

1 VAN NUYS, CALIFORNIA; WEDNESDAY, NOVEMBER 8, 1995

2 9:15 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: EVERYONE'S PRESENT.

7 WE'LL HAVE THE JURY OUT, PLEASE.

8 (THE JURY ENTERED THE

9 COURTROOM AND THE FOLLOWING

10 PROCEEDINGS WERE HELD:)

11

12 THE COURT: THE JURY'S IN THE COURTROOM.

13 GOOD MORNING, LADIES AND GENTLEMEN.

14 WE'RE READY TO RESUME WITH THE TRIAL.

15

16 DR. ROBERT DON LAWRENCE,

17 THE WITNESS ON THE STAND AT THE ADJOURNMENT, HAVING

18 BEEN PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:

19 THE COURT: DR. LAWRENCE IS STILL ON THE

20 WITNESS STAND.

21 WOULD YOU STATE YOUR NAME AGAIN FOR THE

22 RECORD.

23 THE WITNESS: ROBERT DON LAWRENCE.

24 THE COURT: I'LL REMIND YOU YOU'RE STILL

25 UNDER OATH AND WE'RE IN REDIRECT EXAMINATION.

26 MR. CONN: THANK YOU.

27

28 / / /

1 REDIRECT EXAMINATION (RESUMED)

2 BY MR. CONN:

3 Q DOCTOR, YESTERDAY YOU WERE SHOWN SOME
4 DIAGRAMS BY DEFENSE COUNSEL AND YOU WERE ASKED
5 WHETHER YOU AGREE OR DISAGREE WITH SOME OF THE SHOTS
6 OR TRAJECTORIES THAT ARE REFLECTED IN THOSE
7 DIAGRAMS.

8 I WOULD LIKE TO SHOW SOME OF THOSE TO
9 YOU ONCE AGAIN.

10 I'D LIKE TO BEGIN BY SHOWING YOU WHAT
11 HAS ALREADY BEEN MARKED AS 222 AND 223 FOR
12 IDENTIFICATION.

13 AND DIRECTING YOUR ATTENTION TO WHAT
14 APPEARS TO BE TWO VIEWS OF THIS SAME SHOT.

15 IS THIS THE SHOT, FIRST OF ALL, THAT
16 REPRESENTS THE SHOT TO THE AREA OF THE RIGHT EYE OF
17 KITTY MENENDEZ?

18 A YES, IT IS.

19 Q AND I BELIEVE THAT YOU INDICATED IN YOUR
20 TESTIMONY THAT YOU HAVE A SLIGHTLY DIFFERENT VIEW
21 CONCERNING THE PRECISE ANGLE AT WHICH THAT SHOT
22 STRUCK THE FACE; IS THAT CORRECT?

23 A YES, A VERY SLIGHT DIFFERENCE. THIS

24 FAIRLY ACCURATELY DEPICTS WHAT I FEEL IS THE PATH OF
25 THE GUNSHOT WOUND.
26 Q ALL RIGHT. I DON'T KNOW IF IT'S VISIBLE
27 TO THE JURY USING THESE SMALL ILLUSTRATIONS, BUT DO
28 THOSE ILLUSTRATIONS DEPICT A TRAJECTORY OR PATH FOR

40199

1 THE GUN SHOT?

2 A YES.

3 Q AND HOW IS THAT DEPICTED IN THOSE
4 ILLUSTRATIONS?

5 A IT IS MORE OR LESS HORIZONTAL, STRIKING
6 THE RIGHT EYE, COMING FROM THE VICTIM'S RIGHT,
7 SLIGHTLY TO THE VICTIM'S RIGHT.

8 Q THERE'S SORT OF A GREEN LINE GOING
9 ACROSS THE DIAGRAM; IS THAT CORRECT?

10 A YES.

11 Q AND DOES THAT REPRESENT OR APPEAR TO
12 REPRESENT THE PATH OF THE TRAJECTORY?

13 A YES. THE GREEN LINE IS THE TRAJECTORY.

14 Q OKAY. WHAT I WOULD LIKE YOU TO DO,
15 THEN, IF YOU WOULD, IS IF YOU WOULD TAKE THIS RED
16 MARKER AND ILLUSTRATE ON THAT DIAGRAM -- PERHAPS YOU
17 CAN USE THE ONE THAT IS MARKED 223 -- HOW YOU WOULD
18 PLACE THE TRAJECTORY AS OPPOSED TO THAT GREEN LINE

19 THAT IS CURRENTLY THERE.

20 A (WITNESS COMPLIES.)

21 Q OKAY. AS IT IS NOW DEPICTED IN THAT
22 DIAGRAM, YOU HAVE NO DISPUTE WITH THAT PARTICULAR
23 DIAGRAM AS REPRESENTING WHERE KITTY MENENDEZ -- OR
24 THE POSITION AT WHICH KITTY MENENDEZ MIGHT HAVE
25 TAKEN THAT SHOT TO THE RIGHT EYE?

26 A I'M SORRY. I DON'T UNDERSTAND THE
27 QUESTION.

28 Q AS YOU HAVE NOW DRAWN THAT TRAJECTORY

40200

1 USING A RED MARKER, YOU HAVE NO DISPUTE WITH THE WAY
2 THAT THAT DIAGRAM DEPICTS THE WAY THAT KITTY
3 MENENDEZ MIGHT HAVE TAKEN THAT SHOT TO HER RIGHT
4 EYE?

5 A NO, AND THE DIAGRAM COULD EVEN BE
6 CORRECT COMPARED TO ME. IT'S IMPRECISE. MY BEST
7 ESTIMATE IS WHAT I'VE SHOWN. I COULD BE OFF A
8 LITTLE BIT.

9 Q OKAY. ALL RIGHT. SO YOU HAVE NO
10 PROBLEM WITH THAT.

11 WHY DON'T YOU JUST PLACE A CHECKMARK ON
12 223 AT THIS TIME.

13 NOW, 222 SHOWS THE ANGLE FULL FRONTAL.

14 IS THERE ANY WAY YOU CAN CHANGE THAT LINE TO MAKE IT
15 CORRESPOND MORE CLOSELY TO HOW YOU VIEW THE ANGLE OR
16 TRAJECTORY TO HER RIGHT EYE?

17 A NO.

18 Q ALL RIGHT. SO THEN JUST PLACE A
19 CHECKMARK.

20 LET ME GO THROUGH SOME ADDITIONAL
21 DIAGRAMS WITH YOU.

22 BUT BEFORE I MOVE ON FROM THAT
23 PARTICULAR SHOT THAT YOU JUST REFERRED TO, LET ME
24 ASK YOU: DO YOU HAVE -- IN YOUR OWN MEDICAL
25 OPINION, DO YOU HAVE ANY DISPUTE WITH THE MANNER IN
26 WHICH THAT DIAGRAM REPRESENTS THE SHOT THAT KITTY
27 MENENDEZ TOOK TO HER RIGHT EYE?

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

40201

1 HONOR. THE QUESTION IS TOO VAGUE. MUCH OF THAT HAS
2 NOTHING TO DO WITH MEDICAL OPINION.

3 THE COURT: DO YOU UNDERSTAND THE QUESTION?

4 THE WITNESS: I THINK SO.

5 THE COURT: YOU MAY ANSWER IT.

6 THE WITNESS: NO.

7 Q BY MR. CONN: YOU HAVE NO MEDICAL BASIS
8 UPON WHICH YOU CAN DISAGREE WITH WHAT IS REFLECTED

9 IN THAT DIAGRAM; IS THAT CORRECT?

10 A NONE AT ALL.

11 Q OKAY. ALL RIGHT. LET'S MOVE ON THEN TO

12 TWO OTHER DIAGRAMS THAT WERE SHOWN TO YOU.

13 THIS IS 226 AND 227, AND THESE APPEAR TO

14 REPRESENT A SHOT THAT KITTY MENENDEZ RECEIVED TO HER

15 LEFT THIGH, THAT IS, THE THROUGH-AND-THROUGH WOUND

16 TO HER LEFT THIGH.

17 NOW, YESTERDAY DURING THE EXAMINATION BY

18 DEFENSE COUNSEL SHE MADE A RED MARK OR RED "X" ON

19 EACH OF THOSE DIAGRAMS.

20 DO YOU HAVE ANY DISPUTE WITH THE MANNER

21 IN WHICH THOSE DIAGRAMS DEPICT THE SHOT THAT KITTY

22 MENENDEZ RECEIVED TO HER LEFT THIGH?

23 A NO, SIR. THOSE LOOK FINE TO ME.

24 Q OKAY. AND IS THERE ANY MEDICAL BASIS

25 UPON WHICH YOU CAN CONCLUDE THAT THE SHOTS, THAT IS,

26 THE SHOT TO KITTY'S LEFT THIGH, DID NOT OCCUR AS

27 DEPICTED IN THESE DIAGRAMS?

28 A NO.

40202

1 Q ALL RIGHT. THEN I WOULD ASK YOU TO

2 PLACE A CHECK MARK ON EACH OF THOSE TWO.

3 TWO MORE DIAGRAMS THAT WERE SHOWN TO YOU

4 YESTERDAY WERE 224 AND 225. ONCE AGAIN, AS WITH THE
5 ONES THAT I PREVIOUSLY PUT UP ON THE BOARD, THESE
6 REPRESENT TWO VIEWS OF THE SAME SHOT; IS THAT
7 CORRECT?

8 A YES.

9 Q AND HERE THIS APPEARS TO REPRESENT THE
10 SHOT THAT KITTY MENENDEZ RECEIVED TO TWO PARTS OF
11 HER RIGHT ARM; THAT IS, THE RIGHT FOREARM AND THE
12 RIGHT UPPER ARM.

13 ONCE AGAIN, COUNSEL, I BELIEVE, DURING
14 HER EXAMINATION OF YOU MADE A RED "X" ON THE TOP
15 ONE, WHICH HAS BEEN MARKED 224.

16 DO YOU HAVE ANY DISPUTE WITH THE WAY
17 THAT THESE ILLUSTRATIONS DEPICT THAT SHOT TO THE
18 RIGHT ARM OF KITTY MENENDEZ?

19 A NO, SIR.

20 Q ALL RIGHT. AND DO YOU HAVE ANY MEDICAL
21 BASIS UPON WHICH YOU CAN CONCLUDE THAT THE SHOTS DID
22 NOT OCCUR IN THE MANNER DEPICTED IN THESE
23 ILLUSTRATIONS?

24 A NO.

25 Q ALL RIGHT. ONCE AGAIN, I WOULD ASK YOU,
26 THEN, TO PLACE A RED CHECKMARK ON EACH OF THESE TWO
27 ILLUSTRATIONS.

28 I HAVE TWO MORE ILLUSTRATIONS WHICH

1 APPEAR TO DEPICT THE SHOT TO THE LEFT CHEEK OF KITTY
2 MENENDEZ. I'LL MARK THESE AT THIS TIME 228 AND
3 229.

4 THE COURT: DO WE HAVE 227?

5 THE CLERK: WE STRAIGHTENED IT OUT.

6 Q BY MR. CONN: SHOWING YOU 228 AND 229,
7 DO THOSE TWO ILLUSTRATIONS APPEAR TO DEPICT THE SAME
8 SHOT, 228 BEING A SHOT LOOKING FROM THE CEILING DOWN
9 TO THE FLOOR AND 229 DEPICTING A FRONTAL VIEW OF
10 THAT SAME SHOT?

11 A YES.

12 Q AND AS YOU LOOK AT THOSE ILLUSTRATIONS
13 DO YOU HAVE ANY DISAGREEMENT, ONCE AGAIN, BASING
14 YOUR OPINION UPON THE TRAJECTORY, WHICH IS
15 REPRESENTED BY A GREEN LINE, INTO THE FACE AREA OF
16 THE MANNEQUIN, DO YOU HAVE ANY DISAGREEMENT WITH THE
17 WAY THAT THOSE ILLUSTRATIONS DEPICT THE SHOT
18 RECEIVED BY KITTY MENENDEZ TO HER LEFT CHEEK?

19 A NO.

20 Q AND IS THERE ANY MEDICAL BASIS UPON
21 WHICH YOU CAN SAY THAT THE SHOT DID NOT OCCUR AS
22 DEPICTED IN THOSE ILLUSTRATIONS?

23 A NO.

24 Q SO, ONCE AGAIN, I WOULD ASK YOU TO, IF
25 YOU WOULD, PLACE A RED CHECKMARK ON THOSE.

26 I HAVE TWO ADDITIONAL ILLUSTRATIONS
27 WHICH APPEAR TO DEPICT THE SHOT TO THE LEFT SHOULDER

40204

1 MARK THESE 230 AND 231.

2 ONCE AGAIN, DO THESE TWO ILLUSTRATIONS
3 APPEAR TO DEPICT THE SAME SHOT FROM TWO DIFFERENT
4 ANGLES; THAT IS, 230 BEING THE SHOT LOOKING DOWN
5 FROM THE CEILING AND 231 BEING THE SHOT OR THE VIEW
6 FROM THE FULL FRONTAL POINT OF VIEW?

7 A YES.

8 Q AND ONCE AGAIN, BASED UPON THE MANNER IN
9 WHICH THE TRAJECTORY IS DEPICTED IN THOSE
10 ILLUSTRATIONS BY A GREEN BAR, AND BASED UPON YOUR
11 REVIEW OF THE AUTOPSY REPORTS AND THE PHOTOGRAPHS
12 AND X RAYS, DO YOU HAVE ANY DISAGREEMENT WITH THE
13 WAY THAT SHOT IS DEPICTED IN 230 AND 231?

14 A NO, SIR.

15 Q DO YOU HAVE ANY MEDICAL BASIS UPON WHICH
16 YOU CAN CONCLUDE THAT SHOT IS NOT ACCURATELY
17 DEPICTED?

18 A NO.

19 Q ONCE AGAIN, I WOULD ASK YOU, IF YOU
20 WOULD, THEN, TO MAKE A RED CHECKMARK ON EACH OF
21 THESE.

22 I HAVE TWO MORE ILLUSTRATIONS, WHICH

23 I'LL MARK AT THIS TIME, AS 232 AND 233.
24 SHOWING YOU THOSE ILLUSTRATIONS, DO
25 THESE ILLUSTRATIONS APPEAR TO DEPICT THE SAME SHOT
26 FROM TWO DIFFERENT ANGLES, 232 BEING THE SHOT
27 LOOKING FROM THE CEILING DOWN -- THE ANGLE LOOKING
28 FROM THE CEILING DOWN TO THE GROUND, AND 233, THE

40205

1 VIEW FROM THE BACK OF THE SOFA TOWARD THE COFFEE
2 TABLE?

3 A YES.

4 Q AND ONCE AGAIN, BASING YOUR OPINION UPON
5 THE MATERIAL THAT YOU REVIEWED IN THIS CASE, THE
6 AUTOPSY REPORTS AND THE X RAYS AND PHOTOGRAPHS, DO
7 YOU HAVE ANY DISPUTE WITH THE WAY THAT THESE
8 ILLUSTRATIONS DEPICT WHAT APPEARS TO BE THAT
9 THROUGH-AND-THROUGH WOUND THAT WENT THROUGH THE
10 LOWER PART OF THE LEFT LEG OF KITTY'S -- OF KITTY
11 MENENDEZ AND WHICH EMERGED THROUGH THE TOP PART OF
12 HER LEFT LEG?

13 A THROUGH THE THIGH. I HAVE NO DISPUTE.

14 Q IS THERE ANY MEDICAL BASIS UPON WHICH
15 YOU CAN SAY THAT THESE ILLUSTRATIONS DO NOT
16 ACCURATELY DEPICT THE SHOT THAT KITTY MENENDEZ
17 RECEIVED TO THOSE TWO PLACES IN HER LEG?

18 A NO.

19 Q ALL RIGHT. ONCE AGAIN, I WOULD ASK YOU
20 TO MAKE A RED CHECKMARK THEN ON EACH OF THOSE
21 ILLUSTRATIONS.

22 I'M NOW MARKING TWO ADDITIONAL
23 ILLUSTRATIONS AS 234 AND 235.

24 ONCE AGAIN, I ASK YOU IF THE TOP
25 ILLUSTRATION, WHICH HAS BEEN MARKED AS 234, APPEARS
26 TO BE ANOTHER VIEW OF THE BOTTOM ILLUSTRATION WHICH
27 HAS BEEN MARKED AS 235.

28 A YES.

40206

1 Q AND DO BOTH OF THOSE ILLUSTRATIONS
2 APPEAR TO DEPICT THE INJURY THAT KITTY MENENDEZ
3 RECEIVED TO HER LEFT CALF AREA?

4 A YES.

5 Q AND BASED UPON YOUR REVIEW OF THE
6 AUTOPSY REPORTS AND PHOTOGRAPHS AND X RAYS, DO YOU
7 HAVE ANY DISAGREEMENT WITH THE MANNER IN WHICH THIS
8 PARTICULAR SHOT IS DEPICTED IN THOSE ILLUSTRATIONS?

9 A NO, SIR.

10 Q IS THERE ANY MEDICAL BASIS UPON WHICH
11 YOU CAN CONCLUDE THAT THOSE ILLUSTRATIONS DO NOT
12 ACCURATELY REPRESENT THE SHOT THAT WAS RECEIVED TO

13 THE LEFT CALF AREA OF KITTY MENENDEZ?

14 A NO.

15 Q ONCE AGAIN, I WOULD ASK YOU TO MAKE A

16 RED CHECKMARK ON EACH OF THOSE.

17 ALL RIGHT. THE NEXT TWO ILLUSTRATIONS I

18 AM MARKING AS 236 AND 237.

19 I WOULD LIKE TO ASK YOU IF 236, WHICH IS

20 THE ILLUSTRATION THAT I HAVE PLACED ON THE TOP OF

21 THE BOARD, APPEARS TO BE ANOTHER VIEW OF THE SAME

22 SHOT THAT IS DEPICTED IN 237, WHICH APPEARS JUST

23 BENEATH THAT?

24 A YES.

25 Q AND DO BOTH OF THOSE ILLUSTRATIONS

26 APPEARS TO DEPICT THE SHOT THAT WAS FIRED INTO THE

27 LEFT LEG OF JOSE MENENDEZ?

28 A YES.

40207

1 Q AND BASED UPON YOUR REVIEW OF THE

2 MATERIAL IN THIS CASE, DO YOU SEE ANY BASIS UPON

3 WHICH YOU CAN DISAGREE WITH THE SHOT AS IT IS

4 DEPICTED IN THOSE ILLUSTRATIONS?

5 A NO, SIR.

6 Q IS THERE ANY MEDICAL BASIS THAT YOU CAN

7 THINK OF THAT WOULD CAUSE YOU TO CONCLUDE THAT THOSE

8 ILLUSTRATIONS DO NOT ACCURATELY DEPICT THE SHOT TO

9 JOSE MENENDEZ?

10 A NO.

11 Q ONCE AGAIN, I WOULD ASK YOU TO PLACE RED

12 CHECKMARKS ON EACH OF THOSE.

13 I AM NOW MARKING EXHIBITS 238 AND 239,

14 TWO MORE ILLUSTRATIONS IN THIS SERIES OF

15 ILLUSTRATIONS.

16 I'M PLACING THOSE ON THE BOARD AT THIS

17 TIME.

18 DOES 238, WHICH IS THE TOP ILLUSTRATION,

19 APPEAR TO DEPICT THE SAME SHOT FROM A DIFFERENT

20 VIEWPOINT AS 239, WHICH IS THE ILLUSTRATION AT THE

21 BOTTOM?

22 A YES. THEY BOTH SHOW THE SHOT THAT WENT

23 THROUGH THE HAND AND THE COLLAR BONE AREA OF KITTY

24 MENENDEZ.

25 Q OKAY. AND BASED UPON YOUR REVIEW OF THE

26 AUTOPSY REPORTS AND THE X RAYS AND THE PHOTOGRAPHS

27 IN THIS CASE, DO YOU HAVE ANY BASIS UPON WHICH YOU

28 CAN DISAGREE WITH THE SHOTS AS THEY ARE -- THAT SHOT

40208

1 AS IT IS DEPICTED IN THOSE TWO ILLUSTRATIONS?

2 A NO.

3 Q IS THERE ANY MEDICAL BASIS UPON WHICH
4 YOU CAN CONCLUDE THAT THE -- THOSE ILLUSTRATIONS DO
5 NOT ACCURATELY DEPICT THE SHOT TO KITTY MENENDEZ?

6 A NO, SIR.

7 Q ONCE AGAIN, I WOULD ASK YOU TO MAKE A
8 RED MARK ON EACH OF THOSE.

9 THE NEXT TWO ILLUSTRATIONS WILL BE
10 MARKED 240 AND 241. I'M PLACING THOSE ILLUSTRATIONS
11 ON THE BOARD.

12 DO THESE TWO ILLUSTRATIONS APPEAR TO BE
13 TWO ILLUSTRATIONS OF THE --

14 A WE'VE ALREADY DONE THOSE.

15 Q OKAY. THE ILLUSTRATIONS THAT I AM
16 MARKING AS 241 AND 240 APPEAR TO BE TWO
17 ILLUSTRATIONS TO THE -- LET ME HAVE JUST ONE MOMENT.

18 DO YOU HAVE 224 AND 225 IN FRONT OF
19 YOU?

20 A I THINK WE'RE DEALING WITH TWO SHOTS,
21 PORTIONS OF TWO SETS.

22 MR. CONN: MAY I TAKE A LOOK AT THOSE?

23 WE'LL MOVE ON TO -- I BELIEVE THE NEXT IN
24 SEQUENCE WOULD BE 240 AND 241.

25 THE COURT: YOU WERE IN THE PROCESS OF
26 MARKING 240 AND 241 AND ABORTED THAT. SO THOSE WILL
27 BE THE NEXT TWO.

28 MR. CONN: OKAY. THE ONES I AM NOW MARKING

1 AS 240 AND 241 APPEAR TO DEPICT THE SHOT TO THE HEAD
2 OF JOSE MENENDEZ.

3 Q I WOULD LIKE TO PLACE THIS ON THE BOARD
4 AND ASK YOU AT THIS TIME: DO THESE TWO
5 ILLUSTRATIONS APPEAR TO DEPICT TWO VIEWS OF THAT
6 SAME SINGLE SHOT?

7 A YES, SIR.

8 Q AND ONCE AGAIN, BASED UPON THE MATERIAL
9 THAT YOU REVIEWED IN THIS CASE, INCLUDING THE
10 AUTOPSY REPORTS AND THE PHOTOGRAPHS AND X RAYS, DO
11 YOU HAVE ANY BASIS UPON WHICH YOU CAN DISAGREE WITH
12 THE MANNER IN WHICH THAT SHOT IS DEPICTED IN EACH OF
13 THOSE TWO ILLUSTRATIONS?

14 A NO, I CAN'T.

15 Q DO YOU HAVE ANY MEDICAL BASIS UPON WHICH
16 YOU CAN CONCLUDE THAT THOSE ILLUSTRATIONS DO NOT
17 ACCURATELY DEPICT THE MANNER IN WHICH JOSE WAS SHOT
18 TO THE BACK OF THE HEAD?

19 A NO.

20 Q ONCE AGAIN, LET ME GIVE THOSE TO YOU AND
21 ASK YOU TO MARK THOSE AT THIS TIME WITH A
22 CHECKMARK.

23 ALL RIGHT. NOW, BEFORE WE MOVE ON TO
24 THE LAST ONE, WHICH WOULD BE THE SHOT OF JOSE AND
25 KITTY MENENDEZ ON THE SOFA, LET ME ASK YOU SOME

26 QUESTIONS ABOUT SOME OF THOSE THAT WE HAVE GONE
27 THROUGH ALREADY.
28 IN REGARD TO THE SHOT THAT WENT THROUGH

40210

1 THE UPPER THIGH OF KITTY MENENDEZ, THAT IS THE
2 THROUGH-AND-THROUGH SHOT, YOU WERE ASKED A SERIES OF
3 QUESTIONS YESTERDAY CONCERNING WHICH OF THE WOUNDS
4 TO HER UPPER THIGH WAS THE ENTRANCE AND WHICH WAS
5 THE EXIT.

6 DO YOU RECALL THAT?

7 A YES.

8 Q AND DO YOU RECALL THAT AFTER A RECESS
9 DEFENSE COUNSEL ASKED YOU THAT HAVING HAD AN
10 OPPORTUNITY TO SPEAK WITH MYSELF AND OTHER PERSONS,
11 WHETHER YOU HAD CHANGED YOUR OPINION CONCERNING THAT
12 PARTICULAR SHOT?

13 DO YOU RECALL THAT QUESTION?

14 A YES.

15 Q JUST TO CLARIFY FOR THE RECORD, WHAT IS
16 YOUR POSITION CONCERNING THAT PARTICULAR SHOT, THAT
17 IS, TO THE UPPER THIGH OF KITTY MENENDEZ?

18 A MY POSITION REMAINS THAT IT IS FROM THE
19 FRONT OF THE THIGH TO THE BACK.

20 Q NOW, DIRECTING YOUR ATTENTION TO THE

21 WOUND TO THE CHEEK, TO THE LEFT CHEEK OF KITTY
22 MENENDEZ, THAT IS THE WOUND THAT YOU IDENTIFIED AS
23 THE CONTACT WOUND, YOU BROUGHT WITH YOU, DID YOU
24 NOT, A PHOTOGRAPH TO DEPICT A WOUND WHICH SHOWS A
25 LACK OF HEMORRHAGING AROUND THE WOUND; IS THAT
26 CORRECT?
27 A YES, SIR. THAT'S FROM A HOMICIDE CASE
28 OF MINE.

40211

1 Q AND CAN YOU TELL US WHY IT IS THAT YOU
2 BROUGHT THIS PHOTOGRAPH, WHICH HAS BEEN MARKED AS
3 211, WITH YOU TO COURT WHEN YOU CAME TO TESTIFY IN
4 REGARD TO THIS MATTER.

5 A I RECEIVED A TELEPHONE CALL FROM THE
6 PUBLIC DEFENDER'S OFFICE IN WHICH THE ATTORNEY AND I
7 HAD A DISCUSSION ABOUT THE CONTACT WOUND IN KITTY'S
8 LEFT CHEEK, AND IT WAS THE FEELING OF --

9 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
10 OBJECT TO THIS AS HEARSAY, WHATEVER WAS IN THAT
11 TELEPHONE CONVERSATION.

12 THE COURT: THE CONTENT OF THE CONVERSATION
13 IS HEARSAY. HIS ANSWER IS HE BROUGHT IT IN RESPONSE
14 TO A CONVERSATION HE HAD WITH SOMEBODY IN THE PUBLIC
15 DEFENDER'S OFFICE.

16 IS THAT RIGHT?

17 THE WITNESS: YES, SIR.

18 THE COURT: OKAY.

19 Q BY MR. CONN: ALL RIGHT. LET ME SHOW

20 YOU WHAT HAS ALSO BEEN MARKED 196 FOR

21 IDENTIFICATION. I'LL PLACE THAT ON THE BOARD AT

22 THIS TIME.

23 WAS THERE SOMETHING THAT YOU WISHED TO

24 ILLUSTRATE --

25 A COULD YOU PUT IT A LITTLE FURTHER TO THE

26 LEFT SO THE OTHER ONE SHOWS IN THE ENTIRETY.

27 Q AND IS THERE --

28 A NO. THAT CONVERSATION --

40212

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

2 CONVERSATION.

3 Q BY MR. CONN: WITHOUT GOING INTO THE

4 CONVERSATION --

5 THE COURT: SUSTAINED.

6 Q BY MR. CONN: JUST LET ME ASK YOU WHAT

7 IT IS THAT YOU WERE ATTEMPTING TO DEPICT BY BRINGING

8 THIS PHOTOGRAPH WITH YOU IN RELATIONSHIP TO THIS

9 WOUND WHICH APPEARS ON KITTY'S LEFT CHEEK.

10 A THE WOUND ON HER LEFT CHEEK CONSISTS OF

11 A CIRCULAR DEFECT WITH NO HEMORRHAGE OR BRUISING
12 AROUND IT.
13 FOR THAT REASON, ONE MIGHT THINK IT MAY
14 BE POSTMORTEM; THAT THERE WAS NO BLEEDING UNDER THE
15 SKIN AS A RESULT OF THE WOUND.
16 DR. GOLDEN, IN HIS AUTOPSY, DID DESCRIBE
17 BLEEDING INSIDE. AS YOU CAN SEE FROM THE
18 PHOTOGRAPH, THERE'S NO BRUISING AROUND IT.
19 I BROUGHT THE OTHER PHOTOGRAPH OF
20 ANOTHER CASE TO ILLUSTRATE THAT IN A CONTACT SHOTGUN
21 WOUND THAT IS ANTEMORTEM, YOU CAN HAVE ABSOLUTELY NO
22 BRUISING OR HEMORRHAGE IN THE SURROUNDING SKIN.
23 THIS WOUND ON THE RIGHT IS FROM A CASE
24 THAT I AUTOPSIED IN WHICH THE PERSON WAS SHOT ONCE
25 WITH A SHOTGUN, WITH A CONTACT WOUND, SO WE KNOW HE
26 WAS ALIVE AT THE TIME HE WAS HIT, AND WE SEE
27 ABSOLUTELY NO HEMORRHAGE AROUND THE HOLE.
28 Q AND BASED UPON THE FACT THAT BLEEDING

40213

1 WAS OBSERVED INSIDE THE WOUND BY DR. GOLDEN, AND
2 BASED UPON THE WOUND AS IT APPEARS IN THAT
3 PHOTOGRAPH DEPICTING KITTY MENENDEZ, WOULD YOU HAVE
4 AN OPINION AS TO WHETHER OR NOT THAT WAS POSTMORTEM
5 OR ANTEMORTEM?

6 A NOT REALLY. I CAN'T BE SURE.

7 Q WHY IS THAT?

8 A THERE ARE OTHER SHOTGUN WOUNDS INVOLVING
9 THE HEAD ON THIS VICTIM, AND THEY WOULD CAUSE
10 HEMORRHAGE, AND THERE ARE PELLETS CRISSCROSSING AND
11 SO FORTH. SO I CANNOT BE SURE IF THE INTERNAL
12 HEMORRHAGE WAS DUE TO THIS SHOTGUN WOUND OR ONE OF
13 THE OTHERS. I HAVE NO OPINION ABOUT ANTEMORTEM,
14 PERIMORTEM OR POSTMORTEM.

15 Q IN REGARD TO THE WOUND OF THE LEFT LEG
16 OF JOSE MENENDEZ, I BELIEVE THAT YOU SAID IN
17 RESPONSE TO A QUESTION FROM COUNSEL THAT THE REASON
18 WHY YOU WOULD CONCLUDE THAT THAT WOUND WAS A
19 POSTMORTEM WOUND WAS BECAUSE YOU WOULD EXPECT THERE
20 TO BE MORE BLEEDING TO THAT WOUND THAN YOU OBSERVED
21 AT -- IN THE PHOTO OF THE CRIME SCENE; IS THAT
22 CORRECT?

23 A YES.

24 Q NOW, YOU PREMISED YOUR BELIEF THAT THERE
25 WOULD BE MORE BLEEDING THAN WAS OBSERVABLE IN THE
26 PHOTO OF THE CRIME SCENE UPON YOUR CONCLUSION THAT
27 YOU WOULD EXPECT THERE TO BE SOME -- I BELIEVE YOU
28 CALLED IT ARTERIAL DAMAGE TO THE LEG?

1 A VASCULAR DAMAGE, YES, SIR.

2 Q WHAT DID YOU MEAN BY VASCULAR DAMAGE?

3 A DISRUPTION OR INJURY OF BLOOD VESSELS

4 CAUSING HEMORRHAGE.

5 Q CAN YOU DESCRIBE THE BLOOD VESSELS THAT

6 YOU WOULD EXPECT TO FIND IN THAT PARTICULAR PORTION

7 OF THE LEG.

8 A THAT AREA THERE IS THE LARGEST VESSEL,

9 IS THE FEMORAL ARTERY, AND IT'S ABOUT A LITTLE BIT

10 LARGER THAN A PENCIL IN DIAMETER, AND IT PASSES DOWN

11 RIGHT ALONG THE BACK SIDE OF THE FEMUR, RIGHT IN THE

12 AREA WHERE IT WAS SHATTERED FROM THE GUNSHOT WOUND.

13 AND THEN IT GIVES OFF BRANCHES THAT GO INTO THE

14 FEMUR ITSELF AND ALSO BRANCHES INTO THE SURROUNDING

15 SOFT TISSUES, AND THOSE MAIN BRANCHES ARE ABOUT THE

16 SIZE OF A PENCIL LEAD. AND ANY OF THOSE VESSELS, IF

17 SHATTERED, WOULD CAUSE SIGNIFICANT AND OBVIOUS

18 HEMORRHAGE.

19 Q LET ME SHOW YOU THE PHOTO THAT HAS BEEN

20 MARKED 182 AND THE X RAY THAT HAS BEEN MARKED 176.

21 CAN YOU TELL US SPECIFICALLY WHERE THE

22 FEMORAL ARTERY IS LOCATED.

23 A IF YOU LOOK AT THE X RAY, WHICH IS

24 NO. 186, YOU CAN -- THE FEMORAL ARTERY WOULD COME

25 RIGHT DOWN THE SOFT TISSUES RIGHT BEHIND THE FEMORAL

26 BONE. AT THIS POINT IT WOULD BECOME THE POPLITEAL

27 ARTERY, P-O-P-L-I-T-E-A-L, WHICH IS ALSO A SIMILAR

28 SIZE VESSEL.

1 IF YOU LOOK AT THE X RAY, YOU CAN SEE A
2 TRACK OF TISSUE DESTRUCTION, THIS DARK AREA, CAUSED
3 BY THE PASSAGE OF THE SHOT PELLETS, AND YOU ALSO SEE
4 THAT THERE ARE NO PELLETS LEFT IN THERE.

5 SO ALL THE PELLETS WENT THROUGH, CREATED
6 A LARGE DEFECT, AND ON OUT. THERE'S NO WAY THAT THE
7 FEMORAL ARTERY COULD AVOID INJURY UNDER THOSE
8 CIRCUMSTANCES. WE'RE NOT TALKING ABOUT ONE BULLET,
9 WE'RE TALKING ABOUT 27 BUCKSHOT.

10 Q IT WAS BROUGHT OUT DURING
11 CROSS-EXAMINATION YESTERDAY THAT IN YOUR INITIAL
12 REPORT, WHICH YOU PREPARED PRIOR TO YOUR TESTIMONY,
13 YOU INDICATED IN ONE PLACE OF YOUR REPORT YOUR
14 CONCLUSION THAT FOLLOWING THE FIRST SHOT TO KITTY
15 MENENDEZ SHE MAY HAVE JUMPED UP FROM HER POSITION --

16 MS. ABRAMSON: OBJECTION. MISSTATES THE
17 TESTIMONY AND THE REPORT.

18 THE COURT: OVERRULED.

19 Q BY MR. CONN: DO YOU RECALL INDICATING
20 YESTERDAY OR TESTIFYING YESTERDAY THAT SHE MAY HAVE
21 JUMPED UP FOLLOWING THE FIRST SHOT?

22 A YES, SIR. THAT'S NOT WHAT I SAID IN MY
23 REPORT, BUT I DID SAY THAT YESTERDAY.

24 Q OKAY. THE WORDS THAT YOU USED IN YOUR

25 REPORT, DID YOU USE THE WORDS THAT SHE MAY HAVE
26 ROLLED FROM THE SOFA?
27 A ROLLED FORWARD OFF OF THE COUCH, YES,
28 SIR.

40216

1 Q OKAY. CAN YOU TELL US WHY YOU USED BOTH
2 OF THOSE DESCRIPTIONS, WHICH APPEAR TO BE
3 CONTRADICTORY, IN DESCRIBING THE MOVEMENT OF KITTY
4 MENENDEZ FOLLOWING THE FIRST SHOT.

5 A WE KNOW SHE WAS SEATED ON THE COUCH WHEN
6 SHE WAS FIRST HIT. WE KNOW THAT THE BODY WAS FOUND
7 ON THE FLOOR IN FRONT OF THE COUCH. HOW SHE GOT
8 THERE COULD BE IN SEVERAL WAYS. SHE COULD HAVE
9 JUMPED UP AND BEEN HIT AGAIN AND COLLAPSED. SHE
10 COULD HAVE ROLLED FORWARD OFF THE COUCH. SHE COULD
11 HAVE CROUCHED DOWN AND FALLEN OFF OF THE COUCH. SHE
12 COULD HAVE, IN ATTEMPTING TO DIVE AWAY FROM THE
13 COUCH TO GET AWAY, AND THEN FALLEN BACKWARDS. THERE
14 ARE MANY POSSIBILITIES. AND I DON'T KNOW WHICH ONE
15 IS THE TRUE ONE.

16 Q NOW, IN REGARD TO THE SHOT TO THE BACK
17 OF JOSE MENENDEZ' HEAD, YOU INDICATED DURING
18 CROSS-EXAMINATION THAT HIS HEAD WAS IN A DIFFERENT
19 POSITION WHEN HE WAS SHOT THAN IT IS DEPICTED IN

20 THIS PHOTOGRAPH OF THE CRIME SCENE. 201 IS ONE OF
21 THEM WHICH DEPICTS HIS HEAD TILTED TOWARDS THE RIGHT
22 SIDE.

23 CAN YOU TELL US WHY YOU CONCLUDED THAT
24 HIS HEAD WAS IN A DIFFERENT POSITION AT THE MOMENT
25 HE WAS SHOT THAN THE POSITION THAT IS DEPICTED IN
26 THAT PHOTOGRAPH.

27 A I CAN BASED ON COMMON SENSE AND NOT ON
28 MEDICAL EVIDENCE.

40217

1 THE MEDICAL EVIDENCE WOULD BE HE COULD
2 HAVE BEEN SHOT WITH HIS HEAD IN THAT POSITION ALSO
3 FROM BEHIND. IT'S JUST THAT IT'S SUCH AN UNNATURAL
4 POSITION, I COULD NOT IMAGINE A REASON WHY HE WOULD
5 BE SITTING THERE IN THAT POSTURE. BUT THAT'S
6 BASICALLY A COMMON SENSE IDEA.

7 Q SO WHEN YOU GAVE THE OPINION THAT HIS
8 HEAD WOULD HAVE BEEN IN A DIFFERENT POSITION, WHAT
9 VARIATION ARE WE TALKING ABOUT THEN? JUST A MORE
10 ERECT POSITION OF HIS HEAD?

11 A YES.

12 Q ALL RIGHT. NOW, DIRECTING YOUR
13 ATTENTION TO THE TWO ILLUSTRATIONS WHICH DEPICT
14 THE -- OR APPEAR TO REPRESENT THE BODIES OF KITTY AND

15 JOSE MENENDEZ, AND WHICH HAVE BEEN MARKED AS 220 AND
16 221 FOR IDENTIFICATION; ONCE AGAIN, ARE THOSE TWO
17 ILLUSTRATIONS, DO THEY APPEAR TO BE TWO
18 ILLUSTRATIONS OF THE SAME SHOT FROM TWO SLIGHTLY
19 DIFFERENT ANGLES?

20 A YES.

21 Q AND YOU INDICATED YESTERDAY DURING YOUR
22 TESTIMONY THAT IT IS YOUR OPINION THAT KITTY AND
23 JOSE MENENDEZ WERE SITTING AT THE TIME THAT THE
24 SHOTS WERE FIRST FIRED.

25 AND WHAT WAS YOUR BASIS FOR THAT
26 CONCLUSION?

27 A THE BLOOD PATTERN ON THE COUCH.

28 Q AND WHAT WAS IT ABOUT THE BLOOD PATTERN

40218

1 ON THE COUCH THAT CAUSED YOU TO REACH THAT
2 CONCLUSION?

3 A WHEN THE BODIES WERE REMOVED FROM THE
4 COUCH, ONE CAN SEE TWO AREAS WHERE TWO SETS OF
5 THIGHS PROTECTED THE COUCH FROM BLOOD SPATTER OR
6 SMEAR AND SO FORTH.

7 Q NOW, YESTERDAY ON DIRECT EXAMINATION YOU
8 WERE ASKED WHETHER ALL OF THE WOUNDS TO THE RIGHT
9 ARM OF JOSE MENENDEZ, THAT IS, THE WOUNDS TO THE SIX

10 INDIVIDUAL PELLET DEFECTS, AS WELL AS THE WOUNDS TO
11 THE UPPER RIGHT ARM, WOULD HAVE BEEN CONSISTENT WITH
12 ONE SHOT, AND YOU INDICATED IN YOUR DIRECT
13 EXAMINATION THAT, IN FACT, IT WOULD BE CONSISTENT
14 WITH ONE SHOT.

15 DO YOU RECALL THAT?

16 MS. ABRAMSON: OBJECTION. MISSTATES HIS
17 TESTIMONY.

18 THE COURT: HIS DIRECT EXAMINATION
19 YESTERDAY?

20 MR. CONN: YES.

21 THE COURT: HE WAS ONLY ON CROSS-EXAMINATION
22 YESTERDAY.

23 MS. ABRAMSON: MISSTATES HIS TESTIMONY BOTH
24 WAYS.

25 MR. CONN: THE DAY BEFORE.

26 THE COURT: WHY DON'T YOU REPHRASE THE
27 QUESTION.

28 MR. CONN: YES.

40219

1 Q DO YOU RECALL TESTIFYING THAT AT ONE
2 POINT DURING THE COURSE OF YOUR EXAMINATION THAT THE
3 WOUNDS TO JOSE -- THE RIGHT ARM OF JOSE MENENDEZ --
4 WOULD HAVE BEEN CONSISTENT WITH ONE SHOT?

5 MS. ABRAMSON: I'M OBJECTING, YOUR HONOR. IT

6 MISSTATES THE WITNESS' TESTIMONY.

7 THE COURT: HE'S JUST ASKING WHETHER HE

8 RECALLS IT.

9 OVERRULED.

10 THE WITNESS: I DON'T RECALL SAYING IT THAT

11 WAY. THERE WAS A LOT OF DISCUSSION ABOUT THAT WOUND

12 AND MANY, MANY THINGS WERE SAID. IT IS POSSIBLE

13 THAT ALL WERE CAUSED BY THE SAME SHOT.

14 Q BY MR. CONN: NOW, ON THE DIAGRAMS THAT

15 HAVE BEEN MARKED AS 220 AND 221, DO YOU RECALL BEING

16 ASKED THAT YOU DID NOT DISAGREE WITH THE POSITIONS

17 OF THE VICTIMS AS THEY ARE SHOWN IN ALL OF THE

18 DIAGRAMS PREPARED IN THIS CASE, INDICATING THAT YOU

19 DO NOT DISAGREE WITH THOSE DIAGRAMS?

20 DO YOU RECALL THAT?

21 A I DO NOT DISAGREE WITH THOSE DIAGRAMS.

22 Q OKAY. DIRECTING YOUR ATTENTION TO THE

23 SPECIFIC -- OR THESE TWO SPECIFIC DIAGRAMS, 220 AND

24 221, THOSE DIAGRAMS APPEAR TO DEPICT THE BODIES OF

25 JOSE MENENDEZ AND KITTY MENENDEZ SITTING TOGETHER,

26 AND IT MAY NOT BE VISIBLE TO THE JURY AT THIS POINT,

27 BUT THERE APPEARS TO BE A TRAJECTORY OR A LINE

28 PAINTED IN GREEN WHICH GOES THROUGH INTO THE LEFT

1 ELBOW OF JOSE MENENDEZ, ACROSS THE FRONT OF HIS
2 CHEST, AND THEN INTO THE RIGHT ARM AND THE LEFT
3 BREAST AREA OF KITTY MENENDEZ.

4 DO YOU HAVE ANY DISAGREEMENT WITH AN
5 ILLUSTRATION DEPICTING THAT AT LEAST ONE OF THE
6 SHOTS IN THIS CASE FIRED IN THAT PARTICULAR -- ALONG
7 THAT PARTICULAR TRAJECTORY, CAUSING DAMAGE TO BOTH
8 THE LEFT ARM OF JOSE MENENDEZ, THE RIGHT ARM OF JOSE
9 MENENDEZ, AND THE BREAST OF KITTY MENENDEZ?

10 A I HAVE NO DISAGREEMENT.

11 Q OKAY. IS THERE ANY --

12 A IN OTHER WORDS, THE -- THE TRAJECTORY
13 SHOWS THAT THE SHOT STRUCK THE LEFT ELBOW, THE RIGHT
14 ARM, AND KITTY'S LEFT BREAST, AND I AGREE WITH
15 THAT.

