

1 VAN NUYS, CALIFORNIA; FRIDAY, NOVEMBER 3, 1995

2 9:15 A.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (ANNAMARIE PAPA, OFFICIAL REPORTER)

7

8 THE COURT: AS SOON AS THE JURY IS HERE WE WILL
9 START WITH TESTIMONY.

10 ARE YOUR WITNESSES HERE? WE HAVE THE

11 COMPLETION OF MR. ANDERSEN, AND --

12 MS. NAJERA: THEN WE HAVE MISS EISENBERG.

13 THE COURT: AND WHO ELSE?

14 MS. NAJERA: AND THEN WE HAVE THE 402 ON

15 DETECTIVE ZOELLER, AND THEN DETECTIVE ZOELLER AND THE
16 CORONER'S REPRESENTATIVE.

17 MR. CONN: YES. WE ALSO HAVE A REPRESENTATIVE OF
18 THE CORONER'S OFFICE, WHICH I THINK SHOULD BE DONE
19 OUTSIDE THE PRESENCE OF THE JURY. IT'S -- I DON'T THINK
20 IT'S NECESSARY TO DO THAT IN THE PRESENCE OF THE JURY,
21 BUT THAT'S ALSO SUBJECT TO THE MOTION WE FILED.

22 THE COURT: WE HAVE A JUROR WHO HAS TO LEAVE FOR
23 A MEDICAL APPOINTMENT AT A QUARTER TO 3:00, SO I WANT TO
24 FINISH ALL THE TESTIMONY BEFORE THE JURY AS SOON AS WE
25 CAN TO ACCOMMODATE THAT SCHEDULE.

26 MS. ABRAMSON: AND THEN WE CAN HAVE A DISCUSSION
27 ABOUT THE PHOTOGRAPHS.

28 MS. NAJERA: ARE WE WAITING FOR A JUROR NOW, YOUR

1 HONOR?

2 THE COURT: NO, THEY'RE HERE.

3 MS. NAJERA: BECAUSE I WAS GOING TO SAY THAT

4 ISSUE WITH DETECTIVE ZOELLER WILL PROBABLY NOT TAKE VERY

5 LONG OUTSIDE OF THE PRESENCE OF THE JURY, AND THEN WE

6 CAN DO IT ALL IN FRONT OF THE JURY.

7 THE COURT: IF WE WERE READY DO IT, I'D DO IT

8 RIGHT NOW.

9 MS. ABRAMSON: LET'S DO IT NOW.

10 MS. NAJERA: I'LL SEE IF HE'S HERE. HE SHOULD BE

11 OUTSIDE.

12 MS. ABRAMSON: YOUR HONOR, I AM GOING TO MARK

13 THAT TRAVEL DOCUMENT OF BRIAN ANDERSEN'S AS 165.

14 THE COURT: OKAY.

15 THE BAILIFF: JURORS COMING THROUGH.

16 (BRIEF PAUSE)

17

18 THE COURT: OKAY, THE JURY IS HERE.

19 IS MR. ANDERSEN, HERE?

20 MS. NAJERA: YES, HE IS, YOUR HONOR.

21 THE COURT: OKAY. THEN LET'S GET HIM IN, AND

22 THEN WE'LL JUST START UP WITH THE TESTIMONY BEFORE THE

23 JURY.

24 (BRIEF PAUSE)

25

26 THE COURT: OKAY, THE WITNESS IS BACK. I'LL HAVE
27 THE JURY COME IN, AND WE WILL RESUME CROSS-EXAMINATION.
28

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1 (THE JURY ENTERS THE COURTROOM AND THE
2 FOLLOWING PROCEEDINGS WERE HELD:)

3

4 THE COURT: THE JURY IS IN COURT. GOOD MORNING,
5 LADIES AND GENTLEMEN. AND WE ARE READY TO RESUME WITH
6 THE TRIAL.

7 THE WITNESS IS STILL ON THE WITNESS STAND.

8 WOULD YOU STATE YOUR NAME AGAIN FOR THE
9 RECORD, PLEASE?

10 THE WITNESS: BRIAN ANDERSEN.

11 THE COURT: OKAY. MR. ANDERSEN, I WILL REMIND
12 YOU YOU'RE STILL UNDER OATH, AND WE WILL CONTINUE WITH
13 CROSS-EXAMINATION.

14

15 BRIAN ANDERSEN,
16 THE WITNESS ON THE STAND AT THE TIME OF THE ADJOURNMENT,
17 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

18

19 CROSS-EXAMINATION (CONTINUED)

20 BY MS. ABRAMSON:

21 Q. GOOD MORNING, MR. ANDERSEN.

22 A. GOOD MORNING.

23 Q. LET ME TAKE YOU BACK TO THE TIME YOU WENT
24 TO ATTORNEY WRIGHT'S HOUSE, OKAY, WHATEVER DATE THAT
25 WAS.

26 WHAT IS YOUR BEST RECOLLECTION AS YOU SIT
27 HERE NOW CONCERNING HOW A LOCKSMITH OR SAFE CRACKER OR
28 WHATEVER IT WAS GOT TO THAT HOUSE?

-25795

1 A. THEY DROVE THERE.

2 Q. AND HOW DO YOU KNOW THEY DROVE THERE?

3 A. THE VEHICLE PULLED UP WITH THEM IN IT.

4 Q. AND YOUR RECOLLECTION IS THERE WAS MORE
5 THAN ONE PERSON?

6 A. YES, MA'AM.

7 Q. AND WHAT IS YOUR BEST RECOLLECTION ABOUT
8 ANY EFFORTS ON ANYONE'S PART TO GET THEM THERE?

9 A. I DON'T RECALL.

10 Q. DO YOU HAVE ANY RECOLLECTION OF ANY
11 ARRANGEMENTS BEING MADE FOR A SAFE CRACKER OR A
12 LOCKSMITH BEFORE YOU WENT TO MR. WRIGHT'S HOUSE?

13 A. I BELIEVE IT WAS IN THE DISCUSSION THAT I
14 HAD WITH MR. WRIGHT ON THE PHONE.

15 Q. AND IN THAT DISCUSSION THAT YOU HAD WITH
16 MR. WRIGHT ON THE PHONE, WHO WAS SUPPOSED TO PROVIDE THE
17 SAFE CRACKER?

18 A. I DON'T RECALL.

19 Q. MR. ANDERSEN, DO YOU REMEMBER THAT THE

20 LOCKSMITH CAME TO THE ELM DRIVE HOUSE AND WENT WITH YOU

21 AND CARLOS BARALT AND ERIK AND LYLE MENENDEZ TO MR.

22 WRIGHT'S HOUSE?

23 A. I DON'T RECALL THAT.

24 Q. NOW, WHEN YOU WENT INTO THE -- WELL, STRIKE

25 THAT.

26 WHEN YOU GOT TO MR. WRIGHT'S HOUSE, WAS THE

27 SAFE ALREADY IN THE GARAGE?

28 A. YES, MA'AM.

-25794

1 Q. YOU HAVE NO RECOLLECTION OF ANYONE GOING TO

2 A BACK BEDROOM AND TAKING THE SAFE AND PUTTING IT IN THE

3 GARAGE; IS THAT CORRECT?

4 A. I DON'T RECALL THAT.

5 Q. AND WHEN YOU ENTERED THE GARAGE AFTER THE

6 SAFE CRACKERS OR LOCKSMITHS HAD SAID THE SAFE WAS OPEN,

7 WHERE WAS -- WHERE WERE ERIK AND LYLE MENENDEZ?

8 A. THEY WERE IN THE GARAGE.

9 Q. WERE THEY NEAR THE SAFE?

10 A. YEAH. THE GARAGE WASN'T THAT BIG.

11 Q. WELL, THE SAFE WASN'T THAT BIG EITHER, WAS

12 IT?

13 A. NO.

14 Q. IT WASN'T LIKE A BANK VAULT, IT WAS THE
15 KIND OF SAFE YOU COULD PICK UP AND CARRY, WASN'T IT?
16 A. IT WAS PRETTY HEAVY.
17 Q. DID YOU EVER PICK IT UP?
18 A. NO, MA'AM.
19 Q. WAS IT EVER TAKEN FROM MR. WRIGHT'S HOUSE?
20 A. I DON'T KNOW THAT.
21 Q. DON'T REMEMBER THAT YOU ALL DROVE OFF WITH
22 IT?
23 A. I DON'T RECALL THAT.
24 Q. AND WHEN YOU WERE IN THE GARAGE WITH THE
25 SAFE, YOU HAD AN OPPORTUNITY TO LOOK INSIDE IT, CORRECT?
26 A. YES, MA'AM.
27 Q. AND DO YOU HAVE A SPECIFIC RECOLLECTION OF
28 ACTUALLY DOING THAT, LOOKING INSIDE IT?

-25793

1 A. YES, MA'AM.
2 Q. AND THAT'S WHEN YOU SAW SOME PAPERS THERE?
3 A. YES, MA'AM.
4 Q. WOULD IT BE FAIR TO SAY, MR. ANDERSEN, THAT
5 GIVEN THE EMOTIONAL TRAUMA OF THAT WEEK, YOU DO NOT HAVE
6 A PERFECT MEMORY OF THE SEQUENCE OF EVENTS?
7 A. YES, MA'AM.
8 Q. AND WOULD IT BE SAFE TO SAY OR FAIR TO SAY
9 THAT THAT'S TRUE FOR THE ENTIRE TIME YOU WERE IN

10 CALIFORNIA THAT WEEK FOLLOWING THE DEATH OF YOUR SISTER?

11 A. IT WAS A VERY EMOTIONAL TIME.

12 Q. AND YOU DON'T HAVE A VERY PERFECT MEMORY OF
13 THE SEQUENCE OF EVENTS?

14 A. NO, MA'AM.

15 Q. NOW, I HAVE A PIECE OF PAPER I WANTED TO
16 SHOW YOU.

17 YOU BROUGHT WITH YOU HERE TO CALIFORNIA ON
18 THIS TRIP FROM CHICAGO OR THE CHICAGO AREA A TRAVEL
19 INTINERARY AND A PHOTOCOPY OF AN AIRPLANE TICKET,
20 CORRECT?

21 A. YES, MA'AM.

22 Q. WHAT'S YOUR BEST RECOLLECTION AS TO THE
23 DATE THAT YOU ACTUALLY ARRIVED IN LOS ANGELES THAT WEEK
24 OF AUGUST 23RD, 1989?

25 A. EARLY IN THE MORNING OF WEDNESDAY.

26 Q. AND THAT WOULD HAVE BEEN AUGUST 23RD? THE
27 20TH WAS SUNDAY.

28 A. YES, MA'AM.

-25792

1 Q. OKAY. AND I HAVE A DOCUMENT, YOUR HONOR,
2 THAT I'VE MARKED 165.

3 LET ME SHOW YOU THIS DOCUMENT AND ASK IF
4 THIS IS WHAT YOU BROUGHT WITH YOU.

5 A. YES, MA'AM.

6 Q. AND THAT DOCUMENT SHOWS AN INTINERARY AND
7 THE COPY OF A TICKET FOR A ROUND TRIP, IF YOU WILL, A
8 ROUND TRIP TICKET FROM CHICAGO TO LOS ANGELES BACK TO
9 CHICAGO?

10 A. YES, MA'AM.

11 Q. AND THE RETURN IS NOT NOTED ON THAT
12 ITINERARY; IT'S AN OPEN RETURN?

13 A. THAT'S CORRECT.

14 Q. AND THAT SHOWS THAT THE ARRIVAL WAS AUGUST
15 23RD, SOMETIME AFTER MIDNIGHT?

16 A. YES, MA'AM.

17 Q. DO YOU HAVE AN INDEPENDENT RECOLLECTION NOW
18 OF WHEN IN FACT YOU DID RETURN TO CHICAGO?

19 A. IT WAS AFTER THE MEMORIAL SERVICE.

20 Q. AND THE MEMORIAL SERVICE WAS ON WHICH DAY?

21 A. FRIDAY.

22 Q. AND AT WHAT TIME?

23 A. SOMETIME MIDDAY, AS I RECALL.

24 Q. MIDDAY?

25 AND DO YOU REMEMBER WHETHER YOU RETURNED TO
26 CHICAGO ON FRIDAY OR ON THE NEXT DAY, SATURDAY?

27 A. I'M PRETTY SURE IT WAS ON SATURDAY.

28 Q. YOU THINK IT WAS SATURDAY?

-25791

1 A. YES, MA'AM.

2 Q. AND IF THAT'S TRUE, IF IT WAS SATURDAY, YOU
3 WOULD HAVE SPENT THE FRIDAY EVENING AT THE BELAGE HOTEL?

4 A. YES, MA'AM.

5 Q. AND AFTER YOU RETURNED TO CHICAGO, DID YOU
6 THEN TRAVEL AGAIN TO PRINCETON FOR THE FUNERAL?

7 A. YES, MA'AM.

8 Q. AND WHEN WAS THE FUNERAL?

9 A. AS I RECALL, IT WAS THE FIRST PART OF THE
10 FOLLOWING WEEK.

11 Q. YOU'RE NOT CERTAIN OF THE DATE?

12 A. THE 29TH, I THINK.

13 Q. YOU THINK THE 29TH. AND THE 29TH WAS WHAT
14 DAY OF THE WEEK, DO YOU REMEMBER?

15 A. MONDAY OR TUESDAY. MAYBE WEDNESDAY.

16 Q. SO, YOU'RE NOT CERTAIN?

17 A. NO, MA'AM.

18 Q. I WANT TO TURN YOUR ATTENTION NOW TO THE
19 TRIP TO THE BANK, OKAY?

20 A. YES, MA'AM.

21 Q. WHERE DID YOU START OUT FROM BEFORE YOU GOT
22 TO THE BANK?

23 A. I DON'T RECALL.

24 Q. HOW DID YOU GET TO THE BANK, BY WHAT MEANS
25 OF TRANSPORTATION?

26 A. I BELIEVE I DROVE WITH CARLOS.

27 Q. YOU DROVE?

28 A. BARALT.

1 Q. YOU DROVE OR CARLOS DROVE?

2 A. CARLOS DROVE.

3 Q. AND WE ARE TALKING ABOUT CARLOS BARALT, NOT
4 CARLOS MENENDEZ, CORRECT?

5 A. YES, MA'AM.

6 Q. AND DO YOU KNOW WHOSE CAR CARLOS DROVE?

7 A. I DON'T RECALL.

8 Q. AND YOU HAVE TESTIFIED THAT ERIK AND LYLE
9 MENENDEZ WERE THERE AS WELL. HOW'D THEY GET THERE?

10 A. TO MY RECOLLECTION THEY DROVE
11 INDEPENDENTLY.

12 Q. AND WHOSE CAR DID THEY DRIVE?

13 A. I DON'T RECALL. I THINK THEY HAD ONE OF
14 THE PARENTS' CARS, BUT I'M NOT SURE.

15 Q. AND WHEN YOU GOT TO -- WELL, WAS THERE SOME
16 ARRANGEMENT WITH THE BANK MADE IN ADVANCE OF YOUR
17 GETTING THEIR?

18 A. I BELIEVE A CALL HAD BEEN MADE TO THE BANK.

19 Q. DID YOU MAKE THE CALL?

20 A. I DON'T RECALL THAT I DID.

21 Q. DO YOU KNOW WHO DID MAKE THE CALL?

22 A. NOT AT THIS TIME.

23 Q. EXCUSE ME?

24 A. NOT AT THIS TIME.

25 Q. WHEN YOU GOT TO THE BANK, DO YOU HAVE ANY
26 RECOLLECTION OF ANYONE MEETING YOU OR GREETING YOU FROM

27 THE BANK?

28 A. YES, MA'AM.

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1 Q. AND WAS THAT A MAN OR A WOMAN?

2 A. A WOMAN.

3 Q. AND WAS THAT PERSON THE PERSON -- THE BANK
4 OFFICER WHO INDICATED THAT YOU COULD NOT GO BACK BECAUSE
5 YOU WERE NOT EITHER A POTENTIAL HEIR NOR AN EXECUTOR?

6 A. NO, MA'AM.

7 Q. WAS THE BANK OFFICER WHO GAVE YOU THAT
8 INFORMATION A MAN?

9 A. I BELIEVE SO.

10 Q. AND HAD YOU STATED YOUR DESIRE TO GO BACK
11 AND LOOK IN THE BOX TO THIS BANK OFFICER?

12 A. YES, MA'AM.

13 Q. AND HE SAID HE COULDN'T ALLOW THAT, IT
14 WASN'T LEGAL, CORRECT?

15 A. HE WANTED TO SEE WHO WOULD BE APPROPRIATE
16 AND PROPER TO GO BACK THERE.

17 Q. HE IS TALKING ABOUT RULES AND REGULATIONS
18 OF SOME KIND, NOT HIS OWN PERSONAL OPINION?

19 A. THAT'S CORRECT.

20 Q. AND HE INDICATED THAT YOU DIDN'T HAVE IN
21 THE LAW WHAT WE CALL STANDING TO GO BACK THERE?

22 A. I WOULD SAY THAT WOULD BE TRUE.

23 Q. AND IT'S YOUR TESTIMONY THAT BOTH ERIK AND
24 LYLE MENENDEZ WENT BACK TO THE SAFE DEPOSIT AREA WITH
25 THIS BANK OFFICER?

26 A. YES, MA'AM.

27 Q. AND YOU'RE SURE OF THAT?

28 A. YES, MA'AM.

-25788

1 Q. NOW, AT SOME POINT DID THEY EMERGE, THE
2 BANK OFFICER AND ERIK AND LYLE MENENDEZ?

3 A. YES, MA'AM.

4 Q. AND WHAT HAPPENED AFTER THEY EMERGED FROM
5 VIEWING THE BOX? WE ASSUME THEY VIEWED THE BOX.

6 THEN WHAT HAPPENED?

7 A. THEY INDICATED THERE WAS NO WILL TO BE
8 FOUND THERE.

9 Q. AND THEN WHAT HAPPENED?

10 A. I REMEMBER A GENERAL DISCUSSION, AND THEN
11 WE LEFT THERE.

12 Q. A GENERAL DISCUSSION AND YOU LEFT.

13 HOW LONG -- HOW LONG DO YOU BELIEVE AFTER
14 ERIK AND LYLE MENENDEZ AND THE BANK OFFICER EMERGED DID
15 YOU LEAVE?

16 A. IT WASN'T VERY LONG.

17 Q. THREE, FOUR MINUTES?

18 A. MAYBE 15 MINUTES.

19 Q. DO YOU REMEMBER, MR. ANDERSEN, THAT THE
20 BANK OFFICER INVENTORIED THE CONTENTS OF THE BOX?
21 A. NO, MA'AM.
22 Q. DO YOU REMEMBER THAT THE BANK OFFICER
23 HANDED A COPY OF THE INVENTORY OF THE CONTENTS OF THE
24 BOX TO CARLOS BARALT, THE EXECUTOR?
25 A. NO, MA'AM.
26 Q. WERE THE CONTENTS OF THE BOX REMOVED?
27 A. I DON'T RECALL.
28 Q. DO YOU KNOW WHO STEVEN GOLDBERG IS?

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1 A. YES, MA'AM.
2 Q. IS HE THE LAWYER FOR CARLOS AND TERRY
3 BARALT IN THEIR CAPACITY AS EXECUTORS OF THE ESTATES OF
4 JOSE AND MARY LOUISE MENENDEZ?
5 A. YES, MA'AM.
6 Q. AND ISN'T IT TRUE, MR. ANDERSEN, THAT IT
7 WAS STEVE GOLDBERG AT THE BANK WITH LYLE MENENDEZ AND
8 CARLOS BARALT AND NOT ERIK MENENDEZ AT ALL?
9 A. I DON'T RECALL THAT.
10 Q. IF I WERE TO TELL YOU THAT CARLOS BARALT
11 HAS TESTIFIED -- ALREADY TESTIFIED THAT IT WAS STEVE
12 GOLDBERG AND NOT ERIK MENENDEZ, WOULD THAT REFRESH YOUR
13 RECOLLECTION?
14 A. NO, MA'AM.

15 Q. I TAKE IT THEN ALSO IT WOULDN'T MATTER WHAT
16 STEVE GOLDBERG HAS TO SAY ON THIS?
17 A. I DON'T UNDERSTAND THAT QUESTION.
18 Q. IF STEVE GOLDBERG WERE TO SAY HE WAS THE
19 PERSON AT THE BANK, NOT ERIK MENENDEZ, THAT WOULDN'T
20 CHANGE YOUR RECOLLECTION EITHER?
21 A. I'VE ANSWERED THE QUESTION. AS I RECALL,
22 ERIK AND LYLE WERE BOTH THERE.
23 Q. ALL RIGHT.
24 AND AS YOU RECALL HERE IN THIS TRIAL, LYLE
25 MENENDEZ MADE AN IDENTICAL STATEMENT BEFORE THE SAFE WAS
26 LOOKED INTO AND BEFORE THE SAFE DEPOSIT BOX WAS LOOKED
27 INTO ABOUT NOT WANTING ANY EMBARRASSING INFORMATION
28 ABOUT HIS PARENTS TO BE SEEN BY OTHERS; IS THAT RIGHT?

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1 A. THAT'S CORRECT.
2 Q. YET WHEN YOU SPOKE TO MRS. BOZANICH BACK IN
3 NOVEMBER OF 1993, YOU INDICATED THAT THAT STATEMENT WAS
4 ONLY MADE AT THE BANK.
5 DO YOU REMEMBER THAT?
6 A. NO, I DON'T REMEMBER THAT I SAID THAT.
7 Q. DO YOU REMEMBER THAT IN TALKING ABOUT THIS
8 FOR THE FIRST TIME WHEN YOU SPOKE TO MRS. BOZANICH
9 DURING THE LAST TRIAL THAT YOU DIDN'T INDICATE THAT
10 THERE WAS ANY STATEMENT MADE BY LYLE MENENDEZ BEFORE

11 LOOKING AT THE SAFE IN RANDY WRIGHT'S GARAGE?

12 A. I DIDN'T -- THE QUESTION MISSED ME. WOULD

13 YOU ASK IT AGAIN?

14 Q. ALL RIGHT. LET ME ASK YOU THIS:

15 IN FACT, YOU DIDN'T EVEN MENTION TO MRS.

16 BOZANICH A SAFE IN RANDY WRIGHT'S GARAGE WHEN YOU SPOKE

17 TO HER IN NOVEMBER OF '93, DID YOU?

18 A. I THINK THAT'S CORRECT.

19 Q. NOW, LET'S GO BACK TO KALAMAZOO, PRIOR TO

20 THE KALAMAZOO TOURNAMENT WHEN MRS. MENENDEZ AND ERIK

21 MENENDEZ WERE AT YOUR HOUSE, OKAY?

22 A. OKAY.

23 Q. HOW LONG DID YOUR SISTER STAY WITH YOU AT

24 YOUR HOUSE DURING THAT TRIP?

25 A. THREE OR FOUR DAYS.

26 Q. DID YOU PREVIOUSLY TESTIFY IN THIS -- IN

27 THE FIRST TRIAL THAT YOU BELIEVED SHE STAYED FOR TWO

28 WEEKS?

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1 A. THAT WOULD HAVE BEEN AN ERROR. I DON'T

2 BELIEVE --

3 Q. BUT YOU DID SAY THAT?

4 A. IT WAS -- IT WOULD BE AN ERROR IN THE

5 QUESTIONING OR AN ERROR IN TRANSCRIBING. SHE WAS NOT

6 THERE TWO WEEKS.

7 Q. WELL, LET'S SEE IF IT WAS AN ERROR IN THE
8 QUESTIONING.

9 22613. START AT 22612, JUST TO GIVE
10 CLARITY. I PROPOSE TO READ FROM LINE 14 THROUGH LINE 1
11 OF 22613. AT LINE 14, A QUESTION STARTS OUT WITH THE
12 WORD "YES."

13 "YES. DURING THE SAME
14 TIME PERIOD, THIS AUGUST OF 1989, DO
15 YOU KNOW WHETHER OR NOT KITTY WENT TO
16 OAKLAWN, WHICH IS WHERE YOU GUYS GREW
17 UP, BEFORE SHE CAME TO DOWNER'S GROVE
18 TO YOUR HOUSE THAT DAY?

19 "A. SHE VISITED
20 OAKLAWN ON THAT TRIP. WHETHER IT WAS
21 THAT DAY OR BEFORE SHE CAME -- IT
22 SEEMS TO ME IT WAS AFTER.

23 "Q. SO, YOU THINK SHE
24 VISITED OAKLAWN AFTER SHE WENT TO
25 KALAMAZOO?

26 "A. OH, NO.

27 "Q. OKAY.

28 "A. AFTER SHE WAS AT

-25784

1 MY HOUSE.

2 "Q. ALL RIGHT. HOW

3 LONG DID THEY STAY AT YOUR HOUSE
4 BEFORE THEY WENT TO KALAMAZOO?

5 "A. I BELIEVE TWO
6 WEEKS."

7 A. WELL, ALL I CAN SUGGEST, MRS. ABRAMSON, IS
8 I WOULD HAVE INTERPRETED AT THE TIME THE DIFFERENCE
9 BETWEEN WHEN SHE WAS AT MY HOUSE AND THE TIME OF THE
10 MURDERS. THERE WAS NEVER ANY UNDERSTANDING ON MY PART
11 OR THOUGHT IN MY MIND THAT SHE WAS THERE FOR TWO WEEKS.

12 Q. SO, YOU MISUNDERSTOOD OR YOU WERE
13 INTERPRETING IT WHEN YOU ANSWERED THAT AT THE LAST
14 TRIAL?

15 A. IT HAD TO BE.

16 Q. SHE DIDN'T STAY AT YOUR HOUSE TWO WEEKS?

17 A. NO.

18 Q. SHE WAS THERE HOW MANY DAYS?

19 A. THREE, FOUR DAYS I WOULD SAY.

20 Q. WAS SHE THERE LONGER THAN ERIK MENENDEZ WAS
21 THERE?

22 A. YES.

23 Q. SO, THEY DEFINITELY DID NOT COME TOGETHER?

24 A. NO, MA'AM.

25 Q. YET YOU TESTIFIED AT THE LAST TRIAL THAT
26 THEY DID COME TOGETHER, AND THAT NOBODY MET THEM AT THE
27 AIRPORT BECAUSE THEY RENTED A CAR.

28 DO YOU REMEMBER THAT TESTIMONY?

1 A. IT WAS A VERY EMOTIONAL TIME FOR ME. MRS.
2 BOZANICH -- I WOULD HAVE TO SEE THAT TESTIMONY OR HEAR
3 IT.

4 Q. CERTAINLY. THEN YOU DIDN'T KEEP ANY LOGS
5 OR DIARIES OF THESE ACTIVITIES AT THE TIME, DID YOU, MR.
6 ANDERSEN?

7 A. LOGS?

8 Q. AT THE TIME OF THESE EVENTS YOU WEREN'T
9 KEEPING A DIARY OR A LOG OF WHAT HAPPENED OR WHO CAME
10 WHEN OR WHO PICKED THEM UP AT THE AIRPORT OR ANYTHING
11 LIKE THAT?

12 A. JUST MY AIRPLANE LOG AS TO WHEN I FLEW. MY
13 AIRPLANE LOG AS TO WHEN I WOULD FLY.

14 Q. SO, YOUR AIRPLANE LOG YOU WOULD FILL OUT
15 WHEN YOU WOULD LEAVE DOWNER'S GROVE AND GO SOMEWHERE,
16 AND LEAVE SOMEWHERE AND GO BACK.

17 YOU HAVE TO MAINTAIN THAT; IS THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. BUT AS FAR AS THESE OTHER EVENTS WERE
20 CONCERNED, YOU NEVER WROTE ANYTHING DOWN. YOU DIDN'T
21 KNOW IT WOULD MATTER; IS THAT A FAIR STATEMENT?

