

1 VAN NUYS, CALIFORNIA; THURSDAY, NOVEMBER 16, 1995

2 9:10 A.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN FADALE, OFFICIAL REPORTER)

7

8 THE COURT: ALL RIGHT. THE DEFENDANTS ARE

9 PRESENT, ALL COUNSEL ARE PRESENT. LET'S HAVE THE JURY

10 OUT.

11 (THE JURY ENTERS THE COURTROOM AND THE

12 FOLLOWING PROCEEDINGS WERE HELD:)

13

14 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

15 I UNDERSTAND THE LAWYERS ARE GOING TO BRING

16 IN THE LARGE EXHIBITS NEXT WEEK FOR YOU. I WONDER IF

17 ANYONE'S THOUGHT OF HOW YOU'RE GOING TO DEAL WITH ALL OF

18 THESE IN THE JURY ROOM.

19 ALL RIGHT. WE WILL NOW RESUME WITH THE

20 CROSS-EXAMINATION OF THE WITNESS.

21

22 ROGER MC CARTHY,

23 THE WITNESS ON THE STAND AT THE TIME OF THE ADJOURNMENT,

24 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

25

26

27

28

1 CROSS-EXAMINATION (CONTINUED)

2 BY MS. ABRAMSON:

3 Q. I BELIEVE, DR. MC CARTHY, I WAS ASKING
4 YOU -- I WAS ASKING YOU ABOUT WHAT IN YOUR MIND OF THE
5 ARM INJURIES, THE UPPER ARM INJURIES TO MR. MENENDEZ,
6 WHICH ONE DID YOU BELIEVE WAS HIGHER UP ON THE ARM, THE
7 ONE THAT YOU'RE SEEING IN THAT PHOTOGRAPH ON 295, WHICH
8 IS THE MEDIAL ONE, OR THE ONE THAT'S ON THE OPPOSITE
9 SIDE OF THE ARM WHICH IS THE LATERAL ONE. I DON'T THINK
10 WE EVER RESOLVED THAT.

11 A. AND WHAT I SHOULD HAVE DONE LAST NIGHT WAS
12 LOOK AGAIN AT THE PHOTOS, BUT MY RECOLLECTION AS I SIT
13 HERE WAS THAT THE LATERAL ONE IS HIGHER THAN THE MEDIAL
14 ONE.

15 Q. SO THAT IF YOU LOOK AT 1A THEN -- FIRST OF
16 ALL, YOU HAVE ALREADY TOLD US THAT 1A DOESN'T PURPORT TO
17 SHOW THE WOUND ON THE UPPER ARM; IS THAT CORRECT?

18 A. NO, I BELIEVE IT DOES. BUT IT -- I GUESS
19 IN TERMS OF THE MEDICAL DISCUSSION, I THINK THE PELLET
20 INDICATIONS AT THE ELBOW ARE CLEARLY ENTRY WOUNDS, AND I
21 BELIEVE THE UPPER -- THE WOUND ABOVE IT WAS ALSO PART OF
22 THE SAME SHOT.

23 Q. BUT AS YOU HAVE JUST INDICATED, THE WOUND
24 ON THE OTHER SIDE OF THE ARM IS HIGHER UP ON THE ARM
25 THAN THE ONE ON THE INNER SIDE OF THE ARM THAT'S NEAR

26 THE PELLET DEFECTS, CORRECT?

27 A. MY RECOLLECTION IS A LITTLE. IT'S NOT

28 GREATLY. BUT AS WE DISCUSSED, THE ARM IS BROKEN AND A

-24558

1 SLIGHT DEFLECTION OF THE PATH OF THE PELLETS WOULDN'T
2 SURPRISE ME.

3 Q. WELL, WHETHER IT'S DEFLECTION OR NOT, THE
4 EXIT WOUND IS HIGHER?

5 A. YOU KNOW, BEFORE WE'RE GOING TO TAKE THAT
6 TO THE BANK, LIKE I SAID IN THE BEGINNING, I'D LIKE TO
7 LOOK AT THE PHOTOS AGAIN. BUT THAT'S MY RECOLLECTION.

8 Q. YOU HAVE HAD THE PHOTOS FOR ALMOST A YEAR,
9 HAVEN'T YOU?

10 A. I HAVE HAD ALL 800 PHOTOS FOR ALMOST A
11 YEAR, CORRECT.

12 Q. NOT ALL PHOTOS SHOW THE BODIES OR THE DEN
13 WHERE THE SHOOTING OCCURRED, CORRECT?

14 A. THAT'S CORRECT.

15 Q. ABOUT 180 OF THEM REFLECT THE BODIES AND
16 THE DEN WHERE THE SHOOTING OCCURRED, CORRECT?

17 A. CORRECT.

18 Q. IN FACT, ANATOMICALLY SPEAKING, THE WOUNDS
19 TO HIS UPPER ARM, EVEN ON THIS DIAGRAM, THEY'RE ABOUT
20 THREE INCHES ON THE DIAGRAM HIGHER THAN THE GREEN LINE
21 THAT YOU PUT THERE, CORRECT?

22 A. I'M NOT COMFORTABLE WITH THREE INCHES. IF
23 YOU LOOK AT THE DEFECTS, THEY'RE RIGHT IN THE ELBOW.
24 Q. IS THAT NO?
25 A. I AM NOT COMFORTABLE WITH THE THREE INCHES.
26 Q. I AM NOT TALKING ABOUT THE INDIVIDUAL
27 DEFECTS, I AM TALKING ABOUT -- AND THEY'RE NOT RIGHT IN
28 THE ELBOW. ACCORDING TO DR. LAWRENCE, THEY'RE ABOVE THE

-24557

1 ELBOW.
2 DO YOU REMEMBER THAT TESTIMONY?
3 A. NO, I GUESS I DON'T. EXCUSE ME. I DON'T
4 RECALL HIM TESTIFYING TO THAT. EXCUSE ME.
5 Q. IN ANY EVENT, BASED ON THE MEASUREMENTS AND
6 BASED ON JUST VISUALIZING THIS, YOU CAN SEE MR.
7 MENENDEZ' ARMPIT IN THE UPPER LEFT PHOTO IN 295, CAN'T
8 YOU? THAT'S AN ARMPIT?
9 A. YES.
10 Q. AND YOU CAN SEE THIS DEFECT RIGHT BELOW THE
11 ARMPIT?
12 A. IT DEPENDS. ON THE UPPER ARM BETWEEN THE
13 ELBOW AND ARMPIT. I DON'T THINK THAT PICTURE GOES UP TO
14 THE ARMPIT.
15 Q. CLOSER TO THE ARMPIT THAN THE ELBOW,
16 HOWEVER?
17 A. AND I GUESS THAT'S WHAT I AM UNCOMFORTABLE

18 ABOUT. IF YOU REFER TO THE --

19 Q. SO YOU DON'T KNOW; IS THAT THE ANSWER?

20 A. NO. I DO KNOW. I HAVE IT DIAGRAMMED, AND
21 THAT'S WHAT I WANT TO REFER TO.

22 THE COURT: OKAY. MS. ABRAMSON, WHY DON'T YOU
23 GET BACK TO THE PODIUM, PLEASE.

24 MS. ABRAMSON: BECAUSE I CAN'T POINT TO THE
25 DIAGRAM FROM THERE.

26 THE COURT: AND LET'S NOT USE THAT POINTER AS
27 YOU'RE DOING IT. YOU TEND TO USE IT AS AN EXCLAMATION
28 POINT. LET'S JUST USE IT TO POINT AT THINGS.

-24556

1 MS. ABRAMSON: I WAS POINTING AT THINGS.

2 THE COURT: WHY DON'T YOU LEAVE IT THERE AT THE
3 DIAGRAM.

4 THE WITNESS: I WOULD CHARACTERIZE IT AS CLOSER
5 TO THE ELBOW.

6 Q. BY MS. ABRAMSON: YOU WOULD?

7 A. I HAVE A DIAGRAM, IF YOU WANT.

8 Q. DID YOU READ DR. GOLDEN'S '95 SUPPLEMENT?

9 A. YES.

10 Q. AND DOESN'T HE PLACE IT NINE INCHES BELOW
11 IT? WELL, LET ME GET IT EXACTLY.

12 NOW, HE DESCRIBES THE ENTRANCE WOUND AS
13 WHAT YOU ARE CALLING THE EXIT, CORRECT?

14 A. I BELIEVE SO.

15 Q. AND HE SAYS THE ENTRANCE WOUND IS

16 APPROXIMATELY SIX TO SEVEN INCHES BELOW THE TOP OF THE

17 RIGHT SHOULDER.

18 DO YOU REMEMBER THAT?

19 A. YEAH.

20 Q. AND HE HAS THE EXIT WOUND 9 TO 14 INCHES

21 BELOW THE TOP OF THE RIGHT SHOULDER, CORRECT?

22 A. MUCH CLOSER TO THE ELBOW THAN TO THE

23 ARMPIT.

24 Q. WELL, THE TOP OF IT IS NINE INCHES FROM THE

25 TOP OF THE SHOULDER, CORRECT?

26 A. CORRECT. NINE INCHES FROM THE TOP OF THE

27 SHOULDER, AND 14 INCHES PUTS IT ALMOST DOWN TO THE

28 ELBOW.

-24555

1 Q. WELL, THE WOUND IS VERY LARGE, IS IT NOT?

2 A. UNDERSTOOD. BUT DEFINITELY -- I DON'T KNOW

3 WHY I HAVE A FROG IN MY THROAT TODAY.

4 DEFINITELY CLOSER TO THE ELBOW AND THE

5 ARMPIT, WHICH IS WHERE WE STARTED.

6 Q. HOWEVER, THE LINE YOU HAVE DRAWN ON 1A IS A

7 LINE THAT GOES DOWNWARD, CORRECT?

8 A. AGAIN, THERE IS A SLIGHT ANGULARITY

9 DOWNWARD IN THIS DIAGRAM IN THE RIGID POSITION THEY'RE

10 SITTING IN, THAT'S WHY I HAVE TAKEN PAINS TO POINT THAT
11 OUT. WITHIN THE ACCURACY OF THE DIAGRAMS, I MEAN.

12 Q. YOUR HONOR, I WOULD MOVE TO STRIKE
13 EVERYTHING BEYOND THE DESCRIPTION OF THE LINE AS
14 NONRESPONSIVE.

15 THE COURT: LET'S HEAR THE QUESTION AGAIN,
16 PLEASE.

17 (RECORD READ.)

18

19 MS. ABRAMSON: THAT WAS THE QUESTION.

20 THE COURT: LET'S HEAR THE ANSWER.

21 (RECORD READ.)

22

23 THE COURT: EVERYTHING IS STRICKEN STARTING WITH
24 "THAT'S WHY." EVERYTHING ELSE WILL STAND.

25 Q. BY MS. ABRAMSON: NOW, WITH THIS FIXED POST
26 THAT YOU CHOSE TO ILLUSTRATE IN SHOT 1A, DR. MC CARTHY,
27 IN ORDER TO SHOW WHAT YOU CALL THE EXIT WOUND HIGHER UP
28 ON MR. MENENDEZ' RIGHT ARM, THE LINE WOULD HAVE TO GO

-24554

1 UPWARD TO THE LEFT RATHER THAN DOWNWARD; ISN'T THAT
2 TRUE?

3 A. NO.

4 Q. YOU'RE SAYING THE LINE WHERE IT IS NOW
5 SHOWS THE EXIT WOUND, AS YOU CALL IT, HIGHER UP ON THE

6 ARM THAN THE EXIT -- THAN THE ENTRANCE WOUND; IS THAT

7 WHAT YOU'RE SAYING? THE LINE AS IT'S DRAWN RIGHT NOW?

8 A. YEAH. YOU PROBABLY COULD ARGUE THERE IS A

9 SLIGHT BIAS THE OTHER WAY IN THE DIAGRAM AS IT IS DRAWN

10 NOW.

11 Q. SO, MY LAST QUESTION WAS CORRECT; IS THAT

12 RIGHT?

13 A. NO. YOU COULD -- YOU WOULDN'T HAVE TO

14 CHANGE THE ANGLE OF THE SHOT. YOU COULD JUST ROTATE THE

15 BODY SLIGHTLY, THE ARM, AS I WAS DOING YESTERDAY.

16 Q. THE QUESTION IS BASED ON THE FIGURES BEING

17 IN THE EXACT POSITION YOU CHOSE TO PLACE THEM IN IN

18 FORMING ILLUSTRATION 1A.

19 DO YOU UNDERSTAND? DO YOU REMEMBER THAT

20 PART?

21 A. I DON'T REMEMBER YOU SAYING THAT IN THE

22 QUESTION, BUT IF YOU FREEZE THE FIGURES, YOU HAVE TO

23 CHANGE THE ANGLE OF THE SHOT.

24 Q. IT WOULD HAVE TO GO UPWARD, CORRECT?

25 A. IF YOU FREEZE THE FIGURES, YES.

26 Q. AND IF IT DID GO HIGHER, IT WOULD MISS HER

27 LEFT BREAST ENTIRELY, CORRECT?

28 A. AGAIN, IF SHE WERE SEATED HIGHER, NO. BUT

-24553

1 WITH THE FIGURES SHOWN AS THEY ARE NOW, YES.

2 Q. THANK YOU.

3 NOW, I THINK WE WERE TALKING YESTERDAY
4 ABOUT DR. LAWRENCE AND HIS BASIC POSITION THAT HE DOES
5 NOT BELIEVE THOSE TWO WOUNDS -- OR THE TWO WOUNDS ON MR.
6 MENENDEZ' RIGHT ARM AS VISUALIZED ON 295 WERE
7 NECESSARILY PART OF THE SAME SHOT.

8 DO YOU REMEMBER OUR DISCUSSION ABOUT THAT
9 YESTERDAY?

10 A. I RECALL OUR DISCUSSION. I WOULDN'T AGREE
11 WITH THE BASIC -- YOUR BASIC POSITION CHARACTERIZATION.

12 Q. WELL, LET ME ASK YOU THIS:

13 IF ONLY THE DEFECTS THAT YOU -- THE
14 INDIVIDUAL PELLET DEFECTS THAT YOU SAY ARE IN THE ELBOW
15 AREA WERE INVOLVED IN SHOT 1A AND NOT THE UPPER ARM PART
16 WERE INVOLVED IN THAT SHOT, THEN YOU CAN'T EXPLAIN THE
17 LEFT BREAST INJURIES WITH THIS TRAJECTORY, CORRECT?

18 A. NO. I THINK DR. LAWRENCE EVEN WAS
19 COMFORTABLE WITH THE LEFT BREAST INJURY.

20 Q. THAT'S NOT WHAT I ASKED YOU.

21 DR. LAWRENCE INDICATED HE BELIEVED THE LEFT
22 BREAST WAS CONNECTED TO THE LEFT ELBOW, CORRECT?

23 A. YES.

24 Q. BUT YOU'RE SHOWING THE LEFT BREAST AS BEING
25 A WOUND THAT'S PRODUCED BY PASSAGE OF PELLETS THROUGH
26 HIS RIGHT ARM, CORRECT?

27 A. THE DIAGRAM GOES THROUGH THE RIGHT ARM,
28 YES.

1 Q. AND THAT'S WHAT YOU'VE TESTIFIED TO ON
2 DIRECT; THAT YOU THOUGHT ALL THOSE WOUNDS WERE IN A
3 STRAIGHT LINE AND CONNECTED, RIGHT?

4 A. YES.

5 Q. YOU SAID THE GEOMETRY LED TO A STRAIGHT
6 LINE, CORRECT?

7 A. YES.

8 Q. SO IF THE RIGHT UPPER ARM IS NOT
9 INVOLVED -- WELL, FIRST OF ALL, THE PELLET DEFECTS ON
10 THE INNER ELBOW, DO YOU KNOW IF THEY EXITED?

11 A. MY RECOLLECTION IS THAT THE X RAYS SHOW
12 THAT THE PELLET COUNT IN THE ELBOW IS PRETTY CLOSE TO
13 THE DEFECT COUNT. I WOULD HAVE TO BLOW IT UP TO SEE.

14 Q. IS THAT NO, THEY DID NOT EXIT?

15 A. THEY -- IT DOESN'T APPEAR THAT MOST OF THEM
16 EXITED. IT'S JUST THAT WHEN YOU TALK ABOUT THAT, YOU'RE
17 TALKING ABOUT A PELLET COUNT PLUS OR MINUS ONE OR TWO.

18 BUT MOST OF THEM I BELIEVE STAYED IN THE
19 ELBOW.

20 Q. FINE. SO THEY DIDN'T PASS THROUGH HIS ARM
21 INTO HER BREAST?

22 A. THAT'S CORRECT. I DON'T BELIEVE THEY DID.

23 Q. SO YOU NEEDED THE UPPER WOUND TO HAVE
24 PASSED THROUGH HIS ARM INTO HER BREAST, CORRECT?

25 A. I BELIEVE THAT'S WHAT HAPPENED, BUT I DON'T
26 NEED THAT.

27 Q. YOU NEED IT TO JUSTIFY THE DIAGRAM,

28 CORRECT?

-24551

1 A. NO. AS YOU INDICATED, THE PELLET PATTERN
2 COULD HAVE CAUGHT HIS ELBOW PARTIALLY, AND THEN THE
3 REMAINDER HIT HER BREAST.

4 Q. BUT THEN YOU WOULD HAVE TO MAKE A BIG "X"
5 OVER THAT DIAGRAM SHOWING THE PELLETS THAT WENT INTO HIS
6 RIGHT ARM WENT INTO HER LEFT BREAST.

7 A. OH, NO. THIS IS THE SAME SHOT.

8 Q. DR. MC CARTHY, IF MY EYES DON'T DECEIVE ME,
9 IT IS MEANT TO --

10 MR. CONN: OBJECTION. ARGUMENTATIVE. OBJECT TO
11 THE FORM OF THE QUESTION.

12 THE COURT: REPHRASE THE QUESTION.

13 Q. BY MS. ABRAMSON: DR. MC CARTHY, THAT LINE
14 IS SHOWN IN SUCH A WAY, IS IT NOT, TO SHOW PELLETS GOING
15 THROUGH HIS ARM AND INTO HER BREAST, CORRECT? THAT'S
16 HOW IT'S DRAWN.

17 A. THAT'S HOW IT'S DRAWN. I BELIEVE --

18 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS
19 ANSWER.

20 THE COURT: YES. YOU MAY ANSWER THE QUESTION.

21 THE WITNESS: I BELIEVE THAT'S WHAT HAPPENED.

22 BUT THE DIAGRAM IS CORRECT. IF YOU DON'T BELIEVE THAT

23 BECAUSE IT'S -- I THINK, MAYBE I'M WRONG -- IT'S
24 UNCONTROVERTED THAT SOME OF THE INDICATIONS HIT HIS
25 RIGHT ARM, AND IF THE REMAINDER OF THE PELLETS WENT BY
26 THE ARM, I DIDN'T SHOW THE DIAMETER OF THE SPREAD AT
27 THIS TIME WITH THE GREEN LINE; THAT IS, THE
28 DIRECTIONALITY AND THE CONNECTION.

-24550

1 Q. WE'RE TALKING ABOUT IF THE RIGHT ARM IS NOT
2 INVOLVED IN A SHOT THAT CONNECTS HIS LEFT ELBOW WITH HER
3 LEFT BREAST, THEN THE DIAGRAM IS NOT CORRECT; IS THAT
4 RIGHT?

5 A. IF THE RIGHT ARM IS NOT INVOLVED IN ANY
6 WAY, YOU ARE CORRECT.

7 Q. EVEN IF THE RIGHT ARM IS INVOLVED FOR THE
8 INNER DEFECTS, THEY DON'T PASS THROUGH TO HER BREAST,
9 CORRECT?

10 A. THEY DO NOT, CORRECT.

11 Q. SO THE DIAGRAM IS WRONG IN SHOWING PASSAGE
12 TO HER BREAST IF THE UPPER ARM IS NOT INVOLVED; ISN'T
13 THAT CORRECT?

14 A. NO.

15 Q. FINE. YOU HAVE ANSWERED THE QUESTION.

16 A. I --

17 THE COURT: WAIT. LET HIM ANSWER THE QUESTION.

18 THE WITNESS: I MEANT TO INDICATE THE CONNECTION

19 OF THE GEOMETRY OF THE SHOT. I DIDN'T TRY TO SHOW BY
20 THE DIAMETER OF THE GREEN BAR THE FULL EXTENT OF THE
21 PELLET SPREAD.

22 THE PELLETS THAT STRUCK THE ELBOW, I
23 BELIEVE AS YOU INDICATED, WERE ABSORBED BY THE ELBOW.
24 THE PELLETS COULD HAVE COME BY HIS ELBOW AND INTO HER
25 BREAST. THE DIAGRAM IS CORRECT IN EITHER WAY.

26 Q. BUT IF THEY WENT THROUGH THE ARM THEY WOULD
27 HAVE BEEN LOW-VELOCITY, WHICH WOULD EXPLAIN WHY THEY
28 DIDN'T PENETRATE VERY FAR INTO HER CHEST; IS THAT

-24549

1 CORRECT?

2 A. THAT IS CORRECT, MA'AM.

3 Q. NOW, DO YOU BELIEVE, DR. MC CARTHY, THAT
4 THIS NOTION THAT YOU HAVE THAT THE TWO DECEDENTS WERE
5 SEATED AND THAT THE FIRST SHOT CAME FROM MR. MENENDEZ'
6 LEFT IS UNCONTROVERTED IN THIS CASE?

7 A. NO, NOT THAT. I GUESS I JUST WAS THINKING
8 ABOUT THE CONNECTION OF THE THREE WOUNDS. BUT IF IT'S
9 CONTROVERTED, THAT'S ALL RIGHT.

10 Q. DO YOU THINK THE CONNECTION OF THE WOUNDS
11 IS UNCONTROVERTED?

12 A. I DIDN'T THINK DR. LAWRENCE WAS
13 UNCOMFORTABLE WITH THE CONNECTION OF THOSE THREE WOUNDS.

14 Q. DO YOU THINK DR. LAWRENCE WAS THE DEFENSE'S

15 WITNESS?

16 A. NO, I DIDN'T MEAN IN THAT SENSE.

17 Q. AND YOU UNDERSTAND THE DEFENSE IS CALLING

18 WITNESSES ON ALL OF THESE POINTS, DON'T YOU?

19 MR. CONN: OBJECTION. CALLS FOR SPECULATION AND

20 HEARSAY.

21 THE COURT: SUSTAINED.

22 Q. BY MS. ABRAMSON: NOW, WOULD YOU

23 CHARACTERIZE, BASED ON YOUR FAMILIARITY AND YOUR HAVING

24 FIRED GUNS IN YOUR OWN HOME RANGE OVER THE YEARS, WOULD

25 YOU CHARACTERIZE THE PELLET PATTERN ON HER LEFT BREAST

26 AS A PATTERN SHOWING INDIVIDUAL DISTRIBUTION OF PELLETS?

27 MR. CONN: OBJECTION. VAGUE.

28 THE COURT: DO YOU UNDERSTAND THE QUESTION?

-24548

1 THE WITNESS: I AM NOT SURE.

2 THE COURT: WELL, LET'S TRY TO REPHRASE THEN.

3 Q. BY MS. ABRAMSON: LET'S BACK UP.

4 CAN WE AGREE, DR. MC CARTHY, THAT AT A

5 CERTAIN DISTANCE, WHATEVER IT MAY BE, PELLETS FIRED BY A

6 SHOTGUN SPREAD?

7 A. YES.

8 Q. AND THE FARTHER AWAY, THE LARGER THE

9 SPREAD, GENERALLY SPEAKING?

10 A. YES.

11 Q. AND DOESN'T THAT PATTERN ON HER LEFT BREAST

12 DENOTE SPREAD?

13 A. YES.

14 Q. AND YOU CAN'T TELL US AT WHAT DISTANCE; IS

15 THAT CORRECT?

16 A. THAT IS CORRECT.

17 Q. WHAT IS THE SIZE OF THAT SPREAD? DID YOU

18 EVER MEASURE IT?

19 A. NO. I DID NOT ATTEMPT TO CHARACTERIZE IT

20 NUMERICALLY.

21 Q. WOULD IT BE FAIR TO SAY IT'S WIDER THAN ANY

22 SPREAD YOU OBTAINED USING THE FIOCCHI AMMUNITION IN YOUR

23 TEST PATTERNS?

24 A. IT COULD BE, BUT I WOULD HAVE TO MEASURE IT

25 TO ANSWER YOUR QUESTION.

26 Q. BUT UPON EYEBALLING IT DOES APPEAR TO BE

27 WIDER THAN THOSE, DOES IT NOT?

28 A. PERHAPS YOUR EYE IS MORE CONFIDENT THAN

-24547

1 MINE. DO WE HAVE A PICTURE OF THE BREAST HERE?

2 Q. YES.

3 A. I MEAN, I AM NOT COMFORTABLE WITH THAT. IT

4 MAY BE, BUT IT WOULDN'T BE A WHOLE LOT.

5 Q. BUT IT'S WIDE, CORRECT?

6 A. IT IS A DISTRIBUTION. IT IS A PATTERN. I

7 AM UNCOMFORTABLE WITH "WIDE".

8 Q. AND HOW FAR AWAY FROM THAT BREAST DO YOU

9 OPINE HIS RIGHT ARM WAS AT THE MOMENT WHEN THE PELLETS

10 ARE ESCAPING HIS RIGHT ARM, AS YOU HAVE DIAGRAMMED THEM,

11 AND ENTERING HER LEFT BREAST?

12 A. I THINK REASONABLY CLOSE.

13 Q. CLOSE.

14 SO, IN ORDER FOR THAT LARGE PATTERN TO BE

15 IMPRINTED ON HER LEFT BREAST, IT HAD TO COME OUT THAT

16 WAY FROM HIS RIGHT ARM; ISN'T THAT TRUE?

17 A. IT DIDN'T HAVE TO COME OUT IN A GEOMETRY,

18 BUT IT HAD TO COME OUT WITH ANGULARITY TO THE PATTERN,

19 YES.

20 Q. IT HAD TO COME OUT, EITHER THAT SPREAD

21 ITSELF OR SOMETHING MUST HAVE RE-CONE SHAPED IT; IS THAT

22 WHAT YOU'RE SAYING?

23 A. SOMETHING HAD TO -- IF IT DIDN'T COME OUT

24 IN THAT GEOMETRY, HIS UPPER -- THE FEMUR (SIC) THAT WAS

25 SHATTERED BY THAT SHOT OPENED THE SHOT PATTERN UP.

26 Q. BECAUSE IN YOUR ESTIMATION FOR THE SHOT --

27 A. I'M SORRY. HUMERUS, NOT FEMUR.

28 Q. -- IT HAD TO HAVE ENTERED IN THE PATTERN

-24546

1 WITH THAT BIG DEFECT IN THE UPPER ARM. THE SHOT HAD TO

2 COME IN FAIRLY CLOSE TOGETHER; ISN'T THAT TRUE?

3 A. I'M SORRY. THAT SOUNDS LIKE A CLEAR

4 QUESTION. I JUST -- I WAS THINKING. I'M SORRY.

5 Q. IF THE FEMUR (SIC) SPREAD THE SHOT, THEN I

6 ASSUME --

7 A. HUMERUS I THINK IS UP HERE.

8 Q. IF THE HUMERUS SPREAD THE SHOT, THEN I

9 DETECT YOU'RE ASSUMING THAT THE SHOT WAS CLOSER TOGETHER

10 BEFORE IT BROKE THE BONE; IS THAT RIGHT?

11 A. IF IT -- YES, THAT'S TRUE LOGICALLY.

12 Q. AND BASED ON THE APPEARANCE OF THAT UPPER

13 ARM DEFECT THAT YOU ARE CALLING AN ENTRY, IT APPEARS

14 THAT THE SHOT, SINCE IT TORE OUT THE WHOLE CENTER THERE,

15 THERE IS NO INDIVIDUAL HOLES WITH SKIN IN BETWEEN, THAT

16 THE SHOT WAS BUNCHED TOGETHER WHEN IT WENT THROUGH THAT

17 ARM.

18 A. AT THE FRONT, YES.

19 Q. TRUE. HOWEVER, THERE IS A VERY LARGE

20 SPREAD ALSO ON HIS LEFT ELBOW; ISN'T THAT TRUE?

21 A. BUT THERE ARE INDIVIDUAL DEFECTS. YES,

22 THEY ARE SHOWN AS SPREAD.

23 Q. NOW, DO YOU BELIEVE, DR. MCCARTHY, GIVEN

24 THE LAWS OF PHYSICS, THAT SHOT WILL COME OUT OF A

25 SHOTGUN, TRAVEL SEVERAL FEET, WIDEN OUT, AND THEN COME

26 BACK TOGETHER AGAIN AND GO THROUGH THE RIGHT ARM AND

27 THEN WIDEN OUT AGAIN?

28 IS THAT POSSIBLE?

1 A. NO.

2 Q. NOW, WHEN YOU TESTIFIED HERE IN THIS
3 HEARING, THIS TRIAL, YOU GAVE A 27 PELLET COUNT FOR THE
4 THINGS THAT YOU CHOSE TO INCLUDE IN THE COUNT FOR
5 SHOT 1; IS THAT CORRECT?

6 A. YES.

7 Q. WHEN YOU TESTIFIED AT THE PRETRIAL HEARING,
8 HOWEVER, YOU TESTIFIED TO 14 PELLETS IN HER CHEST, NOT
9 12.

10 DO YOU REMEMBER THAT?

11 A. I DON'T REMEMBER THE COUNT BY FRAME.

12 Q. DO YOU REMEMBER COUNTING THE PELLET IN HIS
13 CHEST AT THE PRETRIAL HEARING?

14 A. AGAIN, I DON'T HAVE A SPECIFIC RECOLLECTION
15 OF THAT.

16 Q. AND YOU COUNTED HERE SOMETHING FROM HER
17 LEFT FOREARM.

18 DO YOU REMEMBER THAT?

19 A. AGAIN, WE DISCUSSED THE SHOT IN -- THE
20 INDICATION ON THE X RAY IN HER LEFT FOREARM, YES. I
21 REMEMBER DISCUSSING IT.

22 Q. HOW MANY PELLETS ARE IN HER LEFT ARM?

23 A. THERE ARE TWO, ONE DOWN BY THE WRIST AND
24 ONE UP HIGHER.

25 Q. AND WHICH ONE DID YOU CHOOSE TO COUNT?

26 A. I THINK I MAY HAVE INCLUDED THE ONE IN THE
27 UPPER ARM. I WASN'T -- I CAN'T RECOLLECT FOR CERTAIN.

-24544

1 ARM?

2 A. I WASN'T --

3 Q. NO, NO, NO.

4 A. I COUNTED IN EITHER CASE, IN RESPONSE TO

5 YOUR QUESTION. I HAVEN'T -- I AM VERY COMFORTABLE

6 ADOPTING DR. LAWRENCE'S COUNTS, BUT IF YOU WANT TO PUT

7 THE X RAY BACK ON, I CAN SHOW YOU THE VARIOUS PELLETS

8 THAT I COUNTED THERE, AND THE ONES I HAVE QUESTIONS

9 ABOUT.

10 Q. JUST TO INDICATE AGAIN, YOU DID ALL THESE

11 CHARTS AND YOU TESTIFIED AT THAT PRETRIAL HEARING

12 WITHOUT EVER KNOWING THERE WAS A DR. LAWRENCE ON THE

13 FACE OF THE EARTH; ISN'T THAT CORRECT?

14 A. YES.

15 Q. SO YOU WENT AHEAD AND DID YOUR CALCULATIONS

16 AND HAD YOUR THEORIES ABOUT THESE SHOTS WITHOUT RELYING

17 ON ANY MEDICAL EXPERT AT ALL, CORRECT?

18 A. THAT IS CORRECT.

19 Q. AND I AM ASKING YOU NOW, NOT DR. LAWRENCE,

20 WHICH PELLET DID YOU INCLUDE FROM HER LEFT ARM IN YOUR

21 COUNT FOR SHOT 1?

22 A. OKAY. LET ME HAVE --

23 Q. I HAVE THE X RAYS IF YOU NEED TO LOOK AT

24 THEM.

25 A. YEAH, I DO.

26 Q. HERE. DR. MC CARTHY, THIS IS 172. IT'S
27 ALREADY IN EVIDENCE.

28 A. OKAY.

-24543

1 Q. THAT APPEARS TO BE THE X RAY OF HER LEFT
2 FOREARM.

3 A. RIGHT. AND THE --

4 Q. AND THERE ARE TWO -- WAIT FOR A QUESTION.

5 A. OKAY.

6 Q. ARE THERE TWO PELLETS OBSERVABLE IN THAT
7 ARM?

8 A. YES. THERE IS CLEARLY A WHOLE PELLET IN
9 THE LOWER ARM, AND THEN WE GOT THE INDICATION OF -- IT'S
10 CERTAINLY PART OF A PELLET IN THE UPPER ARM, BUT IT'S OF
11 A DIFFERENT SIZE.

12 Q. WELL, IT COULD BE DISTORTED AND FACING THE
13 X RAY MACHINE AT AN ANGLE, COULD IT NOT?

14 A. YES, IT COULD.

15 Q. AND SO IT COULD BE A WHOLE PELLET AND NOT A
16 FRAGMENT, COULD IT NOT?

17 A. THAT'S CORRECT.

18 Q. AND WHICH ONE DID YOU COUNT?

19 A. THE UPPER ONE, I BELIEVE. WHATEVER MY

20 TESTIMONY WAS. BUT MY RECOLLECTION IS THE UPPER ONE.

21 Q. AND WHY DIDN'T YOU COUNT THE LOWER ONE?

22 A. BECAUSE OF ITS DISTANCE FROM THE PATTERN.

23 AGAIN, WE TALKED ABOUT MOVING THE HAND UP,

24 THE LEFT ARM INTO THE PROXIMITY OF THE BREAST, AND

25 INDEED THERE IS SOME CORONER PHOTOGRAPHS SHOWING THAT.

26 BUT AT THIS POINT IN TIME I DON'T THINK EITHER

27 DR. LAWRENCE OR I WERE COMFORTABLE MOVING THAT PELLET UP

28 INTO THIS COUNT.

-24542

1 Q. WELL, DR. MC CARTHY, DO YOU BELIEVE THAT

2 DR. LAWRENCE INCLUDED THE UPPER ARM PELLET IN

3 ASSOCIATION WITH THE BREAST? IS THAT WHAT YOU THINK?

4 A. I GUESS I DON'T RECOLLECT HIS TESTIMONY

5 WELL ENOUGH TO INDICATE WHICH ONE HE COUNTED.

6 Q. WELL, WHAT IF I WERE TO ASK YOU TO ASSUME

7 THAT IN FACT HE TESTIFIED IT WAS THE LOWER PELLET THAT

8 WAS ASSOCIATED WITH THE BREAST WOUNDS AND NOT THE UPPER

9 ONE?

10 A. FINE. WHATEVER HE ASSOCIATED.

11 Q. THAT'S FINE.

12 WHY DON'T YOU TAKE A LOOK AT THE

13 PHOTOGRAPH.

14 ARE WE AT 301, YOUR HONOR, OR BEYOND THAT?

15 THE COURT: 301 IS THE NEXT EXHIBIT NUMBER.

16 MS. ABRAMSON: THE RECORD SHOULD REFLECT I AM
17 MARKING A CHART THAT I HAVE LABELED 1B AS EVIDENCE ITEM
18 301.

19 Q. CAN YOU SEE THIS, DR. MC CARTHY, OR SHALL
20 WE -- IF I TILT IT THE JURORS WON'T BE ABLE TO SEE.

21 A. I CAN SEE IT TO START WITH. IF I NEED, I
22 WILL COME DOWN.

23 Q. LOOK AT THAT CHART. ON THE FAR LEFT THERE
24 ARE TWO VISUALIZATIONS OF HER LEFT FOREARM IN
25 AFFILIATION WITH HER LEFT BREAST, CORRECT?

26 A. YES.

27 Q. AND THE ONE ON THE TOP JUST SHOWS THE
28 FOREARM AND THE BREAST AND SOME FURTHER BEYOND THE

-24541

1 WRIST, CORRECT?

2 A. YES.

3 Q. THE LOWER ONE, HOWEVER, SHOWS THE FOREARM,
4 THE BREAST, BELOW THE BREAST AND JUST SOMETHING RIGHT AT
5 THE RIB CAGE.

6 DO YOU SEE THAT?

7 A. NOT FROM HERE. IF YOU WANT ME TO TESTIFY
8 ABOUT IT --

9 Q. WHY DON'T YOU STEP DOWN AND LOOK AT THE
10 LOWER PHOTOGRAPH. I'M SORRY, YOU'RE A PRISONER.
11 WHY DON'T YOU LOOK AT THE SCALE. DO YOU

12 SEE THE SCALE?

13 A. YES.

14 Q. DO YOU SEE RIGHT TO THE LEFT OF THE SCALE?

15 A. YES.

16 Q. DOES THERE APPEAR TO BE SOMETHING ON THE
17 SKIN?

18 A. YES.

19 Q. OKAY. YOU CAN RESUME THE WITNESS STAND.

20 NOW, I ASK YOU, DOES IT APPEAR THAT WHAT
21 YOU SEE ON THE SKIN IN THE LOWER PHOTOGRAPH NEXT TO THE
22 SCALE IS ALSO WHAT YOU JUST SEE AT THE EDGE OF THE UPPER
23 PHOTOGRAPH NEAR THE WRIST?

24 SEE NEAR THE -- THE LITTLE DARK SPOT. LET
25 ME JUST POINT IT OUT FOR ONE MOMENT. THIS (INDICATING).

26 DO YOU SEE THE HAND IS HERE, AND THEN THERE
27 IS THIS DEFECT.

28 WOULD YOU LIKE TO STEP DOWN?

-24540

1 A. YEAH.

2 THE COURT: GO AHEAD.

3 Q. BY MS. ABRAMSON: I AM TRYING TO ORIENT
4 YOU. YOU SEE THIS PHOTOGRAPH. YOU SEE THESE DEFECTS.
5 YOU SEE THIS DARK SPOT, THAT LIGHTER ONE?

6 A. YES. YEAH.

7 Q. YOU SEE THIS PHOTOGRAPH. IT LOOKS LIKE THE

8 SAME DARK SPOT?

9 A. IT DOES.

10 Q. OKAY.

11 NOW, YOU INDICATED THAT YOU DIDN'T THINK

12 THE LOWER PELLET IN THE X RAY WOULD LINE UP WITH THE

13 BREAST; IS THAT RIGHT?

14 A. I THINK IT WOULD -- WELL, LET ME PUT IT

15 THIS WAY: AS I STATED IN MY PRETRIAL TESTIMONY, I AM

16 UNDECIDED ON THIS.

17 Q. WELL, HERE IS APPROXIMATELY -- AND THIS IS

18 NOT REALLY AT THE WRIST. IT APPEARS TO BE SOME INCHES

19 ABOVE THE WRIST, DOES IT NOT, THE DEFECT?

20 A. IT'S ABOVE THE WRIST, YES.

21 Q. SOME INCHES ABOVE THE WRIST?

22 A. A FEW, PERHAPS.

23 Q. JUST AS THESE PELLET DEFECTS ON HER FOREARM

24 ARE A FEW INCHES ABOVE THE WRIST, CORRECT?

25 A. CLEARLY THEY ARE A FEW INCHES ABOVE THE

26 WRIST. IT'S JUST I AM UNCOMFORTABLE LEAVING THE

27 IMPLICATION IT IS THE SAME FEW INCHES. IT MAY BE THAT

28 THAT INDICATION MATCHES UP WITH THESE DEFECTS. I AM

-24539

1 UNCOMFORTABLE TESTIFYING TO THAT, OR LEAVING THAT

2 IMPLICATION.

3 Q. HOW MANY DEFECTS ARE ON HER LEFT FOREARM?

4 A. I WOULD HAVE TO RECOUNT FROM HERE.

5 Q. DON'T REMEMBER?

6 A. FROM MEMORY, I DO NOT. I WOULD HAVE TO
7 RECOUNT THEM IN THE PHOTOGRAPH.

8 Q. CAN WE AGREE MORE THAN TWO?

9 A. YES.

10 Q. BUT THERE IS ONLY ONE PELLET IN THAT AREA
11 OF HER ARM, CORRECT?

12 A. YES.

13 Q. DO YOU HAVE ANY REASON TO DOUBT THAT
14 PELLETS INSIDE THE ARM CAN MOVE UPWARD, DEPENDING ON
15 WHETHER OR NOT THEY STRIKE BONE OR ARE DEFLECTED?

16 A. PELLETS CAN MOVE WHEN THEY STRIKE BONE,
17 YES, AND CAN BE DEFLECTED BY BONE. TYPICALLY WHEN THAT
18 HAPPENS, AS WE HAVE SEEN --

19 Q. WELL, I WOULD OBJECT TO ANYTHING BEYOND
20 THAT, YOUR HONOR, FIRST OF ALL AS BEYOND HIS EXPERTISE,
21 BUT NOT RESPONSIVE.

22 THE COURT: YOU ASKED HIM THE QUESTION.

23 MS. ABRAMSON: WELL, HE IS OFFERING ALL THESE
24 OPINIONS.

25 THE COURT: WAIT. WAIT. YOU ASKED THE QUESTION.

26 Q. BY MS. ABRAMSON: IN ANY EVENT, YOU
27 UNDERSTAND, OF COURSE, THAT BOTH DR. LAWRENCE AND DR.
28 GOLDEN ARE ASSOCIATING THESE FOREARM WOUNDS WITH THE

1 BREAST WOUNDS?

2 A. THEY HAVE CERTAINLY RAISED THAT QUESTION OF
3 WHETHER THEY ARE ASSOCIATED.

4 Q. DO YOU THINK THEY'RE ONLY RAISING A
5 QUESTION, OR DO YOU THINK THEY HAVE INDICATED THAT THEY
6 ARE ASSOCIATED?

7 A. I THINK THE CORONER THOUGHT THEY WERE
8 POSSIBLY ASSOCIATED. I WOULD HAVE TO READ HOW CERTAIN
9 HIS LANGUAGE WAS.

10 Q. AND DR. LAWRENCE INDICATED HE BELIEVED THEY
11 WERE ASSOCIATED?

12 A. I BELIEVE THAT'S WHAT HE SAID, YES.

13 Q. SO, ARE YOU DISAGREEING WITH HIM AND
14 DISCOUNTING THE BOTTOM PELLET?

15 A. NO. THOSE ARE TWO DIFFERENT QUESTIONS.

16 ONE CAN AGREE WITH THE ASSOCIATION OF THOSE
17 WOUNDS AND STILL ATTRIBUTE THE LOWER PELLET TO ANOTHER
18 SHOT.

19 Q. BUT THE LOWER PELLET IS WHAT DR. LAWRENCE
20 ATTRIBUTED TO THIS SHOT, AND YOU HAVE TO RELY ON DR.
21 LAWRENCE.

22 YOU UNDERSTAND THAT, DON'T YOU?

23 MR. CONN: OBJECTION. ARGUMENTATIVE, ASSUMES
24 FACTS NOT IN EVIDENCE.

25 THE COURT: IT'S ALSO THREE SEPARATE QUESTIONS
26 THERE.

27 Q. BY MS. ABRAMSON: ALL RIGHT.

28 SO, YOU ARE REJECTING DR. LAWRENCE'S

1 TESTIMONY THAT HE BELIEVED THAT THE LOWER PELLET WAS
2 ASSOCIATED WITH THE BREAST WOUNDS?

3 A. NO. AS I INDICATED BEFORE, I WAS MORE THAN
4 WILLING TO ADOPT DR. LAWRENCE'S PELLET COUNT.

5 Q. SO, THE LOWER PELLET COUNT -- NOT THE
6 COUNT, PELLET ATTRIBUTION.

7 ARE YOU ACCEPTING HIS PELLET ATTRIBUTION?

8 A. IT WAS CLOSE ENOUGH TO WHAT I THOUGHT
9 INDEPENDENTLY. THE DIFFERENCE IS NOT WORTH ARGUING
10 ABOUT.

11 Q. I AM NOT ARGUING, DOCTOR. I AM ASKING
12 QUESTIONS.

13 MR. CONN: OBJECTION. ARGUMENTATIVE, MOTION TO
14 STRIKE.

15 THE COURT: OBJECTION IS SUSTAINED. MOTION TO
16 STRIKE IS GRANTED.

17 Q. BY MS. ABRAMSON: THE QUESTION IS ARE YOU
18 ACCEPTING DR. LAWRENCE'S ATTRIBUTION OF THE LOWER PELLET
19 TO THE BREAST WOUNDS?

20 A. I AM COMFORTABLE WITH THIS. IT IS NOT THE
21 ATTRIBUTION THAT I MADE.

22 Q. WELL, I DON'T UNDERSTAND. ARE YOU STILL
23 STICKING BY YOUR ATTRIBUTION THEN? THAT'S THE QUESTION.

24 A. NO. MY ATTRIBUTION WAS AS MY ATTRIBUTION
25 WAS. I AM COMFORTABLE WITH HIS ATTRIBUTION.

26 Q. ARE YOU ACCEPTING IT AND GIVING UP YOURS?

27 A. NO. I AM JUST -- I WAS UNCERTAIN TO BEGIN

28 WITH, AND I REMAIN SO.

-24536

1 Q. SO, YOU ARE UNCERTAIN?

2 A. YES.

3 Q. ARE YOU UNCERTAIN ABOUT BOTH OF THESE

4 PELLETS, OR ARE YOU ONLY UNCERTAIN ABOUT ONE OF THEM?

5 A. IN HONESTY, I WOULD HAVE TO BE UNCERTAIN

6 ABOUT BOTH OF THEM.

7 Q. SO YOU COULD COUNT BOTH OF THEM IN SHOT 1?

8 THEN IF YOU'RE UNCERTAIN, THEY COULD HAVE COME FROM YOUR

9 SHOT 1; IS THAT RIGHT?

10 A. I'M NOT COMFORTABLE DOING THAT.

11 Q. WELL, IF YOU'RE NOT COMFORTABLE ABOUT WHICH

12 SHOT THEY'RE COMING FROM, THEY COULD HAVE COME FROM ONE,

13 CORRECT?

14 A. NO. YOU'VE ONLY GOT SO MANY PELLETS IN A

15 SHOTGUN ROUND. YOU COME ALONG AND YOU HAVE PELLETS THAT

16 YOU HAVE HIGHER CONFIDENCE COME FROM A SHOT, AND OTHER

17 PELLETS THAT YOU HAVE LOWER CONFIDENCE, AND YOU GO

18 THROUGH -- AND I DID INDEED GO THROUGH THESE SHOT

19 GEOMETRIES AND LOOK AT THE LIKELIHOOD OF THE OTHER

20 PELLETS.

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

22 TO EVERYTHING AFTER THE FIRST SENTENCE AS NONRESPONSIVE.

23 THE COURT: THE ENTIRE ANSWER IS STRICKEN. YOU

24 MAY RE-ASK THE QUESTION OR ASK ANOTHER ONE.

25 Q. BY MS. ABRAMSON: NOW DR. MC CARTHY, THERE

26 ARE ONLY SO MANY PELLETS IN A SHOT SHELL, CORRECT?

27 A. CORRECT.

28 Q. SO, IF THERE ARE ONLY SO MANY HERE, THAT

-24535

1 PROVES THAT ONE IS WRONG, CORRECT?

2 A. NO. IT WOULD I BELIEVE CALL INTO QUESTION

3 YOUR ATTRIBUTION OF PELLETS.

4 Q. YOU COULD NOT POSSIBLY BE WRONG, ONLY THE

5 ATTRIBUTION OF PELLETS COULD BE WRONG; IS THAT WHAT

6 YOU'RE SAYING?

7 A. NO. I BELIEVE THE EVIDENCE ON THE GEOMETRY

8 OF THE SHOT IS PRETTY COMPELLING. THE -- I BELIEVE THAT

9 IS A REASONABLE APPROACH TO THE COUNT.

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

11 AS NOT RESPONSIVE AFTER THE WORD "NO".

12 THE COURT: WELL, HE HAS THE RIGHT TO EXPLAIN HIS

13 ANSWERS, SO OVERRULED.

14 YOU MAY CONTINUE YOUR ANSWER.

15 THE WITNESS: I BELIEVE A REASONABLE ATTRIBUTION

16 OF THE SHOT CONFIRMS IT.

17 Q. BY MS. ABRAMSON: YOUR ATTRIBUTION OF THE

18 SHOT?

19 A. OR DR. LAWRENCE'S.

20 Q. BUT NOBODY ELSE'S; IS THAT CORRECT?

21 MR. CONN: OBJECTION. VAGUE AS TO WHO ELSE

22 COUNSEL IS REFERRING TO.

23 THE COURT: SUSTAINED.

24 Q. BY MS. ABRAMSON: IN ANY EVENT, THE REASON

25 YOU ARE NOT ATTRIBUTING BOTH PELLETS IN HER LEFT ARM TO

26 THIS SHOT IS BECAUSE THAT WOULD PROVE YOUR THEORY WRONG;

27 ISN'T THAT TRUE?

28 A. NO --

-24534

1 Q. YOU HAVE ANSWERED THE QUESTION.

2 MR. CONN: OBJECTION. YOUR HONOR, MAY THE

3 WITNESS FINISH HIS ANSWER?

4 THE COURT: YOU MAY EXPLAIN YOUR ANSWER.

5 THE WITNESS: WHETHER THE INDICATIONS IN ALL THE

6 X RAYS ARE FULL PELLETS OR PARTIAL PELLETS, OR WHETHER

7 WE HAD A SHOT THAT HAD 27 OR 28 PELLETS IS NOT KNOWN TO

8 ENOUGH PRECISION TO SAY THE SHOT COUNT CAN DISCOUNT OR

9 CONFIRM TOTALLY.

10 NOW, IF YOU END UP WITH 35 OR SOMETHING

11 LIKE THAT, THEN THEY OBVIOUSLY DIDN'T ALL COME FROM THE

12 SAME SHOT.

13 Q. BY MS. ABRAMSON: DO YOU THINK 32 CAME FROM

14 THE SAME SHOT; 32 COULD?

15 A. NO.

16 Q. THIRTY-THREE?

17 A. NO.

18 Q. THIRTY-FOUR?

19 A. NO. TOO HEAVY.

20 Q. TWENTY-NINE?

21 A. I THINK 29 IS TOO HEAVY AND TOO BIG.

22 Q. BUT YOU THINK 28 IS OKAY?

23 A. WE HAVE OPENED UP NO. 4'S AND FOUND 28.

24 Q. LET'S SEE IF WE CAN GET TO 30 THEN.

25 MR. CONN: OBJECTION. ARGUMENTATIVE, YOUR HONOR.

26 MOTION TO STRIKE.

27 THE COURT: SUSTAINED TO COUNSEL'S REMARK AS TO

28 "LET'S SEE IF WE CAN GET TO 30."

-24533

1 Q. BY MS. ABRAMSON: NOW IF YOU COUNTED ALL

2 THE PELLETS, LET'S ASSUME HYPOTHETICALLY WE ARE COUNTING

3 ALL FROM THE LEFT ARM, SO WE'RE AT 28.

4 NOW IF YOU COUNT ALL OF THE PELLETS THAT

5 ARE OBSERVABLE IN HER CHEST, YOU LEFT THESE TWO OUT,

6 DIDN'T YOU, THE TWO THAT ARE SHOWN HERE THAT APPEAR TO

7 BE ON THE RIGHT SIDE?

8 A. THAT IS CORRECT.

9 Q. EVEN THOUGH THE HOLES, THE ONLY HOLES ON

10 HER CHEST ARE ON THE LEFT, CORRECT? THE HOLES THAT
11 COULD POSSIBLY BE AFFILIATED WITH IT ARE THESE TWO HOLES
12 THAT APPEAR IN THIS PHOTOGRAPH ON 301; ISN'T THAT RIGHT?

