

1 VAN NUYS, CALIFORNIA; TUESDAY, NOVEMBER 14, 1995

2 9:10 A.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN FADALE, OFFICIAL REPORTER)

7

8 THE COURT: IN THE TRIAL, THE DEFENDANTS ARE IN

9 COURT, THEIR LAWYERS ARE HERE. THE PEOPLE ARE HERE.

10 THE WITNESS IS HERE. THE JURY IS HERE, AND WE'LL HAVE

11 THEM COME OUT.

12 (THE JURY ENTERS THE COURTROOM AND

13 THE FOLLOWING PROCEEDINGS WERE HELD:)

14

15 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

16 WE ARE READY TO RESUME WITH THE TRIAL. THE WITNESS IS

17 AGAIN ON THE WITNESS STAND.

18 WOULD YOU STATE YOUR NAME AGAIN FOR US,

19 PLEASE?

20 THE WITNESS: ROGER LEE MC CARTHY.

21 THE COURT: ALL RIGHT. I WILL REMIND YOU THAT

22 YOU'RE STILL UNDER OATH, AND WE ARE IN DIRECT

23 EXAMINATION.

24 THE WITNESS: YES, YOUR HONOR.

25

26

27

28

1 ROGER LEE MC CARTHY,
2 CALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN
3 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED
4 FURTHER AS FOLLOWS:

5

6 DIRECT EXAMINATION (RESUMED)

7 BY MR. CONN:

8 Q. DR. MC CARTHY, I BELIEVE WHEN WE LAST SPOKE
9 WE HAD COMPLETED GOING THROUGH FOUR OF A SERIES OF 12
10 SHOTS THAT WE WILL BE DISCUSSING TODAY, AND I WOULD LIKE
11 TO DIRECT YOUR ATTENTION AT THIS TIME TO A SHOT FIRED IN
12 THAT SEQUENCE OF 12 AS DEPICTED IN AN ILLUSTRATION WHICH
13 IS MARKED SHOT 5A AND WHICH HAS BEEN IDENTIFIED IN THIS
14 PROCEEDING AS EXHIBIT 258.

15 CAN YOU TELL US, ONCE AGAIN, BEFORE WE ASK
16 YOU -- BEFORE I QUESTION YOU ABOUT THE MATERIALS YOU
17 RELIED UPON IN FORMING YOUR OPINION CONCERNING THAT
18 SHOT, WHAT IS IT, THAT ILLUSTRATION, SHOT 5A, EXHIBIT
19 258 DEPICTS?

20 A. THE GENERAL LOCATION IN MY RECONSTRUCTION
21 WHERE THE FIFTH SHOT WAS RECEIVED. IT'S BETWEEN THE
22 COFFEE TABLE AND THE SOFA, AND IN MY RECONSTRUCTION I
23 BELIEVE THAT SHE IS NOW HORIZONTAL.

24 Q. ALL RIGHT. AND THAT PARTICULAR SHOT THAT
25 IS BEING FIRED THERE IS STRIKING THE VICTIM, KITTY

26 MENENDEZ, IN WHAT PARTS OF HER BODY?

27 A. BASICALLY THE RIGHT ARM, THE LOWER FOREARM

28 AND THE UPPER ARM NEAR THE SHOULDER. THE SHOT

-24940

1 STRIKES -- THE SAME SHOT CREATES BOTH WOUNDS IN MY
2 RECONSTRUCTION.

3 Q. OKAY. AND ONCE AGAIN DID YOU RELY UPON
4 CERTAIN X RAYS AND PHOTOGRAPHS IN FORMING YOUR
5 CONCLUSION REGARDING THAT PARTICULAR SHOT THAT WAS
6 FIRED?

7 MS. ABRAMSON: OBJECTION, YOUR HONOR, LACK OF
8 EXPERTISE.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 Q. BY MR. CONN: ALL RIGHT. IF WE CAN ONCE
12 AGAIN DIM THE LIGHTS A BIT, I WOULD LIKE TO DIRECT YOUR
13 ATTENTION TO 1.XRAY, A PHOTOGRAPH OF AN X RAY THAT HAS
14 BEEN MARKED IN THIS PROCEEDING AS EXHIBIT 167.

15 I BELIEVE THAT DR. LAWRENCE TESTIFIED THAT
16 THIS X RAY THAT WE ARE NOW LOOKING AT IS AN X RAY OF THE
17 UPPER RIGHT ARM OF KITTY MENENDEZ.

18 CAN YOU TELL US WHAT INFORMATION YOU RELIED
19 UPON IN FORMING AN OPINION CONCERNING THE SHOT THAT YOU
20 HAVE ILLUSTRATED IN THE DIAGRAM THAT IS BEFORE THE JURY
21 AT THIS TIME?

22 A. YES. THIS IS AN X RAY OF MARY MENENDEZ'
23 RIGHT ARM. THIS IS THE UPPER ARM HERE. THIS IS THE
24 SHOULDER, AND YOU CAN SEE THE LARGE BUCKSHOT AS THE
25 OPAQUE WHITE CIRCLES ON THE X RAY, AND THE UPPER ARM
26 HERE IS BROKEN (INDICATING).
27 Q. OKAY. I WOULD LIKE TO DIRECT YOUR
28 ATTENTION NOW TO ANOTHER X RAY, 7.XRAY WHICH HAS BEEN

-24939

1 MARKED IN THIS PROCEEDING AS EXHIBIT 173, AND THIS IS AN
2 X RAY WHICH I BELIEVE DR. LAWRENCE IDENTIFIED AS AN X
3 RAY OF THE LOWER RIGHT ARM OF KITTY MENENDEZ.

4 CAN YOU TELL US WHAT INFORMATION YOU RELIED
5 UPON IN THIS X RAY IN FORMING AN OPINION CONCERNING THE
6 SHOT THAT HAS BEEN DESCRIBED AS SHOT 5?

7 A. THIS IS WHERE, IN MY RECONSTRUCTION, THE
8 LOWER FOREARM WAS SHOT. AS DR. LAWRENCE MENTIONED, YOU
9 CAN SEE THE SMALL LEAD PARTICLES THAT WERE LEFT BEHIND
10 BY THE SHOT STRIKING THE BONE.

11 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO A
12 PHOTOGRAPH WHICH HAS BEEN MARKED IN THIS PROCEEDING AS
13 EXHIBIT 190 AND WHICH YOU HAVE DESIGNATED 5.MARY IN YOUR
14 PRESENTATION.

15 CAN YOU TELL US WHAT INFORMATION IN THIS
16 PHOTOGRAPH YOU RELIED UPON IN FORMING AN OPINION
17 CONCERNING THE SHOT THAT HAS BEEN DEPICTED AS FIVE?

18 A. THIS IS THE RIGHT FOREARM OF MARY, AND YOU
19 CAN JUST MAKE OUT THE FINGERS TO THE RIGHT OF THE
20 PHOTOGRAPH. IT GIVES YOU SOME IDEA OF THE ORIENTATION.
21 YOU CAN ALSO SEE THAT THE WOUND HAS A BIAS; THAT IS, AN
22 ANGLE RELATIVE TO THE AXIS OF THE ARM.

23 Q. OKAY. AND HOW WOULD YOU DESCRIBE THAT BIAS
24 FOR US, PLEASE.

25 A. I -- IN THIS PARTICULAR SHOT, IT'S CLEARLY
26 GOING UP AND TO THE LEFT, AND THAT WILL HAVE
27 SIGNIFICANCE IN OTHER PHOTOS.

28 Q. AND IS THAT BIAS THAT YOU HAVE JUST SHOWN

-24938

1 US CONSISTENT WITH A BIAS THAT YOU DEPICTED IN THE
2 ILLUSTRATION THAT IS CURRENTLY BEFORE THE JURY IN SHOT
3 5A?

4 A. AND OBVIOUSLY ANY HYPOTHESIS HAS TO
5 CONSIDER THE DIRECTIONALITY OF THAT SHOT.

6 Q. I'D LIKE TO DIRECT YOUR ATTENTION NOW TO
7 ANOTHER PHOTOGRAPH WHICH YOU HAVE DESIGNATED 7.MARY AND
8 WHICH WE HAVE MARKED IN THIS PROCEEDING AS EXHIBIT 192.

9 CAN YOU TELL US WHAT WE ARE LOOKING AT
10 THERE?

11 A. THIS IS THE UPPER SHOULDER OF MARY
12 MENENDEZ, AND SHOWS THE WOUND TO THE FRONT, THE
13 ELONGATION. IT'S LONGER THAN WIDER.

14 Q. DOES THE FACT THAT IT IS LONGER THAN WIDER
15 HAVE SOME SIGNIFICANCE TO YOU IN ARRIVING AT THE
16 CONCLUSION YOU REACHED CONCERNING SHOT 5A?

17 MS. ABRAMSON: OBJECTION, YOUR HONOR. LACK OF
18 EXPERTISE.

19 THE COURT: SUSTAINED.

20 Q. BY MR. CONN: THE FACT THAT IT IS LONGER
21 THAN WIDER, IS THAT SOMETHING THAT YOU SOUGHT TO TAKE
22 INTO CONSIDERATION IN FORMING AN OPINION CONCERNING SHOT
23 5?

24 MS. ABRAMSON: SAME OBJECTION, YOUR HONOR.

25 THE COURT: UNLESS YOU CAN ESTABLISH SOME MEDICAL
26 EXPERTISE ON THE PART OF THE WITNESS, OR HE RELIED UPON
27 THE OPINIONS OF MEDICAL EXPERTS, SUSTAINED.

28 Q. BY MR. CONN: OKAY. DID YOU RELY UPON THE

-24937

1 OPINIONS OF ANY MEDICAL EXPERTS IN REGARD TO THE
2 SPECIFIC SHAPE OF THAT WOUND AS DESCRIBED IN ANY OF THE
3 CORONER'S REPORTS?

4 A. AS I SIT HERE, I DON'T RECOLLECT DOING SO.

5 Q. OKAY. LET ME MOVE ON TO THE NEXT
6 PHOTOGRAPH, A PHOTOGRAPH WHICH YOU HAVE DESIGNATED
7 13.MARY IN YOUR CLASSIFICATION SYSTEM, WHICH WE HAVE
8 MARKED HERE AS EXHIBIT 197.

9 AND CAN YOU TELL US WHAT INFORMATION YOU

10 RELIED UPON IN THIS PHOTOGRAPH IN FORMING AN OPINION

11 CONCERNING THAT FIFTH SHOT.

12 A. YES. THE ORIENTATION OF THE WOUND IN THE

13 UPPER RIGHT ARM TO THE WOUND IN THE LOWER RIGHT ARM, YOU

14 CAN STILL SEE THE ANGULARITY, THE BIAS OF THIS.

15 THIS POSITIONING WAS DONE BY THE CORONER,

16 WHO JUST TOOK THIS PICTURE. SO I BELIEVE, THOUGH, THAT

17 WHETHER OR NOT YOU MOVE THIS ARM A LITTLE FURTHER DOWN

18 PERHAPS TO PICK UP THAT BIAS PERFECTLY, IT REPRESENTS

19 A -- FROM JUST THE GEOMETRY -- A REASONABLE

20 JUXTAPOSITION OF THE ARM AND THE SHOULDER. AND ALSO IF

21 SHE IS LYING DOWN, OBVIOUSLY, FOR THE AUTOPSY, AND IF

22 THE SHOT WERE RECEIVED IN THIS POSITION, THAT LINES UP

23 PRETTY WELL GEOMETRICALLY.

24 Q. AND DID YOU -- IN FORMING AN OPINION

25 CONCERNING THIS FIFTH SHOT, DID YOU ALSO RELY UPON THE

26 OPINION OF DR. LAWRENCE, WHO ASSOCIATED THOSE TWO WOUNDS

27 TOGETHER; THAT IS THE WOUND TO THE LOWER RIGHT ARM AND

28 THE WOUND TO THE UPPER RIGHT ARM?

-24936

1 A. RELYING ON BOTH THE CORONER AND DR.

2 LAWRENCE, WHO ASSOCIATED THESE TWO WOUNDS.

3 Q. ALL RIGHT. ALL RIGHT.

4 DOES THAT COMPLETE THE SERIES OF

5 PHOTOGRAPHS FOR THIS PARTICULAR SHOT?

6 A. YES.

7 Q. ALL RIGHT. IF WE MAY JUST RAISE THE LIGHTS

8 ONCE AGAIN, I WOULD LIKE TO DIRECT YOUR ATTENTION BACK
9 TO THE ILLUSTRATION THAT HAS BEEN MARKED 5A.

10 AND ONCE AGAIN I WOULD LIKE TO ASK YOU
11 CONCERNING THIS ILLUSTRATION WHICH YOU HAVE PREPARED THE
12 SAME QUESTION THAT I ASKED YOU CONCERNING THE OTHER
13 ILLUSTRATIONS, AND THAT IS WHAT IS THE ESSENTIAL
14 INFORMATION THAT YOU ARE SEEKING TO COMMUNICATE THROUGH
15 THIS ILLUSTRATION?

16 A. BASICALLY A GENERAL DIRECTIONALITY TO THE
17 SHOT. OBVIOUSLY THAT GREEN LINE WOULD MOVE DEPENDING ON
18 IF YOU MOVED THE ARM A LITTLE BIT ONE WAY OR THE OTHER,
19 AND THIS IS NOT HER FINAL POSITION; THAT IS, ON THE
20 RIGHT-HAND SIDE.

21 BUT THIS SHOT IS RECEIVED IN THE RIGHT ARM,
22 WHICH IN THE FINAL POSITION IT'S -- IT'S ON TOP.

23 SO, THIS SHOT HAS TO BE RECEIVED EARLIER
24 THAN THE FINAL POSITION TO EXPOSE THIS PART OF HER BODY.

25 SO, IT'S A GENERAL DEPICTION OF WHAT I
26 THINK IS THE GENERAL ANGULARITY, HER POSITION AT THE
27 TIME OF THE SHOT. IT LOOKS CONSISTENT WITH THE GEOMETRY
28 AND THE PLACEMENT OF THE WOUNDS.

-24935

1 Q. OKAY. IN THIS ILLUSTRATION YOU HAVE

2 DEPICTED, FOR EXAMPLE, HER RIGHT LEG BEING IN A
3 PARTICULAR POSITION; THAT IS SLIGHTLY UNDER THE COFFEE
4 TABLE.

5 CAN YOU SAY WITH ANY CERTAINTY WHETHER THAT
6 ACCURATELY REPRESENTS THE PRECISE POSITION OF HER RIGHT
7 LEG AT THE TIME THIS SHOT WAS FIRED?

8 A. NO, I CANNOT. IN MY RECONSTRUCTION THIS
9 SHOT DOES NOT INVOLVE THE LEGS, SO THEY COULD HAVE BEEN
10 STRAIGHT, THEY COULD HAVE BEEN BENT THE OTHER WAY.

11 I JUST PUT HER IN A REASONABLE POSITION
12 THERE, BUT I CAN'T TESTIFY THAT HER LEFT ARM WAS IN THAT
13 POSITION EITHER, OR THAT HER HEAD WAS NOT COCKED TO ONE
14 SIDE OR THE OTHER. IT'S BASICALLY THE GENERAL
15 ORIENTATION OF WHAT I BELIEVE OCCURRED ON THIS SHOT, AND
16 THE POSITION I BELIEVE SHE WAS IN THE ROOM WHEN SHE WAS
17 SHOT.

18 Q. OKAY. BEFORE WE GET FURTHER INTO WHAT YOU
19 MEAN BY THOSE TERMS, LET ME SHOW YOU WHAT APPEARS TO BE
20 ANOTHER ILLUSTRATION OF THE SAME SHOT.

21 I WOULD LIKE TO SHOW YOU WHAT IS MARKED ON
22 THE EXHIBIT ITSELF AS SHOT 5B AND WHICH HAS BEEN MARKED
23 IN THIS PROCEEDING AS EXHIBIT 259.

24 CAN YOU TELL US WHAT WE ARE LOOKING AT IN
25 THIS ILLUSTRATION.

26 A. AGAIN, IT'S THE SAME GEOMETRY JUST FROM A
27 DIFFERENT ANGLE, BECAUSE MY PLOTS NECESSARILY ARE FLAT.
28 IT JUST GIVES YOU ANOTHER ANGLE ON THE SAME SHOT AND

1 SHOWS THE GENERAL DIRECTIONALITY, AGAIN WITH ALL THE
2 QUALIFIERS, THAT I CAN'T SAY HER LEFT ARM WAS IN THAT
3 POSITION OR HER FEET WERE IN THAT POSITION.

4 Q. NOW, CAN YOU TELL US WHY IN THIS -- FOR
5 THIS PARTICULAR SHOT, SHOT 5 AS ILLUSTRATED IN BOTH THE
6 ILLUSTRATION MARKED SHOT 5A AND SHOT 5B, WHERE THE ARM
7 IS POSITIONED ON THE FLOOR FOR THIS PARTICULAR SHOT?

8 MS. ABRAMSON: YOUR HONOR, I OBJECT. THIS WAS
9 ASKED AND ANSWERED LAST WEEK.

10 THE COURT: OVERRULED.

11 THE WITNESS: BECAUSE OF THE GEOMETRY, THE SHOT
12 HAS TO GRAZE OVER THE TOP OF THE FOREARM, AS DR.
13 LAWRENCE TESTIFIED, AND THE PICTURE SPEAKS FOR ITSELF.
14 IT HAS TO GO THROUGH THE SHOULDER. THIS -- IT HAS TO BE
15 ON THE RIGHT SIDE, SO THE RIGHT SIDE HAS TO BE EXPOSED.

16 IF YOU LOOK AT A SCENE OF THE ROOM WITH THE
17 BODIES REMOVED, HER BLOOD IS IN THIS AREA.

18 SO, REGARDLESS, I BELIEVE SHE HAD TO
19 RECEIVE THE SHOT IN THIS POSITION BECAUSE OF THE
20 BLEEDING THAT WOULD HAVE OCCURRED. IF SHE HAD BEEN
21 SOMEWHERE ELSE IN THE ROOM, WE WOULD SEE BLOOD THERE.

22 MS. ABRAMSON: WE WOULD OBJECT TO THAT, YOUR
23 HONOR. THERE IS NO EXPERTISE IN BLOOD SPATTER.

24 THE COURT: OVERRULED.

25 Q. BY MR. CONN: AND CAN YOU TELL US WHY YOU
26 DEPICTED THIS PARTICULAR SERIES OF WOUNDS TO HER RIGHT

27 ARM AND TO HER LOWER RIGHT ARM AND TO HER UPPER RIGHT

28 ARM AS BEING THE FIFTH SHOT IN THIS SERIES OF 12 THAT WE

-24933

1 ARE PRESENTING TO THE JURY?

2 A. WELL, THE NEXT SHOT IN SEQUENCE, WHICH I
3 BELIEVE IS SHOT 6, I BELIEVE HAS TO FOLLOW SHOT 5, AND
4 IT HAS TO BE IN THIS ORDER FOR THE REASONS THAT THE
5 CORONER AND I THINK DR. LAWRENCE MENTIONED.

6 YOU SAW FROM THE X RAY IT WAS OBVIOUS THAT
7 HER UPPER ARM IS BROKEN. THE RIGHT ARM IS BROKEN
8 THROUGH HERE (INDICATING). I MEAN, IT'S -- I CAN BRING
9 THE X RAY BACK UP.

10 SO, THIS ARM LOSES ITS SKELETAL-MECHANICAL
11 EFFECT. IT IS JUST NOT MECHANICALLY AN ELEMENT ANY
12 MORE.

13 MS. ABRAMSON: OBJECTION, YOUR HONOR. BEYOND HIS
14 EXPERTISE.

15 THE COURT: THE LAST PORTION OF THE ANSWER
16 REGARDING THE SKELETAL EFFECTS IS STRICKEN AS BEYOND THE
17 WITNESS' EXPERTISE.

18 Q. BY MR. CONN: OKAY. YOU INDICATED THAT THE
19 VICTIM AT THIS POINT WOULD HAVE HAD A BROKEN ARM AS
20 TESTIFIED TO BY DR. LAWRENCE; IS THAT CORRECT?

21 A. CORRECT.

22 Q. AND THEN HOW DOES THAT ASSIST YOU IN

23 DETERMINING THAT THIS WAS THE FIFTH SHOT IN A SERIES?
24 A. THE NEXT SHOT IN MY RECONSTRUCTION INVOLVES
25 THE RIGHT HAND IN A DIFFERENT POSITION, AND IT IS
26 CONSISTENT WITH THE LOCATION OF THE HAND IN THE NEXT
27 SHOT, THAT THIS SHOT BREAKING THE ARM WOULD ALSO MOVE
28 THE HAND UPWARD AND POSITION IT FOR THE NEXT SHOT.

-24932

1 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS
2 EXHIBIT 260 IN THIS PROCEEDING, AND WHICH IS DESIGNATED
3 ON ITS SURFACE AS SHOT 6A.

4 CAN YOU TELL US WHAT WE ARE LOOKING AT IN
5 EXHIBIT 260?

6 A. THIS IS MY RECONSTRUCTION OF THE
7 ORIENTATION AND GEOMETRY OF THE SIXTH SHOT.

8 Q. AND CAN YOU TELL US THE PORTIONS OF THE
9 BODY THAT ARE BEING STRUCK IN THIS ILLUSTRATION.

10 A. THIS WOULD BE HER RIGHT HAND AREA AND HER
11 UPPER THROAT, CHIN, CLAVICLE AREA.

12 Q. OKAY. DID YOU RELY UPON CERTAIN PHOTOS AND
13 X RAYS IN FORMING AN OPINION REGARDING THE MANNER IN
14 WHICH THIS PARTICULAR SHOT TOOK PLACE?

15 A. YES.

16 Q. ALL RIGHT. IF WE CAN DIM THE LIGHTS ONCE
17 AGAIN, PLEASE.

18 I WOULD LIKE TO DIRECT YOUR ATTENTION ONCE

19 AGAIN TO WHAT HAS BEEN MARKED AS 167; THAT IS ONE X RAY.

20 ONCE AGAIN, THIS IS AN X RAY THAT DR.

21 LAWRENCE TESTIFIED REPRESENTS NOT ONLY THE UPPER RIGHT
22 ARM BUT THE UPPER RIGHT SHOULDER AREA OF MARY LOUISE
23 MENENDEZ.

24 CAN YOU TELL US WHAT INFORMATION YOU RELIED
25 UPON IN THIS X RAY IN FORMING AN OPINION CONCERNING SHOT
26 6?

27 A. HERE IN MY RECONSTRUCTION ARE THE PELLETS
28 FROM SHOT 6 IN HER RIGHT SHOULDER. YOU CAN SEE THE MEAN

-24931

1 DISTANCE BETWEEN THE PELLETS, AND THERE IS A BIG GAP
2 HERE (INDICATING), BETWEEN THIS GROUP, WHICH IS MY SHOT
3 5, AND THIS GROUP, WHICH IS MY SHOT 6.

4 Q. WHAT DO YOU MEAN BY THE TERM "MEAN
5 DISTANCE"?

6 A. WELL, JUST THAT IF YOU JUST LOOK AT THE
7 AVERAGE SEPARATION BETWEEN TWO PELLETS HERE, IT'S CLEAR
8 THIS IS A GROUP. ALSO IT IS CLEAR THIS IS A GROUP
9 (INDICATING).

10 IT IS ALSO CLEAR THAT THE DISTANCE BETWEEN
11 THE TWO GROUPS EXCEEDS THE DISTANCE BETWEEN ANY TWO
12 ADJACENT PELLETS.

13 Q. OKAY.

14 SO, YOU ATTRIBUTE THE SHOT TO THE SHOULDER

15 AREA AS BEING DISTINCT FROM THE SHOT TO THE UPPER RIGHT

16 ARM AREA, AS DID DR. LAWRENCE?

17 A. YES.

18 Q. I'D LIKE TO DIRECT YOUR ATTENTION NOW TO

19 ANOTHER X RAY THAT YOU HAVE PREVIOUSLY TESTIFIED TO,

20 7.XRAY WHICH WAS MARKED AS EXHIBIT 173 IN THIS

21 PROCEEDING.

22 ONCE AGAIN, THIS IS AN X RAY OF THE LOWER

23 RIGHT ARM, AND HERE WE CAN SEE THAT IT ALSO DEPICTS THE

24 RIGHT HAND OF MARY LOUISE MENENDEZ.

25 CAN YOU TELL US WHAT INFORMATION YOU RELIED

26 UPON IN THIS X RAY AS IT RELATES TO SHOT 6?

27 A. YES. YOU CAN SEE THE OPAQUE LITTLE SPECS

28 DR. LAWRENCE TESTIFIED TO CONCERNING PIECES BREAKING OFF

-24930

1 THE SHOT, AND WE SEE A PELLET HERE, OR PART OF A PELLET

2 DOWN BY WHAT LOOKS LIKE THE RIGHT FOREFINGER.

3 Q. DIRECTING YOUR ATTENTION TO PHOTOGRAPH

4 6.MARY, WHICH WE HAVE MARKED IN THIS PROCEEDING AS

5 EXHIBIT 191, I'D LIKE TO ASK YOU WHAT WE ARE LOOKING AT

6 HERE.

7 A. THIS IS A SHOT OF MARY'S RIGHT HAND.

8 Q. AND WHAT INFORMATION DID YOU RELY UPON IN

9 THIS PHOTOGRAPH IN ASSISTING YOU IN FORMULATING AN

10 OPINION CONCERNING SHOT 6?

11 A. BOTH THE X RAY AND THE DEFECTS ARE
12 CONSISTENT WITH THIS HAND BEING SHOT WITH NO. 4 BUCK, AS
13 THE PEOPLE HAVE INDICATED.

14 Q. DIRECTING YOUR ATTENTION TO PHOTOGRAPH
15 9.MARY, WHICH WAS MARKED IN THIS PROCEEDING AS EXHIBIT
16 193, CAN YOU TELL US WHAT IS DEPICTED IN THIS
17 PHOTOGRAPH?

18 A. THIS IS THE UPPER CLAVICLE AND RIGHT NECK,
19 THROAT, SHOULDER AREA, AND YOU CAN SEE THE DEFECTS HERE.

20 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO
21 PHOTOGRAPH 10.MARY WHICH HAS BEEN MARKED IN THE
22 PROCEEDING AS EXHIBIT 194 AND WHICH DEPICTS THE RIGHT
23 SIDE OF THE FACE OF MARY LOUISE MENENDEZ.

24 CAN YOU TELL US WHAT INFORMATION YOU RELIED
25 UPON IN THIS PHOTOGRAPH.

26 A. YES. YOU CAN SEE AGAIN NO. 4 BUCK DOWN IN
27 THE LOWER RIGHT CHIN AREA.

28 Q. DIRECTING YOUR ATTENTION TO 12.MARY, WHICH

-24929

1 HAS BEEN MARKED IN THIS PROCEEDING AS EXHIBIT 196.

2 A. DID YOU SAY 12.MARY? I'M SORRY.

3 Q. 12.MARY, YES.

4 CAN YOU TELL US WHAT INFORMATION YOU RELIED
5 UPON IN THIS PHOTOGRAPH DEPICTING THE SHOULDER AND THE
6 FACIAL AREA OF MARY LOUISE MENENDEZ?

7 A. AGAIN, YOU CAN NOW SEE IN THE SAME PICTURE
8 THE SEPARATION BETWEEN THE UPPER SHOULDER WOUND, WHICH
9 IS MY SHOT 5, AND THIS AREA OF WOUND, WHICH IS MY SHOT
10 6. YOU CAN SEE THE ELONGATED NATURE OF THE DEFECT HERE,
11 AND YOU CAN SEE THE INJURIES UNDER THE RIGHT CHIN.

12 Q. AND WHEN YOU SPEAK ABOUT THE ELONGATED
13 NATURE OF THE INJURY, WHAT ARE YOU REFERRING TO
14 SPECIFICALLY?

15 MS. ABRAMSON: OBJECTION, YOUR HONOR. THIS HAS
16 ALREADY BEEN OBJECTED TO.

17 THE COURT: ARE YOU ASKING HIM TO GIVE AN
18 INTERPRETATION, OR JUST POINT OUT WHERE IT IS?

19 Q. BY MR. CONN: YES.

20 IF YOU WOULD JUST POINT OUT THE ELONGATED
21 NATURE OF THE WOUND THAT YOU'RE REFERRING TO.

22 A. RIGHT HERE (INDICATING).

23 Q. OKAY, ALL RIGHT.

24 AND LET ME DIRECT YOUR ATTENTION
25 SPECIFICALLY TO THE WOUNDS THAT APPEAR IN THE LOWER JAW
26 AREA OF MARY LOUISE MENENDEZ, THIS PARTICULAR WOUND
27 RIGHT HERE, WHICH IS ALMOST UNDER HER CHIN.

28 DID THE LOCATION OF THAT WOUND HAVE ANY

1 SIGNIFICANCE TO YOU IN FORMING AN OPINION IN REGARD TO
2 THE ANGLE OR THE TRAJECTORY AT WHICH THIS PARTICULAR

3 SHOT WAS FIRED AT THE VICTIM?

4 A. YES.

5 Q. IN WHAT WAY?

6 A. WELL, TO COME UNDER THE CHIN YOU HAVE TO BE
7 COMING UNDER THE CHIN TO THE WOUND. SO, OBVIOUSLY THE
8 HEAD WOULD HAVE TO BE ORIENTED TO PRESENT THE CHIN, OR
9 IN MY RECONSTRUCTION THE ANGLE IS SUCH THAT WITH HER
10 HEAD DOWN -- WITH HER HEAD TO THE RIGHT, WHICH I BELIEVE
11 IT WAS, TO BRING THE GROUP ON THE RIGHT SIDE OF HER CHIN
12 IN CONTACT TO THE RIGHT SIDE OF HER SHOULDER, AND THEN
13 UNDERNEATH THE JAW WOULD BE CONSISTENT WITH LYING DOWN
14 AT A LOW ANGLE SHOT FROM BENEATH HER FEET.

15 Q. OKAY. I'D LIKE TO DIRECT YOUR ATTENTION
16 NOW TO PHOTOGRAPH 13.MARY, WHICH HAS BEEN IDENTIFIED IN
17 THIS PROCEEDING AS EXHIBIT 197.

18 CAN YOU TELL US WHAT INFORMATION YOU ARE
19 RELYING UPON IN THIS PHOTOGRAPH TO ASSIST YOU IN YOUR
20 RECONSTRUCTION OF SHOT 6?

21 A. THIS WAS A POSITIONING OF THE CORONER OF
22 THE HANDS, THE WOUND TO THE UPPER RIGHT SHOULDER AND TO
23 HER BOTTOM CHIN, AND I BELIEVE THE CORONER IS CORRECT IN
24 HIS PLACEMENT.

25 Q. OKAY. AND ONCE AGAIN DIRECT -- NOW
26 DIRECTING YOUR ATTENTION TO PHOTOGRAPH 16.MARY, WHICH
27 HAS BEEN MARKED IN THE PROCEEDING AS EXHIBIT 199, CAN
28 YOU TELL US WHAT INFORMATION YOU RELIED UPON IN THIS

1 PHOTOGRAPH IN ASSISTING YOU IN FORMING AN OPINION
2 CONCERNING SHOT 6?

3 A. AGAIN, IF THE HEAD IS TURNED AWAY, YOU OPEN
4 UP A LARGE AMOUNT -- THIS IS AGAIN THE CORONER'S
5 PLACEMENT.

6 IF THE HEAD IS TURNED AWAY, YOU OPEN UP A
7 HUGE SPACE BETWEEN THE WOUNDS ON THE CHIN AND THE FACE
8 AND THESE WOUNDS.

9 SO, I BELIEVE THE CORONER PLACED CORRECTLY
10 THE PRECEDING SHOTS, AND YOU ALSO GET A -- THIS IS A
11 GOOD ELONGATED DEPICTING VIEW RIGHT HERE.

12 Q. ALL RIGHT. DOES THAT COMPLETE THE SERIES
13 OF PHOTOGRAPHS AND X RAYS YOU RELIED UPON IN FORMING AN
14 OPINION CONCERNING SHOT 6?

15 A. YES.

16 Q. OKAY. IF WE MAY RAISE THE LIGHTS ONCE
17 AGAIN.

18 I WOULD LIKE TO DIRECT YOUR ATTENTION BACK
19 TO THE ILLUSTRATION THAT HAS BEEN MARKED 6-A, AND I
20 WOULD LIKE TO ASK YOU AGAIN WHAT IS THE ESSENTIAL
21 INFORMATION THAT YOU ARE SEEKING TO COMMUNICATE IN THIS
22 PARTICULAR ILLUSTRATION?

23 A. AGAIN, THE GENERAL DIRECTION AND
24 ORIENTATION, I BELIEVE, OF THE SHOT. YOU CAN SEE I
25 HAVEN'T TAKEN THE HEAD OF THE FIGURE AND MOVED IT DOWN
26 TO WHERE THE CORONER HAD IT POSITIONED, RIGHT CHIN CLOSE
27 TO RIGHT SHOULDER. I BELIEVE THAT THE CORONER'S

-24926

1 TRYING TO SHOW THE GENERAL DIRECTION OF THE SHOTS, THE
2 GENERAL ORIENTATION OF THE HANDS AND THE LEFT ARM; AND
3 THE FEET, OF COURSE, COULD HAVE BEEN ANYWHERE. I HAVE
4 NO INDEPENDENT BASIS TO PLACE THEM AS I DID HERE.

5 Q. OKAY. LET ME SHOW YOU AT THIS TIME ANOTHER
6 ILLUSTRATION WHICH IS DESIGNATED ON THE SURFACE AS SHOT
7 6B AND WHICH HAS BEEN MARKED IN THIS PROCEEDING AS
8 EXHIBIT 261.

9 CAN YOU TELL US WHAT THAT ILLUSTRATION
10 PURPORTS TO REPRESENT?

11 A. YES. THIS IS JUST THE SAME GEOMETRY FROM
12 ANOTHER ANGLE, MORE OF A TOP VIEW, AND SHOWING BASICALLY
13 THE DIRECTIONALITY AS ESTABLISHED BY THE CORONER IN HIS
14 POSITION OF THE WOUNDS ON THE BODY, AND I HAVE JUST NOW
15 PLACED THAT IN THE SCENE, AND I BELIEVE IT HAD TO BE
16 ROUGHLY IN THIS LOCATION AND ROUGHLY IN THIS
17 ORIENTATION.

18 Q. OKAY.

19 NOW, MOVING ON TO THE NEXT ILLUSTRATION, I
20 WOULD LIKE TO DIRECT YOUR ATTENTION TO AN ILLUSTRATION
21 DESIGNATED SHOT 7A WHICH HAS BEEN MARKED IN THIS
22 PROCEEDING AS EXHIBIT 262.

23 CAN YOU TELL US WHAT IS -- WHAT THIS

24 ILLUSTRATION PURPORTS TO REPRESENT?

25 A. YES. IN MY RECONSTRUCTION I HAVE TERMED

26 THE SHOT TO JOSEPH'S LEFT UPPER LEG AS SHOT 7.

27 Q. OKAY.

28 NOW, IN THIS ILLUSTRATION, JUST TO JUMP

-24925

1 AHEAD, I AM GOING TO BE SHOWING YOU THREE MORE

2 ILLUSTRATIONS FOLLOWING THIS WHICH APPEAR TO DEPICT

3 SHOTS TO THE LEG OF KITTY MENENDEZ. THAT IS IN THE

4 SUBSEQUENT THREE SHOTS.

5 DO YOU KNOW WITH ANY CERTAINTY AS TO

6 WHETHER THIS PARTICULAR SHOT, WHICH APPEARS TO DEPICT A

7 SHOT TO THE LEG OF JOSE MENENDEZ, NECESSARILY PRECEDED

8 THE THREE SHOTS TO THE LEG AREA OF KITTY MENENDEZ?

9 A. NO. THIS SHOT CANNOT BE BENCHMARKED IN

10 TIME OTHER THAN IT OCCURRED AT SOME POINT, AND AS DR.

11 LAWRENCE TESTIFIED, AFTER HIS DEATH.

12 Q. CAN YOU TELL US WHY YOU CHOSE TO DESIGNATE

13 THIS PARTICULAR SHOT TO JOSE MENENDEZ AS SHOT 7 RATHER

14 THAN LATER IN THE SERIES OF SHOTS TO THE LEGS WHICH GO

15 FROM SHOT 7 THROUGH SHOT 10?

16 A. IN MY RECONSTRUCTION THERE IS A NATURAL

17 BREAK IN THE SERIES HERE. IF YOU NOTE IN MY PRECEDING

18 TWO SHOTS, I HAVE THEM COMING FROM THE FOOT AREA

19 SUPERIOR ON MARY MENENDEZ.

20 IF YOU LOOK AT A GENERAL DIRECTION OF WHERE
21 MY SHOT RECONSTRUCTION COMES FROM, SOMEONE WOULD BE
22 STANDING IN THIS GENERAL AREA TO SHOOT THE WEAPON AND
23 DELIVER THOSE SHOTS. THAT WOULD BE A VERY DANGEROUS
24 PLACE TO STAND DURING THIS SHOT.
25 SO, I BELIEVE THERE HAD TO BE SOME
26 MOVEMENT. YOU WOULDN'T BE STANDING THERE WHEN THIS SHOT
27 WAS DELIVERED.
28 MS. ABRAMSON: OBJECTION, YOUR HONOR. MOVE TO

-24924

1 STRIKE. SPECULATION.
2 THE COURT: OVERRULED. THE ANSWER WILL STAND.
3 Q. BY MR. CONN: AND DID YOU RELY UPON THE
4 SERIES OF PHOTOGRAPHS AND X RAYS TO ASSIST YOU IN
5 FORMULATING YOUR OPINION ABOUT THIS PARTICULAR SHOT?
6 A. YES.
7 Q. ONCE AGAIN, IF WE COULD JUST DIM THE LIGHTS
8 FOR A MOMENT I WOULD LIKE TO DIRECT YOUR ATTENTION TO
9 10.XRAY WHICH HAS BEEN DESIGNATED IN THIS PROCEEDING AS
10 EXHIBIT 176, AND THIS X RAY I BELIEVE DR. LAWRENCE
11 TESTIFIED REPRESENTS THE INJURY TO THE UPPER LEFT LEG OF
12 JOSE MENENDEZ.
13 CAN YOU TELL US WHAT INFORMATION YOU RELIED
14 UPON IN -- FROM THIS PARTICULAR X RAY IN FORMING AN
15 OPINION CONCERNING SHOT 7?

16 A. YES. YOU CAN SEE THE WHITE SPECKS. AGAIN,
17 AS DR. LAWRENCE INDICATED, THE SHOT STRIKES THE BONE
18 AND --

19 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
20 TO THAT. THAT MISSTATES DR. LAWRENCE'S TESTIMONY.

21 THE COURT: IS THAT YOUR RECOLLECTION OF WHAT DR.
22 LAWRENCE TESTIFIED?

23 THE WITNESS: YES.

24 THE COURT: OKAY. WITH THAT UNDERSTANDING, THAT
25 IT'S THE WITNESS' RECOLLECTION, OBJECTION OVERRULED.

26 THE WITNESS: BUT ALSO AS DR. LAWRENCE TESTIFIED,
27 IT'S A COMPLETE BREAK. THAT LEG IS NOW COMPLETELY
28 BROKEN.

-24923

1 Q. BY MR. CONN: I'D LIKE TO DIRECT YOUR
2 ATTENTION TO A PHOTOGRAPH WHICH YOU HAVE DESIGNATED
3 2.JOSEPH AND WHICH HAS BEEN MARKED IN THIS PROCEEDING AS
4 EXHIBIT 186, AND CAN YOU TELL US WHAT INFORMATION YOU
5 RELIED UPON IN THIS PHOTOGRAPH IN FORMING AN OPINION
6 CONCERNING SHOT 7?

7 A. YES. THIS IS THE LEFT LEG OF JOSE, AND AS
8 DR. LAWRENCE TESTIFIED, AND THE PICTURE SPEAKS FOR
9 ITSELF, I BELIEVE THERE IS A SLIGHT BIAS DETECTABLE
10 BETWEEN THE ENTRY AND THE EXIT, AND IT'S WHY THE
11 RECONSTRUCTION HAS THE ANGULARITY THAT IT DOES,

12 ALTHOUGH -- YOU KNOW, A FEW DEGREES ONE WAY OR THE OTHER
13 ISN'T GOING TO AFFECT THIS.

14 Q. WHEN YOU SAY IT HAS A SLIGHT BIAS, CAN YOU
15 BE MORE SPECIFIC AND TELL US THE BIAS YOU'RE REFERRING
16 TO.

17 A. I'VE GOT A BIAS TO THE BACK OF THE COUCH,
18 OKAY. OBVIOUSLY, I ONLY HAVE THE POSITION OF THE LEG AT
19 THE END OF THE SHOT. I DON'T HAVE THE POSITION OF THE
20 LEG AT THE BEGINNING OF THE SHOT.

21 SO, THE IMPULSE OF THE SHOT -- WELL, IT
22 OBVIOUSLY MOVED THE LEG SOME. IT'S JUST A QUESTION OF
23 HOW MUCH; AND SO I CAN'T WITH ANY PRECISION TELL YOU IT
24 CAME IN AT PRECISELY THIS ANGLE.

25 Q. OKAY. IS THAT THE ONLY PHOTOGRAPH THAT YOU
26 RELIED UPON FOR THIS PARTICULAR SHOT?

27 A. YES.

28 Q. ALL RIGHT. IF WE CAN RAISE THE LIGHTS ONCE

-24922

1 AGAIN, I WOULD LIKE TO SHOW YOU THAT SAME SHOT THROUGH
2 ANOTHER ILLUSTRATION WHICH IS MARKED 7-B ON THE SURFACE
3 AND WHICH WE MARKED HERE AS EXHIBIT 263.

4 CAN YOU TELL US WHAT WE ARE LOOKING AT IN
5 EXHIBIT 263?

6 A. AGAIN, IT'S ANOTHER -- IT'S ANOTHER VIEW OF
7 THE SAME SHOT AS BEFORE, SHOWING THE GENERAL DIRECTION

8 OF WHAT I HAVE RECONSTRUCTED THE SHOT TO BE.

9 Q. NOW, ONCE AGAIN LET ME ASK YOU ABOUT WHAT
10 ESSENTIAL INFORMATION YOU ARE SEEKING TO CONVEY IN THIS
11 PARTICULAR ILLUSTRATION.

12 A. BASICALLY WHAT I BELIEVE IS THE GENERAL
13 DIRECTION OF THE SHOT AND THE ORIENTATION OF MR.
14 MENENDEZ WHEN THE SHOT WAS RECEIVED.

15 AGAIN, THE POSITION OF HIS HANDS, THE --
16 PARTICULARLY THE POSITION OF HIS LEGS. THIS IS NOT THE
17 POSITION OF HIS LEGS IN THE FINAL SHOT, IT'S SORT OF AN
18 INTERMEDIATE POSITION, AND I DID THAT INTENTIONALLY,
19 BECAUSE ALL I HAVE IS THE FINAL RESTING POSITION OF HIS
20 FEET.

21 THIS LEG WAS SHOT AT SOME POINT IN TIME.
22 IT'S VERY POSSIBLE -- IN FACT, AS I HAVE INDICATED, IT
23 HAD TO MOVE SOME. IT'S JUST A QUESTION OF HOW AND WHAT.

24 SO, I HAVE JUST SHOWN AN INTERMEDIATE FOOT
25 POSITION. ALL WE KNOW IS THE FINAL REST POSITION OF HIS
26 FEET.

27 Q. OKAY.

28 DIRECTING YOUR ATTENTION TO AN UNRELATED

-24921

1 FIGURE IN THIS ILLUSTRATION; FOR EXAMPLE -- AND THAT
2 WOULD BE THE ILLUSTRATION OF MARY LOUISE MENENDEZ WHICH
3 DEPICTS HER ARMS IN PARTICULAR PLACES.

4 DO YOU HAVE ANY IDEA WHAT POSITION HER ARMS
5 WOULD HAVE BEEN IN DURING THE COURSE OF THIS SHOT?
6 A. NO. THE RIGHT ARM I BELIEVE WE HAVE
7 POSITIONED BECAUSE OF THE LAST SHOT, BUT THE LEFT ARM, I
8 CAN'T VOUCH FOR THAT POSITION OR LEG POSITION AT THIS
9 POINT IN TIME, NO.

10 Q. OKAY. ALL RIGHT.

11 AT THIS TIME I WOULD LIKE TO SHOW YOU --

12 A. EXCUSE ME. I SAID HER LEFT ARM. I MEAN
13 HER RIGHT ARM WAS POSITIONED BY THE LAST SHOT. I AM
14 SORRY.

15 Q. AT THIS TIME I WOULD LIKE TO SHOW YOU
16 ANOTHER ILLUSTRATION IN THE SERIES, ONE THAT IS LABELED
17 8-A ON THE SURFACE AND WHICH HAS BEEN MARKED IN THIS
18 PROCEEDING AS 264.

19 NOW, CAN YOU TELL US WHAT WE ARE LOOKING AT
20 THERE IN EXHIBIT 264?

21 A. THIS I RECONSTRUCTED AS THE EIGHTH SHOT,
22 AND IT CREATES THE WOUNDS WE SEE IN THE LEFT LEG OF MARY
23 MENENDEZ.

24 Q. NOW, THIS IS GOING TO BE THE FIRST OF THREE
25 SHOTS THAT WILL DEPICT INJURIES TO THE LEFT LEG OF MARY
26 LOUISE MENENDEZ.

27 CAN YOU TELL US WHY YOU SELECTED THIS
28 PARTICULAR SHOT TO THE LEFT LEG AS THE FIRST IN THAT

1 SERIES OF THREE?

2 A. I REALLY CAN'T PIN DOWN THE PRECISE ORDER,
3 EXCEPT I THINK THE THIRD ONE WAS THE LAST ONE. BUT I
4 CAN'T SAY THAT THIS ONE WAS THE FIRST AND THE ONE WE ARE
5 GOING TO SEE AFTER NINE DIDN'T PRECEDE IT. I THINK
6 THERE IS A PROGRESSION TO THESE, BUT I CAN'T PROVE IT TO
7 YOU.

8 Q. ALL RIGHT.

9 THEN ONCE AGAIN DID YOU RELY UPON SOME
10 PHOTOGRAPHS AND X RAYS IN FORMING AN OPINION CONCERNING
11 THIS PARTICULAR ILLUSTRATION?

12 A. YES.

13 Q. I WOULD LIKE TO, IF WE CAN, LOWER THE
14 LIGHTS ONCE AGAIN.

15 THE COURT: DEPUTY WOLF, CAN WE LOWER THE LIGHTS?

16 Q. BY MR. CONN: I WOULD LIKE TO DIRECT YOUR
17 ATTENTION TO THE PHOTOGRAPH THAT HAS BEEN MARKED 1.MARY
18 AND WHICH WE HAVE DESIGNATED IN THIS PROCEEDING AS 186.

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

21 A. WE ARE LOOKING AT THE LEFT LEG OF MARY
22 MENENDEZ. WE SEE THE INDIVIDUAL PELLET DEFECTS HERE ON
23 THE UPPER INNER LEG, AND THEN THE LARGE COMBINED DEFECT
24 IN THE LOWER LEG HERE (INDICATING).

