS FLAT
23 OUT -- ALMOST TO THE POINT WHERE THE BOY WAS ALMOST
24 DRAGGED OFF THE PROPERTY ONTO THE STREET WITH THE
25 BICYCLE.

26 Q. FORCED OFF THE PROPERTY ONTO THE STREET?

27 A. YES. THE BOY DID NOT WANT TO GO. HE WAS
28 AT FIRST VERY HESITANT. HE WAS PULLING AWAY FROM HIS

-12417

1 FATHER. THE BOY DID GIVE IN, BUT THE FATHER JUST WAS
2 DRAGGING HIM ALL THE WAY THERE.

3 IN THE BEGINNING THERE WAS RESISTANCE, AND
4 THEN HE THEN WILLFULLY WENT ONTO THE STREET.

5 Q. WAS ERIK INJURED AGAIN AS BADLY ON THESE
6 OTHER TWO OCCASIONS AS HE WAS THE FIRST TIME?

7 A. ANY NEW -- NO. HE KEPT RE-HURTING THE OLD
8 INJURIES.

9 Q. DO YOU KNOW WHETHER MRS. MENENDEZ TOOK HIM
10 FOR ANY MEDICAL TREATMENT, OR MR. MENENDEZ, FOR THESE
11 INJURIES?

12 A. NO, I DON'T REMEMBER THEM EVER LEAVING THE
13 PROPERTY TO GO TO THE HOSPITAL OR TO A DOCTOR. THEY DID
14 MEND HIS WOUNDS, BUT AT HOME. IT WAS AN AT-HOME TYPE
15 THING.

16 Q. NOW, DURING THE SUMMERS THAT YOU STAYED AT
17 THE MONSEY HOUSE WITH THE FAMILY, WERE THERE OCCASIONS
18 ON THE WEEKENDS WHEN THE FAMILY WOULD GO SOMEWHERE FOR
19 TENNIS PRACTICE?

20 A. YES.

21 Q. AND WOULD ALL OF YOU GO?

22 A. YES.

23 Q. AND WHO WOULD PRACTICE WITH WHOM?

24 A. JOSE AND LYLE, KITTY AND ERIK, AND I'D BE
25 OFF AGAINST THE -- THERE WAS A CONCRETE-TYPE HANDBALL
26 PRACTICE THING THAT HAD A LITTLE LINE ACROSS IT. THAT'S
27 WHERE I WAS TOLD TO GO AND JUST PLAY BY MYSELF AND KEEP
28 MYSELF COMPANY.

-12416

1 Q. WAS THERE AN OCCASION WHEN YOU OBSERVED
2 JOSE MENENDEZ AND LYLE IN A TENNIS PRACTICE WHERE LYLE
3 APPEARED TO BECOME INJURED?

4 A. YES.

5 Q. AND CAN YOU DESCRIBE WHAT YOU OBSERVED
6 HAPPENING AND THEN WHAT THE INJURY WAS?

7 A. ON NUMEROUS OCCASIONS I WOULD BE BORED

8 QUICKLY BY JUST SITTING THERE HITTING THE BALL AGAINST
9 THAT CONCRETE WALL, SO I WOULD JUST SET THERE ON THE
10 SIDE AND WATCH THE FOUR OF THEM GOING ABOUT THEIR
11 BUSINESS.

12 AND MORE THAN HALFWAY INTO THE SESSION OF
13 THIS ONE SATURDAY, YOU COULD SEE LYLE'S SHOULDER
14 GROWING, AND IT WASN'T MUSCLE DEVELOPMENT. IT WAS
15 SWELLING. AND I DIDN'T THINK -- I DIDN'T SAY NOTHING
16 ABOUT IT. I JUST WAS WITNESSING THIS.

17 Q. LET ME ASK YOU THIS:

18 HAD HE BEEN PLAYING TENNIS WITH SOMEONE?

19 A. WITH JOSE.

20 Q. AND HOW OLD WAS HE -- HOW OLD WAS LYLE AT
21 THAT TIME?

22 A. ABOUT NINE.

23 Q. SO THIS WOULD HAVE BEEN THE SECOND SUMMER?

24 A. CORRECT, '77.

25 Q. AND HOW WERE THEY PLAYING TENNIS? WAS IT A
26 CASUAL, EASY GAME?

27 A. FOR KITTY AND ERIK IT WAS CASUAL. FOR LYLE
28 AND JOSE IT WAS EXTREME COMPETITION.

-12415

1 Q. AND BY THE WAY, DID THIS HAPPEN EVERY
2 WEEKEND DURING THE SUMMER, THIS GOING TO PLAY TENNIS?

3 A. ALMOST EVERY WEEKEND. THERE WERE A COUPLE

4 WEEKENDS THAT JOSE HAD TO BE AWAY FOR WORK PURPOSES.

5 Q. ON AVERAGE, HOW MANY HOURS WOULD LYLE BE
6 PRACTICING OR DRILLED BY HIS FATHER?

7 A. SIX.

8 Q. SIX HOURS?

9 A. SIX HOURS.

10 Q. AND DURING THOSE SAME SIX HOURS, WOULD ERIK
11 ALSO BE PLAYING TENNIS WITH HIS MOTHER?

12 A. YEAH. BUT THEY WOULD TAKE MORE FREQUENT
13 BREAKS.

14 Q. AND DURING THE SIX HOURS, WOULD THE FAMILY
15 BREAK AND, YOU KNOW, HAVE LIKE A PICNIC LUNCH OR
16 SOMETHING LIKE THAT?

17 A. NO. NO FOOD WAS BROUGHT, JUST JUICE AND
18 WATER.

19 Q. AND YOU SAY YOU SAW LYLE'S SHOULDER
20 SWELLING UP?

21 A. YES.

22 Q. AND DID YOU SEE ANYTHING HAPPEN AFTER THAT?

23 A. WHILE HE WAS PLAYING -- LYLE WAS HAVING A
24 TREMENDOUSLY HARD TIME RETURNING THE BALL, SO HE
25 WOULD -- HE JUST DROPPED HIS RACKET. HE DIDN'T WANT TO
26 PLAY NO MORE.

27 Q. DON'T TESTIFY TO WHAT PEOPLE WANTED, OKAY?

28 WHAT YOU SAW WAS THAT HE WAS HAVING

1 DIFFICULTY HITTING IT, AND THEN HE DROPPED THE RACKET?

2 A. CORRECT.

3 Q. AND WHAT HAPPENED, IF ANYTHING, AFTER HE

4 DROPPED THE RACKET?

5 A. WELL, JOSE WENT OVER, TALKED WITH HIM, AND

6 IN THE MIDST OF TALKING AT LYLE, LOOKED OVER AT KITTY,

7 AND TOLD KITTY TO COME OVER. JOSE WALKED AWAY.

8 KITTY WENT TO THE OPPOSITE END OF THE COURT

9 AND CONTINUED TO SERVE BALLS TO ERIK -- I MEAN TO LYLE,

10 AND JOSE WENT OVER AND PLAYED WITH ERIK.

11 Q. SO AFTER LYLE DROPPED THE RACKET, HIS

12 FATHER PICKED IT UP?

13 A. MM-HMM.

14 Q. DID HE GIVE IT BACK TO LYLE?

15 A. YES.

16 Q. AND THEN KITTY STARTED LOBBING WITH LYLE?

17 A. NOT LOBBING. SERVING.

18 Q. WAS SHE SERVING HARD SHOTS?

19 A. NO.

20 Q. NOT AS HARD AS JOSE?

21 A. NO.

22 Q. HOW MUCH LONGER DID THIS GO ON WITH LYLE

23 PLAYING NOW WITH HIS MOTHER?

24 A. ROUGHLY, A HALF HOUR, 45 MINUTES.

25 Q. AND DURING THAT WHOLE TIME, WAS HIS

26 SHOULDER STILL OBVIOUSLY SWOLLEN?

27 A. OH, YES. IMMENSE, YES.

28 Q. DID YOU GO OVER TO FIND OUT WHAT WAS GOING

1 ON?

2 A. NOT UNTIL AFTER KITTY WAS -- THEY WERE DONE
3 AND THEY WERE PICKING THE BALLS UP. I THEN WENT OVER TO
4 LOOK, AND YOU COULD SEE HIS T-SHIRT, HOW TIGHT IT WAS IN
5 THAT AREA.

6 Q. AND WAS THERE ANY BREAK BETWEEN JOSE
7 DRILLING HIM, AND THEN MRS. MENENDEZ DRILLING HIM

8 A. JUST THE AMOUNT OF TIME THAT JOSE SPENT
9 TALKING WITH LYLE.

10 Q. AND DID YOU HEAR LYLE COMPLAINING?

11 A. OH, HE WAS -- OH, HE WAS CRYING.

12 Q. CRYING?

13 A. HE WAS CRYING. IT HURT. THE CRYING DIDN'T
14 LAST VERY LONG, BUT HE DID SHED A TEAR.

15 MS. ABRAMSON: THANK YOU, MR. ANDERSEN.

16 I HAVE NOTHING FURTHER, YOUR HONOR.

17 THE COURT: OKAY.

18 EXAMINATION ON BEHALF OF LYLE MENENDEZ?

19 MR. GESSLER: NO, YOUR HONOR.

20 THE COURT: CROSS-EXAMINATION.

21 MR. CONN: YES.

22

23 CROSS-EXAMINATION

24 BY MR. CONN:

25 Q. MR. ANDERSEN, IN REGARD TO THE BICYCLE

26 INCIDENT, YOU SAID THAT YOU OBSERVED ERIK MENENDEZ
27 INJURED THE FIRST TIME, THE FIRST OCCASION THAT HIS
28 FATHER WAS TRYING TO TEACH HIM HOW TO RIDE THE BICYCLE?

-12412

1 A. YES.

2 Q. AND WHERE DID YOU OBSERVE INJURY TO HIS
3 BODY?

4 A. TO HIS LEG AND HIS LEFT ELBOW.

5 Q. AND YOU OBSERVED THAT AS SOON AS IT
6 HAPPENED?

7 A. WELL, YES. WHEN HE FELL. WHEN HE CAME
8 BACK UP THE HILL WAS WHEN THE OBSERVANCE WAS.

9 Q. AND YOU SAW BLOOD AT THAT TIME?

10 A. THE FIRST TIME WHEN THE LEG WAS DAMAGED, IT
11 WAS ON THE MATERIAL OF THE PANTS. IT WAS A WET AREA
12 WHICH WAS DARKENED.

13 Q. AND DID IT APPEAR TO BE RED?

14 A. WELL, IT WAS DARK. IT WAS -- I MEAN, HE
15 HAD PANTS ON. HE DIDN'T HAVE LIKE PINK PANTS WHERE THE
16 RED WOULD HAVE SHOWN UP, NO. HE WAS WEARING BLUE JEANS.

17 Q. SO YOU SAW MOISTURE IN THAT AREA OF THE
18 PANTS LEG; IS THAT CORRECT?

19 A. YES. YES.

20 Q. AND LATER ON DID YOU SEE WHETHER OR NOT
21 THERE WAS BLEEDING AT THAT LOCATION?

22 A. THERE WAS BLEEDING AT THAT LOCATION,
23 BECAUSE LATER AT THE END OF THE DAY WHEN THEY CAME IN,
24 WHEN THEY TOOK THE PANTS OFF HE WAS PHYSICALLY BLEEDING.

25 Q. AND WHO WITNESSED THIS BESIDES YOURSELF?

26 A. LYLE AND KITTY, AND I DON'T THINK ANY
27 NEIGHBORS WERE WATCHING, BUT THAT'S WHO WAS PHYSICALLY
28 WITH ME.

-12411

1 Q. NO PERSONS OUTSIDE THE FAMILY; IS THAT
2 CORRECT?

3 A. CORRECT.

4 Q. AND THE SECOND TIME THAT -- NOW, AFTER --
5 ON THAT FIRST OCCASION, HOW MANY TIMES DID JOSE MENENDEZ
6 PUT HIS SON BACK ON THE BIKE TO TRY AGAIN?

7 A. NUMEROUS.

8 Q. HOW MANY TIMES WOULD YOU ESTIMATE?

9 A. IN GUESSTIMATION, I WOULD SAY A DOZEN
10 TIMES.

11 Q. AND ARE YOU SAYING THAT ERIK MENENDEZ WAS
12 CRYING THROUGHOUT THE ENTIRE TIME?

13 A. IN THE BEGINNING, NO. THE ELATION WAS VERY
14 HIGH IN THE BEGINNING. HE WAS NOT.

15 BUT AS SOON AS HE FELL DOWN, HE DIDN'T WANT
16 ANY PART OF IT.

17 Q. ARE YOU SAYING HE FELL ON HIS VERY FIRST

18 ATTEMPT TO RIDE THE BIKE?

19 A. CORRECT. CORRECT. IN THE BEGINNING HE WAS
20 EXTREMELY HAPPY. WE WERE ALL VERY HAPPY. AND WHEN HE
21 WENT DOWN THE HILL HE FELL DOWN AND HE WAS CRYING.

