

1 VAN NUYS, CALIFORNIA; MONDAY, NOVEMBER 13, 1995

2 9:10 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (THE FOLLOWING PROCEEDINGS WERE

6 HELD IN OPEN COURT, OUT OF THE

7 PRESENCE OF JURY:)

8

9 THE COURT: COURT'S IN SESSION. LET ME

10 INQUIRE OF COUNSEL. YOU HAD SOMETHING OUTSIDE THE

11 PRESENCE OF THE JURY YOU WANTED TO DISCUSS?

12 MS. ABRAMSON: JUST THIS. WE'RE GOING TO

13 CALL KURT KUHN FROM THE BEVERLY HILLS POLICE

14 DEPARTMENT THIS MORNING, AND HE IS THE PERSON WHO

15 DID ALL THE ORIGINAL MEASURING OF VARIOUS OBJECTS IN

16 THE ROOM. HE MEASURED ALL THE FURNITURE, FOR

17 EXAMPLE. AND WE BELIEVE THAT IS GOING TO BECOME

18 SIGNIFICANT IN THE NEXT FEW DAYS, AND I WANTED TO BE

19 ABLE TO UTILIZE THE EXHIBIT THAT IS THE DIAGRAM OF

20 THAT ROOM IN ORDER TO INDICATE ON IT WHAT THE

21 DIMENSIONS ARE.

22 THE COURT: BEFORE WE GET INTO THE DETAILS OF

23 WHAT YOU WANT TO DO WITH MR. KUHN, WHICH OTHER

24 WITNESSES DID YOU INTEND TO CALL TODAY?

25 MS. ABRAMSON: THE ONLY OTHER WITNESSES WE

26 COULD GET THAT WERE AVAILABLE FOR TODAY IS DETECTIVE

27 ZOELLER. HE'S GOING TO BE BRIEF AND MR. KUHN IS

28 GOING TO BE RELATIVELY BRIEF AS WELL.

1 WE'RE GOING TO TALK ABOUT EVIDENCE

2 COLLECTION AND PHOTOGRAPHS.

3 THE COURT: YOU EXPECT TO COMPLETE IT THIS

4 MORNING AS FAR AS THE PRESENTATION? IS THAT ASSURED

5 BY EVERYONE, THAT THERE WON'T BE ANYTHING THIS

6 AFTERNOON FOR THE JURY?

7 MR. GESSLER: YES, YOUR HONOR.

8 THE COURT: I THINK MR. CONN IS PUTTING ON

9 DETECTIVE ZOELLER.

10 THE COURT: DO BOTH SIDES EXPECT YOU WON'T

11 HAVE ANYTHING FOR THE JURY THIS AFTERNOON?

12 MS. ABRAMSON: YES. WE HAVE THIS EXHIBIT,

13 WHICH IS A LARGE EXHIBIT, AND ALL I WANTED TO DO WAS

14 TO HAVE MR. KUHN INDICATE THE DIMENSIONS OF SOME OF

15 THE OBJECTS, THE COUCHES THE TABLES, AND OBVIOUSLY

16 THE PROSECUTION IS OBJECTING TO US PUTTING ANYTHING

17 ON THIS CHART. I OFFERED TO PUT IT ON WITH AN

18 ADDITIONAL SMALL PIECE OF PAPER THAT JUST HAS THE

19 DIMENSIONS WRITTEN ON IT TAPED TO THE CHART SO IT

20 DOESN'T DEFACE IT, RATHER THAN HAVE TO USE ANOTHER

21 CHART THAT THE JURY WOULD HAVE TO LOOK AT TO

22 COMPARE. THAT'S THE MORNING'S HASSLE, IF YOU WILL.

23 THE COURT: FIRST OF ALL, WHAT IS YOUR POSITION?

24 MR. CONN: THE CHART THAT WE PREPARED
25 REFLECTS THE PROSECUTION'S THEORY OF THE CASE AND WE
26 PRESENTED IT IN SUCH A WAY THAT WE WILL BE ABLE TO
27 USE THAT EXHIBIT EFFECTIVELY DURING ARGUMENT. I
28 DON'T THINK COUNSEL SHOULD BE PERMITTED TO MARK UP

40498

1 OUR CHART. THAT'S ONE OF THE REASONS WE PROVIDED
2 COPIES OF ALL OF OUR CHARTS TO COUNSEL. SHE CAN USE
3 THE SMALL ONE, MAKE XEROX COPIES OF THE SMALL ONE,
4 IF MULTIPLE COPIES ARE TO BE MARKED. WE CAN EVEN
5 BLOW IT UP. I'VE EVEN OFFERED TO ASSIST COUNSEL IN
6 PREPARING A LITTLE CHART HERE WHICH WOULD BE A
7 USEFUL WAY OF WRITING DOWN MEASUREMENTS SO THE
8 ORIGINAL DOESN'T HAVE TO BE MARKED.

9 WE'VE GIVEN COUNSEL VARIOUS OPTIONS AND
10 I'D ASK THE COURT NOT TO ALLOW COUNSEL TO MARK UP
11 OUR VISUAL PRESENTATION FOR THE JURY.

12 THE COURT: LET ME TO DO THIS: EITHER THE
13 DEFENSE, AS I UNDERSTAND IT FROM WHAT MR. CONN JUST
14 SAID, HAS A SMALL VERSION OF THIS EXHIBIT --

15 MS. ABRAMSON: A VERY POOR QUALITY XEROX.

16 THE COURT: -- WHICH YOU CAN USE FOR MR. KUHN
17 TO PUT ON HIS MEASUREMENTS; AND THEN YOU CAN DO WHAT
18 YOU WISH AS FAR AS GENERATING AN EXHIBIT OF YOUR OWN.

19 BUT I AGREE WITH THE PROSECUTION, THAT
20 TO, IN ESSENCE, GO INTO THEIR OFFICE AND REMOVE AN
21 EXHIBIT THAT THEY HAVE YET TO USE --
22 MS. ABRAMSON: THEY'VE USED IT. IT'S IN
23 EVIDENCE.
24 THE COURT: THEY HAVEN'T USED IT TO THEIR
25 COMPLETION YET. TO MODIFY IT IS INAPPROPRIATE, THE
26 SAME WAY THEY WOULDN'T BE ALLOWED TO DO THAT TO YOUR
27 EXHIBITS.
28 SO EITHER THAT, OR THERE'S THE MORE

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1 TRADITIONAL WAY OF DOING IT, TO HAVE SOME SORT OF
2 TRANSPARENCY OVER THAT THAT CAN THEN BE USED AS AN
3 EXHIBIT. I DON'T KNOW IF THERE'S ANY AVAILABLE
4 MEDIUM TO MAKE A TRANSPARENCY, BUT IF THERE WAS,
5 THAT WOULD BE THE OTHER ALTERNATIVE.
6 MS. ABRAMSON: I CAN GET A TRANSPARENCY MADE
7 THAT, BUT THAT MEANS I'M NOT GOING TO CALL THE
8 WITNESS TODAY BECAUSE I WANT THE DIMENSIONS ON THAT
9 CHART. ACTUALLY, THOUGH --
10 (ALL DEFENSE COUNSEL CONFER
11 SOTTO VOCE.)
12
13 MS. ABRAMSON: OF THE PROBLEMS IS WE DON'T

14 HAVE THE SAME RESOURCES AVAILABLE TO US THAT THE
15 PROSECUTION HAS TO. AND IT DIDN'T MAKE SENSE TO ME
16 TO DUPLICATE A SCHEMATIC THAT IS BASED ON THE
17 MEASUREMENTS AND THE OBSERVATIONS OF THE VERY
18 WITNESS I WANT TO CALL.

19 THE COURT: I UNDERSTAND. BUT THEN THE
20 PROSECUTION HAS ITS OWN USE FOR THAT DIAGRAM, AND I
21 DON'T WANT TO FORECLOSE THAT USE WHICH CAUSED THEM
22 TO PREPARE IT AND PLAN FOR THE USE OF IT BY YOUR
23 USING IT FOR YOUR PURPOSE AT THIS POINT. THERE IS A
24 COMPROMISE, WHICH IS A TRANSPARENCY, WHICH IS JUST A
25 TRANSPARENT SHEET OF PAPER OR PLASTIC THAT GOES OVER
26 THAT AND IT COULD BE USED FOR WHATEVER PURPOSE YOU
27 WANT.

28 MS. ABRAMSON: CAN WE DO THIS: IF I HAVE THE

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1 WITNESS TESTIFY TODAY AND MARK A SMALLER VERSION OF
2 THAT, DO WE THEN HAVE A STIPULATION THAT WE CAN ADD
3 THE NUMBERS ON THE TRANSPARENCY, WHICH I CAN HAVE
4 MADE UP AND HAVE IT HERE BY TOMORROW? IT'S JUST A
5 SHEET OF PLASTIC BASICALLY, AND I CAN GET THAT HERE.

6 MR. CONN: YES. WE WOULD STIPULATE TO THAT.

7 MS. ABRAMSON: ALL RIGHT.

8 MS. NAJERA: YOUR HONOR, THERE'S ONE OTHER

9 ISSUE AS WELL.

10 MS. ABRAMSON: I HAVE TO MAKE COPIES NOW OF
11 THE CHART BECAUSE I ONLY HAVE ONE CHART.

12 THE COURT: IF YOU WANT TO GIVE IT TO THE
13 CLERK, SHE CAN PERHAPS DO IT.

14 MS. ABRAMSON: LET ME FIND IT.

15 MS. NAJERA: I WANTED TO MAKE A MOTION UNDER
16 352 TO EXCLUDE A CERTAIN AREA TOPIC THAT COUNSEL
17 WANTS TO GO INTO WITH REGARDS TO DETECTIVE ZOELLER.

18 WE HAVE HAD TESTIMONY THAT JAMIE
19 PISARCIK WAS SUBPOENAED IN TO THE GRAND JURY AND
20 ENDED UP AT THE D.A.'S OFFICE GIVING A HEARING.
21 COUNSEL WANTS TO ELICIT FROM DETECTIVE ZOELLER THAT
22 HE SUBPOENAED HER TO THE GRAND JURY, NOT TO THE
23 D.A.'S OFFICE.

24 THE PROBLEM IS, IF SHE DOES THAT, I HAVE
25 TO SUBPOENA IN SEVERAL OTHER PEOPLE; HER ATTORNEY,
26 POSSIBLY ONE OF THE D.A.'S WHO HANDLED THIS CASE, TO
27 EXPLAIN THAT SHE WAS SUBPOENAED TO THE GRAND JURY,
28 SHE GAVE THE SUBPOENA TO HER ATTORNEY, THE ATTORNEY

40501

1 SPOKE TO THE D.A.'S OFFICE, AND THEY AGREED TO HAVE
2 HER COME TO THE D.A.'S OFFICE TO GIVE HER STATEMENT.

3 ALL OF THAT SEEMS TO TAKE UP A LOT OF

4 TIME THAT I DON'T THINK WE NEED TO TAKE UP, SINCE
5 IT'S VERY CLEAR SHE WAS SUBPOENAED AND HER BELIEF
6 WAS SHE WAS SUBPOENAED TO COME IN AND GIVE A
7 STATEMENT. THAT IS HOW SHE GOT INVOLVED IN THIS
8 CASE.

9 SO I WOULD ASK THAT THE COURT PRECLUDE,
10 UNDER 352, DETECTIVE ZOELLER GOING INTO THE FACT SHE
11 WAS NOT SUBPOENAED TO COME TO THE D.A.'S OFFICE.

12 THE COURT: WELL, IT WAS BROUGHT OUT DURING
13 CROSS-EXAMINATION. I THINK IT'S APPROPRIATE FOR THE
14 DEFENSE TO BE ABLE TO ESTABLISH WHAT IT WAS THAT SHE
15 WAS REFERRING TO WHEN SHE WAS TALKING ABOUT BEING
16 SUBPOENAED. AND IT COULD HAVE BEEN CLARIFIED BY THE
17 WITNESS, BUT SHE DIDN'T DO IT.

18 SO IT WILL HAVE TO BE CLARIFIED IN SOME
19 OTHER FASHION. I THINK IT'S APPROPRIATE, AND I
20 WON'T EXCLUDE IT UNDER 352.

21 MS. NAJERA: THE PROBLEM WAS THAT IT WAS
22 CLARIFIED TO THE WITNESS AS FAR AS HER KNOWLEDGE OF
23 WHAT HAPPENED. BUT THE PROBLEM IS, HER ATTORNEY GOT
24 INVOLVED AND THE ATTORNEYS BASICALLY HASHED IT OUT
25 AND DECIDED WHAT WAS GOING TO HAPPEN.

26 THE COURT: I DON'T THINK IT WOULD TAKE MORE
27 THAN 10 MINUTES THEN, IF THERE'S WHAT HAPPENED, FOR
28 HER TO COME IN AND SAY THAT'S WHAT HAPPENED. I

1 DON'T SEE HOW 352 SHOULD STAND IN THE WAY OF THAT
2 EVIDENCE.

3 MS. NAJERA: OKAY.

4 MS. ABRAMSON: YOUR HONOR, I CAN'T FIND MY
5 COPY OF THAT SCHEMATIC. I DON'T KNOW IF I'VE MARKED
6 IT ALREADY OR NOT.

7 THE COURT: THE SUBPOENA?

8 MS. ABRAMSON: NO, YOUR HONOR, THE SMALL
9 VERSION OF THAT CHART. PERHAPS THE PROSECUTION HAS
10 ANOTHER COPY.

11 THE COURT: FOR SCHEDULING PURPOSES, BY THE
12 WAY, WE HAVE A JUROR WHO INDICATES THAT ON WEDNESDAY
13 THAT JUROR HAS TO LEAVE AT 3:15. SO WE WILL BE
14 RECESSING AT 3:15 ON WEDNESDAY.

15 MS. ABRAMSON: I WANTED TO INDICATE TO THE
16 COURT THAT AND THAT JUST CONFIRM MY THOUGHTS, THAT I
17 DON'T BELIEVE MR. MC CARTHY WILL BE OFF THE WITNESS
18 STAND UNTIL SOMETIME THURSDAY AT THE EARLIEST.

19 GIVEN THAT, I'M NOT GOING TO CALL MY
20 CROSS-COUNTRY WITNESSES THIS WEEK BECAUSE I DON'T
21 WANT EITHER -- FIRST OF ALL, DR. FACKLER CAN'T BE
22 HERE FRIDAY; AND I BELIEVE BOTH HE AND DR. WECHT
23 WILL TAKE A LITTLE OVER A DAY, NOT FROM ME BUT
24 TOTALLY.

25 THE COURT: YOU FOUND THE CHART, BY THE WAY?

26 MS. ABRAMSON: I FOUND A DIFFERENT ONE I'M
27 GOING TO USE.

28 THE COURT: DO YOU NEED COPIES? I JUST WANT

1 TO GET THIS THING COPIED.

2 MS. ABRAMSON: I HAVE A BUNCH OF THESE. THIS
3 IS THE ONE THAT MR. KUHN HIMSELF DREW.

4 IN ANY EVENT, BASED ON TRYING TO HANDLE
5 CROSS-COUNTRY WITNESSES, IT'S NOW MY INTENTION TO
6 CALL DR. FACKLER ON MONDAY AND DR. WECHT ON
7 TUESDAY. AND THAT'S ALL WE'RE GOING TO HAVE, IS THE
8 TWO OF THEM NEXT WEEK. AND IT IS MY FERVENT HOPE
9 THAT WE GET BOTH OF THEM ON AND OFF IN THOSE THREE
10 DAYS OF NEXT WEEK.

11 SO, WITH RESPECT TO THIS FRIDAY, YOUR
12 HONOR, IT IS NOW MY THOUGHT, IF THEY'RE AVAILABLE,
13 THAT I'M GOING TO CALL IN THE SHERIFF'S
14 CRIMINALISTICS PEOPLE, MR. VAN HORN, MR. LINHART,
15 AND MR. CATALINI. SO THAT'S WHAT I'M PLANNING ON TO
16 COVER FOR PART OF THURSDAY AND FRIDAY.

17 THE COURT: OKAY. WELL, EVEN -- I WOULD HAVE
18 HOPED THAT YOU WOULD GET HIM HERE TODAY.

19 MS. ABRAMSON: NOBODY COULD BE FOUND TO BE
20 HERE FOR TODAY.

21 IN ANY EVENT, THAT'S THE PLAN RIGHT NOW.

22 THE COURT: OKAY. ALL RIGHT. ARE WE READY
23 THEN FOR THE JURY?

24 MS. ABRAMSON: YES. I THINK.

25 THE COURT: MR. CONN, YOU'RE GOING TO CALL

26 DETECTIVE ZOELLER, AND THEN THE DEFENSE CAN GO INTO
27 AREAS BEYOND THE SCOPE OF THE DIRECT AND THEN WE'LL
28 HAVE MR. KUHN.

40504

1 LET'S HAVE THE JURY OUT, PLEASE.
2 (THE JURY ENTERED THE COURTROOM
3 AND THE FOLLOWING PROCEEDINGS
4 WERE HELD:)
5
6 THE COURT: THE JURY IS IN COURT.
7 GOOD MORNING, LADIES AND GENTLEMEN.
8 JUST SOME INFORMATION REGARDING OUR
9 SCHEDULE. AS I INDICATED ON THURSDAY OF LAST WEEK
10 WHEN WE RECESSED, THE WITNESS WHO WAS ON THE WITNESS
11 STAND, DR. MC CARTHY, HAD ANOTHER COMMITMENT THAT
12 PREVENTED HIM FROM BEING HERE TODAY. HE'LL COME
13 BACK TOMORROW.
14 THE LAWYERS HAVE ATTEMPTED TO SECURE THE
15 ATTENDANCE OF OTHER WITNESSES TO BE HERE TODAY TO
16 FILL IN THE VOID. UNFORTUNATELY, WE DON'T HAVE THAT
17 MANY WITNESSES AVAILABLE TODAY. SO FROM WHAT I'VE
18 BEEN TOLD, WE WON'T HAVE ANY MORE EVIDENCE THAN
19 WOULD FILL UP THIS MORNING AND; THEREFORE, WE'LL
20 PROBABLY BE RECESSING AROUND NOON TIME, OR EVEN A

21 LITTLE BIT BEFORE THAT; AND THEN WE'LL RESUME
22 TOMORROW AT 8:30.
23 ALSO, ONE OF THE JURORS HAS REQUESTED
24 THAT WE RECESS AT 3:15 ON WEDNESDAY, NOVEMBER THE
25 15TH, AND WE WILL DO THAT. SO ON THAT PARTICULAR
26 DAY WE'LL BE BREAKING AT 3:15, THIS COMING
27 WEDNESDAY.
28 ALL RIGHT. WE'LL NOW RESUME WITH THE

40505

1 TESTIMONY AND THE PEOPLE MAY CALL THEIR NEXT
2 WITNESS.

3 MR. CONN: YES. WE WOULD LIKE TO RECALL
4 DETECTIVE ZOELLER AT THIS TIME.

5

6 LESLIE H. ZOELLER,
7 WAS RECALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN
8 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

9 THE COURT: STATE YOUR NAME FOR THE RECORD.

10 THE WITNESS: LESLIE H. ZOELLER.

11 THE COURT: I'LL REMIND YOU THAT YOU'RE STILL
12 UNDER OATH.

13 AND YOU MAY EXAMINE THE WITNESS.

14 MR. CONN: THANK YOU.

15

16 DIRECT EXAMINATION

17 BY MR. CONN:

18 Q DETECTIVE ZOELLER, I WOULD LIKE TO SHOW
19 YOU THE MAP THAT HAS BEEN PREVIOUSLY MARKED IN THIS
20 CASE AS 86 FOR IDENTIFICATION.

21 PREVIOUSLY, SOME OF THE WITNESSES
22 TESTIFIED IN REGARD TO CERTAIN LOCATIONS THAT ARE
23 DEPICTED ON THIS MAP.

24 THIS MORNING DID YOU ASSIST IN PROVIDING
25 SOME LABELS FOR THOSE LOCATIONS THAT ARE DEPICTED ON
26 THE MAP?

27 A YES, I DID.

28 Q AND I WOULD LIKE TO DIRECT YOU FROM THE

40506

1 TOP OF THE MAP GOING TO THE BOTTOM OF THE MAP.

2 CAN YOU TELL US THE SIGNIFICANCE OF EACH
3 OF THOSE LOCATIONS ON THIS MAP.

4 A WELL, AS FAR AS THE TOP ONE, IT'S PERRY
5 BERMAN'S HOME, WHICH IS ALSO MARKED BY AN ORANGE
6 DOT; THE MENENDEZ HOME ON 722 NORTH ELM; THE POLICE
7 STATION, WHICH IS 464 NORTH REXFORD; THE CHEESECAKE
8 FACTORY, WHICH IS IN THE 300 BLOCK OF NORTH BEVERLY;
9 AND THE CENTURY-14 MOVIE THEATRES, WHICH IS IN
10 CENTURY CITY ON SANTA MONICA BOULEVARD. AND THEN

11 THE "TASTE OF L.A.," AND THE TELEPHONE BOOTH WHICH
12 IS AT PICO AND MAIN STREET IN SANTA MONICA.

13 Q OKAY. LET ME GO OVER A COUPLE OF THOSE
14 LOCATIONS WITH YOU AT THIS TIME.

15 DURING THE INTERVIEW WITH DEFENDANTS AT
16 THE POLICE STATION ON THE EVENING OF AUGUST THE 20TH
17 OF 1989, DEFENDANTS MADE REFERENCE TO A MOVIE
18 THEATER, THE CENTURY CITY MOVIE THEATER.

19 IS THAT THE MOVIE THEATER THAT YOU HAVE
20 INDICATED THERE ON THE MAP?

21 A YES.

22 Q AND MR. BERMAN TESTIFIED TO THE FOOD
23 FESTSIVAL THAT HE WENT TO ON THE EVENING OF AUGUST
24 THE 20TH OF 1989, THE "TASTE OF L.A."

25 IS THAT WHAT YOU HAVE ALSO INDICATED
26 THERE ON THE MAP?

27 A YES.

28 Q NOW, MR. BERMAN ALSO TESTIFIED IN REGARD

40507

1 TO A DOCUMENT WHICH HAS BEEN MARKED AS 79, THAT IS,
2 SPRINT TELEPHONE RECORDS; AND HE IDENTIFIED TWO
3 PHONE CALLS THAT WERE MADE TO HIS HOME AT 11:07 AND
4 11:15 ON THAT DOCUMENT.

5 DO YOU RECOGNIZE THE DOCUMENT I AM NOW

6 SHOWING YOU?

7 A YES, I DO.

8 Q AND DOES THAT DOCUMENT REFLECT TWO
9 TELEPHONE CALLS AT 11:07 AND 11:15, BEING MADE FROM
10 A PARTICULAR LOCATION?

11 A YES.

12 Q AND DID YOU ASSIST IN THE PREPARATION OF
13 THAT DOCUMENT WHICH IS NOW BEFORE THE JURY?

14 A YES.

15 Q AND CAN YOU TELL US HOW YOU FIRST
16 OBTAINED THE INFORMATION THAT IS CONTAINED ON THAT
17 DOCUMENT TO ASSIST IN THE PREPARATION OF THAT
18 DOCUMENT.

