

1 VAN NUYS, CALIFORNIA; MONDAY, NOVEMBER 20, 1995

2 9:10 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (MARILYN A. FADALE, OFFICIAL REPORTER.)

6 (ANNAMARIE PAPA, OFFICIAL REPORTER)

7

8 THE COURT: IN THE TRIAL, THE DEFENDANTS ARE

9 IN COURT WITH THEIR LAWYERS; THE PEOPLE ARE HERE.

10 GOOD MORNING, LADIES AND GENTLEMEN.

11 WE'RE READY TO RESUME. WE HAVE THE JURY HERE. THE

12 WITNESS IS HERE.

13 LET'S GET THE JURY OUT, PLEASE.

14 (THE JURY ENTERED THE COURTROOM

15 AND THE FOLLOWING PROCEEDINGS

16 WERE HELD:)

17

18 THE COURT: THE JURY IS IN THE COURTROOM.

19 GOOD MORNING, LADIES AND GENTLEMEN.

20 WE'RE READY TO RESUME WITH THE TESTIMONY. THE

21 WITNESS IS STILL ON THE WITNESS STAND.

22 WOULD YOU STATE YOUR NAME AGAIN FOR THE

23 RECORD.

24 THE WITNESS: ROGER LEE MC CARTHY.

25 THE COURT: YOU'RE REMINDED YOU'RE STILL

26 UNDER OATH.

27 THE WITNESS: YES, YOUR HONOR.

28 THE COURT: I BELIEVE WE WERE ON REDIRECT

1 EXAMINATION.

2 MR. CONN: YES.

3

4 ROGER LEE MC CARTHY,

5 THE WITNESS AT THE TIME OF ADJOURNMENT, RESUMED THE

6 STAND, AND TESTIFIED FURTHER AS FOLLOWS:

7

8 REDIRECT EXAMINATION

9 BY MR. CONN:

10 Q DR. MC CARTHY, I'D LIKE TO DIRECT YOUR

11 ATTENTION NOW TO THE SHOT THAT YOU HAVE NUMBERED

12 SHOT 10A, AND THIS IS AN EXHIBIT WHICH HAS BEEN

13 MARKED 268 AT THIS PROCEEDING.

14 NOW, IN FORMING YOUR OPINION IN REGARD

15 TO THIS PARTICULAR SHOT, DID YOU RELY UPON THE

16 OPINION OF DR. GOLDEN CONCERNING THE ENTRY AND EXIT

17 WOUND FOR THIS PARTICULAR SHOT?

18 A I'M RELYING ON HIS CURRENT OPINION.

19 Q OKAY. IS THAT CURRENT OPINION REFLECTED

20 IN THE 1995 AMENDMENT?

21 A YES.

22 Q AND DOES HIS CURRENT OPINION IN THE 1995

23 AMENDMENT REFLECT THAT THE SHOT IS, AS YOU INDICATED

24 THERE IN YOUR ILLUSTRATION, A SHOT WHICH ENTERED THE
25 LOWER LEG OF THE BODY OF KITTY MENENDEZ AND PASSES
26 THROUGH, COMING OUT THE UPPER LEG OF KITTY MENENDEZ?

27 A YES.

28 Q NOW, WAS THAT HIS OPINION BACK IN 1989

41335

1 AS REFLECTED IN THE ORIGINAL AUTOPSY REPORT?

2 A NO.

3 MS. ABRAMSON: OBJECT, YOUR HONOR. CALLS FOR
4 SPECULATION AS TO WHETHER THAT'S HIS OPINION OR
5 NOT.

6 THE COURT: OBJECTION SUSTAINED. THE
7 ANSWER'S STRICKEN. PERHAPS YOU CAN REPHRASE THE
8 QUESTION.

9 MR. CONN: YES.

10 Q DIRECTING YOUR ATTENTION BACK TO THE
11 ORIGINAL 1989 AUTOPSY REPORT, CAN YOU TELL US IF THE
12 WOUND WAS SO DESCRIBED IN THAT REPORT?

13 A IT WAS NOT.

14 Q HOW WAS IT DESCRIBED BACK IN 1989?

15 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
16 OBJECT AS IRRELEVANT AND HEARSAY, SINCE HE'S NOT
17 RELYING ON IT.

18 THE COURT: OVERRULED.

19 THE WITNESS: IN 1989 THE WOUND WAS DESCRIBED
20 AS HAVING ITS ENTRY AT THE BACK OF THE KNEE AND TWO
21 EXIT POINTS.

22 Q BY MR. CONN: AND THE TWO EXIT POINTS
23 WOULD BE WHICH TWO POINTS?

24 A ROUGHLY, THE SAME POINTS ON THE KNEE
25 I'VE SHOWN AS ENTRY AND EXIT. THOSE WERE DESCRIBED
26 AS TWO EXITS WITH AN ENTRY IN THE BACK OF THE KNEE.

27 Q SO, JUST TO CLARIFY THEN. YOU'RE SAYING
28 THAT IN 1989 DR. GOLDEN SAID THAT THE ENTRY TO THIS

41336

1 WOUND WAS IN THE BACK OF THE KNEE HERE?

2 A YES.

3 Q AND THAT THERE WAS AN EXIT HERE ON THE
4 BOTTOM OF THE LEG AND AN EXIT HERE AT THE TOP OF THE
5 LEG; IS THAT CORRECT?

6 A ABOVE AND BELOW THE KNEE.

7 Q OKAY. AND NOW DR. GOLDEN IS OF THE
8 OPINION THAT THE WOUND IS AS YOU ILLUSTRATED THERE
9 ON THE DIAGRAM?

10 A YES.

11 Q NOW, DID YOU CONFER WITH DR. GOLDEN
12 AFTER THE -- SOMETIME BEFORE HE WROTE THE 1995
13 AMENDMENT?

14 A YES.

15 Q AND DID YOU EXPRESS YOUR OPINION TO

16 DR. GOLDEN THAT THIS IS THE WAY THE SHOT TOOK PLACE?

17 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

18 FOR HEARSAY.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES, I DID. I EXPLAINED AND

21 SHOWED HIM IN THE PHOTOGRAPHS WHY I THOUGHT IT HAD

22 THIS GEOMETRY AND WHY I THOUGHT THE BACK OF THE KNEE

23 WAS AN EXIT/ENTRY.

24 Q BY MR. CONN: AND SOMETIME AFTER YOU HAD

25 THAT CONVERSATION WITH DR. GOLDEN DID HE THEN CHANGE

26 HIS OPINION AND AGREE WITH YOU IN HIS '95 AMENDMENT?

27 MS. ABRAMSON: OBJECTION. CALLS FOR

28 SPECULATION AS TO WHETHER --

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1 THE COURT: SUSTAINED AS TO THE FORM OF THE

2 QUESTION.

3 MR. CONN: OKAY.

4 Q AND DO YOU KNOW HOW LONG AFTER YOU HAD

5 THAT CONVERSATION WITH DR. GOLDEN THAT HE ISSUED THE

6 1995 AMENDMENT WHICH AGREES WITH YOUR INTERPRETATION

7 OF THIS SHOT?

8 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT

9 ASSUMES FACTS NOT IN EVIDENCE.

10 THE COURT: AS TO THE LAST PORTION OF IT,
11 AGREEING TO THE WITNESS' CHARACTERIZATION OF THE
12 SHOT IS SUSTAINED.

13 Q BY MR. CONN: CAN YOU TELL US HOW LONG
14 AFTER YOU HAD THAT CONVERSATION WITH DR. GOLDEN DID
15 HE WRITE THE 1995 AMENDMENT?

16 A APPROXIMATELY A WEEK.

17 Q OKAY.

18 A TEN DAYS. VERY CLOSE.

19 Q AND DID YOU TELL DR. GOLDEN DURING THAT
20 CONVERSATION WITH HIM THAT YOU ARE NOT A MEDICAL
21 DOCTOR?

22 A YES.

23 Q NOW, I'D LIKE TO DIRECT YOUR ATTENTION
24 TO ANOTHER SHOT, WHICH IS ILLUSTRATED SHOT 3A, AND
25 IS DEPICTED IN EXHIBIT 254. AND THAT IS THE SHOT
26 WHICH YOU DESCRIBED AS THE SHOT WHICH MISSED GOING
27 THROUGH THE FRENCH DOORS.

28 DO YOU RECALL THAT SHOT?

41338

1 A YES.

2 Q NOW, I'D LIKE TO ASK YOU AT THIS TIME
3 ABOUT THE TWO DAMAGED WINDOWS.

4 DID YOU NOTE, DURING THE COURSE OF YOUR
5 EVALUATION OF THIS PARTICULAR SHOT, THAT THERE WERE,
6 AS DEPICTED IN THIS PHOTOGRAPH HERE, 244, SHOWING
7 THE TWO FRENCH DOORS, THAT THERE ARE ACTUALLY BROKEN
8 PANES OF GLASS; ONE ON THE LEFT-HAND SIDE WHICH IS
9 ALSO DEPICTED HERE IN EXHIBIT 244, AND ANOTHER
10 BROKEN PANE OF GLASS IN THE LOWER RIGHT-HAND SIDE
11 LOOKING FROM THE OUTSIDE OF EXHIBIT 244, WHICH IS
12 ALSO DEPICTED HERE IN PHOTOGRAPH 246?

13 A YES.

14 Q AND DID YOU CONCLUDE ON THE -- AFTER
15 EVALUATING THOSE SHOTS THAT IT WAS THE SHOT THAT
16 PASSED THROUGH THE LEFT-HAND DOOR, LOOKING FROM THE
17 OUTSIDE, THAT WAS THE SHOT THAT STRUCK THE TREE,
18 WHICH IS DEPICTED IN PHOTOGRAPH 307?

19 A YES.

20 Q NOW, IN CONCLUDING THAT IT WAS THAT SHOT
21 THAT CAUSED THE DAMAGE TO THAT TREE, DID YOU RELY
22 UPON CERTAIN MEASUREMENTS?

23 A NO. I CONCLUDED THAT WITHOUT THOSE
24 MEASUREMENTS.

25 Q AND YOUR CONCLUSION AT THAT TIME WAS
26 BASED UPON WHAT?

27 A JUST THE GEOMETRY OF THE DOOR AND THE
28 HEIGHT OF THE VARIOUS BARS MADE IT, IN MY OPINION,

1 THE ONLY POSSIBLE SHOT THAT COULD STRIKE THE TREE.

2 Q OKAY. NOW, SINCE THAT TIME DID YOU
3 RECEIVE SOME MEASUREMENTS CONCERNING THE DISTANCES
4 BETWEEN THOSE PANES OF GLASS AND THE TREE, WHICH IS
5 DEMONSTRATED AND HAS BEEN MARKED HERE AS EXHIBIT
6 278?

7 A YES. THEY WERE MEASURED AT MY REQUEST.

8 MR. CONN: I WOULD ALSO LIKE TO MARK AT THIS
9 TIME ANOTHER EXHIBIT AS 310, WHICH IS A DETAILED
10 MEASUREMENT OF THE FRENCH DOORS.

11 THE COURT: 310.

12 Q BY MR. CONN: CAN YOU TELL US WHAT THIS
13 DOCUMENT IS THAT I'M SHOWING YOU AT THIS TIME.

14 A YES. THIS IS A DIMENSIONAL DIAGRAM OF
15 THE FRENCH DOORS PREPARED AT MY DIRECTION BY
16 DR. ROBERT CADLAC OF MY LOS ANGELES OFFICE.

17 Q HAVING OBTAINED THE MEASUREMENTS OF THE
18 FRENCH DOORS SOME TIME, AND MORE RECENTLY
19 MEASUREMENTS FROM THE -- OF THE DISTANCE FROM THE
20 FRENCH DOORS TO THE TREE, HAVE YOU EVALUATED WHETHER
21 IT WAS POSSIBLE FOR THE SHOT ON THE RIGHT-HAND DOOR,
22 ONCE AGAIN, LOOKING FROM THE EXTERIOR OF THAT DOOR,
23 TO HAVE CAUSED THE SHOT, RATHER THAN THE SHOT THAT
24 WENT THROUGH THE LEFT DOOR?

25 A I EVALUATED THAT PREVIOUSLY, BUT NOW
26 WITH THE DIMENSIONS I CAN SHOW PRECISELY WHY IT
27 DOESN'T WORK.

41340

1 EVALUATION, THAT IT WAS, IN FACT, THE SHOT TO THE
2 DOOR THAT YOU PREVIOUSLY INDICATED THAT CAUSED THE
3 SHOT TO THE TREE?

4 A YES.

5 Q WHAT DO YOU BASE THAT ON?

6 A WELL, IT'S THE HEIGHT OF THE DOOR OF
7 THAT FIRST CROSSBAR; AND OBVIOUSLY, NOT THE GEOMETRY
8 OF THE TREE -- THE LAST 30 MINUTES AND I FINALLY
9 BROUGHT MY LASER POINTER -- IF YOU LOOK AT THIS BAR
10 RIGHT THERE.

11 Q YOU'RE POINTING TO A PHOTOGRAPH THAT HAS
12 BEEN MARKED 240 FOR THE EXTERIOR FRENCH DOORS.

13 A RIGHT. THAT FIRST CROSSBAR IS ABOUT 30
14 AND A HALF INCHES, AND THIS ROOM IS CONSTRAINED BY
15 THE HEIGHT OF THAT COUCH IN FRONT OF THE DOORS.
16 OKAY?

17 SO WE HAVE 28 INCHES TO THE TOP OF THE
18 COUCH, AND WE HAVE 30 INCHES AT THE HEIGHT OF THAT
19 CROSSBAR.

20 NOW, ANYTHING THAT GETS SHOT -- THE
21 WEAPON IS TOO LONG TO FIT BETWEEN THE DOOR AND THE
22 BACK OF THE COUCH. SO WE KNOW THE WEAPON HAS TO BE

23 SHOOTING OVER THE COUCH; AND EVEN IF IT CONCEIVABLY
24 COULD FIT THERE, THE SHOTGUN WOULD BE A CONTACT SHOT
25 AT THE DOOR. IT -- YOU WOULDN'T SEE THIS SIZE
26 PATTERN.

27 BE THAT AS IT MAY, THERE'S NO QUESTION
28 IN MY MIND THAT THE SHOT IS OVER THE COUCH. YOU

41341

1 CAN'T GET DOWN IN FRONT OF THE COUCH.
2 ONCE WE KNOW WE'RE SHOOTING OVER THE
3 COUCH, AND THE COUCH IS A 28-INCH-HIGH OBSTACLE,
4 THEN THE ONLY WAY SOMETHING IS GOING TO GET
5 DOWN-RANGE -- AND YOUR PICTURE SORT OF OBSCURES THE
6 GROUND -- THESE SHOTS ARE REASONABLY UP ON THE
7 TREE. IF YOU SHOOT BELOW THE 30-INCH BARRIER, AND
8 YOU CAN SEE THIS SHOT, I RECONSTRUCT THE CENTER OF
9 THAT SHOT AT ABOUT 26 INCHES OF HEIGHT. YOU SHOOT
10 OVER A 26-INCH COUCH, YOU'RE COMING DOWN TWO AND
11 WHATEVER THE DISTANCE IS. THE DISTANCE BETWEEN THE
12 BACK OF THE COUCH IS 26 OR 27. CALL IT 28. IT
13 DOESN'T MAKE ANY DIFFERENCE TO THE CALCULATION.
14 WHAT THAT MEANS IS, YOU'RE DROPPING 2
15 AND 28. YOU DROP TWO INCHES -- EVERY TIME YOU DROP
16 TWO INCHES DOWN CHANGING -- THE DOWN-RANGE IS 32
17 FEET. DROP ALL OF THOSE, AND IT'S ABOUT 14 DROPS,

18 WHATEVER YOU CALCULATE IT. SO IF YOU DROP TWO
19 INCHES IN 27, YOU HAVE 14 OF THOSE DROPS. YOU'VE
20 DROPPED 28 INCHES. THIS SHOT HITS THE BASE OF THE
21 TREE, IF IT HITS IT AT ALL. SO IT'S NOT THE SHOT.

22 Q BASED UPON THAT CALCULATION, HAVE YOU
23 CONCLUDED THAT IT COULD NOT HAVE BEEN THAT SHOT THAT
24 STRUCK THE TREE, BUT IT WAS, IN FACT, THE SHOT AS
25 YOU PREVIOUSLY INDICATED IN YOUR DIAGRAM?

26 A THAT CALCULATION CONFIRMS IT. I COULD
27 SEE THAT CLEARLY FROM THE GEOMETRY, BUT THAT SHOWS
28 WHY DIMENSIONALLY IT DOES NOT WORK.

41342

1 MR. CONN: ALL RIGHT. THANK YOU.

2 I HAVE NO FURTHER QUESTIONS, YOUR
3 HONOR.

4 THE COURT: RECROSS-EXAMINATION?

5 MS. ABRAMSON: MR. GESSLER IS GOING TO HAVE
6 SOME BRIEF CROSS.

7

8 RECROSS EXAMINATION

9 BY MR. GESSLER:

10 Q DR. MC CARTHY, IF YOU TAKE THE BUCKSHOT
11 SHOTS AT 13 YOU HAVE COMPUTED HERE, THERE'S AN
12 ENORMOUS NUMBER OF POSSIBILITIES AS TO HOW THOSE CAN

13 BE IN ORDER, CAN'T THERE?

14 A (NO AUDIBLE RESPONSE.)

15 Q LET ME JUST ASK YOU THIS. IF THERE'S

16 TEN OF ANY KIND OF RANDOM EVENTS, THERE ARE MILLIONS

17 OF POSSIBILITIES AS TO WHICH COULD BE FIRST, WHICH

18 COULD BE FIFTH, WHICH COULD BE TENTH, AREN'T THERE?

19 A TEN FACTORIAL I THINK IS THE

20 CALCULATION, YES.

21 Q AND TEN FACTORIAL MEANS YOU TAKE TEN

22 TIMES NINE TIMES EIGHT TIMES SEVEN TIMES SIX AND SO

23 ON TO CALCULATE THE POSSIBILITIES; IS THAT CORRECT?

24 A THAT IS THE PRECISE CALCULATION OF TEN

25 EVENTS RESPECTING ORDER WITHOUT REGARD TO ORDER.

26 Q AND THAT COMES UP IN THIS CASE TO

27 APPROXIMATELY 3.6 MILLION, DOESN'T IT?

28 A I'D HAVE TO -- I'D HAVE TO TURN ON MY

41343

1 CALCULATOR. BUT IT'S A HIGH NUMBER.

2 Q WELL, HOW LONG WOULD IT TAKE YOU TO

3 CALCULATE?

4 A IF THIS CALCULATOR HAS A FACTORIAL

5 FUNCTION I CAN DO IT INSTANTLY.

6 (BRIEF PAUSE IN THE PROCEEDINGS.)

7 IT DOESN'T. JUST A MOMENT.

8 (CALCULATING). YEAH. 3.6 MILLION.

9 Q ABOUT RIGHT?

10 A 3.62880 TIMES 10 TO THE SIXTH.

11 Q SO WE'RE TALKING IN THE RANGE OF 3.6

12 MILLION, 3,600,000, PLUS POSSIBILITIES?

13 A YES. 3,628,800.

14 Q AND YOU HAVE NOW TOLD THIS JURY THE ONE

15 SEQUENCE THAT YOU FEEL HAPPENED, TO THE ELIMINATION

16 OF THE OTHER THREE MILLION FIVE HUNDRED AND

17 NINETY-NINE ODD THOUSAND?

18 A NOT EXACTLY. AS I KNOW I'VE INDICATED

19 AT VARIOUS POINTS, THERE ARE PLACES WHERE I CAN'T

20 PIN DOWN THE SHOT ORDER. YOU COULD SHUFFLE THESE

21 SHOTS FOR PERHAPS A DOZEN OR TWO DIFFERENT

22 SEQUENCES. I DON'T THINK IT WOULD MATERIALLY AFFECT

23 MY CONCLUSIONS ABOUT THE GEOMETRY OF THE SHOT.

24 BUT WHERE I CAN'T PIN THE ORDERING TO

25 PRECISE PHYSICAL EVIDENCE I'VE TRIED TO SO INDICATE.

26 Q SO YOU'VE TAKEN FROM 3,600,000 TO ABOUT

27 24?

28 A I'D HATE TO SAY 24. BUT -- I HAVEN'T SAT

41344

1 DOWN AND CALCULATED IT. IT'S A LOT FEWER THAN

2 3,000,000.

3 Q BECAUSE OF YOUR ORDERING OF THE SHOTS,
4 IN OTHER WORDS?

5 A WELL, ORDERING OF THE SHOTS AND THE
6 PHYSICAL EVIDENCE WHICH CONSTRAINS SOME OF THE SHOTS
7 AND NOT OTHERS.

8 Q HOW MANY BUCKSHOT DID YOU SAY THERE IS
9 PER ROUND OF BUCKSHOT?

10 A TWENTY-SEVEN.

11 Q AND EVEN IF SOME HAVE 26 AND SOME HAVE
12 28, BY YOUR CALCULATION, 27 IS CERTAINLY THE AVERAGE
13 THAT YOU'D FIND?

14 A OH. USE 27, YEAH.

15 Q ALL RIGHT. WE'LL USE 27. WITH THE 10
16 ROUNDS OF BUCKSHOT THAT WERE USED HERE, HOW MANY
17 PELLETS DOES THAT GIVE YOU TO WORK WITH?

18 A A TOTAL OF 270.

19 Q NOW, IN ONE OF THOSE SHOTS YOU HAVE COME
20 UP WITH A COUNT OF, BY X RAY, OF AT LEAST 27
21 BUCKSHOT. THAT'S YOUR FIRST SHOT, RIGHT?

22 A YES. I BELIEVE THE X RAY, REASONABLY
23 INTERPRETED, SHOWS 27.

24 Q OR A FULL ROUND, IN OTHER WORDS?

25 A YES.

26 Q HOW MANY OTHER SHOTS HAVE YOU FOUND IN A
27 FULL ROUND; THAT IS, 27 BUCKSHOT BY X RAY TO CONFIRM
28 YOUR SHOT CALCULATION?

1 A THAT FIRST SHOT WAS THE ONLY ONE THAT
2 WHAT I'M GOING TO SAY IS BACK-STOPPED SUFFICIENTLY
3 IN MY MIND TO CATCH ALL 27.

4 BUT THERE'S NO OTHERS WHERE I WOULD
5 REPRESENT TO YOU THAT I BELIEVED COME UP WITH A 27
6 COUNT.

7 Q AND THAT'S ASSUMING THAT YOU'RE CORRECT,
8 THAT THE 27 COUNT YOU HAVE ARE ALL COMING FROM YOUR
9 FIRST SHOT, ISN'T IT?

10 A YES.

11 Q NOW, OF THE 270 BUCKSHOT THAT APPARENTLY
12 WERE FIRED THIS NIGHT, HOW MANY WERE RECOVERED FOR
13 YOU TO WORK WITH BY X RAY, BY THE POLICE, BY ANY
14 MEANS?

15 A I COULDN'T TELL YOU.

16 Q LESS THAN A THIRD?

17 A CONCEIVABLY. I JUST HAVEN'T ATTEMPTED
18 TO COUNT.

19 Q THE ONLY ONE YOU ATTEMPTED TO COUNT WAS
20 TO BACK-STOP, YOUR SHOT NO. 1?

21 A JUST THE OPPOSITE. IT'S THE ONLY ONE
22 WHERE I HAD X RAYS AND THE ALIGNMENT BETWEEN THE
23 BODY PARTS; AND NO ONE DUG ALL THE SHOT OUT OF THAT
24 POOR TREE THERE.

25 Q LET'S FORGET THE TREE. LET'S GO TO THE

26 NINE BUCKSHOT ROUNDS, ALL OR PART OF WHICH HIT

27 MR. OR MRS. MENENDEZ OR BOTH.

28 OF THOSE NINE ROUNDS, YOU'RE WORKING

41346

1 WITH ABOUT A THIRD OF THE BUCKSHOT, WOULD YOU SAY?

2 A I HAVEN'T SAT DOWN AND TRIED TO

3 CORRELATE ALL THE EVIDENCE ENVELOPES. AND SO I

4 CAN'T TELL YOU.

5 Q SO SOME OF YOUR SHOTS YOU CAN ACCOUNT

6 FOR FIVE BUCKSHOT, TEN BUCKSHOT, OR YOU JUST DON'T

7 KNOW?

8 A ON A SHOT BASIS I CAN GIVE YOU A ROUGH

9 APPROXIMATION WHAT WE CAN ACCOUNT FOR. SHOT 2 TO

10 THE BACK OF THE HEAD THERE WERE 11 BUCK.

11 Q WHAT HAPPENED TO THE OTHER 16?

12 A THERE WERE TWO EXIT DEFECTS AT THE

13 CORNER IDENTIFIED ABOVE THE RIGHT EAR.

14 Q IT'S YOUR OPINION ALL 16 WENT OUT OF

15 THOSE EXIT DEFECTS OR DO YOU KNOW?

16 A OBVIOUSLY, I DO NOT KNOW.

17 Q AND OTHER SHOTS, THE SAME IS TRUE, ISN'T

18 IT? YOU DON'T KNOW WHAT HAPPENED TO THE BUCKSHOT

19 THAT ARE NOT ACCOUNTED FOR BY X RAY?

20 A NOT MATCHED TO SHOT; THAT IS CORRECT.

21 MR. GESSLER: THANK YOU.
22 NOTHING FURTHER, YOUR HONOR.
23 THE COURT: MS. ABRAMSON.
24 MS. ABRAMSON: I NEED TO MOVE SOME EXHIBITS
25 AROUND FOR A MOMENT, YOUR HONOR.
26 WHAT I'D LIKE TO DO IS ADD SOME
27 SUB-NUMBERS BECAUSE I'D LIKE TO STAY BACK AT THE
28 PODIUM.

41347

1 THE COURT: OKAY.
2 MS. ABRAMSON: TO 301, WHICH IS ALSO CALLED
3 1B, STARTING ON THE LEFT THERE ARE TWO PHOTOGRAPHS.
4 I'M GOING TO MARK THE ONE ABOVE A, THE ONE BELOW B,
5 AND DOWN THE CENTER C, D, AND E, AND THE SINGLE
6 PHOTOGRAPH ON THE RIGHT F.
7 WHILE I'M HERE, YOUR HONOR, I'M GOING TO
8 DO THE SAME THING TO 295. THERE ARE TWO PHOTOS DOWN
9 THE LEFT AND I'M GOING TO MARK THEM A, B, AND C.
10 THERE ARE FOUR IN THE CENTER: D, E, F,
11 AND G.
12 AND THREE ON THE RIGHT: H, I, J.
13
14 RE-CROSS EXAMINATION
15 BY MS. ABRAMSON:

16 Q DR. MC CARTHY, CALLING YOUR ATTENTION TO
17 301-C, THE TOP PHOTOGRAPH IN THE MIDDLE OF THE TOP
18 CHART.

19 DO YOU SEE THAT?

20 A YES.

21 Q AND DOES THAT APPEAR TO BE A PHOTOGRAPH
22 TAKEN AT THE CORONER'S OFFICE THAT SHOWS THE CORONER
23 PROBING WOUND NO. 3, AS HE CALLS IT, TO
24 MR. MENENDEZ?

25 A YES. THAT IS CONSISTENT WITH THE
26 APPEARANCE OF THE PHOTOGRAPH.

27 Q AND IN THAT PHOTOGRAPH DOES IT APPEAR
28 THAT THE PROBE IS BEING INSERTED IN THE LATERAL

41348

1 ASPECT OF THE UPPER ARM, THE BACK?

2 A YES. IT LOOKS LIKE THE PROBE DISAPPEARS
3 THERE. I CAN'T SEE WHAT HE'S POINTING TO.

4 Q AND IS IT YOUR UNDERSTANDING THAT WHEN
5 CORONERS ARE USING A PROBE FOR DEMONSTRATION
6 PURPOSES FOR A PHOTOGRAPH THEY PUT THE PROBE INTO
7 THE ENTRY WOUND?

8 MR. CONN: OBJECTION. CALLS FOR
9 SPECULATION. I THINK THIS WAS ASKED AND ANSWERED
10 PREVIOUSLY.

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: NOW, YOU DON'T SEE HIM
13 STICKING THAT PROBE INTO THE INDIVIDUAL PELLET
14 DEFECTS IN THE ANTECUBITAL FOSSA TO OPEN THAT ARM,
15 DO YOU?

16 MR. CONN: OBJECTION. IRRELEVANT.

17 THE COURT: OVERRULED.

18 THE WITNESS: NO. THEY'VE ALL, AS YOU
19 POINTED OUT, PREVIOUSLY BEEN ELIMINATED BY THE
20 SURGICAL WORK.

21 Q BY MS. ABRAMSON: WHAT YOU'RE SEEING ON
22 THE MEDIAL ASPECT, THE INSIDE OF THE ARM, IS A
23 DISSECTED AREA?

24 A YES.

25 Q IS THAT RIGHT?

26 A I BELIEVE SO.

27 Q AND IN THE SEPTEMBER '95 WRITTEN
28 AMENDMENT DR. GOLDEN CLEARLY LABELS THE WOUND THAT

41349

1 HE HAS THAT PROBE IN IN THAT PHOTOGRAPH AS THE
2 ENTRY; AND THE OTHER SIDE OF IT, WHICH YOU CAN SEE
3 IN 295, PHOTOGRAPHS "A" AND "B," THE LARGE DEFECT,
4 AS THE EXIT, CORRECT?

5 A I'M UNCOMFORTABLE MAKING THAT INFERENCE.

6 IT DOESN'T LOOK TO ME LIKE THE PROBE IS EVEN
7 REMOTELY AT THE RIGHT ANGLE TO BE AN ENTRY ON THE
8 BACK OF THE ARM. BUT COULD HE HAVE THE TIP OF THAT
9 POINTING TO THAT AREA? PERHAPS. ALTHOUGH I CAN'T
10 TELL THAT FROM THIS PHOTOGRAPH.

11 Q YOU WANT TO QUIBBLE OVER WHETHER THE
12 PROBE IS FULLY IN THE WOUND OR POINTING TO THE
13 WOUND?

14 MR. CONN: OBJECTION. ARGUMENTATIVE.

15 THE COURT: SUSTAINED.

16 Q BY MS. ABRAMSON: MY QUESTION WAS: IN
17 THE 1995 AMENDMENT HE CLEARLY INDICATES, DOES HE
18 NOT, THAT THE ENTRY WOUND FOR NO. 3 IS A LARGE
19 RAGGED DEFECT ON THE BACK, LATERAL, ASPECT OF THE
20 UPPER ARM; AND THE EXIT IS A LARGE DEFECT ON THE
21 MEDIAL ASPECT, OR THE INNER SURFACE OF THE RIGHT
22 ARM, CORRECT?

23 A CORRECT.

24 Q NOW, YOU INDICATED IN RESPONSE TO
25 QUESTIONING FROM MR. CONN THAT WHEN DR. GOLDEN
26 AMENDED THAT REPORT HE DELETED REFERENCES THAT
27 PREVIOUSLY APPEARED TO FOREARM DEFECTS ON THE DORSAL
28 ASPECT OF THE RIGHT FOREARM.

1 A YES.

2 Q AND DO YOU ASSUME BECAUSE HE DELETED THE
3 PARAGRAPH THAT DESCRIBED IT THAT THE WOUNDS
4 DISAPPEARED?

5 A NO. PERHAPS HIS CONFIDENCE IN THEM.
6 OBVIOUSLY, THE WOUNDS WERE WHATEVER THE WOUNDS WERE.

7 Q YOU'RE LOOKING RIGHT AT THEM, AREN'T
8 YOU? IF YOU'RE LOOKING AT 301, PHOTOGRAPH "D," THE
9 ONE IN THE CENTER?

10 A NO. WE'RE LOOKING AT THE PHOTOGRAPH OF
11 WHAT ULTIMATELY -- WE CAN'T SEE WHEN THE BODY IS
12 CLEANED. IN OTHER WORDS, WE SEE THESE SPOTS HERE.
13 WHEN THE BODY IS CLEANED, THERE'S NO VIEW OF THAT
14 ARM THAT CAPTURES THESE SUPPOSED DEFECTS.

15 Q HOWEVER, THAT'S PRECISELY WHERE
16 DR. GOLDEN DESCRIBED THE FOREARM DEFECT IN THE
17 REPORT BEFORE HE DELETED THAT PARTICULAR PARAGRAPH,
18 DIDN'T HE?

19 A HE EARLIER HAD MENTION OF THESE. AND
20 AFTER EXAMINING THE PHOTOS HE REVISED HIS REPORT AND
21 DELETED ANY MENTION OF THEM.

22 Q YOU DON'T KNOW IF HE DELETED IT ON
23 PURPOSE OR BY ACCIDENT, DO YOU?

24 A I DO NOT.

25 Q AND YOU DELETED THEM ALL THE WAY THROUGH
26 YOUR RECONSTRUCTION. YOU'VE NEVER REFERRED TO THOSE
27 WOUNDS, HAVE YOU?

28 A THAT IS CORRECT. ANY VIEW OF THE

1 CLEANED-UP BODY FAILS TO SHOW THEM. THERE IS A VERY
2 LEGITIMATE QUESTION WHETHER THEY'RE THERE AT ALL.

3 Q ASSUMING THEY ARE AND YOU JUST IGNORED
4 THEM, YOU JUST DON'T ACCOUNT FOR THEM IN THIS
5 RECONSTRUCTION OF YOURS?

6 A I HAVEN'T ATTEMPTED TO ACCOUNT FOR
7 THEM. NO VIEW, ONCE THE BODY IS CLEANED, SHOWS
8 THEM.

9 Q IS THAT YES, YOU DIDN'T ACCOUNT FOR
10 THEM? THAT WAS THE QUESTION.

11 A I DID NOT.

12 Q NOW, DID YOU AND YOUR ASSOCIATES AT
13 FAILURE ANALYSIS -- WELL, STRIKE THAT.

14 YOU RECALL WE'VE PREVIOUSLY TALKED ABOUT
15 THE FACT THAT YOU GAVE DISCOVERY TO THE DEFENSE IN
16 THIS CASE BY WAY OF THE PROGRAM THAT CONTAINED THE
17 VIEWS THAT YOU WERE GOING TO SHOW FOR YOUR
18 RECONSTRUCTION BEING ON A CD-ROM DISK, CORRECT?

19 A OR TAPE, YES.

20 Q OR TAPE. AND ON THAT DISK AND/OR TAPE
21 YOU ALSO INCLUDED VARIOUS DIAGRAMS, BODY CHART
22 DIAGRAMS, CORRECT?

23 A WHATEVER WE HAD -- WE PREPARED SOME
24 DIAGRAMS.

25 Q AND YOU HAVEN'T USED THOSE DIAGRAMS HERE
26 IN YOUR TESTIMONY; IS THAT RIGHT?
27 A I HAVE USED THEM.
28 Q HAVE YOU SHOWN THEM TO THE REST OF US

41352

1 DURING YOUR TESTIMONY?
2 A NO. I DON'T RECOLLECT DOING SO, BUT
3 I'LL BE GLAD TO. THAT'S WHAT I'VE BEEN LOOKING FOR
4 FOR THE LAST 10 MINUTES.
5 MS. ABRAMSON: I HAVE TWO DIAGRAMS. I'D LIKE
6 TO HAVE THEM MARKED NEXT IN ORDER. ONE OF THEM --
7 ALTHOUGH THEY ARE HOLE-PUNCHED -- ONE OF THEM IS
8 CALLED "JOSEPH MENENDEZ EXTERNAL INJURIES."
9 I'D LIKE TO MARK THAT --
10 THE COURT: 311.
11 MS. ABRAMSON: -- 311. AND THE OTHER ONE IS
12 MARKED "MARY MENENDEZ EXTERNAL INJURIES."
13 I'D LIKE TO MARK THAT 312.
14 Q ARE THESE DIAGRAMS THAT FAILURE ANALYSIS
15 PREPARED?
16 A YES. OF OUR ATTEMPT TO CHARACTERIZE THE
17 CORONER'S ORIGINAL FINDINGS.
18 Q AND WAS A DECISION MADE IN CONSULTATION
19 WITH YOU NOT TO USE THEM BECAUSE THEY ARE SO

20 INACCURATE?

21 A NO. THEY REFLECT THE ORIGINAL AUTOPSY
22 WHICH WAS INACCURATE. SO, I MEAN, I HAVE TESTIFIED
23 ABOUT THE ORIGINAL AUTOPSY. BUT --

24 Q THE AUTOPSY WAS INACCURATE. THAT'S WHAT
25 YOU, THE ENGINEER, IS SAYING ABOUT THE FORENSIC
26 PATHOLOGIST'S WORK?

27 A ANY TIME YOU ISSUE AS MANY REVISIONS AS
28 THERE ARE TO THIS AUTOPSY, THERE'S NO QUESTION IT'S

41353

1 INACCURATE. IT'S JUST A QUESTION OF --

2 Q YOU'RE SAYING A DESCRIPTION OF THE
3 AUTOPSY IS INACCURATE? YOU HAVE NO WAY OF KNOWING
4 IF THE AUTOPSY ITSELF WAS PERFORMED INACCURATELY, DO
5 YOU?

6 A I GUESS, IF I UNDERSTAND YOUR QUESTION,
7 COULD IT BE POSSIBLE THAT THE AUTOPSY WAS PERFORMED
8 CORRECTLY AND YET THESE ERRONEOUS DESCRIPTIONS MAKE
9 IT INTO THE AUTOPSY?

10 Q WELL, THAT WAS NOT MY QUESTION.

11 A OKAY. THEN I DID NOT UNDERSTAND YOUR
12 QUESTION.

13 Q WHAT IS AN AUTOPSY, DR. MC CARTHY? DO
14 YOU KNOW?

15 A AN EXAMINATION AS TO CAUSE OF DEATH.
16 Q AND WHAT DO AUTOPSY SURGEONS DO IN THE
17 COURSE OF AUTOPSY?
18 A LOOK FOR WHAT THEY BELIEVE CAUSED DEATH.
19 Q AND YOU THINK THAT'S ALL THEY DO?
20 A OH, NO. THEY DO A LOT OF THINGS. BUT
21 THAT'S THE ULTIMATE GOAL OF AN AUTOPSY.
22 Q THAT'S THE ULTIMATE GOAL?
23 A YES.
24 Q SO THEY LOOK -- DON'T THEY ALSO PROBE
25 AND DISSECT AND CUT OPEN AND EXAMINE, OR DON'T YOU
26 KNOW THAT?
27 A WELL, THEY DO ALL OF THOSE THINGS, BUT I
28 THINK THAT IS WELL-ENCOMPASSED UNDER THE TERM

41354

1 "LOOKED." I DIDN'T MEAN TO SAY THEY PUT THEIR
2 HANDS BEHIND THEIR BACK AND WALK AROUND VISUALLY
3 ONLY.
4 Q ARE YOU SUGGESTING THAT DR. GOLDEN DID
5 NOT PROPERLY DISSECT OR PROBE OR OPEN UP THESE
6 WOUNDS OR EXAMINE THE INTERNAL STRUCTURES OR LOOK
7 PROPERLY AT THE WOUND PATHS OF VARIOUS PROJECTILES?
8 A I'M NOT SURE I'M THE ONE TO COMMENT ON
9 WHAT IS AN ADEQUATE STANDARD OF CARE IN AN AUTOPSY,

10 GIVEN THIS VOLUME OF AUTOPSY IN THIS OFFICE.

11 Q THANK YOU. I'LL ACCEPT THAT.

12 COULD I HAVE THE DIAGRAMS BACK.

13 YOU THINK THE STANDARD OF CARE FOR AN

14 AUTOPSY DEPENDS ON THE VOLUME OR DEPENDS ON WHAT'S

15 ACCEPTABLE IN THE -- REASONABLY ACCEPTABLE IN THAT

16 MEDICAL COMMUNITY?

17 A I THINK THERE HAS GOT TO BE A BALANCING

18 OF BOTH; IN OTHER WORDS, OBVIOUSLY, WITH THE VOLUME

19 THEY WOULD HAVE TO HAVE A VASTLY EXPANDED STAFF TO

20 DO A DETAILED AUTOPSY AND PHOTOGRAPH ALL THE WOUNDS

21 OF EACH AND EVERY PERSON THEY AUTOPSIED.

22 BUT AGAIN, YOU'RE ASKING -- THIS IS OUT

23 OF MY AREA. IT'S JUST THAT --

24 MS. ABRAMSON: I MOVE TO STRIKE THE ANSWER,

25 YOUR HONOR, AS OUTSIDE HIS AREA, BEYOND HIS

26 KNOWLEDGE, AND PURE SPECULATION.

27 THE COURT: WELL, EXCEPT THAT YOU ASKED THE

28 QUESTION, AND NOW YOU'RE ASKING HIM NOT TO ANSWER

41355

1 IT.

2 MS. ABRAMSON: HE SAID HE DOESN'T KNOW. SO

3 IF HE DOESN'T KNOW, THAT SHOULD BE HIS ANSWER.

4 THE COURT: THE ANSWER WILL STAND.

5 Q BY MS. ABRAMSON: ON THE DIAGRAMS THAT
6 FAILURE ANALYSIS PREPARED, THE ONE I JUST SHOWED
7 YOU, DO NOT CONTAIN DR. GOLDEN'S NUMBERING SYSTEM.
8 THEY CONTAIN YOURS, CORRECT?

9 A I PREPARED A DIAGRAM WITH HIS NUMBERING
10 SYSTEM AND THEN ONE WITH MY SHOT SYSTEM.

11 Q THE ONE I JUST SHOWED YOU, DO YOU
12 REMEMBER WHICH ONE IT WAS?

13 A NO. I'M SORRY. I WASN'T LOOKING AT IT
14 FOR THAT.

15 Q SHOWING YOU 311 AND 312 AGAIN, WHOSE
16 NUMBERING SYSTEM IS ON THE ONE'S I JUST GAVE YOU?

17 A YEAH. THESE ARE MAPPED TO OUR NUMBERS.

18 Q THANK YOU.

19 AND WERE THESE EVER MADE IN LARGE FORM,
20 BY THE WAY? WERE THEY EVER MADE UP AS BIG BOARDS?
21 DID YOU SEE THAT?

22 A CERTAINLY WE NEVER DID. I COULD HAVE
23 PROJECTED THEM FOR YOU.

24 Q DID YOU EVER SEE THEM MADE UP BY ANYBODY
25 ELSE IN LARGE FORM?

26 A NOT TO MY KNOWLEDGE.

27 Q ALL RIGHT. SHOWING YOU NOW THE ONE
28 THAT'S MARKED 312, WHICH IS MARY MENENDEZ, THERE'S A

1 RED CIRCLE WITH THE FIGURE ON THE RIGHT AROUND THE
2 NUMBER 1E.

3 DO YOU SEE THAT?

4 A YES.

5 Q AND WHAT IS THAT 1E POINTING TO?

6 A TRYING TO CAPTURE A DISCUSSION OF THIS
7 WOUND AREA (POINTING).

8 Q LET'S -- THIS IS NOT A NARRATIVE. THIS
9 IS A PICTURE, CORRECT?

10 A YES.

11 Q AND IN THAT PICTURE YOU ARE ASCRIBING AS
12 PART OF SHOT 1 THAT COMPONENT, 1E, ARE YOU NOT?

13 A NO. WE'RE SHOWING THAT THE CORONER
14 ASCRIBED THAT WOUND, OR AT LEAST RAISED THE
15 POTENTIAL OF THAT WOUND BEING ASSOCIATED. SO WE
16 LABELED IT THAT WAY.

17 Q HE DIDN'T LABEL IT 1E OR ONE ANYTHING
18 ELSE, CORRECT?

19 A THAT'S CORRECT. BUT IN THE TEXT HE
20 POTENTIALLY -- HE'S NOT CERTAIN. HE TALKS ABOUT
21 THOSE BEING POTENTIALLY ASSOCIATED. SO IN OUR
22 NUMBERING SYSTEM WE JUST ATTEMPTED TO NUMBER HIS
23 ON -- THESE ARE HIS -- WE JUST ATTEMPTED TO TIE THEM
24 TOGETHER, YES.

25 Q HE DIDN'T RELATE THOSE SHOTS, WHICH ARE
26 HIS LEFT FOREARM TO MRS. MENENDEZ' RIGHT ARM, DID
27 HE?

41357

1 Q BUT YOU'VE LABELED MR. MENENDEZ' RIGHT
2 ARM 1C, CORRECT?

3 A CORRECT.

4 Q HE DIDN'T RELATE THE FOREARM WOUND TO
5 HER TO MR. MENENDEZ' LEFT CHEST, BUT YOU'VE LABELED
6 THAT 1B, CORRECT?

7 A NO, NO, NO. I WAS TOO QUICK THE LAST
8 TIME. PREVIOUSLY --

9 Q IF YOU WOULD JUST ANSWER. IT CALLS FOR
10 A YES OR NO ANSWER.

11 THE COURT: NO. HE WANTS TO CLARIFY THIS
12 ANSWER AND THE PREVIOUS ANSWER. HE CAN DO THAT.

13 THE WITNESS: THIS WOUND, 1C, HE PREVIOUSLY
14 CHARACTERIZED THE BOTTOM AS AN EXIT AND THE TOP --
15 EXCUSE ME -- THE BOTTOM AS AN ENTRANCE AND THE TOP
16 AS AN EXIT.

17 THEN HE HAS CHANGED NOW TO THE TOP OF 1C
18 AS NOT RELATED TO THE BOTTOM OF 1C.

19 I WAS MERELY TRYING TO TIE HIS SHOT
20 PATTERNS ON HIS DIAGRAM TO MY SHOT SEQUENCE.

21 Q BY MS. ABRAMSON: YES. THAT'S MY
22 POINT. ALL THE ONES ON THIS ARE WHAT YOU HAVE

23 RELATED TO SHOT 1, YOUR SHOT SEQUENCE 1, CORRECT?

24 THIS IS YOUR RELATIONSHIP?

25 A NOT QUITE. IT'S A HYBRID OF MY

26 RELATIONSHIP AND HIS RELATIONSHIP. 1E IS ONE THAT

27 HE ASSOCIATED. AS I INDICATED TO YOU, HE ASSOCIATED

28 IT WITH THE LEFT BREAST AND INDICATED THERE MIGHT BE

41358

1 A POSSIBLE RELATIONSHIP.

2 Q WITH THAT, WITH THE LEFT BREAST?

3 A YES.

4 Q HE DID NOT ASSOCIATE IT WITH ANY WOUND

5 WHATSOEVER ON MR. MENENDEZ' BODY, DID HE? IS THAT

6 CORRECT?

7 A CORRECT.

8 Q AND ALL OF THESE WOUNDS THAT YOU CHARTED

9 ON YOUR ILLUSTRATIONS AS ONE ARE INDICATED ON THESE

10 TWO CHARTS AS HAVING A ONE DESIGNATION, 1A, B, C, D,

11 AND 1E, CORRECT?

12 A THEY CALL CARRY A ONE DESIGNATION,

13 CORRECT.

14 Q AND THE FOREARM ON THIS CHART CARRIES

15 THE DESIGNATION 1E, CORRECT?

16 A CORRECT.

17 Q AND MR. MENENDEZ' RIGHT CHEST, IN THE

18 AREA WHERE THE PELLET IN THE STERNAL ZONE WAS

19 LOCATED IS LABELED ON THIS CHART 1B?

20 A NO. YOU CAN SEE THE STERNUM IS NOT

21 WHERE THE ARROW IS.

22 Q IT'S NOT ON THE STERNUM. IT'S THE

23 STERNAL AREA.

24 A I THOUGHT THE AUTOPSY INDICATED HE

25 RECOVERED THAT PELLET FROM THE STERNUM. AM I WRONG

26 ON THAT?

27 Q DR. MC CARTHY, MAY I HAVE YOUR

28 ATTENTION?

41359

1 THIS IS 295-A. YOU RECALL I SHOWED YOU

2 A PHOTOGRAPH THAT HAD A CIRCLE FROM THE PREVIOUS

3 TRIAL AROUND THE DARK SPOT I AM POINTING TO HERE?

4 A OOH. I'D HAVE TO SEE A PHOTOGRAPH AGAIN

5 OF ONE OF THOSE SPOTS, YES.

6 Q WELL, WHAT IS IT IF THIS IS NOT SUPPOSED

7 TO LABEL THE PELLET IN THE STERNUM? WHAT IS IT THAT

8 1B IN THIS DIAGRAM IS SUPPOSED TO SHOW?

9 A THESE ABRASIONS HE ASSOCIATED.

10 Q AND YOU DON'T ASSOCIATE -- HE ASSOCIATED

11 THEM WITH WOUND NO. 3 OF THE RIGHT ARM, CORRECT?

12 A YES. THE TWO OR THREE.

13 Q AND YOU'RE ASSOCIATING THEM
14 DIRECTIONALLY WITH HIS WOUND NO. 4, THE LEFT ARM.
15 YOU'RE SAYING THEY'RE COMING LEFT TO RIGHT. HE SAID
16 IT CAME RIGHT TO LEFT, CORRECT?
17 A HOLD ON. THERE WAS TOO MUCH IN THAT
18 QUESTION. HOLD ON.
19 Q I'LL WITHDRAW THE QUESTION, YOUR HONOR.
20 DR. MC CARTHY, WERE MR. AND
21 MRS. MENENDEZ SHOT WITH GREEN RODS?
22 A NO.
23 Q WHAT WERE THEY SHOT WITH?
24 A TEN SHOTS OF NO. 4 BUCKSHOT AND TWO
25 SHOTS OF BIRD SHOT.
26 Q NOW, THAT'S YOUR OPINION, THAT THAT'S 12
27 SHOTS, CORRECT?
28 A CORRECT.

41360

1 Q BUT, IN ANY EVENT, HOWEVER MANY, THEY
2 ARE SHOT WITH MULTIPLE PELLET-LOADED AMMUNITION,
3 CORRECT?
4 A YES.
5 Q NOT A SOLID GREEN ROD, RIGHT?
6 A CORRECT.
7 Q AND WHEN YOU SHOW ON THESE ILLUSTRATIONS

8 OF YOURS A SOLID ROD, YOU HAVE TESTIFIED THAT'S JUST
9 REPRESENTATIVE OF THE GENERAL GEOMETRY OF THE
10 TRAJECTORIES HERE; IS THAT CORRECT?

11 A THE DIRECTION OF SHOT, CORRECT.

12 Q AND WHEN YOU SHOWED IN YOUR SHOT 1A
13 MR. MENENDEZ WITH HIS ARM RAISED IN SUCH A POSITION
14 THAT VISUALLY IT APPEARED IT WAS QUITE CLOSE TO THE
15 ARMREST OF THE COUCH; AND YOU SHOWED A GREEN ROD,
16 YOU WEREN'T TRYING TO SHOW ONE PELLET GOING THROUGH,
17 WERE YOU?

18 A THE ROD REPRESENTS THE DIRECTION OF THE
19 EPICENTER OF THE SHOT. IT'S NOT NECESSARILY
20 REPRESENTATIVE OF THE GEOMETRY OF THE SHOT PATTERN.

21 Q AND YOU'VE INDICATED, HAVE YOU NOT, THAT
22 THAT THE SHOT INTO THE LEFT ELBOW SHOWS A SCATTERED
23 PATTERN, CORRECT?

24 A YES.

25 Q AND YOU'RE UNWILLING TO DISCUSS
26 DISTANCE, CORRECT?

27 A UNWILLING TO DEFEND A PARTICULAR
28 DISTANCE FOR REASONS I'VE DISCUSSED. IT COULD

41361

1 ENCOMPASS A WIDE RANGE.

2 Q AND SO WHEN WE SHOWED, ARTISTICALLY,

3 USING THE SAME RODS, SYMBOLICALLY, THAT A SPREAD
4 SHOT PATTERN THE WAY YOU HAVE DEPICTED -- I DON'T
5 FIND ANY OF THE CLIPS NOW -- IN THE POSITION YOU
6 CHOSE TO ILLUSTRATE, DID YOU NOT UNDERSTAND THAT
7 THESE PHOTOGRAPHS SHOWING THE GREEN ROD HITTING THE
8 CHANNEL CHANGER TO ALSO BE REPRESENTATIVE OF WHAT A
9 SPREAD SHOT PATTERN COULD DO IF THE ARM WAS IN THE
10 POSITION IN THE ILLUSTRATION?

11 A I DID NOT UNDERSTAND THAT THAT ROD --
12 YOUR ARTIST THEN WOULD HAVE HAD TO EXPAND THAT ROD
13 DRAMATICALLY TO GIVE A FAIR REPRESENTATION OF HOW
14 BIG IT WOULD HAVE TO BE AT THE ELBOW POSITION TO
15 START TO STRIKE THE CHANNEL CHANGER.

16 Q YOU DON'T GIVE MY -- YOU PURPOSELY JUST
17 USED A GREEN ROD RATHER THAN SCATTER OF SHOT,
18 BECAUSE IF YOU HAD SHOWN SCATTER OF SHOT WIDE ENOUGH
19 TO CAUSE THAT PATTERN, IT WOULD HAVE HIT NOT JUST
20 THE CHANNEL CHANGER, BUT THE ARMREST; ISN'T THAT
21 TRUE?

22 A NO. THERE'S NO REQUIREMENT FOR THAT
23 WHATSOEVER.

24 Q ARE YOU AWARE OF ANY PELLET TEARS IN
25 THAT ARMREST?

26 A I'M UNAWARE OF ANY.

27 Q ARE YOU AWARE OF ANY PELLET TEARS IN THE
28 OTHER SIDE OF THE COUCH, THE INSIDE PART OF THAT

1 ARMREST?

2 A I'M UNAWARE OF ANY THERE.

3 Q NOW, YOU TALKED ABOUT, WITH MR. CONN,
4 WHAT YOU MEANT IN THE NOTATIONS THAT YOU WROTE ON
5 THAT ARTICLE THAT YOU AND SOME OTHERS WERE WRITING
6 FOR A JOURNAL.

