

1 VAN NUYS, CALIFORNIA; THURSDAY, NOVEMBER 9, 1995

2 1:50 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (THE FOLLOWING PROCEEDINGS WERE

7 HELD IN OPEN COURT OUT OF THE

8 PRESENCE OF THE JURY:)

9

10 THE COURT: EVERYBODY IS PRESENT. WE'LL

11 RESUME WITH THE TRIAL.

12 LET'S GET THE JURY OUT, PLEASE.

13 MS. NAJERA: YOUR HONOR, WE HAVE SOMETHING

14 OUTSIDE THE PRESENCE OF THE JURY.

15 DO YOU WANT ME TO BRING IT UP?

16 THE COURT: WHAT'S THAT.

17 MS. NAJERA: YESTERDAY I SPOKE TO THE DEFENSE

18 ABOUT IT. THEY HAVE BEEN TALKING ABOUT THEIR

19 EXPERTS AND THE FACT THAT THEY'RE BRINGING IN THEIR

20 EXPERTS TUESDAY AND WEDNESDAY AND THAT THEY -- THEY

21 ASSERT THESE STATEMENTS THAT THEIR EXPERTS

22 APPARENTLY HAVE TOLD THEM CONCERNING THEIR

23 RECONSTRUCTION.

24 I HAVE NOTICE THAT THERE ARE FOUR

25 EXPERTS THAT ARE GOING TO BE CALLED IN THIS CASE,

26 DR. BUCKLIN, DR. FACKLER, CHARLES MORTON AND CYRIL

27 WECHT.

28 COUNSEL TELLS ME THAT THERE ARE REPORTS

1 FOR DR. FACKLER AND DR. MORTON WHICH THEY DON'T WANT
2 TO GIVE TO US UNTIL AFTER THIS WITNESS TESTIFIES,
3 WHICH I DO NOT BELIEVE IS APPROPRIATE.

4 DR. BUCKLIN, THEY SAY THEY DO NOT HAVE A
5 REPORT AND THEY WILL NOT ASK HIM TO GENERATE A
6 REPORT, AND DR. WECHT THEY ALSO APPARENTLY DON'T
7 INTEND TO GET A REPORT FROM; OR THEY HAVEN'T YET.
8 IF THEY'RE PLANNING ON CALLING DR. WECHT ON TUESDAY
9 OR WEDNESDAY, WE'RE GOING TO NEED SOME TIME TO READ
10 THESE REPORTS AND DIGEST THEM AND DETERMINE WHAT
11 WE'RE GOING TO DO IN TERMS OF CROSS-EXAMINATION.

12 THE COURT: WHAT IS THE RESPONSE OF THE
13 DEFENSE, FIRST, AS TO THOSE WITNESSES FOR WHOM THERE
14 ARE REPORTS?

15 MS. ABRAMSON: THERE ARE ONLY TWO REPORTS,
16 AND BOTH OF THOSE REPORTS HAVE TO DO SOLELY WITH
17 IMPEACHMENT OF THIS WITNESS, AND IT IS OUR POSITION
18 THAT THEY'RE NOT ENTITLED TO IMPEACHMENT OF THIS
19 WITNESS UNTIL AFTER THIS WITNESS HAS TESTIFIED, OR
20 ELSE HE MIGHT CHANGE OR ALTER HIS TESTIMONY IN VIEW
21 OF THE IMPEACHING EVIDENCE.

22 SO I TOLD COUNSEL YESTERDAY THAT AS SOON
23 AS DR. MC CARTHY IS FINISHED, THEY MAY HAVE THOSE

24 WHICH ARE PRELIMINARY REPORTS WHICH HAVE TO DO
25 SOLELY WITH IMPEACHING HIS PRESENTATION.
26 WITH RESPECT TO DR. WECHT, HE HASN'T
27 FINISHED EXAMINING ALL OF THE INFORMATION YET, AND
28 SO I HAVE NO REPORT FROM HIM, AND I DON'T KNOW THAT

40391

1 THERE WILL BE TIME TO GENERATE ONE.

2 WITH RESPECT TO DR. BUCKLIN, HE'S NOT MY
3 WITNESS, HE'S MR. GESSLER'S WITNESS.

4 MR. GESSLER: THERE IS NO REPORT FROM
5 DR. BUCKLIN, YOUR HONOR. I CAN'T AFFORD ONE ON THE
6 AMOUNT OF HOURS THAT I WAS ABLE TO GET. I TOLD
7 COUNSEL ORALLY EXACTLY WHAT HE WOULD TESTIFY TO.

8 THE COURT: OKAY.

9 MS. NAJERA: YOUR HONOR, IF I MAY BE HEARD AS
10 TO DR. BUCKLIN, AT LEAST, COUNSEL TOLD ME YESTERDAY
11 BASICALLY TWO SENTENCES CONCERNING WHAT DR. BUCKLIN
12 WOULD BE TESTIFYING TO. HE'S TOLD ME THAT
13 DR. BUCKLIN WOULD TESTIFY THAT KITTY'S LEFT CHEEK
14 WAS POSTMORTEM. AND WHEN I ASKED WHAT THE BASIS OF
15 THIS OPINION WAS HE SAID, WELL, HE LOOKED AT THE
16 PHOTOGRAPH. AND I DON'T THINK THAT'S APPROPRIATE,
17 AND I DON'T THINK THAT WE CAN DO AN ADEQUATE OR A
18 THOROUGH AND COMPLETE CROSS-EXAMINATION BASED ON

19 THOSE TWO SENTENCES. AND WE DON'T KNOW WHAT IN THE
20 PHOTOGRAPH HE LOOKED AT, WHAT HIS OPINION WAS, WHAT
21 MEDICAL BASIS HE'S USING TO SUPPORT WHATEVER IT IS
22 HE SAW IN THE PHOTOGRAPH THAT SUPPORTED THAT OPINION
23 THAT IT'S POSTMORTEM.

24 SO I THINK THAT IF THEY PLAN TO CALL
25 DR. BUCKLIN FOR SOME PURPOSE THAT'S IMPORTANT TO THE
26 RECONSTRUCTION, THAT WE NEED SOMETHING IN WRITING
27 TELLING US WHAT HIS OPINION IS AND WHAT HE BASED IT
28 ON.

40392

1 AS FOR DR. WECHT, I THINK THAT IF
2 THEY'RE GOING TO PUT A RECONSTRUCTION EXPERT ON THE
3 STAND AND SAY WE DON'T HAVE A REPORT, THE PEOPLE ARE
4 GOING TO BE SUBSTANTIALLY HAMPERED IN THEIR
5 CROSS-EXAMINATION. ONCE AGAIN, THAT PUTS US IN THE
6 UNTENABLE POSITION OF HAVING BASICALLY NOTHING GOING
7 INTO THIS IN TERMS OF DISCOVERY.

8 MS. ABRAMSON: FIRST OF ALL, WE'RE NOT
9 ATTEMPTING TO DO A RECONSTRUCTION. I DON'T KNOW
10 WHERE COUNSEL GOT THAT IDEA, IN CALLING DR. WECHT,
11 WHO IS A FORENSIC PATHOLOGIST.

12 AND SIMILAR TO MR. GESSLER'S PROBLEM,
13 AND AS THIS COURT KNOWS, IT TOOK MONTHS TO GET ANY

14 FUNDS AUTHORIZED WHATSOEVER FOR DR. WECHT. AND WHAT
15 WAS AUTHORIZED, WHICH I'M NOT GOING TO SPREAD ON THE
16 RECORD, WAS INSUFFICIENT TO COVER THE COST OF US
17 HAVING HIM WRITE A REPORT AS WELL. IF HE HAS
18 SOMETHING THAT HE REDUCES TO WRITING BEFORE HE
19 TESTIFIES, I'LL GIVE IT TO COUNSEL. I DON'T THINK
20 IT'S ANY MYSTERY AT ALL AS TO WHAT THE MEDICAL
21 FINDINGS THAT THE DEFENSE HAS BEEN ASSERTING ARE THE
22 TRUE FINDINGS HERE, WHAT THEY ARE; OR THAT DR. WECHT
23 IS BEING CALLED BECAUSE HE CAN TESTIFY TO THOSE
24 FINDINGS.

25 THE COURT: WELL, AS TO THESE TWO WITNESSES
26 THAT DON'T APPARENTLY RELATE TO IMPEACHMENT OF THE
27 WITNESS WHO'S ON THE WITNESS STAND --

28 MS. ABRAMSON: WELL, DR. WECHT DOES, YOUR

40393

1 HONOR, RELATE TO IMPEACHMENT AS WELL OF THIS
2 WITNESS.

3 THE COURT: OKAY. IT SEEMS TO THE COURT THAT
4 JUST AS THE DEFENSE FELT IT WAS ENTITLED TO THE
5 REPORTS OF PROSECUTION WITNESSES, LIKEWISE, THE
6 PROSECUTION IS ENTITLED TO REPORTS OF WITNESSES
7 CALLED BY THE DEFENSE. THE DEFENSE WANTS TO BE
8 TREATED IN THE SAME FASHION AS THE PROSECUTION, AS

9 THE BENEFICIARY OF DISCOVERY, AND AT THE SAME TIME
10 IT HAS A RESPONSIBILITY TO PROVIDE DISCOVERY. AND
11 IT SEEMS TO ME THAT IF REPORTS CAN'T BE AFFORDED, IF
12 THAT IS THE REPRESENTATION, THEN COUNSEL ARE
13 OBLIGATED TO SIT DOWN AND WRITE OUT THEMSELVES WHAT
14 IT IS THEY EXPECT IN DETAIL THESE WITNESSES TO SAY.

15 NOW, IF YOU WANT TO DO IT THAT WAY,
16 THAT'S YOUR CHOICE. BUT IT SEEMS TO ME THAT ONE WAY
17 OR THE OTHER THE PROSECUTION HAS THE SAME RIGHT AS
18 THE DEFENSE TO NOTICE OF WHAT IT IS THE WITNESSES
19 WILL TESTIFY TO AND NOT JUST ASSUMING THAT BASED
20 UPON THE NATURE OF THE QUESTIONING OR ORAL
21 REPRESENTATIONS OF COUNSEL IN RESPONSE TO SOME
22 OBJECTION OR SOME ISSUE THAT MIGHT ARISE, THAT THE
23 PROSECUTION IS SOMEHOW ON NOTICE OF THE DETAIL OF
24 TESTIMONY OF THESE WITNESSES.

25 MS. ABRAMSON: WELL, YOUR HONOR, WITH RESPECT
26 TO DR. WECHT, HE WAS APPOINTED ON NOVEMBER 6TH, AND
27 WE HAD BEEN CONFERENCING WITH HIM AND SENDING HIM
28 MATERIALS, FED-EX, FOR THE PAST WEEK. AND SO IF HE

40394

1 HAS TIME -- HE'S NOT DUE TO TESTIFY UNTIL THE 16TH --
2 I'LL ASK HIM -- WE'RE SUPPOSED TO CONFER AGAIN
3 TOMORROW. I'LL ASK HIM TO DO SOME SORT OF REPORT SO

4 THAT I CAN GIVE IT TO THE PEOPLE IN ADVANCE OF HIS
5 TESTIMONY, BUT PART OF HIS REPORT IS ALSO GOING TO
6 DEAL WITH IMPEACHMENT OF THIS WITNESS. PERHAPS I
7 CAN HAVE HIM WRITE TWO SEPARATE REPORTS AND GIVE
8 THEM THE ONE THAT DOESN'T DEAL WITH IMPEACHMENT OF
9 THIS WITNESS BEFORE.

10 BUT NEVERTHELESS, ALL I CAN DO IS ASK
11 HIM TO DO THIS. THE COURT'S WELL AWARE OF THE FACT
12 THAT WE WERE UNABLE, FOR QUITE SOME TIME, TO GET ANY
13 COURT AUTHORIZATION FOR DR. WECHT AND IT CAME
14 THROUGH ON NOVEMBER 6TH.

15 THE COURT: WELL, THE REASON FOR THAT DELAY
16 WAS BECAUSE UNTIL THE PROSECUTION CALLED AN
17 INDEPENDENT PATHOLOGIST OF THEIR OWN, THERE WAS NO
18 NEED APPARENT FOR THE DEFENSE TO HAVE AN INDEPENDENT
19 PATHOLOGIST. THE ASSUMPTION WAS PRIOR TO RECENT
20 EVENTS THAT BOTH SIDES WOULD BE PRIMARILY RELYING
21 UPON THE TESTIMONY OF THE COUNTY CORONER'S OFFICE.
22 SO UNTIL THAT OCCURRED THERE WAS NO NEED OR REASON
23 TO APPOINT ANYBODY FOR EITHER SIDE OR FOR THE
24 DEFENSE IN THIS CASE. AND THAT AROSE, YOU MADE YOUR
25 PRESENTATION TO DEPARTMENT 100, AND IT WAS DEALT
26 WITH AS QUICKLY AS IT COULD BE UNDER THE
27 CIRCUMSTANCES.

28 MS. ABRAMSON: WELL I WOULD POINT OUT, SO THE

1 RECORD IS CLEAR, THE PEOPLE DON'T HAVE TO ASK
2 ANYBODY. THEY CAN HIRE ANY EXPERT THEY WANT.

3 THE COURT: I'M NOT TALKING ABOUT WHO THEY
4 HAVE TO ASK OR NOT. IT'S IRRELEVANT TO MY
5 OBSERVATIONS AND MY STATEMENT AS TO THE TIMING OF
6 IT.

7 BUT AS TO EACH OF THESE WITNESSES, ANY
8 WITNESS WHO IS GOING TO BE TESTIFYING AS AN EXPERT,
9 THERE SHOULD BE SUFFICIENT TIME FOR THE OPPOSITION
10 TO DIGEST THE INFORMATION. WE HAVE ON THE RECORD
11 THE POSITION OF THE DEFENSE AS TO WHY THEY FELT THE
12 NEED FOR THE REPORTS IN ADVANCE, AND THOSE REASONS
13 APPLY EQUALLY TO THE PROSECUTION.

14 SO WHAT I'LL DO IS -- I DON'T KNOW WHEN
15 DR. BUCKLIN IS SUPPOSEDLY GOING TO TESTIFY.

16 WHEN IS HE SCHEDULED OR IS HE?

17 MR. GESSLER: WE DON'T HAVE HIM SCHEDULED
18 YET, YOUR HONOR.

19 THE COURT: SO WECHT ISN'T SCHEDULED UNTIL
20 THE END OF --

21 MS. ABRAMSON: THURSDAY OR FRIDAY.

22 THE COURT: TOWARDS THE END OF NEXT WEEK.

23 ALL RIGHT. WHAT I'LL DO IS ORDER THAT
24 ANY REPORTS RELATING TO WECHT AND HIS TESTIMONY BE
25 PROVIDED TO THE PROSECUTION NO LATER THAN TUESDAY OF
26 NEXT WEEK, AND IF THERE IS MATERIAL CONTAINED
27 THEREIN THAT RELATES TO IMPEACHMENT, THAT IT IS TO

40396

1 WITNESS HAS COMPLETED HIS TESTIMONY.

2 AND AS FAR AS DR. BUCKLIN IS CONCERNED,
3 ANY REPORT FROM HIM, EITHER PREPARED BY HIM OR BY
4 COUNSEL, RELATING WHAT IT IS SPECIFICALLY THAT
5 DR. BUCKLIN WOULD TESTIFY ABOUT, IS TO BE PROVIDED
6 TO THE PROSECUTION WITHIN THE SAME TIME FRAME, BY
7 TUESDAY OF NEXT WEEK.

8 MS. ABRAMSON: WELL, YOUR HONOR, THIS WITNESS
9 ISN'T COMING BACK TILL TUESDAY, AND HE WON'T BE
10 FINISHED BEFORE WEDNESDAY, I WOULD THINK, AT THE
11 EARLIEST.

12 THE COURT: WELL, I NEVER HEARD THAT
13 DR. BUCKLIN'S TESTIMONY RELATES TO THIS WITNESS AT
14 ALL.

15 MS. ABRAMSON: I'M JUST REFERRING BACK TO THE
16 COURT'S STATEMENT WITH RESPECT TO DR. WECHT,
17 PROVIDING THIS REPORT BY TUESDAY. THIS WITNESS
18 WON'T BE FINISHED BY TUESDAY.

19 THE COURT: YOU SAID THERE IS SOME OF HIS
20 REPORT THAT RELATES TO IMPEACHMENT, THE REST IS NOT.

21 MS. ABRAMSON: OKAY.

22 THE COURT: SO TUESDAY FOR EVERYTHING BUT

23 IMPEACHMENT EVIDENCE, WHICH WILL BE PROVIDED AS SOON
24 AS THE WITNESS LEAVES THE WITNESS STAND.
25 MR. CONN: CAN WE MAKE THAT TUESDAY MORNING?
26 MS. ABRAMSON: AS SOON AS I CAN GET IT.
27 DR. WECHT IS BACK EAST.
28 THE COURT: TUESDAY BEFORE COMMENCEMENT OF

40397

1 COURT.
2 ANYTHING ELSE BEFORE WE HAVE THE JURY
3 COME OUT?
4 OKAY, LET'S GET THE JURY OUT.
5 (THE JURY ENTERED THE
6 COURTROOM AND THE FOLLOWING
7 PROCEEDINGS WERE HELD:)
8
9 THE COURT: OKAY. THE JURY IS BACK.
10 GOOD AFTERNOON, LADIES AND GENTLEMEN.
11 I HAVE RECEIVED VARIOUS NOTES OF
12 INDIVIDUAL JURORS REGARDING REQUESTS FOR TIME TO
13 DEAL WITH VARIOUS APPOINTMENTS, AND WE'LL
14 ACCOMMODATE ALL OF THOSE. I JUST WANT TO GATHER
15 THEM ALL TOGETHER AND CREATE A LITTLE SCHEDULE THAT
16 I CAN PROVIDE TO YOU.
17 AND IF ANYBODY ELSE HAS SIMILAR

18 SITUATIONS, MEDICAL APPOINTMENTS OR THINGS OF THAT
19 NATURE, IF YOU WANT, IF YOU HAVE THEM AND WANT TO
20 GIVE THEM TO ME, IF YOU KNOW ABOUT THEM NOW, GIVE
21 THEM TO ME AND I'LL COORDINATE THEM ALL AT THE SAME
22 TIME SO WE CAN DEAL WITH IT ALTOGETHER.

23

24 ROGER LEE MC CARTHY,
25 THE WITNESS ON THE STAND AT THE ADJOURNMENT, HAVING
26 BEEN PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:
27 THE COURT: OKAY. WE'RE NOW READY TO
28 RESUME. THE WITNESS IS STILL ON THE WITNESS STAND.

40398

1 WOULD YOU STATE YOUR NAME AGAIN FOR US,
2 PLEASE.

3 THE WITNESS: ROGER LEE MC CARTHY.

4 THE COURT: ALL RIGHT. YOU'RE STILL UNDER
5 OATH.

6 AND THE PEOPLE MAY CONTINUE THEIR DIRECT
7 EXAMINATION.

8 MR. CONN: THANK YOU.

9

10 DIRECT EXAMINATION (RESUMED)

11 BY MR. CONN:

12 Q DR. MC CARTHY, I BELIEVE THAT WHEN WE

13 BROKE YESTERDAY YOU WERE SPEAKING ABOUT SOME OF THE
14 WORK THAT YOU PERFORMED IN CONNECTION WITH THIS CASE
15 CONCERNING THE SHOTGUN AND THE AMMUNITION THAT YOU
16 USED FOR PURPOSES OF CONDUCTING SOME EXPERIMENTS.

17 I WOULD LIKE TO SPEAK A LITTLE BIT
18 FURTHER ABOUT THAT SHOTGUN AND AMMUNITION.

19 I BELIEVE YOU INDICATED IN YOUR
20 TESTIMONY THAT IT WAS YOUR CONCLUSION THAT THERE
21 WERE 12 SHOTS THAT WERE FIRED IN THIS CASE --

22 MS. ABRAMSON: OBJECTION. THERE'S BEEN NO
23 SUCH TESTIMONY.

24 THE COURT: SUSTAINED.

25 Q BY MR. CONN: CAN YOU TELL US, FIRST OF
26 ALL, THE -- YOU CONCLUDED THAT NO. 4 BUCK WAS USED IN
27 CONNECTION WITH THIS CASE; IS THAT CORRECT?

28 A YES. THAT PART -- THE MAJORITY OF THE

40399

1 SHOTS, IN MY RECONSTRUCTION, INVOLVE 12-GAUGE NO. 4
2 BUCKSHOT ROUNDS.

3 Q OKAY. AND CAN YOU TELL US, FIRST OF
4 ALL, WHAT 12-GAUGE MEANS.

5 A YEAH. IT'S AN OLD TERM. BASICALLY IT
6 WAS THE DIAMETER OF THE LEAD BALL, 12 OF WHICH MADE
7 UP A POUND. SO A 12- GAUGE SHOTGUN WOULD SHOOT A

8 BALL WHICH WOULD BE 1/12TH OF A POUND. SO IT WAS A

9 12TH GAUGE.

10 Q AND BY LOOKING AT A SHOTGUN TODAY, CAN
11 YOU DETERMINE THE GAUGE OF THAT PARTICULAR SHOTGUN?

12 A OH, YES, IF YOU HAVE THE WEAPON.

13 Q AND HOW IS THAT DETERMINED TODAY?

14 A JUST BASICALLY DIAMETER OF THE BARREL.

15 A 12-GAUGE IS 700 THOUSANDTHS AND SOME CHANGE. I'D
16 HAVE TO LOOK IT UP. 772 OR SOMETHING LIKE THAT.

17 Q NOW, IN THIS PARTICULAR CASE, I WOULD
18 LIKE TO DIRECT YOUR ATTENTION TO THE SHOTGUN THAT
19 YOU ACTUALLY OBTAINED, WHICH HAS BEEN MARKED IN THIS
20 PROCEEDING AS AN EXHIBIT.

21 DO YOU HAVE THAT BEFORE YOU AT THIS
22 TIME?

23 A YES, I DO.

24 Q OKAY. AND DIRECTING YOUR ATTENTION TO
25 THAT WEAPON, CAN YOU TELL US WHAT GAUGE SHOTGUN THAT
26 IS.

27 A THIS IS A 12-GAUGE MODEL 500 MOSSBERG.

28 Q OKAY. AND ARE YOU FAMILIAR WITH THE

40400

1 OPERATION OF THAT WEAPON?

2 A YES.

3 Q NOW, CAN YOU TELL US ESSENTIALLY, GET
4 INTO SOME DETAIL WITH YOU LATER, HOW THAT SHOTGUN
5 WORKS?

6 A SURELY. THIS IS A TUBULAR MAGAZINE
7 UNDERNEATH A CYLINDRICAL BARREL; THAT IS, IT HAS
8 THAT VERY MINOR THREE, FOUR THOUSAND CHOKE I TALKED
9 ABOUT BEFORE. IT'S ESSENTIALLY A 12-GAUGE CYLINDER
10 BORE. THE BARREL IS BIGGER HERE BECAUSE THAT'S
11 WHERE THE HIGHER BARREL PRESSURE IS. SO IT'S FATTER
12 AND THEN IT THINS DOWN WHEN THE PRESSURE GETS LOWER.

13 Q LET ME SLOW YOU DOWN. YOU SAID IT'S A
14 TUBULAR MAGAZINE.

15 WHAT DO YOU MEAN BY THAT TERM?

16 A LOTS OF TIMES YOU'LL SEE MILITARY RIFLES
17 WHERE THERE'S A BOX STICKING OUT BELOW. THAT'S A
18 STICK MAGAZINE OR STACK MAGAZINE. A TUBULAR
19 MAGAZINE, THE ROUNDS SIT INSIDE THIS TUBE, ONE ON
20 TOP OF THE OTHER, BACK TO FRONT. THE COCKING OLD
21 WINCHESTER 94, IT LOOKS LIKE IT HAS TWO BARRELS BUT
22 THE BOTTOM ONE IS A TUBULAR MAGAZINE THAT'S THE VERY
23 OLD -- THE FIRST MAGAZINES EVER DESIGNED FOR WEAPONS
24 WERE TUBULAR. VERY STANDARD DESIGN.

25 Q DOES THAT MAGAZINE HAVE SOME SORT OF A
26 PLUG AT THE TOP OF IT?

27 A NO. I GATHER THERE WAS SOME CONFUSION
28 ON THAT.

1 MS. ABRAMSON: MOVE TO STRIKE THE WITNESS'

2 STATEMENT, YOUR HONOR.

3 THE COURT: SUSTAINED AS TO THE PHRASE "I

4 GATHER."

5 THE WITNESS: I'M SORRY.

6 NO. THIS IS A -- THERE'S A SPRING UP

7 HERE, A PISTON. IT HOLDS FIVE ROUNDS.

8 MR. CONN: OKAY.

9 THE WITNESS: IN SOME STATES, LEGALLY, YOU
10 CAN ONLY HUNT WITH THREE ROUNDS IN YOUR MAGAZINE, SO
11 THERE ARE AVAILABLE THINGS THAT ARE CALLED PLUGS OR
12 DOWELS THAT RESTRICT THE MAGAZINE'S CAPACITY TO
13 THREE ROUNDS.

14 Q BY MR. CONN: AND DOES THIS PARTICULAR
15 WEAPON HAVE ANY SUCH PLUG?

16 A NO.

17 Q DOES IT OPEN UP THERE IN THE FRONT OF
18 THE MAGAZINE OR UNSCREW IN SOME WAY?

19 A YES. IF I TOOK THIS OFF -- THIS IS HOW
20 YOU WOULD TAKE THE BARREL OFF, THIS SCREW RIGHT
21 HERE. I INTENDED TO DO IT BEFORE COURT STARTED AND
22 IT'S A LITTLE TIGHT, BUT I CAN DO IT MONDAY BECAUSE
23 I'LL BRING A PLIER. THAT'S HOW YOU TAKE THE BARREL
24 OFF WHEN YOU BREAK THE WEAPON DOWN FOR DISASSEMBLY
25 IS THIS SCREW RIGHT HERE.

26 Q SO YOU SAID YOU CAN TAKE THE ROUNDS, THE
27 SHOTGUN ROUNDS, AND YOU LOAD THEM INTO THAT MAGAZINE
28 AT THE BOTTOM OF THE WEAPON; IS THAT CORRECT?

40402

1 A DOWN HERE.

2 Q OKAY. AND YOU PRESS THEM IN ONE AFTER
3 THE OTHER UNTIL YOU GET FIVE INTO THAT SPACE?

4 A YES. THE MAGAZINE IS -- THERE'S A PIECE
5 OF METAL HERE THAT'S FORCED BY THE SPRING AND THE
6 MAG. YOU LOAD THROUGH THE BOTTOM, TAKE A SHOTGUN
7 SHELL.