16 WHAT I'M STILL UNCERTAIN ABOUT IS THE
17 LARGER GAPING WOUND. AND I'M NOT SURE IF THAT'S ALL
18 PART OF THE SAME SHOT, WHICH IS POSSIBLE, BUT I --
19 BUT I'M JUST NOT SURE. I THINK IT MAY NOT BE. IT
20 MAY BE A SEPARATE SHOT. THERE ARE OTHER SHOTS THAT
21 ARE DEFINITELY FROM THE SAME TRAJECTORY.

22 Q OKAY. NOW, THE -- YOU WERE SHOWN A
23 PHOTOGRAPH YESTERDAY OF THE LEFT BREAST AREA OF
24 KITTY MENENDEZ WHICH ALSO DEPICTS A NUMBER OF PELLET
25 WOUNDS TO HER RIGHT ARM -- I'M SORRY -- HER LEFT ARM.

26 DO YOU RECALL THAT PHOTOGRAPH?

27 A NOT OFFHAND.

28 Q OKAY. LET ME SEE IF I CAN FIND IT.

40221

1 I'LL MOVE ON TO ANOTHER AREA.

2 YOU WERE QUESTIONED IN REGARD TO WHAT
3 APPEAR TO BE ABRASIONS TO THE CHEST OF JOSE
4 MENENDEZ, AND YOU WERE ASKED ABOUT THE POSSIBLE
5 CAUSE OF THE ABRASIONS TO THE CHEST.

6 DO YOU RECALL THAT?

7 A YES.

8 Q NOW, YOU INDICATED THAT IT WAS YOUR
9 BELIEF THAT THOSE ABRASIONS MIGHT HAVE BEEN CAUSED
10 BY SOME SURFACE BRUSHING UP AGAINST THE CHEST WALL;
11 IS THAT CORRECT?

12 MS. ABRAMSON: OBJECTION. MISSTATES THE
13 TESTIMONY.

14 THE COURT: OVERRULED.

15 THE WITNESS: YES. I INDICATED THOSE
16 ABRASIONS WERE PROBABLY DUE TO A SHOT PASSING IN A
17 GRAZING FASHION ALONG THAT AREA CAUSING A FABRIC
18 BURN OR A FABRIC ABRASION OF THE CHEST.

19 Q BY MR. CONN: OKAY. AND YOU WERE ASKED
20 BY DEFENSE COUNSEL WHETHER YOU WOULD EXPECT TO FIND
21 A HOLE IN THE SHIRT THAT HE WAS WEARING AT THE TIME
22 OF THE SHOOTING CAUSED BY THIS TYPE OF CONTACT

23 BETWEEN THE PELLETS AND THE CHEST; IS THAT CORRECT?

24 A YES. AND I SAID THERE PROBABLY WOULD

25 BE.

26 Q SINCE THAT TIME HAVE YOU HAD AN

27 OPPORTUNITY TO LOOK AT THE SHIRT?

28 A YES, SIR.

40222

1 MR. CONN: YOUR HONOR, I HAVE IN COURT A BAG

2 CONTAINING A BLOODY SHIRT.

3 I WOULD ASK THAT THIS BE MARKED AS 242

4 FOR IDENTIFICATION.

5 THE COURT: 242.

6 MS. ABRAMSON: YOUR HONOR, THE PEOPLE DID NOT

7 SHOW US THIS EXHIBIT BEFORE NOW AND WE'D LIKE AN

8 OPPORTUNITY TO SEE IT BEFORE IT'S SHOWN TO THE

9 WITNESS.

10 THE COURT: YOU HAVEN'T SEEN IT BEFORE?

11 MS. ABRAMSON: NEVER.

12 THE COURT: HAS IT BEEN HERE IN COURT OR --

13 MR. CONN: IT WAS JUST BROUGHT DOWN, YOUR

14 HONOR.

15 THE COURT: ALL RIGHT. CERTAINLY WE'LL LET

16 COUNSEL REVIEW IT BEFORE YOU GET TO THAT.

17 DO YOU HAVE OTHER QUESTIONS OF THE

18 WITNESS?

19 MR. CONN: YES, I DO.

20 Q LET ME SHOW YOU THE PHOTOGRAPH THAT I

21 WAS REFERRING TO A MOMENT AGO, 187.

22 IT IS A PHOTOGRAPH WHICH DEPICTS THE

23 LEFT BREAST AREA OF KITTY MENENDEZ AND ALSO DEPICTS

24 SOME WOUNDS TO HER LEFT ARM.

25 IS THERE ANY WAY THAT YOU CAN DETERMINE,

26 JUST FROM LOOKING AT THE PHOTOGRAPH, WHETHER THE

27 WOUNDS TO THE LEFT ARM WERE NECESSARILY CAUSED BY

28 THE SAME SHOT AS OPPOSED TO SOME OTHER RANDOM SHOT?

40223

1 A NO, SIR.

2 Q NOW, SIR, YOU WERE SHOWN YESTERDAY SOME

3 OF THESE ILLUSTRATIONS TO WHICH YOU HAVE TESTIFIED

4 HERE IN COURT TODAY, AND I SHOWED YOU SOME

5 ADDITIONAL ILLUSTRATIONS.

6 YOU HAVE, HOWEVER, BROUGHT THOSE

7 MANNEQUINS OR SO-CALLED DOLLS WITH YOU TO COURT.

8 FOR PURPOSES OF YOUR EXAMINATION AND

9 DEPICTION OF THE WOUNDS IN THIS CASE, WHICH DO YOU

10 FEEL MOST ACCURATELY REPRESENT YOUR OPINIONS

11 CONCERNING THE INJURIES THAT WERE INFLICTED IN THIS

12 CASE?

13 A I THINK THEY'RE BOTH FAIRLY GOOD
14 REPRESENTATIONS. I WOULD CHOOSE THE DOLLS AS THE
15 ONES THAT I WORKED ON AND SPENT THE MOST TIME WITH,
16 AND I FEEL MOST COMFORTABLE WITH THOSE.
17 AND I FEEL THE SAME WAY AS I DID WHEN I
18 FIRST MADE THEM, THAT THEY ARE ACCURATE, AS ACCURATE
19 AS POSSIBLE UNDER THE CIRCUMSTANCES.
20 Q AND YOU MADE SOME --
21 A THERE IS THAT ONE-LEG ONE THAT HAS THE
22 WRONG DIRECTION. BUT OTHER THAN THAT, THEY'RE QUITE
23 ACCURATE.
24 Q YES. WITH THE EXCEPTION OF THAT
25 MODIFICATION THAT YOU NOTED BEFORE THE JURY, DO
26 THOSE DOLLS APPEAR TO BE SUBSTANTIALLY ACCURATE FOR
27 PURPOSES OF DEMONSTRATING YOUR TESTIMONY TO THE
28 JURY?

40224

1 A YES, SIR.
2 MR. CONN: WITH THE EXCEPTION OF THE SHIRT,
3 YOUR HONOR, I HAVE NO FURTHER DIRECT EXAMINATION.
4 THE COURT: OKAY. WELL, LET'S TAKE OUR BREAK
5 HERE AND LET YOU DO THAT.
6 WE'LL RESUME AT 20 MINUTES AFTER 10.
7 (A RECESS WAS TAKEN FROM

8 10:00 A.M. TO TO 10:30 A.M.)

9

10 THE COURT: ARE WE READY FOR THE JURY?

11 MR. CONN: YES.

12 THE COURT: THERE WAS A QUESTION, APPARENTLY,

13 FROM ONE OF THE JURORS. I'LL SHOW COUNSEL.

14 (THE JURY ENTERED THE

15 COURTROOM AND THE FOLLOWING

16 PROCEEDINGS WERE HELD:)

17

18 THE COURT: OKAY. WE'RE READY TOO RESUME.

19 WE HAVE EVERYBODY BACK.

20 YOU MAY CONTINUE YOUR EXAMINATION.

21 MR. CONN: THANK YOU.

22 Q IN SOME OF THE PHOTOGRAPHS IT MAY APPEAR

23 THAT THE VICTIM'S EYES ARE OPENED OR CLOSED.

24 DOES THAT HAVE ANY SIGNIFICANCE THAT THE

25 EYES ARE OPEN OR CLOSED AT THE TIME OF THE AUTOPSY?

26 A NO.

27 Q WHY IS THAT?

28 A JUST DOESN'T MEAN ANYTHING.

40225

1 Q DIRECTING YOUR ATTENTION TO 202, WHICH

2 IS A PHOTOGRAPH DEPICTING THE ABRASIONS TO THE CHEST

3 OF JOSE MENENDEZ, I'D LIKE TO, AT THIS TIME, ALSO
4 SHOW TO YOU WHAT HAS BEEN MARKED AS 242, A BLOODY
5 SHIRT.

6 I WOULD ASK YOU, AT THIS TIME, IF YOU
7 WOULD, TO PLEASE REMOVE THAT ITEM, IF YOU WOULD?

8 A I THINK IT WOULD BE BETTER IF I COULD DO
9 IT ON THE FLOOR. I NEED A SURFACE TO --

10 MS. ABRAMSON: DO YOU WANT TO USE THE BACK OF
11 THIS?

12 THE WITNESS: I THINK THE FLOOR WILL BE FINE,
13 SAFER.

14 (WITNESS HOLDING UP SHIRT.)

15

16 Q BY MR. CONN: IF YOU WOULD, HAVING
17 OBSERVED THAT SHIRT THIS MORNING, DID YOU HAVE AN
18 OPPORTUNITY TO OBSERVE WHETHER THERE ARE ANY HOLES?

19 A YES, SIR, THERE ARE.

20 Q AND PERHAPS IF YOU CAN USE A -- THERE'S A
21 PIECE OF CARDBOARD UP ON THE WITNESS TABLE THERE.
22 PERHAPS IF YOU CAN PLACE THAT UNDERNEATH SO THAT THE
23 JURY CAN BETTER SEE THE AREA THAT DEPICTS A HOLE TO
24 THE SHIRT.

25 WOULD YOU JUST DESCRIBE FOR US WHERE
26 THAT HOLE IS LOCATED ON THE SHIRT.

27 A THIS IS A RAGGED SERIES OF THREE HOLES,
28 ALL CLUSTERED IN THE SAME AREA, COVERING ABOUT A

1 TWO-AND-ONE-HALF INCH AREA, CORRESPONDING, QUITE
2 STRIKINGLY --

3 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
4 WITNESS' STATEMENT, YOUR HONOR.

5 THE COURT: OVERRULED.

6 THE WITNESS: CORRESPONDING, QUITE
7 STRIKINGLY, TO THE AREA THAT I POINTED TO ON
8 MR. LEVIN THE OTHER DAY WHEN I WAS DEMONSTRATING THE
9 SHOT PASSING BY HIS SHIRT AND CAUSING AN ABRASION.

10 Q BY MR. CONN: IF YOU WOULD HOLD THAT
11 NEAR THE PHOTOGRAPH OF JOSE MENENDEZ THAT HAS BEEN
12 MARKED 202 SO WE CAN GET AN IDEA WHERE THAT HOLE IS
13 IN RELATIONSHIP TO THE ABRASIONS ON HIS CHEST.

14 NOW, DID YOU ALSO OBSERVE ANY OTHER
15 HOLES TO THE SHIRT?

16 A YES. THERE ARE SOME HOLES ON THE BACK
17 OF THE RIGHT SLEEVE, RAGGED HOLES ON THE BACK OF THE
18 SLEEVE.

19 LET ME USE THE CARDBOARD AGAIN. SEVERAL
20 HOLES ON THE BACK OF THE SLEEVE.

21 Q AND DO THE LOCATION OF THOSE HOLES
22 CORRESPOND TO THE INJURY THAT MR. MENENDEZ RECEIVED
23 TO HIS RIGHT ARM?

24 A YES.

25 Q AND DO THOSE HOLES ASSIST YOU IN ANY WAY
26 IN DETERMINING THE DIRECTION OF THAT WOUND?

27 A YES.

28 Q IN WHAT WAY?

40227

1 A THE HOLE ON THE FRONT OF THE SHIRT HAS --
2 WHERE THE BLOOD IS DRIED, IT HAS, FORTUNATELY,
3 FROZEN OR FIXED THE MATERIAL IN THE POSITION THAT IT
4 WAS AT THE TIME OF THE GUNSHOT INJURY.

5 AND YOU CAN SEE THAT THE MATERIAL HAS
6 BEEN PUSHED IN THIS DIRECTION TOWARD THE ARMPIT.

7 SO THIS REALLY FIRMLY ESTABLISHES MY
8 OPINION THAT THE DIRECTION IS FRONT TO BACK. IN
9 OTHER WORDS, THE SHOT MASS WENT THROUGH THE INSIDE
10 OF THE ARM AND OUT THE BACK. THOSE HOLES ON THE
11 BACK OF THE SLEEVE ARE UNDOUBTEDLY EXIT HOLES.

12 Q AND THEN WHY DO YOU SAY THEY ARE
13 UNDOUBTEDLY EXIT HOLES?

14 A WELL, INDEED, WHEN I LOOKED AT THESE
15 ORIGINALLY, THIS MORNING, ABOUT AN HOUR AGO, AND IT
16 STILL SHOWS, THE FIBERS PASS OUTWARD.

17 IF YOU LOOK AT THE INSIDE OF THE SHIRT,
18 THERE ARE ONLY FIBERS GOING OUTWARD. THERE ARE NONE
19 COMING TOWARD THE INSIDE OF THE SLEEVE.

20 Q ALL RIGHT. THANK YOU.

21 YOU MAY RETURN THE SHIRT TO THE BAG. I

22 BELIEVE IT'S A DOUBLE BAG.

23 THE COURT: BEFORE YOU REMOVE YOUR GLOVES AND
24 PUT THE SHIRT BACK TOO MUCH, ARE YOU GOING TO HAVE
25 ANY QUESTIONS REGARDING THAT?

26 MS. ABRAMSON: YES, AND I'M GOING TO HANDLE
27 THE SHIRT SO THERE'S NO POINT IN PUTTING IT BACK.

28 THE COURT: WHY DON'T YOU LEAVE IT THERE.

40228

1 DO YOU HAVE ANY FURTHER QUESTIONS OF THE
2 WITNESS?

3 MR. CONN: NO, YOUR HONOR, I HAVE NO
4 QUESTIONS AT THIS TIME.

5 THE COURT: WHY DON'T YOU LEAVE THEM ON.

6 THE WITNESS: I'LL PUT THEM BACK ON, IF
7 NECESSARY.

8

9 RECROSS-EXAMINATION

10 BY MS. ABRAMSON:

11 Q WHY DO YOU WEAR GLOVES TO HANDLE THE
12 SHIRT?

13 A MORE FOR AESTHETICS THAN ANYTHING ELSE.
14 IT'S PROBABLY NOT DANGEROUS AT THIS TIME, BUT IT'S
15 DECOMPOSING AND -- IF I COULD WASH MY HANDS I
16 WOULDN'T MIND HANDLING IT BARE-HANDED.

17 Q THERE'S NO ISSUE NOW OF ANY GERMS THAT
18 COULD STILL BE ALIVE OR CONTAMINATING ON THAT SHIRT
19 AFTER SIX YEARS, IS THERE?

20 A NOT ORIGINAL GERMS. THERE MIGHT BE
21 GERMS THAT ARE STILL THERE -- IT HAS A BIT OF
22 MALODOR, SO I THINK THERE ARE SOME ORGANISMS THERE,
23 YES. NONE OF THEM VERY HARMFUL, THOUGH.

24 Q LET'S GO BACK FOR A MOMENT TO YOUR
25 PREVIOUS TESTIMONY BEFORE THIS MORNING.

26 AND LET'S START WITH SOME PHOTOGRAPHS
27 THAT I SHOWED YOU YESTERDAY THAT WE DIDN'T PUT UP ON
28 THE BOARD. THESE ARE 217 AND 218.

40229

1 DO YOU REMEMBER THESE?

2 A YES.

3 Q AND DO YOU REMEMBER MY INDICATING TO YOU
4 THAT THERE WERE AREAS THAT APPEAR TO BE SCALLOPING
5 AREAS, AREAS THAT SHOWED THE IMPRESSION OF PELLETS
6 GOING THROUGH?

7 A YES.

8 Q AND YOU RECALL YOUR PREVIOUS TESTIMONY
9 WAS THAT A WOUND THAT SHOWS SCALLOPING IS LIKELY TO
10 BE AN ENTRANCE WOUND, CORRECT?

11 A YES, USUALLY.

12 Q AND YOU RECALL THAT WHEN YOU SAW THOSE
13 PHOTOGRAPHS YOU INDICATED THAT YOU COULDN'T
14 DETERMINE IF THE AREAS I WAS POINTING TO LOOKED LIKE
15 PELLET ENTRY AREAS; IS THAT RIGHT?

16 A YES. THE REASON I WAS HAVING
17 DIFFICULTY, AND STILL AM, IS THAT THE AREA THAT
18 LOOKS LIKE SCALLOPING DOES NOT HAVE, THAT I CAN SEE,
19 AN ABRASION COLLAR. AND SO IT'S DIFFICULT TO BE
20 SURE IF THAT IS, INDEED, ENTRANCE. IT COULD WELL BE
21 EXIT.

22 Q OF COURSE, YOU ALSO SHOWED US THE
23 PHOTOGRAPH FROM YOUR OWN CASE OF A SINGLE CONTACT
24 SHOTGUN WOUND THAT HAD NO ABRASION COLLAR, CORRECT?

25 A NO, MA'AM.

26 Q THAT JUST HAD NO HEMORRHAGE?

27 A THAT WOUND HAD A VERY LARGE IRREGULAR
28 ABRASION COLLAR. YOU'RE CONFUSING THE TWO THINGS.

40230

1 Q ALL RIGHT.

2 A ABRASION COLLAR IS DIFFERENT FROM THE
3 BRUISING AROUND THE WOUND.

4 Q ALL RIGHT. WITH RESPECT TO THOSE
5 PHOTOGRAPHS, THOUGH, I SHOWED YOU AREAS THAT
6 APPEARED TO BE SCALLOPING AND YOU RESISTED THAT.

7 NOW YOU'VE SEEN THE SHIRT AND THERE ARE
8 HOLES IN THE SHIRT RIGHT NEAR THOSE AREAS THAT I WAS
9 POINTING TO, AREN'T THERE?

10 A YES, AND THE SHIRT HOLES LOOK LIKE EXIT
11 WOUNDS.

12 Q THAT'S YOUR OPINION TODAY, CORRECT, THAT
13 THE SHIRT HOLES ARE EXIT WOUNDS?

14 A YES.

15 Q AND YOU LOOKED AT THAT SHIRT FOR THE
16 FIRST TIME THIS MORNING?

17 A YES, MA'AM.

18 Q ARE YOU AWARE THAT THE DEFENSE
19 CRIMINALIST LOOKED AT THAT SHIRT THREE YEARS AGO?

20 MR. CONN: OBJECTION. IRRELEVANT.

21 THE COURT: SUSTAINED.

22 Q BY MS. ABRAMSON: NOW, YOU TESTIFIED
23 JUST NOW, DR. LAWRENCE, ABOUT HOW STRIKINGLY
24 SIMILAR, IN YOUR WORDS, THE LOCATION OF THE CLUSTER
25 OF HOLES ON THE SHIRT THAT IS NOW IN COURT WAS TO
26 WHERE YOU POINTED ON MR. LEVIN.

27 DON'T YOU THINK IT'S FOR THE JURY TO
28 DECIDE WHETHER YOU POINTED TO THE SAME PLACE ON

2 MR. CONN: OBJECTION. ARGUMENTATIVE.

3 THE COURT: SUSTAINED.

4 Q BY MS. ABRAMSON: NOW, EXPLAIN HOW YOU
5 ENVISION WHAT CAUSED THAT CLUSTER OF HOLES AT -- IT'S
6 ALMOST AT THE MIDLINE, THAT HOLE THAT YOU SAW IN THE
7 SHIRT -- IS THAT CORRECT? -- THE MIDLINE OF THE
8 SHIRT?

9 A NO.

10 Q WELL, LET'S TAKE IT OUT. I DON'T WANT
11 TO BOTHER WITH GLOVES.

12 LET'S PUT IT ON THE BOARD.

13 NOW, THIS WHOLE AREA -- I'M SORRY. LET'S
14 TRY IT -- SEE IF WE CAN GET IT TO STICK.

15 (PAUSE IN PROCEEDINGS.)

16

17 Q BY MS. ABRAMSON: NOW, THE RIGHT SIDE OF
18 THE SHIRT IS VERY ENCRUSTED WITH BLOOD, CORRECT?

19 A YES.

20 Q SO IT'S DIFFICULT TO STRETCH IT OUT AND
21 I DON'T WANT TO TEAR IT.

22 IT'S DIFFICULT TO LINE IT UP AS IT WOULD
23 HAVE LOOKED -- WELL, AS, FOR EXAMPLE, THE LEFT SIDE,
24 WHICH HAS LESS BLOOD, SHOWS THE SHIRT TO BE LONGER
25 ON THAT SIDE; BUT, OF COURSE, IT ISN'T, CORRECT?

26 A CORRECT.

27 Q AND HERE IS THE -- YOU SAY CLUSTER OF
28 THREE HOLES.

1 THERE'S A LARGE ONE, ONE THAT'S A LITTLE
2 BIT SMALLER AND THEN A LITTLE BITTY ONE; IS THAT
3 CORRECT?

4 A YES.

5 Q ALL RIGHT. NOW, YOU'RE ENVISIONING
6 PELLETS ENTERING THROUGH THAT HOLE?

7 A PELLETS STRIKING THAT AREA, THE SHIRT
8 BEING NOT THE SAME AS THE SKIN, THE SHIRT BEING ABLE
9 TO BUNCH UP, PELLETS CARRYING THE SHIRT AS THEY GO
10 BY WRINKLING AND BUNCHING CAUSING MORE HOLES THAN
11 JUST ONE AND DRAGGING THE SHIRT ACROSS THE SKIN AND
12 CAUSING ABRASION.

13 Q THAT WOULD CAUSE ABRASION HERE, CORRECT?

14 A THERE, AND IT COULD CAUSE ABRASION ON
15 EITHER SIDE BECAUSE OF THE FORCIBLE DRAGGING OF
16 SHIRT ACROSS SKIN.

17 Q SO YOU'RE ENVISIONING --

18 A OR THE --

19 Q -- PELLETS SOMEHOW MAKING THIS HOLE BUT
20 NOT TOUCHING THE SKIN? IS THAT WHAT YOU'RE SAYING?

21 A THERE ACTUALLY ARE SOME MARKS THAT MAY
22 BE GRAZE MARKS FROM THE PELLET.

23 Q WE HAVE TO DO THIS ONE THEORY AT A TIME.

24 A I'M ANSWERING YOUR QUESTION.

25 Q HOW MANY PELLETS DO YOU THINK WOULD MAKE

26 A HOLE THAT BIG IF THAT'S A HOLE MADE BY PELLETS

27 ENTERING?

28 A I DON'T KNOW HOW MANY PELLETS.

40233

1 Q IT'S A LARGE HOLE, ISN'T IT?

2 A IT COULD ALSO BE WADDING. I THINK BY

3 THE LOOK OF IT, IT'S MORE LIKELY PELLETS.

4 Q NOW, WADDING, YOU HAVEN'T MENTIONED

5 WADDING BEFORE IN YOUR TESTIMONY; IS THAT CORRECT?

6 A NO.

7 Q DO YOU KNOW, IF, IN FACT, A WAD WAS

8 FOUND ON MR. MENENDEZ' BODY THAT WOULD CORRESPOND TO

9 THIS HOLE?

10 A THERE WAS NO MENTION OF A WAD FOUND AT

11 THAT LOCATION, BUT IT WOULDN'T STAY THERE.

12 Q RIGHT. A WAD --

13 A IT WENT --

14 Q ARE YOU FAMILIAR WITH THE FACT THAT

15 THERE WAS A WAD FOUND -- IF YOU DROPPED A LINE

16 DIRECTLY FROM THAT HOLE DOWN TO HIS RIGHT THIGH, ARE

17 YOU AWARE THERE WAS A WAD FOUND SITTING ON TOP OF

18 HIS RIGHT THIGH?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED.

21 THE WITNESS: NO, MA'AM. IF THERE WAS, IT

22 COULD HAVE BEEN FROM THAT.

23 Q BY MS. ABRAMSON: FROM THAT HOLE?

24 A IT'S POSSIBLE, YES.

25 Q A WAD COULD HAVE GONE THROUGH THAT HOLE,

26 STRUCK HIS CHEST AND DROPPED DOWN AND LANDED ON HIS

27 RIGHT THIGH, CORRECT?

28 A IT COULD HAVE STRUCK HIM IN THE AREA

40234

1 CAUSING THE ABRASION AND THEN FALLEN OUT, YES,

2 MA'AM.

3 Q ALL RIGHT. AND AS YOU STARTED TO

4 INDICATE, APART FROM THIS PATTERNED AREA, THERE'S

5 ANOTHER DARK SPOT RIGHT IN THIS SAME AREA, IS THERE

6 NOT?

7 A YES.

8 Q AND THAT DARK SPOT COULD CORRESPOND TO

9 THIS HOLE WHERE A WAD COULD HAVE HIT AND THEN

10 DROPPED TO HIS LEG?

11 A IT'S POSSIBLE, YES, MA'AM.

12 Q NOW, YOU UNDERSTAND, DO YOU NOT,

13 DR. LAWRENCE, THAT THE TYPE OF AMMUNITION THAT WAS

14 USED HERE CARRIES TWO WADS INSIDE EACH SHOT SHELL,

15 OR DIDN'T YOU KNOW THAT?

16 A I DON'T KNOW HOW MANY WADS THE SHOT
17 SHELLS HAVE.

18 Q WELL, HYPOTHETICALLY, IF I SUBMIT TO YOU
19 THERE ARE TWO WADS, ONE IS COMPRESSED PAPER AND ONE
20 IS A ROUND PLASTIC DISK, COULDN'T THAT EXPLAIN BOTH
21 OF THESE HOLES?

22 A YES.

23 Q NOW, YOU'VE INDICATED TODAY THAT BECAUSE
24 OF YOUR EXAMINATION OF THE INSIDE OF THE SHIRT
25 SLEEVE YOU'VE MADE A DETERMINATION AS TO THE
26 DIRECTION OF THE FIBERS?

27 A YES, MA'AM. IT LOOKS THAT WAY TO ME.

28 Q ARE YOU A FIBER EXPERT?

40235

1 A NO.

2 Q DID YOU EXAMINE IT UNDER A LABORATORY
3 MICROSCOPE?

4 A NO.

5 Q NOW, YOU'VE ALREADY TOLD US YOU'RE NOT A
6 BLOOD SPATTER EXPERT, CORRECT?

7 A CORRECT.

8 Q SO YOU HAVE TESTIFIED NOW THIS MORNING
9 THAT YOU THINK THE WOUND TO THE UPPER ARM WAS FRONT
10 TO BACK; IS THAT RIGHT?

11 A YES.

12 Q PREVIOUSLY, WOULD IT BE FAIR TO SAY YOUR
13 INCLINATION WAS TO BELIEVE IT WAS BACK TO FRONT?

14 A NO.

15 Q NO?

16 A NO.

17 Q GEE, PREVIOUSLY YOU HAD NO IDEA EITHER
18 WAY?

19 A CORRECT.

20 Q ALL RIGHT. LET'S TALK FOR A MINUTE
21 ABOUT BLOOD SPATTER, THOUGH, OKAY?

22 WHAT DIRECTION ARE THESE SPATTERS GOING
23 IN, DR. LAWRENCE? DO YOU HAVE ANY IDEA?

24 A I'M NOT A BLOOD SPATTER EXPERT.

25 Q IF I WERE TO TELL YOU HYPOTHETICALLY
26 THAT BECAUSE OF THE WAY THESE DROP TAILS, THIS BLOOD
27 IS TRAVELING FROM RIGHT TO LEFT --

28 A I WOULD PAY NO ATTENTION TO IT.

40236

1 Q YOU'D PAY NO ATTENTION TO BLOOD
2 TRAVELING FROM RIGHT TO LEFT DOWN THE ENTIRE SIDE OF
3 THE SHIRT; IS THAT WHAT YOU'RE SAYING?

4 A NO, MA'AM. I WOULD PAY NO ATTENTION TO
5 WHAT YOU TELL ME ABOUT BLOOD SPATTER.

6 Q WELL, THANK YOU, DR. LAWRENCE. BUT I
7 WOULD NEVER SAY THAT TO YOU. I DO PAY ATTENTION TO
8 WHAT YOU SAY.

9 THE COURT: OKAY, COUNSEL. LET'S NOT GET
10 INTO THIS DISCOURSE. ASK YOUR NEXT QUESTION.

11 Q BY MS. ABRAMSON: I'M OFFERING YOU, AS
12 AN EXPERT WITNESS, A HYPOTHETICAL.

13 YOU UNDERSTAND WHAT HYPOTHETICAL
14 QUESTIONS ARE IN THE LAW?

15 MR. CONN: OBJECTION. ARGUMENTATIVE.

16 THE COURT: SUSTAINED.

17 THE WITNESS: I'M NOT AN EXPERT ON BLOOD --

18 THE COURT: OBJECTION SUSTAINED.

19 Q BY MS. ABRAMSON: I WANT TO OFFER YOU A
20 HYPOTHETICAL THAT AN EXPERT IN BLOOD SPATTER WILL
21 TESTIFY THAT DOWN THE ENTIRE LENGTH OF THIS LEFT
22 SIDE OF THE SHIRT THERE ARE BLOOD SPATTERS THAT ARE
23 TRAVELING FROM RIGHT TO LEFT.

24 A I DON'T FEEL COMFORTABLE TESTIFYING IN
25 THAT AREA.

26 Q IF THERE -- IF IT WAS SHOWN THAT BLOOD
27 SPATTERED FROM MR. MENENDEZ' RIGHT TO HIS LEFT, DO
28 YOU HAVE ANY EXPLANATION OF WHAT COULD HAVE CAUSED

1 THAT?

2 A I'M NOT ABLE TO ANSWER THAT QUESTION.

3 Q ALL RIGHT. NOW, LET ME SHOW YOU

4 SOMETHING ELSE, IF I CAN.

5 YOU CAN SEE, CAN YOU NOT, IN THIS AREA

6 OF THE SHIRT HERE IN THE RIGHT SHOULDER WHAT APPEARS

7 TO BE LIGHTER PARTS OF THE FABRIC VERSUS THE DARKER

8 BLOODIER PARTS?

9 A YES.

10 Q AND DID YOU, WHEN YOU WERE LOOKING AT

11 THIS SHIRT, BOTHER TO CREASE THE SHIRT UP ALONG

12 THOSE LINES?

13 A NO, BUT THAT'S OBVIOUSLY THE REASON FOR

14 THE PATTERN.

15 Q RIGHT. IF YOU DO CREASE THE SHIRT UP

16 ALONG THOSE LINES, THE CREASES ARE ENTIRELY

17 CONSISTENT, ARE THEY NOT, WITH HIS RIGHT ARM BEING

18 FOLDED ACROSS HIS CHEST, CRUMPLING THE SHIRT AS IT

19 GOES?

20 A THAT'S OUT OF MY AREA, I'M SORRY.

21 Q I SEE. SO ALL BLOOD SPATTER IS OUT OF

22 YOUR AREA, BLOOD SPATTER ON THE BODY, BLOOD SPATTER

23 ON FABRIC; IS THAT CORRECT?

24 A I'VE BEEN TO A LOT OF CRIME SCENES IN MY

25 CAREER AND I'VE SEEN A LOT OF BLOOD EVIDENCE AND

26 SPATTER, BUT I DO NOT HOLD MYSELF OUT AS AN EXPERT.

27 I KNOW SOMETHING ABOUT IT, BUT I'M NOT

28 EXPERT.

1 MS. ABRAMSON: I'M GOING TO RETURN THE
2 EXHIBIT TO THE INTERIOR BAG AND THEN TO THE MARKED
3 BAG.

4 I WANT TO PUT SOME PHOTOGRAPHS BACK UP
5 ON THE BOARD. TAKE THIS DOWN FOR THE MOMENT.

6 WHY DON'T I BORROW YOUR PEN AND I'LL PUT
7 THE NUMBER ON THE FRONT.

8 THE WITNESS: THANK YOU.

9 Q BY MS. ABRAMSON: THIS IS 184. YOU'VE
10 SEEN IT BEFORE, CORRECT?

11 A YES.

12 Q OH, BY THE WAY, DID YOU NOTICE THIS
13 LITTLE DARK SPOT RIGHT ABOVE MR. MENENDEZ' BELLY
14 BUTTON?

15 A I DON'T KNOW WHAT THAT IS.

16 Q OKAY. NOW, THAT PHOTOGRAPH -- IS IT
17 REFLECTING?

18 JUROR NO. 9: YES.

19 MS. ABRAMSON: I'M GOING TO TAKE IT OUT OF
20 ITS PLASTIC HOLDER AND THAT WAY IT WILL HAVE LESS
21 REFLECTION, MAYBE.

22 IS THAT ANY BETTER?

23 JUROR NO. 9: IF YOU LOWER IT, IT REDUCES THE

24 GLARE.

25 MS. ABRAMSON: ANY BETTER? OKAY.

26 Q 184 IS A PHOTOGRAPH THAT SHOWS THE
27 CORONER PROBING THE LEFT ELBOW OF MR. MENENDEZ,
28 CORRECT?

40239

1 A YES.

2 Q HOW MANY PELLET DEFECTS WERE THERE ON
3 THE LEFT ELBOW?

4 A I DON'T RECALL.

5 Q DO YOU WANT TO LOOK IT UP?

6 A I WOULD HAVE TO LOOK AT THE PHOTOGRAPH.

7 Q WELL, THERE'S THE PHOTOGRAPH.

8 A THAT'S NOT A VERY GOOD ONE. THERE'S --
9 LET ME TRY ON THAT ONE.

10 Q I DON'T THINK THERE'S ANY THAT'S ANY
11 BETTER.

12 DO YOU HAVE THE AUTOPSY REPORT?

13 A I SEE SEVEN.

14 Q OKAY.

15 A I CAN'T TELL IF THERE ARE ANY MORE THAN
16 THAT.

17 Q I BELIEVE THE REPORT INDICATED NINE.

18 DO YOU HAVE YOUR COPY OF THE REPORT?

19 A THERE'S ONE HERE. MY FILE'S OUT THERE

20 SOMEWHERE.

21 MS. ABRAMSON: I'M SORRY. WHERE'S

22 DR. LAWRENCE'S FILE? WHO'S GOT IT?

23 (PAUSE IN PROCEEDINGS.)

24

25 THE WITNESS: HE STATES THAT APPROXIMATELY

26 NINE INDIVIDUAL PELLET WOUNDS ARE PRESENT.

27 Q BY MS. ABRAMSON: ALL RIGHT. AND IS

28 THERE ANY PHOTOGRAPH THAT YOU'VE SEEN THAT SHOWS THE

40240

1 INSIDE OF THAT ARM, THE OTHER SIDE OF THAT WOUND?

2 A I'M SORRY. I DON'T RECALL.

3 Q DO YOU KNOW HOW MANY -- CAN YOU TELL FROM

4 THE DESCRIPTION -- OKAY.

5 FIRST OF ALL, DO YOU KNOW IF THERE WERE

6 ANY EXIT HOLES ON THE OTHER SIDE OF THAT ELBOW?

7 BECAUSE THIS IS THE OUTSIDE OF THE ELBOW, RIGHT?

8 A YES.

9 Q OKAY. THE OUTSIDE OF THE ELBOW, AND THE

10 INDICATION IS THAT THE TRAJECTORY IS BACK TO FRONT

11 WITHOUT ANGULATION OR DEVIATION, WHATEVER THAT

12 MEANS, RIGHT?

13 A YES.

14 Q AND THAT MEANS JUST THAT, THEY GO

15 STRAIGHT IN.

16 A BACK TO FRONT WITH -- BACK TO FRONT WITH

17 THE BODY IN THE ANATOMIC POSITION, WHICH IS WITH THE

18 PALMS ROTATED TOWARD THE FRONT, FACING THE FRONT.

19 Q OKAY. SO BACK TO FRONT IN THE ARMS IN

20 THE ANATOMIC POSITION IS TRUE BACK TO FRONT,

21 CORRECT? BACK OF THE ELBOW TO FRONT.

22 A YES.

23 Q OKAY. SO THIS IS THE BACK AND THAT'S

24 WHERE THE DEFECTS ARE?

25 A YES.

26 Q AND THEY APPEAR TO BE GOING STRAIGHT,

27 THEY DON'T GO UP, THEY DON'T GO DOWN, THEY DON'T GO

28 LEFT, THEY DON'T GO RIGHT, CORRECT?

40241

1 A CORRECT.

2 Q AND THERE'S NO PHOTOGRAPH THAT YOU CAN

3 RECALL THAT SHOWS THE INSIDE OF THAT ELBOW?

4 A NO, NOT THAT I RECALL. THERE MAY BE.

5 THERE WERE 180 SOMETHING PHOTOGRAPHS.

6 Q IF THERE WERE, I'D SHOW IT TO YOU.

7 A THANK YOU.

8 Q ALL RIGHT. SO YOU DON'T KNOW HOW MANY

9 ACTUALLY PASSED THROUGH?

10 A WELL, HE SAID THAT NONE OF THEM DID OR
11 HE DOES NOT MENTION ANY EXIT WOUNDS.

12 Q OKAY. SO YOU DON'T KNOW IF ANY OF THEM
13 DID PASS THROUGH?

14 A I DON'T KNOW THAT ANY OF THEM DID.

15 Q ALL RIGHT. BUT YOU DO KNOW THAT THERE
16 ARE ONLY FIVE PELLETS INSIDE THE ELBOW BY X RAY.

17 A WELL, LET'S LOOK AGAIN AT THE X RAY.
18 I'LL HAVE TO REFRESH MY MEMORY.

19 Q CERTAINLY.

20 A FIVE PELLETS.

21 Q OKAY. WE'LL PUT THE X RAY FOR THAT
22 WOUND JUST BENEATH IT.

23 AM I READING THIS X RAY RIGHT? IT'S
24 SHOWING THE ARM SORT OF THE WAY I'M HOLDING MY ARM?

25 A YES.

26 Q SO THERE ARE FIVE PELLETS INSIDE THE
27 ARM.

28 NOW, LET'S ASSUME, HYPOTHETICALLY, SINCE

40242

1 YOU WEREN'T THERE, THAT, INDEED, THERE WERE NINE
2 DEFECTS OBSERVABLE ON THE OUTSIDE OF THAT ELBOW, NO
3 EXIT WOUND AND FIVE INSIDE.

4 WHAT HAPPENED TO THE FOUR?

5 A THEY PROBABLY -- OR COULD HAVE STRUCK
6 THE SKIN AND THEN FALLEN BACK OUT.

7 Q OKAY. AND WOULD THAT INDICATE TO YOU
8 THAT THAT'S A SHOT FROM -- WITH LOW VELOCITY?

9 A THOSE PELLETS WOULD LIKELY HAVE LOW
10 VELOCITY, YES, MA'AM.

11 I MUST WARN YOU, WE'RE GETTING A LITTLE
12 BIT OUT OF MY AREA.

13 Q ALL RIGHT. BUT THOSE EXTRA FOUR PELLETS
14 DID NOT PENETRATE THE ELBOW, BUT THEY DID HIT IT,
15 CORRECT?

16 A YES.

17 Q SO THEY WOULD HAVE FALLEN AWAY; IS THAT
18 RIGHT?

19 A POSSIBLY, YES, MA'AM.

20

21

22

23

24

25

26

27

28

1 Q YOU PREVIOUSLY TESTIFIED BEFORE TODAY
2 THAT -- WELL, LET ME STRIKE THAT.

3 AS FAR AS YOU KNOW, BASED ON BOTH WHAT
4 SHOWS IN THESE -- IN THIS PHOTOGRAPH, WHICH IS 216,
5 AND THE DESCRIPTION, HOWEVER CONFUSING THE ORIGINAL
6 DESCRIPTION MAY HAVE BEEN, BUT THE DESCRIPTION THAT
7 DR. GOLDEN GAVE, EVEN IN THE FIRST REPORT, THAT
8 THESE INDIVIDUAL DEFECTS TO THE PLACE WHERE YOU DREW
9 A LINE ON MY ARM YESTERDAY, WHICH IS THE RIGHT ARM
10 OF MR. MENENDEZ, WERE A SEPARATE SHOT THAN THE
11 LARGER DEFECT ABOVE.

12 MR. CONN: OBJECTION. MISSTATES THE
13 EVIDENCE.

14 THE COURT: ALL RIGHT. THAT'S A QUESTION?

15 MS. ABRAMSON: YES.

16 Q CORRECT? YES? NO?

17 A YES.

18 Q THANK YOU.

19 AND HAVE YOU SEEN A PHOTOGRAPH THAT
20 SHOWS THE POTENTIAL EXIT WOUND FOR THESE INDIVIDUAL
21 PELLET WOUNDS THAT CAME -- THAT ENTERED IN THE
22 ANTERIOR OR FRONT -- IN THE ANATOMICALLY CORRECT
23 POSITION -- PART OF MR. MENENDEZ' RIGHT ARM?

24 A I'D LIKE TO SEE THE PHOTOGRAPH YOU'RE
25 TALKING ABOUT.

26 Q I SHOWED THIS TO YOU BEFORE WE BEGAN
27 TODAY. DO YOU RECALL I SHOWED YOU A PHOTOGRAPH OF

40244

1 LET ME SEE WHERE IT IS. I THINK YOU'VE
2 GOT IT THERE. NOT THAT ONE. NO. IT'S THE NEXT IN
3 THAT SERIES.

4 LET ME SEE IF IT'S HERE OR BACK ON
5 COUNSEL TABLE. IT'S BACK ON COUNSEL TABLE.

6 I THINK YOU GUYS HAVE IT. LET ME
7 RUMMAGE THROUGH THIS FILE.

8 (BRIEF PAUSE.)

9 WELL, THE ONE THAT SHOWS AT THE SCENE
10 THE RIGHT ARM LIFTED. WHY DON'T YOU SEE IF YOU CAN
11 FIND IT HERE. I DON'T KNOW WHERE IT WENT.

12 I SHOWED IT TO YOU AND MR. CONN AND --
13 YEAH. HERE WE GO. YOU WERE HIDING IT.

14 A I SHOWED IT TO YOU A MINUTE AGO.

15 Q I'M SORRY. NEVER MIND. WE FOUND IT.

16 THIS IS 217, CORRECT?

17 A YES.

18 Q ON THE RIGHT-HAND SIDE OF THIS
19 PHOTOGRAPH YOU CAN SEE THE OUTER PART OF THE AREA
20 NEAR MR. MENENDEZ' ELBOW, CORRECT?

21 A THE AREA WITH THE PELLET MARKS IS ABOUT
22 FOUR TO FIVE INCHES BELOW THE ELBOW --

23 Q RIGHT.

24 A -- ON THE ELBOW SIDE OF THE FOREARM.

25 Q SO IT APPEARS THAT, IF THE ENTRY WOUND
26 WAS ABOVE, THE EXIT DEFECTS ARE LOWER ON THE
27 FOREARM, CORRECT?

28 A I DON'T UNDERSTAND YOUR QUESTION. WHERE

40245

1 IS THE ENTRANCE WOUND NOW?

2 Q WE'RE TALKING ABOUT THESE DEFECTS THAT
3 YOU DREW ON MY ARM YESTERDAY. OKAY?

4 A YES.

5 Q AND THEN ON THE BACK OF HIS FOREARM
6 THERE APPEAR TO BE THIS SERIES OF DEFECTS, CORRECT?

7 A YES. BUT I'M NOT RELATING THOSE TO THAT
8 ENTRANCE WOUND.

9 Q DO YOU KNOW IF THEY'RE RELATED OR NOT?

10 A NO, I DON'T BELIEVE THEY ARE.

11 Q ALL RIGHT. WHEN MR. CONN WAS ASKING YOU
12 YESTERDAY ABOUT DR. GOLDEN HAVING TALKED ABOUT
13 INJURIES ON A FOREARM, YOU INDICATED THERE WERE NO
14 INJURIES ON A FOREARM; ISN'T THAT RIGHT?

15 A THAT'S CORRECT.

16 Q BUT THERE THEY ARE.

17 A YES.

18 Q SO THERE ARE DEFINITELY INJURIES ON
19 MR. MENENDEZ' RIGHT FOREARM?
20 A YES.
21 Q WHAT CAUSED THEM?
22 A THEY LOOK -- THEY'RE PELLET MARKS.
23 Q RIGHT. WHAT ARE THEY ASSOCIATED WITH,
24 WHAT OTHER SHOT?
25 A I WOULD HAVE TO -- I DON'T KNOW.
26 Q YOU DON'T KNOW.
27 NOW, THIS IS A SCENE PHOTOGRAPH SO IT'S
28 EXTREMELY BLOODY, CORRECT?

