

1 VAN NUYS, CALIFORNIA; WEDNESDAY, NOVEMBER 15, 1995

2 9:15 A.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN FADALE, OFFICIAL REPORTER)

7

8 THE COURT: EVERYBODY IS PRESENT, AND WE'RE READY  
9 TO PROCEED, SO LET'S GET THE JURY OUT.

10 MS. ABRAMSON: YOUR HONOR, I DO APOLOGIZE. I WAS  
11 A LITTLE LATE THIS MORNING, WHICH SLOWED THINGS DOWN.

12 (THE JURY ENTERS THE COURTROOM AND THE  
13 FOLLOWING PROCEEDINGS WERE HELD:)

14

15 THE COURT: AND THE JURY IS IN COURT. GOOD  
16 MORNING TO YOU ALL.

17 WE ARE READY TO RESUME WITH THE TRIAL. THE  
18 WITNESS IS ON THE WITNESS STAND.

19 WOULD YOU SAY YOUR NAME AGAIN FOR US,  
20 PLEASE?

21 THE WITNESS: ROGER LEE MC CARTHY.

22 THE COURT: I WILL REMIND YOU YOU ARE STILL UNDER  
23 OATH.

24 THE WITNESS: YES, YOUR HONOR.

25 THE COURT: AND WE WILL CONTINUE WITH THE  
26 CROSS-EXAMINATION.

27 MS. ABRAMSON: THANK YOU, YOUR HONOR.

28

1           ROGER LEE MC CARTHY,  
2 THE WITNESS ON THE STAND AT THE TIME OF THE ADJOURNMENT,  
3 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

4

5           CROSS-EXAMINATION (RESUMED)

6 BY MS. ABRAMSON:

7       Q. DR. MC CARTHY, YESTERDAY WE WERE TALKING  
8 ABOUT THE FACT THAT THE ILLUSTRATIONS HAD BEEN CHANGED  
9 TO REFLECT THE ACTUAL MEASUREMENTS THAT THE BEVERLY  
10 HILLS POLICE DEPARTMENT TOOK OF THE FURNITURE.

11       DO YOU REMEMBER THAT DISCUSSION?

12       A. THE 24 DIAGRAMS, YES.

13       Q. YES. WE ARE CALLING THEM ILLUSTRATIONS  
14 HERE.

15       A. OKAY.

16       Q. AND YOU TESTIFIED I BELIEVE THAT THE  
17 REASON -- WELL, STRIKE THAT.

18       THE ILLUSTRATIONS THAT WERE CREATED BY THE  
19 COMPUTER BEFORE THAT CHANGE WERE RELYING UPON THE  
20 COMPUTER TO SCALE THE FURNITURE ITSELF, CORRECT?

21       A. THE COMPUTER IS SCALING THE OBJECTS TO THE  
22 IMAGES, YES.

23       Q. ALL RIGHT. AND ISN'T IT TRUE THAT THE  
24 COMPUTER SCALING THE OBJECTS TO THE IMAGES WAS  
25 INACCURATE?

26 A. NOT BAD. THERE WERE JUST TWO DIMENSIONS I  
27 RECOLLECT THAT THE MACHINE INDEXED OFF ON, BUT THE REST  
28 WERE PRETTY GOOD. THE TABLE WAS 48 --

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1 Q. I DIDN'T ASK YOU PRETTY GOOD, AND I DIDN'T  
2 ASK YOU --

3 THE COURT: LET THE WITNESS FINISH HIS ANSWERS.

4 MS. ABRAMSON: WE STARTED WITHOUT MR. GESSLER.

5 THE COURT: WAIT, WAIT. HE WAS ANSWERING THE  
6 QUESTION. LET HIM FINISH.

7 THE WITNESS: THERE WERE A COUPLE OF EXTENDED  
8 DIMENSIONS OF THE FIGURES THAT WE DIDN'T CATCH ON, BUT  
9 THEY WERE PRETTY ACCURATE, WITHIN A HALF INCH OR SO.

10 Q. BY MS. ABRAMSON: DO YOU UNDERSTAND WHAT THE  
11 WORD "ACCURATE" MEANS?

12 MR. CONN: OBJECTION.

13 ARGUMENTATIVE.

14 THE COURT: LET'S ASK ANOTHER QUESTION, PLEASE.

15 Q. BY MS. ABRAMSON: IN ENGINEERING, ISN'T IT  
16 EXTREMELY IMPORTANT TO HAVE ACCURATE MEASUREMENTS?

17 A. THE FIELD IN ENGINEERING IS CALLED  
18 METROLOGY, AND THE ACCURACY YOU NEED OR WANT GENERALLY  
19 DEPENDS ON YOUR APPLICATION.

20 Q. OR YOUR BIAS; IS THAT CORRECT?

21 A. WELL, YOUR BIAS CANNOT AFFECT ACCURACY.

22 ACCURACY IS AN INDEPENDENT OBJECTIVE PHYSICAL

23 MEASUREMENT.

24 Q. INDEPENDENT OBJECTIVE ACTUAL MEASUREMENT,

25 CORRECT?

26 A. CORRECT.

27 Q. ALL RIGHT. THE QUESTION IS, DID THE

28 COMPUTER CAPTURE THE ACTUAL IN FACT SIZE OF THE

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1 FURNITURE BEFORE YOU ADDED THE BEVERLY HILLS

2 MEASUREMENTS?

3 YES OR NO.

4 A. AND THE ANSWER IS PRETTY CLOSE. THERE WERE

5 A COUPLE DIMENSIONS THAT IT DIDN'T.

6 Q. IS THAT NO?

7 MR. CONN: OBJECTION. ASKED AND ANSWERED.

8 ARGUMENTATIVE AT THIS POINT.

9 THE COURT: OVERRULED.

10 THE WITNESS: I DON'T KNOW HOW TO ANSWER YOUR

11 QUESTION DIFFERENTLY. THERE WERE TWO DIMENSIONS WHERE I

12 WOULD SAY NO. I WOULD SAY THE REST WERE WITHIN NORMAL

13 PHOTOGEOMETRIC RECONSTRUCTIVE ACCURACY.

14 Q. IF YOU TRIED TO RECREATE THIS COUNSEL TABLE

15 AND YOU GOT TWO DIMENSIONS OFF OF IT, YOU WOULD NOT HAVE

16 AN ACCURATE RE-CREATION, WOULD YOU?

17 A. THAT'S TRUE, BUT THAT WOULD BE TRUE --

18 Q. THANK YOU.  
19 THE COURT: HE CAN FINISH HIS ANSWER.  
20 THE WITNESS: THAT WOULD BE TRUE, BECAUSE A  
21 SINGLE TABLE HAS RELATIVELY FEW DIMENSIONS, AND IF YOU  
22 BLEW TWO OF FOUR YOU WOULDN'T HAVE A VERY ACCURATE  
23 RECONSTRUCTION.  
24 BUT IF YOU GO INTO A ROOM WHERE THERE IS  
25 MULTIPLE DOZENS OF DIMENSIONS AND YOU ONLY MISS A  
26 COUPLE, THAT'S PRETTY GOOD IN PHOTOGEOMETRIC TERMS.  
27 Q. WE'RE ONLY TALKING ABOUT THE PHOTOS, EACH  
28 PIECE OF FURNITURE.

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1 A. RIGHT. BUT EACH PIECE OF FURNITURE HAS  
2 MULTIPLE DIMENSIONS.  
3 Q. AND THE SIZE OF THE COFFEE TABLE, LENGTH  
4 AND WIDTH WERE WRONG?  
5 A. WIDTH WAS PRETTY CLOSE. THE LENGTH WAS OFF  
6 BY SIX INCHES.  
7 Q. SIX INCHES. SIX INCHES ISN'T ACCURATE, IS  
8 IT?  
9 MR. CONN: OBJECTION. ARGUMENTATIVE.  
10 THE COURT: REPHRASE THE QUESTION.  
11 Q. BY MS. ABRAMSON: IS SIX INCHES OFF AN  
12 ACCURATE MEASUREMENT OF A COFFEE TABLE?  
13 A. NO.

14 Q. NOW, YOU TESTIFIED YESTERDAY, HOWEVER, THAT  
15 THE REASON THAT YOU REINPUTTED, OR -- STRIKE THAT.  
16 THAT THE REASON YOU INPUTTED THE BEVERLY  
17 HILLS POLICE DEPARTMENT MEASUREMENTS WAS NOT BECAUSE THE  
18 COMPUTER WAS INACCURATE, BUT BECAUSE YOU WANTED TO  
19 AVOID, I BELIEVE YOU SAID, ANOTHER TWO HOUR FIGHT WITH  
20 ME; IS THAT CORRECT? IS THAT WHAT YOU TESTIFIED TO?

21 A. NO, I DON'T -- I MEAN, IF YOU WISH TO  
22 FIGHT, I DON'T MIND, BUT REALLY WHAT I WAS HOPING TO DO  
23 IS --

24 THE COURT: NO. SHE JUST ASKED WHETHER THAT WAS  
25 YOUR TESTIMONY, BASICALLY.

26 THE WITNESS: NO, I DON'T THINK IT WAS MY  
27 TESTIMONY. I THINK I TESTIFIED, SINCE WE ARGUED OVER  
28 THE DIMENSIONS FOR A COUPLE OF HOURS, I WISHED TO REMOVE

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1 WHAT I THOUGHT WAS THAT NOT RELEVANT ISSUE FROM THE  
2 DISCUSSION.

3 Q. BY MS. ABRAMSON: AND WHEN, DR. MC CARTHY,  
4 DO YOU CLAIM WE ARGUED, YOU AND ME, OVER THESE  
5 DIMENSIONS FOR A COUPLE OF HOURS?

6 A. NOW I'M GOING TO GET THE TERM WRONG. IT'S  
7 NOT A PRELIMINARY HEARING.

8 Q. PRETRIAL HEARING?

9 A. THE PRETRIAL HEARING, YES.

10 Q. DR. MC CARTHY, DO YOU HAVE A TRANSCRIPT OF  
11 THAT PRETRIAL HEARING?

12 A. I HAVE SOME OF IT.

13 Q. YOU ONLY HAVE SOME OF IT?

14 A. WELL, I ONLY HAVE SOME OF IT BECAUSE THEY  
15 LENT ME IT THIS MORNING, BUT I DIDN'T GET A TRANSCRIPT  
16 OF IT.

17 Q. THEY, BEING THE PROSECUTORS, MR. CONN AND  
18 MS. NAJERA, NEVER PROVIDED YOU WITH A TRANSCRIPT OF  
19 THOSE TWO DAYS OF TESTIMONY?

20 A. I DON'T THINK SO, BUT THEY WOULD HAVE HAD I  
21 ASKED, I'M SURE.

22 Q. DIDN'T ASK; IS THAT CORRECT?

23 A. I DIDN'T ASK, THAT'S CORRECT.

24 Q. YOU HAVE A PERFECT MEMORY OF EVERYTHING  
25 THAT TRANSPIRED AT THAT HEARING, I TAKE IT?

26 A. NO, BUT --

27 Q. DO YOU HAVE A PERFECT MEMORY THEN OF WHAT  
28 HAPPENED BETWEEN PAGES 35,608 AND 36,613?

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1 A. NO.

2 Q. ISN'T IT TRUE, DR. MC CARTHY, THAT ONLY ON  
3 THOSE FIVE PAGES IS THERE ANY DISCUSSION AT ALL AT THAT  
4 HEARING ABOUT THE SIZE OF THE FURNITURE AND WHAT  
5 DIMENSIONS THE COMPUTER SCALED IT AT.

6 A. WELL, THAT DOESN'T SQUARE WITH MY

7 RECOLLECTION AT ALL. I MEAN --

8 Q. YOU DO UNDERSTAND THAT FIVE PAGES OF

9 TESTIMONY DOES NOT TAKE UP TWO HOURS?

10 A. THAT'S CORRECT. BUT THEN WE DISCUSSED AT

11 THE BREAK GETTING COMPUTER DOWN-LOADS. THAT ISSUE --

12 WELL, MY RECOLLECTION IS WE DISCUSSED THAT ISSUE AT SOME

13 LENGTH.

14 Q. WELL, LET'S TURN TO 35,608 IF YOU HAVE IT.

15 IF NOT, I WILL LET YOU SEE MINE.

16 A. I HAVE 35 -- NO. MY COPY ENDS AT 35,602

17 AND STARTS AGAIN AT 35,613. SORRY ABOUT THAT.

18 Q. HERE IS MINE.

19 YOUR HONOR, I AM HANDING THE WITNESS PAGES

20 35,608 THROUGH 35,613, AND I AM, ALTHOUGH IT MAY BE

21 SOMEWHAT TIME-CONSUMING, GOING TO ASK HIM TO READ THOSE

22 FIVE PAGES.

23 THE COURT: ALL RIGHT.

24 MS. ABRAMSON: WITH THE COURT'S PERMISSION.

25 THE COURT: GO AHEAD.

26 MS. ABRAMSON: THANK YOU.

27 (WITNESS COMPLIES)

28

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1 THE WITNESS: OKAY. THERE IS MORE DISCUSSION



2 OF THOSE DIMENSIONS THAN THE PAGES YOU GAVE ME. DO YOU

3 WANT ME TO CONTINUE TO READ IN THE TRANSCRIPT, OR --

4 Q. THAT DISCUSSION THAT YOU SEE IN -- WE'RE

5 TALKING ABOUT THE DISCUSSION ABOUT SCALING THE

6 FURNITURE, CORRECT?

7 A. YES.

8 Q. AND AT THE POINT THAT I GAVE IT TO YOU,

9 WE'RE TALKING ABOUT -- AT THAT POINT IN THE HEARING

10 WE'RE TALKING ABOUT THE DISTANCE BETWEEN THE FRENCH

11 DOORS AND THE BACK OF THE COUCH, NOT ABOUT SCALING THE

12 FURNITURE, RIGHT?

13 A. I'M SORRY? SAY THAT AGAIN.

14 Q. WE'RE TALKING AT THE END OF THAT PAGE,

15 35,613, ABOUT HOW YOU CAME UP WITH THE DISTANCE OF 26

16 INCHES FROM THE BACK OF THE -- FROM THE FRENCH DOORS TO

17 THE BACK OF THE COUCH.

18 A. CORRECT.

19 Q. WE ARE NO LONGER TALKING ABOUT THE SIZE OF

20 THE FURNITURE, CORRECT?

21 A. WELL, AT THE BOTTOM OF THAT PAGE, THAT IS

22 CORRECT.

23 Q. AND IN THAT DISCUSSION YOU ALSO -- I WAS

24 ASKING YOU BASICALLY WHAT DIMENSIONS DID THE COMPUTER

25 COME UP WITH FOR THESE PIECES OF FURNITURE.

26 A. CORRECT.

27 Q. AND YOU SAID YOU DIDN'T HAVE THEM AT YOUR

28 FINGERTIPS, THEY WERE AT YOUR OFFICE IN MENLO PARK?

1 A. CORRECT.

2 Q. AND THE JUDGE, RATHER THAN HAVING ME GO  
3 THROUGH EVERY SINGLE PIECE OF FURNITURE, ASKED YOU TO  
4 PROVIDE THOSE DIMENSIONS TO US, CORRECT?

5 A. I DON'T THINK THE JUDGE DID. I AM READING  
6 THE TRANSCRIPT NOW. PERHAPS -- I KNOW I'VE GOT YOUR  
7 COPIES NOW, AND I AM SORRY, MA'AM, BUT I DON'T READ  
8 THAT.

9 Q. WELL, LET ME ASK YOU THIS.

10 WE ALSO ASKED YOU FOR ALL OF THE DATA THAT  
11 HAD GONE INTO THE COMPUTER FOR IT TO COME UP WITH THE  
12 ABILITY TO DRAW THESE ITEMS OF FURNITURE IN THAT WAY,  
13 CORRECT?

14 A. WE DISCUSSED THAT.

15 Q. AND THE JUDGE EVENTUALLY INDICATED THAT YOU  
16 SHOULD PROVIDE US WITH THAT INFORMATION ON CD-ROM.

17 MR. CONN: I WOULD OBJECT TO THAT, UNLESS THE  
18 WITNESS WAS PRESENT AT THE TIME THAT ORDER WAS ISSUED.

19 MS. ABRAMSON: HE WAS ON THE WITNESS STAND AT THE  
20 TIME.

21 THIS WAS AT THE TIME YOU WERE ON THE  
22 WITNESS STAND AND I WAS CROSS-EXAMINING YOU.

23 THE COURT: HE HAS THE TRANSCRIPT. PERHAPS YOU  
24 CAN POINT IT OUT TO HIM.

25 THE WITNESS: NO. THE COURT SAID SOMETHING  
26 DIFFERENT THAN THAT. THE COURT --

27 Q. BY MS. ABRAMSON: LET ME ASK YOU QUESTIONS.

28 CAN I HAVE MY OTHER PAGES?

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1 A. YEAH.

2 Q. WE HAD ASKED YOU TO GIVE US THE DATA  
3 PRINTED OUT, AND THE COURT INDICATED IT MIGHT BE OF MORE  
4 BENEFIT TO US IF YOU GIVE IT TO US ON CD-ROM, CORRECT?

5 A. NO. I THINK IF YOU READ THE DISCUSSION, I  
6 DISCUSSED GIVING IT TO YOU IN BOTH EITHER PRINT-OUT OR  
7 IN CD-ROM, AND THE COURT ASKED YOU WOULD IT BE OF  
8 BENEFIT TO YOU EITHER WAY.

9 Q. GO AHEAD.

10 A. BUT I MEAN -- IT'S FIVE PAGES. WHY DON'T  
11 YOU READ THE TRANSCRIPT TO THE JURY AND THEY CAN SEE THE  
12 DISCUSSION.

13 Q. I'LL DECIDE.

14 THE POINT IS, A LOT OF THE DISCUSSION  
15 DOESN'T EVEN HAVE TO DO WITH MY ASKING YOU ABOUT THE  
16 SIZE OF THE FURNITURE; A LOT WHAT'S IN THESE FIVE PAGES  
17 IS A COLLOQUY ABOUT HOW YOU'RE GOING TO GET THE DATA TO  
18 US ABOUT WHAT NUMBERS WERE USED TO COME UP WITH THE SIZE  
19 OF THE FURNITURE, CORRECT?

20 MR. CONN: I WOULD OBJECT AS IRRELEVANT, YOUR  
21 HONOR. THIS IS COUNSEL'S FIVE PAGES.

22 THE COURT: OVERRULED.

23 THE WITNESS: YES. THERE IS A LOT OF COLLOQUY  
24 ABOUT IT -- COLLOQUY ABOUT EXHANGING DIMENSIONS AND WHAT  
25 I WAS GOING TO DO OVER THE LUNCH HOUR.  
26 MS. ABRAMSON: WHICH, BY THE WAY, YOU WERE  
27 SUPPOSED TO COME UP WITH SOME NUMBERS OVER THE LUNCH  
28 HOUR AND YOU NEVER DID THAT DAY; ISN'T THAT CORRECT?

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1 MR. CONN: OBJECTION. IRRELEVANT.  
2 THE COURT: OVERRULED.  
3 Q. BY MS. ABRAMSON: DID YOU COME UP WITH  
4 THOSE NUMBERS OVER THE LUNCH HOUR?  
5 A. NO. THERE WASN'T ANYBODY AT MY OFFICE TO  
6 PRINT IT OUT. BUT I ALSO DON'T REMEMBER EXPLICITLY  
7 AGREEING. WE DISCUSSED THE POSSIBILITY, AND I DIDN'T  
8 SAY I WOULD. I SAID I THINK I COULD. I SAID I WOULD  
9 CHECK INTO THE POSSIBILITY OF IT. BUT THE TRANSCRIPT  
10 SPEAKS FOR ITSELF.  
11 Q. LET ME ASK YOU THIS.  
12 ULTIMATELY WHAT WAS DETERMINED IN THIS FIVE  
13 PAGE ENTIRE DISCUSSION ABOUT THE FURNITURE WAS THAT YOU  
14 WOULD PROVIDE THE DATA AND C.D. ROM, CORRECT?  
15 A. NO. I SAID I COULD PROVIDE IT IN SOME SORT  
16 OF MAGNETIC MEDIA OR OPTICAL MEDIA LIKE C.D. ROM.  
17 Q. AND IN FACT THE FOLLOWING WEEK YOU DID  
18 PROVIDE IT, CORRECT?

19 A. NOT THE BASE DATA. I THINK I PROVIDED --

20 WELL, DID WE SEND THE BASE DATA? DID WE SEND THE

21 FILES --

22 Q. EXCUSE ME. WHO ARE YOU TALKING TO?

23 A. DEVINDER. HE SAID WE DID SEND THE FILES.

24 Q. AND YOU SENT A MAGNETIC TAPE ALSO, RIGHT?

25 A. WE DID.

26 Q. AND ON THAT MAGNETIC TAPE WERE THE NEW

27 ILLUSTRATIONS WITH THE NEW FURNITURE SIZES; ISN'T THAT

28 CORRECT?

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1 MR. CONN: I WOULD OBJECT AS CALLING FOR

2 SPECULATION, UNLESS THIS WITNESS PERSONALLY SENT THE

3 MATERIAL.

4 THE COURT: WELL, LET'S SEE IF SHE CAN ESTABLISH

5 HIS PERSONAL KNOWLEDGE.

6 Q. BY MS. ABRAMSON: YOU PREVIOUSLY TESTIFIED

7 YESTERDAY THAT IT WAS WITHIN A WEEK AFTER THE HEARING

8 THAT YOU CHANGED THE DIMENSIONS ON THE FURNITURE TO

9 REFLECT BEVERLY HILLS POLICE DEPARTMENT MEASUREMENTS,

10 RIGHT?

11 A. THAT'S RIGHT.

12 MR. CONN: I WOULD OBJECT, YOUR HONOR. MAY THE

13 WITNESS FINISH HIS ANSWER.

14 THE WITNESS: BUT FOR ALL BUT TWO DIMENSIONS THE

15 CHANGES WERE EXTREMELY MINOR.

16 Q. BY MS. ABRAMSON: THAT'S NOT WHAT I ASKED.

17 I MOVE TO STRIKE THAT, YOUR HONOR, AS NON-RESPONSIVE.

18 THE COURT: IT'LL REMAIN.

19 Q. BY MS. ABRAMSON: AND WHEN YOU SENT THE

20 DATA DOWN, THE DATA NOW SENT INCLUDED THE MEASUREMENTS

21 OF THE BEVERLY HILLS POLICE DEPARTMENT, CORRECT?

22 A. YES.

23 Q. AND THE ILLUSTRATIONS, THEREFORE, WERE

24 CHANGED SOMEWHAT WHEN YOU SENT THE DATA DOWN?

25 A. TO A VERY MINOR DEGREE, YES.

26 Q. AND IS IT YOUR CONTENTION THAT EVEN BEFORE

27 THAT WEEK WHEN YOU CHANGED THE ILLUSTRATIONS, YOU

28 ALREADY HAD THE BEVERLY HILLS POLICE DEPARTMENT DATA?

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1 MR. CONN: OBJECTION. VAGUE AS TO TIME.

2 THE COURT: DID YOU UNDERSTAND WHAT SHE IS ASKING

3 YOU?

4 THE WITNESS: YES, I JUST -- I CAN'T REMEMBER. I

5 JUST CAN'T REMEMBER. I AM SORRY.

6 Q. BY MS. ABRAMSON: DO YOU REMEMBER THAT THE

7 BEVERLY HILLS POLICE DEPARTMENT MEASUREMENT DATA WAS THE

8 THIRD PAGE OF A THREE-PAGE REPORT INDICATING THE

9 LOCATION OF ALL OF THE ITEMS OF PROPERTY FOUND IN THE

10 ROOM?

11 A. YES.

12 Q. AND IS IT YOUR TESTIMONY THAT YOU HAD THOSE  
13 THREE PAGES BEFORE THE HEARING SAY OF OCTOBER 2ND AND  
14 OCTOBER 3RD?

15 A. MY RECOLLECTION IS THAT I DID, BUT I CANNOT  
16 TELL YOU THAT FOR SURE.

17 Q. HAVE YOU READ THE TRANSCRIPT OF THAT  
18 HEARING?

19 A. NO.

20 Q. IF I WERE TO TELL YOU THAT YOU TESTIFIED IN  
21 THAT HEARING THAT YOU NEVER HAD ANY POLICE REPORT  
22 INDICATING THE LOCATION OF THE PROPERTY FOUND, WOULD  
23 THAT REFRESH YOUR RECOLLECTION AS TO WHETHER YOU HAD  
24 THAT DATA ON OCTOBER 2ND AND 3RD?

25 A. THAT WOULD BE MORE RELIABLE, YES.

26 DID I SO TESTIFY?

27 Q. TURNING COURT AND COUNSEL'S ATTENTION TO  
28 PAGE 35.

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1 A. I ACCEPT IT IF YOU SAY I DID.

2 Q. YES, YOU DID SO TESTIFY THAT YOU DIDN'T  
3 HAVE ANY POLICE REPORT ON WHERE THE EVIDENCE WAS  
4 LOCATED.

5 A. THEN I DIDN'T.

6 Q. HAVE YOU PRIOR TO -- WELL, HAVE YOU AT ANY

7 TIME EXAMINED THE CLOTHING WORN BY THE DECEDENTS IN THIS  
8 CASE?

9 A. JUST THE SHIRT OF JOSE MENENDEZ.

10 Q. AND YOU EXAMINED THAT HERE IN COURT?

11 A. NO, IN THE D.A.'S OFFICES.

12 Q. AND WAS THAT IN THE PRESENCE OF  
13 DR. LAWRENCE?

14 A. YES.

15 Q. AND WERE YOU POINTING ANYTHING OUT ON THAT  
16 SHIRT TO DR. LAWRENCE?

17 A. WE WERE POINTING THINGS OUT TO EACH OTHER.

18 SO, I PROBABLY POINTED SOME THINGS OUT TO HIM.

19 Q. SO, YOU AND DR. LAWRENCE CONFERRED ON THE  
20 SHIRT BEFORE HE EVER CAME IN THIS COURT AND TESTIFIED TO  
21 WHAT HE SAYS HE SAW ON IT; IS THAT RIGHT?

22 A. WE BOTH LOOKED AT THE SHIRT TOGETHER. I  
23 DON'T KNOW IF IT RISES TO CONFERRED, BUT WE DID VIEW THE  
24 SHIRT TOGETHER WHEN DETECTIVE ZOELLER BROUGHT IT TO THE  
25 D.A.'S OFFICES.

26 Q. AND THAT WAS BEFORE HE RETOOK THE WITNESS  
27 STAND AND TESTIFIED TO WHAT HE CLAIMED HE SAW ON IT; IS  
28 THAT RIGHT?

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1 A. I THINK THAT'S TRUE.

2 Q. NOW, YOU'RE NOT A FIBER EXPERT EITHER, ARE



3 YOU, DR. MC CARTHY?

4 A. NOT IN THE FORENSIC EVIDENCE SENSE OF WHAT

5 I THINK YOU MEAN FIBER EXPERT, NO.

6 Q. THANK YOU.

7 YOU NEVER LOOKED AT ANY OF THE OTHER

8 CLOTHING, CORRECT?

9 MR. CONN: OBJECTION. ASKED AND ANSWERED.

10 THE WITNESS: I DON'T THINK SO, NO.

11 Q. BY MS. ABRAMSON: YOU DON'T KNOW?

12 A. IT'S BEEN A YEAR. IF WHEN DETECTIVE

13 ZOELLER BROUGHT THE BALLISTICS EVIDENCE FROM THE SCENE,

14 IF HE WERE TO TAKE THE STAND AND TESTIFY, AND HE ALSO

15 BROUGHT A PIECE OF CLOTHING, I MEAN --

16 Q. HE DIDN'T SO TESTIFY. WE'RE RELYING ON

17 YOUR MEMORY NOW.

18 A. I DON'T RECOLLECT EVER SEEING ANY, BUT I AM

19 NOT SAYING THAT IT WASN'T THERE. I JUST DON'T RECOLLECT

20 SEEING ANY AS I WAS HERE.

21 Q. DO YOU RECOLLECT EVER SEEING THE WHITE

22 TENNIS SHOES THAT MRS. MENENDEZ WAS WEARING?

23 A. NO. NOT PHYSICALLY THE REAL --

24 Q. YOU SAW PHOTOGRAPHS OF THEM FROM THE SCENE?

25 A. YES.

26 Q. DID YOU EVER SEE THE CRIMINALIST'S

27 PHOTOGRAPHS OF THEM TAKEN AT THE SHERIFF'S DEPARTMENT?

28 A. THIS IS GOING TO SOUND STUPID. WERE THERE

1 ANY PHOTOGRAPHS OF IT ON THE C.D. ROMS I GAVE YOU?

2 THE COURT: LET'S NOT ASK --

3 THE WITNESS: I AM SORRY. I DON'T HAVE AN

4 INDEPENDENT RECOLLECTION, YOUR HONOR. I'M SORRY.

5 Q. BY MS. ABRAMSON: DR. MC CARTHY, TO THE

6 BEST OF YOUR KNOWLEDGE, THE PHOTOGRAPHS YOU PUT ON

7 CD-ROM CAME FROM TWO SOURCES, THE BEVERLY HILLS POLICE

8 DEPARTMENT AND THE CORONER'S OFFICE, CORRECT?

9 A. YES.

10 Q. AND THOSE ARE THE ONLY SOURCES OF

11 PHOTOGRAPHS YOU ARE AWARE THAT YOU RECEIVED PHOTOGRAPHS

12 FROM, CORRECT?

13 A. PERHAPS I WAS A LITTLE TOO QUICK IN THAT

14 PREVIOUS ANSWER. I RECEIVED MY PHOTOGRAPHS FROM THE

15 DISTRICT ATTORNEY'S OFFICE. I GUESS THEY MAY HAVE BEEN

16 SENT TO ME DIRECTLY BY THE BEVERLY HILLS POLICE

17 DEPARTMENT, BUT I DON'T HAVE AN INDEPENDENT RECOLLECTION

18 OF WHETHER I GOT THEM FROM THE D.A.S OR BEVERLY HILLS

19 P.D.

20 Q. WHAT IS YOUR UNDERSTANDING ABOUT THE SOURCE

21 OF THE PHOTOGRAPHS YOU PUT ON CD-ROM?

22 A. PRIMARILY FROM THE BEVERLY HILLS POLICE

23 DEPARTMENT AND THE CORONER'S OFFICE. IF THE BEVERLY

24 HILLS POLICE DEPARTMENT FILM HAD OTHER AGENCIES' FILM IN

25 IT, I WOULDN'T --

26 Q. IT DIDN'T.

27 A. NO? OKAY.

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1 EVIDENCE.

2 THE COURT: SUSTAINED. THE REMARK OF COUNSEL IS  
3 STRICKEN. THE ANSWER OF THE WITNESS TO THAT REMARK IS  
4 STRICKEN.

5 Q. BY MS. ABRAMSON: ALL RIGHT. DETECTIVE  
6 ZOELLER -- IF I TELL YOU HYPOTHETICALLY DETECTIVE  
7 ZOELLER HAS TESTIFIED THAT THERE WERE BEVERLY HILLS  
8 POLICE DEPARTMENT PHOTOGRAPHS TAKEN AT THE AUTOPSY,  
9 OKAY, DO YOU UNDERSTAND THAT YOU HAVE THOSE PHOTOGRAPHS?

10 A. THAT IS MY UNDERSTANDING.

11 Q. AND IF DETECTIVE ZOELLER TESTIFIED THAT  
12 ONLY THE BEVERLY HILLS POLICE DEPARTMENT TOOK  
13 PHOTOGRAPHS AT THE CRIME SCENE, YOU HAVE THOSE  
14 PHOTOGRAPHS AS WELL; IS THAT CORRECT?

15 A. THAT IS MY UNDERSTANDING.

16 Q. AND IF I WERE TO SUGGEST HYPOTHETICALLY  
17 THAT ALL THE ROLLS OF FILM THAT YOU RECEIVED OF THAT  
18 CRIME SCENE AND THAT THE PHOTOGRAPHS AT THE AUTOPSY CAME  
19 FROM EITHER THE BEVERLY HILLS POLICE DEPARTMENT OR THE  
20 CORONER'S OFFICE, DOES THAT COMPORT WITH YOUR  
21 UNDERSTANDING?

22 A. THAT COMPORTS WITH MY RECOLLECTION, YES.

23 Q. NOW, YOU DO NOT RECALL RECEIVING ANYTHING

24 DIRECTLY FROM THE L.A. COUNTY SHERIFF'S OFFICE, CORRECT?

25 A. AS I SIT HERE, I DO NOT.

26 Q. AND YOU DON'T RECALL ANYONE TRANSMITTING

27 MATERIAL TO YOU WITH A TRANSMITTAL LETTER INDICATING IT

28 CAME FROM THE L.A. COUNTY SHERIFF'S OFFICE?

-24722

1 AND WE ARE TALKING PHOTOGRAPHS HERE.

2 A. I DON'T.

3 Q. AND NO ONE TOLD YOU THEY WERE SENDING YOU

4 PHOTOGRAPHS FROM THE L.A. COUNTY SHERIFF'S OFFICE; IS

5 THAT CORRECT?

6 A. I DON'T RECOLLECT BEING SO TOLD.

7 Q. DO YOU REMEMBER SEEING ANY PHOTOGRAPHS OF

8 JUST THE TENNIS SHOES; NO FEET, NOTHING ELSE?

9 A. AS I SIT HERE, I DON'T HAVE A RECOLLECTION

10 OF IT, BUT I WOULD WANT TO CHECK MY CD-ROMS TO BE

11 CERTAIN.

12 Q. WELL, YOU PROVIDED THE DEFENSE WITH A COPY

13 OF EACH OF YOUR CD-ROMS, CORRECT?

14 A. YES.

15 Q. NOW, I WANT TO GO BACK FOR A MOMENT TO

16 SOMETHING EARLIER IN YOUR TESTIMONY CONCERNING ONE OF

17 THE FACILITIES THAT FAILURE ANALYSIS HAS.

18 YOU SAID THAT FAILURE ANALYSIS HAS A

19 CADAVER LABORATORY.

20 WHAT'S A CADAVER LABORATORY?

21 A. IT'S A FACILITY THAT IS SET UP TO DO

22 TESTING ON HUMAN CADAVERS. THESE ARE PEOPLE WHO

23 OBVIOUSLY HAVE DIED, AND THERE IS OBVIOUSLY CERTAIN

24 SENSITIVITY AND CARE THAT MUST BE TAKEN IN THOSE

25 SITUATIONS. SO YOU TYPICALLY HAVE TO CONSTRUCT A

26 LABORATORY SPECIALLY TO DO THAT TYPE OF WORK.

27 Q. CARE AND SENSITIVITY. WHAT DO YOU DO WITH

28 THESE CADAVERS AT THE LABORATORY? DO YOU SHOOT THINGS

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1 AT THEM?

2 A. NO. TYPICALLY WHAT WE DO IS ACCELERATE

3 THEM IN OUR TEST SHED ON WHAT'S CALLED A BUCK. WE HAVE

4 A SYSTEM WHEREBY WE CAN PUT THEM IN THE FRAME, LIKE AN

5 AUTOMOTIVE OCCUPANT COMPARTMENT, AND THEN ACCELERATE THE

6 CADAVER IN WHAT'S CALLED THE BUCK, THE SEATING AREA IN

7 THE INTERIOR, STOP IT WITH A DECELERATION PULSE THAT WE

8 CAN PROGRAM. WE CAN TELL THE COMPUTER WE WANT THE

9 VEHICLE TO RIDE DOWN, LIKE IT'S HITTING A CONCRETE

10 ABUTMENT, OR HITTING A SOFT, YOU KNOW, SMALL IMPORT CAR

11 OR SOMETHING.

12 WE CAN GIVE IT DIFFERENT DECEL PULSE, AND

13 THEN THE CADAVER, EITHER BELTED OR UNBELTED, WILL IMPACT

14 WITH THE INTERIOR.

15 Q. SO YOU DO -- COULD I STOP JUST FOR A MOMENT

16 TO SUMMARIZE IT.

17 YOU DO TESTING ON AUTO IMPACT ON THESE

18 CADAVERS, IMPACTS OF VARIOUS KINDS OF THINGS IN A MOVING

19 VEHICLE ON THESE CADAVERS; IS THAT WHAT YOU DO?

20 A. IN PART.

21 Q. OKAY. DO YOU DO ANY TESTS ON THESE

22 CADAVERS OF BALLISTICS, PROJECTILES HITTING THEM?

23 A. AS I SIT HERE, I CAN'T RECOLLECT. BUT I

24 DON'T RUN THE LABORATORY, SO I AM THE WRONG PERSON TO

25 ASK.

26 Q. SO YOU DON'T KNOW?

27 A. I DO NOT KNOW, THAT IS CORRECT.

28 Q. YOU ARE THE CHIEF EXECUTIVE OFFICER OF THE

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1 COMPANY THAT OWNS AND OPERATES THIS LABORATORY, ARE YOU

2 NOT?

3 A. CORRECT.

4 Q. AND YOU DON'T KNOW WHAT THEY'RE DOING OVER

5 THERE IN PHILADELPHIA WITH THE CADAVERS?

6 A. NOT THE NATURE OF EVERY TEST; THAT IS

7 CORRECT.

8 Q. WELL, WHEN YOU TALKED ABOUT EXTREME

9 SENSITIVITY, THERE IS IN FACT A GREAT DEAL OF

10 SENSITIVITY ABOUT PEOPLE EXPERIMENTING ON OTHER PEOPLE'S

11 DEAD RELATIVES, ISN'T THERE?

12 A. WELL, THERE IS IN OUR SHOP. I DON'T KNOW

13 IF THERE IS EVERYWHERE.

14 Q. SO ISN'T IT IMPORTANT FOR YOU TO KNOW WHAT

15 IS BEING DONE TO THESE DEAD PEOPLE?

16 A. NOT IN TERMS OF THE TRAUMA EXPERIMENTS.

17 BUT HOW THE BODIES ARE HANDLED AND HOW THE REMAINS ARE

18 TREATED DOES HAVE TO BE DONE CAREFULLY.

19 Q. WELL, SOME OF THE THINGS THAT'S DONE IN

20 THESE ACCELERATED SHEDS WIND UP IN DECAPITATING SOME OF

21 THESE CADAVERS, DOESN'T IT?

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: SUSTAINED.

24 Q. BY MS. ABRAMSON: AT THE HEARING ON OCTOBER

25 2ND AND OCTOBER 3RD, YOU BROUGHT IN SOME OF THE FIOCCHI

26 NO. 4 AMMUNITION THAT YOU HAD PURCHASED IN THE PAST

27 YEAR, RIGHT?

28 A. NO. I BROUGHT IN PARTS OF FIOCCHI

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1 AMMUNITION.

2 Q. WELL, IT WAS DISASSEMBLED, CORRECT?

3 A. BUT I BROUGHT IN NO -- FOR INSTANCE, NO

4 POWDER.

5 Q. FINE. AND YOU WERE TESTIFYING, WERE YOU

6 NOT, AT SOME POINT ABOUT THE COMPONENTS THAT MAKE UP A

7 LOAD OF FIOCCHI NO. 4 AMMUNITION?

8 A. I CERTAINLY TESTIFIED ABOUT THAT TOPIC,

9 YES.

10 Q. NOW, I ASKED YOU YESTERDAY, DID I NOT, DR.

11 MC CARTHY, WHETHER OR NOT IT WAS DURING THAT TESTIMONY

12 THAT YOU FIRST BECAME AWARE OF THE FACT THAT THE

13 AMMUNITION YOU HAD PURCHASED DID NOT MATCH THE

14 AMMUNITION USED IN THIS CASE.

15 YOU REMEMBER THAT QUESTION?

16 A. YES.

17 Q. AND YOU DENIED IT, CORRECT?

18 A. CORRECT.

19 Q. CALLING COURT AND COUNSEL'S ATTENTION TO

20 PAGE 35,727.

21 DO YOU HAVE THAT ONE, DR. MC CARTHY?

22 A. I DO.

23 Q. NOW, YOU HAVE UP ON THE WITNESS STAND NOW

24 THE ITEMS THAT YOU WERE SHOWING ME WHEN YOU WERE

25 TESTIFYING ON OCTOBER 3RD, 1995, DO YOU NOT?

26 A. YES, I DO.

27 Q. AND WE WENT OVER THIS BEFORE THE JURY CAME

28 IN THIS MORNING; THAT WHAT YOU WERE SHOWING ME -- AND

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1 YOUR HONOR, I AM GOING TO NEED TO MARK THESE, THOUGH

2 EXACTLY HOW I AM NOT SURE. I GUESS ON THE WHITE.

3 THERE IS AN ENVELOPE HERE THAT HAS A ROUND,



4 EMPTY ROUND OF SHOTGUN AMMUNITION AND THREE DIFFERENT  
5 WHAT APPEAR TO BE PAPER WADS, AND A MIXTURE OF PELLETS  
6 THAT APPEAR TO BE BIRD SHOT AND BUCKSHOT.

7 WHAT'S THE NEXT IN ORDER?

8 THE COURT: 291.

9 MS. ABRAMSON: THANK YOU, YOUR HONOR.

10 AND I WOULD ALSO LIKE TO MARK AN OPEN  
11 SHOTGUN ROUND CONTAINING A SHOT CUP POWER PISTON  
12 ASSEMBLY, AND I'D LIKE TO MARK THAT 292, AND I AM  
13 WRITING IT ON IT, BUT IT --

14 THE WITNESS: DOESN'T WRITE GOOD.

15 Q. BY MS. ABRAMSON: IT WRITES WELL ENOUGH FOR  
16 THE PURPOSE.

17 NOW, DR. MC CARTHY, WHEN I WAS -- LET ME  
18 JUST PUT THESE UP HERE SO THE JURY CAN AT LEAST GET A  
19 BIT OF A VIEW OF WHAT WE'RE TALKING ABOUT.