19 MS. ABRAMSON: OBJECTION, YOUR HONOR. WELL,
20 COULD WE HAVE A MOMENT?

21 (ATTORNEYS ABRAMSON AND TOWERY
22 CONFER SOTTO VOCE.)

23

24 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. COULD
25 WE APPROACH, COUNSEL?

26 (ATTORNEYS, ABRAMSON AND CONN
27 CONFER SOTTO VOCE.))

28

1 MR. CONN: WE WILL OFFER TO STIPULATE AT THIS
2 TIME THAT THE TELEPHONE RECORD WHICH HAS BEEN MARKED
3 AS 79 FOR IDENTIFICATION IS AN ACCURATE TELEPHONE
4 RECORD RELATING TO A TELEPHONE THAT IS LOCATED IN
5 THE VICINITY OF THE "TASTE OF L.A." FOOD FESTIVAL.

6 MS. TOWERY: SO STIPULATED.

7 MS. ABRAMSON: YES. SO STIPULATED.

8 THE COURT: THAT STIPULATION IS NOTED IN
9 REGARD TO EXHIBIT 79.

10 Q BY MR. CONN: SIR, DID YOU GO TO A
11 TELEPHONE TO DETERMINE IF THE PHONE NUMBER REFLECTED
12 ON THAT EXHIBIT IS FOUND AT A SPECIFIC LOCATION?

13 A YES.

14 Q AND CAN YOU TELL US WHERE THAT TELEPHONE
15 WAS LOCATED.

16 A IT WAS A BANK OF TELEPHONES ON THE -- IT
17 WAS JUST NORTH OF THE SANTA MONICA CIVIC BUILDING,
18 AND THE "TASTE OF L.A." WAS ACTUALLY IN THE PARKING
19 LOT NORTH OF AND BEHIND AND EAST OF THAT BUILDING.

20 SO THERE WAS A BANK OF TELEPHONES AT
21 THAT POINT.

22 Q AND IS THAT TELEPHONE LOCATED HERE ON
23 THE MAP WHICH YOU HAVE IDENTIFIED AS THE "TASTE OF
24 L.A." AND THE TELEPHONE?

25 A YES.

26 Q NOW, DURING THE TESTIMONY OF PERRY
27 BERMAN HE INDICATED THAT LYLE MENENDEZ SPOKE TO HIM
28 ON THE EVENING OF AUGUST THE 20TH OF 1989 ABOUT A

1 PERSON BY THE NAME OF NOEL BLOOM.

2 DID YOU MAKE AN EFFORT TO ASCERTAIN WHO
3 NOEL BLOOM IS?

4 A YES.

5 Q WHAT DID YOU DETERMINE?

6 A I DETERMINED THAT NOEL BLOOM OWNS A
7 BUSINESS BY THE NAME OF I.V.E., INTERNATIONAL VIDEO
8 ENTERTAINMENT, I BELIEVE, AND THAT COMPANY WAS
9 BOUGHT OUT BY CAROLCO PICTURES. AND THEY BOUGHT IT
10 OUT BECAUSE OF ITS TAPE DUPLICATION POSSIBILITIES.

11 Q DID YOU ASCERTAIN THE EXISTENCE OF A
12 DISPUTE CONCERNING ONE OF THOSE COMPANIES WITH JOSE
13 MENENDEZ?

14 A YES.

15 Q AND WHAT TYPE OF DISPUTE WAS --

16 MS. ABRAMSON: AT THIS POINT I THINK WE'RE IN
17 HEARSAY LAND. OBJECTION, HEARSAY.

18 THE COURT: SUSTAINED.

19 Q BY MR. CONN: ALL RIGHT. DID YOU
20 ASCERTAIN THE NATURE OF THE BUSINESS THAT WAS
21 PREVIOUSLY OWNED BY NOEL BLOOM?

22 A YES.

23 Q WHAT TYPE OF BUSINESS WAS THAT?

24 A IT WAS A TAPE DUPLICATION BUSINESS AND

25 THEY ALSO MADE THE MOVIES THAT THEY DUPLICATED.

26 Q WAS NOEL BLOOM INVOLVED IN PORNOGRAPHY
27 IN SOME WAY?

28 A YES. THAT WAS THE BUSINESS.

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1 MR. CONN: ALL RIGHT. THANK YOU.

2 I HAVE NO FURTHER QUESTIONS AT THIS
3 TIME, YOUR HONOR.

4 THE COURT: OKAY. CROSS-EXAMINATION.

5 MS. TOWERY: MAY I HAVE JUST A MOMENT, YOUR
6 HONOR?

7 (ATTORNEYS ABRAMSON AND TOWERY CONFER
8 SOTTO VOCE.)

9

10 CROSS-EXAMINATION

11 BY MS. TOWERY:

12 Q GOOD MORNING, DETECTIVE ZOELLER.

13 A GOOD MORNING.

14 Q I JUST HAVE A FEW VERY QUICK QUESTIONS
15 TO ASK YOU ABOUT VARIOUS INTERVIEWS THAT YOU
16 CONDUCTED WITH VARIOUS WITNESSES WHO TESTIFIED IN
17 THIS TRIAL.

18 YOU INTERVIEWED LAWRENCE COHEN; IS THAT
19 CORRECT?

20 A THAT'S CORRECT.

21 Q DID YOU SEE HIS TESTIMONY? WERE YOU
22 PRESENT WHEN HE TESTIFIED?

23 A I WAS NOT PRESENT, NO.

24 Q WHAT DATE DID YOU FIRST INTERVIEW
25 LAWRENCE COHEN?

26 A AUGUST 26TH OF 1993.

27 Q WHEN YOU INTERVIEWED MR. COHEN, DID
28 MR. COHEN TELL YOU THAT ATTORNEY STEVE GOLDBERG HAD

40511

1 REFERRED OTHER CLIENTS TO HIM OTHER THAN ERIK
2 MENENDEZ?

3 A HE MADE THAT STATEMENT, YES.

4 Q AND YOU REPORTED THAT IN YOUR POLICE
5 REPORT?

6 A THAT'S CORRECT.

7 Q NOW, WITH RESPECT TO MARK SLOTKIN,
8 ANOTHER WITNESS WHO TESTIFIED FOR THE PROSECUTION,
9 DID YOU ALSO INTERVIEW MR. SLOTKIN?

10 A A FEW TIMES, YES.

11 Q DO YOU RECALL INTERVIEWING HIM ON MARCH
12 30TH, 1994?

13 A YES.

14 Q AND ON THAT DATE DID YOU ASK HIM ABOUT

15 THE AMOUNT OF MONEY SPENT BY ERIK MENENDEZ WHEN HE
16 WENT TO LAKE TAHOE WITH MR. SLOTKIN?

17 A I'M NOT SURE WHETHER I ASKED HIM OR HE
18 JUST VOLUNTARILY GAVE THAT INFORMATION. BUT, YES,
19 THAT INFORMATION WAS OBTAINED.

20 Q ALL RIGHT. AND WHAT WAS THAT AMOUNT?

21 A FOUR TO FIVE THOUSAND DOLLARS.

22 Q AND YOU ALSO REPORTED THAT IN YOUR
23 POLICE REPORT; IS THAT RIGHT?

24 A THAT'S CORRECT.

25 Q WITH RESPECT TO JAMIE PISARCIK, WERE YOU
26 PRESENT FOR HER TESTIMONY?

27 A YES.

28 Q WERE YOU THE POLICEMAN WHO SERVED A

40512

1 SUBPOENA ON MS. PISARCIK?

2 A YES.

3 Q AND YOU HAD MET HER BEFORE YOU SERVED
4 THE SUBPOENA ON HER; IS THAT RIGHT?

5 A YES.

6 Q AND WAS THE SUBPOENA THAT YOU SERVED ON
7 MS. PISARCIK A SUBPOENA TO THE OFFICE OF THE
8 DISTRICT ATTORNEY IN NORWALK TO GIVE A STATEMENT?

9 A NO, IT WAS NOT.

10 Q WHAT WAS IT?

11 A IT WAS A GRAND JURY SUBPOENA.

12 Q AND WHERE DOES THE GRAND JURY SIT?

13 A AT 210 WEST TEMPLE, DOWNTOWN

14 LOS ANGELES.

15 Q AND WHEN MS. PISARCIK DID GIVE HER

16 STATEMENT AT THE DISTRICT ATTORNEY'S OFFICE IN

17 NORWALK YOU WERE PRESENT; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q AND THAT STATEMENT WAS GIVEN

20 VOLUNTARILY, WAS IT NOT?

21 A IT WAS.

22 Q AND SHE HAD A LAWYER PRESENT; IS THAT

23 RIGHT?

24 A YES, SHE DID.

25 Q WHAT WAS HIS NAME, IF YOU RECALL?

26 A ERIC DAVIS.

27 Q NOT STEVE DAVIS?

28 A NO.

40513

1 Q AND LAST, WITH RESPECT TO BRIAN

2 ANDERSEN, WERE YOU PRESENT DURING HIS TESTIMONY IN

3 THIS TRIAL?

4 A THE MAJORITY OF IT, YES.

5 Q DID YOU TAKE A STATEMENT FROM

6 MR. ANDERSEN IN FEBRUARY OF 1994?

7 A YES, I DID.

8 Q AND DID HE TELL YOU AT THAT TIME THAT HE

9 AND OTHERS WHO WERE PRESENT AT RANDY WRIGHT'S HOUSE

10 WERE LOOKING FOR A SECOND WILL?

11 A YES.

12 Q AND YOU WROTE THAT IN YOUR REPORT IN

13 FEBRUARY OF 1994; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 MS. TOWERY: MAY I HAVE JUST A MOMENT, YOUR

16 HONOR?

17 THE COURT: YES.

18 (ATTORNEYS TOWERY AND ABRAMSON

19 CONFER SOTTO VOCE.)

20

21 MS. TOWERY: I HAVE NOTHING FURTHER.

22 THE COURT: ANYTHING ON BEHALF OF ERIK

23 MENENDEZ.

24 MS. ABRAMSON: NO, YOUR HONOR. THAT WAS ON

25 BEHALF OF ERIK MENENDEZ AS WELL.

26 THE COURT: OKAY.

27 ///

28 ///

1 REDIRECT EXAMINATION

2 BY MR. CONN:

3 Q DO YOU RECALL WHEN IT WAS THAT YOU
4 SERVED THAT SUBPOENA ON JAMIE PISARCIK TO GO TO THE
5 GRAND JURY?

6 A IT WAS IN NOVEMBER OF 1992.

7 Q AND WERE YOU INVOLVED IN ANY FURTHER
8 DISCUSSIONS BETWEEN HER OR HER ATTORNEY AS TO
9 WHETHER SHE SHOULD, IN FACT, REPORT TO THE GRAND
10 JURY AFTER YOU SERVED THAT SUBPOENA ON HER?

11 MS. TOWERY: OBJECTION. HEARSAY.

12 THE COURT: WELL, WHETHER HE WAS INVOLVED IN
13 SUCH DISCUSSIONS -- OVERRULED AS FAR AS WHETHER HE
14 WAS INVOLVED IN DISCUSSIONS.

15 MS. TOWERY: OBJECTION. IRRELEVANT.

16 THE COURT: OVERRULED.

17 THE WITNESS: NO.

18 Q BY MR. CONN: OKAY. SOMETIME AFTER YOU
19 SERVED THAT SUBPOENA ON JAMIE PISARCIK, DID SHE, IN
20 FACT, GO TO THE OFFICE OF THE DISTRICT ATTORNEY?

21 A YES.

22 Q AND DID SHE, IN FACT, GO TO THE GRAND
23 JURY?

24 A YES.

25 Q DID SHE GO TO THE OFFICE OF THE DISTRICT
26 ATTORNEY BEFORE SHE WENT BEFORE THE GRAND JURY?

27 A YES, SHE DID.

40515

1 SUBPOENA UPON HER DID SHE GO TO THE OFFICE OF THE
2 DISTRICT ATTORNEY FOR AN INTERVIEW?

3 A I BELIEVE IT WAS APPROXIMATELY A WEEK
4 LATER.

5 Q AND WHEN IN RELATIONSHIP TO THE TIME
6 THAT SHE WENT TO THE D.A.'S OFFICE DID SHE THEN GO
7 BEFORE THE GRAND JURY?

8 A WITHIN A FEW WEEKS AFTER THAT.

9 Q IN ORDER FOR HER TO APPEAR BEFORE THE
10 GRAND JURY WEEKS AFTER SHE APPEARED IN THE D.A.'S
11 OFFICE, WAS SHE SERVED WITH ANOTHER SUBPOENA?

12 A NO, SHE WAS NOT.

13 Q DURING THE INTERVIEW AT THE D.A.'S
14 OFFICE DID SHE AGREE TO APPEAR BEFORE THE GRAND JURY
15 WEEKS AFTER THE INTERVIEW WAS CONDUCTED?

16 A YES.

17 MS. TOWERY: OBJECTION, HEARSAY. MOTION TO
18 STRIKE.

19 THE COURT: OVERRLED. THE ANSWER WILL STAND.

20 MR. CONN: THANK YOU. I HAVE NO FURTHER
21 QUESTIONS.

22 MS. TOWERY: COULD I HAVE JUST A MOMENT?

23 THE COURT: YES.
24 (ATTORNEYS ABRAMSON AND TOWERY
25 CONFER SOTTO VOCE.)
26
27 MS. TOWERY: JUST ONE QUESTION, YOUR HONOR.
28 /// /// ///

40516

1 RECROSS-EXAMINATION
2 BY MS. TOWERY:
3 Q DETECTIVE ZOELLER, TO THE BEST OF YOUR
4 RECOLLECTION, JAMIE PISARCIK TESTIFIED BEFORE THE
5 GRAND JURY?
6 A I BELIEVE SHE DID, YES.
7 Q DO YOU KNOW WHEN SHE SO TESTIFIED?
8 A IF SHE DID TESTIFY, IT WAS, I BELIEVE,
9 DECEMBER, DECEMBER -- THAT WAS THE SECOND TIME THAT
10 THE GRAND JURY SAT ON THIS CASE, DECEMBER OF 1992.
11 Q WAS THAT TESTIMONY REPORTED BY A COURT
12 REPORTER, TO THE BEST OF YOUR KNOWLEDGE?
13 A TO THE BEST OF MY KNOWLEDGE.
14 MS. TOWERY: THANK YOU.
15 I HAVE NOTHING FURTHER.
16 THE COURT: ANYTHING ELSE?
17 MR. CONN: NO FURTHER QUESTIONS, YOUR HONOR.

18 THE COURT: THANK YOU. YOU MAY STEP DOWN.
19 THE WITNESS: THANK YOU.
20 AT THIS POINT DO THE PEOPLE HAVE ANY
21 FURTHER WITNESSES?
22 MR. CONN: NO, YOUR HONOR, NOT AT THIS TIME.
23 THE COURT: OKAY. AND THE DEFENSE?
24 MS. ABRAMSON: YES, YOUR HONOR.
25 THE COURT: THE DEFENSE IS PERMITTED, TO
26 ACCOMMODATE OUR SCHEDULE, CALL WITNESSES AT THIS
27 POINT.
28 MS. TOWERY: BEFORE WE DO THAT, COULD WE

40517

1 APPROACH BRIEFLY?
2 THE COURT: YES. SURE.
3 (THE FOLLOWING PROCEEDINGS
4 WERE HELD OUTSIDE THE
5 PRESENCE OF THE JURY:)
6
7 MS. TOWERY: TO THE BEST OF MY KNOWLEDGE,
8 JAMIE PISARCIK NEVER TESTIFIED BEFORE THE GRAND
9 JURY; AND, CERTAINLY, I HAVE NO TRANSCRIPT OF ANY
10 SUCH TESTIMONY. I'M A LITTLE CONFUSED BY DETECTIVE
11 ZOELLER'S TESTIMONY.
12 THE COURT: YOU WANT ME TO GET THE

13 TRANSCRIPT?

14 MR. GESSLER: WE WOULD.

15 THE COURT: IT'S IN CHAMBERS. I CAN FIND IT

16 REAL QUICK. HOLD ON A SECOND.

17 (BRIEF PAUSE.)

18

19 THE COURT: LET'S SEE. I DON'T SEE HER ON

20 THE LIST. I'LL GO THROUGH IT ONCE MORE. GROSE,

21 ZOELLER, OZIEL, O-APOSTROPHE-I-E-L; GUTHRIE, BAKER,

22 DULLA, WATERS, BERMAN, ZOELLER, BUTKUS, WEST,

23 EDMONDS, ADAMS, GOODREAU, WITKIN, GOLDEN, STEVENS,

24 WENSKOWSKI, LINLAND (SIC).

25 THERE'S NOTHING IN NOVEMBER, AND THERE

26 ARE -- LET ME LOOK AT THE THIRD VOLUME AND SEE IF

27 THIS IS THE VOLUME THAT HAS THE HANDING DOWN OF THE

28 INDICTMENT. IT IS DECEMBER THE 7TH.

40518

1 MS. TOWERY: SO I THINK WHAT WE WOULD ASK THE

2 COURT TO DO IS TAKE JUDICIAL NOTICE OF THE FACT THAT

3 SHE NEVER TESTIFIED BEFORE THE GRAND JURY, AT THIS

4 POINT, BEFORE IT LOSES ANY --

5 MR. CONN: I WOULD ASK THAT YOU RECALL THE

6 WITNESS AND IMPEACH HIM.

7 MS. TOWERY: HE WASN'T THERE. THE COURT CAN

8 TAKE JUDICIAL NOTICE OF THAT. THAT'S THE

9 APPROPRIATE WAY OF DOING IT.

10 THE COURT: HE WAS NOT INSIDE THE PROCEEDINGS

11 UNLESS THERE WAS SOME -- SOMETHING ON THE RECORD

12 SHOWING HE WAS.

13 MS. TOWERY: THIS IS AN APPROPRIATE MATTER

14 FOR THE COURT TO TAKE JUDICIAL NOTICE.

15 THE COURT: I WOULD THINK SO. I CAN TAKE

16 JUDICIAL NOTICE THAT THE TRANSCRIPT OF THE

17 PROCEEDINGS DO NOT REFLECT SHE TESTIFIED. I CAN'T

18 SAY ANY MORE THAN THAT BECAUSE I WASN'T THERE.

19 MS. TOWERY: WILL THE COURT DO THAT NOW

20 BEFORE IT BECOMES A --

21 THE COURT: SURE.

22 MS. TOWERY: THANK YOU.

23 (THE FOLLOWING PROCEEDINGS WERE

24 RESUMED IN OPEN COURT IN THE

25 PRESENCE OF THE JURY;)

26

27 THE COURT: ALL RIGHT. WE'RE READY TO

28 RESUME. THE COURT AND COUNSEL WERE CONFERRING, AND

40519

1 I OBTAINED FROM CHAMBERS THE TRANSCRIPT, THE COURT

2 REPORTER'S TRANSCRIPT, OF THE PROCEEDINGS BEFORE THE

3 GRAND JURY. AND IN REVIEWING THOSE TRANSCRIPTS --
4 LET ME DOUBLE CHECK HERE -- WHICH HAS THE TESTIMONY
5 OF ALL OF THE WITNESSES WHO TESTIFIED BEFORE THE
6 GRAND JURY, THE TRANSCRIPT REFLECTS THAT JAMIE
7 PISARCIK DID NOT TESTIFY BEFORE THE GRAND JURY IN
8 THIS MATTER.

9 ALL RIGHT. AND THE COURT TAKES JUDICIAL
10 NOTICE OF THAT AS AN OFFICIAL RECORD.

11 OKAY. THE DEFENSE MAY CALL ITS WITNESS.

12 MS. ABRAMSON: YES, YOUR HONOR. WE'RE GOING
13 TO CALL KURT KUHN.

14

15 D E F E N S E

16

17

18 KURT E. KUHN,
19 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
20 SWORN, AND TESTIFIED AS FOLLOWS:

21 CLERK RAISE YOUR RIGHT HAND TO BE SWORN.

22 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
23 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
24 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
25 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

26 THE WITNESS: I DO.

27 THE CLERK: PLEASE TAKE THE STAND AND STATE
28 YOUR NAME FOR THE RECORD.

1 THE WITNESS: KURT E. KUHN. K-U-R-T, MIDDLE

2 INITIAL E; K-U-H-N;

3

4 DIRECT EXAMINATION

5 BY MS. ABRAMSON:

6 Q MR. KUHN, WOULD YOU TELL THE JURY WHAT

7 YOUR OCCUPATION IS AND WHO YOU WORK FOR.

8 A I'M A SENIOR IDENTIFICATION TECHNICIAN

9 FOR THE BEVERLY HILLS POLICE DEPARTMENT, SUPERVISING

10 THE CRIME LAB.

11 Q AND THE BEVERLY HILLS POLICE DEPARTMENT

12 HAS A CRIME LAB WITH CERTAIN FUNCTIONS, BUT NOT THE

13 FULL FUNCTIONS OF A LARGE CRIME LAB; IS THAT

14 CORRECT?

15 A THAT'S CORRECT.

16 Q AND WHAT FUNCTIONS DOES THE BEVERLY

17 HILLS POLICE DEPARTMENT CRIME LAB PERFORM?

18 A OUR RESPONSIBILITIES INCLUDE CRIME-SCENE

19 INVESTIGATION; COLLECTION AND PRESERVATION OF

20 PHYSICAL EVIDENCE, PHOTOGRAPHIC DOCUMENTATION; BOTH

21 BY STILL AND VIDEO PHOTOGRAPHY; LATENT FINGERPRINT

22 PRODUCTION; LATENT PRINT DEVELOPMENT; THE COMPARISON

23 OF LATENT PRINT EVIDENCE; PRESENTATION OF EXPERT

24 TESTIMONY IN THAT PARTICULAR RESPECT; QUESTIONED

25 DOCUMENT EXAMINATION, AND JUST SOME GENERAL -- THE

26 EXAMINATION OF JUST ABOUT ANY PIECE OF EVIDENCE THAT

27 WILL COME INTO THE PROPERTY SECTION AND EVALUATING
28 IT FOR FURTHER EVALUATION BY A FULLY-QUALIFIED CRIME

40521

1 LABORATORY.

2 Q SO, WHEN YOU GO TO A CRIME SCENE IT'S
3 THE JOB OF YOURSELF AND THE PEOPLE THAT YOU
4 SUPERVISE TO OBSERVE AND RECOGNIZE, IF YOU WILL,
5 POTENTIAL EVIDENCE.

6 IS THAT ONE OF YOUR FUNCTIONS?

7 A YES, MA'AM.

8 Q AND WHEN YOU COME UPON -- YOU'RE TRAINED
9 TO HAVE AN INFORMED VISION, IF YOU WILL, TO KNOW
10 WHAT KIND OF THINGS CAN BE EVIDENCE OF THE
11 COMMISSION OF A CRIME OR THE MODE OF COMMISSION OF A
12 CRIME; IS THAT A FAIR STATEMENT?

