

1 VAN NUYS, CALIFORNIA; FRIDAY, NOVEMBER 17, 1995

2 9:25 A.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE OFFICIAL REPORTER)

7

8 THE COURT: ALL RIGHT. EVERYBODY IS HERE, AND WE
9 WILL START WITH THE TRIAL AND HAVE THE JURY COME OUT.

10 (THE JURY ENTERS THE COURTROOM AND THE

11 FOLLOWING PROCEEDINGS WERE HELD:)

12

13 THE COURT: OKAY, EVERYBODY IS HERE. GOOD
14 MORNING, LADIES AND GENTLEMEN.

15 ALL RIGHT, WE ARE READY TO RESUME WITH THE
16 TRIAL. THE WITNESS IS ON THE WITNESS STAND.

17 PLEASE STATE YOUR NAME AGAIN FOR US,
18 PLEASE.

19 THE WITNESS: ROGER LEE MC CARTHY.

20 THE COURT: I WILL REMIND YOU YOU'RE STILL UNDER
21 OATH.

22 THE WITNESS: YES, SIR.

23 THE COURT: AND YOU MAY CONTINUE YOUR
24 CROSS-EXAMINATION.

25 MS. ABRAMSON: THANK YOU, YOUR HONOR.

26

27

28

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

4

5 CROSS-EXAMINATION (CONTINUED.)

6 BY MS. ABRAMSON:

7 Q. DR. MC CARTHY, THIS MORNING WERE YOU MADE
8 AWARE OF THE FACT THAT I HAD A MEETING LAST NIGHT WITH
9 THE SHERIFF'S BALLISTICS EXPERT, DEPUTY VAN HORN?

10 A. SOMEONE TOLD ME THIS MORNING THAT YOU HAD
11 BEEN TALKING TO DEPUTY VAN HORN. I WAS UNAWARE YOU HAD
12 A MEETING LAST NIGHT WITH HIM.

13 Q. AND WAS IT BROUGHT TO YOUR ATTENTION THIS
14 MORNING AREAS WITH WHICH HIS, DEPUTY VAN HORN'S,
15 EXPERTISE DISAGREES WITH YOURS?

16 A. IT WAS BROUGHT TO MY ATTENTION THAT THERE
17 WERE A COUPLE OF POINTS OF DISAGREEMENT. I DON'T KNOW
18 THAT I WOULD CALL IT AN EXPERTISE DISAGREEMENT.

19 Q. WELL, YOU UNDERSTAND THAT DEPUTY VAN HORN
20 IS A FIREARMS AND BALLISTICS EXPERT FOR THE L.A. COUNTY
21 SHERIFF'S DEPARTMENT, AND THAT'S ALL HE DOES FOR A
22 LIVING, DO YOU NOT?

23 A. I GUESS I DIDN'T HAVE THAT UNDERSTANDING,
24 BUT I KNEW HE WORKED IN THAT AREA AT LEAST SOME OF THE
25 TIME.

26 Q. AND DO YOU KNOW HOW MANY HUNDREDS OF CASES
27 HE HAS QUALIFIED AS AN EXPERT IN BALLISTICS AND
28 TESTIFIED IN?

-24335

1 MR. CONN: OBJECTION. IRRELEVANT.

2 THE COURT: SUSTAINED.

3 Q. BY MS. ABRAMSON: AND YOU HAVE NEVER
4 TESTIFIED AS A BALLISTICS EXPERT.

5 YOU HAVE TOLD US THAT, RIGHT?

6 MR. CONN: OBJECTION. ASKED AND ANSWERED.

7 THE COURT: OVERRULED.

8 THE WITNESS: I DON'T RECALL BEING QUALIFIED
9 SPECIFICALLY IN THAT AREA, THAT IS CORRECT.

10 Q. BY MS. ABRAMSON: AND WHAT WERE THE COUPLE
11 OF AREAS THAT YOU WERE TOLD WERE IN DISAGREEMENT BETWEEN
12 YOURSELF AND DEPUTY VAN HORN?

13 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

14 THE COURT: SUSTAINED.

15 Q. BY MS. ABRAMSON: AND IS IT YOUR INTENTION
16 ON REDIRECT EXAMINATION TO MODIFY OR CHANGE ANY OF THE
17 STATEMENTS YOU HAVE MADE IN ORDER TO AVOID BEING
18 CONTRADICTED BY THE SHERIFF'S DEPARTMENT?

19 MR. CONN: OBJECTION. ARGUMENTATIVE AS PHRASED.

20 THE COURT: SUSTAINED.

21 Q. BY MS. ABRAMSON: IS IT YOUR INTENTION NOW

22 THAT YOU ARE GOING TO CHANGE ANY OF THE ANSWERS YOU GAVE
23 CONCERNING THIS RECONSTRUCTION FOR THE PURPOSE OF
24 AVOIDING BEING CONTRADICTED BY DEPUTY VAN HORN?
25 A. NO. THERE WAS ONLY ONE ISSUE THAT GAVE ME
26 SOME CONCERN, AND THAT WAS TALKING ABOUT THE KENNEDY
27 RECREATION, IF I QUOTED A CURCANO CALIBER AS A
28 NINE-MILLIMETER, I WAS TALKING ABOUT MY GLYCERIN BULLET

-24334

1 AND NOT THE CURCANO.

2 Q. SO THAT'S ALL YOU WERE TOLD WAS IN
3 CONTENTION WITH YOUR TESTIMONY, THAT HE SAYS A CURCANO
4 WAS NOT A NINE-MILLIMETER?

5 A. I WAS TOLD THAT HE THINKS A CURCANO IS 7.5
6 MILLIMETERS, AND IT'S NOT THAT EITHER. IT'S 6.5
7 MILLIMETERS. THAT WOULD BE THE ONLY AREA. BUT A
8 CURCANO IS A SMALL-CALIBER MILITARY CARBINE.

9 Q. SO THAT'S IT, THAT'S ALL YOU WERE TOLD?

10 A. NO. BUT THAT WOULD BE THE ONLY AREA, IF I
11 MADE THAT ERROR, IN TERMS OF SUBSTITUTING THE CALIBER.
12 YOU KNOW, IF I MISSPOKE MYSELF IN TERMS OF THE CALIBER
13 OF MY GLYCERIN BULLET.

14 YOU KNOW, CURCANOS HAVEN'T BEEN MADE FOR A
15 WHILE, BUT I WOULDN'T WANT THE JURY CONFUSED ON THE
16 CALIBER OF ONE IF THAT WAS RELEVANT TO ANY OF THEIR
17 CONSIDERATIONS.

18 Q. AND IT'S YOUR UNDERSTANDING THAT NOT WITH
19 RESPECT TO THE KENNEDY MOCK PRESENTATION THAT YOU DID
20 WITH THE LAWYERS, BUT WITH RESPECT TO WHAT YOU'RE
21 PRESENTING HERE IN THIS CASE, THIS REAL CASE, YOU
22 WEREN'T TOLD ANY AREAS THAT DEPUTY VAN HORN DISAGREES
23 WITH YOU; IS THAT RIGHT?

24 A. NOT DISAGREES WITH MY RECONSTRUCTION. I
25 GATHER HE WAS CRITICAL OF ME DISCUSSING CLOSING THE TOP
26 OF A SHOTGUN SHELL WITH AN OVER-SHOT WAD, BECAUSE THAT'S
27 AN OLDER TECHNOLOGY, AND HE IS CORRECT THERE.

28 Q. HOW MUCH OLDER?

-24333

1 A. WELL, HE SAYS 30 YEARS, AND I AM HORRIFIED
2 TO THINK THAT.

3 Q. WELL, HAVE YOU GOTTEN OVER YOUR HORROR TO
4 RESEARCH WHETHER OR NOT 30 YEARS IS ACCURATE?

5 MR. CONN: OBJECTION. ARGUMENTATIVE AS PHRASED.

6 THE COURT: SUSTAINED.

7 Q. BY MS. ABRAMSON: YOU DISAGREE WITH THAT?

8 A. IT WAS REPRESENTED TO ME THAT HE CLAIMED
9 THAT SUCH A CLOSURE HASN'T BEEN MADE IN 30 YEARS.
10 HOWEVER, IT'S SO UNRELATED TO MY RECONSTRUCTION IT
11 WOULDN'T -- I AM NOT GOING TO BOTHER TO RESEARCH IT.
12 IT'S JUST EVERY TIME YOU GET A SIGN OF YOUR AGING, IT'S
13 JUST --

14 Q. ARE YOU FAMILIAR WITH A BOOK CALLED
15 "GUNSHOT INJURIES" BY CORNELL LEWIS A. LAGARDE, UNITED
16 STATES ARMY MEDICAL CORPS?

17 A. NOT -- THAT TITLE DOES NOT RING A BELL.

18 Q. I MAY NOT HAVE THE COMPLETE TITLE.

19 IS LAGARDE CONSIDERED ONE OF THE LEADING
20 AND ORIGINAL RESEARCHERS IN THE AREA OF WOUND
21 BALLISTICS?

22 A. THAT NAME IS FAMILIAR. I AM NOT SO
23 FAMILIAR THAT I COULD GIVE YOU THAT VERIFICATION, BUT I
24 HAVE HEARD THAT NAME AND SEEN THAT NAME IN THE
25 LITERATURE, YES.

26 Q. DON'T YOU IN FACT REFER TO THAT NAME,
27 LAGARDE, AS ONE OF THE STANDARD TEXTS THAT YOU HAD
28 RELIED ON IN YOUR GAINING KNOWLEDGE OF BALLISTICS AT THE

-24332

1 PRETRIAL HEARING? DIDN'T YOU CITE LAGARDE AND DIMAIO?
2 IS THAT THE OTHER ONE?

3 A. I HAVE A BOOK BY LAGARDE. YOUR QUESTION
4 WASN'T THAT, HAD HE WRITTEN A BOOK, BUT --

5 Q. MY QUESTION WAS HAVE YOU EVER READ ANYTHING
6 ABOUT BALLISTICS?

7 THE COURT: LET'S NOT DEBATE WHAT THE QUESTION
8 WAS. WHY DON'T YOU ASK THE NEXT QUESTION.

9 Q. BY MS. ABRAMSON: THE QUESTION IS HAVE YOU

10 EVER READ THE BOOK BY LAGARDE?

11 A. I HAVE LOOKED THROUGH IT ON OCCASION. IT

12 IS NOT THE TEXT I USE MOST OFTEN. I'M SORRY. I NOW

13 UNDERSTAND YOUR QUESTION. I MISUNDERSTOOD.

14 Q. DID YOU EVER READ THE INTRODUCTION TO THE

15 1991 SECOND REVISED EDITION OF LEGUARD'S BOOK?

16 A. I DON'T THINK I HAVE THAT RECENT OF AN

17 EDITION.

18 Q. SO YOU NEVER READ DR. FACKLER'S

19 INTRODUCTION TO THAT BOOK?

20 A. I DON'T HAVE AN EDITION OF HIS BOOK WHERE

21 DR. FACKLER WROTE THE INTRODUCTION; THAT IS CORRECT.

22 Q. DO YOU BELIEVE, DR. MC CARTHY, THAT IT IS A

23 COMMON MISPERCEPTION OF LAYMAN THAT BULLETS KNOCK PEOPLE

24 BACKWARDS?

25 A. YES.

26 Q. AND A COMMON MISPERCEPTION THAT SHOTGUN

27 ROUNDS KNOCK PEOPLE BACKWARDS?

28 A. I THINK THERE IS A COMMON MISPERCEPTION OF

-24331

1 THE DEGREE OF ENERGY THEY HAVE, YES. I MEAN, THEY DO

2 KNOCK YOU BACKWARDS, BUT NOT WITH THE FORCE THAT I THINK

3 MOST PEOPLE THINK THEY DO.

4 Q. SO THEY KNOCK YOU DOWN; IS THAT WHAT YOU'RE

5 SAYING?

6 A. NO. THEY IMPULSE IN THE DIRECTION OF THE
7 IMPACTS, BUT IT'S NOT NEARLY -- I THINK THE COMMON
8 PERCEPTION IS THEY HIT A LOT HARDER WITH A LOT MORE
9 FORCE THAN THEY DO. I MEAN, I HAVEN'T SURVEYED PEOPLE,
10 BUT MY COMMON PERCEPTION OF THE MISPERCEPTION IS THAT
11 PERCEPTION, IF ANYTHING.

12 MS. ABRAMSON: AS MUCH AS ANYTHING ELSE?

13 MR. CONN: OBJECTION, ARGUMENTATIVE.

14 THE COURT: OKAY. THE COMMENTS OF COUNSEL ARE
15 STRICKEN AS HEARD BY THE REPORTER.

16 Q. BY MS. ABRAMSON: DO YOU KNOW HOW MANY
17 AUTOPSIES DR. GOLDEN DID ON THE DATE HE PERFORMED THE
18 AUTOPSY ON MR. AND MRS. MENENDEZ?

19 A. HE TOLD ME HE DID 800 THAT YEAR, BUT I
20 DON'T RECOLLECT HOW MANY HE TOLD ME HE DID THAT DAY.

21 Q. DID YOU EVEN ASK HIM HOW MANY HE DID THAT
22 DAY?

23 A. I DON'T REMEMBER WHETHER I DID OR DIDN'T.

24 Q. SO YOU DON'T KNOW HOW MANY HE DID THAT DAY?

25 A. THAT'S CORRECT.

26 Q. AND YOU ALSO DON'T KNOW HOW MUCH TIME HE
27 SPENT IN THE PAST SIX YEARS EXAMINING AND EVALUATING THE
28 PHOTOGRAPHS, THE EVIDENCE, HIS NOTES, CORRECT?

-24330

1 A. THAT IS TRUE, I DO NOT.

2 Q. YOU DON'T KNOW HOW MANY HOURS HE SPENT
3 TALKING TO HIS COLLEAGUES IN THE CORONER'S OFFICE, DO
4 YOU?

5 A. I DO NOT.

6 Q. HOW MANY CORONER'S ARE THERE IN THE
7 CORONER'S OFFICE IN LOS ANGELES?

8 A. I DON'T KNOW.

9 Q. SO YOU DON'T KNOW HOW MANY COLLEAGUES WITH
10 EXPERIENCE HE HAS TO CONSULT WITH; IS THAT RIGHT?

11 A. HE HAS OR DID, THAT IS CORRECT.

12 Q. NOW, YOU TESTIFIED YESTERDAY THAT THERE WAS
13 SOMETHING IN ONE OF THE PHOTOGRAPHS OF THE DEN THAT
14 APPEARED TO BE TISSUE SOMEWHERE IN THE AREA NEAR THE
15 FOYER; IS THAT RIGHT?

16 A. I THINK I WAS A LITTLE MORE SPECIFIC THAN
17 THAT.

18 Q. WELL, YESTERDAY YOU WEREN'T VERY SPECIFIC.

19 MR. CONN: OBJECTION. ARGUMENTATIVE. MOTION TO
20 STRIKE.

21 THE COURT: SUSTAINED.

22 Q. BY MS. ABRAMSON: LET ME SHOW YOU THIS
23 LARGE PHOTOGRAPH, WHICH IS 299. YOU'RE REFERRING TO
24 THIS PARTICULAR PHOTOGRAPH, ARE YOU NOT?

25 A. WELL, THAT'S THE ONE YOU HAD THAT SHOWED
26 THE OBJECT I WAS REFERRING TO, SO I USED THAT, YEAH.

27 Q. AND THERE IS A PIECE OF MATTER, SHALL WE
28 SAY, WHERE THIS DARK AREA IS?

1 A. YEAH, RED TISSUE.

2 Q. WHY DON'T WE CIRCLE THAT.

3 A. IT'S YOUR DRAWING. YOU MAY.

4 Q. FIRST I MAY -- I HAVE TO GET SOMETHING WITH
5 WHICH TO DO IT.

6 WELL, I WANT YOU TO DO IT, BECAUSE I DON'T
7 WANT TO BE ACCUSED OF NOT CIRCLING WHAT YOU HAD IN MIND.

8 A. ALL RIGHT. THIS IS NOT THE BEST
9 PHOTOGRAPH, BUT I THINK WHAT I SHOWED YOU IN THE OTHER,
10 BETTER PHOTOGRAPH WAS RIGHT HERE (INDICATING).

11 Q. THAT'S NOT WORKING.

12 A. SORRY, MA'AM.

13 MS. ABRAMSON: I HAD 10,000 OF THESE AT ONE
14 POINT, YOUR HONOR. I HAVE SLIGHTLY LESS NOW.

15 THE WITNESS: HERE IS A RED ONE.

16 MS. ABRAMSON: PERFECT. WHY DON'T YOU CIRCLE IT
17 WITH A RED ONE. AND --

18 THE WITNESS: (INDICATING)

19 Q. BY MS. ABRAMSON: AND YOU HAVE THESE
20 PHOTOGRAPHS ON COMPUTER, CORRECT?

21 A. CORRECT.

22 Q. YOU DON'T HAVE HARD COPIES OF ALL OF THEM;
23 IS THAT RIGHT?

24 A. UM --

25 Q. LET ME REPHRASE THE QUESTION.

26 DO YOU HAVE A SET OF THESE PHOTOGRAPHS

27 PRINTED OUT?

28 A. I DON'T RECOLLECT PRINTING OUT -- WE MAY

-24328

1 HAVE. AS I SIT HERE, I DON'T RECOLLECT ASKING FOR A
2 COMPLETE SET TO BE PRINTED OUT.

3 Q. AND WHEN YOU MADE YOUR EXAMINATION OF THESE
4 PHOTOGRAPHS, YOU DID IT ON COMPUTER, DIDN'T YOU?

5 A. YES.

6 Q. YOU DIDN'T DO IT BY JUST LOOKING AT
7 PHOTOGRAPHS?

8 A. CORRECT.

9 Q. AND DID YOU LOOK AT ANY OF THEM THROUGH A
10 STEREO MICROSCOPE?

11 A. NO.

12 Q. DID YOU -- DID YOU HAVE A WAY ON YOUR
13 COMPUTER SCREEN TO SPLIT THE SCREEN AND LOOK AT MULTIPLE
14 PHOTOGRAPHS AT THE SAME TIME?

15 A. I HAVE SOFTWARE THAT DOES THAT, YES.

16 Q. DID YOU DO THAT?

17 A. NO.

18 Q. AND WITH RESPECT TO THAT PIECE OF MATERIAL
19 THAT YOU'VE CIRCLED, YOU DON'T HAVE A HARD COPY
20 AVAILABLE THAT ENLARGES THIS, OR ANY OTHER PHOTOGRAPH,
21 TO SHOW THAT MATERIAL CLOSE ENOUGH TO IDENTIFY IT; ISN'T
22 THAT TRUE?

23 A. I HAVEN'T GOT A PRINT-OUT. I COULD SHOW IT
24 TO YOU ON THE SCREEN.

25 Q. YEAH, BUT WE CAN'T DO THAT, THOUGH.

26 YOU DON'T HAVE A PRINT-OUT; IS THAT RIGHT?

27 A. NOT WITH ME.

28 Q. AND HOW MANY FEET AWAY FROM THE EXIT

-24327

1 WOUND -- LET'S GET THESE OUT OF THE WAY.

2 HOW MANY FEET -- I'LL TURN BACK TO THE EXIT

3 WOUND, BUT HOW MANY FEET AWAY FROM THE EXIT WOUND IS

4 THAT PIECE OF MATERIAL, DO YOU KNOW?

5 A. I HAVEN'T TRIED TO LAY IT OUT EXACTLY, BUT

6 OBVIOUSLY YOU COULD GO TO THE PHOTOGRAPHS AND DETERMINE

7 IT PRETTY CLOSE.

8 Q. IN LOOKING AT THE PHOTOGRAPH BEFORE WE

9 BEGAN THIS MORNING, YOU ENLARGED IT ON YOUR SMALL

10 COMPUTER AND WE LOOKED AT IT; IS THAT CORRECT?

11 A. YES.

12 Q. AND DID WE DETERMINE THAT THIS PIECE OF

13 MATERIAL APPEARS TO BE APPROXIMATELY 21 INCHES TO THE

14 RIGHT, OR NORTH, OF THE MIDLINE OF THESE TWO DOORS?

15 A. I'M GOING TO SAY ON THE ORDER OF 20 INCHES.

16 Q. FINE.

17 A. OKAY.

18 Q. SO, IT'S 20 INCHES NORTH OF THE MIDLINE OF

19 THE DOORS?

20 A. APPROXIMATELY.

21 Q. AND YOU DON'T KNOW HOW MANY FEET WEST OF
22 THE COUCH?

23 A. WELL, IT'S A FEW FEET, BUT I CAN'T TELL YOU
24 PRECISELY.

25 Q. AND IT'S NOWHERE IN YOUR LINE OF TRAJECTORY
26 AS WE'RE LOOKING AT IT RIGHT NOW OF SHOT 7B; IS THAT
27 CORRECT?

28 A. IT'S NOT IN THE LINE. IT'S OFF TO THE

-24326

1 RIGHT.

2 Q. AND IS IT YOUR OPINION, DR. MC CARTHY,
3 BASED ON YOUR ENGINEERING EXPERTISE, THAT THAT PIECE OF
4 TISSUE CAME FROM WHAT YOU'RE CALLING SHOT 7 AND NO
5 OTHER?

6 A. I CAN'T POSITIVELY TELL YOU THAT.

7 Q. YOU CAN'T TELL ME THAT AT ALL, CAN YOU?

8 A. WELL, I MEAN, I THINK IT IS PERHAPS MORE
9 LIKELY, BUT I CAN'T TELL YOU, AS YOUR QUESTION WAS
10 POSITIVELY, THAT IT RELATED TO THAT SHOT.

11 Q. THERE ARE, ACCORDING TO YOU, 12 SHOTS IN
12 THAT ROOM, CORRECT?

13 A. YES.

14 Q. ELEVEN OF WHICH, ACCORDING TO YOU, HIT

15 HUMAN BODY?

16 A. YES.

17 Q. AND --

18 A. SOME PART OF THEM DID, YES.

19 Q. AND THERE ARE A NUMBER OF WOUNDS HERE THAT

20 HAVE BOTH ENTRIES AND EXITS, CORRECT?

21 A. YES.

22 Q. AND YOU CAN'T IDENTIFY WHAT KIND OF TISSUE,

23 IF THAT THING IS TISSUE, THAT IS, CAN YOU?

24 A. I CANNOT.

25 Q. AND YOU CERTAINLY CAN'T SAY WHOSE IT IS?

26 A. THAT IS CORRECT.

27 Q. NOW I'D LIKE TO GET BACK TO EXHIBIT 3 OR 4.

28 FIRST OF ALL, I WANT TO CALL YOUR ATTENTION

-24325

1 TO THE PHOTO -- EITHER TO THE EXHIBIT -- THE LARGE

2 EXHIBIT THAT CONTAINS WHAT YOU'RE CALLING SHOT 7B, WHICH

3 IS TWO -- IT'S VERY SMALL -- 263, OR IF IT'S EASIER FOR

4 YOU TO SEE IT, YOU CAN LOOK AT IMAGE "E" ON 304.

5 THE ANGLE THAT YOU HAVE SHOWN FOR THE LEG

6 WOUND IN THAT RECONSTRUCTION IS ACTUALLY MORE EXTREME

7 THAN THE REAL ANGLE OF ENTRY AND EXIT, ISN'T IT?

8 A. IT WOULD DEPEND ON THE EXACT ROTATION OF

9 THE LEG WHEN THE SHOT OCCURRED. BUT I DON'T MEAN TO

10 SHOW THAT AS THE PRECISE ANGLE OF ENTRY AND EXIT.

11 Q. IT'S TRUE, IS IT NOT, THAT THE ENTRY AND
12 EXIT WITH RESPECT TO THIS WOUND, BASED ON DR. GOLDEN'S
13 REPORT, IS -- THEY'RE ALMOST LINED UP. THERE IS A VERY
14 SLIGHT, MAYBE LESS THAN AN INCH LOWER POSITION FOR THE
15 EXIT WOUND, THE ONE ON THE OUTSIDE; IS THAT RIGHT?

16 A. I -- I GUESS, AS I SIT HERE, I DON'T
17 RECOLLECT HIM TRYING TO BE QUITE THAT PRECISE, BUT --
18 YOU SEE THE PICTURE UP TOP? THAT'S AT THE MURDER SCENE,
19 AND I DON'T THINK WHEN HE DID THE AUTOPSY HE HAD THAT
20 PHOTO IN THE UPPER LEFT-HAND CORNER. TAKE A LOOK AT IT.
21 IF YOU DON'T LIKE MY ANGLE, MOVE IT A BIT.

22 MS. ABRAMSON: IT DOESN'T HAVE TO DO WITH LIKE OR
23 DISLIKE, AND I MOVE TO STRIKE THE ANSWER AS NOT
24 RESPONSIVE.

25 THE COURT: SUSTAINED.

26 MS. NAJERA: EXCUSE ME, YOUR HONOR. COUNSEL IS
27 BLOCKING ME.

28 MS. ABRAMSON: YOU DON'T HAVE X-RAY VISION?

-24324

1 MS. NAJERA: NO, SORRY.

2 THE COURT: OKAY.

3 Q. BY MS. ABRAMSON: SO IS YOUR ANSWER YOU
4 DON'T KNOW HOW MUCH HIGHER OR LOWER THESE WOUNDS ARE IN
5 RELATION TO EACH OTHER?

6 A. NO. MY ANSWER IS LOOK AT THE PICTURE IN

7 THE UPPER LEFT-HAND CORNER. LOOK AT MY ANGLE. THAT'S
8 WHAT I PLACED IT WITH. COULD IT BE -- I DO KNOW THE LEG
9 WAS -- THAT'S THE LEG AFTER THE SHOT. THE LEG PRIOR TO
10 THE SHOT COULD HAVE BEEN TOUCHING THE OTHER LEG, IN
11 WHICH CASE THAT ANGLE WOULD BE TOO HIGH, AND LOWER WOULD
12 BE CORRECT. THE REMAINING EVIDENCE DOESN'T PERMIT THAT
13 PRECISION.

14 Q. IF THE ANGLE WERE LOWER, APART FROM WHAT
15 POSITION THE LEG WAS IN, IF THE WOUNDS ARE LINED UP IN A
16 CERTAIN WAY TO WHERE THERE IS LESS OF A HEIGHT
17 DIFFERENTIAL BETWEEN THE ENTRY AND EXIT, WOULDN'T THAT
18 ALSO REQUIRE THE ANGLE TO BE LOWER? IF THEY ARE ALMOST
19 PARALLEL, THE ANGLE SHOULD BE LOWER THAN WHAT YOU'VE
20 DEPICTED, CORRECT?

21 A. DEPENDS ON THE POSITION OF THE LEG AS WELL.

22 Q. ALL RIGHT. IN SOME POSITIONS OF THE LEG,
23 IF THEY'RE ALMOST PARALLEL, YOUR ANGLE HAS TO BE LOWER?

24 A. YES.

25 Q. AND IF THE ANGLE IS LOWER, YOU MEAN YOUR --
26 THAT MEANS YOU'RE ROTATING THE VECTOR LINE, AS I AM NOW
27 DEMONSTRATING IT ON THE ILLUSTRATION. THE LINE AT THE
28 TOP WOULD ACTUALLY COME DOWN, RIGHT?

-24323

1 A. IN THAT GENERAL DIRECTION, REALIZING THAT
2 YOU'RE MOVING A VECTOR, WHICH IS A THREE-DIMENSIONAL

3 THING, IN A TWO DIMENSIONAL VIEW.

4 Q. EXACTLY. IT MEANS THAT TO PUT IT INTO

5 THREE-DIMENSIONAL TERMS, THE MUZZLE OF THE GUN WOULD BE

6 MOVING FARTHER EAST, CORRECT?

7 A. IN AN EASTERLY DIRECTION, AND LOWER IF WE

8 ARE GOING MORE HORIZONTAL.

9 Q. AND BY LOWER, THE MUZZLE WOULD BE MOVING

10 THIS WAY AND LOWER?

11 A. LOWER DOWN.

12 Q. THANK YOU.

13 NOW, IN YOUR SCENARIO, DR. MC CARTHY, MR.

14 MENENDEZ IS DEAD BY SHOT 2, CORRECT?

15 A. AFTER SHOT 2, YES.

16 Q. SHOT 2 IS WHAT KILLS HIM?

17 A. YES.

18 Q. AND SUBSEQUENT TO THAT OCCURRING, THERE ARE

19 IN YOUR SCENARIO SHOTS 3, 4, 5 AND 6 BEFORE THIS LEG

20 WOUND IS INFLICTED; IS THAT CORRECT?

21 A. IN THE NUMBERING I HAVE POSTULATED, YES,

22 WITH THE UNDERSTANDING THAT, AS I CONCEDED TO YOU EARLY

23 ON, I CAN'T -- THERE IS NOTHING TO REALLY PIN THIS SHOT

24 DOWN RELATIVE TO THE OTHER SEQUENCE.

25 Q. SO, IT COULD HAVE HAPPENED AT ANY TIME IS

26 WHAT YOU'RE SAYING, AFTER 2?

27 A. I WOULDN'T SAY AT ANY TIME, BECAUSE THERE'S

28 SOME OF THE SHOTS EARLIER IN MY SEQUENCE WHICH ARE SHOT

1 IN THIS POSITION. TO DELIVER THIS SHOT HE WOULD HAVE
2 BEEN IN DANGER OF GETTING SHOT BY THE OTHER SHOOTER. SO
3 THE AREA WOULD BE DENIED TO THE SHOOTER AT VARIOUS
4 POINTS.

5 BUT THERE IS NOTHING IN THE PHYSICAL
6 EVIDENCE THAT ALLOWS ME TO TIME THIS SHOT PRECISELY
7 RELATIVE TO THE OTHER SHOTS.

8 Q. OKAY. WHAT'S HAPPENED TO MR. MENENDEZ,
9 HOWEVER, BEFORE THIS SHOT, ACCORDING TO YOUR SEQUENCING,
10 IS SHOT NO. 1 HAS CAUSED MOST OF HIS OTHER INJURIES.
11 SHOT NO. 2 HAS CAUSED HIS HEAD INJURY, AND THIS IS THE
12 ONLY OTHER SHOT THAT INJURES HIM, CORRECT?

13 A. THIS IS THE ONLY OTHER SHOT -- WELL, WE
14 TALKED ABOUT THAT STRAY PELLET IN THE CHEST, BUT THIS IS
15 THE ONLY OTHER SERIOUS SHOT, YES.