8 Q RIGHT NOW YOU ARE LOADING. CAN YOU TELL
9 US WHAT THAT IS YOU HAVE IN FRONT OF YOU?

10 A I FIRED SOME SHELLS AND THEN RELOADED
11 THEM WITH A POXY SO THEY JUST HAVE THE STRUCTURAL
12 STIFFNESS THEY WOULD HAVE. UNFORTUNATELY, WHEN YOU
13 SHOOT A SHELL IT EXPANDS A LITTLE BIT, SO IT
14 DOESN'T -- THESE DON'T WORK AS SMOOTHLY AS NEW SHELLS
15 IN THE WEAPON BUT THEY ILLUSTRATE THE POINT.

16 Q NONE OF THOSE ARE LIVE AMMUNITION,
17 THEY'RE ALL DUMMY?

18 A THEY'RE ALL DUMMY THAT I MADE.

19 Q IF YOU CAN SHOW US AT THAT TIME HOW YOU
20 MADE THAT.

21 A PUSH IT IN. THERE'S A LITTLE CATCH SO
22 THE SHELL DOESN'T COME OUT AND YOU TAKE ANOTHER
23 ONE. TAKE ANOTHER ONE. TAKE ANOTHER ONE. TAKE
24 ANOTHER ONE.

25 Q ALL RIGHT. YOU HAVE NOW INSERTED FIVE.

26 SO IS IT FULLY -- IS THE MAGAZINE FULLY
27 LOADED AT THIS POINT?

28 A CORRECT. THE MAGAZINE IS FULL.

40403

1 Q DOES THAT MEAN THAT THIS WEAPON CANNOT
2 HOLD ANY ADDITIONAL SHELLS?

3 A NO, BUT IT CAN'T HOLD ANY -- IT CAN ONLY
4 HOLD FIVE IN THE MAGAZINE.

5 Q IF YOU WANTED TO LOAD IT MORE, HOW MANY
6 MORE SHELLS CAN BE PUT INTO THE WEAPON AT THIS
7 POINT?

8 A YOU CAN PUT IN ONE MORE.

9 Q HOW WOULD YOU PUT THAT SIXTH SHELL
10 INSIDE THIS WEAPON?

11 A THERE'S A LEVER RIGHT DOWN HERE OPPOSITE
12 THE TRIGGER GUARD WHICH IF YOU DEPRESS IT UNLOCKS IT
13 AND ALLOWS YOU TO CYCLE THE WEAPON EVEN THOUGH YOU
14 HAVEN'T PULLED THE TRIGGER.

15 Q WHAT DO YOU MEAN BY CYCLE?

16 A JUST LIKE I'M COCKING IT. PULL DOWN, IT
17 BRINGS -- YOU CAN SEE A ROUND IS ABOUT TO NOW BE
18 TRANSPORTED INTO THE BARREL. YOU CAN SEE IT
19 STICKING THROUGH THE EJECTION PORT.
20 NOW, IT IS ALWAYS BEST TO DO THIS
21 DYNAMICALLY LIKE FAST AND THEN THE WEAPON DOESN'T
22 JAM. SO I DON'T KNOW IF THIS WILL SNAP UP HERE
23 CLEANLY. IF I'M LUCKY IT WILL. IT DID.
24 NOW, I'VE STRICKED A MAGAZINE -- A ROUND
25 OUT OF THE MAGAZINE, PUT ONE IN THE BARREL. I CAN
26 TAKE AN ADDITIONAL ROUND NOW, PUT THAT BACK IN THE
27 MAGAZINE.
28 Q NOW, WITH SIX ROUNDS INSIDE THAT WEAPON,

40404

1 IS IT FULLY LOADED TO ITS CAPACITY?
2 A THIS IS THE MAXIMUM IT CAN HOLD, AND --
3 BUT YOU'VE GOT A ROUND UNDER THE FIRING PIN NOW.
4 Q OKAY. NOW, TO FIRE THAT WEAPON, AT THIS
5 POINT, WHAT WOULD YOU HAVE TO DO?
6 A JUST PULL THE TRIGGER IF THE SAFETY IS
7 OFF. YOU'D HAVE TO REMOVE THE SAFETY.
8 Q WHERE'S THAT?
9 A RIGHT BEHIND HERE. IT'S A THUMB
10 SAFETY. THAT'S THE SAFETY ON POSITION. YOU CAN SEE

11 THE SWITCH THERE. WHEN IT'S OFF, I DON'T KNOW IF
12 YOU CAN SEE THAT RED DOT, BUT IT TELLS THE SHOOTER
13 THAT NOW THAT SAFETY IS OFF.

14 Q WHEN YOU JUST LOADED THAT WEAPON, DID IT
15 MATTER THAT THE SAFETY WAS ON OR OFF OR WOULD YOU
16 HAVE BEEN ABLE TO LOAD IT EITHER WAY?

17 A EITHER WAY.

18 Q OKAY. ALL RIGHT. NOW, ONCE YOU SQUEEZE
19 THE TRIGGER AND FIRE THE WEAPON, DOES THE SHELL
20 EJECT AUTOMATICALLY OR WHAT DO YOU HAVE TO DO TO
21 EJECT THE SHELL?

22 A THE SHELL DOES NOT EJECT AUTOMATICALLY.
23 THIS IS NOT WHAT'S CALLED A SEMI-AUTOMATIC WEAPON OR
24 SHOTGUN. THERE ARE SHOTGUNS THAT DO THAT. THIS
25 ISN'T ONE.

26 Q HOW DO YOU EJECT THE SHELL AT THIS
27 POINT?

28 A YOU WOULD PULL THE TRIGGER,

40405

1 (DEMONSTRATING), THAT'S THE FIRING PIN STRIKING THE
2 BACK OF THE ROUND, AND THEN YOU ONCE AGAIN CYCLE THE
3 WEAPON WITH THE HANDLE, THE FOREGRIP.

4 Q SO BY CYCLING THE WEAPON, YOU MEAN THAT
5 YOU ARE EJECTING ANY ROUNDS THAT ARE CURRENTLY IN

6 THE CYLINDER; IS THAT WHAT IT'S CALLED?

7 A IT STRIPS THE CYLINDER. THERE'S AN

8 EJECTOR THAT'S A LITTLE HOOK. IF YOU LOOK AT ANY

9 SHOTGUN SHELL -- AND THERE'S TWO STRATEGIES ON THIS.

10 THERE'S A LIP ON THE BACK OF THE SHOTGUN

11 SHELL THAT REGISTERS THE SHELL IN THE BREECH IN

12 TERMS OF ITS POSITION TO BE FIRED.

13 Q WHEN YOU SAY "THE BREECH," WHAT ARE YOU

14 REFERRING TO?

15 A THAT'S THE VERY BACK OF THE BARREL

16 WHICH -- SOMETHING HAS TO CLOSE AND SEAL UP. WHEN

17 YOU SHOOT THIS SHELL THERE'S A BARREL PRESSURE IN

18 THE THOUSANDS OF PSI'S. VERY HIGH PRESSURE. NOW,

19 WHEN YOU PUT A SHELL IN, SOMETHING HAS TO CLOSE

20 BEHIND IT TO SEAL UP THE BACK OF THE BARREL AND

21 CONTAIN THAT PRESSURE SO THAT THE PRESSURE IS ALL

22 APPLIED TO THE PROJECTILES AND THEY ALL GO OUT THE

23 FRONT OF THE BARREL.

24 THE COURT: IS THAT A LIVE ROUND?

25 THE WITNESS: NO. NOTHING HERE IS LIVE.

26 NO. THIS IS ANOTHER POXY ONE THAT I MADE. IT'S

27 JUST A DIFFERENT BRAND. IT'S EASIER TO SEE BECAUSE

28 IT'S NOT THAT WHITE, IT'S RED.

1 THE BACK OF THE BREECH BLOCK, THE PART
2 THAT SEALS THE BACK OF THE BARREL, WILL HAVE AN
3 EJECTOR HOOK THAT WILL GRAB UNDER THAT LITTLE FLANGE
4 OF THAT SHELL. WHEN I CYCLE THAT BLOCK BACK IT'LL
5 PULL THAT SHELL OUT OF THE BARREL AND STRIP IT OUT
6 AND THEN THERE'S TYPICALLY A LITTLE PIN OR
7 MECHANICAL THAT WILL THROW THAT SHELL OUT THE
8 EJECTION PORT.

9 Q OKAY. AND TO NOW CYCLE THE REMAINING OF
10 THE SHELLS THAT ARE CURRENTLY IN THERE, WOULD YOU
11 THEN HAVE TO FOLLOW THE SAME PROCEDURE THAT YOU JUST
12 SHOWED US TO FIRE AND REMOVE ALL OF THOSE SHELLS?

13 A YES. EACH SHOT WOULD REQUIRE A PULL OF
14 THE TRIGGER, CYCLE OF THE CHARGING HANDLE FOREGRIP
15 AND RELOADING AND THEN IT COCKS THE FIRING PIN AGAIN
16 SO IT FIRES AGAIN. (DEMONSTRATING.)

17 Q ALL RIGHT. AT THIS TIME I WOULD ASK YOU
18 TO GO THROUGH THE REMAINDER OF THOSE SHELLS TO SHOW
19 US HOW THEY ARE EJECTED FROM THAT WEAPON.

20 A (WITNESS COMPLIES.)

21 IF YOU DON'T SHOOT YOU CAN'T RECYCLE
22 IT.

23 I THINK THAT'S IT UNLESS ONE OF THE
24 SHELLS HAS JAMMED.

25 Q IS THAT --

26 A DID I GET THEM ALL? YEP, THAT'S IT.

27 OH, NO. ONE OF MY RELOADS IS JAMMED.

28 THAT'S A DISADVANTAGE TO USING SHOT

1 SHELLS, THAT LITTLE BRASS BASE EXPANDS WHEN IT'S
2 FIRED THE FIRST TIME, SO THERE'S ONE STUCK IN HERE
3 THAT SHOULD HAVE EJECTED.

4 Q ALL RIGHT. THANK YOU.

5 YOU MAY PLACE THAT DOWN.

6 NOW, REGARDING THE PARTICULAR TYPE OF
7 AMMUNITION THAT YOU USED IN THIS CASE, YOU INDICATED
8 THAT FOR PURPOSES OF FIRING THE WEAPON YOU USE NO. 4
9 BUCKSHOT; IS THAT CORRECT?

10 A YES.

11 Q NOW, DO YOU KNOW WHETHER THE TYPE OF
12 BUCKSHOT THAT YOU USE, NO. 4 BUCKSHOT FROM FIOCCHI,
13 WAS THE SAME TYPE OF AMMUNITION THAT -- IN ALL OF ITS
14 DETAIL, AS FIOCCHI HAD COMMERCIALY AVAILABLE BACK
15 IN 1989?

16 A NO. I CALLED THE FIOCCHI PLANT AND
17 ATTEMPTED TO VERIFY OR DETERMINE FROM THEM WHAT
18 THEIR PROGRESS WAS IN TERMS OF DESIGN AND USE OF
19 AMMUNITION, BUT THEY ARE A BULK MANUFACTURER AND
20 THEY DON'T KEEP RECORDS ON THE VARIOUS MIXES AND
21 DESIGNS THEY USE AT VARIOUS TIMES. SO THEY COULD
22 NOT TELL ME THAT FROM THE PLANT RECORDS.

23 Q ALL RIGHT. LET ME THEN DIRECT YOUR
24 ATTENTION TO SOME EXHIBITS THAT WERE RECOVERED FROM

25 THE CRIME SCENE IN THIS CASE. I'M DIRECTING YOUR
26 ATTENTION SPECIFICALLY TO AN EXHIBIT THAT HAS BEEN
27 MARKED AS 48 IN THIS TRIAL, AND THERE ARE FOUR
28 ENVELOPES THAT I WOULD LIKE YOU TO TAKE A LOOK AT

40408

1 AND IDENTIFY THE CONTENTS FOR THE JURY.

2 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
3 OBJECT. NO FOUNDATION.

4 THE COURT: WELL, HE CAN ONLY REFER TO WHAT'S
5 IN THE ENVELOPES WITHOUT IDENTIFYING WHERE THEY CAME
6 FROM. HE CAN SEE NOTATIONS.

7 MS. ABRAMSON: I'M OBJECTING, HOWEVER, BASED
8 ON HIS QUALIFICATIONS THUS FAR IN THIS AREA.

9 THE COURT: OVERRULED.

10 Q BY MR. CONN: NOW, SIR, ARE YOU FAMILIAR
11 WITH SHOTGUN ROUNDS?

12 A YES.

13 Q AND CAN YOU TELL US HOW YOU ARE FAMILIAR
14 WITH SHOTGUN ROUNDS.

15 A I'VE FIRED A SIGNIFICANT NUMBER OF
16 THEM. I'VE STUDIED THEIR BALLISTIC
17 CHARACTERISTICS. THIS IS A TOPIC OF RESEARCH THAT
18 WAS GOING ON AT ABERDEEN PROVING GROUND WHEN I WAS
19 THERE. I'VE SHOT THEM IN MY OWN RANGE. AND HAVE

20 DISASSEMBLED A FAIR NUMBER OF THEM.

21 Q OKAY. LET ME SHOW YOU WHAT HAS BEEN
22 MARKED IN THIS CASE AS 48-O, WHICH IS A TRANSPARENT
23 ENVELOPE CONTAINING AN OBJECT INSIDE.

24 DO YOU RECOGNIZE WHAT IS INSIDE THAT
25 ENVELOPE?

26 MS. ABRAMSON: MAY I APPROACH, YOUR HONOR?

27 THE COURT: SURE.

28 THE WITNESS: YES. THIS APPEARS TO BE A --

40409

1 WHAT WE CALL A STANDARD FIBER WADDING OUT OF A
2 12-GAUGE ROUND.

3 Q BY MR. CONN: CAN YOU TELL US WHAT A
4 PIECE OF WADDING IS?

5 A YES. IT IS USED INTERNAL TO A SHOTGUN
6 SHELL TO ASSIST IN THE JOB OF TRANSFERRING THE
7 ENERGY FROM THE POWDER, WHICH IS CHEMICAL ENERGY
8 RELEASED WHEN IT BURNS, INTO MECHANICAL ENERGY OF
9 THE PELLETS WHEN THEY GO DOWNRANGE.

10 Q OKAY. PERHAPS IF YOU WOULD, AT THIS
11 TIME, LET ME GIVE YOU A SHEET OF PAPER AND PERHAPS
12 YOU CAN JUST ILLUSTRATE FOR THE JURY VERY ROUGHLY
13 WHERE INSIDE THE SHOTGUN ROUND YOU WOULD EXPECT TO
14 FIND WADDING OF THE NATURE THAT YOU HAVE JUST

15 DESCRIBED TO THE JURY.

16 A YOU WOULD EXPECT -- DO WE HAVE A MARKER?

17 I'M SORRY. I DIDN'T BRING ONE.

18 THE COURT: THERE SHOULD BE ONE ON THE BACK

19 SIDE THERE.

20 THE WITNESS: I'LL STAND OVER HERE TRY NOT TO

21 BLOCK MY OWN ARM.

22 IF YOU TAKE INSIDE A 12-GAUGE SHOTGUN.

23 I'LL DRAW THE FLANGE DOWN HERE. I'LL TRY TO DO THIS

24 ROUGHLY TO SCALE.

25 NOW, THERE HAVE BEEN SOME CHANGES IN

26 SHOTGUN SHELLS OVER THE YEARS. BUT THE NORMAL

27 SHOTGUN SHELL WOULD HAVE A BRASS BASE LIKE YOU SEE

28 ON THESE, ALTHOUGH THERE ARE ALL POLYMER ONES NOW.

40410

1 YOU DON'T NEED TO DO THAT. AT A MINIMUM INSIDE THAT

2 BASE -- I'M GOING TO DRAW WALL THICKNESS HERE. WHAT

3 I'M GOING TO DO IS THIS SHELL IN CROSS-SECTION.

4 IN THE CENTER THERE'S A PRIMER. THIS

5 IS --

6 Q GO AHEAD. WHAT DO YOU MEAN BY A

7 PRIMER?

8 A THIS IS THE PART THAT THE FIRING PIN

9 HITS.

10 THIS IS A SMALL PIECE OF METAL THAT'S
11 DIFFERENT FROM THE BRASS CASE. YOU CAN SEE IN THE
12 BOTTOM, THAT THE FIRING PIN HITS. AND THIS CONTAINS
13 A VERY -- A VERY SMALL AMOUNT OF A VERY SENSITIVE --
14 USUALLY IT'S AN EXPLOSIVE. IT'S NOT IF IT'S -- IT
15 CAN ALSO BE SOME SORT OF PYROTECHNIC, BUT IT'S GOT
16 TO BE A MATERIAL THAT WILL BURST INTO FLAME AND
17 CAUSE AN IGNITION SPARK BY MECHANICAL IMPACT. SORT
18 OF LIKE THE CAP IN YOUR CAP GUN. YOU HAVE TO BE
19 ABLE TO HIT IT WITH A HAMMER AND GET A SPARK.
20 THAT'S WHAT YOUR FIRING PIN HITS. WHAT'S THAT
21 SITTING ON TOP OF THAT IS SITTING YOUR POWDER. AND
22 I PROBABLY -- SUPPOSED TO BE GRANULES OF POWDER. AND
23 THERE'S ALL SORTS OF SCHOOLS OF THOUGHT ABOUT HOW
24 YOU GRANULATE POWDER. BUT BASICALLY THERE'S POWDER
25 GRANULES THAT SIT RIGHT OVER THAT FRAME.
26 NOW, WHEN YOU SHOOT THIS ROUND, THIS
27 POWDER IS GOING TO BURN VERY DRAMATICALLY AND VERY
28 RAPIDLY, CREATING THOUSANDS AND THOUSANDS OF POUNDS

40411

1 OF PRESSURE THAT'S GOING TO BE CREATE A SHOT LOAD
2 ABOVE. YOU WOULD LIKE THIS GAS NOT TO BLOW BY A
3 STACK OF INDIVIDUAL PELLETS. IF THE PELLETS ARE
4 SITTING THERE, THEY GOT VOIDS ALL AROUND THEM. SO

5 IF YOU JUST DROP THE POWDER IN OVER -- THE PELLETS
6 IN OVER THE POWDER, FIRST OF ALL, THE POWDER WOULD
7 GET MIXED IN WITH THE PELLETS AND THAT WOULD NOT BE
8 GOOD AT ALL. BUT SECONDLY, THE GAS IS COMING OUT.
9 SO WHAT YOU DO IS PUT A PIECE OF WAD.

10 Q IS THAT TO ALLOW ALL OF THE ENERGY FROM
11 THE POWDER TO BE TRANSFERRED TO THE PELLETS RATHER
12 THAN SOME OF THE ENERGY BEING DISPERSED IN BETWEEN
13 THE PELLETS?

14 A RIGHT. I'M GOING TO DRAW TWO IN HERE
15 FOR REASONS YOU'RE GOING TO SEE IN A MOMENT. AND
16 THEN I'M GOING TO DRAW A TOP PIECE HERE. I NEED TO
17 COME BACK TO THOSE.

18 Q OKAY. WHEN YOU SAY THAT YOU'RE DRAWING
19 TWO, ARE THESE TWO SQUARE SPACES THAT YOU HAVE JUST
20 DRAWN INSIDE THAT SHOTGUN ROUND BOTH WADDING
21 SPACES?

22 A CAN BE. IN AN OLDER DESIGN SHELLS THEY
23 WERE. MORE RECENTLY THIS BECAME A -- WHAT
24 WINCHESTER, I THINK, PATENTED THE NAME. IT'S CALLED
25 A POWER PISTON. BASICALLY, IT'S A PIECE OF PLASTIC
26 THAT SEALS AGAINST THE WALLS OF THE SHOTGUN SHELL
27 AND LET'S LESS GAS BLOW BY AROUND THE EDGE AFTER THE
28 FIRING; WHEREAS IF THIS WERE A PIECE OF FIBROUS

1 WADDING, SOME GAS WOULD GET AROUND THE GAS EASIER.
2 SO YOU'LL EITHER SEE TWO WADS OR A POWER PISTON AND
3 THEN A WAD.

4 AND THEN THE CURRENT SHOTGUN SHELL
5 DESIGN. THIS WILL BE ALL --

6 MS. ABRAMSON: I'M GOING TO OBJECT TO
7 ANYTHING THAT ISN'T RELEVANT TO THIS CASE TO 1989.

8 THE COURT: OKAY. WHY DON'T YOU JUST
9 CONTINUE WITH THIS FIRST AND THEN IF THERE'S
10 SOMETHING RELEVANT TO THE NEW DESIGNS, YOU CAN DO
11 THAT.

12 MS. ABRAMSON: THANK YOU, YOUR HONOR.

13 THE WITNESS: THE BIRD SHOT IN THIS CASE
14 REFLECTS THE NEW DESIGN WHICH IS YOU HAVE A CUP THAT
15 ACTUALLY ATTACHES ITSELF. IT'S ATTACHED TO THIS.
16 AND YOU ACTUALLY PUT A SHOCK ABSORBER BETWEEN THE
17 SHOCK AND THIS POWER PISTON. AND I GOT AN EXAMPLE
18 OF THAT, BUT THERE'S ALSO SOME IN THE EVIDENCE.

19 NOW, YOU HAVE YOUR POWER PISTON, YOU
20 HAVE A LITTLE PLASTIC SHOCK ABSORBER IN THERE AND
21 THEN ALL THE SHOT FITS IN THIS CUP, AND THIS PISTON
22 GIVES YOU MUCH BETTER SEAL AGAINST THE SIDE OF THE
23 SHELL, ESPECIALLY WHEN PRESSURE EXPANDS IT. AND
24 THEN THE SHOT --

25 Q BY MR. CONN: SO THAT CUP, THEN, WOULD
26 BE USED IN LIEU OF BOTH THE CUP THAT WOULD APPEAR
27 HERE AS WELL AS THE POWER PISTON?

40413

1 THE POWER PISTON AND CUP ARE ENTERED. YOU WOULDN'T
2 HAVE TO DO IT THAT WAY. YOU COULD PUT A PIECE OF
3 WADDING BETWEEN THE TWO AND USE A PLASTIC CUP AND
4 PLASTIC PISTON THIS. ONE OF THESE IS THIS PISTON.

5 Q AND ABOVE THAT?

6 A AND ABOVE HERE YOU HAVE YOUR SHOT. I'M
7 NOT GOING TO DRAW IN ALL THE -- I KNOW I'M NOT
8 DRAWING IT TO SCALE ON THIS DRAWING, BUT YOUR
9 BUCKSHOT WOULD THEN BE STACKED TIGHT HERE.

10 AND THEN THERE'S TWO STRATEGIES ON
11 CLOSURE. ONE, YOU CAN PUT A PIECE LIKE I'VE SHOWN
12 HERE, OR -- NO, I CAN'T BRING -- I DIDN'T BRING A LIFE
13 ROUND. YOU CAN CLOSE THE END UP LIKE A TULIP AND
14 ACTUALLY USE THE WALLS OF THE SHELL TO CLOSE THE END
15 WITH NO BARRIER HERE.

16 Q IF THERE IS A BARRIER IN THERE, WHAT DO
17 YOU -- WHAT NAME DO YOU GIVE THAT?

18 A IT WOULD BE AN OVERSHOT WAD AND YOU CAN
19 CLOSE THE CAP.

20 Q OKAY. SO WADDING THEN CAN REFER TO BOTH
21 THE MATERIAL THAT CLOSES THE SHOT AS WELL AS THE
22 MATERIAL THAT SEPARATES THE SHOT FROM THE GUN

23 POWDER?

24 A YES.

25 Q ALL RIGHT, THANK YOU. YOU MAY RETURN TO
26 YOUR SEAT AT THIS POINT.

27 NOW, DIRECTING YOUR ATTENTION TO SOME OF
28 THE ITEMS ONCE AGAIN THAT WERE PREVIOUSLY MARKED AS

40414

1 PART OF THE EXHIBIT 48. I WAS DIRECTING YOUR
2 ATTENTION, FIRST OF ALL, TO 48-O.

3 CAN YOU TELL US WHAT THAT FIBROUS
4 LOOKING MATERIAL THERE IS.

5 A IT'S OBVIOUSLY A PIECE OF SHOTGUN WAD,
6 12-GAUGE. I'M JUST TELLING THAT FROM MY BALLING
7 THIS DIAMETER.

8 I CAN'T TELL BY LOOKING AT IT WOULD IT
9 BE OVER OR UNDER.

10 Q LET ME SHOW YOU ANOTHER ENVELOPE THAT
11 HOLDS SOMETHING WHICH LOOKS SOMEWHAT SIMILAR TO
12 THAT. AND THIS ENVELOPE IS 48-N. IT ALSO APPEARS
13 TO BE SOMEWHAT OF A FIBROUS MATERIAL, BUT IT APPEARS
14 TO BE THICKER THAN THE ONE THAT I JUST SHOWED YOU.

15 CAN YOU TELL US WHAT THAT IS?

16 A THIS LOOKS CLEARLY AS AN UNDERSHOT WAD.

17 Q CAN YOU TELL US WHY THE UNDERSHOT WAD

18 APPEARS TO BE THICKER THAN THE WADDING THAT I HAVE
19 JUST SHOWN YOU WHICH HAS BEEN MARKED 48-O?
20 A ALL THE STUFF ON THE TOP DOES, IF THERE
21 IS ONE, IS PROTECT THE SHOT, I MEAN, DURING
22 TRANSPORT, BECAUSE YOU WANT THE SHOT NOT TO DAMAGE
23 ITSELF. ROUND SHOT FLIES TRUER AND BETTER THAN BENT
24 UP SHOT.
25 SO AS MUCH AS POSSIBLE, AND PART OF THE
26 REASON THESE DESIGNS ARE POPULAR, IS TO KEEP THE
27 SHOT FROM DAMAGING ITSELF ON THE BARREL OR BENDING
28 ITSELF THROUGH IMPACT ON ONE ANOTHER.

40415

1 THERE'S ALSO ANOTHER REASON, YOU CAN --
2 IF YOU LOOK CLOSELY AT THAT WAD, YOU'LL SEE IT HAS
3 THE DESIGN. IT LOOKS PRETTY CLEARLY LIKE IT'S TAKEN
4 THE IMPRESSION OF THE POWER PISTON. SO THAT'S
5 ALMOST A DEAD GIVE-AWAY YOU'RE LOOKING AT THE
6 BOTTOM.
7 Q ALL RIGHT. NOW, DIRECTING YOUR
8 ATTENTION TO A THIRD ENVELOPE, WHICH HAS BEEN MARKED
9 48-M, THIS APPEARS TO BE A PIECE OF PLASTIC SIMILAR
10 IN SIZE OR IDENTICAL IN SIZE TO THE TWO PREVIOUS
11 OBJECTS THAT I'VE SHOWN YOU.
12 CAN YOU TELL US WHAT THAT IS.