13 A YES, MA'AM.

14 Q SO WHEN YOU GO TO A SCENE AND YOU
15 OBSERVE CERTAIN THINGS, IS IT YOUR STANDARD PRACTICE
16 AND PROCEDURE TO PHOTOGRAPH THESE ITEMS OF POTENTIAL
17 EVIDENCE BEFORE ANYONE HAS TOUCHED OR MOVED THEM?

18 A IN OPTIMUM CIRCUMSTANCES, YES. THERE
19 ARE SOME OCCASIONS WHEN ITEMS HAVE BEEN MOVED, AND
20 WE DOCUMENT THE SCENE IN ITS PRESENT CONDITION AS WE
21 FIRST OBSERVE IT.

22 Q WHEN I WAS TALKING ABOUT NOT MOVED, I
23 MEAN NOT MOVED BY POLICE PERSONNEL, THE PEOPLE THAT
24 YOU CAN CONTROL.

25 A THEY'RE OFTEN THE ONE'S THAT DO MOVE
26 THINGS. IN MOST CASES THEY HAVEN'T BEEN MOVED AND
27 WE HAVE THE OPPORTUNITY TO DOCUMENT IT IN ITS
28 ORIGINAL CONDITION, YES.

40522

1 Q SOMETIMES THEY WALK INTO SCENES OR PICK
2 SOMETHING UP INADVERTENTLY, AND LATER WHEN THE I.D.
3 TECHS COME YOU REALIZE IT'S EVIDENCE?

4 A YES.

5 Q NOW, DID YOU PERFORM A CRIME-SCENE
6 INVESTIGATION AND COLLECT AND SUPERVISE THE
7 COLLECTION OF EVIDENCE AT 722 NORTH ELM DRIVE IN THE
8 EARLY MORNING HOURS OF AUGUST 21ST, 1989?

9 A YES, MA'AM. MYSELF AND TWO OTHER
10 TECHNICIANS FROM MY SECTION.

11 Q TO THE BEST OF YOUR KNOWLEDGE, WHEN YOU
12 GOT THERE HAD ANY EVIDENCE BEEN MOVED?

13 A TO THE BEST OF MY KNOWLEDGE, NO.

14 Q NOW, WHEN -- BECAUSE YOU HAVE A LIMITED
15 CRIME LABORATORY, WHEN YOU COLLECT EVIDENCE ARE
16 THERE CERTAIN KINDS OF EVIDENCE WHERE THE DECISION

17 IS MADE THAT IT NEEDS FURTHER ANALYSIS AND YOU SEND
18 IT SOMEWHERE ELSE FOR THAT ANALYSIS TO BE PERFORMED?

19 A YES, MA'AM.

20 Q AND ROUTINELY, IS THERE A PARTICULAR
21 LABORATORY THAT YOU SEND YOUR EVIDENCE TO FOR
22 FURTHER ANALYSIS?

23 A YES, MA'AM.

24 Q WHAT LABORATORY IS THAT?

25 A LOS ANGELES COUNTY SHERIFF'S DEPARTMENT.

26 Q AND THEY RUN A LARGE FULL-SERVICE
27 LABORATORY?

28 A YES, MA'AM, THEY DO.

40523

1 Q NOW, ARE THERE CERTAIN AREAS OF EVIDENCE
2 EXAMINATION IN WHICH YOU ARE A QUALIFIED EXPERT?

3 A YES, MA'AM.

4 Q CAN WHAT ARE THOSE AREAS?

5 A COLLECTION AND PRESERVATION OF PHYSICAL
6 EVIDENCE, LATENT PRINT EVIDENCE, AND QUESTIONED
7 DOCUMENT OR HANDWRITING-RELATED EVIDENCE. AND I
8 HAVE --

9 Q HAVE YOU QUALIFIED AS AN EXPERT IN COURT
10 ON THE COLLECTION OF EVIDENCE PROCEDURES?

11 A YES, MA'AM, I HAVE.

12 Q HAVE YOU QUALIFIED AS AN EXPERT ON THE
13 IDENTIFICATION OF LATENT PRINTS OR -- WELL, STRIKE
14 THAT.

15 HAVE YOU QUALIFIED AS AN EXPERT ON THE
16 OBTAINING OF WHAT'S CALLED LATENT PRINTS; IN OTHER
17 WORDS, THE LIFTING OF LATENT PRINTS FROM THE SCENE
18 OF THE CRIME?

19 A I'M ALSO A CERTIFIED LATENT PRINT
20 EXAMINER.

21 Q I WAS GETTING TO THAT. AND HAVE YOU
22 ALSO QUALIFIED AS SOMEONE WHO'S CAPABLE OF MAKING
23 COMPARISONS BETWEEN A FINGERPRINT FOUND AT THE SCENE
24 AND AN EXAMPLE OF SOMEONE'S ACTUAL FINGERPRINT?

25 A YES, MA'AM, I HAVE.

26 Q AND HAVE YOU ALSO QUALIFIED IN COURT AS
27 SOMEONE -- AS A HANDWRITING IDENTIFYING EXPERT?

28 A YES, MA'AM, I HAVE.

40524

1 Q NOW, WITH RESPECT TO YOUR EXPERTISE IN
2 THE AREA OF COLLECTING AND IDENTIFYING EVIDENCE, DID
3 YOU YOURSELF PHYSICALLY COLLECT EVIDENCE FROM THE
4 SCENE AT 722 ELM DRIVE?

5 A YES, MA'AM, I DID. I EITHER PHYSICALLY
6 COLLECTED IT OR PARTICIPATED IN A GROUP COLLECTION

7 OF THE EVIDENCE FROM THAT LOCATION.

8 Q DO YOU HAVE A SPECIFIC MEMORY RIGHT NOW
9 AS TO -- WELL, LET ME SHOW YOU THIS CHART THAT'S
10 PREVIOUSLY BEEN MARKED WHICH CONTAINS NUMBERS
11 CORRESPONDING TO EVIDENCE ITEMS. I BELIEVE IT'S
12 EXHIBIT 24.

13 DO YOU RECOGNIZE WHAT'S PORTRAYED ON
14 THAT CHART?

15 A YES, MA'AM, I DO.

16 Q AND DO YOU HAVE ANY RECOLLECTION
17 SPECIFICALLY OF COLLECTING ANY OF THE NUMBERED ITEMS
18 OF EVIDENCE THAT APPEAR ON THAT CHART?

19 A I HAVE SPECIFIC RECOLLECTION OF AT LEAST
20 SEEING THESE OR PARTICIPATING IN THE DOCUMENTATION
21 OF EACH OF THEM. I DON'T REMEMBER WHICH ITEM I MAY
22 SPECIFICALLY HAVE COLLECTED.

23 Q OKAY. BEFORE YOU -- COLLECTING AN ITEM
24 MEANS ACTUALLY REMOVING IT FROM THE PLACE WHERE YOU
25 FOUND IT.

26 A CORRECT.

27 Q AND BEFORE YOU WOULD REMOVE AN ITEM, ARE
28 THERE METHODS EMPLOYED TO DOCUMENT WHERE IT WAS WHEN

2 A YES, MA'AM.

3 Q AND ARE THERE TWO DIFFERENT KINDS OF
4 METHODS OF DOING THAT?

5 A YES, MA'AM.

6 Q ONE OF THEM IS PHOTOGRAPHIC?

7 A CORRECT.

8 Q AND DID YOU DO THAT YOURSELF AND OBSERVE
9 YOUR OTHER IDENTIFICATION DIVISION TECHNICIANS
10 PHOTOGRAPHING EVERY ITEM OF EVIDENCE IN ITS PLACE?

11 A YES, MA'AM.

12 Q AND AT SOME POINT IN THE INVESTIGATION
13 OF THIS CRIME SCENE DID YOU AND THE OTHER

14
IDENTIFICATI*****

*****A'AM.

24 Q AND IS THERE A LIST THAT WAS PREPARED OF
25 EVERY ITEM OF EVIDENCE COLLECTED FROM THE SCENE?

26 A YES, MA'AM, THERE IS.

27 Q AND WHO WROTE THE LIST?

28 A I ACTUALLY DID THE ROUGH COPY OF THE

40526

1 LIST, AND THEN I TRANSFERRED IT ON TO A CLEAN
2 COMPUTER-GENERATED COPY.

3 Q OKAY. AND THAT IS A LIST CONSISTING OF
4 TWO PAGES, IS IT NOT, WITH ITEMS NUMBERED 1 THROUGH
5 25 ON IT?

6 A ACTUALLY, IT'S A THREE-PAGE DOCUMENT, 1
7 THROUGH 25, AND THE THIRD PAGE INCLUDES OTHER
8 MEASUREMENTS.

9 Q WE'LL GET THERE.

10 1 THROUGH 25 DESCRIBES EACH ITEM OF
11 EVIDENCE THAT WAS PHOTOGRAPHED AND COLLECTED?

12 A BRIEF DESCRIPTION, YES, MA'AM.

13 Q AND IT ALSO GIVES MEASUREMENTS FOR WHERE
14 IN THE ROOM THOSE ITEMS WERE LOCATED, CORRECT?

15 A THAT'S ALSO CORRECT.

16 Q AND DID YOU PREPARE A CHART THAT -- FIRST
17 OF ALL, DID YOU MEASURE, YOURSELF, VARIOUS ITEMS IN
18 THE ROOM AND THE DIMENSIONS OF THE ROOM ON AUGUST
19 21ST, 1989?

20 A I PARTICIPATED IN THAT, YES. IT WAS AT
21 LEAST A TWO-PERSON JOB, IF NOT ALL THREE OF US WERE
22 WORKING ON IT.

23 Q AND DID YOU PREPARE A ROUGH DRAFT OF THE
24 INTERIOR OF THE ROOM WHICH INDICATED MEASUREMENTS
25 AND DIMENSIONS?

26 A YES, MA'AM, I DID.

27 Q AND DO YOU HAVE THAT ORIGINAL WRITING
28 WITH YOU TODAY?

1 A YES, MA'AM, I DO.

2 MS. ABRAMSON: YOUR HONOR, I'D LIKE TO MARK
3 THIS ITEM --

4 THE COURT: YES.

5 MS. ABRAMSON: -- NEXT IN ORDER.

6 THE COURT: OKAY. 275.

7 MS. ABRAMSON: THANK YOU.

8 Q THIS IS JUST A HAND-SKETCHED SCHEMATIC
9 OF THE ROOM, CORRECT?

10 A DONE AS -- THAT EVENING AS WE WERE, IN
11 FACT, LOOKING AT THE EVIDENCE.

12 Q BUT THE MEASUREMENTS WERE NOT
13 GUESSTIMATES. THESE WERE THE ACTUAL MEASUREMENTS
14 YOU MADE?

15 A THEY ARE ACCURATE TO THE INCH.

16 Q OKAY. CALLING YOUR ATTENTION TO ONE OF
17 THESE MEASUREMENTS, DID YOU -- WAS THE DISTANCE
18 BETWEEN THE BACK OF THE SOFA AND THE FRENCH DOORS
19 ONE OF THE THINGS THAT WAS SPECIFICALLY MEASURED?

20 A YES, MA'AM.

21 Q AND WHAT WAS THAT DISTANCE?

22 A TWENTY-SEVEN INCHES.

23 Q AND WHEN WE TALK ABOUT THE COUCH AND THE
24 FRENCH DOORS -- IF WE STILL HAVE AN UNBROKEN POINTER
25 -- WE'RE TALKING ABOUT THIS DISTANCE HERE, CORRECT?

26 A ACTUALLY, IT WOULD HAVE BEEN TO THE
27 WALL, RATHER THAN TO THE DOORS THEMSELVES, BUT
28 ACTUALLY, THAT IS THE SOUTH WALL.

40528

1 Q SO IT'S TO THE SOUTH WALL?

2 A YES, MA'AM.

3 Q AND THAT'S 27 INCHES?

4 A YES, MA'AM.

5 Q I'M JUST GOING TO PUT THIS UP. BUT IT
6 IS YOUR ORIGINAL NOTATIONS OF THAT MORNING, CORRECT?

7 A YES, MA'AM.

8 Q AND SUBSEQUENT TO MAKING THOSE NOTATIONS
9 DID YOU DRAFT A SCALED DIAGRAM OF THE ROOM AND THE
10 LARGE OBJECTS IN IT?

11 A YES, MA'AM, I DID.

12 Q AND DO YOU HAVE THAT WITH YOU? I GAVE
13 IT BACK TO YOU.

14 A I JUST REALIZED THAT.

15 Q I GAVE IT BACK TO YOU BEFORE AND ASKED
16 YOU TO RETRACE CERTAIN OBJECTS THAT WERE FAINT.

17 A THEY'RE NOT ALL RETRACED YET.

18 Q WE MAY HAVE YOU DO THAT.

19 MS. ABRAMSON: MAY I MARK THIS 276, YOUR
20 HONOR?

21 THE COURT: YES.

22 Q BY MS. ABRAMSON: 276 IS A SCHEMATIC

23 DIAGRAM OF THE ROOM THAT YOU MADE BASED ON THE

24 MEASUREMENTS AND YOUR PERSONAL OBSERVATIONS OF THE

25 ROOM ON AUGUST 21ST, 1989, CORRECT?

26 A YES, MA'AM, IT IS.

27 Q AND I HAD ASKED YOU TO RETRACE AND

28 YOU'RE GOING TO, ARE YOU NOT, RETRACE SOME OF THESE

40529

1 FAINTER LINES ON THIS DIAGRAM?

2 A SO THEY CAN BE XEROXED, YES, MA'AM.

3 Q THANK YOU.

4 YOU DO WANT A COPY OF THIS BACK?

5 A I DO.

6 Q AND I'M ORIENTING THIS -- I DON'T WANT TO

7 STICK PINS IN THIS. PERHAPS A POST-IT NOTE MIGHT

8 HOLD IT.

9 I'M ORIENTING THIS DIAGRAM THAT YOU LAID

10 ON THE SAME AXIS AS THE LARGE EXHIBIT, NO. 24,

11 CORRECT?

12 A YES.

13 Q LET'S SEE IF THIS WILL HOLD WITHOUT

14 MARKING ANYTHING.

15 IN THE DIAGRAM THAT YOU PREPARED YOU

16 SHOW BASICALLY THE LAYOUT OF THE ROOM ITSELF,
17 CORRECT?
18 A CORRECT.
19 Q AND THE LARGE OBJECTS IN IT, LIKE THE
20 OCTAGONAL TABLE THAT CORRESPONDS WITH THIS OCTAGONAL
21 TABLE IN THE EXHIBIT?
22 A YES, MA'AM.
23 Q AND THE THREE-PIECE SECTIONAL SOFA?
24 A YES, MA'AM.
25 Q AND THE MOVEABLE OTTOMAN?
26 A YES, MA'AM.
27 Q AND THE COFFEE TABLE?
28 A THAT'S CORRECT.

40530

1 Q AND YOU SHOW THE TELEVISION SET WHICH
2 WAS ACTUALLY RECESSED INTO THE NORTH WALL, CORRECT?
3 A TELEVISION WAS RECESSED; HOWEVER, A BIT
4 OF IT DID STUCK OUT FROM THE WALL, YES.
5 Q AND YOU SHOWED THE BAR AREA, CORRECT?
6 A CORRECT.
7 Q NOW, ON THE EXHIBIT IT APPEARS AS IF THE
8 BAR IS TOTALLY OPEN TO THE ROOM; IS THAT ACCURATE?
9 A NO. THERE'S ACTUALLY A PHYSICAL BAR
10 PRESENT, LIKE A SERVING BAR YOU COULD WALK UP TO,

11 THAT DIVIDES THE ROOM FROM THE AREA BEHIND THE BAR;
12 AND THEN THAT IS ACCESSIBLE THROUGH A ROOM DIRECTLY
13 BEHIND THE TELEVISION.

14 Q SO THERE'S ACTUALLY A PHYSICAL BAR
15 ACROSS HERE (POINTING)?

16 A IF I CAN SEE THE POINTER FOR A SECOND.

17 Q YES.

18 A THE BAR ACTUALLY CAME ACROSSED ABOUT
19 HERE (DEMONSTRATING), AND I BELIEVE IT WAS ABOUT A
20 FOOT AND A HALF OR TWO-FOOT BAR. IT WASN'T A
21 MEASUREMENT I TOOK BECAUSE IT WASN'T DIRECTLY
22 RELATED TO THAT AREA.

23 Q TO WHERE THE DECEDENTS WERE FOUND?

24 A CORRECT.

25 Q THERE'S LIKE A SERVING AREA BEHIND THE
26 BAR. THERE'S THE PHYSICAL BAR ITSELF, CORRECT?

27 A CORRECT.

28 Q AND THIS BAR WAS LIKE A LARGE

40531

1 MAHOGANY-LOOKING OLD-FASHION WOODEN SOLID PIECE OF
2 FURNITURE BASICALLY?

3 A WOODEN, YES.

4 Q OKAY. WELL, IT WAS SOLID FROM THE TOP
5 TO THE FLOOR, IT WASN'T OPEN.

6 A CORRECT.

7 Q AND IT HAD WHAT, A MARBLE COUNTER ON IT?

8 A I DON'T RECALL.

9 Q ALL RIGHT. AND BEHIND THE BAR, IN THIS

10 AREA HERE THAT IS BLUE, THERE ACTUALLY IS A ROOM,

11 CORRECT?

12 A MORE WHAT I DESCRIBE AS A LARGE CLOSET

13 USED FOR THE STORAGE OF VIDEOTAPES. IT WAS A

14 SHELVING AREA THAT HAD A LARGE NUMBER OF VIDEOTAPES.

15 Q AND THAT'S IN THIS BLUE ZONE BEHIND

16 WHAT'S MARKED HERE AS "TV"?

17 A CORRECT.

18 Q AND IN YOUR DRAWING IT'S ALL ENCLOSED IN

19 THIS AREA HERE (POINTING)?

20 A CORRECT. AND THERE'S A DOORWAY INTO IT

21 ON THIS SIDE.

22 Q THE DOORWAY ACTUALLY EXITS THROUGH THE

23 ARROW THAT'S MARKED KITCHEN HERE?

24 Q YES.

25 A THERE'S A SMALL LITTLE AREA LEADING INTO

26 THE KITCHEN, A SMALL LITTLE HALLWAY. THE AREA INTO

27 THE TV OR LARGE ROOM AND BAR IS DIRECTLY WHERE

28 YOU'RE POINTING.

1 Q ABOUT UNDER THE "E" IN THE WORD KITCHEN
2 IN EXHIBIT 24?

3 A PRETTY CLOSE.

4 Q AND THAT LET'S YOU INTO THIS LARGE
5 CLOSET STORAGE AREA.

6 IN ADDITION TO MEASURING THE ROOM AND
7 THE DISTANCES BETWEEN THINGS, DID YOU ALSO MEASURE
8 SOME OF THE THINGS?

9 A YES, MA'AM, I DID.

10 Q AND DID YOU, FOR EXAMPLE, MEASURE THE
11 SECTIONAL SOFA?

12 A YES, MA'AM, I DID.

13 Q AND DID YOU MEASURE THREE SEPARATE --
14 IT'S THREE SEPARATE PIECES, WASN'T IT?

15 A YES, MA'AM, IT WAS.

16 Q AND DID YOU CALL THE LONGEST PIECE, THE
17 ONE THAT MR. MENENDEZ WAS FOUND SEATED ON, THE
18 COUCH?

19 A YES, MA'AM, I DID.

20 Q AND WHAT DID YOU CALL THAT PIECE WHERE
21 YOU SEE NO. 7 ON IT FOR AN EVIDENCE ITEM ON EXHIBIT
22 24?

23 A I INDICATED THAT JUST AS A CORNER UNIT.

24 Q AND THE SMALLER PIECE WHERE WE SEE
25 EVIDENCE ITEMS 8 AND 9, WHAT DID YOU CALL THAT?

26 A A LOVE SEAT.

27 Q AND DID YOU HAVE THE MEASUREMENTS
28 ACTUALLY TYPED UP ON COMPUTER?

1 A I DID THOSE. YES, MA'AM.

2 Q AND DO YOU HAVE YOUR COPY OF THAT SHEET
3 WITH YOU?

4 A NO, I DO NOT.

5 Q WELL, LET ME LEND YOU MINE.

6 A OH, I HAVE MY COPY, YES.

7 Q YES. THAT'S WHAT I MEAN, YOUR COPY.

8 NOW, DID YOU -- IN ADDITION TO MEASURING
9 THE COUCH AND THE CORNER UNIT AND THE LOVE SEAT, DID
10 YOU MEASURE THE OBJECT THAT APPEARS AT THE END OF
11 THE SHORT END OF THE COUCH, THE OTTOMAN?

12 A YES, MA'AM, I DID.

13 Q DID YOU MEASURE THE COFFEE TABLE?

14 A YES, MA'AM.

15 Q DID YOU MEASURE ANOTHER SMALL TABLE IN
16 THE ROOM?

17 A YES, MA'AM, I DID.

18 Q DID YOU EVEN MEASURE THE TENNIS RACKET
19 STRINGING MACHINE?

20 A YES, MA'AM, I DID.

21 Q AND DID YOU MEASURE THE OCTAGONAL TABLE
22 IN THE SOUTHWEST CORNER OF THE ROOM NEXT TO THE LONG
23 PART OF THE COUCH?