22 A. YES, MA'AM.

23 Q. AND IT IS SIX YEARS LATER?

24 A. YES, MA'AM.

25 Q. SO, YOU DON'T HAVE A PERFECT MEMORY OF
26 THESE THINGS, FAIR ENOUGH?

27 A. I REMEMBER THAT WEEKEND.

28 Q. OKAY. BUT YOU DON'T HAVE A PERFECT MEMORY?

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1 A. NO, I DON'T.

2 Q. OR AT LEAST YOU DIDN'T TWO YEARS YEARS AGO
3 OF WHO CAME WHEN AND WHO CAME FROM WHERE AND WHO PICKED
4 THEM UP OR ANY OF THOSE DETAILS; IS THAT CORRECT?

5 A. I DO NOT HAVE A PERFECT MEMORY, IF THAT'S
6 THE QUESTION.

7 Q. ALL RIGHT.

8 AND YOU NEVER WROTE DOWN ANY OF THESE
9 CONVERSATIONS THAT OCCURRED EITHER AT YOUR HOME OR WHEN
10 YOU WERE IN CALIFORNIA THAT WEEK AFTER THE DEATHS?

11 A. NO, MA'AM.

12 Q. AND WHEN YOU CAME TO CALIFORNIA AND SPENT
13 THOSE FEW DAYS HERE, YOU SAW ERIK AND LYLE PERIODICALLY,
14 CORRECT?

15 A. YES, MA'AM.

16 Q. YOU DIDN'T BELIEVE THEY KILLED THEIR
17 PARENTS AT THAT TIME, DID YOU?

18 A. IN '89?

19 Q. CORRECT.

20 A. NO, MA'AM.

21 Q. CAMCORDER OR NO CAMCORDER, CORRECT?

22 A. CORRECT.

23 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

24 HONOR.

25 THE COURT: MR. GESSLER?

26 MR. GESSLER: THANK YOU, YOUR HONOR.

27

28

-25781

1 CROSS-EXAMINATION

2 BY MR. GESSLER:

3 Q. GOOD MORNING, MR. ANDERSEN.

4 A. GOOD MORNING, SIR.

5 Q. AFTER YOUR CONVERSATION WITH JOSE MENENDEZ

6 IN KALAMAZOO, YOU NEVER TALKED TO HIM AGAIN, DID YOU?

7 A. I DID TALK TO HIM AGAIN.

8 Q. WHEN WAS THAT?

9 A. WHEN I PICKED HIM UP TO FLY HIM TO O'HARE

10 FIELD.

11 Q. AND AFTER THAT, AFTER YOU TOOK HIM TO

12 O'HARE FIELD, THAT WAS THE LAST TIME YOU SAW MR.

13 MENENDEZ, WASN'T IT?

14 A. AFTER WE HUGGED EACH OTHER AND WISHED EACH

15 OTHER WELL AND SAID GOODBYE, THAT WAS IT.

16 Q. AND THAT WAS THE LAST TIME YOU TALKED TO

17 HIM?

18 A. THAT'S CORRECT.

19 Q. NOW, DIRECTING YOUR ATTENTION TO WHEN YOU

20 CAME OUT HERE TO CALIFORNIA AGAIN, AND AGAIN TO THE
21 GARAGE AT MR. WRIGHT'S HOUSE --
22 A. YES, SIR.
23 Q. YOU HAVE BEEN ASKED ABOUT THAT, RIGHT?
24 A. YES, SIR.
25 Q. AND WHEN YOU ARRIVED AT THE GARAGE, DID YOU
26 GET THERE AT THE SAME TIME AS LYLE AND ERIK MENENDEZ OR
27 AFTER THEM OR BEFORE THEM?
28 A. AS I RECALL, WE FOLLOWED THEM THERE.

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1 Q. AND DID THEY GET OUT OF THE CAR FIRST?
2 A. I DON'T RECALL THAT.
3 Q. DO YOU REMEMBER IF YOU ARRIVED AT THE SAME
4 TIME AS THEY DID?
5 A. WE FOLLOWED THEIR CAR THERE.
6 Q. SO, THEY PARKED?
7 A. YES.
8 Q. AND DID YOU PARK BEHIND THEM THEN?
9 A. I DON'T RECALL.
10 Q. DID THEY PRECEDE YOU UP TO THE HOUSE?
11 A. I DON'T RECALL THAT, SIR.
12 Q. DID YOU MEET MR. WRIGHT?
13 A. YES, SIR.
14 Q. WHERE WAS HE WHEN YOU MET HIM?
15 A. HIS HOUSE.

16 Q. WAS HE AT THE FRONT DOOR, WAS HE IN THE
17 GARAGE, WAS HE IN THE LIVING ROOM?
18 A. HE WAS STANDING AT THE FRONT DOOR, SIR.
19 Q. WELL, I DON'T WANT YOU TO ASSUME. DO YOU
20 REMEMBER IF HE WAS AT THE FRONT DOOR?
21 A. I DO NOT RECALL, NO.
22 Q. DO YOU REMEMBER IF LYLE MENENDEZ INTRODUCED
23 YOU TO MR. WRIGHT?
24 A. I HAD MET MR. WRIGHT BEFORE.
25 Q. ALL RIGHT. AND DID HE SAY -- YOU HAD MET
26 HIM AT KALAMAZOO?
27 A. THAT'S CORRECT, AS I REMEMBER.
28 Q. AND DID MR. WRIGHT THEN SAY "OH, YEAH, I

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1 REMEMBER YOU FROM KALAMAZOO," OR SOMETHING LIKE THAT
2 WHEN YOU MET HIM THERE?
3 A. WE HAD SMALL TALK. I DON'T RECALL WHAT IT
4 WAS.
5 Q. DO YOU REMEMBER WHERE THE SMALL TALK TOOK
6 PLACE?
7 A. AT HIS HOME.
8 Q. DO YOU REMEMBER WHERE AT THE HOME; THE
9 FRONT DOOR, THE GARAGE, THE LIVING ROOM, THE BEDROOM?
10 A. NO.
11 Q. DID YOU GO DIRECTLY TO THE GARAGE OR DID

12 YOU GO TO THE FRONT DOOR OF THE HOUSE FIRST?

13 A. I WENT TO THE FRONT DOOR OF THE HOUSE

14 FIRST, AS I RECALL.

15 Q. AND WERE LYLE AND ERIK AT THE FRONT DOOR OF

16 THE HOUSE ALSO?

17 A. WE WERE ALL TOGETHER, I THINK, AT THAT

18 TIME.

19 Q. SO, IT WAS YOU AND CARLOS BARALT AND LYLE

20 MENENDEZ AND ERIK MENENDEZ AND RANDY WRIGHT ALL AT THE

21 FRONT DOOR THERE?

22 A. THAT'S AS I RECALL.

23 Q. AND THEN WAS THE LOCKSMITH THERE AT THAT

24 TIME?

25 A. I DON'T RECALL.

26 Q. DO YOU REMEMBER HOW LONG YOU HAD TO WAIT

27 FOR THE LOCKSMITH?

28 A. I DO NOT.

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1 Q. OR IF YOU HAD TO WAIT AT ALL?

2 A. IT SEEMS THAT I HAD TO WAIT FOR THE

3 LOCKSMITH.

4 Q. WHAT DID YOU DO WHILE YOU WAITED?

5 A. TALKED.

6 Q. TO RANDY WRIGHT?

7 A. GENERALLY, I SUPPOSE. SOME CONVERSATION.

8 Q. I DON'T WANT YOU TO SUPPOSE, BUT DO YOU
9 REMEMBER THAT?

10 A. I REMEMBER DISCUSSING THINGS, JUST TALKING.

11 Q. AND WAS THAT AT THE FRONT DOOR, THE GARAGE,
12 THE BACK YARD?

13 A. I DON'T -- VARIOUS PLACES IN THE HOUSE.

14 Q. IN THE HOUSE?

15 A. YES.

16 Q. AND ALL OF YOU WERE STILL TOGETHER?

17 A. THAT'S CORRECT.

18 Q. WHEN DID YOU GO TO THE GARAGE, HOW LONG
19 AFTER YOU ARRIVED AT THE HOUSE?

20 A. WE WALKED THROUGH THE HOUSE TO THE GARAGE.
21 NOT LONG.

22 Q. WELL, YOU HAD ALREADY HAD ALL OF THESE
23 CONVERSATIONS, HADN'T YOU?

24 A. YES.

25 Q. DID YOU GO TO THE GARAGE BEFORE THE
26 LOCKSMITH ARRIVED?

27 A. I DON'T RECALL.

28 Q. OR DID YOU GO TO THE GARAGE WITH THE

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1 LOCKSMITH?

2 A. MAYBE. I DON'T RECALL.

3 Q. YOU HAVE NO CLEAR RECOLLECTION OF GOING

4 INTO THE GARAGE FROM THE HOUSE THEN?

5 A. I DO. THERE WAS A SIDE DOOR -- AS I

6 REMEMBER, THERE WAS A SIDE DOOR FROM THE HALLWAY INTO

7 THE GARAGE, AS WELL AS AN ENTRANCE OBVIOUSLY OUT TO THE

8 STREET.

9 Q. AND DO YOU REMEMBER IF YOU ALL WENT THROUGH

10 THAT DOOR TOGETHER; THAT IS, YOU AND CARLOS BARALT AND

11 LYLE MENENDEZ AND ERIK MENENDEZ?

12 A. I DON'T HAVE GOOD RECALL ON THAT.

13 Q. DID RANDY WRIGHT GO INTO THE GARAGE WITH

14 YOU?

15 A. YES.

16 Q. AND WAS THE SAFE ALREADY IN THE GARAGE WHEN

17 YOU WENT IN THERE?

18 A. YES, SIR.

19 Q. DO YOU REMEMBER WHERE IN THE GARAGE IT WAS?

20 A. ON THE FLOOR NEAR THE CENTER OF THE GARAGE.

21 Q. AND THEN HOW LONG WERE YOU ALL IN THE

22 GARAGE BEFORE YOU LEFT THE GARAGE?

23 A. TO LEAVE THE AREA, YOU MEAN, OR -- I'M NOT

24 SURE.

25 Q. TO LEAVE THE SAFE?

26 A. TO LEAVE THE SAFE. I DON'T RECALL TIME

27 FRAME. IT WASN'T LONG.

28 Q. WERE YOU TOLD TO LEAVE THE GARAGE BY THE

1 LOCKSMITH?

2 A. NO. IT WAS AN AGREED THING TO LEAVE THE
3 GARAGE WHILE THE LOCKSMITH OPENED THE LOCK.

4 Q. SO, EVERYBODY LEFT THE GARAGE?

5 A. THAT'S CORRECT.

6 Q. AND WAS THAT BECAUSE THE LOCKSMITH SAID FOR
7 SAFETY HE WANTED EVERYBODY OUT OF THE GARAGE?

8 A. I DON'T RECALL THAT.

9 Q. WERE THERE ONE OR TWO OR MORE LOCKSMITHS
10 WORKING ON THE SAFE, OR DO YOU REMEMBER?

11 A. THERE WERE AT LEAST TWO.

12 Q. DID THEY HAVE A TORCH OR A DRILL, OR WHAT
13 DID THEY USE?

14 A. DRILL.

15 Q. AND SO YOU AND LYLE MENENDEZ, ERIK MENENDEZ
16 AND CARLOS BARALT ALL LEFT THE GARAGE THEN WHILE THE
17 LOCKSMITH WORKED?

18 A. THAT'S CORRECT.

19 Q. AND RANDY WRIGHT LEFT WITH YOU, DID HE?

20 A. RANDY WRIGHT LEFT THE GARAGE ALSO.

21 Q. AND DID ALL OF YOU THEN GO OUT TO THE
22 BACKYARD, OR WHERE DID YOU ALL GO?

23 A. CARLOS AND LYLE AND ERIK AND I WERE IN THE
24 BACKYARD, AND I DON'T REMEMBER IF HE WAS WITH US.

25 Q. DON'T REMEMBER IF HE WAS WITH YOU OR AT
26 SOMEPLACE ELSE AT THAT POINT?

27 A. THAT'S CORRECT.

28 Q. AND THEN AT THAT POINT IS WHEN THE

1 LOCKSMITH CAME OUT AND SAID "IT'S OPENED"?

2 A. THAT'S CORRECT.

3 Q. AND THE LOCKSMITH SAID "THERE'S NOTHING IN
4 IN IT"?

5 A. THE LOCKSMITH DID NOT DISCUSS THE CONTENTS,
6 I DON'T THINK. I DON'T KNOW IF HE OPENED IT AND LOOKED.
7 HE DID NOT DISCUSS THE CONTENTS.

8 Q. AND AT THAT POINT LYLE MENENDEZ SAID HE
9 WANTED TO GO WITH ERIK TO LOOK FIRST?

10 A. THAT'S CORRECT.

11 Q. NOW, AT THAT TIME, MR. ANDERSEN, YOU DIDN'T
12 KNOW THAT YOUR SISTER KITTY HAD EVER TRIED TO COMMIT
13 SUICIDE, DID YOU?

14 MR. CONN: OBJECTION. CALLS FOR HEARSAY,
15 IRRELEVANT.

16 THE COURT: SUSTAINED.

17 Q. BY MR. GESSLER: AT THAT TIME, MR.
18 ANDERSEN, DID YOU EVER KNOW THAT YOUR SISTER KITTY HAD
19 WRITTEN A SUICIDE LETTER?

20 MR. CONN: OBJECTION, IRRELEVANT. NO FOUNDATION.

21 THE COURT: SUSTAINED.

22 MR. GESSLER: MAY I APPROACH, YOUR HONOR?

23 THE COURT: ON THIS PARTICULAR SUBJECT?

24 MR. GESSLER: YES.

25 THE COURT: I DON'T THINK IT'S NECESSARY.

26 Q. BY MR. GESSLER: LYLE MENENDEZ DID NOT TELL
27 YOU WHAT FAMILY SECRETS MIGHT BE IN THE SAFE, DID HE?
28 A. NO, SIR.

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1 Q. HE JUST SAID HE WANTED TO CHECK FIRST TO
2 SEE IF THERE WAS ANYTHING EMBARRASSING BEFORE THE FAMILY
3 CAME IN?

4 A. THAT'S CORRECT.

5 Q. AND THEN AFTER THAT YOU LOOKED IN THE SAFE
6 AND SAW SOME PAPERS?

7 A. YES, SIR.

8 Q. YOU DON'T REMEMBER WHAT THEY WERE?

9 A. NOT AT THIS TIME, NO.

10 Q. DID YOU LOOK THROUGH THEM?

11 A. I DON'T RECALL.

12 Q. AND AT THAT TIME DID LYLE MENENDEZ SAY
13 "WELL, THERE IS A KEY AND THE INSTRUCTIONS AS TO WHERE
14 THE SAFETY DEPOSIT BOX IS"?

15 A. HE MAY HAVE.

16 Q. AND YOU DON'T RECALL NOW IF HE DID OR NOT?

17 A. I DON'T HAVE A FRESH RECOLLECTION, NO.

18 Q. ALL RIGHT.

19 WHEN YOU DON'T REMEMBER SOMETHING YOU HAVE
20 NO PROBLEM WITH SAYING "I DON'T REMEMBER," DO YOU?

21 A. I WOULD SAY SO, THAT'S CORRECT.

22 Q. YOU'RE HONEST. WHEN YOU DO REMEMBER
23 SOMETHING, YOU SAY IT. WHEN YOU DON'T REMEMBER, YOU SAY
24 "I DON'T RECALL"?
25 A. THAT'S CORRECT.
26 Q. AND YOU DID COME OUT IN FEBRUARY OF 1994
27 AND TALK WITH MR. CONN, MISS NAJERA AND DETECTIVE
28 ZOELLER, DIDN'T YOU?

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1 A. YES, SIR.
2 Q. AND YOU TALKED OVER A PERIOD OF ABOUT TWO
3 DAYS WITH THEM ABOUT VARIOUS THINGS?
4 A. AS I RECALL, THAT'S CORRECT.
5 Q. AND INCLUDED IN THOSE THINGS YOU TALKED
6 ABOUT WERE THIS VISIT AT THE TIME OF THE FUNERAL SERVICE
7 AND THE TRIP OVER TO THE GARAGE?
8 A. YES, SIR.
9 Q. AND YOU GAVE THEM YOUR BEST, ACCURATE
10 RECOLLECTION AT THAT TIME, DIDN'T YOU?
11 A. YES, SIR.
12 Q. WHEN YOU DIDN'T REMEMBER SOMETHING THEN,
13 YOU SAID "I DON'T RECALL." WHEN YOU DID REMEMBER, YOU
14 TOLD THEM THE TRUTH?
15 A. YES, SIR.
16 Q. AND THAT'S IN ALL MATTERS THAT YOU COVERED
17 WITH THEM AT THAT TIME, ISN'T IT?

18 A. YES, SIR.

19 MR. GESSLER: MAY I APPROACH THE WITNESS, YOUR
20 HONOR?

21 THE COURT: YES.

22 Q. BY MR. GESSLER: I'D JUST ASK YOU TO READ
23 TO YOURSELF THE UNDERLINED PORTION HERE OF THIS
24 STATEMENT.

25 A. CAN I READ THE ENTIRE PARAGRAPH SO I CAN
26 PUT IT IN CONTEXT?

27 Q. SURE, SURE.

28 A. OKAY.

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1 Q. SHOWING YOU THIS, DOES THIS REFRESH YOUR
2 RECOLLECTION THAT YOU TOLD MR. CONN, MS. NAJERA AND
3 DETECTIVE ZOELLER THAT YOU RESPONDED TO THE WRIGHT HOUSE
4 TO OPEN THE SAFE?

5 A. THAT'S CORRECT.

6 Q. THAT YOU WERE LOOKING FOR A SECOND WILL?

7 A. I DON'T KNOW THAT THAT'S CORRECT.

8 Q. ALL RIGHT.

9 BUT AT ANY RATE, YOU GAVE THE MOST ACCURATE
10 INFORMATION YOU COULD TO MR. CONN, MISS NAJERA AND
11 DETECTIVE ZOELLER?

12 A. I HAD NOT SEEN THOSE NOTES UNTIL YESTERDAY,
13 AND THERE ARE SOME ERRORS IN THOSE NOTES.

14 Q. DID YOU TELL THEM THAT?

15 A. I JUST RECEIVED THEM LAST NIGHT.

16 Q. "THE SAFE WAS DRILLED BY A LOCKSMITH THAT
17 THEY HAD TAKEN UP TO THE HOUSE."

18 DOES THAT REFRESH YOUR RECOLLECTION AS TO
19 THAT?

20 A. WELL, I KNOW HE WAS TAKEN.

21 Q. "ONCE THE SAFE WAS OPENED, HE AND CARLOS
22 WERE TOLD BY LYLE AND ERIK THAT THERE WAS NOTHING OF ANY
23 IMPORTANCE IN THE SAFE EXCEPT FOR THE KEYS TO THE BANK
24 SAFETY DEPOSIT BOX, PLUS INSTRUCTIONS ON THE LOCATION OF
25 THAT BOX."

26 DID YOU TELL DETECTIVE ZOELLER THAT?

27 A. APPARENTLY.

28 MR. GESSLER: MAY I HAVE JUST A MOMENT, YOUR

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1 HONOR?

2 THE COURT: SURE.

3 MR. GESSLER: NO FURTHER QUESTIONS, YOUR HONOR.

4 THE COURT: ANY REDIRECT?

5 MR. CONN: YES, YOUR HONOR.

6

7 REDIRECT EXAMINATION

8 BY MR. CONN:

9 Q. MR. ANDERSEN, YOU WERE ASKED BY DEFENSE

10 COUNSEL WHETHER DURING THE CONVERSATION THAT YOU
11 OVERHEARD BETWEEN YOUR SISTER AND ERIK MENENDEZ THERE
12 WAS A REFERENCE TO LYLE MENENDEZ HAVING PURCHASED A
13 CAMCORDER ON THE VISA CARD.

14 DO YOU REMEMBER THAT?

15 A. YES, SIR.

16 Q. AND YOU ALSO SAID --

17 MS. ABRAMSON: THAT MISSTATES THE QUESTION, YOUR
18 HONOR.

19 THE COURT: OVERRULED.

20 Q. BY MR. CONN: YOU ALSO SAID THAT AT SOME
21 POINT YOUR SISTER SAID TO HER SON ERIK, "YOU KIDS HAVE
22 GOT TO STOP DOING THESE THINGS."

23 CAN YOU TELL US WHEN YOUR SISTER MADE THAT
24 RESPONSE; THAT IS, "YOU KIDS HAVE GOT TO STOP DOING
25 THESE THINGS," IN RELATIONSHIP TO THE STATEMENT THAT YOU
26 HEARD THAT LYLE MENENDEZ HAD PURCHASED THE CAMCORDER ON
27 THE VISA CARD?

28 A. IT WAS AFTER I HAD ASKED ERIK WHAT HAD

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1 HAPPENED, AND THAT'S WHEN HE TOLD ME ABOUT THE PURCHASE
2 BY LYLE.

3 Q. OKAY. I AM JUST ASKING YOU RIGHT NOW ABOUT
4 THE CONVERSATION THAT YOU HEARD BETWEEN YOUR SISTER AND
5 ERIK MENENDEZ.

6 DID YOU HEAR ERIK MENENDEZ MAKE REFERENCE
7 TO LYLE PURCHASING THE CAMCORDER ON THE VISA CARD?
8 A. YES, SIR.
9 Q. AND WAS THAT A COMMENT THAT HE MADE TO YOUR
10 SISTER?
11 A. HE DIVULGED IT TO ME.
12 Q. AND WAS YOUR SISTER PRESENT WHEN HE
13 DIVULGED THAT TO YOU?
14 A. I DON'T KNOW THAT HE WAS -- SHE WAS.
15 Q. DID YOU HEAR ERIK MENENDEZ MAKE REFERENCE
16 OR SAY TO YOUR SISTER THAT LYLE HAD PURCHASED THE CAMERA
17 ON THE VISA CARD?
18 A. THEY HAD A CONVERSATION.
19 MR. GESSLER: MOVE TO STRIKE THAT AS
20 NONRESPONSIVE.
21 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN.
22 Q. BY MR. CONN: OKAY.
23 YOU INDICATED THAT ALTHOUGH YOU -- THAT YOU
24 PREVIOUSLY MADE THE STATEMENT DURING AN INTERVIEW BACK
25 IN FEBRUARY OF '94 THAT AT THE TIME THAT YOU WENT TO THE
26 GARAGE OF RANDY WRIGHT YOU WERE LOOKING FOR A SECOND
27 WILL.
28 WHAT IS YOUR BEST RECOLLECTION TODAY IN

1 TERMS OF WHETHER AT THE TIME YOU WENT TO THE GARAGE OF

2 RANDY WRIGHT YOU WERE -- WHETHER THE ORIGINAL WILL HAD
3 ALREADY BEEN FOUND OR NOT?

4 A. AS I RECALL, THE ORIGINAL WILL HAD NOT BEEN
5 FOUND.

6 Q. NOW, YOU REFERRED TO YOUR SISTER -- OR AT
7 LEAST WE REFERRED TO YOUR SISTER HERE IN COURT AS KITTY
8 MENENDEZ.

9 WAS THAT HER PROPER NAME?

10 A. MARY LOUISE MENENDEZ WAS HER PROPER NAME.

11 Q. AND YOU ALSO SAID THAT WHEN LYLE MENENDEZ
12 ASKED YOU NOT TO BE PRESENT DURING THE TIME HE OPENED UP
13 THE SAFE, HE MADE REFERENCE TO A CONCERN THAT SOMETHING
14 EMBARRASSING MIGHT BE IN THE SAFE; WAS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. DID YOU ASK HIM AT THAT TIME WHY HE HAD
17 BROUGHT THE SAFE TO THE HOME OF A PROBATE ATTORNEY?

18 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT, YOUR
19 HONOR. ASSUMES FACTS NOT IN EVIDENCE.

20 THE COURT: SUSTAINED.

21 MR. CONN: I HAVE NO FURTHER QUESTIONS.

22 THE COURT: ANYTHING ELSE?

23 MS. ABRAMSON: THANK YOU, YOUR HONOR.

24

25 RECROSS-EXAMINATION

26 BY MS. ABRAMSON:

27 Q. MR. ANDERSEN,, HOW MANY TIMES HAVE YOU
28 TALKED TO DETECTIVE LESLIE ZOELLER FROM THE BEVERLY

1 HILLS POLICE DEPARTMENT?

2 A. I DON'T RECALL.

3 Q. DO YOU THINK HE'S HONEST?

4 A. YES, MA'AM.

5 Q. NOW, YOU'RE CLAIMING THAT YOU SAW THIS

6 POLICE REPORT LAST NIGHT FOR THE FIRST TIME; IS THAT

7 WHAT YOU'RE SAYING?

8 A. WHICH REPORT ARE YOU REFERRING TO?

9 Q. THE ONE THAT HAS YOUR STATEMENT FROM

10 FEBRUARY 22ND AND FEBRUARY 23RD OF 1994 IN IT.

11 A. THAT'S CORRECT.

12 Q. AND YOU'RE SAYING THAT IN FACT IN THIS

13 IT -- THIS IS AN EIGHT PAGE STATEMENT, CORRECT?

14 A. I DON'T KNOW THE NUMBER OF PAGES.

15 Q. WELL, YOU GOT IT LAST NIGHT.

16 A. I'M SORRY, MA'AM. I DID NOT COUNT THE

17 PAGES.

18 Q. DO YOU HAVE A COPY?

19 A. YES, MA'AM.

20 Q. THEY GAVE YOU YOUR OWN COPY?

21 A. YES, MA'AM.

22 Q. YOU HAD AS MUCH TIME AS YOU NEEDED TO READ

23 IT?

24 A. WELL, THIS MORNING.

25 Q. OKAY. AND ARE YOU SAYING THAT THIS MORNING

26 WAS THE FIRST TIME THAT YOU READ THE SECTION OF THAT

27 EIGHT PAGE STATEMENT WHERE YOU'RE TALKING ABOUT THE SAFE
28 AND THE WILL AND THE BANK, THESE TWO PARAGRAPHS THAT I

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1 AM LINING UP FOR YOU HERE?

2 A. EITHER LAST NIGHT OR THIS MORNING.

3 Q. MR. ANDERSEN, I SHOWED YOU THOSE TWO
4 PARAGRAPHS WHEN YOU WERE ON THE WITNESS STAND IN A
5 HEARING YESTERDAY MORNING OUT OF THE PRESENCE OF THE
6 JURY, DIDN'T I?

7 A. YES, MA'AM. YES, MA'AM.

8 Q. AND WHEN YOU READ IT THAT TIME, THE
9 PHRASE -- FIRST THIS PHRASE "BRIAN ANDERSEN SAID THAT
10 WHEN HE ARRIVED IN LOS ANGELES ON THE WEDNESDAY AFTER
11 THE MURDERS, HE ASSISTED CARLOS BARALT IN TRYING TO FIND
12 THE MOST RECENT WILL OF KITTY AND JOSE."

13 YOU RECALL I READ THAT TO YOU DURING THAT
14 HEARING?

15 A. YES, MA'AM.

16 Q. AND YOU DIDN'T SAY ONCE, "THAT'S A
17 MISTAKE," DID YOU?

18 A. I HAD NOT SEEN THAT REPORT, MA'AM.

19 Q. I SHOWED IT TO YOU.

20 A. THAT'S THE FIRST TIME I HAD EVER SEEN IT.

21 Q. YESTERDAY MORNING?

22 A. YES.

23 Q. AND THEN I ALSO POINTED OUT --

24 A. JUST THOSE TWO PAGES, I WOULD POINT OUT. I

25 DID NOT SEE THE ENTIRE REPORT.

26 Q. BUT THESE ARE THE ONLY TWO PAGES THAT TALK

27 ABOUT THIS TOPIC; ISN'T THAT TRUE?

28 MR. CONN: OBJECTION, IRRELEVANT.

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1 THE COURT: OVERRULED.