22 Q. AND THEN HE WAS CRYING THROUGHOUT THE
23 ENTIRE INCIDENT?

24 A. THROUGHOUT THE ENTIRE INCIDENT.

25 Q. WELL, YOU REGARDED ERIK MENENDEZ AS A
26 WHINER, DIDN'T YOU?

27 A. I MAY HAVE.

28 Q. WHAT DO YOU MEAN YOU MAY HAVE?

-12410

1 A. HE WAS AN EMOTIONAL KID.

2 Q. WELL, DID YOU PREVIOUSLY DESCRIBE ERIK
3 MENENDEZ TO BE A WHINER, SOMETHING THAT YOU FOUND
4 IRRITATING?

5 A. I PROBABLY DID.

6 Q. AND WHY IS THAT, BECAUSE HE WAS CRYING ALL
7 THE TIME?

8 A. HE WAS AN EMOTIONAL CHILD.

9 Q. WELL, WHAT DID YOU FIND IRRITATING?

10 MS. ABRAMSON: OBJECT ON RELEVANCE GROUNDS, YOUR
11 HONOR.

12 THE COURT: SUSTAINED.

13 Q. BY MR. CONN: WHY DID YOU DESCRIBE HIM AS A

14 WHINER?

15 MS. ABRAMSON: OBJECTION. RELEVANCE.

16 THE COURT: OVERRULED.

17 THE WITNESS: RELATED TO I HAVE A YOUNGER

18 BROTHER. MY YOUNGER BROTHER WAS THE SAME WAY, AND I

19 USED TO CALL HIM A WHINER.

20 Q. BY MR. CONN: WHAT WOULD HE WHINE ABOUT?

21 A. MY BROTHER, OR ERIK?

22 Q. ERIK MENENDEZ.

23 A. IT COULD BE -- I REALLY DON'T KNOW ANY REAL

24 GIVEN POINTS. IT COULD BE SOMETIMES ANYTHING.

25 Q. SO YOU DIDN'T FIND IT UNUSUAL THAT HE WAS

26 CRYING WHEN HIS FATHER WAS PUTTING HIM ON THE BIKE

27 BECAUSE HE USED TO WHINE ALL THE TIME ANYWAY; IS THAT

28 CORRECT?

-12409

1 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

2 MISSTATES THE TESTIMONY.

3 THE COURT: REPHRASE THE QUESTION.

4 Q. BY MR. CONN: DID YOU FIND IT UNUSUAL WHEN

5 YOU OBSERVED HIM REPEATEDLY CRYING ON THE BIKE?

6 A. BECAUSE OF WHAT WAS HAPPENING TO HIM, NO.

7 Q. YOU ALSO DESCRIBED ERIK MENENDEZ AS BEING A

8 PANSY, A MAMA'S BOY; IS THAT CORRECT?

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

10 OBJECT TO THIS LINE AND ASK TO BE HEARD.

11 THE COURT: OKAY. WE'LL TAKE A RECESS, AND WE'LL

12 HAVE THE JURY BACK AT 1:45.

13 DON'T DISCUSS THE MATTER WITH ANYONE.

14 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL SEE YOU

15 AFTER LUNCH.

16 (THE JURY EXITS THE COURTROOM

17 AND THE FOLLOWING PROCEEDINGS

18 WERE HELD:)

19

20 THE COURT: OKAY. AND THE OBJECTION IS WHAT?

21 MS. ABRAMSON: THIS IS OUTSIDE THE SCOPE, YOUR

22 HONOR. HE'S ONLY DESCRIBED TWO INCIDENTS WHERE HE

23 INDICATED MY CLIENT DOESN'T START CRYING UNTIL AFTER

24 HE'S HURT, AND COUNSEL IS JUST USING THIS AS AN

25 OPPORTUNITY FOR SOME NAME-CALLING.

26 THE COURT: WELL, CERTAINLY THE AREA OF CRYING IS

27 RELEVANT TO WHAT HAS BEEN BROUGHT OUT ON THE EXAMINATION

28 OF THE WITNESS. THE OTHER AREAS OF CHARACTERIZATION,

-12408

1 I'M NOT SO SURE WHERE IT'S GOING, MR. CONN.

2 WHAT IS IT PROFFERED FOR?

3 MS. ABRAMSON: LET ME SAY ONE THING. MR. CONN IS

4 DOING THE EXACT SAME THING WITH THIS WITNESS THAT HE

5 LIKES TO DO WITH OTHERS. "DIDN'T YOU PREVIOUSLY

6 SAY ..."

7 IF HE WANTS TO ASK THEM THE DIRECT QUESTION

8 FIRST, THAT'S DIFFERENT. BUT HE CONSTANTLY BOOTSTRAPS.

9 THE COURT: ONE THING AT A TIME.

10 AS TO THIS FIRST OBJECTION THAT YOU

11 ARTICULATED AND I INQUIRED OF MR. CONN, WHAT IS IT

12 YOU'RE GETTING AT?

13 MR. CONN: I THINK THIS WITNESS HAS CHARACTERIZED

14 THIS INCIDENT IN AN PARTICULAR WAY, AND I SUPPOSE THE

15 POINT THAT IS BEING MADE HERE IS THAT IT WAS SO

16 HORRENDOUS, OF THE CONDUCT OF HIM.

17 BUT I THINK THAT IF THIS WITNESS HAS A

18 TENDENCY TO CHARACTERIZE THE DEFENDANT IN A PARTICULAR

19 WAY BASED UPON THE WAY HE NORMALLY BEHAVES, SUCH AS IF

20 HE IS, IN THE EYES OF THIS WITNESS, A WHINER OR A PANSY

21 OR A MAMA'S BOY, I THINK THAT THAT COLORS HIS

22 RECOLLECTION OF THIS INCIDENT. IT'S SOMETHING THAT THE

23 JURY SHOULD HEAR ABOUT IN EVALUATING HIS

24 CHARACTERIZATION OF THIS INCIDENT.

25 AND WHETHER OR NOT THE BEHAVIOR OF ERIK

26 MENENDEZ ON THIS PARTICULAR DAY WAS OUT OF CONFORMITY TO

27 HIS NORMAL BEHAVIOR, OR WHETHER IT WAS CONSISTENT WITH

28 THE WAY HE NORMALLY BEHAVED ANY TIME HIS FATHER TRIED TO

1 DO ANYTHING WITH HIM.

2 THE COURT: ALL RIGHT.

3 WELL, WHAT IS IT THAT THIS PARTICULAR
4 INQUIRY WOULD -- THIS LINE OF QUESTIONING, THOUGH, THAT
5 YOU'VE ASKED, I DON'T SEE HOW IT CONNECTS TO WHAT YOU'RE
6 TRYING TO GET AT.

7 MR. CONN: IT WOULD ONLY PUT THE TESTIMONY OF
8 THIS WITNESS IN PROPER PERSPECTIVE, TO KNOW HOW HE
9 CHARACTERIZES ERIK MENENDEZ, HOW HE HAS CHARACTERIZED
10 HIM IN THE PAST. IT WILL ALLOW THE JURY THEN TO
11 EVALUATE THIS TESTIMONY PROPERLY, BECAUSE IT IS
12 CONNECTED TO CRYING BEHAVIOR. AND BECAUSE IT IS
13 CONNECTED TO THE REACTION OF ERIK MENENDEZ TO PARTICULAR
14 CONDUCT BY JOSE MENENDEZ, IT ALLOWS THE JURY TO SEE IT
15 IN ITS PROPER PERSPECTIVE.

16 THE COURT: OKAY.

17 AS FAR AS THE QUESTIONING THAT'S GONE ON SO
18 FAR, THE SO-CALLED WHINING, THAT'S BEFORE THE JURY. AND
19 IF THERE IS FURTHER INQUIRY ALONG THOSE LINES AS TO WHY
20 THE WITNESS CHARACTERIZED HIM IN THAT FASHION, THAT'S
21 PROPER. BUT TO GET BEYOND IT TO THESE CHARACTERIZATIONS
22 I DON'T THINK IS RELEVANT, AND IS BEYOND THE SCOPE OF
23 THE EXAMINATION.

24 ALL RIGHT. WE WILL BE IN RECESS UNTIL
25 AFTER LUNCH.

26 MR. GESSLER: DID YOUR HONOR SAY 1:45 TODAY?

27 THE COURT: YES.

28 WHO IS YOUR NEXT WITNESS?

1 MR. GESSLER: SANDY SHARP, I BELIEVE, YOUR HONOR.

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

3 ADJOURNED TO 1:45 P.M. OF THE

4 SAME DAY.)

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-12334

1 Q. BY MS. ABRAMSON: OKAY. DID YOU KNOW OF
2 ANYONE ELSE IN HIS FAMILY, BESIDES HIS FATHER, WHO KNEW
3 SPANISH?

4 A. HIS BROTHER.

5 Q. HOW GOOD WAS HIS BROTHER'S SPANISH, THOUGH?

6 A. I HAD TO ASSUME IT WAS HIS FATHER.

7 MR. CONN: OBJECTION. MOTION TO STRIKE. CALLS
8 FOR SPECULATION.

9 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN.

10 Q. BY MS. ABRAMSON: IT WAS HIGHER QUALITY
11 WORK THAN WHAT LYLE HAD DONE FOR YOU?

12 A. YES, IT WAS.

13 Q. DID ERIK APPEAR TO BE MOTIVATED IN YOUR
14 CLASS?

15 A. YES.

16 Q. AND DID YOU HAVE AN OPINION AS TO WHAT IT
17 WAS THAT WAS MOTIVATING HIM?

18 MR. CONN: OBJECTION. CALLS FOR SPECULATION. NO
19 FOUNDATION.

20 THE COURT: SUSTAINED.

21 Q. BY MS. ABRAMSON: DID HE APPEAR TO BE
22 MOTIVATED TO MASTER THE SPANISH LANGUAGE, OR DID HE
23 APPEAR TO BE MOTIVATED TO GET A GOOD GRADE, OR DID HE
24 APPEAR TO BE MOTIVATED FOR BOTH?

25 A. THAT'S A DIFFICULT ONE TO ANSWER, BECAUSE
26 HE WORKED VERY, VERY HARD. I WOULD -- GRADES WERE
27 IMPORTANT, MORE IMPORTANT TO HIM AT THAT PARTICULAR
28 POINT IN HIS ACADEMIC DEVELOPMENT.

-12333

1 Q. AND DID YOU HAVE ANY REASON TO BELIEVE THAT
2 GRADES WERE IMPORTANT TO HIS MOTHER?

3 A. OH, I KNOW THEY WERE.

4 Q. SHE TOLD YOU THAT, DIDN'T SHE?

5 A. YES.

6 Q. WHEN YOU PROPOSED TO HER THAT HE NEEDED
7 TESTING, DID SHE INDICATE THAT HER ONLY CONCERN WAS
8 WHETHER HE GOT BETTER GRADES?

9 A. YES.

10 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

11 THE COURT: SUSTAINED.

12 THE ANSWER IS STRICKEN.

13 Q. BY MS. ABRAMSON: DID YOU SUGGEST TO HER
14 THAT IF HE WERE TESTED AND HIS DISABILITIES ADDRESSED,
15 HE MIGHT ACTUALLY GET BETTER GRADES?

16 A. YES.

17 Q. NOW, WITH RESPECT TO ERIK AS COMPARED TO
18 OTHER MEMBERS OF THE CLASS, AND OTHER 9TH GRADERS YOU
19 DEALT WITH, APART FROM THE CRYING, WAS HE A PARTICULARLY
20 SOPHISTICATED 9TH GRADER?

21 A. NO. I THINK I MENTIONED BEFORE HE WAS
22 PARTICULARLY UNSOPHISTICATED.
23 Q. WAS HE NAIVE?
24 A. YES.
25 Q. AND THAT WAS TRUE EVEN THOUGH HE WAS A YEAR
26 OLDER THAN ALL THE OTHER KIDS?
27 A. YES.
28 Q. AND WAS THERE A POINT DURING THIS YEAR THAT

-12332

1 YOU WERE TEACHING HIM WHEN HE SEEMED TO GIVE UP?
2 A. ABOUT HALFWAY THROUGH -- OH, MAYBE FEBRUARY
3 OR MARCH. I'D SAY ABOUT MARCH, AND THAT'S WHEN I REALLY
4 NOTICED THAT HE WAS LOSING FOCUS IN THE CLASS.
5 Q. AND DID HE APPEAR DEPRESSED?
6 A. VERY.
7 Q. AND DEFEATED?
8 A. YES.
9 Q. AND WERE YOU AWARE THAT DURING THAT MONTH
10 THE FAMILY MOVED TO A HOUSE ON MOUNTAIN AVENUE INSIDE
11 PRINCETON IN A SEVEN-ACRE WOODED PARK?
12 A. NO, I DIDN'T.
13 MR. CONN: OBJECTION. IRRELEVANT.
14 THE COURT: OVERRULED.
15 THE ANSWER WILL STAND.
16 Q. BY MS. ABRAMSON: AND AT THIS POINT, THIS

17 YEAR, 1986, IS THIS A TIME WHEN LYLE MENENDEZ IS ENGAGED
18 IN THIS VERY INVOLVED RELATIONSHIP WITH THIS GIRL, STACY
19 FELDMAN, THAT YOU OBSERVED?

20 A. YES.

21 MS. ABRAMSON: YOUR HONOR, WHAT I'D LIKE TO DO IS
22 TAKE THE AFTERNOON RECESS SO THE WITNESS CAN LOOK OVER
23 THE RECORDS, AND THEN I CAN FINISH.