25 Q. WHEN YOU SAY UPPER INNER LEG, IS THAT
26 CONSISTENT WITH THE ILLUSTRATION THAT YOU HAVE DRAWN?
27 DO YOU KNOW IF THAT ILLUSTRATION HAS BEEN DRAWN
28 ACCURATELY AS FAR AS THE EXACT POSITIONING OF THE

1 TRAJECTORY IS CONCERNED?

2 A. NONE OF THESE CAN BE EXACTLY POSITIONED IN
3 A DIRECT TRAJECTORY, AS DR. LAWRENCE INDICATED. THE
4 REMAINING EVIDENCE DOESN'T PRESENT EXACTNESS, BUT AS I
5 HAVE INDICATED IN MY OTHER DRAWINGS, I AM TRYING TO SHOW
6 THE GENERAL DIRECTIONALITY, AND IF YOU WANT TO SAY IT
7 WAS OVER A FEW DEGREES TO THE LEFT OR A FEW MORE DEGREES
8 TO THE RIGHT, IT COULD VERY WELL POSSIBLY HAVE BEEN,
9 BECAUSE DEPENDING ON THE DIRECTION OF THE LEG AT THE
10 TIME OF THE SHOT, WOULD DETERMINE OBVIOUSLY THE
11 ORIENTATION OF THE SHOOTER AND THE LEG.

12 BUT BASICALLY IT'S THIS GENERAL DIRECTION
13 AND I BELIEVE THIS GENERAL ORIENTATION.

14 Q. ALL RIGHT.

15 I WOULD LIKE TO DIRECT YOUR ATTENTION NEXT
16 TO A SECOND PHOTOGRAPH THAT IS OF AN X RAY, TWO X RAYS
17 IN YOUR DESIGNATION, AND 168 IN OUR SEQUENCE OF
18 EXHIBITS.

19 I BELIEVE THAT DR. LAWRENCE TESTIFIED THAT
20 THIS IS AN X RAY OF THE LEFT UPPER LEG OF KITTY
21 MENENDEZ.

22 CAN YOU TELL US WHAT INFORMATION YOU RELIED
23 UPON IN THIS X RAY IN FORMING YOUR OPINION ON THE
24 ILLUSTRATION IN SHOT 8?

25 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.

26 BEYOND HIS EXPERTISE.

27 THE COURT: OVERRULED.

28 THE WITNESS: THE TESTIMONY THAT THIS LEG IS

-24918

1 CLEARLY BROKEN, AND THAT THIS WAS A SHOT WITH BUCKSHOT,
2 BECAUSE YOU CAN SEE IT IN THE X RAY, AND YOU CAN SEE
3 WHOLE PELLETS AND THEN PARTS THAT WERE OBVIOUSLY, AS DR.
4 LAWRENCE INDICATED, BROKEN BY CONTACT WITH THE BONE.

5 Q. BY MR. CONN: OKAY. I WOULD NEXT LIKE TO
6 DIRECT YOUR ATTENTION --

7 MS. ABRAMSON I OBJECT, YOUR HONOR. MISSTATES
8 DR. LAWRENCE'S TESTIMONY.

9 THE COURT: WITH THE UNDERSTANDING THIS IS THE
10 WITNESS' RECOLLECTION OF THE TESTIMONY, AND DR.
11 LAWRENCE'S TESTIMONY IS IN THE RECORD FOR THE JURY TO
12 EVALUATE, THE ANSWER WILL STAND.

13 Q. BY MR. CONN: I WOULD NEXT LIKE TO DIRECT
14 YOUR ATTENTION TO ANOTHER PHOTOGRAPH OF AN X RAY,
15 12.XRAY WHICH WE HAVE MARKED IN THIS PROCEEDING AS
16 EXHIBIT 178.

17 THIS IS AN X RAY WHICH DR. LAWRENCE
18 TESTIFIED ALSO DEPICTS THE LEFT LEG AREA OF KITTY
19 MENENDEZ, SLIGHTLY LOWER THAN THE X RAY WHICH WE HAVE
20 JUST BEEN LOOKING AT.

21 CAN YOU TELL US WHAT YOU RELIED UPON IN

22 THIS X RAY IN FORMING AN OPINION CONCERNING SHOT 8?

23 A. AGAIN, ALL THE OBSERVATIONS I SAID BEFORE.

24 I THINK HERE THIS IS A NO. 4 BUCKSHOT WOUND AND BREAKS

25 THE LEG.

26 Q. OKAY. AND FINALLY AS THE LAST IN THE

27 SEQUENCE OF PHOTOGRAPHS I WOULD LIKE TO DIRECT YOUR

28 ATTENTION TO 17.MARY WHICH WE HAVE MARKED IN OUR SERIES

-24917

1 OF EXHIBITS AS EXHIBIT 200.

2 AND CAN YOU TELL US WHAT WE ARE LOOKING AT

3 THERE?

4 A. WE ARE LOOKING AT THE -- AGAIN, THE WOUND

5 FROM A SLIGHTLY DIFFERENT ANGLE, AND YOU CAN SEE HERE

6 THE TOP -- YOU CAN'T QUITE SEE THE INDIVIDUAL PELLET

7 DEFECTS WHICH WOULD BE UP HERE AT THE TOP OF THE

8 PICTURE. YOU CAN SEE THE EXIT. YOU CAN SEE IN THIS

9 ORIENTATION IT APPEARS THROUGH THE TOP OF THE LEG AND

10 OUT THE LOWER LEFT SIDE.

11 BUT AGAIN, SINCE THE LEG IS BROKEN IT'S

12 DIFFICULT TO ORIENT IT BY THE CORONER FOR PRECISE

13 POSITIONING FOR PICTURES.

14 Q. AND CAN YOU TELL US --

15 MS. ABRAMSON: I WOULD MOVE TO STRIKE THAT LAST

16 ANSWER, YOUR HONOR. IT'S BEYOND HIS PERSONAL KNOWLEDGE

17 WHAT THE CORONER DID.

18 THE COURT: SUSTAINED. THAT PORTION OF THE
19 ANSWER REGARDING ANY DIFFICULTY THE CORONER HAD IN
20 ORIENTING THE LEG IS STRICKEN.
21 MS. ABRAMSON: THANK YOU.
22 Q. BY MR. CONN: AND CAN YOU TELL US WHAT
23 INFORMATION YOU RELIED UPON IN THIS PHOTOGRAPH IN
24 FORMING AN OPINION CONCERNING THE SHOT THAT YOU HAVE
25 DESIGNATED SHOT 8?
26 A. YOU DO HAVE A BIAS THAT HAS TO BE ACCOUNTED
27 FOR IN THE RECONSTRUCTION ACROSS THE LEG, AND I HAVE
28 ATTEMPTED TO DO THAT CONSISTENT WITH THE OTHER

-24916

1 POSITIONS, BECAUSE THIS SHOT CAN'T BE RECONSTRUCTED IN
2 ISOLATION. IT HAS TO BE PART OF THE SEQUENCE.
3 Q. ALL RIGHT. IS THAT THE LAST PHOTOGRAPH IN
4 THIS SEQUENCE OF PHOTOGRAPHS?
5 A. YES.
6 Q. ALL RIGHT.
7 IF WE CAN RAISE THE LIGHTS ONCE AGAIN, I
8 WOULD LIKE TO DIRECT YOUR ATTENTION BACK TO ILLUSTRATION
9 264, WHICH IS LABELED 8-A.
10 AND ONCE AGAIN, I WOULD LIKE TO ASK YOU
11 WHAT IS THE ESSENTIAL INFORMATION THAT YOU ARE SEEKING
12 TO COMMUNICATE THROUGH THIS ILLUSTRATION?
13 A. BASICALLY THAT THE SHOT GEOMETRY IS

14 GENERALLY IN THE LOCATION AND THE POSITION INDICATED.
15 AGAIN, THERE COULD BE SOME ANGULAR
16 DIFFERENCE, AND I CAN'T POSITION IT. WE KNOW THE WOUND
17 CROSSES THE LEG, BUT AT PRECISELY WHAT ANGLE AND
18 PRECISELY WHAT ANGLE THE SHOOTER WAS AND THE LEG WAS AT
19 THAT MOMENT, I CAN'T TELL YOU. I BELIEVE THIS IS PART
20 OF THE NEXT SEQUENCE, AS I'LL INDICATE IN THE NEXT
21 SHOTS, IN TERMS OF OCCURRING AT THIS POINT IN TIME.
22 BUT BASICALLY JUST TRYING TO INDICATE THE
23 FUNDAMENTALS OF THE GEOMETRY. I DON'T KNOW WHERE HER
24 RIGHT LEG IS. I DON'T KNOW -- I HAVE LEFT HER RIGHT
25 HAND IN THE POSITION OF THE EARLIER SHOT FOR THE REASONS
26 I HAVE INDICATED, BUT I DON'T KNOW WHERE HER LEFT HAND
27 IS.
28 Q. OKAY. LET ME SHOW YOU THE ILLUSTRATION

-24915

1 WHICH HAS BEEN MARKED 265 IN THIS PROCEEDING AND WHICH
2 IS LABELED 8-B.
3 CAN YOU TELL US WHAT WE ARE LOOKING AT IN
4 THIS ILLUSTRATION?
5 A. AGAIN, THAT'S JUST THE PREVIOUS GEOMETRY,
6 BUT FROM ANOTHER ANGLE. AGAIN, IF THE LEG IS A
7 LITTLE -- IF THE LEG ISN'T AS FAR UP THE ANGLE CHANGES.
8 Q. OKAY.
9 ARE YOU SEEKING IN THIS ILLUSTRATION TO

10 COMMUNICATE ANY INFORMATION CONCERNING THE POSITIONING
11 OF THE LEGS OF JOSE MENENDEZ?

12 A. THE LEGS HAVE NOW ASSUMED HIS -- THE FINAL
13 POSITION THAT WE SEE IN THE PHOTOGRAPHS. I HAVE ASSUMED
14 THAT THEY ENDED UP WHERE THEY ENDED UP IN THE PHOTOGRAPH
15 NOW AS A RESULT OF THE LAST SHOT.

16 Q. OKAY. IF WE CAN GO BACK AND PERHAPS I CAN
17 SHOW THE JURY THIS SIMULTANEOUSLY, THE LAST SHOT, SHOT
18 7B.

19 YOU SHOWED A SHOT TO THE LEFT LEG OF JOSE
20 MENENDEZ, AND I BELIEVE THAT YOU DEPICTED THIS AS BEING
21 SLIGHTLY DIFFERENT -- SLIGHTLY DIFFERENT THAN THE -- LET
22 ME USE THIS.

23 I BELIEVE YOU DEPICTED IT AS BEING SLIGHTLY
24 DIFFERENT IN LOCATION THAN THE SHOT WHICH WE ARE NOW
25 LOOKING AT, WHICH IS SHOT 8B.

26 ARE YOU SUGGESTING BY THAT SLIGHT
27 DIFFERENCE THAT IT WAS SHOT 8B THAT IS THE LATTER SHOT
28 THAT CAUSED THE MOVEMENT IN HIS LEG?

-24914

1 A. I AM ONLY SAYING IT'S POSSIBLE. THE LEG
2 COULD HAVE BEEN IN THE FINAL POSITION ANY TIME AFTER, IN
3 MY RECONSTRUCTION, SHOT 2.

4 SO, I JUST DON'T KNOW. SO, I DON'T WANT TO
5 HAVE -- THESE HAVE TO BE WITH MORE PRECISION THAN I CAN

6 ASSIGN. I THINK I HAVE TO ACKNOWLEDGE THAT THE LEG
7 COULD HAVE BEEN MOVED BY THAT SHOT TO THE KNEE. I
8 ACCEPT THAT. WE JUST KNOW THE FINAL POSITION.

9 Q. ALL RIGHT. ALL RIGHT.

10 LET ME NOW DIRECT YOUR ATTENTION TO ANOTHER
11 ILLUSTRATION WHICH HAS BEEN MARKED 266 IN THIS
12 PROCEEDING AND WHICH IS LABELED ON ITS SURFACE SHOT 9A.

13 AND WOULD YOU TELL US WHAT WE ARE LOOKING
14 AT IN THAT ILLUSTRATION.

15 A. IN MY RECONSTRUCTION THIS IS THE
16 APPROXIMATE GEOMETRY AND LOCATION OF WHAT I BELIEVE WAS
17 THE NINTH SHOT.

18 Q. ALL RIGHT. AND THAT IS A SHOT TO THE LOWER
19 LEFT CALF AREA OF MARY LOUISE MENENDEZ?

20 A. YES.

21 Q. ALL RIGHT.

22 I WOULD LIKE TO, IF WE COULD, DIM THE
23 LIGHTS ONCE AGAIN TO DIRECT YOUR ATTENTION TO A COUPLE
24 OF PHOTOGRAPHS, BEGINNING WITH PHOTOGRAPH 4.MARY WHICH
25 WE HAVE DESIGNATED IN THIS PROCEEDING AS EXHIBIT 189.

26 AND CAN YOU TELL US WHAT WE ARE LOOKING AT
27 IN THIS PARTICULAR PHOTOGRAPH?

28 A. YEAH. UNFORTUNATELY THIS IS THE WOUND

1 WE'RE LOOKING AT.

2 Q. AND DOES THAT SHOW ITS RELATIONSHIP TO THE
3 OTHER WOUNDS, LOOKING AT THE LEG FROM THE FRONT?

4 A. THAT'S RIGHT. WELL, LOOKING FROM THE LEG
5 AS IT'S SHOWN IN THIS X RAY.

6 Q. ALL RIGHT. LET ME DIRECT YOUR ATTENTION
7 NOW TO 15.

8 THE COURT: THIS IS THE PHOTOGRAPH YOU'RE
9 REFERRING TO?

10 THE WITNESS: YES, THIS IS THE PHOTOGRAPH OF THE
11 LEG.

12 Q. BY MR. CONN: LET ME DIRECT YOUR ATTENTION
13 TO 15.MARY, WHICH HAS BEEN DESIGNATED 198 IN THIS
14 PROCEEDING.

15 AND DOES THAT DEPICT THE WOUNDS THAT YOU
16 ARE REFERRING TO?

17 A. AND YOU CAN SEE IT'S GOT A BIAS. IF YOU
18 SAY THAT THE BIAS ON THAT LEG IS A LITTLE MORE THAN THE
19 BIAS OF MY FINGER, THE LEG COULD HAVE BEEN A LITTLE
20 FARTHER OUT. I MEAN, SMALL ANGULAR DIFFERENCES IS NOT
21 WHAT I AM TRYING TO GET AT HERE.

22 Q. AND HAVE YOU SOUGHT TO REPRESENT THAT BIAS
23 IN THE ILLUSTRATION THAT IS DESIGNATED 9.SHOT -- THAT IS
24 SHOT 9A?

25 A. NOT TERRIBLY. IT'S ALMOST A NEUTRAL SHOT
26 IN THAT REGARD. IF THERE IS A SLIGHT BIAS, THE LEG
27 COULD HAVE BEEN UP FARTHER. EITHER THE LEG IS UP
28 FARTHER OR THE SHOOTER IS A LITTLE LOWER.

1 YOU CAN SEE THIS IS FRONT TO THE BACK. IF

2 THERE IS A BIAS AT ALL, IT'S FRONT TO THE BACK

3 ELEVATING, AND THIS IS THE LOWER LEG.

4 SO, IF YOU WANT A BIAS ON A LOWER LEG FRONT

5 TO BACK ELEVATING, EITHER THE SHOOTER -- IF A PERSON

6 WERE STANDING FOR THIS WOUND, THE SHOOTER WOULD HAVE TO

7 BE ON THE FLOOR, THE WEAPON WOULD HAVE TO BE ON THE

8 FLOOR, OR THE LEG WOULD HAVE TO BE KICKED OUT OR

9 SOMETHING TO GET THAT BIAS.

10 SO, I HAVEN'T DWELLED ON THAT, BUT IT'S GOT

11 TO BE THE GEOMETRY, I BELIEVE, FOR THIS POSITION; AND

12 IT'S A BIAS OF HER HORIZONTAL AND THE SHOOTER AT

13 APPROXIMATELY THE ANGULATION SHOWN HERE.

14 Q. OKAY. ALL RIGHT.

15 IF WE CAN RAISE THE LIGHTS ONCE AGAIN, I

16 WOULD LIKE TO GET BACK TO THE ILLUSTRATION 266 AND ASK

17 YOU WHAT IS THE ESSENTIAL INFORMATION THAT YOU ARE

18 SEEKING TO COMMUNICATE IN THAT ILLUSTRATION?

19 A. JUST THAT FOR THE REASONS I HAVE INDICATED

20 ON THE ANGULATION, I BELIEVE THAT THE GEOMETRY OF THIS

21 SHOT IS VERY DIFFICULT TO WORK, UNLESS AGAIN THE

22 INDIVIDUAL IS DOWN.

23 I BELIEVE THE LEG HAS TO BE RAISED SLIGHTLY

24 TO MAKE THE ANGLES COME OUT. YOU KNOW, IF YOU THINK THE

25 KNEE WAS A LITTLE LESS ELEVATED, THAT'S NOT IMPORTANT.

26 I THINK THERE WAS SOME ELEVATION TO THE KNEE TO MAKE THE

27 BIASES COME OUT ON THE PREVIOUS SHOTS, TOO.

28 Q. AND IN REGARD TO THE POSITION OF THE RIGHT

-24911

1 LEG OF MARY LOUISE MENENDEZ, OR HER LEFT HAND, ARE YOU
2 SEEKING TO COMMUNICATE ANY INFORMATION CONCERNING THEIR
3 PRECISE LOCATION AT THE TIME THAT THIS SHOT WAS FIRED?

4 A. NO, I CAN'T TELL YOU WHERE THEY WERE. I
5 DID LEAVE AGAIN THE RIGHT HAND POSITIONED AT THE LAST
6 SHOT. I RECONSTRUCTED THAT INVOLVEMENT.

7 Q. AND SHOWING YOU EXHIBIT 267, WHICH IS
8 LABELED ON ITS SURFACE SHOT 9B, CAN YOU TELL US WHAT WE
9 ARE LOOKING AT IN THIS ILLUSTRATION?

10 A. AGAIN, IT'S ANOTHER ANGLE, ANOTHER VIEW OF
11 THE SAME SHOT, AND SMALL ANGULAR DIFFERENCES I CAN'T
12 NAIL DOWN FROM THE WOUND. I BELIEVE THIS IS THE GENERAL
13 GEOMETRY, AND I BELIEVE IT WAS IN THIS LOCATION.

14 Q. AS FAR AS THE DEPICTION OF JOSE MENENDEZ IN
15 THAT ILLUSTRATION, DOES THAT DEPICT HIS FINAL RESTING
16 PLACE?

17 A. PRETTY MUCH SCHEMATICALLY. I HAVEN'T TRIED
18 TO -- AGAIN, THAT FIGURE IS ONLY MATCHED HEIGHT-WISE TO
19 MR. MENENDEZ. IT'S NOT ATTEMPTING TO BE HIS WIDTH, AND
20 SO IT'S NOT A TORTUOUSLY ACCURATE PICTURE OF HIS
21 POSITION, BUT IT'S GENERALLY HIS POSITION, YES.

22 Q. OKAY. I'D LIKE TO DIRECT YOUR ATTENTION

23 NOW TO SHOT 10 IN THE SEQUENCE AND WHICH BEGINS WITH
24 ILLUSTRATION 268, WHICH IS DESIGNATED ON THE SURFACE AS
25 SHOT 10A.

26 CAN YOU TELL US WHAT WE ARE LOOKING AT IN
27 THAT ILLUSTRATION?

28 A. WE'RE LOOKING AT MY RECONSTRUCTION OF NOW

-24910

1 WHAT IS THE TENTH SHOT, HITTING HER LEFT LEG -- PASSING
2 THROUGH THE LEFT LEG AND IN THE GEOMETRY ROUGHLY
3 INDICATED THERE.

4 Q. OKAY. AND BEFORE I ASK YOU FURTHER
5 QUESTIONS CONCERNING THAT SHOT IN THE SEQUENCE, I WOULD
6 LIKE TO DIRECT YOUR ATTENTION TO SOME PHOTOGRAPHS AND
7 X RAYS IF WE CAN DIM THE LIGHTS.

8 DIRECTING YOUR ATTENTION TO 4.MARY, AN
9 EXHIBIT WHICH HAS BEEN MARKED 189 IN THIS PROCEEDING,
10 DID YOU RELY UPON THIS PHOTOGRAPH IN FORMING AN OPINION
11 CONCERNING SHOT 10?

12 A. YES. THIS IS THE WOUND I AM TRYING TO
13 DEPICT, THERE, WITH THE EVIDENCE IN THE BACK OF THE LEG,
14 THIS WOUND GEOMETRY AND THIS PLACEMENT OF THE LEG IN
15 TERMS OF THE WOUNDS WE SEE THERE AND THE PATH.

16 Q. DIRECTING YOUR ATTENTION TO 6.XRAY, WHICH
17 HAS BEEN DESIGNATED 172 IN OUR EXHIBIT LIST, THIS IS AN
18 X RAY WHICH DR. LAWRENCE TESTIFIED DEPICTS THE LEFT ARM

19 OF MARY LOUISE MENENDEZ.

20 CAN YOU TELL US WHAT INFORMATION, IF ANY,
21 YOU RELIED UPON IN THIS X RAY OF HER ARM IN FORMING AN
22 OPINION CONCERNING SHOT 10?

23 A. WE DO HAVE A PELLET HERE IN THE LOWER LEFT
24 FOREARM, AND I WAS RELYING ON -- LET ME PUT IT THIS WAY.
25 I NOTED THAT, AND THAT MAKES SOME POTENTIAL SENSE WITH
26 THIS SHOT.

27 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
28 TO THIS. THIS IS CONTRARY TO DR. LAWRENCE'S TESTIMONY

-24909

1 ABOUT THIS INJURY.

2 THE COURT: WELL, WE HAVEN'T REALLY HEARD THE
3 WITNESS' EXPLANATION YET, SO THE OBJECTION IS OVERRULED.

4 Q. BY MR. CONN: YES.

5 CAN YOU TELL US WHY YOU ASSOCIATE THAT
6 INJURY TO THE LEFT ARM WHICH APPEARS TO DEPICT A PELLET
7 AS DESCRIBED BY DR. LAWRENCE AS POSSIBLY ASSOCIATED WITH
8 THIS INJURY TO THE LEFT LEG OF KITTY MENENDEZ?

9 A. IF YOU LOOK AT MY SHOT 10A AND WHERE HER
10 LEFT ARM IS NOW, WAS HER LEFT ARM THERE? I CAN'T SAY
11 FOR SURE, BUT -- AND I CAN'T SAY THIS PELLET IS
12 ASSOCIATED WITH THIS PARTICULAR SHOT. IT JUST HAPPENS
13 TO WORK.

14 MS. ABRAMSON: YOUR HONOR, I AM GOING TO MOVE TO

15 STRIKE AS SPECULATION.

16 THE COURT: OVERRULED.

17 Q. BY MR. CONN: DIRECTING YOUR ATTENTION NOW
18 TO AN X RAY THAT HAS BEEN DESIGNATED 12.XRAY, WHICH HAS
19 BEEN MARKED 178 IN THIS PROCEEDING, THIS IS AN X RAY
20 WHICH DR. LAWRENCE DESCRIBED AS DEPICTING THE UPPER LEG
21 AREA OF THE LEFT LEG OF KITTY MENENDEZ.

22 CAN YOU TELL US WHAT INFORMATION YOU RELIED
23 UPON IN THIS X RAY IN FORMING AN OPINION CONCERNING A
24 SHOT THAT YOU LABELED 10?

25 A. HIS TESTIMONY AND HIS -- DID HIS FIGURES
26 GO -- ARE THEY GONE NOW, HIS LITTLE DOLLS?

27 THE COURT: THEY ARE AVAILABLE IF MR. CONN WANTS
28 TO USE THEM.

-24908

1 THE WITNESS: I AM SORRY.

2 I BELIEVE, AS HE INDICATED, THIS IS A
3 THROUGH AND THROUGH SHOT, HITS THE LOWER LEG AND THE
4 UPPER LEG, CREATES THE WOUNDS AS HE TESTIFIED TO THE
5 INSIDE OF THE KNEE, AND SO REPRESENTS A TRUE GEOMETRY
6 CONSISTENT WITH THE X RAYS, AND IT WAS NO. 4 BUCK.

7 Q. BY MR. CONN: AND IS THAT ILLUSTRATION
8 WHICH YOU HAVE PREPARED, WHICH HAS BEEN MARKED SHOT 10A,
9 ALSO CONSISTENT WITH THE TRAJECTORY, AS YOU UNDERSTOOD
10 IT AND AS DESCRIBED BY DR. LAWRENCE IN HIS DOLL THAT HE

11 PREPARED?

12 A. YES.

13 Q. AND DIRECTING YOUR ATTENTION TO ONE FINAL

14 X RAY, 13.XRAY WHICH HAS BEEN MARKED IN THIS PROCEEDING

15 AS EXHIBIT 179, THIS IS AN X RAY WHICH I BELIEVE WAS

16 TESTIFIED TO BY DR. LAWRENCE AS DEPICTING THE BODY OF

17 MARY LOUISE MENENDEZ.

18 CAN YOU TELL US WHAT INFORMATION, IF ANY,

19 YOU RELIED UPON ON THIS X RAY?

20 A. I WOULDN'T CALL IT RELIANCE. AGAIN, WE

21 HAVE A COUPLE OF PELLETS HERE THAT ARE DISTINCT, ARE

22 SEPARATED SIGNIFICANTLY GEOMETRICALLY. THEY COULD, AS

23 DR. LAWRENCE TESTIFIED, MOVE IN THE CHEST CAVITY FOR

24 REASONS HE INDICATED. HE IS MORE QUALIFIED THAN I.

25 BUT WE HAVE A GEOMETRY IN MY RECONSTRUCTION

26 WHERE IT WORKS IN TERMS OF STRAY PELLETING IN THE LOWER

27 EXTREMITY OF MARY MENENDEZ.

28 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT

-24907

1 TO THAT AS BEYOND HIS COMPETENCE, SPECULATION.

2 THE COURT: OVERRULED. BUT WE NEED A

3 CLARIFICATION BY WHAT THE WITNESS MEANS BY "IT WORKS".

4 Q. BY MR. CONN: YES. CAN YOU CLARIFY THAT

5 FOR US, PLEASE?

6 A. GEOMETRICALLY. NO OTHER BASIS THAN SHOT

7 TRAVEL AND DIRECTION.

8 Q. WOULD THAT STRIKING OF THE BODY IN THAT
9 PARTICULAR PLACE BE CONSISTENT WITH THE TRAJECTORY THAT
10 YOU HAVE ILLUSTRATED IN SHOT 10A?

11 MS. ABRAMSON: YOUR HONOR, I AM STILL GOING TO
12 OBJECT. I DON'T THINK HE'S QUALIFIED AS A BALLISTICS
13 EXPERT.

14 THE COURT: OVERRULED.

15 THE WITNESS: IT'S CONSISTENT WITH THE GENERAL
16 AREA, RECOGNIZING, AS DR. LAWRENCE TESTIFIED, AND IT'S
17 WELL-KNOWN, ONCE PELLETS STRIKE BONES THEY CAN BE
18 DEFLECTED.

19 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
20 TO THE WITNESS' ANSWER, CONCLUSION AS TO WHAT'S
21 WELL-KNOWN.

22 THE COURT: ALL RIGHT. THE REFERENCE TO WHAT IS
23 WELL-KNOWN IS STRICKEN. THE REST OF THE ANSWER WILL
24 STAND.

25 Q. BY MR. CONN: OKAY.

26 AND DID YOU HEAR DR. LAWRENCE TESTIFY TO
27 THE FACT THAT WHEN PELLETS STRIKE BONE THEY CAN BE
28 DEFLECTED?

-24906

1 A. YES.

2 Q. AND IS THAT AN OPINION THAT YOU

3 INCORPORATED IN YOUR ILLUSTRATIONS AS YOU SIT THERE

4 TODAY?

5 A. IT'S CERTAINLY A FACT I KEPT IN MIND, YES.

6 Q. ALL RIGHT.

7 ONCE AGAIN IF WE COULD RAISE THE LIGHTS, I

8 WOULD LIKE TO ASK YOU FURTHER QUESTIONS CONCERNING THE

9 SHOT THAT IS ILLUSTRATED IN EXHIBIT 268, SHOT 10A.

10 YOU INDICATED THAT YOU HAVE -- YOU

11 CONCLUDED THAT THIS WAS THE THIRD IN THE SERIES OF THREE

12 WOUNDS TO THE LEFT LEG AREA OF MARY LOUISE MENENDEZ.

13 CAN YOU TELL US WHY YOU DESIGNATED THIS

14 PARTICULAR ONE WAS THE LAST IN THE SERIES?

15 A. FOR THE REASONS -- IF WE RETURN TO THE

16 EARLIER X RAY, FOR THE REASONS I THINK DR. LAWRENCE

17 INDICATED WHEN WE LOOKED AT IT.

18 Q. OKAY.

19 A. IF YOU RECOLLECT THE PREVIOUS X RAY, THE

20 LEG IS BROKEN EXTENSIVELY AROUND THE KNEE, AND I THINK

21 AS THE CORONER ALSO INDICATED -- I MEAN, THE KNEE IS

22 BROKEN.

23 THIS POSITION, THIS ANGULATION REQUIRES THE

24 KNEE TO BE IN THE AIR TO GET THIS ANGLE OF THE SHOT

25 PASSING THROUGH THE BACK. I THINK IT WOULD BE A MORE

26 DIFFICULT ASSUMPTION TO MAKE THAT AFTER ALL THAT

27 STRUCTURAL DAMAGE THE KNEE WOULD STAY UPRIGHT IN THIS

28 POSITION.

1 Q. AND LET ME DIRECT YOUR ATTENTION NOW TO
2 ANOTHER ILLUSTRATION, TO 69 WHICH HAS BEEN MARKED --
3 WHICH APPEARS ON THE SURFACE TO BE DESIGNATED SHOT 10B.
4 CAN YOU TELL US WHAT THAT ILLUSTRATION
5 DEPICTS?

6 A. THIS IS JUST THE GEOMETRY OF SHOT 10B FROM
7 ANOTHER ANGLE.

8 Q. AND WHAT IS THE ESSENTIAL INFORMATION THAT
9 YOU ARE SEEKING TO CONVEY IN THIS ILLUSTRATION?

10 A. AGAIN, THE GENERAL PHYSICAL DIRECTION I
11 BELIEVE THE SHOT OCCURRED AND THE GENERAL POSITIONING.

12 OBVIOUSLY I AM NOT GOING TO FIGHT OVER SOME
13 ANGULATION, BECAUSE IT ALL DEPENDS ON IF YOU MOVE THE
14 LEG AROUND. THE SHOT -- IT ULTIMATELY MOVED AROUND.

15 BUT I BELIEVE THE PREVIOUS TWO SHOTS AND
16 THIS SHOT ALL WORK FROM THIS GENERAL LEG POSITION,
17 SLIGHTLY RAISED, FRONT TO HER ON HER BACK. IF YOU TRY
18 TO MAKE THESE SHOTS WORK WITH HER ON HER RIGHT --

19 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT
20 AT THIS POINT. THE ANSWER IS NO LONGER RESPONSIVE.

21 THE COURT: ALL RIGHT. IT SEEMS TO BE A LITTLE
22 BIT BEYOND THE QUESTION.

23 NEXT QUESTION, PLEASE.

24 Q. BY MR. CONN: WOULD THIS PARTICULAR SHOT BE
25 CONSISTENT WITH THE BODY OF MARY LOUISE MENENDEZ TURNED
26 OVER ON ITS RIGHT AT THE TIME OF THE FIRING OF THIS
27 SHOT?

-24904

1 TORTUOUS SHOT. THE SHOOTER HAS TO GET LOW OR IT JUST --
2 YOU START THINKING ABOUT THE POTENTIAL GEOMETRIES OF
3 THAT, ESPECIALLY WITH NOW THERE IS A COFFEE TABLE THAT'S
4 GOING TO PRESENT SOME REAL GEOMETRIC PROBLEMS TO THE
5 SHOT IF SHE IS NOT ON THE BACK.

6 SO, THESE THREE SHOTS WORK AGAIN FROM THE
7 GEOMETRY, GIVEN THE ROOM AND WHERE SHE IS. IF SHE'S
8 LYING ON HER BACK, IF SHE IS LYING ON HER RIGHT, THESE
9 ARE MUCH MORE PROBLEMATICAL SHOTS TO MAKE.

10 Q. ALL RIGHT.

11 LET ME DIRECT YOUR ATTENTION NOW TO ANOTHER
12 ILLUSTRATION WHICH HAS BEEN MARKED 270 IN THIS
13 PROCEEDING AND WHICH IS DESIGNATED ON ITS FACE AS SHOT
14 11A.

15 NOW, WOULD YOU TELL US WHAT WE ARE LOOKING
16 AT IN THIS ILLUSTRATION?

17 A. YES. THIS IS MY RECONSTRUCTION OF THE
18 ELEVENTH SHOT.

19 Q. AND WHAT DOES THIS ILLUSTRATION PURPORT TO
20 REFLECT?

21 A. THE GENERAL GEOMETRY. THE SHOT ACTUALLY
22 STRIKES THE RIGHT SIDE OF HER FACE, AND I HAVEN'T SHOWN
23 THE LINE EXACTLY ON THE RIGHT SIDE OF HER FACE, BUT THIS

24 IS THE GENERAL DIRECTION THAT I BELIEVE THE SHOT
25 OCCURRED FROM. IT STRIKES HER LEFT SHOULDER, AND I
26 BELIEVE THE LEFT SIDE OF HER FACE.
27 Q. OKAY. ALL RIGHT.
28 IF WE CAN DIM THE LIGHTS ONCE AGAIN, I

-24903

1 WOULD LIKE TO DIRECT YOUR ATTENTION TO SOME PHOTOGRAPHS,
2 BEGINNING WITH 3.MARY, WHICH WE HAVE DESIGNATED IN THIS
3 PROCEEDING AS 188, AND CAN YOU TELL US WHAT WE ARE
4 LOOKING AT THERE.

5 A. THIS IS THE SHOT TO HER SHOULDER, THE FIRST
6 POINT IN MY RECONSTRUCTION THAT IS STRUCK BY THIS SHOT.
7 THIS SHOT IS BIRD SHOT. YOU CAN ACTUALLY SEE A LITTLE
8 BIRD SHOT THERE.

9 Q. OKAY.

10 A. AND THE X RAYS SHOWED BIRD SHOT.

11 Q. OKAY. I WOULD LIKE TO ASK YOU WHAT IS THE
12 ESSENTIAL INFORMATION THAT YOU RELIED UPON IN THIS
13 ILLUSTRATION IN ASSISTING YOU IN FORMING AN OPINION
14 CONCERNING SHOT 11?

15 A. THE POSITION OF THE WOUND RELATIVE TO THE
16 FACE WOUND, AND ALSO THE TYPE OF AMMUNITION THAT WAS
17 USED TO CREATE IT.

18 Q. DIRECTING YOUR ATTENTION NOW TO 4.XRAY, THE
19 PHOTOGRAPH OF AN X RAY THAT WE HAVE MARKED AS 170 IN

20 THIS PROCEEDING, THIS IS A PHOTOGRAPH WHICH DR. LAWRENCE
21 SAID DEPICTS THE LEFT SHOULDER AREA OF MARY LOUISE
22 MENENDEZ.

23 CAN YOU TELL US WHAT INFORMATION YOU RELIED
24 UPON IN THIS PHOTOGRAPH IN ASSISTING YOU IN FORMING AN
25 OPINION CONCERNING SHOT 11?

26 A. YES. IT'S THE LITTLE DOTS ARE LEAD BIRD
27 SHOT, AND THEREFORE A RECONSTRUCTION OF THIS WOUND CAN'T
28 ASSOCIATE IT WITH ANY OF THE BUCKSHOT WOUNDS, BECAUSE

-24902

1 NOW WE HAVE SWITCHED AMMUNITION, SO --

2 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT'S
3 SPECULATION ON THE PART OF THE WITNESS. MOVE TO STRIKE.

4 THE COURT: ALL RIGHT. FROM THE WORD "NOW"
5 INCLUDING "WE HAVE SWITCHED AMMUNITION," THAT ENTIRE
6 PORTION OF THE ANSWER IS STRICKEN.

7 Q. BY MR. CONN: OKAY. DOES THIS AMMUNITION
8 THAT IS DEPICTED IN THIS PARTICULAR X RAY APPEAR TO BE A
9 DIFFERENT TYPE OF AMMUNITION FROM THE AMMUNITION THAT
10 YOU HAVE BEEN DESCRIBING IN ALL OF THE PREVIOUS SHOTS
11 THAT WE HAVE SEEN SO FAR?

12 A. YES.

13 Q. OKAY. AND WOULD I LIKE TO DIRECT YOUR
14 ATTENTION NOW TO ANOTHER X RAY, 8.XRAY, WHICH HAS BEEN
15 MARKED IN THIS PROCEEDING AS EXHIBIT 174. THIS IS AN X

16 RAY WHICH DR. LAWRENCE TESTIFIED DEPICTS THE HEAD AREA
17 AND THE SKULL OF MARY LOUISE MENENDEZ.

18 CAN YOU TELL US WHAT INFORMATION YOU RELIED
19 UPON IN THIS X RAY IN FORMING AN OPINION CONCERNING SHOT
20 11?

21 A. YES. YOU CAN SEE X RAY INDICATIONS OVER
22 HERE ON THE LEFT SIDE OF THE FACE CONSISTENT WITH THE
23 SIZE AND DISPERSION OF THE INDICATIONS WE SAW ON THE
24 PRECEDING X RAY.

25 Q. OKAY.

26 AND DIRECTING YOUR ATTENTION TO PHOTOGRAPH
27 11.MARY, WHICH HAS BEEN MARKED IN THIS PROCEEDING AS
28 EXHIBIT 195, CAN YOU TELL US WHAT INFORMATION YOU RELIED

-24901

1 UPON IN THIS PHOTOGRAPH TO ASSIST YOU IN FORMING AN
2 OPINION CONCERNING SHOT 11?

3 A. YES. THIS IS HER LEFT FACE. YOU CAN JUST
4 SEE THE SHOULDER WOUND HERE DOWN IN THIS PICTURE IN THE
5 LOWER LEFT. BUT YOU CAN SEE THE WOUND CREATED AROUND
6 HER LEFT EAR. YOU CAN ACTUALLY PHYSICALLY SEE A PELLET
7 THERE IN THE PICTURE, AND YOU CAN SEE THE ELONGATED
8 TRAVEL OF SOME OF THE PELLETS.

9 Q. OKAY. WHEN YOU TALK ABOUT THE PHYSICAL
10 PELLET, ARE YOU REFERRING, FOR EXAMPLE, TO THAT LITTLE
11 BLACK OBJECT?

12 A. RIGHT THERE (INDICATING).

13 Q. AND IS THAT A PIECE OF BIRD SHOT?

14 A. YES. I MEAN, I DIDN'T PULL IT OUT, BUT IT
15 CLEARLY LOOKS LIKE IT.

16 Q. WHEN YOU SPEAK ABOUT THE ELONGATED NATURE
17 OF THE WOUNDS, WHAT WOUNDS ARE YOU REFERRING TO
18 SPECIFICALLY?

19 A. THESE DEFECTS (INDICATING).

20 Q. OKAY. AND YOU INDICATED THAT YOU CAN SEE
21 THE SHOULDER AREA IN THAT PHOTOGRAPH. BY MANIPULATING
22 THAT PHOTOGRAPH WITH THAT LITTLE COMPUTER HAND ON THE
23 SCREEN, CAN YOU --

24 A. NO, UNFORTUNATELY. THERE JUST ISN'T ENOUGH
25 AND YOU CAN'T SEE IT. IT'S TOO DARK ON YOURS.

26 Q. ALL RIGHT.

27 DOES THAT COMPLETE THE SEQUENCE OF
28 PHOTOGRAPHS FOR THIS PARTICULAR SHOT?

-24900

1 A. YES.

2 Q. ALL RIGHT. IF WE CAN RAISE THE LIGHTS ONCE
3 AGAIN.

4 AND DIRECTING YOUR ATTENTION TO
5 ILLUSTRATION 11A, CAN YOU TELL US WHAT IS THE ESSENTIAL
6 INFORMATION THAT YOU ARE SEEKING TO CONVEY IN THAT
7 ILLUSTRATION?

8 A. THAT THE GENERAL GEOMETRY OF THIS SHOT,
9 THAT THE INDICATIONS ON THE X RAY WOULD INDICATE A
10 DIFFERENT AMMUNITION, DIFFERENT PELLET SIZE, AND THAT
11 AGAIN THIS GEOMETRY WORKS IN TERMS OF ORIENTATION OF THE
12 ANGLE, THE SHOULDER, THE RIGHT SIDE OF THE FACE NOW
13 AND --

14 Q. THE LEFT SIDE OF THE FACE, YOU MEAN?

15 A. EXCUSE ME, LEFT SIDE OF THE FACE, WHICH
16 WOULDN'T HAVE WORKED IN THE PREVIOUS GEOMETRY.

17 IN OTHER WORDS, WHEN SHE WAS ON HER BACK
18 THIS IS A VERY DIFFICULT SHOT TO DO, BUT IT COULD BE
19 DONE IF SHE IS ROLLED OVER ON HER RIGHT SIDE.

20 Q. DIRECTING YOUR ATTENTION NOW TO ANOTHER
21 ILLUSTRATION WHICH IS INDICATED ON ITS SURFACE AS SHOT
22 11B, WHICH HAS BEEN MARKED IN THIS PROCEEDING AS 271,
23 CAN YOU TELL US WHAT WE ARE LOOKING AT IN THIS
24 ILLUSTRATION?

25 A. AGAIN, IT'S THE SAME GEOMETRY FROM ANOTHER
26 ANGLE. AND AGAIN, DEPENDING ON HER PRECISE POSITION THE
27 ANGULATION WOULD CHANGE, BUT BASICALLY I BELIEVE IT'S
28 AGAIN FROM THE DIRECTION OF -- FROM HER FEET TOWARDS HER

-24899

1 HEAD, STRIKING THE SHOULDER AND THEN THE LEFT SIDE OF
2 HER FACE, AND THIS GENERAL ANGLE AND THIS GENERAL
3 POSITION AGAIN GEOMETRICALLY WORKS AS A RATIONAL SHOT.

4 Q. OKAY. AND CAN YOU TELL US WHY YOU DEPICTED
5 THIS PARTICULAR SHOT, SHOT 11, AS BEING THE ELEVENTH IN
6 THIS SERIES OF 12 THAT WE HAVE BEEN WATCHING SO FAR?

7 A. THIS ONE IS DELIVERED WHEN SHE, I BELIEVE,
8 HAS TO BE ON HER RIGHT SIDE, BECAUSE SHE IS GOING TO BE
9 HIT ON HER LEFT SIDE.

10 IF YOU LOOK AT THE OVER-ALL FINAL SCENE
11 PICTURES, I THINK IT'S PRETTY CLEAR SHE WAS IN THIS
12 POSITION WHEN SHE GOT THESE SHOTS, AND IT ALSO WORKS FOR
13 THE FINAL SHOT.

14 Q. AND WHEN YOU SAY "WHEN SHE GOT THESE
15 SHOTS," ARE YOU REFERRING TO THE TWO FINAL SHOTS, THAT
16 IS SHOT 11 AND SHOT 12?

17 A. YES.

18 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.
19 THIS IS SPECULATION, AND I WOULD OBJECT TO THE WITNESS
20 CONSTANTLY SAYING "IT WORKS "AS A CONCLUSION ON HIS
21 PART.

22 THE COURT: OBJECTION SUSTAINED.

23 BUT AGAIN, WHEN YOU USE THE PHRASE "IT
24 WORKS," JUST EXPLAIN WHAT YOU MEAN.

25 THE WITNESS: OKAY.

26 THE COURT: WELL, WHAT DO YOU MEAN WHEN YOU USE
27 THAT PHRASE?

28 THE WITNESS: IF I COULD SHOW COUCH -- 1.COUCH I

1 CAN EXPLAIN WHAT --

2 THE COURT: NO. JUST GENERALLY, WHAT DO YOU MEAN
3 WHEN YOU USE THE PHRASE "IT WORKS"?

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

5 WHEN I SAY IT WORKS, GEOMETRICALLY IT LINES
6 UP. IT PUTS A SHOOTER IN A POSITION HE COULD REACT TO
7 THE RECOIL OF A .12-GAUGE, AND IT MAKES GEOMETRIC SENSE.

8 MS. ABRAMSON: YOUR HONOR, I AM GOING TO MOVE TO
9 STRIKE THEN WITH REGARD TO HOW SHOOTERS REACT TO RECOIL
10 AS BEYOND HIS KNOWLEDGE OR EXPERTISE.

11 THE COURT: OVERRULED. BUT THERE WILL HAVE TO BE
12 SOME EXPLANATION AS TO WHAT HE MEANS BY THAT.

13 Q. BY MR. CONN: YES.

14 ONCE AGAIN, COULD YOU EXPLAIN THE TERM
15 "MAKES GEOMETRICAL SENSE" TO US.

16 THE COURT: NO. I MEAN REACTION, RECOIL
17 REACTION. WHAT DOES HE MEAN BY THAT?

18 Q. BY MR. CONN: COULD YOU EXPLAIN THAT TO US,
19 PLEASE.

20 A. YES. THE .12-GAUGE SHOTGUN SHOOTS A
21 ONE-OUNCE LEAD LOAD. THAT MEANS THAT THERE IS
22 SIGNIFICANT IMPULSE TO THE SHOOTER WHEN HE SHOOTS A
23 .12-GAUGE AS OPPOSED TO A MUCH LOWER CALIBER WEAPON
24 WHICH HAS MUCH LESS ENERGY AND MOMENTUM LEAVING THE
25 BARREL.

26 THUS, WHEN A PERSON SHOOTS A .12-GAUGE TO
27 SEND ONE OUNCE OF LEAD DOWN RANGE AT ABOUT 1200 FEET PER
28 SECOND, THAT MOMENTUM HAS TO BE REACTED SOMEWHERE.

1 NEWTON'S LAWS WILL BE SATISFIED.

2 THAT HAS TO BE REACTED BY THE SHOOTER,
3 TYPICALLY WITH HIS SHOULDER. ANYBODY WHO HAS FIRED A 12
4 GAUGE KNOWS THE IMPULSE IS SUBSTANTIALLY GREATER THAN
5 LIGHTER CALIBER WEAPONS, WHICH DON'T PRODUCE THE
6 MOMENTUM AND THE ENERGY IN THEIR PROJECTILES.

7 Q. AND DIRECTING YOUR ATTENTION TO A
8 PHOTOGRAPH WHICH HAS BEEN MARKED IN THIS PROCEEDING AS
9 201 AND WHICH YOU HAVE LABELED 1.COUCH.

10 A. WE CAN'T IT SEE IT ON 1.COUCH. IT'S GOT TO
11 BE 2.COUCH.

12 Q. 2.COUCH HAS ALSO BEEN --

13 A. WE'LL HAVE TO DIM THE LIGHTS FOR THIS TO BE
14 SEEN.

15 Q. BY MR. CONN: COULD YOU DIM THE LIGHTS,
16 PLEASE.

17 DIRECTING YOUR ATTENTION TO 2.COUCH, THAT
18 IS THE -- THAT IS A PHOTOGRAPH THAT WE HAVE --

19 MS. ABRAMSON: YOUR HONOR, I AM OBJECTING TO
20 THESE ENLARGEMENTS BEING MADE, SINCE THE COURT RULED
21 THAT THAT CAN'T BE DONE BY THE WITNESS.