40246

1 A YES.
2 Q BUT YOU'RE NOT HAVING ANY DIFFICULTY
3 VISUALIZING THESE FOREARM WOUNDS, ARE YOU?
4 A NO.
5 Q AND THIS ALSO SHOWS THE SHIRT THAT WE
6 HAVE JUST BEEN HANDLING AND THE VERY RAGGED DEFECT
7 AT THE BACK OF THE ARM, THE UPPER -- THE BACK OF THE
8 UPPER ARM, CORRECT?
9 A YES.
10 Q THAT'S THE OTHER SIDE OF THIS HOLE WHICH
11 APPEARS IN 216.
12 A YES.

13 Q ALL RIGHT. NOW, I HAD ASKED YOU -- I
14 KNOW WE'VE ESTABLISHED THAT YOU DID NOT BELIEVE THAT
15 THE INDIVIDUAL PELLET DEFECTS IN THE INSIDE OF THE
16 RIGHT ARM WERE THE SAME SHOT AS THE ONE ABOVE,
17 CORRECT?

18 A I DON'T KNOW. THEY COULD BE, THEY COULD
19 BE. I JUST -- I'M NOT SURE.

20 Q WELL, AM I CORRECT IN RECALLING THAT
21 YOUR TESTIMONY WAS, SINCE THESE ARE INDIVIDUAL
22 DEFECTS, THEY SHOW A DIFFERENT LEVEL OF SPREAD THAN
23 THIS BIG HOLE?

24 A THAT'S CORRECT. BUT YOU CAN HAVE A SHOT
25 MASS WITH SOME SATELLITE PELLETS THAT ARE BEGINNING
26 TO SPREAD, AND IT MAY NOT BE IN A REGULAR FASHION.
27 SO THAT DOESN'T HELP ANSWER THE QUESTION.

28 Q SO YOU DON'T KNOW?

40247

1 A I DON'T KNOW.

2 Q AND WHEN I GAVE YOU THE HYPOTHETICAL
3 ABOUT WHETHER THIS GROUP OF INDIVIDUAL PELLET
4 DEFECTS COULD BE AFFILIATED WITH THE BREAST WOUND TO
5 MRS. MENENDEZ, IF, FOR EXAMPLE, MR. MENENDEZ THREW
6 OUT HIS ARM, WHETHER THAT LINED UP WITH HER LEFT ARM
7 AND HER LEFT BREAST. YOU SAID YES, THAT COULD BE.

8 A YES.

9 Q ALL RIGHT. YOU'RE CHANGING THAT?

10 A NO, MA'AM.

11 Q OKAY. NOW, YOU PREVIOUSLY HAVE SAID,
12 HAVE YOU NOT, DR. LAWRENCE, THAT YOU DEFINITELY DID
13 NOT BELIEVE THAT THE UPPER ARM WOUND OF MR. MENENDEZ
14 WAS ASSOCIATED WITH THE LEFT BREAST OF
15 MRS. MENENDEZ.

16 YOU'VE TOLD ME THAT, DIDN'T YOU?

17 A NO.

18 Q YOU NEVER DID?

19 A I DID NOT SAY THE WORDS THAT YOU USED.

20 Q DIDN'T YOU SAY, BECAUSE OF THE PATTERN
21 OF SPREAD ON MRS. MENENDEZ AND THE FACT THAT THERE
22 WAS NO GREAT DISTANCE SEPARATING HIS RIGHT ARM FROM
23 HER LEFT BREAST, YOU CANNOT ASSOCIATE THE UPPER ARM
24 INJURY TO MR. MENENDEZ WITH MRS. MENENDEZ' LEFT
25 BREAST INJURY?

26 A NO. THAT WAS NOT MY TESTIMONY.

27 Q I'M NOT ASKING YOU YOUR TESTIMONY. I'M
28 ASKING YOU WHAT YOU TOLD ME ON THE TELEPHONE IN

40248

1 OCTOBER WHEN WE SPOKE.

2 A I DIDN'T SAY IT THAT WAY, NO, MA'AM.

3 Q ALL RIGHT. YOUR -- WELL --

4 A WOULD YOU LIKE ME TO SAY IT TO THE JURY
5 THE WAY I WOULD SAY IT?

6 Q NO. I'D LIKE TO ASK YOU QUESTIONS
7 BECAUSE THE WAY YOU WOULD SAY IT CHANGES.

8 A THAT'S NOT TRUE.

9 Q THE QUESTION IS -- WE'LL SEE.

10 THE QUESTION IS: DIDN'T YOU PREVIOUSLY
11 TESTIFY THAT YOU DID NOT BELIEVE THE UPPER ARM
12 INJURY OF MR. MENENDEZ WAS AFFILIATED WITH THE LEFT
13 BREAST INJURY OF MRS. MENENDEZ?

14 A YES.

15 Q AND YOU'RE CHANGING THAT TESTIMONY, OR
16 YOU'RE NOT CHANGING THAT TESTIMONY?

17 A I'M NOT CHANGING IT. I'M ALSO NOT
18 CHANGING THE PART WHERE I SAID I DIDN'T KNOW.

19 MS. ABRAMSON: THERE'S NO QUESTION PENDING,
20 DR. LAWRENCE.

21 THE COURT: LET HIM FINISH HIS ANSWER.

22 THE WITNESS: I'M ALSO SAYING THAT, ANSWERING
23 THE QUESTION, STATING THAT I DON'T KNOW, THAT IT
24 COULD BE. AND THE ANSWER IS I JUST DON'T KNOW. IT
25 MAY BE ASSOCIATED AND IT MAY NOT BE.

26 Q BY MS. ABRAMSON: ALL RIGHT. SO NOW
27 YOU'RE SAYING YOU DON'T KNOW?

28 A I SAID THAT BEFORE.

1 MR. CONN: OBJECTION TO THE FORM OF THE
2 QUESTION.

3 THE COURT: SUSTAINED. THE ANSWER'S
4 STRICKEN.

5 MS. ABRAMSON: I HAVEN'T FINISHED THE
6 QUESTION.

7 Q DID YOUR STATE OF KNOWLEDGE ABOUT THESE
8 WOUNDS CHANGE OVERNIGHT SOMEHOW?

9 A WHICH NIGHT ARE YOU TALKING ABOUT?

10 Q LAST NIGHT.

11 A MY STATE OF KNOWLEDGE HAS NOT CHANGED AT
12 ALL THAT I'M AWARE OF.

13 Q OKAY. LET'S MOVE ON.

14 A THERE HAVE BEEN MANY DISCUSSIONS OVER
15 THE LAST TWO DAYS OF WOUNDS AND INTERPRETATIONS AND
16 MANY THINGS WERE SAID. BUT MY CONSISTENT
17 INTERPRETATION HAS BEEN THAT I DON'T KNOW IF THE
18 SEPARATE PELLET MARKS ARE ASSOCIATED WITH THE LARGER
19 DEFECT OR NOT. AND I STILL FEEL THAT WAY.

20 Q OKAY. LET'S TALK ABOUT ANOTHER PART OF
21 MR. MENENDEZ' RIGHT FOREARM. WHEN MR. CONN WAS
22 ASKING YOU ABOUT DR. GOLDEN AND INSINUATING THAT
23 DR. GOLDEN WAS COMPLETELY CONFUSED, HERE ON 183, DO
24 YOU SEE ADDITIONAL MARKS TO MR. MENENDEZ' RIGHT
25 FOREARM?

26 A YES.

27 Q AND THOSE ARE MARKS THAT YOU HAVEN'T
28 TALKED ABOUT AT ALL IN YOUR TESTIMONY.

40250

1 A THAT'S CORRECT.

2 Q AND ONE OF THESE MARKS IS LINEAR, IS IT
3 NOT?

4 A IT LOOKS LIKE A GRAZE WOUND FROM A
5 PELLET. YES, MA'AM.

6 Q IN DR. GOLDEN'S REPORT, NOT THE PART
7 THAT MR. CONN READ YESTERDAY, BUT ANOTHER PART
8 DESCRIBING MR. MENENDEZ' RIGHT FOREARM, HE DESCRIBES
9 A GRAZE WOUND JUST LIKE THAT, DOESN'T HE?

10 A YES.

11 Q WHAT CAUSED THAT GRAZE WOUND?

12 A A PELLET PASSING BY.

13 Q YEAH. WHICH ONE? WHICH SHOT?

14 A I HAVE NO IDEA.

15 Q NOW, HOW MANY INDIVIDUAL DEFECTS -- WELL,
16 LET ME ASK YOU A QUESTION BEFORE WE GO ON.

17 YOU UNDERSTAND THAT THE DIAGRAM -- MAYBE
18 YOU DON'T. LET ME MAKE SURE.

19 220. THIS VERSION OF 220 -- THIS VERSION
20 OF THIS PARTICULAR SUPPOSED EVENT HAS THE NUMBER

21 SHOT.1-A ON IT, OKAY?

22 A YES.

23 Q DO YOU UNDERSTAND THE SIGNIFICANCE OF

24 THE NUMBERING SEQUENCE ON THESE DIAGRAMS, THESE SHOT

25 NUMBERING SEQUENCES.

26 A YES.

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: OVERRULED. THE ANSWER WILL

40251

1 STAND.

2 Q BY MS. ABRAMSON: IS IT YOUR

3 UNDERSTANDING, DR. LAWRENCE, THAT THIS GREEN

4 TRAJECTORY LINE THAT'S GOING THROUGH MR. MENENDEZ'

5 RIGHT ARM IS SUPPOSED TO ACCOUNT FOR BOTH THE UPPER

6 DEFECT AND THE LOWER SATELLITE DEFECTS, THE

7 INDIVIDUALS?

8 DO YOU UNDERSTAND THAT?

9 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: YOU WOULD HAVE TO ASK THE

12 PERSON WHO PREPARED THE DOCUMENT.

13 MS. ABRAMSON: I'M GIVING THIS TO YOU AS A

14 HYPOTHETICAL. YOU'VE ALREADY RENDERED AN OPINION

15 ABOUT THIS DIAGRAM. I WANT TO KNOW IF YOU HAVE ALL

16 THE FACTS.

17 THE WITNESS: LET ME EXPLAIN.

18 MS. ABRAMSON: NO. LET ME ASK THE

19 QUESTIONS. HERE'S THE QUESTION:

20 Q HYPOTHETICALLY, THIS LINE GOING THROUGH

21 MR. MENENDEZ' RIGHT ARM IS SUPPOSED TO INDICATE BOTH

22 THE UPPER ARM DEFECT AND THE INDIVIDUAL DEFECTS THAT

23 APPEAR IN 216.

24 NOW, IF THAT IS WHAT THAT'S SUPPOSED TO

25 REPRESENT, IS IT STILL YOUR POSITION THAT YOU DO NOT

26 DISAGREE MEDICALLY WITH ANYTHING ON THAT DIAGRAM?

27 A THE ANSWER TO THAT WOULD BE IT MIGHT BE

28 WRONG, BUT IT MIGHT NOT.

40252

1 Q YOU DON'T KNOW?

2 A THE DIAGRAM IS COMPLETELY CORRECT IF YOU

3 CHOOSE EITHER POSSIBILITY, AND IT MAY BE WRONG ABOUT

4 THE LARGER WOUND. AND THE ANSWER IS I DON'T KNOW

5 HOW TO FIND THAT OUT.

6 Q OKAY. LET'S MOVE ON WITH THE DIAGRAM.

7 A IN ESSENCE IT'S TELLING YOU THE

8 STRUCTURES THAT WERE HIT.

9 Q I GAVE YOU A HYPOTHETICAL TELLING YOU

10 THE BASIS OF THIS DIAGRAM, TELLING YOU BOTH OF THESE

11 WOUNDS ARE CAUSED BY THAT SAME SHOT THAT WENT AND
12 HIT -- THAT HIT THE LEFT ELBOW.
13 YOU UNDERSTAND THAT?
14 A AND IT MIGHT BE WRONG; IT MAY NOT BE
15 WRONG.
16 Q WOULD IT BE FAIR TO SAY YOU DON'T HAVE A
17 MEDICAL OPINION THAT CAN VERIFY THAT DIAGRAM?
18 A YES.
19 Q THANK YOU.
20 YOU'RE SAYING YOU CAN'T DISAGREE, BUT
21 YOU CANNOT SUPPORT IT EITHER IN YOUR MEDICAL
22 OPINION?
23 A I SUPPORT IT IN LARGE PART.
24 Q BUT NOT ENTIRELY?
25 A I CAN'T APPROVE THE ASPECT OF THE
26 SEPARATE WOUND VERSUS THE LARGE WOUND.
27 Q LET'S GO ON TO MRS. MENENDEZ' LEFT ARM.
28 IF I PUT IT UP THERE, IS THAT BAD?

40253

1 GOOD. I THINK I'LL MOVE THE DIAGRAM.
2 NOW, I HAVE SHOWN YOU THESE PHOTOGRAPHS
3 BEFORE. YOU HAVE TESTIFIED ABOUT THESE TWO
4 PHOTOGRAPHS, WHICH ARE 214 AND 187. LET ME WRITE
5 "187" ON THE OUTSIDE.

6 AND THOSE ARE TWO PHOTOGRAPHS. 187 IS A
7 PHOTOGRAPH OF THE LEFT BREAST WITH THE LEFT ARM
8 SHOWN UP CLOSE TO IT.

9 AND 214 IS A PHOTOGRAPH OF THE LEFT ARM
10 LOWER ON MRS. MENENDEZ' BODY, REVEALING ADDITIONAL
11 PELLETS.

12 BAILIFF WOLF: QUESTION BY THE JURY.

13 UNIDENTIFIED JUROR: CAN YOU MOVE 214? THE
14 GLARE IS -- I CAN'T SEE A THING.

15 MS. ABRAMSON: THIS ONE?

16 UNIDENTIFIED JUROR: YES.

17 MS. ABRAMSON: LET ME SEE IF IT HELPS IF I
18 TAKE IT OUT OF THE PLASTIC.

19 THE WITNESS: JUST IN A DIFFERENT POSITION IT
20 SHOULD WORK.

21 MS. ABRAMSON: THINK SO? HOW'S THAT?

22 UNIDENTIFIED JUROR: I CAN SEE HALF OF IT
23 NOW. THAT'S BETTER. A LITTLE BIT MORE. PERFECT.
24 OKAY.

25 Q BY MS. ABRAMSON: IN 214 THE ARM IS
26 FARTHER DOWN ON THE BODY. YOU CAN SEE OTHER DEFECTS
27 RIGHT UNDER THE BREAST. YOU CAN SEE THIS DEFECT IN
28 THE UPPER ABDOMINAL AREA, AT LEAST I CAN.

1 NOW YOU CAN, RIGHT?

2 A YES.

3 Q NOW, DR. GOLDEN IN HIS REPORT ASSOCIATED --

4 OH, YOU DIDN'T GET THE 1992 AMENDMENT, DID YOU? I

5 SHOULD SHOW THAT TO YOU.

6 DO YOU KNOW THAT DR. GOLDEN WROTE AN

7 AMENDMENT IN 1992 SPECIFICALLY DEALING WITH THIS

8 LEFT FOREARM WOUND OF MRS. MENENDEZ?

9 A NO.

10 Q AND I ASKED YOU, DID I NOT, DAY BEFORE

11 YESTERDAY, IF YOU HAD EVER SEEN THAT AMENDMENT AND

12 YOU INDICATED NO, CORRECT?

13 A YES.

14 Q AND DID YOU EVER ASK FOR IT AFTER I

15 TALKED TO YOU ABOUT IT TWO DAYS AGO?

16 A NO.

17 Q NO?

18 A NO.

19 Q AND NO ONE OFFERED IT TO YOU; IS THAT

20 RIGHT?

21 A NO.

22 Q THAT'S NOT CORRECT?

23 A OH. I'M SORRY. YES, THAT IS CORRECT.

24 Q HERE IT IS.

25 A I WAS SAYING NO, NO ONE OFFERED IT TO

26 ME.

27 (READING.) I THINK HIS OPINION --

28 Q I DIDN'T ASK YOU ANYTHING. I JUST

1 HANDED YOU THE REPORT TO READ IT.

2 HE DESCRIBES IN THIS REPORT THREE

3 SHOTGUN PELLET WOUNDS ON THE ANTERIOR, OUTSIDE,

4 ASPECT OF THE LEFT FOREARM, CORRECT?

5 A I'D LIKE TO HAVE A COPY OF IT.

6 MS. ABRAMSON: WELL, MR. CONN, DO YOU WANT TO

7 GIVE YOUR WITNESS A COPY OF THIS REPORT.

8 MR. CONN: DO YOU HAVE A COPY FOR HIM?

9 MS. ABRAMSON: NO. I ONLY HAVE ONE.

10 MR. CONN: HE'S GOING TO HAVE TO WAIT.

11 MS. ABRAMSON: WELL, HERE, IF YOU DON'T

12 REMEMBER WHAT IT SAYS, LET ME READ IT OVER YOUR

13 SHOULDER.

14 Q IT INDICATES THAT THERE ARE THREE PELLET

15 WOUNDS ON THE ANTERIOR, WHICH IS THE OUTSIDE ASPECT,

16 AS I'M SHOWING, OF THE LEFT FOREARM OF

17 MRS. MENENDEZ, CORRECT?

18 A NO.

19 Q THREE ON THE INSIDE?

20 A ON THE ANTERIOR ASPECT OF THE LEFT

21 FOREARM.

22 Q SO THREE HERE?

23 A YES.

24 Q AND YOU SEE IN THE PHOTOGRAPH -- MAYBE

25 THREE OR MORE?

26 A THAT'S NOT THE ANTERIOR SURFACE.

27 Q I KNOW, BUT WE SEE THREE OR MORE ON THE
28 POSTERIOR SURFACE, CORRECT?

40256

1 A YES.

2 Q AND THEN HE SAYS --

3 A AND ON THE POSTERIOR SURFACE.

4 Q HE FINDS AN EXIT.

5 A HE FINDS AN EXIT AND TWO ABRASIONS.

6 Q OKAY. SO THERE ARE THREE INSIDE THAT
7 WE'RE NOT SEEING IN THIS PHOTOGRAPH?

8 A THAT'S WHAT HE SAYS, YES.

9 Q THERE'S ONE WHICH IS AN ACTUAL EXIT,
10 WHICH WE ARE PRESUMABLY SEEING IN THIS PHOTOGRAPH?

11 A I CAN'T TELL. THERE'S NO WAY I CAN TELL
12 THAT THAT'S AN EXIT.

13 Q WELL, THERE'S A HOLE, ISN'T THERE?

14 A I CAN'T TELL.

15 Q OKAY. BUT HE SEEMS TO THINK ONE OF
16 THESE THREE THINGS ON THE OUTSIDE IS A HOLE, WHICH
17 MEANS SOMETHING PASSED THROUGH, CORRECT?

18 A YES.

19 Q OKAY. AND THEN HE SEES OTHER THINGS

20 THAT HE CALLS ABRASIONS, CORRECT?

21 A YES.

22 Q AND HE BELIEVES THEY ARE ASSOCIATED WITH
23 THE OTHER WOUNDS?

24 A HIS OPINION IS: "THE SHOTGUN PELLET
25 WOUND OF THE LEFT FOREARM MAY BE RELATED TO ONE OF
26 THE OTHER PREVIOUS GROUPS OF SHOTGUN WOUNDS
27 DESCRIBED ABOVE."

28 Q OKAY. AND IN THE PHOTOGRAPH THERE

40257

1 APPEARS TO BE A RELATIONSHIP BETWEEN THE LEFT
2 FOREARM, AND I THINK THERE ARE EVEN MORE HOLES THERE
3 IN THE TOP PHOTOGRAPH. IT LETS YOU SEE THE
4 POSITIONING DIFFERENTLY OF THE ARM IN RELATION TO
5 THE BREAST, CORRECT, THAT APPEARS TO BE ASSOCIATED?

6 A THE UPPER PHOTOGRAPH DEPICTS THE WOUNDS
7 THE WAY I THINK THEY PROBABLY REALLY ARE, AND THAT
8 IS THAT THEY ALL CAME ON INTO THE BREAST AREA, WITH
9 SOME OF THEM STRIKING THE FOREARM WHICH IS NEARBY.

10 Q THAT'S WHAT YOU THINK HAPPENED?

11 A THAT IS NOT WHAT HE SAID IN THE AMENDED
12 REPORT.

13 Q BUT THAT'S WHAT YOU THINK HAPPENED?

14 A YES.

15 Q YOU DO YOU BELIEVE THE LEFT ARM IS

16 AFFILIATED WITH THE LEFT BREAST?

17 A YES.

18 Q I THOUGHT MAYBE YOU DIDN'T SAY THAT THIS

19 MORNING.

20 MR. CONN: OBJECTION. ARGUMENTATIVE.

21 THE COURT: SUSTAINED.

22 MR. CONN: MOVE TO STRIKE.

23 Q BY MS. ABRAMSON: SO I WAS

24 MISUNDERSTANDING YOUR EARLIER TESTIMONY THIS

25 MORNING. YOU STILL BELIEVE THEY ARE --

26 THE COURT: OKAY. LET'S NOT MINGLE ALL SORTS

27 OF OBSERVATIONS WITH QUESTIONS.

28 THE OBJECTION IS SUSTAINED. THAT ANSWER

40258

1 IS STRICKEN.

2 Q MS. ABRAMSON: ALL RIGHT. SO IN YOUR

3 MIND, AS OF THIS MOMENT, THESE LEFT-ARM WOUNDS ARE

4 AFFILIATED WITH THE BREAST WOUND, CORRECT?

5 A YES.

6 Q AND THIS -- I'M HOLDING IN MY

7 HAND EXHIBIT 172, WHICH IS AN X RAY OF MRS. MENENDEZ'

8 LEFT ARM.

9 A YES.

10 Q AND IT SHOWS TWO PELLETS INSIDE HER LEFT
11 ARM?

12 A YES. IN THE FOREARM AREA.

13 Q RIGHT. WHICH IS WHAT WE'RE TALKING
14 ABOUT, CORRECT?

15 A YES. BUT ONE OF THE PELLETS IS MUCH
16 FURTHER -- WELL, I GUESS IT'S IN THE SAME AREA.

17 Q WELL, PELLETS CAN MOVE INSIDE THE BODY,
18 FIRST OF ALL, BY THE FORCE OF VELOCITY, AND THEY HIT
19 THINGS AND IT MAKES THEM MOVE, CORRECT?

20 A I WOULDN'T QUITE CHARACTERIZE IT THAT
21 WAY MYSELF.

22 Q ALL RIGHT. BUT YOU HAD TALKED -- I
23 THINK WHEN WE WERE TALKING ABOUT THE CHEST X RAY YOU
24 SAID THINGS TEND TO KEEP GOING, CORRECT? PELLETS
25 INSIDE THE BODY TEND TO KEEP GOING?

26 A I DON'T BELIEVE I SAID IT QUITE THAT
27 WAY. WHAT ARE YOU GETTING AT?

28 Q IN OTHER WORDS, THEY'RE NOT NECESSARILY

40259

1 RIGHT UNDER THE ENTRY WOUNDS.

2 A OH, THAT'S CORRECT.

3 Q THEY MOVE.

4 A YES, MA'AM.

5 Q THAT'S WHAT I MEANT.

6 A THEY MOVE AS THEY'RE ENTERING, PASSING
7 THROUGH THE BODY. I THOUGHT YOU MEANT THEY MOVED
8 AFTERWARDS.

9 Q NO, NO. ONLY AS THEY'RE ENTERING, UNTIL
10 ALL THE FORCE IS SPENT AND THEN THEY STOP.

11 A YES, MA'AM.

12 Q WHEREVER THEY STOPPED, THEY STAY STOPPED.

13 A UNLESS THEY'RE IN A BODY CAVITY.

14 Q BUT IF THEY'RE INSIDE WHAT WE KNOW IS
15 THE NOT-HOLLOW LIMBS, THEY STAY WHERE THEY ARE?

16 A YES.

17 Q BY THE WAY, IS THE CHEST A HOLLOW BODY
18 CAVITY?

19 A NO. IT'S HOLLOW IN A SENSE, BUT WHEN
20 IT'S IN LIFE IT'S FILLED UP WITH LUNGS; AND WHEN THE
21 LUNGS COLLAPSE, THEN USUALLY BLOOD FILLS UP THE
22 SPACE. SOMETIMES THERE CAN BE AIR IN THERE.

23 SO ON OCCASION IT COULD BE HOLLOW.

24 Q BUT YOU'RE STILL TALKING ABOUT, IN YOUR
25 OPINION, PELLETS WOULDN'T MOVE AROUND INSIDE THE
26 CHEST BEFORE DEATH (SIC)?

27 A THEY MOVE A LITTLE BIT WITH THE POSITION
28 OF THE BODY DURING X RAY EXAMINATION BECAUSE THE

1 LUNGS ARE SOMEWHAT FLEXIBLE, AND BY GRAVITY THEY
2 CHANGE THEIR POSITION A LITTLE BIT.

3 Q SO IS IT POSSIBLE THAT IN THE X RAY THAT
4 WE HAVE OF MRS. MENENDEZ' CHEST, WHICH IS 169, THAT
5 ANY OF THESE PELLETS MIGHT HAVE MOVED AFTER DEATH?

6 A IT IS POSSIBLE -- FOR EXAMPLE, THERE
7 WAS, I THINK, A THOUSAND CC'S OF BLOOD DESCRIBED IN
8 THAT CHEST. IF ANY OF THOSE PELLETS WERE SITTING IN
9 THAT CHEST CAVITY FILLED WITH BLOOD, THEY COULD FALL
10 WHEREVER GRAVITY WOULD TAKE THEM.

11 Q SO YOU CAN'T BE SURE THAT THIS X RAY OF
12 HER CHEST IS ACTUALLY SHOWING WHERE THE PELLETS
13 WOUND UP DUE TO THE FORCE OF THE SHOTGUN WOUND?

14 A THAT'S CORRECT. I CAN'T BE SURE.

15 Q OKAY. NOW, LET'S GET BACK TO THE
16 DIAGRAM, 220.

17 DID YOU NOTICE -- LET ME PUT IT RIGHT IN
18 FRONT OF YOU.

19 IN THIS DIAGRAM, 220, WHICH ON THE
20 BOTTOM SAYS "SHOT.1A," IS THE POSITION OF
21 MRS. MENENDEZ' ARM SUCH THAT SHE COULD NOT HAVE
22 RECEIVED THE FOREARM WOUND AT THE TIME THAT SHE'S
23 SHOWN THERE RECEIVING THE BREAST WOUND?

24 A YES.

25 Q SO, IF YOU BELIEVE THE FOREARM WOUND IS
26 AFFILIATED WITH THE BREAST WOUND, THEN THIS
27 PHOTOGRAPH IS INACCURATE, IS IT NOT? I MEAN, THIS

40261

1 A NOT AT ALL. ONE WOULD SIMPLY HAVE TO
2 COCK THE FOREARM UP.

3 Q YOU CAN'T COCK A DIAGRAM, DR. LAWRENCE.
4 AS IT'S DRAWN, WOULDN'T YOU SAY IT'S
5 INACCURATE TO SHOW THE FOREARM/BREAST COMBINATION?

6 A IT MISSES THE FOREARM. SO IN THAT SENSE
7 IT'S INACCURATE. THAT'S AN EXTREMELY MINOR POINT.
8 AND WHAT I BELIEVE AND I FEEL THE DIAGRAM'S VALUE
9 IS, IS IT SHOWS YOU TRAJECTORY AND THINGS THAT WERE
10 STRUCK AND WHERE THEY WERE SITTING.

11 Q BUT YOU DON'T KNOW WHAT USE IS GOING TO
12 BE MADE OF IT AFTER YOU'RE BACK IN STOCKTON.

13 MR. CONN: OBJECTION. ARGUMENTATIVE.

14 THE WITNESS: I'M NOT WILLING TO DISMISS THAT
15 DIAGRAM TO THAT TYPE OF FLAW.

16 Q BY MS. ABRAMSON: I AM ASKING YOU IF
17 MEDICALLY YOUR OPINION SUPPORTS HER ARM NOT BEING
18 INVOLVED AS SHOWN IN THIS DIAGRAM WITH THE LEFT
19 BREAST WOUND. THAT'S WHAT I'M ASKING YOU.

20 MEDICALLY, DO YOU AGREE THAT THE WAY
21 THAT IS SHOWN THAT LEFT ARM --

22 A NO. THE ARM SHOULD BE COCKED UP --

23 Q SO --
24 A -- AGAINST THE BREAST.
25 Q SO YOU DO NOT AGREE WITH THAT ASPECT OF
26 THE DIAGRAM; IS THAT FAIR?
27 A YES, MA'AM.
28 Q THANK YOU, SIR.

40262

1 AND YOU NOTE, DO YOU NOT, DR. LAWRENCE,
2 THAT I PLACED THE X, A CROSS-SECTION, THE X RIGHT
3 OVER HER LEFT FOREARM, CORRECT?
4 A LOOKS LIKE IT'S OVER THE BICEPS AREA.
5 Q I MEAN, IT'S OVER HER LEFT ARM, THOUGH.
6 WHICH REMINDS ME OF SOMETHING ELSE.
7 THIS DIRECTION, THIS TRAJECTORY THAT'S
8 SHOWN HERE, ISN'T IT TOO LOW ON MR. MENENDEZ' RIGHT
9 ARM TO ACCOUNT FOR THE UPPER-ARM WOUND?
10 A A LITTLE BIT. HIS RIGHT ARM WOULD BE
11 ROTATED DOWN A LITTLE BIT.
12 Q IT'S TOO LOW AS TO WHERE IT'S SHOWN
13 HERE, CORRECT?
14 A IT'S NOT PERFECT.
15 Q I REALIZE THAT. BUT MY QUESTION IS:
16 IT'S NOT PERFECT BECAUSE IT'S TOO LOW; IS THAT
17 CORRECT?

18 A YES, YES.

19 Q THANK YOU.

20 AND IF IT WERE HIGHER ON HIS ARM, IT
21 WOULD MISS MS. MENENDEZ' BREAST, CORRECT?

22 A I'M SUGGESTING, THAT TO BE HIGHER ON THE
23 ARM, HIS ARM WOULD HAVE TO BE LOWER.

24 Q MAYBE HIS ARM IS LOWER, BUT AS THE
25 ARTIST WHO DREW THIS DREW IT, IF HE HAD DRAWN THE
26 TRAJECTORY HIGHER SO THAT IT CAME -- THIS IS JUST A
27 STRAIGHT LINE TRAJECTORY, RIGHT? DOESN'T GO UP,
28 DOESN'T GO DOWN.

40263

1 A IT'S PASSING SLIGHTLY DOWNWARD, AS YOU
2 CAN SEE.

3 Q OKAY. SO IT'S EVEN -- IN ENTERING THE
4 LEFT ELBOW, THEN IT APPEARS TO BE PASSING THROUGH
5 SLIGHTLY DOWNWARD.

6 A YEAH. AS I SEE IT.

7 Q AND THAT'S CONTRARY TO WHAT THE AUTOPSY
8 REPORT SAYS WAS THE DIRECTION IN THE LEFT ELBOW?

9 A THERE'S NO SIGNIFICANT DIFFERENCE
10 THERE. WE'RE TALKING ABOUT A FEW DEGREES. YOU'RE
11 ASSUMING PRECISION WHERE PRECISION DOES NOT EXIST.

12 Q IS THAT CONTRARY TO THE DESCRIPTION

13 GIVEN IN THE AUTOPSY REPORT THAT THE LEFT ELBOW
14 INJURY WAS ABSOLUTELY STRAIGHT-ON, NO DEVIATION UP
15 OR DOWN?

16 A NO.

17 Q IT'S NOT. DIDN'T WE JUST READ THAT
18 DESCRIPTION?

19 A BUT IT'S NOT -- IT'S MEANINGLESS.

20 Q I'M NOT ASKING --

21 MR. CONN: MAY THE WITNESS FINISH HIS ANSWER.

22 MS. ABRAMSON: I'M GOING TO OBJECT AS NOT
23 RESPONSIVE.

24 THE COURT: HE WAS IN THE PROCESS OF
25 ANSWERING THE QUESTION.

26 MS. ABRAMSON: GO AHEAD.

27 THE WITNESS: IF THERE'S NO SIGNIFICANT
28 DIFFERENCE, NO MEDICALLY SIGNIFICANT DIFFERENCE

40264

1 BETWEEN THE TWO --

2 Q BY MS. ABRAMSON: I DIDN'T ASK IF IT WAS
3 MEDICALLY SIGNIFICANT. I'M SIMPLY ASKING IF THE
4 AUTOPSY REPORT INDICATED THAT THERE WAS NO DEVIATION
5 UP OR DOWN, LEFT OR RIGHT, TO THE LEFT ELBOW WOUND.
6 THAT'S ALL I'M ASKING.

7 A THAT WAS THE WORDING OF THE AUTOPSY

8 REPORT.

9 Q THANK YOU.

10 A AND THAT IS NOTHING TO EXPLAIN TO US
11 THESE ASPECTS.

12 Q THANK YOU.

13 NOW, IN THIS DIAGRAM, HOWEVER, BASED ON
14 THE WAY THIS TRAJECTORY LINE HAS BEEN DRAWN, IN
15 ORDER FOR IT TO INTERSECT MR. MENENDEZ' UPPER ARM
16 WHERE THE WOUND IS, THE LINE WOULD HAVE TO TIP
17 UPWARD, CORRECT?

18 A NO, MA'AM. THE ARM WOULD HAVE TO BE
19 FURTHER DOWN.

20 Q EITHER ONE.

21 A WHY DON'T YOU ASK THE PERSON WHO
22 PREPARED THE DIAGRAM.

23 Q OH, I INTEND TO; BUT MEANWHILE, YOU'RE
24 ON THE WITNESS STAND.

25 YOU'RE SAYING THE ONLY WAY FOR THIS --
26 THE ONLY WAY TO SHOW THE INJURY TO MR. MENENDEZ'
27 RIGHT ARM IS FOR THE ARM TO DIP DOWNWARD; ISN'T THAT
28 WHAT YOU'RE SAYING?

40265

1 A NO, MA'AM.

2 Q YOU COULD TIP THE TRAJECTORY UPWARD,

3 CORRECT?

4 A BUT THEN IT WOULD MISS HER BREAST.

5 Q EXACTLY.

6 A THERE ARE MANY --

7 Q THERE'S NO QUESTION AGAIN.

8 A JUST A MINUTE. I DON'T WANT THE JURY TO

9 HAVE THE WRONG --

10 MS. ABRAMSON: YOUR HONOR, PLEASE.

11 THE COURT: YOU ASKED A QUESTION AND YOU'RE

12 NOT GIVING HIM A CHANCE TO ANSWER IT.

13 MS. ABRAMSON: DID HE ANSWER?

14 THE COURT: NO, HE DIDN'T.

15 THE WITNESS: I DON'T WANT THE JURY TO FEEL

16 THAT THERE'S SOMETHING WRONG WITH THE DIAGRAM FOR

17 THESE REASONS. THE ARM COULD BE LOWER. HE COULD BE

18 LOWER DOWN ON THE COUCH THAN HE IS SHOWN THERE.

19 MS. ABRAMSON: RIGHT.

20 THE WITNESS: HE COULD BE ANGLED DOWN TO THE

21 RIGHT.

22 MS. ABRAMSON: UH-HUH.

23 THE WITNESS: HE COULD BE SLOUCHING HIS

24 SHOULDER TO THE RIGHT.

25 MS. ABRAMSON: UH-HUH.

26 THE WITNESS: SHE COULD HAVE BEEN HIKED UP

27 AND ADJUSTING HER SEAT.

28 THERE ARE MANY, MANY POSSIBILITIES.

1 MS. ABRAMSON: RIGHT.

2 THE WITNESS: NONE OF THESE DIAGRAMS, NOT MY
3 DOLLS, NONE OF THE X RAYS, CAN DO ANYTHING BUT TELL
4 US THOSE KINDS OF DETAIL. IT'S JUST NOT POSSIBLE.

5 MS. ABRAMSON: THANK YOU, DR. LAWRENCE.

6 Q SO WHAT YOU'RE BASICALLY SAYING IS WHAT
7 IS SHOWN IN THIS DIAGRAM IS ONE OUT OF MANY, MANY,
8 MANY DIFFERENT POTENTIAL HYPOTHESES?

9 A IT'S PRETTY GOOD.

10 Q WELL, I DIDN'T ASK YOU IF IT WAS PRETTY
11 GOOD. I ASKED YOU IS IT ONE OF MANY?

12 A YES.

13 Q AND THE TEST IS NOT PRETTY GOOD. WHO
14 TOLD YOU THE TEST WAS PRETTY GOOD?

15 MR. CONN: OBJECTION. ARGUMENTATIVE.

16 THE COURT: SUSTAINED.

17 Q BY MS. ABRAMSON: DID SOMEONE TELL YOU
18 THE TEST WAS PRETTY GOOD?

19 MR. CONN: OBJECTION. ARGUMENTATIVE.

20 IRRELEVANT.

21 THE COURT: OVERRULED.

22 Q BY MS. ABRAMSON: DID ANYONE TELL YOU
23 THESE ARE SUPPOSED TO BE PRETTY GOOD?

24 A NO, MA'AM.

25 Q THANK YOU.

26 NOW, LET'S GET BACK TO WHAT THIS

27 PARTICULAR DIAGRAM SHOWS. ALL RIGHT?

28 IT SHOWS A TRAJECTORY THAT INDICATES,

40267

1 DOES IT NOT, THAT A SINGLE SHOTGUN BLAST WENT AND
2 INTERSECTED WITH MR. MENENDEZ' LEFT ELBOW, HIS RIGHT
3 INNER ARM, MRS. MENENDEZ' LEFT BREAST, CORRECT?
4 THAT'S WHAT IT SHOWS.

5 A YOU'LL HAVE TO ASK THE PERSON THAT
6 PREPARED THE DIAGRAM, BECAUSE AS I SAID EARLIER, IT
7 SHOWS THE DIFFERENT AREAS THAT WERE STRUCK.

8 Q LEAVING OUT THE FOREARM, HOWEVER.

9 A I DON'T KNOW WHAT THE PERSON WHO
10 PREPARED THE DIAGRAM INTENDED TO SHOW, SO I CAN'T
11 ANSWER THAT.

12 MAYBE HE OR SHE THOUGHT IT HIT BOTH
13 AREAS IN THE ARM OF MRS. MENENDEZ AND THEN MAYBE HE
14 THOUGHT IT HIT JUST THE FOREARM AREA OR JUST THE
15 GAPING DEFECT. I DON'T KNOW.

16 Q YOU MEAN MR. MENENDEZ, DON'T YOU?

17 A I'M SORRY. MR. MENENDEZ.

18 Q ALL RIGHT.

19 A AND I THINK YOU SHOULD ASK THE PERSON
20 WHO PREPARED THE DIAGRAM.

21 Q ALL RIGHT. BUT RIGHT NOW YOU'VE BEEN

22 ASKED TO VALIDATE THESE DIAGRAMS.
23 DO YOU UNDERSTAND THAT?
24 A YES. AND THEY COMPARE QUITE ACCURATELY
25 TO MY SENSE OF THE PATH TRAJECTORY AND ITEMS OR
26 PARTS OF THE BODY THAT WERE STRUCK.
27 Q WITH SOME EXCEPTIONS.
28 A AND THAT'S ALL I'M SAYING.

40268

1 Q WITH SOME EXCEPTIONS, CORRECT?
2 A MINOR EXCEPTIONS, YES, MA'AM.
3 Q LET'S DO A MINOR PELLET COUNT.
4 THERE ARE 27 PELLETS IN A NO. 4
5 BUCKSHOT; IS THAT CORRECT?
6 A THAT'S WHAT I'M TOLD.
7 Q AND YOU BELIEVE THAT FOR THE MOMENT, DO
8 YOU NOT?
9 A ACTUALLY, I LOOKED IT UP. YES.
10 MR. CONN: I WOULD OBJECT TO THE PELLET COUNT
11 AS BEING BEYOND THE SCOPE OF DIRECT EXAMINATION.
12 THE COURT: OVERRULED.
13 Q BY MS. ABRAMSON: I WANT TO PUT THESE IN
14 ORDER.
15 (BRIEF PAUSE.)
16

17 Q BY MS. ABRAMSON: OKAY. WHAT'S HERE ARE
18 FIVE BLOWUPS OF THE PHOTOGRAPHS OF THE X RAYS,
19 CORRECT?

20 A YES.

21 Q WE HAVE 177, WHICH IS MR. MENENDEZ' LEFT
22 ARM, CORRECT?

23 A SHOWING THE LEFT ELBOW, YES.

24 Q LOOKS LIKE FIVE PELLETS. LET'S DO
25 THIS.

26 OKAY. LET'S START WITH MR. MENENDEZ'
27 LEFT ELBOW. THERE ARE -- I'M GOING TO HAVE HERE AN
28 "X" AND A QUESTION MARK.

40269

1 BASED ON THE X RAY, THERE ARE FIVE
2 PELLETS IN THE LEFT ELBOW, CORRECT?

3 A YES.

4 Q HOWEVER, YOU PREVIOUSLY TOLD US THERE
5 WERE ORIGINALLY NINE DEFECTS ON THE LEFT ELBOW AND
6 FOUR MAY HAVE FALLEN AWAY, CORRECT?

7 A ARE WE GOING TO COUNT PELLETS OR WOUNDS
8 THAT ARE NOT THERE?

9 Q WE'RE GOING TO TRY TO DO BOTH.

10 A OKAY. FOUR.

11 Q THANK YOU.

12 NOW LET'S TALK ABOUT MR. MENENDEZ' RIGHT
13 ARM, WHAT'S IN THE X RAY OF HIS RIGHT ARM.
14 AND YOU AND I WENT OVER THIS BEFORE THIS
15 SESSION BEGAN, CORRECT?
16 A I SEE NINE PELLETS.
17 Q LET'S SEE IF YOU CAN POINT TO -- WE CAN
18 POINT TO THEM. HERE WE HAVE --
19 A ONE, TWO -- THESE ARE FRAGMENTS AND DON'T
20 COUNT. THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE.
21 THAT ONE I'M NOT SURE OF.
22 Q SO THAT EVEN COULD BE ANOTHER ONE.
23 A POSSIBLY A FRAGMENT.
24 Q FRAGMENT. OF ANOTHER PELLET?
25 A LET'S PUT NINE AND ONE IN THE QUESTION
26 MARK COLUMN.
27 Q EXACTLY. AND THIS IS THE RIGHT ARM.
28 NOW, LET'S GO TO MRS. MENENDEZ' LEFT

40270

1 ARM. THERE ARE TWO IN THE X RAY, CORRECT?
2 A I'M NOT SURE ABOUT -- YES, THERE ARE TWO
3 PELLETS. I'M NOT SURE IF THE ONE IN THE ELBOW AREA
4 WOULD BE CONNECTED. SO LET'S PUT ONE AND ONE.
5 Q NO. YOU'RE SAYING YOU'RE NOT SURE IF
6 IT'S IN THE ELBOW AREA. BUT IN DR. GOLDEN'S REPORT

7 HE TALKS ABOUT SEEING DEFECTS ALL THE WAY FROM THE
8 ANTECUBITAL FOSSA AREA, WHICH IS THE ELBOW, TO THE
9 FOREARM, DOESN'T HE?

10 A I'M NOT SAYING THOSE ARE NECESSARILY ALL
11 THE SAME WOUND. I WOULD LIKE TO COUNT ONLY ONE OF
12 THOSE.

13 Q WELL. I'LL GO ALONG WITH YOU FOR THE
14 MOMENT.

15 NOW, WE HAVE MRS. MENENDEZ' LEFT CHEST,
16 CORRECT?

17 A YES. I SEE 12.

18 Q YES. IN THIS PHOTOGRAPH, CORRECT?

19 A YES.

20 Q AND THEN IN THE ADDITIONAL SECTION
21 THAT'S SHOWN IN X RAY 179, THERE ARE TWO MORE,
22 CORRECT?

23 A TWO MORE. AND I'M NOT SURE WHERE THEY
24 CAME FROM.

25 Q BUT THEY EASILY COULD HAVE COME FROM THE
26 WOUND THAT WENT INTO HER CHEST THAT WE SAW THE
27 PHOTOGRAPHS OF?

28 A I DON'T KNOW THAT. SO I'D LIKE TO PUT

40271

1 IT IN THE RIGHT-HAND SIDE COLUMN, TWO.

2 Q AND THEN WE KNOW -- BY THE WAY, THERE ARE
3 ONE, TWO, THREE, FOUR ROUND OBJECTS IN X RAY 175.

4 A THESE ARE.

5 Q OFF TO THE RIGHT SIDE. DO YOU KNOW WHAT
6 THEY ARE?

7 A THAT'S DEBRIS, NOT PELLETS.

8 Q OKAY. NOW, IF YOU -- YOU WANT TO
9 DISCOUNT THIS PELLET OR THIS POTENTIAL PELLET IN
10 MR. MENENDEZ' RIGHT ARM; IS THAT CORRECT?