20 THESE ARE THE THINGS THAT YOU WERE SHOWING  
21 ME WHILE I WAS CROSS-EXAMINING YOU ON OCTOBER 3RD,  
22 CORRECT?

23 A. YES.

24 Q. AND THIS ENVELOPE WHICH IS NOW MARKED 291  
25 CONTAINS AN EMPTY SHOT SHELL CASING, CORRECT?

26 A. CORRECT.

27 Q. IT HAS NO SHOT CUP INSIDE LIKE THIS?

28 A. CORRECT.

1 Q. IT HAS THREE PAPER WADS?

2 A. YES.

3 Q. NO PLASTIC WAD?

4 A. THAT'S CORRECT.

5 Q. AND MANY MIXED PELLETS OF BUCK AND BIRD  
6 SHOT?

7 A. YES.

8 Q. WHAT BRAND BIRD SHOT PELLETS ARE IN HERE?

9 A. I DON'T RECOLLECT WHAT SHELL I TOOK THEM  
10 OUT OF.

11 Q. WHAT BRAND SHELL DID YOU TAKE THE POWER --  
12 EXCUSE ME, STRIKE THAT.

13 WHAT BRAND OF AMMUNITION DID YOU TAKE THE  
14 PAPER WADS OUT OF?

15 A. MY RECOLLECTION IS THOSE CAME OUT OF A  
16 WINCHESTER.

17 Q. AND TWO OF THESE PAPER WADS -- WELL, ALL  
18 THREE OF THEM ARE DIFFERENT SIZES; IS THAT CORRECT?

19 A. YES.

20 Q. DID ALL THREE OF THEM COME OUT OF THE SAME  
21 ROUND OF WINCHESTER, OR DID THE THREE OF THEM COME FROM  
22 THREE SEPARATE ROUNDS?

23 A. I DON'T RECOLLECT. I JUST PICKED UP THE  
24 PARTS FROM MY BENCH.

25 Q. WELL, IS IT YOUR UNDERSTANDING THAT THE  
26 FIREARMS MANUFACTURERS PACK VARYING SIZES INSIDE EACH  
27 SHELL OF PAPER WADDING?

28 A. DIFFERENT MANUFACTURERS USE DIFFERENT SIZE

1 WADDINGS IN DIFFERENT TYPES OF SHELLS.

2 Q. RIGHT. DOES THE SAME MANUFACTURER USE  
3 THREE DIFFERENT SIZE WADDINGS IN ONE SHELL?

4 A. MY RECOLLECTION IS THAT I HAVE SEEN THAT.  
5 I HAVE SEEN TWO DIFFERENT SIZES OF UNDER-WADS AND ONE  
6 OVER-WAD, AND ALL THREE WERE DIFFERENT.

7 Q. IS THAT WHAT THIS IS? DO YOU KNOW IF ALL  
8 THREE OF THESE CAME FROM THE SAME WINCHESTER ROUND?

9 A. I DON'T HAVE A SPECIFIC RECOLLECTION, SO I  
10 CAN'T TESTIFY THAT THAT'S THE CASE.

11 Q. OKAY. BUT THIS ONE WHICH HAS BEEN MARKED  
12 292, AND THE SHOT CUP THAT'S INSIDE OF IT, THIS  
13 CONTAINS -- THIS SHOT CUP HAS WHAT YOU HAVE CALLED A  
14 POWER PISTON ON IT, CORRECT?

15 A. THAT'S THE BASE, YES.

16 Q. RIGHT. AND THERE IS NO POWER PISTON IN  
17 THIS ENVELOPE?

18 A. THERE IS NOT.

19 MS. ABRAMSON: YOUR HONOR, I PROPOSE TO READ FROM  
20 35,727 TO 35,729, LINE 1.

21 ON 35,727 STARTING AT LINE 21.

22 MR. CONN: I WOULD OBJECT AS --

23 MS. ABRAMSON: IN FACT, I COULD GO ON READING TO  
24 35,731.

25 MR. CONN: I WOULD OBJECT. IT'S NOT INCONSISTENT

26 WITH HIS TESTIMONY.

27 MS. ABRAMSON: I BELIEVE IT IS.

28 THE COURT: ALL RIGHT. WELL, YOU'LL HAVE TO GIVE

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1 IT TO ME AND I'LL LOOK AT IT.

2 MS. ABRAMSON: EXCUSE ME?

3 THE COURT: YOU WILL HAVE TO GIVE IT TO ME SO I  
4 CAN LOOK AT IT.

5 MS. ABRAMSON: MR. GESSLER, DO YOU HAVE OCTOBER  
6 7TH TO GIVE TO THE JUDGE?

7 THE WITNESS: I HAVE IT HERE.

8 MS. ABRAMSON: NO, YOU SHOULD KEEP IT.

9 MR. GESSLER, OCTOBER 7TH?

10 THE COURT: THE WITNESS IS GIVING IT TO ME.

11 (BRIEF PAUSE)

12

13 THE COURT: WELL, THE ONLY PART THAT WOULD BE OF  
14 ANY VALUE WOULD BE 35,728, LINE 15 THROUGH 21.

15 MS. ABRAMSON: OKAY. WELL, I THINK GOING OVER TO  
16 35,729, LINE 1, YOUR HONOR.

17 THE COURT: WELL, THEN YOU'RE GOING INTO A  
18 DIFFERENT SUBJECT. YOU'RE TALKING ABOUT THE EVIDENCE IN  
19 THE CASE VERSUS THE --

20 MS. ABRAMSON: NO. WE'RE TALKING ABOUT THE POWER  
21 PISTON THAT HE IS SHOWING ME.

22 THE COURT: WELL, IT'S NOT CLEAR TO ME. SO  
23 THAT'S ALL THAT I THINK IS OF ANY VALUE.  
24 MS. ABRAMSON: WELL, YOUR HONOR, I DON'T THINK IT  
25 MAKES ANY SENSE IF I DON'T READ IT ALL.  
26 THE COURT: I THINK THE REST OF IT IS UNCLEAR AS  
27 TO WHAT WAS BEING REFERRED TO.  
28 Q. BY MS. ABRAMSON: DR. MC CARTHY, WHEN YOU

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1 WERE TESTIFYING ON OCTOBER 3RD, WERE THERE OTHER PEOPLE  
2 IN THE COURTROOM BESIDES YOU AND ME?  
3 MR. CONN: OBJECTION. IRRELEVANT.  
4 THE COURT: OVERRULED.  
5 THE WITNESS: YES.  
6 Q. BY MS. ABRAMSON: WAS MS. TOWERY, MY  
7 CO-COUNSEL, AT THE END OF THE TABLE THERE?  
8 A. I THINK SO.  
9 Q. WAS MR. GESSLER THERE.  
10 MR. CONN: OBJECTION. IRRELEVANT.  
11 THE COURT: OVERRULED.  
12 THE WITNESS: I THINK SO.  
13 Q. BY MS. ABRAMSON: WAS MR. LEVIN THERE?  
14 MR. CONN: OBJECTION. IRRELEVANT.  
15 THE COURT: OVERRULED.  
16 Q. BY MS. ABRAMSON: AND MS. NAJERA AND MR.  
17 CONN?

18 A. YES.

19 Q. AND DO YOU REMEMBER YOU WERE SHOWING ME  
20 THESE ITEMS THAT WE HAVE JUST SHOWN THE JURY AND WE HAVE  
21 JUST MARKED, AND YOU INDICATED THAT YOU BELIEVED AT THAT  
22 TIME THAT THE NO. 4 FIOCCHI SHOT IN THIS CASE HAD THE  
23 SAME KIND OF POWER PISTON AS WHAT YOU WERE SHOWING ME?

24 A. YOU ASKED ME THAT SPECIFICALLY, AND I TOLD  
25 YOU NO ON PAGE 730.

26 Q. YOU TOLD ME AT 35,729, "OH, YES,  
27 DEFINITELY."

28 A. NO, NO, NO, NO, NO.

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1 Q. WELL, LET ME READ THIS TO YOU. THIS IS  
2 READING NOW FROM --

3 A. I MEAN, I SAID THAT, BUT THAT WASN'T THE  
4 QUESTION.

5 Q. WELL, LET ME READ YOU THE QUESTION.  
6 35,728, LINE 27.

7 "QUESTION: IS IT YOUR  
8 IMPRESSION THAT THE ONES HERE HAD  
9 THIS KIND OF POWER PISTON " TALKING  
10 ABOUT THE ONE YOU WERE SHOWING ME.

11 "ANSWER: YEAH. I WAS SHOWING  
12 YOU THIS ONE HERE.

13 "QUESTION: RIGHT. IS IT YOUR

14 IMPRESSION THAT THE ONES HERE -- "  
15 MEANING THE EVIDENCE IN THIS CASE --  
16 "HAD THIS KIND OF POWER PISTON,"  
17 MEANING THE ONE YOU WERE SHOWING ME,  
18 "INSIDE THE BUCKSHOT," MEANING THE  
19 ONES YOU WERE SHOWING ME.  
20 MR. CONN: OBJECTION.  
21 THE COURT: OBJECTION SUSTAINED.  
22 Q. BY MS. ABRAMSON: WHAT WERE YOU ANSWERING  
23 "OH, YES, DEFINITELY" TO?  
24 A. YOU WERE SHOWING ME A NO. 4 FIOCCHI SHOT, A  
25 SHOTGUN SHELL.  
26 Q. LIKE THE ONE YOU ARE SHOWING ME?  
27 A. WHICH I HAD DISASSEMBLED. THE ONLY REASON  
28 THESE WADS AND SHELLS ARE HERE IS BECAUSE I BROUGHT

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1 THEM.  
2 Q. YES. AND THAT WASN'T THE QUESTION I WAS  
3 ASKING YOU.  
4 ISN'T IT YOUR UNDERSTANDING THAT THIS KIND  
5 OF SHELL HAD THIS KIND OF POWER PISTON IN THE BUCKSHOT,  
6 THAT'S WHAT I WAS ASKING YOU.  
7 A. MY UNDERSTANDING WAS YOU WERE ASKING ME  
8 ABOUT THIS SHELL. WE DIDN'T HAVE ANY OF THE BALLISTICS  
9 EVIDENCE FROM THE SCENE.

10 Q. WE DIDN'T?

11 A. NOT AT THE TIME IN FRONT OF ME DURING THIS

12 TESTIMONY. THAT IS MY RECOLLECTION. AM I WRONG IN

13 THAT?

14 THE COURT: LET'S MOVE ON, MS. ABRAMSON. THE

15 RECORD IS REALLY WHAT'S ON THOSE PAGES AND NOTHING ELSE.

16 MS. ABRAMSON: WE'LL MOVE ON, YOUR HONOR. THERE

17 WERE WITNESSES.

18 Q. HAVE YOU SEEN A DIAGRAM DRAWN BY CLARK FOGG

19 OF THE BEVERLY HILLS POLICE DEPARTMENT INDICATING

20 MEASUREMENTS TAKEN ON OCTOBER 23RD, '95 FROM THE FRENCH

21 DOORS TO THE TREE?

22 A. YES.

23 Q. DO YOU HAVE A COPY OF THAT?

24 A. I THINK SO, YES.

25 Q. WHEN DID YOU RECEIVE IT?

26 A. IN THE LAST COUPLE WEEKS.

27 Q. SINCE YOU TESTIFIED IN OCTOBER, CORRECT?

28 A. DEFINITELY.

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1 Q. WHY DON'T YOU FIND YOUR COPY.

2 A. I DO. I HAVE IT IN FRONT OF ME.

3 Q. LET ME MAKE SURE IT'S THE SAME ONE. I

4 BELIEVE THIS HAS ALREADY BEEN MARKED, YOUR HONOR, HASN'T

5 IT?



6 THE COURT: YEAH, IT WAS MARKED -- WE DID IT A

7 COUPLE OF DAYS AGO.

8 MS. ABRAMSON: OKAY.

9 THE COURT: 278.

10 Q. BY MS. ABRAMSON: YOU DID NOT HAVE THAT  
11 DIAGRAM AT THE TIME THAT YOU CONSTRUCTED THESE  
12 ILLUSTRATIONS; IS THAT RIGHT?

13 A. THAT IS CORRECT.

14 Q. AND SINCE RECEIVING IT YOU HAVEN'T CHANGED  
15 THE ILLUSTRATION?

16 A. NOT A WHIT.

17 Q. IN FACT, YOU HAVEN'T CHANGED THE  
18 ILLUSTRATIONS BASED ON THE TESTIMONY OF DR. LAWRENCE  
19 EITHER; IS THAT CORRECT?

20 A. THAT IS CORRECT.

21 Q. AND YOU HAVEN'T CHANGED THE ILLUSTRATIONS  
22 BASED ON ANYTHING THAT YOU MAY HAVE RECEIVED SINCE THE  
23 WEEK AFTER OCTOBER 2ND, CORRECT?

24 A. THAT'S CORRECT. THERE WAS NO NEED TO.

25 MS. ABRAMSON: I MOVE TO STRIKE THE SECOND HALF  
26 OF THE ANSWER, YOUR HONOR, AS NOT RESPONSIVE.

27 THE COURT: OVERRULED. THAT WILL STAND.

28 Q. BY MS. ABRAMSON: NOW, I BELIEVE YOU

1 STARTED OUT, DR. MC CARTHY, SAYING THAT THIS SO-CALLED

2 RECONSTRUCTION OF YOURS WAS GOING TO COMPORT WITH THE  
3 LAWS OF PHYSICS AND THE LAWS OF THERMODYNAMICS; IS THAT  
4 WHAT YOU SAID?

5 A. I COULD HAVE SAID THAT, YES.

6 Q. IS THAT WHAT YOU ARE SAYING; THAT THESE  
7 ILLUSTRATIONS COMPLY WITH THE LAWS OF PHYSICS?

8 A. YES.

9 Q. AND IS'NT ONE OF THE LAWS OF PHYSICS  
10 GRAVITY?

11 A. IT'S AN EFFECT CONSIDERED IN PHYSICS.  
12 THERE IS A LAW OF GRAVITATIONAL ACCELERATION.

13 Q. WELL, HOW ABOUT THE BASIC LAW OF GRAVITY;  
14 THAT ON THIS EARTH PEOPLE DON'T FLOAT.

15 A. WELL, THAT'S NOT THE WAY IT'S STATED IN  
16 PHYSICS, BUT THERE ARE LAWS IN PHYSICS ABOUT  
17 GRAVITATIONAL ACCELERATION.

18 Q. MY QUESTION IS: ARE YOU OBSERVING THAT  
19 BASIC RULE THAT ON EARTH PEOPLE DON'T FLOAT UNLESS  
20 THEY'RE IN BODIES OF WATER?

21 A. OR ANY LIQUID WITH BUOYANCY.

22 Q. RIGHT.

23 A. THERE IS NO LIQUID SHOWN ON ANY OF MY  
24 PHOTOGRAPHS, NOT EVEN BLOOD.

25 Q. DO THESE ILLUSTRATIONS COMPORT WITH THE  
26 BASIC NOTION THAT PEOPLE ON EARTH DON'T FLOAT?

27 YES OR NO.

28 A. YES.

1 Q. NOW, IS THERE ANOTHER LAW OF PHYSICS THAT  
2 HAS TO DO WITH OBJECTS -- YOU KNOW, THESE ARE SORT OF  
3 SIMPLISTIC SCHOOL CHILDREN TYPE LAWS, SINCE I AM NOT  
4 MUCH OF A PHYSICS SCHOLAR -- THAT TWO OBJECTS CAN'T  
5 OCCUPY THE EXACT SAME PLACE AT THE EXACT SAME TIME  
6 WITHOUT COMING IN CONTACT WITH EACH OTHER?

7 A. THEY CERTAINLY TEND TO NOT VIOLATE  
8 CONSERVATION OF SPACE.

9 Q. OKAY. AND THERE IS SOME BASIC LAWS OF  
10 MOMENTUM AS WELL, ARE THERE NOT; THAT BODIES AT REST  
11 REMAIN AT REST UNLESS SOME FORCE IS APPLIED TO THEM.  
12 BODIES IN MOTION REMAIN IN MOTION UNLESS GRAVITY OR  
13 FRICTION OR COMING IN CONTACT WITH SOMETHING ELSE STOPS  
14 THEM?

15 A. NEWTONIAN LAWS OF CLASSICAL MECHANICS, YES,  
16 WHICH ARE VALID IN MOST FIELDS.

17 Q. AND YOU HAVE FOLLOWED THOSE NEWTONIAN LAWS,  
18 CORRECT?

19 A. THERE REALLY WASN'T ANY NEWTONIAN MECHANICS  
20 ILLUSTRATED HERE, I BELIEVE. BUT TO THE EXTENT THERE  
21 MIGHT BE, IT SHOULD BE CONSISTENT WITH THAT, YES.

22 Q. AND HAVE YOU FOLLOWED THE BASIC RULE IN  
23 THESE ILLUSTRATIONS THAT INANIMATE OBJECTS DO NOT MOVE  
24 UNDER THEIR OWN POWER?

25 A. I DON'T KNOW THAT THERE IS A BASIC LAW OF  
26 PHYSICS THAT SAYS IT QUITE THAT WAY, BUT I DON'T

27 CERTAINLY INTEND TO HAVE INANIMATE OBJECTS MOVE WITHOUT  
28 SOME SORT OF INPUT.

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1 Q. OKAY. SO, IF THE WAY THESE ILLUSTRATIONS  
2 WERE DRAWN THEY KEEP SHOWING A SHIFT IN THE POSITIONING  
3 OF THE COFFEE TABLE, THAT'S AN ACCIDENT?

4 A. IT WOULD BE AN ARTIFACT, I MEAN, UNLESS --  
5 THERE IS NOTHING IN MY RECONSTRUCTION THAT POSITED THE  
6 COFFEE TABLE SHIFTING.

7 Q. WHAT'S AN ARTIFACT?

8 A. WHEN SOMEONE REGISTERS AN "OBJECT BETWEEN  
9 FRAMES, HE MIS-ENTERS A COORDINATE OR SOMETHING OF THAT  
10 NATURE, SO IT WOULD EXECUTE A SHIFT IN THE OBJECT. BUT  
11 THERE WAS NO INTENTION TO MOVE THE COFFEE TABLE.

12 Q. WELL, ARE YOU THE ONE WHO WOULD DO THAT,  
13 WHO ACTUALLY PUT THE COFFEE TABLE IN THESE VARIOUS  
14 ILLUSTRATIONS, OR DID SOMEBODY ELSE DO THAT?

15 A. THE ACTUAL DATA ENTRY COMMAND OF THE OBJECT  
16 WOULD BE DONE BY ONE OF OUR GRAPHICS PERSONS.

17 Q. SO YOU DON'T KNOW WHAT THAT GRAPHICS PERSON  
18 INTENDED OR DIDN'T INTEND, BECAUSE YOU DIDN'T DO IT?

19 A. NO, IT'S THE OPPOSITE. WHAT I INTENDED WAS  
20 TO POSITION THE COFFEE TABLE, AND THAT WAS EXECUTED BY A  
21 GRAPHIC ARTIST EXECUTING THE COMPUTER DIAGRAM.

22 Q. AND YOU HAVE LOOKED AT THESE DIAGRAMS SINCE

23 THE ARTIST EXECUTED THEM, DIDN'T YOU?

24 A. YES.

25 Q. AND DIDN'T YOU NOTICE THE COFFEE TABLE  
26 MOVES UP AND MOVES BACK?

27 MR. CONN: OBJECTION. NOT IN EVIDENCE.

28 THE COURT: OVERRULED.

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1 THE WITNESS: I DID NOT NOTICE THAT PHENOMENA.

2 Q. BY MS. ABRAMSON: WHEN WE GO THROUGH THEM  
3 I'LL POINT IT OUT TO YOU.

4 MR. CONN: OBJECTION. ARGUMENTATIVE, MOTION TO  
5 STRIKE. ASK THAT COUNSEL BE ADMONISHED.

6 THE COURT: SUSTAINED. THE COMMENT OF COUNSEL IS  
7 STRICKEN.

8 Q. BY MS. ABRAMSON: ALL RIGHT. YOU HAVE  
9 SMALL VERSIONS OF THESE, DO YOU NOT?

10 A. YES, I DO.

11 Q. AT THE BREAK I'LL ASK YOU TO LOOK AT THEM.

12 A. OKAY.

13 Q. NOW, WHEN YOU STARTED OUT TO DO THIS WORK,  
14 DR. MC CARTHY, WAS IT YOUR BELIEF THAT IT WAS AN  
15 UNCONTROVERTED FACT IN THIS CASE THAT MR. AND MRS.  
16 MENENDEZ WERE SEATED ON THE SOFA AT THE TIME THEY WERE  
17 FIRST SHOT?

18 A. I DON'T SPECIFICALLY REMEMBER MY STATE OF

19 MIND WITH REGARD TO THAT CONTROVERSY.

20 Q. OKAY. DID YOU TESTIFY AT THE PRETRIAL --

21 AT THE PRETRIAL HEARING THAT YOU BELIEVED THAT WAS AN  
22 UNCONTROVERTED FACT IN THIS CASE?

23 A. IF THAT'S WHAT I TESTIFIED TO, THAT'S WHAT  
24 I BELIEVED IN TERMS OF THAT CONTROVERSY.

25 Q. WELL, I AM ASKING YOU IF YOU DID TESTIFY TO  
26 THAT, IF YOU REMEMBER TESTIFYING TO THAT?

27 A. I DON'T HAVE A SPECIFIC RECOLLECTION OF THE  
28 STATUS OF THAT CONTROVERSY.

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1 Q. WHETHER THERE WAS A CONTROVERSY OR NOT, YOU  
2 MEAN?

3 A. THAT IS CORRECT.

4 Q. CALLING COURT AND COUNSEL'S ATTENTION TO  
5 PAGE 35,670.

6 BY THE WAY, DR. MC CARTHY, WHY ARE THOSE  
7 PAGES THAT YOU SAID ARE MISSING, MISSING IN YOUR COPY OF  
8 THE TRANSCRIPT?

9 A. I HAVEN'T A CLUE. IT'S NOT MY COPY.

10 Q. WHY DON'T YOU READ TO REFRESH YOUR  
11 RECOLLECTION, SINCE YOU HAVE IT IN FRONT OF YOU,  
12 STARTING AT THE QUESTION ON LINE 19, AND GO DOWN TO LINE  
13 25.

14 DO YOU SEE THAT?

15 A. MM-HMM.

16 Q. AND YOU DID TESTIFY THAT THE FACT THAT WHEN  
17 THE SHOOTING BEGAN "THEY," MEANING THE DECEDENTS, "WERE  
18 SEATED ON THE COUCH."

19 YOU INDICATED "THAT WAS ONE OF THOSE THINGS  
20 THAT I DIDN'T THINK WAS CONTROVERTED," CORRECT? IS THAT  
21 WHAT YOU SAID?

22 A. THAT'S NOT MY ENTIRE ANSWER.

23 Q. WELL, THAT'S YOUR ENTIRE ANSWER TO THAT  
24 QUESTION, ISN'T IT?

25 A. NO. THE ANSWER SAID -- YOU ASKED ME:

26 "QUESTION: THAT IS BASED ON YOUR HYPOTH  
27 --"

28 Q. IF YOU'RE GOING TO READ IT, YOU HAVE TO

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1 READ IT ACCURATELY. I'LL READ IT.

2 MR. CONN: OBJECTION. ARGUMENTATIVE. MOTION TO  
3 STRIKE.

4 THE COURT: LET'S JUST GET TO THE POINT HERE.

5 Q. BY MS. ABRAMSON: I WILL READ IT.

6 "QUESTION: IS THAT BASED ON

7 THIS, YOUR HYPOTHESIS ABOUT HOW THE

8 WOUNDS OCCURRED, OR WERE YOU GIVEN

9 THAT INFORMATION THAT WHEN THE

10 SHOOTING BEGAN THEY WERE SEATED ON

11 THE COUCH?

12 "ANSWER: THAT IS DUE TO MY  
13 RECONSTRUCTION. HOWEVER, AGAIN,  
14 THAT'S ONE OF THOSE THINGS THAT I  
15 DIDN'T THINK WAS CONTROVERTED.

16 Q. IS THAT WHAT YOU SAID?"

17 A. THAT WAS THE QUESTION AND THAT WAS MY  
18 ANSWER.

19 Q. SO, YOU DIDN'T THINK IT WAS CONTROVERTED AS  
20 TO WHETHER OR NOT THEY WERE SEATED ON THE COUCH WHEN THE  
21 FIRING BEGAN; IS THAT CORRECT?

22 A. YES, AS I TESTIFIED AT THAT TIME.

23 Q. AND IF I UNDERSTAND YOUR TESTIMONY FROM  
24 YESTERDAY, AT THE POINT WHEN THESE ILLUSTRATIONS WERE  
25 MADE, THAT WEEKEND OF SEPTEMBER 30TH AND OCTOBER 1ST,  
26 YOU HAD NOT HAD THE PROGRAM SET UP WITH THE DUMMIES IN  
27 THE COMPUTER SO THAT YOU COULD MANIPULATE THEM INTO  
28 VARIOUS SCENARIOS BEFORE THAT WEEKEND, CORRECT?

-24704

1 A. BEFORE THAT WEEKEND, YES.

2 Q. DURING THE WEEK BEFORE THAT WEEKEND PEOPLE  
3 WERE INPUTTING WHATEVER WAS NECESSARY FOR YOU TO BE ABLE  
4 TO MANIPULATE THOSE DUMMIES AND PUT THEM IN THE  
5 POSITIONS YOU WANTED TO PUT THEM IN, CORRECT?

6 A. YES.



7 Q. AND OVER THE COURSE OF THAT WEEKEND YOU  
8 CREATED THE 24 ILLUSTRATIONS BY MANIPULATING THE DUMMIES  
9 IN THE FRAMES, CORRECT?

10 A. CORRECT.

11 Q. AND I TAKE IT THEN YOU DID NOT HAVE TIME,  
12 OR FOR WHATEVER REASON, TO TRY TO CONSTRUCT DIFFERENT  
13 SCENARIOS BY USING THE DUMMIES ON THE COMPUTER, CORRECT?

14 A. NO. I HAD THE DUMMIES IN VARIOUS POSITIONS  
15 WHILE I WAS FINALIZING THESE DIAGRAMS WHILE I HAD IT IN  
16 THE COMPUTER.

17 Q. BUT YOU WERE FINALIZING WHAT YOUR  
18 IMPRESSIONS WERE AT THAT POINT, CORRECT?

19 A. WELL, I MEAN, WHAT MY RECONSTRUCTION WAS,  
20 YES.

21 Q. YES. YOU WERE TRYING TO CREATE  
22 ILLUSTRATIONS OF THAT RECONSTRUCTION THAT YOU HAD THAT  
23 ARE DETERMINED IN YOUR HEAD, CORRECT?

24 A. MORE DETAIL, OBVIOUSLY, WHEN YOU HAVE TO  
25 CREATE A FIGURE. BUT YES, GENERALLY THAT WAS THE  
26 PROGRESSION, CORRECT.

27 Q. YOU WEREN'T TESTING OUT OTHER HYPOTHESES  
28 ABOUT POSITIONS OF THE BODIES OVER THAT WEEKEND, WERE

-24703

1 YOU?

2 A. NO.

3 Q. THAT WOULD HAVE TAKEN A VERY LONG TIME,  
4 WOULD IT NOT?

5 A. WELL, IT WOULD DEPEND HOW MANY HYPOTHESES  
6 ONE TESTED, BUT -- SO IT COULD HAVE TAKEN A SHORT TIME  
7 OR A LONG TIME.

8 Q. BUT YOU DIDN'T TEST ANY?

9 A. THAT IS CORRECT. I -- GO AHEAD.

10 Q. WELL NOW, IS IT ALSO SOMETHING THAT YOU  
11 BELIEVE WAS UNCONTROVERTED OR ACCEPTED THAT THERE WERE  
12 12 ROUNDS FIRED IN THIS ROOM, CORRECT?

13 A. AGAIN, AT THIS POINT DON'T REMEMBER MY  
14 EXACT STATE OF MIND AS A FUNCTION OF TIME ON THAT  
15 CONTROVERSY. MY RECONSTRUCTION REQUIRES 12 ROUNDS.

16 Q. WELL, DIDN'T YOU BELIEVE THAT IT WAS  
17 UNCONTROVERTED THAT 12 ROUNDS HAD IN FACT BEEN FIRED?

18 A. AT SOME POINT IN TIME I THINK I BELIEVED  
19 THAT, YES.

20 Q. AND DO YOU KNOW WHAT YOU BASE THAT ON?

21 A. IT WOULD HAVE TO HAVE COME FROM THE  
22 PREVIOUS TRIAL TESTIMONY, BUT --

23 Q. WHOSE TESTIMONY?

24 A. I DON'T HAVE THAT SPECIFIC A RECOLLECTION.

25 Q. WELL, YOU TOLD US ALL THE NAMES OF THE  
26 PEOPLE WHO TESTIFIED. DR. GOLDEN CERTAINLY DIDN'T  
27 TESTIFY THERE WERE 12 ROUNDS FIRED, DID HE?

28 A. AGAIN, I DON'T HAVE A SPECIFIC RECOLLECTION

1 OF GETTING THAT IMPRESSION FROM A SPECIFIC WITNESS.

2 THAT WAS JUST -- YOU ASKED ME ABOUT MY IMPRESSION, AND

3 THAT WAS MY IMPRESSION.

4 Q. DEPUTY VAN HORN DIDN'T TESTIFY THAT THERE

5 WERE 12 ROUNDS FIRED, DID HE?

6 A. I CAN'T TESTIFY THAT HE DID, NO.

7 Q. IN FACT, DEPUTY VAN HORN TESTIFIED THAT

8 BASED ON THE ONLY AVAILABLE BALLISTIC EVIDENCE, THE MOST

9 HE AS A BALLISTICS EXPERT COULD SAY WAS THAT THERE WAS

10 EVIDENCE OF EIGHT ROUNDS FIRED, CORRECT?

11 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

12 THE COURT: SUSTAINED.

13 Q. BY MS. ABRAMSON: YOU READ HIS TESTIMONY,

14 RIGHT?

15 A. YES. SOME TIME AGO I DID, YES.

16 Q. AND YOU DON'T REMEMBER IT ANYMORE, IS THAT

17 WHAT YOU'RE SAYING?

18 A. I WOULDN'T REMEMBER -- EVEN IF -- FIRST OF

19 ALL, I DON'T HAVE A TERRIBLY GRAPHIC RECOLLECTION OF THE

20 CONTEXT IN WHICH HE TESTIFIED. I DO REMEMBER THE NUMBER

21 EIGHT SOMETHING. BUT CERTAINLY HE DID TESTIFY UNDER

22 OATH. I COULD REVIEW THE TESTIMONY.

23 Q. WELL, YOU ARE TESTIFYING UNDER OATH.

24 DIDN'T YOU REVIEW THE TESTIMONY?

25 A. BUT I WOULDN'T CHARACTERIZE THE TESTIMONY

26 FOR THE JURY FROM MEMORY WITHOUT GOING BACK AND LOOKING

27 AT IT AGAIN.

28 Q. WELL, YOU DIDN'T TAKE NOTES ABOUT THAT

-24701

1 EITHER, DID YOU?

2 A. NO.

3 Q. DO YOU NOT TAKE NOTES SO THAT YOU CAN SIT  
4 THERE AND SAY "I DON'T REMEMBER. I DON'T RECALL."

5 A. NO.

6 Q. NOW THEN, YOU DON'T RECALL WHETHER OR NOT  
7 DEPUTY VAN HORN SAID THERE WERE 12 ROUNDS, OR HE DIDN'T  
8 SAY THAT?

9 MR. CONN: OBJECTION. IRRELEVANT.

10 THE COURT: SUSTAINED.

11 Q. BY MS. ABRAMSON: SO, WHO ELSE TESTIFIED  
12 CONCERNING THE NUMBER OF ROUNDS FIRED BESIDES -- WELL,  
13 BESIDES DEPUTY VAN HORN?

14 MR. CONN: OBJECTION. IRRELEVANT.

15 THE COURT: SUSTAINED. THE ONLY QUESTION IS  
16 WHERE HE GOT THAT FIGURE 12, SO --

17 MS. ABRAMSON: WELL, HE DOESN'T KNOW.

18 Q. YOU HAVE NO IDEA WHERE YOU GOT THAT FIGURE  
19 OF 12?

20 A. I GUESS NO RECOLLECTION OF WHERE IT CAME UP  
21 THE FIRST TIME SPECIFICALLY IN THE PREVIOUS TRIAL; THAT  
22 IS CORRECT.

23 HOWEVER, IT DIDN'T PLAY -- I MEAN, I GOT TO

24 12 IN MY RECONSTRUCTION, SO IT WOULDN'T MATTER WHAT THE  
25 PREVIOUS RECONSTRUCTION WAS.

26 Q. SO YOU GOT TO 12. TWELVE WAS WHAT ARE --  
27 WELL, WAIT A MINUTE. YOU CONSIDERED 12 THE OUTER LIMIT,  
28 DIDN'T YOU?

-24700

1 A. OH, NO. THE OUTER LIMIT IS THE TOTAL  
2 NUMBER OF WOUNDS.

3 Q. OKAY. WELL -- WELL, WE'RE GOING TO GO  
4 THROUGH THIS.

5 YOU ASSOCIATED CERTAIN WOUNDS ON JOSE  
6 MENENDEZ' BODY WITH EACH OTHER, CORRECT?

7 A. YES.

8 Q. AND YOU ASSOCIATED THOSE WOUNDS ON HIS BODY  
9 THAT WERE ASSOCIATED WITH EACH OTHER WITH ADDITIONAL  
10 WOUNDS ON MRS. MENENDEZ?

11 A. IN ONE SHOT, YES.

12 Q. WELL, THAT'S WHAT YOU CALL SHOT NO. 1. YOU  
13 CALL IT ONE SHOT, RIGHT?

14 A. YES, BUT I ONLY DO THAT ASSOCIATION IN ONE  
15 OF MY SHOTS IS WHAT I MEANT TO SAY. I'M SORRY.

16 Q. OKAY. AND DO YOU REMEMBER WHEN I  
17 CROSS-EXAMINED YOU AT THE PRETRIAL HEARING I SUGGESTED  
18 THAT THOSE MIGHT HAVE BEEN SEPARATE SHOTS, SOME OF THOSE  
19 SHOTS THAT YOU ASSOCIATED?

20 A. I REMEMBER WE DISCUSSED THAT.

21 Q. AND YOU SAID "OH, NO. YOU WOULD RUN OUT OF  
22 AMMUNITION."

23 DO YOU REMEMBER SAYING THAT?

24 A. I DON'T REMEMBER, BUT I MIGHT HAVE,  
25 DEPENDING ON WHAT WE WERE DOING AT THE TIME.

26 Q. AND IF YOU DID THAT, IT'S BECAUSE YOU FELT  
27 12 WAS THE OUTER LIMIT, COULD NOT HAVE BEEN MORE THAN  
28 12, CORRECT?

-24699

1 A. WELL, YOU CAN'T DO MORE THAN 12 WITHOUT A  
2 RELOAD. YOU'VE GOT TO GO BACK AND -- THE WEAPON ONLY  
3 HOLDS SIX, SO YOU WOULD RUN OUT OF AMMUNITION WITHOUT  
4 GOING INTO A RELOAD. BUT YOU CAN BUY INFINITE NUMBERS  
5 OF SHELLS.

6 Q. BUT YOU KNEW, DR. MC CARTHY, DID YOU NOT,  
7 THAT THERE WAS TESTIMONY FROM ERIK AND LYLE MENENDEZ AT  
8 THE PREVIOUS TRIAL THAT THERE WAS A RELOAD.

9 MR. CONN: OBJECTION. IRRELEVANT.

10 THE COURT: OVERRULED.

11 THE WITNESS: WELL, YES. BUT IN THE PRE --  
12 PRELIMINARY HEARING YOU AND I WERE ARGUING ABOUT THE  
13 RELOAD AND WHETHER OR NOT ONE OCCURRED.

14 Q. DR. MC CARTHY, I WASN'T ARGUING. I WAS  
15 ASKING QUESTIONS, JUST LIKE I AM NOW.

16 DO YOU CALL THIS ARGUING?

17 A. NO, BUT WE HAD A VERY MUCH MORE ANIMATED  
18 DISCUSSION IN THE PRELIMINARY HEARING.

19 Q. PRETRIAL?

20 A. I'M SORRY. I DO THAT WRONG EVERY TIME.  
21 THE PRETRIAL. BUT YOU CAN ONLY PUT SIX ROUNDS IN EACH  
22 WEAPON. SO AFTER 12 YOU ARE OUT OF AMMUNITION UNLESS  
23 YOU RELOAD.

24 Q. ALL RIGHT. AND YOU ACCEPT THE FACT THAT  
25 THERE WAS TESTIMONY AT THE PREVIOUS TRIAL THAT THERE WAS  
26 A RELOAD.

27 MR. CONN: OBJECTION. IRRELEVANT.

28 THE COURT: WAIT. FOR THE PURPOSE OF YOUR

-24698

1 PREPARING THESE DIAGRAMS AND YOUR RECONSTRUCTION, DID  
2 YOU ASSUME THERE WAS RELOADING OF SHOTGUNS?

3 THE WITNESS: NO. YOU ASKED ME THAT QUESTION AT  
4 THE PRELIMINARY HEARING AND I INDICATED I -- THERE WAS  
5 NOTHING IN MY SCENARIO THAT REQUIRED A RELOAD. WE  
6 DISCUSSED THAT SPECIFICALLY.

7 Q. BY MS. ABRAMSON: WE ARE NOT TALKING ABOUT  
8 REQUIRED. THIS IS A REAL EVENT THAT HAPPENED, NOT JUST  
9 YOUR SCENARIO, CORRECT?

10 MR. CONN: OBJECTION. ARGUMENTATIVE.

11 THE COURT: REPHRASE THE QUESTION.

12 Q. BY MS. ABRAMSON: ISN'T THIS A REAL EVENT,  
13 NOT JUST YOUR SCENARIO?  
14 MR. CONN: AGAIN, I WOULD OBJECT.  
15 THE COURT: IT IS UNCLEAR WHAT IS MEANT BY THAT.  
16 Q. BY MS. ABRAMSON: THERE REALLY WAS A  
17 SHOOTING OF THESE TWO PEOPLE, CORRECT?  
18 A. CORRECT.  
19 Q. AND THERE IS NO QUESTION THAT ERIK AND LYLE  
20 MENENDEZ DID IT, CORRECT?  
21 A. MY UNDERSTANDING IS THAT IS NOT  
22 CONTROVERTED.  
23 Q. WELL, THEY TESTIFIED TO THAT, AND YOU READ  
24 THEIR TESTIMONY, RIGHT?  
25 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND  
26 IRRELEVANT.  
27 THE COURT: OVERRULED.  
28 THE WITNESS: YES, I DID. BUT THE REASON I

-24697

1 STATED THE QUESTION THAT WAY IS A COUPLE OF OTHER THINGS  
2 THAT I THOUGHT WERE TESTIFIED ABOUT AND WEREN'T  
3 CONTROVERTED, YOU HAVE SINCE ASKED ME ABOUT. AND SO  
4 I --  
5 Q. I DIDN'T ASK YOU IF IT WAS CONTROVERTED.  
6 MR. CONN: OBJECTION. YOUR HONOR, MAY THE  
7 WITNESS FINISH HIS ANSWER?



8 THE COURT: ALL RIGHT. I THINK HE HAS ANSWERED

9 THE QUESTION. LET'S GET TO THE NEXT QUESTION.

10 Q. BY MS. ABRAMSON: THE ISSUE IS YOU READ

11 THEIR TESTIMONY. THEY DISCUSSED THE FACT THAT THEY WENT

12 INTO THIS ROOM AND THEY DID THIS SHOOTING, AND YOU READ

13 THAT, CORRECT?

14 MR. CONN: OBJECTION. CALLS FOR HEARSAY AND

15 IRRELEVANT.

16 THE COURT: OVERRULED. YOU MAY ANSWER THE

17 QUESTION.

18 THE WITNESS: I THINK THAT SPECIFIC DESCRIPTION

19 WAS IN THE TRIAL TESTIMONY I READ. UNFORTUNATELY, I

20 HAVE READ A LOT OF STUFF SINCE I HAVE READ THE TRIAL

21 TESTIMONY, BUT I THINK THAT'S IN THE PAGES THAT I HAD

22 INDICATED TO YOU I READ AS WELL.

23 Q. YOU DON'T KNOW IF WHAT YOU WERE GIVEN BY

24 WAY OF THE TESTIMONY OF ERIK AND LYLE MENENDEZ WAS THEIR

25 TESTIMONY ABOUT THE SHOOTING. YOU DON'T KNOW THAT?

26 A. I THINK IT WAS, THAT IS MY RECOLLECTION,

27 BUT --

28 Q. YOU THINK IT. YOU DON'T KNOW?

-24696

1 A. WELL, I DON'T THINK, I KNOW THAT IS MY

2 RECOLLECTION.

3 BUT AGAIN, BEFORE I -- I AM NOT COMFORTABLE

4 ABOUT TESTIFYING ABOUT THE SPECIFIC CONTENTS OF SOMEONE  
5 ELSE'S SWORN TESTIMONY UNDER OATH, AND SO BEFORE THE  
6 JURY ACCEPTS MY REPRESENTATIONS, I WOULD READ THE  
7 TESTIMONY SO I COULD BE CERTAIN.

8 MS. ABRAMSON: MOVE TO STRIKE THAT AS NOT  
9 RESPONSIVE.

10 THE COURT: OVERRULED.

11 Q. BY MS. ABRAMSON: YOU HAVE READ THE  
12 TESTIMONY. THAT'S WHAT YOU TOLD US, RIGHT?

13 A. YES, BUT IT'S BEEN A WHILE SINCE I READ IT.

14 Q. AND YOU DIDN'T REREAD IT TO PREPARE TO  
15 TESTIFY HERE?

16 A. THAT IS CORRECT.

17 Q. HOWEVER, READING THAT TESTIMONY WITHOUT  
18 GETTING INTO THE SPECIFICS, WHAT YOU READ WAS ERIK AND  
19 LYLE MENENDEZ SAY THAT THEY DID THIS SHOOTING?

20 A. I -- YES, I THINK THAT IS MY TESTIMONY.  
21 THAT IS MY RECOLLECTION.

22 Q. SO, THERE IS NO CONTROVERSY ABOUT THAT,  
23 RIGHT?

24 MR. CONN: OBJECTION. CALLS FOR A CONCLUSION ON  
25 THE PART OF THE WITNESS.

26 THE COURT: SUSTAINED.

27 Q. BY MS. ABRAMSON: IS THAT WHERE YOU FORMED  
28 THE OPINION THAT THERE WAS NO CONTROVERSY ABOUT THE FACT

1 THAT THEY ARE THE ONES WHO DID THIS?

2 A. THAT IS MY RECOLLECTION, YES.

3 Q. AND THEY ALSO TESTIFIED IN THE SAME PAGES  
4 OF TRANSCRIPT WITH WHICH WERE YOU FURNISHED THAT THERE  
5 WAS RELOADING, DIDN'T THEY?