13 A PRETTY CLOSE. THIS IS JUST THE PISTON
14 ARRANGEMENT THAT I TOLD YOU ABOUT. AND IF YOU LOOK
15 VERY CLOSELY, YOU'LL HAVE TO HAND IT ROUND TO THE
16 JURY SO THEY CAN SEE IT. YOU SEE HOW THE BOTTOM
17 EDGE OF THAT IS BLACKENED BUT NOT THE TOP EDGE?
18 LOOK AT THE EDGE AND YOU CAN SEE ONLY ONE PART IS
19 BLACKENED.

20 THAT'S BECAUSE --

21 Q WHAT WAS THE NUMBER ON THAT?

22 A 48-M.

23 THE WAY THE PISTON IS DESIGNED, IT'S
24 SORT OF A -- IT'S GOT A LITTLE BIT OF A CAPTURE SHELL
25 IN THE BOTTOM.

26 MAY I DRAW -- THE BASE OF THE POWER
27 PISTON TYPICALLY IS OF A DESIGN LIKE THIS. THEN
28 I'LL HAVE SOME OTHER DETAIL AT THE TOP. BUT WHAT IT

40416

1 USES IS THE PRESSURE FROM THE POWDER TO EXPAND THE
2 FLANGE AND PROVIDE A SEAL.

3 AND IF YOU LOOK AT THAT YOU CAN SEE THE
4 EXPLODING POWER EXPANDED THE FLANGE AND THAT'S WHAT
5 CREATED THE DARK RIM YOU SEE ON THE PISTON.

6 Q SO THE BLACK RIM THEN WOULD BE THE
7 PORTION THAT IS CLOSEST TO THE POWDER?

8 A YES.

9 Q OKAY. AND THEN DIRECTING YOUR ATTENTION
10 TO THE LAST ENVELOPE THAT I HAVE PULLED FROM EXHIBIT
11 48, THIS PARTICULAR ENVELOPE IS LABELED 48-C. CAN
12 YOU TELL US WHAT THIS LARGE PLASTIC OBJECT IS INSIDE
13 THAT ENVELOPE.

14 A AND THIS IS AN INTEGRAL -- AND YOU'LL
15 HAVE TO PASS IT AROUND SO THEY CAN SEE IT. IT IS AN
16 INTEGRAL SHOT PISTON AND CUP. YOU CAN SEE UP HERE
17 RIGHT UNDER THE RED TAG, YOU CAN SEE SORT OF A
18 RUMPLED AND -- THIS IS A TERRIBLE DISTANCE FOR THEM
19 TO SEE. BUT YOU CAN SEE SORT OF A RUMPLED CUP.
20 THEN THIS CENTER SECTION YOU'LL SEE IS A LITTLE
21 SHOCK ABSORBER. THAT'S JUST SO WHEN THE POWDER GETS
22 A JOLT IT DOESN'T FLATTEN THE FIRST LAYER OF SHOT,
23 ABSORBING THE SHOCK. AND THEN THE PISTON EXPANDS
24 UNDERNEATH THERE. IF YOU LOOK AT THE BOTTOM OF THIS
25 RIM RIGHT HERE, YOU'LL SEE THE BLACK RING AGAIN.

26 Q OKAY. AND COULD YOU TELL FROM LOOKING
27 AT THIS PARTICULAR OBJECT WHETHER THIS WOULD HAVE
28 BEEN PART OF THE ROUND THAT YOU IDENTIFIED AS NO. 4

40417

1 BUCKSHOT OR WHETHER IT WOULD HAVE BEEN PART OF THE
2 ROUND THAT YOU IDENTIFIED AS EIGHT AND A HALF BIRD

3 SHOT?

4 A THIS IS CLEARLY BIRD SHOT.

5 Q CAN YOU TELL US HOW YOU KNOW THAT.

6 A IF YOU LOOK AT THE CUP IN THIS, YOU'LL

7 SEE THE CUP HAS ACQUIRED A MOTTLING, DENTING, FROM

8 ACCELERATING THE SHOT. AND SO IN SOME SENSE DURING

9 THE FIRING PROCESS THE SHOT LEAVES A SIGNATURE ON

10 THE CUP. AND IF YOU'RE SHOOTING NO. 4, YOU LEAVE

11 BIG SIGNATURES. IF YOU SHOOT BIRD SHOT, IN EIGHT

12 AND A HALF THERE'S LIKE 400-AND-SOME-ODD PELLETS.

13 SO YOU LEAVE A VERY DIFFERENT MOTTLED APPEARANCE.

14 Q WHAT TYPE OF APPEARANCE -- IF YOU CAN

15 JUST DESCRIBE THAT A LITTLE BIT FURTHER, WHAT TYPE

16 OF APPEARANCE DO YOU SEE ON THAT PARTICULAR OBJECT

17 AS IN FRONT OF YOU AT THIS TIME?

18 A IT'S PRETTY CLEARLY MOTTLED; THAT IS

19 RIPPLED ON A SMALL SCALE.

20 Q ALL RIGHT.

21 A CONSISTENT WITH BIRD SHOT.

22 Q ALL RIGHT. AT THIS TIME IF YOU WOULD

23 PLEASE RETURN THOSE FOUR ENVELOPES TO THIS LARGER

24 ENVELOPE. I THINK WE'RE FINISHED WITH THIS.

25 NOW, AFTER YOU CONDUCTED THE EXPERIMENTS

26 THAT YOU DID, THE FIRING OF THE WEAPON THAT YOU

27 OBTAINED AND THE AMMUNITION THAT YOU OBTAINED, DID

28 YOU GO ABOUT MAKING AN EFFORT TO RECONSTRUCT THE

1 SHOOTING THAT TOOK PLACE IN THIS CASE?

2 MS. ABRAMSON: OBJECTION, YOUR HONOR.

3 THE COURT: AND THE NATURE OF THE OBJECTION?

4 MS. ABRAMSON: BEYOND HIS EXPERTISE TO
5 RECONSTRUCT.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES.

8 Q BY MR. CONN: NOW, WHAT WAS THE FIRST
9 STEP THAT YOU UNDERTOOK IN YOUR EFFORT TO
10 RECONSTRUCT THE SHOOTING IN THIS CASE?

11 A BASICALLY, TO COLLECT AND SUMMARIZE ALL
12 THE MEDICAL INFORMATION ON THE WOUNDS. THE STARTING
13 PLACE WOULD BE THE WOUNDS.

14 Q OKAY. AND WHAT INFORMATION DID YOU RELY
15 UPON IN COLLECTING AND EVALUATING THAT MEDICAL
16 INFORMATION?

17 A WE HAD THE AUTOPSY REPORTS AND WE HAD
18 SEVERAL --

19 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
20 OBJECT TO THE USE OF THE WORD "WE."

21 THE COURT: WELL, PERHAPS IF THERE IS MORE
22 THAN ONE PERSON INVOLVED, YOU CAN IDENTIFY WHO IT
23 WAS.

24 MR. CONN: YES.

25 Q DID YOU WORK ON THIS PROJECT ALONE OR
26 DID YOU HAVE ASSISTANTS FROM OTHER PERSONS AT

27 FAILURE ANALYSIS ASSOCIATES?

28 A I WAS ASSISTED BY OTHERS AT FAILURE

40419

1 ANALYSIS.

2 Q CAN YOU TELL US WHO ASSISTED YOU IN THAT
3 REGARD.

4 A PRIMARILY IT WAS DEVINDER GREWAL. HE'S
5 ONE OF OUR ENGINEERS IN OUR BIOMECHANICS DEPARTMENT
6 AND HE MANAGES THE INTERFACE OF THE BIOMECHANICS
7 DEPARTMENT AND ANY SERVICES I NEEDED FROM THEM.

8 Q CAN YOU TELL US WHAT THE BIOMECHANICS
9 DEPARTMENT IS.

10 A WELL, IT'S THE GROUP WITHIN FAILURE
11 ANALYSIS THAT DOES OUR BIODYNAMICS, OUR CADAVER
12 TESTING, OR WORK ON BIOLOGICAL STRUCTURES AND THEIR
13 RESPONSE, THINGS OF THAT NATURE.

14 Q CAN YOU TELL US WHAT IS MEANT BY THE
15 TERM BIODYNAMICS.

16 A YES. BASICALLY, THE DYNAMIC RESPONSE TO
17 HUMAN TISSUE, PARTICULARLY IN ACCIDENTS AND
18 INCIDENTS, HOW IT RESPONDS TO RAPID TRAUMATIC
19 INJURY, IS OBVIOUSLY AN IMPORTANT QUESTION FOR
20 THINGS THAT RELATE TO ACCIDENTS AND INCIDENTS WHERE
21 THAT KIND OF ENERGY IS EXPERIENCED BY A HUMAN BODY.

22 Q AND CAN YOU TELL US, ARE YOU FAMILIAR
23 WITH THE BACKGROUND AND THE TRAINING OF MR. GREWAL?
24 A YES.
25 Q CAN YOU TELL US --
26 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
27 OBJECT AND ASK TO APPROACH: IN FACT, I'M ALSO GOING
28 TO ASK THAT MR. GREWAL BE NOT PERMITTED TO LISTEN

40420

1 THROUGH THIS WITNESS' TESTIMONY. IF HE IS SOMEHOW
2 RELIED ON, HE MAY BE A WITNESS, AND HE IS IN THE
3 AUDIENCE.
4 THE COURT: ALL RIGHT. THE REQUEST TO
5 APPROACH IS DENIED AND THE REQUEST TO HAVE
6 MR. GREWAL LEAVE THE COURTROOM IS DENIED.
7 THE WITNESS: MR. GREWAL HAS A BACHELOR'S --
8 HE HAS A BACHELOR'S AND A MASTER'S AND ONE IS FROM
9 STANFORD AND ONE BERKELEY, AND I DON'T KNOW WHICH IS
10 WHICH.
11 MS. ABRAMSON: MOVE TO STRIKE. NO PERSONAL
12 KNOWLEDGE.
13 THE COURT: OVERRULED.
14 Q BY MR. CONN: ARE THOSE BACHELOR'S AND
15 MASTER'S IN THE AREA OF MECHANICAL ENGINEERING?
16 A YES.

17 MS. ABRAMSON: OBJECTION. LEADING.

18 THE COURT: OVERRULED.

19 Q BY MR. CONN: AND IN ADDITION TO THE
20 AUTOPSY REPORTS, DID YOU RELY UPON ANY OTHER
21 INFORMATION IN ASSESSING AND EVALUATING THE WOUNDS
22 IN THIS PARTICULAR CASE?

23 A YES. AS I INDICATED BEFORE, WE HAD
24 SEVERAL HUNDRED PHOTOGRAPHS, WHICH I HAD SCANNED AND
25 THEN PUT ON LASER DISKS SO WE COULD MORE EASILY
26 MANIPULATE THEM.

27 Q NOW, AS PART OF YOUR DETERMINATION OF
28 THE INCIDENT THAT OCCURRED IN THE COURSE OF THIS

40421

1 PARTICULAR SHOOTING, DID YOU MAKE A DETERMINATION AS
2 TO THE NUMBER OF SHOTS THAT WERE FIRED DURING THE
3 COURSE OF THE INCIDENT?

4 A YES.

5 Q AND DID YOU DO THAT AS A -- AS THE FIRST
6 STEP TO DETERMINE FURTHER INFORMATION OR TO REACH
7 FURTHER CONCLUSIONS CONCERNING THIS SHOOTING?

8 A IT CERTAINLY WAS THE BEGINNING OF OUR
9 EFFORTS TO RECONSTRUCT WHAT HAPPENED.

10 Q OKAY. AND CAN YOU TELL US HOW YOU WENT
11 ABOUT DETERMINING THE NUMBER OF SHOTS THAT WERE

12 FIRED IN THIS CASE.

13 A YES. NOT A SIMPLE PROCESS, BUT IN

14 GENERAL.

15 WE FIRST STARTED WITH THE NUMBER OF

16 WOUNDS; THAT IS, AN UPPER -- OR AT LEAST LET ME PUT

17 IT THIS WAY -- THE NUMBER OF SHOTS THAT ACTUALLY

18 STRUCK A BODY IS ULTIMATELY BOUNDED BY THE NUMBER OF

19 WOUNDS, AS A MATTER OF LOGIC.

20 THEN IN THIS PARTICULAR CASE WE HAVE A

21 NUMBER OF WOUNDS THAT HAVE BEEN IDENTIFIED AND

22 DISCUSSED ALREADY. AND AFTER IDENTIFYING ALL THE

23 WOUNDS AND ENUMERATING THEM, THEN THE PROCESS

24 CONSISTS OF TRYING TO DETERMINE FROM THE GEOMETRY,

25 NOT ONLY OF THE BODIES, BUT OF THE SHOTS THEMSELVES,

26 AND THEN THE CRIME SCENE LOCATION AND THE

27 SURROUNDING PHYSICAL EVIDENCE, WHAT POTENTIAL

28 COMBINATIONS OF WOUNDS COULD HAVE BEEN CREATED BY

40422

1 THIS SAME SHOT, BECAUSE IN THIS PARTICULAR CASE

2 SINCE A SHOTGUN IS BEING USED FOR ALL THESE SHOTS,

3 AT LEAST ALL THE SHOTS THAT WE DETERMINED EXISTED,

4 THERE ARE MULTIPLE PROJECTILES IN EACH SHOT. AND SO

5 WHEN YOU HAVE MULTIPLE PROJECTILES, YOU CAN

6 OBVIOUSLY HAVE DEFECTS CREATED BY THOSE PROJECTILES,

7 DIFFERENT TARGETS FROM THE SAME SHOT.

8 Q NOW, HOW DO YOU GO ABOUT EVALUATING THE
9 POSSIBLE COMBINATIONS OF SHOTS THAT WERE FIRED SO AS
10 TO REACH AN ACCURATE CONCLUSION CONCERNING THE
11 NUMBER OF SHOTS THAT WERE FIRED?

12 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
13 OBJECT TO THE QUESTION AS ASSUMING FACTS NOT IN
14 EVIDENCE.

15 THE COURT: OVERRULED.

16 THE WITNESS: BASICALLY, YOU LOOK AT THE
17 GEOMETRY OF THE WOUNDS IN THE BODY. YOU ALSO LOOK
18 AT THE GEOMETRY OF THE SCENE. AND SO I HAD TO
19 DISPATCH ENGINEERS TO, AS I EXPLAINED EARLIER,
20 MEASURE THE SCENE AND DIGITALLY RECONSTRUCT THE
21 PHYSICAL ARRANGEMENTS THAT WERE AVAILABLE TO THE
22 VICTIMS DURING THE TIME OF THE SHOOTING.

23 AND THEN YOU HAVE INDIVIDUAL WOUNDS AND
24 YOU HAVE A SCENE AND THERE IS A FINITE NUMBER OF
25 PERMUTATIONS TO THOSE. AND YOU START LOOKING AT
26 THEM IN SERIES TO SEE WHAT WOUNDS COULD HAVE BEEN
27 CREATED BY THE SAME SHOT, BY SIMILAR SHOTS, FROM THE
28 GEOMETRY OF THE WAY THE VICTIMS WERE ULTIMATELY

40423

1 FOUND, FROM WHAT EVIDENCE AT THE SCENE INDICATED

2 THEY MAY HAVE BEEN INITIALLY.

3 AND USING THE INFORMATION ABOUT THEIR
4 GEOMETRIES, THEIR POSITIONS, AND THE DIRECTIONS OF
5 THE WOUNDS ON THE INDIVIDUAL THEMSELVES COMBINED
6 WITH GEOMETRIC CONSTRAINTS ON THE SCENE ITSELF, YOU
7 THEN START CONSTRUCTING HYPOTHESES ABOUT THE
8 ARRANGEMENT OF SHOTS, WHICH WORK FINE UNTIL YOU FIND
9 A CONTRADICTION. AND THEN YOU HAVE TO PROJECT ON A
10 HYPOTHESIS AND IT'S A PROCESS OF HYPOTHESIZING,
11 TESTING AGAINST THE EVIDENCE, HYPOTHESIZING, TESTING
12 AGAINST THE EVIDENCE, AND FINALLY COMING UP WITH A
13 HYPOTHESIS THAT CONSISTENTLY EXPLAINS ALL THE MAJOR
14 WOUNDS AT THE RIGHT PLACE AT THE RIGHT TIME.

15 Q SO AS PART OF THAT DETERMINATION THAT
16 YOU MADE IN THIS CASE, NOT ONLY A CONSIDERATION OF
17 THE NUMBER OF SHOTS THAT WERE FIRED BUT ALSO THE
18 SEQUENCE OF SHOTS THAT WERE FIRED?

19 A YES. IN A SCENE LIKE THIS YOU CAN'T DO
20 A MICROTHEORY ON EACH SHOT.

21 Q WHAT DO YOU MEAN A MICROTHEORY ON EACH
22 SHOT?

23 A JUST LIKE ANY OTHER MAJOR SCENE, EVENT
24 OR SCENE YOU INVESTIGATE. THERE ARE INDIVIDUAL
25 PIECES OF EVIDENCE THAT IF YOU PICKED UP THIS PIECE
26 OF EVIDENCE, THERE ARE PROBABLY, YOU KNOW, 20
27 DIFFERENT WAYS THIS EVIDENCE COULD HAVE COME TO LOOK
28 LIKE IT IS IF YOU JUST HANDED THAT TO SOMEONE IN A

1 DARK ROOM. BUT WHERE IT IS IN THE SCENE CONSTRAINS
2 THE NUMBER OF POSSIBLE WAYS THAT IT COULD HAVE
3 GOTTEN TO THAT CONDITION.

4 AND THE SAME THING IS TRUE WITH THESE
5 SHOTS. YOU CAN TAKE A SINGLE SHOT IN ISOLATION AND
6 SAY THAT COULD HAVE HAPPENED FROM A NUMBER OF
7 DIFFERENT GEOMETRIES, BUT IT DIDN'T HAPPEN IN
8 ISOLATION. IT HAPPENED AS PART OF A LARGER
9 SEQUENCE. SO YOU CAN'T END UP MICROTHEORYING EACH
10 LITTLE PART. THE CHALLENGE IS TO COME UP WITH A
11 THEORY THAT EXPLAINS THE SEQUENCE AND THE GEOMETRY
12 AS BEST THE AVAILABLE EVIDENCE PERMITS.

13 AND OF COURSE AVAILABLE EVIDENCE IS
14 NEVER PERFECT.

15 Q OKAY. AND AS PART OF YOUR CONCLUSIONS
16 THAT YOU REACHED IN THIS CASE, DID YOU PREPARE SOME
17 ILLUSTRATIONS TO DEPICT THE CONCLUSIONS CONCERNING
18 THE NUMBER OF SHOTS THAT WERE FIRED AND THE SEQUENCE
19 OF THOSE SHOTS?

20 A YES.

21 MR. CONN: YOUR HONOR, AT THIS TIME I HAVE
22 SOME ADDITIONAL EXHIBITS THAT I WOULD LIKE TO MARK.

23 THERE IS A PHOTOGRAPH WHICH HAS NOT YET
24 BEEN MARKED, DEPICTING -- THERE'S A PHOTOGRAPH THAT I

25 BELIEVE THE CLERK HAS AT THIS TIME. I SHOULD PULL
26 THAT.
27 THE COURT: DID YOU WANT TO MARK THIS
28 DIAGRAM?

40425

1 MR. CONN: YES. MAY WE MARK THAT AS --
2 THE COURT: 246.
3 MR. CONN: --246?
4 WHILE WE ARE LOOKING FOR THOSE
5 PHOTOGRAPHS, I HAVE ANOTHER LARGE EXHIBIT THAT HAS
6 NOT PREVIOUSLY BEEN MARKED, WHICH DEPICTS AN
7 ILLUSTRATION OF WHAT IS MARKED AS SHOT.1A.
8 MAY THIS BE MARKED AS 247?
9 Q SIR, AT THIS TIME I WOULD LIKE TO SHOW
10 YOU THE ILLUSTRATION THAT HAS BEEN MARKED AS 247.
11 CAN YOU TELL US WHAT IS DEPICTED IN THAT
12 ILLUSTRATION.
13 A YES. THIS IS MY RECONSTRUCTION OF THE
14 FIRST SHOT --
15 MS. ABRAMSON: OBJECTION, YOUR HONOR. ASK TO
16 APPROACH.
17 THE COURT: OKAY. WE'LL HAVE A BRIEF HEARING
18 OUTSIDE THE PRESENCE OF THE JURY.
19 (THE FOLLOWING PROCEEDINGS

20 WERE HELD AT THE BENCH:)

21

22 THE COURT: YES.

23 MS. ABRAMSON: MY OBJECTION WENT TO THE USE

24 OF HIS WORD RECONSTRUCTION. I DON'T THINK THERE'S

25 BEEN ANY BASIS LAID ON THE RECORD THAT HE WAS ABLE

26 TO, IN FACT, RECONSTRUCT WHAT ACTUALLY HAPPENED. WE

27 KNOW HE LACKS MEDICAL EXPERTISE TO DO SO. AND

28 COUNSEL HAD INDICATED WHEN WE WERE HAVING DEBATES

40426

1 ABOUT THE TYPE OF VEHICLE HE WAS GOING TO BE ABLE TO

2 USE TO DEMONSTRATE THIS, THAT COUNSEL WAS MERELY

3 GOING TO REFER TO THESE THINGS AS ILLUSTRATIONS OF A

4 THEORY.

5 IF THEY WANT TO CALL THEM ILLUSTRATIONS

6 OF HIS THEORY, FINE. BUT I THINK TO GIVE IT THE

7 TERM "RECONSTRUCTION" ADDS A DIGNITY AND WEIGHT THAT

8 THUS FAR THERE'S BEEN NO RECORD LAID TO SATISFY IT.

9 HE'S TALKED ABOUT GEOMETRY, BUT WE HAVEN'T HEARD

10 WHAT HIS GEOMETRY IS. AND HIS PREVIOUS TESTIMONY

11 WAS THAT HE DECIDED WHERE TO PLACE THE FIGURES. HE

12 DECIDED HOW TO DRAW THE TRAJECTORY LINE. AND I

13 DON'T WANT THE JURY TO HAVE THE FALSE IMPRESSION

14 THAT SOMEHOW THIS WAS ALL MATHEMATICALLY ARRIVED AT

15 IN SOME PREDETERMINED WAY.

16 AND I DO APOLOGIZE, YOUR HONOR. I HAVE
17 A MONSTER MIGRAINE RIGHT NOW.

18 THE COURT: OBVIOUSLY, YOU DON'T HAVE TO
19 APOLOGIZE.

20 MS. ABRAMSON: I MEAN, I'M NOT BEING VERY
21 ARTICULATE.

22 THE COURT: MR. CONN.

23 MR. CONN: THAT WAS THE PURPOSE OF THE
24 HEARING WE CONDUCTED IN THIS COURT. HE USED THE
25 TERM RECONSTRUCTION DURING THE HEARING. COUNSEL
26 WITHDREW HER OBJECTION. SHE HAD NO OBJECTION TO THE
27 TESTIMONY OF THIS WITNESS. IT'S BEEN CLEAR, I
28 THINK, FROM THE START THAT HE WAS GOING TO TESTIFY

40427

1 TO HIS RECONSTRUCTION OF THIS INCIDENT, AND I WOULD
2 SUBMIT THAT HIS TESTIMONY IS ADMISSIBLE AT THIS
3 TIME.

4 THE COURT: ALL RIGHT. I DON'T SEE THAT THE
5 USE OF THE WORD "RECONSTRUCTION" IS PREJUDICIAL IN
6 ANY WAY. IT'S CERTAINLY SUBJECT TO A FOUNDATION
7 BEING ESTABLISHED BY THE PROSECUTION AND ALSO
8 SUBJECT TO CHALLENGE BY THE DEFENSE IN
9 CROSS-EXAMINATION. AND THIS IS JUST AN ILLUSTRATION

10 OF WHAT THIS WITNESS CLAIMS IS A RECONSTRUCTION, BUT
11 CERTAINLY IT'S UP TO THE -- HOPEFULLY, UP TO THE JURY
12 TO DETERMINE WHETHER OR NOT THERE'S ANY VALIDITY TO
13 HIS RECONSTRUCTION, WHETHER YOU CALL IT A THEORY OR
14 OTHERWISE. BUT I DON'T SEE THAT IT'S ANYTHING
15 PREJUDICIAL IN THE USE OF THE WORD ITSELF.
16 THEREFORE, THAT OBJECTION'S OVERRULED.

17 MS. ABRAMSON: YOUR HONOR, COULD I ASK THAT
18 WE TAKE OUR RECESS NOW INSTEAD OF LATER, NOT
19 INTERRUPT THIS, JUST BECAUSE I THINK I NEED ABOUT 10
20 MINUTES FOR THE MEDICINE TO WORK.

21 THE COURT: WHEN'D YOU TAKE IT?

22 MS. ABRAMSON: I TOOK IT HALF AN HOUR AGO.
23 IT'S JUST NOT WORKING. I WAS GOING TO HAVE SOME TEA
24 AND SEE IF THAT HELPS IT. I'LL HANG ON, IF YOU
25 LIKE, BUT I THOUGHT WE'D DO IT NOW, THEN IT WON'T
26 TAKE --

27 THE COURT: IF WE DO, THEN WE'LL JUST WORK
28 THROUGH UNTIL.

40428

1 MS. ABRAMSON: 4:30.

2 IS THAT OKAY WITH YOU?

3 THE COURT: GIVE YOU 10 MINUTES.

4 MS. ABRAMSON: WHY DON'T YOU, IN THE INTERIM,

5 MARKUP THE EXHIBITS.

6 (THE FOLLOWING PROCEEDINGS WERE
7 RESUMED IN OPEN COURT IN THE
8 PRESENCE OF THE JURY:)

9

10 THE COURT: WHAT WE'RE GOING TO DO IS JUST
11 TAKE A SHORT RECESS TO ALLOW THE PROSECUTOR TO MARK
12 ALL THE EXHIBITS HERE. AND RATHER THAN DO IT ONE AT
13 A TIME WHILE THE WITNESS IS ON THE WITNESS STAND AND
14 YOU'RE IN THE JURY BOX, IT'S EASIER JUST TO HAVE HIM
15 DO IT ALL AT ONCE. AND WE HAVE TO TAKE A RECESS AT
16 SOME POINT THIS AFTERNOON, SO WE'LL DO IT NOW AND
17 THEN WE'LL RESUME AND WORK THROUGH UNTIL THE END OF
18 THE DAY.