13 A. TO ANSWER YOUR QUESTION I WOULD HAVE TO GO
14 BACK OVER HER CHEST AUTOPSY PHOTOS.

15 Q. YOU DON'T KNOW; IS THAT THE ANSWER?

16 A. AS I SIT HERE, THAT IS CORRECT.

17 Q. ALL RIGHT. AND YOU DO UNDERSTAND, BASED ON
18 THE PHOTOGRAPHS -- FOR EXAMPLE, EVEN THE CENTER
19 PHOTOGRAPH ON 295 THAT SHE WAS -- HER BODY WAS LYING ON
20 THE RIGHT SIDE FOR SOME PERIOD OF TIME BEFORE THE WOUND
21 WAS X-RAYED IN THE CORONER'S OFFICE.

22 A. YES.

23 Q. AND DO YOU HAVE ANY KNOWLEDGE AT ALL ABOUT
24 WHETHER PELLETS INSIDE THE CHEST CAVITY CAN MOVE?

25 A. THE INDICATION THAT DR. LAWRENCE GAVE ABOUT
26 THAT.

27 Q. AND HE INDICATED THEY COULD, CORRECT?

28 A. YES.

-24532

1 Q. THEY COULD EVEN MOVE BASED ON ONE OF THE
2 LAWS OF PHYSICS, GRAVITY?

3 A. AND BUOYANCY.

4 Q. AND SO WHAT BASIS DID YOU HAVE, YOU, TO
5 ELIMINATE THOSE TWO PELLETS OR TO ELIMINATE THOSE TWO

6 HOLES?

7 A. I DIDN'T ELIMINATE EITHER. FIRST OF ALL,
8 THE DEFECTS THAT YOU'RE POINTING TO ON THE LOWER CHEST I
9 HAVE LOOKED AT THROUGH SOME MAGNIFICATION, AND I
10 COULDN'T RESOLVE THAT IT WAS A HOLE.

11 BUT SECONDLY, DR. LAWRENCE DIDN'T ADOPT
12 THOSE PELLETS EITHER. TO GET TO --

13 Q. HE SAID HE DIDN'T KNOW.

14 A. UNDERSTOOD. I DIDN'T ENVISION -- CERTAINLY
15 PELLETS CAN MOVE IN THE CHEST CAVITY. IT WOULD REQUIRE
16 THOSE PELLETS TO MOVE ACROSS THE CHEST CAVITY OUT OF ONE
17 SIDE AND INTO THE OTHER.

18 Q. BUT YOU HAVE DESCRIBED, DR. MC CARTHY, THIS
19 BLAST AS LEFT TO RIGHT?

20 A. CORRECT.

21 Q. AND SO THAT WOULD EXPLAIN, WOULDN'T IT,
22 PELLETS MOVING ACROSS THE CHEST FROM LEFT TO RIGHT?

23 A. I DON'T BELIEVE THE REMAINING -- AS I HAVE
24 INDICATED, THE REMAINING ENERGY OF THE PELLETS WAS SUCH
25 IT WOULD PENETRATE THROUGH THAT MUCH BODY TISSUE.

26 Q. THERE IS NO TISSUE INSIDE -- WHAT BODY
27 TISSUE IS INSIDE THE CHEST CAVITY BESIDES LUNGS?

28 A. WELL, YOU WOULD HAVE TO DEFEAT THE WALL OF

-24531

1 THE CHEST CAVITY, THE MUSCLES WHICH SURROUND THE RIB

2 CAGE WHICH CAUSE DEBRIDING. THEN YOU HAVE TO DEFEAT THE
3 LUNG. THEN YOU WOULD HAVE TO GO IN BETWEEN THE TWO
4 LUNGS AND GET OVER INTO THE OTHER LUNG AREA.

5 Q. BUT WE KNOW THE PELLETS DEFEATED THE
6 MUSCLES AROUND THE CHEST WALL, GOT INTO THE CHEST CAVITY
7 AND PUNCTURED THE LUNG IN AT LEAST EIGHT PLACES; IS THAT
8 RIGHT? THAT'S A KNOWN.

9 A. YES.

10 Q. AND YOU THINK THAT IT WOULD BE DIFFICULT
11 FOR A PELLET TO TRAVEL LUNG-TO-LUNG?

12 A. THROUGH A COUPLE MORE, YEAH.

13 Q. DO YOU THINK LUNG TISSUE IS SOMEWHAT
14 FIBROUS AND TOUGH TO GET THROUGH?

15 A. NO, LUNG TISSUE IS MUCH EASIER TO GET
16 THROUGH THAN TISSUE THAT IS PRIMARILY DENSE AND SOLID,
17 BECAUSE IT'S GOT AIR GAPS IN IT. BUT YOU'D HAVE TO GET
18 OUT AND GET IN.

19 Q. BUT IF YOU'RE WRONG ABOUT LOW-VELOCITY,
20 NONE OF THAT HAS ANY SIGNIFICANCE; ISN'T THAT TRUE? IF
21 THIS IS NOT A LOW-VELOCITY SHOT AT ALL, THEN THERE IS NO
22 LIMITATION ON WHERE THE PELLETS COULD GO; ISN'T THAT
23 TRUE?

24 A. IT'S STILL -- EVEN IF IT IS A FULL-VELOCITY
25 SHOT, ONE --

26 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS
27 ANSWER?

28 MS. ABRAMSON: I THINK IT WAS ABOUT TO BE

1 NONRESPONSIVE.

2 THE COURT: I CAN'T EVALUATE THAT UNTIL I HAVE
3 HEARD IT.

4 THE WITNESS: SECONDLY, THE DEGREE OF PENETRATION
5 IN A GROUP. IF THEY ARRIVED WITH A COMMON ENERGY, YOU
6 WOULD EXPECT IT TO BE SOMEWHAT SIMILAR.

7 Q. BY MS. ABRAMSON: BUT YOU HAVE NO WAY OF
8 KNOWING IF PELLETS ARRIVED WITH A COMMON ENERGY UNLESS
9 IT'S A FULL HIT, FULL LOAD. DIRECT, FULL HIT, CORRECT?

10 A. YOU'RE CORRECT. MY TESTIMONY IS THE
11 REVERSE OF THAT, JUST EXACTLY WHAT YOU SAID.

12 A FULL LOAD SHOT COLUMN COMING OUT WILL
13 PRODUCE A GROUP OF PELLETS THAT HAVE MORE OR LESS THE
14 SAME ENERGY.

15 Q. YOU DON'T KNOW WHAT THE ENERGY ENTERING ON
16 ANY OF THESE PELLETS WERE, DO YOU, THE ONES IN HER
17 CHEST?

18 A. WELL, I KNOW THEY'RE ABOVE LIKE 200 FOOT
19 PER SECOND, OR THEY WOULDN'T HAVE PENETRATED. BUT I
20 CAN'T GIVE YOU THE PRECISE ENERGY CONTENTS OF THE
21 PELLETS UPON IMPACT; THAT IS CORRECT.

22 Q. AND YOU DON'T KNOW THEY ALL HAD THE SAME
23 ENERGY?

24 A. I DON'T BELIEVE THEY DID.

25 Q. SO, SOME COULD HAVE TRAVELED FURTHER THAN
26 OTHERS?

27 A. I BELIEVE THEY DID.

28 Q. NOW, IF THOSE TWO PELLETS IN HER CHEST HAD

-24529

1 BEEN INCLUDED IN THE COUNT, WE'D BE AT 30, WOULDN'T WE?

2 WE HAVE 28 FOR THE SECOND ONE IN HER LEFT FOREARM, AND

3 TWO MORE FOR THOSE.

4 DO YOU WANT TO GO OVER THE COUNT?

5 A. WELL, FIRST TO CONFIRM AND CHANGE A NUMBER,

6 I WOULD HAVE TO AGAIN UNDERSTAND --

7 Q. WELL, LET'S GO OVER THE COUNT.

8 A. OKAY.

9 Q. YOU TESTIFIED THERE WERE FIVE IN THE LEFT

10 ELBOW, RIGHT?

11 A. YES.

12 Q. YOU TESTIFIED THERE WERE 12 IN THE CHEST

13 INSTEAD OF 14, RIGHT?

14 A. BOY.

15 Q. WELL, IT'S RIGHT IN FRONT OF YOU,

16 DR. MC CARTHY. DO YOU WANT TO COUNT THEM AGAIN?

17 A. YEAH, BUT I DIDN'T JUST MAKE A CASUAL

18 COUNT. I SPENT SOME TIME LOOKING AT WHETHER -- I MEAN,

19 I CAN RECOUNT WHAT'S ON THE X RAY.

20 Q. AND YOU DON'T REMEMBER WHAT THE COUNT WAS

21 YOU TESTIFIED TO TWO DAYS AGO; IS THAT WHAT YOU'RE

22 SAYING?

23 A. NO. NO. I REMEMBER TWO DAYS AGO I
24 TESTIFIED TO DR. LAWRENCE'S COUNTS. NOW THERE WAS A
25 DIAGRAM OF DR. LAWRENCE'S --
26 Q. YOU'VE DONE YOUR OWN COUNT?
27 MR. CONN: OBJECTION. YOUR HONOR, MAY THE
28 WITNESS FINISH HIS ANSWER?

-24528

1 THE COURT: ARE YOU REFERRING TO THE X RAY THAT
2 DR. LAWRENCE USED OR SOME OTHER DOCUMENT?
3 THE WITNESS: I REMEMBER GOING THROUGH
4 DR. LAWRENCE'S COUNT BY X RAY, AND MY MERELY CONFIRMING
5 WHAT HIS COUNT NUMBERS WERE, AND MY RECOLLECTION IS HIS
6 CHEST COUNT WAS 12, YES.
7 MS. ABRAMSON: AND THEN THERE WERE NINE IN THE
8 RIGHT ARM OF MR. MENENDEZ?
9 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
10 EVIDENCE.
11 MS. ABRAMSON: THAT WAS THE COUNT, CORRECT?
12 THE COURT: ARE YOU ASKING WHAT HE TESTIFIED TO
13 PREVIOUSLY?
14 MS. ABRAMSON: YES, YOUR HONOR.
15 THE WITNESS: AGAIN, AS I SIT HERE THAT IS MY
16 RECOLLECTION.
17 Q. BY MS. ABRAMSON: ALL RIGHT. AND THEN
18 THERE WAS ONE YOU COUNTED FROM HER LEFT FOREARM?

19 A. YES.

20 Q. OKAY. NOW, CAN WE ADD THOSE UP TO 27?

21 A. I MEAN, THAT DOES STRIKE ME AS ADDING UP TO

22 27.

23 Q. THAT'S BECAUSE IT DOES ADD UP TO 27, RIGHT?

24 A. OKAY.

25 MR. CONN: OBJECTION. ARGUMENTATIVE.

26 THE COURT: OVERRULED.

27 Q. BY MS. ABRAMSON: NOW, IF WE ADD TO THAT

28 THE ONE -- THE OTHER ONE IN HER LEFT ARM WE'RE AT 28,

-24527

1 CORRECT?

2 A. THAT WOULD MAKE IT 28.

3 Q. IF WE ADD THE TWO IN THE CHEST, WE'RE AT

4 30, CORRECT?

5 A. THIRTY, CORRECT.

6 Q. AND IF WE ADD THE ONE IN HIS CHEST THAT

7 DR. GOLDEN SAYS IS ASSOCIATED WITH HIS UPPER ARM WOUND,

8 WE'RE AT 31, CORRECT?

9 A. YOU WOULD BE AT 31 IF YOU ALLEGED THOSE,

10 YES.

11 Q. AND YOU WILL CONCEDE, WILL YOU NOT,

12 DR. MC CARTHY, THAT 31 IS NOT ONE ROUND OF AMMUNITION?

13 A. I WOULD FIND IT EXTREMELY UNLIKELY.

14 Q. IS THAT CORRECT? 31 DOES NOT COMPACT IN A

15 ROUND?

16 A. LIKE I SAY, I CAN'T SAY FOR CERTAIN IT'S
17 NEVER HAPPENED. I JUST FIND IT EXTREMELY UNLIKELY.

18 Q. THANK YOU.

19 NOW, TURNING TO THE PRETRIAL HEARING. I'LL
20 GET IT IN A MOMENT. I HAVE GIVEN MYSELF THE WRONG PAGE.

21 OKAY, NEVER MIND.

22 NOW, IS IT YOUR OPINION, DR. MC CARTHY,
23 WITH RESPECT TO WHICH IS THE ENTRY AND WHICH IS THE EXIT
24 WOUNDS TO MR. MENENDEZ' UPPER RIGHT ARM, THAT IT REALLY
25 DOESN'T MATTER FOR YOUR PURPOSES WHICH IS WHICH?

26 A. I'M A LITTLE UNCOMFORTABLE WITH "DOESN'T
27 MATTER". I THINK THAT THE WOUNDS COULD BE ACCOUNTED FOR
28 IN REVERSE DIRECTION, BUT IT REQUIRES A MORE -- A MORE

-24526

1 SPECIALIZED PHYSICAL REORIENTATION OF JOSE FOR IT TO
2 MAKE SENSE.

3 Q. A MORE SPECIALIZED PHYSICAL REORIENTATION
4 MEANS HE WOULD HAVE TO ROTATE HIS ARM IN A WAY THAT
5 PEOPLE WOULD USUALLY NOT NATURALLY DO, SUCH AS I AM
6 DEMONSTRATING RIGHT NOW, CORRECT?

7 A. CLOSE. YOU KNOW, IF YOU IMAGINED HIM
8 BRINGING THE ARM AROUND TO SHIELD MARY, THEN YOU COULD
9 ROTATE THE ARM AND MAKE IT BACK TO FRONT.

10 Q. YOU IMAGINE THAT HE'S SHIELDING MARY. IS

11 THAT WHAT YOU IMAGINE, OR IS THAT WHAT YOU'D LIKE TO SAY
12 IN FRONT OF THE JURY?

13 MR. CONN: OBJECTION. VAGUE AS TO THE FORM OF
14 THE QUESTION.

15 THE COURT: WELL, IT'S ARGUMENTATIVE AS PHRASED.

16 Q. BY MS. ABRAMSON: YOU DON'T KNOW HE WAS
17 SHIELDING MARY. YOU DON'T KNOW WHAT THESE PEOPLE WERE
18 DOING, DO YOU?

19 A. WELL, NO. I DO NOT KNOW --

20 Q. THANK YOU.

21 A. -- WHAT THEY WERE DOING.

22 Q. NOW, WITH RESPECT TO THE ARM, IN ORDER TO
23 SUSTAIN YOUR ONE WAY OR YOUR SHOT 1 AS HAVING THE UPPER
24 ARM PART OF THAT SHOT PATTERN, IF YOU ARE WRONG ABOUT
25 THE ENTRY AND EXIT, THEN YOUR EXPLANATION IS HIS ARM IS
26 ROTATED ALL THE WAY AROUND TO WHERE THE LATERAL ASPECT
27 IS EXPOSED IN THE WAY I AM DEMONSTRATING. IT'S TURNED
28 ALL THE WAY FORWARD SO THAT HIS PALM IS POINTING TOWARDS

-24525

1 THE BACK.

2 IS THAT CORRECT?

3 A. I AM NOT COMFORTABLE NECESSARILY WITH YOUR
4 ROTATION.

5 Q. WELL, THAT'S AS MUCH AS MY ARM WOULD GO.

6 A. GENERALLY YOU'D BE LOOKING AT SOME MANEUVER

7 LIKE THAT IF THAT ROTATION IS GOING TO OCCUR. I JUST
8 DON'T -- IT'S POSSIBLE. I JUST DON'T THINK THAT'S THE
9 MOST LIKELY.

10 Q. SO, YOU DON'T REALLY ACCEPT THAT. YOU
11 DON'T REALLY BELIEVE THAT'S WHAT HAPPENED; IS THAT
12 CORRECT?

13 A. I DON'T THINK THAT THE MOST LIKELY.

14 Q. NOW, WHAT -- LET ME GO BACK TO THE
15 ILLUSTRATION FOR A SECOND. OKAY, WE'RE FINE.

16 ALSO I NEED THESE TWO. MR. LEVIN, CAN YOU
17 PUT THIS WHERE 295 IS FOR THE MOMENT.

18 ALL RIGHT. I DON'T BELIEVE, DR. MC CARTHY,
19 THAT YOU HAVE IN DESCRIBING ANY OF YOUR 12 SHOT
20 HYPOTHESIS ACCOUNTED FOR ANY WOUNDS WHATSOEVER TO THE
21 OUTSIDE, IF YOU WILL, I BELIEVE THAT'S THE DORSAL ASPECT
22 OR THE ULNAR SIDE OF MR. MENENDEZ' RIGHT FOREARM, HAVE
23 YOU?

24 DO YOU KNOW WHAT PART I AM TALKING ABOUT?

25 A. YES. I WAS ACTUALLY THINKING ABOUT YOUR
26 QUESTION. I WASN'T CONFUSED OVER THE GEOMETRY.

27 I HAVEN'T -- I DID NOT IN MY DIRECT
28 TESTIMONY MAKE A SPECIFIC ATTRIBUTION TO THE INDICATIONS

-24524

1 YOU SEE THERE.

2 Q. HERE. HERE'S THE POINTER. YOU KNOW I AM

3 TALKING ABOUT THE MIDDLE PICTURE ON 301. THE MIDDLE --

4 MIDDLE PICTURE.

5 A. THAT'S RIGHT. YOU ARE TALKING ABOUT THESE

6 INDICATIONS (INDICATING).

7 Q. I AM TALKING ABOUT THOSE THINGS, YES.

8 A. YES. AND I HAVE LOOKED AT THOSE UNDER --

9 Q. THE QUESTION WAS HAVE YOU ILLUSTRATED THEM

10 IN ANY WAY?

11 A. NO.

12 Q. AND AS YOU INDICATED, YOU DID NOT TESTIFY

13 ABOUT THEM IN ANY WAY IN YOUR DIRECT EXAMINATION; IS

14 THAT RIGHT?

15 A. THAT IS CORRECT.

16 Q. IS IT AN ACCURATE STATEMENT TO SAY,

17 DR. MC CARTHY, THAT NOTHING ABOUT A WOUND -- THE

18 APPEARANCE OR LOCATION OF A WOUND IN AN ARM NECESSARILY

19 TELLS YOU SOMETHING ABOUT THE POSITION OF THE PERSON WHO

20 WAS SHOT?

21 A. I'M COMFORTABLE WITH NECESSARILY. I MEAN,

22 IT DOESN'T. YOU CAN PUT THE BODY IN A NUMBER OF

23 POSITIONS AND SHOOT IT AND PRODUCE THE SAME GEOMETRY.

24 Q. IS THAT -- YOU AGREE WITH THAT STATEMENT;

25 DO YOU NOT?

26 A. YES.

27 Q. IN FACT, THAT'S THE STATEMENT YOU MADE AT

28 THE PRETRIAL HEARING, WAS IT NOT?

1 A. I DON'T REMEMBER SPECIFICALLY, BUT I AGREE
2 WITH IT.

3 Q. AND WOULD YOU ALSO AGREE THAT THERE IS
4 NOTHING ABOUT THE WOUNDS ON MR. MENENDEZ' ARMS, EITHER
5 ONE OF THEM, THAT MAKE IT IMPOSSIBLE FOR HIM TO HAVE
6 RECEIVED THEM STANDING UP?

7 A. IF YOU JUST LOOKED AT HIS WOUNDS IN
8 ISOLATION, APART FROM THE REST OF THE SEQUENCE AND THE
9 SCENE, YOU ARE CORRECT.

10 Q. IN FACT, THERE IS NOTHING ABOUT HER CHEST
11 WOUND THAT MAKES IT IMPOSSIBLE FOR IT TO HAVE BEEN
12 RECEIVED STANDING UP, AS DR. LAWRENCE TESTIFIED.

13 A. TAKE THAT WOUND OUT OF THE SCENE AND OUT OF
14 THE SEQUENCE AND YOU ARE CORRECT.

15 Q. IN FACT, THERE IS NOTHING, ACCORDING TO
16 DR. LAWRENCE'S TESTIMONY, ABOUT THE WOUNDS THAT THE
17 CORONER CALLS NO. 2 AND 3, HER RIGHT FACE AND THE OTHER
18 WOUND, HER MANDIBLE AND CLAVICLE, THAT COULD NOT HAVE
19 BEEN INFLICTED STANDING UP; ISN'T THAT TRUE?

20 A. AGAIN, I'LL AGREE. BUT IT NOW REQUIRES A
21 MORE TORTUOUS SHOOTING GEOMETRY.

22 Q. MORE TORTUOUS FOR YOU TO PUT IT ALL IN A
23 NEAT PICTURE, CORRECT?

24 A. NO. YOU'VE GOT TO STILL HIT HER WITH
25 PELLETS UNDER THE CHIN, AND YOU HAVE TO PRODUCE THE
26 ELONGATED INDICATIONS. I MEAN, YOU HAVE TO MAKE IT COME
27 OUT RIGHT, BUT SO THEN YOU WOULD HAVE TO SHOOT REALLY

-24522

1 Q. DR. MC CARTHY, HOW IT HAPPENED IS HOW IT
2 HAPPENED, CORRECT?

3 A. YES.

4 MR. CONN: OBJECTION.

5 Q. BY MS. ABRAMSON: THERE IS ONLY ONE VERITE,
6 TRUTH, ABOUT HOW IT HAPPENED?

7 A. CORRECT.

8 Q. AND THE PERMUTATIONS OF TWO PEOPLE BEING
9 SHOT BY TWO SHOTGUNS AND 12 ROUNDS, THERE ARE MANY,
10 MANY, MANY, MANY POSSIBLE COMBINATIONS, ARE THERE NOT?

11 A. THAT WILL PRODUCE ALL THESE WOUNDS IN THIS
12 EVIDENTIARY SCENE? NO.

13 Q. WE'LL GET TO THE EVIDENCE AT THE SCENE IN A
14 MINUTE.

15 BUT THERE ARE ENUMERABLE NUMBERS OF WAYS
16 THAT TWO PEOPLE CAN BE HIT WITH TWO SHOTGUNS; WOULD YOU
17 AGREE WITH THAT?

18 A. YES.

19 Q. DR. LAWRENCE TESTIFIED THERE WAS NOTHING IN
20 THE MEDICAL EVIDENCE THAT RULED OUT HER RECEIVING THE
21 SHOTS TO THE MANDIBLE/CLAVICLE STANDING UP; ISN'T THAT
22 RIGHT?

23 A. I BELIEVE --

24 Q. THAT'S WHAT HE SAID?

25 A. I BELIEVE HE TESTIFIED TO SOMETHING LIKE
26 THAT, YES.

27 Q. NOW, YOU HAVE USED THE TERM CHIN.

28 IS THAT THE CORONER'S TERM?

-24521

1 A. NO. I THINK HE USES MANDIBLE.

2 Q. IS THE MANDIBLE THE SAME THING AS THE CHIN?

3 A. NO. THE CHIN IS WHAT WE SEE. THE MANDIBLE
4 IS THE BONE INSIDE IT.

5 Q. IT'S ALSO THE BONE TO THE SIDE OF IT, IS IT
6 NOT?

7 A. WELL, IT DEFINITELY GOES AROUND THE SIDE,
8 YES.

9 Q. ARE YOU SAYING THAT IF I STOOD HERE RIGHT
10 NOW WITH A SHOTGUN I COULDN'T HIT YOU IN THE CHIN WITH
11 YOU IN THE POSITION YOU'RE IN AND ME IN THE POSITION I
12 AM IN?

13 A. YOU COULD HIT ME IN THE CHIN, BUT YOU'D
14 HAVE -- WELL, I HAVE MORE OF A DOUBLE CHIN. BUT YOU
15 WOULD HAVE DIFFICULTY HITTING ME UNDERNEATH THE CHIN.

16 Q. WOULD YOU PLEASE POINT YOUR FINGER THERE
17 AGAIN.

18 A. (WITNESS COMPLIES).

19 Q. NOW YOU MOVED IT, DR. MC CARTHY.

20 A. HOW IS THAT (INDICATING)?
21 Q. WELL, THAT'S FINE. YOU HAVE NOW MADE LIKE
22 A LITTLE BASKET WITH YOUR FINGERS OVER THE RIGHT SIDE
23 MANDIBLE AREA, CORRECT; WHERE I AM HOLDING MINE RIGHT
24 NOW?
25 A. I THINK MINE WERE A LITTLE LOWER. WHAT I
26 WOULD INDICATE IS THOSE DEFECTS UNDERNEATH THE CHIN --
27 Q. WE WILL GO TO THE PHOTOGRAPH.
28 IT IS YOUR IMPRESSION THERE ARE DEFECTS

-24520

1 UNDER THE CHIN IN THE AREA I AM NOW POINTING TO WITH THE
2 CHIN RAISED, THE SOFT AREA UNDER THE BONE, BEHIND THE
3 BONE?
4 A. NO. CLOSE TO WHERE YOUR FINGER IS NOW.
5 Q. MY FINGER IS BEHIND THE BONE NOW. IS THAT
6 WHAT YOU'RE SAYING, IT'S BEHIND THE BONE?
7 A. I WOULD HAVE TO GO LOOK AT THE PHOTOGRAPH
8 TO BE THAT PRECISE FOR YOU.
9 Q. WE'LL GET TO TALKING ABOUT THAT WHEN WE GET
10 TO THE SHOT THAT YOU ASCRIBE TO THAT.
11 BUT IN ANY EVENT, DR. LAWRENCE DID NOT
12 INDICATE THAT THAT HAD TO BE ADMINISTERED WHILE SHE WAS
13 LYING FLAT ON HER BACK, CORRECT?
14 A. CORRECT.
15 Q. IN FACT, WITH RESPECT TO EVERYTHING YOU

16 HAVE ATTRIBUTED IN SHOT 1, DR. LAWRENCE TESTIFIED THAT
17 ALL COULD HAVE OCCURRED WHILE BOTH OF THEM WERE
18 STANDING, CORRECT?

19 A. I JUST DON'T RECOLLECT THAT "Q" AND "A".

20 Q. MAYBE YOU WERE ON THE PHONE?

21 A. OR DOING SOMETHING.

22 Q. OKAY. NOW, DR. MC CARTHY, WITH RESPECT TO
23 WHAT YOU'RE CALLING SHOT 1, DO YOU KNOW HOW MANY
24 CONCLUSIONS YOU HAVE COME TO IN SHOT 1 THAT ARE AT
25 DIRECT VARIANCE WITH DR. GOLDEN'S OPINIONS AS EXPRESSED
26 IN THE AUTOPSY REPORTS?

27 A. THE FIRST ONE, OR WITH ALL THE REVISIONS?

28 Q. WITH ALL OF -- WELL, LET ME ASK YOU THIS.

-24519

1 HE REVISED, TO THE BEST OF YOUR KNOWLEDGE,
2 BY REEXAMINING PHOTOGRAPHS, CORRECT?

3 A. HE DIDN'T HAVE THE BODIES ANY MORE, SO HE
4 MUST HAVE REEXAMINED PHOTOGRAPHS, OR PERHAPS OTHER
5 EVIDENCE.

6 Q. AND HE DID HAVE THE BODIES ONCE?

7 A. YES.

8 Q. AND HE DOES TAKE NOTES, CORRECT?

9 A. HE DID AT THE TIME THAT I MET WITH HIM.

10 Q. HE DIDN'T TAKE NOTES OF YOUR CONVERSATION,
11 BUT YOU DID SEE -- WELL, AS PART OF THE AUTOPSY REPORT

12 DID YOU SEE THE NOTES ALL OVER THE DIAGRAMS THERE?

13 A. YES.

14 Q. AND YOU TESTIFIED YESTERDAY THERE WAS

15 ANOTHER CORONER, ANOTHER MEDICAL EXAMINER AT THE MEETING

16 THAT YOU HAD WITH DR. GOLDEN WHEN YOU WERE DISCUSSING

17 THE RIGHT UPPER ARM?

18 A. YES.

19 Q. AND THAT DOCTOR, WOULD IT BE FAIR TO SAY,

20 WAS MORE VEHEMENT -- STRIKE THAT.

21 WAS THAT DOCTOR VEHEMENT WITH YOU IN

22 DISAGREEING WITH YOU ABOUT THE UPPER ARM?

23 A. HE WAS VERY PROFESSIONAL.

24 Q. AND THAT WAS DR. SHERRY, CORRECT?

25 A. I BELIEVE SO.

26 Q. AND DO YOU KNOW HOW LONG DR. SHERRY HAS

27 BEEN A MEDICAL EXAMINER FOR THE COUNTY?

28 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

-24518

1 THE COURT: OVERRULED.

2 THE WITNESS: I DO NOT.

3 Q. BY MS. ABRAMSON: DO YOU KNOW HOW MANY

4 AUTOPSIES HE HAS PERFORMED?

5 A. I DO NOT.

6 Q. DO YOU KNOW HOW MANY MULTIPLE INJURY

7 SHOTGUN CASES HE HAS TESTIFIED ABOUT?

8 A. I DO NOT.

9 Q. SO, YOU DISAGREE WITH HIM ALSO, THOUGH?

10 A. I THINK IT IS LESS LIKELY THAT HE IS
11 CORRECT THAN THE WOUND IS THE DIRECTION THAT I INDICATE,
12 YES.

13 Q. SO YOU KNOW MORE WITH NO MEDICAL TRAINING
14 THAN TWO EXPERIENCED MEDICAL EXAMINERS FOR THE COUNTY OF
15 LOS ANGELES; IS THAT WHAT YOU ARE SAYING?

16 A. OH, MY, NO. BUT THESE PEOPLE --

17 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS
18 ANSWER?

19 MS. ABRAMSON: I'LL FOCUS THE ANSWER.

20 THE COURT: THE WITNESS IS IN THE PROCESS OF
21 ANSWERING THE QUESTION.

22 THE WITNESS: FROM WHAT I KNOW, THESE PEOPLE ARE
23 DOING LIKE FOUR AUTOPSIES A DAY. SO HERE I HAVE
24 MULTIPLE MONTHS TO STUDY THE EVIDENCE AROUND ONE CASE,
25 AND THEY ARE DOING THESE THINGS ONE RIGHT AFTER ANOTHER.

26 I MEAN, IT'S NOT FAIR TO THEM, I MEAN -- I
27 THINK TO SAY THAT THEY CAN LOOK AT EACH OF THESE CASES
28 WITH ANYTHING CLOSE TO THE TIME THAT I DID.

-24517

1 Q. BY MS. ABRAMSON: BUT THEY HAVE GONE BACK
2 AND LOOKED AT IT, SIR; HAVEN'T THEY, DR. MC CARTHY?

3 A. BUT THEY ARE STILL UNDER TREMENDOUS

4 PRESSURE, IT WAS CLEAR, EVEN JUST TO TAKE THE TIME FOR
5 OUR MEETING. I MEAN, THEY ARE UNDER SOME SERIOUS TIME
6 PRESSURE.

7 Q. GEE, THEY TOOK THE TIME FOR A MEETING WITH
8 US, TOO, FOR MANY HOURS. THEY SEEMED TO HAVE THE TIME;
9 WOULDN'T YOU AGREE?

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

12 THE COURT: SUSTAINED.

13 Q. BY MS. ABRAMSON: DO YOU KNOW THAT THEY
14 TOOK THE TIME TO HAVE A MEETING WITH THE PROSECUTORS IN
15 JULY? ARE YOU AWARE OF THAT?

16 A. I AM NOT AWARE OF WHAT MEETING THEY HAD
17 WITH THE PROSECUTORS.

18 Q. AND YOU ARE NOT AWARE OF HOW MUCH TIME THEY
19 TOOK TO HAVE A MEETING WITH THE DEFENSE ATTORNEYS?

20 A. I DO NOT.

21 Q. AND YOU DO NOT KNOW HOW MUCH TIME
22 DR. GOLDEN TOOK TO HAVE A MEETING WITH FACKLER?

23 A. I DO NOT.

24 Q. AND YOU DON'T KNOW HOW MUCH TIME IT TOOK
25 DR. GOLDEN TO REVIEW ALL THE FACTS AND WRITE HIS
26 SUPPLEMENTAL REPORT IN SEPTEMBER, DO YOU?

27 A. I DO NOT.

28 Q. SO YOU THINK THEY'RE TOO RUSHED TO THINK?

1 A. THAT'S NOT MY TESTIMONY EITHER. IT'S JUST
2 THEY'RE UNDER TIME PRESSURE WITH INDIVIDUAL CASES THAT
3 DOESN'T AFFORD THEM THE LUXURY I HAVE.

4 Q. AND YOU HAVE NOTHING TO DO -- WITH FAILURE
5 ANALYSIS, THE STOCK HAS SLIPPED TO \$5 A SHARE -- BUT
6 THINK ABOUT THIS FREEBIE CASE; IS THAT RIGHT?

7 MR. CONN: OBJECTION. ARGUMENTATIVE.

8 THE COURT: SUSTAINED.

9 MS. ABRAMSON: STARTED OUT AT 20, YOUR STOCK,
10 DIDN'T IT?

11 MR. CONN: OBJECTION. IRRELEVANT.

12 THE COURT: SUSTAINED.

13 MS. ABRAMSON: YOU ARE SUPPOSED TO BE THE
14 BUSINESS GETTER, THE RAINMAKER, AREN'T YOU,
15 DR. MC CARTHY?

16 MR. CONN: OBJECTION.

17 THE COURT: SUSTAINED.

18 Q. BY MS. ABRAMSON: DO YOU THINK YOU WOULD
19 HAVE BEEN ENLISTED IN A CASE WITH NO PUBLICITY?

20 I'LL WITHDRAW THE QUESTION, YOUR HONOR.

21 MR. CONN: YOUR HONOR, MAY THE WITNESS ANSWER THE
22 QUESTION?

23 THE WITNESS: I CAN HONESTLY SAY I HAD NO
24 APPRECIATION OF THE PUBLICITY ISSUE WHEN I AGREED TO DO
25 A FAVOR FOR A FRIEND.

26 Q. BY MS. ABRAMSON: A YEAR AGO YOU HAD NEVER
27 HEARD OF THE MENENDEZ CASE; IS THAT WHAT YOU ARE SAYING?

28 A. I HAD HEARD OF THE CASE, BUT I GUESS I HAD

1 NEVER HEARD OF ANY WITNESS WHO HAD TESTIFIED IN IT. IT
2 NEVER WOULD OCCUR TO ME THAT I WOULD HEAR ABOUT THEM
3 NOW.

4 Q. NEVER HEARD ABOUT THE BROTHERS MENENDEZ
5 TESTIFYING?

6 A. OF COURSE YOU HEAR ABOUT THE DEFENDANTS,
7 BUT I NEVER HEARD ABOUT ANY OF THE EXPERTS. SO, IT
8 NEVER OCCURRED TO ME ANYBODY WOULD HEAR ABOUT THE
9 EXPERTS.

10 Q. NEVER HEARD ABOUT ANY CONTROVERSY ABOUT THE
11 PHYSICAL EVIDENCE; ISN'T THAT TRUE?

12 A. AS I SIT HERE, I DON'T RECOLLECT ANY
13 CONTROVERSIES, THAT'S TRUE.

14 Q. AND THAT'S BECAUSE UNTIL YOU SHOWED UP
15 THERE WASN'T ANY CONTROVERSY ABOUT IT.

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

18 THE COURT: SUSTAINED.

19 Q. BY MS. ABRAMSON: THE QUESTION WAS DO YOU
20 KNOW HOW MANY DIRECT DISAGREEMENTS YOUR SHOT 1 HAS WITH
21 DR. GOLDEN'S CONCLUSIONS AND DOCTOR SHERRY?

22 A. NOT OFF THE TOP OF MY HEAD, BUT OBVIOUSLY
23 THAT'S A FUNCTION OF TIME, AS THEY HAVE CHANGED THEIR
24 CONCLUSIONS.

25 Q. WELL, YOU HAVE CHANGED YOUR CONCLUSIONS

26 ALSO BASED ON HEARING DR. LAWRENCE, HAVEN'T YOU?

27 MR. CONN: OBJECTION. ARGUMENTATIVE.

28 THE COURT: OVERRULED.

-24514

1 THE WITNESS: I DON'T BELIEVE SO IN ANY

2 SIGNIFICANT DEGREE, NO.

3 Q. BY MS. ABRAMSON: WELL, IF I TOLD YOU YOU

4 HAVE A DISAGREEMENT HIM CONCERNING THE ANGULARITY ON THE

5 BREAST WOUNDS, WOULD YOU AGREE THAT YOU HAVE A

6 DISAGREEMENT WITH HIM?

7 A. I THINK WE DISCUSSED THAT, AND I DON'T

8 THINK WE HAVE A SIGNIFICANT DISAGREEMENT.

9 Q. HE SAYS FRONT TO BACK, YOU SAY LEFT TO

10 RIGHT. IS THERE A DISAGREEMENT THERE TO ANY DEGREE?

11 A. IN ESSENCE, NO. AS I THINK HE INDICATED,

12 AND I WILL NOW INDICATE --

13 Q. SO YOU SAY NO?

14 A. WELL --

15 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS

16 ANSWER?

17 THE COURT: YES. WHY DON'T YOU FINISH YOUR

18 ANSWER.

19 THE WITNESS: HOW SHE IS POSITIONED ON THE COUCH,

20 I CAN'T PUT HER PRECISELY IN THAT POSITION. IF YOU WANT

21 TO ROTATE HER SLIGHTLY TOWARDS THE SHOOTER, THERE IS NO

22 DISAGREEMENT WHATSOEVER, AND I CAN'T POSITION HER TO
23 THAT ACCURACY.

24 Q. BY MS. ABRAMSON: SO ARE YOU BACKING OFF ON
25 LEFT TO RIGHT ACROSS HER BODY, AS YOU HAVE PREVIOUSLY
26 TESTIFIED?

27 A. WELL, THAT I DREW FROM THE CORONER, SO NO.

28 Q. HE SAID FRONT TO BACK, DIDN'T HE,

-24513

1 DR. MC CARTHY? FRONT TO BACK AND LEFT TO RIGHT?

2 A. CORRECT, WHICH IS WHAT I HAVE SHOWN.

3 Q. AND YOU HAVE TESTIFIED LEFT TO RIGHT?

4 A. AND FRONT TO BACK. I HAVE NO PROBLEM WITH
5 THAT.

6 Q. AT THE PRETRIAL HEARING YOU ONLY TESTIFIED
7 LEFT TO RIGHT; ISN'T THAT TRUE?

8 A. I CAN'T BELIEVE I RULED OUT FRONT TO BACK.
9 I MEAN, CLEARLY THERE IS SOME ENTRY. THERE IS AN ANGLE
10 OF ENTRY, EVEN IN MY DIAGRAM.

11 Q. BUT THE BASIC DIRECTION YOU SAID WAS LEFT
12 TO RIGHT; ISN'T THAT TRUE?

13 A. IF YOU ASK ME ABOUT THE DIRECTION ON THIS
14 DIAGRAM, IT IS MORE LEFT TO RIGHT THAN FRONT TO BACK,
15 BUT I CAN'T POSITION HER TORSO PRECISELY.

16 Q. ON THIS DIAGRAM IT IS ALMOST ONLY LEFT TO
17 RIGHT; ISN'T THAT TRUE?

18 A. I AM UNCOMFORTABLE WITH THAT. IT IS MORE
19 LEFT TO RIGHT THAN FRONT TO BACK, BUT THERE IS A FRONT
20 TO BACK COMPONENT IN IT.

21 Q. HE HAS FRONT TO BACK, SO DO YOU AGREE OR
22 DISAGREE?

23 A. THERE IS NOT ENOUGH DETAIL FOR ME TO
24 DISAGREE.

25 Q. NOW CONCERNING THE RIGHT ARM OF MR.
26 MENENDEZ, DR. SHERRY AND DR. GOLDEN DO NOT BELIEVE 2 AND
27 3 ARE AFFILIATED, WHICH IS THE TWO AREAS OF WOUNDING ON
28 THE INNER ARM.

-24512

1 DO YOU DISAGREE OR AGREE?

2 A. LET ME MAKE SURE WE ARE FOLLOWING THE
3 COUNT. YOU MEAN THE INDIVIDUAL PELLET DEFECTS AND THE
4 LARGER WOUNDS?

5 Q. YOU DON'T SEE THEM ON THE THING YOU'RE
6 POINTING TO RIGHT NOW? RIGHT NOW YOU ARE POINTING TO
7 301. GO BACK TO 295.

8 WHAT YOU SEE IN THE LEFT HAND COLUMN IN THE
9 TOP OR MIDDLE PHOTOGRAPH.

10 A. YES.

11 Q. THEY DO NOT BELIEVE THEY ARE AFFILIATED.
12 DO YOU AGREE OR DISAGREE?

13 A. I DISAGREE.

14 Q. DR. GOLDEN AND DR. SHERRY, BASED ON DR.
15 GOLDEN'S REPORT, AND DR. SHERRY'S COMMENTS TO YOU AT THE
16 MEETING, DO NOT AGREE WITH YOU THAT WHAT YOU'RE SEEING
17 ON 295, THE LARGE DEFECT, IS AN ENTRY WOUND. THEY
18 BELIEVE THAT'S THE EXIT, CORRECT?
19 A. CORRECT.
20 Q. AND YOU'RE AWARE FROM DR. GOLDEN'S REPORT
21 THAT HE BELIEVES THAT ONE OF THE -- THAT THE ONE SINGLE
22 PELLET IN MR. MENENDEZ' CHEST IS ALSO AFFILIATED WITH
23 THE BRUISING AREA ON HIS CHEST, CORRECT?
24 A. HE ASSOCIATED THOSE WOUNDS, THAT PELLET
25 FROM THE SAME WOUND, NO. 6, YES.
26 Q. AND YOU ASSOCIATE WOUND NO. 6 WITH THE
27 RIGHT UPPER ARM, DON'T YOU, PART OF YOUR SHOT 1?
28 A. YES.

-24511

1 Q. AND YOU DON'T ASSOCIATE THAT PELLET, DO
2 YOU?
3 A. I HAVE NOT. THAT IS CORRECT.
4 Q. SO, YOU DISAGREE WITH THEM ON THAT?
5 A. I DON'T THINK IT LIKELY.
6 Q. SO, YOU DISAGREE WITH THEM ON THAT. THEY
7 THINK IT'S LIKELY.
8 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
9 EVIDENCE.

10 THE COURT: REPHRASE THE QUESTION.

11 MS. ABRAMSON: WELL, THEIR CONCLUSION IT'S

12 AFFILIATED --

13 MR. CONN: OBJECTION. COMPOUND AND CALLS FOR A

14 CONCLUSION AS TO WHAT DR. SHERRY SAID.

15 THE COURT: WHY DON'T YOU REPHRASE IT.

16 Q. BY MS. ABRAMSON: DR. GOLDEN HAS AFFILIATED

17 THAT WOUND IN THE CHEST WITH THE RIGHT ARM EXIT WOUND

18 THAT IS OBSERVED IN THOSE PHOTOS AND THE MARKS ON THE

19 RIGHT SIDE OF THE CHEST, CORRECT?

20 A. MOST RECENTLY, YES.

21 Q. WELL, YOU DON'T KNOW WHAT HE -- HE DIDN'T

22 WRITE ABOUT IT THE FIRST TIME AROUND; ISN'T THAT TRUE?

23 HE DIDN'T AFFILIATE IT WITH ANYTHING ELSE, BECAUSE HE

24 DIDN'T MENTION IT.

25 A. DIDN'T MENTION IT?

26 Q. YOU DON'T REMEMBER?

27 A. I DON'T REMEMBER IF HE DIDN'T MENTION IT.

28 Q. SO, WHENEVER HE AFFILIATES IT, HE'S

-24510

1 AFFILIATING IT AND YOU DISAGREE; IS THAT CORRECT?

2 A. DISAGREE IS AWFULLY STRONG. I JUST DON'T

3 THINK IT LIKELY.

4 Q. SO, YOU DISAGREE. HE AFFILIATES THEM, YOU

5 DON'T, RIGHT?

6 A. I --

7 MR. CONN: ASSUMES FACTS NOT IN EVIDENCE, THAT HE
8 DOES IN FACT AFFILIATE THE TWO OF THEM.

9 MS. ABRAMSON: I READ IT.

10 THE COURT: THE WITNESS HAS ALREADY ANSWERED, SO
11 ASK HIM ANOTHER QUESTION.

12 Q. BY MS. ABRAMSON: I'LL MOVE ON, YOUR HONOR.
13 THANK YOU.

14 LET'S GO TO WHAT YOU CALL 2.

15 THE COURT: OKAY. IF WE'RE MOVING ON TO THE
16 SECOND SHOT HERE IN THE SEQUENCE, WE WILL TAKE OUR
17 RECESS AND GET THE THINGS SET UP SO WE CAN DO IT WITHOUT
18 TOO MUCH HAZARD TO THE JURORS.

19 WE'LL BE IN RECESS. DON'T DISCUSS THE
20 MATTER WITH ANYONE. DON'T FORM ANY FINAL OPINIONS ABOUT
21 IT. WE'LL RESUME IN 15 MINUTES.

22 (A RECESS WAS TAKEN FROM

23 10:15 A.M. TO 10:35 A.M.)

41027

1 THE COURT: ALL RIGHT. WE'RE ABOUT TO
2 RESUME.

3 LET ME JUST INQUIRE IF YOU HAVE ALL THE
4 EXHIBITS OUT THAT YOU'RE GOING TO NEED FOR THE NEXT
5 SEGMENT OF THE EXAMINATION, SO WE DON'T HAVE ALL OF
6 THE MOVEMENTS OF THESE LARGE BOARDS.

7 MS. ABRAMSON: LET ME JUST DOUBLE CHECK, YOUR
8 HONOR. I THINK I HAVE ALL THE LARGE BOARDS UP THAT

9 I'M GOING TO NEED. I KNOW THEY'RE VERY CLUMSY. I
10 THINK MY NEXT LARGE BOARD HAS TO DO WITH THE NEXT
11 SHOT, NOT THIS ONE. I HAVE EVERYTHING.
12 THE COURT: OKAY. AND HOW LONG DO YOU THINK
13 THIS SEGMENT WILL TAKE BEFORE YOU GET TO THE NEXT
14 ONE, SO WE DON'T HAVE TO MOVE THESE THINGS AROUND?
15 MS. ABRAMSON: IT DEPENDS ON THE WITNESSES.
16 THE COURT: IT DEPENDS ON THE QUESTIONS.
17 MS. ABRAMSON: YES. DEPENDS ON BOTH.
18 THE COURT: HOW LONG DO YOU THINK?
19 MS. ABRAMSON: I MAY NOT GET THE OTHERS OUT
20 UNTIL AFTER LUNCH. THE OTHER -- I WILL GO ON TO THE
21 NEXT SHOT BEFORE I ACTUALLY UTILIZE THE BOARDS SO...
22 THE COURT: ALL RIGHT. LET'S HAVE THE JURY
23 OUT.
24 (THE JURY ENTERED THE COURTROOM
25 AND THE FOLLOWING PROCEEDINGS
26 WERE HELD:)
27
28 THE COURT: ALL RIGHT. WE'LL RESUME WITH THE

41028

1 TESTIMONY OF THE WITNESS.

2 Q BY MS. ABRAMSON: WHAT'S UP RIGHT NOW
3 ARE, DR. MC CARTHY, THE TWO ILLUSTRATIONS. I JUST

4 HAVE TO CHECK THE NUMBERS FOR WHAT YOU'RE CALLING

5 SHOT 2. THESE ARE EXHIBITS 252 AND 253.

6 NOW, IN USING THESE ANTHROPOMORPHIC

7 DUMMIES, THEY DON'T HAVE FACES ON THEM; IS THAT

8 CORRECT?

9 A ANATOMIC FIGURES.

10 Q ANATOMIC FIGURES. THEY DO NOT. THEY'RE

11 JUST --

12 A ANATOMICALLY SCALABLE AS SHOWN.

13 Q OKAY. NOW, IN THESE TWO ILLUSTRATIONS

14 DID YOU MEAN TO IMPLY BY -- PARTICULARLY LOOKING AT

15 SHOT 2B, THE SECOND ONE, DID YOU MEAN TO IMPLY THAT

16 THE VECTOR, THE GREEN LINE, IS EXACTLY PLACED WHERE

17 IT MUST HAVE BEEN PLACED WHEN MR. MENENDEZ RECEIVED

18 THE HEAD WOUND?

19 A NO.

20 Q AND DO YOU HAVE ANY EVIDENCE TO SUPPORT

21 THE PRESENCE OF MRS. MENENDEZ ON THE COUCH AT THE

22 TIME THAT MR. MENENDEZ IS RECEIVING HIS HEAD WOUND?

23 A NO. NOTHING BEYOND THE MISTING THAT I

24 THINK DR. LAWRENCE TESTIFIED TO.

25 Q NOW, YOU DIDN'T EVER TESTIFY TO MISTING

26 YOURSELF, CORRECT?

27 A THAT IS CORRECT.

28 Q YOU DIDN'T INCLUDE MISTING AS A THEORY

1 OF YOURS BEFORE YOU DESIGNED THIS PARTICULAR SHOT
2 ILLUSTRATION; IS THAT CORRECT?

3 A THAT'S CORRECT. I DID NOT PICK UP ON
4 IT.

5 Q AND YOU HEARD DR. LAWRENCE INDICATE THAT
6 EVEN HE IS NOT A BLOOD SPATTER EXPERT, SO THAT
7 MISTING IS JUST A HYPOTHESIS FOR HIM. YOU HEARD
8 THAT?

9 A I RECOLLECT HIS TESTIMONY ABOUT HIS
10 EXPERTISE IN BLOOD EVIDENCE, BUT MY RECOLLECTION IS
11 IT WAS MORE COMPLICATED THAN HOW YOU'VE JUST
12 CLARIFIED IT.

13 Q DO YOU RECALL TESTIFYING AT THE PRETRIAL
14 HEARING THAT IN YOUR ACTUAL OPINION YOU BELIEVE MR.
15 MENENDEZ' HEAD WAS TURNED TOWARDS THE RIGHT, FACING
16 MRS. MENENDEZ, WHEN HE RECEIVED THIS INJURY?

17 A TOWARDS HER. I MEAN, AS I'VE INDICATED
18 IN THE FIGURE, YES.

19 Q AS YOU'VE INDICATED IN THE FIGURE, HE'S
20 NOT FACING HER. HE'S SORT OF FACING NORTH --
21 SLIGHTLY NORTHEAST.

22 A WELL, I DON'T THINK I TESTIFIED IN -- I
23 CERTAINLY DIDN'T MEAN TO TESTIFY IN THE PRELIMINARY
24 HEARING THAT HE WAS FACING HER. I BELIEVE HIS HEAD
25 WAS TILTED OR TURNED TOWARDS HER SLIGHTLY.

26 Q NOW, IN THIS ILLUSTRATION YOU'VE ALSO

27 TILTED HIS LEFT SHOULDER; IS THAT CORRECT?

28 A HIS SHOULDER LINE IS TILTED, YES.

41030

1 Q AND YOU DON'T HAVE ANY EVIDENCE TO
2 SUPPORT THAT TILT, DO YOU?

3 A THAT'S CORRECT. THE HEAD ALONE TURNED.

4 Q AND DEPENDING HOW FAR THAT HEAD IS
5 TURNED TO THE RIGHT, OR TO THE LEFT, FOR THAT
6 MATTER, THAT WOULD DICTATE THE POSITION OF THE
7 MUZZLE OF THE GUN, WOULD IT NOT?

8 A THE WEAPON IS TOO LONG, UNLESS HE MOVES
9 FORWARD TO TILT. YOU RUN OUT OF 30 INCHES OF BLINDS
10 BEHIND HIM TO GO STRAIGHT AROUND. SO EITHER HE HAS
11 TO BE OFF AT AN ANGLE LIKE THIS OR LIKE THAT.

12 Q YOU'RE POINTING OUT THAT THERE'S ONLY
13 26, OR AS THE POLICE MEASURED IT, 27 INCHES BETWEEN
14 THE BACK OF THE COUCH AND THE SOUTH WALL OR WINDOWS
15 OR DOORS, CORRECT?