24 A YES, MA'AM, I DID.

25 Q DID YOU MEASURE THE BASE OF THE PLANT

26 NEXT TO WHERE ITEM 11 WAS FOUND?

27 A YES, MA'AM, I DID.

28 Q AND DID YOU MEASURE THE LAMP?

40534

1 A I MEASURED THE BASE OF THE LAMP, YES.

2 Q STARTING WITH THE OCTAGONAL TABLE, WHAT

3 MEASUREMENT DID YOU MAKE OF THAT TABLE?

4 A WELL, I TOOK SEVERAL MEASUREMENTS OF

5 IT. IT WAS ALL UNIFORM. IT WAS 48 INCHES, WHAT I

6 LISTED HERE AS DIAMETER, EVEN THOUGH DIAMETER IS

7 JUST ON A ROUND ITEM. WHAT I TOOK IS JUST ACROSS

8 THE TABLE, IF THE EDGES WEREN'T CUT OFF. IT WENT

9 FROM 48 FROM END TO END.

10 Q SO THE WAY IT'S SHOWN HERE, WHERE IT HAS

11 A STRAIGHT SIDE NEAR THE COUCH AND A STRAIGHT SIDE

12 NEAR THE WEST WALL, IT'S 48 INCHES ACROSS THAT TABLE

13 TOP?

14 A YES, MA'AM.

15 Q AND WOULD YOU BE GOOD ENOUGH TO STEP

16 DOWN AND WRITE 48 INCHES AND SHOW IT WITH ARROWS ON

17 THE OCTAGONAL TABLE ON YOUR ORIGINAL DIAGRAM.

18 A (WITNESS COMPLIES.)

19 Q NOW, THAT DIAGRAM THAT YOU'RE WRITING

20 ON, MR. KUHN, IS TO SCALE, RIGHT?

21 A YES, MA'AM, IT IS.

22 Q NOW, WITH RESPECT TO THE -- WHY DON'T

23 YOU STAY DOWN BECAUSE I'M GOING TO HAVE YOU FILL

24 IN.

25 WITH RESPECT TO THE COUCH, FIRST OF ALL,

26 WAS THE COUCH, THE CORNER UNIT AND THE LOVE SEAT, AS

27 THEY APPEAR, ALL THE SAME DEPTH AND THE SAME HEIGHT?

28 A THE ONLY THING THAT WOULD NOT HAVE BEEN

40535

1 THE SAME DEPTH WAS THE CORNER UNIT. ALL THE REST OF

2 THE PIECES, YES, WERE.

3 Q OKAY. SO WOULD YOU INDICATE FIRST ON

4 YOUR DRAWING, FIRST OF ALL, THE LENGTH OF THE COUCH

5 UNIT WITH ARROWS SHOWING THAT YOU'RE TALKING ABOUT

6 THE LENGTH?

7 A (WITNESS COMPLIES.)

8 Q AND THAT WAS 90 INCHES?

9 A YES, MA'AM.

10 Q THE DEPTH OF THE COUCH UNIT.

11 A (WITNESS COMPLIES.)

12 Q AND THAT WAS 36 INCHES?

13 A YES, MA'AM.

14 Q AND DO YOU HAVE A WAY OF SHOWING THE

15 HEIGHT OF THE COUCH UNIT?

16 A I'LL JUST INDICATE IT WITH A "28" AND AN
17 "H."

18 Q SO THE HEIGHT OF THE COUCH WAS 28
19 INCHES?

20 A YES, MA'AM.

21 Q AND THAT'S THE HEIGHT TO THE BACK OF THE
22 COUCH?

23 A YES, MA'AM.

24 Q NOT THE SEAT HEIGHT?

25 A CORRECT.

26 Q AND WAS IT YOUR OBSERVATION THAT THE
27 BACK OF THE COUCH AND THE SIDE OF THE COUCH, THE
28 ARMREST, WERE THE SAME HEIGHT?

40536

1 A RIGHT.

2 Q NOW, WOULD YOU PUT IN THE MEASUREMENTS
3 FOR THE COFFEE TABLE.

4 A (WITNESS COMPLIES.) THE COFFEE TABLE IS
5 56 INCHES LONG, 22 INCHES WIDE, AND IT STOOD 17 AND
6 A HALF INCHES ABOVE THE GROUND.

7 Q AND WOULD YOU, FINALLY, PUT IN THE
8 MEASUREMENT FOR THE OTTOMAN.

9 A (WITNESS COMPLIES.)

10 Q AND THOSE MEASUREMENTS, WERE THEY 26

11 LONG, 36 INCHES DEEP, AND 9 INCHES HIGH?

12 A CORRECT.

13 Q NOW, DID YOU NOTE, MR. KUHN, WHETHER THE

14 OTTAMAN, HEIGHT OF THE OTTAMAN, WAS THE SAME AS THE

15 HEIGHT OF THE SEAT OF THE COUCH?

16 A I BELIEVE IT WAS.

17 Q AND ALL THREE SECTIONS OF THE COUCH HAD

18 THE SAME HEIGHT FOR THE SEAT?

19 A CORRECT.

20

40537

1 A CORRECT.

2 Q AND ALL OF THEM WERE THE SAME NUMBER OF

3 INCHES FROM THE GROUND. THE SEAT WAS EVEN.

4 A YES, MA'AM.

5 Q OKAY. NOW, IN ADDITION TO THAT

6 OCTAGONAL TABLE, HOWEVER, DO YOU RECALL THERE WERE

7 FOUR CHAIRS NEXT TO THAT TABLE?

8 A YES, MA'AM, THERE WERE.

9 Q AND YOU DIDN'T DRAW THE CHAIRS INTO YOUR

10 DIAGRAM, CORRECT?

11 A THAT'S CORRECT.

12 Q AND YOU DIDN'T TAKE THEIR MEASUREMENTS

13 EITHER?

14 A NO, I DID NOT.

15 Q WAS THERE ANYTHING ABOUT THEIR

16 APPEARANCE THAT YOU RECALL AS BEING UNUSUAL? WERE

17 THEY UNUSUALLY LARGE CHAIRS OR ESPECIALLY SMALL

18 CHAIRS?

19 A NO. THEY WERE STANDARD CHAIRS AND THEY

20 WERE ALL PUSHED UP UNIFORMLY AGAINST THE TABLE.

21 THAT'S WHY I DIDN'T TAKE ANY MEASUREMENTS OF THEM,

22 NOR DID I RECORD THEM IN THE DRAWING.

23 Q WHAT DO YOU MEAN BY THAT?

24 A WHAT DO I MEAN BY WHAT?

25 Q BECAUSE THEY WERE PUSHED UP TO THE TABLE

26 YOU DIDN'T TAKE ANY MEASUREMENTS. WHY NOT?

27 A THEY WERE AVAILABLE, DEPICTED IN THE

28 PHOTOGRAPHS. THROUGHOUT THE INVESTIGATION THEY

40538

1 SEEMED TO PLAY NO DIRECT PART IN ANY EVIDENTIARY

2 REASONS. SO I OPTED NOT TO INCLUDE THEM IN THE

3 DRAWING.

4 Q THEY HAD NO EVIDENCE ON THEM; IS THAT

5 CORRECT?

6 A NOT THAT I RECALL SEEING.

7 Q YOU DIDN'T SEE ANY BLOOD OR ANY TISSUE

8 OR ANY BALLISTICS EVIDENCE OR ANYTHING LIKE THAT; IS

9 THAT CORRECT?

10 A HAD THERE BEEN ANY OF THAT THAT WAS OF

11 EVIDENTIARY VALUE, IT WOULD HAVE BEEN NOTED. THERE

12 MAY HAVE BEEN BLOOD OR A SMALL PIECE OF TISSUE THAT

13 WAS THERE THAT, YOU KNOW, BLENDED WITH THE MATERIAL

14 OR SOMETHING LIKE THAT, BUT NOTHING THAT WAS EITHER

15 OBVIOUS OR NOTED WHEN WE EXAMINED THEM.

16 Q OKAY. AND YOU DID, OF COURSE, EXAM IT,

17 YOU LOOKED AT AT ALL THE CHAIRS?

18 A YES, MA'AM, WE DID.

19 Q NOW, TO THE BEST OF YOUR RECOLLECTION,

20 MR. KUHN, WAS ANY WHAT WE CALL -- WELL, STRIKE

21 THAT.

22 WAS ANY BLOOD SAMPLING, ANY BLOOD TAKEN

23 OR LIFTED FROM ANY OBJECTS AT THE SCENE?

24 A NOT TO MY KNOWLEDGE, NO.

25 Q WAS ANY, WHAT APPEARED TO BE TISSUE,

26 TAKEN OR SAMPLED OR LIFTED OR REMOVED FROM THE

27 SCENE?

28 A NO.

1 Q WITH RESPECT TO -- THERE WAS BALLISTICS
2 EVIDENCE GATHERED, CORRECT?

3 A OF A SORT, YES.

4 Q THERE WERE PELLETS.

5 A YES, MA'AM.

6 Q AND TWO DIFFERENT KINDS -- THREE
7 DIFFERENT KINDS OF WADDING.

8 A I REMEMBER DIFFERENT WADDINGS, YES. I'M
9 NOT SURE AS TO THE NUMBERS.

10 Q OKAY. THERE WAS PAPER WADDING THAT WAS
11 COLLECTED.

12 YOU CAN REFER TO THE LIST IF YOU NEED TO
13 TO REFRESH YOUR RECOLLECTION.

14 A I'M NOT SURE.

15 Q FOR EXAMPLE, TAKE A LOOK AT 12, ITEM 12,
16 AND ITEM 2.

17 A OH. OKAY.

18 Q OKAY?

19 A YES. THERE WAS BOTH PLASTIC AND PAPER
20 SHOTGUN WADDING RECOVERED.

21 Q THERE ALSO WAS NO. 11, WHICH IS A SHOT
22 CUP, A WADDING THAT HAS A CUP ATTACHED?

23 A CORRECT.

24 Q THERE ALSO WERE THREE SEPARATE PIECES OF
25 A WHITE PLASTIC BRACELET THAT WERE COLLECTED, 5B,
26 16, AND 21B.

27 DO YOU SEE THAT?

28 A YES, MA'AM.

1 Q AND WHAT WAS DONE WITH THE ITEMS OF
2 EVIDENCE THAT WERE COLLECTED?

3 A THEY WERE TAGGED, PACKAGED, AND PLACED
4 INTO EVIDENCE.

5 Q HOW WERE THEY PHYSICALLY PICKED UP?

6 A AT THAT PARTICULAR TIME, WITH THOSE
7 ITEMS THAT WERE CAPABLE OF BEING JUST SCOOPED INTO
8 AN ENVELOPE, WERE SCOOPED INTO AN ENVELOPE. THOSE
9 THAT WEREN'T WERE PICKED UP WITH FORCEPS OR
10 TWEEZERS, BEING PLACED IN AN ENVELOPE AND EVENTUALLY
11 TAGGED.

12 Q AND WHEN YOU SAY "SCOOPED INTO AN
13 ENVELOPE," WHAT DO YOU MEAN? HOW DO YOU DO THAT?
14 DO YOU USE SOMETHING TO SCOOP IT?

15 A IT CAN BE AS SIMPLE AS TAKING AN ITEM --
16 AND I'LL DEMONSTRATE WITH JUST A LITTLE POCKET
17 KNIFE -- TAKING AN ENVELOPE AND DOING THAT
18 (DEMONSTRATING) AND PLACING IT INTO AN ENVELOPE.

19 MS. ABRAMSON: LET THE RECORD SHOW WHAT THE
20 WITNESS DID IS HE SLIPPED A PIECE OF PAPER UNDER
21 WHAT APPEARS TO BE ABOUT A TWO-INCH POCKET KNIFE AND
22 THEN TAPPED IT WITH A PEN ON TO THE PIECE OF PAPER.

23 Q IS THAT WHAT YOU DID?

24 A YES, MA'AM.

25 Q AND IS THE POINT NOT TO TOUCH THINGS?

26 A EXACTLY.

27 Q AND WERE THOSE PROCEDURES FOLLOWED IN

28 COLLECTING THE EVIDENCE HERE?

40541

1 A YES, MA'AM.

2 Q NOW, IN ADDITION TO OBSERVING AND

3 IDENTIFYING AND NOTING ITEMS OF EVIDENCE, DID YOU

4 ALSO PHYSICALLY TAKE SOME OF THE PHOTOGRAPHS OF THE

5 CRIME SCENE?

6 A YES, MA'AM, I DID.

7 Q AND HOW MANY ROLLS OF FILM WERE USED TO

8 PHOTOGRAPH THE CRIME SCENE HERE?

9 A THE ENTIRE CRIME SCENE ON THAT

10 PARTICULAR DAY ENCOMPASSED 17 ROLLS OF COLOR FILM

11 ALONG WITH ONE VIDEOTAPE.

12 Q AND WHO OPERATED THE VIDEO CAMERA TO THE

13 TAPE?

14 A CLARK FOGG DID THE VIDEOTAPING FOR THE

15 CRIME SCENE.

16 Q NOW, RECENTLY DID CLARK FOGG GO OUT AND

17 DO SOME MEASUREMENTS AT 722 ELM DRIVE, WHICH YOU ARE

18 THE CUSTODIAN OF?

19 A YES, MA'AM.

20 Q AND DO YOU HAVE WITH YOU THE ORIGINAL

21 NOTES THAT HE MADE MEASURING SOMETHING AT THE CRIME

22 SCENE?

23 A YES, MA'AM, I DO.

24 MS. ABRAMSON: AND, YOUR HONOR, I'D LIKE TO

25 MARK THIS 277.

26 THE COURT: 277.

27 Q BY MS. ABRAMSON: AND THIS IS A PIECE OF

28 GRAPH PAPER AND IT HAS LINES AND NUMBERS AND WRITING

40542

1 ON IT.

2 A YES, MA'AM, IT DOES.

3 Q AND WHAT IS YOUR UNDERSTANDING OF WHAT

4 THOSE NOTATIONS INDICATE?

5 A THIS IS THE FRENCH DOORS THAT ARE

6 LOCATED JUST ABOVE THE WORD "PATIO," AND THAT'S ON

7 THE -- THOSE OPEN UP TO A SOUTH -- LITTLE PATIO AREA

8 IN THE ROUND CIRCLE. ABOUT TWO-THIRDS OF THE WAY

9 DOWN IS THE TREE THAT IS IN THAT PARTICULAR PATIO.

10 Q AND WAS HE TRYING TO DRAW LINES BETWEEN

11 PLACES ON THE FRENCH DOORS WHERE THERE HAD BEEN

12 HOLES ON AUGUST 21ST AND THAT TREE?

13 A YES, MA'AM.

14 Q AND DO YOU KNOW IF MR. -- WELL, STRIKE

15 THAT.

16 THE BEVERLY HILLS POLICE DEPARTMENT

17 STILL HAS ALL THE NEGATIVES OF THESE PHOTOGRAPHS,

18 CORRECT?

19 A YES, MA'AM.

20 Q AND YOU ALSO HAVE PRINT COPIES?

21 A I DON'T BELIEVE WE HAVE MANY PRINT

22 COPIES LEFT. I KNOW WE HAVE THE NEGATIVES.

23 Q OKAY. AND DO YOU KNOW IF MR. FOGG

24 CONSULTED WITH PHOTOGRAPHERS BEFORE HE WENT OUT TO

25 DO THAT DRAWING AND MAKE THOSE MEASUREMENTS?

26 A TO THE BEST OF MY KNOWLEDGE, YES; AND HE

27 ALSO SPOKE PERSONALLY WITH DETECTIVE ZOELLER

28 REGARDING THE ISSUE.

40543

1 Q AND MR. FOGG HAD BEEN THERE ON AUGUST

2 21ST AND WAS IN A POSITION TO OBSERVE THE DAMAGE TO

3 THE FRENCH DOORS THAT MORNING?

4 A YES. HE NOT ONLY ASSISTED IN THE DIRECT

5 PHOTOGRAPHY OF THIS, BECAUSE I SAW HIS HANDS IN

6 SEVERAL OF THE PICTURES, BOTH INSIDE AND OUT; BUT HE

7 WAS WITH ME PERSONALLY WHEN WE WENT OUT AND LOOKED

8 AT THE DAMAGE TO THAT TREE ON THAT MORNING.

9 Q THE TWO OF YOU DID GO OUTSIDE THE DEN
10 AND LOOK AT THE TREE THAT MORNING?
11 A THAT MORNING, YES, MA'AM.
12 Q SO HE HAD PERSONAL KNOWLEDGE FROM WHICH
13 TO CONSTRUCT THE MEASUREMENTS THAT HE DID ON WHAT'S
14 NOW BEEN MARKED 277?
15 A YES, MA'AM.
16 Q AND THAT'S THE ROUGH VERSION. BUT THERE
17 WAS A NICE NEAT VERSION BASED ON THOSE NOTES THAT
18 WAS ALSO GENERATED, CORRECT?
19 A I'M NOT SURE.
20 Q YOU HAVEN'T SEEN IT?
21 A NO, I HAVEN'T.
22 Q LET ME SHOW YOU.
23 A OKAY. I TAKE THAT BACK. I HAVE A FAXED
24 COPY HERE.
25 Q YOU HAVE IT. OKAY. WHY DON'T WE MARK
26 THAT ALSO SO...
27 THIS IS THE FINAL DRAWING THAT WAS MADE
28 BASED ON THE NOTES THAT HAS BEEN MARKED, HAVE BEEN

40544

1 MARKED, 277, CORRECT?
2 A THAT'S CORRECT.
3 MS. ABRAMSON: 278, YOUR HONOR.

4 THE COURT: 278.

5 Q BY MS. ABRAMSON: AND BASED ON THESE
6 NOTES, IT APPEARS THAT A TRAJECTORY LINE, A
7 DIRECTIONAL LINE FROM EITHER OF THE HOLES IN THE
8 FRENCH DOORS COULD INDICATE SHOTS STRIKING THE TREE?

9 A CORRECT.

10 Q TO THE BEST OF YOUR RECOLLECTION, THERE
11 WAS A HOLE IN THE WEST DOOR, CORRECT?

12 A I DON'T RECALL WHICH DOOR IT WAS IN.
13 BUT, ACTUALLY, I THINK THERE WERE TWO OR THREE HOLES
14 IN WHICHEVER DOOR IT WAS.

15 Q RIGHT. I'M JUST TRYING TO DO ONE AT A
16 TIME.

17 BASED ON WHAT HE HAS DRAWN, DO YOU
18 RECOGNIZE THERE'S A HOLE BOTH IN THE WEST DOOR AND A
19 HOLE FARTHER DOWN IN THE EAST DOOR?

20 A CORRECT.

21 Q DOES THAT REFRESH YOUR RECOLLECTION OF
22 WHAT YOU SAW THAT MORNING OF THESE TWO HOLES IN THE
23 DOORS?

24 A YES, MA'AM.

25 Q AND BASED ON HIS MEASUREMENTS AND
26 CALCULATIONS, A SHOT FIRED THROUGH EITHER OF THOSE
27 HOLES COULD HAVE STRUCK THE TREE?

28 A CORRECT.

1 Q AND YOU PERSONALLY OBSERVED WHAT
2 APPEARED TO BE PELLET STRIKE MARKS ON THE TREE?

3 A ON THE MORNING OF THE 21ST, YES, MA'AM.

4 Q NOW, YOU DIDN'T TAKE -- YOU, BEING THE
5 BEVERLY HILLS POLICE DEPARTMENT, DIDN'T TAKE INTO
6 YOUR POSSESSION ANY OF THE OBJECTS OF FURNITURE, DID
7 YOU?

8 A NO, MA'AM, WE DID NOT.

9 Q YOU WERE STILL AT THE SCENE AFTER THE
10 CORONER'S PEOPLE CAME AND REMOVED THE DECEDENTS,
11 CORRECT?

12 A CORRECT.

13 Q AND WAS THERE ANY EFFORT MADE TO COLLECT
14 ANY ADDITIONAL BALLISTICS EVIDENCE FROM THE BLOODIER
15 AREAS OF THE SCENE?

16 A THERE WAS AN EFFORT MADE TO RECOVER
17 POSSIBLE SHOTGUN WADDING; HOWEVER, THERE WAS NO
18 SIGNIFICANT EFFORT MADE TO RECOVER ANY OF THE PELLET
19 MATERIAL BECAUSE THEY ARE NOT OF BALLISTIC EVIDENCE
20 VALUE.

21 Q AND WHAT -- WELL, WHY DON'T YOU EXPLAIN
22 TO THE JURY WHY INDIVIDUAL PELLETS ARE NOT OF
23 BALLISTIC EVIDENCE VALUE.

24 A BALLISTIC EVIDENCE IS PRIMARILY THAT OF
25 WHAT'S CALLED RIFLING, GROOVES, MARKS, LANDS, THAT
26 ARE INDENTATIONS IN THE BARREL OF A PISTOL OR A

27 RIFLE. THESE CAUSE A PROJECTILE BEING FIRED TO
28 DEVELOP A SPIN AND THEN MAINTAINS A NICE TRAJECTORY

40546

1 WHEN IT LEAVES THE WEAPON.

2 SHOTGUNS ARE CLEAN-BORE ITEMS. THEY'RE
3 NOTHING OTHER THAN SIMILAR TO THE INSIDE OF A
4 TYPICAL PIECE OF PIPE. THE SHOTGUN SHELL IS FIRED
5 AND THESE PELLETS ARE MAINTAINED OR HELD WITHIN THE
6 BARREL, THE LENGTH OF THE BARREL, AT WHICH POINT IN
7 TIME THEY JUST DIVERSELY GO OUT.

8 SO THERE IS NO RIFLING, THERE'S NO
9 MARKING OR ANYTHING PRESENT ON THE INSIDE OF A
10 BARREL TO GIVE THESE INDIVIDUAL PELLETS ANY KIND OF
11 UNIQUE MARKS WHATSOEVER.

12 Q SO UNLIKE THE PART OF A BULLET THAT GETS
13 FIRED THROUGH THE BARREL OF A GUN -- WELL, STRIKE
14 THAT.

15 THE PART OF A BULLET THAT GETS FIRED
16 THROUGH THE BARREL OF A GUN PICKS UP MARKS FROM
17 INSIDE THE BARREL, CORRECT?

18 A YES, MA'AM, IT DOES.

19 Q AND THOSE MARKINGS ARE UNIQUE TO EACH
20 GUN, ARE THEY NOT?

21 A THAT'S CORRECT.

22 Q BECAUSE THE MANUFACTURERS PURPOSELY
23 DON'T TRY TO MAKE THE INSIDE OF THE BARREL
24 ABSOLUTELY PERFECT.
25 A I THINK THEY TRY TO MAKE THEM ABSOLUTELY
26 PERFECT. IT'S JUST MACHINING AND EVERYTHING DOESN'T
27 ALLOW IT TO BE PERFECTLY DONE; AND THEN AS
28 SUBSEQUENT PROJECTILES ARE FIRED THROUGH A BARREL,

40547

1 THERE IS SOME DAMAGE, OR WHERE THAT OCCURS TO THE
2 BARREL. SO THESE BALLISTICS MARKS CAN CHANGE WITH
3 TIME IN A RIFLED WEAPON.

4 Q IS IT YOUR UNDERSTANDING THAT THESE
5 BALLISTICS MARKS, THESE MARKS THAT A BULLET PICKS UP
6 GOING THROUGH THE BARREL, IS THE MOST SIGNIFICANT
7 WAY IN WHICH GUNS CAN BE MATCHED TO BULLETS AT CRIME
8 SCENES?

9 A NOT NECESSARILY. CARTRIDGE CASES HAVE
10 AS MUCH IDENTIFIABLE VALUE AS DO BULLETS. IN FACT,
11 A LOT OF TIMES CARTRIDGE CASES ARE SIGNIFICANTLY
12 BETTER TO WORK WITH BECAUSE WHEN A PROJECTILE IS
13 RECOVERED, IT'S OFTEN SIGNIFICANTLY DAMAGED BY
14 SOMETHING IT'S HIT.

