

1 VAN NUYS, CALIFORNIA; TUESDAY, NOVEMBER 21, 1995

2 9:05 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: EVERYBODY'S IN COURT AND WE'RE

7 READY TO RESUME.

8 GOOD MORNING.

9 MR. LEVIN: YOUR HONOR, AT THE BREAK I HAVE

10 AN APPEARANCE. I'D LIKE TO BE EXCUSED TO MAKE JUST

11 ACROSS THE HALL IN MUNI COURT, IF I MAY. IT WOULD

12 BE A BRIEF MATTER.

13 THE COURT: AT THE BREAK, SURE.

14 MR. LEVIN: IT'LL ONLY TAKE A FEW MINUTES.

15 THE COURT: ALL RIGHT. WE'LL HAVE THE JURY

16 OUT, PLEASE.

17 (THE JURY ENTERED THE

18 COURTROOM AND THE FOLLOWING

19 PROCEEDINGS WERE HELD:)

20

21 THE COURT: THE JURY'S IN COURT. GOOD

22 MORNING, LADIES AND GENTLEMEN.

23

24 DR. MARTIN FACKLER,

25 THE WITNESS ON THE STAND AT THE ADJOURNMENT, HAVING

26 BEEN PREVIOUSLY SWORN, TESTIFIED FURTHER AS FOLLOWS:

27 THE COURT: THE WITNESS IS ON THE WITNESS

28 STAND.

1 WOULD YOU STATE YOUR NAME FOR US,
2 PLEASE.

3 THE WITNESS: DR. FACKLER, F-A-C-K-L-E-R.

4 THE COURT: I'LL REMIND YOU YOU'RE STILL
5 UNDER OATH.

6 THE WITNESS: YES, YOUR HONOR.

7 THE COURT: YOU MAY CONTINUE YOUR
8 EXAMINATION.

9 MS. ABRAMSON: THANK YOU, YOUR HONOR.

10

11 DIRECT EXAMINATION (CONTINUED)

12 BY MS. ABRAMSON:

13 Q DR. FACKLER, RETURNING FOR A MOMENT TO
14 WOUND NO. 7, AS DESCRIBED IN DR. GOLDEN'S AUTOPSY
15 REPORTS, MRS. MENENDEZ' LEFT THIGH.

16 A JUST A SECOND 'TIL I GET THAT.

17 Q CERTAINLY.

18 A YES.

19 Q YOU DESCRIBED YESTERDAY HOW YOU
20 DISAGREED WITH DR. GOLDEN'S ENTRANCE AND EXIT
21 INFORMATION, AT LEAST AT THE TIME THAT HE WROTE THAT
22 REPORT, CORRECT?

23 A THAT'S CORRECT.

24 Q NOW, DO YOU HAVE AN OPINION,
25 DR. FACKLER -- WELL, STRIKE THAT.
26 YOU'RE ALSO AWARE THAT DR. GOLDEN
27 DESCRIBES A SERIES OF WOUNDS TO MRS. MENENDEZ AS
28 NO. 8, WHICH INVOLVES AN ENTRY WOUND BELOW THE KNEE

41558

1 AND AN EXIT WOUND AT THE BASE OF THE THIGH.

2 A YES.

3 Q AND A SERIES OF EXITS AND REENTRIES AT
4 THE BACK OF THE LEFT LEG FOR THOSE WOUNDS, IN THE
5 AMENDED REPORT OF '95, I THINK.

6 A YES. I HAVE MOST OF THE AMENDMENT
7 WRITTEN OUT HERE AND I HAVE IT, YES.

8 Q OKAY. NOW, AT THE TIME OF THE AUTOPSY,
9 THERE'S X RAYS TAKEN OF MRS. MENENDEZ' LEFT LEG,
10 CORRECT?

11 A YES, THERE WAS.

12 Q AND SHOWING YOU WHAT'S BEEN PREVIOUSLY
13 MARKED 178, DOES THIS APPEAR TO BE A PHOTOGRAPH OF
14 THE X RAY OF HER LEFT LEG?

15 A YES, IT IS.

16 Q AND DOES THAT PHOTOGRAPH OF THE X RAY
17 SHOW THAT THERE ARE TWO BONES AT THE TIME OF AUTOPSY
18 THAT ARE BROKEN, TWO DIFFERENT BONES THAT ARE BROKEN

19 IN THAT LEFT LEG?

20 A YES, IT DOES.

21 Q AND WHAT ARE THE TWO BONES THAT APPEAR

22 IN THAT X RAY TO BE BROKEN?

23 A THE TIBIA AND THE FEMUR.

24 Q AND WHERE IS THE TIBIA IN THE BODY?

25 A THE TIBIA IS THE SHIN BONE, THE LARGE

26 BONE OF THE LOWER LEG, EXTENDING FROM THE KNEE TO

27 THE ANKLE; AND THE FEMUR IS THE SINGLE LARGE BONE

28 THAT EXTENDS FROM THE KNEE TO THE HIP.

41559

1 Q NOW, WITH RESPECT TO -- AND THE FEMUR IS

2 CLEARLY BROKEN AT THE TIME THAT X RAY IS TAKEN?

3 A YES, IT IS.

4 Q NOW, DO YOU HAVE AN OPINION,

5 DR. FACKLER, AS TO WHETHER OR NOT IT WAS THAT WOUND,

6 NO. 8, THAT BROKE MRS. MENENDEZ' FEMUR OR WOUND

7 NO. 7, THE ONE THAT WE'RE LOOKING AT ON THE CHART

8 HERE, WHICH IS TO THE LEFT THIGH, THE ONE-INCH DEEP

9 WOUND THAT BROKE THE FEMUR?

10 A WELL, I THINK BOTH, BECAUSE THE -- WHAT

11 WE SEE ON THE X RAY IS -- IT'S JUST TOP OF THE BREAK

12 OF THE FEMUR. THERE ARE ACTUALLY TWO BREAKS OF THE

13 FEMUR. THERE'S A FREE SEGMENT OF FEMUR THAT

14 MEASURES APPROXIMATELY TWO AND A HALF TO THREE
15 INCHES LONG; AND THE BOTTOM EDGE OF THIS APPEARS --
16 HAS THE CHEWED-OUT APPEARANCE THAT GOES ALONG WITH
17 BEING HIT BY MULTIPLE BUCKSHOT; AND ALSO THE MEDIAL
18 CONDYLE OF THE FEMUR, WHICH IS THE PORTION ON THE
19 INSIDE OF THE KNEE, THAT LITTLE BULGE IN THERE, IS
20 CHEWED OUT THE SAME WAY. I DEFINITELY THINK THAT
21 WAS BROKEN BY THE SHOT COLUMN. HOWEVER --

22 Q IS THAT FOR NO. 8 YOU'RE TALKING ABOUT,
23 HER WOUND NO. 8?

24 A THAT'S WOUND NO. 8, YES.

25 HOWEVER, THE OTHER END OF THE -- THIS
26 SEGMENT, IF YOU LOOK AT THE UPPER END OF THE BREAK,
27 IT APPEARS TO BE A SIMPLER FRACTURE, ALTHOUGH THERE
28 ARE SOME FRAGMENTS. IT'S VERY DIFFICULT TO TELL. I

41560

1 THINK THERE'S A POSSIBILITY THAT THE UPPER FRACTURE
2 MIGHT HAVE BEEN MADE BY THE TEMPORARY CAVITY
3 ASSOCIATED WITH THE PREVIOUS WOUND AND THE LOWER END
4 OF THIS NOW FREESTANDING SEGMENT BROKEN BY THE SHOT
5 COLUMN IN NO. 8. BUT WITHOUT A LATERAL X RAY, IT'S
6 VERY DIFFICULT TO TELL. BUT THAT WOULD BE MY
7 OPINION.

8 Q IS IT POSSIBLE THAT WOUND NO. 7, THE ONE

9 THAT WE'RE LOOKING AT, DIDN'T BREAK THE FEMUR AT
10 ALL, THAT ALL THAT DAMAGE WAS CAUSED BY WOUND
11 NO. 8?

12 A THAT, OF COURSE, IS ALSO POSSIBLE.

13 Q THERE DO APPEAR TO BE PELLET FRAGMENTS
14 AROUND BOTH OF THOSE BREAK SITES, CORRECT?

15 A YES. WELL, YES.

16 Q BUT FEWER AROUND THE TOP?

17 A IT'S DIFFICULT TO -- I NEED TO SHOW THE
18 JURY WHICH, WHEN I'M TALKING, I THINK, BECAUSE IT'S
19 DIFFICULT FOR THEM TO UNDERSTAND IT.

20 Q THERE'S ANOTHER X RAY. LET ME SHOW YOU
21 THE OTHER ONE, 168.

22 THE WITNESS: MAY I, YOUR HONOR, JUST STEP
23 OVER HERE?

24 THE COURT: YES.

25 THE WITNESS: I'LL TRY TO PICK ONE OF THESE.
26 THEY'RE BOTH THE SAME. THIS X RAY INCLUDES THE
27 LOWER BONE, THE TIBIA, AND ALSO THE FEMUR, AND THIS
28 UPPER ONE JUST INCLUDES THE FEMUR. I THINK I'LL PUT

41561

1 THIS ONE ASIDE. WE'RE CONCERNED WITH THE BREAK IN
2 THE FEMUR AND I'LL USE THIS ONE.

3 MS. ABRAMSON: OKAY. THE PINS ARE IN THE

4 ENVELOPE.

5 THE WITNESS: THE DIFFICULTY WITH YOUR
6 QUESTION LIES IN THAT THIS IS THE SEGMENT THAT IN
7 THE INTACT FEMUR, THIS SEGMENT FITS BETWEEN THIS END
8 AND THIS END OF THE BONE. AND WHAT WE SEE HERE IS
9 IN THE X RAY OF THE -- MRS. MENENDEZ' BODY AT THE
10 TIME THE X RAY WAS TAKEN, THE -- THIS END OF THE
11 FEMUR COULD EASILY FIT WITH THE LOWER FRAGMENT
12 WITHOUT THIS IN THE MIDDLE. AND WE KNOW THAT'S NOT
13 THE WAY IT HAPPENED. WHAT HAS HAPPENED HERE IS
14 SHE'S HAD FORESHORTENING. IT'S NOT UNCOMMON WHEN A
15 LONG BONE IS FRACTURED FOR THE MUSCLES TO GO INTO
16 SPASM AND YOU HAVE THIS FORESHORTENING. AND JUST
17 THE WAY THE BODY IS LAID COULD ALSO DO THAT.
18 SO WE DO SEE THESE -- THESE SMALL
19 FRAGMENTS OF BUCKSHOT AND ACTUAL BUCKSHOT AROUND THE
20 SITE, THIS IS TRUE. BUT IT'S VERY DIFFICULT TO TELL
21 IF, WHEN THIS WERE -- WERE RECONSTRUCTED, WHICH SITE,
22 IF THIS WOULD PULL UP AND ALLOW AND THEY WOULD
23 REMAIN DOWN HERE WITH THE FRACTURE SITE HERE OR IF
24 THEY WOULD GO UP TO THIS LEVEL, IF THIS WERE IN
25 PLACE, AND BE ASSOCIATED WITH THIS. SO I JUST
26 REALLY CAN'T TELL.

27 Q BY MS. ABRAMSON: OKAY. AND IS IT YOUR
28 OPINION THAT THE MEDICAL EVIDENCE IS SUCH THAT IT'S

1 TOO AMBIGUOUS TO CALL IT ONE WAY OR THE OTHER?

2 A THAT IS MY OPINION, YES.

3 Q NOW, LET'S TURN, IF WE CAN, DR. FACKLER,
4 TO A COUPLE OF GENERAL MATTERS BEFORE WE GET TO THE
5 LAST WOUND.

6 LET'S TALK ABOUT THE CONCEPT OF GUNSHOT
7 INJURIES AND PAIN.

8 DO GUNSHOT INJURIES NECESSARILY CAUSE
9 IMMEDIATELY EXPERIENCED PAIN IN THE PERSON WHO
10 RECEIVES THE WOUND?

11 A SURPRISINGLY, IN THE MAJORITY OF CASES
12 THEY DO NOT. IT IS COMMON FOR ANYONE WHO IS IN A
13 SITUATION WHERE THEIR ATTENTION IS SHARPLY FOCUSED,
14 FOR INSTANCE, THE MILITARY IN THE FIELD OF BATTLE,
15 POLICE OFFICER DURING A GUN FIGHT, TO SUFFER GUNSHOT
16 WOUNDS AND NOT KNOW THEY'RE HIT. THIS IS NOT AT ALL
17 UNCOMMON. PEOPLE WHO ARE NOT SHARPLY FOCUSED AND
18 JUST HAPPEN TO BE HIT BY GUNFIRE, MOST COMMON, THE
19 MOST COMMON EXPERIENCE IS THEY LOOK AROUND AND
20 THOUGHT SOMEBODY HIT THEM WITH A STICK OR, SAY, LIKE
21 HIT WITH SOMETHING BLUNT LIKE A SMALL ROD OR
22 SOMETHING. SOME PEOPLE WILL SAY IT'S A LITTLE
23 STINGING, SORT OF LIKE A BEE STING. ALMOST NEVER DO
24 THEY HAVE EXCRUCIATING PAIN, AND THIS IS NOT ONLY
25 GUNSHOT. THIS INCLUDES PEOPLE WHO HAVE EXTREMITIES
26 BLOWN OFF.

27 THERE'S ONE -- THIS IS NOT JUST MY

41563

1 HISTORY.

2 THE FIRST WELL-DOCUMENTED SERIES WAS
3 DONE BY DR. BEECHER, WHO'S HEAD OF ANESTHESIA AT
4 HARVARD MEDICAL SCHOOL IN THE SECOND WORLD WAR. HE
5 REPORTED THIS AND THIS IS COVERED IN A BOOK CALLED
6 "THE CHALLENGE OF PAIN" BY MELZAK AND WALL. AND
7 ALSO COVERED IN THAT BOOK WAS A SERIES BY THE
8 ISRAELIS IN ONE OF THEIR WARS WHERE THEY POINTED TO
9 THE SAME EXPERIENCE, WHERE PEOPLE WHO HAD
10 EXTREMITIES BLOWN OFF FROM LAND MINES AND GRENADES
11 AND THINGS DID NOT HAVE PAIN.

12 AND THAT'S BEEN MY EXPERIENCE ON THE
13 FIELD OF BATTLE AND IN ACTUALLY SPEAKING TO MANY
14 PEOPLE WHO HAVE BEEN WOUNDED AND QUESTIONING THEM
15 ABOUT THIS. AND EVERY TIME I GIVE A SEMINAR TO
16 POLICE I ASK HOW MANY HAVE BEEN SHOT AND I QUESTION
17 THEM A LITTLE BIT ABOUT IT. AND VERY -- IT'S VERY
18 UNCOMMON TO HAVE PEOPLE SAY IT HURTS.

19 Q SO IT WOULD MAKE NO SENSE TO TRY TO
20 PREDICT HOW PEOPLE WOULD REACT TO GUNSHOT WOUNDS
21 BASED ON THE NOTION THAT THEY'RE EXPERIENCING PAIN
22 AT ANY PARTICULAR TIME?

23 A NO, THAT WOULD NOT MAKE ANY SENSE.
24 Q NOW, LET'S TURN TO WHAT DR. GOLDEN
25 CALLED WOUND NO. 5, I BELIEVE, ON MR. MENENDEZ.
26 A MR. MENENDEZ NOW?
27 Q YES.
28 A YES, I HAVE IT.

41564

1 Q I'M PUTTING UP EXHIBIT 304.
2 AND I DID SUBNUMBER THESE PHOTOGRAPHS,
3 ALTHOUGH THEY DON'T HAVE LABELS YET, EVIDENCE
4 LABELS.
5 LET ME GET THIS OUT OF THE WAY OF THE
6 JURORS.
7 NOW, DR. FACKLER, WITH RESPECT TO THIS
8 WOUND, YOU'RE FAMILIAR WITH DR. GOLDEN'S DESCRIPTION
9 OF IT, WHICH HE NEVER AMENDED, WHICH HAS BEEN IN HIS
10 AUTOPSY REPORT SINCE 1989, CORRECT?
11 A YES, I AM.
12 Q AND YOU'RE FAMILIAR WITH THE FACT THAT
13 DR. GOLDEN DESCRIBED THIS UNEQUIVOCALLY AS AN
14 ANTEMORTEM WOUND, A WOUND SUSTAINED WHILE THE HEART
15 IS PUMPING, CORRECT?
16 A WELL, I'D HAVE TO READ THAT. I DIDN'T
17 RECALL THAT SPECIFICALLY.

18 Q HE DIDN'T USE THAT PHRASE, "WHILE THE
19 HEART IS PUMPING," BUT HE DID INDICATE ALL WOUNDS
20 HERE WERE ANTEMORTEM?

21 A YES. THAT'S RIGHT. HE INDICATED THAT
22 AS I THINK IS A GENERAL STATEMENT, NOT WITH EACH
23 WOUND. I'M LOOKING -- ARE YOU SAYING IT IS WITH THIS
24 PARTICULAR DESCRIPTION OF THE WOUND? I DON'T SEE IT
25 RIGHT THERE.

26 Q I DON'T KNOW IF IT'S RIGHT THERE, BUT HE
27 INDICATED ALL THE WOUNDS --

28 A HE INDICATED, YES, AS A GENERAL

41565

1 STATEMENT, THIS IS TRUE.

2 Q ALL THE WOUNDS TO MR. MENENDEZ HE
3 INDICATED WAS ANTEMORTEM, CORRECT?

4 A YES.

5 Q DOES HE GIVE A DESCRIPTION OF SOMETHING
6 HE OBSERVED WHILE HE WAS DISSECTING THIS WOUND THAT
7 IS THE MOST RELIABLE EVIDENCE THAT A WOUND IS
8 ANTEMORTEM?

9 A YES. HE TALKED ABOUT --

10 Q IF YOU LOOK AT PAGE 7 OF HIS REPORT.

11 A THAT'S WHAT I'M DOING.

12 Q THIRD FROM THE LAST PARAGRAPH.

13 A YES. HE STATES HERE THERE WAS
14 HEMORRHAGE ALONG THE ENTIRE WOUND PATH AS WELL AS AT
15 THE FRACTURE ABOVE. AND HE'S TALKING ABOUT
16 HEMORRHAGE FROM THE SMALL CAPILLARIES AND SMALL
17 VESSELS, THAT HE CAN SEE, IF HE ACTUALLY DISSECTS
18 AND LOOKS AT THE WOUND, HE CAN SEE BLOOD ALONG --
19 AND THAT'S WHAT HE'S SPEAKING ABOUT.

20 Q AND IS HEMORRHAGE ALONG THE WOUND PATH
21 THE MOST RELIABLE INDICATION THAT A WOUND IS
22 ANTEMORTEM?

23 A YES, I WOULD THINK IT WOULD BE, BUT
24 THAT'S A LITTLE BIT OUT OF MY FIELD.

25 Q IS THERE ANYTHING THAT YOU SAW IN THE
26 OBSERVATION OF THE CONDITION OF THIS WOUND THAT
27 INDICATES THAT IT IS NOT ANTEMORTEM?

28 A NO.

41566

1 Q NOW, IN ADDITION TO THAT ORIGINAL
2 DESCRIPTION OF HEMORRHAGE ALONG THE ENTIRE WOUND
3 PATH AND AT THE FRACTURE SITE -- BY THE WAY, DOES
4 THAT MEAN -- AND AT THE FRACTURE SITE, DOES THAT
5 MEAN HE DISSECTED DOWN TO THE BONE, TO THE
6 FRACTURE?

7 A WELL, YES. HE DESCRIBES IT, CERTAINLY.

8 Q AND IN HIS AMENDMENT OF 1995, DID
9 DR. GOLDEN ALSO INDICATE THAT DURING THE PROCESS
10 WHERE HE DISSECTED TO THE FRACTURE SITE HE DID NOT
11 SEE ANY EVIDENCE THAT THE FEMORAL ARTERY WAS
12 PERFORATED IN ANY WAY?

13 A WHERE WAS THAT AGAIN?

14 Q SEPTEMBER '95 AMENDMENT.

15 A SEPTEMBER '95 AMENDMENT.

16 OH, YES.

17 Q THAT'S THE LAST PARAGRAPH?

18 A LAST PARAGRAPH. HE STATED --

19 Q YOU DON'T HAVE TO READ IT OUT LOUD. IN
20 FACT, YOU SHOULDN'T READ IT OUT LOUD. AGAINST THE
21 RULES.

22 ALL RIGHT, NOW, BASED ON YOUR EXPERIENCE
23 AND EXPERTISE IN THE AREA OF WOUND BALLISTICS, IS IT
24 LOGICAL THAT WITH THIS WOUND THAT WE ARE SEEING ON
25 MR. MENENDEZ' THIGH, THAT THE LARGE VESSELS, SUCH AS
26 THE FEMORAL ARTERY AND OTHERS, WOULD NOT BE DAMAGED
27 BY SUCH A WOUND?

28 A WELL, IT WOULD CERTAINLY DEPEND ON

41567

1 WHETHER THE SHOT COLUMN, WHICH AT THIS POINT WAS
2 ACTING LIKE A SINGLE PROJECTILE, BECAUSE IT WAS VERY

3 CLOSE TOGETHER, BECAUSE -- YOU CAN SEE THAT BECAUSE
4 OF THE BLOWN-OUT ENTRANCE AND EXIT FROM CAVITATION,
5 WHICH MEANS THE SHOT WAS VERY CLOSE TOGETHER; AND ON
6 THE X RAY YOU DON'T SEE ANY SHOT, BUT JUST A FEW
7 VERY, VERY MINUTE FRAGMENTS, WHICH INDICATED THE
8 SHOT COLUMN PROBABLY CAME CLOSE ENOUGH TO THE FEMUR,
9 SO JUST A FEW SCRAPED A LITTLE BIT. SO IT JUST SORT
10 OF BRUSHED BY THE FEMUR.

11 YES, IF THAT SHOT COLUMN HAPPENED TO HIT
12 THE FEMUR -- HIT THE ARTERY, IT WOULD BREAK IT. BUT
13 IF IT -- AND IF IT DIDN'T, THEN THE -- JUST THE FACT
14 THAT THE BONE IS BROKEN AND YOU HAVE THIS BIG
15 ENTRANCE AND EXIT FROM STRETCHING DOES NOT MEAN THAT
16 THE ARTERY WOULD BE BROKEN BY THIS CAVITATION. THIS
17 IS ANOTHER FAIRLY COMMON MISCONCEPTION THAT YOU SEE
18 SOMETIMES IN THE PAPERS WHEN THEY'RE SPEAKING ABOUT
19 THE HORRORS OF HIGH-VELOCITY BULLET WOUNDS AND IT
20 SAYS ARTERIES ARE TORN WHEN THEY'RE NOT HIT BY THE
21 VESSEL BUT THEY'RE TORN ANYWAY.

22 Q DO YOU MEAN WHEN THEY'RE NOT HIT BY THE
23 PROJECTILE?

24 A BY THE PROJECTILE, YES, THEY'RE TORN.

25 ANYWAY, THIS HAS BEEN VERY WELL
26 DOCUMENTED ALSO IN THE 1962 EDITION BY "WOUND
27 BALLISTICS" THAT I'VE REFERRED TO PREVIOUSLY, IN
28 WHICH THEY'VE PROVEN THIS EXPERIMENTALLY. THEY SAID

1 THAT ON THE FIELD OF BATTLE IT'S BEEN SEEN COMMONLY
2 THAT YOU WILL HAVE BONES BROKEN AND THE LARGE
3 VESSELS THAT ARE VERY NEAR THE BONE NOT BROKEN.
4 VERY, VERY COMMONLY SEEN. AND IN ORDER TO DUPLICATE
5 THIS IN THE LABORATORY THEY DID SOME SHOTS ON
6 ANIMALS AND FOUND THAT THEY COULD EASILY BREAK THE
7 BONE AND NOT BREAK THE VESSEL. AND I'VE DONE SOME
8 LABORATORY STUDIES TO SHOW THE SAME THING.