16 A YES. IT'S PRETTY TIGHT.

17 Q SO THE SHOOTER COULDN'T -- THERE'S NO
18 ROOM FOR THE GUN, LET ALONE THE PERSON.

19 A WELL, IT'S NOT THAT THERE'S NO ROOM.
20 YOU'VE GOT TO MOVE HIS HEAD A FEW INCHES FORWARD.
21 IT BECOMES MORE COMPLEX TO PUT THE WEAPON DIRECTLY

22 BEHIND HIM.

23 Q SO YOU'RE MORE COMFORTABLE WITH THE

24 SHOOTER OFF -- AS WE'RE LOOKING AT THESE

25 ILLUSTRATIONS -- OFF TO THE RIGHT OR OFF TO

26 MR. MENENDEZ' LEFT; IS THAT FAIR TO SAY?

27 A I'M NOT VERY COMFORTABLE OFF AT THE

28 OTHER ANGLE AT ALL. I'M COMFORTABLE WITH THIS

41031

1 ANGLE.

2 Q THAT'S WHAT I ASKED YOU.

3 A YES.

4 Q EVEN THAT ANGLE, IF MR. MENENDEZ' HEAD

5 IS TURNED MORE TO THE RIGHT, THIS LINE STARTS TO

6 ROTATE DOWN. AS THE ILLUSTRATION SHOWS, IT STARTS

7 TO COME NORTH.

8 A YES. THE END OF THE LINE DOES, YES.

9 Q AND DEPENDING, THEREFORE, ON WHAT IN

10 FACT WAS MR. MENENDEZ' HEAD POSITION, THAT WOULD

11 DETERMINE WHETHER OR NOT THE SHOOTER WAS, AS YOU'RE

12 TRYING TO SHOW IT HERE, MORE BEHIND THEM, RATHER

13 THAN MORE TO HIS SIDE, CORRECT?

14 A YES.

15 Q AND IF HIS HEAD WAS TURNED TO THE RIGHT

16 SO THAT -- FIRST OF ALL, IF HE WAS INDEED LOOKING

17 DIRECTLY AT MRS. MENENDEZ, IF SHE WERE STILL ON THE
18 SOFA, THAT WOULD POSITION THE RIGHT SIDE OF HIS FACE
19 PARALLEL WITH THE WALL, CORRECT?

20 A CLOSELY. I MEAN, IT WOULD BE COMING IN
21 PARALLEL.

22 Q NOW, WHERE IS THIS MISTING BLOOD
23 SUPPOSEDLY COMING FROM?

24 A HE HAS TWO EXIT INDICATIONS IN THE RIGHT
25 SIDE OF HIS FACE, ACCORDING TO THE CORONER'S
26 REPORT. THE CORONER ONLY FINDS 11 PELLETS IN THE
27 CRANIUM AND, YOU KNOW, STARTING WITH 27, AND IT'S A
28 BUCKSHOT SHOT, SO HE'S GOT TO LOSE MOST OF THE

41032

1 PELLETS FROM THE SHOT OUT OF HIS CRANIUM.

2 Q OKAY. YOU'RE AWARE THAT WHEN THEY MOVED
3 THE BODY, AFTER THE CORONERS GOT THERE, THEY PLACED
4 HIM FLAT ON A PIECE OF PLASTIC?

5 A I HAVE PICTURES OF HIM BEING PLACED ON A
6 PIECE OF PLASTIC, YES.

7 Q AND DO YOU KNOW WHETHER OR NOT ANY
8 PELLETS EMERGED AT THAT POINT?

9 A I DO NOT.

10 Q NOW, IF, TO FOLLOW WHAT YOU'VE JUST
11 SAID, HOWEVER, IF PELLETS ARE EMERGING FROM THE

12 RIGHT SIDE OF HIS HEAD AND HE'S SITTING THE WAY YOU
13 HAVE SHOWN HIM, COULDN'T THEY HAVE HIT MRS. MENENDEZ
14 IN THE FACE?
15 A NO. SEE, THAT WOULD TAKE A RIGHT TURN.
16 THEY DIDN'T DO THAT.
17 Q WELL, IN THE ILLUSTRATION TO THE LEFT --
18 HE COULD HAVE EVEN BEEN FACING STRAIGHT ON, DON'T
19 YOU THINK?
20 A THEN THE GUN IS TOO LONG.
21 Q SO YOU HAVE HIM FACING SOMEWHAT TO THE
22 RIGHT?
23 A YEAH.
24 Q AND THEN DEPENDING ON THE ANGLE OF HER
25 BODY, IF SHE'S REALLY THERE, SOME OF THOSE PELLETS
26 COULD HAVE HIT HER?
27 A NO, NO. THAT WOULD REQUIRE A RIGHT
28 TURN.

41033

1 Q YOU DON'T KNOW -- YOU BE HIM.
2 A OKAY.
3 Q YOU LOOK AS YOU'VE SHOWN IT.
4 A RIGHT. OKAY.
5 Q WELL, YOU'RE NOT SITTING CLOSE ENOUGH.
6 WE HAVE TO GET CLOSER HERE.

7 A ALL RIGHT.

8 Q YOU BE HIM AND I'M HER. BOOM.

9 A BOOM. THEN THEY COME OUT OF MY HEAD
10 HERE (DEMONSTRATING).

11 Q THEY'RE GOING TO GO THERE?

12 A I WOULDN'T PREDICT THEM TO TAKE A RIGHT
13 TURN INTO YOU.

14 Q WHAT IF I'M HERE?

15 A YOU CAN GET IN THE WAY IF YOU COME OFF,
16 SURE.

17 Q OKAY.

18 A BUT -- YEAH.

19 Q NOW, LET'S TAKE IT THE OTHER WAY. LET'S
20 SAY THAT -- IN FACT, WELL, LET'S JUST STICK WITH
21 THIS WAY.

22 SO THIS MIST IS GOING TO COME OUT THE
23 RIGHT SIDE OF HIS HEAD; IS THAT RIGHT?

24 A YES.

25 Q GIVEN THE WAY YOU'VE SHOWN THAT, IF
26 THEY'RE COMING OUT THE RIGHT SIDE OF HIS HEAD,
27 WOULDN'T YOU EXPECT A LITTLE MIST ON THE BACK OF THE
28 COUCH?

41034

1 A I WOULD EXPECT THE MIST TO HAVE -- CAN

2 I -- I WOULD EXPECT THE MIST TO HAVE -- IT WOULD HAVE
3 A TOUGH TIME DIRECTIONALLY GOING SIDEWAYS. IF THE
4 PELLETS ARE EMERGING FROM THE SKULL, I WOULD EXPECT
5 THEM TO COME OUT WITH A BALLISTIC COMPONENT. SO I
6 WOULD BE LOOKING AT SORT OF LIKE -- SOME OF THE MIST
7 COULD SURELY TURN TO THE RIGHT COMING OUT OF THE
8 SKULL.

9 Q LET ME SHOW YOU WHAT'S BEEN MARKED AND
10 IS IN EVIDENCE AS EXHIBIT 8.

11 THAT'S A PHOTOGRAPH, IS IT NOT, OF
12 MR. MENENDEZ ON THE COUCH?

13 A YES.

14 Q DO YOU SEE THE AREA IMMEDIATELY TO HIS
15 RIGHT ON THE COUCH, THE PORTION THAT WOULD BE HERE
16 (POINTING) BETWEEN -- YOU'VE GOT THE FIGURE OF
17 MRS. MENENDEZ HERE. BUT WHETHER SHE'S THERE OR
18 NOT --

19 A IT WOULD BE THIS AREA HERE, RIGHT.

20 Q SEE ANY MIST?

21 A NO.

22 Q NONE?

23 A WELL, NOT THAT I COULD SEE.

24 Q AND IF HIS FACE WAS TURNED IN SUCH A WAY
25 THAT HE'S LOOKING DIRECTLY AT HER, THEN THE MIST IS
26 GOING TO GO TOWARDS THE WALL, CORRECT?

27 A WELL, IN THEORY YOU COULD ROTATE HIS
28 HEAD ENOUGH AROUND SO THERE WOULD BE SOME MISTING

1 TOWARDS THE WALL, YES.

2 Q I DON'T WANT TO DO LIKE THE EXORCIST. I

3 JUST WANT A NORMAL ROTATION OF THE HEAD.

4 A IF YOU GET YOUR HEAD ALL THE WAY AROUND.

5 Q AND THE MIST IS GOING TO GO ON THE WALL?

6 A I DON'T KNOW IF IT WOULD GO FAR ENOUGH

7 ON THE WALL. IF YOUR FACE WAS GOING THIS WAY, I

8 WOULD EXPECT IT TO COME OFF AT SOME ANGLE AND HAVE A

9 COMPONENT OF MOTION TOWARDS THE WALL.

10 IS THAT FAIR ENOUGH? DO YOU UNDERSTAND

11 WHAT I MEAN?

12 Q YEAH. THAT DIRECTION. BUT HOW FAR IT

13 WOULD GO, YOU DON'T KNOW?

14 A AND ALSO, THE COMPONENT OF THE MOTION.

15 I JUST DON'T EXPECT ANY OF THE MIST TO TAKE A RIGHT

16 TURN OR TO BE CLOSE -- IT'S GOT A BALLISTIC

17 COMPONENT.

18 Q YOU HAVEN'T SHOWN THIS IN SUCH A WAY

19 THAT COULD EXPLAIN THAT THE ONLY AREA OF POTENTIAL

20 MIST IS AT THE BASE OF THE COUCH BETWEEN HER LEGS?

21 A (A) I DON'T RECOLLECT THAT BEING HIS

22 TESTIMONY; BUT (B) IF YOU LOOK AT THE PICTURE, THERE

23 IS EVIDENCE OF SPLATTERS, WHAT I THOUGHT DR. LAWRENCE

24 REFERRED TO ON THE PILLARS AS WELL. IF YOU HAD A

25 MISTING FROM THE HEAD, I WOULD EXPECT IT TO BE IN

26 SOME SORT OF A CONE COMING OFF IN THIS DIRECTION

27 (INDICATING).

28 Q KEEP YOUR HANDS THERE. KEEP YOUR HANDS

41036

1 THERE.

2 A IF THIS IS THE TRUE ANGLE, IF THAT'S THE

3 ANGLE --

4 Q WHICH YOU DON'T KNOW.

5 A THAT'S RIGHT.

6 Q HE WAS TALKING ABOUT MISTING, LIKE RIGHT

7 HERE (POINTING), RIGHT NEXT TO HER RIGHT LEG, AND

8 THEN RIGHT HERE (POINTING)?

9 A UH-HUH.

10 Q BUT NOTHING HERE (POINTING), NOTHING AT

11 ALL, AND NOTHING THERE (POINTING), NOTHING AT ALL.

12 A I'M NOT UNCOMFORTABLE -- THIS AREA, IT'S

13 GOT TO TRAVEL A WAYS. I DON'T RECOLLECT HIM

14 EXCLUDING THIS AREA, BUT I WASN'T HERE FOR ALL HIS

15 TESTIMONY.

16 Q YOU'RE FREE TO LOOK AT THE PHOTOGRAPH.

17 DO YOU SEE ANYTHING OTHER THAN THOSE --

18 A OH, YEAH. YOU SEE A LOT OF LITTLE BLOOD

19 DROPLETS.

20 Q DON'T YOU REMEMBER HE TESTIFIED HE

21 DIDN'T TAKE NOTE OF THE PILLOW OR PAY ANY ATTENTION
22 TO THE SPLATTERS ON THE PILLOW?
23 A THAT'S FINE.
24 Q YOU DON'T KNOW THE DIRECTION OF THE
25 SPLATTER ON THE PILLOW?
26 A THAT'S CORRECT.
27 Q YOU DON'T KNOW IF WHAT'S ON THE PILLOW
28 IS MISTING OR SPLATTERS, BECAUSE YOU'RE NOT A

41037

1 SPATTER EXPERT, RIGHT?
2 A WELL, I'M NOT A SPLATTER EXPERT. I
3 DISTINGUISH A MIST FROM VERY SMALL DROPLETS, AND A
4 SPLATTER IS A BIGGER DROPLET; AND CLEARLY, THERE ARE
5 BIGGER DROPLETS.
6 Q THAT WOULD TELL YOU IT'S A SPLATTER, NOT
7 A MIST.
8 A THERE ARE SOME SPLATTERS; AND, IN ADDITION,
9 HE WAS TALKING ABOUT THE SHADOWING, AND THERE
10 CLEARLY IS -- AND I DIDN'T PICK UP ON IT -- BUT THERE
11 CLEARLY IS SOME GENERAL DARKENING.
12 Q ON THE PILLOW?
13 A YES.
14 Q BUT THOSE ARE SPLATTERS OR DROPS, RIGHT?
15 A WELL, I WANT TO DISTINGUISH THE GENERAL

16 DARKENING FROM THE SPATTERS.

17 Q YOU DESCRIBED THE BLOOD THAT APPEARS ON
18 THE COUCH TOWARDS THE FRONT OF THE COUCH THAT
19 DR. LAWRENCE WAS REFERRING TO AS A SMEAR WHEN YOU
20 LAST TESTIFIED; ISN'T THAT TRUE?

21 A THERE CLEARLY ARE SOME SMEARS ON THE
22 FRONT OF THE COUCH, YES.

23 Q WHAT HE'S CALLING MISTING NOW IS WHAT
24 YOU CALLED SMEARS, CORRECT?

25 A I DON'T THINK SO.

26 THE COURT: DON'T YOU HAVE A PHOTOGRAPH
27 SHOWING A CLOSE-UP OF THAT PILLOW ON THE SOFA?

28 MS. ABRAMSON: YES.

41038

1 THE COURT: WASN'T IT USED DURING DR. LAWRENCE'S
2 TESTIMONY?

3 MS. ABRAMSON: WELL, I THINK I HAVE IT ON -- I
4 HAVE IT ON ONE OF THOSE CHARTS. I DON'T WANT TO GET
5 A NEW BIG CHART OUT.

6 THE COURT: IT'S ALREADY AN EXHIBIT THAT'S
7 BEEN REFERRED TO.

8 MS. ABRAMSON: IT'S JUST FINDING THEM. WHAT
9 I CAN DO IS I HAVE ONE TO SHOW HIM, AND THEN I
10 CANNOT MARK IT BECAUSE IT'S THE SAME AS THE ONE THAT

11 HAS BEEN MARKED. I DIDN'T PULL IT OUT.

12 (PAUSE IN THE PROCEEDINGS.)

13

14 THE COURT: HOW ABOUT 209?

15 MS. ABRAMSON: EXHIBIT 209? 208 AND 209.

16 I HAVE A CHART THAT HAS TWO

17 PHOTOGRAPHS.

18 CAN I WALK THROUGH THE WELL?

19 THE COURT: LET'S FIND 208 AND 209, SINCE

20 IT'S ALREADY BEEN REFERRED TO. JUST GETTING

21 REFERENCE TO THE SAME DOCUMENTS.

22 MS. ABRAMSON: THAT'S WHY I COULDN'T FIND IT.

23 I ALREADY PULLED IT OUT. THANK YOU, YOUR HONOR.

24 Q SHOWING YOU 208, DO YOU RECOGNIZE THAT

25 AS A PHOTOGRAPH OF THE COUCH?

26 A YES.

27 Q AND DO YOU SEE THE RED MARKS ON IT?

28 A A NUMBER OF RED MARKS ON THE COUCH, YES.

41039

1 Q I MEAN THE RED CIRCLES.

2 A YES.

3 Q AND DO YOU KNOW HOW THOSE RED CIRCLES

4 GOT ON THE SOFA?

5 A I DO NOT.

6 Q YOU WEREN'T HERE WHEN DR. LAWRENCE DREW
7 THOSE RED CIRCLES ON THE PHOTOGRAPH?

8 A IF I WAS, I DIDN'T REALIZE THAT'S WHAT
9 HE WAS DOING.

10 Q WELL, WERE YOU HERE WHEN HE WAS
11 TESTIFYING ABOUT MISTING AND SMEARS?

12 A I WAS HERE DURING SOME OF HIS TESTIMONY
13 DURING THAT, YES.

14 Q HERE'S 209. DO YOU RECOGNIZE WHAT THAT
15 IS?

16 A IT'S AN ENLARGEMENT OF AN AREA OF THE
17 COUCH.

18 Q AND IS THAT AN ENLARGEMENT OF THE AREA
19 THAT ALSO SHOWS THE MARKS THAT ARE ON THE CUSHION
20 ADJACENT TO WHERE MR. MENENDEZ' BODY WAS?

21 A YEAH. I MEAN, NOT DIRECTLY ADJACENT.
22 SOME DISTANCE AWAY. IT'S ON THE PILLOW; NOT THE
23 PILLOW THAT HE IS SITTING ON, BUT THE BIG SEAT
24 CUSHION.

25 Q THE ADJACENT CUSHION?

26 A THE SEAT CUSHION ON THE COUCH.

27 Q YES. MAY I HAVE THIS SO THE JURY CAN
28 SEE WHAT YOU'RE TALKING ABOUT.

1 NOW, DID YOU, BEFORE YOU HEARD DR. LAWRENCE
2 TESTIFY, IDENTIFY THE MARKS THAT SHOW UP ON 209,
3 WHICH IS THE LOWER PHOTOGRAPH, AS SMEARS?

4 A SOME OF THEM AS SMEARS, YES.

5 Q DO YOU NO LONGER THINK THEY'RE SMEARS,
6 OR DO YOU STILL --

7 A SOME OF THEM LOOK LIKE SMEARS TO ME.

8 Q AND YOU UNDERSTAND, DR. MC CARTHY, THAT
9 NO ONE EVER SAMPLED ANY OF THAT BLOOD, SO WE DON'T
10 KNOW WHOSE IT IS, CORRECT?

11 A OH. THERE WAS A SEROLOGIST THAT
12 TESTIFIED, AND YOU'RE GOING BEYOND MY ABILITY TO
13 RECALL EXACTLY WHAT HE TESTIFIED TO HE TESTED AND
14 DIDN'T.

15 Q HE TESTIFIED TO DROPS ON THE TENNIS
16 SHOES.

17 A AND I'M NOT DISPUTING YOU. I'M JUST
18 SAYING I'M THE WRONG GUY TO ASK.

19 Q YOU DON'T KNOW IF THAT BLOOD HAS BEEN
20 IDENTIFIED OR WHOSE IT MAY BE, CORRECT?

21 A WHICH OF THE TWO INDIVIDUALS, THAT IS
22 CORRECT.

23 Q OR ANY INDIVIDUALS, FOR THAT MATTER.
24 YOU DON'T KNOW THAT'S BLOOD -- IN FACT, WOULD IT BE
25 FAIR TO SAY YOU DON'T KNOW IT'S BLOOD?

26 A I GUESS IN THE FINAL ANALYSIS, CAN I SAY
27 WITH ABSOLUTE CERTAINTY IT'S BLOOD? NO.

28 Q YOU CAN'T SAY WITH ANY CERTAINTY IT'S

1 NOT. WE'RE ALL ASSUMING IT'S BLOOD FOR THE SAKE OF
2 THESE DECISIONS.

3 A WHEN YOU SAY "NOT WITH ANY CERTAINTY,"
4 THAT'S TOO STRONG. THAT'S AN INAPPROPRIATE USE OF
5 THAT WORD. WE HAVE SOME REASONABLE BIASES TO ASSUME
6 OR TO INFER THAT IT IS BLOOD. BUT WE CANNOT KNOW
7 THAT WITH CERTAINTY.

8 Q IF THE BLOOD -- IF THE RED STUFF WHICH WE
9 HAVE ALL BEEN ASSUMING IS BLOOD, WHICH I STILL
10 ASSUME IS BLOOD, HAD BEEN COLLECTED AND ANALYZED,
11 HOWEVER, THEN WE'D HAVE CERTAINTY THAT IT'S BLOOD,
12 CORRECT?

13 A OH, YES.

14 Q IF IT IS.

15 A YES. I MEAN, IT'S AS CLOSE TO CERTAINTY
16 AS YOU CAN GET.

17 Q LOOKING AT THIS PHOTOGRAPH, IT DOES
18 APPEAR, BASED ON THE WAY DR. LAWRENCE MARKED IT AND
19 WHAT'S OBSERVABLE, THAT THERE IS NOT, FOR EXAMPLE,
20 BLOOD BEYOND WHAT'S SHOWN; IN OTHER WORDS, TO THE
21 LEFT OF WHAT'S SHOWN IN 209 ON THE SEAT OF THE
22 COUCH, CORRECT?

23 A HIS CIRCLES DO NOT CONTINUE TO EXTEND.

24 THERE'S CLEARLY EVIDENCE OF BLOOD BEYOND THAT.

25 Q WELL, THERE ISN'T CONTIGUOUS BLOOD.

26 THERE'S LITTLE BITS AND PIECES, CORRECT?

27 A IN THE WAY I WOULD USE THE WORD

28 CONTIGUOUS, YOUR STATEMENT IS CORRECT.

41042

1 Q AND THERE DOESN'T APPEAR TO BE -- WELL,
2 THERE'S CERTAINLY NOTHING THAT MATCHES THE DARKNESS
3 OF THE COLOR OR THE AREAS OF SATURATION THAT APPEAR
4 IN 209 ANYWHERE ELSE ON THIS SEAT CUSHION AS IT
5 APPEARS IN 208, CORRECT?

6 DO YOU AGREE TO THAT?

7 A YES. WITH THE UNDERSTANDING THAT THAT
8 "6" MARKER IS SORT OF HIDING AN INDIVIDUAL THING,
9 BUT...

10 Q IT'S HIDING A PIECE OF TISSUE.

11 A YES, CORRECT.

12 Q AND WE DON'T KNOW WHOSE TISSUE THAT IS
13 EITHER, CORRECT?

14 A THAT'S CORRECT.

15 Q AND I DON'T BELIEVE ANYONE HAS ACTUALLY
16 IDENTIFIED WHAT SORT OF TISSUE THAT IS EITHER; IS
17 THAT CORRECT?

18 A I DON'T KNOW THAT IT HAS BEEN

19 IDENTIFIED. BUT THAT'S A DIFFERENT QUESTION FROM I

20 DON'T KNOW THAT NO ONE HAS IDENTIFIED IT.

21 Q YOU DON'T KNOW IT HAS. YOU HAVEN'T SEEN

22 ANYTHING THAT TELLS YOU IT WAS IDENTIFIED?

23 A THAT'S CORRECT, I HAVE NOT.

24 Q AND ARE YOU AWARE OF THE PREVIOUS

25 TESTIMONY IN THIS CASE GIVEN BOTH BY DETECTIVE

26 ZOELLER AND BY MR. KUHN OF THE BEVERLY HILLS POLICE

27 DEPARTMENT THAT NO TISSUE SAMPLING OR BLOOD SAMPLING

28 WAS DONE FROM THE SCENE?

41043

1 A WELL, FIRST, I'M UNAWARE OF THAT

2 TESTIMONY, IF THERE WAS SUCH TESTIMONY GIVEN.

3 Q WHY DON'T YOU ASSUME THAT THERE WAS.

4 MR. CONN: OBJECTION. ARGUMENTATIVE. OBJECT

5 TO THE FORM OF THE QUESTION.

6 THE COURT: IT WOULDN'T MAKE ANY DIFFERENCE

7 IF HE ASSUMED IT OR NOT AT THIS POINT.

8 MS. ABRAMSON: ALL RIGHT. LET'S MOVE ON.

9 Q NOW, SO IS IT YOUR CURRENT OPINION THAT

10 HIS HEAD, MEANING MR. MENENDEZ' HEAD, WAS ROTATED TO

11 THE RIGHT, PERHAPS, LOOKING TO KITTY?

12 A NO. MY OPINION HAS BEEN PRETTY CONSTANT

13 ALL ALONG. I THINK THIS DIAGRAM IS INDICATIVE OF MY

14 OPINION IN TERMS OF HIS HEAD ROTATION. I THINK IT
15 WAS BIAS TOWARDS KITTY, BUT I DON'T THINK HE WAS
16 LOOKING AT KITTY.

17 MS. ABRAMSON: CALLING THE COURT AND
18 COUNSEL'S ATTENTION TO PAGE 35,421. I INTEND TO
19 READ LINES -- I'LL READ THE WHOLE QUESTION AND
20 ANSWER, STARTING AT LINE 14.

21 YOU WANT TO READ IT OVER MY SHOULDER?
22 IT'S RIGHT HERE.

23 "QUESTION: CAN YOU TELL US WHAT
24 WE ARE LOOKING AT.

25 "ANSWER: THIS IS A CONTACT
26 SHOTGUN WOUND TO THE BACK OF JOSE'S
27 SKULL DELIVERED FROM BEHIND AT THE --
28 ROUGHLY, THE ANGLE INDICATED AFTER THE

41044

1 -- I'M GOING TO SHOW IT FROM THIS
2 POINT OF VIEW. I BELIEVE HIS HEAD WAS
3 ROTATED TO THE RIGHT, PERHAPS LOOKING
4 TO KITTY."

5 Q DO YOU KNOW, BY THE WAY, DR. MC CARTHY,
6 WHETHER OR NOT THOSE EXIT DEFECTS ON THE RIGHT SIDE
7 OF MR. MENENDEZ' HEAD WAS CAUSED BY THE DIRECT PATH
8 THE PELLETS TOOK THROUGH HIS SKULL OR BY RICOCHET

9 INSIDE THE SKULL?

10 A NO.

11 Q WOULD IT MAKE ANY DIFFERENCE TO YOUR
12 PLACEMENT OF THE GUN MUZZLE AT THE ANGLE THAT YOU
13 HAVE SHOWN IT IF THOSE WERE RICOCHET MARKS AND NOT A
14 DIRECT-LINE FIRE?

15 A NO. I DIDN'T RELY ON THOSE FOR THE
16 GEOMETRY.

17 Q YOU DON'T SHOW HIS FEET IN THESE TWO
18 ILLUSTRATIONS OF 2A AND 2B. YOU DO, HOWEVER, SHOW
19 THEM IN THE NEXT -- 1, 3, AND IN THE ONE AFTER THAT,
20 4.

21 IS IT YOUR OPINION THAT HIS FEET ARE
22 FLAT ON THE FLOOR AT THIS TIME?

23 A NO. I DON'T HAVE ANY OPINION ABOUT THE
24 EXACT POSITION OF HIS FEET AT THE MOMENT THE SHOT IS
25 DELIVERED. AND THE REASON THE FEET ARE NOT SHOWN
26 IS, AS WE DISCUSSED YESTERDAY IN TERMS OF THE TABLE
27 IN THIS ONE SHOT MOVING CLOSER TO THE SOFA. WHAT
28 HAPPENS -- THE REGISTER ON THE "Y" COORDINATE DIDN'T

41045

1 GET FILLED.

2 Q THE TABLE HASN'T ROTATED.

3 A BUT AS YOU POINTED OUT YESTERDAY, IT

4 MOVED BACK THREE INCHES. WHAT HAPPENED IS THERE
5 SHOULD HAVE BEEN A "Y" TRANSLATION PUT IN THE
6 REGISTER, AND IT JUST DIDN'T GET WRITTEN IN THIS
7 FILE. IT'S MOVED IN ALL THE REST.

8 Q DID YOU, PREVIOUS TO THESE PROCEEDINGS,
9 OFFER THE OPINION THAT THIS HEAD WOUND TO
10 MR. MENENDEZ WAS INSTANTANEOUSLY FATAL?

11 A I DON'T KNOW WHETHER ANYBODY LET ME
12 EXPRESS THAT OPINION, BUT I DO BELIEVE THAT WAS THE
13 CASE.

14 Q THAT'S A MEDICAL OPINION, ISN'T IT?

15 A I GUESS IT STRIKES ME, AS AN ENGINEER,
16 AS A NO. 4 BUCKSHOT DIRECT CONTACT WOUND TO THE BACK
17 OF THE HEAD. NO. IT SORT OF LIKE BORDERS ON THE
18 OBVIOUS. BUT I GUESS YOU COULD CALL IT A MEDICAL
19 OPINION.

20 Q DOES IT BORDER ON THE OBVIOUS WHEN THE
21 MEDICAL EXPERTS SAY, ALTHOUGH IT IS FATAL, YOU
22 CANNOT EVER SAY INSTANTANEOUSLY, RATHER THAN VERY
23 RAPIDLY?

24 A PERHAPS WE WERE DISCUSSING A DISTINCTION
25 WITHOUT A DIFFERENCE.

26 Q DID YOU TESTIFY AT THE PRETRIAL HEARING
27 AT PAGE 35,423 THAT IT WAS INSTANTANEOUSLY FATAL?

28 A I DID DISCUSS THAT. AND I THINK, AS I

1 DISCUSSED, LIKE WITHIN, YOU KNOW, A FEW SECONDS, ALL
2 ELECTRICAL ACTIVITY IN THE BRAIN CEASED.

3 Q AND THAT'S A MEDICAL OPINION TOO, ISN'T
4 IT?

5 A NOT WITH 27 PELLETS OF NO. 4 BUCKSHOT.

6 Q YOU'RE SAYING THAT ANY LAYMAN WHO
7 UNDERSTANDS 27 PELLETS OF BUCK SHOT CAN RENDER AN
8 OPINION ON THE TIME OF DEATH OF THE APPLICATION OF
9 SUCH A ROUND TO THE BACK OF ONE'S HEAD?

10 IS THAT WHAT YOU'RE SAYING?

11 A PRETTY CLOSE. I THINK ANY LAYMAN WHO
12 KNOWS THE INSTANT SOMEONE IS SHOT DIRECTLY IN THE
13 BACK OF THE HEAD WITH 27 .24 CALIBER BULLETS WILL BE
14 PRETTY GOOD, ON PRETTY SAFE GROUND TO SAY THAT IS
15 THE INSTANTANEOUS MOMENT OF DEATH.

16 Q THE INSTANTANEOUS MOMENT OF DEATH. IS
17 THAT WHAT YOU'RE SAYING?

18 A YOU'RE QUIBBLING OVER SECONDS, YOU KNOW;
19 AND NOT TEN OF THEM. ONE OR TWO OF THEM.

20 Q YOU'RE TALKING ABOUT RANGE OF ACCURATE
21 SCIENTIFICALLY BASED CONCLUSIONS, DR. MC CARTHY.
22 OKAY? AND YOU DON'T HAVE A SCIENTIFIC BASIS TO MAKE
23 A MEDICAL OPINION, ISN'T THAT TRUE?

24 A I'M NOT A MEDICAL PERSON. AND LET'S SAY
25 YOU WANTED TO DEFINE DEATH IN TERMS OF WHAT
26 TRANSACTION OF ALL THE BRAIN CELLS HAVE DIED. I
27 MEAN, BRAIN CELLS ARE GOING TO BE DYING FOR SEVERAL

41047

1 GOING TO BE INSTANTANEOUSLY DEAD OFF THE SHOT. IT'S
2 GOING TO BE SOME MINUTES BEFORE EVERY SINGLE ONE DIE
3 IN THE WAY WE USE DEAD.

4 Q YOU MEAN LAYMEN USE DEAD OR MEDICAL
5 DOCTORS USE DEAD?

6 A LAYMAN -- I MEAN, THE WAY -- MAYBE I
7 DON'T WISH TO SAY I'VE SURVEYED EVERYBODY ON HOW
8 THEY USE THE TERM DEAD BUT...

9 Q ARE YOU DONE?

10 A I GUESS. I'M JUST SORT OF SITTING HERE --
11 I NEVER IMAGINED DEFENDING INSTANTANEOUS DEATH WITH
12 27 .24 CALIBER BULLETS IN THE BACK OF THE BRAIN.

13 Q DID YOU RENDER AN OPINION THAT THE
14 FUNCTION OF THE BRAIN WOULD CEASE IMMEDIATELY?

15 A YES.

16 Q AND THAT'S WHAT YOU BELIEVE AS A LAYMAN?

17 A YES.

18 Q AND DO YOU RECALL BEING ASKED AT THAT
19 HEARING BY THE JUDGE: "HOW LONG DOES THE HEART BEAT
20 AFTER THAT OCCURS?"

21 AND YOUR ANSWER: "I HAVE NO MEDICAL
22 KNOWLEDGE"?

23 A THAT'S CORRECT.

24 Q AND WAS IT YOUR TESTIMONY AT THE
25 PRETRIAL HEARING THAT DEATH WAS SO INSTANTANEOUS
26 THAT THE TISSUE OF HIS HEAD HAD NOT ENOUGH TIME TO
27 REACT TO THE SHOT?

28 A I'M SORRY. WELL, LET ME PUT IT THIS

41048

1 WAY. DOESN'T SOUND LIKE SOMETHING I MEANT TO SAY.

2 COULD YOU READ ME BACK WHAT I SAID?

3 Q DO YOU BELIEVE THAT THERE ARE SOME SHOTS
4 THAT ARE SO FAST THAT THE TISSUE HAS NO TIME TO
5 REACT?

6 A THAT'S A QUESTION?

7 Q THAT'S A QUESTION.

8 A THAT I WAS ASKED?

9 Q I'M ASKING YOU THAT NOW.

10 A THAT'S A YES, BUT I WOULD HAVE TO
11 QUALIFY MY ANSWER. IN OTHER WORDS, WE KNOW FROM
12 PAST EXPERIENCE THAT PEOPLE, LIKE IN THE BATTLE OF
13 BRITAIN, WERE -- THERE WERE SHOTS THROUGH -- PEOPLE
14 WHO ACTUALLY GOT A CRANIAL SHOT THROUGH AND THROUGH
15 AT ESTIMATES RANGING FROM 8,000 FEET PER SECOND WHO,
16 AFTER, BARELY HAD A HEADACHE.

17 SO THERE WAS -- IT'S A

18 THROUGH-AND-THROUGH WOUND WITH A VERY SMALL
19 FRAGMENT. BUT VERY RAPID BULLETS PASS THROUGH A
20 WOUND FASTER THAN THE TISSUE HAS TIME TO REACT, AND
21 THE ACTUAL WOUND CAVITY DEVELOPS AFTER THE
22 PROJECTILE HAS PASSED THROUGH.

23 Q IS THAT WHAT YOU BELIEVE HAPPENED WITH
24 RESPECT TO ANY OF THE SHOTS IN THIS CASE?

25 A I THINK THESE SHOTGUN BULLETS --

26 Q PELLETS.

27 A PELLETS. AND THAT IS A FAIR

28 CORRECTION. THE SHOTGUN PELLETS ARE NOT QUITE UP TO

41049

1 THE VELOCITIES WHERE WE SEE DELAYED WOUND CAVITY
2 FORMATION. BUT AT THE SAME TIME, THEY START
3 SUPERSONIC. SO THERE WOULD BE SOME DELAY.

4 Q THE TISSUE DELAY TO THIS PASSAGE?

5 A YES.

6 Q THAT IS TRUE EVEN FOR THE SHOT THAT YOU
7 HAVE CALLED NO. 12, THE ONE TO THE LEFT CHEEK OF
8 MRS. MENENDEZ?

9 A THERE WOULD BE SOME DELAY IN THE TISSUE
10 REACTION TO THE PASSAGE OF PELLETS. THEY WOULD
11 EMERGE BECAUSE IT'S A CONTACT WOUND, PARTICULARLY --
12 THEY WOULD EMERGE FROM THE MUZZLE IN A SUPERSONIC

13 CONDITION, LIKE 1200 FEET PER SECOND. THIS WOULD BE
14 BARELY ABOVE THE SPEED OF SOUND, BUT THEY'D BE
15 SOMEWHAT --

16 Q SO THERE WOULD BE TIME FOR THE TISSUE TO
17 REACT WITH RESPECT TO THAT WOUND?

18 A THE PELLETS --

19 Q COULD YOU ANSWER THAT YES OR NO?

20 A IT'S NOT A SIMPLE QUESTION.

21 Q WELL, DO YOU BELIEVE THERE WAS TIME FOR
22 THE TISSUE TO REACT TO THAT WOUND?

23 A THE TISSUE HAD EVENTUALLY REACTED TO
24 IT. THE QUESTION IS: WHEN DOES THE TISSUE REACT IN
25 PROXIMITY TO THE PROJECTILE? PRESSURE WAVES CAN
26 ONLY TRAVEL THROUGH FLUID --

27 MS. ABRAMSON: I'M GOING TO OBJECT AS NOT
28 RESPONSIVE. WE'RE TALKING ABOUT SHOTGUN WOUNDS.

41050

1 THE COURT: YOU'RE ASKING FOR HIS ANSWER AND
2 HE'S GIVING IT.

3 THE WITNESS: PRESSURE WAVES TRAVEL THROUGH
4 FLUID MEDIA AT A FIXED VELOCITY. PROJECTILES CAN
5 TRAVEL THROUGH THE SAME FLUID MEDIA AT SPEEDS
6 GREATER THAN THE PRESSURE PULSES CAN. SO THE
7 PROJECTILE CAN OUT-RUN THE PRESSURE WAVE. THE

8 PRESSURE WAVE, THEREFORE, TRAILS AND THE TISSUE

9 REACTS AFTER THE PROJECTILE HAS GONE.

10 ULTIMATELY, ALL THE TISSUE REACTS TO ANY
11 PROJECTILE IF IT HAS SUFFICIENT ENERGY VELOCITY TO
12 DISTURB THE TISSUE.

13 MS. ABRAMSON: CALLING THE COURT'S AND
14 COUNSEL'S ATTENTION TO PAGE 35,589. THESE ARE
15 QUESTIONS HAVING TO DO WITH, STARTING AT LINE 15,
16 WITH THE WOUND TO MRS. MENENDEZ' LEFT CHEEK.

17 I'LL START WITH -- I'LL START WITH THE
18 PRECEDING QUESTION ON LINE 9.

19 "QUESTION: AND, IN FACT THERE IS
20 A QUESTION NOW BECAUSE THE CORONER HAS
21 NOW ISSUED AN AMENDED REPORT IN WHICH
22 HE HAS INDICATED THAT DUE TO LACK OF
23 TISSUE REACTION HE BELIEVES IT IS HIS
24 OPINION THAT THAT SHOT IS EITHER AT
25 THE TIME OF DEATH OR POSTMORTEM.

26 "YOU'RE AWARE OF THAT, ARE YOU
27 NOT?

28 "ANSWER BY DR. MC CARTHY: WELL,

41051

1 I DON'T THINK I DISAGREE WITH THE TIME
2 OF DEATH. I THINK THAT THE SHOT WAS

3 AT THE TIME OF DEATH. SHE DIED, BAM,

4 WHEN THAT SHOT WAS DELIVERED.

5 "QUESTION: NO, NO, NO. YOU

6 DON'T UNDERSTAND HOW ANTEMORTEM THE

7 TISSUE REACTION DIFFERS FROM

8 PERIMORTEM OR POSTMORTEM?

9 "ANSWER: I DO. THERE WAS

10 CERTAINLY NOT ENOUGH TIME FOR THE

11 TISSUE TO REACT TO THAT SHOT."

12 THE WITNESS: IN THE SENSE OF --

13 MS. ABRAMSON: THERE'S NO QUESTION PENDING,

14 DR. MC CARTHY.

15 Q NOW, LET'S TALK ABOUT --

16 MR. CONN: YOUR HONOR, IF THAT'S NOT PART OF

17 A QUESTION, I WOULD ASK THAT WHAT COUNSEL JUST READ

18 BE STRICKEN FROM THE RECORD.

19 MS. ABRAMSON: IT'S IMPEACHMENT. IT WAS READ

20 AS IMPEACHMENT, YOUR HONOR.

21 THE COURT: IT IS NOT IMPEACHING. SO UNLESS

22 YOU WANT TO ASK HIM TO CLARIFY OR EXPLAIN THE

23 ANSWER...

24 MS. ABRAMSON: YOU JUST HEARD WHAT YOU SAID

25 AT THE PRETRIAL HEARING, THAT THERE WAS CERTAINLY NO

26 TIME FOR THE TISSUE IN HER BODY TO REACT TO THE SHOT

27 TO THE LEFT CHEEK.

28 Q IS THAT STILL YOUR POSITION?

1 MR. CONN: I WOULD ASK THAT COUNSEL READ THE
2 REMAINING THREE LINES LEFT AS AN AREA OF INQUIRY.

3 MS. ABRAMSON: I DON'T HAVE THEM IN FRONT OF
4 ME RIGHT NOW, JUDGE. I MEAN, I CAN.

5 THE COURT: IF COUNSEL HAS IT, WHY DON'T YOU
6 JUST SHOW IT TO HER.

7 MS. ABRAMSON: SHOW ME WHAT IT IS YOU WANT ME
8 TO READ.

9 THAT'S THE END OF THE ANSWER, YOUR
10 HONOR. I'M NOT GOING TO READ ANY MORE. THAT'S THE
11 TOTAL END OF HIS ANSWER.

12 THE COURT: LET'S GET THE EXPLANATION OF THE
13 WITNESS THEN.

14 THE WITNESS: THE SENSE OF WHAT THE CORONER
15 MEANT WAS IN TERMS OF HEMORRHAGING AND TISSUE. I
16 DON'T BELIEVE THE TISSUE HAD TIME TO HEMORRHAGE. I
17 BELIEVE DEATH WAS ALMOST IMMEDIATELY AFTER THAT
18 CHIEF SHOT. THE CRANIUM WAS FILLED, AS WE SAW IN
19 THE X RAYS, IN THE SENSE THAT THE CORONER MEANT
20 REACT, HEMORRHAGE. HE'S RIGHT. I DON'T THINK THERE
21 WAS TIME TO REACT.

22 DEATH WAS -- AGAIN, IN MY USE OF THE
23 WORD OF THE TERM -- VIRTUALLY INSTANTANEOUS.

24 Q BY MS. ABRAMSON: WAS DEATH CAUSED BY
25 THE PELLETS GOING THROUGH THE SKIN, THE SKIN?

26 A NO.

27 Q WAS DEATH CAUSED BY PELLETS GOING

28 THROUGH THE OTHER TISSUE THAT UNDERLAY THE CHEEK, IN

41053

1 THE CHEEK?

2 A NOT -- DEATH WAS NOT CAUSED WITH ANY

3 INTERACTION WITH THE CHEEK WALL.

4 Q SO BEFORE DEATH HITS, THE BRAIN, THE

5 SKIN, THE CHEEK, AND ALL OF THAT TISSUE HAS ALREADY

6 BEEN PASSED THROUGH BY THOSE PELLETS, CORRECT?

7 A OH, YES.

8 Q AND YOU'RE SAYING THAT THAT SKIN DOESN'T

9 REACT BECAUSE THE PELLETS ARE GOING TOO FAST?

10 A OH. BELIEVE YOU ME, THOSE THINGS REACT.

11 THEY GET OUT OF THE WAY.

12 Q A HOLE IS PUNCHED IN IT. IT DIDN'T GET

13 OUT OF THE WAY.

14 A WELL, I MEAN -- YOU DON'T DESTROY THE

15 TISSUE. YOU MOVE IT OUT OF THE WAY. THAT'S WHAT

16 BULLETS DO. THEY DON'T -- TISSUE DOESN'T CEASE TO

17 EXIST. ALL BALLISTIC PROJECTILES DO IS MOVE IT VERY

18 DRAMATICALLY AND RAPIDLY.

19 Q DO YOU UNDERSTAND WHAT TISSUE THE

20 CORONER'S TALKING ABOUT WHEN HE'S TALKING ABOUT A

21 REACTION OR LACK OF REACTION TO ESTABLISH WHETHER A
22 WOUND IS ANTEMORTEM, PERIMORTEM, OR POSTMORTEM?
23 WHAT DO YOU THINK HE'S TALKING ABOUT?
24 A I DON'T KNOW WHAT EXACT TISSUE
25 MR. GOLDMAN -- DR. GOLDEN IS TALKING ABOUT IN HIS
26 REVISION ON THAT PARTICULAR WOUND. BUT IN THE SENSE
27 OF WHAT YOU'RE LOOKING FOR, HEMORRHAGING OR TISSUE
28 TO REACT TO DAMAGE, HER SKULL BEING, YOU KNOW, ON

41054

1 THE ORDER OF A FOOT FROM FRONT TO BACK, AND THE
2 SHOTGUN PELLETS EMERGING AT THE RATE OF 1200 FEET
3 PER SECOND, WOULD GO FROM THE CHEEK TO THE BACK OF
4 THE SKULL IN APPROXIMATELY ONE MILLISECOND. THAT'S
5 ONE THOUSANDTH OF A SECOND.
6 AFTER -- IN ONE THOUSANDTH OF A SECOND
7 HER BRAIN WOULD BE SHREDDED BY SEVERAL HUNDRED SMALL
8 PELLETS.
9 THAT IS THE MOMENT OF DEATH IN MY
10 OPINION.
11 Q THAT'S TRUE OF EVERY SINGLE SHOTGUN
12 WOUND IN THIS CASE, FAST PELLETS GOING THROUGH HUMAN
13 TISSUE, RIGHT? ISN'T THAT TRUE?
14 A THEY'RE FAST IN HUMAN TERMS, REGARDLESS.
15 SOME ARE MUCH FASTER THAN OTHERS.

16 Q WHAT HE'S TALKING ABOUT, DR. MC CARTHY,
17 IS THE ABRASION RING AROUND THE CIRCLE IN THE
18 CHEEK. AND IT IS YOUR OPINION THAT ON HUMAN BEINGS,
19 WITH A CONTACT SHOTGUN WOUND TO THE HEAD, THERE
20 ISN'T ENOUGH TIME FOR THAT AREA AROUND TO CHANGE IN
21 REACTION TO THE PELLETS PASSING THROUGH?

22 IS THAT YOUR OPINION?

23 A NO. THEY CHANGE AND CAN BE BURNED BY
24 THE BLAST AND THE PELLETS GOING THROUGH.

25 Q BURNED?

26 A WELL, YEAH. A SHOTGUN BLAST EMERGING
27 WITH THE HOT DISCHARGE OF PELLET AND GAS. IN OTHER
28 WORDS, THE GAS PROPELLING THE PELLETS IS STILL

41055

1 EXPANDING OUTSIDE THE BARREL, AND IT'S STILL
2 BURNING. ACTUALLY, IF YOU DO A CHROMOGRAPH YOU'LL
3 SEE THAT.

4 SO THERE'S TYPICALLY THERMAL DAMAGE
5 RIGHT IN A CONTACT WOUND. THE TISSUE WILL HAVE TIME
6 TO RESPOND TO THAT. THE TISSUE GETS OUT OF THE WAY
7 OF THE SHOT. WHAT THERE WON'T BE, IF THE PELLETS
8 IMMEDIATELY SPREAD THE BRAIN TO THIS EXTENT, IS TIME
9 FOR THE TISSUE TO HEMORRHAGE, TO BLEED.

10 YOU REMEMBER THE PHOTOGRAPHS UP HERE?

11 THERE'S NO BLEEDING FROM THIS AREA HERE PER SE.

12 IT'S JUST A HOLE.

13 Q THAT'S AN ENGINEER'S EXPLANATION, ISN'T

14 IT, DR. MC CARTHY?

15 A YEAH. I GUESS SO.

16 Q WEREN'T YOU IN THE COURTROOM WHEN

17 DR. LAWRENCE SAID THAT THE RING THAT'S FORMED BY A

18 CONTACT WOUND IS NOT A BURN, IT'S A CONTUSION? IT'S

19 WHEN THE SKIN HAS A SHOCK WAVE. IT'S NOT A BURN AT

20 ALL. IT'S BLEEDING UNDER THE SKIN.

21 A HE WAS TALKING ABOUT THE CONTACT WITH

22 THE BARREL, AND THAT IS A CONTUSION.

23 Q HE'S TALKING ABOUT THE CHEEK WOUND.

24 A THERE ARE GOING TO BE SOME PARTS OF THE

25 CHEEK WOUND THAT ARE THERMAL AND SOME PARTS OF THE

26 CHEEK WOUND THAT ARE MECHANICAL CONTACT, AS YOU'VE

27 JUST DESCRIBED.

28 Q YOU WEREN'T HERE WHEN I ASKED HIM: IS

41056

1 IT A BURN CAUSED BY HEAT? AND HE SAID NO.

2 YOU WEREN'T --

3 A IT'S PART OF A BURN.

4 Q WERE YOU HERE WHEN HE SAID NO?

5 A I CAN'T RECOLLECT IF I WAS HERE OR NOT

6 FOR THE Q AND A. WE'RE NOT DISAGREEING.

7 Q WHO'S NOT DISAGREEING?

8 A I AM NOT DISAGREEING WITH HIS STATEMENTS
9 ABOUT CONTUSION AGAINST THE BARREL RING. THAT IS A
10 SEPARATE MECHANICAL PHENOMENA THAT --

11 Q LET'S TAKE A LOOK AT WHAT YOU'VE CALLED
12 SHOT 2A. IN THAT ILLUSTRATION YOU CAN SEE THE
13 FRENCH DOORS BEHIND THE COUCH, CORRECT?

14 A YES.

15 Q YOU'VE ALREADY TESTIFIED THERE WASN'T
16 ENOUGH SPACE BEHIND THE COUCH FOR SOMEONE TO BE
17 HOLDING THE GUN THAT'S STANDING DIRECTLY BEHIND
18 MR. MENENDEZ, CORRECT?

19 A NOT WITH HIS HEAD BACK. I MEAN, YOU'RE
20 RIGHT AT THE BORDER WHERE IT'S GOING TO FIT.

21 Q NOW, YOU ALSO TESTIFIED YESTERDAY WHEN
22 WE WERE TALKING ABOUT THE SPREAD PATTERN ON THE LEFT
23 ELBOW; THAT IF INDEED IT TOOK 12 TO 14 FEET FOR THE
24 MUZZLE OF THE GUN TO BE BACK FROM THAT ELBOW TO
25 CAUSE THAT PATTERN, THE SHOOTER WOULD BE IN THE
26 FOYER.

27 DO YOU REMEMBER THAT TESTIMONY?

28 A IN RESPONSE TO YOUR 14-FOOT SUGGESTION,

1 YES.

2 Q OKAY. EVEN AT 12 FEET THE SHOOTER WOULD
3 BE IN THE FOYER.

4 A WHATEVER THE ROOM DIMENSIONS. WE'VE GOT
5 A SCALE DRAWING. SO I DON'T RECOLLECT THE EXACT
6 DIMENSIONS. IT WOULD -- AT SOME POINT HE HAS TO
7 MOVE OUT OF THE ROOM.

8 Q WASN'T IT YOUR ORIGINAL OPINION,
9 REPEATED IN TWO TELEPHONE CONVERSATIONS WITH MEMBERS
10 OF THE DEFENSE AND PROSECUTION IN THIS CASE, THAT
11 THE SHOOTERS CAME IN THROUGH THE FRENCH DOORS?

12 A THERE'S NOTHING IN MY RECONSTRUCTION
13 THAT REQUIRES AN ENTRY FROM EITHER POSITION. BUT I
14 THINK THAT IS MORE LIKELY THAN WALKING IN FROM THE
15 SIDE.

16 Q SO YOU STILL BELIEVE THE SHOOTERS CAME
17 IN THE FRENCH DOOR?

18 A I THINK IT IS MORE LIKELY, BUT THAT'S
19 JUST MY -- I HAVE NO BASIS FOR THAT.

20 Q THE FRENCH DOORS ARE 30 INCHES WIDE
21 BASED ON YOUR ENGINEERS' MEASUREMENT, CORRECT?

22 A CORRECT. THEY DON'T OPEN ALL THE WAY
23 BEHIND THE COUCH.

24 Q I HAVEN'T GOTTEN THERE YET. THEY DO NOT
25 OPEN ALL THE WAY BEHIND THE COUCH?

26 A THAT'S CORRECT.

27 Q THE ONE ON THE RIGHT, AS WE LOOK AT 2A,
28 IS THE ONE THAT DOES OPEN FROM THE OUTSIDE WITH A

1 KEY, CORRECT?

2 A YES.

3 Q AND THE OTHER ONE, THE ONE ON THE LEFT,
4 HAS A TWO-FOOT SLIDE BOLT AT THE TOP, CORRECT?

5 A CORRECT.

6 Q BASED ON THE PHOTOGRAPHS WHICH YOU ARE
7 ABLE TO ENLARGE ON YOUR COMPUTER, ONE CAN SEE THAT
8 THE BOLT IS INTO THE MORTISE ABOVE IT, HOLDING THAT
9 BOLT IN PLACE AT THE TIME THE POLICE TAKE THE
10 PHOTOGRAPHS, CORRECT?