7 A YES.

8 Q DO YOU BELIEVE, DR. MC CARTHY, THAT
9 ANYTHING THAT IMPEACHES YOU, PROVES THAT YOU'RE
10 WRONG, IS, QUOTE, CONFUSION OF A JURY?

11 A IF I'M RIGHT AND IT CONFUSES THE JURY,
12 YES. I MEAN, IT'S CLEARLY CONFUSING. IF I'M TRULY
13 WRONG --

14 Q YOU DO TAKE THE POSITION THAT ANYTHING
15 YOU TESTIFY TO YOU'RE RIGHT ABOUT, DON'T YOU?

16 A THE OVERWHELMING MAJORITY. BUT I CAN'T
17 SAY EVERY SINGLE THING. I MEAN, EVERYBODY IS
18 MORTAL.

19 Q AS YOU'VE TOLD US, YOU GET PAID A GREAT
20 DEAL OF MONEY TO TESTIFY ON BEHALF OF LARGE
21 CORPORATIONS, DON'T YOU?

22 A YOU MEAN IN OTHER ENVIRONMENTS? YEAH.

23 Q AND IT ISN'T GOOD FOR YOUR BUSINESS IF
24 YOU ARE SHOWN TO BE WRONG AS YOU TESTIFY, IS IT?

25 A OH, OBVIOUSLY. NOT IN MY BUSINESS, IT
26 IS NOT GOOD BUSINESS OR GOOD PROFESSIONAL CONDUCT TO

27 MAKE A MISTAKE.

28 Q WHAT YOU'RE DOING IN THOSE NOTES TO AN

41363

1 ARTICLE IS YOU'RE ASKING SOMEONE TO CHANGE THE
2 EXAMPLES THAT THEY HAVE CHOSEN TO SHOW BECAUSE THOSE
3 EXAMPLES, IF PUBLISHED, COULD CONTRADICT YOU AS A
4 WITNESS. ISN'T THAT WHAT THOSE NOTES MEAN?

5 A OH, NO. WHAT THEY MEAN IS THAT SOMEONE
6 COULD TAKE THE CHART, AND WITHOUT UNDERSTANDING THE
7 BACKGROUND, THE 22 PAGES OF ACADEMIC DISCUSSION
8 AROUND IT, COULD SAY: DIDN'T YOU SAY "X" HERE AND
9 "Y" THERE; AND, OF COURSE, THE ANSWER IS NO.

10 BUT AS MUCH AS POSSIBLE -- AND I DON'T
11 ALWAYS SUCCEED -- BUT AS MUCH AS POSSIBLE, I'D LIKE
12 TO KEEP THE OPPORTUNITY TO MAKE SUCH A SUPERFICIAL
13 CROSS-EXAMINATION DOWN TO A MINIMUM.

14 Q YOU DON'T LIKE TO BE CONTRADICTED IN
15 CROSS-EXAMINATION; ISN'T THAT IT?

16 A THAT DOESN'T BOTHER ME. WHAT BOTHERS ME
17 IS WHEN SOMEONE ATTEMPTS TO USE AN EXAMPLE TO
18 CONFUSE A JURY ON A SCIENTIFIC POINT WHEN THEY KNOW
19 WHAT THE CORRECT ANSWER IS.

20 Q SORT OF LIKE WHEN SOMEONE THAT'S
21 COMPLETELY OUTSIDE HIS AREA OF EXPERTISE OFFERS

22 OPINIONS IN CONTRAVENTION TO THE EXPERTS WHO HAVE
23 OTHERWISE LOOKED AT THE SAME EVIDENCE; IS THAT WHAT
24 YOU MEAN?
25 A NO. IT'S THE DIFFERENCE --
26 Q BY MS. ABRAMSON: WELL, DR. MC CARTHY --
27 MR. CONN: MAY THE WITNESS EXPLAIN HIS
28 ANSWER, YOUR HONOR?

41364

1 THE COURT: YES.
2 THE WITNESS: IT IS THE DIFFERENCE BETWEEN
3 INTENTIONALLY TAKING AN EXAMPLE WHERE YOU KNOW WHAT
4 THE CORRECT ANALYSIS IS AND TRYING TO CONVINCE
5 SOMEONE OF THE OPPOSITE. IN THIS PARTICULAR CASE --
6 MS. ABRAMSON: I THINK, YOUR HONOR, HE'S GONE
7 BEYOND EXPLAINING HIS ANSWER.
8 THE COURT: NO. HE'S STILL ANSWERING.
9 THE WITNESS: IN THIS PARTICULAR CASE I HAVE
10 BEEN FORTHCOMING AS TO MY EXPERTISE AND TESTIFIED TO
11 THE BEST OF MY ABILITY TO USE IT TO RECONSTRUCT THIS
12 PARTICULAR CRIME SEQUENCE.
13 Q BY MS. ABRAMSON: HOW ARE YOU ON
14 COUNTING? ARE YOU EXPERT IN COUNTING UP TO 10?
15 A I USUALLY CAN DO THAT ERROR FREE, YES.
16 Q CAN YOU EXPLAIN, THEREFORE, WHY YOU

17 COUNTED -- IN SPITE OF DR. LAWRENCE'S TESTIMONY AND
18 THE SHOWING OF THE X RAY TO THE JURY -- WHY IT IS
19 YOU CHOSE TO INCLUDE IN YOUR PELLET COUNT FOR SHOT 1
20 ONLY EIGHT PELLETS IN MR. MENENDEZ' RIGHT ARM, WHEN
21 PREVIOUSLY IT WAS ESTABLISHED THERE ARE NINE?

22 A I GUESS I'M LESS COMFORTABLE WITH
23 "PREVIOUSLY IT WAS ESTABLISHED." A LOT OF THESE
24 X RAY INDICATIONS GET -- ARE NOT AS CLEAN AND OPAQUE
25 AND STARKLY DARK; AND ALSO, ON SOME IT'S
26 QUESTIONABLE WHETHER IT'S A FULL PELLET OR A PARTIAL
27 PELLET.

28 THAT'S WHY COUNTING OF PELLETS IN X RAYS

41365

1 IS NOT AN EXACT SCIENCE, AND I'M VERY COMFORTABLE
2 WITH EMBRACING DR. LAWRENCE'S COUNT.

3 Q OF NINE?

4 A OF 27.

5 Q NO. HE DIDN'T COUNT 27. HE COUNTED
6 NINE IN THE RIGHT ARM. ARE YOU EMBRACING THAT
7 COUNT?

8 A I'M COMFORTABLE WITH THE SEQUENCE THAT
9 HE COUNTED.

10 NOW, WE WILL HAVE TO GO BACK OVER HIS
11 SPECIFIC TESTIMONY TO FIND WHERE HE COUNTED WHAT BY

12 X RAY.

13 Q WILL WE?

14 A I MEAN, I WOULD.

15 MR. CONN: OBJECTION. ARGUMENTATIVE. MOTION

16 TO STRIKE.

17 THE COURT: OBJECTION SUSTAINED. THE

18 QUESTION AND ANSWER'S STRICKEN.

19 Q BY MS. ABRAMSON: YOU HAVE ADMITTED YOU

20 HAVE NO MEDICAL TRAINING IN READING X RAYS

21 WHATSOEVER, CORRECT?

22 A SEVERAL TIMES.

23 Q AND DR. LAWRENCE HAS, CORRECT?

24 A THAT IS MY UNDERSTANDING, YES.

25 Q AND YOU NO LONGER REMEMBER THAT HE

26 COUNTED NINE IN THE RIGHT ARM OF MR. MENENDEZ.

27 SHALL I GET THE CHART?

28 A YES. I BELIEVE HE COUNTED NINE ON

41366

1 9.XRAY.

2 Q AND HE COUNTED FIVE IN THE LEFT ELBOW,

3 CORRECT?

4 A 11.XRAY.

5 Q IS THAT YES?

6 A HE COUNTED FIVE IN 11.XRAY.

7 Q WELL, I DON'T WANT TO TALK ABOUT

8 X RAYS. I WANT TO TALK ABOUT PARTS OF PEOPLE.

9 A THEN JUST A MOMENT, PLEASE. HE COUNTED

10 FIVE ON THE LEFT ARM.

11 Q LEFT ELBOW OF MR. MENENDEZ?

12 A YES.

13 Q AND THEN YOU COUNTED 13 IN MRS. MENENDEZ

14 CHEST BASED ON WHAT, 3.XRAY?

15 A 3.XRAY.

16 Q AND YOU COUNTED HOW MANY IN HER LEFT

17 FOREARM?

18 A I ATTRIBUTED THE POSSIBILITY OF ONE

19 THERE.

20 Q WHAT FINALLY DID YOU DECIDE TO DO ABOUT

21 THE ONE IN HER LEFT ELBOW AREA, FARTHER UP, JUST

22 IGNORE IT?

23 A FRANKLY, I'M UNCERTAIN AS A PRECISE

24 MATTER, ABOUT EITHER OF THEM, BUT I COUNTED ONE.

25 Q SO YOU'RE ONLY COUNTING ONE?

26 A THAT'S CORRECT.

27 Q SO -- AND YOU'RE NOT COUNTING THE PELLET

28 IN HIS CHEST?

41367

1 A NO. THAT CLEARLY -- DIRECTIONALLY THAT

2 DOESN'T APPEAR TO BE CONNECTED TO THE SHOT.

3 Q SO WHY DON'T WE JUST ADD WHAT YOU'VE NOW
4 SAID YOU ARE COUNTING.

5 NINE, FIVE, THIRTEEN, AND ONE?

6 A WELL, NOT QUITE. YOU'RE TRYING TO ADD
7 UP WHAT I'M COUNTING AND DR. LAWRENCE COUNTED. WHEN
8 I COUNTED 9.XRAY I ATTRIBUTED EIGHT.

9 Q ARE YOU AGAIN REFUSING TO ACCEPT THE
10 COUNT OF A DOCTOR WHO IS TRAINED TO PROPERLY READ
11 X RAYS?

12 A NO, MS. ABRAMSON. BUT YOU WANT TO TAKE
13 MY COUNT ON SOME AND YOU WANT TO TAKE HIS COUNT ON
14 OTHERS. I HAVE NO TROUBLE WITH A CONSISTENT
15 INTERPRETATION OF ALL THE X RAYS. IF YOU DO THAT,
16 WE BOTH COME TO 27.

17 Q DR. MC CARTHY, WHAT'S THERE IS THERE;
18 HOWEVER YOU MAY CHOOSE TO ADD OR IGNORE, THERE ARE
19 NINE PELLETS IN THAT X RAY OF HIS RIGHT ARM.

20 DO YOU DISPUTE THAT?

21 MR. CONN: OBJECTION. ARGUMENTATIVE.

22 THE COURT: REPHRASE THE QUESTION.

23 Q BY MS. ABRAMSON: DO YOU DISPUTE THERE
24 ARE NINE PELLETS IN HIS RIGHT ARM?

25 A MY COUNT WAS EIGHT. WE CAN PUT IT UP
26 AND SHOW THE DISPUTED PELLET.

27 Q WHY DON'T WE DO THIS.

28 DID YOU EVER BOTHER TO COUNT HOW MANY

1 HOLES WERE IN HER BREAST, WHICH IS YOUR BACK-STOP
2 TERMINAL POINT?

3 A I COUNTED THE DEFECTS AT VARIOUS TIMES.
4 BUT, OBVIOUSLY, BECAUSE OF PELLET FRAGMENTS, YOUR
5 DEFECT COUNT MAY NOT MATCH YOUR PELLET COUNT.

6 Q YOU DON'T HAVE ANY IDEA IF THERE ARE
7 PELLET FRAGMENTS OR WHOLE PELLETS, DO YOU?

8 A OH, MOST CERTAINLY WE DO. LOOK AT THE
9 CHEST X RAY.

10 Q ISN'T IT TRUE THAT THERE ARE 16 SEPARATE
11 HOLES IN HER BREAST?

12 A I WOULD HAVE TO BLOW THAT UP IF YOU WANT
13 AN INDEPENDENT COUNT FROM ME.

14 Q IS THAT YOU DON'T KNOW?

15 A NOT FROM MEMORY; THAT IS CORRECT.

16 Q NOW, YOU TALKED ABOUT EXHIBIT 309, WHICH
17 IS A PHOTOGRAPH THAT YOU THEN BLEW UP OF MR. MENENDEZ'
18 BODY ON A PIECE OF PLASTIC WITH THE SHIRT PULLED UP
19 TO DEMONSTRATE BLEEDING AFTER THE CORONER'S
20 INVESTIGATORS MOVED THE BODY; IS THAT RIGHT?

21 A NO. YOU ASKED ME ABOUT DRIPPING BLOOD
22 AND I EXPLAINED TO YOU THAT MY RECOLLECTION WAS
23 THERE WERE BLOOD DRIPS WHEN THE BODIES WERE MOVED;
24 AND SURE ENOUGH, THERE ARE BLOOD DRIPS ON THAT

25 PLASTIC.

26 Q THERE IS ONE DROP OF BLOOD THAT YOU
27 POINTED TO ON THAT PLASTIC.

28 A THAT IS INCORRECT. I THINK THERE ARE

41369

1 FOUR; AND I THINK A REASONABLE, PERHAPS UNOPPOSED,
2 INTERPRETATION IS THAT THERE'S OTHERS.

3 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
4 OBJECT TO ANYTHING AFTER FOUR AS NOT RESPONSIVE.

5 THE COURT: ALL RIGHT. OBJECTION IS
6 SUSTAINED. THE REST OF THE ANSWER IS STRICKEN.

7 Q BY MS. ABRAMSON: AND DO YOU BELIEVE --
8 WE WERE TALKING ABOUT DROPS OF BLOOD ON THE CARPET
9 WHEN YOU REMARKED IN CROSS-EXAMINATION THAT THE
10 BODIES WERE STILL BLEEDING.

11 DO YOU RECALL THAT?

12 A NO. MY RECOLLECTION IS YOU WERE ASKING
13 ABOUT THE POTENTIAL OF DRIPS OF BLOOD ON THE COUCH,
14 AND I INDICATED TO YOU THAT MY RECOLLECTION WAS THAT
15 THE BODIES WERE DRIPPING WHEN THEY WERE REMOVED.
16 AND THAT'S WHEN I SHOWED YOU THE DROPS ON THE
17 PLASTIC.

18 Q NOW, IS THAT GOING TO BE YOUR
19 EXPLANATION FOR DROPS OF BLOOD ON THE CARPET TO THE

20 WEST OF MR. MENENDEZ AS WELL, THAT THEY FIRST MOVED
21 THE BODY ONTO THE CARPET SO IT COULD DROP THERE AND
22 THEN PUT IT ON PLASTIC?

23 A I'M SORRY. WITHOUT KNOWING WHAT
24 SPECIFIC DROPS YOU'RE REFERRING TO, I CAN'T HAZARD
25 YOU AN EXPLANATION WITH THE UNDERSTANDING THAT BLOOD
26 SPLATTERS ARE NOT MY AREA OF EXPERTISE.

27 Q WE'RE TALKING ABOUT DROPS. YOU KNOW
28 THERE'S A DIFFERENCE BETWEEN A DROP AND A SPLATTER?

41370

1 A I KNOW THERE IS A DIFFERENCE, THAT YOU
2 WOULD LET ME INTERPRET A PARTICULAR PICTURE
3 UNFETTERED IN THAT REGARD IS REALLY THE QUESTION I
4 HAVE.

5 MS. ABRAMSON: MAY I STRIKE THE WITNESS'
6 QUESTION, SINCE HE'S NOT SUPPOSED TO BE ASKING
7 QUESTIONS.

8 THE COURT: NO. THAT WAS HIS EXPLANATION OF
9 HIS ANSWER.

10 OVERRULED.

11 Q BY MS. ABRAMSON: SO IN 309, IS THE
12 PHOTOGRAPH THAT YOU'RE RELYING ON AND THERE DOES
13 SHOW, DOES IT NOT, HIS SHIRT MOVED UP, 309. IT'S
14 NOT ON THE CHART YOU'RE LOOKING AT.

15 A OH. I'M SORRY. I CAN'T DO THE EXHIBIT
16 NUMBER FROM MEMORY. I'M SORRY, MA'AM.
17 Q WELL, YOU HAVE THE PHOTOGRAPH FROM
18 MEMORY? IT'S WHAT YOU HAVE IN MIND. IT'S THE BODY
19 ON ITS SIDE ON PLASTIC.
20 THE COURT: LET'S SHOW HIM THE PHOTOGRAPH, IF
21 THAT'S WHAT YOU'RE ASKING ABOUT.
22 Q BY MS. ABRAMSON: IT'S THIS PHOTOGRAPH.
23 A YES.
24 Q WOULD YOU CIRCLE THE FOUR DROPS; AND NOT
25 SMEARS, DROPS ON THAT PHOTOGRAPH.
26 A SURE. I'VE CIRCLE THEM IN RED.
27 Q AND IN THAT PHOTOGRAPH IS THE SHIRT
28 PULLED UP?

41371

1 A YES, MA'AM.
2 Q AND DO YOU KNOW IF THE BLOOD CAME FROM
3 THE PROCESS OF PULLING UP THE SHIRT OR NOT?
4 DO YOU KNOW THAT?
5 A OBVIOUSLY, I DON'T KNOW. IT SEEMS LIKE
6 AN --
7 MS. ABRAMSON: YOUR HONOR, HE ANSWERED THE
8 QUESTION.
9 THE COURT: THAT'S CORRECT. THE ANSWER IS

10 IN.

11 THE NEXT QUESTION, PLEASE.

12 MS. ABRAMSON: THANK YOU.

13 Q NOW, DR. MC CARTHY, CONCERNING THE
14 AMMUNITION YOU PURCHASED, DID YOU PURCHASE THAT
15 DIRECTLY FROM ITALY?

16 A NO. I BOUGHT IT FROM SOME -- MY
17 RECOLLECTION -- FIRST OF ALL, I DID NOT BUY IT
18 DIRECTLY FROM ITALY. I BOUGHT IT FROM A U.S.
19 WHOLESALER.

20 Q AND HOW MANY OF THOSE SHELLS DID YOU
21 OPEN UP AND COUNT?

22 A UNTIL VERY RECENTLY, ONLY A COUPLE.

23 Q WHEN IS VERY RECENTLY?

24 A I OPENED IT UP, I THINK, TWO OR THREE
25 ORIGINALLY; AND I OPENED UP TEN MORE THIS WEEKEND.

26 Q DIDN'T YOU TESTIFY ORIGINALLY ON DIRECT
27 THAT YOU HAD FOUND AT LEAST TWO, WITH A COUNT OF 26
28 AND AT LEAST ONE WITH A COUNT OF 28?

41372

1 A NOT IN THE FIOCCHI AMMUNITION, NO.

2 Q NOT IN THE FIOCCHI AMMUNITION?

3 A NO. THAT WAS A MORE MODERN, AS YOU
4 PROPERLY OBSERVED, CUP-FILLED DESIGN.

5 Q NO, NO, NO. WE'RE TALKING ABOUT

6 AMMUNITION THAT YOU ORDERED A CASE OF.

7 A YES.

8 Q THAT'S FIOCCHI AMMUNITION?

9 A CORRECT.

10 Q AND THAT'S WHAT I'M ASKING YOU ABOUT.

11 YOU TESTIFIED THAT YOU OPENED UP THE ONLY AMMUNITION

12 OF THIS TYPE THAT YOU HAD AND FOUND NUMEROUS ONES

13 WITH COUNTS OF ONLY 26 AND FOUND AT LEAST ONE OR

14 MORE WITH COUNTS OF 28; ISN'T THAT WHAT YOU

15 TESTIFIED TO?

16 A NO. I DIDN'T RELATE THAT COUNTING TO

17 THE FIOCCHI AMMUNITION THAT I HAD PURCHASED FROM MY

18 TESTING.

19 Q WHAT COUNTING DID YOU RELATE THAT TO?

20 A IT WAS WINCHESTER AMMUNITION THAT WE --

21 THAT WE HAD OPENED PREVIOUSLY OF AN OLDER DESIGN,

22 USING THE OVER-WAD AS OPPOSED TO THE CUP.

23 Q AND HOW MANY OF -- THAT'S WHERE YOU

24 OPENED TWO OR THREE?

25 A WE OPENED 10 OF THOSE.

26 Q NO, NO. I'M TALKING ABOUT WHAT YOU DID

27 BEFORE YOU TESTIFIED ON DIRECT EXAMINATION IN THIS

28 TRIAL.

1 A ONLY I OPENED TWO OR THREE OF THE
2 FIOCCHI.

3 Q YES. YOU OPENED UP TWO TO THREE OF THE
4 FIOCCHI. THAT'S ALL YOU OPENED UP?

5 A CORRECT.

6 Q AND OF THAT TWO OR THREE THAT YOU OPENED
7 UP, HOW MANY WERE OFF COUNT?

8 A OH, THEY WERE ALL 27.

9 Q SO IT WAS SOME OTHER AMMUNITION YOU WERE
10 TESTIFYING ABOUT WHEN YOU SAID THEY WERE OFF COUNT?

11 A YES. A KIND FILLED -- OF THE OLDER
12 TECHNOLOGY. THESE NEW SHELLS THAT I HAVE ARE
13 STILL --

14 MS. ABRAMSON: EVERYTHING AFTER "YES" I WOULD
15 ASK TO BE STRICKEN.

16 THE COURT: SUSTAINED. THE REST OF THE
17 ANSWER'S STRICKEN.

18 THE WITNESS: I'M SORRY. YES.

19 Q BY MS. ABRAMSON: NOW, DID YOU ATTEMPT --
20 SINCE OBVIOUSLY YOU WERE DOING SOME EXPERIMENTING
21 THIS WEEKEND -- DID YOU ATTEMPT TO OBTAIN THE
22 EXACT -- STRIKE THAT.

23 DID YOU ATTEMPT TO OBTAIN FIOCCHI NO. 4
24 BUCKSHOT PACKED EXACTLY THE SAME WAY THAT THE
25 AMMUNITION THAT WAS USED IN THIS CASE WAS PACKED,
26 FOR EXPERIMENTATION?

27 A NO.

28 Q AND WHY DIDN'T YOU TRY TO GET THE REAL

1 STUFF?

2 A WELL, WHEN I FOUND OUT THE DISAGREEMENT
3 BETWEEN WHAT I HAD AND WHAT WAS USED, THERE WAS NO
4 SENSE GOING THROUGH THE EFFORT OF FINDING THE REAL
5 STUFF, UNLESS THE SHOOTING EXERCISE WAS GOING TO
6 PROVE OUT TO BE RELIABLE; THAT IS, IF THE MORE
7 ADVANCED FIOCCHI AMMUNITION THAT I WAS SHOOTING
8 DIDN'T PRODUCE A REPEATABLE GROUP, THEN THE REAL
9 STUFF WOULD ONLY BE PREDICTED TO PRODUCE A LESS
10 REPEATABLE GROUP.

11 Q HOW ABOUT FOR THE PURPOSE OF COUNT?

12 A I DIDN'T BASE ANY OF MY RECONSTRUCTION
13 ON COUNT. I DIDN'T COUNT WINCHESTER OVER THE WEEK.
14 I COUNTED FIOCCHI OVER THE WEEKEND.

15 Q WHY DID YOU OPEN UP NEW WINCHESTER OVER
16 THE WEEKEND PACKED IN THE OLD FASHION WAY?

17 A NO, NO, NO. I'M SORRY. I THINK THERE'S
18 CONFUSION. THIS WEEKEND I OPENED UP SOME OF THE NEW
19 FIOCCHI. ORIGINALLY, THE TESTIMONY THAT I WAS
20 TALKING ABOUT IS WINCHESTER WE HAD OPENED
21 PREVIOUSLY.

22 Q SO YOU OPENED UP YOUR NEW FIOCCHI WHICH
23 ARE STILL THE WRONG AMMUNITION, CORRECT?

24 A YES. IT'S WHAT I GOT.
25 MS. ABRAMSON: THE GUN'S NOT NEAR THE
26 WITNESS, YOUR HONOR; AT LEAST, I DON'T THINK IT IS.
27 THE WITNESS: IT IS NOT.
28 Q BY MS. ABRAMSON: THIS RED BOX, MAROON

41375

1 OR PURPLE, ACTUALLY, IS ONE OF THE CASES THAT YOU
2 PURCHASED, CORRECT?

3 A CORRECT.

4 Q NOW, YOU TESTIFIED THAT YOUR
5 UNDERSTANDING WAS THAT FIOCCHI NO. 4 WAS SOLD BY
6 WEIGHT?

7 A WELL, IT IS. IT'S ON THE BOX.

8 Q FIOCCHI NO. 4 IS SOLD BY WEIGHT?

9 A YES.

10 Q AND IS IT YOUR TESTIMONY THAT ALL
11 FIOCCHI NO. 4 IS SOLD BY WEIGHT?

12 A OH, NO.

13 Q WHY IS THIS SOLD BY WEIGHT AND NOT SOME
14 OTHER --

15 A YOU'D HAVE TO ASK FIOCCHI.

16 Q WHAT ABOUT AMMUNITION THAT WAS USED
17 HERE?

18 A I HAVEN'T TESTIFIED ABOUT THE AMMUNITION

19 USED HERE OUTSIDE OF WHAT I'VE BEEN ASKED.

20 Q I'M ASKING YOU, IS IT SOLD BY WEIGHT?

21 A I DON'T KNOW.

22 Q WHY DON'T YOU KNOW?

23 A DIDN'T PLAY ANY PART IN MY

24 RECONSTRUCTION. I'VE ALWAYS USED 27.

25 Q YOU DON'T KNOW BECAUSE YOU'VE NEVER --

26 TO THIS MINUTE, YOU'VE NEVER TRIED TO GET THE REAL

27 AMMUNITION TO COMPARE IT TO ANYTHING IN THIS CASE,

28 CORRECT?

41376

1 A I TRIED TO GET THE REAL AMMUNITION;

2 OTHERWISE, I WOULDN'T HAVE HAD TO ORDER FIOCCHI OR

3 CALLED THE FIOCCHI FACTORY.

4 Q AND YOU COULDN'T FIND IT ANYWHERE?

5 A I COULD NOT FIND IT ANYWHERE; THAT IS

6 CORRECT.

7 MS. ABRAMSON: NOW, TRAVIS -- I'M SORRY.

8 DEPUTY OELAND.

9 I'D LIKE TO MARK THIS BAG AND ITS

10 CONTENTS NEXT IN ORDER.

11 THE COURT: 313.

12 Q BY MS. ABRAMSON: WOULD YOU CAREFULLY

13 REMOVE THE BOX THAT'S IN THAT BAG, DR. MC CARTHY?

14 A (WITNESS COMPLIES.)
15 Q WHAT IS IT?
16 A IT'S A BOX. APPEARS TO BE 10 SHOTGUN
17 SHELLS FROM FIOCCHI OF AMERICA.
18 Q NO. 4?
19 A NO. 4 BUCK.
20 Q SOLD BY PELLET COUNT?
21 A YES.
22 Q TWENTY-SEVEN PELLETS?
23 A NO. 4 BUCK.
24 Q AND WOULD YOU OPEN THE SIDE OF THAT BOX
25 AND REMOVE ONE OF THOSE ROUNDS.
26 A SURELY.
27 Q AND CAN YOU OBSERVE THE PACKING OF THAT
28 ROUND?

41377

1 A YES. IT'S A TRANSLUCENT CASE.
2 Q AND DOES THAT APPEAR TO BE THE IDENTICAL
3 KIND OF PACKING AS USED IN THE AMMUNITION IN THIS
4 CASE?
5 A IT LOOKS SIMILAR. I WOULDN'T TESTIFY TO
6 IDENTITY UNTIL I DISSECTED IT OR WHATEVER.
7 Q AND IF I WERE TO TELL YOU THAT
8 AMMUNITION WAS PURCHASED THIS PAST FRIDAY RIGHT HERE

9 IN LOS ANGELES COUNTY, WOULD THAT INDICATE TO YOU IT

10 AIN'T THAT HARD TO FIND?

11 A NO. I KNOW HOW HARD IT IS TO FIND. BUT

12 YOU FOUND A BOX OF IT. MY CONGRATULATIONS.

13 Q WE FOUND A CASE OF IT.

14 A OH, GOOD.

15 Q AND YOU SEE, I JUST REMOVED A PIECE OF

16 PAPER FROM INSIDE THIS BAG?

17 A UH-HUH.

18 Q IS THAT A RECEIPT DATED NOVEMBER 17TH,

19 1995?

20 A IT IS.

21 Q INDICATING A PURCHASE FOR THE AMOUNT

22 SHOWN ON THE LITTLE PRICE LABEL ON THIS BOX OF

23 AMMUNITION?

24 A INDEED IT IS.

25 Q FIVE NINETY-NINE PLUS TAX?

26 A UH-HUH.

27 MS. ABRAMSON: I'D LIKE TO MARK THE TWO

28 COMPONENT PARTS OF 313, THE BOX OF AMMUNITION AND

41378

1 ALL SHELLS, AS 313-A; AND THE RECEIPT AS 313-B.

2 THE COURT: ALL RIGHT.

3 MS. ABRAMSON: AND REPLACE THEM IN THE BAG.

4 I HAVE NOTHING FURTHER.

5 THE COURT: ANY REDIRECT?

6 MR. CONN: NO FURTHER QUESTIONS, YOUR HONOR.

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

8 DOWN. YOU'RE EXCUSED.

9 THE WITNESS: THANK YOU.

10 THE COURT: WE'LL TAKE A RECESS AT THIS POINT

11 UNTIL 10:30.

12 DON'T DISCUSS THE MATTER WITH ANYONE AND

13 DON'T FORM ANY FINAL OPINIONS ABOUT IT, AND WE'LL

14 RESUME AT 10:30.

15 (A RECESS WAS TAKEN FROM

16 10:00 A.M. TO 10:35 A.M.)

17 (THE FOLLOWING PROCEEDINGS WERE

18 HELD IN OPEN COURT OUT OF THE

19 PRESENCE OF THE JURY:)

20

21

22

23

24

25

26

27

28

1

2 THE COURT: EVERYONE IS PRESENT WITHOUT THE
3 JURY.

4 ARE THERE ANY FURTHER WITNESSES BY THE
5 PROSECUTION?

6 MR. CONN: YES, YOUR HONOR. WE'D LIKE TO
7 CALL DETECTIVE ZOELLER JUST FOR A COUPLE OF
8 QUESTIONS AND THEN WE'LL BE RESTING AFTER THAT.

9 THE COURT: ALL RIGHT. AND THEN OTHER THAN
10 DISCUSSION OF EXHIBITS, WHICH CAN BE DEFERRED TO A
11 TIME MORE CONVENIENT TO DEAL WITH MATTERS OUTSIDE
12 THE PRESENCE OF THE JURY, WILL THERE BE ANY MOTIONS
13 BEFORE THE DEFENSE BEGINS?

14 MR. GESSLER: THERE WOULD BE THE 1118.1 THAT
15 I MENTIONED AS TO THE LYING IN WAIT, YOUR HONOR.
16 BUT I BELIEVE WE ALSO AGREED THAT COULD WAIT. WE
17 COULD EASILY DECIDE WHAT THE STATE OF THE EVIDENCE
18 IS AFTER THE PEOPLE RESTED FOR THAT MOTION.

19 THE COURT: ALL RIGHT. IF THERE COULD BE A
20 STIPULATION TO THAT EFFECT, THAT THE DEFENSE MAY
21 BRING ITS MOTION UNDER 1118.1 SOMETIME IN THE
22 FUTURE, BEFORE THE DEFENSE RESTS ITS CASE, IF THEY
23 CHOOSE TO DO SO, WITH A STIPULATION THAT IT HAD BEEN
24 BROUGHT AT THE TIME THE PEOPLE CLOSED THEIR
25 PRESENTATION OF EVIDENCE.

26 MR. CONN: YES, YOUR HONOR.

27 THE COURT: IS THAT AGREED?

28 MR. GESSLER: SO STIPULATED, YOUR HONOR.

41380

1 MS. ABRAMSON: SO STIPULATED.

2 THE COURT: ALL RIGHT. LET'S HAVE THE JURY
3 OUT.

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

7

8 THE COURT: OKAY. THE JURY IS BACK AND WE'RE
9 ABOUT TO RESUME.

10 IT'S A LITTLE COOL IN THE COURTROOM, AND
11 I'VE ASKED IF THEY CAN ADJUST THE AIR CONDITIONING,
12 AND IT'S SOMETIMES DONE HERE IN THE COURTROOM. THEY
13 HAVE SOME TECHNICIAN COME IN AND ADJUST THINGS.
14 SOMETIMES THEY DO IT BY SOME REMOTE SENSOR DEVICES
15 THAT THEY HAVE IN ANOTHER BUILDING. I DON'T KNOW
16 WHICH WILL BE DONE AND WHETHER IT WILL BE DONE, BUT
17 WE'RE TRYING ANYWAY.

18 ALL RIGHT. THE PEOPLE MAY CALL THEIR
19 NEXT WITNESS.

20 MR. CONN: YES. THE PEOPLE RECALL DETECTIVE
21 ZOELLER AT THIS TIME.

22

23 LESLIE H. ZOELLER,

24 RECALLED AS A WITNESS BY THE PEOPLE, HAVING BEEN

25 PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:

26 THE COURT: ALL RIGHT. STATE YOUR NAME AGAIN

27 FOR THE RECORD, PLEASE.

28 THE WITNESS: LESLIE H. ZOELLER.

41381

1 THE COURT: I'LL REMIND YOU THAT YOU'RE STILL

2 UNDER OATH.

3 THE WITNESS: YES, YOUR HONOR.

4

5 DIRECT EXAMINATION

6 BY MR. CONN:

7 Q DETECTIVE ZOELLER, I'D LIKE TO SHOW YOU

8 THE PHOTOGRAPH THAT HAS PREVIOUSLY BEEN MARKED AS

9 309 FOR IDENTIFICATION.

10 DO YOU RECOGNIZE THAT PHOTOGRAPH?

11 A YES, I DO.

12 Q AND CAN YOU TELL US WHAT THAT PHOTOGRAPH

13 DEPICTS.

14 A IT DEPICTS JOSE MENENDEZ LYING ON A -- ON

15 THE FLOOR ON A PLASTIC TARP THAT THE CORONER

16 BROUGHT.

17 Q CAN YOU TELL US WHEN IT WAS THAT THAT
18 PHOTOGRAPH WAS TAKEN.

19 A THE PHOTOGRAPH WAS TAKEN IMMEDIATELY
20 AFTER THE CORONER PLACED HIM THERE, THE MORNING OF
21 THE 21ST OF AUGUST, 1989.

22 Q AND YOU PREVIOUSLY DESCRIBED THAT DURING
23 THAT MOVEMENT PROCESS THAT THE VICTIM'S BRAIN FELL
24 FROM HIS HEAD; IS THAT CORRECT?

25 A THAT'S CORRECT.

26 Q AND CAN YOU TELL US WHAT IT IS THAT
27 WE'RE LOOKING AT OVER HERE IN THE UPPER RIGHT-HAND
28 CORNER OF THE PHOTOGRAPH.

41382

1 A THAT APPEARS TO BE HIS BRAIN.

2 Q DURING THIS MOVEMENT PROCESS, DID YOU
3 SEE ANY DRIPPING OF BLOOD?

4 A YES.

5 Q CAN YOU TELL US WHAT -- CAN YOU DESCRIBE
6 FOR US WHAT YOU OBSERVED AT THAT TIME.

7 A ONCE JOSE MENENDEZ WAS PICKED UP BY THE
8 CORONER -- CORONER'S INVESTIGATOR AND THE CORONER'S
9 INVESTIGATOR OR HELPER, AS SOON AS HE WAS TILTED
10 WITH HIS HEAD BACK, THERE WAS DRIPPING FROM THE HEAD
11 WOUND.

12 Q CAN YOU TELL US WHERE HE WAS PHYSICALLY
13 WHEN THAT DRIPPING ACTUALLY BEGAN.

14 A WELL, THEY PICKED HIM UP AT THE COUCH
15 AND THEN PUT HIM PRETTY MUCH SIDEWAYS AND THEN
16 CARRIED HIM OVER TO THE PLASTIC, WHICH IS ON THE
17 FLOOR.

18 Q I HAVE ANOTHER PHOTOGRAPH WHICH I WOULD
19 LIKE TO SHOW YOU THAT HAS PREVIOUSLY BEEN MARKED 307
20 FOR IDENTIFICATION.

21 CAN YOU TELL US WHAT THIS DEPICTS HERE.

22 A THIS IS A PHOTOGRAPH OF THE WOODEN FLOOR
23 DIRECTLY INSIDE THE DEN FROM THE DOUBLE DOORS AND
24 THE EDGE OF THE CARPET.

25 Q OKAY. AND I WOULD LIKE TO DIRECT YOUR
26 ATTENTION SPECIFICALLY TO THE DARK MARK WHICH
27 APPEARS AT THE BOTTOM OF THE PHOTOGRAPH THERE, THE
28 DARK MARK WHICH DR. MC CARTHY PREVIOUSLY NUMBERED

41383

1 NO. 1 AS HE WAS TESTIFYING IN REGARD TO THAT
2 PHOTOGRAPH.

3 DO YOU RECALL SEEING THAT AT THE CRIME
4 SCENE AT THE TIME OF YOUR INVESTIGATION?

5 A YES.

6 Q CAN YOU TELL US WHAT IT WAS THAT YOU

7 OBSERVED THERE.

8 A IT WAS A PIECE OF REDDISH-COLORED BODY
9 MATTER.

10 Q OKAY. DO YOU HAVE ANOTHER PHOTOGRAPH
11 WITH YOU TODAY --

12 A YES.

13 Q -- THAT SHOWS THAT FROM A DIFFERENT
14 VIEW?

15 A YES, I DO.

16 Q BEFORE YOU DO THAT, LET ME SHOW IT TO
17 COUNSEL.

18 (PAUSE IN PROCEEDINGS.)

19

20 MR. CONN: I HAVE ANOTHER PHOTOGRAPH, YOUR
21 HONOR, I WOULD LIKE TO MARK AS 315 FOR
22 IDENTIFICATION. IT'S A PHOTOGRAPH --

23 THE COURT: I THINK WE'RE AT 14.

24 MR. CONN: YES. I'M SORRY. 314. THANK
25 YOU.

26 Q SHOWING YOU 314, CAN YOU TELL US WHAT
27 THAT PHOTOGRAPH CONSISTS OF.

28 A IT'S ANOTHER ANGLE OF THE ENTRYWAY, AND

1 WITHIN THE SHADOW OF THE DOOR, THE WHITE DOOR, YOU

2 CAN SEE THE MATTER THAT I'M DESCRIBING THAT'S ON THE
3 PARQUET FLOOR.

4 MR. CONN: OKAY. THANK YOU.

5 THANK YOU. I HAVE NO FURTHER QUESTIONS
6 AT THIS TIME, YOUR HONOR.

7 THE COURT: CROSS.

8

9 CROSS-EXAMINATION

10 BY MS. ABRAMSON:

11 Q WHAT TIME WAS IT WHEN THE PEOPLE FROM
12 THE CORONER'S OFFICE CAME TO THE SCENE?

13 A APPROXIMATELY 2:30, 3:00.

14 Q 2:30, 3:00 IN THE MORNING?

15 A THAT'S CORRECT.

16 Q AND DURING THE TIME THAT THEY WERE
17 THERE -- WELL, DID THEY IMMEDIATELY REMOVE THE BODIES
18 OR DID THEY WAIT UNTIL CERTAIN OTHER THINGS HAD BEEN
19 DONE?

20 A THEY WAITED. IT WASN'T IMMEDIATE, NO.

21 Q AND DURING THE TIME THAT THEY WERE
22 WAITING, WERE PHOTOGRAPHS STILL BEING TAKEN AT THE
23 SCENE?

24 A YES.

25 Q AND CALLING YOUR ATTENTION, IN FACT, TO
26 THE BOARD 1A THAT'S DOWN BELOW. IT'S 295.

27 AND SPECIFICALLY CALLING YOUR ATTENTION
28 TO PHOTOGRAPH G, WHICH IS THE LAST ONE IN THE CENTER

1 LINE, IS THAT A PORTION OF JOSE MENENDEZ' BODY ON
2 THE PLASTIC SHEETING?

3 A YES.

4 Q NOW, YOU'VE WORKED WITH THE CORONER'S
5 INVESTIGATORS BEFORE, HAVE YOU NOT, DETECTIVE
6 ZOELLER?

7 A YES, I HAVE.

8 Q AND YOU WERE STILL THERE SUPERVISING
9 THIS CRIME SCENE TO MAKE SURE THAT IT WASN'T
10 TAMPERED WITH, WERE YOU NOT?

11 A THAT'S CORRECT.

12 Q DON'T THEY ATTEMPT TO NOT TAMPER WITH
13 THE PHYSICAL EVIDENCE WHILE THEY'RE DOING WHAT THEY
14 HAVE TO DO TO REMOVE THE BODIES?

15 A TO THE BEST OF THEIR ABILITY, THAT'S
16 CORRECT. SOMETIMES THEY EVEN ASK BEFOREHAND WHAT
17 WE'VE DONE AT THE IMMEDIATE CRIME SCENE TO KNOW
18 WHETHER THEY ARE DISTURBING ANYTHING OR NOT.

19 Q ALL RIGHT. AND WITH RESPECT TO THE
20 BODIES, A WHOLE SERIES OF PHOTOGRAPHS WERE TAKEN OF
21 VARIOUS PARTS OF THE BODIES WHEN THE CORONER'S
22 INVESTIGATORS WERE THERE TO PRESERVE THEM IN THAT
23 CONDITION, CORRECT?

24 A CORRECT.

25 Q TO PRESERVE THE OBSERVATIONS THAT ONE

26 COULD MAKE OF THESE VARIOUS PARTS OF THE BODIES

27 RIGHT THERE AT THE SCENE?

28 A AT WHAT POINT?

41386

1 Q WHEN THE CORONER'S INVESTIGATORS WERE

2 THERE AND THE PHOTOGRAPHS WERE BEING TAKEN.

3 A FOR THE MOST PART, YES.

4 Q WELL, TAKE A LOOK, IF YOU WILL, ON THE

5 SAME CHART, 295, PHOTOGRAPH C. THE THIRD ONE DOWN

6 ON THE LEFT-HAND SIDE, IS A PHOTOGRAPH, IS IT NOT,

7 OF MRS. MENENDEZ EXPOSING THE BRASSIERE THAT SHE WAS

8 WEARING?

9 A THAT'S CORRECT.

10 Q THAT WAS TAKEN AT THE SCENE.

11 A THAT'S CORRECT.

12 Q AND THERE'S A RUBBER-GLOVED HAND OR

13 PARTIALLY GLOVED HAND THAT'S LIFTING UP HER SHIRT

14 FOR THAT PHOTOGRAPH, CORRECT?

15 A CORRECT.

16 Q IS THAT A CORONER'S INVESTIGATOR?

17 A YES, IT IS.

18 Q AND IS IT YOUR UNDERSTANDING THAT BY

19 DOING THAT AND HAVING A PHOTOGRAPH TAKEN, HE WAS

20 TRYING TO PRESENT THIS INFORMATION, WHATEVER

21 INFORMATION'S CONTAINED IN THAT VIEW AT THAT TIME?

22 A YES.

23 Q AND WITH RESPECT TO PHOTOGRAPH G, THE

24 BOTTOM ONE IN THE MIDDLE, THAT'S A PHOTOGRAPH OF

25 MR. MENENDEZ' LEFT ARM, CORRECT?

26 A THAT'S CORRECT.

27 Q AND HE'S ON THAT SHEET OF PLASTIC YOU

28 TALKED ABOUT?

41387

1 A CORRECT.

2 Q IS THAT THE SAME SHEET OF PLASTIC?

3 A YES, IT IS.

4 Q AND THAT SHEET OF PLASTIC -- WHEN THE

5 BODY'S ON THAT SHEET OF PLASTIC, IT APPEARS THAT HIS

6 SHIRT IS STILL ENDING SOMEWHERE DOWN OVER HIS PANTS

7 IN THE WAIST AREA?

8 A THAT'S CORRECT.

9 Q THE PHOTOGRAPH THAT YOU WERE SHOWN

10 BEFORE, 309, THE SHIRT'S BEEN LIFTED UP AT THAT

11 POINT, HAS IT NOT?

12 A YES, IT HAS.

13 Q AND OTHER THINGS ARE BEING SHOWN IN THE

14 PHOTOGRAPH WITH THE SHIRT LIFTED UP THAT COULDN'T BE

15 SEEN WITH THE SHIRT DOWN?

16 A THAT'S CORRECT.

17 Q NOW, YOU INDICATE THERE WERE TWO PEOPLE
18 FROM THE CORONER'S OFFICE WHO MOVED THE BODIES?

19 A I BELIEVE SO, YES.

20 Q AND WHERE IN THE ROOM IS MR. MENENDEZ'
21 BODY AT THE TIME WHEN THEY'RE TAKING PHOTOGRAPH G?

22 A DIRECTLY IN FRONT OF THE COUCH, I
23 BELIEVE, ALSO IN FRONT OF THE COFFEE TABLE.

24 Q AND SO AM I CORRECT IN DESCRIBING THAT
25 WHAT THE CORONER'S INVESTIGATOR DID WAS THEY PUT
26 DOWN THE PLASTIC, LIFTED THE BODY OFF THE COUCH, AND
27 PUT THE BODY ON TO THE PLASTIC?

28 A CORRECT.

41388

1 Q THEY DIDN'T PUT THE BODY DOWN ON THE
2 CARPET FIRST AND THEN SLIP THE PLASTIC UNDERNEATH
3 IT.

4 A NO, THEY DIDN'T.

5 Q AND WHEN THEY REMOVED THE BODY FROM THE
6 COUCH, OF COURSE, THE BODY WAS IN A SEATED POSITION
7 AT FIRST, CORRECT?

8 A THAT'S CORRECT.

9 Q SO DID SOMEONE COME AND LIFT UP UNDER
10 HIS ARMS AND SOMEONE ELSE LIFT UP HIS FEET?

11 A I DON'T RECALL EXACTLY HOW THEY DID IT.

12 Q BUT SOMEHOW THEY LIFTED HIM OFF THE
13 COUCH AND THEN RECLINED HIM ON TO THE PLASTIC?

14 A YES.

15 Q AND THE MINUTE HE HIT THE PLASTIC YOU
16 SAW, BECAUSE OF THIS VERY LARGE HEAD WOUND, YOU SAW
17 THINGS COMING OUT OF THAT WOUND?

18 A THAT'S CORRECT.

19 Q NOW, DETECTIVE ZOELLER, WITH RESPECT TO
20 THE OTHER PHOTOGRAPH THAT I'VE NOW BURIED,
21 UNFORTUNATELY, THAT YOU SHOWED US TODAY, THIS SMALL
22 ONE, NO. 314, IS ANOTHER VIEW OF THIS RED STUFF THAT
23 YOU'VE CALLED MATTER THAT'S ON THE WOODEN PARQUET
24 AREA JUST BEFORE THE FOYER, CORRECT?

25 A THAT'S CORRECT.

26 Q DID YOU COLLECT THAT MATTER?

27 A NO.

28 Q TO FIND OUT WHAT MATTER IT WAS?

41389

1 A NO.

2 Q NO TISSUE WAS COLLECTED FROM THE SCENE,
3 CORRECT?

4 A THAT'S CORRECT.

5 Q NO BLOOD WAS SAMPLED FROM THE SCENE?

6 A THAT'S CORRECT.

7 Q NONE OF THE SPATTER PATTERNS WERE
8 ATTEMPTED TO BE MATCHED TO EITHER OF THE TWO
9 DECEDENTS, CORRECT?

10 A CORRECT.

11 Q BY SAMPLING THE BLOOD AND TESTING IT AND
12 FINDING OUT WHOSE BLOOD IT IS.

13 A THAT'S CORRECT.

14 Q WE ALL KNOW NOW PEOPLE HAVE DIFFERENT
15 BLOOD?

16 A YES, WE DO.

17 Q AND THERE ARE WAYS TO DETERMINE WHETHER
18 THE BLOOD BELONGS TO ONE PERSON OVER ANOTHER IN A
19 SCENE?

20 A THAT'S CORRECT.

21 Q NOW, THERE WERE PHOTOGRAPHS TAKEN OF THE
22 COUCH AREA AND THE CARPET AREA BEFORE THE CORONER'S
23 INVESTIGATORS MOVED THE BODY, CORRECT?

24 A THAT'S CORRECT.

25 Q AND THEN THERE WERE SOME PHOTOGRAPHS
26 TAKEN AFTER.

27 A YES.

28 Q FEWER WERE TAKEN AFTER, CORRECT?

1 A YES.

2 Q AND IF, HYPOTHETICALLY, A PHOTOGRAPH
3 SHOWS AN OBJECT BEFORE THE BODY WAS REMOVED AND
4 SHOWS THAT SAME OBJECT IN THAT SAME POSITION AFTER
5 THE BODY WAS REMOVED, IS IT FAIR TO SAY THAT OBJECT
6 WAS NOT DISTURBED DURING THE REMOVAL PROCESS?

7 A YES.

8 Q DID YOU NOTE, DETECTIVE ZOELLER, THAT
9 THERE WAS WHAT APPEARS TO BE BRAIN MATTER ON THE
10 COUCH CUSHION RIGHT NEXT TO MR. MENENDEZ?

11 A YES.

12 Q AND THAT BRAIN MATTER APPEARS IN
13 PHOTOGRAPHS WHEN THE BODY OF MR. MENENDEZ IS IN
14 PLACE, CORRECT?

15 A THAT'S CORRECT.

16 Q AND IT ALSO APPEARS IN EXACTLY THE SAME
17 PLACE WHEN THE BODY IS REMOVED?

18 A YES.

19 Q AND IT'S RIGHT ADJACENT TO AN EVIDENCE
20 ITEM NO. 6?

21 A YES.

22 Q AND ISN'T IT TRUE, DETECTIVE ZOELLER,
23 THAT THAT BRAIN MATTER IS PRECISELY IN THE PLACE
24 WHERE DR. MC CARTHY SHOWS MRS. MENENDEZ WOULD HAVE
25 BEEN SITTING IN HIS RECONSTRUCTION OF SHOT NO. 2,
26 THE SHOT TO MR. MENENDEZ' HEAD?

27 A I DON'T RECALL WHETHER -- HOW FAR AWAY
28 FROM MR. MENENDEZ THE BRAIN MATTER IS AND HOW CLOSE

1 HE HAD PUT MRS. MENENDEZ' BODY TO HIM.

2 Q BUT IT IS ON THAT CUSHION RIGHT NEXT TO
3 THE CUSHION THAT MR. MENENDEZ IS ON?

4 A YES.

5 MS. ABRAMSON: NOTHING FURTHER.

6 THE COURT: ANY REDIRECT?

7 MR. CONN: YES.

8

9 REDIRECT EXAMINATION

10 BY MR. CONN:

11 Q DO YOU RECALL IF THE BODY OF JOSE
12 MENENDEZ WAS PLACED ON PLASTIC BEFORE THE BODY OF
13 MRS. MENENDEZ?

14 A I BELIEVE IT WAS, YES.

15 Q AND I WOULD LIKE YOU TO TELL US, AS
16 PRECISELY AS YOU CAN, EXACTLY WHERE THE PLASTIC WAS
17 PLACED THAT THE BODY OF JOSE MENENDEZ WAS PLACED
18 ON.

19 A FROM WHAT I RECALL IT WAS PLACED IN
20 FRONT OF THE COFFEE TABLE, PRETTY MUCH IN THE CENTER
21 OF THE ROOM, BETWEEN THE COUCH AND THE TELEVISION.

22 Q SO TO YOUR RECOLLECTION DID THE COFFEE
23 TABLE REMAIN IN PLACE WHILE THE BODY OF JOSE

24 MENENDEZ WAS TAKEN FROM THE SOFA AND PLACED ON THAT
25 PLASTIC?

26 A YES.

27 Q AND DURING THAT TIME DO YOU KNOW WHETHER
28 ANY DROPS OF BLOOD FELL ON OR NEAR THE SOFA?

41392

1 A I DON'T KNOW PRECISELY, NO.

2 Q THERE WAS AN OPPORTUNITY FOR DROPS OF
3 BLOOD TO FALL ON OR NEAR THE SOFA AT THAT TIME?

4 A YES.

5 Q AND THAT PIECE OF -- THAT PIECE OF BODY
6 MATTER THAT YOU'VE NOTED HERE ON THE FLOOR NEAR THE
7 ENTRYWAY, WAS THAT THERE BEFORE THE ARRIVAL OF THE
8 CORONER'S OFFICE?