2 Q. BY MS. ABRAMSON: THESE TWO PARAGRAPHS I

3 SHOWED YOU, THESE TWO PARAGRAPHS ARE THE ONLY PART THAT

4 TALK ABOUT THE WILL AND THE SAFE AND THE BANK?

5 A. THAT'S CORRECT.

6 Q. AND DO YOU SEE THAT THERE IS AN UNDERLINED

7 SENTENCE HERE, THE SENTENCE READING "THEY WERE LOOKING

8 FOR A SECOND WILL."

9 DO YOU SEE THAT STARTING WITH THE LAST TWO

10 WORDS ON PAGE SIX AND THEN THE FIRST FIVE WORDS ON PAGE

11 SEVEN?

12 A. YES.

13 Q. AND I UNDERLINED THOSE WORDS BEFORE I

14 SHOWED YOU THAT REPORT YESTERDAY MORNING BEFORE THE JURY

15 WAS HERE; ISN'T THAT TRUE?

16 A. I DON'T KNOW WHEN YOU UNDERLINED IT.

17 Q. WELL, I SHOWED IT TO YOU UNDERLINED?

18 A. YES, MA'AM.

19 Q. AND AT THAT TIME YOU WEREN'T CRITICIZING

20 DETECTIVE ZOELLER'S REPORT WRITING, WERE YOU?

21 A. I HAD NOT SEEN THE ERRORS IN THE REPORT AT
22 THAT TIME.

23 Q. I SHOWED YOU THAT, AND THAT'S WHAT YOU'RE
24 CLAIMING IS AN ERROR.

25 WELL, LET ME SHOW YOU DETECTIVE ZOELLER'S
26 NOTES. HE TOOK NOTES WHILE YOU WERE BEING INTERVIEWED,
27 DIDN'T HE?

28 A. YES, MA'AM.

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1 Q. I AM HOLDING, YOUR HONOR -- I DON'T EVEN
2 KNOW HOW MANY PAGES THIS IS. LET ME COUNT. THE FIRST
3 DATE IS 0900 HOURS, 2-22-94. EIGHTEEN PAGES OF WHAT
4 APPEAR TO BE HANDWRITTEN NOTES.

5 MR. CONN: OBJECTION, CALLS FOR HEARSAY. NO
6 QUESTION PENDING. MOTION TO STRIKE.

7 THE COURT: WELL, AT THIS POINT SHE IS JUST
8 SHOWING THE NOTES TO HIM, SO OBJECTION OVERRULED.

9 Q. BY MS. ABRAMSON: AND I HAVE MARKED ONE OF
10 THE PAGES, THE 15TH PAGE 15.

11 DO YOU SEE THE HIGHLIGHTED SENTENCE IN
12 THOSE NOTES?

13 A. YES, MA'AM.

14 Q. WOULD YOU READ THEM OUT LOUD.

15 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

16 THE COURT: SUSTAINED.

17 Q. BY MS. ABRAMSON: THOSE NOTES CONTAIN THE
18 SAME SENTENCE AS THE ONE THAT'S UNDERLINED IN THE
19 REPORT, DOESN'T IT?

20 MR. CONN: OBJECTION, CALLS FOR HEARSAY.

21 OBJECTION, CALLS FOR HEARSAY.

22 THE COURT: SUSTAINED. THE NOTES HAVE NEVER BEEN
23 IDENTIFIED ANYWAY.

24 MS. ABRAMSON: OKAY, WE WILL DO THAT.

25 Q. WERE YOU TRYING TO TELL DETECTIVE ZOELLER
26 THE TRUTH ON FEBRUARY 22ND AND 23RD OF 1994?

27 A. YES, MA'AM.

28 Q. AND WERE MR. CONN AND MISS NAJERA ALSO

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1 PRESENT?

2 A. YES, MA'AM.

3 Q. AND HAVE THEY, MR. CONN OR MISS NAJERA,
4 EVER CALLED YOU AND SAID "GEE, DETECTIVE ZOELLER GOT IT
5 WRONG IN HIS REPORT. WE KNOW THAT YOU DIDN'T SAY THEY
6 WERE LOOKING FOR A SECOND WILL"?

7 MR. CONN: OBJECTION, IRRELEVANT.

8 MS. ABRAMSON: DID YOU EVER HEAR FROM THEM ON
9 THAT?

10 MR. CONN: OBJECTION, IRRELEVANT. CALLS FOR

11 HEARSAY.

12 THE COURT: OVERRULED.

13 THE WITNESS: THAT WAS WHICH CONVERSATION? WOULD
14 YOU REPEAT.

15 Q. BY MS. ABRAMSON: I'M SORRY. HAVE YOU
16 SINCE FEBRUARY 22ND AND 23RD, 1994 EVER RECEIVED ANY
17 CONTACT FROM MR. CONN OR MISS NAJERA WHERE THEY SAID
18 "GEE, DETECTIVE ZOELLER GOT IT WRONG IN HIS REPORT ABOUT
19 YOUR SAYING THEY WERE LOOKING FOR A SECOND WILL"?

20 A. I DID NOT SEE THE REPORT AND DO NOT
21 REMEMBER THAT CONVERSATION.

22 Q. AND THEY NEVER CALLED YOU TO TELL YOU THERE
23 WAS MISTAKE IN THIS REPORT, DID THEY?

24 A. NO, MA'AM.

25 MS. ABRAMSON: NOTHING FURTHER.

26 THE COURT: MR. GESSLER, ANYTHING FURTHER?

27 MR. GESSLER: JUST ONE QUESTION, YOUR HONOR.

28

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1 RECROSS-EXAMINATION

2 BY MR. GESSLER:

3 Q. MR. ANDERSEN, YOU TESTIFIED YESTERDAY THAT
4 THE STATEMENT BY LYLE MENENDEZ WAS "THERE MIGHT BE
5 SOMETHING EMBARRASSING TO MY PARENTS IN THE SAFE."
6 ISN'T THAT WHAT YOU SAID?

7 A. THAT'S CORRECT.

8 MR. GESSLER: NOTHING FURTHER.

9 THE COURT: ANY REDIRECT?

10 MR. CONN: YES.

11

12 REDIRECT EXAMINATION

13 BY MR. CONN:

14 Q. YESTERDAY WHEN YOU WERE ON THE WITNESS

15 STAND OUTSIDE THE PRESENCE OF THE JURY, COUNSEL SHOWED

16 YOU A COUPLE OF PARAGRAPHS; IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. DID SHE GIVE YOU THE EIGHT PAGE REPORT AND

19 GIVE YOU AN OPPORTUNITY TO READ THE WHOLE REPORT AT THAT

20 TIME?

21 A. SHE DID NOT.

22 Q. AND YOU DID NOT READ THAT REPORT IN COURT?

23 A. THAT'S CORRECT.

24 Q. DID YOU READ IT LAST NIGHT FOR THE FIRST

25 TIME?

26 A. LAST NIGHT AND THIS MORNING.

27 MR. CONN: THANK YOU, SIR.

28 NOTHING FURTHER.

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1 THE COURT: ANYTHING ELSE?

2 MS. ABRAMSON: YES.

3

4 FURTHER RECROSS-EXAMINATION

5 BY MS. ABRAMSON:

6 Q. HERE, MR. ANDERSEN, IS THE EIGHT PAGE

7 REPORT.

8 SHOW ME ANY OTHER PLACE IN THAT REPORT

9 WHERE IT TALKS ABOUT THE WILL, THE BANK, THE SAFE

10 DEPOSIT BOX.

11 MR. CONN: OBJECTION, YOUR HONOR, BEYOND THE

12 SCOPE.

13 THE COURT: I THINK HE HAS ALREADY INDICATED THAT

14 THAT WAS THE ONLY PLACE.

15 MS. ABRAMSON: THANK YOU, YOUR HONOR.

16 NOTHING FURTHER.

17 THE COURT: OKAY.

18 THANK YOU, SIR. YOU MAY STEP DOWN.

19 THE WITNESS: THANK YOU, SIR.

20 THE COURT: DO YOU WANT THE WITNESS TO REMAIN ON

21 CALL?

22 MR. GESSLER: YES, YOUR HONOR.

23 THE COURT: OR IS HE EXCUSED?

24 OKAY, HE IS SUBJECT TO BEING RECALLED, BUT

25 HE IS EXCUSED FOR TODAY. THANK YOU, SIR.

26 AND YOUR NEXT WITNESS, IS THAT WITNESS

27 HERE?

28 MS. NAJERA: YES, YOUR HONOR. OUR NEXT WITNESS

1 WOULD BE MISS EISENBERG.

2 YOUR HONOR, THE PEOPLE CALL MARZIE

3 EISENBERG, MARLENE EISENBERG.

4

5 MARLENE EISENBERG,

6 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND

7 TESTIFIED AS FOLLOWS:

8

9 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE

10 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE

11 THE COURT WILL BE THE TRUTH, THE WHOLE TRUTH, AND

12 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

13 THE WITNESS: YES.

14 THE CLERK: PLEASE TAKE THE STAND AND STATE YOUR

15 NAME FOR THE RECORD.

16 THE WITNESS: MARLENE EISENBERG.

17 THE CLERK: WOULD YOU SPELL YOUR LAST NAME,

18 PLEASE.

19 THE WITNESS: E-I-S-E-N-B-E-R-G.

20 THE COURT: OKAY. YOU CAN TAKE THE WITNESS

21 STAND. YOU BROUGHT YOUR OWN SUPPLY OF WATER.

22 ALL RIGHT. YOU MAY EXAMINE THE WITNESS.

23 MS. NAJERA: THANK YOU, YOUR HONOR.

24

25

26

27

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1 DIRECT EXAMINATION

2 BY MS. NAJERA:

3 Q. MISS EISENBERG, ON AUGUST 20TH OF 1989, DID
4 YOU WORK AT L.I.V.E. ENTERTAINMENT?

5 A. YES, I DID.

6 Q. AND WHAT WAS YOUR JOB? WHAT WAS YOUR TITLE
7 AT L.I.V.E. ENTERTAINMENT?

8 A. I WAS THE ASSISTANT TO THE CHAIRMAN OF THE
9 BOARD.

10 Q. AND WHO WAS THE CHAIRMAN OF THE BOARD?

11 A. JOSE MENENDEZ.

12 Q. NOW, SOMETIME AFTER AUGUST 20TH, 1989, DID
13 YOU HEAR ABOUT THE KILLING OF JOSE MENENDEZ AND KITTY
14 MENENDEZ?

15 A. YES, I DID.

16 Q. AND WHEN DID YOU HEAR ABOUT IT?

17 A. APPROXIMATELY 8:15 THAT MONDAY MORNING WHEN
18 I ARRIVED AT THE OFFICE.

19 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. THERE
20 NEEDS TO BE AN ADMONITION TO THE JURY.

21 THE COURT: YES.

22 AS TO THIS WITNESS AND HER TESTIMONY, IT'S
23 BEING OFFERED AND IS TO BE CONSIDERED BY THE JURY ONLY

24 AS TO THE DEFENDANT, LYLE MENENDEZ.

25 ALL RIGHT, YOU MAY CONTINUE.

26 MS. NAJERA: THANK YOU, YOUR HONOR.

27 Q. NOW, WHEN YOU HEARD THIS INFORMATION THAT

28 JOSE MENENDEZ AND KITTY MENENDEZ WERE DEAD, DID YOU --

-25759

1 DID YOU CALL THE HOUSE?

2 A. I DID, I GUESS TO SEE IF IT WAS TRUE. I

3 CALLED. I SPOKE TO DETECTIVE ZOELLER AND LEFT HIM A

4 MESSAGE AND ASKED HIM TO HAVE EITHER LYLE OR ERIK CALL

5 ME. THEY WERE NOT AT THE HOUSE. I THINK THEY WERE WITH

6 THE TENNIS COACH.

7 MR. GESSLER: YOUR HONOR, I WOULD OBJECT. IT'S

8 BEYOND THE QUESTION ASKED. IT'S NONRESPONSIVE.

9 THE COURT: SUSTAINED, THE ANSWER IS STRICKEN.

10 WHY DON'T YOU RE-ASK THE QUESTION?

11 MS. NAJERA: OKAY.

12 Q. AFTER YOU HEARD THAT JOSE MENENDEZ AND

13 KITTY MENENDEZ WERE DEAD, DID YOU CALL THE MENENDEZ

14 HOUSE?

15 A. YES, I DID.

16 Q. AND DID YOU SPEAK TO SOMEBODY THERE?

17 A. YES, I DID.

18 Q. AND WHO DID YOU SPEAK TO?

19 A. DETECTIVE ZOELLER.

20 Q. AND DID YOU MAKE ANY REQUEST OF DETECTIVE
21 ZOELLER?
22 A. I DID.
23 Q. AND WHAT WAS THAT?
24 A. THAT ONE OF THE SONS CALL ME.
25 Q. AND AFTER YOU MADE THIS REQUEST, DID YOU
26 HEAR AT ANY TIME FROM EITHER OF THE DEFENDANTS?
27 A. YES, I DID.
28 Q. AND HOW DID THIS COME ABOUT?

-25758

1 A. LYLE RETURNED MY CALL SOMETIME DURING THAT
2 AFTERNOON OR LATE MORNING. I THINK IT WAS THE
3 AFTERNOON.
4 Q. AND THIS WOULD BE ON MONDAY, AUGUST 21ST?
5 A. YES.
6 Q. AND WHEN LYLE MENENDEZ RETURNED YOUR PHONE
7 CALL, DID YOU HAVE A CONVERSATION WITH HIM?
8 A. YES, I DID.
9 Q. AND WHAT DID HE SAY DURING THIS
10 CONVERSATION?
11 A. I ASKED HIM OR MADE THE STATEMENT "WHAT
12 HAPPENED?" AND HIS REMARK WAS "I DON'T KNOW. I WAS IN
13 THE SHOWER. I DIDN'T HEAR ANYTHING."
14 Q. NOW, AFTER HE TOLD YOU THAT HE HAD BEEN IN
15 THE SHOWER AND DIDN'T HEAR ANYTHING, DID HE TELL YOU

16 ANYTHING ELSE AT THAT CONVERSATION?

17 A. NOTHING THAT I RECALL, NO. NOTHING IN
18 PARTICULAR.

19 Q. DID YOU HAVE ANOTHER CONVERSATION WITH THE
20 DEFENDANT, LYLE MENENDEZ?

21 A. YES, I DID.

22 Q. AND WHEN DID THIS COME ABOUT?

23 A. WELL, IT WOULD HAVE BEEN THE NEXT DAY,
24 BECAUSE HIS QUESTION TO ME WAS -- HE CALLED ME AT THE
25 OFFICE.

26 THE COURT: YOU CAN ANSWER THE QUESTION THE NEXT
27 DAY.

28 THE WITNESS: HE ASKED WHAT WOULD HAPPEN IF THEY

-25757

1 DIDN'T FIND THE WILL.

2 Q. BY MS. NAJERA: AND THIS WAS -- HE ASKED
3 YOU THIS -- DO YOU RECALL WHAT TIME OF THE DAY IT WAS
4 THAT HE CALLED YOU AND ASKED YOU ABOUT WHAT WOULD HAPPEN
5 IF THEY DIDN'T FIND THE WILL?

6 A. THE TIME? NO, NO.

7 Q. BUT THIS WOULD HAVE BEEN A TUESDAY?

8 A. IT WOULD HAVE BEEN -- IT WOULD HAVE BEEN
9 TUESDAY, BECAUSE I FELT THAT HE WOULDN'T HAVE ASKED ME
10 THAT QUESTION ONCE THE FAMILY ARRIVED, AND THEY STARTED
11 TO ARRIVE IN CALIFORNIA I BELIEVE LATE TUESDAY, EARLY

12 WEDNESDAY.

13 Q. AND WHEN HE ASKED YOU WHAT WOULD HAPPEN IF
14 THEY COULDN'T FIND A WILL, WHAT DID YOU TELL HIM?

15 A. WELL, I THOUGHT -- WHAT I SAID TO HIM WAS,
16 YOU KNOW, "IT WILL PROBABLY GET TIED UP IN THE COURTS."
17 I'M NOT VERY EXPERIENCED --

18 MR. GESSLER: YOUR HONOR, I WOULD OBJECT. IT'S
19 NONRESPONSIVE.

20 THE COURT: IS THIS WHAT YOU SAID?

21 THE WITNESS: YEAH, JUST ABOUT. JUST ABOUT.

22 THE COURT: OVERRULED.

23 Q. BY MS. NAJERA: I AM SORRY, COULD YOU
24 REPEAT THAT ANSWER?

25 A. THAT IT WOULD BE TIED UP IN THE COURTS AND
26 IT WOULD TAKE A WHILE, YOU KNOW, TO SETTLE THE WILL.
27 I DON'T HAVE MUCH EXPERIENCE WITH WILLS, SO
28 I DIDN'T GIVE HIM A GREAT DEAL OF INFORMATION.

-25756

1 Q. AND AFTER YOU TOLD HIM THAT IT WOULD
2 PROBABLY TAKE A WHILE TO SETTLE THE WILL IF THERE WASN'T
3 ONE FOUND, DID YOU LATER LEARN THAT A WILL WAS FOUND?

4 A. AS FAR AS THE WILL, I DON'T RECALL WHAT
5 HAPPENED. I DIDN'T HAVE A LOT OF CONTACT REGARDING THE
6 WILL, SO I DON'T REALLY RECALL.

7 Q. NOW, AT SOME POINT DID YOU GO TO THE

8 MEMORIAL SERVICE THAT WAS HELD HERE IN CALIFORNIA FOR

9 JOSE AND KITTY MENENDEZ?

10 A. YES.

11 Q. AND WAS THIS ON AUGUST -- FRIDAY, AUGUST

12 25TH?

13 A. YES.

14 Q. NOW, AT THAT MEMORIAL SERVICE, AFTER THE

15 MEMORIAL SERVICE, DID YOU LEAVE IN A LIMOUSINE?

16 A. YES.

17 Q. WERE YOU WITH ANYBODY IN THAT LIMOSINE?

18 A. YES.

19 Q. WHO WERE YOU WITH?

20 A. LYLE, ERIK, AND COUSIN CARLOS. CARLOS

21 MENENDEZ, NOT BARALT.

22 Q. AND WHILE YOU WERE IN THAT LIMOUSINE WITH

23 LYLE MENENDEZ, DID YOU HAVE A CONVERSATION WITH HIM?

24 A. WITH LYLE.

25 Q. AND WITH REGARDS TO THAT CONVERSATION, WHAT

26 DID HE TELL YOU?

27 A. LYLE WAS TO MY LEFT. HIS RIGHT LEG WAS

28 ACROSS HIS LEFT LEG, AND HE WAS MOVING HIS FOOT KIND OF

-25755

1 BACK AND FORTH, AND HE SAID TO ME "HEY, MARZIE, WHO SAID

2 I COULDN'T FILL MY FATHER'S SHOES."

3 AND MY RESPONSE WAS "DON'T FILL HIS SHOES.

4 MAKE YOUR OWN TRACKS IN LIFE."

5 AND HE SAID "YOU DON'T UNDERSTAND. THESE
6 ARE MY FATHER'S SHOES."

7 Q. AND WHEN HE -- WHAT WAS HE DOING WHEN HE
8 SAID THAT?

9 A. WELL, HIS FOOT WAS JUST KIND OF FLEXING
10 BACK AND FORTH, YOU KNOW.

11 Q. AND WAS THAT THE ONLY CONVERSATION THAT YOU
12 HAD WITH HIM IN THE LIMOUSINE?

13 A. YEAH, THAT I HAD WITH HIM.

14 MS. NAJERA: YOUR HONOR, THAT'S ALL I HAVE.

15 THE COURT: CROSS-EXAMINATION.

16 MR. GESSLER: THANK YOU, YOUR HONOR.

17

18 CROSS-EXAMINATION

19 BY MR. GESSLER:

20 Q. GOOD MORNING, MISS EISENBERG.

21 A. GOOD MORNING.

22 Q. YOU WERE SECRETARY AND ASSISTANT TO JOSE
23 MENENDEZ FOR A NUMBER OF YEARS, WEREN'T YOU?

24 A. YES.

25 Q. BOTH IN NEW YORK CITY --

26 A. YES.

27 Q. AT TWO DIFFERENT POSITIONS HE HELD THERE?

28 A. YES.

1 Q. AND THEN YOU CAME OUT TO CALIFORNIA?

2 A. YES.

3 Q. NOT WITH HIM, BUT LATER ON?

4 A. YES.

5 Q. AND YOU WERE GONE FOR AWHILE AND THEN CAME
6 BACK AND ASSISTED HIM AGAIN?

7 A. YES.

8 Q. AND YOU CONSIDERED YOURSELF A LOYAL
9 SECRETARY, DIDN'T YOU?

10 MS. NAJERA: I AM GOING TO OBJECT AS IRRELEVANT.

11 THE COURT: OVERRULED.

12 Q. BY MR. GESSLER: YOU WERE LOYAL TO YOUR
13 BOSS?

14 A. YES.

15 Q. AND AS A MATTER OF FACT, YOU HELPED HIDE AN
16 AFFAIR HE HAD FROM HIS WIFE, DIDN'T YOU?

17 MS. NAJERA: OBJECTION, IRRELEVANT.

18 THE COURT: SUSTAINED.

19 Q. BY MR. GESSLER: WHEN YOU WERE HERE, DID
20 YOU PROTECT HIS DESK IN A WAY?

21 A. PROTECT HIS DESK?

22 Q. YES. MAKE SURE THAT THERE WAS NOTHING ON
23 IT THAT SOMEBODY ELSE SHOULDN'T SEE?

24 A. PERSONAL THINGS THAT --

25 MS. NAJERA: I AM GOING TO OBJECT AS IRRELEVANT.

26 THE COURT: SUSTAINED.

27 Q. BY MR. GESSLER: WHEN YOU WERE HERE IN

28 CALIFORNIA, DID YOU HAVE A CODE SYSTEM FOR CALLERS THAT

1 CALLED?

2 A. NO. I --

3 MS. NAJERA: OBJECTION, IRRELEVANT.

4 THE COURT: SUSTAINED.

5 Q. BY MR. GESSLER: DID YOU HAVE ANYTHING SET
6 UP TO USE CALLERS BY THEIR INITIALS SO THAT NOBODY WOULD
7 KNOW WHO THE CALLER WAS?

8 A. NO. WE HAD NOTHING --

9 MS. NAJERA: OBJECTION, IRRELEVANT AND OUTSIDE
10 THE SCOPE.

11 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN.

12 Q. BY MR. GESSLER: WHILE YOU WERE HERE, DID
13 MR. MENENDEZ REFER TO YOU AS HIS "OFFICE WIFE"?

14 MS. NAJERA: OBJECTION, IRRELEVANT.

15 THE COURT: OVERRULED. YOU CAN ANSWER THAT
16 QUESTION.

17 THE WITNESS: KITTY AND I REFERRED TO ME AS HIS
18 OFFICE WIFE. HE DID NOT.

19 Q. BY MR. GESSLER: AND DID HE EVER REFER TO
20 YOU AS THE "OTHER MRS. MENENDEZ"?

21 A. KITTY AND I DID.

22 Q. ALL RIGHT. AND THAT'S BECAUSE OF YOUR
23 CLOSENESS TO MR. MENENDEZ, ISN'T IT?

24 A. NOT TO JUST MR. MENENDEZ, MRS. MENENDEZ
25 ALSO.

26 Q. NOW, THIS FIRST CALL THAT YOU MADE, THAT
27 WAS A CALL YOU MADE OVER TO THE HOUSE?
28 A. YES.

-25752

1 Q. AND YOU THINK THAT WAS THE MORNING OF
2 AUGUST 21ST?

3 A. I KNOW.

4 Q. THAT'S WHEN YOU HAD CONTACTED DETECTIVE
5 ZOELLER TO HAVE EITHER ERIK OR LYLE CALL YOU?

6 A. YES.

7 Q. DO YOU REMEMBER WHAT TIME THEY -- ONE OF
8 THEM RETURNED THE CALL?

9 A. I BELIEVE IT WAS IN THE AFTERNOON.

10 Q. THAT WOULD BE MONDAY AFTERNOON?

11 A. YES.

12 Q. DO YOU REMEMBER IF IT WAS EARLY AFTERNOON,
13 LATE AFTERNOON?

14 A. NO. I DON'T REMEMBER THE TIME.

15 Q. WHERE WERE YOU WHEN YOU RECEIVED THE CALL
16 BACK?

17 A. I WAS IN THE OFFICE.

18 Q. AND DID YOU WORK A FULL DAY THAT DAY?

19 A. I WORKED WELL INTO THE NIGHT THAT DAY.

20 Q. SO, IT COULD HAVE BEEN ANY TIME THAT
21 AFTERNOON?

22 A. IT WAS THE AFTERNOON, NOT THE EVENING.
23 Q. OKAY. BUT AFTERNOON MEANING ANY TIME SAY
24 BETWEEN NOON AND 5:00?
25 A. MORE LIKE NOON AND 2:00. I DON'T BELIEVE
26 IT WAS LATE, LATE INTO THE DAY.
27 Q. NOW, THE TOPIC OF THAT CALL WAS WHAT?
28 A. I WANTED TO MAKE SURE THAT THEY WERE OKAY,

-25751

1 I HADN'T SPOKEN TO THEM, AND THEN WE HAD THE BRIEF
2 SHOWER CONVERSATION.
3 Q. THAT'S WHEN THE SHOWER CONVERSATION TOOK
4 PLACE?
5 A. I BELIEVE SO.
6 Q. HOW DID IT COME UP?
7 A. WELL, MY COMMENT TO LYLE -- I BASICALLY
8 JUST MADE THE STATEMENT "WHAT HAPPENED," AS IF TO SAY
9 WHAT THE HELL HAPPENED HERE, AND THAT WAS HIS REMARK,
10 HIS RESPONSE TO ME.
11 Q. HIS REMARK WAS "I WAS IN THE SHOWER, I
12 DIDN'T HEAR ANYTHING," SOMETHING LIKE THAT?
13 A. RIGHT, EXACTLY. "I DON'T KNOW WHAT
14 HAPPENED. I WAS IN THE SHOWER. I DIDN'T HEAR
15 ANYTHING."
16 Q. AND THEN THERE WAS ANOTHER CALL THAT YOU
17 HAD WITH LYLE MENENDEZ TALKING ABOUT THE WILL?

18 A. THE FOLLOWING DAY WAS A BRIEF CONVERSATION,
19 JUST --

20 Q. THIS IS TUESDAY NOW?

21 A. YES.

22 Q. OKAY. AND HOW DO YOU RECOLLECT THAT THIS
23 WAS TUESDAY AS OPPOSED TO SOME OTHER DAY?

24 A. BECAUSE THE FAMILY STARTED TO ARRIVE IN
25 CALIFORNIA, AND I FELT THAT THERE WOULD BE NO REASON FOR
26 HIM TO ASK ME THE QUESTION IF HE HAD CARLOS BARALT
27 THERE. WHY WOULD HE COME TO ME WITH THAT?

28 Q. SO, THAT'S HOW YOU REMEMBER DATING IT AS

-25750

1 TUESDAY?

2 A. EXACTLY.

3 Q. CARLOS BARALT ARRIVED ON MONDAY, DIDN'T HE?

4 A. I DON'T KNOW. NO, NO ONE ARRIVED ON
5 MONDAY, IF I RECALL. AND IF IT WAS MONDAY, IT WOULD
6 HAVE BEEN VERY, VERY LATE MONDAY.