11 A AT THIS POINT IN TIME, YES.

12 Q NOT AT THIS POINT IN TIME; AT THAT POINT
13 IN TIME, WHEN THE POLICE TOOK THE PHOTOGRAPHS.

14 A I MEAN -- WE WERE REFERRING TO THE SAME
15 POINT IN TIME. YOU ARE CORRECT.

16 Q SO IT IS YOUR THEORY THAT SOMEHOW TWO
17 PEOPLE WITH 30-INCH SHOTGUNS OPENED BOTH DOORS --
18 THE LEFT DOOR, THE RIGHT DOOR? YOU-DON'T-KNOW DOOR
19 (SIC)?

20 MR. CONN: OBJECTION. ARGUMENTATIVE. OBJECT
21 TO THE FORM OF THE QUESTION.

22 THE COURT: REPHRASE THE QUESTION.

23 Q BY MS. ABRAMSON: THEY OPENED WHICH
24 DOOR?

25 A WITH THE UNDERSTANDING THAT THERE'S
26 NOTHING IN THE PHYSICAL EVIDENCE THAT I CAN NOW
27 CORROBORATE THE FOLLOWING WITH; I JUST THINK IT MORE
28 PLAUSIBLE THAT THEY OPENED THE RIGHT -- IN THIS

41059

1 VIEW, THE RIGHT-HAND DOOR, THE DOOR ON THE RIGHT
2 WITH THE HANDLE.

3 Q FINE.

4 A WHICH DOESN'T OPEN ALL THE WAY.

5 Q THAT'S ALL I ASKED WAS WHICH DOOR.

6 A OKAY.

7 Q SO THEY OPENED THAT RIGHT-HAND DOOR,
8 WHICH DOESN'T OPEN ALL THE WAY.

9 A YES.

10 Q IN FACT, IT BLOCKS THEM FROM WHERE THE
11 TWO FIGURES THAT YOU BELIEVE ARE SITTING ON THE
12 COUCH ARE SITTING?

13 A YES.

14 Q THEY CAN'T GO THAT WAY, RIGHT, AT THIS
15 POINT?

16 A UNTIL THEY CLOSE THE DOOR, THAT'S
17 CORRECT.

18 Q SO THEY HAVE TO COME IN BEHIND THESE TWO
19 PEOPLE SITTING ON THE COUCH?

20 A YES.

21 Q AND THEN THEY HAVE TO CLOSE THE DOOR?

22 A CORRECT.

23 Q CORRECT? BEFORE THEY CAN WALK ALL THE

24 WAY AROUND AND OUT TO THE FOYER TO AIM SHOT NO. 1?

25 A ONE OF THE INDIVIDUALS OF --

26 MR. CONN: ASSUMES FACTS NOT IN EVIDENCE,

27 THAT THE SHOT WAS FIRED FROM THE FOYER.

28 THE COURT: SUSTAINED.

41060

1 THE ANSWER'S STRICKEN.

2 Q BY MS. ABRAMSON: ASSUMING THAT YOUR

3 CONCLUSION YESTERDAY, THAT IF THE SHOT PATTERN

4 DICTATES 12 TO 14 FEET, THEY'RE IN THE FOYER; THEN

5 IN ORDER TO GET SHOT 1 OFF THEY HAVE TO WALK ALL THE

6 WAY AROUND THE COUCH, WALK ACROSS THE ROOM, OUT THE

7 DOOR, AND SHOOT FROM THE FOYER?

8 MR. CONN: AGAIN, I WOULD OBJECT TO THE USE

9 OF MULTIPLE HYPOTHETICALS WHEN THE UNDERLYING FACTS

10 HAVE NOT BEEN ESTABLISHED.

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: IN FACT, THE

13 UNDERLYING FACTS ARE ABSURD, AREN'T THEY?

14 A NO.

15 Q IT'S ABSURD TO THINK THEY WOULD COME
16 FROM BEHIND, WALK AROUND, AND THESE PEOPLE WOULD
17 JUST REMAIN THERE SITTING ON THE COUCH UNTIL THEY
18 GOT TO THE FOYER. ISN'T THAT ABSURD?

19 A NO. I THINK IT IS THE MOST PLAUSIBLE
20 FOR THE FOLLOWING REASON.

21 Q I DIDN'T ASK YOU WHAT YOUR REASONS WERE.

22 MR. CONN: MAY THE WITNESS PLEASE ANSWER.

23 THE COURT: THE QUESTION DOESN'T ASK FOR
24 THAT. SO THE OBJECTION IS OVERRULED.

25 Q BY MS. ABRAMSON: NOW, YOU TESTIFIED
26 YESTERDAY THAT YOU THOUGHT MR. MENENDEZ RAISED HIS
27 ARMS UP IN A DEFENSIVE RESPONSE, CORRECT?

28 A I BELIEVE I INDICATED HE RAISED HIS LEFT

41061

1 ARM, AND HIS RIGHT SHOULDER DROPPING DOWN AND
2 PERHAPS ROTATING.

3 Q AND THAT WAS IN REACTION TO SOMETHING,
4 RIGHT?

5 A YES.

6 Q SOMETHING THAT HE COULD SEE?

7 A YES.

8 Q SOMETHING IN FRONT OF HIM?

9 A I BELIEVE, FROM THE ANGULARITY, NOT

10 DIRECTLY IN FRONT. OFF TO HIS LEFT.

11 Q OFF TO HIS LEFT AT THE ANGLE THAT YOU
12 SHOWED?

13 A IN THAT GENERAL DIRECTION, YES.

14 Q AND IN A DISTANCE TO PRODUCE THE ELBOW
15 WOUND.

16 A OF COURSE.

17 Q AND YOU THINK THAT'S WHAT HE REACTED TO,
18 SEEING PEOPLE?

19 A I DON'T THINK, AS YOU QUITE PROPERLY
20 BROUGHT UP YESTERDAY, THAT HE HAD HIS ARM SORT OF
21 FLOATING UP IN THE AIR WATCHING T.V.

22 Q YOU DON'T THINK THAT PEOPLE COMING IN
23 BEHIND THEM, HAVING TO OPEN AND CLOSE A DOOR, THAT
24 THEY REACTED AT ALL TO THAT?

25 A THEY MAY VERY WELL HAVE REACTED TO
26 THAT. IT'S JUST -- IF MY CHILDREN COME INTO A ROOM
27 I DON'T TURN AROUND. I NOTICE MY KIDS COMING IN,
28 AND THEY COULD COME IN FROM THE BACK HOLDING A

41062

1 WEAPON, AND NOT NECESSARILY EITHER PERSON WOULD
2 TURN. I CERTAINLY DON'T TURN WHEN MY KIDS WALK INTO
3 A ROOM NECESSARILY, CERTAINLY NOT BEHIND ME.

4 Q YOU DIDN'T JUST HAVE AN ARGUMENT WITH

5 YOUR KIDS EITHER, DID YOU?

6 MR. CONN: OBJECTION. IRRELEVANT.

7 THE COURT: SUSTAINED.

8 Q BY MS. ABRAMSON: YOU DON'T KNOW WHAT

9 PRECEDED THESE TWO PEOPLE SITTING IN THIS ROOM OR

10 THESE TWO KIDS ENTERING IT, DO --

11 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

12 EVIDENCE THERE ARE KIDS ON TRIAL.

13 THE COURT: SUSTAINED.

14 MS. ABRAMSON: HE USED THE WORD "KIDS," YOUR

15 HONOR.

16 THE COURT: ALL RIGHT. HE'S TALKING ABOUT

17 HIS CHILDREN.

18 Q BY MS. ABRAMSON: YOU DON'T KNOW WHAT

19 PRECEDED THIS SHOOTING, DO YOU?

20 A I KNOW SOME THINGS THAT PRECEDED THE

21 SHOOTINGS. THERE'S A COUPLE OF DISHES OF ICE CREAM

22 ON THE COFFEE TABLE.

23 Q ARE THERE?

24 A WELL, THAT WAS --

25 Q A COUPLE OF DISHES OF ICE CREAM.

26 READING VANITY FAIR RECENTLY FOR YOUR INFORMATION

27 ABOUT THE CASE, DR. MC CARTHY?

28 MR. CONN: OBJECTION. ARGUMENTATIVE.

1 THE COURT: SUSTAINED.

2 AND LET'S HAVE QUIET IN THE AUDIENCE.

3 MS. ABRAMSON: THANK YOU, YOUR HONOR.

4 Q WHERE DID YOU EVER HEAR THAT THERE WAS A
5 COUPLE OF DISHES OF ICE CREAM ON THE TABLE,
6 DR. MC CARTHY?

7 A ONE OF THOSE THINGS THAT I GUESS I
8 DIDN'T THINK WAS CONTROVERTED. BUT LET ME SEE IF I
9 COULD FIND A SOURCE FOR IT.

10 I'M SORRY. I DIDN'T BRING THE TRIAL
11 TESTIMONY WITH ME.

12 Q NOBODY TESTIFIED AT THAT TRIAL,
13 DR. MC CARTHY, THAT THERE WERE DISHES OF ICE CREAM
14 ON THE TABLE.

15 A ALL RIGHT. JUST ONE MINUTE.

16 Q DO YOU THINK IT WAS MELTED ICE CREAM OR
17 SOLID ICE CREAM?

18 MR. CONN: OBJECTION. IRRELEVANT.

19 THE WITNESS: FOR CERTAIN WERE MELTED.

20 Q BY MS. ABRAMSON: BEN & JERRY'S ICE
21 CREAM OR ANOTHER BRAND?

22 MR. CONN: OBJECTION. CALLS FOR SPECULATION
23 AND IRRELEVANT.

24 THE COURT: SUSTAINED. LET'S SEE IF HE CAN
25 FIND WHAT IT IS HE WAS REFERRING TO BEFORE WE HAVE
26 ANY MORE OF THESE TYPES OF QUESTIONS.

27 (PAUSE IN THE PROCEEDINGS.)

41064

1 THE WITNESS: OH, YEAH. IT'S IN THE PICTURE.

2 Q BY MS. ABRAMSON: IT'S IN THE PICTURE, A
3 COUPLE OF DISHES OF ICE CREAM IN THE PICTURE?

4 A HERE'S -- THE SPOON IS STILL IN IT.

5 Q STILL? LOOK, DR. MC, CARTHY, HERE'S THE
6 PICTURE.

7 A YEAH.

8 Q YEAH. WHAT'S IN THE GLASSES,
9 DR. MC CARTHY?

10 MR. CONN: OBJECTION. IRRELEVANT, AND UNDER
11 352 IT'S COLLATERAL TO THE ISSUES IN THE TRIAL.

12 THE COURT: OVERRULED.

13 THE WITNESS: THAT DOESN'T LOOK LIKE ICE
14 CREAM TO YOU?

15 MS. ABRAMSON: IT DIDN'T LOOK LIKE ICE CREAM
16 TO DETECTIVE ZOELLER WHO WAS THERE AND PICKED IT
17 UP. DIDN'T LOOK LIKE ANYTHING. IT WAS EMPTY.

18 MR. CONN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: IT'S VERY MUCH ARGUMENTATIVE.

20 MS. ABRAMSON: SORRY, YOUR HONOR.

21 THE COURT: LET'S ASK QUESTIONS IN THE PROPER
22 WAY.

23 Q BY MS. ABRAMSON: SO YOU TOOK A GLASS
24 THAT HAS WHITE STUFF AND A SPOON AND TURNED THAT
25 INTO TWO DISHES OF ICE CREAM; IS THAT RIGHT?
26 MR. CONN: OBJECTION. ARGUMENT. OBJECT TO
27 THE FORM OF THE QUESTION.
28 THE COURT: OVERRULED.

41065

1 THE WITNESS: I GUESS -- I DON'T KNOW WHY MY
2 RECOLLECTION IS MULTIPLE DISHES, ALTHOUGH THAT IS MY
3 RECOLLECTION. BUT, I MEAN, YOU DON'T THINK THIS IS
4 ICE CREAM?

5 MS. ABRAMSON: I KNOW IT ISN'T ICE CREAM,
6 DR. MC CARTHY, AND YOU DON'T KNOW WHAT IT IS.

7 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
8 EVIDENCE THAT COUNSEL KNOWS WHAT'S IN THAT DISH.

9 THE COURT: ALL RIGHT. SUSTAINED.

10 THE WITNESS SHOULDN'T ASK QUESTIONS OF
11 COUNSEL AND COUNSEL SHOULDN'T BE RESPONDING TO THE
12 QUESTION OF THE WITNESS.

13 AND THE RESPONSES OF COUNSEL ARE
14 STRICKEN.

15 THE WITNESS: I'M SORRY.

16 Q BY MS. ABRAMSON: DR. MC CARTHY, IS THIS
17 HOW YOU COME UP WITH YOUR ENGINEERING CALCULATIONS,

18 YOU SPECULATE ON EMPTY GLASSES?

19 MR. CONN: OBJECTION. ARGUMENTATIVE.

20 THE COURT: OBJECTION SUSTAINED TO THE FORM
21 OF THE QUESTION.

22 Q BY MS. ABRAMSON: YOU DON'T KNOW WHAT
23 WAS IN THAT GLASS.

24 A THAT IS CORRECT.

25 Q IT WAS NEVER TESTED, DO YOU KNOW THAT?

26 A I DON'T KNOW THAT. BUT IF THERE HAS
27 BEEN A TEST OF IT, I HAVE NOT SEEN IT.

28 Q AND WHATEVER MAY HAVE, AT SOME POINT IN

41066

1 HISTORY, BEEN IN THAT GLASS, YOU DON'T KNOW WHEN, IF
2 EVER, OR WHO ATE IT, DO YOU?

3 A I DO KNOW PER YOUR QUESTION IT WAS
4 BEFORE.

5 Q WELL, IT WAS BEFORE THE POLICE GOT TO
6 THE SCENE.

7 A THAT'S CORRECT.

8 Q HOW MANY DAYS BEFORE?

9 A OH, I CAN'T TELL YOU THAT.

10 Q COULD HAVE BEEN DAYS BEFORE, COULDN'T
11 IT?

12 MR. CONN: OBJECTION. IRRELEVANT.

13 THE COURT: SUSTAINED.

14 Q BY MS. ABRAMSON: YOU HAVE NO IDEA WHAT
15 WAS IN THAT GLASS OR WHO ATE IT OR WHEN IT WAS
16 EATEN.

17 MR. CONN: OBJECTION. ASKED AND ANSWERED.

18 THE COURT: OVERRULED.

19 Q BY MS. ABRAMSON: RIGHT?

20 A THAT'S NOT QUITE CORRECT. THERE WAS
21 SOME TESTIMONY ABOUT THE MAID AND WHEN SHE CLEANED
22 UP. THAT -- YOUR STATEMENT IS NOT CORRECT.

23 Q THERE WAS SOME TESTIMONY ABOUT WHEN THE
24 MAID CLEANED UP?

25 A YES. THE FREQUENCY WITH WHICH THE MAID
26 VISITED. AND I REMEMBER THIS -- THERE'S A VACUUM
27 CLEANER IN THE FRONT FOYER. YEAH. THERE'S SOME --

28 Q WHO'S -- YOU DIDN'T GET THE MAID'S

41067

1 TESTIMONY, DID YOU; OR DID YOU FORGET TO TELL US
2 ABOUT THAT?

3 A I DIDN'T GET THE MAID'S TESTIMONY. I
4 THINK I WAS THINKING -- MY RECOLLECTION, AS I SIT
5 HERE, ABOUT THE DETECTIVE'S INTERVIEW WITH THE
6 MAID --

7 Q WHAT INTERVIEW WITH THE MAID DID YOU

8 GET? I ASKED YOU ABOUT EVERYTHING THAT WAS

9 SUBMITTED TO YOU.

10 A AND I TOLD YOU EVERYTHING I GOT. BUT

11 THE QUESTION IS: THERE'S NO DISCUSSION OF THE MAID

12 IN ANY OF THAT STUFF?

13 Q THERE'S DISCUSSION OF THE MAID IN THE

14 TESTIMONY OF ERIK AND LYLE MENENDEZ CONCERNING HOW

15 OFTEN SHE WORKED THERE AND WHEN SHE WORKED THERE AND

16 WHERE HER ROOM WAS.

17 DO YOU REMEMBER THAT?

18 A AGAIN, I DON'T HAVE A SPECIFIC

19 RECOLLECTION OR SOURCE, OR I WOULD CITE IT TO YOU.

20 Q HOWEVER, THAT DISCUSSION BY THEM OF THE

21 TESTIMONY OF THE MAID DID NOT APPEAR IN THE PAGE YOU

22 TOLD US YOU GOT OF THEIR TESTIMONY.

23 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

24 EVIDENCE.

25 THE COURT: SUSTAINED.

26 Q BY MS. ABRAMSON: IN ANY EVENT, DR. MC

27 CARTHY, IS IT YOUR BELIEF THAT THERE'S BEEN

28 TESTIMONY THAT THE MAID WOULD HAVE PICKED UP A GLASS

41068

1 IF SHE HAD SEEN IT?

2 MR. CONN: I WOULD OBJECT UNDER 352 AT THIS

3 POINT.

4 THE COURT: WE'RE GETTING A LITTLE FAR AFIELD

5 HERE. MOVE ON TO SOMETHING ELSE.

6 Q BY MS. ABRAMSON: SO YOUR THEORY THAT

7 THE GUNS WERE BROUGHT INTO THE ROOM THROUGH THE

8 FRENCH DOOR WAS DEPENDENT ON THERE BEING TWO DISHES

9 OF ICE CREAM ON THE COFFEE TABLE?

10 A NO. NOT IN THE LEAST. THE REASON I

11 TEND TOWARDS THAT THEORY AS --

12 MS. ABRAMSON: ANYTHING ELSE IS NOT

13 RESPONSIVE.

14 MR. CONN: OBJECTION.

15 THE COURT: HE ANSWERED NO, AND I THINK THAT

16 WAS THE ANSWER TO THE QUESTION.

17 MS. ABRAMSON: THANK YOU, YOUR HONOR.

18 Q YOU READ THE TESTIMONY OF ERIK AND LYLE

19 MENENDEZ WHERE THEY INDICATED HOW THEY ENTERED THAT

20 ROOM, DID YOU?

21 A IF IT'S CONTAINED ON THE PAGES I READ,

22 YES, I READ IT.

23 Q AND THEY CERTAINLY DIDN'T TESTIFY THAT

24 THEY CAME IN THROUGH THE FRENCH DOORS, DID THEY?

25 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

26 THE COURT: SUSTAINED.

27 Q BY MS. ABRAMSON: YOU'RE NOT BASING YOUR

28 THEORY THAT THE SHOOTERS CAME IN FROM BEHIND THESE

1 PEOPLE WITH THESE TWO 30-INCH GUNS ON ANYTHING THAT
2 YOU READ OF THEIR TESTIMONY; ISN'T THAT TRUE?

3 A I REALLY DON'T HAVE A THEORY EITHER. I
4 JUST SAY I THINK IT MORE LIKELY. THERE'S NOTHING IN
5 THE EVIDENCE THAT COMPELS A PARTICULAR DIRECTION OF
6 ENTRY.

7 Q WELL, YOU THINK IT MORE LIKELY THAT
8 PEOPLE CAME IN BEHIND AND THEN WENT -- BUT THAT SHOT
9 NO. 2 WASN'T THE FIRST SHOT.

10 THAT'S ALSO YOUR THEORY, CORRECT?

11 A CORRECT.

12 Q NOW, I WANT TO SHOW YOU 295 AGAIN.
13 BEFORE WE GO ON TO THE NEXT SHOT THE NEXT SHOT --
14 WELL, LET ME ASK YOU THIS, DR. MC CARTHY.

15 THE WAY YOU'VE LAID THIS OUT, SHOTS 1
16 THROUGH 12, ARE YOU ASSUMING THAT EACH SHOT WAS
17 SEPARATELY FIRED?

18 A NO.

19 Q THERE COULD HAVE BEEN SIMULTANEOUS SHOTS
20 THEN?

21 A YES.

22 Q AND, IN FACT, DID ANYONE EVER GIVE YOU
23 EITHER THE TESTIMONY OR THE INTERVIEWS WITH THE EAR
24 WITNESSES, THE PEOPLE WHO HEARD IT?

25 A WHAT I HAVE BEEN GIVEN IS WHAT I
26 INDICATED TO YOU I'VE BEEN GIVEN.

27 Q WELL, DID ANYONE GIVE YOU, OR ARE YOU
28 AWARE, OF WHAT IT IS THAT VARIOUS WITNESSES SAID

41070

1 THEY HEARD AT THE TIME OF THE SHOOTING?

2 A AS I SIT HERE, I DON'T RECOLLECT ANY
3 TESTIMONY FROM ANYBODY TALKING ABOUT WHAT THEY
4 HEARD.

5 Q AND YOU WEREN'T GIVEN ANY INTERVIEWS
6 WITH WITNESSES, PEOPLE WHO LIVED IN THE
7 NEIGHBORHOOD, INDICATING WHAT THEY HEARD; IS THAT
8 CORRECT?

9 A I DON'T RECOLLECT SUCH MATERIAL, EXCEPT
10 TO THE EXTENT IT'S CONTAINED IN THE MATERIAL I HAVE
11 BEEN GIVEN.

12 Q WHETHER OR NOT YOU'VE INDICATED, IT
13 DOESN'T CONTAIN IT.

14 IS YOUR ANSWER YOU HAVEN'T BEEN GIVEN
15 IT?

16 A I DON'T RECOLLECT ANY.

17 Q NOW, IN THIS SEQUENCE -- YOU HAVEN'T
18 FIGURED OUT WHICH ONES COULD HAVE BEEN SIMULTANEOUS,
19 HAVE YOU?

20 A WE CAN GO THROUGH ON A SHOT BASIS.
21 THERE ARE SOME THAT COULD HAVE BEEN CLOSE. THERE

22 ARE OTHERS, OBVIOUSLY, TO THE EXTENT I POSTULATE SHE
23 MOVED, THOSE COULDN'T HAVE BEEN INSTANTANEOUS.

24 Q LET'S TAKE A LOOK AT 295. YOU SEE THE
25 TOP PICTURE ON 295 IN THE MIDDLE?

26 A YES.

27 Q THAT'S A PICTURE THAT SHOWS MR. MENENDEZ
28 ON THE COUCH AND THE FRENCH DOORS BEHIND HIM?

41071

1 A YES.

2 Q AND YOUR SHOT 3 IS WHAT YOU CALL A
3 MISSED ROUND THROUGH THE FRENCH DOORS.

4 A YES.

5 Q YOU'VE PROVIDED TWO VIEWS OF THAT.

6 A PROVIDED TWO VIEWS OF EACH SHOT.

7 Q RIGHT. AND THE TWO VIEWS OF THAT ONE
8 ARE 3A, WHICH IS 254, AND 3B, WHICH IS 255.

9 MR. LEVIN: I'LL DO IT.

10 MS. ABRAMSON: I WANT "B" IN FRONT OF "A."

11 Q NOW, JUST TO LOOK BACKWARD FOR A MOMENT
12 AT 2. FOR 2 YOU HAVE MRS. MENENDEZ SITTING ON THE
13 SOFA.

14 FOR 3 YOU HAVE HER STANDING UP; IS THAT
15 CORRECT?

16 A IN THE FIGURES DEPICTED, YES.

17 Q BUT YOU DON'T KNOW THAT SHE ALREADY
18 STOOD UP BEFORE SHOT 2 WAS EVER ADMINISTERED. YOU
19 DON'T KNOW THAT, DO YOU?

20 A WELL, WITH CERTAINTY, NO. BUT --

21 Q YOU'VE ANSWERED THE QUESTION.

22 NOW, WITH RESPECT TO 3, YOU HAVE
23 MRS. MENENDEZ STANDING AND FACING IN A PARTICULAR
24 DIRECTION. YOU HAVE HER SHOULDERS SQUARED TO A
25 PARTICULAR DIRECTION, CORRECT?

26 A WELL, THE FIGURE DOES, YES.

27 Q YOU PUT THE FIGURE THERE. THE FIGURE
28 DIDN'T GET THERE BY ITSELF, RIGHT?

41072

1 A THAT'S CORRECT.

2 Q AND THAT'S AN ARBITRARY POSITIONING BY
3 YOU, IS IT NOT?

4 A YES.

5 Q WITH RESPECT, HOWEVER, TO THAT
6 TRAJECTORY, THAT IS NOT AN ARBITRARY POSITIONING, IS
7 IT?

8 A IT IS NOT.

9 Q YOU ARE VERY DEFINITE THAT THAT
10 TRAJECTORY IS THE ONE THAT FIRED WHAT YOU'RE CALLING
11 ROUND 3 THROUGH THE FRENCH DOORS?

12 A YES.

13 Q AND THAT PUTS WHOEVER IS SHOOTING THAT
14 TO THE RIGHT OF THE COFFEE TABLE?

15 A ANYWHERE ALONG THAT VECTOR. I CAN'T PUT
16 THEM -- WELL, ALL OF THAT -- MOST THAT VECTOR IS TO
17 THE RIGHT OF THE COFFEE TABLE. SO...

18 Q THE SHOOTER'S NOT SITTING IN
19 MR. MENENDEZ' LAP WHEN THAT'S FIRED?

20 A NO. BUT HE COULD HAVE BEEN STANDING
21 VERY CLOSE TO HIS LEGS.

22 Q IN ANY EVENT, STILL TO THE RIGHT OF THE
23 COFFEE TABLE?

24 A ON THE RIGHT-HAND END TO BE SURE.

25 Q OKAY. TO BE SURE.

26 CAN YOU DRAW A LINE ON 295, THIS
27 PHOTOGRAPH, THAT WOULD SHOW THAT VECTOR?

28 A NOT AS GOOD AS THE COMPUTER DID, NO.

41073

1 Q THE COMPUTER DIDN'T DRAW THAT LINE. YOU
2 SAID THAT LINE WAS AN ARTIFACT THAT YOU COULD PUT
3 WHEREVER YOU WANTED.

4 A OH. I COULD PUT IT, BUT IT DID DRAW
5 IT. THE COMPUTER DOES A MUCH BETTER JOB THAN I DO
6 DRAWING.

7 Q IT MAY, BUT THE COMPUTER CAN'T DRAW ON
8 MY PHOTOGRAPH.

9 CAN YOU DRAW A LINE ON THAT PHOTOGRAPH
10 THAT WOULD SHOW IT?

11 A NOT AS I SIT HERE WITH -- YOUR
12 PHOTOGRAPH IS A WIDE ANGLE, AND I CAN'T DRAW THE
13 APPROPRIATE ANGULARITY IN A WIDE-ANGLE PICTURE BY --
14 THAT WOULD BE -- THAT I WOULD BE COMFORTABLE WITH.

15 Q WELL, THE PROBLEM IS WE CAN'T PRINT FROM
16 YOUR COMPUTER RIGHT NOW, RIGHT? YOU DIDN'T BRING A
17 PRINTER.

18 A WELL, YOU ARE RIGHT. I DID NOT BRING A
19 PRINTER.

20 Q SO YOU CAN'T DRAW IT ON THE COMPUTER AND
21 PRINT IT SO THE JURY COULD SEE IT?

22 A THAT'S WHAT I DID.

23 Q I'M ASKING YOU TO DO -- THAT'S YOUR
24 ILLUSTRATION, WHERE YOU MADE CERTAIN DECISIONS.

25 A YES.

26 Q THE PHOTOGRAPH, HOWEVER, IS WHAT THE
27 POLICE SAW.

28 YOU'LL AGREE TO THAT, WILL YOU NOT?

41074

1 A YES. BUT THE ANGULARITY -- THE WAY YOU

2 HAVE TO DRAW A LINE ON A WIDE-ANGLE PICTURE IS
3 DIFFERENT THAN YOU CAN -- FIRST OF ALL, THE COMPUTER
4 TAKES CARE OF ALL THE ISOMETRIC DISTORTION AND
5 EVERYTHING ELSE WHEN IT DRAWS. IF I WOULD LAY A
6 LINE DOWN ON THE WIDE-ANGLE PICTURE, I'VE GOT TO GET
7 THE ISOMETRICS RIGHT. A WIDE-ANGLE LENS MAKES
8 ANGLES LOOK DIFFERENT, BUT PREDICTABLY SO. IT'S NOT
9 IMPOSSIBLE. YOU JUST CAN'T GO AROUND THROWING LINES
10 ON WIDE-ANGLE PICTURES CARELESSLY.

11 Q YOU TOLD US BEFORE THE LINES YOU'VE
12 THROWN ON THESE ILLUSTRATIONS ARE NOT ABSOLUTELY,
13 DEFINITELY THE LINE OF FIRE. DIDN'T YOU SAY THAT?

14 A I MEAN, NOT EXACTLY THOSE WORDS, BUT THE
15 REMAINING EVIDENCE WON'T PERMIT ME TO PIN DOWN THESE
16 ANGLES PRECISELY. IF THAT'S YOUR POINT, YOU ARE
17 CORRECT.

18 Q WELL, WOULD YOU THEN, ACCORDING TO YOUR
19 VECTOR ON 3B, THAT LINE CROSSES -- LOOKS LIKE IT
20 COMES VERY CLOSE TO MR. MENENDEZ' RIGHT SHOULDER AND
21 THEN CROSSES THE BACK OF THE COUCH, CORRECT?

22 A COMES IN THE VICINITY OF HIS RIGHT
23 SHOULDER, YES.

24 Q CAN YOU PUT A MARK ON THAT PHOTOGRAPH
25 WHERE YOU THINK IT WOULD BE AS IT CROSSES THE BACK
26 OF THE COUCH.

27 A I'M COMFORTABLE POINTING OUT THE
28 CONNECTING POINTS IN THAT SCENE. I MEAN --

1 Q DID YOU TAKE SOMETHING THAT WILL WRITE
2 ON THAT?

3 A YES. I'LL POINT OUT THE DEFECT IN THE
4 BLINDS BEHIND.

5 Q AND DRAW THE LINE FROM THE DEFECT, IF
6 YOU WILL.

7 A THAT'S WHAT --

8 Q WE WON'T HOLD YOU TO PERFECTION. AT
9 LEAST DRAW IT BACK TO THE COUCH. THAT WAY THE ANGLE
10 WON'T BE AS IMPORTANT.

11 MR. CONN: I WOULD OBJECT, GIVEN THE
12 LIMITATION SPECIFIED BY THE WITNESS.

13 THE COURT: WELL, IF THE WITNESS SAYS HE CAN
14 DO IT, HE CAN. IF HE SAYS IT CANNOT BE DONE WITH
15 THAT PHOTOGRAPH, THEN HE DOESN'T HAVE TO DO IT.

16 MS. ABRAMSON: PERHAPS WE CAN FIND ANOTHER
17 ONE THAT CAN BE DONE. WHY DON'T YOU DO THIS ONE.
18 IT'S A BIGGER VERSION OF THE SAME THING AND YOU CAN
19 HAVE IT DOWN IN YOUR LAP.

20 THE WITNESS: I'M NOT GOING TO DRAW THE LINE,
21 BUT THERE IS A DEFECT AND --

22 Q WE CAN ALL SEE THE DEFECT. I WOULD LIKE
23 YOU TO TRY TO AT LEAST INDICATE SOME POINTS ALONG
24 THIS LINE, AT LEAST THE POINT OF WHERE IT'S CROSSING

25 THE COUCH, EVEN IF YOU DON'T WANT TO BRING IT OUT TO
26 THE TABLE. BECAUSE YOU'VE GOT A SOLID OBJECT, THE
27 COUCH WILL SHOW UP.
28 A BECAUSE OF THE ANGLE OF THIS PHOTOGRAPH,

41076

1 IF I DRAW A LINE ON HIS DIAGRAM, IT'S GOING TO LOOK
2 LIKE THAT SHOT GOES THROUGH HIS HEAD. IF YOU TOOK A
3 VIEW FROM THIS ANGLE YOU'LL SEE IT COMES CLOSE, BUT
4 MISSES, AS THIS DIAGRAM SHOWS.

5 Q JUST SHOW AS BEST YOU CAN TO THE BACK OF
6 THE COUCH, WHICH DOESN'T TAKE YOU TO HIS HEAD WHERE
7 IT WOULD BE.

8 MR. CONN: GIVEN THE LIMITATIONS TESTIFIED TO
9 BY THE WITNESS, I WOULD OBJECT UNDER 352. IT'S NOT
10 GOING TO ACCURATELY PORTRAY --

11 THE COURT: OVERRULED. IF THE WITNESS FEELS
12 HE CAN DO IT. IF HE SAYS HE CAN'T --

13 THE WITNESS: I'M GOING TO CIRCLE THE DEFECT
14 ON THE DOOR, BUT I CAN'T DRAW A LINE ACCURATELY
15 WITHOUT THE AID OF THE COMPUTER BECAUSE I CAN'T MAKE
16 THE ISOMETRICS COME UP --

17 Q BY MS. ABRAMSON: CAN YOU USE THE
18 COMPUTER OVER THE LUNCH HOUR TO SHOW YOU THAT LINE
19 AND THEN PUT IT ON THAT -- YOU HAVE THAT PHOTOGRAPH

20 IN YOUR COMPUTER, THE VERY ONE YOU'RE --

21 A I CAN'T MANIPULATE THIS PHOTOGRAPH IN MY
22 COMPUTER.

23 Q THIS IS IN YOUR COMPUTER.

24 A THE ONLY WAY YOU CAN ROTATE ANGLES IS TO
25 BUILD THESE OBJECTS IN THE APPROPRIATE SOFTWARE AND
26 THEN MOVE IT, LITERALLY BUILDING ALL THESE
27 THREE-DIMENSIONAL OBJECTS, MOVING THE SCENE. THAT'S
28 WHAT I TRIED TO DO HERE.

41077

1 Q LET ME JUST ASK YOU THIS: DO YOU THINK
2 IT'S CROSSING THE COUCH OVER HERE?

3 A NO. CLOSER TO THE HEAD.

4 Q HERE (POINTING)?

5 A TO THE LEFT OF HIS HEAD, OBVIOUSLY.

6 Q SOMEWHERE HERE (POINTING)?

7 A YES. AS THE DIAGRAM SHOWS.

8 Q CAN WE PUT AN "X" THERE, AT LEAST WHERE
9 YOU JUST INDICATED IT'S CROSSING THE COUCH?

10 A CLOSER TO HIS HEAD.

11 Q AS CLOSE TO HIS HEAD AS YOU FEEL IS THE
12 BEST YOU CAN DO.

13 A I WILL OVAL (SIC) AN AREA ONCE AGAIN
14 FROM THIS ANGLE. I CAN'T BE PRECISE.

15 Q FINE. SO YOU'VE PUT PROBABLY -- PROBABLY

16 TOO MUCH SHINE. PUT IT DOWN.

17 YOU'VE SHOWN AN OVAL AROUND THE DEFECT

18 IN THE BLINDS AND THE WINDOW, CORRECT?

19 A YES.

20 Q YOU'VE SHOWN ANOTHER OVAL IN THE AREA

21 NEAR HIS HEAD?

22 A RIGHT.

23 Q NOW I WANT TO GET CHART 3.

24 BY THE WAY, DR. MC CARTHY, WHAT'S THIS

25 JUST BEYOND THE OVAL THAT YOU DREW?

26 A I DON'T RECOLLECT, AND I CAN'T TELL FROM

27 THIS PHOTOGRAPH. DO YOU WANT ME TO BLOW ONE UP AND

28 LOOK?

41078

1 Q NO. I HAVE ONE BLOWN UP.

2 A OKAY.

3 Q DID YOU EVER NOTICE THE MARKS ON THE

4 BACK OF THE COUCH, TEARING OF THE FABRIC?

5 A YES, I DID.

6 Q AND DID YOU ASSOCIATE THE TEARING OF THE

7 FABRIC AND THE MARKS ON THE BACK OF THE COUCH WITH

8 THAT ROUND THAT YOU SAY IS A FULL ROUND THAT WENT

9 OUT THE WINDOW?

10 A NO, I DIDN'T.

11 Q IT'S OUTSIDE THE TRAJECTORY THAT YOU'VE
12 DRAWN, ISN'T IT?

13 A I THINK IT IS. I THINK IT'S NOT PART OF
14 THAT TIGHT GROUP GOING THROUGH THE WINDOW.

15 Q NOW, YOU TESTIFIED THAT YOU BELIEVED
16 THAT TIGHT GROUP GOING THROUGH THE WINDOW WAS OVAL
17 BECAUSE IT WAS SHOT AT A BIAS, IT WAS SHOT OFF TO
18 THE SIDE, NOT DIRECTLY LINED UP WITH THE WINDOW,
19 CORRECT?

20 A NOT PERPENDICULAR, THAT'S CORRECT.

21 Q BUT IT'S TRUE, IS IT NOT, THAT IF A SHOT
22 COLUMN IS INTERFERED WITH, IF PART OF IT HITS AN
23 INTERMEDIATE OBJECT, THAT CAN CHANGE THE SCRAPE OF
24 THE SCATTER, IT'S GOING THROUGH AN OBJECT?

25 A YES.

26 Q AND YOU, OF COURSE, DON'T KNOW EXACTLY
27 WHAT THE SHAPE OF THE ROUND IS IN HOWEVER MANY
28 BUNCHES THEY EMERGE FROM THE BARREL OF A SHOTGUN

41079

1 HERE, BECAUSE THE TESTS YOU DID DON'T TELL YOU THAT,
2 CORRECT?

3 A OUTSIDE OF THIS APPROXIMATELY CIRCULAR
4 -- YOU DON'T KNOW THE EXACT SHAPE AS A FUNCTION OF

5 DISTANCE, THAT IS TRUE.

6 Q NOW, IF THIS COLUMN HAD, IN FACT, NOT
7 COME FROM THE DIRECTION YOU INDICATE, BUT FROM MORE
8 STRAIGHT ON, AND HAD INTERSECTED WITH THE TOP OF THE
9 COUCH, THAT TOO COULD DISTORT ITS SHAPE, COULD IT
10 NOT?

11 A A SHOT INTERSECTING WITH THE TOP OF THE
12 COUCH MAY ACQUIRE SOME DISTORTION.

13 Q AND --

14 A BASICALLY --

15 Q THERE'S NO QUESTION PENDING.

16 LET ME JUST TRY AND GET OUT OF THE WAY
17 AND SHOW YOU THESE PHOTOGRAPHS.

18 THE ONE IN THE UPPER RIGHT IS THE ONE WE
19 WERE JUST MARKING IN A LARGER FORM, CORRECT?

20 A NO. THAT'S A SUB-SET OF THIS PICTURE.
21 ALL THIS HAS BEEN CROPPED.

22 Q RIGHT. I MEAN, IF IT'S THE SAME
23 PHOTOGRAPH?

24 A NO. IT MAY BE A DIFFERENT PHOTOGRAPH,
25 ACTUALLY. IT SHOWS THE SAME ITEMS, THOUGH THE BACK
26 -- THE HOLE IN THE WINDOW -- IT SHOWS MR. MENENDEZ
27 ON THE COUCH. SHOWS MRS. MENENDEZ --

28 Q IT'S A DIFFERENT PHOTOGRAPH.

1 A THAT'S RIGHT. YOU WANT TO HOLD THAT
2 JUST -- POINT OUT THE DEFECT. I WANT TO MAKE SURE
3 THE RECORD IS CLEAR YOU AND I WERE TALKING ABOUT THE
4 SAME THING ON THE BACK OF THE COUCH.

5 Q IT'S ABOUT HERE (POINTING)?

6 A FINE.

7 Q OUTSIDE YOUR OVAL. IN FACT, LOOK AT
8 THIS PHOTOGRAPH, THE ONE FARTHER DOWN --

9 THIS HAS TO BE MARKED, YOUR HONOR, 302.

10 THE COURT: THE BOARD WITH THE MULTIPLE
11 PHOTOGRAPHS IS 302.

12 Q AND THIS BOARD HAS THE NO. 3 UP IN THE
13 RIGHT-HAND CORNER.

14 THIS PHOTOGRAPH DOWN HERE, DR. MC CARTHY,
15 WHICH IS JUST A PHOTOGRAPH OF MR. MENENDEZ, IT SHOWS
16 THE DEFECT RIGHT THERE (POINTING).

17 A THAT'S RIGHT.

18 Q THAT'S NOT IN THE LINE WITH THE HOLE
19 YOU'VE GOT GOING THROUGH THE WINDOW, WHICH IS HERE,
20 (POINTING) CORRECT?

21 A IT'S NOT IN LINE WITH MY DIRECTION,
22 WHICH WOULD BE LIKE, YOU KNOW, SORT OF HERE
23 (POINTING).

24 Q CAN YOU DRAW THE LINE HERE? YOU JUST
25 SHOWED IT.

26 A THAT'S BETTER.

27 Q GOOD ENOUGH?

28 A WELL, I CAN DRAW A LINE. NOW LET ME

1 THINK WHAT MISTAKE I COULD MAKE BY DOING SO.

2 Q OH? I WOULDN'T WORRY ABOUT ONE
3 MISTAKE.

4 A OH, BUT I WORRY ABOUT EVERY MISTAKE I
5 HEAR ABOUT.

6 Q I WON'T ASK YOU TO DO IT NOW. OVER THE
7 LUNCH BREAK YOU CAN DECIDE. THE DEFECT WE'RE
8 TALKING ABOUT IS THERE (POINTING).

9 HERE IS A FURTHER CLOSE-UP WHICH ALSO
10 SHOWS THAT DEFECT?

11 A A LITTLE BIT OF TEARING.

12 Q IF YOU LOOK AT THIS PHOTOGRAPH IT SHOWS
13 THE DEFECT GOES ACROSS THE TOP AND BACK OF THE
14 COUCH. DO YOU SEE THAT? THESE LITTLE TUFTS THAT
15 ARE TORN OUT?

16 I'M SORRY.

17 A I'M HAVING TROUBLE SEEING WHAT YOU'RE
18 POINTING TO.

19 Q WHY DON'T YOU STEP DOWN. AND I'D ASK
20 YOU TO STEP DOWN AND EXAMINE THE TOP PHOTOGRAPH AND
21 THE ONE BENEATH IT AND SEE IF YOU SEE WHAT APPEARS
22 TO BE TEARS IN THE COUCH FABRIC.

23 A THERE'S TUFTING DOWN HERE (POINTING),

24 YOU'VE ALLUDED TO, AND YOU CAN SEE THEM IN THIS
25 PHOTOGRAPH TOO. I GUESS THAT'S DEFINITELY TUFTING
26 HERE. I GUESS WHERE I'M RELUCTANT -- THERE APPEARS
27 TO BE SOME DAMAGE HERE AND THERE'S TUFTING HERE.

28 Q OKAY. THANK YOU. YOU CAN RESUME THE

41082

1 STAND.

2 NONE OF YOUR ILLUSTRATIONS DEAL WITH
3 THAT DAMAGE TO THE COUCH; IS THAT TRUE?

4 A THAT'S CORRECT.

5 Q NOW, YOU ALSO INDICATE THAT YOU RECEIVED
6 A COPY OF A DIAGRAM THAT MR. CLARK FOGG OF THE
7 BEVERLY HILLS POLICE DEPARTMENT TOOK, RATHER, MADE
8 QUITE RECENTLY.

9 DO YOU RECALL THAT IN THE DIAGRAM
10 SHOWING THE FRENCH DOORS AND THE TREE?

11 A YES. YES, I DO. I'M SORRY. I DIDN'T
12 MEAN TO BE DENSE.

13 Q NOW, IT'S YOUR TESTIMONY THAT THIS HOLE
14 IN THE -- THIS IS THE WESTERN DOOR, IS IT NOT?

15 A YES.

16 Q IT'S YOUR TESTIMONY THAT THE PROOF OF
17 THE ACCURACY OF THIS PARTICULAR SHOT, ACCORDING TO
18 YOUR HYPOTHESIS, ARE THE PELLET MARKS THAT APPEARED

19 ON THE TREE, RIGHT?

20 A I WILL SAY THEY'RE CONFIRMATORY. I
21 PLACED THIS SHOT BEFORE KNOWING THE EXACT POSITION
22 OF THE TREE AND IT WORKED OUT 23 DEGREES PERFECTLY.

23 Q YOU KNEW THERE WAS A TREE, THOUGH?

24 A YEP.

25 Q YOU SAW THE PICTURES OF THE TREE?

26 A THAT'S RIGHT.

27 Q BEFORE YOU PLACED THIS SHOT YOU SAW A
28 TREE THAT APPEARED TO HAVE PELLET DEFECTS.

41083

1 A THAT IS TRUE, BUT I DIDN'T USE THE TREE
2 IN THE PLACEMENT OF THIS RAY FOR THE SHOT. I DID
3 THAT ON THE BASIS OF THE OVALITY. BUT WHEN YOU
4 PLACED IT BASED ON THE OVALITY IT COMES RIGHT OUT
5 AND INTERSECTS THE TREE.

6 Q AND YOU IGNORED, FOR THOSE PURPOSES --
7 NEVER ENOUGH ORGANIZATION.

8 I'M PUTTING UP WHAT'S 265 IN EVIDENCE
9 AND I'LL DO THEM NEXT TO EACH OTHER.

10 NEXT TO IT IS NO. 18.

11 THE COURT: WHAT'S THE ONE ABOVE IT?

12 MS. ABRAMSON: THE ONE ABOVE IT? GOOD POINT,
13 YOUR HONOR. IT'S NO. 17.

14 Q NO. 17 SHOWS -- THIS ISN'T GOING TO
15 HOLD -- 17 SHOWS BOTH FRENCH DOORS FROM THE EXTERIOR?
16 A YES.
17 Q AND IF I WERE THE PHOTOGRAPHER WHO TOOK
18 17, THE TREE WOULD BE BEHIND ME AND PERHAPS OFF TO
19 MY RIGHT?
20 A PROBABLY JUST ABOUT BEHIND YOU. YOU'RE
21 STANDING OFF TO THE RIGHT WHEN YOU TAKE THIS SHOT.
22 YOU MAY BE STANDING IN FRONT OF THE TREE.
23 Q OKAY. AND WHAT IS THE DISTANCE, DO YOU
24 KNOW, FROM THE HOLE IN THE WEST DOOR, WHICH IS THE
25 ONE ON THE LEFT, TO THE TRUNK OF THE TREE?
26 A IN THE DIRECTION TOWARDS THE
27 PHOTOGRAPHER IT'S 31 FEET.
28 Q YOU'RE READING FROM SOMETHING?

41084

1 A THE DIAGRAM, THE ONE WE TALKED ABOUT.
2 Q MR. FOGG'S DIAGRAM?
3 A YES.
4 Q AND APPARENT IN BOTH THE LARGE
5 PHOTOGRAPH ON TOP AND THE ONE HERE ON THE RIGHT,
6 WHICH IS 18, IS THAT THERE'S ALSO A HOLE IN THE EAST
7 DOOR, CORRECT?
8 A A BROKEN WINDOW, AND PART OF THE GLASS

9 BROKEN OUT, YES.

10 Q AND THERE WERE PELLETS FOUND BELOW THAT,
11 CORRECT, INSIDE?

12 A INSIDE, YES.

13 Q THERE ARE PELLET DEFECTS IN THE SLATS IN
14 FRONT OF THAT HOLE IN THE EAST DOOR?

15 A A FEW, YES.

16 Q IT'S FAIR TO OPINE, IS IT NOT, THAT HOLE
17 WAS CAUSED BY PELLETS?

18 A YES.

19 Q AND YOU CAN SEE FROM -- DID YOU FIND ME
20 THE -- YOU'RE LOOKING AT A COPY OF -- THIS IS THE
21 EXHIBIT RIGHT NOW.

22 A YES.

23 Q NO. 278?

24 A YES.

25 Q YOU'RE LOOKING AT THE SAME THING.

26 A YES, I AM.

27 Q NO. 278 IS THE DRAWING THAT MR. FOGG
28 MADE, CORRECT?

41085

1 A CORRECT.

2 Q AND ACCORDING TO HIS DRAWING, PELLETS
3 COMING OUT OF EITHER OF THOSE HOLES COULD HAVE HIT

4 THE TREE?

5 A I DON'T KNOW THAT HE TESTIFIED TO THAT,
6 BUT IF HE HAD CONSIDERED THE VERTICAL ANGULATION, HE
7 WOULDN'T HAVE TESTIFIED TO THAT, IF HE DID, WHICH I
8 HAVE NO EVIDENCE.

9 MS. ABRAMSON: MOVE TO STRIKE, YOUR HONOR, AS
10 NOT RESPONSIVE.

11 THE COURT: OBJECTION SUSTAINED.

12 THE ANSWER IS STRICKEN, BUT PERHAPS YOU
13 COULD CLARIFY WHAT YOU MEAN IN YOUR QUESTION.

14 MS. ABRAMSON: OKAY.

15 Q I'M ASKING YOU ABOUT THE DIAGRAM, WHICH
16 IS ALL THAT'S IN FRONT OF YOU, CORRECT?

17 A YES.

18 Q AND ACCORDING TO THAT DIAGRAM, PELLETS
19 COMING OUT OF BOTH OF THOSE HOLES COULD HAVE STRUCK
20 THE TREE, DEPENDING ON THEIR ANGLE?

21 MR. CONN: OBJECTION. MISREPRESENTS THE
22 DIAGRAM.

23 MS. ABRAMSON: IT SHOWS IT TO CLEARLY.

24 THE COURT: IS THE QUESTION, ASSUMING A
25 PROJECTILE WENT THROUGH THE HOLES IN THE WINDOW AS
26 SHOWN, IT COULD HAVE STRUCK THE TREE WITH SUCH
27 VELOCITY? IS THAT WHAT YOU'RE SAYING?

28 Q BY MS. ABRAMSON: I'M ASKING WHAT DOES

1 THE -- DOESN'T THE TRAJECTORY VECTOR LINES COMING
2 OUT OF BOTH WINDOWS WIND UP ON THE TREE?

3 A THE DIAGRAM JUST SHOWS THE GEOMETRY IN
4 THE HORIZONTAL PLANE ONLY OF THE TREE IN
5 RELATIONSHIP TO THE TWO DEFECTS.

6 Q AND IT SHOWS A LINE FROM EACH OF THOSE
7 HOLES IN THE DOOR THAT CONNECTS TO THE TREE.

8 A IN THE HORIZONTAL PLANE ONLY, YES.

9 Q AND A LINE IS WHAT YOU WERE PROJECTING
10 -- THAT'S WHAT YOUR VECTORS ARE, A LINE BETWEEN A
11 HOLE AND A TREE?

12 A CORRECT.

13 MS. ABRAMSON: YOUR HONOR, I'M ABOUT TO GO ON
14 TO THE NEXT ONE SO...

15 THE COURT: ALL RIGHT. WE'LL TAKE OUR
16 RECESS. RESUME AT 1:30.

17 DON'T DISCUSS THE MATTER WITH ANYONE AND
18 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL
19 RESUME AT 1:30.

20 (AT 12:00 NOON PROCEEDINGS WERE
21 ADJOURNED UNTIL 1:00 P.M. OF THE
22 SAME DAY.)