9 A YES.

10 MR. CONN: THANK YOU. I HAVE NO FURTHER
11 QUESTIONS.

12 THE COURT: ANYTHING ELSE?

13 MS. ABRAMSON: NO, YOUR HONOR.

14 THE COURT: THANK YOU. YOU MAY STEP DOWN.

15 ANY FURTHER WITNESSES TO BE OFFERED BY
16 THE PROSECUTION?

17 MR. CONN: NO, YOUR HONOR.

18 SUBJECT TO THE RECEIPT OF THE EXHIBITS,

19 THE PEOPLE REST AT THIS TIME.

20 THE COURT: ALL RIGHT. THE PEOPLE REST.

21 IS THE DEFENSE READY TO PROCEED WITH

22 WITNESSES?

23 MS. ABRAMSON: YES, YOUR HONOR.

24 THE COURT: OKAY. YOU MAY CALL YOUR FIRST

25 WITNESS.

26 D E F E N S E

27

28 MS. ABRAMSON: WE WOULD CALL DR. MARTIN

41393

1 FACKLER.

2

3 DR. MARTIN FACKLER,

4 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN AND

5 TESTIFIED AS FOLLOWS:

6 THE CLERK: YOU DO SOLEMNLY SWEAR THE

7 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING

8 BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE

9 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

10 THE WITNESS: YES.

11 THE CLERK: PLEASE TAKE THE STAND AND STATE

12 YOUR NAME FOR THE RECORD.

13 THE WITNESS: MY NAME IS MARTIN FACKLER.

14 THE CLERK: SPELL YOUR LAST NAME, PLEASE.

15 THE WITNESS: F-A-C-K-L-E-R.

16

17 DIRECT EXAMINATION

18 BY MS. ABRAMSON:

19 Q DR. FACKLER, WHAT IS YOUR OCCUPATION,

20 SIR?

21 A I'M A WOUND BALLISTICS CONSULTANT.

22 Q IT'S IN THAT CAPACITY AS A WOUND

23 BALLISTICS CONSULTANT THAT YOU ARE TESTIFYING IN

24 THIS CASE?

25 A YES, THAT'S CORRECT.

26 Q AND ARE YOU -- DO YOU HOLD ANY DEGREES IN

27 MEDICINE?

28 A YES. I HOLD AN M.D. DEGREE.

41394

1 Q AND ARE YOU CURRENTLY IN A PRIVATE

2 CONSULTING BUSINESS OF YOUR OWN?

3 A YES, THAT'S CORRECT, I AM.

4 Q AND BEFORE BEING A PRIVATE CONSULTANT,

5 WERE YOU EMPLOYED BY SOMEONE?

6 A YES, I WAS.

7 Q AND BY WHOM WERE YOU EMPLOYED BEFORE

8 BECOMING A PRIVATE CONSULTANT?

9 A BY THE UNITED STATES GOVERNMENT.

10 Q AND SPECIFICALLY WHAT BRANCH OF THE
11 UNITED STATES GOVERNMENT EMPLOYED YOU?

12 A I RETIRED FROM THE UNITED STATES ARMY IN
13 MID YEAR OF 1991, AFTER -- LET ME SEE. MY
14 GOVERNMENT SERVICE IS SLIGHTLY OVER 31 YEARS.

15 Q AND FOR HOW MANY OF THOSE YEARS WERE YOU
16 IN THE UNITED STATES ARMY?

17 A I WAS IN THE UNITED STATES ARMY FOR 15
18 YEARS AND SEVEN MONTHS AND THE UNITED STATES NAVY
19 FOR 15 YEARS AND SIX MONTHS.

20 Q AND WHEN YOU WERE BOTH IN THE UNITED
21 STATES ARMY AND THE UNITED STATES NAVY, WERE YOU IN
22 THE MEDICAL CORPS OF THOSE SERVICES?

23 A YES, I WAS.

24 Q AND WHEN YOU RETIRED FROM THE UNITED
25 STATES ARMY, WHAT RANK DID YOU HAVE?

26 A COLONEL.

27 Q AND FOR THE 10 YEARS BEFORE YOU RETIRED
28 FROM THE UNITED STATES ARMY, WHAT WAS YOUR POSITION

41395

1 WITH THE ARMY?

2 A I WAS THE DIRECTOR OF THE WOUND
3 BALLISTICS LABORATORY AT THE LETTERMAN ARMY

4 INSTITUTE OF RESEARCH IN SAN FRANCISCO.

5 Q AND WHAT, SIR, WAS YOUR MEDICAL AND IS
6 YOUR MEDICAL SPECIALTY?

7 A MY MEDICAL SPECIALTY IS GENERAL SURGEON,
8 WHICH IS A SPECIALTY I'VE PRACTICED. HOWEVER, I
9 ALSO WAS FULLY TRAINED IN PLASTIC SURGERY, BUT CHOSE
10 TO DO TRAUMA SURGERY RATHER THAN PLASTIC SURGERY.

11 Q LET'S GO BACK TO YOUR EDUCATIONAL
12 BACKGROUND, DR. FACKLER.

13 WOULD YOU TELL US ABOUT THE SCHOOLS THAT
14 YOU ATTENDED AND THE DEGREES THAT YOU RECEIVED AND
15 THE YEARS IN WHICH YOU RECEIVED THEM.

16 A YES. I RECEIVED A BACHELOR OF ARTS
17 DEGREE FROM GETTYSBURG COLLEGE IN 1955.

18 I RECEIVED A -- AFTER FOUR YEARS OF
19 COLLEGE.

20 I RECEIVED THE M.D. DEGREE FROM YALE
21 UNIVERSITY SCHOOL OF MEDICINE IN 1959 AFTER FOUR
22 YEARS THERE.

23 AND THAT'S THE DEGREES.

24 DO YOU WANT ME TO ALSO MENTION THE
25 RESIDENCY TRAINING?

26 Q YOUR RESIDENCY TRAINING AND YOUR
27 CERTIFICATION.

28 A THEN I HAD A ONE-YEAR INTERNSHIP, A

1 ROTATING INTERNSHIP, AT THE UNIVERSITY OF OREGON
2 MEDICAL SCHOOLS AND HOSPITALS IN PORTLAND, OREGON.
3 AND THEN I HAD A FOUR-YEAR RESIDENCY IN GENERAL
4 SURGERY AT THE BOSTON NAVAL HOSPITAL, IMMEDIATELY
5 FOLLOWED BY A TWO-YEAR RESIDENCY IN BETHESDA NAVY
6 HOSPITAL.

7 Q I TAKE IT YOU WERE IN THE NAVY AT THAT
8 TIME?

9 A YES, THAT'S CORRECT.

10 Q WHEN DID YOU JOIN THE NAVY?

11 A I ACTUALLY JOINED THE NAVY WHILE I WAS
12 WHAT WAS CALLED AN ENSIGN 1995 PROGRAM IN WHICH WE
13 WERE OFFERED THE OPTION OF SIGNING UP FOR A
14 PARTICULAR SERVICE IN A RESERVE STATUS; AND THE
15 ADVANTAGE OF DOING THAT WAS THAT WE WOULD THEN KNOW
16 THAT -- WE WOULD HAVE ASSURANCE THAT WE WOULD BE
17 CALLED TO SERVICE IMMEDIATELY AFTER OUR TRAINING
18 ENDED.

19 AT THAT TIME THERE WAS A DOCTOR'S DRAFT
20 AND IF YOU DIDN'T DO THIS, YOU MIGHT START A
21 RESIDENCY AND THEN BE DRAFTED FROM THE RESIDENCY,
22 AND IT WAS AN IFFY THING.

23 SO I WAS ASSOCIATED WITH THE NAVY FROM,
24 I GUESS, THE LAST TWO YEARS OF MY MEDICAL SCHOOL IS
25 WHEN I ACTUALLY FIRST SIGNED WITH THE NAVY.

26 Q AND WERE -- DID YOU GO ON ACTIVE DUTY
27 WITH THE NAVY AFTER YOU COMPLETED YOUR RESIDENCY IN

41397

1 A YES, I DID.

2 Q WAS THAT BEFORE YOU --

3 A WELL, I'M SORRY. COULD I -- NOT AFTER --

4 IMMEDIATELY AFTER MY RESIDENCY IN GENERAL SURGERY I

5 HAD TWO YEARS TRAINING IN PLASTIC SURGERY, AS I

6 MENTIONED. NOW, I WENT ON ACTIVE DUTY IMMEDIATELY

7 AFTER THE PLASTIC SURGERY RESIDENCY.

8 Q WHERE WERE YOU STATIONED ON ACTIVE DUTY

9 AFTER THOSE TWO YEARS AT THE BETHESDA NAVY HOSPITAL?

10 A I WAS STATIONED AT THE NAVAL SUPPORT

11 HOSPITAL IN DUNANG, VIETNAM.

12 Q WERE YOU THERE AS A COMBAT SURGEON IN

13 VIETNAM?

14 A THAT WAS MY DUTY, YES, WAS COMBAT

15 SURGERY.

16 Q AS A COMBAT SURGEON IN VIETNAM, DID YOU

17 HAVE THE OPPORTUNITY TO OPERATE ON AND TREAT WOUNDED

18 SAILORS AND MARINES WITH PROJECTILE INJURIES?

19 A YES. NOT TOO MANY SAILORS, BUT MOSTLY

20 MARINES.

21 Q AND WHAT WAS YOUR -- HOW LONG WAS YOUR

22 TOUR AT THAT PARTICULAR COMBAT HOSPITAL?

23 A THAT WAS A ONE-YEAR TOUR FROM DECEMBER

24 OF 1967 TILL DECEMBER OF 1968.

25 Q AND AFTER THAT TOUR AT DANANG, DID YOU

26 CONTINUE TO DO BASICALLY COMBAT SURGERY AT ANOTHER

27 LOCATION?

28 A YES. I THEN WAS STATIONED AT THE

41398

1 YOKOSUKA NAVY HOSPITAL IN JAPAN, AND WHERE THE

2 COMBATS -- TYPE OF COMBAT SURGERY WE DID THERE WAS

3 THE BASIC FOLLOW-UP SURGERY BECAUSE IT WAS

4 IMPOSSIBLE TO DO THE ENTIRE SURGERY FROM -- WHAT I

5 MEAN BY THAT IS, IF A PERSON HAS A SURGICAL PROBLEM

6 LIKE A GUNSHOT WOUND, ORDINARILY IN THE UNITED

7 STATES, STATE SIDE, A SURGEON WOULD OPERATE ON THIS

8 PERSON AND THEN FOLLOW THIS PERSON UNTIL THEY HEAL

9 THEIR WOUND AND THEN YOU DISCHARGE THEM AND THERE'D

10 BE A CONTINUITY OF CARE.

11 BECAUSE OF THE GREAT NUMBER OF

12 CASUALTIES IN DUNANG WE COULDN'T DO THAT. SO

13 FREQUENTLY, ON THE AVERAGE OF TWO OR THREE DAYS

14 AFTER, I'D DO A LARGE ABDOMENAL OPERATION ON

15 SOMEONE, HE WOULD BE SENT ON A TO YOKOSUKA AND I

16 WOULD THEN LOSE THE FOLLOW-UP BECAUSE I COULDN'T SEE

17 WHAT HAPPENED TO THAT PATIENT. AND MOST OF THE

18 SURGICAL COMPLICATIONS, THE INFECTIONS AND THINGS
19 THAT SOMETIMES OCCUR, OCCUR USUALLY NOT BEFORE FIVE
20 TO SEVEN DAYS. AND SO AT YOKOSUKA I HAD THREE YEARS
21 WHICH ALLOWED ME TO SEE THE OTHER SIDE OF THE COMBAT
22 SURGERY THAT WE WERE DEPRIVED OF SEEING BECAUSE OF
23 THE VERY SHORT STAY OF THE PATIENTS IN DUNANG.

24 Q SO YOU COULD SEE WHAT THE HEALING
25 PROCESS WAS LIKE AND WHAT THE COMPLICATION PROCESS
26 WAS LIKE. AND DID THAT AFFECT THE WAY YOU PERFORMED
27 SURGERY? DID YOU LEARN FROM THAT METHOD TO APPLY IN
28 THE ACTUAL SURGERIES?

41399

1 A WELL, YES. IT -- PRACTICE OF SURGERY IS
2 SOMEWHAT TRIAL AND ERROR. I MEAN, YOU DO WHAT YOU
3 THINK IS THE BEST OPERATION AND YOU FOLLOW THE
4 PATIENTS AND SOME OF THEM -- THERE ARE COMPLICATIONS,
5 AND EACH OF THOSE YOU WOULD LOOK BACK AND SAY, YOU
6 KNOW, WOULD I DO SOMETHING DIFFERENTLY? SOMETIMES
7 YOU SAY YES AND SOMETIMES YOU SAY NO. BUT IN ORDER
8 TO STUDY THE -- IN ORDER TO LEARN THE MOST FROM
9 SURGERY, YOU MUST DO THAT.

10 AND TO THAT END THERE WERE -- DURING THE
11 VIETNAM CONFLICT, THERE WERE SEVERAL -- I THINK THERE
12 WERE FIVE TRI-SERVICE WAR SURGERY CONFERENCES WHERE

13 PEOPLE FROM THE IN-COUNTRY HOSPITALS, PEOPLE FROM
14 THE PACIFIC COMMAND HOSPITALS LIKE JAPAN. AND ALSO
15 PEOPLE FROM THE STATES, MET IN A GROUP TO DISCUSS
16 THE PROBLEMS BECAUSE IT WAS REALIZED THAT WE NEEDED
17 THIS DISCUSSION WITH THE OTHER PEOPLE. AND I WAS
18 DELEGATE TO BOTH THE LAST TWO OF THOSE CONFERENCES
19 WHICH WERE HELD IN TOKYO 1970 AND 1971.

20 Q FOLLOWING YOUR THREE YEARS IN JAPAN,
21 WHAT WAS YOUR NEXT ASSIGNMENT, IF YOU WILL?

22 A YES. I CAME BACK AND WAS ASSIGNED TO
23 THE NAVAL HOSPITAL IN MEMPHIS, TENNESSEE.

24 Q AND WERE YOU PERFORMING SURGERY AT THAT
25 HOSPITAL AT THAT TIME?

26 A YES, I WAS.

27 Q AND HOW LONG DID YOU REMAIN AT THE NAVAL
28 HOSPITAL IN MEMPHIS?

41400

1 A I THINK I WAS THERE ABOUT THREE YEARS.

2 Q BY THE WAY, DURING THIS TIME THAT YOU'RE
3 IN MEMPHIS, ARE YOU ALSO PERFORMING PLASTIC
4 SURGERIES PURSUANT TO THAT TWO-YEAR RESIDENCY THAT
5 YOU HAD OBTAINED?

6 A YES. I WAS ASSOCIATED WITH THE
7 UNIVERSITY OF TENNESSEE AS AN INSTRUCTOR IN THE

8 PLASTIC SURGERY SERVICE AND I WENT TO THEIR WEEKLY
9 CONFERENCES. AND I WOULD DO SOME PLASTIC SURGERY
10 MYSELF. MAINLY, I WOULD DO RECONSTRUCTIVE TYPE OF
11 SURGERY, WHICH I PREFERRED. BUT THERE WOULD BE SOME
12 COSMETIC SURGERY THAT I WOULD EVALUATE AND REFER IT
13 DOWN TO THE UNIVERSITY PEOPLE.

14 Q AND WERE YOU INVOLVED IN ANY ASPECT OF
15 WOUND BALLISTICS DURING THE TIME THAT YOU WERE AT
16 THE NAVAL HOSPITAL AND TEACHING AT THE UNIVERSITY OF
17 TENNESSEE DURING THOSE THREE YEARS?

18 A ONLY A VERY FEW CASES. THE HOSPITAL IN
19 MEMPHIS IS ONE OF THE MEMBERS THAT CARES FOR A
20 PATIENT POPULATION WHERE THERE WAS A HIGH DEGREE OF
21 VIOLENCE FROM GUNFIRE.

22 AND SO I WOULDN'T GET INVOLVED IN IT ON
23 A DAY-TO-DAY BASIS, BUT THE MORE UNUSUAL CASES WOULD
24 BE BROUGHT TO CONFERENCE OR I WOULD BE CALLED TO
25 CONSULT ON AN OCCASIONAL CASE BECAUSE IT WAS AN
26 UNUSUAL CASE AND MIGHT BE, SAY, A RIFLE WOUND
27 SIMILAR TO WHAT I HAD SEEN IN VIETNAM, BECAUSE THOSE
28 WERE NOT -- THEY WERE FAIRLY RARE IN CIVILIAN

41401

1 HOSPITALS, SO THEY'D CALL ME OCCASIONALLY ON
2 SOMETHING LIKE THAT.

3 Q AFTER THAT TOUR IN TENNESSEE, WHAT WAS
4 YOUR NEXT DUTY IN THE ARMED FORCES?

5 A YES. I WENT -- THEN I SWITCHED SERVICES
6 IN ORDER TO BE STATIONED AT THE LANDSTUHL ARMY
7 HOSPITAL IN LANDSTUHL, GERMANY.

8 Q YOU SAY YOU SWITCHED SERVICES. IS THAT
9 WHEN YOU WENT FROM THE NAVY TO THE ARMY?

10 A YES.

11 Q WHY WAS IT YOU WANTED TO BE STATIONED IN
12 THAT HOSPITAL IN GERMANY?

13 A WELL, I DIDN'T SPECIFICALLY ASK FOR THAT
14 HOSPITAL. MY REASON WAS I WANTED TO -- I WANTED TO
15 LIVE OVERSEAS IN A COUNTRY THAT SPOKE GERMAN IN
16 ORDER TO LEARN THE LANGUAGE WELL.

17 WHILE I WAS IN VIETNAM, BECAUSE OF MY
18 PLASTIC SURGERY TRAINING, I WAS SOUGHT OUT BY SOME
19 SURGEONS WHO WERE WORKING ON A GERMAN HOSPITAL SHIP,
20 THE HELGOLAND. IT WAS SPONSORED BY THE GERMAN RED
21 CROSS AND IT WAS IN DUNANG HARBOR. SO WHEN WE WERE
22 NOT BUSY AT NAVAL SUPPORT ACTIVITY HOSPITAL, I WOULD
23 GO OVER AND HELP THEM WITH RECONSTRUCTIVE SURGERY
24 ON -- MOSTLY ON CIVILIAN VIETNAMESE WHO WERE HURT AS
25 A RESULT OF THE WAR. THAT'S WHAT THEIR MISSION
26 WAS.

27 AND I GOT INTERESTED IN THE GERMAN
28 LANGUAGE SOMEWHAT OUT OF A NECESSITY TO COMMUNICATE

1 AND GOT SOME GERMAN TAPES AND WAS LEARNING IT, AND
2 THEN I DECIDED THAT IN THE -- AS A PHYSICIAN IN THE
3 MILITARY, I COULD -- THE ARMY HAD MANY STATIONS IN
4 GERMANY WHERE THEY HAD LARGE HOSPITALS AND THE
5 TRAINING AND EXPERIENCE WAS JUST AS GOOD IN THE
6 UNITED STATES, AND SORT OF AS A BONUS I COULD GET TO
7 LEARN THE GERMAN LANGUAGE.

8 I ALSO HAD MET SEVERAL PEOPLE FROM THE
9 ARMY AT THE TRI-SERVICE WAR SURGERY CONFERENCES AND
10 WAS VERY IMPRESSED BY THE WAY THEY HAD HANDLED THE
11 RECORD-KEEPING OF THE CASUALTIES. ONE -- I WAS
12 SOMEWHAT DISAPPOINTED IN THE NAVY IN THAT I DID NOT
13 RECEIVE, WHILE I WAS IN DUNANG, ANY REPORTS OF WHAT
14 HAD HAPPENED TO THE PATIENTS I HAD OPERATED ON, AND
15 IT WAS SOMEWHAT DISAPPOINTING. AND AT THE
16 TRI-SERVICE WAR SURGERY CONFERENCES I MET THE
17 CONSULTANTS IN THE ARMY WHO DID, IN FACT, MAKE SURE
18 THAT THE ARMY SURGEONS WERE ACQUAINTED WITH AND
19 INSTRUCTED ON WHAT HAPPENED TO THE PATIENTS THEY'D
20 OPERATED ON.

21 Q SO FOR A NUMBER OF REASONS YOU DECIDED
22 YOU WOULD RATHER BE PRACTICING MEDICINE IN THE ARMY
23 AT THAT POINT?

24 A THAT'S TRUE.

25 Q HOW LONG DID YOU REMAIN IN GERMANY

26 BEFORE YOU CAME BACK TO THE UNITED STATES?

27 A FIVE YEARS.

28 Q AND DURING THAT TIME -- NOW, LET ME RACE

41403

1 AHEAD.

2 YOU'VE QUALIFIED AS AN EXPERT IN WOUND

3 BALLISTICS MANY TIMES, CORRECT?

4 A I'VE ACTUALLY TESTIFIED -- I THINK THIS

5 IS THE 44TH TIME.

6 Q AND YOU HAVE BEEN THE PRESIDENT OF THE

7 INTERNATIONAL WOUND BALLISTICS ASSOCIATION FOR THE

8 PAST FIVE YEARS, CORRECT?

9 A YES, THAT'S TRUE.

10 Q AND WAS ALL OF YOUR EXPERIENCE UP TO

11 THIS POINT THAT WE'RE TALKING ABOUT IN GAINING

12 EXPERTISE IN WOUND BALLISTICS THE COMBAT SURGERY YOU

13 DID OR WERE YOU GAINING EXPERTISE DURING THESE OTHER

14 TOURS AS WELL?

15 A WELL, I -- I WAS GAINING FAR LESS

16 EXPERTISE DURING THESE OTHER YEARS BECAUSE ONE OF

17 THE REASONS THAT I -- WHEN I DECIDED I LIKED TRAUMA

18 SURGERY, ONE OF THE REASONS THAT I WAS SO EAGER TO

19 ACCEPT THE POSTING TO DUNANG IS BECAUSE I KNEW IT

20 WAS A VERY, VERY ACTIVE HOSPITAL AND THERE'S JUST NO

21 PLACE IN CIVILIAN TRAUMA IT'S POSSIBLE TO SEE
22 ANYWHERE NEAR THE MAGNITUDE OF INJURIES YOU SEE.
23 SO FOR THE TRAINING ASPECTS OF IT, YOU
24 JUST CAN'T -- YOU KNOW YOU CAN'T GET IT IN CIVILIAN
25 LIFE.
26 Q DID YOU, HOWEVER, CONTINUE OVER THE
27 COURSE OF THESE YEARS -- DID YOU GET INVOLVED IN
28 RESEARCH DURING THESE YEARS IN WOUND BALLISTICS OR

41404

1 DID THAT COME LATER?
2 A RESEARCH IN THE SENSE THAT ONE OF THE
3 REASONS I WANTED TO LEARN TO READ GERMAN WAS SO THAT
4 I COULD READ IN THE ORIGINAL LANGUAGE THE -- SOME OF
5 THE HISTORICAL RESEARCH OF THAT THAT HAS BEEN DONE
6 IN THIS FIELD.
7 AS A MATTER OF FACT, SURGEONS HAVE
8 WRITTEN ABOUT THEIR EXPERIENCES ON THE FIELD OF
9 BATTLE EVER SINCE THERE HAD BEEN FIREARMS, AND I -- I
10 FELT IT WOULD BE USEFUL TO BE ABLE TO -- AND THERE
11 ARE NOT TOO MANY TRANSLATIONS AVAILABLE IN SOME OF
12 THE BEST WORKS. AND SO I FELT, YOU KNOW, BY READING
13 FRENCH AND GERMAN, I WOULD BE ABLE TO UNDERSTAND
14 THIS FIELD A LOT BETTER IF I COULD READ, FOR
15 INSTANCE, THE MEMOIRS OF BARON LARRE WHO WAS

16 NAPOLEON'S SURGEON AND THE WORKS OF THEODORE KOCHER
17 WHO WAS A VERY FAMOUS GERMAN -- I'M SORRY -- SWISS
18 PHYSICIAN PROFESSOR WHO WROTE IN GERMAN AND WROTE
19 TWO EXCELLENT BOOKS ON THE SUBJECT THAT HADN'T --
20 THERE'S NO TRANSLATIONS AVAILABLE. SO I HAD TO READ
21 THEM MYSELF.
22 AND BY THE WAY, I THEN DID PUBLISH A
23 PAPER IN ONE OF OUR MAJOR MEDICAL JOURNALS ON THE
24 WORK OF KOCHER.
25 Q AS A RESULT OF YOUR CONTINUING
26 INVOLVEMENT IN WOUND BALLISTICS, HAVE YOU PUBLISHED
27 PAPERS AND ARTICLES AND BOOKS CONCERNING WOUND
28 BALLISTICS?

41405

1 A NOT BOOKS, BUT BOOK CHAPTERS, CHAPTERS
2 IN OTHER PEOPLE'S BOOKS. BUT I HAVE PUBLISHED
3 PAPERS AND BOOK CHAPTERS, YES.
4 Q AND HOW MANY PUBLICATIONS IN THE AREA OF
5 WOUND BALLISTICS HAVE YOU HAD PUBLISHED?
6 A WELL, ACTUALLY, IT'S DIFFICULT TO
7 NUMBER. ACTUALLY, I KEEP ON MY C.V. A LISTING OF
8 EVERYTHING I HAVE IN PRINT SO I CAN LOOK IT UP AND
9 KNOW WHEN I DID IT. BUT IN ALL FAIRNESS, MANY OF
10 THOSE ARE DUPLICATES BECAUSE THERE ARE CERTAIN TIMES

11 OR CERTAIN REASONS WHERE I'LL PUBLISH VERY CLOSE TO
12 THE SAME ARTICLE IN SEVERAL JOURNALS BECAUSE -- IN
13 ORDER TO HIT SEVERAL TARGET AUDIENCES. FOR
14 INSTANCE, THE EMERGENCY ROOM DOCTORS DO NOT READ THE
15 SURGICAL JOURNALS AND VICE VERSA. SO IF YOU PUBLISH
16 BOTH OF THEM -- AND THE FORENSIC DOCTORS GENERALLY
17 DON'T READ THE SURGERY JOURNALS, SO MANY OF THE
18 RESEARCH THINGS I DO HAVE BEEN PUBLISHED IN MULTIPLE
19 PLACES.

20 SO ON MY C.V. I HAVE LISTED
21 APPROXIMATELY -- IT'S ABOUT ALMOST 190 NOW, BUT IN
22 ALL HONESTY NOW PROBABLY ABOUT A HUNDRED OF THOSE,
23 AND THEN THE REST OF THEM ARE REPEATS AND LETTERS TO
24 THE EDITOR.

25 Q SO ABOUT A HUNDRED ARTICLES AND BOOK
26 CHAPTERS IN THIS AREA?

27 A YES, ABOUT.

28 Q IS THERE ANYONE IN THE UNITED STATES WHO

41406

1 HAS PUBLISHED MORE THAN YOU IN THIS AREA?

2 A I DON'T THINK SO.

3 Q AND DID YOU, STARTING IN 1981, HEAD UP
4 THE WOUND BALLISTICS LABORATORY AT LETTERMAN ARMY
5 INSTITUTE OF RESEARCH?

6 A YES.

7 Q AND HOW DID YOU GET TO BECOME DIRECTOR
8 OF THAT LABORATORY?

9 A WELL, I WAS ASKED BY THE ARMY. I WAS
10 STATIONED AT FORT CARSON WHEN MY 20TH YEAR IN THE
11 SERVICE CAME UP. AND AS YOU KNOW, AT 20 YEARS IT'S
12 POSSIBLE TO RETIRE FROM THE MILITARY, AND I HAD
13 INTENDED TO DO THAT. BUT SOMEHOW SOMEONE IN THE
14 MEDICAL RESEARCH AND DEVELOPMENT COMMAND HAD HEARD
15 OF MY -- SOME EXPERTISE IN THE FIELD OF WOUND
16 BALLISTICS AND BECAUSE OF THAT I GOT A PHONE CALL
17 ASKING IF I WOULD CONSIDER -- INSTEAD OF GETTING OUT
18 OF THE MILITARY, IF I WOULD CONSIDER GOING TO
19 SAN FRANCISCO AND SETTING UP A WOUND BALLISTICS
20 PROGRAM AT THE LETTERMAN ARMY INSTITUTE OF RESEARCH
21 AND DIRECTING THAT PROGRAM AND STAYING IN THE
22 MILITARY TO DO THAT.

23 SO THEY SENT ME OUT THERE TO LOOK AT THE
24 PROGRAM AND I -- I MEAN, TO LOOK AT THE LABORATORY,
25 TO SEE THE FACILITIES AND TALK TO THE COMMANDING
26 OFFICER, AND I MADE UP MY MIND THAT I WOULD DO THAT
27 AND I ACCEPTED THAT POSITION.

28 Q AND WHAT WAS -- WHAT WERE SOME OF THE

1 GOALS OF THAT LABORATORY UNDER YOUR DIRECTORSHIP?

2 WHAT WERE YOU TRYING TO DO OR ACCOMPLISH?

3 A WELL, THE ARMY -- IT WAS THE ARMY'S MAIN

4 GOAL IN SETTING UP A LABORATORY FOR THE STUDY OF

5 WOUND BALLISTICS SO THEY WILL BE ABLE TO, AS BEST

6 THEY CAN, ASSURE THAT WHEN A PERSON IS WOUNDED ON

7 THE FIELD OF BATTLE THAT THEY GET THE VERY BEST

8 MEDICAL CARE AVAILABLE. AND THERE WAS CONSIDERABLE

9 CONFUSION IN THE FIELD OF WOUND BALLISTICS, AS

10 WITNESSED IN THE 1975 EDITION OF THE NATO WAR

11 SURGERY MANUAL, FOR INSTANCE. AND IN ORDER TO STUDY

12 THE SUBJECT SO WE COULD STRAIGHTEN OUT THE

13 DIFFICULTIES AND WRITE SOME -- REWRITE THE CHAPTER IN

14 THAT NATO WAR SURGERY HANDBOOK SO THAT THE SOLDIER

15 WOULD BE -- SO THAT WE COULD PUT SOMETHING IN THE

16 HAND OF THE SURGEON WHO IN WAR-TIME SITUATION IS

17 SENT TO A WAR SURGERY HOSPITAL AND HE COMES FROM A

18 BACKGROUND WHERE HE HAS NO TRAINING IN PENETRATING

19 WOUNDS.

20 AND SO THERE'S SO MUCH MISCONCEPTION IN

21 THE FIELD THAT SOME OF THE SURGERY THEY MIGHT RENDER

22 WOULD BE DANGEROUSLY EXCESSIVE UNLESS THEY ARE

23 INSTRUCTED WHAT IS THE PROPER WAY TO DO THIS, AND

24 NOT ONLY INSTRUCTED TO DO IT, BUT WHY THEY DO IT.

25 AND THAT WAS THE PURPOSE OF OUR RESEARCH IN THEIR

26 PUBLICATIONS.

27 Q WHAT FORMS DID THE RESEARCH TAKE THAT

28 YOU WERE DOING AT LETTERMAN?

1 A WELL, THE FIRST FORM WAS TO READ
2 EVERYTHING THAT HAD BEEN DONE UP TO THAT POINT. I
3 SPENT THE FIRST THREE MONTHS DOING NOTHING BUT
4 READING THE WORLD LITERATURE ON WOUND BALLISTICS. I
5 HAD -- I WAS ALREADY FAMILIAR WITH SOME OF IT, OF
6 COURSE. BUT IN ORDER TO, YOU KNOW, MAKE SURE WE
7 DIDN'T MISS ANYTHING, I SPENT THREE MONTHS JUST
8 WORKING ON THE LITERATURE, AND THEN CAME TO THE
9 CONCLUSION OF WHAT NEEDED TO BE DONE. AND ONE
10 GLARING PROBLEM WAS THAT THERE HAD BEEN NO GOOD -- NO
11 SCIENTIFICALLY VALID WORK DONE WITH A TISSUE
12 SIMULANT THAT SIMULATED TISSUE.

13 IN OTHER WORDS, THERE HAD NOT BEEN A
14 SINGLE STUDY WHERE THE PENETRATION DEPTH OF A
15 PROJECTILE, OF A PARTICULAR PROJECTILE, HAD BEEN
16 MEASURED OR QUANTIFIED OR THE FRAGMENTATION
17 POTENTIAL OF A PARTICULAR PROJECTILE. EVERYTHING
18 HAD BEEN DONE USING A VERY SMALL BLOCK OF USUALLY
19 GELATIN TISSUE SIMULANT AND A PROJECTILE WAS FIRED
20 THROUGH THAT BLOCK AND WHAT WAS LEFT OF THE
21 PROJECTILE OR ENTIRE PROJECTILE WOULD PASS THROUGH A
22 CHRONOGRAPH, WHICH IS A SET OF SCREENS WHICH
23 MEASURES HOW FAST IT TRAVELED. SO THERE WOULD BE A
24 CHRONOGRAPH BEFORE THE SIX-INCH BLOCK AND A

25 CHRONOGRAPH AFTER. AND BY DETERMINING HOW MUCH
26 VELOCITY WAS LOST, YOU COULD THEN PUT IT IN A
27 FORMULA AND DETERMINE THE AMOUNT OF KINETIC ENERGY
28 THE BULLET LOST OR PROJECTILE LOST GOING THROUGH.

41409

1 AND THE ASSUMPTION WAS MADE THAT THE
2 WOUNDING OF THE DAMAGE TO THE BODY WAS DIRECTLY
3 PROPORTIONAL TO THE KINETIC ENERGY. AND THIS
4 BASICALLY WAS WHAT THE ENGINEERS AT ABERDEEN PROVING
5 GROUND HAD RELIED UPON FOR YEARS IN THEIR BULLET
6 DESIGN, ET CETERA.

7 Q LET ME STOP YOU THERE FOR A MOMENT SO WE
8 CAN TALK ABOUT ABERDEEN FOR A MOMENT.

9 WHAT IS THE ABERDEEN FACILITY'S PURPOSE,
10 THE PROVING GROUNDS' PURPOSE?

11 A WELL, THE PURPOSE IS MAINLY TO DEVELOP
12 THE MUNITIONS OF VARIOUS SORTS.

13 Q AND WHAT'S THE OVERRIDING GOAL IN
14 MUNITION DEVELOPMENT IN THE ARMY, OR GOALS?

15 A WELL, I SUPPOSE IT'S TO HAVE A MUNITION
16 THAT INCAPACITATES THE ENEMY SOLDIER SUFFICIENTLY TO
17 BE A USEFUL WEAPON TO PROTECT THE LIVES OF THE
18 SOLDIER SHOOTING IT AND YET NOT CONTRAVENE THE
19 INTERNATIONAL CONVENTIONS, LIKE THE CONVENTION OF

20 1989, WHICH PROHIBITS THE USE OF AN EXPANDING BULLET

21 WHICH IS A HOLLOW-POINT BULLET.

22 Q SO AS NOT TO TORTURE BUT TO DISABLE SO

23 YOUR SOLDIERS CAN BE PROTECTED?

24 A WELL, THE DISABLING IS -- I THINK IN

25 THE -- ALTHOUGH THIS IS NOT SOMETHING I REALLY GOT

26 INTO A GREAT DEAL, BUT IT'S -- MOST OF THE PEOPLE WHO

27 WRITE ABOUT WAR CONSIDER A DISABLED SOLDIER MORE

28 ADVANTAGEOUS THAN A DEAD SOLDIER IN THAT A DISABLED

41410

1 SOLDIER TAKES MUCH RESOURCE FROM THE ENEMY IN ORDER

2 TO TAKE CARE OF THIS PERSON. SO FOR THE MILITARY A

3 BULLET THAT, FOR INSTANCE, GOES THROUGH SOMEONE AND

4 CAUSES HIM TO STOP FIGHTING, BUT DOESN'T KILL HIM IS

5 A MORE ADVANTAGEOUS WOUND -- BULLET THAN ONE THAT

6 WOULD KILL HIM OUTRIGHT.

7 Q AND HAVE YOU KEPT -- HAVE YOU BEEN

8 INVOLVED ON SOME LEVEL WITH WHAT'S BEING DESIGNED

9 AND DEVELOPED AT ABERDEEN OVER THE YEARS?

10 A NOT NECESSARILY ABERDEEN, BUT IN THE

11 MILITARY AND OTHER PLACES. ABERDEEN IS NOT THE SOLE

12 PLACE THAT THIS IS BEING DONE.

13 I HAVE KEPT ABREAST WITH THE VARIOUS

14 PLACES THAT THINGS ARE BEING DEVELOPED IN WEAPONRY

15 IN THE MILITARY, YES.

16 Q ARE YOU AWARE OF ANY SHOTGUN RESEARCH
17 THAT WAS DONE AT ABERDEEN IN THE 1970'S?

18 A NO, I'M NOT.

19 Q DO YOU BELIEVE THAT THEY BOTHERED DOING
20 ANY SHOTGUN RESEARCH AT ABERDEEN?

21 A I HAVE NEVER READ OF ANY, AND I WOULD
22 THINK IT IS MOST UNLIKELY. THE SHOTGUN IS A WEAPON
23 THAT IS USED PERIODICALLY BY VERY SPECIALIZED GROUPS
24 IN THE MILITARY, BUT VERY, VERY FEW COMPARED TO
25 RIFLES, AND I THINK THE WORK DONE AT ABERDEEN, THE
26 SMALL ARMS AREA AT ABERDEEN, WOULD BE, AS FAR AS I
27 KNEW, UNIVERSALLY, RIFLES AND THE DEVELOPMENT OF
28 RIFLE MUNITION. AND THEN, OF COURSE, THEY HAVE THE

41411

1 LARGER CALIBERS LIKE THE CANNONS AND THAT SORT OF
2 THING.

3 Q NOW, THERE ARE MEMBERS OF THE ARMY WHO
4 WORK AT ABERDEEN WHO ARE ENGINEERS INVOLVED WITH
5 DESIGNING MUNITIONS, CORRECT?

6 A YES. THE ORDINANCE ENGINEERS, YES.

7 Q NOW, YOU'VE BEEN READING, HAVE YOU NOT,
8 THE TESTIMONY OF ROGER MC CARTHY AS IT'S UNFOLDED IN
9 THIS TRIAL?

10 A YES, I HAVE.

11 Q YOU'RE ALSO FAMILIAR WITH DR. MC CARTHY;

12 ISN'T THAT RIGHT?

13 A I HAVE MET HIM, YES.

14 Q AND BASED ON HIS DESCRIPTION OF WHAT HE

15 WAS DOING AT HIS BRANCH SCHOOL AT ABERDEEN, WAS HE

16 IN ANY WAY, SHAPE, OR FORM INVOLVED IN ORDINANCE

17 DESIGN?

18 A NO. IT WAS MY IMPRESSION THAT HE WAS

19 THERE AS A STUDENT.

20 Q AND WHEN HE WAS -- WHEN HE TESTIFIED THAT

21 HE WAS TAUGHT HOW TO FIRE EVERYTHING IN THE ARMY AND

22 MAINTAIN IT, DOES THAT MEAN HE LEARNED HOW TO CLEAN

23 THEM?

24 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

25 LACK OF FOUNDATION.

26 THE COURT: ON THE LATTER GROUNDS SUSTAINED.

27 MS. ABRAMSON: LACK OF WHAT?

28 THE COURT: FOUNDATION AS TO HOW HE WOULD

41412

1 KNOW THIS.

2 Q BY MS. ABRAMSON: YOU KNOW WHAT'S TAUGHT

3 AT THE ABERDEEN TRAINING FACILITY, DON'T YOU?

4 MR. CONN: OBJECTION. NO FOUNDATION.

5 THE COURT: OVERRULED.

6 Q BY MS. ABRAMSON: ARE YOU FAMILIAR WITH
7 THE COURSE PROGRAMS THERE?

8 A NO, I'M NOT FAMILIAR WITH THE COURSE
9 PROGRAMS THERE. WHAT I AM FAMILIAR WITH IS
10 DR. MC CARTHY'S TESTIMONY, HOWEVER, IN WHICH HE DID,
11 I THINK, TESTIFY THAT HE -- ONE OF THE THINGS THAT
12 THEY DID WAS MAINTAIN WEAPONS.

13 Q WHAT IS -- IN THE ARMY USE OF THAT TERM,
14 WHAT DOES "MAINTAIN WEAPONS" MEAN?

15 A WELL, MOSTLY KEEPING THEM CLEAN, BUT IT
16 CAN BE REPAIRING AND REPLACING DEFECTIVE PARTS
17 ALSO.

18 Q NOW, YOU INDICATED THAT THE LABORATORY
19 AT LETTERMAN, WHAT YOU SET OUT TO DO WAS TO TRY TO,
20 ON ONE ASPECT, TEST THESE THEORIES THAT THE ENERGY
21 PRODUCED BY A PROJECTILE ENTERING THE HUMAN BODY WAS
22 SOMEHOW RELATED TO THE DEGREE OR SEVERITY OF THE
23 WOUNDING?

24 A YES.

25 Q WAS THAT A CONCEPTION THAT WAS COMMONLY
26 HELD?

27 A VERY COMMONLY.

28 Q WAS THAT ONE OF THOSE THINGS THAT YOU

1 PREVIOUSLY REFERRED TO AS A COMMON MISCONCEPTION IN
2 THE FIELD?

3 A YES, IT IS.

4 Q AND WHAT WERE SOME OF THE OTHER
5 MISCONCEPTIONS IN THE FIELD THAT YOU WERE SEEKING TO
6 TEST OR PROVE AT LETTERMAN?

7 A WELL, ONE OF THE COMMON MISCONCEPTIONS
8 IS THAT RIFLES OF A -- THEY CALL, SAY, HIGH VELOCITY,
9 UNSPECIFIED EXACTLY WHAT HIGH VELOCITY IS. BUT
10 GENERALLY PEOPLE WILL WRITE ABOUT RIFLE WOUNDS AS,
11 QUOTE, HIGH-VELOCITY WOUNDS, AND THAT THESE WOUNDS
12 CAUSE DAMAGE AROUND THE WOUND PATH THAT EXCEEDS WHAT
13 IS VISUALLY OBVIOUS; AND THAT IN ORDER TO TREAT
14 THESE WOUNDS ADEQUATELY, YOU MUST REMOVE ALL THIS
15 TISSUE AROUND THE WOUNDS. AND THIS IS BASICALLY
16 WHAT WE WERE SEEKING TO DISPROVE BECAUSE THIS COULD
17 CERTAINLY RESULT IN VERY WIDE EXCISION OF TISSUE
18 THAT WAS QUITE HEALTHY.

19 Q SO WHAT METHODS DID YOU DEVISE AT THE
20 LABORATORY TO TEST THESE THEORIES OF VELOCITY AND
21 WOUNDING?

22 A WELL, THE FIRST THING WE DID WAS TRY TO
23 FIGURE OUT A SCIENTIFIC WAY OF MEASURING THE
24 POTENTIAL OF A GIVEN PROJECTILE, LIKE MOSTLY
25 BULLETS. AND THE FIRST THING WE HAD TO DO WAS
26 CALIBRATE A TISSUE SIMULANT. THIS HAD BEEN,
27 UNFORTUNATELY, NOT DONE. AS I MENTIONED, THE PEOPLE

41414

1 SIX-INCH BLOCKS OF ORDINANCE GELATIN, WHICH IS A
2 SUBSTANCE THAT LOOKS A BIT LIKE YELLOWISH JELLO.
3 IT'S TRANSLUCENT AND YOU CAN INDENT IT WITH YOUR
4 FINGER.

5 HOWEVER, THERE -- IN SEARCHING, I WAS
6 UNABLE TO FIND ANY PLACE THAT IT HAD EVER BEEN
7 CALIBRATED AGAINST HUMAN TISSUE; AND, THEREFORE, THE
8 RELATIONSHIP WAS INVALID UNLESS IT HAD SOME
9 RELATIONSHIP WITH HUMAN TISSUE. AND THAT HAD NOT
10 BEEN ESTABLISHED.

11 SO THE FIRST THING THAT WE DID WAS TO
12 CALIBRATE IT USING PENETRATION DEPTH OF A
13 PROJECTILE. WE SHOT A GIVEN -- A KNOWN PROJECTILE
14 INTO THE UPPER THIGH OF AN ANESTHESIZED 200-POUND
15 PIG AND MEASURED THE PENETRATION DEPTH OF FIVE -- A
16 GROUP OF FIVE OF THESE PROJECTILES, EACH IN A
17 DIFFERENT PIG. AND THEN WHAT WE DID IS IN MIXING
18 THE GELATIN WE MIXED A GELATIN THAT MATCHED THE
19 PENETRATION DEPTH. SO WE STARTED OUT WITH 20
20 PERCENT GELATIN, WHICH IS THE COMMONLY -- HAD BEEN
21 THE COMMONLY USED ONE AND FOUND IT DIDN'T PENETRATE
22 DEEPLY ENOUGH. AND WE WENT DOWN TWO PERCENTAGE

23 STEPS AT A TIME UNTIL WE FOUND 10 DEGREES -- NO, I'LL
24 GET TO THAT. TEN PERCENT GELATIN WAS THE GELATIN,
25 IF SHOT AT FOUR DEGREES CENTIGRADE, WHICH IS 39
26 DEGREES FAHRENHEIT. AND THIS -- YOU HAVE TO SPECIFY
27 THE TEMPERATURE BECAUSE GELATIN CHANGES ITS
28 PROPERTIES AS THE TEMPERATURE CHANGES. SO I

41415

1 ARBITRARILY ESTABLISHED WE WERE GOING TO USE FOUR
2 DEGREES CENTIGRADE, OR 39 FAHRENHEIT, FOR THE REASON
3 THAT THAT IS WHAT MOST EVERYBODY'S REFRIGERATOR IS
4 SET AT, AND IT WOULD BE EASY FOR EVERYONE WHO WANTED
5 TO DO IT. IF THEY HAD A REFRIGERATOR, THEY COULD DO
6 OUR TECHNIQUES. OTHER STUDIES HAD USED SUCH THINGS
7 AS 10 DEGREES CENTIGRADE, WHICH IS 50 DEGREES
8 FAHRENHEIT. IF YOU WANT TO DO THAT YOU HAVE TO BUY
9 A VERY SPECIAL LABORATORY REFRIGERATOR TO DO IT. WE
10 WANTED EVERYONE DOING THE RESEARCH TO GET THE
11 SCIENTIFIC METHODOLOGY ON LINE.

12 Q NOW, DID THESE SCIENTIFIC METHODS AND
13 THESE RESEARCH DESIGNS THAT YOU CAME UP WITH AT
14 LETTERMAN BECOME ACCEPTED IN THE AREA OF WOUND
15 BALLISTICS RESEARCH?

16 A YES, THEY DID. THE 10 PERCENT GELATIN
17 AT FOUR DEGREES CENTIGRADE WAS, I THINK, 1987, THE

18 F.B.I. SWITCHED FROM THE 20 PERCENT TO THIS GELATIN;
19 AND I -- THEY RIGHT NOW, APPROXIMATELY, THAT I KNOW
20 OF, APPROXIMATELY 50 FORENSIC LABORATORIES IN THE
21 WORLD THAT ARE DOING STUDIES USING GELATIN AND ALL
22 OF THEM, TO MY KNOWLEDGE, ARE USING OUR TECHNIQUES.
23 THE MOST ARE IN CANADA, REGINA, SASKATCHEWAN. WE
24 WORKED WITH THEM TO GET THE GELATIN RIGHT. I WORK
25 WITH MANY OF THESE LABORATORIES BECAUSE IT'S A
26 LITTLE BIT TRICKY TO GET THE -- MIXING THE GELATIN
27 AND SOME THINGS. LITTLE TRICKS. SO I SPENT A LOT
28 OF TIME ON THE TELEPHONE WITH PEOPLE WHO ARE USING

41416

1 THE TECHNIQUE, IN THE BEGINNING WHEN THEY'RE USING
2 IT.

3 Q ARE THERE OTHER EXPERIMENTS THAT YOU
4 PERFORMED AT LETTERMAN OR IN AFFILIATION WITH
5 LETTERMAN THAT OTHER LABORATORIES AND RESEARCHERS
6 HAVE ALSO ACCEPTED YOUR METHODS ON, DUPLICATED THE
7 RESEARCH, OR ATTEMPTED TO?

8 A WELL, YES. WE -- AFTER WE -- WELL,
9 THERE'S ONE OTHER STEP THAT I MUST MENTION.

10 AFTER THE FIRST CALIBRATION OF THE
11 GELATIN, WE PUBLISHED THIS, AND WE PUBLISHED SOME
12 RESULTS OF PROJECTILES THAT HAD GONE A SPECIFIC

13 DEPTH WITH THIS GELATIN. AND AS I HAD HOPED, OTHER
14 INVESTIGATORS PICKED UP ON THE TECHNIQUE AND STARTED
15 DOING THEIR OWN STUDIES. AND THEN I GOT SOME CALLS
16 FROM OTHER INVESTIGATORS SAYING WE'RE USING YOUR
17 TECHNIQUE AND NOT GETTING THE SAME RESULTS AND WE'RE
18 GETTING MUCH DEEPER DEPTHS OF PENETRATION THAN YOU
19 ARE; AND THEN WE HAD TO FIND OUT WHY THIS WAS, AND
20 WE FOUND IT WAS THE WAY THEY WERE MAKING THE
21 GELATIN.

22 THE GELATIN, UNBEKNOWNST TO ME -- WE GET
23 THIS VERY LARGE 25-POUND DRUM OF GELATIN POWDER, AND
24 UNBEKNOWNST TO ME THERE WERE NO DIRECTIONS WITH
25 THIS. I THOUGHT THERE WERE DIRECTIONS BECAUSE WE
26 HAD DIRECTIONS. BUT MY ASSISTANT, NOTING THERE WERE
27 NO DIRECTIONS, CALLED THE COMPANY AND GOT THE
28 DIRECTIONS AND PUT THEM IN THERE. I ASSUMED

41417

1 EVERYBODY HAS DIRECTIONS, CAUSE KIND & KNOX, WHO
2 MAKES THE GELATIN, DOESN'T.

3 Q ONLY IF YOU GET THEM IN LITTLE BITTY
4 BAGGIES?

5 A THAT'S THE PROBLEM. THE DIRECTIONS THAT
6 KIND & KNOX GIVES YOU FOR MAKING SAYS ALWAYS START
7 WITH COLD WATER. UNFORTUNATELY, WHEN AN

8 INVESTIGATOR WOULD GET A BATCH OF THE GELATIN POWDER
9 AND NOT KNOW -- THERE ARE NO DIRECTIONS, FIRST THING
10 HE WOULD DO IS ASK HIS WIFE AND SHE'D LOOK ON THE
11 LITTLE THING AND I THINK IT SAYS YOU START WITH
12 BOILING WATER.

13 Q YES.

14 A THE PROBLEM IS GELATIN IS AN ANIMAL
15 TISSUE AND IT GETS DENATURED WHEN IT'S HEATED TOO
16 MUCH, LIKE THINGS SOFTEN UP WHEN THEY WERE COOKED.
17 THAT'S WHAT WAS HAPPENING.

18 SO THEN WE HAD TO PUBLISH ANOTHER PAPER
19 AND WE HAD TO DESIGN A METHOD OF CALIBRATING EACH
20 BLOCK OF GELATIN TO MAKE SURE IT WAS MADE RIGHT.

21 AND SO WE DID THIS BY JUST USING A 50
22 DOLLAR -- OR MAYBE 30-DOLLAR PUMPED UP BB GUN, THE
23 ONES YOU CAN VARY THE VELOCITY BY PUMPING THEM. AND
24 WE FOUND THAT IF WE SHOT A BB AT 590 FEET PER SECOND
25 INTO THE GELATIN, WE ESTABLISHED THE EIGHT AND A
26 HALF CENTIMETERS PENETRATION DEPTH AS THE STANDARD,
27 AND THAT HAS NOW BEEN USED. AND THERE'S RECENTLY
28 BEEN A BOOK BROUGHT OUT ON THE -- A NEW PENETRATION

41418

1 MODEL DONE. THIS BOOK'S BEEN DONE BY A FRIEND OF
2 MINE AND HE'S USING THIS METHODOLOGY AND THE

3 CALIBRATION METHOD, AND HE'S ALSO PUBLISHED A WAY OF
4 ADJUSTING THE RESULTS IN SO-CALLED NON-STANDARD
5 GELATIN.

6 THERE ARE CERTAIN PEOPLE THAT GET
7 GELATIN AND THEIR BB GOES 10 CENTIMETERS. IN ORDER
8 TO KEEP THEM FROM THROWING IT OUT, HE'S BEEN ABLE TO
9 CALCULATE HOW MUCH DIFFERENCE THEY HAVE TO MAKE IN
10 THE ADJUSTMENT OF THEIR RESULTS TO MATCH IT UP.

11 SO ANYHOW, WE'VE CALCULATED TWO WAYS,
12 ONE CALIBRATED AGAINST LIVING TISSUE, WHICH HAD NOT
13 BEEN DONE; AND SECONDLY, WE CALIBRATE EACH BLOCK OF
14 GELATIN BEFORE THAT BLOCK IS SHOT. AND THE
15 ASTOUNDING THING IS THAT THIS HAD NOT BEEN DONE
16 BEFORE, BECAUSE THIS IS NO MORE COMPLEX THAN IN
17 QUANTITATIVE ANALYSIS USING A KNOWN WEIGHT TO
18 CALIBRATE YOUR SCALES. JUST BASIC 1-A SCIENCE, BUT
19 IN THE FIELD OF WOUND BALLISTICS IT HAD BEEN
20 NEGLECTED.

21 Q WHAT ULTIMATELY WERE THE AREAS OF
22 RESEARCH THAT YOU WERE ABLE TO UTILIZE THIS
23 TECHNOLOGY IN YOUR INVESTIGATIONS? I MEAN, WHAT HAS
24 BEEN LEARNED BECAUSE OF THESE TECHNIQUES THAT YOU
25 DEVELOPED ABOUT THE EFFECTS OF -- I MEAN, I DON'T
26 WANT YOU TO LIST EVERYTHING BECAUSE I'M SURE IT'S A
27 LOT, BUT HOW DID THIS RESEARCH AFFECT AFFECT SOME OF
28 THE PROBLEMS OF THE COMMON MISCONCEPTIONS?

1 A OKAY. WOULD IT -- COULD I EXPLAIN THE
2 FIRST ONE, THE MAIN ONE BY GOING TO THE BOARD?

3 Q SURE. LET ME GET YOU A CLEAN PIECE OF
4 PAPER THOUGH. THERE'S A BUNCH OF STUFF ON THAT.
5 LET ME GET YOU A CLEAN PIECE OF PAPER, DR. FACKLER.