16 Q. WELL, THIS IS THE ONLY SHOT THAT YOU HAVE
17 ILLUSTRATED.

18 A. THAT'S CORRECT.

19 Q. NOW, I HAVE INDICATED TO YOU, POINTED OUT
20 TO YOU -- I POINTED OUT TO YOU YESTERDAY THE FACT THAT
21 THERE APPEARS TO BE BLOOD SMEARING INSIDE MR. MENENDEZ'
22 RIGHT THIGH AND APPEARS TO BE BLOOD SMEARING DOWN HIS
23 LEFT LEG IN THE KNEE AREA AND THE CALF AREA.

24 IS THAT WHAT APPEARS ON THAT PHOTOGRAPH?

25 A. YES.

26 Q. AND YOU SAID YESTERDAY THAT YOU BELIEVED
27 THAT IT WAS A CONTACT SMEARING WITH THE TWO LEGS

-24321

1 A. IT LOOKS CONSISTENT WITH THAT. I AM NOT
2 GOING TO SAY THAT THAT IS THE ONLY EXPLANATION.

3 Q. AND YOU ARE NOT SUGGESTING THAT AFTER MR.
4 MENENDEZ WAS SHOT IN THE LEG, LEFT LEG, HIS TWO LEGS
5 CAME TOGETHER, ARE YOU?

6 WELL, LET ME BREAK THAT UP. HE'S DEAD WHEN
7 HE GETS THIS, ACCORDING TO YOU, CORRECT?

8 A. IT'S NOT VOLITIONAL MOVEMENT. IT'S THE
9 ELASTICITY OF THE COUCH. AND YOU COULD SHOOT THE LEG,
10 AS I POSTULATE THIS IS SHOT, AND THEN BOUNCE BACK AND
11 HIT THE OTHER LEG, OSSILATE ON THE OTHER CUSHIONS. THIS
12 IS WHAT I AM THINKING ABOUT. I AM NOT SURE I CAN ANSWER
13 YOUR QUESTION.

14 IN OTHER WORDS, IT'S POSSIBLE YOU COULD HIT
15 THE LEG -- I MEAN, I CAN'T RULE OUT THE POSSIBILITY THAT
16 THE SHOTGUN BLAST THAT HITS THE LEG SQUEEZES IT AGAINST
17 THE CUSHION ON ITS LEFT, BOUNCES IT BACK ONTO THE OTHER
18 LEG, AND THEN BOUNCES IT BACK TO ITS CURRENT POSITION.
19 I CAN'T RULE THAT OUT.

20 Q. THIS IS THE CUSHION TO THE LEFT; IS THAT
21 THIS (POINTING)?

22 A. YES.

23 Q. THE CUSHION THAT DOES NOT HAVE ONE DROP OF

24 BLOOD ON IT.

25 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
26 EVIDENCE.

27 THE COURT: SUSTAINED.

28 Q. BY MS. ABRAMSON: DID YOU FIND, IN

-24320

1 EXAMINING THE PHOTOGRAPHS, THAT THERE WAS ANY EVIDENCE
2 OF BLOOD ON THIS AREA OF THE COUCH?

3 A. WHERE YOU'RE POINTING TO NOW IN THE
4 PHOTOGRAPHS, THERE DOESN'T APPEAR TO BE ANY. I'D HAVE
5 TO GO BACK AND LOOK AROUND THE INSIDE TO ANSWER YOUR
6 QUESTION MORE PRECISELY.

7 Q. DON'T KNOW IS WHAT YOU'RE SAYING?

8 A. I DON'T RECOLLECT AS I SIT HERE, THAT'S
9 TRUE.

10 Q. AND WHAT YOU'RE SAYING IS IF THE LEG
11 OSSILATED AND THAT HIT THAT CUSHION, THAT IT'S LIKELY
12 THERE WOULD HAVE BEEN A BLOOD TRANSFER AFTER THE LEG IS
13 SHOT, WOULDN'T IT?

14 A. I DON'T SEE THAT AS NECESSARY. WHAT YOU
15 POSTULATE COULD HAPPEN, BUT I DON'T SEE IT AS NECESSARY.
16 FRANKLY, THAT'S NOT PART OF MY SCENARIO. YOU'RE ASKING
17 IS IT A POSSIBILITY? I CAN'T RULE IT OUT.

18 Q. BUT YOU BELIEVE IT'S POSSIBLE THAT THERE IS
19 A TRANSFER OF BLOOD TO THE INNER THIGH BY HAVING THESE

20 LEGS TOUCH TOGETHER, EVEN THOUGH THERE IS NO WOUND AREA
21 ON THE LEFT INNER THIGH TO COME IN CONTACT WITH THE
22 RIGHT INNER THIGH; IS THAT WHAT YOU'RE SAYING?
23 A. NO. WHAT I AM SAYING IS IT LOOKS LIKE
24 THOSE -- THE TWO THIGHS TOUCHED AT ONE TIME, BUT AFTER
25 THE SHOT TO -- FIRST OF ALL, AFTER THE SHOT TO HIS ARMS,
26 THERE IS NO SHORTAGE OF A SOURCE FOR BLOOD IN HIS LEG
27 AREAS.
28 SECONDLY, AFTER HE IS SHOT IN HIS HEAD, WE

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1 HAVE ALREADY DISCUSSED THE CATATONIC MOVEMENT, OR FOR
2 ALL I KNOW, HIS LEGS WERE TOGETHER AT THE TIME OF THAT
3 SHOT, AND IT'S ONLY THIS SHOT THAT SEPARATES HIS LEGS.
4 BUT I CAN'T TELL YOU WHERE IT WAS.

5 I MEAN, THERE IS NO SHORTAGE OF BLOOD IN
6 THE LEG AREAS, NO SHORTAGE OF AREAS OF BLOOD. THERE IS
7 NO SHORTAGE OF OPPORTUNITIES FOR THE LEGS TO TOUCH AND
8 MOVE APART. I DON'T KNOW WHAT IT IS.

9 Q. THERE IS NO SHORTAGE OF OPPORTUNITIES FOR
10 REPEAT; IS THAT WHAT YOU'RE SAYING?

11 A. AFTER HE WAS SHOT THROUGH THE ARM, I DON'T
12 POSTULATE HE IS DEAD.

13 Q. BUT HE IS DEAD IN THE NEXT SHOT, ACCORDING
14 TO YOU?

15 A. THAT'S CORRECT. HE IS SHOT (SIC) IN THE

16 SHOT, BUT THERE IS NO SHORTAGE OF SOURCE OF BLOOD, AND

17 HE'S HURT, AND AT THAT POINT IN TIME HE IS ALIVE.

18 Q. WELL, DID YOU EXAMINE TO SEE IF YOU COULD

19 TRACE THAT SMEAR THAT APPEARS IN THE INNER RIGHT THIGH

20 TO A SOURCE OF BLOOD? IS THERE A RIVER CONNECTING TO

21 HIS ARM SOME WAY THERE?

22 A. NO. NO, IT'S NOT A FLOWING CONTACT. I

23 MEAN SHOTGUNS AND PELLET ENTRY AND EXITS CREATE SPATTERS

24 OF BLOOD. THERE --

25 Q. WAIT. DR. MC CARTHY, THAT'S NOT A SPATTER,

26 THAT'S A SMEAR.

27 A. EVENTUALLY, WHERE IT ENDS UP BEING MOVED,

28 IT FINALLY ENDS UP A SMEAR. I CAN'T TELL YOU WHAT IT

-24318

1 WAS BEFORE THE LEGS TOUCHED TOGETHER.

2 Q. ARE YOU SAYING THE LEGS TOUCHED TOGETHER?

3 ARE YOU OFFERING AN OPINION THAT BASED ON SCIENCE THE

4 LEGS TOUCHED TOGETHER?

5 A. NO. ALL -- MA'AM --

6 Q. YOU ARE JUST SAYING WHATEVER WORKS FOR YOUR

7 THEORY; IS THAT TRUE?

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

9 ANSWER.

10 THE COURT: YES. THE LAST QUESTION IS STRICKEN

11 AS NOT HAVING GIVEN THE WITNESS A CHANCE TO GIVE HIS

12 ANSWER TO THE PREVIOUS QUESTION.

13 THE WITNESS: YOU ASKED ME IF THIS THIGH BLOOD

14 INDICATION WAS CONSISTENT WITH A SMEAR FROM THE TWO

15 THIGHS BEING TOGETHER.

16 I READILY CONCEDED THAT IT IS. I WAS THEN

17 MERELY GOING ON TO ANSWER YOUR QUESTION, ASSUMING THE

18 HYPOTHETICAL ABOUT THE TWO THIGHS BEING TOGETHER, AND

19 DISCUSSING THE VARIOUS TYPES AND WAYS THAT COULD HAPPEN

20 AND THE SOURCES OF THE BLOOD BETWEEN THEM.

21 Q. BY MS. ABRAMSON: DR. MC CARTHY, IT WAS NOT

22 MY HYPOTHETICAL THAT THE TWO THIGHS TOUCHED. YESTERDAY

23 YOU SPECIFICALLY SUGGESTED THAT AS THE REASON WHY THERE

24 IS BLOOD ON THE INSIDE OF BOTH THIGHS; ISN'T THAT TRUE?

25 A. ONLY IN ANSWER TO ONE OF YOUR QUESTIONS.

26 Q. MY HYPOTHETICAL IS THAT HE WAS ALIVE WHEN

27 HE GOT THE WOUND TO HIS LEG; THAT HE WAS STANDING UP

28 WHEN HE RECEIVED EVERY WOUND BUT THE HEAD WOUND; THAT HE

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1 FELL BACK INTO THE COUCH, LEANING FORWARD; THAT BECAUSE

2 HE HAD BLOOD ON BOTH ARMS HE HAD HIS HANDS BETWEEN HIS

3 THIGHS; THAT THAT BLOOD SMEARED ON THE INSIDE OF BOTH

4 THIGHS, AND THAT THE PROOF OF IT IS THAT HE'S GOT

5 SMEARED BLOOD DOWN THE LEFT SIDE OF HIS ARM AND HIS

6 HAND.

7 THAT'S MY HYPOTHETICAL. DO YOU DISAGREE WITH IT?

8 MR. CONN: OBJECTION.

9 THE WITNESS: YEAH. I THINK IT'S IMPOSSIBLE.

10 THE SHOT THROUGH THE LEFT LEG IMMEDIATELY FRACTURES IT
11 INTO THREE PIECES, AND HE'S DOWN.

12 Q. BY MS. ABRAMSON: LET ME STOP YOU.

13 BUT IT GETS TOO COMPLEX --

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

16 THE COURT: WELL, YOU ASKED HIM A VERY LONG
17 HYPOTHETICAL, AND HE IS ENTITLED TO RESPOND TO IT.

18 THE WITNESS: THE LEG DOESN'T BEAR THE LOAD.
19 HE'S DOWN. NOW, YOU COULD POSTULATE WELL, WHILE STILL
20 ALIVE, BUT BADLY INJURED IN THE ARMS AND LEGS, SOMEONE
21 PLACED HIM BACK UP ON THE SOFA TO SHOOT HIM IN THE BACK
22 OF THE HEAD.

23 I DON'T THINK IT WORKS THAT HE TAKES THIS
24 SHOT IN THIS LEG AT ALL. LOOK HOW -- LOOK AT THOSE --
25 LOOK AT HOW SEATED NATURALLY THOSE LEGS ARE. I JUST
26 FIND IT VERY DIFFICULT TO BELIEVE THAT AS A RESULT OF
27 TAKING THIS SHOT, RATHER THAN FALLING DOWN ON THE
28 STRUCTURALLY LOST LEG, INSTEAD HE ELECTS TO GO AND SIT

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1 DOWN GENTLY.

2 Q. BY MS. ABRAMSON: WELL, WHO SUGGESTED
3 SITTING DOWN GENTLY, DR. MC CARTHY?

4 A. LOOK AT HIS POSITION.

5 Q. YES, LOOK AT HIS POSITION. LOOK AT HIS

6 FEET. YOU SAY THAT IT IS NATURAL --

7 THE COURT: COUNSEL, LET'S STOP, SLOW DOWN AND

8 STAND UP.

9 MS. ABRAMSON: I WANT TO DEMONSTRATE SOMETHING TO

10 THE WITNESS, IF I MAY.

11 THE COURT: THEN DO IT IN A WAY THAT YOU'RE NOT

12 ARGUING.

13 Q. BY MS. ABRAMSON: ARE THESE -- HIS FEET

14 SEATED IN THE FINAL PHOTOGRAPHS CROSSED THE WAY MINE

15 ARE?

16 A. NO.

17 Q. CROSSED THIS WAY (DEMONSTRATING)?

18 A. YES.

19 Q. ON THE EDGES OF HIS FEET?

20 A. YES.

21 Q. THAT'S A NATURAL POSITION?

22 THE COURT: IS THAT A QUESTION?

23 MS. ABRAMSON: YES.

24 THE COURT: WHAT'S THE QUESTION?

25 Q. BY MS. ABRAMSON: IS THAT WHAT YOU CALL A

26 NATURAL POSITION?

27 A. I ROTATE MY FEET SOMETIMES THAT WAY, BUT

28 I'M NOT GOING TO SAY HOW MANY PEOPLE DO.

1 Q. ARE YOU USING YOURSELF AS THE ONLY EXEMPLAR
2 FOR YOUR EXPERTISE?

3 A. THAT'S PRECISELY WHY I ANSWERED THE
4 QUESTION THE WAY I DID.

5 Q. THIS IS NOT A NATURAL POSITION, IS IT?

6 A. I DON'T THINK OF MYSELF AS UNNATURAL,
7 BUT --

8 Q. AGAIN YOU'RE ONLY USING YOURSELF. WHEN YOU
9 ARE TALKING ABOUT A NATURAL POSITION FOR HIS FEET,
10 THAT'S BECAUSE THAT'S HOW ROGER MC CARTHY SITS. IS THAT
11 YOUR REASON?

12 A. WELL, I WAS IMMEDIATELY DRAWING ON THAT
13 FROM ANSWERING YOUR QUESTION. I DO NOT THINK OF IT AS
14 AN UNNATURAL POSITION, IF THAT'S YOUR QUESTION.

15 Q. AND IT IS YOUR TESTIMONY THAT IF A PERSON
16 IS -- HAS A BROKEN FEMUR, THEY CANNOT STAND UP FOR ANY
17 PERIOD OF TIME; IS THAT YOUR EXPERT OPINION?

18 A. OH, NO. THEY COULD TRANSFER WEIGHT TO THE
19 OTHER LEG OBVIOUSLY, AND PEOPLE CAN STAND ON ONE FOOT.
20 AND INDEED, IF -- I GUESS YOU COULD POSTULATE HE HAD HIS
21 WITS ABOUT HIM AND TOOK THE WEIGHT OFF THE LEG THAT WAS
22 SHOT OFF, AND THEN USED THE OTHER LEG TO MANEUVER
23 HIMSELF IN FRONT OF THE COUCH AND SIT DOWN, AS WE SEE
24 HIM NOW.

25 AND INCIDENTALLY, WHEN HE WAS DOING THAT --

26 Q. YOUR HONOR, I THINK THE WITNESS IS ABOUT TO
27 BECOME NONRESPONSIVE.

28 THE COURT: ALL RIGHT. ASK YOUR NEXT QUESTION.

1 Q. BY MS. ABRAMSON: THANK YOU.

2 ARE YOU ASSUMING THAT HE HAD WEIGHT ON THAT
3 LEG, THE LEFT LEG, WHEN IT WAS SHOT, IN ORDER TO SAY
4 MAYBE HE COULD TRANSFER HIS WEIGHT?

5 A. UM --

6 Q. COULD YOU ANSWER THAT YES OR NO?

7 A. I'M NOT MAKING A SPECIFIC ASSUMPTION ABOUT
8 WEIGHT AT THE TIME. HE JUST COULDN'T PUT ANY MORE
9 WEIGHT ON IT AFTER --

10 Q. SO THEN, YOU DON'T KNOW IF HE HAD WEIGHT ON
11 IT TO BEGIN WITH, OR TRANSFERRED WEIGHT OFF OF IT; IS
12 THAT RIGHT?

13 A. WELL, MY VIEW IS THIS IS NOT EVEN A
14 RELEVANT DISCUSSION. I DON'T THINK HE HAD WEIGHT ON
15 EITHER LEG. HE WAS SEATED, AND THAT'S WHY WE SEE THE
16 STRAIGHT GEOMETRY OF THE UPPER LEG AS WE DO NOW, AS A
17 NORMALLY SEATED PERSON.

18 IF THAT LEG WAS SHOT WHILE HE WAS STANDING,
19 HE MANAGED TO SEAT HIMSELF IN A WAY THAT HIS LEG ENDED
20 UP PRETTY NATURAL AND PRETTY STRAIGHT. THAT IS, I
21 THINK, UNLIKELY.

22 Q. YOU INDICATED HIS LEGS MOVED AFTER HE WAS
23 DEAD BECAUSE OF THE SHOT?

24 A. ONLY -- I MEAN, HIS LEGS COULD HAVE MOVED
25 CATATONICALLY AFTER THE SHOT, BUT AT MY RECONSTRUCTION

26 THEY'RE INTACT. SO THEY MOVE NATURALLY, AND THE UPPER
27 LEG STAYS STRAIGHT.

28 Q. THEY MOVE NATURALLY AFTER HE'S SHOT; IS

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1 THAT WHAT YOU SAID?

2 A. WELL, THEY MOVE MECHANICALLY CORRECT. IF
3 HE IS MOVED CATATONICALLY AFTER HE IS SHOT IN THE
4 HEAD -- I MEAN, I GUESS YOU COULD SAY THAT'S NATURAL.
5 BUT NEVERTHELESS, THE LEG IS INTACT AFTER HE IS SHOT IN
6 THE HEAD IN MY POSTULATION.

7 BUT ONCE THAT UPPER LEG IS SHEARED BY THAT
8 SHOT, ANY MOVEMENT IS LIKE THOSE CORONER PHOTOS WE SEE
9 WHERE THE LIMBS ARE SORT OF VERY DIFFICULT TO STRAIGHTEN
10 OUT AND GET RIGHT. THAT LEG -- THAT FEMUR IS NOW BROKEN
11 IN THREE PIECES. BUT HERE, LOOK HOW STRAIGHT THE UPPER
12 LEG IS.

13 Q. IS THAT AN ANSWER OR A QUESTION, DR. MC
14 CARTHY?

15 A. I MEANT THAT AS A QUESTION. LOOK AT HOW
16 STRAIGHT THE UPPER LEG IS, CONFIRMING THE FACT --

17 Q. I DON'T KNOW WHAT YOU'RE TALKING ABOUT.
18 WHAT LEG IS STRAIGHT? BOTH LEGS ARE BENT AT THE KNEE.

19 MR. CONN: OBJECTION. ARGUMENTATIVE. MOTION TO
20 STRIKE.

21 THE COURT: IT IS, AND IT'S ALSO COMPOUND.

22 Q. BY MS. ABRAMSON: YOU POINTED TO PHOTOGRAPH
23 A, AND YOU ARE INDICATING THAT THE WOUND LEG IS
24 STRAIGHT, CORRECT? IS THAT WHAT YOU'RE SAYING?
25 A. YES, EXACTLY. THERE IS NO STRUCTURAL BONE
26 BETWEEN THE HIP AND THE KNEE NOW, BUT YOU'VE GOT --
27 Q. AND YOU'RE ASSUMING --
28 MR. CONN: YOUR HONOR, MAY THE WITNESS FINISH HIS

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1 ANSWER.
2 THE COURT: YES, FINISH THE ANSWER.
3 THE WITNESS: BUT THE LEG IS SITTING THERE IN A
4 REASONABLY NATURAL POSITION. IT HASN'T BEEN MISALIGNED.
5 IF HE WAS STANDING AND THEN SAT DOWN, I FIND IT VERY
6 UNLIKELY YOU WOULDN'T BE LOOKING AT SOME MISPOSITIONING
7 OF THE KNEE VIS-A-VIS THE THIGH, BECAUSE THERE IS NO
8 STRUCTURAL STRAIGHTNESS OF THAT FEMUR ANYMORE.
9 Q. BY MS. ABRAMSON: THIS IS YOUR MEDICAL
10 EXPERTISE INDICATING THAT IF HE WERE STANDING AT THE
11 TIME HE WERE SHOT, BY THE TIME HE SAT DOWN THE BONES
12 WOULD HAVE BEEN SO OUT OF ALIGNMENT IT WOULD HAVE MADE
13 HIS UPPER LEG CROOKED; IS THAT WHAT YOU MEAN?
14 MR. CONN: OBJECTION. ARGUMENTATIVE.
15 THE COURT: OVERRULED.
16 BY MS. ABRAMSON: IS THAT WHAT YOU MEANT?
17 A. NO. I WOULD SAY JUST THE OPPOSITE. FOR A

18 PERSON TO BE STANDING AND THEN SIT DOWN WITH THIS
19 SHEARED FEMUR AND ACHIEVE THIS STRAIGHTNESS AND
20 NATURALNESS OF POSITION STRIKES ME AS EXTREMELY
21 UNLIKELY.

22 Q. ALL RIGHT. IS THAT BASED ON YOUR
23 ENGINEERING EXPERTISE OR YOUR COMMON SENSE, WHAT YOU
24 WOULD CALL COMMON SENSE?

25 A. I WOULD SAY MY ENGINEERING EXPERTISE AND MY
26 UNDERSTANDING OF STRUCTURES.

27 Q. ENGINEERING IS AN AREA THAT'S EXTREMELY
28 DEPENDENT, IS IT NOT, ON MATHEMATICAL CALCULATION?

-24311

1 A. SOME OF ENGINEERING IS, YES.

2 Q. WHAT IS THE MATHEMATICAL CALCULATION OF
3 PROBABILITIES OR POSSIBILITIES THAT YOU ARE RELYING ON
4 TO GIVE THAT PREVIOUS ANSWER?

5 A. OH, I DON'T THINK THERE IS A RIGOROUS
6 CHARACTERIZATION OF THE PROBABILITIES I COULD GIVE YOU.

7 Q. SO, IS THE ANSWER YOU DON'T HAVE ONE?

8 A. I DO NOT HAVE A RIGOROUS MATHEMATICAL
9 CHARACTERIZATION, THAT IS TRUE.

10 Q. YESTERDAY I ASKED YOU A QUESTION ABOUT
11 REASONABLE SCIENTIFIC CERTAINTY; IS THAT THE CONCEPT
12 THAT YOU HAVE BEEN RELYING UPON IN COMING UP WITH THIS
13 SCENARIO.

14 ARE YOU SAYING THAT THE COMPONENTS OF THIS
15 SCENARIO ARE, IN YOUR OPINION, BASED ON REASONABLE
16 SCIENTIFIC CERTAINTY?
17 A. THE COMPONENTS WHERE I TESTIFIED I HAD
18 PRETTY GOOD EVIDENCE FOR, YES. WHERE I HAVE MERELY
19 PLACED THINGS OR ASSUMED STUFF GENERALLY, I HAVE TRIED
20 TO BE PERHAPS OVERLY CONCERNED ABOUT QUALIFYING WHAT YOU
21 CAN TAKE TO THE BANK AND WHAT YOU SHOULD RECOGNIZE ARE
22 SCHEMATIC AS OPPOSED TO PRECISE CHARACTERIZATIONS.

23 Q. IS PRETTY GOOD EVIDENCE REASONABLE
24 SCIENTIFIC CERTAINTY IN YOUR OPINION, DR. MC CARTHY?

25 A. I CERTAINLY HAVE USED THE TERM "PRETTY GOOD
26 EVIDENCE" PROBABLY, PERHAPS. IT -- WELL, I MEAN, I
27 PROBABLY HAVE USED THAT PHRASE WHEN I THOUGHT WE HAD
28 PRETTY GOOD EVIDENCE, I MEAN PRETTY SOLID -- WHAT I

-24310

1 THOUGHT WAS A REASONABLE DEGREE OF SCIENTIFIC CERTAINTY
2 ON SOME POINT.

3 Q. EVEN IF YOUR PRETTY GOOD EVIDENCE IS NOT
4 DR. LAWRENCE'S PRETTY GOOD EVIDENCE; IS THAT NOT TRUE?

5 MR. CONN: OBJECTION. ARGUMENTATIVE.

6 THE COURT: SUSTAINED.

7 Q. BY MS. ABRAMSON: YOU'RE SAYING SOMETHING
8 IS PRETTY GOOD AND YOU WILL BASE YOUR OPINION ON IT EVEN
9 IF DR. LAWRENCE HAS SAID IT'S UNLIKELY, THOUGH HE

10 COULDN'T SAY IMPOSSIBLE; ISN'T THAT TRUE?

11 A. NOT JUST IN AND OF ITSELF. THERE WOULD

12 HAVE TO BE SOME OTHER COMPELLING FACTS TO MAKE IT PRETTY

13 GOOD EVIDENCE.

14 Q. NO. WHAT I AM ASKING YOU IS YOU'RE SAYING

15 SOME THINGS HERE ARE PRETTY GOOD EVIDENCE, EVEN THOUGH

16 DR. LAWRENCE THINKS THOSE THINGS ARE UNLIKELY, THOUGH

17 NOT IMPOSSIBLE.

18 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

19 EVIDENCE AND VAGUE.

20 THE COURT: SUSTAINED.

21 Q. BY MS. ABRAMSON: FOR EXAMPLE, THE UPPER

22 ARM WOUNDS THAT DR. LAWRENCE THINKS IS UNLIKELY TO BE

23 ASSOCIATED WITH THE ELBOW WOUNDS, YOU STILL THINK

24 THEY'RE ASSOCIATED, CORRECT?

25 MR. CONN: OBJECTION. ASKED AND ANSWERED.

26 THE COURT: OVERRULED.

27 THE WITNESS: I DO.

28 Q. BY MS. ABRAMSON: NOW, DO YOU CONCEDE,

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1 DR. MC CARTHY, THAT THERE IS NO EVIDENCE ON THE RUG

2 ALONG THE LINE OF YOUR TRAJECTORY TO INDICATE THAT 27

3 PELLETS OF NO. 4 BUCKSHOT PASSED THROUGH A LEG THERE?

4 A. THERE IS NO EVIDENCE OF A -- STRIKE THAT I

5 CAN SEE IN THE REMAINING PHOTOGRAPHS OF 27 PELLETS IN

6 THE LINE WHICH I HAVE DIAGRAMMED.

7 Q. AND THERE IS NO EVIDENCE THAT YOU CAN POINT
8 TO OF SPATTERED BLOOD OR TISSUE ANYWHERE IN THE AREA
9 NEAR YOUR TRAJECTORY LINE; ISN'T THAT TRUE?

10 A. IN THE AREA YOU POINTED, THERE IS NOTHING I
11 CAN IDENTIFY FROM THE REMAINING PHOTOGRAPHS OF THE TYPE
12 YOU HAVE ASKED ME ABOUT; THAT IS CORRECT.

13 Q. NOW, LET ME ASK YOU ABOUT WHAT APPEARS IN
14 PHOTOGRAPH F AND PHOTOGRAPH -- I'LL GET AS MUCH OUT OF
15 THE WAY AS I CAN -- H, ON 304.

16 DO YOU SEE ROUND DARK AREAS, AS I AM
17 POINTING TO THEM, IN THESE TWO PHOTOGRAPHS?

18 A. NOT CONCURRING WITH ALL OF YOUR POINTS. I
19 CONCUR WITH SOME OF THEM.

20 Q. DO YOU SEE THIS AREA HERE THAT I AM
21 CIRCLING?

22 A. YES.

23 Q. DO YOU SEE WHAT APPEARS TO BE ROUNDISH,
24 DARK SPOTS IN THAT AREA?

25 A. AS I SIT HERE, I DO NOT, BUT THAT DOES NOT
26 MAKE YOU INCORRECT.

27 Q. YOU HAVE LOOKED AT THIS -- HOW ABOUT HERE?
28 DO YOU SEE THEM IN THIS ONE, SAME SPOTS HERE?

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1 A. I THINK THERE ARE SOME SPOTS IN THAT AREA,

2 YES. BUT NOT FROM YOUR PHOTOGRAPHS, FROM MY

3 MANIPULATION OF THEM.

4 Q. AND DO YOU SEE THAT THERE ARE SPOTS HERE

5 OUTSIDE THE ACTUAL POOL WHICH APPEARS TO BE A POOL

6 DRIPPING FROM THIS SIDE OF MR. MENENDEZ' LEFT LEG?

7 A. YES.

8 Q. OUTSIDE THAT POOL THERE ARE ALSO ROUND

9 SPOTS, CORRECT?

10 A. I WOULD SAY NEXT TO IT. I AM NOT SURE WHAT

11 YOU MEAN -- WELL, THEY ARE WHERE THEY ARE.

12 Q. AND THOSE ARE RIGHT BELOW THE LEG, THE ONES

13 THAT WE JUST LOOKED AT, THE ROUND SPOT -- WELL, STRIKE

14 THAT.

15 THE POOL IS RIGHT BELOW THE LEFT LEG,

16 CORRECT?

17 A. GENERALLY, YES. I AM UNCOMFORTABLE WITH

18 RIGHT BELOW, BUT IT'S GENERALLY BELOW THE LEG, YES.

19 Q. AND EVEN IN THAT AREA, RIGHT BELOW THE LEG

20 THERE IS NO TISSUE OR PELLETS OF ANY KIND; ISN'T THAT

21 TRUE?

22 A. YOU KNOW, I WOULD HAVE TO GO BACK AND

23 RE-EXAMINE THE PATCH TO SAY THERE IS NO TISSUE IN IT,

24 BUT I DON'T RECOLLECT SEEING ANY PELLETS.

25 Q. I WANT TO CHANGE THE SUBJECT FOR A MOMENT

26 AND GO BACK TO AMMUNITION.

27 YOU BROUGHT TO COURT SOME LIVE ROUNDS THAT

28 ARE IN THE CUSTODY OF THE DEPUTY SHERIFF.

1 A. FEDERAL EXPRESS BROUGHT TO THE COURT SOME
2 LIVE ROUNDS, YES, THAT ARE IN THE CUSTODY OF THE
3 SHERIFF.

4 Q. OKAY. THE SHOTGUN, YOUR HONOR -- YOU DO
5 NOT HAVE THE SHOTGUN UP THERE WITH YOU NOW?

6 A. NO.

7 Q. AND I DON'T WANT YOU TO. I WOULD, HOWEVER,
8 LIKE TO APPROACH THE WITNESS AND HAVE THE DEPUTY PUT THE
9 LIVE ROUNDS UP THERE.