1 VAN NUYS, CALIFORNIA; THURSDAY, NOVEMBER 16, 1995
2 1:50 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER)

6 (MARY LU MURPHY, OFFICIAL REPORTER)

7

8 THE COURT: EVERYONE IS PRESENT. WE'LL HAVE

9 THE JURY OUT PLEASE.

10 (THE JURY ENTERED THE COURTROOM

11 AND THE FOLLOWING PROCEEDINGS

12 WERE HELD:)

13

14 THE COURT: ALL RIGHT. EVERYONE IS PRESENT.

15 WE WILL RESUME WITH THE CROSS-EXAMINATION.

16 MS. ABRAMSON: THANK YOU, YOUR HONOR.

17

18 CROSS-EXAMINATION (CONTINUED)

19 BY MS. ABRAMSON:

20 Q DR. MC CARTHY, WE'RE TALKING ABOUT, NOW,

21 INJURIES TO MRS. MENENDEZ THAT YOU HAVE CALLED SHOT

22 NO. 4. OKAY?

23 A OKAY.

24 Q YOU RECALL THAT THIS IS WHAT THE CORONER

25 CALLS, AND WHAT DR. LAWRENCE CALLED, NO. 2.

26 DO YOU RECALL THAT?

27 A I THINK THAT'S CORRECT. YES.

28 Q YES, IT'S NO. 2.

1 A YES, IT IS NO. 2. BUT IT'S MR. GOLDEN,
2 NOT MR. WARREN.

3 Q I SAID THE CORONER.

4 A OH.

5 Q I USED THE WORD "CORONER."

6 A OKAY.

7 Q YOU UNDERSTAND DR. GOLDEN IS THE CORONER
8 IN THIS CASE?

9 A OH. YES, I DID. OKAY. I'M SORRY. I
10 DIDN'T MEAN TO BE OBTUSE. OKAY.

11 MS. ABRAMSON: ALL RIGHT. NOW, YOU HAVE
12 SHOWN THIS IN THE DIAGRAM, AND --

13 MR. LEVIN, COULD YOU JUST SET UP "A" ON
14 ONE BOARD AND "B" ON THE OTHER. THANK YOU.

15 GOOD. THANK YOU. THAT'S OKAY. I THINK
16 IT WILL STAY. THANK YOU.

17 ONE OF THE JURORS CAN'T SEE IT.

18 ALL RIGHT.

19 Q NOW, YOUR ILLUSTRATION FOR WHAT YOU CALL
20 SHOT 4 SHOWS THIS SHOT COMING IN ALMOST
21 PERPENDICULAR TO THE FRONT OF MRS. MENENDEZ' FACE,
22 CORRECT?

23 A YES.

24 Q AND THE WAY YOU'VE DEMONSTRATED IT, IT
25 SHOWS THAT THE SHOT IS COMING AT LEAST

26 PREDOMINANTLY, IF NOT EXCLUSIVELY, FROM THE RIGHT

27 SIDE?

28 A PREDOMINANTLY RIGHT TO LEFT, MORE THAN

41089

1 FRONT TO BACK, YES.

2 Q AND YOU REALIZE, OF COURSE, THAT

3 DR. GOLDEN DESCRIBED THIS WOUND, AND HE DISSECTED IT

4 INSIDE, AS FRONT TO BACK WITH NO ANGULATION LEFT TO

5 RIGHT.

6 A I CAN'T --

7 Q TRY PAGE 4.

8 A I'M LOOKING AT PAGE 4 AND I DON'T SEE

9 ANY MENTION TO HIS DISSECTION. DID HE CHARACTERIZE

10 IT FRONT TO BACK? IT WAS THE DISSECTION THAT I

11 COULDN'T SUPPORT.

12 Q THE PARAGRAPH -- FIRST OF ALL, THERE'S A

13 PARAGRAPH THAT SAYS: "THE TRAJECTORY IS FRONT TO

14 BACK WITHOUT ANY ANGULATION OR DEVIATION

15 DETERMINATE," CORRECT?

16 A YES.

17 Q AND THE PARAGRAPH ABOVE THAT SHOWS WHAT

18 THE SUBSEQUENT AUTOPSY -- YOU UNDERSTAND AN AUTOPSY

19 IS A SURGICAL EXAMINATION, DON'T YOU?

20 A IT IS AN EXAMINATION. DEPENDING ON THE

21 WOUNDS, IT MAY OR MAY NOT INVOLVE SURGERY.

22 Q YES. HE'S SHOWING THAT THE WOUND ENTERS
23 FROM THE SKIN. THAT'S WHAT YOU CAN SEE FROM THE
24 OUTSIDE, RIGHT?

25 A YES.

26 Q SOFT TISSUE AND BONE IN THE FACE,
27 CORRECT?

28 A THAT'S WHAT HE'S WRITTEN.

41090

1 Q AND IT TALKS ABOUT THE PATHWAYS,
2 INTERSECTING PATHWAYS FROM OTHER WOUNDS.

3 A YES.

4 Q AND DO YOU UNDERSTAND, THAT TO SEE
5 PATHWAYS, HE HAS TO GET IN THERE, RIGHT?

6 A I GUESS THAT'S NOT MY UNDERSTANDING. IF
7 HE INSERTED PROBES AND SAW THEY CROSS -- THE WORD
8 DISSECTION --

9 Q YOU DON'T KNOW. YOU DON'T UNDERSTAND
10 THAT CORONERS DISSECT WOUND PATHS?

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

13 THE COURT: WELL, IT MISSTATES THE WITNESS'
14 ANSWER.

15 Q BY MS. ABRAMSON: IS IT YOUR

16 UNDERSTANDING -- WELL, STRIKE THAT.

17 DO YOU HAVE AN UNDERSTANDING ABOUT WHAT

18 CORONERS DO TO EXAMINE WOUND PATHS INSIDE HUMAN

19 BODIES?

20 A I HAVE A GENERAL UNDERSTANDING BASED ON

21 HAVING READ AUTOPSIES.

22 Q AND IS IT YOUR GENERAL UNDERSTANDING

23 THAT THEY CUT AND LOOK?

24 A SOMETIMES THEY DO AND SOMETIMES THEY

25 DON'T, DEPENDING ON THE WOUND.

26 Q OKAY. NOW, DID THIS SHOT TAKE OUT HER

27 RIGHT EYE?

28 A I THINK SO.

41091

1 Q YOU THINK SO?

2 A UH-HUH.

3 Q WERE YOU AT THE AUTOPSY?

4 A NO.

5 Q IS THERE ANY MENTION WHATSOEVER IN THIS

6 DESCRIPTION OF THIS WOUND, THAT IT DAMAGED THE EYE

7 ITSELF?

8 A NO. AND I GUESS TOTALLY, JUST BASING ON

9 THE PICTURES --

10 Q IT DOESN'T SAY ANYTHING ABOUT DAMAGE TO

11 THE EYE OR THE EYE IS TAKEN OUT, DOES IT?

12 A NO.

13 MR. CONN: OBJECTION. VAGUE AS TO WHAT IS

14 MEANT BY THE TERM "TAKEN OUT."

15 THE COURT: ONLY THE ANSWER WILL STAND.

16 Q BY MS. ABRAMSON: YOU'VE DESCRIBED IT

17 BEFORE IN OUR PRETRIAL HEARING AS TAKING OUT HER

18 RIGHT EYE, HAVEN'T YOU?

19 A I DON'T REMEMBER DOING SO, BUT I THINK

20 IT DID. BUT LIKE I SAY, ALL I HAVE IS THE

21 PHOTOGRAPHS.

22 Q AND SO YOU MADE CERTAIN ASSUMPTIONS

23 BASED ON PHOTOGRAPHS, EVEN IF THOSE ASSUMPTIONS HAD

24 NO EVIDENCE TO SUPPORT THEM; ISN'T THAT TRUE?

25 A I WOULDN'T CALL A PHOTOGRAPH NO

26 EVIDENCE.

27 Q LET'S -- WOULD IT REFRESH YOUR

28 RECOLLECTION AS TO WHETHER YOU TESTIFIED BEFORE THAT

41092

1 IT TOOK OUT HER EYE IF I SHOW YOU YOUR TESTIMONY

2 FROM THE PRETRIAL HEARING?

3 A IF YOU WANT ME TO ALSO -- I MEAN, I

4 BELIEVE IT DID. IF YOU ALSO WANT TO ME TO CONFIRM

5 DID I SAY THAT IN THE PRETRIAL HEARING, SURELY.

6 JUST SHOW ME THE TESTIMONY AND --

7 MS. ABRAMSON: COULD I SHOW THE WITNESS PAGE

8 35,435?

9 YOU CAN START HERE.

10 THE WITNESS: YES.

11 Q BY MS. ABRAMSON: YOU DID SO TESTIFY?

12 A YES.

13 Q NOW, YOU HEARD DR. LAWRENCE TESTIFY,

14 DIDN'T YOU?

15 A NOT ALL OF HIS TESTIMONY, NO.

16 Q DO YOU KNOW -- YOU STILL HAVEN'T READ

17 HIS TRANSCRIPTS?

18 A NO.

19 Q DO YOU KNOW IF HE TESTIFIED THAT IT TOOK

20 OUT HER RIGHT EYE, TO USE A MORE MEDICAL WAY OF

21 PUTTING IT, OR REFERRED TO THAT AT ALL?

22 A I DON'T KNOW ONE WAY OR THE OTHER.

23 Q WHAT IF HE DIDN'T?

24 MR. CONN: OBJECTION. VAGUE.

25 THE COURT: THE QUESTION IS VAGUE.

26 Q BY MS. ABRAMSON: IF DR. LAWRENCE DID

27 NOT TESTIFY THAT HER RIGHT EYE WAS DESTROYED BY THIS

28 WOUND THEN, ARE YOU STILL GOING TO ASSUME IT WAS?

1 MR. CONN: OBJECTION. CALLS FOR SPECULATION
2 WHETHER DR. LAWRENCE WAS ASKED THAT QUESTION.

3 THE COURT: SUSTAINED.

4 Q BY MS. ABRAMSON: IS IT YOUR
5 UNDERSTANDING DR. LAWRENCE DESCRIBED EACH WOUND?

6 A HE DISCUSSED THEM GENERALLY. I DON'T
7 KNOW IF HE DESCRIBED EACH ONE.

8 Q OKAY. DO YOU KNOW IF HE DESCRIBED AN
9 INJURY TO THE EYE ITSELF?

10 A I DON'T KNOW ONE WAY OR THE OTHER.

11 Q DOES IT MATTER IF HE HAD -- IF IN HIS
12 TESTIMONY HE DID NOT INDICATE THERE WAS ANY DAMAGE
13 TO THE EYE ITSELF, WOULD THAT MATTER TO YOUR
14 ASSUMPTION THAT THE EYE WAS DESTROYED?

15 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
16 EVIDENCE THAT HE DID SO TESTIFY.

17 MS. ABRAMSON: I THINK HE DID, YOUR HONOR.

18 THE COURT: WELL, REGARDLESS OF THAT, UNLESS
19 THERE WAS SOME REFERENCE ONE WAY OR THE OTHER TO THE
20 EYE, IT IS MEANINGLESS. SO --

21 MS. ABRAMSON: I BELIEVE THERE WAS REFERENCE
22 TO THE EYE.

23 THE COURT: PERHAPS YOU CAN IDENTIFY WHAT IT
24 WAS.

25 MS. ABRAMSON: ALL RIGHT. I'LL LOOK IT UP.

26 Q NOW, DO YOU HAVE IN FRONT OF YOU -- I PUT
27 SOME X RAY PHOTOGRAPHS --

28 A YES. I HAVEN'T LOST THEM YET.

1 Q OKAY. AND WOULD YOU FIND -- JUST HOLD
2 THAT FOR A MOMENT.

3 WHAT'S IN FRONT OF YOU -- LET ME READ THE
4 NUMBER FROM THE BACK. WHAT'S IN FRONT OF YOU IS
5 EXHIBIT NO. 174.

6 DO YOU RECOGNIZE THAT?

7 A YES.

8 Q AND WERE YOU HERE WHEN THE RED CIRCLES
9 WERE PLACED ON THAT?

10 A I DON'T RECOLLECT BEING SO.

11 Q AND DO YOU KNOW WHO PLACED THE RED
12 CIRCLES ON THAT?

13 A I DO NOT.

14 Q YOU -- STRIKE THAT.

15 YOU SCANNED PHOTOGRAPHS OF THE X RAYS
16 INTO A COMPUTER AND PLACED THEM ON CD-ROM, CORRECT?

17 A YES.

18 Q I'M NOT GOING TO ASK YOU TO --

19 A OH, OKAY.

20 Q WHEN YOU DID THAT YOU GAVE THEM CERTAIN
21 NUMBERS, THE X RAY PHOTOGRAPHS?

22 A YES.

23 Q AND WHAT NUMBER DID YOU GIVE THAT
24 PARTICULAR PHOTOGRAPH?

25 A I'D HAVE TO LOOK.
26 Q WHY DON'T YOU LOOK AT IT. IT'S THERE.
27 IT'S PRINTED OUT ON THE PHOTOGRAPH.
28 A OH. GEES. 8.XRAY.

41095

1 Q AND WHAT IS 8.XRAY, DR. MC CARTHY?
2 A IT'S AN X RAY OF MARY MENENDEZ' SKULL
3 PRIMARILY. IT ALSO CAPTURED PART OF HER SHOULDER
4 AND NECK.
5 Q AND FROM WHAT DIRECTION IS THAT X RAY
6 TAKEN, BACK TO FRONT OR FRONT TO BACK?
7 A FACE TO BACK, I THINK.
8 Q DID YOU PREVIOUSLY TESTIFY IT WAS BACK
9 TO FRONT?
10 A I DON'T REMEMBER DOING SO, BUT IF I SAID
11 THAT IT'S INCORRECT.
12 Q YOU HAVE NO TRAINING IN READING X RAYS?
13 A I MEAN, MEDICAL X RAYS, THAT'S CORRECT.
14 Q YOU'RE SAYING YOU HAVE NO RECOLLECTION
15 OF HAVING SO TESTIFIED?
16 A THAT IS TRUE. I HAVE NO RECOLLECTION OF
17 SO TESTIFYING. BUT --
18 Q WOULD IT REFRESH YOUR RECOLLECTION IF I
19 SHOWED YOU YOUR TESTIMONY FROM THE PRETRIAL HEARING?

20 A CONCERNING WHAT I TESTIFIED TO, SURELY.

21 Q CONCERNING 8.XRAY. THAT'S WHAT THAT'S
22 CALLED, ISN'T IT, 8.XRAY?

23 A THAT'S THE NUMBER THAT PRINTED OUT ON
24 IT, SO I ASSUME YOU'RE CORRECT.

25 Q LET ME SHOW YOU PAGE 35,432 AND ASK YOU
26 TO READ, STARTING AT LINE 24.

27 A (WITNESS COMPLIES.) YEAH. I APPARENTLY
28 SAID BACK TO FRONT, BUT IT IS FRONT TO BACK.

41096

1 Q WERE YOU HERE WHEN DR. LAWRENCE
2 TESTIFIED THAT THAT WAS FRONT TO BACK?

3 A NO.

4 Q AND YOU WEREN'T HERE WHEN DR. LAWRENCE
5 MARKED IT, CORRECT?

6 A THAT'S CORRECT. WELL, I DON'T THINK I
7 WAS.

8 Q YOU DON'T REMEMBER?

9 A IN ALL HONESTY, I WAS THINKING ABOUT
10 OTHER THINGS AT THE TIME. I CAN'T SAY I WAS PAYING
11 ATTENTION TO THE TESTIMONY AT EVERY POINT.

12 Q THE REASON THAT YOU WERE HERE WHILE
13 DR. LAWRENCE WAS TESTIFYING WAS SO THAT YOU COULD
14 HEAR WHAT HE SAID SO THAT YOU COULD SAY THAT YOU

15 RELIED ON IT, ISN'T THAT TRUE?

16 A NO. I WOULD HAVE BEEN HERE FOR HIS
17 DIRECT IF THAT WOULD HAVE BEEN THE THOUGHT. I WAS
18 HERE WHEN DR. LAWRENCE TESTIFIED BECAUSE I THOUGHT
19 HE WAS GOING ON FOR A SHORT TIME IN THE MORNING AND
20 THEN I'D BE ON.

21 Q OKAY. NOW, ACCORDING TO YOUR VIEW OF
22 THIS, THIS SHOT WHICH YOU CALL SHOT 4, CAUSES
23 MRS. MENENDEZ TO FALL FLAT ON HER BACK, CORRECT?

24 A I POSTULATE THIS IS THE SHOT THAT MAKES
25 HER PROSTRATE, YES.

26 Q AND SHE FALLS ONTO HER BACK CORRECT?

27 A SHE DOESN'T NECESSARILY HAVE TO FALL
28 THAT WAY. SHE JUST HAS TO END UP THERE.

41097

1 Q FOR THE REST OF WHAT YOU'RE ABOUT TO
2 STATE TO WORK?

3 A IT'S THE MOST SENSIBLE GEOMETRIC
4 EXPLANATION. IT'S NOT THE ONLY ONE.

5 Q IT'S THE ONE YOU CHOSE, CORRECT?

6 A YES.

7 Q NOW, WHY IS IT IN YOUR OPINION THAT THIS
8 SHOT CAUSES HER TO HIT THE DECK?

9 A WELL, BECAUSE I THINK THE LATER SHOTS,

10 AGAIN IN MY OPINION, INDICATE A PRONE BODY; AND
11 SHE'S GOT TO GET PRONE SOMEHOW. AND THIS SHOT,
12 BEING AT THE FACE, LOOKED LIKE IT WAS OF THE TYPE
13 AND CHARACTER AND INJURY LEVEL THAT COULD DO THAT.

14 Q WELL, DID YOU INDICATE IN THE REPORT --
15 BEFORE WE GET THERE -- OF AN INJURY LEVEL, YOU MEAN
16 IT WAS SO SERIOUS AN INJURY THAT IT WOULD CAUSE
17 ANYONE TO FALL AFTER RECEIVING IT?

18 IS THAT WHAT YOU MEAN?

19 A I DON'T KNOW IF IT WOULD CAUSE ANYONE.
20 I THINK IT'S HIGHLY PLAUSIBLE THAT IT DID CAUSE HER
21 TO FALL.

22 Q AND DID YOU -- IS THAT BECAUSE THERE WERE
23 SHOTS IN THE FRONTAL LOBES OF THE BRAIN FROM THIS?

24 A NOT NECESSARILY BECAUSE OF ANYTHING IN
25 THE LOBES OF THE BRAIN, BUT JUST -- IT'S -- IN MY
26 OPINION, IT'S A SEVERE SHOT TO THE FACE.

27 Q OKAY.

28 A I MEAN, ONE CAN ONLY SPECULATE HOW IT

41098

1 FELT.

2 Q ONE COULD ONLY SPECULATE HOW IT
3 HAPPENED, CAN'T ONE?

4 A WELL, I MEAN, NO. SHE WAS SHOT BY NO. 4

5 BUCK IN THE FACE. I MEAN, PRECISE ANGLE IS WHAT

6 YOU'RE DISCUSSING.

7 Q WE'RE ALSO DISCUSSION THE PRECISE

8 SEQUENCE, AREN'T WE?

9 A YES. WHEN IN THE ORDER SHE WAS SHOT IN

10 THE FACE.

11 Q AND YOU PREVIOUSLY TESTIFIED THAT SHOT 4

12 DID NOT NECESSARILY HAPPEN NEXT. IT COULD HAVE BEEN

13 5 OR 6 THAT HAPPENED NEXT; ISN'T THAT TRUE?

14 A IN POINT OF FACT, I CAN'T ABSOLUTELY,

15 POSITIVELY GUARANTEE THIS ONE HAPPENED HERE; THAT IS

16 CORRECT.

17 Q IN FACT, DR. LAWRENCE TESTIFIED THAT --

18 LET'S SEE IF WE MAKE SURE WE'RE ALL TALKING ABOUT

19 THE SAME THING -- THAT NO. 4 WAS PERFECTLY CONSISTENT

20 WITH HER STANDING UP, CORRECT, AS YOU HAVE HER?

21 A YES.

22 Q THAT NO. 5 COULD HAVE HAPPENED -- WHICH

23 IS THE NEXT ONE WHERE YOU HAVE HER LYING DOWN -- NO.

24 5 COULD HAVE HAPPENED WITH HER STANDING UP, RIGHT?

25 THAT'S WHAT HE SAID?

26 A MY RECOLLECTION ISN'T SERVING ME VERY

27 WELL THERE. I DON'T RECOLLECT THE "Q" AND "A" ON

28 THAT.

1 Q YOU DON'T REMEMBER HIM EVEN
2 DEMONSTRATING, HOLDING HIS ARM WHEN HE WAS
3 TESTIFYING AS TO HOW SHE COULD HAVE BEEN HOLDING HER
4 ARM, AND STANDING UP WHEN SHE RECEIVED THAT WOUND?
5 YOU DON'T REMEMBER?

6 A THERE WAS A DISCUSSION THAT I REMEMBER.
7 I JUST CANNOT DO IT GOOD ENOUGH TO REPEAT THE
8 TESTIMONY FOR YOU.

9 Q IN ANY EVENT, YOU'VE JUST CONCEDED THAT
10 YOU CAN'T TELL IF NO. 4 PRECEDED 5 AND 6, RIGHT?

11 A THAT'S CORRECT. OBVIOUSLY, IF SHE WAS
12 PRONE YOU COULD DO THIS SHOT WHILE SHE'S ON THE
13 GROUND AND --

14 Q YOU THINK NO. 4 WAS ON THE GROUND?

15 A NO, NO, NO. I'M SAYING, COULD 4 HAVE
16 HAPPENED AFTER -- I THINK 5 WAS ON THE GROUND, BUT
17 COULD HAVE 4 HAVE HAPPENED ON THE GROUND AND LATER
18 IN THE SEQUENCE? YES.

19 Q THAT'S NOT WHAT I'M ASKING YOU, THOUGH.

20 MR. CONN: OBJECTION. ARGUMENTATIVE.

21 THE COURT: SUSTAINED.

22 Q BY MS. ABRAMSON: I'M STATING, AND YOU
23 CAN DISAGREE, THAT 4, 5, AND 6 WAS TESTIFIED TO BY
24 DR. LAWRENCE AS BEING CAPABLE OF OCCURRING WHILE
25 SHE'S STANDING UP.

26 A MY RECOLLECTION IS THE TESTIMONY WAS
27 MORE COMPLEX THAN THAT BUT -- I KNOW THERE WAS

41100

1 Q WELL, LET ME ASK YOUR OPINION.

2 ARE YOU SAYING SHOTS 5 AND 6 COULD NOT
3 POSSIBLY HAVE HAPPENED WHILE SHE WAS STANDING UP.

4 MR. CONN: OBJECTION. COMPOUND AND PART OF
5 WHICH WAS ASKED AND ANSWERED.

6 THE COURT: SUSTAINED.

7 Q BY MS. ABRAMSON: COULD NO. 5 HAVE
8 HAPPENED WHILE SHE WAS STANDING UP?

9 A POSSIBLY, YES. BUT IT WOULD BE A
10 TORTUROUS SHOOTING GEOMETRY.

11 Q WHAT ABOUT 6, WOULD THAT HAVE HAPPENED
12 WHILE SHE WAS STANDING UP?

13 A AGAIN, POSSIBLY JUST A TORTUROUS
14 SHOOTING GEOMETRY.

15 Q IF NO. 4, 5 AND 6 ARE ALL HAPPENING
16 WHILE SHE'S STANDING UP, AS FAR AS THE ORDER, IT'S
17 TRUE, THEY COULD HAVE HAPPENED IN ANY ORDER,
18 CORRECT?

19 A AGAIN, IT IS PHYSICALLY POSSIBLE YOU
20 COULD COME UP WITH A TORTUROUS SHOOTING GEOMETRY
21 THAT WOULD MAKE IT WORK. I JUST DIDN'T THINK IT WAS
22 LIKELY.

23 Q I'M SAYING, CAN YOU POINT TO ANY

24 EVIDENCE THAT RULES IT OUT?

25 A I CAN POINT TO EVIDENCE THAT MAKES IT SO

26 DIFFICULT THAT I THINK IT UNLIKELY, BUT I CAN'T RULE

27 IT OUT PHYSICALLY.

28 Q NOW, LET'S GET BACK TO SHOT 4. YOU

41101

1 TESTIFIED ON DIRECT THAT YOU WERE ACCEPTING

2 DR. LAWRENCE'S ANGLE. REMEMBER THAT?

3 A I SAID IF YOU WANT TO USE SOMETHING A

4 LITTLE MORE FORWARD, THAT'S FINE, YES.

5 Q IT'S NOT A MATTER OF WHAT WE WANT TO

6 USE.

7 ARE YOU RELYING ON DR. LAWRENCE, OR ARE

8 YOU RELYING ON YOURSELF?

9 A THAT WASN'T THE POINT I WAS -- THAT

10 WASN'T WHAT THE TESTIMONY WAS ABOUT. IT WAS ABOUT

11 DID I HAVE AN OPINION ABOUT THIS ANGLE BEING

12 PRECISELY TO THE WOUND SLOPE, AND THE ANSWER IS --

13 THE REMAINING ANSWER DOES NOT PERMIT THAT PRECISION.

14 Q DR. LAWRENCE TESTIFIED THIS ANGLE IS NOT

15 CORRECT AND RE-DREW IT. DO YOU REMEMBER THAT?

16 A HE TESTIFIED, I THINK, HE BELIEVED IT

17 WAS A LITTLE MORE FORWARD, BUT HE THOUGHT THE

18 DIFFERENCE WAS NOT SIGNIFICANT.

19 Q IT DOESN'T MATTER WHETHER HE THINKS IT'S
20 SIGNIFICANT.

21 MR. CONN: OBJECTION.

22 MS. ABRAMSON: STRIKE THAT. I'LL WITHDRAW
23 THAT.

24 Q YOU DON'T HAVE ANY MEDICAL EXPERTISE.
25 YOU UNDERSTAND THAT FOR THIS PURPOSE --

26 MR. CONN: OBJECTION. ARGUMENTATIVE.

27 THE COURT: SUSTAINED.

28 Q BY MS. ABRAMSON: DO YOU BELIEVE YOU'RE

41102

1 TESTIFYING IN THESE PROCEEDINGS AS A MEDICAL EXPERT?

2 A NO.

3 Q DO YOU UNDERSTAND THAT DR. LAWRENCE'S
4 TESTIMONY WAS SUPPOSED TO PROVIDE THE MEDICAL BASIS
5 FOR YOURS; IS THAT YOU'RE UNDERSTANDING?

6 A IN PART, YES.

7 Q AND IS IT YOUR UNDERSTANDING THAT
8 DR. LAWRENCE RENDERED A MEDICAL OPINION THAT THIS
9 LINE YOU DREW IN SHOT 4 IS NOT ACCURATE?

10 A THAT IS NOT A FAIR SUMMARY OF HIS
11 TESTIMONY.

12 Q SO YOU DISAGREE WITH THAT?

13 A I DISAGREE WITH YOUR SUMMARY, NOT WITH
14 HIS TESTIMONY.

15 Q LET'S DO THIS: IF DR. LAWRENCE BELIEVES
16 THE ANGLE, AS HE TESTIFIED, WAS ONLY SLIGHTLY TO THE
17 RIGHT, DO YOU ACCEPT THAT?

18 A YOU MEAN ESSENTIALLY FRONT TO BACK?

19 Q HE SAID ESSENTIALLY FRONT TO BACK, ONLY
20 SLIGHTLY TO THE RIGHT. THAT'S WHAT HE TESTIFIED
21 TO.

22 MR. CONN: OBJECTION. MISSTATES THE
23 TESTIMONY.

24 THE COURT: SUSTAINED.

25 Q BY MS. ABRAMSON: IF DR. LAWRENCE
26 TESTIFIED THAT THE ANGLE WAS ONLY SLIGHTLY TO THE
27 RIGHT, NOT EXTREMELY TO THE RIGHT AS YOU HAVE DRAWN
28 IT, DO YOU ACCEPT HIS MEDICAL OPINION ON THAT?

41103

1 A I WAS HERE FOR HIS TESTIMONY, AND I
2 ACCEPT HIS TESTIMONY. IT'S THE VIOLENCE THAT YOUR
3 RESTATEMENT DOES TO MY RECOLLECTION OF IT THAT I
4 HAVE THE PROBLEM WITH.

5 Q SO YOU DON'T RECOLLECT IT THAT WAY?

6 A NOT THE WAY YOU'VE RECITED IT; THAT IS
7 CORRECT.

8 Q IF HE TESTIFIED TO AN ANGLE DIFFERENT
9 THAN YOURS, DO YOU ACCEPT HIS ANGLE, OR DO YOU STILL
10 THINK YOURS IS RIGHT?

11 A I THINK I TESTIFIED EARLIER THAT GIVEN
12 WHAT I HEARD HIM TESTIFY TO, I WAS COMFORTABLE WITH
13 HIS ANGLE. THE QUESTION ISN'T COMFORTABLE.

14 Q DO YOU STILL THINK YOUR ANGLE IS RIGHT?
15 LET ME ASK YOU.

16 A THE EVIDENCE DOES NOT PERMIT THE
17 PRECISION TO SAY I'M RIGHT AND HE'S WRONG. HE COULD
18 VERY WELL BE RIGHT AND I'M WRONG. IT'S ANGLED
19 SOMEWHAT.

20 Q WELL, YOU'RE NOT SHOWING IT ANGLED
21 SOMEWHAT IN 4B. YOU'RE SHOWING IT ALMOST
22 PERPENDICULAR.

23 MR. CONN: OBJECTION. ARGUMENTATIVE.

24 THE COURT: OVERRULED.

25 THE WITNESS: I'M SHOWING IT MORE ANGLED THAN
26 DR. LAWRENCE TESTIFIED. BUT I'M COMFORTABLE WITH
27 HIS ANGLE.

28 Q BY MS. ABRAMSON: BUT YOU DIDN'T CHANGE

41104

1 IT?

2 A I DIDN'T GO RE-DRAW THE DIAGRAM, NO.

3 Q THE WAY YOU'VE DRAWN IT, HOW DO YOU
4 EXPLAIN THE INJURIES ON THE OTHER SIDE OF HER NOSE?

5 A I DON'T THINK THE NOSE STOPPED A PELLET,
6 IF WE'RE TALKING ABOUT THE SAME DEFECT. WE'D HAVE
7 TO GO TO A PICTURE NOW.

8 Q THERE IS -- NOT NECESSARILY. THERE ARE
9 DEFECTS ON HER LEFT CHEEK, BUCKSHOT DEFECTS ON HER
10 LEFT CHEEK.

11 DO YOU REMEMBER THOSE?

12 A I GUESS -- I CERTAINLY REMEMBER SOME
13 BUCKSHOT DEFECTS ON THE LEFT SIDE OF HER FACE. I
14 DON'T RECOLLECT, AS I SIT HERE, THOSE ON THE CHEEK.

15 IF WE GET A PHOTO OUT, IF YOU CAN SHOW
16 ME THE ONE YOU'RE REFERRING TO.

17 Q DO YOU RECOLLECT A DEFECT AT THE TIP OF
18 HER NOSE?

19 A YES. THERE'S -- WELL, AGAIN, I'M NOT
20 COMFORTABLE WITH PRECISELY THE TIP, BUT THERE ARE
21 PELLET DEFECTS ON HER NOSE.

22 Q DO YOU ACCEPT DR. GOLDEN'S DESCRIPTION
23 THAT THERE ARE BUCKSHOT DEFECTS ON BOTH THE RIGHT
24 SIDE OF HER FACE AND THE LEFT-SIDE OF HER FACE?

25 A THERE ARE DEFECTS ON BOTH SIDES OF HER
26 FACE CAUSED BY BUCKSHOT, YES.

27 Q AND IS IT YOUR OPINION THAT THE BUCKSHOT
28 THAT CAUSED IT IS WHAT WE'RE SEEING ON THIS

1 ILLUSTRATION, 4-B?

2 A YES.

3 Q NOW, YOU HEARD -- DID YOU HEAR DR. LAWRENCE
4 TESTIFY THAT HE FELT THAT THE BUCKSHOT DID NOT
5 PENETRATE VERY FAR INTO HER HEAD FROM THIS SHOT FROM
6 THE WOUNDS THAT SHE SUSTAINED?

7 A I DON'T SPECIFICALLY HAVE A RECOLLECTION
8 OF HIS TESTIMONY, BUT I AGREE WITH THAT.

9 Q OKAY. AND IS IT YOUR OPINION THAT THIS
10 SHOT CAUSED THE PENETRATION OF THE FRONTAL LOBES OF
11 HER BRAIN?

12 A THERE'S ONE PELLET, I BELIEVE, UP NEAR
13 THE FRONTAL LOBE, BUT I CAN'T TELL YOU POSITIVELY
14 FOR SURE IT GOT THERE FROM THIS SHOT.

15 Q WHAT IS THE FRONTAL LOBE, DR. MC CARTHY?

16 A WHAT I'M REFERRING TO IS THE FRONT AREA
17 OF THE BRAIN (INDICATING).

18 Q IT'S A PART OF THE BRAIN ITSELF,
19 CORRECT?

20 A YES.

21 Q THE BRAIN IS MADE OF VERY SOFT TISSUE,
22 RIGHT?

23 A IT'S CERTAINLY SOFTER THAN MUSCLE, YES.

24 Q AND IT IS YOUR BELIEF THAT A PELLET
25 PENETRATED THE FRONTAL LOBE AREA OF HER BRAIN?

26 A NOT THAT IT NECESSARILY PENETRATED THE

27 FRONTAL LOBE EXACTLY, BUT IT'S IN THAT AREA, YES.

28 Q IN THAT AREA, INSIDE THE SKULL OR

41106

1 OUTSIDE THE SKULL?

2 A I DON'T THINK I HAVE ENOUGH PRECISION ON
3 THE X RAYS TO ANSWER THAT.

4 Q HOW ABOUT DR. LAWRENCE'S TESTIMONY, WHO
5 SAID THERE'S A PELLET SITTING RIGHT UNDER THE SKIN
6 OUTSIDE THE SKULL?

7 DO YOU REMEMBER HIM SAYING THAT?

8 A I DO NOT.

9 Q YOU DID INDICATE IN YOUR REPORT,
10 HOWEVER, THAT MRS. MENENDEZ WAS INCAPACITATED DUE TO
11 THE SHOTS, PLURAL, IN THE FRONTAL LOBES, PLURAL, OF
12 THE BRAIN.

13 DO YOU REMEMBER THAT?

14 A YOU'RE ON PAGE 1?

15 Q PAGE 2.

16 A PAGE 2?

17 Q IT'S THE FIRST SENTENCE ON THE SECOND
18 PARAGRAPH AT PAGE 1 OF YOUR REPORT.

19 A OKAY. IT'S PAGE 1.

20 Q IT'S PAGE 2 ON MY REPORT.

21 A OKAY. BUT THE COVER PAGE DOESN'T CARRY

22 A NUMBER. I UNDERSTAND NOW WHY I WAS -- OKAY. YES.

23 Q YES. THAT'S WHAT WAS WRITTEN THERE,

24 RIGHT?

25 A YES.

26 Q I'M CLIPPING UP THIS EXHIBIT NO. 171,

27 WHICH IS -- AND EXHIBIT 174.

28 DO YOU RECOGNIZE 171 IS THE X RAY FROM

41107

1 THE LEFT SIDE OF MRS. MENENDEZ' HEAD?

2 A YES.

3 Q AND 174 IS THE X RAY THAT IS FRONT TO

4 BACK OF HER SKULL.

5 A YES.

6 Q DO YOU SEE THE CIRCLE THAT LOOKS LIKE

7 IT'S ON THE FOREHEAD BETWEEN THE TWO EYE ORBITS WITH

8 THE -- THE "1" ON IT?

9 A THE LOWER?

10 Q IN BOTH. HERE (POINTING)?

11 A YES.

12 Q AND ON THE LOWER ONE, THERE (POINTING)?

13 A I CAN'T SEE THE CIRCLE ON THAT LOWER

14 ONE, BUT THAT'S ALL RIGHT.

15 Q I'LL SHOW IT TO YOU.

16 A I'M NOT DOUBTING YOU.

17 Q YOU WERE NOT HERE WHEN DR. LAWRENCE DREW
18 THESE RED MARKS AND MADE THAT ONE AROUND THESE
19 THINGS, WERE YOU?

20 A I DON'T RECOLLECT BEING HERE, THAT'S
21 CORRECT.

22 Q THEN YOU DIDN'T HEAR HIM TESTIFY THAT
23 THE PELLET THAT -- THIS IS THE PELLET THAT YOU THINK
24 MIGHT HAVE BEEN IN THE FRONTAL LOBE AREA OF THE
25 BRAIN, ISN'T IT?

26 A YES.

27 Q AND DR. LAWRENCE -- LET ME ASK YOU A
28 HYPOTHETICAL. IF, HYPOTHETICALLY, DR. LAWRENCE

41108

1 TESTIFIED THAT HIS READING OF THE X RAYS SHOWS THIS
2 PELLET DIDN'T ENTER THE SKULL AT ALL, THAT IT'S JUST
3 BELOW THE SKIN, DOES THAT, IN YOUR OPINION, RENDER
4 INCORRECT YOUR CONCLUSION THAT THERE WERE PELLETS IN
5 THE FRONTAL LOBE OF THE BRAIN?

6 A IT WOULD RENDER A CONCLUSION THAT A
7 PELLET INTERACTED WITH THE FRONTAL LOBE INCORRECT.
8 THAT IS TRUE.

9 Q AND IS IT YOUR OPINION THAT ANY SHOT TO
10 THE FACE, EVEN WHEN THE PELLETS DON'T PENETRATE THE
11 CRANIAL CAVITY, WILL CAUSE SOMEONE TO FALL FLAT ON

12 THEIR BACK?

13 A NOT ANY SHOT, TO BE SURE. I'M

14 COMFORTABLE THAT THIS SHOT IS SEVERE ENOUGH.

15 Q AND THAT'S BASED ON WHAT?

16 A IF WE GET A PHOTO OF THE FACE UP THERE,

17 THE DEGREE OF DESTRUCTION AND DAMAGE TO HER FACE.

18 Q YOU MEAN BECAUSE IT LOOKS UGLY, THAT

19 MEANS IT MUST HAVE KNOCKED HER ONTO HER BACK?

20 A NO. NOT -- I'M NOT RELYING ON A MOMENTUM

21 AND -- HYPOTHESIS. IT LOOKS UGLY BECAUSE IT WAS

22 TERRIBLY DESTRUCTIVE TO LARGE AMOUNTS OF TISSUE.

23 Q WHAT LARGE AMOUNTS OF TISSUE?

24 A WHY, ON HER FACE.

25 Q HOW DO YOU KNOW THAT?

26 A LET'S LOOK AT THE PICTURE.

27 Q YOU CAN TELL BY LOOKING FROM THE

28 OUTSIDE; IS THAT RIGHT?

41109

1 A WELL --

2 Q PART, BUT ALSO BECAUSE YOU CAN TELL THE

3 CHANGES THAT HAVE OCCURRED TO THE STRUCTURE OF THE

4 FACE. I MEAN, THE SHOT SPEAKS FOR ITSELF. IT

5 OBVIOUSLY WAS EXCRUCIATINGLY PAINFUL.

6 MS. ABRAMSON: EXCUSE ME?

7 I WOULD MOVE TO STRIKE THAT AS WAY

8 BEYOND THIS WITNESS' EXPERTISE.

9 THE COURT: ALL RIGHT. THE REFERENCE TO

10 OBVIOUSLY TERRIBLY EXCRUCIATING -- HOWEVER IT WAS

11 PHRASED -- IS STRICKEN AS NONRESPONSIVE.

12 MS. ABRAMSON: THANK YOU.

13 Q NOW, LET ME GIVE YOU A HYPOTHESIS,

14 DR. MC CARTHY. THAT SHE IS SHOT WHILE STANDING UP

15 FOR SHOT 6 AND SHOT 5 AND SHOT 4. OKAY?

16 A IF YOU WISH ME TO ASSUME THAT AS A

17 HYPOTHETICAL, I WILL.

18 Q AND IT IS ONLY AFTER THAT SHE GOES TO

19 THE GROUND, OKAY?

20 A THIS IS WHAT I'M TO ASSUME FOR YOUR

21 HYPOTHETICAL?

22 Q THAT'S WHAT YOU'RE TO ASSUME FOR MY

23 HYPOTHETICAL.

24 AND IF YOU ASSUME THAT FOR MY

25 HYPOTHETICAL, WOULD IT MAKE SENSE THAT IF SHE PLACED

26 HER HAND ON THE COFFEE TABLE AS SHE WENT DOWN, IT

27 WOULD LEAVE A SMEAR OF BLOOD IF SHE PLACED HER RIGHT

28 HAND?

41110

1 A NOTHING ABOUT WHAT YOU'VE POSTULATED IN

2 THERE -- IN THAT HYPOTHETICAL REQUIRES OR RENDERS
3 IMPOSSIBLE PLACING A RIGHT HAND, BLOODY RIGHT HAND
4 ON THE COFFEE TABLE.

5 IN OTHER WORDS, THERE'S NOTHING ABOUT
6 WHAT YOU'VE SAID THAT ENTAILS THAT OR RULES IT OUT.
7 IT'S JUST AN INDEPENDENT HYPOTHESIS.

8 Q AND HAVE YOU SEEN A CLOSE-UP OF THE
9 COFFEE TABLE THAT SHOWS A VERY LARGE AREA OF WHAT
10 APPEARS TO BE SMEARED BLOOD ON THE TOP SURFACE?

11 A I HAVE LOOKED AT THE COFFEE TABLE AND
12 THERE IS EVIDENCE OF BLOOD ON THE SURFACE, YES.

13 Q I'M TALKING ABOUT WHAT LOOKS IT LIKE,
14 NOT LITTLE ROUND DROPS, BUT SMEARS.

15 A MY RECOLLECTION IS THERE'S SOME AREAS ON
16 THE COFFEE TABLE THAT COULD BE SMEARS.

17 Q LET ME SHOW YOU THIS PICTURE. I'M
18 LOOKING FOR THE ONE THAT WE HAD EARLIER. THIS IS
19 EXHIBIT 75.

20 CAN YOU SEE THAT AREA OF THE COFFEE
21 TABLE WITH THE SMEARS IN EXHIBIT 75?

22 A I CAN SEE THOSE AREAS THAT ARE DARKENED
23 THAT YOU MAY BE REFERRING TO. I CAN SEE AREAS THAT
24 ARE DARKENED AND THAT ALSO MAY BE THE AREAS TO WHICH
25 YOU ARE REFERRING.

26 Q I WANT TO FIND A BLOW-UP. REMEMBER THE
27 PHOTOGRAPH I SHOWED YOU WHEN YOU WERE TALKING ABOUT
28 DISHES OF ICE CREAM?

1 A YES.

2 Q THERE WAS A CLOSE-UP OF THE TABLE TO
3 THE --

4 A YES, IT WAS.

5 Q -- THAT SHOWED THOSE AREAS OF SMEARED
6 BLOOD CLOSE UP.

7 A NOW YOU GOT ME. I WASN'T LOOKING AT
8 THAT PART OF THE PICTURE.

9 Q WE'RE TRYING TO FIND IT AGAIN. IN ANY
10 EVENT, NOTHING IN THE DIAGRAM OR ILLUSTRATIONS THAT
11 YOU MADE EVER SHOW HER COMING IN CONTACT WITH THE
12 TOP OF THE COFFEE TABLE, CORRECT?

13 A WHEN OR WHERE SHE PUT OUT HER HAND, IF
14 SHE DID COME INTO CONTACT, NO.

15 Q IN FACT, YOU NEVER HAVE MR. MENENDEZ
16 GETTING OFF THE COUCH. SO HE CERTAINLY DIDN'T TOUCH
17 THE TOP OF THE COFFEE TABLE AFTER HE'S SHOT.

18 A NO PART OF HIM CONNECTED TO HIM TOUCHED
19 THE COFFEE TABLE AFTER HE WAS SHOT, CORRECT.

20 Q HERE'S THE CLOSE-UP I WAS TALKING
21 ABOUT. THIS IS EXHIBIT 15.

22 I THINK IF YOU HOLD IT THIS WAY IT
23 PROBABLY ORIENTS THE CAMERA BETTER. LOOK HERE.

24 A YES.

25 Q IN FACT, THERE'S MORE THAN ONE AREA THAT
26 HAS WHAT APPEARS TO BE SMEARED BLOOD ON TOP OF THE
27 COFFEE TABLE, ISN'T THERE?

28 A THERE'S MORE THAN ONE AREA THAT APPEARS

41112

1 TO HAVE BLOOD. I GUESS -- IT COULD BE SMEARED.
2 THAT'S A LITTLE TOUGH TO DETERMINE, AT LEAST IT WAS
3 FOR ME LOOKING AT IT.

4 Q SO YOU CHOSE TO NOT MENTION IT AT ALL
5 BECAUSE YOU COULDN'T DETERMINE IF IT WAS SMEARED OR
6 DRIPPED OR WHAT?

7 A ONE; AND SECOND, I CAN'T TELL IT DIDN'T
8 COME FROM JOSE'S HEAD. I JUST DIDN'T KNOW WHERE IT
9 CAME FROM.

10 Q WE'RE LOOKING AT AN AREA OF BLOOD, ARE
11 WE NOT, ON THE END OF THE COFFEE TABLE, THE EASTERN
12 END, THE PART THAT'S DOWN NEAR YOUR LEFT THUMB RIGHT
13 NOW.

14 A YES.

15 Q YOU THINK THAT CAME FROM JOSE'S HEAD?

16 A NO, NO, NO.

17 Q AND THEN THERE'S ANOTHER AREA JUST A FEW
18 INCHES AWAY FROM THE END OF THE COFFEE TABLE, SORT
19 OF IN THE ZONE IN FRONT OF WHERE MRS. MENENDEZ' BODY

20 IS FOUND THAT HAS SORT OF A LARGE AREA OF BLOOD,
21 CORRECT, SEVERAL INCHES IN LENGTH?
22 A THERE ARE AREAS OF BLOOD THERE. WHAT
23 I'M UNCOMFORTABLE ABOUT -- WHEN YOU TALK ABOUT LARGE
24 AREAS, YOU SEE THE GRAIN PATTERN OF THE TABLE IS
25 UNDERNEATH THE BLOOD AND HOW MUCH OF THE DARK
26 SPOTTING -- HERE IT'S PRETTY CLEAR THAT DARK SPOTTING
27 IS BLOOD.
28 WHEN YOU GET OVER TO HERE, THE GRAIN

41113

1 PATTERN OF THE TABLE MAKES THE INTERPRETATION
2 DIFFICULT.
3 Q THERE'S BLOOD IN THIS AREA, HOWEVER
4 MUCH?
5 A YES.
6 Q AND YOU THINK THAT MIGHT HAVE COME FROM
7 HIS HEAD?
8 A I CERTAINLY CAN'T RULE IT OUT.
9 Q YOU DON'T THINK IT'S MORE LIKELY THAT IT
10 CAME FROM THE FACT SHE WAS RIGHT OPPOSITE THAT AREA
11 WHEN SHE RECEIVED SEVERAL SHOTS AND TRIED TO PROTECT
12 HER FALL BY PUTTING HER HANDS OUT?
13 A THERE'S NO OBVIOUS HAND SHAPE TO THE
14 STAIN; AND IF YOU LOOK AT THE OTHER DROPLETS OF

15 BLOOD ON THAT SURFACE, THERE ARE SEVERAL DIRECTIONS
16 INDICATED. I CAN'T TELL YOU FROM LOOKING AT IT THAT
17 YOUR HYPOTHESIS CORRECT. I CAN'T TELL YOU FROM
18 LOOKING AT IT THAT HIS HYPOTHESIS ISN'T CORRECT.
19 THERE IS NOT A HANDPRINT CONFIRMING YOUR HYPOTHESIS.

20 Q DID YOU LOOK AT THE SHOES?

21 A I LOOKED AT PICTURES OF THE SHOES.

22 Q THE SHOES ARE HERE. HAVE YOU LOOKED AT
23 THE SHOES?

24 A NOT WHILE THEY'VE BEEN HERE, NO.

25 Q ARE THERE WHAT APPEAR TO BE ROUND DARK
26 SPOTS ON THE TOP OF THE SHOES?

27 A THERE WAS NO ROUND SPOTTING ON THE TOP
28 OF THE SHOES THAT I SAW IN THE PHOTOGRAPHS. THAT IS

41114

1 MY RECOLLECTION.

2 Q AND IS THERE ALSO WHAT APPEARS TO BE
3 BLOOD-STAINING ON THE BOTTOM OF THE SHOE OF HER
4 RIGHT LEG AS IT COMES THROUGH THE COFFEE TABLE?

5 A YES. THERE DOES APPEAR TO BE SOME BLOOD
6 ON HER SHOE.

7 Q DOES THAT INDICATE TO YOU IN THAT
8 PHOTOGRAPH THAT SHE STEPPED ON BLOOD?

9 A OR HAD THE BOTTOM OF HER FOOT IN BLOOD

10 AT SOME POINT.

11 Q BLOOD -- WELL DON'T -- IN ORDER TO HAVE
12 THE BOTTOM OF YOUR SHOE IN BLOOD, DON'T YOU HAVE TO
13 STEP ON IT?

14 A OH, NO, NO. IF YOU LOOK AT MY FIGURE
15 DOWN HERE, ALL YOU HAVE TO DO IS HAVE YOUR KNEES
16 RAISED, OR FOOT, AND YOU WILL HAVE BLOOD ON THE
17 SHOE.

18 Q IT HAS TO BE BELOW.

19 A CERTAINLY. YOU JUST DON'T HAVE TO
20 STAND, IS MY POINT.

21 Q I DIDN'T SAY STAND. I SAID STEPPED. AT
22 LEAST THE BOTTOM SURFACE OF THE SHOE HAD TO COME ON
23 TOP OF BLOOD ALREADY BELOW IT?

24 A THAT'S CORRECT. THAT JUST DOESN'T
25 REQUIRE STANDING OR STEPPING.

26 Q AND IF YOU HAVE HER STANDING UP AND THEN
27 IMMEDIATELY RECEIVING SHOT 4 AND FALLING BACKWARDS,
28 WHAT BLOOD IS HER FOOT ON?

41115

1 A OH, I'M NOT SAYING SHE NECESSARILY
2 PICKED UP THE BLOOD ON THE BOTTOM OF HER FEET IN
3 THIS SHOT; ALTHOUGH SHE STANDS UP AND SHE HAS 13
4 PELLET WOUNDS IN HER LEFT BREAST. SO THERE IS NO

5 SHORTAGE OF SOURCES FOR BLOOD TO BE GETTING ON THE
6 FLOOR, COPIOUSLY EVEN, IN THIS POSITION.

7 CAN I TESTIFY THAT'S THE BLOODS SHE
8 STEPPED IN? NO.

9 Q WELL, IF SHE JUST STOOD UP AND BLOOD WAS
10 COMING DOWN, YOU WOULD EXPECT IT TO HIT THE TOP OF
11 HER SHOES CERTAINLY.

12 A SOME. YOU WOULD EXPECT TO SEE --

13 Q YOU WOULDN'T EXPECT IT TO CREEP
14 UNDERNEATH HER FEET.

15 A SHE WOULD HAVE TO MOVE HER FEET TO WHERE
16 IT HAD FALLEN ON THE CARPET AT SOME POINT.

17 Q ALL RIGHT. NOW, LET'S TAKE A LOOK 6. I
18 THINK I'M DONE WITH 4 AND 5.

19 WERE YOU HERE WHEN
20 DR. LAWRENCE, BY THE WAY, TESTIFIED THAT IT WOULD
21 TAKE VERY LITTLE MOVEMENT, EITHER FROM A SHOOTER OR
22 FROM MS. MENENDEZ, FOR HER TO BE BASICALLY STANDING
23 STILL IN THE SAME POSITION WHEN SHE RECEIVED WHAT
24 YOU'RE CALLING SHOT 5 AND THEN 6?

25 A I THINK HE WAS TALKING ABOUT MOVEMENT OF
26 HER ARM, AND I DON'T RECOLLECT IF HE SAID VERY
27 LITTLE MOVEMENT. BUT IT WOULDN'T HAVE TO MOVE
28 TERRIBLY MUCH.

1 Q DO YOU REMEMBER HIM SIMULATING AND BEING
2 THE SHOOTER AND GOING "BAM, BAM."

3 DO YOU REMEMBER THAT?

4 A I GUESS I DON'T.

5 Q NOW, YOU'RE SAYING THAT NO. 5 HAD TO BE
6 DELIVERED WHEN SHE WAS HORIZONTAL, OR HAVE YOU
7 BACKED OFF OF THAT?

8 A NO. I DON'T THINK I'VE EVER SAID HAD TO
9 BE. IT'S JUST, TO GET THE WEAPON LOW ENOUGH TO
10 SHOOT HER STANDING UP TO MAKE THE TRAJECTORY TO COME
11 OUT RIGHT, I JUST THINK IT UNLIKELY.