6 A. THAT IS MY RECOLLECTION. I JUST -- AGAIN,  
7 I -- MY STANDING DISCOMFORT ABOUT SOMEONE RELYING ON MY  
8 RECOLLECTION OF TESTIMONY. THAT IS CORRECT.

9 Q. AND DID YOU REJECT THAT TESTIMONY THAT  
10 THERE WAS A RELOADING?

11 A. NO, NOR COULD I -- EXCUSE ME. NOR COULD I  
12 INDEPENDENTLY CONFIRM IT.

13 Q. BUT IT'S A FACTUAL RECORD, IS IT NOT, FOR  
14 YOUR RECONSTRUCTION? WHAT PEOPLE SAY THEY DID IS A  
15 SOURCE OF FACTUAL INFORMATION, IS IT NOT?

16 A. BUT THEY HAVE SAID WHAT THEY DID SEVERAL  
17 DIFFERENT WAYS WHICH ARE IN COMPLETE CONFLICT.

18 Q. IN THE TRANSCRIPT THAT YOU READ?

19 A. I CAN'T SAY THAT THE CONFLICT -- THERE WAS  
20 CONFLICT IN THE TRANSCRIPT I READ, BUT WHAT THEY HAVE  
21 SAID THEY DID AT VARIOUS POINTS IN TIME, IT IS MY  
22 UNDERSTANDING, IS NOT CONTROVERTED CONFLICTS.

23 Q. WAIT A MINUTE. YOU'RE TALKING ABOUT  
24 STATEMENTS THAT THEY MADE OUTSIDE OF TRIAL?

25 A. NO, I AM TALKING --

26 Q. TELL ME WHAT YOU ARE TALKING ABOUT.

27 WHAT STATEMENTS OF THE DEFENDANTS WHERE  
28 THEY TALKED ABOUT THIS SHOOTING ARE IN CONFLICT WITH

1 WHAT YOU READ IN THEIR TESTIMONY AT THE PREVIOUS TRIAL?

2 MR. CONN: OBJECTION. IRRELEVANT. IT CALLS FOR  
3 HEARSAY.

4 THE COURT: ALL RIGHT. LET'S TAKE A RECESS, AND  
5 WE WILL RESUME AT 20 MINUTES TO THE HOUR.

6 DON'T DISCUSS THE MATTER WITH ANYONE.

7 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME  
8 AT 20 MINUTES TO.

9 (THE JURY EXITS THE COURTROOM AND THE  
10 FOLLOWING PROCEEDINGS WERE HELD:)

11

12 THE COURT: ALL RIGHT. THE JURY HAS LEFT THE  
13 COURTROOM.

14 THERE HAS BEEN AN OBJECTION TO THE LAST  
15 QUESTION. WHAT IS IT THAT YOU INTEND TO ELICIT FROM THE  
16 WITNESS?

17 MS. ABRAMSON: WELL, I HAVE NO IDEA, YOUR HONOR.  
18 THIS WITNESS -- I ASKED HIM WHAT HE WAS SUBMITTED AND HE  
19 TOLD US, AND NOW APPARENTLY HE IS MAKING UP OPINIONS AND  
20 CONCLUSIONS BASED ON WHAT HE READS IN THE NEWSPAPER. SO  
21 I DON'T KNOW WHAT HE'S GOING TO SAY.

22 THE COURT: WELL, THERE IS NO INFORMATION OR  
23 TESTIMONY FROM THIS WITNESS THAT HE CONSIDERED THESE AND  
24 THEY FORMED A BASIS OF HIS RECONSTRUCTION, AND WHAT  
25 YOU --

26 MS. ABRAMSON: WELL, YOUR HONOR --  
27 THE COURT: POTENTIALLY, DEPENDING UPON WHAT THE  
28 WITNESS SAYS, YOU COULD BRING IN ALL SORTS OF THINGS

-24693

1 THAT HE HAS READ ABOUT; STATEMENTS MADE BY THE  
2 DEFENDANTS TO OTHERS THAT WERE INTRODUCED IN THE FIRST  
3 TRIAL THAT THIS JURY HAS NOT HEARD.

4 MS. ABRAMSON: HE HASN'T READ THOSE.

5 THE COURT: I DON'T KNOW THAT.

6 MS. ABRAMSON: WELL, HE TOLD US WHAT HE HAD.

7 THE COURT: YOU'RE CERTAINLY OPENING THE DOOR TO  
8 ANYTHING.

9 MS. ABRAMSON: I WOULD LIKE TO EXCUSE THE  
10 WITNESS, YOUR HONOR. HE ALREADY KNOWS HOW TO PLAY THE  
11 GAME.

12 THE COURT: COUNSEL, LET'S NOT MAKE THESE CATTY  
13 REMARKS. IT'S INAPPROPRIATE FOR COUNSEL TO DO THAT.

14 MS. ABRAMSON: I WOULD LIKE THE WITNESS EXCUSED.

15 THE COURT: YOU CAN WAIT OUTSIDE.

16 MS. ABRAMSON: AND THEN I WOULD LIKE TO BE HEARD  
17 ABOUT WHAT I THINK IS HAPPENING HERE.

18 (WITNESS MC CARTHY EXITS THE COURTROOM)

19

20 THE COURT: YES.

21 MS. ABRAMSON: WELL, YOUR HONOR, HE HAS TESTIFIED

22 BOTH HERE AND AT THE PRETRIAL HEARING -- FIRST LET'S GO  
23 BACK TO THE PRETRIAL HEARING.  
24 HE TESTIFIED THERE THAT HE BELIEVED 12 WAS  
25 UNCONTROVERTED, AND THAT WAS BASED ON THE FACT THAT THE  
26 DEFENDANTS HAD TESTIFIED THEY BOUGHT ONE BOX, AND HE  
27 WAS -- WHAT HE HAS DONE IS HE SELECTIVELY RELIES ON  
28 THEIR TESTIMONY WHEN IT SUPPORTS HIS THEORY, BUT THEN

-24692

1 DENIES THAT HE IS RELYING ON IT. AND OBVIOUSLY HE IS  
2 SAYING THAT BECAUSE THE PROSECUTION DOES NOT WANT TO LET  
3 US ASK HIM SPECIFIC QUESTIONS ABOUT SPECIFIC ASPECTS OF  
4 OUR CLIENTS' PRIOR TESTIMONY.

5 IT'S VERY CLEAR THIS IS A TACTICAL GAME,  
6 AND HE TRIED TO PLAY IT AT THE PRETRIAL HEARING AS WELL.

7 HOWEVER, AT THE PRETRIAL HEARING TOWARDS  
8 THE END HE WAS ADMITTING THAT HE RELIED ON THEIR  
9 TESTIMONY WITH RESPECT TO ESTABLISHING A RELOAD; THAT HE  
10 RELIED ON THEIR TESTIMONY WITH RESPECT TO ESTABLISHING  
11 THAT IT WAS THEY WHO DID THE SHOOTING, AND OUR POSITION  
12 IS HE CANNOT SELECTIVELY RELY ON THE PARTS THAT SUPPORT  
13 HIS THEORY AND DISCARD THE OTHERS, OR PREVENT US FROM  
14 INQUIRING ABOUT THE OTHERS, JUST BY SAYING "I DIDN'T  
15 RELY ON THAT."

16 THIS ISN'T THE STANDARD KIND OF EXPERT  
17 OPINION WHERE THEY'RE RELYING ON A TEXT OR ON SOME OTHER

18 EXPERTISE OR SOME OTHER AUTHORITY. AND I UNDERSTAND THE  
19 RULE IS WHEN AN EXPERT HAS NOT RELIED ON A TEXT, THEN  
20 YOU CAN'T BRING THAT HEARSAY TEXT IN.

21 BUT THIS IS SOMEONE WHO IS CLAIMING TO  
22 RECONSTRUCT A CRIME; WHO CLAIMS TO HAVE A FACTUAL BASIS  
23 FOR THAT RECONSTRUCTION; WHO HAS INDICATED WHAT MATERIAL  
24 WAS SUBMITTED TO HIM IN ORDER TO DO THIS RECONSTRUCTION.

25 I DON'T BELIEVE THAT HE CAN BE ALLOWED TO  
26 CLAIM THAT HE -- WELL, IF HE WANTS TO SAY HE COMPLETELY  
27 IGNORED THE TESTIMONY OF THE DEFENDANTS, FINE. LET HIM  
28 SAY THAT. BUT HE HASN'T SAID THAT.

-24691

1 IF HE HAS RELIED ON ANY PART OF IT OR  
2 CONSIDERED ANY PART OF IT, I THINK WE SHOULD BE ABLE TO  
3 GO INTO WHAT IT IS HE HEARD, WHAT IT IS HE RELIED ON,  
4 WHAT IT IS HE IS IGNORING, TO SHOW WHAT WE BELIEVE IS  
5 HIS VERY STRONG AND VERY OBVIOUS NON-INDEPENDENT BIAS.  
6 THIS IS NOT AN OBJECTIVE WITNESS.

7 AND SO I THINK WE HAVE A RIGHT TO GO INTO  
8 THAT.

9 NOW, WHAT HE IS SAYING ABOUT OTHER THINGS,  
10 HE IS OBVIOUSLY BEING CUTE AND TRYING TO RELY ON  
11 STATEMENTS; THE FACT THAT THE DEFENDANTS DID NOT  
12 AUTOMATICALLY ADMIT THAT THEY DID THIS SHOOTING, AND  
13 TRYING TO GO OUTSIDE THE QUESTIONS I AM ASKING AND BEING

14 NONRESPONSIVE.

15 I AM ONLY TALKING ABOUT WHAT WAS IN THE  
16 TRANSCRIPT. HE IS TRYING TO BRING THESE OTHER THINGS  
17 IN, AND HE SHOULD BE ADMONISHED NOT TO.

18 THE COURT: WELL, THE NATURE OF YOUR QUESTIONS  
19 WERE SUCH THAT IT CERTAINLY CREATED THE POTENTIAL OF HIM  
20 VOLUNTEERING ANYTHING IN THE WORLD THAT HE MIGHT HAVE  
21 HEARD ABOUT THE DEFENDANTS OR THEIR STATEMENTS TO  
22 ANYBODY.

23 MS. ABRAMSON: SO, LET'S --

24 THE COURT: LET ME FINISH.

25 WHAT YOU ARE BASICALLY PROPOSING IS TO GO  
26 THROUGH THE DEFENDANTS' TESTIMONY FROM THE FIRST TRIAL  
27 AND ASK HIM "DID HE CONSIDER THIS, DID HE CONSIDER  
28 THAT," AND BRINGING ALL SORTS OF THINGS BEFORE THE

-24690

1 JURY --

2 MS. ABRAMSON: NO.

3 THE COURT: -- THAT HE DIDN'T CONSIDER, WHEN IT  
4 SEEMS TO ME THAT IF YOU ASK HIM WHAT HE CONSIDERED AND  
5 HIS TESTIMONY IS THAT HE CONSIDERED THE FACT THAT THERE  
6 WAS A RELOAD OF THE SHOTGUNS AND NOTHING ELSE, THEN  
7 THAT'S ALL THAT WAS CONSIDERED.

8 MS. ABRAMSON: WELL, I DON'T KNOW THAT THERE'S  
9 MANY OTHER DETAILS I HAVEN'T ASKED HIM ABOUT, BUT I



10 DON'T --

11 THE COURT: WHAT YOU'RE PROPOSING TO GO THROUGH  
12 IS EVERYTHING.

13 MS. ABRAMSON: NO, I AM NOT, YOUR HONOR. I DON'T  
14 INTEND TO GO THROUGH EVERYTHING. I CAN ASSURE THE COURT  
15 OF THAT.

16 THERE ARE ONLY A FEW CRUCIAL FACTS THAT I  
17 INTEND TO ASK HIM THAT HE CONSIDERED, AND IF HE SAYS NO,  
18 I WANT IT CLEAR ON THE RECORD THAT HE CHOSE TO IGNORE  
19 CERTAIN PARTS OF THE DEFENDANTS' TESTIMONY WHILE  
20 ACCEPTING THE PARTS THAT HELPED HIM.

21 AND THAT'S THE POINT I AM TRYING TO MAKE,  
22 AND I DON'T INTEND TO TAKE HIM THROUGH EVERYTHING. A  
23 FEW THINGS, JUST AS I DID AT THE PRETRIAL HEARING;  
24 THINGS CONCERNING THE LIGHTING CONDITIONS, THINGS  
25 CONCERNING FIRING ALL THE SHOTS IN THE GUN, FOR EXAMPLE,  
26 WHICH HE HIMSELF IS RELYING ON, BECAUSE HE HAS TALKED  
27 ABOUT THE GUN HAVING A SIX SHOT CAPACITY; AND THEREFORE,  
28 ALL SIX SHOTS HAD TO BE FIRED.

-24689

1 THE COURT: WELL, IT SEEMS TO ME THAT THAT'S THE  
2 ISSUE, WHETHER OR NOT HE RELIED UPON THE TESTIMONY FROM  
3 THE FIRST TRIAL AS TO THE NUMBER OF SHOTS FIRED.

4 BUT EVERYTHING ELSE, AS FAR AS LIGHTING  
5 CONDITIONS AND THINGS LIKE THAT, IS IRRELEVANT UNLESS

6 YOU'RE GOING TO ASK HIM HIS OPINIONS ABOUT WHETHER THE  
7 PEOPLE DOING THE SHOOTING WERE CAPABLE OF AIMING THE  
8 SHOTGUN AT CERTAIN INDIVIDUALS AND THINGS OF THAT  
9 NATURE.

10 MS. ABRAMSON: SO, I MAY --

11 THE COURT: WELL, IF YOU DO THAT, YOU'RE GOING  
12 INTO OTHER AREAS THAT HAVEN'T BEEN BROUGHT OUT IN DIRECT  
13 EXAMINATION.

14 MS. ABRAMSON: I KNOW, YOUR HONOR. I DO THINK IT  
15 GOES TO, JUST AS THE COURT INDICATED AT THE PRETRIAL  
16 HEARING, I THINK THAT THE WILDNESS OF THE OPINIONS THAT  
17 HE EXPRESSED IN HIS REPORT AND IN HIS INTERVIEW GOES TO  
18 HIS CREDIBILITY AS A SO-CALLED EXPERT WITNESS.

19 THE COURT: YEAH. I AM NOT DISPUTING THAT OR  
20 ADDRESSING THAT ISSUE. WHAT I AM TALKING ABOUT, THOUGH,  
21 IS THAT FROM WHAT I HAVE HEARD, THE ONLY SIGNIFICANT  
22 FACT THAT HE CONSIDERED WAS THAT THERE WAS A RELOAD OF  
23 THE SHOTGUNS, AND FROM HIS TESTIMONY SO FAR IT -- THAT  
24 DOESN'T EVEN SEEM TO BE SIGNIFICANT. IT ONLY EXPLAINS  
25 WHY PERHAPS THERE WERE DIFFERENT ROUNDS OF AMMUNITION  
26 FIRED. BUT IT DOESN'T NEED TO BE EXPLAINED THAT WAY.

27 SO, AT THIS POINT I AM GOING TO SUSTAIN THE  
28 OBJECTION, BECAUSE WE ARE GOING INTO HEARSAY MATERIAL.

-24688

1 MS. ABRAMSON: THEN I WOULD MOVE TO STRIKE HIS

2 LAST ANSWER WHERE HE VOLUNTEERED -- OR THE LAST TWO  
3 ANSWERS WHERE HE WAS VOLUNTEERING OTHER STATEMENTS, WHEN  
4 THERE ARE NO OTHER STATEMENTS OF THE DEFENDANTS EVER  
5 DESCRIBING THE SHOOTING EXCEPT WHAT THEY TESTIFIED TO.

6 THE COURT: OH, THERE ARE OTHER STATEMENTS. THE  
7 STATEMENTS MADE TO CIGNARELLI BY YOUR CLIENT.

8 MS. ABRAMSON: THAT DOESN'T DESCRIBE THE  
9 SHOOTING.

10 THE COURT: IT DESCRIBES THE NATURE OF THE  
11 ENTRANCE INTO THE ROOM AND THINGS OF THAT NATURE, WHICH  
12 DOOR THEY CAME THROUGH AND WHAT HAPPENED. THERE ARE  
13 OTHER STATEMENTS.

14 MS. ABRAMSON: HE HASN'T SEEN THE STATEMENTS.

15 THE COURT: WE DON'T KNOW.

16 MS. ABRAMSON: I WOULD LIKE TO QUESTION HIM  
17 OUTSIDE THE PRESENCE.

18 THE COURT: THAT IS A WHOLE OTHER AREA, ONE THAT  
19 NEEDS NOT BE GONE INTO, BECAUSE IT GOES INTO EXTRANEIOUS  
20 MATERIAL.

21 MS. ABRAMSON: THEN WE SHOULD STRIKE THE ANSWER  
22 HE GAVE, OTHERWISE -- AND THE JURY SHOULD BE ADMONISHED  
23 TO IGNORE IT, OTHERWISE IT SAYS HE KNOWS OF SOME OTHER  
24 STATEMENTS THE DEFENDANTS MADE HAVING TO DO WITH THE  
25 SPECIFICS OF THE SHOOTING, ABOUT OTHER ROUNDS FIRED, AND  
26 WHETHER OR NOT THERE WAS A RELOAD, WHICH IS WHAT I ASKED  
27 HIM.

28 MR. GESSLER: THAT'S EXACTLY BEFORE THE JURY,

1 YOUR HONOR, AND HE LISTED BEFORE THE JURY YESTERDAY WHAT  
2 HE HAD REVIEWED. IT WASN'T CIGNARELLI'S STATEMENT OR  
3 THE TESTIMONY OF LYLE AND ERIK BEFORE THE JURY.

4 THE COURT: OKAY. YOU FIND WHERE IT WAS IN  
5 TODAY'S TRANSCRIPT OR YESTERDAY'S TRANSCRIPT, RATHER,  
6 WHAT THE ACTUAL QUESTIONS WERE. IT'S DIFFICULT TO SAY  
7 THE LAST TWO QUESTIONS AND ANSWERS, BECAUSE THAT MIGHT  
8 NOT BE EXACTLY WHAT IT IS.

9 MS. ABRAMSON: I WILL ASK THE REPORTER.

10 THE COURT: AND I'LL BE GLAD TO DEAL WITH IT.

11 MS. ABRAMSON: I WILL ASK THE REPORTER DURING THE  
12 BREAK.

13 MR. GESSLER: YOU SAID YESTERDAY'S TRANSCRIPT,  
14 YOUR HONOR?

15 THE COURT: YOU SAID YESTERDAY.

16 MR. GESSLER: FOR WHAT HE RELIED ON, YES, NOT FOR  
17 THE ANSWERS TO BE STRICKEN.

18 THE COURT: WELL THEN, TODAY'S TRANSCRIPT, AS FAR  
19 AS THE ACTUAL QUESTIONS AND ANSWERS.

20 MS. ABRAMSON: RIGHT. RIGHT NOW.

21 THE COURT: YOU CAN DO THAT.

22 OKAY. WE WILL BE IN RECESS UNTIL 20  
23 MINUTES TO.

24 (A RECESS WAS TAKEN FROM  
25 10:30 A.M. TO 10:50 A.M)

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

4

5 THE COURT: COURT IS IN SESSION. EVERYONE IS  
6 PRESENT.

7 MS. ABRAMSON: YOUR HONOR, THERE'S A QUESTION  
8 ABOUT WHETHER THIS PARTICULAR TARGET PATTERN, WHICH  
9 WAS MADE WITH A WINCHESTER BY THE WITNESS, WAS  
10 DESIGNATED A NUMBER YESTERDAY. IT FELL DOWN AND  
11 DIDN'T WIND UP WITH A LITTLE YELLOW LABEL.

12 IS THERE A MISSING NUMBER?

13 THE COURT: I NOTICED THAT IT FELL DOWN. I  
14 COULDN'T SEE WHERE IT FELL. IT FELL OVER BY THAT  
15 DOORWAY.

16 THE WITNESS: IT FELL IN THE SLOT.

17 THE COURT: SOMEHOW IT MATERIALIZED AND WAS  
18 UP HERE THIS MORNING. I DON'T KNOW HOW IT GOT HERE.

19 MS. ABRAMSON: THE BAILIFF DEMATERIALIZED IT,  
20 YOUR HONOR.

21 THE COURT: YOU STARTED MARKING THOSE  
22 WINCHESTER PATTERNS AT THE END. I DON'T THINK THIS  
23 ONE GOT MARKED. WHY DON'T WE JUST ASSIGN THE NEXT  
24 NUMBER TO IT. 293.

25 MS. ABRAMSON: I'M GOING TO MARK IT AND TURN  
26 IT OVER TO THE CLERK.

27 THE REPORTER DID LOCATE THE DISPUTED

40851

1 THE COURT: OKAY.

2 (THE FOLLOWING RECORD WAS READ:)

3

4 "QUESTION: IN THE TRANSCRIPT

5 THAT YOU READ?

6 "ANSWER: I CAN'T SAY THAT THE

7 CONFLICT --"

8 MS. ABRAMSON: GO TO THE PREVIOUS ONE. I'M

9 SORRY.

10 "QUESTION: BUT IT'S A FACTUAL

11 RECORD, IS IT NOT, FOR YOUR

12 RECONSTRUCTION, WHAT PEOPLE SAY THEY

13 DID IS A SOURCE OF FACTUAL

14 INFORMATION, IS IT NOT?

15 "ANSWER: YES. BUT THEY HAVE

16 SAID WHAT THEY DID SEVERAL DIFFERENT

17 WAYS WHICH ARE IN COMPLETE CONFLICT.

18 "QUESTION: IN THE TRANSCRIPT

19 THAT YOU READ?

20 "ANSWER: I CAN'T SAY THAT THE

21 CONFLICT -- THERE WAS CONFLICT IN THE

22 TRANSCRIPT I READ. BUT WHAT THEY HAVE

23 SAID THEY DID AT VARIOUS POINTS IN  
24 TIME, IT IS MY UNDERSTANDING, IS NOT  
25 CONTROVERTED -- IS NOT CONTROVERTED  
26 CONFLICT."  
27 MS. ABRAMSON: NOW, YOUR HONOR, BOTH OF HIS  
28 VOLUNTEERING INFORMATION OUTSIDE THE TRANSCRIPT WERE

40852

1 NONRESPONSIVE TO THE QUESTION, AND I ASK THAT THE  
2 NONRESPONSIVE ANSWERS BE STRICKEN AND THE JURY BE  
3 ADMONISHED TO DISREGARD THEM.  
4 THE COURT: ALL RIGHT. I WILL BE GLAD TO DO  
5 THAT. THE ONLY QUESTION IS, DOING IT SO THAT THE  
6 JURY WOULD BE AWARE OF WHAT IS BEING STRICKEN AND  
7 THE ANSWERS WOULD HAVE TO BE READ BACK FOR THE JURY,  
8 OTHERWISE THEY WON'T KNOW.

9 MS. ABRAMSON: THERE'S NO OTHER WAY TO DO  
10 IT. THAT'S WHAT YOU HAVE TO DO.

11 THE COURT: IS THAT AGREEABLE?

12 MR. GESSLER: I CAN'T THINK OF AN  
13 ALTERNATIVE, SO THE ANSWER IS YES.

14 THE COURT: THE ALTERNATIVE IS I CAN STRIKE  
15 THEM, AND IF THERE'S REREAD OF TESTIMONY IT WON'T BE  
16 IN THE RECORD.

17 MR. GESSLER: I'D PREFER IT BE REREAD, IN

18 SPITE OF THE DANGER THAT IT CAUSES, AND THEN  
19 STRICKEN SO THE JURY SPECIFICALLY KNOWS WHAT TO  
20 DISREGARD.

21 THE COURT: SURE. I'LL BE GLAD TO DO THAT.

22 (THE JURY ENTERED THE COURTROOM  
23 AND THE FOLLOWING PROCEEDINGS  
24 WERE HELD:)

25

26 THE COURT: ALL RIGHT. THE JURY IS BACK AND  
27 WE'LL DEAL WITH AN ISSUE HERE THAT AROSE AT THE  
28 BREAK.

40853

1 A COUPLE OF QUESTIONS WERE ASKED OF THE  
2 WITNESS AND HE GAVE ANSWERS. THE ANSWERS WENT  
3 BEYOND THE QUESTION; AND, THEREFORE, I'M GOING TO  
4 STRIKE EVERYTHING THAT WAS NONRESPONSIVE TO THE  
5 QUESTION. BUT WE HAVE TO HAVE THE QUESTIONS READ BY  
6 THE REPORTER, AND THEN I'LL INDICATE WHAT PORTION OF  
7 THE ANSWER REMAINS, AND THE REST OF IT WILL BE  
8 STRICKEN. YOU ARE TO DISREGARD THAT PART THAT'S  
9 STRICKEN.

10 SO THE REPORTER WILL READ IT BACK FOR  
11 YOU.

12 (THE FOLLOWING RECORD WAS READ:)



13

14 "QUESTION BY MS. ABRAMSON: BUT  
15 IT'S A FACTUAL RECORD, IS IT NOT, FOR  
16 YOUR RECONSTRUCTION, WHAT PEOPLE SAY  
17 THEY DID IS A SOURCE OF FACTUAL  
18 INFORMATION, IS IT NOT?

19 "ANSWER: YES. BUT THEY HAVE  
20 SAID WHAT THEY DID SEVERAL DIFFERENT  
21 WAYS WHICH ARE IN COMPLETE CONFLICT."

22 THE COURT: HOLD ON RIGHT THERE. THE ANSWER  
23 TO THAT QUESTION WAS YES. EVERYTHING AFTER THAT IS  
24 NONRESPONSIVE TO THE QUESTION AND IT'S STRICKEN, AND  
25 YOU ARE TO DISREGARD IT.

26 (THE FOLLOWING RECORD WAS READ:)

27

28 "QUESTION BY MS. ABRAMSON: IN

40854

1 THE TRANSCRIPT THAT YOU READ?

2 "ANSWER: I CAN'T SAY THAT THE  
3 CONFLICT -- THERE WAS CONFLICT IN THE  
4 TRANSCRIPT I READ. BUT WHAT THEY HAVE  
5 SAID THEY DID AT VARIOUS POINTS IN  
6 TIME, IT IS MY UNDERSTANDING, IS NOT  
7 CONVERTED CONFLICT."

8 THE COURT: THE RESPONSE TO THAT QUESTION  
9 WAS: I CAN'T SAY THERE WAS ANY CONFLICT IN WHAT I  
10 READ. EVERYTHING AFTER THAT IS NONRESPONSIVE TO THE  
11 QUESTION AND IS STRICKEN, AND YOU ARE TO DISREGARD  
12 THE UNRESPONSIVE PORTION.

13 OKAY. YOU MAY PROCEED.

14 MS. ABRAMSON: THANK YOU, YOUR HONOR.

15 Q DR. MC CARTHY, I'VE PUT UP ON THE EASEL  
16 SOME OF THESE ILLUSTRATIONS. OKAY.

17 WHAT'S UP ON THE EASEL FIRST IS WHAT  
18 YOU'VE LABELED SHOT 1B. THAT IS EVIDENCE EXHIBIT  
19 251.

20 CAN YOU SEE IT, DR. MC CARTHY, OR DO I  
21 NEED TO TIP IT?

22 A NO. IT'S FINE. I CAN SEE IT.

23 Q AND IN THAT PARTICULAR ILLUSTRATION THE  
24 COFFEE TABLE IS REPRESENTED AS BEING AT SOMETHING OF  
25 AN ANGLE, VIS-A-VIS THE COUCH, CORRECT?

26 A NOT MUCH OF ONE.

27 Q VERY, VERY SLIGHT, CORRECT?

28 A CORRECT.

40855

1 THE COURT: WHAT EXHIBIT IS WHAT?

2 MS. ABRAMSON: THIS IS EXHIBIT 251, YOUR

3 HONOR.

4 Q NOW WE'RE LOOKING, ARE WE NOT, AT YOUR  
5 SHOT 2B, WHICH IS EXHIBIT 253, CORRECT?

6 A YES.

7 Q AND THAT SHOWS THE COFFEE TABLE ALMOST  
8 PARALLEL.

9 A YES.

10 Q NOW, YOU DON'T BELIEVE ANYTHING MOVED  
11 THE COFFEE TABLE BETWEEN SHOT 1B AND SHOT 2. LET ME  
12 STRIKE THAT.

13 YOU DON'T HAVE ANY EVIDENCE TO SUPPORT  
14 THE NOTION THAT ANYTHING CHANGED THE COFFEE TABLE  
15 BETWEEN 1B AND 2B, DO YOU?

16 A BETWEEN THOSE TWO PARTICULAR SHOTS, NO.

17 Q SO, THIS IS AN ARTIFACT, THE MOVEMENT?

18 A I'M SORRY?

19 Q IS THAT AN ARTIFACT, THE FACT THAT ANGLE  
20 CHANGED SLIGHTLY BETWEEN 1B AND 2B, A COMPUTER  
21 MISTAKE?

22 A I DON'T THINK IT DID. PERHAPS IT'S A  
23 DIFFERENT PERSPECTIVE. LET ME LOOK AGAIN JUST TO  
24 MAKE SURE.

25 MS. ABRAMSON: CERTAINLY. WOULD YOU PUT 1B  
26 BACK UP, MR. LEVIN. PUT 251 BACK UP. OKAY.

27 Q ARE YOU SAYING THAT THE ANGLE SHOWN IN  
28 1B IS THE SAME AS THE ANGLE IN 2B? WHY DON'T YOU

1 STEP DOWN.

2 A I'M SORRY. IT'S PRETTY CLOSE. I DON'T  
3 KNOW THERE'S A DIFFERENT ANGLE. YOU'RE JUST LOOKING  
4 AT A PERSPECTIVE SHIFT. YOU SEE HOW --

5 Q WHY DON'T YOU DO THIS, DR. MC CARTHY.

6 A YOU'RE LOOKING AT A DIFFERENT ANGLE  
7 HERE. YOU SEE HOW THIS -- THESE PARALLEL LINES  
8 CONVERGE. THAT IS A PERSPECTIVE THAT THE COMPUTER  
9 COMPUTES.

10 THEN HERE YOU COULD SEE THESE TWO LINES  
11 HERE. AND THERE IS AN ANGLE, BUT THE CONVERGENCE OF  
12 THIS LINE IS NOT THE SAME PERSPECTIVE AS ON THOSE  
13 LINES. I'M NOT SAYING THERE ISN'T AN ARTIFACT HERE,  
14 BUT IT'S SMALL.

15 Q IF YOU LOOK AT THE SOUTHERN EDGE OF THE  
16 COFFEE TABLE AND YOU LOOK AT THE WESTERN EDGE OF THE  
17 COFFEE TABLE, IT SEEMS CLOSER TO THE BORDERLINE OF  
18 THE PATTERN --

19 A YEAH.

20 Q -- THAN DOES THE SOUTH EASTERN EDGE.

21 AND, IN FACT, THE TIP HERE IN 251, SHOT 1B,  
22 WOULD PUT THE EASTERN EDGE OF THE COFFEE TABLE, NO  
23 MATTER WHAT THE PERSPECTIVE, CLOSER TO THE BORDER  
24 THAN THE WESTERN EDGE?

25 A YES. I THINK YOU'RE RIGHT, BECAUSE IT

26 LOOKS LIKE THIS PATTERN -- THIS CORNER PICKED UP --  
27 THIS CORNER SHOULD HAVE PICKED UP THIS PATTERN LINE  
28 (POINTING) AND MAY HAVE PICKED UP THIS PATTERN LINE.

40857

1 Q THAT MISTAKE IS AN ARTIFACT?

2 A IT APPEARS SO. GOOD CATCH.

3 Q YOU CAN TAKE THIS ONE DOWN.

4 NOW, LET'S LOOK AT SHOT 3B. THAT SHOWS  
5 A MUCH GREATER PITCH TO THE ANGLE OF THE COFFEE  
6 TABLE THAN THE PRECEDING TWO DID, DOES IT NOT?

7 A YES.

8 Q AND I WOULD CALL YOUR ATTENTION TO THIS  
9 PARTICULAR ASPECT, TO WATCH THIS LITTLE ROUND-DISH  
10 ASPECT OF THE CARPET PATTERN FOR THE NEXT FEW OF  
11 THESE, CORRECT?

12 A OKAY.

13 Q YOU CAN SEE WHERE, FROM AN OVERHEAD  
14 PERSPECTIVE, THE SOUTHERN EDGE OF THE COFFEE TABLE  
15 INTERSECTS WITH THAT PART OF THE CARPET PATTERN.

16 ALL RIGHT?

17 A OKAY.

18 Q WHAT WE JUST SAW WAS 3B, WHICH IS 255,  
19 YOUR HONOR.

20 NOW, MOVING 255, I'D LIKE YOU TO --

21 MR. LEVIN, IF YOU CAN HOLD IT UP. HOLD UP 255. I  
22 KNOW, THIS IS VERY DIFFICULT. THANK YOU.  
23 NOW, WHAT'S BELOW 255 -- LET ME READ THE  
24 NUMBER BELOW IT. WHAT'S ON THE EASEL IS 277, YOUR  
25 SHOT 4B. WHAT MR. LEVIN IS HOLDING IS 255, WHICH IS  
26 3B.  
27 AND THIS ONE SUGGESTS, DOES IT NOT, AN  
28 EVEN GREATER ANGLE TO THE COFFEE TABLE?

40858

1 A GREATER ANGLE AND GREATER OUTWARD SHIFT,  
2 YES.

3 Q OKAY. AND DID YOU ILLUSTRATE ANY EVENT  
4 THAT WOULD HAVE MOVED THE COFFEE TABLE, OR IS THAT  
5 ANOTHER ARTIFACT?

6 A NO. THIS SEQUENCE -- WE HAVE A COUPLE OF  
7 FLOOR IMPRESSIONS AND -- I SHOULD HAVE REMEMBERED  
8 THIS WHEN WE WERE TALKING THE FIRST TIME. WE HAD A  
9 COUPLE OF FLOOR IMPRESSIONS FROM THE CARPET WHERE WE  
10 CAN SEE WHEN WE BLOW UP THE PHOTOS IN TERMS OF WHAT  
11 IT LOOKED LIKE WHERE THE COFFEE TABLE WAS AT THE  
12 BEGINNING. IT COULD HAVE BEEN THERE THE NIGHT  
13 BEFORE OR TWO NIGHTS BEFORE, BUT WE JUST HAD THE  
14 FINAL POSITION.

15 SO I DIDN'T TESTIFY ABOUT THE RELATIVE

16 MOVEMENT OF THE COFFEE TABLE. ALL WE KNOW IS WE  
17 HAVE THESE IMPRESSIONS IN THE CARPET AND WE HAVE  
18 THESE FINAL POSITIONS. SO WE JUST INCREMENTED IT  
19 OVER THERE.

20 Q SO YOU ACTUALLY WENT OFF OF SOMETHING  
21 THAT WAS AN IMPRESSION IN THE COFFEE TABLE (SIC) AND  
22 YOU MOVED IT AROUND AS IF IT HAD BEEN MOVED DURING  
23 THE SHOOTING, EVEN THOUGH YOU DON'T KNOW THAT  
24 HAPPENED?

25 A WE CANNOT TESTIFY THAT HAPPENED. WE  
26 JUST KNOW WHERE IT ENDS UP.

27 Q JUST LIKE AN EMPTY GLASS THAT ONCE HAD  
28 FOOD; YOU DON'T KNOW WHEN THE FOOD WAS EATEN, DO

40859

1 YOU?

2 A CORRECT.

3 Q LET'S GO ON THEN. NOTICING WHAT NOW  
4 LOOKS LIKE A MUSHROOM OF THAT PATTERN AT THE SOUTH  
5 END OF THE COFFEE TABLE.

6 A YES.

7 Q LET'S MOVE TO THE NEXT ONE, WHICH IS 5B.

8 MR. LEVIN, WOULD YOU HOLD 4B UP AGAIN.

9 IT SEEMS TO HAVE MOVED AGAIN.

10 5B BY THE WAY, YOUR HONOR, IS 259. SO

11 WE'RE NOW COMPARING 277 TO 259.

12 THE TABLE SEEMS TO HAVE MOVED AGAIN.

13 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
14 EVIDENCE.

15 THE COURT: OVERRULED.

16 THE WITNESS: NO. I DON'T RECOLLECT THERE  
17 WAS AN INTENTION TO MOVE BETWEEN THOSE TWO FRAMES.  
18 NO.

19 Q BY MS. ABRAMSON: THIS COULD JUST BE A  
20 PERSPECTIVE PROBLEM?

21 A IF YOU LOOK AT THIS INCREMENT HERE, THEN  
22 YOU LOOK AT THIS INCREMENT HERE, IT'S PRETTY CLOSE.

23 Q IT MAYBE MOVED A LITTLE?

24 A PERHAPS. BUT VERY, VERY SLIGHT.

25 Q IS THAT ONE OF YOUR INTENTIONAL  
26 MOVEMENTS OR AN ARTIFACT?

27 A NO. THERE SHOULDN'T BE -- ANY MOVEMENT  
28 AFTER SHE'S DOWN IS AN ARTIFACT.

40860

1 Q TAKE DOWN 4B THEN.

2 NOW, I WANT YOU TO SHIFT -- WELL, ONE  
3 SECOND. WOULD YOU PICK UP 5B FOR A SECOND. OKAY.

4 FOR THIS ONE, TO COMPARE 259, WHICH IS  
5 5B WITH WHAT'S COMING UP, DR. MC CARTHY, I WOULD



6 CALL YOUR ATTENTION NOW, NOT TO THE MOVING COFFEE

7 TABLE, BUT TO THE MOVING FORM OF MRS. MENENDEZ.

8 IN 259, WHAT YOU'VE CALLED 5B, YOU HAVE

9 HER BODY LYING ON ITS BACK, CORRECT?

10 A YES.

11 Q YOU HAVE THE RIGHT LEG ROTATED FROM THE

12 THIGH OUTWARDS SO THAT THE KNEE IS NOW, I TAKE IT,

13 UNDER THE COFFEE TABLE SOMEWHERE, OR ON THE SHELF OF

14 THE COFFEE TABLE?

15 A ON THE SHELF OF THE COFFEE TABLE.

16 Q YOU, OF COURSE, DON'T KNOW IF HER KNEE

17 WAS IN THAT POSITION?

18 A AS I TESTIFIED, THAT'S CORRECT.

19 Q BUT HER LEFT ELBOW SEEMS VERY CLOSE TO

20 THE COUCH IN SHOT 5B, DOES IT NOT?

21 A YES. BUT, AGAIN, AS I TESTIFIED, I

22 CAN'T POSITION THAT LIMB FOR YOU.

23 Q WELL, YOU CAN'T REALLY POSITION HER BODY

24 FOR ME EITHER AT THAT POINT, SPECIFICALLY ON THE

25 FLOOR, CAN YOU? THIS IS A POSITION YOU TOOK.

26 A WE KNOW -- LET ME PUT IT THIS WAY. I

27 KNOW, FROM THE FACT THAT ALL THE MAJOR BLOOD STAINS

28 FROM HER ARE THERE, THAT SHE'S IN THIS LOCATION.

1 BUT THE EXACT POSITION OF HER LIMBS, I CAN'T TELL

2 YOU.

3 Q YOU KNOW SHE'S IN THAT LOCATION AT THE  
4 TIME THAT SHE RECEIVED SOME SHOT BECAUSE THERE'S  
5 BLOOD THERE, CORRECT?

6 A WELL, I'M GOING TO SAY ALL THE MAJOR  
7 WOUNDS, BECAUSE THERE ISN'T ANY MAJOR BLOOD STAINS  
8 FROM HER ANYWHERE ELSE IN THE ROOM EXCEPT THAT  
9 LOCATION.

10 Q THAT'S WHAT YOUR HYPOTHESIS IS, CORRECT?

11 A I THINK THE PHOTOGRAPHS SHOW --

12 Q WHATEVER YOU THINK, THAT'S YOUR  
13 HYPOTHESIS, CORRECT?

14 A YES.

15 Q NOW, IF YOU WOULD MOVE THAT, MR. LEVIN,  
16 259, SO WE NOW GET TO -- HOLD IT UP, IF YOU WOULD.

17 WE NOW GET TO 261. AND NOW SHE'S  
18 MOVED. WHY IS THAT?

19 A AGAIN --

20 Q YOU SEE SHE'S MOVED TO THE NORTH FOR  
21 SOME REASON?

22 A I COULDN'T POSITION HER. AS I INDICATED  
23 BEFORE, I CAN'T TELL YOU SHE'S PRECISELY IN EITHER  
24 POSITION. SO WHATEVER -- IT WAS MORE CONVENIENT FOR  
25 THE ARTIST TO DRAW. AS I INDICATED, I CAN'T PUSH --  
26 PUT HER PRECISELY AT SOME POSITION.

27 Q THIS IS ARTISTIC LICENSE, THE DIFFERENCE  
28 BETWEEN 259 AND 261, IS THAT WHAT YOU'RE SAYING?

1 A WELL, I WOULDN'T CALL IT ARTISTIC  
2 LICENSE. IT'S A DETAIL THAT I CANNOT PIN DOWN  
3 PRECISELY FROM THE EVIDENCE.

4 Q WELL, ISN'T IT TRUE THAT THE REASON THIS  
5 WAS DONE WAS BECAUSE IF YOU HAD HAD HER IN SHOT 5B  
6 IN THE POSITION THAT SHE'S IN IN 6-B, YOU WOULDN'T  
7 BE ABLE TO SHOW THAT INJURY THAT YOU'RE SHOWING IN  
8 5B? IT WOULD HAVE BEEN HIDDEN BY THE COFFEE TABLE.  
9 SO FOR ILLUSTRATIVE PURPOSES YOU JUST MOVED THE BODY  
10 AROUND, RIGHT?

11 A I'M SORRY. I MUST BE SLOW. I DIDN'T  
12 UNDERSTAND YOUR QUESTION.

13 Q IF THE POSITION OF THE DUMMY -- WHICH IS  
14 ALL WE'RE TALKING ABOUT IS AN ANTHROPOMORPHIC DUMMY  
15 ON A SCREEN -- IF THE POSITION OF THE DUMMY ON THE  
16 SCREEN THAT YOU HAVE REPRESENTING MRS. MENENDEZ HAD  
17 BEEN FARTHER NORTH FOR 5B, YOU WOULDN'T HAVE BEEN  
18 ABLE TO SEE THIS. WHAT YOU'RE TRYING TO SHOW IS AN  
19 INJURY IN 5B.