22 THE WITNESS: EXCUSE ME.

23 THE COURT: LET'S STICK TO WHAT WAS PROVIDED TO
24 COUNSEL.

25 THE WITNESS: OKAY.

26 Q. BY MR. CONN: DIRECTING YOUR ATTENTION TO
27 2.COUCH, WHICH IS THE SAME AS THE PHOTOGRAPH WHICH HAS
28 BEEN MARKED IN THIS PROCEEDING AS EXHIBIT 7, CAN YOU

-24896

1 TELL US IF YOU RELIED ON THAT PHOTOGRAPH IN FORMING A
2 CONCLUSION CONCERNING THE SHOTS IN THIS CASE.

3 A. YES.

4 Q. AND WHAT DID YOU RELY UPON IN FORMING YOUR
5 OPINION?

6 A. THIS IS THE WOUND TO THE LEFT SIDE OF THE
7 FACE I TALKED ABOUT EARLIER.

8 Q. AND BY THIS WOUND, IF YOU CAN DESCRIBE IT
9 FURTHER.

10 A. RIGHT THERE, THE PATCH OF BLOOD YOU SEE
11 HERE (INDICATING).

12 MS. ABRAMSON: OBJECTION, YOUR HONOR, TO HIS
13 TESTIFYING IT IS A PATCH OF BLOOD.

14 THE COURT: OVERRULED.

15 Q. BY MR. CONN: IS THAT A WOUND TO THE
16 VICINITY OF THE LEFT EAR?

17 A. YES.

18 Q. OKAY.

19 A. AND YOU CAN SEE THE RIVULET GOING DOWNHILL,
20 AND THERE IS ALSO ONE THERE FROM THOSE WOUNDS.

21 Q. AND HOW DID THAT ASSIST YOU IN FORMING AN

22 OPINION?

23 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT

24 TO THAT AS WELL AS BEYOND HIS EXPERTISE.

25 THE COURT: OKAY. THE REFERENCE TO "FROM THOSE

26 WOUNDS" IS STRICKEN AS BEYOND THE WITNESS' EXPERTISE.

27 Q. BY MR. CONN: OKAY.

28 THE COURT: BY THE WAY, LADIES AND GENTLEMEN,

-24895

1 THERE WAS AN OBJECTION EARLIER TO THE WITNESS ENLARGING
2 CERTAIN OF THESE PHOTOGRAPHS OR FOCUSING ON A PARTICULAR
3 PORTION OF THE PHOTOGRAPH AND ENLARGING IT, AND I
4 SUSTAINED THE OBJECTION.

5 THE REASON FOR THAT IS THAT THE PROSECUTION
6 PROVIDED TO THE DEFENSE AND TO THE COURT A CERTAIN
7 SERIES OF EXHIBITS, CERTAIN PHOTOGRAPHS THAT WILL THEN
8 BE GIVEN TO YOU DURING YOUR DELIBERATIONS, AND WE WANT
9 YOU TO HAVE IN THE JURY ROOM THE SAME EXHIBITS AS
10 REFERRED TO HERE IN COURT, AND BY ENLARGING SOMETHING
11 THAT CREATES A DIFFERENT EXHIBIT THAN THE ONE THAT YOU
12 WILL HAVE IN THE JURY ROOM, SINCE THEY HAVEN'T PREPARED
13 AN ENLARGEMENT OF THAT IN HARD FORM.

14 SO, WE HAVE THESE PHOTOGRAPHS. WHEN YOU
15 HEAR THE PROSECUTOR REFERRING TO EXHIBIT NUMBERS, HE IS
16 REFERRING TO THE ACTUAL PHOTOGRAPH THAT WE HAVE AS AN
17 EXHIBIT HERE THAT WILL BE AVAILABLE.

18 SO, YOU AREN'T GOING TO HAVE THIS TYPE OF
19 DISPLAY DURING DELIBERATIONS, YOU WILL ACTUALLY HAVE THE
20 ACTUAL PHOTOGRAPHS.

21 Q. BY MR. CONN: AND DID YOU RELY UPON THIS
22 FINAL RESTING PLACE AS OBSERVED BY THE POLICE IN FORMING
23 AN OPINION CONCERNING THE SEQUENCE OF SHOTS THAT WERE
24 FIRED IN THIS CASE?

25 A. YES. ESSENTIALLY I HAVE SHOWN HER IN THIS
26 GEOMETRIC POSITION IN SHOT 11.

27 Q. ALL RIGHT. ONCE AGAIN I WOULD LIKE TO NOW
28 DIRECT YOUR ATTENTION TO A FINAL SEQUENCE OF PHOTOS AND

-24894

1 ILLUSTRATIONS.

2 FIRST DIRECTING YOUR ATTENTION TO AN
3 ILLUSTRATION WHICH IS DESIGNATED 12A, WHICH HAS BEEN
4 MARKED IN THIS PROCEEDING AS 272, CAN YOU TELL US WHAT
5 WE ARE LOOKING AT IN THAT EXHIBIT 272?

6 A. YES. THIS IS MY --

7 Q. PERHAPS WE CAN TURN THE LIGHTS ON
8 MOMENTARILY FOR THIS.

9 A. THIS IS THE RECONSTRUCTION, MY
10 RECONSTRUCTION OF THE FINAL SHOT DELIVERED AS A CONTACT
11 SHOT TO HER LEFT CHEEK, AS DR. LAWRENCE INDICATED.

12 Q. OKAY. THIS MAY BE DIFFICULT FOR THE JURY
13 TO SEE. LET ME GO OVER AND POINT.

14 DID YOU DESIGNATE THE TRAJECTORY IN THIS
15 PARTICULAR SHOT AS CONSISTING OF THIS GREEN BAR-LIKE
16 FIGURE STANDING DOWN TOWARD THE HEAD OF THE VICTIM?

17 A. CORRECT.

18 Q. AND LET ME PUT UP AT THIS TIME THE LAST
19 ONE, WHICH MIGHT BE BETTER FOR THE JURY, ILLUSTRATION
20 12-B WHICH HAS BEEN DESIGNATED IN THIS PROCEEDING AS
21 273.

22 CAN YOU TELL US WHAT WE ARE LOOKING AT IN
23 THIS ILLUSTRATION?

24 A. AGAIN, IT'S JUST ANOTHER ANGLE ON THE SAME
25 SHOT, AND AGAIN, THE -- THE EXACT ANGLE OF THE WEAPON I
26 CAN'T TELL YOU PRECISELY FROM JUST A CONTACT WOUND RING.
27 IT WAS DELIVERED TO HER LEFT CHEEK, AND SINCE IT WAS A
28 CONTACT WOUND, THE WEAPON HAD TO BE PROXIMATE TO HER

-24893

1 CHEEK, AND THEN THE EXACT ANGLE WAS AS BEST I CAN
2 RECONSTRUCT HERE, BUT DON'T GET HUNG UP ON THAT.

3 Q. ALL RIGHT. IF WE CAN LOWER THE LIGHTS ONCE
4 AGAIN, I WOULD LIKE TO DIRECT YOUR ATTENTION TO FIRST
5 5.XRAY, WHICH HAS BEEN DESIGNATED IN THIS PROCEEDING AS
6 171, AND THIS WAS DESCRIBED BY DR. LAWRENCE AS AN X RAY
7 DEPICTING THE HEAD AREA OF MARY LOUISE MENENDEZ.

8 CAN YOU TELL US WHAT INFORMATION YOU RELIED
9 UPON IN THIS X RAY IN FORMING AN OPINION CONCERNING SHOT

10 12?

11 A. YES. FIRST OF ALL, WE HAVE NUMEROUS
12 INDICATIONS OF THE DIFFERENT SHOT DIAMETER. NOW YOU CAN
13 SEE IN THE SAME X RAY, NO. 4 AND THE BIRD SHOT COMPARED.

14 Q. DIRECTING YOUR ATTENTION NOW TO A SHOT THAT
15 IS 8.XRAY, WHICH HAS BEEN DESIGNATED IN THE PROCEEDING
16 AS EXHIBIT 174 AND WHICH DR. LAWRENCE DESCRIBED AS A
17 FRONTAL VIEW OF THE HEAD OF MARY LOUISE MENENDEZ, CAN
18 YOU TELL US WHAT INFORMATION YOU RELIED UPON IN THIS
19 X RAY IN FORMING AN OPINION CONCERNING SHOT 12?

20 A. AGAIN, YOU SEE THE SMALL OPAQUE SHOT
21 DISPERSED THROUGHOUT NOW THE SKULL IN THIS SHOT.

22 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT'S
23 BEYOND HIS EXPERTISE, AND IT'S NOT APPARENT ON THE
24 X RAY, AND IT WAS NOT TESTIFIED TO BY DR. LAWRENCE, THE
25 "DISBURSED THROUGHOUT THE SKULL."

26 THE COURT: OVERRULED. THE ANSWER WILL STAND.

27 Q. BY MR. CONN: DIRECTING YOUR ATTENTION
28 FINALLY TO ONE MORE PHOTOGRAPH, 12.MARY, WHICH HAS BEEN

-24892

1 DESIGNATED 196 IN THIS PROCEEDING, CAN YOU TELL US WHAT
2 INFORMATION YOU RELIED UPON IN THIS PHOTOGRAPH IN
3 FORMING AN OPINION CONCERNING SHOT 12.

4 A. YES. HERE'S THE WOUND LOCATION, AND THERE
5 HAS BEEN AMPLE MEDICAL TESTIMONY ON THE NATURE OF THAT

6 WOUND, THAT IT'S A CONTACT WOUND, AND I HAVE JUST

7 INCORPORATED THAT IN MY RECONSTRUCTION.

8 Q. ALL RIGHT. IF WE CAN RAISE THE LIGHTS, I

9 HAVE JUST A COUPLE MORE QUESTIONS CONCERNING SHOT 12.

10 IN THIS ILLUSTRATION YOU HAVE DEPICTED THE

11 BODY OF MARY LOUISE MENENDEZ AS LYING ON THE FLOOR AT

12 THE TIME OF THIS SHOT.

13 CAN YOU TELL US WHAT IS THE ESSENTIAL

14 INFORMATION THAT YOU ARE SEEKING TO ILLUSTRATE HERE AS

15 OPPOSED TO THE NON-ESSENTIAL OR VARIABLE INFORMATION?

16 A. AGAIN, JUST WHERE I BELIEVE THE GENERAL

17 POSITION OR GEOMETRY OF THE SHOT WAS. IT OCCURRED TO

18 HER LEFT SIDE; SO, THEREFORE I BELIEVE NOW WE SEE HERE

19 IN THE FINAL POSITION AT THE END OF THE SEQUENCE IN MY

20 RECONSTRUCTION ON HER RIGHT SIDE, AND IT GENERALLY

21 OCCURRED IN THIS ORIENTATION, BUT I CAN'T PRECISELY

22 POSITION THE ANGLE OF THE WEAPON AT THE TIME OF

23 DISCHARGE OTHER THAN IT WAS OBVIOUSLY VERY CLOSE.

24 Q. CAN YOU TELL US WHY YOU DEPICTED THE BODY

25 OF MARY LOUISE MENENDEZ AS LYING ON THE FLOOR AT THE

26 TIME THAT THIS SHOT WAS FIRED?

27 A. AGAIN, IT'S -- THIS IS HER FINAL REST

28 POSITION, APPROXIMATELY, SCHEMATICALLY ILLUSTRATED BY MY

1 FIGURE HERE. AND SO I HAVE POSITIONED HER LIMBS,

2 ROUGHLY, APPROXIMATELY TO HER FINAL REST POSITION. I

3 BELIEVE THIS IS THE LAST SHOT.

4 MR. CONN: THANK YOU, DR. MC CARTHY.

5 I HAVE NO FURTHER QUESTIONS AT THIS TIME.

6 THE COURT: OKAY. WE WILL TAKE OUR RECESS AND

7 THEN START UP WITH CROSS-EXAMINATION. WE WILL RESUME AT

8 TEN MINUTES TO THE HOUR.

9 IT'S NOW APPROXIMATELY 10:32, AND WE WILL

10 RESUME AT TEN MINUTES TO THE HOUR.

11

12 (A RECESS WAS TAKEN FROM

13 10:32 A.M. TO 10:55 A.M.)

40646

1 THE COURT: OKAY.

2 (THE FOLLOWING PROCEEDINGS WERE

3 HELD IN OPEN COURT, OUT OF THE

4 PRESENCE OF THE JURY:)

5

6 THE COURT: IN THE TRIAL, THE WITNESS IS ON

7 THE WITNESS STAND. EVERYONE IS PRESENT. PEOPLE

8 HAVE COMPLETED THEIR DIRECT EXAMINATION. SO WE'LL

9 NOW GO TO CROSS-EXAMINATION.

10 WE'LL HAVE THE JURY COME OUT, PLEASE.

11 (THE JURY ENTERED THE COURTROOM

12 AND THE FOLLOWING PROCEEDINGS

13 WERE HELD:)

14

15 THE COURT: THE JURY IS BACK. WE'LL NOW

16 RESUME WITH CROSS-EXAMINATION.

17 MR. GESSLER: THANK YOU, YOUR HONOR.

18

19 CROSS-EXAMINATION

20 BY MR. GESSLER:

21 Q GOOD MORNING, DR. MC CARTHY.

22 A GOOD MORNING.

23 Q I'M NOT GOING TO QUESTION YOU ON THE

24 CHARTS AND GRAPHS HERE SO WE CAN TAKE THAT DOWN FOR

25 A MOMENT.

26 AND YOU PROBABLY WON'T EVEN NEED YOUR

27 COMPUTER OPEN THERE.

28 I WANT TO ASK YOU A LITTLE BIT ABOUT

40647

1 YOUR MILITARY CAREER, DR. MC CARTHY.

2 I TAKE IT YOU SERVED IN VIETNAM?

3 A OH, NO.

4 Q HOW MANY YEARS WERE YOU ON ACTIVE DUTY

5 IN THE MILITARY?

6 A I WAS ONLY ON ACTIVE DUTY FOR A PORTION

7 OF A YEAR TO DO MY OFFICER'S BASIC TRAINING SCHOOL.

8 Q WHEN WAS THAT?

9 A IN 1973.

10 Q SO YOU WERE NOT A CAREER ARMY OFFICER AT

11 ANY TIME?

12 A OH, NO.

13 Q AND YOUR ORDINANCE THAT YOU'VE TALKED

14 ABOUT, THAT CAME THROUGH YOUR R.O.T.C., YOUR RESERVE

15 TRAINING?

16 A NO. MY OFFICER'S BASIC BRANCH SCHOOL

17 WAS IN ORDINANCE.

18 Q OH. THIS -- YOU SAID 1973?

19 A YES.

20 Q AND THIS WAS AS AN R.O.T.C. OFFICER?

21 A NO. I HAD ALREADY BEEN COMMISSIONED. I

22 HAD TO COME ON ACTIVE DUTY TO BECOME BRANCH QUALIFIED.

23 ALL OFFICERS ARE ASSOCIATED WITH A MILITARY BRANCH,

24 AND MINE WAS ORDINANCE.

25 Q WELL, YOUR R.O.T.C. COMMISSION CAME WHEN

26 YOU GRADUATED FROM COLLEGE, DIDN'T IT?

27 A THAT'S CORRECT.

28 Q AND AT THE TIME THAT YOU GRADUATED FROM

40648

1 COLLEGE YOU HAD NOT BEEN ON ACTIVE DUTY IN THE ARMY

2 AT ANY TIME, HAD YOU?

3 A JUST FOR BASIC TRAINING.

4 Q BASIC TRAINING CONSISTS OF WHAT, 12

5 WEEKS AT A TIME, EIGHT WEEKS?

6 A SOMETHING LIKE THAT.

7 Q THE BASIC TRAINING WAS BASIC INFANTRY
8 TRAINING?

9 A BASIC OFFICER TRAINING. BUT MOST OF IT
10 WAS, I THINK, WHAT YOU WOULD ASSOCIATE -- WHAT I
11 WOULD CALL INFANTRY TRAINING.

12 Q AN R.O.T.C. OFFICER GOES THROUGH WHAT,
13 THE ACTUAL RECRUITING, THROUGH BASIC TRAINING,
14 DOESN'T HE? YOU QUALIFY ON A RANGE. YOU DO SOME
15 MARCHING. YOU DO SOME RUNNING. YOU DO SOME
16 BIVOUACKING, ALL THOSE TYPE THINGS?

17 A YES.

18 Q AND THAT'S IN A COMPANY OF WHAT, A
19 COUPLE OF HUNDRED MEN?

20 A YEAH. A HUNDRED AND TWENTY.

21 Q IT'S LEARNING HOW TO BE A SOLDIER?

22 A THAT IS CORRECT.

23 Q AND THAT WAS WHAT YOU HAD DONE BY THE
24 TIME YOU HAD GOT YOUR COMMISSION AFTER R.O.T.C.
25 CLASSES?

26 A THAT'S CORRECT.

27 Q SO THEN THE FIRST TIME THAT YOU SPENT
28 MORE THAN A COUPLE OF MONTHS ON AN ARMY BASE WAS

1 WHEN YOU WENT FOR YOUR -- YOU SAID YOUR BRANCH
2 TRAINING?

3 A YEAH. MY BRANCH SCHOOL.

4 Q YOUR BRANCH SCHOOL WAS IN ORDINANCE?

5 A CORRECT.

6 Q THAT LASTED WHAT, TWO MONTHS, THREE
7 MONTHS?

8 A THREE MONTHS.

9 Q TWELVE WEEKS?

10 A YES.

11 Q AND AGAIN, THAT'S GROUP TRAINING, ISN'T
12 IT?

13 A WE'RE TRAINED AS A CLASS.

14 Q AS A CLASS. YOU WERE PART OF A CLASS
15 THAT WENT THROUGH THAT ORDINANCE SCHOOL?

16 A CORRECT.

17 Q AND HOW MANY WERE IN YOUR CLASS?

18 A SEVENTY TOTAL, DIVIDED IN TWO SECTIONS.
19 THIRTY-FIVE.

20 Q THIRTY-FIVE IN EACH SECTION?

21 A YES.

22 Q AND THAT'S WHAT YOU DID FOR THREE
23 MONTHS, WAS YOU WENT AS PART OF THIS SECTION OF 35
24 MEN AND WOMEN TO ORDINANCE SCHOOL?

25 A CORRECT.

26 Q AND YOU ALL DID PRETTY MUCH THE SAME
27 THING?

28 A EXACTLY THE SAME THING.

1 Q THAT'S THE WAY THE ARMY DOES IT, ISN'T
2 IT?

3 A YES.

4 Q AND AFTER THAT THREE MONTHS -- BY THE
5 WAY, YOU SAID THERE WAS SOME SHOTGUN TESTING GOING
6 ON AT ABERDEEN WHILE YOU WERE THERE?

7 A YES.

8 Q ABERDEEN. THAT'S WHERE YOU WENT FOR
9 YOUR ORDINANCE?

10 A BASIC TRAINING SCHOOL, YES.

11 Q YOU DIDN'T TAKE PART IN THAT SHOTGUN
12 TESTING, DID YOU?

13 A NO.

14 Q THAT'S JUST SOMETHING THAT WAS GOING ON
15 AT ANOTHER PART OF THE BASE?

16 A RESEARCH ONGOING THERE.

17 Q NOT FROM YOU?

18 A THAT IS CORRECT.

19 Q SO AFTER YOU GRADUATED, ALONG WITH THE
20 OTHER 69 PEOPLE, I TAKE IT FROM THAT BRANCH --

21 A THAT'S MY MEMORY. IT WAS APPROXIMATELY
22 70.

23 Q BUT YOU ALL GRADUATED AT THE SAME TIME?

24 A YES.

25 Q AFTER HAVING DONE BASICALLY THE SAME
26 THING?

27 A CORRECT.

28 Q AND THEN YOU GOT AN ASSIGNMENT FOR THE

40651

1 NEXT COUPLE OF MONTHS OF YOUR ACTIVE DUTY, DID YOU?

2 A NO. THEY DIDN'T HAVE ANY SLOTS FOR US
3 SO THEY SENT US ALL HOME.

4 Q SO THAT WAS IT?

5 A THAT WAS IT.

6 Q AND YOUR TOTAL REGULAR ARMY TRAINING,
7 THEN. WOULD HAVE BEEN THAT THREE MONTHS AT THAT
8 TIME AND THEN JUST -- DID YOU EVER GO INTO THE
9 REGULAR ARMY AS A CAREER AT ANY TIME?

10 A OH, NO.

11 Q THEN AFTER THAT, I TAKE IT YOU HAD A
12 RESERVE COMMITMENT TO FILL?

13 A THAT'S CORRECT.

14 Q AND YOUR RESERVE COMMITMENT WAS A COUPLE
15 OF WEEKS SUMMER CAMP EACH YEAR?

16 A EVERY YEAR, YES.

17 Q ALONG WITH ALL THE OTHER RESERVISTS WHO
18 HAD BEEN SCHOOLED IN ORDINANCE?

19 A SCHOoled IN ANYTHING. BUT YES,

20 ORDINANCE TOO.

21 Q AND YOU, AND THE OTHER 69 PEOPLE WHO

22 GRADUATED WITH YOU, WOULD GO DO YOUR TWO WEEKS AT

23 SOME ARMY BASE AROUND THE COUNTRY?

24 A I DON'T MEAN TO IMPLY THEY ALL WENT

25 HOME. SOME OF THOSE GUYS WERE CAREER.

26 Q YOU WEREN'T?

27 A I WAS NOT.

28 Q SO WHATEVER WAS LEFT OF THE R.O.T.C.

40652

1 RESERVISTS, THEY ALSO WENT OUT ON THESE TWO-WEEK

2 MILITARY TRAININGS EACH SUMMER?

3 A UNLESS THEY HAD A MOBILIZATION

4 DESIGNATION SPOT.

5 Q DID YOU EVER GET MOBILIZED OR --

6 A I WAS EVENTUALLY WHAT THEY CALL

7 MOBE-DEZED (PHONETIC).

8 Q THAT MEANS MOBILIZED DESIGNATED?

9 A THAT'S CORRECT.

10 Q YOU WERE NEVER MOBILIZED, IN FACT?

11 A NO. I WAS ON MOBE-DEZ FOR FOUR YEARS.

12 THERE WAS NO NATIONAL EMERGENCY, SO I WAS NEVER

13 MOBILIZED.

14 Q HOW LONG DID YOU STAY IN THE RESERVES?

15 A MY COMMITMENT WAS FOR EIGHT YEARS. I

16 WAS HONORABLY DISCHARGED IN 1980.

17 Q SO YOU DID YOUR EIGHT-YEAR COMMITMENT

18 AND RETIRED?

19 A WAS DISCHARGED.

20 Q YOU DID NOT THEN SEEK TO KEEP A RESERVE

21 CAREER AS SOME PEOPLE DO?

22 A SOME PEOPLE DO AND I DID NOT.

23 Q THAT IS AN OPTION THAT WAS AVAILABLE,

24 WASN'T IT, TO STAY IN THE RESERVES IF YOU WANTED TO,

25 BEYOND YOUR EIGHT YEARS?

26 A IN THEORY, YES. IN PRACTICALITY, NO.

27 DURING THAT PERIOD OF TIME THEY WERE DECREASING THE

28 SIZE OF THE REGULAR ARMY, AND RESERVE SLOTS DID AND

40653

1 SHOULD GO TO THE REGULAR ARMY OFFICERS FIRST.

2 Q THE REGULAR ARMY OFFICERS ARE DOING

3 REGULAR ARMY DUTY, AREN'T THEY?

4 A NO -- WELL, YES, WHEN THEY'RE IN THE

5 REGULAR ARMY. BUT DURING -- WHEN THERE'S A RIF,

6 REDUCTION IN FORCE, PEOPLE WITH A REGULAR ARMY

7 COMMISSION -- SEE, I HAD A RESERVE COMMISSION. IF

8 YOU GRADUATE FROM WESTPOINT YOU GET A REGULAR ARMY

9 POSITION AND THEY GET FIRST CHOICE AT RESERVE SLOTS,

10 WHICH THEY SHOULD. THEY'RE MORE HIGHLY TRAINED.

11 Q SO AFTER YOUR EIGHT YEARS, YOU DID NOT

12 HAVE ANY FURTHER ASSOCIATION WITH THE UNITED STATES

13 ARMY RESERVES?

14 A NOT AS A DRILLING OFFICER, THAT IS

15 CORRECT.

16 Q AND WHEN THE GULF WAR BROKE OUT, DID YOU

17 GO OVER TO KUWAIT?

18 A NO.

19 Q OR TO IRAQ?

20 A NO.

21 Q OR WERE YOU CALLED INTO ANY OF THE

22 THEATERS OF COMBAT DURING THE GULF WAR?

23 A NOT COMBAT. WE DISPATCHED A TEAM TO

24 KUWAIT FOR THE OIL WELL FIRES.

25 Q DID YOU GO?

26 A NO.

27 Q SO, IN ESSENCE, DOCTOR, IT'S TRUE THAT

28 YOU HAVE NEVER BEEN IN COMBAT THEN?

40654

1 A THAT IS CORRECT.

2 Q AND YOU'VE NEVER PERSONALLY FIRED A

3 WEAPON IN A COMBAT SITUATION?

4 A THAT IS CORRECT.

5 Q DOCTOR, YOU'VE TOLD US ABOUT YOUR
6 FAILURE ANALYSIS GROUP.

7 A THERE IS THE FAILURE GROUP, WHICH --

8 Q FAILURE ANALYSIS IS A SUBSIDIARY --

9 A A WHOLLY-OWNED SUBSIDIARY, CORRECT.

10 Q THE FAILURE GROUP THAT HAS THE OFFICE IN
11 GDANSK IN POLAND?

12 A YES. THESE ARE FAILURE GROUP OFFICES.
13 ACTUALLY, THEY ARE SUBSIDIARIES OF THE COMPANY
14 CHARTERED IN THE NETHERLANDS WHICH IS A WHOLLY-OWNED
15 SUBSIDIARY OF THE FAILURE GROUP.

16 Q GDANSK -- THAT'S WHERE LECH WALESIA
17 GAINED FAME?

18 A IT'S IN POLAND, YES.

19 Q IT USED TO BE CALLED DANZIG BACK IN THE
20 GERMAN DAYS, OR DO YOU KNOW?

21 A YOU HAVE ME THERE.

22 MR. CONN: OBJECTION. RELEVANCE.

23 Q BY MR. GESSLER: IT'S A SEAPORT.

24 MR. CONN: OBJECTION. IRRELEVANT.

25 THE COURT: OVERRULED.

26 YOU CAN ANSWER THE QUESTION.

27 THE WITNESS: I HAVE NOT BEEN THERE. I'M
28 SORRY.

1 Q BY MR. GESSLER: YOU'VE NEVER BEEN
2 THERE?

3 A I HAVE NOT.

4 Q EVEN AS CHIEF EXECUTIVE OFFICER OF THE
5 COMPANY, YOU HAVE NEVER VISITED THAT PARTICULAR
6 BRANCH?

7 A THAT IS CORRECT.

8 Q DID THEY HELP YOU IN ANY WAY IN THESE
9 EXHIBITS THAT YOU PREPARED HERE, THESE ANGLES AND
10 THINGS?

11 A NO.

12 Q THEY NEVER SENT YOU ANY FAXES OR
13 ANYTHING LIKE THAT ON IT?

14 A THAT IS CORRECT.

15 Q YOU JUST MENTIONED YOUR OFFICE THERE TO
16 SHOW US HOW BIG YOUR COMPANY IS?

17 MR. CONN: OBJECTION. CALLS FOR SPECULATION
18 AS TO WHY THE QUESTIONED WAS ASKED.

19 THE COURT: OVERRULED.

20 THE WITNESS: I TALKED ABOUT GADANSK BECAUSE
21 I WAS ASKED ABOUT GDANSK.

22 Q BY MR. GESSLER: BUT IT HAD NO RELEVANCE
23 TO ANY OF THE WORK THAT YOU'VE DONE IN THIS CASE,
24 DID IT?

25 MR. CONN: OBJECTION. ARGUMENTATIVE.

26 THE COURT: OVERRULED.

27 THE WITNESS: THEY DID NOT PARTICIPATE IN ANY
28 OF THE WORK ON THIS CASE. THAT IS TRUE.

40656

1 Q BY MR. GESSLER: NOW, I THINK YOU
2 MENTIONED YOU HAVE HOW MANY PH.D.'S IN YOUR COMPANY?

3 A EIGHTY OR NINETY SOME ODD. I'D HAVE TO
4 LOOK AT A PERSONNEL ROSTER TO GET AN EXACT COUNT.

5 Q HAVE YOU BEEN INCREASING THE SIZE OF
6 YOUR PH.D.'S IN THE LAST YEAR?

7 A WE'VE BEEN BOTH UP AND DOWN. I THINK
8 THE COUNT IS BOTH DECREASED AND INCREASED AND THAT'S
9 WHY I'M UNCERTAIN. WE'RE CERTAINLY IN A
10 HIGH-RECRUITING MODE NOW.

11 Q WELL, IN MARCH OF THIS YEAR YOU HAD 70
12 PH.D.'S, DIDN'T YOU?

13 A WHATEVER THE COUNT WAS IN MARCH WAS THE
14 COUNT IN MARCH. I JUST -- IT'S BEEN FLUCTUATING AS
15 WE'VE BEEN IN MERGER DISCUSSIONS WITH A COUPLE OF
16 COMPANIES. AND WE SPUN OFF A COUPLE UNITS, AND I
17 JUST DON'T KNOW THE EXACT COUNT AS A FUNCTION OF
18 TIME.

19 Q YOU SAID WHATEVER THE COUNT IS THE COUNT
20 IS. THAT DOESN'T PROVIDE US ANY INFORMATION.

21 YOU HAVE TO FILE A FORM WITH THE

22 SECURITIES AND EXCHANGE COMMISSION EACH YEAR, DON'T

23 YOU?

24 A THAT IS CORRECT.

25 Q AND YOU'RE RESPONSIBLE FOR THAT AS CHIEF

26 EXECUTIVE OFFICER?

27 A YES.

28 Q AND IN THAT FORM THAT YOU FILED FOR THE

40657

1 END OF DECEMBER 1994, FOR THAT FISCAL YEAR, YOU TOLD

2 THE UNITED STATES GOVERNMENT YOU HAD 70 PH.D.'S,

3 DIDN'T YOU?

4 A I DON'T RECOLLECT WHAT THE COUNT WAS IN

5 '74, BUT WHATEVER THE COUNT WAS ON THAT FORM.

6 Q NOT '74. '94, LAST YEAR.

7 A THAT WAS ACCURATE.

8 Q YOU SAID WHATEVER THE COUNT WAS. WAS IT

9 70?

10 A IT COULD HAVE BEEN. I THINK WE HAVE

11 BEEN AS LOW AS 70 IN THE PAST, YES.

12 Q SO THAT FLUCTUATES FROM TIME TO TIME?

13 A YES.

14 Q AT ANY RATE, DOCTOR, HOW MANY OF THESE

15 PH.D.'S DID YOU INVOLVE IN THIS WORK THAT YOU

16 BROUGHT TO THE JURY HERE?

17 A I DON'T KNOW WHO DEVINDER INVOLVED, BUT

18 BASICALLY, I'M THE ONLY ONE -- I'M SORRY.

19 Q BASICALLY ONE?

20 A I'M THE ONLY ONE THAT I'M SPECIFICALLY

21 AWARE OF.

22 Q SO THIS MOSTLY IS YOUR WORK, ISN'T IT?

23 IN FACT, IT'S ALL YOUR WORK?

24 A I'M RESPONSIBLE FOR ALL OF THIS, YES.

25 Q AND IT WAS NOT PARTICIPATED IN BY THESE

26 OTHER PH.D.'S AND MEMBERS OF YOUR GROUP?

27 A FUNDAMENTALLY, THAT IS CORRECT.

28 Q YOU TOLD US ABOUT THEM ALSO JUST TO SHOW

40658

1 US HOW BIG THE COMPANY IS?

2 MR. CONN: OBJECTION. CALLS FOR SPECULATION

3 AS TO WHY THE QUESTION WAS ASKED.

4 THE COURT: OVERRULED.

5 THE WITNESS: I THINK I WAS ASKED SPECIFICALLY.

6 BUT I'LL HAVE TO GO BACK AND CHECK THE RECORD.

7 Q BY MR. GESSLER: THEY HAD NOTHING TO DO

8 WITH YOUR PREPARATION OF THESE EXHIBITS THAT YOU

9 HAVE SHOWN THE JURY?

10 A ESSENTIALLY, THAT IS CORRECT.

11 Q AND THE CADAVER LAB THAT YOU HAVE BACK

12 IN PENNSYLVANIA --

13 A YES.

14 Q -- HOW DID YOU INVOLVE THEM IN THIS WORK?

15 A I DID NOT.

16 Q THEY WEREN'T INVOLVED EITHER?

17 A THEY WERE NOT.

18 Q AND YOU HAVE NO MEDICAL DEGREE, DO YOU?

19 A I DO NOT.

20 Q NOR ANY WORK AS A CRIMINALIST?

21 A NOT MUCH.

22 Q HAVE YOU EVER WORKED AS A PROFESSIONAL

23 CRIMINALIST FOR A LAW ENFORCEMENT AGENCY ANYWHERE?

24 A NO.

25 Q NEVER WORKED AT AN F.B.I. LAB AS A

26 CRIMINALIST?

27 A THAT IS CORRECT.

28 Q NOR IN A POLICE AGENCY LAB AS A

40659

1 CRIMINALIST?

2 A THAT IS CORRECT.

3 Q NOW, IN 1993 YOUR COMPANY SUFFERED

4 CERTAIN REVERSALS, DIDN'T IT?

5 LET ME PUT IT THIS WAY: DID YOU TELL

6 YOUR STOCKHOLDERS IN 1993 THAT THERE WAS A LOSS

7 BECAUSE COMPANIES WERE NOT USING EXPERT WITNESSES AS
8 MUCH ANYMORE?

9 A WE -- I CAN'T REMEMBER IF WE LOST MONEY
10 FOR ALL OF 1993, BUT CERTAINLY THAT TIME FRAME WAS A
11 TOUGH YEAR.

12 BUT THE EXPLANATION WAS FAR MORE COMPLEX
13 THAN THAT.

14 Q ONE EXPLANATION YOU GAVE TO THE
15 STOCKHOLDERS WAS THAT LARGE COMPANIES WERE NOT USING
16 EXPERT WITNESSES AS MUCH ANYMORE BECAUSE THEY WERE
17 CUTTING BACK ON THE USE OF THEIR MONEY, ISN'T IT?

18 A I WAS AT THE STOCKHOLDER'S MEETING, AND
19 I DON'T REMEMBER EXPLAINING IT THAT WAY. I DID
20 EXPLAIN THAT COMPANIES WERE USING OUTSIDE EXPERTS
21 LESS BECAUSE OF THE ECONOMIC SITUATION.

22 Q AND YOU WERE ONE OF THOSE OUTSIDE
23 EXPERTS THAT YOU WERE TALKING ABOUT.

24 A THE FIRM AS A WHOLE. I NEVER SEE ANY
25 CHANGE REALLY IN MY PERSONAL WORKLOAD, BUT THE FIRM
26 AS A WHOLE CERTAINLY DID.

27 Q DR. MC CARTHY, IN 1993 YOUR FOCUS BECAME
28 GETTING NEW BUSINESS FOR THE FIRM, DIDN'T IT?

40660

1 A MORE SO THAN THE PAST, YES.

2 Q THAT WAS WHAT YOU WERE PRESENTING TO THE
3 STOCKHOLDERS, THAT NOW YOUR PRIMARY FUNCTION WAS TO
4 BRING IN NEW BUSINESS?

5 A GET US INTO NEW BUSINESS AREAS AND
6 CERTAINLY BE MUCH MORE INVOLVED IN THE BUSINESS
7 GENERATION PROCESS, YES.

8 Q THAT'S WHAT YOU'RE CONTINUING TO DO,
9 ISN'T IT?

10 A THAT OCCUPIES MORE OF MY TIME NOW THAN
11 IT USED TO, YES.

12 Q AGAIN, IN 1994 YOU TOLD YOUR STOCKHOLDERS
13 THAT YOU WERE COMING UP WITH NEW STRATEGIES TO TRY TO
14 GET NEW BUSINESS?

15 A THAT, AND CONTINUING TO WORK THE
16 ACQUISITION OF COMPANIES WITH A LIKE-MINDED
17 TECHNICAL FOCUS.

18 Q IN OTHER WORDS, THE BUSINESS END OF THE
19 THING?

20 A WELL --

21 Q RAINMAKER.

22 A IT'S GOT TO BE BUSINESS RELATED TO THE
23 TECHNICAL --

24 Q BUT YOU'VE GOT -- YOUR ACCENT, YOUR
25 EMPHASIS IS BRINGING IN THE NEW BUSINESS SO THAT
26 YOUR FIRM CAN CONTINUE TO SHOW A GOOD PROFIT.

27 A I AM MORE INVOLVED IN THAT THAN I WAS
28 PREVIOUSLY; THAT IS CORRECT.

1 Q PREVIOUSLY, GENERAL MOTORS AND SOME OF
2 THESE OTHER FORTUNE TOP-50 COMPANIES, THEY PROVIDED
3 OVER HALF OF YOUR BUSINESS, DIDN'T THEY?

4 A NO SINGLE COMPANY DID, BUT CERTAINLY
5 MORE THAN HALF OUR BUSINESS WAS CONCENTRATED IN THE
6 FORTUNE TOP-50, TRUE.

7 Q TALKING ABOUT, LIKE GENERAL MOTORS,
8 SUZUKI?

9 A (NO AUDIBLE RESPONSE.)

10 Q YOU HAVE TO ANSWER OUT LOUD.

11 A SUZUKI IS NOT IN THE TOP-50.

12 Q THEY'RE ONE OF THE COMPANIES YOU'VE
13 WORKED FOR?

14 A THAT'S TRUE. GENERAL MOTORS AND FORD
15 AND CHRYSLER. THE AUTOMOTIVE BUSINESS WAS A BIG
16 MAINSTAY. THE INSURANCE BUSINESS WAS A BIG
17 MAINSTAY.

18 Q SO YOU WORK PRIMARILY FOR THE BIG
19 PRODUCT PLAINTIFFS; THE CAR MANUFACTURERS, THE TRUCK
20 MANUFACTURERS, THE RECREATION VEHICLES, ALL-TERRAIN
21 VEHICLES, THAT TYPE THING?

22 A I PERSONALLY PROBABLY WORKED PRIMARILY
23 IN RELATIONSHIP TO THOSE COMPANIES, YES.

24 Q AND THAT'S WHO YOU'VE PRIMARILY
25 TESTIFIED FOR, ISN'T IT?

26 A I WOULD SUSPECT OVER MY CAREER THE
27 MAJORITY OF MY TESTIMONY OUTINGS HAVE BEEN ON BEHALF
28 OF MANUFACTURERS AS YOU'VE CHARACTERIZED.

40662

1 Q NOW, YOUR DEGREES, YOU HAVE ONE DEGREE
2 IN PHILOSOPHY.

3 A CORRECT.

4 Q AND WHAT IS THAT, MEDIEVAL PHILOSOPHY?

5 A THAT WAS MY SPECIALTY, YES, SIXTH
6 THROUGH TWELFTH CENTURY.

7 Q ALTHOUGH INTERESTING, THAT DID NOT
8 PROVIDE MUCH HELP IN RECONSTRUCTING THE CRIME SCENE,
9 DID IT? YOU DIDN'T GO OUT TO ANY CRIME SCENE AS
10 PART OF THAT -- GETTING THAT DEGREE, DID YOU?

11 A NO. BUT -- THAT'S QUITE ALL RIGHT. IT
12 DIDN'T PROVIDE ANY.

13 Q FOR YOUR DEGREES AT MICHIGAN AND
14 M.I.T. -- DID YOU EVER GO TO A CRIME SCENE AS PART
15 OF GETTING THOSE DEGREES, A MURDER SCENE?

16 A NO.

17 Q AND YOUR THESIS THAT YOU WORKED ON
18 GETTING THAT SPECIAL DEGREE FROM M.I.T., WHAT DID
19 YOU CALL THAT ONE, THE ENGINEERS DEGREE?

20 A DEGREE OF PROFESSIONAL MECHANICAL

21 ENGINEERS.

22 Q THE PROFESSIONAL ENGINEERS DEGREE.

23 THE THESIS THAT YOU WROTE FOR THAT, THAT
24 DIDN'T HAVE ANYTHING TO DO WITH THE CRIME SCENE OR
25 WORK AS A CRIMINALIST, DID IT?

26 A IT DID NOT.

27 Q DOCTOR, HOW MANY HOMICIDE SCENES HAVE
28 YOU EVER VISITED?

40663

1 A PERSONALLY?

2 Q PERSONALLY.

3 A I CAN'T THINK OF A SCENE THAT I HAVE
4 PERSONALLY VISITED THAT I ULTIMATELY CONCLUDED WAS A
5 HOMICIDE.

6 Q CERTAINLY YOU'VE NEVER BEEN TO ANYWHERE
7 WHERE THE DECEASED WERE STILL PRESENT, SUCH AS ARE
8 PORTRAYED IN YOUR WORK HERE?

9 A THAT IS CORRECT.

10 Q AND DOCTOR, HOW MANY AUTOPSIES HAVE YOU
11 EVER VISITED WHERE SOMEBODY HAD DIED FROM SHOTGUN
12 WOUNDS?

13 A I HAVE NEVER BEEN AT AN AUTOPSY.

14 Q YOU'VE NEVER BEEN AT AN AUTOPSY OF ANY
15 KIND?

16 A THAT IS CORRECT.

17 Q DOCTOR, HOW MANY WOUNDS HAVE YOU EVER
18 SEEN ON A HUMAN BEING?

19 A LIVE?

20 Q LIVE. GUNSHOT WOUNDS.

21 A AS I SIT HERE, I DON'T RECOLLECT EVER
22 DEALING WITH ONE LIVE.

23 Q SO YOU'VE SEEN NO LIVE GUNSHOT WOUNDS
24 AND YOU'VE NEVER ATTENDED AN AUTOPSY.

25 A THAT IS CORRECT.

26 Q IN WORK FOR THIS CASE THEN, IN PREPARING
27 THESE WORK-UPS THAT YOU'VE GIVEN US, DID YOU CONSULT
28 WITH ANY PATHOLOGISTS OR CORONERS BEFORE YOU CAME TO

40664

1 YOUR CONCLUSIONS AS TO THE SHOT SEQUENCE?

2 A OUTSIDE OF READING AUTOPSY MATERIALS
3 THAT WERE ALREADY DONE IN THE CASE, NO.

4 Q BUT READING THE AUTOPSY REPORTS IS NOT
5 CONSULTING WITH THE DOCTOR WHO DID THEM, IS IT?

6 A I WOULDN'T DEFINE IT AS SO. THAT'S WHY
7 I ANSWERED YOUR QUESTION AS I DID.

8 Q SO THE ANSWER IS NO. YOU HAVE NEVER,
9 BEFORE YOU CAME TO THESE CONCLUSIONS AS TO THE SHOT
10 SEQUENCE, YOU DID NOT CONSULT WITH ANY CORONERS OR

11 PATHOLOGISTS OR MEDICAL DOCTORS?

12 A NO.

13 Q AND DID YOU CONSULT WITH ANY

14 PROFESSIONAL CRIMINALISTS BEFORE COMING TO THIS

15 CONCLUSION OF THE SEQUENCE? BY THAT I MEAN,

16 CRIMINALISTS WHO WORK IN F.B.I. LABS OR POLICE

17 LABS.

18 A NO.

19 Q BASICALLY, YOU DID THIS WORK ON YOUR

20 OWN, WITHOUT CONSULTING WITH THE OTHER PROFESSIONALS

21 IN YOUR OUTFIT AND WITHOUT CONSULTING WITH CORONERS

22 OR PATHOLOGISTS AND WITHOUT CONSULTING WITH ANY

23 PROFESSIONAL CRIMINALISTS.

24 THAT'S A FAIR STATEMENT, ISN'T IT?

25 A NO. MR. DEVINDER (SIC) OF OUR

26 BIOMECHANICS GROUP WAS INVALUABLE IN ASSISTING IN

27 THIS RECONSTRUCTION.

28 Q CHRISTIAN DEVINDER?

40665

1 A MR. DEVINDER. DEVINDER GREWAL.

2 Q DEVINDER GREWAL. ALL RIGHT.

3 HE'S NOT A DOCTOR, IS HE?

4 A HE IS NOT A MEDICAL DOCTOR; THAT IS

5 CORRECT.

6 Q HE'S NOT A CRIMINALIST, TO YOUR

7 KNOWLEDGE, IS HE?

8 A HE IS NOT.

9 Q HE'S NEVER WORKED FOR THE F.B.I. OR ANY

10 POLICE CRIMINAL LABS WHO DO THIS FOR A LIVING?

11 A NO.

12 Q DOCTOR, YOU TOLD US ABOUT YOUR

13 EXPERIENCE WITH WEAPONS, I THINK, A COUPLE OF DAYS

14 AGO. YOU SAY YOU OWNED 400 WEAPONS?

15 A SEVERAL HUNDRED. I DON'T KNOW IF I'M UP

16 TO 400, BUT CERTAINLY MORE THAN TWO, I THINK. I

17 HAVEN'T COUNTED THEM.

18 Q AND YOU MENTIONED THAT YOU HAD

19 TESTIFIED, YOU BELIEVE, AS AN EXPERT PROBABLY A

20 HUNDRED TIMES.

21 A BALLPARK IN MY CAREER, YES.

22 Q HOW MANY OF THOSE TIMES HAS BEEN AS AN

23 EXPERT IN BALLISTICS, DOCTOR?

24 A I DON'T RECOLLECT EVER BEING SO

25 DESIGNATED BY A COURT.

26 Q IN OTHER WORDS, YOU'VE NEVER TESTIFIED

27 AS AN EXPERT IN BALLISTICS UNTIL THIS TRIAL?

28 A I GUESS IF YOU HAD ASKED ME AFTER THIS

1 TRIAL, WAS I QUALIFIED AS AN EXPERT, THAT I WOULD
2 HESITATE TO SAY. I WOULDN'T MAKE THAT
3 REPRESENTATION. BUT I DON'T REMEMBER EVER BEING
4 SPECIFICALLY QUALIFIED IN THAT AREA.

5 Q SO YOU DON'T CONSIDER THE TESTIMONY THAT
6 YOU'VE BEEN GIVING HERE, BASICALLY, THAT OF
7 BALLISTICS?

8 A I BELIEVE IT INVOLVES AN EXTENSIVE
9 AMOUNT OF BALLISTICS, AND I THINK I HAVE MORE
10 BACKGROUND THAN THE AVERAGE PERSON.