24 THE COURT: OKAY. WE WILL RESUME AT 3:30.

25 DON'T DISCUSS THE MATTER WITH ANYONE.

26 DON'T FORM ANY FINAL OPINIONS ABOUT IT.

27 WE WILL RESUME IN APPROXIMATELY 15 MINUTES.

28

-12331

1 (A RECESS WAS TAKEN FROM

2 3:20 TO 3:40 P.M.)

3

4 THE COURT: ALL RIGHT. EVERYBODY IS BACK.

5 ARE WE READY TO PROCEED WITH THE JURY?

6 MS. ABRAMSON: NO, YOUR HONOR. THERE ARE A FEW
7 MATTERS I WOULD LIKE TO GET INTO.

8 THE COURT: OKAY.

9 MS. ABRAMSON: I HAVE TURNED OVER TO THE
10 PROSECUTION ALL THE P.D.S. RECORDS. WE HAD TURNED THEM
11 OVER TWO YEARS AGO OR THREE YEARS AGO ALSO, BUT I GAVE A
12 NEW SET TO MS. NAJERA THIS MORNING AND ASKED IF THEY

13 WERE GOING TO STIPULATE TO THESE RECORDS, AND DID I HAVE
14 TO BRING IN THE CUSTODIAN.

15 THEY TOLD ME THEY WOULDN'T STIPULATE TO THE
16 LEWIS SCHOOL, SO I AM BRINGING IN THAT CUSTODIAN.
17 THAT'S ONE ASPECT.

18 AND THE OTHER THING IS WITH RESPECT TO THIS
19 WITNESS, SHE REVIEWED THE RECORDS AGAIN DURING THE
20 RECESS, AND SHE DID NOTE THAT ERIK MENENDEZ APPLIED TO
21 P.D.S. FOUR DIFFERENT TIMES, AND HIS ACCEPTANCE WAS
22 PREDICATED ON HIS GETTING THE EXTRA HELP FROM THEIR
23 SPECIAL CLASS. THAT IS CALLED -- THAT SPECIAL CLASS IS
24 CALLED LANGUAGE SKILLS AT P.D.S.

25 AND SHE NOTED IN THE RECORDS THAT HE DID --
26 THERE IS EVIDENCE THAT HE WAS ENROLLED IN THE LANGUAGE
27 SKILLS CLASS FOR HIS FIRST YEAR AT P.D.S., 5TH GRADE,
28 AND THEN FROM 6TH GRADE ON HE IS NOT IN THAT CLASS. AND

-12330

1 IT'S UP TO THE PARENT TO PUT THE CHILD IN THAT CLASS,
2 THE SCHOOL WOULDN'T THROW HIM OUT OF IT.

3 SO THAT INDICATES TO HER THAT HE WAS IN THE
4 REMEDIAL CLASS, AND THEN HE WAS REMOVED FROM THE
5 REMEDIAL CLASS BY ACTION OF THE PARENTS, AND I'D LIKE TO
6 BRING THOSE FACTS OUT.

7 I WOULD ALSO, AT SOME POINT -- I DON'T NEED
8 HER TO READ FROM THE RECORD IN ORDER TO SAY THOSE

9 THINGS, BECAUSE SHE SIMPLY REVIEWED THEM, BUT I WOULD
10 LIKE AT SOME POINT TO GET THE RECORDS IN. AND OBVIOUSLY
11 IF THE PEOPLE WERE GOING TO STIPULATE THAT THESE ARE
12 BUSINESS RECORDS, THEN I COULD HAVE HER GIVE THE
13 SPECIFICS AND READ FROM THE REPORT, AS WELL AS INDICATE
14 THAT THERE IS EVIDENCE THAT HE WAS THERE.

15 THE OTHER MATTER THAT I WANTED TO BRING UP
16 WITH THE COURT IS AN IN LIMINE MOTION VIS A VIS THE
17 CROSS-EXAMINATION OF THIS WITNESS.

18 WHEN WE CAME BACK FROM THE BREAK, DETECTIVE
19 ZOELLER WAS INTERVIEWING THE WITNESS AND ASKED HER IF
20 SHE BELIEVED -- IF SHE BELIEVED THAT MY CLIENT STOLE A
21 TEST, AND SHE INDICATED THAT AT FIRST SHE SUSPECTED
22 THAT, BUT HE DENIED IT, AND SHE BELIEVED HIM.

23 SO I WOULD OBJECT TO ANY QUESTIONS
24 CONCERNING THAT, SINCE THERE IS NO EVIDENCE HE DID STEAL
25 A TEST, AND THE WITNESS DOES NOT BELIEVE AT THIS POINT
26 THAT HE STOLE A TEST.

27 AND I ACTUALLY SPOKE TO THE PERSON WHO
28 STOLE THE TEST, AND HE COULD COME OUT, BUT I DON'T WANT

-12329

1 TO HAVE A TRIAL ON STEALING THE TEST, AND BRING AN
2 OUT-OF-STATE WITNESS IN ORDER TO ESTABLISH THAT IN 9TH
3 GRADE HE STOLE A TEST.

4 THE COURT: ON THE SECOND ISSUE, DO THE PEOPLE

5 INTEND TO GO INTO THAT?

6 MR. CONN: NO, WE DON'T.

7 THE COURT: AS TO THE FIRST ISSUE, THE WITNESS

8 REVIEW OF THE RECORDS AND INFORMATION SHE OBTAINED FROM

9 THE RECORDS, WHAT IS YOUR POSITION ON THAT?

10 MR. CONN: WELL, WE DON'T HAVE ANY PROBLEM TO HER

11 TESTIFYING IN RELIANCE ON THE RECORDS.

12 WE DO HAVE A PROBLEM ALLOWING HER TO

13 TESTIFY OR TO READ FROM THE RECORDS. WE STILL HAVEN'T

14 RECEIVED A NAME FROM COUNSEL AS TO WHO WE CAN CHECK WITH

15 TO DETERMINE THAT THIS IS A COMPLETE SET OF RECORDS.

16 I WOULD LIKE TO BE ABLE TO DO THAT FIRST.

17 BUT IF THE WITNESS WANTS TO RELY UPON THE RECORDS RATHER

18 THAN READ FROM THE RECORDS, I HAVE NO PROBLEM WITH THAT.

19 MS. ABRAMSON: WHAT I WOULD LIKE TO DO, YOUR

20 HONOR, IS MARK THE RECORD, SHE DOESN'T HAVE TO READ FROM

21 IT, SO THE JURY WILL KNOW WHEN THE TIME COMES -- WE CAN

22 PUT IT IN ORDER -- WHAT RECORD IT IS SHE WAS RELYING

23 UPON.

24 IS THAT SATISFACTORY WITH THE COURT?

25 THE COURT: THAT THE RECORDS THAT ARE HERE ARE

26 THE SAME RECORDS THAT WOULD BE RECEIVED IF ULTIMATELY

27 THEY WERE RECEIVED; IS THAT WHAT YOU'RE SAYING?

28 MS. ABRAMSON: YES.

1 THE COURT: OKAY.

2 MS. ABRAMSON: WHAT I WANT TO DO IS MARK THE ONE
3 THAT INDICATES TO HER IN HER REVIEW OF THE RECORD THAT
4 HE WAS IN THAT LANGUAGE SKILLS CLASS IN THE 5TH GRADE,
5 BUT NOT THEREAFTER.

6 THE COURT: RIGHT. OKAY.

7 MS. NAJERA: YOUR HONOR, I GUESS THE ONE PART
8 WE'RE NOT CLEAR ABOUT -- AND I WAS JUST TALKING TO
9 MR. CONN ABOUT THIS -- IS WHAT COUNSEL SAID IS THIS
10 PROVES THAT HIS PARENTS TOOK HIM OUT OF THAT REMEDIAL
11 CLASS, AND IT DOESN'T PROVE ANYTHING. ALL THE FACTS ARE
12 IS THAT HE WAS IN A REMEDIAL CLASS FOR ONE YEAR, AND HE
13 WASN'T IN A REMEDIAL CLASS FOR 6TH GRADE.

14 MS. ABRAMSON: SHE SHOULD BE ENTITLED TO SAY THAT
15 THE PROCEDURE OF THAT FOR THE SCHOOL WAS THAT IT WAS FOR
16 THE PARENT TO BRING THEM TO THAT CLASS. THEY WOULD
17 NEVER HAVE BEEN THROWN OUT OF THERE.

18 MS. NAJERA: WE HAVE NO KNOWLEDGE OF WHAT
19 HAPPENED.

20 THE COURT: THE RECORDS DON'T SAY THAT, AND WE
21 CAN DEAL WITH THAT BY WAY OF QUESTIONING OF THE WITNESS
22 AS TO WHAT IS AND ISN'T ADMISSIBLE.

23 BUT AS FAR AS THE FACT THAT HE WAS IN A
24 PARTICULAR CLASS, THAT OBVIOUSLY IS DOCUMENTED BY THE
25 RECORDS AND ISN'T IN DISPUTE.