20 A FROM THIS PERSPECTIVE, BUT I COULD HAVE  
21 MOVED THE COMPUTER.

22 Q YOU'RE SAYING THERE WAS NO REASON AT  
23 ALL, THEREFORE, FOR THESE BODIES BEING IN DIFFERENT  
24 POSITIONS BETWEEN 5 AND 6B?

25       A   AND NO REASON TO CAUSE IT AND NO REASON  
26 TO CONTROL IT.

27       Q   NO REASON TO CONTROL IT. SO EVEN IF  
28 THREE MONTHS FROM NOW THE JURY IS BACK THERE

40863

1 DELIBERATING WITH THESE ILLUSTRATIONS, WHICH ARE NOT  
2 REALLY ACCURATE, THAT'S OKAY?

3       MR. CONN: OBJECTION. ARGUMENTATIVE.

4       THE COURT: SUSTAINED.

5       Q   BY MS. ABRAMSON: WOULD YOU TAKE THAT  
6 BACK.

7       DID YOU DO THIS IN ORDER TO CONFUSE THE  
8 JURY, DR. MC CARTHY?

9       A   I HOPE THESE DIAGRAMS HELP THEM IN  
10 UNDERSTANDING RATHER THAN CONFUSING.

11       Q   IS THAT NO?

12       A   I ANSWERED THE QUESTION.

13       Q   HAVE YOU EVER, IN TESTIFYING AS AN  
14 EXPERT WITNESS, SELECTED EITHER AN EXAMPLE, AN  
15 EXEMPLAR, A CHART, OR A GRAPH WITH THE PURPOSE OF  
16 CONFUSING A JURY?

17       A   INTENTIONALLY?

18       Q   INTENTIONALLY.

19       A   NO.

20 Q WE'LL GET BACK TO THAT.

21 MR. CONN: OBJECTION. ARGUMENTATIVE, YOUR  
22 HONOR. MAKE A MOTION TO STRIKE THAT STATEMENT OF  
23 COUNSEL.

24 THE COURT: THE LAST RESPONSE OF COUNSEL IS  
25 NOT A QUESTION. IT IS A REMARK THAT IS STRICKEN.

26 THE JURY IS ADMONISHED TO DISREGARD IT.

27 Q BY MS. ABRAMSON: DID YOU TESTIFY IN A  
28 NUMBER OF CASES INVOLVING THE AUTOMOTIVE FIELD THAT

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1 ARE CALLED "KIDS CASES"?

2 A I DON'T RECOLLECT A CLASS OF CASES IN  
3 THE AUTOMOTIVE FIELD BY THAT GENERAL --

4 Q ISN'T THAT A TERM THAT YOU AND OTHERS  
5 USE TO DESCRIBE CASES IN WHICH YOUNG DRIVERS HAVE  
6 BEEN INJURED OR KILLED IN ALL-TERRAIN VEHICLES?

7 MR. CONN: OBJECTION. RELEVANCE. MOTION  
8 UNDER 352 TO EXCLUDE.

9 THE COURT: OVERRULED.

10 THE WITNESS: WE TALK ABOUT CASES INVOLVING  
11 CONSUMER PRODUCTS AND CHILDREN, GENERALLY, AS KIDS  
12 CASES. IT WAS YOUR "AUTOMOTIVE" THAT I WAS TRYING  
13 TO UNDERSTAND.

14 Q BY MS. ABRAMSON: DID YOU EVER MAKE THE

15 STATEMENT THAT YOU WOULD USE AN EXAMPLE TO  
16 CONFUSE JURIES WHEN YOU TESTIFY IN KID CASES?

17 MR. CONN: OBJECTION. IRRELEVANT. NO  
18 FOUNDATION. HEARSAY.

19 THE COURT: OVERRULED.

20 THE WITNESS: NO.

21 Q BY MS. ABRAMSON: DID YOU EVER WRITE  
22 THAT OVER AN EXAMPLE OF ENGINE SIZE OF A.T.V.,  
23 MEANING ALL-TERRAIN VEHICLE USED?

24 A I WROTE A COMMENT CONCERNING A DIAGRAM I  
25 FEARED PLAINTIFF'S ATTORNEYS WOULD USE TO CONFUSE  
26 JURIES IN KID CASES, YES.

27 (PAUSE IN PROCEEDINGS.)

28

40865

1 Q BY MS. ABRAMSON: AND WHEN YOU SAID "IN  
2 KID CASES," YOU ARE TALKING ABOUT A.T.V. CASES,  
3 ALL-TERRAIN VEHICLE, BEING AUTOMOTIVE CASES?

4 A IT WAS IN TERMS OF THE REMARK, I BELIEVE  
5 YOU'RE REFERRING TO.

6 Q YOU'VE SEEN THIS BEFORE IN OTHER TRIALS,  
7 HAVEN'T YOU?

8 A A COUPLE OTHERS, YES.

9 Q ALL RIGHT. SO LET ME ASK YOU RIGHT NOW

10 IF THE HANDWRITING THAT APPEARS ON THE TOP OF THIS  
11 DOCUMENT, WHICH IS AT THE TOP, AND IT'S ENTITLED  
12 "DRAFT SUBJECT TO REVIEW AND REVISION," BOTTOM OF  
13 PAGE 18 -- IS THAT YOUR HANDWRITING?

14 A YES, IT IS.

15 Q AND DID YOU WRITE: "BILL --

16 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

17 Q BY MS. ABRAMSON: WERE YOU WRITING OVER  
18 AN ENGINE SIZE OF A.T.V. USED CHART?

19 A I WAS.

20 Q AND DID YOU WRITE: "BILL --

21 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

22 THE COURT: LET ME SEE IT THEN.

23 MS. ABRAMSON: WOULD YOU LIKE TO SEE IT,  
24 JUDGE?

25 THE WITNESS: IF I --

26 MS. ABRAMSON: EXCUSE ME, YOUR HONOR.

27 THE COURT: HOLD ON A SECOND.

28 (COURT READING.)

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1

2 THE COURT: OKAY. FIRST OF ALL, LET THE  
3 WITNESS LOOK AT THE ENTIRE DOCUMENT.

4 MS. ABRAMSON: CERTAINLY.

5 (PAUSE.)

6

7 MS. ABRAMSON: IS THE WITNESS READING THE  
8 DOCUMENT?

9 THE WITNESS: I HAVE READ THE DOCUMENT.

10 THE COURT: YOU MAY ASK YOUR QUESTION.

11 OBJECTION OVERRULED.

12 MS. ABRAMSON: MAY I HAVE THE DOCUMENT.

13 Q AND DID YOU WRITE THE FOLLOWING:

14 "BILL: I UNDERSTAND THE PURPOSE

15 OF THIS EXAMPLE AND THINK IT IS

16 INSTRUCTIVE. HOWEVER, THIS EXAMPLE

17 WILL BE USED TO CONFUSE THE JURY WHEN

18 I TESTIFY IN KID CASES. CAN WE FIND

19 AN EXAMPLE THAT WORKS THE OTHER WAY;

20 THAT IS, THE GROSS NUMBER IS HIGHER

21 THAN THE SINGLE ADJUSTANT (SIC)

22 NUMBER?"

23 A ADJUSTED NUMBER.

24 Q YOU WROTE THAT?

25 A UH-HUH.

26 THE COURT: IS THAT YES?

27 THE WITNESS: YES. MOST DEFINITELY.

28 Q BY MS. ABRAMSON: NOW, LET'S MOVE ON



1 WITH WHAT WE'RE DOING HERE. WE NOW SEE THIS  
2 MOVEMENT, AND I BELIEVE THE COFFEE TABLE'S MOVED  
3 HERE AS WELL; IS THAT CORRECT?

4 A NOT MUCH.

5 Q A LITTLE?

6 A I'M NOT COMFORTABLE WITH THAT. IT'S SO  
7 SMALL I WOULD HAVE TO GO BACK AND CHECK HOW IT CAME  
8 OUT.

9 Q THE BODY IS MOVED, HOWEVER?

10 A YES.

11 Q MR. LEVIN IS HOLDING UP 5B.

12 A YES. AND AS I TESTIFIED, YOU SEE HER  
13 RIGHT LEG IS MOVED.

14 Q HER RIGHT LEG IS MOVED AND YOU DON'T  
15 KNOW HOW HER RIGHT LEG MOVED EITHER?

16 A AS I INDICATED, THERE'S JUST NO  
17 INDEPENDENT WAY I CAN RECONSTRUCT THAT.

18 Q NOW WE'RE LOOKING AT 6B, WHERE HER BODY  
19 IS.

20 NOW, LET'S MOVE ON TO THE NEXT ONE,  
21 WHICH IS 7B.

22 WOULD YOU HOLD UP 6B, MR. LEVIN.

23 7B IS 263, AND WE'RE COMPARING IT NOW TO  
24 261.

25 THE COFFEE TABLE MOVED AGAIN, HASN'T IT,  
26 DR. MC CARTHY?

27 A NO. I'M NOT COMFORTABLE --

40868

1 SHOULDER -- I'M SORRY. WE HAVE THE MUSHROOM AND NOW  
2 WE HAVE ANOTHER PART OF THE CARPET PATTERN SHOWING  
3 THAT DOESN'T SHOW HERE.

4 A YES, BUT WE'RE A LITTLE DIFFERENT  
5 ANGLE. THAT'S WHAT I'M CONCERNED ABOUT.

6 EXCUSE ME. IF I MIGHT.

7 Q WELL, YOU OR WHOEVER --

8 THE COURT: LET HIM FINISH WHAT HE WAS  
9 SAYING.

10 MS. ABRAMSON: OKAY.

11 THE WITNESS: IN FACT, THE ANGLE CUTS THE  
12 OTHER WAY. SO YOU'RE RIGHT, THERE'S A SMALL AMOUNT  
13 OF MOVEMENT THERE. DON'T ATTACH ANY SIGNIFICANCE TO  
14 IT.

15 Q BY MS. ABRAMSON: WELL, THE COFFEE TABLE  
16 MOVED AGAIN.

17 A IT'S SHOWN IN A SLIGHTLY DIFFERENT  
18 POSITION. I DON'T BELIEVE THE COFFEE TABLE MOVED.

19 Q IN FACT, NOT ONLY DOES IT SHOW ON 7B, OR  
20 SUGGEST THAT THE COFFEE TABLE HAS MOVED FORWARD, BUT  
21 SOMEHOW IT SUGGESTS HER LEG HAS PULLED OUT SOMEWHAT  
22 FROM UNDER THE TABLE, BECAUSE THERE'S MORE LEG

23 SHOWING IN 7B THAN 6B?

24 A NO. AS I SPECIFICALLY TESTIFIED, I  
25 COULDN'T, IN THIS SHOT, MAKE ANY STATEMENT ABOUT  
26 WHERE HER LIMBS WERE. SO I TESTIFIED ON DIRECT, DO  
27 NOT ATTACH SIGNIFICANCE TO THAT BECAUSE THERE'S NO  
28 INDEPENDENT EVIDENCE OF THAT AT THIS POINT IN TIME.

40869

1 Q I UNDERSTAND THAT. I'M NOT SUGGESTING  
2 THESE THINGS REALLY HAPPENED. ALL I'M ASKING YOU IS  
3 ISN'T THAT WHAT THIS ILLUSTRATION SUGGESTS, THESE  
4 MOVEMENTS, THAT YOU DON'T KNOW WHETHER OR NOT THEY  
5 HAPPENED?

6 A AND I HOPE I WAS CLEAR ON DIRECT TO  
7 INDICATE THAT THAT IS NOT WHAT I'M INTENDING TO  
8 SUGGEST WITH THESE ILLUSTRATIONS, BECAUSE I DON'T  
9 HAVE INDEPENDENT EVIDENCE OF THAT.

10 Q BUT THIS MERELY SHOWS THIS ILLUSTRATING  
11 PROCESS IS NOT TOTALLY ACCURATE, CORRECT?

12 A WELL, THE PROCESS IS TOTALLY ACCURATE,  
13 BUT WHAT THE ILLUSTRATIONS INDICATE, I DON'T MEAN TO  
14 REPRESENT WERE COMPLETE IN EVERY DETAIL ACCURATE OF  
15 WHAT HAPPENED AT THAT TIME.

16 Q GO TO THE NEXT ONE PLEASE, MR. LEVIN.

17 NOW WE SEE IN SHOT 7B, WHICH IS 263.

18 CAN YOU VISUALIZE NOW WHERE YOU HAVE THE  
19 DUMMY THAT'S SUPPOSED TO REPRESENT MRS. MENENDEZ ON  
20 THE FLOOR?

21 A YES.

22 Q WHY DON'T WE MOVE TO THE NEXT ONE THAT I  
23 HAVE UP HERE, WHICH IS 10B.

24 MR. LEVIN, WOULD YOU HOLD UP 7B.

25 NOW, SOMEHOW, FOR 10B THE COFFEE TABLE  
26 IS MOVED BACK; IS THAT RIGHT?

27 A NO. NO. I DON'T THINK SO.

28 Q NO?

40870

1 A HERE WE ARE LOOKING AT A LITTLE  
2 DIFFERENT ANGLE. IF YOU LOOK AT HOW MUCH OF THE  
3 FACE OF THE SOFA'S SHOWING, YOU CAN SEE HOW WE'RE  
4 ALMOST VERTICALLY DOWN. BUT HERE WE'VE GOT MORE OF  
5 THE FACE SHOWING, AND THAT MEANS OUR PERSPECTIVE HAS  
6 MOVED OVER. AS WE MOVE OVER, LOOK OVER THE END OF  
7 THE TABLE, THIS DETAIL, YOU'D BE LOOKING DOWN AT  
8 THIS ANGLE.

9 DO YOU UNDERSTAND WHAT I MEAN?

10 Q OH, YES, I UNDERSTAND WHAT YOU MEAN. I  
11 ALSO UNDERSTAND THAT YOU GOT TO CHOOSE THE  
12 PERSPECTIVE, CORRECT?

13 A YES.

14 Q OKAY. NOW, IN CHOOSING THE PERSPECTIVE,  
15 YOU ALSO -- YOU DECIDED WHAT POSITION THE BODIES  
16 WERE, CORRECT?

17 A YES.

18 Q AND YOU DECIDE WHEN TO MOVE THINGS, LIKE  
19 MR. MENENDEZ' LEFT LEG, AS YOU'VE REPRESENTED IT  
20 HERE, CORRECT?

21 A YES.

22 Q AND LET ME GET YOUR FINAL POSITION. IS  
23 10B YOUR FINAL POSITION ON HIS FEET?

24 A SHOULD BE.

25 Q LET'S MAKE SURE. 12B IS YOUR FINAL  
26 ILLUSTRATION, PERIOD, RIGHT?

27 A PERIOD, YES.

28 Q AND 12B, THIS LITTLE EXTENDED OVAL.

40871

1 THAT'S SUPPOSED TO BE HIS FOOT, RIGHT?

2 A I'M SORRY, MA'AM. I COULDN'T SEE WHERE  
3 YOU'RE POINTING.

4 Q THIS OVAL, THIS IS SUPPOSED TO REPRESENT  
5 A FOOT OR A SHOE?

6 A APPROXIMATELY, YES.

7 Q IN FACT, DR. MC CARTHY, THAT REALLY

8 WASN'T THE POSITION THAT HIS FEET WERE IN WHEN HE  
9 WAS FOUND.

10 A PERHAPS NOT EXACTLY, BUT CLOSE.

11 Q THE ONLY REALLY POSITION YOU CAN BE  
12 ABSOLUTELY CERTAIN OF FOR MR. MENENDEZ AND FOR  
13 MRS. MENENDEZ, IN EVERY DETAIL, IS THE POSITION IN  
14 WHICH THEY WERE FOUND, CORRECT?

15 A YES.

16 Q AND THE POSITION IN WHICH MR. MENENDEZ  
17 WAS FOUND WAS WITH EACH FOOT, BOTH THE LEFT AND THE  
18 RIGHT, ROTATED OUT ONTO ITS OUTER EDGE, CORRECT?

19 A YES. MORE SO THAN HERE.

20 Q WELL, ROTATED OUT ON THEIR OUTER EDGE  
21 AND CROSSED RIGHT OVER LEFT, CORRECT?

22 A YES.

23 Q NOW, YOU'RE NOT GOING TO TESTIFY THAT  
24 THOSE FEET COULD HAVE GOTTEN CROSSED AFTER DEATH,  
25 ARE YOU?

26 A I --

27 Q LET ME DO THIS. YOU'RE NOT GOING TO  
28 TESTIFY THAT HE CROSSED HIS FEET AFTER DEATH.

40872

1 A CORRECT.

2 Q YOU KNOW HE CAN'T DO THAT?

3 A THAT'S RIGHT.

4 Q NOW, DO YOU BELIEVE THAT HE COULD HAVE  
5 MOVED AT ALL AFTER HE RECEIVED SHOT 2 TO HIS HEAD?

6 A NOT OF HIS OWN VOLITION, NO.

7 Q BUT HIS BODY COULD HAVE MOVED BY ITSELF,  
8 WHETHER VOLITIONALLY OR NOT?

9 A WHEN HE TOOK THE SHOT TO THE LEFT LEG IT  
10 CERTAINLY WOULD HAVE MOVED THE LEG SOMEWHAT.

11 Q AND AFTER -- WELL, AFTER THE SHOT TO THE  
12 HEAD, BEFORE WHAT YOU CALL THE SHOT TO THE LEG,  
13 COULD HIS BODY HAVE MOVED ITSELF?

14 A HE COULD NOT. AFTER THE SHOT TO THE  
15 HEAD HE COULD NOT HAVE DONE VOLITIONAL MOVEMENT.

16 Q COULD HE HAVE DONE AUTOMATIC MOVEMENT?

17 A COULD HE, AFTER DEATH, HAVE HAD  
18 CATATONIC ACTION WHERE HIS LIMBS FLAILED? YES. I  
19 JUST CAN'T SAY --

20 Q WELL, YOU BELIEVE THAT CAN HAPPEN, THERE  
21 CAN BE CATATONIC ACTION WITH FLAILING OF LIMBS AFTER  
22 DEATH, CORRECT?

23 A YES.

24 Q NOW, LET'S -- I JUST WANT TO ESTABLISH A  
25 FEW OTHER THINGS HERE.

26 YOU'RE NOT A BLOOD SPATTER EXPERT,  
27 CORRECT?

28 A THAT'S CORRECT.

1 Q YOU DON'T HOLD YOURSELF OUT TO BE ONE?

2 A NO.

3 Q AND, IN FACT, YOU DIDN'T TRY TO ANALYZE  
4 ANY BLOOD SPATTER EVIDENCE IN THIS CASE IN ORDER TO  
5 DETERMINE DIRECTIONALITY OF SHOTS, CORRECT?

6 A THAT'S CORRECT.

7 Q AND YOU'RE NOT EVEN CERTAIN WITH RESPECT  
8 TO CERTAIN THINGS APPEARING IN THE PHOTOGRAPHS,  
9 WHETHER THEY'RE BLOOD SPATTERS OR BLOOD DROPS OR  
10 NOT, CORRECT?

11 A THERE CERTAINLY WOULD BE CERTAIN THINGS  
12 THAT I COULD NOT TELL YOU; THAT IS CORRECT.

13 Q AND DID YOU EVEN BOTHER LOOKING AT ALL  
14 THE PHOTOGRAPHS IN ORDER TO VISUALIZE WHERE ALL  
15 POTENTIAL BLOOD DROPS AND BLOOD SPATTERS ARE?

16 A YES. I LOOKED AT ALL THE PHOTOGRAPHS AT  
17 ONE POINT OR ANOTHER.

18 Q DID YOU TRY TO DETERMINE THE  
19 SIGNIFICANCE, IF ANY, BETWEEN THINGS THAT APPEARED  
20 TO BE CIRCULAR DROPS OF BLOOD AND THINGS THAT  
21 APPEARED TO BE OTHER KINDS OF BLOOD EVIDENCE?

22 A THERE WERE SOME DRIPS AND DROPS THAT I  
23 THINK I REFERRED TO ON DIRECT. BUT NOT ON ANY  
24 SYSTEMATIC SCENE-WIDE BASIS, NO.

25 Q NOW, YOU TESTIFIED ON DIRECT EXAMINATION  
26 THAT AFTER HEARING DR. LAWRENCE YOU WISHED TO ADOPT



27 HIS MIST-OF-BLOOD THEORY.

28 IS THAT WHAT YOU'RE SAYING?

40874

1 A I DON'T THINK I INDICATED THAT. I THINK  
2 IT WAS AN OBSERVATION THAT I HAD NOT MADE. BUT IT'S  
3 CERTAINLY CONSISTENT WITH THE PHYSICAL EVIDENCE I  
4 SEE.

5 Q WELL, YOU DON'T EVEN KNOW IF THERE IS A  
6 BLOOD MIST THEORY?

7 A THERE WAS BLOOD MIST TESTIMONY.

8 Q BY DR. LAWRENCE, WHO ADMITTED HE WASN'T  
9 A BLOOD SPATTER EXPERT, CORRECT?

10 A THIS IS MY RECOLLECTION OF HIS  
11 TESTIMONY, YES.

12 Q AND YOU DON'T KNOW, AND YOU HAVEN'T DONE  
13 ANY RESEARCH TO SEE, IF DR. LAWRENCE IS RIGHT ABOUT  
14 THIS NOTION OF BLOOD MISTING AND SETTLING IN SOME  
15 PLACES BUT NOT OTHERS, DO YOU?

16 A I HAVE NOT DONE AN INDEPENDENT TEST,  
17 THAT'S CORRECT.

18 Q LET'S TAKE A LOOK AT SHOT 12B FOR A  
19 MOMENT SINCE IT'S UP THERE.

20 COULD YOU GIVE ME THAT EXHIBIT NUMBER,  
21 MS. TOWERY.

22 MS. TOWERY: WHICH ONE?  
23 THE COURT: 12B.  
24 MS. ABRAMSON: 12B. SO WE'RE MAKING A RECORD  
25 HERE.  
26 MS. TOWERY: 12B?  
27 MS. ABRAMSON: UH-HUH.  
28 MS. TOWERY: I DON'T THINK I HAVE THAT ONE

40875

1 LISTED.  
2 MR. GESSLER: 273?  
3 THE COURT: 273.  
4 MS. ABRAMSON: THANK YOU, YOUR HONOR.  
5 Q NOW, I WANT YOU TO FOCUS ON THE COUCH,  
6 IF YOU WOULD AT THIS TIME, DR. MC CARTHY.  
7 THERE ARE WHAT APPEAR TO BE LOOSE  
8 PILLOWS, LOOSE CUSHION BACKS DRAWN ON THE COUCH,  
9 CORRECT?  
10 A YES.  
11 Q AND IT'S YOUR RECOLLECTION, IS IT NOT,  
12 FROM LOOKING AT THE PHOTOGRAPHS, THAT THERE WERE  
13 SIMILAR TYPES OF CUSHIONS OR PILLOWS ON THE ACTUAL  
14 COUCH?  
15 A ROUGHLY SIMILAR. AGAIN, I'M NOT INTO  
16 COUCH RECONSTRUCTION, BUT IT REPRESENTS THEM, YES.

17 Q WELL, THIS IS YOUR COUCH RECONSTRUCTION,  
18 ISN'T IT?

19 A IT DIAGRAMMATICALLY REPRESENTS THE  
20 COUCH. BUT THE EXACT POSITION OF THE CUSHIONS  
21 DIDN'T PLAY MUCH ROLE IN MY RECONSTRUCTION.

22 Q AND THEY'RE NOT MUCH ACCURATE EITHER,  
23 ARE THEY?

24 A WELL, I CAN CHECK THEM, BUT THERE WAS  
25 NO -- I CERTAINLY DIDN'T CHECK THEM FOR CONTROL AND  
26 ACCURACY BECAUSE THEY PLAYED NO ROLE. THEY'RE JUST  
27 THERE SCHEMATICALLY TO BE REPRESENTATIVE OF WHAT WAS  
28 THERE.

40876

1 Q LET'S USE SOME PHOTOGRAPHS THAT HAVE  
2 ALREADY BEEN ADMITTED IN EVIDENCE HERE AND USED IN  
3 THIS TRIAL, EXHIBIT 8 AND EXHIBIT 75. HERE'S  
4 EXHIBIT 8.

5 DO YOU SEE THAT?

6 A YES.

7 Q CALLING YOUR ATTENTION TO THE COUCH  
8 CUSHIONS THE WAY THEY ARE SHOWN IN EXHIBIT 8, IT  
9 DOES NOT EXACTLY LINE UP WITH WHAT'S SHOWN IN  
10 SHOT 12B, CORRECT?

11 A THAT IS CORRECT.

12 Q AND THE SAME IS TRUE IF YOU LOOK AT IT  
13 FROM ANOTHER ANGLE, WHICH IS EXHIBIT NO. 75; THAT  
14 ALSO CONFIRMS THAT THE CUSHIONS ARE NOT LINED UP ON  
15 YOUR SCHEMATIC THE SAME WAY THEY ARE -- DO WE HAVE  
16 SOME MORE BINDER CLIPS? -- IN THAT PHOTOGRAPH.

17 A NOT PRECISELY, NO.

18 Q AND YOU ATTACH NO SIGNIFICANCE TO THAT  
19 WHATSOEVER; IS THAT RIGHT?

20 A THAT'S CORRECT. PLEASE DO NOT ATTACH  
21 ANY SIGNIFICANCE TO THE POSITION OF THE PILLOWS I'VE  
22 SHOWN IN MY DIAGRAM.

23 Q HOW ABOUT ATTACHING SIGNIFICANCE TO THE  
24 POSITION OF THE PILLOWS AS THEY WERE ON THE REAL  
25 COUCH WHERE THE REAL PEOPLE WERE WHERE THE REAL  
26 EVENT HAPPENED.

27 DO YOU THINK THEY MIGHT HAVE  
28 SIGNIFICANCE THERE?

40877

1 A PLEASE DO.

2 Q ALL RIGHT. AND IN THE REAL PHOTOGRAPH  
3 THERE'S A MUCH LARGER SPACE BETWEEN MR. MENENDEZ AND  
4 A PILE OF PILLOWS TO HIS RIGHT THAN YOU SHOW IN  
5 SHOT 12B, CORRECT?

6 A I'M SORRY?

7 Q I'M SORRY. BETWEEN MR. MENENDEZ AND A  
8 PILE OF PILLOWS ON THE REAL COUCH THERE IS MUCH  
9 GREATER SPACE THAN THIS VERY SMALL SPACE YOU SHOW ON  
10 12B?

11 A YEAH. THERE MIGHT BE -- YEAH. THERE'S  
12 DEFINITELY A FEW MORE INCHES ON THE ACTUAL COUCH.

13 Q IN FACT, THIS CUSHION HERE, WHICH IS THE  
14 FIRST ONE YOU SHOW TO THE RIGHT OF MR. MENENDEZ,  
15 THERE REALLY IS NO SUCH SEPARATE CUSHION SITTING  
16 NEXT TO HIM?

17 A THAT'S CORRECT. IT'S SORT OF TUCKED UP  
18 MORE BEHIND THE TOP CUSHION THERE.

19 Q THERE'S A PILE OF PERHAPS THREE CUSHIONS  
20 FARTHER OVER TO THE RIGHT WHERE YOU SHOW TWO,  
21 CORRECT?

22 A YES.

23 Q ON THE TOP OF ONE OF THOSE CUSHIONS  
24 THERE'S A VERY EXTENSIVE BLOOD SPATTER PATTERN,  
25 ISN'T THERE?

26 A YES.

27 Q WHICH YOU ARE NOT EXPERT TO ANALYZE?

28 A AND DIDN'T UTILIZE IN MY RECONSTRUCTION.

40878

1 Q AND HAVE NO IDEA WHOSE BLOOD IS ON THAT,

2 CORRECT?

3 A THAT'S CORRECT.

4 Q NOW, YOU ALSO CAN'T KNOW -- FIRST OF ALL,  
5 THERE'S SOMETHING ELSE ON THE COUCH THAT ISN'T ON  
6 YOUR COUCH AT ALL. THERE'S SOME SMALLER LIKE  
7 BODY-PROPPING PILLOWS ON THE COUCH, CORRECT?

8 A THAT'S CORRECT.

9 Q AND YOU LEFT THEM OUT OF YOUR DIAGRAMS  
10 ALL TOGETHER?

11 A YES. I DIDN'T USE THEM FOR ANYTHING.

12 Q AND YOU HAVE NO IDEA OF WHY THERE ARE --  
13 UNLIKE YOUR DIAGRAM -- WHY THERE ARE THREE CUSHIONS  
14 PILED UP ABOUT A FOOT AWAY FROM MR. MENENDEZ?

15 A THAT IS CORRECT. I HAVE NOT  
16 RECONSTRUCTED THE CUSHIONS.

17 Q AND DID YOU EVER ATTEMPT, USING YOUR  
18 ANTHROPOMORPHIC DUMMIES, OR ANYTHING ELSE, TO  
19 ENVISION HOW A RECLINING FIGURE LEANING ON THOSE  
20 CUSHIONS WITH LEGS UP ON THE COUCH WOULD HAVE  
21 APPEARED?

22 A NO. I DIDN'T ATTEMPT TO RECREATE THAT  
23 USING THE ANTHROPOMORPHIC FIGURES; THAT IS CORRECT.

24 Q OR ANY DRAWING OR SKETCHES OR ANYTHING  
25 ELSE?

26 A THAT'S CORRECT.

27 Q OKAY. LET ME NOW GO TO 1A.

28 IS IT TRUE, DR. MC CARTHY, THAT BECAUSE

1 YOU BELIEVE THAT THERE WERE 12 ROUNDS FIRED, YOU  
2 ATTEMPT TO ACCOUNT FOR 12; NO MORE AND NO LESS, IN  
3 YOUR RECONSTRUCTION?

4 A NO. IT'S JUST THE OPPOSITE. AS I  
5 INDICATED, I STARTED WITH THE NUMBER OF WOUNDS AND  
6 THEN -- WHICH FAR EXCEEDED 12 -- AND THEN LOOKED AT  
7 WHICH ONES APPEARED TO HAVE BEEN RELATED TO THE SAME  
8 SHOTS AND EVENTUALLY CAME DOWN TO 12.

9 Q ALL RIGHT. SO YOU CAME DOWN TO 12. SO  
10 THERE COULD HAVE BEEN MORE; ISN'T THAT TRUE? IS  
11 THAT WHAT YOU'RE SAYING?

12 A I DON'T THINK IT LIKELY, NO.

13 Q ALL RIGHT. WELL, LET'S SAY THAT --  
14 YOU'RE NOT SAYING THAT THE ONLY WAY, GIVEN THE LAWS  
15 OF PHYSICS AND BIOLOGY, THE ONLY WAY THAT MRS. MENENDEZ  
16 COULD HAVE RECEIVED A WOUND IN HER LEFT BREAST IS IF  
17 SHE WAS SITTING ON A COUCH NEXT TO HER HUSBAND WHEN  
18 HE WAS SHOT.

19 YOU'RE NOT SAYING THAT, ARE YOU?  
20 THERE'S NO WAY ON HEAVEN AND EARTH THAT THIS WOMAN  
21 COULD HAVE RECEIVED THIS WOUND TO HER LEFT BREAST  
22 EXCEPT THIS WAY?

23 A IN THIS SCENE, IN THIS SEQUENCE.

24 Q WE'RE NOT TALKING ABOUT SEQUENCE.

25 RECOGNIZE WE GET INTO A CIRCLE. YOU DECIDED THE  
26 SEQUENCE, YOU DECIDED NUMBER OF SHOTS.  
27 I WANT TO GO OUTSIDE YOUR SEQUENCE AND  
28 JUST TALK ABOUT THIS AS AN ABSOLUTE.

40880

1 A AND WE CAN DO THAT. JUST RECOGNIZE YOU  
2 ARE NO LONGER RECONSTRUCTING THIS MURDER, BECAUSE  
3 IT'S THE SEQUENCE --

4 Q NO.

5 MR. CONN: MAY THE WITNESS FINISH HIS  
6 ANSWER?

7 MS. ABRAMSON: IT'S NOT RESPONSIVE.

8 THE WITNESS: I'M SORRY.

9 THE COURT: THE QUESTION WAS ARGUMENTATIVE AS  
10 PHRASED.

11 SO THE OBJECTION IS SUSTAINED. THE  
12 ANSWER IS STRICKEN.

13 REASK THE QUESTION SOME OTHER WAY.

14 Q BY MS. ABRAMSON: ALL RIGHT. WHAT I  
15 WANT YOU TO DO FOR A MOMENT, IF YOU CAN, IS PUT  
16 ASIDE THE SEQUENCE YOU HAVE DECIDED.

17 CAN YOU DO THAT?

18 A PUT ASIDE MY SEQUENCE OR ANY SEQUENCE?

19 Q PUT ASIDE YOUR SEQUENCE OR ANY SEQUENCE



20 FOR THE MOMENT, OKAY?

21 A YES.

22 Q HAVING DONE THAT, YOU ARE NOT SAYING, I  
23 TAKE IT -- WELL, STRIKE THAT.

24 ARE YOU SAYING THERE'S NO WAY, EXCEPT  
25 WHAT'S SHOWN IN 1A, FOR MRS. MENENDEZ TO HAVE  
26 RECEIVED PELLET WOUNDS TO HER LEFT BREAST?

27 A THE ANSWER TO THAT IS A QUALIFIED NO, AS  
28 LONG AS --

40881

1 Q NO, YOU'RE NOT SAYING THAT?

2 A I'M NOT SAYING THAT AS LONG AS YOU COME  
3 UP WITH SOME OTHER MECHANISM --

4 Q YES.

5 A -- TO FILTER OUT HALF THE PELLETS IN THE  
6 SHOT, BECAUSE WE'VE GOT A SHOT ON HER BREAST AND A  
7 GOOD GROUPING THAT IS CLOSE.

8 Q UH-HUH.

9 A AND THERE'S ONLY, WHAT, 12 PELLETS  
10 THERE?

11 Q FOURTEEN. BUT THAT'S OKAY.

12 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
13 EVIDENCE.

14 THE WITNESS: WHATEVER DR. LAWRENCE INDICATED.

15 THE COURT: WAIT A MINUTE. THE REMARK OF  
16 COUNSEL IS STRICKEN. ALL RIGHT.

17 THE WITNESS: AND THERE'S ALL THAT TISSUE  
18 AROUND THAT'S CLEAR.

19 MS. ABRAMSON: ALL RIGHT.

20 Q YOU'RE SAYING IT'S NOT A FULL SHOT,  
21 CORRECT?

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

24 THE COURT: HAD YOU FINISHED YOUR ANSWER?

25 MS. ABRAMSON, IF YOU CAN STAND OVER BY  
26 THE PODIUM RATHER THAN OVER BY THE JURY, IT MAKES IT  
27 VERY AWKWARD; OR MOVE THAT AWAY FROM THE JURY. IT'S  
28 TOO CLOSE TO THE JURY.

40882

1 MS. ABRAMSON: OKAY.

2 THE TROUBLE IS THE JURY HAS TO SEE IT.

3 THE COURT: MOVE THE OTHER DISPLAY OUT OF THE  
4 WAY.

5 MS. ABRAMSON: IF THE COURT WOULD INQUIRE,  
6 CAN THE JURORS SEE IT?

7 THE COURT: THE WITNESS WON'T BE ABLE TO SEE  
8 IT.

9 MS. ABRAMSON: YOU HAVE A SMALL VERSION IN

10 FRONT OF YOU.

11 THE WITNESS: THANK YOU, YOUR HONOR.

12 YOU'RE RIGHT. IT IS NOT A FULL SHOT.

13 IT'S MORE THAN THAT. YOU'VE GOT A REASONABLY WELL

14 GROUPED, NOT A FULL SHOT. SO YOU HAVE -- AND YOU'VE

15 GOT A LOT OF SPACE AROUND ON THE SIDE, AND YOU'VE

16 GOT TO FILTER OUT HALF THE SHOT AND STILL LEAVE A

17 REASONABLY TIGHT GROUP.

18 SO IT ISN'T JUST THAT YOU GOT ONLY A

19 PARTIAL SHOT. YOU'VE GOT A PRETTY RATIONALLY

20 GROUPED PARTIAL SHOT AND THE REST FILTERED OUT.

21 Q WERE YOU HERE FOR DR. LAWRENCE'S

22 TESTIMONY, ALL OF IT?

23 A NO.

24 Q WERE YOU HERE FOR THE PART OF

25 DR. LAWRENCE'S TESTIMONY, WHO YOU ARE RELYING ON,

26 THAT HIS ORIGINAL -- HIS OPINION IS THAT THE LEFT

27 ELBOW SHOT TO MR. MENENDEZ AND THE LEFT BREAST SHOT

28 TO MRS. MENENDEZ, BY THEMSELVES, COULD BE ONE

40883

1 RELATED SHOT? DID YOU HEAR THAT TESTIMONY?

2 A HE SAID THAT, SOMETHING OF THAT NATURE,

3 WHEN I WAS IN THE COURTROOM. SO, YES.

4 Q AND THAT'S A SHARED SHOT, IS IT NOT?

5 A THAT POSTULATION WOULD BE A SHARED SHOT,  
6 YES.

7 Q AND HE ALSO TESTIFIED THAT THERE WAS  
8 NOTHING WHATSOEVER FROM A MEDICAL POINT OF VIEW THAT  
9 RULED OUT THAT SHOT; LEFT ELBOW, LEFT BREAST,  
10 OCCURRING WHILE MR. AND MRS. MENENDEZ WERE STANDING  
11 UP.

12 DID YOU HEAR THAT?

13 A I REMEMBER THAT TOPIC BEING DISCUSSED.  
14 I DIDN'T THINK THE ANSWER WAS QUITE THAT SIMPLE IN  
15 MY RECOLLECTION.

16 Q YOU RECALL THAT DR. LAWRENCE AND I WERE  
17 DEMONSTRATING, HE BEING MR. MENENDEZ, ME BEING MRS.  
18 MENENDEZ, JUST THAT OCCURRENCE, WHERE THE LEFT ELBOW  
19 SHARED A SHOT WITH THE LEFT BREAST.

20 DO YOU REMEMBER SEEING THAT, OR PERHAPS  
21 YOU WEREN'T --

22 A I DON'T REMEMBER SEEING IT, BUT I  
23 REMEMBER SOME DISCUSSION OF THAT NATURE.

24 Q THE QUESTION IS: DO YOU REMEMBER SEEING  
25 THAT WHEN THE TWO OF US STOOD THERE AND HE  
26 DEMONSTRATED HOW THE LEFT ELBOW AND THE LEFT BREAST  
27 COULD HAVE SHARED ONE SHOT?

28 DO YOU REMEMBER SEEING THAT?

1       A    I GUESS MY RECOLLECTION IS YOU FOLKS  
2 WERE STARTING TO DO SOME SORT OF DEMONSTRATION AND I  
3 HAD TO LEAVE FOR SOME REASON.

4       Q    SO YOUR ANSWER IS NO?

5       A    I DON'T RECOLLECT SEEING IT.

6       Q    BUT WITH RESPECT TO MY QUESTION NOW,  
7 IT'S TRUE, IS IT NOT, THAT THERE ARE OTHER WAYS --  
8 IF WE ARE FOCUSING SOLELY ON THE LEFT BREAST SHOT --  
9 THERE ARE OTHER WAYS IN WHICH MRS. MENENDEZ COULD  
10 HAVE RECEIVED THAT SHOT THAN THE ONE THAT YOU HAVE  
11 PUT IN SHOT 1A, CORRECT?

12      A    IF WE DECOUPLE (SIC) FROM THIS SCENE AND  
13 THIS SEQUENCE, YOU COULD FILTER ANOTHER MEANS.

14      Q    ALL RIGHT. NOW, WITH RESPECT TO WOUNDS  
15 TO MR. MENENDEZ' RIGHT ARM, THERE IS NOTHING FROM  
16 THE TESTIMONY OF DR. LAWRENCE. THERE'S NOTHING FROM  
17 DR. GOLDEN, AND THERE'S NOTHING IN THE LAWS OF  
18 NATURE, AS I UNDERSTAND THEM, THAT INDICATES THAT  
19 FOR A MAN TO RECEIVE A WOUND TO HIS RIGHT ARM,  
20 WHICHEVER IS THE ENTRY, AND WHICHEVER IS THE EXIT,  
21 HE HAS TO BE SEATED ON A COUCH NEXT TO HIS WIFE.

22           THERE'S NOTHING THAT SAYS THAT?

23      A    DECOUPLED FROM THIS SCENE AND THIS  
24 SEQUENCE, YOU ARE CORRECT.

25      Q    AND GOING BACK TO THE WOUND ON THE LEFT  
26 ELBOW, THE SAME IS TRUE, THERE'S NOTHING IN THE LAWS  
27 OF NATURE THAT SAY THAT FOR A MAN TO RECEIVE A WOUND  
28 TO HIS LEFT ELBOW HE HAS TO BE SEATED ON A COUCH

1 WITH HIS ELBOW ON THE ARMREST?

2 A DECOUPLED FROM THIS SCENE AND THIS  
3 SEQUENCE, YOU ARE CORRECT.

4 Q IS HIS ARM ON THE ARMREST, BY THE WAY?

5 A I'D HAVE TO LOOK. I DON'T THINK SO.

6 THERE WASN'T ANY BLOOD ON THE ARMREST.

7 Q WHY DO YOU SHOW IT ON THE ARMREST IF IT  
8 WASN'T THERE?

9 MR. CONN: ASSUMES FACTS NOT IN EVIDENCE,  
10 THAT THAT ARM WAS ON THE ARMREST.

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: ARE YOU MEANING TO  
13 SHOW THE JURY THAT HIS ARM IS ON THE ARMREST AS IT  
14 APPEARS IN SHOT 1A?

15 MR. CONN: IT'S ARGUMENTATIVE AS PHRASED,  
16 THAT IT APPEARS THAT WAY IN THE --

17 THE COURT: SUSTAINED. WHY DON'T YOU GET  
18 DOWN AND LOOK AT IT THEN.

19 THE WITNESS: I'M SORRY, YOUR HONOR. YOU  
20 WERE CONCERNED -- OKAY.

21 MS. ABRAMSON: I PUT 1B UP JUST TO MAKE IT  
22 CLEARER.

23 THE WITNESS: YES.

24 Q BY MS. ABRAMSON: 1B SHOWS THE ARM ON  
25 THE ARMREST, DOESN'T IT?  
26 A NO. LET ME PUT IT THIS WAY. THERE'S  
27 NOTHING IN MY RECONSTRUCTION THAT REQUIRES THE ARM  
28 BEING ON THE ARMREST.