10 THE COURT: ALL RIGHT.

11 Q. BY MS. ABRAMSON: THIS IS A BOX OF
12 FIOCCHI -- AND IT READS THAT IT HAS 10 "CARTOUCHES," BUT
13 I TAKE IT THAT'S NOT ENGLISH; IS THAT CORRECT?

14 A. MY ASSUMPTION HAS ALWAYS BEEN IT'S ITALIAN,
15 BUT I DON'T READ ITALIAN.

16 Q. I THINK THIS SIDE IS ITALIAN, "CARTUCCE DA
17 CACCIA," BUT WE WON'T MAKE THE REPORTER DO THAT. THIS
18 LOOKS A LITTLE MORE LIKE FRENCH, "CARTOUCHES DE CHASSE."

19 BUT HOWEVER, THEY'RE CARTRIDGES, RIGHT?

20 A. TO ME, YES.

21 Q. AND THESE HAVE LITTLE COPPER BALLS IN THEM?

22 A. YES.

23 Q. AND IS IT YOUR UNDERSTANDING THAT THE
24 PELLETS IN THIS CASE WERE COPPER-COLORED?

25 A. OH, NO. AS I TOLD YOU, THESE ARE WHAT'S
26 CALLED PLATED SHOT.

27 Q. DID YOU TELL US THAT THE OTHER DAY, THAT
28 THESE ARE PLATED?

-24306

1 A. YES. WHEN YOU ASKED ME ABOUT IT, DIDN'T I
2 ASSUME THAT THE SHOT I WAS SHOOTING WAS THAT INVOLVED IN
3 THE INCIDENT, I SAID "OF COURSE NOT. MY SHOT WAS
4 PLATED."

5 Q. NO, YOU SAID YOURS HAS A SHOT CUP INSIDE,
6 AND IT DOES, DOESN'T IT?

7 A. THE RECORD WILL INDICATE IT ALSO MENTIONED
8 A PLATING. I MEAN, THIS IS A STATE-OF-THE-ART SHOTGUN
9 SHELL.

10 Q. AND DID YOU THINK YOU COULD PUT IT IN A
11 TIME MACHINE AND SHOOT IT BACK TO 1989 AND MAKE IT
12 AVAILABLE TO OUR CLIENTS?

13 MR. CONN: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 Q. BY MS. ABRAMSON: NOW -- AND YOU KNEW THE
16 MINUTE YOU BOUGHT THIS, THIS WAS NOT THE AMMUNITION USED
17 IN THIS CASE; IS THAT WHAT YOU'RE SAYING?

18 A. NO. I KNEW WHEN I INSPECTED THE CRIME
19 SCENE EVIDENCE.

20 Q. SO YOU BOUGHT THIS FIRST?

21 A. OH, YEAH. THAT'S WHY I HAD A CASE OF IT.

22 Q. SO, YOU BOUGHT THIS FIRST AND THEN YOU

23 INSPECTED THE CRIME-SCENE EVIDENCE THAT DIDN'T HAVE
24 PLATED SHOT AND DIDN'T HAVE A SHOT CUP HOLDING NO. 4
25 ROUNDS, AND THEN YOU DID YOUR TEST-FIRING; IS THAT
26 RIGHT?

27 A. YES. I STARTED TEST-FIRING WITH THIS.

28 Q. AFTER YOU ALREADY KNEW THIS WASN'T THE

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1 RIGHT AMMUNITION?

2 A. OH, YEAH.

3 Q. DO YOU HAVE A KNIFE WITH YOU?

4 A. SURELY.

5 Q. NOW, THESE SHELLS HAVE A STAR-CRIMPED TOP,
6 CORRECT.

7 A. YES.

8 Q. AND THAT'S WHAT THAT'S CALLED,
9 STAR-CRIMPED?

10 A. I AM NOT SURE.

11 Q. DON'T KNOW THAT TERM?

12 A. I AM NOT SURE THAT'S ALL IT'S CALLED, BUT
13 THAT'S -- I USE THAT TERM FOR THIS TYPE OF CLOSURE, YES.

14 Q. DID YOU USE THAT TERM IN YOUR DIRECT
15 TESTIMONY?

16 A. I DON'T KNOW WHETHER I USED STAR-CRIMPED,
17 BUT CRIMPED OR FOLDED.

18 Q. AND THERE IS NO WAD BENEATH THE CRIMPING

19 AND ABOVE THE PELLETS?

20 A. TYPICALLY NOT IN A CRIMPED SHOT.

21 WHERE WOULD YOU LIKE ME TO CUT THIS?

22 Q. BEFORE YOU CUT ANYTHING, I WOULD LIKE TO
23 ASK YOU ANOTHER QUESTION.

24 ARE THESE PELLETS THE SAME DIAMETER AS THE
25 NON-COATED TYPE, THE NON-PLATED TYPE?

26 A. I THINK SO. THEY'RE VERY CLOSE.

27 Q. DO YOU KNOW?

28 A. I CAN'T REMEMBER IF I MIC'D THEM UP OR NOT.

-24304

1 Q. OKAY. SO YOU DON'T KNOW RIGHT NOW?

2 A. THEY'RE VERY CLOSE, BUT I CAN'T REMEMBER IF
3 THEY'RE PRECISELY. I THINK THEY ARE, THOUGH.

4 Q. AND DO SHOT SHELLS COME -- LET'S JUST MAKE
5 ONE THING CLEAR. THIS IS A .12-GAUGE SHELL?

6 A. CORRECT.

7 Q. AND THAT HAS TO DO WITH THE WIDTH OF THE
8 BARREL, CORRECT?

9 A. THE DIAMETER, YES.

10 Q. THE DIAMETER OF THE BARREL. AND YOU CAN'T
11 PUT A LARGER ONE OF THESE -- A DIFFERENT GAUGE THAT'S
12 LARGER, LIKE A .16 -- OR IS IT THE OTHER ONE?

13 A. .16 IS SMALLER.

14 Q. YOU CAN'T PUT LIKE A .10 SHOT IN A

15 .12-GAUGE SHOTGUN, CORRECT?

16 A. THAT IS CORRECT. BUT YOU CAN PUT A MAGNUM

17 OR STOCK SHELL IN A .12-GAUGE.

18 Q. OKAY. WE'RE TALKING ABOUT A .12-GAUGE,

19 THOUGH. THE DIAMETER CAN'T BE ANY BIGGER THAN THIS, OR

20 IT WON'T GO IN THE GUN.

21 A. CORRECT.

22 Q. AND IF IT'S SMALLER THAN THIS, IT WON'T

23 FIRE PROPERLY EITHER, WILL IT?

24 A. IF IT IS SIGNIFICANTLY SMALLER IT WON'T

25 EVEN STAY IN THE BARREL. IT WILL JUST --

26 Q. FLY RIGHT OUT.

27 HOWEVER, NOT ALL SHOT SHELLS FOR .12-GAUGES

28 ARE EXACTLY THIS LENGTH.

-24303

1 A. CORRECT.

2 Q. YOU CAN GET LONGER ONES OR SHORTER ONES.

3 A. I AM NOT --

4 Q. I DON'T MEAN SHORTER THAN THIS. SOME ARE

5 LONGER, SOME ARE SHORTER.

6 A. THIS IS TWO AND THREE-QUARTERS, AND YOU CAN

7 GET THREE AND I THINK YOU CAN PERHAPS GET LONGER THAN

8 THREE, BUT THREE IS A COMMON LENGTH.

9 Q. AND CERTAIN KINDS OF SHOTGUN AMMUNITION

10 COMES IN THOSE VARYING LENGTHS?

11 A. YES.

12 Q. MAINLY BIRD SHOT, WOULDN'T YOU AGREE?

13 A. BIRD SHOT CAN BE AVAILABLE IN THREE. I

14 GUESS I UNDERSTAND YOUR QUESTION TO MEAN ONLY SOME AND

15 NOT ALL. I DON'T THINK SLUGS ARE AVAILABLE IN LONGER

16 AMMUNITION. AS SOON AS I SAY THAT, YOU'LL BRING OUT A

17 THREE-INCH SLUG, BUT I AM NOT SURE THAT ALL AMMUNITION

18 ISN'T AVAILABLE IN A THREE-INCH MAGNUM?

19 A. ALL RIGHT.

20 Q. ALL RIGHT. SO, ARE YOU SAYING THAT YOU

21 COULD BUY NO. 4 BUCK THAT IS BIGGER THAN THIS?

22 A. AS I SIT HERE, I DON'T RECOLLECT SEEING IT.

23 Q. SO, YOU DO NOT KNOW, OR DO YOU THINK NOT,

24 OR DO YOU THINK YES?

25 A. I DON'T HAVE AN OPINION.

26 Q. ALL RIGHT. WOULD YOU OPEN ONE OF THESE?

27 A. SURE.

28 Q. WHEN YOU'RE FIRING PLATED ROUNDS LIKE THAT,

-24302

1 DO THEY MAKE A DIFFERENT KIND OF HOLE THAN THE UNPLATED

2 KIND.

3 A. NOT MATERIALLY IN A PAPER TARGET. THEY

4 MAKE A CLEANER HOLE.

5 Q. YOU'RE CUTTING THE CRIMPING OFF?

6 A. YES.

7 Q. I AM JUST INDICATING FOR THE RECORD WHAT
8 YOU'RE DOING.

9 A. I STOPPED. I THOUGHT PERHAPS YOU HAD A
10 PREFERENCE.

11 Q. NO. I WANT YOU TO DO IT THE WAY YOU CAN DO
12 IT.

13 A. PROMISE YOU WON'T PUT YOUR FINGERS DOWN
14 THERE YET.

15 Q. I JUST DON'T WANT THE PAPER TO -- I DON'T
16 WANT THE PELLETS TO RUN AWAY.

17 A. YEAH. IF WE LOSE ONE IT'S GOING TO BE DOWN
18 UNDER THIS.

19 MS. ABRAMSON: WOULD YOU GET AN ENVELOPE? I WANT
20 TO GET TO WHAT'S INSIDE, SO I WANT TO GET THEM OUT.

21 THE WITNESS: OKAY.

22 Q. BY MS. ABRAMSON: OKAY.

23 A. WOULD YOU LIKE ME TO LEAVE THE STAR ON THIS
24 LIKE I HAVE, OR WOULD YOU LIKE IT CUT OFF?

25 Q. NO, DON'T CUT ANYTHING OFF.

26 A. OKAY.

27 Q. OKAY. NOW, INSIDE WHEN YOU HAVE TAKEN OUT
28 THE 27 PELLETS, YOU HAVE WHAT?

-24301

1 A. NOW YOU HAVE THE SHOT CUP.

2 Q. WOULD YOU REMOVE THE CUP. AND YOU'RE

3 TAPPING AT IT TO REMOVE SOMETHING FROM THE BASE.

4 WHAT IS IT THAT'S IN THE BASE?

5 A. GUNPOWDER.

6 Q. AND LET'S TAKE THE GUNPOWDER OUT, TOO,

7 WHILE WE'RE AT IT, AND PUT IT IN THAT. WE'VE GOT A

8 NAPKIN?

9 A. AND THIS IS GUNPOWDER.

10 Q. AND THAT'S GUNPOWDER. THAT ISN'T THE

11 FILLER GRANULES THAT YOU HAD TALKED ABOUT IN YOUR DIRECT

12 TESTIMONY?

13 A. THAT'S CORRECT. THAT'S A DIFFERENT TYPE OF

14 SHOTGUN SHELL DESIGN ALL TOGETHER.

15 Q. AND TO YOUR KNOWLEDGE DOES FIOCCHI MAKE A

16 SHOT SHELL THAT HAD THAT KIND OF FILLER GRANULES IN IT?

17 A. I DON'T HAVE ANY KNOWLEDGE WHAT THEY'VE

18 DONE, TO ANSWER YOUR QUESTION.

19 Q. THEN YOU DON'T KNOW.

20 A. BEAR WITH ME JUST ONE SECOND.

21 Q. SURE. YOU ALWAYS WANT TO CLEAN THIS STUFF

22 OUT. OKAY. I'M JUST MAKING A CRIMPED-UP BINDLE OUT OF

23 THIS.

24 THE COURT: WHY DON'T YOU GIVE IT TO THE BAILIFF

25 THEN.

26 MS. ABRAMSON: I WAS GOING TO PUT IT IN THE

27 ENVELOPE.

28 THE COURT: GIVE IT TO THE BAILIFF.

1 MS. ABRAMSON: WELL, I WOULD LIKE TO KEEP IT. WE
2 WILL PUT IT IN ANOTHER ENVELOPE.

3 THE COURT: HE'S TAKEN CARE OF IT.

4 Q. BY MS. ABRAMSON: ALL RIGHT.

5 NOW, THIS SHOT CUP IS WHAT WAS INSIDE THIS
6 NO. 4, AND YOU DO RECOGNIZE THAT THE NO. 4 AMMUNITION
7 THAT WAS USED HERE DID NOT CONTAIN SUCH A DEVICE?

8 A. YES.

9 Q. AND IS THE PURPOSE, TO THE BEST OF YOUR
10 KNOWLEDGE AS A USER OF SHOTGUN AMMUNITION, IS THE
11 PURPOSE OF LOADING THE PELLETS IN THAT CUP IN ORDER TO
12 KEEP THEM TOGETHER MORE WHEN THEY COME OUT THE MUZZLE OF
13 THE GUN?

14 A. IT PERFORMS THAT FUNCTION, BUT I BELIEVE
15 THE PRIMARY PURPOSE OF THE CUP IS TO PROTECT THE SHOT
16 FROM THE BARREL, AND ALSO TO FACILITATE THE SHOCK
17 ABSORPTION BY THE SHOCK ABSORBER, THE LITTLE PLASTIC
18 OVAL YOU SEE THERE. THE IMPULSE OF THE POWDER CAN NOW
19 BE SMOOTHED OUT AGAINST THE SHOT, SO IT'S LESS LIKELY TO
20 DEFORM THE SHOT BY HITTING IT IN THE BASE.

21 Q. THAT SHOT IS ALSO WHAT YOU'RE REFERRING TO
22 IN THAT FORM AND THE INDIVIDUAL FORM AS THE POWER
23 PISTON?

24 A. NO. BELOW THE SHOCK ABSORBER IS THE POWER
25 PISTON.

26 Q. I'M SORRY, I MISSPOKE. YOU'RE RIGHT.

27 THE RESULT OF THAT, HOWEVER, IS YOU GET

28 MORE TIGHTLY PACKED ROUNDS COMING OUT OF THE MUZZLE,

-24299

1 CORRECT, TIGHTER PATTERNS?

2 A. TIGHTER PATTERNS AND ALSO MORE CONSISTENT

3 PATTERNS, BECAUSE THIS -- THIS REPRESENTS

4 STATE-OF-THE-ART SHOTGUN SHELL DESIGN, BECAUSE THE SHOT

5 IS PLATED WHICH PROTECTS IT, MAKES IT SLIDE OUT OF THE

6 BARREL EASIER. THE SHOT IS PROTECTED BY A SHOT CUP,

7 WHICH IS OF THE DISCARDING BOW VARIETY.

8 MAY I BREAK THIS, LESLIE, OR IS IT GOING TO

9 BOTHER YOU IF I DO IT?

10 Q. IT'S NOT RESPONSIVE, BUT I WILL LET YOU DO

11 IT WITH THE NEXT QUESTION.

12 A. AND THIS CUP PROTECTS THE SHOT COMING OUT,

13 PROTECTS THE SHOT AND ALSO SEALS AGAINST THE BARREL BY

14 GIVING YOU THE MAXIMUM BENEFIT OF THE POWDER ENERGY.

15 Q. FINE.

16 HOWEVER, IF AMMUNITION PROVIDED IN THAT

17 SHOT CUP TENDS TO KEEP A TIGHTER PATTERN THAN AMMUNITION

18 THAT'S PACKED THE WAY THE AMMUNITION IN THIS CASE WAS

19 PACKED --

20 A. YES.

21 Q. AND YOU KNEW THAT -- YOU KNEW IT WAS GOING

22 TO PRODUCE TIGHTER PATTERNS WHEN YOU STARTED TO DO YOUR

23 DISTANCE SHOOTING.

24 A. TIGHTER AND MORE CONSISTENT PATTERNS, YES.

25 Q. NOW, IT DIDN'T PRODUCE CONSISTENT PATTERNS,

26 YOU TOLD US.

27 A. BUT THEY WERE TIGHTER AND MORE CONSISTENT

28 THAN THE OTHER AMMUNITION WOULD HAVE BEEN.

-24298

1 Q. WELL, YOU'RE SPECULATING ON WHAT THE OTHER

2 AMMUNITION WOULD HAVE DONE, DR. MC CARTHY.

3 YOU DIDN'T SHOOT THE OTHER AMMUNITION,

4 RIGHT?

5 A. NO, BUT I SHOT SOME WINCHESTER NEXT TO IT,

6 WHICH WERE THOSE OTHER TARGETS, AND THERE IS NO QUESTION

7 THAT THIS IS A BETTER SHOTGUN SHELL DESIGN.

8 Q. BUT YOU SHOT WINCHESTER, AND THAT

9 WINCHESTER THAT YOU SHOT, DIDN'T THAT HAVE IN FACT THAT

10 GRANULATING SPACING YOU WERE TALKING ABOUT?

11 A. IT DID.

12 Q. SO, YOU SHOT A WINCHESTER ROUND WITH

13 GRANULATED SPACING MATERIAL WHEN YOU HAD NO REASON TO

14 BELIEVE THAT ANY ROUND USED IN THIS CASE HAD GRANULATED

15 SPACING MATERIAL; ISN'T THAT CORRECT?

16 A. THAT IS CORRECT.

17 Q. AND YET YOU ARE -- WELL, STRIKE THAT.

18 AND ARE YOU PROJECTING OFF OF WHAT YOU SAW

19 IN THE WINCHESTER ROUNDS TO MAKE CERTAIN ASSUMPTIONS

20 ABOUT WHAT THE MATTER WOULD HAVE BEEN AND THE TYPE OF
21 AMMUNITION ACTUALLY USED HERE?
22 A. NO, NOT PROJECT OFF OF. I WOULD HAVE
23 PRESUMED BEFORE I SHOT THEM WHAT WOULD HAPPEN, AND
24 INDEED IT DID. THE GRANULATED POWDER IS IN AMONGST THE
25 SHOT TO PROTECT IT. IT IS STILL A SUPERIOR DESIGN TO
26 THE UNPROTECTED SHOT.
27 SO THE WINCHESTER SHELL, EVEN WITHOUT LOOSE
28 SHOT, WITHOUT A CUP, IS STILL PROTECTING THE SHOT

-24297

1 BETTER. THE BETTER YOU PROTECT THE SHOT, THE MORE
2 UNIFORM THE SHOT COMES OUT OF THE BARREL, AND THE
3 BETTER, MORE CONSISTENT PATTERNS YOU GET.
4 Q. SO, EVEN THE WINCHESTER GAVE MORE
5 CONSISTENT PATTERNS THAN YOU WOULD HAVE EXPECTED WITH
6 THE AMMUNITION HERE, THAT'S WHAT YOU'RE SAYING?
7 A. YES.
8 Q. HAVE YOU SEEN THE TEST-FIRINGS THAT HAVE
9 BEEN DONE WITH THE ACTUAL AMMUNITION HERE?
10 A. NO. I HAVE NOT.
11 Q. NOW, IS IT YOUR OPINION, DR. MC CARTHY,
12 THAT YOU CAN TAKE TEST-FIRE PATTERNS -- LET'S ASSUME YOU
13 HAVE THE IDENTICAL MODEL GUN. LET'S SAY YOU HAVE THE
14 NEXT SERIAL NUMBER.
15 A. OKAY.

16 Q. EITHER BEFORE OR AFTER, OKAY?
17 A. I'M NOT SURE THAT WOULD MAKE IT ANY CLOSER
18 DIMENSIONALLY, BUT I UNDERSTAND WHAT YOU MEAN.
19 Q. AND LET'S SAY YOU HAVE THE IDENTICAL
20 AMMUNITION, LET'S SAY FROM THE SAME RUN OF THE LEAD PIG.
21 DO YOU KNOW WHAT I MEAN BY THAT?
22 A. YES. BUT THAT'S NOT WHAT YOU MEAN TO SAY.
23 WHAT YOU MEAN TO SAY IS THE SAME LOT.
24 Q. SAME CASE.
25 A. SAME PRODUCTION RUN.
26 Q. SAME BOX, OKAY?
27 A. WELL, THE BOX ONLY HOLDS 10, BUT I
28 UNDERSTAND.

-24296

1 Q. SO YOU HAVE FIVE FROM THE SAME BOX.
2 A. OKAY.
3 Q. AS WAS USED IN A PARTICULAR EVENT, OKAY?
4 A. OKAY.
5 Q. BUT YOU HAVE A DIFFERENT GUN.
6 A. YES.
7 Q. ALL RIGHT. AND IN YOUR OPINION IF YOU DID
8 TEST-FIRINGS WITH THAT DIFFERENT GUN WITH THE SAME
9 AMMUNITION, COULD YOU THEN TAKE THE PATTERNS THAT WERE
10 PRODUCED IN THAT TEST-FIRING AND USE THOSE DEFINITELY
11 TO MEASURE WOUND PATTERNS IN THE INCIDENT?

12 A. MAYBE.

13 Q. MAYBE?

14 A. IF THEY WERE CLOSE AND CONSISTENT ENOUGH.

15 LET ME PUT IT THIS WAY:

16 YOU COULD USE THAT INFORMATION TO MAKE A
17 DEFENSIBLE ESTIMATE OF DISTANCES. IN OTHER WORDS, I AM
18 NOT SURE SOMEONE WOULDN'T YELL AT YOU, BUT YOU STILL
19 WOULD HAVE A REASONABLE BASIS TO HYPOTHESIZE THAT
20 CERTAIN SHOTS WENT A CERTAIN DISTANCE RANGE. I MEAN, I
21 DON'T THINK NECESSARILY YOU COULD DO IT ON FIVE UNLESS
22 THEY WERE JUST VERY, VERY CONSISTENT. THEN MAYBE I
23 WOULD BE COMFORTABLE WITH FIVE. BUT IF YOU DID, YOU
24 KNOW, 10 OR 15 AND THEY WERE REALLY CONSISTENT --

25 Q. WITH EACH OTHER. YOU MEAN IF THEY WERE
26 REALLY CONSISTENT WITH EACH OTHER?

27 A. REALLY CONSISTENT WITH EACH OTHER, SHOT TO
28 SHOT, ESPECIALLY IN THIS SORT OF WEAPON, WHICH IS

-24295

1 BASICALLY A STANDARD CYLINDER BORE DOESN'T DEPEND ON
2 EXACTLY HOW THE CHOKE WAS MADE OR SOMETHING.

3 I WOULD -- I AM NOT COMFORTABLE WITH THE
4 WORD "DEFINITELY," BUT I THINK YOU WOULD COME UP WITH
5 EVIDENCE THAT YOU WOULD HAVE TO GIVE SOME WEIGHT TO, AND
6 YOU CERTAINLY COULD DEFEND AS A BASIS SOME OF YOUR --
7 SOME STATEMENTS. IT WOULD JUST DEPEND ON THE

8 CONSISTENCY.

9 Q. YOU WOULD BE WILLING TO DO THAT; IS THAT
10 WHAT YOU'RE SAYING?

11 A. I WOULD BE WILLING TO DO WHAT I JUST
12 DESCRIBED. I AM NOT SURE WHAT YOU MEAN BY "THAT".

13 Q. THAT'S WHAT I MEAN. YOU WOULD BE WILLING
14 TO MAKE THAT KIND OF STATEMENT ABOUT POSSIBILITIES --
15 PROBABILITIES I THINK YOU SAID, IF YOU HAD SHOT THE SAME
16 AMMUNITION WITH THE SAME TYPE OF GUN AND GOTTEN
17 CONSISTENT PATTERNS, CORRECT?

18 A. I WOULD BE WILLING TO SAY ABOUT THE PATTERN
19 WHAT THE EVIDENCE ALLOWED ME TO SAY ABOUT THE PATTERN.
20 LIKE I SAY, I AM UNCOMFORTABLE WITH DEFINITELY, BUT AT
21 THE SAME TIME, THAT INFORMATION IS NOT OF ZERO VALUE.

22 Q. I DIDN'T ASK IF IT WAS OF ZERO VALUE. I AM
23 ASKING IF YOU, AS TESTIFYING AS AN EXPERT WITNESS, WOULD
24 TAKE THAT INFORMATION FROM SIMILAR GUNS, SAME AMMUNITION
25 EVEN, TEST-FIRING, AND USE IT AS THE BASIS TO MAKE SOME
26 ESTIMATES OR DECISIONS ABOUT DISTANCE IN THE INCIDENT.
27 THAT'S WHAT I AM ASKING.

28 A. I THINK WITH ONE MORE LITTLE PIECE OF WORK,

-24294

1 YES. THERE WOULD BE JUST ONE MORE STEP.

2 IF YOU NOW TOOK THAT AMMUNITION -- YOU GOT

3 GOOD CONSISTENT RESULTS ON THE SAME GUN, IF YOU THEN --

4 AND MY PLAN HERE WOULD HAVE BEEN --

5 Q. WE ARE TALKING ABOUT A SIMILAR GUN. YOU
6 DON'T HAVE THE GUN.

7 A. WE DON'T HAVE THE GUN, WE JUST HAVE THE
8 NEXT SERIAL NUMBER.

9 NOW I TAKE ONE OR TWO MORE, WHICH WAS MY
10 PLAN HERE, OF CYLINDER BORE 18 AND A HALF-INCH BARREL
11 WEAPONS, AND YOU SHOOT THEM AND YOU GET GOOD, CONSISTENT
12 GROUPS, CONSISTENT WITH THE FIRST WEAPON, CONSISTENT
13 WITH EACH OTHER; THAT IS, AND YOU DEMONSTRATE THAT IT'S
14 SORT OF ROUND-TO-ROUND INDEPENDENT AND WEAPON-TO-WEAPON
15 INDEPENDENT, BECAUSE HERE YOU ARE SHOOTING THEM OUT OF
16 ONE GUN. YOU HAVE TO PROJECT THEM BACK TO THE OTHER
17 GUN, I THINK, TO TEST HOW MUCH IT VARIES GUN TO GUN.

18 SO IF YOU DO NOW THE NEXT THREE IN THE SAME
19 SERIES AND THEY ALL SHOOT PRETTY CONSISTENTLY, THEN
20 WITHIN THE DEGREE OF CONSISTENCY, I WOULD BE WILLING TO
21 OPINE THAT IT WAS TO THE DEGREE WE HAD MEASURED, GUN
22 DEPENDENT OR INDEPENDENT, AND TO THE DEGREE WE HAD
23 MEASURED DISTANCE INDEPENDENT.

24 Q. BUT YOU DIDN'T ATTEMPT TO GET THREE GUNS
25 WITH WHICH TO DO THIS RIGOROUS EXPERIMENTATION YOU HAVE
26 JUST TOLD US ABOUT, DID YOU?

27 A. OH, I'VE GOT THREE. IT'S JUST --

28 Q. THREE OF THESE GUNS?

1 A. NO. THE POINT IS YOU HAVE TO DEMONSTRATE
2 GUN INDEPENDENCE, SO I WAS GOING TO USE -- IN FACT, HAVE
3 YOU GOT THE TARGETS? I THINK YOU WILL SEE I USED --

4 Q. DR. MC CARTHY, CAN YOU ANSWER THE QUESTION
5 AND NOT ASK A QUESTION?

6 A. OKAY. MY RECOLLECTION IS I SHOT THOSE
7 TARGETS WITH TWO DIFFERENT WEAPONS. THERE IS TWO
8 DIFFERENT SHOTGUN SERIAL NUMBERS ON THEM.

9 Q. AND THEN YOU GOT NO CONSISTENCY?

10 A. WELL, I DIDN'T GET ENOUGH CONSISTENCY TO
11 MAKE A DEFENSIBLE ESTIMATE. BUT NO CONSISTENCY IS TOO
12 STRONG.

13 Q. AND YOU NEVER SHOT IT WITH THE RIGHT
14 AMMUNITION, CORRECT?

15 A. I DIDN'T SHOOT WITH THE AMMUNITION AS WAS
16 USED IN THE MURDER; THAT IS CORRECT.

17 Q. NOW, YOU -- AND YOU'RE NOT TO USE THE WORD
18 "MURDER," DR. MC CARTHY. THAT'S FOR THIS JURY TO
19 DECIDE.

20 MR. CONN: OBJECTION.

21 THE COURT: LET'S TAKE OUR RECESS NOW AND RESUME
22 AT QUARTER TO.

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

25

26

27

28

1 THE COURT: OKAY. LET'S GET THE JURY OUT,
2 PLEASE.

3 (THE JURY ENTERED THE COURTROOM
4 AND THE FOLLOWING PROCEEDINGS
5 WERE HELD:)

6

7 THE COURT: THE JURY IS BACK.

8 WE'LL CONTINUE THE CROSS-EXAMINATION.

9 MS. ABRAMSON: THANK YOU, YOUR HONOR.

10 Q DR. MC CARTHY, ON THE BEGINNING OF YOUR
11 DIRECT TESTIMONY YOU INDICATED THAT YOU HAD
12 CONTACTED THE FIOCCHI FIREARMS COMPANY.

13 A AMMUNITION COMPANY, YES.

14 Q AND WHERE DID YOU CONTACT THEM?

15 A IN ITALY.

16 Q AND IS IT YOUR TESTIMONY THAT THEY TOLD
17 YOU THAT THEY HAD DISCONTINUED MANUFACTURING THE
18 TYPE OF NO. 4 BUCKSHOT THAT WAS ACTUALLY USED IN
19 THIS CASE?

20 A NO. MY RECOLLECTION IS THAT WHEN WE
21 CONTACTED THEM THEY COULD NOT TELL US WHAT RUNS AT
22 VARIOUS TIMES BASICALLY CONSISTED OF IN TERMS OF
23 INTERNAL CONSTRUCTION. THEY JUST DIDN'T KEEP
24 RECORDS LIKE THAT.