19 SO WE'LL ASK THAT YOU BE READY TO RETURN
20 IN APPROXIMATELY 10 MINUTES; AND HOPEFULLY BY THEN
21 THINGS WILL BE READY TO PROCEED.

22 (A RECESS WAS TAKEN FROM
23 2:40 P.M. TO 3:00 P.M.)

24

25

26

27

28

1 THE COURT: ALL RIGHT. WITHOUT THE JURY
2 PRESENT. I UNDERSTAND THAT THERE WAS A PROBLEM WITH
3 THE EXHIBITS. WE MISSED 243 AND 244.

4 MR. CONN: YES. IF WE COULD RE-NUMBER THEM,
5 ONCE AGAIN, RE-NUMBERING THE LAST TWO EXHIBITS.

6 THE COURT: OKAY. WHAT IS 243 THEN?

7 MS. TOWERY: A CHART.

8 THE COURT: WHICH CHART?

9 MS. NAJERA: HANDMADE WRITTEN PELLET CHART.
10 THAT'S 243.

11 THE COURT: ALL RIGHT.

12 MR. CONN: I'VE ALREADY MARKED SOME OF THESE
13 EXHIBITS BEFORE WE STARTED.

14 I WOULD LIKE TO MARK AS 244 A PHOTOGRAPH
15 OF THE EXTERIOR DOORS OF THE DEN. IT IS AN
16 EIGHT-AND-A-HALF BY ELEVEN INCHES IN SIZE, AND THESE
17 PHOTOGRAPHS ALSO DEPICT THE DESIGNATION SIMILAR TO
18 THE DESIGNATION FOR THE OTHER PHOTOGRAPHS BY DR. MC
19 CARTHY. THIS IS 1.EXTERIO.

20 245 WILL BE 2.EXTERIO; 246 --

21 THE COURT: WAIT A MINUTE -- YOU HAVE TO SAY
22 WHAT IT IS.

23 MR. CONN: 245 IS THE EXTERIOR OF THE WEST
24 DOOR.

25 MR. LEVIN: FRENCH DOOR.

26 MR. CONN: ONCE AGAIN, THIS DESIGNATION IS
27 CONTAINED ON ALL OF THE PHOTOGRAPHS.

28 I WOULD LIKE TO MARK 246 AS 3.EXTERIO;

1 247 IS DESIGNATED 1.DOOR ON THE PHOTOGRAPH.

2 MS. ABRAMSON: I HAVE TO SEE WHAT IT IS.

3 MR. CONN: 248 HAS THE DESIGNATION 2.DOOR ON
4 THE PHOTOGRAPH.

5 249 HAS DESIGNATION 1.TREE ON IT; AND
6 WITH 250 I WILL BEGIN THE SEQUENCE OF THE
7 ILLUSTRATIONS. 250 IS SHOT 1-A; 251 SHOT.1B; 252,
8 SHOT.2A; 253, SHOT.2B; 254, SHOT.3A; 255, SHOT.3B;
9 256, SHOT.4A; 277, SHOT.4B; 258, SHOT.5A; 259,
10 SHOT.5B; 260, SHOT.6A; 261, SHOT.6B; 262, SHOT.7A;
11 263, SHOT.7B; 264, SHOT.8A; 265, SHOT.8B, 266,
12 SHOT.9A; 267, SHOT.9B; 268, SHOT.10A; 269, SHOT.10B;
13 270, SHOT.11A; 271, SHOT.11B; 272, SHOT.12A; 273,
14 SHOT.12B; AND 274 WILL BE THE DIAGRAM OF THE SHOTGUN
15 SHELL DRAWN BY DR. MC CARTHY.

16 MS. ABRAMSON: SO WE'RE RE-NUMBERING THAT.

17 THE COURT: OKAY. THAT WAS SHORT-LIVED 246
18 AND NOW IS 274.

19 MR. CONN: YES, YOUR HONOR. THANK YOU.

20 THE COURT: ARE WE READY FOR THE JURY?

21 MR. CONN: YES.

22 THE COURT: OKAY.

23 (THE JURY ENTERED THE COURTROOM

24 AND THE FOLLOWING PROCEEDINGS
25 WERE HELD:)
26
27 THE COURT: OKAY. THE JURY IS BACK, AND THE
28 EXHIBITS HAVE BEEN MARKED.

40431

1 AT THE END OF THE TRIAL WHEN THE CASE IS
2 GIVEN TO THE JURY FOR DELIBERATIONS AND DECISION, AT
3 THAT POINT, YOU'LL HAVE THE EXHIBITS TO LOOK AT IN
4 THE JURY ROOM; AND ALSO, THE LAWYERS WILL COOPERATE
5 AND ASSIST THE COURT IN PREPARING A LIST OF ALL THE
6 EXHIBITS WITH A DESCRIPTIVE TITLE TO EACH EXHIBIT,
7 SO THAT THAT WOULD ASSIST YOU IN FINDING THE
8 PARTICULAR EXHIBITS THAT YOU WANT. JUST AS YOU CAN
9 SEE, WE HAVE QUITE A FEW EXHIBITS. RIGHT NOW WE'RE
10 AT EXHIBIT 274. THAT'S 274 SEPARATE EXHIBITS. AND
11 THERE'S QUITE A WAYS TO GO YET. SO TO ASSIST YOU IN
12 FINDING THOSE YOU WANT TO FIND DURING YOUR
13 DELIBERATIONS, WE'LL HAVE A LIST WITH THEIR
14 RESPECTIVE TITLES.

15 ALL RIGHT. THE PEOPLE MY CONTINUE THEIR
16 EXAMINATION OF THE WITNESS.

17 MR. CONN: THANK YOU.

18 Q DR. MC CARTHY, CURRENTLY BEFORE THE JURY

19 IS THE LARGE ILLUSTRATION DEPICTING SHOT.1A, WHICH
20 HAS BEEN DESIGNATED EXHIBIT 250 IN THIS PROCEEDING.
21 CAN YOU TELL US, BEFORE WE GET INTO THE
22 DETAILS OF WHAT YOU RELIED UPON IN FORMING AN
23 OPINION CONCERNING THIS PARTICULAR SHOT, WHAT WAS IT
24 THAT THAT ILLUSTRATION DEPICTS?

25 A BASICALLY, THIS IS A COMPUTER-GENERATED
26 PICTURE.

27 MS. ABRAMSON: OBJECTION, YOUR HONOR.

28 THE COURT: SUSTAINED. THE ANSWER IS

40432

1 STRICKEN.

2 Q BY MR. CONN: CAN YOU JUST DESCRIBE FOR
3 US AT THIS TIME WHAT IT IS THAT THAT PARTICULAR
4 ILLUSTRATION DEPICTS TO YOU.

5 A IT ILLUSTRATES THE SCENE IN THE DEN AS I
6 HAVE RECONSTRUCTED IT FROM THE AVAILABLE PHYSICAL
7 EVIDENCE.

8 Q THE TWO FIGURES THAT ARE -- APPEAR TO BE
9 SEATED ON THE COUCH, CAN YOU TELL US WHAT PERSONS
10 THEY SEEK TO DEPICT IN THIS CASE.

11 A YES. I HAVE TAKEN A STANDARD MODEL AND
12 SCALED IT HEIGHTH-WISE TO MARY MENENDEZ AND JOSEPH
13 MENENDEZ; THAT IS, THE FIGURE THERE IS A STANDARD

14 OFF-THE-SHELF COMPUTER MODEL OF A HUMANOID FIGURE
15 THAT HAS BEEN SCALED HEIGHT-WISE TO THE TWO
16 DECEDENTS AND THEN PLACED IN THE SCENE BY THE
17 COMPUTER IN THE POSE HERE THAT I HAVE SELECTED.

18 MS. ABRAMSON: OBJECTION, YOUR HONOR. MOVE
19 TO STRIKE AND ASK TO APPROACH.

20 THE COURT: ALL RIGHT. THE OBJECTION'S
21 SUSTAINED. THE REFERENCE TO PLACEMENT BY A COMPUTER
22 IS STRICKEN. THE JURY IS ADMONISHED TO DISREGARD
23 IT.

24 REQUEST TO APPROACH IS DENIED.

25 THE WITNESS IS ADMONISHED TO REFER TO
26 WHAT YOU DID; NOT ANYTHING ELSE THAT HAS OCCURRED
27 HERE, BUT ONLY WHAT YOU DID.

28 THE WITNESS: I'M SORRY, YOUR HONOR.

40433

1 MR. CONN: OKAY.

2 Q LET ME DIRECT YOUR ATTENTION THEN TO THE
3 FIGURE ON THE LEFT.

4 WHICH OF THE TWO DECEDENTS IN THIS CASE
5 DOES THAT PURPORT TO DEPICT?

6 A ON THE PICTURE'S LEFT IS MARY MENENDEZ,
7 AND ON THE PICTURE'S RIGHT IS JOSE MENENDEZ.

8 Q NOW, THERE APPEARS TO BE, GOING THROUGH

9 OR TOUCHING THE OBJECTS DEPICTED IN THAT

10 ILLUSTRATION, A GREEN BAR.

11 WHAT DOES THAT PURPORT TO REPRESENT?

12 A THIS GRAPHICALLY REPRESENTS THE GENERAL

13 AXES OF THE FIRST SHOT THAT I HAVE RECONSTRUCTED

14 FROM THE EVIDENCE.

15 Q OKAY. NOW, BEFORE WE GET INTO THE

16 DETAILS OF WHAT THAT PURPORTS TO REPRESENT, DID YOU

17 RELY UPON CERTAIN PHOTOGRAPHS AND X RAYS OR

18 PHOTOGRAPHS OF X RAYS, IN FORMING A CONCLUSION

19 CONCERNING THAT FIRST SHOT?

20 A YES.

21 Q AND DO YOU HAVE THE PHOTOGRAPHS AND

22 X RAYS STORED IN SOME PLACE FOR YOUR REFERENCE?

23 A YES.

24 Q CAN YOU TELL US WHERE THOSE PHOTOGRAPHS

25 AND X RAYS ARE STORED AT THIS MOMENT?

26 A I HAVE CONVERTED THE PICTURE TO AN

27 ELECTRONIC IMAGE WHICH I HAVE STORED IN MY COMPUTER

28 HERE SO THAT I CAN PROJECT IT WHEN DESIRED.

40434

1 Q AT THIS TIME, WHAT I WOULD LIKE TO DO IS

2 GO THROUGH THE PHOTOGRAPHS AND THE X RAYS THAT

3 YOU'VE RELIED UPON IN FORMING AN OPINION IN REGARD

4 TO THIS PARTICULAR SHOT. AND I WILL REFER YOU TO
5 YOUR INDEXING SYSTEM AS WELL AS TO THE EXHIBIT
6 NUMBER THAT HAS BEEN GIVEN TO THOSE SAME PHOTOS AND
7 X RAYS THAT YOU WILL BE REFERRING TO.

8 MS. ABRAMSON: YOUR HONOR, WE'RE GOING TO
9 OBJECT TO ASKING THIS WITNESS WHAT HE RELIED UPON IN
10 THESE PHOTOGRAPHS BECAUSE HE LACKS THE EXPERTISE TO
11 DRAW THOSE CONCLUSIONS.

12 THE COURT: OVERRULED.

13 MR. CONN: ALL RIGHT. AT THIS TIME I WOULD
14 LIKE TO BEGIN --

15 MS. ABRAMSON: YOUR HONOR, I WOULD LIKE TO
16 APPROACH BASED ON A RULING THE COURT MADE YESTERDAY.

17 THE COURT: YES. I UNDERSTAND THAT, BUT AT
18 THIS POINT IT'S PREMATURE.

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

20 MR. CONN: AT THIS TIME I WOULD LIKE TO
21 DIRECT YOUR ATTENTION TO A PHOTOGRAPH THAT YOU HAVE
22 DESIGNATED 2.MARY AND WHICH WE HAVE MARKED IN THIS
23 PROCEEDING AS EXHIBIT 187.

24 IF YOU CAN CALL THAT UP ON YOUR COMPUTER
25 SCREEN. DOES THIS NEED TO BE TURNED ON HERE?

26 A JUST PUNCH THE LAST BUTTON -- NOT THAT
27 ONE. ON TOP. SEE THE ONE THAT SAYS "STANDBY"?
28 PUNCH IT FIRMLY ONCE. IT JUST TAKES A MINUTE TO

1 WARM UP.

2 THE COURT: ONE OF THE JURORS CAN'T SEE IT.

3 THE WITNESS: OKAY. NOW, I'M GOING TO BRING
4 THAT IMAGE ON THE SCREEN.

5 THE COURT: PERHAPS WE CAN DIM THE LIGHTS A
6 LITTLE BIT.

7 Q BY MR. CONN: OKAY. DIRECTING YOUR
8 ATTENTION TO THIS PARTICULAR PHOTOGRAPH, WHICH WE
9 HAVE MARKED AS 187 IN OUR PROCEEDINGS, CAN YOU TELL
10 US WHAT INFORMATION YOU RELIED UPON IN THIS
11 PHOTOGRAPH IN REACHING YOUR CONCLUSION CONCERNING
12 SHOT.1A.

13 A YES. I RELIED ON THE INFORMATION
14 CONCERNING THE PATTERN OF THE PELLET WOUNDS ON MARY
15 MENENDEZ' LEFT BREAST, AS ARE SHOWN HERE, AND IN
16 PARTICULAR, THE GEOMETRY OF THAT PATTERN.

17 Q WHAT DO YOU MEAN BY THE GEOMETRY OF THAT
18 PATTERN?

19 A NOTE THAT ALL THE INDICATIONS ARE
20 ADJACENT, THIS PROBABLY BEING THE FARTHEST, TO ALL
21 THE OTHER INDICATIONS; IN OTHER WORDS, THERE'S
22 NO -- THERE ISN'T LIKE A PELLET HERE AND A BUNCH OF
23 CUT INDICATIONS. THE INDICATIONS ARE ROUGHLY
24 CONTIGUOUS TO EACH OTHER.

25 Q WHAT SIGNIFICANCE DID THAT HAVE TO YOU?

26 A IT'S GOING TO HAVE SOME SIGNIFICANCE IN

27 WHAT WE'RE GOING TO DO WITH THESE INDICATIONS ON THE
28 LOWER RIGHT ARM AND TRY TO DECIDE WHAT SHOT THEY MAY

40436

1 BE ASSOCIATED WITH.

2 Q OKAY. I WOULD LIKE TO DIRECT YOUR
3 ATTENTION NOW TO A SECOND PHOTOGRAPH OF AN X RAY
4 WHICH YOU HAVE DESIGNATED 3.X RAY, AND WHICH WE HAVE
5 DESIGNATED 169.

6 A THAT'S THIS.

7 Q CAN YOU TELL US IN REGARD TO THIS
8 PARTICULAR X RAY --

9 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
10 OBJECT. THAT'S NOT A COMPLETE SHOWING OF IT AND
11 THERE WAS --

12 THE COURT: WELL --

13 THE WITNESS: I JUST HAVE TO MOVE IT UP AND
14 DOWN.

15 THE COURT: YOU CAN'T SHOW IT IN ITS FULL --

16 THE WITNESS: NO. IT'S GOT TOO MANY PIXELS.
17 I'M SORRY, YOUR HONOR. I HAVE TO MOVE IT UP AND
18 THEN DOWN.

19 Q BY MR. CONN: CAN YOU TELL US WHAT
20 INFORMATION YOU RELIED UPON IN THIS EXHIBIT IN
21 ASSISTING YOU IN FORMULATING AN OPINION CONCERNING

22 SHOT.1A.

23 A WELL, WE SEE THE X RAY, THE INDICATIONS
24 OF THE PROJECTILE INVOLVED IN THE SHOT NOW SHOWN IN
25 THE BREAST INSIDE THE CHEST CAVITY.

26 MS. ABRAMSON: I'M GOING TO OBJECT. THIS
27 WITNESS ISN'T QUALIFIED TO TESTIFY WHERE THINGS ARE
28 ON AN X RAY.

40437

1 THE COURT: WELL, CERTAINLY, HE CAN POINT OUT
2 THINGS THAT ARE PLAINLY VISIBLE.

3 SO OBJECTION OVERRULED.

4 MS. ABRAMSON: MY OBJECTION IS AS TO WHERE
5 THEY ARE OTHER THAN ON THE X RAY.

6 THE COURT: THEY CLEARLY ARE IN THE CHEST
7 AREA.

8 MS. ABRAMSON: IN THE CHEST AREA, I AGREE.

9 THE COURT: I DON'T THINK IT TAKES AN EXPERT
10 TO LOOK AT THAT AND SAY THAT.

11 OVERRULED.

12 THE WITNESS: I'LL BE GLAD TO JUST QUOTE
13 DR. LAWRENCE.

14 AS DR. LAWRENCE INDICATED, THESE ARE
15 PELLETS IN THE CHEST AREA, PERHAPS IN THE CHEST
16 CAVITY, AS SHOWN BY THE DARK OPAQUE DOTS, BECAUSE

17 THE LED THAT'S THE ALLOYED THE PELLET IS MADE OUT OF
18 IS HIGHLY ABSORBING OF RADIATION.

19 SO ON AN X RAY THEY COME THROUGH
20 PROPORTIONATELY MUCH BRIGHTER FOR THEIR SIZE THAN
21 BONE OR TISSUE.

22 Q AND CAN YOU TELL US SPECIFICALLY WHAT
23 SIGNIFICANCE THIS X RAY HAD FOR YOU IN ASSISTING YOU
24 IN FORMULATING AN OPINION CONCERNING SHOT.1A.

25 A YES. IF YOU LOOK AT MY VECTOR AS SHOWN
26 IN SHOT.1A, THE DIRECTION IT APPEARS FROM THIS
27 DIRECTION, THAT THIS SHOT IS BACK-STOPPED BY
28 MRS. MENENDEZ; THAT IS, THE SHOT TERMINATES IN HER

40438

1 BODY IN MY RECONSTRUCTION AFTER GOING THROUGH THESE
2 VARIOUS OTHER PARTS OF MR. MENENDEZ.

3 NOW, THIS REPRESENTS A CASE THEN WHERE
4 WE MIGHT HAVE A SHOT AT A COMPLETE PELLET COUNT
5 WHICH WOULD BE, IF IT WORKS OUT, A USEFUL
6 CONFIRMATION OF A SEQUENCE OF SHOTS. VERY OFTEN YOU
7 DON'T HAVE THE SHOT BACK-STOPPED; THAT IS, THE
8 PELLETS CAN PASS THROUGH AND WE DON'T KNOW WHERE
9 THEY WENT OR DON'T HAVE A PLACE TO AUDIT THEM. BUT
10 SINCE THIS SHOT -- IF I'M CORRECT IN THIS
11 RECONSTRUCTION -- TERMINATES IN HER, THIS IS THE END

12 OF THE LINE FOR THE PELLETS, UNLESS THEY'VE BEEN
13 DEFLECTED BY A PIECE OF BONE OR SOMETHING IN THE
14 INTERIM.

15 Q NOW, DID YOU DO A PELLET COUNT, AS
16 DR. LAWRENCE DID HERE IN COURT, TO DETERMINE THE
17 NUMBER OF PELLETS THAT ARE APPARENT IN THAT
18 PARTICULAR X RAY?

19 A I DO, BUT DR. LAWRENCE HAS ALREADY DONE
20 ONE. LET'S JUST USE HIS PELLET COUNT.

21 Q CAN YOU REMIND US WHAT THAT PELLET COUNT
22 WAS.

23 A I THINK HE COUNTED 12 ON THAT ONE.

24 Q OKAY. NOW, WHY WAS -- WHY IS A PELLET
25 COUNT SIGNIFICANT TO YOU IN DOING YOUR DETERMINATION
26 OF SHOT.1A?

27 A WELL, IF -- IF THIS RECONSTRUCTION IS
28 CORRECT, WE CAN EXAMINE THE VARIOUS PARTS OF THE

40439

1 BODY, BODIES, INVOLVED IN THE DIRECTION OF THE SHOT,
2 AND COUNT PELLETS ON X RAYS, AT LEAST AS A START.
3 AND IF WE COME OUT CLOSE TO WHAT WE WOULD EXPECT TO
4 FIND IN A NO. 4 BUCKSHOT SHELL, YOU CAN SAY, WELL,
5 THAT'S JUST AN ACCIDENT. BUT YOU COULD ALSO SAY
6 THAT'S AN IMPORTANT PIECE OF CONFIRMATION. IF YOU

7 WERE WAY SHORT OR WAY LONG, YOU MIGHT HAVE TO GO

8 BACK AND RETHINK.

9 Q OKAY. NOW, YOU TOLD US THAT A NO. 4

10 BUCKSHOT CONTAINS APPROXIMATELY 27 PELLETS; IS THAT

11 CORRECT?

12 A YEAH, GIVE OR TAKE.

13 Q DID YOU TAKE INTO CONSIDERATION AT ALL,

14 IN CONSIDERING THE PELLET COUNT IN THIS CASE, ANY

15 FRAGMENTS OR DEBRIS?

16 A SURE. I MEAN, YOU ALWAYS HAVE TO

17 CONSIDER THE POSSIBILITY. AND WE GOT HIM RIGHT

18 THERE (POINTING.)

19 MS. ABRAMSON: YOU'RE POINTING --

20 IS THERE SOME WAY DR. MC CARTHY CAN MOVE

21 THE COMPUTER BECAUSE IT'S BLOCKING MY VISION.

22 THE WITNESS: OH.

23 MS. ABRAMSON: THE TOP OF THE COMPUTER.

24 MAYBE JUST PUSH IT FARTHER AWAY.

25 THE WITNESS: IS THAT BETTER?

26 MS. ABRAMSON: THAT MAKES IT WORSE,

27 ACTUALLY.

28 THE WITNESS: OKAY. LET'S TRY IT THE OTHER

40440

1 WAY.

2 MS. ABRAMSON: THAT'S BETTER. THANK YOU.

3 THE WITNESS: CAN I TILT THE SCREEN UP?

4 MS. ABRAMSON: IT'S OKAY FOR THAT ONE.

5 Q BY MR. CONN: OKAY. POINTING TO WHAT

6 APPEARS TO BE A FRAGMENT IN THAT PHOTOGRAPH THAT IS

7 CONTAINED WITHIN A CLUSTER OF FIVE, CAN YOU TELL US

8 HOW YOU CONSIDER OR HOW YOU EVALUATE THAT PARTICULAR

9 FRAGMENT OR OTHER FRAGMENTS IN YOUR PELLET COUNT.

10 A WHEN YOU START SEEING LARGE FRAGMENTS,

11 YOU HAVE TO AT LEAST NOW BE ON NOTICE OR AWARE OF

12 THE POSSIBILITY THAT YOU CAN GET A SLIGHTLY HIGHER

13 COUNT BECAUSE YOU COUNT TWO INDIVIDUAL FRAGMENTS AS

14 TWO INDIVIDUAL PELLETS INSTEAD OF EACH HALF OF THE

15 SAME PELLET; AND, OF COURSE, IN AN X RAY YOU ONLY

16 SEE A CROSS-SECTION, YOU DON'T SEE VOLUME.

17 AND LED IS SUCH -- YOU NOTICE THAT THE

18 X RAY IMAGE OF A PELLET IS PERFECTLY WHITE FROM EDGE

19 TO CENTER TO EDGE. IN OTHER WORDS, YOU DON'T

20 DISTINGUISH VARIED DEGREES OF OPACITY IN THAT

21 PELLET, AND THAT MEANS THE STRENGTH OF THE X RAY FOR

22 LED OF THIS SIZE IS NOT STRONG ENOUGH TO

23 DIFFERENTIATE THE THICKNESS OF THE LED. SO ALMOST

24 ANY LED WILL BLOCK THE X RAY AND GIVE YOU AN OPAQUE

25 WHITE DISK EVEN IF IT'S HALF-A-PELLET THICK, BECAUSE

26 EVEN THE EDGES OF THE PELLETS ARE ABLE TO CREATE A

27 WHITE DENSITY ON AN X RAY SHADE AS DENSE AS THE VERY

28 CENTER OF THE PELLET AND ONE THAT'S A QUARTER-INCH

1 THICK OF LED.

2 Q IN TERMS OF COMING UP WITH A COUNT OF 12
3 WITH THIS PARTICULAR SOURCE OF INFORMATION, WOULD
4 THAT INCLUDE OR NOT INCLUDE THE FRAGMENTS SUCH AS
5 THE ONE YOU JUST POINTED TO?

6 A I COULDN'T TELL FROM THE BACK OF THE
7 COURTROOM WHETHER HE INCLUDED IT OR NOT. SO I'M
8 JUST USING DR. LAWRENCE'S COUNT.

9 Q OKAY.

10 THE COURT: YOU WERE HERE WHEN DR. LAWRENCE
11 WAS TESTIFYING?

12 THE WITNESS: ABOUT THIS SLIDE, YES.

13 Q BY MR. CONN: I'D LIKE TO DIRECT YOUR
14 ATTENTION TO AN X RAY WHICH YOU HAVE DESIGNATED
15 6.X RAY AND WHICH WE HAVE MARKED IN OUR EXHIBITS AS
16 172.

17 HERE WE ARE LOOKING AT WHAT DR. LAWRENCE
18 HAS PREVIOUSLY TESTIFIED TO BE THE LEFT ARM OF MARY
19 MENENDEZ. IN THE UPPER PORTION OF THAT X RAY THERE
20 APPEARS TO BE A, ONCE AGAIN, ONE OF THE SMALL ROUND
21 INDICATIONS OF A PELLET; AND BENEATH THAT, AT THE
22 BOTTOM OF THE X RAY, THERE APPEARS TO BE ANOTHER ONE
23 OF THOSE OBJECTS.

24 WHAT SIGNIFICANCE DID THIS PARTICULAR
25 X RAY HAVE FOR YOU IN YOUR DETERMINATION, IF ANY, OF

26 SHOT.1A?

27 A WELL, IT RAISES THE QUESTION -- FIRST OF
28 ALL, HERE'S A PELLET, OR AT LEAST PART OF ONE

40442

1 (POINTING), AND THERE IS WHAT LOOKS LIKE A -- PRETTY
2 CLEARLY, A HOLE, FAIRLY ROUND ONE DOWN HERE.