26 MS. NAJERA: YOUR HONOR, IT DOESN'T SAY HE WAS
27 REMOVED FROM THE CLASS.

28 THE COURT: WELL, HE WAS NO LONGER IN THE CLASS.

1 MS. ABRAMSON: HE WASN'T.

2 MS. NAJERA: HE WAS IN THE CLASS IN 5TH GRADE.

3 HE DID NOT TAKE A CLASS LIKE THAT IN HIS 6TH GRADE YEAR.

4 THAT'S WHAT IT IS. THAT'S WHAT I'M SAYING.

5 THE COURT: THAT'S WHAT THE RECORD SHOWS.

6 MS. NAJERA: THAT'S NOT WHAT COUNSEL IS SAYING.

7 MS. ABRAMSON: I'M SAYING THAT IT'S UP TO THE

8 PARENT TO BRING THAT CHILD TO THAT CLASS.

9 THE COURT: THAT'S SOMETHING THE RECORD DOESN'T

10 SHOW.

11 MS. ABRAMSON: THAT'S SOMETHING THE WITNESS CAN

12 SAY. SHE KNOWS THAT FROM BEING A TEACHER AT THE SCHOOL.

13 THE COURT: THAT'S RIGHT. BUT THE RECORDS DON'T

14 SAY THAT.

15 LET'S BRING THE JURY IN.

16 (THE JURY ENTERS THE COURTROOM

17 AND THE FOLLOWING PROCEEDINGS

18 WERE HELD:)

19

20 THE COURT: OKAY. WE HAVE THE JURY BACK, AND WE

21 WILL RESUME.

22 Q. BY MS. ABRAMSON: MS. SHARP, OVER THE

23 RECESS DID YOU LOOK OVER A STACK OF DOCUMENTS THAT

24 COMPRISE ERIK MENENDEZ' RECORDS FROM THE PRINCETON DAY

25 SCHOOL?

26 A. YES, I DID.

27 Q. AND DID THOSE DOCUMENTS INCLUDE

28 APPLICATIONS TO THAT SCHOOL BY HIS PARENTS ON HIS

-12326

1 BEHALF?

2 A. YES.

3 Q. AND HOW MANY YEARS -- FOR HOW MANY YEARS

4 DID THEY APPLY, OR ARE THERE APPLICATIONS TO THE SCHOOL

5 BY THE PARENTS OF ERIK MENENDEZ ON HIS BEHALF?

6 A. I THINK I COUNTED FOUR.

7 Q. FOUR SEPARATE YEARS THEY APPLIED?

8 A. I BELIEVE SO.

9 Q. AND WAS IT ON THE LAST APPLICATION THAT HE

10 WAS ACCEPTED?

11 A. YES.

12 Q. AND WAS HE ACCEPTED AT THAT TIME IN THE 5TH

13 GRADE?

14 A. YES.

15 Q. AND HE WAS -- HAD JUST COMPLETED THE 5TH

16 GRAD SOMEWHERE ELSE, HAD HE NOT?

17 A. AT HOPEWELL.

18 Q. AT HOPEWELL VALLEY SCHOOL?

19 A. YES.

20 Q. AND WAS THAT ACCEPTANCE CONDITIONAL UPON

21 HIM GETTING EXTRA HELP?

22 A. YES.

23 Q. AND WAS THAT EXTRA HELP PROVIDED BY

24 PRINCETON DAY SCHOOL IN A REMEDIAL CLASS CALLED LANGUAGE

25 SKILLS?

26 A. IT WAS REQUIRED -- THE ACCEPTANCE WAS

27 PREDICATED ON THE FACT THAT HE TAKE THIS SPECIAL SKILLS

28 CLASS.

-12325

1 Q. AND DID IT INDICATE HOW LONG HE SHOULD BE

2 TAKING IT?

3 A. NO, THERE WAS NO INDICATION.

4 Q. AND IS IT -- WAS IT THE PRACTICE AND

5 PROCEDURE AT PRINCETON DAY SCHOOL THAT A KID SHOULD TAKE

6 LANGUAGE SKILLS FOR AS LONG AS HE NEEDS IT?

7 A. ABSOLUTELY.

8 Q. AND IN THE 9TH GRADE DID ERIK MENENDEZ

9 STILL NEED IT?

10 A. YES.

11 Q. AND DID YOU REVIEW THE RECORDS TO SEE FOR

12 HOW MANY OF THE YEARS THAT HE WAS A STUDENT THERE HE WAS

13 ACTUALLY ATTENDING LANGUAGE SKILLS?

14 A. YES, I CHECKED THAT.

15 Q. AND FOR HOW MANY YEARS DID HE ATTEND

16 LANGUAGE SKILLS?

17 A. ONLY THE 5TH GRADE.

18 Q. AND IS IT UP TO THE PARENTS TO MAKE THE

19 CHILD AVAILABLE FOR THOSE CLASSES?

20 A. YES.

21 MS. ABRAMSON: YOUR HONOR, I HAVE IN MY HAND ONE

22 PAGE OF THE PRINCETON DAY SCHOOL RECORDS I WOULD LIKE TO

23 MARK AS 452.

24 IS THIS THE DOCUMENT THAT INDICATES TO YOU

25 THAT FOR THE 5TH GRADE ERIK MENENDEZ PARTICIPATED IN THE

26 REMEDIAL CLASS LANGUAGE SKILLS?

27 A. IT IS.

28 Q. IT'S THE BOTTOM PORTION, THE BOTTOM THIRD

-12324

1 OF THE PAGE?

2 A. IT IS.

3 Q. AND WE CAN'T GET INTO THE CONTENTS RIGHT

4 NOW, OKAY?

5 DOES THAT BOTTOM PART, IS THAT A REPORT OF

6 HIS PROGRESS IN THAT CLASS?

7 A. IT IS.

8 Q. AND BASED ON THAT REPORT, WOULD THAT GIVE

9 YOU, AS A TEACHER, AN INDICATION OF WHETHER OR NOT HE

10 SHOULD CONTINUE IN LANGUAGE SKILLS INTO THE NEXT YEAR?

11 A. THE CONTENT OF THIS WOULD TELL ME, AS THE

12 PARENT, WHETHER HE SHOULD OR SHOULD NOT.

13 MS. ABRAMSON: OKAY.

14 I HAVE NOTHING FURTHER, YOUR HONOR.

15 THE COURT: OKAY.

16 CROSS-EXAMINATION.

17

18 CROSS-EXAMINATION

19 BY MS. NAJERA:

20 Q. GOOD AFTERNOON, MRS. SHARP. HI.

21 MRS. SHARP, WITH REGARDS TO THE RECORDS

22 THAT YOU HAVE REVIEWED REGARDING ERIK MENENDEZ'

23 ADMISSION INTO PRINCETON DAY SCHOOL, DIDN'T THOSE

24 RECORDS INDICATE THAT IN FACT MR. --

25 MS. ABRAMSON: OBJECTION. HEARSAY.

26 THE COURT: WHICH RECORDS ARE YOU REFERRING TO?

27 Q. BY MS. NAJERA: THE RECORDS THAT YOU HAVE

28 JUST EXAMINED, THAT YOU HAVE JUST TESTIFIED TO,

-12323

1 REGARDING ERIK MENENDEZ AND THE PRINCETON DAY SCHOOL.

2 A. YES.

3 MS. ABRAMSON: WELL, YOUR HONOR, I AM GOING TO

4 OBJECT, UNLESS COUNSEL IS FOCUSED ON A PARTICULAR PART

5 OF THOSE RECORDS. I DON'T KNOW WHAT SHE'S TALKING

6 ABOUT.

7 THE COURT: WELL, WAIT FOR THE QUESTION THEN.

8 MS. ABRAMSON: EXCUSE ME?

9 THE COURT: I HAVEN'T HEARD A QUESTION. I DON'T

10 KNOW WHAT IT IS YET.

11 MS. ABRAMSON: WELL, SHE WAS ABOUT TO INDICATE
12 WHAT THE RECORDS INDICATE, AND I AM OBJECTING ON HEARSAY
13 GROUNDS.

14 THE COURT: WELL, ASK YOUR QUESTION FIRST.

15 GO AHEAD.

16 MS. NAJERA: THANK YOU, YOUR HONOR.

17 Q. MRS. SHARP, IN REVIEWING THE RECORDS FROM
18 PRINCETON DAY SCHOOL, DID YOU DETERMINE THAT ERIK
19 MENENDEZ WAS ALLOWED INTO PRINCETON DAY SCHOOL ON
20 CERTAIN CONDITIONS?

21 A. THAT WAS THE WAY I READ THEM.

22 Q. AND, IN FACT, WASN'T IT PRINCETON DAY
23 SCHOOL WHO DETERMINED THAT ERIK MENENDEZ WOULD HAVE TO
24 GO INTO THE 5TH GRADE AT PRINCETON DAY SCHOOL?

25 A. THAT IS CORRECT.

26 Q. AND AT THAT TIME, THE RECORDS REFLECT THAT
27 PRINCETON DAY SCHOOL WAS AWARE OF THE FACT THAT ERIK
28 MENENDEZ HAD COMPLETED THE 5TH GRADE AT HOPEWELL VALLEY;

-12322

1 ISN'T THAT CORRECT?

2 A. CORRECT, YES.

3 Q. SO THE DETERMINATION THAT ERIK MENENDEZ
4 SHOULD GO INTO THE 5TH GRADE WAS MADE BY PRINCETON DAY
5 SCHOOL; ISN'T THAT CORRECT?

6 A. FOR ADMISSION, YES.

7 Q. AND THAT IS REFLECTED IN THE RECORDS?

8 A. CORRECT.

9 Q. THAT WAS NOT A DECISION THAT WAS MADE BY

10 MR. OR MRS. MENENDEZ?

11 A. THAT IS CORRECT.

12 Q. AND WITH REGARDS TO WHAT YOU HAVE TESTIFIED

13 TO CONCERNING CERTAIN CONDITIONS OF HIS ACCEPTANCE INTO

14 PRINCETON DAY SCHOOL, WAS IT YOUR UNDERSTANDING FROM THE

15 RECORDS THAT ERIK MENENDEZ WOULD BE ACCEPTED INTO

16 PRINCETON DAY SCHOOL PROVIDED THAT HE WAS WILLING TO GET

17 SOME EXTRA HELP?

18 A. DOES EXTRA HELP MEAN TAKE THE LANGUAGE

19 SKILLS, OR EXTRA HELP OUTSIDE OF SCHOOL?

20 Q. DID YOU READ SOMETHING THAT STATED THAT HE

21 WAS ACCEPTED IF HE WAS WILLING TO GET EXTRA HELP FOR

22 HIM, IF NECESSARY?

23 A. OUTSIDE OF SCHOOL? I SAW NO MENTION OF

24 THAT.

25 Q. DID YOU READ SOMETHING THAT TOLD YOU THAT

26 HE WOULD GET SOME -- THAT HE -- CONDITIONAL UPON HIM

27 ENTERING PRINCETON DAY SCHOOL HE WOULD BE IN ONE OF

28 THESE REMEDIAL CLASSES?

-12321

1 A. THE ONLY 5TH GRADE STUDENTS WHO TOOK THE

2 LANGUAGE SKILLS CLASS WERE STUDENTS WHOSE ADMISSION WAS
3 PREDICATED UPON APPROVAL BY THE PARENTS TO TAKE THIS
4 COURSE, BECAUSE OUR 4TH GRADE STUDENTS COMING THROUGH
5 EITHER WOULD NOT NEED THE COURSE, OR HAD COMPLETED THE
6 COURSE IN THE LOWER SCHOOL.

7 Q. AND YOUR UNDERSTANDING IS THAT ERIK
8 MENENDEZ TOOK A REMEDIAL CLASS FOR THE 5TH GRADE; IS
9 THAT RIGHT?

10 A. I BELIEVE SO, IN THE RECORDS.

11 Q. AND IN YOUR REVIEW OF THE RECORDS FROM
12 PRINCETON DAY SCHOOL, WAS THERE A STATEMENT IN THERE
13 THAT --

14 MS. ABRAMSON: OBJECTION, YOUR HONOR. HEARSAY,
15 UNLESS SHE FOCUSES ON THE RECORDS.

16 THE COURT: THAT'S WHAT SHE'S DOING.

17 Q. BY MS. NAJERA: WAS THERE A STATEMENT THAT
18 THERE WERE SOME RESERVATIONS ABOUT ERIK MENENDEZ'
19 ACCEPTANCE INTO PRINCETON DAY SCHOOL, BUT THAT HE WOULD
20 BE ALLOWED IN AND THEY WOULD TAKE A LOOK AT HIM AFTER
21 ONE YEAR?

22 A. I READ THEM VERY FAST, BUT I BELIEVE THAT'S
23 CORRECT.

24 Q. AND WAS IT YOUR UNDERSTANDING FROM THESE
25 RECORDS THAT ERIK MENENDEZ -- ERIK MENENDEZ, WHETHER OR
26 NOT HE STAYED IN PRINCETON DAY SCHOOL WOULD DEPEND UPON
27 HOW HE DID THAT FIRST YEAR?

28 A. I DON'T RECALL READING THAT.

1 Q. WOULD IT HELP TO LOOK AT A PAGE FROM THOSE
2 RECORDS?

3 A. YES.

4 Q. OKAY.

5 Q. AND WAS IT YOUR UNDERSTANDING THAT
6 PRINCETON DAY SCHOOL WAS ACCEPTING HIM CONDITIONALLY
7 UPON HOW DID HE THAT FIRST YEAR IN 5TH GRADE?

8 A. YES.

9 Q. AND AFTER HIS 5TH GRADE YEAR, HE WAS
10 ALLOWED TO STAY AT PRINCETON DAY SCHOOL; IS THAT
11 CORRECT?

12 A. THAT'S CORRECT.

13 Q. SO IS IT YOUR UNDERSTANDING, BASED ON THE
14 RECORDS AT PRINCETON DAY SCHOOL, THAT HE APPARENTLY
15 PERFORMED IN LINE TO MEET THE CONDITIONS TO BE ALLOWED
16 TO STAY AT PRINCETON DAY SCHOOL?

17 MS. ABRAMSON: OBJECTION, YOUR HONOR. I THINK
18 IT'S CALLING FOR SPECULATION, USING THE WORD "PERFORM."

19 THE COURT: REPHRASE THE QUESTION, PLEASE.

20 Q. BY MS. NAJERA: BASED ON YOUR UNDERSTANDING
21 FROM THE RECORDS THAT ERIK MENENDEZ' ABILITY TO REMAIN
22 AT PRINCETON DAY SCHOOL WOULD BE DEPENDENT UPON HIS
23 PERFORMANCE AT PRINCETON DAY SCHOOL DURING HIS 5TH GRADE
24 YEAR, AND THE FACT THAT HE DID REMAIN THERE AFTER HIS
25 5TH GRADE YEAR, WOULD THIS INDICATE TO YOU THAT HE WOULD
26 HAVE APPEARED TO HAVE PERFORMED AS WAS NEEDED TO REMAIN

27 AT THE SCHOOL?

28 A. MAY I GIVE A QUALIFIED ANSWER ON THAT? HE

-12319

1 HAD A LOT OF FOURS, WHICH IS OKAY, BUT YES.

2 Q. SO HIS PERFORMANCE WAS ADEQUATE?

3 A. BUT NOT SATISFACTORY. ADEQUATE.

4 Q. ADEQUATE ENOUGH TO REMAIN AT PRINCETON DAY
5 SCHOOL?

6 A. CORRECT.

7 Q. AND THE STANDARDS AT PRINCETON DAY SCHOOL
8 WERE --

9 A. VERY HIGH.

10 Q. -- AS YOU STATED, VERY HIGH.

11 SO APPARENTLY HE MET THOSE HIGH STANDARDS?

12 A. NO, HE DIDN'T MEET THE HIGH STANDARDS. HE
13 MET THE ADEQUATE STANDARDS TO STAY AT THE DAY SCHOOL.

14 Q. SO WOULD IT BE FAIR TO SAY HE MET THE
15 ADEQUATE STANDARDS TO STAY AT THIS SCHOOL, WHOSE
16 STANDARDS WERE VERY HIGH?

17 A. YES.

18 Q. NOW, YOU TESTIFIED ON DIRECT EXAMINATION
19 THAT YOU WERE VERY CONCERNED ABOUT WHAT YOU REFER TO AS
20 AN ORAL/AURAL PROBLEM THAT ERIK MENENDEZ HAD
21 DIFFERENTIATING BETWEEN SOUNDS IN THE SPANISH LANGUAGE?