11 A YES.

12 Q AND YOU WANT TO DISCOUNT ONE OF THE
13 PELLETS IN MRS. MENENDEZ' LEFT ARM?

14 A YES. IT LOOKS LIKE A SPRAY.

15 Q A SPRAY. JUST FROM THE ETHER?

16 A FROM SOMEWHERE ELSE.

17 MR. CONN: OBJECTION. ARGUMENTATIVE.

18 Q BY MS. ABRAMSON: THE REASON YOU WANT TO
19 DISCOUNT THEM --

20 THE COURT: WAIT A SECOND, COUNSEL. JUST
21 HOLD ON. RELAX. WHEN THERE'S AN OBJECTION, WAIT
22 FOR THE COURT TO RULE.

23 MS. ABRAMSON: I WAS GOING TO ASK A DIFFERENT
24 QUESTION.

25 THE COURT: REGARDLESS OF WHAT YOU WANT TO
26 DO, YOU'RE GOING TO WAIT UNTIL THE COURT RULES; IS
27 THAT RIGHT?

28 MS. ABRAMSON: YES, YOUR HONOR, OF COURSE.

1 THE COURT: OKAY. THE OBJECTION IS
2 SUSTAINED.

3 Q BY MS. ABRAMSON: I SUBMIT TO YOU,
4 DR. LAWRENCE, THE REASON YOU WANT TO DISCOUNT THOSE
5 IS THAT YOU KNOW IF YOU COUNT THEM THERE'S FOUR TOO
6 MANY PELLETS HERE FOR ONE ROUND; ISN'T THAT TRUE?

7 A NO, MA'AM. I DIDN'T ADD THOSE UP UNTIL
8 ABOUT 10 SECONDS AGO.

9 Q UH-HUH. THE FACT OF THE MATTER IS, IF
10 THESE PELLETS IN HER LEFT ARM ARE WHAT THEY APPEAR
11 TO BE, PART OF THAT SAME WOUND, THEN WE'RE AT 28,
12 CORRECT?

13 A I DON'T UNDERSTAND.

14 Q AND IF THIS DEFECT IN MR. MENENDEZ'
15 RIGHT ARM IS ALSO A PELLET, WE'RE AT 29, CORRECT?

16 A WHAT WERE YOU POINTING TO?

17 Q THE ONE THAT YOU THINK MAY BE A PELLET,
18 BUT YOU'RE NOT SURE, AND YOU ASKED ME TO HOLD OFF ON
19 IT, MR. MENENDEZ' RIGHT ARM.

20 A IT LOOKS LIKE A FRAGMENT -- IT LOOKS
21 LIKE A SHELL FRAGMENT OF A PELLET; IN OTHER WORDS,
22 KIND OF LIKE AN EGGSHELL; AND THE REST OF THE PELLET
23 MAY BE ONE OF THOSE OTHERS, OR MAYBE SOMEWHERE ELSE.

24 Q YOU UNDERSTAND THE PELLETS ARE HOLLOW
25 AND THERE'S SOMETHING DIFFERENT INSIDE THAN

26 OUTSIDE?

27 A YOU'RE GETTING OUT OF MY AREA. YOU'RE

28 GETTING INTO --

40273

1 Q ARE YOU SUGGESTING THAT A SHELL IS OUT
2 OF YOUR AREA?

3 A WHAT'S IN MY AREA IS THE APPEARANCE OF
4 X RAYS AND BULLETS AND PELLETS. AND I NOTICE THAT
5 THAT PARTICULAR ONE IS DECIDEDLY LESS DENSE THAN ALL
6 THE OTHERS. IT LOOKS LIKE IT MUST BE JUST THE
7 SURFACE OF A PELLET. IF IT IS A PELLET AT ALL, IT
8 LOOKS SIGNIFICANTLY DIFFERENT FROM THE OTHERS.

9 I'M NOT WILLING TO COUNT IT AS A
10 PELLET. I THINK THAT MIGHT BE A MISTAKE.

11 Q ALL RIGHT. IF WE ADD UP ALL OF THESE
12 POTENTIAL PELLETS, INCLUDING THE FOUR THAT WE KNOW
13 STRUCK MR. MENENDEZ' LEFT ELBOW BUT DROPPED OFF,
14 WE'RE WAY ABOVE THE COUNT OF ONE SHOT, AREN'T WE?

15 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
16 EVIDENCE.

17 THE COURT: SUSTAINED. WAIT, WAIT. THE
18 OBJECTION HAS BEEN SUSTAINED.

19 Q BY MS. ABRAMSON: LET'S DO THE COUNT.
20 THE ONES THAT YOU ARE WILLING TO CONCEDE ARE FIVE IN

21 HIS LEFT ELBOW, CORRECT?

22 A YES.

23 Q NINE IN HIS RIGHT ARM?

24 A YES.

25 Q ONE -- ONLY ONE OF THE TWO IN HER LEFT

26 ARM, CORRECT?

27 A YES.

28 Q TWELVE IN HER LEFT CHEST?

40274

1 A YES.

2 Q AND THERE ARE TWO OTHERS FROM THE CHEST

3 THAT CAN BE THE SAME, COULD BE PART OF THE SAME

4 INJURY?

5 A JUST A MINUTE. WE DIDN'T ADD THOSE UP.

6 Q THEY CAME OUT TO 27. BUT WE KNOW THERE

7 WERE NINE STRIKES TO THE LEFT ELBOW, NOT FIVE,

8 CORRECT?

9 A YES.

10 Q AND THEN THERE IS SOMETHING THAT COULD

11 WELL BE ANOTHER PELLET IN MR. MENENDEZ' RIGHT ARM,

12 CORRECT?

13 A BUT LOOKS LIKE IT'S NOT.

14 Q WE'LL TAKE IT OFF. WE WON'T EVEN ARGUE

15 ABOUT THAT ONE.

16 WE KNOW THAT THERE IS DEFINITELY ANOTHER
17 PELLET IN MRS. MENENDEZ' LEFT ARM, CORRECT?

18 A YES.

19 Q AND WE KNOW THAT THERE DEFINITELY ARE
20 TWO MORE PELLETS IN MR. MENENDEZ' CHEST AREA,
21 CORRECT?

22 A YES. THERE'S ONE OTHER THING I'D LIKE
23 TO MENTION TO THE JURY.

24 Q BEFORE --

25 A THEY NEED TO KNOW THIS.

26 MS. ABRAMSON: YOUR HONOR, COULD WE ASK THE
27 WITNESS TO WAIT UNTIL I'VE FINISHED DEALING WITH HIS
28 ANSWER TO ONE QUESTION BEFORE HE STARTS TO ANSWER

40275

1 UNASKED QUESTIONS.

2 THE COURT: WAS THIS RESPONSE TO A PREVIOUS
3 QUESTION?

4 THE WITNESS: YES. IT HAD TO DO WITH THE
5 CHEST AREA PELLETS.

6 THE COURT: OKAY.

7 THE WITNESS: THE ONE RIGHT HERE (POINTING)
8 COULD BE A PELLET IN HER STOMACH. I'M NOT SURE.
9 SHE HAD THESE HEAD WOUNDS AND THE PELLET MIGHT HAVE
10 GONE DOWN HER ESOPHAGUS AND INTO HER STOMACH.

11 THIS ONE ALSO MIGHT BE A STRAY. IT'S
12 QUITE A DISTANCE FROM THE OTHERS.
13 Q BY MS. ABRAMSON: THIS ONE HAS TWO --
14 A THOSE TWO MIGHT BE STRAYS.
15 Q AND THIS ONE THAT YOU JUST THOUGHT MIGHT
16 BE IN HER STOMACH SHOWS ON THE OTHER X RAY AS WELL,
17 DOESN'T IT?
18 A YES.
19 Q OKAY.
20 A IT WOULD BE --
21 Q THERE'S ANOTHER ONE ON A SIMILAR PLANE?
22 A YES.
23 Q YOU STILL THINK IT'S IN HER STOMACH?
24 A I DON'T KNOW.
25 Q YOU DON'T KNOW?
26 A I THINK SOME OF THEM COULD BE STRAYS,
27 MAYBE ONE OR TWO COULD BE IN THE STOMACH; AND WE'RE
28 TALKING ABOUT LOTS OF PELLETS AND LOTS OF GUNSHOT

40276

1 WOUNDS AND SOME UNCERTAINTY ABOUT WHICH PELLETS CAME
2 FROM WHICH GUNSHOT WOUND.
3 FOR THAT REASON, I DIDN'T EVEN ADD UP
4 THESE PELLETS.
5 Q BUT YOU UNDERSTAND THAT THIS CHART

6 PROPOSES TO DO JUST THAT, ACCOUNTING FOR ALL THESE

7 WOUNDS WITH ONE ROUND.

8 DO YOU UNDERSTAND THAT'S WHAT THE

9 ILLUSTRATION IS SUPPOSED TO SHOW?

10 A I THINK YOU NEED TO ASK THE PERSON WHO

11 MADE THE CHART.

12 Q SO YOU DON'T UNDERSTAND THAT; IS THAT

13 WHAT YOU'RE SAYING?

14 A WHEN I APPROVED THE CHART, WHEN I SAID

15 THAT THE CHART WAS REPRESENTATIVE OF WHAT HAPPENED,

16 I MEANT THAT IT SHOWS THE TRAJECTORY OF THE GUNSHOT

17 WOUNDS, THE FACT THAT IT STRUCK THE ELBOW OF JOSE,

18 STRUCK THE ARM OF JOSE, AND WENT ON INTO THE BREAST

19 AREA.

20 I'M NOT ACCEPTING IT AS SHOWING ANY MORE

21 DETAIL THAN THAT.

22 Q THANK YOU, DR. LAWRENCE.

23 NOW, DR. LAWRENCE, YOU TESTIFIED THIS

24 MORNING THAT YOU DID BELIEVE, BASED ON A SCENE

25 PHOTOGRAPH, THAT THERE WAS SOME SUPPORT FOR THE

26 NOTION THAT BOTH DECEDENTS WERE SEATED ON THE COUCH

27 AT THE TIME THERE WAS A SHOOTING.

28 DO YOU RECALL THAT TESTIMONY?

1 A THOSE WEREN'T MY WORDS.

2 Q WAS THAT WHAT YOU MEANT?

3 A I MEANT A LITTLE MORE THAN THAT. A
4 LITTLE STRONGER, I WOULD SAY.

5 Q WELL, GO AHEAD. TELL US WHAT YOU
6 MEANT.

7 A I SAID THAT -- I MEAN, THAT THE
8 PHOTOGRAPHS INDICATE THAT THEY WERE BOTH SEATED ON
9 THE COUCH WHEN THE SHOOTING BEGAN.

10 Q AND WHAT WAS YOUR REASON FOR BELIEVING
11 THAT?

12 A AS I SAID BEFORE, IT WAS THE BLOOD
13 PATTERN ON THE COUCH AND THE TWO AREAS WHERE THE
14 THIGHS OF MARY CAN BE SEEN HAVING BEEN THERE; AND
15 ALSO HIS THIGHS.

16 Q I WANT TO SHOW YOU WHAT'S PREVIOUSLY
17 BEEN MARKED 208.

18 THAT'S A PHOTOGRAPH, IS IT NOT, OF THE
19 COUCH WITH NO BODIES ON IT?

20 A YES.

21 Q YOU AND I HAVE PREVIOUSLY DISCUSSED --
22 BECAUSE I DID A BLOWUP OF THE CUSHION WHERE
23 MRS. MENENDEZ, IN YOUR OPINION, WAS SITTING -- AND
24 THAT CUSHION SHOWS THIS BLOOD SMEAR LEFT OF CENTER,
25 CORRECT?

26 BAILIFF WOLF: QUESTION BY THE JURY.

27 THE COURT: OKAY. IT HAS TO BE DOWN LOWER.

28 MS. ABRAMSON: THANK YOU, YOUR HONOR. OKAY.

1 Q AND THIS IS WHAT I'M TALKING ABOUT. 209
2 WAS A PHOTOGRAPH THAT SHOWS THIS BLOOD SMEAR AREA.
3 AND I BELIEVE YOU TESTIFIED YOU BELIEVE THAT SHE HAD
4 ONE THIGH ON ONE SIDE OF THAT SMEAR AND THE OTHER
5 THIGH ON THE OTHER SIDE OF THAT SMEAR.

6 A ONE THIGH UP HERE ON THE PILLOW AND THE
7 LEGS DOWN HERE (POINTING).

8 Q SHOW ME THAT AGAIN.

9 A THIGHS ON EITHER SIDE HERE, LEGS DOWN
10 HERE (POINTING).

11 Q WHAT'S THE WIDTH -- NOW, YOU'RE SAYING
12 THIGHS INSIDE THIS OTHER SMEAR THAT APPEARS IN THE
13 LEFT-HAND SIDE PART OF THE PHOTOGRAPH; IS THAT
14 CORRECT?

15 A NOT -- THERE WASN'T A PERFECT COVERING
16 OR PROTECTING THE COUCH.

17 Q SO YOU'RE NOT SAYING THIS IS ENOUGH
18 SPACE HERE IN THIS BLANK AREA FOR A THIGH?

19 A NO.

20 Q ALL RIGHT. NOW, I'M SHOWING YOU 208.
21 AND THIS COUCH, BY THE WAY, UNLIKE THE ILLUSTRATION,
22 HAS CUSHIONS ON THE BOTTOM, NOT JUST PILLOWS ON THE
23 BACK, CORRECT?

24 A I DON'T KNOW.
25 Q WELL, YOU'RE LOOKING AT IT.
26 A I CAN'T TELL IF THESE ARE -- YOU'RE
27 TALKING ABOUT BELOW THE PILLOW?
28 Q THE SEAT. SEAT CUSHIONS.

40279

1 A OH, YES, THERE ARE.
2 Q SEPARATE SEAT CUSHIONS?
3 A YES.
4 Q IT'S NOT A BENCH-LIKE SEAT. IT'S GOT
5 SEPARATE SEATS?
6 A YES.
7 Q AND THIS AREA THAT'S ENLARGED, 209 IS
8 LESS THAN -- OKAY. FROM THE MIDDLE TO THE RIGHT OF
9 THAT CUSHION, THIS STAIN HERE ON THE LEFT SIDE OF
10 THE PHOTOGRAPH IS BASICALLY ABOUT THE MIDDLE OF THAT
11 CUSHION, THAT SEAT CUSHION?
12 A YES.
13 MR. CONN: OBJECTION. CALLS FOR SPECULATION.
14 THE COURT: OVERRULED.
15 THE WITNESS: YES. WHY DON'T WE PUT UP THIS
16 OTHER VIEW.
17 MS. ABRAMSON: BECAUSE I WANT TO ASK YOU
18 SOMETHING BEFORE I DO THAT AND I WANT YOU TO BE ABLE

19 TO SEE IT.

20 Q NOW, DO YOU SEE ON THE CUSHION ADJACENT

21 TO IT WHERE THE BODY OF MR. MENENDEZ HAD BEEN, A

22 SIMILAR PATTERN OF STAIN IN THE MIDDLE AND WHITENESS

23 ON EITHER SIDE?

24 A NO. COULD YOU PUT THIS UP SO I CAN SHOW

25 WHAT I'M TALKING ABOUT.

26 Q SURE. SO YOU DON'T SEE A PATTERN OF

27 WHAT YOU OPINE IS TWO THIGHS ON THE RIGHT-HAND SIDE

28 CUSHION WHERE MR. MENENDEZ, WE KNOW, WAS FOUND

40280

1 SEATED WHEN THE POLICE GOT THERE?

2 A I DO SEE THE THIGH AREA. I DON'T SEE

3 THE LOWER LEG PATTERN.

4 Q SHOW ME WHAT YOU THINK ARE THE THIGH

5 AREAS.

6 A HERE, AND PROBABLY OVER IN HERE THERE'S

7 A SUGGESTION OF IT. TOO MUCH BLOOD HAS OOZED DOWN

8 IN HERE.

9 Q WELL, WHY DON'T YOU TAKE A LITTLE LIGHT

10 AND JUST SHOW THIS ENTIRE LINE THAT GOES ACROSS THE

11 TOP OF THE CUSHION. THERE'S AN ENTIRE STRAIGHT LINE

12 OF STAINING THERE?

13 A THAT'S BLOOD THAT'S DRIPPED ON DOWN.

14 Q IT'S BLOOD, BUT YOU'RE NOT A SPATTER
15 EXPERT, SO YOU CAN'T SAY IT DRIPPED ON DOWN; ISN'T
16 THAT TRUE?

17 A CORRECT. IT CERTAINLY LOOKS THAT WAY.

18 Q WELL, COULD I SEE THE LITTLE LIGHT.

19 COULD YOU ILLUSTRATE THAT LINE. I DON'T KNOW HOW TO
20 USE THOSE. THAT'S A STRAIGHT LINE.

21 NOW, ABOVE IT DO YOU SEE WHAT DO APPEAR
22 TO BE DROPS IN THE CUSHION?

23 A NOW YOU'RE RIGHT. WE'RE GETTING OUT OF
24 MY AREA.

25 Q I SEE.

26 A WHAT I'M ATTEMPTING TO POINT OUT TO THE
27 JURY IS, JUST FROM LOOKING AT THE PHOTOS FROM THIS
28 DISTANCE YOU CAN SEE WHERE THEY WERE BOTH SITTING

40281

1 AND THAT'S THE SIMPLEST WAY TO DESCRIBE IT.

2 Q YOU DON'T HAVE TO LOOK AT A PHOTOGRAPH
3 TO SEE MR. MENENDEZ WAS SITTING ON THAT CUSHION
4 BECAUSE THAT'S WHERE HE WAS WHEN THE POLICE FOUND
5 HIM, CORRECT?

6 A WHAT I'M SAYING IS THIS PHOTOGRAPH
7 CLEARLY SHOWS WHERE THEY WERE BOTH SEATED.

8 Q I'D LIKE YOU TO TAKE THIS PHOTOGRAPH,

9 208, AND CIRCLE FOR ME ON IT WHERE YOU THINK IT
10 SHOWS MR. MENENDEZ' THIGH MARKS, BOTH THIGHS.

11 A I CAN'T DO THAT.

12 Q SO IT COULDN'T SHOW BOTH THIGHS?

13 A NO. IT WILL DESTROY THE VALUE OF THE
14 EXHIBIT. IT CAN CONFUSE THINGS.

15 Q NO, IT WON'T, BECAUSE THAT'S A PLASTIC
16 COVER. YOU CAN WRITE ON THE PLASTIC COVER AND THE
17 PICTURE WILL BE PRESERVED.

18 A OKAY.

19 Q NO, NO. I WANT YOU TO SHOW EACH THIGH
20 SEPARATELY.

21 A I'VE CIRCLED THE TWO AREAS THAT ARE
22 ROUGHLY SYMMETRICAL THAT SHOW THE TWO PEOPLE SEATED
23 SIDE BY SIDE.

24 Q SO YOU BELIEVE HE'S SEATED AT THE LEFT
25 EDGE OF THE CUSHION; IS THAT WHAT YOU'RE SAYING?

26 A I DON'T KNOW IF HIS WHOLE BODY IS
27 THERE. HIS LEG MIGHT HAVE ROTATED OUT. THIS THIGH
28 LOOKS LIKE IT WAS THERE. I'M MUCH MORE CERTAIN

40282

1 ABOUT MARY MENENDEZ.

2 Q WITH RESPECT TO YOU, YOU THINK YOU SEE
3 SPACE OF TWO THIGHS, RIGHT?

4 A YES.

5 Q THIGH ONE AND THIGH TWO, CORRECT?

6 A YES.

7 Q WITH MR. MENENDEZ THERE SIMPLY IS A

8 LESS-SMEARED AREA ON THE LEFT-HAND SIDE OF THE

9 CUSHION AND YOU'RE OPINING THAT BOTH OF HIS LEGS

10 WERE THERE?

11 A NO. HIS RIGHT LEG.

12 Q OKAY. SO WE HAVE THIGH ONE FOR

13 MR. MENENDEZ.

14 A YES.

15 Q BUT WE DON'T HAVE A THIGH TWO ZONE?

16 A NOT FOR SURE. IT'S NOT WELL SHOWN.

17 Q DR. LAWRENCE, YOU WERE NOT CONSULTED

18 BEFORE THESE ILLUSTRATIONS WERE MADE, CORRECT?

19 A CORRECT. WHICH -- ARE YOU TALKING ABOUT

20 THE --

21 Q ANY OF THEM.

22 A THE RECONSTRUCTION DIAGRAM?

23 Q RIGHT. THE DIAGRAM. YOU WERE NOT

24 CONSULTED?

25 A NO.

26 Q AND DO YOU HAVE ANY IDEA WHOSE, IF

27 ANYONE'S, MEDICAL OPINION WAS SOUGHT BEFORE THESE

28 ILLUSTRATIONS WERE DRAWN?

1 A NO.

2 Q I WANT TO GO THROUGH SOME OF THEM WITH
3 YOU.

4 221 IS THE OTHER HALF OF 220. IT'S JUST
5 SHOWN FROM A DIFFERENT ANGLE, CORRECT?

6 A YES.

7 Q AND, AGAIN, IN 221 MRS. MENENDEZ' ARM IS
8 SHOWN DOWN AT HER SIDE, AND THE FOREARM IS NOT SHOWN
9 AS BEING INJURED, CORRECT?

10 A YES.

11 Q AND THEN THE NEXT -- WHICH NO ONE IS
12 GOING TO SEE. DO IT HERE. THIS IS 241, AND THIS
13 PURPORTS TO SHOW -- 240 AND 241 PURPORT TO SHOW A
14 SCENARIO OF MR. MENENDEZ RECEIVING THE HEAD WOUND,
15 CORRECT?

16 A YES.

17 Q NOW, WHAT MEDICAL EVIDENCE IS THERE,
18 DR. LAWRENCE, TO SHOW THAT AT THE TIME THAT
19 MR. MENENDEZ IS RECEIVING THE HEAD WOUND
20 MRS. MENENDEZ IS ON THE COUCH?

21 A I CAN'T PROVE THAT. THERE'S NO MEDICAL
22 EVIDENCE THAT WOULD PROVE THAT.

23 Q THANK YOU.

24 AND WITH RESPECT TO MR. MENENDEZ' HEAD
25 WOUND, WHAT EVIDENCE IS THERE TO SHOW THAT HIS HEAD
26 WAS FACING IN PRECISELY THE DIRECTION SHOWN IN THAT
27 ILLUSTRATION?

40284

1 Q AND IF I COULD HAVE -- YOU'VE INDICATED
2 YOU WERE MORE COMFORTABLE WITH YOUR DOLL THAN --
3 WITH THE ARTIST'S DOLL HERE, THAN WITH THE
4 ILLUSTRATIONS, CORRECT?

5 A YES.

6 Q NOW, AS A MEDICAL EXAMINER OF BODIES, IS
7 IT FAIR TO SAY THAT THE MOST YOU CAN SAY WITH
8 MEDICAL CERTAINTY IS BASED ON WHAT YOU CAN SEE ON
9 THE BODY? WOULD THAT BE A FAIR GENERALIZATION?

10 A NO.

11 Q ALL RIGHT. WHEN IT COMES TO THE
12 TRAJECTORY OF WOUNDS, IS THAT YOUR AREA OF
13 SPECIALTY?

14 A THAT'S ONE OF THE AREAS THAT I DEAL IN,
15 YES.

16 Q NOW, YOU'VE SEEN THE PHOTOGRAPH OF THE
17 BACK OF MR. MENENDEZ' HEAD FROM THE AUTOPSY,
18 CORRECT?

19 A YES.

20 Q AND YOU'VE READ THE DESCRIPTION OF WHERE
21 THIS WOUND IS, CORRECT?

22 A YES.

23 Q AND YOU'VE STUCK YOUR LITTLE WIRE
24 SLIGHTLY TO THE RIGHT OF THE MIDLINE, HAVEN'T YOU?
25 A YES. VERY SLIGHTLY.
26 Q AND IN FACT --
27 A WELL, WELL, JUST A MINUTE. IT'S HARD TO
28 TELL. THESE DOLLS AREN'T ANATOMICALLY CORRECT SO...

40285

1 IT LOOKS TO BE JUST MAYBE A SMIDGEN TO THE RIGHT;
2 AND AGAIN, I'M NOT ATTEMPTING TO RECREATE PRECISION
3 WHERE IT DOESN'T EXIST.
4 Q WELL, THERE IS PRECISION ABOUT WHETHER
5 THIS WOUND WAS TO THE RIGHT OF THE MIDLINE OR TO THE
6 LEFT OF THE MIDLINE, ISN'T THERE? I MEAN, YOU CAN
7 SEE IT ON THE PHOTOGRAPH, CAN'T YOU?
8 A LET'S LOOK AT THE PHOTOGRAPH.
9 Q I'LL GET THAT IN A SECOND. I JUST WANT
10 TO READ SOMETHING.
11 THIS IS THE PHOTOGRAPH THAT WAS
12 PREVIOUSLY MARKED 185.
13 CAN YOU TELL FROM THAT PHOTOGRAPH?
14 A IT LOOKS CLOSE TO THE MIDLINE OF THE
15 HEAD. AND DR. GOLDEN DESCRIBES IT AT THE MIDLINE.
16 Q OKAY.
17 A IT'S A LARGE DEFECT, AND IT APPEARS TO

18 BE CLOSE TO THE MIDLINE.

19 Q ALL RIGHT. NOW, IS THERE A DIRECTION OF
20 THAT WOUND?

21 A YES. HE SAYS THAT THE DIRECTION IS BACK
22 TO FRONT. WE'VE ALREADY GONE OVER THIS BEFORE, BUT
23 I HAVE TO REFRESH MY MEMORY.

24 Q GO AHEAD. IT'S COMPLICATED.

25 A (READING.) IT STATES THAT THE
26 TRAJECTORY IS BACK TO FRONT WITHOUT ANGULATION OR
27 DEVIATION. SO HE'S SAYING IT'S STRAIGHT BACK TO
28 FRONT.

40286

1 Q OKAY. AND YOU WERE ASKED ON, I THINK,
2 YOUR ORIGINAL DIRECT EXAMINATION, WHETHER THERE WERE
3 ANY SIGNS OF ANY EXITING.

4 A YES. AND THERE WAS A PELLET MARK, AS I
5 RECALL, IN THE RIGHT TEMPLE AREA THAT HE FELT WAS AN
6 EXIT WOUND.

7 Q IN FACT, THERE WERE TWO; ISN'T THAT
8 TRUE?

9 A YES. I'M SURE IT'S TRUE. I'D HAVE TO
10 DOUBLE CHECK.

11 Q LOOK AT PAGE 3.

12 A (WITNESS COMPLIES.) YES. THERE WERE

13 TWO.

14 Q IT'S TWO EXIT LACERATIONS AND ONE IS THE
15 RIGHT EAR AREA, CORRECT?

16 A YES.

17 Q AND THE OTHER IS THE RIGHT TEMPLE. I
18 THINK YOU TESTIFIED TO THE RIGHT TEMPLE ONE; IS THAT
19 CORRECT?

20 A YES.

21 Q NOW, DID DR. GOLDEN DESCRIBE WHERE THE
22 SEMICIRCULAR CONTACT ABRASION WAS ON THE BACK OF
23 MR. MENENDEZ' HEAD?

24 A WHERE ARE YOU READING?

25 Q PAGE 3, SHOTGUN WOUND NO. 1, FIRST BIG
26 PARAGRAPH, STARTING WITH THE WORD "HOWEVER..."

27 A I DON'T SEE SUCH A PARAGRAPH ON PAGE 3.

28 Q LET ME TAKE MY PAGE 3 AND SEE IF WE'VE

40287

1 GOT THE SAME PAGE 3. YEAH. STARTING RIGHT THERE
2 (POINTING).

3 A YOU SAID THE PARAGRAPH STARTING WITH
4 "HOWEVER."

5 Q NO, NO. I SAID THE FIRST BIG --

6 A IN THE PARAGRAPH DOWN THE MIDDLE THERE.
7 "HOWEVER."

8 Q WHY DON'T YOU READ THAT.

9 A "HOWEVER" --

10 Q NO. TO YOURSELF FIRST.

11 A (WITNESS COMPLIES.) YES. HE SAID THAT

12 THE CONTACT ABRASION WAS POSTERIOR-SUPERIOR, SO THAT

13 WOULD PUT IT ABOVE THE ENTRANCE HOLE ALONG THE TOP

14 OF IT.

15 Q AND DIDN'T HE ALSO SAY IT WAS ONE INCH

16 TO THE LEFT OF THE POSTERIOR MIDLINE?

17 A THE ABRASION COLLAR, YES.

18 Q YES. AND THE ABRASION COLLAR TELLS YOU

19 WHERE THE MUZZLE OF THE GUN CAME IN CONTACT WITH THE

20 SCALP, CORRECT?

21 A YES.

22 Q OKAY.

23 A WELL, JUST A MINUTE. WOULD YOU RESTATE

24 THE QUESTION.

25 Q I'LL ASK IT THIS WAY. DOES THE ABRASION

26 COLLAR INDICATE WHERE THE MUZZLE OF THE GUN CAME IN

27 DIRECT CONTACT WITH THE SCALP?

28 A NO.

40288

1 Q WHAT DOES IT INDICATE?

2 A THE MUZZLE IS SOMETIMES INDICATED BY A

3 MUZZLE IMPRINT OR A MUZZLE CONTUSION.

4 ABRASION COLLAR IS FROM THE SHOT PASSING
5 THROUGH THE SKIN.

6 Q SO THERE IS NO MUZZLE IMPRINT HERE.

7 THAT'S JUST AN ABRASION COLLAR?

8 A CORRECT.

9 Q SO WHEN IT'S DESCRIBED AS A CONTACT
10 WOUND, THERE'S NO REAL PROOF THAT IT IS, IN FACT, A
11 CONTACT WOUND, RATHER, JUST A VERY, VERY CLOSE
12 WOUND?

13 A AS I SAID BEFORE, IT IS PROBABLY A
14 CONTACT WOUND BASED ON THE ABSENCE OF SOOT AROUND
15 THE HOLE. HAD THERE BEEN A GAP WE WOULD HAVE MORE
16 GUNSHOT RESIDUE DEPOSITED ON THE SKIN; ALSO, THE
17 EXPLOSION OF THE WOUND.

18 Q SO HOW COME THERE'S NO ABRASION COLLAR?
19 HOW COME THERE'S NO MUZZLE RING?

20 A FOR THE SAME REASON THERE'S NO -- NOT
21 ANY BLOOD AROUND THE WOUND ON THE SKIN, I SUPPOSE.
22 THE MUZZLE IMPRINT --

23 Q YOU SAID YOU SUPPOSE. DO YOU KNOW?

24 MR. CONN: MAY THE WITNESS FINISH HIS
25 ANSWER.

26 THE COURT: YES.

27 THE WITNESS: IT'S COMPLICATED.

28 MS. ABRAMSON: UH-HUH.

1 THE WITNESS: WHEN THE MUZZLE IS HELD AGAINST
2 THE SKIN THE WEAPON IS FIRED. THE PROJECTILE GOES
3 ON IN. THE GASES -- IF THERE'S A BONY STRUCTURE
4 BENEATH, SUCH AS THE SKULL, THE GASES HIT THAT,
5 BOUNCE BACK. THE SKIN IS LITERALLY EXPLODED AS IF
6 THERE WERE LITTLE FIRECRACKERS IN THERE.

7 AND THAT'S WHY YOU GET THE RADIATING
8 SPLITS AND TEARS OF SKIN AROUND THE HOLE.

9 MS. ABRAMSON: UH-HUH.

10 THE WITNESS: AT THAT TIME WHEN THAT HAPPENS
11 THE SKIN LITERALLY FLIES OUT FORCEFULLY AGAINST THE
12 MUZZLE OF THE WEAPON AND SOMETIMES RECEIVES A
13 BRUISED IMPRINT FROM THE MUZZLE. WHEN THAT OCCURS
14 THE MUZZLE IMPRINT IS SEEN AS A PALE AREA OUTLINED
15 AT THE PERIPHERY BY HEMORRHAGING.

16 Q BY MS. ABRAMSON: AND DID --

17 THE COURT: WAIT, WAIT. HE HASN'T FINISHED.

18 THE WITNESS: WE DON'T SEE THAT HERE. IT'S A
19 COMPLEX SERIES OF EVENTS THAT CAUSE THESE WOUNDS AND
20 MARKS.

21 Q BY MS. ABRAMSON: SO IT'S A BRUISE, NOT
22 A BURN?

23 A THE THING WE WERE TALKING ABOUT THAT IS
24 MENTIONED IN THE REPORT IS AN ABRASION COLLAR AND
25 THAT HAS TO DO WITH THE SHOT PASSING THROUGH THE

26 MUZZLE IMPRINT AS A PATTERNED CONTUSION, A PATTERNED

27 BRUISE.

28 Q LET'S STAY WITH THAT FOR A MINUTE. IT'S

40290

1 NOT A BURN. IT'S NOT LIKE THE BARREL OF THE GUN

2 BURNS THE SKIN, CORRECT?

3 A NO, MA'AM.

4 Q IT'S A BRUISE WHEN THE SKIN FLIES BACK

5 AND HITS A HARD OBJECT?

6 A ABSOLUTELY.

7 THE COURT: HOW MUCH LONGER ARE YOU GOING TO

8 BE?

9 MS. ABRAMSON: A WHILE, YOUR HONOR.

10 THE COURT: OKAY. 1:30.

11 (AT 12:00 NOON PROCEEDINGS WERE

12 ADJOURNED UNTIL 1:30 P.M. OF

13 THE SAME DAY.)

40291

1 VAN NUYS, CALIFORNIA; WEDNESDAY, NOVEMBER 8, 1995

2 1:50 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: ANYTHING WITHOUT THE JURY?

7 OKAY, LET'S GET THE JURY OUT.

8 (THE JURY ENTERED THE

9 COURTROOM AND THE FOLLOWING

10 PROCEEDINGS WERE HELD:)

11

12 THE COURT: OKAY. THE JURY IS BACK. THE

13 WITNESS IS ON THE WITNESS STAND.

14 YOU MAY CONTINUE RECROSS-EXAMINATION.

15 MS. ABRAMSON: THANK YOU, YOUR HONOR.

16 DR. LAWRENCE, I REWROTE ON THIS PIECE OF

17 PAPER, WHICH I WOULD LIKE TO MARK NEXT IN ORDER,

18 YOUR HONOR.

19 THE COURT: 243.

20 MS. ABRAMSON: THANK YOU, YOUR HONOR.

21

22 RECROSS-EXAMINATION (RESUMED)

23 BY MS. ABRAMSON:

24 Q I REWROTE ON 243 THE LIST THAT WE HAD

25 STARTED TO -- THAT WE WERE DOING EARLIER ABOUT THE

26 NUMBER OF PELLETS OBSERVABLE ON AN X RAY.

27 AND IS IT TRUE, DR. LAWRENCE, THAT IF

28 YOU'RE LOOKING AT AN X RAY AND YOU ONLY HAVE -- AND

1 YOU DON'T HAVE A FULL SET, BOTH FRONT AND BACK AND
2 LEFT AND RIGHT, THAT PELLETS CAN BE BEHIND EACH
3 OTHER AND YOU CAN'T TELL THAT THERE'S MORE THAN ONE,
4 OR DO YOU THINK THAT'S NOT TRUE OF ANY OF THESE
5 X RAYS?

6 A I DID NOT -- WELL, I CAN'T TELL. IF A
7 PELLET IS LOCATED IN THE RIGHT POSITION, WITH
8 RESPECT TO ANOTHER, THERE CAN BE ONE VIEW THAT WOULD
9 MAKE THEM LOOK AS IF THEY WERE ONE.

10 Q BUT YOU HAD TWO VIEWS --

11 A BUT WITH MORE THAN ONE VIEW AND
12 DIFFERENT LEVELS SHOWING THE SAME PELLETS, THAT'S
13 HIGHLY UNLIKELY; UNDER THE CIRCUMSTANCES, IMPOSSIBLE
14 ACTUALLY.

15 Q IT'S IMPOSSIBLE?

16 A WITH MULTIPLE VIEWS, YES.

17 Q WE'RE GOING TO DEAL WITH WHAT WE'VE SEEN
18 ON THESE X RAYS WITH THE ASSUMPTION THAT THERE'S NO
19 OTHERS HIDING BEHIND ANYTHING, OKAY?

20 A THAT'S A REASONABLE ASSUMPTION.

21 Q THANK YOU.

22 WHAT I'VE DONE ON 243 IS YOU'VE REPEATED
23 THAT WITH RESPECT TO MR. MENENDEZ, WHAT WE SEE ON
24 THE X RAY, AND THE LEFT ELBOW, IS FIVE, CORRECT?

25 A I DON'T REMEMBER NOW. IT'S BEEN A FEW
26 HOURS.

27 Q HERE'S WHAT WE DID. "X" AND THEN
28 QUESTIONABLE?

1 A FINE.

2 Q I'M NOT CHANGING ANYTHING. HERE, YOU
3 WANT TO SEE?

4 I'M GOING ALONG WITH WHAT YOU'RE
5 COMFORTABLE WITH.

6 A ALL THE NUMBERS ON THE LEFT-HAND COLUMN,
7 ON THE "X" COLUMN ARE THE SAME.

8 Q WE HAVE "MR., RIGHT ARM, 9" AND
9 "MRS., LEFT ARM" -- YOU WERE COMFORTABLE WITH "1"?
10 AND "MRS., LEFT CHEST" YOU WERE COMFORTABLE WITH 12,
11 CORRECT? THESE WERE THE TWO -- THE FAR RIGHT COLUMN
12 IS QUESTIONABLE IN YOUR MIND, CORRECT?

13 A YES.

14 Q ALL RIGHT. NOW, YOU'RE AWARE THAT IN
15 THE AUTOPSY REPORT DR. GOLDEN TALKS ABOUT, WITH
16 RESPECT TO MR. MENENDEZ, A WOUND PATTERN THAT HE
17 CALLS NO. 6, CORRECT?

18 A YES.

19 Q AND WHAT HE'S TALKING ABOUT WITH RESPECT
20 TO NO. 6 IS A SEPARATE WOUND THAT HE LOCATES ON
21 MR. MENENDEZ' STERNUM THAT HE INDICATES IS PART OF
22 THIS WHOLE PICTURE INVOLVING THE, WHAT YOU CALL
23 ABRASIONS ON THE CHEST WALL; AND HE CONNECTS IT TO

24 WOUND NO. 3, WHICH IS THIS BIG GAPING WOUND ON THE
25 UPPER ARM, CORRECT?
26 A YES.
27 Q ALL RIGHT. AND WE -- DOES THE AUTOPSY
28 REPORT INDICATE THAT -- WELL, FIRST OF ALL, HAVE YOU

40294

1 SEEN AN X RAY OF MR. MENENDEZ' CHEST?
2 A YES. THE AREA WE'RE TALKING ABOUT WAS
3 COVERED IN SOME OF THE X RAYS WE'VE LOOKED AT.
4 Q THAT WE'VE LOOKED AT HERE?
5 A YES.
6 Q GEE, I DON'T HAVE AN X RAY OF
7 MR. MENENDEZ' CHEST.
8 DO YOU HAVE AN X RAY OF MR. MENENDEZ'
9 CHEST?
10 I DON'T BELIEVE SO, DR. LAWRENCE. THE
11 CHEST WE WERE LOOKING AT WAS MRS. MENENDEZ' CHEST.
12 I DON'T BELIEVE THERE IS AN X RAY OF MR. MENENDEZ'
13 CHEST.
14 A OH, THAT IS POSSIBLE.
15 Q HOWEVER, THE AUTOPSY REPORT INDICATES --
16 A LET'S LOOK AT THE X RAYS AND SEE WHAT WE
17 HAVE.
18 Q CERTAINLY.

19 THESE ARE THE ONES I HAVE.
20 DO YOU HAVE SOME OTHERS? ARE YOU
21 HOLDING THE REST?
22 OKAY. NOW, FIRST OF ALL, TO BE
23 ORGANIZED, LET'S START WITH THE ONES THAT I HAD UP
24 ON THE BOARD EARLIER TODAY.
25 (PAUSE IN PROCEEDINGS.)
26
27 THE WITNESS: THEY SHOW MARY'S TORSO AREA AND
28 JOSEPH'S ARM, BOTH ARMS. THEY DON'T SHOW THE CHEST

40295

1 OF JOSEPH.
2 Q BY MS. ABRAMSON: AND THESE ARE ALL THE
3 REST. THE DISTRICT ATTORNEY HAD THEM IN HIS PILE.
4 A THERE ARE NONE HERE OF JOSEPH THAT SHOW
5 THE AREA OF CONCERN.
6 Q RIGHT. SO CALLING YOUR ATTENTION BACK
7 TO DR. GOLDEN'S AUTOPSY REPORT, DOES THAT REPORT
8 INDICATE THAT HE REMOVED -- FIRST OF ALL, THAT THERE
9 WAS A PELLET LODGED IN THE STERNUM AND THAT HE
10 REMOVED IT?
11 A YES.
12 MS. ABRAMSON: OKAY. YOUR HONOR, THERE'S AN
13 ENVELOPE THAT HAS THE EXHIBIT -- THE NUMBER FOR THIS

14 TRIAL, 81, AND INSIDE THERE'S A SMALLER ENVELOPE. I
15 DO NOT BELIEVE THE INTERIOR ENVELOPES HAVE BEEN
16 SUBNUMBERED.

17 THE COURT: NO. THEY'RE JUST 17 ENVELOPES.

18 MS. ABRAMSON: WHAT I'D LIKE TO DO --

19 THE COURT: I'M SORRY, THAT'S CONTENTS. IT
20 WAS PREVIOUSLY EXHIBIT 17.

21 MS. ABRAMSON: IT USED TO BE 17. THERE ARE A
22 BUNCH OF ENVELOPES IN THERE. I DON'T RECALL OFFHAND
23 HOW MANY. NONE OF THEM HAVE BEEN SUBNUMBERED, SO
24 I'D LIKE TO SUBNUMBER, IF I COULD, THIS INTERIOR
25 ENVELOPE AS 81-A.

26 THE COURT: OKAY.

27 Q BY MS. ABRAMSON: AND SHOWING YOU WHAT'S
28 BEEN MARKED 81-A, THAT IS A NO. 4 BUCKSHOT PELLET,

40296

1 ISN'T IT?

2 A YES, IT IS. IT'S CONSIDERABLY
3 DEFORMED.

4 Q YES. AS IF IT HAD STRUCK BONE?

5 A YES.

6 Q NOW, LET'S LOOK AT THE ENVELOPE.

7 A IT STATES THAT IT WAS REMOVED FROM THE
8 STERNUM.

9 Q OF MR. MENENDEZ?

10 A YES.

11 Q SO IN DR. GOLDEN -- THIS IS ALL PART OF
12 THIS -- THIS BRUISING, IN DR. GOLDEN'S OPINION, THAT
13 IT'S AFFILIATED WITH THE UPPER ARM WOUND, CORRECT?

14 A THAT'S WHAT HIS OPINION IS, YES.

15 Q ALL RIGHT. AND IF HIS OPINION IS RIGHT,
16 THAT ADDS ANOTHER KNOWN OPINION?

17 A THAT'S NOT MY OPINION.

18 Q YOU MAY NOT AGREE WITH IT, BUT YOU
19 DIDN'T EVEN REALIZE THERE WAS SUCH A WOUND, DID YOU?

20 MR. CONN: I'LL OBJECT AS IRRELEVANT, NO
21 RELEVANCE IN COUNSEL ADDING IT TO THIS EXHIBIT.

22 THE COURT: IT'S COMPOUND.

23 Q BY MS. ABRAMSON: YOU DIDN'T EVEN TALK
24 ABOUT THIS WOUND WHEN YOU WERE DIRECTLY EXAMINED BY
25 MR. CONN, DID YOU?

26 A NO.

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: OVERRULED.