9 Q CONCERNING YOUR -- JUST FOR A MOMENT HERE
10 TO SIDELINE, CONCERNING YOUR LABORATORY STUDIES AND
11 YOUR RESEARCH, YOU HAD DESCRIBED IN SOME DETAIL THE
12 ORIGINAL RESEARCH THAT YOU DID AT THE WOUND
13 BALLISTICS LABORATORY BY USING THIS SPECIALLY MADE
14 GELATIN.

15 DID YOU ALSO, AND HAVE YOU OVER THE
16 YEARS, DONE NUMEROUS EXPERIMENTS ON ANIMAL TISSUE,
17 BOTH LIVING BUT ANESTHESIZED, ON ANIMALS SUCH AS
18 PIGS AND ALSO SHOOTING EXPERIMENTS ON DEAD ANIMALS?

19 A YES. THE INITIAL CALIBRATION OF THE
20 GELATIN THAT I DESCRIBED PREVIOUSLY OF NECESSITY HAD
21 TO BE DONE WITH LIVE ANESTHESIZED ANIMALS. IT CAN'T
22 BE DONE ANY OTHER WAY. IF YOU WANT TO CALIBRATE A
23 GELATIN TISSUE SIMULANT AGAINST LIVING TISSUE, YOU
24 HAVE TO HAVE YOUR BASE LINE IN LIVING TISSUE;
25 OTHERWISE, YOU DON'T HAVE A SCIENTIFICALLY VALID

26 THING. I DID A FEW EXPERIMENTS AT LETTERMAN ARMY
27 INSTITUTE WITH ANESTHESIZED 200-POUND PIGS, BUT THE
28 MAJORITY OF MY WORK WITH ANIMALS WAS DONE AT THE

41569

1 FRENCH ARMY HOSPITAL IN MARSEILLE, FRANCE. WE HAD A
2 COLLABORATIVE RESEARCH PROJECT, AND FOR THE LAST SIX
3 YEARS THAT I WAS -- OF OUR LABORATORY AT LETTERMAN
4 ENDING IN 1991, I WOULD SPEND APPROXIMATELY A MONTH
5 IN THE SPRING AND A MONTH IN THE FALL IN MARSEILLE
6 AND THERE WE WOULD DO STUDIES WITH LIVING
7 ANESTHESIZED PIGS, SO THAT WE DID CERTAINLY OVER A
8 HUNDRED SHOTS THERE. SO THE MAJORITY OF THIS
9 MATERIAL I DID WITH LIVING PIGS WAS DONE OVER IN
10 FRANCE.

11 Q AND THE RESEARCH THAT YOU HAVE DONE OVER
12 THE YEARS, I THINK YOU'VE ALREADY INDICATED IS
13 DIRECTLY APPLICABLE TO SHOTGUN WOUNDS SUCH AS THE
14 ONES THAT ARE INVOLVED IN THIS CASE?

15 A WELL, YES. CERTAINLY, I'VE DONE WORK
16 WITH SHOTGUNS BECAUSE THEY'RE FAIRLY COMMON. BUT
17 ADDITIONALLY THERE'S ANOTHER REASON.

18 THE MILITARY, IN FINANCING ME TO -- AND
19 THE LABORATORY FOR 10 YEARS, THEIR GOAL WAS TO AIM
20 AT WHAT HAPPENS ON THE FIELD OF BATTLE. AND I HAD

21 TO -- THAT WAS MY FIRST GOAL ALSO. AND SO -- IN
22 VIETNAM WHAT I SAW, AND MY COLLEAGUES SAW, WAS 20
23 PERCENT OF THE CASUALTY WAS HIT BY RIFLE FIRE AND 80
24 PERCENT WERE INJURED BY FRAGMENTS FROM EXPLOSIVE
25 DEVICES.

26 NOW, THE SHOTGUN IS AN EXCELLENT WAY TO
27 STUDY THESE EFFECTS BECAUSE THE SHOTGUN IS VERY
28 SIMILAR TO THE EXPLOSIVE DEVICE. EXPLOSIVE DEVICE

41570

1 EXPLODES AND SENDS OUT FRAGMENTS IN EVERY
2 DIRECTION. A SHOTGUN, WHEN IT EXPLODES, SENDS THEM
3 OUT IN ONLY ONE DIRECTION; HOWEVER, THEY DO SPREAD
4 OUT WITH DISTANCE, SO BY VARYING THE DISTANCE YOU
5 CAN VARY THE VELOCITY WITH WHICH THEY HIT AND THE
6 DISTANCE THEY ARE APART.

7 AND SO ACTUALLY I'VE USED THE STUDIES
8 WITH SHOTGUNS TO EXPLAIN TO THE COMBAT SURGEON THE
9 MECHANISM OF WOUNDS WITH EXPLOSIVE DEVICES, AND I
10 USED THE SHOTGUN ANALOGY AND A WOUND PROFILE OF THE
11 SHOTGUN IN THE "NATO WAR SURGERY MANUAL" WHERE I
12 WROTE THE CHAPTER ON THE SUBJECT.

13 Q LET ME SHOW YOU -- I WANT TO GET SOME
14 CLARIFICATION ON THE MECHANISMS HERE THAT LED TO THE
15 BREAK IN MR. MENENDEZ' LEFT LEG AND ALSO HOW THE

16 FACT THAT THIS APPEARS TO BE, I THINK YOU'VE
17 TESTIFIED, PRIMARILY A WOUND CAUSED BY CAVITATION
18 SUPPORTS THE NOTION THAT NEITHER THE ARTERY NOR ANY
19 OTHER MAJOR VESSEL WAS HARMED IN THE COURSE OF THIS
20 WOUND BEING INFLICTED.

21 SO I PUT UP ON THE BOARD THE
22 PHOTOGRAPHIC X RAY, EVIDENCE 176, WHICH IS OF
23 MR. MENENDEZ' LEFT LEG.

24 A YES.

25 Q IF YOU COULD USE THAT TO --

26 A YES, I SHALL.

27 Q -- CLARIFY THE NATURE OF THAT BREAK AND
28 WHY IT SUPPORTS THE NOTION THAT THE ARTERY WAS NOT

41571

1 SEVERED.

2 A ACTUALLY, IF YOU LOOK AT THIS BREAK, IT
3 LOOKS LIKE IT MAY BE FAIRLY COMPLEX, BUT IT'S REALLY
4 NOT. IT'S A SIMPLE BREAK. THERE'S ONE FRAGMENT,
5 TWO FRAGMENTS; AND, OF COURSE, WE HAVE THIS
6 FORESHORTENING AGAIN WHICH WE DESCRIBED BEFORE, AND
7 THEN WE HAVE ONE SEPARATE FRAGMENT HERE. AND YOU
8 CAN SEE THE ANATOMY OF THESE FRAGMENTS, HOW THEY
9 WOULD FIT TOGETHER, AND IT'S A FAIRLY SIMPLE
10 FRAGMENT -- SIMPLE BREAK, WHICH IS CHARACTERISTIC OF

11 WHAT YOU SEE WITH BREAKS FROM TEMPORARY CAVITATION,
12 AS OPPOSED TO ACTUALLY BEING HIT AS WE SHOWED
13 YESTERDAY.

14 YOU SEE SOME -- A FEW VERY, VERY TINY
15 LITTLE, LITTLE FLAKES OF LEAD IN HERE, AND THAT'S
16 WHY I SAY WHAT I THINK HAPPENED IS THIS SHOT COLUMN,
17 WHICH WAS ALL TOGETHER, IN ORDER TO GIVE ENOUGH
18 TEMPORARY CAVITY SIZE TO BREAK THAT LEG, THE SHOT
19 COLUMN WOULD HAVE TO HAVE BEEN ALL ACTING AS ONE
20 PROJECTILE ALL TOGETHER. I THINK IT SCRAPED A
21 LITTLE BIT ALONG THE BONE, ENOUGH TO SCRAPE OFF A
22 FEW OF THESE VERY, VERY TINY LITTLE FRAGMENTS. WE
23 SEE NO SUBSTANTIAL FRAGMENTS IN THERE.

24 AND THIS -- UNLESS THIS WENT THROUGH AT
25 AN ANGLE WHERE IT ABSOLUTELY HIT THE VESSEL AND THE
26 VESSEL IS IN THE TISSUE SOMEWHERE GOING THROUGH
27 HERE, BUT IF YOU LOOK AT IT IN A THREE-DIMENSIONAL
28 VIEW, YOU COULD SEE THAT YOU WOULD HAVE TO HAVE IT

41572

1 JUST -- YOU KNOW, THE TRAJECTORY HITTING THE VESSEL
2 IN ORDER TO BREAK THE VESSEL. AND HERE -- BUT YOU
3 COULD EASILY BREAK THE BONE WITHOUT -- IF YOU WERE
4 ANYWHERE NEAR THE AREA, JUST THE -- BUT THIS STRETCH
5 WOULD CERTAINLY NOT BREAK THE VESSEL. IT JUST

6 DOESN'T HAPPEN.

7 Q IN FACT, IN THAT 1962 TEXT THAT YOU HAVE
8 REFERRED TO, IT INDICATES SPECIFICALLY, DOES IT NOT,
9 WITH REFERENCE TO THIGH WOUNDS, THAT THE CAVITY --
10 THE TEMPORARY CAVITY PUSHES THE VESSEL ASIDE, AND
11 BECAUSE THESE VESSELS ARE VERY ELASTIC THEY JUST
12 STRETCH AWAY AND DON'T BREAK?

13 A THAT'S RIGHT. THE CHARACTERISTICS OF
14 THE -- THE CHARACTERISTIC OF ELASTICITY IS PROBABLY
15 THE MOST IMPORTANT ONE AS FAR AS THE RESISTANCE OF
16 TISSUE TO BE HARMED BY CAVITATION.

17 ALL CAVITATION IS, AS I HAVE TRIED TO
18 DESCRIBE IT, AS A SPLASH. BUT BASICALLY IT'S -- IF
19 YOU TAKE -- THE PROJECTILE GOES ON THROUGH.
20 TIMEWISE THE CAVITY COMES LATER. ON HIGH-SPEED
21 PHOTOGRAPHY SORT OF LIKE THE WAKE OF A SHIP, IT
22 COMES A FEW MILLISECOND -- ITS MAXIMUM IS MAYBE A
23 MILLISECOND AFTER THE PROJECTILE GOES THROUGH. BUT
24 AS THE BULLET OR BULLETS GO THROUGH, THEY MAKE A
25 PERMANENT CAVITY; ACTUALLY, THEY MAKE A HOLE, THEN
26 ALL THE TEMPORARY CAVITY IS IS THIS HOLE STRETCHING
27 ITS WALLS OUTWARD TEMPORARILY AND THEN COMING BACK.

28 THERE ARE CERTAIN SUBSTANCES IN WHICH

1 THE TEMPORARY CAVITY REMAINS PERMANENT LIKE THAT.
2 FOR INSTANCE, CLAY, WHICH IS TOTALLY NON-ELASTIC.
3 CLAY WILL BE SPLASHED ASIDE AND THE TEMPORARY CAVITY
4 REMAINS PERMANENT BECAUSE IT DOESN'T COME BACK. AND
5 MOST TISSUE, IT COMES BACK. BUT ELASTICITY IS THE
6 MOST IMPORTANT CHARACTERISTIC TO PREDICT WHETHER OR
7 NOT A CERTAIN TISSUE WILL BE HARMED; AND LARGE BLOOD
8 VESSELS ARE EXTREMELY ELASTIC.

9 Q WAS THERE ALSO ADDITIONAL RESEARCH THAT
10 YOU CONDUCTED THAT INDICATED THAT THERE IS ANOTHER
11 PHENOMENON HAVING TO DO WITH CONSTRICTION OF THESE
12 VESSELS, EVEN IF THEY ARE TORN, THAT SHUTS OFF
13 BLEEDING?

14 A YES. THIS IS -- THIS IS SOMETHING THAT
15 IS NOT -- HAS NOT BEEN WELL-RECOGNIZED. AND WE SAW
16 IT IN FRANCE WHEN WE DID A STUDY WITH THE RUSSIAN --
17 THE NEWEST RUSSIAN ASSAULT RIFLE WEAPON, WHICH WENT
18 THROUGH THE HIND LEG AND THE THIGH AREA OF 200-POUND
19 PIGS, AND THESE PIGS WERE ANESTHESIZED AND WE HELD
20 THE PIG UP AND SHOT THROUGH THEM. AND THIS
21 PROJECTILE CAUSES A CAVITY ABOUT THE SIZE OF A
22 CANTALOUPE, THE ONE WE WERE TALKING ABOUT.

23 AND IN EVERY CASE WE FOUND A PHENOMENON
24 THAT WAS VERY INTERESTING. IN THE FIRST PLACE WE
25 FOUND THESE TORN EXIT WOUNDS WHICH WERE -- OH, THEY'D
26 MEASURE MAYBE SIX INCHES ACROSS. ACTUALLY, SOME
27 LARGER THAN WHAT WE SEE HERE ON MR. MENENDEZ. AND
28 IN NO CASE WAS THERE BLOOD GUSHING OUT OF THESE

1 WOUNDS. THERE'D BE A LITTLE TRICKLE DOWN AT THE
2 BOTTOM FROM THE VERY SMALL VESSELS, BUT THE LARGE
3 VESSELS WEREN'T BLEEDING.

4 AND ANOTHER INTERESTING THING WAS THAT
5 WE NOTED, IF YOU LOOKED AT THE SKIN AROUND THE
6 VESSEL -- AROUND THE HOLE, IT WAS BLANCHED. IT WAS
7 WHITE, WHICH INDICATED IT WASN'T GETTING ANY BLOOD
8 SUPPLY.

9 AND THIS IS VERY IMPORTANT FOR TRAINING
10 OF THE MILITARY BECAUSE COMMONLY THE SOLDIER IS --
11 THE COMBAT SURGEON IS TAUGHT WHEN YOU SEE A WOUND,
12 ONE WAY TO TELL DEAD TISSUE FROM LIVING TISSUE IS IF
13 IT BLEEDS OR NOT WHEN YOU CUT IT. SO VERY
14 FREQUENTLY, AS YOU'RE CUTTING TISSUE AND THERE'S --
15 AGAIN, AS I TRIED TO EXPLAIN YESTERDAY, THERE'S A
16 LINE BETWEEN THE HEALTHY TISSUE AND THE TISSUE
17 THAT'S OBVIOUSLY BADLY MANGLED, MUST COME OUT, BUT
18 THERE'S A POINT THERE AT WHICH WHERE THE TISSUE IS
19 GONNA BE LIVING HEALTHY TISSUE AND THEN WHERE IT --
20 THE TISSUE THAT WILL NOT SURVIVE.

21 NOW, IF YOU USE THE GUIDELINE OF CUTTING
22 UNTIL IT BLEEDS, THEN THAT -- WHAT THAT WOULD SAY IS
23 ALL THIS WHITE AREA, IF YOU SEE THIS CASUALTY, YOU
24 WOULD HAVE TO CUT ALL THIS WHITE AREA OUT BECAUSE

25 OBVIOUSLY IT'S NOT GOING TO BLEED. IT'S NOT GETTING
26 ANY BLOOD SUPPLY.
27 HOWEVER, WHAT WE DID IS -- WE WERE
28 PUZZLED BY THIS PHENOMENON BECAUSE IT HAD NEVER BEEN

41575

1 DESCRIBED BEFORE. SO WHAT WE DID IS WE WANTED TO
2 SEE HOW LONG IT WOULD LAST. HALF OF THE PIGS THAT
3 WE OPERATED ON -- WE OPERATED ON HALF THE PIGS AND
4 DID FAIRLY LARGE RESECTION AND THE OTHER HALF WE
5 DIDN'T OPERATE ON AT ALL AND JUST SAW HOW NATURE'S
6 DEFENSE MECHANISMS WOULD HANDLE IT. AND WE NOTED
7 THAT IN OUR PROTOCOL THAT WE'D SET UP WAS TO DO THE
8 OPERATION IMMEDIATELY, WITHIN 15 MINUTES OF THE TIME
9 THAT WE DID THE SHOTS. AND THEN WE'D CHANGE THE
10 DRESSING THE NEXT DAY. WE NOTICED WHEN YOU CHANGE
11 THE DRESSING THE NEXT DAY ON THE ONES THAT WE HADN'T
12 OPERATED UPON, THE WHITE AREAS, THE AREAS THAT HAD
13 BEEN WHITE, WERE NO LONGER WHITE. SO WE SAID, WELL,
14 WE'LL STUDY THIS. SO WE TOOK ONE PIG, AN EXTRA PIG,
15 AND SHOT THE PIG, AND --

16 Q ANESTHESIZED?

17 A OF COURSE. ANYTHING -- WE DIDN'T SHOOT
18 ANYTHING THAT WEREN'T ANESTHESIZED. WE LOOKED AT
19 THIS WHITE AREA, PHOTOGRAPHED IT, AND DIDN'T TOUCH

20 IT. LET THE PIG BE ANESTHESIZED WITH THE LEGS
21 STRUNG UP FOR THREE HOURS; LATER TOOK ANOTHER
22 PHOTOGRAPH AND THE WHITENESS HAD GONE.
23 SO IT'S A TEMPORARY PHENOMENON OF A
24 SPASM OF THE LOCAL BLOOD VESSELS SECONDARY TO BEING
25 STRETCHED VIOLENTLY. THE BODY DEFENSE MECHANISMS
26 HAVE THE CAPACITY TO CLAMP BLOOD VESSELS DOWN SO
27 THEY WON'T BLEED. THIS REALLY EXPLAINS A LOT OF
28 THINGS.

41576

1 FOR INSTANCE, THE LAYMEN TENDS TO BE
2 VERY SURPRISED BY THE FACT THAT A PERSON WHO'S LEG
3 HAS BEEN BLOWN OFF WILL COME IN AND THEY WON'T BE
4 BLEEDING TO DEATH. IF YOU TOOK A SHARP KNIFE AND
5 CUT THE LEG OFF THE PERSON WOULD BLEED TO DEATH IN
6 MINUTES. BUT WHEN THE LEG GETS BLOWN OFF BY AN
7 EXPLOSIVE DEVICE IT DOESN'T BLEED. IT'S THE SAME
8 PHENOMENON.

9 Q IS IT THEREFORE LAYMAN THINKING TO THINK
10 THAT IF YOU CUT YOUR FINGER AND IT BLEEDS THAT THIS
11 WOUND TO MR. MENENDEZ' LEFT LEG SHOULD HAVE BEEN
12 BLEEDING A LOT; IS THAT LAYMAN THINKING?

13 A WELL, IT WOULD BE, YES. BUT BASED ON
14 EVERYTHING I'VE SEEN ON THE FIELD OF BATTLE AND

15 DOCUMENTED EXPERIMENTALLY, I WOULD NOT EXPECT TO SEE
16 ANYTHING -- MAYBE A SMALL TRICKLE OF BLOOD COMING
17 OUT OF THIS. BUT CERTAINLY NOTHING MAJOR. UNLESS
18 THE VESSEL HAD BEEN ACTUALLY CUT.

19 Q BUT EVEN IF THE VESSEL HAD BEEN CUT --

20 A WELL, THE VESSEL -- EVEN IF THE VESSEL
21 HAD BEEN CUT, THE VESSEL MAY NOT BE BLEEDING.

22 YES, I HAVE SEEN A CASE --

23 Q DOES THAT HAVE TO DO WITH THE PIG
24 EXPERIMENT?

25 ON THE ONE HAND, IF THE VESSEL IS NOT
26 CUT BECAUSE, THIS IS A CAVITY CAUSED -- THE VESSELS
27 MOVE ASIDE IN THE TEMPORARY CAVITY?

28 A YES.

41577

1 Q THAT'S ONE REASON IT COULDN'T BE
2 BLEEDING; IS THAT CORRECT?

3 A YES.

4 Q IS A SECOND REASON WHY IT MIGHT NOT BE
5 BLEEDING, THIS PHENOMENON THAT YOU WERE SEEING IN
6 FRANCE, THAT THE VESSELS CONSTRICT AND SHUT THEMSELF
7 OFF?

8 A THIS CERTAINLY COULD EXPLAIN IT.

9 AND MY FIRST EXPERIENCE WITH THIS CAME

10 WHEN I WAS A MEDICAL STUDENT ROTATING THROUGH THE
11 SURGERY SERVICE. WE HAD A FELLOW WHO WAS A GARBAGE
12 COLLECTOR AND HE WAS THROWING A GARBAGE CAN UP OVER
13 A CONVEYOR BELT AND HIS ARM GOT CAUGHT AND IT GOT
14 TORN OFF. EXCEPT FOR JUST A VERY SMALL VOLUME OF
15 SKIN AND A VERY LITTLE BIT OF MUSCLE, THE ARM WAS
16 COMPLETELY GONE. THIS FELLOW CAME IN AND WE OPENED
17 THE WOUND AND LOOKED AT IT AND SITTING THERE IN THE
18 WOUND WAS THE AXILLARY ARTERY, THE BRACHIAL ARTERY,
19 GOING TO THE ARM, WHICH IS AN ARTERY PROBABLY ABOUT
20 THE SIZE OF THIS PENCIL. AND THE END OF IT WAS JUST
21 SITTING THERE WITH A CLOT IN IT. YOU COULD SEE THE
22 PULSATION -- YOU COULD SEE THE ARTERY MOVING WITH
23 THE PULSATION, BUT IT WASN'T BLEEDING AT ALL.

24 Q NOW, BASED ON ALL THE EXPERIMENTATION
25 YOU HAVE DONE WITH BALLISTICS AND WITH WOUND
26 BALLISTICS, DR. FACKLER, DO YOU HAVE AN OPINION
27 ABOUT THIS QUESTION?

28 IF MR. MENENDEZ HAD BEEN SEATED ON THE

41578

1 COUCH THE WAY FAILURE ANALYSIS TRIES TO SUGGEST IN
2 THEIR DIAGRAMS, AT THE TIME THAT HE RECEIVED THAT
3 LEG WOUND, WOULD YOU EXPECT THERE TO BE SOME
4 PHYSICAL EVIDENCE THAT A SHOT COLUMN HAD GONE

5 THROUGH THAT LEG ALONG A REASONABLE TRAJECTORY FROM
6 THAT WOUND?

7 A WELL, I'M -- YES, IN ANSWER TO YOUR
8 QUESTION, CERTAINLY, THE SHOT COLUMN THAT CAME
9 THROUGH THE LEG CAME THROUGH AS A SINGLE SHOT COLUMN
10 AND PROBABLY DIDN'T LOSE A GREAT DEAL OF VELOCITY IN
11 GOING THROUGH, AND IT WOULD COME OUT WITH A -- YOU
12 KNOW, A GREAT DEAL OF FORCE AND IT HAD TO DO
13 SOMETHING. IT HAD TO GO SOMEWHERE, HAD TO HIT
14 SOMETHING.

15 Q JUST DOESN'T EVAPORATE?

16 A THAT'S CERTAINLY TRUE.

17 Q CAN YOU SEE THE PHOTOGRAPHS ON THIS
18 EXHIBIT 304 THAT HAVE BEEN MARKED -- WELL, FIRST OF
19 ALL, LET ME JUST DIRECT YOUR ATTENTION TO THE
20 ILLUSTRATIONS D AND E.