15 Q OKAY. TO GET BACK TO THE POINT ABOUT
16 THIS SITUATION, WHEN YOU HAVE THESE INDIVIDUAL

17 PELLETS, THEY DON'T EVEN PICK UP THESE, WHAT'S

18 CALLED RIFLING

CHARACTER*****

***** 27 SAMPLING OF THE PELLETS SO
WE COULD MAKE AN EFFORT

28 TO DETERMINE SIZE; AND WITH THE SUBSEQUENT

40548

1 COLLECTION OF THE SHOTGUN WADDINGS, THERE WAS

2 POSSIBLY AN ABILITY TO DETERMINE THE MANUFACTURER OF

3 THE SHOTGUN SHELL INVOLVED.

4 Q OKAY. SO EVERY WAD -- I THINK JUST TO

5 GO BACK TO WHAT YOU SAID EARLIER BEFORE WE TALKED

6 ABOUT RIFLING, ET CETERA -- EVERY WAD THAT YOU SAW

7 WAS COLLECTED?

8 A I BELIEVE SO, YES, MA'AM.

9 Q AND THEN A REPRESENTATIVE SAMPLING OF

10 THE PELLETS THAT YOU SAW WERE COLLECTED.

11 A THAT'S ALSO CORRECT.

12 Q DID YOU PURPOSELY JUST LEAVE -- SAY A

13 PELLET WAS LYING IN AN AREA WHERE THERE WAS NO

14 BIOLOGICAL EVIDENCE ON IT. DID YOU JUST LEAVE IT

15 THERE OR DID YOU TRY TO PICK THOSE UP?

16 A TO THE BEST OF MY KNOWLEDGE, WE

17 RECOVERED THE ONES THAT WERE NOT PHYSIOLOGICALLY

18 BLOOD CONTAMINATED FROM THE COUCH, AND THE REST OF
19 THEM WE MADE NO EFFORT TO COLLECT.

20 Q AND WHERE WERE THE REST OF THEM?

21 A FROM WHAT I REMEMBER, BY THE REST OF
22 THEM, THOSE THAT WERE IMBEDDED IN THE COUCH WE MADE
23 NO EFFORT TO DIG OUT.

24 Q AND WHAT ABOUT ANY THAT MAY HAVE BEEN
25 UNDERNEATH THE BODIES OF MR. AND MRS. MENENDEZ?

26 A IF THEY APPEARED TO BE OF THE SAME SIZE,
27 WE MADE NO EFFORT TO COLLECT THOSE. IN OUR OPINION,
28 WE HAD A RANDOM SAMPLING OF THE PELLETS INVOLVED.

40549

1 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR
2 HONOR.

3 THANK YOU.

4 THE COURT: ANY EXAMINATION BY COUNSEL FOR
5 LYLE MENENDEZ?

6 MR. GESSLER: NO. THAT WAS JOINTLY, YOUR
7 HONOR.

8

9 CROSS-EXAMINATION

10 BY MR. CONN:

11 Q WITH REGARD TO THE PELLETS AT THE CRIME
12 SCENE, DO YOU KNOW HOW MANY PELLETS WERE NOT

13 COLLECTED?

14 A NO, SIR, I DON'T.

15 Q DO YOU KNOW HOW MANY PELLETS WERE

16 EMBEDDED IN THE SOFA?

17 A NO, SIR, I DO NOT.

18 Q DO YOU KNOW IF ANY PELLETS WERE EMBEDDED

19 IN THE SOFA?

20 A NO. I DON'T RECALL.

21 Q DID YOU MAKE ANY EFFORT TO COLLECT BLOOD

22 OR TISSUE SAMPLES AT THE CRIME SCENE?

23 A NO, SIR, I DID NOT.

24 Q CAN YOU TELL US WHY YOU DID NOT DO THAT?

25 A THE ONLY REASON THAT WE WOULD HAVE

26 PHYSICALLY COLLECTED TISSUE SAMPLES OR BLOOD SAMPLES

27 AT THE SCENE WOULD HAVE BEEN IF WE WERE OF THE

28 OPINION THERE HAD BEEN INJURY TO ONE OF THE SUSPECTS

40550

1 INVOLVED. IT APPEARED THAT ALL OF THE TISSUE

2 SAMPLES AND BLOOD SAMPLES THAT WERE THERE WERE

3 CONSISTENT WITH HAVING COME FROM THE VICTIMS

4 INVOLVED IN THIS CASE.

5 Q AND YOU ALSO SAID THAT SOMETIMES YOU CAN

6 MATCH CARTRIDGE CASES TO A FIREARM.

7 A YES, SIR.

8 Q IN THIS CRIME SCENE DID YOU RECOVER ANY
9 CARTRIDGE CASES?

10 A NO, SIR, WE DIDN'T.

11 MR. CONN: THANK YOU.

12 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

13 MS. ABRAMSON: JUST A MOMENT, YOUR HONOR.

14 (ATTORNEYS ABRAMSON AND LEVIN

15 CONFER SOTTO VOCE.)

16

17 MS. ABRAMSON: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: OKAY. THANK YOU. YOU MAY STEP

19 DOWN.

20 THE WITNESS: YOUR HONOR, COULD I TAKE THAT
21 WITH ME FOR 15 OR 20 MINUTES AND OUTLINE THINGS?

22 THE COURT: WE'LL WORK IT OUT AT THE RECESS
23 HERE.

24 THE WITNESS: OKAY.

25 THE COURT: THE LAWYERS ARE GOING TO MODIFY
26 THAT DIAGRAM A LITTLE BIT SO THAT THEY CAN USE IT
27 LATER ON IN THE TRIAL.

28 ALL RIGHT. LET ME SEE COUNSEL OVER

40551

1 HERE.

2 (THE FOLLOWING PROCEEDINGS

3 WERE HELD OUTSIDE THE
4 PRESENCE OF THE JURY:)

5

6 MS. ABRAMSON: THAT'S IT. SORRY.

7 THE COURT: ONCE THE JURY IS GONE, THERE
8 COULD BE USE OF THE TIME TO EITHER GO THROUGH
9 EXHIBITS OR IDENTIFY THINGS THAT CAN BE LITIGATED
10 FURTHER THAT WE CAN -- THAT HAVE TO BE LITIGATED
11 THAT CAN BE DONE TODAY.

12 ANYBODY GIVE ANY THOUGHT TO THAT?

13 MS. ABRAMSON: WHAT I WOULD VOTE FOR IS THOSE
14 I LEAVE BEHIND GO THROUGH EXHIBITS, AND I LEAVE AND
15 GO DO THE WORK I HAVE TO DO TO PREPARE FURTHER FOR
16 ALL THE PHYSICAL EVIDENCE WITNESSES WHO ARE ALL
17 MINE.

18 SO I WOULD VOTE THAT EVERYBODY ELSE GO
19 THROUGH EXHIBITS.

20 THE COURT: WELL, IT'S NOT A QUESTION OF WHO
21 DOES IT. IT'S WHETHER IT CAN BE DONE.

22 HAVE YOU TALKED AT ALL ABOUT THIS GOING
23 THROUGH EXHIBITS SO FAR AND SEEING IF THERE ARE ANY
24 DISPUTES OR SOME EXHIBITS THAT CAN BE RECEIVED SO
25 THE CLERK CAN GET A HEAD START?

26 MR. CONN: NO. WE HAVEN'T DONE THAT YET. I
27 THINK WE SHOULD DO THAT THIS MORNING.

28 MS. TOWERY: IT MIGHT BE A BETTER USE OF OUR

1 TIME IF WE LOOK THROUGH THEM THE REST OF THIS
2 MORNING AND TALK THIS AFTERNOON ABOUT IT. I HAVEN'T
3 LOOKED AT THE LIST AT ALL.

4 THE COURT: ALSO, THERE'S STILL A DISPUTE
5 ABOUT A TRANSCRIPT OF THE OZIEL TAPE-RECORDING.

6 HAVE YOU TRIED TO ISOLATE OR LIMIT THE
7 DISPUTE?

8 MS. TOWERY: I AM COMPARING THOSE TWO. I'M
9 IN THE PROCESS OF DOING THAT.

10 MS. ABRAMSON: THAT'S THE OTHER THING I HAVE
11 TO CALL ZOELLER ABOUT, GETTING THE REST OF THE
12 SEPTEMBER 17TH PART, WHAT THE PEOPLE WERE OBJECTING
13 TO. WE COULD TRY TO DEAL WITH THAT. I THINK THEY
14 LOST ON THAT OR -- I THINK I WON ON THAT.

15 THE COURT: IS THERE ANYTHING THAT CAN BE
16 DONE TODAY?

17 MS. TOWERY: I DON'T THINK I CAN DO IT
18 TODAY. I'LL TRY. IF WE'RE GOING TO TALK ABOUT
19 EXHIBITS, I CAN'T FINISH THAT.

20 THE COURT: AT THE VERY LEAST, MAYBE YOU AND
21 THE D.A. CAN CONFER.

22 MS. TOWERY: WHAT I PLAN ON DOING IS
23 COMPARING THE TWO TO EACH OTHER AND SEE IF THERE'S
24 ANY DISCREPANCY; THEN LISTEN TO THE TAPES. I'VE
25 BEEN CARRYING THEM AROUND WITH ME.

26 THE COURT: I'D LIKE THE LAWYERS TO DO IT.
27 THERE MIGHT BE VERY FEW DISPUTES. I DON'T KNOW.
28 I'M GOING TO LET THE JURY GO.

40553

1 MS. ABRAMSON: CAN I BE EXCUSED?

2 THE COURT: AS LONG AS EVERYONE ELSE CAN DEAL
3 WITH IT WITHOUT YOU.

4 (THE FOLLOWING PROCEEDINGS WERE
5 RESUMED IN OPEN COURT IN THE
6 PRESENCE OF THE JURY:)

7

8 THE COURT: THAT'S ALL THEY HAVE TODAY AS FAR
9 AS TESTIMONY OF WITNESSES. AND WE'LL RESUME WITH
10 THE JURY TOMORROW AT 8:30 WHEN DR. MC CARTHY RETURNS
11 AND HE'LL BE ON THE STAND TOMORROW, AND PROBABLY FOR
12 A COUPLE OF DAYS MORE THIS WEEK BEFORE HIS TESTIMONY
13 IS COMPLETED.

14 AND THE LAWYERS WILL STAY BEHIND THIS
15 MORNING AND INTO THE AFTERNOON TO ASSIST THE COURT
16 IN GOING THROUGH THE EXHIBITS. WE HAVE 277 EXHIBITS
17 MARKED SO FAR. THERE ARE A LOT MORE THAT WILL BE
18 MARKED. IT WILL BE OF ASSISTANCE TO THE COURT TO
19 REVIEW THE EXHIBITS TO SEE IF THERE ARE ANY DISPUTES
20 ABOUT WHICH EXHIBITS CAN BE RECEIVED IN EVIDENCE AND

21 GIVEN TO THE JURY DURING DELIBERATIONS, AND THIS HAS
22 TO BE DONE AT SOME POINT DURING THE TRIAL.
23 SO WE'LL GET A HEAD START ON THAT NOW,
24 AND THE LAWYERS WILL DO THAT AND HELP THE COURT IN
25 DEALING WITH PHYSICAL EXHIBITS THAT WILL ULTIMATELY
26 BE GIVEN TO THE JURY DURING DELIBERATIONS. THAT,
27 OBVIOUSLY, DOESN'T REQUIRE THE JURY TO BE HERE.
28 THEREFORE, I'LL EXCUSE YOU AND ASK THAT

40554

1 YOU RETURN TOMORROW AT 8:30, AT WHICH TIME WE SHOULD
2 HAVE A FULL DAY OF TESTIMONY AND FOR THE BALANCE OF
3 THE WEEK. SEE YOU BACK HERE TOMORROW AT 8:30.

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

7

8 THE COURT: AS WE DISCUSSED THEN, COUNSEL
9 WILL REVIEW THE EXHIBITS THIS MORNING; AND THEN IN
10 THE AFTERNOON, IF THERE ARE DISPUTES, WE CAN DISCUSS
11 THEM THIS AFTERNOON. AND IF SOME COUNSEL FEEL THAT
12 THEY CAN DEFER TO OTHERS TO DEAL WITH THESE MATTERS,
13 THEN THOSE WHO WANT TO LEAVE CAN DO SO, AND THOSE
14 THAT REMAIN BEHIND WILL BE LEFT WITH THE
15 RESPONSIBILITY OF RESOLVING ANY OF THESE DISPUTES.

16 WE'LL BE IN RECESS UNTIL 1:30.

17 MR. LEVIN: YOUR HONOR, MAY WE JUST HAVE A
18 MOMENT?

19 THE COURT: YES.

20 (ATTORNEYS LEVIN, GESSLER, AND TOWERY
21 CONFER SOTTO VOCE.)

22

23 MR. LEVIN: YOUR HONOR, THE DEFENDANTS WISH
24 TO WAIVE THEIR APPEARANCE AND GET BACK TO THE JAIL
25 SO THAT WILL SAVE SOME TIME WHEN I GO TO SEE MY
26 CLIENT.

27 THE COURT: OKAY. WE WILL BE DISCUSSING
28 DISPUTES, IF THERE ARE DISPUTES ABOUT EXHIBITS,

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1 WHICH WILL GO TO THE JURY, THESE DISPUTES, WHEN
2 RESOLVED, MIGHT BE RESOLVED OVER THE OBJECTION OF
3 THE DEFENDANTS' OBJECTIONS. DEFENDANTS MIGHT HAVE
4 OBJECTIONS TO THE RECEIPT OF EXHIBITS OR HOW THEY
5 APPEAR OR THINGS OF THAT NATURE.

6 EACH OF THE DEFENDANTS HAVE A RIGHT TO
7 BE PRESENT FOR THOSE DISCUSSIONS AND TO HEAR WHAT
8 THE OBJECTIONS ARE, TO HEAR ANY ISSUES THAT YOUR
9 LAWYERS WANT TO BRING UP AS TO WHAT THE EXHIBITS
10 WILL BE AND HOW THEY'LL LOOK, WHETHER THEY GO TO THE

11 JURY. IT'S UP TO YOU IF YOU WANT TO BE HERE. YOU
12 CAN GIVE UP THAT RIGHT IF YOU WANT TO AND HAVE YOUR
13 LAWYERS REPRESENT YOUR INTEREST WITHOUT BEING
14 PRESENT. IT'S UP TO YOU.

15 WHAT DO YOU WANT TO DO?

16 MR. LEVIN: THEY'RE GOING TO STAY, YOUR
17 HONOR. SO...

18 THE COURT: WE'LL BE IN RECESS UNTIL 1:30.

19 MS. ABRAMSON: THANK YOU, YOUR HONOR.

20 (AT 10:30 A.M. PROCEEDINGS WERE

21 ADJOURNED UNTIL 1:30 P.M. OF

22 THE SAME DAY.)

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1 VAN NUYS, CALIFORNIA; MONDAY, NOVEMBER 13, 1995

2 3:15 P.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARILYN FADALE, OFFICIAL REPORTER)

6 (MARY LU MURPHY, OFFICIAL REPORTER)

7

8 THE COURT: OKAY.

9 IN THE TRIAL, THE DEFENDANTS ARE HERE,

10 COUNSEL ARE PRESENT, THE JURY IS NOT. COUNSEL HAVE BEEN

11 CONFERRING ABOUT EXHIBITS.

12 WHY DON'T YOU FILL ME IN ON WHAT'S

13 OCCURRED.

14 MS. NAJERA: WELL, YOUR HONOR, WHAT WE'VE DONE IN

15 THIS CASE IS THAT THE DEFENSE HAS SUBMITTED TO US AND WE

16 SUBMITTED TO THEM WHAT IT WAS THAT EITHER SIDE WOULD BE
17 OFFERING, AND THEN BOTH SIDES WENT OVER EACH LIST RATHER
18 CAREFULLY, AND THEN BASICALLY PRESENTED EACH OTHER WITH
19 OUR SET OF OBJECTIONS FOR EACH OTHER'S OFFERED EXHIBITS.

20 SO, RIGHT NOW WE'RE AT A POINT WHERE
21 EVERYBODY KNOWS WHAT THE OTHER IS OBJECTING TO IN TERMS
22 OF EXHIBITS. IT'S HOW THE COURT WANTS TO PROCEED WITH
23 WHICH GROUP YOU WANT TO DEAL WITH FIRST, OR BOTH OF
24 THEM, AND WE CAN GIVE YOU THE OBJECTIONS.

25 THE COURT: HOW MANY ARE THERE?

26 MS. NAJERA: AS TO -- THE PEOPLE WILL BE
27 OBJECTING TO 18. PEOPLE WILL BE OBJECTING TO 18 DEFENSE
28 EXHIBITS, AND THE DEFENSE ARE OBJECTING TO -- THE

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1 DEFENSE IS OBJECTING AT THIS TIME TO 27 OF THE PEOPLE'S
2 EXHIBITS, AND ALSO THEY INFORMED US THAT THEY ARE NOT
3 PREPARED TO MAKE ANY KIND OF A DETERMINATION REGARDING
4 EXHIBITS 167 TO 278.

5 MR. GESSLER: THOSE EXHIBITS ARE STILL ONGOING,
6 YOUR HONOR, AS DR. MCCARTHY IS TESTIFYING, AND I FEEL
7 THAT WE SHOULD RESERVE OBJECTIONS. MANY OF THEM
8 CERTAINLY ARE UNOBJECTIONABLE, BUT RESERVE OBJECTIONS ON
9 THOSE UNTIL WE GET TO THE CONCLUSION OF THAT TESTIMONY.

10 THE COURT: OKAY.

11 MR. GESSLER: BUT WE ARE READY, I THINK, TO

12 PROCEED ON THE MAJORITY OF THE EXHIBITS THAT HAVE BEEN
13 DONE BEFORE WE GOT INTO THE MEDICAL AND THE
14 RECONSTRUCTION ASPECTS.

15 THE COURT: OKAY, LET'S DO THIS THEN. SINCE THE
16 PEOPLE ARE ABOUT TO REST, LET'S START WITH THE EXHIBITS
17 THAT THEY'RE OFFERING AND DEAL WITH THE DEFENSE
18 OBJECTIONS TO THEM AND THEN WE WILL -- WHEN WE GET TIME,
19 IF WE STILL HAVE TIME TODAY, DEAL WITH THE REVERSE OF
20 THAT.

21 OKAY. SO, WHY DON'T YOU JUST TELL ME WHICH
22 EXHIBITS YOU WANT TO TALK ABOUT HERE. I GUESS SINCE THE
23 DEFENSE IS OBJECTING, WHY DON'T YOU TELL ME WHICH ONES
24 YOU WANT TO TALK ABOUT FIRST.

25 MR. GESSLER: WELL AGAIN, YOUR HONOR, PART OF IT
26 IS THE PEOPLE ARE NOT OFFERING ALL EXHIBITS THAT HAVE
27 BEEN MARKED.

28 THE COURT: OKAY.

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1 MR. GESSLER: AND SO THE FACT THAT I AM NOT
2 OBJECTING DOESN'T MEAN THAT IT'S ONLY GOING TO THE ONES
3 THAT WE HAVE BEEN GIVEN NOTICE THAT THEY ARE GOING TO
4 SEEK ADMISSION TO.

5 THE COURT: RIGHT, OKAY. I UNDERSTAND. I
6 WOULD --

7 MR. GESSLER: FOR EXAMPLE, THE PEOPLE ARE NOT

8 OFFERING EXHIBIT 29, TO WHICH WE HAD PREVIOUSLY

9 OBJECTED, SO --

10 THE COURT: LET'S NOT THEN DEAL WITH THOSE THAT

11 THEY'RE NOT OFFERING AT THIS POINT, OR EVEN DEALING WITH

***** THE COURT: AND THIS IS A PHOTOGRAPH OF
ITEM NO.

21 13, AND MY NOTES INDICATE THAT IT WAS NOWHERE IDENTIFIED

22 DURING TESTIMONY.

23 MR. GESSLER: I BELIEVE THAT'S CORRECT. IT WAS

24 NOT USED IN TESTIMONY. IT IS A HAND I BELIEVE OF JOSE

25 MENENDEZ WITH A GLOVED HAND AT THE SCENE, OBVIOUSLY

26 EXPLORING PART OF AN INJURY. IT SEEMS TO CONTAIN A LOT

27 OF BLOOD AND PRACTICALLY NO EVIDENTIARY VALUE, AND WE

28 ARE OBJECTING ON 352 GROUNDS FOR THAT PARTICULAR

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1 PICTURE.

2 THE COURT: WELL, REGARDLESS OF 352, I DON'T

3 THINK IT WAS EVER IDENTIFIED IN THE TESTIMONY, UNLESS IT

4 CAME OUT DURING SOME LATER TESTIMONY AFTER IT WAS

5 INITIALLY MARKED ON OCTOBER 12TH.

6 MR. GESSLER: THAT'S TRUE.

7 MS. NAJERA: YOUR HONOR, IT CAME OUT I BELIEVE

8 WITH THE CHART THAT'S OUT THERE, WHICH IS 24. WHAT IT

9 WAS IS IT SHOWED WHERE EVIDENCE ITEM NO. 13, WHICH IS ON
10 CHART 24, WAS FOUND, AND DETECTIVE ZOELLER TESTIFIED
11 THAT THIS WAS WADDING THAT --

12 THE COURT: LET ME SAY THAT THERE WAS AN
13 OBJECTION AT THAT POINT.

14 MS. NAJERA: CORRECT.

15 THE COURT: I BELIEVE -- I WOULD GIVE SORT OF AN
16 EDUCATED GUESS UNDER 352 AT THAT POINT, AND IT WAS HELD
17 OFF AS FAR AS WHETHER IT WAS GOING TO BE REFERRED TO BY
18 DETECTIVE ZOELLER, AND I DON'T THINK YOU EVER PICKED UP
19 ON IT LATER ON. THAT'S MY NOTES.

20 SO, AT THIS POINT IT HAS NEVER BEEN
21 IDENTIFIED.

22 MS. NAJERA: YOUR HONOR, THAT'S SOMETHING MR.
23 CONN BELIEVES THAT HE DID -- DETECTIVE ZOELLER, THAT HE
24 IN FACT WAS ASKED ABOUT THIS, BUT IT WASN'T SHOWN TO THE
25 JURY.

26 SO, PERHAPS WE SHOULD HOLD OFF ON THIS AND
27 LOOK IT UP IN THE TRANSCRIPT.

28 THE COURT: HOLD OFF AND SEE IF IT WAS EVER

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1 IDENTIFIED.