22 A. THAT'S CORRECT.

23 Q. AND YOU ALSO TESTIFIED THAT YOU SENT
24 HOME -- I BELIEVE THE WORDS YOU USED WERE "COUNTLESS
25 REPORTS" ON THIS SUBJECT?
26 A. YES.
27 Q. AND YOU ALSO TESTIFIED THAT YOU SENT HOME
28 AT LEAST HALF A DOZEN REPORTS DEALING SPECIFICALLY WITH

-12318

1 THE -- WHAT YOU CALL THE ORAL/AURAL PROBLEM; IS THAT
2 CORRECT?
3 A. YES, I DID.
4 Q. AND YOU TAUGHT ERIK MENENDEZ FOR THE YEAR
5 85-86; IS THAT CORRECT?
6 A. YES.
7 Q. AND DID YOU HAVE AN OPPORTUNITY TO
8 REVIEW -- AND YOU ALSO TESTIFIED, I BELIEVE, THAT
9 RECORDS OF THESE REPORTS, COPIES ARE KEPT AT THE SCHOOL,
10 AND THEY ARE ALSO SENT HOME TO THE FAMILY; IS THAT
11 CORRECT?
12 A. NOT ALL OF THEM.
13 Q. I BELIEVE YOU TESTIFIED IN RESPONSE TO -- I
14 BELIEVE YOU TESTIFIED IN RESPONSE TO QUESTIONS BY
15 MRS. ABRAMSON THAT THESE RECORDS WERE KEPT -- THAT
16 PRINCETON DAY SCHOOL KEPT VERY GOOD RECORDS OF THESE
17 THINGS, AND THEY WERE KEPT IN THE STUDENT'S FILE.
18 A. THAT'S CORRECT. BUT THERE WAS ALSO A

19 CHANCE FOR A TEACHER TO SEND A PERSONAL NOTE HOME TO A
20 PARENT.

21 Q. ISN'T IT TRUE, MRS. SHARP, THAT THE
22 PRINCETON DAY SCHOOL RECORDS REFLECT THAT YOU ONLY SENT
23 FOUR REPORTS THAT ARE LISTED IN HIS RECORDS TO MR. AND
24 MRS. MENENDEZ?

25 A. IF YOU SAY SO. I DIDN'T COUNT THEM. I
26 SAID SIX. THERE WERE FOUR.

27 Q. I BELIEVE YOU TESTIFIED THAT --

28 MS. ABRAMSON: I'M GOING TO -- I'M SORRY, NEVER

-12317

1 MIND.

2 Q. BY MS. NAJERA: I BELIEVE YOU SAID YOU SENT
3 COUNTLESS REPORTS TO MR. AND MRS. MENENDEZ, CORRECT?

4 A. I SENT COUNTLESS MESSAGES. I DID NOT FILE
5 THEM, BECAUSE I WAS AFRAID THAT THE CHILD MIGHT GET IN
6 TROUBLE.

7 Q. AND, IN FACT, THERE ARE ONLY FOUR INTERIM
8 REPORTS THAT ARE IN ERIK MENENDEZ' PRINCETON DAY SCHOOL
9 RECORDS FOR THE YEAR '85 TO '86 FROM YOU; ISN'T THAT
10 CORRECT?

11 A. OFFICIAL ONES.

12 Q. IS THAT CORRECT?

13 A. I DON'T KNOW. IF YOU SAY SO.

14 Q. WOULD IT HELP YOU TO REVIEW -- WELL, DID

15 YOU JUST HAVE AN OPPORTUNITY TO REVIEW THE RECORDS?

16 A. I WAS LOOKING AT FIVE YEARS OF RECORDS IN
17 ABOUT 15 MINUTES.

18 Q. OKAY.

19 MS. ABRAMSON: DO YOU WANT THE EXHIBIT, COUNSEL?

20 Q. BY MS. NAJERA: SHOWING YOU SOME RECORDS
21 HERE, MAYBE THIS WILL REFRESH YOUR MEMORY.

22 WHY DON'T YOU TAKE A LOOK AT THAT, AND WHEN
23 YOU'RE THROUGH LOOKING AT THEM, I'LL ASK YOU SOME
24 QUESTIONS.

25 A. DO YOU WANT ME TO READ THEM, OR JUST THE
26 DATES? DO YOU WANT ME TO READ THEM ALSO?

27 MS. ABRAMSON: EXCUSE ME, YOUR HONOR, BUT THE
28 WITNESS SHOULDN'T BE TALKING PRIVATELY.

-12316

1 THE COURT: SHE IS JUST ASKING TO CLARIFY WHAT
2 SHE SHOULD BE LOOKING AT.

3 THE WITNESS: DO YOU WANT ME TO READ THE DATES,
4 OR READ THEM ALL?

5 Q. BY MS. NAJERA: WHY DON'T YOU JUST GLANCE
6 AT THEM AND TELL ME IF THESE REFRESH YOUR MEMORY THAT
7 THERE WERE FOUR.

8 FIRST OF ALL, WHY DON'T YOU REFRESH YOUR
9 MEMORY IF THESE WERE TO THE YEAR '85 AND '86?

10 A. YES.

11 Q. AND HOW MANY REPORTS WERE THERE?
12 A. THERE WERE FOUR.
13 Q. IN FACT, THESE ARE THE ONLY FOUR REPORTS
14 THAT ARE PART OF THE PRINCETON DAY SCHOOL RECORD; IS
15 THAT CORRECT?

16 A. YES.

17 Q. SO THERE WEREN'T AT LEAST HALF A DOZEN
18 REPORTS SENT BY YOU; IS THAT CORRECT?

19 A. OFFICIAL FORMS, YES.

20 Q. SO, THERE WEREN'T HALF A DOZEN OFFICIAL
21 FORMS SENT?

22 MS. ABRAMSON: OBJECTION. IT'S ARGUMENTATIVE.
23 IT'S BEEN ASKED AND ANSWERED.

24 THE COURT: IS IT CORRECT THAT THERE WERE ONLY
25 FOUR OF THESE OFFICIAL FORMS? THAT'S WHAT SHE'S ASKING.

26 THE WITNESS: YES.

27 Q. BY MS. NAJERA: AND I BELIEVE YOU TESTIFIED
28 IN RESPONSE TO QUESTIONS BY MRS. ABRAMSON THAT THESE

-12315

1 OFFICIAL REPORTS, BECAUSE YOU WERE SO CONCERNED ABOUT
2 THIS ORAL/AURAL PROBLEM THAT ERIK MENENDEZ HAD, THAT YOU
3 MENTIONED IT MANY, MANY TIMES IN THESE DIFFERENT REPORTS
4 THAT YOU SENT BACK.

5 DO YOU REMEMBER THAT TESTIMONY?

6 MS. ABRAMSON: OBJECTION. MISSTATES THE

7 TESTIMONY.

8 THE COURT: OVERRULED.

9 THE WITNESS: I BELIEVE I RECALL SAYING THAT.

10 Q. BY MS. NAJERA: AND ISN'T IT TRUE THAT, IN
11 FACT, YOU ONLY MADE REFERENCE TO AN ORAL/AURAL
12 DIFFICULTY ERIK MENENDEZ WAS HAVING IN ONE REPORT THAT
13 YOU SENT HOME?

14 A. I DIDN'T READ THEM WHEN YOU HANDED THEM TO
15 ME.

16 Q. WELL, DO YOU REMEMBER THAT YOU ONLY MADE
17 REFERENCE TO AN ORAL PROBLEM IN ONE REPORT?

18 A. NO, I DON'T RECALL THAT.

19 Q. DO YOU REMEMBER YOUR REPORT OF NOVEMBER
20 1985?

21 A. NO, I DON'T.

22 Q. SHOWING YOU YOUR REPORT OF NOVEMBER OF
23 1985, DOES IT APPEAR THAT YOU MENTION THAT ERIK MENENDEZ
24 HAS AN ORAL/AURAL DIFFICULTY WITH REGARDS TO THE SPANISH
25 LANGUAGE?

26 A. YES, IT DOES.

27 MS. ABRAMSON: I AM GOING TO OBJECT TO THE
28 QUESTION. MISSTATES THE EVIDENCE.

-12314

1 THE COURT: OVERRULED.

2 Q. BY MS. NAJERA: WITH REGARDS TO THE OTHER

3 THREE REPORTS, DO YOU MENTION THAT THERE IS AN

4 ORAL/AURAL DIFFICULTY IN ANY OF THE OTHER THREE REPORTS?

5 A. IN THOSE WORDS, NO.

6 MS. NAJERA: I HAVE NOTHING FURTHER.

7 THE COURT: REDIRECT EXAMINATION.

8

9 REDIRECT EXAMINATION

10 BY MS. ABRAMSON:

11 Q. MRS. SHARP, WAS THERE ANY COMPULSION ON

12 MR. AND MRS. MENENDEZ TO PUT THEIR CHILD IN PRINCETON

13 DAY SCHOOL?

14 MS. NAJERA: OBJECTION. CALLS FOR SPECULATION

15 FROM THIS WITNESS.

16 THE COURT: SUSTAINED.

17 Q. BY MS. ABRAMSON: ARE YOU AWARE OF ANYBODY

18 THAT WAS FORCING THEM TO PUT THEIR KID IN PRINCETON DAY

19 SCHOOL?

20 MS. NAJERA: OBJECTION. CALLS FOR SPECULATION.

21 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.

22 Q. BY MS. ABRAMSON: NO CHILD IS FORCED TO

23 ATTEND A PRIVATE SCHOOL, ARE THEY?

24 MS. NAJERA: OBJECTION. IRRELEVANT.

25 THE COURT: WE ALL KNOW THAT. SO WHY DON'T YOU

26 ASK A DIFFERENT QUESTION.

27 Q. BY MS. ABRAMSON: HE WAS REQUIRED TO REPEAT

28 THE 5TH GRADE BECAUSE THAT'S THE TERMS THAT P.D.S. WOULD

1 TAKE HIM, CORRECT?

2 A. YES.

3 Q. THAT WOULD MAKE HIM OLDER THAN ALL OF THE

4 OTHER KIDS IN THIS CLASS, CORRECT?

5 A. YES.

6 Q. AND BASED ON THE RECORDS YOU SAW, HE WAS

7 PROMOTED OUT OF THE 5TH GRADE IN HOPEWELL VALLEY AND

8 COULD GO TO THE 6TH GRADE?

9 A. YES.

10 Q. ARE CHILDREN EMBARRASSED BY BEING HELD

11 BACK?

12 MS. NAJERA: OBJECTION. IRRELEVANT.

13 THE COURT: ALSO CALLS FOR A CONCLUSION ON THE

14 PART OF THE WITNESS.

15 Q. BY MS. ABRAMSON: YES OR NO, ARE CHILDREN

16 EMBARRASSED BY THE FACT THEY ARE BEING HELD BACK? IS

17 BEING HELD BACK USUALLY A SIGN OF FAILURE?

18 MS. NAJERA: OBJECTION. NO FOUNDATION.

19 MS. ABRAMSON: SHE IS A TEACHER.

20 THE COURT: WELL, IT'S A COMPOUND QUESTION.

21 SO THE OBJECTION IS SUSTAINED AND THE

22 ANSWER IS STRICKEN.

23 Q. BY MS. ABRAMSON: IS BEING HELD BACK

24 COMMONLY UNDERSTOOD TO BE A SIGN OF FAILURE?

25 MS. NAJERA: OBJECTION. IRRELEVANT AND CALLS FOR

26 SPECULATION.

27 THE COURT: UNDERSTOOD BY WHO?

-12312

1 IS STRICKEN.

2 Q. BY MS. ABRAMSON: UNDERSTOOD BY STUDENTS,
3 IN YOUR EXPERIENCE?

4 A. YES.

5 MS. NAJERA: OBJECTION. IRRELEVANT AND CALLS FOR
6 SPECULATION.

7 THE COURT: OVERRULED.

8 Q. BY MS. ABRAMSON: AND BASED ON THE RECORDS
9 THAT YOU SAW, ERIK MENENDEZ DID RATHER WELL AT HOPEWELL
10 VALLEY, DIDN'T HE?

11 A. HE DID.

12 Q. AND HE DID MUCH BETTER AS A STUDENT IN THAT
13 PUBLIC SCHOOL THAN HE HE EVER DID AT PRINCETON DAY
14 SCHOOL?

15 A. YES.

16 Q. AND IS IT IMPORTANT TO A CHILD THAT THEY DO
17 WELL IN SCHOOL?

18 A. YES.

19 MS. NAJERA: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED.

21 Q. BY MS. ABRAMSON: NOW, IN ADDITION TO THESE
22 FOUR OFFICIAL SLIPS, DID YOU SEND HOME NOTES AND
23 MESSAGES TO THE MENENDEZ PARENTS THAT ERIK HAD LEARNING

24 DISABILITY PROBLEMS?

25 A. YES.

26 Q. YOU'RE NOT MAKING THAT UP FOR THIS TRIAL,
27 ARE YOU, MS. SHARP?

28 A. NO.

-12311

1 Q. IN FACT, LOOKING OVER ALL THE RECORDS, ARE
2 THERE INDICATIONS OF LEARNING DISABILITIES AT EVERY
3 SINGLE GRADE LEVEL?

4 A. YES.

5 Q. BY EVERY OTHER TEACHER?

6 A. MOST.

7 MS. ABRAMSON: NOTHING FURTHER.

8 THE COURT: ANYTHING ELSE?

9 MS. NAJERA: JUST BRIEFLY.

10

11 RECROSS-EXAMINATION

12 BY MS. NAJERA:

13 Q. WITH REGARDS TO THIS SITUATION, YOU SAID
14 THAT YOU SENT HOME MANY NOTES REGARDING WHAT YOU BELIEVE
15 WAS ERIK MENENDEZ' LEARNING DISABILITY; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND YOU SENT THESE NOTES HOME WITH ERIK
18 MENENDEZ; IS THAT CORRECT?

19 A. NO, THAT IS NOT CORRECT.

20 Q. MAILED THESE NOTES HOME?
21 A. I MAILED THEM TO HIS MOTHER.
22 Q. SO YOU DON'T -- BUT THESE WEREN'T NOTES
23 THAT WERE SENT TO THE SCHOOL WHERE THEY KEPT OFFICIAL
24 RECORDS?
25 A. THAT'S CORRECT.
26 Q. SO YOU DON'T KNOW WHAT INFORMATION SHE WAS
27 GETTING AND WHAT INFORMATION SHE WASN'T GETTING; IS THAT
28 CORRECT?