21 FOR ONE THING, DO YOU UNDERSTAND THAT
22 THE TRAJECTORY THAT IS SUGGESTED IN THESE
23 ILLUSTRATIONS REQUIRES SOMEONE TO BE SHOOTING AT
24 THAT LEG FROM BEHIND THE COUCH IN SOMETHING LIKE THE
25 ANGLE SHOWN?

26 NOW, DO YOU HAVE AN OPINION BASED ON THE
27 WOUND AND THE ALIGNMENT OF THE ENTRY AND EXIT WOUNDS
28 AS TO WHETHER THAT TRAJECTORY IS REASONABLY

1 PROBABLE?

2 A YES. THE TRAJECTORY DOESN'T MAKE ANY
3 SENSE BECAUSE OF THE ANGLE OF THAT WOUND ACROSS
4 MR. MENENDEZ' LEG. THAT IS WITHIN ABOUT 10 DEGREES
5 OF ACTUALLY PERPENDICULAR TO THE LONG BONE OF THE
6 LEG. IT'S CERTAINLY NOT ANGLED ANYWHERE NEAR THE
7 WAY IT'S ANGLED IN THESE TWO PHOTOGRAPHS.

8 AND AS A MATTER OF FACT, IN THE AUTOPSY
9 REPORT DR. GOLDEN HAS MEASURED THE DISTANCE FROM THE
10 HEEL TO EACH OF THESE WOUNDS AND THERE'S ONE-INCH
11 DIFFERENCE BETWEEN THE TWO, AND ONE-INCH DIFFERENCE
12 ACROSS ABOUT A FIVE-INCH LEG GIVES YOU 11 DEGREES.
13 SO IT'S CERTAINLY NO MORE THAN 11 DEGREES. AND THIS
14 IS DEPICTED HERE AS -- THIS IS LIKE 45 DEGREES FROM
15 THE LONG AXIS OF THE FEMUR AND THAT CERTAINLY
16 DOESN'T HAPPEN.

17 Q IN ORDER FOR SOMEONE BEHIND THE COUCH,
18 IF IT'S -- FIRST OF ALL, IS IT EVEN CONCEIVABLE THAT
19 SOMEONE COULD INFLICT A WOUND WITH AN 11-DEGREE
20 ANGLE FROM A POSITION BEHIND THE COUCH?

21 A NO. THEY'D HAVE TO BE OVER AND THIS --
22 THEY'D HAVE TO BE OVER BEHIND THE COUCH AS IT
23 EXTENDS AROUND -- WELL, THE COUCH IS AN L-SHAPED
24 COUCH. IF THEY WERE BEHIND THIS PORTION OF THE
25 COUCH, YES.

26 Q AND THEN THEY'D HAVE TO GET THE SHOT LOW
27 ENOUGH?

28 A YES, THAT WOULD BE A POSSIBILITY. BUT

41580

1 CERTAINLY NOT FROM THERE.

2 AND THE PROBLEM WITH THE SHOT FROM THIS
3 PART OF THE COUCH IS IT PUTS THE GUN TOO FAR AWAY
4 FROM THE LEG TO EXPLAIN THE SHOT COLUMN BEING AS
5 CLOSE TOGETHER AS IT WOULD HAVE TO BE TO HAVE CAUSED
6 THAT WOUND.

7 Q THAT DOES APPEAR TO BE A WOUND THAT'S
8 CAUSED WITHIN A FEW FEET?

9 A I WOULD SAY NO MORE THAN THREE,
10 PROBABLY.

11 Q SO YOU CAN'T HAVE THE MUZZLE OF THE GUN
12 MANY FEET AWAY ON THE OTHER SIDE OF THE COUCH AND
13 PRODUCE THIS SHOT COLUMN WOUND; IS THAT CORRECT?

14 A THAT'S TRUE.

15 Q SO THE TRAJECTORY SHOWN IN THOSE
16 ILLUSTRATIONS IS WRONG, CORRECT?

17 A CORRECT.

18 Q NOW, IN ADDITION TO THAT, DO YOU SEE
19 THESE PHOTOGRAPHS FOLLOWING THIS NOTION, WHAT WE NOW
20 KNOW IS WRONG, BUT IN ANY EVENT, IF YOU FOLLOW THIS
21 WRONG-HEADED TRAJECTORY TO ITS TERMINUS, THAT WOULD
22 BE AN AREA -- YOU CAN SEE HOW THE CARPET PATTERN

23 LINES UP. THAT WOULD BE AN AREA ON THE CARPET
24 THAT'S DEPICTED IN F, G AND H.
25 AND ARE YOU AWARE OF THE FACT THAT
26 ABSOLUTELY NO BALLISTIC OR BLOOD OR TISSUE MATTER
27 WAS OBSERVED OR IS OBSERVABLE IN THOSE AREAS?
28 A WELL, YES, I NOTE THAT. BUT THAT

41581

1 DOESN'T -- THE THING THAT I WOULD EXPECT TO BE MUCH
2 MORE CERTAIN EVIDENCE THAN TISSUE FRAGMENTS WOULD BE
3 THE PELLETS.

4 Q I SAID BALLISTIC EVIDENCE. THERE'S NO
5 PELLETS THERE?

6 A OH, I'M SORRY. YES, THE PELLETS, THE
7 PELLETS ARE COMING OUT OF THERE AT QUITE A RAPID
8 SPEED AND THEY'D HAVE TO GO SOMEWHERE. THEY WOULD
9 CERTAINLY GO THROUGH THIS RUG AND THIS IS A HARDWOOD
10 FLOOR. THEY'D PROBABLY GO INTO THE HARDWOOD FLOOR.

11 Q AND THERE'S NO EVIDENCE WHATSOEVER OF
12 ANY PELLET DAMAGE IN THAT AREA, TO THE LEFT OF YOUR
13 OBSERVATION?

14 A BEST OF MY KNOWLEDGE THERE'S NOT.

15 Q NOW, IN ADDITION TO PELLETS COMING OUT
16 OF THE WOUND LIKE THAT, WOULD YOU EXPECT BLOOD TO BE
17 COMING OUT?

18 A YOU'D EXPECT SOME BLOOD SPRAY, YES.

19 Q SIMILAR TO WHAT WE SAW ON MR. MENENDEZ'

20 LEFT ARM AS THE SPRAY OF THE WOUND TO HIS RIGHT

21 ARM?

22 A YES, I THINK THAT'S AN EXCELLENT

23 ANALOGY. EVEN THOUGH THE -- THERE'S CERTAIN AMOUNT

24 OF BLOOD -- WE'RE TALKING ABOUT THE SPASM AND

25 EVERYTHING, BUT THERE'S A CERTAIN AMOUNT OF BLOOD IN

26 THE EXTREMITY WHEN IT'S HIT. THIS IS WHERE THE

27 BLOOD SPATTER WOULD COME FROM AND THEN THE CLAMPING

28 DOWN WOULD COME VERY SHORTLY. BUT THERE WOULD BE A

41582

1 CERTAIN AMOUNT AND YOU WOULD CERTAINLY EXPECT SOME

2 BLOOD SPATTER IN THE DIRECTION OF THE PATH OF THE

3 BULLET.

4 Q AND THERE IS NO BLOOD SPATTER IN THE

5 DIRECTION OF THE PATH OF THE BULLET AS IMAGINED BY

6 FAILURE ANALYSIS, CORRECT?

7 A NO. YOU DON'T SEE ANYTHING.

8 Q OH, I WANTED TO SHOW YOU SOMETHING ELSE,

9 DR. FACKLER. THESE WERE TWO EXHIBITS MARKED BY

10 DR. LAWRENCE.

11 AND YOU DID READ DR. LAWRENCE'S

12 TESTIMONY, DID YOU NOT?

13 A I DID.

14 Q FIRST OF ALL, I WANT TO SHOW YOU WHAT
15 WAS MARKED 208. THIS IS A PHOTOGRAPH, A DUPLICATE
16 OF WHICH APPEARED ON -- LET ME JUST GET THE NUMBER --
17 YOU KNOW, YOUR HONOR, WE DISCOVERED
18 YESTERDAY. THERE'S A REASON WHY THIS DOESN'T HAVE A
19 NUMBER ON THE FRONT. THIS DOESN'T HAVE A NUMBER
20 PERIOD.

21 THE COURT: OKAY. YOU FAILED TO ASK IT TO BE
22 MARKED AS AN EXHIBIT.

23 MS. ABRAMSON: I CERTAINLY DID.

24 THE COURT: IT HAS SINCE BEEN MARKED 319.

25 MS. ABRAMSON: THIS ONE IS 319?

26 THE COURT: YES.

27 MS. ABRAMSON: THIS IS THE BOARD THAT HAS A
28 NUMBER OF PHOTOGRAPHS THAT HAS THE NO. 8 IN THE

41583

1 UPPER RIGHT CORNER. LET ME TAKE THIS BACK FOR A
2 MINUTE.

3 Q OKAY, JUST FOR A MOMENT.

4 THIS IS CHART 319. AND CALLING YOUR
5 ATTENTION TO PHOTOGRAPH "A" IN 319, THE PHOTOGRAPH
6 OF THE COUCH, DO YOU SEE ON THE CUSHION IMMEDIATELY
7 ADJACENT TO THE CUSHION WHERE THE BODY OF

8 MR. MENENDEZ WAS FOUND THERE ARE TWO NUMBERS, FOUR

9 AND SIX?

10 A YES.

11 Q AND DO YOU SEE IMMEDIATELY TO THE RIGHT

12 OF THE NO. 6 AN OBJECT?

13 A YEAH, I DO, YEAH.

14 Q AND DID YOU OBSERVE THAT OBJECT UNDER A

15 MAGNIFYING GLASS AND IN OTHER METHODS IN STUDYING

16 THESE PHOTOGRAPHS?

17 A YES. IN THIS PHOTOGRAPH, AND A FEW

18 OTHERS I STUDIED UNDER MAGNIFICATION EVERY TIME WE

19 HAVE IT, WHICH IS AT LEAST ONE OTHER, MAYBE TWO

20 OTHERS.

21 Q AND WHAT, IN THE BEST OF YOUR OPINION,

22 WHAT DOES THAT MATTER APPEAR TO BE?

23 A IT CERTAINLY APPEARS TO BE BRAIN

24 TISSUE.

25 Q AND THIS IS BRAIN TISSUE SITTING RIGHT

26 IN THE MIDDLE, IS IT NOT, OR THEREABOUTS, OF THE

27 CUSHION UPON WHICH DR. MC CARTHY IMAGINES

28 MRS. MENENDEZ IS SITTING WHILE MR. MENENDEZ IS

41584

1 RECEIVING THE SHOT TO THE BACK OF HIS HEAD?

2 MR. CONN: OBJECTION. ARGUMENTATIVE AND

3 MISSTATES THE TESTIMONY.

4 THE COURT: SUSTAINED AS TO THE FORM OF THE
5 QUESTION.

6 Q BY MS. ABRAMSON: YOU'RE FAMILIAR WITH --
7 YOU'RE FAMILIAR WITH WHAT MR. MC CARTHY CALLED SHOT
8 NO. 2, WHICH IS THE SHOT TO THE BACK
9 MR. MENENDEZ' HEAD?

10 A YES, I AM.

11 Q AND YOU'RE FAMILIAR THIS IS HIS
12 ILLUSTRATED VERSION OF THAT?

13 A YES.

14 Q DO YOU SEE MRS. -- WHAT'S SUPPOSED TO BE
15 MRS. MENENDEZ SITTING ON THE COUCH WHEN THAT'S
16 HAPPENING?

17 A YES.

18 Q AND IS THIS PIECE OF BRAIN MATTER
19 SITTING ON THE COUCH WHERE SHE'S SUPPOSED TO BE,
20 ACCORDING TO THIS ILLUSTRATION?

21 A YES, IT IS.

22 Q NOW, I WANT TO SHOW YOU, THEREFORE, WHAT
23 DR. LAWRENCE MARKED SOME AREAS ON 208, WHICH IS AN
24 IDENTICAL PHOTOGRAPH, AS "A" ON 319.

25 A YES.

26 Q YOU SEE THAT?

27 AND HE WAS MAKING A MARK, IN FACT, THAT
28 WAS SUPPOSED TO ENCOMPASS WHERE MRS. MENENDEZ WAS

1 SITTING.

2 A YES.

3 Q AND HAS HE INCLUDED THAT PIECE OF BRAIN
4 MATERIAL AS THE AREA WHERE SHE'S SUPPOSEDLY SITTING?

5 A YES.

6 Q IS IT CONCEIVABLE THAT THAT PIECE OF
7 BRAIN MATERIAL COULD HAVE HIT THE CUSHION OF THE
8 COUCH IF SHE WAS SITTING ON THE CUSHION OF THE
9 COUCH?

10 A NO.

11 Q NOW, THE OTHER THING I WANTED TO SHOW
12 YOU, DR. FACKLER, IS THIS PHOTOGRAPH WHICH
13 DR. LAWRENCE BROUGHT FROM STOCKTON AND IT'S MARKED
14 EXHIBIT 211.

15 DO YOU RECALL DR. LAWRENCE'S TESTIMONY
16 THAT AT ONE TIME IN HIS EXPERIENCE HE HAD BEEN,
17 QUOTE, FOOLED BY A SHOTGUN WOUND AND HAD ORIGINALLY,
18 IN OBSERVING IT, FORMED THE OPINION THAT IT WAS A
19 POSTMORTEM WOUND?

20 A YES, I RECALL THAT.

21 Q AND YOU'RE LOOKING AT THAT PHOTOGRAPH OF
22 THAT WOUND. DR. FACKLER, BASED ON YOUR EXPERIENCE,
23 IS THERE ANY REASON THAT YOU CAN SEE IN THAT
24 PHOTOGRAPH WHY YOU WOULD CONSIDER THAT EVEN
25 PRELIMINARILY AS A POSTMORTEM WOUND?

26 A CERTAINLY DOESN'T -- WELL, NO. ACTUALLY,

27 THE SUBCUTANEOUS TISSUE IS -- HAS A LOT OF SMALL
28 PUNCTATE HOLES -- I MEAN SMALL PUNCTATE AREAS OF

41586

1 BLEEDING, WHICH IS THE HALLMARK OF AN ANTEMORTEM
2 WOUND. SO I CAN'T FOR THE LIFE OF ME SEE WHY
3 ANYBODY WOULD THINK THIS IS POSTMORTEM.

4 Q SO THAT WOUND WOULDN'T HAVE FOOLED YOU?

5 A NO.

6 MS. ABRAMSON: I HAVE NOTHING FURTHER.

7 THE COURT: ALL RIGHT. WE'LL TAKE A RECESS
8 AND THEN WE'LL HAVE CROSS-EXAMINATION AT FIVE
9 MINUTES AFTER THE HOUR.

10 DON'T DISCUSS THE MATTER WITH ANYONE.
11 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL
12 RESUME IN 15 MINUTES.

13 (A RECESS WAS TAKEN FROM
14 9:50 A.M. TO 10:15 A.M.)

15

16 THE COURT: OKAY. THE DEFENDANTS ARE IN
17 COURT, ALL LAWYERS.

18 LET'S GET THE JURY OUT, PLEASE.

19 (THE JURY ENTERED THE
20 COURTROOM AND THE FOLLOWING
21 PROCEEDINGS WERE HELD:)

22

23 THE COURT: THE JURY IS IN COURT.

24 YOU MAY CROSS-EXAMINE THE WITNESS.

25 MR. CONN: THANK YOU, YOUR HONOR.

26

27 / / /

28

41587

1 CROSS-EXAMINATION

2 BY MR. CONN:

3 Q DOCTOR, IS IT YOUR TESTIMONY THAT THE
4 SHOTS INFLICTED IN THIS CASE DID NOT CAUSE THE
5 VICTIMS ANY PAIN?

6 A NO.

7 Q IS THAT YOUR PURPOSE OF TESTIFYING, TO
8 THE FACT THAT GUNSHOT WOUNDS COMMONLY DO NOT CAUSE
9 ANY PAIN AT ALL, TO GIVE THE JURY THE IMPRESSION
10 THAT THESE VICTIMS DID NOT SUFFER ANY PAIN?

11 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

12 THE COURT: OBJECTION SUSTAINED.

13 Q BY MR. CONN: HOW MANY OF THE WOUNDS
14 THAT WERE INFLICTED IN THIS CASE, DOCTOR, IN YOUR
15 OPINION, WERE PAINFUL TO THE VICTIMS?

16 MS. ABRAMSON: OBJECTION. CALLS FOR

17 SPECULATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: WELL, IT'S DIFFICULT TO SAY.

20 THE -- AS I -- I CAN ONLY RELATE TO YOU THE EXPERIENCE

21 OF WAR TIME AND POLICEMEN WHO ARE SHOT IN THE LINE

22 OF DUTY WHO RECALL MANY TIMES THEY DIDN'T HAVE PAIN

23 FROM GUNSHOT WOUNDS AND IT'S RARE THAT THEY WOULD

24 HAVE SEVERE PAIN.

25 Q BY MR. CONN: DO YOU THINK THAT THE

26 WOUND TO THE LEFT ELBOW OF JOSE MENENDEZ WOULD HAVE

27 BEEN A PAINFUL WOUND?

28 A UNLIKELY.

41588

1 Q UNLIKELY THAT WOULD HAVE BEEN PAINFUL?

2 A YES, YES, IMMEDIATELY PAINFUL. I HAVE

3 TALKED TO PEOPLE WHO HAVE SHOT THEMSELVES, FIREARMS

4 EXAMINERS, FOR INSTANCE, WHO HAVE ACCIDENTALLY SHOT

5 THEMSELVES WHILE EXAMINING A GUN AND THEY LOOK AND

6 THEY FELT NO PAIN FOR ABOUT TWO HOURS AND THEN IT

7 GETS VERY PAINFUL.

8 Q DOCTOR, HAVE YOU SPOKE --

9 A BUT NOT IMMEDIATELY.

10 Q HAVE YOU SPOKEN TO PEOPLE WHO HAVE CUT

11 THEIR FINGER FROM TIME TO TIME?

12 A WELL, I'VE CUT MY OWN FINGER FROM TIME
13 TO TIME.

14 Q AND HAVE YOU RECEIVED REPORTS FROM
15 PEOPLE WHO, SUCH AS I'M SURE IN THIS COURTROOM, HAVE
16 CUT THEIR FINGER FROM TIME TO TIME AND FELT A GREAT
17 DEAL OF PAIN?

18 MS. ABRAMSON: OBJECTION. CALLS FOR
19 SPECULATION THAT HE HAD REPORTS FROM PEOPLE --
20 THE COURT: REPHRASE THE QUESTION.

21 Q BY MR. CONN: HAVE YOU EVER RECEIVED
22 REPORTS FROM PEOPLE WHO HAVE SUFFERED MINOR CUTS?

23 A I DON'T THINK I GET REPORTS FROM MINOR
24 CUTS, NO.

25 Q IS IT YOUR UNDERSTANDING THAT MINOR CUTS
26 CAUSE PAIN?

27 A VERY FREQUENTLY THEY DO.

28 Q BUT MASSIVE GUNSHOT WOUNDS SUCH AS THESE

41589

1 IN THIS CASE DO NOT CAUSE PAIN?

2 A I KNOW IT SEEMS KIND OF
3 COUNTERINTUITIVE, BUT THAT IS THE CASE, YES.

4 Q SO IT'S YOUR OPINION, DOCTOR, THE LARGER
5 THE WOUND, THE LESS THE PAIN; IS THAT CORRECT?

6 A NO. I DIDN'T MAKE ANY LINEAR

7 RELATIONSHIP.

8 Q YOU SAID THAT YOU CAN'T PREDICT HOW
9 PEOPLE WOULD RESPOND TO SHOTS INFLICTED UPON THEM
10 SINCE THEY DO NOT RESPOND TO PAIN; IS THAT WHAT YOU
11 SAID?

12 MS. ABRAMSON: OBJECTION. MISSTATES THE
13 TESTIMONY.

14 THE COURT: SUSTAINED.

15 Q BY MR. CONN: DID YOU SAY THAT YOU
16 CANNOT PREDICT HOW PEOPLE WOULD RESPOND TO SHOTGUN
17 WOUNDS?

18 A YES.

19 Q AND WHY IS THAT?

20 A WELL, BECAUSE YOU CAN'T PREDICT HOW
21 PEOPLE CAN RESPOND TO ALMOST ANYTHING.

22 Q BUT CAN YOU --

23 A EXCEPT CERTAIN INSTANCES. I'LL GIVE YOU
24 CERTAIN INSTANCES THAT YOU CAN PREDICT IT. IF A
25 PERSON PUTS HIS HAND ON A HOT STOVE AND BURNS HIS
26 HAND, THE PERSON WILL WITHDRAW HIS HAND. SO IN THAT
27 INSTANCE IT'S PREDICTABLE. I MAINTAIN IT IS NOT
28 PREDICTABLE HOW A PERSON WILL RESPOND TO A GUNSHOT

2 THE BACK OF MR. MENENDEZ' HEAD WHERE THERE WILL BE
3 NO REACTION; THERE WILL BE IMMEDIATE DEATH. NOW,
4 THAT'S ALSO PREDICTABLE. BUT THE GREAT MAJORITY OF
5 GUNSHOT WOUNDS, HOW A PERSON WILL REACT TO THEM IS
6 NOT PREDICTABLE.

7 Q IS IT NOT PREDICTABLE THAT A PERSON WHO
8 IS BEING SHOT TO DEATH WOULD RESPOND IN SOME
9 DEFENSIVE MANNER?

10 A WELL, I DON'T KNOW HOW THE PERSON WOULD
11 KNOW THEY'RE BEING SHOT TO DEATH IN THE FIRST PLACE,
12 IF THAT'S THE PART OF THE QUESTION THAT YOU THINK IS
13 THE MOST IMPERATIVE. IT'S SORT OF A DOUBLE
14 QUESTION. I MEAN, IF YOU -- IF YOU COULD REPHRASE IT
15 IN TWO QUESTIONS, I THINK I COULD ANSWER IT EASIER.

16 Q DO YOU THINK THAT A PERSON WOULD RESPOND
17 TO BEING SHOT WITH A SHOTGUN IN SOME DEFENSIVE
18 MANNER?

19 A THEY MIGHT AND THEY MIGHT NOT.

20 Q SO YOU HAVE NO OPINION ONE WAY OR THE
21 OTHER AS TO WHETHER SUCH A PERSON MIGHT BE MORE
22 LIKELY TO RESPOND TO A SHOT BEING FIRED AT HIM?

23 A A PERSON MIGHT RESPOND BY SHOCK AND
24 SURPRISE AND BE STUNNED AND FROZEN, THAT'S A VERY
25 COMMON WAY PEOPLE WOULD RESPOND TO A -- SOMETHING
26 WHERE THEY FELT THEY WERE BEING -- THEIR LIVES WERE
27 BEING IN DANGER.

28 THEY MIGHT ROTATE THEIR BODY AND TRY TO

1 ESCAPE. THIS IS A VERY COMMON RESPONSE THAT I'VE
2 RUN ACROSS IN MANY CASES THAT I'VE TESTIFIED WHERE --
3 IN A POLICE GUN FIGHT A PERSON WILL BE HIT ONCE AND
4 THEN ROTATE THE BODY RAPIDLY TO RUN THE OPPOSITE
5 DIRECTION. THAT'S A COMMON WAY OF RESPONDING.

6 Q DO YOU THINK IT'S EQUALLY POSSIBLE THAT
7 IN THIS CASE IF JOSE MENENDEZ WAS SHOT IN THE LEFT
8 ELBOW HE MIGHT HAVE JUST CONTINUED SITTING THERE
9 WATCHING TELEVISION?

10 A WELL, HE MIGHT HAVE SAT THERE FOR, YOU
11 KNOW, OUT OF SHOCK AND NOT KNOWING -- AND SURPRISE.
12 HE COULD HAVE WELL HAVE SAT THERE FOR A FEW
13 SECONDS. HE MIGHT HAVE MOVED AFTER THAT.