3 NOW, AS WE SAW IN THE PREVIOUS
4 PHOTOGRAPH OF THE HAND RAISED UP TO THE BREAST, AND
5 AT THE END I GUESS WE'LL RETURN TO THAT TO DISCUSS
6 IT ONCE WE HAVE THIS IN PLACE. BASICALLY THERE'S A
7 PELLET DOWN IN THE HAND THAT --

8 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,
9 YOUR HONOR. FIRST OF ALL, MISSTATES THE X RAY.

10 SECOND OF ALL, HE DOESN'T HAVE THE
11 MEDICAL EXPERTISE TO READ AN X RAY PROPERLY.

12 THE COURT: OVERRULED.

13 MS. ABRAMSON: I'M GOING TO OBJECT TO
14 MISSTATING THE EVIDENCE. THERE'S NO PELLET IN THE
15 HAND.

16 THE COURT: ALL RIGHT. LET'S CLARIFY THAT
17 THEN.

18 MR. CONN: OKAY.

19 Q ARE YOU REFERRING TO THE PELLET THAT
20 APPEARS IN THE LOWER LEFT ARM?

21 A LOWER LEFT ARM. DR. LAWRENCE TESTIFIED
22 CONCERNING THE LOWER PART OF THE ARM. I DIDN'T MEAN
23 TO -- YOU HAVE THIS PELLET UP HERE WHICH HE GROUPE
24 WITH THE OTHER PELLETS. HE WAS NOT COMFORTABLE
25 GROUPING THIS ONE WITH THE SHOT THAT TERMINATED IN
26 THE BREAST.

27 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
28 TESTIMONY. MISSTATES DR. LAWRENCE'S TESTIMONY.

40443

1 THE COURT: IT'S THE WITNESS' UNDERSTANDING
2 OF THE TESTIMONY.

3 SO WITH THAT INTERPRETATION, OBJECTION
4 OVERRULED.

5 MS. ABRAMSON: I WOULD OBJECT, THAT IT'S
6 HEARSAY.

7 THE COURT: OVERRULED. IT'S JUST FOUNDATION
8 FOR THE WITNESS' OPINION.

9 Q BY MR. CONN: WAS IT YOUR UNDERSTANDING,
10 FROM THE TESTIMONY OF DR. LAWRENCE, THAT HE WAS
11 ASSOCIATING ONE OF THOSE PELLETS, AND NOT BOTH, TO
12 THE INJURY THAT MARY MENENDEZ RECEIVED TO HER LEFT
13 BREAST AREA?

14 A THAT WAS MY UNDERSTANDING. BUT
15 EVERYBODY WAS HERE SO... ANYWAY. THERE'S ONE MORE

16 HERE IN HIS PELLET COUNT. SO WE ADD ONE MORE.

17 Q SO WHEN YOU SAY WE ADD ONE MORE, WE HAVE

18 12 PELLETS FROM THE BREAST OF MARY MENENDEZ. WHEN

19 YOU SAY WE ADD ONE MORE, DO YOU MEAN BY THAT THAT WE

20 NOW HAVE A TOTAL PELLET COUNT FOR THAT PARTICULAR

21 AREA OF 13?

22 A THIRTEEN WITH THIS WOUND SO FAR.

23 Q OKAY.

24 A OKAY.

25 Q I'D LIKE TO DIRECT YOUR ATTENTION NOW TO

26 ANOTHER X RAY, 9.X RAY, WHICH WE HAVE ALREADY MARKED

27 AS 175 IN THIS PROCEEDING. AND THERE BEFORE YOU IS

28 THE X RAY THAT DR. LAWRENCE HAS PREVIOUSLY TESTIFIED

40444

1 REPRESENTS THE RIGHT ARM AREA OF JOSE MENENDEZ.

2 CAN YOU TELL US WHAT SIGNIFICANCE, IF

3 ANY, YOU ATTACH TO THIS PARTICULAR X RAY IN REACHING

4 AN OPINION CONCERNING SHOT.1A.

5 A WE PICKED UP, OBVIOUSLY, AN ADDITIONAL

6 PELLET COUNT. WE ALSO SEE THAT THE ARM, AS

7 DR. LAWRENCE INDICATED, IS FRACTURED, WHICH PRETTY

8 CLEARLY IS -- AND THIS -- IF YOU LOOK AT THE DIAGRAM

9 I HAVE HERE, I HAVE THE DIRECTION OF SHOT THROUGH

10 HIS RIGHT ARM AREA.

11 NOW -- WELL, I DON'T -- THE DISADVANTAGE
12 OF A DIAGRAM IS YOU CAN ONLY SHOW ONE PARTICULAR
13 POSITION. AND AS DR. LAWRENCE INDICATED, ABSOLUTELY
14 CORRECTLY, AND I AGREE WITH, YOU CAN'T --

15 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
16 WITNESS' STATEMENT ABOUT DR. LAWRENCE'S
17 CORRECTNESS. THIS WITNESS DOESN'T HAVE THE
18 EXPERTISE TO JUDGE THAT.

19 THE COURT: OKAY. WE DON'T KNOW EXACTLY WHAT
20 IT WAS HE WAS GOING TO SAY.

21 SO OBJECTION OVERRULED AT THIS POINT.

22 THE WITNESS: I DON'T MEAN TO PRESENT --
23 AND PLEASE DO NOT READ PRECISION INTO DETAILS THAT
24 THE EVIDENCE CAN'T DETERMINE PRECISELY, LIKE COULD
25 SHE HAVE HAD HER RIGHT ARM BEHIND HER HEAD? OF
26 COURSE.

27 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR
28 HONOR. THAT'S NOT RESPONSIVE TO THE QUESTION THAT

40445

1 WAS ASKED ABOUT THIS PARTICULAR X RAY.

2 THE COURT: SUSTAINED. THE ANSWER IS
3 STRICKEN.

4 MR. CONN: OKAY. I WILL GET TO THAT ISSUE IN
5 A MOMENT.

6 Q LET ME DIRECT YOUR ATTENTION TO THIS
7 PARTICULAR X RAY AND ASK YOU WHAT INFORMATION YOU
8 RELIED UPON FROM THIS X RAY IN FORMING AN OPINION
9 CONCERNING SHOT.1A.

10 A THIS IS HIS RIGHT ARM, AND ACCORDING TO
11 DR. LAWRENCE, WE PICK UP NINE MORE PELLETS IN THIS
12 INDICATION.

13 Q AND YOU ADD NINE PELLETS TO THE PELLET
14 COUNT THAT WE ALREADY HAVE OF 13?

15 A YES.

16 Q AND THAT IS FOR A TOTAL OF 22?

17 A CORRECT.

18 Q OKAY. LET ME DIRECT YOUR ATTENTION NOW
19 TO AN X RAY THAT YOU DESIGNATE 11.X RAY, WHICH HAS
20 BEEN MARKED IN THIS PROCEEDING AS 177.

21 AND WE HAVE IN THAT X RAY WHAT
22 DR. LAWRENCE DESCRIBED AS THE LEFT ARM OF JOSE
23 MENENDEZ.

24 CAN YOU TELL US WHAT SIGNIFICANCE THIS
25 X RAY HAD TO YOU IN FORMING AN OPINION CONCERNING
26 SHOT.1A.

27 A MY SHOT RECONSTRUCTION PICKS UP HIS LEFT
28 ELBOW IN THIS SHOT AS THE FIRST PLACE OF STRIKING,

1 AND THERE ARE INDICATIONS ON THIS X RAY OF --
2 ACCORDING TO DR. LAWRENCE, FIVE PELLETS IN THIS
3 ELBOW.

4 Q OKAY. SO IF WE ADD THOSE FIVE PELLETS
5 TO THE ONES THAT WE HAVE PREVIOUSLY TOTALED TO 22,
6 WE COME UP WITH A TOTAL OF 27 PELLETS.

7 NOW, DOES THAT PELLET COUNT HAVE SOME
8 PARTICULAR SIGNIFICANCE FOR YOU?

9 A WELL, YES, IT DOES.

10 Q WHAT IS THAT?

11 A THAT'S HOW MANY PELLETS ARE NOMINALLY IN
12 A NO. 4 BUCKSHOT.

13 THE COURT: WHAT DOES THE WORD "NOMINALLY"
14 MEAN?

15 THE WITNESS: JUST THAT THE SHOT IS LOADED BY
16 WEIGHT AS OPPOSED TO NUMBER OF PELLETS. SO THAT IN
17 SOME NO. 4 SHELLS YOU'LL SEE 28; AND SOME YOU'LL SEE
18 26. BUT THE NOMINAL IS 27.

19 Q BY MR. CONN: SO WOULD ALL OF THESE
20 X RAYS AND THE PELLET COUNT THAT YOU SEE IN EACH OF
21 THESE X RAYS BE CONSISTENT WITH THE PELLETS THAT
22 WOULD FIRE FROM ONE SINGLE NO. 4 BUCKSHOT?

23 A YES. THEY CERTAINLY ARE CONSISTENT IN
24 COUNT.

25 Q AND BY SAYING CONSISTENT IN COUNT, ARE
26 YOU TRYING TO DRAW A DISTINCTION BETWEEN SOMETHING
27 ELSE?

28 A WELL, YES. I THINK WE'RE GOING TO

1 HAVE -- I THINK THERE ARE SEVERAL PIECES OF
2 CONSISTENCY THAT ARE INDEPENDENT. THE PELLET COUNT
3 IS WHOLLY INDEPENDENT OF THE GEOMETRY.

4 Q OKAY. ALL RIGHT.

5 TURNING THEN BACK TO THE ISSUE OF THE
6 GEOMETRY, I WOULD LIKE TO DIRECT YOUR ATTENTION TO
7 ANOTHER PHOTOGRAPH OR -- DOES THIS PHOTOGRAPH HAVE
8 ADDITIONAL SIGNIFICANCE TO YOU IN DETERMINING THE
9 GEOMETRY?

10 A NO. WE'RE GOING TO HAVE TO GO TO THE
11 EXTERIOR INDICATION DEFECTS IN THE SKIN TO DO THAT.

12 Q LET ME NOW DIRECT YOUR ATTENTION TO
13 PHOTOGRAPH 4.JOSEPH, WHICH WE HAVE MARKED IN THIS
14 PROCEEDING AS 183.

15 THAT IS A PHOTOGRAPH WHICH
16 DR. LAWRENCE DESCRIBED AS A PHOTOGRAPH OF THE RIGHT
17 ARM WOUND TO JOSE MENENDEZ.

18 CAN YOU TELL US WHAT SIGNIFICANCE THIS
19 PHOTOGRAPH ENTERED INTO YOUR DETERMINATION OF THE
20 GEOMETRY OF SHOT.1A.

21 A IF THIS RECONSTRUCTION IS CORRECT,
22 GEOMETRICALLY IT'S GOT TO BE POSSIBLE FOR THE LIMBS
23 THAT ARE SUPPOSED TO BE STRUCK BY THIS SINGLE SHOT

24 TO ALL HAVE LINED UP AT SOME POINT IN TIME
25 REASONABLY, IN A STRAIGHT LINE, OR ROUGHLY IN A
26 STRAIGHT LINE. A SHOTGUN SHELL SHOT CAN BE DEVIATED
27 IN SMALL AMOUNTS.

28 Q OKAY. AND LOOKING AT THIS PHOTOGRAPH,

40448

1 WERE YOU ABLE TO DERIVE SOME SIGNIFICANT INFORMATION
2 IN REACHING YOUR CONCLUSION CONCERNING THAT
3 GEOMETRY?

4 A YES. AS DR. LAWRENCE INDICATED, YOU CAN
5 SEE ONE HERE, AN INDIVIDUAL PELLET DEPICTED IN THE
6 ELBOW, AND I THINK WE HAVE ONE OTHER SHOT WITH MORE
7 DETAIL. BASICALLY, THERE WERE INDIVIDUAL PELLET
8 DEFECTS SEEN IN THE ANTECUBITAL FOSSA OF JOSE
9 MENENDEZ' RIGHT IN THE ARMPIT. AND I GUESS --

10 MS. ABRAMSON: OBJECTION, YOUR HONOR.
11 MISSTATES DR. LAWRENCE.

12 THE WITNESS: I MEAN THE ELBOW. I'M SORRY.

13 MS. ABRAMSON: EVEN WITH THE ELBOW IT
14 MISSTATES HIS TESTIMONY.

15 THE COURT: YOU'RE TALKING ABOUT WHERE?

16 THE WITNESS: RIGHT HERE (INDICATING).

17 THE COURT: THE BEND OF THE ARM?

18 THE WITNESS: THE BEND OF THE ARM.

19 MR. CONN: OKAY.

20 MS. ABRAMSON: CAN -- I OBJECT TO THAT. THAT

21 MISSTATES DR. LAWRENCE'S TESTIMONY.

22 THE COURT: WELL, THIS IS WHAT THE WITNESS IS

23 INDICATING.

24 MS. ABRAMSON: OKAY.

25 THE WITNESS: YES. I'LL BRING ANOTHER

26 PICTURE.

27 BUT BASICALLY, AS -- AND I THINK

28 DR. LAWRENCE DREW A PICTURE -- INDIVIDUAL PELLET

40449

1 INDICATIONS ARE GENERALLY ASSOCIATED WITH ENTRANCE.

2 MS. ABRAMSON: OBJECTION. BEYOND HIS

3 EXPERTISE.

4 THE COURT: ALL RIGHT. OBJECTION SUSTAINED.

5 THE ANSWER IS STRICKEN.

6 YOU MAY REASK THE QUESTION.

7 Q BY MR. CONN: ONCE AGAIN, IN REACHING A

8 CONCLUSION CONCERNING THIS PARTICULAR SHOT, 1A, DID

9 YOU RELY UPON NOT ONLY THE PHOTOGRAPH THAT IS

10 CURRENTLY BEFORE YOU, WHICH WE HAVE MARKED AS 183,

11 AS WELL AS THE TESTIMONY OF DR. LAWRENCE?

12 MS. ABRAMSON: OBJECTION.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DIDN'T RELY ON THE TESTIMONY
15 OF DR. LAWRENCE WHEN I CONSTRUCTED THE DIAGRAMS.
16 BUT CERTAINLY EVIDENCE DEVELOPED DURING HIS
17 TESTIMONY THAT CONFIRMED IT.

18 Q CAN YOU TELL US --

19 MS. ABRAMSON: I'M GOING TO MOVE TO STRIKE
20 THAT ANSWER. HE HAS NO EXPERTISE TO FORM OPINIONS
21 ON MEDICAL MATTERS.

22 THE COURT: ALL RIGHT. YOU HAVE TO ESTABLISH
23 THAT HE IS CURRENTLY RELYING UPON THE OPINIONS OF
24 DR. LAWRENCE IN HIS TESTIMONY HERE.

25 MR. CONN: YES. ALL RIGHT.

26 Q FOR THE PURPOSE OF YOUR TESTIMONY TODAY,
27 HAVE YOU CONSIDERED AND INCORPORATED ANY OF THE
28 TESTIMONY OF DR. LAWRENCE?

40450

1 A YES.

2 Q OKAY. SO LET ME ASK YOU, JUST AS A
3 MATTER OF YOUR OPINION TODAY, HAVE YOU RELIED UPON
4 CERTAIN ASPECTS OF THE TESTIMONY OF DR. LAWRENCE
5 DURING THE TIME THAT HE TESTIFIED IN THIS
6 PROCEEDING?

7 A YES.

8 MR. GESSLER: I'LL OBJECT. THAT'S AN

9 IMPROPER HYPOTHETICAL, YOUR HONOR.

10 THE COURT: OVERRULED.

11 Q BY MR. CONN: CAN YOU TELL US WHAT

12 INFORMATION YOU WERE ABLE TO DERIVE FROM THIS

13 PARTICULAR PHOTOGRAPH AS DESCRIBED BY DR. LAWRENCE

14 DURING THE COURSE OF HIS TESTIMONY?

15 MR. GESSLER: OBJECTION. BEYOND HIS

16 OPINION. IT'S A MEDICAL OPINION.

17 THE COURT: HE'S NOW REFERRING TO THE

18 TESTIMONY OF DR. LAWRENCE. SO WITH THE

19 UNDERSTANDING HE'S RELYING UPON THAT, IF THAT IS HIS

20 STATE OF MIND, THEN THE OBJECTION'S OVERRULED.

21 THE WITNESS: RELYING ON DR. LAWRENCE'S

22 TESTIMONY ABOUT THE INDIVIDUAL DEFECTS ON THE INSIDE

23 OF THE ELBOW AND ALSO THE NEWLY DEVELOPED

24 INFORMATION ABOUT THE EXIT DAMAGE TO THE RIGHT

25 SLEEVE OF THE SHIRT IN THE BACK, AGAIN, CONSISTENT

26 WITH THE LINEUP THAT I POSTULATE BETWEEN THE LEFT

27 ELBOW, THE RIGHT ARM, AND THE LEFT BREAST OF KITTY

28 MENENDEZ.

40451

1 Q BY MR. CONN: OKAY. NOW, LET ME DIRECT

2 YOUR ATTENTION TO ANOTHER PHOTOGRAPH, 5.JOSEPH,

3 WHICH WE HAVE MARKED IN THIS PROCEEDING AS 184.

4 AND DID YOU RELY UPON THE PHOTOGRAPH
5 THAT IS CURRENTLY BEFORE YOU FOR CERTAIN INFORMATION
6 IN REACHING A CONCLUSION CONCERNING SHOT.1A?

7 A YES. AND, INDEED, MY DIAGRAM, THESE
8 DEFECTS MARK THE STARTING POINT OF MY RECONSTRUCTION
9 OF THIS FIRST SHOT; THAT IS, THE SHOT STRUCK THE
10 LEFT ELBOW FIRST. SOME OF THE PELLETS STAYED THERE,
11 AS WE SAW IN THE X RAY; THE REMAINDER OF THE SHOT
12 MOVED ON, STRIKING MR. MENENDEZ' RIGHT ARM, SOME
13 STAYING IN THE ARM, AND THE REST PASSING THROUGH,
14 MAKING UP THE BALANCE OF THE SHOT IN HER LEFT
15 BREAST.

16 Q AND DOES THAT COMPLETE THE SEQUENCE OF
17 PHOTOGRAPHS THAT YOU HAVE PREPARED TO EXPLAIN AND TO
18 CLARIFY THAT WHICH YOU HAVE DEPICTED IN SHOT.1A?

19 A YES.

20 Q NOW, AT THIS TIME WHAT I WOULD LIKE TO
21 DO IS, I'D LIKE TO REFER YOU BACK TO SHOT.1A AND
22 TAKE FURTHER TESTIMONY CONCERNING THAT. PERHAPS IF
23 WE COULD RAISE THE LIGHTS ONCE AGAIN.

24 NOW, DIRECTING YOUR ATTENTION, ONCE
25 AGAIN, BACK TO THE ILLUSTRATION THAT HAS BEEN MARKED
26 AS EXHIBIT 250 AND IS LABELED THERE "SHOT.1A."
27 THAT ILLUSTRATION DEPICTS THE VARIOUS LIMBS OF THE
28 BODY AT THE TIME THAT THE SHOT WAS FIRED.

1 DOES THIS PARTICULAR -- ARE YOU SEEKING
2 TO COMMUNICATE THROUGH THIS ILLUSTRATION THAT EACH
3 OF THOSE LIMBS -- LET ME DIRECT YOUR ATTENTION
4 SPECIFICALLY TO THE LEGS, FOR EXAMPLE -- THAT THE
5 LEGS WERE IN PRECISELY THAT POSITION AT THE MOMENT
6 THAT THAT PARTICULAR SHOT WAS FIRED?

7 A NO.

8 Q AND CAN YOU TELL US WHY YOU ARE NOT
9 SEEKING TO COMMUNICATE THAT PARTICULAR PIECE OF
10 INFORMATION?

11 A WELL, BECAUSE THERE'S NO WAY I CAN
12 KNOW. I COULDN'T KNOW IF BOTH OF THEM HAD THEIR
13 LEGS CROSSED OR THEIR LEGS STRAIGHT AT THIS MOMENT
14 IN TIME.

15 WHAT I'M TRYING TO DO IS DIAGRAMATICALLY
16 SHOW THE GENERAL DIRECTION OF THE SHOT. I HAVE
17 PLACED THE FIGURES SORT OF IN THERE IN A NOMINAL
18 POSITION.

19 COULD SHE HAVE BEEN TURNED SLIGHTLY?
20 SURELY.

21 COULD HER RIGHT ARM -- I DON'T HAVE ANY
22 EVIDENCE ABOUT THE RIGHT ARM. IT COULD HAVE BEEN IN
23 ANY POSITION. I'VE JUST NOMINALLY SHOWN IT IN THIS
24 POSITION.

25 Q OKAY.

26 A WHAT I'M TRYING TO COMMUNICATE IS THE
27 GEOMETRY, AND THE FIGURES ARE IN THERE AS JUST

40453

1 MOMENT IN TIME SOMEONE COULD HAVE HAD THEIR HEAD
2 BENT, AND THOSE ARE DETAILS THAT ARE NOT IMPORTANT
3 IN MY RECONSTRUCTION.

4 THE DISADVANTAGE IS WHEN YOU SHOOT AN
5 IMAGE, THE THING CAN ONLY BE IN ONE POSITION. BUT
6 DON'T READ INTO IT MORE PRECISION THAN I CAN BRING
7 TO IT.

8 Q OKAY. LET'S CLARIFY ILLUSTRATION
9 SHOT.1A SO THAT WE FULLY UNDERSTAND WHAT YOU ARE
10 SEEKING TO COMMUNICATE IN THIS ILLUSTRATION AND WHAT
11 YOU ARE NOT SEEKING TO ILLUSTRATE IN THIS DIAGRAM.

12 WHAT PRECISELY IS THE ESSENTIAL
13 INFORMATION THAT YOU ARE COMMUNICATING IN THIS
14 ILLUSTRATION?

15 A ESSENTIALLY, THE INFORMATION IS THAT
16 IT'S VERY PHYSICALLY, BIOLOGICALLY AND KINEMATICALLY
17 POSSIBLE FOR ALL THE LIMBS THAT ARE STRUCK, THAT I
18 POSTULATE ARE STRUCK IN THIS SHOT, TO BE IN THESE
19 POSITIONS. COULD THEY HAVE BEEN ROTATED A LITTLE
20 MORE? COULD HIS ARM HAVE BEEN AT A FEW DEGREES
21 ANGLE? OF COURSE. THAT'S BEYOND THE PRECISION
22 WHICH WE CAN RECONSTRUCT WITH THE DATA I NOW HAVE.

23 I BELIEVE THIS IS CONSISTENT WITH WHAT
24 WE SEE IN THE PHOTOS, GIVE OR TAKE THE ANGULARITY
25 AND THE ACCURACY THAT WE CAN REPLICATE THOSE THINGS
26 WITH.

27 Q OKAY. THIS ILLUSTRATION SEEKS TO
28 REPRESENT TWO PERSONS WHO ARE SEATED ON A SOFA AT

40454

1 THE TIME OF THE SHOT, AS WELL AS A SHOT PASSING
2 THROUGH THE LEFT ARM OF WHAT APPEARS TO BE JOSE
3 MENENDEZ, THE RIGHT ARM OF JOSE MENENDEZ, AND THE
4 BREAST OF MARY MENENDEZ.

5 DO YOU SEEK TO COMMUNICATE ANY MORE
6 INFORMATION THAN THAT THROUGH THIS ILLUSTRATION?

7 A NO. OTHER THAN IT WORKS INDEPENDENTLY
8 OF THAT WITH THE X RAYS, THE PELLET COUNT.

9 Q LET ME SHOW YOU NOW WHAT WE HAVE MARKED
10 OUTSIDE THE PRESENCE OF THE JURY, ANOTHER
11 ILLUSTRATION, WHICH HAS BEEN DESIGNATED SHOT.1B.

12 AND WOULD YOU TELL US WHAT THIS
13 ILLUSTRATION SEEKS TO REPRESENT.

14 A IT'S JUST THE SAME SHOT, SAME EXACT
15 COMPUTER PHOTOGRAPH, BUT I'VE ASKED THE COMPUTER TO
16 DRAW IT -- EXCUSE ME. I'VE CAUSED IT TO BE DRAWN IN
17 A DIFFERENT ANGLE.

18 THE COURT: WHEN YOU SAY COMPUTER, YOU'RE
19 JUST USING THE COMPUTER TO ILLUSTRATE THINGS THAT
20 YOU BELIEVE OCCURRED.

21 THE WITNESS: THAT'S RIGHT. IT'S JUST A BIG
22 DRAFTING MACHINE.

23 THE COURT: THE COMPUTER DOESN'T DO ANYTHING
24 OTHER THAN DRAW THINGS AT YOUR DIRECTION.

25 THE WITNESS: IN THE TRUE PERSPECTIVE OF MY
26 DIRECTION. EXACTLY.

27 THE COURT: EVERYTHING THAT WAS DONE BY
28 COMPUTER WAS JUST USED FOR ILLUSTRATION. YOU COULD

40455

1 HAVE DONE THE SAME THING IF YOU WERE AN ARTIST
2 DRAWING IT YOURSELF BY HAND; IS THAT RIGHT?

3 THE WITNESS: IF I HAD ANY TALENT, YES, YOUR
4 HONOR.

5 THE COURT: OKAY.

6 Q BY MR. CONN: ONCE AGAIN, DIRECTING YOUR
7 ATTENTION TO WHAT APPEARS TO BE THE TRAJECTORY THAT
8 IS DEPICTED IN THIS ILLUSTRATION THROUGH THE LEFT
9 ARM OF JOSE MENENDEZ, THE RIGHT ARM OF JOSE
10 MENENDEZ, AND INTO THE BREAST OF MARY MENENDEZ; IS
11 THAT CORRECT? DO YOU SEEK TO ILLUSTRATE PRECISELY
12 THE SAME INFORMATION THAT YOU ILLUSTRATED IN

13 SHOT.1A?

14 A YES. THAT GEOMETRICALLY, AND DEPENDING
15 ON WHAT ULTIMATELY YOU DECIDE IN TERMS OF SMALL
16 DEVIATION AND ANGLES THAT ARE NOT IMPORTANT,
17 GEOMETRICALLY THIS WORKS --

18 UNIDENTIFIED JUROR: THE GLARE IS ACROSS --
19 UNIDENTIFIED JUROR: GOOD.

20 THE WITNESS: BETTER?

21 MR. CONN: LET ME NOW DIRECT YOUR ATTENTION
22 TO ANOTHER ILLUSTRATION WHICH WE HAVE MARKED HERE AS
23 EXHIBIT 252.

24 Q CAN YOU TELL US WHAT WE ARE LOOKING AT
25 IN THAT EXHIBIT.

26 A YES. THIS IS MY RECONSTRUCTION OF THE
27 SECOND SHOT.

28 Q AND ONCE AGAIN, CAN YOU TELL US WHAT

40456

1 THOSE FIGURES SEEK TO REPRESENT.

2 A AGAIN, THESE ARE GENERAL REPRESENTATIONS
3 OF MARY MENENDEZ AND JOSE MENENDEZ IN THE POSITIONS
4 I BELIEVE THEY WERE APPROXIMATELY WERE AT THE TIME
5 OF THE SHOT.