2 MS. TOWERY: IS THE COURT SAYING IT WAS NEVER
3 IDENTIFIED AT ALL OR USED SUBSEQUENTLY?

4 THE COURT: IT WAS MARKED AS AN EXHIBIT BUT NEVER

5 SHOWN TO DETECTIVE ZOELLER AND NEVER IDENTIFIED.

6 THAT'S MY RECOLLECTION AND NOTATION. I HAVE THE SAME

7 NOTATION AS TO EXHIBIT 29 ACTUALLY.

8 NOW, WHETHER LATER ON IT WAS IDENTIFIED, I

9 DIDN'T CHANGE MY NOTES, I CAN'T TELL YOU. BUT FIRST

10 THINGS FIRST. IT'S NEVER BEEN IDENTIFIED AND IT CAN'T

11 BE RECEIVED.

12 MS. NAJERA: THAT'S FINE, YOUR HONOR.

13 THE COURT: WHAT'S THE NEXT EXHIBIT?

14 MR. GESSLER: THE NEXT WOULD BE THE SERIES 50,

15 51, 52 AND 53. THIS IS THE SERIES -- TAPES OF THE

16 SEPTEMBER 17TH STATEMENTS OF BOTH THE TAPES AND

17 TRANSCRIPTS OF THEM WITH ERIK MENENDEZ AND LYLE

18 MENENDEZ.

19 THE OBJECTIONS ARE THOSE THAT WE HAVE

20 PREVIOUSLY STATED ON ARANDA GROUNDS, 352, THAT LIMITING

21 INSTRUCTIONS ARE INSUFFICIENT, THE OBJECTIONS PREVIOUSLY

22 STATED IN A 402 MOTION BEFORE THIS COURT.

23 THE COURT: OKAY. THOSE OBJECTIONS ARE OVERRULED

24 AND THEY WILL BE RECEIVED, 50 THROUGH 53.

25 MR. GESSLER: THE NEXT OBJECTIONS, YOUR HONOR,

26 ARE -- WELL, FIRST IT'S 59, WHICH IS THE DECEMBER 11TH

27 TAPE.

28 THE OBJECTION THERE IS ON ALL GROUNDS

1 PREVIOUSLY STATED IN 402 MOTIONS AND OTHER MOTIONS

2 BEFORE THE COURT, WRITING AND ORALLY.

3 THE COURT: OKAY. IT WILL BE RECEIVED OVER THE

4 OBJECTIONS, AND RULINGS PREVIOUSLY MADE BY THE COURT

5 STAND.

6 MR. GESSLER: AS TO EXHIBIT 60, WE WOULD ASK THE

7 COURT TO DEFER RULING. THERE IS STILL NEGOTIATIONS

8 GOING ON AS TO WHICH TRANSCRIPT OR AMALGAMATION OF THE

9 TRANSCRIPTS SHOULD BE USED.

10 THE COURT: OKAY.

11 MS. TOWERY: AND JUST SO THE COURT IS AWARE, MISS

12 NAJERA GAVE ME A COPY OF THE PEOPLE'S TRANSCRIPT THAT

13 THEY INTEND TO OFFER THIS AFTERNOON, WHICH SHE INDICATES

14 TO ME IS BASICALLY THE SAME AS PRIOR EXHIBIT 322. BUT I

15 DO NEED TO GO THROUGH THAT AND CHECK IT, AND WE DID HAVE

16 AN OBJECTION TO IT. 322 IS EXHIBIT 60 IN THIS TRIAL.

17 THE COURT: OKAY. WE WILL HOLD OFF ON THAT.

18 MS. NAJERA: OKAY.

19 MR. GESSLER: NEXT OBJECTION WOULD BE TO EXHIBIT

20 89. THIS IS A TAPE RECORDED STATEMENT OF PERRY BERMAN.

21 I BELIEVE IT WAS USED TO REFRESH HIS RECOLLECTION FOR

22 ONE PORTION OF THAT TAPE ONLY, AND I THINK IT'S IMPROPER

23 FOR THE PEOPLE TO OFFER IT. IT WAS THEIR WITNESS. I

24 THINK THAT A TAPE FOR REFRESHED RECOLLECTION OR PAST

25 RECOLLECTION RECORDED CAN ONLY BE OFFERED BY THE

26 OPPOSING SIDE AS TO THE PART THAT IS RELEVANT.

27 THE COURT: MY NOTES INDICATE IT WAS OFFERED TO

28 IMPEACH THE WITNESS.

1 MS. TOWERY: YOUR HONOR, I LOOKED THAT UP. THIS
2 IS EXHIBIT 89.

3 THE COURT: YES.

4 MR. GESSLER: THIS IS EXHIBIT 89.

5 MS. TOWERY: MY REVIEW OF THE TRANSCRIPT
6 INDICATES IT WAS USED TO REFRESH HIS RECOLLECTION
7 REGARDING WHAT HE SAID TO SERGEANT EDMONDS WHEN HE WAS
8 INTERVIEWED. ONLY A PORTION OF THE TAPE WAS PLAYED.

9 THAT'S AT VOLUME 224, PAGES 37000 THROUGH
10 37002, AND THAT WAS OVER DEFENSE OBJECTION ON IMPROPER
11 IMPEACHMENT AND RELEVANCY GROUNDS.

12 AND THEN I BELIEVE THAT MS. NAJERA'S FIRST
13 QUESTION AFTER PLAYING IT WAS "DOES THAT REFRESH YOUR
14 RECOLLECTION," AND HE SAID "YES, I GUESS SO" OR
15 SOMETHING ALONG THOSE LINES.

16 THE COURT: AGAIN, WHAT WERE THE PAGES, 37 WHAT?

17 MS. TOWERY: 37000 THROUGH 37002. 37002 WAS THE
18 TESTIMONY ABOUT REFRESHING THE RECOLLECTION, AND THAT'S
19 VOLUME 224.

20 THE COURT: OKAY.

21 MS. NAJERA: YOUR HONOR, IF I MAY, JUST TO ADD SO
22 THE COURT KNOWS, THAT IS A -- IT WAS ONLY A SECTION OF
23 THE TAPE THAT WE PLAYED, AND IF WE OFFERED IT WE WOULD
24 REDACT IT, DEPENDING ON IF THE COURT RULES IT IS
25 ADMISSIBLE. WE WOULD REDACT IT TO JUST THE ADMISSIBLE

26 PORTION.

27 THE COURT: MY NOTES ARE THAT A SMALL PORTION WAS
28 PLAYED, AND I WROTE DOWN FOR THE PURPOSE OF IMPEACHMENT,

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1 BUT I WILL CERTAINLY LOOK AT THE TRANSCRIPT.

2 MS. NAJERA: OKAY.

3 THE COURT: LET ME MAKE A NOTE HERE.

4 OKAY, THEN THE NEXT ONE?

5 MR. GESSLER: THE NEXT WOULD BE THE SERIES OF 90,
6 91, 92 AND 93, AGAIN INTERVIEWS OF ERIK MENENDEZ AND
7 LYLE MENENDEZ.

8 I BELIEVE THOSE WERE THE INTERVIEWS
9 CONDUCTED IN THE EARLY MORNING HOURS OF AUGUST THE 21ST
10 OF 1989, AND OUR OBJECTIONS THERE ARE ON GROUNDS
11 PREVIOUSLY STATED, ARANDA, LIMITING INSTRUCTIONS NOT
12 BEING SUFFICIENT, ALL OTHER GROUNDS STATED PREVIOUSLY IN
13 WRITING AND ORALLY.

14 THE COURT: OKAY. TO WHATEVER OBJECTIONS WERE
15 MADE PREVIOUSLY, THE COURT'S RULINGS IN RESPONSE TO
16 THAT, THOSE RULINGS STAND AND THE OBJECTIONS REMAIN
17 OVERRULED, AND THOSE EXHIBITS WILL BE RECEIVED.

18 THAT'S 90 THROUGH 93.

19 MR. GESSLER: THE OBJECTION TO EXHIBIT 100, YOUR
20 HONOR, I FORGET IF I INCLUDED THAT EARLIER.

21 MS. NAJERA: NO, YOU DIDN'T EARLIER.

22 MR. GESSLER: BUT THAT'S AGAIN THE GENERAL
23 OBJECTION TO THE SPENDING EVIDENCE. IT INCLUDES THE
24 BOARD I BELIEVE THAT HAS THE -- I'M SORRY, IT'S NOT 167,
25 IT'S THAT SERIES WHERE THE PORSCHE IS PICTURED, THE
26 PATIO HOME IS PICTURED AND THE CONDOMINIUM IN PRINCETON
27 IS PICTURED, AND THE OBJECTION THERE IS AS TO ONES
28 PREVIOUSLY STATED, AS TO SPENDING EVIDENCE IN GENERAL.

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1 THE COURT: ALL RIGHT. THOSE OBJECTIONS WOULD BE
2 OVERRULED, AND THAT AGAIN, JUST TO IDENTIFY THE EXHIBITS
3 HERE, THAT'S 100 THROUGH --

4 MS. NAJERA: 104.

5 MR. GESSLER: 101 THROUGH 104 I BELIEVE
6 PRIMARILY, YOUR HONOR. I THINK 100 IS THE LIFE
7 INSURANCE POLICY, AND THAT'S OKAY.

8 MS. NAJERA: ARE YOU OBJECTING -- I'M SORRY, YOUR
9 HONOR.

10 ARE YOU OBJECTING, COUNSEL, TO 100 OR NOT?
11 100 IS THE DOCUMENT OF THE LIFE INSURANCE POLICY.

12 MS. TOWERY: NO.

13 MS. NAJERA: SO, IT IS 101 TO 104?

14 MR. GESSLER: RIGHT.

15 MS. NAJERA: THANK YOU.

16 MR. LEVIN: AND YOUR HONOR, ALTHOUGH COUNSEL FOR
17 ERIK MENENDEZ JOINS IN WITH MR. GESSLER'S STATED

18 OBJECTIONS, WITH RESPECT TO THE DISPLAY BOARDS THAT
19 DEMONSTRATE OR ILLUSTRATE ITEMS PURCHASED BY LYLE OR
20 ERIK MENENDEZ, WE BELIEVE THEY SHOULD BE SEPARATED SO
21 THAT THERE ARE NO DISPLAY BOARDS WHERE THE SPENDING OF
22 LYLE MENENDEZ APPEARS WITH OBJECTS OR ITEMS THAT ARE
23 ALLEGED TO HAVE BEEN PURCHASED OR ATTEMPTED TO HAVE BEEN
24 PURCHASED BY ERIK MENENDEZ, AS IT CONFUSES THE JURY AND
25 MAY GIVE AN INFERENCE THAT OTHERWISE SHOULD NOT STEM
26 FROM THAT PARTICULAR EXHIBIT.

27 THE COURT: ARE YOU TALKING ABOUT A PARTICULAR
28 BOARD THAT HAS PHOTOGRAPHS RELATING TO SPENDING BY EACH

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1 DEFENDANT? WHICH BOARD IS THAT?

2 MR. LEVIN: I BELIEVE -- I WILL CHECK IT AGAIN,
3 BUT I BELIEVE IT WAS IN THAT 100 SERIES WHERE THERE WERE
4 DISPLAY BOARDS PRESENTED, AND IT SEEMED TO BE FOR MORE
5 OF EASE OF THE WITNESS AT THE TIME.

6 I WILL CHECK IT, BUT I JUST WANT TO MAKE
7 SURE THAT THAT DIDN'T OCCUR.

8 THE COURT: OKAY. I THINK THEY WERE ALL
9 SEPARATED, THE CAR AND THINGS WERE SEPARATED. I DON'T
10 THINK THERE WAS ANY --

11 MS. NAJERA: THERE WAS NEVER WHAT HE IS TALKING
12 ABOUT.

13 MR. LEVIN: I MAY HAVE BEEN CONFUSED, BECAUSE SO

14 MANY OF THEM GOT PUT UP ON THE BOARD. I THINK THAT WAS
15 THE PROBLEM.

16 MS. TOWERY: YOU DIDN'T USE A BOARD, THAT'S
17 RIGHT.

18 MR. LEVIN: SORRY.

19 THE COURT: OKAY. THEN THE NEXT OBJECTION THEN?

20 MR. GESSLER: WOULD BE TO 110, YOUR HONOR, WHICH
21 IS A BLOW-UP OF 109, AND I THINK THE JURY CAN EASILY SEE
22 109, WHICH IS THE CHECK CASHED BY MR. WITKIN FOR THE
23 XEROX SERVICES. 110 WAS USED I THINK TO -- FOR THE
24 JURY'S CONVENIENCE IN BEING ABLE TO SEE IT, BUT IT'S
25 CUMULATIVE.

26 THE COURT: ALL RIGHT. ALTHOUGH IT IS A
27 DUPLICATION, IT IS AN ENLARGEMENT AND -- WELL, LET ME
28 SEE WHAT THE PEOPLE'S POSITION IS. WE HAVE A WHOLE

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1 SERIES OF THESE, AND WE ARE GOING TO HAVE DUPLICATION
2 BASICALLY OF MANY EXHIBITS THAT ARE ENLARGEMENTS OF
3 OTHER EXHIBITS THAT HAVE ALREADY BEEN REFERRED TO. IS
4 THERE REALLY A NEED TO HAVE BOTH THOSE GO TO THE JURY,
5 THE ORIGINAL AND A BLOW-UP?

6 MS. NAJERA: IF I MAY, YOUR HONOR, I BELIEVE THAT
7 THIS ONLY TAKES PLACE WITH REGARDS TO THESE RECEIPTS AND
8 ALSO WITH THE ATF RECORDS, AND I DON'T BELIEVE THAT
9 THERE IS ANY -- IN FACT, I KNOW FROM WHAT THEY HAVE

10 GIVEN ME THAT THERE IS NO OBJECTION BY COUNSEL FOR THE
11 DEFENSE AS TO THE ATF BLOW-UPS.

12 IN THIS CASE WE WOULD REQUEST THAT THE
13 BLOW-UPS BE ALLOWED IN. I THINK THAT THEY MAKE IT VERY
14 CLEAR TO THE JURY. IT -- I BELIEVE THAT THE WITNESS
15 ALSO USED THEM AND MARKED THEM, AND I BELIEVE THAT THEY
16 WERE AN INTEGRAL PART OF HIS TESTIMONY. AND ALSO WITH
17 REGARDS TO THE ATF RECORDS, THAT AS WELL, AND I KNOW
18 WITH THE ATF RECORDS, THEY ALSO USED THEM AS PART OF THE
19 EXHIBITS AND ALL OF THAT INFORMATION.

20 SO, WE WOULD ASK THAT ALL OF THEM BE
21 ADMITTED. I DON'T BELIEVE THERE IS ANY OBJECTION TO
22 ANYTHING OTHER THAN THIS.

23 SO, IN TERMS OF THE COURT'S CONCERNS AS TO
24 OTHER BLOW-UPS, I DON'T BELIEVE THERE IS ANY OBJECTIONS
25 IN TERMS OF THE OTHER BLOW-UPS.

26 THE COURT: CERTAINLY WE WILL HAVE THAT WITH ALL
27 OF THE MCCARTHY DOCUMENTS. WE HAVE DUPLICATIONS OF
28 THOSE, ALTHOUGH THERE IS A DISTINCTION THERE THAT THE

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1 SMALLER VERSIONS WERE MARKED UP IN DIFFERENT WAYS BY
2 WITNESSES DURING TESTIMONY. SO, THERE IS A REASON TO
3 DISTINGUISH THOSE.

4 YOU'RE SAYING WE DON'T HAVE ANY OTHERS LIKE
5 THIS?

6 MS. NAJERA: THAT'S MY UNDERSTANDING, YOUR HONOR.
7 AND WITH REGARDS TO THE MCCARTHY ONES, I BELIEVE THE
8 DEFENSE OFFERED THE SMALL ONES AND WE ARE OFFERING THE
9 LARGE ONES.

10 THE COURT: LIKE I SAID, THAT'S BEEN DIFFERENT,
11 BECAUSE THERE HAVE BEEN MARKINGS ON THOSE EXHIBITS.

12 MS. NAJERA: AS TO THESE BLOW-UPS, YOUR HONOR, I
13 BELIEVE IT IS JUST THESE AND THE ATF RECORDS.

14 MR. GESSLER: I AM NOT OBJECTING TO 111, BECAUSE
15 THERE IS NO SMALL VERSION OF THAT IN EVIDENCE, IT'S THE
16 BLOW-UP ONLY.

17 BUT FOR 110 I AM OBJECTING, BECAUSE IT'S
18 DUPLICATIVE OF 109, AND I DON'T THINK THAT 110 WAS
19 MARKED ON BY THE WITNESS EVEN THOUGH 111 MAY HAVE BEEN.

20 THE COURT: OKAY. 110 IS THE BLOW-UP OF THE
21 CHECK; IS THAT IT?

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

23 THE COURT: OKAY. I AM GOING TO SUSTAIN THE
24 OBJECTION TO THAT. THERE IS NO NEED TO HAVE BOTH, AND
25 YOU'RE SAYING HE MARKED ONE AND NOT THE OTHER; IS THAT
26 WHAT YOU'RE SAYING?

27 MR. GESSLER: I BELIEVE, YOUR HONOR, WHAT HE
28 MARKED WAS 111, WHICH IS THE SERVICE AUTHORIZATION AND

1 RECEIPT, AND THAT'S FINE, BECAUSE THERE IS NO ORIGINAL

2 IN THERE FOR 111.

3 THE COURT: OKAY. 109 THEN WOULD BE RECEIVED.

4 110 --

5 MS. NAJERA: YOUR HONOR -- I AM SORRY, I DIDN'T

6 MEAN TO INTERRUPT YOU, BUT I JUST WANTED TO SAY THAT IF

7 IT'S THE COURT'S FEELING THAT IT'S CUMULATIVE, WE WOULD

8 OFFER 110, THE BLOW-UP, AND WITHDRAW 109.

9 THE COURT: I THINK THE ORIGINAL DOCUMENT SHOULD

10 GO IN, AND YOU CAN USE 110 FOR ARGUMENT PURPOSES.

11 MS. NAJERA: OKAY.

12 THE COURT: THERE IS NOTHING ABOUT IT THAT

13 JUSTIFIES IT GOING TO THE JURY OTHER THAN JUST SOME

14 DOCUMENT THAT CAN BE USED FOR ARGUMENT PURPOSES. 110

15 WILL NOT GO IN.

16 WHAT ELSE?

17 MR. GESSLER: I AM OBJECTING TO 116, YOUR HONOR,

18 ON TWO GROUNDS, THE GENERAL SPENDING GROUNDS -- THIS IS

19 THE BLOW-UP OF THE ROLEX WATCH, AND THE SECOND OBJECTION

20 IS THAT IT IS NOT THE SAME TYPE WATCH AS WAS PURCHASED

21 BY LYLE MENENDEZ. THIS ONE HAS THE EMERALDS ON THE DIAL

22 THAT MAKES IT SUBSTANTIALLY DIFFERENT FROM THE VERSION

23 OR MODEL THAT WAS ACTUALLY PURCHASED.

24 THE COURT: WELL, IT APPEARS TO BE SUBSTANTIALLY

25 THE SAME BUT FOR THE DIAL, AND THAT HAD BEEN EXPLAINED

26 THROUGH THE TESTIMONY OF THE WITNESS.

27 SO, AS A GENERAL ILLUSTRATION OF THE TYPE

28 OF WATCH PURCHASED, IT IS SUBSTANTIALLY SIMILAR. THE

1 WITNESS DID EXPLAIN IN HER TESTIMONY THE DIFFERENCE IN
2 PURCHASE PRICE BETWEEN A WATCH WITH THIS TYPE OF DIAL
3 AND THE WATCH ACTUALLY PURCHASED BY THE DEFENDANT.

4 SO, I DON'T THINK THERE'S ANYTHING
5 MISLEADING ABOUT IT IN ANY WAY, OR INFLAMMATORY.
6 THEREFORE, THE OBJECTION IS OVERRULED.

7 MR. GESSLER: I WOULD ALSO OBJECT TO 117 AND 118,
8 THIS IS THE OTHER TWO ROLEX WATCHES, THAT THEY ARE NOT
9 IDENTICAL TO THE ONES PURCHASED, AND ALSO ON THE GENERAL
10 SPENDING EVIDENCE GROUNDS THAT WE OBJECTED TO BEFORE.

11 THE COURT: RIGHT. THOSE OBJECTIONS WILL BE
12 OVERRULED. THE COURT FINDS THEY ARE SUBSTANTIALLY
13 SIMILAR, AND WEIGHING THEM UNDER SECTION 352 OF THE
14 EVIDENCE CODE, THE PROBATIVE VALUE SUBSTANTIALLY
15 OUTWEIGHS ANY POTENTIAL FOR PREJUDICE.

16 AND WHAT ELSE HERE?

17 MR. GESSLER: 119 IS THE SAME OBJECTION. THAT'S
18 THE RECEIPTS FOR THE ROLEX. THAT'S ON THE SPENDING
19 GROUNDS, RELEVANCY AND 352, YOUR HONOR.

20 THE COURT: OKAY. THAT'LL BE OVERRULED.

21 MR. GESSLER: I OBJECT TO 120. THIS IS A PAST
22 RECOLLECTION RECORDED OF WITNESS MARY MAHAR AND SHOULD
23 NOT COME IN BASED ON THE FACT THAT IT WAS A PEOPLE'S
24 WITNESS AND ONLY IF OFFERED BY US, WHICH WE ARE NOT.

25 THE COURT: OKAY. THAT IS MY NOTATION AS WELL.

26 SO, IT WILL NOT BE RECEIVED.

27 MR. GESSLER: LET'S SEE. 122, THE TENNIS

28 CONTRACT WITH ERIK, AND 123 AND -24, THE PICTURES OF THE

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1 MARINA CITY CLUB.