11 WHAT CONSTITUTES AN EXPERT IS A DECISION
12 THE COURT MAKES, NOT THAT I MAKE.

13 Q LET ME ASK YOU ABOUT SOME OF THE TERMS
14 YOU'VE USED IN YOUR TESTIMONY, DOCTOR.

15 YOU'VE MENTIONED JUXTAPOSITION.

16 THAT MEANS HOW A COUPLE OF OBJECTS ARE
17 PLACED NEXT TO EACH OTHER, DOESN'T IT?

18 A CAN BE THAT, YES.

19 Q THAT'S THE DEFINITION OF THAT, ISN'T IT?

20 A ONE OF THEM.

21 Q THAT'S HOW YOU USED IT, WASN'T IT?

22 A I DON'T REMEMBER THE CONTEXT IN WHICH I
23 SPECIFICALLY USED IT, BUT CONTINUE.

24 Q WE WANT TO BRING SOME OF THE ENGINEERING
25 TERMS YOU'VE USED DOWN TO THOSE OF LAWYERS SO THAT
26 WE CAN UNDERSTAND THEM. SO...

27 A I DON'T KNOW THAT THAT'S AN ENGINEERING
28 TERM.

1 Q WHAT ABOUT ANGULARITY? YOU'VE USED THAT
2 WORD, HAVEN'T YOU?

3 A AGAIN, I DON'T HAVE A SPECIFIC
4 RECOLLECTION.

5 Q WELL, DID YOU TALK ABOUT ANGULARITY OF
6 THE WOUNDS WHEN YOU WERE EXPLAINING YOUR DIAGRAMS
7 HERE TO THE JURY?

8 A I MAY HAVE, BUT NOT --

9 Q ANGULARITY JUST MEANS AN ANGLE?

10 A ACTUALLY, THAT MIGHT NOT EVEN BE A WORD.

11 Q IT MIGHT NOT. IT'S GOT A LOT OF
12 SYLLABLES.

13 BASICALLY, IT MEANS THE ANGLE OF
14 SOMETHING, DOESN'T IT, IF THAT'S WHAT YOU USED?

15 A IF THAT'S WHAT I USED. THAT'S WHAT I
16 WAS TRYING TO COMMUNICATE. THAT WORD SOUNDS AWFUL
17 TO ME WHEN I HEAR IT BACK. I DON'T KNOW WHY.

18 Q WHAT ABOUT DIRECTIONALITY?

19 A AGAIN, JUST DIRECTION.

20 Q JUST DIRECTION, PLUS A COUPLE OF
21 SYLLABLES?

22 A YES.

23 Q WHEN YOU USED THE WORD "DIRECTIONALITY,"

24 DIDN'T YOU MEAN DIRECTION?

25 A YES, I WOULD ASSUME SO. AGAIN, I DON'T

26 HAVE A SPECIFIC RECOLLECTION OF USING THAT WORD. BUT

27 IF I DID, THAT'S WHAT I WAS TRYING TO COMMUNICATE.

28 Q WHEN YOU USE THE WORD "BIAS" IN

40668

1 ASSOCIATION WITH THESE WOUNDS, THAT JUST MEANS THE

2 ANGLE OF THE WOUND TOO, DOESN'T IT?

3 A THAT MEANS THE EXISTENCE OF AN ANGLE,

4 NON-PARALLELISM.

5 Q WHICH MEANS THERE'S AN ANGLE. IT'S NOT

6 A STRAIGHT LINE, IN OTHER WORDS?

7 A THAT'S NOT RIGHT. USUALLY, WHEN I'M

8 TALKING ABOUT BIAS, THAT MEANS AN ANGLE RELATIVE TO

9 SOME AXIS, LIKE TWO PARALLEL LINES DO NOT HAVE A

10 BIAS, BUT WHEN THE LINES ARE NOT PARALLEL TO ONE

11 ANOTHER, THAT HAS A BIAS.

12 Q ALL ANGLES GO OFF FROM AN AXIS.

13 A ALL ANGLES ARE DEFINED BY TWO

14 INTERSECTING RAYS THAT ARE NON-PARALLEL.

15 USUALLY, WHEN I WAS USING THE TERM

16 "BIAS," I WAS TALKING ABOUT THE DIRECTION OF ONE

17 FEATURE, ITS MAJOR AXIS RELATIVE TO SOME OTHER AXES.

18 Q YOU'VE TALKED ABOUT WOUND GEOMETRY AND

19 GEOMETRY OF A WOUND. THAT, AGAIN, JUST MEANS THE
20 ANGLE, DOESN'T IT?
21 A NO. WELL, I COULD HAVE BEEN MAKING A
22 REFERENCE TO ANGLE. BUT MY RECOLLECTION OF TALKING
23 ABOUT WOUND GEOMETRY WAS, IN PART, ALSO THE SHAPE;
24 AN OVAL WOUND BEING MORE INDICATIVE OF A BIAS THAN A
25 CIRCULAR WOUND THAT IS STRAIGHT ON.
26 Q GEOMETRY BASICALLY MEANS WHERE OBJECTS
27 ARE PLACED IN RELATION TO ONE ANOTHER USING
28 MATHEMATICS TO ARRIVE AT THAT.

40669

1 A THE RELATIVE POSITIONS OR THE SHAPES. I
2 MEAN, GEOMETRY IS JUST A STUDY OF PHYSICAL
3 PROPERTIES, OF OBJECTS AND WHAT CAN BE TOLD ABOUT
4 THEM.
5 Q AND THOSE OBJECTS ARE INANIMATE, AREN'T
6 THEY?
7 A GEOMETRIC THEOREMS DON'T CARE WHETHER
8 THE OBJECTS ARE INANIMATE OR NOT.
9 Q THEY CARE WHETHER THEY'RE STATIONERY?
10 A WE CAN TALK ABOUT INSTANTANEOUS
11 GEOMETRIC POSITION --
12 Q MEANING, WHERE SOMEBODY IS RIGHT AT THE
13 VERY INSTANT THAT SOMETHING HAPPENS.

14 A IT MEANS AT SOME POINT IN TIME THE
15 OBJECTS ARE IN THESE RELATIONSHIPS TO ONE ANOTHER.
16 ALL THAT MEANS -- THEY CAN BE IN MOTION.
17 Q SO THAT'S WHAT YOU MEANT WHEN YOU SAID
18 GEOMETRY, THAT YOU'VE USED FOR WOUNDS OR FOR YOUR
19 PICTURES HERE, IS THE RELATIONSHIP OF OBJECTS.
20 A THE PHYSICAL RELATIONSHIP OF OBJECTS AND
21 PEOPLE, YES.
22 Q NOW, DID YOU USE MATHEMATICAL FORMULAS
23 TO WORK OUT THIS GEOMETRY?
24 A NO. THE DATA DOES NOT PERMIT EXACT
25 POSITION.
26 Q GEOMETRY IS A BRANCH OF MATHEMATICS,
27 ISN'T IT?
28 A YES. AND IF YOU HAVE PRECISE POSITIONS

40670

1 AND SHAPES OF OBJECTS YOU CAN DO VERY PRECISE
2 CALCULATIONS.
3 Q SO WHEN YOU USED THE TERM "GEOMETRY" IN
4 THIS COURTROOM, THEN, YOU WERE NOT REFERRING TO
5 MATHEMATICAL CALCULATIONS THAT YOU HAD DONE?
6 A THAT IS CORRECT. THERE JUST ISN'T
7 ENOUGH DETAILED DATA FOR THAT.
8 Q YOU MEANT GEOMETRY SIMPLY IN THE SENSE

9 OF, AS I SAY, WHERE OBJECTS WERE IN RELATION TO ONE
10 ANOTHER.

11 A YES.

12 Q DOCTOR, I TAKE IT, THEN, THERE'S NO
13 MATHEMATICAL WORK THAT WE COULD LOOK AT THAT YOU'VE
14 DONE HERE, NO CALCULATIONS?

15 A NO. THERE JUST IS NOT ENOUGH DETAIL.

16 Q AS YOU WERE GOING THROUGH THESE
17 DIFFERENT SHOTS THAT YOU'VE PRESENTED TO THE JURY
18 HERE, DID YOU MAKE NOTES OF YOUR PROCESS IN DOING
19 THAT?

20 A NO. GENERALLY I DON'T MAKE NOTES.

21 Q YOU DON'T MAKE NOTES?

22 A CORRECT.

23 Q YOUR MEMORY IS GOOD.

24 A WELL, THAT'S A LITTLE STRONG. BUT IF I
25 SIT DOWN AND WORK WITH IT, IT'S GOOD ENOUGH, YES.
26 IN OTHER WORDS, I CAN'T LEAVE IT FOR A WEEK. IF I
27 SIT THERE AND WORK WITH IT.

28 Q FOR THINGS YOU'VE WORKED WITH YOUR

40671

1 MEMORY IS GOOD?

2 A GOOD ENOUGH.

3 Q YOU'VE EVEN TESTIFIED THAT PEOPLE AT

4 YOUR WORK THINK YOU HAVE A PHOTOGRAPHIC MEMORY

5 BECAUSE IT'S SO GOOD, HAVEN'T YOU?

6 A DID I SAY THAT?

7 Q DO PEOPLE AT WORK THINK YOU HAVE A

8 PHOTOGRAPHIC MEMORY BECAUSE YOUR MEMORY IS SO GOOD?

9 A I'VE HEARD THAT SAID, BUT I CAN'T

10 IMAGINE SAYING THAT.

11 Q YOU'VE HEARD THAT SAID AT WORK, YOU

12 MEAN?

13 A YES.

14 Q BUT YOU CAN'T IMAGINE YOURSELF SAYING

15 THAT IN THE COURTROOM?

16 A WELL, I GUESS IT'S SORT OF EMBARRASSING

17 TO HEAR BACK IF I SAID THAT.

18 Q DOCTOR, AS YOU WENT THROUGH THESE

19 DIFFERENT SHOT SEQUENCES, DID YOU RULE OUT CERTAIN

20 OTHER POSSIBILITIES?

21 A I DIDN'T RULE THEM OUT. LET ME PUT IT

22 THIS WAY. SOME THINGS I DID RULE OUT. LOTS OF

23 TIMES I ONLY THOUGHT THEM LESS PROBABLE.

24 Q AND WHEN YOU THOUGHT SOMETHING LESS

25 PROBABLE, DID YOU MAKE ANY NOTES AS YOU WERE GOING

26 THROUGH THIS PROCESS OF PROBABILITY?

27 A NO. AS I INDICATED, I DIDN'T.

28 Q SO THAT WAS ALSO, AGAIN, IN YOUR MIND,

1 IN YOUR HEAD, THAT YOU REMEMBERED WHAT YOU HAD DONE
2 AND WENT FROM THERE?

3 A NO. I WOULDN'T MAKE THAT REPRESENTATION
4 TO YOU. I MEAN, IT DIDN'T STRIKE ME -- I WASN'T
5 WRITING A BOOK. SO I WASN'T TRYING TO SIT THERE AND
6 RECONSTRUCT EVERY BIT OF THINKING I DID. I WAS JUST
7 TRYING TO UNDERSTAND THE GEOMETRY AS BEST I COULD
8 FROM THE REMAINING EVIDENCE, AND IT WASN'T IMPORTANT
9 TO ME TO SAY, WELL I WENT DOWN THIS PATH FOR A WHILE
10 AND DECIDED THAT DOESN'T MAKE ANY SENSE.

11 Q THE GEOMETRY, MEANING THE RELATIVE
12 POSITIONS OF THINGS?

13 A POSITIONS AND ANGLES, THINGS OF THAT
14 NATURE, YES.

15 Q AS YOU WERE DOING THAT, THEN, YOU
16 DIDN'T, AS YOU SAY, MAKE NOTES OF ANY PARTICULAR
17 ANGLE THAT YOU MIGHT HAVE COME ACROSS AS BEING
18 PROBABLE?

19 A WELL, ULTIMATELY, ALL THESE CHARTS
20 REFLECT SOME SORT OF ANGULATION. THERE'S SOME
21 GEOMETRY DEPICTED. BUT I DIDN'T TRY AND WRITE A
22 CHRONICLE OF EVERY DEAD END I HIT AND THE REASONING
23 PROCESS.

24 Q OVER HOW LONG A PERIOD OF TIME DID YOU
25 WORK ON THIS PROJECT?

26 A BETTER PART OF A YEAR, I THINK.

27 Q AND I TAKE IT THAT WASN'T ALL DAY EVERY

40673

1 A OH. HEAVEN FORBID, NO.

2 Q IT WOULD BE SIX HOURS HERE AND A MONTH
3 WOULD GO BY; AND THEN YOU'D SPEND ANOTHER EIGHT
4 HOURS, OR SOMETHING OF THAT NATURE?

5 A OR TWO HOURS HERE OR SOMETHING OF THAT
6 NATURE. IT WAS INTERMITTENT, YES.

7 Q SO WHEN YOU GOT BACK TO IT YOU DIDN'T
8 HAVE ANY NOTES THEN TO REVIEW OF WHERE YOU HAD LEFT
9 OFF BEFOREHAND; IS THAT TRUE?

10 A THAT IS CORRECT.

11 Q YOU JUST KIND OF WORKED BACK INTO IT AND
12 TRIED TO PICK UP WHERE YOU HAD LEFT OFF.

13 A NO. THAT'S NOT THE WAY I APPROACH AN
14 INVESTIGATION. I PREFER TO COME BACK TO THE
15 EVIDENCE ON SEVERAL ITERATIONS AS MUCH AS POSSIBLE
16 WITHOUT THE BIAS OF THE FIRST LOOK. AND I JUST GET
17 MORE COMFORTABLE WITH THE CONCLUSION WHEN SEVERAL --
18 YOU CAN'T EVER RESET YOUR MIND TO ZERO. BUT WHEN
19 SEVERAL DIFFERENT RUNS OF THE EVIDENCE PRODUCE A
20 SIMILAR THINKING PATTERN, I'M MORE COMFORTABLE WITH
21 IT.

22 Q THAT'S WHEN IT'S A SIMILAR THINKING

23 PATTERN OR A DISTINCT THINKING PATTERN YOU'RE HAVING
24 TO RELY ON YOUR MEMORY?
25 A NOT EXACTLY. SEE, I'M NOT TRYING TO
26 REPLICATE HISTORY. WHAT I'M TRYING TO DO IS FIGURE
27 OUT WHAT HAPPENED. SO IF I COME BACK TWO MONTHS
28 LATER AND I LOOK AT SOMETHING SOMEWHAT DIFFERENTLY

40674

1 WHETHER I RECALL HAVING SEEN THAT FEATURE BEFORE OR
2 NOT IS NOT AS IMPORTANT AS FINALLY SEEING THAT
3 FEATURE AND UNDERSTANDING IT.

4 Q BUT YOU DON'T HAVE ANY NOTES TO GO BY AS
5 TO WHERE YOU LEFT OFF; THAT IS, AS TO WHAT YOUR
6 THINKING HAD BEEN THE FIRST TIME THROUGH.

7 LET'S JUST SAY YOU DID ONE OF THESE, OR
8 STARTED ONE OF THESE SHOTS IN MARCH, AND YOU DIDN'T
9 GET BACK TO IT UNTIL APRIL. YOU HAD TO RELY ON YOUR
10 MEMORY AS TO WHAT YOU HAD DONE, WHAT YOU HAD RULED
11 OUT OR NOT RULED OUT IN MARCH.

12 ISN'T THAT TRUE?

13 A TO THE EXTENT THAT I MADE A RELIANCE ON
14 MY PREVIOUS ANALYSIS, YES.

15 Q NOW, DOCTOR, YOU TOLD US THAT YOU FIRED
16 THIS MOSSBERG SHOTGUN.

17 A YES. THIS ONE.

18 Q AND YOU DID THAT AT A SERIES OF TARGETS?

19 A YES.

20 Q AND HOW MANY TARGETS DID YOU FIRE AT FOR
21 THIS PARTICULAR CASE?

22 A I MADE COPIES. HOW MANY OF THEM WERE
23 THERE?

24 Q YOU TELL ME.

25 A A DOZEN -- I'D HAVE TO GO BACK AND COUNT
26 THEM; AND UNFORTUNATELY, THEY WON'T BE HERE FOR
27 ANOTHER HOUR.

28 Q WHAT WON'T BE HERE?

40675

1 A MY TARGETS. THEY'RE BETWEEN SAN FRANCISCO
2 AND LOS ANGELES.

3 Q YOU DIDN'T BRING THEM WITH YOU?

4 A I DIDN'T. MR. DEVINDER WAS SUPPOSED TO
5 BRING THEM AND HIS PLANE GOT FOGGED IN.

6 Q THOSE TARGETS SHOW THE WORK THAT YOU DID
7 WITH THE SHOTGUN AND THE FIOCCHI AMMUNITION AND THIS
8 MOSSBERG?

9 A AND OTHER AMMUNITION, YES.

10 Q AND YOU NEED THEM TO LOOK AT IN ORDER TO
11 SEE WHAT WORK WAS DONE ON THEM?

12 A TO GIVE YOU A PRECISE COUNT OF THE

13 NUMBER OF TARGETS I SHOT. IT WAS MORE THAN A DOZEN,

14 BUT I DON'T RECOLLECT HOW MANY SPECIFICALLY.

15 Q YOU DON'T REMEMBER HOW MANY MORE THAN A

16 DOZEN?

17 A THAT'S CORRECT.

18 Q DO YOU REMEMBER WHAT RANGES YOU SHOT AT?

19 A SIX AND TWELVE FEET.

20 Q DID YOU SHOOT AT ANY INTERMEDIARY

21 RANGES; THAT IS, EIGHT FEET, TEN FEET?

22 A NO.

23 Q ALL OF YOUR SHOTS WERE AT SIX FEET AND

24 TWELVE FEET?

25 A THAT'S CORRECT.

26 Q DO YOU REMEMBER HOW MANY WERE AT SIX

27 FEET?

28 A OH, I GUESS SIX OR EIGHT, SOMETHING LIKE

40676

1 THAT, WOULD BE MY BEST RECOLLECTION.

2 Q WE DON'T WANT YOU TO GUESS. BUT THAT'S

3 YOUR BEST RECOLLECTION?

4 A THAT'S WHY I'D LIKE TO HAVE THE TARGET

5 COUNT. WHATEVER IT IS, IT IS.

6 Q AT 12 FEET, WHAT'S YOUR BEST

7 RECOLLECTION FOR HOW MANY TARGETS YOU SHOT THERE?

8 A AGAIN, BALLPARK, HALF A DOZEN.

9 Q AND THAT WAS YOUR EFFORT TO DETERMINE
10 SCATTER, WASN'T IT; THAT IS, A PATTERN?

11 A NO. AT THE END OF THAT EFFORT I
12 DETERMINED THAT I COULDN'T RELIABLY USE SCATTER.
13 THAT'S DIFFERENT.

14 Q AT THE BEGINNING OF THE PATTERN, THAT'S
15 WHAT YOU WERE TRYING TO FIND OUT?

16 A AT THE BEGINNING OF IT MY HOPE WAS THAT,
17 USING THE SAME WEAPON AND THE SAME AMMUNITION, I
18 WOULD GET A CONSISTENT RATE OF SPREAD AT DIFFERENT
19 RANGES SO I COULD USE A SPREAD OF THE SHOT PATTERN
20 AS A RELIABLE INDICIA OF A RANGE.

21 Q AND WHEN DID YOU DO THESE TESTS?

22 A A FEW MONTHS AGO.

23 Q DID YOU DO THE TESTS BEFORE YOU TALKED
24 ON THE PHONE TO MR. CONN, MS. NAJERA AND MR. KRSTULJA,
25 AND MYSELF?

26 A OH, YES.

27 Q AND YOU RECALL THAT WE ASKED YOU ABOUT
28 THOSE TESTS. I SPECIFICALLY ASKED YOU ABOUT THOSE

40677

1 TESTS.

2 A I DO RECALL SOME DISCUSSION OF THEM,

3 YES.

4 Q AND AT THAT TIME DID YOU TELL ME THAT
5 THE SHOTS AT TWELVE FEET GAVE A PATTERN OF ABOUT
6 FIVE INCHES?

7 A WHATEVER -- I MEAN, I'M SURE I INDICATED
8 -- I DIDN'T HAVE THE PATTERN IN FRONT OF ME. BUT
9 WHEN YOU PRESSED ME, I GAVE YOU MY BEST RECOLLECTION.
10 I DON'T RECALL THAT THAT WAS MY BEST RECOLLECTION AT
11 THE TIME. WHATEVER IT WAS, IT WAS.

12 Q AGAIN, WHATEVER IT WAS, IT WAS DOESN'T
13 HELP US HERE, BECAUSE YOU'RE THE WITNESS
14 TESTIFYING.

15 MR. CONN: OBJECTION. ARGUMENTATIVE. MOTION
16 TO STRIKE.

17 THE COURT: OVERRULED.

18 Q BY MR. GESSLER: YOU REALIZE THAT THAT
19 CONVERSATION THAT WE HAD WAS BEING TAPE-RECORDED?

20 A OH, YES.

21 Q AND WE TOLD YOU THAT IT WAS BEING
22 TAPE-RECORDED FOR THE BENEFIT OF EVERYONE SO THAT WE
23 COULD LOOK BACK AND SEE WHAT YOU SAID, DIDN'T WE?

24 A MOST DEFINITELY.

25 Q SO YOU HAD NO OBJECTIONS TO IT BEING
26 TAPE-RECORDED?

27 A WELL, I DIDN'T EVEN THINK ABOUT IT. I
28 DIDN'T THINK I GOT A VOTE.

1 Q WELL, YOU DIDN'T, BUT YOU DIDN'T EXPRESS
2 ANY -- YOU DIDN'T EXPRESS ANY OBJECTION, EVEN WITHOUT
3 YOUR VOTE, DID YOU?

4 A (WITNESS SHAKING HEAD.)

5 Q NOW, WOULD LISTENING TO THAT PORTION OF
6 THE CONVERSATION REFRESH YOUR RECOLLECTION AS TO
7 WHAT YOU TOLD US?

8 A IT WOULD, IF YOU WISH.

9 Q WELL, I DO.

10 A I DON'T HAVE A BETTER RECOLLECTION OF
11 THE TAPE. YOU CAN JUST PLAY THE TAPE.

12 Q IF YOU HEARD THE TAPE, THAT WOULD ASSIST
13 YOU IN RECOGNIZING YOUR VOICE, WOULDN'T IT?

14 A I PRESUME IT'S MY VOICE. WHATEVER I
15 SAID, I SAID.

16 Q AGAIN, YOU SAID WHATEVER YOU SAID YOU
17 SAID. WE HAVE TO KNOW WHAT YOU SAID. I CAN'T SAY
18 WHAT YOU SAID AND HAVE IT IN EVIDENCE. WE HAVE TO
19 HEAR IT FROM YOU.

20 WOULD LISTENING TO THE TAPE HELP YOU IN
21 THAT?

22 A I CAN'T INDEPENDENTLY RECOLLECT. SO I
23 WOULD HAVE TO SEE A TRANSCRIPT OR HEAR THE TAPE,
24 EITHER ONE.

25 MR. GESSLER: I'LL BE GLAD TO PLAY THE TAPE

26 FOR YOU.

27 THIS DOES NOT HAVE TO BE TAKEN DOWN BY
28 THE REPORTER. THIS IS SIMPLY TO REFRESH THIS

40679

1 WITNESS' RECOLLECTION.

2 LET ME GET THROUGH THESE HIGH-TECH
3 THINGS HERE.

4 (TAPE BEING PLAYED.)

5

6 Q BY MR. GESSLER: DOCTOR, WERE YOU ABLE
7 TO HEAR THAT TAPE-RECORDING?

8 A YES.

9 Q AND DID YOU STATE IN IT THAT AT TWELVE
10 FEET YOU GOT SCATTERS THAT WENT TO FIVE-ISH INCHES?

11 A FIVE-ISH INCHES, YES.

12 Q AND THEN DID YOU STATE AT SIX FEET THAT
13 IT WOULD BE ROUGHLY HALF OF THAT?

14 A IT WOULD BE HALF THE INTERVAL, YES.

15 Q AND WHEN YOU TOLD US THAT YOU DIDN'T SAY
16 ANYTHING ABOUT THE PATTERNS NOT BEING RELIABLE, DID
17 YOU?

18 A I DON'T REMEMBER WHAT WE DISCUSSED ON
19 THAT ASPECT.

20 Q WOULD YOU LIKE TO HEAR THE WHOLE TAPE?

21 A IF YOU WISH ME TO ANSWER QUESTIONS ABOUT
22 WHAT WE DISCUSSED, THAT, OR A TRANSCRIPT.

23 Q WELL, I HAVE A TRANSCRIPT, BUT I THINK
24 THE TAPE IS BETTER.

25 OVER THE LUNCH HOUR WOULD IT ASSIST YOU
26 IN LISTENING TO THAT TAPE?

27 A IF YOU WISH ME TO ANSWER SPECIFIC
28 QUESTIONS ABOUT THE CONVERSATION, YES.

40680

1 Q AND -- LET ME JUST ASK YOU A COUPLE OF
2 MORE QUESTIONS ON THIS LINE.

3 DOCTOR, THERE WAS ONE SHOT -- I THINK YOU
4 CALLED IT SHOT NO. 3 -- THAT WENT THROUGH THE FRENCH
5 DOOR, WASN'T THERE --

6 A YES.

7 Q -- WITHOUT HITTING ANYBODY.

8 A CORRECT.

9 Q AND IN YOUR VIEW THAT WAS WHAT YOU
10 CALLED A TIGHT PATTERN?

11 A WELL, REASONABLY SO. I MEAN, YES.

12 Q THAT'S ONE REASON YOU FELT IT DIDN'T HIT
13 ANYBODY, WAS IT WAS ALL PRETTY COMPACT WHEN IT WENT
14 THROUGH THE GLASS?

15 A REASONABLY GROUPED, AS OPPOSED TO

16 EVIDENCING A DISTURBANCE, YES.

17 Q AND DID YOU MEASURE THAT DEFECT THERE,
18 THAT HOLE, TO SEE WHAT ITS DIAMETER WAS?

19 A OH, THERE'S -- I MEAN, YES. BUT THERE'S
20 A GOOD PHOTOGRAPH OF THE HOLE.

21 Q I KNOW THERE'S A GOOD PHOTOGRAPH. BUT
22 DID YOU MEASURE IT?

23 A I LOOKED AT THE PHOTOGRAPH WITH THE
24 MEASURE IN IT. I DIDN'T MEASURE IT INDEPENDENT OF
25 THE WINDOWS. I DID STUDY THE PHOTOGRAPH WITH THE
26 MEASUREMENT IN IT.

27 Q WHAT DID YOU DETERMINE TO BE THE PATTERN
28 FOR THAT?

40681

1 A I WOULD HAVE TO LOOK AT THE PHOTO
2 AGAIN. I DIDN'T MAKE ANY USE OF THAT DIMENSION.

3 Q YOU DIDN'T MAKE ANY USE OF THAT
4 DIMENSION?

5 YOU DID NOT TRY TO ESTIMATE THE DISTANCE
6 THE SHOOTER WOULD HAVE BEEN FROM THAT GLASS THAT WAS
7 BROKEN?

8 A I WOULD HAVE LIKED TO DO THAT, AND HAD
9 THE SHOTGUN TESTS COME OUT RELIABLY IN TERMS OF THE
10 SPREAD RATE, I WOULD HAVE. BUT I DID NOT FOR THAT

11 REASON.

12 Q YOU WOULD HAVE LIKED TO DO THAT. WHAT

13 STOPPED YOU?

14 A FROM SHOT TO SHOT THE VARIATION OF THE

15 SPREAD OF PELLETS ON THE SHOTGUN VARIED SO MUCH THAT

16 I COULDN'T HAVE COME IN -- THE RANGE SPREAD OF THE

17 POTENTIAL DISTANCE INDICATED BY THAT PATTERN WOULD

18 HAVE BEEN SO LARGE IT WOULDN'T HAVE BEEN IN ANY

19 UTILITY IN MY RECONSTRUCTION.

20 Q DOCTOR, WHEN I ASKED YOU THAT QUESTION

21 IN OUR PHONE CALL, DID YOU SAY THAT YOU COULD

22 CALCULATE THE DISPERSION PATTERN IF YOU WANTED TO

23 AND COME UP WITH A DISTANCE, YOU JUST DIDN'T FIND IT

24 USEFUL?

25 A I THINK I TOLD YOU YOU'D HAVE TO

26 CALCULATE A DISTRIBUTION OF DISPERSION. AND YOU'RE

27 RIGHT. THE DISTRIBUTION WOULD BE SO WIDE, I DIDN'T

28 FIND IT USEFUL. THAT COULD BE CALCULATED.

40682

1 Q YOU DIDN'T SAY IT WOULD BE SO WIDE IT

2 WOULDN'T BE USEFUL, DID YOU, DOCTOR, WHEN WE TALKED

3 ON THE PHONE?

4 A I DON'T RECOLLECT SPECIFICALLY WHAT WE

5 DISCUSSED.

6 Q LET ME ASK YOU ANOTHER ONE.

7 A BUT LET ME FINISH.

8 Q ALL RIGHT.

9 A WE DID NOT HAVE A CONVERSATION WHERE I
10 COMMUNICATED THAT THERE WAS A RELIABLE MECHANISM TO
11 DETERMINE RANGE BASED ON SHOT PATTERN AND I JUST
12 DIDN'T DO IT. THAT CONVERSATION WE DIDN'T HAVE.

13 Q DID WE HAVE A CONVERSATION IN WHICH YOU
14 SAID I COULD GIVE IT TO ANY EXPERT AND THEY COULD
15 COME UP WITH THAT DISTANCE IF THEY WANTED TO?

16 A THEY COULD COME UP WITH A DISTANCE BASED
17 ON THE DISTRIBUTION FROM MY SHOTS IF THEY WANTED TO,
18 THEY JUST COULDN'T DEFEND IT.

19 I COULD DO THAT. I COULD DRAW YOU A
20 BELL CURVE AND SAY ONE PERCENT OF THE SHOTS ARE THIS
21 WIDE AND ONE PERCENT OF THE SHOTS ARE THIS WIDE AND
22 THE DISTRIBUTION WOULD BE FUNCTIONED LIKE THIS. AND
23 WE KNOW THE RANGE IS SOMEWHERE IN THERE.

24 Q THAT'S FINE, DOCTOR. BUT WHEN WE TALKED
25 ON THE PHONE -- AND WE JUST PLAYED THE
26 TAPE-RECORDING THERE -- YOU SAID THAT AT TWELVE FEET
27 IT WAS ABOUT FIVE-ISH INCHES, DIDN'T YOU?

28 A YES. THAT WAS MY RECOLLECTION.

1 Q THAT WAS YOUR ANSWER, WASN'T IT?

2 A YES, IT WAS.

3 Q AND AT THAT TIME YOU DIDN'T SAY, BUT

4 GEE, THAT FIVE-ISH INCHES, IT COULD BE TWO INCHES

5 AND IT COULD BE EIGHT INCHES, AND IT'S JUST OF NO

6 VALUE AT ALL, DID YOU?

7 A I DON'T THINK I SAID THOSE WORDS, BUT --

8 Q YOU DIDN'T EVEN SAY WORDS CLOSE TO THAT?

9 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH

10 HIS ANSWER?

11 THE WITNESS: I WOULD HAVE TO LISTEN TO THE

12 WHOLE TAPE. I JUST CANNOT BELIEVE -- I MEAN, THERE'S

13 JUST NO WAY THAT I COMMUNICATED TO YOU THAT THAT WAS

14 A RELIABLE MECHANISM TO DETERMINE RANGE. THAT IS

15 THE WHOLE REASON I EMBARKED ON THIS RESEARCH AND

16 COULDN'T MAKE IT WORK.

17 MR. GESSLER: YES.

18 Q DOCTOR, WHEN YOU SAID THAT AT THE TWELVE

19 FEET IT'S FIVE-ISH INCHES, AND THAT AT SIX FEET IT'S

20 HALF THAT, THAT IT'S A SIMPLE MATHEMATICAL

21 CALCULATION, YOU DIDN'T SAY THAT THIS WAS INVALID,

22 DID YOU?

23 A AGAIN, I DON'T RECOLLECT EXACTLY WHAT I

24 SAID. BUT GENERALLY, IF YOU GET A COUPLE OF POINTS

25 ON A DISPERSION CURVE YOU CAN EXTRAPOLATE TO ALL THE

26 INTERMEDIATE RANGES, AND I'M SURE I COMMUNICATED

27 THAT.

28 Q THAT'S EXACTLY WHAT YOU SAID, YOU

1 COULDN'T EXTRAPOLATE FROM IT?

2 A GENERALLY, YES.

3 Q AND IN THIS CASE YOU SAID FIVE-ISH

4 INCHES FOR TWELVE FEET, HALF THAT FOR SIX FEET, AND

5 THAT YOU FIRED AT LEAST SIX SHOTS AT EACH OF THOSE

6 DISTANCES; ISN'T THAT CORRECT?

7 A THAT IS MY -- ONCE AGAIN, I DON'T

8 RECOLLECT SAYING THAT SPECIFICALLY IN THAT

9 CONVERSATION. BUT ALL OF THOSE THINGS ARE TRUE. I

10 THINK I SHOT A HALF DOZEN AT EACH.

11 Q AND YOU THOUGHT WHAT YOU SAID WAS ABOUT

12 A FIVE-INCH PATTERN FOR TWELVE FEET.

13 A FIVE-ISH. YOU KNOW, I COULDN'T REMEMBER

14 EXACTLY WHAT THE DIMENSIONS WERE. FIVE-ISH IS

15 FIVE-ISH.

16 Q FIVE-ISH IS NOT AN M.I.T. TERM, IS IT?

17 A NO. IF I HAD THE TARGET I WOULD HAVE

18 PUT A RULER ON IT FOR YOU.

19 Q SO YOU JUST KIND OF GUESSED OFF THE TOP

20 OF YOUR HEAD WHEN WE WERE HAVING THIS PHONE

21 CONVERSATION?

22 A I HOPE FIVE-ISH DIDN'T COMMUNICATE THREE

23 DECIMAL POINTS.

24 Q WHAT DO YOU MEAN?

25 A JUST THAT. I MEAN, I HOPE YOU DIDN'T
26 THINK I WAS SAYING 5.000 WHEN I SAID FIVE INCHES,
27 FIVE-ISH.
28 Q I TAKE IT YOU DID MEAN -- WHEN YOU SAID

40685

1 FIVE-ISH, YOU DID MEAN IN THE VICINITY OF FIVE
2 INCHES, DIDN'T YOU?

3 A YES. AS OPPOSED TO TWO.

4 Q EXACTLY.

5 A THAT WAS MY RECOLLECTION.

6 Q WHEN YOU WERE TALKING ABOUT THE SIX
7 FEET, YOU WERE TALKING ABOUT HALF THAT, OR AROUND
8 TWO, TWO AND A HALF INCHES, WEREN'T YOU?

9 A OR, YOU KNOW, IF IT WAS FOUR, THEN TWO,
10 OR WHATEVER. HALF THAT WAS APPROXIMATELY.

11 Q AND SO TO THAT EXTENT YOUR TEST WAS
12 VALID, I TAKE IT; THAT IS, THAT YOU GOT THE LARGER
13 PATTERNS AT TWELVE FEET AND ABOUT HALF THAT AT SIX
14 FEET; ISN'T THAT TRUE?

15 A CLOSE.

16 Q THAT'S WHAT YOU TOLD US, ISN'T IT?

17 A WELL, FIRST OF ALL, IF YOU WOULD HAVE
18 ASKED ME, I WOULD HAVE TOLD YOU YOU'RE GOING TO GET
19 A LARGER PATTERN AT TWELVE FEET THAN AT SIX FEET.

20 AND IF YOU COULD HAVE MEASURED THE SAME SHOT AT SIX
21 FEET, YOU WOULD SEE, ROUGHLY, IT SPREAD AT WHATEVER
22 IT WAS AT TWELVE FEET, BARRING SMALL DEVIATIONS DUE
23 TO IMPERFECTIONS IN THE PELLETS.

24 Q DID YOU DO A SHOT OF THAT NATURE, WHERE
25 YOU DID THE SAME SHOT AND YOU MEASURED IT AT SIX AND
26 TWELVE FEET?

27 A NO. I WAS CONCERNED WITH INTERACTION
28 WITH THE TARGET, CHANGING THE SPREAD FOR THE SECOND

40686

1 TARGET. I TRIED IN MY --

2 Q THAT WAS THE EXPERIMENT THAT YOU DID?

3 A I'M SORRY?

4 Q THAT WAS THE EXPERIMENT YOU DID,
5 CHECKING SIX FEET AND TWELVE FEET.

6 A I HAD TO SHOOT THEM INDEPENDENT. I
7 FOUND I COULD NOT AIM RELIABLY THROUGH A NUMBER OF
8 TARGETS BACK TO BACK.

9 Q SO WHAT YOU DID WAS YOU BOLTED THE
10 SHOTGUN, OR YOU PUT IT IN A LATHE OR SOMETHING TO
11 KEEP IT ABSOLUTELY STEADY, DIDN'T YOU?

12 A NO. THAT WOULDN'T REALISTICALLY
13 SIMULATE THE RECOIL ABSORPTION OF A SHOOTER.

14 WHAT I DID WAS CLAMP A VERY SLIGHT SMALL

15 JORGENSEN HAND SCREW CLAMP TO THE BARREL WHICH
16 REGISTERED THE FRONT OF THE BARREL PRECISELY ON MY
17 SHOOTING BENCH, AND THEN I SEATED MYSELF, USED MY
18 SHOULDER AS THE BENCH REST AND SHOT THOSE SO THAT MY
19 BODY MOTION WOULD BE CONSISTENT WITH A RECOILING
20 SHOOTER, WHICH NOMINALLY SHOULDN'T AFFECT THE
21 SPREAD. BUT I WANTED TO MAKE SURE THAT, TO THE
22 EXTENT THAT EXPERIMENTAL VARIABLE WAS THERE, IT WAS
23 IN MY EXPERIMENT.

24 Q AND THEN YOU PUT IT BACK AND DID IT THE
25 SAME WAY THE SECOND TIME?

26 A THEN I WOULD PUT A NEW TARGET MOUNTED AT
27 12 FEET, DRAW A BEAD, AND DO THE SAME SHOT; REGISTER
28 THE WEAPON ON THE FRONT OF THE SHOOTING BENCH, SO

40687

1 THE INITIAL POSITION OF MY BARREL STARTED THE SAME
2 DISTANCE FROM THE TARGET.

3 Q THERE WAS THE LEG WOUND ON JOSE MENENDEZ
4 THAT YOU'VE DESCRIBED AS BEING SHOT NO. 7.

5 DO YOU RECALL THAT ONE?

6 A I RECALL SHOT NO. 7, YES.

7 Q AND DID YOU MEASURE THE SHOT DISPERSION
8 IN THAT WOUND OR THE SIZE OF THAT WOUND?

9 A I DON'T RECOLLECT TRYING TO MAKE AN

10 EXACT MEASUREMENT OF THE SIZE OF IT, NO.

11 Q DID YOU TRY TO ESTIMATE FROM THE SIZE OF
12 THE PATTERN HOW FAR BACK THE SHOOTER MIGHT HAVE BEEN
13 WHEN THAT SHOT WAS DELIVERED?

14 A NO. THAT WAS THE PROBLEM. I MEAN --

15 Q IF IT WAS A FIVE-INCH PATTERN IT WOULD
16 HAVE BEEN TWELVE FEET, WOULDN'T IT, BASED ON YOUR
17 OWN EXPERIMENTS? A FIVE-ISH PATTERN, LET'S PUT IT
18 THAT WAY.

19 A I MEAN -- NO. THAT IS THE PROBLEM.

20 FIRST OF ALL, I CAN JUST HEAR THE
21 OBJECTION IF I SAID "FIVE-ISH." BUT...

22 MR. CONN: YOUR HONOR, MAY THE WITNESS
23 COMPLETE HIS ANSWER?

24 THE COURT: WHY DON'T YOU ANSWER THE
25 QUESTION.

26 THE WITNESS: NO. YOU CAN'T DO THAT, BECAUSE
27 IF I HAD MY 12-FOOT TARGETS HERE YOU'D SEE THAT SOME
28 WERE BIGGER AND SOME WERE SMALLER, AND THE RANGE OF

40688

1 SIZE OF SHOT AT THE SAME DISTANCE VARIED
2 SUBSTANTIALLY.

3 SO THAT MEANS THAT BY TRYING TO RELY ON
4 THE SIZE OF THAT SHOT PATTERN, WHAT YOU ARE TRYING

5 TO DO IS SAY, WELL, I KNOW THERE'S A DISTRIBUTION OF
6 RANGES THAT MAY HAVE ACCOUNTED FOR THIS.

7 WELL, IT WAS CLEAR TO ME WITH MY FIRST
8 DOZEN SHOTS THAT THE WIDTH OF THAT DISTRIBUTION,
9 PARTICULARLY ONCE I GOT THE CENTROID DEFINED WAS
10 GOING TO BE SO BIG THAT IT WOULD BE USELESS. I
11 COULDN'T MAKE THE DETERMINATION.

12 Q YOU MEAN AT SIX FEET SOME SHOT PATTERNS
13 WERE BIGGER THAN THEY WERE AT TWELVE FEET; IS THAT
14 TRUE?

15 A NO. YOU WOULDN'T SEE THAT KIND OF
16 CROSSOVER. YOU WOULD STILL SEE, AT SIX FEET,
17 FACTORS OF TWO DIFFERENCE IN THE SIZE OF THE SHOT.

18 Q YOU MEAN ONE TO TWO FEET?

19 A YES. THAT'S A BIG DIFFERENCE.

20 Q AT TWELVE IT MIGHT BE FOUR TO FIVE
21 INCHES?

22 A WHATEVER IT WAS. I DIDN'T ATTEMPT TO
23 MEASURE IT. IT WAS A LARGE DISTANCE IN THE SIZE OF
24 DISTRIBUTION.

25 Q THERE IS SOME VALUE IN SEEING HOW BIG
26 THE DISPERSION IS AS TO AN ESTIMATE OF THE DISTANCE
27 AWAY AS TO THE SHOOTER AND LONGER, ISN'T THERE?

28 A NOT MUCH, BECAUSE HAD I SHOT ENOUGH

1 TWELVE-FOOTERS AND I HAD SHOT ENOUGH SIX-FOOTERS,
2 THEN YOU WOULD BEGIN TO SEE AT THE TAIL END OF THE
3 DISTRIBUTION SOME OF THE TWELVE-FOOTERS WOULD HAVE
4 BEEN TIGHTER THAN SOME OF THE SIX-FOOTERS.

5 NOW WHAT DO I DO?

6 MR. GESSLER: MOVE TO STRIKE THAT ENTIRE
7 ANSWER AS SPECULATION.

8 THE COURT: SUSTAINED. THAT ANSWER'S
9 STRICKEN.

10 Q BY MR. GESSLER: YOU DID NOT FIRE MORE
11 THAN SIX SHOTS AT TWELVE FEET, DID YOU, DOCTOR? AND
12 THAT CAN BE ANSWERED YES OR NO.

13 A I DON'T RECOLLECT -- I MAY HAVE SHOT MORE
14 THAN SIX AT TWELVE FEET. I'D HAVE TO COUNT THE
15 TARGETS TO ANSWER PRECISELY.

16 Q AT ANY RATE, OF ALL THE SHOTS YOU DID
17 DO, YOU DID NOT GET ANY AT SIX FEET THAT WERE BIGGER
18 THAN THEY WERE AT TWELVE FEET, DID YOU?

19 A I DON'T RECOLLECT SEEING THE PATTERN
20 CROSS-OVER ON MY SIX SHOTS. THAT'S CORRECT.

21 Q HOW MANY SHOTS DID YOU HAVE AVAILABLE TO
22 YOU TO TAKE, HAD YOU DECIDED TO DO? SO WERE YOU
23 LIMITED TO 12 ROUNDS OF FIOCCHI AMMUNITION?

24 A OH, I HAD A WHOLE CASE.

25 Q HOW MUCH IS A CASE?

26 A TWO HUNDRED ROUNDS.

27 Q AND YOU FIRED 12 OF THOSE 200 ROUNDS?

40690

1 MR. GESSLER: ALL RIGHT.

2 YOUR HONOR, I REALLY DO NEED TO GO A

3 LITTLE BIT INTO THE SHOTGUN PATTERNS THAT HE DOES

4 HAVE WITH HIM, AND APPARENTLY WE CAN'T DO THAT.

5 IT'S NOON NOW ANYWAY. CAN WE TAKE THE NOON BREAK AT

6 THIS TIME?

7 THE COURT: WE'LL TAKE OUR RECESS UNTIL

8 1:30.

9 (AT 12:00 NOON PROCEEDING WERE

10 ADJOURNED UNTIL 1:30 P.M. OF

11 THE SAME DAY.)

12

13

-24845

1 VAN NUYS, CALIFORNIA; TUESDAY, NOVEMBER 14, 1995

2 1:35 P.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN FADALE, OFFICIAL REPORTER)

7

8 THE COURT: OKAY. EVERYBODY IS PRESENT. WE WILL

9 HAVE THE JURY OUT, PLEASE.

10 (THE JURY ENTERS THE COURTROOM AND THE
11 FOLLOWING PROCEEDINGS WERE HELD:)

12

13 THE COURT: EVERYONE IS BACK, AND WE WILL RESUME
14 WITH THE CROSS-EXAMINATION.

15 MR. GESSLER: THANK YOU, YOUR HONOR.

16

17 CROSS-EXAMINATION (CONT'D)

18 BY MR. GESSLER:

19 Q. DR. MC CARTHY, THE DEVINDER GREWAL, DID I
20 PRONOUNCE THAT RIGHT?

21 A. YES, I THINK SO.

22 Q. -- THAT YOU WORKED WITH, HE IS THE
23 GENTLEMAN WITH THE BLACK BEARD IN THE SECOND ROW HERE?

24 A. SURE. STAND UP.

25 Q. AND HE RECEIVED HIS MASTER'S DEGREE FROM
26 STANFORD IN '94.

27 A. YES.

28 Q. AND HE IS NOT ONE OF THE DOCTORS THAT YOU

-24844

1 HAVE ON YOUR STAFF THERE, THE 70 TO 90 PH.D'S?

2 A. NOT YET.

3 Q. AND HIS DEGREE, THAT'S IN MECHANICAL
4 ENGINEERING, ISN'T IT?

5 A. BIOMECHANICS.

6 Q. WELL, MECHANICAL ENGINEERING IS THE DEGREE
7 THAT WAS AWARDED FOR THE MASTERS, ISN'T IT?

8 A. YES. HIS SPECIALTY IN MECHANICAL
9 ENGINEERING WAS BIOMECHANICS.

10 Q. BUT MY QUESTION IS THE DEGREE THAT WAS
11 AWARDED WAS MECHANICAL ENGINEER, CORRECT?

12 A. YES.

13 Q. NOW, YOU BROUGHT THE TARGETS?

14 A. YES.

15 Q. LET'S GO THROUGH THE TARGETS.

16 MAY I APPROACH THE WITNESS, YOUR HONOR?

17 THE COURT: YES, OKAY.

18 Q. BY MR. GESSLER: OKAY. WHY DON'T YOU HOLD
19 ON TO THEM. THESE ARE THE TARGETS THAT YOU SHOT WITH
20 THE MOSSBERG?

21 A. YES.

22 Q. AND FIRST CAN YOU SHOW US THE ONES THAT YOU
23 SHOT AT SIX FEET?

24 A. I CAN. THESE.

25 Q. OKAY. YOU HAVE ONE, TWO, THREE, FOUR
26 TARGETS?

27 A. HERE IS ANOTHER ONE, FIVE.

28 Q. ALL RIGHT.

1 A. FIVE, YES.

2 YES, THAT'S CORRECT.

3 Q. ONE OF THESE SAYS THAT IT WAS A WINCHESTER?

4 A. RIGHT.

5 Q. THAT'S NOT THE FIOCCHI THAT YOU SHOT THEN,

6 IS IT?

7 A. THAT IS CORRECT. IT IS NOT FIOCCHI, IT IS

8 WINCHESTER.

9 Q. WOULDN'T YOU TRYING SHOOT FIOCCHI SO YOU

10 COULD FIND OUT IF THE SAME AMMUNITION PROVIDED TARGET

11 SCATTER THAT WAS USEFUL TO YOU?

12 A. IF THE SAME AMMUNITION WAS USED, AND THAT

13 WAS PRECISELY WHY I SHOT A CONTROLLED WINCHESTER.

14 Q. WINCHESTER DOESN'T HELP YOU KNOW WHAT THE

15 FIOCCHI DID, DOES IT?

16 A. NO, BUT IT DOES HELP YOU TO DETERMINE IF --

17 I WAS TRYING TO UNDERSTAND IF THERE WAS A SIGNIFICANT

18 AMMUNITION-TO-AMMUNITION SCATTER, SO I WAS JUST SHOOTING

19 THE SAME THING.

20 Q. THIS ONE IS A WINCHESTER ALSO, ISN'T IT?

21 A. CORRECT.

22 Q. SO, THAT LEAVES THREE THAT YOU SHOT WITH

23 FIOCCHI?

24 A. YES.

25 Q. AND WHERE IS THE OTHER THREE YOU SHOT WITH

26 FIOCCHI AT SIX FEET?

27 A. THESE ARE THE ONLY ONES I'VE GOT.

28 DID I SHOOT THREE OTHERS?

1 Q. YOU TOLD US THAT YOU SHOT SIX FROM SIX FEET
2 WITH FIOCCHI, SO THAT'S WHAT I AM ASKING YOU.

3 A. OKAY. I SHOT FIVE, BUT I GUESS I DIDN'T
4 UNDERSTAND THE FIOCCHI CONJUNCTION. I ONLY HAD THREE.
5 I DON'T RECOLLECT SHOOTING SIX WITH FIOCCHI AT SIX FEET.