7 BUT I DON'T RECALL HIM ARRIVING MONDAY.

8 Q. WERE YOU MAKING THE ARRANGEMENTS FOR THE
9 FAMILY?

10 A. I WAS MAKING A LOT OF ARRANGEMENTS.

11 Q. DID THAT INCLUDE THE FAMILY, AS TO WHERE
12 THEY WERE STAYING?

13 A. ACTUALLY CAROLCO MADE A LOT OF THOSE

14 ARRANGEMENTS. I JUST LET THEM KNOW WHERE THEY WERE

15 STAYING.

16 Q. CAROLCO IS A COMPANY?

17 A. YES.

18 Q. I TAKE IT YOU FELT THIS REQUEST OF YOU

19 ABOUT A WILL WAS A RATHER ODD STATEMENT FOR SOMEBODY TO

20 MAKE?

21 A. I DIDN'T THINK OF IT AS BEING ODD. I

22 JUST -- YOU KNOW, I RESPONDED THE BEST I COULD WAS THAT

23 IT -- MY RESPONSE ABOUT IT BEING TIED UP.

24 Q. THAT IT WOULD DELAY PROBATE OR DELAY THE

25 ESTATE OR SOMETHING?

26 A. EXACTLY.

27 Q. YOU DIDN'T ATTACH ANY SIGNIFICANCE TO IT

28 THEN?

-25749

1 A. NOT AT ALL.

2 Q. YOU TALKED TO DETECTIVE ZOELLER MANY TIMES

3 DURING THAT PERIOD OF TIME, DIDN'T YOU; THAT IS AUGUST,

4 SEPTEMBER, OCTOBER 1989?

5 A. I AM SURE I DID.

6 Q. AND YOU NEVER MENTIONED THIS WILL

7 CONVERSATION TO HIM, DID YOU?

8 A. I DON'T RECALL WHETHER I DID OR NOT.

9 Q. AND YOU NEVER MENTIONED THE SHOWER

10 CONVERSATION TO DETECTIVE ZOELLER EITHER, DID YOU?
11 A. THE SHOWER CONVERSATION FOR ME WAS WHAT I
12 HAVE REFERRED TO AS A THROW-AWAY CONVERSATION. IT WAS
13 THERE.

14 FOLLOWING THAT I READ THAT LYLE AND ERIK
15 WERE STATING THEY WERE AT THE MOVIES. I HAD FIRST
16 THOUGHT I HAD MISUNDERSTOOD WHAT LYLE SAID TO ME. I
17 THOUGHT "GEE, I THOUGHT HE SAID HE WAS IN THE SHOWER.
18 HE'S SAYING HE'S AT THE MOVIES."

19 I JUST KIND OF PUSHED IT ASIDE AND, FOR
20 LACK OF A BETTER WORD, I BURIED IT AND DIDN'T GIVE IT A
21 LOT OF THOUGHT.

22 Q. THEN THE FIRST TIME THAT YOU TOLD DETECTIVE
23 ZOELLER ABOUT THAT COMMENT WAS IN DECEMBER 1989, WASN'T
24 IT; THAT IS, THE SHOWER?

25 A. I DON'T RECALL THE DATE.

26 Q. DO YOU REMEMBER HAVING A CONVERSATION WITH
27 DETECTIVE ZOELLER APPROXIMATELY DECEMBER 11TH, 1989?

28 A. I REMEMBER HAVING A CONVERSATION WITH HIM.

-25748

1 I DON'T RECALL THE DATE OF THE CONVERSATION.

2 MR. GESSLER: MAY I APPROACH THE WITNESS, YOUR
3 HONOR?

4 THE COURT: YES.

5 THE WITNESS: MY READING GLASSES, YOU HAVE. I

6 CAN'T SEE A THING. I DON'T HAVE THEM.

7 MS. NAJERA: MR. GESSLER, IS THIS THE DECEMBER
8 14, 1989 ONE PAGE REPORT?

9 MR. GESSLER: YES.

10 MS. NAJERA: THANK YOU.

11 THE WITNESS: I DON'T RECALL WHEN I HAD THE
12 CONVERSATION. CAN I GET MY READING GLASSES?

13 MR. GESSLER: SURE.

14 THE WITNESS: IT'S BLURRED. IT'S NOT FUNNY.

15 IT'S NOT GOING TO HELP. I DON'T RECALL THE
16 DATE, BUT OKAY.

17 Q. BY MR. GESSLER: OKAY.

18 DOES LOOKING AT THIS POLICE REPORT, DOES
19 THAT REFRESH YOUR RECOLLECTION AS TO DECEMBER 11TH, 1989
20 BEING THE APPROXIMATE TIME THAT YOU HAD THIS
21 CONVERSATION WITH DETECTIVE ZOELLER?

22 A. I'LL GO ALONG WITH THE DATE. I DON'T
23 RECALL, SO I CAN'T ARGUE IF THAT'S WHAT --

24 MS. NAJERA: I OBJECT, MAKE A MOTION TO STRIKE,
25 YOUR HONOR.

26 THE WITNESS: I JUST DON'T RECALL.

27 THE COURT: OVERRULED. THE ANSWER WILL STAND.

28 Q. BY MR. GESSLER: ALL RIGHT.

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1 AND AT THAT TIME DID YOU ASK DETECTIVE

2 ZOELLER IF HE RECALLED YOUR HAVING SAID THAT LYLE WAS IN
3 THE GUEST HOUSE AT THE TIME OF THE KILLINGS TAKING A
4 SHOWER, AND HE SAID "NO, I DON'T RECALL THAT"?

5 A. ALL RIGHT. I WOULDN'T -- I DIDN'T KNOW
6 THERE WAS -- I KNEW OF A GUEST HOUSE. I HAD NO
7 KNOWLEDGE OF WHERE LYLE WAS LIVING OR TAKING SHOWERS OR
8 ANYTHING ELSE, SO I -- YOU KNOW, THIS I FOUND OUT LATER.

9 NO, I DON'T RECALL SAYING THAT.

10 Q. ALL RIGHT.

11 YOU DIDN'T MAKE ANY MENTION OF THE WILL AT
12 THAT TIME TO DETECTIVE ZOELLER, DID YOU, OF THE
13 STATEMENT OF LYLE SAYING "WHAT IF THEY CAN'T FIND THE
14 WILL?"

15 A. I WOULDN'T REMEMBER. I WOULD IMAGINE AT
16 THAT POINT THE WILL WOULD HAVE BEEN FOUND. I REALLY
17 DIDN'T THINK MUCH OF IT.

18 Q. SO, THE ANSWER IS YOU DIDN'T TELL DETECTIVE
19 ZOELLER THAT?

20 A. I DON'T REMEMBER. I CAN'T ANSWER THAT.

21 Q. AND YOU DIDN'T TELL DETECTIVE ZOELLER ABOUT
22 THIS INCIDENT OF "THESE ARE MY FATHER'S SHOES" AT ANY
23 TIME, DID YOU?

24 A. I DON'T RECALL.

25 Q. DID YOU THINK THE INCIDENT ABOUT HIM SAYING
26 "THESE ARE MY FATHER'S SHOES" WAS OF ANY IMPORTANCE?

27 MS. NAJERA: I OBJECT AS IRRELEVANT.

28 THE COURT: AT WHAT POINT?

1 Q. BY MR. GESSLER: AT THE TIME WHEN HE MADE
2 THAT STATEMENT TO YOU?

3 A. IT MADE ME VERY UN --

4 MS. NAJERA: I OBJECT AS IRRELEVANT WHAT SHE
5 THOUGHT.

6 THE COURT: OVERRULED.

7 THE WITNESS: I WAS EXTREMELY UNCOMFORTABLE WITH
8 IT. IT WAS A VERY BIZARRE CONVERSATION.

9 Q. BY MR. GESSLER: IN ANY OF YOUR
10 CONVERSATIONS THEN WITH DETECTIVE ZOELLER DURING THE
11 FALL OF 1989, DID YOU REPORT THAT INCIDENT TO HIM?

12 A. I WOULD HAVE TO THINK THAT I DID. WHETHER
13 I DID, I JUST DON'T REMEMBER.

14 Q. YOU DON'T REMEMBER ANY CONTEXT IN WHICH YOU
15 MIGHT HAVE SAID THAT TO DETECTIVE ZOELLER?

16 A. I REALLY DON'T REMEMBER.

17 Q. OR ANY CONVERSATION IN WHICH THAT MIGHT
18 HAVE COME UP BETWEEN YOU AND DETECTIVE ZOELLER?

19 A. NO. I DID MENTION IT TO A FRIEND OF MINE,
20 BUT I DON'T REMEMBER WHETHER I MENTIONED IT TO HIM OR
21 NOT.

22 Q. AND DETECTIVE ZOELLER YOU DID KNOW WAS THE
23 INVESTIGATING OFFICER FOR THIS MATTER?

24 AND YOU MENTIONED THAT LYLE MENENDEZ HAD
25 HIS LEGS CROSSED AND HIS --

26 A. NO. HIS RIGHT LEG WAS SWUNG OVER HIS LEFT

27 LEG.

28 Q. ALL RIGHT. AND THEN HE -- YOU SAID FLEXED

-25745

1 IN SOME WAY?

2 A. HE WAS FLEXING THE SHOE BACK AND FORTH.

3 Q. AND I THINK YOU DESCRIBED THAT AS A LOAFER

4 WITH A TASSLE?

5 A. YES.

6 Q. AND DO YOU REMEMBER WHERE THE TASSLE WAS?

7 A. ON THE LOAFER.

8 Q. DO YOU REMEMBER THE COLOR OF THE LOAFERS?

9 A. IT WAS A DARK COLOR. I DON'T REMEMBER

10 WHETHER IT WAS A BLACK COLOR, A DARK OXBLOOD COLOR, BUT

11 IT WAS A --

12 Q. THE TASSLE WAS CLEARLY VISIBLE?

13 A. OH, ABSOLUTELY.

14 Q. AND DID YOU RECOGNIZE THESE AS SHOES THAT

15 JOSE MENENDEZ HAD WORN?

16 A. THEY LOOKED FAMILIAR, BUT I DIDN'T ATTACH

17 THEM TO BEING JOSE'S SHOES. I MEAN, I DON'T SIT AND

18 WATCH PEOPLE'S -- YOU KNOW, SHOES, AND IT'S A VERY

19 COMMON LOAFER THAT MANY, MANY MEN WEAR.

20 SO, I WOULDN'T HAVE THOUGHT ANYTHING OF IT

21 AS FAR AS BEING HIS FATHER'S SHOES UNTIL HE SAID WHAT HE

22 SAID.

23 Q. BUT UNTIL THEN IT WAS JUST A LOAFER WITH A
24 TASSLE THAT YOU SAW THERE AS HE FLEXED HIS ANKLE?
25 A. RIGHT.
26 Q. AND THIS WAS WHEN NOW, THIS WAS IN THE
27 LIMOSINE?
28 A. YES.

-25744

1 Q. COMING BACK FROM THE MEMORIAL SERVICE HERE?
2 A. YES.
3 Q. THIS WAS IN LOS ANGELES?
4 A. YES.
5 Q. AND THAT'S THE ONE THAT WAS HELD FRIDAY,
6 AUGUST 25TH?
7 A. AT THE DIRECTOR'S GUILD.
8 MR. GESSLER: MAY I HAVE JUST A MOMENT, YOUR
9 HONOR?
10 THE COURT: YES.
11 MR. GESSLER: NOTHING FURTHER, YOUR HONOR.
12 THE COURT: ANY REDIRECT?
13 MS. NAJERA: NO REDIRECT, YOUR HONOR.
14 THE COURT: OKAY, THANK YOU. YOU MAY STEP DOWN.
15 YOU ARE EXCUSED, SUBJECT TO BEING RECALLED. THANK YOU.
16 THE WITNESS: THANK YOU.
17 THE COURT: ALL RIGHT.
18 WE'LL TAKE A RECESS, LADIES AND GENTLEMEN,

19 AND WE WILL RESUME AT APPROXIMATELY A QUARTER TO THE
20 HOUR.

21 (THE JURY EXITS THE COURTROOM AND THE
22 FOLLOWING PROCEEDINGS WERE HELD:)

23

24 THE COURT: ALL RIGHT. WE WILL RESUME IN ABOUT
25 10 MINUTES WITH THE HEARINGS THAT WE DISCUSSED BEFORE.

26 MS. NAJERA: OKAY.

27 MS. ABRAMSON: YES.

28 (A RECESS WAS TAKEN FROM 10:30 TO 10:50 A.M.)

39793

1 (THE FOLLOWING PROCEEDINGS WERE
2 HELD IN OPEN COURT OUT OF THE
3 PRESENCE OF THE JURY:)

4 THE COURT: OKAY. WE HAVE A HEARING TO
5 CONDUCT HERE. LET'S DEAL WITH DETECTIVE ZOELLER'S
6 TESTIMONY HERE.

7 MS. NAJERA: THANK YOU, YOUR HONOR.

8 THE PEOPLE ARE RECALLING DETECTIVE
9 ZOELLER.

10

11 LESLIE H. ZOELLER,
12 RECALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN
13 PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:
14 THE COURT: ALL RIGHT. YOU CAN TAKE THE
15 WITNESS STAND. YOU'RE STILL UNDER OATH. JUST STATE

16 YOUR NAME FOR THE RECORD.

17 THE WITNESS: LESLIE H. ZOELLER.

18 THE COURT: ALL RIGHT.

19 MS. NAJERA: YOUR HONOR, FOR THE RECORD, I

20 HAVE A THREE-PAGE REPORT THAT I'M MARKING EXHIBIT

21 166 FOR IDENTIFICATION.

22 THE COURT: OKAY.

23 MS. NAJERA: FOR THE RECORD, IT IS THE

24 HEFFERNAN REPORT.

25

26 DIRECT EXAMINATION

27 BY MS. NAJERA:

28 Q DETECTIVE ZOELLER ON FEBRUARY 28TH,

39794

1 1991, DID YOU TALK TO AN INDIVIDUAL NAMED MARK

2 HEFFERNAN?

3 A YES.

4 Q DID YOU TAKE A STATEMENT WITH HIM AT

5 THAT TIME?

6 A YES, I DID.

7 Q A STATEMENT FROM HIM AT THAT TIME?

8 A YES, I DID.

9 Q AND AFTER YOU TOOK THIS STATEMENT, DID

10 YOU TAKE NOTES ON THIS STATEMENT?

11 A YES, I DID.

12 Q AND AT SOME POINT AFTER YOU TOOK THIS
13 STATEMENT FROM HIM, DID YOU MEMORIALIZE IT IN A
14 REPORT?

15 A YES, I DID.

16 Q DID YOU MEMORIALIZE IT IN A REPORT ON
17 MARCH 28TH, 1991?

18 A YES.

19 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW
20 THAT REPORT?

21 A YES, I HAVE.

22 Q AND SHOWING YOU EXHIBIT 166, WOULD YOU
23 TAKE A LOOK AT THIS AND TELL ME IF YOU RECOGNIZE
24 WHAT THAT EXHIBIT IS.

25 A THIS IS THE REPORT OF THE INTERVIEW OF
26 MARK HEFFERNAN ON FEBRUARY 28TH OF 1991.

27 Q AND DOES THIS REPORT REFLECT BOTH YOUR
28 NOTES AND YOUR MEMORY OF THAT CONVERSATION?

39795

1 A YES.

2 Q AND IS IT A TRUE AND ACCURATE REPORT OF
3 EVERYTHING AS YOU RECALLED IT?

4 A YES.

5 Q EVERYTHING BEING THE CONVERSATION?

6 A THAT'S CORRECT.

7 Q AND CALLING YOUR ATTENTION TO PAGE 2 OF
8 THAT REPORT, AND SPECIFICALLY THE FOURTH PARAGRAPH
9 DOWN, STARTING WITH THE SENTENCE -- STARTING ON THE
10 SEVENTH LINE WHERE IT STARTS "LYLE" AND GOING TO THE
11 END OF THE PARAGRAPH, WOULD YOU REVIEW THAT WHOLE
12 PARAGRAPH AND WHEN YOU'RE DONE LET ME KNOW.

13 A OKAY.

14 Q DOES THAT PARAGRAPH ACCURATELY REFLECT
15 YOUR -- WHAT WAS TOLD TO YOU BY MR. HEFFERNAN?

16 A YES, IT DOES.

17 MS. NAJERA: FOR THE RECORD, YOUR HONOR, MAY
18 I READ THIS PARAGRAPH INTO THE RECORD?

19 THE COURT: YES.

20 MS. NAJERA: THANK YOU, YOUR HONOR.

21 THE PARAGRAPH BEING:

22 "AFTER THE DETECTIVES HAD
23 INTERVIEWED THEM, WHICH WAS
24 APPROXIMATELY 4:00 IN THE MORNING,
25 BOTH THE BOYS CAME BACK TO THE
26 HOUSE" -- EXCUSE ME -- "CAME BACK TO HIS
27 HOUSE. HE WENT DIRECTLY TO BED. HIS
28 WIFE HAD TO GET UP AND GO TO WORK. HE

1 THOUGHT THAT THE BOYS HAD GONE TO BED
2 ALSO. WHEN HE GOT UP AT SEVEN, THE
3 BOYS HAD JUST RETURNED. HE ASKED THEM
4 WHERE THEY HAD BEEN. THEY SAID THAT
5 THEY TOOK A TAXI, THAT THEY HAD TO GO
6 BACK TO THE HOUSE, 722 NORTH ELM
7 DRIVE. HE GOT DRESSED AND THEY -- HE,
8 ERIK AND LYLE -- DROVE TO THE HOUSE.
9 LYLE WANTED TO GET BACK INTO THE HOUSE
10 BEFORE THE POLICE WERE DONE WITH THE
11 INVESTIGATION AND HE WANTED MARK'S
12 WIFE, WHO WORKS IN AN ATTORNEY'S
13 OFFICE, TO CONTACT A LAWYER TO GET HIM
14 INTO THE HOUSE. MARK DIDN'T THINK TOO
15 MUCH OF THIS AT THE TIME BECAUSE HE
16 WAS DEALING WITH ERIK'S SADNESS."

17 THE PARAGRAPH THAT I HAVE JUST READ, IS
18 THAT THE PARAGRAPH THAT YOU HAVE PREVIOUSLY SAID
19 ACCURATELY REFLECTS THE CONVERSATION YOU HAD WITH
20 MR. HEFFERNAN?

21 A YES.

22 Q IS THAT WHAT MR. HEFFERNAN TOLD YOU?

23 A YES, IT IS.

24 MS. NAJERA: I HAVE NOTHING FURTHER, YOUR
25 HONOR.

26 THE COURT: CROSS-EXAMINATION.

27 MR. GESSLER: YES, YOUR HONOR.

28

1 CROSS-EXAMINATION

2 BY MR. GESSLER:

3 Q DETECTIVE ZOELLER, DO YOU HAVE YOUR
4 NOTES OF THAT FEBRUARY 28TH INTERVIEW?

5 A YES, I DO.

6 Q MAY I SEE THEM, PLEASE?

7 A THIS IS ACTUALLY TO THE RIGHT PAGE.

8 Q IS THERE ANY PLACE IN YOUR NOTES THAT
9 SAYS "LYLE WANTED TO GET BACK IN THE HOUSE BEFORE
10 THE POLICE LEFT"?

11 A NO. NOT THAT EXACT QUOTE.

12 Q THE QUOTE IS "LYLE WANTED TO GET BACK IN
13 THE HOUSE, WANTED TO CONTACT A LAWYER TO GET INTO
14 THE HOUSE," ISN'T IT?

15 A CORRECT.

16 MR. GESSLER: I HAVE NO FURTHER QUESTIONS,
17 YOUR HONOR.

18 I WOULD OBJECT TO DETECTIVE ZOELLER
19 READING ANYTHING BEYOND THE PART THAT THEY'RE
20 OFFERING FOR PAST-RECOLLECTION RECORDED, WHICH
21 BEGINS WITH "LYLE WANTED TO GET BACK INTO THE
22 HOUSE." IT'S THOSE TWO SENTENCES. THE REST OF IT
23 IS NOT SUBJECT TO DISPUTE FROM MARK HEFFERNAN. HE

24 EITHER HAD HIS RECOLLECTION REFRESHED OR WASN'T
25 ASKED.
26 MS. ABRAMSON: I WOULD ALSO OBJECT TO
27 ANYTHING BEFORE THOSE TWO SENTENCES BEING READ
28 BECAUSE THERE WAS NO FAILURE OF RECOLLECTION AS TO

39798

1 ANY OTHER PART.

2 THE COURT: WELL, I DON'T BELIEVE IT'S BEING
3 OFFERED. I THINK IT WAS JUST READ AT THIS POINT TO
4 PUT IT IN CONTEXT FOR ME, BUT WOULDN'T BE SOMETHING
5 THAT WOULD BE PRESENTED TO THE JURY.

6 MS. NAJERA: THAT'S CORRECT, YOUR HONOR.

7 THE COURT: WHY DON'T YOU IDENTIFY WHAT
8 EXACTLY YOU PROPOSE TO READ.

9 MS. NAJERA: YES, YOUR HONOR. AND THE COURT
10 WAS CORRECT. WHAT I WOULD PROPOSE ELICITING FROM
11 THIS WITNESS IS AS COUNSEL HAD STATED: "LYLE WANTED
12 TO GET BACK INTO THE HOUSE BEFORE THE POLICE WERE
13 DONE WITH THE INVESTIGATION AND HE WANTED MARK'S
14 WIFE, WHO WORKS IN AN ATTORNEY'S OFFICE, TO CONTACT
15 A LAWYER TO GET HIM INTO THE HOUSE."

16 THE COURT: OKAY. AND THAT'S WHAT YOU
17 PROPOSE TO HAVE DETECTIVE ZOELLER READ?

18 MS. NAJERA: THAT'S CORRECT, YOUR HONOR.

19 THE COURT: AS A PAST-RECOLLECTION RECORDED

20 STATEMENT OF THE WITNESS?

21 MS. NAJERA: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: ALL RIGHT. THEN THAT'S WHAT WILL

23 BE READ.

24 MR. GESSLER: CAN I JUST HAVE A MINUTE.

25 THE COURT: YES.

26 (ATTORNEYS GESSLER AND ABRAMSON

27 CONFER SOTTO VOCE.)

28 MS. ABRAMSON: IT'S SUBJECT TO BEING A GREEDY

39799

1 FIG. GET WHAT YOU CAN, JUDGE. WE ONLY HAVE CRUMBS.

2 ACTUALLY, THAT'S NOT THE ONLY REASON

3 WHY. I THINK THE ISSUE WAS BROUGHT OUT SUFFICIENTLY

4 THROUGH THE TESTIMONY ABOUT MY CLIENT'S DEMEANOR.

5 BUT I THINK IT GIVES --

6 THE COURT: I THINK YOUR RECORD ISN'T CLEAR

7 BECAUSE I OVERHEARD YOU, SO PERHAPS YOU OUGHT TO PUT

8 IT ON THE RECORD AS TO WHAT YOU'RE REFERRING TO.

9 MS. ABRAMSON: I DON'T HAVE THE REPORT IN

10 FRONT OF ME.

11 THE SENTENCE THAT I THINK SHOULD BE

12 INCLUDED IS, "MARK DIDN'T THINK TOO MUCH OF THIS AT

13 THE TIME," WHICH IS THE NEXT SENTENCE, "BECAUSE HE

14 WAS DEALING WITH ERIK'S SADNESS." AND I THINK THAT
15 SHOULD BE IN THERE BECAUSE IT MAY EXPLAIN WHY
16 MR. HEFFERNAN DOESN'T HAVE A RECOLLECTION OF TELLING
17 THIS TO DETECTIVE ZOELLER, AND NEEDS TO HAVE THIS
18 BROUGHT IN THROUGH PAST-RECOLLECTION RECORDED.

19 THE COURT: WELL, THAT WOULD BE SPECULATION.
20 WE DON'T HAVE ANY REASON TO BELIEVE THAT. OKAY, THE
21 REQUEST TO ADD TO IT IS DENIED.

22 BEFORE WE GET TO THE JURY, HOWEVER, AS I
23 UNDERSTAND IT FROM WHAT YOU TOLD ME, OTHER THAN A
24 REPRESENTATIVE OF THE CORONER'S OFFICE THERE ARE NO
25 OTHER WITNESSES HERE FOR THE JURY TO HEAR, CORRECT?

26 MR. CONN: CORRECT.

27 THE COURT: THE PROSECUTION HAS PROPOSED THAT
28 THIS PARTICULAR REPRESENTATIVE NOT TESTIFY IN FRONT

39800

1 OF THE JURY.

2 WHAT IS THE DEFENSE POSITION, JUST ON
3 FOUNDATIONAL ISSUES?

4 MR. GESSLER: THE DEFENSE POSITION IS THAT WE
5 OBJECT.

6 MS. ABRAMSON: I THINK IT'S TWO-FOLD.

7 FIRST OF ALL, I DON'T HAVE ANY OBJECTION
8 TO THE WITNESS TESTIFYING IN FRONT OF THE JURY TO

9 THE EXTENT THAT SHE CAN. OUR PROBLEM IS --

10 THE COURT: NO. THEY'RE SAYING THERE'S NO
11 REASON FOR HER TO TESTIFY IN FRONT OF THE JURY.
12 IT'S DISCRETIONARY UNDER SECTION 402 AS TO WHETHER
13 THIS TYPE OF EVIDENCE IS PRESENTED BEFORE THE JURY.

14 MS. ABRAMSON: WELL --

15 THE COURT: ANYWAY, THE REASON I'M ASKING
16 THAT IS AS TO WHETHER WE SHOULD EXCUSE THE JURY
17 AFTER WE HEAR FROM DETECTIVE ZOELLER IF THERE'S
18 NOTHING ELSE FOR THEM TO HEAR TODAY.

19 MS. ABRAMSON: I UNDERSTAND THAT'S WHY YOU'RE
20 ASKING. I THINK DEPENDING ON THE COURT'S RULING, I
21 THINK THIS WITNESS -- WE DON'T BELIEVE THIS WITNESS
22 WILL BE ADEQUATE TO MAKE THE RECORD FOR REFERENCE TO
23 ANYTHING IN THE CORONER'S REPORTS. BUT IF WE ARE
24 WRONG AND THE COURT RULES THAT SHE IS, THEN SHE HAS
25 TO TESTIFY IN FRONT OF THE JURY AT SOME POINT,
26 BECAUSE THAT'S THE ONLY WAY THEY'RE GOING TO
27 ESTABLISH A CHAIN OF CUSTODY FOR THE CORONER'S
28 EVIDENCE.

39801

1 WE BELIEVE THAT SHE CAN TESTIFY IN FRONT
2 OF THE JURY TO ESTABLISH A CHAIN OF CUSTODY, BUT
3 THAT SHE CANNOT DO THE TASK THAT BEELER REQUIRES; TO

4 WIT, SHE DOESN'T HAVE ANY IDEA WHAT THE MEDICAL
5 PROCEDURES ARE OF THAT OFFICE OR WHETHER AUTOPSIES
6 ARE CONDUCTED IN CONFORMITY WITH ACCEPTED MEDICAL
7 PROCEDURES, AND THAT'S THE FOUNDATION THAT WE
8 BELIEVE ALL THE CASES THAT THEY CITED INDICATE THEY
9 HAVE TO ESTABLISH IF ANY OF THE RESULTS OF THE
10 CORONER'S EXAMINATION ARE TO BE ADMISSIBLE. SO
11 THAT'S THE TWO LEVELS OF ANALYSIS OF THAT WITNESS.

12 SOONER OR LATER I THINK, UNLESS THEY
13 BITE THE BULLET AND CALL THE CORONER, THEY'RE GOING
14 TO HAVE TO PUT HER ON IN FRONT OF THE JURY.