40886

1 Q WERE YOU TALKING ABOUT YOUR  
2 RECONSTRUCTION OR ARE YOU TALKING ABOUT YOUR  
3 ILLUSTRATIONS, OR ARE THEY THE SAME?

4 A I DON'T THINK THE ILLUSTRATIONS SHOW IT  
5 ON THE ARMREST EITHER, BUT SEE, I THINK THE ARM IS  
6 OVER THE ARMREST. I DON'T THINK THE ILLUSTRATIONS  
7 SHOW IT EITHER. BUT IT'S CERTAINLY NOT PART OF MY  
8 RECONSTRUCTION.

9 Q SO IF THE ILLUSTRATION YOU HAVE IN YOUR  
10 HAND RIGHT NOW, WHICH IS 1B, AND I WILL LOOK BEHIND  
11 IT AND -- 251.

12 NOW, 251 SEEMS TO GIVE THE IMPRESSION  
13 VISUALLY THAT THE ARM IS ON THE ARMREST, BECAUSE THE  
14 LINE OF THE BACK OF THE ARMREST SEEMS TO INTERSECT  
15 HERE WITH THE ELBOW, DOESN'T IT?

16 MR. CONN: OBJECTION. ARGUMENTATIVE AS  
17 PHRASED.

18 THE COURT: SUSTAINED.

19 Q BY MS. ABRAMSON: DOES THE LINE SEEM TO  
20 INTERSECT WITH THE ELBOW?

21 A NOT TO ME, BECAUSE I PRINT THESE OUT.

22 SO YOU GET A LITTLE PERSPECTIVE AND YOU  
23 CAN SEE THAT THE ARM IS NOT INTENDED TO BE ON THE  
24 ARMREST. BUT I MEAN --

25 Q WHY DON'T YOU PUT 1B BACK UP.

26 A SURE.

27 Q LET THE RECORD SHOW WHEN YOU WERE  
28 POINTING AND SAYING IT WAS NOT INTENDED TO BE ON THE

40887

1 ARMREST, YOU HAD REMOVED 1B AND WERE POINTING TO 1A,  
2 CORRECT?

3 A DIFFERENT ANGLE.

4 Q LET'S TALK ABOUT THIS ANGLE. THE ANGLE  
5 OF 1-B.

6 A YES.

7 Q IT DOES GIVE THE APPEARANCE THAT THE ARM  
8 WAS ON THE ARMREST.

9 A AGAIN, NOT TO ME.

10 Q SO IT'S MISLEADING BECAUSE THERE'S NOT --

11 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
12 EVIDENCE.

13 THE COURT: SUSTAINED.



14 Q BY MS. ABRAMSON: IS IT MISLEADING,

15 ILLUSTRATION 1B?

16 A IN MY OPINION, NO.

17 Q IT'S NOT MISLEADING?

18 A THAT'S CORRECT.

19 Q HOW FAR ABOVE THE ARMREST DO YOU INTEND

20 THE ARM TO BE?

21 A AND I CAN'T TELL YOU HOW FAR ABOVE

22 PRECISELY. I DON'T BELIEVE IT WAS ON. BUT I CAN'T

23 POSITION THAT ONE INCH OR TWO INCHES OR THREE

24 INCHES. THE EVIDENCE DOESN'T PRESENT.

25 Q SO WE HAVE SOMEONE SITTING ON A COUCH

26 WITH HIS ARM RAISED, IS THAT RIGHT, AND IT'S NOT

27 RESTING ON THE ARMREST. IT'S JUST FLOATING IN THE

28 AIR?

40888

1 MR. CONN: OBJECTION. ARGUMENTATIVE AS

2 PHRASED.

3 THE COURT: SUSTAINED.

4 Q BY MS. ABRAMSON: ARE YOU MEANING -- IS

5 IT YOUR INTENTION TO CONVEY THAT MR. MENENDEZ IS

6 SITTING ON THE COUCH AND HE'S GOT HIS ARM BENT, BUT

7 HE'S NOT RESTING IT ON THE ARMREST?

8 IS THAT WHAT YOU MEAN TO CONVEY?

9       A   NO. I MEAN TO CONVEY THAT HE HAS RAISED  
10 HIS ARM, I BELIEVE.

11       Q   IN A SORT OF SHIELDING MANEUVER?

12       MS. ABRAMSON: OBJECTION, YOUR HONOR.

13 NONRESPONSIVE AND IT'S A CONCLUSION, SPECULATION.

14 I'D ASK IT BE STRICKEN.

15       THE COURT: OVERRULED. HE'S RESPONDING TO

16 YOUR QUESTION.

17       OKAY. GO AHEAD.

18       THE WITNESS: HE'S IN A SHIELDING MANEUVER.

19       MS. ABRAMSON: WE'LL PLAY THE GAME.

20       MR. CONN: OBJECTION.

21       THE COURT: COUNSEL, LET'S NOT MAKE THESE

22 REMARKS. IT'S INAPPROPRIATE AND NOT PROFESSIONAL.

23       MS. ABRAMSON: WHY DON'T YOU RECREATE WHAT

24 YOU JUST DID. SHOW US THE ARM. SHOW US THE

25 POSITION. I WANT TO DESCRIBE WHAT YOU'RE DOING. DO

26 IT AGAIN.

27       YOU'RE LEANING TOWARDS YOUR RIGHT; IS

28 THAT CORRECT?

40889

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

2 HIS ANSWER AS HE DEMONSTRATED?

3       THE COURT: HE WAS IN THE PROCESS OF DOING IT

4 WHEN YOU INTERRUPTED HIM, COUNSEL. JUST LET HIM

5 ANSWER THE QUESTION.

6 MS. ABRAMSON: ANSWER THE QUESTION.

7 THE WITNESS: YES. I BELIEVE HE WAS RAISING

8 HIS ARM. I POSTULATE, BECAUSE OF THE WAY IT LINES

9 UP WITH HIS RIGHT ARM WOUND, THAT HE RAISES HIS ARM,

10 HE LEANS TO THE RIGHT IN A POSITION THAT WOULD

11 SHIELD MARY BEHIND HIM MORE, SO IT WOULD BE A

12 NATURAL MANEUVER; AND HE TAKES THE SHOT IN THE LEFT

13 ARM.

14 Q BY MS. ABRAMSON: AND, OF COURSE, YOU

15 DID NOT ILLUSTRATE ANY OF THOSE BODY POSITIONS THAT

16 YOU JUST DEMONSTRATED ON THESE CHARTS, DID YOU? YES

17 OR NO?

18 A I CAN'T ILLUSTRATE ALL THAT DETAIL ON

19 THESE CHARTS. SO THE ANSWER IS NO.

20 Q SO NOW YOU'RE SAYING HIS ARM IS UP AND

21 HIS RIGHT SHOULDER IS DOWN; IS THAT CORRECT?

22 A NO. I MEAN -- I CAN'T DO IT THAT

23 PRECISELY FOR YOU FOR THE EVIDENCE. BUT I BELIEVE

24 IT'S THAT SORT OF A MANEUVER.

25 Q WHY DON'T YOU JUST STAY FROZEN AND WE'LL

26 DESCRIBE WHAT THE MOVEMENT LOOKS LIKE.

27 YOU'RE DIPPING YOUR RIGHT SHOULDER DOWN,

28 RAISING YOUR ARM UP SO THE HAND IS PARALLEL WITH

1 YOUR CHIN, CORRECT?

2 A I CAN'T DO IT THIS PRECISELY FOR YOU.

3 Q DO IT AGAIN. YOU WON'T EVEN ANSWER IF  
4 YOUR HAND IS IN FRONT OF YOUR CHIN? DO YOU SEE YOUR  
5 HAND IN FRONT OF YOUR CHIN?

6 A YES. BUT WHAT I DON'T WANT TO DO -- IF  
7 I COULD RECONSTRUCT THE POSITION OF EVERYBODY TO  
8 THIS PRECISION, I WOULD HAVE DONE IT ALREADY.

9 Q DR. MC CARTHY, WHAT YOU DON'T WANT ME TO  
10 DO IS TO PIN YOU DOWN; ISN'T THAT TRUE?

11 MR. CONN: OBJECTION. ARGUMENTATIVE.

12 THE COURT: SUSTAINED.

13 Q BY MS. ABRAMSON: DO YOU NOT WANT TO BE  
14 PINNED DOWN, DR. MC CARTHY?

15 A I DON'T WANT TO COMMUNICATE TO THE JURY  
16 DETAIL THAT I CAN'T INFER FROM THE REMAINING  
17 EVIDENCE.

18 Q YOU CAN'T INFER FROM THE EVIDENCE THE  
19 DETAIL YOU PUT ON THESE DIAGRAMS, CAN YOU? YOU JUST  
20 ARBITRARILY PUT IT THERE.

21 A SOME DETAIL IS ARBITRARILY PLACED, AND I  
22 TRIED TO INDICATE THAT WHICH PERHAPS SOMEONE MIGHT  
23 ATTACH SIGNIFICANCE TO, BUT WAS ARBITRARY IN MY  
24 DIAGRAMS.

25 Q I WANT YOU TO RETAKE THE POSITION THAT  
26 YOU THINK, IN FACT, WAS THE POSITION THAT

27 MR. MENENDEZ WAS IN WHEN HE RECEIVED THE ELBOW

28 WOUND, BECAUSE I HAVEN'T COMPLETED DESCRIBING IT FOR

40891

1 THE RECORD.

2 WOULD YOU PLEASE DO THAT AGAIN.

3 A IT'S --

4 Q IT DOESN'T REQUIRE AN ANSWER. COULD YOU  
5 PLEASE DO IT.

6 THE COURT: HE'S ALREADY SAID HE CAN'T BE  
7 PRECISE.

8 MS. ABRAMSON: HE'S DEMONSTRATING.

9 THE COURT: COUNSEL, LET'S NOT ARGUE. YOU  
10 ASKED HIM TO SIMPLY ILLUSTRATE SOMETHING, BUT HE  
11 SAYS THERE IS NO PRECISE WAY HE CAN DO THAT.

12 MS. ABRAMSON: HE ASSUMED THE POSTURE BEFORE  
13 I ASKED HIM TO DEMONSTRATE ANYTHING. WHEN HE WAS  
14 ANSWERING QUESTIONS HE LIFTED HIS LEFT ELBOW,  
15 DROPPED HIS RIGHT SHOULDER, BEFORE I ASKED HIM  
16 ANYTHING. AND ALL I'M TRYING TO DO IS CAPTURE IT  
17 FOR THE RECORD.

18 THE COURT: HE'S QUALIFIED THAT THIS IS NOT A  
19 PRECISE DEMONSTRATION. SO IT'S MEANINGLESS TO  
20 DESCRIBE.

21 Q BY MS. ABRAMSON: ARE YOU NOW SAYING

22 THAT EVEN WHAT YOU WERE JUST DEMONSTRATING, THAT'S  
23 NOT ACCURATE. WE SHOULDN'T PAY ATTENTION TO IT; IS  
24 THAT WHAT YOU'RE SAYING?

25 A NO. YOU ASKED ME WHAT I THOUGHT -- YOU  
26 ASKED ME IF I THOUGHT HE WAS JUST SORT OF SITTING  
27 THERE FLOATING ABOVE THE ARMREST, AND I SAID NO.  
28 I THOUGHT HE WAS ATTEMPTING TO DO

40892

1 SOMETHING MORE LIKE THIS (DEMONSTRATING), RAISING  
2 HIS ARM, SHIELDING. BUT I CAN'T DO THAT PRECISE  
3 POSITION, BECAUSE DEPENDING ON WHERE YOU PUT HER,  
4 DEPENDING ON WHERE YOU PUT THE SHOOTER, THE POSITION  
5 IS CHANGED.

6 Q DO IT AGAIN. YOU JUST DID IT AGAIN  
7 AUTOMATICALLY.

8 NOW, YOUR LEFT HAND IS UP SORT OF  
9 PARALLEL WITH YOUR CHIN AND MOUTH.

10 IS THAT WHAT YOU'RE SHOWING RIGHT NOW?  
11 THAT'S ALL I'M ASKING YOU.

12 A YOU'VE GOT A BETTER VIEW OF ME THAN ME.  
13 THAT'S WHAT IT LOOKS LIKE FROM HERE, YES.

14 Q YOU'VE GOT YOUR RIGHT SHOULDER DIPPED  
15 DOWN, CORRECT?

16 A YES.

17 Q AND YOU'VE GOT YOUR RIGHT ARM BENT AND  
18 YOUR RIGHT HAND RESTING ABOUT OPPOSITE -- ABOUT TWO  
19 INCHES BELOW THE KNOT OF YOUR TIE; IS THAT RIGHT?

20 MR. CONN: I OBJECT UNDER 352, IN LIGHT OF  
21 THE WITNESS' TESTIMONY THAT HE IS NOT ACCURATELY  
22 PORTRAYING HIS POSITION. HE'S PREPARED  
23 ILLUSTRATIONS WHICH INDICATE THE POSITIONS HE'S  
24 SEEKING TO PRESENT.

25 MS. ABRAMSON: HIS POSITION IS WHAT IT IS.  
26 ALL I'M TRYING TO DO IS TRANSLATE IT FOR THE  
27 RECORD. THE JURY SEES IT; THE RECORD DOESN'T.

28 THE COURT: AGAIN, YOU HAVE DESCRIBED IT AS

40893

1 MUCH AS IT NEEDS TO BE DESCRIBED.

2 YOUR NEXT QUESTION, PLEASE.

3 MS. ABRAMSON: OKAY.

4 Q SO, IN SPITE OF THE FACT -- NOW, LET'S  
5 DO THIS AGAIN. WITH THE RIGHT ARM DIPPED, RIGHT AND  
6 THE LEFT ARM UP --

7 THE COURT: WE'VE BEEN THROUGH THIS ALREADY.

8 MS. ABRAMSON: I'M JUST TRYING TO SHOW --

9 THE COURT: COUNSEL, LET'S GO ON TO SOMETHING  
10 ELSE, BECAUSE YOU'RE ASKING HIM TO DO SOMETHING HE  
11 SAYS HE CANNOT DO.

12 MS. ABRAMSON: I'M ASKING HIM WHY HE'S  
13 DECIDED TO DO THIS INSTEAD.  
14 THE COURT: LET'S NOT GET INTO A DISCUSSION.  
15 HE WAS JUST ANSWERING THE QUESTION.  
16 Q BY MS. ABRAMSON: WHAT'S THE ANGLE OF  
17 THE TRAJECTORY THAT YOU'RE SHOWING IN 1A?  
18 A I DON'T KNOW THE PRECISE ANGLE ON THAT  
19 DIAGRAM, BUT I CAN RECONSTRUCT FOR YOU THE PRECISE  
20 ANGLE.  
21 Q WHAT IS THE ANGLE ON THE DIAGRAM YOU  
22 DREW, THE --  
23 A I DON'T RECALL IT FROM MEMORY.  
24 Q AND THIS DOES NOT SHOW -- WELL, DOES IT  
25 HAVE A DOWNWARD ANGLE, AN UPWARD ANGLE? CAN YOU  
26 TELL ME AT LEAST THAT MUCH?  
27 A YES. I BELIEVE IT DOES APPEAR TO BE AT  
28 A SLIGHT DOWNWARD ANGLE. I THINK THAT'S CORRECT.

40894

1 Q IF THE BODY WAS IN THE POSITION THAT  
2 YOU'RE DEMONSTRATING AND WENT THROUGH THE SAME  
3 PLACES ON THE BODIES THAT YOU'RE SHOWING, THAT WOULD  
4 HAVE A MUCH MORE DRAMATICALLY DOWNWARD ANGLE THAN  
5 WHAT YOU'VE ILLUSTRATED ON 1A, WOULDN'T IT?  
6 A I WOULDN'T SAY MUCH MORE DRAMATICALLY.



7 DEPENDING ON HOW YOU POSITION THE BODY, THE ANGLE  
8 WILL CHANGE.

9 Q THERE'S NO INDICATION, IS THERE, THAT  
10 THE BREAST WOUNDS TO MRS. MENENDEZ HAVE A DOWNWARD  
11 ANGLE, IS THERE?

12 A THE AUTOPSY REPORT SAYS WHAT IT SAYS.  
13 BUT THERE'S NO INDICATION OF A DRAMATIC DOWNWARD  
14 ANGLE.

15 Q THERE'S NO INDICATION OF ANY DOWNWARD  
16 ANGLE IN THE AUTOPSY REPORTS; ISN'T THAT TRUE,  
17 DR. MC CARTHY?

18 A I DON'T RECOLLECT ANY DISCUSSION; AND  
19 THUS, THAT'S WHY THERE'S A VERY MILD ONE HERE.

20 Q WELL, I DON'T KNOW WHAT YOU MEAN BY  
21 RECOLLECT A DISCUSSION. I'M TALKING ABOUT AN  
22 AUTOPSY REPORT, NOT A DISCUSSION. OKAY?

23 ARE WE CLEAR ON THAT?

24 A YES. BUT I CAN'T REMEMBER THE SPECIFIC  
25 WORD -- IF THE CORONER --

26 Q YOU HAVE IT. WHY DON'T YOU LOOK.

27 A YEAH. I WILL. THANK YOU.

28 (PAUSE.)

2 Q WHY DON'T YOU TRY 6, PAGE 7. THIS  
3 PARTICULAR TOPIC IS IN THE NEXT TO THE LAST  
4 PARAGRAPH ON PAGE 8 OF THIS WOUND, OF SIX.

5 A YES. HE SAYS: "WITHOUT MEASURABLE  
6 ANGULATION." HE'S NOT SAYING ZERO.

7 Q THIS IS WHAT THE PARAGRAPH SAYS, IS IT  
8 NOT?

9 A WHO CAN --

10 Q "THERE IS HEMORRHAGE ALONG THE  
11 ENTIRE WOUND PATH AS DESCRIBED. THE  
12 TRAJECTORY IS FRONT TO BACK AND LEFT  
13 TO RIGHT, OR INWARD, WITHOUT  
14 MEASURABLE ANGULATION UPWARD OR  
15 DOWNWARD."

16 A CORRECT.

17 Q THAT MEANS HORIZONTAL, DOESN'T IT?

18 A YES, MORE OR LESS.

19 Q SO THERE IS NO ANGULATION DOWNWARD  
20 INSIDE THE BODY AS DISSECTED BY THE CORONER,  
21 CORRECT?

22 MR. CONN: OBJECTION. MISSTATES THE  
23 TESTIMONY AND ASSUMES FACTS NOT IN EVIDENCE.

24 THE COURT: OVERRULED.

25 THE WITNESS: THERE WAS NO ANGULATION  
26 SIGNIFICANT ENOUGH POSSIBLY TO MEASURE.

27 Q BY MS. ABRAMSON: WHAT YOU'RE SHOWING,  
28 WHICH IS A TIPPING OF MR. MENENDEZ' SHOULDER AND THE

1 SHOT COMING DOWNWARD, IS SIGNIFICANT ANGULATION,  
2 ISN'T IT?

3 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
4 EVIDENCE, WHICH IS WHAT THAT POSITION REPRESENTS.

5 THE COURT: IT'S ARGUMENTATIVE AS PHRASED.

6 Q BY MS. ABRAMSON: NOW, DID YOU HAVE YOUR  
7 COMPUTER RE-SCALE MRS. MENENDEZ' SIZE YESTERDAY AS  
8 YOU WERE PLANNING ON DOING?

9 A NO. WE ATTEMPTED TO LOOK AT THE AUTOPSY  
10 PHOTOGRAPHS TO SEE IF WE HAD ONE WITH A COMPLETE  
11 BODY SHOT. WE DO NOT. SO WHAT WE'LL HAVE TO DO, IF  
12 WE'RE GOING TO SCALE, IS WE'LL -- WE'VE GOT PARTS OF  
13 HER BODY IN DIFFERENT POSITIONS, AND WE WOULD HAVE  
14 TO SEE IF WE'VE GOT A SEQUENCE WHERE SHE WAS NOT  
15 MOVING, AND DITHER AND RECONSTRUCT, AND I DON'T HAVE  
16 THAT SOFTWARE.

17 Q IS THAT NO?

18 A THAT'S THE ANSWER TO YOUR QUESTION.

19 Q DID IT OCCUR TO YOU THAT SOMEONE SHOULD  
20 JUST ASK HER BROTHER OR SISTER, OR SOMEONE WHO KNOWS  
21 HER, AND FIND OUT HOW TALL SHE WAS; OR IS THAT TOO  
22 SIMPLE?

23 MR. CONN: OBJECTION. ARGUMENTATIVE.

24 THE COURT: SUSTAINED.

25 Q BY MS. ABRAMSON: DID YOU HAVE DRAWN

26 SHOT 1A AS ENTERING MRS. MENENDEZ' LEFT CHEST  
27 BASICALLY FROM THE SIDE OF THE BREAST, THE WAY IT'S  
28 DRAWN RIGHT THERE, CORRECT?

40897

1 A YES.

2 Q AND YOU HAVE HER WHAT, SITTING ON A  
3 CUSHION?

4 A SITTING ON THE COUCH.

5 Q FLOATING ON THE COUCH, ACTUALLY, ISN'T  
6 SHE?

7 A NO. IT'S DIFFICULT TO FLOAT ON A  
8 COUCH. THE REPRESENTATION IS TO HAVE HER SITTING ON  
9 THE COUCH.

10 Q THE WAY SHE'S DRAWN THERE SHE IS  
11 ARTIFICIALLY RAISED UP ON THAT COUCH, ISN'T SHE?

12 A I GUESS THE ANSWER OCCURS TO ME, NOT IF  
13 SHE'S FIVE-EIGHT. I DON'T THINK SHE'S ARTIFICIALLY  
14 ELEVATED ON THE COUCH, EVEN IF SHE'S DRAWN AS SHOWN.

15 Q WELL, THE PURPOSE OF THIS LINE THAT  
16 YOU'VE DRAWN, AND POSITIONING THE FIGURES THE WAY  
17 THEY ARE POSITIONED, IS TO SHOW THAT IT'S POSSIBLE  
18 FOR ALL THESE WOUNDS TO COMMUNICATE ALONG A STRAIGHT  
19 LINE, ISN'T IT?

20 A WELL, I MEAN, IT'S TO DEMONSTRATE THAT

21 THEY, IN MY RECONSTRUCTION, DO COMMUNICATE IN A  
22 STRAIGHT LINE.

23 Q THIS IS TO DEMONSTRATE THAT THERE'S A  
24 STRAIGHT LINE THAT CONNECTS THE LEFT ELBOW, THE  
25 RIGHT ARM OF MR. MENENDEZ, AND THE LEFT BREAST OF  
26 MRS. MENENDEZ?

27 A YES. THIS CERTAINLY IS.

28 Q SO THE BODIES SORT OF HAVE TO BE LINED

40898

1 UP IN A WAY TO SHOW THAT?

2 A WELL, LINED UP IN A WAY; OR COULD THE  
3 BODIES ALL BE IN SLIGHTLY DIFFERENT POSITIONS IN THE  
4 ACTUAL SCENE? SURELY.

5 MS. ABRAMSON: YOUR HONOR, I HAVE ONE OF  
6 THESE ILLUSTRATIONS IN SMALLER FORM. I'D LIKE TO  
7 MARK IT NEXT IN EVIDENCE.

8 THE COURT: HAVEN'T THEY ALREADY BEEN MARKED,  
9 SO WE'RE JUST GETTING INTO A DUPLICATION?

10 MS. ABRAMSON: NOT THIS ONE.

11 THE COURT: IT WASN'T USED IN TESTIMONY?

12 MS. ABRAMSON: THIS HAS A LINE DRAWN IN IT  
13 THAT DOESN'T EXIST YET.

14 MR. CONN: MAY I SEE IT?

15 MS. ABRAMSON: CAN YOU SEE IT?

16 THE COURT: 294 IS THE NEXT EXHIBIT NUMBER.

17 MS. ABRAMSON: THANK YOU, YOUR HONOR.

18 Q THIS APPEARS, DOES IT NOT, DR. MC CARTHY,  
19 TO BE A SMALLER DUPLICATE OF YOUR SHOT NO. 1A, BUT  
20 IT HAS A LINE DRAWN ALONG THE EDGE OF THE COUCH  
21 CUSHION. YOU SEE THAT LINE DRAWN BY COMPUTER?

22 A IT HAS AN EDGE ON IT. YES. I JUST  
23 CAN'T VERIFY, IN TERMS OF THE COUCH CUSHION, WHERE  
24 IT'S DRAWN.

25 Q YOU SEE THERE'S AN EDGE TO THE COUCH  
26 CUSHION IN YOUR LARGE ILLUSTRATION. IF YOU GO FROM  
27 THIS POINT, WHICH IS THIS CORNER TO THIS POINT,  
28 WHICH IS THIS CORNER, YOU CAN DRAW A STRAIGHT LINE

40899

1 ACROSS THAT EDGE.

2 A SURELY.

3 MS. ABRAMSON: WHY DON'T YOU JUST -- PERHAPS,  
4 MR. LEVIN, YOU CAN MOVE THAT ILLUSTRATION BACK, GET  
5 SOME SPACE SO THE WITNESS DOESN'T HAVE TO GET UP AND  
6 THE JURY CAN SEE IT AS WELL.

7 Q NOW, YOU SEE IF YOU CONNECT THOSE -- BY  
8 THE WAY, THAT'S HOW YOU DREW YOUR TRAJECTORY LINES.  
9 YOU PICKED TWO POINTS AND YOU ASKED THE COMPUTER TO  
10 CONNECT THEM WITH A STRAIGHT LINE, CORRECT?

11 A THAT'S ONE WAY YOU COULD DO IT. I THINK  
12 WE JUST BASICALLY MOVED THE LINE AND THE FIGURES  
13 INDEPENDENTLY.

14 Q SO YOU JUST HAD A LINE THAT YOU COULD  
15 MOVE AND TILT AND TIP?

16 A A LINE AND FREE SPACE, A BAR. THAT BAR  
17 IS AN OBJECT TO THE COMPUTER. IT JUST THINKS THAT'S  
18 PART OF THE SCENE.

19 Q IT ISN'T THE COMPUTER DOING GEOMETRICS  
20 FROM ONE VECTOR TO THE OTHER?

21 A THAT'S CORRECT.

22 Q YOU CAN DO THAT ON A COMPUTER. YOU CAN  
23 TELL IT TO GO FROM THIS POINT TO THAT POINT IN A  
24 STRAIGHT LINE?

25 A ABSOLUTELY.

26 Q AND YOU SEE HERE THAT SUCH A STRAIGHT  
27 LINE IS DRAWN?

28 A APPEARS SO, YES.

40900

1 Q AND YOU SEE THAT IN THAT STRAIGHT LINE  
2 DRAWN -- SOMEHOW HER BODY, HER KNEES ARE FLOATING  
3 ABOVE THE COUCH CUSHION, THE BASE OF THE COUCH,  
4 CORRECT?

5 A NO. IN THIS PLACEMENT -- WE'D HAVE TO

6 GET SHOT 1B.

7 Q I WANT TO TALK ABOUT THIS FOR THE  
8 MOMENT. HER KNEE IS HERE AND THE EDGE OF THE  
9 CUSHION IS BELOW IT. THE EDGE OF THE CUSHION LINES  
10 UP WITH HIS KNEES THE WAY YOU'VE DRAWN IT.

11 A YES, UH-HUH.

12 Q DO YOU INTEND TO HAVE HER SITTING ON  
13 THIS PILLOW, THAT PIECE OF THE PILLOW SHOWN  
14 UNDERNEATH HER BOTTOM?

15 A SHE'S ILLUSTRATED LIKE THAT IN THAT  
16 ILLUSTRATION, SITTING ON A PILLOW.

17 Q SHE'S EITHER SITTING ON A PILLOW OR  
18 FLOATING ABOVE THE BOTTOM OF IT?

19 A AGAIN, I'D HAVE TO LOOK AT THE OTHER  
20 SHOT TO ANSWER YOUR QUESTION ABOUT HER KNEES AND  
21 GEOMETRY. SHE'S SHOWN THERE CLEARLY SITTING.

22 Q SINCE WE'VE ALREADY ESTABLISHED THERE IS  
23 NO PILLOW, SHE CAN'T BE SEATED ON ONE, CORRECT?

24 A THAT IS CORRECT. SHE CAN'T.

25 Q AND PUTTING HER ON A PILLOW AND PUTTING  
26 HER UP AT THIS ANGLE SIMPLY LINES THE BREAST UP  
27 BETTER WITH THE RIGHT ARM, DOESN'T IT?

28 A I MEAN, IT LINES UP IN THIS GEOMETRY.



1 BUT I COULD HAVE FOLDED HER KNEES UNDER HER AND  
2 LINED IT UP. THERE'S ANY NUMBER OF WAYS SHE COULD  
3 HAVE BEEN FOR THIS ORIGINAL SHOT.

4 Q BUT THAT'S THE WAY YOU DO IT TO LINE HER  
5 UP, SO IT WOULD LOOK LIKE IT CONNECTED?

6 A THAT'S THE WAY THIS ILLUSTRATION IS  
7 SHOWN, THAT'S CORRECT.

8 Q NOW, WE WERE TALKING YESTERDAY; YOU,  
9 MR. GESSLER, MAINLY, AND MYSELF A LITTLE, ABOUT ALL  
10 THESE TEST-FIRINGS YOU DID; AND THE PURPOSE  
11 ORIGINALLY WAS TO TRY TO FIND A DISTRIBUTION PATTERN  
12 SO YOU COULD DO SOME DISTANCE CALCULATIONS; IS THAT  
13 RIGHT?

14 A IT WOULD ASSIST ME IN DISTANCE  
15 RECONSTRUCTION, YES.

16 Q ARE YOU FAMILIAR WITH THE LITERATURE  
17 CONCERNING HOW SHOT PELLETS EMIT FROM THE BARREL OF  
18 SHOTGUNS GENERALLY?

19 A I THINK I AM.

20 Q AND GENERALLY SPEAKING, ISN'T IT TRUE  
21 THAT THE PELLETS FORM A PATTERN THAT'S EVER-WIDENING  
22 THE FARTHER AWAY FROM THE TARGET THE MUZZLE OF THE  
23 GUN IS?

24 A WHEN YOU'RE TALKING ABOUT THE ULTIMATE  
25 CONTACT PATTERN, YES.

26 IN POINT OF FACT, THE LITERATURE TEACHES  
27 THAT THE PELLETS EMERGE FROM THE SHOTGUN AND ASSUME  
28 TWO GROUPS THAT ARE ALSO EXPANDING, IF YOU WILL,

1 CONICALLY, AS YOU ALLUDED TO EARLIER IN THE CASE.

2 BUT IN POINT OF FACT, THE LEAD PELLETS  
3 THAT LEAD THE SHOT GROUP ACTUALLY, BECAUSE THEY'RE  
4 PLOWING THE UNDISTURBED AIR FIRST, BECOME RETARDED  
5 AND THEN MOVE BACK THROUGH THE SHOT GROUP; AND THEN  
6 THE SHOT GROUP ASSUMES -- ONCE THEY GET SPREAD OUT  
7 THERE ISN'T A FLOWING EFFECT FROM THE LEADERS AND  
8 THE COLUMN GOES OUT AS TWO GROUPS IN A WIDENING  
9 PATTERN. BUT IT'S NOT QUITE -- IT'S JUST A CLEAN  
10 EXPANDING CONE.

11 AND THAT'S SOME OF THE LITERATURE.

12 Q WHAT'S THE SPACE BETWEEN THE TWO GROUPS,  
13 A FOOT?

14 A NOW YOU GOT ME THERE.

15 Q WELL, IS THAT A SPACE?

16 A IT'S A FEW INCHES, FROM MY  
17 RECOLLECTION. I DON'T KNOW THAT IT'S A FOOT.

18 BUT THE IMPORTANCE OF THAT IS THAT WHEN  
19 THE SHOT MOVES BACK THROUGH FROM -- THE COLUMN  
20 DESTABILIZES INTO TWO PARTS AND THE PELLETS ARE  
21 NON-SYMMETRIC. THEY DON'T HAVE TO TAKE A PRECISELY  
22 LINEAR PATH AND YOU DON'T MAKE PRECISELY A LINEAR  
23 CONE. THE FLIGHT OF A SHOT COLUMN IS NOT A SIMPLE

24 THING.

25 Q THE QUESTION WAS: AT A GREATER DISTANCE

26 THERE'S A WIDER PATTERN OF DISTRIBUTION OF PELLETS.

27 CAN YOU ANSWER THAT YES OR NO?

28 A GENERALLY.

40903

1 Q GENERALLY, YES?

2 A YES.

3 Q IS THERE A RANGE GENERALLY ACCEPTED IN

4 THE ACCEPTABLE SCIENTIFIC LITERATURE OF WHEN IT IS

5 THAT PELLETS EVEN SEPARATE FROM ONE SOLID COLUMN

6 INTO INDIVIDUAL PELLETS WITH SPACES BETWEEN THEM?

7 A THERE ARE.

8 Q IF YOU KNOW.

9 A RANGES OF PELLETS SPREAD, PUBLISHED IN

10 THE LITERATURE, AS A FUNCTION OF DISTANCE DOWN

11 RANGE. THEY HAVE HUGE SPREADS ON THEM. GENERALLY,

12 EVERYBODY AGREES THERE ISN'T MUCH SPREAD BEFORE YOU

13 GET OUTSIDE THE BARREL. BUT AFTER YOU GET OUTSIDE

14 THE BARREL, DEPENDING ON THE CONSTRUCTION OF THE

15 SHOT SHELL, THE RATE OF EXPANSION CAN VARY

16 SIGNIFICANTLY AND DRAMATICALLY BETWEEN AMMUNITION

17 TYPES.

18 Q SO YOU'RE SAYING THERE IS NO GENERALLY

19 ACCEPTED SPREAD RANGE OUTSIDE THE BARREL IN THE  
20 LITERATURE? IS THAT WHAT YOU'RE SAYING?  
21 A THERE ARE GENERALLY USED FORMULAS FOR  
22 SPREAD IN THE LITERATURE, BUT ANY DETAILED STUDIES  
23 SHOWED THAT THEY'RE REMARKABLY INACCURATE FOR A  
24 PARTICULAR SHOT AND ROUND.  
25 Q THAT MEANS YOU ARE COMPLETELY INCAPABLE  
26 OF PREDICTING WHETHER OR NOT THERE IS A SPREAD AT  
27 ONE, TWO, THREE, TEN FOOT OR FIFTY FOOT, ANYTHING?  
28 A NO. IT IS NOT THE CASE THAT YOU ARE

40904

1 COMPLETELY INCAPABLE. YOU COULD EVEN PERHAPS  
2 CALCULATE A NOMINAL. BUT YOU WOULD HAVE TO ADMIT A  
3 DISTRIBUTION AROUND IT; THAT IS, YOU THINK THIS  
4 NOMINALLY -- THIS IS A SPREAD CONSISTENT WITH FIVE  
5 FEET.  
6 BUT DEPENDING ON THE ROUND AND THE SHOT,  
7 IT MAY BE A TWO-AND-A-HALF OR SEVEN-AND-A-HALF SORT  
8 OF DISCUSSION.  
9 DO YOU UNDERSTAND WHAT I MEAN?  
10 Q NOW, YOU DID IN YOUR TEST-FIRINGS  
11 DISCERN, HOWEVER NON-UNIFORM, THERE WAS A DISTANCE  
12 IN THE SPREAD BETWEEN SIX FEET AND TWELVE FEET,  
13 CORRECT?

14 A OH, CLEARLY, THERE IS MORE SPREAD AT  
15 TWELVE FEET THAN SIX FEET.  
16 Q OH, GOOD. THERE IS MORE SPREAD AT  
17 TWELVE THAN SIX?  
18 A GENERALLY. YOU WOULD AGAIN --  
19 Q YES?  
20 A NOT ALWAYS, BUT MOST OF THE TIME.  
21 NOT --  
22 Q NOT ALWAYS?  
23 A NOT ALWAYS. YOU WILL HAVE SHOTS -- AND  
24 I COULD SHOW SOME OF MY TARGETS WHERE THE SPREAD AT  
25 TWELVE FEET FROM A TIGHT GROUP WILL BE SMALLER THAN  
26 THE SPREAD AT SIX FEET FROM A LOOSE GROUP.  
27 Q WITH THE SAME AMMUNITION AND SAME GUN?  
28 A I'M ABSOLUTELY CERTAIN YOU WOULD GET

40905

1 THAT WITH THE SAME ROUNDS AND SAME GUN.  
2 Q YOU DIDN'T GET THAT HERE, THOUGH?  
3 A I GOT VERY CLOSE, AS I CAN ILLUSTRATE  
4 FOR YOU.  
5 Q GO AHEAD. ILLUSTRATE FOR ME HOW YOUR  
6 TWELVE FOOT IS SMALLER THAN YOUR SIX.  
7 MR. CONN: OBJECTION. MISSTATES THE  
8 TESTIMONY THAT IT IS SMALLER.

9 MS. ABRAMSON: WELL, THAT'S WHAT HE SAID.  
10 WITH THE FIOCCHI AMMUNITION.  
11 THE WITNESS: I'VE GIVEN UP MY TARGETS, BUT I  
12 THINK I HAVE COPIES. HANG ON.  
13 THE COURT: LET'S JUST USE THE EXHIBITS THEN  
14 AND WE'LL DO THAT AT 1:30.

15 MS. ABRAMSON: THANK YOU, YOUR HONOR.

16 THE COURT: WE'LL BE IN RECESS.

17 (AT 12:00 NOON PROCEEDINGS WERE  
18 ADJOURNED UNTIL 1:30 P.M. OF THE  
19 SAME DAY.)

-24630

1 VAN NUYS, CALIFORNIA; WEDNESDAY, NOVEMBER 15, 1995

2 1:40 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: THE TRIAL PARTICIPANTS ARE HERE, AND  
9 ARE WE ALL SET?

10 MS. ABRAMSON: YES, YOUR HONOR. WE MARKED A NEW  
11 EXHIBIT FOR THE COURT'S RECORD, 295.

12 THE COURT: OKAY. ALL RIGHT. LET'S GET THE JURY  
13 OUT, PLEASE.

14 (THE JURY ENTERS THE COURTROOM AND THE  
15 FOLLOWING PROCEEDINGS WERE HELD:)

16

17 THE COURT: THE JURY IS BACK, AND WE WILL RESUME  
18 WITH THE CROSS-EXAMINATION.

19

20 CROSS-EXAMINATION (CONTINUED.)

21 BY MS. ABRAMSON:

22 Q. THANK YOU, YOUR HONOR.

23 DR. MC CARTHY, I AM GOING TO TURN YOUR

24 ATTENTION BACK TO THE TWO ILLUSTRATIONS NOW THAT HAVE

25 BEEN MARKED AS EVIDENCE ITEMS IN THIS CASE, SHOWING SHOT

26 1A AND SHOT 1B.

27 IS IT NOW YOUR TESTIMONY THAT THOSE DO NOT

28 REPRESENT YOUR RECONSTRUCTION OF SHOT 1A -- OF SHOT 1,

-24629

1 RATHER?

2 A. NO. I MEAN, THEY DO REPRESENT MY  
3 RECONSTRUCTION OF SHOT 1.

4 Q. ALL RIGHT. WELL, LET ME ASK YOU A SERIES  
5 OF QUESTIONS ABOUT THEM THEN.

6 A. SURE.

7 Q. BASED ON WHAT YOU DEMONSTRATED ON THE  
8 WITNESS STAND, ARE YOU SAYING THAT THE GREEN LINE IS  
9 WRONG?

10 A. NO, IT'S SCHEMATICALLY CORRECT.

11 Q. SO, ARE YOU STILL SAYING THAT SHOT 1 COULD  
12 HAVE BEEN -- THE PATH OF SHOT 1 COULD HAVE BEEN JUST THE

13 WAY THAT LINE IS DRAWN, MORE OR LESS HORIZONTAL FROM HIS

14 LEFT ELBOW, ENDING UP IN HER LEFT BREAST?

15 A. IT WOULD JUST DEPEND -- THE EXACT ANGLE

16 RELATIVE TO THE GROUND WOULD JUST DEPEND ON HIS POSITION

17 AND HER POSITION AT THE MOMENT THE SHOT WAS FIRED. AS

18 THEY --

19 Q. I'M SORRY.

20 A. AS THEY STAND MORE ERECT, THE SHOOTER COULD

21 HAVE BEEN HOLDING THE SHOTGUN HIGHER. IF THEY BEND

22 OVER, THE SHOOTER CAN BE LOWER. OBVIOUSLY, HE'S LIMITED

23 BY THE HEIGHT OF THE COUCH ARM. THEY CAN'T GET ANY

24 LOWER THAN THAT.

25 BUT SCHEMATICALLY THIS IS MY RECONSTRUCTION

26 OF THE FIRST SHOT.

27 Q. THAT'S NOT WHAT I AM ASKING, THOUGH.

28 WHAT I NEED TO KNOW IS IS IT STILL WITHIN

-24628

1 YOUR THESIS, IF YOU WILL, THAT THE POSITION OF THE

2 DECEDENTS COULD HAVE BEEN, AS IT IS REPRESENTED IN THESE

3 TWO EXHIBITS, SITTING THE WAY YOU SHOW THEM?

4 A. WITH THE UNDERSTANDING, AS I TESTIFIED

5 ORIGINALLY, THAT OUTSIDE OF THE GEOMETRY OF THE LOWER

6 ARM, THE LEFT ARM AND THE BREAST. THEY CAN MOVING THOSE

7 POINTS AROUND.

8 SO, THIS IS SCHEMATICALLY CORRECT. BUT AS



9 I HAVE INDICATED, I DON'T KNOW IF THEIR LEGS WERE

10 CROSSED --

11 Q. OKAY.

12 A. I CAN'T PUT THEM PRECISELY UPRIGHT. I JUST

13 USED THE ANTHROPOMORPHIC DUMMY IN ITS STIFF, AS

14 PURCHASED, POSITION.

15 Q. LET ME ASK YOU, THOUGH, IF MR. MENENDEZ WAS

16 IN THE POSITION AS ILLUSTRATED BEFORE WE BROKE FOR

17 LUNCH, THE GREEN LINE WOULD NOT BE AT AN ANGLE, CORRECT?

18 A. I AM SORRY, I DON'T UNDERSTAND. THE FIGURE

19 IS ANTHROPOMORPHICALLY CORRECT.

20 Q. I AM NOT TALKING ABOUT THE FIGURE. THE

21 GREEN LINE IS SUPPOSED TO REPRESENT A TRAJECTORY AND A

22 VECTOR, AN ANGLE OF SOME KIND?

23 A. THAT IS CORRECT.

24 Q. AND FOR IT TO BE ACCURATE IN ANY WAY, THE

25 FIGURES HAVE TO BE SEATED THE WAY YOU SHOW THEM,

26 CORRECT?

27 A. NOT PRECISELY. YOU COULD ROTATE THE

28 FIGURES WITHIN CERTAIN DEGREES AND STILL ACHIEVE THE

-24627

1 SAME GEOMETRY.

2 Q. BUT WHEN YOU SHOWED A POSITIONING FOR MR.

3 MENENDEZ WITH THE LEFT ARM UP AND THE RIGHT ARM AND

4 RIGHT SHOULDER DOWN WITH THE SHOT COMING IN, THAT

5 CHANGES THE ANGLE, DOES IT NOT, THE WAY I AM HOLDING THE  
6 POINTER NOW?

7 A. NO, IT --

8 Q. SO THE ANGLE -- LET ME FINISH THE QUESTION.

9 A. OKAY.

10 Q. IF THE ELBOW IS UP AND YOU ARE STILL GOING

11 TO END UP IN HER BREAST, THE ANGLE IS GOING TO BE

12 DRAMATICALLY DIFFERENT, ISN'T IT?

13 A. ONLY IF YOU HOLD YOUR ELBOW DRAMATICALLY

14 HIGHER. THAT'S WHY I INDICATED MY UNCOMFORTABLENESS IN

15 TAKING AN EXACT POSITION WITH AN ELBOW POSE OF SO MANY

16 INCHES. WHAT YOU HAVE TO DO IS MAKE THIS GEOMETRY LINE

17 UP, AND YOU CAN DO THAT FROM A NUMBER OF POSITIONS.

18 Q. YOU HAVE AN ENTIRE RANGE THEN; IT CAN BE

19 HIGH, AS I AM SHOWING IT NOW, OR IT CAN COME DOWN TO

20 WHERE IT IS VIRTUALLY HORIZONTAL, THE WAY YOU SHOW IT ON

21 1A AND B; IS THAT CORRECT?