6 Q. DIDN'T YOU TELL US THIS MORNING THAT YOU
7 COULD HAVE SHOT MORE FIOCCHI OUT OF THAT 200 BOX AND
8 COME UP WITH A BETTER PATTERN PERHAPS?

9 A. I WOULDN'T HAVE COME UP WITH A BETTER
10 PATTERN, BUT I WOULD HAVE COME UP WITH A WIDER
11 DISTRIBUTION.

12 BUT YES, I COULD HAVE SHOT DOZENS.

13 Q. BUT INSTEAD OF DOZENS YOU SHOT THREE WITH
14 FIOCCHI?

15 A. THAT'S CORRECT.

16 Q. LET'S TAKE THIS ONE YOU SHOT WITH FIOCCHI.

17 WHAT WAS THE SCATTER PATTERN ON THAT ONE?

18 MS. ABRAMSON: IS THERE SOME WAY YOU COULD MARK
19 THESE OR IDENTIFY THEM?

20 THE COURT: THAT'S UP TO COUNSEL IF YOU WANT TO
21 MARK THEM.

22 MR. GESSLER: WE CAN MARK THEM. MAY I KNOW WHAT
23 THE NEXT EXHIBIT IN ORDER IS, YOUR HONOR?

24 THE COURT: 278.

25 MR. GESSLER: LET'S MARK THE FIRST TARGET AS 278.

26 MS. TOWERY: 279, YOUR HONOR.

27 MS. NAJERA: 279.

28 THE COURT: WHAT IS 278?

-24841

1 MS. NAJERA: A FINAL SKETCH OF THE TRIANGLE.

2 MS. ABRAMSON: MAY I APPROACH, YOUR HONOR, TO
3 MARK MY COPIES?

4 THE COURT: YES, YOU MAY DO SO.

5 Q. BY MR. GESSLER: AND WHAT IS THE DIAMETER
6 OF YOUR PATTERN ON THAT ONE, 279?

7 A. THE SHOT WHICH I BELIEVE IS THIS DOWN HERE.
8 THE OTHER TWO HOLES ARE PLASTIC. BALLPARK, AN INCH.

9 Q. WELL, HOW ABOUT BETTER THAN BALLPARK.
10 DON'T YOU HAVE A LITTLE BETTER MEASURING DEVICE?

11 A. I DIDN'T BRING IT UP.

12 DO YOU HAVE THE CALIPER THERE? WE HAVE A
13 CALIPER UPSTAIRS. SORRY.

14 MR. LEVIN: I HAVE A RULER, IF THAT WILL HELP.

15 MR. GESSLER: THAT'LL BE FINE.

16 MR. LEVIN: I THINK IT'S CALIBRATED.

17 THE WITNESS: IT PROBABLY ISN'T, BUT THAT'S ALL
18 RIGHT.

19 NOW, WHAT DIMENSION WOULD YOU LIKE ME TO
20 MEASURE ON THAT PATTERN?

21 Q. BY MR. GESSLER: OH, YOU MIGHT TRY THE

22 WIDEST DIAMETER.

23 A. OKAY. INCH AND THREE-SIXTEENTHS, INCH AND

24 A QUARTER.

25 Q. INCH AND A QUARTER.

26 NOW LET'S MARK THE NEXT ONE 280.

27 A. INCH AND FIVE-SIXTEENTHS.

28 Q. OKAY. AND LET'S MARK THIS ONE 281.

-24840

1 A. TWO INCHES.

2 Q. AND DOES THAT ONE APPEAR THAT THE WAD WENT

3 THROUGH THAT ALSO?

4 A. IT APPEARS SO. THAT COULD BE A WADDING

5 MARK THERE (INDICATING).

6 Q. AND YOU ARE LOOKING AT THE BACK OF EXHIBIT

7 281?

8 A. YEAH. IF I HAD TO DO A PELLET, I'D CAPTURE

9 THAT GRAY THERE, BUT THE PELLET-TO-PELLET GRAY IS STILL

10 TWO INCHES.

11 Q. SO, YOU HAVE ONE AND THREE-SIXTEENTHS

12 INCHES, ONE AND FIVE-SIXTEENTHS INCHES AND TWO INCHES

13 FROM SIX FEET?

14 A. YES.

15 Q. AND THOSE THREE ARE THE ONLY TARGETS THAT

16 YOU SHOT FROM SIX FEET WITH FIOCCHI AMMUNITION?

17 A. CORRECT.

18 Q. NOW, HOW ABOUT THE SIX THAT YOU DID AT 12

19 FEET?

20 A. FIVE IN FIOCCHI.

21 Q. FIVE IN FIOCCHI FROM 12 FEET?

22 A. YES.

23 Q. ALL RIGHT.

24 AND LET'S TAKE -- MAY WE MARK THIS FIRST

25 ONE 282, YOUR HONOR?

26 THE COURT: YES.

27 Q. BY MR. GESSLER: WOULD YOU TELL US THE

28 SCATTER PATTERN ON THAT ONE THE SAME WAY THAT YOU DID ON

-24839

1 THE SIX FEET.

2 A. I AM COMFORTABLE THAT THAT MIGHT BE A WAD.

3 Q. HOW ABOUT THE PART THAT'S PROBABLY NOT A

4 WAD THEN?

5 A. TWO AND THREE-QUARTERS.

6 Q. ALL RIGHT.

7 A. YEAH, TWO AND THREE-QUARTERS.

8 Q. NOW, THAT'S NOT COUNTING WHAT'S AT THE VERY

9 TOP THAT YOU THINK MIGHT BE A WAD?

10 A. YEAH. IF YOU DO THAT WITH THE WAD, IT

11 BECOMES THREE AND -- THREE AND A HALF.

12 Q. OKAY. LET ME MARK THE NEXT ONE THE NEXT IN

13 ORDER, YOUR HONOR.

14 THE COURT: 283.

15 THE WITNESS: I SHOULD BE PUTTING STICKERS ON

16 THESE, OR SOMEONE'S GOING TO HAVE TO.

17 MS. ABRAMSON: I AM MARKING COPIES.

18 THE WITNESS: OKAY, THANK YOU.

19 TWO AND SEVEN-EIGHTHS.

20 Q. BY MR. GESSLER: NEXT ONE NEXT IN ORDER

21 PLEASE, YOUR HONOR.

22 THE COURT: WELL, IT'S NOT VERY HELPFUL -- MS.

23 ABRAMSON SAYS YOU'RE MARKING COPIES, AND THERE IS NO WAY

24 OF VERIFYING COPY VERSUS THE ORIGINAL UNLESS THERE'S

25 SOMETHING ON THE RECORD.

26 SO, DR. MC CARTHY IS CORRECT, WE SHOULD BE

27 LABELING THESE ORIGINALS, NOT COPIES.

28 MR. GESSLER: WE CAN LABEL THESE WITH STICK-ONS.

-24838

1 WE CAN ACCOMPLISH THAT, YOUR HONOR.

2 THE COURT: OKAY. 284.

3 THE WITNESS: THREE INCHES.

4 Q. BY MR. GESSLER: NOW, DO YOU WANT TO PUT IT

5 DOWN HERE WHERE IT DOESN'T COVER THE SCATTER PATTERN?

6 NOW WHAT DID YOU GET?

7 A. THREE INCHES.

8 Q. THREE INCHES ON 284?

9 A. MM-HMM.

10 Q. AND THE NEXT ONE WE WILL MARK 285 AS SOON
11 AS WE GET A STICK-ON HERE. THAT'S ANOTHER 12-FOOT SHOT
12 WITH FIOCCHI.
13 A. YES.
14 A. BALLPARK, TWO AND A HALF.
15 Q. TWO AND A HALF INCHES?
16 A. YES.
17 Q. AND FINALLY, 286.
18 THIS IS ALSO 12 FEET?
19 A. TWO AND A QUARTER.
20 Q. DR. MC CARTHY, WHERE ARE THE ONES THAT ARE
21 FIVE INCHES?
22 A. THAT'S FIVE INCHES.
23 Q. IS THAT A FIOCCHI?
24 A. NO, IT'S A WESTERN.
25 Q. WELL, WESTERN? AGAIN, THAT'S NOT
26 WINCHESTER EITHER, IT'S WESTERN?
27 A. EXCUSE ME, WINCHESTER. I'M SORRY.
28 Q. DOES IT SAY WHAT IT IS?

-24837

1 A. YEAH. WINCHESTER NO. 4.
2 Q. NONE OF THE FIOCCHI WERE FIVE INCHES?
3 A. THAT IS CORRECT.
4 Q. AND THEN YOU WERE IN ERROR WHEN YOU TOLD
5 MR. CONN AND MS. NAJERA AND I THAT IT WAS A FIVE-INCH

6 PATTERN ON THE FIOCCHI?

7 A. I DON'T RECOLLECT TYING THE PATTERN

8 SPECIFICALLY TO FIOCCHI, BUT IF I WAS RECALLING THE

9 WESTERN -- THE WINCHESTER PATTERN WHEN I WAS TALKING

10 ABOUT FIOCCHI, YEAH, I JUST HAD THE WRONG AMMO PATTERN

11 IN MIND.

12 Q. THE WINCHESTER PATTERN WAS ONLY ONE SHOT AT

13 FIVE INCHES, WASN'T IT?

14 A. I DON'T UNDERSTAND YOUR QUESTION. YOU MEAN

15 AT THIS SPREAD?

16 Q. YES.

17 A. WELL, I MEAN -- I MEAN THE WINCHESTER

18 TENDED TO SCATTER MORE. BUT HERE AGAIN, I MEAN -- AND I

19 SORT OF SAID FIVE-ISH. THERE IS FIVE INCHES, I MEAN.

20 Q. WELL, YES. THERE'S FIVE INCHES ON ONE

21 WINCHESTER. IS THAT WHAT YOU'RE SAYING?

22 A. TWO WINCHESTERS.

23 Q. BUT NOT ON ANY OF THE FIOCCHI'S?

24 A. THAT'S CORRECT.

25 Q. AND THE FIOCCHI'S IS WHAT YOU WERE

26 INTERESTED IN FOR THIS CASE?

27 A. WELL, I WAS INTERESTED IN ALL OF THEM, BUT

28 THE FIOCCHI WAS THE PRIMARY BENCHMARK I WAS LOOKING AT,

2 Q. THAT'S WHAT THIS CASE WAS INVOLVING WAS THE
3 FIOCCHI, WASN'T IT?

4 A. THAT HAS BEEN THE TESTIMONY. I HAVE NOT
5 INDEPENDENTLY COME TO A CONCLUSION ON THAT.

6 Q. YOU HAVEN'T COME TO A CONCLUSION
7 INDEPENDENTLY THAT FIOCCHI AMMUNITION WAS USED?

8 A. THAT IS CORRECT.

9 Q. WHAT IS YOUR OPINION AS TO WHAT WAS USED?

10 A. I DON'T HAVE AN OPINION. IT'S JUST THAT I
11 WAS UNABLE TO FIND, AFTER LOOKING AT A NUMBER OF GUN
12 SHOWS, EXACTLY THE SAME INTERNAL CONSTRUCTION AS THE
13 AMMO THAT WAS USED IN THIS CASE. I PURCHASED FIOCCHI
14 EXEMPLARS AND USED THOSE, BUT I HAVEN'T FORMED AN
15 INDEPENDENT CONCLUSION AS TO THE AMMUNITION USED IN THIS
16 CASE.

17 Q. YOU DIDN'T GO OUT IN 1989 TRYING TO FIND
18 THE FIOCCHI AMMUNITION?

19 A. WELL, NO. I WASN'T INVOLVED IN THIS MATTER
20 IN 1989. BUT WHEN YOU GO TO GUN SHOWS YOU CAN BUY OLD
21 AMMUNITION, AND I HAVE ATTEMPTED TO BUY OLD FIOCCHI, AND
22 I HAVE GOTTEN OLDER VERSIONS OF DOUBLE AUGHT BUCK, BUT I
23 HAVEN'T FOUND NO. 4.

24 Q. DID YOU CONSULT WITH THE CRIMINALISTS WHO
25 WORKED ON THIS CASE IN THE FIRST TRIAL?

26 A. I MET WITH MR. ZOELLER.

27 Q. WELL, DETECTIVE ZOELLER IS A DETECTIVE,
28 ISN'T HE?

1 A. BUT I DON'T KNOW WHETHER HE FITS YOUR
2 DEFINITION OF A CRIMINALIST OR NOT.

3 Q. NO. A CRIMINALIST IN THE DEFINITION IS
4 SOMEBODY WHO WORKS WITH EVIDENCE AT THE SCENE;
5 BALLISTICS, AMMUNITION, GUNS, THINGS OF THAT NATURE.

6 DID YOU TALK TO DEPUTY VAN HORN OF THE
7 SHERIFF'S DEPARTMENT?

8 A. I DON'T RECOLLECT DOING SO.

9 Q. OR TO CHUCK MORTON? HE IS A CRIMINALIST UP
10 YOUR WAY, ISN'T HE?

11 A. I DON'T KNOW MR. MORTON.

12 Q. SO, YOU DIDN'T CHECK WITH ANY CRIMINALIST
13 THEN TO TRY TO LOOK AT THE OLD AMMUNITION FROM THIS CASE
14 AND SEE IF YOU COULD FIND OUT WHAT IT WAS?

15 A. I HAVE JUST BEEN ACCEPTING IT'S FIOCCHI. I
16 HAVEN'T ATTEMPTED -- NO ONE HAS ASKED ME TO FORM AN
17 INDEPENDENT OPINION.

18 Q. WELL, YOU HAVE NO REASON TO BELIEVE THAT
19 IT'S NOT FIOCCHI, DO YOU?

20 A. NO.

21 Q. AND YOU SAID THAT YOU LOOKED AT THE
22 EXHIBITS IN THIS CASE FROM THE FIRST TRIAL?

23 A. YES.

24 Q. YOU LOOKED AT THE PELLETS THAT WERE
25 RECOVERED, DIDN'T YOU?

26 A. YES.

27 Q. DETERMINED THEY WERE NO. 4 BUCK?

28 A. YES.

-24834

1 Q. LOOKED AT ONE OF THE SHOT CUPS THAT WAS
2 RECOVERED?

3 A. YES.

4 Q. LOOKED AT THE WADDINGS THAT WERE RECOVERED?

5 A. YES.

6 Q. AND YOU KNOW THAT THE ANALYST AT THE FIRST
7 TRIAL DETERMINED THAT THAT WAS FIOCCHI?

8 MR. CONN: OBJECTION, CALLS FOR HEARSAY.

9 THE COURT: SUSTAINED.

10 Q. BY MR. GESSLER: DID YOU READ THE TESTIMONY
11 OF ANY OF THE CRIMINALISTS WHO TESTIFIED AT THE FIRST
12 TRIAL?

13 A. YES.

14 Q. AND DID YOU UNDERSTAND FROM READING THEIR
15 TESTIMONY THAT IT WAS FIOCCHI AMMUNITION THAT WAS USED?

16 MR. CONN: OBJECTION, CALLS FOR HEARSAY.

17 THE COURT: OVERRULED. YOU MAY ANSWER THE
18 QUESTION.

19 THE WITNESS: THAT'S WHAT I RECALL THE TESTIMONY
20 WAS.

21 Q. BY MR. GESSLER: THAT IS YOUR RECOLLECTION?

22 A. YES.

23 Q. NOW, DR. MC CARTHY, YOU LISTENED TO THE
24 TAPE RECORDING OF OUR CONVERSATION OVER THE LUNCH HOUR,
25 DIDN'T YOU?

26 A. I READ THE TRANSCRIPT. I DIDN'T HAVE TIME
27 TO LISTEN TO THE TAPE.

28 Q. THE TAPE WAS ABOUT 45 MINUTES, WASN'T IT?

-24833

1 A. UNDERSTOOD, BUT I READ THE TRANSCRIPT. IT
2 WAS FASTER, AND -- I DO HAVE A JOB, I MEAN, AND I TRY TO
3 DO IT DURING THE LUNCH HOUR.

4 Q. IN OTHER WORDS, YOU DIDN'T LISTEN TO THE
5 TAPE, YOU READ THE TRANSCRIPT?

6 A. THAT'S CORRECT.

7 Q. WELL, DID YOU SAY IN THAT CONVERSATION THAT
8 AS TO THE LEG WOUND ON JOSE MENENDEZ, THAT IF IT WAS --

9 THE COURT: PERHAPS YOU CAN JUST POINT TO THE
10 PAGE. HE HAS THE TRANSCRIPT THERE, TOO, MR. GESSLER.

11 Q. BY MR. GESSLER: PAGE 30 OF THE TRANSCRIPT
12 OF THAT TELEPHONE CALL DOWN ABOUT TWO-THIRDS OF THE WAY.

13 IF I COULD, YOUR HONOR.

14 RIGHT THERE WHERE IT SAYS "W.K." FOR WALTER
15 KRSTULJA. I'LL SEE IF I CAN RECOVER THAT. I AM SURE WE
16 CAN.

17 A. OKAY.

18 Q. QUESTION BY WALTER KRSTULJA:

19 "Q. ALL RIGHT. AND DID YOU
20 MAKE ANY CALCULATIONS OF ROUGHLY HOW
21 FAR THE PERSON WOULD HAVE BEEN FROM
22 THE LEG SHOT?

23 "ROGER MC CARTHY: CLOSE, UM,
24 BUT I HAVEN'T. ONCE AGAIN, IF THAT
25 BECAME RELEVANT I COULD SCALE THE
26 WOUNDS OF THE AUTOPSY AND GO TO MY
27 SHOT PATTERNS AND MAKE AN ESTIMATE.
28 JUST NOTHING IN MY RECONSTRUCTION HAS

-24832

1 REQUIRED THAT, SO I HAVEN'T DONE IT."

2 IS THAT WHAT YOU SAID IN THAT PHONE
3 CONVERSATION?

4 A. LOOKS LIKE IT.

5 Q. SO, THESE RECONSTRUCTIONS OF SHOT PATTERNS,
6 THEY JUST WEREN'T RELEVANT OF YOUR DETERMINATION OF
7 THESE SHOT SEQUENCES?

8 A. NO. I JUST COULDN'T MAKE AN ESTIMATE THAT
9 WOULD BE DEFENSIBLE BY THE TIME WE GOT DONE WITH THE
10 DISTRIBUTIONS ON THESE SHOTS.

11 Q. THAT'S NOT THE ANSWER YOU GAVE TO THE
12 QUESTION THOUGH, IS IT?

13 A. WELL, YOU ASKED A DIFFERENT QUESTION NOW.

14 Q. THE QUESTION WAS DID YOU MAKE ANY

15 CALCULATIONS? AND YOUR ANSWER WAS IF IT BECAME RELEVANT
16 YOU COULD; ISN'T THAT IT?
17 A. THAT'S RIGHT, I COULD, BUT I COULDN'T
18 DEFEND IT. I WOULD BE CROSS-EXAMINED TO DEATH ON IT
19 Q. AND NOW YOU'RE BEING CROSS-EXAMINED TO
20 DEATH FOR NOT DOING IT, RIGHT?
21 DID YOU SCALE THE SCATTER PATTERN FOR WHAT
22 YOU CALL SHOT NO. 1; THAT IS, THE SHOT THAT YOU SAY WENT
23 THROUGH JOSE MENENDEZ' LEFT ELBOW, HIT HIS RIGHT ELBOW
24 AND SHOULDER AREA, AND LODGED IN MRS. MENENDEZ' LEFT
25 BREAST.
26 DID YOU SCALE THAT TO SEE HOW WIDE A
27 SCATTER PATTERN THAT WOULD BE?
28 A. NO. THERE WOULD BE NO WAY TO.

-24831

1 Q. I AM JUST ASKING DID YOU OR DID YOU NOT?
2 A. I DID NOT, COULD NOT.
3 MR. GESSLER: I HAVE NO FURTHER QUESTIONS, YOUR
4 HONOR. I THINK MS. ABRAMSON MIGHT HAVE A FEW, THOUGH.
5 THE COURT: OKAY.
6 MS. ABRAMSON: I WANT TO GET THE TARGETS
7 STRAIGHTENED OUT IF WE CAN, YOUR HONOR, FIRST.
8 THE COURT: THAT WOULD BE GOOD.
9 MS. ABRAMSON: JUST TO MAKE SURE, AND LET ME JUST
10 START WITH A QUESTION.

11

12 CROSS-EXAMINATION

13 BY MS. ABRAMSON:

14 Q. DR. MC CARTHY, YOU PROVIDED COPIES OF THESE
15 TARGETS TO COUNSEL IN THIS CASE, BOTH PROSECUTION AND
16 THE DEFENSE; IS THAT RIGHT?

17 A. YES.

18 Q. ARE THE IMAGES ON THE COPIES, HOWEVER, THE
19 REVERSE OF THE IMAGES ON THE ACTUAL TARGETS?

20 A. NO. BUT THEY'RE ONLY AN IMAGE OF ONE SIDE
21 OF THE TARGET. IN OTHER WORDS --

22 Q. YEAH. WELL, I AM JUST TALKING ABOUT
23 WHETHER THEY LINE UP WITH THE SIDE OF THE TARGET THAT'S
24 GOT PRINTING ON IT OR WHETHER IT'S THE OTHER SIDE OF THE
25 TARGET.

26 A. DIFFERENT QUESTION.

27 Q. LIKE 279, OKAY. 279 LINES UP THE WAY WE
28 ARE NOW HOLDING IT, BUT THE SIDE OF 279 THAT HAS THE

-24830

1 WRITING ON IT IS BASICALLY THE FLIP SIDE?

2 A. YEAH. I WROTE ON THE BACK OF THE TARGET.
3 THAT IS THE EXIT.

4 Q. SO, ON OUR COPIES YOU ARE WRITING ON THE
5 FRONT?

6 A. NO, NO. DID I PUT THAT ON?

7 Q. I GUESS. THAT'S HOW THEY CAME TO US.
8 A. OKAY, GOOD.
9 Q. ALL RIGHT. THIS IS 279 THOUGH, RIGHT?
10 A. THEY TRANSFERRED THE INFORMATION FROM THE
11 BACK TO THE FRONT OF THE TARGET FOR YOU.
12 Q. AND I WROTE ON THE BACK. SO, NOW THIS IS
13 THE LABEL FOR 279 UNTIL THE CLERK DOES A BETTER ONE.
14 WHY DON'T YOU PUT THAT ASIDE.
15 AND THIS IS THE ONE I WROTE 280 ON THE BACK
16 AS YOU WERE MARKING IT, OKAY, AND THAT'S THEREFORE --
17 WHY DON'T YOU TURN IT OVER SO THE CLERK KNOWS WHICH IS
18 THE BACK AND PUT THE LABEL ON THE BACK.
19 AND THIS IS THE ONE I WROTE 281 ON, RIGHT?
20 SO, LET'S STICK A 281 ON THAT.
21 AND THIS IS THE ONE I WROTE 282 ON -- YEAH.
22 FLIP IT OVER. THAT'S 282.
23 AND THIS IS THE ONE I WROTE 283 ON. IT'S A
24 12 FOOT. IT'S THAT ONE. I ALREADY STUCK ONE ON THERE.
25 I KNOW I DIDN'T DO IT ON ALL OF THEM, OKAY.
26 AND THIS IS THE ONE THAT WE LABELED 284,
27 THAT'S IT, AND THAT'S ALREADY GOT A LABEL ON IT. GOOD.
28 NOW, COULD YOU FIND THE ONE I WROTE 285 ON?

-24829

1 HERE IT IS. OKAY.
2 AND 285 IS THIS ONE, RIGHT? OOPS, SLIPPERY

3 LITTLE DEVILS.

4 A. SORRY ABOUT THAT.

5 Q. SO NOW I'VE GOT MY 285 MARKED, AND THE LAST
6 ONE WHICH HAS -- THIS IS A WAD IMPRESSION, THIS HOLE,
7 ISN'T IT?

8 A. YES.

9 Q. AND THAT'S 286. OKAY. SO, NOW WE'VE GOT
10 THEM ALL.

11 AND THE OTHERS, THE WINCHESTERS WERE NOT
12 MARKED; IS THAT CORRECT?

13 A. YOU MEAN JUST NOW?

14 Q. RIGHT.

15 A. YES, I DON'T THINK SO.

16 Q. I THINK MAYBE WE SHOULD DO THAT JUST FOR
17 FUTURE REFERENCE.

18 A. OKAY.

19 Q. SO, WE FINISHED WITH 286, YOUR HONOR?

20 LET'S JUST MOVE ON AND MARK -- YOU HAVE
21 SOME SIX-FOOT WINCHESTERS, I THINK YOU SAID?

22 A. I HAVE --

23 Q. ONE SIX FOOT WINCHESTER. WHY DON'T WE MARK
24 THAT ONE 287, AND THEN YOU HAD TWO 12-FOOTS?

25 A. MM-HMM.

26 Q. OKAY. WE WILL MARK ONE OF THEM 288 AND ONE
27 OF THEM 289.

28 GOOD. NOW THAT'S DONE.

1 LET'S SEE NOW. I HAVE ONE OR TWO
2 QUESTIONS, YOUR HONOR.

3 DR. MC CARTHY, HAVE YOU EVER TESTIFIED IN A
4 CRIMINAL CASE BEFORE?

5 A. NO.

6 Q. AND ARE YOU AWARE OF THE FACT THAT YOUR
7 PARTICIPATING FOR THE PROSECUTION IN THIS CASE HAS BEEN
8 WRITTEN ABOUT IN PUBLICATIONS?

9 A. NOT BY ME. BUT YES, THERE HAS BEEN SOME
10 WRITING ABOUT IT, YES.

11 Q. SOME PUBLICITY FOR YOUR FIRM, CORRECT?

12 A. THE FIRM HAS BEEN MENTIONED.

13 Q. IN TIME MAGAZINE, FOR EXAMPLE, ARE YOU
14 AWARE OF THAT ARTICLE?

15 A. THERE WAS SOME MENTION IN TIME, BUT MY
16 RECOLLECTION IS IT WAS ONLY QUOTING YOU. I AM NOT --
17 I'M NOT SURE THERE WOULD HAVE BEEN INDEPENDENT MENTION,
18 BUT MAYBE THERE WOULD HAVE BEEN. I DON'T KNOW.

19 Q. QUOTING ME TALKING ABOUT YOUR FIRM?

20 A. YES.

21 Q. AND THERE WAS A WRITE-UP IN THE LOS ANGELES
22 TIMES ABOUT YOUR WORK IN THIS CASE?

23 A. THERE HAVE BEEN A COUPLE ARTICLES IN THE
24 LOS ANGELES TIMES, YES.

25 Q. AND WERE THERE ARTICLES IN U.S.A. TODAY AND
26 OTHER NATIONWIDE PUBLICATIONS ABOUT YOUR PARTICIPATION
27 IN THIS CASE?

28 A. I AM UNAWARE OF ANYTHING IN U.S.A. TODAY.

-24827

1 Q. WHAT ARE YOU AWARE OF?

2 A. THE LOS ANGELES PAPER AND THE TIME

3 MAGAZINE.

4 Q. NOW, THERE HAVE BEEN A NUMBER OF ARTICLES,
5 SOME OF SOME LENGTH, WRITTEN ABOUT FAILURE ANALYSIS OVER
6 THE YEARS; HAVE THERE NOT?

7 A. OH, YES.

8 Q. AND YOU ARE A PERSON FREQUENTLY QUOTED IN
9 MAGAZINE AND NEWSPAPER ARTICLES WHEN THE SUBJECT MATTER
10 OF ACCIDENTS OR -- SUCH AS THE EXXON VALDIZ OR THE HYATT
11 WALKWAY COLLAPSED.

12 WHEN THOSE KINDS OF ENGINEERING DISASTERS
13 ARE MENTIONED, YOU ARE OFTEN QUOTED; IS THAT CORRECT?

14 A. THAT'S PROBABLY A LITTLE TOO KIND. I AM
15 QUOTED ON OCCASION.

16 Q. WELL, ISN'T ONE OF THE WAYS IN WHICH
17 FAILURE ANALYSIS GETS THE WORD OUT TO THOSE FORTUNE 50
18 COMPANIES WHO CAN AFFORD YOU IS THROUGH FREQUENT
19 REFERENCE IN THE PRESS?

20 A. NO. WE RUN NUMEROUS CORRELATIONS. IN
21 FACT, WE EVEN TRIED AN ADVERTISING EXPERIMENT ONCE. IT
22 DOESN'T DO ANYTHING TO OUR BUSINESS.

23 Q. THAT WAS AN ADVERTISING EXPERIMENT WHERE

24 YOU HAD AN ARTIST COMMISSION WORKS OF ART LIKE LINKING
25 YOUR FIRM TO -- OR RATHER SUGGESTING THAT PERHAPS IF
26 ICARUS HAD HIRED YOUR FIRM THE WINGS WOULDN'T HAVE
27 MELTED, THAT SORT OF THING?

28 A. NO. WE COULD HAVE RECONSTRUCTED THE CRASH,

-24826

1 BUT YOU'VE GOT THE FUNDAMENTAL THING.

2 Q. YOU COME ALONG AFTER THE DISASTER, RIGHT?

3 A. MOST OFTEN, YES.

4 Q. WHEN YOU TESTIFY YOU HAVE AN INDEPENDENT
5 TESTING LABORATORY. THAT MEANS IT IS NOT DIRECTLY OWNED
6 BY A MANUFACTURING COMPANY WHOSE PRODUCTS YOU TEST,
7 CORRECT? THAT'S WHAT YOU MEAN BY INDEPENDENT.

8 A. YES, WE ARE INDEPENDENT OF ANY PRODUCT
9 MANUFACTURER.

10 Q. UNTIL THEY HIRE YOU, AT WHICH POINT YOU'RE
11 WORKING FOR THEM, CORRECT?

12 A. WE ARE CONSULTANTS TO THEM.

13 Q. AND YOU GET PAID LIKE \$600 AN HOUR TO DO
14 TESTS, FOR EXAMPLE, ON G.M. CARS OR TRUCKS THAT ARE
15 INVOLVED IN EITHER LITIGATION OR INVESTIGATION BY THE
16 FEDERAL SAFETY FOLK; ISN'T THAT WHAT YOU DO?

17 A. OR PRODUCT DEVELOPMENT. IF I AM INVOLVED
18 IN THE TESTING OF A VEHICLE, THAT WOULD BE MY BILLING
19 RATE.

20 Q. BUT MY QUESTION WAS ISN'T IT TRUE THAT EVEN
21 AS RECENTLY AS JULY OF THIS YEAR AT LEAST 50 PERCENT OF
22 THE WORK OF FAILURE ANALYSIS WAS FOR THE MAJOR AUTO
23 MANUFACTURERS?

24 A. I WOULD ESTIMATE BALLPARK 50 PERCENT, YES.
25 I COULDN'T PROVE THAT NUMBER TO YOU.

26 Q. BUT THAT'S WHAT YOU TESTIFIED TO IN A CASE
27 IN ST. LOUIS IN JULY, CORRECT?

28 A. I DON'T RECOLLECT SPECIFICALLY DOING SO,

-24825

1 BUT THE NUMBER IS CORRECT. ABOUT ONE-HALF OF ALL
2 VIOLENT PREMATURE DEATH IS AUTOMOTIVE-RELATED, AND ABOUT
3 HALF OF OUR WORK IS AUTOMOTIVE-RELATED.

4 Q. AND WHEN AUTOMOTIVE-RELATED, ON THE SIDE OF
5 THE AUTO MANUFACTURERS, CORRECT?

6 A. OVERWHELMINGLY, YES.

7 Q. WELL, HOW MANY TIMES HAVE YOU EVER
8 TESTIFIED ON BEHALF OF A PERSON, LIVING OR DEAD, WHO WAS
9 INJURED IN AN AUTOMOBILE ACCIDENT WHO WAS SUING AN
10 AUTOMAKER?

11 A. ON TWO OR THREE OCCASIONS.

12 Q. ARE YOU SURE IT WASN'T JUST ONE, AS YOU
13 TESTIFIED IN ST. LOUIS?

14 A. WELL, IT WAS KAPLAN V. TOYOTA AND GARCIA
15 VERSUS KEN-TOOL.

16 Q. KEN-TOOL IS AN AUTO MANUFACTURER?
17 A. THEY'RE AN AUTOMOTIVE COMPONENT PART
18 MANUFACTURER. THEY MAKE PARTS FOR THE AUTOMOTIVE
19 INDUSTRY.
20 Q. WHEN DID YOU TESTIFY IN THE KAPLAN CASE?
21 A. IT WAS A WHILE AGO.
22 Q. TEN YEARS OR MORE?
23 A. BALLPARK.
24 Q. AND WHAT ABOUT GARCIA? THAT IS ALSO 10 OR
25 15 YEARS AGO?
26 A. NO. LIKE SIX OR SEVEN YEARS AGO.
27 Q. THAT'S IT?
28 A. THAT'S ALL I CAN RECOLLECT AS I SIT HERE.

-24824

1 Q. AND HOW MANY TIMES HAVE YOU TESTIFIED --
2 LET'S JUST START WITH ONE.
3 HOW MANY TIMES HAVE YOU TESTIFIED IN THE
4 PAST FOR GENERAL MOTORS?
5 A. I WOULDN'T HAVE A SPECIFIC RECOLLECTION,
6 BUT COULD BE BALLPARK TWO DOZEN.
7 Q. AND HOW MANY TIMES HAVE YOU TESTIFIED --
8 DID YOU EVER TESTIFY FOR FORD?
9 MR. CONN: OBJECTION. IRRELEVANT.
10 THE COURT: OVERRULED.
11 THE WITNESS: YES. I HAVE TESTIFIED IN CASES ON

12 BEHALF OF FORD MOTOR COMPANY.

13 Q. BY MS. ABRAMSON: HOW MANY TIMES?

14 A. I COULDN'T ESTIMATE ACCURATELY. A COUPLE
15 DOZEN.

16 Q. MORE THAN G.M. OR ABOUT THE SAME?

17 A. I WOULD SUSPECT PROBABLY MORE, BUT I -- YOU
18 KNOW, IT'S TOUGH TO LOOK BACK OVER YOUR WHOLE CAREER AND
19 COME UP WITH THAT NUMBER.

20 Q. AND YOU HAVE BEEN TESTIFYING FOR THE
21 AUTOMAKERS OVER A LONG SPAN OF YOUR CAREER, CORRECT?

22 A. OH, YEAH. WE HAVE BEEN AN AUTOMOTIVE
23 TESTER FOR A LONG TIME.

24 Q. AND YOU HAVE TESTIFIED ON BEHALF OF SUZUKI,
25 CORRECT?

26 A. YES.

27 Q. AND THAT WAS WHO YOU WERE TESTIFYING ON
28 BEHALF OF THIS PAST SUMMER IN ST. LOUIS?

-24823

1 A. YES.

2 Q. NOW, ISN'T IT TRUE THAT G.M. NO LONGER
3 EMPLOYS YOU?

4 A. I'M SORRY?

5 Q. IS G.M. STILL EMPLOYING YOU PERSONALLY AS
6 AN EXPERT WITNESS IN THEIR CASES?

7 A. WELL, THEY WERE WHEN I LEFT THE OFFICE.

8 Q. IN 1992 WASN'T THERE A SCANDAL INVOLVING
9 G.M. AND THE FEDERAL GOVERNMENT BASED ON SOME FIGURES
10 THAT YOU SUBMITTED THAT WERE FALLACIOUS?

11 A. QUITE THE CONTRARY. THE GOVERNMENT
12 EVENTUALLY AGREED THEY WERE CORRECT AND DROPPED THE
13 ACTION.

14 Q. WHO IS HARRY J. PIERCE?

15 A. HE IS AN EXECUTIVE VICE-PRESIDENT OF
16 GENERAL MOTORS.

17 Q. AND ARE YOU FAMILIAR WITH A LETTER THAT MR.
18 PIERCE WROTE ON NOVEMBER 24TH, 1992 TO THE HONORABLE
19 MARION C. BLAKELY, ADMINISTRATOR TO THE NATIONAL HIGHWAY
20 TRAFFIC ASSOCIATION?

21 MR. CONN: OBJECTION. IRRELEVANT.

22 THE COURT: LET'S JUST HEAR THE ANSWER.

23 YES OR NO.

24 THE WITNESS: I MIGHT IF I SAW IT. I CAN'T DO IT
25 FROM MEMORY ON THE DATE.

26 YES.

27 Q. BY MS. ABRAMSON: BY THE WAY, DO YOU KNOW
28 WHO -- I JUST WANT TO SHOW THAT THIS IS A -- YOU NOTE

-24822

1 THIS IS A CERTIFICATION ON THE TOP OF THAT LETTER?

2 MR. CONN: OBJECTION. IRRELEVANT.

3 THE COURT: OVERRULED.

4 THE WITNESS: YOU'RE ASKING ME?

5 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

6 Q. BY MS. ABRAMSON: I AM ASKING IF THERE IS A

7 CERTIFICATION ON THE TOP OF THAT LETTER.

8 THE COURT: OVERRULED.

9 THE WITNESS: IT IS A DOCUMENT THAT HAS

10 "CERTIFICATE OF TRUE COPY."

11 Q. BY MS. ABRAMSON: YES, FROM THE NATIONAL --

12 FROM G.M. TO THE N.H.T.S.A. RE 1973 THROUGH 1987 C.K.

13 PICKUP TRUCKS, CORRECT? AND IT WAS ON FILE IN THE

14 TECHNICAL REFERENCE DIVISION OF THE NATIONAL HIGHWAY

15 TRAFFIC SAFETY ADMINISTRATION --

16 MR. CONN: I WILL OBJECT TO COUNSEL READING.

17 THE COURT: OBJECTION SUSTAINED.

18 MS. ABRAMSON: I AM JUST READING THE LETTER, YOUR

19 HONOR.

20 THE COURT: THE REMARK OF COUNSEL READING IT IS

21 STRICKEN.

22 MS. ABRAMSON: MAY I MARK THIS, YOUR HONOR?

23 THE COURT: 290.

24 MS. ABRAMSON: THANK YOU.

25 Q. NOW, YOU HAVE SEEN THIS LETTER BEFORE,

26 CORRECT, DR. MC CARTHY?

27 A. YES, I HAVE.

28 Q. AND THIS LETTER IS IN FACT, IS IT NOT, AN

1 APOLOGY FROM GENERAL MOTORS FOR SUBMITTING --

2 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

3 MS. ABRAMSON: LET ME FINISH THE QUESTION.

4 MR. CONN: I AM GOING TO OBJECT AND ASK THAT WE
5 APPROACH. I HAVEN'T SEEN THAT DOCUMENT.

6 THE COURT: I'M SORRY?

7 MR. CONN: I HAVEN'T SEEN THIS DOCUMENT. I WOULD
8 ASK WE APPROACH AT THIS TIME.

9 THE COURT: LET HIM SEE THE DOCUMENT.

10 (BRIEF PAUSE)

11

12 MR. CONN: I WILL OBJECT TO READING OF THIS
13 DOCUMENT ON THE GROUNDS THAT IT IS HEARSAY AND
14 IRRELEVANT, NO FOUNDATION. THE WITNESS WAS NEITHER
15 RECIPIENT NOR THE SENDER OF THAT LETTER.

16 THE COURT: WHY DON'T YOU SHOW IT TO THE CLERK
17 AND I WILL LOOK AT IT.

18 MS. ABRAMSON: WHILE YOU'RE DOING THAT, YOUR
19 HONOR, PERHAPS I WILL ASK SOME QUESTIONS.

20 Q. IN SOME OF THESE AUTOMOBILE CASES IN WHICH
21 YOU HAVE TESTIFIED ON BEHALF OF THE AUTOMAKERS, IT'S
22 YOUR TESTIMONIAL FUNCTION TO PROVIDE STATISTICS OF
23 ACCIDENT RATES FOR VARIOUS VEHICLES?

24 A. SOMETIMES.

25 Q. AND TO ANALYZE THE STATISTICS ON ACCIDENT
26 RATES FOR SOME OF THESE VEHICLES?

27 A. SOMETIMES, YES.

28 Q. THAT WAS A FUNCTION THAT YOU WERE SERVING

1 AT ONE TIME FOR GENERAL MOTORS, CORRECT?

2 A. WELL, AT ONE TIME AND STILL DO.

3 Q. AND THERE WAS A SERIES OF LITIGATIONS --

4 LAWSUITS, IF YOU WILL, INVOLVING GENERAL MOTORS AND SOME
5 TRUCKS THEY HAD WHERE THE FUEL TANK WAS MOUNTED OUTSIDE
6 THE FRAME OF THE VEHICLE?

7 MR. CONN: OBJECTION. IRRELEVANT.

8 MS. ABRAMSON: ISN'T THAT TRUE?

9 MR. CONN: OBJECTION. IRRELEVANT, 352.

10 THE COURT: OVERRULED. YOU MAY ANSWER THE
11 QUESTION.

12 THE WITNESS: I HAVE BEEN INVOLVED IN THE
13 REGULATORY MATTERS ASSOCIATED WITH C.K. TRUCKS.

14 Q. BY MS. ABRAMSON: IS THAT WHAT C.K. TRUCKS
15 ARE, THE ONES THAT -- WHERE THESE FUEL TANKS WERE
16 MOUNTED OUTSIDE OF THE FRAME?

17 A. THE '73 THROUGH '88 MODELS PRIMARILY. I
18 CAN'T RECOLLECT -- I MAY HAVE. I HAVE BEEN INVOLVED IN
19 INDIVIDUAL PRODUCTS SUITS OF THOSE TRUCKS, TOO, AS WELL,
20 YES.

21 Q. OKAY. AND WERE YOU DOING STATISTICAL WORK
22 FOR GENERAL MOTORS WHICH WAS BEING SUBMITTED TO THE
23 FEDERAL GOVERNMENT ON THE ISSUE OF THE SAFETY OF THOSE
24 MODEL TRUCKS?

25 MR. CONN: OBJECTION. IRRELEVANT.

26 THE COURT: OVERRULED. YOU MAY ANSWER THE
27 QUESTION.
28 THE WITNESS: WE CERTAINLY WERE DOING STATISTICAL

-24819

1 ANALYSIS AND PREPARING REPORTS CONCERNING THE RELATIVE
2 FIRE RATES OF GENERAL MOTORS C.K. TRUCKS AND OTHER
3 PICKUPS.

4 Q. BY MS. ABRAMSON: AND IS THE LETTER THAT I
5 SHOWED YOU, DOES THAT DEAL WITH SOME STATISTICAL
6 MATERIAL THAT YOU SUBMITTED TO THE GOVERNMENT ON THAT
7 ISSUE THAT YOU JUST TALKED ABOUT, THE FIRE RATES?

8 MR. CONN: OBJECTION. IRRELEVANT AND CALLS FOR
9 HEARSAY.

10 THE COURT: SUSTAINED. OBJECTION IS SUSTAINED ON
11 THE GROUNDS OF HEARSAY.

12 Q. BY MS. ABRAMSON: WELL, DID YOU SUBMIT
13 STATISTICAL MATERIAL ON THE FIRE RATE TO THE AGENCY
14 INDICATED IN THAT LETTER PRIOR TO THE DATE OF THAT
15 LETTER?

16 MR. CONN: OBJECTION. CALLS FOR HEARSAY, IS
17 IRRELEVANT UNDER SECTION 352.

18 THE COURT: OVERRULED.

19 THE WITNESS: I NEVER SUBMITTED, TO THE BEST OF
20 MY KNOWLEDGE AND BELIEF, ANYTHING DIRECTLY TO THE
21 AGENCY. ALL OF MY REPORTS WERE FORWARDED TO G.M.

22 Q. BY MS. ABRAMSON: AND IS IT YOUR
23 UNDERSTANDING THAT G.M. FORWARDED YOUR REPORTS TO THE
24 AGENCY?

25 MR. CONN: OBJECTION. CALLS FOR SPECULATION, NO
26 FOUNDATION.

27 THE COURT: OVERRULED. YOU MAY ANSWER THE
28 QUESTION.

-24818

1 THE WITNESS: I GATHER THAT THEY DID AT SOME
2 POINT, YES.

3 Q. BY MS. ABRAMSON: AND ARE THEY APOLOGIZING
4 FOR THOSE REPORTS IN THAT LETTER?

5 MR. CONN: OBJECTION. CALLS FOR HEARSAY, NO
6 FOUNDATION.

7 THE COURT: SUSTAINED. THE LETTER IS HEARSAY.

8 Q. BY MS. ABRAMSON: LET'S GO BACK TO THE
9 BEGINNING OF YOUR TESTIMONY HERE.

10 OH, BY THE WAY, DR. MC CARTHY, YOU
11 TESTIFIED IN THIS COURTROOM IN A HEARING BEFORE --
12 OUTSIDE THE PRESENCE OF THE JURY IN OCTOBER OF THIS
13 YEAR, CORRECT?