14 WE'RE GETTING INTO AN AREA HERE THAT I
15 CAN'T PREDICT AND NO ONE IN THIS WORLD CAN PREDICT.

16 Q DO YOU THINK THAT BROKEN BONES ARE
17 PAINFUL?

18 A FROM SHOTGUN WOUNDS, FROM EXPLOSIVE
19 DEVICES, IMMEDIATELY THEY ARE NOT.

20 Q SO EVEN FOR THOSE WOUNDS IN THIS CASE
21 THAT INVOLVE FRACTURES, SUCH AS WE'VE SEEN HERE IN
22 THE X RAYS, IT'S YOUR OPINION THAT THEY TOO WOULD
23 NOT BE PAINFUL?

24 A IT'S MY OPINION, AND SOLIDLY SUPPORTED

25 BY THE MEDICAL LITERATURE, WHICH I HAVE CITED TO
26 YOU -- IT'S NOT MY OPINION. IT'S BASED ON STUDIES
27 DONE BY VERY EMINENT PEOPLE STARTING WITH THE SECOND
28 WORLD WAR AND SOME EVEN BEFORE.

41592

1 Q CAN YOU POINT TO ANY OF THE WOUNDS IN
2 THIS CASE, DOCTOR, THAT MIGHT HAVE CAUSED THE
3 VICTIMS IN THIS CASE A LITTLE PAIN?

4 A ANY OF THESE WOUNDS EXCEPT THE ONE TO
5 MR. MENENDEZ' HEAD COULD HAVE CAUSED HIM A LITTLE
6 PAIN.

7 Q JUST A LITTLE?

8 A AS I SAY, I'M -- ALL I'M TRYING TO DO IS
9 TO PRESENT TO YOU THE EVIDENCE THAT HAS BEEN
10 GATHERED AND VERY SOLIDLY ATTESTED TO, WHICH TENDS
11 TO CORRECT THE COMMON MISCONCEPTION OF THE LAYMAN
12 THAT WOUNDS OF THIS TYPE ARE UNIFORMLY PAINFUL.

13 Q HOW ABOUT THE MULTIPLE FRACTURES TO THE
14 HEAD OF KITTY MENENDEZ? DO YOU THINK THAT MIGHT
15 HAVE HURT A LITTLE BIT?

16 MS. ABRAMSON: OBJECTION. MISSTATES THE
17 TESTIMONY. THERE'S BEEN NO TESTIMONY OF FRACTURES
18 TO THE HEAD.

19 THE COURT: REPHRASE THE QUESTION.

20 Q BY MR. CONN: LOOKING AT THE X RAYS OF
21 THE SKULL OF KITTY MENENDEZ, DID YOU NOTICE ANYTHING
22 IN HER HEAD THAT MIGHT HAVE CAUSED HER A LITTLE
23 PAIN?

24 A A LITTLE PAIN? ALL OF THE SHOTS MIGHT
25 HAVE CAUSED HER A LITTLE PAIN.

26 Q WHAT ABOUT -- WHAT WAS THE CONDITION OF
27 HER SKULL AS IT APPEARED IN THE X RAYS?

28 A I DON'T QUITE UNDERSTAND WHAT YOU MEAN

41593

1 BY THE CONDITION OF THE SKULL.

2 Q WAS IT IN PERFECT -- WAS IT PERFECTLY
3 INTACT?

4 A OF COURSE NOT.

5 Q OKAY. THEN PERHAPS YOU CAN TELL US WHAT
6 WAS THE CONDITION OF THE SKULL.

7 A WELL, THERE WERE MULTIPLE FACIAL
8 FRACTURES AND THERE WERE FEW FRACTURES AT THE BASE
9 OF THE SKULL.

10 Q THAT'S WHAT I'M REFERRING TO, DOCTOR.
11 DO YOU THINK THAT MIGHT HAVE CAUSED A
12 LITTLE PAIN, THAT?

13 A PROBABLY WOULDN'T HAVE, NO.

14 Q SO IT'S YOUR OPINION THAT YOU CAN

15 FRACTURE A PERSON'S SKULL AND THAT WOULDN'T CAUSE
16 THEM ANY PAIN?
17 A IF IT'S IN COMBINATION WITH A GUN -- WITH
18 GUNFIRE THAT ALSO GOES IN AND DISRUPTS THE BASAL
19 PORTIONS OF THE BRAIN LIKE THE CONTACT WOUND TO HER
20 CHEEK, CERTAINLY, BECAUSE THE AREAS OF THE BRAIN
21 THAT RECEIVE THE PAIN ARE NO LONGER OPERATIVE; SO OF
22 COURSE THERE WOULDN'T BE ANY PAIN.
23 Q SO YOU FEEL THAT THIS WAS ESSENTIALLY A
24 PAINLESS CRIME?
25 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR
26 HONOR. THAT'S ARGUMENTATIVE.
27 THE COURT: OVERRULED.
28 THE WITNESS: NO. I NEVER SAID THAT, NO.

41594

1 Q BY MR. CONN: NOW, HAVE YOU SPOKEN TO A
2 LOT -- I UNDERSTAND THAT YOU TREATED A LOT OF
3 PROJECTILE WOUNDS; IS THAT CORRECT?
4 A YES, I HAVE.
5 Q DID YOU ALSO SPEAK TO PEOPLE WHO
6 RECEIVED GUNSHOT WOUNDS?
7 A GUNSHOT WOUNDS ARE PROJECTILE WOUNDS.
8 Q DID YOU SPEAK TO PEOPLE WHO RECEIVED
9 SHOTGUN WOUNDS?

10 A YES.

11 Q AND DID THEY REPORT TO YOU FEELING NO
12 PAIN AT THE TIME OF THE SHOT?

13 A I'M NOT SURE HOW MANY I'VE TALKED TO AND
14 ASKED THAT QUESTION. I HAVE NOT -- LET ME SEE. THE
15 CASE I TESTIFIED ON RECENTLY ON A SHOTGUN WOUND I
16 DIDN'T GET A CHANCE TO SPEAK TO THE DEFENDANT,
17 ALTHOUGH HE WAS LIVING. BUT THAT DID NOT COME OUT
18 IN THE CASE, SO, NO, I DON'T KNOW.

19 Q SO DID YOU EVER ASK A PERSON WHO HAD
20 BEEN SHOT BY A SHOTGUN WHETHER THAT CAUSED HIM ANY
21 PAIN WHATSOEVER?

22 A I DON'T BELIEVE I'VE EVER ASKED A PERSON
23 WHO'S BEEN SHOT WITH A SHOTGUN THAT QUESTION.

24 Q DID YOU EVER SEE ANY SIGNS FROM PEOPLE
25 YOU'VE TREATED FOR SHOTGUN WOUNDS THAT PERHAPS MAYBE
26 IT HURT A LITTLE BIT?

27 A WELL, THE TREATMENT HURTS. I MEAN --
28 AND AFTER THE -- AFTER THE FACT ALMOST EVERYONE AFTER

41595

1 THE FACT WILL SUFFER PAIN. BUT THE -- THERE SEEMS TO
2 BE SOMETHING ABOUT THE IMMEDIATE RAPIDITY OF THE
3 PROJECTILE AND POSSIBLY IT'S THE CAVITATION AND THE
4 STRETCHING OF THE NERVES THAT MAKES THEM INOPERATIVE

5 FOR A SHORT PERIOD OF TIME. I CAN'T EXPLAIN THE
6 MECHANISMS OF IT. I DON'T THINK IT'S EVER BEEN
7 WORKED OUT. BUT CERTAINLY MANY OF THESE CASES THAT
8 I'M SPEAKING OF THAT DON'T HAVE IMMEDIATE PAIN AFTER
9 AN HOUR OR TWO CERTAINLY HAVE PAIN.

10 Q SO DO THE SHOT -- DOES THE SIZE OF THE
11 PROJECTILE HAVE ANY BEARING UPON THE AMOUNT OF
12 PAIN?

13 A I'M UNAWARE OF ANY.

14 Q SO WHEN YOU SHOOT SOMEONE WITH A SHOTGUN
15 FROM A DISTANCE IT CREATES A VERY LARGE CAVITATION
16 INSIDE THEIR BODY?

17 A EXCUSE ME?

18 Q WHEN YOU SHOOT A PERSON WITH A SHOTGUN,
19 FURTHER DISTANCE AWAY INCREASES THE SIZE OF THE
20 CAVITATION; IS THAT CORRECT?

21 A NO. JUST THE OPPOSITE.

22 Q IT GETS SMALLER THE FURTHER YOU GET
23 AWAY?

24 A THE FURTHER YOU GET AWAY THE SMALLER THE
25 CAVITATION.

26 Q WHY IS THAT?

27 A THE MAXIMUM CAVITATION WITH A SHOTGUN IS
28 CAUSED WHEN THE SHOT COLUMN HAS NOT YET SPREAD, IT'S

1 ACTING AS ONE LARGE PROJECTILE. THAT'S WHERE YOU
2 GET THE MAXIMUM CAVITATION. THEN AS YOU GET OUT A
3 WAYS, AS THE PROJECTILES SPREAD, EACH ONE OF THESE
4 PROJECTILES HAS A SMALL AMOUNT OF CAVITATION, BUT IT
5 DOESN'T -- IT DOESN'T ACT LIKE THE SINGLE LARGE
6 PROJECTILE. SO YOU GET LESS CAVITATION AS YOU GET
7 FURTHER AWAY.

8 Q WHEN YOU SHOOT A PERSON FROM A DISTANCE
9 WITH A SHOTGUN, IT CREATES A BIGGER HOLE IN A BODY
10 THAN SHOOTING HIM UP CLOSE; IS THAT CORRECT?

11 A EXCUSE ME? CAN YOU RESTATE THAT.

12 Q YES. WHAT IS THE DIFFERENCE IN TERMS OF
13 THE HOLE CREATED IN THE BODY WHEN YOU SHOOT A PERSON
14 WITH A SHOTGUN UP CLOSE AS OPPOSED TO FAR AWAY?

15 A UP CLOSE YOU GET ONE LARGE HOLE; FAR
16 AWAY YOU GET MANY SMALL HOLES.

17 Q IF YOU SHOOT A PERSON IN BETWEEN THOSE
18 TWO, ISN'T THERE A POINT WHERE YOU GET LARGER
19 HOLES?

20 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
21 QUESTION AS VAGUE.

22 THE COURT: OVERRULED.

23 DO YOU UNDERSTAND THE QUESTION?

24 THE WITNESS: I'D PREFER THE QUESTION, IF IT
25 COULD BE STATED IN FEET, I COULD ANSWER IT MUCH
26 EASIER.

27 THE COURT: OKAY.

28 Q BY MR. CONN: ALL RIGHT. LET'S TRY

1 THAT.

2 AT SIX FEET AWAY, WHAT SIZE HOLE DOES A
3 SHOTGUN PELLET -- OR SHOTGUN SHOOTING IMPACT UPON THE
4 BODY? WHAT IS THE SIZE OF THE HOLE TO THE BODY?

5 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
6 OBJECT TO THE QUESTION AS CALLING FOR SPECULATION.
7 THERE'S NOT ANY FACTS THERE.

8 THE COURT: ARE YOU ABLE TO ANSWER THAT JUST
9 IN GENERAL OR DO YOU NEED TO KNOW THE SIZE OF THE
10 SHOT?

11 THE WITNESS: YEAH. THE PORTION OF THE BODY
12 HIT AND THE SIZE OF THE SHOT AND THE GAUGE AND A FEW
13 OTHER THINGS WOULD BE HELPFUL.

14 Q BY MR. CONN: LET'S USE THE SAME TYPE OF
15 AMMUNITION, REFERRING TO THE SAME TYPE OF AMMUNITION
16 THAT WAS USED IN THIS CASE.

17 A BIRD SHOT OR BUCKSHOT?

18 Q BUCKSHOT. FROM SIX FEET AWAY WHAT TYPE
19 OF IMPACT WOULD THAT HAVE ON THE HUMAN BODY?

20 A FROM SIX FEET AWAY THE PROJECTILES WOULD
21 PROBABLY BE SPREAD, OH, TO THE DISTANCE BETWEEN THE
22 OPPOSITE PROJECT -- THE TWO -- THE EXTENT OF THE
23 WOUND, IF MEASURED, WOULD BE PROBABLY ABOUT AN INCH

24 AND A HALF TO TWO INCHES. THIS WOULD VARY SOME, BUT

25 I THINK THAT'S A GOOD APPROXIMATION.

26 Q NOW, DOES THAT MEAN THAT IT MAKES A

27 TWO-INCH HOLE THROUGH THE BODY AS IT PASSES THROUGH?

28 A IN THE ENTRANCE SIDE.

41598

1 Q AND WHAT HAPPENS AFTER IT HITS THE

2 ENTRANCE SIDE?

3 A WELL, THEN THE SHOT PELLETS TEND TO

4 SPREAD.

5 Q AND HOW DOES THAT IMPACT UPON THE BODY?

6 A WELL, IT MAKES MUL- -- SMALL HOLES

7 INSTEAD OF ONE LARGE HOLE.

8 Q HOW DOES IT COME OUT OF THE BODY?

9 A ORDINARILY, IF IT DOES COME OUT IT COMES

10 OUT IN MULTIPLE SMALL HOLES, DEPENDING ON THE SIZE

11 OF THE BODY. IF YOU'RE TALKING ABOUT A SHOT THROUGH

12 THE ARM, IT WOULD TEND NOT TO CHANGE MUCH BECAUSE

13 THE DISTANCE TRAVELED MAY ONLY BE AN INCH AND A HALF

14 OR TWO INCHES. BUT IF YOU'RE TALKING ABOUT THROUGH

15 A TORSO, WHICH IS SIX, SEVEN, EIGHT INCHES, THEN

16 THERE'D BE CONSIDERABLE DIFFERENCE.

17 Q AND HOW ABOUT FROM 12 FEET? IF YOU

18 FIRED THE SAME TYPE OF AMMUNITION FROM 12 FEET AWAY,

19 CAN YOU TELL US HOW THAT WILL IMPACT UPON THE BODY?

20 A IT'LL PROBABLY BE ABOUT DOUBLE WHAT YOU
21 GET FROM SIX FEET, EVERYTHING ELSE BEING EQUAL.

22 Q THAT IS, THAT THE ENTRANCE WILL BE ABOUT
23 THREE TO FOUR INCHES?

24 A THAT'S ABOUT IT, YES.

25 Q AND THAT MEANS A HOLE ACTUALLY THREE TO
26 FOUR INCHES IN SIZE; IS THAT CORRECT?

27 A NO, NO. AT 12 FEET THAT MEANS MULTIPLE
28 SMALL HOLES AND THE DISTANCE BETWEEN THE TWO MOST

41599

1 WIDELY SPREAD SMALL PROJECTILES WOULD BE THAT
2 DISTANCE.

3 Q SO WHEN YOU SAID IT CREATES THE SAME
4 THING ONLY TWICE IN SIZE, YOU WERE EARLIER REFERRING
5 TO A SINGLE HOLE HALF AN INCH TO TWO INCHES IN SIZE;
6 IS THAT CORRECT?

7 A WELL, NOT -- NO, I'M SORRY.

8 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT
9 MISSTATES THE TESTIMONY. IT WAS AN INCH AND A HALF.

10 THE COURT: ALL RIGHT. WHY DON'T YOU
11 REPHRASE THE QUESTION.

12 MR. CONN: YES.

13 Q WHEN I ASKED YOU ABOUT THE ENTRY AT SIX

14 FEET, YOU SAID THAT THAT WOULD CREATE A HOLE, AN
15 ENTRY HOLE, ABOUT AN INCH AND A HALF TO TWO INCHES;
16 IS THAT CORRECT?

17 A OKAY. I'M -- RATHER -- I PROBABLY SHOULD
18 NOT -- I PROBABLY SHOULD HAVE ADDED AN ADDENDUM TO
19 CLARIFY THAT, MEANING THAT THEY MIGHT NOT ALL BE IN
20 THE SAME HOLE WHEN YOU GET THAT FAR SPREAD APART.
21 IN OTHER WORDS, YOU COULD HAVE SOME SATELLITE HOLES
22 WHERE IT -- I THOUGHT YOU WERE TALKING ABOUT THE
23 SPREAD OF THE SHOT COLUMN AND THE SHOT -- I WAS
24 TALKING ABOUT SPREAD OF SHOT COLUMN IN ALL OF THESE.
25 AND WHETHER OR NOT THEY WOULD BE A SINGLE HOLE AT
26 SIX FEET, YOU GET TO THE POINT WHERE THERE WERE --
27 YOU'RE LOOKING AT MAYBE ONE MAJOR HOLE AND SEVERAL
28 SMALLER ONES.

41600

1 Q WHEN YOU SAY ONE MAJOR HOLE, YOU'RE
2 SAYING THAT THE SHOT WOULD TEND TO CREATE ONE SOLID
3 HOLE INTO THE BODY, PERHAPS WITH SOME SATELLITES?

4 A IT WOULD BE LIKELY. IT MAY -- THERE
5 WOULD ALSO BE POSSIBLY PATTERNS THAT MOST EVERY ONE
6 WOULD BE AN INDIVIDUAL. IT'S VERY DIFFICULT. JUST
7 DEPENDS ON THE RANDOM DISTRIBUTION. SAY IF YOU GET --
8 HALF A DOZEN SHOT HAPPEN TO LINE UP AND MAKE ONE

9 HOLE, THAT WOULD BE A FAIRLY LARGE HOLE AND THEN
10 SEVERAL OTHER ONES ON THE SIDE. AND THERE'S A POINT
11 AT WHICH, SAY AT TWO FEET, YOU ALMOST ALWAYS HAVE
12 ONE HOLE. AND THEN AT 10 FEET YOU WOULD -- OR 12
13 FEET YOU WOULD MOST COMMONLY HAVE INDIVIDUAL HOLES.

14 SO THERE'S A RANDOM VARIATION BETWEEN
15 THOSE TWO DISTANCES AS THE SHOT COLUMN SPREADS HOW
16 THE -- IT WILL APPEAR, HOW MANY HOLES IT WILL MAKE.

17 Q OKAY. WHAT IS THE DISTANCE AT WHICH YOU
18 NO LONGER HAVE ONE HOLE BUT YOU BEGIN TO HAVE
19 SATELLITE DEFECTS?

20 A THIS CAN BE ANYWHERE FROM USUALLY THREE
21 TO FIVE FEET ORDINARILY.

22 Q AND WHAT IS THE DISTANCE AT WHICH YOU NO
23 LONGER HAVE A SINGLE HOLE BUT YOU HAVE ALL SEPARATE
24 PELLET DEFECTS?

25 A WELL, CERTAINLY OUT AT 15 OR 20 FEET
26 THAT WOULD BE THE CASE. BUT, AGAIN, IT MIGHT NOT BE
27 TOTALLY THE CASE BECAUSE EVEN OUT AT THIS DISTANCE
28 YOU COULD HAVE TWO TOGETHER; YOU COULD HAVE TWO

41601

1 STRIKING RIGHT TOGETHER OR MAYBE EVEN POSSIBLY THREE
2 STRIKING TOGETHER. IT'S A RANDOM SPREAD. AND SO IF
3 YOU SHOT -- TOOK A PIECE OF PAPER AND PUT IT UP AT 20

4 FEET AND SHOT 20 SHOTS THROUGH IT, NOW, MOST OF THEM
5 WOULD BE INDIVIDUAL HOLES, BUT I'M SURE YOU'D
6 PROBABLY FIND ONE MAYBE WHERE THREE SHOT HAPPENED TO
7 HIT TOGETHER AND THERE'D BE SEVERAL WHERE TWO SHOT
8 HAPPENED TO HIT TOGETHER. IT'S JUST A RANDOM
9 DISTRIBUTION.

10 Q DIRECTING YOUR ATTENTION TO THE WOUND OF
11 THE LEFT LEG OF MR. JOSE MENENDEZ, WHAT SHOT WAS
12 THAT DISTANCE FIRED FROM?

13 A THE LEFT LEG OF JOSE MENENDEZ. THAT'S
14 THE -- LET ME SEE. I JUST WANT TO MAKE SURE WE GET
15 THE RIGHT SHOT HERE. I THINK THERE WAS ONLY ONE TO
16 HIS LEFT LEG, BUT -- YOU'RE TALKING ABOUT THE SHOT
17 FROM THE AUTOPSY REPORT, NO. 5, THE LEFT THIGH,
18 THROUGH-AND-THROUGH WOUND, NO PROJECTILE RECOVERED?

19 Q YES. THERE WAS JUST ONE WOUND TO HIS
20 LEFT LEG; IS THAT CORRECT?

21 A YES. I JUST WANTED TO MAKE SURE.

22 YOU WANT TO KNOW THE DISTANCE THAT WAS
23 FIRED FROM?

24 Q YES.

25 A MY ESTIMATE WOULD BE ANYWHERE FROM --
26 PROBABLY FROM THREE TO FIVE FEET. COULD BE A LITTLE
27 FURTHER.

28 Q NOW, YOU REVIEWED THE TESTIMONY OF

1 DR. MC CARTHY; IS THAT CORRECT?

2 A NOT ALL OF IT. I REVIEWED SOME OF IT.

3 SOME OF IT WAS SENT TO ME AND THEN I THINK THERE WAS

4 A DAY THAT I MISSED WHEN -- BECAUSE I WAS TRAVELING.

5 Q ALL RIGHT. AND DID YOU READ THE PART

6 WHERE HE SPOKE ABOUT EXPERIMENTS THAT HE CONDUCTED

7 USING A MOSSBERG SHOTGUN IN TRYING TO ASCERTAIN

8 RELIABLE VERIFIABLE RESULTS CONCERNING SHOTGUN

9 PELLET SPREAD FOR THE PURPOSE OF RECONSTRUCTING THIS

10 CRIME?

11 A YES. I RECEIVED THOSE TARGETS, COPIES

12 OF THOSE TARGETS.

13 Q DID YOU FEEL THAT, CONTRARY TO WHAT HE

14 WAS TESTIFYING TO IN COURT, YOU ARE ABLE TO GIVE

15 ESTIMATES EVEN WITHOUT CONDUCTING ANY EXPERIMENTS OF

16 YOUR OWN?

17 A I'M GIVING ROUGH ESTIMATES. I'M NOT

18 SAYING I CAN SAY IT'S WITHIN ONE FOOT.

19 Q THE WOUND TO THE BACK OF JOSE MENENDEZ'

20 HEAD, HOW FAR WAS THAT SHOT FIRED FROM HIS HEAD?

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

22 OBJECT AS BEYOND THE SCOPE WITH THIS WITNESS.

23 THE COURT: OVERRULED.

24 THE WITNESS: MY UNDERSTANDING IS THAT WAS A

25 CONTACT WOUND.

26 Q BY MR. CONN: IS THAT YOUR UNDERSTANDING

27 OR YOUR OPINION?

28 A THAT'S WHAT I -- I THINK IT'S PROBABLY

41603

1 STATED AS THUS IN THE AUTOPSY. I REALLY HAVEN'T
2 CONCENTRATED MUCH ON THAT WOUND, BUT I'D BE HAPPY TO
3 REFER TO THE AUTOPSY AND SEE.

4 Q I'M ASKING YOU IF YOU HAVE AN OPINION
5 CONCERNING THAT.

6 A I HAVE ALWAYS THOUGHT IT WAS A CONTACT
7 WOUND BECAUSE I THOUGHT I HAD READ THAT IN THE
8 AUTOPSY. IT WAS EXTREMELY CLOSE IF IT WASN'T ACTUAL
9 CONTACT.