25 Q DIDN'T THEY TELL YOU THEY ARE STILL

26 ACTUALLY MANUFACTURING NO. 4 BUCK LOADED BOTH IN THE
27 WAY IT WAS USED IN THIS CASE AND IN THE WAY IT'S
28 LOADED THAT YOU PURCHASED?

41245

1 A I DON'T REMEMBER GETTING THAT
2 INFORMATION. NOBODY THERE SPOKE ENGLISH, SO I HAD
3 TO HAVE THE LIBRARY DO IT WITH AN INTERPRETER. I
4 DIDN'T TALK TO THEM DIRECTLY. I DON'T REMEMBER
5 GETTING THAT PIECE OF INFORMATION IF, IN FACT, THAT
6 IS TRUE.

7 Q YOU DIDN'T ACTUALLY TALK TO THEM AT ALL?

8 A THAT'S CORRECT. NO ONE SPOKE ENGLISH.

9 Q IF WE SPOKE TO SOMEONE IN ITALY
10 YESTERDAY MORNING WHO SPOKE ENGLISH TO US, ARE YOU
11 TELLING US YOU JUST DIDN'T REACH THE SAME PERSON?

12 A THAT IS CORRECT.

13 Q AND THEN DID YOU TALK TO FIOCCHI OF
14 AMERICA, THEIR MAIN HEADQUARTERS HERE IN THE U.S.?

15 A YES. WE INITIALLY STARTED THERE.

16 Q AND THEY REFERRED YOU TO ITALY?

17 A YES.

18 Q WHAT ARE YOU RELYING ON, BY THE WAY, TO
19 FORM THE OPINION THAT FIOCCHI AMMUNITION WAS USED IN
20 THIS CASE?

21 A I HAVEN'T EXPRESSED THAT AS MY OWN
22 OPINION. I THINK I WAS ASKED ABOUT THAT A COUPLE OF
23 DAYS AGO.

24 AS I'VE INDICATED, I'VE MADE AN
25 INDEPENDENT ATTEMPT TO VERIFY THE TYPE OR
26 MANUFACTURER OF THE AMMUNITION. IT HASN'T PLAYED
27 ANY PART IN MY OPINION.

28 Q YOU SAID YOU WERE GOING TO TRY TO BUY

41246

1 THE SAME AMMUNITION. WOULDN'T IT HELP TO KNOW WHAT
2 IT IS YOU'RE TRYING TO BUY?

3 A NO. I SAID IF THE TECHNIQUE HAD WORKED
4 OUT. IN OTHER WORDS, I HAD A HYPOTHESIS THAT I
5 COULD RECONSTRUCT THE SHOTS BASED ON GROUPINGS AND
6 DISTANCE SHOT FROM A SIMILAR SAMPLE, SIMILAR
7 AMMUNITION. I WAS WRONG.

8 SO I DON'T SEE HOW TO RECONSTRUCT SHOT
9 DISTANCE BASED ON SHOT SPREAD. IT'S TOO VARIABLE
10 SHOT TO SHOT; FORGET GUN TO GUN.

11 MS. ABRAMSON: I'M GOING TO OBJECT. MOVE TO
12 STRIKE AS TOTALLY NONRESPONSIVE.

13 THE COURT: THE ANSWER WILL STAND AS IT IS.

14 YOUR NEXT QUESTION, PLEASE.

15 MS. ABRAMSON: THANK YOU.

16 Q DID YOU HAVE IN MIND A TYPE OR BRAND OF
17 AMMUNITION THAT YOU WERE GOING TO USE FOR
18 EXPERIMENTAL PURPOSES?

19 A YES. FIOCCHI NO. 4. THAT'S WHAT I
20 ORIGINALLY BOUGHT, HAVING ONLY READ THE TESTIMONY.

21 Q THAT'S WHERE WE'RE GETTING TO. AND WHO
22 TESTIFIED THAT FIOCCHI NO. 4 WAS USED?

23 A I DON'T REMEMBER SPECIFICALLY WHO.
24 PERHAPS DETECTIVE VAN HORN. I JUST DON'T HAVE A
25 SPECIFIC RECOLLECTION.

26 Q HAVE YOU HAD AN OPPORTUNITY TO GO BACK
27 AND LOOK AT THE MATERIALS THAT YOU TOLD US WERE
28 SUBMITTED TO YOU, THAT LIST YOU GAVE US, TO SEE WHO,

41247

1 IF ANYONE, IN THOSE MATERIALS MENTIONED ANYTHING
2 ABOUT A MAID AT THE MENENDEZ HOME?

3 A I MEAN, I HAD AN OPPORTUNITY. I COULD
4 HAVE DONE IT LAST NIGHT. HAVE I DONE SO? AGAIN,
5 THE MAID PLAYED NO PART IN MY RECONSTRUCTION.

6 Q THE QUESTION WAS: WHERE DID YOU GET THE
7 INFORMATION.

8 A AS I SIT HERE, I CANNOT RECALL.

9 Q DID YOU HAVE IN MIND, WHEN SETTING OUT
10 TO ATTEMPT A RECONSTRUCTION OF THIS INCIDENT, THAT

11 12 ROUNDS WERE FIRED?

12 A NO. I COULD CARE LESS HOW MANY ROUNDS
13 WERE FIRED.

14 Q DID YOU BELIEVE THAT IT WAS
15 UNCONTROVERTED THAT 12 ROUNDS HAD BEEN FIRED?

16 A YOU KNOW, IT'S TOUGH TO GO BACK IN YOUR
17 BELIEF SYSTEM. AT ONE TIME I CERTAINLY THOUGHT THAT
18 THAT WAS THE NUMBER PEOPLE THOUGHT. BUT, I MEAN,
19 THAT CERTAINLY WOULDN'T HAVE DRIVEN THE
20 RECONSTRUCTION. WHATEVER IT CAME OUT, IT CAME OUT.

21 MS. ABRAMSON: MOVE TO STRIKE THE SECOND HALF
22 OF THE ANSWER AS NONRESPONSIVE.

23 THE COURT: OVERRULED.

24 Q BY MS. ABRAMSON: DID YOU, AT THE
25 PRETRIAL HEARING ON OCTOBER 2ND AND 3RD, TESTIFY
26 THAT YOU BELIEVED 12 ROUNDS WAS AN UNCONTROVERTED
27 FACT?

28 A I BELIEVE IN CROSS-EXAMINATION WHEN YOU

41248

1 ASKED ME ABOUT THAT I MIGHT HAVE SAID THAT. BUT --
2 BECAUSE AT ONE TIME I CERTAINLY BELIEVED THAT THE
3 THOUGHT WAS THAT IT WAS 12. BUT, YOU KNOW.

4 Q NOW, YOU PREPARED -- YOU PREPARED YOUR
5 REPORT ON JULY 13TH, 1995 AND UNDERSTOOD THAT AT

6 SOME POINT THEREAFTER THE REPORT WAS GIVEN TO THE

7 DEFENSE, CORRECT?

8 A I ASSUME SO, YES.

9 Q AND THEN THERE WERE CONTACTS TRYING TO

10 ARRANGE CONFERENCE CALLS SO THAT VARIOUS MEMBERS OF

11 THE DEFENSE COULD TALK TO YOU ABOUT YOUR REPORT.

12 DO YOU REMEMBER THAT?

13 A YES.

14 Q AND IN THE COURSE OF THOSE CONTACTS YOU

15 INDICATED THAT YOU HAD DONE THIS TARGET SHOOTING,

16 CORRECT?

17 A I THINK I DID IN RESPONSE TO QUESTIONS I

18 WAS ASKED, YES.

19 Q AND IN RESPONSE TO A REQUEST FOR

20 MATERIAL YOU PREPARED XEROX COPIES OF THE TARGET --

21 THE BOARD TARGETS THAT YOU HAD MADE THE HOLES IN,

22 CORRECT?

23 A SOMEONE REQUESTED COPIES, SO I HAD MY

24 ASSISTANT COPY THE TARGETS THAT I SHOT.

25 Q AND THOSE COPIES WERE SENT TO THE

26 DISTRICT ATTORNEY'S OFFICE?

27 A I HAVE NO KNOWLEDGE. HE SENT THEM

28 WHEREVER HE WAS ASKED TO SEND THEM.

1 Q I WANT TO SHOW YOU -- THESE ARE THE PAPER
2 TARGETS THAT YOU SHOT, CORRECT, AND WE'VE PREVIOUSLY
3 MARKED THEM ALL?

4 A YES.

5 Q AND SHOWING YOU WHAT WAS PREVIOUSLY
6 MARKED 283, IS THAT ONE TARGET THAT WAS SHOT WITH A
7 DIFFERENT MOSSBERG SHOTGUN THAN THE ONE THAT YOU
8 BROUGHT TO COURT, AND THAT'S NOW AN EVIDENCE ITEM?

9 A YES. THIS IS A MOSSBERG-500A WITH A
10 DIFFERENT SERIAL NUMBER.

11 Q THAT HAS A SERIAL NUMBER THAT BEGINS
12 WITH THE LETTER "J," CORRECT?

13 A YES.

14 Q AND THE OTHER ONE, THE ONE THAT'S AN
15 ITEM OF EVIDENCE HERE, IS A "K" NUMBER, SERIAL
16 NUMBER, CORRECT?

17 A MINE IS A "K," YES.

18 Q WELL, IS YOURS THE ONE YOU BROUGHT TO
19 COURT?

20 A YEAH. I MEAN --

21 Q YOU THINK IT'S STILL YOURS? YOU THINK
22 WE'RE GIVING IT BACK TO YOU?

23 A I'M NOT VERY OPTIMISTIC, BUT THE ONE I
24 BROUGHT HAS GOT A "K," YES.

25 Q NOW, I JUST LOOKED THROUGH ALL THE
26 TARGETS.

27 DO YOU RECOLLECT THAT YOU SHOT MORE THAN
28 ONE ROUND WITH THE OTHER MOSSBERG, THE J-NUMBERED

1 MOSSBERG?

2 A I DON'T HAVE A SPECIFIC RECOLLECTION. I
3 THOUGHT I JUST SHOT OUT OF TWO.

4 Q YOU SHOT OUT OF TWO GUNS?

5 A YEAH.

6 Q AND YOU WANT TO LOOK THROUGH THESE TO
7 VERIFY THAT THERE'S ONLY ONE TARGET FROM THE
8 J-NUMBERED GUN?

9 A YOU ARE CORRECT. I NOTED THE SERIAL
10 NUMBER OF THE WEAPON ON EACH TARGET.

11 MS. ABRAMSON: SHOWING YOU A PACKAGE OF XEROX
12 COPIES, I'D LIKE TO MARK THE PACKAGE COLLECTIVELY
13 NEXT IN ORDER. I'D LIKE TO ACTUALLY MARK THE
14 DISASSEMBLED SHOT SHELL NEXT IN ORDER.

15 WHAT I'D LIKE TO DO IS MARK AN ENVELOPE
16 WITH A NUMBER AND PUT BOTH COMPONENTS IN THE
17 ENVELOPE, BOTH THE SHELL AND THE PELLETS.

18 DOES THAT MAKE SENSE?

19 THE COURT: YOU WANT IT ALL TOGETHER IN ONE
20 LARGE ENVELOPE?

21 WHAT HAPPENED TO THE POWDER? DID YOU
22 WANT THAT AS WELL?

23 MS. ABRAMSON: THAT SHOULD BE PART OF IT AS
24 WELL. WE'LL MARK THEM ALL COLLECTIVELY WITH ONE

25 NUMBER.

26 THE COURT: OKAY. 305.

27 MS. ABRAMSON: I'M JUST PUTTING 305 ON BOTH

28 OF THESE ENVELOPES. AND I'LL ADD THE THIRD ONE.

41251

1 SO I WOULD THEN LIKE TO MARK THIS

2 PACKAGE OF DOCUMENTS, XEROX COPIES, 306, YOUR HONOR.

3 THE COURT: 306.

4 Q BY MS. ABRAMSON: DR. MC CARTHY, DO

5 THESE APPEAR TO BE THE XEROX COPIES OF THE TARGETS?

6 A YES, SIR, THEY DO.

7 MS. ABRAMSON: THANK YOU.

8 I HAVE NOTHING FURTHER, YOUR HONOR.

9 THE COURT: OKAY.

10 REDIRECT?

11 MR. CONN: YES.

12

13 REDIRECT EXAMINATION

14 BY MR. CONN:

15 Q DR. MC CARTHY, YOU SAID THAT YOU DID NOT

16 CONSULT WITH A CRIMINALIST OR A PATHOLOGIST BEFORE

17 REACHING YOUR CONCLUSIONS IN THIS CASE OR PREPARING

18 YOUR ILLUSTRATIONS.

19 CAN YOU TELL US WHY YOU DID NOT DO SO.

20 MS. ABRAMSON: OBJECTION. IRRELEVANT.

21 THE COURT: OVERRULED.

22 THE WITNESS: MY UNDERSTANDING IS THERE WERE

23 ALREADY CRIMINALISTS, AND MY ROLE WAS GOING TO BE AS

24 AN ENGINEER DOING RECONSTRUCTION.

25 SO I APPROACHED IT AS AN ENGINEER DOING

26 A RECONSTRUCTION, WHICH IS WHAT I UNDERSTAND HOW TO

27 DO.

28 Q BY MR. CONN: SINCE THE TIME THAT YOU

41252

1 REACHED YOUR CONCLUSIONS AND PREPARED YOUR

2 ILLUSTRATIONS, YOU'VE HEARD THE TESTIMONY OF

3 DR. LAWRENCE, HAVE YOU?

4 A YES. WELL, SOME OF IT, YES.

5 Q YOU ALSO RECEIVED ADDITIONAL

6 INFORMATION, SUCH AS THE DISTANCE FROM THE FRENCH

7 DOORS TO THE TREE OUTSIDE ON THE LAWN; IS THAT

8 CORRECT?

9 A THE PRECISE MEASUREMENTS, YES.

10 Q HAS ANY ADDITIONAL INFORMATION THAT YOU

11 RECEIVED IN THIS CASE TO DATE CAUSED YOU TO CHANGE

12 ANY OF YOUR CONCLUSIONS OR OPINIONS?

13 A NO. IN MY VIEW, IT'S BEEN REMARKABLY

14 CONSISTENT.

15 MS. ABRAMSON: OBJECT. MOVE TO STRIKE.
16 NONRESPONSIVE. CONCLUSION AND OPINION OF THE
17 WITNESS BASED ON EXPERTISE.
18 THE COURT: OVERRULED.
19 Q BY MR. CONN: NOW, IN THIS CASE, DOCTOR,
20 YOU SAW, FROM THE ILLUSTRATION OF THE CRIME SCENE,
21 THAT THERE WAS WADDING THAT WAS RECOVERED BY THE
22 BEVERLY HILLS POLICE DEPARTMENT SCATTERED THROUGHOUT
23 THE ROOM.
24 MS. ABRAMSON: I'M GOING TO OBJECT TO COUNSEL
25 LEADING AND TESTIFYING.
26 THE COURT: JUST A PREFACE TO THE QUESTION TO
27 FOCUS IT.
28 SO OVERRULED.

41253

1 Q BY MR. CONN: DOES THE LOCATION OF THAT
2 WADDING ASSIST YOU IN ANY WAY IN DETERMINING THE
3 LOCATIONS FROM WHERE THE SHOTS WERE FIRED IN THIS
4 CASE?
5 A NO.
6 Q AND WHY IS THAT?
7 A TOO MUCH OF IT. TOO MANY SHOTS; AND
8 ALSO, IF YOU GET A COUPLE MORE OF THESE TARGETS, THE
9 WADDING -- I MEAN, SOME OF THE TARGETS I SHOWED THERE

10 WAS ACTUALLY WADDING HOLES IN A DIFFERENT PLACE THAN
11 THE SHOT GROUP. WADDING ACTUALLY CAN GO OFF IN
12 DIFFERENT DIRECTIONS; AND EVEN THE SHOT THAT
13 EXPELLED THE WADDING -- WADDING DOESN'T FOLLOW THE
14 TRAJECTORY OF THE SHOT. IT CAN GO OFF AT A
15 DIFFERENT ANGLE. IT DOESN'T GO BACKWARDS. AFTER IT
16 HITS SOMETHING, IT CAN GO BACKWARDS.

17 THERE WAS JUST TOO MUCH WADDING BOUNCING
18 AROUND THE ROOM FOR ME TO USE IT RELIABLY.

19 Q OKAY. DURING YOUR EXAMINATION BY
20 COUNSEL SHE SHOWED YOU WHAT APPEARED TO BE A
21 COMMUNICATION FROM YOURSELF TO ANOTHER PERSON.

22 DO YOU RECALL THE DOCUMENT THAT I'M
23 REFERRING TO?

24 A CONCERNING MY AMERICAN SOCIETY OF
25 MECHANICAL ENGINEERS PAPER? YES.

26 Q OKAY. AND I DON'T KNOW IF THAT'S BEEN
27 MARKED?

28 THE COURT: I DON'T BELIEVE IT HAS.

41254

1 MR. CONN: PERHAPS IF COUNSEL HAS THAT
2 DOCUMENT I CAN SHOW IT TO DR. MC CARTHY AGAIN.

3 I'D LIKE TO MARK THIS DOCUMENT AS WELL.

4 MS. ABRAMSON: I'LL FIND IT FOR YOU,

5 COUNSEL. I HAVE A LOT OF DOCUMENTS.

6 THE COURT: IT'S EXHIBIT 299.

7 MS. ABRAMSON: DID I GIVE IT A NUMBER?

8 MR. CONN: THAT'S A DIFFERENT DOCUMENT, YOUR

9 HONOR. I JUST HAD THAT ONE PULLED.

10 THE COURT: OKAY. THAT'S A DIFFERENT ONE?

11 MS. ABRAMSON: I'LL TRY TO FIND IT. IT'S

12 HERE SOMEWHERE. WHY DON'T YOU GO ON, COUNSEL, SO I

13 DON'T HOLD YOU UP. I'LL FIND IT.

14 Q BY MR. CONN: DO YOU RECALL THE PURPOSE

15 FOR WHICH THAT COMMUNICATION WAS WRITTEN?

16 A YES.

17 Q AND CAN YOU TELL US WHAT THAT WAS.

18 A YES. THIS WAS A PAPER THAT I WAS

19 WORKING ON WITH FOUR OTHER INDIVIDUALS AT FAILURE

20 ANALYSIS. IT RAN ABOUT 20-SOME-ODD PAGES, AND IT

21 WAS GOING TO BE PEER-REVIEWED, AND IT DEALT WITH

22 STATISTICAL ANALYSIS OF LARGE-SCALE ACCIDENT DATA

23 SETS INVOLVING ALL-TERRAIN VEHICLES. THOSE ARE

24 MOTORIZED THREE AND FOUR-WHEEL VEHICLES,

25 STRADDLE-RIDDEN CYCLES.

26 THIS PAPER DEALT WITH THE ACCIDENT DATA

27 AND METHODS OF ANALYZING IT, PARTICULARLY FOR

28 CONTROL OF MULTIPLE SIMULTANEOUS VARIABLES; AND SO,

1 IT WAS TECHNICAL, AND I THINK I WAS THE FOURTH
2 AUTHOR.

3 SO THE PAPER HAD BEEN WRITTEN AND EDITED
4 BY THE THREE AUTHORS IN FRONT OF ME, AND I WAS
5 PUTTING IN MY EDITS, BUT I WAS EDITING ON THE ROAD,
6 EDITING A FEW PAGES AND FAXING THEM BACK.

7 Q OKAY. AND DO YOU RECALL THE PHRASE IN
8 THAT DOCUMENT -- I DON'T THINK THE DOCUMENT HAS BEEN
9 FOUND YET.

10 DO YOU RECALL THE PHRASE THAT COUNSEL
11 DIRECTED YOUR ATTENTION TO IN THAT DOCUMENT?

12 A YES.

13 Q AND WHAT WAS THAT PHRASE?

14 A MY PHRASE WAS -- CONCERN OVER THE
15 EXAMPLE BEING USED TO CONFUSE JURIES.

16 MS. ABRAMSON: I'M GOING TO OBJECT AND MOVE
17 TO STRIKE. HE'S ASKING WHAT PHRASE HE USED. THOSE
18 WEREN'T THE WORDS WRITTEN.

19 THE COURT: OVERRULED. IF YOU COULD FIND IT
20 IT WOULD HELP THE WITNESS ANSWER THE QUESTION.

21 MS. ABRAMSON: I KNOW. IF COUNSEL WANTED ME
22 TO FIND IT HE COULD HAVE TOLD ME EARLIER.

23 THE COURT: YOUR NEXT QUESTION, PLEASE.

24 Q BY MR. CONN: AND CAN YOU TELL US WHAT
25 YOU WERE REFERRING TO IN THAT PHRASE?

26 A YES.

27 Q DO YOU HAVE YOUR OWN COPY OF THAT

41256

1 A I HAVE MY OWN COPY.

2 MS. ABRAMSON: OH, THEN HE DOESN'T NEED
3 MINE.

4 CAN I APPROACH, YOUR HONOR, AND MAKE
5 SURE THAT THE WITNESS' COPY AND THE COPY THAT I'M
6 TRYING TO FIND ARE THE SAME, AND WE CAN USE THE
7 WITNESS' COPY?

8 THE WITNESS: SURELY.

9 MS. ABRAMSON: YES. YOU CAN GO AHEAD AND USE
10 HIS. IT'S THE SAME.

11 Q BY MR. CONN: CAN YOU TELL US WHAT THAT
12 PHRASE WAS THAT YOU WERE REFERRING TO?

13 A SURE. I SAID: "HOWEVER --"

14 WOULD YOU LIKE ME TO READ THE WHOLE
15 THING?

16 Q YES. THE WHOLE THING.

17 A "BILL: I UNDERSTAND THE PURPOSE
18 OF THIS EXAMPLE AND THINK IT IS
19 INSTRUCTIVE; HOWEVER, THIS EXAMPLE
20 WILL BE USED TO CONFUSE JURIES WHEN I
21 TESTIFY IN KIDS CASES.

22 "CAN WE FIND AN EXAMPLE THAT

23 WORKS THE OTHER WAY; THAT IS, THE
24 GROSS NUMBER IS HIGHER THAN THE SINGLE
25 ADJUSTED NUMBER?"
26 Q AND WHAT WERE YOU ATTEMPTING TO
27 COMMUNICATE IN THE USE OF THAT PHRASE, "WILL BE USED
28 TO CONFUSE JURIES"?

41257

1 A THIS WAS A SINGLE VARIABLE, UNCORRECTED
2 ANALYSIS OF THE CORRELATION BETWEEN RISK AND ENGINE
3 SIZE, NOT CONTROLLED, FOR ANY OTHER VARIABLES. AND
4 PARTICULARLY IN A SUBJECT LIKE MOTORIZED CYCLES, YOU
5 NOT ONLY HAVE TO CONTROL FOR ENGINE SIZE AND DRIVER
6 AGE, YOU HAVE TO CONTROL FOR THE NATURE OF THE
7 SUSPENSION, THE TYPE OF THE VEHICLE.
8 THERE'S A NUMBER OF OTHER VARIABLES YOU
9 HAVE TO CONTROL TOO. I WAS CONCERNED THAT IN CASES
10 WHERE WE HAD A CONTROLLED ANALYSIS THEY WOULD TROT
11 OUT THIS PHOTOGRAPH AND SAY: DIDN'T YOU SAY IT WAS
12 METHOD "X"? AND NOW YOU'RE SAYING IT HAS A
13 CORRELATION. WHY?
14 NO, NO, NO, NO, NO. WHEN YOU FIND A
15 CONTROL FOR ALL THE VARIABLES, YOU HAVE ACHIEVED THE
16 CORRECT CORRELATION. ABSENT THAT, YOU HAVE AN
17 UNCONTROLLED ANALYSIS.

18 WHAT I WAS SUGGESTING IS THAT YOU
19 ACTUALLY FIND A COUNTER-INTUITIVE EXAMPLE WHERE
20 UNCONTROLLED WORKED THE OTHER WAY AND SHOW HOW THE
21 CONTROL STRAIGHTENS IT OUT.

22 Q YOU WERE SUGGESTING IT MIGHT BE USED BY
23 WHO TO CONFUSE JURIES?

24 A ON THE NEXT PARAGRAPH I WRITE THE
25 FOLLOWING, NEXT PAGE ON THAT SAME DOCUMENT.

26 "THIS GRAPH WILL BE USED BY
27 MANUFACTURERS TO CONFUSE JURIES AND
28 SHOW OUR CONTROLLED ANALYSIS --"

41258

1 THE WAY I WROTE MY EDITING --
2 "AND SHOW OUR CONTROLLED ANALYSIS
3 COMPLETELY IS WRONG. IF THE HIGH SIDE
4 WERE ON THE GREATER THAN 35, NO
5 PROBLEM."

6 Q SO YOU WERE SUGGESTING IT COULD PERHAPS
7 BE USED BY THE OTHER LITIGANTS TO CONFUSE THE JURY?

8 A EXACTLY. THAT WAS MY CONCERN.

9 Q NOW, YOU INDICATED IN YOUR TESTIMONY
10 THAT YOU DID NOT -- LET ME DIRECT YOUR ATTENTION TO
11 ONE OF THE PHOTOGRAPHS REFERRED TO BY COUNSEL.
12 DIRECTING YOUR ATTENTION TO THIS MIDDLE

13 PHOTOGRAPH, TO THE DARK MARKS ON THE ARM THERE.

14 YOU INDICATED THAT YOU DID NOT

15 ILLUSTRATE ON YOUR DIAGRAM WOUNDS REFLECTED IN THAT

16 PHOTOGRAPH.

17 CAN YOU TELL US WHY YOU DID NOT

18 ILLUSTRATE ON YOUR DIAGRAM SUCH MARKS ON THAT ARM AS

19 DEPICTED THERE?

20 THE COURT: WHAT EXHIBIT NUMBER IS THAT, BY

21 THE WAY?

22 MR. CONN: IT IS EXHIBIT 1B.

23 THE COURT: IT'S NOT 1B.

24 THE WITNESS: 301.

25 THE COURT: 301. OKAY.

26 THE WITNESS: THOSE WOUNDS IN THE RIGHT SIDE

27 OF THE CENTER PHOTOGRAPH ON THE RIGHT FOREARM HAVE,

28 IN THE CURRENTLY REVISED CORONER'S REPORT,

41259

1 DISAPPEARED; THAT IS, THE REVISED REPORT DOES NOT

2 MENTION WOUNDS THERE. AND I DON'T HAVE A PICTURE OF

3 THE CLEANED-UP BODY SHOWING WOUNDS THERE.

4 MR. CONN: ALL RIGHT. I'LL GET BACK TO THAT

5 WOUND A LITTLE BIT LATER WHEN WE GO THROUGH GOLDEN'S

6 REPORT WITH YOU.

7 I HAVE A PHOTOGRAPH, YOUR HONOR, WHICH

8 HAS NOT BEEN PREVIOUSLY MARKED. IT IS A PHOTOGRAPH,
9 A COPY OF WHICH IS CONTAINED ON THE CD-ROM PROVIDED
10 BY COUNSEL, PROVIDED TO COUNSEL.

11 MS. ABRAMSON: YOU WANT TO SHOW ME WHICH ONE
12 IT IS?

13 THE WITNESS: THIS IS 1.FLOOR.

14 MS. ABRAMSON: MAY I CONSULT WITH COUNSEL?

15 (ATTORNEYS ABRAMSON AND CONN

16 CONFER SOTTO VOCE.)

17

18 MR. CONN: I WOULD ASK THAT --

19 THE COURT: NO. 307. THANK YOU.

20 Q BY MR. CONN: DOCTOR, IF YOU WOULD, AT
21 THIS TIME, TURN ON YOUR COMPUTER, AND IF WE CAN HOOK
22 UP THAT PROJECTOR, I'D LIKE TO BE ABLE TO PROJECT
23 THIS PHOTOGRAPH TO THE JURY.

24 MS. ABRAMSON: WE WOULD ONLY ASK IT BE
25 PROJECTED IN ITS STANDARD FORM, NOT ENLARGED.

26 THE COURT: SAME FORM IT APPEARS ON THE
27 CD-ROM.

28 YOU'LL NEED SOMETHING TO PROJECT IT

41260

1 ONTO.

2 MS. ABRAMSON: MR. CONN, YOU'LL HAVE TO MOVE

3 THE BOARD.

4 MR. CONN: IF WE COULD DIM THE LIGHTS

5 MOMENTARILY.

6 Q I WOULD LIKE TO ASK YOU IF YOU SEE IN

7 THAT PHOTOGRAPH THE DARK SPOT WHICH YOU SAID APPEARS

8 TO DEPICT SOME TISSUE OR FLESH?

9 A YES. YOU CAN SEE IT RIGHT THERE

10 (POINTING). THERE ARE THREE THINGS YOU CAN SEE IN

11 THIS PHOTOGRAPH, MORE OR LESS, IN A LINE.

12 Q WHICH THREE THINGS ARE YOU REFERRING TO?

13 A YOU SEE THIS TISSUE HERE (POINTING).

14 MS. ABRAMSON: I'M GOING TO OBJECT TO THE

15 WITNESS SAYING IT'S TISSUE. HE'S NOT QUALIFIED AND

16 YOU CAN'T SEE IT CLEARLY ENOUGH FOR A LAYMAN TO SAY.

17 THE COURT: OVERRULED.

18 DO YOU HAVE THE POINTER SOMEWHERE?

19 MS. ABRAMSON: I DON'T BELIEVE HE HAS A BASIS

20 FOR SUCH AN OPINION.

21 THE COURT: WHERE IS THE POINTER?

22 THE WITNESS -- TO QUALIFY THE WITNESS'

23 ANSWER, IT APPEARS TO THE WITNESS TO BE TISSUE.

24 MS. ABRAMSON: THANK YOU, YOUR HONOR.

25 Q BY MR. CONN: WHAT THREE THINGS WERE YOU

26 REFERRING TO, DOCTOR?

27 A YOU HAVE WHAT APPEARS TO ME TO BE TISSUE

28 HERE. YOU HAVE -- YOU CAN JUST SEE THE RED PIXEL

1 THERE, WHAT APPEARS TO BE BLOOD THERE.

2 MS. ABRAMSON: OBJECTION, YOUR HONOR. NO
3 FOUNDATION.

4 THE COURT: OVERRULED.

5 THE WITNESS: WE DID END UP WITH A WAD HERE.

6 MR. CONN: ALL RIGHT. THANK YOU. YOU MAY
7 RETURN TO YOUR SEAT AND RAISE THE LIGHTS ONCE AGAIN.

8 THE WITNESS: DO YOU WANT ME TO TURN OFF THE
9 IMAGE?

10 MR. CONN: YES. IF YOU WOULD, PLEASE. THANK
11 YOU.

12 THE COURT: YOU WANT TO CIRCLE THOSE ON THAT
13 EXHIBIT, 307, SO THAT WE HAVE REFERENCE TO "HERE."

14 THE WITNESS: CAN I PUT ONE, TWO, AND THREE
15 OR -- ONE I HAVE CIRCLED, WHAT I TESTIFIED APPEARS
16 TO ME TO BE TISSUE. I HAVE CIRCLED AND PUT A TWO
17 NEXT TO WHAT APPEARS TO ME TO BE BLOOD; AND I HAVE
18 PUT A THREE NEXT TO WHAT IS A -- WHAT APPEARS TO BE A
19 PIECE OF WADDING.