15 THE COURT: LET ME INQUIRE OF THE
16 PROSECUTION: DID YOU INTEND TO OFFER PHYSICAL
17 EXHIBITS THAT WERE OBTAINED FROM THE BODIES OF THE
18 DECEDENTS DURING YOUR CASE-IN-CHIEF OR JUST
19 PHOTOGRAPHS AND THE CONTENT OF A REPORT PREPARED BY
20 DR. GOLDEN?

21 MR. CONN: WE'LL SIMPLY BE OFFERING INTO
22 EVIDENCE PHOTOGRAPHS AND X RAYS THAT THE EXPERTS
23 WILL RELY UPON IN FORMING THEIR OPINIONS. IT'S NOT
24 NECESSARY FOR US TO INTRODUCE THE ACTUAL PHYSICAL
25 EXHIBITS, ALTHOUGH THE -- DETECTIVE ZOELLER WAS THERE
26 FOR THE RECOVERY OF THE PHYSICAL EXHIBITS, THAT IS,
27 THE PELLETS AND THE WADDING FROM THE BODIES. AND I
28 BELIEVE THAT HE CAN ESTABLISH SUFFICIENT FOUNDATION

1 FOR THAT, IF HE HAS NOT ALREADY DONE SO.

2 THE COURT: WELL, I'M JUST ASKING WHETHER YOU
3 INTEND TO PURSUE THAT OR NOT. I'M NOT SUGGESTING
4 YOU SHOULD DO ONE THING OR THE OTHER. I JUST WANT
5 TO FIND OUT THE LIMITS OF THE HEARING.

6 MR. CONN: YES. WE'LL BE OFFERING -- WE'LL
7 OFFER, THEN, THE PELLETS AND WADDING THROUGH THE
8 TESTIMONY OF DETECTIVE ZOELLER. WE'LL ALSO SEEK TO
9 HAVE THE EXPERTS RELY UPON PHOTOGRAPHS AND X RAYS
10 THAT WERE TAKEN AT THE TIME OF THE AUTOPSY. AND BY
11 ESTABLISHING THE FOUNDATION FOR THOSE PHOTOGRAPHS
12 AND X RAYS THROUGH THE CUSTODIAN OF RECORDS, WE'LL
13 ASK THAT THEY BE RECEIVED INTO EVIDENCE.

14 AS FAR AS THE ACTUAL AUTOPSY REPORT OF
15 DR. GOLDEN OR THE ADDENDUM TO THE REPORT, WE'LL NOT
16 BE OFFERING THOSE REPORTS THEMSELVES. WE'LL SIMPLY
17 HAVE OUR EXPERTS REVIEW THOSE AND TAKE THOSE INTO
18 CONSIDERATION IN FORMING THEIR OWN CONCLUSIONS
19 CONCERNING THE WOUNDS IN THIS CASE.

20 MS. ABRAMSON: YOUR HONOR, THAT, OF COURSE,
21 PUTS ME AT A PECULIAR DISADVANTAGE BECAUSE I NEED TO
22 IMPEACH THESE WITNESSES ON CROSS-EXAMINATION WITH
23 THE FINDINGS OF THE AUTOPSY SURGEON, WHICH IS
24 DR. GOLDEN.

25 THE COURT: WELL, HE SAID THAT -- AS I
26 UNDERSTAND IT, MR. CONN, THE EXPERTS YOU CALL OR
27 WITNESSES YOU CALL WILL HAVE RELIED UPON THE

39803

1 ADDENDUMS TO THE REPORT; IS THAT CORRECT?

2 MR. CONN: THAT'S CORRECT. IN FORMING THEIR
3 OWN INDEPENDENT CONCLUSIONS, THEY WILL CONSIDER AND
4 RELY UPON THAT MATERIAL.

5 THE COURT: INCLUDING THE LAST ADDENDUM TO
6 WHICH YOU HAD SOME OBJECTIONS TO ITS CONCLUSIONS.

7 MR. CONN: CORRECT.

8 THE COURT: ALL RIGHT. SO THEN THE DEFENSE
9 WOULD BE IN A POSITION TO USE THAT REPORT TO
10 IMPEACH.

11 MS. ABRAMSON: YES, I COULD, TECHNICALLY,
12 EXCEPT IT WON'T HAVE A FOUNDATION, THAT REPORT,
13 BECAUSE THIS WITNESS, THE CUSTODIAN OF RECORDS,
14 CAN'T AUTHENTICATE THE VERACITY OR ACCURACY OF THAT
15 REPORT AND DETECTIVE ZOELLER CERTAINLY CAN'T.

16 THE COURT: WELL, AS FAR AS -- THERE ARE TWO
17 ISSUES HERE IN REGARD TO THE REPORT: NUMBER ONE IS
18 THE PHYSICAL OBSERVATIONS OF DR. GOLDEN, SOME OF
19 WHICH APPARENTLY ARE IN DISPUTE, AS WELL AS ANY
20 CONCLUSIONS, MEDICAL CONCLUSIONS, THAT HE FORMED,
21 WHICH NORMALLY ARE NOT ADMISSIBLE, THE MEDICAL
22 CONCLUSIONS, OTHER THAN GENERALLY THE CAUSE OF DEATH

23 BEING GUNSHOT WOUNDS. BUT THE SPECIFICS OF IT OFTEN
24 ARE MEDICAL CONCLUSIONS THAT ARE NOT ADMISSIBLE AS --
25 MS. ABRAMSON: THEY'RE ADMISSIBLE IF HE
26 TESTIFIES.
27 THE COURT: YES, I'M TALKING ABOUT THE REPORT
28 ITSELF, THE BODY OF THE REPORT. NORMALLY, YOU HAVE

39804

1 ANOTHER PATHOLOGIST COME IN AND TESTIFY TO HIS
2 INDEPENDENT OPINION AS TO THE CAUSE OF DEATH AND
3 NATURE OF WOUNDS AND THINGS OF THAT NATURE; AND THE
4 REPORT IS ONLY RECEIVED FOR THE DESCRIPTION OF THE
5 WOUNDS AND THE OBSERVATIONS, PHYSICAL OBSERVATIONS
6 OF THE CORONER.

7 IF THE PEOPLE ARE USING THEIR WITNESS
8 TO -- CALLING THEIR WITNESS AND HAVING THE REPORT
9 RELIED UPON BY THE WITNESS IN FORMING OPINIONS, BY
10 THAT THEY ARE ESTABLISHING THE REPORT EXISTS AND HOW
11 IT'S PREPARED.

12 MS. ABRAMSON: THEY CAN'T ESTABLISH HOW IT'S
13 PREPARED, JUDGE.

14 (PAUSE IN PROCEEDINGS.)

15

16 THE COURT: WHAT I'M GETTING AT IS WE HAVE A
17 SITUATION WHERE THERE IS NO DISPUTE, REALLY, BY

18 EITHER SIDE AS TO THE AUTHENTICITY OF THE REPORT OR
19 ITS MODE OF PREPARATION OR ITS RELIABILITY IN
20 GENERAL. NOBODY'S DISPUTING THAT IN THIS CASE.
21 YOU'RE GOING TO CALL GOLDEN IN YOUR CASE-IN-CHIEF.
22 THE PEOPLE WANT TO ESTABLISH THAT THE REPORT CAN BE
23 RELIED UPON. THEY'RE NOT DISPUTING IT'S PREPARED IN
24 THE ORDINARY COURSE OF BUSINESS AND DONE SO WITH THE
25 TYPE OF PROCEDURE ONE WOULD EXPECT FOR A REPORT TO
26 BE PREPARED IN THE ORDINARY COURSE OF BUSINESS.
27 BOTH SIDES ARE AGREEABLE TO THAT. THEY'RE NOT --
28 THERE'S NO DISPUTE.

39805

1 SO WE REALLY WOULD HAVE A HEARING OR
2 HAVE TESTIMONY ABOUT SOMETHING WHERE THERE'S REALLY
3 NO DISPUTE, AND THE PEOPLE'S POSITION, FROM WHAT YOU
4 FILED, THE PEOPLE FILED HERE, IS THAT IT'S ALREADY
5 BEEN ESTABLISHED, AS FAR AS THE COURT IS CONCERNED,
6 BY REASON OF DR. GOLDEN'S TESTIMONY IN THE FIRST
7 TRIAL, THAT IT'S BEEN PROVED THAT THIS REPORT --
8 THAT'S HOW THEY --
9 MS. ABRAMSON: INTERESTING WAY TO DO IT. IF
10 THE PEOPLE WANT TO STIPULATE IN FRONT OF THE JURY
11 THAT DR. GOLDEN USED APPROPRIATE METHODS AND HIS
12 REPORT IS RELIABLE AND ACCURATE, FINE.

13 MR. GESSLER: WE'LL DO THAT.

14 MS. ABRAMSON: WE'LL DO THAT.

15 THE COURT: IT DEPENDS ON WHAT YOU MEAN BY
16 RELIABLE AND ACCURATE. I SUPPOSE THERE'S A DISPUTE,
17 THAT'S WHY THEY DON'T WANT TO CALL DR. GOLDEN.

18 MS. ABRAMSON: RIGHT. AND THEY WANT TO RELY
19 ON THE REPORT AND TRASH THE REPORT AT THE SAME
20 TIME. THEY SHOULD HAVE TO CHOOSE.

21 THE COURT: WELL --

22 MR. GESSLER: YOUR HONOR, I THINK THE PROBLEM
23 IS THAT, AT LEAST IN PART, WHETHER IT'S DR. LAWRENCE
24 OR ANYBODY ELSE, IT HAS TO BE BASED ON A DESCRIPTION
25 OF THE WOUNDS WHICH COMES FROM THE REPORT, WHETHER
26 OR NOT THE OPINIONS OF THE PATHOLOGIST ARE GIVEN AS
27 TO ENTRY WOUNDS, EXIT WOUNDS, DISTANCE OR THINGS
28 LIKE THAT, DESCRIPTION OF THE WOUNDS IS VERY

39806

1 IMPORTANT TO ANYBODY EXAMINING OR CROSS-EXAMINING IN
2 THIS CASE.

3 THE COURT: RIGHT.

4 MR. GESSLER: AND WE HAVE NOT HAD ANY WITNESS
5 COME IN AND TALK ABOUT THE MEDICAL PROCEDURES BEING
6 USED FOR THE MEASUREMENTS OF THE WOUNDS, THE PROBING
7 OF THE WOUNDS, THE DIFFERENT THINGS THAT WERE DONE.

8 SO TO THAT EXTENT I THINK BEELER
9 CONTROLS AND WE NEED TO HAVE THE -- SOMEBODY COME IN
10 AND TALK ABOUT MEDICAL PROCEDURES.

11 THE COURT: ALL RIGHT.

12 MS. ABRAMSON: THE JUDGE IS SAYING NO ONE'S
13 DISPUTING THE MEDICAL PROCEDURES.

14 MR. GESSLER: WELL, IF NO ONE IS, AS YOU SAY,
15 IF THEY'RE WILLING TO STIPULATE --

16 MS. ABRAMSON: PROPER PROCEDURES WERE
17 FOLLOWED.

18 THE COURT: PERHAPS YOU CAN WORK OUT A
19 STIPULATION AS TO WHAT IT IS THAT YOU'RE STIPULATING
20 TO, SO THAT BOTH SIDES CAN THEN PRESENT TO THE JURY
21 THE ISSUES THAT YOU THINK ARE PERTINENT RATHER THAN
22 DEALING WITH THINGS THAT REALLY AREN'T IN DISPUTE.
23 THERE ARE SOME THINGS THAT AREN'T GOING TO BE IN
24 DISPUTE AS FAR AS THE GENERAL PROTOCOL FOLLOWED BY
25 DR. GOLDEN. I ASSUME THERE'S NOT GOING TO BE ANY
26 DISPUTE ABOUT THAT.

27 MR. GESSLER: PERHAPS WE SHOULD TAKE FIVE
28 MINUTES AND HAVE A BOSNIA PEACE CONFERENCE WITH --

39807

1 THE COURT: YOU HAVE TO GO TO DAYTON.

2 MR. GESSLER: WE DON'T HAVE TO GO TO OHIO.

3 WE CAN DO IT HERE AND TALK TO MR. CONN AND
4 MS. NAJERA AND MAYBE WE CAN WORK OUT WHERE WE AGREE
5 OR DISAGREE.

6 THE COURT: WELL, IT'S CERTAINLY POSSIBLE
7 BECAUSE, AS I SAID, IT'S A UNIQUE SITUATION IN THAT
8 BOTH SIDES HAVE NO DISPUTE WITH THE GENERAL CONCEPT
9 OF THE AUTOPSY BEING PERFORMED IN THE ORDINARY
10 COURSE OF BUSINESS AND IN A MEDICALLY ACCEPTABLE
11 FASHION. THERE'S JUST A DISPUTE ABOUT THE ULTIMATE
12 FINDINGS.

13 AND RATHER THAN CONSUME A LOT OF TIME
14 AND DEBATE ABOUT THINGS THAT AREN'T IN DISPUTE,
15 PERHAPS WE SHOULD JUST FOCUS ON THOSE THINGS THAT
16 EITHER SIDE WANTS TO PROVE OR DISPROVE.

17 AND THIS IS A SITUATION WHERE THE
18 MEDICAL EXAMINER IS AVAILABLE AND HIS AVAILABILITY
19 WILL BE ESTABLISHED BY THE FACT THAT YOU'RE CALLING
20 HIM.

21 MS. ABRAMSON: SURE.

22 THE COURT: AND I ASSUME YOU'LL BE CALLING
23 HIM RATHER EARLY IN YOUR CASE.

24 MS. ABRAMSON: LIKE FIRST.

25 THE COURT: SO IT WILL BE JUST FOLLOWING THE
26 PROSECUTION'S PRESENTATION OF EVIDENCE. SO IT'S NOT
27 GOING TO BE A MYSTERY.

28 MS. ABRAMSON: AND WE WOULD, SINCE HE IS

1 GOING TO BE CALLED, OBJECT TO DETECTIVE ZOELLER
2 GIVING ANYTHING EVEN COMING CLOSE TO OPINIONS OF
3 RECOVERY OF EVIDENCE. HE DOESN'T KNOW WHERE INSIDE
4 THE BODY THOSE THINGS CAME FROM.

5 THE COURT: IT SEEMS TO ME IF DR. GOLDEN IS
6 GOING TO BE THE NEXT WITNESS, IT DOES SEEM TO BE
7 RATHER WASTEFUL OF TIME FOR DETECTIVE ZOELLER TO
8 DESCRIBE FINDING CERTAIN THINGS, WHERE THINGS WERE
9 FOUND, IF DR. GOLDEN WAS THERE AND FOUND THEM AND
10 CAN ACTUALLY IDENTIFY WHERE THINGS WERE FOUND. SO
11 TO THAT EXTENT, I WOULD AGREE WITH THAT OBSERVATION.

12 AND, AGAIN, THE PURPOSE WOULD BE TO CUT
13 DOWN ON THE LITIGATION THAT DOESN'T PROVE ANYTHING.
14 IT MIGHT CREATE SOME HEAT AND FIREWORKS, BUT IT
15 MIGHT NOT PROVE ANYTHING OTHER THAN JUST GETTING US
16 TO THE STAGE WHERE YOU'RE GOING TO GET ANYWAY WITH
17 YOUR WITNESS AND WITH THE DEFENSE WITNESS.

18 MS. ABRAMSON: SO LONG AS THEY DON'T
19 CHALLENGE THAT DR. GOLDEN FOLLOWED THE PROPER
20 PROCEDURES; THAT HE SAW WHAT HE SAW; THAT HE
21 MEASURED WHAT HE MEASURED; THAT THINGS WERE WHERE HE
22 SAYS THEY WERE, WE WON'T HAVE A DISPUTE. BUT IF
23 THEY'RE GOING TO GET INTO THAT HE'S AN IDIOT AND HE
24 CAN'T SEE ANYTHING OR HE OVERLOOKED SOMETHING, THEN
25 WE HAVE A PROBLEM.

26 THE COURT: WELL, THERE OBVIOUSLY COULD BE
27 THAT DEBATE AND THAT DEBATE WOULD EXIST WHETHER OR
28 NOT YOU HAD SOMEONE ELSE FROM THE CORONER'S OFFICE

39809

1 TESTIFY ABOUT HOW THINGS ARE DONE IN THE ORDINARY
2 COURSE OF BUSINESS.

3 MS. ABRAMSON: WELL, I DON'T THINK THAT'S
4 LIKELY TO HAPPEN AGAIN.

5 THE COURT: OFTEN TIMES THE MEDICAL EXAMINER
6 WHO DID THE AUTOPSY IS UNAVAILABLE AND SOMEONE ELSE
7 COMES IN AND THAT PERSON WHO COMES IN AND TESTIFIES
8 CANNOT SAY THAT EVERYTHING THAT WAS DONE BY THE
9 PERSON WHO ACTUALLY DID THE AUTOPSY WAS DONE IN A
10 CERTAIN PRECISE WAY. ALL HE CAN SAY IS IT APPEARS
11 TO HAVE BEEN DONE IN THE ORDINARY COURSE OF BUSINESS
12 AND PREPARED.

13 MS. ABRAMSON: THEY TESTIFY TO THE ULTIMATE
14 CONCLUSIONS AS WELL. AND THEY DON'T USUALLY TRASH
15 THEIR COLLEAGUES. THAT'S ONLY HAPPENED ONCE THAT
16 I'M AWARE OF.

17 THE COURT: THAT'S A SEPARATE ISSUE, AND THAT
18 WILL BE DEALT WITH DURING THE EXAMINATION OF THE
19 SUBSTANTIVE WITNESSES RATHER THAN THE FOUNDATIONAL
20 ASPECT OF IT.

21 ANYWAY, I AGREE WITH MR. GESSLER. IF
22 YOU CAN JUST SEE IF YOU CAN RESOLVE THIS, IT WOULD
23 HELP ME IN DECIDING WHETHER TO KEEP THE JURY TO HEAR
24 THIS WITNESS OR SOME OTHER WITNESS THIS AFTERNOON.
25 I'M JUST -- I DON'T WANT TO GET INTO A
26 LENGTHY RECESS HERE BECAUSE OFTEN TIMES AFTER A LONG
27 RECESS YOU COME OUT AND NOTHING'S BEEN RESOLVED AND
28 WE'RE AT SQUARE ONE.

39810

1 MS. ABRAMSON: HOW ABOUT A BRIEF RECESS?
2 MR. GESSLER: IF WE CAN'T DO IT IN FIVE
3 MINUTES, WE CAN'T DO IT.
4 THE COURT: WE'LL TAKE -- LET'S MAKE IT 20
5 MINUTES AFTER THE HOUR, AND LET ME KNOW HOW YOU'VE
6 RESOLVED THE ISSUE, IF YOU HAVE; AND THEN WE'LL AT
7 LEAST HAVE THE JURY COME OUT AND DEAL WITH DETECTIVE
8 ZOELLER'S TESTIMONY.
9 MS. NAJERA: YOUR HONOR, JUST REAL BRIEFLY,
10 HOUSEKEEPING MATTER, BEFORE DETECTIVE ZOELLER
11 TESTIFIES THERE WILL BE ANOTHER STIPULATION, AND
12 THEN THERE WAS ONE ISSUE THAT JUST KIND OF GOT
13 OVERLOOKED IN THE -- WHEN I EXAMINED HIM EARLIER, AND
14 THAT WAS THE THIRD THING I'LL ASK, IS IF HE WENT OUT
15 TO THAT ADDRESS THAT WAS GIVEN TO HIM AT BIG-5, 63

16 AUGUST STREET, AND WHETHER OR NOT THAT LOCATION
17 EXISTED, WHICH IT DIDN'T AND EVERYONE KNOWS THAT.

18 THE COURT: OKAY. I'LL PERMIT YOU TO REOPEN
19 TO ASK THOSE QUESTIONS.

20 MS. NAJERA: THANK YOU.

21 THE COURT: TWENTY AFTER THE HOUR.

22 (A RECESS WAS TAKEN FROM

23 11:10 A.M. TO 11:40 A.M.)

39813

1 (PAGES 39811 THROUGH 39812 WERE
2 SEALED BY ORDER OF THE COURT.)

3
4 (THE JURY ENTERED THE
5 COURTROOM AND THE FOLLOWING
6 PROCEEDINGS WERE HELD:)

7
8 THE COURT: THE JURY IS BACK.

9 AND THE REASON WE TOOK SO LONG IS THAT
10 WE'RE TRYING TO FINISH UP SOME LOOSE ENDS IN THE
11 CASE BEFORE WE GET ON TO THE NEXT PHASE OF THE
12 EVIDENCE, WHICH WILL BE PRESENTED ON MONDAY, DEALING
13 WITH MEDICAL EXAMINER-TYPE EVIDENCE, AUTOPSIES, THAT
14 SORT OF THING. BUT WE HAD SOME LOOSE ENDS THAT WE
15 HAD TO DEAL WITH AND THAT'S WHAT TOOK SOME TIME THIS
16 MORNING.

17 THE PARTIES HAVE A LITTLE BIT MORE
18 EVIDENCE TO OFFER THIS MORNING, A STIPULATION, AND

19 THEN THERE WON'T BE ANY MORE EVIDENCE TODAY FOR
20 YOU. WE'LL BE TAKING A BREAK UNTIL MONDAY. BUT WE
21 HAD SOME THINGS THAT WE HAD TO RESOLVE THIS
22 MORNING.

23 SO THE PEOPLE, I THINK, WANTED TO CALL
24 DETECTIVE ZOELLER BACK; IS THAT RIGHT?

25 MS. NAJERA: YES. AND, YOUR HONOR, I HAVE
26 TWO OTHER LITTLE STIPULATIONS WHICH CAN BE BEFORE OR
27 AFTER HIM, WHATEVER.

28

39814

1 LESLIE H. ZOELLER,
2 RECALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN
3 PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:

4 THE COURT: OKAY. SAY YOUR NAME AGAIN FOR
5 US, PLEASE.

6 THE WITNESS: LESLIE H. ZOELLER.

7 THE COURT: YOU'RE STILL UNDER OATH.

8 THE WITNESS: YES, YOUR HONOR.

9 MS. NAJERA: THANK YOU.

10

11 DIRECT EXAMINATION

12 BY MS. NAJERA:

13 Q DETECTIVE ZOELLER, ON SEPTEMBER 11TH,

14 1989, DID YOU HAVE A CONVERSATION WITH A SALES

15 PERSON NAMED MARY ELLEN MAHAR?

16 A YES, I DID.

17 Q AND WAS THIS AT THE SLAVICK'S JEWELRY

18 STORE ON SANTA MONICA BOULEVARD?

19 A IN CENTURY CITY, THAT'S CORRECT.

20 MS. NAJERA: MAY I APPROACH THE WITNESS?

21 THE COURT: YES.

22 Q BY MS. NAJERA: SHOWING YOU EXHIBIT 120,

23 WOULD YOU TAKE A LOOK AT THAT.

24 A OKAY.

25 Q NOW, DO YOU RECALL HAVING A CONVERSATION

26 WITH MS. MAHAR ON THAT DAY CONCERNING A CONVERSATION

27 SHE HAD -- OR SHE HEARD BETWEEN THE DEFENDANT, LYLE

28 MENENDEZ, AND ANOTHER INDIVIDUAL ON THE TELEPHONE?

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1 A YES.

2 Q AND DO YOU RECALL WHAT IT WAS SHE TOLD

3 YOU AT THAT TIME CONCERNING JUST THAT CONVERSATION?

4 A YES.

5 Q AND WHAT WAS THAT?

6 A IT'S A QUOTE, AND IT'S QUOTED IN THE

7 REPORT, IF I MAY READ THE REPORT FOR THE QUOTE.

8 Q IF YOU WOULD.

9 A "I NEED A HUNDRED-THOUSAND-DOLLAR
10 ADVANCE FROM THE COMPANY IMMEDIATELY, NO MATTER WHAT
11 IT TAKES."

12 Q AND WHO DID SHE TELL YOU SAID THAT?

13 A LYLE SAID THAT TO THE PERSON ON THE
14 OTHER END OF THE PHONE.

15 Q AND DID THIS CONVERSATION TAKE PLACE
16 WHILE HE WAS IN THE SLAVICK'S JEWELRY STORE MAKING A
17 PURCHASE OF SOME WATCHES?

18 A YES.

19 MS. ABRAMSON: THERE WOULD BE AN ADMONITION
20 ON THAT STATEMENT, YOUR HONOR?

21 THE COURT: YES. THAT'S BEING RECEIVED ONLY
22 AS TO LYLE MENENDEZ.

23 MS. ABRAMSON: THANK YOU, YOUR HONOR.

24 Q BY MS. NAJERA: SIR, ON FEBRUARY 28TH,
25 1991, DID YOU HAVE A CONVERSATION WITH AN INDIVIDUAL
26 NAMED MARK HEFFERNAN?

27 A YES, I DID.

28 Q AND SPECIFICALLY DID YOU TALK TO

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1 MR. HEFFERNAN ABOUT A CONVERSATION HE HAD WITH THE
2 DEFENDANT, LYLE MENENDEZ, THE MORNING AFTER HIS
3 PARENTS -- MR. AND MRS. MENENDEZ WERE KILLED?

4 A YES.

5 Q AND SHOWING YOU WHAT'S BEEN MARKED AS A
6 PREVIOUS EXHIBIT, WOULD YOU LOOK AT THAT AND TELL ME
7 IF THAT REFLECTS THE CONVERSATION THAT YOU HAD WITH
8 MR. HEFFERNAN.

9 A YES, IT DOES.

10 Q AND WITH REGARD TO MERELY THE STATEMENT,
11 THE ONE STATEMENT THAT MR. HEFFERNAN MADE TO YOU
12 REGARDING WHAT THE DEFENDANT, LYLE MENENDEZ, TOLD
13 HIM THAT MORNING UPON RETURNING FROM THE HOUSE, CAN
14 YOU TELL US WHAT IT WAS HE TOLD YOU.

15 A AGAIN, MAY I READ IT?

16 Q IF YOU CAN -- IF THAT WILL HELP YOU TO
17 REMEMBER IT, SURE.

18 A I REMEMBER IT.

19 Q OKAY.

20 A THE STATEMENT WAS -- IS LYLE TOLD MARK
21 HEFFERNAN THAT HE HAD TO GET IN THE HOUSE BEFORE THE
22 POLICE WERE DONE WITH THEIR INVESTIGATION, AND THAT
23 TO ENABLE HIM TO DO THIS, HE WAS GOING TO HAVE MARK
24 HEFFERNAN'S WIFE, WHO WORKS FOR AN ATTORNEY, TRY TO
25 GET HIM AN ORDER TO GET IN.

26 Q AND, SIR, CALLING YOUR ATTENTION TO A
27 BIG BLOWUP, EXHIBIT 58. THIS IS A BLOWUP OF SOME
28 A.T.F. -- SOME FIREARMS TRANSACTION RECORDS THAT I

1 BELIEVE YOU TESTIFIED TO PREVIOUSLY.

2 AND ON THIS BLOWUP IS AN ADDRESS OF AN
3 INDIVIDUAL WHO SUPPOSEDLY BOUGHT SHOTGUNS ON AUGUST
4 18TH, 1989.

5 THE ADDRESS THAT WAS ON THE FIREARMS
6 TRANSACTIONS, 63 AUGUST STREET, DID YOU EVER -- IN
7 SAN DIEGO, CALIFORNIA -- DID YOU EVER DO ANYTHING IN
8 REGARDS TO THAT ADDRESS?