40297

1 Q BY MS. ABRAMSON: DID YOU EVEN RECALL,
2 UNTIL I ASKED YOU TO REREAD THE REPORT RIGHT AFTER
3 LUNCH, THAT THERE WAS AN INDIVIDUAL PELLET DEFECT IN

4 THE STERNUM?

5 A IT'S NOT A MATTER OF RECOLLECTION.

6 Q IF WE ADD THESE UP --

7 THE COURT: WAIT, WAIT, WAIT.

8 THE WITNESS: THIS CHART WAS ONE THAT WE

9 CREATED WITH MY TALLY OF THE PELLETS THAT WERE

10 RECOVERED FROM THE VARIOUS SITES OR THAT ARE VISIBLE

11 ON THE X RAYS, AND I DON'T ACCEPT THAT ONE AS BEING

12 INCLUDED IN THAT TALLY.

13 Q BY MS. ABRAMSON: WELL, WHERE'D IT COME

14 FROM?

15 A IT LOOKS LIKE IT'S A STRAIGHT PELLET.

16 I'M NOT SURE WHERE IT CAME FROM. COULD BE A

17 RICOCHET. IT DIDN'T PENETRATE. HE PLUCKED IT OUT

18 WITHOUT EVEN DISSECTING. SO I DON'T KNOW HOW THAT

19 FIGURES IN.

20 Q THERE'S ONLY ONE HOLE -- ONE SET OF HOLES

21 IN THE SHIRT, YOU'VE ALREADY TESTIFIED TO THAT,

22 RIGHT?

23 A I'M NOT EVEN SURE THIS PELLET HAS

24 ANYTHING TO DO WITH THAT HOLE IN THE SHIRT.

25 Q THERE'S NO OTHER HOLE IN THE SHIRT?

26 A I HAVEN'T EXAMINED THE SHIRT WELL ENOUGH

27 TO SEE ALL THE HOLES.

28 Q SURE. WHY DON'T YOU DO THAT.

1 A IT'S -- I'LL DO IT. IT'S -- AGAIN, IT'S
2 GETTING OUT OF MY AREA WHEN WE'RE TALKING ABOUT
3 SUBTLE THINGS SUCH AS TINY HOLES OR WHETHER THERE
4 ARE PIN HOLES FROM PUTTING IT UP ON THE BOARD OR SO
5 FORTH.

6 Q SO YOU DON'T FEEL COMFORTABLE TO EXAMINE
7 THE SHIRT?

8 A NO, MA'AM. I'D RATHER HAVE THE
9 CRIMINALIST GIVE HIS OPINION OR HER OPINION.

10 Q LET'S DO THIS AS A HYPOTHETICAL THEN,
11 DR. LAWRENCE. OKAY?

12 LET'S SAY, HYPOTHETICALLY, THAT PELLET
13 IN THE STERNUM IS AFFILIATED WITH THE UPPER ARM
14 WOUND AND THOSE ABRASIONS, AS YOU CALL THEM
15 ABRASIONS, ON THE CHEST. OKAY? HYPOTHETICALLY.

16 A YES.

17 Q THEN IF ALL THESE WOUNDS ARE CORRECTED,
18 AS THAT ILLUSTRATION TRIES TO SHOW, YOU'RE TALKING
19 ABOUT 28 PELLETS, CORRECT?

20 A YES.

21 Q THANK YOU.

22 THE COURT: WHY DON'T YOU CHANGE THAT DIAGRAM
23 SINCE IT DOESN'T REFLECT WHAT HE TESTIFIED.

24 MS. ABRAMSON: WELL, I'LL PUT IT IN
25 PARENTHESES, YOUR HONOR.

26 THE COURT: PUT THAT "28" IN PARENTHESES AS

27 WELL.

28 MS. ABRAMSON: ALL RIGHT. HAPPY TO DO THAT.

40299

1 Q I WANT TO GET BACK TO THESE
2 ILLUSTRATIONS. WE WERE TALKING ABOUT 240 AND 241,
3 CORRECT?

4 A YES.

5 Q NOW, DR. LAWRENCE, YOU'RE NOT OFFERING
6 ANY OPINION, I TAKE IT, ON THE EXACT SEQUENCE OF
7 SHOTS HERE?

8 A I'M NOT.

9 Q AND YOU WOULDN'T --

10 A THERE ARE -- I HAVE OPINIONS ABOUT SOME
11 OF THE SEQUENCES, BUT NOT ALL OF THEM.

12 Q ANYTHING THAT'S POSTMORTEM, OBVIOUSLY,
13 COMES AT THE END OF SOMETHING, CORRECT?

14 A UNLESS THERE'S MORE THAN ONE POSTMORTEM,
15 THEN IT COMES SOMEWHERE AT THE END OR NEAR THE END.

16 Q ALL RIGHT. AND YOU'RE NOT OFFERING ANY
17 OPINION ON, I THINK YOU'VE SAID THIS MANY TIMES NOW,
18 WITH ABSOLUTE PRECISION ABOUT ANY OF THESE WOUNDS,
19 CORRECT?

20 A THAT'S NOT QUITE CORRECT, NO.

21 Q WELL, WITH RESPECT TO ANGLES AND

22 DIRECTIONS AND EXACT ENTRY LOCATIONS.

23 A NO PRECISION ON THOSE MATTERS.

24 Q THANK YOU.

25 A AS FAR AS WHICH WOUND CAME AFTER

26 ANOTHER, I FEEL QUITE CONFIDENT AND PRECISE IN THOSE

27 INTERPRETATIONS.

28 Q OKAY. LET'S TALK ABOUT THESE DIAGRAMS,

40300

1 HOWEVER.

2 NUMBER 240 AND 241 SHOW -- I MEAN, BY

3 THEIR VERY NATURE THESE ILLUSTRATIONS ONLY SHOW ONE

4 HYPOTHESIS, ONE DIRECTION, IF YOU WILL, FOR THE

5 WOUNDS IN 240 AND 241, CORRECT?

6 A YES. THIS IS A STATIC DIAGRAM. IT

7 CAN'T SHOW ANY MORE THAN ONE UNLESS THERE ARE

8 SEVERAL LINES DRAWN IN THE SAME PICTURE.

9 Q AND CAN YOU HYPOTHESIZE ANY DIFFERENT

10 POSITION, LET'S SAY, FOR THE GUN BARREL THAN WHAT'S

11 SHOWN IN 240 AND 241?

12 A YES, DEPENDING UPON THE POSITION OF THE

13 HEAD.

14 Q EXACTLY. AND YOUR DOLL, 204,

15 DEMONSTRATES, DOES IT NOT, THAT IF THE HEAD TURNS,

16 SAY THAT WAY, TO THE RIGHT -- WE WON'T GO BEYOND WHAT

17 A HUMAN CAN DO -- THEN THE POSITION OF THE MUZZLE OF
18 THE GUN WOULD ALSO SWING AROUND, CORRECT?

19 A YES. THAT'S -- THAT'S THE PURPOSE OF THE
20 DOLL AS COMPARED TO THE DIAGRAMS. IT ALLOWS US TO
21 MOVE IT AROUND AND SEE WHAT'S POSSIBLE AND WHAT'S
22 NOT POSSIBLE.

23 Q BY THE SAME TOKEN, IT COULD GO THE OTHER
24 WAY. THE HEAD COULD ALSO BE LOOKING TO ITS LEFT,
25 CORRECT?

26 A YES.

27 Q SO THERE'S A WHOLE RANGE HERE. I GUESS
28 THERE'S -- I DON'T KNOW HOW FAR A HEAD GOES RIGHT. I

40301

1 DON'T THINK IT GOES A WHOLE HUNDRED AND EIGHTY
2 DEGREES, BUT THERE'S A LOT OF DEGREES THROUGH WHICH
3 A HEAD CAN TRAVEL FROM RIGHT TO LEFT, CORRECT?

4 A YES. AND A LOT OF MINUTES WITHIN THOSE
5 DEGREES.

6 Q YES, MINUTES AS --

7 A SMALLER, YES.

8 Q -- SMALLER UNITS OF MEASUREMENT.

9 AND DEPENDING ON EXACTLY WHICH DIRECTION
10 THAT HEAD IS TURNED, ONLY IF YOU MOVE PRECISELY
11 WHERE THE HEAD WAS TURNED COULD YOU KNOW WHERE THE

12 MUZZLE OF THE GUN WAS.

13 A CORRECT.

14 Q AND UNTIL YOU KNOW EXACTLY WHERE THE
15 MUZZLE OF THE GUN WAS, YOU'RE ONLY SPECULATING AS TO
16 WHERE THE SHOOTER WOULD BE?

17 MR. CONN: OBJECTION. IRRELEVANT AS TO THIS
18 WITNESS.

19 THE COURT: OVERRULED.

20 Q BY MS. ABRAMSON: CORRECT?

21 A YES.

22 Q SO WHEN YOU SAID EARLIER THAT YOU CAN'T
23 FIND ANY MEDICAL REASON TO DISAGREE WITH THIS
24 HYPOTHESIS, YOU'RE NOT SAYING THIS IS THE TRUE WAY
25 IN WHICH THIS OCCURRED?

26 A I'M NOT SAYING THAT.

27 Q AND YOU CAN'T GIVE ANY MEDICAL REASON TO
28 AGREE WITH THIS PARTICULAR TRAJECTORY LINE AS DRAWN

40302

1 ON THIS DIAGRAM, CORRECT?

2 A THAT'S INCORRECT. THERE ARE PLENTY OF
3 MEDICAL REASONS TO AGREE WITH IT.

4 Q BUT YOU CAN'T SAY THAT'S THE WAY IT HAD
5 TO HAPPEN BECAUSE WE KNOW THE HEAD COULD ROTATE.

6 A I CAN'T SAY THAT THAT IS THE WAY IT

7 HAPPENED.

8 Q THANK YOU.

9 DO YOU UNDERSTAND -- NOW, YOU UNDERSTAND
10 THAT THIS IS THE SECOND SHOT IN SOMEBODY'S
11 SEQUENCING ARRANGEMENT?

12 DO YOU UNDERSTAND THAT?

13 A YES.

14 Q ALL RIGHT. SO THAT FROM THIS POINT ON
15 IN THAT HYPOTHESIS, MR. MENENDEZ HAS RECEIVED A
16 FATAL WOUND?

17 A YES.

18 Q AND THIS IS THE HEAD WOUND THAT I
19 BELIEVE YOU THOUGHT WAS JUST ABOUT IMMEDIATELY
20 FATAL?

21 A YES.

22 Q NOW WE'RE GOING TO GO BACK TO 222 AND
23 223, AND YOU HAVE REDRAWN A TRAJECTORY LINE ON 223
24 TO MORE ACCURATELY REFLECT THE TRAJECTORY LINE THAT
25 YOU PLACED ON THE MANNEQUIN, ON THE DOLL, CORRECT?

26 A YES.

27 Q AND IS THERE ANY MEDICAL EVIDENCE TO
28 SUPPORT THE WAY IN WHICH THE MANNEQUIN IN THIS

40303

1 ILLUSTRATION DEPICTS MRS. MENENDEZ' BODY? IS THERE

2 ANY MEDICAL EVIDENCE THAT SAYS AT THIS POINT SHE IS
3 STANDING WITH HER SHOULDERS FACING PERPENDICULAR TO
4 THE COUCH?

5 A THERE IS NO SUCH EVIDENCE TO POINT THE
6 EXACT POSITIONING OF THE MANNEQUINS IN ANY OF THE
7 ILLUSTRATIONS.

8 Q THANK YOU.

9 A AND THERE'S ALSO NO MEDICAL EVIDENCE
10 THAT WOULD COUNTER THAT. IN OTHER WORDS, IT'S
11 CONSISTENT WITH THAT. IT DOESN'T PROVE THOSE EXACT
12 POSITIONS.

13 Q ALL RIGHT. AND MY QUESTION IS, THOUGH,
14 WE DO HAVE ON MRS. MENENDEZ THAT ONE PELLET THAT'S
15 LODGED RIGHT ABOVE THE NOSE, IF YOU WILL, ON THE
16 FOREHEAD, CORRECT?

17 A I'D HAVE TO SEE THE X RAY AGAIN.

18 Q YOU HAVE THEM ALL IN FRONT YOU NOW.

19 I THINK YOU'LL FIND IT IN THIS PILE.
20 THE SKULL ONES ARE IN THIS PILE. THERE YOU GO.
21 THOSE ARE THE TWO.

22 (PAUSE IN PROCEEDINGS.)

23

24 THE WITNESS: THERE IS A BUCKSHOT PELLET
25 LODGED BENEATH THE SKIN, PROBABLY RIGHT NEAR THE
26 MIDLINE OF THE FOREHEAD.

27 Q BY MS. ABRAMSON: RIGHT. AND IF THE
28 FACE WERE TURNED, PRESENTING ITS SIDE TO THE MUZZLE

1 OF THE GUN, DO YOU BELIEVE THERE WOULD HAVE BEEN A
2 BUCKSHOT PELLET LODGED JUST BENEATH THE SKIN?

3 A FROM THE X RAY YOU CAN'T DETERMINE IF
4 THE PELLET WENT STRAIGHT IN TANGENTIAL TO THE
5 FOREHEAD OR PERPENDICULAR TO THE FOREHEAD OR IF IT
6 CAME IN AT AN ANGLE. SO I CAN'T ANSWER THAT
7 QUESTION IN TERMS OF THIS X RAY.

8 Q JUST TO REMIND YOU, THOUGH, THAT IS A
9 WOUND, THAT FACIAL WOUND, THAT THIS PARTICULAR
10 PELLET ON THE FOREHEAD IS PART OF, THAT DR. GOLDEN
11 DESCRIBES AS BACK TO FRONT -- FRONT TO BACK RATHER,
12 WITH NO ANGULATION, CORRECT?

13 A HE'S NEVER SPECIFICALLY TALKED ABOUT
14 THIS PELLET, BUT MY ASSUMPTION IS THAT HE FEELS THAT
15 THIS PELLET IS PART OF THE SHOT GROUP THAT HIT HER
16 RIGHT ORBIT, AND AS YOU KNOW BY THE -- AS YOU CAN
17 TELL BY THE CONTOURS HERE, COMING FROM THE DIRECTION
18 THAT I AM SUPPOSING, WHICH IS SLIGHTLY OFF TO HER
19 RIGHT, THE PELLET COULD HIT THERE AND END UP
20 UNDERNEATH THE SKIN WHERE IT IS IN THE X RAY.

21 Q YES, BUT YOU HAVE JUST DEMONSTRATED,
22 AGAIN, YOUR ANGLE, WHICH IS JUST SLIGHTLY OFF TO THE
23 RIGHT, NOT PERPENDICULAR TO THE RIGHT SIDE OF HER
24 FACE, CORRECT?

25 A CORRECT.

26 Q AND WHAT WAS ON THIS CHART BEFORE YOU
27 ADJUSTED IT WAS SOMETHING CLOSER TO PERPENDICULAR,
28 WAS IT NOT?

40305

1 A YOU WOULD SAY IT WAS NOWHERE NEAR
2 PERPENDICULAR.

3 Q ALL RIGHT. DO YOU NOTE, BY THE WAY,
4 DR. LAWRENCE, IN THIS CHART OF WHAT IS LABELED
5 SHOT 4, THE POSITION OF MR. MENENDEZ' LEGS?

6 A LET ME CORRECT ONE THING.

7 Q YES.

8 A I THINK YOU USED THE WORD
9 "PERPENDICULAR" WHEN YOU MEANT "TANGENTIAL." YOU
10 WENT OFF TO THE SIDE.

11 Q I'M USING LAYMEN'S TERMS.

12 A PERPENDICULAR WOULD BE STRAIGHT ON AND I
13 DO NOT THINK THAT IT SHOWED IT COMING FROM THE
14 SIDE.

15 Q OKAY. LATERAL, I GUESS WE DECIDED, WAS
16 THE SIDE, FROM THE LATERAL?

17 OKAY. YOU DON'T THINK THAT'S WHAT THIS
18 SHOWED?

19 A NO.

20 Q ALL RIGHT. THAT'S SORT OF WHAT 222

21 SUGGESTS, BUT YOU CAN'T SEE THE EXACT ANGLE IN 222.

22 A FROM THE RIGHT FRONT, BUT NOT FROM THE
23 RIGHT SIDE.

24 Q YOU THINK 222 SHOWS FROM THE RIGHT
25 FRONT?

26 A YES. THE -- THE GREEN LINE IS -- IF YOU
27 COULD HAVE IT IN THREE-DIMENSIONAL SPACE, YOU WOULD
28 SEE THAT IT'S PROBABLY COMING OUT TOWARDS US A

40306

1 LITTLE BIT IN THE WAY THIS PICTURE IS SHOWN.

2 AGAIN, YOU CAN ASK THE PERSON WHO
3 CREATED IT AND GET A MORE PRECISE UNDERSTANDING.

4 Q BUT HE DIDN'T ASK YOU BEFORE HE CREATED
5 IT, CORRECT?

6 A I WAS --

7 MR. CONN: OBJECTION. ASKED AND ANSWERED.

8 THE COURT: YOU CAN ANSWER THE QUESTION.

9 THE WITNESS: I HAD NO CONTACT OR
10 CONVERSATION WITH ANYBODY BEFORE THOSE DIAGRAMS WERE
11 CREATED.

12 Q BY MS. ABRAMSON: I WAS TRYING TO CALL
13 YOUR ATTENTION TO THE POSITION OF MR. MENENDEZ' LEGS
14 IN THIS, WHAT'S CALLED SHOT 4. OKAY?

15 DO YOU NOTE THEM?

16 A IN THAT VIEW AND THE ONE NEXT TO IT.
17 Q BOTH OF THESE VIEWS.
18 A THEY ARE PARALLEL TO ONE ANOTHER,
19 PARALLEL AND QUITE CLOSE TOGETHER.
20 Q WHY DON'T WE DO THIS.
21 A YOU CAN SEE IT ON THE PICTURE.
22 Q IT'S PRETTY FAR.
23 SO THEY'RE PARALLEL AND QUITE CLOSE
24 TOGETHER, CORRECT?
25 A YES.
26 Q AND BY SHOT 4, IT'S YOUR UNDERSTANDING
27 THAT MR. MENENDEZ IS ASSUMEDLY DEAD?
28 A YES.

40307

1 Q NOW, WE'RE GOING TO MOVE ON TO 224 AND
2 225, WHICH ARE LABELED SHOT 5.
3 AND THIS IS THE SHOT THAT WENT THROUGH
4 THE FOREARM AND UPPER ARM OF MRS. MENENDEZ.
5 A YES.
6 Q AND THIS IS THE ONE THAT YOU
7 DEMONSTRATED WITH THE HAND ON THE CLAVICLE?
8 A YES.
9 Q AND YOU BELIEVE THAT WHAT WAS
10 HAPPENING -- YOUR OPINION WAS THAT THERE WAS THIS

11 SHOT TO THE UPPER ARM AND FOREARM AND THEN THE NEXT
12 SHOT, WHICH WAS THE HAND AND THE CLAVICLE, OR IN
13 REVERSE ORDER.

14 A BUT IT'S NOT MY OPINION THAT THE HAND
15 WAS ON THE CLAVICLE WHEN THE FOREARM WOUND WAS
16 RECEIVED. IT COULD HAVE BEEN, BUT IT DID NOT HAVE
17 TO BE. IN OTHER WORDS, THERE COULD HAVE BEEN A
18 WOUND FIRST AND THEN SUBSEQUENTLY THE HAND WAS ON
19 THE CLAVICLE WHEN THE CLAVICLE WOUND WAS RECEIVED.

20 Q BUT THE WAY YOU ORIGINALLY DEMONSTRATED
21 IT HERE, YOU INDICATED IT COULD HAVE BEEN IN THE
22 SAME POSITION FOR BOTH SHOTS?

23 A YES. THAT'S THE WAY I ORIGINALLY
24 DEMONSTRATED.

25 Q ARE YOU CHANGING IT OR DO YOU THINK IT
26 COULD HAVE?

27 A YOU SUCCESSFULLY POINTED OUT THAT IT
28 DIDN'T FIT THAT WAY. AT THAT POINT I REALIZED THAT

40308

1 IT PROBABLY WAS NOT THAT WAY.

2 Q SO I CHANGED YOUR MIND?

3 A YES.

4 Q OKAY. NOW, WITH RESPECT TO THIS -- THESE
5 DIAGRAMS, THOUGH, 224 AND 225, THIS IS CALLED SHOT

6 5.

7 YOU NOTE MR. MENENDEZ' LEGS ARE IN THE
8 SAME POSITION YOU JUST DEMONSTRATED?

9 A YES.

10 Q NOW, WITH RESPECT TO MRS. MENENDEZ,
11 THOUGH, SHE'S LYING ON HER BACK IN THIS DIAGRAM,
12 CORRECT?

13 A YES.

14 Q IS THERE ANY MEDICAL EVIDENCE THAT
15 YOU'RE AWARE OF THAT INDICATES SHE HAD TO HAVE BEEN
16 LYING ON HER BACK AT THAT POINT?

17 A NO.

18 Q SO YOU REMEMBER WHEN I PUT THE "X" ON
19 224 IT WAS FOR THAT REASON, THAT THERE WAS NO
20 MEDICAL EVIDENCE TO SHOW THAT SHE WAS LYING ON HER
21 BACK.

22 A YES.

23 Q SO ALTHOUGH YOU TOLD MR. CONN YOU DON'T
24 DISAGREE WITH THIS, YOU CAN'T SAY THAT THIS IS A
25 POSITION THAT HER BODY WAS EVER IN, CAN YOU?

26 A AS I SAID EARLIER TO THE JURY, WE KNOW
27 HER POSITION WHEN THE BODY WAS FOUND. WE KNOW SHE
28 WAS SEATED ON THE COUCH. WE DON'T KNOW ANY OF THE

1 THINGS IN BETWEEN.

2 Q AND, IN FACT, THE POSITION THAT SHE'S
3 SHOWN IN 224 AND 225 IS NOT THE POSITION IN WHICH
4 HER BODY WAS FOUND?

5 A IT IS NOT.

6 Q NOW, I'M SHOWING YOU WHAT'S BEEN MARKED
7 238 AND 239.

8 AND EVEN THOUGH IT ISN'T NOTED ON THESE,
9 DO YOU UNDERSTAND THAT THIS IS THE SIXTH IN
10 SOMEONE'S SEQUENCE, SUPPOSED TO BE THE SIXTH?
11 OKAY?

12 A I'LL ACCEPT THAT WITHOUT CHECKING,
13 UNLESS YOU WANT ME TO BE ABSOLUTELY SURE.

14 Q THERE'S A "6" ON IT THAT I THINK
15 MR. CONN PUT, SO I THINK WE'RE SAFE.

16 NOW, IN THIS SEQUENCE WHAT'S SHOWN IS
17 THE SHOT TO HER RIGHT HAND.

18 A AND COLLAR BONE AREA.

19 Q YES, THE RIGHT HAND, THE COLLAR BONE,
20 THE MANDIBLE, CORRECT?

21 A YES.

22 Q NOW, YOU'VE ALREADY TESTIFIED THAT BASED
23 ON THE MEDICAL EVIDENCE THERE IS NOTHING
24 INCONSISTENT WITH THOSE INJURIES HAVING BEEN
25 INFLECTED WHEN SHE WAS STANDING UP, CORRECT?

26 A YES.

27 Q AND, IN FACT, THAT'S TRUE FOR WHAT WE
28 JUST SAW ON NO. 4, THE MEDICAL EVIDENCE, THERE'S

1 NOTHING INCONSISTENT WITH THE ARM WOUND OCCURRING
2 WHILE SHE'S STANDING UP.

3 A CORRECT.

4 Q NOW, THE ARM WOUND TO THE FOREARM AND
5 THE UPPER ARM, DR. LAWRENCE, IT BROKE THE BONES IN
6 BOTH PLACES, CORRECT?

7 A YES.

8 Q HOW -- WOULD IT PROVIDE ANY IMPEDIMENT TO
9 A PERSON MOVING THAT ARM THAT THEY'VE GOT BONES
10 BROKEN IN TWO PLACES?

11 A MOVING IT IN WHAT WAY?

12 Q UP, DOWN, OUT, AT ALL?

13 A IT -- IT WOULD PROVIDE AN IMPEDIMENT IN
14 TERMS OF PRECISION OF MOVEMENT, ABILITY TO GRASP
15 SOMETHING, THROW A BALL AND SO FORTH. IT WOULD NOT
16 PREVENT MOVEMENT OF THE ARM. AS A MATTER OF FACT,
17 THERE COULD BE -- IT COULD ACTUALLY ENCOURAGE
18 MOVEMENT OF THE ARM.

19 Q LET ME ASK YOU THIS: DO YOU KNOW WHAT
20 KIND OF NERVE DAMAGE WAS SUFFERED IN THE UPPER ARM,
21 LOWER ARM COMBINATION?

22 A NO.

23 Q IF NERVES ARE DAMAGED, CAN ARMS MOVE?

24 A YES.

25 Q IS THERE A CERTAIN AMOUNT OF NERVE
26 DAMAGE THAT WOULD PREVENT ARMS FROM MOVING?

27 A ACTUALLY, THE NERVES THAT WOULD OPERATE
28 THE UPPER ARM AREN'T IN THE AREA.

40311

1 Q THE UPPER ARM AS WELL AS THE LOWER?

2 A YES. STILL, THE NERVES ARE MORE CLOSER
3 TO THE SPINE.

4 Q ALL RIGHT. SO WHEN YOU TOLD MR. CONN
5 THAT YOU DON'T DISAGREE WITH THIS DRAWING, YOU ALSO
6 CAN'T SAY THAT YOU AGREE WITH THIS DEPICTION; ISN'T
7 THAT CORRECT?

8 A I AGREE WITH THE DEPICTION. I CAN'T
9 PROVE MEDICALLY THAT THAT IS THE ONLY POSSIBILITY.

10 Q YOU DON'T HAVE AN OPINION AS TO WHETHER
11 THAT'S THE ONLY POSSIBILITY?

12 A YOU ASKED IF I AGREE WITH IT, AND I DO
13 AGREE WITH IT.

14 Q I WANT TO DISTINGUISH BETWEEN HIS ASKING
15 YOU DO YOU DISAGREE AND MY SAYING DO YOU HAVE A
16 MEDICAL OPINION THAT DICTATES THIS DIAGRAM LOOKING
17 THIS WAY.

18 A I AGREE WITH THE DIAGRAM AND I HAVE NO

19 OPINION THAT DICTATES THAT PRECISE DIAGRAM.

20 Q OKAY. AND WE NOTE AGAIN MR. MENENDEZ'

21 LEGS ARE IN THE SAME POSITION IN THIS SIXTH

22 SEQUENCE, CORRECT?

23 A YES.

24 Q NOW, THIS IS 236 AND 237. AND IS IT

25 YOUR UNDERSTANDING THIS IS SUPPOSED TO BE SEQUENCE 7?

26 A DOES IT SAY 7?

27 Q IT DOES.

28 A THANK YOU.

40312

1 Q AND THIS IS SUPPOSED TO DEPICT THE LEG

2 WOUND TO MR. MENENDEZ, CORRECT?

3 A YES.

4 Q NOW, HYPOTHETICALLY, DR. LAWRENCE --

5 WELL, STRIKE THAT.

6 IS THERE ANY MEDICAL EVIDENCE WHATSOEVER

7 THAT INDICATES THAT MRS. MENENDEZ WOULD BE IN THE

8 POSITION THAT SHE IS SHOWN IN THESE DIAGRAMS?

9 A NO.

10 Q AND WITH RESPECT TO MR. MENENDEZ, YOU

11 SEE --

12 BAILIFF WOLF: QUESTION BY THE JURY.

13 ALTERNATE JUROR NO. 5: I CAN'T SEE.

14 MS. ABRAMSON: I'M SORRY. BOTH POINTERS ARE
15 HERE. LET'S DO THIS. WHY DON'T YOU KEEP ONE AND
16 I'LL KEEP ONE.

17 Q NOW, THIS IS SUPPOSED TO DEMONSTRATE A
18 SHOT BEING FIRED FROM SOMEWHERE HERE OVER THE BACK
19 OF THE COUCH, AND THEN THROUGH MR. MENENDEZ' LEFT
20 THIGH; IS THAT CORRECT?

21 A YES.

22 Q NOW, FROM THE MEDICAL EVIDENCE YOU'VE
23 DETERMINED, AS YOU SHOW ON THE DOLL, AN ENTRY AND AN
24 EXIT WOUND ON MR. MENENDEZ' LEFT THIGH, CORRECT?

25 A YES.

26 Q AND YOU'RE ENTIRELY IN AGREEMENT WITH
27 DR. GOLDEN'S FINDINGS ON WHAT'S THE ENTRY AND WHAT'S
28 THE EXIT?

40313

1 A YES.

2 Q AND THE WAY YOU'VE PUT THIS IN, IT
3 APPEARS THAT THE EXIT WOUND ON THE OUTSIDE OF THE
4 LEG IS REALLY ONLY A TINY BIT LOWER ON THE LEG THAN
5 THE ENTRY WOUND?

6 A WE'LL NEED THE PHOTOGRAPHS IF WE'RE
7 GOING TO ADDRESS THOSE ISSUES, AS WE'VE DONE
8 BEFORE.

9 Q OKAY. DID YOU HAVE THE APPEARANCE OF
10 THE WOUND IN MIND WHEN YOU MADE THE DOLL?
11 A WHEN I MADE THE DOLL I TOOK THE AUTOPSY
12 REPORTS AND USED THE X RAYS AND THE PHOTOGRAPHS, AND
13 LOOKED AT ALL OF THOSE, AND THEN DECIDED HOW I WAS
14 GOING TO DRILL THE HOLES. AND THEN I DRILLED THE
15 HOLES LOOKING AT THE DOLL, NOT AT THE PHOTOGRAPHS.
16 SOMETIMES I WAS SUCCESSFUL, OTHER TIMES I WAS A
17 LITTLE OFF. SO SOME OF THESE WILL HAVE EXTRA HOLES
18 WHERE I HAD TO REDO IT. WHEN I GOT CLOSE ENOUGH I
19 STOPPED AND GLUED THE WIRE IN. THIS DOLL IS NOT
20 PRECISE, SO IF YOU WANT -- IF WE WANT TO KNOW ABOUT
21 THE RELATIVE POSITION OF THE WOUNDS, WE NEED TO LOOK
22 AT THE PHOTOGRAPHS.
23 Q HERE'S THE PHOTOGRAPH.
24 A THAT LOOKS PRETTY CLOSE TO WHAT I PUT ON
25 THE DOLL.
26 Q IT DOES, DOESN'T IT?
27 A THE PROBLEM WE'RE DEALING WITH IS THAT
28 LEG IS MARKEDLY DISTORTED DUE TO THE FRACTURES AND

40314

1 THERE'S SOME BUNCHING UP OF THE SKIN AT THE BOTTOM,
2 SO I'M NOT COMPLETELY COMFORTABLE THAT THESE
3 RELATIONSHIPS ARE WHAT THEY WERE WHEN HE WAS SHOT.

4 Q THERE ARE NUMEROUS SCENE PHOTOGRAPHS
5 THAT SHOW HIM SITTING ON THE COUCH WITH THAT LEG
6 VISIBLE IN THE PHOTOGRAPH, AREN'T THERE?

7 A YES.

8 Q AND CAN YOU RECALL -- WITHOUT HAVING TO
9 GO THROUGH 180 OF THEM, CAN YOU RECALL ANY SCENE
10 PHOTOGRAPH THAT, IN YOUR MIND, CONTRADICTS THE
11 IMPRESSION GIVEN BY THIS PHOTOGRAPH THAT THE EXIT
12 WOUND IS ONLY SLIGHTLY LOWER THAN THE ENTRY WOUND?

13 A I WOULD SAY THAT'S PROBABLY CORRECT;
14 THEY ARE PROBABLY QUITE CLOSE, THE EXIT WOUND BEING
15 A LITTLE FURTHER DOWN.

16 Q OKAY. AND IF YOU GO BACK TO THIS -- IF
17 YOU GO BACK TO THE DIAGRAM, HOWEVER, 236, THAT WOULD
18 SEEM TO INDICATE AN ANGLE OF ENTRY THAT WOULD PLACE
19 THE ENTRY WOUND MUCH HIGHER ON THE LEG THAN THE EXIT
20 WOUND; OR AT LEAST HIGHER THAN THE PICTURES AS -- AND
21 THE TRANSLATION OF THE PICTURE INTO YOUR DOLL WOULD
22 SUGGEST.

23 A I THINK YOU SHOULD ASK THE PERSON THAT
24 MADE THE DIAGRAM. I DON'T KNOW WHAT THE PERSON
25 INTENDED. TO ME IT SHOWS THE TRAJECTORY OF WHAT WAS
26 STRUCK AND WHERE IT WENT.

27 Q ARE YOU SAYING THIS IS AN ACCURATE
28 TRAJECTORY BASED ON WHAT YOU SEE IN THE PHOTOGRAPH,

1 THE X RAY AND WHAT YOU RECREATED ON YOUR MANNEQUIN?

2 A AS ACCURATE AS MY MANNEQUIN, AND NEITHER
3 OF WHICH CAN BE PRECISE, FOR THE MANY REASONS WE'VE
4 DISCUSSED.

5 Q YOU DON'T BELIEVE THIS IS PRECISE; IS
6 THAT A FAIR STATEMENT?

7 A THAT'S FAIR.

8 Q AND I BELIEVE YOU SAID THAT YOU'RE NOT A
9 CRIMINALIST, SO YOU DIDN'T REALLY PAY ATTENTION TO
10 THE SCENE PHOTOGRAPHS TO SEE IF THERE WAS ANY
11 EVIDENCE OF A SHOT COMING IN THAT DIRECTION ON THE
12 RUG; IS THAT RIGHT?

13 A I DIDN'T SAY THAT.

14 Q WELL, DID YOU LOOK ON THE RUG AREA TO
15 SEE IF THERE WAS ANY EVIDENCE OF A ROUND OF BUCKSHOT
16 COMING THROUGH AT THE ANGLE DEPICTED IN THAT DIAGRAM
17 ON THE RUG?

18 A I DON'T FEEL COMFORTABLE DISCUSSING
19 SCENE FINDINGS WITH RESPECT TO CARPETS AND GUNSHOT
20 INJURIES AND SO FORTH BECAUSE IT'S OUT OF MY AREA OF
21 EXPERTISE.

22 Q SO WHATEVER YOU SAW YOU DON'T FEEL
23 COMFORTABLE DISCUSSING IT; IS THAT WHAT YOU'RE
24 SAYING?

25 A YES.

26 Q WOULD YOU NOTE MR. MENENDEZ' LEGS IN
27 THIS PHOTOGRAPH -- IN THIS DIAGRAM, PARTICULARLY

40316

1 DO YOU NOTICE NOW THERE'S BEEN A CHANGE
2 IN POSITION?

3 A YES, THE LEG -- THE LEFT LEG HAS MOVED
4 Laterally, in other words, towards his leg.

5 Q CAN YOU SHOW THAT --

6 A THEY DON'T NEED TO SEE THAT.

7 Q DR. LAWRENCE, ARE YOU REFUSING TO DO
8 WHAT I'M ASKING YOU TO DO?

9 THE COURT: HE DOESN'T HAVE TO DO YOUR
10 DEMONSTRATIONS IF HE DOESN'T WANT TO.

11 ASK YOUR NEXT QUESTION.

12 Q BY MS. ABRAMSON: OKAY. THIS SHOWS THE
13 LEFT LEG HAS MOVED OUT SLIGHTLY?

14 A YES.

15 Q AND THE RIGHT LEG HAS REMAINED IN THE
16 POSITION IT WAS IN ALL ALONG?

17 A ROUGHLY, YES, MA'AM.

18 Q NOW, LET'S GO TO THE NEXT ONES, AND
19 THESE WERE NOS. 227, 226 AND 227. AND THIS IS
20 SUPPOSED TO BE THE EIGHTH SEQUENCE, CORRECT?

21 A IS THERE AN "8" ON IT?

22 Q YES.

23 A THANK YOU.
24 Q IN FACT, IT'S PRINTED RIGHT HERE.
25 SHOT.8B, SHOT.8A.
26 SEE THAT?
27 A I NEED YOU TO READ IT TO ME.
28 Q THAT'S WHAT IT SAYS.

40317

1 A THANK YOU.
2 Q AND THAT'S SUPPOSED TO DEMONSTRATE THE
3 THIGH/THIGH WOUND, WHAT DR. GOLDEN CALLS HIP/THIGH,
4 TO MRS. MENENDEZ' LEFT LEG, CORRECT?
5 A YES.
6 Q NOW, YESTERDAY WHEN WE WERE TALKING
7 ABOUT THIS WOUND, I ASKED YOU IF ON REFLECTION AND
8 VIEWING THAT WOUND WHETHER IT WERE NOT LIKELY THAT
9 THE LOWER WOUND IS, IN FACT, THE ENTRY AND THE UPPER
10 INDIVIDUAL DEFECTS ARE, IN FACT, THE EXITS.
11 DO YOU RECALL THAT?
12 A YES.
13 Q NOW, YOUR ORIGINAL OPINION HERE HAD BEEN
14 AS APPEARS IN DR. GOLDEN'S REPORT, THAT THE UPPER
15 WOUND WAS THE ENTRY AND THE LOWER WOUND WAS THE
16 EXIT, CORRECT?
17 A YES, MA'AM. I PREFER TO ACCEPT HIS

18 OPINION.

19 Q WELL, I'VE INDICATED TO YOU THAT HIS
20 OPINION MAY HAVE CHANGED, CORRECT?

21 A I'VE NOT SEEN THAT.

22 Q BUT I INDICATED TO YOU THAT, AS A
23 HYPOTHETICAL.

24 A YOU SAID THAT, YES.

25 Q AND DID I ALSO ASK YOU WHETHER IT DIDN'T
26 MAKE MORE SENSE THAT IF THE TOP WOUNDS WERE AN ENTRY
27 WOUND, IT'S NOT LOGICAL TO ASSUME THAT THEY WOULD
28 ALL GET TOGETHER SOMEHOW INSIDE THE LEG AND COME OUT

40318

1 TOGETHER IN THIS SMALLER DEFECT, CORRECT?

2 A THAT SOUNDS CLOSE TO YOUR
3 CHARACTERIZATION OF THE SITUATION.

4 Q AND ISN'T THAT -- DIDN'T YOU AGREE WITH
5 THAT CHARACTERIZATION, THAT IT MADE MORE LOGICAL
6 SENSE TO BELIEVE THAT THE LOWER ONE WAS THE ENTRY
7 AND THE UPPER ONE THE EXIT?

8 A I AGREE WITH PORTIONS OF WHAT YOU SAY.
9 AND I RESERVE ANY CHANGE IN MY OPINION TO THE TIME
10 WHEN I CAN HAVE MEDICAL EVIDENCE TO SHOW WHY IT
11 SHOULD BE CHANGED.

12 SO FAR DR. GOLDEN HAS NOT ISSUED A

13 REPORT THAT WOULD EXPLAIN THAT TO ME.

14 Q LET'S PUT DR. GOLDEN ASIDE.

15 JUST FROM THE SENSE OF MEDICAL LOGIC,

16 DOES IT MAKE SENSE THAT THE SMALLER WOUND IS THE

17 ENTRY AND THE LARGER DISTRIBUTED PELLETS WOULD BE

18 THE EXIT?

19 A YES.

20 Q SO WOULD IT BE FAIR TO SAY THAT YOU'RE

21 UNCERTAIN AT THIS POINT WHICH IS WHICH?

22 A I HAVE SOME UNCERTAINTY.

23 Q OKAY. AND LET'S ASSUME -- THIS DIAGRAM

24 DOESN'T HAVE UNCERTAINTY. IT ONLY SHOWS ONE POINT

25 OF VIEW, CORRECT?

26 A CORRECT.

27 Q THIS DIAGRAM ONLY SHOWS THE ENTRY BEING

28 ON TOP AND THE EXIT BEING BELOW?

40319

1 A WHICH I BELIEVE IS THE CASE.

2 Q BUT IF IT'S -- BUT SINCE YOU HAVE SOME

3 UNCERTAINTY, IF THAT'S NOT THE CASE, THIS DIAGRAM IS

4 WRONG?

5 MR. CONN: OBJECTION. ARGUMENTATIVE.

6 THE COURT: SUSTAINED.

7 Q BY MS. ABRAMSON: CONSIDERING YOUR

8 UNCERTAINTY, IF, IN FACT, THE ENTRY WOUND IS THE
9 LOWER ONE AND THE EXIT WOUND IS THE TOP, WOULD YOU
10 AGREE THE DIAGRAM IS WRONG?

11 A YES.

12 MR. CONN: AGAIN, ARGUMENTATIVE. MOTION TO
13 STRIKE.

14 THE COURT: OVERRULED.

15 Q BY MS. ABRAMSON: BY THE WAY, DO YOU
16 NOTICE IN THIS DIAGRAM THAT MR. MENENDEZ' LEFT LEG
17 SEEMS TO HAVE CHANGED POSITION SINCE THE PREVIOUS
18 SEQUENCE?

19 A YES. I DIDN'T PAY ANY ATTENTION TO
20 THAT.

21 Q I KNOW THAT.

22 THAT'S NOT POSSIBLE, IS IT, FOR A DEAD
23 MAN TO MOVE HIS LEG THAT WAY?

24 A IF SHE INDEED WAS SHOT AFTER HIM, HE
25 WOULD NOT HAVE MOVED HIS LEG.

26 Q OKAY. SO HE WAS SUPPOSED TO BE SHOT
27 SINCE SHOT 2 AND THIS IS NOW 8. OKAY?

28 A YES.

40320

1 Q AND THE ONLY OTHER THING THAT'S SUPPOSED
2 TO HAVE HAPPENED TO HIM IS SHOT 7 IN THE LEG, WHICH

3 MOVED THE LEG TO THE SIDE?

4 A CORRECT.

5 Q NOW, THE LEG IS BENT AT THE KNEE, WHICH
6 IS DIFFERENT?

7 A YES.

8 Q DEAD PEOPLE CAN'T DO THAT, CAN THEY?

9 A NO. AND WHAT YOU'VE UNCOVERED IS AN
10 INCONSEQUENTIAL ARTIFACT.

11 MS. ABRAMSON: YOUR HONOR, I'D MOVE TO STRIKE
12 THAT AS NOT RESPONSIVE.

13 THE COURT: SUSTAINED. THAT REMARK IS
14 STRICKEN.

15 Q BY MS. ABRAMSON: NOW, WE'RE LOOKING AT
16 234 AND 235, AND THIS IS THE ONE THAT SHOWS THE
17 GRAZE WOUND TO HER CALF, CORRECT?

18 A YES.

19 Q AND, AGAIN, DR. LAWRENCE, IS THERE ANY
20 MEDICAL EVIDENCE THAT AT THE TIME SHE GOT THE GRAZE
21 WOUND TO HER CALF SHE WAS IN PRECISELY THIS POSITION
22 ON THE FLOOR?

23 A NO. WE KNOW SHE WAS ON THE FLOOR. WE
24 KNOW THE KNEE WAS ELEVATED ABOVE THE FLOOR.

25 Q BUT YOU DON'T KNOW --

26 A WE DON'T KNOW THE POSTURING OF HER
27 FINGERS, WHICH WAY SHE WAS LOOKING.

28 Q OR EVEN THE POSTURE OF HER LEG

1 PRECISELY?

2 A WE KNOW FAIRLY PRECISELY THE POSTURE OF
3 HER LEG.

4 Q WELL, LET ME ASK YOU THIS --

5 A I'M SORRY. WITH THE --

6 Q THE GRAZE WOUND?

7 A WITH THE GRAZE WOUND IT'S NOT AS
8 POSITIVE.

9 Q SO WITH THE GRAZE WOUND YOU CAN'T SAY
10 THAT THIS WAS DEFINITELY THE POSTURE OF HER LEG?

11 A NOT THE EXACT POSTURE, NO, MA'AM.

12 Q IN FACT, IF YOU RECALL THE WAY SHE WAS
13 ACTUALLY FOUND ON THE FLOOR, LYING ON HER RIGHT SIDE
14 WITH THE LEFT LEG RAISED ABOVE, COULD IT HAVE EVEN
15 BEEN IN THAT POSITION WHEN THE GRAZE WOUND OCCURRED,
16 THE FINAL POSITION?

17 A AS I RECALL, WHEN SHE WAS FOUND, SHE WAS
18 IN A POSITION ON HER RIGHT SIDE WITH HER LEFT LEG
19 BENT AT QUITE A SHARP ANGLE AT THE KNEE, SUCH THAT
20 THE CALF WAS WITHIN A FOOT OR SO OF THE THIGH.