-12310

1 A. WELL, I ASSUME THAT IF THE POSTAL SYSTEM
2 WORKS, SHE GOT THEM.
3 Q. ASSUMING ERIK MENENDEZ DIDN'T INTERCEPT
4 THEM?
5 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT CALLS
6 FOR SPECULATION.
7 THE COURT: SUSTAINED.
8 Q. BY MS. NAJERA: IN ANY EVENT, WITH REGARDS
9 TO THE OFFICIAL REPORTS THAT YOU KNOW ABOUT, ONLY ONE OF
10 THEM MENTIONS THAT HE HAS A LEARNING DISABILITY OF AN
11 ORAL/AURAL DIFFICULTY; IS THAT CORRECT?
12 MS. ABRAMSON: ASKED AND ANSWERED, YOUR HONOR.
13 THE COURT: WE'VE ALREADY GONE INTO THIS.
14 MS. NAJERA: NOTHING FURTHER.
15 THE COURT: ANYTHING ELSE?

16 ALL RIGHT. THANK YOU. YOU MAY STEP DOWN.

17 YOU'RE EXCUSED.

18 YOUR NEXT WITNESS.

19 MR. GESSLER: ALICIA HERCZ, YOUR HONOR. MAY I

20 GET HER IN THE HALL?

21 THE COURT: YES.

22

23 ALICIA HERCZ,

24 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND

25 TESTIFIED AS FOLLOWS:

26 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE

27 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE

28 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND

-12309

1 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

2 THE WITNESS: I DO.

3 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR

4 NAME FOR THE RECORD.

5 THE WITNESS: ALICIA HERCZ. THE LAST NAME IS

6 SPELLED H-E-R-C, LIKE IN CAT, AND Z LIKE IN ZEBRA.

7

8 DIRECT EXAMINATION

9 BY MR. GESSLER:

10 Q. MRS. HERCZ, WHERE DO YOU RESIDE?

11 A. I LIVE IN WASHINGTON, D.C., GEORGETOWN.

12 Q. AND DIRECTING YOUR ATTENTION TO THE YEAR

13 1979, IN WHAT AREA DID YOU LIVE THEN?

14 A. WE MOVED FROM LOS ANGELES, FROM THE

15 CALABASAS/WOODLAND HILLS AREA TO PENNINGTON IN 1979.

16 Q. THAT'S PENNINGTON, NEW JERSEY?

17 A. YES, SIR.

18 Q. WHEN YOU MOVED TO PENNINGTON, DID YOU HAVE

19 OCCASION TO MEET MR. AND MRS. MENENDEZ?

20 A. ALMOST IMMEDIATELY, YES.

21 Q. WAS THAT SOCIALLY THAT YOU KNEW THEM, OR

22 OTHERWISE, AT THAT TIME?

23 A. SOCIALLY. WE WERE IN THE SAME

24 NEIGHBORHOOD. WE WERE JUST A FEW BLOCKS AWAY FROM EACH

25 OTHER.

26 Q. WOULD YOU CLASSIFY YOURSELF AS FRIENDS?

27 A. YES.

28 Q. NOW, SKIPPING TO 1984, DID YOU GO TO TEACH

-12308

1 AT PRINCETON DAY SCHOOL AT THAT TIME?

2 A. YES, I DID. MY SON WAS STARTING THE 7TH

3 GRADE, AND THEY HIRED ME AS A TEACHER THE SAME EXACT

4 YEAR.

5 Q. HAD YOU WORKED AS A TEACHER IN OTHER PLACES

6 BEFORE THAT?

7 A. I HATE TO ADMIT IT, BUT I'M 50, AND I'VE

8 BEEN TEACHING 21 YEARS. SO EVEN BY THEN I HAD BEEN
9 TEACHING AWHILE.

10 Q. AND WHAT WAS YOUR SPECIALTY? WHAT WAS YOUR
11 COURSE THAT YOU TAUGHT AT PRINCETON DAY SCHOOL?

12 A. I TAUGHT SPANISH. I GREW UP IN ARGENTINA,
13 AND GOT MY MASTERS AND NEARLY MY PH.D IN SPANISH, AND
14 THAT'S WHAT I'VE BEEN TEACHING ALL MY LIFE.

15 Q. IN THAT PARTICULAR YEAR OF 1984 --

16 A. YES.

17 Q. -- WAS LYLE MENENDEZ A STUDENT IN YOUR
18 CLASS?

19 A. HE WAS.

20 Q. AND THAT PARTICULAR CLASS, WAS THAT WHAT
21 YOU'D CALL KIND OF A SEMINAR, A SMALL CLASS OF SOME
22 KIND?

23 A. IT WAS. IT WAS SPANISH IV, AND I HAD THE
24 HONOR OF HAVING ONLY FIVE KIDS IN THAT CLASS.

25 Q. SO WAS THAT ONE WHERE EVERYBODY COULD KIND
26 OF PARTICIPATE ON A MORE RELAXED BASIS?

27 A. VERY MUCH SO.

28 Q. NOW, THIS WAS LYLE MENENDEZ' JUNIOR YEAR?

-12307

1 A. IT WAS.

2 Q. AND THAT PARTICULAR CLASS, WAS THAT AN
3 EARLY MORNING CLASS?

4 A. FIRST THING IN THE MORNING.

5 Q. AND WOULD LYLE MENENDEZ BE ON TIME FOR THAT
6 CLASS IN HIS JUNIOR YEAR, OR WOULD HE BE USUALLY LATE?

7 A. ALMOST ALWAYS LATE.

8 Q. AND WHEN HE'D COME IN, HOW WAS HE DRESSED?

9 A. TENNIS CLOTHES; IN THE HEIGHT OF WINTER OR
10 IN THE -- ANY TIME DURING THE SCHOOL YEAR.

11 Q. NOW, DIRECTING YOUR ATTENTION THEN TO THE
12 NEXT YEAR, HIS SENIOR YEAR, DID YOU ALSO TEACH HIM OR
13 TEACH PART OF A CLASS IN WHICH HE WAS INVOLVED IN THAT
14 YEAR?

15 A. I TAUGHT WITH SANDRA SHARP, RAY GONZALEZ
16 AND MYSELF, AND IT WAS THE FIRST YEAR WE HAD EVER DONE
17 THAT. IT WAS A CIVILIZATION CLASS, AND I HAD LYLE FOR A
18 THIRD OF THE ACADEMIC YEAR.

19 Q. AND TO YOUR KNOWLEDGE, WOULD HE MISS SOME
20 OF THOSE CLASSES FOR TENNIS PURPOSES?

21 A. YES, SIR. FOR TOURNAMENTS.

22 Q. AS A STUDENT IN YOUR CLASS IN BOTH HIS
23 JUNIOR AND SENIOR YEARS, HOW WOULD YOU DESCRIBE HIM?

24 A. HE WAS VERY POLITE, TRIED TO DO WHATEVER
25 THE TEACHER WOULD ASK HIM TO DO. BUT I HAD NEVER IN MY
26 LIFE MET SOMEONE SO QUIET, SO TIMID, AND SO UNABLE TO
27 COMMUNICATE.

28 Q. THIS WAS IN THE TWO CLASSES THAT YOU WERE

1 INVOLVED WITH HIM?

2 A. YES, SIR.

3 Q. NOW, DIRECTING YOUR ATTENTION TO THE JUNIOR
4 YEAR.

5 A. YES.

6 Q. WAS THERE AN OCCASION IN WHICH LYLE
7 MENENDEZ CAME TO YOUR OFFICE IN THE AFTERNOON?

8 A. THERE WAS.

9 Q. WHERE WAS YOUR OFFICE LOCATED?

10 A. THE FIRST YEAR I TAUGHT THERE, I -- I DON'T
11 THINK YOU COULD CALL IT AN OFFICE. I HAD A CUBICLE. IT
12 WAS A CUBICLE ALMOST NEXT DOOR TO WHERE THE
13 ADMINISTRATION OFFICES WERE.

14 AND I HAD A LITTLE SPOT, A LITTLE OFFICE
15 THERE WHICH WAS PRACTICALLY IN THE HALLWAY, AND THERE
16 WAS A GLASS PARTITION LIKE THAT ONE (INDICATING). AND
17 SO I WAS VERY VISIBLE TO THE STUDENTS FROM THE HALLWAY,
18 AND SO WAS MY OFFICE.

19 Q. AND WAS THERE AN OCCASION THEN WHEN LYLE
20 MENENDEZ CAME AND SAT IN YOUR OFFICE?

21 A. THERE WAS, SIR.

22 Q. HOW LONG DID HE STAY ON THAT FIRST
23 OCCASION?

24 A. A WHOLE CLASS PERIOD. I WOULD THINK IT
25 WOULD BE NO LESS THAN 40 MINUTES.

26 Q. WAS THIS VISIBLE TO THE OTHER STUDENTS
27 WALKING BY?

28 A. VERY MUCH SO. IT WAS REALLY UNUSUAL THAT

1 HE WOULD COME, BECAUSE IT WASN'T THE COOL THING TO DO,
2 TO COME TO A TEACHER'S OFFICE AND JUST SIT THERE, BUT HE
3 DID.

4 Q. DID YOU ASK HIM SOME QUESTIONS AS TO WHY HE
5 WAS THERE?

6 A. YES, I DID.

7 Q. DID YOU TRY TO SEE IF YOU COULD HELP OUT?

8 A. I DID. I WANTED TO KNOW IF IT WAS ABOUT
9 GRADES, IF IT WAS ABOUT WHATEVER.

10 AND AGAIN, I WAS ENCOUNTERED BY TOTAL
11 SILENCE.

12 Q. NOW, AFTER -- DID HE LEAVE THEN AT THE END
13 OF THE 45 MINUTES?

14 A. YES.

15 Q. AND A PERIOD OF A MONTH OR SO LATER, WAS
16 THIS INCIDENT REPEATED?

17 A. IT WAS, MUCH THE SAME WAY. NOTHING HAD
18 PRECIPITATED IT, JUST HE CAME AND HE POLITELY SAID,
19 "HELLO, MRS. HERCZ," AND SAT DOWN AND THAT WAS IT.

20 Q. AND AGAIN, DID YOU ASK HIM ANY QUESTIONS AS
21 TO WHAT WAS TROUBLING HIM, OR WHY HE SEEMED TO BE THERE?

22 A. YES, SIR. WITHIN THE REALM OF, YOU KNOW,
23 IN A SCHOOL ATMOSPHERE. YES, I DID.

24 Q. DID YOU GET ANY ANSWERS?

25 A. NO, SIR.

26 Q. AND WERE YOU TRYING TO FIND OUT WHAT WAS
27 WRONG?

28 A. ABSOLUTELY.

-12304

1 Q. WHY?

2 A. AS AN ADULT AND ALSO AS HAVING A CHILD OF
3 MY OWN NOT MUCH DIFFERENT THAN LYLE IN AGE, I TRIED TO
4 ELICIT EVERYTHING I COULD. "HOW ARE YOU? HOW ARE YOU
5 DOING? WHAT'S UP?"

6 YOU KNOW, YOU TRY TO, BUT YOU DON'T -- YOU
7 CAN'T FORCE SOMEONE TO TALK TO YOU. YOU REALLY CAN'T.

8 Q. DID YOU TRY TO FIND OUT SO THAT YOU COULD
9 HELP?

10 A. YES, SIR.

11 Q. AFTER THIS SECOND OCCASION, DID YOU THEN GO
12 TO MRS. MENENDEZ TO FIND OUT FURTHER, IF YOU COULD, HOW
13 YOU COULD HELP OUT IN THIS SITUATION?

14 A. YEAH. I SAW KITTY AND JOE JUST ABOUT AS
15 FREQUENTLY AS I SAW LYLE. WE REALLY DID SEE EACH OTHER
16 FREQUENTLY. THIS WAS A NEIGHBORHOOD THAT WAS VERY YOUNG
17 IN TERMS OF -- YOU KNOW -- THE HOUSES WERE BEING BUILT
18 AND WE WERE ALL TOGETHER THERE, KIND OF HANGING ONTO
19 EACH OTHER.

20 AND I SAW KITTY SOCIALLY, NOT TOO LONG
21 AFTER THE SECOND TIME THAT LYLE CAME UP TO ME, AND SAID:

22 "YOU KNOW WHAT? LYLE'S BEEN COMING OVER, AND I'D LIKE
23 TO KNOW IF YOU COULD HELP ME WITH THAT."
24 Q. AND BY "HELP YOU WITH THAT," DID YOU MEAN
25 TO END IT, OR TO FIND OUT WHY, OR WHAT DID YOU MEAN?
26 A. TO GIVE ME A HINT OF WHAT HE MIGHT BE
27 WANTING TO TALK TO ME ABOUT.
28 Q. AND WHAT WAS HER RESPONSE?