10 YES, IT SAYS A CONTACT-TYPE ABRASION.

11 AND THE OTHER THING WE HAVE WITH THAT
12 WOUND IS WE HAVE A WIDELY SPREAD STELLATE ENTRANCE
13 WOUND WHICH WOULD INDICATE THE POWDER GASES PROBABLY
14 ENTERED INTO THE FORMATION OF THAT WOUND ALSO.

15 Q THE WOUND TO JOSE MENENDEZ' LEFT ELBOW,
16 HOW FAR AWAY WAS THAT SHOT FIRED FROM?

17 A THE LEFT ELBOW. FROM THE SPREAD IT'S
18 DIFFICULT TO SAY. I WOULD SAY SOMETHING IN THE
19 NEIGHBORHOOD OF 14 FEET.

20 Q HOW DO YOU COME UP WITH THE SPECIFIC
21 DISTANCE LIKE THAT, 14 FEET?

22 A I DON'T. I SAID "IN THE NEIGHBORHOOD
23 OF."
24 Q WHAT IS THE VARIATION THERE?
25 A OKAY. I'LL TELL YOU WHAT I'M TALKING
26 ABOUT. I'M TALKING ABOUT 14 FEET, PLUS OR MINUS
27 FOUR FEET, IF YOU WANT TO BE EXACT ABOUT IT.
28 Q HOW MANY WOUNDS -- HOW MANY SEPARATE

41604

1 GUNSHOT WOUNDS DID JOSE MENENDEZ SUFFER TO HIS RIGHT
2 ARM?

3 A TO HIS RIGHT ARM?

4 Q YES.

5 A AT LEAST TWO.

6 Q WHAT WERE THE ENTRANCE AND THE EXITS OF
7 EACH OF THOSE WOUNDS THAT YOU'RE REFERRING TO?

8 A THE MAJOR WOUND IS THE ONE THAT ENTERED
9 IN THE BACK OF THE ARM AND CAME FORWARD, ENTERED
10 Laterally and came medially, and it's the one that
11 CAUSED THE BRUISING OF THE CHEST.

12 AND THE OTHER WAS PROBABLY ENTRANCE
13 COMING FROM THE -- NEAR THE ANTECUBITAL FOSSA WHERE
14 THERE WAS MORE SPREAD OF INDIVIDUAL PELLETS AND -- AS
15 I SAY, ENTRANCE COMING FROM THE RIGHT AND GOING OUT
16 THE -- I'M SORRY -- COMING FROM THE LEFT GOING OUT THE

17 RIGHT.

18 Q WENT OUT WHAT PART OF HIS RIGHT ARM?

19 A THAT WAS NEAR THE ANTECUBITAL FOSSA, BUT
20 IT IS -- THE ARM IS SOMEWHAT DISTORTED BECAUSE OF THE
21 BREAK AND IT'S DIFFICULT TO SAY. BUT IT'S NEAR THE
22 BEND OF THE ELBOW.

23 Q YOU'RE REFERRING TO YOUR LEFT ARM, THE
24 WOUND YOU'RE DESCRIBING WAS TO HIS RIGHT ARM.

25 A I'M SORRY. I WAS REFERRING TO THE
26 ANTECUBITAL FOSSA AS THE BEND. I'M SORRY. I USED
27 THE WRONG ARM.

28 Q THE ANTECUBITAL FOSSA WAS THE ENTRY; IS

41605

1 THAT CORRECT?

2 A IT APPEARS TO BE, YES.

3 Q WHERE WAS THE EXIT?

4 A THE OTHER SIDE OF THE ARM.

5 Q WHERE SPECIFICALLY?

6 A WELL, I'D HAVE TO LOOK AT THE
7 PHOTOGRAPHS. BUT I THINK THERE -- OR THE AUTOPSY. I
8 CAN'T RECALL EVERY ONE OF THESE WOUNDS FROM MEMORY,
9 BUT I'D BE HAPPY TO LOOK THEM UP FOR YOU.

10 Q LET ME SHOW YOU A PHOTOGRAPH THAT HAS
11 BEEN MARKED AS 183. I'D LIKE TO PUT THIS ON THE

12 BOARD AT THIS TIME.

13 CAN YOU SEE IN THAT PHOTOGRAPH THE EXIT
14 FROM THE ENTRY WOUND TO THE ANTECUBITAL FOSSA?

15 A NO. THAT -- IT WOULD BE -- THE EXITS,
16 NO. THE EXITS WOULD BE ON THE OTHER SIDE OF THE
17 ARM. THIS WOULD BE ONE OF THE ENTRANCES UP HERE, IT
18 APPEARS. AND THE EXITS WOULD BE ON THE OTHER SIDE.

19 Q OKAY. LET ME SHOW YOU THE -- AT THE
20 BOTTOM OF THIS PHOTOGRAPH THERE APPEARS TO BE A
21 LARGE WOUND WHICH IS SEPARATE -- APPEARS TO BE
22 SEPARATE FROM THE LARGEST WOUND TO THE ARM ON THE
23 FRONT SIDE OF THE ARM. IT APPEARS TO BE SEPARATED
24 BY A LITTLE PIECE OF SKIN, YOU SEE THAT?

25 A YES.

26 Q OKAY. THAT WOUND AT THE BOTTOM THAT I'M
27 POINTING TO NOW, WAS THAT PART OF THE EXIT FOR THE
28 WOUND FOR THESE PELLET DEFECTS IN THE ANTECUBITAL

41606

1 FOSSA?

2 A NO. I BELIEVE THAT WAS THE ENTRANCE FOR
3 THE EXIT COMING OUT HERE OF THE LARGE WOUND.

4 Q YOU'RE TELLING US HERE THAT IN ADDITION
5 TO THIS LARGE WOUND THAT WE SEE HERE AND IN ADDITION
6 TO THAT SMALL WOUND THAT WE SEE SEPARATED BY THE

7 SMALL PIECE OF SKIN, THERE ARE MORE EXITS ON THE

8 BACK OF THAT ARM?

9 A WELL, I BELIEVE SO. THE -- I THINK

10 THEY'RE DESCRIBED IN THE AUTOPSY.

11 Q CAN YOU SHOW US A PICTURE OF THOSE?

12 A I DON'T THINK I SAW A PICTURE OF THE

13 BACK OF THE ARM, BUT I THINK THEY'RE DESCRIBED IN

14 THE AUTOPSY.

15 Q YOU TOLD COUNSEL YOU RECEIVED EVERY

16 PHOTOGRAPH IN THIS CASE; IS THAT CORRECT?

17 A WELL, I RECEIVED A GREAT NUMBER OF

18 PHOTOGRAPHS AND I ASSUME THAT COUNSEL SENT ME EVERY

19 PHOTOGRAPH.

20 Q DID YOU LOOK TO SEE IF THERE WAS A

21 PHOTOGRAPH OF THIS EXIT THAT YOU'RE DESCRIBING?

22 A I'M NOT SURE. THIS IS NOT A -- THIS IS

23 NOT A WOUND I SPECIFICALLY CONCENTRATED ON. IT

24 REALLY DIDN'T -- IT WAS NOT IN ANY GREAT DISPUTE THAT

25 I THOUGHT. SO IT'S NOT SOMETHING I REALLY

26 CONCENTRATED ON. I HAVEN'T SPENT A LOT OF TIME

27 LOOKING FOR EXITS FOR THIS PARTICULAR ENTRANCE WOUND

28 YOU POINTED OUT.

41607

1 Q HOW DO YOU KNOW WHAT THE DISPUTE IS IN

2 THIS CASE?

3 A HOW DO I KNOW WHAT THE DISPUTE IS IN

4 THIS CASE?

5 Q YES.

6 A JUST FROM READING DR. MC CARTHY'S

7 REPORT, WHICH CLAIMS A LOT OF THINGS, AND MY

8 UNDERSTANDING IS THAT THE DEFENSE IS DISPUTING MANY

9 OF THE PORTIONS OF THAT REPORT. AND I DON'T RECALL

10 THIS WAS A PARTICULAR POINT OF DISPUTE.

11 Q ARE YOU TELLING US, DOCTOR, THAT YOU

12 DIDN'T REALIZE THAT THE WOUNDS TO THE RIGHT ARM OF

13 JOSE MENENDEZ WAS ONE OF THE MOST DISPUTED WOUNDS IN

14 THIS CASE?

15 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

16 THE COURT: REPHRASE THE QUESTION.

17 Q BY MR. CONN: YOU WERE NEVER TOLD AT ANY

18 TIME THAT THE WOUNDS TO THE RIGHT ARM OF JOSE

19 MENENDEZ WERE IN DISPUTE?

20 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE AND

21 CALLS FOR HEARSAY.

22 THE COURT: OVERRULED.

23 THE WITNESS: YOU MISSTATED WHAT I TOLD YOU.

24 I, IN NO WAY, SAID THAT. WE'RE TALKING ABOUT TWO

25 WOUNDS. THE BIG DISPUTE WAS ON THE LARGE WOUND, THE

26 FAIRLY SHORT-RANGE WOUND, WHERE YOU HAVE A BLOWN-OUT

27 ENTRANCE AND EXIT.

28 THEN THERE'S ANOTHER WOUND, AT LEAST ONE

1 OTHER WOUND. THERE'S PROBABLY MORE THAN ONE OTHER
2 WOUND HERE. THERE'S SOME SCATTERED SMALL PELLETS
3 AND I WAS UNAWARE OF ANY BIG DISPUTE ON THOSE.

4 Q BY MR. CONN: DIDN'T YOU REALIZE FROM
5 READING THE AUTOPSY REPORT THAT EITHER -- THAT EVEN
6 DR. GOLDEN CHANGED HIS OPINION CONCERNING WHAT WAS
7 THE ENTRANCE AND WHAT WAS THE EXIT WOUNDS ON THAT
8 ARM?

9 MS. ABRAMSON: OBJECTION, YOUR HONOR.
10 ARGUMENTATIVE.

11 THE COURT: AS PHRASED IT'S ARGUMENTATIVE.

12 Q BY MR. CONN: DID YOU -- DID YOU NOTE
13 FROM READING THE REPORTS OF DR. GOLDEN THAT HE HAD
14 CHANGED HIS OPINION FROM 1989 TO 1995 CONCERNING THE
15 WOUNDS ON THAT ARM?

16 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
17 OBJECT. THAT ASSUMES FACTS NOT IN EVIDENCE. CALLS
18 FOR HEARSAY AND IT'S NOT WHAT'S CONTAINED IN THE
19 REPORTS. MISSTATES WHAT WE'VE HEARD ABOUT THE
20 REPORTS.

21 THE COURT: OKAY. COUNSEL, YOU ARE ARGUING.
22 AND THE SIMPLE OBJECTION IS WHAT?

23 MR. GESSLER: ASSUMES FACTS NOT IN EVIDENCE,
24 YOUR HONOR. OBJECT ON THOSE GROUNDS.

25 THE COURT: IN THE FUTURE IF YOU HAVE AN

26 OBJECTION, SAY THAT, NOTHING MORE, UNLESS I INVITE
27 FURTHER COMMENT.
28 OBJECTION SUSTAINED TO THE FORM OF THE

41609

1 QUESTION.

2 MR. CONN: OKAY.

3 Q DID YOU NOTICE ANY DISCREPANCY
4 CONCERNING DR. GOLDEN'S DESCRIPTION OF THE WOUNDS IN
5 THE RIGHT ARM BETWEEN HIS 1989 REPORT AND HIS 1995
6 REPORT?

7 A WELL, OF COURSE. THE LATTER REPORT WAS
8 MADE TO POINT OUT A CHANGE IN HIS OPINION.

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41610

1 Q AND WHAT CHANGE DID YOU NOTE BETWEEN
2 THOSE TWO REPORTS?

3 A I'D BE HAPPY TO LOOK IT UP FOR YOU.

4 ON THE AMENDED REPORT HE SAYS THAT THE
5 SUBSEQUENT AUTOPSY SHOWS THAT THE WOUND TRACT IS
6 THROUGH THE SKIN, SUBCUTANEOUS TISSUE AND MUSCLE,
7 PASSING FROM LATERAL TO MEDIAL.

8 SO HE SAYS -- AND THIS IS THE LARGE ONE,
9 FROM LATERAL TO MEDIAL.

10 NOW YOU'RE ASKING SPECIFICALLY ABOUT THE
11 INDIVIDUAL ENTRANCE FROM THE OTHER WOUNDS; IS THAT
12 TRUE?

13 Q NO, DOCTOR.

14 MS. ABRAMSON: I'M GOING TO OBJECT. COUNSEL
15 IS MISLEADING THE WITNESS.

16 THE COURT: OVERRULED.

17 Q BY MR. CONN: I'M ASKING YOU TO EXPLAIN
18 TO THE JURY, AS SIMPLE AS YOU CAN, WHAT WAS THE
19 DEVIATION, WHAT WAS THE CHANGE FROM THE 1989 REPORT
20 TO THE 1995 REPORT CONCERNING THE WOUNDS TO THE
21 RIGHT ARM OF JOSE MENENDEZ.

22 MS. ABRAMSON: WELL, I'M GOING TO OBJECT.
23 CALLS FOR A CONCLUSION ON THE PART OF THE WITNESS.

24 THE COURT: OVERRULED.

25 THE WITNESS: THIS WILL TAKE A WHILE. I'M
26 GOING TO HAVE TO READ THE PREVIOUS REPORT AND THEN
27 COMPARE IT WITH THE OTHER.

28 (READING.)

41611

1 OKAY. WE GO TO PAGE 5 OF THE AUTOPSY
2 REPORT, AND SHOTGUN WOUND NO. 3, WHICH IS IN THE
3 LOWER PORTION OF THIS PAGE. PARAGRAPHS 1 AND 2
4 SHOULD BE DELETED.

5 DID YOU WISH ME TO READ THE PARAGRAPHS
6 THAT WERE DELETED?

7 Q BY MR. CONN: I WANT YOU TO SUMMARIZE
8 FOR THE JURY, IF YOU CAN, WHAT WAS THE CHANGE FROM
9 THE 1989 REPORT TO THE 1995 REPORT IN REGARD TO THE
10 WOUNDS TO THE RIGHT ARM OF JOSE MENENDEZ.

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

12 OBJECT. CALLS FOR A COMPOUND ANSWER.

13 THE COURT: OVERRULED. IT'S ASKING FOR THIS

14 WITNESS' UNDERSTANDING OF THE MODIFICATION IN THE

15 REPORT.

16 THE WITNESS: ONE DIFFERENCE IS THAT IN THE

17 INITIAL REPORT OF 1989 IT SAYS: "FIFTEEN INDIVIDUAL

18 LEAD PELLETS WERE RECOVERED FROM ALONG THE WOUND

19 PATH." THIS WAS DELETED.

20 Q BY MR. CONN: DO YOU KNOW FROM READING

21 THE 1995 REPORT WHY DR. GOLDEN, IN HIS 1989 REPORT,

22 INDICATED THAT HE RECOVERED 15 LEAD PELLETS ALONG A

23 PARTICULAR WOUND PATH, BUT THEN IN 1995 HE DELETED

24 ALL REFERENCE TO THOSE 15 PELLETS?

25 A DO I KNOW WHY HE DID THIS?

26 Q FROM READING THE REPORT, DO YOU KNOW WHY

27 HE HAS DELETED ALL 15 PELLETS FROM THE 1995 REPORT?

28 A WELL, I DON'T THINK I CAN KNOW WHY

41612

1 BECAUSE HE -- IN THE 1989 REPORT THEY'RE THERE, AND

2 IN THE AMENDMENT HE SAYS DELETE THE PARAGRAPH IN

3 WHICH THEY'RE LOCATED.

4 Q SO WHAT I'M ASKING YOU IS --

5 A SO HE HASN'T EXPLAINED WHY HERE, BUT

6 THAT'S WHAT'S HE'S DONE.

7 Q HE MAKES NO REFERENCE AS TO WHY HE
8 DELETED THOSE 15 PAGES?

9 A I'LL HAVE TO READ THE ENTIRE THING.
10 I'LL TELL YOU IN A SECOND. IF YOU'D LIKE, I'D BE
11 HAPPY TO.

12 (READING.)

13 I CAN FIND NO INDICATION IN HIS
14 AMENDMENT TO THE REASON HE DELETED THAT PARAGRAPH.

15 Q OKAY. SO THERE'S ONE CHANGE. FIFTEEN
16 PELLETS DELETED WITHOUT ANY EXPLANATION.

17 DO YOU SEE ANY OTHER DEVIATIONS FROM THE
18 1989 REPORT TO THE 1995 REPORT CONCERNING THE RIGHT
19 ARM OF JOSE MENENDEZ?

20 A I'LL CONTINUE. JUST A SECOND.

21 (READING.)

22 HE ADDS THE FOLLOWING, HE ADDS THE FACT
23 THAT IT WAS A SINGLE RAGGED ENTRANCE DEFECT
24 APPROXIMATELY TWO INCHES IN MAXIMUM DIAMETER WITHOUT
25 ANY EVIDENCE OF SATELLITE DEFECT.

26 AND I DON'T FIND THAT IN THE INITIAL
27 REPORT.

28 Q OH, IN OTHER WORDS, IN THE 1995 REPORT

1 HE ADDS A BRAND NEW ENTRANCE WOUND; IS THAT CORRECT?

2 A WELL, HE DESCRIBES IT DIFFERENTLY, YES.

3 Q HOW DID HE DESCRIBE THAT WOUND, WHICH

4 YOU HAVE JUST REFERRED TO AS AN ENTRANCE WOUND, IN

5 THE 1989 REPORT?

6 A ONE OF THE DIFFICULTIES HERE IS THAT

7 WE'VE GOT TWO WOUNDS, AND THEY WERE MIXED TOGETHER,

8 AND I RECALL READING THE INITIAL REPORT, AND I WAS

9 VERY CONFUSED BY THE DIFFERENCE BETWEEN THE TWO; AND

10 I THINK WHAT HE'S TRYING TO DO HERE IS STRAIGHTEN

11 THE TWO OUT.

12 SO IT'S NOT JUST THE ONE, BUT THERE'S

13 TWO.

14 Q WHAT ARE THE TWO THAT YOU'RE REFERRING

15 TO?

16 A THE TWO I REFERRED TO -- ONE WHERE THE

17 SHOT COLUMN IS TOGETHER WITH THE TEMPORARY CAVITY

18 WHICH CAUSED THE BRUISE TO THE CHEST. THAT'S ONE.

19 THE OTHER IS WHERE A MORE -- A MORE

20 DISTANT WOUND HAS INDIVIDUAL PELLET MARKS. THOSE

21 ARE THE TWO SEPARATE WOUNDS.

22 Q INDIVIDUAL PELLET MARKS STRIKING WHERE?

23 A AS I DESCRIBED, NEAR THE ANTECUBITAL

24 FOSSA.

25 Q BY THAT --

26 MS. ABRAMSON: I DON'T BELIEVE THE WITNESS

27 HAD A CHANCE TO FINISH THE ANSWER.

28 THE COURT: HAD YOU FINISHED YOUR ANSWER?

1 THE WITNESS: YES.

2 THE COURT: YOUR NEXT QUESTION.

3 Q BY MR. CONN: AREN'T THERE THREE WOUNDS
4 THAT HE'S TRYING TO STRAIGHTEN OUT? WASN'T THERE A
5 THIRD WOUND WHICH HE PREVIOUSLY DESCRIBED IN 1989 AS
6 A WOUND ENTERING THE DORSAL ASPECT, THAT IS, THE
7 OUTSIDE OF THE RIGHT FOREARM?

8 A WELL, THERE ARE ALSO WOUNDS -- AS WE CAN
9 SEE, THERE'S GRAZE WOUNDS ALSO IN THE FOREARM.

10 Q I'M NOT TALKING ABOUT THE GRAZE WOUNDS.
11 I'M ASKING YOU IF DR. GOLDEN, IN 1989, DESCRIBED ONE
12 OF THE WOUNDS TO THE RIGHT ARM AS BEING A WOUND TO
13 THE DORSAL ASPECT OF THE RIGHT FOREARM CONSISTING OF
14 MULTIPLE INDIVIDUAL PELLET WOUNDS AVERAGING
15 APPROXIMATELY ONE-QUARTER INCH IN DIAMETER.

16 A YES.

17 Q OKAY. SO IS THAT A THIRD WOUND THAT HE
18 IS TRYING TO STRAIGHTEN OUT IN THE 1995 AMENDMENT?

19 A WELL, I THOUGHT THERE WERE ONLY TWO.
20 BUT IT'S A VERY DIFFICULT THING TO SAY WHETHER OR
21 NOT THERE WAS A THIRD WOUND. BECAUSE OF THE
22 INDIVIDUAL PELLET WOUND, NO ONE CAN SAY FOR SURE
23 THAT ONE OF THE PELLET WOUNDS CAME FROM -- DIDN'T

24 COME FROM ONE OF THE SHOTGUN BLASTS AND THE ONE
25 NEARBY COMES FROM ANOTHER WOUND, FROM TWO SEPARATE
26 WOUNDS THAT WERE PASSING NEARBY. I THINK WHAT WE'RE
27 TRYING TO DO HERE IS SEARCH FOR MINUTIA THAT MAY IN
28 ALL TRUTH NEVER REALLY BE POSSIBLE TO SORT OUT.

41615

1 Q MINUTIA? DOCTOR, ISN'T IT A FACT THAT
2 DR. GOLDEN, IN HIS 1989 REPORT, DESCRIBES A SERIES
3 OF WOUNDS TO THE DORSAL ASPECT OF THE RIGHT FOREARM;
4 AND THEN IN HIS 1995 REPORT ELIMINATES THAT WOUND
5 ALTOGETHER?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR. IT'S
7 ARGUMENTATIVE.

8 THE COURT: OVERRULED.

9 THE WITNESS: YES. THIS IS TRUE.

10 Q BY MR. CONN: DO YOU CALL THAT MINUTIA,
11 DOCTOR?

12 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

13 THE COURT: OVERRULED.

14 THE WITNESS: I -- WE DID -- I THOUGHT OF THIS,
15 AND I THINK HE JUST FORGOT THEM. OBVIOUSLY, THEY'RE
16 THERE, AND YOU CAN SEE THEM. AND SO, WE HAVE AN
17 ENTRANCE WOUND, WE HAVE TO HAVE AN EXIT WOUND. HE
18 FORGOT THEM ON -- THAT'S MY ONLY EXPLANATION.

19 WHY DON'T YOU ASK HIM?

20 Q BY MR. CONN: DOCTOR, ARE YOU TELLING US
21 THAT IN 1989 HE WROTE A REPORT AND HE DECIDED TO
22 WRITE THE REPORT -- TO REWRITE THE REPORT IN 1995 TO
23 GET IT CORRECT, AND THEN FORGOT TO DESCRIBE WOUNDS
24 THAT HE HAD PREVIOUSLY IDENTIFIED IN 1989?

25 MS. ABRAMSON: OBJECTION. CALLS FOR
26 SPECULATION.

27 THE COURT: SUSTAINED.

28 Q BY MR. CONN: NOW, IN 1989 DID HE

41616

1 REMEMBER TO WRITE THE WOUND THAT YOU ARE NOW
2 DESCRIBING AS THE ENTRANCE WOUND TO THE BACK OF THE
3 RIGHT ARM?

4 MS. ABRAMSON: OBJECTION. CALLS FOR
5 SPECULATION.

6 THE COURT: SUSTAINED.

7 Q BY MR. CONN: DO YOU SEE A DESCRIPTION
8 IN THE 1989 REPORT OF THE ENTRANCE WOUND WHICH YOU
9 ARE NOW DESCRIBING AS THE RAGGED DEFECT, TWO INCHES
10 IN MAXIMUM DIAMETER, TO THE BACK OF THE RIGHT ARM?