6 A AS I MENTIONED, ONE OF THE COMMON
7 MISCONCEPTIONS IS THAT A BULLET OF, QUOTE, HIGH
8 VELOCITY, FOR INSTANCE, LET'S TAKE AN M-16 RIFLE
9 BULLET. THIS VELOCITY IS HIGH BY ANYBODY'S
10 DEFINITION, ABOUT 3200 FEET PER SECOND. THESE
11 PROJECTILES, UPON HITTING SOMEONE, WILL CAUSE VERY
12 WIDE-SPREAD DAMAGE, AND EVEN THOUGH THE HOLE APPEARS
13 SMALL, YOU MUST REMOVE A CERTAIN AREA AROUND THE
14 HOLE. AND THE ASSUMPTION IS THAT, OF COURSE, FROM
15 WHEN THEY HIT THEY MAKE ALL THIS DAMAGE.

16 WELL, WHEN WE WOUND -- WHAT WE DID WITH
17 OUR -- AGAIN, TO BACK UP A LITTLE BIT, INSTEAD OF
18 USING SIX-INCH BLOCKS OF GELATIN WE USED 20-INCH
19 BLOCKS OF GELATIN. SO OUR -- WHAT WE DID WAS
20 ENTRAPPED THE ENTIRE PATH OF ANY PROJECTILE IN THE
21 BLOCK. SO THERE HAD BEEN SOME PROJECTILES THAT
22 WE'VE HAD TO USE THREE OF THESE 20-INCH BLOCKS TO
23 CATCH IT. BUT WITHOUT THIS YOU DON'T KNOW WHAT THE
24 PENETRATION POTENTIAL IS.

25 AND YOU ALSO FIND OUT OTHER THINGS ABOUT
26 AS THE BULLET GOES THROUGH, IF THE BULLET MUSHROOMS

27 OR EXPANDS OR IF IT DOES A THING CALLED YAWING. AND

28 MILITARY RIFLE BULLETS DO NOT EXPAND IN THE SENSE

41420

1 THEY'RE SOFT-POINT BULLETS WHICH DOUBLE THEIR
2 DIAMETER AND FLATTEN AND MAKE A LARGER WOUND BECAUSE
3 OF THAT. MILITARY RIFLE BULLETS DON'T DO THAT. BUT
4 MILITARY RIFLE BULLETS DO DO A THING CALLED YAW AND
5 THAT IS AFTER THEY HIT THE TISSUE THEY'LL PENETRATE
6 A CERTAIN DISTANCE AND THEN THE BULLET WILL BEGIN TO
7 TURN SIDEWAYS AND THERE WILL BE A POINT WHERE THE
8 BULLET IS TRAVELING SIDEWAYS TO ITS PATH. OF
9 COURSE, WHEN IT'S DOING THAT IT'S MAKING MORE DAMAGE
10 BECAUSE THERE -- THERE ARE ONLY TWO THINGS A BULLET
11 DOES: ONE, IT CRUSHES WHAT IT CAN HIT; AND
12 SECONDLY, IT MAKES A TEMPORARY CAVITY WHICH IS JUST
13 A SPLASH. WHEN YOU THROW A ROCK IN THE WATER, THE
14 WATER GOES APART AND COMES BACK. THE SPLASH IN
15 TISSUE IS A TEMPORARY CAVITY. THOSE ARE THE TWO
16 THINGS A BULLET DOES.

17 WHEN A BULLET IS GOING -- A STREAMLINE
18 BULLET SUCH AS THE MILITARY BALL ROUND LIKE AN M-16
19 LOOKS SOMETHING LIKE THAT. IT'S MADE VERY
20 STREAMLINE IN ORDER TO GO THROUGH THE AIR AND
21 DISTURB THE AIR LITTLE SO IT DOESN'T LOSE MUCH

22 VELOCITY AND HOLDS VELOCITY VERY WELL. IF IT SHOT
23 IT WITH THE BASE FORWARD IT WOULD LOSE SPEED VERY
24 RAPIDLY.

25 IN GOING THROUGH TISSUE, AS LONG AS THE
26 BULLET REMAINS THAT WAY, IT MAKES A VERY TINY LITTLE
27 HOLE AND DOESN'T DISTURB MUCH TISSUE EITHER. WHEN
28 IT GOES SIDEWAYS IT MAKES A BIG SPLASH OR BIG

41421

1 TEMPORARY CAVITY AND THE M-16 BULLET ALSO BREAKS.

2 THIS IS NO MORE COMPLEX THAN A DIVER
3 GOING OFF A VERY HIGH BOARD MAKING A VERY GOOD DIVE
4 AND VERY TINY SPLASH BECAUSE HE HITS AT A
5 STREAMLINE. EVEN OFF A LOW BOARD, LOW VELOCITY, IF
6 YOU HIT SIDEWAYS YOU MAKE A BIG SPLASH. NO MORE
7 COMPLEX THAN THIS.

8 WHAT WE DID WITH THE GELATIN IS MEASURE
9 WHERE THE BULLET DID VARIOUS THINGS. AND I'LL USE
10 THE M-16 BECAUSE THAT'S A VERY WELL-KNOWN BULLET AND
11 IT WAS COMMONLY USED IN VIETNAM. AND THE WOUND
12 PROFILE, WHICH IS WHAT WE GOT FROM TAKING THE ENTIRE
13 LENGTH OF THE PROJECTILE, MEASURING THE DIAMETERS OF
14 THE DISRUPTION AT EVERY POINT, AND WE CONSTRUCTED
15 WHAT WAS CALLED A PROFILE. AND WE MADE THIS PROFILE
16 BY -- I WOULD TAKE THE MEASUREMENTS FROM THE

17 GELATIN, ROUGH THEM OUT ON A PIECE OF CARDBOARD OR
18 PAPER AND THEN OUR ARTIST WOULD MAKE THESE
19 PROFILES. AND I HAVE ALL THESE PROFILES WHICH
20 THERE'S A CHARACTERISTIC WOUND PATTERN FOR EACH
21 PROJECTILE.

22 I'LL JUST DRAW THE M-16 BECAUSE THIS
23 MAKES THE POINT THAT I'M TRYING TO SPEAK OF HERE.

24 AND IT GOES LIKE THIS.

25 MR. CONN: I WOULD OBJECT AT THIS TIME, YOUR
26 HONOR, TO FURTHER EXAMINATION CONCERNING BULLETS
27 SINCE THE PROJECTILES IN THIS CASE ARE SHOTGUN
28 PELLETS RATHER THAN BULLETS.

41422

1 THE COURT: OVERRULED, WITH THE UNDERSTANDING
2 THAT IF THERE IS MUCH MORE BEYOND THIS IT'LL GO ON
3 TO THE SHOTGUN PELLETS.

4 MS. ABRAMSON: WELL, WE'LL TALK ABOUT THE
5 CONNECTION, YOUR HONOR.

6 ONE MOMENT. LET ME ASK YOU A QUESTION.

7 Q DR. FACKLER, WHAT YOU'RE TRYING TO
8 DEMONSTRATE NOW IS THE CONCEPT OF THE TEMPORARY
9 CAVITATION, CORRECT?

10 A YES. AND I'M TRYING TO DEMONSTRATE THE
11 CONCEPT OF HOW WE PROVE THE ERROR IN THE IDEA THAT A

12 BULLET OF HIGH VELOCITY ALWAYS MAKING A LOT OF
13 DAMAGE AND THEREFORE YOU MUST DO A LARGE OPERATION.
14 THAT'S THE BASIC APPLICATION THAT YOU ASKED ME,
15 WHICH WAS --

16 Q RIGHT. WITH RESPECT TO THE CONCEPT OF
17 TEMPORARY CAVITY, IS THAT A CONCEPT THAT WHEN WE GET
18 TO IT IN A LITTLE WHILE ENTERS INTO YOUR EVALUATION
19 IN THE WOUNDS IN THIS CASE?

20 A OH, CERTAINLY. OH, ABSOLUTELY.

21 BUT THE POINT HERE IS THAT THIS DISTANCE
22 UNTIL -- AS LONG AS THIS BULLET IS GOING STRAIGHT, IT
23 MAKES A VERY SMALL HOLE AND THIS CAVITY IS VERY
24 SMALL.

25 IN OTHER WORDS -- AND IN DISTANCE FOR THE
26 AVERAGE DISTANCE AN M-16 PENETRATES BEFORE IT YAWS
27 AND MAKES THIS LARGE CAVITY, WHEN THE BULLET YAWS
28 AND GOES SIDEWAYS WE HAVE A BIG SPLASH AND THE

41423

1 BULLET FRAGMENTS AND YOU HAVE A LOT OF DAMAGE IN
2 HERE. THAT VERY CLEARLY DOES OCCUR. HOWEVER, IN
3 THE M-16 ORDINARILY THIS TAKES ABOUT FOUR INCHES OF
4 PENETRATION BEFORE THIS HAPPENS, ACTUALLY A LITTLE
5 MORE THAN FOUR. IT'S 12 CENTIMETERS BEFORE THIS
6 HAPPENS.

7 SO, IN OTHER WORDS, WHAT I'M SAYING IS
8 IF YOU PUT A HUMAN LEG UP ON THIS PROFILE IT WOULD
9 COME TO ABOUT THERE. IN OTHER WORDS, I TREATED
10 MANY, MANY WOUNDS FROM AN M-16 WHERE IT SHOT RIGHT
11 THROUGH THE INSIDE IN ONE LEG, OUT THE OTHER, AND
12 THE SOLDIER WALKED IN WITHOUT ANY DIFFICULTY. AND
13 THERE'S NO WAY IN THE WORLD ONE COULD TELL THAT
14 WOUND FROM ONE MADE BY A SIMPLE HANDGUN OR .22.

15 BUT THE TEACHING WAS IF IT WAS HIGH
16 VELOCITY YOU HAD TO DO A HUGE OPERATION. AND WHAT
17 WE'VE BEEN NOW SUCCESSFUL IN TRYING TO GET THE POINT
18 ACROSS IS NO, YOU DON'T TREAT WHAT YOU THOUGHT THE
19 VELOCITY WAS. YOU LOOK AT THE WOUND AND TREAT THE
20 DAMAGE YOU SEE AND YOU DON'T GO EXCISING A LOT OF
21 EXCESS DAMAGE. AND THAT WAS THE POINT THAT WE HAVE
22 BEEN SUCCESSFUL IN GETTING ACROSS FROM THE WOUND
23 PROFILES.

24 Q SO YOU WERE ABLE TO SHOW THAT FROM THOSE
25 KINDS OF BULLETS THAT THE FIRST FOUR INCHES, NO
26 MATTER WHAT THE VELOCITY, REALLY ISN'T AN
27 EXCEEDINGLY DAMAGING PROJECTILE, IT'S ONLY WHEN IT
28 TURNS?

41424

1 A RIGHT. THIS IS FOR THE M-16, OF COURSE.

2 AND THERE ARE OTHER COMMON PROJECTILES. THE AK-47
3 THAT GOES 12 INCHES BEFORE IT YAWS, WHICH IS VERY
4 FORTUNATE BECAUSE IT MAKES VERY SMALL WOUNDS
5 COMPARED TO OTHER PROJECTILES.

6 Q NOW, AS A RESULT OF -- STRIKE THAT.

7 WERE THERE OTHER CONCEPTS AND NOTIONS
8 THAT YOU WERE ADDRESSING IN THE RESEARCH AT
9 LETTERMAN? I MEAN, WITHOUT LISTING THEM ALL BECAUSE
10 WE'RE NOT GOING TO DO THAT. BUT OTHER AREAS THAT
11 WERE STUDIED CONCERNING THE IMPACT OF PROJECTILES ON
12 THE HUMAN BODY?

13 A IT WAS BASICALLY THE IDEA OF TRYING TO
14 GET ACROSS THAT -- WE'RE LOOKING FOR A LESSON THAT WE
15 COULD BACK UP WITH SCIENTIFIC CERTAINTY SO WE COULD
16 PUBLISH AND THE LESSON WAS THAT FOR THE SOLDIER --
17 FOR THE SURGEON THAT'S TREATING THE SOLDIER, IS THAT
18 YOU CANNOT TELL WHAT A PROJECTILE'S WOUNDING
19 POTENTIAL IS GOING TO BE BY ITS VELOCITY. AND,
20 THEREFORE, YOU HAVE TO LOOK AT THE WOUND AND EXAMINE
21 THE WOUND AND USE X RAYS, AND YOU CAN DETERMINE FROM
22 THAT. BUT JUST VELOCITY WON'T DO IT. AND THAT WAS
23 MAINLY WHAT WE WERE DOING, AND THAT WAS WHAT THE
24 ARMY WISHED TO DO.

25 AND THIS IS THE SETTING UP OF THE BASIC
26 RESEARCH. TO SET UP THE METHODOLOGY IS ONE THING,
27 AND THEN THE NEXT THING WAS ACTUALLY APPLYING THIS
28 TO THE FIELD OF BATTLE. AND AS A MATTER OF FACT,

1 THIS APPEARS IN THE MOST CURRENT ISSUE OF THE
2 EMERGENCY WAR SURGERY MANUAL, WHICH IS THE 1988
3 EDITION, GOVERNMENT PRINTING OFFICE, THE 1988
4 EDITION.

5 Q NOW, HAVE YOU HELD VARIOUS HONORARY
6 POSITIONS AND ELECTED POSITIONS WITHIN PROFESSIONAL
7 ORGANIZATIONS IN THE AREA OF WOUND BALLISTICS?

8 A WELL, NOT VERY MANY PROFESSIONAL
9 ORGANIZATIONS. BUT OF THE FEW, YES, I'VE --

10 Q ARE THERE MANY PROFESSIONAL
11 ORGANIZATIONS?

12 A NOT IN WOUND BALLISTICS, NOT WOUND
13 BALLISTICS ALONE. IT'S A VERY NARROW FIELD
14 ACTUALLY. AND THE ONLY ONES I KNOW OF ARE THE
15 INTERNATIONAL WOUND BALLISTICS, WHICH I'M PRESIDENT
16 AND EDITOR OF THE JOURNAL; AND A SECOND ONE WHICH
17 HAS BEEN FORMED IN THE LAST YEAR IS THE FRENCH WOUND
18 BALLISTICS SOCIETY AND I WAS SELECTED HONORARY
19 PRESIDENT OF THAT.

20 Q AND ARE YOU A REGULAR REVIEWER FOR
21 MEDICAL AND FORENSIC SCIENCE JOURNALS?

22 A YES.

23 Q ARE YOU A CONSULTANT TO THE UNITED
24 STATES DEPARTMENT OF DEFENSE AND DEPARTMENT OF STATE

25 FORENSIC SCIENCE CRIMINALISTS INDUSTRY, THE F.B.I.,
26 AND OTHER LAW ENFORCEMENT AGENTS IN THE AREA OF
27 WOUND BALLISTICS?
28 A YES, I AM.

41426

1 Q HAVE YOU BEEN SELECTED TO BE A MEMBER OF
2 VARIOUS UNITED STATES DELEGATION -- WELL, YOU'VE
3 INDICATED YOU WERE SELECTED TO BE A MEMBER OF ARMY
4 DELEGATIONS?

5 A THAT WAS THE UNITED STATES. THAT WAS
6 DEPARTMENT OF STATE. I WAS LOANED TO THE DEPARTMENT
7 OF STATE TO GO DOWN TO GENEVA -- WHILE IN GERMANY I
8 WENT DOWN TO GENEVA AND WAS THE MEDICAL MEMBER TO A
9 UNITED NATIONS CONFERENCE ON WEAPONS. THAT WAS
10 REGARDING THE M-16 WHICH WAS ONE OF THE BIG BONE OF
11 CONTENTIONS DURING THAT CONFERENCE.

12 Q HAVE YOU RECEIVED ANY MEDALS FROM THE
13 ARMY FOR YOUR WORK?

14 A YES. I GOT THE MERITORIOUS MEDAL OF
15 SERVICE FOR THE RESEARCH -- THE SCIENTIFIC RESEARCH
16 OF ESTABLISHING THE -- BASICALLY, ESTABLISHING THE
17 VALID TISSUE SIMULANT. AND THEN I GOT THE LEGION OF
18 MERIT FOR THE APPLICATION OF OUR WORK TO THE FIELD
19 OF BATTLE, TO THE APPLICATION OF HOW TO TREAT BATTLE

20 WOUNDS.

21 Q AND AS A PRIVATE CONSULTANT, HAVE YOU
22 BECOME INVOLVED IN THE AREA OF WOUND BALLISTICS IN A
23 FORENSIC SETTING, IN OTHER WORDS, IN A LEGAL
24 SETTING?

25 A YES, I HAVE. I STARTED THAT WHILE I WAS
26 STILL -- AFTER OUR METHODOLOGY CAME ON AND WE
27 PUBLISHED A COUPLE OF PAPERS WITH THE WOUND
28 PROFILES; AND, THEREFORE, YOU COULD LOOK AT A WOUND

41427

1 PROFILE AND FIND OUT HOW DEEPLY A PROJECTILE
2 PENETRATES IT -- I GOT A CALL FROM -- I THINK IT WAS
3 ' THE FIRST TIME I TESTIFIED IN A CASE AND
4 SOMEONE -- ACTUALLY, IT WAS A FIREARMS EXAMINER WHO
5 HAD FELT THAT THIS WOULD BE APPLICABLE, AND HE
6 TALKED TO THE LAWYER IN -- I WENT DOWN TO SANTA FE,
7 NEW MEXICO IN 1984 AND TESTIFIED ON A CASE. AND
8 WHILE I WAS IN THE MILITARY, FROM 1984 TO '91, I
9 THINK I ONLY TESTIFIED IN ABOUT FIVE CASES BECAUSE
10 THE MILITARY DOES NOT ENCOURAGE YOU TO DO THIS. BUT
11 THEY DON'T PROHIBIT IT WHEN YOU'RE DEALING WITH A
12 FIELD THAT IS NOT -- WELL, THERE WAS NO ONE ELSE THAT
13 HAD THIS AVAILABLE, AND THEY FELT THIS -- IT WAS OKAY
14 FOR ME TO GO TESTIFY BECAUSE THE -- IT WAS

15 UNAVAILABLE ELSEWHERE, THE EXPERTISE.

16 Q IN OTHER WORDS, THERE WERE NO CIVILIAN
17 EXPERTS?

18 A NOT IN THIS SPECIFIC AREA.

19 Q OKAY. AND SINCE THAT TIME, SINCE THE
20 TIME YOU RETIRED FROM THE ARMY, YOU'VE HAD MORE TIME
21 TO ACT AS A FORENSIC CONSULTANT?

22 A YES. I WOULD ESTIMATE THAT
23 APPROXIMATELY 50 PERCENT OF MY TIME IS SPENT AS A
24 FORENSIC CONSULTANT RIGHT NOW.

25 Q AND IN WHAT KINDS OF CASES INVOLVING
26 WHAT KINDS OF FIREARM -- ALL OF THESE INVOLVE FIREARM
27 INJURIES, ALL THE CASES YOU'VE BEEN INVOLVED IN?

28 A I HESITATE TO SAY YES WITHOUT THINKING.

41428

1 CERTAINLY THE GREAT MAJORITY OF THEM DO. ONE OF
2 THEM INVOLVED BODY ARMOR, BUT IT WAS FIRE -- YOU
3 KNOW, FIREARM IMPACT, BUT THE BODY ARMOR WAS AN
4 IMPORTANT PART OF IT.

5 ALL OF THEM HAVE INVOLVED FIREARMS.

6 Q ALL DIFFERENT KINDS OF FIREARMS?

7 A YES.

8 Q NOW, THIS DESCRIPTION YOU HAVE GIVEN
9 ABOUT THE EFFECTS OF WHEN A HIGH-SPEED PROJECTILE,

10 IN THIS CASE THE M-16 BULLET, PASSES THROUGH HUMAN
11 TISSUE IT CREATES THIS CAVITY. DOES THE RESEARCH
12 INDICATE THAT THE SAME KIND OF EFFECTS OR SOME OF
13 THE SAME EFFECTS OCCUR WHEN OTHER PROJECTILES PASS
14 THROUGH THE BODIES, OTHER FIREARM PROJECTILES
15 BESIDES THE M-16 BULLET?

16 A OH, CERTAINLY. ANY PROJECTILE THAT
17 PASSES THROUGH THE BODY AT -- PROBABLY FASTER THAN
18 500 FEET PER SECOND WILL GIVE A CAVITATION OR SPLASH
19 OF THE TISSUE TO SOME DEGREE. AND EVERYTHING ELSE
20 BEING EQUAL, THE HIGHER THE SPEED OF THE PROJECTILE
21 THE LARGER THIS CAVITATION WILL BE.

22 Q NOW, WITH RESPECT TO SHOTGUN WOUNDS,
23 WHICH IS WHAT'S INVOLVED IN THIS CASE, DO THESE
24 THEORIES THAT YOU WORKED OUT AT THE LETTERMAN
25 INSTITUTE APPLY EQUALLY TO SHOTGUN WOUNDS?

26 A IF I COULD -- I DON'T KNOW IF IT'S PROPER
27 FOR ME TO COMMENT ON THE FORMAT OF YOUR QUESTION OR
28 NOT.

41429

1 Q PLEASE, IF IT'S A BAD QUESTION, SAY IT'S
2 A BAD QUESTION.

3 A I DON'T CONSIDER -- THESE ARE THINGS WE
4 CAN MEASURE AND PROVE, THE HIGH-SPEED PHOTOGRAPHY

5 BEYOND THE THEORIES OR FACTS.

6 Q I DIDN'T MEAN TO DENIGRATE THE
7 RESEARCH.

8 A OKAY.

9 Q THESE FACTS THAT YOU HAVE DEVELOPED IN
10 YOUR RESEARCH, DO THEY APPLY AS WELL TO PENETRATION
11 OF THE HUMAN BODY WITH SHOTGUN AMMUNITION?

12 A CERTAINLY THEY DO.

13 Q HAVE YOU EVER BEEN CALLED UPON,
14 DR. FACKLER, IN YOUR CAPACITY AS A CONSULTANT IN THE
15 FORENSIC AREA, TO CONTRIBUTE YOUR EXPERTISE IN THE
16 ATTEMPT TO RECONSTRUCT A SHOOTING?

17 A I HAVE NEVER BEEN ASKED TO DO THAT
18 ENTIRELY ON MY OWN. AND I -- WELL, I THINK -- YEAH, I
19 HAVE BEEN ASKED TO DO THAT ENTIRELY ON MY OWN AND
20 I'VE REFUSED AND SUGGESTED THAT I WOULD BE ABLE -- I
21 WOULD BE HAPPY TO ASSIST THE FIREARM'S EXAMINER AND
22 WE COULD DO IT TOGETHER. BECAUSE THAT'S BASICALLY --
23 A FIREARMS EXAMINER GENERALLY DOES THAT. NOT ALL
24 FIREARMS EXAMINERS, BUT THERE ARE CERTAIN EXAMINERS
25 WHO SPECIALIZE IN THAT. AND WHAT I'VE DONE IS, IN
26 EACH CASE THAT I'VE BEEN ASKED, I'VE COMBINED WITH A
27 FIREARMS EXAMINER, MOST RECENTLY IN A CASE UP IN
28 VANCOUVER, CANADA I'VE DONE THAT.

1 Q WHAT WAS THE CASE IN VANCOUVER?

2 A IT WAS A -- THE POLICE HAD PULLED AROUND
3 A PERSON WHO WAS STOPPED AND THEY HAVE THIS
4 TECHNIQUE OF WHEN THEY -- THE POLICE CAR PULLS AROUND
5 THIS STOPPED CAR IN SUCH A FASHION THAT THE FRONT OF
6 THE POLICE CAR BLOCKS THE FORWARD MOVEMENT OF THIS
7 CAR. I DON'T KNOW WHAT THEY CALL IT, BUT IT'S A
8 STANDARD POLICE TECHNIQUE. AND IN PULLING AROUND
9 THE -- I GUESS THE DRIVER OF THE CAR APPLIED THE
10 BRAKES A LITTLE BIT MORE ABRUPTLY, UNEXPECTED, AND
11 THE PASSENGER POLICEMAN HAD A HANDGUN IN HIS HAND
12 AND HE WAS THROWN FORWARD AGAINST THE DASHBOARD AND
13 THE HANDGUN HIT THE DASHBOARD AND WENT OFF. HIS
14 WINDOW WAS OPEN. THE BULLET WENT OUT THROUGH THE
15 WINDOW, HIT THIS PASSENGER IN THE NECK AND CUT HIS
16 SPINAL CORD, SO HE BECAME A PARAPLEGIC OR
17 QUADRIPLLEGIC.

18 Q WAS THE ISSUE WHETHER OR NOT THIS WAS AN
19 ACCIDENTAL FIRING OF THE HANDGUN?

20 A THAT'S WHAT IT'S TURNED INTO, YES.

21 Q AND THAT WAS A -- AND WAS THERE TESTIMONY
22 FROM YOURSELF AND FROM A FIREARMS EXAMINER
23 ATTEMPTING TO RECONSTRUCT THE MANNER IN WHICH THAT
24 GUN WAS FIRED OR --

25 A WELL, WE HAVEN'T -- THE RECONSTRUCTION
26 HAS BEEN DONE. THE POINT IN DISPUTE IS THE PERSON
27 WHO WAS SHOT MAKES THE CLAIM THAT HE SAW THE
28 POLICEMAN STANDING OUT THERE, THE POLICEMAN GOT OUT

1 OF THE CAR, STOOD THERE AND SHOT HIM. WHAT WE DID
2 WAS RECONSTRUCT THIS WITH THE PERSON IN THE CAR AND
3 HE HAD HIS SEAT BELT ON AND IT CAME ACROSS HIS
4 SHOULDER AND THE BULLET WENT THROUGH THE SEAT BELT.
5 AND WE HAD THE CAR OF THE PERSON WHERE THE BULLET
6 ENTERED AND BY PUTTING HIM IN VARIOUS POSITIONS WE
7 WERE ABLE TO RECONSTRUCT A SCENE THAT LINED UP VERY
8 WELL WITH IT COMING OUT THE CAR AS IT WAS GOING BY,
9 BUT DID NOT LINE UP WELL WITH A POLICEMAN STANDING
10 WHERE HE SAID HE SAW THE POLICEMAN STANDING. SO
11 THAT'S WHY WE DID IT.

12 Q SO YOU TOOK ALL THE KNOWN FACTS AND YOU
13 WERE ABLE TO INDICATE WHETHER ONE VERSION FIT THE
14 PHYSICAL EVIDENCE VERSES ANOTHER VERSION THAT DID
15 NOT FIT THE PHYSICAL EVIDENCE?

16 A PRECISELY.

17 Q CONCERNING THIS CASE, DR. FACKLER, IF
18 YOU HAD BEEN ASKED TO ATTEMPT TO RECONSTRUCT ALL OF
19 THE COMPONENTS OF THE SHOOTING IN THIS CASE, THE
20 NUMBER OF SHOTS FIRED, THE PLACEMENT OF THE
21 SHOOTERS, THE PLACEMENT OF THE DECEDENTS, WOULD YOU
22 HAVE ACCEPTED SUCH AN ASSIGNMENT?

23 MR. CONN: OBJECTION. IRRELEVANT. LACK OF

24 FOUNDATION.

25 THE COURT: REPHRASE THE QUESTION.

26 Q BY MS. ABRAMSON: IN YOUR PROFESSIONAL
27 OPINION, IS THIS A SCENE THAT YOU BELIEVE CAN BE
28 RECONSTRUCTED SCIENTIFICALLY?

41432

1 MR. CONN: ONCE AGAIN, I WOULD OBJECT. LACK
2 OF FOUNDATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: NO, I DON'T BELIEVE IT CAN
5 BECAUSE OF THE TREMENDOUS NUMBER OF VARIABLES
6 INVOLVED.

7 Q BY MS. ABRAMSON: NOW, YOU'RE AWARE THAT
8 A HYPOTHESIS OF RECONSTRUCTION HAS BEEN OFFERED IN
9 THIS CASE BY ROGER MC CARTHY, ARE YOU NOT?

10 A YES, I AM.

11 Q AND, IN YOUR OPINION, IS THAT A
12 SCIENTIFIC RECONSTRUCTION?

13 A WELL, I THINK IT -- THAT'S DIFFICULT. I
14 THINK WE CAN SAY IT WAS -- THE ATTEMPT TO DO IT WAS
15 DONE IN AS SCIENTIFIC A FASHION AS DR. MC CARTHY WAS
16 ABLE TO DO. BUT I DO NOT FEEL THAT IT MEETS THE
17 CRITERION FOR A SCIENTIFICALLY DONE RECONSTRUCTION
18 BECAUSE OF THE MANY ERRORS MADE IN IT.

19 Q BASED ON YOUR OWN INVOLVEMENT IN
20 RECONSTRUCTED SHOOTINGS, ARE THERE CERTAIN AREAS OF
21 EXPERTISE THAT SOMEONE ATTEMPTING TO DO THAT MUST
22 PREPOSSESS OR MUST CONSULT WITH BEFORE A SCIENTIFIC
23 RECONSTRUCTION OF A SHOOTING CAN BE DONE WITH A
24 REASONABLE DEGREE OF SCIENTIFIC CERTAINTY?

25 MR. CONN: OBJECTION. LACK OF FOUNDATION AND
26 CALLS FOR SPECULATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: WELL, CERTAINLY IN A SITUATION

41433

1 WHERE YOU HAVE, FOR INSTANCE, A HOLE IN AN INANIMATE
2 OBJECT AND A KNOWN POSITION OF WHERE THE GUN WAS OR
3 IF YOU LINE UP HOLES IN TWO INANIMATE OBJECTS,
4 FINE. I THINK THAT'S SOMETHING AN ENGINEER CAN DO
5 WITHOUT ANY DIFFICULTY.

6 BUT WHEN YOU'RE TALKING ABOUT PATHS IN
7 AND THROUGH THE HUMAN BODY, I DON'T THINK THE
8 ENGINEER HAS THE KNOWLEDGE NECESSARY TO UNDERSTAND
9 THE SUBJECT WELL ENOUGH TO DO AN ACCURATE JOB.

10 MR. CONN: OBJECTION. MOTION TO STRIKE THE
11 LATTER HALF BASED UPON LACK OF FOUNDATION AND
12 IMPROPER OPINION.

13 THE COURT: OVERRULED.

14 Q BY MS. ABRAMSON: NOW, IS THE KNOWLEDGE
15 OF INJURIES INSIDE THE HUMAN BODY SOMETHING THAT
16 BOTH SURGEONS AND FORENSIC PATHOLOGISTS -- IS THAT
17 SOMETHING BOTH OF THOSE AREAS (SIC) HAVE TRAINING
18 IN?

19 A YES, THEY DO.

20 Q AND IN THIS PARTICULAR CASE HAVE YOU --
21 WELL, FIRST, DID YOU HAVE SUBMITTED TO YOU A LARGE
22 BODY OF MATERIALS OVER THE LAST THREE MONTHS?

23 A YES, I HAVE.

24 Q AND HAVE YOU ALSO BEEN READING THE
25 TESTIMONY OF DR. ROBERT LAWRENCE AND ROGER
26 MC CARTHY?

27 A YES, I HAVE.

28 Q AND DID YOU FORM CERTAIN OPINIONS AND

41434

1 CONCLUSIONS CONCERNING SOME OF THE OPINIONS AND
2 CONCLUSIONS THAT DRS. LAWRENCE AND MC CARTHY ARRIVED
3 AT?

4 A YES.

5 Q AND DID YOU DISCUSS, AND, IF YOU WILL,
6 BOUNCE OFF THOSE OPINIONS AND CONCLUSIONS WITH SOME
7 OTHER PEOPLE WHO ARE ALSO INVOLVED IN THE
8 EXAMINATION OF FORENSIC EVIDENCE?

9 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

10 THE COURT: OVERRULED. YOU CAN ANSWER THE
11 QUESTION.

12 THE WITNESS: YES.

13 Q BY MS. ABRAMSON: DID YOU, AT VARIOUS
14 TIMES, CONSULT WITH CHARLES MORTON, A CRIMINALIST
15 WHO HEADS UP THE INSTITUTE OF FORENSIC SCIENCE IN
16 OAKLAND?

17 A YES.

18 Q HAVE YOU CONSULTED WITH AND DISCUSSED
19 ASPECTS OF THIS CASE WITH DEPUTY DWIGHT VAN HORN
20 FROM THE L.A. COUNTY SHERIFF'S DEPARTMENT WHO WAS
21 THE BALLISTICS EXAMINER IN THIS CASE IN THE FIRST
22 TRIAL?

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

25 THE COURT: SUSTAINED.

26 Q BY MS. ABRAMSON: HAVE YOU DISCUSSED
27 ASPECTS OF THIS CASE WITH DEPUTY VAN HORN?

28 A YES, I HAVE.

41435

1 Q AND HAVE YOU KNOWN DEPUTY VAN HORN FOR A
2 NUMBER OF YEARS?

3 A YES, I HAVE.

4 Q HOW DO YOU KNOW HIM?

5 A I'M NOT SURE HOW I -- DEPUTY VAN HORN IS
6 A MEMBER OF THE ASSOCIATION OF FIREARM AND TOOL MARK
7 EXAMINERS, AND THIS IS AN ORGANIZATION IN WHICH I AM
8 A TECHNICAL ADVISOR AND HAVE RECENTLY BECOME A
9 DISTINGUISHED MEMBER AND REMAIN A MEMBER AND
10 TECHNICAL ADVISOR; AND I'VE GONE TO THE YEARLY
11 MEETINGS OF THIS ORGANIZATION FOR, OH, AT LEAST THE
12 LAST SIX YEARS, IF NOT MORE. AND DEPUTY VAN HORN I
13 MET -- I THINK THE FIRST TIME I MET HIM AT THE
14 ASSOCIATION OF FIREARM AND TOOL MARK EXAMINER'S
15 YEARLY MEETING.

16 DEPUTY VAN HORN AND I HAVE ALSO
17 COLLABORATED ON SOME RESEARCH THAT WE DO YEARLY.
18 THERE'S A WEEKEND THAT A GROUP OF US ARE INVITED
19 DOWN TO YUMA PROVING GROUND IN YUMA, ARIZONA, IN THE
20 FALL, AND THE PEOPLE IN ORDINANCE DOWN THERE, THE
21 SMALL ARMS ORDINANCE, WHO ARE INTERESTED IN
22 FIREARMS, PUT AT OUR DISPOSAL THEIR VERY EXPENSIVE
23 AND HIGHLY SOPHISTICATED EQUIPMENT, SUCH AS A RADAR
24 CHRONOGRAPH THAT CAN TAKE THE INSTANTANEOUS VELOCITY
25 OF ANY PROJECTILE FROM THE TIME IT'S FIRED UNTIL IT
26 COMES TO REST.

27 AND WE'VE DONE THIS YEARLY FOR, I THINK,
28 THE LAST FOUR YEARS, AND I THINK DEPUTY VAN HORN WAS

1 AT THE FIRST TWO OF THESE AND I'VE KNOWN HIM THERE.
2 AND I'VE KNOWN HIM -- I'VE CHATTED WITH HIM
3 PERIODICALLY ON OTHER CASES. I'VE DONE A FEW CASES
4 FOR THE L.A. SHERIFF'S DEPARTMENT.

5 Q NOW, WHEN YOU SAY YOU'VE DONE A FEW
6 CASES FOR THE L.A. SHERIFF'S DEPARTMENT, WHAT SORT
7 OF CASES WERE THOSE?

8 A GUNSHOT WOUND CASES.

9 Q AND WHO WAS THE -- WERE THESE CASES THAT
10 WERE IN LITIGATION OR WAS THIS TO ASSIST THEM IN
11 INVESTIGATIONS?

12 A WELL, ACTUALLY, I'VE DONE BOTH. SOME OF
13 THEM HAVE COME TO COMPLETION WITHOUT GOING TO COURT
14 AND OTHERS HAVE GONE TO COURT. I WOULD SAY I
15 PROBABLY HAVE TESTIFIED FOR THE L.A. SHERIFF'S
16 DEPARTMENT PROBABLY AT LEAST SIX TIMES.

17 Q WAS THIS IN SO-CALLED OFFICER-INVOLVED
18 SHOOTING CASES?

19 A YES, IT WAS.

20 Q WERE THESE CIVIL CASES OR CRIMINAL CASES
21 OR BOTH?

22 A I THINK THESE WERE ALL CIVIL CASES.

23 Q AND THIS IS WHERE THE SHERIFF'S
24 DEPARTMENT WAS BEING SUED?

25 A THAT'S CORRECT.

26 Q AND YOU WERE TESTIFYING ON BEHALF OF THE

27 SHERIFF'S DEPARTMENT WITH RESPECT TO THE PROPER USE
28 OF A WEAPON BY THE DEPUTY SHERIFFS INVOLVED?

41437

1 A NO, I WASN'T DEALING WITH THE PROPER
2 USE. ALL I WAS DOING WAS THE ANGLE WORK, AS WE
3 TALKED ABOUT EARLIER, IN LINING UP A GIVEN SHOT
4 WOULD HAVE GONE THROUGH A BODY AT A GIVEN ANGLE AND
5 THERE WOULD BE TWO STORIES.

6 ONE CASE IN WHICH A PERSON CAME OUT OF A
7 DOOR AND HAD A HANDGUN IN HIS HAND. AND THE ONE
8 SIDE OF THE STORY SAID THAT HE WAS STANDING THERE
9 UPRIGHT WITH HIS ARM AT HIS SIDE AND HE WAS SHOT
10 THROUGH BY THE POLICE AND WAS KILLED.

11 AND THE POLICE VERSION WAS THAT THEY
12 FIRED AT HIM BECAUSE HE ASSUMED A CROUCHED POSITION
13 WITH THE HANDGUN IN FRONT OF HIM, POINTED AT HIM AND
14 THEY SHOT HIM BECAUSE OF THAT. AND IT HAPPENED TO
15 BE ON A FAIRLY LEVEL TERRAIN, AND, FORTUNATELY, THE
16 BULLET BEHIND HIM WENT INTO A WALL SO WE COULD
17 ESTABLISH THE BULLET. AND THE ANGLE OF THE CHEST
18 WAS DOWNWARD AT 30 DEGREES WHICH MAKES IT IMPOSSIBLE
19 FOR HIM TO BE STANDING UPRIGHT. BUT WHEN HE ASSUMES
20 THE CROUCHED POSITION THE UPPER TORSO LEANS FORWARD
21 ABOUT 30 DEGREES.

22 THAT'S JUST AN EXAMPLE OF THE KIND OF
23 THING I WOULD BE CALLED UPON TO DO.
24 Q WOULD YOU SAY THAT MOST OF THE -- I THINK
25 YOU SAID 46 CASES?
26 A I THINK THIS IS THE 44TH CASE.
27 Q FORTY-FOUR CASES THAT YOU'VE TESTIFIED
28 IN, HAVE MOST OF THEM BEEN CIVIL CASES?

41438

1 A ACTUALLY, NO. THERE HAVE BEEN ABOUT AN
2 EVEN SPLIT. IT WAS A YEAR AGO THAT I DID THE COUNT,
3 AND I DON'T THINK IT'S CHANGED MUCH SINCE THEN. BUT
4 AT THAT TIME IT WAS ABOUT AN EVEN SPLIT, HALF
5 CRIMINAL AND HALF CIVIL.
6 Q AND IN THE CRIMINAL CASES, HAVE YOU
7 TESTIFIED ON BEHALF OF THE PROSECUTION IN CRIMINAL
8 CASES?
9 A ABOUT 50 PERCENT OF THE TIME.
10 Q AND THE OTHER 50 PERCENT OF THE TIME
11 YOU'VE TESTIFIED ON BEHALF OF THE DEFENDANTS?
12 A YES.
13 Q AND WAS THAT A PARTICULAR CLASS OF
14 DEFENDANTS ON WHOSE BEHALF YOU HAVE PREVIOUSLY
15 TESTIFIED IN CRIMINAL CASES?
16 A I DON'T UNDERSTAND THE QUESTION, I'M SORRY.

17 Q WAS IT MAINLY POLICE OFFICERS?

18 A IN THE CRIMINAL CASES, NO. NOT IN THE
19 CRIMINAL CASES. IN THE CIVIL CASES.

20 Q IT'S MAINLY POLICE OFFICERS?

21 A IT'S MAINLY POLICE OFFICERS, BUT NOT IN
22 CRIMINAL.

23 Q IN THE CRIMINAL CASES IT'S A VARIETY?

24 A JUST A VARIETY.

25 Q NOW, WHEN WE BEGIN -- WELL, FIRST OF ALL,
26 YOU WERE RETAINED BY THE DEFENSE AS A
27 COURT-APPOINTED EXPERT BY THE COUNTY OF LOS ANGELES;
28 IS THAT CORRECT?

41439

1 A YES, THAT'S MY UNDERSTANDING.

2 Q AND IS IT ALSO YOUR UNDERSTANDING THAT
3 ONLY A CERTAIN AMOUNT OF MONEY WAS ALLOCATED FOR
4 YOUR SERVICES AS A FLAT FEE NO MATTER HOW MANY HOURS
5 YOU ACTUALLY PUT IN OR WHAT YOU USUALLY CHARGE?

6 A THAT WAS MY UNDERSTANDING ALSO.

7 Q WHAT DO YOU USUALLY CHARGE FOR YOUR WORK
8 IN THIS AREA?

9 A \$250 AN HOUR.

10 Q HAVE YOU KEPT TRACK OF THE HOURS THAT
11 YOU HAVE PUT IN ON THIS CASE AT THAT POINT?

12 A NO. I'VE JUST NOT BOTHERED BECAUSE IT

13 DOESN'T MAKE ANY DIFFERENCE.

14 Q YOU'VE LONG SINCE PASSED THE --

15 A YES, I'VE LONG SINCE.

16 Q NOW, WHEN YOU WERE FIRST APPOINTED TO

17 ASSIST THE DEFENSE IN THIS CASE, WERE YOU PROVIDED

18 WITH A REPORT FROM FAILURE ANALYSIS ASSOCIATES

19 SIGNED BY MR. MC CARTHY AND MR. GREWAL?

20 A YES, I WAS.

21 Q AND WERE THERE IN THAT -- WAS THERE IN

22 THAT REPORT SOME GLARING MISCONCEPTIONS ABOUT HOW

23 PROJECTILES FIRED BY FIREARMS INTERACT WITH THE

24 HUMAN BODY?

25 A YES.

26 Q AND COULD YOU NAME WHAT THOSE

27 MISCONCEPTIONS WERE.

28 MR. CONN: I WOULD OBJECT AT THIS POINT.

41440

1 CALLS FOR HEARSAY UNLESS THAT TESTIMONY WAS

2 PRESENTED DURING THIS TRIAL.

3 MS. ABRAMSON: IT WAS, YOUR HONOR.

4 THE COURT: ALL RIGHT. LET'S REPHRASE IT THEN.

5 MS. ABRAMSON: OKAY.

6 Q WAS THERE EXPRESSED IN THAT REPORT THE

7 NOTION THAT SOMEONE HIT IN THE HEAD WITH A ROUND OF
8 SHOTGUN AMMUNITION WOULD BE KNOCKED FLAT?

9 A YES.

10 Q IS THAT TRUE?

11 A AS A GENERAL RULE, NO. IT'S A
12 POSSIBILITY, BUT ONE CANNOT SAY IT WOULD HAPPEN.

13 Q WITH RESPECT TO THE SHOT IN QUESTION
14 HERE, WAS THAT DESCRIBED IN THAT REPORT AS SHOTS TO
15 THE FRONTAL LOBES WITH RESPECT TO MRS. MENENDEZ?

16 A YES. IT WAS DESCRIBED AS AN ACTUAL
17 PENETRATION OF THE FRONTAL LOBE.

18 Q AND WAS THERE, FROM ANY OF THE MEDICAL
19 EVIDENCE THAT YOU REVIEWED, IS THERE ANY INDICATION
20 THERE WAS ANY PENETRATION OF THE FRONTAL LOBES?

21 A NO. THE X RAYS WOULD BE THE THING THAT
22 WOULD PROVE THIS. AND IN THE HEAD WE HAVE TWO
23 VIEWS, FRONT TO BACK AND ALSO A VIEW FROM THE SIDE,
24 SO WE CAN TELL.

25 AND ON THE VIEW FROM THE FRONT THERE
26 APPEARS THAT THERE IS A BUCKSHOT RIGHT IN THE MIDDLE
27 OF THE FOREHEAD AND IT APPEARS THAT HAVING NO OTHER
28 EVIDENCE ONE WOULD SAY, WELL, THAT CAN BE IN THE

41441

1 FRONTAL LOBE. BUT IT COULD BE RIGHT UNDER THE SKIN

2 HERE, RIGHT IN THE SKIN IN THE BACK, OR ANYWHERE IN
3 BETWEEN. AND YOU HAVE TO HAVE A VIEW FROM THE SIDE
4 TO FIND OUT WHERE ON THAT ONE LINE IT IS. AND WHEN
5 THE VIEW FROM THE SIDE IS SHOWN THAT PARTICULAR
6 BUCKSHOT IS FLATTENED OUT ON THE FRONT OF THE SKULL
7 AND DID NOT PENETRATE THE SKULL.

8 Q AND WOULD THAT FLATTENED OUT -- IT'S
9 FLATTENED OVER THE SINUS BONE?

10 A YEAH. IT'S FLATTENED OVER THE OUTER
11 WALL OF THE FRONTAL SINUS WHERE THE BONE IS SOMEWHAT
12 THINNER THAN IT WOULD BE ELSEWHERE BECAUSE WHAT THE
13 SINUS IS IS A SPACE BETWEEN THE TWO LAYERS OF BONE.
14 SO THE BONE IS FAIRLY THIN. FOR THAT -- IT'S
15 FLATTENED OUT WITHOUT PENETRATING THAT THIN BONE.

16 Q AND SO DOES THAT INDICATE THAT IT IS NOT
17 THE KIND OF PROJECTILE INJURY THAT COULD KNOCK
18 SOMEONE FLAT?

19 A WELL, IT CERTAINLY DIDN'T GO INTO THE
20 FRONTAL LOBE.

21 BUT THERE'S ANOTHER LEVEL OF ERROR.
22 EVEN IF IT HAD GONE INTO THE FRONTAL LOBE, THERE'S
23 STILL NO EVIDENCE THAT IT WOULD HAVE CAUSED THE
24 PERSON TO BECOME INCAPACITATED BECAUSE THERE'S LOTS
25 OF INSTANCES OF PEOPLE BEING SHOT IN THE FRONTAL
26 AREA OF THE BRAIN AND REMAINING CONSCIOUS AND
27 FUNCTIONAL.

28 Q DID YOU WRITE AN ARTICLE AT ONE TIME,

1 DR. FACKLER, IN WHICH YOU TALKED ABOUT THE FACT THAT
2 MANY MEDICAL PROFESSIONS EVEN HAVE SOME ERRONEOUS
3 NOTION FROM THE MOVIES THAT IF SOMEBODY IS HIT WITH
4 A BULLET IT KNOCKS THEM BACKWARDS?

5 A YES. THE ENVIRONS WE'RE IN HERE, I
6 THINK, HAS BEEN LARGELY RESPONSIBLE FOR THAT
7 MISCONCEPTION BECAUSE IT'S VERY COMMON IN MOVIES TO
8 SEE A PERSON WHEN THEY'RE HIT BY A BULLET TO BE
9 KNOCKED BACKWARDS AND THIS JUST DOES NOT HAPPEN.

10 Q AND IT DOES NOT HAPPEN WHEN THEY'RE HIT
11 WITH SHOTGUN PELLETS THE WAY MRS. MENENDEZ WAS
12 STRUCK WITH WOUND NO. 2, AS DR. GOLDEN CALLS IT,
13 EITHER; ISN'T THAT TRUE?

14 A YES. IT DOES NOT HAPPEN. AND THIS IS
15 NOT SOMETHING THAT ANYBODY HAS TO TAKE AT -- BECAUSE
16 I AS AN EXPERT TELL THEM, BECAUSE IT'S VERY, VERY
17 EASY TO PROVE AND WE HAVE DONE THIS. AND WE, AT MY
18 LABORATORY, TOOK A LARGE SACK AND FILLED IT WITH A
19 HUNDRED AND EIGHTY-FIVE POUNDS OF SAND BAGS AND HUNG
20 IT FROM SOMETHING, I'M NOT SURE WHAT, IN OUR
21 LABORATORY. AND THIS IS A BAG THAT WEIGHS AS MUCH
22 AS MOST AVERAGE PERSONS. AND YOU CAN TAKE THE HEEL
23 OF YOUR HAND AND PUSH IT AND EASILY START IT
24 SWINGING BACK AND FORTH. AND CERTAINLY IF A SHOTGUN
25 WAS GOING TO PROPEL A PERSON IT SHOULD MOVE THIS BAG

26 SIGNIFICANTLY. BUT WHEN YOU SETTLE THIS BAG DOWN
27 AND SHOOT IT WITH A SHOTGUN, IT DOESN'T MOVE
28 SIGNIFICANTLY. IF YOU LOOK VERY CLOSELY IT STARTS

41443

1 INTO AN ARC OF MAYBE AN INCH. IT JUST DOESN'T MOVE.

2 AND THE PHYSICS ARE VERY EASILY
3 AVAILABLE TO PROVE THIS. I MEAN IT'S -- BUT THE
4 EASIEST WAY I THINK TO EXPLAIN IT IS TO USE THAT
5 EXAMPLE, BECAUSE ANYBODY CAN DO IT IF THEY WANT TO
6 CHECK IT OUT.

7 Q IF THE IMPACT WAS THAT STRONG OUT THE
8 ONE END OF THE SHOTGUN TO KNOCK PEOPLE OVER WOULD
9 THE RECOIL BE STRONG ENOUGH TO --

10 A YES. BASED ON NEWTON'S LAWS IT
11 CERTAINLY WOULD.

12 Q SO IF BULLETS REALLY DID KNOCK PEOPLE
13 OVER, SHOOTERS WOULD BE KNOCKED OVER TOO?

14 A YES.

15 MS. ABRAMSON: YOUR HONOR, THIS WOULD BE A
16 GOOD PLACE.

17 THE COURT: ALL RIGHT. WE'LL TAKE A RECESS.
18 WE'LL RESUME AT 1:30. DON'T DISCUSS THE MATTER WITH
19 ANYONE. DON'T FORM ANY FINAL OPINIONS ABOUT IT.
20 WE'LL RESUME AT 1:30.

21 (AT 12:00 P.M. THE NOON
22 RECESS WAS TAKEN UNTIL
23 1:30 P.M. OF THE SAME DAY.)

41444

1 VAN NUYS, CALIFORNIA; MONDAY, NOVEMBER 20, 1995
2 1:50 P.M.
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE
4 (APPEARANCES AS HERETOFORE NOTED.)
5
6 THE COURT: THE DEFENDANTS ARE IN COURT WITH
7 THEIR LAWYERS; PEOPLE ARE HERE. THE WITNESS IS
8 HERE.
9 GET THE JURY OUT, PLEASE.
10 (THE JURY ENTERED THE COURTROOM
11 AND THE FOLLOWING PROCEEDINGS
12 WERE HELD:)
13
14 THE COURT: OKAY. THE JURY IS BACK. AND
15 WE'LL RESUME WITH THE DIRECT EXAMINATION.
16 MS. ABRAMSON: THANK YOU, YOUR HONOR.
17
18 DIRECT EXAMINATION (CONTINUED)
19 BY MS. ABRAMSON:
20 Q DR. FACKLER, THIS MORNING YOU WERE
21 DESCRIBING HOW THE RESEARCH AT THE WOUND BALLISTICS
22 LABORATORY THAT YOU HEADED WAS DEVELOPING WOUND

23 PROFILES FOR VARIOUS KINDS OF PROJECTILES, CORRECT?

24 A YES, CORRECT.

25 Q AND DID YOU DEVELOP WOUNDS PROJECTILES

26 FOR SHOTGUN WOUNDS INVOLVING DOUBLE-OUCHT BUCKSHOT

27 AND NO. 4 BUCK?

28 A YES, WE DID. AND ALSO BIRD SHOT.

41445

1 Q AND HAVE YOU HAD EXPERIENCE EVALUATING

2 WOUND BALLISTICS ISSUES INVOLVING SHOTGUN INJURIES?

3 A YES. I HAVE HAD EXPERIENCE INVOLVING

4 FORENSIC CASES WITH SHOTGUN WOUNDS, AND I'VE USED

5 THE SHOTGUN WOUND IN WRITING IN ORDER TO ILLUSTRATE

6 THE KIND OF DAMAGE THAT OCCURS IN THE MILITARY WITH

7 EXPLOSIVE DEVICES, SUCH AS LAND MINES AND MORTAR

8 SHELLS AND THINGS OF THAT SORT, BECAUSE THIS IS WHAT

9 THE MILITARY REALLY SEES MOST OF.

10 IN VIETNAM WE PROBABLY SAW -- 80 PERCENT

11 OF WHAT WE SAW WAS TRAINING PROJECTILES FROM VARIOUS

12 KINDS OF EXPLOSIONS, RATHER THAN RIFLE BULLETS. IN

13 ORDER TO STUDY THAT, THE SHOTGUN IS A PERFECT

14 EXAMPLE BECAUSE IT ALSO THROWS MANY PROJECTILES AND

15 YOU CAN VARY THE DISTANCE THEY ARE APART BY SIMPLY

16 VARYING THE DISTANCE FROM WHAT YOU'RE SHOOTING. AND

17 THE SAME RELATIONSHIP HOLDS TRUE WITH EXPLOSIVE

18 DEVICES. THE FURTHER A SOLDIER IS AWAY, THE LESS
19 PENETRATION IN HIS BODY AND THE LESS CLOSE TOGETHER
20 THE FRAGMENTS ARE.

21 Q SO THESE EXPLOSIVE FRAGMENTS, THESE ARE
22 THINGS LIKE GRENADES AND MINES AND THINGS LIKE THAT?

23 A THAT IS CORRECT.

24 Q AND SHOTGUN PATTERNS ARE A GOOD
25 REFERENCE, SIMILAR KINDS OF PROJECTILE PATTERNS AS
26 THESE EXPLOSIVE DEVICES THAT ARE USED IN WAR TIMES?