20 MR. CONN: THANK YOU. I THINK WE CAN TURN
21 OFF THAT PROJECTOR.

22 Q I WOULD LIKE TO REFER YOU BACK, ONCE
23 AGAIN, AT THIS TIME -- I BELIEVE FOR YOU THIS MAY BE
24 THE FIRST TIME THIS HAS BEEN PRESENTED, A PORTION OF
25 THIS, EXHIBIT 243; THAT IS, THIS PELLET COUNT. I'D
26 LIKE TO CLARIFY.

27 YOU INDICATED THAT YOU CAME UP WITH A
28 COUNT OF APPROXIMATELY 27 FOR THE PELLETS THAT WERE

41262

1 RECOVERED, OR AT LEAST VIEWED IN THE X RAYS, AND/OR
2 RECOVERED FROM THE VICTIMS' BODIES.

3 I WOULD LIKE TO ASK YOU AT THIS TIME IF
4 YOU WOULD INDICATE FOR US WHICH FIGURES YOU WERE
5 RELYING UPON IN THAT PELLET COUNT?

6 A WELL, WHEN I DID MINE -- AND ONCE AGAIN,
7 I'M COMFORTABLE WITH, AS I INDICATED, DR. LAWRENCE --
8 THERE WERE TWO X RAYS WHERE I DIFFERED WITH HIS
9 COUNT.

10 X RAY NO. 9, I THINK MY COUNT WAS EIGHT;
11 AND IN X RAY NO. 3 I COUNTED EIGHT HERE; AND 13
12 HERE, AND I AGREED WITH HIM. I IGNORED THAT ONE.

13 Q OKAY.

14 A AND I CAME UP WITH 27 TOO.

15 Q OKAY. SO WHEN YOU SAY THERE WAS EIGHT
16 IN X RAY 9, WOULD THAT BE IN REFERENCE TO THE RIGHT
17 ARM OF JOSE MENENDEZ?

18 A THAT'S RIGHT.

19 Q YOU SAID THAT YOU CAME UP WITH 13 FOR
20 X RAY 3.

21 A NO, NO. I CAME UP -- EXCUSE ME. YES.

22 13. I'M SORRY.

23 Q WOULD THAT BE IN THE BREAST OF KITTY
24 MENENDEZ?

25 A YES.

26 Q WHEN YOU SAY YOU CAME UP WITH ONE FOR
27 JOSE MENENDEZ' CHEST --

28 A NO. I DIDN'T HAVE -- I DIDN'T THINK THE

41263

1 CHEST WAS ASSOCIATED. I DON'T THINK DR. LAWRENCE
2 DID EITHER.

3 MS. ABRAMSON: I'M GOING TO OBJECT. MOVE TO
4 STRIKE. IT MISSTATES DR. LAWRENCE'S TESTIMONY.

5 THE COURT: ALL RIGHT. THAT PORTION
6 REFERRING TO DR. LAWRENCE IS STRICKEN. HIS
7 TESTIMONY IS IN THE RECORD.

8 Q BY MR. CONN: THE ONE THAT YOU WERE
9 REFERRING TO THEN, WAS THAT THE LEFT ARM OF KITTY
10 MENENDEZ?

11 A I HAD ONE, HE HAD ONE.

12 Q AND THEN THAT GIVES US A TOTAL OF 22.

13 AND FOR THE REMAINING FIVE, WOULD THAT
14 BE THE FIVE THAT WAS RECOVERED FROM THE LEFT ELBOW
15 OF JOSE MENENDEZ?

16 A YES.

17 Q NOW, I WOULD LIKE TO DIRECT YOUR
18 ATTENTION TO ANOTHER EXHIBIT THAT HAS BEEN PRESENTED
19 BY THE DEFENSE, AND THAT IS AN EXHIBIT DEPICTING -- A
20 TRAJECTORY GOING THROUGH THE REMOTE CONTROL ON THE
21 SOFA.

22 DO YOU RECALL WHICH ONE I'M REFERRING
23 TO?

24 A YES.

25 Q NOW, CAN YOU TELL US WHY IT IS THAT YOU
26 DISAGREE WITH THAT ILLUSTRATION, AND IF YOU --
27 PERHAPS IT WOULD ASSIST YOU IF WE WERE TO USE A
28 SHEET OF PAPER AT THIS TIME THAT WOULD HELP YOU

41264

1 ILLUSTRATE WHAT IT IS THAT YOU DISAGREE WITH.

2 LET ME MARK THIS AT THIS TIME AS 308.

3 USING A PEN, IF ONE IS THERE, COULD YOU
4 TO GO TO THE BOARD AND INDICATE TO US WHAT IT IS YOU
5 DISAGREE WITH.

6 A YES. WHAT IT IS -- IT'S A ARTISTIC --

7 Q LET ME SEE IF I CAN FIND THE OTHER
8 PHOTOGRAPH TO USE. IT'S NOT HERE AT THE MOMENT.

9 MS. ABRAMSON: IT WAS A SMALL ATTACHMENT,
10 MR. CONN.

11 THE COURT: IT WAS AN EIGHT-AND-A-HALF BY

12 ELEVEN SHEET OF PAPER?

13 MS. ABRAMSON: YES, IT WAS. IT MIGHT HAVE
14 BEEN 297.

15 MS. NAJERA: WE HAVE THE TAG, BUT THE TAG
16 CAME OFF. THAT'S WHY WE CAN'T FIND IT. THERE IT
17 IS.

18 Q BY MR. CONN: ALL RIGHT. DIRECTING YOUR
19 ATTENTION TO 96, AND 97 IS THE TOP ONE; AND
20 IMMEDIATELY BELOW IT I'M PUTTING 296, BOTH OF WHICH
21 DEPICT, ON THE SOFA, THE REMOTE CONTROL, THE TOP ONE
22 APPEARING TO INTERSECT WITH IT IN SOME WAY.

23 COULD YOU TELL US WHY YOU DISAGREE WITH
24 THAT ILLUSTRATION?

25 A YES. IT'S AN ARTISTIC MISIMPRESSION
26 GIVEN BY DRAWING A THREE-DIMENSIONAL CONSTRUCT IN
27 TWO DIMENSIONS.

28 Q OKAY. AND CAN YOU TELL US WHAT YOU

41265

1 MEAN -- WOULD IT HELP TO MAKE A DRAWING -- IF YOU CAN
2 ILLUSTRATE WHAT YOU'RE REFERRING TO.

3 A I'M NOT THE BEST ARTIST IN THE WORLD,
4 BUT I CAN ILLUSTRATE HOW YOU DO IT.

5 Q OKAY.

6 A ALL YOU DO -- LET'S SAY WE HAVE AN

7 OBJECT, A ROD IN SPACE. THIS WILL BE A
8 THREE-DIMENSIONAL ROD. AND BEHIND IT IT'S GOING TO
9 BE OVER THE TOP, OVER THE TOP OF THE CUBE, WHICH I'M
10 NOW GOING TO DRAW -- NOT A CUBE. LET'S JUST MAKE IT
11 A FLAT -- OKAY.

12 WHAT I'VE DRAWN HERE IS A ROD, JUST
13 ABOVE AND OFF TO THE RIGHT OF A SQUARE BLOCK.

14 NOW, LET'S DRAW THAT SAME OBJECT. AND
15 THIS IS WHERE MY ARTISTIC LACK OF SKILL IS GOING TO
16 START TO SHOW. IT ALREADY DID.

17 I'M GOING TO DRAW THE SAME SIDE, THE
18 SAME ROD, AND I'M GOING TO CONTINUE THIS LINE.

19 NOW, WHAT I MEANT TO DO IS SORT OF DRAW
20 THE SAME -- I SHOULD HAVE BROUGHT THE SPACE OF BLOCK
21 DOWN A LITTLE FARTHER. WHAT I'M TRYING TO DO IS
22 REPRESENT THE SAME GEOMETRY, BUT NOW I'M JUST GOING
23 TO CHANGE ONE DETAIL ON HOW I DRAW THE SIDE OF THAT
24 ROD (DRAWING).

25 NOW, I HAVEN'T DONE ANYTHING MOVING THE
26 TWO OBJECTS, JUST HOW I'VE TREATED THE DETAIL OF THE
27 INTERSECTION OF THE SIDE AND THE CORNER. IT GIVES
28 YOUR EYE A DIFFERENT IMPRESSION. THAT'S WHAT'S BEEN

41266

1 DONE HERE. THIS ROD HAS BEEN TRUNCATED AROUND THE

2 CHANNEL CHANGER TO GIVE THE IMPRESSION OF
3 INTERSECTION. BUT IF YOU LOOK AT THE PICTURE, THE
4 ELBOW IS CLEARLY WELL ABOVE. IT'S NOT
5 INTERSECTING. BUT A ROD OF THAT DIAMETER WOULD NOT
6 HAVE HAD THAT INTERSECTION, THAT TRUNCATION. THAT'S
7 A MISPERCEPTION CREATED BY NOTCHING THE ROD.

8 Q OKAY. THANK YOU. YOU MAY RETURN TO
9 YOUR SEAT.

10 I BELIEVE THAT DURING YOUR TESTIMONY YOU
11 ALSO REFERRED TO THE POSSIBILITY OF DROPS OF BLOOD
12 AT THE CRIME SCENE BEING CONSISTENT WITH DROPS OF
13 BLOOD THAT WERE OBSERVABLE DURING THE TRANSPORTATION
14 OF THE BODY OF JOSE MENENDEZ.

15 DO YOU RECALL THAT?

16 A YES.

17 MS. ABRAMSON: I'M GOING TO OBJECT TO COUNSEL
18 MISSTATING --

19 THE COURT: THERE'S NO REFERENCE TO
20 TRANSPORTATION. MOVING THE BODY.

21 MR. CONN: YES.

22 Q DURING THE MOVEMENT OF THE BODY, DID YOU
23 MAKE REFERENCE TO THE OBSERVATION OF SOME DROPS OF
24 BLOOD DURING THE MOVEMENT OF THE BODY, AT THE CRIME
25 SCENE?

26 A YES. DRIPS OFF THE BODY THAT I HAD
27 RECOLLECTED SEEING ON PLASTIC FROM BODY MOVEMENT AT
28 THE CRIME SCENE.

1 MR. CONN: I HAVE ANOTHER PHOTOGRAPH THAT I'D
2 LIKE TO MARK AT THIS TIME AS 309. IT DEPICTS THE
3 BODY OF JOSE MENENDEZ WHICH SHOWS HIM LYING ON HIS
4 BACK ON A SHEET OF PLASTIC.

5 SHOWING YOU 309.

6 IS THIS THE PHOTOGRAPH THAT YOU WERE
7 REFERRING TO?

8 A YES.

9 Q AND CAN YOU TELL US -- I KNOW THIS IS TOO
10 SMALL FOR THE JURY TO SEE AT THIS TIME, BUT IF YOU
11 CAN, AS BEST YOU CAN, USING THE POINTER, TRYING TO --

12 A I THINK I CAN PROJECT THAT PICTURE. IT
13 WOULDN'T BE ENLARGED. JUST PROJECT IT.

14 Q LET'S DO THAT.

15 ALL RIGHT. IF YOU CAN TURN ON THAT
16 PROJECTOR ONCE AGAIN.

17 A CAN I SEE THE PICTURE, SO I'M NOT GUILTY
18 OF ENLARGEMENT. OKAY. YES. I HAVE THIS PICTURE.

19 Q OKAY. IF YOU CAN SET UP THAT PROJECTOR
20 ONCE AGAIN.

21 CAN YOU TELL US WHAT YOU WERE REFERRING
22 TO WHEN YOU MADE REFERENCE TO DROPS OF BLOOD ON THE
23 PLASTIC?

24 A YES. YOU COULD SEE --

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

26 OBJECT TO THE WITNESS SPECULATING WHAT OTHERS COULD
27 SEE AND JUST POINT TO WHAT HE THINKS HE SEES.
28 THE COURT: THAT'S BASICALLY WHAT HE'S

41268

1 DOING.
2 THE WITNESS: WE SEE HERE IN THIS PICTURE --
3 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
4 FORM OF HIS STATEMENT --
5 THE COURT: OVERRULED.
6 MS. ABRAMSON: -- "WE SEE."
7 THE COURT: GO AHEAD.
8 THE WITNESS: I SEE IN THIS PICTURE WHAT I
9 BELIEVE TO BE DROPLETS OF BLOOD HERE. I CAN BLOW IT
10 UP AND ENHANCE THE PICTURE, AND I BELIEVE THEM TO BE
11 BLOOD.
12 MS. ABRAMSON: MOVE TO STRIKE THE STATEMENT
13 ABOUT BLOW-UP AND ENHANCEMENT, AND MOVE TO STRIKE
14 HIS STATEMENT ALL TOGETHER IF HE WAS RELYING ON
15 SOMETHING WE HAVEN'T SEEN.
16 THE COURT: OVERRULED.
17 Q BY MR. CONN: LET ME DIRECT YOUR
18 ATTENTION TO ONE MORE THING WHILE WE HAVE THIS
19 PHOTOGRAPH UP.
20 ON THE RIGHT SIDE OF THE BODY OF JOSE

21 MENENDEZ THERE APPEARS TO BE A LOT OF BLACK SPOTS

22 ALONG HIS TORSO.

23 DO YOU SEE WHAT I'M REFERRING TO?

24 A YES.

25 Q ARE THOSE PELLET HOLES THERE?

26 A NO.

27 Q CAN YOU TELL US WHAT THAT IS?

28 A AGAIN, FROM MY VIEW OF THE PICTURE, THIS

41269

1 IS DRIED BLOOD, COAGULATED BLOOD.

2 Q ALL RIGHT. THANK YOU. YOU MAY RETURN

3 TO YOUR SEAT; AND, ONCE AGAIN, I THINK WE CAN TURN

4 OFF THE PROJECTOR AT THIS TIME.

5 YOU MADE REFERENCE IN YOUR TESTIMONY

6 THIS MORNING TO STAR CRIMPING. IS STAR CRIMPING OF

7 SHOTGUN PELLETS THE MOST COMMON FORM FOR CLOSING

8 SHOTGUN PELLETS TODAY?

9 A OH, YEAH. CHEAPER.

10 Q DO YOU KNOW TO WHAT EXTENT THE SO-CALLED

11 OVAL WAD IS STILL USED AS AN ALTERNATIVE TO STAR

12 CRIMPING?

13 A I DON'T. IT'S A QUESTION OF THE

14 MANUFACTURER. MANY TIMES THEY ROLL THEM --

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

16 OBJECT TO ANYTHING AFTER "I DON'T."

17 THE COURT: SUSTAINED.

18 Q BY MR. CONN: I WOULD LIKE TO ASK YOU A
19 QUESTION NOW IN REGARD TO YOUR ITEM CONCERNING THE
20 WOUND TO THE -- THE SHOT WHICH YOU INDICATED STRUCK
21 BOTH THE LEFT ELBOW OF JOSE MENENDEZ AND ALSO STRUCK
22 THE RIGHT ARM OF JOSE MENENDEZ.

23 JUST TO CLARIFY. WERE YOU SAYING THAT
24 IN THAT SHOT THE PELLETS CAME TOGETHER TO CAUSE THE
25 WOUND -- I'LL DIRECT YOUR ATTENTION BACK TO EXHIBIT
26 301.

27 THE TOP CENTER PHOTOGRAPH IN EXHIBIT 301
28 DEPICTS THE ARM, THE RIGHT ARM OF JOSE MENENDEZ, THE

41270

1 LARGE WOUND TO HIS UPPER RIGHT ARM.

2 ARE YOU SAYING THAT AFTER STRIKING HIS
3 LEFT ELBOW THE SHOTGUN BULLETS -- SHOTGUN PELLETS
4 CAME TOGETHER TO CREATE THAT LARGE DEFECT IN HIS
5 RIGHT ARM?

6 A NO, NOT AT ALL.

7 Q OKAY. SO NOW, IT WAS PART OF YOUR
8 TESTIMONY THAT THE SHOTGUN PELLETS IN THIS CASE
9 CAUSED NOT ONLY THE WOUND TO HIS LEFT ELBOW AND THAT
10 WOUND THERE, THE LARGE WOUND --

11 MS. ABRAMSON: I'M GOING TO OBJECT. THERE'S
12 BEEN TESTIMONY THAT IS A DISSECTED WOUND. I'M GOING
13 TO OBJECT. THIS IS MISLEADING.

14 THE COURT: OVERRULED.

15 Q BY MR. CONN: YOU UNDERSTAND THE WOUND
16 I'M REFERRING TO, THE ONE YOU HAVE TESTIFIED TO IN
17 THIS CASE, THE ONE AS BEING THE LARGE WOUND TO HIS
18 UPPER RIGHT ARM?

19 A YES.

20 Q AND DID YOU ALSO NOTE THAT THERE WAS SIX
21 INDIVIDUAL DEFECTS JUST BENEATH THAT WHICH NOW
22 APPEARS TO HAVE BEEN DISSECTED AND OPENED UP IN THIS
23 PHOTOGRAPH?

24 A THERE WERE INDIVIDUAL DEFECTS BELOW IT,
25 YES.

26 Q AND IS IT YOUR TESTIMONY THAT IT WAS A
27 SINGLE SHOT WHICH CAUSED THE WOUND TO BOTH ARMS?

28 A I BELIEVE IT A SINGLE SHOT, YES.

41271

1 Q NOW, IS IT YOUR TESTIMONY THAT SOME OF
2 THE PELLETS STAYED -- CAME TOGETHER TO CAUSE A LARGE
3 DEFECT, WHILE OTHERS SEPARATED TO CAUSE THE SIX
4 INDIVIDUAL DEFECTS IN THE RIGHT ARM?

5 A NO.

6 Q OKAY. SO COULD YOU TELL US THEN WHY, IN
7 YOUR OPINION, AND FOR PURPOSES OF YOUR ILLUSTRATION,
8 YOU CONCLUDED THAT THE SAME SHOT COULD HAVE CAUSED
9 BOTH THE INDIVIDUAL PELLET DEFECTS ON THE RIGHT ARM,
10 AS WELL AS THE LARGE DEFECT THAT IS DEPICTED IN THAT
11 PHOTO.

12 A BECAUSE THE SHOT CONTINUES TO EXPAND,
13 WHICH IT DOES. IT DOESN'T ALWAYS EXPAND UNIFORMLY.
14 SO WHEN YOU HAVE A HIT AT SOME POINT IN A TARGET YOU
15 CAN HAVE A GROUP OF SHOT THAT WILL TAKE OUT A
16 SECTION, WHERE YOU CAN HAVE INDIVIDUAL INDICATIONS
17 AROUND IT.

18 AND SO, I BELIEVE IT'S A NON-UNIFORMITY
19 OF THE SHOT. SOME OF THE -- IT'S A CONSTANTLY
20 EXPANDING PATTERN. THE PATTERN NEVER SHRINKS BACK.
21 SOME OF IT STRIKES THE LEFT ELBOW AND IS FILTERED
22 OFF. IT STRIKES HIS RIGHT ARM. SOME OF THE SHOT IS
23 TOGETHER, AND TAKES OUT AND CREATES WHAT I BELIEVE
24 IS THE LARGE DEFECT. OTHERS OF THE CONTINUALLY
25 EXPANDING AHEAD PATTERN ARE CREATING THE INDIVIDUAL
26 DEFECTS YOU SEE RIGHT NEXT TO IT.

27 Q OKAY. I'D LIKE TO SHOW YOU WHAT HAS
28 BEEN MARKED AS 219 IN THIS PROCEEDING, AN

1 ILLUSTRATION THAT DR. LAWRENCE PREPARED WHILE HE WAS
2 ON THE WITNESS STAND.

3 DOES THIS ILLUSTRATION ASSIST YOU ANY IN
4 EXPLAINING US TO WHAT YOU ARE TRYING TO EXPLAIN TO
5 US?

6 A YES.

7 Q HOW IS THAT?

8 A THIS ILLUSTRATION THAT DR. LAWRENCE DREW
9 OF A LARGE DEFECT SURROUNDED BY SMALLER DEFECTS IS
10 PRECISELY WHAT I'M TALKING ABOUT HERE.

11 Q YOU WERE ASKED SOME QUESTIONS ABOUT THE
12 OPINIONS OF DR. GOLDEN, WHICH ONES YOU RELIED UPON.
13 LET ME ASK YOU THIS: DID YOU ASSUME FOR PURPOSES OF
14 YOUR RECONSTRUCTION REGARDING THE SHOT TO THE HEAD
15 OF JOSE MENENDEZ -- DID YOU ASSUME THAT HIS HEAD
16 WOULD HAVE BEEN THROWN FORWARD AND REMAINED IN A
17 FORWARD POSITION BY THE SHOTGUN BLAST?

18 MS. ABRAMSON: I'M GOING TO OBJECT. BEYOND
19 HIS EXPERTISE, UNLESS SUCH A REFERENCE IS IN
20 DR. GOLDEN'S REPORT OR DR. LAWRENCE'S TESTIMONY.

21 THE COURT: OVERRULED.

22 THE WITNESS: NO. THIS IS THE POINT WE WERE
23 DISCUSSING EARLIER TODAY ABOUT THE MISCONCEPTION OF
24 PEOPLE STRUCK BY A SHOTGUN BLAST ARE KNOCKED DOWN OR
25 PUSHED AROUND. IT DOES IMPART SOME VELOCITY, BUT IT
26 DOESN'T -- I KNOW THERE'S A MISCONCEPTION ABOUT THAT.

27 Q BY MR. CONN: OKAY. AND DO YOU RECALL
28 THE TESTIMONY OF DR. GOLDEN BEFORE THE GRAND JURY

1 THAT THERE COULD HAVE BEEN --

2 MS. ABRAMSON: I'D LIKE A CITATION, YOUR
3 HONOR.

4 MR. CONN: YES. I BELIEVE IT'S 123.

5 MS. ABRAMSON: I WOULD ALSO OBJECT AS
6 HEARSAY.

7 THE COURT: OVERRULED.

8 Q BY MR. CONN: DO YOU RECALL THE
9 TESTIMONY BEFORE OF DR. GOLDEN BEFORE THE GRAND JURY
10 THAT SUCH A SHOT COULD CAUSE A REFLEX JERK OF THE
11 HEAD BACKWARDS?

12 A I DON'T RECALL THAT SPECIFIC TESTIMONY,
13 BUT I DON'T DISAGREE WITH IT.

14 MS. ABRAMSON: MOVE TO STRIKE. SINCE HE
15 DOESN'T RECALL IT, HE COULDN'T HAVE RELIED ON IT.

16 THE COURT: SUSTAINED.

17 Q BY MR. CONN: WOULD THE TESTIMONY --

18 MS. ABRAMSON: I'D ASK THAT THE JURY BE
19 ADMONISHED TO --

20 THE COURT: THE ANSWER'S STRICKEN.

21 MS. ABRAMSON: THANK YOU, YOUR HONOR.

22 Q BY MR. CONN: WOULD THE TESTIMONY OF
23 DR. GOLDEN, THAT A HEAD WOUND OF THIS NATURE WOULD

24 RESULT IN A REFLEX JERKING OF THE HEAD BACKWARD, BE
25 CONSISTENT WITH YOUR OPINION?
26 MS. ABRAMSON: WELL, YOUR HONOR, I'M GOING TO
27 OBJECT. HE DOESN'T HAVE THE EXPERTISE TO DECIDE
28 THAT.

41274

1 THE COURT: OVERRULED.

2 THE WITNESS: IT CERTAINLY WOULD BE
3 CONSISTENT WITH THE POSITION WE FIND THE BODIES IN
4 MY SCENARIO.

5 MS. ABRAMSON: EXCUSE ME. COULD I HAVE A
6 LINE INDICATION OF WHERE THAT TESTIMONY SUPPOSEDLY
7 IS ON 123?

8 MR. CONN: IT'S ON PAGE 123.

9 MS. ABRAMSON: IF COUNSEL WOULD WAIT FOR A
10 MINUTE, I'M NOT SEEING IT.

11 THE COURT: THE QUESTION HAS ALREADY BEEN
12 ASKED AND THE WITNESS HAS GIVEN HIS ANSWER. YOU CAN
13 COVER IT ON RECROSS IF THERE'S SOME AREA TO BE
14 COVERED.

15 NEXT QUESTION, PLEASE.

16 Q BY MR. CONN: NOW, IN REGARD TO THE
17 WOUND TO THE LEFT ELBOW OF JOSE MENENDEZ, YOU SAID
18 THAT YOU DID NOT ACCEPT THE TESTIMONY OF DR. LAWRENCE,

19 IF HE DID SO TESTIFY, THAT THE PELLETS BOUNCED OFF

20 OR FELL FROM THE LEFT ELBOW OF JOSE MENENDEZ.

21 CAN YOU TELL US WHY YOU REJECT THAT

22 PROPOSITION?

23 A VELOCITY OF -- YOU KNOW -- PELLETS THAT

24 HAD NOT BEEN SLOWED DOWN BY SOMETHING ELSE WOULD BE

25 SO GREAT -- PELLETS DO NOT BOUNCE OFF, ESPECIALLY AT

26 THIS SIZE, UNLESS THEY HAVE BEEN SLOWED DOWN BY

27 SOMETHING. THEY HAVE A FACTOR OF 76 TIMES MORE

28 VELOCITY AND PROBABLY, YOU KNOW, 30 OR 40 TIMES MORE

41275

1 ENERGY THAN THEY NEED TO PENETRATE SKIN, FRESHLY

2 SHOT, UNENCUMBERED.

3 Q AND IN ADDITION TO YOUR OWN CONCLUSION

4 REJECTING THAT THEORY, IS THERE -- DO YOU RECALL

5 READING ANY MEDICAL OPINION THAT YOU RELIED UPON OF

6 DR. GOLDEN AT THE TRIAL WHICH ASSISTS YOU IN

7 CONCLUDING THAT THE FOUR PELLET DEFECTS ARE NOT THE

8 CONSEQUENCE OF FOUR PELLETS THAT BOUNCED OFF THE

9 ARM?

10 A I CAN'T QUOTE THE TRANSCRIPT TO YOU,

11 BUT --

12 MS. ABRAMSON: I'M GOING TO OBJECT THEN, YOUR

13 HONOR, SINCE THE QUESTION REQUIRES HIM TO TALK ABOUT

14 WHAT HE RELIED ON IN THE TRANSCRIPT.

15 THE COURT: OVERRULED.

16 THE WITNESS: THERE WAS DISCUSSION OF THE
17 DEFECTS BEING PERHAPS ENTRY OR EXIT, AND I THINK IT
18 IS IMPORTANT THAT THE DIFFERENCE BETWEEN THE COUNT
19 IN THE X RAY PELLETS AND THE COUNT OF DEFECTS IS BY
20 AN EVEN NUMBER.

21 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. MOVE
22 TO STRIKE THAT PART AS NONRESPONSIVE TO THE QUESTION
23 ABOUT DR. GOLDEN'S TESTIMONY.

24 THE COURT: SUSTAINED. THE ANSWER IS
25 STRICKEN.

26 MR. CONN: OKAY.

27 Q WHAT I'M ASKING YOU NOW IS: DO YOU
28 RECALL DR. GOLDEN TESTIFYING IN THE FIRST TRIAL THAT

41276

1 THE PELLET --

2 MS. ABRAMSON: I'M GOING TO OBJECT TO COUNSEL
3 READING, UNLESS HE GIVES ME A PAGE CITE.

4 MR. CONN: 9235.

5 THE COURT: LET COUNSEL FIND IT.

6 (PAUSE IN THE PROCEEDINGS.)

7

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

9 OBJECT. THIS DOES NOT -- FIRST OF ALL, 9235 DOESN'T
10 SAY ANYTHING ABOUT THAT. BUT THE CITE IS ERRONEOUS.
11 AND WHAT COUNSEL IS SAYING ABOUT IT, I DON'T
12 BELIEVE --

13 THE COURT: HE HASN'T SAID ANYTHING YET.

14 MS. ABRAMSON: WOULD YOU LIKE TO SEE IT, YOUR
15 HONOR?

16 THE COURT: NO. THE QUESTION HASN'T BEEN
17 ASKED YET.

18 MS. ABRAMSON: WELL...

19 THE COURT: WE'LL LISTEN TO THE QUESTION
20 FIRST.

21 Q BY MR. CONN: DO YOU RECALL DR. GOLDEN
22 TESTIFYING IN THE FIRST TRIAL THAT THE PELLETS TO
23 THE LEFT ARM COULD HAVE PASSED THROUGH THAT ELBOW
24 AND CONTINUED ON INTO THE BODY OF KITTY MENENDEZ?

25 MS. ABRAMSON: OBJECTION, YOUR HONOR.
26 MISSTATES THE TESTIMONY. AND IT'S AT 9234.

27 THE COURT: ALL RIGHT. LET'S GET THE EXACT
28 QUESTION AND THE EXACT ANSWER, MR. CONN, IF YOU HAVE

41277

1 IT.

2 MR. CONN: YES.

3 THE COURT: DO YOU HAVE THE TRANSCRIPT?

4 MR. CONN: I DON'T KNOW THAT I HAVE IT.

5 MS. ABRAMSON: I'LL GIVE COUNSEL MY COPY IF
6 YOU WANT TO.

7 MS. NAJERA: HERE IT IS.

8 Q BY MR. CONN: DO YOU RECALL DR. GOLDEN
9 TESTIFYING IN THE FIRST TRIAL:

10 "QUESTION: AND IT'S POSSIBLE
11 THAT FOUR OF THOSE PELLETS PASSED
12 THROUGH THAT LEFT ARM, CONTINUED ON
13 INTO HER, CORRECT?