6 Q AND DID YOU RELY UPON SOME PHOTOGRAPHS
7 AND X RAYS IN REACHING YOUR CONCLUSION CONCERNING

8 THIS SHOT?

9 A YES.

10 Q AT THIS TIME I'D ONCE AGAIN ASK THAT THE
11 LIGHTS BE DIMMED SO THAT WE CAN ILLUSTRATE THOSE
12 PHOTOGRAPHS AND X RAYS TO THE JURY.

13 AT THIS TIME I WOULD LIKE TO DIRECT YOUR
14 ATTENTION TO WHAT YOU HAVE DESIGNATED 14.XRAY, WHICH
15 WE HAVE MARKED IN THIS PROCEEDING AS 180.

16 AND DIRECTING YOUR ATTENTION TO AN
17 EXHIBIT THAT DR. LAWRENCE IDENTIFIED AS AN X RAY OF
18 THE HEAD OF JOSE MENENDEZ, CAN YOU TELL US WHAT
19 INFORMATION YOU RELIED UPON IN THIS EXHIBIT IN
20 FORMING YOUR OPINION CONCERNING SHOT.2A.

21 A FIRST, TO THE EXTENT WE'RE ABLE, A
22 CONFIRMATION OF THE PELLET COUNT INDICATED IN THE
23 AUTOPSY REPORT AND ONLY A FRACTION -- I FORGET
24 WHETHER IT'S 11 OR 13 -- PELLETS ARE FOUND IN HIS
25 SKULL FROM THE SHOTGUN ESSENTIALLY IN A CONTACT
26 GEOMETRY TO THE BACK OF THE HEAD THAT WAS TESTIFIED
27 TO YESTERDAY. SO IN A CONTACT GEOMETRY NO PELLETS
28 MISSED. THEY ALL WENT IN. AND THE QUESTION IS HOW

40457

1 MANY OF THEM REMAINED.

2 Q SO WHEN YOU SAY A CONTACT GEOMETRY,

3 YOU'RE REFERRING TO THE FACT THAT DR. LAWRENCE
4 IDENTIFIED THIS PARTICULAR WOUND AS A CONTACT WOUND?

5 A TO THE BACK OF THE HEAD, YES.

6 Q AND DOES THE POSITION OF THE SHOT AS IT
7 APPEARS IN THAT X RAY, WHICH WE HAVE LABELED 180,
8 ASSIST YOU IN SOME WAY IN YOUR DETERMINATION OF THE
9 SHOT THAT YOU HAVE DESIGNATED 2A?

10 A YES. FIRST OF ALL, WE SEE NOTHING IN
11 THE X RAY THAT CONTRADICTS THE CORONER'S PELLET
12 COUNT. IN OTHER WORDS, WE DON'T SEE 27 PELLETS IN
13 THIS X RAY. WE SEE AREAS, OBVIOUSLY, THAT ARE TOO
14 OPAQUE. BUT, BASICALLY, IN THE CRANIAL AREA WHERE
15 THE BRAIN IS, WE JUST DON'T SEE -- WE SEE SOME
16 INDICATIONS. BUT WE CERTAINLY DON'T SEE THE BULK OF
17 THEM. SO THERE'S NOTHING TO CAUSE US ANY PROBLEM
18 WITH THE CORONER'S FINDINGS.

19 THE CORONER ALSO INDICATED THAT THERE
20 WERE TWO RIGHT-HAND EXIT DEFECTS TO THE SKULL, WHICH
21 WOULD EXPLAIN WHY NOT ALL THE PELLETS ARE IN THE
22 SKULL, IF THEY EXITED.

23 THE AUTOPSY REPORT INDICATE THOSE
24 DEFECTS ARE BOTH ON THE RIGHT SIDE OF THE SKULL, AND
25 I BELIEVE THAT'S GOING TO BE IMPORTANT, AS I'LL
26 EXPLAIN LATER ON.

27 Q OKAY. DIRECTING YOUR ATTENTION NOW TO
28 16.XRAY, WHICH WE HAVE MARKED IN THIS PROCEEDING AS

1 EXHIBIT 181. AND BEFORE YOU IS AN X RAY OF WHAT
2 DR. LAWRENCE DESCRIBED AS ANOTHER VIEW OF THE HEAD
3 OF JOSE MENENDEZ.

4 CAN YOU TELL US WHAT INFORMATION YOU
5 RELIED UPON IN THIS EXHIBIT IN FORMING A CONCLUSION
6 CONCERNING SHOT.2A.

7 A AGAIN, FROM THIS VIEW WE DON'T SEE
8 ANYTHING TO CAUSE A PROBLEM WITH THE CORONER'S
9 PELLET COUNT IN THE SKULL. WE SEE THE INDICATIONS,
10 THE DAMAGE TO THE SKULL AND SCALP THAT DR. LAWRENCE
11 TESTIFIED YESTERDAY ABOUT THE GAS PRESSURE, AND THE
12 TEARING OF THE SKIN; AND OBVIOUSLY, THE SKULL WAS
13 PRESSURIZED BY THAT SHOT.

14 AND SO, AGAIN, WE GOT CONFIRMATION THAT
15 PELLETS DID INDEED ESCAPE THE CRANIUM ON THE RIGHT
16 SIDE, AS THE CORONER INDICATED.

17 Q AND LET ME DIRECT YOUR ATTENTION NOW TO
18 ANOTHER PHOTOGRAPH THAT YOU HAVE DESIGNATED
19 6.JOSEPH, AND WHICH WE HAVE IDENTIFIED IN THIS
20 PROCEEDING AS EXHIBIT 172.

21 AND CAN YOU TELL US WHAT INFORMATION YOU
22 RELIED UPON IN THIS PHOTOGRAPH IN ASSISTING YOU IN
23 FORMULATING AN OPINION CONCERNING SHOT.2A?

24 MS. ABRAMSON: OBJECTION, YOUR HONOR. BEYOND
25 HIS EXPERTISE.

26 THE COURT: OVERRULED.
27 THE WITNESS: AS THE DAMAGE INDICATED,
28 TESTIFIED TO BY DR. LAWRENCE YESTERDAY, IN TERMS OF

40459

1 THE TEARS ON THE SKIN FROM THE CONTACT AND THE
2 PRESSURIZATION, SO WE KNOW NO PELLETS MISSED. THEY
3 ALL STARTED IN HERE. AND CONSISTENT NOW WITH ALL
4 THE X RAYS, THEY ESCAPED TO THE RIGHT, WHICH NOW
5 SOLVES ONE OTHER QUESTION.

6 Q AND WHAT QUESTION DOES THAT SOLVE?

7 A IT WAS THE TESTIMONY DR. LAWRENCE TALKED
8 ABOUT YESTERDAY WHERE HE TALKED ABOUT THE POSITION --
9 HIS BASIS FOR THINKING MARY MENENDEZ WAS SEATED TO
10 JOSE'S RIGHT AT THE BEGINNING OF THE SHOT SEQUENCE,
11 AND PARTICULARLY HIS OBSERVATION, WHICH I HAD NOT
12 MADE, THAT THERE WAS A MISTING OF BLOOD THAT HAD
13 MASKING IN APPARENTLY THE POSITION WHERE SHE WAS
14 SEATED.

15 IF THERE'S GOING TO BE A MISTING OF
16 BLOOD AT THAT POINT, WHERE DID THAT BLOOD MIST COME
17 FROM?

18 MS. ABRAMSON: WELL, YOUR HONOR, I'M GOING TO
19 OBJECT TO THIS. DR. LAWRENCE INDICATED THAT WAS
20 SPECULATION ON HIS PART. NOW WE'RE GOING TO HAVE

21 SPECULATION ON SPECULATION.

22 THE COURT: OVERRULED.

23 BUT LET'S GET ANOTHER QUESTION.

24 MR. CONN: YES.

25 Q CAN YOU TELL US HOW THAT MIST ASSISTED

26 YOU IN FORMING A CONCLUSION CONCERNING WHAT IS

27 DEPICTED IN SHOT.2A.

28 MS. ABRAMSON: OBJECT TO THE QUESTION.

40460

1 ASSUMES FACTS NOT IN EVIDENCE.

2 THE COURT: SUSTAINED.

3 Q BY MR. CONN: ASSUMING THE PRESENCE OF

4 SUCH A MIST, AS DESCRIBED BY DR. LAWRENCE, CAN YOU

5 TELL US, DID THAT -- NOW THAT YOU HAVE CONSIDERED THE

6 TESTIMONY OF DR. LAWRENCE CONCERNING THAT MIST, DOES

7 THAT ASSIST YOU IN YOUR OPINION CONCERNING SHOT.2A?

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

9 OBJECT BECAUSE THIS WITNESS HAS NO EXPERTISE IN

10 BLOOD SPLATTER, MISTING, OR OTHERWISE.

11 THE COURT: OVERRULED.

12 THE WITNESS: CONSISTENT -- BEFORE WE HAD ANY

13 KNOWLEDGE OF THAT, OR EVEN CONSIDERED IT, WE

14 PLACED --

15 MR. GESSLER: I'LL OBJECT TO THE "WE," YOUR

16 HONOR.

17 THE COURT: YES. IF YOU CAN JUST CONFINE
18 YOURSELF TO WHAT YOU DID.

19 THE WITNESS: OKAY. I PLACED THE SHOT AT THE
20 ANGLE INDICATED IN THE OTHER PERSPECTIVE OF THIS
21 SHOWING THE ANGLE AT ABOUT HERE. THERE ARE
22 GEOMETRIC CONSTRAINTS IN THE ROOM THAT I BELIEVE
23 STRONGLY DICTATED THE DIRECTION I'VE SHOWN. BUT
24 NOW, WHEN YOU PLACE THE RIGHT SIDE OF HIS HEAD IN A
25 POSITION FACING MARY, IF THIS SHOT IS THE SOURCE OF
26 THE MISTING, THE HEAD IS IN PRECISELY THE RIGHT
27 POSITION TO DO IT.

28 MR. CONN: OKAY.

40461

1 THE COURT: AT THIS TIME, BEFORE I SHOW YOU
2 THE NEXT ILLUSTRATION, HAVE YOU COMPLETED THE SERIES
3 OF PHOTOGRAPHS THAT YOU RELIED UPON IN FORMING A
4 CONCLUSION CONCERNING SHOT.2A?

5 A YES.

6 MR. CONN: IF WE COULD RAISE THE LIGHTS FOR A
7 MOMENT, I WILL SHOW YOU THAT OTHER ILLUSTRATION THAT
8 YOU HAVE JUST REFERRED TO, AN ILLUSTRATION WHICH WE
9 HAVE MARKED IN THIS PROCEEDING AS 253.

10 THIS ILLUSTRATION IS ALSO DESIGNATED IN

11 THE UPPER LEFT-HAND CORNER AS SHOT.2B.

12 Q CAN YOU TELL US WHAT THIS ILLUSTRATION
13 PURPORTS TO REPRESENT.

14 A YES. IT'S JUST AN OVERHEAD ON THE
15 GEOMETRY OF THAT SAME SHOT, AND YOU CAN SEE THAT WE
16 HAVE HIS HEAD TURNED SLIGHTLY. COULD IT HAVE BEEN
17 TURNED A FEW MORE DEGREES? YES. BUT, BASICALLY, WE
18 KNOW THERE HAD TO BE SOME TURN BECAUSE THE DISTANCE
19 BETWEEN THE BACK OF THE HEAD AND THE COUCH -- THE
20 GUNS TOO LONG.

21 Q NOW, YOU INDICATED THAT YOU HAD SOME
22 ENGINEERS WHICH YOU DISPATCHED TO THIS LOCATION TO
23 MEASURE THE ROOM; IS THAT CORRECT?

24 A YES.

25 Q AND ARE THERE MEASUREMENTS THAT YOU HAVE
26 RELIED UPON IN DETERMINING THE DISTANCE BETWEEN THE
27 SOFA AND THE WALL BEHIND THE SOFA AS WELL AS THE
28 HEAD AND THE WALL BEHIND THE HEAD?

40462

1 A YES.

2 Q AND WHAT MEASUREMENT DID YOU RELY UPON
3 IN FORMING AN OPINION CONCERNING THE DISTANCE
4 BETWEEN THOSE ITEMS?

5 A BASICALLY, WE HAVE SCENES OF THE --

6 PHOTOGRAPHS OF THE CRIME SCENE, A STRONG PATTERN IN
7 THE PARQUET OF THE FLOOR THAT LET US PLACE THE BACK
8 OF THE SOFA APPROXIMATELY 26 INCHES FROM THE REAR
9 WALL. I BELIEVE THAT'S THE NUMBER.

10 AND THEN THE SOFA GEOMETRY IS KNOWN.

11 AND SEATED THERE, THAT ONLY ALLOWS A
12 CERTAIN AMOUNT OF SPACE BEHIND HIS HEAD. AND
13 ASSUMING THAT THE SHOOTER IS GOING TO STAND BEHIND A
14 .12-GAUGE SHOTGUN. AND I CAN'T SHOOT ONE TO
15 DEMONSTRATE THE KICK OF A .12-GAUGE, BUT IT'S A GOOD
16 WEAPON TO STAND BEHIND AND NOT TRY AND DISCHARGE
17 OFFHAND BECAUSE OF THE AMOUNT OF MOVEMENT ASSOCIATED
18 WITH IT, RECOIL. IT RESTRICTS THE NUMBER OF PLACES
19 THE SHOOTER COULD HAVE STOOD BECAUSE OF THE LACK OF
20 SPACE BEHIND THE COUCH.

21 Q WHAT IS THE LENGTH OF THE BARREL ON THE
22 OVERALL WEAPON THAT YOU HAVE BEEN REFERRING TO?

23 A THIS PART OF THE WEAPON IS 18 INCHES.

24 Q NOW, YOU'RE REFERRING TO THE LENGTH OF
25 THE BARREL ALONE?

26 A YES. TO SELL THE SHOTGUN AS A RIFLE IN
27 THIS COUNTRY IT HAS TO BE 16. THIS IS AN 18-INCH
28 MODEL, 18 OR 18 AND A HALF. I'D HAVE TO LOOK AT THE

1 SPECS. IT'S ABOUT A 30-INCH WEAPON WHEN YOU GET IT

2 ALL TOGETHER.

3 Q WHAT YOU'RE SAYING IS THAT THE WEAPON IS

4 SO LONG THAT YOU COULD NOT PLACE THAT WEAPON FULLY

5 BEHIND THE HEAD OF JOSE MENENDEZ AS HE APPEARS IN

6 THAT DIAGRAM WITHOUT BUMPING INTO THE WALL?

7 A YOU COULD, BUT IF YOU SWUNG THAT -- YOU

8 TRIED TO SWING THE ARC BEHIND THE SOFA, THE SHOOTER

9 CAN'T STAND BEHIND IN THIS POSITION AND MAKE IT

10 WORK. I MEAN, HE'D HAVE TO FIRE THE WEAPON

11 OFFHAND. COULD BE. YOU CAN DO IT. IT'S JUST --

12 ESPECIALLY IF YOU'VE EVER SHOT ONE -- SOMETHING YOU

13 DON'T LIKE TO DO BECAUSE OF THE RECOIL OF THE

14 WEAPON.

15 Q SO IN FORMING THESE ILLUSTRATIONS, DID

16 YOU RELY UPON CERTAIN ASSUMPTIONS, SUCH AS THE FACT

17 THAT A PERSON FIRING THAT WEAPON WOULD BE UNLIKELY

18 TO HOLD THE WEAPON IN SUCH AN ODD POSITION?

19 A YES. THE RECOIL OF A .12-GAUGE IS

20 SUBSTANTIAL AND IT PROMPTS ITS SHOOTER TO GET -- TO

21 HOLD THE WEAPON IN CERTAIN POSITIONS WHERE HE REALLY

22 HAS EXCELLENT CONTROL OF IT AND -- IN A POSITION TO

23 ABSORB THE RECOIL, TO USE IT.

24 Q AND IS THIS DEPICTION OF THAT PARTICULAR

25 ANGLE AT WHICH THE WEAPON IS SEEMINGLY BEING FIRED

26 INTO THE HEAD OF JOSE MENENDEZ CONSISTENT WITH THE

27 PHYSICAL EVIDENCE AS DEPICTED IN THE PHOTOGRAPHS AND

28 THE X RAYS?

1 MS. ABRAMSON: OBJECTION, YOUR HONOR.

2 THE COURT: THE LEGAL OBJECTION?

3 MS. ABRAMSON: WELL, IT CALLS FOR SPECULATION
4 AND HIS CONCLUSIONS. THE QUESTION IS TOO VAGUE, AND
5 IT REFERS TO ALL THE PHYSICAL EVIDENCE.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES. NOT ONLY IS IT CONSISTENT
8 WITH THE WOUND GEOMETRY --

9 MS. ABRAMSON: OBJECTION. HE HAS NO
10 EXPERTISE IN WOUND GEOMETRY.

11 THE COURT: OVERRULED.

12 THE WITNESS: WE'RE ALSO GOING TO SEE IT'S
13 VERY CONSISTENT WITH WHERE WE'RE GOING TO SEE HIS
14 BLOOD IN THE CRIME SCENE PHOTOGRAPHS.

15 MS. ABRAMSON: OBJECTION, YOUR HONOR. HE HAS
16 NO EXPERIENCE IN BLOOD SPATTER AND HE CANNOT
17 DETERMINE WHOSE BLOOD IS WHOSE.

18 THE COURT: SUSTAINED AS TO THE
19 CHARACTERIZATION AS TO WHOSE BLOOD IS AT ANY
20 PARTICULAR LOCATION. THAT PORTION OF THE ANSWER IS
21 STRICKEN.

22 AS FAR AS WOUND GEOMETRY, YOU'LL HAVE TO
23 LAY A FOUNDATION THAT HE IS RELYING UPON A CORONER'S
24 REPORT AND/OR THE TESTIMONY OF DR. LAWRENCE.

25 MR. CONN: OKAY.

26 Q IN YOUR REFERENCE TO THE TERM "WOUND
27 GEOMETRY," WHAT WERE YOU RELYING UPON IN OFFERING
28 THAT BASIS FOR YOUR OPINION?

40465

1 A EXACTLY WHAT I EXPLAINED BEFORE,
2 DR. LAWRENCE'S TESTIMONY. IT WAS A CONTACT WOUND,
3 AND THE SHOTGUN WAS PLACED UP TO THE BACK OF THE
4 HEAD.

5 Q DID YOU OBSERVE SOME BLOOD IN THE
6 PHOTOGRAPHS OF THE CRIME SCENE, ON OR ABOUT THE BODY
7 OF JOSE MENENDEZ, AS IT WAS FOUND AT THE CRIME
8 SCENE?

9 A YES.

10 Q AND WHERE DID YOU OBSERVE THAT BLOOD IN
11 THE PHOTOGRAPHS?

12 A BASICALLY, COPIOUS AMOUNTS ON HIM AND ON
13 THE SOFA DIRECTLY BEHIND HIS HEAD, IF HE WAS SEATED
14 IN THIS POSITION.

15 Q OKAY. NOW, I ASKED YOU BEFORE IN REGARD
16 TO SHOT.1A AND B, WHAT WAS THE ESSENTIAL INFORMATION
17 THAT YOU WERE SEEKING TO COMMUNICATE THROUGH THAT
18 ILLUSTRATION. AND I WILL BE ASKING YOU THAT
19 QUESTION IN REGARD TO EACH ONE OF THE SEQUENCE OF

20 ILLUSTRATIONS THAT WE WILL BE GOING THROUGH.

21 IN REGARD TO THIS ILLUSTRATION, SHOT.2B,
22 WHAT IS THE ESSENTIAL INFORMATION THAT YOU ARE
23 SEEKING TO REPRESENT OR COMMUNICATE THROUGH THIS
24 ILLUSTRATION?

25 A BASICALLY, THAT THE SHOT OCCURRED WHEN
26 HE WAS SEATED IN THIS LOCATION, DELIVERED TO THE
27 BACK OF HEAD IN THE -- ROUGHLY, THE GENERAL DIRECTION
28 THAT I'VE INDICATED.

40466

1 Q OKAY. ARE YOU SEEKING THROUGH THIS
2 ILLUSTRATION TO COMMUNICATE, FOR EXAMPLE, THE
3 POSITION OF MARY MENENDEZ AS SHE IS PRECISELY
4 DEPICTED IN THAT ILLUSTRATION?

5 A NO. ALTHOUGH IT IS CONSISTENT WITH WHAT
6 DR. LAWRENCE TESTIFIED TO YESTERDAY.

7 Q AND MORE SPECIFICALLY, I WOULD LIKE TO
8 DIRECT YOUR ATTENTION TO, FOR EXAMPLE, THE POSITION
9 OF THE LEGS OF MARY MENENDEZ AS SHE WOULD APPEAR IN
10 THAT ILLUSTRATION.

11 DO YOU HAVE AN OPINION CONCERNING THE
12 PRECISE LOCATION OF HER LEGS AT THAT PARTICULAR
13 POINT IN TIME AT WHICH THE SHOT TO THE HEAD -- TO THE
14 BACK OF THE HEAD OF JOSE MENENDEZ WAS FIRED?

15 A NO. THEY COULD HAVE BEEN FARTHER APART
16 CERTAINLY; I MEAN, THEY'RE JUST -- THERE'S NOTHING
17 IN THE SCENE THAT PERMITS ME TO RECONSTRUCT THAT
18 LEVEL OF DETAIL. SO I JUST LEFT THEM IN THE
19 STANDARD ANTHROPOMORPHIC SEATED POSITION.

20 Q LET'S TAKE HER ARMS, FOR EXAMPLE.

21 ARE YOU SEEKING TO COMMUNICATE THROUGH
22 THIS ILLUSTRATION THE PRECISE LOCATION OF HER ARMS
23 OR HER HANDS AT THE TIME THAT THE SHOT TO THE BACK
24 OF THE HEAD OF JOSE MENENDEZ WAS FIRED?

25 A NO. I THINK IT UNLIKELY THEY WERE IN
26 THE POSITION SHOWN.

27 Q UNLIKELY THAT THEY WERE IN WHAT
28 POSITION?

40467

1 A THE POSITION I'VE ILLUSTRATED HERE.

2 Q WHY IS THAT?

3 A SHE HAS, IN MY RECONSTRUCTION, JUST BEEN
4 SHOT IN THE LEFT BREAST. I DON'T THINK SHE'S
5 SITTING THERE IN THIS IMMOBILIZED POSITION.
6 HOWEVER, I DON'T KNOW WHAT POSITION SHE'S IN. SO
7 I'VE SHOWN HER THERE, BUT THE LADY HAS JUST BEEN
8 SHOT.

9 Q YOU DON'T KNOW AT THAT POINT PRECISELY

10 WHAT SHE WAS DOING WITH HER HANDS; IS THAT CORRECT?

11 A NO.

12 Q NOW, YOU SAID THAT IS CONSISTENT WITH
13 THE TESTIMONY OF DR. LAWRENCE YESTERDAY. WHAT
14 ASPECT OF DR. LAWRENCE WERE YOU RELYING UPON WHEN
15 YOU SAY THAT THIS IS CONSISTENT WITH THE TESTIMONY
16 OF DR. LAWRENCE?

17 A WELL, CONCERNING HIS TESTIMONY ABOUT THE
18 BLOOD PATTERN AND WHAT YOU BELIEVED TO BE THE
19 MASKING OF HER LOCATION NEXT TO HIM, THE EXIT WOUND
20 OF THE PELLETS ON THE RIGHT SIDE OF HIS FACE -- HIS
21 HEAD IS ELEVATED. IT PROVIDES AN INTERESTING -- I
22 DID NOT THINK OF IT -- BUT A POINT FOR THE EMISSION
23 OF MIST THAT HE COULD HAVE BEEN DIAGNOSED AS BEING
24 ON THE CUSHIONS.

25 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
26 OBJECT. BEYOND THIS WITNESS' EXPERTISE, AND IT WAS
27 EVEN BEYOND DR. LAWRENCE'S EXPERTISE.

28 THE COURT: EXCEPT THAT DR. LAWRENCE DID

40468

1 TESTIFY ABOUT IT.

2 MS. ABRAMSON: THEN HE ADMITTED HE WAS NO
3 EXPERT IN THAT AREA.

4 THE COURT: WHATEVER WEIGHT THE TESTIMONY OF

5 DR. LAWRENCE HAS, IT'S BEFORE THE JURY AND FOR THE
6 JURY TO EVALUATE AS A BASIS FOR THIS WITNESS'
7 OPINION.

8 Q BY MR. CONN: NOW, BEFORE WE GO ON TO
9 THE NEXT SEQUENCE OF SHOTS HERE, I WOULD LIKE TO
10 FOCUS A LITTLE BIT MORE ON THE QUESTION OF SEQUENCE,
11 AS WE ARE DOING THAT.

12 FIRST OF ALL, IN THE ILLUSTRATION WHICH
13 YOU HAVE ALREADY TESTIFIED TO, SHOT.1A AND 1B, YOU
14 INDICATED THROUGH YOUR ILLUSTRATIONS THAT IT IS YOUR
15 OPINION THAT THAT WAS THE FIRST IN THE SEQUENCE TO
16 BE FIRED.

17 CAN YOU TELL US WHAT YOU BASE YOUR
18 CONCLUSION UPON THAT THAT WAS THE FIRST IN THE
19 SEQUENCE.

20 A BASICALLY, TO GET -- IF YOU REMEMBER
21 SHOT.1A, I HAVE RECONSTRUCTED JOSE'S LEFT ARM
22 RAISED. HE CAN'T BE DEAD TO RAISE HIS LEFT ARM. SO
23 HE'S GOT TO BE ALIVE AT THAT POINT.

24 AS DR. LAWRENCE TESTIFIED YESTERDAY,
25 HE'S DEAD AT THIS POINT.

26 Q SO YOUR CONCLUSION CONCERNING THE
27 SEQUENCE OF SHOTS FIRED TO THE BODY OF JOSE MENENDEZ
28 RELIES UPON TESTIMONY OF DR. LAWRENCE AT THIS TIME

1 AS YOU TESTIFY HERE TODAY?

2 A CLEARLY. I MEAN, AS DR. LAWRENCE
3 INDICATED -- BUT I THINK IT'S PRETTY CLEAR -- HE'S
4 DEAD WHEN THIS HAPPENS. SO THAT THE PREVIOUS SHOT
5 HAS TO COME IN FRONT OF THIS SHOT.