14 A. YES.

15 Q. AND THAT WAS ON OCTOBER 2ND AND OCTOBER
16 3RD?

17 A. YOU GOT ME THERE.

18 Q. OKAY. AND THAT WAS THE FIRST TIME THAT YOU
19 DISPLAYED THESE ILLUSTRATIONS, AS YOU NOW CALL THEM, OF
20 THE SHOT SEQUENCE, CORRECT?

21 A. IT'S THE FIRST TIME I WENT THROUGH THIS
22 DISPLAY, YES.

23 Q. AND YOU TOLD US IN YOUR TESTIMONY OVER
24 THOSE TWO DAYS THAT THESE ILLUSTRATIONS HAD ACTUALLY
25 BEEN PUT TOGETHER WITHIN THE PRECEDING WEEK BEFORE YOU
26 TESTIFIED?

27 A. THAT'S MY RECOLLECTION.

28 Q. AND IS THAT TRUE, THAT THESE ILLUSTRATIONS

-24817

1 WERE ALL PUT TOGETHER IN THE LAST WEEK IN SEPTEMBER OF
2 1995?

3 A. YES. WE MIGHT HAVE ACQUIRED THE
4 ANTHROPOMORPHIC MODELS OR SOME OTHER SOFTWARE EARLIER,
5 BUT I ASSEMBLED AND FINALIZED THESE IN THAT LAST WEEK.

6 Q. WELL, WHAT YOU TESTIFIED TO THEN WAS THAT
7 YOU ACTUALLY ASSEMBLED THESE THAT WEEKEND BEFORE YOU
8 WERE HERE TO TESTIFY, CORRECT?

9 A. YES. I WAS IN THAT WEEKEND MAKING --

10 Q. I'M SORRY?

11 A. MAKING THESE.

12 Q. RIGHT. AND THAT OTHER MEMBERS OF YOUR
13 STAFF HAD BEEN LOADING THE PROGRAM, WHICH THEN LETS YOU

14 DECIDE THE SIZE, I SUPPOSE, OF THE DUMMIES A FEW DAYS
15 BEFORE YOU ACTUALLY PLACED THE DUMMIES IN THESE DRAWINGS
16 AND HAD THESE GREEN LINES DRAWN, RIGHT?

17 A. AND CONSTRUCTING THE SCENE MODEL, YES.

18 Q. WHEN YOU SAY THE SCENE MODEL, YOU MEAN THE
19 COMPUTER MODEL OF THE SCENE THAT'S IN HERE?

20 A. THAT'S CORRECT. EVERY OBJECT HAS TO BE --
21 YOU HAVE TO TELL IT, THE COMPUTER, EVERY DETAIL OF EVERY
22 OBJECT OR IT CAN'T DRAW IT.

23 Q. SO, YOU GIVE IT ALL THAT INFORMATION AND IT
24 DRAWS IT?

25 A. THAT'S -- YES, SIMPLY PUT. IT'S MORE
26 COMPLEX THAN THAT. BUT YES, THAT'S THE LONG AND SHORT
27 OF IT.

28 Q. WE WILL GET BACK TO THAT COMPLEXITY IN A

-24816

1 MINUTE. BUT I JUST WANTED TO INDICATE THAT THESE ARE
2 SOMETHING THAT YOU MADE THE WEEKEND OF SEPTEMBER 30,
3 CORRECT?

4 A. FINALIZED. IT TOOK SOME PEOPLE SOME TIME
5 TO PUT THE MODEL MATERIAL IN. THEY HAD ALREADY INPUT
6 AND BUILT THE OBJECTS AND CREATED THE RENDERED SURFACE
7 AND STUFF LIKE THAT WHICH IS -- IT'S SORT OF GRUNT WORK,
8 BUT YOU HAVE TO DO IT TO MAKE A FINAL PICTURE.

9 Q. BUT YOU PLACED THE DUMMIES AND PLACED THE

10 GREEN LINES THAT ARE SUPPOSED TO BE THE TRAJECTORIES OF
11 FIRE YOURSELF THAT WEEKEND?
12 A. THAT'S CORRECT.
13 Q. HOWEVER, ON JULY 13TH, 1995, YOU FILED A
14 REPORT WHICH DESCRIBES THE SEQUENCE OF SHOTS; ISN'T THAT
15 TRUE?
16 A. I FILED A REPORT. YOU'VE GOT ME ON THE
17 DATE.
18 Q. I WILL SHOW IT TO YOU. DO YOU HAVE A COPY?
19 A. I HAVE A COPY OF IT. I JUST CAN'T DO IT
20 FROM MEMORY.
21 I'VE GOT IT. HANG ON.
22 Q. HERE, I CAN --
23 A. I'VE GOT ONE. HERE, JULY 13TH, 1995,
24 CORRECT.
25 Q. ON JULY 13, 1995 YOU FILED A REPORT, AND
26 THAT REPORT CONTAINED THE CONCLUSIONS ABOUT THE SHOT
27 SEQUENCE THAT YOU THEN, ON SEPTEMBER 30TH AND OCTOBER
28 1ST, PUT INTO PICTORIAL FORM IN THESE EXHIBITS THAT ARE

-24815

1 BEFORE US, CORRECT?
2 A. FINALIZED IN PICTORIAL FORM, YES.
3 Q. ALL RIGHT. BEFORE THE WEEKENDS OF
4 SEPTEMBER 13TH/OCTOBER 1ST DID YOU HAVE THESE
5 ANTHROPOMORPHIC DUMMY FORMS IN YOUR COMPUTER SO THAT YOU

6 COULD MOVE THEM AROUND?

7 A. NOT AT THE TIME OF THE REPORT FOR SURE. I

8 MEAN, THE FORMS WERE BUILT PRIOR TO MY FINAL

9 POSITIONING, BECAUSE THAT'S WORK THAT HAS TO BE DONE IN

10 PREPARATION.

11 Q. BUT I BELIEVE YOU PREVIOUSLY TESTIFIED ALL

12 THAT BUILDING OF THE FORMS -- BASICALLY THERE IS A

13 COMPUTER PROGRAM THAT WILL ALLOW YOU TO SCALE THESE

14 LITTLE ANTHROPOMORPHIC DUMMIES, CORRECT? YOU PUT IN THE

15 PROGRAM AND THE DUMMIES ARE IN YOUR COMPUTER?

16 A. THAT'S CLOSE ENOUGH.

17 Q. BUT YOU HAVE TO SCALE THEM AND MOVE THEM,

18 DO ALL THAT?

19 A. YEAH. AND WHAT YOU SAID IS CLOSE ENOUGH.

20 THE DETAIL IS NOT IMPORTANT.

21 Q. AND IT WAS HOW LONG BEFORE SEPTEMBER 30TH

22 DID YOU LOAD THE PROGRAM WITH THE DUMMIES INTO THE

23 COMPUTER?

24 A. OH, PEOPLE MAY HAVE BEEN BUILDING A WEEK OR

25 SO BEFORE, I DON'T KNOW. THAT'S A DETAIL THAT GRAPHICS

26 WOULD TAKE CARE OF.

27 Q. OKAY. BUT IN ANY EVENT, YOUR REPORT WAS AT

28 LEAST TWO MONTHS BEFORE ANY OF THE WORK OF LOADING THESE

1 FIGURES INTO THE COMPUTER BEGAN, CORRECT?

2 A. YES.

3 Q. SO, YOU NEVER ACTUALLY SAT -- AND BY THE
4 WAY, YOU MADE THEM THE WEEKEND BEFORE YOU TESTIFIED, AND
5 THEN YOU CAME IN AND TESTIFIED AND SHOWED US NOT EXACTLY
6 THESE, BUT A VERY SIMILAR VERSION OF THESE, CORRECT?

7 A. THAT'S CORRECT.

8 Q. THESE ARE A SLIGHTLY UPDATED VERSION OF THE
9 PREVIOUS MODEL, IF YOU WILL?

10 A. I WOULDN'T CALL THEM UPDATED, BUT I'D CALL
11 THEM RATIONALIZED.

12 Q. WELL, YOU TESTIFIED AT THE PRETRIAL HEARING
13 THAT THE COMPUTER DECIDED THE SIZE OF THE INANIMATE
14 OBJECTS IN THE ROOM BASED ON ITS HAVING SCANNED
15 PHOTOGRAPHS, AND BEING ABLE TO SCALE THE FURNITURE FROM
16 THE PHOTOGRAPHS AND FROM THE KNOWN DIMENSIONS OF THE
17 ROOM AS YOUR ENGINEERS HAD MEASURED IT; IS THAT TRUE?
18 IS THAT WHAT HAPPENED?

19 A. VERY CLOSE. THE COMPUTER SHAPES THE IMAGE
20 YOU'RE TRYING TO CREATE TO LOOK THE SAME AS THE
21 PHOTOGRAPHS. IN DOING SO, IT BACKS INTO VARIOUS
22 DIMENSIONS FOR VARIOUS COMPONENTS IN THE PICTURE.

23 Q. I AM TAKING ONE OF THESE COMPLETELY
24 ARBITRARILY, AND I'LL TURN IT SO IT DOESN'T BLOCK THE
25 JUROR, AND I'LL ASK YOU -- FOR EXAMPLE, THERE IS THIS
26 COUCH REPRESENTATION, CORRECT?

27 A. YES.

28 Q. NOW, THAT WASN'T DRAWN BY AN ARTIST, WAS

1 IT?

2 A. NO. THE COMPUTER DREW EVERY OBJECT IN THAT
3 PICTURE.

4 Q. OKAY. NOW, IS THERE A COMPUTER PROGRAM
5 CALLED "COUCH" OR "FURNITURE" OR "HOME DECORATING" OR
6 SOMETHING THAT USES THIS SORT OF COUCH AS ITS STANDARD?

7 A. THERE ARE PROGRAMS LIKE THAT, BUT I
8 DON'T -- WE DIDN'T NEED TO MAKE USE OF IT FOR HERE. I
9 THINK WE BUILT THAT COUCH OUT OF NATIVE OBJECTS.

10 Q. WHEN YOU SAID YOU BUILT THAT COUCH OUT OF
11 NATIVE OBJECTS, YOU'RE NOT REALLY SPEAKING ORDINARY
12 LAYMAN'S ENGLISH, ARE YOU?

13 A. I'M SORRY.

14 Q. IN OTHER WORDS, LET ME MAKE SURE WE'RE
15 CLEAR.

16 YOU DIDN'T GET A FURNITURE GUY IN WITH WOOD
17 AND CUSHIONS AND BUILD A COUCH UP AT FAILURE ANALYSIS,
18 CORRECT?

19 A. THAT'S CORRECT. THAT'S CORRECT.

20 Q. YOU BUILT IT INSIDE THE COMPUTER?

21 A. THAT'S CORRECT, BUILT THE IMAGE OF IT
22 INSIDE THE COMPUTER.

23 Q. AND DID YOU USE A PROGRAM, SOMETHING AKIN
24 TO "IMAGE BUILDER"? I AM MAKING UP A NAME HERE,
25 SOMETHING THAT CAN MAKE THINGS IF YOU GIVE IT LINES AND
26 DIMENSIONS, ET CETERA?

27 A. WE USED A PROGRAM THAT WILL MAKE A VISIBLE
28 OBJECT WHEN GIVEN INPUT BY THE PROGRAMMER, YES.

-24812

1 Q. OKAY. AND SO IT IS NOT TRUE THAT THE
2 COMPUTER READ THE PHOTOGRAPHS AND DUPLICATED WHAT IT SAW
3 ON THE PHOTOGRAPHS.

4 IN OTHER WORDS, THIS IS NOT THE COUCH OR
5 THE TYPE OF COUCH NECESSARILY THAT WAS IN THE MENENDEZ
6 DEN. CAN WE ANSWER THAT ONE?

7 THIS IS NOT THE SAME IDENTICAL COUCH AS
8 WHAT WAS IN THE MENENDEZ DEN?

9 A. IT IS NOT THE SAME IDENTICAL COUCH.

10 Q. THE MENENDEZ COUCH DIDN'T HAVE SO WIDE A
11 BACK, FOR EXAMPLE. DO YOU REALIZE THAT? I CAN SHOW YOU
12 A PICTURE.

13 A. IT'S SHAPED A LITTLE DIFFERENTLY.

14 Q. IT'S SHAPED DIFFERENTLY IN THE BACK AND IT
15 DOESN'T HAVE DIVIDED COUCH CUSHIONS, WHICH THE MENENDEZ
16 COUCH DOES HAVE.

17 A. THAT'S CORRECT.

18 Q. AND THE DIMENSIONS OF THE CUSHIONS MAY BE A
19 LITTLE DIFFERENT THAN THE MENENDEZ COUCH HAD
20 VIS-A-VIS --

21 A. THERE AGAIN, IT'S JUST A QUESTION OF
22 MATCHING IT UP TO THE PHOTOGRAPH. BUT THERE MIGHT BE A

23 SMALL VARIATION, YOU KNOW, A HALF AN INCH.
24 Q. WHEN YOU SAY MATCHING IT THOUGH TO THE
25 PHOTOGRAPH, IT DIDN'T MATCH THE BACK OF THE COUCH TO A
26 PHOTOGRAPH. SOMEONE TOLD IT TO MADE A BACK OF THE COUCH
27 THAT LOOKED LIKE THE ONE HERE IN 12-B THAT WE'RE LOOKING
28 AT.

-24811

1 A. YES. BUT WHAT YOU DO WITH THE COMPUTER IS
2 YOU BRING THE RELEVANT, MOST IMPORTANT PIECES OF THE
3 PHOTOGRAPH IN, OF THE BUILT IMAGE IN LINE WITH THE
4 SURFACES OF THE PHOTOGRAPH, AND THE COMPUTER THEREBY
5 DOING, BACKS INTO A DIMENSION.

6 IN OTHER WORDS, IT'S MATCHING THE VIEW, AND
7 WHATEVER DIMENSION IT HAD TO ULTIMATELY DEMAND TO
8 PRODUCE THAT FALLS OUT OF THE PROGRAM.

9 Q. ALL RIGHT. BUT IN PRODUCING THAT GRAND
10 DIMENSION WITH A LITTLE DIFFERENT STYLISTIC DETAIL; IS
11 THAT FAIR?

12 A. ABSOLUTELY.

13 Q. SO, BASICALLY THIS IS SUPPOSED TO SHOW THE
14 DIMENSION OF THE DEPTH OF THE COUCH; BUT WHEREAS THE
15 REAL COUCH MAY HAVE MORE SEAT OR MORE CUSHION, THIS
16 COUCH HAS MORE BACK?

17 A. AS YOU INDICATED, YES.

18 Q. SO, IT WENT SWEDISH MODERN EVEN THOUGH THE

19 MENENDEZ COUCH MIGHT HAVE BEEN CONTEMPORARY; IS THAT
20 WHAT YOU'RE SAYING?
21 A. YES.
22 MR. CONN: OBJECTION, ARGUMENTATIVE.
23 THE COURT: OVERRULED. THE ANSWER WILL STAND.
24 Q. BY MS. ABRAMSON: SO, STYLISTICALLY IT'S
25 DIFFERENT, BUT SIZE-WISE IT'S THE SAME?
26 A. YES.
27 Q. AND DID IT DO THE SAME THING WITH COFFEE
28 TABLE? IT COULD SORT OF SCAN THE COFFEE TABLE IN

-24810

1 PHOTOGRAPHS AND THEN BUILD IT THE BEST THAT THE BUILDING
2 BLOCKS IN THE COMPUTER WOULD ALLOW IT, A SIMILAR COFFEE
3 TABLE?
4 A. REALIZING THAT WE DIDN'T GET THIS SHOT.
5 Q. WHEN YOU SAY "WE DIDN'T GET THIS SHOT,"
6 THERE IS NO PHOTOGRAPH FROM THE SCENE PHOTOGRAPHS THAT
7 REVEALS PRECISELY THIS PERSPECTIVE, RIGHT?
8 A. IT'S OVERHEAD AND DOWN, SO WHAT THE
9 COMPUTER HAS TO DO IS YOU LOOK AT A PERSPECTIVE. IF YOU
10 LOOK AT A TABLE AT AN ANGLE, THERE'S NO SQUARE CORNERS.
11 IT'S OFF. IT'S GOT PERSPECTIVE IN IT, BUT THE COMPUTER
12 UNDERSTANDS IN ITS WAY PERSPECTIVE AND BACKS INTO IT.
13 Q. IN OTHER WORDS, IT ADJUSTS FROM THE
14 PHOTOGRAPH TO THE PERSPECTIVE YOU WANT IT TO GIVE. YOU

15 TELL IT THAT YOU WANT AN OVERHEAD SHOT, CORRECT?
16 A. NO, NO, NO. AND I HAVE CONFUSED YOU, I'M
17 SORRY.
18 Q. DON'T BE SO SURE, MAYBE I AM TRYING TO
19 CONFUSE YOU. BUT GO AHEAD.
20 A. YOU HAVE AN ANGLE WHERE THE PICTURE WAS
21 TAKEN, AND YOU ATTEMPT TO MATCH THAT WITH THE COMPUTER
22 AND MATCH THE APPEARANCE. ONCE THE ONES ARE BUILT IN
23 THE COMPUTER, THE COMPUTER DOESN'T CARE WHERE YOU LOOK.
24 Q. IT CAN MOVE AROUND IN ALL PERSPECTIVES?
25 A. ALL PERSPECTIVES.
26 Q. AND ULTIMATELY WHEN YOU WANTED TO
27 MEMORALIZE FOR SHOT 12B WAS THIS PERSPECTIVE?
28 A. YES.

-24809

1 Q. BUT THE COMPUTER WAS ALSO BUILT TO SHOW
2 THESE SAME OBJECTS IN DIFFERENT PERSPECTIVES, LIKE 12A,
3 WHICH IS THIS ONE. I AM NOT USING THE EVIDENCE NUMBERS
4 NOW, BECAUSE WE ARE JUST ILLUSTRATING, BUT HERE IS
5 BASICALLY THE SAME BUILT OBJECTS FROM A DIFFERENT
6 PERSPECTIVE ON THE COMPUTER, CORRECT?
7 A. CORRECT. THE COMPUTER CARES NOT.
8 Q. NOW, THE FIRST SET OF THESE ILLUSTRATIONS
9 THAT YOU DID THOUGH; AM I CORRECT IN STATING IT HAD --
10 THE FURNITURE WAS BUILT A LITTLE DIFFERENTLY SIZE-WISE?

11 A. YES.

12 Q. AND THE CHANGE THAT WAS MADE IN ORDER TO
13 PRODUCE THESE ILLUSTRATIONS, WAS THAT BASED ON YOUR
14 FINALLY RECEIVING THE MEASUREMENTS THAT THE BEVERLY
15 HILLS POLICE DEPARTMENT TOOK OF THESE ITEMS OF
16 FURNITURE?

17 A. NO. IT WAS BASED ON ARGUING OVER THEM.

18 Q. ARGUING OVER THEM? WITH WHOM DID YOU
19 ARGUE?

20 A. YOU, MA'AM.

21 Q. YOU ARGUED WITH ME OVER THE SIZE OF THE
22 FURNITURE?

23 A. FOR A COUPLE HOURS.

24 Q. WHEN WAS THAT, DR. MC CARTHY?

25 A. DURING THE PRELIMINARY HEARING.

26 Q. YOU MEAN THE PRETRIAL HEARING?

27 A. YES.

28 Q. IT WAS A RESULT OF MY ARGUING WITH YOU THAT

-24808

1 THE FURNITURE WAS OUT OF SCALE YOU RESCALED IT; IS THAT
2 WHAT YOU'RE SAYING?

3 A. NO. INSTEAD OF GETTING INTO A DEBATE
4 WHETHER THE SCALING OF THE COMPUTER WAS MORE ACCURATE
5 THAN THE MEASUREMENTS THE POLICE TOOK AT THE SCENE, I
6 FIGURED THESE WERE DIFFERENCES THAT MADE NO DIFFERENCE

7 TO MY OPINION, SO I JUST MERELY BROUGHT ALL THE
8 DIMENSIONS IN LINE WITH THE POLICE REPORT AND THEN
9 RE-DREW.

10 Q. AND WHEN DID YOU RE-DRAW THEM?

11 A. AFTER THE PRELIMINARY HEARING, THAT
12 FOLLOWING WEEK.

13 Q. YOU CALL IT A PRELIMINARY HEARING, BUT IT
14 WASN'T. SO IT WAS THE PRETRIAL HEARING, OKAY?

15 A. I'M SORRY. PRETRIAL. I'M SORRY. YOU ARE
16 CORRECT AND I AM WRONG.

17 Q. PRELIMINARY HEARING IS A TERM OF ART IN
18 CALIFORNIA, AND IT'S NOT WHAT WE DID.

19 A. OKAY.

20 Q. ALL RIGHT. SO, THESE THEN ARE THE NEW
21 VERSIONS.

22 NOW, DID YOU NOTICE WHEN DR. LAWRENCE WAS
23 TESTIFYING THAT HE WAS USING A MIXTURE OF THE OLD
24 DIAGRAMS AND THE NEW DIAGRAMS, BECAUSE I GAVE HIM SOME
25 AND THEN MR. CONN GAVE HIM SOME?

26 A. I HEARD YOU DISCUSSING THAT WITH HIM UP
27 HERE, SO I GUESS I WOULD SAY I BECAME AWARE OF IT FROM
28 YOUR DISCUSSIONS.

-24807

1 Q. AND WERE YOU SITTING IN THE AUDIENCE
2 THROUGH ALL OF DR. LAWRENCE'S TESTIMONY?

3 A. NO. JUST WHAT I THOUGHT WAS GOING TO BE
4 THE LAST MORNING.

5 Q. OKAY. AND ALSO SITTING IN THE AUDIENCE
6 WHILE YOU WERE WATCHING AND LISTENING TO DR. LAWRENCE
7 WAS A GENTLEMAN NAMED DON VINCENT; IS THAT CORRECT?

8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: OVERRULED.

10 THE WITNESS: HE CAME IN THE AFTERNOON. I DON'T
11 KNOW THAT HE SAW -- HE MAY HAVE SEEN DR. LAWRENCE'S
12 TESTIMONY, I JUST CAN'T REMEMBER. I THINK HE DID.

13 YES, HE DID.

14 Q. I DIDN'T ASK IF HE SAW DR. LAWRENCE, I
15 ASKED IF YOU SAW HIM HERE?

16 A. CERTAINLY. DR. VINCENT, MOST CERTAINLY.

17 Q. AND HE IS A FRIEND OF YOURS, RIGHT?

18 MR. CONN: OBJECTION.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES, A LONG-TIME PERSONAL FRIEND.

21 Q. BY MS. ABRAMSON: AND IT IS AS A
22 CONSEQUENCE OF YOUR LONG-TIME PERSONAL FRIENDSHIP WITH
23 HIM THAT YOU VOLUNTEERED YOUR SERVICES TO THE
24 PROSECUTION IN THIS CASE; ISN'T THAT TRUE?

25 A. CLOSE. AS A CONSEQUENCE OF MY FRIENDSHIP
26 WITH HIM I ACCEPTED A DRAFT OF MY SERVICES IN THIS CASE.

27 Q. AND HE DRAFTED YOU, DID HE?

28 A. I WAS A CONSCRIPT, YES.

1 Q. JUST A POOR CONSCRIPT; IS THAT RIGHT?

2 A. UNFORTUNATELY.

3 Q. AND YOU UNDERSTAND, DO YOU NOT, THAT DON
4 VINCENT SERVED AS THE JURY SELECTION CONSULTANT FOR THE
5 PROSECUTION IN THIS CASE?

6 MR. CONN: OBJECTION. IRRELEVANT.

7 THE COURT: OVERRULED.

8 THE WITNESS: I WOULD GATHER THAT, ALTHOUGH I
9 DON'T HAVE ANY SPECIFIC KNOWLEDGE OF THAT.

10 Q. BY MS. ABRAMSON: HE DIDN'T TELL YOU THAT
11 WHILE HE WAS DRAFTING YOU, TO TELL YOU THAT HE, TOO, WAS
12 A CONSCRIPT?

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

15 THE COURT: SUSTAINED.

16 Q. BY MS. ABRAMSON: SO, YOU VOLUNTEERED TO
17 THE PROSECUTION, THEY DIDN'T COME TO YOU; IS THAT RIGHT?

18 A. I DIDN'T VOLUNTEER FOR ANYTHING. DON
19 VINCENT CALLED ME.

20 Q. YES. AND HE SAID "ROGER, IF YOU DON'T GO
21 DOWN THERE AND HELP THOSE PROSECUTORS CONVICT THOSE
22 MENENDEZ BROTHERS, HERE'S WHAT'S GOING TO HAPPEN TO
23 YOU."

24 IS THAT WHAT HE SAID?

25 A. OH, NO.

26 Q. NO? HE ASKED YOU IF YOU WOULD COME DOWN
27 AND HELP OUT POOR OLD GIL GARCETTI, WHO WAS HAVING A

-24805

1 MR. CONN: OBJECTION. ARGUMENTATIVE.

2 THE COURT: SUSTAINED.

3 MR. CONN: I WOULD ASK THAT COUNSEL BE
4 ADMONISHED, YOUR HONOR.

5 THE COURT: WELL, THIS IS CROSS-EXAMINATION.
6 OVERRULED.

7 Q. BY MS. ABRAMSON: NOW, HOW MANY CRIMINAL
8 DEFENDANTS HAVE YOU EVER WORKED FOR FREE FOR,
9 DR. MC CARTHY?

10 A. I DON'T RECOLLECT EVER HAVING WORKED FOR
11 ONE.

12 Q. THEY CERTAINLY COULDN'T AFFORD TO PAY YOU,
13 YOUR AVERAGE CRIMINAL DEFENDANT, COULD THEY?

14 A. WELL, SOME COULD. I MEAN -- BUT IT'S JUST
15 NOT -- IT'S JUST NOT PART OF THE MARKET THAT MY SERVICES
16 ARE USED IN.

17 Q. IN FACT, YOUR SERVICES HAVE NEVER BEEN USED
18 IN A CRIMINAL CASE BEFORE, YOU HAVE ALREADY TOLD US
19 THAT, CORRECT?

20 A. MY SERVICES HAVE BEEN UTILIZED IN CRIMINAL
21 CASES BEFORE, BUT I HAVE NEVER TESTIFIED IN ONE.

22 Q. WELL, YOUR SERVICES WERE UTILIZED BY
23 TELEVISION IN THE O.J. SIMPSON CASE, WEREN'T THEY?

24 MR. CONN: OBJECTION. IRRELEVANT.
25 THE COURT: SUSTAINED.
26 Q. BY MS. ABRAMSON: OH.
27 DID YOU VOLUNTEER TO MAKE A VIDEOTAPED
28 RE-ENACTMENT OF THE O.J. SIMPSON CASE HOMICIDES AS --

-24804

1 MR. CONN: OBJECTION. IRRELEVANT.
2 THE COURT: LET ME HEAR THE QUESTION.
3 MS. ABRAMSON: AS A PROMOTIONAL DEVICE TO GAIN
4 BUSINESS FOR YOUR FIRM?
5 MR. CONN: OBJECTION. IRRELEVANT.
6 THE COURT: OVERRULED.
7 THE WITNESS: ABSOLUTELY NOT. I WAS PAID SEVERAL
8 HUNDRED THOUSANDS OF DOLLARS TO DO THAT.
9 Q. BY MS. ABRAMSON: THREE, AS A MATTER OF
10 FACT, WASN'T IT? \$300,000 TO DO THAT.
11 A. I DON'T THINK I GOT THE FEE TO THERE, BUT I
12 WOULD HAVE LIKED TO.
13 Q. DID YOU GET \$300,000?
14 A. I DON'T THINK WE ENDED UP BILLING THAT MUCH
15 FOR IT. IT WAS TOTALLY AND COMPLETELY PAID FOR. IT WAS
16 A COMMERCIAL JOB.
17 Q. AND IT WAS SEVERAL -- YOU HAVE ALREADY
18 INDICATED IT WAS MORE THAN \$100,000?
19 A. OH, YES. IT WAS A LOT OF WORK.

20 Q. AND AT WHAT RATE DID YOU BILL TO DO THAT?
21 MR. CONN: OBJECTION. IRRELEVANT TO THIS
22 PROCEEDING.
23 THE COURT: OVERRULED.
24 THE WITNESS: WE BID THAT AT A FIXED PRICE.
25 Q. BY MS. ABRAMSON: FLAT FEE?
26 A. AND THEN -- BUT THEY ENDED UP WANTING A
27 BUNCH OF ADD ON, AND THAT WAS ALL BILLED AT MY STANDARD
28 HOURLY RATE OF \$600 AN HOUR.

-24803

1 Q. WHICH IS A RATE THAT YOU FEEL IS LUCRATIVE
2 AND ADEQUATELY COMPENSATORY FOR YOUR SERVICES, DON'T
3 YOU, 600 AN HOUR?
4 A. I GUESS I NEVER THOUGHT ABOUT IT. IT'S --
5 THE MARKET PRICES CONSULTING SERVICE IS JUST LIKE
6 EVERYTHING ELSE, AND AT THAT RATE I CAN'T DEAL WITH ALL
7 THE DEMAND, BUT IT'S BETTER THAN IT WOULD BE AT \$300 AN
8 HOUR.
9 Q. SO THEN YOU DON'T THINK 600 AN HOUR
10 ADEQUATELY COMPENSATES YOU; IS THAT WHAT YOU'RE SAYING,
11 IT'S A BARGAIN RATE?
12 A. IT'S NOT A QUESTION OF COMPENSATING ME. I
13 AM THE CHIEF EXECUTIVE OFFICER, SO THE FIRM BILLS THE
14 MONEY AND TAKES THE REVENUE. I WILL CHARACTERIZE THE
15 OPINION OF MY BOARD OF DIRECTORS --

16 Q. WHY DON'T WE TRY TO ANSWER MY QUESTION
17 ABOUT YOUR OPINION.
18 WITH RESPECT TO \$600 AN HOUR, DOES WORKING
19 AT THAT RATE PRODUCE PROFITABILITY FOR FAILURE ANALYSIS?
20 A. ON MY INDIVIDUAL HOURS I WOULD CERTAINLY
21 EXPECT SO, BUT THAT REALLY ISN'T THE QUESTION. THE
22 QUESTION IS IS THAT THE HIGHEST AND BEST USE OF THOSE
23 HOURS.
24 Q. IN ANY EVENT, \$600 AN HOUR IS NOT CHICKEN
25 FEED, WOULD YOU AGREE?
26 A. IT IS NOT CHICKEN FEED, I WOULD AGREE.
27 Q. AND THIS VIDEO REENACTMENT OF THE SIMPSON
28 HOMICIDES WAS SOLELY FOR THE USE OF C-NET CABLE

-24802

1 TELEVISION NETWORK, CORRECT?
2 MR. CONN: OBJECTION. TOTALLY IRRELEVANT TO THIS
3 PROCEEDING.
4 THE COURT: OVERRULED. YOU CAN ANSWER THE
5 QUESTION.
6 THE WITNESS: IT WAS TO BE THE PREMIERE SHOWPIECE
7 OF THE NETWORK LAUNCH.
8 Q. BY MS. ABRAMSON: C-NET NETWORK?
9 A. THAT'S CORRECT.
10 Q. THIS WAS NOT SOMETHING THAT WAS UTILIZED BY
11 EITHER THE PROSECUTION OR THE DEFENSE IN THAT CASE,

12 CORRECT?

13 MR. CONN: OBJECTION. IRRELEVANT.

14 THE COURT: OVERRULED.

15 THE WITNESS: THAT IS CORRECT. THE WORK ON IT

16 STARTED --

17 Q. BY MS. ABRAMSON: YOU HAVE ANSWERED THE

18 QUESTION.

19 A. IT WAS NOT. IT WAS IN THE MIDDLE OF THE

20 CASE.

21 Q. AND DID IT AIR BEFORE THE CASE WAS OVER?

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: SUSTAINED.

24 Q. BY MS. ABRAMSON: YOU TESTIFIED LAST

25 WEDNESDAY ABOUT YOUR PARTICIPATION IN A MOCK TRIAL FOR

26 THE AMERICAN BAR ASSOCIATION IN 1992.

27 DO YOU REMEMBER THAT?

28 A. YES.

-24801

1 Q. AND THIS WASN'T A REAL TRIAL, RIGHT?

2 A. THAT'S WHAT IT MEANS TO BE A MOCK TRIAL.

3 IT WAS NOT A REAL ONE, YES.

4 Q. NOBODY'S LIBERTY OR LIFE WAS AT STAKE,

5 CORRECT?

6 A. THAT IS CORRECT.

7 Q. IT WASN'T COMMISSIONED BY THE GOVERNMENT,

8 IT WAS NOT AN OFFICIAL INVESTIGATION, CORRECT?

9 A. THAT IS CORRECT.

10 Q. THE AMERICAN BAR ASSOCIATION WAS USING THIS
11 AS AN AMUSEMENT AND TEACHING TOOL FOR LAWYERS, CORRECT?

12 A. THEY NEVER PITCHED THE AMUSEMENT PART TO
13 ME, BUT THEY DID INDICATE THAT THEY WANTED TO EXPOSE
14 ATTORNEYS TO SCIENTIFIC AND COURTROOM METHODS OF THE
15 21ST CENTURY.

16 AND AGAIN, WE WERE DRAFTEES. IT WAS NOT
17 OUR IDEA.

18 Q. AND YOU RESISTED?

19 A. INITIALLY, YES.

20 Q. NOW, YOU INDICATED THAT YOU WERE WORKING
21 FOR THE DEFENSE, MEANING THE LEE HARVEY OSWALD SIDE OF
22 THAT EXERCISE; IS THAT RIGHT?

23 A. I PERSONALLY WAS. ACTUALLY, FAILURE
24 PROVIDED THE EXPERTS FOR BOTH THE PROSECUTION AND THE
25 DEFENSE.

26 Q. RIGHT. IS THERE A FELLOW WHO USED TO WORK
27 THERE WITH YOU NAMED PIZIALI?

28 A. PIZIALI.

-24800

1 Q. AND WHAT WAS HIS FIRST NAME?

2 A. ROBERT.

3 Q. AND WAS HE ALSO DOING WORK FOR THE OTHER

4 SIDE, FOR THE PSEUDO PROSECUTION IN THAT CASE?

5 A. YES.

6 Q. AND WAS THE POINT OF THAT EXERCISE TRYING
7 TO DEAL WITH THE CONSPIRACY THEORY OF WHETHER OR NOT
8 PRESIDENT KENNEDY WAS SHOT BY MORE THAN ONE PERSON AND
9 FROM MORE THAN ONE DIRECTION?

10 A. NO. THE POINT OF THAT EXERCISE WAS TO
11 ILLUSTRATE THE NEW COMPUTER-BASED EVIDENCE ANALYSIS
12 TOOLS THAT WERE AVAILABLE TO ATTORNEYS, AND THE
13 COMPUTER-BASED EVIDENCE PRESENTATION TOOLS.

14 WE CHOSE AS THE VEHICLE THIS TRIAL, AND
15 THEN IT WAS UP TO THE ATTORNEYS ON EACH SIDE IF --
16 ASSUMING THEIR ROLES AS THEY WOULD HAVE BEEN FOR THE
17 ATTORNEYS IF THE REAL CASE HAD BEEN TRIED AS A MURDER
18 TRIAL IN TEXAS -- BACK THEN IT WASN'T A FEDERAL OFFENSE
19 TO SHOOT THE PRESIDENT, SO IT WOULD HAVE BEEN A STATE
20 COURT TRIAL.

21 THEN EACH SIDE WAS GOING ABOUT THE NORMAL
22 THINGS THAT I GATHER PROSECUTION AND DEFENSE ATTORNEYS
23 DO TO PLAY THEIR ROLES IN A MURDER CASE.

24 Q. MY QUESTION WAS THE SIDE THAT YOU WERE ON,
25 THE DEFENSE OF LEE HARVEY OSWALD SIDE, TRYING TO PROVE
26 THAT THERE HAD BEEN A SHOOTER ON THE SO-CALLED GRASSY
27 KNOLL IN FRONT OF THE PRESIDENT.

28 IF YOU CAN ANSWER THAT YES OR NO, WE COULD

1 MOVE RIGHT ALONG HERE.

2 A. YES. I MEAN, THEY WERE TRYING DO MORE THAN
3 THAT, BUT THEY WERE TRYING TO DO THAT, TOO.

4 Q. THAT WAS ONE OF THE THINGS, AND THAT WAS
5 THE THING FOR WHICH YOU FASHIONED THE GLYCERIN BULLET,
6 CORRECT?

7 A. THAT ELEMENT OF THE PROOF.

8 Q. NOW, YOU TESTIFIED HERE THAT -- LET ME GET
9 THAT TRANSCRIPT FOR A SECOND.

10 YOU TESTIFIED THAT THIS THING THAT YOU
11 CONSTRUCTED, THIS GLYCERIN BULLET, WAS BASICALLY WHAT A
12 PROFESSIONAL ASSASSIN WOULD USE; IS THAT RIGHT?

13 A. YES.

14 Q. A GLYCERIN BULLET IS WHAT A PROFESSIONAL
15 ASSASSIN USES?

16 A. AN EXPLOSIVE BULLET IS WHAT A PROFESSIONAL
17 ASSASSIN USES. YOU CAN BASE THEM ON EITHER GLYCERIN AND
18 MERCURY OR MERCURY. IN THE CALIBER I WAS SHOOTING,
19 GLYCERIN WAS THE APPROPRIATE CHOICE.

20 Q. LET ME READ WHAT YOU TESTIFIED TO. THIS IS
21 40376. "AND I ALSO CONSTRUCTED BASICALLY WHAT A
22 PROFESSIONAL ASSASSIN WOULD USE, WHICH IS CALLED A
23 GLYCERIN BULLET, AND THAT'S AN EXPLOSIVE BULLET."

24 ARE ALL GLYCERIN BULLETS EXPLOSIVE BULLETS?

25 A. YES.

26 Q. OKAY. AND YOU INDICATED "IF ANY OF YOU --"
27 I GUESS TALKING TO US ALL, "EVER SAW THE 'DAY OF THE
28 JACKAL,' IT ILLUSTRATES WHAT AN EXPLOSIVE BULLET DOES IN

1 THAT MOVIE."

2 DO YOU KNOW HOW THE PEOPLE WORKING ON THE
3 MOVIE "DAY OF THE JACKAL" PUT THEIR LITTLE SPECIAL
4 EFFECTS TOGETHER?

5 A. NO, BUT IT WAS A GOOD ILLUSTRATION OF HOW
6 SUCH A BULLET WORKS.

7 Q. AND THE BULLET THAT WAS CONTAINED IN DAY OF
8 THE JACKAL, HOWEVER, IT WAS A MERCURY-FILLED BULLET, NOT
9 A GLYCERIN-FILLED BULLET, CORRECT?

10 A. THAT'S CORRECT, BECAUSE THE SHOOTER WAS
11 USING THE .22 CALIBER, AND MERCURY IS THE APPROPRIATE
12 CHOICE FOR THE SMALLER CALIBER.

13 Q. AND IS IT YOUR TESTIMONY THAT ALL MERCURY
14 BULLETS ARE EXPLOSIVE BULLETS?

15 A. I CAN'T IMAGINE MAKING A MERCURY BULLET
16 WITHOUT IT -- I MEAN, THAT IS NOT.

17 Q. IS THAT YES, DR. MC CARTHY?

18 A. IN THE WAY THAT I AM USING THE TERM, YES.

19 Q. WELL, WHAT I AM ASKING IS THE WORD "ALL".
20 ARE ALL MERCURY-FILLED BULLETS EXPLOSIVE BULLETS?

21 A. I NEVER THOUGHT ABOUT IT, BUT ALL THE
22 MERCURY BULLET DESIGNS THAT I AM FAMILIAR WITH ARE
23 EXPLOSIVE; THAT IS, THEY BURST USING THE INERTIA OF THE
24 MERCURY UPON IMPACT.

25 Q. AND THAT'S WHAT YOU MEAN BY EXPLOSIVE, THEY

26 BURST?

27 A. THEY USE THE INERTIA OF AN INTERNAL FLUID

28 UPON IMPACT WITH THE TARGET TO CREATE A PRESSURE OR

-24797

1 SHOCK WAVE, AND INCREASE AND DISSIPATE ALL OF THEIR
2 ENERGY IN THE TARGET AS OPPOSED TO GOING THROUGH THE
3 TARGET.

4 Q. AND IS THAT WHAT ALL GLYCERIN BULLETS DO,
5 TOO?

6 A. IN THE WAY I AM USING THE TERM "GLYCERIN
7 BULLETS", YES; THAT IS, A GLYCERIN BULLET IS DESIGNED
8 NEVER TO EXIT. IT'S TO DELIVER ALL OF ITS ENERGY TO THE
9 TARGET.

10 Q. WELL, GLYCERIN MELTS AWAY INSIDE THE HUMAN
11 BODY.

12 WASN'T THAT ONE OF THE POINTS THAT YOU WERE
13 TRYING TO PROVE AT THE ABA MOCK TRIAL?

14 MR. CONN: I WOULD OBJECT UNDER 352, YOUR HONOR.

15 THE WITNESS: I DON'T REMEMBER.

16 THE COURT: WAIT, WAIT, WAIT. THAT'S A COMPOUND
17 QUESTION, SO REPHRASE IT.

18 THE WITNESS: SORRY.

19 Q. BY MS. ABRAMSON: LET'S START WITH THIS.

20 WAS THE POINT -- YOU FASHIONED A GLYCERIN

21 BULLET AS THE SUPPOSED WEAPON OF THE UNKNOWN SECOND

22 ASSASSIN FOR THE ABA MOCK TRIAL, CORRECT?
23 A. CLOSE. IT WAS A POSSIBILITY THAT WAS NOT
24 INVESTIGATED BY THE WARREN COMMISSION.

25 Q. NOW THIS, GLYCERIN BULLET, WHAT IS
26 GLYCERIN?

27 A. IT'S A CLEAR OIL. YOU CAN BUY IT AT THE
28 DRUGSTORE. I USED WALGREN'S GLYCERIN.

-24796

1 Q. AND GLYCERIN IS LIGHTER THAN WATER, IS IT
2 NOT, OR DO YOU KNOW?

3 A. I DON'T THINK ALL TYPES OF GLYCERIN ARE,
4 BUT THE TYPE I WAS USING WAS.

5 Q. AND MERCURY IS NOT ONLY HEAVIER THAN WATER
6 BUT HEAVIER THAN LEAD, CORRECT?

7 MR. CONN: OBJECTION. EVIDENCE CODE SECTION 352.

8 THE COURT: OVERRULED.

9 THE WITNESS: MY RECOLLECTION IS ITS DENSITY IS
10 GREATER THAN LEAD, YES, BUT DON'T QUOTE THAT AS --
11 BEFORE I WOULD OPINE ON THAT AS AN EXPERT, I WOULD
12 CHECK, BUT I THINK YOU'RE RIGHT.

13 Q. BY MS. ABRAMSON: NOW, THIS GLYCERIN BULLET
14 THAT WAS SUPPOSED TO BE DELIVERED, THIS WAS SUPPOSED TO
15 HAVE ENTERED, PENETRATED THE HEAD OF PRESIDENT KENNEDY,
16 CORRECT?

17 MR. CONN: OBJECTION. IRRELEVANT, EVIDENCE CODE

18 SECTION 352.

19 THE COURT: EXCEPT THAT THE WITNESS HAS USED THIS
20 IN HIS OWN TESTIMONY ON DIRECT EXAMINATION AND REFERRED
21 TO THIS, SO THE DEFENSE HAS A RIGHT TO EXPLORE IT TO
22 SOME EXTENT.

23 OVERRULED.

24 THE WITNESS: YES. IT WOULD HAVE BEEN THE SHOT
25 DIRECTED TO THE SKULL OF THE PRESIDENT.

26 Q. BY MS. ABRAMSON: A SHOT THAT LEFT NO TRACE
27 INSIDE THE SKULL, CORRECT?

28 A. IT PROBABLY LEFT TRACES, BUT NONE THAT

-24795

1 PEOPLE WOULD LOOK FOR.

2 Q. NONE THAT PEOPLE SAW, CORRECT?

3 A. YES.

4 Q. AND THIS GLYCERIN WAS GOING TO BE DELIVERED
5 TO THE HEAD, WAS IT NOT, WRAPPED IN A COPPER JACKET,
6 YES?

7 A. WELL, YES, THAT'S HOW I BUILT THE BULLETS,
8 ALTHOUGH YOU WOULDN'T HAVE TO NECESSARILY USE THAT, BUT
9 I JUST HAD COPPER JACKETING, SO I USED IT.

10 Q. YOU WOULD HAVE TO USE SOMETHING TO MAKE
11 GLYCERIN PENETRATE THE HEAD BECAUSE GLYCERIN ISN'T GOING
12 TO PENETRATE THE HEAD ALL BY ITSELF, IS IT?

13 A. WELL, YOU WOULD HAVE --

14 Q. IS THAT YES, NO, OR YOU CAN'T ANSWER?
15 A. NO, IT'S YOU'RE WRONG.
16 Q. I'M WRONG. COULD GLYCERIN -- LET'S BREAK
17 IT DOWN.
18 ARE YOU SAYING YOU COULD FASHION A GLYCERIN
19 PROJECTILE THAT HAS NO METAL SHEETING ON IT THAT COULD
20 PENETRATE THE HEAD, PURE GLYCERIN; IS THAT WHAT YOU'RE
21 SAYING?
22 A. VERY CLOSE. THERE IS NO DOUBT I COULD SEND
23 A SLUG OF PURE HIGH-VELOCITY FLUID INTO YOUR BODY AT ANY
24 POINT I WISHED IF I GET IT GOING FAST ENOUGH.
25 Q. YES. WITH THE WEAPON THAT WAS USED AT THE
26 TIME OF THE KENNEDY ASSASSINATION?
27 A. IF YOU WERE A PROFESSIONAL ASSASSIN YOU
28 WOULD USE A WEAPON OF SUFFICIENT VELOCITY TO PENETRATE

-24794

1 THE SKULL WITH THE FLUID.
2 HOWEVER, SINCE IT WAS USING A
3 NINE-MILLIMETER RIFLE. I USED A THIN COPPER JACKET TO
4 HOLD THE GLYCERIN --
5 Q. MY QUESTION WAS THE WEAPON INVOLVED IN THE
6 KENNEDY ASSASSINATION, COULD THAT HAVE PRODUCED A
7 VELOCITY HIGH ENOUGH TO BE ABLE TO GET A PURE GLYCERIN
8 BULLET TO PENETRATE THE HEAD, THAT'S THE QUESTION.
9 A. THERE IS NO EVIDENCE OF A SECOND SHOOTER IN

10 THE CURRENT RECORD. THE CURCANO, THE ITALIAN CARBINE
11 BEING USED BY LEE HARVEY OSWALD, WOULDN'T -- IS NOT
12 CAPABLE OF SHOOTING A PURE FLUID SLUG.

13 Q. THANK YOU.

14 NOW, THE ONE THAT YOU FABRICATED, THOUGH IT
15 WAS A SLUG WITH A COPPER JACKET, RIGHT?

16 A. YES.

17 Q. AND DURING THAT ABA PRESENTATION, ISN'T IT
18 TRUE THAT NOBODY POINTED OUT TO YOU OR EVEN QUESTIONED
19 YOU ON THE ISSUE OF WHAT HAPPENED TO THE COPPER JACKET,
20 IF YOUR THEORY WAS RIGHT?