14 "ANSWER: IT'S POSSIBLE."

15 A YES, I DID READ THAT PAGE OF TESTIMONY.
16 IT WAS ONE OF THOSE PROVIDED TO ME.

17 Q AND DOES THAT ASSIST YOU IN YOUR
18 ILLUSTRATION DEPICTING THE WOUNDS TO BOTH THE LEFT
19 AND THE RIGHT ARM OF JOSE MENENDEZ AND THE BREAST OF
20 KITTY MENENDEZ?

21 A PARTIALLY.

22 Q I BELIEVE THAT YOU TESTIFIED THAT
23 DR. GOLDEN DID NOT AGREE WITH YOUR OPINION THAT THE
24 WOUNDS TO JOSE'S UPPER RIGHT ARM WERE ALL CAUSED BY
25 THE SAME SHOT.

26 DO YOU RECALL THAT?

27 A YES.

28 Q AND WAS DR. GOLDEN CONSISTENT, OR HAS HE

1 BEEN CONSISTENT IN HIS OPINION THAT THOSE WOUNDS TO
2 THE UPPER RIGHT ARM WERE NOT ALL CAUSED BY THE SAME
3 SHOT?

4 MS. ABRAMSON: I'M GOING TO OBJECT AS CALLING
5 FOR SPECULATION AND CONCLUSION BY THE WITNESS.

6 THE COURT: IN REFERENCE TO THINGS THAT THIS
7 WITNESS HAS READ THAT HAVE BEEN EITHER WRITTEN BY
8 DR. GOLDEN OR TESTIFIED TO BY DR. GOLDEN, PERHAPS
9 YOU CAN REPHRASE THE QUESTION.

10 Q BY MR. CONN: YES. DIRECTING YOUR
11 ATTENTION ONLY TO THE ORIGINAL AUTOPSY REPORT AND
12 HIS TESTIMONY AND HIS AMENDMENTS TO HIS ORIGINAL
13 REPORT, HAS HE BE CONSISTENT IN HIS OPINION THAT THE
14 WOUNDS WERE NOT CAUSED BY A SINGLE SHOT?

15 MS. ABRAMSON: AGAIN, I'M GOING TO OBJECT
16 BECAUSE THERE'S -- DR. GOLDEN WROTE AN AMENDED REPORT
17 BECAUSE OF A MISNOMER.

18 THE COURT: WAIT, WAIT. COUNSEL, DON'T MAKE
19 SPEECHES. THE QUESTION HAS BEEN ASKED AND THE
20 WITNESS IS BEING REFERRED TO VARIOUS DOCUMENTS, AND
21 HE CAN LOOK AND SEE IF ANYTHING IN THERE REFERS TO
22 THE QUESTION.

23 THE WITNESS: NO, HE HAS NOT.

24 Q BY MR. CONN: AND CAN YOU TELL US HOW HE
25 HAS BEEN INCONSISTENT?

26 A IN THE ORIGINAL AUTOPSY REPORT HE REFERS
27 TO THE INDIVIDUAL PELLET DEFECTS AS ENTRANCE; AND

41279

1 ARM AS THE EXIT, AND THE DEFECT BACK HERE IS NEVER
2 MENTIONED.

3 Q OKAY. SO NOW WHEN YOU TALK ABOUT THE
4 ENTRANCE WOUND, DOES DR. GOLDEN, IN THE ORIGINAL
5 1989 AUTOPSY REPORT, REFER TO THE WOUND, OR TO WHAT
6 HE WAS SAYING WAS A WOUND AT THE TIME, TO THE RIGHT
7 FOREARM, TO THE BOTTOM OF THE RIGHT FOREARM AS BEING
8 AN ENTRY WOUND?

9 A YES. HE HAS THAT AS A -- HE HAS THE
10 INDIVIDUAL DEFECT ON THE INSIDE AS A NO. 2 SHOTGUN
11 WOUND. HE HAS DEFECTS ON THE BOTTOM SIDE OF THE
12 FOREARM AS A NO. 3 SHOTGUN WOUND; AND HE HAS THIS
13 (POINTING) AS THE EXIT FOR NO. 2 OR 3.

14 Q UH-HUH.

15 THE COURT: "THIS" BEING WHAT?

16 THE WITNESS: THE BIG DEFECT ON THE UPPER
17 ARM.

18 I'M SORRY, YOUR HONOR.

19 MR. CONN: LET ME CLARIFY THAT A LITTLE BIT
20 FURTHER IF I CAN.

21 Q SHOTGUN WOUND NO. 2 IN THE ORIGINAL
22 REPORT REFERRED TO WHICH WOUND?

23 A THE INDIVIDUAL DEFECTS ON THE --
24 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
25 OBJECT TO THIS WITNESS -- HE CANNOT TESTIFY TO WHAT
26 DR. GOLDEN HAD IN HIS MIND. ALL HE CAN TESTIFY --
27 THE COURT: HE CAN TESTIFY TO WHAT HE'S
28 REFERRING TO AS THE REPORT THAT WAS THE SUBJECT OF

41280

1 CROSS-EXAMINATION AND PART OF THE MATERIAL THAT WAS
2 RELIED UPON IN HIS OPINIONS, WHICH IS WHAT HE'S
3 DOING. HE'S REFERRING TO THE REPORT.

4 BY THE WAY, I DON'T KNOW IF IT'S BEEN
5 MENTIONED HERE, BUT THERE'S A DIFFERING NUMBERING
6 SYSTEM USED BY THIS WITNESS THAN WAS USED BY
7 DR. GOLDEN AND DR. LAWRENCE IN REGARD TO THE
8 WOUNDS.

9 PERHAPS YOU'VE NOTICED THAT IN THE
10 TESTIMONY, THAT THE CORONER IN THE INITIAL REPORT
11 NUMBERED THE WOUNDS A CERTAIN WAY. I THINK THE
12 EVIDENCE, IF IT HASN'T ALREADY BEEN ESTABLISHED, IS
13 THAT THOSE ARE JUST ARBITRARY NUMBERS THAT THE
14 CORONER GIVES TO WOUNDS, LABELING THEM ONE, TWO,
15 THREE, FOUR, FIVE, SIX, WITHOUT REGARD TO ANY
16 PARTICULAR ORDER THAT WOUND MIGHT HAVE BEEN
17 INFLECTED. THEY ARBITRARILY SELECT A NUMBER

18 ATTRIBUTABLE TO CERTAIN WOUNDS.

19 AND I THINK THERE WILL BE EVIDENCE ABOUT
20 THAT LATER IN THE PROCEEDINGS.

21 MR. CONN: THANK YOU.

22 Q SO, WHAT DR. GOLDEN ARBITRARILY ASSIGNED
23 TO --

24 MS. ABRAMSON: OBJECT TO THE FORM OF THE
25 QUESTION, YOUR HONOR.

26 THE COURT: WELL, WITHOUT REFERENCE TO
27 ARBITRARILY, JUST REFERENCE TO THE SELECTION.

28 MR. CONN: OKAY.

41281

1 Q WHAT DR. GOLDEN DESIGNATED AS, WHAT YOU
2 NUMBERED AS WOUND NO. 2, REFERRED TO WHICH WOUND?

3 A THE DEFECTS ON THE INSIDE OF THE ELBOW.

4 Q UH-HUH.

5 A RIGHT HERE ON HIS RIGHT ARM (POINTING).

6 Q OKAY. IN HIS ORIGINAL AUTOPSY REPORT HE
7 DID INDICATE THAT THAT WOUND, THE SIX INDIVIDUAL
8 PELLETS, MAY BE RELATED TO THE LARGER WOUND ON THE
9 SAME ARM?

10 A YES.

11 Q AND IN HIS SUPPLEMENTAL REPORT, WRITTEN
12 IN 1995, DID HE DESIGNATE FOR THE FIRST TIME A NEW

13 ENTRANCE WOUND TO THAT ARM WHICH HE HAD NEVER
14 PREVIOUSLY DESIGNATED IN THE PRECEDING SIX YEARS?

15 A YES.

16 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS
17 FOR SPECULATION ON THE WITNESS' PART.

18 THE COURT: ALL RIGHT. REPHRASE THE QUESTION
19 AS FAR AS -- THE ANSWER'S STRICKEN IN REFERENCE TO
20 "DESIGNATE."

21 PERHAPS YOU CAN REFER TO A PARTICULAR
22 DOCUMENT OR TESTIMONY.

23 MR. CONN: YES.

24 Q IN HIS '95 AMENDMENT DID HE MAKE
25 REFERENCE TO AN ENTRANCE WOUND IN THE RIGHT ARM
26 WHICH HE HAD NOT PREVIOUSLY IDENTIFIED AS AN
27 ENTRANCE WOUND IN EITHER HIS ORIGINAL REPORT OR
28 DURING HIS TESTIMONY IN THE FIRST TRIAL?

41282

1 MS. ABRAMSON: WELL, I'M GOING TO OBJECT.
2 THIS WITNESS PREVIOUSLY TESTIFIED HE DOESN'T KNOW IF
3 HE READ HIS TESTIMONY IN THE FIRST TRIAL.

4 THE COURT: OVERRULED.

5 THE WITNESS: AND -- NOW I'M UNCOMFORTABLE
6 TESTIFYING ABOUT WHAT ALL THE TRIAL WAS BECAUSE I
7 CAN'T RECOLLECT THAT WELL.

8 MR. CONN: JUST LET ME FOCUS YOU THEN ON THE
9 DIFFERENCE BETWEEN THE ORIGINAL AUTOPSY REPORT IN
10 '89 AND THE AMENDMENT IN '95.

11 Q IN THE '95 AMENDMENT DID HE IDENTIFY A
12 WOUND AS BEING AN ENTRANCE WOUND WHICH HE HAD NOT
13 PREVIOUSLY IDENTIFIED IN HIS ORIGINAL '89 REPORT?

14 A HE DID.

15 Q AND WHICH ONE WAS THAT?

16 A HE NOW IDENTIFIES A DEFECT ON THE UPPER
17 RIGHT ARM IN BACK THAT HE NOW CALLS AN ENTRANCE FOR
18 EXIT (POINTING). THESE WOUNDS ARE NO LONGER
19 DISCUSSED.

20 Q AND WHEN YOU SAY THEY NO LONGER ARE
21 DISCUSSED, YOU'RE REFERRING TO WOUND -- FOR THE
22 RECORD, YOU'RE REFERRING TO WHAT HE HAD PREVIOUSLY
23 DESCRIBED AS A WOUND TO THE RIGHT ELBOW; THAT IS,
24 I'M SORRY, TO THE BOTTOM OF THE RIGHT FOREARM; IS
25 THAT CORRECT?

26 MS. ABRAMSON: I'M GOING TO OBJECT TO
27 LEADING.

28 THE COURT: OVERRULED.

41283

1 THE WITNESS: THAT THE WOUND ON THE LOWER
2 RIGHT FOREARM, THE PARAGRAPHS ARE DISCUSSING, THOSE

3 ARE DELETED AND THERE'S NO DISCUSSION OF THEM IN THE
4 RESTATEMENT.

5 Q BY MR. CONN: SO HE DELETED THOSE WOUNDS
6 ENTIRELY FROM HIS REPORT; IS THAT CORRECT?

7 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
8 OBJECT TO THE FORM OF THE QUESTION. WOUNDS AREN'T
9 DELETED, JUST THE PARAGRAPH IS DELETED.

10 THE COURT: REPHRASE THE QUESTION.

11 Q BY MR. CONN: YES. ALL REFERENCE TO
12 THOSE WOUNDS, AS EXISTING IN THE BODY OF JOSE
13 MENENDEZ, WAS DELETED IN HIS '95 SUPPLEMENT; IS THAT
14 CORRECT?

15 A BY HIS SUPPLEMENT, YES.

16 Q NOW, DIRECTING YOUR ATTENTION TO THE
17 CONTACT CHEEK WOUND TO THE BODY OF KITTY MENENDEZ,
18 DID YOU ASSUME FOR PURPOSES OF YOUR RECONSTRUCTION
19 THAT THIS WOUND WAS EITHER ANTEMORTEM, PERIMORTEM OR
20 POSTMORTEM?

21 A NO. FOR PURPOSES OF RECONSTRUCTION
22 THAT'S NOT AN ELEMENT.

23 Q DID YOU REVIEW AND CONSIDER THE OPINION
24 OF DR. GOLDEN IN REGARD TO THIS WOUND?

25 A YES.

26 Q AND WAS DR. GOLDEN CONSISTENT IN REGARDS
27 TO THAT WOUND?

28 MR. GESSLER: OBJECTION. IRRELEVANT, YOUR

1 HONOR.

2 THE COURT: OVERRULED.

3 THE WITNESS: NO.

4 Q BY MR. CONN: CAN YOU TELL US HOW HIS
5 OPINION CONCERNING THAT WOUND VARIED?

6 A UNTIL VERY RECENTLY, THAT WOUND WAS
7 BEFORE DEATH.

8 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT.
9 HE DOESN'T KNOW WHAT HE'S BEEN SAYING FOR SIX YEARS.

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

12 CLARIFY WHAT IT IS THAT'S BEING REFERRED
13 TO.

14 MR. CONN: YES.

15 Q THAT IS -- DIRECTING YOUR ATTENTION TO
16 THE ORIGINAL '89 REPORT OF DR. GOLDEN, DID HE REFER
17 TO THE WOUND TO -- ALL OF THE WOUNDS TO THE BODY OF
18 KITTY MENENDEZ AS BEING ANTEMORTEM IN THAT REPORT?

19 A YES. UNLESS OTHERWISE SPECIFIED.

20 Q AND DID THAT REPORT SPECIFY THAT THE
21 CONTACT WOUND TO HER CHEEK WAS EITHER PERIMORTEM OR
22 POSTMORTEM?

23 A HE DID NOT.

24 Q OKAY. DO YOU RECALL WHAT HIS TESTIMONY
25 WAS AT TRIAL CONCERNING WHETHER THE WOUNDS TO THE

26 BODY OF KITTY MENENDEZ WERE ANTEMORTEM OR

27 POSTMORTEM?

28 MS. ABRAMSON: SAME OBJECTION.

41285

1 THE COURT: I THINK HE'S ALREADY EXPRESSED

2 SOME DISCOMFORT IN DEALING WITH THE TRIAL TESTIMONY.

3 MR. CONN: OKAY.

4 Q DIRECTING YOUR ATTENTION JUST TO THE '95

5 SUPPLEMENT, DID HE CHANGE HIS OPINION IN THAT '95

6 SUPPLEMENT?

7 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

8 FOR SPECULATION.

9 THE COURT: ARE YOU ASKING DID HE WRITE

10 SOMETHING DIFFERENT IN THAT REPORT THAN HE DID IN

11 THE EARLIER REPORT?

12 MR. CONN: YES.

13 Q DID HE?

14 A YES.

15 Q AND WHAT DID HE INDICATE IN THAT '95

16 REPORT?

17 A NOW HE'S INDICATED THAT WOUNDS COULD

18 HAVE BEEN --

19 MS. ABRAMSON: OBJECT TO THE ANSWER, YOUR

20 HONOR, AS SPECULATION AS TO "NOW."

21 THE COURT: WELL, WITH THE UNDERSTANDING HE'S
22 REFERRING TO THIS SUPPLEMENT.
23 THE WITNESS: SEPTEMBER 25TH, 1995. HE
24 INDICATED THE WOUNDS COULD BE PERIMORTEM OR
25 POSTMORTEM.
26 MR. CONN: I DO HAVE A FEW MORE QUESTIONS.
27 DOES THE COURT WANT TO BREAK AT THIS TIME?
28 THE COURT: WE'LL RECESS UNTIL 1:30. DON'T

41286

1 DISCUSS THE MATTER WITH ANYBODY AND DON'T FORM ANY
2 FINAL OPINIONS.
3 (AT 12:00 NOON PROCEEDINGS WERE
4 ADJOURNED UNTIL 1:30 P.M.
5 OF THE SAME DAY.)

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41309

1 THE COURT: THE DEFENDANTS ARE IN COURT WITH
2 COUNSEL, WITH THE EXCEPTION OF MR. LEVIN AND
3 MR. CONN.

4 YES.

5 MS. NAJERA: YES, YOUR HONOR. I ASKED THAT
6 THE COURT BE RECONVENED AT THIS TIME TO DEAL WITH
7 TWO ISSUES WHICH WE HAD JUST DISCUSSED PREVIOUSLY
8 AND I THOUGHT HAD BEEN RESOLVED, BUT APPARENTLY HAD
9 NOT. THE TWO ISSUES DEAL WITH DISCOVERY OF THE
10 REPORTS ON MR. MORTON AND DR. MC CARTHY.

11 WITH REGARDS, FIRST, TO MR. MORTON,
12 BECAUSE I THINK THAT'S AN EASIER ISSUE TO RESOLVE,

13 COUNSEL STATED ABOUT A HALF HOUR AGO, AND I HAVE A
14 COPY OF THE REPORT, WHEN I ASKED ABOUT GETTING A
15 REPORT FROM MR. MORTON SHE STATED THAT HE PROBABLY
16 WOULDN'T HIT THE STAND UNTIL THE 30TH. THE COURT
17 STILL STATED THEY WANTED TO KNOW WHEN THEY COULD GET
18 A RECORD FROM YOU. SHE SAID: "I WILL HAVE A REPORT
19 FOR THEM WITH RESPECT TO MR. MORTON ON THE 20TH."

20 THE COURT ASKS: "WELL, CAN YOU GET IT
21 BEFORE THANKSGIVING?"

22 AND MS. ABRAMSON REPLIED: " DON'T KNOW.
23 I HAVEN'T TALKED TO HIM IN SEVERAL DAYS BECAUSE I
24 HAVE BEEN BUSY WITH ALL THE DOCTORS."

25 THE IMPLICATION BEING THAT SHE NEEDED TO
26 TALK TO HIM TO HAVE A REPORT GENERATED.

27 ON REVIEWING THE REPORT OF DR. WECHT, M.D.,
28 THAT IS DATED NOVEMBER 13TH, 1995, I REVIEWED WHEN

41310

1 WE WENT BACK UPSTAIRS WHAT IT WAS HE HAD RELIED UPON
2 TO FORMULATE HIS CONCLUSIONS. UNDER NO. 7, THE
3 THINGS THAT HE RELIED ON WERE, FIRST, THE REPORT,
4 COPIES OF THE REPORTS FROM MR. C. MORTON, MR. --
5 DR. M. FACKLER, DR. R. MC CARTHY, AND
6 DR. R. LAWRENCE.

7 THIS LEADS ME TO BELIEVE THAT COUNSEL

8 WASN'T BEING COMPLETELY CANDID WITH THE COURT WHEN
9 STATING THEY COULDN'T HAVE THE REPORT AS EARLY AS
10 MONDAY, RIGHT AFTER DR. MC CARTHY TESTIFIED, BECAUSE
11 CLEARLY THERE IS A REPORT IN EXISTENCE AND THEY HAVE
12 ALREADY TURNED THIS OVER TO DR. WECHT.

13 THE SECOND ISSUE THAT CAUSES ME SOME
14 CONCERN AS WELL, YOUR HONOR, IS THAT WITH REGARDS TO
15 THE REPORT OF DR. FACKLER, I ASKED COUNSEL TO GIVE
16 ME A REPORT, AND I BELIEVE THE COURT ORDERED THAT
17 SHE RETURN -- PROVIDE TO THE PEOPLE AN UNREDACTED
18 REPORT. COUNSEL INFORMED ME THAT SHE DID NOT HAVE A
19 REPORT, AND THAT SHE DID NOT NEED TO HAVE A REPORT
20 AND STILL BE ABLE TO CALL THIS INDIVIDUAL TO THE
21 STAND, HER WORDS. SHE STATED THAT SHE HAD A LETTER
22 FROM DR. MARTIN FACKLER THAT SHE WOULD TURN OVER TO
23 US, BUT FIRST SHE WANTED TO REDACT IT.

24 APPARENTLY, THESE WERE SEVERE
25 REDACTIONS, SINCE THEY HAVE BEEN REDACTING THIS
26 LETTER FOR ABOUT 20 MINUTES. WE HAVE SOME CONCERNS,
27 ONCE AGAIN, THAT IT APPEARS FROM THE RECORD THAT THE
28 ASSERTIONS WEREN'T COMPLETELY CANDID, OR I DIDN'T

41311

1 COMPLETELY UNDERSTAND WHAT WAS BEING ASSERTED
2 EARLIER.

3 I FEEL THE ONLY APPROPRIATE WAY TO
4 RESOLVE THIS IS FOR THE COURT TO SEE IT, BOTH THE
5 REDACTED AND UNREDACTED, AND DETERMINE WHAT SHOULD
6 BE DISCLOSED TO THE PEOPLE.

7 I ALSO HAVE SOME CONCERNS ABOUT THIS
8 REPORT OF DR. MORTON THAT SHE IMPLIED TO THE COURT
9 DIDN'T EXIST AND VERY CLEARLY DOES.

10 THE COURT: OKAY. LET'S HEAR FIRST ABOUT
11 MR. MORTON AND HIS REPORT.

12 MS. ABRAMSON: WHAT I HAVE FROM BOTH
13 MR. MORTON AND DR. FACKLER, WERE NOTES THAT I ASKED
14 THEM TO WRITE TO ME SO THAT I COULD PREPARE TO
15 CROSS-EXAMINE MR. MC CARTHY, BOTH BEFORE AND AFTER
16 THE 801 HEARING, AND WHAT WAS PREPARED WERE NOTES
17 THAT THEY WROTE TO ME.

18 NOW, WITH RESPECT TO MR. MORTON, SINCE
19 HE'S NOT GOING TO TESTIFY FOR A WHILE, I WAS GOING
20 TO GIVE -- WHAT THE COURT SHOULD ALSO UNDERSTAND AND
21 I'M SURE IS OBVIOUS TO THE COURT -- THIS IS A VERY
22 COMPLICATED CRIME SCENE AND A VERY COMPLICATED SET
23 OF MEDICAL FINDINGS, AND WHAT WE HAVE IS A
24 CONSORTIUM OF FIVE PEOPLE WHO ARE CONSTANTLY TALKING
25 AND REVIEWING AND REVISING OPINIONS ABOUT THIS CRIME
26 SCENE.

27 SO I WAS GOING TO ASK MR. MORTON TO
28 PREPARE A FINAL REPORT, BECAUSE HE'S STILL DOING

1 TEST-FIRINGS. HE'S STILL DOING EXPERIMENTAION.
2 HE'S STILL TALKING TO THE OTHER WITNESSES; AND SINCE
3 HE WASN'T SCHEDULED TO TESTIFY THIS WEEK, I HAVEN'T
4 YET ASKED HIM TO PREPARE A FINAL REPORT. WHAT I
5 SENT TO DR. WECHT WERE THE NOTES THAT MR. MORTON HAD
6 SENT TO ME. THESE ARE INTERNAL DEFENSE NOTES.
7 THEY'RE NOT DISCOVERABLE JUST BECAUSE I SENT THEM TO
8 DR. WECHT. BUT HE HAS THEM, SO WHEN HE TESTIFIES,
9 IF THE PEOPLE WANT TO SEE THEM, HE HAS THEM. BUT I
10 WAS GOING TO HAVE MR. MORTON PREPARE A FINAL
11 REPORT.

12 NOW, WITH RESPECT TO DR. FACKLER, WHEN
13 WE WERE FIRST TALKING ABOUT A REPORT FROM
14 DR. MC CARTHY AND A REPORT FROM DR. WECHT, I DIDN'T
15 REALIZE HOW FULL OF STRATEGY TACTICS AND COMMENTARY
16 THE NOTES THAT I RECEIVED FROM DR. FACKLER WERE.

17 MOREOVER, THOSE NOTES WERE WRITTEN RIGHT
18 AFTER THE 801 HEARING AND HAVE BEEN SUBJECT TO
19 FURTHER REVISION, AT LEAST IN DR. FACKLER'S
20 THINKING, BASED ON MY LAST CONVERSATIONS WITH HIM.

21 SO WHAT I HAVE DONE IS I HAVE TAKEN
22 THOSE NOTES, WHICH ARE ADDRESSED IN A LETTER TO ME,
23 AND THE FIRST PART OF THEM ARE ENTITLED: "MEMO,
24 COMMENTS ON TRANSCRIPT." AND THE SECOND PART IS
25 ENTITLED "SUMMARY," ENCOMPASSING HIS REPORT,
26 INTERVIEW, AND TESTIMONY, MEANING DR. MC CARTHY.

27 THIS IS COMMENTARY ON DR. MC CARTHY. AND IN THAT
28 COMMENTARY IS CONTAINED DR. FACKLER'S CONCLUSIONS,

41313

1 AS I UNDERSTAND THEM TO BE AT THIS TIME, ON THE
2 WOUNDS THAT HE'S COMMENTING ON.

3 AND SO ALL I DID WAS I TOOK THAT LETTER,
4 I CUT OUT -- AND I HAVE IT FOR THE COURT TO SEE --
5 THINGS THAT I AM EITHER NOT GOING TO ASK HIM TO
6 TESTIFY ABOUT BECAUSE WE'VE ALREADY ESTABLISHED IT,
7 OR I HAVE OTHER WITNESSES WHO ARE GOING TO ESTABLISH
8 IT. I HAVE CUT OUT HIS COMMENTARY TO ME, AND I
9 REMOVED REFERENCE TO ONE FINDING THAT I KNOW HE HAS
10 SINCE CHANGED AND THAT IS NOT IN CONTROVERSY.

11 SO THAT'S ALL I'VE DONE. I JUST -- THE
12 PEOPLE ARE EXTREMELY IMPATIENT. THEY WANTED THE
13 REPORT IN FIVE MINUTES. WE TOLD THEM IT WOULD TAKE
14 15 MINUTES, AND WHEN IT WAS 20 MINUTES, MS. NAJERA
15 SAID WE'RE GOING TO COURT. THE JUDGE ISN'T GOING TO
16 LET HIM TESTIFY. SO HERE WE ARE. GOOD AFTERNOON.
17 I HAVE THE MATERIAL TO SHOW THE COURT.

18 THE COURT: AND DR. WECHT IS GOING TO BE
19 TESTIFYING WHEN?

20 MS. ABRAMSON: THE COURT SAID WE DID NOT HAVE
21 TO TURN OVER IMPEACHMENT EVIDENCE BEFORE

22 DR. MC CARTHY FINISHED TESTIFYING. AND THE NOTES --
23 IN THE FORM THAT THESE NOTES WERE WRITTEN THEY WERE
24 WRITTEN AS IMPEACHMENT NOTES, IF YOU WILL. I HAVE
25 TO TALK TO DR. WECHT. I HAVE A CONFERENCE CALL WITH
26 DR. WECHT AND TWO OTHER PATHOLOGISTS TONIGHT AT 6:00
27 TO FIND OUT IF HE FEELS COMFORTABLE COMING IN HERE
28 NEXT WEEK WITHOUT A GUARANTEE THAT HE'LL BE

41314

1 FINISHED. IF HE DOES NOT, I'M GOING TO CANCEL HIM
2 AND PUT HIM OVER TO NEXT WEEK IF HE'S AVAILABLE.

3 COULD YOU NOT TALK WHILE I'M TALKING.
4 THANK YOU.

5 THE COURT: WELL, WECHT IS GOING TO
6 DEFINITELY BE A WITNESS.

7 MS. ABRAMSON: HE IS DEFINITELY GOING TO BE A
8 WITNESS. HE HAS BEEN THE LAST ONE TO GET MATERIALS,
9 AND THAT'S BEEN THE PROBLEM. DR. FACKLER HAD THE
10 ONLY SET OF X RAYS, AND HE WAS IN TORONTO LAST WEEK.

11 THE COURT: I JUST WANTED TO FIND OUT IF
12 WECHT IS GOING TO BE A WITNESS; AND IF HE HAS
13 ALREADY CONSIDERED AND RELIED UPON THE NOTES THAT
14 YOU GAVE HIM OF FACKLER AND MORTON, THEN THOSE
15 MATERIALS ARE GOING TO BE TURNED OVER TO THE
16 PROSECUTION ANYWAY.

17 MS. ABRAMSON: WELL, MAYBE, MAYBE NOT. THE
18 ONLY REPORT THEY'VE RECEIVED SO FAR IS THE ONE OF
19 UNCONTROVERTED -- WHAT HE INDICATES IS UNCONTROVERTED
20 -- CONCLUSIONS ON HIS PART FOR THE PARTS THAT ARE
21 IMPEACHMENT, WHICH REPORT I DON'T HAVE YET. I DON'T
22 KNOW IF HE'S RELYING ON THEIR NOTES ANYWAY. THEY
23 WERE SUBMITTED TO HIM. AND I DON'T KNOW IF HE'S
24 GOING TO BE RELYING ON THEIR NOTES AS COMPARED TO
25 THE CONSULTATIONS HE'S BEEN HAVING WITH DR. BODEN
26 AND DR. WOLF OR NOT. THAT'S WHAT I'M SUPPOSED TO
27 FIND OUT TONIGHT. WE'RE HAVING A THREE-WAY
28 CONFERENCE CALL.

41315

1 I DON'T EVEN KNOW HIS FINAL CONCLUSIONS
2 ON THE CONTROVERSIAL WOUNDS. I WAS GOING TO TELL
3 HIM TO PREPARE A REPORT I WOULD HAVE BY SUNDAY, AND
4 I WOULD HAVE IT TO THE PROSECUTION FIRST THING
5 MONDAY MORNING. BUT I DON'T IMAGINE HIM GETTING ON
6 THE STAND BEFORE LATE TUESDAY, EARLY WEDNESDAY, IF
7 HE COMES IN THIS WEEK. IF HE TELLS ME TONIGHT HE
8 CAN'T RUN THE RISK OF COMING IN THIS WEEK, HE ISN'T
9 GOING TO TESTIFY UNTIL THE FOLLOWING WEEK. I'M
10 GOING TO GIVE THE PEOPLE THE FINDINGS I HAVE IN
11 WRITING. I CANNOT ASK THESE EXPERTS TO WRITE A

12 REPORT A DAY. THESE NOTES CONTAIN HIS MAJOR
13 FINDINGS AS I NOW UNDERSTAND THEM. AND I THINK IT'S
14 ALREADY OBVIOUS FROM WHAT I HAVE DONE IN
15 CROSS-EXAMINATION WITH DR. MC CARTHY, MENTIONING
16 DR. FACKLER BY NAME, WHAT SOME OF HIS OPINIONS ARE.
17 NONE OF THIS IS GOING TO BE A SURPRISE.