9 A YES.

10 Q WHAT DID YOU DO?

11 A I WENT -- I LOOKED IN THE THOMAS GUIDE,
12 THE SAN DIEGO COUNTY THOMAS GUIDE, FOR AN AUGUST
13 STREET. I FOUND -- THE ONLY AUGUST STREET I FOUND
14 WAS A 5,000 BLOCK OF AUGUST STREET. AND I DROVE TO
15 THAT LOCATION, THE AUGUST STREET THAT WAS LISTED IN
16 THE THOMAS GUIDE, AND VERIFIED IT WAS ONLY THE 5,000
17 BLOCK. THERE WAS NO ADDRESS OF 63 AUGUST STREET.

18 MS. NAJERA: THANK YOU, SIR. I HAVE NOTHING
19 FURTHER.

20 THE COURT: CROSS-EXAMINATION.

21 MR. GESSLER: NO QUESTIONS.

22 MS. ABRAMSON: NO QUESTIONS.

23 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU
24 MAY STEP DOWN.

25 THE COURT: YOU HAVE SOME STIPULATIONS?

26 MS. NAJERA: YES, I DO, YOUR HONOR.

27 THE COURT: ALL RIGHT. NOW THE LAWYERS HAVE
28 SOME STIPULATIONS; AGAIN, AGREEMENTS ABOUT CERTAIN

39818

1 THINGS THAT ARE NOT IN DISPUTE.

2 MS. NAJERA: COUNSEL, WILL YOU STIPULATE THAT
3 EXHIBIT 102 IS THE PATIO HOME REFLECTED IN THE
4 DOCUMENTS THAT ARE EXHIBIT 147?

5 MR. GESSLER: I'LL SO STIPULATE.

6 MS. NAJERA: AND COUNSEL, WILL YOU ALSO
7 STIPULATE THAT EXHIBIT 103 IS THE CONDOMINIUM
8 REFLECTED IN THE DOCUMENTS THAT ARE EXHIBIT 148?

9 MR. GESSLER: I'LL STIPULATE IT IS A PICTURE
10 OF THE CONDOMINIUM.

11 MS. NAJERA: THANK YOU. AND I APPRECIATE
12 THAT, COUNSEL.

13 AND THE PEOPLE JOIN IN THE STIPULATION,
14 AND WE THANK YOU.

15 THE COURT: OKAY. THOSE STIPULATIONS ARE
16 NOTED. AGAIN, THAT EVIDENCE WAS OFFERED AND
17 RECEIVED ONLY AS TO LYLE MENENDEZ.

18 MS. NAJERA: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT. THERE'S ANOTHER
20 STIPULATION.

21 MR. CONN: YES, YOUR HONOR.

22 WE WOULD ALSO STIPULATE AT THIS TIME
23 THAT STANDARD MEDICAL PROCEDURES OF THE LOS ANGELES
24 COUNTY CORONER'S OFFICE WERE USED IN THE AUTOPSIES
25 OF MARY LOUISE MENENDEZ AND JOSE ENRIQUE MENENDEZ AS
26 TO OBSERVATIONS OF WOUNDS, MEASUREMENTS OF WOUNDS,
27 DETERMINATIONS OF ENTRANCES AND EXITS OF WOUNDS,
28 DETERMINATIONS OF DIRECTION OF WOUNDS, AND

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1 DETERMINATIONS OF WHETHER WOUNDS WERE MADE BEFORE
2 DEATH, AT THE TIME OF DEATH, OR AFTER DEATH, AND AS
3 TO DETERMINING WHAT THE CAUSES OF DEATH BE.

4 IT IS FURTHER STIPULATED THAT STANDARD
5 PROCEDURES OF THE LOS ANGELES COUNTY CORONER'S
6 OFFICE WERE USED IN DOCUMENTING THE RESULTS IN
7 AUTOPSY REPORTS, SUPPLEMENTAL AUTOPSY REPORTS, AND
8 ACCOMPANYING DIAGRAMS.

9 MR. GESSLER: I SO STIPULATE ON BEHALF OF
10 JOSEPH LYLE MENENDEZ.

11 MS. ABRAMSON: SO STIPULATED ON BEHALF OF
12 ERIK MENENDEZ.

13 THE COURT: ALL RIGHT. THEN THAT STIPULATION
14 IS OFFERED AND RECEIVED.

15 AND AT THIS POINT, THEN, THERE IS NO
16 FURTHER EVIDENCE TO BE OFFERED TODAY. THE NEXT

17 WITNESSES WILL BE COMING IN MONDAY. AND I'LL BE
18 EXCUSING YOU AT THIS POINT WITH THE ADMONITION NOT
19 TO DISCUSS THE CASE WITH ANYONE, NOT TO FORM ANY
20 FINAL OPINIONS ABOUT THE CASE, NOT TO PERMIT
21 YOURSELVES TO BE EXPOSED TO ANYTHING ABOUT THE CASE
22 IN ANY FORM WHATSOEVER, WHETHER IT'S IN NEWS
23 COVERAGE, OVERHEARING OTHER PEOPLE TALK ABOUT IT, OR
24 ANYTHING OF THAT NATURE. JUST MAKE YOUR DECISION
25 ONLY ON THE EVIDENCE YOU SEE IN THE COURTROOM.
26 ALL RIGHT. WE'LL EXCUSE YOU AND YOU ALL
27 HAVE A GOOD WEEKEND. WE'LL SEE YOU BACK HERE MONDAY
28 AT 8:30.

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1 (THE JURY EXITED THE
2 COURTROOM AND THE FOLLOWING
3 PROCEEDINGS WERE HELD:)
4
5 THE COURT: OKAY. STILL TO BE DISCUSSED IS
6 POTENTIAL OBJECTIONS BY THE DEFENSE TO CERTAIN
7 PHOTOGRAPHS THAT THE PROSECUTION MIGHT USE DURING
8 THE EXAMINATION OF THE NEXT TWO WITNESSES; AND I'M
9 UNCLEAR AS TO WHETHER OR NOT THE PROSECUTION HAS
10 SHOWN THOSE PHOTOGRAPHS TO THE DEFENSE OR IF THEY
11 HAVE ALL OF THEM; OR WHETHER THERE'S SOME DECISION

12 MADE THAT YOU'RE NOT GOING TO BE USING SOME THAT
13 THEY DO HAVE OR WHETHER OR NOT IT'S, AT THIS POINT,
14 GERMANE AT THIS STAGE WHERE WE CAN DISCUSS IT.

15 MS. ABRAMSON: I SHARE YOUR NOT BEING CLEAR,
16 YOUR HONOR.

17 I'VE ASKED MR. CONN TO PLEASE SHOW ME
18 THE PHOTOGRAPHS HE INTENDS TO USE. WHAT HE'S TOLD
19 ME TWICE IS THAT THE ONLY PHOTOGRAPHS HE INTENDS TO
20 USE ARE THE ONES THAT APPEAR ON ROGER MC CARTHY'S
21 MOST RECENT CD-ROM.

22 NOW, I FIND THAT HARD TO BELIEVE,
23 BECAUSE WE'VE JUST STIPULATED TO THE CORONER'S
24 RECORD OF EVIDENCE, WHICH INCLUDES A LARGER NUMBER
25 OF PHOTOGRAPHS THAN WHAT APPEARS ON DR. MC CARTHY'S
26 CD-ROM, BUT LET'S ASSUME THEY'RE TELLING THE TRUTH
27 OR THAT -- RATHER THAN IMPLY THAT HE'S WILLFULLY NOT
28 TELLING THE TRUTH, LET'S ASSUME HE'S BEING

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1 ACCURATE.

2 I HAVE HERE A PRINTOUT OF THE
3 PHOTOGRAPHS THAT APPEAR ON THE CD-ROM, AND I CAN
4 HIGHLIGHT FOR THE COURT THE ONES THAT I HAVE
5 OBJECTION TO AND DEMONSTRATE TO THE COURT WHY I'M
6 OBJECTING. BUT I THINK IT MIGHT BE USEFUL IF THE

7 COURT HAS THIS TO LOOK OVER FOR A FEW MINUTES SO YOU
8 CAN SEE.

9 AS A GENERAL PROPOSITION, WE THINK THERE
10 ARE A REDUNDANT NUMBER OF ESPECIALLY GRUESOME
11 PHOTOGRAPHS OF MRS. MENENDEZ THAT SERVE NO ADEQUATE
12 SCIENTIFIC PURPOSE SINCE THEY'RE ALL SHOWING THE
13 SAME WOUNDS, AND THEY'RE JUST PILING GRIM ON GRIM.

14 THE COURT: OKAY. LET'S DO THIS THEN, IF
15 YOU'VE IDENTIFIED THOSE THAT YOU OBJECT TO, LET ME
16 FIRST VERIFY, THESE ARE ALL THE PHOTOGRAPHS THAT
17 YOU'LL BE USING IN YOUR EXAMINATION OF THE WITNESS?

18 MR. CONN: I'VE NEVER SEEN WHAT COUNSEL'S
19 REFERRING TO.

20 MS. ABRAMSON: I SHOWED THIS TO YOU THE OTHER
21 DAY.

22 MR. CONN: COUNSEL HAS NEVER SHOWED ME WHAT
23 SHE HAS.

24 MS. ABRAMSON: THIS IS THE PRINTOUT --

25 MR. CONN: I'VE NEVER SEEN THIS.

26 THE COURT: WHY DON'T YOU LOOK AT IT WITHOUT
27 FURTHER DEBATE.

28 MS. ABRAMSON: I SHOWED THIS TO YOU AND I

1 SHOWED YOU WHICH ONES WERE NEW.

2 MR. CONN: I'VE NEVER SEEN THIS BEFORE.

3 MS. ABRAMSON: WELL, YOU HAVE THE PRINTOUTS
4 OF MR. MC CARTHY'S CD.

5 THE COURT: LET'S NOT JUST DEBATE WHETHER HE
6 DID OR DIDN'T SEE SOMETHING. LET'S JUST DO IT NOW.

7 (PAUSE IN PROCEEDINGS.)

8

9 THE COURT: ARE THOSE THE PHOTOGRAPHS THAT
10 YOU'RE GOING TO USE?

11 MR. CONN: YES. I THINK THAT THERE MAY BE
12 ONE ADDITIONAL PHOTOGRAPH. AS I WAS GOING THROUGH
13 THEM THIS MORNING, THERE WAS APPARENTLY A WOUND --

14 THE BAILIFF: JURORS WALKING.

15 THE COURT: LET'S LET THE JURORS LEAVE
16 FIRST.

17 (THE JURORS EXIT THE JURY ROOM.)

18

19 THE COURT: OKAY.

20 MR. CONN: YES. AS I LOOKED THROUGH THE
21 PHOTOGRAPHS THIS MORNING, I NOTED THAT THERE WAS
22 ONLY ONE WOUND WHICH I THINK IS NOT DEPICTED IN ANY
23 OF THE PHOTOGRAPHS, AND THAT IS THERE IS INDIVIDUAL
24 PELLET DEFECTS TO THE INSIDE OF THE RIGHT ARM OF
25 JOSE MENENDEZ, WHICH APPEARED PRIOR TO THE TIME THE
26 AUTOPSY BEGAN. I THINK THAT AREA WAS THEN CUT AWAY
27 AND THOSE DEFECTS WERE NO LONGER VISIBLE AS A RESULT
28 OF THAT INCISION. SO WE'LL PROBABLY INTRODUCE JUST

1 THAT ONE MORE PHOTOGRAPH WHICH WILL DEPICT THOSE
2 INDIVIDUAL PELLET DEFECTS, WHICH MC CARTHY HAS NOT
3 INCLUDED IN HIS CD-ROM THAT HAS BEEN PROVIDED. I'M
4 SURE THAT THERE WILL BE DISCUSSION CONCERNING THAT
5 ONE WOUND, WHICH IS NOT DEPICTED IN ANY OF THE
6 PHOTOGRAPHS.

7 SO WITH THE EXCEPTION OF ADDING THAT ONE
8 WOUND, I THINK THAT THE OTHER PHOTOGRAPHS WHICH
9 COUNSEL HAS IDENTIFIED ARE SUFFICIENT TO DEPICT ALL
10 OF THE WOUNDS AT THIS TIME, AS FAR AS I CAN TELL.

11 THE COURT: OKAY. SO THE DEFENSE HAS
12 OBJECTIONS TO CERTAIN OF THOSE WOUNDS OR PHOTOGRAPHS
13 AND YOU'VE MARKED THEM IN THE EXHIBIT,
14 MS. ABRAMSON?

15 MS. ABRAMSON: I'M IN THE PROCESS OF DOING
16 THAT. I'M ASKING COUNSEL RIGHT NOW, YOUR HONOR, TO
17 IDENTIFY WHICH PHOTOGRAPH IT IS THAT HE WANTS TO
18 USE.

19 THE COURT: OKAY. WELL, THAT'S JUST AN
20 ADDITIONAL PHOTOGRAPH. RIGHT NOW I'D LIKE TO
21 FOCUS --

22 MS. ABRAMSON: I WANT TO MAKE SURE I DON'T
23 OBJECT TO IT.

24 ALL RIGHT, WHAT I'M DOING, YOUR HONOR,
25 IS I'M MARKING AND I'M SAYING "OBJECT." THERE IS

26 NUMEROUS PHOTOGRAPHS OF -- NUMEROUS PHOTOGRAPHS OF
27 MRS. MENENDEZ, AND I'M OBJECTING TO THE DUPLICATION.
28 THE COURT: OKAY. WHY DON'T YOU JUST SHOW ME

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1 THE ONES THAT YOU OBJECT TO AND THEN I'LL REVIEW
2 THEM AND WE'LL DISCUSS THEM AFTER LUNCH.
3 MS. ABRAMSON: RIGHT. I'M JUST PUTTING
4 LITTLE POST-IT NOTES WITH THE WORD "OBJECT."
5 AND I ALSO WANT TO SHOW THE COURT, AND I
6 SHOWED THIS TO MR. CONN A WEEK AGO, SINCE ALL THESE
7 PHOTOGRAPHS ARE ON COMPUTER, OR ON CD-ROM, THEY CAN
8 VERY EASILY BE CROPPED. AND I'M JUST GOING TO GIVE
9 THIS TO YOU AS AN EXAMPLE. THIS IS ONE THAT THEY
10 JUST ADDED TO MR. MC CARTHY'S CD-ROM, WHICH IS
11 PARTICULARLY GRISLY BECAUSE IT SHOWS AN OPEN MOUTH,
12 AND WE CROPPED IT ON THE COMPUTER, CUT OFF THE PART
13 THAT WAS GRISLY, JUST AS AN EXAMPLE OF HOW THESE
14 PHOTOGRAPHS CAN VERY EASILY BE CROPPED.
15 AND WITH RESPECT TO THE MOST RECENT ONE
16 THAT MR. CONN INDICATES THEY WANT TO USE TO SHOW THE
17 INDIVIDUAL PELLET DEFECTS, WE WOULD ASK THAT THIS
18 SHOULD BE CROPPED. THERE'S NO REASON TO SHOW THE
19 FACE OR THE HEAD IN THIS ONE. SO I'M WRITING
20 "OBJECT UNLESS CROPPED."

21 AND WE'LL BE VERY HAPPY TO PREPARE THE
22 CROPPED PHOTOGRAPH FOR THE PROSECUTION IF THEY HAVE
23 ANY PROBLEM WITH IT BECAUSE I'M GOING TO BE DOING
24 THAT THIS AFTERNOON.

25 AND HERE'S THE PHOTOGRAPHS.

26 THE COURT: ALL RIGHT. I'LL REVIEW THEM AND
27 THEN WE'LL DISCUSS IT THIS AFTERNOON AT 1:30.

28 MR. CONN: DOES COUNSEL HAVE A LIST OF THE

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1 ONES --

2 THE COURT: IF YOU WANT TO LOOK AT THEM NOW,
3 YOU CAN LOOK AT THEM AND THEN I'LL LOOK AT THEM --
4 YOU JUST LEAVE IT HERE AND THEN I'LL PICK THEM UP.

5 OKAY, WE'LL BE IN RECESS UNTIL 1:30. IF
6 YOU CAN JUST LEAVE THEM ON THE CLERK'S DESK WHEN
7 YOU'RE THROUGH.

8 MS. ABRAMSON: JUDGE, CAN WE HAVE UNTIL 2:00?

9 THE COURT: OKAY, 2:00.

10 (AT 12:00 P.M. THE NOON
11 RECESS WAS TAKEN UNTIL
12 2:00 P.M. OF THE SAME DAY.)

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2 2:10 P.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (ANNAMARIE PAPA, OFFICIAL REPORTER)

7

8 THE COURT: OKAY. THE DEFENDANTS ARE IN COURT

9 WITH THEIR LAWYERS. THE PEOPLE ARE PRESENT. THE JURY

10 ISN'T HERE. WE'RE GOING TO DISCUSS THE PROPOSED

11 EXHIBITS FROM THE PROSECUTION.

12 THE COURT HAS LOOKED AT THE PHOTOGRAPHS,

13 AND I ASSUME EVERYBODY HAS THE SAME AS I HAVE; IS THAT

14 RIGHT?

15 MS. ABRAMSON: NO. YOU'VE GOT THE ONLY COPY OF

16 THAT PRINT-OUT. EVERYBODY HAS GOT THE PHOTOGRAPHS.

17 YOU'VE GOT THE ONLY COPY OF THAT PRINT-OUT.

18 AND YOU KNOW, YOUR HONOR, I AM LOOKING

19 RIGHT NOW AT A SET OF PRINT-OUTS THAT SHOW HOW DR.

20 MCCARTHY WAS USING THOSE PHOTOGRAPHS TO ILLUSTRATE THE

21 DIFFERENT SHOTS, AND IT MIGHT BE USEFUL FOR THE -- I

22 KNOW IT'S COMPLICATED, BUT IT MIGHT BE USEFUL FOR THE

23 COURT TO SEE IT.

24 THE COURT: BY THE WAY, THIS IS AN OPEN SESSION

25 IF THERE IS ANY PUBLIC OUT THERE.

26 MS. ABRAMSON: YES, THERE ARE SOME PEOPLE

27 OUTSIDE.

28 THE COURT: YOU WERE SAYING?

1 MS. ABRAMSON: YES, YOUR HONOR.

2 I ALSO HAVE, BASED ON DR. MCCARTHY'S
3 TESTIMONY, WHAT HE DID IN COURT, WE ASSEMBLED ON
4 SEPARATE SHEETS ALL THE IMAGES HE CALLED UP TO
5 ILLUSTRATE EACH OF THE SHOTS AS HE NUMBERS THEM ONE
6 THROUGH 12, AND I THINK THIS HIGHLIGHTS THE NATURE OF MY
7 OBJECTION THAT HE IS USING FAR TOO MANY REPETITIVE,
8 GRUESOME SHOTS TO ILLUSTRATE A SINGLE POINT.

9 I WISH I HAD HAD MORE OF THESE MADE. THESE
10 ARE VERY HARD TO MAKE, SO -- BUT LET ME STAND WITH MR.
11 CONN SO HE CAN SEE WHAT I'M TALKING ABOUT, AND THEN HE
12 CAN HOLD THEM UP FOR YOU SO YOU CAN SEE.

13 FOR EXAMPLE, THIS IS ALL OF THE IMAGES THAT
14 ARE USED TO -- THAT YOU USED BEFORE, AND I AM ASSUMING
15 THERE ISN'T GOING TO BE ANY DEVIATION, TO ILLUSTRATE
16 SHOT -- WHAT HE CALLS SHOT NO. 1.

17 SHOT NO. 1 IS THE ONE THAT GOES THROUGH
18 JOSE MENENDEZ' LEFT ELBOW, ACCORDING TO HIM, WHICH IS
19 HERE. IT GOES THROUGH HIS RIGHT ARM, WHICH IS IN THIS
20 PICTURE, AND A TINY BIT IN THIS PICTURE, AND THEN IT
21 SUPPOSEDLY GOES INTO MRS. MENENDEZ' LEFT BREAST, WHICH
22 IS IN THIS PICTURE.

23 OF ALL THESE IMAGES I HAVE NO OBJECTION
24 EXCEPT PERHAPS TO THIS ONE, WHICH IS CALLED 1.JOSEPH,
25 ONLY BECAUSE THE HEAD IS TOTALLY IRRELEVANT TO WHAT'S
26 TRYING TO BE ILLUMINATED THERE, WHICH IS THIS TINY PIECE

27 OF THE ARM, AND I WOULD ASK THAT IT BE CROPPED.

28 BUT THAT'S HOW HE PRESENTS THE NARRATIVE,

-25708

1 IF YOU WILL, THROUGH PHOTOGRAPHS, AND BASICALLY I DON'T
2 HAVE A LOT OF PROBLEM WITH THIS PARTICULAR SHOT SEQUENCE
3 NARRATIVE EXCEPT PERHAPS FOR 1.JOSEPH, WHICH IS NOT THE
4 WORST OF THE PICTURES.

5 NOW, ON THE MOST RECENT PROGRAM C.D. THAT
6 WE GOT, THERE WERE THE ADDITIONAL PICTURES THAT ON THE
7 SHEETS I GAVE THE COURT HAVE THE WORD "NEW" ON THEM.

8 I DON'T KNOW HOW THEY INTEGRATE INTO THAT
9 C.D. YET, BUT LET ME SHOW YOU WHAT HE WAS USING FOR TWO,
10 WHICH IS, ACCORDING TO HIM, THE SHOTGUN WOUND TO THE
11 BACK OF JOSE MENENDEZ' HEAD.

12 WHEN MR. MCCARTHY DID THIS FIRST
13 PRESENTATION, HE DID NOT HAVE THE CORONER'S AUTOPSY
14 PHOTOGRAPHS. WHAT'S BEFORE THE COURT NOW AND LABELED
15 "NEW" AND DOES NOT HAVE AN OBJECTION ON IT IS A
16 DIFFERENT PICTURE OF THE BACK OF THE HEAD, ONE THAT WE
17 ARGUE IS MORE PROBATIVE THAN THIS PICTURE, WHICH IS ALSO
18 INCLUDED IN THE PACKAGE THE COURT HAS.

19 THIS PICTURE WHICH WAS CALLED 3.JOSEPH, IS
20 PROBED. IT'S BEEN TORN UP BY THE CORONOR'S OFFICE, AND
21 IT'S BLOODY AND GORY AND DOESN'T SHOW ANYTHING ABOUT THE
22 ORIGINAL SHAPE OF THE WOUND OR THE DIRECTION.

23 THE COURT: I AM TRYING TO FIND THE ONE YOU DON'T
24 OBJECT TO HERE THAT'S LABELED "NEW".

25 MS. ABRAMSON: IT'S THE ONLY OTHER SHOT STRAIGHT
26 ON OF THE BACK OF THE HEAD.

27 THE COURT: YEAH, I SAW IT HERE. I WAS JUST
28 TRYING TO FIND IT.

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1 MS. ABRAMSON: CAN I APPROACH, YOUR HONOR?

2 THE COURT: I SAW IT ONCE BEFORE, SO I AM SURE I
3 CAN FIND IT.

4 MR. CONN: THE ONE THAT COUNSEL DOESN'T OBJECT TO
5 IS LABELED 6.JOSEPH.

6 THE COURT: OKAY, I SEE IT.

7 MS. ABRAMSON: YOU SEE IT?

8 THE COURT: YEAH.

9 MS. ABRAMSON: SO, OUR CONTENTION IS OBVIOUSLY
10 6.JOSEPH IS A MORE PROBATIVE PHOTOGRAPH AND A LESS
11 GRUESOME PHOTOGRAPH THAN 3.JOSEPH, AND THAT IS THE BASIS
12 OF OUR OBJECTION TO 3.JOSEPH, AND THAT IS THEY HAVE A
13 MUCH MORE PROBATIVE WAY AND LESS INFLAMMATORY WAY OF
14 ILLUSTRATING THE SIZE AND CONTACT NATURE OF THAT WOUND,
15 IF YOU WILL, BECAUSE 6.JOSEPH SHOWS ALL THE RADIATING
16 FRACTURES AND TEARS FROM THAT WOUND, WHICH IS PART OF
17 THE MEDICAL OPINION, I ASSUME EVEN OF DR. LAWRENCE, OF
18 WHY THAT'S A CONTACT WOUND.

19 OKAY. SHOT NO. 3 IS THE ONE THAT HE SAYS
20 PASSED THROUGH, AND THAT'S JUST THE OUTDOOR PHOTOGRAPHS,
21 AND THERE IS NO OBJECTION TO ANY OF THAT.
22 BUT HERE IS A REAL EXAMPLE OF OVER-USE OF
23 GRUESOMENESS BY DR. MCCARTHY. THESE ARE THE FRAMES
24 BEING USED FOR THE DESCRIPTION OF SHOT 4.
25 SHOT 4, ACCORDING TO DR. MCCARTHY, IS THE
26 UPPER RIGHT SIDE OF THE FACE OF MRS. MENENDEZ, THE PART
27 THAT I AM COVERING WITH MY HAND (INDICATING).
28 THE COURT: OKAY.

-25706

1 MS. ABRAMSON: BUT THIS IS WHAT HE WANTS TO USE
2 TO ILLUSTRATE IT, NO LESS THAN FOUR GROTESQUE
3 PHOTOGRAPHS OF MRS. MENENDEZ THAT SHOW NOT ONLY SHOT 4,
4 BUT ALSO SHOT 5, WHICH IS THE ARM WOUNDS; SHOT 1, WHICH
5 IS THE LEFT CHEEK, SHOT -- WELL, IT'S THE CORONER'S SHOT
6 2 AND 3.
7 I DON'T KNOW WHAT -- LET ME SEE WHAT
8 MCCARTHY CALLS IT. MCCARTHY CALLS IT -- IT'S MCCARTHY'S
9 SHOT 6.
10 BUT IN ANY EVENT, IT SHOWS ALL OF THE
11 WOUNDS TO HER HEAD AND FACE, AND THIS ONE -- FOR
12 EXAMPLE, 12.MARY HARDLY SHOWS WHAT HE IS TALKING ABOUT,
13 WHICH IS THE RIGHT SIDE OF THE FACE.
14 14.MARY SHOWS ALL OF THE WOUNDS, AND MY

15 SUGGESTION IS SINCE IT SHOWS ALL OF THE WOUNDS, THAT ONE
16 PHOTO COULD BE USED FOR ALL OF THOSE WOUNDS TO THE UPPER
17 PART OF HER BODY, BECAUSE IT SHOWS EACH AND EVERY ONE.

18 HE ALSO USES 8.MARY, WHICH HARDLY SHOWS THE
19 WOUNDS IN QUESTION, AND THEN HE USES 10.MARY, WHICH IS
20 THE MOST GROTESQUE OF ALL, BUT AT LEAST ONE COULD SAY IS
21 THE ONE THAT MOST SHOWS THAT PARTICULAR SHOT.

22 SO, I DON'T SEE ANY REASON IN THE WORLD
23 EXCEPT FOR INFLAMMATORY PURPOSES. THERE YOU GO, THAT'S
24 HOW HE ALIGNED THEM. NOT THAT ONE. IN FACT, THAT ONE
25 HE SAVES FOR LATER --

26 MR. CONN: I SEE.

27 MS. ABRAMSON: -- TO SHOW THAT ONE WOUND TO THE
28 UPPER RIGHT PART OF THE FACE. HERE IS WHERE HE SHOWS

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1 THAT ONE, THAT'S 12.MARY.

2 NOW, HE DOES THE SAME THING, AND ALSO WITH
3 VERY LITTLE LOGIC FOR HIS SHOT NO. 5, WHICH IS THE SAME
4 AS CORONOR'S 5, AND THAT'S JUST THE DOUBLE ARM WOUNDS.

5 HER RIGHT ARM HAS GOT A CREASE IN THE
6 FOREARM PART AND A CREASE IN THE UPPER ARM PART. BUT HE
7 DOESN'T STOP WITH THE ARMS. HE SHOWS 12.MARY, WHICH IS
8 PARTICULARLY DISTURBING BECAUSE IT SHOWS MRS. MENENDEZ'
9 LEFT EYE OPEN. HE SHOWS 5.MARY, WHICH IS ONLY HALF OF
10 THE WOUNDS, THE FOREARM PART.