22 A. THAT'S CORRECT. ALL YOU HAVE TO DO --

23 Q. I'M SORRY?

24 A. ALL YOU HAVE TO DO IS MOVE HIS RELATIVE ARM

25 POSITION, AND ALSO HER BODY POSITION. IF SHE IS MORE

26 TILTED BACK, THEN AN ANGLE SHOT COMES IN HORIZONTALLY TO

27 HER BREAST. BUT, OF COURSE, THE SHOT DOESN'T HAVE TO BE

28 HORIZONTAL. THAT MEANS IS HAS TO ENTER PERPENDICULAR TO

1 HER TORSO.

2 SO, IF HER TORSO IS PERPENDICULAR, IT

3 ENTERS HORIZONTAL, AND IT APPEARS HORIZONTAL TO THE

4 CORONER.

5 Q. WHEN THE CORONER IN HIS REPORT TALKS ABOUT

6 DIRECTION, HE IS TALKING ABOUT DIRECTION, IS HE NOT,

7 FROM WHERE HE SEES A DEFECT ON THE SKIN TO A PATH INSIDE

8 THE BODY. HE IS BASICALLY TALKING ABOUT DIRECTION

9 INSIDE THE BODY?

10 A. RELATIVE TO THE AXIS OF THE BODY, CORRECT.

11 Q. AND THEY ALWAYS USE THE SAME -- AS FAR AS

12 YOU KNOW, DO THEY ALWAYS USE THE SAME ANATOMICAL

13 POSITION?

14 A. GENERALLY FOR THE BEGINNING DESIGNATION OF

15 POSITION, YES.

16 Q. SO, THEY ARE DESCRIBING -- IF THEY DESCRIBE

17 UP OR DOWN, IT HAS TO DO WITH ASSUMING THE BODY IN THE

18 BASIC ANATOMICAL POSITION?

19 A. RIGHT.

20 Q. RIGHT. AND WITH RESPECT TO WHAT WE WERE

21 SHOWING BEFORE LUNCH -- WELL, STRIKE THAT.

22 WITH RESPECT EVEN TO THIS, IF THE VECTOR IS

23 ANGLED AT A GREATER ANGLE THAN WHAT YOU'RE SHOWING HERE,

24 IN ORDER TO ACCOUNT FOR HIS LIFTING HIS ELBOW AND

25 DROPPING HIS RIGHT ARM, THEN THE BASIC -- WE ARE NOT

26 JUST TALKING ABOUT INSIDE BODY ANGLE, BUT THE ANGLE OF

27 THE MUZZLE OF THE GUN IS ON A DOWNWARD TRAJECTORY,

28 CORRECT?

1 A. IF HE ANGLES HIS ARM UP AND HIS LOWER ARM  
2 IS DOWN, AND SHE IS ROTATED RELATIVE TO THE SHOOTER,  
3 THEN YES, THE ANGLE RELATIVE TO THE FLOOR IS DOWN. BUT  
4 THERE IS NO HORIZONTAL ANGULATION IN HER BREAST RELATIVE  
5 TO THE STANDARD ANATOMICAL POSITION.

6 Q. WELL, THAT'S A FACT THAT THERE ISN'T,  
7 BECAUSE THAT'S WHAT DR. GOLDEN SAID.

8 A. UNDERSTOOD. BUT WHAT I AM SAYING IS JUST  
9 BECAUSE THERE IS NO ANGULATION IN THE STANDARD  
10 ANATOMICAL POSITION, YOU DON'T KNOW WHAT THE ANGLE OF  
11 THE WEAPON IS RELATIVE TO THE FLOOR. ALL SHE HAS TO DO  
12 IS HAVE HER BODY TILTED AND IT COMES IN PERPENDICULAR TO  
13 HER BACK.

14 Q. RIGHT. IN FACT, HOW MANY DIFFERENT  
15 POSITIONS, WITH SAY ONE DEGREE DIFFERENCE, DO YOU THINK  
16 HER BODY COULD HAVE BEEN IN TO RECEIVE THAT BREAST  
17 WOUND?

18 A. OH, IF YOU WANTED TO COUNT EVERY ONE DEGREE  
19 ANGULATION DIFFERENCE, ESPECIALLY OF HIM, YOU ARE  
20 TALKING ESSENTIALLY AN INFINITE NUMBER OF POSITIONS.  
21 BUT THE SCHEMATIC IS STILL CORRECT.

22 Q. ALL RIGHT. IF YOU COULD ANSWER JUST THE  
23 QUESTION.

24 A. SORRY.

25 Q. SO, THERE ARE ACTUALLY THOUSANDS OF

26 DIFFERENT POSITIONS HER BODY COULD BE IN?

27 A. IF YOU ARE GOING TO COUNT SMALL ENOUGH

28 DIFFERENCES, YES.

-24624

1 Q. AND THERE ARE THOUSANDS OF DIFFERENT

2 POSITIONS HIS BODY COULD BE IN?

3 A. IF YOU COUNT SMALL ENOUGH DIFFERENCES, YES.

4 Q. THE QUESTION IS NOW YOU ARE ELIMINATING --

5 ELIMINATING THE POSITIONS THAT ARE SHOWN ON THOSE TWO

6 EXHIBITS, SHOT 1A AND 1B.

7 ARE THEY OUT OF THE QUESTION NOW?

8 A. NO.

9 Q. ALL RIGHT.

10 A. THEY JUST SCHEMATICALLY REPRESENT THE

11 FAMILY OF POSITIONS.

12 Q. I AM NOT ASKING ABOUT A FAMILY OF

13 POSITIONS. I AM ASKING ABOUT THE POSITIONS -- THERE IS

14 ONLY ONE POSITION SHOWN ON THESE CHARTS.

15 A. THAT IS CORRECT.

16 Q. THESE ARE NOT MOVING PICTURES.

17 A. CORRECT.

18 Q. THESE ARE NOT VIDEOS?

19 A. THEY ARE NOT.

20 Q. THIS IS A FROZEN IMAGE, AND ONE IMAGE ONLY,

21 CORRECT?

22 A. CORRECT.

23 Q. NOW, ARE YOU ELIMINATING THIS IMAGE IN 1A  
24 EXACTLY AS IT'S SHOWN? IS THAT NOT POSSIBLE?

25 A. NO, I AM NOT ELIMINATING THAT IMAGE.

26 Q. ARE YOU ELIMINATING THE IMAGE IN SHOT 1B;  
27 IS THAT NOT POSSIBLE?

28 A. NO, I AM NOT ELIMINATING THAT IMAGE.

-24623

1 Q. SO, THESE TWO IMAGES ARE STILL, WITHIN YOUR  
2 ANALYSIS, POSSIBLE?

3 A. YES.

4 Q. THE BODIES COULD HAVE BEEN IN EXACTLY THESE  
5 POSITIONS AS PICTURED, THAT'S WHAT YOU'RE SAYING?

6 A. I AM NOT COMFORTABLE WITH EXACT.

7 Q. WELL, WE ARE ONLY SAYING COULD. I AM NOT  
8 SAYING WERE.

9 A. YEAH, BUT I'M NOT COMFORTABLE WITH EXACT.  
10 I DIDN'T TAKE INCREMENTS, FOR INSTANCE, OF HIS RIGHT ARM  
11 PRECISELY ON THE WOUND. I MEAN, IF I WANTED AN EXACT  
12 REPRESENTATION, I MIGHT HAVE ROTATED HIM A LITTLE MORE  
13 TO THE RIGHT. PERHAPS.

14 Q. WELL, SITTING UPRIGHT. LET'S ASK YOU THIS,  
15 TO MAKE IT SIMPLER. I AM MORE INTERESTED IN THE LINE.  
16 IS THIS LINE STILL WITHIN THE REALM OF THE  
17 POSSIBILITIES?

18 A. NO QUESTION ABOUT THAT.  
19 Q. NO QUESTION ABOUT THAT?  
20 A. YES.  
21 Q. ALL RIGHT. NOW, DR. MC CARTHY, DID YOU  
22 PURPOSELY LEAVE OBJECTS OUT OF THESE SCHEMATICS BECAUSE  
23 THEY RENDERED YOUR POSITIONS IMPOSSIBLE?  
24 A. NO. BUT I PROBABLY LEFT OUT --  
25 Q. IS THAT NO?  
26 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS  
27 ANSWER.  
28 THE WITNESS: NO, BUT I LEFT OBJECTS OUT BECAUSE

-24622

1 THEY DIDN'T PLAY ANY PART OF MY RECONSTRUCTION.  
2 Q. BY MS. ABRAMSON: YOUR HONOR, I HAVE TWO  
3 MORE -- UNFORTUNATELY, TWO MORE OF THESE ILLUSTRATIONS,  
4 BUT THESE ARE SLIGHTLY DIFFERENT THAN WHAT'S UP THERE.  
5 THE COURT: THAT HAVE BEEN MODIFIED SOMEWHAT?  
6 MS. ABRAMSON: YES, THEY HAVE, YOUR HONOR.  
7 THE COURT: 296 AND 297.  
8 MS. ABRAMSON: THANK YOU.  
9 THE COURT: AND THIS IS WHAT?  
10 MS. ABRAMSON: THIS IS 1A AND 1B, YOUR HONOR.  
11 296 CORRESPONDS TO 1A AND 297 CORRESPONDS TO 1B.  
12 THE COURT: ALL RIGHT.  
13 Q. BY MS. ABRAMSON: NOW, DR. MC CARTHY,

14 SHOWING YOU WHAT'S BEEN MARKED 296 AND 297, DO YOU SEE  
15 WHAT'S BEEN PUT BACK IN THAT ILLUSTRATION THAT YOU LEFT  
16 OUT?  
17 A. YOU PUT THE T.V. CONTROL.  
18 Q. YES, THE CHANNEL CHANGER.  
19 A. OKAY.  
20 Q. NOW, BASED ON THE PHOTOGRAPHS -- AND WE  
21 HAVE SEVERAL OF THEM UP HERE RIGHT NOW -- THERE IS  
22 SITTING RIGHT NEXT TO MR. MENENDEZ ON THE ARM OF THE  
23 SOFA A CHANNEL CHANGER.  
24 A. MM-HMM.  
25 Q. AND YOU CAN SEE THAT IN THREE OF THE  
26 PHOTOGRAPHS THAT ARE UP ON 295?  
27 A. MM-HMM.  
28 Q. AND IT IS CORRECT, IS IT NOT,

-24621

1 DR. MC CARTHY, THAT THERE ARE INDIVIDUAL PELLET DEFECTS  
2 ON MR. MENENDEZ' LEFT ELBOW?  
3 A. YES.  
4 Q. SEPARATE DEFECTS WITH SPACE BETWEEN THEM?  
5 A. YES.  
6 Q. AND IT IS CORRECT, GENERALLY, IS IT NOT,  
7 THAT THAT CONNOTES A NON-CONTACT WOUND?  
8 A. AN ENTRY AND NON-CONTACT.  
9 Q. AND IT CONNOTES SOME DISTANCE FROM THE



10 MUZZLE OF THE GUN?

11 A. YES.

12 Q. AND THERE ARE NOT ALL 27 PELLETS, SO THOSE

13 NINE DEFECTS ARE ONLY ONE-THIRD OF THE PELLETS THAT WERE

14 IN THAT ROUND?

15 A. YES.

16 Q. AND SO THERE IS A SPREAD EVEN LARGER IF YOU

17 COUNT ALL THE PELLETS, THAN THE SPREAD THAT'S

18 DEMONSTRATED IN THAT LEFT ELBOW, CORRECT?

19 A. YES.

20 Q. SO THERE ARE PELLETS COMING TOWARDS THAT

21 ELBOW THAT DO NOT STRIKE THAT ELBOW?

22 A. YES.

23 Q. YOUR THEORY IS THEY GO RIGHT BY IT,

24 CORRECT?

25 A. THAT'S A FACT, BUT ALSO MY THEORY, YES.

26 Q. AND YOU ARE AWARE, ARE YOU NOT, THAT THERE

27 ARE NO PELLET DEFECTS, THAT'S NO BREAKAGE OR PELLET

28 IMPACTS, ON THE CHANNEL CHANGER?

-24620

1 A. I AM NOT AWARE OF ANY.

2 Q. PUTTING UP ON THE BOARD THEN THIS -- 297

3 ESPECIALLY SHOWS THAT ALONG THE VECTOR THAT YOU HAVE PUT

4 IN SHOT 1B, IF THAT LINE IS MEANT TO BE TAKEN SERIOUSLY,

5 THE CHANNEL CHANGER WOULD HAVE BEEN HIT.

6 A. NO. THIS DIAGRAM IS INCORRECT. IF YOU CAN  
7 LOOK AT THE OTHER ONE, YOU CAN SEE YOUR ARTIST MADE AN  
8 ERROR IN CROPPING THE BAR AROUND THE CHANNEL CHANGER.  
9 YOU CAN SEE CLEARLY IN THE OTHER FIGURE THE SHOT WOULD  
10 CLEAR THE CHANNEL CHANGER EASILY.

11 Q. BUT THIS FIGURE 297 IS THE ARTIST'S SHOWING  
12 ON THAT VECTOR LINE, ADDING THE CHANNEL CHANGER TO 1B  
13 WHERE IT ACTUALLY WAS.

14 THIS -- I AM ONLY ASKING YOU WHAT IT SHOWS.  
15 THIS SHOWS THE VECTOR LINE INTERSECTING THE CHANNEL  
16 CHANGER, DOESN'T IT?

17 A. NO.

18 Q. IT DOESN'T?

19 A. NO. YOUR ARTIST HAS CROPPED THE VECTOR  
20 LINE. IN OTHER WORDS, THERE IS NOT AN INTERSECTION. IF  
21 YOU LOOK AT THE OTHER FIGURE YOU WILL SEE YOUR ARTIST  
22 DID NOT DO A COMPUTATION TO HIT THAT CHANNEL CHANGER.  
23 IF YOU LOOK AT THE OTHER SHOT, YOU WILL SEE EXACTLY WHAT  
24 HE DID.

25 Q. THE NARROW PART THERE IS MEANT TO SHOW IT'S  
26 HITTING AND GOING THROUGH THE CHANNEL CHANGER; DO YOU  
27 UNDERSTAND THAT?

28 A. EXACTLY. EXACTLY, AND YOU WILL SEE IN THE

2 Q. WELL, YOU CAN POINT IT OUT WHEN YOU GET  
3 YOUR TURN AGAIN.

4 A. I ALREADY HAVE.

5 Q. NOW, IT'S BEEN YOUR PREVIOUS TESTIMONY,  
6 DR. MC CARTHY, THAT THE SHOOTER WAS STANDING DIRECTLY TO  
7 THE LEFT OF MR. MENENDEZ WHEN SHOT NO. 1 WAS INFLICTED.

8 IS THAT STILL YOUR TESTIMONY?

9 A. TO THE LEFT. I AM NOT SURE WHAT YOU MEAN  
10 BY "DIRECTLY."

11 Q. WELL, WAS HE IN FRONT? WAS HE IN FRONT OF  
12 THE COUCH?

13 A. THE SHOT HAS A BIAS FRONT TO REAR, SO I  
14 DON'T THINK THE SHOOTER WAS LINEARLY EXTENDED OUT TO THE  
15 LEFT OF THE COUCH. I THINK HE WAS SOMEWHAT FORWARD.

16 Q. SOMEWHAT FORWARD. HOW MUCH FORWARD?

17 A. WELL AGAIN, THAT WOULD DEPEND ON EXACTLY  
18 WHERE THEIR BODY POSITIONS WAS -- WERE, BUT SOMEWHERE  
19 FORWARD.

20 Q. WELL, DID YOU EVER ANGULATE FARTHER OUT  
21 THAN WHAT YOUR VECTOR LINE SHOWS? YOUR VECTOR LINE  
22 STOPS -- OH, I GUESS. LET'S SEE.

23 LOOKING AT YOUR ILLUSTRATION FOR SHOT 1A,  
24 YOUR VECTOR LINE STOPS ABOUT WHAT, HOW MANY INCHES AWAY  
25 FROM THE COUCH?

26 A. I DON'T KNOW. THAT WASN'T A CONTROL. I AM  
27 MERELY SHOWING DIRECTION, NOT DISTANCE.

28 Q. AND YOU HAVE TOLD US THAT YOU CAN'T SAY

1 ANYTHING ABOUT DISTANCE, BECAUSE YOUR DISTANCE

2 EXPERIMENTS WERE TOO VARIABLE; IS THAT RIGHT?

3 A. I WOULDN'T SAY YOU CAN'T SAY ANYTHING. AS

4 YOU PROPERLY POINTED OUT, IT'S NOT A CONTACT SHOT. BUT

5 I CAN'T PIN THIS DISTANCE DOWN VERY RELIABLY, OTHER THAN

6 TO SAY IT'S A FEW FEET.

7 Q. A FEW FEET. A FEW FEET.

8 AND WHAT ABOUT THIS ANGLE ON 1B? YOU DID

9 THIS. YOU CAN MEASURE THIS ANGLE, CAN'T YOU?

10 A. BUT I CAN'T -- DEPENDING ON -- I COULD

11 ROTATE THOSE FIGURES THROUGH A FEW DIFFERENT POSITIONS

12 AND THAT ANGLE WOULD STAY THE SAME. THE REMAINING

13 EVIDENCE DOESN'T ALLOW ME TO POSITION IT PRECISELY.

14 Q. BUT YOU CHOSE THIS FROZEN IMAGE TO PORTRAY,

15 DID YOU NOT?

16 A. YES.

17 Q. AND WITH RESPECT TO THIS FROZEN IMAGE,

18 WHICH YOU HAVE NOW TESTIFIED IS ONE OF THE

19 POSSIBILITIES, THERE IS AN ANGLE HERE OF SLIGHTLY FRONT

20 TO BACK, CORRECT?

21 A. YES.

22 Q. AND IF THE BODIES ARE IN THE POSITION THAT

23 YOU HAVE SHOWN THEM, AND IF THEY'RE RECEIVING WOUNDS IN

24 THE DIRECTIONS THAT YOU HAVE DESCRIBED, YOU REALLY CAN'T

25 CHANGE THAT ANGLE, CAN YOU?

26 A. WELL, SURE YOU CAN. JUST WHERE HIS

27 POSITION IS.

28 Q. BUT THEN YOU HAVE TO CHANGE THE POSITION OF

-24617

1 THE BODIES AS WELL?

2 A. WELL, OF COURSE.

3 Q. WELL, I WANT EVERYTHING TO BE FROZEN FOR A  
4 MOMENT, OKAY? THE BODIES ARE IN THIS POSITION. THE  
5 ANGLE IS WHERE THE ANGLE IS.

6 A. I AM SORRY, MA'AM. I CAN'T SEE WHERE YOU  
7 ARE POINTING.

8 Q. WELL, YOU HAVE A COPY OF IT?

9 A. YES.

10 Q. WHAT WE ARE SAYING IS YOU HAVE FROZEN THE  
11 BODIES IN THIS POSITION AND YOU HAVE DRAWN THE VECTOR  
12 LINE AT THE ANGLE THAT'S SHOWN HERE, RIGHT?

13 A. RIGHT.

14 Q. AND IF YOU JUST PLAY IT OUT, ARE YOU SAYING  
15 THE SHOOTER WAS RIGHT HERE AT THE VECTOR LINE?

16 A. I DON'T KNOW. HE COULD HAVE BEEN FURTHER  
17 AWAY.

18 Q. WELL, WAS HE?

19 A. I DON'T KNOW. IF I COULD HAVE BEEN ABLE TO  
20 RELIABLY DETERMINE THE SHOT DISTANCE, I COULD HAVE.

21 Q. WELL, HE HAD TO BE AT LEAST THE DISTANCE OF  
22 THE GUN, DIDN'T HE?

23 A. IT WAS NOT A CONTACT WOUND, YES.  
24 Q. THERE IS SOME AREA BETWEEN THE ELBOW AND  
25 THE MUZZLE OF THE GUN?  
26 A. YES.  
27 Q. A FEW FEET AT LEAST, CORRECT?  
28 A. YES, CORRECT.

-24616

1 Q. AND HOW LONG IS THE GUN?  
2 A. THIRTY INCHES. PUT A TAPE ON IT. THIRY  
3 SOME ODD.  
4 Q. AND YOU TESTIFIED ON DIRECT EXAMINATION  
5 THAT IT WAS YOUR OPINION THAT THIS GUN WAS BEING HELD IN  
6 A POSITION -- BECAUSE OF THE RECOIL OF THIS GUN, THAT IT  
7 WAS BEING HELD UP, CORRECT, AT THE SHOULDER? THAT'S  
8 WHAT YOU SAID.  
9 A. I DON'T REMEMBER SAYING THAT PRECISELY. I  
10 SAID YOU HAD TO HOLD THE WEAPON IN A WAY TO ABSORB THE  
11 RECOIL. A SHOULDER IS A GOOD PLACE. YOU CAN HOLD A  
12 SHOTGUN DOWN LOWER, BUT YOU HAVE TO HOLD IT IN A WAY YOU  
13 CAN HANDLE THE RECOIL.  
14 Q. DO YOU WANT TO CHANGE YOUR PREVIOUS  
15 TESTIMONY INDICATING THAT IT COULD HAVE BEEN UP HERE TO  
16 LOWER?  
17 MR. CONN: OBJECTION. MISSTATES THE PREVIOUS  
18 TESTIMONY.

19 THE COURT: SUSTAINED.

20 Q. BY MS. ABRAMSON: WELL, DO YOU HAVE AN  
21 OPINION AS TO WHETHER THE GUN WAS HELD UP OR LOWER?

22 A. I CAN'T GIVE YOU A PRECISE POSITION OF HOW  
23 THE GUN WAS HELD. I DON'T HAVE A VIDEOTAPE OF THE  
24 MURDERS, OF THE SHOOTINGS. ALL I HAVE IS THE REMAINING  
25 EVIDENCE.

26 Q. LET'S TALK ABOUT WHAT YOU SHOW, THOUGH, IN  
27 THIS FROZEN PORTRAYAL THAT YOU CHOSE TO MEMORALIZE.

28 IN THIS FROZEN PORTRAYAL, THE VECTOR LINE

-24615

1 IN SHOT 1A INDICATES THAT THE MUZZLE OF THE GUN WOULD BE  
2 A MATTER OF JUST A FEW INCHES ABOVE THE ARM OF THE  
3 COUCH; ISN'T THAT WHAT THAT SHOWS?

4 A. YEAH. WHEN YOU SAY A FEW INCHES, YOU KNOW,  
5 6 TO 12. THE GUN IS OFF TO THE RIGHT, SO IT CONTINUES  
6 TO ELEVATE. THE FURTHER YOU GET AWAY TO THE RIGHT, THE  
7 HIGHER IT GETS ABOVE THE ARM. THIS ALSO SHOWS --

8 Q. BECAUSE THAT'S A SLIGHT DOWNWARD ANGLE?

9 A. AND AGAIN, THE AMOUNT OF DOWNWARD ANGLE  
10 DEPENDS ON HIS DISTANCE AND THE EXACT POSITION OF THEIR  
11 BODIES. THIS SHOT IS ALSO -- GO AHEAD.

12 Q. LET'S DO THIS. WE KNOW THE SIDE OF THE  
13 COUCH IS ONLY 28 INCHES HIGH, CORRECT?

14 A. THAT'S MY RECOLLECTION OF THE POLICE

15 DIAGRAM.

16 Q. AND THAT'S WHAT YOU SCALED INTO THE  
17 COMPUTER, 28 INCHES HIGH, CORRECT?

18 A. AGAIN, THAT'S MY RECOLLECTION. I WOULD  
19 HAVE TO CHECK TO BE CERTAIN.

20 Q. AND BASED ON HOW THIS APPEARS, EVEN IF THE  
21 ELBOW ISN'T TOUCHING THE ARMREST OF THE COUCH, IT'S ONLY  
22 A VERY SHORT DISTANCE ABOVE IT, RIGHT?

23 A. WELL, IT'S A FEW INCHES ABOVE IT. IT'S  
24 CLEARLY MORE THAN THE THICKNESS OF THE CHANNEL CHANGER.

25 Q. HOW MANY INCHES ABOVE IT?

26 A. I WOULD HAVE TO SCALE OFF THE DIAGRAM, BUT  
27 THREE OR FOUR.

28 Q. THREE OR FOUR. SO NOW WE'RE AT ABOUT 31

-24614

1 INCHES HIGH; IS THAT RIGHT?

2 A. APPROXIMATELY. BUT THERE AGAIN --

3 Q. AND AT THIS ANGLE HAVE YOU FIGURED UP HOW  
4 FAR UP OFF THE FLOOR THE GUN WOULD HAVE TO BE?

5 A. NO. IT WOULD HAVE TO BE A FEW MORE INCHES  
6 THAN THAT.

7 Q. BUT STILL LOWER THAN IF SOMEONE WHO WAS  
8 FIVE-TEN SAY WERE HOLDING IT AT SHOULDER HEIGHT?

9 A. YEAH. YOU WOULD BE LOOKING AT HOLDING IT  
10 DOWN AT YOUR WAIST.



11 Q. SO NOW IT WOULD HAVE TO BE HELD AT THE

12 WAIST, CORRECT?

13 A. IF YOU WERE GOING TO MAKE A 30-INCH

14 GEOMETRY COME OUT, YES. IF YOU WERE TO MAKE A HIGHER

15 ANGLE WITH MORE ROTATED FIGURES, YOU COULD FIRE IT FROM

16 THE SHOULDER.

17 Q. IF WE MADE AN ANGLE TO INDICATE WHAT YOU

18 WERE TALKING ABOUT BEFORE LUNCH, THIS KIND OF DIPPING

19 MOTION THAT YOU SHOWED, THEN THE GUN OBVIOUSLY HAS TO BE

20 POINTED DOWNWARD?

21 A. NO.

22 Q. AND HAS TO BE HELD HIGHER, CORRECT?

23 A. NO. NO. YOU CAN IMAGINE A FIGURE THAT

24 GOES THROUGH THE ROTATION THAT I DID AND STILL MAINTAIN

25 REASONABLY HORIZONTAL ROTATION BETWEEN THE LEFT ELBOW

26 AND THE RIGHT ARM. THAT'S WHY I HESITATE TO LEAVE YOU

27 WITH A SPECIFIC SCENARIO, BECAUSE THE REMAINING EVIDENCE

28 WON'T PERMIT THAT DEGREE OF PRECISION.

-24613

1 Q. BUT ONE OF THE THINGS THAT YOU HAVE ALREADY

2 SAID IS THAT ONE THING IS FOR SURE, WHICH IS THE ELBOW

3 CAN'T BE BELOW THE TOP OF THE COUCH.

4 A. CORRECT.

5 Q. SO IT CAN'T BE LOWER THAN 28 INCHES?

6 A. CORRECT.

7 Q. SO IF IT STARTS ROTATING IT'S GOING TO BE

8 ROTATING TO WHERE IT'S ABOVE 28 INCHES?

9 A. TWENTY-EIGHT INCHES FROM A SEATED FIGURE.

10 MY ELBOW HERE IS HIGHER THAN 28 INCHES.

11 Q. SO WHERE IS THE SHOOTER STANDING, BASED ON

12 THIS FROZEN IMAGE, WHICH IS THE ONLY ONE YOU CHOSE TO

13 PORTRAY OF SHOT 1A?

14 A. UNFORTUNATELY, 1B SORT OF GIVES YOU A

15 BETTER -- THEY CAN SEE IT, I AM SORRY.

16 Q. RIGHT HERE.

17 A. YOU CAN SEE IT A LITTLE FORWARD OF THE

18 COUCH AND OFF TO THE LEFT.

19 Q. HOW FAR OFF TO THE LEFT?

20 A. THERE AGAIN, I COULDN'T RELIABLY DETERMINE

21 DISTANCE, BUT IT'S A FEW FEET.

22 Q. WHAT IS OFF TO THE LEFT, DR. MC CARTHY?

23 A. DO YOU WANT TO GIVE ME THE POINTER?

24 Q. I DON'T MEAN WHAT DIRECTION IS OFF TO THE

25 LEFT, BUT I MEAN WHAT IN THE ROOM IS OFF TO THE LEFT?

26 A. OH. WELL, FAR ENOUGH THERE IS A DOORWAY

27 OVER THERE.

28 Q. AND NEAR ENOUGH THERE IS A TABLE AND

-24612

1 CHAIRS, CORRECT?

2 A. THERE IS A TABLE AND CHAIR, BUT NOW --

3 WHERE IS THAT --

4 Q. WELL, I AM GOING TO GET YOU ONE.

5 A. HERE. IT'S OVER HERE. NOT QUITE DIRECTLY  
6 OFF TO THE LEFT THERE IS A TABLE AND CHAIR, BUT --

7 Q. WE'RE GOING TO GET SOME PHOTOGRAPHS NOW.

8 CHARLIE, IN THE BIG BOX. THOSE. NO.

9 RIGHT IN YOUR HAND. IT'S IN YOUR RIGHT HAND.

10 MR. GESSLER: IN THE BOX, OKAY.

11 MS. ABRAMSON: IN THE BOX. JUST TAKE THEM OUT.

12 I AM SORRY, YOUR HONOR. I FEEL LIKE A  
13 PIANO MOVER.

14 THE COURT: ARE THESE NEW EXHIBITS?

15 MS. ABRAMSON: YES. 298 AND 299.

16 THE COURT: AND IS THERE ONE PHOTOGRAPH ON EACH  
17 ONE OF THESE?

18 MS. ABRAMSON: YES, YOUR HONOR. THEY ARE JUST  
19 ENLARGEMENTS OF THINGS THAT HAVE BEEN IN HERE TO SHOW  
20 SCALE.

21 299, YOUR HONOR IS A -- JUST SO THAT  
22 THERE'S A RECORD, IS A VIEW OF THE -- OF THE DEN LOOKING  
23 WEST, AND 298 IS A VIEW -- YOU MIGHT HAVE TO HOLD THIS  
24 ONE UP FOR ME. PUT THAT ONE RIGHT THERE.

25 I AM SORRY. 298 IS A VIEW LOOKING SOUTH.

26 ALL RIGHT.

27 DR. MC CARTHY, YOU ARE FAMILILAR WITH THESE  
28 TWO PHOTOGRAPHS, CORRECT?

1 A. YES.

2 Q. AND 298, WHICH IS THE ONE ON THE LEFT,  
3 SHOWS THAT THERE IS A TABLE WITH CHAIRS PULLED AWAY FROM  
4 IT TO THE LEFT AND SLIGHTLY TO THE FRONT OF THE COUCH,  
5 CORRECT?

6 A. VERY SLIGHTLY, YES.

7 Q. WELL, LET'S SEE ABOUT "VERY". LET'S LOOK  
8 AT THE RUG. THE COUCH APPEARS TO BE SITTING RIGHT AT  
9 THE END OF THE PATTERN OF THE RUG, RIGHT?

10 A. MM-HMM.

11 Q. AND WE ARE LOOKING AT THIS CHAIR HERE, THE  
12 CHAIR THAT IS FACING DUE SOUTH, AND WE CAN SEE THAT THE  
13 BACK LEG OF THE CHAIR IS AT LEAST A FOOT OR MORE OVER  
14 THE RUG.

15 A. IT'S OVER THE RUG. I MEAN, THIS SHOT SHOWS  
16 IT MUCH BETTER. I MEAN, THE TABLE.

17 Q. WELL, EVERY SHOT HAS ITS OWN PERSPECTIVE,  
18 CORRECT?

19 A. YEAH.

20 Q. AND NONE OF THEM ARE PERFECTLY STRAIGHT ON,  
21 CORRECT?

22 A. WHEN YOU SAY STRAIGHT ON, TO WHAT? THIS  
23 LOOKS LIKE PRETTY MUCH PERPENDICULAR TO THE FAR WALL.

24 Q. YOU CAN SEE, EVEN WITH THE CHAIR, THE SAME  
25 CHAIR. SEE, IT SEEMS TO BE FACING MUCH MORE DIRECTLY  
26 SOUTH WHEN YOU TAKE A SHOT LOOKING SOUTH, CORRECT?

27 A. THIS SHOT WOULD BE BETTER MAYBE.

28 Q. I WILL WITHDRAW THE QUESTION. LET'S START

-24610

1 WITH THIS.

2 FIRST OF ALL, YOU DO SEE THE CHANNEL

3 CHANGER SITTING RIGHT THERE?

4 A. YES.

5 Q. AND BASED ON YOUR VECTOR, THE SHOOTER WOULD

6 BE PRETTY MUCH WHERE THE END OF THE POINTER IS RIGHT

7 NOW?

8 A. NO. A LITTLE FARTHER FORWARD, I THINK.

9 Q. IF YOU LOOK AT THE VECTOR, IS IT COMING OUT

10 FROM THE CHAIR?

11 A. OBVIOUSLY HE WASN'T STANDING ON THE CHAIR

12 OR IN THE CHAIR IF THE CHAIR WAS IN THAT POSITION WHEN

13 THE SHOTS WERE FIRED.

14 Q. WELL, IS THERE A PROBLEM IF THE CHAIR WAS

15 IN THAT POSITION?

16 A. WELL, I DON'T BELIEVE HE WAS STANDING IN

17 THE CHAIR.

18 Q. NO, THAT WOULDN'T MAKE SENSE, WOULD IT?

19 A. BUT HE WOULD BE IN THIS AREA IN MY

20 RECONSTRUCTION.

21 Q. THIS AREA WHERE I AM POINTING?

22 A. WELL, THAT AND FURTHER OUT.

23 Q. WELL, IF IT'S FURTHER OUT YOU ARE GOING TO

24 GET AN ANGLE TOO EXTREME TO LINE UP THE LEFT ELBOW, THE  
25 RIGHT ARM AND HER LEFT BREAST, BASED ON HOW YOU HAVE  
26 PORTRAYED THESE FOLKS IN SHOT 1A AND B?  
27 A. AGAIN, IT WOULDN'T BE TOO EXTREME. IT  
28 DEPENDS ON THE ANGULATION OF HIM AND HER ON THE SOFA AT

-24609

1 THAT MOMENT.

2 Q. WHAT'S THE DISTANCE BETWEEN THE EDGE OF THE  
3 COUCH AND THE WALL?

4 A. I DON'T RECOLLECT OFF THE TOP OF MY HEAD,  
5 BUT --

6 Q. IS THAT "I DON'T KNOW"?

7 A. I DON'T KNOW AS I SIT HERE.

8 Q. WHAT'S THE DISTANCE BETWEEN THE SIDE OF THE  
9 COUCH AND THE TABLE?

10 A. AGAIN, IT'S NOT MUCH, BUT I COULDN'T TELL  
11 YOU EXACTLY JUST SITTING HERE.

12 Q. AND YOU'RE NOT PROPOSING THAT THE SHOOTER  
13 IS STANDING ON THE TABLE, ARE YOU?

14 A. NO.

15 Q. OR SITTING ON THE TABLE?

16 A. NO.

17 Q. OR SITTING IN A CHAIR?

18 A. NO.

19 Q. OR STANDING ON A CHAIR?

20 A. THAT IS CORRECT.

21 Q. SO, SOMEHOW THE SHOOTER HAS TO BE IN A

22 PLACE PHYSICALLY WHERE HE CAN BE WHERE THE MUZZLE OF THE

23 GUN IS FAR ENOUGH AWAY TO CAUSE A SPEAD PATTERN ON THE

24 LEFT ELBOW; WOULD YOU AGREE WITH THAT?

25 A. YES.

26 Q. AND THEN YOU CAN'T TELL US WHAT THAT

27 DISTANCE IS, BECAUSE THE SPREAD PATTERN OF YOUR TEST

28 ROUNDS WAS TOO VARIABLE, CORRECT?

-24608

1 A. CORRECT, BEYOND SAYING IT'S A FEW FEET.

2 Q. AND IF I WERE TO SUGGEST TO YOU,

3 DR. MC CARTHY, THAT BASED ON EVEN THE SPREAD PATTERNS

4 YOU HAVE, THE MUZZLE OF THE GUN WOULD HAVE HAD TO HAVE

5 BEEN MORE THAN 12 FEET AWAY FROM THE ELBOW, WOULD YOU

6 DISAGREE WITH THAT?

7 A. THAT YOU COULDN'T TAKE ONE OF MY PATTERNS

8 AND GET A 12-FOOT? I WOULD NOT DISAGREE.

9 Q. AND IF I WERE TO TELL YOU THAT OTHER PEOPLE

10 HAVE TESTED THE SAME MODEL GUN WITH THE EXACT TYPE OF

11 FIOCCHI NO. 4 AND COME UP WITH A SIMILAR SPREAD; THAT IT

12 WOULD HAVE TO BE AT LEAST 12 FEET AWAY, THE MUZZLE OF

13 THE GUN WOULD HAVE TO BE 12 FEET AWAY TO CAUSE THAT

14 SPREAD PATTERN, WOULD YOU DISAGREE WITH THAT?

15 A. I WOULD DISAGREE WITH THE STATEMENT IT

16 WOULD HAVE TO BE. THAT YOU COULD FIND SOME SHOTS AND  
17 SOME SPREADS THAT MIGHT ACCOMMODATE 12 FEET, I AM  
18 CERTAIN YOU ARE RIGHT.

19 Q. AND 12 FEET IS FOR THE MUZZLE. IN ADDITION  
20 THERE IS 30 INCHES FOR THE GUN, CORRECT?

21 A. CORRECT.

22 Q. SO WE ARE TALKING MORE LIKE 14, 15 FEET?

23 A. FOR THE SHOOTER.

24 Q. YES. AND IF I WERE TO TELL YOU THAT THE  
25 DISTANCE BETWEEN THE DOOR AND THE EDGE OF THE COUCH,  
26 EVEN ON AN ANGLE, IS NOT 14 OR 15 FEET.

27 A. WOULD I BELIEVE YOU? THAT WOULD BE  
28 CONSISTENT WITH THIS VIEW.

-24607

1 Q. BUT IT WOULD BE INCONSISTENT WITH THE WAY  
2 YOU HAVE PORTRAYED SHOT 1 IN FIGURES 1A AND 1B?

3 A. OH, I DON'T THINK SO. IF YOU EXTENDED THAT  
4 RAY IT MIGHT VERY WELL MAKE IT OUT THE DOORS.

5 Q. SO YOU THINK NOW THEY'RE BEING SHOT AT FROM  
6 OUT THE DOOR?

7 A. NO. I THINK YOU HAVE ASKED ME NUMEROUS  
8 TIMES ABOUT THE DISTANCE OF THE SHOOTER, AND I THINK --  
9 AT LEAST I HOPE -- EACH AND EVERY TIME I HAVE INDICATED,  
10 BECAUSE OF THE UNCERTAINTY OF THE SHOT PATTERN, YOU  
11 COULD GO TO EXTREMES LIKE 14 FEET. YOU MIGHT BE ABLE TO



12 GET THEM AS CLOSE AS TWO FEET. I WOULD HAVE TO CHECK  
13 THE SPREADS. BUT NEVERTHELESS, WITHIN THAT RANGE. THEY  
14 HAD TO BE SOMEWHERE.

15 Q. WELL, THEY HAD TO BE SOMEWHERE, CERTAINLY.  
16 EVERYBODY HAS TO BE SOMEWHERE; WOULDN'T YOU AGREE?

17 A. YES. BUT IT REALLY DOES ILLUSTRATE THE  
18 DIFFICULTY OF USING THE SHOT SPREAD, BECAUSE IT IS SO  
19 HIGHLY VARIABLE.

20 Q. OR THE DIFFICULTY OF DECIDING THAT TWO  
21 PEOPLE WHO ARE CAPABLE OF THOUSANDS OF INDIVIDUAL  
22 MOVEMENTS ARE IN ONE PARTICULAR POSITION WHEN A SHOT IS  
23 FIRED AT THEM. THAT'S ALSO DIFFICULT, ISN'T IT?

24 A. OH, IT'S NOT DIFFICULT. IT'S JUST ONE OF  
25 THE RESTRICTIONS OF A STATIC MEDIA VERSUS ANIMATION, OR  
26 I COULD PUT MULTIPLE FRAMES UP.

27 Q. NOW, YOU NEVER DID, HOWEVER, EXPERIMENT  
28 WITH ANY KIND OF ANTHROPOMORPHIC FIGURES SHOWING THEM

-24606

1 STANDING WHEN THEY RECEIVED ANY OF THESE INJURIES THAT  
2 YOU HAVE ALL INCLUDED IN SHOT 1, CORRECT?

3 A. I HAVE NOT EXPERIMENTED WITH FIGURES WITH  
4 THIS SHOT GEOMETRY STANDING, THAT IS CORRECT.

5 Q. NOW, IS IT YOUR OPINION -- IS IT YOUR  
6 OPINION THAT THE SHOT THAT ENTERED MRS. MENENDEZ' LEFT  
7 BREAST WAS A LOW-VELOCITY SHOT?