12 Q UH-HUH. NOW, THIS IS A SHOT TO HER
13 RIGHT FOREARM AND IT GOES UP TO HER RIGHT UPPER ARM,
14 CORRECT?

15 A THAT'S CORRECT.

16 Q AND YOU HYPOTHESIZE THAT THIS SHOT ALSO
17 FORCES HER ARM TO MOVE UP TO PUT HER RIGHT HAND OVER
18 THE CLAVICLE TO RECEIVE THAT WOUND; IS THAT CORRECT?

19 A YES, I DO.

20 Q NOW, IF THE WOUND TO THE CLAVICLE
21 HAPPENED FIRST, THEN NOTHING FORCED HER ARM UP; IT
22 WAS ALREADY THERE, CORRECT?

23 A TRUE. THEN THE QUESTION BECOMES WHAT
24 FORCED HER ARM DOWN.

25 Q WELL, YOU COULD -- THERE ARE TWO GUNS,
26 AREN'T THERE?

27 A YES.

28 Q DO YOU BELIEVE THERE WERE TWO PEOPLE

1 SHOOTING?

2 A THAT IS MY UNDERSTANDING, YES.

3 Q AND YOU'VE ALREADY INDICATED THERE COULD
4 BE SIMULTANEOUS SHOOTING GOING ON.

5 A YES.

6 Q NOW, DID YOU EVER EXAMINE THE THREE
7 PIECES OF PLASTIC BRACELET THAT WERE RETRIEVED FROM
8 THE SCENE?

9 A NO.

10 Q EVEN AFTER I QUESTIONED YOU ABOUT IT AT
11 THE PRETRIAL HEARING, YOU DIDN'T ASK TO LOOK AT IT?

12 A NO.

13 Q DOESN'T INTEREST YOU; IS THAT RIGHT?

14 A I CAN'T DO ANYTHING ABOUT IT. IT'S NOT
15 A QUESTION OF NOT BEING INTERESTING. I CAN'T MAKE
16 USE OF IT MY RECONSTRUCTION.

17 Q YOU UNDERSTAND, DO YOU NOT, THAT THE
18 THREE PIECES OF BRACELET WERE FOUND, ONE BEHIND THE
19 EAST -- ONE IN FRONT OF THE EAST FRENCH DOOR BEHIND
20 THE COUCH, CORRECT?

21 A I BELIEVE YOU'RE CORRECT, YES.

22 Q ONE BEHIND THE WEST SECTION OF THE COUCH
23 IN FRONT OF THE BOOKCASES ON -- STRIKE THAT. BEHIND

24 THE EAST SECTION OF THE COUCH IN FRONT OF THE

25 BOOKCASES THAT WERE THEN ON THE EAST WALL.

26 A YES. IN FRONT OF THE EAST WALL

27 BOOKCASES. I DO RECOLLECT THAT.

28 Q AND THE OTHER ONE LODGED RIGHT NEXT TO

41118

1 MR. MENENDEZ ON THE SOFA. DO YOU REMEMBER THAT?

2 A SOMEWHERE ON THE SOFA. I'M

3 UNCOMFORTABLE BEING TERRIBLY PRECISE FOR YOU.

4 MS. ABRAMSON: I HAVE ANOTHER ONE OF THESE

5 BIG ONES, YOUR HONOR. WHAT'S THE NEXT NUMBER?

6 THE COURT: WE'RE AT 303.

7 MS. ABRAMSON: EXHIBIT 303? I'M GOING TO

8 WRITE -- MR. LEVIN IS GOING TO WRITE "303" BELOW THE

9 NUMBER "5" IN THE CORNER OF THIS BOARD, YOUR HONOR.

10 THANK YOU.

11 Q NOW, ON THAT BOARD THERE'S BEEN MARKED

12 "303."

13 IN THE THIRD COLUMN FROM THE LEFT, THE

14 SECOND AND THIRD IMAGE DOWN, ARE YOUR ILLUSTRATIONS

15 OF THIS SHOT THAT YOU CALL SHOT 5, CORRECT?

16 A YES.

17 Q AND THAT SHOWS THAT THE WAY YOU HAVE

18 ENVISIONED MRS. MENENDEZ' BODY POSITION AT THAT

19 POINT IS SHE IS FLAT ON HER BACK WITH HER RIGHT LEG

20 OPENED UP, AND HER LEFT LEG BENT, CORRECT?

21 A THAT'S THE WAY WE HAVE SHOWN HER, BUT

22 WITH MY PREVIOUS CAVEATS ABOUT POSITIONS AND

23 WHATNOT.

24 Q I WANT TO PUT SHOT 5 IN FRONT OF THE

25 JURY SO THEY'RE NOT CONFUSED BY 6.

26 NOW, YOU HAVE NOT ACCOUNTED IN YOUR

27 TESTIMONY AT ALL, DR. MC CARTHY, FOR DAMAGE TO THE

28 EAST FRENCH DOOR, THE ONE THAT, IF YOU'RE LOOKING AT

41119

1 THE COUCH, IS ON THE LEFT; IS THAT RIGHT?

2 A I HAVE NOT ASSIGNED IT TO A SPECIFIC

3 SHOT; THAT IS CORRECT.

4 Q AND THE FIRST PHOTOGRAPH, WHICH IS IN

5 THE ONE PHOTOGRAPH COLUMN, THAT DAMAGE, CORRECT?

6 A YES.

7 Q AND IT'S THE PANE OF GLASS DIAGONALLY

8 ACROSS FROM IT IN THE OTHER DOOR THAT HAS WHAT YOU

9 CALLED THE FULLY MISSED SHOT.

10 A THE LOWER AND EAST.

11 Q THE ONE I'M TALKING ABOUT IS LOWER AND

12 EAST.

13 A YES.

14 Q ALL RIGHT. IN THIS PHOTOGRAPH, LOWER

15 AND TO THE RIGHT, CORRECT?

16 A YES.

17 Q NOW, DO YOU SEE THE AREA THAT'S DEPICTED

18 IN THE FIRST PHOTOGRAPH IN THE SECOND COLUMN AS

19 INDICATING THAT SPACE, THAT 26 OR 27 INCHES BEHIND

20 THE COUCH AND THE FRENCH DOORS?

21 A YES.

22 Q AND ARE YOU AWARE THAT CLUSTER OF

23 EVIDENCE ITEMS LABELED "21" WERE FOUND THERE?

24 A I ASSUMED THAT FROM THE 21 TAG IN THE

25 PICTURE.

26 Q AND DO YOU KNOW WHAT 21 CONSISTED OF?

27 A I HAVE NOT AUDITED 21, NO.

28 Q WE HAVE A GIANT CHART THAT TELLS US.

41120

1 IF I WERE TO TELL YOU THAT THERE'S BEEN

2 TESTIMONY THAT 21 WAS A PIECE OF THE BRACELET --

3 A UH-HUH.

4 Q -- A PELLET --

5 A UH-HUH.

6 Q -- NO. 4 BUCK, AND A PIECE OF WADDING,

7 DOES THAT REFRESH YOUR RECOLLECTION, ASSUMING YOU

8 KNEW THAT ONCE?

9 A IF I KNEW THAT ONCE I HAD FORGOTTEN, BUT
10 THAT'S FINE. I HAVE NO CONTRADICTORY TESTIMONY TO
11 OFFER YOU.

12 Q AND DO YOU SEE DARK SPOTS ON THE WOOD OF
13 THE EAST DOOR -- I KNOW IT'S SHINY.

14 A THERE IS BLOOD EVIDENCE ON THAT DOOR.

15 Q THERE'S BLOOD EVIDENCE ON THE DOOR. AND
16 ISN'T THERE ALSO BLOOD SPLATTERING AND BLOOD
17 EVIDENCE ON THE FLOOR AT THE BASE OF THE DOOR?

18 A YES.

19 Q NOW, GOING BACK TO THE SECOND COLUMN,
20 YOU SEE THE NO. 16?

21 A YES.

22 Q DID YOU UNDERSTAND THAT 16 WAS ANOTHER
23 PIECE OF THAT SAME WHITE PLASTIC BRACELET?

24 A I HAVEN'T ATTEMPTED TO FIT THE PIECES
25 TOGETHER, BUT IT LOOKS SIMILAR.

26 MS. ABRAMSON: BARRY, WOULD YOU GET 24. IT'S
27 IN BACK. TRY TO HOLD IT UP.

28 FOR THE MOMENT, UNTIL WE GET THE CHART

41121

1 OUT, WILL YOU ACCEPT MY STATEMENT THAT 16 IS A PIECE
2 OF WHITE BRACELET?

3 A IT LOOKS SIMILAR.

4 Q AND YOU DIDN'T PUT IT IN YOUR DIAGRAM.

5 BUT ARE YOU AWARE THAT THERE WAS AN OTTOMAN AT THE
6 END OF THE EAST SECTION OF THE COUCH?

7 A I DO RECOLLECT SOME ADDITIONAL FURNITURE
8 THAT I HAVEN'T DIAGRAMMED. I'M THE WRONG PERSON TO
9 ASK IF IT'S AN OTTOMAN.

10 Q DO YOU KNOW WHAT AN OTTOMAN IS?

11 A I KNOW WHAT I WOULD REFER TO ONE AS.

12 Q BACK EAST WE CALL THEM HAS SOCKS.

13 DO YOU KNOW WHAT A HAS SOCK IS?

14 A I WILL SHOW MY AGE.

15 Q I DIDN'T SAY "BACK OLD." I SAID "BACK
16 EAST." OKAY.

17 WE HAVE DOWN HERE FOR THE MOMENT EXHIBIT
18 24, WHICH IS THE SCHEMATIC THAT SHOWS WHERE VARIOUS
19 ITEMS OF EVIDENCE WERE FOUND.

20 CAN YOU SEE THAT?

21 A YES, I CAN.

22 Q AND YOU CAN SEE WHERE 16 IS IN FRONT OF
23 THE OTTOMAN/HAS SOCK?

24 A YES.

25 Q YOU UNDERSTAND THAT THIS BROWN LINE IS
26 THE EAST WALL OF THE ROOM?

27 A IT WOULD BE IN THE RIGHT PLACE TO BE
28 THAT, YES.

1 Q AND THERE WERE BOOKCASES THERE BEFORE
2 YOUR ENGINEERS WENT THERE TO MEASURE IT?

3 A YES.

4 Q AND THIS SHOWS THE RELATIVE POSITION, IN
5 FACT, OF 24, MRS. MENENDEZ BODY WITHIN THE LONG ARM
6 OF THE COUCH?

7 A NOW, AS SHE IS SHOWN POSITIONED IN THIS
8 DIAGRAM, YES.

9 Q OKAY. NOW, IT ALSO SHOWS, DOES IT NOT,
10 NO. 5?

11 A YES.

12 Q AND IT SHOWS NO. 5 AS BEING SOMETHING
13 NEAR MR. MENENDEZ?

14 A YES.

15 Q FAIR STATEMENT? OKAY.

16 A IT'S ON THE NEXT CUSHION, BUT OVER ON
17 HIS END.

18 Q MAYBE IT IS.

19 SHOWING YOU THE SECOND PHOTOGRAPH IN THE
20 FAR RIGHT COLUMN ON 303, DO YOU RECOGNIZE THIS TO BE
21 THE RIGHT ARM AND SLEEVE AREA OF MR. MENENDEZ?

22 A YES.

23 Q AND DO YOU SEE THIS WHITE
24 CRESCENT-SHAPED OBJECT?

25 A I DO.

26 Q AND THEN, AS WE GO CLOSER IN, DO YOU SEE

27 THAT TO BE ANOTHER SEGMENT OF THE WHITE PLASTIC

28 BRACELET?

41123

1 A THEY LOOK SIMILAR. I CAN'T POSITIVELY
2 LINK THEM UP FOR YOU, BUT THE SIMILARITY IS OBVIOUS.

3 Q WHAT'S THIS?

4 A I'M SORRY?

5 Q WHAT'S THIS THAT I'M POINTING TO RIGHT
6 NEXT TO IT?

7 A IT LOOKS LIKE A POWER PISTON.

8 Q IT LOOKS LIKE ONE OF THOSE FLAT PLASTIC
9 DISK WADS FROM A NO. 4 BUCK, DOESN'T IT?

10 A YES.

11 Q AND I THINK, AS YOU'VE PREVIOUSLY
12 TESTIFIED -- WELL, PERHAPS YOU HAVEN'T TESTIFIED. I
13 STRIKE THAT, YOUR HONOR.

14 YOU LOOKED, AT SOME POINT, AT THE
15 BALLISTIC EVIDENCE IN THIS CASE?

16 A YES.

17 Q YOU NOTED THAT THERE WERE PAPER WADS AND
18 THESE PLASTIC DISK WADS?

19 A YES. THE PISTONS IN THE WADS, YES.

20 Q AND IT IS YOUR STATE OF MIND THAT A
21 NO. 4 BUCK ROUND FROM THAT ERA WOULD HAVE HAD ONE OF

22 THOSE PLASTIC DISKS WHICH YOU CALL A POWER PISTON,

23 AND AT LEAST ONE OF THOSE PAPER WADS, CORRECT?

24 A YES.

25 Q AND DO YOU KNOW WHAT KIND OF WAD THE WAD

26 OF 21 IS?

27 A LOOKS LIKE A PLASTIC ONE FROM THIS VIEW.

28 Q OKAY. WE MIGHT HAVE TO GET IT OUT AND

41124

1 SHOW YOU. NOW, IF THAT BRACELET WERE STRUCK BY

2 PELLETS DURING THAT SHOT THAT YOU'RE CALLING NO. 5,

3 IT'S OF NO EVIDENTIARY INTEREST TO YOU WHATSOEVER

4 THAT THE BRACELET WAS FOUND IN THE THREE PLACES THAT

5 WE'VE SHOWN?

6 A IT'S OF NO EVIDENTIARY USE; IN OTHER

7 WORDS, IT'S TOTALLY CONSISTENT WITH MY DIAGRAM OF

8 THE SHOT.

9 Q IF THE BRACELET WERE HERE AND STRUCK BY

10 PELLETS --

11 A NOT ON THIS SHOT, BUT IN THE NEXT SHOT

12 WHICH HITS THE HAND.

13 Q WAIT, WAIT, WAIT. WE'RE TALKING ABOUT

14 THIS SHOT.

15 A THE BRACELET WOULD HAVE HAD TO FALL DOWN

16 THE WRIST TO GET INVOLVED WITH THIS SHOT.

17 Q IT'S A BIG BRACELET.

18 A OKAY. WE'LL PUT IT DOWN ON THE WRIST.

19 IT GETS STRUCK. IT SHATTERS. THE PARTS COULD HAVE

20 GONE IN PRECISELY THE PATTERN WE --

21 Q PARTS WOULD JUST GO ANYWHERE.

22 A WELL --

23 Q FLY OVER THE COUCH IN TWO DIRECTIONS?

24 A IF YOU SHOT, YOU KNOW, TEN DIFFERENT

25 BRACELETS, YOU WOULD GET TEN DIFFERENT SCATTER

26 PATTERNS.

27 Q WHAT ABOUT THE FACT THAT THE BRACELET

28 AND PELLET AND WAD IS RIGHT BELOW THE BROKEN HOLE OF

41125

1 THE EAST DOOR? DOES THAT HAVE ANY SIGNIFICANCE TO

2 YOU?

3 A YOU CANNOT TIE THAT WAD TO THAT SHOT,

4 NOR CAN YOU TIE THIS PLASTIC WAD TO THIS SHOT, OR AT

5 LEAST I CAN'T.

6 Q YOU CAN'T?

7 A I DON'T THINK ANYBODY ELSE CAN EITHER.

8 Q IF A CRIMINALIST COMES AND QUALIFIES AS

9 A CRIMINALIST AND STATES, TO HIM, IT IS STRONG

10 EVIDENCE THAT THE SHOT THAT HIT HER ARM AND HIT HER

11 BRACELET, BROKE THAT DOOR; THAT'S, SHOULD I SAY,

12 EXPERTISE, CORRECT?

13 MR. CONN: OBJECTION. ARGUMENTATIVE AND

14 IRRELEVANT AS PHRASED.

15 THE COURT: SUSTAINED. OBJECTION SUSTAINED.

16 Q BY MS. ABRAMSON: NOW, IN FACT, YOU

17 NEVER EVEN BOTHERED LOOKING AT THE BRACELET, RIGHT?

18 A THAT'S CORRECT. THERE'S NO USE THAT

19 COULD BE MADE OF IT.

20 Q AND SO YOU DON'T KNOW WHETHER OR NOT

21 THAT BRACELET SHOWS THAT IT ACTUALLY WAS STRUCK BY A

22 PELLET, CORRECT?

23 A OUTSIDE OF YOUR REPRESENTATIONS TO ME

24 EARLIER, I DO NOT.

25 Q AND I REPRESENTED TO YOU THAT THERE WERE

26 LEAD SMEARS FOUND ON THE BRACELET?

27 A YES.

28 Q AND IF, INDEED, THE PELLETS THAT BROKE

41126

1 THE EAST DOOR WERE PART OF THE SAME SHOT THAT STRUCK

2 MRS. MENENDEZ IN THE RIGHT ARM AND BROKE THE

3 BRACELET, WOULDN'T THAT BE MORE CONSISTENT WITH HER

4 STANDING UP, OR AT LEAST SITTING UP, THAN LYING DOWN

5 IN FRONT OF THE COUCH THE WAY YOU HAVE HER PICTURED?

6 A THE WAY YOU HAVE PHRASED YOUR

7 HYPOTHESIS, YOU ARE CORRECT.

8 IF YOU'RE GOING TO MAKE THAT SHOT BREAK

9 THE DOOR, THIS IS NOT THE CORRECT ORIENTATION FOR

10 HER.

11 Q THANK YOU. PEOPLE WISH TO INQUIRE?

12 LET'S MOVE ON THEN TO NO. 6.

13 NO. 6 IS WHAT THE CORONER AND

14 DR. LAWRENCE, ACCEPTING THE CORONER'S LABELING, CALL

15 SHOT NO. 3, CORRECT?

16 A YES.

17 Q AND ARE YOU AWARE OF WHAT DR. LAWRENCE

18 INDICATED WAS THE DIRECTION OF THIS -- OF THE PATH OF

19 THIS WOUND WITH RESPECT TO THE HEAD PART OF IT, THE

20 RIGHT MANDIBLE?

21 A I DON'T HAVE A SPECIFIC RECOLLECTION OF

22 TESTIMONY IN THAT REGARD, IF I WAS PRESENT FOR IT.

23 Q SO YOU DON'T KNOW WHAT HE SAID ABOUT IT;

24 IS THAT WHAT YOU'RE SAYING?

25 A AS I SIT HERE, I DON'T HAVE A

26 RECOLLECTION, THAT'S CORRECT.

27 Q DO YOU KNOW WHAT DR. GOLDEN CLAIMED WAS

28 THE TRAJECTORY OF THIS WOUND IN THE HEAD AREA? WHEN

41127

1 I SAY "IN THE HEAD AREA," I'M EXCLUDING FOR THE

2 MOMENT THE HANDS.

3 A THIS I UNDERSTOOD IN YOUR QUESTION, BUT

4 THANK YOU.

5 HE INDICATES TRAJECTORY IS FRONT TO BACK

6 AND SLIGHTLY UPWARD.

7 Q OKAY. NOW, DO YOU UNDERSTAND THAT

8 UPWARD MEANS, AGAIN, THE ANATOMICAL POSITION?

9 A YES.

10 Q AND IN THE ANATOMICAL POSITION, SLIGHTLY

11 UPWARDS MEANS JUST WHAT IT SAYS; INSTEAD OF BEING AT

12 A 90-DEGREE ANGLE, IT'S AT SOMETHING LESS THAN OR

13 GREATER, ACTUALLY, THAN A 90-DEGREE ANGLE?

14 A INSTEAD OF HORIZONTAL, IT IS UPWARD.

15 Q WELL, THE ENTRY IS SOMEWHAT UPWARD?

16 A YES.

17 Q HE SAID SLIGHTLY, CORRECT?

18 A THAT IS CORRECT.

19 Q NOW, IN WHAT YOU HAVE DEMONSTRATED IN

20 6A, YOU'RE SHOWING THE SHOT COMING FROM WHAT'S KNOWN

21 AS, I THINK, INFERIOR TO INTERIOR, FROM FOOT TO

22 HEAD?

23 A INFERIOR TO SUPERIOR.

24 Q HE DIDN'T SAY INFERIOR TO SUPERIOR, DOES

25 HE, DR. GOLDEN?

26 A HE DOES NOT.

27 Q AND DR. LAWRENCE, AS FAR AS YOU KNOW,

28 DIDN'T SAY INFERIOR TO SUPERIOR EITHER, CORRECT?

1 A I CAN'T TESTIFY TO WHAT HE -- I DON'T
2 HAVE A RECOLLECTION IF I WAS HERE.

3 Q OKAY. YOU'RE SHOWING THIS SHOT COMING,
4 WITH ALL THAT VELOCITY THAT YOU'VE PREVIOUSLY SAID
5 AND NEED NOT REPEAT, AND THE FIRST THING IT STRIKES,
6 IN YOUR VIEW, IS HER RIGHT HAND; ANOTHER ONE OF
7 THOSE NEWTONIAN LAWS, AND THEN IT'S IMMEDIATELY
8 TRAVELING INTO HER SHOULDER AND HER HEAD?

9 A YES.

10 Q NOW, IT'S TRUE, IS IT NOT, DR. MC CARTHY,
11 THAT THERE ARE NO BUCKSHOT PELLETS IN THE CRANIAL
12 PORTION OF HER HEAD?

13 A BESIDES THE ONE WE JUST DISCUSSED,
14 THAT'S CORRECT.

15 Q WELL, THE ONE WE JUST DISCUSSED IS
16 SITTING ON THE SKULL. YOU ACCEPT DR. LAWRENCE'S
17 MEDICAL OPINION ON THAT; IS THAT RIGHT?

18 A STILL IN THE CRANIAL AREA.

19 Q THE CRANIAL AREA IS IN THE SKULL. LET'S
20 CALL IT THE BRAIN CASE.

21 A THERE'S NO. 4 ABOVE THE EYE SOCKETS,
22 BEYOND THE ONE WE'VE DISCUSSED AND THAT'S NOT -- YOU
23 INDICATED WHAT DR. LAWRENCE TESTIFIED.

24 Q IT'S IN THE INSIDE OF THE BRAIN CASE,
25 NOT IN THE PART THAT HOLDS THE BRAIN?

26 A I WASN'T HERE FOR THE TESTIMONY.

27 WHATEVER IT WAS IT WAS.

28 Q ISN'T IT TRUE THAT IF THE TRAJECTORY

41129

1 YOU'RE SEEING IN NO. 6A WERE REAL, THE PELLETS WOULD
2 JUST KEEP GOING AND WOULD GO FARTHER UP IN THE HEAD
3 THAN ANY OF THE X RAYS SHOWN?

4 A IT WOULD DEPEND WHETHER OR NOT THE
5 PELLETS THAT HIT THE FACE HAVE AN UNOBSTRUCTED
6 FLIGHT, IN WHICH CASE IT WOULD HAVE MORE ENERGY. IF
7 THEY COME OUT OF THE HAND AND IT'S THE HAND PELLETS
8 THAT ENTER THE HEAD, THEN THEY'D HAVE GREATLY
9 DIMINISHED ENERGY, AND I CAN'T DIFFERENTIATE THAT
10 FOR YOU.

11 Q YOU UNDERSTAND DR. GOLDEN, WHEN HE WROTE
12 HIS REPORT, RIGHT WHEN THE BODIES WERE IN FRONT OF
13 HIM, BACK IN 1989 --

14 MR. CONN: ASSUMES FACTS NOT IN EVIDENCE,
15 THAT HE WROTE THE REPORT WHILE THE BODIES WERE IN
16 FRONT OF HIM.

17 THE COURT: SUSTAINED.

18 Q BY MS. ABRAMSON: HE WROTE THE REPORT
19 SHORTLY AFTER HE PERFORMED THE AUTOPSY.

20 YOU DO UNDERSTAND THAT, DO YOU NOT?

21 A AT THE RATE HE WAS DOING AUTOPSIES, I
22 ASSUME THAT. BUT I DON'T HAVE ANY SPECIFIC
23 KNOWLEDGE.

24 Q WHY DON'T YOU LOOK AT THE DATE THAT HE
25 SIGNED THE REPORT. YOU KNOW THEY SIGN THEM?

26 A OH. YES. HE SIGNED IT THE 13TH.

27 Q OF SEPTEMBER, 1989?

28 A YES.

41130

1 Q NO, HE DIDN'T. WHAT MONTH IS 10?

2 A IT'S OCTOBER.

3 Q AH. OKAY. SO HE SIGNED IT OCTOBER
4 13TH, 1989?

5 A THAT'S RIGHT. AND I GUESS IT WAS AUGUST
6 THAT HE DID THE AUTOPSY. SO HE SIGNED IT TWO MONTHS
7 LATER.

8 Q UH-HUH. AND HE HAD NOTES THAT WERE
9 CONTEMPORANEOUS --

10 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: IN ANY EVENT, HE
13 INDICATED THAT AS FAR AS HE WAS CONCERNED, AT THIS
14 TIME WOUND NO. 2, AS HE CALLS IT, WHICH IS THE ONE
15 THAT YOU SAY IS COMING FROM THE RIGHT SIDE, COULD

16 HAVE BEEN AFFILIATED WITH THE HAND WOUND TO NO. 10,

17 DOESN'T HE?

18 A IT'S NOT MY RECOLLECTION, BUT JUST A

19 MOMENT.

20 Q TRY PAGE 5, THE LAST PARAGRAPH BEFORE

21 NO. 4.

22 A HE GROUPS SHOT 2 AND SHOT 3 INVOLVING

23 THE HEAD AND NECK.

24 Q NO, SIR.

25 A UNDER "10" HE SAYS: "THIS IS A SHOTGUN

26 WOUND TO THE --"

27 Q I'M NOT ASKING FOR "10." I'M ASKING YOU

28 TO LOOK AT PAGE 5. WE'LL GET TO 10.

41131

1 A OKAY. I GOT IT.

2 Q PAGE 5 IS THE BULK OF THE DESCRIPTION OF

3 SHOTGUN WOUND NO. 3; THE MANDIBLE, JAW, CLAVICLE,

4 RIGHT? THERE'S WHAT NO. 3 IS. IT STARTS ON PAGE 4

5 AND GOES OVER TO PAGE 5.

6 A OKAY. YEAH. WOUND 3 STARTS ON PAGE 4

7 AND GOES TO PAGE 5, CORRECT.

8 Q THE LAST PARAGRAPH UNDER WOUND NO. 3

9 INDICATES THAT IT MAY BE RELATED TO THE SHOTGUN

10 WOUND OF THE RIGHT HAND TO BE DESCRIBED BELOW,

11 RIGHT?

12 A IT MAY BE RELATED, YES.

13 Q OKAY. THAT'S WHAT IT SAYS THERE.

14 THAT'S ALL I'M ASKING.

15 IT SAYS: "IT MAY BE RELATED TO THE
16 SHOTGUN WOUND TO THE RIGHT HAND, TO BE DESCRIBED
17 BELOW."

18 AND IT ALSO GOES ON TO SAY:

19 "IN ADDITION, THE SHOTGUN WOUND
20 NO. 2, WHICH IS THE ONE HIGHER UP ON
21 THE RIGHT SIDE OF THE FACE, MAY
22 LIKEWISE BE RELATED TO THE SHOTGUN
23 WOUND OF THE RIGHT HAND." CORRECT?

24 A THAT'S WHAT HE SAYS, YES.

25 Q ARE YOU AWARE THAT DR. GOLDEN TESTIFIED
26 AT THE FIRST TRIAL THAT SHOTS 2 AND 3, WHAT YOU ARE
27 CALLING SHOTS 4 AND 6, COULD HAVE BEEN ONE SHOT?

28 A AS I SIT HERE, I DON'T RECOLLECT SUCH

41132

1 TESTIMONY.

2 Q OKAY. THEN HE GOES ON AND DESCRIBES
3 AGAIN THE WOUND TO THE HAND, WHICH HE CALLS 10?

4 A YES.

5 Q AND WHEN HE DESCRIBES THAT WOUND --

6 EXCUSE MY BACK. I'M SORRY.

7 A THAT'S QUITE ALL RIGHT.

8 Q HE DESCRIBES THAT ON PAGE 10, CORRECT?

9 A YES.

10 Q AND HE INDICATES THERE THAT IF YOU
11 MANIPULATE -- HE CALLS IT THE UPPER EXTREMITY -- THE
12 RIGHT HAND. IT APPEARS RELATED TO SHOTGUN WOUNDS 2
13 AND 3, CORRECT?

14 A HE SAYS IT'S PROBABLY RELATED, YES,
15 INVOLVING THE HEAD AND NECK.

16 Q PROBABLY?

17 A YEAH. HE SAID IT MAY BE BROAD IN
18 OPPOSITION TO THOSE TWO WOUNDS.

19 Q I AM READING FROM THE PARAGRAPH THAT IS
20 ENTITLED "OPINION" ON PAGE 10 OF HIS REPORT.

21 A ME TOO.

22 Q IT SAYS:

23 "IN MY OPINION THIS IS NOT
24 CONSIDERED AN IMMEDIATELY FATAL WOUND,
25 BUT WOULD BE INCAPACITATING BECAUSE OF
26 THE FRACTURE AND EVULSION OF THE THUMB
27 AS DESCRIBED ABOVE BY MANIPULATION OF
28 THE RIGHT UPPER EXTREMITY, APPEARS

1 RELATED TO SHOTGUN WOUNDS 2 AND 3."

2 ARE YOU READING THE SAME THINGS?

3 A THAT'S WHAT HE WRITES.

4 Q I DIDN'T SEE THE WORD "PROBABLY" OR

5 " THERE.

6 A WHEN HE DESCRIBES THE WOUNDS, HE SAYS AT

7 THE BEGINNING OF 10:

8 "THIS IS A SHOTGUN WOUND OF THE

9 RIGHT HAND AND IS PROBABLY RELATED BY

10 MANIPULATION OF THE UPPER RIGHT

11 EXTREMITY TO SHOTGUN WOUNDS 2 AND 3

12 INVOLVING THE HEAD AND NECK BY --"

13 Q HE'S LUMPED ALL THREE OF THESE WOUNDS,

14 TWO, WHICH IS HER UPPER RIGHT FACE; THREE, WHICH THE

15 LOWER RIGHT FACE; AND TEN, WHICH IS THE HAND, INTO

16 ONE WOUND, HASN'T HE?

17 A I GUESS THAT WOULDN'T BE MY READING OF

18 IT. I THINK HE INDICATES THERE'S A PROBABILITY OF A

19 RELATIONSHIP, AS HE SAYS.

20 Q LET'S SAY HIS PROBABILITY IS RIGHT.

21 THEN THEY'RE ALL THREE ONE SHOT, RIGHT?

22 A IF WHAT HE SAID WERE CORRECT, THEN

23 THEY'D ALL BE RELATED TO THE SAME SHOT.

24 Q THAT WOULD REDUCE YOUR NUMBER OF SHOTS

25 FROM 12 TO 11, WOULDN'T IT?

26 A YES. IF THAT WERE CORRECT.

27 Q NOW, IT'S YOUR TESTIMONY THAT AFTER SHOT

28 5A, WHENEVER THAT HAPPENED, MRS. MENENDEZ LOST THE

1 ABILITY TO MOVE HER RIGHT ARM; IS THAT RIGHT?

2 A AFTER SHOT 5 SHE LOSES THE ABILITY TO
3 MOVE THE RIGHT ARM. HER HUMERUS IS BROKEN.

4 Q YOU CAN'T MOVE YOUR ARM AT ALL.

5 A YOU CAN MOVE IT, BUT THE SKELETAL
6 SUPPORT THAT MAKES VOLITIONAL POSITIONING POSSIBLE
7 IS GONE.

8 Q SO IT CAN'T BE MOVED BY ITSELF?

9 A NO. YOUR MUSCLES ARE STILL WORKING.
10 IT'S JUST YOUR MUSCLES WORK ONLY IN TENSION. THEY
11 APPLY TENSION AROUND THE PIVOTS OF THE SKELETON. IF
12 THE SKELETON IS NOT THERE, YOUR MUSCLE CAN CONTRACT,
13 BUT THEY CAN'T PUT LIMBS WHERE YOU WANT THEM BECAUSE
14 THEY'RE NOT WORKING IN COMBINATION WITH THE
15 SKELETON.

16 Q THAT MEANS HER LEFT ARM IS NOT WORKING
17 EITHER. SO SHE CAN'T TOUCH HER RIGHT ARM WITH HER
18 LEFT ARM.

19 A I'M SORRY?

20 Q NOT TOUCH HER --

21 A WHY NOT?

22 Q WELL, THAT'S MY QUESTION. HER RIGHT ARM
23 IS ABOVE, RIGHT?.

24 A YEAH. UP HERE, RIGHT.

25 Q BUT SHE CAN STILL MOVE IT. SHE CAN MOVE

26 IT WITH HER LEFT ARM. AND YOU DON'T KNOW WHAT RANGE

27 OF MOTION SHE MIGHT STILL HAVE?

28 A OH. I BELIEVE AT THIS POINT I HAVEN'T

41135

1 POSTULATED ANY INJURIES THAT WOULD DESTROY THE USE

2 OF HER LEFT ARM; AND I GUESS IN THEORY SHE COULD --

3 Q IF DR. GOLDEN IS RIGHT AND THAT'S WHAT

4 HAPPENED, IS THAT 2 AND 3 AND THEN ALL ONE THING?

5 THEN MAYBE 5 IS WHAT CAME LATER.

6 IN OTHER WORDS, THE ARM DOESN'T HAVE TO

7 BE BROKEN BEFORE SHE RECEIVES THE FACE AND THE

8 MANDIBLE AND THE HANDS, DOES IT?

9 A IF THE ORDER DOESN'T CHANGE, THAT IS

10 TRUE; BUT FOR DR. GOLDEN TO EQUATE ALL OF THOSE

11 THREE WOUNDS, THERE'S GOING TO HAVE TO BE AN

12 AGREEMENT OF THE DIRECTIONALITY OF ALL OF THEM.

13 Q APART FROM THAT POINT, YOU DON'T KNOW IF

14 THE ARM WAS BROKEN BEFORE THE MANDIBLE-CLAVICLE WAS

15 SHOT OR WHETHER IT WAS BROKEN AFTER, DO YOU?

16 A WITH CERTAINTY, NO. I JUST POSTULATE

17 THAT THE SHOT THAT BREAKS THE HUMERUS COULD ALSO IN

18 PART --

19 MS. ABRAMSON: COULD EVERYTHING AFTER "NO" BE
20 STRICKEN AS NOT RESPONSIVE?
21 THE COURT: HE'S EXPLAINING HIS ANSWER.
22 THE WITNESS: BY BEING HORIZONTAL, I DON'T
23 HAVE A PROBLEM. THE ARM DOESN'T FALL AWAY BECAUSE
24 OF THE SHATTER OF THE HUMERUS. THE MOMENTUM CAN
25 MOVE THE BROKEN ARM OR THE SHATTERED HUMERUS RIGHT
26 IN POSITION FOR THE NEXT SHOT.
27 Q LET'S JUST ASSUME, HYPOTHETICALLY, 2 AND
28 3 HAPPENED BEFORE 5, OKAY?

41136

1 A IS SHE STANDING OR --
2 Q STANDING.
3 A SO THIS BROKEN ARM IS NOW --
4 Q THIS BROKEN ARM HASN'T HAPPENED YET. ALL
5 SHE'S GOT IS A BROKEN HAND; AND THEN THE SHOT COMES
6 THAT BREAKS THE ARM.
7 IS THAT POSSIBLE?
8 A I DON'T THINK SO.
9 Q YOU MEAN IT'S ANATOMICALLY NOT POSSIBLE
10 THAT SHE COULD HAVE BEEN STANDING AND RECEIVE THE
11 WOUND TO THE FACE AND THE WOUND TO THE MANDIBLE AND
12 THE WOUND TO HER RIGHT HAND?
13 A ALL IN ONE SHOT, WITHOUT A VERY TORTUOUS

14 SHOOTING POSITION, NO.

15 Q LET'S SAY IN TWO SHOTS. YOU HAVE IT IN

16 TWO SHOTS; THE RIGHT FACE AND THE RIGHT

17 MANDIBLE-CLAVICLE, RIGHT?

18 A YES. WE'VE GOT ROUND TRACKS WITH

19 90-DEGREE DIFFERENT DIRECTIONS NOW.

20 Q I DON'T UNDERSTAND WHAT YOU JUST SAID.

21 MY QUESTION -- LET'S SEE IF I CAN MAKE A SIMPLE

22 QUESTION.

23 I THINK YOU'VE ALREADY CONCEDED,

24 DR. MC CARTHY, THAT YOU CANNOT RULE OUT -- JUST AS

25 YOU HAVE HER STANDING FOR NO. 4 -- THERE'S NO

26 QUESTION IN YOUR MIND SHE'S STANDING FOR 4, UPPER

27 RIGHT; IS THAT RIGHT?

28 A THAT IS A MISSTATEMENT OF MY TESTIMONY.

41137

1 AS I TESTIFIED BEFORE, I'VE SHOWN HER STANDING.

2 COULD SHE HAVE BEEN KNEELING SLIGHTLY? YES.

3 Q BUT YOU CERTAINLY -- SHE CERTAINLY COULD

4 HAVE BEEN STANDING, RIGHT?

5 A I BELIEVE SO, YES.

6 Q FINE. AND I THINK YOU'VE ALREADY

7 CONCEDED, AND DR. LAWRENCE TESTIFIED, SHE COULD HAVE

8 BEEN STANDING FOR THE RIGHT MANDIBLE-CLAVICLE

9 INJURIES THAT DR. GOLDEN CALLS NO. 3?

10 MR. CONN: OBJECTION. COMPOUND.

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: DIDN'T YOU ALREADY

13 CONCEDE THAT THERE'S NOTHING ANATOMIC THAT MAKES

14 THIS IMPOSSIBLE FOR HER TO HAVE BEEN STANDING FOR 3,

15 DR. GOLDEN'S 3?

16 A ANATOMICALLY THERE IS NOTHING, THAT'S

17 CORRECT.

18 Q AND ANATOMICALLY THERE IS NOTHING THAT

19 PREVENTS HER FROM STANDING FOR DR. GOLDEN'S 5, WHICH

20 IS THE DOUBLE ARM WOUND, CORRECT?

21 A NOTHING ON THE ANATOMY; THAT IS CORRECT.

22 Q SO, BASED ON THAT, ANATOMICALLY, SHE

23 COULD HAVE HAD THE HAND-CLAVICLE INJURY BEFORE SHE

24 HAD THE DOUBLE ARM INJURY?

25 A NO. BECAUSE THE SHOOTER WOULD HAVE BEEN

26 IN SUCH AN UNGODLY POSITION THAT'S NOT ANATOMICALLY

27 PROBABLE. IT'S A PRACTICAL PROBLEM.

28 Q SHE CAN'T MOVE --

41138

1 A IF SHE MOVED THE SHOOTER DOESN'T --

2 Q BUT IF SHE --

3 THE COURT: ONE AT A TIME, MS. ABRAMSON.

4 MS. ABRAMSON: I'M WITHDRAWING THE QUESTION.

5 THE COURT: THE WITNESS IS ANSWERING THE
6 QUESTION.

7 MS. ABRAMSON: HE'S NOT ANSWERING THE
8 QUESTION I ASKED.

9 THE COURT: LET HIM RESPOND.

10 THE WITNESS: THERE'S NOTHING ANATOMICALLY
11 IMPOSSIBLE. IT IS THE TORTUOUS POSITION THE SHOOTER
12 WOULD HAVE HAD TO HAVE BEEN IN TO MAKE THAT ANATOMY
13 WORK.

14 Q BY MS. ABRAMSON: THE SHOOTER CAN'T
15 MOVE?

16 A THE SHOOTER CERTAINLY CAN MOVE. IT
17 WOULD BE, IN MY OPINION, UNLIKELY HE WOULD KNEEL AND
18 SHOOT FROM THE FLOOR.

19 Q YOU DON'T HAVE TO SHOOT FROM THE FLOOR
20 TO HIT SOMEONE FIVE-FOOT-FIVE ACROSS THE ARM,
21 DR. MC CARTHY.

22 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
23 EVIDENCE THAT'S SHE'S FIVE-FOOT-FIVE.

24 THE COURT: ARGUMENTATIVE AS PHRASED.

25 Q BY MS. ABRAMSON: DO YOU HAVE TO BE
26 KNEELING ON THE -- FIRST OF ALL, DO YOU HAVE TO BE
27 KNEELING ON THE FLOOR IF YOU WERE GOING TO SHOOT ME
28 ACROSS MY FOREARM AND UPPER ARM?

1 A NO.

2 Q SO WHY WOULD THE SHOOTER HAVE TO BE
3 KNEELING TO SHOOT HER?

4 A WE'RE TALKING ABOUT THE WOUND TO HER
5 HAND, CHIN, AND SUPPOSEDLY FACE. LOOK AT THE DEGREE
6 OF VELOCITY AND THE ENTRANCE GEOMETRY OF THOSE
7 PELLET INDICATIONS. IT'S NOT A STRAIGHT-ON SHOT.

8 Q WHAT IS THE ENTRANCE GEOMETRY OF THOSE
9 PELLETS? GIVE ME THE FORMULA.

10 A WELL, THERE ISN'T A FORMULA.

11 Q GIVE ME THE EQUATION.

12 MR. CONN: MAY THE WITNESS FINISH THE ANSWER.

13 THE COURT: YES.

14 THE WITNESS: IT'S CLEARLY INFERIOR TO
15 SUPERIOR, FEET TO HEAD.

16 Q BY MS. ABRAMSON: CLEARLY TO YOU, THE
17 NON-MEDICAL WITNESS; IS THAT CORRECT?

18 MR. CONN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 Q BY MS. ABRAMSON: NOW, DR. LAWRENCE SAID
21 THAT IT WAS ATYPICAL, AND THE SHAPE OF THE ENTRY
22 WOUND WAS BECAUSE THE PELLETS WERE DEFORMED.

23 DID YOU HEAR THAT TESTIMONY?

24 A I GUESS I DON'T RECOLLECT ANY TESTIMONY
25 THAT THE SHAPE OF ALL THE WOUNDS WERE STRANGE,
26 BECAUSE ALL THE PELLETS WERE DEFORMED. THERE MAY
27 HAVE BEEN SUCH TESTIMONY ABOUT A SPECIFIC WOUND, BUT

41140

1 Q YOU DON'T RECOLLECT HIM USING THE TERM
2 "ATYPICAL PELLET DEFECT"?

3 A THERE WAS SOME DISCUSSION OF PELLET
4 DEFECTS, BUT I DON'T HAVE A SPECIFIC RECOLLECTION OF
5 IT GOOD ENOUGH TO RECALL IT TO YOU, TO SWEAR TO IT
6 UNDER OATH.

7 Q THE QUESTION, DR. MC CARTHY, IS: DO YOU
8 REMEMBER DR. LAWRENCE USING THE TERM "ATYPICAL
9 PELLET DEFECT," THOSE THREE WORDS. YES OR NO.

10 A I DON'T HAVE A SPECIFIC RECOLLECTION OF
11 THE ATYPICAL APPENDED TO THAT. I'M NOT SAYING IT
12 DIDN'T HAPPENED.

13 Q IS THAT NO?

14 A I DON'T -- THE ANSWER IS NO. I DON'T
15 HAVE A SPECIFIC RECOLLECTION.

16 MS. ABRAMSON: THANK YOU. MR. LEVIN, COULD
17 WE MOVE THIS AWAY. IT'S GETTING VERY CROWDED HERE.

18 (PAUSE IN THE PROCEEDING.)

19

20 MS. ABRAMSON: WE'RE LOOKING AT SHOT 8A.

21 MS. TOWERY, COULD YOU TELL ME WHAT
22 NUMBER THAT IS, THAT EXHIBIT, SO I CAN MAKE A

23 RECORD.

24 MS. TOWERY: 8A?

25 MS. ABRAMSON: YES.

26 MS. TOWERY: EXHIBIT 264.

27 MS. ABRAMSON: EXHIBIT 264.

28 Q LOOKING AT 8A, WHICH IS EXHIBIT 264,

41141

1 DR. MC CARTHY, THAT PURPORTS TO SHOW A PENETRATING
2 WOUND TO THE LEFT LEG OF MRS. MENENDEZ IN THE THIGH/
3 HIP AREA, CORRECT?

4 A THIGH AREA. I'M NOT COMFORTABLE WITH
5 HIP.

6 Q DR. GOLDEN DESCRIBED IT AS HIS WOUND
7 NO. 7, CORRECT?

8 A YES.

9 Q AND HE CALLS IT HIP-THIGH AREA.

10 A HE DID, YES.

11 Q NOW, IF THE ENTRY WOUND -- I'D ASK YOU TO
12 JUST LOOK AT YOUR CHART FOR A MINUTE. THIS COULD
13 ACTUALLY BE DONE WITH ONE QUESTION. IF THE ENTRY
14 AND EXIT WOUND AS YOU HAVE -- STRIKE THAT.

15 IF THE ENTRY AND EXIT WOUND, AS YOU HAVE
16 SHOWN THEM HERE ARE REVERSED, THEN THIS ILLUSTRATION
17 IS WRONG, CORRECT?

18 A YES.

19 Q NOW, IT IS YOUR TESTIMONY THAT THAT
20 WOUND, OR WHAT YOU ARE CALLING SHOT 8, CAUSED A
21 BREAK IN THE FEMUR, CORRECT?

22 A TRUE.

23 Q DO YOU NEED THE COMPUTER OPEN? ARE YOU
24 LOOKING FOR THINGS IN THERE?

25 A I WAS JUST GOING TO LOOK AT THE FIGURE.
26 YOU ASKED ME A QUESTION --

27 Q YOU CAN LOOK AT THE FIGURE.

28 A WELL, HER FEMUR IS BROKEN. NOW, AM I

41142

1 GOING TO MARRY IT TO THIS SHOT OR THE OTHER SHOTS IN
2 THE LEFT LEG --

3 Q I THINK YOU'VE ALREADY TESTIFIED IT
4 BROKE HER FEMUR HERE IN TRIAL. I'LL LOOKING -- AT
5 MY NOTES ABOUT WHEN YOU TALKED ABOUT THIS.

6 A I MAY HAVE, BUT I'M -- WHAT DID THE
7 CORONER SAY?

8 Q HE SAID IT FRACTURED THE FEMUR.

9 A OKAY.

10 Q YOU WANT TO ACCEPT HIS WORD ON THIS ONE?

11 A YES, BECAUSE I DON'T THINK I WOULD HAVE
12 MADE THAT KIND OF DRAW ALL ON MY OWN.

13 Q OH. OKAY. SO YOU ACCEPT THAT THIS ONE

14 FRACTURED THE FEMUR; IS THAT RIGHT?

15 A LET ME MAKE SURE THAT'S WHAT HE SAID.

16 Q DO YOU THINK I'D LIE TO YOU?

17 LOOK AT PAGE 8, THE VERY LAST PARAGRAPH

18 UNDER "OPINION."

19 A YES.

20 Q "IT CONSIDERED INCAPACITATING BECAUSE OF

21 COMPLETE FRACTURE OF THE LEFT FEMUR."

22 A YES. IT'S DEFINITELY COMPLETELY

23 FRACTURED.

24 Q OKAY. NOW, I'M TRYING TO REMEMBER IN

25 TRYING TO REMEMBER WHAT YOU WERE SAYING A FEW

26 MINUTES AGO ABOUT WHEN THE SKELETON ISN'T THERE TO

27 HOLD THE MUSCLES IT MAKES IT DIFFICULT TO MOVE HER

28 RIGHT ARM.

41143

1 REMEMBER THAT? WHAT YOU WERE SAYING

2 BEFORE?

3 BUT AS BETWEEN 8 AND 9 YOU SHOW THIS

4 PERSON WITH A COMPLETELY FRACTURED FEMUR LIFTING UP

5 HER LEG, DON'T YOU?

6 A I'M SORRY?

7 Q YOU'RE SORRY? YOU MEAN YOU DON'T

8 UNDERSTAND WHAT I'M SAYING?

9 A OH, YOU MEAN A GREATER ANGLE THAN THE
10 BEND OF THE KNEE?

11 Q IS THAT WHAT LIFTS THE KNEE?

12 WHEN ONE IS LYING ON ONE'S BACK,

13 DR. MC CARTHY, WHAT LIFTS THE KNEES? THE THIGH
14 BONE? ISN'T IT THE MUSCLES AND THE THIGH BONE?

15 A IF YOUR THIGH BONE IS CONNECTED
16 STRUCTURALLY, MOST DEFINITELY.

17 Q I MEAN, THAT'S WHAT IT TAKES TO LIFT THE
18 BOTTOM PART OF THE LEG, IS THE GLUTEUS MAXIMUS?

19 A IT TAKES THAT MUSCLE, BUT IT TAKES THE
20 PIVOT POINT OF THE HIP AND THE CONTRACTION -- IN
21 OTHER WORDS, THE MUSCLE CONTRACTS ALONG THE LENGTH
22 OF THE FEMUR, USING IT AS A LEVER TO LIFT.

23 Q WE HAVE A FRACTURED FEMUR HERE, RIGHT?

24 A YES.

25 Q SO WHAT YOU'RE SHOWING HERE, AFTER
26 SHOT -- WHAT YOU'RE CALLING 8 -- TO GET TO SHOT 9,
27 THERE'S NO WAY SHE COULD HAVE LIFTED HER LEG.

28 IF SHE COULDN'T LIFT HER HAND, SHE

41144

1 COULDN'T LIFT HER LEG. WOULD THAT BE A FAIR
2 STATEMENT?

3 A YES. AND I DON'T MEAN TO ATTACH ANY
4 SIGNIFICANCE -- IN FACT, THERE MAY BE JUST A
5 PERSPECTIVE DIFFERENCE IN THE WAY THE LEG APPEARS.
6 I'M NOT ATTACHING ANY MORE ELEVATION BETWEEN THESE
7 TWO SHOTS. IT'S NOT REQUIRED FOR MY SCENARIO.

8 Q WELL, WHAT IS REQUIRED FOR YOUR SCENARIO
9 IS FOR SOME REASON THAT SHOT 8 COME FROM THE EAST,
10 AND IT'S THE ONLY ONE THAT DOES; ISN'T THAT TRUE?

11 A NO. GO BACK TO NO. 4.

12 Q NO. 4, COMING ACROSS THE COFFEE TABLE.
13 I CAN GO BACK TO IT, BUT I HATE SCHLEPPING THESE
14 THINGS AROUND.

15 A IF YOU WOULD GIVE ME -- SAY THAT THAT IS
16 EASTERLY OF KITTY IN MY PORTRAYAL, YOU DON'T HAVE TO
17 SCHLEPP IT BACK.

18 Q IF WHAT'S EASTERLY --

19 A THAT COMES FROM THE EAST AS WELL. I
20 MEAN, I'M JUST RELYING ON MY RECOLLECTION NOW BUT...

21 Q WHY DON'T WE DO IT LATER. WHY DON'T WE
22 RELY ON THESE THUMBNAILED. I HAVE OF ALL OF THESE
23 NOTES.

24 A NO. IT COMES FROM THE NORTH,
25 BASICALLY.

26 Q NORTH IS THAT-A-WAY?

27 A NORTH AND EAST.

28 Q WELL, YOU PLACE THE PERSON SOMEWHERE ON

1 THE OTHER SIDE OF THE COFFEE TABLE.

2 A BUT EAST OF HER FOR THAT SHOT.

3 Q YES. WE'RE TALKING ABOUT THE EAST SIDE
4 OF THE ROOM FOR NO. 8.

5 A YES.

6 Q RIGHT. THANK YOU.

7 NOW, DR. MC CARTHY, YOU SAID YOU HAD ALL
8 THIS TIME TO STUDY THIS, MORE TIME THAN THE
9 OVERWORKED CORONERS OF L.A. COUNTY.