27 A WELL, YES. IN TEACHING THE SURGEON
28 ABOUT THE CAUSATION OF HOW TISSUE GETS DISRUPTED, IF

41446

1 YOU DESCRIBED, SAY, IF A PERSON HAS A LEG BLOWN OFF
2 BY A GRENADE OR STEPPING ON A LAND MINE, THAT
3 IDENTICAL KIND OF AN INJURY COULD BE PRODUCED BY
4 SEVERAL SIMULTANEOUS SHOTGUN BLASTS, BECAUSE IT'S
5 THE SAME KIND OF A PROJECTILE. WHEN THE SHOTGUN
6 PELLETS SPREAD TO ONLY A FEW-INCH DIAMETER, THERE
7 ARE MANY PROJECTILES HITTING MANY PATHS IN
8 PROJECTILES IN VERY CLOSE PROXIMITY WHICH TEND TO
9 SEPARATE THE TISSUE.

10 ALSO, EACH OF THE PELLETS HAS A
11 TEMPORARY CAVITY FROM A REAL CLOSE RANGE, SAY, DOWN
12 TWO FEET OR SO. THE SHOTGUN PELLETS HIT AND ACT AS

13 ONE PROJECTILE. SO, BASICALLY, THE WOUND PROFILE
14 WOULD GIVE A LARGE TEMPORARY CAVITY MUCH LIKE A VERY
15 HEAVY CALIBER, ONE OF THE OLD FORTY-FIVE SEVENTIES
16 OR SOMETHING, TRAVELING ABOUT THE SAME SPEED A
17 SHOTGUN DOES AND WEIGHING ABOUT 300 TO 500 GRAINS.
18 AND THEY GIVE YOU A VERY LARGE TEMPORARY CAVITY
19 BECAUSE THEY ACT AS ONE PROJECTILE. AND AS THEY
20 SPREAD OUT THEY HAVE THEIR INDIVIDUAL TEMPORARY
21 CAVITIES; EACH ARE SMALLER BUT INTERACT WITH ONE
22 ANOTHER.

23 Q NOW, BECAUSE OF THE FACT THAT YOU HAD
24 DUAL-RESIDENCY AND AT ONE TIME HAD A PLASTIC SURGERY
25 RESIDENCY, DO YOU BELIEVE THAT YOU ARE MORE FAMILIAR
26 WITH THE NATURE OF BREAST TISSUE THAN THE AVERAGE
27 GENERAL SURGEON?

28 MR. CONN: OBJECTION. LEADING.

41447

1 THE COURT: OVERRULED.

2 THE WITNESS: YES. CERTAINLY. BECAUSE AS I
3 THINK I MENTIONED EARLIER, THE PORTION OF THE
4 PLASTIC SURGERY THAT I TENDED TO BE ATTRACTED TO AND
5 DID AS A PART OF MY GENERAL SURGERY ROTATION WAS --
6 HOW SHALL I SAY -- THE NECESSARY KIND, WHERE A
7 PERSON WAS DEFORMED OR INCAPACITATED BY SOME

8 PROCEDURE, BY SOME DEFORMITY. AND THERE ARE MANY
9 WOMEN WHO HAVE EXCESSIVELY LARGE BREASTS THAT ARE
10 TRULY INCAPACITATING AND PAINFUL AND SO -- PROBABLY
11 HAVE DONE 20, MAYBE, SO-CALLED REDUCTION
12 MAMMOPLASTIES WHERE YOU ACTUALLY REMOVE, SAY, THREE
13 QUARTERS OF THE MASS OF BREAST TISSUE AND TAKE
14 WHAT'S LEFT, TAILOR IT TOGETHER, AND TRANSPLANT THE
15 NIPPLE.

16 IT'S A SATISFYING OPERATION BECAUSE
17 THESE WOMEN ARE VERY, VERY RELIEVED.

18 Q AND AS A CONSEQUENCE OF THAT EXPERIENCE
19 ARE YOU PARTICULARLY FAMILIAR WITH THE NATURE OF
20 BREAST TISSUE AS COMPARED TO MUSCLE TISSUE?

21 A WELL, I NEVER REALLY COMPARED IT BEFORE
22 THIS CASE, THAT IT CAME UP. CERTAINLY THE BREAST
23 TISSUE IS A VERY DIFFERENT TISSUE, AND I'M VERY,
24 VERY FAMILIAR, HAVING OPERATED ON IT MANY, MANY
25 TIMES.

26 Q AND IS BREAST TISSUE HARDER TO CUT, FOR
27 EXAMPLE, THAN MUSCLE TISSUE?

28 A OH, MUCH HARDER. IT'S A VERY FIBROUS

41448

1 TISSUE. IT'S COMPOSED OF -- THERE'S A LOT OF
2 SCARRING IN BREAST TISSUE; AND THE REASON IS THAT IN

3 THE MONTHLY CYCLES OF A WOMAN'S HORMONAL CYCLE,
4 GENERALLY AT A TIME OF THE MONTH MOST WOMEN HAVE
5 PAIN IN THEIR BREASTS, AND THIS HAS BECOME KNOWN AS
6 FIBROCYSTIC DISEASE. ACTUALLY, I DON'T THINK IT
7 SHOULD BE CALLED A DISEASE BECAUSE ESSENTIALLY ALL
8 WOMEN HAVE IT TO SOME AGREE OR ANOTHER. THEY WILL
9 GET IT -- WHEN THEY HAVE PAIN THERE'S INFLAMMATION
10 IN THE BREASTS, SWELLING, AND THAT'S WHY THE PAIN.
11 AND THEN AS THAT SUBSIDES, ANY TIME YOU HAVE INFLAMMATION
12 IN THE BODY, IN THE PATHOLOGY OF THE BODY,
13 INFLAMMATION IS FOLLOWED BY SCARRING. SO YOU HAVE A
14 LITTLE BIT OF SCAR TISSUE LAID DOWN EACH MONTH, A
15 LITTLE BIT MORE EACH MONTH. SO WHEN YOU GET A WOMAN
16 OF 44, AS I UNDERSTAND MRS. MENENDEZ' AGE, AND JUST
17 LOOK AT HER BREAST FROM THE PHOTOGRAPHS, I CAN TELL
18 THAT'S A DENSE BREAST. THAT'S WHAT A DENSE FIBROUS
19 BREAST LOOKS LIKE.

20 Q SO IF AN OBJECT WERE TO BE PENETRATING
21 THAT KIND OF BREAST TISSUE, WHETHER IT WAS A KNIFE,
22 FOR EXAMPLE, AND THE CUTTING ASPECT, OR A LEAD
23 PROJECTILE, IS THAT A DIFFICULT TISSUE TO PENETRATE
24 AS COMPARED TO, SAY, MUSCLE TISSUE?

25 A WELL, THAT QUESTION IS SOMETHING THAT WE
26 DON'T HAVE A DIRECT ANSWER. WE MUST MAKE -- WE MUST
27 JUDGE -- WE MUST MAKE CERTAIN ASSUMPTIONS. WE MUST
28 MAKE THE ASSUMPTION THAT IF IT IS HARDER TO CUT -- IN

1 OTHER WORDS, I CAN TAKE MUSCLE TISSUE AND USUALLY
2 DISSECTING THAT MUSCLE WITH WHAT THEY CALL A
3 METZENBAUM SCISSORS, YOU CAN CUT ACROSS MUSCLE
4 TISSUE; AND IF I WANT TO SEW IT TOGETHER I USE A
5 REGULAR ROUND NEEDLE, SORT OF LIKE SEWING NEEDLES.

6 WITH BREAST TISSUE IT'S ENTIRELY
7 DIFFERENT. YOU CAN'T CUT IT WITH A METZENBAUM
8 WITHOUT A GREAT DEAL OF DIFFICULTY. WHAT YOU HAVE
9 TO USE IS A VERY SHARP SCALPEL; AND TO SEW THIS
10 TISSUE TOGETHER, TO GET A NEEDLE THROUGH THERE THE
11 ROUND NEEDLE IS VERY DIFFICULT TO USE. YOU HAVE TO
12 USE WHAT'S CALLED A CUTTING NEEDLE WITH THREE
13 CUTTING EDGES.

14 AND THAT'S THE STANDARD WAY YOU REPAIR
15 BREAST TISSUE IS TO USE A CUTTING NEEDLE.

16 Q MY QUESTION WAS: WOULD THIS SAME
17 DIFFICULTY AND FIBROUSNESS OF THE TISSUE BE A FACTOR
18 IF YOU'RE TRYING TO EVALUATE WHAT VELOCITY, FOR
19 EXAMPLE, PELLETS WOULD NEED TO BE TRAVELING AT TO
20 PENETRATE THROUGH THE --

21 A I'M SORRY. I DIDN'T GET TO THE END OF
22 MY ANSWER. YOU'RE RIGHT.

23 Q SORRY.

24 A I'M ASSUMING FROM THIS THAT, THEREFORE --

25 MR. CONN: OBJECTION AT THIS POINT. CALLS
26 FOR SPECULATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: KNOWING WHAT WE KNOW ABOUT THE

41450

1 DENSITY, HOW HARD THE BREAST TISSUE IS TO CUT AND
2 FEEL, ONE WOULD -- I THINK THE ASSUMPTION IS CORRECT
3 THAT A PENETRATING PROJECTILE WOULD HAVE MORE
4 DIFFICULTY IN PENETRATING BREAST TISSUE THAN IT
5 WOULD MUSCLE TISSUE.

6 I'M UNAWARE, HOWEVER, OF ANYONE EVER
7 DOING A PENETRATION OF SHOOTING THROUGH BREAST
8 TISSUE. I DON'T THINK IT'S EVER BEEN REPORTED IN
9 THE WORLD'S LITERATURE.

10 Q BY MS. ABRAMSON: YOU'RE FAMILIAR, ARE
11 YOU NOT, THAT ROGER MC CARTHY CLAIMS, BECAUSE IT'S
12 SOFT, THAT BREAST TISSUE IS EASIER TO PENETRATE AND
13 EASIER TO CUT THAN MUSCLE TISSUE, ARE YOU NOT?

14 A YES. I'M FAMILIAR WITH THAT.

15 Q AND WHAT IS YOUR OPINION OF THAT
16 TESTIMONY ON HIS PART?

17 A WELL, THAT IS WHAT THE LAYMAN WOULD
18 THINK; AND, AFTER ALL, HE IS A LAYMAN ON THE
19 SUBJECT.

20 Q NOW, IN ADDITION TO YOUR ARMY EXPERIENCE
21 AS A SURGEON DEALING WITH WOUND AND BALLISTICS, HAVE

22 YOU ALSO HAD A LIFETIME OF FAMILIARITY WITH

23 FIREARMS?

24 A YES, I HAVE.

25 Q AND DOES THAT PREDATE YOUR MILITARY

26 CAREER?

27 A OH, YES.

28 Q IS IT MORE EXTENSIVE THAN THE EXPOSURE

41451

1 YOU HAD TO FIREARMS IN THE MILITARY IN ANY FORM OF

2 TRAINING OR EVEN AS A WOUND SURGEON?

3 A OH. CERTAINLY. CERTAINLY. AS -- THEY

4 DON'T TRAIN DOCTORS VERY MUCH IN WEAPONS IN THE

5 MILITARY.

6 Q WOULD YOU DESCRIBE FOR THE JURY YOUR

7 FAMILIARITY AND TRAINING WITH WEAPONS OVER THE

8 COURSE OF YOUR LIFE.

9 A YES. I STARTED SHOOTING WHEN I WAS

10 ABOUT 12 YEARS OLD AND WAS INTERESTED IN -- WAS IN A

11 LOCAL GUN CLUB, AND I WAS INTERESTED IN SHOOTING AND

12 THERE WERE PEOPLE THERE TO TEACH ME HOW TO SHOOT AND

13 HANDLE WEAPONS SAFELY, AND I BECAME A CERTIFIED

14 RIFLE INSTRUCTOR.

15 DURING THE SUMMERS WHEN I WAS GOING TO

16 COLLEGE AND MEDICAL SCHOOL, I HAD A SUMMER JOB AT A

17 BOYS CAMP AS A RIFLE INSTRUCTOR. AND THEN WHEN I
18 WAS IN COLLEGE I BECAME A MEMBER, AND FINALLY THE
19 CAPTAIN, OF THE COLLEGE RIFLE TEAM AS FAR AS
20 COMPETITIVE SHOOTING WITH SMALL BORE RIFLES. AND
21 SINCE THAT TIME, AND DURING THAT PERIOD, HAVE DONE A
22 LOT OF WORK ON WEAPON TECHNOLOGY. I WAS VERY
23 INTERESTED IN ACCURACY, WHAT MAKES ONE RIFLE
24 ACCURATE AND ANOTHER ONE NOT; AND I HAND-LOADED MY
25 OWN BULLETS AND DID CERTAIN THINGS LIKE THAT.
26 THIS CAME IN VERY HANDY WHEN I WAS AT
27 THE LABORATORY. IT WAS SET UP BY THE MEDICAL
28 RESEARCH AND DEVELOPMENT COMMAND WITH NO ARMORERS.

41452

1 Q NO ARMORERS?

2 A ARMORERS IS A SPECIALTY IN THE MILITARY
3 OF A PERSON WHOSE SPECIALTY IS WEAPONS. WE DID NOT
4 HAVE ANY ASSIGNED TO THE LETTERMAN ARMY INSTITUTE OF
5 RESEARCH, SOMEWHAT OF AN OVERSIGHT. I REALLY DIDN'T
6 NEED ONE BECAUSE I KNEW THE TECHNOLOGY WELL ENOUGH
7 TO DO WHAT WE NEEDED TO DO WITH THE WEAPONS, WHICH
8 INCLUDED SOMETIMES MODIFYING BULLETS AND ACTUALLY
9 MAKING BULLETS MYSELF ON A LATHE TO DIFFERENT SHAPES
10 TO PROVE PARTICULAR POINTS ABOUT HOW ONE SHAPE GAVE
11 YOU A DIFFERENT WOUND PROFILE THAN ANOTHER SHAPE.

12 Q OKAY. NOW, TURNING TO SOME OF THE
13 ISSUES IN THIS CASE. YOU HAVE BEEN PROVIDED, HAVE
14 YOU NOT, WITH ALL OF THE ILLUSTRATIONS AND
15 PHOTOGRAPHS AND PHOTOGRAPHS OF X RAYS THAT WERE
16 INCLUDED IN MR. MC CARTHY'S PRESENTATION, CORRECT?

17 A I BELIEVE I HAVE ALL OF THEM, YES.

18 Q WERE YOU ALSO PROVIDED A COMPLETE SET OF
19 ALL THE SCENE PHOTOGRAPHS AND ALL THE AUTOPSY
20 PHOTOGRAPHS, AND ALL OF THE CORONER PHOTOGRAPHS IN
21 THE CASE?

22 A YES, I HAVE.

23 Q WERE YOU ALSO PROVIDED WITH ALL OF THE
24 REPORTS, BOTH ORIGINAL AND AMENDED, PREPARED BY
25 DR. GOLDEN?

26 A THE AUTOPSY REPORTS, YES.

27 Q DID YOU ALSO HAVE A MEETING WITH
28 DR. GOLDEN ON OCTOBER 5TH, I BELIEVE IT WAS. YEAH,

41453

1 1995, NEAR VAN NUYS?

2 A I CAN'T VERIFY THE DATE. IT WAS EARLY
3 OCTOBER. THE 5TH IS PROBABLY CORRECT. YES.

4 Q AND DID YOU SIT DOWN WITH HIM AND GO
5 OVER PHOTOGRAPHS AND SOME OF HIS FINDINGS AND
6 DISCUSS THE MAINLY DISPUTED AREAS OF THE AUTOPSY

7 REPORT?

8 A YES.

9 Q AND DID YOU ALSO RECEIVE BY WAY OF
10 PHOTOGRAPHIC INFORMATION, PHOTOGRAPHS MADE BY
11 CHARLES MORTON, THE DEFENSE CRIMINALIST, OF ALL THE
12 CLOTHING OF THE DECEDENTS IN THIS CASE?

13 A YES.

14 Q AND DID YOU ALSO RECEIVE TRANSCRIPTS OF
15 TESTIMONY?

16 A YES, I DID.

17 Q BOTH FROM THE FIRST TRIAL AND FROM THIS
18 ONE?

19 A I DON'T RECALL IF I RECEIVED ANY FROM
20 THE FIRST TRIAL. I DON'T BELIEVE I DID RECEIVE ANY
21 FROM THE FIRST TRIAL.

22 Q DID YOU RECEIVE ANY TRANSCRIPTS OF
23 DR. GOLDEN'S PREVIOUS TESTIMONY, EITHER BEFORE THE
24 GRAND JURY OR THE FIRST TRIAL?

25 A DON'T BELIEVE SO.

26 Q OKAY. AND HAVE YOU ALSO HAD AN
27 OPPORTUNITY TO CONFER WITH DR. CYRIL WECHT, A
28 FORENSIC PATHOLOGIST WHO'S GOING TO TESTIFY FOR THE

2 A YES, I HAVE.

3 Q AND DID YOU ALSO HAVE A DISCUSSION WITH
4 DR. MICHAEL BODEN, ANOTHER FORENSIC PATHOLOGIST
5 WHO'S CONSULTING FOR THE DEFENSE?

6 A YES, I DID.

7 Q NOW, WOULD YOU SAY, DR. FACKLER, THAT A
8 SURGEON, DEALING WITH PROJECTILE-INDUCED WOUND, HAS
9 AN ENHANCED INTEREST IN THE ACTUAL IMPACT OF
10 PROJECTILES ON TISSUE THAN DOES A PATHOLOGIST WHO'S
11 DEALING WITH SOMEONE WHO'S ALREADY DEAD AND ISN'T
12 GOING TO REQUIRE ANY AGREEMENT?

13 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

14 THE COURT: OVERRULED.

15 THE WITNESS: WELL, I WOULD -- A TRAUMA
16 SURGEON WHO HAS A SPECIFIC INTEREST IN GUNSHOT
17 WOUNDS, YES. THERE ARE MANY SURGEONS THAT TREAT
18 GUNSHOT WOUNDS MATTER-OF-FACTLY AND REALLY DON'T
19 HAVE ANY INTEREST IN THE SUBJECT. I DON'T THINK
20 THEY WOULD HAVE ANY FURTHER KNOWLEDGE.

21 Q BY MS. ABRAMSON: BUT, WITH RESPECT TO
22 ALL SURGEONS WHO ARE TREATING TRAUMATIC WOUNDS,
23 AREN'T THERE THINGS THAT ARE CONSIDERATIONS FOR THEM
24 THAT ARE NOT CONSIDERATIONS FOR PATHOLOGISTS WHO ARE
25 ONLY EXAMINING THE BODIES OF THE DEAD?

26 A CERTAINLY. I'M SORRY. I MISINTERPRETED
27 YOUR QUESTION.

28 Q AND WITH RESPECT TO SURGEONS SUCH AS

1 YOURSELF WHO ARE TREATING AND -- WELL, LET'S START
2 WITH JUST SURGEONS WHO DEAL WITH TRAUMATIC SURGERY.

3 WHAT IS THIS AREA OF ENHANCED CONCERN
4 OVER THAT, SAY, OF THE FORENSIC PATHOLOGIST?

5 A WELL, THE FORENSIC PATHOLOGIST DOESN'T
6 HAVE TO WORRY ABOUT THE OUTCOME -- HE DOESN'T HAVE
7 TO WORRY A THING ABOUT TREATMENT. AND THE SURGEON'S
8 ENTIRE FOCUS IS UPON TREATMENT, TO GIVE THE MOST
9 EFFECTIVE TREATMENT, AND NOT OVERDO IT, BUT DO
10 ENOUGH. AND IT'S BASICALLY -- IT'S A BALANCING ACT
11 MANY TIMES.

12 AROUND EVERY PATH -- PROJECTILE PATH
13 THERE IS CERTAINLY A CERTAIN AMOUNT OF TISSUE THAT
14 WILL BE HIT BY THE BULLET. AND THIS TISSUE WILL BE
15 DESTROYED. AND WHAT WILL BE LEFT OF THIS TISSUE --
16 IF YOU LOOK AT A BULLET HOLE, MOST OF THEM AREN'T
17 ACTUALLY HOLES YOU CAN SEE LIGHT THROUGH. BUT
18 THEY'RE AN APERTURE WHERE IN THE MIDDLE YOU CAN SEE
19 TISSUE SORT OF FRAYED AND MINCED. THIS IS SORT OF
20 WHAT'S LEFT OF THE TISSUE WHEN THE PROJECTILE MADE
21 ITS HOLE. SO THAT TISSUE CERTAINLY IS NOT GOING TO
22 SURVIVE.

23 THEN GETTING OUT FROM THAT, FOR
24 INSTANCE, IN THE WOUND PROFILE I DREW THERE EARLIER,

25 WHEN THAT TISSUE GETS TORN -- I'M SORRY. WHEN THE
26 TISSUE GETS THROWN ASIDE IN MOST PARTS OF THE BODY,
27 DEPENDING ON HOW FORCEFULLY IT GETS THROWN ASIDE AND
28 HOW LARGE THE TEMPORARY CAVITY, IT WOULD REACH ITS

41456

1 ELASTIC LIMITS AND BREAK. THEREFORE, WHEN IT SPLITS
2 THERE'S CERTAINLY DAMAGE WHERE IT'S SPLIT. THERE
3 WILL BE CERTAIN AREAS IN WHICH, AS IT'S STRETCHED,
4 SMALL BLOOD VESSELS WILL BE TORN AND THE TISSUE THAT
5 IS SUPPLIED BY THESE SMALL BLOOD VESSELS WILL NO
6 LONGER HAVE ANY BLOOD SUPPLY, AND THAT TISSUE MIGHT
7 DIE.

8 SO, IF THIS TISSUE IS LEFT IN THE
9 PATIENT IT COULD BE THAT INFECTION WOULD BE SET UP
10 THERE. INFECTION COULD TRAVEL THROUGH THE BODY AND
11 CAUSE A SERIOUS, MAYBE EVEN FATAL, OUTCOME.

12 SO WHAT THE GOAL OF THE SURGEON IN
13 TREATING THE WOUND IS, IS TO INITIALLY TO EXCISE
14 ENOUGH TISSUE TO AVOID BAD CONSEQUENCES, BUT
15 STOPPING THERE, AND NOT GOING OVERBOARD AND TAKING
16 OUT THREE TIMES THAT MUCH TISSUE AND UNNECESSARILY
17 CRIPPLING THE PATIENT.

18 Q SO IS THAT WHY, IN THE AREA OF THE
19 SURGEON'S CONCERNS, THE NOTION OF THESE TEMPORARY --

20 A YOU CALL IT CAVITATION. WHAT IT MEANS
21 IS TEMPORARY CAVITIES, A TEMPORARY HOLE. A
22 TEMPORARY CAVITY IS WHAT IT'S CALLED. CAVITATION IS
23 SORT OF A SHORTCUT TERM.
24 Q THE FACT THAT TEMPORARY CAVITIES OCCUR
25 THAT PUSH TISSUE ASIDE AND CAN THEREFORE DAMAGE IT,
26 IT'S IMPORTANT FOR THE SURGEONS TO KNOW THAT SO THEY
27 CAN REMOVE ALL DAMAGED TISSUE SO THAT THE REST -- SO
28 THAT THE WOUND CAN PROPERLY HEAL, CORRECT?

41457

1 A WELL, YES. THEY HAVE TO -- WELL, IT'S A
2 DIFFICULT QUESTION TO ANSWER. IT'S NOT NECESSARILY
3 MUST REMOVE ALL OF THIS TISSUE. BASICALLY, THERE
4 ARE SOME -- THIS IS ONE OF THE FALLACIES, THAT
5 SOMETIMES YOU'LL GET THE IMPRESSION THAT AN
6 EXPERIENCED SURGEON CAN LOOK AT THE TISSUE AND SAY
7 OH, THIS TISSUE WILL SURVIVE, AND THIS LITTLE BIT
8 RIGHT NEXT TO IT WON'T; AND I'LL CUT HERE AND HAVE
9 THE RIGHT BALANCE. THERE'S NO SURGEON IN THE WORLD
10 THAT CAN DO THAT CONSTANTLY, ALL THE TIME, INCLUDING
11 MYSELF, AND WE NEED TO REALIZE THIS.
12 AND WHAT THE RECOMMENDATION IS -- SO
13 THERE WILL BE A CERTAIN AMOUNT OF TISSUE THAT WILL
14 BE QUESTIONABLE.

15 Q NOW, LET ME JUST CUT YOU SHORT. I THINK
16 YOU MISSED THE POINT OF MY QUESTION THOUGH. FROM
17 THE SURGEON'S STANDPOINT HE'S GOT TO KEEP IN MIND
18 THIS NOTION OF THE TEMPORARY CAVITY. EVEN THAT
19 TISSUE THAT ISN'T ABSOLUTELY DESTROYED DIRECTLY
20 COULD BE DESTROYED. AND HE HAS TO CONSIDER IT IN
21 PLANNING HIS SURGICAL PLAN. THERE'S WHAT I'M
22 ASKING.

23 A BUT I'M TRYING TO --

24 Q I WAS JUST GOING TO COMPARE IT TO A
25 PATHOLOGIST WHERE THEY'RE NOT GOING TO CUT AWAY BAD
26 TISSUE, SO IT DOESN'T MATTER.

27 A I WAS TRYING TO LEAD YOU AWAY FROM A
28 POINT THAT IS ANOTHER COMMON MISCONCEPTION.

41458

1 Q OKAY.

2 A THAT IS, IF ONE TAKES ONE OF MY WOUND
3 PROFILES AND -- FOR INSTANCE, THE M-16. THAT'S A
4 TEMPORARY CAVITY ABOUT THE SIZE OF A CANTELOUPE.
5 AND THERE'S A COMMON MISCONCEPTION THAT THAT AMOUNT
6 OF TISSUE WILL BE DAMAGED; SO, IN OTHER WORDS, YOU
7 TAKE AND -- THEREFORE, YOU HAVE TO REMOVE A
8 CANTELOUPE-SIZE AMOUNT OF TISSUE. AND THAT'S JUST
9 NOT TRUE. EVERYTHING THAT'S STRETCHED BY THE

10 TEMPORARY CAVITY DOES NOT GET DESTROYED AND YOU
11 DON'T HAVE TO REMOVE IT.

12 Q BUT YOU DO HAVE TO BE AWARE OF THE
13 CONCEPT OF THE TEMPORARY CAVITY TO UNDERSTAND WHAT'S
14 GOING ON IN THE BODY.

15 A YOU DO. YOU DO. AND IN CERTAIN TISSUE
16 THE TEMPORARY CAVITY GIVES YOU LESS -- MORE OR LESS
17 EQUIVOCAL EVIDENCE. LIKE IN THE LIVER, THE
18 TEMPORARY CAVITY JUST MINCES TISSUE BADLY, AND
19 MUSCLE AND LUNG TISSUE. IT DOESN'T DO AS BADLY
20 BECAUSE THESE TISSUE STRETCH AND THE TISSUE THAT IS
21 STRETCHING AND CAN ABSORB BEING STRETCHED IS NOT
22 GOING TO BE DAMAGED AS MUCH AS ONE THAT CAN'T.

23 BLOOD VESSELS, FOR INSTANCE, CAN BE
24 STRETCHED AND NOT BE TORN BY THE TEMPORARY CAVITY,
25 ESPECIALLY LARGE BLOOD VESSELS. THINGS THAT ARE --
26 THAT CAN'T STRETCH, LIKE BONES, CAN BE BROKEN BY THE
27 TEMPORARY CAVITY BECAUSE THEY CAN'T STRETCH. YOU
28 CAN TAKE A BIG BONE AND BREAK IT, AND THE BLOOD

41459

1 VESSELS RIGHT BESIDE THIS BIG BONE WILL NOT BE
2 DAMAGED AT ALL. THIS HAS BEEN PROVEN TIME AND TIME
3 AGAIN EXPERIMENTALLY. IN 1962 THERE WAS THE EDITION
4 OF A BOOK CALLED "WOUND BALLISTICS," BY THE

5 GOVERNMENT PRINTING OFFICE, THAT GOES INTO THIS IN
6 GREAT DEPTH.

7 Q I BELIEVE YOU SENT A PORTION OF THAT
8 CHAPTER TO ME, PARTICULARLY, THE CHAPTER DEALING
9 WITH THIGH WOUNDS AND HOW THE BLOOD VESSELS IN SUCH
10 A WOUND BASICALLY ARE STRETCHED ASIDE OR PUSHED
11 ASIDE BY THE TEMPORARY CAVITY; AND RARELY, IF EVER,
12 ARE THEY PERFORATED OR TORN.

13 MR. CONN: OBJECTION. LEADING.

14 THE COURT: IT'S NOT REALLY A QUESTION.

15 Q BY MS. ABRAMSON: WAS THAT THE SECTION
16 THAT YOU'RE REFERRING TO?

17 A THE SECTION YOU'VE CITED IS EXACTLY THE
18 SECTION I WAS REFERRING TO IN TALKING TO THE JURY
19 ABOUT.

20 Q AND IN READING THE TESTIMONY OF
21 DR. LAWRENCE, DID YOU OBSERVE THAT I READ THAT
22 SECTION TO HIM?

23 A YES, I DID.

24 Q NOW, TURNING TO THIS PARTICULAR CASE, IF
25 YOU'LL TAKE A LOOK AT WHAT'S UP ON THE BOARD, WHICH
26 I BELIEVE IS 295, THAT'S A CHART WHICH CONSISTS OF
27 10 SUB -- 10 IMAGES. AND THE TWO CENTRAL IMAGES ARE
28 FAILURE ANALYSIS' CONCEPTION OF WHAT THEY CALL SHOT

1 NO. 1.

2 YOU SEE THAT?

3 THE WITNESS: YOUR HONOR, MAY I GO DOWN AND
4 LOOK?

5 THE COURT: SURE. GO AHEAD.

6 THE WITNESS: "E" AND "F?"

7 Q BY MS. ABRAMSON: YES. YOU'VE SEEN
8 THOSE BEFORE, HAVE YOU NOT?

9 A I THINK I'VE SEEN THEM BRIEFLY. I'VE
10 NEVER REALLY SAT DOWN AND STUDIED THEM.

11 Q YOU UNDERSTAND WHAT'S PORTRAYED THERE IS
12 A LINING UP OF VARIOUS WOUNDS TO BOTH MR. AND MRS.
13 MENENDEZ, AND POSITING THE THEORY THAT ALL OF THESE
14 WOUNDS WERE CONNECTED AND CAUSED BY ONE SINGLE SHOT
15 OF NO. 4 BUCKSHOT.

16 YOU UNDERSTAND THAT TO BE THE PREMISE
17 THERE?

18 A THAT IS AS STATED ALSO IN WORDS AND IN
19 DR. MC CARTHY'S REPORT. YES.

20 Q OKAY. AND HAVE YOU CAREFULLY EXAMINED
21 EACH AND EVERY WOUND APPEARING ON BOTH MR. AND MRS.
22 MENENDEZ' BODIES THAT DR. MC CARTHY ASSOCIATES ALONG
23 THIS TRAJECTORY TO SEE IF, IN FACT, THAT TRAJECTORY
24 IS POSSIBLE?

25 A YES, I HAVE.

26 THE COURT: AGAIN, COULD WE IDENTIFY
27 DR. MC. CARTHY'S DESIGNATION AS TO WHAT SHOT NUMBER
28 HE DESIGNATED.

1 MS. ABRAMSON: THAT'S 1, YOUR HONOR. I THINK
2 I HAVE. THIS IS WHAT DR. MC CARTHY CALLS NO. 1.

3 Q AND DR. FACKLER, WITH RESPECT TO THE
4 NUMBERING SYSTEM, DO YOU UNDERSTAND THAT THIS
5 DIAGRAM ENCOMPASSES A NUMBER OF WOUNDS THAT
6 DR. GOLDEN HAS APPLIED A NUMBERING SYSTEM TO?

7 A YES.

8 Q AND LET'S STATE WHAT THOSE ARE FOR THE
9 MOMENT.

10 ARE YOU FAMILIAR WITH THE FACT THAT
11 DR. GOLDEN REFERS TO MR. MENENDEZ' LEFT ELBOW WOUND
12 AS NO. 4?

13 A YES. I'D HAVE TO CHECK THAT TO MAKE
14 SURE. I HAVE IT RIGHT HERE, AND I CAN, BUT I THINK
15 THAT'S RIGHT FROM MY RECOLLECTION.

16 Q WHY DON'T YOU JUST TAKE OUT THE AUTOPSY
17 REPORTS SO YOU HAVE THEM HANDY.

18 A OKAY. I HAVE THEM.

19 Q NOW, I'M GOING TO JUST RESTATE THE
20 NUMBERS AND ASK YOU IF YOU CONFIRM THAT THOSE ARE
21 DR. GOLDEN'S NUMBERING. LOOK ACROSS THIS.

22 A I HAVE CHECKED YOUR QUESTION. I HAVE
23 NO. 4. I HAVE CHECKED THAT AND YOU'RE CORRECT.

24 Q AND GOING ACROSS THIS CONCEPTUALIZED
25 TRAJECTORY, THE NEXT AREA OF WOUNDS THAT THIS
26 TRAJECTORY SUPPOSEDLY AFFECTS IS AN AREA ON THE
27 RIGHT CHEST OF MR. MENENDEZ.

28 YOU'RE AWARE OF DR. GOLDEN'S NUMBERING

41462

1 THAT NO. 6 OF MR. MENENDEZ?

2 A YES.

3 Q AND OF THE NEXT AREA THAT'S SUPPOSEDLY
4 PART OF THIS TRAJECTORY IS THE UPPER RIGHT ARM AND
5 THE ANTECUBITAL FOSSA AREA OF THE RIGHT ARM OF
6 MR. MENENDEZ THAT DR. GOLDEN HAS REFERRED TO AS BOTH
7 WOUND NO. 3, THE UPPER ARM, AND NO. 2, THE
8 INDIVIDUAL DEFECTS?

9 A YES.

10 Q AND ARE YOU ALSO AWARE THAT THIS
11 TRAJECTORY SUPPOSEDLY TERMINATES OR ENDS WITH WOUNDS
12 TO MRS. MENENDEZ' LEFT BREAST THAT DR. GOLDEN HAS
13 NUMBERED NO. 6 FOR HER?

14 A YES.

15 Q OKAY. WHY DON'T WE START AT THE END IF
16 WE CAN.

17 WITH RESPECT TO THE LEFT BREAST WOUNDS,
18 YOU ARE AWARE THAT ROGER MC CARTHY DESCRIBED THIS

19 ORIGINALLY IN HIS REPORT AS A WOUND, THE DIRECTION
20 OF WHICH WAS LEFT TO RIGHT. HE DESCRIBED IT AS
21 SUPERFICIAL AND INDICATED THAT IT APPEARED TO BE A
22 LOW-VELOCITY IMPACT, ORIGINATING WITH A BASICALLY
23 SHOT COLUMN THAT EMERGED FROM MR. MENENDEZ' RIGHT
24 ARM.

25 YOU'RE AWARE THAT THAT'S HOW HE
26 DESCRIBED THAT WOUND TO THE BREAST.

27 A YES, I AM.

28 Q OKAY. NOW, FIRST OF ALL, IS THERE ANY

41463

1 EVIDENCE WHATSOEVER THAT THIS WOUND DIRECTIONALLY
2 WAS LEFT TO RIGHT?

3 A I DON'T BELIEVE THERE IS. I THINK THIS
4 WOUND, HOWEVER, DOES CONTAIN ELEMENTS THAT MAKES IT
5 VERY DIFFICULT TO JUDGE THAT. THE ELEMENTS ARE:
6 ONE, THAT YOU HAVE A WOUND THAT IS GOING THROUGH
7 BREAST TISSUE AND BREAST TISSUE IS MOVEABLE.

8 NOW, THE PHOTOGRAPHS WE HAVE OF THE BODY
9 OF MRS. MENENDEZ --

10 Q LET ME PUT THIS UP. I THINK 1B IS DOWN
11 BELOW. YOU CAN SEE THE BREAST PHOTOGRAPHS ON 1B.

12 A YES.

13 Q 301. THIS IS CALLED EXHIBIT 301.

14 PHOTOGRAPHS "A" AND "B" ON THE LEFT SIDE
15 OF 301 ARE THE PHOTOGRAPHS OF THE BREAST AREA; IS
16 THAT CORRECT?
17 THE WITNESS: MAY I, YOUR HONOR?
18 THE COURT: SURE.
19 THE WITNESS: "A" AND "B," YES.
20 WOULD IT BE POSSIBLE, IN ORDER TO
21 COMPLETE MY ANSWER, TO HAVE A PHOTOGRAPH OF THE
22 X RAY OF HER CHEST?
23 MS. ABRAMSON: YES.
24 THE WITNESS: AND I'LL CONTINUE MY ANSWER.
25 THE PROBLEM WITH TRYING TO ESTABLISH
26 DIRECTIONALITY HERE IS THAT WHEN A WOMAN IS STANDING
27 UP THE BREASTS ASSUME A DIFFERENT POSITION THAN WHEN
28 SHE'S LYING DOWN, AND THEY ALSO ASSUME ALMOST A

41464

1 LITTLE DIFFERENT POSITION IF SHE'S STANDING UP WITH
2 A BRA ON, AS OPPOSED TO A BRA OFF; AND THEREFORE,
3 THESE ENTRANCE WOUNDS WOULD BE MORE BECAUSE OF
4 THE -- WHEN A WOMAN IS LYING DOWN THE BREASTS TEND
5 TO FLOW TO THE SIDE, AS YOU CAN SEE, TOWARD THE
6 ARMPIT; AND THEREFORE, THESE HOLES THAT ARE IN THIS
7 BREAST WOULD BE FURTHER TO THE SIDE, TO HER LEFT
8 SIDE, THAN THEY ORDINARILY WOULD BE WHEN SHE'S

9 STANDING WITH A BRA ON. THEY WOULD BE AT LEAST AN
10 INCH CLOSER TO THE MIDLINE. THAT'S ONE DIFFICULTY
11 IN EVALUATING. BECAUSE YOU HAVE A MOVEABLE PORTION
12 OF THE TRAJECTORY, WHICH IS PROBABLY THE FIRST TWO
13 TO THREE INCHES. THEN YOU HAVE A RELATIVELY FIXED
14 PORTION OF THE TRAJECTORY, WHICH IS ABOUT A HALF
15 INCH TO THREE QUARTERS OF AN INCH -- THAT'S THE
16 CHEST WALL. SO THAT'S RELATIVELY FIXED.

17 THEN, IF YOU COULD PUT THE OTHERS UP.

18 IF YOU COULD PUT THE OTHERS UP. OKAY.

19 IF IT WON'T BE TOO CONFUSING, IF I COULD
20 GO BACK NOW AND LOOK AT HOW THESE -- HOW THE IDEA
21 THAT THIS WAS A LEFT TO RIGHT TRAJECTORY WOULD HAVE
22 BEEN ARRIVED AT IN THE FIRST PLACE.

23 MS. ABRAMSON: LET ME JUST STOP YOU FOR ONE
24 SECOND, IF I COULD.

25 Q DR. GOLDEN DESCRIBED THESE, DID HE NOT,
26 AS FRONT TO BACK AND LEFT TO RIGHT?

27 A YES.

28 Q CORRECT. HE PUT FRONT TO BACK FIRST?

41465

1 A YES.

2 Q NOW, DR. MC CARTHY CALLS THEM LEFT TO
3 RIGHT.

4 A YES.

5 Q I'M ASKING YOU, JUST BASED ON THE
6 MEDICAL EVIDENCE, IF YOU CAN SEE A SUGGESTION OF WHY
7 DR. GOLDEN EVER GAVE THEM A LEFT TO RIGHT TRAJECTORY
8 AT ALL?

9 A THAT'S WHAT I'M TRYING TO EXPLAIN, WHY
10 HE MIGHT HAVE, BECAUSE IT'S DIFFICULT. IF YOU SAY,
11 OKAY, HERE ARE THE ENTRANCE WOUNDS AND WHERE DO
12 THESE FALL ON THE X RAY? WELL, THE BIGGEST GROUP OF
13 THEM IS RIGHT HERE (POINTING). THERE ARE A FEW OUT
14 HERE ALONG THE SIDE, BUT BASICALLY HERE'S FIVE AND
15 ONE SMALL ONE RIGHT THERE TOGETHER.

16 SO YOU SAY OKAY. THIS MASS MOSTLY WOULD
17 HAVE ENDED UP HERE. SO THIS IS ONLY ABOUT OH, AN
18 INCH AND A HALF FROM THE BACK BONE AND THIS IS
19 STARTING OUT HERE. SO IT APPEARS TO BE GOING FROM
20 LEFT TO RIGHT. OKAY.

21 NOW, TWO THINGS. AS I MENTIONED BEFORE,
22 WE'D HAVE TO MOVE THE BREAST OVER BECAUSE THAT'S
23 WHERE IT WOULD BE WHEN SHE'S STANDING IN A BRA.

24 AND SECONDLY -- AND THIS IS NOT NEARLY
25 AS OBVIOUS -- THESE PELLETS WENT COMPLETELY THROUGH
26 THE BREAST TISSUE, COMPLETELY THROUGH THE CHEST
27 WALL; AND ACCORDING TO DR. GOLDEN'S ACCOUNT, EIGHT
28 OF THEM PENETRATED INTO THE LUNG TISSUE. EIGHT OF

1 THEM PENETRATED INTO THE LUNG TISSUE.

2 NOW, WHETHER OR NOT ANY WENT THE WHOLE
3 WAY THROUGH THE BREAST TISSUE, IT'S UNCLEAR. BUT
4 ANYHOW, HERE WE HAVE THIS GROUP OF FIVE WHICH I'D
5 LIKE TO CONCENTRATE ON. AND WHAT I'D LIKE TO SHOW
6 IS HOW, WHEN THESE ENTERED THE BODY, THEY WERE OVER
7 HERE, NOT HERE (POINTING). AND THE REASON IS, WHAT
8 HAPPENED WHEN THEY WENT INTO THE LUNG TISSUE IS THEY
9 INTERRUPTED ENOUGH BLOOD VESSELS SO THERE WAS
10 SIGNIFICANT BLEEDING INTO THE CHEST AND ALSO AIR
11 LEAKING INTO THE CHEST, AND WHAT IS CALLED A
12 HEMOPNEUMOTHORAX HAPPENED. THERE WAS ABOUT A QUART
13 OF BLOOD IN THE CHEST AS WELL AS AIR. WHAT HAPPENED
14 IN THAT SITUATION IS THE LUNG ORDINARILY FILLS THE
15 ENTIRE CHEST, SO WHEN THE LUNG IS FILLING THE ENTIRE
16 CHEST, THESE PELLETS GO INTO IT AND THEY GO INTO THE
17 LATERAL -- I THINK THE TRAJECTORY WAS STRAIGHT BACK.
18 THEY WENT INTO THE LATERAL PART OF THE LUNG, THE
19 PART OUT NEAR THE CHEST WALL WHERE SOME OF THEM
20 APPEAR TO REMAIN. THEY MAY BE IN THE MUSCLE. I
21 DON'T KNOW IF THEY ARE OR NOT. I DON'T HAVE A
22 LATERAL VIEW. HOWEVER, THESE -- WHAT HAPPENS WHEN
23 THIS LUNG BLEEDS AND AIR GETS IN THERE -- THERE'S
24 SPACE BETWEEN THE LUNG AND THE CHEST WALL, AND THAT
25 LUNG COLLAPSES. THERE USED TO BE AN OPERATION THEY
26 USED TO DO FOR PEOPLE WITH T.B., COLLAPSED LUNG.

27 THEY JUST PUT AIR IN THERE ARTIFICIALLY AND THE
28 WHOLE LUNG WOULD COLLAPSE TO A LITTLE NUB IN THE

41467

1 TISSUE ABOUT THE SIZE OF YOUR CUPPED HAND. THAT'S
2 WHAT THEY HAVE HERE. THE WHOLE LUNG THAT IS NOW
3 DOWN HERE VERY CLOSE TO THE SPINE, RIGHT HERE
4 (POINTING), AND YOU CAN SEE THAT VERY CLEARLY BY
5 SOMEONE WHO HAS READ A LOT OF X RAYS. IF YOU LOOK
6 AT THAT SPACE THERE WHERE YOU'RE LOOKING BETWEEN THE
7 RIBS THERE, YOU CAN SEE THAT THERE'S NO LUNG
8 MARKINGS, AND LUNG MARKINGS ARE SOMETHING YOU HAVE
9 TO KNOW HOW TO LOOK FOR. THERE'S NO LUNG THERE.
10 THE LUNG IS ALL DOWN HERE. THAT'S WHAT YOU EXPECT
11 WITH A PNEUMOTHORAX. THE LUNG IS COLLAPSED.
12 FOR THAT REASON, I FEEL, WHEN THESE
13 ENTERED THEY WERE OUT HERE AND THEN THEY MOVED,
14 BECAUSE THE WHOLE LUNG MOVED WITH THEM. THAT'S WHY
15 THIS IS SUCH A DIFFICULT WOUND TO JUDGE THE
16 TRAJECTORY IN, BECAUSE THERE'S ONLY ONE FIXED
17 POINT. THAT'S THE CHEST WALL. AND BOTH THE BREAST
18 SIDE OF IT AND THE LUNG SIDE OF IT WERE MOVING.
19 Q IF I UNDERSTAND YOU, WHAT YOU'RE SAYING
20 IS THAT CLUSTER OF PELLETS IN THE MIDDLE THAT YOU
21 SAID ARE THE ONES TO GO BY, THEY ARE IN THE LUNG,

22 AND WHEN THE LUNG COLLAPSED AND MOVED MORE TO THE
23 CENTER LINE THEY MOVED WITH IT?
24 A THAT'S EXACTLY WHAT I'M SAYING.
25 Q BUT IF THE LUNG WERE STILL EXPANDED IN
26 ITS NORMAL PLACE, THOSE PELLETS WOULD THEN BE
27 SHIFTED FARTHER LEFT?
28 A THEY'D BE OUT NEAR THE RIB CAGE, YES;

41468

1 THAT'S CORRECT.
2 Q AND FARTHER LEFT, ARE YOU SAYING THEY
3 WOULD LINE UP PERFECTLY WITH THE BREAST AS IT WOULD
4 BE HELD INSIDE THE BRA?
5 A THAT'S CORRECT, YES.
6 Q AND THAT IS WHY, IN COMPARING THE
7 EXTERNAL WOUNDS AND X RAY WOUNDS AND YOUR KNOWLEDGE
8 OF WHAT HAPPENS TO LUNGS WHEN THEY'RE BLEEDING, YOU
9 CAN SAY THAT IT IS FRONT TO BACK WITH NO DEVIATION
10 OF LEFT TO RIGHT OR RIGHT TO LEFT?
11 A WELL, MINIMAL DEVIATION. CAN'T SAY NO
12 DEVIATION. A FEW DEGREES ONE WAY OR ANOTHER. I
13 CAN'T REALLY TELL. THE BASIC DIRECTION IS BACK TO
14 RIGHT; AND, OF COURSE, YOU MUST REMEMBER THAT --
15 Q BACK TO BACK?
16 A STRAIGHT BACK.

17 Q FRONT TO BACK?

18 A FRONT TO BACK. THE BASIC DESCRIPTION IS

19 FRONT TO BACK. AND YOU MUST REMEMBER THAT WHEN

20 DR. GOLDEN PUT DOWN THE TWO DIRECTIONS HE PUT THAT

21 ONE FIRST.

22 Q DO YOU REMEMBER, DURING THE MEETING THAT

23 YOU HAD WITH DR. GOLDEN, POINTING OUT TO HIM THAT HE

24 HADN'T TAKEN INTO CONSIDERATION PLACING THE BREAST

25 BACK ON THE CHEST WALL AS IF IT HAD BEEN HELD IN A

26 BRA?

27 A I DID MENTION THAT TO HIM.

28 Q AND DID HE INDICATE THAT AS A

41469

1 PATHOLOGIST IT'S ONLY HIS --

2 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

3 THE COURT: SUSTAINED AS TO WHAT DR. GOLDEN

4 SAID.

5 MS. ABRAMSON: ALL RIGHT.

6 Q IF ONE WAS NOT CONSIDERING THE FACT THAT

7 THIS BREAST HAD BEEN CONTAINED IN A BRA AT THE TIME

8 OF THE SHOOTING, COULD THAT MISLEAD ONE INTO

9 BELIEVING THIS WAS LEFT TO RIGHT?

10 A WELL, IF YOU TOOK THAT ONE FACTOR, IF

11 YOU -- AND THEN COMBINED THAT WITH THE LOCATION OF

12 THE MASS OF SHOT WHERE THEY ARE NOW, CERTAINLY.

13 Q NOW, YOU ARE AWARE, ARE YOU NOT, THAT

14 DR. MC CARTHY'S DRAWING THERE INDICATES STRICTLY

15 LEFT TO RIGHT IN THE DIRECTION OF THIS WOUND?

16 A WELL, THAT'S GOT TO BE WRONG FOR VARIOUS

17 REASONS. IF IT WAS LEFT TO RIGHT THE PELLETS WOULD

18 HAVE ENTERED ONE SIDE OF THE BREAST AND CAME OUT THE

19 OTHER SIDE.

20 Q AS IT IS, THEY'RE NOT REALLY ON THE SIDE

21 OF THE BREAST AT ALL. THEY'RE JUST ON THE LEFT HALF

22 OF THE FRONT OF IT?

23 A AND GOING FRONT TO BACK. IF ENTERING

24 THAT SAME SIDE OF THE BREAST, GOING SIDE TO SIDE,

25 THEY WOULD HAVE GONE IN THE LEFT SIDE OF THE BREAST

26 AND CAME OUT THE RIGHT SIDE OF THE BREAST.

27 Q OF COURSE, THERE'S NO EXIT WOUND AT ALL?

28 A NOT IN THE BREAST AREA, NO.

41470

1 Q NOW, DR. FACKLER, IF THERE WERE,

2 HYPOTHETICALLY, THE TERMINATION POINT OF A ROUND OF

3 SHOTGUN AMMUNITION, THAT WOULD MEAN THAT WHATEVER

4 HAPPENED WITH RESPECT TO THIS WOUND WOULD BE THE END

5 OF THE LINE OF THAT SHOT, CORRECT?

6 A I GUESS SO. IF YOU COULD REPHRASE

7 THAT. I'M NOT SURE I UNDERSTAND YOUR QUESTION.

8 Q ACCORDING TO ROGER MC CARTHY'S

9 CONSTRUCT, THE SHOT INTO HER LEFT BREAST IS THE END

10 OF THIS STRINGING TOGETHER OF WOUND SITES ON THE TWO

11 DECEDENTS, CORRECT?

12 A THAT'S CORRECT, YES.

13 Q YOU'RE AWARE, ARE YOU NOT, THAT SOME

14 TIME AND ENERGY HAS BEEN SPENT IN TRYING TO COUNT UP

15 PELLETS LEFT IN THOSE VARIOUS WOUND SITES THAT HE

16 STRINGS TOGETHER?

17 A YES. I'M AWARE OF THAT.

18 Q IN YOUR OPINION, AS A FORENSIC ANALYST

19 OF WOUNDS, BALLISTICALLY CAUSED WOUNDS, IS IT

20 APPROPRIATE WITH RESPECT TO THIS LAST WOUND TO

21 COUNT, NOT JUST WHAT ONE CAN VISUALIZE ON THE

22 X RAYS, BUT TO COUNT THE ENTRY HOLES?

23 A THAT WOULD BE THE OBVIOUS THING TO DO.

24 OF COURSE, THERE ARE 16 DISTINCT HOLES, MEANING, A

25 MINIMUM OF 16 HIT THE BREAST. THE REASON I SAY A

26 MINIMUM IS BECAUSE TWO OF THE HOLES LOOK SOMEWHAT

27 LARGE AND THEY COULD BE A DOUBLE PROJECTILE, TWO

28 PROJECTILES TRAVELING VERY CLOSE TOGETHER, OR ONE

41471

1 BEHIND ANOTHER. SO THERE'S A MINIMUM OF 16. AND

2 DR. GOLDEN VERIFIED 16 ON HIS REPORT.

3 Q SIXTEEN ENTRY WOUNDS ON THE LEFT BREAST?

4 A YES.

5 Q NOW, WITH RESPECT TO THE X RAYS, THERE'S

6 NOT REALLY A FULL VIEW MADE IN X RAY OF THE ENTIRE

7 AREA OF HER BODY WHERE PELLETS ENTERING HER BREAST

8 COULD HAVE WOUND UP, IS THERE?

9 A WELL, THERE'S NOT A FULL VIEW, BUT WE

10 HAVE THE TWO VIEWS THERE THAT WE HAVE; AND IN

11 COUNTING UP THE NUMBER OF PELLETS IN THESE TWO THEY

12 DON'T COME OUT TO 16. AND I'M NOT SURE EXACTLY WHY

13 THAT WOULD BE. THERE ARE SEVERAL POSSIBILITIES,

14 HOWEVER. I WOULD SUGGEST THAT TWO --

15 MAY I, YOUR HONOR?

16 THE COURT: YES. CERTAINLY.

17 THE WITNESS: I WOULD SUGGEST THE POSSIBILITY

18 THAT -- LET ME -- IF I MAY CHANGE THESE AROUND TO MAKE

19 IT A LITTLE BIT CLEARER.

20 MS. ABRAMSON: CERTAINLY.

21 THE WITNESS: BECAUSE THAT'S THE WAY THEY

22 OCCUR.

23 THE COURT: BY THE WAY, YOU'RE REFERRING TO

24 CERTAIN EXHIBITS THAT HAVEN'T BEEN IDENTIFIED BY

25 NUMBERS.

26 MS. ABRAMSON: YES, YOUR HONOR. BEFORE YOU

27 PUT THAT UP.

28 WE'RE REFERRING RIGHT NOW -- ON THE LEFT

1 IS EXHIBIT 179, AND ON THE RIGHT IS EXHIBIT 169.

2 THE COURT: OKAY. AND THESE ARE X RAY VIEWS
3 OF THE CHEST OF MRS. MENENDEZ.

4 THE WITNESS: THE REASON I TRANSPOSED THESE
5 ARE BECAUSE THEY CORRESPOND ACCURATELY ANATOMICALLY
6 THE WAY THEY ARE NOW. THIS IS HER RIGHT SIDE, AND
7 THIS IS HER LEFT SIDE, AND THE SPINE IS IN THE
8 MIDDLE.