6 Q NOW, CAN YOU TELL US WHY YOU CONCLUDED,
7 ONCE AGAIN, TALKING ABOUT THE SEQUENCE, THAT SHOTS 1
8 AND 2 WHICH, IN YOUR ILLUSTRATIONS, BOTH STRUCK THE
9 BODY OF JOSE MENENDEZ, OCCURRED EARLIER IN TIME THAN
10 THE OTHER SHOTS THAT WE'RE GOING TO BE ADDRESSING,
11 SOME OF WHICH, OR MANY OF WHICH STRUCK THE BODY OF
12 MARY MENENDEZ?

13 A BASICALLY, IN MY RECONSTRUCTION, JOSE IS
14 NOT AN ACTIVE PARTICIPANT IN THIS SHOOTING SCENE
15 FROM HERE ON.

16 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
17 OBJECT AS PURE SPECULATION.

18 THE COURT: WELL, THE WAY THE ANSWER IS
19 PHRASED, IT'S UNCLEAR WHAT THE WITNESS MEANS.

20 SO THE ANSWER'S STRICKEN.

21 MR. CONN: OKAY.

22 Q LET ME CLARIFY.

23 CAN YOU TELL US WHY YOU, IN YOUR
24 ILLUSTRATIONS AND IN YOUR OPINION THAT YOU HAVE THEN
25 BEEN TESTIFYING TO, YOU HAVE DESIGNATED THE SHOTS TO
26 JOSE MENENDEZ AS OCCURRING EARLY IN THE SEQUENCE OF
27 SHOTS THAT WERE FIRED ON THIS PARTICULAR OCCASION?

40470

1 FROM THE ORIGINAL SEATED POSITION. HE CLEARLY
2 RAISED HIS ARM, IN MY RECONSTRUCTION, FOR THE FIRST
3 SHOT. BEING SHOT, I RECONSTRUCTED THE SECOND SHOT
4 OCCURRED AFTER THE FIRST ONE, WHEN HE HAD TO BE
5 ALIVE, BUT FAIRLY RAPIDLY AFTER THE FIRST ONE
6 BECAUSE HE IS, IF YOU WILL, IMMOBILIZED IN MY
7 RECONSTRUCTION BY THIS SHOT. HE DOESN'T MOVE FROM
8 THE SEATED POSITION.

9 AFTER THE FIRST SHOT, AS WAS TESTIFIED
10 TO YESTERDAY AND AS THE CORONER INDICATED, THE SHOTS
11 THROUGH THE LEFT ARM AND THE RIGHT ARM OF JOSE
12 MENENDEZ WERE NOT FATAL.

13 SO, HE IS NOW SHOT. IF HE IS GOING TO
14 NOT MOVE FROM THIS POSITION, I POSTULATE THE MOST
15 LOGICAL REASON FOR THAT IS THIS SHOT HAPPENS CLOSELY
16 AND IMMEDIATELY THEREAFTER AND THAT'S WHAT
17 IMMOBILIZES HIM ON THE COUCH.

18 MS. ABRAMSON: OBJECTION. SPECULATION. MOVE
19 TO STRIKE.

20 THE COURT: OVERRULED. THE ANSWER WILL
21 STAND.

22 MR. CONN: OKAY. NOW, AT THIS TIME WHAT I

23 WOULD LIKE TO DO IS TO SHOW YOU ANOTHER SHOT
24 ILLUSTRATION WHICH HAS BEEN DESIGNATED 3A AND HAS
25 BEEN NUMBERED HERE AS EXHIBIT 254.
26 Q DIRECTING YOUR ATTENTION TO EXHIBIT 254,
27 CAN YOU TELL US WHAT THAT EXHIBIT PURPORTS TO
28 ILLUSTRATE.

40471

1 A YES. THIS IS THE GEOMETRY I
2 RECONSTRUCTED THAT PERTAINS TO THE THIRD SHOT.
3 Q AND BEFORE WE GET INTO PRECISELY WHAT
4 YOU ARE SEEKING TO ILLUSTRATE THROUGH THAT DIAGRAM,
5 I WOULD LIKE TO FOCUS YOU ON ANY X RAYS OR
6 PHOTOGRAPHS THAT YOU RELIED ON IN FORMING A
7 CONCLUSION CONCERNING THOSE SHOTS OR THAT PARTICULAR
8 SHOT.
9 ONCE AGAIN, IF WE COULD DIM THE LIGHTS.
10 I WOULD LIKE TO DIRECT YOUR ATTENTION TO
11 AN EXHIBIT WHICH HAS BEEN MARKED AS 1.EXTERIO HERE
12 IN YOUR CLASSIFICATION. AND LET ME DIRECT YOUR
13 ATTENTION TO 1.DOOR, WHICH HAS BEEN MARKED AS 247 IN
14 THIS PROCEEDING.
15 IS THIS A PHOTOGRAPH THAT YOU RELIED
16 UPON IN FORMING AN OPINION CONCERNING THE SHOT THAT
17 HAS BEEN DESIGNATED 3A?

18 A YES.

19 Q AND CAN YOU TELL US WHAT WE ARE LOOKING
20 AT THERE.

21 A WE ARE LOOKING AT -- YOU CAN SEE IN THE
22 SHOT.3A DIAGRAM A SHOT THAT GOES THROUGH THE DOOR IN
23 THE BACK OF THE ROOM. AND THIS IS A PHOTOGRAPH OF
24 THE ACTUAL -- THESE ARE THE BLINDS, AND YOU CAN SEE
25 THE GLASS BROKEN THROUGH -- ONE OF THE BLINDS HERE
26 HAS BEEN BROKEN IN HALF BY THE SHOT, AND YOU CAN SEE
27 THE SHATTERED GLASS. IT'S CLEARLY TEMPERED GLASS
28 BECAUSE OF THE WAY IT FRACTURED.

40472

1 Q OKAY. AND LET ME DIRECT YOUR ATTENTION
2 TO AN EXTERIOR VIEW OF THAT SAME SHOT, WHICH HAS
3 BEEN MARKED 245 HERE, AND IS 2.EXTERIO IN YOUR
4 CLASSIFICATION.

5 CAN YOU TELL US WHAT WE ARE LOOKING AT
6 THERE.

7 A NOW, WE'VE STEPPED OUTSIDE AND WE'RE
8 LOOKING ON THE OTHER SIDE OF THE DOOR THAT WE SAW IN
9 THE PREVIOUS SHOT.

10 Q NOW, THE SHAPE OF THAT HOLE IN THE
11 GLASS, DOES THAT HAVE SOME PARTICULAR SIGNIFICANCE
12 FOR YOU?

13 A YES.

14 Q WHAT CONCLUSIONS DID YOU REACH

15 CONCERNING THE SHAPE OF THAT HOLE IN THE GLASS?

16 A WELL, WE KNOW, BECAUSE OF THE SLIGHTLY

17 OVALLED SHAPE, THAT BECAUSE IT'S LONGER HORIZONTALLY

18 THAN IT IS VERTICALLY, THAT IT WAS NOT SHOT SQUARE

19 ON THE DOOR. IT HAD TO BE SHOT OFF AT A BIAS.

20 Q IS THAT BECAUSE SHOOTING AT A BIAS WOULD

21 CAUSE A LARGER HOLE HORIZONTALLY THAN VERTICALLY?

22 A YES. IT'S JUST LIKE SHINING A

23 FLASHLIGHT AT AN ANGLE. IF YOU SHINE A FLASHLIGHT

24 ONTO AN OBJECT YOU GET A CIRCLE. BUT IF YOU ANGLE

25 THE BEAM OF THE FLASHLIGHT, YOU GET AN OVAL.

26 YOU CAN SORT OF THINK OF THE CONICAL

27 SHAPE OF THE SHOWERING PELLETS COMING OUT OF THE

28 SHOTGUN SORT OF LIKE A CONICAL BEAM.

40473

1 Q OKAY. LET ME NOW SHOW YOU ANOTHER

2 PHOTOGRAPH WHICH YOU HAVE DESIGNATED 2.DOOR AND

3 WHICH WE HAVE DESIGNATED IN OUR PROCEEDING 248.

4 CAN YOU TELL US WHAT THIS DEPICTS.

5 A THIS IS NOW A CLOSER-UP PICTURE OF THE

6 HOLE IN THE GLASS. YOU CAN SEE THE BLIND THAT WAS

7 ON THE INSIDE. YOU CAN SEE THE INVESTIGATING

8 OFFICER HOLDING THE SCALE IN THE PICTURE.

9 Q OKAY. AS PART OF YOUR REVIEW OF THE
10 INFORMATION, DID YOU BECOME AWARE OF DAMAGE DONE TO
11 A DIFFERENT PART OF THAT PAIR OF DOORS THAT WERE
12 RIGHT BEHIND THE SOFA OF THE DEN?

13 A YES.

14 Q I WOULD LIKE TO DIRECT YOUR ATTENTION TO
15 ANOTHER PHOTOGRAPH WHICH YOU HAVE DESIGNATED
16 3.EXTERIO, WHICH HAS BEEN DESIGNATED IN THIS
17 PROCEEDING AS 246.

18 AND CAN YOU TELL US WHAT WE ARE LOOKING
19 AT THERE?

20 A YES. WE'RE LOOKING AT THE OTHER DOOR,
21 THE TV BEING NORTH. WE'RE LOOKING AT THE EAST DOOR
22 HERE. AND YOU CAN SEE THE LOWER PANEL HAS SOME
23 BREAKAGE AND SHATTERING. THE UPPER PANEL HERE, EVEN
24 THOUGH THE BLIND IN FRONT OF IT WAS HIT WITH SOME
25 PELLETS, THEY DIDN'T HAVE ENOUGH ENERGY TO BREAK THE
26 GLASS.

27 Q OKAY. NOW, IN FORMING YOUR OPINIONS
28 CONCERNING THE SHOTS THAT WERE FIRED IN THIS ROOM,

40474

1 DID YOU REACH AN OPINION CONCERNING THE NUMBER OF
2 SEPARATE SHOTS THAT STRUCK THE TWO DOORS THAT YOU

3 HAVE JUST IDENTIFIED?

4 A YES.

5 Q AND WHAT IS THAT OPINION?

6 A AS THE PREVIOUS PHOTOGRAPH INDICATED --

7 IF I MAY GO BACK -- THIS IS CLEARLY DAMAGE FROM A

8 SINGLE SHOT IN A WELL-FORMED PATTERN UNOBSTRUCTED BY

9 ANYTHING INTERIOR GOING THROUGH THE WINDOW.

10 Q YOU'RE REFERRING TO THE PHOTOGRAPH THAT

11 WE HAVE MARKED HERE AS 245. IS IT YOUR OPINION THAT

12 AN ENTIRE SHOTGUN ROUND CAUSED THAT DEFECT THAT YOU

13 SEE IN THE DOOR THERE?

14 A YES. THIS IS A CLASSIC SHOTGUN STRIKING

15 PATTERN, A LARGE AREA, NUMBER OF INDIVIDUAL PELLETS

16 ARE OBSERVABLE THROUGH THE BLINDS. THE BLIND WAS

17 ACTUALLY BROKEN. YOU CAN SEE INDIVIDUAL DEFECTS

18 INDICATED IN THE SURFACE OF THE BLIND, WELL-FORMED.

19 IT HAS A LITTLE MORE ELONGATION HORIZONTALLY BECAUSE

20 IT'S AT A BIAS, BUT NO INTERVENING STRIKES. THIS,

21 IN MY RECONSTRUCTION, IS A CLEAR MISS.

22 Q AS FAR AS THE DAMAGE THAT WAS DONE TO

23 THE OTHER DOOR THAT IS PART OF THAT SET OF FRENCH

24 DOORS, DID YOU FORM AN OPINION CONCERNING WHETHER

25 THAT REPRESENTS A FULL MISS CAUSED BY AN ENTIRE

26 SHOTGUN ROUND?

27 A CLEARLY, IT IS NOT A FULL MISS. WE HAVE

28 AN IN-TACT SET OF BLINDS IN FRONT OF IT AGAIN. THE

1 AREA OF A CLEAN MISS IS CLEARLY LARGER -- WE HAVE
2 NOW AN EXAMPLE ON THE OTHER DOOR, CLEARLY LARGE
3 ENOUGH TO TAKE OUT A BLIND. WE BREAK UP SOME BLINDS
4 HERE, BUT DON'T TAKE ONE OUT. WE DON'T HAVE THE
5 CLEAR PATTERNING.

6 ALSO, YOU SEE THAT THE ENERGY OF THE
7 PELLET IS SUBSTANTIALLY LESS. HERE WE HAVE PELLET
8 ENERGIES THAT WERE SUFFICIENT TO DENT SOME WOOD BUT
9 COULDN'T EVEN BREAK THIS PIECE OF GLASS.

10 SO IT'S CLEARLY TWO DIFFERENT SHOTS.

11 Q OKAY. AND DID YOU FORM AN OPINION
12 WHETHER THAT SHOT REPRESENTS AN ENTIRE LOAD OR A
13 FULL MISS?

14 A THERE AREN'T ENOUGH DEFECTS. THERE
15 ISN'T ENOUGH ENERGY. THIS SHOT WAS INVOLVED WITH
16 SOMETHING ELSE BEFORE IT GOT TO THE DOOR. AS YOU
17 CAN SEE, THE CONTRAST BETWEEN THE SHOTS IS VERY
18 GREAT.

19 Q OKAY. NOW, I WOULD LIKE TO DIRECT YOUR
20 ATTENTION TO ANOTHER PHOTOGRAPH WHICH HAS BEEN
21 PREPARED FOR THIS SERIES OF PHOTOGRAPHS, ONE THAT
22 YOU HAVE DESIGNATED 1.TREE, AND WHICH HAS BEEN
23 DESIGNATED FOR US AS 249.

24 DID THIS PHOTOGRAPH ASSIST YOU IN SOME
25 WAY IN DETERMINING THE GEOMETRY OF SHOT 3?

26 A YES. THIS TREE IS OUTSIDE THE DOOR WE

27 JUST SAW, DOWN RANGE, AND A LITTLE BIT TO THE EAST,
28 CONSISTENT WITH THE BIAS THAT I TALKED ABOUT IN

40476

1 TERMS OF THE OVALING OF THE HOLE. THE TREE'S A
2 LITTLE BIT TO THE EAST; AND CLEARLY, THE TREE PICKED
3 UP SOME SHOTGUN PELLET DEFECTS AS A RESULT OF THE
4 SHOOTING.

5 Q OKAY. ALL RIGHT. IF WE COULD RAISE THE
6 LIGHTS THEN.

7 SO REFERRING YOU BACK TO THE
8 ILLUSTRATION THAT HAS BEEN DESIGNATED 254 AND WHICH
9 DEPICTS SHOT.3A, IF WE WERE TO CONTINUE THE
10 TRAJECTORY THAT IS DEPICTED IN THAT ILLUSTRATION,
11 GOING THROUGH THE FRENCH DOORS, AFTER MISSING BOTH
12 OF THE VICTIMS IN THIS CASE, DOES THAT TRAJECTORY
13 EVENTUALLY STRIKE SOMETHING IN THE BACKYARD?

14 A YES.

15 Q AND WHAT IS THAT?

16 A THE TREE.

17 Q NOW, TURNING YOUR ATTENTION TO THE
18 ILLUSTRATION IN SHOT.3A, ONCE AGAIN, I WOULD LIKE TO
19 ASK YOU ABOUT THE ESSENTIAL INFORMATION THAT YOU ARE
20 SEEKING TO ILLUSTRATE OR TO COMMUNICATE WITH THIS
21 ILLUSTRATION, AS OPPOSED TO THE NON-ESSENTIAL,

22 INFORMATION OF WHICH YOU CANNOT FORM AN OPINION.

23 CAN YOU TELL US WHAT YOU ARE SEEKING TO
24 COMMUNICATE HERE.

25 A YES. FIRST OF ALL, THERE'S THE
26 DIRECTION OF THE SHOT. IN THIS SHOT WE HAVE TWO
27 POINTS. WE HAVE THE TREE, WE HAVE THE DOOR. THIS
28 DIRECTION WE KNOW.

40477

1 Q WHEN YOU SAY "THIS DIRECTION WE KNOW,"
2 HOW CAN YOU TELL FROM THOSE TWO POINTS THE DIRECTION
3 OF THE SHOT?

4 A THE TREE DIDN'T MOVE, THE DOOR DIDN'T
5 MOVE.

6 Q SO YOU DRAW A STRAIGHT LINE FROM THE
7 TREE TO THE GLASS AND WHAT DO YOU KNOW FROM THAT?

8 A THIS IS THE DIRECTION OF THE SHOT
9 (INDICATING).

10 NOW, WHAT'S ESSENTIAL TO COMMUNICATE IS
11 THAT IF YOU LOOK WHERE YOU PLACED THAT GEOMETRY
12 RELATIVE TO THE COUCH AND RELATIVE TO MY PREVIOUS
13 TWO SHOTS, MARY MENENDEZ WASN'T THERE ANYMORE.

14 Q OKAY. WHY DO YOU CONCLUDE THAT SHE WAS
15 NOT THERE AT THE TIME THAT THIS SHOT, 3A, WAS FIRED?

16 A WELL, WHEN I SAY "NOT THERE," SHE WAS

17 NOT IN THE WAY OF THIS SHOT. THIS SHOT IN -- YOU
18 SHOULD GET 3B UP THERE TOO. IT GETS A LITTLE BETTER
19 DOWN-VIEW ON THE ANGLE.

20 Q AT THIS TIME I WILL PLACE ON THE EASEL
21 EXHIBIT 255 WHICH ILLUSTRATES 3B.

22 AND IS 3B A VIEW OF THE SAME SHOT
23 DEPICTED FROM A DIFFERENT POINT OF VIEW?

24 A YES. SLIGHTLY MORE OVERHEAD NOW.
25 AGAIN, SHOWING THE GEOMETRY OF THE DOOR AND THE TREE
26 OUT BACK, WHICH ALLOWS US TO LAY A LINE HERE.

27 NOW, YOU CAN ALSO POSITION MARY ON THE
28 COUCH, EVEN STILL SEATED, WHERE THAT SHOT WOULD

40478

1 MISS; AND THE ESSENTIAL INFORMATION IS THAT THE SHOT
2 MISSED.

3 Q OKAY.

4 A ALL I COULD SHOW YOU IS THE DIRECTION OF
5 THE SHOT, WHICH I'VE SHOWN YOU, WHICH WE KNOW PRETTY
6 COMFORTABLY.

7 I HAVE SHOWN HER MOVED. COULD SHE HAVE
8 BEEN SEATED TO THE LEFT OF THAT SHOT WHEN IT
9 OCCURRED AND STILL BE SEATED ON THE COUCH? YES.
10 EXCEPT AGAIN, WE DON'T HAVE ANY EVIDENCE ABOUT WHERE
11 SHE WAS, EXCEPT THAT SHE WASN'T IN THE WAY OF THAT

12 SHOT.

13 Q OKAY. WE ALSO HEARD FROM DR. LAWRENCE A
14 SUGGESTION THAT SHE MAY HAVE MOVED IN A DIFFERENT
15 WAY, FOR EXAMPLE, BY ROLLING OR IN SOME OTHER WAY
16 MOVED HER BODY. HAVE YOU RULED OUT THOSE
17 POSSIBILITIES IN FORMULATING AN OPINION CONCERNING
18 THIS SHOT?

19 A NO. IN MY RECONSTRUCTION SHE'S SHOT.
20 SHE COULD HAVE ROLLED OFF, STAGGERED OFF. I'VE
21 AGAIN JUST SHOWN THE ANTHROPOMORPHIC FIGURE IN A
22 STATIC POSITION. I DON'T KNOW -- I DON'T KNOW IF SHE
23 WAS CLUTCHING HERSELF. MOST PROBABLY. SHE MOST
24 PROBABLY WAS NOT IN THAT POSITION. WHAT I'M SHOWING
25 YOU IS OUT OF THE WAY OF THE SHOT.

26 Q ALL RIGHT. AT THIS TIME -- WELL, LET ME
27 ASK YOU THIS BEFORE I MOVE ON.

28 CAN YOU TELL ME WHY YOU DETERMINED, OR

40479

1 HOW YOU DETERMINED, IN YOUR OPINION, THAT THE MISS
2 WHICH YOU HAVE INDICATED OCCURRED AT SOME POINT IN
3 TIME IN THAT ROOM THAT WENT THROUGH THE FRENCH DOOR
4 AND WENT INTO THE TREE, OCCURRED IN THIS PARTICULAR
5 SEQUENCE; THAT IS, FOLLOWING THE FIRST TWO SHOTS,
6 THE LAST OF WHICH WAS THE SHOT TO THE HEAD OF JOSE

7 MENENDEZ?

8 A WELL, IF WE GO THROUGH THE SEQUENCE OF
9 WHERE THE FOLLOWING SHOTS ARE GOING TO OCCUR FROM,
10 YOU'LL SEE BETTER WHY THIS MAKES SENSE; AND AGAIN,
11 YOU CAN'T MICRO THEORY EACH SHOT. THE FUNDAMENTAL
12 DRIVERS ARE THAT THE SHOOTERS NORMALLY DON'T WANT TO
13 BE SHOOTING AT EACH OTHER.

14 MS. ABRAMSON: I'M GOING TO OBJECT AS MIND
15 READING AND BEYOND HIS EXPERTISE.

16 THE COURT: SUSTAINED. THE ANSWER IS
17 STRICKEN.

18 THE WITNESS: I'M SORRY.

19 Q BY MR. CONN: OKAY. ASIDE FROM THAT,
20 CAN YOU -- WE'LL ELABORATE UPON YOUR OPINION AS WE
21 GET FURTHER INTO THE ILLUSTRATIONS.

22 BUT JUST FOR OUR PURPOSE NOW, CAN YOU
23 GIVE A BRIEF ANSWER AS TO WHY YOU CONCLUDED THAT
24 THIS PARTICULAR MISS, WHICH YOU'VE DESIGNATED, SHOT
25 3B, OCCURRED AT THAT POINT IN TIME?

26 A THE DIRECTION OF THE SHOT MAKES BY FAR
27 THE MOST SENSE; OR AS A DIRECTED SHOT, WHEN THE TWO
28 FIGURES ARE SEATED ON THE SOFA.

40480

1 IN MY RECONSTRUCTION, PARTICULARLY WHERE

2 WE'RE GOING TO SEE HER BODY AND A LOT OF THE
3 EVIDENCE LATER ON, EARLY IN THE SEQUENCE SHE IS ON
4 THE SOFA; AND LATER ON IN THE SEQUENCE SHE IS OFF
5 THE SOFA. THIS SHOT DIRECTED AS IT -- WELL,
6 TRAVELING IN THIS DIRECTION, MAKES SENSE AT THIS
7 POINT.

8 Q OKAY. FOLLOWING THIS PARTICULAR SHOT
9 THEN, DO YOU PLACE THE BODY OF MARY MENENDEZ THEN IN
10 A DIFFERENT POSITION FOR THE REMAINDER OF THE SHOTS?

11 A WELL, FROM THIS SHOT FORWARD SHE'S NO
12 LONGER ON THE SOFA. SHE ISN'T HERE IN MY
13 RECONSTRUCTION, ALTHOUGH SHE COULD HAVE BEEN TO THE
14 LEFT. SHE'S EITHER OFF OR GETTING OFF OR OFF AT
15 THIS POINT.

16 Q AND DID YOU MAKE AN ASSUMPTION OR REACH
17 A CONCLUSION CONCERNING THE MOBILITY OF MARY
18 MENENDEZ AT THIS POINT IN TIME AND THE LIKELIHOOD
19 CONCERNING WHETHER OR NOT SHE WOULD HAVE REMAINED IN
20 THAT POSITION?

21 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS,
22 YOUR HONOR. THIS CALLS FOR MATTERS THAT ARE PURE
23 SPECULATION.

24 THE COURT: WELL, IF YOU COULD ESTABLISH THAT
25 ANY ASSUMPTIONS WERE BASED UPON THE MEDICAL RECORDS
26 OR TESTIMONY.

27 MR. CONN: OKAY.

28 Q BASED UPON THE PHYSICAL EVIDENCE IN THIS

1 CASE, AND I'M REFERRING YOU SPECIFICALLY TO THE
2 WOUNDS TO THE BODY OF MARY MENENDEZ BEING BOTH
3 BEFORE AND AFTER THIS -- THE TIME OF THIS PARTICULAR
4 SHOT -- DID YOU FORM AN OPINION CONCERNING HER
5 MOBILITY AT THIS POINT IN TIME?

6 MS. ABRAMSON: YOUR HONOR, THIS BEGS THE
7 QUESTION, NUMBER ONE; NUMBER TWO, IT'S BEYOND --

8 THE COURT: AGAIN, OPINIONS AS TO HER
9 MOBILITY WOULD HAVE TO BE BASED UPON SOME MEDICAL
10 EVIDENCE FROM SOMEBODY ELSE, NOT HIS OPINION.

11 MR. CONN: OKAY.

12 Q DID YOU TAKE INTO CONSIDERATION THE
13 TESTIMONY OF DR. LAWRENCE CONCERNING THE WOUND TO
14 KITTY'S LEFT BREAST AND WHETHER OR NOT THAT WOULD
15 HAVE BEEN AN IMMEDIATELY FATAL WOUND IN FORMING AN
16 OPINION CONCERNING SHOT.3B?

17 MS. ABRAMSON: YOUR HONOR, I'M STILL GOING TO
18 OBJECT. DR. LAWRENCE NEVER SUGGESTED A SEQUENCE.

19 THE COURT: WELL, THAT IS NOT THE NATURE OF
20 THE QUESTION. SO OBJECTION OVERRULED.

21 THE WITNESS: YES.

22 Q BY MR. CONN: AND WHAT ASPECT OF THAT
23 OPINION DID YOU RELY UPON IN ASSISTING YOU IN
24 DETERMINING THAT SHOT 3 WAS THE MISS IN THIS CASE?

25 A WELL, IF THE SHOT TO HER LEFT BREAST IS
26 IMMEDIATELY FATAL, THIS THEORY FAILS. IT'S WRONG
27 THEN.
28 BUT AS HE TESTIFIED, THERE'S A HUNDRED --

40482

1 THERE'S A THOUSAND CC'S OF BLOOD IN HER CHEST
2 CAVITY; I MEAN, OBVIOUSLY HER HEART WAS PUMPING FOR
3 A WHILE.

4 MS. ABRAMSON: OBJECTION. THIS IS BEYOND HIS
5 EXPERTISE.

6 THE COURT: JUST STICK TO WHAT DR. LAWRENCE
7 SAID, RATHER THAN WHAT MIGHT BE OBVIOUS TO YOU,
8 WHICH MIGHT OR MIGHT NOT BE CORRECT.