18 THE COURT: THAT'S WHY I SAID EARLIER THIS
19 AFTERNOON THAT I DIDN'T SEE WHY YOU COULDN'T TURN
20 OVER THE ENTIRETY OF HIS REPORT TO THE PROSECUTION.

21 MS. ABRAMSON: WELL, I'M NOT WITHHOLDING ANY
22 IMPEACHMENT. I'M WITHHOLDING CONFIDENTIAL STRATEGIC
23 MATERIAL WHICH THEY'RE NOT ENTITLED TO HAVE. LIKE
24 HIS TELLING ME TO DO THIS AND TO DO THAT AND THE
25 OTHER, WHICH HAS NOTHING TO DO WITH HIS MEDICAL
26 OPINIONS. I'VE PREPARED A REPORT THAT CONTAINS HIS
27 MEDICAL OPINIONS, AS I UNDERSTAND THEM RIGHT NOW,
28 AND I'M PREPARED TO TURN IT OVER TO THEM.

41316

1 THE COURT: AND THE REST OF THE REPORT THAT
2 YOU REDACTED ONLY HAS IN IT STRATEGY, TRIAL
3 STRATEGY, NOTHING TO DO WITH ANY OPINIONS HE HAS?

4 MS. ABRAMSON: NO. IT HAS TO DO WITH
5 STRATEGY, SOMETHING TO DO WITH AMMUNITION, WHICH IS
6 NO LONGER AN ISSUE BECAUSE THE WITNESS HAS

7 TESTIFIED, AND I'M NOT GOING TO ASK DR. FACKLER
8 ABOUT IT; AND IT HAS TO DO WITH ONE PRELIMINARY
9 MEDICAL OPINION THAT HE HAD THAT I BELIEVE HE HAS
10 CHANGED. IN FACT, HE'S TOLD ME HE'S CHANGED IT.

11 THE COURT: DON'T THE PEOPLE HAVE A RIGHT TO
12 KNOW THAT HE'S CHANGED HIS OPINION?

13 MS. ABRAMSON: I DON'T THINK SO, BECAUSE THIS
14 IS THE GAME THEY'RE PLAYING CONCERNING DR. GOLDEN.
15 THIS WAS A PRELIMINARY COMMENT TO ME TO PREPARE ME
16 TO CROSS-EXAMINE DR. MC CARTHY. THAT'S ALL IT WAS.
17 IT WAS NOT A FORMAL REPORT, AND THIS WITNESS HAS
18 BEEN WORKING ON THIS CASE AND CONSULTING ON THIS
19 CASE AND REVIEWING MATERIALS ON THIS CASE -- THIS WAS
20 WRITTEN BEFORE HE EVEN SAW THE C.D.'S, FOR EXAMPLE.
21 NOW HE HAS REVISED THINGS. THIS IS NOT HIS FINAL
22 REPORT. I DON'T THINK THEY HAVE A RIGHT TO HIS
23 TEMPORARY THINKING IF I'M NOT GOING TO OFFER IT AS
24 AN OPINION. PERIOD. I'M NOT GOING TO OFFER THIS
25 TEMPORARY THINKING AS AN OPINION. THEREFORE--

26 THE COURT: ARE YOU GOING TO OFFER THE FINAL
27 OPINION ON THE SAME SUBJECT?

28 MS. ABRAMSON: WILL I OFFER A FINAL OPINION

2 THE COURT: YES. IF IT'S THE SAME OR
3 DIFFERENT. IF THE MAN HAD A DIFFERENT OPINION ON
4 SOME EARLIER OCCASION AND HE PUT IT IN WRITING IN A
5 REPORT TO YOU, DON'T YOU THINK THE OPPOSITION HAS A
6 RIGHT TO KNOW THAT?

7 MS. ABRAMSON: IT'S IN THE NOTES TO ME BASED
8 ON A PRELIMINARY IDEA. HE'S SINCE GOT THE X RAYS
9 AND HAS A DIFFERENT OPINION. WHY SHOULD HE BE
10 IMPEACHED ABOUT SOMETHING HE THOUGHT ABOUT AND
11 DIDN'T HAVE A FINAL OPINION ABOUT? THAT'S WHAT A
12 GOOD SCIENTIST DOES; NOT MAKE UP HIS FINDINGS AND
13 REFUSE TO CHANGE, BUT ABSORB INFORMATION UNTIL HE
14 HAS A FINAL OPINION.

15 THE COURT: TRADITIONALLY THAT'S BEEN THE
16 SUBJECT OF OPINION, AS TO WHETHER PEOPLE'S OPINIONS
17 CHANGED OR NOT. MY CONCERN IS IF THIS MAN HAS A
18 CERTAIN FINAL OPINION THAT IS DIFFERENT THAN AN
19 EARLIER OPINION, THEN THE PEOPLE SHOULD HAVE A RIGHT
20 TO THAT.

21 MS. ABRAMSON: WHY? IT'S NOT AN OPINION HE'S
22 OFFERING IN COURT. IF HE DIDN'T HAVE AN OPINION
23 WITH A LEVEL OF SCIENTIFIC CERTAINTY TO OFFER IT,
24 WHY SHOULD THEY IMPEACH HIM ON HIS THINKING?

25 THE COURT: IF HE HAS A FINAL OPINION THAT'S
26 DIFFERENT THAN A PRELIMINARY OPINION THEY HAVE A
27 RIGHT TO IT.

28 MS. ABRAMSON: I DON'T BELIEVE THAT'S TRUE.

1 THE COURT: YOU HAVE BEEN EXPLORING THIS
2 WITNESS THROUGHOUT -- I DON'T WANT TO CHARACTERIZE
3 HIS OPINIONS OR TESTIMONY -- JUST IN GENERAL, THE
4 NATURE OF THE INQUIRY HAS BEEN: DID YOU HAVE THE
5 SAME OPINION, DIFFERENT OPINIONS, THINGS OF THAT
6 NATURE THROUGHOUT.

7 MS. ABRAMSON: BUT --

8 THE COURT: THAT'S WHAT'S HAPPENING THROUGH
9 DR. GOLDEN.

10 MS. ABRAMSON: I DON'T THINK YOU'RE ENTITLED
11 TO THE THOUGHT PROCESS OF ANY EXPERT WHILE HE'S
12 FORMULATING AN OPINION. WHEN HE HAS A FINAL OPINION
13 THAT HE'S PREPARED TO GIVE EVIDENCE ON, OR TO WRITE
14 A FORMAL REPORT ABOUT, THAT'S ONE THING. BUT THE
15 THOUGHT PROCESS, I DON'T BELIEVE THE PEOPLE ARE
16 ENTITLED TO. I'M NOT ENTITLED TO THE THOUGHT
17 PROCESS DURING THE PROCESS OF FORMULATING AN OPINION
18 FROM THEIR EXPERTS EITHER, ONLY THE FINAL OPINION.

19 THE COURT: WELL, YOU CERTAINLY, NUMBER ONE,
20 COULD ASK A WITNESS WHETHER YOU HAD THE SAME OPINION
21 OR A DIFFERENT OPINION ON SOME PRIOR OCCASION;
22 WHETHER YOU THOUGHT ABOUT IT IN A DIFFERENT LIGHT
23 BEFORE OR THE SAME LIGHT, IF THE OPINION WAS THE
24 SAME OR DIFFERENT. IT'S CLEARLY A PROPER QUESTION.

25 YOUR WITNESS HAS GONE FARTHER THAN THAT

26 AND PUT IT IN WRITING AND HAS GIVEN IT TO YOU.
27 THAT'S HOW I LOOK AT THAT. WITHOUT LOOKING AT THE
28 REPORT, I DON'T KNOW WHAT THE SUBJECT IS OR ANYTHING

41319

1 ELSE THAT WE'RE TALKING ABOUT.

2 AS FAR AS MR. MORTON IS CONCERNED, YOU
3 SAID THESE ARE NOTES HE PROVIDED TO YOU. YOU HAVE
4 YET TO SPEAK WITH HIM. I INDICATED THAT YOU SHOULD
5 ATTEMPT TO GET A REPORT FROM HIM BY THE 22ND.

6 MS. ABRAMSON: RIGHT.

7 THE COURT: AND THAT'S STILL THE SITUATION.
8 I DON'T SEE ANY NEED TO DEAL WITH IT EARLIER THAN
9 THAT. BUT THE NOTES THAT WERE GIVEN TO DR. WECHT
10 SHOULD BE AVAILABLE FOR THE COURT TO REVIEW.

11 MS. ABRAMSON: I DON'T KNOW THAT HIS REPORT
12 WILL BE ANY DIFFERENT. I JUST HAVEN'T TALKED TO HIM
13 TO SEE IF HE HAS ANY ADDITIONS OR CHANGES OR
14 ANYTHING ELSE.

15 THE COURT: ONCE THAT REPORT IS PREPARED,
16 BOTH THE NOTES OF HIS -- HIS NOTES THAT WERE GIVEN
17 TO WECHT SHOULD BE AVAILABLE TO THE COURT AS WELL.

18 MS. ABRAMSON: I HAVE THEM.

19 THE COURT: THERE'S NO REASON FOR ME TO LOOK
20 AT THEM TODAY BECAUSE --

21 MS. ABRAMSON: I'LL KEEP THEM. I'M NOT GOING

22 TO DESTROY THEM.

23 THE COURT: I DIDN'T SAY YOU WOULD. I JUST

24 WANT TO LOOK AT THEM.

25 AS FAR AS THE REDACTION OF FACKLER'S

26 REPORT, ANY IMPEACHING EVIDENCE, AS I SAID, IT'S

27 ALREADY BEEN THE SUBJECT OF EXTENSIVE CROSS-EXAMINATION

28 WITH DR. MC CARTHY. SO THERE'S NO REASON FOR IT NOT

41320

1 TO BE TURNED OVER.

2 MS. ABRAMSON: I DIDN'T CUT OUT ANY

3 IMPEACHING MATERIAL, YOUR HONOR.

4 THE COURT: AND AS FAR AS THE REST OF IT,

5 I'LL HAVE TO LOOK AT THE UNREDACTED VERSIONS AS

6 WELL. SO IF YOU WANT TO TURN OVER THE REDACTED

7 VERSIONS, I'LL LOOK AT THE UNREDACTED.

8 MS. ABRAMSON: I CAN JUST GIVE YOU MY COPY

9 AND YOU CAN LOOK AT WHAT I CROSSED OFF.

10 THE COURT: THAT'S FINE.

11 MS. ABRAMSON: I HAVE IT IN EXACTLY THAT

12 ORDER.

13 THE COURT: OKAY.

14 MS. NAJERA: FINE.

15 (COURT READING.)

16

17 THE COURT: OKAY. I'VE REVIEWED IT. I AGREE
18 THAT THERE'S SOME THINGS HERE THAT CAN PROPERLY BE
19 REDACTED AS TRIAL TACTICS OR STRATEGY, BUT OTHER
20 THINGS ARE OPINIONS OF THE WITNESS, OR PROPOSED
21 WITNESS, ON ISSUES THAT WILL EITHER BE ASKED OF HIM
22 OR ARE THE GENERAL SUBJECT OF HIS TESTIMONY.

23 MS. ABRAMSON: WELL, YOUR HONOR, I WOULD LIKE
24 TO GO IN CAMERA WITH THE COURT ABOUT SOME OF THE
25 PARAGRAPHS.

26 THE COURT: I COULD TELL YOU WHICH ONES I
27 THINK CAN STILL BE REDACTED. I DON'T KNOW IF YOU
28 HAVE IT --

41321

1 MS. ABRAMSON: I HAVE IT.

2 THE COURT: THE ONE STARTING -- I DON'T KNOW
3 IF IT'S 530 OR 539. THAT ONE CAN STILL BE
4 REDACTED. I DON'T SEE THAT IS SUBJECT MATTER THAT'S
5 BEING LITIGATED --

6 MS. ABRAMSON: RIGHT. THAT DIDN'T COME UP.

7 THE COURT: -- AT THIS STAGE ANYWAY.

8 THEN AT PARAGRAPH, STARTING AT 635, THE
9 PART THAT YOU REDACTED, STARTING WITH THE LAST WORD
10 OF THE SECOND LINE.

11 MS. ABRAMSON: UH-HUH.

12 THE COURT: THAT FULL SENTENCE CAN BE
13 REDACTED.

14 MS. ABRAMSON: I DON'T THINK THE NEXT
15 SENTENCE IS SOMETHING THAT IS THE MANNER IN WHICH
16 THAT WOULD BE TESTIFIED TO, AND THEY DO HAVE HIS
17 VERY EXTENSIVE C.V.

18 THE COURT: THAT'S THE BASIS OF HIS OPINION,
19 OR PART OF HIS OPINION. SO I THINK THAT SHOULD
20 REMAIN. THE PREVIOUS SENTENCE IS TRIAL TACTICS AND
21 SHOULD BE OR COULD BE REDACTED.

22 THE ONE STARTING WITH THE PRONOUN "I."

23 MS. ABRAMSON: I SEE. THEN 669, THE NEXT
24 FOLLOWING PAGE.

25 MS. ABRAMSON: THAT'S JUST REFERRED TO
26 TWICE. THAT'S THE ONLY REASON -- IT'S NOT EVEN IN
27 DISPUTE, AND I THINK IT'S VERY OBVIOUS.

28 THE COURT: WHETHER IT'S IN DISPUTE OR NOT,

41322

1 IT MIGHT BE SOMETHING THAT CAN BE BROUGHT OUT. THE
2 ONLY PORTION I THINK CAN BE REMOVED WOULD BE THE
3 PORTION THAT STARTS WITH "ALL."

4 MS. ABRAMSON: UH-HUH.

5 THE COURT: AND STOPS WITH "OUT," THAT

6 PHRASE.

7 MS. ABRAMSON: RIGHT.

8 THE COURT: WITH A COMMA.

9 THEN 730.

10 MS. ABRAMSON: THIS WAS BASED ON -- THIS
11 ISN'T SOMETHING I'D BRING OUT NOW BECAUSE OF THE
12 NATURE OF THE TESTIMONY THAT WE HAVE ACTUALLY HAD.
13 THAT'S ALL THAT IS. I DON'T THINK THERE'S ANYTHING
14 WRONG WITH IT. THAT'S ALL IT IS.

15 THE COURT: I THINK IT'S ON THE SAME SUBJECT
16 MATTER. AND IF IT'S CONFIRMATORY OR IMPEACHING OF
17 OTHER WITNESSES, I THINK IT'S STILL PART OF HIS
18 REPORT. I CAN'T SEE ANY JUSTIFICATION FOR REDACTING
19 IT.

20 733, I DON'T UNDERSTAND THE REASON FOR
21 YOUR REDACTION.

22 MS. ABRAMSON: THIS IS THE PARAGRAPH THAT
23 CONTAINED A TEMPORARY -- THIS IS WHY I'D LIKE TO GO
24 IN CAMERA AND EXPLAIN TO THE COURT -- TEMPORARY
25 OPINION THAT HE DOESN'T HAVE A FINAL OPINION ON
26 YET. WHEN HE DOES, I WILL LET THE PEOPLE KNOW WHAT
27 IT IS BEFORE HE TAKES THE WITNESS STAND.

28 THE COURT: I'LL HEAR YOU FURTHER ON THAT.

1 MS. ABRAMSON: ALL RIGHT.

2 THE COURT: I AGREE WITH YOUR REDACTION, THE
3 LINE UNDER THE LINE SUMMARY.

4 MS. ABRAMSON: YES.

5 THE COURT: THE THIRD PAGE, I ASSUME THIS IS
6 THE SAME THING THAT YOU'RE TALKING ABOUT PRECEDING.

7 MS. ABRAMSON: UH-HUH.

8 THE COURT: AND I AGREE WITH YOUR LAST
9 REDACTION ON THE BOTTOM OF THE FINAL PAGE.

10 MS. ABRAMSON: I HAVE TO SEE THAT AGAIN,
11 JUDGE.

12 THE COURT: ALL RIGHT.

13 MS. ABRAMSON: I HAVE TO SEE IT AGAIN.

14 THE COURT: IT SAYS, "YOU HAVE." ITEM NO. 5,
15 THE LAST LINE.

16 MS. ABRAMSON: YES.

17 THE COURT: I'D HAVE TO HEAR YOU ON THIS
18 OTHER.

19 MS. ABRAMSON: RIGHT.

20 THE COURT: THIS IS CLEARLY AN AREA THAT'S
21 GONE INTO WITH OTHER WITNESSES.

22 ALL RIGHT. SO LET'S HAVE THE PROSECUTOR
23 STEP OUT FOR A MOMENT AND WE'LL HEAR YOU ON THIS
24 ONE. I'VE GIVEN MY RULING ON THESE OTHERS.

25 (PAGES 41324 THROUGH 41329 WERE
26 HELD IN-CAMERA AND SEALED BY
27 ORDER OF THE COURT.)
28

1 VAN NUYS, CALIFORNIA; FRIDAY, NOVEMBER 17, 1995

2 1:50 P.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 (THE FOLLOWING PROCEEDINGS WERE HELD IN

9 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

10

11 THE COURT: OKAY. THE DEFENDANTS ARE IN COURT.

12 ALL THE LAWYERS ARE HERE. THE JURY IS NOT.

13 THE BAILIFF HAS INFORMED ME THAT ONE OF THE

14 JURORS IS SICK. I DON'T KNOW HOW MUCH YOU'VE BEEN TOLD

15 ABOUT IT.

16 MS. ABRAMSON: WE KNOW THE PARAMEDICS WERE

17 CALLED, YOUR HONOR.

18 THE COURT: YES. IT'S JUROR NO. 8.

19 MS. ABRAMSON: YES, WE KNOW.

20 THE COURT: WHO COMPLAINED THIS MORNING OF AN

21 EARACHE, I BELIEVE, AND A SINUS-TYPE INFECTION, AND

22 NEEDED A LITTLE TIME IN THE MORNING TO GET OVER WHAT SHE

23 WAS DESCRIBING AS A HEADACHE. SHE TOOK SOME MEDICATION

24 FOR THAT, AND AFTER LUNCH, WALKING BACK TO THE COURT

25 HOUSE SHE BECAME DIZZY AND COULDN'T COME OVER HERE, SO

26 THE BAILIFF INFORMED ME THAT THEY CALLED THE PARAMEDICS

27 TO SEE HER, AND APPARENTLY THE PARAMEDICS FEEL THAT SHE
28 NEEDS REST. THEY'RE NOT TAKING HER ANYWHERE, BUT THEY

-24248

1 ARE STATING THAT SHE NEEDS REST.

2 SHE DESCRIBED TO THE BAILIFF, DEPUTY WOLF,
3 THAT SHE HAS HAD A SINUS INFECTION -- AND I'M UNSURE NOW
4 AS TO WHICH WAS OF WHAT DURATION, A SINUS INFECTION FOR
5 ONE WEEK AND A VIRAL INFECTION IN THE LUNGS FOR TWO
6 WEEKS, AND THAT SHE'S BEEN TAKING AN ANTIBIOTIC THIS
7 WEEK, AND THAT'S BASICALLY ALL I CAN TELL YOU.

8 SO, IT DOESN'T APPEAR THAT SHE CAN CONTINUE
9 TODAY. AS TO WHETHER SHE WILL BE ABLE TO PARTICIPATE
10 NEXT WEEK, MONDAY, I DON'T KNOW, AND SHE DOESN'T REALLY
11 KNOW AT THIS POINT.

12 THAT'S WHERE WE STAND.

13 MS. ABRAMSON: OKAY. WHAT I MIGHT DO, YOUR
14 HONOR, IS BRING OUT JUST ONE OF MY OUT-OF-STATE
15 WITNESSES AND TRY TO AVAIL MYSELF OF SOME LOCAL TALENT
16 NEXT WEEK IN THE OFF CHANCE THAT THIS JUROR MIGHT CUT
17 OUR WEEK DOWN FROM THREE DAYS TO TWO.

18 THE COURT: WELL, IF SHE DOESN'T COME IN ON
19 MONDAY, I WILL PROCEED WITHOUT HER.

20 MS. ABRAMSON: EXCUSE ME?

21 THE COURT: IF SHE DOESN'T COME IN ON MONDAY, I
22 AM NOT GOING TO KEEP WAITING IF IT DOESN'T APPEAR THAT

23 SHE IS GOING TO BE AVAILABLE. IT WOULDN'T MAKE SENSE.

24 MS. ABRAMSON: WELL, WE'LL DEAL WITH SUCH AN

25 EVENTUALITY IF IT COMES UP, YOUR HONOR.

26 THE COURT: WELL, WE ARE TALKING ABOUT RIGHT NOW

27 AS TO WHAT TO DO RIGHT NOW.

28 MS. ABRAMSON: RIGHT NOW I THINK WE SHOULD

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1 RECESS.

2 THE COURT: THAT'S YOUR POSITION.

3 WHAT IS YOUR POSITION, MR. GESSLER?

4 MR. GESSLER: I AGREE, YOUR HONOR.

5 THE COURT: PEOPLE?

6 MR. CONN: YES, I AGREE.

7 THE COURT: ALL RIGHT.

8 WHAT IS YOUR WITNESS SITUATION?

9 MS. ABRAMSON: SAD.

10 THE COURT: YOU ARE UNABLE TO COME BACK ON

11 MONDAY, NO DOUBT?

12 THE WITNESS: I WAS SUPPOSED TO BE ON ANOTHER

13 MATTER ON MONDAY, BUT I HAVEN'T STARTED THERE AND I AM

14 IN THE PROCESS HERE.

15 THE COURT: OKAY. HOW LONG DO YOU THINK YOU'RE

16 GOING TO BE ON YOUR REDIRECT?

17 MR. CONN: I ONLY HAVE ANOTHER FIVE MINUTES.

18 THE COURT: RECROSS?

19 MS. ABRAMSON: TEN MINUTES.
20 MR. GESSLER: AND PROBABLY FIVE BY ME.
21 THE COURT: MOST UNFORTUNATE THEN THAT WE
22 COULDN'T FINISH THAT PART OF IT.
23 MS. ABRAMSON: MOST UNFORTUNATE.
24 THE COURT: SHE HAS HAD AILMENTS PERIODICALLY
25 THROUGHOUT, SO THIS IS NOTHING THAT COMES AS A SURPRISE.
26 SHE ALSO, AS I RECALL, SUFFERS FROM ASTHMA.
27 MS. ABRAMSON: RIGHT.
28 THE COURT: WE HAD TO TAKE A BREAK ONCE WITH

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1 THAT.
2 SO, WHAT WE WILL DO THEN IS SEE WHAT HER
3 SITUATION IS ON MONDAY, AND -- BUT AS I SAID, IF SHE IS
4 UNAVAILABLE ON MONDAY AND THERE IS NO CLEAR IDEA OF HER
5 AVAILABILITY, WE CAN'T LOSE TOO MANY DAYS BECAUSE OF HER
6 SITUATION.
7 SO, SINCE SHE IS NOT HERE AT THE MOMENT,
8 SHE IS OVER IN THE JUROR'S LOUNGE, SHE WILL BE TOLD OF
9 HER BEING EXCUSED AND COMING BACK ON MONDAY, AND THERE
10 MIGHT BE SOME NEED TO ARRANGE FOR TRANSPORTATION FOR
11 HER, AND WE WILL GET THE OTHER JURORS OUT AND TELL THEM
12 TO COME BACK ON MONDAY AS WELL.
13 THE BAILIFF: DO YOU WANT THEM OUT NOW JUDGE?
14 THE COURT: YES.

15 (THE JURY ENTERS THE COURTROOM AND THE
16 FOLLOWING PROCEEDINGS WERE HELD:)

17

18 THE COURT: OKAY. JURORS ARE HERE.

19 JUROR NO. 8 HAS BEEN TAKEN ILL, SO SHE
20 WON'T BE ABLE TO PARTICIPATE TODAY, AND WE'LL SEE HOW
21 HER CONDITION IS ON MONDAY.

22 WE'LL HAVE TO RECESS NOW AND WAIT AND SEE
23 WHAT HER SITUATION IS ON MONDAY. SHE IS OVER IN THE
24 JUROR'S LOUNGE, AND THE SHERIFFS WILL ARRANGE TO GET HER
25 HOME.

26 BUT WE WILL EXCUSE YOU THEN FOR THE BALANCE
27 OF TODAY AND ASK THAT YOU RETURN ON MONDAY AS WELL AT
28 8:30.

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1 IT'S IMPORTANT THAT YOU NOT TALK ABOUT THIS
2 CASE WITH ANYONE, THAT YOU NOT FORM ANY FINAL OPINIONS
3 ABOUT IT, AND NOT BE EXPOSED TO ANYTHING ABOUT THE CASE
4 IN ANY FORM OUTSIDE THE COURTROOM, AND WE WILL ASK THAT
5 YOU RETURN ON MONDAY AT 8:30.

6 LET ME MAKE THE SAME INQUIRY I HAVE DONE IN
7 THE PAST HERE.

8 ANYONE BEEN EXPOSED TO ANYTHING ABOUT THE
9 CASE OUTSIDE THE COURTROOM SINCE WE LAST SPOKE?

10 OKAY. WE HAVE ONE JUROR, THAT'S ALTERNATE

11 NO. 4.

12 WHAT WAS THAT, IN WHAT SITUATION?

13 ALTERNATE JUROR NO. 4: IT WAS THE RADIO. I

14 HEARD --

15 THE COURT: OKAY. DON'T TELL ME WHAT YOU HEARD.

16 OKAY. ANYONE ELSE? OKAY. JUROR NO. 1.

17 ANYBODY ELSE? OKAY. WE WILL TALK TO YOU

18 TWO FOLKS, AND THEN WE WILL LET YOU ALL GO AS SOON AS WE

19 FINISH TALKING TO YOU, AND WE'LL SEE YOU BACK HERE ON

20 MONDAY.

21 JUROR NO. 1, YOU CAN STAY WHERE YOU ARE AND

22 WE WILL TALK TO YOU FIRST.

23 (JURY EXITS THE COURTROOM AND THE

24 FOLLOWING PROCEEDINGS WERE HELD:)

25

26 THE COURT: OKAY. JUROR NO. 1.

27 JUROR NO. 1: "PROSECUTION INTENDS TO REST IN THE

28 MENENDEZ TRIAL."

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1 THE COURT: OKAY. AND YOU HEARD THAT WHERE?

2 JUROR NO. 1: T.V., I THINK.

3 THE COURT: AND --

4 JUROR NO. 1: YEAH.

5 THE COURT: AND DID YOU SEE ANYTHING OR JUST HEAR

6 THAT?

7 JUROR NO. 1: JUST HEARD THAT.

8 THE COURT: OKAY. AND NO COMMENTARY OTHER THAN
9 THOSE WORDS?

10 JUROR NO. 1: NO. NO. I GOT TO IT BEFORE
11 THEN.

12 THE COURT: OKAY. AND THEY WERE JUST TELLING YOU
13 SOMETHING YOU PRETTY MUCH KNEW ANYWAY?

14 JUROR NO. 1: I PRETTY WELL HAD IT FIGURED OUT
15 ANYWAY.

16 THE COURT: WILL THAT INFLUENCE YOU AT ALL IN
17 THIS CASE?

18 JUROR NO. 1: I DON'T THINK SO.

19 THE COURT: THANK YOU.

20 THEN IF WE COULD GET ALTERNATE NO. 5 OUT
21 HERE. ALTERNATE NO. 5.

22 (JUROR NO. 1 EXITS THE COURTROOM

23 AND ALTERNATE JUROR NO. 4.

24 ENTERS THE COURTROOM)

25

26 THE COURT: HI.

27 ALTERNATE JUROR NO. 4: I'M ALTERNATE 4, YOUR
28 HONOR.

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1 THE COURT: I'M SORRY. WE HAVE THE NUMBERS ALL

2 MIXED UP, I DO ANYWAY, BECAUSE WE EXCUSED ONE PERSON.

3 YES.

4 ALTERNATE JUROR NO. 4: I JUST HEARD THEM MENTION
5 ROGER'S NAME ON THE RADIO, AND AT THAT POINT I JUST
6 TURNED THE RADIO OFF IS ALL.

7 THE COURT: OKAY. YOU REFER TO HIM AS ROGER?

8 ALTERNATE JUROR NO. 4: I'M SORRY. I'M NOT EVEN
9 SURE I KNOW HIS NAME. DR. MC CARTHY.

10 THE COURT: AND SO WHAT DID YOU HEAR?

11 ALTERNATE JUROR NO. 4: I JUST HEARD THEM SAY
12 SOMETHING ABOUT HIS NAME, SO I ASSUMED IT WAS GOING TO
13 BE SOMETHING ABOUT THE CASE, SO AT THAT POINT I
14 IMMEDIATELY TURNED OFF THE RADIO.

15 THE COURT: SO, YOU JUST HEARD THE NAME AND
16 NOTHING ELSE?

17 ALTERNATE JUROR NO. 4: THAT WAS IT.

18 THE COURT: FIRST AND LAST NAME?

19 ALTERNATE JUROR NO. 4: WELL, ACTUALLY, THEY SAID
20 HIS FULL NAME, SO WHATEVER HIS FULL NAME IS,
21 "DR. X MC CARTHY." ROGER, I THINK IT IS.

22 THE COURT: WILL THAT INFLUENCE YOU AT ALL IN
23 THIS CASE?

24 ALTERNATE JUROR NO. 4: NO, IT WILL NOT.

25 THE COURT: THANKS.

26 WERE YOU THE ONE WHO HAS PLANS -- AN AIR
27 FARE SITUATION? DID THE BAILIFF TALK TO YOU AT ALL
28 ABOUT THAT, AS TO WHETHER YOU COULD CHANGE IT?