9 NOW, IN ORDER TO LINE THEM UP I'D HAVE
10 TO PUT THIS OVER THIS, AND LINE -- BUT I'LL JUST
11 KEEP THEM LIKE THIS SO WE CAN SEE BOTH BREASTS,
12 RECOGNIZING THAT THIS GROUP UP HERE, THIS GROUP HERE
13 (POINTING), IF WE TRANSPOSE THEM -- SO IF WE COUNT
14 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13. OKAY.

15 THERE'S 13. WELL, WE SHOULD HAVE 16. I MAINTAIN
16 THESE COULD EASILY BE 14 AND 15.

17 NOW, ONE WOULD SAY, HOW COULD THAT
18 POSSIBLY HAPPEN, BECAUSE THEY'RE WAY OVER IN THE
19 RIGHT, AND THAT DOESN'T SEEM TO MAKE ANY SENSE;
20 HOWEVER, I SUGGEST TO YOU, IF YOU LOOK RIGHT HERE,
21 WHAT THIS CURVED STRUCTURE HERE IS THE DIAPHRAGM AND
22 THE DIAPHRAGM SEPARATES THE ABDOMINAL CAVITY FROM
23 THE CHEST CAVITY.

24 NOW, THIS IS THE LOCATION OF HER
25 DIAPHRAGM WHEN SHE IS DECEASED. WHEN YOU BREATHE

26 YOUR DIAPHRAGM MOVES UP AND DOWN. WHEN YOU INHALE,
27 TAKE A DEEP BREATH AND INHALE, IT PUSHES IT DOWN;
28 AND WHEN YOU EXHALE IT PUSHES IT UP. SO THIS

41473

1 DIAPHRAGM COULD GO FROM MAYBE -- AT LEAST CERTAINLY
2 MOVE AT LEAST AN INCH UP AND DOWN. SO THAT'S
3 SOMEWHAT VARIABLE.

4 I MAINTAIN WHAT COULD EASILY HAVE
5 HAPPENED IS THESE TWO PELLETS COULD HAVE PENETRATED
6 THE DIAPHRAGM, BECAUSE IT'S A CURVED DOMED
7 STRUCTURE. IT COULD HAVE HIT THE DOME OF THE
8 DIAPHRAGM, PERFORATED INTO THE ABDOMINAL CAVITY, AND
9 FALLEN OVER TO HERE, FREEING THE ABDOMINAL CAVITY;
10 BECAUSE IN THE ABDOMINAL CAVITY YOU HAVE INTESTINES,
11 AND THERE'S LOTS OF SPACE, AND IF YOU PUT TWO
12 PELLETS OF LEAD, WHICH IS A HEAVY SUBSTANCE IN THE
13 ABDOMINAL CAVITY, THEN THEY WOULD GO WHERE GRAVITY
14 WOULD TAKE THEM.

15 AND I BELIEVE MS. MENENDEZ WAS FOUND
16 LYING ON HER RIGHT SIDE, AS I RECALL.

17 MS. ABRAMSON: THAT'S CORRECT.

18 THE WITNESS: AND IF SHE WERE LYING ON HER
19 RIGHT SIDE, GRAVITY WOULD TAKE THESE TOWARDS THE
20 RIGHT, WHERE THEY WOULD HAVE ENTERED OVER HERE, AND

21 THAT WOULD TAKE THEM MAYBE SIX INCHES TO THE RIGHT.
22 I MAINTAIN THAT'S A REASONABLE EXPECTATION FOR WHERE
23 TWO OF THEM MIGHT HAVE GONE.
24 I THINK ANOTHER THING WE CANNOT OVERLOOK
25 IS THE POSSIBILITY THAT MAYBE WE HAVE ONE OR TWO
26 EXITS OUT THE BACK THAT WERE MISSED. AND I DON'T
27 SAY THIS IN ANY CRITICISM OF DR. GOLDEN, BUT IT'S A
28 WELL-KNOWN FACT THAT WHAT WE'VE SEEN HERE, MOST OF

41474

1 THESE WOUNDS HAVE BEEN THROUGH EXTREMITIES WHERE THE
2 PATH OF PENETRATION IS NOT VERY GREAT. WHEN THE
3 PROJECTILE COMES OUT IT'S NOT TRAVELING AT MUCH LESS
4 VELOCITY THAN IT HAD WHEN IT WENT IN. SO IT CRUSHES
5 TISSUE ON THE WAY OUT. IT'S WELL KNOWN FROM OUR
6 STUDIES AND THE WORK OF OTHERS, THAT HANDGUN
7 BULLETS, FOR INSTANCE, AND SHOTGUN PELLETS, ARE
8 ABOUT THE SAME VELOCITY AS A LOT OF HANDGUN
9 BULLETS. WHEN THEY ENTER THE FRONT OF THE TORSO,
10 MAKE A HOLE, AND WHEN THEY COME OUT THE BACK THEY
11 MAKE A SLIT, BECAUSE AS THE PROJECTILE LOSES ITS
12 VELOCITY NEAR THE END OF ITS PATH, IT WILL PUSH
13 TISSUE ASIDE. MUCH LIKE IF YOU TAKE A PIECE OF
14 INNER TUBE AND TRY PUSHING AN ICE PICK THROUGH IT.
15 WHEN IT GOES THROUGH THE HOLE IT'S SMALLER BECAUSE

16 IT'S ALREADY STRETCHED. IT'S WELL KNOWN THAT EXIT
17 WOUNDS ARE LITTLE SLITS VERY OFTEN. THEY CAN BE
18 HALF-MOON SHAPED. THEY CAN BE SOMETIMES T-SHAPED,
19 BUT VERY COMMONLY THEY'RE JUST A LITTLE SLIT. YOU
20 COULD HAVE ONE OR TWO VERY LITTLE SLITS IN THE BACK,
21 ALMOST NOT NOTICEABLE, BECAUSE THERE'S NO TISSUE
22 ACTUALLY CRUSHED. IT'S JUST TURNED ASIDE, POPPED
23 THROUGH, AND WENT BACK TOGETHER.

24 AS A MATTER OF FACT, DR. BODEN HAS A
25 BOOK -- I'VE FORGOTTEN THE NAME OF IT -- HE DOES
26 HAVE A SMALL POCKET BOOK THAT I READ A YEAR AGO AND
27 HE MAKES THAT DISTINCTION.

28 Q BY MS. ABRAMSON: THAT A LOW VELOCITY --

41475

1 EXITS WOUNDS ON THE TORSO ARE SLITS AND ENTRANCE
2 WOUNDS ARE ROUND?

3 A YES. I'M JUST SAYING THAT'S A
4 POSSIBILITY.

5 Q IN ANY EVENT, WHETHER ALL THE PELLETS
6 CAN BE FOUND ON AN X RAY OR WHETHER SOME OF THEM
7 EXITED, OR SOME OF THEM ARE JUST NOT OBSERVABLE,
8 BECAUSE THERE'S ONLY TWO VIEWS FROM THIS X RAY
9 RATHER THAN THREE, DO YOU HAVE ANY RESERVATION IN
10 COUNTING THE 16 ENTRY WOUNDS AS THE NUMBER OF

11 PELLETS THAT STRUCK HER BREAST?

12 A I DON'T SEE HOW I CAN. WE HAVE 16

13 HOLES. I CAN COUNT THEM. ANYONE CAN SEE THEM. AND

14 DR. GOLDEN ALSO VERIFIES THIS.

15 THERE'S ONE LITTLE POINT I MIGHT MAKE.

16 IT'S NOT AN IMPORTANT POINT, BUT IF YOU WILL --

17 Q LET ME JUST ASK YOU A QUESTION FIRST, OR

18 ELSE THIS JUST READS AS A GIGANTIC NARRATIVE.

19 THERE ARE TWO, WHAT APPEAR TO BE,

20 DEFECTS IN THE CREASE.

21 A I WAS GOING TO --

22 Q I KNOW. THAT'S WHY I'M ASKING. IN THE

23 CREASE OF THE LEFT BREAST THAT WOULD APPEAR TO BE

24 FARTHER PART FROM THE OTHER PELLET DEFECTS ON THE

25 BREAST THAN THEY ARE FROM EACH OTHER.

26 A YES. THAT'S CORRECT.

27 Q IN OTHER WORDS, THESE UP HERE APPEAR TO

28 BE CLOSER TOGETHER AND THESE TWO UNDER HERE WOULD

41476

1 SEEM TO BE FARTHER APART.

2 A THAT'S CORRECT.

3 Q IS IT YOUR OPINION THAT ALL OF THESE,

4 THOUGH, INCLUDING THE TWO IN THE CREASE, ARE PART OF

5 THE IDENTICAL PATTERN?

6 A YES. AND THAT'S WHAT I WANTED TO SHOW.

7 Q NOW YOU CAN COME DOWN AND SHOW.

8 A THANK YOU.

9 AGAIN, HERE, I BELIEVE WE HAVE THE

10 EFFECT OF CAVITY. WITH THIS BREAST -- WITH

11 MS. MENENDEZ STANDING THIS BREAST WOULD BE HANGING

12 DOWNWARD AND -- I DON'T KNOW IF YOU CAN VISUALIZE

13 THIS, OR I MIGHT HAVE TO DRAW IT -- AS THE BREAST --

14 Q WHY DON'T YOU DRAW IT. I'LL GET YOU THE

15 POST-IT NOTE.

16 A IF I COULD. IT WOULD BE EASIER TO

17 UNDERSTAND.

18 MS. ABRAMSON: I HAVE TWO SETS OF POST-IT

19 NOTES.

20 UNIDENTIFIED JUROR: IT'S IN FRONT.

21 MS. ABRAMSON: THANK YOU VERY MUCH.

22 LET ME TAKE OFF THIS ONE. WHAT I WOULD

23 SUGGEST IS WE JUST USE THE EASEL.

24 THE COURT: WHY DON'T YOU JUST USE THE

25 POST-IT ON TOP OF THE ONE PIECE OF PAPER.

26 MS. ABRAMSON: WE CAN DO THIS. I'LL TELL YOU

27 WHAT, DR. FACKLER, SO THE JURY CAN SEE BETTER, THESE

28 ARE STICKY. HERE'S YOUR SURFACE TO DRAW ON. WRITE

1 HERE.

2 THE WITNESS: I HAVE A SURFACE, BUT I DON'T
3 HAVE ANYTHING TO DRAW WITH. I'M LOOKING FOR THE
4 LITTLE THING WE HAD. I HAVE A RED ONE I CAN USE.

5 Q BY MS. ABRAMSON: IS THAT SMALL ENOUGH?

6 A IT'S FINE.

7 Q OKAY.

8 A REFERRING TO 301-B, I THINK WHAT WE HAVE
9 HERE IS THE -- IF YOU WILL, BEING A CROSS-SECTION
10 THROUGH THE BODY OF MS. MENENDEZ; BREAST. YOU HAVE
11 BASICALLY THIS KIND OF A THING. AND YOU HAVE THE
12 HOLES UP HERE AND THESE HOLES IN THE CREASE AND THE
13 NIPPLE IN THIS AREA HERE (INDICATING).

14 WITH HER STANDING -- WELL, LET ME DRAW IT
15 IN THE UPRIGHT POSITION.

16 I THINK THIS IS THE MORE LIKELY ANATOMY
17 OF THE BREAST. AND AS YOU CAN SEE, THESE WOUNDS
18 WOULD NOW BE UP HERE, WHICH WOULD BE THE SAME
19 DISTANCE FROM THESE, BUT WITH A PROJECTILE COMING IN
20 THIS DIRECTION, ONE THAT HIT HERE AND ONE THAT HIT
21 HERE IN THE CREASE, WOULD BE, FROM THIS VIEW, VERY
22 CLOSE TOGETHER, BECAUSE ALL THIS WOULD BE PARALLEL
23 TO THE PATH. THIS EMPTY SPACE IN HERE IS
24 ESSENTIALLY -- VIEWED A PROJECTILE COMING IN LIKE
25 THIS. THIS IS MORE -- NOW IT'S MORE PARALLEL TO THE
26 PATH AND HERE IT'S SPREAD OUT.

27 AND SO WHAT I THINK IS WE HAVE THESE
28 PROJECTILES HITTING HERE, WHICH ARE THE ONES VISIBLE

1 HERE, AND TWO THAT HIT IN THE CREASE ARE DOWN HERE.

2 NOW, THE REASON -- THERE'S ANOTHER

3 SUBTLE HINT THEORY THAT THESE HIT IN THE CREASE,

4 BECAUSE AS YOU CAN SEE EACH OF THEM HERE APPEARS TO

5 HAVE A LITTLE SHADOW JUST -- A LITTLE SHADOWING OR A

6 LITTLE OTHER -- MAYBE A LITTLE ABRASION. AND I THINK

7 WHAT HAPPENED HERE, INSTEAD OF IT -- IF I ENLARGE

8 THIS AREA RIGHT HERE AND HAVE THAT COME -- THERE MAY

9 BE A LITTLE BIT OF THIS KIND OF THING. MAYBE NOT

10 STRAIGHT DOWN HERE, BUT POSSIBLY A LITTLE ROLL OF

11 FATTY SUBCUTANEOUS TISSUE HERE THAT WOULD MAKE AN

12 ACTUAL CREASE. FIT HERE IN THE CREASE. IT WOULD

13 MAKE A HOLE. WHEN YOU STRETCHED THE CREASE OUT YOU

14 WOULD HAVE THIS HOLE, BUT THE APPEARANCE OF A LITTLE

15 THING ON THE OTHER SIDE. YOU CAN SEE THE LITTLE

16 CREASES AND YOU CAN SEE EACH ONE OF THOSE HOLES HAS

17 THAT LITTLE SHADOWING WHICH WOULD INDICATE THAT WAS

18 HIT IN THE CREASE; AND THEREFORE WOULD PUT THESE

19 REALISTICALLY AS PART OF THIS SAME RATHER DENSE

20 PATTERN.

21 Q IF YOU COUNT THOSE TWO WITH THAT RATHER

22 DENSE PATTERN YOU HAVE 16 ENTRY WOUNDS, CORRECT?

23 A THAT'S CORRECT; THAT IS CORRECT.

24 Q AND DO YOU UNDERSTAND, DR. FACKLER, THAT
25 DEPENDING ON WHO'S DOING THE COUNTING, WHETHER IT'S
26 DR. LAWRENCE OR MR. MC CARTHY, IF YOU MAKE THE COUNT
27 16 FOR THE BREAST WOUND, WE'RE WAY OVER 30 PELLETS
28 FOR WHAT'S SUPPOSED TO BE ONE SHOTGUN ROUND?

41479

1 A YES.

2 Q AND YOU DO UNDERSTAND, DO YOU NOT, THAT
3 NO. 4 BUCK DOESN'T COME IN 30 PELLETS?

4 MR. CONN: OBJECTION. LEADING.

5 THE COURT: REPHRASE THE QUESTION.

6 Q BY MS. ABRAMSON: BASED ON YOUR
7 EXPERIENCE OVER THE YEARS WITH FIREARMS AND YOUR
8 EXPERIENCE IN DESIGNING SHOTGUN WOUNDS PROJECTILES,
9 HOW MANY PELLETS COME LOADED IN A ROUND OF NO. 4
10 BUCK SUCH AS WHAT WAS USED HERE?

11 A IN MY EXPERIENCE IT HAS BEEN ALWAYS
12 UNIFORMLY BEEN 27, AND IT'S MARKED ON THE BOX AS
13 27. I'VE NEVER SEEN 26 OR 28.

14 Q AND YOU'VE HAD -- YOU CUT THEM OPEN
15 YOURSELF AND SEEN THEM BEING CUT OPEN?

16 A NOT MANY OF THEM.

17 Q AND YOU'VE NEVER COME ACROSS ONE THAT
18 WAS OFF COUNT?

19 A I'VE NEVER REALLY LOOKED FOR IT. BUT I
20 DID CALL WINCHESTER AND ASKED THEM ABOUT THIS AND
21 THEY SAID THEY'RE MARKED 27, AND THAT'S THE WAY THEY
22 COME.

23 Q THAT WAS THE WINCHESTER COMPANY?

24 A THAT WAS THE WINCHESTER COMPANY.

25 Q YOU UNDERSTAND THAT'S THE FIOCCHI
26 COMPANY?

27 A YES. I DIDN'T CALL THE FIOCCHI COMPANY.

28 Q YOU TALK TO FIREARM EXAMINERS WITH SOME

41480

1 FREQUENCY, DO YOU NOT?

2 A YES. I DID TALK ABOUT THIS TO SEVERAL
3 FIREARMS EXAMINERS.

4 Q ABOUT THIS NOTION THAT SOMEHOW THE
5 NUMBER OF PELLETS VARY FROM SHELL CASING TO SHELL
6 CASING. DID YOU TALK TO THEM ABOUT THAT?

7 A YEAH. SPECIFICALLY ABOUT THAT, BECAUSE
8 THIS BOTHERED ME. IF YOU LOOK AT HOW MUCH A NO. 4
9 BUCKSHOT WEIGHS, IT'S ABOUT 20 GRAINS. IF YOU SAY
10 THERE'S SOME 26 AND SOME 28, THAT'S 40 GRAINS
11 DIFFERENCE BETWEEN ONE SHELL AND THE OTHER. AND TO
12 ME WHEN YOU TALK --

13 MR. CONN: I WOULD OBJECT. NO QUESTION

14 PENDING.

15 THE COURT: YOUR NEXT QUESTION, PLEASE.

16 Q BY MS. ABRAMSON: WHAT WAS IT ABOUT THIS
17 THAT STRUCK YOU AND MADE YOU INQUIRE OF OTHERS?

18 A WELL, I THOUGHT THE VARIATION WOULD BE
19 WAY BEYOND WHAT A NORMAL AMMUNITION COMPANY WOULD
20 ACCEPT.

21 Q AND DID YOU THEN TALK TO OTHERS WHO ARE
22 REGULAR FIREARM EXAMINERS TO SEE IF THEY HAD EVER
23 SEEN THIS PHENOMENON OF NO. 4 BUCKSHOT HAVING
24 VARIABLE NUMBER OF PELLETS?

25 A I DID.

26 Q AND DID YOU -- WHAT WAS THE RESPONSE?

27 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

28 THE COURT: SUSTAINED.

41481

1 Q BY MS. ABRAMSON: WAS ONE OF THE PEOPLE
2 YOU TALKED TO ABOUT THIS DWIGHT VAN HORN?

3 A YES.

4 Q AND DO YOU RIGHT NOW HAVE ANY REASON TO
5 BELIEVE, DR. FACKLER, THAT YOU'RE OWN EXPERIENCE WAS
6 ERRONEOUS. DO YOU HAVE ANY REASON TO BELIEVE THAT
7 NO. 4 BUCKSHOT IS OTHER THAN 27 PELLETS PER ROUND?

8 A NO. I HAVE NO REASON TO BELIEVE THAT'S

9 NOT TRUE.

10 Q NOW, WITH RESPECT TO THE WOUND NO. 6 IN
11 MRS. MENENDEZ, THE LEFT BREAST WOUND, IN THE
12 PHOTOGRAPH THAT IS, I BELIEVE, "A" ON -- CAN'T
13 REMEMBER NOW -- 301. HER LEFT FOREARM IS DRAWN UP
14 AT THE CORONER'S OFFICE SO THAT IT LIES JUST BENEATH
15 THE BREAST.

16 AND THAT'S A SUGGESTION TO YOU, IS IT
17 NOT, THAT THE CORONER CONSIDERED THESE TWO WOUNDS TO
18 BE AFFILIATED --

19 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

20 THE COURT: AS PHRASED IT DOES.

21 MS. ABRAMSON: ALL RIGHT.

22 Q EVEN IN HIS SUPPLEMENTAL REPORT, DOES
23 DR. GOLDEN AFFILIATE THE LEFT FOREARM WOUND WITH THE
24 LEFT BREAST WOUND --

25 A I'M NOT SURE I RECALL.

26 Q -- IN THE '92 SUPPLEMENT?

27 A IN THE '92 SUPPLEMENT, I DON'T
28 REMEMBER. I CAN CHECK IT IF YOU WISH.

41482

1 Q LET ME ASK YOU THIS: BASED ON HOW IT
2 APPEARS, DOES IT SEEM TO YOU THAT THOSE TWO WOUNDS
3 PROBABLY WERE AFFILIATED --

4 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

5 THE COURT: OVERRULED.

6 THE WITNESS: OKAY. I CAN ANSWER?

7 MS. ABRAMSON: YES.

8 THE WITNESS: WELL, CERTAINLY IT TAKES LITTLE

9 STRETCH OF THE IMAGINATION TO SEE THEY MEET.

10 Q BY MS. ABRAMSON: IT TAKES A LITTLE

11 STRETCH?

12 A I MEAN, THEY'RE RIGHT THERE. A SIMPLE

13 BEND OF THE ARM PUTS IT IN EXACTLY THE RIGHT

14 POSITION, AND THE SPREAD APPEARS TO BE APPROPRIATE.

15 AND SO THERE ARE A LOT OF THINGS THAT ARE GOING FOR

16 IT. I DON'T THINK BASED ON THAT WE CAN SAY;

17 CERTAINLY NOT ABSOLUTELY, BUT CERTAINLY A GOOD

18 POSSIBILITY.

19 Q AND DID YOU TRY TO DETERMINE HOW MANY

20 ENTRY WOUNDS ARE IN THAT ARM?

21 A I COUNTED FOUR.

22 Q AND SINCE THIS IS THE SUPPOSED TERMINUS

23 POINT OF A ROUND OF AMMUNITION, WOULD YOU CONSIDER

24 THOSE FOUR IN CONJUNCTION WITH THE 16 TO INDICATE

25 THAT SHE WAS HIT WITH 20 PELLETS AT THIS POINT, AT

26 THIS PLACE IN HER BODY?

27 A WELL, I KNOW SHE WAS HIT WITH 16, AND

28 WHETHER OR NOT THOSE OTHER FOUR WERE ASSOCIATED, IF

1 THEY WERE, THEN THAT WOULD COME UP TO 20. BUT WE'RE
2 STILL MISSING SEVEN.

3 Q OKAY. AND WITH RESPECT TO THE MISSING
4 SEVEN, ARE YOU AWARE OF THE FACT THAT THERE ARE OR
5 APPEAR TO BE PELLET DEFECTS ON THE EXTERIOR OF THE
6 RIGHT FOREARM OF MR. MENENDEZ?

7 A EXTERIOR.

8 Q DORSAL ASPECT.

9 A DORSAL ASPECT OF THE RIGHT, YEAH. YES.
10 CORRECT.

11 Q AND, HYPOTHETICALLY, IF MR. MENENDEZ HAD
12 HIS ARM OUT IN THE VICINITY, IN THE MANNER I'M
13 SHOWING, WITH THE DORSAL ASPECT PROMINENT, IN THE
14 VICINITY OF MRS. MENENDEZ' LEFT BREAST AND LEFT ARM,
15 COULD SOME OF THE PELLETS IN THAT ROUND HAVE STRUCK
16 HIM IN THE DORSAL ASPECT OF THE FOREARM?

17 A THIS IS, I THINK, ANOTHER POSSIBILITY
18 THAT MUST BE STRONGLY CONSIDERED.

19 Q BASED ON THE NUMBER OF PELLETS IN
20 MRS. MENENDEZ' BREAST, IS IT YOUR OPINION,
21 DR. FACKLER, THAT THAT BREAST WOUND IS NOT THE
22 TERMINATION POINT OF A SHOT TRAJECTORY THAT WOULD
23 FIRST GO THROUGH MR. MENENDEZ' LEFT ELBOW, THEN INTO
24 HIS RIGHT ARM, AND THEN OUT AND INTO HER BREAST?

25 A NO. I CERTAINLY DON'T THINK -- BASED ON
26 MY STUDIES, I CERTAINLY DON'T THINK THE PENETRATION
27 POTENTIAL OF NO. 4 BUCKSHOT WOULD ALLOW THAT TO BE

41484

1 PENETRATING THROUGH THE BREAST TISSUE, THE CHEST
2 WALL INTO THE LUNGS; AND HOW FAR INTO THE LUNGS I
3 DON'T KNOW. I DON'T THINK ANYBODY DOES BECAUSE WE
4 DON'T HAVE A LATERAL VIEW. BUT I WOULD THINK THAT
5 WOULD BE CONSISTENT WITH THE LIMITATION, PENETRATION
6 OF THE NO. 4 BUCKSHOT, AND I CAN'T SEE HOW NO. 4
7 BUCK COULD GO THROUGH TWO ARMS AND STILL GO THE
8 WHOLE WAY THROUGH HER BREAST.

9 Q PLUS THE FACT -- WOULD IT BE FAIR TO SAY
10 THAT IN ADDITION TO THAT THE PELLET COUNT IS OFF?

11 A WELL, YES. BUT I WAS JUST LOOKING AT
12 PENETRATION-WISE I DON'T THINK IT'S POSSIBLE.

13 Q SO, IN YOUR OPINION, SHE COULD NOT HAVE
14 SUSTAINED A PENETRATING WOUND OF THAT LEFT BREAST IF
15 THE SHOT THAT ENTERED HER BREAST HAD FIRST PASSED
16 THROUGH HIS RIGHT ARM; IS THAT FAIR ENOUGH?

17 A YEAH. THAT'S MY OPINION, YES.

18 Q NOW, IF WE COULD THEN GO TO THE RIGHT
19 ARM WOUND.

20 YOU UNDERSTAND THAT PART OF THE
21 CONSTRUCT OF MR. MC CARTHY FOR THIS SUPPOSED SHOT 1
22 ENVISIONED A SHOT COLUMN PASSING THROUGH THE MEDIAL

23 ASPECT OF MR. MENENDEZ' RIGHT ARM AND EXITING THE
24 LATERAL ASPECT, AND THEN ENTERING MRS. MENENDEZ'
25 BREAST FROM THAT LATERAL EXIT SITE.

26 A YES.

27 Q YOU UNDERSTAND THAT'S WHAT MC CARTHY IS
28 TALKING ABOUT?

41485

1 A YES.

2 Q LET'S START, FIRST OF ALL, WITH THE
3 WOUNDS THAT ARE SHOWN ON 295, PHOTOGRAPHS A AND B,
4 WHICH ARE THE LEFT SIDE, THE FIRST TWO PHOTOGRAPHS.
5 OKAY?

6 A YES.

7 Q AND YOU CAN SEE IN PHOTOGRAPH A, FIRST
8 OF ALL, WITH RESPECT TO THE ARM, A LARGE -- WE CALL
9 THESE THINGS DEFECTS, BUT I GUESS HOLE IS AS GOOD A
10 WORD AS ANY -- A LARGE HOLE ON THE INTERIOR OR
11 MEDIAL ASPECT OF THE ARM, CORRECT?

12 A YES.

13 Q BELOW THAT HOLE THERE ARE SOME
14 INDIVIDUAL, WHAT HAS BEEN DESCRIBED AS INDIVIDUAL
15 SATELLITE DEFECTS. THOSE ARE LITTLE HOLES, CORRECT?

16 A YES.

17 Q AND ON HIS RIGHT ANTERIOR CHEST WALL,

18 RIGHT FRONT CHEST, THERE ARE SOME RED MARKS.

19 A YES.

20 Q FIRST OF ALL, LET'S START WITH THOSE RED
21 MARKS.

22 WHAT ARE THEY?

23 A I THINK THEY'RE BRUISES.

24 Q AND IN MEDICAL JARGON, ARE BRUISES ALSO
25 CALLED CONTUSIONS?

26 A OH, YES, YES. I'M SORRY. YES, THEY
27 ARE.

28 Q IT'S OKAY. BRUISES IS EASIER.

41486

1 AND IS THERE ANOTHER KIND OF DAMAGE THAT
2 IS CALLED SCRAPES, IN LAYMAN'S LANGUAGE, AND
3 ABRASIONS IN MEDICAL LANGUAGE?

4 A YES.

5 Q WHAT IS THE DIFFERENCE, DR. FACKLER,
6 BETWEEN A SCRAPE OR ABRASION AND A BRUISE OR
7 CONTUSION?

8 A THE DIFFERENCE IS THAT A SCRAPE OR
9 ABRASION REMOVES THE OUTER SURFACE OF THE SKIN, AND
10 THERE IS THEN USUALLY A WEEPING OF SERUM FROM THE
11 UNDERLYING TISSUE, OR SOMETIMES ACTUAL BLEEDING FROM
12 THE SUBCUTANEOUS TISSUE, GENERALLY ENDING UP IN

13 THIS -- EXPOSURE TO THE AIR, HARDENS, AND YOU END UP
14 WITH A SCAB.

15 AND ANYBODY THAT'S FALLEN AND HAD THEIR
16 KNEE BRUSHED ON A STREET OR SOMETHING LIKE THAT
17 KNOWS WHAT A -- IT'S COMMONLY CALLED A BRUSH BURN --
18 WHICH IS JUST A SCRAPING OFF OF THE SURFACE; AND WE
19 HAVE THIS WEEPING AND THE SCAB FORMATION. THAT'S AN
20 ABRASION.

21 A CONTUSION IS A WOUND WHERE THERE IS NO
22 DISRUPTION OF THE SURFACE LAYERS OF THE SKIN, BUT
23 WHAT YOU HAVE IS BREAKING OF -- BY A BLUNT FORCE,
24 LIKE A FIST, A BREAKING OF SMALL BLOOD VESSELS AND
25 CAPILLARIES JUST BENEATH THE SKIN, AND THEY BLEED
26 SMALL AMOUNTS JUST BENEATH THE SKIN AND GIVE YOU
27 FIRST A RED TYPE OF A DISCOLORATION, WHICH LATER
28 TURNS TO A BLUISH TYPE OF DISCOLORATION.

41487

1 Q LIKE A SHINER, LIKE A BLACK EYE?

2 A THAT'S THE BEST EXAMPLE, CERTAINLY.

3 Q IN YOUR OPINION, BASED ON EXAMINING
4 THESE PHOTOGRAPHS AND -- YOU ALSO HAD THAT DISCUSSION
5 WITH DR. GOLDEN, DID YOU NOT, ABOUT THIS AREA?

6 A YES, YES.

7 Q BASED ON THAT, YOU FORMED THE OPINION

8 THAT THOSE MARKS ARE BRUISES BASICALLY, CONTUSIONS?

9 A YES, I DO.

10 Q IS THERE ANY EVIDENCE IN EXAMINING THE
11 SURFACE OF THOSE MARKS THAT ANY PART OF THE SKIN WAS
12 SCRAPED AWAY?

13 A I COULDN'T SEE ANY. IT'S SOMEWHAT --
14 SOMETIMES A LITTLE BIT DIFFICULT TO TELL ON THE
15 PHOTOGRAPH, BUT I CAN'T TELL FOR SURE. BUT I
16 DIDN'T -- TO ME THESE LOOK LIKE BRUISES; AND THERE'S
17 -- WELL, I GUESS WE'LL GET INTO THAT.

18 Q YOU HAVE AN OPINION, BASED ON YOUR
19 TRAINING AND EXPERIENCE, AS TO PRECISELY WHAT CAUSED
20 THESE MARKS, DO YOU NOT?

21 A YES, I DO.

22 Q AND THE MECHANISM THAT YOU BELIEVE
23 CAUSED THESE MARKS IS SOMETHING LIKE WHAT YOU JUST
24 DESCRIBED, A BLUNT FORCE THAT WOULD CREATE BLEEDING
25 UNDER THE SKIN?

26 MR. CONN: OBJECTION. LEADING.

27 THE COURT: SUSTAINED.

28 Q BY MS. ABRAMSON: WOULD YOU DESCRIBE THE

41488

1 TYPE OF MECHANISM THAT YOU BELIEVE CAUSED THESE
2 BRUISES.

3 A WHAT CAUSED THESE BRUISES, IN MY
4 OPINION, IS SOMETHING JUST STRIKING A BLUNT FORCE
5 FROM THE OUTSIDE, DESCRIBING THE CHEST WALL.

6 Q AND DO YOU HAVE AN OPINION AS TO WHAT
7 THIS THING WAS, THIS BLUNT FORCE THAT STRUCK THE
8 CHEST WALL AND CREATED THESE BRUISES?

9 A YES, I DID.

10 Q AND WOULD YOU DESCRIBE FOR THE JURY WHAT
11 THAT WAS AND HOW THAT MECHANISM WORKED.

12 A YES. I BELIEVE WHAT HAPPENED HERE IS
13 THE SHOT COLUMN --

14 MAY I YOUR HONOR, GO DOWN?

15 Q BEFORE YOU GET HERE, LET ME ASK YOU ONE
16 CRUCIAL QUESTION. OKAY?

17 DO YOU BELIEVE THAT -- WELL, STRIKE
18 THAT.

19 WITH RESPECT TO WHAT DR. GOLDEN CALLS
20 WOUND NO. 3, THE INJURIES TO THE RIGHT UPPER ARM --

21 A YES.

22 Q -- WHICH, DR. FACKLER, IS THE ENTRY AND
23 WHICH IS THE EXIT?

24 A THE ENTRY IS ON THE LATERAL ASPECT AND
25 THE EXIT IS ON THE MEDIAL ASPECT TOWARDS THE FRONT.

26 Q THE ENTRY IS ON THE BACK?

27 A ENTRY IS IN THE BACK AND THE EXIT IN THE
28 FRONT ESSENTIALLY.

1 Q YOU RECALL THAT'S THE OPPOSITE OF WHAT
2 ROGER MC CARTHY CLAIMS?

3 A YES, I REALIZE THAT.

4 Q YOU REALIZE THAT'S EXACTLY WHAT
5 DR. GOLDEN CLAIMS?

6 A YES.

7 MR. CONN: OBJECTION AS TO TIME.

8 THE COURT: SUSTAINED AS TO THE LAST QUESTION
9 AND ANSWER. THE ANSWER WAS STRICKEN.

10 MS. ABRAMSON: WELL, YOUR HONOR, I WOULD
11 OBJECT TO THAT OBJECTION. DR. GOLDEN HAS NEVER
12 STATED OTHERWISE.

13 THE COURT: DON'T ARGUE. JUST ASK ANOTHER
14 QUESTION.

15 Q BY MS. ABRAMSON: WITH RESPECT TO WHAT'S
16 IN DR. GOLDEN'S REPORT OF SEPTEMBER, HE INDICATES
17 THE ENTRY TO THE BACK AND THE EXITS IN THE MEDIAL
18 ASPECT?

19 A THAT'S CORRECT.

20 Q WITH RESPECT TO THE PHOTOGRAPHS OF HIM
21 AT THE AUTOPSY PROBING THE BACK, HE'S INDICATING
22 THAT THAT'S AN ENTRY WOUND, CORRECT?

23 A I'M NOT SURE.

24 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

25 THE COURT: SUSTAINED. THE ANSWER IS

26 STRICKEN.

27 Q BY MS. ABRAMSON: IN REFERENCE TO YOUR

28 DISCUSSIONS WITH DR. GOLDEN, HE'S INDICATING THAT

41490

1 THAT WOUND IS ON THE LATERAL --

2 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

3 THE COURT: SUSTAINED.

4 MS. ABRAMSON: YOUR HONOR, I BELIEVE THE

5 PROSECUTION WAS ALLOWED TO GET INTO DR. MC CARTHY'S

6 CHATS WITH DR. GOLDEN.

7 THE COURT: WELL, AT THIS POINT THE OBJECTION

8 IS SUSTAINED.

9 Q BY MS. ABRAMSON: IS THERE ANY

10 INDICATION IN DR. GOLDEN'S EVEN ORIGINAL AUTOPSY

11 REPORT TO THE EFFECT THAT HE BELIEVED THAT THIS

12 DEFECT ON THE MEDIAL ASPECT WAS ANYTHING BUT AN EXIT

13 WOUND?

14 A I DON'T THINK SO.

15 Q IN FACT, DIDN'T HE CONNECT THIS EXIT

16 WOUND WITH THE BRUISES ON THE CHEST?

17 A YES.

18 Q AND BASED ON HIS REASONING, WASN'T IT

19 NECESSARY THAT THIS LARGE DEFECT BE AN EXIT WOUND TO

20 EXPLAIN THE BRUISING ON THE CHEST?

21 A YES.

22 Q AND HAS HE ALWAYS HAD THE DIRECTION OF
23 THIS WOUND BEING FROM RIGHT TO LEFT?

24 MR. CONN: OBJECTION. CALLS FOR
25 SPECULATION. THE WITNESS DIDN'T EVEN READ HIS
26 TESTIMONY.

27 THE COURT: SUSTAINED.

28 MS. ABRAMSON: WE'RE TALKING ABOUT HIS

41491

1 ORIGINAL REPORT.

2 THE COURT: YOU DIDN'T ASK THAT QUESTION, DID
3 YOU?

4 MS. ABRAMSON: YES.

5 THE COURT: YOU ASKED THE QUESTION "ALWAYS
6 SAID" THAT AND ALWAYS --

7 MS. ABRAMSON: I'M SORRY. BASED ON THE
8 ORIGINAL REPORT, YOUR HONOR. I STAND CORRECTED.

9 THE COURT: YOU'RE ASKING IN THAT ORIGINAL
10 REPORT?

11 Q BY MS. ABRAMSON: IN THE ORIGINAL
12 REPORT, AS WELL AS THE AMENDED REPORT, HASN'T
13 DR. GOLDEN ALWAYS MAINTAINED THAT THIS WOUND HERE ON
14 THE MEDIAL ASPECT WAS AN EXIT WOUND THAT WAS
15 COMMUNICATED WITH THE BRUISING ON THE CHEST?

16 A YES.

17 Q AND HASN'T HE ALWAYS DESCRIBED THAT
18 WOUND AS A WOUND FROM RIGHT TO LEFT?

19 MR. CONN: OBJECTION TO --

20 MS. ABRAMSON: IN THOSE SOURCES --

21 MR. CONN: -- "ALWAYS.

22 " MS. ABRAMSON: WELL --

23 THE COURT: ALL RIGHT. YOU HAVEN'T FINISHED
24 THE QUESTION. WHY DON'T YOU ASK IT AGAIN.

25 Q BY MS. ABRAMSON: HE FIRST WROTE ON THIS
26 ISSUE IN 1989, IN THE AUTOPSY REPORT, CORRECT?

27 A YES.

28 Q HE WROTE AGAIN ABOUT IT IN HIS AMENDED

41492

1 REPORT IN 1995.

2 A YES.

3 Q AND YOU HAVE READ BOTH OF THOSE REPORTS?

4 A YES, I HAVE.

5 Q AND BOTH OF THOSE REPORTS ARE
6 CONSISTENT, ARE THEY NOT, WITH HIS ASCRIBING A
7 DIRECTION TO THAT WOUND IN THE MEDIAL ASPECT OF THE
8 ARM AND THE CHEST AS BEING RIGHT TO LEFT.

9 A YES.

10 Q ALL RIGHT. AND THAT IS YOUR OPINION AS

11 WELL, IS IT NOT, THAT THE ENTRY IS LATERAL, THE EXIT

12 IS MEDIAL, AND THE DIRECTION IS RIGHT TO LEFT?

13 A YES.

14 Q THAT'S THE OPPOSITE DIRECTION THAN

15 MC CARTHY'S CONSTRUCT, CORRECT?

16 A YES.

17 Q NOW, WOULD YOU DESCRIBE, WITH THAT AS A

18 GIVEN, THE DIRECTION OF NO. 3 IN THE RIGHT ARM, WHAT

19 MADE THE BRUISES ON THE CHEST WALL.

20 A NOW, IF I MAY --

21 THE COURT: YES. GO AHEAD. DO YOU WANT TO

22 DRAW SOMETHING AGAIN, DR. FACKLER? WOULD IT HELP?

23 THE WITNESS: YEAH. YES. I GUESS THAT WOULD

24 BE A GOOD IDEA.

25 MS. ABRAMSON: OKAY.

26 THE WITNESS: I THINK I COULD MAYBE TRY TO

27 EXPLAIN IT WITHOUT DRAWING IT, BUT I THINK MAYBE

28 DRAWING WOULD BE BETTER.

41493

1 MS. ABRAMSON: LET'S PUT ANOTHER POST-IT NOTE

2 UP HERE. PUT IT RIGHT NEXT TO THE WOUND THAT YOU'RE

3 DRAWING ABOUT.

4 WHAT I'D LIKE TO DO, BEFORE WE GO ANY

5 FARTHER, IS MARK THE DRAWING THAT YOU MADE

6 PREVIOUSLY OF A CROSS-SECTION OF THE BREAST.

7 IS 314 NEXT?

8 THE COURT: 315.

9 MS. ABRAMSON: I'LL MARK THE DRAWING OF THE
10 CROSS-SECTION OF THE BREAST AS 315.

11 THEN WE'LL MARK WHAT YOU'RE ABOUT TO DO,
12 AS 316, AND YOUR HONOR, COULD WE RESERVE NO. 317 FOR
13 THE CAVITATION DRAWING OF THE M-16 BULLET THAT
14 DR. FACKLER DID THIS MORNING?

15 THE COURT: THAT WILL BE MARKED 317.

16 MS. ABRAMSON: THANK YOU, YOUR HONOR. ALL
17 RIGHT. NOW YOU CAN DO WHAT YOU WANT ON 316.

18 THE WITNESS: OKAY. IF I CAN DRAW A
19 CROSS-SECTION THROUGH THE BODY OF MR. MENENDEZ'
20 CHEST WALL, WHICH COMES OUT SOMETHING LIKE THIS,
21 (DRAWING), WITH HIS NIPPLE BEING RIGHT ABOUT HERE
22 (POINTING).

23 NOW, THE BRUISING EXTENDS QUITE A BIT
24 OVER AN AREA THAT IS SOMEWHAT CURVED, AND I THINK
25 WHAT HAPPENED IS, I THINK WE HAVE GOOD INDICATION
26 THAT THIS IS AN EXIT WOUND FOR A FEW REASONS.

27 ONE BEING, IF WE LOOK AT THE -- WE HAVE A
28 POINT RIGHT HERE (POINTING). AND WHEN WE HAVE A

1 POINT AND SKIN IS TORN AND THERE'S A POINT, THAT
2 MEANS THE SKIN WAS TORN APART. A PROJECTILE DOESN'T
3 MAKE THAT KIND OF A HOLE. WHEN A SKIN IS TORN BY
4 CAVITATION IT'S STRETCHED BEYOND WHERE IT CAN GO.
5 THEN IT TEARS AND YOU GET WHAT WE CALL A STELLATE
6 TEAR BECAUSE WE HAVE TEARS GOING TO SOMEWHAT LIKE A
7 STAR -- A STELLATE TEAR ROUTINELY GIVES YOU A POINT,
8 SO WE HAVE A POINT VERY VISIBLE RIGHT HERE. THESE
9 ARE BASICALLY STRAIGHT LINES HERE LEADING INTO THE
10 POINT.

11 SO THAT'S CONSISTENT WITH THIS TISSUE
12 BEING TORN APART BY CAVITATION AND BEING STRETCHED
13 BY CAVITATION.

14 SO WHAT I THINK HAPPENED HERE -- WE ALSO
15 HAD THIS ARM BROKEN HERE, OF COURSE.

16 WHAT I THINK HAPPENED HERE IS I THINK
17 MR. MENENDEZ HAD HIS RIGHT ARM IN A SIMILAR FASHION
18 TO THE WAY I'M PUTTING MINE, FOLDED ACROSS HIS
19 CHEST, AND COVERING HIS NIPPLE LIKE SO
20 (DEMONSTRATING). I'LL TRY TO DRAW THAT IF I CAN
21 HERE. IT'S A LITTLE BIT DIFFICULT CONCEPT TO -- THE
22 ARM WOULD BE SOMETHING LIKE THIS. IT WOULD BE
23 INDENTED SOMEWHAT, BECAUSE IF YOU PUSH AN ARM OVER A
24 CURVED SUBSTANCE, IT WILL FORM, BECAUSE THE ARM IS
25 SOMEWHAT -- THE SKIN OF THE ARM WOULD MATCH THAT
26 CURVED AREA RIGHT THERE.

27 AND WE HAVE A BONE GOING DOWN THE ARM
28 TOO. LET ME MARK THAT MORE DENSELY HERE.

1 WHAT I THINK HAPPENED WHEN THIS ARM WAS
2 IN THIS POSITION, I THINK A SHOT FROM RATHER CLOSE
3 DISTANCE, PROBABLY NO MORE THAN THREE FEET, ENTERED
4 THE BACK OF THE ARM; AND HERE THE PELLETS ARE QUITE
5 FAIRLY CLOSE TOGETHER. SO WE HAD A CAVITATION THAT
6 I EXPLAINED EARLIER, HOW THEY ARE ALL ACTING, OR
7 MOST OF THEM ACTING LIKE A SINGLE PROJECTILE; AND,
8 SO THEREFORE, YOU HAVE A FAIRLY LARGE CAVITATION.

9 NOW, THE ARM ISN'T ALL THAT BIG, SO YOU
10 CAN'T STRETCH THAT MUCH BEFORE IT'S GOING TO BREAK
11 IF YOU TRY TO PUT THAT MUCH STRETCH INTO THE ARM. I
12 THINK WHAT WAS HERE AT THE EXIT -- THAT ARM GOT
13 BROKEN. BUT BEFORE IT GOT BROKEN THE BONE ALSO GOT
14 BROKEN, AND I THINK HERE IN THIS SITUATION IT'S A
15 LITTLE UNCLEAR, BUT THERE IS -- PUT AN ARROW
16 HERE -- WHAT WE'RE SEEING HERE IS A FAIRLY SIMPLE
17 BREAK. AND WHEN YOU GET A BONE, JUST A SIMPLE
18 BREAK, WHICH MEANS IT HAS PUSHED FROM ONE SIDE, THE
19 SAME KIND OF A PUSH YOU GET IF YOU GET HIT IN THE
20 LEG WITH AN AUTOMOBILE BUMPER, AND YOU GET A LEG
21 BROKEN YOU HAVE A SIMPLE BREAK. CAVITATION IS
22 NOTHING MORE THAN A PUSH ONE DIRECTION. YOU GET A
23 SIMPLE BREAK. WHEN YOU HAVE A BROKEN BONE BY
24 ACTUALLY BEING HIT BY A BULLET OR MULTIPLE PELLETS

25 YOU HAVE PART OF THE BONE MISSING BECAUSE IT'S
26 THROWN OUT, AND YOU HAVE MANY BONE FRAGMENTS.
27 THERE ARE OTHER X RAYS IN THIS CASE OF
28 MRS. MENENDEZ WHERE YOU CAN SHOW WHERE BONES HAVE

41496

1 BEEN HIT BY PELLETS. THERE ARE MANY, MANY FRAGMENTS
2 IN THIS X RAY WE DON'T SEE. THERE'S MANY
3 FRAGMENTS.
4 SO I THINK WHAT WE HAVE HERE IS WE HAD A
5 SHOT THAT WENT INTO THE ARM JUST ABOUT IN THIS
6 POSITION. NOW, MAYBE ONE OR TWO OF THE PELLETS
7 MIGHT HAVE HIT THE BONE, AND THERE ARE SOME PELLET
8 FRAGMENTS IN THERE. SO MAYBE SOME OF THEM DID. BUT
9 I THINK THAT THE PREDOMINANT MECHANISM HERE, BECAUSE
10 OF THE TORN EXIT WOUNDS AND THE SINGLE EXIT WOUNDS
11 HERE, I THINK WE HAVE A LARGE CAVITATION, AND WHAT
12 HAPPENED WHEN THAT CAVITY OCCURRED IN THERE IS IT
13 NOT ONLY PUSHED ON THE BONE, BUT IT PUSHED THE OTHER
14 WAY TOO. AS IT PUSHED THE ARM DOWN ONTO
15 MR. MENENDEZ' CHEST, IT WAS JUST LIKE A BLOW.
16 AND WHAT'S MORE, I THINK THERE WERE TWO
17 BLOWS. I THINK THIS IS ONE BLOW AND THIS IS THE
18 SECOND BELOW; AND THE REASON I SAY THAT IS BECAUSE
19 IN CAVITATION, AS THE TEMPORARY CAVITY GOES OUT --

20 AND I HAVE IN MY POSSESSION HERE SOME COPIES OF THIS
21 FROM HIGH-SPEED PHOTOGRAPHY DONE OF THIS THAT SHOWS
22 THE REPETITIVE NATURE OF CAVITATION. IN OTHER
23 WORDS, IF CAVITATION GOES OUT, THE ARM IS -- OR THE
24 TISSUE, THE STRETCHY TISSUE, THEN COLLAPSES AND SORT
25 OF SLAPS TOGETHER AND THEN BOUNCES BACK AND YOU GET
26 A SECOND CAVITATION, WHICH IS SMALLER THAN THE
27 FIRST, BUT STILL CONSIDERABLE. YOU CAN ACTUALLY GET
28 THREE CAVITIES. WE CAN SEE THIS ON HIGH-SPEED

41497

1 PHOTOGRAPHY. WE SEE ONE THIS BIG AND THEN IT
2 COLLAPSES TOGETHER AND THEN IT COMES UP AGAIN.

3 SO WHAT I THINK WE HAVE HERE IS -- I
4 THINK WE HAVE ONE SLAM OF A CAVITY THERE AND THEN
5 THAT MOVED THE ARM A LITTLE BIT AND THE SECOND ONE
6 DOWN HERE.

7 NOW, THE OTHER -- I THINK THE MOST -- THE
8 STRONGEST POINT FOR THIS IS SOMETHING THAT I
9 COULDN'T FIGURE OUT. DR. GOLDEN FIGURED IT OUT AND
10 TOLD IT TO ME.

11 MR. CONN: OBJECTION. CALLS FOR HEARSAY.
12 MOTION TO STRIKE.

13 THE COURT: ALL RIGHT. THE ANSWER WILL STAND
14 AS PHRASED HERE OR AS STATED. YOUR NEXT QUESTION.

15 MS. ABRAMSON: WHY DON'T YOU HAVE A SEAT FOR
16 A SECOND. STAY THERE AND LET ME ASK YOU ANOTHER
17 QUESTION.

18 Q IS IT APPROPRIATE, DR. FACKLER, FOR A
19 FORENSIC EXPERT SUCH AS YOURSELF TO CONSULT WITH
20 OTHER FORENSIC EXPERTS TO GET THE BENEFIT OF THEIR
21 WISDOM AND EXPERIENCE?

22 A I THINK IN MANY CASES IT'S ALMOST
23 MANDATORY.

24 Q AND DID YOU, THEREFORE, CONSULT WITH DR.
25 GOLDEN CONCERNING A CERTAIN ASPECT OF THAT WOUND
26 CONFIGURATION?

27 A YES, I DID.

28 Q AND DID YOU ALSO DISCUSS THAT ASPECT OF

41498

1 THE WOUND CONFIGURATION WITH DR. WECHT?

2 A YES, I DID.

3 Q NOW, DOES THERE APPEAR TO BE, WITHIN THE
4 BORDERS, WITHIN THE OUTER BORDERS OF THAT CONTUSION,
5 SOME WHITE LINES?

6 A WELL, THERE ARE WHITE LINES. THEY'RE
7 NOT LIMITED TO THE OUTER BORDER.

8 Q I'M SAYING WITHIN THOSE BORDERS.

9 A I SEE. YES. YOU'RE ABSOLUTELY

10 CORRECT. YES.

11 Q INSIDE THIS RED AREA, ARE THERE -- THIS

12 STRIPE'S BASICALLY SOME WHITE LINES?

13 A THERE ARE SOME WHITE LINES.

14 Q AND IN YOUR OPINION, WHAT CAUSED --

15 STRIKE THAT.

16 AND THOSE WHITE LINES ARE AREAS IN THE

17 SKIN WHERE THERE DOES NOT APPEAR TO BE BLEEDING

18 UNDER THE SKIN OR CONTUSION?

19 A THAT'S CORRECT.

20 Q THOSE ARE AREAS THAT APPEAR THAT

21 SOMETHING PREVENTED THIS BANGING OF THE ARM TISSUE

22 FROM CAUSING A BRUISE?

23 A THAT'S CORRECT.

24 Q AND IN YOUR OPINION, WHAT WAS IT THAT

25 PROTECTED THOSE AREAS THAT DON'T HAVE THE BRUISING

26 MARKS?

27 A WELL, THEY WERE PROTECTED BY THE FOLDS

28 IN THE -- MR. MENENDEZ' SHIRT. BECAUSE THIS GAVE

41499

1 PADDING OF THE FOLDED AREA AS BEING THREE LAYERS OF

2 SHIRT MATERIAL TOGETHER INSTEAD OF ONE, WHICH WOULD

3 GIVE IT A RELATIVE AMOUNT OF PROTECTION. AND IF

4 WEARING THE SHIRT -- IF HE PUT HIS ARM OVER LIKE

5 THIS, IT'S VERY LIKELY THERE WOULD BE FOLDS. I'LL

6 POINT TO THESE AREAS.

7 Q YOU CAN EVEN CIRCLE THEM IF YOU WANT.

8 THAT'S OUR EXHIBIT. YOU CAN DO WHATEVER YOU'D LIKE

9 TO IT.

10 A CIRCLE IT?

11 Q SURE.

12 A I DON'T WANT TO -- I'D RATHER NOT

13 CIRCLE. COULD I JUST PUT ARROWS TO THEM?

14 Q SURE. DO ARROWS.

15 A THAT'S ONE OF THEM. THAT'S ANOTHER

16 ONE. THAT'S ANOTHER ONE. THAT'S ONE. THESE ARE

17 STREAKS, AND WHAT I THINK THAT WAS, IF I COULD DRAW

18 THAT HERE. IF YOU HAVE ONE -- THE SHIRT NON-FOLDED,

19 YOU HAVE THIS.

20 AND WITH THE ARM -- OF COURSE, WE WOULD

21 ACTUALLY HAVE TWO, BECAUSE WE'D HAVE THE SHIRT ON

22 THE ARM AND THE SHIRT ON THE CHEST. SO WE HAVE TWO

23 LAYERS. BUT THEN IF YOU FOLD ONE OF THESE, WHAT YOU

24 GET IS THIS KIND OF A THING. SO YOU WOULD HAVE,

25 INSTEAD OF TWO, YOU WOULD HAVE FOUR. YOU MIGHT EVEN

26 GET FOLDING OF BOTH OF THEM, WHICH WOULD GIVE YOU

27 EVEN MORE PADDING. IT LOOKS TO ME, AS I SAY, THAT'S

28 WHAT WOULD PROTECT THOSE BECAUSE THERE'S THREE

1 LAYERS OF THIS SOFT SHIRT MATERIAL RATHER THAN ONE.

2 Q YOU ARE KEEPING IN MIND, ARE YOU NOT,
3 DR. FACKLER, THAT MR. MENENDEZ WAS WEARING A
4 SHORT-SLEEVED SHIRT?

5 A YES, I AM. I AM. WHETHER OR NOT THE
6 SHORT-SLEEVED -- I THINK PROBABLY THE SHORT -- I
7 DON'T KNOW IF THE SHORT SLEEVES WENT THAT FAR OR
8 NOT. IF IT DIDN'T GO THAT FAR, THEN WE HAVE, YOU
9 KNOW, THREE OR ONE; AND IF IT DID GO THAT FAR, WE
10 HAVE TWO OR -- WAIT A MINUTE. ONE, TWO, THREE, FOUR;
11 FOUR OR TWO, SO THERE'S TWO EXTRA LAYERS OF CLOTH.