10 I TAKE IT THEN YOU LOOKED VERY CAREFULLY
11 AT THESE PHOTOGRAPHS TO SEE WHAT DEBRIS, IF ANY,
12 FROM SHOT 8 MIGHT APPEAR ON THE CARPET WHERE YOU
13 HAVE YOUR VECTOR LINE ENDING.

14 DID YOU DO THAT?

15 A I HAVE LOOKED AT THE CARPET FOR DEBRIS,
16 YES.

17 Q AND DID YOU LOCATE ANY RIGHT WHERE THAT
18 VECTOR LINE ENDS ON NO. 8?

19 A NONE I COULD DEFINITELY TIE THAT SHOT
20 TO, AND NO OTHER.

21 Q HOW ABOUT NO. 9? WELL, THERE'S NONE IN
22 THAT AREA, IS THERE?

23 A THERE'S A HUGE CONTINUOUS BLOOD STAIN IN
24 THIS AREA.

25 Q THERE'S A HUGE CONTINUOUS BLOOD STAIN,

26 TO BE SLIGHTLY MORE ACCURATE, WHERE THE TOP HALF OF
27 HER BODY WAS; ISN'T THAT TRUE?
28 A WELL, THEY'RE CERTAINLY RIGHT UP THERE

41146

1 TOO, YES.

2 Q THIS PART (POINTING) ARE YOU SAYING ON
3 THE PHOTOGRAPHS OF THE-- THAT SHOWS THE CARPET WHERE
4 THIS SHOT, NO. 8, SUPPOSEDLY ENDS, THAT THERE'S
5 MATERIAL THAT YOU COULD IDENTIFY AS COMING THROUGH,
6 OR LOOKS LIKE THE BLOW-OUT FROM THIS WOUND?

7 A THAT I COULD TIE TO THAT WOUND AND NO
8 OTHER? NO.

9 Q NO. 9 IS A GRAZE WOUND, CORRECT?

10 A YES.

11 Q AND YOU HAVE A GRAZE WOUND HEADING
12 DOWNWARD TOWARD THE CARPET?

13 A YES.

14 Q AND IT LOOKS FROM THIS ANGLE -- LET ME
15 SEE IF I -- TAKE A LOOK AT "B" TO MAKE SURE I'M NOT --
16 AGAIN, IT LOOKS LIKE IT'S HEADING -- YOU CAN'T TELL
17 FROM "B." BUT HEADING DOWN TOWARDS THE CARPET,
18 RIGHT?

19 A YES.

20 Q YOU DON'T -- MR. MENENDEZ IS DEAD AT THIS

21 POINT. THIS APPEARS -- AM I CORRECT, IN ASSUMING
22 THAT YOU'RE THINKING AN ENTIRE ROUND WAS FIRED AND
23 GRAZED HER CALF?

24 A YES.

25 Q AND DID YOU STUDY THE CARPET IN THE AREA
26 THAT WOULD HAVE BEEN UNDER THAT AREA OF HER LEFT LEG
27 TO SEE IF THERE'S AN INDICATION THAT 27 PELLETS OF
28 NO. 4 BUCK ARE THERE?

41147

1 A I COULDN'T FIND ANY DEFECT IN THE CARPET
2 THAT I COULD IDENTIFY THAT. BUT CARPET IS NOT THE
3 BEST SURFACE TO SHOW DAMAGE -- PROBABLY ONE OF THE
4 REASONS WHY WE USE CARPET -- BUT I COULDN'T FIND
5 ANYTHING TO IDENTIFY WITH THAT SHOT.

6 Q THE SAME IS TRUE WITH RESPECT TO NO. 8.
7 COULDN'T FIND ANYTHING TO IDENTIFY ON THE CARPET
8 WITH NO. 8, CORRECT?

9 A THAT'S A LITTLE STRONG; THAT I COULD
10 MARRY TO THAT SHOT AND NO OTHER? YES.

11 Q TO ANY SHOT. THERE'S NO PELLETS FOUND
12 IN THIS ZONE AT ALL, ARE THERE?

13 A NO LOOSE PELLETS OR -- I CAN'T SAY.
14 THERE WERE NO LOOSE PELLETS FOUND IN THAT AREA THAT
15 WERE IDENTIFIED AS BEING FOUND IN THAT AREA.

16 Q RIGHT. IN THE PHOTOGRAPHS YOU CAN'T SEE
17 ANY PELLETS. THIS ENTIRE AREA BETWEEN WHERE YOU
18 WOULD HAVE HER FOOT BENT AND HER HIP JOINED. THIS
19 WHOLE ZONE THERE'S NO EVIDENCE OF ANY PELLETS AT
20 ALL?

21 A THERE'S NO EVIDENCE IN THE PHOTOGRAPH IN
22 THE ANGLES WE HAVE THAT I CAN POINT YOU TO.

23 Q AND NOW, BY THE WAY, DID YOU EVER TRY TO
24 LINE UP THE FOLLOWING HYPOTHETICAL; THAT BEFORE SHOT 8
25 OCCURS, MRS. MENENDEZ IS ALREADY ON HER RIGHT SIDE --

26 A OKAY.

27 Q NOW, YOU MIGHT NOT BE ABLE TO DO THIS.
28 I WANT TO DO A DOUBLE HYPOTHETICAL. OKAY.

41148

1 SHE'S ON HER RIGHT SIDE. THE ENTRY AND
2 EXIT ARE OPPOSITE, WHICH ARE SHOWING HERE. THE
3 ENTRY IS ACTUALLY BELOW, THE EXIT IS ABOVE; AND HER
4 LEG IS BENT IN SUCH A WAY THAT THE CALF LINES UP
5 WHERE THE GRAZE WOUND IS ON THE CALF, LINED UP WHERE
6 WHAT YOU'RE SHOWING IS AN EXIT WOUND ON THE LOWER
7 LEG.

8 DID YOU EVER THINK ABOUT THAT
9 CONFIGURATION?

10 A YES. AND THEN WHERE IS THE SHOTGUN

11 SPLASH ON THE COUCH? IN OTHER WORDS, ROLL OVER ON
12 THE SIDE. BRING THE LEG UP. SHOOT HER FROM THE
13 BACK. NOW WE HAVE A WHITE COUCH AS A BACK STOP.

14 Q YOU MEAN SHOOT FROM THE BACK?

15 A SHOOT HER FROM THE FRONT? IS THAT PART
16 OF YOUR HYPOTHETICAL?

17 Q YOU DON'T HAVE ANY SPLASH ON THE COUCH
18 FROM THIS THING.

19 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
20 EVIDENCE THAT THERE IS ANYTHING.

21 THE COURT: OBJECTION SUSTAINED. THE ANSWER
22 IS STRICKEN.

23 Q BY MS. ABRAMSON: I DON'T THINK I CAN DO
24 THIS ONE. I'M NOT GOING TO GET ON THE FLOOR. I
25 PROBABLY COULD. I DON'T WANT TO.

26 SO WHAT I'M -- I'M NOT SURE WE'RE
27 PICTURING THE SAME THING. JUST TO SHOW THE LEG
28 CONFIGURATION. SORT OF LIKE THIS. SEE THAT LINE?

41149

1 A I SEE YOUR POSTULATION JUST AS A LEG
2 POSTULATION.

3 Q DOES THE CALF WOUND -- IF WHAT WE'RE
4 SEEING ON 8A -- IF THE LOWER PART REALLY IS THE
5 ENTRANCE AND THE HIGHER PART IS THE EXIT, DOES THE

6 CALF WOUND LINE UP?

7 A I DON'T THINK THAT COMES OUT CORRECT

8 GEOMETRICALLY, BUT I WOULD HAVE TO CONSULT THE

9 PICTURES. I DON'T THINK THAT COMES OUT

10 GEOMETRICALLY RIGHT. I THINK THE WOUND IS TOO FAR

11 DOWN FOR IT TO COME OUT RIGHT, OR IF YOU GET THE LEG

12 EXTENDED ENOUGH THAT IT'S TOO FAR DOWN AND THE ANGLE

13 IS WRONG.

14 Q YOU DIDN'T CONSIDER IT?

15 A AT SOME POINT IN TIME I WENT THROUGH,

16 METHODICALLY, EVERY COMBINATION OF THOSE LEG

17 WOUNDS. I DON'T HAVE A SPECIFIC RECOLLECTION WHAT

18 ABOUT THAT DIDN'T WORK OUT. BUT MY RECOLLECTION IS

19 IT DIDN'T.

20 Q DID YOU GO THROUGH -- DID YOU EVER

21 ENVISION MRS. MENENDEZ ON THE COUCH RECLINING TO HER

22 RIGHT ON THE PILED-UP PILLOWS WITH -- ON HER RIGHT

23 SIDE WITH THE LEFT LEG, THE HIGHER OF HER TWO

24 LEGS -- DID YOU EVER PICTURE HER GETTING A LEG WOUND

25 IN THAT POSITION?

26 A WITH SO LITTLE BLOOD EVIDENCE ON A WHITE

27 COUCH?

28 Q WELL --

1 A I DID NOT.

2 Q FINE. BUT THE BLOOD EVIDENCE THAT DOES
3 APPEAR ON THE WHITE COUCH IS AN AREA OF SMEAR WHERE
4 ORDINARILY A PERSON'S LEG WOULD BE, CORRECT?

5 A I WOULD CHARACTERIZE IT MORE OF AN AREA
6 NORMALLY BETWEEN A PERSON'S LEGS.

7 Q I'M TALKING ABOUT WHAT'S ON THE FACE OF
8 THE COUCH, NOT WHAT'S ON THE SEAT OF THE COUCH.

9 A I GUESS I'M UNCOMFORTABLE THEN WITH
10 ORDINARY. IT'S ON THE FACE OF THE COUCH. I DON'T
11 THINK IT'S NECESSARILY INDICATIVE OF A PARTICULAR
12 LEG POSITION.

13 Q BUT IT CAN BE INDICATIVE OF A SMEAR FROM
14 A BLEEDING LEG, CAN IT NOT?

15 A OR A LEG WITH BLOOD ON IT, YES.

16 Q EITHER WAY.

17 A YES.

18 Q NOW, YOU DO REALIZE FROM WHAT YOU SAW
19 THAT SHE WAS WEARING PANTS?

20 A YES.

21 MS. ABRAMSON: I HAVE TWO MORE THINGS TO DO.
22 IF YOU WANT TO --

23 THE COURT: OKAY. WE'LL TAKE OUR RECESS AND
24 WE'LL RESUME AT 3:30.

25 MS. ABRAMSON: THANK YOU.

26 (A RECESS WAS TAKEN FROM

27 3:10 P.M. TO 3:35 P.M.)

28

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

4

5 THE COURT: EVERYBODY IS PRESENT. DO YOU WANT TO
6 RESUME?

7 MS. NAJERA: YOUR HONOR, THERE'S ONE THING.
8 THERE IS A NEW PODIUM HERE THAT COMPLETELY BLOCKS MY
9 VIEW OF THE JURY.

10 THE COURT: WELL, WE WILL EXPERIMENT WITH IT THIS
11 AFTERNOON AND THEN DECIDE WHETHER WE'RE GOING TO KEEP IT
12 OR NOT. IT'S ALREADY 20 MINUTES TO THE HOUR, 20 MINUTES
13 TO 4:00, SO WE WILL DO IT THIS AFTERNOON AND SEE HOW IT
14 WORKS.

15 BRING THE JURY OUT, PLEASE.

16 (THE JURY ENTERS THE COURTROOM AND THE
17 FOLLOWING PROCEEDINGS WERE HELD:)

18

19 THE COURT: LET'S PROCEED.

20 MS. ABRAMSON: THANK YOU, YOUR HONOR.

21 Q. DR. MC CARTHY, I HAVE UP ON THE EASEL WHAT
22 YOU HAVE CALLED SHOT 10A, WHICH IS THE SHOT THAT ENTERS
23 BELOW THE KNEE AND ULTIMATELY EXITS ABOVE THE KNEE ON
24 THE LEFT SIDE OF MRS. MENENDEZ.

25 DO YOU SEE THAT?

26 A. YES.

27 Q. NOW THIS, TOO, HAS HER LEG IN AN ELEVATED
28 POSITION AFTER YOU OPINE HER LEFT FEMUR HAS BEEN BROKEN

1 TWO SHOTS AGO, CORRECT?

2 A. YES.

3 Q. AND YOU HAVE THIS PARTICULAR VECTOR LINE

4 TERMINATING AT HER -- WHAT APPEARS TO BE HER LEFT

5 FOREARM.

6 IS THAT WHAT YOU MEANT THE VECTOR TO SHOW?

7 A. THAT IS A POSSIBILITY, ALTHOUGH I DIDN'T

8 MEAN IT TO SHOW PRECISELY THERE IN THE SENSE THAT ONCE

9 THE SHOT COLUMN GOES THROUGH THAT MUCH LEG, IT ISN'T

10 GOING TO HAVE A DISTINCT DIRECTIONALITY. IT WOULD

11 SPREAD OR IT COULD DEFLECT.

12 Q. SO YOU DON'T KNOW IF IT HIT HER LEFT ARM OR

13 NOT?

14 A. AT THE PRECISE POSITION SHOWN, I DO NOT.

15 Q. OR IN ANY MANNER, FOR THAT MATTER?

16 A. IT WOULD GO SOMEWHERE, BUT IT WOULD BE

17 HEAVILY DISSIPATED. YOU POINTED OUT THAT DEFECT HERE IN

18 THIS PICTURE. THE CORONER DOESN'T INDICATE THAT'S A

19 HOLE, IT'S JUST A BRUISE OR AN ABRASION.

20 Q. I AM SORRY. YOU CAN'T DO THAT, SAY "THIS

21 PICTURE" IN A CASE WITH 303 EXHIBITS?

22 A. I AM SORRY.

23 Q. HERE'S THE POINTER. YOU CAN SEE THIS

24 PICTURE.

25 A. I DIDN'T MEAN TO GOOF UP THE SYSTEM. THIS

26 IS WHAT WE WERE TALKING ABOUT BEFORE.

27 THE COURT: THE WAY THE DEFENSE HAS LABELED THEM,

28 MS. ABRAMSON, WITHOUT NAMES FOR THESE PHOTOGRAPHS, IT'S

-24383

1 JUST THAT, "THIS" AND "THAT".

2 MS. ABRAMSON: THAT PARTICULAR CHART, I BELIEVE

3 IS 301, AND 301 CONSISTS OF THREE COLUMNS OF

4 PHOTOGRAPHS. THE LEFT COLUMN HAS TWO PHOTOGRAPHS IN IT.

5 BOTH OF THEM SHOW THE POSITION OF MRS. MENENDEZ' LEFT

6 BREAST AND LEFT ARM, AND THE WITNESS WAS JUST POINTING

7 TO THE SECOND OR LOWER ONE, THE ONE THAT HAS THE SCALE

8 ON HER RIB CAGE, AND TWO CIRCULAR MARKS BELOW THE SCALE.

9 THE COURT: IF YOU HAVE ANY MORE OF THESE,

10 PERHAPS IN THE FUTURE YOU COULD LABEL THE PHOTOGRAPHS A,

11 B, C, D, AND E SO WE DON'T HAVE TO GO THROUGH THAT

12 DESCRIPTIVE EFFORT.

13 MS. ABRAMSON: GOOD IDEA, YOUR HONOR.

14 Q. OKAY. NOW, HOWEVER, WHAT I'M TRYING TO

15 FIGURE OUT, DR. MC CARTHY, IS WHAT YOU MEANT IN YOUR

16 ILLUSTRATION.

17 DO YOU MEAN THAT ILLUSTRATION TO INDICATE

18 WITH SCIENTIFIC CERTAINTY OF ANY DEGREE, THAT THE COLUMN

19 OF PELLETS THAT WENT THROUGH HER LEFT LEG IN THESE TWO

20 PLACES ALSO PUT PELLETS IN HER LEFT ARM?

21 A. NO, NOT WITH SCIENTIFIC CERTAINTY.

22 Q. WELL, AREN'T YOU TESTIFYING HERE AS A
23 SCIENTIST?

24 A. AN ENGINEER. BUT YES, I GUESS SO.

25 Q. ARE YOU SUPPOSED TO BE UNSCIENTIFIC IF
26 YOU'RE AN ENGINEER?

27 A. WELL, THERE IS SOME ART TO ENGINEERING, BUT
28 IT IS ALL APPLIED SCIENCE.

-24382

1 Q. WELL, ARE YOU TESTIFYING HERE AS AN ARTIST
2 USING YOUR CREATIVITY, OR ARE YOU TESTIFYING HERE
3 SUPPOSEDLY SCIENTIFICALLY AS AN ENGINEER?

4 A. I AM TESTIFYING HERE AS AN ENGINEER, AND I
5 HAVE ATTEMPTED TO BASE MY TESTIMONY ON SCIENTIFIC
6 RECONSTRUCTION WITH THE AVAILABLE EVIDENCE. THERE HAVE
7 BEEN POINTS WHERE I HAVE MADE INFERENCES THAT ARE NOT
8 SCIENTIFIC. I HAVE TRIED TO IDENTIFY THOSE.

9 Q. OKAY. LET'S TALK ABOUT THIS PARTICULAR
10 POINT.

11 IS IT YOUR OPINION THAT ANY OF THE SHOTS
12 THAT MADE THE WOUNDS ON HER LEFT LEG ALSO ENTERED HER
13 LEFT FOREARM?

14 A. I CAN'T STATE THAT WITH CERTAINTY. ALL I
15 CAN DO IS ILLUSTRATE THE POTENTIAL GEOMETRY.

16 Q. NOW, WITH RESPECT TO THE NOTION THAT THE
17 PELLETS HAD TO GO SOMEWHERE, THAT WAS YOUR STATEMENT?

18 A. WELL, THEY DO HAVE TO GO SOMEWHERE. BUT
19 THEY DON'T NECESSARILY HAVE TO HAVE ANY ENERGY AT THIS
20 POINT TO PENETRATE.

21 Q. WELL, HER LEFT ARM DOES NOT NECESSARILY
22 HAVE TO BE WHERE YOU PUT IT ARBITRARILY IN YOUR
23 ILLUSTRATION, CORRECT?

24 A. OF COURSE NOT.

25 Q. HER LEFT ARM COULD BE DOWN AT HER SIDE?

26 A. EXACTLY RIGHT.

27 Q. IT COULD BE OVER HER HEAD AT THIS POINT?

28 A. AT THIS POINT.

-24381

1 Q. IT COULD BE BEHIND HER BACK?

2 A. YES, AT THIS POINT.

3 Q. IN FACT, SHE COULD BE LYING ON HER SIDE AT
4 THIS POINT, HER RIGHT SIDE, AS SHE IS ULTIMATELY FOUND?

5 A. I DON'T THINK SO. THIS IS A TOUGH SHOT TO
6 MAKE WORK HORIZONTAL.

7 Q. IN FACT, YOU HAVE IT REALLY -- STRIKE THAT.

8 WOULD IT BE FAIR TO SAY THAT AGAIN YOU'RE
9 NOT TRYING TO HAVE THIS VECTOR BE ACTUALLY ANATOMICALLY
10 ACCURATE, CORRECT?

11 A. WELL, NOT TO EVERY DETAIL, BUT GENERALLY
12 SCHEMATICALLY CORRECT.

13 Q. WELL, ISN'T IT TRUE THAT THE WOUND PATTERN

14 THAT THIS VECTOR IS SUPPOSED TO REFLECT IS ACTUALLY MORE
15 TOWARDS THE INSIDE OF THE LEG THAN THE OUTSIDE OF THE
16 LEG AS IT APPEARS IN YOUR SHOT 10A?

17 A. THAT IS MORE DETAIL THAT I'M TRYING TO SHOW
18 THERE.

19 Q. THAT IS TRUE. IT IS MORE INSIDE THE LEG
20 THAN TOWARDS THE OUTSIDE OF THE LEG?

21 A. THAT COMPORTS WITH MY RECOLLECTION OF THE
22 PHOTOGRAPH, ALTHOUGH I AM NOT COMFORTABLE -- IT IS MORE
23 INSIDE, YEAH. I MEAN --

24 Q. AND IF IT IS IN FACT MORE INSIDE THAN
25 YOU'RE SHOWING IT HERE -- WELL, STRIKE THAT.

26 YOU HAVE NO IDEA IF HER ARM IS THERE AT
27 ALL, RIGHT?

28 A. THAT -- I CAN'T SAY WITH CERTAINLY IT IS.

-24380

1 I HAVE NO IDEA WHERE HER ARM IS.

2 Q. AND I THINK WE HAVE ALREADY INDICATED WHEN
3 WE WERE TALKING ABOUT SHOT NO. 1, AS YOU CALL IT, THAT
4 DR. LAWRENCE HAS DESCRIBED THE PELLET THAT WOUND UP IN
5 HER LEFT FOREARM TO SHOT NO. 1.

6 A. THAT'S WHAT YOU INDICATED TO ME. I HAVE NO
7 INDEPENDENT RECOLLECTION OF THE TESTIMONY.

8 Q. AND THE ONLY OTHER PELLET IN HER LEFT ARM
9 IS UP IN HER UPPER ARM?

10 A. UPPER SHOULDER AREA, YES.

11 Q. WELL, THE UPPER ARM. CAN WE SAY THAT?

12 A. YES.

13 Q. AND YOU ARE NOT SUGGESTING BY THE WAY YOU

14 HAVE DRAWN THIS, OR ARE YOU, THAT SHE GOT THE PELLET IN

15 HER UPPER ARM FROM THIS SHOT 10?

16 A. AGAIN, IT'S POSSIBLE, BUT I AM NOT

17 SUGGESTING IT.

18 Q. WHY DON'T YOU LOOK AGAIN AT THAT SAME

19 PHOTOGRAPH THAT YOU LOOKED AT ON 301. LEFT-HAND COLUMN,

20 SECOND PHOTOGRAPH.

21 DO YOU SEE ANY HOLES IN HER UPPER ARM?

22 A. THERE IS A DEFECT THERE THAT YOU CAN SEE.

23 Q. WHY DON'T YOU GO UP REAL CLOSE AND LOOK AT

24 HER --

25 THE BAILIFF: QUESTION BY A JUROR.

26 ALTERNATE JUROR: WE CAN'T SEE IT.

27 MS. ABRAMSON: WE WILL MOVE IT.

28 Q. WHY DON'T YOU STEP DOWN AND LOOK AT THIS.

-24379

1 A. THAT'S ALL YOU SEE. YOU DON'T SEE ANYTHING

2 I WOULD IDENTIFY AS A HOLE.

3 Q. RIGHT. HYPOTHETICALLY SPEAKING,

4 DR. MC CARTHY, IF THERE IS NO HOLE ANYWHERE IN HER UPPER

5 ARM, AND YET THERE IS A PELLET INSIDE THAT PART OF HER

6 ARM, IT TRAVELED THERE INSIDE THE ARM, CORRECT?

7 A. IT GOT THERE SOME WAY. NOW --

8 Q. AND IF THE ONLY HOLES, THE ONLY ENTRY

9 ABILITY -- STRIKE THAT.

10 IF THE ONLY AREAS OF AVAILABLE ENTRY ARE IN

11 THE FOREARM, THEN A PELLET IN THE UPPER ARM SOMEHOW HAD

12 TO TRAVEL -- WE'RE TALKING ABOUT THE LEFT -- HAD TO

13 TRAVEL UP FROM THE FOREARM.

14 A. I AM COMFORTABLE WITH THAT HYPOTHETICAL.

15 IF YOU POSTULATE THE ONLY AREAS OF ENTRY ARE DOWN IN THE

16 LOWER ARM, THEY WOULD HAVE TO TRAVEL THE LENGTH OF THE

17 ARM.

18 Q. AND IF THE ONLY ENTRIES ARE IN THE LOWER

19 ARM, AND THE LOWER ARM IS AFFILIATED WITH THE BREAST

20 WOUND, THEN BOTH PELLETS IN THE ARM SHOULD BE

21 ATTRIBUTABLE TO SHOT NO. 1, CORRECT?

22 A. I MISSED THAT. SORRY.

23 Q. IF THE ONLY ENTRY DEFECTS IN HER LEFT ARM

24 ARE IN THE FOREARM, NOT UPPER ARM --

25 A. YES.

26 Q. -- AND IF THE FOREARM DOES MATCH UP WITH

27 THE WOUNDS TO THE LEFT BREAST, SO THAT IT'S PART OF THE

28 SAME SHOT --

-24378

1 A. YES.

2 Q. -- THEN THE TWO PELLETS IN HER LEFT ARM
3 WERE PART OF THE SAME SHOT THAT CAUSED THE DEFECTS IN
4 THE LEFT BREAST.

5 A. NO. THERE IS NO WAY A PELLET THAT ENTERED
6 HERE TOOK A RIGHT TURN AND TRAVELED ALL THAT DISTANCE UP
7 A MUSCLE. IT DIDN'T HAPPEN.

8 Q. SO EVEN THOUGH THERE'S NO OTHER ENTRY IN
9 THE LEFT ARM EXCEPT THE ONES IN THE FOREARM --

10 A. WE DON'T HAVE A RECORD OF ANY OTHER ENTRY
11 IN THE ARM EXCEPT IN THE FOREARM.

12 Q. BUT THERE'S GOT TO BE ONE?

13 A. UNLESS IT TRAVELS THE LENGTH OF THE ARM.
14 IF IT TRAVELED THE LENGTH OF THE ARM, IT COULD DO SO IN
15 THE BREAST SHOT.

16 Q. DIDN'T YOU ALREADY TESTIFY WITH RESPECT TO
17 THE BREAST SHOT THAT THE FOREARM BONE CAN DEFLECT IN THE
18 ARM?

19 A. IT CAN, BUT NOT FOR THAT MANY INCHES.

20 Q. WELL, YOU DON'T KNOW HOW IT CAN BE
21 DEFLECTED IN THE ARM. YOU HAVEN'T STUDIED THIS, HAVE
22 YOU?

23 A. I HAVE STUDIED BALLISTICS. I AM NOT A
24 PRACTICING WOUND BALLISTIC EXPERT. BUT PELLETS DON'T
25 MAKE RIGHT TURNS IN BONE AND TRAVEL FOR A NUMBER OF
26 INCHES. THEY JUST DON'T HAVE THAT MUCH AVAILABLE
27 ENERGY.

28 Q. ARE YOU ASSUMING THAT THESE PELLETS WENT

1 THROUGH HIS RIGHT ARM FIRST?

2 A. THAT IS MY HYPOTHESIS, YES.

3 Q. SO IF YOU'RE WRONG ABOUT THAT, YOU'RE WRONG
4 ABOUT THIS; IS THAT RIGHT?

5 A. I DON'T THINK AT THIS POINT, WHEN YOU SAY
6 "THIS", IF WE'RE TALKING ABOUT THE UPPER ARM, IT IS VERY
7 DIFFICULT FOR A PELLET TO GET DEFLECTED.

8 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.
9 IT'S NOT RESPONSIVE.

10 THE COURT: HE IS RESPONDING TO YOUR QUESTION.

11 THE WITNESS: IT IS DIFFICULT FOR A PELLET TO
12 DEFLECT 90 DEGREES BECAUSE OF BONE AND GO THROUGH THAT
13 MANY INCHES OF TISSUE.

14 Q. BY MS. ABRAMSON: THAT'S YOUR OPINION AS
15 THE NON-WOUND BALLISTICS EXPERT; IS THAT CORRECT?

16 A. THAT IS MY OPINION.

17 Q. THANK YOU.

18 NOW, WITH RESPECT TO SHOT 10, THIS IS THE
19 LAST SHOT THAT YOU SHOW WITH MRS. MENENDEZ ON HER BACK,
20 CORRECT?

21 A. YES.

22 Q. AND YOU HAVE ALREADY INDICATED, I THINK ON
23 DIRECT EXAMINATION, WE SHOULD JUST IGNORE THE POSITION
24 OF HER RIGHT LEG, BECAUSE YOU DON'T KNOW IF IT'S THERE
25 OR NOT?

26 A. I DO NOT. I WOULDN'T IGNORE IT. IT'S

27 SOMEWHERE.

28 Q. BY THE WAY, ARE YOU ALSO ASCRIBING THIS

-24376

1 CIRCULAR AREA IN THE RIB CAGE AREA TO 10?

2 A. I THINK THAT'S VERY PLAUSIBLE. THE CORONER
3 DOESN'T INDICATE. HE SAYS THAT IS AN ABRASION. HE
4 CALLS IT AN ABRASION, NOT A HOLE, AND IT'S VERY POSSIBLE
5 THAT PELLETS THAT HAD SPENT THEIR ENERGY IN HER KNEE
6 COULD ABRABE HER UPPER TORSO.

7 Q. SO THEN YOU DON'T THINK ANY PELLETS ENTERED
8 THROUGH THAT HOLE?

9 A. WELL, THE CORONER DOESN'T FIND THAT.

10 Q. I'M ASKING YOU.

11 A. WELL, I DON'T THINK A PELLET COULD ENTER
12 THROUGH AN ABRASION. IT WOULD HAVE TO BE A HOLE.

13 Q. SO, YOU ACCEPT THE CORONER'S DESCRIPTION
14 THAT IS ONLY AN ABRASION?

15 A. I ACCEPT HIS DESCRIPTION, AND IF YOU
16 MAGNIFY IN ON THAT DEFECT, YOU DON'T FIND A HOLE EITHER.
17 AT LEAST I COULDN'T FIND A HOLE.

18 Q. SO, THAT COULDN'T BE THE SOURCE OF THOSE
19 TWO DEFECTS -- THOSE TWO PELLETS WE SAW INSIDE HER RIB
20 CAGE?

21 A. I DON'T THINK SO, NO.

22 Q. NEVERTHELESS, YOU TESTIFIED AT THE PRETRIAL

23 HEARING THAT AS A RESULT OF THIS SHOT A COUPLE OF

24 PELLETS ENDED UP IN HER LOWER WAIST.

25 DO YOU REMEMBER SAYING THAT?

26 A. I DON'T, BUT I HOPE I MADE IT A CONTINGENT

27 STATEMENT.

28 Q. WELL, LET ME READ YOU THE QUESTION AND THE

-24375

1 ANSWER. 35,444, STARTING AT LINE 11.

2 "QUESTION: THAT IS SHOT 10A.

3 "CAN YOU TELL US WHAT WE'RE

4 LOOKING AT IN THAT VISUALIZATION?

5 "ANSWER: YES. THIS GOES --

6 PASSES DIRECTLY THROUGH THE KNEE IN

7 THE GEOMETRY INDICATED. SOME -- A

8 COUPLE PELLETS END UP IN HER LOWER

9 WAIST AND RIGHT ARM HERE, BUT

10 BASICALLY THE BULK OF THE DAMAGE IS

11 TO THE KNEE."

12 NOW, I BELIEVE WE CLEAR IT UP LATER THAT

13 YOU MEAN THE LEFT ARM AND NOT THE RIGHT ARM.

14 A. I WAS TALKING ABOUT THE ARM.

15 Q. NO. YOU SAID A COUPLE PELLETS ENDED UP IN

16 HER LOWER WAIST.

17 A. KEEP READING THE REST.

18 Q. "AND RIGHT ARM HERE, BUT BASICALLY THE BULK

19 OF THE DAMAGE IS TO THE KNEE."

20 NOW, DO YOU THINK LOWER WAIST AND RIGHT ARM

21 ARE THE SAME THING?

22 A. IT PERHAPS WAS NOT ARTFULLY STATED, BUT I

23 WAS TALKING ABOUT THE LEFT ARM, AS YOU PROPERLY POINT

24 OUT.

25 Q. NO. YOU WERE TALKING ABOUT THE LEFT ARM

26 INSTEAD OF THE RIGHT ARM. I AM NOT SUGGESTING THAT

27 LOWER WAIST MEANS LEFT ARM.

28 A. I MEAN -- WHAT I MEANT TO BE SAYING, I JUST

-24374

1 CONJOINED TOO MANY ADJECTIVES, WAS THAT THE -- I BELIEVE

2 THAT THE ARM PELLETS MAY BE RELATED TO THIS SHOT.

3 Q. YOU BELIEVED THAT BEFORE YOU HEARD

4 DR. LAWRENCE SAY HE BELIEVES THEY'RE RELATED TO THE

5 BREAST; IS THAT RIGHT?

6 A. YES.

7 Q. BUT NOW YOU DON'T BELIEVE THAT ANYMORE,

8 BECAUSE DR. LAWRENCE SAID SOMETHING DIFFERENT; IS THAT

9 ASRIGHT?

10 A. IT'S NOT A QUESTION OF NOT BELIEVING. I

11 THINK A FAIR READING OF THE RECORD, GOING ON, I DIDN'T

12 ATTACH A GREAT DEAL OF CERTAINTY TO -- I COULDN'T TELL

13 YOU FOR CERTAIN WHAT HE DID WITH THIS SHOT. I JUST

14 RAISE THE POSSIBILITY.

15 BUT I ALSO ACCEPT THE POSSIBILITY THAT THE
16 CORONER COULD BE RIGHT IN THE ASSOCIATION. I JUST
17 COULDN'T TELL YOU FOR SURE, AND THAT WAS TRUE AT THE
18 PRETRIAL.

19 Q. NOW, THIS IS SHOT 11, AND BASICALLY YOU
20 KEEP HER BODY IN THE SAME POSITION FOR 11 AND FOR 12; IS
21 THAT RIGHT?

22 A. YES.

23 Q. AND THAT'S WHAT YOU HAVE DETERMINED ARE THE
24 TWO SHOTS?

25 A. YES.

26 Q. NOW, YOU HAVE THIS PERSON WHO HAS GOT,
27 ACCORDING TO YOUR CALCULATION AT THIS POINT, THREE
28 INJURIES TO THE LEFT LEG, TWO OF WHICH BROKE BONES,

-24373

1 RIGHT?

2 A. YES.

3 Q. THREE INJURIES TO THE RIGHT ARM, THREE OF
4 WHICH BROKE BONES?

5 A. YES.

6 Q. INCLUDING THE RIGHT SHOULDER, RIGHT?

7 A. YES.

8 Q. INJURIES TO THE RIGHT FACE?

9 A. YES.

10 Q. YOU HAVE HER DECIDE TO ROLL OVER ONTO HER

11 SHATTERED RIGHT SHOULDER; IS THAT RIGHT? IS THAT WHAT
12 THIS IS DEPICTING?

13 A. IT SHOWS THAT SHE GETS TO THAT POSITION.
14 THAT IS UNCONTROVERTED THAT'S WHAT WE FOUND HER IN.

15 Q. RIGHT.

16 A. WHETHER SHE ROLLED OF HER OWN VOLITION OR
17 WAS ROLLED OVER, I CAN'T TELL.

18 Q. WHAT BASIS DO YOU HAVE THAT SOMEONE ROLLED
19 HER OVER, DR. MC CARTHY? AREN'T WE WAY OUT THERE NOW,
20 EVEN FOR YOU?

21 MR. CONN: OBJECTION. ARGUMENTATIVE.

22 THE COURT: SUSTAINED.

23 MS. ABRAMSON: THAT'S PURE FANTASY, ISN'T IT?

24 MR. CONN: OBJECTION. ARGUMENTATIVE.

25 THE COURT: SUSTAINED.

26 Q. BY MS. ABRAMSON: THE FACT OF THE MATTER
27 IS, DR. MC CARTHY, YOU DON'T KNOW THAT SHE WAS EVER FLAT
28 ON HER BACK; ISN'T THAT TRUE?

-24372

1 A. NO, THAT'S NOT TRUE. OBVIOUSLY WE HAVE ALL
2 THESE INJURIES ON HER RIGHT SIDE.

3 Q. ALL OF WHICH DR. LAWRENCE SAID COULD HAVE
4 BEEN INFLICTED WHILE SHE WAS STANDING UP.

5 REMEMBER THAT?

6 A. WELL, HE SAID WHAT HE SAID. BUT

7 NEVERTHELESS, THAT SHE RECEIVED THOSE INJURIES IN
8 ANOTHER POSITION, ALL THAT LITANY YOU WENT THROUGH,
9 EVERYBODY AGREES ON. SHE COULDN'T HAVE TAKEN THOSE IN
10 THIS POSITION.

11 SO ANY SCENARIO HAS GOT TO GET ALL THOSE
12 RIGHT-SIDE INJURIES, ALL THAT DAMAGE YOU TESTIFIED
13 BEFORE, THE RIGHT HAND AND THE FACE AND EVERYTHING.
14 THAT'S ALL GOT TO HAPPEN BEFORE SHE ASSUMES THIS
15 POSITION.

16 Q. EXACTLY.

17 A. NOW, I THINK FOR THE REASONS INDICATED IN
18 THE VARIOUS GEOMETRY, SHE WAS ON THE BACK. IT CERTAINLY
19 SOLVES THE PROBLEM OF THE BROKEN ARMS AND WHERE THE
20 LIMBS ARE.

21 Q. SOLVES YOUR PROBLEM?

22 MR. CONN: OBJECTION. ARGUMENTATIVE.

23 THE COURT: WAIT. WAIT. THE WITNESS IS
24 FINISHING HIS ANSWER.

25 Q. BY MS. ABRAMSON: GO AHEAD.

26 A. BUT NEVERTHELESS YOU HAVE PROPERLY OBSERVED
27 THAT SHE IS TERRIBLY WOUNDED IN THIS POSITION, AND IF
28 SHE IS INCAPABLE OF MOTIVATING HERSELF OVER ON THE RIGHT

-24371

1 HAND SIDE, THERE IS NO QUESTION IT GOT DONE SOMEHOW.

2 Q. WELL, LET'S JUST SAY THAT YOUR SEQUENCE IS

3 TOTALLY WRONG; THAT SHE WAS SHOT ON THE RIGHT SIDE WHILE
4 STANDING UP AND THAT WHEN SHE WENT DOWN, AS DR. LAWRENCE
5 DESCRIBED, INSTEAD OF FALLING FLAT ON HER BACK, LIKE IN
6 THE MOVIES, SHE CRUMPLED ON HER RIGHT SIDE LIKE IN REAL
7 LIFE.

8 MR. CONN: OBJECTION, ARGUMENTATIVE.

9 MS. ABRAMSON: NOW TELL ME WHAT'S INCONSISTENT
10 WITH THAT.

11 THE COURT: COUNSEL, THERE WAS AN OBJECTION.

12 THE OBJECTION IS SUSTAINED. THE QUESTION
13 WAS ARGUMENTATIVE.

14 Q. BY MS. ABRAMSON: TELL ME WHAT'S
15 INCONSISTENT, DR. MC CARTHY, WITH THE -- BASED ON
16 DR. LAWRENCE AND DR. GOLDEN'S MEDICAL OPINION, WITH MRS.
17 MENENDEZ HAVING RECEIVED ALL THE RIGHT-SIDE INJURY
18 BEFORE SHE EVER HIT THE GROUND, AND THAT WHEN SHE HIT
19 THE GROUND SHE WAS ALREADY ON HER RIGHT SIDE.

20 TELL ME WHAT'S MEDICALLY IMPOSSIBLE.

21 A. WELL, FIRST OF ALL, I THINK YOU MISSTATE
22 DR. LAWRENCE'S TESTIMONY IN SAYING HE THOUGHT IT WAS
23 LIKELY SHE WAS STANDING UP. YOU MERELY ASKED HIM ABOUT
24 THE POSSIBILITY.

25 MS. ABRAMSON: STRIKE THAT. THAT'S NOT
26 RESPONSIVE, YOUR HONOR. I AM ASKING HIM TO STATE WHAT'S
27 MEDICALLY INCONSISTENT.

28 THE COURT: NO. HE IS RESPONDING TO YOUR

1 QUESTION, AND HE HAS A RIGHT TO DO IT IN THE WAY HE IS
2 DOING IT.

3 THE WITNESS: IN RESPONSE TO THE SUBSTANCE, YOU
4 HAVE TO DO ALL THE LEFT LEG INJURIES UNDER THAT SCENARIO
5 HORIZONTALLY. PEOPLE HAVE TO BE SHOOTING, PUTTING
6 SHOTGUNS DOWN ON THE FLOOR TO SHOOT THOSE LEFT LEG
7 WOUNDS, AND I DON'T THINK THAT'S POSSIBLE OR HIGHLY
8 LIKELY.

9 Q. BUT THAT'S BECAUSE YOU ASSUME THOSE LEFT
10 LEG WOUNDS OCCURRED BEFORE SHE STOOD UP; IS THAT RIGHT?

11 A. YES, BUT I DON'T THINK --

12 MR. CONN: YOUR HONOR, MAY --

13 MS. ABRAMSON: THANK YOU.

14 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS
15 ANSWER?

16 THE COURT: YES. HE WAS.

17 THE WITNESS: I DON'T THINK THE BLOOD ON THE
18 WHITE COUCH IS CONSISTENT WITH ALL THAT DAMAGE, HER
19 SITTING THERE, NOT TO MENTION THE PROBLEM WITH HER
20 STANDING UP.

21 Q. BY MS. ABRAMSON: YOU'RE NOT A CRIMINALIST;
22 IS THAT RIGHT?

23 A. THAT'S CORRECT.

24 Q. NOW LET'S GO TO NO. 7.

25 MR. LEVIN: DO YOU WANT 7?

26 MS. ABRAMSON: I HAVE MY CHART NO. 7 HERE
27 SOMEWHERE, AND THEN THOSE THERE. I BOXED MYSELF INTO A

-24369

1 THIS IS THE NEXT ONE IN ORDER. AND WHAT I
2 AM GOING TO DO WITH THIS ONE, YOUR HONOR, THIS WILL BE
3 304.

4 THE COURT: 304.

5 MS. ABRAMSON: PUT 304 UP THERE, AND NOW I AM
6 GOING TO LABEL THE PHOTOGRAPHS, YOUR HONOR, STARTING AT
7 THE LEFT COLUMN, WHICH HAS 3-A, B, C; THE TWO MIDDLE
8 DIAGRAMS D AND E; AND THE RIGHT HAND COLUMN F, G, AND H.

9 Q. NOW, FOR THIS ONE, DR. MC CARTHY, YOU HAVE
10 A GUN BEHIND THE COUCH WHERE WE KNOW THERE'S ONLY 27
11 INCHES OF SPACE AND A 30-INCH LONG GUN, SO I ASSUME --
12 AND YOU HAVE MR. MENENDEZ SHOWN SITTING WITH HIS BACK UP
13 AGAINST THE BACK OF THE COUCH, CORRECT?

14 A. YES.

15 Q. SO, I ASSUME THE SHOOTER IS LEANING OVER
16 THE COUCH IN ORDER TO SHOOT MR. MENENDEZ IN THE THIGH AS
17 WE SEE IT; IS THAT RIGHT?

18 A. I DON'T KNOW THAT THE SHOOTER HAS TO LEAN
19 OVER THE COUCH, BUT THE -- THE END OF THE WEAPON -- HE
20 IS SHOOTING IN AN OFFHAND POSITION, I BELIEVE, AND THE
21 END OF THE WEAPON IS OVER THE COUCH.

22 Q. AND IT IS YOUR POSITION, EVEN BEFORE YOU
23 KNEW THERE WAS A DR. LAWRENCE ON THE FACE OF THE EARTH,

24 THAT THIS WAS A POSTMORTEM WOUND, CORRECT?

25 A. YES.

26 Q. YOU FORMULATED THAT MEDICAL OPINION; IS
27 THAT RIGHT?

28 A. WELL, I WOULDN'T SAY I FORMULATED A MEDICAL

-24368

1 OPINION, BUT I THOUGHT IT WAS AFTER DEATH, YES.

2 Q. YOU DON'T THINK POSTMORTEM WOUNDS ARE A
3 MEDICAL OPINION?

4 A. I GUESS I NEVER THOUGHT OF A WOUND OF THIS
5 SERIOUS NATURE, WITH SO LITTLE BLOOD FLOW, AS A MEDICAL
6 OPINION, NO.

7 Q. SO, YOU THINK ANY LAYMAN CAN LOOK AT A
8 WOUND AND DECIDE WHETHER IT'S POSTMORTEM OR ANTEMORTEM
9 BASED ON WHETHER OR NOT IN THE PLACE THE LEG IS
10 ULTIMATELY FOUND THERE SEEMS TO BE A LOT OF BLOOD OR
11 NOT?

12 A. NO, OBVIOUSLY THAT'S TOO EXTREME, BUT --

13 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS
14 ANSWER?

15 THE COURT: YES.

16 THE WITNESS: FRANKLY, I DON'T THINK THIS WAS A
17 VERY CLOSE CALL.

18 MS. ABRAMSON: MOVE TO STRIKE THAT, YOUR HONOR.
19 IT'S BEYOND HIS EXPERTISE TO CALL THIS POSTMORTEM OR

20 ANTEMORTEM.

21 THE COURT: YOU'VE BEEN ASKING THE QUESTIONS.

22 OBJECTION IS OVERRULED.

23 Q. BY MS. ABRAMSON: THEN YOU DON'T THINK IT'S

24 A CLOSE CALL AS A ENGINEER, RIGHT?

25 A. I DON'T THINK IT'S A CLOSE CALL AS AN

26 ENGINEER, THAT'S CORRECT.

27 Q. NOW, LET ME OFFER YOU A HYPOTHETICAL ABOUT

28 THE PERSON YOU FIRST MENTIONED IN THESE PROCEEDINGS,

-24367

1 DR. MARTIN FACKLER.

2 DR. FACKLER IS GOING TO COME IN HERE NEXT

3 MONDAY AND TESTIFY THAT IN HIS OPINION, AS A LEADING

4 WOUND BALLISTICS EXPERT IN THE UNITED STATES, THAT THIS

5 IS AN ANTEMORTEM WOUND.

6 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

7 EVIDENCE.

8 THE COURT: OBJECTION SUSTAINED AS TO THE FORM OF

9 THE QUESTION.

10 Q. BY MS. ABRAMSON: NOW, GIVEN THIS

11 HYPOTHETICAL, IF DR. MARTIN FACKLER, WHO IS AN EXPERT IN

12 WOUND BALLISTICS, TESTIFIES IN THIS COURTROOM THAT HE

13 HAS AN OPINION TO A REASONABLE DEGREE OF MEDICAL

14 CERTAINTY THAT THIS IS AN ANTEMORTEM WOUND, THAT HAS NO

15 EFFECT ON YOUR OPINION AS AN ENGINEER?

16 A. IT OBVIOUSLY WOULD REQUIRE A CHANGE IN THE
17 SEQUENCING THAT I DON'T THINK HE COULD MAKE COME OUT
18 SENSIBLY WITH THE SHOT BEHIND THE HEAD.

19 IN OTHER WORDS, WHAT THAT WOULD REQUIRE IS
20 JOSE TO BE ALIVE, OBVIOUSLY, WHEN HE GETS THIS SHOT. SO
21 WE KNOW HE'S ALIVE WHEN HE LIFTS HIS ELBOW; WE KNOW HE'S
22 ALIVE WHEN HE TAKES THIS SHOT, AND THIS SHOT ABSOLUTELY
23 SHATTERS THE FEMUR. I MEAN, IT WON'T TAKE --

24 Q. SHATTERS?

25 A. I MEAN BREAKS IT INTO THREE OR FOUR PIECES.

26 Q. THREE.

27 A. OKAY, THREE PIECES. IT IS NO LONGER TAKING
28 LOAD. WE HAVE GOT HIM DOING WHAT NOW?

-24366

1 AND, BY THE WAY, HOW DOES THAT SEQUENCE
2 WITH THE LEFT ARM? HE JUST SITS THERE AND GETS SHOT AT?
3 IT DOES NOT --

4 Q. NO, HE DOESN'T JUST SIT THERE. DR. FACKLER
5 WILL TESTIFY --

6 IS IT FAIR TO SAY, DR. MC CARTHY, THAT
7 YOU -- THAT FOR YOU THE SEQUENCE AND WHAT WOUNDS ARE
8 ANTEMORTEM AND POSTMORTEM IS THE SAME ISSUE? IN OTHER
9 WORDS, IT'S A CIRCLE FOR YOU.

10 MR. CONN: OBJECTION. VAGUE.

11 THE COURT: SUSTAINED.

12 Q. BY MS. ABRAMSON: WHAT MAKES YOU THINK THAT
13 IT IS NECESSARY FOR ANY EXPERT TO CLAIM TO RECONSTRUCT
14 THE SEQUENCE OF THESE SHOOTINGS?

15 A. WELL, FIRST OF ALL, I DON'T KNOW THAT IT'S
16 NECESSARY. BUT AS YOU HAVE SO ABLY POINTED OUT, IF YOU
17 JUST LOOK AT THESE WOUNDS IN ISOLATION, YOU CAN MAKE ALL
18 SORTS OF POSTULATES, AND WE HAVE HAD THE CORONER CHANGE
19 HIS OPINION HOW MANY TIMES ON VARIOUS WOUNDS.

20 THESE ARE VERY DIFFICULT DIAGNOSES TO MAKE,
21 ABSENT STITCHING THEM ALL TOGETHER. THAT BEGINS TO
22 CONSTRAIN MILLIONS OF POSSIBILITIES DOWN TO THE ONE
23 REALITY THAT WE KNOW HAPPENED.

24 Q. DR. MC CARTHY, YOU WERE A MEDIEVAL
25 PHILOSOPHY MAJOR AS A BACHELOR, CORRECT?

26 A. YES.

27 Q. AND DO YOU -- AND I TAKE IT THAT YOU DIDN'T
28 LEAVE OFF YOUR PHILOSOPHICAL PURSUITS SOLELY IN THE

-24365

1 MIDDLE AGES, CORRECT?

2 A. I AM NOT AS WELL-SCHOOLED IN THE
3 REFORMATION OR THE BRITISH SCHOOL LATER ON.

4 Q. WELL, I WASN'T GOING TO GET QUITE THAT
5 FANCY. I WAS GOING TO TALK ABOUT SOMETHING REAL BASIC,
6 LIKE THE DIFFERENCE BETWEEN INDUCTIVE AND DEDUCTIVE
7 REASONING.

8 A. OKAY.

9 Q. NOW, CAN YOU ACCEPT THE NOTION THAT THERE
10 ARE SITUATIONS WHERE THE EVIDENCE IS SIMPLY TOO
11 AMBIGUOUS TO TRY TO COME UP WITH ONE NEAT LITTLE
12 PACKAGE?

13 A. THERE ARE CERTAINLY SITUATIONS THAT ARE TOO
14 AMBIGUOUS FOR A -- WHEN YOU SAY ONE -- OR A SINGLE
15 EXPLANATION, THAT IS TRUE. THERE IS ALMOST NEVER A
16 SITUATION WHERE YOU CAN'T LIMIT IT TO A FEW
17 POSSIBILITIES.

18 Q. AND THE PROBLEM, IF ONE SELECTS ONE THEORY
19 AND LEAVES OUT OTHER THINGS THAT CONTRAINDICATE IT, IS
20 THAT YOU CAN MAKE A MONSTROUS ERROR; ISN'T THAT TRUE?

21 A. IN PRINCIPLE I AGREE WITH YOUR STATEMENT.
22 IF YOU IGNORE OR TRULY BELIEVE THAT THERE IS EVIDENCE
23 THAT DIRECTLY CONTRADICTS YOUR HYPOTHESIS AND YOU DON'T
24 HAVE AN EXPLANATION FOR IT, YOU ARE RUNNING THE RISK OF
25 A SERIOUS ERROR.