11 HE SHOWS 7.MARY, WHICH IS THE OTHER HALF OF
12 THE WOUND, THE UPPER ARM PART. HE SHOWS 13.MARY, WHICH
13 IS BOTH PARTS, AND 14.MARY, WHICH IS AGAIN THE WHOLE
14 HEAD AND BOTH PARTS.

15 THERE IS JUST NO REASON IN THE WORLD WHY
16 THEY NEED FIVE PICTURES TO SHOW AN ARM WOUND, AND ALL
17 THOSE SHOTS OF HER FACE TO SHOW AN ARM WOUND WHICH IS
18 UNAFFILIATED IN BOTH MR. MCCARTHY'S VERSION AND DR.
19 GOLDEN AND ALL OF OUR PATHOLOGIST'S AND EXPERT'S
20 VERSIONS WITH THE FACE WOUNDS. THE ARM WOUND IS CLEARLY
21 SEPARATE.

22 MR. CONN: COULD I SEE THOSE?

23 MS. ABRAMSON: CERTAINLY. CERTAINLY.

24 NOW WE HAVE -- HERE WE GO AGAIN. ALMOST
25 THE SAME PICTURES REPEATED AGAIN FOR SHOT NO. 6, WHICH
26 ACCORDING TO DR. MCCARTHY IS THE SHOT INVOLVING THE
27 RIGHT MANDIBLE, WHICH IS THE CHIN AND CLAVICLE AND THE
28 RIGHT HAND.

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1 THERE IS NO DISPUTE IN FACT AMONG ANY OF
2 THE EXPERTS WHO ARE WORKING ON THIS CASE NOW OR WHO HAVE
3 EVER CONSULTED ON THIS CASE THAT THE RIGHT HAND, RIGHT
4 CLAVICLE, RIGHT MANDIBLE IS AN ASSOCIATED WOUND, AND
5 THERE IS ONE PHOTOGRAPH HERE, AND ONLY ONE, THAT SHOWS
6 THAT ASSOCIATION, WHICH IS WHAT'S NUMBERED 13.MARY.

7 BUT HE WANTS TO DO IT WITH 10.MARY, A
8 PARTICULARLY GRUESOME SHOT THAT ONLY SHOWS A PORTION OF
9 THE WOUND, THE MANDIBLE, AND A PORTION OF THE CLAVICLE.

10 HE WANTS TO DO IT WITH 12.MARY, WHICH IS
11 SHOT FROM THE OTHER SIDE OF HER BODY, WHICH HARDLY SHOWS
12 THOSE WOUNDS AT ALL.

13 HE WANTS TO DO IT WITH 8.MARY, WHICH
14 DOESN'T SHOW THE HAND AND DOESN'T SHOW THE CLAVICLE
15 WELL, AND 13.MARY IS THE ONE THAT BEST SHOWS THE
16 ASSOCIATION.

17 BUT NOT CONTENT WITH THAT, HE ALSO WANTS TO
18 USE 6.MARY TO SHOW THE HAND AND 9.MARY TO SHOW THE
19 CLAVICLE.

20 SO, WE HAVE HERE SIX PHOTOGRAPHS TO SHOW AN
21 INJURY TO THE HAND, MANDIBLE, CLAVICLE THAT ONE
22 PHOTOGRAPH SHOWS.

23 NOW, THE NEXT -- THE NEXT IS SHOT NO. 7.
24 SHOT NO. 7 IS THE PHOTOGRAPH OF WOUND NO. 7. WE HAVE NO
25 PROBLEM WITH THAT ONE.

26 THE NEXT ONE IS WHAT HE CALLS SHOT NO. 8,
27 WHICH IS TO MRS. MENENDEZ' THIGH, HIP. WE HAVE NO
28 PROBLEM WITH THAT ONE.

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1 THE NEXT ONE, HMM, THAT'S INTERESTING, IS
2 SHOT NUMBER 9, WHICH IS MAYBE NOT THE MOST ACCURATE

3 PHOTOGRAPH OF THE IN-AND-OUT ABOVE AND BELOW THE KNEE
4 WOUNDS, BUT WE HAVE NO OBJECTION TO IT.

5 SHOT NO. 10, I THINK HE MAY HAVE ADDED TO
6 THIS, BECAUSE ON HIS ORIGINAL SHOWING OF 10 HE DOESN'T
7 SHOW THE LEFT LEG GRAZE WOUNDS. BUT THERE IS A PICTURE
8 OF IT I BELIEVE IN THE NEW CATEGORY, AND I DON'T OBJECT
9 TO IT.

10 SHOT NO. 11 IS TO SHOW THE SHOULDER, LEFT
11 SHOULDER, LEFT BELOW THE EAR OF MRS. MENENDEZ, AND HE
12 HAS PICKED THE ONLY TWO PHOTOGRAPHS THAT ACTUALLY
13 ILLUSTRATE THAT.

14 SO, I HAVE NO OBJECTION TO THAT. I AM NOT
15 TRYING TO OBJECT BECAUSE THEY'RE UGLY; THEY'RE ALL UGLY.
16 ONLY IF THEY'RE NOT PROBATIVE ENOUGH.

17 THEN 12. WE REALLY GO TO TOWN ON 12.
18 TWELVE IS WHAT THE CORONER CALLS NO. 1. IT'S THE LEFT
19 CHEEK. IT'S A CONTACT WOUND. IT'S BIRDSHOT.

20 THERE IS A DISPUTE IN THIS CASE AS TO
21 WHETHER THAT'S ANTEMORTEM, PERIMORTEM OR POST MORTEM.
22 SO, CERTAINLY IT MAKES SENSE TO ILLUSTRATE IT.

23 BUT WHAT HE'S TRYING TO ILLUSTRATE IT WITH
24 ARE FOUR PHOTOGRAPHS, ONE OF WHICH 10.MARY BARELY SHOWS
25 THE WOUND. 8.MARY SHOWS IT FROM A GREAT DISTANCE AND
26 DOESN'T SHOW THE ANGLE OF IT. 12.MARY WE HAVE TALKED
27 ABOUT BEFORE IS ESPECIALLY GRUESOME, BECAUSE THE DEAD
28 EYE IS LOOKING RIGHT AT YOU. I MEAN, I REALIZE THAT IS

1 WHAT IT IS, BUT --

2 14.MARY SEEMS TO BE THE ONLY ONE, AND IT'S
3 PRETTY GRUESOME, BUT IT'S THE ONE THAT ILLUSTRATES
4 VIRTUALLY EVERY SHOT TO HER HEAD, AND IT'S THE ONE I
5 DIDN'T OBJECT TO, BECAUSE IT SEEMS TO ME THAT 14.MARY,
6 WHICH SHOWS THE ARM AND THE HAND AND THE CLAVICLE AND
7 THE MANDIBLE AND THE RIGHT SIDE OF HER FACE AND THE LEFT
8 SIDE OF HER FACE SHOWS EVERYTHING, AND THERE IS REALLY
9 NO NEED TO USE ALL THESE OTHERS WHEN YOU HAVE ONE
10 PICTURE THAT SHOWS IT ALL.

11 SO, THAT'S THE NATURE -- THAT'S THE NATURE
12 OF OUR OBJECTIONS.

13 THE COURT: OKAY.

14 AND MR. GESSLER, ANYTHING FURTHER, OR ARE
15 YOU JUST ADOPTING --

16 MR. GESSLER: NO. WE JOIN IN THIS MOTION, YOUR
17 HONOR.

18 THE COURT: OKAY.

19 AND THE PEOPLE WANT TO RESPOND?

20 MR. CONN: YES.

21 MS. ABRAMSON: THERE IS ONLY ONE OTHER THING I
22 WOULD ADD TO THIS, YOUR HONOR, AND THAT IS REALLY THERE
23 HAS BEEN NO SCIENTIFIC BASIS GIVEN, NO BASIS FOR THESE
24 PHOTOGRAPHS, BECAUSE THESE ARE DR. MCCARTHY'S CHOICE.
25 THESE ARE NOT THE CORONOR'S CHOICE, THESE ARE NOT DR.
26 LAWRENCE'S CHOICES. THIS IS WHAT DR. MCCARTHY WANTS TO
27 PROJECT ON WHAT APPEARS TO BE A MONITOR RATHER THAN A

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1 SO, THERE IS NO SHOWING THAT THIS
2 ILLUMINATES A MEDICAL OPINION, WHICH HE CAN'T GIVE.

3 THE COURT: I AM ASSUMING THAT DR. LAWRENCE WILL
4 BE USING THIS -- THESE PHOTOGRAPHS TO ILLUSTRATE THE
5 MEDICAL OPINIONS?

6 MS. ABRAMSON: WELL, BUT I SHOULD POINT OUT MOST
7 OF THESE PHOTOGRAPHS WITH RESPECT TO MRS. MENENDEZ AND
8 THE HEAD WOUNDS, THERE IS REALLY NO DISPUTE ABOUT THOSE.

9 SO, I DON'T KNOW WHY YOU WOULD NEED FIVE OR
10 SIX OR SEVEN OR EIGHT DIFFERENT SHOTS OF SOMETHING THAT
11 NO ONE IS REALLY DISPUTING.

12 THE COURT: OKAY. LET ME HEAR THE PEOPLE'S
13 RESPONSE.

14 MR. CONN: YES. FIRST OF ALL, THE ENTIRE PREMISE
15 OF COUNSEL'S PRESENTATION IS BASED ON FALLACY, AND THAT
16 FALLACY IS THAT WHATEVER WAS ASKED OF DR. MCCARTHY IN
17 THE HEARING ARE THE ONLY QUESTIONS THAT ARE GOING TO BE
18 ASKED OF HIM BEFORE THE JURY.

19 IT'S BASED UPON THE PREMISE THAT DR.
20 MCCARTHY IS GOING TO SELECT WHICH PHOTOGRAPHS SHOULD BE
21 SHOWN TO THE JURY, AND THE COURT SPECIFICALLY SAID THAT
22 THAT'S NOT THE WAY IT SHOULD BE DONE. THE ATTORNEYS
23 SHOULD PRESENT THE PHOTOS TO THE EXPERT, RATHER THAN THE

24 EXPERT FLIPPING THROUGH THE PHOTOGRAPHS AND PRESENTING
25 WHICHEVER PHOTOGRAPHS HE WANTS TO THE JURY.
26 SO, COUNSEL'S ENTIRE ARGUMENT IS WITHOUT
27 FOUNDATION.
28 THE ISSUE BEFORE THE COURT IS WHAT

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1 PHOTOGRAPHS SHOULD BE PRESENTED TO THE JURY IN ORDER TO
2 ILLUSTRATE THE WOUNDS THAT WERE INFLICTED TO THE VICTIMS
3 IN THIS CASE.
4 SO, RATHER THAN GO THROUGH DR. MCCARTHY'S
5 SELECTION OF WHAT PHOTOGRAPHS ARE NECESSARY TO PRESENT
6 HIS CASE, WE ARE LOOKING AT WHAT PHOTOGRAPHS ARE
7 NECESSARY BOTH FOR THE TESTIMONY OF DR. MCCARTHY AND FOR
8 THE TESTIMONY OF THE PATHOLOGIST IN THIS CASE, DR.
9 LAWRENCE.
10 SO, THE ISSUE IS WHAT PHOTOGRAPHS ARE
11 NECESSARY TO CLEARLY DEMONSTRATE TO THIS JURY THE NATURE
12 OF THE WOUNDS INVOLVED IN THIS CASE.
13 NOW, COUNSEL EVERY NOW AND THEN WILL REFER
14 TO, "WELL, THIS IS NOT IN DISPUTE, THAT IS NOT IN
15 DISPUTE."
16 I DON'T KNOW WHAT IS IN DISPUTE. COUNSEL
17 HAS NEVER SAT DOWN WITH ME AND TOLD ME "THESE ARE THE
18 FOLLOWING ITEMS MY EXPERTS ARE NOT GOING TO CONTEST." I
19 HAVE NO IDEA WHAT'S IN DISPUTE IN THIS CASE.

20 WHAT I AM PREPARED TO DO IS PRESENT
21 PHOTOGRAPHS TO THE JURY WHICH WILL ILLUSTRATE TO THEM
22 THE NATURE OF THE WOUNDS THAT WERE INFLICTED IN THIS
23 CASE, AND AS WE GO THROUGH THE PHOTOGRAPHS, THE ONLY
24 RELEVANT DETERMINATION TO BE MADE IS WHETHER SOME OF
25 THESE PHOTOGRAPHS ARE UNNECESSARY, AND IF THEY ARE
26 UNNECESSARY, THEN I AGREE, THEY SHOULD NOT BE PRESENTED
27 TO THE JURY.

28 SO, IF WE START WITH THE PHOTOGRAPHS OF

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1 JOSE MENENDEZ, I THINK THAT'S MOST EASILY RESOLVED.

2 THERE ARE TWO PHOTOGRAPHS THAT ARE IN
3 DISPUTE CONCERNING JOSE MENENDEZ; THAT IS 1.JOSEPH,
4 WHICH DEPICTS HIS FULL BODY, AND 3.JOSEPH, WHICH DEPICTS
5 THE BACK OF HIS HEAD.

6 THEY HAVE APPARENTLY CUT INTO HIS HEAD, AND
7 I AGREE WITH COUNSEL, I DON'T SEE ANY REASON WHY
8 3.JOSEPH NEEDS TO BE PRESENTED, BECAUSE IN LIGHT OF THE
9 PHOTOGRAPH WHICH HAS RECENTLY BEEN ADDED, 6.JOSEPH, I
10 THINK THAT ADEQUATELY DEPICTS THE WOUNDS TO THE BACK OF
11 HIS HEAD.

12 SO, I HAVE NO PROBLEM AT THIS TIME, UNLESS
13 SOME NEED ARISES DURING THE TESTIMONY WHICH I DON'T
14 ANTICIPATE AT THIS TIME, I HAVE NO PROBLEM TO
15 WITHDRAWING 3.JOSEPH.

16 AS FAR AS 1.JOSEPH IS CONCERNED, ONE OF THE
17 PURPOSES I THINK FOR WHICH THAT WOUND -- THAT PHOTOGRAPH
18 IS BEING OFFERED IS TO DEPICT THE WOUNDS TO JOSE'S RIGHT
19 ARM.

20 NOW, AS COUNSEL KNOWS, THE KEY WOUND THAT
21 IS GOING TO BE IN DISPUTE THROUGHOUT ALL THE DAYS OF
22 TESTIMONY WE ARE GOING TO LISTEN TO FROM THESE EXPERTS
23 IS THE WOUND OR WOUNDS TO JOSE'S RIGHT ARM. THAT'S
24 GOING TO BE THE FOCAL POINT OF MANY OF THE QUESTIONS PUT
25 TO THE EXPERTS IN THIS CASE.

26 WE HAVE ONLY TWO PHOTOGRAPHS OF THAT WOUND.
27 ONE OF THEM IS 4.JOSEPH, TO WHICH COUNSEL IS NOT
28 OBJECTING.

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1 THE QUESTION THEN IS ARE WE GOING TO
2 PROCEED WITH DAYS AND DAYS OF TESTIMONY FROM NUMEROUS
3 EXPERT WITNESSES CONCERNING THAT WOUND WITHOUT SHOWING
4 THAT WOUND FROM A SECOND ANGLE.

5 I HAVE NO PROBLEM AT THIS TIME WITH JUST
6 FOR THE SAKE OF KEEPING IT AS SIMPLE AS WE CAN WITH NOT
7 USING 1.JOSEPH, BUT I HAVE A HUNCH THAT BEFORE THIS
8 HEARING IS OVER AND BEFORE THIS TRIAL IS OVER, THE JURY
9 IS GOING TO SEE A LOT OF THESE PHOTOGRAPHS THAT THEY'RE
10 NOT GOING TO BE SHOWN UP FRONT.

11 THE COURT: WELL, DOESN'T THIS ADDITIONAL NEW

12 PHOTOGRAPH SHOWS THAT SAME WOUND?

13 MR. CONN: YES, IT DOES. IT'S THE ONLY OTHER --

14 RIGHT. NO. THE NEW ONE?

15 THE COURT: 4.JOSEPH, THIS NEW PHOTOGRAPH, AND

16 1.JOSEPH SHOW THAT WOUND; IS THAT RIGHT?

17 MS. ABRAMSON: CAN I APPROACH TO LOOK AT THE NEW

18 ONE, BECAUSE I PULLED IT FROM MY BOOK?

19 MR. CONN: NO. THE NEW ONE I UNDERSTAND IS

20 6.JOSEPH.

21 MS. ABRAMSON: NO, THERE IS ANOTHER NEW ONE THAT

22 I PULLED OUT. YOU SAID THERE IS ONE MISSING, AND I

23 PULLED IT FROM MY BOOK TO SHOW THE JUDGE.

24 CAN I HAVE THAT BACK FOR A MINUTE? YOU

25 WANTED ONE THAT SHOWED THE ANTECUBITAL FOSSA.

26 MR. CONN: CORRECT.

27 MS. ABRAMSON: AND I AM OBJECTING. I WANT THE

28 HEAD TAKEN OUT OF THIS PICTURE. THAT SHOWS THE WOUNDS

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1 YOU ARE TALKING ABOUT.

2 THE COURT: I JUST MENTIONED IT.

3 MS. ABRAMSON: THIS IS THE BETTER PICTURE.

4 MR. CONN: I HAVE NO PROBLEM PARTICULARLY IN

5 LIGHT OF THE FACT THAT PHOTOGRAPH I THINK ALSO DISPLAYS

6 THE WOUNDS PRETTY WELL.

7 SO, I HAVE NO PROBLEM AT LEAST AT THIS

8 POINT WITHDRAWING 1.JOSEPH IN ADDITION TO --

9 MS. ABRAMSON: 3.JOSEPH.

10 MR. CONN: 3.JOSEPH.

11 MS. ABRAMSON: OKAY. AND YOU'RE GOING TO

12 SUBSTITUTE THIS ONE, WHATEVER WE WIND UP CALLING IT, BUT

13 CAN I PREVAIL ON CROPPING THE HEAD?

14 MR. CONN: MY ONLY PROBLEM WITH CROPPING THE HEAD

15 IS WE DO WANT TO PRESENT THIS SO THAT THE JURY CAN SEE

16 THE PHOTOGRAPHS WELL.

17 THE COURT: I DON'T SEE ANY REASON REALLY FOR

18 THAT PHOTOGRAPH TO REMOVE THE PORTION THAT SHOWS THE

19 HEAD. IT'S NOT -- IT JUST SHOWS A PERSPECTIVE OF THE

20 BODY AND MAKES IT MORE IDENTIFIABLE WHERE THE WOUND IS.

21 SO, I DON'T SEE ANY NEED TO CROP IT.

22 MS. ABRAMSON: ALL RIGHT.

23 THE COURT: IT SHOWS THE WOUNDS AND IT SHOWS --

24 IF THERE IS ANY SIGNIFICANCE TO THE INJURIES TO THE

25 RIGHT CHEST AREA.

26 MS. ABRAMSON: THERE IS GREAT SIGNIFICANCE TO

27 THAT.

28 THE COURT: OKAY. SO, IT SHOWS THAT IN

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1 RELATIONSHIP TO THE WOUNDS TO THE RIGHT ARM.

2 MS. ABRAMSON: THERE ARE ALSO NUMEROUS

3 PHOTOGRAPHS FROM THE SCENE WHEN THE CORONER'S

4 REPRESENTATIVES ARE THERE THAT ALSO SHOW THAT RIGHT ARM

5 WOUND FROM BEHIND THAT WE ARE GOING TO BE USING, SO --

6 THE COURT: OKAY.

7 MS. ABRAMSON: THERE ARE PLENTY OF PICTURES OF

8 THAT RIGHT ARM WOUND.

9 THE COURT: OKAY. SO, PEOPLE ARE AGREEING TO

10 WITHDRAW ONE AND THREE?

11 MR. CONN: YES.

12 THE COURT: OKAY.

13 MR. CONN: SO, THAT TAKES CARE OF JOSE MENENDEZ.

14 WE ARE ONLY CONCERNED WITH FIVE ADDITIONAL

15 PHOTOGRAPHS AT THIS TIME.

16 MS. ABRAMSON: CORRECT.

17 MR. CONN: ONE OF THE OTHER KEY AREAS IN

18 CONTENTION IN REGARD TO THE EXPERT TESTIMONY WILL BE

19 THAT WOUND TO KITTY'S LEFT CHEEK; THAT IS WHETHER THAT

20 WOUND IS A POST MORTEM OR ANTEMORTEM WOUND, AND I DON'T

21 SEE HOW COUNSEL CAN SAY ALL OF THESE DEPICT THE FACE AND

22 NOTHING IS IN DISPUTE CONCERNING THE FACE. OBVIOUSLY

23 THERE'S VERY MUCH IN DISPUTE. THIS IS A WOUND TO HER

24 RIGHT CHEEK --

25 MS. ABRAMSON: LEFT CHEEK. LEFT CHEEK, COUNSEL.

26 MR. CONN: THIS IS AN AREA WHERE DR. GOLDEN,

27 AFTER TESTIFYING BEFORE THE GRAND JURY, TESTIFYING IN

28 THE TRIAL AND MAINTAINING HIS POSITION FOR FIVE YEARS

1 THAT THIS WAS A PERIMORTEM WOUND -- ANTEMORTEM WOUND,
2 HAS NOW DECIDED ON THE EVE OF TRIAL UPON SECOND
3 REFLECTION HE THINKS IT'S PERIMORTEM OR POST MORTEM.
4 THAT'S VERY MUCH GOING TO BE IN DISPUTE IN THIS TRIAL.

5 WE HAVE ONE PHOTOGRAPH OF THAT WOUND WHICH
6 I THINK THAT COUNSEL IS NOT OBJECTING TO, AND THAT IS --

7 MS. ABRAMSON: MY POSITION IS IF THERE'S ONE
8 PHOTOGRAPH THAT CAN SHOW THEM ALL, THAT'S THE PHOTOGRAPH
9 THAT SHOULD BE USED, RATHER THAN FIVE PHOTOGRAPHS TO
10 SHOW THEM ALL.

11 THE COURT: FOURTEEN?

12 MS. ABRAMSON: I THINK IT'S 14.MARY.

13 MR. CONN: THEN THE QUESTION BECOMES IS THAT
14 PHOTOGRAPH DIFFERENT FROM THE OTHER PHOTOGRAPHS.

15 WELL, WHEN YOU LOOK AT 14.MARY, THE
16 INTERESTING THING ABOUT THAT IS YOU SEE A VERY DARK EDGE
17 ALL ALONG THE LEFT SIDE OF THE WOUND, WHICH UPON LOOKING
18 AT OTHER PHOTOGRAPHS OF THE SAME WOUND I SUSPECT IS JUST
19 A SHADOW RATHER THAN DARKNESS OF THE WOUND ITSELF.

20 SO, I THINK IT'S IMPORTANT NOT TO JUST GIVE
21 THE JURY ONE PHOTOGRAPH CONCERNING THAT WOUND WHEN THAT
22 WOUND IS GOING TO BE SO HOTLY CONTESTED.

23 I THINK THE PHOTOGRAPH THAT DEPICTS THAT
24 WOUND -- SHEDS ADDITIONAL LIGHT, LITERALLY AND
25 FIGURATIVELY, UPON THAT WOUND IS 12.MARY, BECAUSE
26 12.MARY SHOWS AT LEAST THE RIGHT SIDE OF THAT WOUND MUCH
27 MORE CLEARLY AND WITH GREATER LIGHT.

28 SO, I THINK THAT TESTIMONY AND PHOTOGRAPH

1 IS GOING TO GO BEFORE THE JURY, WHICH IS GOING TO DEPICT
2 THE WOUND. I DON'T THINK THAT THEY'RE GOING TO BE SO
3 SHOCKED OR HORRIFIED TO SEE ANOTHER PHOTOGRAPH DEPICTING
4 THE SAME WOUND WITH SLIGHTLY DIFFERENT LIGHTING
5 CONDITIONS WHICH ARE GOING TO ASSIST THEM IN LOOKING AT
6 THE REDNESS OF THAT WOUND, WHICH IS ONE OF THE BASES
7 UPON WHICH IT IS DETERMINED WHETHER THE WOUND WAS
8 ANTEMORTEM OR POST MORTEM.

9 MS. ABRAMSON: WELL, IF COUNSEL IS SUGGESTING
10 THAT 12.MARY -- THAT HIS PEOPLE ARE GOING TO SAY 12.MARY
11 IS A MORE ACCURATE DESCRIPTION OF THAT WOUND THAN
12 14.MARY, THEN WHY IS 14.MARY HERE? HE CAN USE 12.MARY
13 AND 13.MARY AND ILLUSTRATE EVERYTHING.

14 I MEAN, THE PROBLEM IS THE CONSTANT
15 REPETITION. IF 12.MARY IS THE ONE HE WANTS, THEN
16 12.MARY IS THE ONE HE SHOULD BE USING FOR NO. 4 AND NO.
17 5, AND NO. 6. IT SHOWS UP ON ALL OF THOSE, INSTEAD OF
18 USING ALL OF THESE PHOTOGRAPHS. THAT'S MY POINT.

19 LET HIM PICK WHICH ONE ILLUSTRATES WHATEVER
20 HE IS TRYING PROVE, INSTEAD OF JUST HEAPING ON EVERY
21 SINGLE -- AND THIS IS EVERY SINGLE HEAD PHOTO OF MRS.
22 MENENDEZ, WHETHER IT'S PARTICULARLY -- EVEN BY HIS
23 ADMISSION, PARTICULARLY PROBATIVE OF WHAT HE WANTS TO
24 PROVE OR NOT.

25 SO, I THINK THAT'S THE ISSUE. WHATEVER HE

26 THINKS IS MOST PROBATIVE, ALTHOUGH I AM NOT SURE HE
27 UNDERSTANDS WHETHER IT'S BETTER FOR HIS CASE OR WORSE
28 FOR HIS CASE THAT IT LOOKS DARK.

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1 MR. CONN: WELL, 12.MARY AND 13.MARY STILL DO NOT
2 ADEQUATELY DEPICT THE INJURY TO KITTY'S RIGHT EYE. YOU
3 REALLY CAN'T SEE THE INJURY TO KITTY'S RIGHT EYE IN
4 12.MARY, AND HER EYES ARE NOT EVEN VISIBLE IN 13.MARY.

5 SO, YOU STILL NEED A PHOTOGRAPH WHICH IS
6 GOING TO DEPICT THE WOUNDS TO HER RIGHT EYE.

7 NOW, ONE OF THE PHOTOGRAPHS THAT DEPICTS
8 THE WOUND TO HER -- TO HER RIGHT EYE IS 10.MARY. SO --

9 MS. ABRAMSON: AND 14.MARY.

10 MR. CONN: AND THEN THE PROBLEM --

11 MS. ABRAMSON: 14.MARY DOES ALSO, IF YOU WANTED
12 TO USE IT.

13 MR. CONN: NO, 14.MARY DOES NOT.

14 MS. ABRAMSON: SURE, IT DOES.

15 MR. CONN: NO. 14.MARY DOES NOT DEPICT THE
16 WOUND. YOU CANNOT SEE THAT WOUND CLEARLY IN 14.MARY
17 BECAUSE OF THE ANGLE. YOU CAN'T SEE THE HOLES, WHERE
18 THE HOLES ARE IN THE AREA ALONG THE TOP OF HER NOSE AND
19 HER EYEBROW IN 14.MARY. YOU CAN SEE THAT IN 10.MARY.