11 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT
12 MISSTATES THE TESTIMONY.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DON'T SEE THAT IN THE 1989.

15 HE RECORDS IT IN THE SAME MANNER, AS A SINGLE RAGGED
16 WOUND. THAT COMES IN THE AMENDMENT.

17 Q BY MR. CONN: OKAY. SO THEN IN '89 HE
18 DESCRIBES THE WOUND TO THE FOREARM, WHICH HE NO
19 LONGER DESCRIBES IN '95; AND IN '95 HE DESCRIBES NEW
20 ENTRANCE WOUNDS WHICH HE HASN'T DESCRIBED IN 1989;
21 IS THAT CORRECT?

22 MS. ABRAMSON: OBJECTION. MISSTATES -- WELL,
23 OBJECTION. MISSTATES THE TESTIMONY. CALLS FOR
24 SPECULATION.

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

27 MS. ABRAMSON: AND THAT --

28 Q BY MR. CONN: NOW, IN ADDITION TO THOSE

41617

1 TWO DISCREPANCIES, AND IN ADDITION TO 15 LEAD
2 PELLETS THAT CAN NO LONGER BE ACCOUNTED FOR, WAS HE
3 CONSISTENT IN REGARD TO THE -- WAS HE CONSISTENT IN
4 REGARD TO WHETHER THIS LARGE DEFECT ON HIS RIGHT ARM
5 WAS AN EXIT FOR A PARTICULAR WOUND?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR.
7 COMPOUND.

8 THE COURT: ALL RIGHT. JUST THAT PORTION OF

9 THE QUESTION STARTING WITH WAS HE CONSISTENT IS NOT
10 COMPOUND.

11 YOU CAN ANSWER THAT QUESTION.

12 THE WITNESS: I CAN'T REMEMBER WHICH PART OF
13 IT WAS -- IF HE COULD RESTATE IT.

14 MR. CONN: I'LL RESTATE IT.

15 Q THAT LARGE WOUND WHICH YOU NOW DESCRIBE
16 AS AN EXIT WOUND --

17 A YES.

18 MS. ABRAMSON: I'M GOING TO OBJECT.
19 MISSTATES THE TESTIMONY. THAT WOUND IS DISSECTED
20 AND THAT'S BEEN ESTABLISHED.

21 THE COURT: AGAIN, YOU'RE NOW ARGUING.

22 MS. ABRAMSON: I'M SORRY. MISSTATES THE
23 TESTIMONY CONCERNING THAT PHOTOGRAPH.

24 THE COURT: REPHRASE THE QUESTION.

25 MR. CONN: YES.

26 Q WHERE WAS THE EXIT WOUND ON THE RIGHT
27 ARM OF JOSE MENENDEZ FOR THE WOUND THAT STRUCK HIM
28 IN THE REAR OF THE ARM?

41618

1 A IN THE MEDIAL PORTION OF HIS UPPER ARM.

2 Q HOW BIG WAS THAT WOUND, THE EXIT?

3 A OH, MAYBE TWO, TWO AND A HALF INCHES

4 APPROXIMATELY, TWO TO THREE INCHES.

5 Q THE EXIT WAS TWO TO TWO AND A HALF
6 INCHES?

7 A I THINK APPROXIMATELY, YES.

8 Q AND WHAT IS YOUR SOURCE OF INFORMATION
9 FOR THAT?

10 A THE PHOTOGRAPHS I LOOKED AT.

11 Q THE PHOTOGRAPHS SHOW THAT EXIT AS BEING
12 TWO BY TWO AND A HALF INCHES.

13 A AS I RECALL, I WOULD BE HAPPY TO REVIEW
14 THEM. BUT I THINK THAT'S AN APPROXIMATION, YES.

15 Q ARE YOU REFERRING --

16 A IT'S A LARGE BLOWN-OUT EXIT.

17 Q ARE YOU REFERRING TO THIS WOUND THAT --

18 MS. ABRAMSON: SAME OBJECTION. MISSTATES THE
19 TESTIMONY.

20 THE COURT: OVERRULED.

21 Q BY MR. CONN: THIS IS 183. ARE YOU
22 REFERRING TO THAT WOUND?

23 A NO. I'M NOT REFERRING TO THAT. I'M
24 REFERRING TO OTHER PHOTOGRAPHS OF THAT WOUND. THAT,
25 I THINK, HAS BEEN OPENED UP.

26 Q AND HOW DID YOU DETERMINE -- THANK YOU.
27 YOU MAY RETURN TO YOUR RIGHT SEAT.

28 A YES, THANK YOU.

1 Q HOW DID YOU DETERMINE THAT WAS TWO BY
2 TWO AND A HALF INCHES IN SIZE? YOU CONDUCTED YOUR
3 OWN MEASUREMENT OR YOU READ THAT SOMEWHERE?

4 A NO. I DON'T -- WELL, LET ME GO BACK HERE
5 AND LOOK. MAYBE, YES.

6 HERE, IN THE AMENDED REPORT, A SINGLE
7 RAGGED ENTRANCE WOUND ABOUT TWO INCHES MAXIMUM
8 DIAMETER.

9 Q MY QUESTION IS CONCERNING THE EXIT.

10 A YES. EXIT. AND THERE WERE SEVERAL
11 PHOTOGRAPHS THAT SHOWED THAT EXIT, NOT THAT ONE
12 WHERE I THINK HE'S DISSECTED IT SOMEWHAT.

13 IF WE CAN FIND THOSE PHOTOGRAPHS, I'D BE
14 HAPPY TO INDICATE WHERE I GOT MY ESTIMATE OF
15 APPROXIMATELY TWO INCHES.

16 Q LET ME SHOW YOU 202 AND ASK YOU IF THIS
17 HELPS YOU ANY?

18 A THAT WAS ONE OF THEM. ONLY THIS SHOWS
19 IT ONLY PARTIALLY. THERE WAS ANOTHER ONE FROM A
20 DIFFERENT ASPECT.

21 Q AND DID YOU HOLD UP A SCALE OR SOMETHING
22 TO GET THE MEASUREMENT?

23 A NO. I REALLY DIDN'T CONCENTRATE ON THAT
24 UNTIL YOU ASKED ME THE MEASUREMENT. IT WAS, TO ME,
25 A LARGE BLOWN-OUT EXIT, MAYBE TWO, THREE INCHES,
26 MAYBE IT WAS LARGER THAN THAT.

27 Q WELL, DID YOU READ THE REPORTS CAREFULLY

41620

1 REPORTS IN THIS CASE?

2 A WELL, I'VE READ THEM SEVERAL TIMES, YES.

3 Q HOW MANY HOURS DID YOU WORK ON THIS
4 CASE?

5 A I STOPPED KEEPING TRACK, BUT I THINK
6 SOMEWHERE AROUND 50.

7 Q AND YOU SAID THAT YOU STOPPED KEEPING
8 TRACK WHEN YOU HIT THE CAP OR THE CEILING, HOW MUCH
9 YOU WERE BEING PAID; IS THAT CORRECT?

10 A I THINK IT WAS FIVE HOURS WAS APPROVED.

11 Q HOW MANY?

12 A FIVE HOURS.

13 Q FIVE HOURS?

14 A FIVE HOURS.

15 Q SO YOU WERE PAID HOW MUCH IN THIS CASE?

16 A I HAVEN'T BEEN PAID ANYTHING IN THIS
17 CASE, NOT YET. I UNDERSTAND I WILL BE PAID FOR FIVE
18 HOURS.

19 Q YOU EXPECT TO GET FIVE HOURS AT \$250 AN
20 HOUR FOR APPROXIMATELY \$1250. IS THAT WHAT YOU
21 EXPECT TO GET?

22 A THAT'S WHAT I WAS GIVEN TO UNDERSTAND;

23 THAT ONLY FIVE HOURS OF MY TIME WAS APPROVED, YES.

24 IF THAT'S NOT TRUE AND MORE TIME IS

25 APPROVED, THAT WOULD BE NICE. I'VE BEEN TOLD BY

26 COUNSEL ONLY FIVE HOURS WAS APPROVED.

27 Q AND THAT INCLUDES ALL YOUR TESTIMONY

28 HERE IN COURT?

41621

1 A I SUPPOSE SO. I WAS TOLD FIVE HOURS WAS

2 APPROVED.

3 YOUR HONOR, I CAN'T ANSWER THE QUESTION

4 ANY BETTER THAN THAT. YOU HAVE TO ASK COUNSEL. I

5 WAS UNDER THE IMPRESSION WHEN I CAME HERE, AND WHEN

6 I WORKED ON THIS ENTIRE CASE, THAT I WOULD HAVE MY

7 EXPENSES PAID TO COME OUT HERE AND GO BACK. BUT THE

8 TIME WOULD BE FIVE -- LIMITED TO FIVE HOURS AT MY

9 HOURLY RATE OF \$250.

10 THIS WAS MY EXPECTATION AND I HAVE

11 RECEIVED NO INFORMATION FROM ANYONE THAT HAS

12 CONTRADICTED THAT.

13 Q ARE YOU PARTICIPATING IN THIS CASE FOR

14 SOME REASON OTHER THAN THE FINANCIAL ASPECT TO IT?

15 A OH, YES. OH, YES.

16 Q AND CAN YOU TELL US WHY YOU'RE A WITNESS

17 IN THIS CASE.

18 A ABSOLUTELY, I'LL TELL YOU. I'M DOING
19 THIS AS A PRO BONO FOR THE FORENSIC SCIENCE
20 COMMUNITY.

21 Q AND WHY ARE YOU DOING THAT?

22 A TO -- TO DEMONSTRATE THE UTTER FALLACIES
23 THAT CAN ARISE WHEN A PERSON WHO MIGHT BE WELL
24 RESPECTED AND HIGHLY PAID IN ONE FIELD IS ALLOWED TO
25 GO OUTSIDE OF HIS FIELD COMPLETELY AND TESTIFY AS AN
26 EXPERT IN A FIELD IN WHICH HE TOTALLY LACKS
27 EXPERTISE. AND IF THIS IS ALLOWED TO ESTABLISH
28 ITSELF AS A PRECEDENT, I FEEL THAT GREAT HARM WILL

41622

1 DONE TO THE FORENSIC SCIENCE COMMUNITY, AND THAT'S
2 WHY I'M HERE.

3 Q AND YOU'RE REFERRING TO DR. MC CARTHY?

4 A I CERTAINLY AM.

5 Q SO YOU HAVE AN AGENDA; IS THAT CORRECT?

6 A I THINK I ANSWERED YOUR QUESTION.

7 Q YOU WANT TO PROVE SOMETHING HERE; IS
8 THAT CORRECT?

9 A NO. I THINK I ANSWERED YOUR QUESTION AS
10 COMPLETELY AS I CAN.

11 Q YOU'RE HERE TO DISCREDIT DR. MC CARTHY,
12 REGARDLESS OF WHAT DR. MC CARTHY TESTIFIES TO; IS

13 THAT CORRECT?

14 A NOT AT ALL, NOT AT ALL. I'M HERE TO
15 POINT OUT THE ERRORS THAT DR. MC CARTHY HAS MADE,
16 BECAUSE HE IS A LAYMAN IN THE FIELD THAT WE'RE --
17 THAT HE'S RECOGNIZED AS AN EXPERT; AND HE HAS MADE
18 ERRORS THAT ARE LAYMAN'S ERRORS.

19 NOW, IF DR. MC CARTHY CAN LINE UP WOUNDS
20 WITH SOME MATHEMATICAL CERTAINTY, IF A LAYMAN CAN
21 SHOW ME HOW CERTAIN WOUNDS LINE UP AND MAKE SENSE IN
22 A DIRECTION, IN A PROPORTION THAT I HAD NOT
23 CONSIDERED, FINE; IF THIS MAKES SENSE, I'D BE VERY
24 HAPPY TO ACCEPT IT AFTER, YOU KNOW, SAYING, NO ONE
25 CAN THINK OF EVERYTHING.

26 BUT WHEN A PERSON WRITES A REPORT IN
27 WHICH HE CONSTANTLY SAYS THIS IS THE WAY THE WOUND
28 WAS, WITHOUT ANY BASIS IN FOUNDATION; AND WHEN HE

41623

1 MAKES STATEMENTS SUCH AS: THIS WOULD HAVE CAUSED
2 THIS PERSON TO MOVE BECAUSE THE PAIN WOULD BE SO
3 GREAT; OR THIS SHOT WOULD HAVE KNOCKED THIS PERSON
4 DOWN; OR THIS PELLET IS IN THE FRONTAL LOBE; ALL
5 THESE THINGS ARE JUST CONTRARY TO FACT AND JUST,
6 FRANKLY, NONSENSE.

7 Q AND HOW DO YOU INTEND TO DEMONSTRATE TO

8 THE FORENSIC SCIENCE COMMUNITY WHAT YOU ACCOMPLISHED
9 BY TESTIFYING IN THIS CASE?

10 A HOW DO I INTEND TO DEMONSTRATE TO THE
11 FORENSIC SCIENCE COMMUNITY?

12 Q ISN'T THAT WHAT YOU SAID? YOU WERE
13 GOING TO DEMONSTRATE TO THE FORENSIC SCIENCE --

14 MS. ABRAMSON: OBJECTION. HE DIDN'T ALLOW
15 THE WITNESS TO ANSWER; AND ARGUMENTATIVE.

16 THE COURT: THE WITNESS WAS ASKING A
17 QUESTION. THE NEW QUESTION CLARIFIED IT.

18 LET'S GET ANOTHER QUESTION.

19 Q BY MR. CONN: YES. HOW DO YOU INTEND TO
20 DEMONSTRATE TO THE FORENSIC SCIENCE COMMUNITY WHAT
21 YOU ACCOMPLISHED IN THIS CASE BY TESTIFYING AGAINST
22 DR. MC CARTHY?

23 A I THINK WHAT THE COURT REPORTER IS
24 TAKING DOWN IN THIS CASE WILL DEMONSTRATE IT VERY
25 CLEARLY.

26 Q AND THEN YOU WILL BE ABLE TO WHAT,
27 DISTRIBUTE COPIES OF YOUR TESTIMONY AND SHOW OTHER
28 PEOPLE HOW YOU WERE ABLE TO DISCREDIT

41624

1 DR. MC CARTHY?

2 A NO. I DON'T HAVE A VENDETTA AGAINST

3 DR. MC CARTHY. I WOULD LIKE TO HAVE THE COURT
4 RECORDS HERE INDICATE THAT DR. MC CARTHY, WHEN HE
5 TRIED TO TESTIFY ON GUNSHOT WOUNDS, MADE MANY
6 ERRORS; SO THAT MAYBE HE WILL NOT BE ENCOURAGED TO
7 DO THIS IN THE FUTURE, OR IF HE DOES DO THIS IN THE
8 FUTURE, MAYBE HE WOULD CONSULT SOMEONE WHO
9 UNDERSTANDS GUNSHOT WOUNDS AND WORK IN CONCERT WITH
10 THEM, WHICH WOULD BE FINE.

11 Q SOMEONE SUCH AS YOURSELF?

12 A HE MIGHT. BUT THAT'S -- I DOUBT VERY
13 MUCH IF HE WOULD.

14 Q YOU ARE DEVOTING HOW MUCH TIME, OF YOUR
15 OWN TIME, TO THIS GOAL OF DISCREDITING DR. MC CARTHY?

16 MS. ABRAMSON: OBJECTION. MISSTATES THE
17 TESTIMONY.

18 THE COURT: OVERRULED.

19 THE WITNESS: I HAVE NEVER STATED I HAVE A
20 GOAL OF DISCREDITING DR. MC CARTHY AS AN INDIVIDUAL.

21 Q BY MR. CONN: DR. --

22 A I'M TRYING TO POINT OUT THAT WHEN AN
23 ENGINEER, WITH NO TRAINING IN MEDICINE, TRIES TO
24 TESTIFY ON GUNSHOT WOUNDS AND THEIR EFFECTS ON THE
25 HUMAN BODY, HE IS LIABLE TO MAKE MANY GROSS ERRORS,
26 WHICH HAS BEEN PROVEN IN THIS CASE.

27 AND IT'S THE ENGINEER, NOT DR. MC CARTHY,
28 THAT I'M TRYING TO PROVE HAS MADE THE ERRORS. AND,

1 YOU KNOW, THE SIMPLE THING IS THAT HE'S TESTIFYING
2 IN A FIELD THAT HE DOESN'T UNDERSTAND, AND IT COMES
3 OUT VERY CLEARLY IN THE THINGS THAT WE'VE POINTED
4 OUT.

5 Q WE'LL GO THROUGH HIS STATEMENTS,
6 DOCTOR.

7 AT THE MOMENT, LET ME ASK YOU THIS: DID
8 YOU WRITE A REPORT IN THIS CASE?

9 A I SENT A MEMO, YEAH. I SENT A MEMO. I
10 THINK IT MIGHT HAVE BEEN HEADED AS A REPORT, MIGHT
11 HAVE BEEN HEADED AS A MEMO. I DON'T RECALL. I DID
12 SEND SOMETHING.

13 Q THIS WAS A MEMO TO ADVISE COUNSEL OF THE
14 MEDICAL ISSUES IN THIS CASE THAT YOU FEEL MIGHT BE
15 BENEFICIAL IN HER EXAMINATION OF THE WITNESS?

16 A I THINK THAT WAS ONE OF THE THINGS THAT
17 WAS IN IT, YES.

18 Q WHAT ELSE WAS IN IT?

19 A I DON'T HAVE IT IN FRONT OF ME, SO I'M
20 NOT SURE.

21 Q DO YOU HAVE A COPY OF THAT REPORT WITH
22 YOU TODAY?

23 A NO, I DON'T.

24 MR. CONN: I WOULD ASK THAT THE WITNESS BE
25 ABLE TO PRODUCE A COPY OF THIS REPORT.

26 THE COURT: DO YOU HAVE A COPY?
27 MR. CONN: I HAVE AN INCOMPLETE COPY.
28 MS. ABRAMSON: WHAT'S THAT SUPPOSED TO MEAN,

41626

1 COUNSEL?

2 YOUR HONOR, I'D LIKE TO APPROACH.

3 THE COURT: LET'S NOT GET INTO CONVERSATIONS
4 BETWEEN COUNSEL.

5 IF COUNSEL HAS A COPY, YOU CAN PROVIDE
6 IT TO THE WITNESS.

7 MS. ABRAMSON: MOVE TO STRIKE COUNSEL'S
8 REMARKS.

9 THE COURT: ALL RIGHT. THE REMARKS OF
10 COUNSEL, EITHER COUNSEL, ARE STRICKEN. THEY'RE NOT
11 PART OF THE RECORD FOR THE JURY TO CONSIDER.

12 THE WITNESS: I HAVE IT NOW.

13 Q BY MR. CONN: MAY I SEE THE DOCUMENT
14 THAT YOU'RE REFERRING TO.

15 IS THIS THE DOCUMENT THAT YOU PROVIDED
16 TO COUNSEL, IN THE SAME FORM THAT YOU PROVIDED IT TO
17 COUNSEL?

18 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
19 OBJECT. MOVE TO STRIKE AND ASK TO APPROACH.

20 THE COURT: ALL RIGHT. OBJECTION IS

21 SUSTAINED. THERE'S NO NEED TO APPROACH. THIS IS
22 THE DOCUMENT THAT HAS BEEN PROVIDED TO THE
23 PROSECUTION.

24 YOUR NEXT QUESTION, PLEASE.

25 Q BY MR. CONN: IN THAT REPORT YOU ADVISED
26 COUNSEL OF MEDICAL OPINIONS THAT MIGHT ASSIST
27 COUNSEL IN THE EXAMINATION OF THE WITNESS; IS THAT
28 CORRECT?

41627

1 A YES.

2 Q AND DID YOU ADVISE HER IN REGARD TO ANY
3 OTHER MATTERS?

4 A OH, I'LL HAVE TO READ THE REPORT TO
5 ANSWER THAT QUESTION.

6 Q WELL, DIDN'T YOU ADVISE COUNSEL --

7 MS. ABRAMSON: OBJECTION, YOUR HONOR. IF HE
8 ASKS THE QUESTION, HE SHOULD LET THE WITNESS READ
9 THE REPORT.

10 THE COURT: WELL, HE ASSUMED FROM THIS THAT
11 YOU'RE WITHDRAWING THE PREVIOUS QUESTION.

12 MR. CONN: YES.

13 Q DON'T YOU ADVISE COUNSEL IN THAT REPORT
14 OF OTHER WAYS THAT YOU CAN ATTACK DR. MC CARTHY
15 OTHER THAN ON THE BASIS OF HIS MEDICAL OPINIONS?

16 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
17 OBJECT AS ARGUMENTATIVE.
18 THE COURT: OVERRULED.
19 MS. ABRAMSON: ALSO CALLS FOR HEARSAY.
20 THE COURT: OVERRULED.
21 THE WITNESS: I DON'T SEE ANY. I DON'T
22 KNOW. CAN YOU POINT OUT ANY? YOU HAVE THE REPORT.
23 MR. CONN: YES.
24 Q DO YOU RECALL ADVISING COUNSEL THAT,
25 REFERRING TO DR. MC CARTHY:
26 "HE DESCRIBES WHAT HE DID IN THE
27 ARMY AS MAINTAINING WEAPONS AND
28 TEACHING TROOPS TO USE THEM. THIS IS

41628

1 A FAR CRY FROM DOING RESEARCH ON
2 BULLET EFFECTS ON A LIVING BODY AND
3 WOULD NOT QUALIFY HIM TO EVALUATE
4 WOUNDS CAUSED BY FIREARMS."
5 DID YOU WRITE THAT TO COUNSEL?
6 A YES, SIR.
7 Q DID YOU ALSO ADVISE COUNSEL:
8 "MC CARTHY PRESENTS NO
9 CREDENTIALS DEALING WITH GUNSHOT
10 WOUNDS. HE CLAIMS TO BE TRAINED AS AN

11 ORDNANCE (SIC) --" IT IS SPELLED
12 ORDNANCE OFFICER -- "AND HAS BEEN
13 DOING RESEARCH ON FIREARMS SINCE
14 THEN. HIS C.V. LISTS 52 PRESENTATIONS
15 AND TWO PUBLICATIONS, NONE OF WHICH
16 RELATE TO FIREARMS OR WOUNDS."

17 A YES.

18 Q SO YOU WERE ADVISING COUNSEL, NOT ONLY
19 OF THE SHORTCOMING IN HIS MEDICAL OPINIONS, BUT ALSO
20 THAT YOU SHOULD ATTACK HIM ON THE BASIS OF HIS
21 C.V.?

22 MS. ABRAMSON: OBJECTION. MISSTATES WHAT'S
23 WRITTEN.

24 THE COURT: OVERRULED.

25 THE WITNESS: I DIDN'T TELL HER TO ATTACK HIM
26 ON ANYTHING. I JUST TRIED TO ADVISE HER ON THE
27 CREDENTIALS OF WHAT I THINK SHOULD BE REQUIRED OF
28 SOMEONE WHO COMES INTO COURT TO TESTIFY TO WOUNDS OF

41629

1 THE HUMAN BODY AND HOW HE DIDN'T HAVE THEM.

2 Q BY MR. CONN: AND YOU WERE LOOKING FOR
3 WAYS TO DISCREDIT HIM WHICH GO BEYOND GIVING COUNSEL
4 THE BENEFIT OF YOUR MEDICAL EXPERTISE; IS THAT
5 CORRECT?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR.