8 A. I DON'T BELIEVE IT HAD THE FULL VELOCITY OF  
9 UNFETTERED PELLETS, THAT IS TRUE.

10 Q. NO, I DIDN'T ASK YOU THAT. I ASKED YOU IF  
11 IT WAS A LOW-VELOCITY SHOT, NOT IF IT --

12 A. THAT'S WHAT I MEAN. THE PELLETS DID NOT  
13 HAVE THE FULL VELOCITY WITH WHICH THEY WERE DISCHARGED.  
14 IT WAS A LOWER-VELOCITY SHOT. IT STILL PENETRATED THE  
15 CHEST, SO YOU KNOW YOU HAVE TO GO 200 FEET PER SECOND TO  
16 TO DO THAT. BUT IT WASN'T A 400-SECOND PROJECTILE  
17 EITHER.

18 Q. WAS IT A LOW-VELOCITY SHOT? AND YOU USED  
19 THAT WORD.

20 A. RELATIVE TO THE ORIGINAL MUZZLE VELOCITY IT  
21 WAS LOW, A FRACTION OF IT.

22 Q. DID IT CAUSE WHAT YOU WOULD CALL A  
23 SUPERFICIAL WOUND?

24 A. I USED THAT TERM? SO, IN THE SENSE THAT IT  
25 WASN'T IMMEDIATELY FATAL AND WAS NOT INCAPACITATING,  
26 YES.

27 Q. SO, YOU WOULD CALL A WOUND THAT PENETRATED  
28 THE LEFT BREAST, PENETRATED THE CHEST CAVITY, CAUSED

-24605

1 EIGHT DEFECTS IN THE LOWER LOBE FROM PELLETS, PLUS HIT  
2 THE UPPER LOBE AND CAUSED A THOUSAND CC'S OF BLOOD TO  
3 SEEP INTO THE PLEURAL CAVITY SUPERFICIAL; IS THAT

4 CORRECT?

5 A. NO, PROBABLY NOT AGAIN. BUT AT THE TIME

6 WHEN I WROTE THE REPORT I MEANT THAT IT WASN'T

7 IMMEDIATELY INCAPACITATING.

8 Q. YOU WROTE THAT "THE INJURIES TO MARY

9 MENENDEZ ARE SUPERFICIAL FROM THIS SHOT," CORRECT?

10 A. IN THE SENSE THAT I JUST DESCRIBED, YES.

11 Q. IS THAT WHAT YOU WROTE?

12 A. YES.

13 MR. CONN: OBJECTION. ASKED AND ANSWERED.

14 THE COURT: OVERRULED.

15 Q. BY MS. ABRAMSON: YOU DIDN'T DESCRIBE IT

16 THAT WAY IN THE REPORT. YOU SIMPLY WROTE IT THE WAY I

17 HAVE READ IT, CORRECT?

18 A. OH, NOW THAT'S NOT QUITE FAIR.

19 Q. WELL, LET ME READ YOU THE SENTENCE.

20 DESCRIBING THE TRAVERSAL, AND THIS IS PAGE

21 1 OF YOUR REPORT DATED JULY 13TH, 1995. THE SENTENCE

22 THAT WE HAVE BEEN READING IS AS FOLLOWS: "THESE PELLETS

23 FURTHER CONTINUE WITH GREATLY DIMINISHED ENERGY INTO THE

24 LEFT BREAST AND ARM OF M.M."

25 M.M. MEANS MARY MENENDEZ?

26 A. YES.

27 Q. "BECAUSE OF THE DIMINISHED ENERGY, THE

28 INJURIES TO MARY MENENDEZ ARE SUPERFICIAL FROM THIS

1 SHOT."

2 A. YES, THAT'S WHAT I WROTE.

3 Q. YOU WROTE THAT?

4 A. THAT IS CORRECT.

5 Q. NOW AT THE PRETRIAL HEARING I POINTED OUT  
6 TO YOU THAT THERE WERE EIGHT DEFECTS IN HER LEFT LOBE,  
7 CORRECT?

8 A. YES.

9 Q. AND YOU DON'T THINK EIGHT DEFECTS IN THE  
10 LEFT LOBE ARE SUPERFICIAL, DO YOU?

11 A. NO. I PROBABLY WOULD USE A DIFFERENT WORD.

12 Q. BUT YOU JUSTIFIED, EVEN AT THE PRETRIAL  
13 HEARING, CALLING IT A LOW-VELOCITY ENTRY ON THE BASIS  
14 THAT BREAST TISSUE IS SO EASY TO PENETRATE, CORRECT?

15 A. NOT ON THE BASIS OF THE EASINESS OF BREAST  
16 TISSUE, BUT BECAUSE THE DEPTH THEY PENETRATED IN THE  
17 CHEST CAVITY I DID NOT BELIEVE WERE CONSISTENT WITH A  
18 FULL-VELOCITY SHOT.

19 Q. AND IS IT YOUR OPINION, DR. MC CARTHY, THAT  
20 BREAST TISSUE IS EASIER TO PENETRATE THAN MUSCLE TISSUE?

21 A. BREAST TISSUE REQUIRES LESS ENERGY TO  
22 PENETRATE THAN MUSCLE TISSUE. A BREAST AS A PHYSICAL  
23 CONSTRUCT MIGHT TAKE MORE ENERGY TO ACHIEVE INITIAL  
24 PENETRATION, BECAUSE THE BREAST IS SO SOFT, BUT THE  
25 TISSUE IS MUCH EASIER TO CUT.

26 Q. MUCH EASIER TO CUT?

27 A. THE TISSUE CONSUMES LESS ENERGY IN THE  
28 CUTTING, YES.

1 Q. BREAST TISSUE IS EASIER TO CUT THAN MUSCLE;  
2 IS THAT YOUR TESTIMONY?

3 A. IT IS.

4 Q. CUT WITH A PELLET, CUT WITH A SCALPEL, CUT  
5 WITH A KNIFE, OR CUT WITH ALL THREE?

6 A. ALL OF THE ABOVE.

7 Q. YOU, OF COURSE, HAVE PERFORMED BREAST  
8 SURGERY?

9 A. NO.

10 Q. AND SINCE BREAST TISSUE IS BASICALLY SOFT,  
11 THE FACT THAT THE PELLETS DIDN'T PENETRATE EVEN DEEPER  
12 TELLS YOU THAT IT WAS A LOW-VELOCITY SHOT; IS THAT  
13 RIGHT?

14 A. NOT SO MUCH -- THEY MADE IT THROUGH THE  
15 BREAST, BUT THEY DIDN'T MAKE IT VERY FAR INTO THE CHEST  
16 CAVITY RELATIVE TO WHAT A FULL-VELOCITY SHOT WOULD HAVE.

17 Q. THEY MADE IT ALL THE WAY THROUGH HER LUNGS,  
18 DIDN'T THEY?

19 A. THEY MADE IT INTO HER LUNG.

20 Q. DO YOU KNOW WHETHER THEY CAME OUT THE OTHER  
21 SIDE OR NOT?

22 A. IT DOESN'T LOOK, FROM ANY OF THE EVIDENCE  
23 THAT I HAVE REVIEWED IN THE MEDICAL REPORTS, THAT THE  
24 BACK OF THE LUNG CAVITY WAS DAMAGED, BUT THEY CERTAINLY  
25 DIDN'T EMERGE FROM THE BACK.

26 Q. THEY DIDN'T EMERGE FROM THE BACK.  
27 AND BREAST TISSUE, IF I WERE TO SUGGEST TO  
28 YOU THAT HYPOTHETICALLY THAT BREAST TISSUE IS EXTREMELY

-24602

1 DIFFICULT TO PENETRATE, IT'S TOUGHER AND MORE FIBROUS  
2 AND DENSER THAN MUSCLE TISSUE, SAY AS A HYPOTHETICAL,  
3 WOULD IT THEN BE WITHIN THE REALM OF POSSIBILITY THAT  
4 THIS WAS A FULL-VELOCITY SHOT, AND THE REASON IT DIDN'T  
5 PENETRATE OUT THE BACK IS BECAUSE THE BREAST TISSUE  
6 SLOWED IT UP?

7 A. WELL, FIRST OF ALL, I THINK YOUR  
8 HYPOTHETICAL IS INCORRECT, BUT --

9 Q. I DIDN'T ASK YOU IF YOU THOUGHT MY  
10 HYPOTHETICAL WAS INCORRECT. I GAVE YOU THE HYPOTHETICAL  
11 BECAUSE A MEDICAL DOCTOR WHO IS QUALIFIED TO OFFER SUCH  
12 AN OPINION IS GOING TO TESTIFY TO IT, OTHERWISE I  
13 WOULDN'T GIVE YOU THE HYPOTHETICAL.

14 MR. CONN: I AM GOING TO OBJECT. IT IS  
15 SPECULATION.

16 THE COURT: LET'S NOT ARGUE WITH THE WITNESS.  
17 THE REMARK OF COUNSEL IS STRICKEN. ASK YOUR NEXT  
18 QUESTION.

19 Q. BY MS. ABRAMSON: LET ME OFFER YOU A  
20 HYPOTHETICAL. LET'S SAY DR. MARTIN FACKLER, WHO YOU  
21 HAVE INDICATED IS ONE OF THE LEADING WOUND BALLISTICS

22 EXPERTS IN THE UNITED STATES, WERE TO TESTIFY THAT  
23 BREAST TISSUE IS MUCH DENSER AND MORE FIBROUS AND HARDER  
24 TO CUT THAN MUSCLE, OKAY? THAT'S A HYPOTHETICAL.  
25 COULD THEN THE FACT THAT THE PELLETS DIDN'T  
26 EXIT OUT HER BACK BE ATTRIBUTABLE TO THE DENSITY OF  
27 BREAST TISSUE RATHER THAN TO THE LOW-VELOCITY OF THE  
28 SHOT FIRED INTO HER?

-24601

1 A. IF I AM GOING TO ASSUME THE TRUTH OF THE  
2 CORRECTNESS OF WHAT YOU SAY, THEN YES, OF COURSE, THAT  
3 COULD FOLLOW. BREASTS ARE, HOWEVER, NOT MORE DENSE THAN  
4 MUSCLE.

5 Q. SO YOU ARE SAYING IF DR. FACKLER, WHO IS A  
6 WOUNDS BALLISTICS EXPERT AND A SURGEON, WERE TO TESTIFY  
7 THAT BREAST TISSUE IS DENSER, HE IS WRONG; IS THAT WHAT  
8 YOU'RE SAYING?

9 A. NO. I AM CONFIDENT THAT WHEN YOU GET DR.  
10 FACKLER IN THIS AREA HE WILL DISTINGUISH BETWEEN THE  
11 DIFFICULTY OF PENETRATING THE STRUCTURE, WHICH BECAUSE  
12 OF ITS COMPLIANCE IS MORE DIFFICULT, AS OPPOSED TO THE  
13 ENERGY CONSUMPTION IN THE CUTTING TASK.

14 Q. THAT'S WHAT YOU ARE -- THAT'S WHAT YOU  
15 THINK HE IS GOING TO SAY?

16 A. I WOULD EXPECT HE WILL DISTINGUISH THE TWO,  
17 YES.

18 Q. YOU HAVEN'T BEEN TALKING TO HIM FOR THE  
19 PAST TWO MONTHS ABOUT HIS REACTION TO YOUR TESTIMONY OR  
20 HIS OPINIONS ABOUT THIS CASE, HAVE YOU?

21 A. NO.

22 Q. DO YOU TRUST THAT I HAVE?

23 MR. CONN: OBJECTION, YOUR HONOR. I AM GOING TO  
24 MOVE TO STRIKE THIS AS ARGUMENTATIVE.

25 THE COURT: ALL RIGHT. SUSTAINED.

26 Q. BY MS. ABRAMSON: NOW, WE -- YOU INDICATED  
27 BEFORE LUNCH THAT DR. GOLDEN'S REPORT CONCERNING THE  
28 ANGLES INSIDE THE BODY OF THIS BREAST WOUND INDICATE NO

-24600

1 DIRECTIONALITY UPWARD OR DOWNWARD, CORRECT?

2 A. NO MEASURABLE ANGULARITY, CORRECT.

3 Q. UP OR DOWN?

4 A. THAT'S RIGHT.

5 Q. THAT SOUNDS LIKE HORIZONTAL, DOESN'T IT?

6 A. RELATIVE TO THE STANDARD ANTHROPOMORPHIC  
7 POSITION, YES.

8 Q. NOT ANTHROPOMORPHICALLY, ANATOMIC?

9 A. ANATOMIC, I AM SORRY.

10 Q. ANTHROPOMORPHIC SEEMS LIKE A HUMAN,  
11 ANATOMICAL IS A HUMAN?

12 A. I HAVE BEEN USING ANTHROPOMORPHIC FIGURES  
13 TOO LONG.



14 Q. RIGHT.

15 NOW, IS IT YOUR UNDERSTANDING,

16 DR. MC CARTHY, THAT THIS WOUND TO HER LEFT BREAST STRUCK

17 A RIB?

18 A. I WOULD HAVE TO REVIEW THE CORONER'S

19 REPORT. I CAN'T RECOLLECT AS I SIT HERE.

20 Q. SO, YOU DON'T REMEMBER?

21 A. AS I SIT HERE, I DO NOT.

22 Q. DO YOU REMEMBER TESTIFYING AT THE PRETRIAL

23 HEARING THAT YOU THOUGHT IT HAD STRUCK A RIB?

24 A. I DON'T REMEMBER SO TESTIFYING. I'M NOT

25 SAYING I DIDN'T, I JUST DON'T REMEMBER.

26 Q. WHY DON'T WE TAKE A LOOK AT PAGE 35,633 OF

27 THAT TESTIMONY.

28 DO YOU HAVE THAT PAGE?

-24599

1 THE COURT: THE WITNESS IS LOOKING AT THE

2 CORONER'S REPORT.

3 MS. ABRAMSON: I WAS GOING TO CITE HIM TO A LINE?

4 THE WITNESS: I DON'T HAVE IT. I LOST IT IN THE

5 NOON SHUFFLE.

6 MS. ABRAMSON: DO YOU HAVE IT?

7 THE COURT: WHY DON'T YOU JUST LET HIM LOOK AT

8 THE CORONER'S REPORT FOR A MOMENT. MAYBE THAT'LL

9 REFRESH HIS RECOLLECTION AND WE WON'T HAVE TO HAVE IT.

10 MS. ABRAMSON: I AM JUST ASKING WHAT HE TESTIFIED  
11 BEFORE. IT'S TOO MUCH PAPER.

12 THE WITNESS: HE INDICATES THE WOUNDS PENETRATE  
13 THE SKIN AND THE CHEST WALL IN THE REGION OF THE 6TH AND  
14 7TH LEFT RIB. THEY PENETRATE THE RIB CAGE INTO THE  
15 PLEURAL CAVITY.

16 Q. BY MS. ABRAMSON: DOESN'T SAY ANYTHING  
17 ABOUT HITTING THE BONE, DOES IT?

18 A. IT SAYS IT PENETRATED THE RIB CAGE.

19 Q. WELL, THE RIB CAGE IS NOT THE RIBS, IT'S  
20 THE SPACE IN BETWEEN, ISN'T IT?

21 A. PERHAPS -- I GUESS, AS I SIT HERE, I DON'T  
22 INTERPRET IT THAT WAY SPECIFICALLY, BUT I AM TRYING TO  
23 REMEMBER THE X RAY.

24 THE COURT: HOLD ON. WAIT FOR ANOTHER QUESTION.

25 THE WITNESS: I'M SORRY.

26 Q. BY MS. ABRAMSON: THERE IS NOTHING IN THAT  
27 CORONER'S REPORT THAT SAYS THAT ANY PELLETS STRUCK A  
28 RIB, CORRECT?

-24598

1 A. NOT -- IT DOESN'T SAY THOSE WORDS. IT SAYS  
2 IT PENETRATED THE RIB CAGE.

3 Q. WHAT IS THE RIB CAGE, DR. MC CARTHY?

4 A. JUST THE CAGE FORMED BY THE RIBS AROUND THE  
5 CHEST.

6 Q. AND THERE IS AN OUTSIDE TO IT AND AN INSIDE

7 TO IT?

8 A. YES.

9 Q. AND WHEN HE SAYS IT PENETRATED THE RIB

10 CAGE, IT MEANS THE PELLETS GO THROUGH INTO THE RIB CAGE

11 INTO THE INNER SPACE?

12 A. YES. IT'S POSSIBLE THAT THAT CLUSTER OF

13 PELLETS THAT WE SEE ON HER BREAST MISSED A RIB. I GUESS

14 I JUST DIDN'T THINK IT -- AND I STILL DON'T, AS I SIT

15 HERE, THINK IT'S VERY LIKELY.

16 Q. SO YOU ARE SPECULATING NOW THERE IS RIB

17 DAMAGE EVEN THOUGH THE CORONER DOESN'T SAY THERE IS?

18 A. NO. I RECOLLECT LOOKING AT AN X RAY, AND

19 THAT'S WHAT I WOULD GO BACK TO. AND I GUESS -- BUT I

20 MEAN --

21 Q. WELL, WHAT DID THE X RAY SHOW, IF YOU

22 RECOLLECT?

23 A. IF I REMEMBERED WHAT THE X RAY SHOWED, I

24 WOULDN'T HAVE TO LOOK AT IT.

25 Q. WELL, WHAT ABOUT YOUR RECOLLECTION OF THE

26 X RAY TELLS YOU IT HAS ANYTHING TO DO WITH RIB DAMAGE?

27 A. WELL THEN, OBVIOUSLY IT DOESN'T. IF THERE

28 IS NO EVIDENCE OF RIB DAMAGE ON THE X RAY, NO

-24597

1 PARTICULATES OF THE PELLETS, THERE ISN'T ANY.

2 Q. PARTICULATION. PELLETS -- YOU'RE SAYING --  
3 THESE PELLETS WHICH WOUND UP IN HER CHEST CAME THROUGH  
4 HIS RIGHT ARM, WHICH WAS BROKEN, CORRECT?

5 A. I GUESS.

6 Q. AND COULDN'T THAT HAVE BROKEN UP SOME OF  
7 THE PELLETS?

8 A. OH, YEAH, ABSOLUTELY.

9 Q. SO EVEN IF THERE ARE PELLET PARTICLES IN  
10 HER LEFT CHEST, YOU CAN'T ATTRIBUTE THEM TO HER RIBS  
11 VERSUS HIS BONE UNLESS YOU SEE DAMAGE TO THE RIB,  
12 CORRECT?

13 A. YOU MAY NOT. IT WOULD DEPEND ON THEIR  
14 PLACEMENT AND THEIR RELATIVE GEOMETRY.

15 Q. I AM HAVING TROUBLE WITH THE LAWS OF  
16 PHYSICS HERE, YOUR HONOR.

17 THE COURT: MOVE THAT PODIUM A LITTLE TO THE  
18 RIGHT.

19 MS. ABRAMSON: WE NEED A BIGGER PODIUM. COULD WE  
20 REQUISITION ONE FROM THE COUNTY?

21 THE COURT: WE HAVE A BIGGER ONE.

22 MS. ABRAMSON: I NEED ONE WITH A SHELF  
23 UNDERNEATH.

24 THE COURT: WE HAVE A BIGGER ONE.

25 Q. BY MS. ABRAMSON: LET ME SHOW YOU WHAT'S  
26 BEEN PREVIOUSLY MARKED AS EXHIBIT 169.

27 DO YOU RECOGNIZE THAT?

28 A. THAT IS AN X RAY OF A RIB.

1 Q. DO YOU SEE A BROKEN RIB?

2 A. NO. NO RIB HERE LOOKS FULLY BROKEN TO ME.

3 Q. NO RIB LOOKS EVEN PARTLY BROKEN, DOES IT?

4 A. WELL, NOW YOU GOT ME HERE.

5 Q. WHILE I HAVE YOU, LET ME JUST ASK YOU THIS:

6 YOU HAVE NO TRAINING IN READING X RAYS, CORRECT?

7 A. NOT MEDICAL X RAYS. I READ X RAYS OF

8 MECHANICAL PARTS.

9 Q. THIS ISN'T A MECHANICAL PART, IS IT?

10 A. WELL, IT'S BIOLOGICAL.

11 Q. IT'S A HUMAN BEING, CORRECT?

12 A. THAT'S CORRECT.

13 Q. NOT A CAR, RIGHT?

14 A. ABSOLUTELY.

15 MR. CONN: OBJECTION. ARGUMENTATIVE, YOUR HONOR.

16 Q. BY MS. ABRAMSON: IT'S NOT A PIECE OF

17 MATERIAL OR MACHINERY?

18 THE COURT: WAIT A MINUTE. THERE IS AN

19 OBJECTION.

20 THE OBJECTION IS OVERRULED.

21 THE WITNESS: IT IS A HUMAN BODY AS OPPOSED TO A

22 WELD OR SOMETHING OF THAT NATURE.

1 Q BY MS. ABRAMSON: DO YOU WANT TO POINT

2 TO SOME AREA ON THERE THAT YOU BELIEVE SHOWS A

3 BROKEN RIB AND CIRCLE IT?

4 A AS I JUST INDICATED, I DON'T SEE A

5 BROKEN RIB.

6 Q DO YOU SEE A FRACTURED RIB?

7 A THERE'S AREAS -- NO. THERE'S NOTHING

8 HERE I WOULD SAY IS FRACTURED.

9 Q THANK YOU.

10 BUT YOU DID OFFER THE OPINION AT THE

11 PRETRIAL HEARING THAT YOU THOUGHT THERE WAS RIB

12 DAMAGE, CORRECT? I'LL SHOW YOU IF YOU'D LIKE TO SEE

13 YOUR TESTIMONY.

14 A COULD I SEE MY SPECIFIC WORDS? I CAN'T

15 IMAGINE ONE OF MY RECONSTRUCTIONS REGARDED --

16 Q "MY RECOLLECTION IS THERE IS SOME RIB

17 DAMAGE." RIGHT THERE.

18 A UH-HUH. "ANSWER: I WOULD LIKE TO LOOK

19 AT THE X RAYS. MY RECOLLECTION IS THAT THERE'S SOME

20 RIB DAMAGE, BUT I DON'T THINK THE RIGHT TURN IS

21 NECESSARY."

22 OKAY. I MEAN -- YES, I SAID THAT.

23 Q THANK YOU. NOW, YOU DID A PELLET COUNT

24 CONCERNING SHOT NO. 1, DIDN'T YOU?

25 A YES, I HAVE.

26 Q AND WAS THERE SOME REASON WHY YOU

27 CHANGED THE WAY YOU WERE COUNTING THE PELLETS IN

28 THIS PROCEEDING FROM THE WAY YOU COUNTED THE PELLETS

1 AT THE PRETRIAL HEARING?

2 A YES.

3 Q OKAY. AND WHAT WAS THE REASON WHY YOU  
4 CHANGED THE WAY YOU COUNTED THE PELLETS?

5 A BECAUSE YOU OBJECTED TO ME READING  
6 X RAYS AND COUNTING PELLETS. SO I MERELY EMBRACED  
7 DR. LAWRENCE'S READING OF X RAYS AND COUNTING  
8 PELLETS. HE STILL CAME OUT TO THE SAME COUNT.

9 Q SO YOU DECIDED YOU'RE NOT GOING TO  
10 COUNT, YOU'RE GOING TO LET DR. LAWRENCE DO YOUR  
11 COUNTING FOR YOU, CORRECT?

12 MR. CONN: OBJECTION. ARGUMENTATIVE, YOUR  
13 HONOR.

14 THE COURT: SUSTAINED.

15 Q BY MS. ABRAMSON: LET ME ASK YOU THIS:

16 DR. LAWRENCE INDICATED THAT HE THOUGHT,  
17 SINCE THERE WERE ONLY FIVE PELLETS IN MR. MENENDEZ'  
18 LEFT ELBOW, BUT NINE DEFECTS, THAT FOUR PELLETS  
19 PROBABLY JUST FELL AWAY.

20 MR. CONN: OBJECTION. MISSTATES THE  
21 EVIDENCE.

22 THE COURT: SUSTAINED.

23 MS. ABRAMSON: I DON'T BELIEVE THAT DOES  
24 MISSTATE THE EVIDENCE, YOUR HONOR.

25 THE COURT: THE WAY IT'S PHRASED IT DOES.

26 MS. ABRAMSON: THAT FOUR PELLETS STRUCK HIS

27 ELBOW, BUT DIDN'T PENETRATE.

28 Q DO YOU REMEMBER THAT TESTIMONY?

40943

1 A I DO REMEMBER YOUR SUGGESTION OF THAT.

2 I DON'T REMEMBER HIM AGREEING TO THAT.

3 Q WELL, LET'S ASSUME HYPOTHETICALLY,  
4 BECAUSE I CAN PULL OUT THE TRANSCRIPT, THAT HE DID  
5 AGREE THAT FOUR STRUCK THAT DIDN'T GO THROUGH.

6 MR. CONN: OBJECTION. MOTION TO STRIKE.

7 THE COURT: REPHRASE THE QUESTION. ASK HIM  
8 TO ASSUME.

9 Q BY MS. ABRAMSON: ASSUME THAT DR. LAWRENCE  
10 DID TESTIFY THAT HE BELIEVED NINE SEPARATE PELLETS  
11 STRUCK THE LEFT ELBOW, ONLY FIVE ENTERED, AND FOUR  
12 WENT SOMEWHERE ELSE. OKAY. ASSUME THAT.

13 A ALL RIGHT.

14 Q CAN YOU DO THAT?

15 A I HAVE DIFFICULTY.

16 Q I WANT YOU TO ASSUME HE SAID THAT, OKAY?

17 A OKAY. I HAVE DIFFICULTY SINCE I WAS  
18 HERE AND --

19 THE COURT: JUST DISREGARD THE FACT THAT YOU  
20 WERE HERE AND ASSUME YOU WEREN'T HERE.

21 Q BY MS. ABRAMSON: ASSUME HE SAID THAT.



22           WOULD YOU AGREE THAT THAT'S POSSIBLE?

23       A   OH, HEAVEN FORBID, NO. YOU CAN'T HAVE A

24 1200-FOOT PER SECOND PELLET HIT ANY TISSUE AND FALL

25 TO THE GROUND. THAT JUST DOES NOT HAPPEN.

26       Q   I DIDN'T SAY FALL TO THE GROUND?

27       A   OR BOUNCE OFF.

28       Q   MR. CONN OBJECTED WHEN I SAID FALL TO

40944

1 THE GROUND. I SAID ASSUME HE SAID NINE PELLETS HIT

2 THE ELBOW, FIVE PENETRATED, THE OTHER FOUR WENT

3 SOMEWHERE ELSE.

4           NOW, DOES THAT MAKE SENSE TO YOU

5 BALLISTICALLY?

6       A   NO. YOU CAN'T HAVE PELLETS FROM A

7 DISCHARGE THAT HAVEN'T STRUCK SOMETHING ELSE, AND

8 BEEN DRAMATICALLY SLOWED, STRIKE AN ELEMENT OF

9 TISSUE AT ANY RANGE THAT I THINK IS REASONABLE TO

10 DISCUSS HERE AND NOT HAVE PENETRATION. THESE

11 PELLETS AT THIS MASS WILL PENETRATE DOWN 200 FEET

12 PER SECOND.

13       Q   SO YOU DISAGREE WITH DR. LAWRENCE?

14       MR. CONN: MAY THE WITNESS FINISH?

15       THE WITNESS: NO. THEY LEAVE THE MUZZLE AT

16 1200 FEET PER SECOND.

17 MS. ABRAMSON: I THINK MUCH OF THIS IS

18 NONRESPONSIVE.

19 THE COURT: HE HAS A RIGHT TO EXPLAIN HIS

20 ANSWER.

21 HAVE YOU FINISHED?

22 THE WITNESS: JUST TO SAY THEY LEAVE AT 1200

23 HUNDRED FOOT PER SECOND. WITHOUT SOMETHING TO KNOCK

24 OFF MOST OF THEIR ENERGY, THEY WILL PENETRATE.

25 Q SO DID YOU DISAGREE WITH DR. LAWRENCE --

26 IF THAT WAS HIS TESTIMONY, YOU DISAGREE WITH HIM.

27 YOU THINK HE'S WRONG?

28 A NO. I WAS HERE FOR HIS TESTIMONY, AND I

40945

1 DON'T REMEMBER DISAGREEING WITH ANYTHING HE SAID.

2 YOU'RE MERELY SUGGESTING A HYPOTHETICAL IN

3 RESOLUTION TO THE DEFECT COUNT.

4 Q DR. MC CARTHY, I JUST ASKED YOU A

5 HYPOTHETICAL QUESTION WHERE YOU WERE SUPPOSED TO

6 ASSUME CERTAIN THINGS. YOU UNDERSTAND THAT?

7 MR. CONN: OBJECTION. ARGUMENTATIVE.

8 THE COURT: YOU'VE GONE BEYOND THAT AND ASKED

9 HIM NOW TO CHARACTERIZE.

10 MS. ABRAMSON: THE QUESTION IS: IF THAT'S

11 HOW DR. LAWRENCE TESTIFIED, WHATEVER YOUR MEMORY MAY

12 BE, DO YOU DISAGREE WITH HIM? AND I THINK YOU SAY

13 YES; IS THAT RIGHT?

14 A ASSUMING, HYPOTHETICALLY, HE SAYS WHAT

15 YOU'RE NOW SAYING HE SAID; YES, I WOULD DISAGREE

16 WITH THAT. IT CLEARLY WOULD NOT BE CORRECT.

17 Q ALL RIGHT. NOW, YOUR SHOT 1, AS YOU

18 DESCRIBED IT ON DIRECT EXAMINATION, INCLUDES WOUNDS

19 TO MR. MENENDEZ' LEFT ELBOW, CORRECT?

20 A YES.

21 Q WOUNDS TO MRS. MENENDEZ IN HER ARM,

22 CORRECT?

23 A IN HER RIGHT ARM? YES.

24 Q IN HER RIGHT ARM.

25 I WANT TO GO BACK TO 295.

26 MR. LEVIN, I NEED YOUR HEIGHT. I WANT

27 TO TAKE THIS DOWN. I WANTED TO POINT. NOW, OKAY.

28 ON 295, IF WE LOOK AT THE LINE OF

40946

1 PHOTOGRAPHS ON THE LEFT, THE MIDDLE PHOTOGRAPH SHOWS

2 A LARGE GAPING DEFECT ON WHAT DR. GOLDEN CALLS, AND

3 DR. LAWRENCE, THE MEDIAL ASPECT OF THE RIGHT ARM,

4 CORRECT?

5 A YES.

6 Q AND BELOW THAT THERE APPEAR TO BE A

7 SERIES OF CIRCULAR, MORE OR LESS CIRCULAR, RED

8 MARKS.

9 A DEFECTS. CORRECT.

10 Q AND IT IS YOUR OPINION, IS IT NOT, BASED  
11 ON THE WAY YOU SHOW THIS SHOT PATTERN, THIS VECTOR,  
12 RATHER, THE GREEN LINE, THAT BOTH THE LARGE GAPING  
13 DEFECT AND THE INDIVIDUAL PELLETS ARE ALL PART OF  
14 ONE SHOT?

15 A YES.

16 Q NOW, DR. GOLDEN DID DISAGREE WITH THAT  
17 BASED ON HIS REPORT, CORRECT?

18 A YES.

19 Q AND DR. LAWRENCE HIMSELF SAID HE DOESN'T  
20 THINK THAT'S THE MOST LIKELY SCENARIO. REMEMBER  
21 THAT TESTIMONY?

22 A YES. AT VARIOUS TIMES HE SAID THAT,  
23 YES.

24 Q HE WAFFLED A LITTLE, DIDN'T HE?

25 A YES.

26 Q BUT ONE OF HIS POSITIONS WAS THAT HE DID  
27 NOT THINK THESE TWO WERE THE SAME SHOT, CORRECT?

28 A HE DID NOT THINK THAT WAS THE GREATEST

40947

1 LIKELIHOOD; THAT IS CORRECT.

2 Q SO YOU'RE NOT REALLY DIAGRAMMING IN  
3 THESE DRAWINGS WHAT DR. LAWRENCE BELIEVES IS THE  
4 MOST LIKELY SCENARIO, BUT WHAT YOU BELIEVE IS THE  
5 SCENARIO, CORRECT?

6 A NO. DR. LAWRENCE HAD NO DISAGREEMENTS  
7 THAT THE INDIVIDUAL DEFECTS WERE AN ENTRY WOUND AND  
8 THAT THIS SHOT CAUSED THOSE DEFECTS. WHAT HE WAS  
9 LESS COMFORTABLE WITH WAS THAT THE MAJOR WOUND WAS  
10 ALSO PART OF THAT SAME SHOT.

11 SO I CONNECTED THE ELBOW PART WITH THIS,  
12 AND I DO BELIEVE THE UPPER DEFECT IS PART OF THE  
13 SAME.

14 Q HE SAYS THE TWO ARE NOT THE SAME AND YOU  
15 ARE CONSIDERING BOTH THE SAME?

16 MR. CONN: OBJECTION. MISSTATES THE  
17 TESTIMONY.

18 THE COURT: OVERRULED.

19 THE WITNESS: NO. MY DIAGRAM ONLY SHOWS  
20 THROUGH THE ELBOW. I BELIEVE THAT THE COINCIDENCE  
21 OF THAT SHOT BEING SO CLOSE TO THE OTHER ONE IS TOO  
22 GREAT TO BE A COINCIDENCE. BUT FOR THE DIAGRAM IT  
23 IS CORRECT, IRRESPECTIVE OF WHAT YOU DO WITH THAT  
24 DEFECT.

25 MS. ABRAMSON: LET'S STOP YOU FOR A MOMENT.

26 Q YOU'RE SAYING THE DIAGRAM IS ONLY  
27 SHOWING THE INDIVIDUAL DEFECTS AND NOT THE WOUND  
28 THAT'S REPRESENTED BY THE LARGER ONE?

1       A   NO. I BELIEVE THEY WERE BOTH CAUSED BY  
2 THAT SHOT.

3       Q   BUT YOU SAID THE DIAGRAM IS ONLY SHOWING  
4 THE ONE IN THE ELBOW. THAT'S THESE DEFECTS,  
5 CORRECT?

6       A   NO. LET ME PUT IT THIS WAY. I DIDN'T  
7 MEAN TO IMPLY THAT THE DIAGRAM INDICATES ALL THOSE  
8 PARTS BEING INJURED BY THE SAME SHOT. I BELIEVE THE  
9 MAJOR DEFECT IS ALSO PART OF THAT SHOT.

10      Q   BUT DR. LAWRENCE INDICATED THAT HE  
11 DIDN'T, RIGHT?

12      A   NO.

13      Q   THAT'S WHAT WE'RE TALKING ABOUT.

14      A   HE INDICATED IT WAS POSSIBLE. HE JUST  
15 WAS NOT THE MOST COMFORTABLE WITH THAT EXPLANATION.

16      Q   HE THOUGHT IT WAS UNLIKELY. HE THOUGHT  
17 MORE LIKELY THAT THEY WERE SEPARATE, CORRECT?

18      A   AT VARIOUS TIMES HE EXPRESSED A THOUGHT  
19 THAT IT WAS A GREATER LIKELIHOOD, YES.

20      Q   ALL RIGHT. SO WHAT I'M ASKING YOU IS IF  
21 HE THOUGHT IT WAS A GREATER LIKELIHOOD THEY'RE  
22 SEPARATE, THEN THEY'RE NOT BOTH CAUSED BY SHOT  
23 NO. 1, WHICH IS WHAT YOUR GREEN VECTOR LINE SHOWS;  
24 IS THAT RIGHT?

25 WE AGREE ON THAT?  
26 A WHAT I BELIEVE OR WHAT HE BELIEVES?  
27 Q WHAT HE BELIEVES.  
28 A I THINK HE BELIEVES IT'S MORE LIKELY IT

40949

1 WAS -- WELL, AT VARIOUS TIMES HE THOUGHT IT WAS MORE  
2 LIKELY IT WAS CAUSED BY A SEPARATE SHOT.

3 Q SO IF THAT'S TRUE, IF -- YOU'RE SUPPOSED  
4 TO BE RELYING ON DR. LAWRENCE'S MEDICAL OPINION  
5 HERE, CORRECT?

6 A YES. HE INDICATED THAT HE THOUGHT IT  
7 WAS POSSIBLE.

8 Q POSSIBLE, BUT NOT LIKELY.

9 A HE THOUGHT ANOTHER SHOT WAS PERHAPS MORE  
10 LIKELY.

11 Q FINE. YOU DON'T EVER SHOW IN ANY OF  
12 THESE RECONSTRUCTIONS ANOTHER SHOT CAUSING THE UPPER  
13 DEFECT, DO YOU?

14 A THAT'S CORRECT. I DON'T THINK IT WORKS.

15 Q IN YOUR PERSONAL OPINION, WITH NO  
16 MEDICAL EXPERTISE, YOU HAVE DECIDED THAT THESE TWO  
17 SHOTS ARE ONE, EVEN THOUGH THE MEDICAL EXPERT WHO  
18 WAS BROUGHT IN HERE TO SUPPORT YOU THINKS THAT'S  
19 UNLIKELY; IS THAT CORRECT?

20 A NO. I THINK HE INDICATED THAT IT WAS  
21 POSSIBLE. HE THOUGHT ANOTHER SHOT WAS MORE LIKELY.  
22 AND I'M NOT EVEN SURE THAT I DISAGREE WITH HIM ON  
23 THAT, EXCEPT THAT WHEN YOU DIAGRAM ALL THE SHOTS, A  
24 SEPARATE SHOT THERE DOESN'T WORK. YOU CAN'T MAKE IT  
25 WORK.

26 Q DIDN'T WORK TO ADD UP TO 12, RIGHT?

27 A NO. I MEAN, YOU CAN --

28 Q THAT'S WHAT YOU MEAN BY DOESN'T WORK.

40950

1 DOESN'T ADD UP TO 12.

2 A YOU CAN TAKE THAT SHOT AND THEN MAKE THE  
3 OUTPUT OF THAT SHOT HIT MARY SOMEWHERE AND TAKE CARE  
4 OF ANOTHER SHOT. TRY AND STITCH THAT TOGETHER. YOU  
5 CAN MAKE EVEN 12 WORK WITH THAT SUPPOSEDLY. TRY IT.  
6 OR START ADDING EXTRA SHOTS.

7 SAY THERE WERE 11 BUCKSHOT.

8 Q LET'S TALK ABOUT THIS, THOUGH. YOU  
9 DON'T BELIEVE, DO YOU, THAT THE PELLETS THAT  
10 PENETRATE THESE SEPARATE DEFECTS IN THE INNER ARMS,  
11 THAT THOSE ARE THE WOUNDS THAT PASSED THROUGH INTO  
12 MARY LOUISE MENENDEZ' LEFT BREAST, CORRECT?

13 A I HAVEN'T GOTTEN DOWN TO THAT DETAIL OF  
14 PELLET PENETRATION.



15 Q WELL. YOU BELIEVE -- YOU KNOW VERY WELL  
16 THAT THERE'S THIS LARGE DEFECT ON THE MEDIAL ASPECT  
17 AND ANOTHER LARGE MEDIAL DEFECT ON THE LATERAL  
18 ASPECT?

19 A CORRECT.

20 Q IT'S YOUR OPINION THAT THE DEFECT ON THE  
21 LATERAL ASPECT IS AN EXIT WOUND?

22 A YES. AS CONFIRMED BY THE SHIRT.

23 Q AS CONFIRMED BY DR. GOLDEN. HOWEVER --

24 MR. CONN: OBJECTION. MISSTATES THE  
25 TESTIMONY.

26 THE COURT: WAIT. WAIT. AT THIS POINT IT'S  
27 ARGUMENTATIVE.

28 Q BY MS. ABRAMSON: MOREOVER, YOU'RE NOT A

40951

1 FIBRE EXPERT OR CRIMINALIST, SO YOU CAN'T RELY ON  
2 THE SHIRT.

3 A DR. LAWRENCE TESTIFIED ABOUT THE SHIRT.

4 Q AND HE WASN'T A FIBRE EXPERT EITHER,  
5 CORRECT?

6 A I RECOLLECT THAT'S WHAT HE TESTIFIED.

7 Q WELL, LET'S -- HE TESTIFIED HE WASN'T A  
8 FIBRE EXPERT.

9 DO YOU RECOLLECT THAT?

10 A YES.

11 Q THANK YOU. LET'S TALK ABOUT THIS  
12 DEFECT. THIS DEFECT, IN YOUR OPINION, IS AN  
13 ENTRANCE WOUND?

14 A ON THAT SIDE, RIGHT.

15 Q AND ON THE OTHER SIDE, IN YOUR OPINION,  
16 IT'S AN EXIT WOUND, CORRECT?

17 A YES.

18 Q AND IT IS YOUR OPINION THAT IT IS  
19 THROUGH THAT CONNECTING SERIES OF HOLES, THIS LARGE  
20 DEFECT HERE, AND A LARGE-- A HOLE ON THE OTHER SIDE  
21 THAT THE PELLETS PASSED THROUGH INTO MRS. MENENDEZ'  
22 LEFT BREAST, CORRECT?

23 A YES.

24 Q AND YOU HAVE DESCRIBED THAT PREVIOUSLY,  
25 ON DIRECT EXAMINATION, OF LEFT TO RIGHT?

26 A YES.

27 Q AND IF I UNDERSTAND LEFT TO RIGHT, LEFT  
28 TO RIGHT IS THIS, WHAT I'M HOLDING NOW ACROSS MY

40952

1 CHEST.

2 A YES.

3 Q LEFT TO RIGHT IS NOT THIS, THE WAY I'M  
4 NOW HOLDING THE POINTER PERPENDICULAR.

5 A THAT'S CORRECT.

6 Q THAT WHAT I'M NOW DOING IS CALLED FRONT  
7 TO BACK.

8 A I WOULD CALL IT THAT, YEAH.

9 Q IF I WANTED TO SHOW FRONT TO BACK,  
10 SLIGHTLY LEFT TO RIGHT, THEN I WOULD HAVE THE  
11 POINTER EVEN ROTATED HALFWAY IN BETWEEN THE TWO  
12 DIRECTIONS. OKAY?