12 Q THANK YOU.

13 A A WRINKLE OR FOLD GIVES US TWO EXTRA
14 LAYERS OF CLOTH FOR PADDING. THAT'S THE PRINCIPLE
15 HERE. WHETHER OR NOT THESE TWO EXTRAS ARE ADDED TO
16 TWO LAYERS OF CLOTH OR ONE LAYER OF CLOTH, I DON'T
17 THINK MAKES MUCH DIFFERENCE.

18

19

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41501

1 Q YOU CAN RESUME THE WITNESS STAND.

2 ARE YOU FAMILIAR, DR. FACKLER, WITH
3 DR. LAWRENCE'S EXPLANATION FOR HOW THAT BRUISING
4 OCCURRED?

5 A YES.

6 Q DID YOU READ THAT IN HIS TESTIMONY?

7 A YES, I DID.

8 Q AND DOES HIS EXPLANATION THAT THIS IS
9 CAUSED BY PELLETS GRABBING A HOLD OF THE SHIRT AND
10 PULLING IT ACROSS HIS CHEST AND CAUSING, BASICALLY,
11 FRICTION BURNS, IS THAT OPINION CORRECT?

12 A NO. I DON'T SEE HOW IT CAN BE.

13 Q WHY DON'T YOU SEE HOW THAT COULD BE
14 CORRECT?

15 A WELL, FOR SEVERAL REASONS.

16 MAY I DRAW ANOTHER ONE?

17 Q ARE YOU GOING TO DRAW AGAIN ON THE SAME
18 CHART?

19 A YES, IT'S THE SAME ANSWER.

20 Q WOULD YOU DRAW A LINE ACROSS BECAUSE
21 YOU'RE NOW GOING TO ILLUSTRATE SOMETHING DIFFERENT.

22 A YES.

23 Q YOU CAN DO IT THAT WAY.

24 A YOU CAN SEE THE WIDTH OF THIS AREA HERE

25 WHERE THE SHIRT WOULD HAVE HAD TO HAVE BEEN GRABBED

26 AND PULLED. IT'S, I'M ESTIMATING, SIX INCHES WIDE

27 RELATIVE TO THE DIRECTION OF PATH OF PROJECTILE THAT

28 WAS PROPOSED BY DR. LAWRENCE WHEN HE EXPLAINED

41502

1 THIS. IT'S ABOUT SIX INCHES WIDE.

2 NOW, A PATTERN OF PROJECTILES COMING

3 ACROSS THERE WILL GIVE YOU -- WELL, I THINK WE HAVE

4 TO GO NO FURTHER THAN, SAY, THE BREAST OF

5 MRS. MENENDEZ TO PROVE THE POINT.

6 WE SEE A RANDOM -- A RANDOM NUMBER OF

7 PROJECTILES, AND AS THIS IS COMING ACROSS, AS THIS

8 IS COMING ACROSS THE CHEST, THERE WOULD BE NO WAY

9 THAT MORE THAN ONE OR TWO OF THOSE AT THE MOST COULD

10 TOUCH THIS. IT WOULD HAVE TO BE SORT OF RIGHT THERE

11 WHERE IT WOULD TOUCH MAYBE ONE OR TWO. AND SO JUST

12 ONE OR TWO OF THOSE WOULD HAVE HAD TO PULL THAT

13 ACROSS SIX INCHES OF CHEST.

14 Q NOW, YOU'RE SAYING ONLY ONE OR TWO.

15 A BECAUSE THEY'RE COMING ACROSS -- YOU SEE,

16 THEY'RE COMING ACROSS.

17 WHAT I'M TRYING TO DO IS CUT ACROSS AND

18 SHOW IT CUTTING IN THIS PLANE, A FRONT-TO-BACK
19 PLANE, THE PATTERN OF SHOT COLUMN THAT'S COMING
20 ACROSS THAT.
21 Q LET ME SEE IF I CAN HELP BECAUSE I KNOW
22 IF IT MAKES ME DIZZY, I CAN IMAGINE --
23 MR. CONN: OBJECTION. MOTION TO STRIKE.
24 ARGUMENTATIVE.
25 THE COURT: ALL RIGHT. THE COMMENT OF
26 COUNSEL IS STRICKEN.
27 YOUR NEXT QUESTION, PLEASE.
28 Q BY MS. ABRAMSON: YOU'RE TALKING ABOUT A

41503

1 COLUMN OF SHOT COMING ACROSS PARALLEL TO HIS CHEST,
2 CORRECT?
3 A WELL, THAT'S WHAT'S BEEN POSTULATED,
4 YES.
5 Q THIS GREEN ROD?
6 A THAT'S CORRECT.
7 Q IT'S SUPPOSED TO BE AN ENTIRE COLUMN OF
8 PELLETS COMING ACROSS, CORRECT?
9 A YES.
10 Q THEY DON'T CROSS SINGLE FILE, DO THEY,
11 DR. FACKLER?
12 A THEY COME IN -- THEY CAN BE SPREAD OUT

13 MAYBE FOUR OR SIX INCHES.

14 Q BUT THEY DON'T LINE UP?

15 A BASICALLY IN A GROUP.

16 Q THEY DON'T LINE UP LIKE A BEAD OF
17 STRINGS?

18 A NO. THEY'RE BASICALLY IN A MASS
19 TOGETHER.

20 Q ONLY SOME OF THEM WOULD BE THE -- SOME
21 HAVE TO BE CLOSEST AND SOME HAVE TO BE FARTHER
22 AWAY --

23 A YES.

24 Q -- IF THEY'RE IN SOME KIND OF SPREAD
25 PATTERN ACROSS A CHEST?

26 MR. CONN: OBJECTION. LEADING.

27 THE COURT: OVERRULED.

28 Q BY MS. ABRAMSON: IS THAT CORRECT?

41504

1 A YES. IN ORDER TO HAVE ONE OF THEM -- IF
2 ANY OF THEM HAD HIT THE CHEST, IT WOULD BE A GROOVE
3 IN THE CHEST; OR IF -- IF SEVERAL OF THEM HAD HIT THE
4 CHEST, THERE WOULD BE MAYBE SEVERAL GROOVES IN THE
5 CHEST WITH A HOLE, AN IN-AND-OUT HOLE THERE, BECAUSE
6 THE FURTHER YOU GET ON INTO THIS, THE MORE OF THIS
7 HAS TO BE HOLES.

8 IF YOU'RE SPEAKING OF THEM JUST HITTING
9 THE SHIRT AND NOT HITTING THE CHEST, THERE CAN --
10 THEY MUST BE VERY FEW OF THEM THAT WOULD DO THAT.
11 AND IT JUST MECHANICALLY DOESN'T MAKE ANY SENSE TO
12 ME THAT EVEN THOUGH THE SPREAD OF THE PATTERN --
13 WELL, THE SPREAD OF THE PATTERN IS EVEN -- IT MAKES
14 NO SENSE ANY WAY YOU LOOK AT IT.

15 AND FURTHERMORE, I'VE TRIED TO RESEARCH
16 THIS BRIEFLY IN THE STANDARD TEXTS ON WOUND
17 BALLISTICS AND FORENSICS AND I'VE NEVER SEEN ANY
18 PLACE THAT IT'S EVEN SUGGESTED THAT THIS CAN HAPPEN.

19 Q THAT A COUPLE OF PELLETS CAN GRAB A
20 SHIRT AND TUG ALONG AND CAUSE BURNS ON THE
21 UNDERLYING SKIN?

22 A I'VE NEVER SEEN IT REPORTED OR EVEN
23 ALLUDED TO ANYWHERE.

24 Q IS IT YOUR CONCEPTION, DR. FACKLER, THAT
25 IF PELLETS HAD GRABBED HOLD OF A SHIRT THAT WAY,
26 THEY'D TEAR A PELLET SIZE HOLE IN THEM?

27 A WELL, IN THIS POSITION IT WOULD BE --
28 WELL, IT WOULD BE PELLET SIZE, BUT IF YOU LOOK -- IF

41505

1 IT'S ABSOLUTELY PARALLEL, IT WOULD PROBABLY BE A
2 SLICE MAYBE AS MUCH AS SIX INCHES LONG, BECAUSE AS

3 THESE PELLETS ARE COMING VERY PARALLEL TO THE
4 SURFACE, THEY WOULD SLICE IT. IT'S LIKE IF YOU TAKE
5 A FLASHLIGHT AND SHINE IT ON A WALL, YOU GET A ROUND
6 BEAM; AND AS YOU WALK -- IF YOU WALK DOWN TO THE VERY
7 SIDE OF THE WALL, YOU CAN SHINE A FLASHLIGHT ALONG
8 AND GO THE WHOLE LENGTH OF THE ROOM. AND THAT'S THE
9 WAY YOU HAVE TO LOOK AT THE PELLETS. IT WOULD BE --

10 Q IT'S LIKE A BEAM?

11 A IT WOULD CUT THE SHIRT. IT'S LIKE A
12 BEAM. AT THIS PARALLEL TO THE SHIRT IT WOULD HAVE
13 HAD TO HAVE CUT THE SHIRT.

14 Q IN ADDITION TO THAT, DR. FACKLER, IF
15 THERE ARE -- IF THERE ARE PELLETS THAT ARE TUGGING
16 THAT HARD AT ONE SIDE OF THE SHIRT, WOULD YOU EXPECT
17 THAT THEY WOULD BE PULLING ACROSS BOTH SIDES OF THE
18 CHEST?

19 IN OTHER WORDS, LET ME SHOW YOU.

20 A I'M NOT SURE I UNDERSTAND THAT.

21 Q LET ME GIVE YOU AN EXAMPLE. CAN I PULL
22 ON YOUR SHIRT?

23 A I SUPPOSE.

24 Q OKAY. IF YOU WERE TO ENVISION SOME
25 PELLETS THAT GRABBED HOLD OF A SHIRT AND PULLED, CAN
26 YOU FEEL THE PULL ON THE LEFT SIDE?

27 A YES. BUT MY SHIRT -- I THINK HIS SHIRT
28 WAS MORE STRETCHY THAN MINE.

1 Q BUT THE THEORY HERE WAS THAT IT PULLED
2 SO HARD ACROSS THE RIGHT SIDE THAT IT CAUSED THESE
3 BRUISES. IT'S THE SHIRT PULLING THAT'S SUPPOSED TO
4 CAUSE THE BRUISES; YOU UNDERSTAND THAT?

5 A THAT'S WHAT WAS SAID.

6 Q IF YOU PULL ON THE SHIRT IT'S PULLING ON
7 YOUR LEFT SIDE NOW, RIGHT?

8 A IN MY SHIRT IT IS.

9 Q AND THERE'S NO BRUISES ON MR. MENENDEZ'
10 LEFT CHEST WALL, ARE THERE?

11 A I DIDN'T SEE ANY, NO.

12 Q NOW, BASED ON HIS ORIGINAL REPORT, THAT
13 SHIRT PULLING AND CAUSING THESE ROPE BURNS, IF YOU
14 WILL, TO THE RIGHT SIDE OF THE CHEST, THAT WASN'T
15 MC CARTHY'S THEORY, WAS IT?

16 A NO. I THINK -- NO, NO. I DON'T RECALL
17 IT WAS.

18 Q IT WASN'T MC CARTHY'S THEORY THAT THESE
19 WERE ACTUALLY MARKS FROM PELLETS?

20 A YES, THAT'S -- YEAH, NEITHER OF THEM ARE
21 POSSIBLE. BUT THAT WAS DR. MC CARTHY'S THEORY, YES.

22 Q WHAT WAS WRONG WITH DR. MC CARTHY'S
23 THEORY THAT THESE WERE NOT SORT OF SHIRT BURNS BUT
24 ACTUAL PELLET MARKS? WHAT'S WRONG WITH THAT?

25 A WELL, PELLETS ARE SMALL AND IF ONE OR
26 TWO OF THEM ACTUALLY WENT ACROSS THE CHEST THEY

27 WOULD MAKE PARALLEL LINES ACROSS THE CHEST.

28 Q MAKE A GROOVE?

41507

1 A MAKE LIKE A GROOVE OR CUT. IT WOULDN'T

2 MAKE A FLAT THING LIKE THIS. THIS IS IMPOSSIBLE.

3 Q IT WOULD ACTUALLY MAKE SOME KIND OF HOLE

4 OR TROUGH?

5 A YES. IT'D MAKE -- YES.

6 Q LIKE A GRAZE WOUND?

7 A LIKE A GRAZE WOUND OR GROOVE, CERTAINLY.

8 Q THERE ARE, IN FACT, GRAZE WOUNDS OR

9 GROOVES ON THE DECEDENTS IN THIS CASE?

10 A ELSEWHERE, YES.

11 Q BUT THERE'S NONE HERE?

12 A NONE HERE.

13 MR. CONN: OBJECTION. LEADING.

14 THE COURT: LET'S TRY TO REFRAIN FROM

15 LEADING.

16 MS. ABRAMSON: I'M SORRY, YOUR HONOR.

17 Q DOES A GRAZE WOUND OR GROOVE TEAR THE

18 SKIN?

19 A WELL, IT DISRUPTS THE SKIN. IT DEPENDS

20 HOW DEEPLY IT IS. YOU GET INTO AN AREA HERE WHERE

21 YOU'RE TALKING ABOUT HOW MUCH OF THE SKIN. ANY OF

22 THEM THAT -- ANY GRAZE WOUNDS THAT YOU'D IDENTIFY AS
23 A GRAZE WOUND WOULD BY DEFINITION DISRUPT THE OUTER
24 LAYER OF THE EPIDERMIS OF THE SKIN. A DEEPER GRAZE
25 WOUND COULD DISRUPT THE DERMIS OF THE SKIN AND YOU
26 COULD SEE THE FAT UNDERLYING IT. AND I THINK YOU
27 COULD STILL CALL THAT A GRAZE WOUND. A GRAZE WOUND
28 WOULD BE A WOUND THAT WOULD BE -- THE SURFACE WOULD

41508

1 BE ENTIRELY OPEN. AND THEN WHEN YOU GOT DEEP
2 ENOUGH, SO THERE WAS AN ENTRANCE AND EXIT, IT'S NO
3 LONGER A GRAZE WOUND.

4 Q AND, OF COURSE, IN YOUR OPINION THESE
5 ARE NOTHING MORE THAN BRUISES?

6 A THAT'S CORRECT.

7 Q AND DOES THE POSITION OF THOSE BRUISES,
8 AND YOUR OPINION OF HOW THEY WERE CAUSED, FURTHER
9 CONFIRM THE NOTION THAT THE WOUND TO THE RIGHT ARM
10 CAME FROM BACK TO FRONT?

11 A YES.

12 Q AND IF THE WOUND TO THE RIGHT ARM CAME
13 FROM BACK TO FRONT, THEN MR. MC CARTHY'S CONSTRUCT
14 THAT IT IS SOMEHOW CONNECTED TO THE WOUND TO
15 MR. MENENDEZ' LEFT ELBOW IS WRONG, CORRECT?

16 A THAT'S CORRECT.

17 Q AND YOU DO BELIEVE IT IS WRONG, DON'T
18 YOU?
19 A YES, I DO.
20 MR. CONN: OBJECTION. LEADING.
21 THE COURT: OVERRULED.
22 THE WITNESS: YES, I DO.
23 MS. ABRAMSON: YOUR HONOR, THIS WOULD BE AS
24 GOOD A TIME AS ANY.
25 THE COURT: OKAY. WE'LL TAKE A RECESS UNTIL
26 3:30. DON'T DISCUSS THE MATTER. DON'T FORM ANY
27 FINAL OPINIONS ABOUT IT. WE'LL RESUME AT 3:30.
28 (A RECESS WAS TAKEN FROM

41509

1 3:15 P.M. TO 3:40 P.M.)
2
3 THE COURT: OKAY. EVERYBODY IS PRESENT.
4 WE'LL GET THE JURY OUT, PLEASE.
5 (THE JURY ENTERED THE
6 COURTROOM AND THE FOLLOWING
7 PROCEEDINGS WERE HELD:)
8
9 THE COURT: THE JURY IS BACK IN COURT. YOU
10 MAY CONTINUE YOUR DIRECT EXAMINATION.
11 MS. ABRAMSON: THANK YOU VERY MUCH.

12 Q DR. FACKLER, I PUT UP, I MOUNTED ON TO

13 295, A PHOTOGRAPH OF AN X RAY.

14 DO YOU RECOGNIZE THAT TO BE THE X RAY OF

15 MR. MENENDEZ' RIGHT ARM?

16 A YES.

17 Q AND YOU HAVE DESCRIBED THE FRACTURE THAT

18 IS APPARENT IN THAT X RAY AS ONE THAT HAS THE

19 CHARACTERISTICS OF BEING CAUSED BY CAVITATION RATHER

20 THAN BY SHATTERING BY INDIVIDUAL PELLETS; IS THAT

21 CORRECT?

22 A THAT'S CORRECT.

23 Q NOW, ARE THERE, HOWEVER, PELLETS BOTH

24 AROUND AND IN THE FRACTURE SIDE?

25 A MAY I GO TO THE DIAGRAM?

26 THE COURT: YES.

27 THE WITNESS: YES. YES, THERE ARE.

28 Q BY MS. ABRAMSON: AND ARE YOU AWARE OF

41510

1 THE FACT THAT DR. LAWRENCE COUNTED NINE PELLETS IN

2 THAT ARM AND DR. MC CARTHY COUNTED EIGHT PELLETS IN

3 THAT ARM? YOU'RE AWARE OF THEIR PREVIOUS TESTIMONY

4 TO THAT EFFECT?

5 A YES, I READ THAT.

6 Q AND HOW MANY, DR. FACKLER, DO YOU COUNT

7 IN THAT ARM?

8 A AT LEAST NINE, MAYBE TEN. MORE LIKELY
9 TEN.

10 Q AND WHEN YOU SAY MORE LIKELY, WHAT, IN
11 PARTICULAR -- AND IF YOU HAVE THE RED PEN YOU CAN
12 CIRCLE -- AND LET'S GIVE THAT EXHIBIT ITS NUMBER SO
13 THAT WE'RE MAKING A RECORD HERE.

14 IT'S 175.

15 THE COURT: WHAT DO YOU WANT HIM TO DO NOW?
16 YOU WANT HIM TO CIRCLE THE --

17 Q BY MS. ABRAMSON: IS THERE AN AREA WHERE
18 YOU CAN'T TELL IF THERE'S ONE PELLET OR MORE THAN
19 ONE?

20 A SHOULD I PUT AN ARROW?

21 Q NO. JUST DO THE CIRCLE.

22 A (WITNESS COMPLIES.)

23 Q NOW, YOU'VE DRAWN A CIRCLE AROUND AN
24 AREA THAT'S BRIGHT WHITE ON THAT PHOTOGRAPH OF THAT
25 X RAY?

26 A I WOULDN'T CHARACTERIZE IT BY VERY
27 BRIGHT. AS A MATTER OF FACT, IT'S AN AREA THAT
28 REALLY DOESN'T SHOW UP ON MY X RAYS, BUT IT SHOWS UP

2 Q IT'S YOUR UNDERSTANDING THE PHOTOGRAPHS
3 WERE MADE FROM THE NEGATIVES OF THE ORIGINAL
4 PHOTOGRAPHS OF THE X RAYS?

5 A YES. CERTAINLY IT SHOWS UP ON THE
6 PHOTOGRAPH. THERE'S NO QUESTION. THE FACT THAT IT
7 DOESN'T SHOW UP ON MINE -- I THINK MINE -- MY X RAY
8 SET WAS MADE OF COPIES OF A MICROFILM WHICH WAS
9 ENLARGED, AND I THINK SOMETHING WAS LOST IN THE
10 PROCESS, BECAUSE IN MINE IT'S JUST NOT VISIBLE AND
11 IT IS VISIBLE IN THIS. THAT'S WHY I SAY I WOULDN'T
12 CHARACTERIZE IT AS VERY BRIGHT. I MEAN, IT CLEARLY
13 IS THERE, BUT IT'S -- IT'S, AS I SAY, IT'S PRETTY
14 MARGINAL AND MARGINAL ENOUGH SO THAT WHEN YOU
15 ENLARGE AND REPRODUCE THE X RAYS ENOUGH, IT'S THE
16 FIRST THING TO GO. IT'S THERE. IT'S BACK TO THE
17 BONE. IT'S NOT EASY TO SEE ONE OF THESE PELLETS IN
18 BACK OF THE BONE OR IN FRONT OF THE BONE.

19 Q ARE YOU AWARE OF THE FACT THAT
20 DR. LAWRENCE COUNTED THAT AREA AS ONE PELLET?

21 A NO. I CERTAINLY COULDN'T BE AWARE OF
22 THAT BECAUSE WHEN I WAS READING THAT, I HAD MY
23 X RAYS TO LOOK AT AND I ONLY -- I DIDN'T SEE IT.

24 Q ALL RIGHT. SO YOU WEREN'T HERE, YOU
25 DIDN'T SEE WHAT HE WAS POINTING TO?

26 A NO.

27 Q NOW, YOU'RE SAYING THAT'S ONE OR MORE
28 THAN ONE. WHY ARE YOU NOT SURE?

1 A I THINK IT'S TOO BIG FOR ONE. I THINK
2 IT'S MOST LIKELY TWO. IT COULD BE ONE THAT'S
3 FLATTENED OR IT COULD BE TWO. I JUST CAN'T TELL.

4 SO I JUST SAY I COUNT IT AS ONE AND
5 POSSIBLY TWO.

6 Q AND DOES THAT PHOTOGRAPH OF THAT X RAY
7 DEMONSTRATE THE NATURE OF THE FRACTURE THAT YOU HAVE
8 DESCRIBED AS SIMPLE RATHER THAN BONE MISSING AND
9 BONE BLOWN AWAY?

10 A OH, YES, IT DOES. THERE REALLY ARE NO --
11 YOU CAN SEE IF YOU LOOK AT THE EDGE OF THE LOWER
12 PIECE OF THE BONE, IT APPEARS THAT IT WOULD NEST
13 RIGHT INTO THE -- SORT OF LIKE TWO PIECES OF A PUZZLE
14 COMING TOGETHER INTO THE UPPER ONE. IT APPEARS TO
15 ME TO BE A SIMPLE BREAK AS OPPOSED TO OTHER X RAYS
16 IN WHICH THERE'S A GREAT DEAL OF BONE MISSING AND,
17 YOU KNOW, UP TO 10 OR MORE FRAGMENTS AROUND.

18 NOW, I DO THINK, HOWEVER, THERE HAVE
19 BEEN SOME BONY HITS HERE BY -- I DON'T THINK IT'S
20 PURELY ONLY CAVITATION. I THINK CAVITATION IS WHAT
21 BROKE IT BECAUSE THAT'S THE WAY CAVITATION BREAKS
22 THINGS. BUT I THINK SOME OF THESE PELLETS DID
23 SCRAPE BY THAT AND SCRAPE OFF CHUNKS OF THE PELLETS
24 ON IT.

25 Q BECAUSE THERE ARE ALSO FRAGMENTS THERE,
26 CORRECT?
27 A YES, THERE ARE FRAGMENTS THERE --
28 Q YOU DIDN'T COUNT THE FRAGMENTS?

41513

1 A OH, NO. YOU ASKED ME THE LARGE -- THE --
2 MORE OR LESS THE TOTAL, WHAT I THOUGHT WAS THE TOTAL
3 BUCKSHOT. BUT THE FRAGMENTS -- NO, THERE ARE SEVERAL
4 FRAGMENTS THERE, BUT IT'S DIFFICULT TO KNOW IF
5 THEY'RE FROM FRAGMENTS -- THEY'RE LITTLE BITS OF
6 PELLETS THAT HAVE ALREADY GONE THROUGH. I THINK
7 MOST OF THAT COLUMN STAYED IN ONE COLUMN, GIVEN THE
8 BIG CAVITY, AND THEN YOU HAVE A FEW OF THEM, BUT
9 ENOUGH, TO HIT AND SCRAPE OFF THE CHUNKS.
10 Q SO IT WOULD BE CHEATING TO COUNT THEM?
11 A PARDON ME?
12 Q IT WOULD BE CHEATING TO COUNT THEM IF
13 THEY PASSED THROUGH?
14 A WELL, IF YOU'RE ASKED TO COUNT THE
15 NUMBER OF BUCKSHOT ON THAT PHOTOGRAPH, WHICH I
16 THOUGHT WAS THE FORM OF THE QUESTION --
17 Q IT WAS.
18 A -- THEN YOU COULDN'T COUNT THEM.
19 Q IT WOULDN'T BE RIGHT TO COUNT THEM?

20 A OF COURSE NOT.

21 Q EVEN THOUGH THEY INDICATE THERE MAY HAVE
22 BEEN ANOTHER PELLET THERE OR TWO?

23 A WELL, THEY'RE PARTS OF ANOTHER PELLET
24 THAT'S NO LONGER THERE, YES.

25 Q AND JUST TO DEMONSTRATE WHAT YOU MEAN BY
26 THE COMPARISON BETWEEN A BREAK DUE TO CAVITATION OR
27 BREAK AS TO THIS RIGHT ARM, I WANT TO SHOW YOU
28 WHAT'S PREVIOUSLY BEEN MARKED 173 AND WHAT'S BEEN

41514

1 PREVIOUSLY MARKED 167. I'LL JUST OVERLAY THESE.

2 DO YOU RECOGNIZE 173 TO BE AN X RAY
3 PHOTOGRAPH OF MRS. MENENDEZ' RIGHT FOREARM?

4 A YES.

5 Q AND DOES THAT SHOW A DIFFERENT KIND OF
6 FRACTURE PATTERN THAN MR. MENENDEZ' RIGHT ARM?

7 A OH, YES, BECAUSE HERE WE SEE NOT ONLY
8 MANY MORE SMALL FRAGMENTS, BUT IF YOU COUNT THE
9 ACTUAL NUMBER OF BONE FRAGMENTS, YOU CAN SEE IF WE
10 START DOWN HERE AT THE BOTTOM THERE'S ONE, TWO, I
11 THINK THAT'S A THIRD ONE, FOUR, FIVE, SIX, SEVEN,
12 LOOKS LIKE AN EIGHTH ONE.

13 AND NOT ONLY THAT, IT APPEARS LIKE
14 THERE'S AN AREA HERE WHERE -- OR SHOULD BE. I DON'T

15 THINK ALL THOSE FRAGMENTS TOGETHER WOULD MAKE UP
16 ENOUGH BONE TO FILL IN THE DEFECT. SO I THINK
17 THERE'S CERTAIN FRAGMENTS THAT ARE LEFT AND ARE NO
18 LONGER THERE.

19 Q AND SIMILARLY WITH 167, WHICH IS A
20 PHOTOGRAPH OF AN X RAY OF MRS. MENENDEZ' UPPER RIGHT
21 ARM, IS THAT ALSO A FRACTURE WITH MANY PIECES OF
22 BONE?

23 A YES, IT IS. UP HERE WE HAVE -- WELL,
24 HERE -- HERE WE HAVE A LOT OF FRAGMENTS RIGHT
25 OVERLYING THE BONE. SO THERE'S SOME FRAGMENTS I
26 DON'T THINK WE CAN SEE BECAUSE IT'S BEHIND. BUT
27 HERE'S A MAJOR FRAGMENT. HERE'S ANOTHER. AND I
28 THINK THERE'S A SEPARATE ONE HERE BECAUSE THERE'S A

41515

1 BEND. THERE'S ONE. THERE'S ONE. OH, I DON'T
2 KNOW. THERE'S EIGHT OR NINE APPROXIMATELY. AND
3 THEN THERE'S A CRACK UP THROUGH HERE. IT'S A
4 COM- -- WHAT WE CALL A COMMUNUTED FRACTURE. WHEN
5 THERE'S THREE OR MORE FRAGMENTS, WE GENERALLY SAY
6 THAT'S COMMUNUTED. THAT MEANS THERE'S A BUNCH OF
7 FRAGMENTS.

8 Q YOU'RE AWARE WHAT THE WEBSTER'S
9 DICTIONARY DEFINITION OF COMMUNUTED IS?

10 A WELL, I'M NOT SURE WHAT WEBSTER -- HE
11 PROBABLY SAYS IT -- HE PROBABLY DOESN'T GIVE A NUMBER
12 TO THE FRAGMENTS. HE PROBABLY SAYS FRAGMENTED
13 FRACTURE. I DON'T KNOW.

14 Q PULVERIZED.

15 A OKAY, PULVERIZED.

16 Q REMEMBER I READ THE DICTIONARY LAST
17 NIGHT AND CAME UP WITH THE WORD PULVERIZED. WHAT
18 THEY SAID IS COMMINUTED?

19 A I DON'T THINK THAT MOST MEDICAL
20 DICTIONARIES WOULD QUITE USE THAT TERM.

21 Q MEDICAL DICTIONARIES WOULD REFER TO IT
22 BEING SEVERAL SEPARATE FRACTURES?

23 A SEVERAL, AND THEY SAY MANY. I DON'T
24 THINK THEY WOULD SAY IF YOU HAVE ONE END OF A ONE, A
25 SECOND END AND ONE EXTRA LARGE FRAGMENT, I DON'T
26 THINK ANY RADIOLOGIST WOULD CALL THAT A COMMINUTED
27 FRACTURE. I THINK THEY CALL THAT A SIMPLE FRACTURE.

28 Q TURNING AGAIN TO 295 AND CALLING YOUR

41516

1 ATTENTION, FIRST OF ALL, TO PHOTOGRAPH C, THAT'S A
2 PHOTOGRAPH THAT SHOWS THE BRASSIERE AREA OF
3 MRS. MENENDEZ IN CLOSE-UP?

4 A YOU REFERRING TO C DOWN HERE?

5 Q YES.

6 A YES.

7 Q DOES THAT CONFIRM YOUR OPINION THAT THE
8 ACTUAL DIRECTION HERE IS FRONT TO BACK?

9 A YES.

10 Q AND NOW WHILE YOU'RE UP, IF YOU WOULD
11 TAKE A LOOK AT PHOTOGRAPH G.

12 A YES.

13 Q AND IN PHOTOGRAPH G DOES THAT SHOW BLOOD
14 ON THE INSIDE OF MR. MENENDEZ' LEFT ARM?

15 A YES, IT DOES.

16 Q AND ASSUMING, HYPOTHETICALLY, THAT
17 THAT'S MR. MENENDEZ' BLOOD, DOES THAT SUPPORT YOUR
18 OPINION THAT THE WOUND TO HIS RIGHT ARM WAS
19 TRAVELING FROM RIGHT TO LEFT?

20 A YES. ASSUMING THIS ARM WAS UP IN A
21 POSITION WHERE IT WOULD BE IN LINE TO BE IN -- SO
22 THAT THE BLOOD THAT WAS TAKEN OUT OF THE ARM IN THE
23 FORWARD DIRECTION OF THE SHOT WOULD -- SO, IN OTHER
24 WORDS, IF HIS ARM WAS UP LIKE THIS, THEN IF THE
25 OTHER ARM WAS SOMEWHERE OUT HERE, IF IT WAS DOWN TO
26 HIS SIDE IT WOULDN'T EXPLAIN IT, BUT IT WOULD HAVE
27 TO BE SOMEWHERE TO LINE IT UP.

28 MR. CONN: OBJECTION. ANSWER CALLS FOR

1 ASSUMING FACTS NOT IN EVIDENCE.

2 THE COURT: OVERRULED.

3 Q BY MS. ABRAMSON: WOULD YOU EXPECT THAT
4 QUANTITY AND THAT DISTRIBUTION OF BLOOD ON HIS LEFT
5 ARM TO BE CAUSED BY BLOW-BACK FROM AN ENTRY WOUND ON
6 HIS RIGHT ARM?

7 A OH, NO, NO. NOT BLOW-BACK FROM AN ENTRY
8 WOUND ON AN ARM, NO.

9 Q WOULD YOU RETAKE THE STAND AND EXPLAIN
10 WHY YOU WOULD NOT EXPECT SUBSTANTIAL BLOOD TO BE
11 CAUSED BY A BLOW-BACK FROM AN ARM WOUND.

12 A YES.

13 Q IF YOU COULD EXPLAIN WHAT BLOW-BACK IS
14 AND HOW IT WORKS.

15 A WELL, BLOW-BACK WOULD JUST MEAN A
16 CERTAIN AMOUNT OF BLOOD COMING BACK OPPOSITE THE
17 DIRECTION OF TRAVEL OF THE PROJECTILE PATH IS WHAT
18 BLOW-BACK WOULD BE.

19 YOU GET -- YOU SEE BLOW-BACK ONLY IN
20 CERTAIN -- WELL, YOU SEE -- YOU CAN SEE A LITTLE BIT
21 OF IT IN HIGH-SPEED PHOTOGRAPHS OF BULLETS GOING
22 THROUGH GELATIN OR TISSUE OR ANYTHING. YOU GET SOME
23 BLOW-BACK. BUT THE MAJORITY, IN AN ARM, WHERE THE
24 PROJECTILE OR PROJECTILES ARE FREE TO GO IN THE
25 DIRECTION OF ITS TRAVEL, THE GREAT MAJORITY OF ANY
26 BLOOD THAT LEAVES THE ARM WOULD BE TAKEN IN THAT --
27 THAT'S THE WAY THE -- THAT'S THE WAY THINGS ARE GOING
28 IN THAT DIRECTION. NOW, BECAUSE OF THE EXPANSION OF

1 THE WALLS OF THE PERMANENT CAVITY, WHICH CAUSES THE
2 TEMPORARY CAVITY, YOU GET A LITTLE BIT COMING BACK.
3 YOU GET SOME COMING BACK. NOWHERE NEAR THAT
4 MAGNITUDE.

5 THE ONLY PLACE YOU WOULD GET SIGNIFICANT
6 BLOW-BACK IS IF SOMEHOW THE FORWARD PATH OF THE
7 PROJECTILES ARE INHIBITED OR THE TEMPORARY CAVITY,
8 THE EXPANSION, IS SOMEHOW CONCENTRATED IN AN AREA;
9 AND THE ONLY AREA THAT COMES TO MIND IS THE SKULL.

10 Q AND WITH SKULL INJURIES IS THERE
11 ROUTINELY BLOW-BACK BECAUSE OF THE CONFINEMENT OF
12 THE BONY STRUCTURE OF THE SKULL?

13 A YES, OF COURSE. THE CONFINEMENT IN THE
14 SKULL, IF THERE'S NO EXIT IN THE SKULL, THEN THE
15 EXPLOSIVE FORCE WOULD HAVE TO GO SOMEWHERE AND IT
16 WOULD GO THE OTHER DIRECTION.

17 Q IT GOES THROUGH THE HOLE THAT'S BEEN
18 CREATED BY THE ENTRY?

19 A THAT'S RIGHT, BECAUSE IT DOESN'T HAVE
20 ANY PLACE ELSE TO GO.

21 Q NOW, WITH RESPECT, ALSO, TO -- CAN YOU
22 NOTE THAT THERE ARE BLOOD SPATTERS DOWN THE LEFT
23 SIDE OF MR. MENENDEZ' SHIRT THAT LINE UP WITH THAT

24 LEFT ARM?

25 A WELL, YES. THEY SEEM TO BE STARTING AT
26 THE SHOULDER AND CONTINUING DOWN TO ABOUT THE
27 WRIST.

28 Q WHAT I'M SUGGESTING IS IF YOU LOOK AT J,

41519

1 DO YOU SEE THE LEFT ARM WITH BLOOD SPATTER ON -- IT
2 IS VISIBLE IN J?

3 A YES.

4 Q DO YOU SEE BLOOD SPATTERS ON THE SHIRT?

5 A YES.

6 Q AND CAN YOU TELL THE DIRECTION OF THOSE
7 BLOOD SPATTERS ON THE SHIRT?

8 MR. CONN: OBJECTION. NO FOUNDATION FOR
9 BLOOD SPATTER TESTIMONY FROM THIS WITNESS.

10 THE COURT: OVERRULED.

11 THE WITNESS: WELL, I CAN TELL THE DIRECTION
12 OF THE BLOOD SPATTER ON THE SHIRT, YES. THE ANSWER
13 TO YOUR QUESTION IS YES, I CAN TELL THE DIRECTION.
14 WHETHER OR NOT I SHOULD, I'M NOT SURE, BECAUSE I
15 HAVE NOT EVER DECLARED MYSELF AN EXPERT IN THE
16 SCIENCE OF BLOOD SPATTER, WHICH THERE ARE PEOPLE NOW
17 THAT TAKE A 40-HOUR COURSE AND BECOME CERTIFIED IN
18 THIS. I HAVE NOT DONE THAT. I CAN TELL YOU THE

19 DIRECTION, BUT IT'S NOT IN MY FIELD OF EXPERTISE I

20 ORDINARILY TESTIFY TO.

21 Q WITH THAT QUALIFICATION THAT THIS IS

22 YOUR OPINION, BUT NOT YOUR USUAL FIELD OF EXPERTISE,

23 TELL US THE DIRECTION.

24 MR. CONN: OBJECTION. NO FOUNDATION.

25 THE COURT: DO YOU FEEL COMFORTABLE THAT YOUR

26 OPINION HAS SOME WEIGHT?

27 THE WITNESS: YES, YOUR HONOR.

28 THE COURT: BASED ON WHAT?

41520

1 THE WITNESS: WELL, BASED ON THE FACT THAT

2 I -- ALTHOUGH I HAVEN'T TAKEN THE 40-HOUR COURSE, I

3 AM A MEMBER OF THE ASSOCIATION OF BLOOD STAIN

4 EXAMINERS AND MANY OF THEM ARE FIREARMS EXAMINERS

5 ALSO, AND WE TALK A LOT ABOUT THIS AND I'VE READ

6 THEIR PAPERS AND THIS SORT OF THING ENOUGH TO KNOW

7 THE BASICS OF THE FIELD.

8 THE COURT: ALL RIGHT. OVERRULED.

9 THE WITNESS: MAY I APPROACH THE DIAGRAM?

10 THE COURT: YES.

11 THE WITNESS: THANK YOU.

12 THE DIRECTION IS FROM RIGHT TO LEFT

13 BASICALLY. SOME ARE MORE ANGLED THAN OTHERS, BUT

14 IT'S BASICALLY RIGHT TO LEFT, BECAUSE YOU HAVE THE
15 MAIN -- RATHER THAN BEING A DROP THAT IS ROUND, IT'S
16 OBLONG AND IT'S POINTED ON ONE END AND THERE'S A
17 LITTLE DROP OFF THE END OF THE POINT AND THAT POINTS
18 TO THE DIRECTION IT'S GOING, BECAUSE THAT'S THE
19 WAY -- WHEN BLOOD HITS SOMETHING AT AN ANGLE, THAT'S
20 THE WAY IT LOOKS. IT'S VERY TYPICAL.

21 Q SO DOES BOTH THE APPEARANCE OF SPATTERED
22 BLOOD ON MR. MENENDEZ' LEFT ARM AND THESE BLOOD
23 SPATTERS ON HIS SHIRT GOING FROM RIGHT TO LEFT,
24 FURTHER SUPPORT YOUR OPINION THAT THE ARM WOUND ON
25 HIS UPPER ARM, THE MAIN WOUND THERE, WAS TRAVELING
26 FROM RIGHT TO LEFT?

27 A YES, IT'S CERTAINLY CONSISTENT WITH
28 THAT.

41521

1 Q OH, YES, ONE OTHER THING.
2 CALLING YOUR ATTENTION TO EXHIBIT 301,
3 PHOTOGRAPH F, DOES THAT APPEAR TO BE A CORONER'S
4 PHOTOGRAPH OF A PROBE BEING PLACED IN ONE OF THE
5 PELLET DEFECTS ON MR. MENENDEZ' LEFT ELBOW?

6 A YES.

7 Q AND HOW WOULD YOU DESCRIBE THE PATTERN
8 OF PELLET DEFECTS ON THAT ELBOW FROM A DISTANCE

9 PERSPECTIVE?

10 MR. CONN: OBJECTION. VAGUE.

11 THE COURT: DO YOU UNDERSTAND THE QUESTION?

12 THE WITNESS: YES, YOUR HONOR.

13 THE COURT: OKAY. YOU MAY ANSWER IT.

14 THE WITNESS: I THINK WHAT YOU MEAN IS THE
15 DISTANCE OF A SHOTGUN FROM THE TARGET CAN GENERALLY
16 BE DETERMINED BY HOW WIDELY SPREAD APART THE PELLETS
17 ARE; IN OTHER WORDS, THE CLOSER THEY ARE TOGETHER,
18 THE CLOSER IT IS TO THE SHOTGUN BARREL; AND THE
19 FARTHER THEY GET APART, THE FARTHER IT IS AWAY.

20 AND IN LOOKING AT THIS, THESE PELLETS,
21 THE ONE THAT IS -- THE ONE WITH THE PROBE IN IT FROM
22 THE ONE NEAREST TO IT, APPEARS TO BE AT LEAST MAYBE
23 AN INCH AND A QUARTER, MAYBE AN INCH AND A HALF, TO
24 THE OTHER ONE. AND THEN THERE ARE A FEW UP HERE
25 THAT ARE SOMEWHAT CLOSER THAN THAT. BUT THE SPREAD
26 APART OF THESE WOULD LEAD ME TO BELIEVE THAT
27 ALTHOUGH I HAVE NOT MYSELF USED THIS SHOTGUN AND
28 DONE PATTERNING, I HAVE SEEN THE PATTERNS DONE BY --

41522

1 MR. MORTON DID A COUPLE PATTERNS AND ALSO

2 DR. MC CARTHY'S, I HAVE HIS TARGETS AVAILABLE. AND

3 USING THAT AS A BASIS AND MY OWN KNOWLEDGE OF

4 APPROXIMATIONS, I WOULD SAY THAT THE DISTANCE FROM
5 THE SHOTGUN TO THAT ARM --

6 Q BY MS. ABRAMSON: LET ME ASK YOU THIS,
7 DR. FACKLER. I'M NOT GOING TO REQUIRE YOU TO GIVE
8 AN ABSOLUTE DISTANCE. THE REAL ISSUE IS: IS THIS
9 CLOSE OR FAR?

10 A WELL, IT'S -- I CAN'T ANSWER IN TERMS OF
11 CLOSE AND FAR, BECAUSE THEY'RE NOT DEFINITE. IF I --
12 COULD I ANSWER IN TERMS OF A RANGE OF --

13 Q YES.

14 A COULD I SAY 10 TO 14 FEET?

15 Q YES.

16 A OKAY, I'LL SAY THAT.

17 Q I MEAN, IS THAT WHAT YOU THINK?

18 A THAT'S WHAT I THINK, YES.

19 Q IS THIS A SPREAD PATTERN?

20 A WELL, IT'S SPREAD TO THE DISTANCE YOU'D
21 EXPECT FROM 10 TO 14 FEET.

22 Q WHEN YOU HAVE A SPREAD PATTERN LIKE
23 THAT, IS IT CONCEIVABLE THAT THE SHOT COLUMN THAT IS
24 NOW SPREAD TO WHERE IT GIVES THIS PARTIAL PATTERN ON
25 AN ELBOW, WOULD THEN SOMEHOW COME BACK TOGETHER
26 AGAIN TO BLOW OUT A BIG HOLE IN THE UPPER ARM?

27 A NO. THAT'S ENTIRELY INCONCEIVABLE.

28 Q AND IS IT POSSIBLE THAT WHEN YOU HAVE A

1 PATTERN THAT STARTS OUT IN ITS IMPACT AREA, THAT
2 SPREAD WOULD HAVE A SIGNIFICANT PORTION OF THAT
3 PATTERN AS IT CONTINUES ACROSS THE BODY, STILL
4 CLUMPED IN A TIGHT PATTERN?

5 A NO, NOT AT ALL. THE CHARACTERISTICS OF
6 A SHOT PATTERN WHEN IT GOES THROUGH AN ARM OR ANY
7 OTHER THING, IS TO SPREAD AS IT GOES THROUGH. I
8 MEAN, SO WHEN IT COMES OUT, IT'S SPREAD IN A WIDER
9 ANGLE THAN IT WAS WHEN IT WENT IN.

10 Q BUT YOU'RE NOT ASSUMING THAT ALL OF THE
11 PELLETS WENT THROUGH THE LEFT ARM. THAT'S JUST PART
12 OF THE PATTERN, CORRECT?

13 A THAT'S TRUE.

14 Q I'M NOT ASKING YOU TO IMAGINE THAT THEY
15 WENT THROUGH THE ARM AND CAME BACK TOGETHER. BUT
16 EVEN IF THE MAJORITY OF THE PELLETS PASSED BY THAT
17 ARM, IS THERE ANY REASON TO SEE THAT THE MAJORITY OF
18 THE PELLETS THAT PASSED BY HAD TWO DISTINCT
19 CHARACTERISTICS, ONE PART IN A TIGHT CLUMP AND ONE
20 PART STILL AS SPREAD AS WHAT'S ON THAT ELBOW?

21 A NOW I UNDERSTAND YOUR QUESTION. NOW
22 IT'S CLEAR.

23 NO. YOU BASICALLY -- WHEN YOU PATTERN A
24 SHOTGUN AND YOU CUT IT IN HALF, THE TOP HALF IS
25 PRETTY CLOSE TO THE BOTTOM HALF. YOU DON'T SEE ALL
26 THE PELLETS IN THE TOP HALF, ONE-HALF INCH OF

27 ANOTHER AND DOWN ON THE BOTTOM HALF SPREAD AN INCH
28 APART.

41524

1 Q IS THAT DEPENDENT ON HOW BIG OF THE
2 PIECE YOU DO KNOW, WHICH IS THIS ELBOW?

3 IN OTHER WORDS, IN THE EARLY STAGES,
4 WHEN IT'S CLOSER AND IT'S JUST STARTING TO SPREAD,
5 CAN YOU SEE SOME IRREGULARITY, SOME SATELLITES, BUT
6 STILL A MAIN SHOT COLUMN?

7 A WELL, YOU CAN SEE SOME SATELLITES AT ANY
8 DISTANCE.

9 Q BUT I'M TALKING ABOUT, DOES IT AT SOME
10 POINT BECOME A TOTALLY SPREAD PATTERN WHERE ALL
11 PARTS OF IT ARE SPREAD?

12 DO YOU UNDERSTAND THE --

13 A NOT EXACTLY, BECAUSE IT'S NOT SOMETHING
14 THAT -- IT'S A CONTINUUM. IN OTHER WORDS, THIS WHOLE
15 SHOT PATTERN, IT STARTS FROM THE BARREL TO WHEREVER,
16 40 FEET, IT'S A STRAIGHT CONE; AND IF YOU CUT ANY
17 PART -- IF YOU PUT A TARGET AT ANY POINT ACROSS THAT
18 YOU'LL FIND JUST A LARGER CONSTRUCTION OF THE SAME
19 BASIC PATTERN YOU FOUND EARLIER. YOU DON'T HAVE ANY
20 REAL -- MUCH CHANGING -- YOU CAN GET A LITTLE BIT OF
21 CHANGING, BUT VERY -- YOU KNOW, NOT ANY MARKED

22 CHANGING OF THE, YOU KNOW, THE PATTERN. I MEAN, YOU
23 COULD RECOGNIZE -- IF YOU DID THIS, YOU COULD
24 RECOGNIZE, YEAH, THIS IS A MORE DISTANT FORM OF THE
25 SAME PATTERN. SAY IF YOU PUT ONE THIN PAPER TARGET
26 SIX FEET, ANOTHER AT 12 FEET, ANOTHER AT 18 FEET, ON
27 PROBABLY 19 OUT OF 20 SHOTS YOU'D BE ABLE TO MATCH
28 IT UP, YEAH, THIS WAS THE 20 FEET THAT GOES WITH THE

41525

1 SIX FEET OF THIS ONE. THERE MAY BE ONE THAT MIGHT
2 BE QUESTIONABLE, BUT YOU CAN MOSTLY TELL.

3 Q AND IF YOU'RE STARTING OUT WITH A SPREAD
4 THAT APPEARS TO BE WITHIN THE RANGE OF 10 TO 14
5 FEET, BY 16 FEET YOU WOULDN'T EXPECT ONE PART OF
6 THAT SHOT COLUMN TO STILL BE A SOLID CORE OF PELLETS
7 THAT ARE CLUMPED TOGETHER?

8 A NO, CERTAINLY. IT COULD NEVER GET BACK
9 TO THAT STATE.

10 Q AND IS THE SPREAD ON MRS. MENENDEZ' LEFT
11 BREAST SIMILAR TO THE SPREAD ON MR. MENENDEZ' LEFT
12 ELBOW; OR IS IT WIDER OR TIGHTER OR --

13 A NO. IT'S CONSIDERABLY TIGHTER.

14 Q SO WOULD YOU EVEN EXPECT THE SPREAD ON
15 HER LEFT BREAST TO BE PART OF THE SAME SHOT PATTERN
16 AS WHAT'S ON HIS LEFT ELBOW?

17 A NO, I WOULDN'T.

18 Q IS IT MORE SIMILAR IN SPREAD, THAT IS,
19 THAT ON HER LEFT BREAST, TO WHAT WE'RE SEEING IN
20 301-D, WHAT APPEARS TO BE A SPREAD OF PELLET DEFECTS
21 ON MR. MENENDEZ' DORSAL FOREARM?

22 A CAN YOU REPEAT THE QUESTION?

23 Q YES. IS THE SPREAD ON HER LEFT BREAST --
24 YOU'VE INDICATED IT SEEMS TO BE TIGHTER THAN WHAT'S
25 ON MR. MENENDEZ' LEFT ELBOW.

26 IS THE SPREAD ON HER LEFT BREAST, AS YOU
27 SEE IT, MORE SIMILAR TO THE SPREAD ON HIS DORSAL
28 FOREARM IN PHOTOGRAPH D?

41526

1 A YEAH. IT'S CLOSER TO IT, YEAH. YES,
2 CORRECT.

3 Q NOW, DID YOU ALSO EXAMINE THE X RAYS AND
4 PHOTOGRAPHS OF -- I'LL TAKE BOTH OF THESE DOWN.
5 WE'RE DONE WITH THESE.

6 BEFORE WE GET TO WHAT'S DEPICTED ON THAT
7 PARTICULAR CHART THAT MR. LEVIN IS PUTTING UP, I
8 JUST WANT TO ASK YOU SOME QUESTIONS ABOUT SOME OF
9 THE OTHER WOUNDS THAT ARE INVOLVED.