2 AGAIN WE RENEW OUR OBJECTION ON THE GENERAL

3 SPENDING GROUNDS THAT WE OBJECTED TO BEFORE, RELEVANCY

4 AND 352.

5 THE COURT: OKAY. THOSE OBJECTIONS PREVIOUSLY

6 HAVING BEEN OVERRULED, THE COURT AGAIN OVERRULES THEM AT

7 THIS TIME.

8 MR. GESSLER: I WOULD OBJECT TO 125, A TAPE OF --

9 OR A TRANSCRIPT ACTUALLY OF A TAPE OF MARK HEFFERNAN.

10 MY RECOLLECTION IS THAT WAS USED ONLY TO VERIFY THE TIME

11 THAT THAT PARTICULAR CONVERSATION ENDED. I DON'T

12 REMEMBER THAT TAPE BEING --

13 THE COURT: WHICH EXHIBIT ARE YOU TALKING ABOUT?

14 MR. GESSLER: I AM TALKING ABOUT -- I BELIEVE

15 IT'S 125, YOUR HONOR.

16 THE COURT: THAT'S A TRANSCRIPT.

17 MR. GESSLER: A TRANSCRIPT OF A TAPE, YOUR HONOR.

18 THE COURT: OKAY, TRANSCRIPT OF AN INTERVIEW OF

19 HEFFERNAN BY EDMONDS.

20 MR. GESSLER: YES, I GUESS YOU'RE RIGHT. IT WAS

21 A TRANSCRIBED INTERVIEW RATHER THAN A --

22 THE COURT: RIGHT. I DON'T KNOW IF IT WAS A

23 TAPE. IT MUST HAVE BEEN, BECAUSE I WROTE DOWN

24 TRANSCRIPT OF INTERVIEW.

25 MS. NAJERA: YES.

26 THE COURT: AND YOUR OBJECTION IS THAT IT WAS?

27 MR. GESSLER: THAT IT'S HEARSAY, YOUR HONOR; THAT

28 IT WAS OFFERED I BELIEVE ON CROSS-EXAMINATION ONLY TO

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1 DEVELOP THE TIME THAT THE INTERVIEW ENDED, NOT FOR THE

2 SUBSTANCE OF WHAT WAS SAID, AND THAT THE TRANSCRIPT

3 ITSELF I DON'T BELIEVE WAS GONE INTO, AS I RECALL.

4 THE COURT: WAS A PORTION OF IT READ TO THE

5 WITNESS?

6 MR. GESSLER: IF IT -- I BELIEVE IT WAS JUST

7 SHOWN TO HIM FOR TIME. I CAN'T RECALL RIGHT OFFHAND IF

8 IT WAS READ TO HIM. IF SO, IT WAS ONLY THE LAST LINE, I

9 BELIEVE.

10 THE COURT: I HAVE NOTHING HERE TO INDICATE HOW

11 IT WAS PRESENTED TO THE WITNESS, SO I -- WHAT IS THE

12 PEOPLE'S POSITION ON THIS ONE?

13 MS. NAJERA: YOUR HONOR, THAT'S SOMETHING -- I

14 WAS UNDER THE IMPRESSION, I COULD BE WRONG, THAT IT WAS

15 READ, BUT SO MUCH WAS READ I'D LIKE TO CHECK IT.

16 THE COURT: IF IT WAS READ, THEN THE READING OF

17 IT IS IN THE RECORD AND THE TRANSCRIPT ITSELF, AND IT

18 NEED NOT GO TO THE JURY. THERE IS NO REASON FOR IT TO

19 GO TO THE JURY.

20 MS. NAJERA: MAY WE CHECK THAT, YOUR HONOR?

21 THE COURT: YEAH, WE WILL HOLD OFF ON THAT ONE.

22 MS. NAJERA: THANK YOU. I'LL FIND OUT.

23 MR. GESSLER: WE RENEW OUR OBJECTION TO 127 ON

24 GROUNDS PREVIOUSLY STATED. THAT'S THE MOSSBERG EXEMPLAR

25 SHOTGUN, YOUR HONOR, AND AGAIN ON THE GROUNDS THAT IT IS

26 NOT OPERATIVE IN ONE OF ITS MAJOR RELEVANT CAPACITIES;

27 THAT IS FOR THE TAKING OUT OF THE DOWEL. I REMEMBER MR.

28 MCCARTHY STRUGGLED WITH IT CONSIDERABLY ON THE STAND

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1 ALSO IN TRYING GET THAT TO PERFORM, JUST AS DID THE

2 SALESPERSON.

3 AND SO FOR THOSE REASONS IT IS NOT AN

4 EXEMPLAR TRULY OF THE SHOTGUNS THAT WERE PURCHASED, AND

5 ON ALL OTHER GROUNDS, TOO, WE WOULD OBJECT.

6 THE COURT: WELL, IT SEEMS TO ME THAT THE DEFENSE

7 EARLIER HAD STATED THAT YOU WERE NOT PURSUING AN

8 OBJECTION ON THE GROUNDS THAT IT WAS -- THIS WEAPON WAS

9 NOT SUBSTANTIALLY SIMILAR TO THE WEAPON PURCHASED, AND

10 YOU WEREN'T DISPUTING THAT. YOUR PROBLEM WAS WITH THE

11 MECHANISM NOT WORKING, THAT PARTICULAR MECHANISM

12 INVOLVED.

13 MR. GESSLER: THAT'S WHAT I MEANT. WE'RE NOT

14 SAYING IT'S NOT THE SAME MODEL OR CLOSE ENOUGH THAT THEY

15 HAVE TO BRING SOMEBODY IN FROM THE MOSSBERG COMPANY.

16 WHAT I AM SAYING IS THIS WEAPON IS INOPERABLE IN A SENSE

17 IN WHICH THE WEAPON PURCHASED WAS OPERABLE.

18 SO, MY OBJECTION IS TO THAT ASPECT OF IT.

19 THE COURT: ALL RIGHT. AS I INDICATED BEFORE, IF

20 THAT PARTICULAR MECHANISM BECOMES MATERIAL TO THE CASE

21 AND THAT MECHANISM IS SUPPOSED TO BE OPERABLE AND IS

22 NOT, THEN IT MUST BE REPAIRED BY THE PROPONENT OF THE

23 EVIDENCE BEFORE IT IS RECEIVED IN EVIDENCE, AND THE

24 PROPONENT IS THE PROSECUTION.

25 NOW, AS I UNDERSTOOD MCCARTHY'S TESTIMONY,

26 HE DIDN'T THINK THAT THIS WAS SUPPOSED TO BE OPERABLE

27 ANYWAY. MAYBE I AM MISUNDERSTANDING HIM, BUT THAT'S THE

28 THRUST OF WHAT HE WAS SAYING, ALTHOUGH I GOT THE

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1 IMPRESSION ALSO THAT HE FELT HE COULD HAVE REMOVED IT

2 WITH THE PROPER EQUIPMENT OR THE PROPER TIME, AND IT

3 MIGHT BE THE TYPE OF DEVICE THAT REQUIRES CERTAIN TOOLS

4 TO OPEN IT UP.

5 MR. GESSLER: NOT ACCORDING TO THE SALESPERSON,

6 WHO SEEMED TO HAVE GREAT FAMILIARITY WITH THAT WEAPON

7 AND GREAT EASE WITH MOST OF THEM.

8 THE COURT: YEAH, YEAH. LIKE I SAID, IF THAT

9 ISSUE OF -- THAT PARTICULAR ISSUE BECOMES RELEVANT, THEN

10 THAT WEAPON WOULD HAVE TO BE REPAIRED BEFORE IT BECOMES

11 ADMISSIBLE. IF THERE IS A DISPUTE ABOUT WHETHER THAT
12 PARTICULAR MECHANISM IS SUBSTANTIALLY SIMILAR TO THE
13 TYPE SOLD TO THE DEFENDANTS, THEN THE PEOPLE WOULD HAVE
14 TO REPAIR IT.

15 MR. LEVIN: WELL, YOUR HONOR, THERE MAY BE A
16 QUESTION WITH RESPECT TO THE SIMILARITY OF THE SHOTGUN,
17 IF ROGER MCCARTHY'S TESTIMONY IS THAT THIS PARTICULAR
18 SHOTGUN DOES HAVE THAT FUNCTION.

19 THE COURT: I AM NOT SURE IF THAT'S WHAT HE SAID.
20 IT'S A LITTLE AMBIGUOUS AS TO WHAT HE MEANT. HE WAS
21 FIDDLING WITH THAT PARTICULAR MECHANISM, AND AS I RECALL
22 HE TESTIFIED THAT THE NORM IS NOT -- THAT WEAPON IS NOT
23 SOLD WITH THAT PLUG IN IT.

24 MR. LEVIN: THAT'S WHAT I THOUGHT HE SAID.

25 MS. NAJERA: THAT IS WHAT HE SAID.

26 THE COURT: BUT THAT'S CONTRARY TO WHAT THE STORE
27 EMPLOYEE TESTIFIED.

28 MR. LEVIN: THAT'S WHAT I UNDERSTOOD.

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1 THE COURT: BUT THERE'S A QUESTION FIRST OF ALL
2 AS TO MCCARTHY'S KNOWLEDGE OF IT, AND THE BASIS OF HIS
3 KNOWLEDGE; AND SECONDLY, AS I SAID, IF IT BECOMES AN
4 ISSUE EITHER DURING THE PEOPLE'S CASE OR THE DEFENSE
5 CASE, THEN THAT WILL HAVE TO BE REPAIRED TO SHOW THAT IT
6 IS SUBSTANTIALLY SIMILAR TO WHAT WAS AVAILABLE IN THE

7 STORE.

8 SO, WE'LL HOLD OFF ON THAT, THE OFFER AS TO
9 127, BECAUSE IT STILL HAS TO BE RESOLVED INsofar AS THAT
10 PARTICULAR PORTION OF THE WEAPON.

11 SO, WE ARE NOT GOING TO RULE UPON THAT YET.
12 THAT WILL BE UNDER SUBMISSION PENDING FURTHER EVIDENCE.

13 MR. GESSLER: NEXT WOULD BE 130. AGAIN, ON
14 SPENDING GROUNDS. THAT'S A PICTURE OF THE -- I BELIEVE
15 THE MARINA CITY CLUB.

16 MS. NAJERA: RIGHT.

17 THE COURT: 130 ARE PURCHASE DOCUMENTS FOR THE
18 MARINA CITY CLUB.

19 MR. GESSLER: PURCHASE DOCUMENTS, THAT'S RIGHT.
20 SAME GROUNDS AS THE SPENDING EVIDENCE ON THE OTHER
21 MARINA CITY CLUB.

22 THE COURT: OKAY. THAT OBJECTION IS OVERRULED.

23 MR. GESSLER: NEXT WOULD BE AN OBJECTION TO 135,
24 THE UNCOMPLETED SALE BY ERIK MENENDEZ -- OR PURCHASE ON
25 THE SILVER STRAND HOME, ON AGAIN THE SPENDING GROUNDS
26 PREVIOUSLY ARGUED.

27 THE COURT: OKAY. THAT'S THE PHOTOGRAPH OF THE
28 HOME?

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1 MR. GESSLER: YES, IT IS.

2 THE COURT: OKAY. THAT OBJECTION IS OVERRULED

3 FOR THE SAME REASONS PREVIOUSLY STATED BY THE COURT.

4 MR. GESSLER: 136 WE WOULD OBJECT TO AS TO THE
5 JEEP. I DON'T BELIEVE THERE'S BEEN ANY SHOWING THAT THE
6 PICTURED JEEP IS THE SAME ONE THAT WAS PURCHASED, OR
7 TYPE THAT ERIK MENENDEZ PURCHASED, AND I THINK AN
8 OBJECTION WAS EARLIER SUSTAINED TO SHOWING THAT PICTURE.

9 THE COURT: WELL, THERE WAS AN EARLIER OBJECTION.
10 THERE WAS AN OFFER BY MISS ABRAMSON TO HAVE THE ACTUAL
11 VEHICLE PHOTOGRAPHED IN HER POSSESSION, BUT THE WITNESS
12 TESTIFIED THAT THE VEHICLE PHOTOGRAPHED WAS A STANDARD
13 MODEL, AS I RECALL IT, AND THAT THE DEFENDANT HAD
14 PURCHASED SOMETHING WHICH HAD MORE EQUIPMENT ON IT THAN
15 THE ONE THAT WAS PHOTOGRAPHED.

16 SO, IF ANYTHING, THIS VEHICLE PHOTOGRAPHED
17 IN 137 HAS LESS OF THE EQUIPMENT THAN THE ONE ACTUALLY
18 PURCHASED BY THE DEFENDANT.

19 MR. GESSLER: THAT IS THE BUERGE PACKAGE, OR
20 SOMETHING LIKE THAT.

21 THE COURT: SO, IT'S SUBSTANTIALLY SIMILAR TO THE
22 ONE PURCHASED, BUT DOESN'T SHOW OFF ALL THE ADDITIONAL
23 EQUIPMENT, WHATEVER IT WAS THAT THEY ATTACHED
24 AFTERWARDS.

25 SO, MY VIEW IS IT IS SUBSTANTIALLY SIMILAR
26 TO THE ONE PURCHASED BY THE DEFENDANT, AND THAT
27 OBJECTION IS OVERRULED.

28 MR. GESSLER: ALONG WITH THAT, WE OBJECT ON

1 GENERAL SPENDING GROUNDS BOTH TO THE PICTURE OF THE JEEP
2 AND 137, THE DOCUMENTS AND CHECK FOR THE PURCHASE OF THE
3 JEEP.

4 THE COURT: OKAY, AND THAT IS OVERRULED, AND I
5 ASSUME THAT WHEN YOU'RE OBJECTING, THE OBJECTION IS ON
6 BEHALF OF THE CO-DEFENDANT, ERIK MENENDEZ?

7 MR. LEVIN: YES, YOUR HONOR.

8 THE COURT: OKAY.

9 AND THE NEXT EXHIBIT?

10 MR. GESSLER: IT WOULD BE -- LET'S SEE. YOU'RE
11 OFFERING BOTH 141 AND 142.

12 141 IS THE UNREDACTED ESCAPE PLANS, I
13 BELIEVE.

14 MS. NAJERA: RIGHT. IT SHOULD BE 142. 141 WAS
15 JUST THE ESCAPE PLANS WHICH THE COURT ALREADY RULED HAD
16 TO BE REDACTED, AND THEY WERE REDACTED IN CONFORMITY
17 WITH 142.

18 THE COURT: SO, 141 IS NOT RECEIVED. 142.

19 MR. GESSLER: WE ARE OBJECTING TO 142 ON ALL
20 PREVIOUS GROUNDS AND LACK OF FOUNDATION.

21 THE COURT: OKAY. THAT DOCUMENT WILL BE RECEIVED
22 BASED UPON THE PREVIOUS RULINGS OF THE COURT.

23 AND THEN THE NEXT ONE?

24 MR. GESSLER: I JUST WANTED TO MAKE A NOTE, YOUR
25 HONOR, I'M SORRY.

26 THE COURT: SURE.

27 MR. GESSLER: 143, THE REDACTED ESLAMINIA LETTER

28 WE OBJECT ON ALL PREVIOUSLY STATED GROUNDS.

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1 THE COURT: ALL RIGHT. THAT OBJECTION IS

2 OVERRULED AND IT WILL BE RECEIVED.

3 MR. GESSLER: AND WE ARE OBJECTING TO 147 AND

4 148, THE CONDO SALE AND THE HOUSE SALE IN PRINCETON. WE

5 STIPULATED TO FOUNDATION, BUT WE RENEW OUR OBJECTIONS

6 BASED ON THE GENERAL SPENDING EVIDENCE AND RELEVANCY.

7 THE COURT: ALL RIGHT. THAT WILL BE OVERRULED ON

8 PREVIOUSLY STATED GROUNDS.

9 MR. GESSLER: WE ARE SIMILARLY OBJECTING TO 149,

10 THE DOCUMENTS FOR THE PURCHASE OF THE RESTAURANT, YOUR

11 HONOR, ON THE SPENDING EVIDENCE AND RELEVANCY UNDER 352.

12 THE COURT: ALL RIGHT. THE COURT'S RULING IS

13 CONSISTENT WITH ITS RULING THAT THIS EVIDENCE WOULD BE

14 ADMISSIBLE. THE PARTICULAR DOCUMENTS ARE ALSO

15 ADMISSIBLE, AND THE OBJECTIONS ARE OVERRULED.

16 MR. GESSLER: WE ALSO OBJECT TO 150, YOUR HONOR.

17 THIS IS THE DOCUMENTS ON THE PORSCHE SALE BASED ON THE

18 GENERAL SPENDING GROUNDS AND ALSO LACK OF FOUNDATION.

19 THE ONLY EVIDENCE I BELIEVE OFFERED SO FAR HAS BEEN GLEN

20 STEVENS, WHO ACCOMPANIED LYLE MENENDEZ TO THE PORSCHE

21 DEALER, AND BELIEVES IT WAS AT THE TIME WITH THE CHECK,

22 BUT HE REALLY WAS IN NO POSITION TO AUTHENTICATE THOSE

23 PARTICULAR DOCUMENTS.

24 THE COURT: MY NOTES INDICATE THAT ON OCTOBER
25 31ST MR. STEVENS IDENTIFIED THE CHECK.
26 MR. GESSLER: HE DID.
27 THE COURT: AND THAT THAT'S THE ONLY DOCUMENT
28 THAT HE COULD IDENTIFY, AND THEREFORE THAT WOULD BE THE

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1 ONLY DOCUMENT THAT CAN BE RECEIVED, BECAUSE IT'S THE
2 ONLY DOCUMENT AT THIS POINT THAT'S BEEN IDENTIFIED.

3 SO, ONLY THE CHECK WHICH IS A PART OF 150
4 WILL BE RECEIVED.

5 MR. GESSLER: AND OUR NEXT OBJECTION, YOUR HONOR,
6 WOULD GO TO 166, WHICH IS I BELIEVE A POLICE REPORT
7 CONCERNING STATEMENTS BY MARK HEFFERNAN.

8 AGAIN, I THINK THAT WAS OFFERED FOR
9 REFRESHED RECOLLECTION OR PAST RECOLLECTION RECORDED,
10 AND IT SHOULD NOT BE OFFERED BY THE PROPONENT.

11 THE COURT: WHAT'S THE PEOPLE'S POSITION ON THAT?

12 MS. NAJERA: YOUR HONOR, THAT ONCE AGAIN IS A
13 DOCUMENT WHICH WE BELIEVE NEEDS TO BE REDACTED AND IN
14 ITS CURRENT FORM WOULD NOT BE ADMISSIBLE, BUT REDACTED
15 TO PAST RECOLLECTION RECORD OF AN OFFICIAL STATEMENT
16 WOULD BE ADMISSIBLE.

17 THE COURT: THE LAW IS THE PAST RECOLLECTION
18 RECORDED IS THE TESTIMONY REGARDING THAT, NOT THE
19 DOCUMENT ITSELF. THE DOCUMENT DOESN'T COME IN.

20 MS. NAJERA: THAT'S CORRECT, YOUR HONOR.
21 THE COURT: SO, IT WILL NOT BE RECEIVED.
22 MS. NAJERA: YEAH, THAT'S RIGHT.
23 MR. GESSLER: THOSE ARE THE OBJECTIONS THAT I HAD
24 NOTED UP TO THE TIME OF THE MEDICAL TESTIMONY, YOUR
25 HONOR, AND I DON'T KNOW IF MR. LEVIN HAS ADDITIONAL.
26 MR. LEVIN: NO, YOUR HONOR, JUST THAT WE JOIN
27 WITH MR. GESSLER'S OBJECTIONS.
28 THE COURT: ALL RIGHT. JUST SO THE CLERK CAN NOW

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1 DO THE PAPERWORK FOR THOSE ITEMS THAT ARE BEING OFFERED
2 AND NOT OBJECTED TO, LET'S HAVE THE PEOPLE JUST IDENTIFY
3 WHICH EXHIBITS YOU ARE OFFERING AND HAVE NOT BEEN
4 OBJECTED TO. JUST GO 1 THROUGH 25 OR WHATEVER IT IS.

5 MS. NAJERA: YOUR HONOR, I'VE GOT THE LIST OF
6 WHAT WE OFFERED, AND I WILL GIVE YOU THE WHOLE LIST, AND
7 WE WILL ALREADY HAVE THE LIST OF WHAT'S COMING IN AND
8 OUT, IF WE CAN DO IT THAT WAY.

9 1 THROUGH 28. 30 THROUGH 60. 67. 70
10 THROUGH 75. 79. 80 THROUGH 86. 89 THROUGH 93. 97
11 THROUGH 104. 108 THROUGH 111. 115 THROUGH 120. 122
12 THROUGH 125. 127. 130 TO 133. 135 TO 137. 141 TO
13 143.

14 MS. TOWERY: IS THAT 141 OR 142?

15 MS. NAJERA: 142, THANK YOU. 142 TO 143.

16 147 TO 150. 166 TO 205. 208 TO 209. 211

17 TO 212, AND 214 TO 274.

18 THE COURT: ALL RIGHT. THEN LET'S GO THROUGH
19 THEM, AND I WILL JUST RULE ON THOSE THAT ARE BEING
20 RECEIVED.

21 OKAY. 1 THROUGH 28 ARE RECEIVED.

22 30 THROUGH 35 ARE RECEIVED.

23 37 THROUGH 59 ARE RECEIVED.

24 WE ARE HOLDING OFF ON 60, WHICH IS THE
25 TRANSCRIPT OF THE TAPE SO THAT WE CAN HAVE FURTHER
26 RESOLUTION OF ANY DISPUTES.

27 67 IS RECEIVED.

28 70 THROUGH 75 ARE RECEIVED.

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1 79 IS RECEIVED.

2 80 THROUGH 86 ARE RECEIVED.

3 89 WE'RE HOLDING OFF ON.

4 90 THROUGH 93 ARE RECEIVED.

5 97 THROUGH 104 ARE RECEIVED.

6 108 AND 109 ARE RECEIVED, AND 111 IS
7 RECEIVED.

8 115 THROUGH 119 ARE RECEIVED, AND 130
9 THROUGH 133 ARE RECEIVED.

10 135 --

11 MS. NAJERA: EXCUSE ME, YOUR HONOR. 122 TO 124 I

12 THINK WE HAD.

13 THE COURT: I'M SORRY?

14 MS. NAJERA: 122 TO 124.

15 THE COURT: 122, 123 AND 124 GO IN.

16 MS. NAJERA: AND 125 WE ARE HOLDING OFF ON.

17 THE COURT: THAT WAS AGAIN AN INTERVIEW OF

18 HEFFERNAN BY EDMONDS.

19 MS. NAJERA: RIGHT. WE WERE GOING TO CHECK AND

20 SEE.

21 THE COURT: YOU WERE GOING TO CHECK ON THIS

22 POINT.

23 MS. TOWERY: I CAN GIVE YOU THAT TRANSCRIPT

24 CITATION RIGHT NOW. IT'S VOLUME 229 AT PAGE 38134, AND

25 IT DOES APPEAR THAT IT WAS ONLY USED TO REFRESH HIS

26 RECOLLECTION REGARDING THE TIMES, AS BEST I CAN

27 DETERMINE. MR. GESSLER IS CORRECT.

28 MS. NAJERA: OKAY. OKAY.

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1 THE COURT: AND --

2 MS. NAJERA: I WILL CHECK THAT.

3 THE COURT: 135 AND 136 AND 137 ARE RECEIVED.

4 142 AND 143 ARE RECEIVED, AND THE SAME, 147

5 THROUGH 150 ARE RECEIVED. 166 --

6 MS. TOWERY: YOUR HONOR, I THINK 150 ONLY THE

7 CHECK PORTION WAS RECEIVED.

8 THE COURT: YEAH, THE CHECK, THAT'S RIGHT, AS I

9 RULED BEFORE.

10 THEN 166 IS NOT RECEIVED.

11 AND THAT IS WHAT THE DEFENSE WAS OBJECTING

12 TO, THE ONES NOW THAT YOU'RE HOLDING OFF BECAUSE OF

13 CURRENT TESTIMONY.

14 MR. GESSLER: YES, YOUR HONOR.

15 THE COURT: WHICH ONES, STARTING AT 167?

16 MR. GESSLER: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: THE X-RAYS AND THINGS.

18 MR. GESSLER: THOSE -- MOST OF THOSE WILL BE NO

19 PROBLEMS. THE X-RAYS, THAT'S THE SIMPLEST PART. I

20 DON'T THINK WE WILL HAVE A LOT OF PROBLEMS RESOLVING

21 THOSE ISSUES, BUT WE PREFER TO WAIT.

22 THE COURT: ALL RIGHT. WE WILL HOLD OFF ON

23 THOSE.

24 ALL RIGHT. THEN LET'S GO TO THE EXHIBITS

25 OFFERED BY THE DEFENSE HERE THAT THE PEOPLE ARE

26 OBJECTING TO. LET'S HEAR THE PEOPLE'S OBJECTIONS TO

27 DEFENSE EXHIBITS SO FAR.

28 MS. NAJERA: THANK YOU, YOUR HONOR.

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1 THE PEOPLE ARE OBJECTING TO DEFENSE EXHIBIT

2 65. THAT WAS A GROUP OF OVER 10 DEFENSE PHOTOS, FROM 61

3 TO 75.

4 WE ARE OBJECTING ONLY TO 65, WHICH IS A
5 PHOTOGRAPH OF A BEDROOM WHICH APPARENTLY HAD SOME DOG
6 FECES IN IT, AND WE WOULD OBJECT TO THAT. WE DON'T
7 BELIEVE THAT IT REALLY HAS ANY RELEVANCE TO THIS CASE.
8 IT WASN'T A PHOTO OF THE CRIME SCENE. IT WASN'T A PHOTO
9 OF ANY EVIDENCE, IT WAS SIMPLY A BEDROOM IN THE HOUSE
10 WITH FECES IN IT.