-12303

1 MR. CONN: OBJECTION. CALLS FOR HEARSAY.
2 THE COURT: OVERRULED.
3 YOU CAN ANSWER THE QUESTION.
4 THE WITNESS: "LYLE DOESN'T OPEN UP TO ANYONE."
5 Q. BY MR. GESSLER: AND DID LYLE THEN COME
6 BACK TO SEE YOU AGAIN?
7 A. NO, SIR.
8 Q. NEVER?
9 A. NEVER AGAIN.
10 Q. IN THE WHOLE YEAR AND A HALF THAT WAS LEFT
11 WHEN HE WAS IN SCHOOL?
12 A. NEVER AGAIN.
13 Q. AND DID YOU REGRET HAVING TOLD
14 MRS. MENENDEZ ABOUT THESE INCIDENTS?
15 MR. CONN: OBJECTION. IRRELEVANT.
16 THE COURT: SUSTAINED.
17 Q. BY MR. GESSLER: TO YOUR KNOWLEDGE, DID

18 MRS. MENENDEZ EVER HELP IN TRYING TO GET HIM TO OPEN UP
19 TO YOU AS TO WHAT WAS WRONG?
20 MR. CONN: OBJECTION. CALLS FOR SPECULATION.
21 THE COURT: OVERRULED.
22 THE WITNESS: NO, SIR.
23 Q. BY MR. GESSLER: NOW, AT THE END OF HIS --
24 I TAKE IT SCHOOL ENDED ABOUT EARLY JUNE, END OF MAY IN
25 THE SENIOR YEAR?
26 A. YES, SIR.
27 Q. AND AT THAT TIME WAS THERE AN OCCASION WHEN
28 THE MENENDEZES MOVED OUT TO KIND OF A PARK-LIKE AREA?

-12302

1 A. YES. THEY MOVED TO A BEAUTIFUL HOME ON
2 MOUNTAIN LAKE AVENUE, I THINK IT WAS CALLED, AND THEY
3 WERE VERY PROUD OF IT, AND THEY WANTED US OVER FOR A
4 BARBECUE ON MEMORIAL DAY WEEKEND.
5 Q. DID YOU AND YOUR HUSBAND ATTEND THAT?
6 A. YES, SIR.
7 Q. AND AT THAT BARBEQUE, DID YOU AND YOUR
8 HUSBAND ATTEMPT TO HAVE A CONVERSATION WITH MR. MENENDEZ
9 AND WITH HIS SON, LYLE?
10 A. YES. WE WERE SITTING IN THE SAME
11 PICNIC-TYPE BENCH THAT THEY HAD AS PATIO FURNITURE, AND
12 JOE AND LYLE WERE DIRECTLY ACROSS FROM MY HUSBAND AND I.
13 Q. AND DURING THAT CONVERSATION DID YOUR

14 HUSBAND ASK LYLE SOME QUESTIONS?

15 A. VERY MUCH SO. "WHAT ARE YOU GOING TO DO

16 AFTER YOU GRADUATE?" AND "WHAT DO YOU THINK YOU'RE GOING

17 TO BE? WHAT DO YOU WANT TO BE? WHAT ARE YOUR

18 INTERESTS? HOW IS YOUR TENNIS GOING?"

19 WE WERE VERY PRONE TO GO AND SEE LYLE PLAY

20 TENNIS, SO THERE'S LOTS OF THINGS THAT WERE ASKED.

21 Q. DID LYLE ANSWER THOSE QUESTIONS?

22 A. NOT ONE.

23 Q. WHY NOT?

24 A. JOE --

25 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

26 THE COURT: REPHRASE THE QUESTION, PLEASE.

27 Q. BY MR. GESSLER: DID ANYTHING OCCUR THAT

28 APPEARED TO YOU WHY LYLE DIDN'T ANSWER THOSE QUESTIONS?

-12301

1 A. DAD ANSWERED BEFORE LYLE COULD OPEN HIS

2 MOUTH.

3 Q. BY "DAD," DO YOU MEAN JOSE MENENDEZ?

4 A. JOSE MENENDEZ, YES.

5 Q. AND WAS THAT TRUE FOR EACH AND EVERY ONE OF

6 THOSE QUESTIONS ASKED OF LYLE?

7 A. YES.

8 Q. AND WERE THE QUESTIONS YOUR HUSBAND ASKED,

9 WERE THEY DIRECTED TO LYLE OR TO HIS FATHER?

10 A. ONLY TO LYLE.

11 MR. GESSLER: I HAVE NOTHING FURTHER.

12 THE COURT: EXAMINATION ON BEHALF OF ERIK

13 MENENDEZ?

14 MR. LEVIN: YES, YOUR HONOR. BRIEFLY.

15

16 DIRECT EXAMINATION

17 BY MR. LEVIN:

18 Q. WHERE DID YOU LIVE IN 1984?

19 A. 1984 WE MOVED BACK TO PENNINGTON AND MOVED

20 CLOSER TO THE MENENDEZ HOME.

21 Q. AND WAS THAT ON LAKE SHORE DRIVE?

22 A. WE LIVED ON LAKE SHORE DRIVE.

23 Q. WAS THERE A LAKE ADJACENT TO YOUR HOME?

24 A. RIGHT. THIS WAS A MAN-MADE LAKE CALLED THE

25 HONEY LAKE IN PENNINGTON, NEW JERSEY, AND A LOT OF OUR

26 HOMES BACKED ONTO THIS LAKE.

27 Q. ONE OF THOSE HOMES WAS ALSO THE MENENDEZ

28 HOME?

-12300

1 A. YES. YES, SIR.

2 Q. I'D LIKE TO SHOW YOU A PHOTOGRAPH. THIS

3 HAS BEEN PREVIOUSLY MARKED AS EXHIBIT NO. 360.

4 TAKE A LOOK AT THIS PHOTOGRAPH FOR A

5 MOMENT, AND --

6 A. OH, YEAH.

7 Q. DOES THAT APPEAR TO BE HONEY LAKE?

8 A. YES, SIR.

9 Q. DO YOU SEE LYLE AND ERIK IN A BOAT ON THAT
10 LAKE?

11 A. YES, SIR.

12 Q. NOW, THIS IS A RATHER LARGE LAKE?

13 A. WELL, I DON'T KNOW. FOR US HOMEOWNERS, IT
14 SEEMED LARGE AND QUITE ADEQUATE. AND YES, IT SEEMED
15 LARGE AND DEEP, YES.

16 Q. WAS IT THE KIND OF LAKE THAT BOATING AND
17 SKIING WAS THE TYPE OF ACTIVITIES THAT WOULD TAKE PLACE
18 ON IT?

19 A. NO MOTOR BOATS, JUST CANOES AND SUNFISH,
20 AND PEOPLE COULD FISH. THE LAKE WAS BEING FED FISH, AND
21 THEN THEY WOULD SURVIVE.

22 SO I DON'T KNOW THE DEPTH OF IT EXACTLY,
23 BUT I DO KNOW THAT IT WAS -- IT WAS A FUN ACTIVITY FOR
24 EVERYONE WHO LIVED AROUND THE LAKE.

25 Q. AT ONE EDGE OF THE LAKE WAS THERE A DAM?

26 A. THERE WAS.

27 Q. AND WAS THERE A DROP-OFF FROM WHERE THE DAM
28 WAS BUILT DOWN TO THE AREA BELOW?

-12299

1 A. YES, SIR.

2 Q. WAS IT A LONG DROP?

3 A. IT WAS A VERY STEEP DROP.

4 Q. AND WERE THERE ROCKS AT THE BOTTOM OF THE
5 DAM?

6 A. ONLY ROCKS AT THE BOTTOM OF THE DAM.

7 Q. WATER THAT WOULD COME OVER THE TOP OF THE
8 DAM, WOULD IT BE FED INTO SOME CREEKS THAT WOULD GO
9 SOMEWHERE?

10 A. YES. PENNINGTON IS WHERE WE LIVED, AND AS
11 THE WATER FELL, IT PROCEEDED TO FOLLOW A LOT OF
12 DIFFERENT PATHS AND A LOT OF DIFFERENT CREEKS, AND THEY
13 WOULD ALL END UP IN PRINCETON.

14 SO YES, SOMEHOW THESE CREEKS WENT ON TO
15 ANOTHER TOWN.

16 Q. THEY SORT OF MEANDERED AND FORKED INTO
17 LITTLE TRIBUTARIES AND ENDED UP IN PRINCETON?

18 A. AFTER THE BIG DROP, YES.

19 Q. HOW FAR WAS PRINCETON FROM WHERE THE LAKE
20 WAS?

21 A. A FEW MILES. FOUR, FIVE, SIX MILES.

22 Q. NOW, DIRECTING YOUR ATTENTION TO THAT YEAR
23 IN 1984, WAS THERE A PARTICULARLY BAD STORM THAT YEAR?

24 A. YES.

25 Q. AND DID IT OCCUR ON A WEEKEND?

26 A. YES. I THINK IT WAS JULY 4TH WEEKEND, AND
27 WE HAD AN UNUSUAL STORM IN THAT IT RAINED AND RAINED,
28 STARTING FRIDAY NIGHT ON, WITH LOTS OF WINDS AND LOTS OF

1 RAIN.

2 Q. DID YOU HAVE A BOAT ON HONEY LAKE?

3 A. YEAH, WE HAD A SUNFISH, AND I DON'T KNOW

4 WHAT YOU WOULD CALL THE OTHER ONE. IT WAS JUST A REAL

5 UGLY BOAT, ROWBOAT KIND OF THING. WE HAD TWO.

6 Q. DID THE MENENDEZ FAMILY HAVE A BOAT?

7 A. THEY DID.

8 Q. ON THAT LAKE?

9 A. THEY DID.

10 Q. AND DID OTHER FAMILIES AS WELL HAVE BOATS

11 ON THAT LAKE?

12 A. YES, SIR. WE ALL DID, I THINK.

13 Q. NOW, ON THAT PARTICULAR WEEKEND WHEN THE

14 STORM OCCURRED, WAS THE MENENDEZ FAMILY HOME?

15 A. NO, THEY WERE OUT OF TOWN AND THEY

16 MISSED -- THEY MISSED THE STORM.

17 Q. AS A RESULT OF THAT STORM, DID ANYTHING

18 HAPPEN TO THE BOATS THAT WERE TIED UP OR MOORED ON THAT

19 LAKE?

20 A. WE SORT OF KNEW THE STORM WAS COMING, SO MY

21 HUSBAND AND SON GOT THE HELP OF A NEXT DOOR NEIGHBOR SO

22 WE COULD PULL OUT THE BOATS, TAKE THEM TO THE LITTLE

23 SAND LANDING AND TIE THEM UP. AND WE DID. THEY DID,

24 THEY TIED THEM UP.

25 BY THE WEEKEND THEY WERE ALL GONE. TWELVE

26 BOATS WENT OVER THE DAM. I MEAN, THE WINDS AND THE

27 WAVES AND EVERYTHING, ALL THE BOATS THAT WE ALL OWNED
28 DISAPPEARED.

-12297

1 Q. AND AFTER THE STORM HAD SUBSIDED, AT SOME
2 POINT IN TIME THE MENENDEZ FAMILY RETURNED?

3 A. YEAH. I THINK THEY GOT BACK ON MONDAY.

4 Q. DID THEIR BOAT GET WASHED OVER THE DAM LIKE
5 EVERYONE ELSE'S?

6 A. RIGHT. THEY GOT BACK, AND THERE WAS NO
7 BOAT IN THEIR BACKYARD, AND SO THEY -- THEY ASSUMED
8 THAT --

9 MR. CONN: I WILL OBJECT AT THIS POINT. IT CALLS
10 FOR SPECULATION AS TO WHAT SOMEONE ASSUMES.

11 THE COURT: RIGHT.

12 NEXT QUESTION, PLEASE.

13 Q. BY MR. LEVIN: AT SOME POINT IN TIME DID
14 YOU SEE ERIK MENENDEZ AFTER THIS STORM?

15 A. YES, SIR. WE HAD -- WE RECEIVED A CALL
16 FROM KITTY ON MONDAY SAYING THAT, "WHAT HAPPENED?"

17 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

18 THE COURT: ALL RIGHT. THE ANSWER WILL STAND SO
19 FAR THAT THEY RECEIVED A PHONE CALL.

20 Q. BY MR. LEVIN: AFTER YOU RECEIVED A PHONE
21 CALL, DID YOU SEE ERIK MENENDEZ?

22 A. YES, SIR. WE SAW ERIK COME TO OUR DOOR

23 MIDDAY.

24 Q. AND AS A RESULT OF THAT TELEPHONE CALL, DID
25 YOU UNDERSTAND WHY IT WAS ERIK WAS AT YOUR DOOR?

26 A. YES. HE WAS LOOKING --

27 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

28 THE COURT: OVERRULED.

-12296

1 YOU CAN ANSWER THE QUESTION.

2 THE WITNESS: YES. ERIK WAS LOOKING FOR THE
3 BOAT, BECAUSE HE HAD BEEN SENT TO LOOK FOR THE BOAT.

4 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

5 THE COURT: ALL RIGHT. THE FIRST PART OF THE
6 ANSWER STANDS. THE "BECAUSE" PART AND THE REST OF IT IS
7 STRICKEN.

8 Q. BY MR. LEVIN: DID YOU FEEL BADLY WHEN YOU
9 SAW ERIK AT YOUR DOOR?

10 A. YES.

11 MR. CONN: OBJECTION. IRRELEVANT.

12 MR. LEVIN: I JUST WANT TO OFFER THE TELEPHONE
13 CONVERSATION, YOUR HONOR, TO EXPLAIN HER STATE OF MIND,
14 AND NOT OFFER IT TO PROVE THE TRUTH OF THE MATTER
15 ASSERTED.