10 CONCERNING MRS. MENENDEZ, YOU'RE AWARE
11 OF WHAT DR. GOLDEN CALLS WOUND NO. 2, WHICH IS A

12 WOUND AREA ON HER -- THE RIGHT SIDE OF HER FACE, THE

13 UPPER PORTION OF THE RIGHT SIDE OF HER FACE.

14 A YES.

15 Q AND WITH RESPECT TO THE DIRECTION, OR AS

16 SOMEONE HAS CALLED IT, THE DIRECTIONALITY, BUT WE'LL

17 CALL IT THE DIRECTION OF THAT WOUND, DID YOU CONSULT

18 WITH THE X RAYS AND PHOTOGRAPHS OF THE X RAYS?

19 A YES, I DID.

20 Q LET ME MARK THESE ON THE OUTSIDE AS

21 WELL.

22 I'M HOLDING WHAT'S BEEN PREVIOUSLY

23 MARKED 171 AND 174.

24 AND DO YOU RECOGNIZE THESE AS

25 PHOTOGRAPHS OF THE X RAYS OF MRS. MENENDEZ' SKULL?

26 A YES, I DO.

27 Q AND DID YOU MAKE A DETERMINATION BASED

28 ON EXAMINING THE PHOTOGRAPHS AND THE X RAYS AND THE

41527

1 PHOTOGRAPHS OF THE X RAYS, AND DR. GOLDEN'S

2 DESCRIPTION FROM THE AUTOPSY OF THE DIRECTION OF

3 THAT WOUND TO THE UPPER PORTION OF HER FACE WITH

4 INJURIES TO THE RIGHT, TO THE CENTER AND SOMEWHAT TO

5 THE LEFT?

6 A YES.

7 Q AND WHAT WAS YOUR OPINION -- WHAT IS

8 YOUR OPINION, DR. FACKLER?

9 A I HAD TO AGREE WITH DR. GOLDEN, IT'S

10 FRONT TO BACK.

11 Q AND DO YOU SEE -- THAT'S A SHOT THAT

12 FAILURE ANALYSIS CALLS 4. LET ME JUST SHOW YOU THE

13 WAY IT'S PORTRAYED IN THESE ILLUSTRATIONS WHICH HAVE

14 BEEN PREVIOUSLY MARKED 256 AND 257. THE JURY HAS

15 ALREADY SEEN THESE, BUT YOU'VE ONLY SEEN LITTLE

16 VERSIONS.

17 THAT'S 256 AND THAT'S DOWN BELOW -- AND

18 DOWN BELOW THAT'S WHAT'S BEEN LABELED SHOT 4B, 257.

19 CAN YOU DISCERN FROM THOSE THE GENERAL

20 ANGLE THAT IS BEING PORTRAYED IN THESE

21 ILLUSTRATIONS?

22 A WELL, THE ANGLE THAT YOU'RE DEPICTING

23 HERE APPEARS TO BE AN ANGLE ALMOST PARALLEL TO THE --

24 YOU KNOW, THE FLAT AXIS OF THE BODY FROM RIGHT TO

25 LEFT RATHER THAN FRONT TO BACK. THIS IS ALMOST 90

26 DEGREES, THE WAY IT LOOKS TO ME.

27 Q IS THERE ANY SUPPORT IN THE MEDICAL

28 EVIDENCE THAT YOU HAVE REVIEWED FOR THIS

2 A NONE WHATSOEVER. AND THERE'S A
3 TREMENDOUS AMOUNT OF CONTRADICTING IT.

4 Q NOW, DO YOU RECALL DR. LAWRENCE'S
5 TESTIMONY WHERE HE INDICATED THAT HE DOESN'T AGREE
6 WITH THIS ANGLE, BUT STILL BELIEVES THERE WAS SOME
7 ANGULATION OF RIGHT TO LEFT FOR THAT WOUND THAT
8 DR. GOLDEN CALLS WOUND NO. 2?

9 A YES, I RECALL THAT.

10 Q AND DO YOU BELIEVE THERE'S ANY SUPPORT
11 IN THE EVIDENCE, AS YOU HAVE REVIEWED IT, FOR
12 DR. LAWRENCE'S POSITION THAT THERE IS SOME SLIGHT
13 ANGULATION RIGHT TO LEFT?

14 A WELL, I -- I DON'T KNOW WHAT SOME LIGHT
15 ANGULATION MEANS. IT COULD MEAN 10 DEGREES. AND NO
16 ONE CAN SAY THIS IS FLAT ON ABSOLUTELY 90 DEGREES.
17 IT COULD BE 10 DEGREES OFF, SO THERE COULD BE SOME
18 SLIGHT ANGULATION. BUT I THINK WHAT HE'S SAYING IS
19 IT'S BASICALLY A FRONT TO BACK, PLUS OR MINUS 10
20 DEGREES. BUT CERTAINLY IT'S NOT 30 OR 40 OR
21 CERTAINLY NOT 90 DEGREES OFF FRONT TO BACK.

22 Q IS THERE ANY PARTICULAR PELLET WOUND
23 THAT YOU CAN SEE IN THE X RAY THAT YOU ALSO OBSERVED
24 IN LOOKING AT THE PHOTOGRAPHS THAT SUPPORTS YOUR
25 CONCLUSION THAT THIS IS FRONT TO BACK?

26 A YES. THERE'S ONE THAT IS REMARKABLE
27 HERE THAT I THINK PROVES THE POINT VERY WELL.

28 UNFORTUNATELY, THE CIRCLING OF IT

1 OBLITERATES IT IN THE LATERAL VIEW. IS THERE ANY
2 WAY OF REMOVING THAT RED STUFF.

3 Q THERE IS A WAY OF REMOVING THE
4 PHOTOGRAPH. THE RED STUFF IS ON THE PLASTIC.

5 A I DIDN'T KNOW THAT. I'M SORRY.

6 Q SEE?

7 A OH, YES.

8 NO, THIS SHOWS IT VERY WELL. THERE ARE
9 TWO THINGS.

10 Q THAT'S 171 YOU'RE HOLDING IN YOUR RIGHT
11 HAND?

12 A YES. THERE'S TWO THINGS AND I'LL SHOW
13 THIS FIRST, AND THEN IF I COULD SEE -- THERE'S A
14 PHOTOGRAPH ALSO THAT SHOWS THIS.

15 IN THE FIRST PLACE WE HAVE A -- SHOWING --
16 SHOULD I APPROACH WITH THIS OR HOW SHOULD I
17 DEMONSTRATE THIS?

18 Q WELL, I THINK IT'S -- IT'S UP TO THE
19 JUDGE, ACTUALLY.

20 THE COURT: JUST PUT IT ON THE BOARD.

21 THE WITNESS: OKAY.

22 MS. ABRAMSON: HERE'S SOME MORE OF THESE
23 TACKS. SO YOU CAN JUST STICK THAT RIGHT UP ON ANY
24 AVAILABLE SURFACE.

25 THE WITNESS: NOW, THERE'S -- LET ME PULL THAT

26 UP FIRST. THESE RED MARKS SOMEWHAT OBSCURE IT. IF
27 I DO IT THIS WAY IT WILL BE EASIER. I'LL DO IT THE
28 SAME WAY WITH THIS ONE SO IT'S UNIFORM. LET ME PUT

41530

1 THEM BACK TOGETHER.

2 THERE'S A PROJECTILE -- THERE'S A
3 PROJECTILE RIGHT HERE ON THE FRONT-TO-BACK VIEW THAT
4 I THINK DR. MC CARTHY SAID WAS IN THE FRONTAL LOBES
5 OF THE BRAIN.

6 Q BY MS. ABRAMSON: IN HIS REPORT HE DID,
7 YES.

8 A AND IN ORDER TO -- FROM A FRONT-TO-BACK
9 VIEW, ALL YOU CAN TELL ABOUT THAT PROJECTILE IS THAT
10 IT COULD BE EITHER SITTING ON THE SKIN HERE ANYWHERE
11 IN BETWEEN OR SITTING ON THE SKIN OR RIGHT UNDER THE
12 SKIN IN BACK. IT COULD BE ANYWHERE ON A LINE.
13 THAT'S ALL ANYTHING ON ONE VIEW TELLS YOU, IT'S
14 SOMEWHERE ON THAT LINE.

15 IN ORDER TO LOCATE IT ON THAT LINE YOU
16 HAVE TO TRIANGULATE IT BY HAVING ANOTHER VIEW. WE
17 KNOW IT'S ON THAT LINE. WE TAKE A VIEW AND THERE IT
18 IS.

19 IF YOU LOOK CLOSELY, IT'S A
20 FLATTENED-OUT PROJECTILE AND IT HAS NOT PENETRATED

21 THE OUTER WALL OF THE SKULL. AND IT'S THE PART OF
22 THE PART THAT'S JUST THE OUTER WALL OF THE FRONTAL
23 SINUS.
24 YOU SEE THE FRONTAL SINUS UNDER IT
25 THERE. A FRONTAL SINUS IS A HOLLOW AREA BETWEEN TWO
26 LAYERS OF SKULL AT THAT POINT. AND THE OUTER LAYER
27 IS NOT REALLY THICK, ABOUT EIGHTH OF AN INCH. YOU
28 SEE RIGHT THERE -- IT'S FLATTENED OUT ON THAT AREA.

41531

1 IT HAS NOT PENETRATED IT.
2 SO, THEREFORE, TO BE IN THE FRONTAL
3 LOBES IT WOULD HAVE TO BE IN ABOUT HERE BECAUSE THE
4 SKULL COMES IN ABOUT THIS FAR, FRONTAL SINUS IS IN
5 HERE, AND THIS IS THE INNER TABLE OF THE SKULL AND
6 THEN THE FRONTAL LOBE IS IN HERE. SO IT'S NOWHERE
7 NEAR THE FRONTAL LOBE. AND THE FACT THAT IT IS
8 FLATTENED OUT MEANS THAT IT HAS TO BE COMING -- IT'S
9 NOT GOING TO FLATTEN OUT -- IF IT'S COMING SIDEWAYS
10 IT'S GOING TO SKIP AND GO -- IT'S GOING TO RICOCHET
11 OFF THE SKULL AND GO OUT. ANY OF THESE PROJECTILES
12 COMING ACROSS THE FACE HITTING AT THE ANGLE
13 DR. MC CARTHY SUGGESTS WOULD HAVE AN ENTRANCE HOLE
14 HERE AND EXIT HERE (POINTING). THEY WOULD GO
15 OUTSIDE THE FACE.

16 Q NO INDICATION THAT HAPPENED?

17 A NO.

18 Q DOES THE FLATTENED NATURE OF THAT PELLET

19 RIGHT ON THE SINUS FOREHEAD AREA SUPPORT

20 DR. GOLDEN'S DESCRIPTION THAT THESE WOUNDS ARE FRONT

21 TO BACK AND SUPPORT YOUR SIMILAR OPINION?

22 A YEAH, VERY STRONGLY SUPPORTS IT.

23 ANOTHER ONE IS THERE'S A PHOTOGRAPH THAT

24 SHOWS THIS AREA AND YOU SEE A ROUND HOLE. IT'S NOT

25 AN OBLIQUE HOLE. IT'S A ROUND HOLE. ANY ANGULATION

26 FROM THE SIDE WOULD CAUSE THE HOLE TO BE OBLIQUE AND

27 IT'S NOT.

28 Q OBLIQUE, MEANING MORE LIKE AN OVAL?

41532

1 A LIKE AN OVAL, YES.

2 Q NOW, WITH RESPECT TO PELLETS THAT WOULD

3 STRIKE, FOR EXAMPLE, AN AREA NEAR THE SLOPE, NEAR

4 SLOPING BONE OR CURVING BONE, LIKE THE SIDE OF THE

5 NOSE OR THE CURVATURE OF THE EYE ORBIT, OKAY?

6 A YES.

7 Q IF YOU SAW AN OVAL-SHAPED HOLE THERE

8 WOULD THAT INDICATE THAT IT CAME IN OBLIQUELY OR IS

9 THAT A FUNCTION OF THE SHAPE OF THE UNDERLYING

10 BONE?

11 A THE AMOUNT OF OBLIQUITY DEPENDS ON THE
12 THING STRUCK. SO IF YOU'RE -- IF IT STRIKES THE
13 SURFACE THAT'S OBLIQUE AND IT'S COMING LIKE THIS,
14 YOU CAN -- YOU CAN EITHER CHANGE THE ANGLE OF THE
15 PROJECTILE OR YOU CAN CHANGE THE ANGLE OF WHAT IT
16 HITS TO GET THIS OBLIQUITY.

17 Q SO IT COULD STILL BE COMING IN STRAIGHT
18 ON EVEN THOUGH IT MIGHT LEAVE AN OVAL OR ELONGATED
19 HOLE BECAUSE OF THE NATURE OF THE ANGLE OF WHAT IT'S
20 HITTING?

21 A IF THE NATURE OF WHAT IT'S HITTING IS
22 ANGLED, YES.

23 Q CAN YOU TELL US EITHER FROM THE
24 DESCRIPTION IN THE AUTOPSY REPORT OR FROM THE X RAYS
25 WHETHER OR NOT THESE PELLETS THAT CAME IN AS PART OF
26 SHOT NO. 2 WERE COMING IN AT HIGH VELOCITY AND
27 THEREFORE PENETRATED DEEPLY OR AT A LOWER VELOCITY
28 AND THEREFORE REMAINED AT THE FRONT OF THE FACE?

41533

1 A WELL, I PREFER NOT TO USE THE TERMS HIGH
2 AND LOW VELOCITY.

3 Q FINE.

4 A BECAUSE THEY DON'T REALLY MEAN
5 ANYTHING. WE HAVE A WONDERFUL SET OF ADJECTIVES

6 CALLED NUMBERS AND WE CAN USE VELOCITY RANGES. THE
7 VELOCITY THIS SHOTGUN IS STARTING OUT IS SOMEWHERE
8 AROUND 1200 FEET PER SECOND. IN ORDER FOR THE
9 VELOCITY TO GET AS LOW AS 500, 600 FEET PER SECOND,
10 WHICH WOULD INDICATE LESS PENETRATION OF THE PELLET,
11 IT WOULD HAVE TO HIT SOMETHING FIRST. I MEAN,
12 TRAVELING 10 FEET IN THE AIR WILL NOT SLOW IT DOWN
13 SIGNIFICANTLY. SO IT HAS TO HIT SOMETHING FIRST IF
14 IT'S GOING TO SLOW DOWN.

15 THE REASON I SAY THIS ABOUT HIGH AND LOW
16 VELOCITY IS TO BE EXACT, AND THE FACT THAT THE WOUND
17 BALLISTICS LITERATURE IS VERY MISLEADING IN THIS.
18 THERE ARE MANY, MANY DEFINITIONS. THERE ARE CERTAIN
19 PEOPLE WHO THINK HIGH VELOCITY IS OVER 2500 FEET PER
20 SECOND. OTHER PEOPLE SAY --

21 Q MY INTEREST HAS TO DO WITH THE
22 PENETRATION DEPTH AND WHETHER OR NOT YOU CAN TELL
23 THE PENETRATION FROM ANOTHER -- FIRST OF ALL, CAN
24 YOU TELL THE PENETRATION FROM THE INFORMATION
25 AVAILABLE?

26 A MOST OF THESE STAY PRETTY SUPERFICIAL.
27 THEY DIDN'T GO AS DEEP AS ONE WOULD EXPECT THEM TO.

28 Q OKAY. SINCE THEY STAYED SUPERFICIAL,

1 DOES THAT INDICATE THAT THEY MIGHT HAVE OR MUST HAVE
2 OR PROBABLY HIT SOMETHING ELSE FIRST?

3 A YES. THE ONE THAT'S MOST -- THAT'S MOST
4 ILLUSTRATIVE OF THIS IS THE ONE WE POINTED OUT IN
5 THE FOREHEAD. I JUST DON'T SEE HOW A FULL-POWER
6 NO. 4 BUCKSHOT COULD NOT GO INTO THE LOBE AND MAYBE
7 EVEN TO THE BACK OF THE BRAIN.

8 SO I THINK IT -- THAT HAD TO GO THROUGH
9 SOMETHING FIRST.

10 Q AND ARE YOU INCLINED, DR. FACKLER, TO
11 SPECULATE AS TO WHAT THAT WAS?

12 A NO.

13 Q AND WOULD IT REQUIRE SPECULATION FOR YOU
14 TO COME UP WITH WHATEVER OBJECT IT WAS THAT THESE
15 PELLETS MAY HAVE HIT FIRST?

16 A YEAH, I THINK IT WOULD.

17 Q IN ANY EVENT, IF THE DIRECTION IS FRONT
18 TO BACK, IN YOUR OPINION THIS WOULD HAVE TO BE A
19 SHOT THAT EITHER WENT THROUGH SOMETHING ELSE OR WAS
20 DEFLECTED BY SOMETHING ELSE?

21 A YES.

22 Q AND, THEREFORE, CANNOT BE AS PORTRAYED
23 IN FAILURE ANALYSIS' DIAGRAM OF A SOLO SHOT AIMED
24 JUST AT THAT PART OF THE FACE?

25 A NO, IT CAN'T.

26 Q IN ANY EVENT, EVEN IF IT WAS A SOLO SHOT
27 AIMED JUST AT THAT PART, THERE AREN'T ENOUGH PELLETS
28 THERE TO MAKE UP A WHOLE SHOT?

1 A THAT'S RIGHT. I THINK ONLY 10 ARE
2 DESCRIBED BY DR. GOLDEN IN HIS AUTOPSY.

3 Q NOW, DID YOU ALSO EXAMINE PHOTOGRAPHS
4 AND X RAYS RELATING TO THE WOUND THAT DR. GOLDEN
5 CALLED NO. 3 ON MRS. MENENDEZ, THE ONE THAT IMPACTED
6 THE AREA OF THE RIGHT MANDIBLE, RIGHT CLAVICLE?

7 A YES.

8 Q AND IS THERE A PHOTOGRAPH THAT
9 VISUALIZES AN AREA OF DISCOLORATION UNDER THE CHIN?

10 A YES.

11 Q AND DOES THAT AREA, BASED ON YOUR
12 EXPERTISE, LOOK LIKE A PELLET ENTRY OR DOES IT LOOK
13 MORE LIKE A GRAZE?

14 A I'D HAVE TO SEE -- YOU'RE TALKING ABOUT
15 THE --

16 Q NO. I'M TALKING ABOUT HERE.

17 A CAN YOU SHOW ME.

18 Q I'LL SHOW YOU THE PHOTOGRAPH.

19 A THERE ARE A FEW THAT ARE IN CLOSE
20 PROXIMITY, SO I'D HAVE TO KNOW FOR SURE WHICH ONE
21 YOU'RE SPEAKING OF.

22 MS. ABRAMSON: YOUR HONOR, WE HAVE ONE OF
23 THESE MARKED AND I DON'T -- I'M NOT GOING TO MARK

24 ANOTHER ONE. I JUST WANT TO SHOW HIM THE PHOTOGRAPH
25 TO REFRESH HIS RECOLLECTION BECAUSE IT'S ALREADY IN
26 EVIDENCE.

27 MR. CONN: I WOULD OBJECT TO THE USE OF AN
28 EXHIBIT THAT HASN'T BEEN MARKED UNLESS WE'RE GOING

41536

1 TO MARK IT.

2 THE COURT: LET ME SEE WHICH ONE YOU'RE
3 TALKING ABOUT.

4 MS. ABRAMSON: THIS ONE, YOUR HONOR.

5 THE COURT: THAT HAS BEEN MARKED AS ANOTHER
6 EXHIBIT; IS THAT RIGHT?

7 MS. ABRAMSON: I BELIEVE SO, BUT IF NOT I'LL
8 GIVE IT --

9 THE COURT: THE ONLY PROBLEM IS IF IT HASN'T
10 BEEN MARKED.

11 MS. ABRAMSON: WELL, I'LL HAVE TIME TO CHECK,
12 AND IF IT HASN'T I'LL MARK IT ANEW TOMORROW.

13 Q THAT IS A PHOTOGRAPH, HOWEVER, THAT YOU
14 ARE FAMILIAR WITH?

15 A YES.

16 Q AND I'M CALLING YOUR ATTENTION TO THIS
17 (POINTING).

18 MR. CONN: I WOULD OBJECT TO WHAT COUNSEL

19 MEANS BY THIS. NO ONE CAN SEE WHAT --

20 THE COURT: AT THIS POINT HE'S JUST USING IT

21 TO REFRESH HIS RECOLLECTION.

22 Q BY MS. ABRAMSON: YOU DON'T HAVE TO SHOW

23 IT. YOU CAN CIRCLE WHAT YOU'RE REFERRING TO.

24 A ON THE PHOTOGRAPH?

25 Q RIGHT ON THE PHOTOGRAPH.

26 YOU'RE CIRCLING A DARK AREA THAT APPEARS

27 JUST UNDER THE EDGE OF THE CHIN?

28 A YES.

41537

1 Q AND THE QUESTION WAS: DOES THAT APPEAR,

2 ON YOUR EXAMINATION OVER THE PAST FEW MONTHS WHEN

3 YOU'VE HAD THESE PHOTOGRAPHS, TO APPEAR TO BE A

4 PELLET ENTRY HOLE OR A GRAZE?

5 A WELL, IT'S A GRAZE OR A GROOVING.

6 EITHER ONE.

7 Q DOES NOT APPEAR TO BE AN ENTRY SITE?

8 A NO. THE DEFINITION OF A GRAZE OR A

9 GROOVING WOUND IS ONE THAT THE ENTIRE WOUND IS OPEN

10 AND DOESN'T HAVE A SPECIFIC ENTRY OR EXIT.

11 MR. CONN: I'M GOING TO ASK THE EXHIBIT TO BE

12 MARKED. I DON'T KNOW IF ANYONE KNOWS WHAT HE'S

13 REFERRING TO.

14 MS. ABRAMSON: I DON'T WANT TO TAKE THE TIME

15 TO FIND A BIG EXHIBIT.

16 THE COURT: LET'S JUST MARK IT. IT'LL BE

17 318.

18 THE WITNESS: 318. WANT ME TO MARK THAT UP

19 HERE?

20 THE COURT: PUT IT ON THE BACK.

21 THE WITNESS: ON THE BACK.

22 Q BY MS. ABRAMSON: AND IN EXAMINING THESE

23 PHOTOGRAPHS THEN, DR. FACKLER, WOULD IT BE CORRECT

24 TO STATE THAT YOU DON'T SEE ANY ACTUAL PELLET ENTRY

25 HOLES UNDER THE CHIN?

26 A UNDER THE CHIN? NO, I DON'T SEE ANY. I

27 SEE THAT GRAZE UNDER THE CHIN. THAT'S THE ONLY

28 THING I SEE UNDER THE CHIN.

41538

1 Q NOW, LET'S TURN TO THE WOUND THAT

2 DR. GOLDEN CALLS NO. 7 TO MRS. MENENDEZ, AND THAT IS

3 ILLUSTRATED AS FAILURE ANALYSIS'S NO. 8.

4 DR. FACKLER, HAVE YOU SPENT A

5 SUBSTANTIAL AMOUNT OF TIME STUDYING THIS PARTICULAR

6 WOUND?

7 A YES.

8 Q IS THIS ONE AREA WHERE YOU, IN FACT,

9 DISAGREE WITH DR. GOLDEN'S DIRECTIONALITY AS

10 REPORTED IN HIS WRITTEN REPORTS?

11 A WHAT WAS THAT, NO. 7 AGAIN?

12 Q SEVEN. WHAT HE CALLS THIGH/HIP.

13 A YES. HE SAYS IT'S PROXIMAL TO DISTAL.

14 I THINK IT'S -- I THINK IT'S DISTAL TO PROXIMAL.

15 Q OKAY. NOW, LET'S DO THAT, IF WE CAN, IN

16 ENGLISH.

17 A OH, I THINK --

18 Q WHICH DO YOU BELIEVE, BASED ON YOUR

19 EVALUATION OF THIS EVIDENCE, IS THE ENTRANCE WOUND?

20 THE WITNESS: MAY I?

21 THE COURT: YES.

22 THE WITNESS: ALL PROXIMAL MEANS IS CLOSER TO

23 THE MIDLINE -- CLOSER TO THE MIDLINE OR TORSO OF THE

24 BODY AND DISTAL MEANS FURTHER AWAY FROM IT. SO THIS

25 WOUND IS FURTHER AWAY FROM IT AND DR. GOLDEN THINKS

26 THE --

27 Q BY MS. ABRAMSON: WHY DON'T YOU USE THE

28 PHOTOGRAPH JUST -- RATHER THAN SAY THIS, THIS, THIS,

41539

1 LET ME NUMBER THESE. AND THERE'S ONE THAT SHOWS

2 BOTH WOUNDS UP ABOVE YOU.

3 A I SEE. THAT'S A BETTER ONE. I'LL USE

4 THAT ONE. IT'S NOT MARKED THOUGH.

5 Q WHAT'D YOU DO WITH THE RED MARKER,

6 DR. FACKLER?

7 A HERE.

8 Q LET'S MARK THE PHOTOGRAPHS, THE TWO ON

9 THE LEFT, A, B; THE THREE IMAGES IN THE MIDDLE C, D,

10 AND E; THE TWO ON THE RIGHT, F AND G.

11 AND CALLING YOUR ATTENTION SPECIFICALLY,

12 IF YOU WANT TO START WITH F, DOES F SHOW BOTH THE

13 ENTRY AND THE EXIT SITES?

14 A YES, IT DOES.

15 Q AND WITH RESPECT TO HIGHER AND LOWER ON

16 THE PHOTOGRAPH, WHICH ONE IS THE ENTRY SITE?

17 A MY OPINION IS THAT THE ENTRY SITE IS THE

18 ONE AT THE BOTTOM AND THE ONE THAT THE -- THE LATERAL

19 ASPECT OF THE THIGH AND THE MORE DISTAL ONE, THE

20 CLOSEST TO THE KNEE.

21 Q THE LOWER ONE?

22 A THE LOWER ONE.

23 Q AS WE WOULD SAY?

24 A YES, LOWER.

25 Q AND, THEREFORE, THE EXIT SITES -- THERE

26 ARE MULTIPLE EXIT SITES HERE, ARE THERE NOT?

27 A YES.

28 Q AND THE EXIT SITES ARE AT THE TOP OF THE

1 PHOTOGRAPH?

2 A YES, IN MY OPINION THEY ARE.

3 Q AND THEY WOULD BE BOTH HIGHER UP ON THE
4 LEG?

5 A YES.

6 Q AND FARTHER IN TOWARDS THE INSIDE OF THE
7 LEG?

8 A THAT'S CORRECT, YES.

9 Q AND IN HIS REPORT, DR. GOLDEN HAD IT
10 REVERSED. HE HAD THE INDIVIDUAL DEFECTS SOMEHOW AS
11 THE ENTRY AND THE LARGE HOLE OF THE BOTTOM AS THE
12 EXIT.

13 A THAT'S CORRECT, YES.

14 Q AND WOULD YOU STEP BACK AND GIVE US YOUR
15 REASONING AS TO WHY YOU HAVE DETERMINED THE ENTRANCE
16 TO BE ON THE OUTER AND LOWER PART OF THE LEG AND THE
17 EXIT TO BE ON THE INNER AND HIGHER PART OF THE LEG.

18 A WELL, THERE'S SEVERAL REASONS, AND ONE
19 IS THAT THE INNER PART OF THE LEG, THE MULTIPLE
20 WOUNDS, INDICATE A PATTERN THAT'S A LITTLE BIT MORE
21 SPREAD THAN THE ONES DOWN HERE.

22 HERE WE HAVE BASICALLY, RATHER, ONE
23 WOUND WHICH WOULD INDICATE A SHOT PATTERN CLOSER TO
24 THIS, AND IT APPEARS TO ME THAT BY THE TIME IT GOT
25 UP HERE IT WAS SPREAD OUT SOMEWHAT.

26 BUT A SECOND FACTOR HERE THAT I THINK IS
27 INTERESTING, WHAT -- YOU SEE SOMETHING UNDER THE SKIN

41541

1 F, AND IT'S MORE EASY TO SEE DOWN IN G. THAT'S A
2 PORTION OF ONE OF THE WADS, ONE OF THE OVER-POWDER
3 WADS. IT'S A WAD THAT'S OVER THE POWDER AND BEHIND
4 THE SHOT. I THINK IT'S PLASTIC IN THIS CASE.

5 Q NO. THAT ONE'S --

6 A FIBER?

7 Q LET ME SHOW YOU ONE OF THE SHELLS.

8 A I HAVEN'T SEEN THE EVIDENCE YET. BUT
9 THESE WADS ARE CONSIDERED -- THEY ARE THE SIZE ABOUT
10 THREE QUARTERS OF AN INCH IN DIAMETER AND QUARTER OF
11 AN INCH THICK. THEY'RE A SUBSTANTIAL PIECE OF FELT
12 OR PLASTIC OR WHATEVER THEY'RE MADE OF.

13 AND VERY FREQUENTLY IN CLOSE SHOTS THEY
14 WILL GO STRAIGHT ON THROUGH LIKE THE WOUND ON
15 MR. MENENDEZ' RIGHT ARM. I'M SURE THE WAD WENT
16 RIGHT ON THROUGH AND THE HOLE WAS BIG ENOUGH FOR IT
17 TO GO THROUGH AND YOU COULDN'T SEE IT.

18 HERE, BECAUSE OF THE SPREADING OF THE
19 SHOT COLUMN AND THE EXIT AND SMALLER HOLES, I DON'T
20 THINK THERE'S A HOLE LARGE ENOUGH FOR IT TO GET OUT,
21 AND THE WADDING ITSELF IS MADE OF VERY LIGHT-WEIGHT
22 MATERIAL AND DOESN'T HAVE ENOUGH INERTIA TO FORCE

23 ITSELF THROUGH THE SKIN. I THINK IT'S CAUGHT RIGHT
24 UNDER THE SKIN. YOU CAN SEE PART OF IT HERE AND
25 PART OF IT HERE. IT'S TOO BIG TO GET OUT THOSE
26 HOLES.

27 Q IF THAT HAD BEEN THE ENTRY AND THIS BIG
28 HOLE HAD BEEN BLOWN OUT BELOW, IS IT YOUR OPINION

41542

1 THAT THE MOMENTUM OF THE SHOT WOULD HAVE PUSHED THE
2 WADDING OUT THROUGH THAT BIG EXIT HOLE, WHAT
3 DR. GOLDEN THOUGHT WAS AN EXIT HOLE?

4 A YES, IF THIS CAME IN -- YEAH, I --
5 ORDINARILY, IF THAT WADDING CAME IN, YOU'D SEE A
6 LARGER ENTRANCE WHERE IT CAME IN. I DON'T THINK
7 IT -- I THINK THAT'S MUCH TOO SMALL FOR IT TO ENTER
8 AND ALSO THAT, BUT IT IS INSIDE. IT'S RIGHT
9 UNDERNEATH THERE. IT'S VERY CLEAR IT'S RIGHT
10 UNDERNEATH THOSE TWO. IT HAD TO COME IN FROM THE
11 LOWER SIDE AND GET STOPPED BECAUSE IT COULDN'T GO
12 OUT, GET CAUGHT.

13 Q NOW, DID YOU ALSO DISCUSS THIS
14 PARTICULAR WOUND WITH DR. GOLDEN WHEN YOU MET WITH
15 HIM IN OCTOBER?

16 MR. CONN: OBJECTION. IRRELEVANT.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES, I DID.

19 Q BY MS. ABRAMSON: AND IN YOUR

20 DISCUSSIONS WITH HIM, DID HE ACKNOWLEDGE THE

21 DIRECTION THAT YOU FORMED, THE OPINION YOU FORMED --

22 MR. CONN: OB- --

23 MS. ABRAMSON: DO YOU MIND?

24 Q -- THE OPINION YOU FORMED ABOUT DIRECTION

25 CONCERNING THIS WOUND?

26 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

27 THE COURT: SUSTAINED.

28 MS. ABRAMSON: WELL, YOUR HONOR, THERE

41543

1 ALREADY HAD BEEN A RULING THAT --

2 THE COURT: LET'S NOT ARGUE THE ISSUE.

3 OBJECTION SUSTAINED.

4 MS. ABRAMSON: I'D LIKE TO BE HEARD ON THIS.

5 THE COURT: OBJECTION SUSTAINED.

6 Q BY MS. ABRAMSON: NOW, DID ANY PORTION

7 OF YOUR OPINION ABOUT THE DIRECTION OF THIS WOUND

8 DEPEND UPON DR. GOLDEN HAVING DESCRIBED TO YOU THE

9 DEPTH OF THIS WOUND?

10 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

11 THE COURT: OVERRULED.

12 THE WITNESS: ACTUALLY -- WELL, THE WAY THE

13 QUESTION IS WORDED, IT'S NOT -- IT --

14 Q BY MS. ABRAMSON: LET'S --

15 A IT'S NOT QUITE RIGHT BECAUSE HE DIDN'T

16 SUGGEST --

17 MR. CONN: OBJECTION TO THE WITNESS

18 RECOUNTING HEARSAY TO THIS JURY.

19 THE COURT: SUSTAINED.

20 Q BY MS. ABRAMSON: WELL, FIRST OF ALL,

21 DID YOU DISCUSS -- DID DR. GOLDEN INFORM YOU OF THE

22 DEPTH OF THE WOUND WHEN YOU DISCUSSED IT WITH HIM?

23 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

24 THE COURT: WITHOUT SAYING WHAT HE SAID, DID

25 HE DESCRIBE THE DEPTH OF THE WOUND?

26 THE WITNESS: YES. HE VERIFIED WHAT I --

27 THE COURT: WITHOUT SAYING WHAT. THE ANSWER

28 IS YES. ANYTHING ELSE IS STRICKEN.

41544

1 MR. CONN: OBJECTION. MOTION TO STRIKE THE

2 ANSWER OF THE WITNESS.

3 THE COURT: EVERYTHING AFTER "YES" IS

4 STRICKEN.

5 Q BY MS. ABRAMSON: YOU HAD AN OPINION

6 CONCERNING THE DEPTH OF THE WOUND BASED ON THE WAY

7 WHICH YOU BELIEVED WAS THE ENTRY AND WHICH YOU

8 BELIEVED WAS THE EXIT APPEARED, CORRECT?

9 A YES, THAT'S CORRECT.

10 Q DID DR. GOLDEN, HOWEVER, INFORM YOU THAT
11 HE DISSECTED THIS WOUND AND DETERMINED THE DEPTH?

12 MR. CONN: I'M GOING TO OBJECT. CALLS FOR
13 HEARSAY.

14 THE COURT: SUSTAINED.

15 Q BY MS. ABRAMSON: DID DR. GOLDEN SHARE
16 WITH YOU HIS INFORMATION CONCERNING THE DEPTH OF THE
17 WOUND?

18 THE COURT: YOU CAN ANSWER THAT.

19 THE WITNESS: OKAY.

20 THE COURT: SAY YES OR NO.

21 THE WITNESS: YES.

22 Q BY MS. ABRAMSON: AND DID WHAT HE
23 INDICATE, IN YOUR MIND, SOLIDIFY YOUR OPINION ABOUT
24 WHAT WAS THE EXIT AND WHAT WAS THE ENTRANCE?

25 A YES.

26 Q AND SO TO THE EXTENT THAT HE GAVE YOU
27 THE INFORMATION OF HIS OBSERVATIONS, ARE YOU BASING
28 YOUR TESTIMONY HERE TODAY IN PART ON WHAT HE TOLD

41545

1 YOU?

2 A WELL, I GUESS IN PART. BASICALLY, I

3 CAME TO THE --

4 MR. CONN: ALL RIGHT. I WOULD OBJECT TO
5 ANYTHING FURTHER.

6 Q BY MS. ABRAMSON: IS THAT YES IN PART?

7 A YES, IN PART.

8 Q WHAT DID HE TELL YOU ABOUT THE DEPTH OF
9 THE WOUND?

10 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

11 THE COURT: SUSTAINED.

12 MS. ABRAMSON: WELL, YOUR HONOR, I BELIEVE
13 THE WITNESS' --

14 THE COURT: COUNSEL, AGAIN, LET'S NOT ARGUE
15 IT.

16 MS. ABRAMSON: I'D LIKE TO BE HEARD.

17 THE COURT: ALL RIGHT. YOU MAY.

18 DO YOU WISH TO BREAK AT THIS POINT AND
19 RESUME WITH THE WITNESS TOMORROW MORNING?

20 MS. ABRAMSON: I CAN KEEP GOING IF THE
21 COURT'S WILLING. I'D LIKE TO GET DONE.

22 THE COURT: WE'LL GO A FEW MORE MINUTES.

23 Q BY MS. ABRAMSON: YOU LIVE OUT OF STATE,
24 DO YOU NOT?

25 A YES.

26 Q YOU'D LIKE TO BE HOME FOR THANKSGIVING?

27 A IT WOULD BE NICE.

28 Q ALL RIGHT. NOW, APART FROM THE FACT --

1 LET ME SHOW YOU THIS.

2 THIS IS 313 -- EXCUSE ME -- WHICH IS THE
3 BOX OF AMMUNITION, AND I JUST WANT TO REMOVE ONE.

4 AND WOULD IT ASSIST YOU IN EXPLAINING
5 YOUR OPINION CONCERNING THIS WOUND NO. 7 TO
6 MRS. MENENDEZ IF YOU COULD SEE WHAT'S IN THERE? OR
7 CAN YOU SEE ENOUGH OF THE --

8 A I CAN SEE IT LOOKS LIKE A FIBER WAD.

9 Q DOES THERE APPEAR TO BE AN OVER-POWDER
10 WAD OF PLASTIC AND THEN A FIBER --

11 A A SEALER WAD OF PLASTIC AND THEN A FIBER
12 WAD ON TOP. THAT'S WHAT IT APPEARS TO BE. FIBER
13 WAD IS ABOUT A QUARTER INCH THICK LIKE I EXPECTED.

14 Q IT'S DARK BROWN IN COLOR?

15 A WELL, THEY CALL IT GRAY, BROWNISH-GRAY.

16 Q AND CALLING YOUR ATTENTION TO THIS IN G,
17 DOES THAT APPEAR TO BE BROWNISH-GRAY?

18 A YES.

19 Q AND DOES IT APPEAR TO BE A PORTION OF
20 WHAT'S VISIBLE, A PORTION OF A WAD, SIMILAR IN SIZE
21 AND SHAPE TO WHAT'S INSIDE THAT SHOT SHELL THAT
22 YOU'RE NOW HOLDING?

23 A YES. IT'S ENTIRELY CONSISTENT WITH IT.

24 Q AND, IN FACT, DID DR. GOLDEN NOTE ON HIS
25 REPORT THAT THERE WAS A WAD IN ONE OF THOSE DEFECT

26 HOLES IN THAT POSITION, THE POSITION THAT WE SEE IT,
27 ON MRS. MENENDEZ' LEG?
28 A YES, HE DID.

41547

1 Q NOW, I WANT TO CALL YOUR ATTENTION TO
2 THIS ILLUSTRATION THAT FAILURE ANALYSIS PREPARED
3 PURPORTING -- CAN I HAVE THE STICK FOR A SECOND? --
4 PURPORTING TO ILLUSTRATE THIS WOUND.

5 AS YOU CAN SEE IN C, THEY SHOW THE WOUND
6 COMING IN FROM A SUPERIOR TO INFERIOR DIRECTION; IS
7 THAT RIGHT?

8 A YES.

9 Q ALL RIGHT. AND THIS SUPPOSES, DOES IT
10 NOT, THAT THE ENTRY WOUND IS WHAT YOU NOW SAY IS THE
11 EXIT AND THAT THE EXIT WOUND IS WHAT YOU ARE SAYING
12 IS THE ENTRY?

13 A YES.

14 Q SO BASED ON YOUR MEDICAL OPINION,
15 DR. FACKLER, ON EXAMINING ALL THE EVIDENCE BEARING
16 ON THIS WOUND, ARE THESE ILLUSTRATIONS, WHICH ARE
17 SHOWN HERE AS C AND D, WRONG?

18 A YES.

19 Q SO THAT WHAT FAILURE ANALYSIS IS CALLING
20 SHOT 8, WHICH I SHOW YOU HERE, IS IT YOUR OPINION

21 THAT SHOT 8 IS --

22 A MAY I GO DOWN THERE, YOUR HONOR?

23 THE COURT: YES, WHENEVER YOU LIKE.

24 Q BY MS. ABRAMSON: YES. THAT'S -- WE

25 DON'T REALLY -- THE JURY HAS SEEN THEM, BUT JUST FOR

26 YOUR BENEFIT, THAT'S THE WAY THAT HE'S ILLUSTRATED

27 SHOT 8?

28 A YES.

41548

1 Q IN YOUR OPINION, IS SHOT 8, AS

2 ILLUSTRATED, CONTRARY, OPPOSITE, TO THE MEDICAL

3 EVIDENCE?

4 A THE ILLUSTRATIONS HERE ARE BOTH CONTRARY

5 TO THE MEDICAL EVIDENCE, YES.

6 Q THANK YOU.

7 AND, THEREFORE, NOT POSSIBLE; IS THAT

8 CORRECT?

9 A I DON'T BELIEVE THEM TO BE POSSIBLE,

10 NO.

11 Q NOW, ARE YOU -- STRIKE THAT.

12 DO YOU RECALL THE WOUND THAT DR. GOLDEN

13 CALLED NO. 9, A GUTTER WOUND, A GRAZE WOUND, TO

14 MRS. MENENDEZ' LEFT THIGH?

15 A YES.

16 Q AND HAVE YOU HYPOTHESIZED, THOUGHT
17 ABOUT, WHETHER THERE ARE POSITIONS THAT HER LEFT LEG
18 COULD BE IN THAT WOULD ASSOCIATE THE GRAZE WOUND TO
19 9 WITH THIS THIGH WOUND WHICH HAS BEEN LABELED 7 IN
20 DR. GOLDEN'S REPORT? THAT'S 7. AND I CAN SHOW YOU
21 THE GRAZE WOUND 9.

22 LET ME SHOW YOU A PHOTOGRAPH THAT'S BEEN
23 MARKED 198. LET'S PUT IT UP.

24 NOT IN THAT POSITION. I DON'T WANT YOU
25 TO TRY TO ENVISION THE POSITION THAT THAT WAS
26 SELECTED HERE.

27 CAN YOU THINK OF ANY POSITION THAT HER
28 HUMAN BODY COULD BE IN WHERE NO. 9, THE GRAZE WOUND,

41549

1 COULD LINE UP WITH NO. 7 WHERE THE ENTRY -- AND, FOR
2 EXAMPLE, DR. FACKLER -- DR. FACKLER, FOR EXAMPLE.

3 A I WAS LOOKING FOR SOME WAY TO
4 DEMONSTRATE. COULD I TAKE THE POINTER AND
5 DEMONSTRATE IT ON YOU OR ME?

6 Q SURE.

7 A THE EASIEST WAY WHEN ASKED A QUESTION
8 LIKE THAT, THE EASIEST WAY IS TO SEE. I HAVE
9 DIFFICULTY ENVISIONING THIS IN THREE DIMENSIONS, BUT
10 SOMETIMES WE CAN ESTABLISH THE --

11 Q LET'S START OUT WITH THIS.
12 CAN YOU ENVISION IT WHERE MRS. MENENDEZ
13 COULD BE ON THE COUCH, RECLINING ON HER RIGHT SIDE,
14 WITH HER LEFT LEG UP AND BENT? IF YOU WANT ME TO DO
15 THIS I'VE GOT TO HOLD ON.

16 A YEAH. I THINK SOMETHING LIKE THIS LINES
17 UP QUITE NICELY.

18

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41550

1 Q THE WITNESS IS DEMONSTRATING HOLDING THE
2 POINTER ACROSS MY LEFT CALF, AND THE END OF THE
3 POINTER GOING ACROSS MY THIGH TO THE MORE PROXIMAL
4 PART OF MY LEG, WITHOUT STICKING IT INSIDE.

5 A IT WOULD, OF COURSE, GO INTO THE LEG.

6 BASICALLY, THAT'S THE POSITION, AND YOUR LEG IS BENT

7 AT A LITTLE BIT GREATER THAN A 90-DEGREE ANGLE,

8 POSSIBLY A HUNDRED DEGREES.

9 Q AND BASED ON YOUR MEDICAL EXPERTISE, DO

10 YOU BELIEVE THAT IS PHYSIOLOGICALLY POSSIBLE THAT

11 SHE COULD HAVE BEEN ON THE COUCH IN A POSITION WHERE

12 THAT LEG WOULD HAVE BEEN ELEVATED AND RECEIVED THOSE

13 WOUNDS IN THAT DIRECTION?

14 A WELL, CERTAINLY.

15 THE COURT: OKAY. WE'LL HAVE TO TAKE OUR

16 BREAK AT THIS POINT. WE'LL RESUME TOMORROW AT

17 8:30.

18 DON'T DISCUSS THE MATTER WITH ANYONE.

19 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL

20 RESUME TOMORROW AT 8:30.

21 WE'LL ASK THAT COUNSEL REMAIN TO DISCUSS

22 THE ISSUE THAT WE HAD DISCUSSED EARLIER.

23 (THE JURY EXITED THE COURTROOM AND

24 THE FOLLOWING PROCEEDINGS WERE HELD:)

25

26 THE COURT: ALL RIGHT. COUNSEL, YOU WANTED

27 TO DISCUSS SOMETHING?

28 MS. ABRAMSON: YES, YOUR HONOR. AND I'VE

1 BEEN THINKING ABOUT IT AND I THINK YOU'RE RIGHT.

2 HERE'S WHAT I WAS THINKING ABOUT.

3 THIS ISSUE CAME UP WITH DR. LAWRENCE
4 WHEN I ASKED HIM HYPOTHETICALLY IF DR. GOLDEN HAD
5 CHANGED HIS OPINION AND HAD INDICATED THAT HE
6 BELIEVED THE ENTRY WOUND WAS LOWER AND THE EXIT
7 WOUND WAS HIGHER.

8 THE COURT: YES.

9 MS. ABRAMSON: AND I BELIEVE THERE WAS AN
10 OBJECTION. I THINK THE COURT ASKED IF -- I HAD
11 INDICATED TO THE COURT THAT DR. FACKLER WAS HAVING A
12 CONVERSATION WITH DR. GOLDEN, IN WHICH I OVERHEARD,
13 AND WHICH DR. GOLDEN ACKNOWLEDGED THAT THE
14 DIRECTIONALITY OF THE WOUND WAS AS DR. FACKLER HAS
15 TESTIFIED HERE. AND THE COURT -- THE COURT ASKED IF
16 I WAS ASKING A HYPOTHETICAL QUESTION AND WAS I IN A
17 POSITION TO PROVE IT WITH DR. GOLDEN OR TO IMPEACH
18 HIM THROUGH DR. FACKLER.

19 IN THINKING IT THROUGH, I GUESS I CAN'T
20 GET TO THIS UNLESS DR. GOLDEN FIRST SAYS NO, RIGHT?

21 THE COURT: OTHERWISE YOU'RE INTRODUCING
22 HEARSAY, WHICH IS THE OBJECTION.

23 MS. ABRAMSON: RIGHT.

24 THE COURT: A COUPLE OF THINGS HERE. IF YOU
25 CAN --

26 MS. ABRAMSON: BUT THE ONLY OTHER THING IS
27 HIS RELIANCE ON THE FACT THAT DR. --

28 THE COURT: HE COULD SAY HE RELIED UPON

1 INFORMATION, BUT HE CAN'T RECITE WHAT IT IS, BECAUSE
2 THEN YOU'RE JUST INTRODUCING HEARSAY. WE'RE REALLY,
3 QUIBBLING ABOUT SOMETHING -- YOU SAID GOLDEN IS
4 GOING TO BE A WITNESS. YOU'RE CALLING HIM AND I
5 ASSUME THAT'S STILL YOUR POSITION.

6 MS. ABRAMSON: I'LL SEE HOW ALL THIS PLAYS
7 OUT TO SEE IF IT'S NECESSARY.

8 THE COURT: TO GET THE INFORMATION IN --

9 MS. ABRAMSON: WHAT ARE YOU TWO GRINNING
10 ABOUT?

11 THE COURT: HIM RECITING WHAT GOLDEN TOLD HIM
12 WOULD BE HEARSAY IF IT'S INTRODUCED FOR THE TRUTH OF
13 THE MATTER ASSERTED, WHICH IS REALLY WHAT IT IS. HE
14 COULD SAY HE SPOKE WITH GOLDEN AND RELIED UPON
15 INFORMATION WITHOUT RECITING WHAT IT WAS. BUT IF HE
16 RECITES WHAT IT WAS, WE'RE REALLY GETTING INTO THE
17 TRUTH OF THE MATTER.

18 GETTING BEYOND THAT, TWO THINGS: ONE,
19 IF YOU HAVE EXHIBITS THAT YOU ARE GOING TO USE THAT
20 HAVE ALREADY BEEN MARKED, RATHER THAN PULLING
21 ANOTHER PHOTOGRAPH OUT, JUST AS I SAID WITH THE
22 PROSECUTION, PLAN AHEAD SO WE DON'T GET INTO THE
23 MARKING OF DUPLICATES OF THE SAME PHOTOGRAPH. IT
24 WOULD MAKE IT A LOT EASIER FOR EVERYBODY, NOT JUST

25 THE LAWYERS, BUT THE CLERK AS WELL. FEWER

26 EXHIBITS. WE'RE ALREADY AT 318.

27 MS. ABRAMSON: I KNOW.

28 THE COURT: IF WE DON'T HAVE TO DUPLICATE

41553

1 THINGS, IT'S ALL TO THE GOOD.

2 SECONDLY, ARE YOU GOING TO BE USING

3 THEIR X RAY BOX TOMORROW?

4 MS. ABRAMSON: I WANTED TO DISCUSS IT WITH

5 THE WITNESS.

6 THE COURT: IF YOU DO, PERHAPS WE CAN PUT IT

7 BEHIND THE WITNESS AND ELEVATE IT IN SOME FASHION SO

8 THAT IT CAN BE SEEN --

9 MS. ABRAMSON: SURE.

10 THE COURT: -- WHICH WOULD BE THE TRADITIONAL

11 WAY OF DOING IT.

12 THE WITNESS: YOU COULD PUT IT HERE, BUT IT

13 WOULD HIDE YOU A LITTLE BIT.

14 THE COURT: YOU CAN PUT IT BACK THERE.

15 MS. ABRAMSON: AND I'LL TRY TO FIND THE

16 PHOTOGRAPH OF THIS. I THINK IT'S ALREADY IN AN

17 ENLARGEMENT. IF NOT, PERHAPS THERE'S A PHOTOGRAPH

18 THAT IS IN THAT THAT ILLUSTRATES THE SAME THING

19 BECAUSE I AGREE THAT -- FRANKLY, THE FEWER OF THESE

20 AROUND THE BETTER FROM MY PERSPECTIVE.

21 THE COURT: I DON'T RECALL THAT PARTICULAR

22 ONE, QUITE FRANKLY.

23 MS. ABRAMSON: IF THIS IS THE ONLY THAT SHOWS

24 THAT GUTTER WOUND I MAY HAVE TO USE IT.

25 THE COURT: THAT MIGHT HAVE BEEN ONE OF THE

26 ONES YOU OBJECTED TO IN OUR EARLIER DISCUSSIONS?

27 THERE'S SO MANY.

28 WE'LL BE IN RECESS UNTIL TOMORROW AT

41554

1 8:30. THE REASON WE HAD TO TAKE A BREAK IS THAT A

2 JUROR NEEDED TO ARRANGE FOR CHILD CARE OR TAKE CARE

3 OF A CHILD HERSELF. THAT'S WHY WE TOOK A BREAK.

4 MS. ABRAMSON: IS IT POSSIBLE WE COULD GO

5 TILL FIVE TOMORROW?

6 THE COURT: AGAIN, THE PROBLEM IS WITH THE

7 JURORS AND THEIR PERSONAL PROBLEMS. SOME DO HAVE

8 CHILD CARE SITUATIONS OR TRANSPORTION SITUATIONS AND

9 THINGS OF THAT NATURE. WE CAN INQUIRE OF THEM IN

10 THE MORNING WHEN THEY ARRIVE.

11 MS. ABRAMSON: HOW ABOUT SHORTENING THE LUNCH

12 HOUR?

13 THE COURT: LET'S GET A FEEL FOR HOW MUCH

14 MORE YOUR DIRECT EXAMINATION --

15 MS. ABRAMSON: I'M ALMOST DONE. I THINK I
16 HAVE ANOTHER HALF HOUR WITH DR. FACKLER, AND HOWEVER
17 LONG CROSS IS.

18 MY BIGGEST CONCERN IS DR. WECHT, WHO'S
19 HERE AND WAITING.

20 THE COURT: YOU TOLD ME YOU WEREN'T GOING TO
21 CALL HIM.

22 MS. ABRAMSON: I'VE GIVEN THE PEOPLE THE
23 REPORT. HE DID WANT TO GET ON THIS WEEK AND GET IT
24 OVER WITH.

25 THE COURT: WE'LL TRY TO GIVE AS MUCH TIME AS
26 AVAILABLE, CONSIDERING THE TRANSPORTING OF THE JURY
27 BACK AND FORTH AND THEIR PROBLEMS.

28 MS. NAJERA: YOUR HONOR, WE HAVEN'T BEEN

41555

1 PROVIDED WITH THESE THINGS FROM DR. MORTON, THESE
2 TARGETS.

3 MS. ABRAMSON: HE'S NOT A DOCTOR.

4 MS. NAJERA: OKAY. MR. MORTON. WE HAVEN'T
5 BEEN PROVIDED --

6 MS. ABRAMSON: IT'S DUE THE 22ND.

7 MS. NAJERA: THE REPORT WAS DUE THE 22ND.
8 THESE ARE SOMETHING OBVIOUSLY IN EXISTENCE.

9 THE COURT: IT'S BEEN REFERRED TO BY THIS

10 WITNESS. HE INDICATED HE'S RELIED UPON IT TO SOME
11 EXTENT IN ONE OF HIS ANSWERS TO HAVE THE DISTANCE OF
12 THE SHOT.

13 MS. ABRAMSON: I'LL --

14 THE COURT: IF YOU HAVE IT AVAILABLE.

15 MS. ABRAMSON: I'LL BE GLAD TO GIVE THE
16 PEOPLE A COPY OF IT THE FIRST THING IN THE MORNING.

17 THE COURT: WE'LL BE IN RECESS THEN UNTIL
18 TOMORROW AT 8:30. IF YOU FOLKS CAN GET READY BEFORE
19 NINE, ALL TO THE GOOD, AND WE'LL ASK THE BAILIFFS TO
20 BRING THE JURY OVER HERE BY QUARTER TO NINE, SO IF
21 YOU'RE ALL READY, WE'LL START UP.

22 MS. ABRAMSON: GREAT. THANK YOU, YOUR
23 HONOR.

24 (AT 4:45 P.M. PROCEEDINGS WERE
25 ADJOURNED UNTIL 9:00 A.M. THE
26 FOLLOWING.)

27

28