21 AND I'D HAVE TO LOOK AT THE PHOTOGRAPH
22 TO REFRESH MY MEMORY AS FAR AS THE DIRECTION.

23 Q OKAY. YOU ALSO REALIZE THAT AT THE TIME
24 THAT SHE WAS FOUND SHE HAD SUSTAINED THE DOUBLE
25 ABOVE-AND-BELOW-KNEE WOUND THAT BROKE NUMEROUS

26 BONES?

27 A YES.

28 Q AND THAT DISTORTS THE WAY THE LEG LIES,

40322

1 DOES IT NOT?

2 A YES.

3 Q SO THE GRAZE COULD HAVE COME AFTER THAT

4 OR BEFORE THAT --

5 A COULD WE LOOK AT THAT PHOTOGRAPH SO I

6 CAN --

7 Q I WANT TO FINISH THESE.

8 A -- FINISH THE OTHER ANSWER.

9 Q IT'S ON THE OTHER SIDE.

10 I WANT TO FINISH GOING THROUGH THESE,

11 THEN WE'LL DO THAT.

12 NOW, THIS IS 232 AND 233. AND THIS IS

13 NO. 10 IN THE SERIES, AND THIS PURPORTS TO SHOW THE

14 DOUBLE LEG WOUND THAT WE'VE BEEN TALKING ABOUT TO

15 THE LEFT LEG, THE ENTRY BELOW THE KNEE, THE EXIT

16 ABOVE THE KNEE, CORRECT?

17 A YES.

18 Q NOW, THIS IS ACTUALLY WHAT'S KNOWN AS AN

19 ENTRY-EXIT-REENTRY-REEXIT WOUND.

20 A CORRECT.

21 Q AND THE PLACE WHERE ALL THE EXITING AND
22 REENTERING IS GOING ON IS BEHIND THE KNEE?
23 A THE ENTRY IS ON THE FRONT OF THE KNEE,
24 THE EXIT IS ON THE BACK OF THE KNEE, THE REENTRY IS
25 ON THE BACK OF THE KNEE, AND THE REEXIT IS ON THE
26 FRONT OF THE THIGH. I HOPE I DIDN'T CONFUSE THE
27 JURY.
28 Q NOW, IN FACT, HOWEVER, THIS LINE IS

40323

1 DRAWN IN SUCH A WAY THAT IT LOOKS LIKE THE ORIGINAL
2 ENTRY IS SORT OF TO THE OUTSIDE OF THE KNEE.

3 A LET'S LOOK AT THE PHOTOGRAPHS, IF WE'RE
4 GOING TO TALK ABOUT THAT DEGREE OF PRECISION AND
5 WOUND INTERPRETATION.

6 Q FIRST I WANT TO ASK YOU WHAT YOU SEE ON
7 THE DIAGRAM, THEN I'LL SHOW YOU THE PHOTOGRAPH.

8 ON THE DIAGRAM, THE WAY THIS IS DRAWN,
9 IT SHOWS, DOES IT NOT, THE ENTRY EITHER IN THE
10 MIDDLE OR TO THE OUTSIDE OF THE KNEE?

11 A I WOULD AGREE WITH THAT, MIDDLE OR
12 SLIGHTLY TO THE OUTSIDE.

13 Q RIGHT. AND YOU DON'T RECALL RIGHT NOW
14 WHETHER OR NOT THESE INJURIES TO THE KNEE WERE
15 ACTUALLY MORE TOWARDS THE INSIDE OF THE KNEE?

16 A I DON'T RECALL.

17 Q ALL RIGHT.

18 A LET'S LOOK AT --

19 Q I'LL SHOW YOU THE PHOTOGRAPH.

20 AND I RECALL, DR. LAWRENCE, WHEN YOU
21 WERE TESTIFYING ON DIRECT AND ON ORIGINAL CROSS,
22 WHEN YOU WERE SAYING THAT THAT KNEE INJURY COULDN'T
23 HAVE HAPPENED WITH HER STANDING OR SITTING, BECAUSE
24 THEN YOU WOULD HAVE EXPECTED THE PELLETS TO HIT HER
25 IN THE STOMACH; IS THAT RIGHT?

26 A TO PASS ON INTO HER BODY, YES. AND
27 STANDING, THE REASON IT COULDN'T BE WHEN SHE WAS
28 STANDING IS BECAUSE THE -- THE WEAPON WOULD HAVE TO

40324

1 BE DOWN SOMEWHERE.

2 Q AND BASED ON THE AUTOPSY REPORT AND THE
3 PHOTOGRAPHS, YOU DIDN'T SEE ANY EVIDENCE THAT THERE
4 WAS ANY ENTRY OF PELLETS OR INJURY TO THE AREA OF --
5 I GUESS IT WOULD BE HER LEFT ABDOMEN -- WHERE IF THE
6 LEG HAD BEEN BENT WHILE STANDING OR SITTING ON THE
7 COUCH, THE WOUND WOULD HAVE CONTINUED OR THE SHOT
8 COLUMN WOULD HAVE CONTINUED; IS THAT RIGHT?

9 A YES.

10 Q BUT DO YOU NOTICE IN THIS DIAGRAM THAT

11 THE LINE THAT IS BEING DRAWN THROUGH THIS KNEE ENDS

12 IN HER MID SECTION?

13 A I CAN'T TELL THAT FROM THE PERSPECTIVE.

14 YOU HAVE TO ASK THE PERSON WHO CREATED IT.

15 Q IT DOES APPEAR THAT WAY FROM THE

16 PERSPECTIVE OF THIS TRAJECTORY, DOESN'T IT?

17 A IT DOES NOT APPEAR THAT WAY TO ME. THE

18 LINE ENDS, BUT I CAN'T TELL WHERE IT ENDS. I CAN'T

19 TELL IF IT ENDS IN THE AIR ABOVE HER TORSO OR IF IT

20 ENDS ABOVE THE SKIN.

21 Q EVEN IF IT ENDS IN THE AREA ABOVE THE

22 TORSO, THE PELLETS DON'T EVAPORATE AT THAT POINT,

23 THEY CONTINUE GOING SOMEWHERE, SOMEPLACE, DON'T

24 THEY?

25 A I CAN'T TELL FROM THIS IF THEY WOULD GO

26 PAST HER WITHOUT STRIKING HER OR MAYBE SOME OF THEM

27 WOULD HIT HER LEFT BREAST. MAYBE SOME OF THE

28 PELLETS IN HER LEFT BREAST.

40325

1 Q I THOUGHT YOU SAID ALL THE PELLETS CAME

2 SLIGHTLY FROM HER LEFT SIDE AND THIS WOULD BE

3 STRAIGHT ON, WOULDN'T IT?

4 THE COURT: OKAY. NOW WE HAVE TWO QUESTIONS.

5 Q BY MS. ABRAMSON: WOULDN'T THIS INDICATE

6 THAT THE PELLETS WOULD COME STRAIGHT ON INTO THE
7 LEFT BREAST?

8 A THE WAY THAT'S DRAWN. BUT AS I SAID
9 MANY TIMES --

10 Q THE WAY THAT'S DRAWN. WAS THAT YES?

11 A NO.

12 Q OH.

13 A THE WAY THAT'S DRAWN, IT INDICATES WHAT
14 YOU JUST SAID. WE CAN'T USE THAT FOR PRECISE WOUND
15 INTERPRETATION.

16 Q OKAY. SO YOU CAN'T SAY THAT THERE IS
17 ANY MEDICAL EVIDENCE THAT PRECISELY DESIGNATES THIS
18 WOUND OCCURRING IN PRECISELY THIS WAY; IS THAT
19 FAIR?

20 A NO. THIS IS THE WOUND WHERE THE LEG WE
21 KNOW WAS ABOVE THE FLOOR AND THE KNEE WAS BENT. WE
22 DON'T KNOW THE EXACT POSITION OF THE LEG BEYOND
23 THAT.

24 Q OKAY. YOU DON'T KNOW THE POSITION OF
25 THE REST OF THE BODY BEYOND THAT?

26 A NO, MA'AM.

27 MS. ABRAMSON: I THINK I DO HAVE A
28 PHOTOGRAPH, THOUGH, OF THE KNEE.

1 CAN I STEP INTO THE WELL, YOUR HONOR?

2 THE COURT: YES.

3 MS. ABRAMSON: THANK YOU.

4 THE COURT: YOU WERE ALSO GOING TO GIVE HIM A
5 PHOTOGRAPH OF THE SOFA AND THE FINAL POSITION OF
6 MR. MENENDEZ, I BELIEVE.

7 THE WITNESS: MRS.

8 THE COURT: MRS. MENENDEZ. IN FRONT OF THE
9 SOFA.

10 MS. ABRAMSON: THAT'S NOT ONE OF THE EXHIBITS
11 WE'VE BEEN USING, SO I'D ASK MY CO-COUNSEL TO LOCATE
12 THE -- I THINK IT'S 70. I'M NOT SURE.

13 WELL, THIS WILL DO. A SCENE PHOTOGRAPH
14 WHICH SHOWS THE POSITION OF BOTH DECEDENTS.

15 Q NOW, DR. LAWRENCE, AT THE TIME THAT
16 MRS. MENENDEZ WAS BEING EXAMINED AT THE CORONER'S
17 OFFICE, THE BONES THAT SHOW UP ON THAT X RAY IN HER
18 LEFT LEG, BOTH ABOVE THE KNEE AND BELOW THE KNEE,
19 HAD BEEN FRACTURED?

20 A YES.

21 Q SHOWING YOU FIRST THIS PHOTOGRAPH, WHICH
22 IS NUMBERED EXHIBIT 200, AND IN THIS PHOTOGRAPH WE
23 ARE LOOKING, ARE WE NOT, AT THE LEFT LEG?

24 A YES.

25 Q AND THAT DOES GIVE A VIEW OF THE LEFT
26 SIDE, THE OUTER SIDE, OF THE LEFT KNEE?

27 A YES.

28 Q AND THE OUTER SIDE OF THE LEFT KNEE IN

1 THIS VIEW DOES NOT APPEAR TO HAVE ANY DAMAGE,
2 CORRECT?

3 A YOU'RE TALKING ABOUT THE KNEE ITSELF?

4 Q THE KNEE ITSELF. WE'LL GET TO THAT IN A
5 SECOND.

6 A I'M NOT SURE WHAT YOU MEAN BY THE OUTER
7 SIDE.

8 Q WELL, WHAT WE'RE LOOKING AT HERE -- THIS
9 IS THE KNEECAP, ISN'T IT?

10 A YES.

11 Q THERE DOESN'T APPEAR TO BE DAMAGE
12 AROUND -- ON THE KNEECAP ITSELF OR AROUND THE LEFT
13 SIDE OF THE KNEECAP?

14 A NO, BUT THERE IS SOME DAMAGE TOWARD THE
15 BACK AND THAT'S STILL IN THE KNEE AREA. THAT'S WHY
16 I'M CONFUSED.

17 Q BUT I'M TALKING ABOUT THE FRONT OF THE
18 KNEE. I SAID WE'LL GET TO THAT IN A SECOND. THE
19 FRONT OF THE KNEE.

20 A THERE IS NO DAMAGE WHERE NO DAMAGE IS
21 SEEN AND THERE IS DAMAGE WHERE DAMAGE IS VISIBLE.

22 Q BUT THE JURY AREN'T MEDICAL EXPERTS.
23 I'M ASKING YOU IF YOU ARE WILLING TO EXPLAIN WHAT WE
24 ARE SEEING. OKAY?

25 AND WHAT WE'RE SEEING IN THIS
26 PHOTOGRAPH, IF YOU WILL, IS A CONTINUATION OF THE
27 LEG FARTHER DOWN FROM WHAT APPEARS IN 186, THIS
28 PHOTOGRAPH, CORRECT?

40328

1 A YES. AND THE WOUND --

2 Q AND THEY LINE UP HERE AND HERE?

3 A THE WOUND IN 186 THAT I'M POINTING OUT
4 HERE IS THE SAME AS THE WOUND IN THE NEXT EXHIBIT,
5 WHICH IS NUMBER --

6 Q 200.

7 A -- 200. THESE ARE THE SAME WOUNDS.

8 Q OKAY. NOW, WHAT IS THIS THING, THIS,
9 WHAT IS THIS?

10 A I'M NOT SURE. YOU'RE POINTING TO THE
11 KNEE AND THE PATELLA. ARE YOU ASKING ABOUT THE SKIN
12 OR THE --

13 Q WHAT'S THE PATELLA?

14 A THE PATELLA IS THE KNEECAP.

15 Q OKAY. AND WE'RE LOOKING AT THE PATELLA,
16 THE KNEECAP, OF HER LEFT LEG, FROM A POSITION TO THE
17 LEFT OF IT.

18 A YES.

19 Q CORRECT?

20 AND ON THIS SIDE OF THE KNEECAP -- I'M
21 SORRY -- ON THIS SIDE OF -- THIS IS THE KNEECAP,
22 CORRECT?
23 A YES.
24 Q AND THERE'S NO APPARENT DAMAGE ON THAT
25 SIDE OF THE KNEECAP FROM THIS PHOTOGRAPH, CORRECT?
26 A CORRECT.
27 Q THE KNEECAP.
28 A CORRECT.

40329

1 Q NOW, THE AREA BEHIND THE KNEE IS CALLED
2 THE POPLITEAL FOSSA?
3 A POPLITEAL (PRONUNCIATION).
4 Q POPLITEAL FOSSA, RIGHT?
5 A YES.
6 Q AND THAT'S WHERE THE FIRST EXIT WOUND
7 AND THEN THE REENTRY WOUNDS APPEAR?
8 A YES.
9 Q AND YOU CAN SEE THEM IN THIS PHOTOGRAPH
10 AT THE BOTTOM OF THE PHOTOGRAPH.
11 A YES.
12 Q ALL RIGHT.
13 A SOME OF THEM.
14 Q SOME OF THEM.

15 AND THE LEG IS DISTORTED, IS IT NOT,
16 IT'S IN AN UNNATURAL POSITION HERE?
17 A YES.
18 Q BECAUSE ORDINARILY IF A LEG IS LAID OUT
19 SO THAT YOU CAN SEE THE KNEECAP FROM THE SIDE, YOU
20 CAN'T USUALLY SEE BEHIND THE KNEE, CORRECT?
21 A NOW YOU'RE GETTING TO A POINT WHERE I'M
22 UNCOMFORTABLE BECAUSE --
23 Q OKAY.
24 A -- THE LEG CLEARLY DISTORTED. IT SHOWS A
25 FRACTURE DISTORTION, BUT I'M NOT COMFORTABLE SAYING
26 WHETHER YOU WOULD BE ABLE TO SEE ONE AREA OR ANOTHER
27 IF THE KNEE WERE NORMAL. I DON'T FEEL THAT I CAN DO
28 THAT.

40330

1 Q ALL RIGHT. DOES IT APPEAR THAT THE LEG
2 IS ROTATED SOMEHOW, THE --
3 A I CAN'T TELL.
4 Q YOU CAN'T TELL. ALL RIGHT.
5 NOW WE'LL LOOK AT THIS PICTURE.
6 A IN THIS PHOTOGRAPH WHICH IS --
7 THE COURT: WHICH ONE?
8 THE WITNESS: NO. 83.
9 THE LOWER --

10 Q BY MS. ABRAMSON: BEFORE YOU ANSWER A
11 QUESTION THAT I HAVEN'T ASKED YOU, LET ME ASK YOU
12 THIS: DO YOU KNOW IF THIS PHOTOGRAPH WAS TAKEN
13 BEFORE OR AFTER THE WOUND WAS DISSECTED?

14 A PROBABLY AFTER.

15 Q AND WHEN YOU DISSECT A WOUND YOU MAKE IT
16 BIGGER, CORRECT?

17 A YES.

18 Q AND YOU CAN DISTORT ITS NORMAL -- WELL,
19 NOT NORMAL -- YOU CAN DISTORT THE APPEARANCE THAT IT
20 HAD WHEN IT FIRST ARRIVED AT THE CORONER'S OFFICE?

21 A YES.

22 Q SO CAN YOU TELL FROM THAT PHOTOGRAPH
23 WHAT THE WOUND LOOKED LIKE AT THE SCENE OR WHEN IT
24 FIRST WAS OBSERVED IN THE CORONER'S OFFICE?

25 A THE WOUND WOULD LOOK DIFFERENT ON ALL OF
26 THOSE CIRCUMSTANCES FOR REASONS EVEN OTHER THAN
27 DISSECTION. IT WOULD HAVE TO DO WITH POSITIONING OF
28 THE LEG, CLEANING OF THE AREA, AND SO FORTH.

40331

1 Q OKAY.

2 A FOR EXAMPLE, IN THIS PHOTOGRAPH, THE LEG
3 HAS BEEN TWISTED TO THE RIGHT IN AN UNNATURAL WAY AS
4 EVIDENCED BY THE WRINKLING OF THE SKIN.

5 Q RIGHT.

6 A SO THE RELATIONSHIPS IN THIS PICTURE ARE
7 NOT VALID.

8 Q RIGHT. SO WE CAN'T USE THAT TO FIGURE
9 OUT EXACTLY WHERE ON THE LEG THIS KNEE INJURY WAS?

10 A NO. THIS IS THE KIND OF PROBLEM THAT WE
11 HAVE IN A CASE LIKE THIS, AND THAT IS IT'S VERY
12 DIFFICULT TO PRECISELY RECONSTRUCT ALL OF THESE
13 WOUNDS, BECAUSE THE WOUNDS THEMSELVES ARE SO LARGE
14 AND IRREGULAR AND THE FRACTURES OCCUR AND IT GOES ON
15 AND ON.

16 Q OKAY. OH, I WANTED TO SHOW YOU THIS.
17 THIS IS 201. WE WERE GOING TO LOOK AT
18 THIS AND THERE MAY BE SOME OTHERS THAT I CAN FIND IN
19 A MINUTE OF EVEN MORE CLOSE UP. IN FACT, I DO HAVE
20 SOME CLOSE-UPS OF THE KNEE INJURY ON MR. MENENDEZ,
21 TO SEE IF YOU'RE CORRECT IN DETERMINING THAT THE
22 ENTRY AND EXIT ARE NOT AT A VERY GREAT ANGLE APART.
23 LET ME SEE WHAT YOU HAVE HERE THAT CAN FURTHER
24 ASSIST.

25 A THIS PHOTOGRAPH IS FAIRLY HELPFUL.

26 Q IS THAT GOOD? OKAY.

27 A FROM THIS PHOTOGRAPH I WOULD SAY THAT
28 THE EXIT WAS LOCATED APPROXIMATELY -- THE CENTER OF

1 THE EXIT WAS ABOUT THREE INCHES BELOW THE CENTER OF
2 THE ENTRY.

3 Q OKAY. SO THERE'S A SPREAD OF ABOUT
4 THREE INCHES?

5 A YES. THE EXIT IS ABOUT THREE INCHES
6 BELOW THE ENTRANCE.

7 Q OKAY.

8 THE COURT: THE WITNESS WANTED TO SEE A
9 PHOTOGRAPH OF THE SCENE SHOWING MRS. MENENDEZ.

10 MS. ABRAMSON: YES. I'M ASKING MY --

11 THE COURT: HERE'S EXHIBIT 13.

12 THE WITNESS: THIS IS THE PHOTOGRAPH THAT I
13 WAS THINKING OF, NO. 13, AND IT SHOWS MRS. MENENDEZ
14 IN A -- SORT OF A FETAL POSITION, ON HER RIGHT SIDE,
15 WITH THE LEFT LEG FLEXED AT THE KNEE, SUCH THAT THE
16 CALF IS QUITE CLOSE TO THE THIGH, AND THE AREAS OF
17 WOUNDING ARE VIRTUALLY ON THE TOP OF THE LEG. THE
18 GRAZING CALF WOUND AND THEN ONE OF HER THIGH WOUNDS.

19 Q BY MS. ABRAMSON: WELL, IS IT YOUR
20 OPINION THAT THE GRAZING CALF WOUND COULD HAVE
21 ENTERED THE THIGH?

22 A I DON'T KNOW.

23 Q IF IT DID, IT WOULD BE ENTERING THROUGH
24 THE LOWER HOLE THAT WE'VE BEEN TALKING ABOUT,
25 CORRECT? THAT'S WHAT THAT IS, ISN'T IT?

26 A YES.

27 Q LET ME PUT THIS UP. THIS IS A CROPPED

40333

1 LYING ON HER RIGHT SIDE, CORRECT?

2 A MAY I COMPLETE THE ANSWER OF THE
3 QUESTION THAT WE NEEDED THE PHOTOGRAPH FOR?

4 Q WELL, LET ME JUST DESCRIBE IT FOR THE
5 JURY, THEN I'LL GIVE YOU AN OPPORTUNITY TO COMPLETE
6 THE ANSWER. OKAY?

7 THAT'S WHAT THIS IS, A PHOTOGRAPH OF HER
8 LYING ON HER RIGHT SIDE?

9 A YES.

10 Q IT'S YOUR UNDERSTANDING THIS IS THE
11 POSITION SHE WAS IN WHEN THE POLICE GOT THERE?

12 A YES.

13 Q ALL RIGHT. NOW YOU MAY SAY WHATEVER YOU
14 WANTED TO SAY ABOUT THE CALF WOUND.

15 A THE REASON I WANTED TO SEE THAT
16 PHOTOGRAPH WAS TO ANSWER YOUR QUESTION ABOUT COULD
17 THAT GUNSHOT WOUND, THE GRAZING WOUND TO THE CALF,
18 HAVE OCCURRED WITH HER IN THE POSITION SHE WAS FOUND
19 RATHER THAN ON HER BACK.

20 AND AS YOU CAN SEE, THE COFFEE TABLE
21 WOULD BE IN THE WAY. I DON'T -- THE WEAPON WOULD
22 HAVE TO BE PARALLEL TO AND VERY CLOSE TO THE FLOOR.

23 IT SEEMS UNLIKELY.

24 Q WELL YOU REALIZE THAT WHAT YOU'RE

25 LOOKING AT HERE IS AFTER, AT SOME POINT, AFTER SHE'S

26 HAD THE DOUBLE SHOT TO THE LEG, RIGHT, TO THE KNEE?

27 A YES.

28 Q AND YOU DON'T KNOW IF THAT CAME BEFORE

40334

1 OR AFTER?

2 A I DON'T KNOW IF IT'S AFTER.

3 Q YOU DON'T KNOW IF IT'S AFTER OR BEFORE.

4 A CORRECT.

5 Q AND IT CAME AFTER THE LEFT CHEEK WOUND?

6 A NO. THE LEFT CHEEK WOUND --

7 Q RATHER, THE LEFT CHEEK WOUND CAME AFTER

8 THIS?

9 A YES.

10 Q SO, THEORETICALLY, SHE COULD HAVE BEEN

11 MOVING THE LEG?

12 A YES.

13 Q AND IT DOES NOT NECESSARILY HAVE TO HAVE

14 BEEN STATIONERY IN THE POSITION THAT YOU SEE THERE?

15 A SHE COULD HAVE BEEN FLOPPING AROUND,

16 MOANING, CRAWLING AROUND, ROLLING OVER AND SO FORTH.

17 Q LET ME ASK YOU THIS, THOUGH, ABOUT THE

18 LEFT CALF WOUND: DO YOU BELIEVE THAT IF THE LEG WAS
19 IN THIS POSITION, HOWEVER THE GUN HAD TO BE HELD, OR
20 EVEN IN A MORE ELEVATED POSITION, THAT THE LEFT CALF
21 GRAZING WOUND COULD HAVE ENTERED THE LEFT THIGH?

22 A FOR THAT TO HAPPEN SHE WOULD HAVE HAD TO
23 HAVE BEEN SHOT IN THAT POSITION, AND I DON'T THINK
24 SHE COULD HAVE BEEN SHOT IN THAT POSITION.

25 BUT THEN AGAIN, IF YOU COULD HOLD HER
26 BODY, FREEZE HER IN THAT POSITION AND MOVE HER
27 SOMEWHERE ELSE AND TIP HER LEGS UP OR SOMETHING, I
28 GUESS IT IS POSSIBLE.

40335

1 Q AND IF SHE COULD HAVE TIPPED HER LEG UP,
2 THEN THAT COULD HAVE HAPPENED, CORRECT? I'M NOT
3 SAYING IT DID HAPPEN; I'M SAYING IT COULD HAVE
4 HAPPENED.

5 A WELL, THEY'RE BOTH SIMILAR. I WANT TO
6 SEE IF IT MAKES SENSE. IT -- IT SEEMS VERY
7 UNLIKELY.

8 Q IMPOSSIBLE?

9 A NO, I WON'T USE THAT WORD AGAIN.

10 Q THANK YOU.

11 OKAY. OH, DO YOU NOTICE, BY THE WAY, IN
12 232 AND 233 THAT MR. MR. MENENDEZ' LEFT LEG HAS

13 MOVED AGAIN?

14 A I'M NOT SURE. IT MAY HAVE.

15 Q NOW IT'S MORE CROSSED BEHIND THE RIGHT.

16 A IT COULD BE JUST THE VIEW. AGAIN, I

17 WOULD PREFER YOU ASK THE PERSON WHO DID THE

18 ILLUSTRATIONS.

19 Q OKAY. BUT DEAD MEN DON'T MOVE THEIR

20 LEGS; IS THAT CORRECT?

21 A CORRECT.

22 Q NOW, LET'S GO ON TO 231 AND 232.

23 AND LET ME ASK YOU TO LOOK AT -- OH, DO

24 YOU NOTICE, BY THE WAY, BETWEEN TWO BETWEEN THE --

25 RATHER, BETWEEN 231 AND -- THERE'S A HOLE IN THE

26 PAPER. I THINK THIS IS -- 230 IS THIS ONE. IT'S 230

27 AND 231.

28 NEVER MIND. WHAT I WAS THINKING OF

40336

1 ASKING, I'M NOT GOING TO ASK YOU THAT.

2 NOW, THE WAY THAT YOU HAVE PORTRAYED THE

3 SHOULDER AND THE HEAD WOUND ON YOUR DOLL IS VERY

4 SIMILAR TO WHAT'S IN THIS PHOTOGRAPH, CORRECT?

5 A YES.

6 Q DO YOU SEE THE ANGLE OF TRAJECTORY

7 HERE?

8 A YES.

9 Q DID YOU MAKE ANY EFFORT WHATSOEVER TO
10 DETERMINE ANGLES?

11 A ON THE DOLL, YES.

12 Q OKAY.

13 A FOR EVERY WOUND.

14 Q DID YOU DO ANY MEASUREMENTS OR TAKE ANY
15 MEASUREMENTS OR USE ANY MEASUREMENTS AS THE BASIS
16 FOR FIG- -- COMPUTING THE ANGLES?

17 A I USED THE MEASUREMENTS OR ANGLES THAT
18 WERE GIVEN IN DR. GOLDEN'S REPORT, AND I ALSO USED
19 THE APPEARANCE OF THE X RAYS AND THE WOUND
20 PHOTOGRAPHS. AND I USED ALL OF THAT INFORMATION TO
21 CREATE THE BEST ANGLE I COULD ON THE DOLLS.

22 Q DO YOU SEE THIS FOOT HERE THAT'S COMING
23 THROUGH THE COFFEE TABLE?

24 A YES.

25 Q AND DO YOU UNDERSTAND THAT IN -- THAT
26 MRS. MENENDEZ' FOOT DOES APPEAR IN THAT OR SIMILAR
27 TO THAT POSITION IN THE SCENE PHOTOGRAPHS?

28 A YES.

40337

1 Q AND ARE YOU AWARE THAT BLOOD WAS FOUND
2 ON THE SOLE OF THAT SHOE?

3 A NO.

4 Q ARE YOU AWARE THAT BLOOD DROPLETS,
5 PERFECTLY ROUND, WERE FOUND ON THE TOP OF ONE OF HER
6 SHOES?

7 A WE'RE GETTING OUT OF MY AREA.

8 Q LET ME ASK YOU IF YOU'RE AWARE OF IT.
9 WE DON'T HAVE TO DISCUSS IT.

10 A NO.

11 Q AND FINALLY WE'RE LOOKING AT 228 AND
12 229, CORRECT?

13 A WOULD YOU READ THE NUMBERS TO ME,
14 PLEASE.

15 Q 228 AND 229.

16 A THANK YOU.

17 Q NOW, THIS PURPORTS TO SHOW THE LEFT
18 CHEEK INJURY TO MRS. MENENDEZ, CORRECT?

19 A YES.

20 Q AND I BELIEVE YOU TESTIFIED THAT YOU
21 BELIEVE THAT THIS INJURY CAME IN HORIZONTALLY.

22 A THAT'S WHAT DR. GOLDEN'S OPINION IS
23 AND --

24 Q YOU DON'T SEE ANY REASON TO CONTRADICT
25 IT?

26 A I DON'T ARGUE WITH IT.

27 Q AND STRAIGHT ON, NEITHER LEFT TO RIGHT
28 NOR UP OR DOWN?

1 A YES.

2 Q AND DO YOU UNDERSTAND THAT THAT'S WHAT --
3 THAT THAT'S WHAT IS BEING ILLUSTRATED IN THIS
4 TRAJECTORY? I KNOW IT'S HARD, THIS LITTLE GREEN
5 THING.

6 A IT'S PROBABLY PRETTY CLOSE.

7 Q IT'S NOT EXACTLY THE SAME, THOUGH, IS
8 IT?

9 A NO. AND AS I'VE SAID MANY TIMES, I
10 DON'T EXPECT IT TO BE.

11 Q OKAY. BUT WHETHER YOU EXPECT THE
12 ILLUSTRATION TO BE OR NOT, THE QUESTION IS, IT ISN'T
13 EXACTLY THE SAME AS YOUR OPINION AND DR. GOLDEN'S
14 OPINION?

15 A I CAN'T TELL. IT CAN BE VERY CLOSE. IT
16 COULD BE A LITTLE OFF.

17 Q DO YOU CONSIDER THIS, BASED ON YOUR
18 EXPERIENCE, DR. LAWRENCE, A VERY COMPLICATED SET OF
19 INJURIES?

20 A YES.

21 Q HAVE YOU EVER BEEN ASKED TO TRY TO
22 DETERMINE SEQUENCE OF SHOTS AS A MEDICAL EXPERT?

23 A YES, ON MANY OCCASIONS.

24 Q AND DO YOU, APART -- LET ME ASK YOU
25 THIS: TO WHAT EXTENT DO YOU BELIEVE YOUR EXPERTISE
26 ALLOWS YOU TO RENDER AN OPINION ON SEQUENCE OF

27 SHOTS?

28 A AS MUCH AS ANYBODY ELSE'S.

40339

1 Q AS MUCH AS ANYBODY ELSE?

2 A YES.

3 Q WHAT DOES THAT MEAN?

4 A IN OTHER WORDS, WHAT I'M TRYING TO
5 CONVEY IS THAT THAT IS THE PURVIEW OR JOB OF THE
6 FORENSIC PATHOLOGIST, TO MAKE THOSE KINDS OF
7 ASSESSMENTS, IF THEY CAN BE MADE, AND THAT'S WHAT I
8 DO FOR A LIVING.

9 Q OKAY. I DIDN'T MEAN TO DISTINGUISH
10 YOURSELF FROM OTHER FORENSIC PATHOLOGISTS. YOU MEAN
11 AS WELL AS ANY OTHER FORENSIC PATHOLOGIST CAN?

12 A YES, OR ANYBODY ELSE FOR THAT MATTER.

13 Q YOU THINK LAYMEN CAN FIGURE THIS OUT?

14 A NO. I MEANT ANYBODY ELSE WHO WOULD HOLD
15 HIMSELF OUT OR HERSELF OUT TO BE AN EXPERT IN THAT
16 AREA.

17 Q IN THE AREA OF WHAT?

18 A OF WOUND BALLISTICS.

19 Q AND DO YOU BELIEVE IT IS POSSIBLE TO
20 KNOW THE EXACT SEQUENCE OF SHOTS BASED ON MEDICAL
21 EVIDENCE ALONE?

22 A SOME OCCASIONS IT IS.
23 Q WHAT ABOUT THIS OCCASION?
24 A I AM CERTAIN ABOUT THE SEQUENCE OF SOME
25 OF THE SHOTS AND UNCERTAIN ABOUT THE OTHERS.
26 Q WHICH ONE WAS FIRST?
27 A I DON'T KNOW.
28 Q WHICH ONE WAS SECOND?

40340

1 A WE'RE TALKING ABOUT JOSE OR --
2 Q EITHER ONE.
3 A I HAVE AN OPINION ABOUT THE ORDER OF
4 THESE GUNSHOT WOUNDS, BUT IT'S NOT WITH CERTAINTY.
5 Q AND THAT'S WHAT YOU DO FOR A LIVING,
6 CORRECT?
7 A YES. THIS IS NOT ONE OF THOSE CASES IN
8 WHICH ONE CAN, FROM THE MEDICAL EVIDENCE ALONE, BE
9 CERTAIN ABOUT THE ORDER OR SEQUENCE.
10 MS. ABRAMSON: THANK YOU, DR. LAWRENCE.
11 THE COURT: ANY FURTHER REDIRECT?
12 MR. CONN: NO, YOUR HONOR.
13 THE COURT: OKAY. THANK YOU, SIR. YOU MAY
14 STEP DOWN.
15 OKAY. WE'LL TAKE A RECESS UNTIL 10
16 MINUTES AFTER THE HOUR.

17 (A RECESS WAS TAKEN FROM
18 2:50 P.M. TO 3:30 P.M.)
19
20
21
22
23
24
25
26
27
28

40341

1 (THE FOLLOWING PROCEEDINGS WERE
2 HELD IN OPEN COURT, OUT OF THE
3 PRESENCE OF THE JURY:)
4
5 THE COURT: WITHOUT THE JURY. THE LAWYERS
6 AND DEFENDANTS ARE HERE.
7 SOMETHING YOU WANTED TO DISCUSS?
8 MS. ABRAMSON: WELL, YOUR HONOR, AS WE
9 INDICATED EVEN YESTERDAY, WE BELIEVE THAT WE SHOULD
10 HAVE A HEARING UNDER -- A BRIEF HEARING UNDER 402
11 CONCERNING THE SCOPE OF MR. MC CARTHY'S TESTIMONY

12 AND SPECIFIC ILLUSTRATIONS THAT WE UNDERSTAND HE
13 INTENDS TO USE.

14 JUST AS A POINT OF INFORMATION FOR THE
15 COURT, I HAD INQUIRED IN OPEN COURT SEVERAL DAYS AGO
16 AS TO WHAT EXHIBITS -- WHAT DEMONSTRATIVE EVIDENCE
17 WAS THE WORD I USED -- THE PEOPLE INTENDED TO USE
18 WITH DR. MC CARTHY, AND WE WERE INFORMED AT THAT
19 TIME THAT HE WOULD BE USING HIS COMPUTER -- WE HAD
20 PREVIOUSLY BEEN TOLD HE WOULDN'T -- TO PROJECT THE
21 IMAGES. AND THEN THERE WOULD BE A HARD COPY, WAS
22 HOW IT WAS DESCRIBED, FOR THE JURY, JUST LIKE THEY
23 HAD BEEN USING, THEY SAID. AND AS THE COURT KNOWS,
24 BECAUSE YOU'VE SEEN THEM, THE HARD COPIES WE HAVE
25 BEEN USING ARE EIGHT BY ELEVEN PRINTOUTS PROVIDED TO
26 US.

27 RETURNING FROM RECESS THIS AFTERNOON --
28 I WASN'T SHOWN -- I SAW, THOSE STACKS OF LARGE

40342

1 CHARTS, WHICH EACH ONE CONTAINS ONE OF THE 24
2 ILLUSTRATIONS. I'LL JUST TAKE -- THIS IS 7-A
3 BECAUSE IT'S JUST THE CLOSEST ONE, JUDGE, SO THE
4 COURT CAN SEE THE SIZE OF THE ILLUSTRATIONS THE
5 PEOPLE NOW INTEND TO USE.

6 THIS IS ALL TOO TYPICAL IN THIS CASE,

7 THAT WE ASK WHAT THE PEOPLE ARE GOING TO USE AND
8 THEY MISLEAD US AND THEY BRING SOMETHING ELSE IN,
9 AND I OBJECT AT THIS POINT TO THE PEOPLE USING THOSE
10 ENLARGEMENTS. I SCALED MY DEMONSTRATIVE EXHIBITS TO
11 WHAT I BELIEVED WAS GOING TO BE THE PEOPLE'S SCALE
12 FOR THEIR DEMONSTRATIVE EXHIBITS AND WAS, AS YOU
13 RECALL, SANDBAGGED. THAT'S AN ASIDE.

14 NOW, THE HEART OF THE MATTER, UNDER 402
15 IS THIS: THIS COURT HAD PREVIOUSLY INDICATED THAT
16 SINCE DR. MC CARTHY DOES NOT HAVE ANY MEDICAL
17 TRAINING, HE COULD NOT OFFER CONCLUSIONS BASED ON
18 MEDICAL KNOWLEDGE UNLESS A FOUNDATION HAD BEEN LAID
19 FOR HIS CONCLUSIONS THROUGH THE TESTIMONY OF A
20 QUALIFIED EXPERT.

21 NOW, WE HAVE GONE THROUGH TWO AND A HALF
22 DAYS OF DR. LAWRENCE'S TESTIMONY, AND IT IS OUR
23 CONTENTION THAT WITH RESPECT TO SOME, THOUGH NOT
24 ALL, OF MR. MC CARTHY'S ILLUSTRATIONS, THERE IS NO
25 FOUNDATION IN THE MEDICAL EVIDENCE TO SUPPORT THEM.

26 AND MOST SPECIFICALLY, HIS WHOLE SHOT
27 SEQUENCE NO. 1 IS NOT SUPPORTED BY MEDICAL EVIDENCE,
28 AND WITH RESPECT TO PART OF THAT SEQUENCE, DEPENDING

40343

1 ON WHICH MOMENT HE WAS TESTIFYING, DR. LAWRENCE

2 EITHER DISAGREED OUTRIGHT WITH THE WOUND AS
3 DEPICTED, OR INDICATED HE COULDN'T TELL.
4 WELL, DR. MC CARTHY HAS NO MEDICAL
5 TRAINING, SO HE CAN'T TELL EITHER. AND IT'S OUR
6 POSITION THAT ONLY WITH RESPECT TO THOSE WOUNDS
7 WHERE THERE HAS BEEN PROVEN THUS FAR UNCONTROVERTED,
8 OR ACTUAL MEDICAL OPINION, THAT THE ILLUSTRATIONS BE
9 SUPPORTED BY MEDICAL TESTIMONY, SHOULD DR. MC CARTHY
10 BE PERMITTED TO SHOW THE ILLUSTRATIONS.

11 THAT IS NOT TRUE FOR HIS SHOT 1
12 SEQUENCE. AND SO WE OBJECT TO ANY DEPICTION OF THAT
13 SEQUENCE.

14 AND I BELIEVE THAT IT IS NOT TRUE
15 UNAMENDED TO HIS SHOT 4, WHICH IS SUPPOSEDLY THE
16 SHOT TO THE RIGHT SIDE OF MRS. MENENDEZ' FACE, THE
17 UPPER SHOT, THE ONE IN THE EYE ORBIT, THAT HAS TO BE
18 CORRECTED BEFORE HE SHOULD BE PERMITTED TO TESTIFY
19 ABOUT THAT SHOT.

20 IT SHOULD -- HE SHOULD NOT BE PERMITTED
21 TO TESTIFY ABOUT OR TO ILLUSTRATE SHOT.10A AND B,
22 BECAUSE THAT IS NOT CONSISTENT WITH THE ACTUAL
23 INJURIES PER THE MEDICAL OPINION.

24 AND THOSE, I BELIEVE, ARE THE ONES THAT
25 WE'RE OBJECTING TO IN TOTO.

26 IN ADDITION, WE WOULD OBJECT TO THE
27 SHOWING ON THE PROJECTION SCREEN -- WE WERE TOLD, BY
28 THE WAY, IT WOULD BE A TELEVISION MONITOR, THE SAME

1 MONITOR THAT HAD BEEN USED PREVIOUSLY TO SHOW THE
2 CRIME SCENE VIDEO. AND NOW IT'S BEING PROJECTED ON
3 THE BOARD AND NOT THE TELEVISION MONITOR. WE WOULD
4 OBJECT TO THE PROJECTION OF ANY AUTOPSY PHOTOGRAPHS,
5 PHOTOGRAPHS TAKEN AT THE TIME OF THE AUTOPSY,
6 BECAUSE DR. MC CARTHY IS NOT QUALIFIED TO RENDER
7 MEDICAL OPINIONS BASED ON THOSE PHOTOGRAPHS; THAT
8 PHOTOGRAPHS THAT WERE RELIED UPON BY DR. LAWRENCE
9 ARE BEFORE THE JURY; THAT IF DR. MC CARTHY IN
10 RELIANCE UPON DR. LAWRENCE WANTS TO POINT TO
11 SOMETHING THAT'S ALREADY AN EXHIBIT, THAT'S FINE.

12 BUT WE OBJECT TO HIM PROJECTING AND
13 OFFERING HIS OWN OPINIONS ABOUT ANY OF THE CORONER
14 PHOTOGRAPHS AS BEYOND HIS AREA OF EXPERTISE.

15 AND WE ASK, THEREFORE, THAT HIS
16 TESTIMONY BE LIMITED TO THOSE THINGS FOR WHICH AN
17 ADEQUATE FOUNDATION HAS BEEN LAID AND NOT ALLOW ANY
18 TESTIMONY BASED ON MEDICAL OPINIONS THAT HE HAS.
19 AND BY THE SAME TOKEN, HE TESTIFIED DURING THE 801
20 HEARING THAT HE HAS NO TRAINING IN READING X RAYS.
21 SO WE OBJECT TO HIM SHOWING X RAYS OR COMMENTING ON
22 WHAT'S IN THE X RAYS AS WELL.

23 THE COURT: MR. GESSLER, ANYTHING ELSE?

24 MR. GESSLER: I JOIN IN THAT OBJECTION, YOUR
25 HONOR. AND ALSO, AS FAR AS THE ONES THAT HE IS

26 ALLOWED TO TESTIFY TO, THAT IS, THE SHOTS THAT HE'S
27 ALLOWED TO TESTIFY TO, THAT ANYTHING HAVING TO DO
28 WITH A MEDICAL BASIS BEING PUT TO HIM AS A

40345

1 HYPOTHETICAL QUESTION BASED ON THE TESTIMONY OF
2 DR. LAWRENCE AND SUPPORTED BY IT, RATHER THAN
3 ALLOWING DR. MC CARTHY TO GIVE HIS OWN MEDICAL
4 OPINIONS IN THE GUISE OF INJURY AND EXIT WOUND OR
5 ANY OF THAT TYPE THING.

6 THE COURT: MR. CONN.

7 MR. CONN: YES. AS FAR AS THE ILLUSTRATIONS
8 ARE CONCERNED, I DID NOT INDICATE TO COUNSEL THAT
9 DURING THE PRESENTATION WITH DR. MC CARTHY WE WERE
10 GOING TO BE USING EIGHT-AND-A-HALF-BY-ELEVEN IN
11 SIZE. WHEN COUNSEL WANTED TO KNOW WHAT WAS --
12 WHETHER THERE WERE ANY FURTHER CHANGES THAT WERE
13 MADE TO THE SUBSTANCE OF THE ILLUSTRATIONS, AND I
14 INFORMED HER AT THE TIME THAT THERE WERE SOME
15 CHANGES MADE TO THE SIZING OF THE FURNITURE INSIDE
16 THE ROOM; AND LATER WHEN THERE WAS ONE ADDITIONAL
17 CHANGE, WHICH WAS SIMPLY TO THE NUMBERING IN THE
18 UPPER LEFT-HAND CORNER, WE ALSO LET COUNSEL KNOW
19 ABOUT THAT SO THAT COUNSEL WOULD BE TOTALLY AWARE OF
20 THE IMAGE THAT WAS GOING TO BE PRESENTED. WE DIDN'T

21 INDICATE IT WAS GOING TO BE EIGHT-AND-A-HALF-BY-ELEVEN.
22 AND I DON'T THINK THAT COUNSEL CAN
23 COMPLAIN ABOUT THE SIZE OF THE ILLUSTRATIONS.
24 THEY'RE SIMPLY WHAT SHE HAS ALREADY BEEN PROVIDED,
25 EXCEPT IN LARGER FORM.
26 AS FAR AS THE USE OF THE PROJECTION IS
27 CONCERNED, THIS IS THE PROBLEM LETTING COUNSEL KNOW
28 WELL IN ADVANCE EXACTLY HOW WE'RE GOING TO MAKE THIS

40346

1 PRESENTATION, BECAUSE OUR PLANS CONCERNING THIS
2 PRESENTATION HAVE CHANGED FREQUENTLY. EVERY SINGLE
3 TIME WE MAKE A REPRESENTATION TO THE COURT, THAT
4 REPRESENTATION WAS ACCURATE BASED UPON MATERIAL THAT
5 WAS AVAILABLE TO US AT THE TIME, AND OUR BELIEF
6 CONCERNING THE APPROPRIATENESS OF THAT PARTICULAR
7 FORM OF PRESENTATION. IT WAS ONLY TODAY THAT WE
8 DECIDED THAT THE BEST WAY TO GO IS WITH THE
9 PROJECTION. THE MONITOR IS UPSTAIRS. IT'S JUST --
10 THE CABLES JUST AREN'T HOOKING CORRECTLY. WE HAVE
11 TO GO WITH WHAT WE HAVE. AND I DON'T SEE ANY HARM
12 IN USING THE PROJECTOR AS OPPOSED TO USING THE LARGE
13 SCREEN MONITOR. IT'S STILL THE SAME IMAGE. SO
14 THERE'S NO PREJUDICE THERE.
15 TURNING TO THE SUBSTANCE OF THE

16 TESTIMONY OF DR. MC CARTHY, I THINK THAT AN ADEQUATE
17 FOUNDATION HAS BEEN LAID THROUGH THE TESTIMONY OF
18 DR. LAWRENCE. THE ISSUE BEFORE THE COURT WAS NOT
19 WHETHER, AS COUNSEL WOULD LIKE TO DESCRIBE IT, THERE
20 IS A MEDICAL BASIS FOR EVERYTHING THAT DR. MC CARTHY
21 IS GOING TO BE TESTIFYING TO. CLEARLY, THERE
22 DOESN'T HAVE TO BE A MEDICAL BASIS FOR DEPICTING THE
23 COFFEE TABLE IN THE POSITION WHERE IT IS, ANY MORE
24 SO THAN THERE HAS TO BE A MEDICAL BASIS FOR
25 DEPICTING THE POSITION OF JOSE'S RIGHT LEG AT THE
26 TIME THAT HE IS SITTING ON THE SOFA.