11 THE COURT: THIS IS THE ONLY PHOTOGRAPH THAT YOU
12 ARE OBJECTING TO OF THE HOUSE?

13 MS. NAJERA: CORRECT, YOUR HONOR. THERE IS A
14 GROUP OF THEM FROM 61 TO 75, AND WE ARE NOT -- THAT IS
15 THE ONLY ONE WE ARE OBJECTING TO.

16 THE COURT: ALL RIGHT. ON THE BASIS THAT THESE
17 ARE GENERALLY PHOTOGRAPHS OF THE HOUSE AND THE ENTIRE
18 HOUSE IS THE CRIME SCENE, THE OBJECTION IS OVERRULED.

19 SO, IT WILL BE RECEIVED.

20 WHAT OTHER OBJECTIONS?

21 MS. NAJERA: ALSO, YOUR HONOR, THE PEOPLE ARE
22 OBJECTING TO DEFENSE EXHIBIT 76. THIS IS THE .22
23 RIFLES, AND WE DON'T BELIEVE THAT THEY HAVE ANY
24 RELEVANCY.

25 THE COURT: OKAY. AT THIS POINT THEY DON'T,
26 ALTHOUGH THEY WERE MENTIONED IN THE SEPTEMBER 17TH
27 INTERVIEW OF ONE OR THE OTHER DEFENDANT, I DON'T RECALL
28 WHICH ONE, IN NEW JERSEY. THERE WAS SOME MENTION OF

1 THAT.

2 THE RELEVANCE WOULD HAVE TO COME DURING THE
3 DEFENSE PHASE OF THE CASE, SO AT THIS POINT I WON'T
4 RECEIVE THAT, BUT I AM NOT GOING TO RULE IT'S NOT
5 ADMISSIBLE. IT WILL HAVE TO WAIT FOR THE DEFENSE.

6 MS. NAJERA: OKAY. AND THE NEXT THING THAT WE
7 WOULD BE OBJECTING TO, YOUR HONOR, IS EXHIBIT 140 AS IT
8 CURRENTLY STANDS. IT IS AN EXHIBIT OF THE -- WHICH WAS
9 USED ALONG WITH 138 AND 139 BY WESLEY GROSE TO DO A
10 HANDWRITING EXEMPLAR, AND I BELIEVE ITS ONLY RELEVANCE
11 WAS WITH REGARDS TO MR. GROSE'S TESTIMONY THAT HE USED
12 THIS WRITING AS SOMETHING HE EXAMINED TO DETERMINE
13 WHETHER OR NOT THIS HANDWRITING -- TO MAKE AN OPINION
14 CONCERNING THE HANDWRITING ON THE ATF RECORDS.

15 THE COURT: OKAY. LET ME HEAR THE DEFENSE
16 POSITION ON THAT.

17 MS. TOWERY: WELL, YOUR HONOR, I THINK THAT HIS
18 TESTIMONY WAS THAT HE COULD NOT ELIMINATE LYLE MENENDEZ
19 AS A WRITER, AND THE CRUX OF THE CROSS-EXAMINATION OF
20 MR. GROSE WAS THE TECHNIQUES THAT HE USED AND THE -- AND
21 HOW HE WENT ABOUT MAKING HIS DETERMINATION, AND HE USED
22 THE THREE DOCUMENTS THAT WERE MARKED AS EXHIBITS IN
23 MAKING HIS DETERMINATION. TWO OF THEM RELATED TO THE
24 HANDWRITING OF DON VAN GOODROW, AND ONE RELATED TO THE
25 HANDWRITING, KNOWN EXEMPLAR OF THE HANDWRITING OF LYLE
26 MENENDEZ.

27 SO, I THINK THE JURY SHOULD BE ENTITLED TO
28 REVIEW THOSE DOCUMENTS AND MAKE THEIR DETERMINATION,

1 BECAUSE THEY ARE THE TRIERS OF FACT, AS TO WHETHER OR
2 NOT LYLE MENENDEZ WAS THE WRITER OF THE DOCUMENTS.

3 THE COURT: WELL, AS I UNDERSTAND IT, THE DEFENSE
4 REPRESENTED TO THE COURT PRIOR TO COMMENCEMENT OF TRIAL
5 IN RESPONSE TO THE PEOPLE'S PROFFER OF EVIDENCE RELATING
6 TO THE DEFENDANTS' REFUSAL TO PROVIDE HANDWRITING
7 EXEMPLARS, THAT THE DEFENSE WOULD NOT BE CONTESTING THE
8 FACT THAT THE HANDWRITING IN QUESTION WAS THAT OF ERIK
9 MENENDEZ.

10 MS. TOWERY: WELL, THE DEFENSE ISN'T CONTESTING
11 THAT IT'S THAT OF ERIK MENENDEZ. BUT I REPRESENT LYLE
12 MENENDEZ, YOUR HONOR, AND MY CROSS-EXAMINATION WAS
13 RELATED TO THE INABILITY OF MR. GROSE TO EXCLUDE LYLE
14 MENENDEZ AS WRITER OF THE DOCUMENT.

15 ERIK MENENDEZ MAY WELL TAKE RESPONSIBILITY
16 FOR HAVING WRITTEN THE NAME DON VAN GOODROW ON THOSE
17 DOCUMENTS, BUT CERTAINLY DURING THE PEOPLE'S CASE WE
18 CAN'T COUNT ON THAT, AND THE DEFENSE FOR LYLE MENENDEZ
19 IS ENTITLED TO CROSS-EXAMINE TO TRY TO EXCLUDE LYLE
20 MENENDEZ AS THE WRITER OF THAT DOCUMENT.

21 THE COURT: WELL, AS I SAID, ONE OF THE REASONS
22 THE COURT WAS HOLDING OFF RULING ON THE PEOPLE'S PROFFER
23 OF EVIDENCE WAS TO DETERMINE WHAT THE POSITION OF THE
24 DEFENDANTS WAS IN REGARD TO CONTESTING THE AUTHOR OF THE
25 SIGNATURE.

26 MS. TOWERY: THAT'S NOT THE ONLY HANDWRITING
27 EVIDENCE THAT'S BEEN OFFERED BY THE PEOPLE. WE -- ON
28 BEHALF OF LYLE MENENDEZ, WE STIPULATED THAT HE WROTE THE

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1 BRIAN ESLAMINIA LETTER, SO WE DID NOT CONTEST THAT OR
2 REQUIRE THAT ANY EVIDENCE BE PRESENTED.

3 HOWEVER, HE DIDN'T WRITE THE DON VAN
4 GOODROW SIGNATURE.

5 THE COURT: WELL, THE PEOPLE AREN'T CONTENDING
6 THAT HE DID.

7 MS. TOWERY: WELL, THE PEOPLE AREN'T CONTENDING
8 THAT ANYONE DID; THAT MR. GROSE COULDN'T SAY WHO DID,
9 BUT HE COULDN'T ELIMINATE LYLE MENENDEZ. THAT WAS THE
10 WHOLE POINT.

11 THE COURT: OKAY. WELL, AT THIS POINT I WILL
12 HOLD OFF A FINAL RULING ON THIS. THE PEOPLE'S POSITION
13 HAS MERIT THAT THE CONTENT OF THE WRITING HAS MATERIAL
14 THAT MAKES ITS RECEIPT POTENTIALLY MORE PREJUDICIAL THAN
15 PROBATIVE.

16 HOWEVER, I WILL AWAIT THE DEFENSE
17 PRESENTATION OF EVIDENCE TO DETERMINE WHAT THE POSTURE
18 OF THE DEFENSE IS AS TO THE AUTHOR OF THIS PARTICULAR
19 SIGNATURE. AND AS I INDICATED EARLIER, TO SOME EXTENT
20 THE COURT'S RULING ON THE PEOPLE'S PROFFER OF THE
21 REFUSAL TO PROVIDE A HANDWRITING SAMPLE IS DERIVED FROM

22 THE DEFENSE POSITION ON THAT ISSUE.

23 MS. TOWERY: WELL, CAN I JUST ADD ONE OTHER

24 OBSERVATION, YOUR HONOR, AND THAT IS THAT MR. GROSE DID

25 TESTIFY THAT ADDITIONAL EXEMPLARS WOULD NOT HAVE

26 ASSISTED HIM IN MAKING HIS DETERMINATION, AND HE HAD

27 SUFFICIENT EXEMPLARS TO MAKE A COMPARISON AND REACH A

28 DECISION AS AN EXPERT.

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1 THE COURT: ALL RIGHT. BUT I AM NOT AWARE THAT

2 THAT WAS THE SITUATION, AND I DON'T RECALL NOW WHAT THE

3 ISSUE WAS AS TO WHETHER OR NOT HE KNEW THAT OR THE

4 PEOPLE KNEW THAT AT THE TIME; AND THAT MORE IMPORTANTLY

5 WHETHER DEFENDANTS KNEW THAT AT THE TIME THE HANDWRITING

6 EXEMPLAR WAS SOUGHT.

7 MS. TOWERY: I CAN REPRESENT TO THE COURT THAT IT

8 WAS IN HIS INITIAL REPORT.

9 THE COURT: OKAY. BUT THE DEFENSE I DON'T

10 BELIEVE HAD ACCESS TO IT, OR DIDN'T KNOW AT THE TIME,

11 THAT'S MY RECOLLECTION OF HOW THAT OCCURRED AT THE TIME

12 IT OCCURRED IN MUNICIPAL COURT.

13 BUT OVER ALL I WILL HOLD OFF RULING ON THAT

14 PENDING FURTHER PRESENTATION OF EVIDENCE BY THE DEFENSE.

15 WHAT'S THE NEXT ONE?

16 MS. NAJERA: YOUR HONOR, THE PEOPLE ARE OBJECTING

17 TO DEFENSE EXHIBIT 151. THIS WAS A LETTER FROM THE

18 WITNESS JAMIE PISARCIK TO LYLE MENENDEZ. IT WAS USED
19 ONLY TO REFRESH HER MEMORY, AND I BELIEVE IT HAD HEARSAY
20 IN IT.

21 THE COURT: OKAY. THAT'S MY NOTATION AS WELL, IT
22 WAS USED ONLY TO REFRESH RECOLLECTION.

23 DID YOU WISH TO BE HEARD ON THAT ONE?

24 MS. TOWERY: YOUR HONOR, I INDICATED TO MR.
25 GESSLER, MISS NAJERA GAVE US THE LIST JUST BEFORE THE
26 COURT CAME OUT AS TO THE DOCUMENTS THAT THE PEOPLE WOULD
27 BE OBJECTING TO, AND THE LETTERS THAT I USED WITH
28 RESPECT TO JAMIE PISARCIK. I JUST CAN'T REMEMBER WHAT

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1 PURPOSE I USED EACH LETTER FOR. I ONLY HAVE THE -- A
2 TERSE DESCRIPTION.

3 SO, WHAT I ASK IS TO BE GIVEN A CHANCE TO
4 LOOK THROUGH AND SEE WHICH DOCUMENTS WERE ONLY USED TO
5 REFRESH RECOLLECTION AND WHICH ONES WERE USED AS ACTUAL
6 EVIDENCE.

7 AS I RECALL, THE PEOPLE OBJECTED TO A
8 NUMBER OF THE DOCUMENTS ON THE GROUNDS THAT THEY SPOKE
9 FOR THEMSELVES, AND I WASN'T PERMITTED TO INQUIRE INTO
10 THE CONTENT OTHER THAN TO JUST AUTHENTICATE THE
11 DOCUMENTS THROUGH MISS PISARCIK, IN WHICH CASE OBVIOUSLY
12 IT WOULD BE UNFAIR TO PERMIT THEM TO MAKE THAT OBJECTION
13 AND NOT LET THE JURY SEE THE DOCUMENT THAT SUPPOSEDLY

14 SPEAKS FOR ITSELF.

15 SO, I WOULD WANT TO GO THROUGH. THERE ARE
16 A NUMBER OF THEM, AND I FEEL THAT SINCE HER TESTIMONY
17 WAS FAIRLY LENGTHY, IT'S HARD TO GO THROUGH AND FIND
18 THEM ALL RIGHT NOW AND MAKE THAT DETERMINATION.

19 SO, IF THE COURT WOULD GIVE ME UNTIL
20 TOMORROW ON THAT, I WOULD APPRECIATE IT.

21 THE COURT: OKAY, SURE. BUT WE'LL HOLD OFF ON IT
22 UNTIL WE HAVE SOME TIME TO LITIGATE IT WITHOUT
23 INCONVENIENCING THE JURY.

24 MS. TOWERY: OKAY, THAT'S FINE. WHATEVER THE
25 COURT WANTS. I JUST DON'T WANT TO BE UNPREPARED TO
26 RESPOND TO THE PURPOSE FOR WHICH EACH DOCUMENT WAS USED.

27 THE COURT: THAT'S FINE. THAT'S FINE. WE CAN
28 HOLD OFF ON ALL THOSE THAT RELATE TO PISARCIK THEN THAT

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1 ARE IN THAT CATEGORY.

2 MS. TOWERY: I THINK THAT WAS 151 THROUGH 163
3 THAT THE PEOPLE WERE OBJECTING TO; IS THAT RIGHT?

4 MS. NAJERA: THAT'S CORRECT, YOUR HONOR. WE
5 WOULD BE OBJECTING TO A WHOLE SERIES OF WRITINGS DEALING
6 WITH MISS PISARCIK.

7 THE COURT: OKAY, OKAY. AND THAT'S IT?

8 MS. NAJERA: AND THAT'S IT.

9 THE COURT: OKAY. LET'S THEN GO THROUGH THE

10 EXHIBITS THAT THE DEFENSE IS OFFERING HERE THAT EITHER
11 ARE NOT OBJECTED TO OR ARE BEING RECEIVED HERE.

12 THERE AREN'T THAT MANY EXHIBITS AT THIS
13 POINT. 61, THAT'S THE -- YOU'RE NOT OFFERING THAT AT
14 THIS POINT, 61.

15 WHY DON'T YOU TELL ME WHAT YOU ARE
16 OFFERING?

17 MS. TOWERY: YES. I'M SORRY, YOUR HONOR.

18 YES, WE ARE OFFERING 61 THROUGH 66.

19 THE COURT: OKAY. 61 MY NOTES INDICATE THAT
20 THERE WAS NO IDENTIFICATION BY DETECTIVE ZOELLER OF THE
21 DOCUMENT, OCTOBER 16TH. NOW, WHETHER IT WAS PICKED UP
22 LATER ON BY OTHER WITNESSES, I DON'T KNOW.

23 MS. TOWERY: THAT WAS THE RECEIPT FOR THE --

24 THE COURT: PURCHASE OF THE RIFLES.

25 MS. TOWERY: OF THE RIFLE. I HAVE A VAGUE
26 RECOLLECTION THAT MR. BARALT AUTHENTICATED THAT THROUGH
27 A SERIAL NUMBER, BUT I AM NOT SURE.

28 THE COURT: IT'S POSSIBLE THAT HE DID. I

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1 DON'T -- I WON'T DISPUTE THAT.

2 MS. TOWERY: IN ANY EVENT, I DON'T THINK THE
3 PEOPLE ARE OBJECTING TO IT. WE GAVE THEM THESE NUMBERS
4 AND THEY DIDN'T OBJECT EXCEPT TO THE ONES MS. NAJERA
5 INDICATED.

6 SO, LET ME JUST GIVE THE COURT A LIST OF
7 THE ONES THAT WE ARE OFFERING, BECAUSE I HAVE THE LIST
8 IN THE SAME FASHION THAT SHE DOES.

9 MS. NAJERA: RIGHT.

10 MS. TOWERY: 61 THROUGH 66.

11 THE COURT: OKAY. ARE THERE ANY OBJECTIONS TO
12 THOSE?

13 MS. TOWERY: 65, I THINK IT WAS.

14 MS. NAJERA: NO, YOUR HONOR, JUST TO 61.

15 THE COURT: 61 THROUGH 66 WILL BE RECEIVED THEN,
16 AND 66 -- 66-A AND B AS WELL.

17 MS. TOWERY: ALL RIGHT.

18 MS. NAJERA: ALL RIGHT.

19 MS. TOWERY: AND THEN 68 AND 69.

20 THE COURT: NO OBJECTIONS TO THOSE. THEY WILL BE
21 RECEIVED.

22 MS. TOWERY: 76 THROUGH 78.

23 THE COURT: THEY WILL BE RECEIVED.

24 MS. TOWERY: ACTUALLY I THINK THE COURT HELD OFF
25 ON 76.

26 MS. NAJERA: YOUR HONOR, 76.

27 MS. TOWERY: A RULING ON 76.

28 MS. NAJERA: YEAH.

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1 THE COURT: OKAY, LET ME BACK UP HERE.

2 MS. TOWERY: SO, 77 THROUGH 78.

3 THE COURT: HOLD ON A SECOND. YEAH, I FORGOT

4 THAT.

5 MS. TOWERY: ALL RIGHT.

6 THE COURT: AND THE DEFENSE IS OFFERING 78?

7 MS. TOWERY: YES, 77 AND 78, TO WHICH THERE IS NO

8 OBJECTION.

9 THE COURT: OKAY, THEY WILL BE RECEIVED.

10 MS. TOWERY: AND THEN 87 AND 88, TO WHICH THERE

11 IS NO OBJECTION.

12 MS. NAJERA: CORRECT.

13 THE COURT: THEY WILL BE RECEIVED.

14 MS. TOWERY: 105 THROUGH 107, TO WHICH THERE IS

15 NO OBJECTION.

16 THE COURT: OKAY, THEY WILL BE RECEIVED.

17 MS. TOWERY: 112 THROUGH 114, TO WHICH THERE IS

18 NO OBJECTION.

19 THE COURT: ALL RIGHT. THEY WILL BE RECEIVED.

20 MS. TOWERY: 126, TO WHICH THERE IS NO OBJECTION.

21 THE COURT: OKAY, IT'LL BE RECEIVED.

22 MS. TOWERY: 128 THROUGH 129, TO WHICH THERE IS

23 NO OBJECTION.

24 THE COURT: THEY WILL BE RECEIVED.

25 MS. TOWERY: 134, TO WHICH THERE IS NO OBJECTION.

26 THE COURT: THAT WILL BE RECEIVED.

27 MS. TOWERY: 138 THROUGH 140, AND THE COURT

28 INDICATED THAT IT WOULD HOLD OFF UNTIL THE DEFENSE CASE

1 TO MAKE THAT DETERMINATION.

2 THE COURT: ON 140.

3 MS. TOWERY: 138 THROUGH 140.

4 MS. NAJERA: I AM SORRY. WE DIDN'T OBJECT TO 138

5 AND 139. IF I SAID THAT I MISSPOKE. IT'S 140.

6 MS. TOWERY: SO, 138 AND 139 THERE IS NO

7 OBJECTION, AND 140 THE COURT HAS INDICATED IT WOULD HOLD

8 OFF ON.

9 MS. NAJERA: THAT'S THE ONE IN ABEYANCE.

10 THE COURT: RIGHT, WAITING FOR THE DEFENSE.

11 MR. GESSLER: CORRECT.

12 MS. TOWERY: SO, THE COURT IS RECEIVING 138 AND

13 139?

14 THE COURT: YEAH.

15 MS. TOWERY: AND THEN 151 THROUGH 165 THE COURT

16 INDICATED THAT WE COULD -- WE COULD LITIGATE 151 THROUGH

17 163, AND 164 AND 165 THERE IS NO OBJECTION.

18 THE COURT: OKAY, 164 AND 165 WILL BE RECEIVED.

19 THE OTHERS WE'LL WAIT FOR YOU TO CHECK THE EXHIBITS.

20 MS. TOWERY: AND THAT'S IT.

21 THE COURT: LET'S GO THROUGH THEM. THERE SEEM TO

22 BE SOME HERE THAT AREN'T BEING OFFERED BY EITHER SIDE.

23 LET'S VERIFY THAT.

24 MS. TOWERY: AGAIN, YOUR HONOR, WE STOPPED

25 STARTING WITH EXHIBIT 167.

26 THE COURT: RIGHT, RIGHT.

27 NOBODY IS OFFERING 94, 95 OR 96.

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

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1 MS. NAJERA: THAT'S CORRECT.

2 THE COURT: SO, THEY WON'T BE RECEIVED.

3 NOBODY IS OFFERING 121?

4 MR. GESSLER: THAT'S TRUE. THAT'S THE ESLAMINIA
5 LETTER BEFORE IT WAS REDACTED.

6 THE COURT: RIGHT.

7 MS. NAJERA: RIGHT.

8 THE COURT: OKAY. SO, THAT'S NOT RECEIVED. 144
9 AND 145.

10 MS. TOWERY: I THINK 141 WASN'T OFFERED EITHER.
11 THAT'S THE ESCAPE -- SO-CALLED ESCAPE PLANS BEFORE
12 REDACTION.

13 THE COURT: YES, WE TALKED ABOUT THAT ONE.

14 144 AND 145 AND 146.

15 MR. GESSLER: NOT BEING OFFERED.

16 THE COURT: AND THEY WILL NOT BE RECEIVED, AND
17 THEN WE HAVE THE PISARCIK MATERIAL.

18 MS. NAJERA: RIGHT.

19 THE COURT: AND THEN THAT TAKES US TO 167, AND
20 THE BULK OF THE MATERIAL THAT IS CURRENTLY BEING USED BY
21 COUNSEL IN THE EXAMINATION OF DR. MCCARTHY.

22 MS. NAJERA: YES.

23 THE COURT: OKAY. SO, I WILL LOOK AT EXHIBIT 89
24 AND THE TRANSCRIPT, AND THERE WAS ONE OR TWO THINGS THAT
25 COUNSEL WERE GOING TO LOOK AT IN ADDITION TO THE
26 PISARCIK MATERIAL, AND WHEN WE HAVE ANOTHER OPPORTUNITY
27 TO DISCUSS EXHIBITS WE WILL DO THAT.
28 MS. NAJERA: 36 AND 60 FOR US.

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1 THE COURT: OKAY. ANYTHING ELSE AT THIS POINT
2 MR. LEVIN: NO, YOUR HONOR.
3 MR. GESSLER: THAT'S IT.
4 THE COURT: OKAY. THEN WE WILL BE IN RECESS
5 UNTIL TOMORROW AT 8:30.
6
7 (PROCEEDINGS WERE ADJOURNED
8 AT 4:15 P.M.)