13 A WHATEVER --

14 Q LET'S JUST SEE IF I UNDERSTAND MY BASIC  
15 JUNIOR HIGH SCHOOL GEOMETRY, ALTHOUGH MY HAND MAY  
16 NOT BE STRAIGHT.

17 RIGHT NOW I'M HOLDING THE POINTER IN  
18 LEFT TO RIGHT ON A 180-DEGREE ANGLE, CORRECT?

19 A CLOSE, YES.

20 Q AND THEN IF I ROTATE IT SO IT'S FRONT TO  
21 BACK, IT'S NOW FORMED A 90-DEGREE ANGLE TO MY  
22 CHEST.

23 A RIGHT.

24 Q AND IF I PUT IT HERE, IT'S A 45-DEGREE  
25 ANGLE.

26 A APPROXIMATELY.

27 Q ALL RIGHT. YOU DESCRIBED THIS WOUND AS  
28 LEFT TO RIGHT. DID YOU MEAN A HUNDRED AND EIGHTY

1 DEGREES?

2 A NO. DIRECTIONALLY, MORE LIKE I'VE  
3 INDICATED IN THE DIAGRAM.

4 Q AND BUT YOU DEFINITELY -- DO YOU  
5 DISCOUNT 45 DEGREES?

6 A NO. YOU COULD PROBABLY ROTATE THE  
7 BODIES AROUND TO GET 45. I THINK THAT'S GETTING TO  
8 THE EDGE OF THE ENVELOPE.

9 Q DR. GOLDEN DESCRIBED IT AS FRONT TO BACK  
10 AND LEFT TO RIGHT.

11 A YES.

12 Q DID YOU EVER PAY ATTENTION TO THE  
13 PHOTOGRAPH THAT SHOWS MRS. MENENDEZ' BODY WHERE THE  
14 BRASSIERE IS EXPOSED?

15 A I LOOKED AT THAT PHOTO.

16 Q AND DO YOU SEE IN THIS PHOTO PELLETS IN  
17 WHAT IS IN THE FRONT OF THE CUP OF THE BRASSIERE?

18 A PELLETS OR DEFECTS?

19 Q HOLES.

20 A HOLES. YES, DEFECTS.

21 Q HOLES ABOUT THE SIZE THAT A PELLET WOULD  
22 MAKE?

23 A YES. THERE APPEAR TO BE DEFECTS ON A  
24 PICTURE OF THAT SIZE.

25 Q THAT'S NOT THE SIDE OF HER BRASSIERE,  
26 BUT THE FRONT OF IT, CORRECT?

27 A I DON'T UNDERSTAND WHAT YOU MEAN. IT'S  
28 AT THE LEFT.

1 Q I TRIED TO DO THIS.

2 BUT A BRASSIERE HAS A FRONT, A CUP, AND

3 A SIDE, WHICH IS A PANEL DOWN THE SIDE.

4 DO YOU UNDERSTAND THAT?

5 A I UNDERSTAND THAT. IT IS IN THE CUP

6 AREA, BUT IT'S ON THE SIDE OF THE CUP.

7 Q WELL, IT'S ON THE LEFT SIDE OF THE LEFT

8 BREAST.

9 A THAT'S RIGHT.

10 Q BUT THE FACT THAT IT'S ON THE LEFT SIDE

11 DOESN'T MEAN THE PELLETS CAME FROM A 180-DEGREE

12 ANGLE. THEY COULD HAVE COME IN STRAIGHT TO THE LEFT

13 SIDE OF THE LEFT BREAST.

14 A THEN THAT WOULD BE INCONSISTENT WITH THE

15 CORONER'S TESTIMONY THAT THEY CAME LEFT TO RIGHT.

16 Q HE SAID FRONT TO BACK AND LEFT TO

17 RIGHT.

18 YOU RECOGNIZE HE SAID FRONT TO BACK AND

19 LEFT TO RIGHT, CORRECT?

20 A RIGHT.

21 Q AND IS IT YOUR UNDERSTANDING THAT THE

22 CORONER GIVES THE MAIN DIRECTION FIRST?

23 A THAT WOULD BE LOGICAL, BUT I WOULDN'T

24 SAY I HAVE AN UNDERSTANDING OF THAT.

25 Q WELL, LET'S SAY THAT IS WHAT HE MEANT,  
26 THAT IT'S MAINLY FRONT TO BACK AND ONLY SLIGHTLY  
27 LEFT TO RIGHT.

28 THAT DISAGREES WITH YOUR CONTENTION,

40955

1 DOESN'T IT?

2 A OH, NO. THAT JUST MEANS SHE WAS ROTATED  
3 MORE TOWARDS THE SHOOTER THAN I HAVE HER SHOWN.

4 Q YOU DON'T SHOW HER IN A POSITION WHERE  
5 SHE WOULD HAVE RECEIVED WOUNDS THAT ARE MORE FRONT  
6 TO BACK THAN LEFT TO RIGHT?

7 A THAT'S RIGHT. YOU'D HAVE TO ROTATE HER  
8 A LITTLE MORE AND FACE THE SHOOTER.

9 Q YOU FORGOT IN YOUR DIRECTION -- DID YOU  
10 FORGET TO TALK ABOUT ONE OF THE WOUND AREAS ON  
11 MR. MENENDEZ?

12 A WELL, I DON'T GET TO FORGET OR REMEMBER  
13 ANYTHING. I JUST GET TO ANSWER QUESTIONS.

14 Q WELL, DID YOU AND THE PROSECUTORS  
15 DISCUSS THAT YOU DIDN'T WANT TO TALK ABOUT WHAT THE  
16 CORONER CALLED WOUND NO. 6 TO MR. MENENDEZ?

17 A CERTAINLY WE DID NOT HAVE SUCH A  
18 DISCUSSION.

19 Q AND YOU DID NOT TESTIFY AT ALL ABOUT THE  
20 WOUNDS THAT APPEAR ON THE RIGHT CURVED SIDE OF  
21 MR. MENENDEZ' CHEST, CORRECT?

22 A I DON'T RECOLLECT TESTIFYING ABOUT THEM.

23 Q BECAUSE YOU DIDN'T.

24 A OKAY. THAT'S WHY I DON'T RECOLLECT.

25 Q NOW, DO YOU BELIEVE THAT THOSE MARKS ON  
26 HIS CHEST ARE AFFILIATED WITH SHOT 1?

27 A OH, YES. I WAS VERY COMFORTABLE WITH  
28 DR. LAWRENCE'S TESTIMONY IN THAT REGARD.

40956

1 Q WELL, BUT YOU HAD A DIFFERENT OPINION  
2 ABOUT WHAT CAUSED THOSE WHEN YOU WROTE YOUR REPORT  
3 AND WHEN YOU TESTIFIED AT THE PRETRIAL, DIDN'T YOU?

4 A I GUESS I DON'T REMEMBER SO...

5 Q YOU THOUGHT THOSE WERE GRAZE WOUNDS  
6 CAUSED BY PELLETS COMING IN CONTACT WITH THE BODY,  
7 DIDN'T YOU?

8 A YES. AS DR. LAWRENCE TESTIFIED.

9 Q DR. LAWRENCE TESTIFIED THAT IT WAS A  
10 BURN CAUSED BY FABRIC BEING DRAGGED ACROSS THE RIGHT  
11 SIDE OF THE CHEST.

12 A OH. I SEE WHAT YOU MEAN. I DIDN'T MEAN  
13 TO DIFFERENTIATE BETWEEN THE SHIRT AND THE PELLETS.

14 I MEAN --

15 Q YOU NEVER MENTIONED A SHIRT IN YOUR  
16 REPORT. YOU TALKED ABOUT PELLET WOUNDS.

17 A YES. BUT WHETHER IT'S FABRIC WRAPPED  
18 AROUND A PELLET OR THE PELLET DIRECTLY, I MEAN --

19 Q LET ME SEE HOW YOU UNDERSTAND IT. HE  
20 DIDN'T TALK ABOUT FABRIC WRAPPED AROUND THE  
21 PELLETS. HE TALKED ABOUT THE SHIRT PULLING, JUST  
22 THE SHIRT, PULLING ACROSS HERE, BECAUSE SOME PELLETS  
23 ARE PULLING THE SHIRT FARTHER DOWN, BUT THE SHIRT'S  
24 PULLING AND SCRATCHING OR ABRADING THIS PART OF THE  
25 CHEST.

26 DIDN'T YOU UNDERSTAND THAT THAT'S WHAT  
27 HE MEANT?

28 A I REMEMBER HIM TALKING ABOUT FABRIC

40957

1 ABRADING; OF COURSE, THERE'S HOLES IN THE SHIRT.  
2 PELLETS GOT THROUGH IT.

3 Q THERE ARE HOLES; AND SO FAR THERE'S BEEN  
4 NO TESTIMONY AS TO WHETHER THEY WERE CAUSED BY  
5 PELLETS OR WADDING.

6 DO YOU UNDERSTAND THAT?

7 A I'M TRYING TO REMEMBER IF DR. LAWRENCE  
8 WAS ASKED ABOUT THAT. I'M NOT SURE I WAS HERE FOR



9 ALL OF HIS SHIRT TESTIMONY.

10 Q SO YOU MIGHT NOT HAVE BEEN HERE WHEN HE  
11 INDICATED THAT THE HOLES HE SAW WERE CONSISTENT WITH  
12 A WAD GOING THROUGH. YOU WEREN'T HERE FOR THAT?

13 A I DON'T REMEMBER HIM TESTIFYING TO  
14 ANYTHING IN THAT REGARD; THAT IS CORRECT.

15 Q SO IF HE DID TESTIFY THAT THE HOLES WERE  
16 THE RIGHT SIZE FOR A WAD TO GO THROUGH, YOU JUST  
17 WEREN'T HERE FOR THAT; IS THAT RIGHT?

18 A I DON'T RECOLLECT HIS TESTIMONY IN THAT  
19 REGARD. SO IF HE DID TALK ABOUT THAT, I MUST NOT  
20 HAVE BEEN HERE.

21 Q NOW, ARE YOU AWARE, DR. MC CARTHY, THAT  
22 THE TRANSCRIPTS, EVERYTHING THAT'S BEING SAID IN  
23 THIS TRIAL IS BEING TRANSCRIBED BY TWO COURT  
24 REPORTERS ON A DAILY BASIS?

25 A I WASN'T AWARE YOU WERE GETTING DAILIES,  
26 BUT I GUESS I AM NOW.

27 Q AND THAT MEANS THAT THE DAY AFTER  
28 TESTIMONY THERE'S A TRANSCRIPT THAT CONTAINS IT ALL

40958

1 AVAILABLE TO BOTH SIDES?

2 A IF YOU GET A DAILY, THAT IS GENERALLY  
3 THE PROCEDURE, YES.

4 Q AND YOU HAVEN'T READ THE DAILIES, AS YOU  
5 CALL THEM, THE DAILY TRANSCRIPTS OF DR. LAWRENCE'S  
6 TESTIMONY; IS THAT CORRECT?

7 A THAT IS CORRECT.

8 Q SO WHEN YOU CAME IN HERE TO TESTIFY,  
9 KNOWING THAT YOU NEEDED TO RELY ON HIS MEDICAL  
10 EXPERTISE, YOU DIDN'T EVEN BOTHER READING WHAT HE  
11 SAID, DID YOU?

12 MR. CONN: OBJECT AS ARGUMENTATIVE.

13 THE COURT: OVERRULED.

14 THE WITNESS: I WAS HERE FOR HIS -- PARTS OF  
15 HIS TESTIMONY. BUT I HAVEN'T GONE BACK AND READ THE  
16 DAILIES, THAT IS TRUE.

17 Q BY MS. ABRAMSON: SO YOU DON'T KNOW WHAT  
18 HE SAID ABOUT SOME THINGS FOR WHICH YOU WEREN'T  
19 HERE?

20 A THAT'S CORRECT.

21 Q AND NO ONE, FOR EXAMPLE, HAS PROVIDED  
22 YOU EVEN WITH SUMMARIES OF WHAT HE SAID?

23 A THAT IS CORRECT.

24 Q FRANKLY, DR. MC CARTHY, YOU DON'T REALLY  
25 CARE WHAT DR. LAWRENCE SAID. YOUR MIND WAS MADE UP  
26 LONG BEFORE YOU KNEW HE EXISTED; ISN'T THAT TRUE?

27 A NO. ALTHOUGH I WAS MUCH PLEASED BY THE  
28 FACT THAT OUR RECONSTRUCTION, JUST FROM THE PHYSICAL

1 EVIDENCE, THAT THERE REALLY WASN'T ANY NEED TO  
2 REVISE ANYTHING FROM HIS ANALYSIS.

3 Q NOT THAT YOU WOULD REVISE ANYTHING  
4 ANYWAY, BECAUSE YOU THINK YOU'RE PERFECT, DON'T YOU,  
5 DOCTOR?

6 MR. CONN: OBJECTION. ARGUMENTATIVE.

7 THE COURT: SUSTAINED.

8 Q BY MS. ABRAMSON: NOW, ON THE RIGHT ARM  
9 WOUND, DR. MC CARTHY, WHICH SIDE IS HIGHER AND WHICH  
10 SIDE IS LOWER?

11 A IF YOU -- AGAIN, THERE'S BEEN MEDICAL  
12 TESTIMONY ON THAT.

13 Q I'M NOT INTERESTED IN MEDICAL  
14 TESTIMONY. I'M INTERESTED IN YOUR OPINION ON THIS  
15 FOR THE MOMENT.

16 A IT LOOKS LIKE THE REAR EXIT WOUND IS  
17 HIGHER THAN THE ENTRY WOUND.

18 Q WITHOUT USING EXIT AND ENTRY, WOULD YOU  
19 KNOW? THIS IS LATERAL.

20 DO YOU KNOW WHAT LATERAL MEANS?

21 A YES.

22 Q COULD YOU SHOW ME ON YOUR ARM THE  
23 LATERAL PART OF YOUR RIGHT ARM.

24 A MY RIGHT ARM. OUT HERE?

25 Q OUT HERE.

26 A YES. MEDIAL IS TOWARDS THE --

27 Q MEDIAL IS THE KIND THAT IF YOU'RE  
28 STANDING WITH YOUR HANDS IN THE ANATOMICAL POSITION,

40960

1 OKAY, IT'S THE OTHER WAY AROUND. LATERAL IS NEXT TO  
2 THE BODY AND MEDIAL IS OUTSIDE OF THE ANATOMIC  
3 POSITION. THIS IS THE ANATOMIC POSITION.

4 A DIDN'T YOU JUST SAY MEDIAL IS TOWARDS  
5 THE CENTER AND LATERAL IS TOWARDS THE OUTSIDE?

6 Q ONLY IN THAT POSITION WE SEE THE ARM IN  
7 THE PHOTOGRAPHS. IN THE ANATOMIC POSITION -- THIS  
8 IS THE ANATOMIC POSITION, WITH PALMS OUT.

9 A YES.

10 Q OKAY. AND LATERAL AND MEDIAL ARE  
11 BASICALLY EACH SIDE OF THE ARM, RATHER THAN THE  
12 FRONT OR THE BACK, IT'S THE SIDE.

13 A THAT'S CORRECT.

14 Q AND IN THE ANATOMIC POSITION THE FRONT  
15 OF THE ARM IS ACTUALLY WHAT WE CALL THE INSIDE,  
16 RIGHT?

17 A HOLDING YOUR HANDS AS YOU'VE INDICATED,  
18 YES.

19 Q THAT'S THE ANATOMIC POSITION; OTHERWISE  
20 IT'S -- WE HAVE TO ALL AGREE ON ONE POSITION.

21 A FINE.

22 Q SO THIS IS THE INSIDE. IT'S CALLED THE

23 ANTERIOR PORTION OF THE ARM, THE FRONT.

24 A RIGHT.

25 Q DO YOU KNOW THAT?

26 A I'M NOT COMFORTABLE CONFIRMING THAT USE

27 OF ANTERIOR.

28 Q ALL RIGHT. IF I ROTATE THE ARM SO THAT

40961

1 IT'S NO LONGER IN THE ANATOMIC POSITION, BUT IN THE

2 OPPOSITE POSITION, THE SURFACE THAT'S NOW EXPOSED IS

3 USUALLY REFERRED TO AS THE BACK OF THE ARM.

4 IN THE ANATOMIC POSITION IT'S IN THE

5 BACK, RIGHT?

6 A I'M COMFORTABLE REFERRING TO THAT AS THE

7 BACK OF THE ARM.

8 Q OKAY. AND THE SIDES ARE WHAT'S ON THE

9 OTHER SIDE, CORRECT?

10 A YES.

11 Q IN THE ANATOMIC POSITION THE MEDIAL

12 ASPECT, THAT SIDE, IS AWAY FROM THE BODY, RIGHT

13 MEDIAL?

14 A I'M WILLING TO GO WITH YOUR TERMINOLOGY.

15 I'M JUST UNWILLING TO CONFIRM THAT'S THE UNIVERSAL

16 USE OF THE TERM.

17 KEEP GOING.

18 Q THAT'S CERTAINLY WHAT DR. GOLDEN WAS  
19 TALKING ABOUT. THIS PART IN THE ANATOMIC POSITION  
20 IS THE LATERAL SIDE.

21 A I'M NOT COMFORTABLE CONFIRMING YOUR  
22 STATEMENT.

23 Q LET'S DO THIS. WE SEE A RIGHT ARM HERE  
24 FOR MR. MENENDEZ.

25 A YES.

26 Q AND THIS IS THE PART THAT'S INJURED, OR  
27 IS THIS THE PART THAT'S INJURED?

28 A IN THIS SHOT, WE'RE LOOKING AT THE

40962

1 INJURY, ROUGHLY, IN THIS AREA (POINTING).

2 Q AREN'T WE FARTHER INSIDE. COULD I POINT  
3 TO YOUR ARM?

4 A SURE.

5 Q AREN'T WE REALLY HERE (POINTING), ALMOST  
6 IN LINE WITH THE ARMPIT?

7 A YEAH. I'M NOT UNCOMFORTABLE WITH THAT.

8 Q THAT'S THE MEDIAL ASPECT?

9 A ALL RIGHT. THAT'S WHERE THE WOUNDS --

10 Q ISN'T THAT THE WAY DR. GOLDEN DESCRIBES  
11 IT, THAT THE HOLE IS THE MEDIAL ASPECT?

12 A NO. I'D HAVE TO GO BACK TO THE AUTOPSY

13 REPORT TO CONFIRM.

14 Q GO BACK TO THE SEPTEMBER '95 REVISION.

15 THAT'S WHERE HE DESCRIBES IT.

16 I'LL TELL YOU WHAT. LET'S SAVE SOME

17 TIME, BECAUSE WE ONLY HAVE 15 MINUTES MORE TODAY.

18 A ALL RIGHT.

19 Q WE'LL DO THIS TOMORROW. FOR THE MOMENT

20 LET'S TO THIS.

21 THIS WOUND THAT WE SEE HERE IN THE

22 PHOTOGRAPH ON 295, THIS BIG HOLE BELOW, ARE THESE

23 INDIVIDUAL DEFECTS?

24 A UH-HUH.

25 Q IS THIS HOLE LOWER ON THE ARM, MEANING

26 CLOSER TO THE HAND THAN THE HOLE THAT'S ON THE

27 OPPOSITE SIDE OF THE ARM; OR IS THIS WOUND HIGHER ON

28 THE ARM THAN THE HOLE ON THE OPPOSITE SIDE?

40963

1 A I'D HAVE TO LOOK AT THE REAR EXIT. BUT

2 MY RECOLLECTION IS THAT THE ENTRY HERE IS LOWER.

3 Q LOWER. AND YOU KEEP TALKING ABOUT THE

4 REAR AS EXIT. BUT DR. GOLDEN TALKS ABOUT THE REAR

5 AS ENTRY, CORRECT?

6 A YES.

7 Q AND DR. LAWRENCE WASN'T SURE.

8 A CORRECT.

9 Q SO THOUGH DR. LAWRENCE WASN'T SURE AND  
10 DR. GOLDEN SAYS THAT WHAT WE'RE LOOKING AT IN THOSE  
11 PHOTOGRAPHS IS AN EXIT WOUND, YOUR OPINION IS THAT  
12 THAT'S THE ENTRY, CORRECT?

13 A CORRECT.

14 Q AND YOUR OPINION IS THAT THE MARKS THAT  
15 ARE APPEARING ON MR. MENENDEZ' RIGHT CHEST ARE  
16 CAUSED BY SOMETHING TRAVELING FROM HIS LEFT TO HIS  
17 RIGHT.

18 A YES.

19 Q AND THE SOMETHING IS PELLETS?

20 A PELLETS OR WADDING. I'M NOT  
21 UNCOMFORTABLE WITH DR. LAWRENCE'S EXPLANATIONS.

22 Q HE DOESN'T SAY WADDING. HE'S SAYING  
23 IT'S A SHIRT. HE'S NOT TALKING ABOUT PELLETS AT ALL  
24 CAUSING THIS. HE SAYS IT'S JUST THE SHIRT PULLING?

25 A YEAH. BUT WHAT PULLS THE SHIRT? IS IT  
26 PELLETS? IS IT WADDING? I MEAN, THAT'S NOT  
27 TERRIBLY.

28 Q DOESN'T MATTER; IS THAT RIGHT?

40964

1 A IT'S NOT A TERRIBLY IMPORTANT DETAIL TO



2 MY RECONSTRUCTION, THAT'S CORRECT.

3 Q NOW, FOR DR. GOLDEN, HOWEVER, WHAT THIS  
4 MEANT WAS PROOF THAT THE LARGE DEFECT THAT WE SEE IN  
5 THESE PHOTOGRAPHS ON 295 WAS AN EXIT WOUND, CORRECT?

6 MR. CONN: I WOULD OBJECT AS VAGUE AS TO  
7 TIME, SINCE THERE'S BEEN AMENDMENTS TO GOLDEN'S  
8 REPORT.

9 THE COURT: IN REFERENCE TO THE AMENDMENTS?

10 MS. ABRAMSON: YES. IN REFERENCE TO THE  
11 COMPLETE DESCRIPTION THAT HE GAVE OF THIS WOUND.  
12 WELL, LET ME STRIKE THAT.

13 Q YOU SAT DOWN AND TALKED TO DR. GOLDEN  
14 ABOUT THIS VERY WOUND, DIDN'T YOU, DR. MC CARTHY?

15 A I DID INDEED.

16 Q AND YOU WERE ARGUING WITH HIM --  
17 PROBABLY FRIENDLY, BUT ARGUING -- ABOUT WHETHER THIS  
18 IS AN ENTRY OR AN EXIT, CORRECT?

19 A HE WAS VERY PROFESSIONAL AND WE MERELY  
20 DISCUSSED IT. BUT, YES, WE DISCUSSED THAT SPECIFIC  
21 DETAIL.

22 Q AND HE WAS VERY FIRM IN MAINTAINING  
23 THAT, IN HIS OPINION, WHAT WE ARE SEEING THERE, THE  
24 DEFECTS ON THE MEDIAL ASPECT OF THE ARM, WAS AN EXIT  
25 WOUND?

26 A NO. IF IT HADN'T BEEN FOR THE OTHER  
27 CORONER THERE -- I THINK THAT DR. GOLDEN WAS  
28 REASONABLY PERSUADED WE WERE CORRECT. IT WAS THE

1 OTHER CORONER THERE THAT WAS SO FIRM ON THE ISSUE.

2 I THINK HE EVENTUALLY PERSUADED DR. GOLDEN THAT WE  
3 WERE INCORRECT.

4 HE CERTAINLY -- I WOULDN'T CHARACTERIZE  
5 HIS REACTION AS VERY FIRM. I MEAN, HE SERIOUSLY  
6 CONSIDERED THE EVIDENTIARY ISSUES WE RAISED.

7 Q ARE YOU SAYING, DR. MC CARTHY, THAT  
8 DR. GOLDEN IS NOT FIRM THAT THIS INJURY IS AN EXIT?  
9 IS THAT WHAT YOU ARE SAYING, WITHOUT ALL THE REST OF  
10 THAT?

11 A OH, NO. IN HIS FINAL REPORT HE  
12 EVENTUALLY COMES DOWN ON THE SIDE OF EXIT.

13 I WAS TRYING TO ANSWER YOUR QUESTION  
14 ABOUT HIS VIEW IN OUR DISCUSSION, WHICH I THINK IS  
15 WHAT YOU ASKED ME IN THE PRECEDING QUESTION, WHICH  
16 WAS A DIFFERENT QUESTION.

17 Q HE WAS NICE TO YOU IN THE DISCUSSION; IS  
18 THAT WHAT YOU'RE SAYING?

19 A HE WAS VERY PROFESSIONAL, YES.

20 Q DIDN'T CALL YOU NAMES OR SAY YOU WERE  
21 WRONG OR SILLY OR FOOLISH?

22 A NO. HE CERTAINLY DID NOT.

23 Q AND HE WROTE A REPORT SUBSEQUENT TO YOUR  
24 DISCUSSION WITH HIM; IS THAT RIGHT?

25 A YES.

26 Q AND THAT REPORT IS DATED SEPTEMBER 25TH,  
27 1995, CORRECT? IT'S RIGHT IN FRONT OF YOU.  
28 THE COURT: YOU'RE ASKING ABOUT DR. GOLDEN'S

40966

1 REPORT?

2 THE WITNESS: I DON'T HAVE THE SUPPLEMENT  
3 RIGHT IN FRONT OF ME. THAT'S WHAT I WAS LOOKING  
4 FOR.

5 MS. ABRAMSON: YOU DON'T HAVE THE  
6 SUPPLEMENT?

7 THE WITNESS: I HAVEN'T FOUND IT IN MY BOOK  
8 YET.

9 MS. ABRAMSON: WELL, LET ME GIVE YOU MINE. I  
10 HAVE MANY COPIES.

11 THE WITNESS: OKAY.

12 MS. ABRAMSON: COULD YOU MOVE THE COMPUTER.  
13 I'M AFRAID OF HITTING IT AND BREAKING IT. IT'S SO  
14 EXPENSIVE.

15 A IT IS.

16 Q I KNOW.

17 DO YOU NEED THE ONE FOR MRS. MENENDEZ  
18 ALSO? CAN YOU NOT FIND THAT ONE?

19 A I FOUND THAT ONE. IT'S JUST HIS.

20 Q WHY DON'T YOU HOLD ON TO HIS.

21 DOES THAT APPEAR TO BE A SEPTEMBER 25TH,  
22 1995 AMENDMENT TO THE AUTOPSY REPORT?

23 A YES.

24 Q AND DOES THAT AMENDMENT, IN FACT, GIVE A  
25 DESCRIPTION OF WOUND NO. 3, WHICH IS THE ONE THAT WE  
26 ARE TALKING ABOUT UP ON THE BOARD NOW?

27 A YES, IT DOES.

28 Q AND IN THAT REPORT DOESN'T DR. GOLDEN

40967

1 INDICATE THAT WHAT WE'RE LOOKING AT IN THIS  
2 PHOTOGRAPH IS THE EXIT WOUND?

3 A YES.

4 Q AND, IN FACT, HE ASSOCIATES WHAT'S ON  
5 NO. 6 WITH NO. 3, INDICATING THE DIRECTION WHICH  
6 CAUSED THESE MARKS ON THE RIGHT BREAST WAS FROM  
7 RIGHT TO LEFT?

8 A I'M SORRY. YOU'LL HAVE TO --

9 Q WHEN HE TALKS ABOUT WOUND NO. 3 ITSELF,  
10 HE TALKS ABOUT THE WOUND TRACK THROUGH THE SKIN.  
11 "THE SUBCUTANEOUS TISSUE AND MUSCLE PASSED FROM  
12 LATERAL TO MEDIAL."

13 THAT'S RIGHT TO LEFT, CORRECT?

14 A HE'S REFERENCING A CHANGE TO PARAGRAPH  
15 3. I'D HAVE TO GO BACK TO THE ORIGINAL. I'M

16 READING THAT PARAGRAPH.

17 Q HE REWROTE THE WHOLE THING ABOUT NO. 3.

18 LET ME ASK YOU SOMETHING, DR. MC CARTHY.

19 HAVE YOU EVER SEEN THIS BEFORE?

20 A YES.

21 Q YOU HADN'T READ IT AS OF OCTOBER 2ND AND

22 3RD WHEN WE DID THE PRETRIAL HEARING, CORRECT?

23 A I DON'T REMEMBER HAVING DONE SO BY THEN,

24 NO.

25 Q AND YOU'VE HAD IT SINCE THEN?

26 A I PROBABLY EVEN HAD IT THEN. I JUST

27 HADN'T READ IT.

28 Q AND HAVE YOU READ IT SINCE THEN?

40968

1 A YES.

2 Q AND HAVE YOU SAT DOWN AND TRIED TO

3 COMPARE IT TO THE PHOTOGRAPHS TO UNDERSTAND WHAT

4 HE'S SAYING?

5 A NO. NOT IN ANY GREAT DETAIL.

6 Q WELL, WHY DON'T WE READ TOGETHER -- HE

7 CALLS WHAT'S ON THE CHEST WALL WOUND NO. 6, CORRECT?

8 A NOW YOU GOT ME. YES.

9 Q OKAY. YOU SEE WHERE HE'S

10 WRITTEN: "BY MANIPULATION OF THE RIGHT UPPER

11 EXTREMITY..."

12 THAT MEANS THE UPPER ARM?

13 A YES.

14 Q AND "BRINGING IT ADJACENT..."

15 DOES THAT MEAN NEXT TO?

16 A YES.

17 Q "THE RIGHT LATERAL THORAX..."

18 IS THIS THE RIGHT LATERAL THORAX, WHAT  
19 I'M POINTING TO? DO YOU KNOW?

20 A YES.

21 Q OKAY. IT IS.

22 "SHOTGUN WOUND NO. 3...", WHICH YOU  
23 UNDERSTAND TO BE THIS HOLE, CORRECT? "MAY BE  
24 RELATED TO SHOTGUN WOUND NO. 6 BELOW."

25 YOU UNDERSTAND THIS IS NO. 6?

26 A UH-HUH.

27 Q AND HE'S DESCRIBING IT FURTHER BELOW IN  
28 THE REPORT, CORRECT?

40969

1 A UH-HUH.

2 Q "INDICATING THAT THERE IS ENTRY

3 AND EXIT THROUGH THE RIGHT UPPER ARM

4 AND REENTRY FROM RIGHT TO LEFT,

5 CAUSING THE GRAZE WOUND OF THE RIGHT

6 UPPER CHEST."

7 A UH-HUH.

8 Q RIGHT?

9 A YES.

10 Q SO HE IS TALKING ABOUT A DIRECTION HERE

11 OF EXIT FROM THE RIGHT ARM AND A TRAVEL ACROSS THE

12 CHEST FROM RIGHT TO LEFT?

13 A YES. THERE.

14 Q THANK YOU. DO YOU NEED A COPY OF THIS?

15 A OH, NO. I HAVE A COPY.

16 Q NOW, IF THIS WOUND WHICH DR. GOLDEN HAS

17 NUMBERED "3," IS AS HE DESCRIBES IT, LATERAL TO

18 MEDIAL, RIGHT TO LEFT, THEN NEITHER THE DEFECT THAT

19 WE SEE HERE, THE LARGE HOLE IN HIS ARM, NOR ANY OF

20 THIS PATTERNING ON HIS CHEST WOULD BE CAUSED BY YOUR

21 SHOT NO. 1.

22 MR. CONN: OBJECTION. MISSTATES THE

23 TESTIMONY THAT IT WAS RIGHT TO LEFT AS OPPOSED TO

24 MAYBE RIGHT TO LEFT.

25 THE COURT: OVERRULED.

26 THE WITNESS: WITH YOUR ASSUMPTION, YOU ARE

27 CORRECT.

28 Q BY MS. ABRAMSON: OKAY. SO NONE OF

1 THOSE WOUNDS COULD HAVE BEEN CAUSED BY SHOT NO. 1 IF

2 DR. GOLDEN'S DIRECTION IS CORRECT?

3 A CORRECT.

4 Q AND -- WELL, STRIKE THAT.

5 BUT YOU DO INCLUDE IT RIGHT NOW FOR THE

6 PURPOSE OF YOUR RECONSTRUCTION, RIGHT?

7 A OH, YES. IF YOU LOOK AT THE SHIRT,

8 THERE'S NO WAY THEY COULD HAVE BEEN GOING FROM RIGHT

9 TO LEFT.

10 Q FINE. IS THERE A HOLE IN HIS CHEST?

11 A THERE IS ONE HOLE IN HIS CHEST, BUT NOT

12 PRECISELY IN THAT AREA. THERE WAS ONE STRAY PELLET

13 DEFECT FOUND IN HIS CHEST.

14 Q NOT PRECISELY IN WHAT AREA?

15 A WHERE THOSE GRAZINGS ARE. IT'S AGAIN IN

16 DR. GOLDEN'S WOUND NO. 6, "INDIVIDUAL SHOTGUN PELLET

17 WOUND OF THE ANTERIOR CHEST."

18 Q HE'S CALLING IT PART OF THE SAME WOUND,

19 NO. 6, RIGHT?

20 A YES.

21 Q DON'T YOU THINK IF HE WRITES ABOUT THEM

22 IN THE SAME WOUND HE MEANS THEY'RE PART OF THE SAME

23 WOUND?

24 A WELL, YOU CAN'T HAVE IT BOTH WAYS. HE

25 SAYS THE TRAJECTORY IS FRONT TO BACK, NO ANGULATION

26 OR DEVIATION IS EVIDENT. HE CAN'T SAY THAT ABOUT IT

27 AND THEN SAY -- HE CAN'T HAVE IT BOTH WAYS.

28 Q YOU'VE NEVER HEARD OF THE BILLIARD BALL



1 EFFECT; IS THAT WHAT YOU'RE SAYING?

2 A OH, I HAVE.

3 Q THE FACT A PELLET STRIKING ANOTHER

4 PELLET CAN MAKE THEM BOTH CHANGE DIRECTION?

5 A YES. THEY JUST CAN'T MAKE A RIGHT TURN.

6 Q YOU DON'T REALLY NEED TO MAKE A RIGHT

7 TURN, DO YOU? ALL YOU HAVE TO DO IS TURN THE CHEST

8 WALL; ISN'T THAT RIGHT?

9 A I DON'T UNDERSTAND WHAT YOU MEAN. YOU

10 CAN'T GRAZE THE CHEST WALL AND THEN ENTER FRONT TO

11 BACK. IN OTHER WORDS, YOU CAN'T HAVE A PELLET

12 GRAZING THE SURFACE OF THE CHEST AND ENTERING FRONT

13 TO BACK WITHOUT A LEFT TURN.

14 Q IN FACT, YOU CAN'T HAVE A PELLET THAT

15 YOU HAVE DESIGNATED AS GOING ACROSS FROM HIS LEFT

16 ARM TO HIS RIGHT ARM -- YOU CAN'T HAVE A SHOT COLUMN

17 THAT CURVES AND WRAPS AROUND THE CURVED SURFACE OF

18 THE CHEST WALL AT ALL, CAN YOU, DR. MC CARTHY?

19 A YOU CANNOT HAVE A SHOT COLUMN CURVE, YOU

20 ARE CORRECT.

21 Q RIGHT. SO THESE CAN'T BE, BECAUSE

22 THEY'RE ON THE CURVED PORTION OF THE GRAZE WOUND

23 FOLLOWING THIS VECTOR LINE YOU'VE DRAWN TO SHOT 1B.

24 THEY HAVE TO BE SOMETHING ELSE?

25 A THAT'S ABSOLUTELY WRONG. THE SHOT

26 COLUMN CAN PUSH THE CHEST SURFACE FLAT WHEN IT GOES

27 BY; IN FACT, IT DOES. THE CHEST SPRINGS BACK TO ITS

28 CURVED SHAPE AFTER THE ABRASION.

40972

1 Q YOU CAN SEE THE BONES STICKING OUT IN

2 THE RIB CAGE OF MR. MENENDEZ, THAT VERY BONY RIB

3 CAGE. DO YOU SEE THAT?

4 A IN THIS POSITION. AS A GUY WHO CARRIES

5 ABOUT THE SAME AMOUNT OF WEIGHT, IN THIS POSITION I

6 DON'T HAVE BONY SKIN SURFACE, UNFORTUNATELY.

7 Q BUT YOU STILL HAVE ABRASIONS, AS YOU'RE

8 CALLING THEM, ON THE CURVED SIDE OF THE CHEST.

9 YOU'RE SAYING THE SHOT COLUMN FLATTENED

10 HIS CHEST?

11 A IN THE SEATED POSITION -- RIGHT NOW I

12 DON'T LOOK HALF BAD LYING FLAT ON A HARD SURFACE

13 LIKE THIS IN TERMS OF WEIGHT. WHEN I SIT UP AND MY

14 SKIN LOOSENS UP, LIKE IT IS NOW, YOU CAN DEPRESS MY

15 CHEST SURFACE HALF AN INCH EASY; AND THUS, YOU DON'T

16 HAVE RIBS HOLDING THAT ORIGINAL HIT. HE ONLY SEES

17 IT BECAUSE HE'S LYING ON A FLAT SURFACE.

18 Q ANSWER ME THIS, DR. MC CARTHY. CAN YOU

19 HAVE A PELLET COMING IN CONTACT WITH THE SKIN THAT  
20 DOES NOT CAUSE A TEAR IN THE SKIN, A PELLET SHOT  
21 FROM A SHOTGUN THAT DOES NOT CAUSE A TEAR IN THE  
22 SKIN?

23 A IF IT DOESN'T HIT THE SKIN AND IT ONLY  
24 GRAZES THE SURFACE, YOU WILL NOT NECESSARILY TEAR  
25 IT. YOU COULD ABRABE IT, PARTICULARLY IF THERE WAS  
26 FABRIC.

27 Q IF IT DOESN'T ACTUALLY HIT THE SKIN,  
28 YOU'RE STILL SAYING IT'S GOING TO DEPRESS THE CHEST

40973

1 WALL, EVEN THOUGH IT'S ONLY GRAZING ON BY?

2 A NO. WHAT I'M SAYING IS IT COULD ENGAGE  
3 A SHIRT WITH A FABRIC BARRIER AND NOT BE A DIRECT  
4 HIT AND NOT A STEEP ENOUGH ANGLE TO CUT THE SKIN.  
5 IT DEFINITELY COULD DEPRESS THE SKIN.

6 Q DEPRESSED SO MUCH THAT IT COULD FLATTEN  
7 A CURVED SURFACE?

8 A YOU DON'T HAVE MUCH CURVATURE IN THIS  
9 PICTURE. AND STANDING UP YOU'D HAVE EVEN LESS  
10 CURVATURE.

11 Q THAT'S YOUR MEDICAL DOCTOR SIDE TALKING  
12 RIGHT NOW, IS THAT RIGHT, DR. MC CARTHY?

13 A GEOMETRY. THE PICTURE SPEAKS FOR

14 ITSELF.

15 Q DO YOU KNOW WHAT THIS IS?

16 THIS IS AN EXHIBIT I'D LIKE TO REMARK.

17 IT WAS MARKED IN THE FIRST TRIAL. EXHIBIT NO. 76.

18 THE COURT: EXHIBIT 300.

19 MS. ABRAMSON: THANK YOU.

20 THE WITNESS: YOUR QUESTION IS: CAN I

21 IDENTIFY THIS PHOTO?

22 Q BY MS. ABRAMSON: YES. CAN YOU IDENTIFY

23 WHAT'S SHOWN IN THAT PHOTOGRAPH?

24 A LOOKS LIKE A PORTION OF THE WOUND IN THE

25 NIPPLE AREA ON JOSE.

26 Q MR. MENENDEZ?

27 A YES.

28 MS. ABRAMSON: LET ME MARK THIS 300 BEFORE I

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1 FORGET THE NUMBER.

2 A NO STICKIES. I'M SORRY.

3 Q AND DO YOU SEE A LITTLE RED DOT ON THIS

4 PHOTOGRAPH THAT HAS A "6" ON IT?

5 A YES.

6 Q AND IF I WERE TO TELL YOU THAT THAT IS A

7 PHOTOGRAPH THAT DR. GOLDEN USED IN THE PREVIOUS

8 TRIAL TO INDICATE WOUND NO. 6, IS THAT CONSISTENT

9 WITH YOUR UNDERSTANDING OF WHAT WOUND NO. 6 IS?

10 A YES.

11 Q AND DO YOU SEE THIS IS AN OBJECT THAT IS  
12 HEAVILY CIRCLED IN BLACK?

13 A YES.

14 Q AND IF I WERE TO TELL YOU THAT THAT  
15 CIRCLE INDICATES WHERE DR. GOLDEN BELIEVED THE  
16 PELLET WAS LOCATED THAT WAS IN MR. MENENDEZ'  
17 CHEST --

18 A I HAVE NO BASIS TO DISAGREE WITH THAT.

19 Q OKAY. AND DO YOU REMEMBER -- WERE YOU  
20 IN THE COURTROOM -- LET'S SEE IF WE CAN LINE THIS UP  
21 WITH WHAT'S ON THE CHART. I MIGHT HAVE TO JUST HOLD  
22 IT AT THIS POINT.

23 I'M LINING IT UP ON THE SAME AXIS AS THE  
24 PHOTOGRAPH ON 294 THAT SHOWS THE SAME WOUND.

25 A YES.

26 Q AND DO YOU SEE THE THING THAT'S CIRCLED  
27 ON 300 LINES UP WITH WHAT I'M CIRCLING NOW?

28 A YEAH. PRETTY CLOSE.

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1 Q ON 295. AND WERE YOU HERE WHEN  
2 DR. LAWRENCE TESTIFIED THAT HE THOUGHT IT WAS THIS  
3 MARK, THE LONGER MARK, THAT DR. GOLDEN HAD

4 IDENTIFIED AS THE ONE CONTAINING THE PELLET DEFECT?

5 A I WAS NOT. AT LEAST I DON'T RECOLLECT  
6 BEING.

7 THE COURT: OKAY. LET'S TAKE OUR BREAK NOW.

8 MS. ABRAMSON: THANK YOU, YOUR HONOR.

9 THE COURT: WE'LL RESUME WITH THE JURY  
10 TOMORROW AT 8:30.

11 DON'T DISCUSS THE CASE WITH ANYONE AND  
12 DON'T FORM ANY FINAL OPINIONS ABOUT IT. SEE YOU ALL  
13 BACK HERE TOMORROW AT 8:30.

14 (AT 3:15 P.M. PROCEEDINGS WERE  
15 ADJOURNED UNTIL 9:00 A.M. THE  
16 FOLLOWING DAY.)