27 THE QUESTION IS TO THE EXTENT AT THAT
28 TIME, THE OPINION OF DR. MC CARTHY MAY RELY UPON

40347

1 MEDICAL FOUNDATION, HAS THAT MEDICAL FOUNDATION BEEN
2 SHOWN, AND THAT I THINK HAS NOW ADEQUATELY BEEN
3 SHOWN THROUGH THE TESTIMONY OF DR. LAWRENCE WHO HAS
4 PROVIDED INFORMATION CONCERNING ALL OF THE
5 ESSENTIALS ON WHICH DR. MC CARTHY WILL BE
6 TESTIFYING; THAT IS, HE HAS TESTIFIED TO THE CAUSE
7 OF DEATH. HE HAS TESTIFIED TO EACH AND EVERY SINGLE
8 WOUND THAT DR. MC CARTHY WILL BE REFERRING TO. HE
9 HAS TESTIFIED IN REGARD TO EVERY SINGLE PHOTOGRAPH
10 THAT DR. MC CARTHY WILL BE RELYING UPON. HE HAS

11 TESTIFIED IN REGARD TO EVERY X RAY THAT
12 DR. MC CARTHY WILL BE RELYING UPON. HE HAS
13 TESTIFIED TO THE -- WHETHER OR NOT EACH OF THOSE --
14 EVERY SINGLE OF THOSE WOUNDS WOULD HAVE BEEN
15 IMMEDIATELY FATAL. HE HAS TESTIFIED TO WHETHER EACH
16 OF THOSE WOUNDS WAS POSTMORTEM OR ANTEMORTEM, OR
17 PERIMORTEM. HE HAS TESTIFIED IN REGARD TO THE
18 ASSOCIATION OF VARIOUS WOUNDS. HE HAS EVEN
19 TESTIFIED IN REGARD TO SEQUENCING OF THOSE WOUNDS.

20 SO HE HAS PROVIDED A TOTAL FOUNDATION
21 FOR EVERYTHING THAT DR. MC CARTHY WILL BE TESTIFYING
22 TO, AND NO FURTHER FOUNDATION SHOULD BE REQUIRED AT
23 THIS TIME.

24 TURNING TO THE SPECIFIC SHOTS THAT
25 COUNSEL IS NOW REFERRING TO. AS FAR AS SHOT 1 IS
26 CONCERNED, DR. LAWRENCE SAID THAT HIS OPINION IS
27 THAT ALTHOUGH IT COULD POSSIBLY HAVE BEEN TWO
28 SEPARATE SHOTS THAT CAUSED THE WOUND TO THE RIGHT

40348

1 ARM OF JOSE MENENDEZ, IT IS ALSO HIS OPINION THAT
2 THE WOUND TO THE RIGHT ARM OF JOSE MENENDEZ IS ALSO
3 CONSISTENT WITH A SINGLE SHOT; AND HE MADE THAT VERY
4 CLEAR IN HIS TESTIMONY.

5 AS FAR AS SHOT 4 IS CONCERNED, HE SAID

6 THERE IS SOME SLIGHT DIFFERENCE OF OPINION
7 CONCERNING THE PRECISE ANGLE AT WHICH THAT
8 PARTICULAR SHOT STRUCK THE RIGHT EYE AREA OF KITTY
9 MENENDEZ, BUT HE INDICATED THAT IT'S A VERY SLIGHT
10 DEVIATION; AND, IN FACT, HE ILLUSTRATED IN REGARD
11 TO -- ON ONE OF THE DIAGRAMS THAT HAS ALREADY BEEN
12 MARKED, JUST WHAT THAT DEVIATION CONSISTED OF. AND
13 WE CAN SEE FROM LOOKING AT IT THAT IT IS SIMPLY A
14 VERY SLIGHT ANGLE.

15 SO I DON'T THINK THAT THE VERY SLIGHT
16 ANGLE DIFFERENCE IS SUFFICIENT TO -- FOR COUNSEL TO
17 ARGUE THAT THE TESTIMONY OF DR. MC CARTHY IS
18 INADMISSIBLE IN REGARD TO THAT SHOT OR TO ANY OTHER
19 SHOT FOR THAT MATTER.

20 AND, FINALLY, WITH REGARD TO THE X RAYS
21 THAT HE WILL BE RELYING UPON, ONCE AGAIN, REGARDLESS
22 OF MY TRAINING IN X RAYS, WE HAVE SUFFICIENT
23 FOUNDATION FOR THE X RAYS THAT HAS BEEN PRESENTED TO
24 THE JURY. COUNSEL INDICATED THAT THERE WOULD NOT BE
25 AN OBJECTION TO THE X RAYS THAT WERE TAKEN BY THE
26 CORONER'S OFFICE AND WHICH ARE CURRENTLY BEFORE THE
27 JURY. THAT WAS PART OF THE STIPULATION THAT WE
28 ENTERED INTO, AND DR. MC CARTHY, DURING THE COURSE

1 OF HIS TESTIMONY, WILL BE REFERRING TO THOSE VERY
2 SAME X RAYS, COUNTING THE PELLETS, WHICH ANYONE IS
3 QUALIFIED TO DO BY LOOKING AT THE RED ROUND, WHITE-
4 SHAPED OBJECTS IN X RAYS AS DR. LAWRENCE HAS ALREADY
5 LAID A FOUNDATION FOR, AND HE WILL BE INDICATING
6 WHICH OF THOSE X RAYS HE RELIED UPON AND WHY.

7 MS. ABRAMSON: YOUR HONOR, JUST WITH RESPECT
8 TO SHOT 1, MR. CONN LEFT OUT PART OF IT. AND THAT
9 IS DR. LAWRENCE CLEARLY SAID SHOT 1 IS INACCURATE;
10 NOT ONLY BECAUSE HE DOES NOT BELIEVE, ALTHOUGH HE
11 WON'T RULE IT OUT AS IMPOSSIBLE, THAT BOTH WOUNDS IN
12 MR. MENENDEZ' INNER RIGHT ARM ARE CAUSED BY THE SAME
13 SHOT, BUT BECAUSE HE ALSO ORIGINALLY INDICATED --
14 AND I DON'T THINK HE'S EVER BACKED OFF OF IT -- THAT
15 THERE'S CORRESPONDENCE ONLY BETWEEN THE LEFT ELBOW
16 SHOT TO MR. MENENDEZ AND THE LEFT BREAST SHOT TO
17 MRS. MENENDEZ.

18 IN ADDITION, WHAT'S MOST NOTABLY MISSING
19 FROM THIS ILLUSTRATION IS THAT HE DOES BELIEVE, AS
20 THE CORONER BELIEVED, AS THE PHOTOGRAPHS SHOW, THAT
21 THE WOUNDS TO MRS. MENENDEZ' LEFT FOREARM WERE
22 CAUSED BY THE SAME SHOT THAT PENETRATED THE LEFT
23 BREAST, AND THE ILLUSTRATION DOES NOT SHOW THAT.

24 MOREOVER, I THINK IT IS OBVIOUS, AND
25 DR. LAWRENCE MADE IT CLEAR, THAT THE TRAJECTORY
26 SHOWN IN SHOT 1 IS WRONG WITH RESPECT TO THE MEDICAL
27 EVIDENCE CONCERNING THE LOCATION OF THE WOUND TO
28 MR. MENENDEZ' UPPER RIGHT ARM.

1 SO, THERE ARE MANY REASONS WHY HE WAS
2 CLEAR THAT HE DOES NOT AND CANNOT SUPPORT WHAT IS
3 DRAWN IN ILLUSTRATION 1A AND 1B FROM THE MEDICAL
4 EVIDENCE. AND DR. MC CARTHY IS NOT QUALIFIED TO
5 DECIDE WHETHER OR NOT THE LEFT FOREARM IS ASSOCIATED
6 WITH THE BREAST. HE IS NOT QUALIFIED TO SAY WHETHER
7 OR NOT A SHOT PASSED THROUGH THE INNER PART OF
8 MR. MENENDEZ' UPPER ARM AND EXITED INTO THE LEFT
9 BREAST OF MRS. MENENDEZ. HE DOES NOT HAVE THE
10 MEDICAL QUALIFICATIONS TO SAY OR DO THAT.
11 DR. LAWRENCE DID NOT PROVIDE THE FOUNDATION FOR THIS
12 SPECIFIC SEQUENCE OF SHOTS.

13 WITH RESPECT TO 4B ALL WE'RE SAYING IS
14 RE-DRAW THE PERSPECTIVE LINE TO FIT WHAT DR. LAWRENCE
15 SAID.

16 BUT WE THINK THAT -- PRESENTING THIS TO THE
17 JURY, PARTICULARLY IN THIS ENORMOUS FORM, UNDER 352
18 IS CONFUSING THE ISSUES, MISLEADING THE JURY, GIVING
19 THEM UNSUPPORTED INFORMATION, FALSE INFORMATION, AND
20 DOING IT IN A VERY GRAPHIC, VISUAL FORM; AND THAT'S
21 WHY WE OBJECT.

22 THE COURT: AS FAR AS THE CHARTS OR DIAGRAMS,
23 THEY WERE PREVIOUSLY SHOWN TO COUNSEL IN THEIR

24 SMALLER VERSION. THERE WAS REALLY NO REPRESENTATION
25 BY THE PROSECUTION THAT THOSE SMALLER VERSIONS WOULD
26 BE THE ONES THAT WOULD BE USED, AT LEAST NO
27 REPRESENTATIONS MADE IN MY HEARING. TO THE
28 CONTRARY, I HAD ASSUMED THAT THE PROSECUTION WAS

40351

1 GOING TO USE LARGER VERSIONS, JUST FROM
2 PRACTICALITIES. THE SMALL VERSIONS ARE VERY
3 DIFFICULT TO SEE. AND I HAD ASSUMED THAT LARGER
4 VERSIONS WOULD BE USED. SO I DON'T SEE ANY
5 SANDBAGGING HERE. I THINK IT WAS PREDICTABLE THEY
6 WOULD BRING IN SOMETHING THAT WOULD BE MORE SUITABLE
7 TO THE PURCHASE OF DEMONSTRATIVE EVIDENCE IN A
8 TRIAL.

9 AS FAR AS THE USE OF THE TYPE OF DISPLAY
10 HERE, THE DEFENSE IS ON NOTICE AND IT HAS ALREADY
11 BEEN DISCUSSED, AND IT'S ALL ON THE RECORD AS FAR AS
12 THE POSITION OF THE PARTIES IN REGARD TO THE TYPE OF
13 DISPLAY THAT WOULD BE USED. WHETHER IT'S ON A
14 TELEVISION SCREEN OR PROJECTED ON TO SOME OTHER
15 SCREEN OR DEVICE, I THINK IS A DISTINCTION WITHOUT A
16 DIFFERENCE, AND I THINK THE MANNER OF PRESENTATION
17 HERE IS WELL WITHIN THE SCOPE OF THE NOTICE GIVEN TO
18 THE DEFENSE AND TO THE COURT.

19 AS FAR AS THE OBJECTIONS TO THE
20 UNDERPINNINGS, OR AT LEAST THE MEDICAL UNDERPINNINGS
21 OF THE PROPOSED TESTIMONY OF DR. MC CARTHY, I'VE
22 LISTENED TO THE EVIDENCE AND WATCHED AS IT WAS
23 PRESENTED AND EVALUATED IT, LOOKED AT THE PROPOSED
24 DIAGRAMS THAT WE HAD SEEN EARLIER IN THE HEARING
25 INVOLVING DR. MC CARTHY. BEARING IN MIND THAT THE
26 ASSUMED FACTS AND QUESTIONS ASKED OF AN EXPERT NEED
27 NOT BE ENTIRELY UNDISPUTED, SO LONG AS THERE IS SOME
28 EVIDENCE TO SUPPORT THEM. THE COURT IS SATISFIED

40352

1 THAT THERE IS SUFFICIENT EVIDENCE HERE TO JUSTIFY
2 THE PRESENTATION AS OUTLINED BY THE PROSECUTION. IT
3 CERTAINLY IS AN AREA OF CROSS-EXAMINATION AND
4 IMPEACHMENT OF DR. MC CARTHY AS TO THE UNDERPINNINGS
5 OF HIS OPINIONS.

6 BUT I DON'T FIND THAT IF HIS TESTIMONY
7 FOLLOWS THE PATTERN THAT WAS PRESENTED TO ME IN THE
8 HEARING THAT WE CONDUCTED AFTER THE JURY WAS
9 SELECTED AND BEFORE THE OPENING STATEMENTS -- THE
10 HEARING AT WHICH THE DEFENSE INITIALLY OBJECTED TO
11 THE TESTIMONY AND THEN WITHDREW THE OBJECTION -- I
12 DON'T FIND THAT SUCH ASSUMPTIONS MADE BY DR. MC
13 CARTHY WOULD BE MISLEADING TO THE JURY. BUT

14 CERTAINLY WOULD BE SUBJECT TO CROSS-EXAMINATION AND
15 POINTING OUT ANY FRAILTIES OR DEFECTS IN THOSE
16 ASSUMPTIONS. THAT ULTIMATELY IS A QUESTION FOR THE
17 JURY TO RESOLVE AS TO THE WEIGHT TO BE GIVEN HIS
18 TESTIMONY. BUT I DON'T FIND THAT THE QUESTIONS THAT
19 WOULD BE PROPOSED TO DR. MC CARTHY WOULD BE
20 MISLEADING BASED UPON THE TESTIMONY PRESENTED BY DR.
21 LAWRENCE.

22 THEREFORE, THE OBJECTIONS ARE
23 OVERRULED.

24 MR. GESSLER: YOUR HONOR, I HAVE ONE FURTHER
25 OBJECTION THEN. GIVEN THAT, THAT IS, TO CLARIFY,
26 THAT IS, THAT DR. MC CARTHY NOT BE ALLOWED TO ANSWER
27 THE DISTRICT ATTORNEY'S QUESTIONS LIKE:
28 DR. MC CARTHY, DO YOU HAVE AN OPINION AS TO WHAT IS

40353

1 AN ENTRANCE WOUND OR AN EXIT WOUND OR WHAT IS AN
2 ANTEMORTEM WOUND OR A POSTMORTEM WOUND? BECAUSE
3 THAT IS BEYOND HIS EXPERTISE. WHAT HE CAN DO IS
4 SAY: DR. MC CARTHY, ASSUMING THAT, BASED ON
5 SOMETHING THAT DR. LAWRENCE HAS SAID...

6 BUT I DON'T THINK HE CAN ASK
7 DR. MC CARTHY FOR MR. MC CARTHY'S PERSONAL OPINION
8 IN THE GUISE OF BUTTRESSING DR. LAWRENCE'S OPINION,

9 SINCE DR. MC CARTHY IS NOT EQUIPPED TO GIVE SUCH AN
10 OPINION DIRECTLY OR INDIRECTLY.

11 THE COURT: I DON'T ASSUME THAT THE
12 PROSECUTION IS GOING TO DO THAT.

13 DID YOU INTEND TO DO THAT?

14 MR. CONN: NO, I WAS NOT PLANNING ON DOING
15 THAT.

16 THE COURT: ALL RIGHT. OBVIOUSLY,
17 DR. MC CARTHY IS NOT A MEDICAL DOCTOR AND HIS
18 TESTIMONY MUST BE BASED UPON THAT OF OTHER EXPERTS
19 WHO ARE EXPERT IN THE FIELD OF FORENSIC PATHOLOGY,
20 SUCH AS DR. LAWRENCE; AND ANY QUESTIONS THAT GO
21 BEYOND THAT WILL BE SUBJECT TO PROPER OBJECTION.

22 MR. GESSLER: I WOULD ASK ALSO, YOUR HONOR,
23 THAT DR. MC CARTHY BE CAUTIONED TO ANSWER IN THAT
24 VEIN; IN OTHER WORDS, NOT TO VOLUNTEER OPINIONS AS
25 THOUGH THEY WERE HIS OWN, WHEN, ACTUALLY, THEY HAVE
26 TO BE BASED ON THAT OF SOMEBODY ELSE.

27 THE COURT: WELL, IT SHOULD BE CLEARLY
28 STATED, THE BASIS OF ANY OF HIS OPINIONS, AND THAT

40354

1 CERTAINLY WILL BE PART OF THAT.

2 MS. ABRAMSON: ONE OTHER THING, YOUR HONOR.

3 GIVEN THE NATURE OF DR. MC CARTHY'S REPORT, WHICH

4 THE COURT HAS SEEN, WE WOULD OBJECT, AND WOULD
5 RATHER NOT HAVE TO DO IT REPEATEDLY IN FRONT OF THE
6 JURY. SO WE OBJECT NOW TO HIS BEING ASKED: WHAT
7 WAS IN THE MIND OF THE SHOOTERS? WHAT WAS IN THE
8 MIND OF THE VICTIMS?

9 THE COURT: WELL, DID THE PROSECUTION INTEND
10 TO DO THAT?

11 MR. CONN: I WAS NOT GOING TO ASK THAT
12 QUESTION, YOUR HONOR.

13 MS. ABRAMSON: OKAY.

14 THE COURT: ALL RIGHT. ANYTHING ELSE NOW?

15 MR. GESSLER: THAT WOULD INCLUDE AIMING, YOUR
16 HONOR, WHICH I THINK IS THE WAY THAT THIS WAS PUT.
17 AND IT'S BEYOND HIS DISCIPLINE, BEYOND ANYONE'S KEN
18 WHERE SOMETHING WAS AIMED.

19 THE COURT: DID YOU INTEND TO USE THE PHRASE
20 "AIMING"?

21 MR. CONN: NO. I WAS NOT INTENDING TO.

22 MS. ABRAMSON: COULD THE WITNESS BE
23 ADMONISHED NOT TO VOLUNTEER IT?

24 THE COURT: IF IT'S NOT ASKED, I'M SURE HE'S
25 NOT GOING TO SAY IT.

26 ANYTHING ELSE BEFORE WE PROCEED?

27 MS. ABRAMSON: NO, YOUR HONOR.

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

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

4
5 THE COURT: OKAY. THE JURY IS BACK, AND
6 WE'LL RESUME WITH THE TRIAL.

7 PEOPLE MAY CALL THEIR NEXT WITNESS.

8 MR. CONN: YES. PEOPLE CALL DR. ROGER
9 MC CARTHY.

10

11 ROGER LEE MC CARTHY,
12 WAS CALLED AS A WITNESS BY THE PEOPLE, WAS DULY
13 SWORN, AND TESTIFIED AS FOLLOWS:

14

15 THE CLERK: RAISE YOUR RIGHT HAND TO BE
16 SWORN.

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

21 THE WITNESS: I DO.

22 THE CLERK: YOU MAY BE SEATED. PLEASE TAKE
23 THE STAND AND STATE YOUR NAME FOR THE RECORD.

24 THE WITNESS: ROGER LEE MC CARTHY.

25 THE CLERK: SPELL YOUR LAST NAME, PLEASE.

26 THE WITNESS: M-C-C-A-R-T-H-Y.

27 THE CLERK: THANK YOU.

40356

1 DIRECT EXAMINATION

2 BY MR. CONN:

3 Q SIR, COULD YOU TELL US WHAT YOUR
4 OCCUPATION IS.

5 A I'M AN ENGINEER.

6 Q AND WHAT IS THE NAME OF THE FIRM THAT
7 YOU WORK FOR?

8 A FAILURE ANALYSIS ASSOCIATES, INCORPORATED.

9 Q WHERE IS FAILURE ANALYSIS ASSOCIATES
10 LOCATED?

11 A WE'RE HEADQUARTERED IN MENLO PARK,
12 CALIFORNIA.

13 Q AND WHAT IS YOUR POSITION IN THAT FIRM?

14 A I'M THE CHIEF EXECUTIVE OFFICER.

15 Q CAN YOU TELL US HOW LARGE THIS FIRM IS.

16 A OH, CURRENTLY WE HAVE 400-SOME-ODD
17 PEOPLE, PROBABLY 300-SOME-ODD -- 300'ISH
18 PROFESSIONALS, OF WHICH 90-SOME-ODD HOLD DOCTORATES
19 IN THE VARIOUS FIELDS OF SPECIALTY, SCIENCE AND
20 ENGINEERING.

21 Q AND HOW MANY OFFICES DOES YOUR FIRM
22 CONSIST OF?

23 A FAILURE ANALYSIS IS THE LARGEST
24 OPERATING UNIT OF THE FAILURE GROUP. FAILURE GROUP
25 HAS 13 OFFICES.

26 Q ARE THEY ALL LOCATED IN THIS COUNTRY?

27 A NO. WE HAVE AN OFFICE IN DUSSELDORF,
28 GERMANY AND AN OFFICE IN GADANSK, POLAND.

40357

1 Q NOW, YOU MENTIONED FAILURE ANALYSIS AND
2 YOU MENTIONED FAILURE GROUP.

3 CAN YOU TELL US WHAT THE DISTINCTION IS
4 BETWEEN THE TWO.

5 A YES. WE FORMED THE FAILURE GROUP IN
6 1990 TO TAKE BASICALLY FAILURE ANALYSIS PUBLIC. IT
7 IS A PUBLICLY TRADED VEHICLE ON THE NASDAQ EXCHANGE
8 FOR THE FAILURE GROUP. WE ARE TRADED UNDER THE
9 SYMBOL "FAIL."

10 Q YOU INDICATED THAT YOU ARE THE CHIEF
11 EXECUTIVE OFFICER OF THE FAILURE ANALYSIS
12 ASSOCIATES.

13 WHAT IS YOUR POSITION IN REGARD TO THE
14 FAILURE GROUP?

15 A I'M ALSO THE CHIEF EXECUTIVE OFFICER OF
16 THE FAILURE GROUP.

17 Q AND HOW LONG HAVE YOU BEEN THE CHIEF

18 EXECUTIVE OFFICER OF THE FAILURE ANALYSIS

19 ASSOCIATES?

20 A SINCE 1982.

21 Q AND HOW LONG HAVE YOU BEEN THE CHIEF

22 EXECUTIVE OFFICER OF THE FAILURE GROUP?

23 A SINCE 1990 WHEN WE FORMED THE GROUP.

24 Q NOW, CAN YOU TELL US WHAT FAILURE

25 ANALYSIS IS. WHAT IS THAT FIRM AND WHAT DOES IT DO?

26 A WE BELIEVE OUR OURSELVES TO BE THE

27 LARGEST ENGINEERING FIRM IN THE NATION, ENGINEERING

28 AND SCIENTIFIC FIRM, DEVOTED TO THE ANALYSIS AND

40358

1 PREVENTION OF FAILURES OF AN ENGINEERING OR

2 SCIENTIFIC NATURE.

3 Q NOW, BEFORE I GET INTO DETAILED

4 QUESTIONS CONCERNING FAILURE ANALYSIS AND THE WORK

5 THAT YOUR FIRM UNDERTAKES, LET ME TALK A LITTLE BIT

6 ABOUT YOUR OWN BACKGROUND.

7 CAN YOU TELL US WHAT DEGREES YOU HAVE AS

8 PART OF YOUR EDUCATION AS AN ENGINEER.

9 A YES. I HAVE A BACHELOR OF SCIENCE IN

10 MECHANICAL ENGINEERING FROM THE UNIVERSITY OF

11 MICHIGAN IN ANN ARBOR.

12 I HAVE A SCIENCE MASTERS IN MECHANICAL

13 ENGINEERING FROM THE MASSACHUSETTS INSTITUTE OF
14 TECHNOLOGY, CAMBRIDGE, MASSACHUSETTS.
15 I ALSO HAVE THE PROFESSIONAL DEGREE OF
16 MECHANICAL ENGINEERING AND A DOCTORATE IN MECHANICAL
17 ENGINEERING. THE LATTER TWO GRADUATE DEGREES WERE
18 ALSO FROM M.I.T.

19 Q CAN YOU TELL US WHAT THE PROFESSIONAL
20 DEGREE OF MECHANICAL ENGINEERING IS.

21 A YES. IT'S A DEGREE OFFERED AT M.I.T.
22 FOR APPLIED RESEARCH. IT REQUIRES ALL THE COURSE
23 WORK OF THE DOCTORATE, BUT REQUIRES A SEPARATE
24 THESIS FROM THE DOCTORATE. M.I.T. HAS A REPUTATION
25 FOR PRODUCING A THEORETICAL THESIS. SO IT'S A
26 SEPARATE DEGREE THAT YOU MUST EARN THROUGH AN
27 APPLIED THESIS. YOU ACTUALLY HAVE TO BUILD OR
28 DESIGN SOME PRACTICAL DEVICE.

40359

1 Q IN ADDITION TO THOSE FOUR DEGREES IN
2 MECHANICAL ENGINEERING, DO YOU HAVE A FIFTH DEGREE?

3 A YES.

4 Q WHAT IS THAT IN?

5 A I HAVE A BACHELOR OF ARTS IN PHILOSOPHY.

6 Q NOW, AS PART OF YOUR CAREER AS AN
7 ENGINEER, HAVE YOU RECEIVED PROFESSIONAL HONORS?

8 A YES.

9 Q AND CAN YOU TELL US WHAT PROFESSIONAL
10 HONORS YOU HAVE BEEN AWARDED.

11 A I GRADUATED SUMMA CUM LAUDE FROM THE
12 UNIVERSITY OF MICHIGAN, FIRST OF MY CLASS, THE
13 OUTSTANDING UNDERGRADUATE, MECHANICAL ENGINEER, IN
14 1972.

15 I WAS SELECTED AS A NATIONAL SCIENCE
16 FOUNDATION FELLOW.

17 THOSE ARE THE ACADEMIC HONORS.

18 Q AND HAVE YOU ALSO BEEN APPOINTED BY THE
19 PRESIDENT OF THE UNITED STATES TO A SCIENTIFIC
20 ADVISORY POSITION?

21 A YES.

22 Q CAN YOU TELL US WHAT THAT POSITION IS.

23 A YES. I WAS APPOINTED BY PRESIDENT BUSH
24 TO THE PRESIDENT'S COMMISSION ON THE NATIONAL MEDAL
25 OF SCIENCE THROUGH THE NATIONAL SCIENCE FOUNDATION.
26 THERE ARE 10 PEOPLE WHO SELECT FOR THE PRESIDENT OF
27 THE UNITED STATES WHOM HE IS GOING TO AWARD THE
28 NATIONAL MEDAL OF SCIENCE IN SIX DIFFERENT SCIENCE

40360

1 AREAS, OR AT THE PRESIDENT'S DISCRETION, UP TO EIGHT
2 MEDALS ARE AWARDED. BUT BASICALLY HE AWARDS

3 ANNUALLY. IT WAS JUST DONE ABOUT THREE WEEKS AGO;
4 MEDALS IN THE AREAS OF MATHEMATICS, PHYSICS,
5 BIOLOGY. AND THE NATIONAL MEDAL OF SCIENCE IS THE
6 HIGHEST SCIENTIFIC AWARD THIS NATION CAN AWARD TO AN
7 INDIVIDUAL, AND THE PRESIDENT AWARDS THEM TO THE
8 INDIVIDUALS THAT THOSE OF US ON HIS COMMISSION
9 SELECT FOR HIM.

10 Q SO YOU ARE A MEMBER OF THE COMMITTEE
11 THAT ADVISES THE PRESIDENT AS TO WHO SHOULD RECEIVE
12 THOSE AWARDS?

13 A YES. THERE ARE 10 OF US, BASICALLY,
14 THAT REPRESENT THE VARIOUS AREAS OF SCIENCE AND
15 ENGINEERING, AND WE CULL THROUGH THE SEVERAL
16 THOUSAND NOMINATIONS ANNUALLY FOR THOSE SIX TO EIGHT
17 MEDALS THAT HE WILL AWARD.

18 Q YOU SAID THAT YOU WERE APPOINTED TO THAT
19 POSITION BY PRESIDENT BUSH. DID YOU CONTINUE IN
20 THAT POSITION OR WERE YOU REAPPOINTED TO THAT
21 POSITION?

22 A I CONTINUED IN THAT POSITION AND WAS ON
23 TWO YEARS OF COMMITTEE SELECTION FOR PRESIDENT
24 CLINTON AS WELL.

25 Q NOW, HAVE YOU ALSO BEEN APPOINTED BY THE
26 SECRETARY OF THE ARMY TO A POSITION?

27 A YES.

28 Q AND WHAT POSITION IS THAT?

1 A I AM A MEMBER OF THE ARMY SCIENCE

2 BOARD.

3 Q CAN YOU TELL US WHAT THE ARMY SCIENCE

4 BOARD IS.

5 A YES. IT'S A GROUP OF 100 SCIENTISTS AND

6 ENGINEERS THAT THE SECRETARY OF THE ARMY APPOINTS TO

7 ADVISE THE ARMY ON ISSUES OF SCIENCE AND TECHNOLOGY

8 RELEVANT TO THE ARMY'S MISSION.

9 Q AND IN THAT CAPACITY ARE YOU HEADING A

10 PARTICULAR STUDY FOR UNITED STATES ARMY?

11 A YES.

12 Q WHAT STUDY IS THAT?

13 A I'M CURRENTLY CHAIRING THE STUDY

14 COMMITTEE ON THE DECISIVE 21ST CENTURY INFANTRY

15 WEAPON; THAT IS, THE RIFLE FOR THE 21ST CENTURY FOR

16 OUR SOLDIERS TO CARRY.

17 Q SO YOU ARE CHAIRING A COMMITTEE THAT

18 WILL DETERMINE THE NATURE OF THE INFANTRY WEAPON

19 THAT THE U.S. ARMY WILL USE IN THE 21ST CENTURY?

20 A WELL, WE'RE AT A LEVEL WHERE WE WON'T

21 DETERMINE THE PRECISE CONFIGURATION OF THE WEAPON,

22 BUT ADD OUR INPUT INTO THE DESCRIPTION AND TYPE AND

23 CONFIGURATION OF THE WEAPON, WHAT TYPE OF ORDINANCE

24 TO SHOOT, GIVEN DIFFERENT STRATEGIES FOR

25 PROJECTILES, THINGS OF THAT NATURE.

26 Q NOW, DO YOU HAVE A BACKGROUND IN

27 FIREARMS?

28 A YES. I WAS AN ORDINANCE OFFICER IN THE

40362

1 ARMY.

2 Q AND WHAT IS AN ORDINANCE OFFICER?

3 A ORDINANCE IS THE BRANCH OF MILITARY

4 SERVICE THAT'S CONCERNED WITH THE ARMY'S WEAPON

5 SYSTEM, THEIR DEVELOPMENT, EMPLOYMENT, MAINTENANCE,

6 TRAINING, AND SOME QUESTIONS RELATED TO THE DOCTRINE

7 OF THEIR USE.

8 Q WHEN WERE YOU AN ORDINANCE OFFICER FOR

9 THE ARMY?

10 A I WAS COMMISSIONED IN 1972 AND DID MY

11 OFFICER BASIC BRANCH SCHOOL IN 1973.

12 Q AND SINCE THEN HAVE YOU DEVELOPED SOME

13 EXPERTISE IN THE USE AND OPERATION OF FIREARMS?

14 A YES. I'M ACTIVELY INTERESTED IN

15 FIREARMS. I ACTUALLY HAVE A RANGE IN MY HOUSE.

16 Q WHAT TYPE OF RANGE?

17 A A 50-YARD RANGE. I CAN STOP UP TO A

18 .50 CALIBER.

19 Q AND DO YOU OWN WEAPONS THAT YOU USE IN

20 YOUR RANGE?

21 A SEVERAL HUNDRED.

22 Q AND DO YOU HAVE EXPERIENCE FIRING A WIDE
23 VARIETY OF WEAPONS?

24 A YES, OF COURSE. AN ORDINANCE OFFICER IS
25 TRAINED ON THE ENTIRE ARMY INVENTORY, STARTING WITH
26 A .45 CALIBER PISTOL AND ENDING WITH THE .155
27 HOWITZER.

28 BUT OVER THE YEARS I'VE FIRED MOST EVERY

40363

1 ASSAULT WEAPON THAT'S USED IN WORLD THE TODAY,
2 BECAUSE I HAVE COPIES OF THEM; AND VARIOUS OTHER
3 CONFIGURATIONS OF EXPERIMENTAL WEAPONS.

4 Q HAVE YOU ALSO HAD ANY EXPERIENCE DOING
5 BALLISTICS RECONSTRUCTION?

6 A YES. IN THE OCCASIONAL CASE WHERE THERE
7 ARE BALLISTICS QUESTIONS, I WILL GET INVOLVED. A
8 GREAT, I GUESS, SOME -- THERE ARE BALLISTICS THAT
9 ARE RELATED TO BULLETS. THEN, OF COURSE, LARGE
10 NUMBERS OF FIRES AND EXPLOSIONS -- PARTICULARLY IN
11 EXPLOSIONS -- PRODUCE PROJECTILES, NOT JUST
12 BULLETS. BUT THEY BALLISTICALLY INJURE PEOPLE AND
13 CAUSE DAMAGE AND ALSO LEAVE EVIDENCE BEHIND IN TERMS
14 OF WHAT HAPPENED IN ANY EXPLOSION.

15 Q AND HAVE YOU QUALIFIED AND TESTIFIED AS

16 AN EXPERT WITNESS IN COURT BEFORE?

17 A YES.

18 Q ON HOW MANY OCCASIONS AND WHAT COURTS

19 HAVE YOU QUALIFIED AND TESTIFIED?

20 MS. ABRAMSON: I'M GOING TO OBJECT UNLESS

21 IT'S IN THE FIELD THAT'S INVOLVED HERE.

22 THE COURT: OVERRULED.

23 THE WITNESS: I WOULD ESTIMATE, BALLPARK, A

24 HUNDRED TIMES IN STATE AND FEDERAL COURT THROUGH THE

25 NATION.

26 Q BY MR. CONN: LET'S GET BACK TO FAILURE

27 ANALYSIS FOR A LITTLE BIT NOW.

28 YOU SAID THAT FAILURE ANALYSIS IS

40364

1 INVOLVED IN THE ANALYSIS AND CAUSE AND ORIGIN

2 DETERMINATION OF FAILURES; IS THAT CORRECT?

3 A YES.

4 Q WHAT TYPE OF FAILURES ARE YOU REFERRING

5 TO?

6 A JUST ABOUT THE RANGE OF MOST TYPES OF

7 MAJOR DISASTERS AND INCIDENCE YOU HEAR ABOUT.

8 WE'RE ASSISTING THE UNITED STATES

9 ATTORNEY IN THE RECONSTRUCTION OF THE OKLAHOMA CITY

10 BOMBING.

11 WE'RE ASSISTING BOEING IN THE
12 INVESTIGATION OF THE PITTSBURG CRASH.
13 WE DID THE ACCIDENT RECONSTRUCTION ON
14 THE EXXON-VALDEZ FOR EXXON.
15 I WAS THE FIRST INVESTIGATOR ON THE
16 SCENE OF THE HYATT WALKWAY COLLAPSE.
17 WHEN THE ROCKET FUEL PLANT EXPLODED NEAR
18 LAS VEGAS, IN HENDERSON, NEVADA, WE INVESTIGATED
19 THAT FOR THE PLANT OWNER, PEPCON.
20 HERE IN LOS ANGELES, WE'VE INVESTIGATED
21 THE COLLISIONS THAT HAVE OCCURRED OF BOATS IN AND
22 OUT OF THE HARBOR.
23 WHEN THE LARGE WASTE TREATMENT PIPE
24 COLLAPSED DOWN IN SAN DIEGO, WE INVESTIGATED THAT
25 FOR THE CITY OF SAN DIEGO.
26 WHEN THOSE MALATHION -- ONE OF THOSE
27 MALATHION HELICOPTERS COLLIDED WITH SOME
28 HIGH-TENSION WIRES, WE INVESTIGATED THAT FOR THE

40365

1 STATE ATTORNEY GENERAL.

2 Q NOW, WHEN YOU SAY THAT YOU INVESTIGATE
3 THESE MAJOR ACCIDENTS OR INCIDENTS, WHAT
4 SPECIFICALLY DO YOU DO CONCERNING THESE ACCIDENTS OR
5 INCIDENTS?

6 A BASICALLY, COLLECT, ANALYZE THE
7 AVAILABLE AND REMAINING PHYSICAL EVIDENCE TO
8 DETERMINE WHAT HAPPENED. BASICALLY, THAT'S OUR
9 JOB. PEOPLE WANT TO UNDERSTAND WHAT HAPPENED IN
10 THESE PARTICULAR INCIDENTS FIRST AND FOREMOST TO
11 STRIVE TO BE SURE THAT SUCH THINGS DON'T HAPPEN
12 AGAIN; AND TO DO THAT COMPETENTLY AND EFFECTIVELY
13 YOU HAVE TO UNDERSTAND WHAT WERE THE CHANGE OF
14 EVENTS? WHAT ELEMENTS BROUGHT ABOUT THE UNDESIRE
15 RELEASE OF ENERGY?

16 THAT'S BASICALLY WHAT WE DEFINE AS A
17 FAILURE; ANY UNDESIRE RELEASE OF ENERGY THAT CAUSES
18 INJURY OR LOSS.

19 Q OKAY. AND WOULD THAT UNDESIRE RELEASE
20 OF ENERGY INCLUDE BOTH ACCIDENTS AND INCIDENTS AS
21 YOU DEFINE THOSE TERMS?

22 A YES. I MEAN, CLEARLY, THE OKLAHOMA CITY
23 BOMBING WAS A VERY UNDESIRE RELEASE OF ENERGY AND
24 CAUSED MASSIVE LOSS OF LIFE. AND A PLANE CRASH IS
25 EXACTLY THAT. THERE'S A TREMENDOUS AMOUNT OF ENERGY
26 IN A FLYING AIRCRAFT.

27 Q CAN YOU GIVE US AN EXAMPLE OF THE
28 NON-ACCIDENTAL INCIDENT THAT YOU WOULD INVESTIGATE

1 AS PART OF YOUR WORK THAT YOUR FIRM PERFORMS.

2 A OH. WE DO THE OCCASIONAL SHOOTING BY A
3 LAW ENFORCEMENT AGENCY.

4 I HELPED THE PRODUCTION COMPANY THAT
5 PRODUCED THE MOVIE "THE CROW" WHERE BRANDON LEE WAS
6 KILLED. FIGURE OUT WHAT HAPPENED TO BRANDON LEE IN
7 THAT PARTICULAR INCIDENT TO BRING ABOUT HIS DEATH.

8 WE INVESTIGATED, BASICALLY, SITUATIONS
9 WHERE THERE'S AN ACCIDENT OR INCIDENT WHERE THERE'S
10 LOSS OF LIFE OR GREAT DAMAGE.

11 Q HAS YOUR FIRM ALSO UNDERTAKEN WORK FOR
12 NASSAU?

13 A YES. OVER THE YEARS NASSAU HAS BEEN OUR
14 BIGGEST GOVERNMENT CLIENT; BASICALLY BECAUSE OF THE
15 VERY DEMANDING TECHNOLOGY OF THE SPACE SHUTTLE.

16 Q WHAT TYPE OF SERVICES, INVESTIGATIONS,
17 DID YOUR FIRM PERFORM IN RELATIONSHIP TO THE WORK
18 CONDUCTED BY NASSAU?

19 A WELL, STARTING IN 1978 WE PROBABLY
20 DELAYED THE SHUTTLE'S FIRST LAUNCH BY A YEAR BECAUSE
21 OF PROBLEMS WITH THE RELIABILITY OF ROCKETDYNE'S
22 PLANE ENGINE DATA; AND THEN AFTER THE FIRST SHUTTLE
23 LAUNCHED THERE WERE THE PROBLEMS OF THE TILES
24 FALLING OFF, AND THAT WAS A BIG PROBLEM. WE'VE
25 NEVER LOST A SHUTTLE TO A HEAT TILE FALLING OFF, BUT
26 INAPPROPRIATE LOSS OF HEAT TILES COULD CERTAINLY
27 COST A SHUTTLE.

28 WE ANALYZED A SHUTTLE TO SEE IF IT

1 NEEDED AN EXTRA FUEL TANK FOR NASSAU. WE DECIDED IT
2 DID.

3 WE ANALYZED A NUMBER OF PERFORMANCE
4 QUESTIONS FOR NASSAU. WE ACTUALLY ANALYZED FOR
5 NASSAU THE SAFETY OF MANUFACTURING THE BOOSTER THAT
6 EXPLODED IN THE CHALLENGER DISASTER THE DAY OF THE
7 CHALLENGER DISASTER, AND WE ASSISTED NASSAU IN THE
8 INVESTIGATION OF THE CHALLENGER DISASTER. AND WE'VE
9 ASSISTED NASSAU IN THE REDESIGN OF THE SHUTTLE.

10 Q YOUR FIRM ALSO PERFORMED SOME WORK IN
11 REGARD TO CONVERTING RUSSIAN NUCLEAR POWER PLANTS?

12 A OUR GADANSK OFFICE IS PRIMARILY INVOLVED
13 NOW IN CONVERTING A RUSSIAN GRAPHITE DESIGN NUCLEAR
14 POWER PLANT INSTALLATION THAT WAS LOCATED IN POLAND
15 FOR NATURAL GAS USE. WE HAVE BEEN GRANTED A LICENSE
16 BY THE POLISH GOVERNMENT AND ARE NOW IN THE PROCESS
17 OF COLLECTING BIDS.

18 Q HAS YOUR FIRM CONDUCTED CRASH TESTS ON
19 VEHICLES?

20 A YES.

21 Q AND WHAT HAVE YOU DONE IN THAT REGARD?

22 A I BELIEVE WE ARE THE LARGEST INDEPENDENT
23 VEHICLE CRASH TESTER IN THE NATION. WE HAVE A TEST
24 FACILITY IN PHOENIX, ARIZONA. WE HAVE THE FASTEST

25 CRASH RAIL IN THE COUNTRY. THAT IS, WE CAN CRASH
26 CARS FASTER THAN ANYBODY ELSE.
27 BUT IN ADDITION, WE DO CRASHES DAILY.
28 THESE ARE CRASHES WHERE YOU SEE ANTHROPOMORPHIC

40368

1 DUMMIES, AND THEY'RE HEAVILY INSTRUMENTED, AND THEY
2 HAVE TO BE CALIBRATED. AND WE ALSO HAVE A COMPANION
3 CADAVER LABORATORY FOR VERY CRITICAL VEHICLE SAFETY
4 QUESTIONS IN OUR PHILADELPHIA OFFICE. OBVIOUSLY,
5 YOU HAVE TO BRING, IF YOU WILL, SENSITIVITY TO
6 CADAVER TESTING QUESTIONS AND YOU HAVE TO BE TESTING
7 QUESTIONS OF GREATER VALUE TO MAKE THAT TECHNIQUE
8 JUSTIFIED.

9 Q CAN YOU TELL US WHO EMPLOYS THE SERVICES
10 OF FAILURE ANALYSIS.

11 A OUR CLIENTS -- WE THINK OF THEM AS -- WE
12 DIVIDE THEM INTO GROUPS. FIRST OF ALL, GOVERNMENTAL
13 CLIENTS, AND WE DO WORK FOR VARIOUS BRANCHES OF
14 DEPARTMENT OF DEFENSE AGENCIES, LIKE DEPARTMENT OF
15 ENERGY, E.P.A., WHOMEVER.