1 ALTERNATE JUROR NO. 4: I TRIED TO CONFIRM THAT
2 DURING LUNCH, AND THERE IS NO WAY I CAN CHANGE THE
3 FLIGHTS. THERE WAS NO FLIGHTS AVAILABLE. THERE WAS A
4 FIRST CLASS AT THE TIME I MADE THE RESERVATION, BUT THAT
5 NO LONGER IS AVAILABLE.

6 THE COURT: THIS IS A FAMILY SITUATION WHERE YOU
7 ARE GOING?

8 ALTERNATE JUROR NO. 4: YES. MY SISTER-IN-LAW
9 HAS JUST HAD A BRAND-NEW BABY, AND WE WOULD LIKE TO GO
10 UP AND SEE HER, YOUR HONOR, SO WE MADE THE FLIGHT AS
11 LATE AS WE COULD FOR THAT DAY.

12 THE COURT: AND THAT'S THIS-COMING WEDNESDAY AT
13 3:30. YOU HAVE TO GET OUT OF HERE AT 3:30?

14 ALTERNATE JUROR NO. 4: THERE MIGHT HAVE BEEN A
15 FLIGHT ON THANKSGIVING DAY, BUT I DIDN'T WANT TO PUT HER
16 FAMILY THROUGH THAT, IF THAT'S OKAY WITH THE COURT.

17 THE COURT: OKAY. 3:30 ON WEDNESDAY, THANK YOU.

18 (ALTERNATE JUROR NO. 4
19 EXITS THE COURTROOM)

20

21 THE COURT: OKAY. ALL RIGHT. WE'LL WAIT FOR THE
22 JURORS TO LEAVE.

23 (BRIEF PAUSE)

24

25 THE COURT: OKAY. THE JURORS HAVE LEFT. YOU CAN
26 LEAVE THE WITNESS STAND, IF YOU LIKE.

27 THE WITNESS: THANK YOU, SIR.

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1 SCHEDULING I KNOW FOR OTHER JURORS WHO HAVE MADE
2 REQUESTS. I DON'T KNOW IF I HAVE DONE THIS. I WAS
3 WAITING TO SEE IF I WOULD GET ANYTHING MORE FROM OTHER
4 JURORS. I WILL GIVE THE JURY A LIST ALSO ON MONDAY.

5 MS. ABRAMSON: MAY I HAVE A MOMENT, YOUR HONOR?

6 THE COURT: SURE.

7 AND FOR THE RECORD, DR. MC CARTHY, YOU'RE
8 ORDERED TO RETURN MONDAY AT 8:30.

9 THE WITNESS: YES, SIR.

10 THE COURT: LET'S SEE. NOVEMBER THE 22ND, AS WE
11 HEARD, WE HAD A JUROR WHO HAS FLIGHT RESERVATIONS AND
12 HAS TO LEAVE HERE AT 3:15. THAT'S THIS-COMING
13 WEDNESDAY.

14 DECEMBER THE 1ST, THAT'S THE DATE THAT
15 MS. ABRAMSON WANTED TO LEAVE AT 2:30.

16 MS. ABRAMSON: NO. NO. I NEEDED TO BE DONE AT
17 NOON.

18 THE COURT: NOON? I THOUGHT YOU SAID 2:30. I
19 WROTE DOWN 2:30. WE ALSO HAVE A JUROR WHO HAS TO LEAVE
20 AT 3:30 ON THAT DATE.

21 MS. ABRAMSON: I HAVE A 1:05 FLIGHT TO PORTLAND
22 THAT DAY.

23 THE COURT: OKAY. AND DECEMBER THE 7TH WE HAVE A

24 JUROR WHO HAS TO LEAVE AT -- THE JUROR ALSO AN
25 APPOINTMENT AT 3:30, AND THE APPOINTMENT IS IN WOODLAND
26 HILLS, SO I GUESS NO LATER THAN A QUARTER TO 3:00 OR SO.
27 MS. TOWERY: THAT'S DECEMBER THE 7TH?
28 MS. ABRAMSON: YES, PEARL HARBOR DAY.

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1 THE COURT: THEN ON DECEMBER THE 19TH WE HAVE A
2 JUROR WHO HAS TO LEAVE AT 1:30. HOWEVER, THAT'S JUROR
3 NO. 8. SO, DEPENDING ON HER STATUS, WE WILL KNOW MORE
4 AS TO WHETHER OR NOT THAT STANDS. THAT'S DECEMBER THE
5 19TH SHE HAS TO LEAVE AT 1:30 FOR A MEDICAL APPOINTMENT
6 INVOLVING HER CHILD, WHO IS GOING TO HAVE SURGERY.
7 THEN WE HAVE ON DECEMBER THE 22ND, AGAIN
8 JUROR NO. 8 HAS TO BE GONE AT NOON. THAT'S THE DAY HER
9 SON'S SURGERY IS CURRENTLY SCHEDULED.
10 MS. TOWERY: I HAVE THAT AS A FULL DAY, YOUR
11 HONOR, FOR SOME REASON FOR JUROR SURGERY. IT'S JUST A
12 HALF DAY?
13 THE COURT: THAT'S WHAT I HAVE.
14 MS. TOWERY: I THOUGHT YOU SAID EARLIER --
15 THE COURT: WHERE DID YOU GET THAT INFORMATION?
16 MS. TOWERY: I GOT IT FROM YOU, BUT I PROBABLY
17 WROTE IT DOWN WRONG.
18 MR. GESSLER: I RECALL THE SAME THING.
19 THE COURT: LET ME GET THE NOTE HERE.

20 THEN ANOTHER JUROR HAS TO LEAVE, ASSUMING
21 1311 IS STILL ON THE JURY BY THEN. ANOTHER JUROR HAS TO
22 LEAVE ON DECEMBER 22ND AT 12:30.

23 MS. ABRAMSON: SO EITHER WAY IT'S A HALF DAY.

24 THE COURT: SHE HAS SURGERY ALSO. THAT JUROR HAS
25 SURGERY RESCHEDULED THAT DAY.

26 WELL, MAYBE YOU'RE RIGHT. I AM SORRY.

27 1311 NEEDS DECEMBER 22ND OFF BECAUSE OF SURGERY,
28 RESCHEDULED. OKAY. I GUESS I DID GIVE YOU THAT. AND I

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1 JUST WROTE IT DOWN WRONG.

2 SO SHE HAS THE WHOLE DAY OFF, AND ANOTHER
3 JUROR NEEDS HALF A DAY OFF.

4 MS. ABRAMSON: SO THAT SOUNDS REASONABLE THAT WE
5 WILL BE OFF THAT DAY.

6 THE COURT: WELL, AT LEAST HALF DAY. THERE IS
7 ANOTHER JUROR WHO HAS, I ASSUME, OUTPATIENT SURGERY
8 SCHEDULED THAT DAY AS WELL FOR THE AFTERNOON, AND THAT
9 IS ALL I KNOW RIGHT NOW.

10 MS. ABRAMSON: JUDGE, DO YOU THINK WE'LL STILL BE
11 IN TRIAL THE WEEK OF JANUARY 22ND?

12 THE COURT: YOU TELL ME, I DON'T KNOW. HOW DO I
13 KNOW?

14 MS. ABRAMSON: I DON'T KNOW EITHER.

15 THE COURT: I'M NOT THE ONE CALLING WITNESSES.

16 MS. ABRAMSON: I WILL WRITE OUT TO THE COURT THAT
17 I NEED TO BE OUT OF TOWN ONE DAY THAT WEEK. I MEAN, IF
18 WE'RE DONE, I WOULD BE OUT OF TOWN THE WHOLE WEEK, BUT
19 IF WE'RE STILL IN SESSION I NEED TO BE OUT OF TOWN ONE
20 DAY THAT WEEK, AND HOPEFULLY IT WON'T BE THE WEEK OF MY
21 FINAL ARGUMENT OR IT WILL BE VERY TRICKY, BUT I'LL PUT
22 IT IN A LETTER.

23 THE COURT: WHAT YOU CAN DO IS, SINCE THE PEOPLE
24 ARE ABOUT TO REST, IS THE DEFENSE CAN GIVE ME A REVISED
25 WITNESS LIST AND ORDER OF CALL HERE AS TO WHAT YOU'VE
26 TOLD ME SO FAR WHAT YOU INTEND, AND I GUESS YOU'RE GOING
27 TO MODIFY IT A LITTLE BIT BECAUSE OF THE UNCERTAINTY OF
28 NEXT WEEK.

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1 MS. ABRAMSON: I AM GOING TO TRY TO DO THAT SO I
2 DON'T HAVE TWO OUT-OF-TOWN WITNESSES.

3 THE COURT: BUT STILL GIVE ME AN IDEA OF WHO YOU
4 INTEND TO CALL AFTER THAT, THOSE WITNESSES, AND THE
5 ORDER IN WHICH YOU INTEND TO CALL THEM, AND THEN MAYBE I
6 COULD GIVE YOU A LITTLE BETTER IDEA AS TO A LENGTH OF
7 THE TRIAL, AS WELL AS PROSECUTION AND REBUTTAL WHEN YOU
8 GIVE ME WHO YOU'RE CALLING.

9 MS. ABRAMSON: WELL, I CAN GIVE YOU SOME -- MY
10 END OF IT. THE FOLLOWING PEOPLE ARE DUE TO BE WITNESSES
11 OVER THE NEXT COUPLE OF WEEKS: DR. FACKLER, DR. WECHT,

12 MR. VAN HORN, MR. LINHART, MR. CATALANI. THOSE ARE ALL
13 FROM THE SHERIFF'S DEPARTMENT.

14 WE ALSO INTEND TO CALL MS. LORD, AND I
15 THINK WE SHOULD CALL --

16 THE COURT: WHO IS MISS LORD?

17 MS. ABRAMSON: VIRGINIA LORD IS ONE OF THE
18 NEIGHBORS WHO HEARD POW-POW-POW-POW, AND THAT'S A VERY
19 BRIEF WITNESS.

20 THERE IS ANOTHER NEIGHBOR WITNESS. I HAVE
21 JUST BEEN REVIEWING THEIR TESTIMONY. MR. ZLOTOLOW ALSO
22 HEARD POW-POW-POW-POW, AND WE MAY CALL HIM. BUT THESE
23 ARE VERY BRIEF WITNESSES.

24 THEN WE INTEND TO CALL MR. ANDERSON AND
25 MISS GASKILL FROM THE BOAT, AND MARTA CANO. AND THEN
26 RIGHT NOW IT'S OUR PLAN TO CALL ERIK MENENDEZ.

27 THE COURT: OKAY. PRETTY MUCH THIS IS THE ORDER
28 YOU'RE TALKING ABOUT.

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1 MS. ABRAMSON: YEAH. I THINK IT'S DICTATED BY
2 THE COURT'S PREVIOUS RULING, SO --

3 THE COURT: OKAY. IS THERE GOING TO BE ANY
4 FILL-IN FROM THE OTHER DEFENDANT DURING THIS TIME, OR IS
5 THIS TO BE TO BE JOINT?

6 MR. GESSLER: THIS IS MOSTLY JOINT WITNESSES,
7 YOUR HONOR.

8 MS. TOWERY: RIGHT.

9 MS. ABRAMSON: JOINT WITNESSES UNTIL WE CALL ERIK
10 MENENDEZ, AND THAT'S WHEN -- AND THEN AFTER WE CALL HIM
11 AND CALL DR. WILSON, IT WILL BE MAINLY ERIK MENENDEZ'
12 DEFENSE WITNESSES. BUT THERE MAY BE SOME SPILL-OVER,
13 DEPENDING ON THE AVAILABILITY OF OUT-OF-STATE PEOPLE.

14 THE COURT: OKAY.

15 MS. ABRAMSON: AND I SUPPOSE, DEPENDING ON HOW
16 THE DEFENDANT AND DR. WILSON ARE EXAMINED, WE WILL HAVE
17 A BETTER IDEA OF HOW MANY WITNESSES WE ARE ACTUALLY
18 CALLING IN OUR CASE IN CHIEF.

19 BUT I THINK THE COURT HAS AN IDEA OF WHO
20 THE SOURCE WITNESSES ARE THAT THE COURT'S ALLOWING US TO
21 CALL IN OUR CASE-IN-CHIEF.

22 THE COURT: WHAT ABOUT LYLE MENENDEZ?

23 MS. ABRAMSON: HE'S GOING TO GO AFTER WE PUT ON
24 ALL OF OUR WITNESSES. I THINK WE HAVE MORE WITNESSES
25 THAN THEY DO.

26 THE COURT: SO YOU INTEND TO GO AFTER, RIGHT?

27 MR. GESSLER: YEAH, WE WILL BE AFTER.

28 THE COURT: ANY IDEA OF WHO YOUR WITNESSES WILL

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1 BE AT THIS POINT?

2 MR. GESSLER: NOT AT THIS POINT, YOUR HONOR,
3 UNTIL WE SEE WHAT'S HAPPENED TO THAT POINT.

4 THE COURT: OKAY. AND ANY SURREBUTTAL WITNESSES
5 AT THAT POINT THAT THE PEOPLE KNOW YOU'RE GOING TO CALL,
6 OR HAVE GOOD REASON TO BELIEVE THAT YOU'RE GOING TO CALL
7 BASED UPON -- I AM NOT ASKING YOU TO DISCLOSE THINGS.

8 MR. CONN: WE ARE GOING TO ASK THAT THE COURT
9 ORDER THAT ERIK MENENDEZ BE EXAMINED BY PARK DEITZ SO
10 THAT HE CAN TESTIFY IN REGARD TO THAT.

11 THE COURT: BUT OTHER THAN THAT?

12 MR. CONN: NO. THAT'S THE ONLY ONE WE'RE
13 PLANNING FOR SURE AT THIS TIME.

14 MS. NAJERA: EXCUSE ME, YOUR HONOR.

15 THE COURT: YES.

16 MS. NAJERA: AT THE BEGINNING OF THE PEOPLE'S
17 CASE THE COURT ORDERED THAT THE PEOPLE GIVE THE DEFENSE
18 AND THE COURT A COMPLETE LIST, AS MOST ACCURATE AND
19 COMPLETE AS WE COULD MAKE IT, OF EVERY WEEK AND WHAT
20 WITNESSES WOULD BE CALLED FOR THAT WEEK.

21 THE COURT: RIGHT.

22 MS. NAJERA: WE WOULD LIKE TO REQUEST THAT THE
23 COURT HAVE THE DEFENSE PROVIDE US WITH THAT BY MONDAY AS
24 WELL.

25 THE COURT: WELL, THIS IS JUST A --

26 MS. ABRAMSON: WE'RE WORKING ON IT.

27 THE COURT: AN ORAL REPRESENTATION. I EXPECT
28 THAT THE DEFENSE WILL DO THAT; THAT THEY ARE GOING TO

1 PROVIDE THE COURT WITH A LIST OF WITNESSES AND THE TIME
2 ESTIMATES THAT YOU REALISTICALLY EXPECT, AS BEST YOU
3 CAN.

4 MS. NAJERA: YOUR HONOR, MY ONLY CONCERN IS THEY
5 DID THAT, BUT WHAT THEY DID IS BASICALLY GIVE A LONG
6 LIST ALPHABETIZED WITH NUMBERS NEXT TO THEM OF 30
7 MINUTES, AN HOUR AND A HALF. WHAT WE WANT IS A LIST
8 COMPARABLE TO WHAT WE GAVE THE DEFENSE.

9 THE COURT: NOW THAT WE'RE GETTING CLOSE TO THE
10 SCHEDULING OF DEFENSE WITNESSES, I WOULD EXPECT THAT
11 THEY PUT THEM IN A TIME FRAME AS FAR AS WHEN YOU -- THE
12 ORDER IN WHICH YOU EXPECT TO CALL THEM.

13 MS. ABRAMSON: ONCE WE GET PAST -- THE IMPEDIMENT
14 HAS BEEN GETTING PAST ALL THESE PHYSICAL EVIDENCE
15 EXPERTS.

16 MS. TOWERY: WE'RE WORKING ON A LIST THAT HAS AN
17 ORDER. BUT AGAIN, WE CERTAINLY CAN'T GIVE WEEKS OR
18 DATES UNTIL THE PEOPLE'S CASE IS OVER. BUT HOPEFULLY
19 WE'LL BE ABLE TO GIVE THEM SOMETHING, AT LEAST A ROUGH
20 IDEA OF WHAT WITNESSES AND WHAT ORDER NEXT WEEK.

21 THE COURT: OKAY. AND AS I HEAR YOU -- OR I
22 DON'T HEAR YOU, I ASSUME YOU HAVEN'T MADE UP YOUR MIND
23 AS TO WHETHER YOUR CLIENT IS GOING TO TESTIFY?

24 MR. GESSLER: NOT YET.

25 THE COURT: ALL RIGHT.

26 MS. NAJERA: YOUR HONOR, ANOTHER PROBLEM THAT
27 RAISES AN ISSUE NOW IS WE EXPECT WE WILL BE THROUGH WITH
28 DR. MC CARTHY ON MONDAY. COUNSEL TELLS ME THEY WANT TO

1 CALL DR. FACKLER ON MONDAY. IF THEY DON'T GIVE US THE
2 REPORT OF DR. FACKLER UNTIL MONDAY, WE CAN'T EFFECTIVELY
3 CROSS-EXAMINE HIM ON MONDAY.

4 THE COURT: YES. THIS WAS A SITUATION WHERE YOU
5 WERE GOING TO GIVE THEM A REDACTED REPORT, OR ONE THAT
6 DEALT WITH THINGS THAT WEREN'T IMPEACHING, AND --

7 MS. ABRAMSON: NO, THAT WAS DR. WECHT, AND THEY
8 ALREADY HAVE THAT. DR. FACKLER'S REPORT IS ALL
9 IMPEACHING.

10 THE COURT: BUT NOW YOU'VE DONE YOUR CROSS, SO
11 REALLY, YOU SHOULD GIVE IT TO THEM SO WE DON'T HAVE A
12 PROBLEM OF DELAY ON MONDAY.

13 MS. ABRAMSON: WOULD YOU WATCH SOMETHING, JUDGE,
14 FOR A MOMENT.

15 CAROL, DID I TELL YOU BEFORE THAT I WOULD
16 GIVE YOU THE REPORT TODAY?

17 MS. NAJERA: THE PROBLEM WITH THAT, YOUR HONOR,
18 IS THEY WANTED TO GIVE IT TO US WITH THE CAVEAT WE
19 COULDN'T DISCUSS IT WITH OUR EXPERTS. OBVIOUSLY WE NEED
20 TO DISCUSS IT WITH OUR EXPERTS TO BE PREPARED TO EXAMINE
21 DR. FACKLER.

22 THE COURT: THE PROBLEM IS THEY CAN ALWAYS CALL
23 DR. MC CARTHY BACK ANYWAY. SO THE RECORD IS CLEAR YOU
24 HAVE TURNED IT OVER TO THEM.

25 MS. ABRAMSON: I TOLD THEM I WOULD GIVE IT TO

26 THEM TODAY. I TRUST THEM WITH IT.

27 MS. NAJERA: WELL, THE PROBLEM IS WE COULDN'T
28 DISCUSS IT WITH OUR EXPERTS AND DR. MC CARTHY.

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1 MS. ABRAMSON: NO, JUST DR. MC CARTHY. I DON'T
2 CARE WHO ELSE YOU WANT TO DISCUSS IT WITH.

3 MS. NAJERA: I ASSUME WE'RE GETTING IT WITH NO
4 PROVISIOS (SIC).

5 MS. TOWERY: PROVISOS.

6 MS. ABRAMSON: PROVISOS.

7 MS. NAJERA: PROVISOS.

8 THE COURT: WELL, DR. MC CARTHY IS ALMOST
9 THROUGH, AND WHATEVER IS IN THAT REPORT THAT IS
10 IMPEACHING THAT HE HASN'T ALREADY BEEN ASKED WOULD
11 CERTAINLY BE DISCLOSABLE ON RECROSS BY THE DEFENSE IF
12 THE PEOPLE WENT INTO SOMETHING LIKE THAT, SO I DON'T SEE
13 ANY REASON TO RESTRICT THE PROSECUTION FROM TALKING TO
14 HIM ABOUT IT.

15 ANYTHING ELSE THAT WE CAN ACCOMPLISH HERE
16 THIS AFTERNOON, DEALING WITH ANYTHING?

17 MS. ABRAMSON: WE COULD ACCOMPLISH A LOT, YOUR
18 HONOR, IF WE COULD LEAVE.

19 THE COURT: NO. THAT'S NOT WHAT I HAD IN MIND.

20 HOW ARE WE DOING WITH THAT TRANSCRIPT?

21 MS. TOWERY: I HAVE COMPLETED MY REVIEW OF ALL

22 THREE VERSIONS. I HAVEN'T HAD A CHANCE TO TALK TO MY
23 LEAD COUNSEL OR MY LEAD CO-COUNSEL ABOUT IT, SO I THINK
24 THEY NEED TO LOOK AT IT. I THINK IT'S SOMETHING THAT WE
25 ALSO NEED TO DISCUSS WITH THE PROSECUTORS AND PERHAPS
26 LISTEN TO THE DISPUTED PORTIONS, BECAUSE AS IT TURNS
27 OUT, THERE ARE NOT TOO MANY IMPORTANT PARTS THAT ARE IN
28 DISPUTE WITH RESPECT TO THE DEFENSE VERSION OF THE

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1 TRANSCRIPT AT THE LAST TRIAL AND THE PROSECUTION'S NEW
2 VERSION.

3 SO, I THINK WE MIGHT BE ABLE TO WORK IT OUT
4 JUST BY LISTENING TO THE TAPE, YOUR HONOR. I KNOW THAT
5 THE COURT WANTS TO DEAL WITH IT.

6 THE COURT: THAT WOULD BE PERFECT.

7 MS. TOWERY: IF WE DO IT NOW, THE COURT IS GOING
8 TO END UP LISTENING TO THE TAPE, AND THAT DOESN'T SEEM
9 USEFUL.

10 THE COURT: THAT'S GREAT IF YOU CAN WORK IT OUT.

11 MS. NAJERA: SOMETHING ELSE, YOUR HONOR.

12 THE COURT: YES.

13 MS. NAJERA: WE HAVE DR. FACKLER OUT OF THE WAY,
14 BUT DR. WECHT -- COUNSEL NOW TELLS ME THAT THEY DON'T
15 HAVE A REPORT DONE YET, AND I NEED TO KNOW A DATE THE
16 COURT CAN GIVE THEM TO GET THE REPORT DONE SO THEY CAN
17 GET IT TO US.

18 AND ALSO I ASKED MR. GESSLER ABOUT
19 DR. BUCKLIN, AND HE TOLD ME LATE THIS WEEK, AND I STILL
20 HAVEN'T GOTTEN THAT REPORT. AND DR. MORTON --

21 MS. ABRAMSON: MR. MORTON IS NOT A DOCTOR.

22 MS. NAJERA: OKAY. WELL, WE STILL NEED.

23 MR. MORTON'S.

24 MS. ABRAMSON: MR. MORTON IS NOT GOING TO BE
25 TESTIFYING UNTIL AFTER THANKSGIVING, AND THE WAY I AM
26 GOING TO RESCHEDULE, DR. WECHT IS NOT GOING TO TESTIFY
27 UNTIL AFTER THAT EITHER.

28 SO I SHOULD HAVE A REPORT FROM DR. WECHT

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1 MONDAY OR TUESDAY, AND I WILL TURN IT OVER. THEY WILL
2 HAVE AT LEAST A WEEK TO LOOK IT OVER BEFORE HE
3 TESTIFIES, AND THEY WILL HAVE AT LEAST AS MUCH TIME FOR
4 MR. MORTON, BECAUSE I AM GOING TO PUT DEPUTY VAN HORN,
5 CATALANI AND LINHART ON BEFORE MORTON ANYWAY.

6 MS. NAJERA: I JUST NEED A DATE CERTAIN WHEN I
7 CAN EXPECT THESE THINGS.

8 MS. ABRAMSON: AS SOON AS I HAVE THEM.

9 MS. NAJERA: WELL, AS SOON AS --

10 THE COURT: WELL, DECIDE WHEN.

11 MS. ABRAMSON: WELL, I SHOULD HAVE A REPORT FROM
12 DR. WECHT -- I WAS GOING TO ASK HIM TONIGHT, BECAUSE I
13 THOUGHT HE WAS COMING MONDAY, TO GIVE ME ONE TOMORROW OR

14 SUNDAY, AND I WAS GOING TO GET IT TO THE PROSECUTORS

15 THEN.

16 I WILL TRY TO HAVE A REPORT FOR THE

17 PROSECUTION NO LATER THAN TUESDAY ON DR. WECHT, AND I

18 WILL HAVE A REPORT FROM THEM WITH RESPECT TO MR. MORTON

19 ON THE 27TH.

20 THE COURT: AND WHEN IS MORTON GOING TO TESTIFY?

21 MS. ABRAMSON: PROBABLY NOT UNTIL THE 30TH.

22 THE COURT: OKAY. WELL, CAN YOU GET IT BEFORE

23 THANKSGIVING?

24 MS. ABRAMSON: I DON'T KNOW. I HAVEN'T TALKED TO

25 HIM IN SEVERAL DAYS, BECAUSE I HAVE BEEN BUSY WITH ALL

26 THE DOCTORS, SO I CAN CALL THEM.

27 THE COURT: WHY DON'T YOU CALL HIM AND SEE IF YOU

28 CAN GET IT BY THE 22ND SO THEY WILL HAVE THAT WEEKEND IF

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1 THEY WANT TO USE IT FOR THAT PURPOSE.

2 MS. NAJERA: AND FINALLY, DR. BUCKLIN.

3 MR. GESSLER: WELL, YOUR HONOR, AS I TOLD

4 MS. NAJERA THIS WEEK, DR. BUCKLIN HAS SEVERE PERSONAL

5 PROBLEMS, GOING BACK TO FLORIDA, AND AT THIS POINT I

6 DOUBTED THAT I WOULD CALL HIM, AND THAT IF I DID CALL

7 HIM, I WOULD GIVE HER A REPORT AT LEAST A WEEK BEFORE HE

8 TESTIFIES.

9 THE COURT: OKAY. AND AS I UNDERSTOOD, HE HAD

10 VERY LIMITED TESTIMONY TO OFFER.

11 MR. GESSLER: VERY LIMITED TESTIMONY TO OFFER.

12 BUT THE PROBLEM IS BECAUSE OF THE NATURE OF HIS PERSONAL
13 PROBLEMS BACK IN FLORIDA, HE MIGHT NOT BE AVAILABLE TO
14 US AS A WITNESS.

15 THE COURT: OKAY. FROM THE CROSS-EXAMINATION IT
16 SOUNDED LIKE HE WAS GOING TO TESTIFY -- HE WAS GOING TO
17 TESTIFY AS TO POSTMORTEM OR ANTEMORTEM, OR ENTRANCE
18 WOUNDS OR EXIT WOUNDS, SOMETHING LIKE THAT.

19 MR. GESSLER: RIGHT.

20 THE COURT: OKAY. AS FAR AS EXHIBITS HERE, CAN
21 WE DO ANYTHING OR BENEFIT FROM THIS TIME TO GO OVER
22 EXHIBITS THAT HAVEN'T BEEN RECEIVED YET, SINCE WE'RE
23 ALMOST THROUGH WITH DR. MC CARTHY'S TESTIMONY?

24 MS. ABRAMSOM: SEE, THERE'S A PROBLEM. WE HAVE A
25 SERIES OF MOTIONS HAVING TO DO WITH DR. MC CARTHY, BUT
26 WE SORT OF NEED TO WAIT UNTIL THE PEOPLE ARE DONE.

27 THE COURT: DO THOSE MOTIONS RELATE TO THE
28 RECEIVED EXHIBITS?

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1 MR. GESSLER: PART OF THEM.

2 THE COURT: WELL, IF YOU FEEL IT WOULDN'T BE
3 FRUITFUL TO DO IT NOW, THEN WE WON'T. I DON'T WANT TO
4 GET INTO A SITUATION OF EXCUSING THE JURY FOR A LONG
5 TIME TO DISCUSS EXHIBITS.

6 MR. GESSLER: I DON'T EITHER, AND YET I AM AFRAID
7 THAT IF WE GO INTO IT BEFORE HE'S COMPLETED ALL OF HIS
8 REDIRECT AND RECROSS, THAT IT COULD BE A FUTILE
9 EXERCISE; THAT WE'LL HAVE TO REPEAT PARTS OF IT ANYWAY.
10 I DON'T BELIEVE IT WILL TAKE A LONG TIME.
11 THERE WILL BE OBJECTIONS TO EXHIBITS AND TO TESTIMONY.
12 THERE ALSO WILL BE AN 1118.1 AS TO THE LYING IN WAIT
13 ISSUE ON THE SPECIAL CIRCUMSTANCE. I THINK THE COURT IS
14 FAMILIAR WITH THE ARGUMENTS MADE AT THE LAST TRIAL, AND
15 I WILL BASICALLY REINCORPORATE THEM.
16 SO, I DON'T --
17 MS. TOWERY: WHAT ABOUT WEDNESDAY AT 3:15 IF
18 WE'RE THROUGH?
19 MR. GESSLER: WE CAN'T DO IT WEDNESDAY AT 3:15
20 IF THE PEOPLE REST MONDAY MORNING.
21 MS. ABRAMSON: YES, WE CAN.
22 THE COURT: WE CAN ALWAYS DEFER THE EXHIBITS.
23 MS. ABRAMSON: I DON'T WANT TO INTERFERE WITH MY
24 EXPERTS.
25 MR. GESSLER: I AM WILLING TO DEFER IT. THAT'S
26 NO PROBLEM.
27 THE COURT: WE CAN DO TWO THINGS: DEFER THE
28 HEARING, BUT ALSO ASK THAT YOU MEET AND CONFER IN THE

2 EXHIBITS THAT AREN'T GOING TO BE IN DISPUTE, AS YOU DID

3 THE LAST TIME.

4 MR. GESSLER: YES, WE CAN DO THAT.

5 MS. NAJERA: THAT'S GOOD.

6 THE COURT: ANYTHING ELSE WE CAN DO HERE AT THIS

7 POINT?

8 MS. NAJERA: THAT'S IT.

9 THE COURT: OKAY. WE WILL BE IN RECESS UNTIL

10 MONDAY AT 8:30.

11 (AT AT 2:25 P.M. PROCEEDINGS

12 WERE ADJOURNED UNTIL MONDAY,

13 NOVEMBER 20, 1995, AT 8:30 A.M.)