7 THE COURT: OVERRULED.

8 THE WITNESS: NO. I DON'T BELIEVE THAT'S

9 GOING BEYOND THE LIMITS OF MY EXPERTISE AT ALL.

10 Q BY MR. CONN: YOU WROTE IT THIS WAY

11 BECAUSE YOU REGARD YOURSELF AS A MEMBER OF THE

12 DEFENSE TEAM AT THIS POINT; ISN'T THAT CORRECT?

13 A NOT AT ALL.

14 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

15 THE COURT: OVERRULED. THE ANSWER WILL

16 STAND.

17 Q BY MR. CONN: ISN'T IT TRUE THAT THE

18 BEST WAY TO SEE TO IT THAT DR. MC CARTHY IS

19 DISCREDITED IS BY SEEING THAT ERIK AND LYLE MENENDEZ

20 ARE NOT CONVICTED IN THIS CASE?

21 A MY SOLE GOAL IS NOT TO DISCREDIT

22 DR. MC CARTHY AS AN INDIVIDUAL; AND IT IS SIMPLY, AS

23 I HAVE PREVIOUSLY STATED, TO TRY TO POINT OUT THE

24 ERRORS THAT WILL CREEP INTO EXPERT TESTIMONY WHEN

25 PEOPLE WHO ARE SUPPOSED EXPERTS TESTIFY IN AREAS

26 THAT THEY HAVE NO REAL EXPERTISE.

27 THAT'S WHAT I'M TRYING TO DO.

28 Q LIKE TALKING ABOUT THE FACT THAT A

1 PERSON WHO'S BEING SHOT AT IS LIKELY TO RESPOND TO
2 SHOTS IN SOME WAY? YOU FEEL THAT DR. MC CARTHY HAS
3 NO EXPERTISE THAT WOULD ALLOW HIM TO DRAW THAT
4 SIMPLE CONCLUSION; IS THAT CORRECT, SIR?

5 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE IN
6 CONTENT AND TONE.

7 THE COURT: OBJECTION SUSTAINED. ALL RIGHT.
8 OBJECTION SUSTAINED.

9 Q BY MR. CONN: IS ONE OF THE CONCLUSIONS
10 THAT YOU FEEL DR. MC CARTHY HAS NO CREDENTIALS TO
11 EXPRESS AN OPINION, THE FACT THAT SOMEONE WHO'S
12 BEING SHOT AT MIGHT GET UP AND TRY TO DEFEND HIMSELF
13 IN SOME WAY; IS THAT CORRECT?

14 A YES, THAT'S RIGHT.

15 Q AND YOU FEEL THAT THERE ARE NO PERSONS
16 IN THE WORLD WHO CAN REACH THAT CONCLUSION BECAUSE
17 IT IS NOT A REASONABLE CONCLUSION; IS THAT CORRECT?

18 A NO PERSONS IN THE WORLD, DID YOU SAY?

19 Q YES. THAT WAS MY QUESTION, SIR.

20 A PLEASE REPEAT THE QUESTION.

21 Q DO YOU FEEL THAT THERE ARE NO PERSONS IN
22 THE WORLD WHO CAN REACH THAT CONCLUSION BECAUSE THAT
23 IS NOT A REASONABLE CONCLUSION; IS THAT CORRECT?

24 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
25 CALLS FOR SPECULATION.

26 THE COURT: DO YOU UNDERSTAND THE QUESTION?

27 MS. ABRAMSON: COMPOUND.

28 THE COURT: OVERRULED.

1 DO YOU UNDERSTAND THE QUESTION?

2 THE WITNESS: THERE'S TWO QUESTIONS THAT I'M
3 TRYING TO SORT THEM OUT. ONE SEEMS TO BE DEPENDENT,
4 ONE UPON THE OTHER.

5 THE COURT: LET'S HAVE IT REASKED THEN.

6 Q BY MR. CONN: SIR, DO YOU NOT FEEL IT IS
7 A REASONABLE CONCLUSION THAT IF A PERSON IS BEING
8 SHOT WITH A SHOTGUN, AND IF HE HAS THE ABILITY TO
9 RESPOND TO IT IN SOME WAY, HE IS GOING TO GET UP AND
10 HE IS GOING TO RESPOND TO IT IN SOME WAY?

11 A HE'S GOING TO GET UP?

12 Q AND RESPOND TO IT IN SOME WAY IF HE
13 CAN.

14 A HE MIGHT AND HE MIGHT NOT. BUT THE
15 PERSON WHO WOULD BE MOST EXPERT IN THIS WOULD BE
16 SOMEONE WHO HAS DEALT WITH THIS SUBJECT IN THE PAST
17 AND HAS HAD SOME EXPERIENCE AND SOME CREDENTIALS AND
18 SOME TRAINING ON THE SUBJECT OF WHAT PEOPLE DO AFTER
19 THEY'RE SHOT.

20 Q AND WHO DO YOU FEEL IS THE BEST
21 QUALIFIED PERSON TO EXPRESS AN OPINION AS TO WHETHER
22 SOMEONE WHO'S BEING SHOT AT WOULD BE LIKELY TO
23 RESPOND TO THE SHOOTING IN SOME WAY?

24 A WELL, I'D START WITH AN M.D. BEHIND HIS

25 NAME, AND THEN I WOULD ADD TO THAT TRAINING IN
26 EITHER SURGERY OR PATHOLOGY; AND IN ADDITION, AN
27 INTEREST AND EXPERIENCE IN FORENSICS. AND WITH
28 THOSE QUALIFICATIONS, THEN I THINK A PERSON THAT HAS

41632

1 THESE WOULD BE THE PERSON THAT I THINK WOULD GIVE
2 YOU THE MOST RELIABLE ANSWER TO THAT QUESTION.

3 Q YOU'RE TELLING US, SIR, YOU'VE GOT TO GO
4 TO MEDICAL SCHOOL? YOU HAVE TO BE A DOCTOR TO KNOW
5 THAT IF SOMEONE IS SHOOTING AT YOU WITH A SHOTGUN
6 YOU'RE GOING TO RESPOND TO PROTECT YOURSELF IN SOME
7 WAY?

8 A WELL, I THINK THE RESPONSE WAS BASED
9 ON -- IN MR. MC CARTHY'S TESTIMONY WAS BASED ON THE
10 PAIN THAT WAS CAUSED. THAT WAS WHY THE PERSON WOULD
11 HAVE HAD PAIN AND THEN RESPONDED, AS I RECALL, FROM
12 HIS WORDING, IN THE -- IN HIS REPORT. AND, OF
13 COURSE, THAT IS BASED ON A LAYMAN'S MISCONCEPTION
14 THAT GETTING SHOT WITH FIREARMS IS UNIFORMLY A VERY
15 PAINFUL ACT, WHICH IT IS NOT.

16 Q ONE OF THE REASONS WHY DR. MC CARTHY
17 EXPRESSED THE OPINION THAT SOMEONE WOULD RESPOND TO
18 A SHOTGUN ATTACK UPON HIMSELF WAS BECAUSE OF THE
19 PAIN; IS THAT CORRECT?

20 A THAT'S WHAT HE STATED IN HIS REPORT.

21 Q DID IT NOT ALSO OCCUR TO YOU, SIR, THAT
22 ONE OF THE REASONS WHY DR. MC CARTHY WAS SAYING THAT
23 SOMEONE WOULD RESPOND TO A SHOTGUN ATTACK UPON
24 HIMSELF IS BECAUSE PEOPLE GENERALLY DISFAVOR SHOTGUN
25 ATTACKS UPON THEMSELVES?

26 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS AS
27 ARGUMENTATIVE. THERE'S NO FOUNDATION.

28 THE COURT: OBJECTION SUSTAINED TO THE FORM

41633

1 OF THE QUESTION.

2 Q BY MR. CONN: DID YOU FEEL THAT
3 DR. MC CARTHY WAS EXPRESSING THE OPINION THAT PEOPLE
4 RESPOND TO SHOTGUN ATTACKS UPON THEMSELVES, IF THEY
5 ARE CAPABLE OF DOING SO, ONLY BECAUSE THERE IS PAIN
6 INVOLVED AND FOR NO OTHER REASON?

7 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
8 OBJECT. CALLING FOR SPECULATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: WELL, HE STATED HIS REASON WAS
11 THAT IT WAS PAINFUL. ANYTHING ELSE YOU ASK ME TO DO
12 MUST BE AN ASSUMPTION OF WHAT ELSE HE MIGHT HAVE
13 BEEN THINKING, AND I DON'T KNOW WHAT ELSE HE WAS
14 THINKING. ALL I CAN RESPOND TO IS WHAT I SAW IN THE

15 WRITTEN WORD.

16 Q BY MR. CONN: UH-HUH. AND YOU FELT THAT
17 IT WAS UNREASONABLE TO DRAW THE CONCLUSION THAT IF A
18 PERSON WAS BEING SHOT BY A SHOTGUN, THAT PERSON
19 WOULD EXPERIENCE PAIN?

20 A YES.

21 Q OKAY. DOCTOR, GETTING BACK TO THIS
22 WOUND THAT YOU DESCRIBED FOR US EARLIER, AND THAT IS
23 THE INDIVIDUAL PELLET DEFECTS TO THE ANTECUBITAL
24 FOSSA OF THE RIGHT FOREARM, YOU TOLD US A LITTLE
25 WHILE AGO THERE'S AN EXIT WOUND ON THE BACK OF THAT
26 ARM THAT IS ASSOCIATED WITH THAT WOUND; IS THAT
27 CORRECT?

28 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

41634

1 THE COURT: IT'S COMPOUND. REPHRASE THE
2 QUESTION.

3 Q BY MR. CONN: DIRECTING YOUR ATTENTION
4 TO THOSE SIX INDIVIDUAL PELLET DEFECTS ON THE
5 ANTECUBITAL FOSSA OF THE RIGHT FOREARM.

6 A YES.

7 Q IS THERE AN EXIT WOUND ON THE BACK OF
8 THAT ARM WHICH CORRESPONDS TO THAT ENTRY WOUND?

9 A MULTIPLE EXIT WOUNDS.

10 Q DO YOU HAVE A PHOTOGRAPH OF THAT THAT

11 YOU CAN SHOW US?

12 A NOT HERE, NO.

13 Q OKAY. WELL, THEN CAN YOU POINT TO

14 SOMETHING?

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

16 OBJECT AS MISLEADING THE WITNESS. COUNSEL HAS THE

17 PHOTOGRAPH.

18 THE COURT: OBJECTION OVERRULED.

19 YOUR NEXT QUESTION, PLEASE.

20 Q BY MR. CONN: OKAY. CAN YOU POINT TO

21 ANYTHING IN DR. GOLDEN'S REPORTS, EITHER THE '89

22 REPORT OR THE '95 REPORT, WHICH IDENTIFIES AN EXIT

23 WOUND FOR THE SIX PELLET DEFECTS TO THE ANTECUBITAL

24 FOSSA OF THE RIGHT ARM?

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

26 OBJECT. CALLS FOR HEARSAY, NO FOUNDATION FOR THAT

27 QUESTION.

28 THE COURT: ALL RIGHT. YOU'RE REFERRING TO

41635

1 THE REPORT ITSELF?

2 MR. CONN: YES, YOUR HONOR.

3 THE COURT: WHAT'S WRITTEN IN THE REPORT?

4 MR. CONN: YES.

5 THE COURT: OVERRULED.

6 THE WITNESS: SHOULD I ANSWER IT, YOUR
7 HONOR?

8 THE COURT: YES.

9 THE WITNESS: I MISUNDERSTOOD. I'M SORRY.

10 WE'VE BEEN OVER THIS ABOUT 20 MINUTES
11 AGO, AS I RECALL.

12 Q BY MR. CONN: I DON'T THINK SO, DOCTOR.

13 CAN YOU -- CAN YOU REFER TO SOMETHING IN
14 THE REPORT WHICH SPECIFICALLY INDICATES THAT THERE'S
15 AN EXIT WOUND FOR THAT WOUND I'M DIRECTING YOUR
16 ATTENTION TO?

17 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
18 MOVE TO STRIKE COUNSEL'S COMMENTS.

19 THE COURT: OVERRULED.

20 THE WITNESS: WE DID TALK ABOUT 20 MINUTES
21 AGO ABOUT WOUNDS THAT WERE INCLUDED IN THE INITIAL
22 REPORT THAT WERE THEN INADVERTENTLY NOT INCLUDED IN
23 THE AMENDMENT.

24 Q BY MR. CONN: ONE OF THE WOUNDS WAS
25 INADVERTENTLY -- OR ONE WOUND WAS INCLUDED IN THE
26 ORIGINAL WOUND WHICH WAS NOT INCLUDED IN THE
27 AMENDMENT; IS THAT CORRECT?

28 A YES.

1 Q AND THAT IS THE WOUND TO THE DORSAL
2 ASPECT OF THE RIGHT FOREARM; IS THAT CORRECT?

3 A OF THE EXIT WOUND, YES.

4 Q SO ARE YOU TELLING US THAT THE EXIT
5 WOUND TO THAT -- THAT THE PELLET DEFECTS ON THE
6 DORSAL ASPECT OF THE RIGHT FOREARM IS THE EXIT WOUND
7 TO THE SIX PELLET DEFECTS NEAR THE ANTECUBITAL FOSSA
8 OF THE RIGHT ARM?

9 A THERE ARE SEVERAL PELLET DEFECTS ON THE
10 DORSAL ASPECT, AND SOME OF THEM WOULD BE LINED UP
11 WITH THESE AS ENTRANCES, THE ONE IN THE ANTECUBITAL
12 FOSSA, YES.

13 Q THE ONE IN THE ANTECUBITAL WOULD BE IN
14 THE ENTRANCE, AND THE EXIT IS IN THE DORSAL ASPECT?

15 A YES.

16 Q NOW, IS THERE ANYWHERE IN DR. GOLDEN'S
17 REPORT, EITHER THE '89 REPORT OR THE '95 REPORT,
18 THAT SUPPORTS THE CONCLUSION YOU'RE NOW TELLING US
19 ABOUT?

20 A I THOUGHT WE COVERED THIS 20 MINUTES
21 AGO, BUT I'LL GO OVER IT AGAIN.

22 MR. CONN: BE MY GUEST, DOCTOR.

23 (BRIEF PAUSE IN THE PROCEEDINGS.)

24

25 THE WITNESS: YES. HERE WE HAVE ON PAGE 5,
26 UNDER SHOT NO. 3, THAT'S LOCATED IN THE DORSAL
27 ASPECT OF THE RIGHT FOREARM:

41637

1 BELOW THE TOP OF THE RIGHT SHOULDER,
2 MULTIPLE INDIVIDUAL PELLET WOUNDS
3 AVERAGING APPROXIMATELY A QUARTER INCH
4 IN DIAMETER. ALL HAVE MARGINAL BROWN
5 ABRASIONS."

6 THERE IT IS.

7 Q BY MR. CONN: THERE WHAT IS?

8 A YOU ASKED WHAT WE -- YOU KNOW, WHERE THE
9 EXIT WOUNDS WERE, AND I'M POINTING THEM OUT TO YOU.

10 Q I ASKED YOU WHERE IN DR. GOLDEN'S
11 REPORT --

12 A WELL, I JUST READ IT TO YOU.

13 Q DOCTOR, LET ME FINISH THE QUESTION. I'M
14 ASKING YOU WHERE IN DR. GOLDEN'S REPORT HE INDICATES
15 THAT THE ONES ON THE DORSAL ASPECT OF THE RIGHT
16 FOREARM ARE THE EXIT WOUNDS TO THE WOUNDS THAT
17 APPEAR IN THE ANTECUBITAL FOSSA OF THE RIGHT ARM?

18 A OH, HE HAS -- HE MAY HAVE NOT REFERRED
19 TO THEM AS EXIT WOUNDS. HE REFERS TO THEM AS
20 INDIVIDUAL WOUNDS. HE ACTUALLY -- I THINK THAT'S
21 WHY HE CHANGED THE REPORT, BECAUSE HE HAS THIS
22 LISTED ON PAGE 5 UNDER SHOTGUN WOUND NO. 3, AND THAT

23 MAY BE WHY -- ONE OF THE REASONS THAT HE MADE THE
24 AMENDMENT, BECAUSE HE DESCRIBES THESE INDIVIDUAL
25 WOUNDS WHICH ARE ON THE DORSAL ASPECT OF THE RIGHT
26 FOREARM. HE ACTUALLY -- RIGHT HERE THEY'RE
27 DESCRIBED, VERY CLEARLY, IF YOU LOOK AT WOUND NO. 3
28 ON PAGE 5.

41638

1 Q YES. THE WOUNDS ARE DESCRIBED VERY
2 CLEARLY HERE. THAT'S WHAT YOU'RE TELLING US,
3 DOCTOR?

4 A YES.

5 Q DO YOU UNDERSTAND THAT MY QUESTION IS:
6 WHERE DOES DR. GOLDEN EVER SAY THAT WOUNDS TO THE
7 DORSAL ASPECT ARE EXIT WOUNDS TO ANOTHER WOUND?

8 A I DON'T THINK HE DOES.

9 Q OKAY. ALL RIGHT. SO HE DOES NOT. NOT
10 THAT YOU DON'T THINK HE DOES. HE DOES NOT; IS THAT
11 CORRECT?

12 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

13 THE COURT: REPHRASE THE QUESTION.

14 Q BY MR. CONN: YES. DOES DR. GOLDEN,
15 ANYWHERE IN HIS REPORT, DESCRIBE THE WOUND TO THE
16 DORSAL ASPECT OF THE RIGHT FOREARM AS BEING AN EXIT
17 WOUND?

18 A NO.

19 Q AND YOU SAID THAT THE REASON WHY YOU
20 BELIEVE HE CHANGED HIS REPORT WAS TO CLARIFY THAT
21 ISSUE?

22 A THAT MAY BE ONE OF THE REASONS. I DON'T
23 KNOW. THERE PROBABLY WERE MULTIPLE REASONS.

24 Q AND YET WHEN HE CHANGED THE REPORT HE
25 DIDN'T ACCOUNT FOR THE WOUND TO THE DORSAL ASPECT OF
26 THE RIGHT FOREARM IN ANY WAY, DID HE?

27 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE,
28 ASKED AND ANSWERED.

41639

1 THE COURT: OVERRULED.

2 THE WITNESS: WE'VE BEEN OVER THIS 20 MINUTES
3 AGO.

4 Q BY MR. CONN: HE DELETED THEM.

5 A YES. AS WE DISCUSSED AND MENTIONED
6 SEVERAL TIMES.

7 Q NOW WE'LL GET BACK TO MY ORIGINAL
8 QUESTION, WHICH WAS THIS CONCLUSION OF YOURS THAT
9 THE ENTRY WOUNDS, THE ENTRY PELLET DEFECTS ON THE
10 ANTECUBITAL FOSSA OF THE RIGHT FOREARM IS ASSOCIATED
11 WITH THE EXIT WOUNDS ON THE DORSAL ASPECT OF THE
12 RIGHT ARM.

13 IS THAT CONFIRMED ANYWHERE IN THE
14 REPORTS OF DR. GOLDEN?
15 MS. ABRAMSON: OBJECTION. CALLS FOR HEARSAY.
16 THE COURT: REFERRING JUST TO THE REPORTS?
17 MR. CONN: YES.
18 THE COURT: OVERRULED.
19 YOU CAN ANSWER THE QUESTION.
20 THE WITNESS: OKAY. NOT IN THE SENSE THAT HE
21 CALLS THEM EXIT WOUNDS; HOWEVER, HE DOES DESCRIBE
22 WOUNDS THERE, BUT HE DOESN'T SPECIFICALLY SAY
23 THEY'RE EXIT WOUNDS, CORRECT. YES.
24 Q BY MR. CONN: MAKES NO ASSOCIATION IN
25 EITHER THE 1989 REPORT OR THE 1995 REPORT TO THOSE
26 TWO SETS OF WOUNDS, DOES HE, DOCTOR?
27 A NO.
28 Q OKAY. SO THIS IS YOUR THEORY; IS THAT

41640

1 CORRECT?
2 A YES. I THINK I LINED THEM UP AND IT
3 SEEMED TO BE REASONABLE.
4 Q HAVE YOU NOT BEEN SAYING THAT THIS
5 ASSOCIATION OF WOUNDS IS NOT JUST YOUR THEORY, BUT
6 IT IS SOMETHING THAT IS REFLECTED IN THE REPORTS OF
7 DR. GOLDEN?

8 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

9 MISSTATES THE TESTIMONY.

10 THE COURT: OVERRULED.

11 THE WITNESS: I DON'T RECALL SAYING THAT.

12 Q BY MR. CONN: OKAY. YOUR CONCLUSION

13 THEN THAT THE WOUNDS TO THE ANTECUBITAL FOSSA ARE

14 ASSOCIATED TO THE WOUNDS TO THE DORSAL ASPECT OF THE

15 RIGHT FOREARM, IS THAT BASED UPON ANYTHING MORE THAN

16 LOOKING AT THE PHOTOGRAPHS AND CONCLUDING THAT

17 THAT'S ONE POSSIBILITY?

18 A WELL, OF COURSE, THAT'S WHAT I DID.

19 MAYBE THAT'S ONE POSSIBILITY. IT DIDN'T RELATE TO

20 ANY OTHER THING IN THIS WHOLE CASE. IT'S MINUTIA,

21 AND I DIDN'T GIVE A GREAT DEAL OF THOUGHT TO IT. IT

22 SEEMED REASONABLE. I SAID, YEAH, THAT'S PROBABLY

23 WHERE THEY CAME OUT BECAUSE THAT'S WHAT HE'S

24 DESCRIBED THERE.

25 Q THAT CONCLUSION, ASSOCIATING THOSE TWO

26 SETS OF WOUNDS, WAS NOT SOMETHING THAT YOU INCLUDED

27 IN YOUR REPORT, DID YOU?

28 A I DON'T RECALL I DID. WHERE IN MY

41641

1 REPORT DID I SAY THAT?

2 Q THAT'S MY POINT.

3 MS. ABRAMSON: WELL, OBJECT TO COUNSEL'S

4 COMMENT AND MOVE TO STRIKE.

5 THE COURT: REPHRASE THE QUESTION.

6 MR. CONN: YES.

7 Q CAN YOU POINT TO A PLACE IN YOUR REPORT

8 WHERE YOU SAID THAT?

9 A NO.

10 Q SO --

11 A I DON'T RECALL SAYING THAT IN MY REPORT.

12 Q OKAY. CAN YOU TELL US WHEN YOU FIRST

13 CONCLUDED THAT THOSE TWO WOUNDS WERE ASSOCIATED?

14 A NO. I DON'T REMEMBER WHEN I FIRST

15 CONCLUDED BECAUSE IT'S -- I'VE BEEN LOOKING AT THE

16 IMPORTANT POINTS OF THIS CASE, AND THIS IS A MINUTIA

17 THAT HAS NO APPLICATION TO ANYTHING THAT I CAN SEE,

18 AND I DON'T RECALL SPENDING -- GIVING A GREAT DEAL OF

19 THOUGHT TO IT BECAUSE THIS IS AN EXTREMELY

20 COMPLICATED CASE, AND THERE ARE MANY OTHER THINGS

21 THAT REALLY REQUIRE ONE'S ATTENTION; AND IF I DIDN'T

22 MENTION IT, THIS IS THE REASON I DIDN'T MENTION IT,

23 IS BECAUSE I CONSIDERED IT MINUTIA.

24 Q NOW, COULD IT HAVE BEEN VICE-VERSA, THE

25 WOUNDS ENTERED THE DORSAL ASPECT OF THE RIGHT ARM

26 AND EXITED IN THE ANTECUBITAL FOSSA?

27 A I THINK THAT'S A POSSIBILITY.

28 Q IS IT POSSIBLE THAT THE PELLET DEFECTS

1 IN THE ANTECUBITAL FOSSA OF THE RIGHT FOREARM MAY
2 HAVE BEEN THE ENTRY WOUNDS FOR AN EXIT THAT WAS IN
3 THE UPPER ARM, THE WOUND THAT CONSTITUTED THE LARGE
4 RAGGED DEFECTS?