9 THE WITNESS: OKAY.

10 THE COURT: OBJECTION SUSTAINED. THE
11 ANSWER'S STRICKEN.

12 THE WITNESS: SHE WAS CLEARLY ALIVE AFTER
13 THAT SHOT. AND ACCORDING TO -- AND LATER ON, THE
14 CORONER'S REPORTS GOING TO INDICATE AND DR. LAWRENCE
15 INDICATED, SHE WAS GOING TO RECEIVE WOUNDS TO HER
16 LEGS AND ARMS; THAT, AS THEY TESTIFIED, WOULD
17 INCAPACITATE HER. IN THIS RECONSTRUCTION THEY COULD
18 NOT HAVE OCCURRED AT THIS POINT.

19 Q ALL RIGHT. LET ME DIRECT YOUR ATTENTION

20 NOW TO THE NEXT ILLUSTRATION IN SEQUENCE, SHOT.4A,
21 WHICH HAS BEEN MARKED IN THIS PROCEEDING AS 277.
22 MS. ABRAMSON: IS THAT 252, COUNSEL?
23 THE COURT: IT WOULD BE 256 OR 277.
24 MR. CONN: 277.
25 THE COURT: 256 WILL BE 4A.
26 MR. CONN: YES. 256. THANK YOU, YOUR
27 HONOR.
28 Q DIRECTING YOUR ATTENTION TO SHOT.4A,

40483

1 WHICH IS EXHIBIT 256, CAN YOU TELL US WHAT IS
2 DEPICTED IN THIS ILLUSTRATION.

3 A YES. THIS IS MY RECONSTRUCTION OF THE
4 FOURTH SHOT.

5 Q AND WHAT DOES THIS PURPORT TO REPRESENT?

6 A BASICALLY, I RECONSTRUCTED THE FOURTH
7 SHOT AS THE ONE THAT HITS MARY AT THE RIGHT SIDE OF
8 HER FACE AT AN ANGLE, AS OPPOSED TO STRAIGHT ON AS
9 INDICATED IN THE AUTOPSY REPORT.

10 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,
11 YOUR HONOR, AS BEYOND HIS EXPERTISE.

12 THE COURT: ALL RIGHT. IT'S UNCLEAR WHAT THE
13 ANSWER MEANT.

14 ARE YOU DISPUTING WHAT THE REPORT SAID,

15 OR ARE YOU AGREEING, OR ARE YOU ACCEPTING AND

16 ASSUMING THAT THE REPORT IS CORRECT?

17 THE WITNESS: I BELIEVE THE REPORT IS IN

18 ERROR.

19 THE COURT: ALL RIGHT. OBJECTION IS

20 SUSTAINED.

21 THE ANSWER IS STRICKEN.

22 MS. ABRAMSON: I'D ASK THAT ANSWER BE

23 STRICKEN AS WELL.

24 THE COURT: THE ENTIRE -- THIS LAST ANSWER'S

25 STRICKEN ALSO.

26 Q BY MR. CONN: AS YOU SIT HERE TODAY, DID

27 YOU RELY UPON THE TESTIMONY OF DR. LAWRENCE

28 CONCERNING THE ANGLE AT WHICH THAT PARTICULAR SHOT

40484

1 WAS FIRED?

2 A YES.

3 MS. ABRAMSON: I'M GOING TO OBJECT THAT.

4 DR. LAWRENCE DISAGREED WITH THIS ANGLE AND REWROTE

5 IT.

6 THE COURT: OVERRULED.

7 Q BY MR. CONN: AND WHAT ASPECT OF

8 DR. LAWRENCE'S TESTIMONY WERE YOU RELYING UPON IN

9 CONCLUDING THAT THIS SHOT WAS FIRED AT AN ANGLE

10 RATHER THAN DIRECTLY TO THE FRONT OF THE FACE OF
11 MARY MENENDEZ?

12 MS. ABRAMSON: YOUR HONOR, I OBJECT AND ASK
13 TO APPROACH.

14 THE COURT: ALL RIGHT. I UNDERSTAND THE
15 NATURE OF THE OBJECTION.

16 OBJECTION'S OVERRULED.

17 THE WITNESS: I ACCEPT DR. LAWRENCE'S ANGLE.

18 NO PROBLEM WITH IT. AND THE BASIS WAS THE AUTOPSY
19 X RAYS AND PHOTOGRAPHS OF THE WOUND.

20 MR. CONN: I WOULD LIKE TO DIRECT YOUR
21 ATTENTION -- IF WE COULD DIM THE LIGHTS ONCE
22 AGAIN -- TO SOME OF THE X RAYS AND PHOTOS THAT YOU
23 RELIED UPON IN FORMING YOUR OPINION CONCERNING THIS
24 SHOT.

25 MS. ABRAMSON: OBJECTION, YOUR HONOR. HE HAS
26 NO RIGHT TO RELY ON X RAYS OR MEDICAL PHOTOGRAPHS.

27 THE COURT: OVERRULED.

28 Q BY MR. CONN: DIRECTING YOUR ATTENTION

40485

1 TO WHAT HAS BEEN MARKED IN THIS PROCEEDING AS 171
2 AND WHICH YOU DESIGNATED 5.XRAY.

3 THERE APPEARS BEFORE YOU AT THIS TIME AN
4 X RAY THAT DR. LAWRENCE PREVIOUSLY IDENTIFIED AS AN

5 X RAY TO THE HEAD OF MARY MENENDEZ.

6 THE COURT: WHAT EXHIBIT NUMBER IS THIS?

7 MR. CONN: THAT IS 171, YOUR HONOR.

8 Q CAN YOU TELL US WHAT INFORMATION YOU

9 RELIED UPON IN THIS X RAY TO ASSIST YOU IN FORMING

10 AN OPINION CONCERNING SHOT.4A?

11 MS. ABRAMSON: I'M GOING TO OBJECT WITH

12 RESPECT TO -- BECAUSE THIS WITNESS DISAGREES WITH

13 THE AUTOPSY REPORT, AND DR. LAWRENCE DID NOT TESTIFY

14 THAT THIS X RAY SHOWED ANGULATION, I WOULD OBJECT TO

15 THIS WITNESS SO TESTIFYING.

16 THE COURT: I HAVEN'T HEARD THAT'S WHAT HE

17 WAS GOING TO TESTIFY ABOUT. IT MIGHT JUST BE HE'S

18 GOING TO REFER TO SOME PELLETS PLAINLY VISIBLE IN

19 THE X RAY.

20 YOU MAY PROCEED.

21

22

23

24

25

26

27

28

1 Q BY MR. CONN: DIRECTING YOUR ATTENTION
2 TO THIS X RAY, CAN YOU TELL US WHAT INFORMATION YOU
3 RELIED UPON?

4 A YES. THE PELLETS PLAINLY VISIBLE IN THE
5 X RAY, CLEARLY RIGHT AT THE FRONT OF THE FACE.

6 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,
7 YOUR HONOR. HE'S NOT QUALIFIED TO READ X RAYS. AND
8 WE KNOW THAT THERE WAS MORE THAN ONE SHOT TO THIS --
9 TO THE HEAD BASED ON THE CORONER.

10 THE COURT: ALL RIGHT. AGAIN, COUNSEL --

11 MS. ABRAMSON: I'M SORRY, YOUR HONOR. IT'S
12 JUST HARD TO FRAME IT. IT'S BEYOND HIS EXPERTISE.

13 THE COURT: ALL RIGHT. I UNDERSTAND THE
14 OBJECTION, BUT BASICALLY THIS X RAY SPEAKS FOR
15 ITSELF. IT'S CLEAR THAT YOU CAN SEE PELLETS IN THE
16 FRONT OF THE FACE.

17 Q BY MR. CONN: AND CAN YOU TELL US WHAT
18 SIGNIFICANCE THE PELLETS TO THE FRONT OF THE FACE
19 PROVIDED TO YOU IN ASSISTING YOU IN CREATING THE
20 ILLUSTRATION THAT HAS BEEN DESIGNATED SHOT.4A?

21 MS. ABRAMSON: OBJECTION. BEYOND HIS
22 EXPERTISE.

23 THE COURT: OVERRULED.

24 THE WITNESS: A SHOT WITHOUT ANGULATION
25 STRAIGHT ON WOULD BE -- THIS IS JUST A REVERSE OF THE
26 SHOT TO JOSE MENENDEZ, ONLY ON THE FRONT OF THE FACE
27 WOULD DRIVE THE PELLETS IN.

28 SO, AS DR. LAWRENCE CONCLUDED, AND I

1 THINK IS CORRECT, THERE'S OBVIOUSLY ANGULATION TO
2 THAT SHOT.

3 Q BY MR. CONN: DIRECTING YOUR ATTENTION
4 NOW TO A PHOTOGRAPH THAT YOU HAVE DESIGNATED 10.MARY
5 AND WHICH WE HAVE MARKED HERE AS 194, I WOULD LIKE
6 TO ASK YOU IF YOU RELIED UPON THIS PHOTOGRAPH IN
7 FORMING AN OPINION --

8 MS. ABRAMSON: OBJECTION. BEYOND HIS
9 EXPERTISE.

10 THE COURT: OVERRULED.

11 Q BY MR. CONN: -- CONCERNING THE
12 ILLUSTRATION THAT YOU HAD DESIGNATED SHOT.4A.

13 A YES. AND AS DR. LAWRENCE INDICATED, THE
14 DAMAGE FROM THIS SHOT ISN'T CONFINED TO THE RIGHT
15 SIDE OF THE FACE.

16 MS. ABRAMSON: OBJECTION. MISSTATES
17 DR. LAWRENCE'S TESTIMONY.

18 THE COURT: OVERRULED.

19 Q BY MR. CONN: I WOULD LIKE TO DIRECT
20 YOUR ATTENTION NOW TO THE PHOTOGRAPH THAT YOU HAVE
21 DESIGNATED 12.MARY AND WHICH WE HAVE MARKED IN THIS
22 PROCEEDING AS 178.

23 A ANOTHER VIEW SO YOU CAN SEE THE LEFT

24 SIDE.

25 Q AND CAN YOU TELL US HOW THESE
26 PHOTOGRAPHS ASSISTED YOU IN PREPARING THE
27 ILLUSTRATION THAT YOU HAVE DESIGNATED SHOT.4A.

28 A FOR THE REASONS INDICATED BY

40488

1 DR. LAWRENCE, AND IT WAS KIND OF HIM TO ACCEPT MY
2 ANGLE, BUT I ACCEPT HIS ANGLE. THERE'S OBVIOUSLY
3 ANGULATION TO THE SHOT AND I'VE ATTEMPTED TO SHOW
4 THAT SCHEMATICALLY HERE, BUT IT COULD BE A FEW
5 DEGREES ONE WAY OR ANOTHER, SURELY.

6 Q LET ME SHOW YOU THE ILLUSTRATION, IF WE
7 CAN RAISE THE LIGHTS ONCE AGAIN.

8 THANK YOU.

9 THE ILLUSTRATION THAT WILL DEPICT THAT
10 ANGULATION SOMEWHAT BETTER, THE --

11 MS. ABRAMSON: I'M GOING TO OBJECT TO COUNSEL
12 TESTIFYING.

13 THE COURT: ALL RIGHT. THE REFERENCE TO
14 "SOMEWHAT BETTER" IS STRICKEN.

15 Q BY MR. CONN: LET ME SHOW YOU WHAT HAS
16 BEEN MARKED AS 257 AND WHICH IS ALSO LABELED
17 SHOT.4B.

18 NOW, CAN YOU TELL US WHAT WE ARE LOOKING

19 AT IN THIS ILLUSTRATION?

20 A YES. AS -- AS I'VE SHOWN, WE HAVE A
21 SHOT, BASICALLY, TO HER RIGHT SIDE. I'M NOT FUSSY
22 ABOUT THE ANGLE. I ALSO CAN'T POSITION HER
23 PRECISELY. I JUST HADN'T MOVED HER FROM THE LAST
24 SHOT. I CAN'T SAY IF SHE WAS STANDING THERE OR
25 THREE FEET FARTHER OVER OR THREE FEET FARTHER BACK.

26 THERE ARE REASONS, IN FACT, TO THINK
27 THAT SHE WAS PERHAPS A LITTLE FARTHER OVER THAN
28 SHOWN IN THIS FIGURE, BUT I CAN'T PIN THAT DOWN FOR

40489

1 YOU.

2 Q OKAY. ONCE AGAIN, FOCUSING ON WHAT IS
3 THE ESSENTIAL INFORMATION THAT YOU ARE SEEKING TO
4 COMMUNICATE IN THIS ILLUSTRATION AS OPPOSED TO THE
5 NON-ESSENTIAL AND VARIABLE INFORMATION, LET'S FOCUS
6 ON THE POSITION OF THE HANDS.

7 DO YOU KNOW WHAT THE POSITION OF HER
8 HANDS WERE IN THIS -- DURING THE TIME OF THIS
9 PARTICULAR SHOT?

10 A NO. IT'S UNLIKELY THEY WERE PRECISELY
11 WHERE I'VE SHOWN THEM.

12 Q WHY DO YOU SAY THAT?

13 A WELL, AT THIS POINT SHE'S WOUNDED.

14 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
15 OBJECT TO THAT AS ALSO SPECULATION. HE'S ONLY
16 TALKING ABOUT HIS SPECULATION.

17 THE COURT: ALL RIGHT. OBJECTION OVERRULED.

18 Q BY MR. CONN: AND THE -- DO YOU KNOW FOR
19 A FACT, EVEN, WHETHER SHE IS STANDING DURING THE
20 TIME OF THIS PARTICULAR SHOT?

21 A NO. IF -- COULD SHE HAVE BEEN KNEELING?
22 YES, ALTHOUGH STANDING GETS HER TO THE SUBSEQUENT
23 POSITIONS EASIER, BUT I CAN'T TELL YOU THAT FOR
24 SURE.

25 Q OKAY. SO IF YOU CANNOT DETERMINE FOR
26 SURE WHETHER SHE IS STANDING OR KNEELING OR THE
27 PRECISE LOCATION OF HER HANDS, WHAT, THEN, IS THE
28 ESSENTIAL INFORMATION THAT YOU ARE SEEKING TO

40490

1 COMMUNICATE IN THIS ILLUSTRATION?

2 A I BELIEVE IN THE SEQUENCE, THIS IS THE
3 MOST LOGICAL PLACE WHERE THIS SHOT TO HER FACE
4 OCCURRED.

5 Q AND CAN YOU TELL US WHY IT IS THAT YOU
6 CONCLUDED THAT THE FOURTH SHOT IN THE SEQUENCE OF
7 SHOTS WAS THE MOST LOGICAL PLACE IN THE SEQUENCE
8 THAT MARY MENENDEZ WAS SHOT IN THE AREA OF HER RIGHT

9 EYE?

10 A AT SOME POINT IN THE SEQUENCE SHE HAS TO
11 BECOME HORIZONTAL IN FRONT OF THE SOFA, BECAUSE
12 SHE -- THAT'S WHERE WE FIND HER.

13 ALSO IN MY RECONSTRUCTION SHE STARTS
14 SEATED TO THE RIGHT. SO HER POSITION HAS TO CHANGE
15 TO GET TO THOSE POSITIONS.

16 AS I'LL ILLUSTRATE IN MY LATER
17 GEOMETRIES, I THINK THOSE ARE BY FAR MOST CONSISTENT
18 WITH HER BEING HORIZONTAL WHEN THE LATER SHOTS
19 COME. SO THERE HAS TO BE SOMEWHERE IN MY
20 RECONSTRUCTION, TO MAKE SENSE, A SHOT THAT BASICALLY
21 KNOCKS HER DOWN. THIS SHOT I POSTULATE -- AND THE
22 CORONER USED "INCAPACITATING." THAT'S FINE WITH
23 ME. I MEAN, THIS IS AN INCAPACITATING SHOT --

24 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S
25 BEYOND HIS EXPERTISE.

26 THE COURT: ALL RIGHT. YOU'RE BASING THAT
27 UPON WHAT?

28 THE WITNESS: THE CORONER TESTIFIED THAT THIS

40491

1 SHOT WAS INCAPACITATING. I AGREE WITH HIM.

2 MR. GESSLER: WELL, I'LL OBJECT TO HIS
3 AGREEING, YOUR HONOR. IT'S A MEDICAL OPINION.

4 THE COURT: ALL RIGHT. THAT AGREEMENT IS
5 STRICKEN. IT'S THE ASSUMPTION OF THE WITNESS THAT --
6 UPON WHICH HE BASES HIS OPINION THAT THE CORONER
7 MADE THIS STATEMENT AND HE ACCEPTS THAT FOR THE
8 BASIS OF HIS OPINION.

9 MR. GESSLER: I'LL ASK THAT THE EXAMINATION
10 PROCEED BY WAY OF HYPOTHETICAL QUESTIONS.

11 THE COURT: WELL, TO THE EXTENT THAT THIS
12 WITNESS IS RELYING UPON INFORMATION PROVIDED BY
13 OTHERS AND EXPERTISE OF OTHERS, THE HYPOTHETICAL,
14 THAT HE IS ASSUMING THAT CERTAIN THINGS HAVE BEEN
15 ESTABLISHED BY OTHERS, WHETHER IT BE THE CORONER IN
16 THE ORIGINAL REPORT OR BY DR. LAWRENCE, AND IT'S
17 BEEN CLARIFIED AS THE TESTIMONY HAS PROCEEDED.

18 Q BY MR. CONN: AS YOU SIT THERE TODAY, DO
19 YOU RELY UPON THE TESTIMONY OF DR. LAWRENCE THAT
20 THIS SHOT WOULD HAVE BEEN AN INCAPACITATING SHOT?

21 MS. ABRAMSON: OBJECTION. DR. LAWRENCE
22 DIDN'T TESTIFY TO THAT.

23 THE COURT: OVERRULED.

24 THE WITNESS: I'M CERTAINLY RELYING ON HIS
25 TESTIMONY ABOUT THIS SHOT. I DON'T REMEMBER THE
26 EXACT WORDS HE USED, BUT I'M RELYING ON HIS
27 TESTIMONY AND THE ANALYSIS OF THE CORONER AS TO THE
28 SEVERITY OF THIS INJURY. AND IT IS, ACCORDING TO

1 THEM, SUFFICIENT TO NOW CAUSE HER TO HAVE FALLEN
2 DOWN.

3 Q BY MR. CONN: CAN YOU TELL US WHY YOU
4 ARE RELYING UPON THAT PARTICULAR WOUND TO HER RIGHT
5 EYE OR TO THE VICINITY OF HER RIGHT EYE, AS OPPOSED
6 TO SOME OF THE OTHER WOUNDS THAT WERE INFLICTED UPON
7 HER BODY IN CONCLUDING THAT THIS PARTICULAR SHOT WAS
8 THE FOURTH SHOT IN THE SEQUENCE?

9 A BECAUSE OF THE -- THERE'S NO DISAGREEMENT
10 AMONGST ANY OF THE MEDICAL PROFESSIONALS THAT I'VE
11 BEEN ABLE TO DETECT CONCERNING THE HORIZONTAL
12 ANGULATION; THAT IS, WAS THE SHOT IN HORIZONTAL.

13 NOW, THAT EITHER WOULD HAVE TO BE A VERY
14 FORTUITOUS LINE UP OF SOMEONE LYING DOWN, OR IF SHE
15 WERE SHOT STANDING UP THEN WE'D EXPECT THERE TO BE
16 LITTLE HORIZONTAL ANGULATION. ALL THE DISCUSSIONS --
17 ANGLE OF HORIZONTAL PLANE. I SHOULD SAY VERTICAL
18 ANGULATION. THERE'S NO DISAGREEMENT ON THAT. IT'S
19 ALL ON THE ANGLE OF HER HEAD.

20 SO IF HE'S SHE'S GOT BASICALLY A
21 HORIZONTAL SHOT, THAT ARGUES IN MY MIND, THERE SEEMS
22 TO BE LITTLE DISAGREEMENT ON THAT, THAT SHE'S
23 STANDING.

24 Q AND IN SOME OF THE LATER WOUNDS THAT WE
25 ARE GOING TO BE LOOKING AT WHEN YOU TESTIFY FURTHER
26 IN REGARD TO THIS SEQUENCE, DO YOU SEE A DIFFERENCE

27 IN ANGULATION THAN YOU SEE FOR THIS PARTICULAR

28 SHOT?

40493

1 MS. ABRAMSON: OBJECTION. BEYOND HIS
2 EXPERTISE.

3 THE COURT: AS FRAMED THE QUESTION DOES CALL
4 FOR EXPERT OPINION BEYOND THIS WITNESS' EXPERTISE,
5 SO OBJECTION SUSTAINED.

6 Q BY MR. CONN: IN THE TESTIMONY -- IN THE
7 TESTIMONY OF DR. LAWRENCE, DID YOU RELY UPON ANY
8 OPINIONS OF DR. LAWRENCE CONCERNING THE ANGULATION
9 OF THE OTHER SHOTS THAT YOU WILL BE DESCRIBING?

10 A YES. BOTH DR. LAWRENCE AND THE AUTOPSY
11 BY THE CORONER WILL INDICATE ANGULATION IN ALMOST
12 ALL OF THE FOLLOWING SHOTS.

13 Q ALL RIGHT.

14 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,
15 YOUR HONOR, THAT STATEMENT, AS INCONSISTENT WITH
16 DR. LAWRENCE AND HEARSAY WITH RESPECT TO THE AUTOPSY.

17 THE COURT: OVERRULED.

18 MR. CONN: ALL RIGHT. THANK YOU.

19 PERHAPS, YOUR HONOR, THIS WOULD BE A
20 GOOD PLACE TO STOP.

21 THE COURT: LET ME SEE COUNSEL AT THE SIDE

22 HERE IN REGARDS TO SCHEDULING.

23 (THE FOLLOWING PROCEEDINGS

24 WERE HELD AT THE BENCH:)

25

26 THE COURT: OKAY. IS IT STILL THIS WITNESS'

27 SITUATION WHERE HE CAN'T BE HERE ON MONDAY?

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

40494

1 MS. NAJERA: THAT'S CORRECT.

2 THE COURT: ALL RIGHT. OFF THE RECORD.

3 (A DISCUSSION WAS HELD OFF

4 THE RECORD CONCERNING

5 SCHEDULING OF WITNESSES.)

6

7 (THE FOLLOWING PROCEEDINGS WERE

8 RESUMED IN OPEN COURT IN THE

9 PRESENCE OF THE JURY:)

10

11 THE COURT: ALL RIGHT. WE'LL BE IN RECESS.

12 TOMORROW IS, AS YOU'RE AWARE, A LEGAL

13 HOLIDAY. AND THE COURT WON'T BE IN SESSION. IT'S A

14 DAY THAT VETERAN'S DAY IS OBSERVED. SO WE WON'T BE

15 IN SESSION TOMORROW. WE'LL RESUME ON MONDAY.

16 THIS WITNESS HAS A SCHEDULING CONFLICT

17 WHERE HE CAN'T BE HERE ON MONDAY. SO WE'RE GOING TO
18 BREAK WITH HIS TESTIMONY AND PICK UP AGAIN ON
19 TUESDAY. AND WE'RE TRYING TO RESCHEDULE OTHER
20 WITNESSES FOR MONDAY. IF WE CAN, WE'LL HAVE THEM
21 HERE. IT'S UNCLEAR EXACTLY HOW MANY WITNESSES WILL
22 BE AVAILABLE, HOW LONG WE'LL HAVE YOU HERE. IT
23 MIGHT NOT BE THAT WE'LL BE ABLE TO FILL UP A WHOLE
24 DAY ON MONDAY, BUT WE'RE GOING TO TRY TO GET SOME
25 WITNESSES HERE, JUST TO UTILIZE SOME TIME. IF
26 WITNESSES HAVE TO TESTIFY LATER ON IN THE TRIAL, IF
27 THE LAWYERS CAN GET THEM IN MONDAY, EVEN IF IT'S OUT
28 OF THE SCHEDULE OF THINGS, WE CAN AT LEAST USE THAT

40495

1 TIME. SO I'LL ASK THAT YOU RETURN MONDAY AT 8:30.
2 DON'T DISCUSS THIS CASE WITH ANYONE.
3 DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T LOOK
4 AT OR PERMIT YOURSELF TO BE EXPOSED TO ANY OF THE
5 NEWS COVERAGE OR DISCUSSIONS ABOUT THIS CASE IN ANY
6 FORM WHATSOEVER OUTSIDE OF THE COURTROOM.
7 HAVE A GOOD WEEKEND AND WE'LL SEE YOU
8 ALL BACK HERE MONDAY AT 8:30.
9 (THE JURY EXITED THE
10 COURTROOM AND THE FOLLOWING
11 PROCEEDINGS WERE HELD:)

12

13 THE COURT: DO COUNSEL HAVE ANY MATTERS THAT
14 YOU WANT TO DISCUSS BEFORE WE RECESS FOR THE WEEKEND?

15 MS. ABRAMSON: WELL, WE'VE JUST BEEN KICKING
16 AROUND THE IDEA OF WITNESSES, JUDGE. IT'S NOT
17 SOUNDING PROMISING. I'LL TALK TO DETECTIVE ZOELLER.

18 THE COURT: IF THERE'S ANY WITNESSES FROM THE
19 POLICE DEPARTMENT THAT YOU INTEND TO CALL LATER ON,
20 IF YOU COULD GET THEM IN HERE ON MONDAY, THAT WILL
21 CERTAINLY BE HELPFUL.

22 OKAY. WE'LL BE IN RECESS UNTIL MONDAY
23 AT 8:30.

24 (AT 4:30 P.M., AN ADJOURNMENT
25 WAS TAKEN UNTIL MONDAY,
26 NOVEMBER 13, 1995, AT 8:30 A.M.)

27

28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

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

4

THE PEOPLE OF THE STATE OF)

5 CALIFORNIA,)

)

6 PLAINTIFFS,)

)

7)

VS.) NO. BA 068880

8)

ERIK GALEN MENENDEZ, AND)

9 JOSEPH LYLE MENENDEZ,)

)

10 DEFENDANTS.)

)

11

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 THURSDAY, NOVEMBER 9, 1995

14 VOLUME 241

15 PAGES 40389 THROUGH 40495

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19

APPEARANCES:

20 (SEE APPEARANCE PAGE)

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