21 MR. CONN: OBJECTION. IRRELEVANT. EVIDENCE CODE
22 SECTION 352.

23 THE COURT: SUSTAINED.

24 Q. BY MS. ABRAMSON: THERE WAS NO EVIDENCE IN
25 PRESIDENT KENNEDY'S HEAD OF A COPPER JACKET, CORRECT?

26 MR. CONN: OBJECTION.

27 THE COURT: WHAT IS THE OBJECTION?

28 MR. CONN: RELEVANCE UNDER 352.

-24793

1 THE COURT: SUSTAINED.

2 Q. BY MS. ABRAMSON: NOW, YOU TESTIFIED ALSO
3 ON WEDNESDAY -- YOU TESTIFIED AGAIN AT PAGE 40371, LINE
4 25 THAT WITH RESPECT TO THE TEST-FIRINGS FOR THAT ABA
5 PRESENTATION, THAT YOU PERSONALLY ACTUALLY FIRED THE

6 WEAPONS FOR ALL OF THOSE TESTS; IS THAT TRUE?

7 A. FOR THE SKULL SHOTS I WAS DISCUSSING, I
8 THINK.

9 Q. ONLY THE SKULL SHOTS, CORRECT?

10 A. THAT'S CORRECT. I MEAN, A LOT OF OTHER
11 PEOPLE SHOT THE CURCANO FOR OTHER TESTS.

12 Q. YES. ALEC JASON, FOR EXAMPLE, DID A LOT OF
13 THE TEST-FIRING, DID HE NOT?

14 A. HE MAY HAVE. I LENT MY CURCANO TO THE
15 OTHER SIDE, SO --

16 Q. AND DR. MARTIN FACKLER WHO ALSO
17 PARTICIPATED IN THIS PRESENTATION, HE ALSO DID SOME
18 FIRING, CORRECT?

19 A. I'LL SAY. HE BLEW UP MY FIRST CURCANO.

20 Q. ARE YOU OF A MIND TO CRITICIZE DR. FACKLER
21 AT THIS HEARING AS OPPOSED TO HOW YOU LAUDED HIM
22 PREVIOUSLY?

23 A. WELL, I CRITICIZE HIM FOR BLOWING UP MY
24 CURCANO, BUT HE CERTAINLY IS A WELL-RECOGNIZED PERSON.
25 WHY HE WANTED TO CLEAR A JAMMED SLUG WITH A BLANK IS A
26 MYSTERY.

27 Q. MUCH OF WHAT YOU'VE BEEN TESTIFYING TO IS A
28 MYSTERY TO HIM AS WELL. HE SUGGESTED I ASK YOU THESE

2 THE COURT: LET'S NOT SLIP IN THESE THINGS FROM

3 COUNSEL. LET'S JUST ASK THE QUESTION.

4 Q. BY MS. ABRAMSON: ISN'T DR. MARTIN FACKLER

5 ONE OF THE LEADING WOUND BALLISTICS EXPERTS IN THE

6 UNITED STATES?

7 A. HE IS CERTAINLY ONE OF THOSE PEOPLE YOU

8 WOULD CONSIDER FOR THAT TITLE.

9 Q. AND YOU HAVE TOLD US YOU ARE NOT A WOUND

10 BALLISTICS EXPERT, CORRECT?

11 A. THAT IS CORRECT.

12 Q. BY THE WAY, WITH RESPECT TO YOUR BALLISTICS

13 EXPERTISE, YOU TESTIFIED HERE THAT THE SIZE OF A .38

14 CALIBER SLUG WAS .380.

15 THAT'S NOT RIGHT, IS IT?

16 A. IT'S NOT. IT'S .3 --

17 Q. -- 57?

18 A. YES.

19 MS. ABRAMSON: YOUR HONOR, THIS WOULD BE A GOOD

20 TIME TO TAKE A BREAK.

21 THE COURT: OKAY. 9:00 IS ALWAYS A GOOD TIME TO

22 TAKE A BREAK. IT'S 3:00. WE WILL TAKE A BREAK.

23 DON'T DISCUSS THIS MATTER WITH ANYONE.

24 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME

25 AT 3:20.

26 (A RECESS WAS TAKEN FROM

27 3:10 P.M.TO 3:25 P.M.)

28

1 THE COURT: EVERYBODY IS PRESENT. WE WILL HAVE

2 THE JURY OUT, PLEASE.

3 (THE JURY ENTERS THE COURTROOM AND THE

4 FOLLOWING PROCEEDINGS WERE HELD:)

5

6 THE COURT: ALL RIGHT. THE JURY IS BACK. YOU

7 MAY CONTINUE YOUR CROSS-EXAMINATION.

8 MS. ABRAMSON: THANK YOU, YOUR HONOR.

9 Q. NOW, DR. MC CARTHY, THE EXHIBITS THAT WE

10 HAVE HERE, THESE ILLUSTRATIONS NOW CONTAIN THE SCALED

11 FURNITURE BASED ON THE MEASUREMENTS MADE BY THE BEVERLY

12 HILLS POLICE DEPARTMENT; IS THAT RIGHT?

13 A. CLOSE. ALL THE DIMENSIONS THAT BEVERLY

14 HILLS MEASURED ARE ON THIS FURNITURE, BUT THEY DIDN'T

15 MEASURE EVERY DIMENSION.

16 Q. THEY MEASURED -- LET ME SHOW YOU WHAT WAS

17 MARKED YESTERDAY AS EXHIBIT -- YOU WEREN'T HERE

18 YESTERDAY, CORRECT?

19 A. THAT IS CORRECT.

20 Q. OKAY, WHAT WAS MARKED EXHIBIT 276.

21 A. YES.

22 Q. AND DOES 276 APPEAR TO BE A SCHEMATIC

23 DIAGRAM OF THE CRIME SCENE, THAT ROOM WHICH YOU ARE

24 USING IN ALL OF YOUR ILLUSTRATIONS?

25 A. YES.

26 Q. AND DO YOU SEE THAT SOME NUMBERS APPEAR ON

27 THAT INDICATING THE SIZE OF SOME PARTS OF THE FURNITURE?

28 A. YES.

-24790

1 Q. AND ARE THOSE THE NUMBERS THAT YOU USED?

2 A. YES.

3 Q. YOU'RE SHAKING. SHAKING DOES NOTHING FOR

4 THIS LADY.

5 A. I'M SORRY. HOLD ON. THERE WAS A TABLE

6 THAT I ALSO USED IN THE POLICE REPORT.

7 Q. THERE WAS A TYPED LIST OF FURNITURE

8 DIMENSIONS?

9 A. YES.

10 Q. YES.

11 A. OKAY.

12 Q. I CAN REPRESENT TO YOU THAT THE PERSON WHO

13 DID THAT, MR. KUHN, WAS HERE YESTERDAY, AND HE TOOK FROM

14 THAT LIST THESE DIMENSIONS AND PUT THEM ON THIS CHART.

15 A. THAT'S FINE. OKAY.

16 Q. OKAY. SO, THAT'S WHAT WE ARE TALKING

17 ABOUT. SO, WHAT IS SUPPOSED TO BE SHOWN HERE BY WAY OF

18 SCALE IS FOR EXAMPLE THAT THE -- WHY DON'T YOU LOOK OVER

19 THAT.

20 THE OCTAGONAL TABLE, FOR EXAMPLE, THAT'S IN

21 THE SOUTHWEST CORNER OF THE ROOM IS 48 INCHES IN

22 DIAMETER?

23 A. YEAH. IT'S ALWAYS BEEN 48.
24 Q. AND THE COFFEE TABLE NOW REFLECTS --
25 A. 56 BY 22.
26 Q. 56 BY 22 BY 17.5 HIGH?
27 A. CORRECT.
28 Q. AND THE COUCH THAT YOU HAVE REPRESENTED, IS

-24789

1 THE MAIN SECTION OF THAT COUCH SUPPOSED TO BE 90 INCHES,
2 AS MR. KUHN INDICATES?
3 A. ASSUMING THERE IS NO DISAGREEMENT. THESE
4 ARE ALL THE VALUES OFF THE TABLE, YES?
5 Q. THOSE ARE THE VALUES OFF THE TABLE, AND
6 THAT THE COUCH DEPTH IS 30 INCHES?
7 A. 36 IT LOOKS TO ME.
8 Q. IT MIGHT BE 36, WE WILL TAKE A LOOK AT THE
9 CHART TO MAKE SURE, AND THAT THE HEIGHT IS 28 INCHES?
10 A. YEAH.
11 Q. OKAY.
12 ARE THESE YOUR DUMMY ROUNDS?
13 A. YES.
14 Q. OKAY. YOU WERE ASKED TO BRING DOWN AND
15 TAKE THROUGH SHERIFF'S SECURITY SOME LIVE ROUNDS OF THE
16 AMMUNITION THAT YOU USED FOR THOSE TEST-FIRINGS;
17 CORRECT?
18 A. YES.

19 Q. AND YOU HAVE ASSURED ME THAT THOSE WILL BE
20 HERE TOMORROW?
21 A. YES.
22 Q. NOW, JUST TO BE CLEAR, THE AMMUNITION THAT
23 YOU USED TO DO THE TEST-FIRINGS WAS ALL NO. 4 BUCKSHOT?
24 A. YES.
25 Q. AND YOU PURCHASED THAT DIRECTLY FROM THE
26 FIOCCHI OF AMERICA DISTRIBUTION COMPANY, OR DID YOU GET
27 IT AT A GUN STORE OR SOMEPLACE LIKE THAT?
28 A. I MAY HAVE ORDERED IT FROM AN AMMO

-24788

1 WHOLESALER. I BOUGHT A SEALED CASE, THOUGH.
2 Q. AND THAT WAS ORDERED THIS YEAR, 1995?
3 A. YES, OR PERHAPS NOVEMBER OR DECEMBER OF
4 LAST YEAR. I MEAN WITHIN THE LAST 12 MONTHS.
5 Q. '94 TO '95?
6 A. YES.
7 Q. AND BEFORE YOU ORDERED THAT AMMUNITION, HAD
8 YOU LOOKED AT THE BALLISTICS EVIDENCE THAT WAS GATHERED
9 FROM THE SCENE HERE AND FROM THE CORONER'S OFFICE?
10 A. NO. I THINK I JUST ORDERED THE AMMUNITION
11 BASED ON THE TESTIMONY I READ.
12 Q. AND THE TESTIMONY YOU READ INDICATED THAT
13 IT WAS FIOCCHI NO. 4?
14 A. YES.

15 Q. AND THE TESTIMONY YOU READ ALSO INDICATED
16 THAT THE BIRD SHOT ROUNDS WERE ALSO FIOCCHI, CORRECT?

17 A. I JUST DON'T HAVE AN INDEPENDENT
18 RECOLLECTION. WHATEVER IT IS, IT IS.

19 Q. YOU DIDN'T GET ANY BIRD SHOT TO DO ANY
20 TESTING WITH THAT?

21 A. THAT IS CORRECT.

22 Q. NOW, YOU HAVE IDENTIFIED BASED ON -- WELL,
23 LET ME ASK YOU.

24 YOU HAVE GIVEN A SIZE FOR THE BIRD SHOT
25 ROUND. I BELIEVE YOU SAID IT WAS EIGHT AND A HALF; IS
26 THAT RIGHT?

27 A. YES.

28 Q. AND THAT'S BASED ON WHAT?

-24787

1 A. ON JUST MIC'ING UP THE LITTLE BIRD SHOTS.

2 Q. YOU ARE GOING TO HAVE TO EXPLAIN IN ENGLISH
3 WHAT MIC'ING UP MEANS?

4 A. JUST PUTTING A MICROMETER ON THE LEAD
5 PELLETS THAT WERE REPRESENTED TO ME TO BE RECOVERED FROM
6 THE SCENE.

7 SO I PUT A MICROMETER ON A COUPLE OF THEM,
8 AND THEY CAME OUT TO EIGHT AND A HALF.

9 Q. NOW, YOU DID THAT TO ACTUAL EVIDENCE
10 COLLECTED AND BOOKED IN HERE IN COURT?

11 A. YES.

12 Q. AND IS IT YOUR TESTIMONY THAT THERE IS SUCH
13 A THING MARKED AS EIGHT AND A HALF SIZE BIRD SHOT?

14 A. OH, YES, THERE IS.

15 Q. IN FACT, DR. MC CARTHY, THERE IS NO EIGHT
16 AND A HALF BIRD SHOT, THERE IS ONLY SEVEN, SEVEN AND A
17 HALF, EIGHT AND NINE?

18 A. YOU WILL SEE IT LISTED IN TEXT BOOKS.

19 Q. ALL RIGHT.

20 HAVE YOU EVER SEEN IT IN A GUN STORE?

21 A. I HAVE NEVER LOOKED.

22 Q. HAVE YOU EVER SEEN IT IN A CATALOGUE?

23 A. AGAIN, I HAVE NEVER LOOKED.

24 Q. LET ME SHOW YOU SOMETHING.

25 THIS IS EVIDENCE -- NO. 67 IN EVIDENCE, AND
26 I ASK YOU FIRST OF ALL CAN YOU SEE THAT THAT IS A ROUND
27 OF FIOCCHI BIRD SHOT?

28 A. THE CARTRIDGE CASING SAYS FIOCCHI DOVE

-24786

1 LOAD, YES.

2 Q. AND IT'S DOVE LOAD SIZE EIGHT, CORRECT?

3 A. YES.

4 Q. AND DO YOU NOTICE THE SHOT CUP, THE PLASTIC
5 SHOT CUP INSIDE?

6 A. YES.

7 Q. AND DO YOU KNOW WHETHER OR NOT THAT SHOT
8 CUP IS IDENTICAL TO THE SHOT CUP RECOVERED AT THE SCENE
9 AND THE SHOT CUP RECOVERED AT THE CORONER'S OFFICE IN
10 THIS CASE?

11 A. IT LOOKS DIFFERENT FROM MY RECOLLECTION,
12 BUT I WOULD HAVE TO HAVE THE RECOVERED SHOT CUP AGAIN TO
13 BE SURE.

14 Q. LET ME GET IT FOR YOU.

15 ARE YOU FAMILIAR WITH THE LABELING THAT THE
16 BEVERLY HILLS POLICE DEPARTMENT GAVE TO CERTAIN ITEMS OF
17 EVIDENCE AT THE SCENE?

18 A. NO. I HAVE ALWAYS HAD DETECTIVE ZOELLER
19 WHENEVER I NEEDED ANYTHING.

20 Q. LET ME SHOW YOU A CHART, NUMBER 24 IN
21 EVIDENCE.

22 YOU'RE GOING TO KNOCK IT OVER, I KNOW YOU
23 ARE. IF YOU DON'T, I WILL.

24 MR. LEVIN: LET ME DO IT.

25 MS. ABRAMSON: IT'S TOO BIG. OKAY. THANK YOU.

26 Q. THIS IS EXHIBIT 24, AND ARE YOU AWARE OF
27 THE FACT THAT A SHOT CUP PREVIOUSLY TESTIFIED TO AS
28 HOLDING BIRD SHOT WAS FOUND WHERE THIS NO. 11 APPEARS?

-24785

1 A. I KNOW ONE WAS -- AT LEAST ONE WAS FOUND,
2 BUT I COULDN'T -- I WOULD HAVE TO GO BACK TO THE POLICE

3 REPORT TO VERIFY. I DON'T HAVE AN INDEPENDENT

4 RECOLLECTION OF YOUR LOCATION.

5 Q. OKAY. YOU DID GET POLICE REPORTS AS PART
6 OF THE INFORMATION THAT WAS SUPPLIED TO YOU TO PREPARE
7 YOU TO DO THIS WORK ON THIS CASE, CORRECT?

8 A. YES.

9 Q. AND PART OF THE POLICE RECORDS THAT YOU HAD
10 INCLUDED A RECORD SHOWING EACH ITEM OF PROPERTY
11 COLLECTED FROM THE SCENE AND ITS LOCATION, CORRECT?

12 A. YES.

13 Q. LET ME SHOW YOU WHAT'S BEEN MARKED 48-C.

14 FIRST OF ALL, IS THAT A PLASTIC SHOT CUP?

15 A. YES.

16 Q. AND IF YOU WOULD LOOK AT THE DESIGN AND
17 CONFIGURATION -- STRIKE THAT.

18 THERE ARE MANY DIFFERENT LOOKING ONES OF
19 THESE ON THE MARKET, ARE THERE NOT, SHOT CUPS?

20 A. THERE IS.

21 Q. AND SOME OF THEM HAVE STRAIGHT SIDES AND
22 SOME OF THEM HAVE SORT OF CHAMPAGNE GLASS SIDES?

23 A. MM-HMM.

24 Q. AND SOME OF THEM HAVE THE BOTTOM PART WHICH
25 I THINK YOU HAVE CALLED THE POWER PISTON HAS DIFFERENT
26 CONFIGURATIONS, CORRECT?

27 A. YES.

28 Q. BUT THE TWO YOU ARE HOLDING RIGHT NOW ARE

1 IDENTICAL, AREN'T THEY?

2 A. NO, I DON'T THINK SO. HERE IS WHY.

3 Q. YOU DON'T?

4 A. YOU SEE THIS HAS GOT THIS STIFFENING RIB

5 ADDED VERTICALLY, OKAY? IF YOU LOOK AROUND THIS ON ALL

6 ANGLES, I DON'T THINK THERE IS ANY STIFFENING.

7 Q. YOU DON'T THINK THAT'S A STIFFENING?

8 A. NO, BUT SEE BETWEEN THIS AND THE BOTTOM OF

9 THE CUP YOU SEE HOW THERE ARE THOSE FOUR GUSSETS THAT

10 HAVE BEEN ADDED. I DON'T THINK YOU WILL SEE THOSE

11 GUSSETS. I WOULD HAVE TO TAKE IT OUT TO BE SURE, BUT I

12 DON'T THINK THEY'RE THERE.

13 Q. IS THE CONFIGURATION OF THE POWER PISTON

14 THE SAME?

15 A. EXCUSE ME?

16 Q. DO YOU WANT TO TAKE IT OUT?

17 A. NOT IF IT'S GOING TO BE A FEDERAL

18 OPERATION.

19 Q. IT'S A STATE COURT.

20 A. IS IT DIFFICULT TO DO?

21 Q. NO.

22 A. I MEAN, THERE IS A TAPED SLIT HERE.

23 Q. WE'LL LET THE CLERK OPEN IT.

24 A. CAN WE OPEN THIS ONE, TOO?

25 Q. YES.

26 OKAY. WE HAVE CUT THE LARGE ENVELOPE ON

27 48-C, AND DO YOU SEE THE SMALLER ENVELOPE SAYS ITEM 11

-24783

1 A. YES.

2 Q. LET ME VERY CAREFULLY CUT THAT ABOVE THE
3 NUMBER.

4 A. IS IT ABOVE THE STAPLE?

5 Q. NO, YOU HAVE TO CUT BELOW THAT.

6 A. IT'S HEAT SEALED.

7 MS. ABRAMSON; YOUR HONOR, CAN I CUT THIS WAY
8 (INDICATING)?

9 THE COURT: DO YOU NEED IT ACTUALLY IN YOUR HAND
10 TO SEE AND COMPARE THE TWO?

11 Q. BY MS. ABRAMSON: CAN YOU SEE IT BETTER NOW
12 THAT IT'S OUT OF THE PLASTIC?

13 A. YES.

14 Q. ALL RIGHT. NOW, LET ME JUST ASK YOU ONE
15 QUESTION.

16 THIS ITEM THAT YOU'RE HOLDING IN YOUR HAND
17 THAT SAYS NO. 11 IS OBVIOUSLY SOMETHING THAT'S BEEN
18 FIRED, IS IT NOT?

19 A. BUT YOU CAN NOW SEE IT PRETTY DEFINITELY.
20 YOU SEE THOSE FOUR GUSSETS THAT SUPPORT THE BASE OF THE
21 CUP. THEY ARE ABSENT FROM THIS PIECE.

22 Q. IN ALL OTHER RESPECTS IS IT IDENTICAL?

23 A. I CAN'T CHECK THE DIMENSIONS, BUT THERE IS

24 NO OTHER OBVIOUS PHYSICAL DETAILED DIFFERENCES THAT I
25 READILY DETECT.
26 Q. NOW, WERE YOU GIVEN THE TESTIMONY FROM THE
27 FIRST TRIAL OF L.A. COUNTY SHERIFF'S BALLISTICS EXPERT
28 DWIGHT VAN HORN?

-24782

1 A. YES.

2 Q. AND DO YOU REMEMBER DETECTIVE -- DEPUTY VAN
3 HORN COMPARING THESE TWO ITEMS OF EVIDENCE WHEN HE
4 TESTIFIED?

5 A. NO, I DON'T.

40755

1 Q AND WERE YOU EVER GIVEN THE REPORT OF A
2 SHERIFF'S CRIMINALIST NAMED JAMES ROBERTS?

3 A (NO AUDIBLE RESPONSE.)

4 Q DO YOU MIND IF I MOVE THIS, BECAUSE I'M
5 NOT GOING TO ASK YOU TO USE THIS TODAY.

6 A FINE. YOU CAN SHUT IT OFF. THE OFF
7 SWITCH IS IN THE BACK. THANK YOU.

8 THAT NAME DOES NOT RING A BELL.

9 Q DID YOU KNOW, IN FACT, THAT THERE WAS A
10 BALLISTICS EXPERT AT THE SHERIFF'S DEPARTMENT NAMED
11 JAMES ROBERTS WHO EXAMINED THE AMMUNITION IN THIS

12 CASE, THE EXPENDED BALLISTICS EVIDENCE?

13 A I DON'T RECOLLECT. I DIDN'T READ ANY

14 TESTIMONY FROM HIM.

15 Q WELL, WHOSE TESTIMONY -- WHAT

16 CRIMINALIST'S TESTIMONY DID YOU READ WHEN YOU

17 WERE -- WHAT WERE YOU REFERRING TO WHEN YOU ANSWERED

18 MR. GESSLER'S QUESTION ABOUT HAVING READ THE

19 TESTIMONY OF CRIMINALISTS?

20 A MR. VAN HORN WAS NOT A CRIMINALIST? I

21 GUESS -- IT'S NOT A TERM I USE. IF I'M MISLABELING

22 PEOPLE, I APOLOGIZE.

23 Q ARE YOU REFERRING SOLELY TO DEPUTY VAN

24 HORN?

25 A AND THE REPORT FROM THE SHERIFF; AND

26 AGAIN, I DON'T KNOW IF -- THE LAWRENCE REPORT, I

27 GUESS? NO, SIR.

28 Q LINHART?

40756

1 A LINHART, YEAH.

2 Q LET'S SEPARATE THESE OUT.

3 YOU READ THE TESTIMONY OF A SHERIFF'S

4 DEPUTY NAMED DWIGHT VAN HORN?

5 A CORRECT.

6 Q AND DO YOU RECALL HE QUALIFIED AS A

7 BALLISTICS EXPERT?

8 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

9 MS. ABRAMSON: JUST TRYING TO IDENTIFY HIM,
10 YOUR HONOR.

11 THE COURT: OVERRULED. YOU CAN ANSWER THE
12 QUESTION.

13 THE WITNESS: HE QUALIFIED IN HAVING
14 EXPERTISE IN THAT, CERTAINLY. IT WAS MY RECOLLECTION.

15 MS. ABRAMSON: OKAY.

16 Q AND YOU SAID YOU HAD READ A REPORT FROM
17 A SHERIFF'S CRIMINALIST NAMED LINHART; IS THAT
18 RIGHT?

19 A IF I'M USING THAT TERM CORRECTLY.

20 Q YOU ARE. HE'S A CRIMINALIST.

21 A OKAY.

22 Q AND DO YOU RECALL WHETHER OR NOT
23 MR. LINHART TESTIFIED? WELL, WHETHER OR NOT YOU GOT
24 ANY TESTIMONY.

25 A I DID NOT GET ANY TESTIMONY, IF HE
26 TESTIFIED.

27 Q LET'S TALK FOR A MOMENT ABOUT WHAT YOU
28 DID GET AND DIDN'T GET TO PREPARE YOU.

40757

1 WERE CERTAIN MATERIALS SENT TO YOU BY

2 THE DISTRICT ATTORNEY?

3 A YES.

4 Q AND HOW LONG AGO WAS IT THAT YOU FIRST
5 RECEIVED MATERIALS FROM THE DISTRICT ATTORNEY?

6 A OH, CLOSE TO A YEAR AGO. I JUST DON'T
7 HAVE A PRECISE RECOLLECTION.

8 Q AND DO YOU RECALL WHAT THE FIRST
9 MATERIALS WERE THAT YOU RECEIVED?

10 A TRANSCRIPTS OF TESTIMONY.

11 Q AND WHOSE TESTIMONY DID YOU RECEIVE
12 TRANSCRIPTS OF?

13 A A MR. -- OR DR. IRWIN GOLDEN.

14 Q WHAT TESTIMONY OF DR. GOLDEN'S; MEANING,
15 IN WHAT PROCEEDINGS?

16 A IT'S PAGES 9,129 TO 9,254.

17 DOES THAT IDENTIFY IT?

18 Q YES. THAT'S TRIAL TRANSCRIPT.

19 A OKAY.

20 Q AND DID YOU ALSO RECEIVE SOME PAGES FROM
21 HIS TESTIMONY BEFORE THE COUNTY GRAND JURY?

22 A YES. PAGES 98 TO 104.

23 Q YOU'RE READING FROM A LIST RIGHT NOW; IS
24 THAT CORRECT?

25 A YES.

26 Q THAT'S ALL RIGHT.

27 THAT'S TO REFRESH YOUR RECOLLECTION
28 ABOUT WHAT MATERIALS WERE SUBMITTED TO YOU?

1 A WITH FIVE-DIGIT PAGE NUMBERS --

2 Q WE'RE UP BEYOND FIVE AT THIS POINT.

3 A OKAY.

4 Q NOW, THIS IS THE FIRST THING YOU
5 RECEIVED WERE THESE TRANSCRIPTS OF DR. GOLDEN'S
6 TESTIMONY?

7 A THEY WERE -- I RECEIVED A -- MY
8 RECOLLECTION IS I RECEIVED A LARGE PACKET OF
9 TESTIMONY, OF WHICH HIS WAS JUST PART.

10 Q WHAT OTHER TESTIMONY THEN -- WE'LL STICK
11 TO THAT FOR THE MOMENT -- DID YOU GET?

12 A MR. VAN HORN'S.

13 Q THAT'S DEPUTY VAN HORN?

14 A YES. I ACCEPT YOUR REPRESENTATION.

15 Q ANY OTHER TESTIMONY? I'M TRYING TO PUT
16 THIS PACKET TOGETHER. I'M SORRY.

17 A I'M SORRY.

18 Q WHAT ELSE WAS IN THIS FIRST PACKAGE OF
19 TESTIMONY?

20 A TESTIMONY OF DETECTIVE ZOELLER.

21 Q AND WAS THAT TESTIMONY OF DETECTIVE
22 ZOELLER HAVING TO DO WITH WITNESSES OR HAVING TO DO
23 WITH THE SCENE?

24 A PAGES 7,327 TO 7,402. IT, FOR THE MOST
25 PART, DEALT WITH THE SCENE, BUT THERE WAS SOME

26 DISCUSSION OF WITNESSES TOO.

27 Q OKAY. WHAT ELSE? WHAT OTHER

28 TESTIMONY?

40759

1 A OH.

2 Q WHAT WITNESSES, DO YOU REMEMBER?

3 A IN HIS TESTIMONY?

4 Q YES.

5 A BASICALLY, THE TWO SONS.

6 Q OKAY. OUR CLIENTS.

7 A YES.

8 Q ERIK AND LYLE MENENDEZ. ALL RIGHT.

9 AND WHAT ELSE?

10 A THEN I GOT TESTIMONY FROM A MR. RICHARD

11 CATALINI.

12 Q AND DID YOU UNDERSTAND MR. CATALANI TO

13 BE A CRIMINALIST WITH THE SHERIFF'S DEPARTMENT WHOSE

14 AREA WAS SEROLOGY?

15 A THAT COMPORTS WITH MY RECOLLECTION.

16 Q OKAY. WHAT ELSE?

17 A I'VE GOT A TRANSCRIPT OF TAPES OF A

18 MEETING WITH A MR. BURT AND A MR. GILLINGHAM.

19 Q AND DR. GOLDEN, RIGHT?

20 A I JUST HAVE IT IDENTIFIED IN THAT MANNER

21 AND I DON'T HAVE A SPECIFIC RECOLLECTION.

22 Q DO YOU REMEMBER TESTIFYING ON OCTOBER
23 2ND OR 3RD THAT THAT TRANSCRIPT WAS OF A MEETING
24 BETWEEN MR. BURT, MR. GILLINGHAM, AND DR. GOLDEN?

25 A A MONTH AGO I MAY HAVE SAID THAT. I
26 JUST DON'T HAVE A SPECIFIC RECOLLECTION AS I SIT
27 HERE.

28 Q DO YOU KNOW WHO MR. BURT AND

40760

1 MR. GILLINGHAM ARE OR WERE?

2 A I THOUGHT THEY WERE DEFENSE ATTORNEYS?

3 Q DEFENSE ATTORNEYS IN THIS CASE AT THAT
4 TIME, CORRECT?

5 A THAT IS MY UNDERSTANDING.

6 Q AND DO YOU KNOW WHAT THE DATE OF THAT
7 MEETING WAS THAT WAS TRANSCRIBED?

8 A 10 JUNE 1990.

9 Q AND WHAT OTHER -- NOW, THAT'S NOT
10 TESTIMONIAL. BUT WHAT OTHER TRANSCRIPTS DID YOU
11 RECEIVE?

12 A THEN TRANSCRIPTS OF ERIK AND LYLE.

13 Q AND THAT'S TRANSCRIPTS OF A PORTION OF
14 THEIR TESTIMONIES FROM THE FIRST TRIAL?

15 A THAT IS MY UNDERSTANDING, YES.

16 Q HOW MANY VOLUMES OF SUCH TRANSCRIPTS DID
17 YOU RECEIVE OF THE MENENDEZ SONS' TESTIMONY?
18 A I CAN GIVE YOU THE PAGE NUMBERS. I
19 DON'T KNOW HOW THAT BREAKS INTO YOUR CONVENTION OF
20 VOLUMES.
21 Q HOW BIG A PILE? LET ME ASK YOU THAT.
22 ABOUT THREE AND A HALF, FOUR INCHES?
23 A THREE-ISH.
24 Q THREE INCHES?
25 A YEAH. BALLPARK.
26 Q WERE YOU AWARE THAT IN THE FIRST TRIAL
27 ERIK MENENDEZ TESTIFIED FOR TEN DAYS AND LYLE
28 MENENDEZ TESTIFIED FOR NINE DAYS?

40761

1 MR. CONN: OBJECTION. IRRELEVANT. ASSUMES
2 FACTS NOT IN EVIDENCE.
3 THE COURT: OVERRULED.
4 THE WITNESS: I COULDN'T HAVE TOLD YOU THE
5 NUMBER OF DAYS THEY TESTIFIED.
6 Q BY MS. ABRAMSON: YOU CERTAINLY DIDN'T
7 RECEIVE 19 DAYS WORTH OF TESTIMONY, DID YOU?
8 A I DON'T THINK SO.
9 Q OKAY. AND WAS THERE ANY OTHER TESTIMONY
10 THAT YOU RECEIVED AS PART OF THIS LARGE PACKAGE FROM

11 THE PROSECUTION?

12 A NOT INITIALLY, I DON'T THINK SO. THAT
13 WAS IT.

14 Q AND WHAT -- WAS THAT THE INITIAL
15 SUBMISSION TO YOU?

16 A YES. NOW, ON OR ABOUT THE SAME TIME I
17 RECEIVED THE AUTOPSY REPORTS AND 25 ROLLS OF
18 PHOTOGRAPHS, AND IT COULD HAVE BEEN IN THE SAME
19 SHIPMENT, OR RIGHT AROUND THE SAME TIME. I JUST
20 DON'T HAVE A SPECIFIC RECOLLECTION.

21 Q WHEN YOU SAY YOU RECEIVED THE AUTOPSY
22 REPORTS, YOU MEAN ONE REPORT EACH FOR MARY LOUISE
23 MENENDEZ AND ONE REPORT FOR JOSE MENENDEZ?

24 A YEAH. JOSEPH MENENDEZ, YES.

25 Q IT'S JOSE.

26 A OKAY. THE AUTOPSY HAD BOTH NAMES ON IT.

27 Q AND DID YOU RECEIVE, AT THAT TIME WITHIN
28 THE LAST YEAR, THE 1992 AMENDMENT TO THE REPORT FOR

40762

1 MARY LOUISE MENENDEZ?

2 A I HAVE RECEIVED AMENDMENTS IN THE LAST
3 YEAR, YES; BUT MORE THAN ONE.

4 Q WELL, YOU'RE AWARE THAT THERE ARE RECENT
5 AMENDMENTS OF SEPTEMBER 25TH, 1990 TO BOTH THE

6 MR. MENENDEZ REPORT AND THE MRS. MENENDEZ REPORT?

7 A YES.

8 Q BUT MY QUESTION SPECIFICALLY WAS WHETHER

9 YOU RECEIVED IN THAT FIRST PACKAGE THE 1992

10 AMENDMENT.

11 A I DON'T THINK SO.

12 Q DO YOU KNOW WHEN THE DATE OF THE FIRST

13 TRIAL WAS?

14 A MY RECOLLECTION IS 1992, BUT NOT -- I

15 MEAN, I DON'T HAVE A SPECIFIC RECOLLECTION, NO.

16 Q DO YOU KNOW IF THE 1992 AMENDMENT THAT

17 YOU RECEIVED -- THAT'S DR. GOLDEN'S AMENDMENT,

18 CORRECT?

19 A YES.

20 Q DO YOU KNOW IF THAT WAS BEFORE THE FIRST

21 TRIAL OR AFTER?

22 A I DO NOT.

23 Q THE TRANSCRIPTS THAT YOU RECEIVED

24 CONTAINING TESTIMONY HAD NO DATES ON THEM?

25 A THEY DID. I JUST DIDN'T BRING THEM

26 DOWN, AND I DON'T RECOLLECT THEM OFF THE TOP OF MY

27 HEAD.

28 Q AND SINCE YOU DON'T TAKE NOTES YOU DON'T

1 HAVE ANY NOTES TO LOOK TO; IS THAT CORRECT?

2 A THAT IS CORRECT.

3 Q ALL RIGHT. NOW, YOU SAID YOU RECEIVED

4 24 ROLLS OF FILM.

5 A TWENTY-FIVE ROLLS, ONE THROUGH

6 TWENTY-FIVE.

7 Q AND THAT WAS NEGATIVES, CORRECT?

8 A YES.

9 Q AND YOU RECEIVED THOSE FROM WHOM?

10 A THE DISTRICT ATTORNEY'S OFFICE.

11 Q AND THAT WAS AT OR CLOSE TO THE TIME

12 WHEN YOU RECEIVED THE PACKAGE OF TRANSCRIPTS,

13 CORRECT?

14 A THAT IS MY RECOLLECTION.

15 Q AND WAS ANYTHING -- YOU TOOK THOSE 25

16 ROLLS OF FILM AND SCANNED THEM INTO THE COMPUTER; IS

17 THAT RIGHT?

18 A PHOTO C.D.'S.

19 Q YOU PUT THEM ON PHOTO C.D.'S?

20 A CORRECT.

21 Q SO THAT YOU COULD SEE THEM ON COMPUTER?

22 A SEE THEM --

23 Q AND STORE THEM AND CARRY THEM ABOUT?

24 A YES. MUCH MORE CONVENIENT.

25 Q AND THOSE TWENTY-FIVE ROLLS OF FILM

26 WOUND UP OCCUPYING SIX SEPARATE C.D.'S, CORRECT?

27 A APPROXIMATELY, YES.

28 Q AND WHAT ELSE, IF ANYTHING, DID YOU

1 RECEIVE, DR. MC CARTHY, BEFORE YOU WROTE THE REPORT
2 OF JULY 13TH, 1995?

3 A FROM THE D.A.'S OFFICE?

4 Q FROM ANYBODY.

5 A WELL, OF COURSE, GOT A SURVEY OF THE
6 ROOM.

7 Q FINE. LET'S TALK ABOUT THAT.

8 YOU SAID THAT YOU SENT ENGINEERS OUT?

9 A YES.

10 Q WHO WAS THAT?

11 A IN DECEMBER OF 1994, BEFORE I WROTE THE
12 REPORT, I SENT THE DIRECTOR OF MY LOS ANGELES
13 OFFICE, DR. ROBERT CADLAC.

14 Q HOW DO YOU SPELL HIS NAME FOR ME AND THE
15 REPORTER?

16 A C-A-D-L-A-C. AND HE WAS ASSISTED BY
17 EDWARD BERES, SENIOR ENGINEER IN THE OFFICE.

18 Q AND YOU FOUND IT WAS NECESSARY TO SEND A
19 PH.D. AND A SENIOR ENGINEER TO MEASURE A ROOM?

20 A WELL, THERE'S NECESSARY AND NECESSARY.
21 I MEAN --

22 Q NEVERTHELESS, THAT'S WHO YOU SENT,
23 CORRECT?

24 A THAT'S WHO I SENT.

25 Q AND WERE YOU MADE AWARE BY ANYONE,
26 EITHER THE PROSECUTORS OR DETECTIVE ZOELLER OR YOUR
27 ENGINEERS, THAT THAT ROOM HAD BEEN MODIFIED SINCE
28 THE TIME OF THE OFFENSE, BY THE TIME THAT THEY WENT

40765

1 THERE IN DECEMBER OF '94?

2 A I WAS EITHER INFORMED BY DR. CADLAC OR
3 DEDUCED FROM THE DRAWINGS THAT THERE HAD BEEN SOME
4 MODIFICATIONS.

5 Q AND TO THE BEST OF YOUR KNOWLEDGE, BASED
6 ON THE DRAWINGS THAT THEY PREPARED, WHAT WERE THOSE
7 MODIFICATIONS?

8 A SOME OF THE BUILT-IN BOOKCASES HAD BEEN
9 REMOVED AND THERE HAD BEEN SOME MODIFICATION ON THE
10 NORTH END OF THE ROOM TO THE TV VIEWING AREA.

11 Q YOU SAY SOME OF THE BOOKCASES HAD BEEN
12 REMOVED. DON'T YOU MEAN ALL OF THEM?

13 A ALL THE BUILT-IN CASES, YES.

14 Q WERE THERE ANY OTHERS IN THE ROOM?

15 A AS I SIT HERE, I DON'T RECOLLECT ANY
16 OTHERS. BUT THAT'S ALL I WAS REFERRING TO.

17 Q AND WHEN YOU TALK ABOUT THE BUILT-IN
18 BOOKCASES, ARE YOU TALKING ABOUT BOOKCASES THAT

19 LINED THE EAST WALL OF THE ROOM?

20 A YES.

21 Q THAT'S YOUR UNDERSTANDING, THAT THERE

22 WERE BOOKCASES ACROSS --

23 A THE EAST WALL.

24 Q -- THE EAST WALL. AND ON THE EXHIBIT 24

25 THAT WE'RE LOOK AT RIGHT NOW, THE EAST WALL IS THE

26 RIGHT-HAND WALL AS WE'RE FACING THAT EXHIBIT,

27 CORRECT?

28 A YES.

40766

1 Q IT'S THE WALL IN FRONT OF WHICH ITEMS

2 16, 17, 18, WERE FOUND?

3 A YES.

4 Q AND IT'S YOUR UNDERSTANDING THAT THERE

5 WAS A MODIFICATION TO THE TV AREA, THAT THAT ALCOVE

6 WAS MODIFIED?

7 A YES.

8 Q NOW, YOU'RE AWARE -- ARE YOU AWARE THAT

9 THIS EXHIBIT WAS PREPARED BY DECISION QUEST?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES.

13 Q BY MS. ABRAMSON: AND DECISION QUEST IS

14 THE COMPANY FOR WHOM YOUR GOOD FRIEND DON VINCENT
15 WORKS, CORRECT?
16 MR. CONN: OBJECTION. CALLS FOR HEARSAY,
17 SPECULATION.
18 THE COURT: OVERRULED.
19 THE WITNESS: IT'S MY UNDERSTANDING HE'S THE
20 CHAIRMAN.
21 Q BY MS. ABRAMSON: AND DID YOU GIVE ANY
22 OF YOUR MEASUREMENTS TO MR. VINCENT OR HIS COMPANY?
23 A WE COULD VERY WELL HAVE. I DIDN'T
24 PERSONALLY, BUT WE COULD HAVE TRANSMITTED OUR
25 DIMENSIONS.
26 Q DO YOU KNOW IF HE BASED THE CHART WORK
27 THAT DECISION QUEST HAS DONE FOR THE PROSECUTION IN
28 THIS CASE ON ANY OF THE WORK THAT YOUR PEOPLE DID?

40767

1 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND
2 SPECULATION.
3 THE COURT: SUSTAINED.
4 Q BY MS. ABRAMSON: WAS IT YOUR
5 UNDERSTANDING, OR DID YOU AGREE THAT YOUR WORK,
6 F.A.A.'S WORK, WOULD BE USED BY DECISION QUEST FOR
7 CHART PRODUCTION?
8 MR. CONN: OBJECTION. IRRELEVANT.

9 THE COURT: OVERRULED.

10 THE WITNESS: IT WAS MY UNDERSTANDING THEY
11 WERE GOING TO PRODUCE THESE CHARTS YOU SEE DOWN
12 HERE. I DON'T HAVE ANY RECOLLECTION OF DISCUSSING
13 THIS CHART. BUT OVER A YEAR WE MIGHT HAVE AND I
14 JUST DON'T RECOLLECT IT.

15 Q BY MS. ABRAMSON: WHEN YOU SAY THE
16 CHARTS DOWN HERE, ALL THE EXHIBITS THAT SHOW
17 ILLUSTRATIONS WERE, IN FACT, PREPARED BY DECISION
18 QUEST, WERE THEY NOT?

19 MR. CONN: OBJECTION. CALLS FOR SPECULATION,
20 NO PERSONAL KNOWLEDGE OR FOUNDATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: THAT IS MY UNDERSTANDING. THEY
23 HAVE DECISION QUEST LABELS ON THE BACK.

24 Q BY MS. ABRAMSON: YEAH. YOU DIDN'T MAKE
25 'THEY MADE 'EM.

26 A YES.

27 Q THIS IS A PHOTOGRAPH I JUST WANTED TO
28 SHOW YOU TO MAKE SURE WE'RE TALKING ABOUT THE SAME

40768

1 THING.

2 THIS IS EXHIBIT 22. THAT SHOWS THE
3 BOOKCASE ON THE EAST WALL, CORRECT?

4 A YES.

5 Q AND YOUR PEOPLE INFORMED YOU THAT THEY
6 WERE GONE WHEN THEY GOT THERE TO MEASURE THE ROOM?

7 A THERE WAS NO INDICATION OF BOOKCASES,
8 AND THEY PHOTOGRAPHED AND SHOWED THEY WEREN'T THERE.

9 Q THEY PHOTOGRAPHED THE ROOM WHEN THEY
10 WENT TO MEASURE IT?

11 A YES.

12 Q DO YOU HAVE THOSE PHOTOGRAPHS?

13 A SURELY.

14 Q OH.

15 MS. ABRAMSON: I'D LIKE TO SEE THEM, YOUR
16 HONOR.

17 WOULD YOU LIKE TO SEE THEM?

18 Q HAVE YOU SHOWN THESE TO THE PROSECUTION?

19 A YEAH. I PRESUME THEY WERE XEROX COPIED
20 WHEN WE COPIED THE COURT'S.

21 Q XEROX COPIES FOR THE PROSECUTION?

22 A FOR EVERYBODY.

23 Q WELL, YOU PRESUMED WRONG.

24 A I'M SORRY.

25 Q WHY DON'T WE LAY THE BOOK FLAT, BECAUSE
26 THE GLARE --

27 A I'M SORRY.

28 Q DON'T LOSE THOSE.

1 A I SHAN'T.

2 Q OKAY. NOW, YOU THEN SENT DR. CADLAC AND
3 EDWARD BERES AND THEY MADE CERTAIN MEASUREMENTS OF
4 THE ROOM.

5 AND YOU HAD THOSE MEASUREMENTS AS OF
6 WHEN?

7 A AS OF WHEN?

8 Q YES.

9 A ON DECEMBER 1994. YOU WANT THE PRECISE
10 DATE?

11 Q NO. THAT'S FINE. THE QUESTION WAS:
12 DID YOU RECEIVE ANYTHING ELSE BEFORE YOU PREPARED
13 YOUR REPORT OF JULY 13TH, 1995?

14 A BEFORE I PREPARED THAT REPORT I ALSO GOT
15 THE EXEMPLAR WEAPON FROM MOSSBERG.

16 Q OKAY. ANYTHING ELSE?

17 A NO.

18 Q YOU CONTACTED MOSSBERG YOURSELF AND
19 ASKED THEM TO SEND A GUN WITH A LOWER SERIAL NUMBER
20 THAN THE ONES PURCHASED IN THIS CASE?

21 A YES. I CONTACTED MISS GEORGIA NICHOLS,
22 THE GENERAL COUNSEL, MYSELF.

23 Q AND SHE SENT YOU A GUN?

24 A YES. SHE CAUSED TO HAVE SENT ME A GUN.

25 Q AND THE GUN THAT YOU RECEIVED, DID IT
26 HAVE A WOODEN DOWEL IN THE MAGAZINE SECTION?

27 A NO.

40770

1 THE STATE OF CALIFORNIA ARE REQUIRED TO HAVE THAT
2 WOODEN DOWEL IN IT?

3 A SOLD FOR RETAIL.

4 Q IS THAT RIGHT? WERE YOU AWARE OF THAT?

5 A I GUESS I DON'T HAVE AN AWARENESS THEY
6 HAVE TO BE SOLD THAT WAY.

7 Q DO YOU HAVE AN AWARENESS THAT IF THEY'RE
8 USED FOR HUNTING THEY HAVE TO HAVE THE DOWEL IN?

9 A YES.

10 Q AND THAT THE MOST THAT COULD BE LOADED
11 IN SUCH A GUN, IF IT'S BEING USED FOR HUNTING, IS
12 ONE IN THE CHAMBER AND TWO IN THE MAGAZINE?