16 WE DO WORK FOR VARIOUS STATES AND
17 MUNICIPALITIES AND GOVERNMENTAL ENTITIES.

18 ON OCCASION, PARTICULARLY WHEN THEY HAVE
19 A PARTICULARLY NASTY PROBLEM, A BULK OF OUR WORK IS

20 FOR FORTUNE 500 COMPANIES. PROBABLY THE BULK OF
21 THAT IS CONCENTRATED IN THE FORTUNE TOP 50.
22 WE DO A SUBSTANTIAL AMOUNT OF WORK FOR
23 THE MAJOR INSURANCE COMPANIES OF THE WORLD; LLOYDS
24 OF LONDON, TOKYO MARINE, OTHER LARGE INSURANCE
25 ENTITIES.
26 WE CERTAINLY DO WORK FOR INDIVIDUAL
27 ATTORNEYS; AND THEN FINALLY, INDIVIDUAL CITIZENS.
28 THE MEDIAN JOB OF OUR FIRM IS \$22,000. SO

40369

1 OCCASIONALLY A HOMEOWNER COULD BE CONFRONTED WITH
2 ONE PART OF HIS HOUSE THAT WILL SETTLE A FOOT LOWER
3 THAN ANOTHER AND WANT TO KNOW WHY.

4 Q NOW, DID YOU ALSO MAKE A PRESENTATION
5 FOR THE AMERICAN BAR ASSOCIATION IN 1992 IN
6 SAN FRANCISCO?

7 A YES.

8 Q DID THAT PRESENTATION INVOLVE THE USE OF
9 FIREARMS AND BALLISTICS IN SOME WAY?

10 A YES. BASICALLY, WE TRIED LEE HARVEY
11 OSWALD. AND THE A.B.A. SET UP TWO TEAMS OF TRIAL
12 EXPERTS ON EACH SIDE TO -- ONE TO PROSECUTE LEE
13 HARVEY OSWALD AND ONE TO DEFEND HIM.

14 Q AND CAN YOU TELL US WHAT SPECIFIC WORK

15 YOU DID IN CONNECTION WITH THAT PRESENTATION.
16 A I WAS INVOLVED AND LED THE DEFENSE TEAM;
17 AND, BASICALLY, WE SET UP THE BALLISTICS TESTS ON
18 THE CURCANO. THAT WAS A TYPE OF ITALIAN CARBINE LEE
19 HARVEY OSWALD USED IN THE ASSASSINATION.

20 I ACQUIRED A CURCANO THAT ONLY DIFFERED
21 IN SERIAL NUMBER BY ONE THOUSAND FROM LEE HARVEY
22 OSWALD; AND I HAD A SCOPE FITTED BY THE SAME GUY
23 THAT FITTED LEE HARVEY OSWALD. HE STILL WORKS IN
24 OJAI, CALIFORNIA.

25 BASICALLY, WE CONSTRUCTED SKULLS, DID
26 HIGH-SPEED VIDEO OF SHOTS OF SKULLS. I CONSTRUCTED
27 SPECIALIZED BULLETS OF DIFFERENT TYPES TO ILLUSTRATE
28 DIFFERENT EFFECTS IN THE BALLISTICS POSSIBILITIES

40370

1 THAT OCCURRED IN THAT ASSASSINATION; AND, OF COURSE,
2 WE DID A LOT OF ELECTRONIC IMAGE ANALYSIS AND PHOTO
3 ENHANCEMENT.

4 WE DISCOVERED IN THE ZABRUDER FILM --
5 THAT'S THE MOVIE YOU SEE OF THE ACTUAL ASSASSINATION --
6 THAT IN ONE FRAME GOVERNOR CONNELLY'S LAPEL FLIPPED
7 FORWARD AND BACK IN ONE FRAME, AND IT CLEARLY TIMES
8 WHAT HAS BEEN CALLED THE MAGIC BULLET SHOT THAT WAS
9 HERETOFORE -- SINCE WE WERE THE FIRST ONES TO LOOK

10 AT THE EVIDENCE SINCE P.C.'S WERE INVENTED -- WAS
11 NOT KNOWN. THAT TIMING WAS ESTABLISHED THROUGH OUR
12 WORK AND A FEW OTHER THINGS.

13 Q CAN YOU TELL US WHAT YOU DID MORE
14 SPECIFICALLY WITH REGARD TO THAT PRESENTATION
15 CONCERNING CONSTRUCTING SKULLS.

16 A BASICALLY, ONE OF THE ISSUES IN THE
17 ASSASSINATION; AND, OF COURSE, THERE WERE ONE OR TWO
18 SHOOTERS, AND ONE KEY EVIDENCE IS HOW PRESIDENT
19 KENNEDY'S HEAD RESPONDED TO THE FATAL BULLET IN THE
20 ZABRUDER VIDEOTAPE. MOST PEOPLE HAVE NOT SEEN THOSE
21 FRAMES. IN THE ZABRUDER TAPE THEY ARE TAKEN OUT OF
22 THE PUBLICLY DISTRIBUTED VERSION, BUT IN THE ACTUAL
23 FULL UNEDITED MOVIE HIS SKULL HITS AND EXPLODES AND
24 IT REACTS TO THE BULLET IMPACT.

25 AND SO, THE QUESTION RAGING DEBATE HAS
26 BEEN, GIVEN THE MOTION OF THE SKULL, WHAT WAS THE
27 DIRECTION OF IMPACT AND WHAT KIND OF BULLET HIT?
28 AND WE SHOT THE SKULL FROM BEHIND WITH CURCANO

40371

1 AMMUNITION. THE KENNEDY MUSEUM IN DALLAS KINDLY
2 PROVIDED ME AMMUNITION FROM THE ACTUAL LOT OF AMMO
3 FOR THE CURCANO THAT LEE HARVEY OSWALD'S FATAL
4 BULLET CAME FROM. SO I HAD THIS 40-YEAR-OLD

5 AMMUNITION OF THE AUTHENTIC VARIETY.

6 AND I ALSO CONSTRUCTED BASICALLY WHAT A
7 PROFESSIONAL ASSASSIN WOULD USE, WHICH IS CALLED A
8 GLYCERIN BULLET, AND THAT'S AN EXPLOSIVE BULLET.

9 IF ANY OF YOU EVER SAW THE "DAY OF THE
10 JACKEL," IT ILLUSTRATES WHAT AN EXPLOSIVE BULLET
11 DOES IN THAT MOVIE. BASICALLY, I CONSTRUCTED THOSE,
12 AND WE DID COMPARISONS OF WHAT WOULD BE THE SKULL
13 REACTION WITH A STANDARD MILITARY FULL-METAL
14 JACKETED BULLET AND THE LEAD RESPONSE, AND WHAT
15 WOULD BE A SIDE HIT WITH AN EXPLOSIVE BULLET OF THE
16 GLYCERIN VARIETY, AND PRESENTED THOSE TO THE JURY IN
17 A MOCK TRIAL.

18 Q DID YOU ACTUALLY USE HUMAN SKULLS TO
19 CONDUCT THAT EXPERIMENT?

20 A YES. HUMAN SKULLS THAT WE DIVIDED AND
21 THEN FILLED WITH ANIMAL BRAIN MATTER. AND WE
22 ATTACHED TO IT A SKULL THAT HAD THE SAME MECHANICAL
23 PROPERTIES AND BRAIN OF THE SAME MECHANICAL
24 PROPERTIES TO SEE HOW THEY WOULD REACT TO BULLETS
25 FROM DIFFERENT DIRECTIONS. AND I PERSONALLY,
26 ACTUALLY, FIRED THE WEAPONS FOR ALL OF THOSE TESTS.

27 Q NOW, GETTING BACK, ONCE AGAIN, TO
28 FAILURE ANALYSIS AND THE TYPE OF WORK THAT YOUR FIRM

1 DOES OVERALL.

2 IS THERE A COMMON APPROACH OR THEORY
3 THAT UNDERLIES THE ANALYSIS AND CAUSE OF DETERMINING
4 THE ORIGIN OF FAILURES AND ACCIDENTS?

5 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
6 OBJECT TO THIS WITHOUT A SHOWING UNDER 402 THAT IT'S
7 RELEVANT TO WHAT HE'S DOING HERE.

8 THE COURT: OVERRULED.

9 THE WITNESS: I WOULD SAY A COMMON FACT --
10 THAT IS, YOU COME TO AN ACCIDENT SCENE AND THERE'S A
11 COLLECTION OF EVIDENCE AND INFORMATION CONTAINED IN
12 THAT SCENE IN TERMS OF THE VARIOUS MATERIALS THERE.
13 THERE IS ONLY ONE -- IT IS A SIMPLE FACT -- THERE'S
14 ONLY ONE EXPLANATION OF EVENTS THAT WILL EXPLAIN ALL
15 THE EVIDENCE YOU SEE.

16 Q BY MR. CONN: IS THERE SOME APPROACH OR
17 THEORY THAT YOU USE TO FIGURE OUT WHAT IS THAT ONE
18 ORIGIN OR CAUSE FOR THAT PARTICULAR ACCIDENT OR
19 INCIDENT?

20 A YES. AND I GUESS IT WOULD BE BASICALLY
21 THE THEORY THAT EXPLAINS MORE OF THE EVIDENCE IS
22 MORE LIKELY CORRECT THAN A THEORY THAT EXPLAINS LESS
23 OF THE EVIDENCE.

24 IN OTHER WORDS, IN ANY MAJOR DISASTER,
25 TYPICALLY, YOU CAN CONSTRUCT LITTLE MICRO THEORIES
26 THAT WOULD EXPLAIN ONE PIECE OF EVIDENCE. IT
27 WOULDN'T MAKE ANY SENSE IN THE BIG PICTURE, BUT YOU

40373

1 PART OF THE DISASTER, YOU CAN DO THAT.

2 BUT THE REAL TRICK ^ (YOU SHOULD HAVE
3 SEEN LESLIE'S FACE WHEN HE USED THE WORD "TRICK.")
4 IS TO EXPLAIN THE SEQUENCE, THE WHOLE SERIES. IT
5 EXPLAINS THE MULTIPLE USES OF EVIDENCE YOU SEE IN
6 THE BEST WAY POSSIBLE. ULTIMATELY, THE CORRECT
7 EXPLANATION IS CORRECT AND EVERY DETAIL WILL EXPLAIN
8 EVERY PIECE OF EVIDENCE. THERE WILL BE NO
9 QUESTION. SELDOM CAN YOU GET THERE. THAT'S REALLY
10 HARD; NOT ALWAYS, BUT MOST OF THE TIME YOU DON'T GET
11 THAT. SO WHAT YOU END UP WITH IS GETTING AS CLOSE
12 AS YOU CAN WITH THE AVAILABLE EVIDENCE TO EXPLAINING
13 AS MUCH OF THE PHYSICAL EVIDENCE AS YOU SEE WITHOUT
14 CONTRADICTING, HOPEFULLY, ANY LAWS OF PHYSICS OR THE
15 FIRST OR SECOND LAW OF THERMAL DYNAMICS.

16 Q WHAT TYPE OF EVIDENCE DO YOU LOOK AT TO
17 TRY TO RECONSTRUCT AND TO DETERMINE WHAT WAS THE
18 CAUSE OR ORIGIN OF A PARTICULAR ACCIDENT OR
19 INCIDENT?

20 A BASICALLY, EVERYTHING THAT'S THERE,
21 RECOGNIZING THAT EVIDENCE HAS CERTAIN CHARACTERS TO
22 IT; THAT IS, REALLY HEAVY PIECES OF METAL AND WOOD

23 AND STRUCTURAL MATERIALS YOU CAN THINK OF AS VERY
24 SLOW PHOTOGRAPHIC FILM. THEY WON'T TAKE AN IMAGE
25 VERY EASILY. IT'S VERY DIFFICULT TO LEAVE AN
26 IMPRINT ON THEM, MORE DIFFICULT THAN IT IS LIGHT
27 PIECES OF SHEET METAL, CLOTH, FABRIC, PAPER, AND
28 UNFORTUNATELY, IN MANY CASES, HUMAN TISSUE, WHICH

40374

1 YOU GET A LOT OF INFORMATION FROM HUMAN TISSUE
2 BECAUSE IT MECHANICALLY WILL BREAK IN KNOWN WAYS.
3 IT'S ALSO THERMALLY SENSITIVE SO YOU CAN SEE HEAT
4 GATHER ON IT AS WELL AS PHYSICAL DAMAGE. SO HUMAN
5 BODIES IN AN ACCIDENT SCENE VERY OFTEN PROVIDE VERY
6 IMPORTANT PIECES OF INFORMATION BECAUSE THEY'RE --
7 ESSENTIALLY, THE SURFACE OF THE BODY WILL TAKE
8 IMAGES, INFORMATION ABOUT WHAT HAPPENED; THAT IF YOU
9 KNOW HOW TO READ THEM, WILL ASSIST YOU IN
10 UNDERSTANDING WHAT ULTIMATELY DEVELOPED.

11 Q OKAY. AND NOW, IN THIS PARTICULAR CASE
12 DID YOU UNDERTAKE AN ASSIGNMENT CONCERNING THE CASE
13 BEFORE THE COURT?

14 A YES.

15 Q AND WHAT DID YOU DO IN THIS CASE?

16 A BASICALLY, I ATTEMPTED, TO THE BEST OF
17 MY ABILITY, TO RECONSTRUCT THE SEQUENCE OF SHOTS

18 THAT RESULTED IN THESE TWO MURDERS.

19 MS. ABRAMSON: OBJECT TO THE USE OF THE WORD
20 "MURDERS," YOUR HONOR.

21 THE WITNESS: I'M SORRY.

22 THE COURT: JUST USE THE PHRASE "KILLING,"
23 "SHOOTING."

24 THE WITNESS: I'M SORRY. SHOOTING.

25 Q BY MR. CONN: AND AS PART OF YOUR
26 INVOLVEMENT IN THIS CASE DID YOU REVIEW SOME
27 MATERIALS?

28 A YES.

40375

1 Q WHAT DID YOU REVIEW?

2 A SEVERAL HUNDRED PHOTOGRAPHS. I WAS
3 PROVIDED PAPER DOCUMENTATION, AUTOPSY. I WAS
4 PROVIDED ACCESS TO PHYSICAL EVIDENCE TAKEN AT THE
5 CRIME SCENE AT VARIOUS POINTS.

6 I DISPATCHED A TEAM OF ENGINEERS TO THE
7 CRIME SCENE TO MEASURE IT UP, OR TO THE SHOOTING
8 SCENE TO MEASURE IT AND GET THE PHYSICAL DIMENSIONS
9 OF THE ROOM AND THE GEOMETRY OF THE ROOM.

10 I ALSO WENT ABOUT ASSEMBLING -- GETTING
11 SOME OF THE RELEVANT EVIDENCE MYSELF.

12 Q OKAY. LET'S TAKE THOSE ONE BY ONE.

13 DID YOU ALSO REVIEW X RAYS IN CONNECTION
14 WITH THIS CASE?

15 A YES. PHOTOGRAPHS OF X RAYS. AND PART
16 OF THE -- I RECEIVED, I THINK, NOW EIGHT HUNDRED
17 PHOTOGRAPHIC IMAGES IN CONNECTION WITH MY WORK IN
18 THIS CASE.

19 Q DO THOSE IMAGES INCLUDE PHOTOGRAPHS FROM
20 THE CORONER'S OFFICE AS WELL AS THE CRIME SCENE?

21 A YES.

22 Q DID THE AUTOPSY REPORTS THAT YOU
23 REVIEWED ALSO CONSIST OF AMENDMENTS TO THOSE
24 AUTOPSIES?

25 A YES.

26 Q AND CAN YOU TELL US, WHY DID YOU
27 DISPATCH SOME ENGINEERS TO THE CRIME SCENE FOR
28 FURTHER MEASUREMENTS?

40376

1 A WELL, BASICALLY, I HAVE A LOT OF
2 PHOTOGRAPHIC IMAGES OF THE SHOOTING SCENE, AND
3 PICTURES OF THE ROOM. BUT, OBVIOUSLY, I DIDN'T GET
4 ACCESS TO THE ROOM AT THE TIME OF THE CRIME. I'M
5 COMING ALONG SOME YEARS OR -- AT THE TIME OF THE
6 SHOOTING -- I'M COMING ALONG SOME YEARS LATER; AND
7 SO I HAVE TO USE GEOMETRY IN THE ROOM THAT I CAN

8 MEASURE NOW IF I HAVE TO INFER DIMENSIONS OF THINGS

9 THAT I DON'T KNOW NOW.

10 SO IT ALLOWS ME TO INTERPRET THE

11 PHOTOGRAPHIC EVIDENCE AND GIVES ME OBJECTS OF A

12 KNOWN SCALE OR DIMENSION IF I NEED THEM.

13 Q AND DID YOU RECEIVE INFORMATION

14 CONCERNING OBJECTS IN THAT ROOM THAT ASSISTED YOU IN

15 MAKING THE DETERMINATION IN FORMING OPINIONS IN THIS

16 CASE?

17 A YES. THERE WAS A HUGE AMOUNT OF

18 PHOTOGRAPHIC EVIDENCE, AND SOME OF IT WITH SCALES IN

19 IT, WHICH IS ALWAYS HELPFUL; AND THEN, OF COURSE, I

20 WAS ABLE TO GET THE DIMENSION OF THE ROOM AND THE

21 SCENE IN A GROSS SENSE FROM WHAT MY PEOPLE DID.

22 Q CAN YOU TELL US HOW LONG YOU HAVE BEEN

23 WORKING ON THIS CASE IN CONSTRUCTING AND FORMING

24 YOUR OPINIONS.

25 A OH, A YEAR, BALLPARK.

26 Q OKAY. AND ARE YOU BILLING THE DISTRICT

27 ATTORNEY'S OFFICE FOR YOUR TIME IN THIS CASE?

28 A NO. UNFORTUNATELY.

40377

1 Q ASIDE FROM THE FACT THAT WE DON'T HAVE

2 THE MONEY, CAN YOU TELL US WHY YOU'RE NOT?

3 A WELL, MY NORMAL BILLING RATE IS \$600 AN
4 HOUR. AND I SUSPECT THAT'S SORT OF LIKE EQUAL TO
5 YOUR PER-DAY CAP FOR A CONSULTANT OR SOMETHING. SO
6 I WAS NOT EVEN -- IF I HAD THE THOUGHT, IT WAS NOT A
7 VERY LONG-LIVED ONE.

8 Q NOW, YOU SAID THAT IN ADDITION TO THE
9 VARIOUS REPORTS AND PHYSICAL EVIDENCE THAT WAS
10 PROVIDED TO YOU, YOU ALSO OBTAINED SOME MATERIAL OF
11 YOUR OWN AS PART OF YOUR REVIEW OF THIS CASE.

12 WHAT DID YOU OBTAIN?

13 A WELL, BASED ON THE DOCUMENTATION I
14 RECEIVED AND THE EVIDENCE, ONE WAS A DOCUMENTATION
15 ON THE FIREARMS PURCHASE THAT WAS INVOLVED IN THE
16 SHOOTING; AND SO, I CONTACTED MISS GEORGIA NICKELS.
17 SHE'S GENERAL COUNSEL FOR MOSSBERG CORPORATION, AND
18 SHE ACQUIRED FOR ME A MOSSBERG SHOTGUN HERE IN A
19 LOWER SERIAL NUMBER THAN THE WEAPON USED IN THE
20 SHOOTINGS THAT BASICALLY IS A MECHANICAL EXEMPLAR IN
21 EVERY WAY, THE SAME AS THOSE WEAPONS THAT WERE
22 PURCHASED AND USED IN THE SHOOTINGS.

23 Q ARE YOU REFERRING TO DOCUMENTS THAT WERE
24 RELATED TO A PURCHASE IN SAN DIEGO ON AUGUST THE
25 18TH OF 1989?

26 A I COULDN'T DO THE DATE FOR YOU BY
27 MEMORY, BUT YES, THE WEAPONS WERE PURCHASED IN
28 SAN DIEGO FROM A SPORTING GOOD SHOP, IS MY

1 RECOLLECTION; AND I HAD THE F.F.L. PURCHASE DOCUMENT
2 WHICH REQUIRED THE WEAPON SERIAL NUMBER.

3 Q AND WHAT WAS YOUR PURPOSE IN ATTEMPTING
4 TO OBTAIN SUCH A WEAPON?

5 A WELL, FIRST OF ALL, IN A SHOOTING IT
6 REALLY HELPS TO HAVE AN EXEMPLAR WEAPON; BUT
7 SECONDLY, IN MY RECONSTRUCTION, TO THE EXTENT THAT
8 CHARACTERISTICS OF THE WEAPON AND THE GEOMETRY OF
9 THE SHOT PATTERN THAT IT PRODUCED WERE USABLE IN THE
10 RECONSTRUCTION, I WAS GOING TO USE THEM.

11 Q AND ONCE YOU OBTAINED THAT WEAPON, DID
12 YOU ALSO ATTEMPT TO OBTAIN A CERTAIN TYPE OF
13 AMMUNITION THAT WOULD BE HELPFUL TO YOU?

14 A YES. PREVIOUS DOCUMENTATION PROVIDED ME
15 INDICATED THAT THE FIOCCHI AMMUNITION WAS INVOLVED.
16 THAT'S AN ITALIAN MANUFACTURE. SO I BOUGHT A CASE
17 OF THAT FOR MY BALLISTIC TESTING.

18 Q AND WHAT SIZE SHOT DID YOU USE FOR THAT
19 TESTING?

20 A WHEN I HAD ACCESS TO THE PHYSICAL
21 EVIDENCE RECOVERED AT THE SCENE, I WAS ABLE TO
22 DETERMINE THROUGH MY MEASUREMENTS THAT A NO. 4
23 BUCKSHOT, BASICALLY A .24-CALIBER LED BALL, WAS THE
24 BUCKSHOT SIZE THAT WAS USED IN THE SHOOTINGS. SO I
25 ACQUIRED A CASE OF NO. 4 BUCK.

26 Q UH-HUH.

27 A THERE WAS SOME EIGHT-AND-A-HALF BIRD
28 SHOT USED AS WELL.

40379

1 Q DID YOU CONDUCT ANY EXPERIMENTS IN
2 REGARD TO THAT EIGHT-AND-A-HALF SHOT SIZE BIRD SHOT?

3 A NO. THERE WERE TWO SHOTS WITH THAT, BUT
4 NONE WHERE PATTERN OF HOLES WAS SUCH THAT
5 REPLICATING THE SHOT PATTERN WOULD HAVE PROVIDED ME
6 ANY REAL INFORMATION.

7 Q SO YOU DIDN'T FIND IT NECESSARY TO
8 CONDUCT EXPERIMENTS REGARDING THE EIGHT-AND-A-HALF
9 SIZE BIRD SHOT?

10 A NO. OUTSIDE OF KNOWING THAT IT'S EIGHT
11 AND A HALF.

12 Q YOU MADE A PASSING REFERENCE TO
13 NORMAL-SIZED BUCKSHOT AND .24-CALIBER LED BALL.

14 WHAT DO YOU MEAN BY THAT?

15 A JUST THAT. THAT WHEN YOU TALK ABOUT
16 BUCKSHOT AND BIRD SHOT, THOSE ARE DIFFERENT THINGS.
17 AND SO BUCKSHOT TAKES ITS NAME FROM BEING USED FOR
18 DEER, BASICALLY. IT'S A LOAD IN A .12-GAUGE SHOTGUN
19 THAT WAS A LARGER LED BALL. AND YOU HEAR
20 TRIPLE-UGHT BUCK AND DOUBLE-UGHT BUCK.

21 YOU CAN BUY BUCKSHOT DOWN TO FOUR; AND

22 EVEN OF THOSE NUMBERS, TRIPLE OUGHT BUCK IS THE
23 BIGGEST AND THAT'S A -- MY RECOLLECTION IS A
24 .38-CALIBER LED BALL. THAT'S 308 THOUSANDTHS IN --
25 DOUBLE-OGHT BUCK IS 32 THOUSANDTHS, AND ALL THE WAY
26 DOWN TO NO. 4, WHICH IS 24 THOUSANDTHS -- 24
27 HUNDREDTHS, 240 THOUSANDTHS. AND THOSE OTHER ONES
28 SHOULD HAVE BEEN 38 HUNDREDTHS, 32 HUNDREDTHS, DOWN

40380

1 TO 24 HUNDREDTHS.
2 AND, BASICALLY, YOU THINK OF A
3 .22-CALIBER BULLET THAT'S 22 HUNDREDTHS OF A
4 DIAMETER. THAT'S -- THAT CALIBER IS THE DIAMETER
5 AND CALIBERS, IF YOU WILL. THEY'RE FRACTIONAL
6 INCHES. A .38 CALIBER IS 38 HUNDREDTHS. IT'S POINT
7 THREE-EIGHTHS OF AN INCH IN DIAMETER. THAT'S THE
8 NOMINAL DIAMETER OF THE BULLET.
9 IN THE NO. 4 BUCK SHOT EACH PELLET IS A
10 NOMINAL 24 HUNDREDTHS, 240 THOUSANDTHS IN DIAMETER,
11 EACH PELLET. AND THERE ARE APPROXIMATELY 27 OF THEM
12 IN A NO. 4 BUCKSHOT, REMEMBERING THAT THE SHOT IS
13 LOADED BY WEIGHT; IN OTHER WORDS, YOU GET AN OUNCE
14 AND A HALF OF BUCK. SO IF YOU OPEN 10 SHELLS YOU'LL
15 SEE 2 WILL HAVE 26 PELLETS.
16 MS. ABRAMSON: AT THIS POINT I'M GOING TO

17 OBJECT THAT THIS ANSWER IS NOT RESPONSIVE AND MOVE
18 TO STRIKE.
19 THE WITNESS: I'M SORRY. I GET CARRIED AWAY
20 THAT WAY.
21 THE COURT: THE ANSWER WILL STAND.
22 ASK YOUR NEXT QUESTION.
23 Q BY MR. CONN: WHEN YOU SAY THAT NO. 4
24 BUCK IS SIMILAR TO THE .24-CALIBER LED BALL, ARE YOU
25 SAYING IT'S ESSENTIALLY THE SAME SIZE?
26 A IT IS A LITTLE .24-CALIBER MINI BALL.
27 IT IS A ROUND LED BALL OF .24-CALIBER, AND THERE ARE
28 A NUMBER OF THEM IN A SHOTGUN SHELL.

40381

1 Q OKAY. NOW, DID YOU ACTUALLY OPEN SOME
2 OF THESE FIOCCHI NO. 4 BUCKSHOT TO LOOK INSIDE AND
3 SEE HOW MANY OF THEM ARE CONTAINED INSIDE A SHOT?
4 A YEAH. WE OPENED UP A BUNCH.
5 Q AND WHAT WAS THE VARIATION THAT YOU SAW
6 WHEN YOU OPENED IT UP?
7 MS. ABRAMSON: I'M GOING TO OBJECT UNLESS THE
8 EVIDENCE IS PRESENTED SO WE CAN ALL SEE IT.
9 THE COURT: OVERRULED.
10 THE WITNESS: WE OPENED UP 10 OF THESE
11 SHELLS, AND YOU'LL SEE A COUPLE WITH 26 PELLETS,

12 MOST WILL HAVE 27, ONE WILL HAVE 28. I MEAN,
13 BASICALLY IT -- IT FALLS RIGHT AROUND 27, WHICH IS
14 THE NOMINAL.

15 Q BY MR. CONN: OKAY. AND ONCE YOU
16 OBTAINED THE SAME TYPE OF A SHOTGUN THAT WAS USED IN
17 THIS CASE AND YOU OBTAINED THE SAME TYPE OF
18 AMMUNITION THAT WAS USED IN THIS CASE, WHAT DID YOU
19 DO WITH THAT MATERIAL?

20 A CONDUCTED SHOOTING TESTS AT CARDBOARD
21 TARGETS TO SEE IF THERE WAS A PREDICTABLE SPREAD IN
22 THE SHOT PATTERN THAT WOULD ALLOW ME DISTANCES.

23 Q AND WHAT WERE YOUR FINDINGS AS A RESULT
24 OF THOSE EXPERIMENTS?

25 A BASICALLY, THE SPREAD SHOT TO SHOT --

26 MS. ABRAMSON: YOUR HONOR, AGAIN, I WOULD
27 OBJECT WITHOUT THE ACTUAL PATTERNS BEING PRESENT.

28 THE WITNESS: OKAY.

40382

1 THE COURT: WAIT, WAIT, WAIT. THERE IS NO
2 REASON TO REQUIRE THAT THEY ACTUALLY BE PRESENTED.
3 BUT IF YOU INTEND TO DO THAT, YOU MAY DO THAT AS
4 WELL.

5 BUT THE OBJECTION'S OVERRULED.

6 MR. CONN: PERHAPS LATER WE WILL GET TO

7 THAT.

8 Q FOR THE MOMENT, CAN YOU JUST TELL US

9 WHAT WERE YOUR FINDINGS IN THAT REGARD?

10 A BASICALLY, THE VARIATION OF SHOT TO SHOT

11 AND PATTERN SIZE WAS SUCH THAT IT WAS NOT A RELIABLE

12 INDICATOR OF DISTANCE OR SOMETHING THAT ASSISTED

13 ME -- COULD ASSIST ME MATERIALLY IN ESTABLISHING THE

14 DISTANCE FROM WHICH VARIOUS SHOTS WERE FIRED.

15 Q AND WHAT DO YOU MEAN WHEN YOU SAY THAT

16 IT WAS NOT A RELIABLE INDICATOR OF DISTANCE?

17 A WELL, JUST THAT. IN OTHER WORDS, IF YOU

18 SHOOT FROM SIX FEET OR TWELVE FEET AND YOUR SHOT

19 FORMED A CERTAIN PATTERN, IF YOU SHOT 10 SHOTS OR

20 FIVE SHOTS WITH THE SAME GUN AND THE SAME AMMO,

21 YOU'D LIKE TO HAVE SORT OF LIKE THE SAME SORT

22 PATTERN. IF THE PATTERNS ARE SMALLER AND LARGER

23 FROM SHOT TO SHOT, THEN YOU'VE GOT A LOT OF

24 VARIATION. THAT'S BEEN REPORTED IN THE LITERATURE

25 FOR SHOTGUNS FOR A LONG TIME. BUT I HAD NOT SEEN

26 SHOT TO SHOT OF THE SAME AMMO IN THE SAME GUN

27 REPORTED BEFORE. SO THAT'S WHY I HAD TO DO THOSE

28 EXPERIMENTS MYSELF.

40383

1 THE VARIATION, EVEN IN THE SAME WEAPON

2 WITH THE SAME AMMO, SHOT TO SHOT IS SIGNIFICANT,
3 SIGNIFICANT ENOUGH THAT -- I GOT TARGETS HERE. I
4 CAN SHOW YOU WHAT IT IS. IT IS ENOUGH TO MAKE USE
5 OF THAT INFORMATION IN A RECONSTRUCTION,
6 PROBLEMATIC AT BEST.

7 Q NOW, DO SHOTGUNS SOMETIMES HAVE SOME
8 SORT OF A VARIABLE MECHANISM CALLED A "CHOKE"?

9 A YES.

10 Q WHAT IS A CHOKE?

11 A WELL, A CHOKE IS A CONSTRUCTION OF THE
12 BORE, TRYING TO BRING THE SHOTGUN COLUMN OF SHOT IN
13 CLOSER PROXIMITY, LEAVING THE BARREL, SO THAT IT
14 WILL STAY TIGHTER DOWN-RANGE TO THE BARREL. AND WE
15 TALK ABOUT, IN OUR SOCIETY, BASICALLY, A CYLINDER
16 BORE, AND THERE'S NO CHOKE. WE TYPICALLY TALK ABOUT
17 A MODIFIED CYLINDER. THAT'S A QUARTER CHOKE. WE
18 TALK ABOUT -- WE BASICALLY MAKE THESE IMPROVED,
19 MODIFIED, ALL THE WAY UP TO A FULL CHOKE. AND A
20 FULL CHOKE IS ABOUT 40 THOUSANDTHS CONSTRICTION ON
21 THE BARREL AND IT GOES IN ABOUT FOUR STEPS:
22 QUARTER, HALF, AND THREE QUARTERS. I'M THINKING OF
23 THE -- MODIFIED, IMPROVED, MODIFIED, AND FINALLY, A
24 FULL CHOKE.

25 AND WHAT THOSE DO IS ESTABLISH VARYING
26 DEGREES OF CONSTRICTION ON THE SHOT GROUP LEAVING.
27 OF COURSE, THE PRICE YOU PAY FOR THAT IS YOU DAMAGE
28 THE SHOT A LITTLE BIT WITH THE CHOKE. SO YOU ROUGH

1 UP THE SHOT MORE, BUT THEY'RE A TIGHTER GROUP.

2 Q DOES THAT MEAN WHEN A PERSON WHO
3 PURCHASES A SHOTGUN, THE PERSON BUYING THE SHOTGUN
4 HAS A WAY -- THE SHOOTER HIMSELF CAN ADJUST THE
5 SHOTGUN TO CONTROL THE SPRAY OF PELLETS THAT WILL
6 COME OUT OF THAT SHOTGUN?

7 A ON A MORE EXPENSIVE SHOTGUN, YES. YOU
8 BUY A VERY NICE ITALIAN-MADE SHOTGUN AND THE FRONT
9 WILL ACTUALLY HAVE -- YOU'LL GET CYLINDERS THAT SCREW
10 IN THAT WILL CHANGE THE CHOKE, HOW MUCH THE BARREL
11 BRINGS THE SHOT GROUP TOGETHER.

12 ON A LESS EXPENSIVE SHOTGUN YOU CANNOT
13 CONTROL CHOKE. IT'S BUILT INTO THE BARREL. EVEN A
14 CYLINDER BORE, WHICH IS NORMALLY A STRAIGHT
15 CYLINDER, HAS AN INNER NOMINAL CHOKE JUST TO IMPROVE
16 THE STABILITY OF THE SHOT GROUP A LITTLE BIT. IN
17 LESS EXPENSIVE SHOTGUNS THE CHOKE IS BUILT IN THE
18 BARREL, AND AS YOU GET TO MORE EXPENSIVE, YOU CAN
19 CHANGE THAT CHOKE.

20 Q NOW, FOR THE SHOTGUN THAT YOU OBTAINED
21 IN THIS CASE, WHICH YOU SAID WAS SIMILAR TO THE
22 SHOTGUN THAT WAS PURCHASED IN REGARD TO THIS
23 PARTICULAR INCIDENT, IS THERE ANY ADJUSTABLE
24 MECHANISM ON THE GUN?

25 A NO.

26 Q SO, IN OTHER WORDS, IF YOU PUT IN A
27 SHOTGUN SHELL AND YOU SQUEEZE THE TRIGGER, YOU HAVE
28 NO CONTROL OVER THE SPRAY PATTERN; IS THAT CORRECT?

40385

1 A YOU CAN'T VARY IT. THE WAY THE GUN IS
2 MADE IS THE PATTERN YOU'RE GOING TO GET -- THIS
3 WEAPON IS MADE WITH A CYLINDER BORE. THERE IS NO
4 NOMINAL CHOKE.

5 MR. CONN: DID THE COURT WISH TO RECESS AT
6 THIS TIME?

7 THE COURT: OKAY. WE'LL BE IN RECESS. WE'LL
8 RESUME TOMORROW. WE WON'T BE IN SESSION IN THE
9 MORNING. WE'LL RESUME AT 1:30.

10 WE'D ASK YOU GET HERE A LITTLE BEFORE
11 1:30 SO WE CAN START PROMPTLY AT 1:30.

12 SEE YOU BACK HERE TOMORROW.

13 (THE JURY EXITED THE COURTROOM
14 AND THE FOLLOWING PROCEEDINGS
15 WERE HELD:)

16

17 MS. ABRAMSON: YOUR HONOR, COULD THE COURT
18 STAY OUT, AND THE WITNESS AS WELL? THANK YOU.

19 THE COURT: OKAY.

20 MS. ABRAMSON: I JUST WANT TO MAKE A

21 DISCOVERY REQUEST, WHICH IS THAT DR. MC CARTHY BRING
22 THESE ROUNDS THAT HE OPENED UP WHERE HE SAYS THE
23 NUMBERS ARE DIFFERENT, ASSUMING HE PRESENTS THEM IN
24 A WAY THAT CAN'T BE TAMPERED WITH.

25 THE COURT: OR IF HE HAS THEM.

26 MS. ABRAMSON: OR IF HE HAS THEM.

27 SECONDLY, I WOULD ASK -- I KNOW HE
28 BROUGHT A CASE OF HIS AMMUNITION AND HE DID BRING IT

40386

1 TO COURT IN THE 801 HEARING, AND I'D LIKE TO MAKE
2 SURE HE BRINGS SOME TO THIS HEARING AS WELL.

3 DO YOU HAVE ANY?

4 THE WITNESS: I HAVE SOME SHELLS FROM IT.
5 THE STUFF I HAD AT THE PRELIMINARY (SIC) HEARING I
6 HAVE HERE. I DIDN'T BRING ANY LIVE AMMO. THEY
7 REALLY GET FUSSY DOWNSTAIRS.

8 MS. ABRAMSON: I KNOW THEY DO. JUST LET ME
9 SEE WHAT YOU'VE BROUGHT AND THEN I'LL LET YOU KNOW
10 IF IT'S ADEQUATE; OTHERWISE, WHAT WE DO WITH LIVE
11 AMMO HERE NOW, SINCE THE FIRST TRIAL WHEN WE LEARNED
12 OUR LESSON, IS WE GIVE IT TO THE SHERIFFS AND THEY
13 BRING IT UP.

14 THE WITNESS: I HAVE ONE OF THESE, WHICH IS A
15 BOX. THEN I HAVE THE EPOXY-FILLED EXEMPLARS.

16 MS. ABRAMSON: WHY DON'T YOU BRING -- YOUR
17 HONOR, I DO NEED TO SEE AN UNOPENED, UNDESTROYED
18 ROUND OR TWO, IF THE WITNESS BRINGS IT AND TURNS IT
19 OVER TO THE SHERIFF'S DEPARTMENT DOWNSTAIRS.

20 THE COURT: MAKE ARRANGEMENTS AHEAD OF TIME
21 TO DO THAT. BEFORE ANY LIVE AMMO IS USED BY COUNSEL
22 FOR ANY PURPOSE, YOU DISCUSS IT WITH ME.

23 MS. ABRAMSON: YES, YOUR HONOR.

24 THE COURT: AND NO LIVE AMMO UP AT THE
25 WITNESS STAND AT THE SAME TIME, IF THERE IS ANY, AS
26 THE WEAPON.

27 MS. ABRAMSON: MY UNDERSTANDING IS WHAT NEEDS
28 TO BE DONE IS THE WITNESS BRINGS THE AMMUNITION --

40387

1 THE COURT: I DON'T WANT TO GO INTO DETAIL.

2 MS. ABRAMSON: I WILL.

3 THE COURT: THAT'S ALL UP TO YOUR MAKING
4 ARRANGEMENTS WITH THE SHERIFFS.

5 WE'LL BE IN RECESS.

6 MR. CONN: ONE ADDITIONAL THING. I JUST
7 LEARNED THIS AFTERNOON THAT MR. MC CARTHY, WHO HAS
8 BEEN HERE ALL THIS WEEK, WITH THE HOPE THAT PERHAPS
9 WE MIGHT HAVE FINISHED WITH DR. LAWRENCE EARLY, AND
10 HE WAS PREPARED TO TESTIFY ALL THIS WEEK. I'VE JUST

11 LEARNED THAT MR. MC CARTHY DOES HAVE A SCHEDULING
12 CONFLICT FOR MONDAY. AND I WAS WONDERING PERHAPS IF
13 THE COURT MIGHT BE ABLE TO ACCOMMODATE HIM. I
14 UNDERSTAND THAT HE HAS A PRESENTATION TO BE MADE IN
15 SAN FRANCISCO ON MONDAY.

16 MS. ABRAMSON: THIS IS YOUR LAST WITNESS?

17 MR. CONN: I THINK WE'RE GOING TO CALL
18 DETECTIVE ZOELLER FOR A FEW QUESTIONS, SOME ODDS AND
19 ENDS. BUT I'M SURE THAT WON'T TAKE MUCH TIME.

20 MS. ABRAMSON: WE HAVE SOME THINGS WE CAN ASK
21 DETECTIVE ZOELLER AS PART OF OUR CASE, WHICH WE
22 WOULD BE WILLING TO DO.

23 THE COURT: IF YOU HAVE SOME THINGS YOU CAN
24 DO OUT OF ORDER, THAT WILL BE HELPFUL.

25 MS. ABRAMSON: WITH DETECTIVE ZOELLER?

26 THE COURT: IF YOU CAN COME UP WITH ENOUGH TO
27 JUSTIFY THE JURY BEING HERE IT WOULD BE --

28 MS. ABRAMSON: I DON'T KNOW IF IT'S ENOUGH

40388

1 FOR THE JURY BEING HERE FOR THE WHOLE DAY.

2 THE COURT: PERHAPS THERE ARE SOME OTHER
3 MATTERS THAT COUNSEL CAN DO WITH THE JURY HERE
4 WITHOUT DR. MC CARTHY AND WE CAN RESOLVE IT
5 TOMORROW.

6 MS. ABRAMSON: THE ONLY PROBLEM IS, IF THAT
7 MEANS DR. MC CARTHY DOESN'T COME BACK UNTIL TUESDAY,
8 I HAVE GOT WITNESSES FLYING IN NEXT WEEK WITH THE
9 EXPECTATION THEY'RE GOING TO GET ON, BUT I THINK IT
10 WILL WORK. HE'S GOING TO BE HERE ON TUESDAY. I
11 HAVE DR. FACKLER ON WEDNESDAY, DR. WECHT ON THURSDAY
12 OR FRIDAY. I HAVE THOSE THREE DAYS FOR FACKLER AND
13 WECHT.

14 OKAY. I GUESS THAT WILL WORK.

15 THE COURT: BUT IF YOU HAVE OTHER MATTERS
16 THAT YOU CAN UTILIZE MONDAY WITH THE JURY, IT WOULD
17 BE OF HELP. LET'S SEE HOW WE CAN WORK IT OUT SO WE
18 CAN ACCOMMODATE THE WITNESS' SCHEDULE.

19 ALL RIGHT. WE'LL BE IN RECESS UNTIL
20 TOMORROW.

21 (AT 4:35 P.M. PROCEEDINGS WERE
22 ADJOURNED UNTIL 1:30 P.M. OF
23 THE FOLLOWING DAY.)

24

25

26

27

28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

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

6 PLAINTIFFS,)

7)
8 VS.) NO. BA 068880

9 ERIK GALEN MENENDEZ, AND)
10 JOSEPH LYLE MENENDEZ,)

11 DEFENDANTS.)
12)

13 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

14 WEDNESDAY, NOVEMBER 8, 1995

15 VOLUME 240

16 PAGES 40197 THROUGH 40388

17

18

19

20 APPEARANCES:
21 (SEE APPEARANCE PAGE)

22

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28

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2

3 FOR THE PEOPLE: GIL GARCETTI
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22 ANNAMARIE PAPA
23 CSR NO. 8608
24 MARILYN FADALE,
25 CSR NO. 4547
OFFICIAL REPORTERS

24

25

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1 INDEX FOR VOLUME 240 PAGES 40197 THROUGH 40388

2

DAY	DATE	SESSION	PAGE	VOL.
-----	------	---------	------	------

3

4 WEDNESDAY, NOVEMBER 8, 1995 A.M. 40197 240

WEDNESDAY, NOVEMBER 6, 1995 P.M. 40291 240

5

6

7 PROCEEDINGS

8

9 CHRONOLOGICAL INDEX OF WITNESSES

10

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

11

DR. LAWRENCE,

12 ROBERT

(RESUMED) 40198-C 40228-A 240

13 (RESUMED)

40291-A 240

14

MC CARTHY,

15 ROGER LEE 40356-C

240

16

17

18

19

20

21

22 LEGEND:

A = MS. ABRAMSON C = MR. CONN

23 G = MR. GESSLER L = MR. LEVIN

N = MS. NAJERA T = MS. TOWERY
24
25
26
27
28

1 EXHIBITS INDEX

2 EXHIBITS:	MARKED	RECEIVED	VOL.
3 228- ILLUSTRATION	40203		240
4 229- ILLUSTRATION	40203		240
5 230- ILLUSTRATION	40204		240
6 231- ILLUSTRATION	40204		240
7 232- ILLUSTRATION	40204		240
8 233- ILLUSTRATION	40204		240
9 234- ILLUSTRATION	40205		240
10 235- ILLUSTRATION	40205		240
11 236- ILLUSTRATION	40206		240
12 237- ILLUSTRATION	40206		240
13 238- ILLUSTRATION	40207		240
14 239- ILLUSTRATION	40207		240
15 240- ILLUSTRATION	40208		240
16 241- ILLUSTRATION	40208		240
17 242- BLOODY SHIRT	40222		240
18 243- LIST OF NUMBER			

19	OF PELLETS	40291	240
20	81A- ENVELOPE WITH NO. 4 BUCKSHOT	40295	240