16 THE COURT: SUSTAINED. HER STATE OF MIND ISN'T
17 RELEVANT ON THIS POINT.

18 Q. BY MR. LEVIN: DID ERIK MENENDEZ TELL YOU

19 WHAT IT WAS HE WAS DOING AT YOUR HOUSE?

20 A. HE WAS ASKED --

21 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

22 THE COURT: WELL, YOU CAN ANSWER THE QUESTION

23 FIRST OF ALL "YES."

24 THE WITNESS: YES.

25 Q. BY MR. LEVIN: WHAT DID HE TELL YOU WAS HIS

26 PURPOSE FOR BEING AT YOUR HOUSE?

27 MR. CONN: OBJECTION, HEARSAY. CALLS FOR

28 SPECULATION.

-12295

1 THE COURT: OVERRULED.

2 THE WITNESS: HE WANTED TO KNOW FROM US, MY

3 HUSBAND AND SON, WHAT DID THEY DO AFTER OUR BOAT

4 DISAPPEARED. LIKE "HELP ME, BECAUSE I HAVE TO FIND OUR

5 BOAT."

6 Q. COULD YOU DESCRIBE WHAT ERIK LOOKED LIKE TO

7 YOU?

8 A. YEAH. HE WAS TOTALLY WET AND COLD AND

9 TIRED.

10 Q. AND DID HE INDICATE TO YOU THAT HE HAD BEEN

11 LOOKING FOR HIS BOAT?

12 A. YES, SIR.

13 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

14 THE COURT: OVERRULED.

15 Q. BY MR. LEVIN: DID HE TELL YOU WHY HE WAS
16 LOOKING FOR HIS BOAT?

17 A. BECAUSE HE COULDN'T COME --

18 MR. CONN: OBJECTION. CALLS FOR MULTIPLE
19 HEARSAY.

20 THE COURT: OVERRULED.

21 YOU CAN ANSWER THE QUESTION.

22 THE WITNESS: YES, THANK YOU.

23 BECAUSE HE COULDN'T COME BACK HOME UNTIL HE
24 FOUND IT.

25 Q. BY MR. LEVIN: AND DID HE TELL YOU WHO IT
26 WAS THAT DIRECTED HIM TO LOOK FOR THE BOAT?

27 THE WITNESS: MOM.

28 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

-12294

1 THE COURT: OVERRULED.

2 THE WITNESS: HIS MOM HAD ASKED HIM TO BRING THE
3 BOAT BACK.

4 Q. BY MR. LEVIN: AND WHAT WAS IT THAT HE
5 WANTED FROM YOU?

6 A. HELP IN FINDING IT, AND HELP IN KNOWING HOW
7 WE LOST IT.

8 Q. DID THAT CAUSE YOU TO MAKE A TELEPHONE
9 CALL?

10 A. YES.

11 Q. AND DID YOU MAKE THAT TELEPHONE CALL IN THE
12 PRESENCE OF ERIK MENENDEZ?

13 A. YES.

14 Q. AND TO WHOM, OR WHO DID YOU CALL?

15 A. KITTY.

16 Q. AND DID YOU TALK TO KITTY?

17 A. YES.

18 Q. WHAT DID YOU TELL HER IN THE PRESENCE OF
19 ERIK MENENDEZ?

20 A. I SAID, "KITTY -- "

21 MR. CONN: OBJECTION. IRRELEVANT.

22 THE COURT: OVERRULED.

23 YOU CAN ANSWER THE QUESTION.

24 THE WITNESS: I SAID: "KITTY, WE LOST OUR BOAT.

25 EVERYBODY ELSE LOST THEIR BOAT -- THEIR BOTH, AND IT WAS
26 NOT BECAUSE IT WASN'T TIED UP. IT WAS BECAUSE THERE WAS
27 A STORM, AND NO ONE IS TO BLAME EXCEPT THE WEATHER."

28 AND WE HAD TO GO WITH CARS TO LOOK AND

-12293

1 TRACE THE BOATS AROUND THE CREEKS, BECAUSE IT WAS NOT A
2 WALKABLE THING. YOU DIDN'T WALK THIS. YOU JUST HAD TO
3 KIND OF GET IN YOUR CAR AND FOLLOW WHERE IT MIGHT BE,
4 BITS AND PIECES OF ALL THE BOATS.

5 Q. BY MR. LEVIN: WHAT DID KITTY TELL YOU?

6 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

7 THE COURT: SUSTAINED.

8 Q. BY MR. LEVIN: FOLLOWING THAT TELEPHONE
9 CONVERSATION, DID YOU SAY ANYTHING TO ERIK?

10 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR
11 HEARSAY.

12 THE COURT: OVERRULED. OVERRULED.

13 THE WITNESS: JUST WHAT WE HAD DONE. EXACTLY HOW
14 WE AND ALL THE OTHER NEIGHBORS HAD GONE ABOUT IT; THAT
15 WE HAD GONE ABOUT IT WITH VEHICLES, NOT ON OUR OWN. NOT
16 ALONE, NOT WITHOUT SEARCH LIGHTS -- YOU KNOW -- NOT THE
17 WAY HE WAS TRYING TO DO IT.

18 Q. BY MR. LEVIN: AND WHAT DID ERIK RESPOND TO
19 YOU?

20 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

21 THE COURT: OVERRULED.

22 THE WITNESS: I DON'T THINK HE HAD A CHOICE. HE
23 HAD TO FIND IT.

24 MR. CONN: OBJECTION. CALLS FOR SPECULATION AND
25 NONRESPONSIVE.

26 THE COURT: THE ANSWER IS NONRESPONSIVE AT THIS
27 POINT.

28 Q. BY MR. LEVIN: DID HE INDICATE TO YOU THAT

-12292

1 HE HAD TO CONTINUE THE SEARCH FOR THE BOAT?

2 MR. CONN: OBJECTION. LEADING.

3 THE COURT: OVERRULED.

4 THE WITNESS: YES, HE DID.

5 Q. BY MR. LEVIN: AND ERIK WAS ABOUT 14 YEARS
6 OLD AT THAT TIME?

7 A. RIGHT. I WOULD IMAGINE, YES, SIR.

8 Q. AND AFTER THAT CONVERSATION, DID ERIK LEAVE
9 YOUR HOUSE?

10 A. WE DIDN'T SEE HIM AGAIN.

11 Q. WELL, HAD HE COME TO YOUR HOUSE, THOUGH,
12 MORE THAN ONE TIME?

13 A. YES, SIR. HE HAD COME TO OUR HOUSE MORE
14 THAN ONCE THAT DAY.

15 Q. AND HOW MANY TIMES DID HE COME TO YOUR
16 HOUSE THAT DAY?

17 A. FOUR OR FIVE. HARD TO TELL, BECAUSE THE
18 DAY KEPT CHANGING AND THE LIGHT KEPT CHANGING. SO IT
19 WAS FROM MORNING UNTIL NIGHT.

20 Q. FROM THE FIRST TIME THAT YOU BECAME AWARE
21 THAT THE -- THAT MRS. MENENDEZ HAD DISPATCHED ERIK TO
22 LOOK FOR THE BOAT AND THE LAST TIME YOU SAW HIM
23 SEARCHING FOR THE BOAT, HOW MUCH TIME WOULD YOU SAY
24 ELAPSED?

25 A. A WHOLE DAY. A WHOLE DAY.

26 Q. FROM MORNING UNTIL NIGHT?

27 A. YES, SIR.

28 Q. AND WHAT WOULD YOUR -- OR HOW WOULD YOU

1 DESCRIBE ERIK'S CONDITION?

2 A. TIRED AND WET ARE THE TWO THINGS THAT COME
3 TO MIND.

4 Q. DID KITTY MENENDEZ EVER INDICATE TO YOU
5 THAT FROM WHAT YOU HAD TOLD HER THAT IT WAS OKAY TO TELL
6 ERIK TO CALL OFF THE SEARCH?

7 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

8 THE COURT: OVERRULED.

9 THE WITNESS: NO, SIR.

10 Q. BY MR. LEVIN: WHAT DID SHE INDICATE?

11 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

12 THE COURT: AS TO WHAT THE WITNESS SHOULD TELL
13 HER SON?

14 MR. LEVIN: YES. YES.

15 THE COURT: OKAY.

16 DO YOU UNDERSTAND THE QUESTION?

17 THE WITNESS: NOT REALLY.

18 THE COURT: PERHAPS YOU CAN REPHRASE IT.

19 THE WITNESS: ELABORATE A LITTLE BIT, PLEASE.

20 Q. BY MR. LEVIN: DID YOU MAKE IT CLEAR TO
21 MRS. MENENDEZ THAT ERIK MENENDEZ WAS AT YOUR HOUSE?

22 A. YES. YES.

23 Q. AND WHAT WAS IT THAT MRS. MENENDEZ TOLD YOU
24 THAT YOU SHOULD RELAY TO ERIK?

25 A. I THINK WE WERE ON TWO DIFFERENT TRACKS.
26 SHE WAS THINKING THAT THE KIDS HADN'T TIED UP THE BOAT
27 AND THEY NEEDED TO FIND IT -- OR ERIK NEEDED TO FIND IT,

28 AND THAT WAS HIS MISSION, AND NOTHING ELSE MATTERED.

-12290

1 NOTHING THAT I SAID MATTERED.

2 Q. AND SHE WANTED YOU TO RELATE THAT TO ERIK,
3 THAT HE WAS TO CONTINUE LOOKING FOR THE BOAT?

4 A. ABSOLUTELY. YES, SIR.

5 MR. LEVIN: THANK YOU.

6 NOTHING FURTHER.

7 THE COURT: CROSS-EXAMINATION?

8 MR. CONN: NO QUESTIONS.

9 THE COURT: OKAY. THANK YOU. YOU MAY STEP DOWN.

10 THE WITNESS: THANK YOU, SIR. THANK YOU, YOUR
11 HONOR.

12 THE COURT: IS THERE ANY WITNESS THAT YOU WANTED
13 TO START WITH AT THIS POINT?

14 MR. LEVIN: YOUR HONOR, I HAVE A WITNESS WHO I
15 BELIEVE WE COULD DO IN 10 OR 15 MINUTES, AND I WOULD ASK
16 THAT WE BE ALLOWED TO GO OVER A LITTLE BIT, IF IT
17 WOULDN'T BE A TERRIBLE INCONVENIENCE.

18 THE COURT: WELL, WE CAN TRY. I DON'T KNOW IF
19 ANY OF THE JURORS HAVE OBLIGATIONS THAT WOULD REQUIRE
20 THEM TO LEAVE AT 4:30?

21 WE HAVE SOMEBODY THAT HAS TO LEAVE AT 4:30,
22 A CHILD CARE SITUATION.

23 MR. LEVIN: WE DO?

24 WE WOULD RATHER WAIT, YOUR HONOR.
25 THE COURT: OKAY. ALL RIGHT.
26 THEN WE'LL TAKE A RECESS AT THIS POINT, AND
27 RESUME ON MONDAY AT 8:30.
28 DON'T DISCUSS THE MATTER WITH ANYONE.

-12289

1 DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T LOOK AT
2 ANY OF THE NEWS COVERAGE. DON'T PERMIT YOURSELVES TO BE
3 IN A POSITION TO HEAR WHAT OTHER PEOPLE ARE SAYING ABOUT
4 THE CASE.

5 WE WILL SEE YOU ALL BACK HERE MONDAY AT
6 8:30. HAVE A GOOD WEEKEND.

7 (AT 4:25 P.M. PROCEEDINGS WERE
8 ADJOURNED UNTIL MONDAY,
9 APRIL 1, 1996 AT 8:30 A.M.)

1 INDEX FOR VOLUME 317 PAGES 53016 THROUGH 53247

2	DAY	DATE	SESSION	PAGE	VOL.
3					
4	FRIDAY,	MARCH 29, 1996	A.M.	53016	317
5	FRIDAY,	MARCH 29, 1996	P.M.	53131	317

6 PROCEEDINGS
7

8

CHRONOLOGICAL INDEX OF WITNESSES

9

10 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

11 GOLDSMITH,
FAITH

12 (CONT'D) 53022-C 53044-G 53059-C 317
53046-A

13 GOLDSMITH,
JESSICA 53061-T 53069-C 317

14

HUNTER,
15 BONNIE 53078-L 53096-C 53106-L 317

16 ANDERSEN,
BRIAN 53108-A 53123-C

17 (CONT'D) 53131-C 53151-G 317

18 SHARP,
SANDRA 53153-T

19 53180-A 53212-N 53222-A 53225-N 317
HERCZ,

20 ALICIA 53227-G 317
53235-L 317

21

22

LEGEND:

23

A = MS. ABRAMSON

24 C = MR. CONN

G = MR. GESSLER

25 K = MS. TOWERY

L = MR. LEVIN

26 N = MS. NAJERA

27

28

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3	451- P.D.S. INTERIM REPORT	53188	317
4	(PREVIOUSLY EX. 198)		
5	452- P.D.S. RECORDS	53211	317

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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