13 A TOTAL OF THREE, YES.

14 Q BUT YOU WEREN'T AWARE OF WHETHER OR NOT
15 THEY'RE SOLD WITH THAT DOWEL IN GUN STORES?

16 A AS A REQUIREMENT BY CALIFORNIA LAW? NO,
17 I'M NOT.

18 Q YOU ARE A CALIFORNIA RESIDENT?

19 A YES.

20 Q AND, IN FACT, DID YOU DETERMINE, AFTER
21 YOU CAME HERE TO TESTIFY IN THE TRIAL, OR WERE YOU
22 TOLD THAT THE MECHANISM WHICH OPENS UP THE GUN IN

23 SUCH A WAY AS TO HAVE THE DOWEL COME OUT WAS JAMMED

24 AND WASN'T WORKING?

25 A I WAS TOLD IT WAS VERY STIFF. A DEPUTY

26 TOLD ME HE GOT IT OPEN.

27 Q AND DID YOU FIND THAT IT WAS EXTREMELY

28 STIFF ON THIS GUN?

40771

1 A YES. THERE WAS DIRT IN THE THREADS.

2 Q AND HAVE YOU SINCE OILED AND LUBRICATED

3 THE GUN?

4 A TO A CERTAIN DEGREE BUT...

5 Q IT'S STILL VERY STIFF?

6 A I'LL PUT SOME LAPPING PASTE ON IT AND IT

7 WILL WORK NICE.

8 Q YOU'LL TRY TO MAKE IT WORK THE WAY IT'S

9 SUPPOSED TO.

10 A IT WORKS THE WAY IT'S SUPPOSED TO NOW,

11 BUT I'LL MAKE IT WORK REALLY NICE.

12 Q HOW MANY OTHER MOSSBERG-500'S OF THAT

13 SERIES DO YOU OWN?

14 A I THINK I HAVE ONE, MAYBE TWO,

15 MODEL-500'S. THAT'S WHAT I MEAN BY THAT SERIES.

16 Q MODEL-500 IS A PARTICULAR STYLE. THIS

17 PARTICULAR ONE HAS AN 18-AND-A-HALF INCH BARREL

18 LENGTH?

19 A YES.

20 Q AND THAT'S NOT STOCK. THAT CAN VARY ON

21 A MODEL-500.

22 IS IT YOUR UNDERSTANDING YOU CAN BUY

23 MODEL-500'S WITH DIFFERENT BARREL LENGTHS?

24 A MY UNDERSTANDING -- RIGHT.

25 Q AND CAN YOU BUY MODEL-500'S WITH

26 DIFFERENT KINDS OF STOCKS?

27 A OH, YES.

28 Q AND WHAT OTHER FEATURES ARE VARIABLE AS

40772

1 FAR AS YOU KNOW, ON MODEL-500'S?

2 A I HAD A MOSSBERG CATALOGUE LAST YEAR.

3 Q DO YOU KNOW OFFHAND?

4 A NOT GOOD ENOUGH TO TESTIFY TO FROM

5 MEMORY.

6 Q ALL RIGHT. DID YOU DO ANY COMPARISON

7 BETWEEN THE OTHER MOSSBERG THAT YOU OWN AND THIS ONE

8 TO SEE IF IT OPERATES THE SAME WAY, IF THE PUMP

9 SLIDES THE SAME WAY, IF THE TRIGGER PULL IS SIMILAR,

10 THOSE THINGS?

11 A YES.

12 Q BY THE WAY, DID YOU MAKE AN EFFORT TO DO

13 ANY EJECTION PATTERN TESTS WITH THE GUN THAT YOU

14 BOUGHT THAT'S NOW AN EXHIBIT -- I JUST DON'T

15 REMEMBER THE NUMBER OFFHAND.

16 A NO. YOU MEAN -- BY THAT YOU MEAN SHELL

17 CASING EJECTIONS? NO.

18 Q YES. THAT'S WHAT EJECTS, SHELL

19 CASINGS.

20 A WELL, UNDERSTOOD. BUT FOR THE

21 CLARIFICATION OF EVERYBODY INVOLVED, THAT'S WHAT --

22 Q SO YOU DIDN'T DO ANY OF THOSE TESTS?

23 A THAT IS CORRECT.

24 Q DID YOU EVER DO ANY EJECTION TESTS ON

25 THE 500 THAT -- THE MAYBE ONE OR TWO THAT YOU OWN?

26 A NO.

27 Q DID YOU EVER DO ANY TEST-FIRINGS IN

28 ORDER TO TRY TO DETERMINE THE DISTRIBUTION PATTERN

40773

1 OF THE AMMUNITION -- OF AMMUNITION IN A PARTICULAR

2 GUN BEFORE?

3 A YES. I HAVE SHOT FOR PATTERN IN THE

4 PAST.

5 Q AND WHAT KIND OF GUN AND WHAT KIND OF

6 AMMUNITION HAVE YOU SHOT FOR PATTERN IN THE PAST?

7 A .12-GAUGE MOSTLY.

8 Q .12-GAUGE MOSTLY WHAT?

9 A MOSTLY FOR DISTRIBUTION PATTERN. I'VE
10 SHOT .410 AS WELL. MOSTLY .12-GAUGE. AND ON GLASS
11 AND WOOD.

12 Q AND WAS THAT TO DETERMINE IMPACT
13 PATTERNS ON GLASS AND WOOD?

14 A AND TO LOOK AT THE EFFECT OF THE PATTERN
15 BECAUSE OF THE ANGLE OF THE WEAPON RELATIVE TO THE
16 SURFACE.

17 Q AND WHAT KIND OF GUN WERE YOU -- OR GUNS
18 WERE YOU USING FOR THOSE TESTS?

19 A VARIOUS SHOTGUNS THAT I'VE HAD. A
20 REMINGTON-870. A COUPLE OTHER REMINGTONS.

21 Q WHAT KIND OF -- I'M SORRY.

22 A A COUPLE OTHER REMINGTONS.

23 THEN I HAVE A NUMBER OF COMBAT SHOTGUNS
24 THAT I HAVE SHOT FOR PATTERN. A USAS, U-S-A-S, AND --
25 IT'S A FRANSCHI-12.

26 Q WHAT KIND OF AMMUNITION DID YOU FIRE IN
27 THESE TEST-FIRINGS FOR DISTRIBUTION PATTERNS?

28 A MOSTLY DOUBLE AND TRIPLE OUGHT.

40774

1 Q DOUBLE AND TRIPLE OUGHT ARE LARGER
2 INDIVIDUAL PELLETS THAN NO. 4 BUCK?

3 A YES.

4 Q AND WERE YOU ABLE IN THOSE EXPERIMENTS
5 TO DETERMINE DISTRIBUTION PATTERNS FOR CERTAIN GUNS
6 AND CERTAIN AMMUNITIONS?

7 A AS A FUNCTION OF DISTANCE? OR --
8 CERTAINLY YOU CAN ALWAYS DETERMINE THE PATTERN YOU
9 GET BUT...

10 Q YOU CAN DETERMINE THE PATTERN YOU GET
11 FROM ONE SHOT?

12 A RIGHT.

13 Q WERE YOU ABLE TO SEE IF YOU GOT
14 CONSISTENT PATTERNS FOR ANY PURPOSE, WHETHER IT'S
15 DISTANCE OR PATTERNING?

16 A YOU CAN SEE IF YOU CAN GET CONSISTENT
17 PATTERNS, YES. AND I HAVE SHOT THESE WEAPONS IN NO
18 SMALL PART FOR CONSISTENCY.

19 BUT CONTINUE ON. I DON'T UNDERSTAND THE
20 QUESTION.

21 Q WAS THERE SOME REASON, OR IS THERE SOME
22 REASON YOU CAN ATTRIBUTE TO WHY YOU WERE NOT ABLE TO
23 GET CONSISTENT PATTERNS WHEN YOU DID YOUR
24 TEST-FIRINGS HERE?

25 A I GUESS I WOULDN'T TERM THE PATTERNS
26 INCONSISTENT. IT'S JUST THEY ARE NOT DIMENSIONALLY
27 CONSISTENT ENOUGH TO PERMIT USE FOR DISTANCE
28 RECONSTRUCTION IN A DEFENSIBLE MANNER. I DIDN'T SEE

1 ANY OTHER TEST-FIRINGS -- WHAT I'M GOING TO SAY

2 DEFENSIBLE DISTANCE GROUPING, ALTHOUGH I WASN'T

3 ATTEMPTING TO DO THAT AT THE TIME.

4 Q BEFORE YOU WROTE YOUR REPORT ON JULY

5 13TH, 1985, HAD YOU ALREADY DONE THESE TEST-FIRINGS?

6 THE COURT: 1995.

7 MS. ABRAMSON: '95. I'M SORRY. DID I SAY

8 SOMETHING STUPID?

9 THE WITNESS: MY RECOLLECTION IS YES. YES.

10 Q BY MS. ABRAMSON: AND BEFORE YOU WROTE

11 YOUR REPORT ON JULY 13TH, 1995 HAD YOU LOOKED AT --

12 BY THE WAY, YOU SEE THAT ENVELOPE IN FRONT OF YOU,

13 THE LARGE YELLOW ENVELOPE BEYOND THE COMPUTER?

14 A YES.

15 Q MY SIDE OF THE COMPUTER. SEE THAT?

16 A YES.

17 Q HAD YOU LOOKED THROUGH THAT BEFORE JULY

18 13TH, 1995?

19 A OH, YES. I MEAN, I HAD LOOKED AT THIS

20 EVIDENCE. I CAN'T VOUCH FOR THAT ENVELOPE.

21 Q WELL, IF I TELL YOU THAT ENVELOPE, THAT

22 LARGE ENVELOPE WHICH IS NUMBERED, I BELIEVE, 48,

23 CONTAINS ALL THE EVIDENCE SEIZED FROM THE SCENE?

24 A OH. THEN I HAVE, YES.

25 Q AND THIS ENVELOPE WHICH HAS TWO GREEN

26 LABELS, EXHIBIT 81, CONTAINS ALL THE BALLISTICS

27 EVIDENCE FROM THE CORONER'S OFFICE.

28 DID YOU LOOK AT THAT ONE TOO?

40776

1 A I THINK SO, YES.

2 Q AND YOU LOOKED AT BOTH OF THOSE BEFORE

3 YOUR REPORT OF JULY 13TH, 1995?

4 A YES.

5 Q AND DO YOU RECALL SEEING ONLY TWO ITEMS

6 OF BALLISTICS EVIDENCE THAT EXISTED AFTER THE SHOT

7 CUP AND POWER PISTON COMBINATION?

8 A AND WADDING.

9 Q A SHOT CUP AND POWER PISTON SUCH AS

10 WHAT'S CONTAINED IN WHAT YOU WERE LOOKING AT A

11 LITTLE WHILE AGO, NO. 61, AND NO. 48-C. THIS THING,

12 THIS LITTLE PLASTIC --

13 A YES. I SAW THOSE. I SAW THAT.

14 Q AND DID YOU SEE, IN ALL OF THE EVIDENCE

15 THAT WAS SEIZED, BOTH FROM THE CORONER'S OFFICE AND

16 THE SCENE, ONLY TWO OF THESE?

17 A YES. ONLY TWO OF THE CUPS. RIGHT.

18 Q ONLY TWO OF THE CUPS.

19 AND DID YOU SEE ANOTHER KIND OF WADDING

20 AND PACKAGING FROM THE EVIDENCE AT THE SCENE AND THE

21 EVIDENCE AT THE CORONER'S OFFICE?

22 A YES.

23 Q AND WAS THAT TYPE OF PACKAGING

24 INDICATIVE OF A SHELL THAT WAS PACKED WITH PAPER

25 WADDING AND A PLASTIC DISK-LIKE WADDING RATHER THAN

26 A CUP?

27 A A DISK POWER PISTON, YES, WHAT I'VE BEEN

28 CALLING POWER PISTON.

40777

1 Q JUST A FLAT PLASTIC DISK, CORRECT?

2 A A LITTLE MORE THAN THAT. IF YOU LOOK,

3 IT'S ONE OF THOSE FLAT PLASTIC DISKS THAT SWELLS

4 BECAUSE OF THE PRESSURE ON THE SEALS.

5 Q WELL, WHY DON'T WE JUST DRAW IT.

6 A I HAVE ALREADY DRAWN IT.

7 Q WHY DON'T I DRAW AND YOU CAN SIT AND

8 RELAX.

9 AS COMPARED TO THIS SHOT CUP, THE OTHER

10 KIND OF PLASTIC THING THAT YOU SAW WAS SHAPED MORE

11 OR LESS LIKE THIS (DRAWING)?

12 A NOT BAD, YES.

13 Q AND YOU SAW A FEW OF THOSE, CORRECT?

14 A YES.

15 Q AND YOU ALSO SAW -- AND I'M GOING TO MARK

16 THAT, THE FIRST THING I DREW "B" AND THE OTHER "A."

17 YOU ALSO SAW PAPER WADDING MORE OR LESS

18 IN THE SHAPE OF THAT RECTANGLE?

19 A YES.

20 Q AND IT'S CIRCULAR AND SO IS "B"?

21 A YES.

22 Q THE PAPER WADDING IS LIKE COMPRESSED

23 FIBROUS PAPER?

24 A YES.

25 Q AND YOU SAW PIECES OF IT AS IF IT HAD

26 BEEN SLICED HORIZONTALLY?

27 A OR WAS PUNCHED OUT OF A PLATE OF A

28 DIFFERENT THICKNESS.

40778

1 Q YOU ALSO SAW PIECES THICKER AND THINNER,

2 AS IF SLICING OFF PIECES OF A CAKE?

3 A OR THEY WERE STAMPED OUT OF DIFFERENT

4 THICKNESS STOCK, YES.

5 Q YOU'RE NOT SURE WHICH IT WAS?

6 A THAT'S RIGHT.

7 Q ARE YOU FAMILIAR WITH THE FACT THAT IN

8 1989 SOME BUCKSHOT AMMUNITION WAS PACKED SOLELY WITH

9 TYPE "A" AND TYPE "B"?

10 A YES.

11 Q AND NO CUPS AT ALL?

12 A THAT IS -- WELL, THAT IS CORRECT, NO

13 CUPS AT ALL.

14 Q AND THE AMMUNITION THAT YOU BOUGHT A

15 CASE OF, 200 ROUNDS OF, NO. 4 FROM FIOCCHI, THAT

16 AMMUNITION DOES HAVE A CUP INSIDE OF IT?

17 A YES. IT IS A MORE ADVANCED DESIGN.

18 Q SO IS YOUR UNDERSTANDING THAT IN 1989,

19 FIOCCHI AMMUNITION -- WELL, STRIKE THAT.

20 BASED ON LOOKING AT THE BALLISTICS

21 EVIDENCE HERE, DID IT APPEAR THAT THE BUCKSHOT

22 AMMUNITION WAS PACKED WITH PAPER WAD AND A PLASTIC

23 DISK-LIKE WAD?

24 A YES.

25 Q AND WAS IT YOUR UNDERSTANDING THAT THE

26 BIRD SHOT AMMUNITION, THE TWO ROUNDS, WAS PACKED IN

27 A SHOT CUP?

28 A YES.

40779

1 Q BUT ALL THE AMMUNITION THAT YOU WERE

2 TEST-FIRING WAS PACKED IN A SHOT CUP?

3 A CORRECT.

4 Q AND DO YOU THINK MAYBE, DR. MC CARTHY,

5 THE FACT THAT YOU WERE SHOOTING AMMUNITION PACKED IN

6 A SHOT CUP MIGHT NOT HAVE PRODUCED A RESULT THAT
7 WOULD HAVE BEEN USABLE IN COMPARING TWO SHOT
8 PATTERNS CREATED BY AMMUNITION PACKED WITH JUST
9 PAPER WADS AND PLASTIC DISK WADS?

10 A OH, I DON'T THINK IT WOULD HAVE BEEN
11 USABLE. BUT HAD IT WORKED OUT, THEN I COULD HAVE
12 GONE AHEAD AND ACQUIRED THE APPROPRIATE AMMUNITION
13 FOR THE TESTS. BUT IF THE MORE ADVANCED SHOT CUP
14 AMMUNITION DIDN'T PRODUCE CONSISTENT GROUPINGS, THEN
15 USING THE OLDER-DESIGNED AMMUNITION WAS LESS LIKELY
16 TO PRODUCE A CONSISTENT GROUP THAN THE SHOT CUP.

17 Q YOU DON'T KNOW THAT. YOU'RE GUESSING.

18 A NO, I'M NOT GUESSING.

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

20 THE WITNESS: THE SHOT CUP IS A MORE ADVANCED
21 DESIGN AND IT'S A BETTER DESIGN. THE CUP PROTECTS
22 THE SHOT BETTER; AND SO A SHOT CUP SHOTGUN GUN ROUND
23 PRODUCES A MORE CONSISTENT PATTERN AND A TIGHTER
24 PATTERN TOO. IF YOU WANT TO SEE IT, LOOK AT THE
25 WINCHESTER I SHOT NEXT TO IT, WHICH IS OF THE
26 OLDER-FILLED POWDERED PLASTIC AROUND THE PELLET'S
27 DESIGN, AND THOSE GROUPINGS ARE NOT AS TIGHT.

28 Q BY MS. ABRAMSON: NO, THEY'RE NOT AS

1 TIGHT. BUT THEY'RE MORE LIKELY TO BE SIMILAR TO A
2 SIMILARLY PACKED SET OF NO. 4 BUCKSHOT THAT WAS USED
3 IN THIS CASE, AREN'T THEY?

4 A I'M NOT COMFORTABLE AGREEING WITH YOU
5 BECAUSE THERE'S NO EVIDENCE THAT GRANULAR FILL WAS
6 USED IN THE WINCHESTER -- WAS, IN FACT, PRESENT IN
7 THE SHOT AT THE SCENE. THERE'S NO EVIDENCE OF
8 GRANULAR FILL ANYWHERE IN THE SCENE.

9 Q LET ME ASK YOU THIS, DR. MC CARTHY.
10 YOU'RE NOW TESTIFYING AS IF YOU KNEW ALL ALONG THAT
11 WHAT YOU BOUGHT WAS THE WRONG-PACKED AMMUNITION.
12 IS THAT WHAT YOU'RE SAYING?

13 A NO. I ORDERED THE AMMUNITION BASED ON
14 THE TESTIMONY OF THE DEPUTY. AND THEN WHEN I
15 FINALLY GOT TO INSPECT THE EVIDENCE AT THE SCENE, I
16 COULD SEE THIS AMMUNITION APPEARED, PERHAPS, TO BE
17 OF A DIFFERENT TYPE. BUT IF THE GROUPING WORKED OUT
18 TIGHT WITH THE MORE ADVANCED AMMUNITION, THEN IT
19 WOULD MAKE SENSE TO GO AHEAD AND GO THROUGH THE MUCH
20 MORE DIFFICULT EFFORT IT WAS GOING TO APPEAR TO BE
21 TO FIND THE EARLIER KIND OF AMMUNITION. IF IT
22 DIDN'T WORK WITH THE MORE ADVANCED, I DIDN'T THINK
23 THERE WAS ANY HOPE OF GETTING A TIGHT GROUPING ON
24 THE EARLIER --

25 Q IN FACT, WASN'T IT ONLY WHEN YOU WERE
26 HERE ON OCTOBER 2ND AND 3RD, WHEN I POINTED IT OUT
27 TO YOU, THAT YOU REALIZED THAT THE AMMUNITION YOU
28 HAD BOUGHT WAS WRONG?

1 A OH, NO. IN FACT, THE AMMUNITION I HAVE
2 IS ALSO PLATED, AND I KNEW THE STUFF FROM THE MURDER
3 SCENE WAS NOT. I MEAN, IT'S OBVIOUS IT'S A MORE
4 ADVANCED SHOTGUN ROUND. BUT IF IT WORKS, THEN WE'VE
5 GOT A VIABLE --

6 Q YOUR ANSWER WAS NO?

7 MR. CONN: MAY THE WITNESS FINISH.

8 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
9 REST OF IT AS NONRESPONSIVE.

10 THE COURT: THE ANSWER AS STATED BY THE
11 WITNESS WILL STAND.

12 YOUR NEXT QUESTION, PLEASE.

13 Q BY MS. ABRAMSON: DID YOU EVER ATTEMPT --
14 WELL, STRIKE THAT. YOU INDICATED YOU WENT AROUND TO
15 GUN SHOWS TRYING TO BUY OLD FIOCCHI AMMUNITION.

16 A TRYING TO FIND OLD FIOCCHI NO. 4, YES.

17 Q WHY DIDN'T YOU JUST CALL THE L.A. COUNTY
18 SHERIFFS WHO DID THE TESTING IN THIS CASE AND ASK
19 THEM IF THEY HAD ANY?

20 A I DID NOT; AND HONESTLY, I DIDN'T THINK
21 OF IT.

22 Q BUT YOU KNEW THE SHERIFF'S DEPARTMENT
23 HAD DONE THE BALLISTICS WORK IN THIS CASE, DIDN'T
24 YOU?

25 A I KNEW THEY HAD DONE SOME BALLISTICS
26 WORK IN THIS CASE, YES, FROM READING THE TRIAL
27 TESTIMONY.
28 Q ARE YOU FAMILIAR WITH THE FACT THAT LAW

40782

1 ENFORCEMENT CRIME LABORATORIES USUALLY STOCKPILE
2 AMMUNITION FROM EVERY MANUFACTURER PERIODICALLY,
3 OVER TIME, TO MAKE SURE THEY ALWAYS HAVE A SUPPLY?
4 DID YOU KNOW THAT?

5 A IF THAT'S A PRACTICE OF EVERY CRIMINAL
6 LAB, I'M UNAWARE OF THAT. I HAVE NO BASIS TO
7 DISAGREE.

8 Q I'M ASKING ABOUT LAW ENFORCEMENT
9 LABORATORIES.

10 DO YOU KNOW WHAT THEY DO?

11 MR. CONN: OBJECTION. IRRELEVANT.

12 THE COURT: IN REGARD TO THIS PARTICULAR
13 SUBJECT OF WHETHER THEY STOCKPILE AMMUNITION?

14 MS. ABRAMSON: YES, YOUR HONOR.

15 THE COURT: OVERRULED.

16 THE WITNESS: I'M AWARE THAT THE F.B.I. LAB
17 DOES IT IN WASHINGTON, D.C., BUT I CAN'T SAY FOR
18 LOCAL COMMUNITIES.

19 Q BY MS. ABRAMSON: AND YOU DIDN'T

20 INQUIRE, CORRECT?

21 A NO, I DIDN'T INQUIRE.

22 Q NOW, IT'S TRUE, IS IT NOT,

23 DR. MC CARTHY, THAT YOU NEVER SPOKE TO DR. IRWIN

24 GOLDEN WHATSOEVER BEFORE YOU WROTE YOUR REPORT,

25 RIGHT?

26 A I DON'T BELIEVE I SPOKE TO HIM BEFORE MY

27 REPORT; THAT IS CORRECT.

28 Q IN FACT, YOU ONLY SPOKE TO HIM ABOUT A

40783

1 WEEK OR TWO BEFORE THE OCTOBER 2ND HEARINGS.

2 A SOMETHING LIKE THAT, YES.

3 Q AND YOU CERTAINLY NEVER SPOKE TO

4 DR. ROBERT LAWRENCE BEFORE YOU WROTE YOUR REPORT,

5 CORRECT?

6 A CORRECT.

7 Q IN FACT, YOU DIDN'T EVEN KNOW WHO

8 DR. ROBERT LAWRENCE WAS UNTIL A FEW WEEKS AGO.

9 A PERSONALLY, I DID NOT, NO.

10 Q YOU NEVER HEARD OF HIM?

11 A THAT'S CORRECT.

12 Q AND WAS IT YOU WHO WAS DIRECTED AT

13 FAILURE ANALYSIS TO SEARCH TO FIND A PATHOLOGIST WHO

14 COULD SUPPORT YOUR CONCLUSIONS?

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

17 THE COURT: SUSTAINED.

18 Q BY MS. ABRAMSON: ARE YOU AWARE THAT
19 FAILURE ANALYSIS WAS CONTACTING VARIOUS PEOPLE
20 TRYING TO FIND A PATHOLOGIST WHO MIGHT SIGN ON TO
21 SOME OF YOUR THEORIES?

22 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
23 EVIDENCE AND ARGUMENTATIVE.

24 THE COURT: REPHRASE THE QUESTION.

25 Q BY MS. ABRAMSON: WAS FAILURE ANALYSIS
26 TRYING TO FIND A PATHOLOGIST WHO WOULD SIGN ON TO
27 SOME OF YOUR THEORIES?

28 A WE WERE CERTAINLY NOT TRYING TO FIND A

40784

1 PATHOLOGIST TO SIGN ON TO A THEORY. WE WERE ASKED
2 BY THE DISTRICT ATTORNEY'S OFFICE TO FIND A
3 PATHOLOGIST TO HANDLE THE MEDICAL QUESTIONS THAT
4 WOULD COME UP THAT CLEARLY I'M NOT QUALIFIED TO
5 ADDRESS.

6 Q THAT DIDN'T STOP YOU, HOWEVER, FROM
7 WRITING A REPORT LADEN WITH MEDICAL OPINIONS BEFORE
8 YOU EVER SPOKE TO A PATHOLOGIST, DID IT?

9 A NO. WE WERE --

10 Q THANK YOU. YOU'VE ANSWERED THE

11 QUESTION.

12 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH

13 THE ANSWER.

14 THE COURT: YOU MAY.

15 THE WITNESS: WE WERE COMFORTABLE WITH THE

16 BIOMECHANICAL CORRECTNESS OF THE TESTIMONY. WE

17 DIDN'T, TO US, THINK OF IT AS MEDICAL OPINIONS. I

18 NOW REALIZE THAT'S THE TERM YOU GUYS USE.

19 Q BY MS. ABRAMSON: YEAH. WE USE THINGS

20 LIKE ANTEMORTEM AND POSTMORTEM.

21 DO YOU DISAGREE THOSE ARE MEDICAL

22 OPINIONS?

23 MR. CONN: OBJECTION. ARGUMENTATIVE.

24 Q BY MS. ABRAMSON: DO YOU DISAGREE

25 THAT TERMS LIKE ANTEMORTEM AND POSTMORTEM ARE

26 MEDICAL OPINIONS?

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: OVERRULED.

40785

1 THE WITNESS: CERTAINLY, THEY CAN BE MEDICAL

2 OPINIONS.

3 Q BY MS. ABRAMSON: CAN YOU ANSWER YES OR

4 NO?

5 A I GUESS I MEAN I USE THOSE TERMS IN CAR
6 CRASHES ALL THE TIME, BUT NOT EXPRESSING THEM AS A
7 MEDICAL OPINION. IT WAS CLEAR AT SOME POINT IN TIME
8 THIS PERSON IS DEAD; AND BELIEVE YOU ME, THEY'RE
9 DEAD. IT'S NOT A MEDICAL OPINION. THEY'RE IN
10 MULTIPLE PIECES.

11 Q WE'RE NOT DEALING WITH PEOPLE IN
12 MULTIPLE PIECES. WE'RE DEALING WITH ANTEMORTEM AND
13 POSTMORTEM WOUNDS, CORRECT?

14 MR. CONN: OBJECTION. ARGUMENTATIVE.

15 THE COURT: AS PHRASED IT IS ARGUMENTATIVE.

16 Q BY MS. ABRAMSON: AREN'T WE DEALING HERE
17 WITH THE DESIGNATION OF VARIOUS WOUNDS AS ANTEMORTEM
18 AND POSTMORTEM?

19 A YES.

20 Q AND DIDN'T YOU OFFER OPINIONS IN YOUR
21 REPORT AS TO CERTAIN WOUNDS AS BEING ANTEMORTEM THAT
22 WERE IN DIRECT CONTRAVENTION TO THE L.A. COUNTY
23 CORONER'S DECISION? YES OR NO?

24 A ONE WOUND, YES.

25 Q AND YOU DID DO THAT WITHOUT CONSULTING
26 ANY FORENSIC PATHOLOGIST OR OTHER MEDICAL DOCTOR OF
27 ANY KIND, CORRECT?

28 A OH, CORRECT.

1 Q AND YOU'VE TESTIFIED HERE THAT YOU'RE
2 NOT QUALIFIED TO GIVE MEDICAL OPINIONS, CORRECT?

3 A THAT'S CORRECT. I'M NOT A DOCTOR.

4 Q AND THE JUDGE HAS SO RULED AND YOU KNOW
5 THAT, DON'T YOU?

6 MR. CONN: OBJECTION. ARGUMENTATIVE, YOUR
7 HONOR.

8 THE COURT: SUSTAINED.

9 Q BY MS. ABRAMSON: YOU ALSO RENDERED AN
10 OPINION IN THAT REPORT CONCERNING WHAT WERE ENTRY
11 WOUNDS AND WHAT WERE EXIT WOUNDS THAT WERE IN
12 CONTRAVENTION TO DR. GOLDEN'S REPORTS, CORRECT?

13 A AGAIN, ONE.

14 Q THAT'S TRUE AS TO ONE; IS THAT WHAT
15 YOU'RE SAYING?

16 A AT LEAST ONE, YES.

17 Q AND, AGAIN, THOSE OPINIONS OF YOURS AS
18 TO WHAT WERE ENTRY AND EXIT WOUNDS WERE MADE WITHOUT
19 CONSULTING ANY MEDICAL PERSON AT ALL, CORRECT?

20 A CORRECT. I MEAN, NO DOCTOR, THAT IS
21 CORRECT.

22 Q DID YOU CONSULT A NURSE?

23 A A NURSE ASSISTED MR. GREWAL IN SOME OF
24 THE AUTOPSY ANALYSES, BUT NO DOCTOR.

25 Q WHO WAS THE NURSE?

26 A I'M SORRY. I DIDN'T -- HOLD ON. I'M
27 SORRY. I DIDN'T WRITE HER NAME DOWN.

40787

1 THAT RUNS THE SICK BAY?

2 A YES. DOES WORK ON OUR MEDICAL RECORDS.

3 Q UH-HUH. DID YOU EVER HEAR OF A FORENSIC
4 PATHOLOGY NURSE?

5 A HAVE I? NO.

6 Q THERE IS NO SUCH THING, IS THERE?

7 A THERE COULD VERY WELL BE, I JUST DON'T
8 KNOW.

9 Q AND THE NURSE HAD TO HELP MR. GREWAL DO
10 WHAT?

11 A NOW, YOU'RE GOING TO HAVE TO ASK
12 MR. GREWAL, BUT I KNOW HE GOT SOME ASSISTANCE
13 PRIMARILY ON THE RECORDS, JUST GOING THROUGH THE
14 VOLUME AND PLOTTING THE VARIOUS INFORMATION ON THE
15 BODY.

16 Q YOU MEAN TRYING TO UNDERSTAND THE
17 MEDICAL TERMS, LIKE ANTECUBITAL FOSSA OR POPLITEAL
18 FOSSA, THINGS LIKE THAT?

19 A MR. GREWAL HAS A GOOD GRASP OF ALL THAT.

20 Q HE GRADUATED FROM HIS MASTER'S PROGRAM
21 LAST YEAR; IS THAT RIGHT? '94 IS LAST YEAR.

22 A I DON'T RECOLLECT THE PRECISE DATE.

23 Q WELL, YOU ASKED HIM BEFORE AND HE SHOOK
24 HIS HEAD YES IN THE AUDIENCE. SHOULD WE ASK HIM
25 AGAIN?
26 A HE'S RIGHT HERE. YES. '94 HE SAYS.
27 Q RIGHT. BEEN OUT OF SCHOOL A YEAR.
28 A I'M SORRY?

40788

1 Q HE'S BEEN OUT OF SCHOOL A YEAR, RIGHT?
2 A SINCE HIS MASTER'S. HE'S BEEN WITH US
3 SEVERAL YEARS.
4 Q WHEN DID HE GET HIS BACHELOR'S DEGREE?
5 MR. GREWAL: 1990.
6 THE WITNESS: '90.
7 Q BY MS. ABRAMSON: SO HE'S FIVE YEARS
8 FROM A BACHELOR'S DEGREE AND ONE YEAR FROM A
9 MASTER'S DEGREE?
10 A HE IS.
11 Q DO YOU HOLD MR. GREWAL OUT TO BE AN
12 EXPERT COMPARABLE WITH DR. GOLDEN?
13 A NO. DR. GOLDMAN -- GOLDEN IS A MEDICAL
14 DOCTOR.
15 Q DO YOU KNOW HOW LONG HE'S BEEN THE
16 COUNTY CORONER?
17 A I DO NOT.

18 Q DO YOU KNOW HOW LONG HIS RESIDENCY WAS

19 IN FORENSIC PATHOLOGY?

20 A I DO NOT.

21 Q WHAT ABOUT DR. FACKLER? DO YOU HOLD

22 YOURSELF OR MR. GREWAL TO BE THE EQUAL OF DR. MARTIN

23 FACKLER ON WOUND BALLISTICS?

24 A NO.

25 Q DO YOU KNOW HOW LONG HE WAS A SURGEON

26 AND MEDICAL DOCTOR AND RESEARCHER?

27 A IT WOULD HAVE TO BE SOMETHING LIKE 30

28 YEARS.

40789

1 Q YES. DO YOU KNOW THAT HE WAS THE

2 DIRECTOR OF THE LETTERMAN INSTITUTE ON WOUND

3 BALLISTICS?

4 MR. CONN: OBJECTION. THIS IS IRRELEVANT.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES.

7 Q BY MS. ABRAMSON: AND DO YOU KNOW HE

8 DISAGREES WITH YOU, DR. MC CARTHY, ABOUT THE

9 DIRECTION OF THE WOUNDS WHERE YOU DISAGREE WITH

10 DR. GOLDEN, DON'T YOU?

11 A I HAVE NOT YET -- I'VE HEARD YOU

12 REPRESENT THAT. I HAVEN'T SEEN A REPORT FROM

13 DR. FACKLER. BUT I WOULD BE MOST INTERESTED IN HIS

14 SEQUENCE RECONSTRUCTION.

15 Q I WILL SEND YOU HIS TESTIMONY AND YOU

16 CAN LEARN FROM IT.

17 MR. CONN: OBJECTION. ARGUMENTATIVE. MOTION

18 TO STRIKE.

19 THE COURT: THE REMARK OF COUNSEL IS

20 STRICKEN, AND THE JURY IS ADMONISHED TO DISREGARD

21 THESE SIDE REMARKS OF COUNSEL.

22 Q BY MS. ABRAMSON: NOW, WHEN, IF EVER,

23 DID YOU RECEIVE THE REPORT OF MR. LINHART?

24 A OH, THE LAST COUPLE OF MONTHS IS MY BEST

25 RECOLLECTION.

26 Q AFTER YOU WROTE YOUR REPORT?

27 A I THINK SO, YES.

28 Q AND WHEN DID YOU RECEIVE THE AUTOPSY

40790

1 PHOTOGRAPHS TAKEN BY THE CORONER'S OFFICE?

2 A AFTER MY MEETING WITH DR. GOLDEN.

3 Q AND YOUR MEETING WITH DR. GOLDEN WAS

4 AFTER YOU WROTE YOUR REPORT?

5 A YES.

6 Q AND UP UNTIL THAT TIME DID YOU EVEN KNOW

7 THERE WAS A SECOND SET OF PHOTOGRAPHS OF THE

8 AUTOPSY?

9 A YES, I DID.

10 Q BUT YOU DIDN'T HAVE THEM, CORRECT?

11 A I DID NOT.

12 Q AND YOU DIDN'T LOOK AT THEM THEN BEFORE

13 YOU WROTE YOUR REPORT?

14 A CORRECT.

15 Q AND BEFORE YOU HAD YOUR MEETING WITH

16 DR. GOLDEN WERE YOU AWARE THAT THE PROSECUTORS HAD

17 HAD A MEETING WITH DR. GOLDEN?

18 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND

19 SPECULATION.

20 THE COURT: SUSTAINED.

21 Q BY MS. ABRAMSON: WERE YOU TOLD BY

22 EITHER MR. CONN OR MS. NAJERA THEY THAT HAD MET WITH

23 DR. GOLDEN?

24 MR. CONN: OBJECTION. CALLS FOR HEARSAY,

25 SPECULATION.

26 THE COURT: DOES CALL FOR HEARSAY.

27 OBJECTION SUSTAINED.

28 Q BY MS. ABRAMSON: WERE YOU TOLD BY

40791

1 MR. CONN OR MS. NAJERA THAT DR. GOLDEN WAS ISSUING A

2 SUPPLEMENTAL REPORT AT ANY TIME?

3 MR. CONN: OBJECTION. CALLS FOR --

4 MS. ABRAMSON: I'M NOT OFFERING THIS FOR THE
5 TRUTH.

6 MR. CONN: IRRELEVANT.

7 THE COURT: IT'S IRRELEVANT THEN.

8 Q BY MS. ABRAMSON: AT THE TIME OF THE
9 OCTOBER 2ND PRETRIAL HEARINGS, ISN'T IT TRUE,
10 DR. MC CARTHY, YOU STILL HADN'T READ DR. GOLDEN'S
11 1995 SUPPLEMENT?

12 A THAT IS CORRECT.

13 Q AFTER YOU RECEIVED THE AUTOPSY
14 PHOTOGRAPHS DID YOU THEN SCAN THEM INTO YOUR
15 COMPUTER?

16 A YES. ONTO COMPACT DISK.

17 Q YOU'RE NOT STORING THEM IN A HARD DRIVE.
18 YOU'RE STORING THEM ON A COMPACT DISK, A PHOTO DISK?

19 A WHEN I SCAN THEM I DO; BUT SUBSEQUENT,
20 EASIER- AND FASTER-TO-LOAD VERSIONS LIKE YOU SAW
21 TODAY, ARE LOADED ON TO HARD DISK.

22 Q AND THE PHOTOGRAPHS THAT ARE CONTAINED
23 IN YOUR COMPUTER NOW THAT YOU SHOWED US AS PART OF
24 YOUR PRESENTATION, HAVE THEY BEEN SHARPENED BY USING
25 "ADOBE PHOTO SHOP"?

26 A NO.

27 Q IS IT YOUR TESTIMONY THAT THEY ARE
28 EXACTLY THE IMAGE ON THE NEGATIVE, UNENHANCED IN ANY

1 WAY?

2 A JUST THE REVERSE. DEGRADED. THEY ARE
3 MUCH SMALLER THAN THE ORIGINAL COMPACT DISK IMAGE.

4 Q HAS ANYTHING BEEN DONE TO CHANGE THE
5 CLARITY, THE SHARPNESS, THE CONTRAST ON THOSE
6 PHOTOGRAPHS?

7 A NO. THEY ARE A REDUCED-SIZE VERSION OF
8 THE ORIGINAL SCANNED IMAGE.

9 Q NOW, IN ADDITION TO PUTTING IN THE
10 FURNITURE DIMENSIONS FROM THE BEVERLY HILLS POLICE
11 DEPARTMENT MEASUREMENTS, I BELIEVE YOU SAID YOU ALSO
12 AFFIXED A SIZE OR DETERMINED A SIZE FOR THE DUMMIES;
13 IS THAT RIGHT?

14 A A HEIGHT ONLY.

15 Q HEIGHT?

16 A HEIGHT ONLY.

17 Q AND WHAT HEIGHT DID YOU USE FOR
18 MR. MENENDEZ?

19 A THAT LISTED IN THE AUTOPSY, AND THAT
20 IS -- MY RECOLLECTION IS SIX-ONE. BUT I'LL CHECK
21 THAT FOR YOU.

22 Q SEVENTY-THREE INCHES?

23 A YES.

24 Q THAT'S HOW IT'S LISTED IN THE AUTOPSY
25 REPORT?

26 A THAT'S WHAT I WAS CHECKING FOR YOU.

27 Q NOW, WAS HEIGHT IMPORTANT FOR YOUR
28 RECONSTRUCTION, AS YOU CALL IT?

40793

1 A IT HAD SOME RELEVANCE. I'M NOT SURE
2 "IMPORTANT" IS THE RIGHT WORD.

3 Q BUT IT'S THE ONLY DIMENSION FROM REAL
4 PEOPLE THAT YOU PUT IN, ISN'T IT?

5 A THAT IS CORRECT. I DIDN'T ATTEMPT TO
6 SCALE THE ANTHROPOMORPHY OF THESE FIGURES TO JOSE
7 AND MARY.

8 Q AND WHERE DID YOU GET THE HEIGHT FOR
9 MRS. MENENDEZ?

10 A AGAIN, FROM THE AUTOPSY REPORT. SHE'S
11 WHAT? FIVE-TWO?

12 Q NO, SHE ISN'T. BUT THAT'S WHAT'S IN THE
13 AUTOPSY REPORT.

14 A I USED THE VALUE IN THE AUTOPSY REPORT.

15 Q IF I WERE TO TELL YOU THAT THE AUTOPSY
16 REPORT SAYS FIVE-TWO AND THE CORONER'S INVESTIGATOR
17 WHO WENT TO THE SCENE AND MEASURED THE BODY SAID
18 FIVE-EIGHT --

19 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

20 THE COURT: OVERRULED.

21 Q BY MS. ABRAMSON: WOULD THAT BE A

22 SIGNIFICANT DIFFERENCE?

23 A NOT TO MY RECONSTRUCTION. BUT SIX
24 INCHES OF HEIGHT IS SIX INCHES OF HEIGHT.

25 Q WELL, WHY DID YOU BOTHER PUTTING IN
26 HEIGHT IF IT ISN'T IMPORTANT?

27 A THE TWO FIGURES COME AS FIFTIETH
28 PERCENTILE OFF THE DISK. I COULD HAVE LEFT --

40794

1 Q MEANING FIFTIETH PERCENTILE OF THE
2 POPULATION, SORT OF YOUR MIDDLE?

3 A EXACTLY.

4 Q NEITHER YOU NOR ME; IS THAT RIGHT?

5 A IN THEORY, ANYONE. THEY COME AS THE
6 FIFTIETH PERCENTILE. WE COULD HAVE LEFT THEM
7 THERE. IT JUST WAS TOO CONVENIENT TO PULL THE
8 NUMBERS OUT OF THE AUTOPSY REPORT AND PUT THEM INTO
9 THE RECONSTRUCTION.

10 Q ISN'T IT SORT OF IMPORTANT HERE WHAT
11 THEIR RELATIVE HEIGHTS ARE, PARTICULARLY FOR SHOT 1,
12 AS YOU CALL IT?

13 A SHOT 1 WOULD BE THE RELEVANT
14 CONSIDERATION; AND OBVIOUSLY, IF HER HEIGHT VARIES
15 BY SIX INCHES, AND WE PICK UP THREE INCHES, PLUS OR
16 MINUS IN HER TORSO, THAT WOULD CHANGE THE

17 RELATIONSHIP, BUT A SMALL AMOUNT.

18 I MEAN, I DON'T REPRESENT THESE FIGURES

19 TO THAT LEVEL OF PRECISION FOR YOU.

20 Q I DON'T WANT TO TRICK YOU, DR. MC CARTHY.

21 THE CORONER'S INVESTIGATOR'S REPORT IS WRONG TOO.

22 I HAVE A COPY OF HER DRIVER'S LICENSE.

23 MR. CONN: AGAIN, ASSUMES FACTS NOT IN

24 EVIDENCE AS TO WHO'S RIGHT AND WHO'S WRONG. COUNSEL

25 IS NOT A WITNESS.

26 THE COURT: IT'S JUST FOR THE PURPOSE OF

27 ASKING WHETHER OR NOT THAT WOULD CHANGE HIS OPINION

28 IS ALL.

40795

1 Q BY MS. ABRAMSON: HER DRIVER'S LICENSE

2 INDICATES HER HEIGHT IS FIVE-FIVE.

3 MR. CONN: AGAIN, CALLING FOR HEARSAY.

4 MOTION TO STRIKE.

5 THE COURT: THE DRIVER'S LICENSE IS CLEARLY

6 HEARSAY, AS IS THE CORONER'S REPORT. IT'S JUST WHAT

7 SOMEBODY HAS WRITTEN DOWN ON A PIECE OF PAPER. IT'S

8 NOT OFFERED FOR THE TRUTH.

9 Q BY MS. ABRAMSON: DO YOU HAVE ANY IDEA

10 WHAT HEIGHT SHE IS RIGHT NOW?

11 LET ME ASK YOU THIS.

12 A I GUESS NOTHING YOU'VE TOLD ME SO FAR
13 CAUSES ME TO DOUBT THE FIVE-TWO. BUT WHATEVER HER
14 HEIGHT WAS HER HEIGHT WAS.

15 Q WELL, I'M NOT ASKING DO YOU DOUBT THE
16 FIVE-TWO. THAT'S NOT MY QUESTION.

17 DO YOU KNOW HOW TALL SHE WAS?

18 A I DID NOT INDEPENDENTLY MEASURE HER
19 HEIGHT. I'VE ONLY RELIED ON THE MEDICAL DOCUMENT
20 I'VE BEEN PROVIDED.

21 Q AND YOUR COMPUTER, WHICH HAS THIS
22 ABILITY TO SCAN THINGS AND GET THE HEIGHT, YOU
23 DIDN'T SCAN HER BODY TO FIND OUT, DID YOU?

24 A NO. AND I CAN DO THAT.

25 MS. ABRAMSON: WELL, PERHAPS YOU'LL DO THAT
26 BY TOMORROW.

27 YOUR HONOR, IT IS 4:30.

28 THE COURT: OKAY. WE'LL RECESS UNTIL

40796

1 TOMORROW AT 8:30.

2 DON'T DISCUSS THIS MATTER WITH ANYONE.

3 DON'T FORM ANY FINAL OPINIONS ABOUT IT. DON'T

4 PERMIT YOURSELVES TO BE EXPOSED TO ANYTHING ABOUT

5 THIS CASE OUTSIDE THE COURTROOM.

6 AND WE'LL RESUME TOMORROW AT 8:30.

(AT 4:30 P.M. PROCEEDINGS WERE
ADJOURNED UNTIL 9:00 A.M. THE
FOLLOWING DAY.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

)
PLAINTIFFS,)

)
)
VS.) NO. BA 068880

)
ERIK GALEN MENENDEZ, AND)
JOSEPH LYLE MENENDEZ,)

)
DEFENDANTS.)
)

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

TUESDAY, NOVEMBER 14, 1995

VOLUME 243

PAGES 40594 THROUGH 40796

APPEARANCES:

(SEE APPEARANCE PAGE)

24

25

26

27

28

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

5

18000 CRIMINAL COURTS BLDG.

210 WEST TEMPLE STREET

6

LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT

9 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,

PUBLIC DEFENDER

10

BY: CHARLES GESSLER, DEPUTY

AND

11

TERRI TOWERY, DEPUTY

210 WEST TEMPLE

12

LOS ANGELES, CA 90012

13

14

FOR THE DEFENDANT

15 ERIK GALEN MENENDEZ: LESLIE ABRAMSON

ATTORNEY AT LAW

16

4929 WILSHIRE BOULEVARD

SUITE 940

17

LOS ANGELES, CA 90010

18

BARRY LEVIN, ESQ.

11661 SAN VICENTE BOULEVARD
LOS ANGELES, CA 90049

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

1 INDEX FOR VOLUME 243 PAGES 40594 THROUGH 40796

DAY	DATE	SESSION	PAGE	VOL.
-----	------	---------	------	------

TUESDAY, NOVEMBER 14, 1995	A.M.	40594	243
TUESDAY, NOVEMBER 14 1995	P.M.	40691	243

PROCEEDINGS

CHRONOLOGICAL INDEX OF WITNESSES

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

MC CARTHY, ROGER		
(RESUMED) 40595-C 40646-G		243
40691-G	243	
40705-A	243	

LEGEND:

A = MS. ABRAMSON	C = MR. CONN
G = MR. GESSLER	L = MR. LEVIN
N = MS. NAJERA	T = MS. TOWERY

23
24
25
26
27
28

1 EXHIBITS INDEX

2 EXHIBITS:	MARKED	RECEIVED	VOL.
3 279- TARGET	40694	243	
4 280- TARGET	40695	243	
5 281- TARGET	40696	243	
6 282- TARGET	40696	243	
7 283- TARGET	40697	243	
8 284- TARGET	40698	243	
9 285- TARGET	40698	243	
10 286- TARGET	40698	243	
11 287- LETTER	40674	243	