26 Q. NOW, LET'S TALK ABOUT HOW MUCH BLEEDING
27 THIS WOUND SHOULD HAVE PRODUCED.

28 HOW MUCH BLEEDING, IN YOUR ENGINEER'S

-24364

1 EXPERTISE, SHOULD HAVE BEEN CAUSED BY THIS WOUND?

2 A. A LOT MORE THAN THAT LITTLE DARK SPOT BELOW
3 IT.

4 Q. AND WHY IS THAT, DR. MC CARTHY?

5 A. WELL, I HAVE BEEN CUT A FEW TIMES IN MY

6 LIFE, AND NOTHING REMOTELY APPROACHING THAT WOUND, AND I

7 HAVE BLED THAT MUCH.

8 Q. SO, YOU'RE BASING IT ON YOUR EXPERIENCE OF

9 HAVING BEEN CUT?

10 A. WELL, MY OWN EXPERIENCE WITH MY OWN

11 PERSONAL WOUNDS, PICTURES THAT I HAVE SEEN OF WOUNDS. I

12 MEAN, THIS IS NOT A CLOSE CALL.

13 Q. NOT IF HE'S SHOT WHEN HE'S SITTING THERE,

14 CORRECT?

15 A. THAT'S -- I GATHER WE HAVE AN AGREEMENT.

16 NOT IF HE'S SHOT WHEN HE'S SITTING THERE.

17 Q. AND YOU DO RECALL THE TESTIMONY OF

18 DR. GOLDEN FROM THE FIRST TRIAL WHEN HE OPINED THAT THE

19 NATURE OF THAT WOUND WAS INCONSISTENT WITH HIS BEING

20 SHOT WHILE SITTING IN THAT POSITION?

21 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

22 EVIDENCE. MISSTATES THE TESTIMONY.

23 THE COURT: SUSTAINED.

24 Q. BY MS. ABRAMSON: WELL, YOU REVIEWED HIS

25 TESTIMONY, DID YOU NOT? YOU TOLD US YOU HAD

26 DR. GOLDEN'S TESTIMONY FROM THE TRIAL AND THE GRAND

27 JURY.

28 A. YES. AND I HAVE READ IT.

1 Q. AND YOU ARE DISAGREEING WITH HIS STATEMENT
2 TO THAT EFFECT, ARE YOU NOT?

3 A. I GUESS I DON'T REMEMBER THAT STATEMENT.

4 Q. AND YOU SAID YOU ALSO RECEIVED A REPORT
5 FROM THE CRIMINALIST, MR. LINHART.

6 A. YES.

7 Q. AND ARE YOU DISAGREEING WITH MR. LINHART --
8 WELL, LET ME OFFER YOU THIS:

9 IF MR. LINHART WERE TO TESTIFY
10 HYPOTHETICALLY THAT HE, TOO, BELIEVES THAT THAT WOUND
11 WAS NOT INFLICTED WHEN MR. MENENDEZ WAS SEATED ON THE
12 COUCH IN THAT POSITION, ARE YOU REJECTING HIS HYPOTHESIS
13 AS WELL?

14 A. I THINK THAT'S INCORRECT.

15 Q. AND DO YOU UNDERSTAND MR. LINHART IS A
16 SENIOR CRIMINALIST WITH THE L.A. COUNTY SHERIFF'S
17 DEPARTMENT?

18 A. I GUESS HE SIGNS HIS SIGNATURE AS
19 SUPERVISING CRIMINALIST, SO I WOULD INFER HE IS SENIOR,
20 BUT I HAVE NO INDEPENDENT KNOWLEDGE.

21 Q. AND, OF COURSE, IF THAT WOUND WERE
22 INFLICTED WHILE MR. MENENDEZ WERE IN SOME OTHER
23 POSITION, THEN THE BLOOD THAT YOU ARE EXPECTING TO SEE
24 COULD HAVE GONE SOMEWHERE ELSE, CORRECT?

25 A. SOME OF IT WOULD HAVE. I STILL WOULD HAVE
26 EXPECTED TO SEE COPIOUS AMOUNTS DOWN THE CALF.

27 Q. AND WOULD YOU HAVE EXPECTED TO HAVE SEEN
28 COPIOUS AMOUNTS DOWN THE CALF BECAUSE YOU ARE ASSUMING,

1 AS SOMEONE WHO HAS CUT HIMSELF, THAT THE FEMORAL ARTERY
2 WAS SEVERED?

3 A. NO. THERE IS PLENTY OF CROSS-SECTIONAL
4 AREA. I MEAN, QUITE FRANKLY, GIVEN WHERE IT IS, I DON'T
5 THINK -- I DON'T SEE HOW IT WASN'T DAMAGED. BUT I
6 WASN'T BASING ANY OPINIONS ON THE BLOOD FLOW FROM THAT.

7 LOOK AT THE SIZE OF THAT WOUND, AND BLOW
8 THAT PICTURE UP SO YOU CAN REALLY SEE HOW BAD THAT WOUND
9 IS.

10 Q. DR. MC CARTHY, THEN YOU THINK THE SIZE OF
11 THE WOUND DICTATES HOW MUCH BLEEDING IT'S GOING TO DO?

12 A. IT IS NOT A ONE-FOR-ONE CORRELATION, BUT
13 THAT IS A GENERAL CORRELATION, YES.

14 Q. WHAT DO YOU SUPPOSE THE SIZE OF THE SHOT
15 WAD WAS THAT WENT THROUGH THAT LEG?

16 A. OH, IT LOOKED LIKE IT TOOK THE ENTIRE
17 COLUMN.

18 Q. THE ENTIRE 27 PELLET COLUMN? THE ENTIRE,
19 AMAZING, 27 DISAPPEARING PELLETS, DR. MC CARTHY?

20 A. THE PELLETS DID NOT DISAPPEAR, BUT THEY ALL
21 WENT THROUGH.

22 Q. THEY DID?

23 A. YES.

24 Q. AND THEN WHERE DID THEY GO?

25 A. THEY OBVIOUSLY BOUNCED OUT IN THE ROOM

26 SOMEWHERE.

27 Q. BOUNCED OUT INTO THE ROOM SOMEWHERE; IS

28 THAT RIGHT?

-24361

1 A. YES.

2 Q. THERE ARE ABSOLUTELY NO PELLETS, NO TISSUE

3 AND NO BLOOD ON THE CARPET IN THE VECTOR THAT YOU HAVE

4 DRAWN IN D AND E, CORRECT?

5 A. NOT PRECISELY IN LINE, BUT OFF TO THE RIGHT

6 YOU WILL FIND A WAD AND ABOUT A THREE-INCH CHUNK OF

7 TISSUE.

8 Q. OFF TO THE RIGHT OF WHAT?

9 A. THE LEG AND TOWARDS -- IF YOU HAVE THE

10 PICTURE OF THAT, THE FOYER, I CAN SHOW IT ON THAT

11 PICTURE.

12 Q. THIS IS A PHOTOGRAPH THAT SHOWS EVERYTHING

13 OFF TO THE RIGHT. YOU SHOW ME WHERE THERE IS A CHUNK OF

14 TISSUE.

15 A. YOU ARE INCORRECT, MA'AM. IF YOU WILL GET

16 THE PICTURE OF THE FOYER THAT YOU SHOWED BEFORE IN ONE

17 OF THE EARLIER SHOTS.

18 Q. I WOULD LIKE YOU TO SHOW ME ON THIS

19 PICTURE.

20 A. IT'S FURTHER OUT. IT'S ABOUT HERE

21 (POINTING).

22 Q. IT'S HERE?
23 A. YEAH, ON THE FLOOR.
24 Q. HERE THERE IS A CHUNK OF TISSUE?
25 A. YES.
26 THE COURT: ARE YOU SAYING THERE IS ANOTHER
27 PHOTOGRAPH THAT SHOWS THE AREA THAT IS NOT DEPICTED IN
28 THAT PARTICULAR PHOTOGRAPH?

-24360

1 THE WITNESS: YEAH, AND WE HAD IT OUT HERE. IT
2 WAS LIKE FOR SHOT 5 OR SOMETHING LIKE THAT, SHOT 1.
3 Q. BY MS. ABRAMSON: WAIT A MINUTE.
4 A. WE JUST HAD THAT BIG ONE FOR SHOT 1. I CAN
5 SHOW YOU ON THAT PHOTOGRAPH.
6 Q. IT'S THE BIG ONE FOR SHOT 1 YOU SAY THAT
7 SHOWS IT?
8 A. I THINK SO. THAT SHOWS THE FOYER AREA,
9 YES. THE ONE THAT SHOWED COUCH TO FOYER.
10 Q. IF YOU WILL BE STILL FOR A MINUTE, I WILL
11 THINK, AND THEN I WILL FIND IT.
12 LET'S TALK ABOUT WHAT'S UP HERE WHILE WE'RE
13 LOOKING FOR THIS.
14 DO YOU SEE PICTURE F?
15 A. MM-HM.
16 Q. DOES PICTURE F SHOW WHAT YOU SAY IS THE
17 VECTOR?

18 A. IT SHOWS THE WOUND THAT THAT VECTOR
19 CORRELATES TO, YES.
20 Q. IT SHOWS THE END OF THE VECTOR, YES?
21 A. ON THE FLOOR, CORRECT.
22 Q. THERE IS NOTHING THERE, CORRECT?
23 A. NOTHING I CAN SEE THERE, CORRECT.
24 Q. AND NOTHING YOU CAN SEE ON YOUR COMPUTER
25 WITH MAGNIFICATION AND ENHANCING, CORRECT?
26 A. NOTHING THAT I COULD SEE ON THE COMPUTER.
27 Q. NOW LET'S MOVE DOWN TO G. G SHOWS THE
28 WHOLE AREA OF THE CARPET PATTERN, CORRECT?

-24359

1 A. WHEN YOU SAY THE WHOLE AREA, IT'S A LITTLE
2 FORWARD, BUT SOME OF THE AREA.
3 Q. THIS IS WHAT WE ARE TALKING ABOUT. WE ARE
4 LOOKING AT 7B. 7B IS WHAT'S E ON THIS CHART, AND YOU
5 SHOW 7B WITH THE VECTOR ENDING SOMEWHERE NEAR THE CORNER
6 OF THIS CARPET PATTERN, THIS LINE THAT MAKES A RIGHT
7 ANGLE IN THE CARPET PATTERN?
8 A. YES.
9 Q. AND THEN YOU SEE HERE IT IS IN MINIATURE,
10 AND THEN WE ARE LOOKING AT THAT CORNER IN G, CORRECT?
11 A. AT LEAST CLOSE.
12 Q. AND THERE IS NOTHING THERE, CORRECT?
13 A. NOTHING THERE, THAT'S CORRECT.

14 Q. AND NOW LET'S GO DOWN TO H, WHICH TAKES IT
15 ALL THE WAY OUT TO THE EDGE OF THE CARPET AND THE
16 FRINGE.
17 DO YOU SEE THE FRINGE?
18 A. YES.
19 Q. AND THERE IS NOTHING THERE, CORRECT?
20 A. CORRECT.
21 Q. OKAY. HERE IS THE PICTURE OF THE FOYER.
22 WHAT DO YOU WANT TO SHOW ME?
23 A. IF YOU LOOK HERE -- YOU SEE THIS SPOT HERE.
24 YOU CAN BLOW THAT UP. THAT'S A THREE-INCH PIECE OF
25 TISSUE. I HAVE A BETTER SHOT THAN THIS PHOTOGRAPH, BUT
26 IT SHOWS IT CLEARLY HERE.
27 Q. AND THAT'S NOWHERE IN THE VECTOR THAT YOU
28 SHOW THAT GOES LIKE THIS?

-24358

1 A. IT'S NOT STRAIGHT ON. IT HAD TO HAVE BEEN
2 DEFLECTED BY THE BONE.
3 Q. I SEE.
4 THE COURT: AND WHICH EXHIBIT NUMBER IS THAT?
5 MS. ABRAMSON: THIS ONE IS -- THIS ONE IS THE
6 GREAT UNNUMBERED PHOTOGRAPH, YOUR HONOR. IT MIGHT NOT
7 HAVE BEEN NUMBERED.
8 MS. TOWERY: IT MIGHT BE 299.
9 MS. ABRAMSON: 299.

10 MS. TOWERY: IT MIGHT BE.

11 MS. ABRAMSON: SHOULD BE A NUMBER ON IT IF IT IS.

12 YEAH, YOU'RE RIGHT. 299.

13 SO THERE IS SOMETHING THAT WE CAN'T SEE, OF

14 COURSE. IT'S ONE PIECE OF TISSUE DOWN HOW MANY FEET

15 AWAY FROM HIS LEFT LEG, THAT PIECE OF TISSUE?

16 A. IT'S SEVERAL FEET. BUT IF YOU LET ME BLOW

17 IT UP ON THE COMPUTER I CAN SHOW YOU.

18 Q. WE'RE NOT GOING TO USE THE COMPUTER. I'M

19 SURE YOU CAN SHOW IT TO MR. CONN.

20 AND HOW MANY PELLETS ARE ON THE FLOOR

21 BETWEEN THAT PIECE OF TISSUE AND THAT LEFT LEG?

22 A. THERE ARE NO PELLETS.

23 Q. THERE ARE NO PELLETS BETWEEN THAT LEFT LEG

24 AND ANYTHING IN THAT DIRECTION IN THE ROOM?

25 A. I CAN'T SAY THAT. THERE IS NO RECORD OF

26 THEM BEING RECOVERED, BUT THE PELLETS WOULD BOUNCE ALL

27 OVER. THAT'S NOT SURPRISING.

28 Q. BOUNCE ALL OVER. BUT THERE IS NO 27

-24357

1 PELLETS RECOVERED THERE?

2 A. THEY DON'T STAY THERE. THEY COME OUT. AS

3 SOON AS THEY HAVE VELOCITY DOWN TO A HUNDRED FEET PER

4 SECOND OR SO, THEY'RE NOT REALLY GOING TO PENETRATE

5 ANYTHING. THEY ARE GOING TO BOUNCE LIKE CRAZY.

6 Q. AND THE POLICE JUST IGNORED THEM; IS THAT
7 WHAT YOU'RE SAYING? THE POLICE JUST DIDN'T SEE THEM?
8 A. NO. BUT THESE PELLETS WOULD BOUNCE ALL
9 OVER THE ROOM. IT'S LIKE ATTACHING SIGNIFICANCE TO
10 WADDING. WADDING DOESN'T COME OUT IN THE SAME
11 TRAJECTORY AS THE SHOT COLUMN, AND IT BOUNCES ALL OVER
12 WHEN IT HITS SOMETHING.
13 Q. DR. MC CARTHY, THERE WEREN'T 27 PELLETS
14 RECOVERED FROM THE ROOM, DO YOU KNOW THAT?
15 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
16 EVIDENCE AND IRRELEVANT.
17 THE COURT: ALL RIGHT. THE QUESTION IS
18 ARGUMENTATIVE. LET'S MOVE ON.
19 Q. BY MS. ABRAMSON: DO YOU BELIEVE THERE WERE
20 27 PELLETS TOTAL RECOVERED FROM THE ROOM?
21 A. I GUESS I DON'T HAVE A RECOLLECTION OF HOW
22 MANY PELLETS WERE RECOVERED. HOWEVER, THE DISPARITY
23 BETWEEN THE TOTAL NUMBER OF PELLETS IN THE BODIES AND
24 THAT WHICH I RECONSTRUCTED WERE FIRED IS SURELY MORE
25 THAN 27.
26 Q. WELL, YOU ARE NOT AWARE OF THE TESTIMONY OF
27 THE OFFICERS, DETECTIVE ZOELLER AND MR. KUHN, THAT THEY
28 MADE NO EFFORT TO REMOVE PELLETS FROM BLOODIED AREAS.

-24356

1 DO YOU KNOW THAT?

2 A. I KNOW THERE HAS BEEN SOME DISCUSSION OF
3 PELLETS, BUT I CAN'T RECALL IT WITH ENOUGH SPECIFICITY
4 TO --

5 Q. IS THAT NO?

6 A. I CAN'T VERIFY YOUR STATEMENT.

7 Q. ALL RIGHT. SO THEN YOU DON'T KNOW THAT.

8 LET'S ASSUME HYPOTHETICALLY THAT THERE HAS
9 BEEN TESTIMONY THAT THEY COLLECTED ALL THE PELLETS THAT
10 THEY FOUND FROM CLEAN AREAS, BUT THEY DIDN'T COLLECT
11 PELLETS FROM BLOODY AREAS.

12 CAN WE ASSUME THAT HYPOTHETICALLY?

13 A. I WILL DO SO IF YOU WISH.

14 Q. SO, THIS AREA WHICH WE ARE TALKING ABOUT,
15 WHICH IS A TOTALLY CLEAN AREA OF THE RUG, DO YOU KNOW
16 THAT THERE IS ONLY ONE PELLET RECOVERED IN THIS WHOLE
17 AREA?

18 A. I MEAN, IT -- I DON'T KNOW THAT, BUT --

19 Q. AND DID YOU DO ANY EXPERIMENTS, SHOOTING A
20 FULL ROUND OF NO. 4 BUCKSHOT THROUGH MEAT OF ANY KIND?

21 A. NO.

22 Q. THANK YOU. YOU HAVE ANSWERED THE QUESTION.

23 A. OKAY.

24 Q. NOW, HOW DO YOU ACCOUNT FOR -- WELL, STRIKE
25 THAT. LET ME SEE IF YOU DO.

26 CALLING YOUR ATTENTION TO PHOTOGRAPH B ON
27 THIS CHART, WHICH IS 304, DO YOU SEE WHAT'S DOWN THE
28 LEFT SIDE, THE PINKY SIDE OF MR. MENENDEZ' LEFT HAND?

1 A. MAY I COME OVER AND LOOK AT THOSE?

2 Q. CERTAINLY. AND IN FACT YOU CAN LOOK AT B

3 AND C.

4 A. I SEE SOME INDICATION HERE.

5 Q. SOME INDICATION OF WHAT?

6 A. AN ABRASION PERHAPS.

7 Q. IS THERE AN ABRASION THERE IDENTIFIED IN

8 THE AUTOPSY REPORT?

9 A. I DON'T RECOLLECT ANY.

10 Q. IF I WERE TO TELL YOU THAT A CRIMINALIST

11 HYPOTHETICALLY WOULD TESTIFY THAT IS SMEARED RATHER THAN

12 DRIPPED BLOOD; IS THAT WHAT IT APPEARS TO BE?

13 A. I WOULD SAY THAT THE APPEARANCE IS NOT

14 INCONSISTENT WITH THAT. HE WOULD HAVE TO HAVE A BETTER

15 PHOTOGRAPH THAN WE HAVE HERE TO SAY THAT -- OR I

16 COULDN'T SAY THAT.

17 Q. LET'S TAKE A LOOK AT THIS.

18 DO YOU SEE WHAT THIS IS HERE THAT I'M

19 CIRCLING?

20 A. I SEE WHAT YOU'RE POINTING TO IN THE

21 PICTURE, YES.

22 Q. AND DOES THAT APPEAR TO BE SMEARED BLOOD?

23 A. THAT DOES LOOK LIKE IT'S SMEARED.

24 Q. AND DOWN BELOW DO YOU SEE ANOTHER AREA

25 WHERE THERE APPEARS TO BE SMEARED BLOOD ON THE INNER

26 THIGH, MR. MENENDEZ' RIGHT INNER THIGH?

27 A. YEAH. IT LOOKS LIKE SORT OF A CONTACT

28 SMEAR THERE.

-24354

1 Q. THAT'S WHAT YOU THINK IS A CONTACT SMEAR?

2 A. IT SORT OF LOOKS LIKE IT. I DON'T KNOW.

3 Q. DO YOU SEE THAT THE DIRECTION OF THE HAIR

4 IN THAT SMEAR IS GOING UPWARD?

5 A. OH, MAN, YOU'VE GOT A BETTER COMPUTER THAN

6 I'VE GOT.

7 Q. I THINK I PROBABLY DO.

8 NOW, YOU ARE AWARE THAT DR. GOLDEN HAS LONG

9 MAINTAINED THAT THIS IS AN ANTEMORTEM WOUND; NOT A

10 PERIMORTEM WOUND, NOT A POSTMORTEM WOUND, CORRECT?

11 A. WELL, THAT'S NOT TRUE.

12 Q. YOU SHOW ME WHERE HE HAS TESTIFIED OR WHERE

13 HE HAS WRITTEN THAT THIS WOUND, WHICH I BELIEVE HE CALLS

14 FOR MR. MENENDEZ NO. 7, BUT I AM GOING TO DOUBLE CHECK.

15 NO, IT'S 5.

16 ANYTHING THERE ABOUT IT BEING POSTMORTEM?

17 A. NO, I DON'T RECOLLECT ANY PLACE HE'S

18 WRITTEN. I JUST MET WITH HIM ONCE AND DISCUSSED THIS

19 WOUND.

20 Q. YES. AND YOU MISREPRESENTED TO ME WHAT HE

21 SAID TO YOU, DIDN'T YOU?

22 A. NO.

23 Q. YOU SAID TO ME DURING THE PRETRIAL HEARING
24 THAT DR. GOLDEN HAD TOLD YOU THAT HE AGREED WITH YOUR
25 THEORY THAT ALL THE BLOOD HERE WAS GRAVITY.

26 DO YOU REMEMBER TELLING ME THAT IN THAT
27 HEARING?

28 A. NO. WE DIDN'T DISCUSS THE BLOOD HERE.

-24353

1 WHAT I TOLD YOU IN THE PRETRIAL HEARING IS THAT HE WAS
2 COMFORTABLE THAT THIS WAS AN ANTEMORTEM WOUND AFTER OUR
3 DISCUSSIONS, AND WE DISCUSSED THIS POINT SPECIFICALLY.

4 Q. RIGHT. AND DR. SHERRY WAS THERE WHEN YOU
5 SPOKE TO HIM, CORRECT?

6 A. I CAN'T SAY FOR THE WHOLE TIME, BUT HE WAS
7 CERTAINLY THERE SOME OF THE TIME.

8 Q. AND DR. SHERRY ALSO SAID THIS WAS AN
9 ANTEMORTEM WOUND?

10 A. NO. I CAN'T VOUCH THAT DR. SHERRY WAS AS
11 COMFORTABLE. I WON'T REPRESENT TO YOU THAT HE BOUGHT ON
12 TO THAT.

13 Q. DR. MC CARTHY, IT'S LATE IN THE DAY, SO I
14 WON'T PLAY GAMES WITH YOU.

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

17 MS. ABRAMSON: YOU'RE GETTING IT WRONG.

18 THE COURT: COUNSEL, WAIT. WAIT. JUST ASK THE

19 QUESTION.

20 Q. BY MS. ABRAMSON: YOU DON'T MEAN ANTEMORTEM
21 HERE. WE'RE TRYING TO SAY POSTMORTEM, RIGHT?

22 A. CORRECT.

23 Q. DR. SHERRY, YOU ARE SAYING, WAS ABSOLUTELY
24 CONVINCED THIS WAS ANTEMORTEM, RIGHT?

25 MR. CONN: OBJECTION. IRRELEVANT AS TO WHAT
26 DR. SHERRY SAID.

27 THE COURT: OVERRULED.

28 WHY DON'T YOU JUST CLARIFY YOUR ANSWER.

-24352

1 WAS IT YOUR IMPRESSION THAT DR. GOLDEN
2 THOUGHT THIS WAS AN ANTEMORTEM OR POSTMORTEM WOUND?

3 THE WITNESS: AT THE END OF OUR DISCUSSIONS I
4 THINK HE WAS COMFORTABLE THAT IT COULD HAVE BEEN A
5 POSTMORTEM WOUND. I DON'T REMEMBER SPECIFICALLY
6 DR. SHERRY'S POSITION ON THIS WOUND.

7 Q. BY MS. ABRAMSON: I THOUGHT YOU JUST SAID
8 DR. SHERRY WAS NOT AS COMFORTABLE WITH YOUR HAVING TRIED
9 TO CONVINC HIM THAT IT WAS A POSTMORTEM WOUND.

10 MR. CONN: OBJECTION. ARGUMENTATIVE AND ASSUMES
11 FACTS NOT IN EVIDENCE, THAT DR. MC CARTHY WAS TRYING TO
12 CONVINC ANYONE.

13 THE COURT: SUSTAINED.

14 Q. BY MS. ABRAMSON: NOW, DR. MC CARTHY, IF I

15 WERE TO TELL YOU HYPOTHETICALLY THAT THE DAY THAT YOU
16 TESTIFIED, THAT WAS OCTOBER 3RD, 1995, AND THAT I
17 IMMEDIATELY CALLED DR. GOLDEN THAT NIGHT, AND HE SAID
18 THAT HE ABSOLUTELY NEVER TOLD YOU THAT, AND THAT HE IS
19 GOING TO COME INTO THIS COURTROOM AND SO TESTIFY, WILL
20 THAT REFRESH YOUR RECOLLECTION THAT HE NEVER SAID THIS
21 WAS A POSTMORTEM WOUND?

22 A. THAT WILL NOT CHANGE WHAT HAPPENED IN THE
23 MEETING, NO.

24 Q. AND, OF COURSE, YOU TOOK NOTES OF THIS
25 MEETING?

26 A. NO, I DID NOT.

27 Q. YOU TAPE-RECORDED THIS MEETING THE WAY WE
28 TAPE-RECORD OUR MEETINGS WITH DR. GOLDEN?

-24351

1 A. NO.

2 Q. DEVINDER WAS THERE, CORRECT?

3 A. HE WAS.

4 Q. HE ALSO TOOK NO NOTES?

5 A. NOT TO MY RECOLLECTION.

6 Q. SO, YOU HAVE NOTHING BY WHICH TO PROVE THIS
7 BUT YOUR WORD; IS THAT RIGHT?

8 A. WELL, I GUESS I AM NOT SEEKING TO PROVE IT.
9 YOU ASKED ME WHAT HAPPENED, AND I TOLD YOU.

10 Q. I NEVER ASKED YOU TO VOLUNTEER THIS

11 DISCUSSION. YOU DECIDED TO DO THAT ON YOUR OWN; ISN'T
12 THAT TRUE?

13 MR. CONN: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 Q. BY MS. ABRAMSON: SO, DID DR. GOLDEN TELL
16 YOU, "GEE, I DIDN'T SEE THE BLEEDING ALONG THE WOUND
17 PATH. I WAS WRONG ABOUT THAT"?

18 A. NO.

19 Q. NOW, DO YOU REMEMBER THAT YOU WERE IN THIS
20 PRETRIAL HEARING FOR TWO DAYS, AND THEN WE HAD A DAY
21 OFF.

22 DO YOU REMEMBER THAT?

23 MR. CONN: OBJECTION. IRRELEVANT.

24 THE COURT: OVERRULED.

25 THE WITNESS: I THINK SO. MY RECOLLECTION IS I
26 WAS HERE FOR TWO DAYS, AND THEN I WAS GONE. AM I WRONG?

27 Q. BY MS. ABRAMSON: AND THEN YOU CAME BACK?

28 A. I DON'T RECOLLECT COMING BACK.

-24350

1 Q. YOU WERE SUPPOSED TO COME BACK, AND THEN
2 THE HEARING ENDED?

3 A. THAT'S MY RECOLLECTION. I NEVER CAME BACK.

4 AM I WRONG IN THAT? I'M SORRY. I DON'T
5 MEAN TO ASK COUNSEL QUESTIONS.

6 Q. SO, YOU DIDN'T MEET WITH DR. GOLDEN WHEN

7 MR. CONN AND MS. NAJERA MET WITH HIM ON OCTOBER 5TH; IS
8 THAT RIGHT?

9 A. I DON'T RECOLLECT MEETING WITH DR. GOLDEN
10 ON OCTOBER 5TH.

11 Q. AND WAS IT SOMETIME AFTER OCTOBER 5TH THAT
12 YOU FIRST LEARNED THAT MR. CONN AND MS. NAJERA WERE NOT
13 GOING TO CALL DR. GOLDEN AS A WITNESS IN THIS CASE?

14 A. I GUESS I STILL DON'T KNOW THE
15 PROSECUTION'S WITNESS LIST, EVEN AS WE SIT HERE TODAY.

16 Q. SO YOU DON'T KNOW THAT YOU'RE THEIR LAST
17 WITNESS?

18 A. I HAVE BEEN TOLD I AM THE LAST WITNESS IN
19 THIS PHASE OF THE CASE.

20 Q. AND YOU KNOW THEY HAVEN'T CALLED DR. GOLDEN
21 TO TESTIFY?

22 MR. CONN: OBJECTION. IRRELEVANT.

23 THE COURT: OVERRULED.

24 THE WITNESS: I GUESS I ASSUMED THAT, BUT DON'T
25 TAKE IT TO THE BANK. I MEAN, THAT WAS MY ASSUMPTION.

26 Q. BY MS. ABRAMSON: AND YOU DIDN'T KNOW THAT
27 THEY WENT OUT AND RECRUITED DR. LAWRENCE SO THEY COULD
28 HAVE SOME PATHOLOGIST TESTIFY TO THE AUTOPSY?

-24349

1 MR. CONN: OBJECTION. ARGUMENTATIVE.

2 THE COURT: AS PHRASED, IT'S ARGUMENTATIVE.

3 Q. BY MS. ABRAMSON: AND DID YOU KNOW THAT
4 THEY WENT AND NEEDED TO FIND A PATHOLOGIST TO TESTIFY TO
5 THE AUTOPSY PHOTOS?

6 MR. CONN: OBJECTION. ARGUMENTATIVE AS PHRASED.

7 THE COURT: OBJECTION SUSTAINED.

8 Q. BY MS. ABRAMSON: WHEN WAS IT YOU FIRST
9 LEARNED THAT FAILURE ANALYSIS WAS ASKED TO GO FIND A
10 PATHOLOGIST TO TESTIFY IN THIS CASE?

11 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
12 EVIDENCE; THAT FAILURE ANALYSIS WAS SO ASKED.

13 THE COURT: OBJECTION SUSTAINED.

14 MS. ABRAMSON: HE TESTIFIED TO THAT.

15 THE COURT: REPHRASE THE QUESTION.

16 Q. BY MS. ABRAMSON: YOU UNDERSTAND THAT
17 FAILURE ANALYSIS WAS ASKED TO LOOK FOR A PATHOLOGIST,
18 CORRECT?

19 A. I CAN'T SAY WHETHER WE WERE ASKED TO LOOK.
20 I KNOW AT SOME POINT DEVINDER WAS ASSISTING THE
21 PROSECUTORS.

22 Q. DIDN'T YOU TESTIFY PREVIOUSLY ON
23 CROSS-EXAMINATION THAT FAILURE ANALYSIS WAS ASKED TO
24 LOCATE A FORENSIC PATHOLOGIST TO TESTIFY FOR THE
25 PROSECUTION?

26 A. WE WERE ASKED TO ASSIST THE D.A.'S OFFICE
27 IN LOCATING A PATHOLOGIST. I JUST CAN'T SAY THAT WE
28 WERE EVEN THE PRIMARY EFFORT. OUR ASSISTANCE WAS

1 SOLICITED, THOUGH.

2 Q. AND YOU WERE HERE FOR DR. LAWRENCE'S
3 TESTIMONY. HE SAID HE WAS CONTACTED BY SOME COMPANY AND
4 TOLD TO CALL FAILURE ANALYSIS, NOT THE DISTRICT
5 ATTORNEY'S OFFICE.

6 A. I DON'T RECOLLECT BEING HERE FOR THAT
7 TESTIMONY.

8 Q. AND WHAT OTHER PATHOLOGISTS DID FAILURE
9 ANALYSIS CONTACT BESIDES DR. LAWRENCE?

10 MR. CONN: OBJECTION. IRRELEVANT.

11 THE COURT: SUSTAINED.

12 MS. ABRAMSON: HOW MANY OTHER PATHOLOGISTS DID
13 FAILURE ANALYSIS CONTACT BESIDES DR. LAWRENCE?

14 MR. CONN: OBJECTION. IRRELEVANT.

15 THE COURT: WELL, IT ASSUMES FACTS NOT IN
16 EVIDENCE; THAT THEY CONTACTED DR. LAWRENCE.

17 MS. ABRAMSON: DID FAILURE ANALYSIS CONTACT OTHER
18 PATHOLOGISTS BEFORE IT CONTACTED DR. LAWRENCE?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: AGAIN, IT ASSUMES FACTS NOT IN
21 EVIDENCE; THAT THEY CONTACTED DR. LAWRENCE.

22 Q. BY MS. ABRAMSON: ALL RIGHT.

23 WELL, DID FAILURE ANALYSIS CONTACT ANY
24 PATHOLOGIST?

25 A. FIRST OF ALL, ROGER MC CARTHY DIDN'T
26 CONTACT ANY PATHOLOGIST.

27 MR. CONN: OBJECTION. CALLS FOR SPECULATION FROM

-24347

1 THE COURT: WELL, IF HE IS ASSUMING SOMETHING,
2 THEN IT WOULD BE SPECULATIVE.

3 MS. ABRAMSON: IS THIS ASSUMED BASED ON TALKING
4 TO YOUR ASSOCIATE, DEVINDER, WHO WAS DOING THE
5 CONTACTING?

6 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
7 EVIDENCE, WHO DID THE CONTACTING.

8 THE COURT: WHY DON'T YOU REPHRASE THE QUESTION
9 AND GET TO THE ISSUE.

10 Q. BY MS. ABRAMSON: YOU WERE AWARE THAT
11 FAILURE ANALYSIS WAS ASSISTING THE PROSECUTION IN
12 LOCATING A PATHOLOGIST.

13 YOU JUST TESTIFIED TO THAT, YES?

14 A. IT WAS MY UNDERSTANDING THAT OUR ASSISTANCE
15 WAS SOLICITED, YES.

16 Q. AND DEVINDER WAS THE PERSON IN YOUR
17 ORGANIZATION WHO WAS GOING TO BE DOING THAT; THAT'S YOUR
18 UNDERSTANDING?

19 A. I DON'T HAVE THAT SPECIFIC -- IT WAS
20 DEVINDER WHO TOLD ME OUR ASSISTANCE WAS SOLICITED, BUT I
21 DON'T KNOW IF DEVINDER DID IT HIMSELF OR ASKED SOMEONE
22 ELSE TO DO IT. I JUST DON'T KNOW.

23 Q. YOU ARE THE HEAD OF THIS COMPANY. YOU ARE

24 RESPONSIBLE, ARE YOU NOT, FOR THE WORK YOUR ASSOCIATES
25 OR SUBORDINATES ARE DOING?
26 A. YEAH, WHEN WE'RE PAID FOR IT.
27 Q. AND DID YOU KNOW THAT EMPLOYEES OF FAILURE
28 ANALYSIS WERE SPENDING THEIR TIME TRYING TO FIND A

-24346

1 PATHOLOGIST FOR THE DISTRICT ATTORNEY'S OFFICE FOR THE
2 COUNTY OF LOS ANGELES?
3 A. I ASSUMED THAT ON THE BASIS OF WHAT
4 DEVINDER TOLD ME, YES.
5 Q. AND DO YOU KNOW IF THESE EMPLOYEES, WHETHER
6 IT WAS DEVINDER OR SOMEONE ELSE, ACTUALLY MADE CONTACT
7 WITH ANY PATHOLOGIST?
8 A. I KNOW AT SOME POINT THAT DEVINDER -- IT'S
9 MY RECOLLECTION THAT DEVINDER TALKED WITH DR. LAWRENCE,
10 BUT I CAN'T TELL YOU BASED ON MY RECOLLECTION WHAT
11 OTHERS HE MIGHT HAVE TALKED TO, IF ANY.
12 Q. DO YOU KNOW IF ANYONE FROM FAILURE ANALYSIS
13 CONTACTED PAUL HERRMANN?
14 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR
15 HEARSAY.
16 THE COURT: OVERRULED.
17 THE WITNESS: I HAVE -- I REMEMBER SOME
18 DISCUSSION OF MR. HERRMANN. I DON'T -- I CAN'T TELL
19 YOU -- IT'S JUST BEEN A OR SO, AND I CAN'T RECOLLECT

20 THE CONTEXT. IT'S POSSIBLE.

21 Q. BY MS. ABRAMSON: AND WHAT ABOUT THE

22 CORONER FOR SANTA CRUZ COUNTY, I BELIEVE HIS NAME IS

23 DICK SAVAGE, ISN'T IT?

24 DO YOU REMEMBER A CONVERSATION ABOUT HIM?

25 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR

26 HEARSAY.

27 THE COURT: OVERRULED.

28 THE WITNESS: I DO NOT.

-24345

1 Q. BY MS. ABRAMSON: NOW -- IN YOUR SCENARIO,

2 DR. MC CARTHY, MR. MENENDEZ NEVER STANDS UP DURING THIS

3 ENTIRE SEQUENCE; IS THAT RIGHT?

4 A. THAT IS CORRECT.

5 Q. AND, THEREFORE, IF THERE ARE CLEAR OBJECTS,

6 BLOOD DROPS ON THE SEAT OF THE CUSHION WHERE HE IS

7 STANDING, THESE ARE NOT EXPLAINED IN YOUR SCENARIO,

8 CORRECT? LET ME REPHRASE THAT QUESTION.

9 IF AFTER HIS BODY IS REMOVED IT IS OBVIOUS

10 THAT THERE ARE ACTUAL BLOOD DROPS RATHER THAN SEEPAGE ON

11 THE SEAT CUSHION WHERE HIS BODY WAS FOUND SEATED, THAT

12 IS NOT EXPLAINED IN YOUR SCENARIO; IS THAT CORRECT?

13 A. THERE IS NO EXPLANATION FOR THAT IN MY

14 SCENARIO. WHILE MOVING A BODY THIS BLOOD-SOAKED, IF IT

15 DRIPPED WHEN IT WAS REMOVED, IT WOULDN'T SURPRISE ME IN

16 THE LEAST.

17 Q. WE ARE NOT TALKING ABOUT DRIPPED WHEN
18 REMOVED. WE ARE TALKING ABOUT DRIPS IN A PLACE --
19 FIRST OF ALL, HOW MANY HOURS AFTER THE
20 SHOOTING WAS THE BODY REMOVED?

21 A. I DON'T HAVE THAT NUMBER IN MEMORY.

22 Q. AND YOU DON'T HAVE ANY INFORMATION THAT IN
23 FACT ANYTHING WAS DRIPPING ON THE PART OF THE
24 CORONER'S -- ANY BLOOD WAS DRIPPING AT THE POINT HIS
25 BODY WAS BEING REMOVED FROM THE COUCH; IS THAT CORRECT?

26 A. NO. CAN I BLOW UP SOME PHOTOGRAPHS WHEN
27 THE BODY WAS REMOVED? YOU TOOK SOME PICTURES OF THAT
28 PROCESS.

-24344

1 MS. ABRAMSON: YOU CAN'T BLOW UP ANYTHING YOU
2 HAVEN'T ALREADY PROVIDED TO COUNSEL AND THE COURT.

3 MR. CONN: OBJECTION. MOTION TO STRIKE.

4 THE COURT: ALL RIGHT. AS FAR AS WHAT THE
5 WITNESS WANTS TO DO TO REFER TO PHOTOGRAPHS, HE CAN LOOK
6 AT WHATEVER HE WANTS.

7 MS. ABRAMSON: HE CAN LOOK AT THEM, BUT HE CAN'T
8 BLOW THEM UP AND DEMONSTRATE THEM.

9 THE COURT: HE ASKED IF HE CAN BLOW THEM UP,
10 WHICH HE CERTAINLY CAN DO.

11 Q. BY MS. ABRAMSON: FIRST I WOULD LIKE AN

12 ANSWER TO THE QUESTION.

13 IS IT YOUR TESTIMONY THAT YOU HAVE

14 INFORMATION THAT WHEN MR. MENENDEZ' BODY WAS REMOVED

15 FROM THE COUCH THERE WAS BLOOD DRIPPING?

16 A. IT IS MY RECOLLECTION THAT IN THE

17 PHOTOGRAPHS OF THE PLASTIC, WHEN HE IS REMOVED FROM THE

18 SCENE AND SET ON PLASTIC THAT THERE WERE BLOOD DRIPS IN

19 THAT PROCESS.

20 Q. THERE WERE BLOOD DRIPS ON THE PLASTIC?

21 A. YES.

22 Q. THAT'S WHAT YOU'RE REFERRING TO?

23 A. THAT'S WHAT MY MEMORY IS JOGGING ME ON,

24 YES.

25 Q. ALL RIGHT. WHY DON'T YOU CALL UP ON YOUR

26 SCREEN THAT PHOTOGRAPH AND LET ME LOOK AT IT. MAYBE WE

27 HAVE IT IN HARD COPY.

28 A. JUST A MOMENT.

-24343

1 Q. AND IF YOU WOULD GIVE ME THE NUMBER, THE

2 DISK NUMBER AND THE IMAGE NUMBER THAT YOU'RE CALLING UP?

3 A. I AM GOING TO HAVE TO LOOK.

4 MS. ABRAMSON: YOUR HONOR, PERHAPS HE CAN FIND IT

5 BY TOMORROW. IT IS 4:30.

6 THE COURT: ALL RIGHT. WE'LL LET HIM DO THAT.

7 LOOK FOR IT TOMORROW.

8 AND WE WILL BE IN RECESS UNTIL TOMORROW AT
9 8:30. DON'T DISCUSS THE MATTER WITH ANYONE. DON'T FORM
10 ANY FINAL OPINIONS ABOUT IT. WE WILL ASK THAT YOU
11 RETURN SO WE CAN COMMENCE TOMORROW, AND WE WILL SEE YOU
12 BACK HERE TOMORROW AT 8:30.

13 (JURY EXITS THE COURTROOM AND THE
14 FOLLOWING PROCEEDINGS WERE HELD:)

15

16 THE COURT: FOR SCHEDULING PURPOSES FOR COUNSEL,
17 WE HAVE A JUROR WHO HAS REQUESTED TO BE ABLE TO LEAVE AT
18 3:15 ON NOVEMBER THE 22ND, WHICH IS NEXT WEDNESDAY.

19 MS. ABRAMSON: OH, THAT'S GOING TO BE TOUGH.

20 THE COURT: I'M TELLING YOU NOW. ALL RIGHT. WE
21 WILL BE IN RECESS UNTIL TOMORROW AT 8:30.

22 MS. ABRAMSON: JUDGE, WE SHOULD TALK ABOUT THAT
23 FOR A MINUTE.

24 NEXT WEEK I AM BRINGING IN TWO OUT-OF-STATE
25 MEDICAL EXPERTS, AND I DON'T WANT TO HAVE TO KEEP THEM.
26 I MEAN, I CAN'T KEEP THEM OVER THANKSGIVING. THEY'RE
27 BOTH SCHEDULED TO FLY OUT ON THE RED-EYE THE NIGHT OF
28 THE 22ND. ONE IS SCHEDULED TO FLY OUT THE 21ST, THE

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1 OTHER THE 22ND, AND HE IS COMING FROM CROSS-COUNTRY,
2 SO --

3 THE COURT: WELL, DO YOU EXPECT THIS PERSON TO --

4 THE BAILIFF: CAN THEY COME OUT?

5 THE COURT: ARE THEY READY? YES.

6 (BRIEF PAUSE)

7

8 THE COURT: OKAY. THE JURORS HAVE LEFT.

9 YOU WERE SAYING?

10 MS. ABRAMSON: YES, YOUR HONOR. I AM VERY
11 CONCERNED. I HAVE GOT DR. FACKLER AND DR. WECHT COMING
12 OUT, BOTH OF THEM. I EXPECTED THAT BETWEEN THE TWO OF
13 THEM THEY WOULD SHARE THE 20TH, 21ST AND 22ND, AND THEN
14 DR. WECHT HAS GOT TO GO BACK TO FLORIDA, AND THAT'S THE
15 THANKSGIVING WEEKEND. I CAN'T SEE SENDING THEM BACK AND
16 BRINGING THEM BACK FOR THE 27TH.

17 THE COURT: YOU HAVE ONE COMING IN ON THE 22ND.
18 WHO IS THAT?

19 MS. ABRAMSON: EXCUSE ME?

20 THE COURT: WHO IS THE PERSON COMING IN ON THE
21 22ND?

22 MS. ABRAMSON: NO, HE IS NOT COMING IN ON THE
23 22ND.

24 THE COURT: YOU SAID YOU HAD SOMEBODY COMING IN
25 THE MORNING OF THE 22ND. YOU SAID HE WAS COMING IN ON
26 THE RED-EYE.

27 MS. ABRAMSON: NO. YOU DON'T UNDERSTAND, JUDGE.
28 I SAID I WANT THEM TO BE DONE BY THE NIGHT OF THE 22ND.

1 BOTH DR. WECHT AND DR. FACKLER ARE COMING IN ON THE
2 20TH.

3 THE COURT: THAT'S NOT WHAT YOU SAID.

4 THEY BOTH ARE COMING IN ON THE 20TH?

5 MS. ABRAMSON: RIGHT.

6 THE COURT: HOW LONG IS YOUR DIRECT EXAMINATION
7 GOING TO BE, AND THEN HOW LONG WOULD THE PROSECUTION
8 EXPECT THE CROSS TO BE? YOU STILL HAVE THIS WITNESS TO
9 COMPLETE. I DON'T KNOW IF HE'S GOING TO BE FINISHED
10 TOMORROW.

11 MS. ABRAMSON: I AM ALMOST DONE WITH HIM. BUT
12 THE POINT IS, I THOUGHT THOSE THREE DAYS WOULD BE ENOUGH
13 FOR THESE THREE WITNESSES.

14 THE COURT: ALL I AM TELLING YOU IS THE REQUEST
15 FROM THIS ONE JUROR, WHICH I RECEIVED THIS AFTERNOON, TO
16 LEAVE AT 3:15 INSTEAD OF 4:30 ON NOVEMBER THE 22ND. YOU
17 ARE THE ONE WHO HAS TO DECIDE HOW LONG YOUR DIRECT IS,
18 AN ESTIMATE.

19 MS. ABRAMSON: IT WASN'T GOING TO BE --

20 THE COURT: AND WE CAN GET AN ESTIMATE AS TO HOW
21 LONG THE CROSS WILL BE.

22 MS. ABRAMSON: THAT'S TRUE, BUT IT'S JUST OF
23 CONCERN TO TRY TO CUT SHORT A DAY WHEN I HAVE
24 OUT-OF-STATE WITNESSES.

25 HOW VITAL IS THE JUROR'S REQUEST?

26 THE COURT: ALL I CAN TELL YOU IS HE HAS A FLIGHT
27 TO CATCH. I CAN ASSUME IT'S FOR THANKSGIVING.

28 MS. ABRAMSON: WELL, MY WITNESSES HAVE FLIGHTS TO

1 CATCH FOR THEIR THANKSGIVING, TOO. THAT'S THE PROBLEM.

2 THE COURT: WELL --

3 MS. ABRAMSON: AND I WILL TELL THE COURT THAT
4 DEPARTMENT 100 ONLY AUTHORIZED ONE TRIP FOR DR. WECHT,
5 AND HE IS THE ONE THAT IS GOING TO GO ON SECOND AFTER
6 DR. FACKLER.

7 THE COURT: WELL, YOU ARE THE ONE WHO DETERMINES
8 THE ORDER, AND WHAT CAN I SAY? YOU HAVE PUT THEM IN
9 THIS THREE-DAY PERIOD, AND NOW IF THAT'S WHO YOU WANT TO
10 TESTIFY DURING THAT PERIOD, YOU WILL HAVE TO FIT THEM IN
11 IN THAT PERIOD.

12 MS. ABRAMSON: I WANT THEM IN THAT PERIOD BECAUSE
13 I WANT TO GET THIS AREA OVER WITH, AND DR. FACKLER CAN'T
14 BE HERE ON THE 27TH, SO -- YOU KNOW. I JUST -- I MEAN,
15 I AM SORRY. I DON'T KNOW WHY A JUROR WOULD HAVE BOOKED
16 AN EARLY FLIGHT WHEN THEY ARE SITTING ON A JURY.

17 BUT I WOULD ASK THE COURT TO SEE IF THAT --
18 IF IT CAN BE CHANGED IN SUCH A WAY THAT WE CAN AT LEAST
19 GO TO 4:30.

20 THE COURT: I WILL DO THAT. BUT WE LET COUNSEL
21 DO THINGS, AND COME IN AND AREN'T READY TO START ON TIME
22 AND THINGS OF THAT NATURE, DELAYING THE START-UP OF
23 PROCEEDINGS, WHICH CUT BACK ON THE TIME WE HAVE FOR
24 TRIAL.

25 THE MORE TIME WE HAVE WITH THE JURY IN THE

26 BOX AND THE WITNESS ON THE STAND, THE MORE LIKELY IT IS
27 WE WILL BE ABLE TO COMPLETE WITHIN THAT TIME FRAME.
28 WHY DON'T YOU GIVE ME A LITTLE IDEA OF WHAT

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1 YOUR ORDER OF WITNESSES IS.

2 MS. ABRAMSON: IT'S VERY SIMPLE, YOUR HONOR.

3 ASSUMING WE GET TO PUT ANYBODY ON TOMORROW, TOMORROW IS
4 VAN HORN AND POSSIBLY LINHART. MONDAY, TUESDAY AND
5 WEDNESDAY ARE FACKLER AND WECHT.

6 THE FOLLOWING WEEK, TENTATIVELY, GOLDEN AND
7 MORTON ON THE 27TH, 28TH AND 29TH; AND THEN I AM NOT
8 SURE ABOUT AVAILABILITY. WE HAVE A PROBLEM WITH A
9 COUPLE OF DIFFERENT WITNESSES FOR NOVEMBER 30TH. BUT
10 THEN WE'RE OUT OF PHYSICAL EVIDENCE-LAND FOR AWHILE.

11 THE COURT: OKAY. AND THESE ARE JOINT WITNESSES
12 FOR BOTH DEFENDANTS; IS THAT RIGHT?

13 MS. ABRAMSON: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. ALL RIGHT.

15 WELL, WE'LL INQUIRE OF THIS JUROR REGARDING
16 THE PLANS THAT HE HAS MADE FOR THE 22ND, AND IF PERHAPS
17 YOU CAN ANALYZE THE TESTIMONY OF THE TWO WITNESSES YOU
18 HAVE COMING IN NEXT WEEK AS TO HOW LONG YOU EXPECT THEIR
19 DIRECT TO BE AND GET SOME ESTIMATE AS FAR AS THE CROSS,
20 WE'LL BE IN A BETTER POSITION TO EVALUATE THE TIME
21 THAT'S AVAILABLE FOR THEM.

22 MS. ABRAMSON: WELL, I AM ESTIMATING THE
23 COMBINATION OF BOTH OF APPROXIMATELY ONE DAY. MAYBE A
24 TINY BIT MORE FOR DR. FACKLER, DIRECT AND CROSS, AND
25 THEN A DAY AND A HALF, POTENTIALLY TWO DAYS FOR DR.
26 WECHT, SINCE HE IS COVERING MORE GROUND.
27 THE COURT: WELL, THAT SHOULD BE ENOUGH, BARRING
28 THE UNEXPECTED.

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1 MS. ABRAMSON: YEAH. THAT'S WHAT I WAS HOPING,
2 YOUR HONOR. THAT'S WHAT I WAS CONCERNED ABOUT.
3 THE COURT: WE ARE ONLY TALKING ABOUT AN HOUR AND
4 15 MINUTES.
5 MS. ABRAMSON: IF WE COULD CUT LUNCH DOWN.
6 THE COURT: WELL, IF WE COULD JUST KEEP GOING AND
7 GET READY HERE, AND WE'LL GET THE JURY HERE AND GET
8 THINGS ORGANIZED. A LOT OF THE DELAYS ARE BECAUSE
9 EXHIBITS HAVE TO BE ORGANIZED BY COUNSEL. SO, WHEN YOU
10 DO THAT, THE JURY IS NOT IN THE BOX, AND IT TAKES THAT
11 MUCH LONGER FOR THINGS TO GET GOING.
12 MS. ABRAMSON: YOU CAN ONLY DO THAT WHEN YOU'RE
13 HERE.
14 THE COURT: WELL, THE COURT IS OPEN AT 8:30.
15 MS. ABRAMSON: WE'RE USUALLY HERE AT 8:30.
16 THE COURT: WE CAN OPEN IT AT 1:00 O'CLOCK, AND
17 IF IT TAKES THAT EXTRA TIME TO GET YOUR EXHIBITS

18 ORGANIZED FOR WHEN THE JURY COMES IN. BUT IT TAKES A
19 LITTLE WHILE FOR THEM TO EAT AND GET BACK IN THE
20 COURTROOM.

21 ALL RIGHT. WE WILL BE IN RECESS UNTIL
22 TOMORROW AT 8:30.

23 (PROCEEDINGS WERE ADJOURNED AT 4:40 P.M.
24 UNTIL 8:30 A.M. THE FOLLOWING DAY)