20 THE COURT: WELL, 14.MARY IS A RATHER -- I DON'T
21 KNOW IF IT'S THE NATURE OF THE PHOTOGRAPHY, BUT IT'S A

22 RATHER FUZZY VIEW OF THE WHOLE THING.

23 MS. ABRAMSON: I THINK HE HAS A MUCH CLEARER

24 IMAGE OFF THE COMPUTER AT THAT POINT, YOUR HONOR. ALL

25 OF HIS IMAGES ARE MUCH CLEARER THAN WHAT YOU'RE LOOKING

26 AT WITH JUST THIRD GENERATION.

27 THE COURT: GETTING BACK TO THE PHOTOGRAPHS OF

28 MRS. MENENDEZ' FACE AND HEAD, ARE THERE ANY HERE THAT

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1 THE PEOPLE FEEL ARE DUPLICATIVE, OR --

2 MR. CONN: I THINK PROVIDED THAT -- IT SEEMS TO

3 ME THERE ARE FIVE PHOTOGRAPHS IN ISSUE HERE.

4 IF WE COULD GET IN -- IF WE COULD GET IN

5 12, 10, 13 AND 16, THEN I THINK 8 AND 14 COULD BE TAKEN

6 OUT.

7 MS. ABRAMSON: LET ME SEE 16. WHICH ONE IS 16?

8 THE COURT: 16 IS THE TORSO -- OR UPPER --

9 MR. CONN: IT'S THE CLAVICLE AND JAW.

10 THE COURT: SHOULDER AREA AND THE JAW.

11 MS. ABRAMSON: I DON'T REMEMBER. LET ME SEE WHAT

12 YOU'RE CALLING 16. I HAVE 10, 12, 8, 14, 13.

13 THE COURT: 16 IS A NEW ONE.

14 MS. ABRAMSON: OH, THAT'S WHY I DON'T HAVE IT ON

15 THIS PRINT-OUT. YEAH, I NEED TO SEE.

16 OH, 16 IS THE ONE WITH THE MOUTH OPEN THAT

17 I OBJECTED TO BECAUSE IT'S PARTICULARLY GROTESQUE, AND I

18 THINK I SHOWED THE COURT THAT THAT COULD BE CROPPED TO
19 REMOVE THE MOUTH PORTION.
20 BUT I STILL THINK THAT YOU DON'T NEED --
21 LET ME LOOK AT WHAT HE'S SAYING HE WANTS. HE WANTS 10,
22 12 AND 13. TEN TO SHOW THE EYE, 12 TO SHOW THE CHEEK,
23 AND 13 OSTENSIBLY TO SHOW THE ARM, HAND, CLAVICLE.
24 IS THAT WHAT IT'S FOR, MISTER -- IF I CAN
25 ASK COUNSEL DIRECTLY -- IS THAT WHAT THAT'S FOR?
26 MR. CONN: THIRTEEN SHOWS THE ARM.
27 MS. ABRAMSON: RIGHT, AND THE HAND AND THE
28 CLAVICLE IN ASSOCIATION.

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1 MR. CONN: WELL, IT'S NOT A VERY GOOD LOOK AT THE
2 CLAVICLE. I THINK THAT 16 SHOWS THE CLAVICLE MUCH
3 BETTER.
4 MS. ABRAMSON: WELL, IF THAT'S TRUE, THEN 13
5 SHOULD BE CROPPED TO REMOVE THE REST OF THE PHOTOGRAPH
6 SHOWING THE FACE AGAIN AND THE CLAVICLE, IF ITS MAIN
7 PURPOSE IS TO SHOW THE ARM.
8 MR. CONN: OH, AGAIN, I WOULD OBJECT TO ANY
9 CROPPING, BECAUSE WE WANT TO PRESENT THE EVIDENCE
10 THROUGH THE USE OF A MONITOR SO THAT THE JURY CAN SEE IT
11 CLEARLY.
12 MS. ABRAMSON: YOU CAN CROP IT THAT WAY.
13 THE COURT: ONE PERSON AT A TIME.

14 MR. CONN: AND WE CAN'T ASK THE JURY TO TURN
15 THEIR FACES AWAY FROM DR. MCCARTHY WHILE HE PROCEEDS TO
16 CROP THE PHOTOGRAPH FOR THEM.

17 AND PLUS, I DON'T THINK THAT THERE'S
18 ANYTHING UNDULY GROTESQUE ABOUT LOOKING AT A HUMAN
19 MOUTH. I THINK THAT THE CASES THAT DEAL WITH GORY
20 PHOTOGRAPHS UNDER EVIDENCE CODE SECTION 352 ARE
21 CONCERNED WITH UNNECESSARILY SHOWING THE JURY OPEN
22 WOUNDS FOR NO REASON, AND I CAN'T RECALL A SINGLE CASE
23 WHICH SAYS IT WAS ERROR TO ALLOW IN THE PHOTOGRAPHS
24 BECAUSE THE VICTIM'S MOUTH WAS OPEN IN THE PHOTOGRAPH.

25 MS. ABRAMSON: WELL, IT DOESN'T HAVE TO DO WITH
26 THE FACT THE MOUTH IS OPEN, IT'S THE PARTICULAR ANGLE OF
27 THE PHOTOGRAPH THAT'S PARTICULARLY GROTESQUE, AND AS FAR
28 AS CROPPING WITH THE SCREEN ON, YOU CAN CROP THEM AND

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1 THEN LOAD THAT IMAGE ON YOUR C.D., AND THAT'S WHAT YOU
2 CALL UP. IT'S A PERMANENT IMAGE. YOU ENLARGE IT, YOU
3 CROP IT, YOU KEEP IT.

4 SO, HE DOESN'T HAVE TO GO ROAMING THROUGH
5 IN FRONT OF THE JURY, HE SIMPLY REPLACES THIS IMAGE WITH
6 A NEW IMAGE WHICH HAS BEEN CROPPED, AND I SHOWED THE
7 COURT HOW THAT CAN BE DONE WITH THAT PARTICULAR -- THAT
8 PARTICULAR 16.MARY PREVIOUSLY WHERE WE DID THAT. WE
9 CROPPED IT, WE LOADED THE CROPPED IMAGE, AND WE PRINTED

10 THE CROPPED IMAGE.

11 THE COURT: I LOOK AT THAT CROPPED IMAGE, AND IT
12 DOESN'T REALLY -- BY CROPPING IT, IT DISTORTS THE VIEW
13 AS I LOOK AT IT. YOU REALLY CAN'T GET A FEEL FOR THE
14 LOCATION OF THAT WOUND IN RELATIONSHIP TO THE REST OF
15 THE ANATOMY.

16 MS. ABRAMSON: WELL, YOU CAN'T FOR 9.MARY EITHER.

17 THE COURT: I AM ONLY TALKING NOW ABOUT THAT ONE
18 THAT YOU ARE DISCUSSING HERE. I HAVE TO LOOK AT WHAT
19 THE NUMBER IS. EIGHT, I GUESS; IS THAT IT?

20 MS. ABRAMSON: SIXTEEN IS THE ONE YOU'RE TALKING
21 ABOUT.

22 THE COURT: SIXTEEN.

23 MS. ABRAMSON: THAT'S THE ONE WE CROPPED WAS 16,
24 BECAUSE IT WAS PARTICULARLY GROTESQUE AND IT WAS ADDED
25 AFTER WE ALREADY HAD SIX OTHER IMAGES THAT WERE SIMILAR.

26 THE COURT: I AM NOT TALKING ABOUT ANYTHING ELSE
27 OTHER THAN REFERRING TO THIS PARTICULAR CROPPING. I
28 DON'T SEE HOW THE CROPPING HELPS, AND IT DISTORTS THE

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1 PHOTOGRAPH AND CHANGES ITS IMAGE.

2 MS. ABRAMSON: WELL, I DON'T UNDERSTAND WHY
3 16.MARY IS EVEN NECESSARY.

4 THE COURT: WE ARE TALKING ABOUT 16. I AM JUST
5 RESPONDING TO YOUR OBSERVATION THAT THE CROPPING IS A

6 GOOD IDEA. IN THIS PARTICULAR PHOTOGRAPH IT IS NOT A

7 GOOD IDEA, WOULD NOT BE.

8 AS FAR AS WHETHER THAT PHOTOGRAPH IS BETTER

9 THAN ANOTHER ONE, THAT'S A SEPARATE ISSUE. I AM NOT

10 TALKING ABOUT THAT.

11 OKAY. ANYWAY, GETTING BACK TO MR. CONN,

12 YOUR VIEW IS THAT YOU COULD FUNCTION WITH 10, 12, 13 AND

13 16 AND NOT USE 8 AND 14; IS THAT WHAT YOU'RE SAYING?

14 MR. CONN: YES.

15 MS. ABRAMSON: AND I DON'T SEE WHY HE NEEDS ALL

16 OF THOSE; 10, 12, 13. I DON'T KNOW WHY HE NEEDS 16 AT

17 THAT POINT, BECAUSE 10 SHOWS THE UPPER PART OF WHAT'S --

18 10 SHOWS WHAT'S ON 16, AND THE -- IF THERE IS ANY PART

19 THAT'S MISSING, 13 SHOWS IT.

20 MR. CONN: THE TESTIMONY IS GOING TO BE THAT THE

21 WOUND TO THE JAW AND TO THE CLAVICLE WAS ALL PART OF ONE

22 WOUND, IN ADDITION TO THE WOUND TO THE RIGHT HAND,

23 AND --

24 MS. ABRAMSON: NO ONE DISPUTES THAT. THAT'S WHAT

25 DR. GOLDEN SAID.

26 MR. CONN: AND IF I MAY FINISH, THIS MARY 16

27 SHOWS THE RELATIONSHIP BETWEEN THE WOUND TO THE CLAVICLE

28 AND THE WOUND TO THE JAW. IT SHOWS THE DISTANCE BETTER

1 THAN ANY OTHER PHOTOGRAPH. IT SHOWS THE SPACE INVOLVED.

2 IT ALSO SHOWS PARTS OF THAT WOUND WHICH YOU
3 CANNOT SEE IN ANY OTHER PHOTOGRAPH. FOR EXAMPLE, MARY
4 13 SHOWS TWO ENTRIES IN THE AREA OF THE CLAVICLE, BUT IT
5 DOESN'T SHOW ALL OF THE OTHER ENTRIES. THERE ARE MORE
6 THAN JUST TWO ENTRIES TO THE CLAVICLE, THERE ARE --

7 MS. ABRAMSON: NINE SHOWS IT.

8 MR. CONN: THERE ARE SEVERAL, AND I DON'T THINK
9 THAT WE SHOULD HAVE TO PASTE TOGETHER PHOTOGRAPHS TO
10 SHOW THE JURY.

11 MS. ABRAMSON: TWELVE SHOWS IT.

12 MR. CONN: THAT THE WOUND TO THE JAW OR THE WOUND
13 TO THE HAND AND THE WOUND TO THE CLAVICLE COULD ALL BE
14 ONE PART OF ONE WOUND.

15 THE ONLY WAY WE COULD GET THERE IS
16 COUNSEL'S NOTION THAT WE ARE GOING TO PASTE SEVERAL
17 TOGETHER. WE ARE GOING TO PASTE 9.MARY TOGETHER WITH
18 10.MARY AND 13.MARY, AND MAYBE IF THEY CAN KIND OF
19 IMAGINE THOSE THREE PHOTOGRAPHS TOGETHER THEY WILL HAVE
20 A PRETTY GOOD -- WITH A LITTLE IMAGINATION THEY MIGHT BE
21 ABLE TO IMAGINE WHAT 16.MARY DEPICTS.

22 MS. ABRAMSON: WELL, IF THEY CAN'T FIGURE OUT --

23 MR. CONN: I MEAN, WHY WOULD WE EVEN ASK THE JURY
24 TO ENGAGE IN THAT PROCESS WHEN 16.MARY DEPICTS WHAT
25 WE'RE TRYING TO DEPICT?

26 MS. ABRAMSON: IF 16.MARY DEPICTS WHAT YOU'RE
27 TRYING TO DEPICT, YOU DON'T NEED 9.MARY EITHER.

28 THE FACT IS THAT ONE WOUND NO ONE DISAGREES

1 WITH. IT WAS IN DR. GOLDEN'S TESTIMONY. IT'S
2 UNCONTESTED BY DR. MCCARTHY. IT'S UNCONTESTED BY DR.
3 LAWRENCE. I CAN AVER THAT IT'S UNCONTESTED BY OUR
4 EXPERTS THAT CORONER'S WOUND NO. 3, WHICH IS THE
5 CLAVICLE/MANDIBLE AFFILIATED WITH WOUND NO. 10, WHICH IS
6 THE RIGHT HAND, IS UNDISPUTED IN THIS CASE. ALWAYS HAS
7 BEEN, ALWAYS WILL BE.

8 MR. CONN: I WISH I HAD A LIST OF EVERYTHING THAT
9 COUNSEL DOES NOT DISPUTE IN THIS CASE, BECAUSE IT MIGHT
10 BE VERY HELPFUL TO US.

11 BUT UNTIL WE HAVE THAT LIST, WE WANT TO BE
12 ABLE TO DEPICT THESE WOUNDS CLEARLY TO THE JURY.

13 THE COURT: WELL, EVEN IF IT'S NOT DISPUTED, IF A
14 PHOTOGRAPH IS ILLUSTRATIVE OF THE WOUND AND ILLUSTRATIVE
15 OF THE PEOPLE'S THEORY OR THE DEFENSE THEORY, IT'S STILL
16 ADMISSIBLE. IT DOESN'T HAVE TO BE IN DISPUTE.

17 MS. ABRAMSON: WELL, BUT COUNSEL IS MAKING IT
18 SEEM LIKE HE NEEDS THREE OR FOUR DIFFERENT PHOTOGRAPHS
19 TO ILLUSTRATE THE SAME THING WHEN IT'S NOT EVEN A VERY
20 CRUCIAL POINT.

21 MR. CONN: I THINK THAT IF ANYTHING WE COULD TAKE
22 9.MARY OUT. LET'S TAKE 9.MARY OUT.

23 MS. ABRAMSON: WELL, I WAS SUGGESTING THAT AS
24 WELL.

25 MR. CONN: LET'S DO THAT. IF WE TAKE OUT 9.MARY,
26 12.MARY AND 14.MARY, THEN I THINK THE OTHER FOUR

27 PHOTOGRAPHS; 8.MARY, 10.MARY, 13.MARY AND 16.MARY --

28 MS. ABRAMSON: WE'RE BACK TO 8? NO. I'D RATHER

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1 HAVE 8 OUT THAN 9.

2 THE COURT: NINE IS CERTAINLY NOT CONTROVERSIAL
3 IN ANY WAY.

4 MS. ABRAMSON: RIGHT. IT'S JUST -- BUT IT SHOWS
5 WHAT MR. CONN SAYS HE NEEDS TO SHOW.

6 MR. CONN: NO.

7 MS. ABRAMSON: WHICH IS HOW MANY WOUNDS ARE IN
8 THE CLAVICLE.

9 THE COURT: IT SHOWS A PERSPECTIVE OF IT, NOT THE
10 WHOLE WOUND.

11 MR. CONN: BUT THE PROBLEM WITH 9 IS IT'S SO HARD
12 TO PUT IT INTO PERSPECTIVE.

13 THE COURT: FOR SOMEBODY TO LOOK AT 9 -- IT WOULD
14 BE DIFFICULT FOR THE LAY PERSON TO ASSOCIATE THAT WITH A
15 PARTICULAR PORTION OF THE ANATOMY.

16 MS. ABRAMSON: THAT'S WHY IT'S JUST EXTRA. IT
17 SHOULD GO OUT ANYWAY.

18 THE COURT: UNLESS THE WOUND OR THE TRACK OF THE
19 WOUNDS OR THE SHAPE OF THE WOUNDS IS SIGNIFICANT IN SOME
20 FASHION.

21 MS. ABRAMSON: SO --

22 THE COURT: ALL RIGHT.

23 SO, I DON'T KNOW HOW 9 CAME INTO IT,
24 BECAUSE THAT'S NOT ONE OF THE PHOTOGRAPHS THAT WE WERE
25 TALKING ABOUT HERE ORIGINALLY. IT WAS 10, 12, 13 AND 16
26 THE PEOPLE SAID THAT THEY COULD FUNCTION WITH, AND
27 DELETE 8 AND 14.
28 MR. CONN: OKAY.

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1 THE COURT: I AM LOOKING AT 8 AND 14 AND LOOKING
2 AT THE OTHERS. I DON'T SEE ANYTHING ABOUT 10 OR 12 THAT
3 IS UNDULY PREJUDICIAL, JUST DIFFERENT ASPECTS OF THE
4 HEAD AND THE UPPER TORSO. THE FACT THAT HER EYE IS OPEN
5 IS -- THERE IS NOTHING INFLAMMATORY ABOUT THAT, THAT'S
6 JUST THE WAY THE BODY WAS FOUND.

7 OKAY. SO, AT THIS POINT THE PEOPLE ARE
8 AGREEING TO REMOVING 8 AND 14.

9 WHAT ELSE THEN IS IN DISPUTE AS TO MRS.
10 MENENDEZ HERE THAT WE HAVEN'T TALKED ABOUT?

11 MR. CONN: I THINK THAT'S IT.

12 MS. ABRAMSON: I THINK THOSE WERE THE
13 PHOTOGRAPHS.

14 THE COURT: OKAY.

15 MS. ABRAMSON: ARE WE OVERLOOKING SOMETHING THAT
16 THE COURT CAN SEE THAT I CAN'T SEE?

17 THE COURT: NO, I AM ASKING YOU.

18 MS. ABRAMSON: SO, WHAT WE HAVE IN IS 10, 12 --

19 THE COURT: THIRTEEN AND 16.
20 MS. ABRAMSON: THIRTEEN AND 16 OF THE FACE
21 PHOTOGRAPHS, AND THE OTHERS ARE OTHER PARTS THAT WEREN'T
22 OBJECTED TO.
23 THE COURT: EIGHT AND 14 HAVE BEEN REMOVED.
24 MS. ABRAMSON: OKAY. BETTER THAN NOTHING.
25 THE COURT: ANYTHING ELSE NOW ON PHOTOGRAPHS?
26 MS. ABRAMSON: NO, BUT I AM A LITTLE CONCERNED
27 ABOUT WHAT MR. CONN INTRODUCED THIS DISCUSSION WITH,
28 WHICH IS THAT --

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1 THE COURT: DO YOU WANT THESE BACK?
2 MS. ABRAMSON: YES, I DO, YOUR HONOR.
3 THE COURT: OKAY.
4 MS. ABRAMSON: THAT WE ARE OPERATING UNDER A
5 FALSE PREMISE THAT MR. MCCARTHY IS NOT GOING TO TESTIFY
6 THE SAME WAY HE DID BEFORE.
7 THE COURT: NO, I THINK MR. CONN SAID HE MIGHT --
8 I GOT THE IMPRESSION YOU WOULD ADD TO WHAT HE SAID.
9 MR. CONN: RIGHT.
10 MS. NAJERA: RIGHT.
11 THE COURT: HIS TESTIMONY WAS NOT AS FULL OR
12 COMPLETE AS IT WOULD BE IN THE -- BEFORE THE JURY, AND I
13 ASSUMED THAT THAT WOULD BE THE CASE, BECAUSE IT WAS JUST
14 A HEARING.

15 MS. NAJERA: FOR FOUNDATION.
16 MR. CONN: RIGHT.
17 MS. ABRAMSON: AND I AM RELYING ON THE
18 REPRESENTATION THAT THERE HAVE BEEN NO CHANGES MADE TO
19 HIS DIAGRAMS SINCE THE LAST C.D. WE WERE GIVEN WHICH
20 CONTAINED THOSE DIAGRAMS.
21 MR. CONN: ONCE AGAIN, I TOLD COUNSEL THE
22 NUMBERING. THERE IS NOW A NUMBER IN THE UPPER LEFT HAND
23 CORNER DEPICTING THE SEQUENCE.
24 MS. ABRAMSON: MEANING 1-A, 1-B?
25 MR. CONN: YES.
26 MS. ABRAMSON: I HAVE ALREADY NUMBERED MINE.
27 THE COURT: THOSE ARE THE EXHIBITS THAT ARE GOING
28 TO GO TO THE JURY ARE NUMBERED?

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1 MS. ABRAMSON: ARE THE IMAGES ON THE C.D.
2 NUMBERED?
3 MR. CONN: NO, I DON'T BELIEVE SO.
4 MS. ABRAMSON: AND WE STILL DO, YOUR HONOR,
5 OBJECT TO THE PROJECTION OF THESE IMAGES. I DON'T EVEN
6 KNOW WHAT SIZE THE MONITOR IS, COUNSEL HASN'T TOLD ME,
7 BUT PROJECTING THEM IN VERY LARGE IMAGES WE THINK, SINCE
8 THEY HAVE HARD COPY PHOTOGRAPHS AND SINCE DR. MCCARTHY
9 DIDN'T WANT TO LEAVE HIS COMPUTER BEHIND, AND SINCE WE
10 ARE NOT IN A POSITION TO PROJECT IMAGES, I JUST THINK

11 IT'S IMPROPER TO PROJECT IMAGES SUCH AS THESE.

12 I DON'T CARE IF HE WANTS TO PROJECT HIS
13 DIAGRAMS, BUT TO PROJECT THESE UGLY PHOTOGRAPHS INTO
14 HUGE IMAGES WE THINK INTERFERES WITH THE JURY'S ABILITY
15 TO THINK, BECAUSE THEY ARE UPSETTING. I DON'T KNOW IF
16 THEY'RE INFLAMMATORY, BUT THEY ARE SHOCKING, AND IT
17 TAKES A LONG TIME, A VERY LONG TIME TO GET USED TO THESE
18 IMAGES.

19 THE COURT: WELL, I -- MY VIEW IS THAT THE
20 PHOTOGRAPH, WHETHER IT'S DISPLAYED BY PROJECTION OR
21 SHOWN IN A LARGE VERSION IS STILL A PHOTOGRAPH, AND IT'S
22 ILLUSTRIOUS -- THE PURPOSE IS TO ILLUSTRATE THE
23 TESTIMONY OF THE WITNESSES, AND THESE ARE, FROM WHAT I
24 HAVE HEARD FROM OPENING STATEMENTS, FROM ALL THESE
25 DISCUSSIONS, ISSUES IN GREAT DISPUTE AND CONTROVERSY,
26 AND FOR THE PURPOSE OF ILLUSTRATING THE TESTIMONY OF THE
27 WITNESS, THE DISPLAY OF THEM IN A PROJECTION MODE IS
28 APPROPRIATE.

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1 I DON'T SEE THAT THERE'S ANYTHING
2 PREJUDICIAL OR INFLAMMATORY. I DON'T THINK IT WOULD
3 INFLAME THE JURY IN ANY WAY, BUT IT WOULD ASSIST THEM IN
4 EVALUATING THIS.

5 MS. ABRAMSON: I JUST THINK THE OVER-SCALED SIZE
6 IS NOT APPROPRIATE.

7 THE COURT: I DON'T KNOW WHAT WE'RE TALKING ABOUT
8 SIZE-WISE.

9 MS. ABRAMSON: I DON'T EITHER, BUT I THINK IT'S
10 GOING TO BE BIGGER THAN A BREAD BASKET.

11 MR. CONN: I THINK AS IT TURNS OUT WE WILL BE
12 USING THE SAME MONITOR AS WE USED TO PLAY "AT CLOSE
13 RANGE."

14 MS. ABRAMSON: WHICH IS HUGE.

15 THE COURT: IT'S NOT A HUGE PROJECTION.

16 MS. ABRAMSON: IT'S NOT LIKE AN ELMO, THANK GOD.
17 WE COULDN'T PUT AN ELMO IN THIS ROOM.

18 THE COURT: IT'S JUST A TELEVISION SCREEN. JUST
19 A TELEVISION SCREEN.

20 MS. NAJERA: IT'S NOT EVEN A BIG SCREEN.

21 THE COURT: AND IT'S GOING TO BE USED BY BOTH
22 LAWRENCE AND BY MCCARTHY, OR JUST MCCARTHY?

23 MR. CONN: NO, JUST DR. MCCARTHY.

24 THE COURT: SO, LAWRENCE IS JUST GOING TO USE THE
25 PHOTOGRAPHS THEMSELVES?

26 MR. CONN: THAT'S CORRECT.

27 MS. ABRAMSON: OKAY.

28 THE COURT: ALL RIGHT.

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1 AND ANY IDEA NOW HOW LONG LAWRENCE'S
2 TESTIMONY WOULD BE?

3 MR. CONN: I IMAGINE HIS DIRECT WILL BE A COUPLE
4 OF HOURS, AND I AM PLANNING ON USING DR. MCCARTHY ON
5 TUESDAY. HOPEFULLY WE'LL BE FINISHED WITH DR. LAWRENCE
6 ON MONDAY, ALTHOUGH I THINK DR. MCCARTHY WILL BE HERE ON
7 MONDAY AS WELL, SO IF NECESSARY WE COULD GET TO HIM.

8 THE COURT: ALL RIGHT. AT THIS POINT I AM SURE
9 THE DEFENSE CAN'T REALLY GIVE A TIME ESTIMATE UNTIL YOU
10 HEAR WHAT HIS TESTIMONY WILL BE.

11 MS. ABRAMSON: DR. MCCARTHY?

12 THE COURT: WELL, NO.

13 MS. ABRAMSON: LAWRENCE?

14 THE COURT: DR. LAWRENCE, YEAH.

15 MS. ABRAMSON: PROBABLY I'D NEED TO CROSS-EXAMINE
16 HIM FOR -- IT DEPENDS. I AM STILL NOT REAL CLEAR ON
17 WHAT HE'S GOING TO SAY. MAYBE TWO, THREE HOURS OF
18 CROSS-EXAMINATION. TWO DAYS WITH DR. MCCARTHY.

19 THE COURT: AND THIS WILL BE THE END OF THE
20 PEOPLE'S PRESENTATION?

21 MR. CONN: YES.

22 THE COURT: HAVE YOU HAD A CHANCE YET TO LOOK AT
23 EXHIBITS AND DISCUSS THINGS THAT MIGHT BE IN DISPUTE, GO
24 THROUGH YOUR LIST TO SEE IF THERE ARE ANY THINGS -- ANY
25 EXHIBITS THAT ARE IN DISPUTE?

26 MS. ABRAMSON: WE HAVEN'T, BUT I AM SURE -- I CAN
27 CERTAINLY DELEGATE THAT TO MR. LEVIN TO START LOOKING,
28 SINCE I AM GOING TO BE A LITTLE BUSY WITH BLOOD AND GORE

1 FOR A WHILE.

2 THE COURT: ALSO, STILL THE TRANSCRIPT OF THE

3 OZIEL TAPE RECORDING --

4 MS. ABRAMSON: NEEDS RECONCILIATION.

5 THE COURT: IF YOU CAN NARROW YOUR DISPUTES SO

6 THAT YOU CAN GIVE IT TO ME TO REVIEW.

7 OKAY. ANYTHING ELSE THEN THAT YOU WANT TO

8 DISCUSS BEFORE WE TAKE OUR RECESS?

9 MR. CONN: NO.

10 THE COURT: OKAY. THEN WE'LL SEE YOU BACK ON

11 MONDAY AT 8:30.

12 MS. ABRAMSON: THANK YOU, YOUR HONOR.

13

14 (A RECESS WAS TAKEN AT 3:00 P.M.

15 UNTIL MONDAY, NOVEMBER 6, 1995)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

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

4

THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)

)
6 PLAINTIFFS,)

)
7)
VS.) NO. BA 068880

8)
ERIK GALEN MENENDEZ, AND)
9 JOSEPH LYLE MENENDEZ,)

10)
 DEFENDANTS.)
)

11

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

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 APPEARANCES:
20 (SEE APPEARANCE PAGE)

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26 G = MR. GESSLER L = MR. LEVIN
N = MS. NAJERA T = MS. TOWERY

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