5 A I THINK THAT'S MOST UNLIKELY.

6 Q DID YOU FIND, IN YOUR REVIEW OF
7 DR. GOLDEN'S REPORT OF 1989, THAT HE SAID THAT THAT
8 WAS A POSSIBILITY?

9 A AS I TESTIFIED ABOUT 15 MINUTES AGO, ON
10 HIS REPORTS OF WOUNDS 2 AND 3, AFTER SEVERAL
11 REREADINGS OF IT, I ENDED UP VERY CONFUSED BECAUSE I
12 COULDN'T TELL EXACTLY WHAT HE WAS TRYING TO SAY.

13 Q RIGHT. AND YOU WERE CONFUSED BECAUSE
14 DR. GOLDEN, WHEN YOU COMPARE HIS 1989 REPORT TO HIS
15 1995 REPORT, APPEARS TO CONTRADICT HIMSELF AND
16 LEAVES THINGS OUT, DOESN'T HE?

17 A WELL, HE APPEARS TO IN CERTAIN AREAS.

18 Q AND HE DESCRIBES WOUNDS IN 1989 WHICH HE
19 NO LONGER DESCRIBES IN 1985; IS THAT CORRECT?

20 MS. ABRAMSON: YOUR HONOR, THIS WAS ASKED AND
21 ANSWERED.

22 THE COURT: SUSTAINED.

23 Q BY MR. CONN: SO HOW RELIABLE DID YOU
24 FIND THIS 1989 REPORT, OR HOW RELIABLE DID YOU FIND
25 THE REPORTS OF DR. GOLDEN ALTOGETHER?

26 A I FIND REPORTS OF DR. GOLDEN ABOVE

27 AVERAGE FOR THE FORENSIC PATHOLOGY REPORTS THAT I
28 CAME ACROSS.

41643

1 Q UH-HUH. DESPITE ALL THOSE ERRORS THAT
2 YOU POINTED OUT?

3 A YES. I THINK YOU'RE OVERLOOKING THE
4 FACT THAT THIS IS AN EXTREMELY COMPLICATED CASE
5 BECAUSE OF THE NUMBER OF SHOTS.

6 Q DOES THE COMPLEXITY OF THIS CASE EXPLAIN
7 WHY DR. GOLDEN DESCRIBED WOUNDS IN 1989 THAT HE NO
8 LONGER DESCRIBES IN 1995?

9 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
10 OBJECT. CALLS FOR SPECULATION.

11 THE COURT: SUSTAINED.

12 Q BY MR. CONN: NOW, YOU SAY THAT IN
13 ADDITION TO REVIEWING ALL OF THE PHOTOGRAPHS IN THIS
14 CASE, YOU ALSO REVIEWED PHOTOS TAKEN BY DR. MORTON
15 OF CLOTHING; IS THAT CORRECT?

16 A A PHOTO TAKEN BY DR. MORTON?

17 MS. ABRAMSON: I'M GOING TO OBJECT. THERE IS
18 NO DR. MORTON.

19 THE COURT: MR. MORTON?

20 MR. CONN: MR. MORTON.

21 THE WITNESS: HE FURNISHED ME WITH TWO TEST

22 TARGETS THAT HE FIRED.

23 Q BY MR. CONN: DID YOU SEE ANY

24 PHOTOGRAPHS OF CLOTHING?

25 A THE CLOTHING PHOTOGRAPHS? IF HE'S THE

26 ONE THAT TOOK THOSE, YES. I DIDN'T RECALL WHO

27 TOOK -- I'VE SEEN SOME PHOTOGRAPHS OF CLOTHING. I

28 DON'T KNOW WHO TOOK THEM.

41644

1 Q WHAT ITEMS OF CLOTHING DID YOU SEE

2 PHOTOGRAPHS OF?

3 A THE SCENE PHOTOGRAPHS SHOW THE VICTIMS

4 DRESSED AND THEY HAVE CLOTHING ON. THOSE ARE THE

5 ONES I'M SPEAKING OF.

6 Q CRIME-SCENE PHOTOGRAPHS?

7 A YEAH. CRIME-SCENE PHOTOGRAPHS. YES.

8 Q AND YOU READ TRIAL TRANSCRIPTS?

9 A WHICH TRIAL TRANSCRIPTS?

10 Q THAT'S WHAT I'M ASKING. DID YOU READ

11 SOME TRIAL TRANSCRIPTS?

12 A SOME -- THIS TRIAL YOU'RE SPEAKING OF, OR

13 THE PREVIOUS TRIAL?

14 Q BUT DID YOU READ ANY TRIAL TRANSCRIPTS

15 IN THIS CASE, SIR?

16 A YES.

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

18 OBJECT TO THE QUESTION AS VAGUE.

19 THE COURT: OVERRULED. THE ANSWER WILL

20 STAND.

21 Q BY MR. CONN: YES. CAN YOU TELL US

22 WHOSE TRANSCRIPTS YOU READ?

23 A IN THIS CASE?

24 Q YES.

25 A DR. LAWRENCE AND MR. MC CARTHY. I

26 DIDN'T READ ALL OF -- AS I HAVE ANSWERED PREVIOUSLY,

27 I DIDN'T READ ALL OF MR. MC CARTHY'S BECAUSE I WAS

28 ON ROUTE AND I MISSED AT LEAST ONE DAY.

41645

1 Q SO YOU DID NOT READ DR. GOLDEN'S

2 TESTIMONY; IS THAT CORRECT?

3 A NO, I DIDN'T.

4 Q THAT HAS NEVER BEEN PROVIDED TO YOU BY

5 DEFENSE COUNSEL IN THIS CASE?

6 A I DON'T RECALL IF IT HAS OR NOT. I

7 DON'T RECALL READING IT, NO.

8 Q DID YOU EVER ASK TO REVIEW IT?

9 A HIS TESTIMONY IN THIS CASE YOU'RE

10 SPEAKING OF?

11 Q YES.

12 A I DON'T BELIEVE SO.

13 Q DID YOU READ HIS TESTIMONY IN ANOTHER
14 CASE?

15 A NO. NO. I'M JUST ASKING. I THINK HE
16 MIGHT HAVE TESTIFIED IN THE PREVIOUS CASE. I WAS
17 WONDERING IF THAT'S WHAT YOU WERE REFERRING TO.

18 Q IN THE PREVIOUS TRIAL YOU'RE REFERRING
19 TO?

20 A YES.

21 Q DID YOU READ HIS TESTIMONY FROM THE
22 FIRST TRIAL?

23 A NO. I DIDN'T READ ANYTHING FROM THE
24 FIRST TRIAL.

25 Q DID YOU EVER ASK FOR THAT TESTIMONY?

26 A NO.

27 Q DID YOU EVER ASK WHY IT WAS NOT PROVIDED
28 TO YOU?

41646

1 A NO.

2 Q DO YOU THINK THAT IT WOULD BE IMPORTANT
3 TO READ IT?

4 A IT MAY HAVE BEEN PROVIDED TO ME AND I
5 MAY HAVE READ IT. I JUST DON'T RECALL IF I HAVE. I
6 DON'T THINK I HAVE.

7 Q YOU FELT THAT IT WAS IMPORTANT TO SPEAK
8 TO DR. GOLDEN?

9 A YES. I SPOKE TO DR. GOLDEN, SURE.

10 Q YOU FELT IT WAS NOT IMPORTANT TO READ
11 HIS TESTIMONY?

12 A I THOUGHT IT WOULD BE BETTER TO SPEAK TO
13 HIM. BUT NO, I DIDN'T CONSIDER HIS -- I CONSIDERED
14 SPEAKING TO HIM MORE IMPORTANT, IF YOU WANT TO KNOW,
15 YES.

16 Q SPEAKING TO HIM WAS MORE IMPORTANT THAN
17 FINDING OUT WHAT HE TESTIFIED TO UNDER OATH IN THIS
18 TRIAL?

19 A CERTAINLY.

20 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

21 THE COURT: OVERRULED. THE ANSWER WILL
22 STAND.

23 Q BY MR. CONN: WHY WOULD THAT BE
24 CERTAINLY TRUE, SIR?

25 A BECAUSE I WANTED TO TALK TO HIM ABOUT
26 CERTAIN SHOTS.

27 Q YOU DIDN'T FIND -- YOU DIDN'T WANT TO
28 KNOW WHAT OPINIONS HE EXPRESSED WHEN HE TESTIFIED IN

2 A AS I SAY, I WANTED TO SPEAK TO HIM ABOUT
3 CERTAIN SHOTS, AND I ASKED HIM ABOUT THOSE CERTAIN
4 SHOTS. I DIDN'T KNOW IF -- CERTAIN QUESTIONS -- IT
5 WOULD BE UNLIKELY THAT QUESTIONS THAT I WANTED TO
6 ASK HIM WOULD HAVE BEEN ASKED IN EXACTLY THE SAME
7 FASHION IN THE TRIAL AND THAT I WOULD BE ABLE TO GET
8 THE INFORMATION THERE AND NOT HAVE TO SPEAK TO HIM.
9 I THOUGHT SPEAKING TO HIM WAS A MUCH BETTER WAY OF
10 HAVING HIM EXPAND HIS ANSWERS; AND, YOU KNOW, IT'S A
11 MUCH EASIER DISCOURSE THAN READING TRIAL
12 TRANSCRIPTS.

13 Q AND YOU DIDN'T THINK IT WOULD BE A GOOD
14 STARTING POINT TO FIND OUT WHAT HE TESTIFIED TO
15 UNDER OATH?

16 A I DIDN'T THINK OF IT. NO.

17 Q DID YOU REVIEW THE ORIGINAL X RAYS IN
18 THIS CASE?

19 A I BELIEVE I ASKED FOR THE ORIGINAL
20 X RAYS IN THIS CASE, AND I WAS TOLD THAT THEY HAD
21 BEEN DESTROYED AND WE ONLY HAD MICROFICHE, AND I
22 ASKED IF I COULD HAVE THEM RECONSTRUCTED FROM
23 MICROFICHE; AND I WAS PROVIDED A SET OF X RAYS THAT
24 I WAS TOLD HAD BEEN RECONSTRUCTED FROM MICROFICHE,
25 AND THAT'S WHAT I REVIEWED.

26 Q YES. YOU WERE TOLD THAT THE X RAYS IN
27 THIS CASE WERE DESTROYED BY THE CORONER'S OFFICE; IS
28 THAT CORRECT?

1 A I DON'T BELIEVE ANYBODY TOLD ME WHO
2 DESTROYED THEM, BUT IT WAS TOLD THAT THEY HAD BEEN
3 DESTROYED. THAT'S WHAT I WAS TOLD.

4 Q AND DID YOU REVIEW PHOTOGRAPHS TAKEN BY
5 THE CORONER'S OFFICE OF THE BODY OF JOSE MENENDEZ?

6 A YES.

7 Q HOW MANY?

8 A OH, THERE MUST HAVE BEEN ABOUT 20. THEY
9 WERE SOME -- THEY WERE -- SOME OF THEM WERE NOT VERY
10 USEFUL BECAUSE THE EXPOSURE -- THEY WERE VERY LIGHT,
11 I GUESS OVER-EXPOSED, AND YOU COULDN'T SEE MUCH.

12 Q ARE YOU SURE THOSE WERE TAKEN BY THE
13 CORONER'S OFFICE AS OPPOSED TO THE BEVERLY HILLS
14 POLICE DEPARTMENT?

15 A NO, I'M NOT. I THOUGHT THOSE WERE THE
16 ONES YOU WERE SPEAKING OF.

17 Q OKAY. WERE YOU TOLD THAT THE CORONER'S
18 OFFICE DESTROYED THE PHOTOGRAPHS IN THIS CASE TOO?

19 A NO, I WAS NOT.

20 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT,
21 YOUR HONOR. THAT LACKS FOUNDATION. THERE'S NO
22 EVIDENCE OF THAT.

23 THE COURT: OVERRULED.

24 MS. ABRAMSON: WELL, IT MISSTATES --

25 THE COURT: IT WAS A QUESTION AND HE GAVE HIS

26 ANSWER.

27 Q BY MR. CONN: DID YOU PREPARE ANY

28 REPORTS OTHER THAN THIS THREE-PAGE REPORT THAT

41649

1 COUNSEL PROVIDED TO YOU JUST A SHORT TIME AGO?

2 A I THINK THIS IS THE ONLY ONE, ALTHOUGH I
3 MAY HAVE SENT ANOTHER SHORTER ONE, BUT I THINK THIS
4 IS THE ONLY ONE. I DON'T REALLY RECALL.

5 Q WHEN YOU SAY YOU THINK YOU SUBMITTED OR
6 SENT A SHORTER ONE --

7 A I MIGHT HAVE.

8 Q WHEN DO YOU THINK YOU MIGHT HAVE SENT
9 THAT?

10 A I CAN'T RECALL.

11 Q WHAT MAKES YOU THINK YOU MIGHT HAVE SENT
12 A SHORTER REPORT?

13 A I JUST DON'T KNOW. I WAS ASKED,
14 SOMETIME IN MAYBE JUNE OR JULY, ABOUT THIS CASE, AND
15 I WAS SENT SOME INFORMATION, AND A LONG TIME WENT BY
16 AND I DIDN'T GET ANY MORE INFORMATION. AND THEN I
17 ACTUALLY, AT ONE POINT, CAME OUT HERE AND SPENT A
18 DAY; AND THEN THAT WAS DURING THE PRETRIAL HEARING
19 OR -- IT WAS -- WAS THERE A PRETRIAL HEARING ON

20 MR. MC CARTHY'S TESTIMONY OR SOMETHING OF THE SORT?

21 Q BEFORE YOU COME TO COURT, SIR, DO YOU

22 COMMONLY REVIEW REPORTS ASSOCIATED WITH CASES YOU'RE
23 WORKING ON?

24 A YES.

25 Q AND DID YOU FEEL THAT YOU HAD AN
26 ADEQUATE TIME TO REVIEW ALL OF THE AUTOPSY REPORTS
27 BEFORE YOU TESTIFIED?

28 A YEAH. I'VE REVIEWED THE AUTOPSY REPORTS

41650

1 BEFORE I TESTIFIED.

2 Q AND YOU HAD ALL THOSE WOUNDS STRAIGHT IN
3 YOUR MIND BEFORE YOU TOOK THE STAND TODAY?

4 A NO. I CAN'T POSSIBLY KEEP THEM ALL
5 STRAIGHT IN MY MIND. THAT'S WHY I HAVE THESE TWO
6 AUTOPSY REPORTS BEFORE ME.

7 Q DID YOU DECIDE THAT YOU WERE GOING TO
8 TESTIFY AS A WITNESS IN THIS CASE AND YOU PREPARED
9 AN EARLIER REPORT AND THOUGHT IT MIGHT BE A GOOD
10 IDEA FOR YOU TO REVIEW THE EARLIER REPORT BEFORE YOU
11 TESTIFIED?

12 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

13 THE COURT: SUSTAINED.

14 Q BY MR. CONN: DID YOU REVIEW ANY OF YOUR

15 OWN REPORTS BEFORE TESTIFYING?

16 A YES. I REVIEWED THE ONE THAT I HAVE IN
17 MY HAND HERE, BUT I HAVE BEEN IN CONVERSATIONS WITH
18 COUNSEL IN RESPONSE TO THE TRANSCRIPTS THAT I HAVE
19 BEEN PROVIDED. WE HAVE SPENT A LOT OF TIME ON THE
20 TELEPHONE, AND THAT'S BEEN A CONSTANT REVIEW OF THE
21 VARIOUS POINTS, MOST OF WHICH ARE INCLUDED HERE.

22 SO I REALLY DIDN'T SEE ANY REASON TO SIT
23 DOWN AND READ OVER EVERYTHING I SAID HERE BECAUSE WE
24 HAD REALLY BEEN CONSTANTLY GOING OVER MOST OF THESE
25 ISSUES.

26 Q DID YOU ASK YOURSELF WHETHER YOU HAD
27 WRITTEN AN EARLIER REPORT BEFORE YOU TESTIFIED IN
28 THIS CASE?

41651

1 A I DID NOT.

2 Q IS THERE ANY WAY YOU CAN ASCERTAIN
3 WHETHER YOU PROVIDED COUNSEL WITH ANOTHER REPORT IN
4 ADDITION TO THE ONE BEFORE YOU?

5 A I CAN GO BACK AND LOOK ON MY COMPUTER
6 AND SEE IF I DID.

7 Q ALL RIGHT. NOW, YOU GRADUATED FROM
8 MEDICAL SCHOOL IN 1959; IS THAT CORRECT?

9 A YES.

10 Q AND YOU WERE IN THE MILITARY FOR 31

11 YEARS?

12 A THAT'S RIGHT.

13 Q WHAT YEAR DID YOU BECOME AN OFFICER IN

14 THE UNITED STATES ARMY?

15 A OH, IN THE ARMY OR IN THE NAVY?

16 Q WERE YOU IN THE ARMY FIRST?

17 A NO. I WAS IN THE ARMY SECOND.

18 Q WHAT YEAR DID YOU BECOME AN OFFICER IN

19 THE NAVY?

20 A I WAS APPOINTED AN ENSIGN IN THE NAVY

21 AND IN A RESERVE PROGRAM IN ABOUT 1957 WHILE I WAS

22 IN MEDICAL SCHOOL.

23 Q YOU WERE ASSIGNED TO THE MEDICAL CORPS

24 THROUGHOUT YOUR ENTIRE MEDICAL CAREER?

25 A THAT'S RIGHT.

26 Q AND YOU SERVED IN THE VIETNAM WAR AS

27 WELL?

28 A YES, I DID.

41652

1 Q HOW MUCH TIME DID YOU SERVE IN VIETNAM?

2 A ONE YEAR AND ONE DAY.

3 Q YOU WERE A CAREER MEDICAL OFFICER?

4 A YES.

5 Q AND YOU ONLY SERVED ONE YEAR IN VIETNAM?

6 A YES. THAT WAS THE STANDARD. MEDICAL
7 OFFICERS SERVED ONE YEAR IN VIETNAM. THAT WAS WHAT
8 EVERYBODY SERVED.

9 Q HOW LONG DID THE VIETNAM WAR LAST?

10 MS. ABRAMSON: OBJECTION, YOUR HONOR.
11 RELEVANCE.

12 THE COURT: SUSTAINED.

13 Q BY MR. CONN: DID YOU PARTICIPATE IN ANY
14 OF THE ARMED CONFLICTS OR -- IN COMBAT DUTY?

15 A NO. NO, I DID NOT.

16 Q DURING THE TIME THAT YOU WERE NOT IN THE
17 COMBAT ZONE WHAT WERE YOUR PRIMARY RESPONSIBILITIES?

18 A WELL, MY PRIMARY RESPONSIBILITIES DURING
19 THE FIRST 20 YEARS OF MY SERVICE WERE THAT OF --
20 WELL, STARTING OUT, IT WAS -- MY MILITARY CAREER
21 INCLUDED MY RESIDENCY TRAINING. SO IT WAS FOUR
22 YEARS OF GENERAL SURGERY, WHICH WAS A FULL TRAINING
23 IN GENERAL SURGERY, FOLLOWED BY FOUR YEARS OF
24 PLASTIC SURGERY, WHICH IS A FULL TRAINING IN PLASTIC
25 SURGERY.

26 MY DUTIES WERE TO LEARN THESE VARIOUS
27 SPECIALITIES; AND THEN AFTER I FINISHED THE
28 RESIDENCY TRAINING, I ASKED TO GO TO A DUTY STATION

1 WHERE I COULD BECOME CURRENT IN TRAUMA SURGERY, AND
2 DANANG WAS THE PREFERENCE I HAD GIVEN, BECAUSE THAT
3 WAS THE HOSPITAL THAT -- IN THE NAVY THAT WAS THE
4 MOST ACTIVE. WE HAD TWO HOSPITAL SHIPS ALSO THERE.
5 BUT THE SHORE BASE HOSPITAL SAW MANY MORE CASUALTIES
6 THAN HOSPITAL SHIPS. SO I ASKED TO GO WHERE I COULD
7 SEE THE MOST CASUALTIES.

8 MY DUTY THERE WAS AS A TRAUMA SURGEON;
9 NO ADMINISTRATIVE DUTIES OR ANYTHING.

10 AND THEN THREE YEARS IN YOKOSAKA JAPAN.
11 IMMEDIATELY AFTER THAT MY DUTIES WERE THAT OF A
12 SURGEON TREATING COMBAT CASUALTIES SHORTLY AFTER
13 THEY WERE HIT AND THEN WHEN I WENT TO MEMPHIS,
14 TENNESSEE. I HAD MY FIRST ADMINISTRATIVE DUTIES
15 ADDED TO MY SURGICAL DUTIES. AND THAT WAS -- I WAS
16 CHIEF OF THE DEPARTMENT OF SURGERY AT THE NAVAL
17 HOSPITAL IN MEMPHIS.

18 AND SUBSEQUENT TO THAT I WAS CHIEF OF
19 THE DEPARTMENT OF SURGERY AT LANDSTUHL,
20 L-A-N-D-S-T-U-H-L ARMY HOSPITAL AND MY -- BUT WHILE
21 I HAD ADMINISTRATIVE DUTIES IN THE DEPARTMENT OF
22 SURGERY, I CONTINUED TO OPERATE AS A SURGEON.

23 AND THAT CONTINUED UNTIL I ACCEPTED THE
24 ASSIGNMENT IN 1981 TO TAKE A RESEARCH ASSIGNMENT,
25 SETTING UP AND RUNNING THE WOUND BALLISTICS PROGRAM
26 AT THE LETTERMAN ARMY INSTITUTE WHERE, ON PAPER, MY
27 ENTIRE DUTY WAS RESEARCH. HOWEVER, I HAD AN
28 AGREEMENT WITH THE ARMY THAT IF I WOULD TAKE THAT

1 RESEARCH ASSIGNMENT, I WOULD BE ALLOWED TO USE ONE
2 QUARTER OF MY TIME TO HELP RESIDENTS OPERATE AT THE
3 LETTERMAN ARMY HOSPITAL, WHICH WAS RIGHT NEXT DOOR,
4 ALTHOUGH THEY HAD NO ADMINISTRATIVE CLAIM TO ME. I
5 WAS UNDER THE MEDICAL RESEARCH AND DEVELOPMENT
6 COMMAND, WHO WAS MY PARENT COMMAND, AND WHO ALLOWED
7 ME THE TIME TO DO THAT BECAUSE THEY KNEW THAT
8 SURGEONS LIKE TO CONTINUE OPERATING. SO I CONTINUED
9 OPERATING PART-TIME AS A GENERAL IN PLASTIC SURGERY
10 UP UNTIL ABOUT 1989, WHEN THE DEMAND OF THE RESEARCH
11 JOB BECAME SUCH THAT I JUST REALLY DIDN'T HAVE TIME
12 TO KEEP MY DUTIES UP AS A GENERAL SURGEON; AND SO, I
13 STOPPED OPERATING AT THAT TIME AND JUST DID RESEARCH
14 FROM THEN ON.

15 Q FROM THAT YEAR YOU STARTED DOING JUST
16 RESEARCH?

17 A ABOUT 1989.

18 Q AND WHERE WAS IT THAT YOU HAVE
19 EXPERIENCE IN TREATING LARGE NUMBERS OF SHOTGUN
20 WOUNDS?

21 A I DON'T HAVE EXPERIENCE TREATING LARGE
22 NUMBERS OF SHOTGUN WOUNDS. NO ONE DOES.

23 Q WHAT DO YOU MEAN "NO ONE DOES"?

24 A BECAUSE THERE ARE NOT LARGE NUMBERS OF
25 SHOTGUN WOUNDS. THE AVERAGE -- OH, I WOULD ESTIMATE
26 THAT -- OF THE WOUNDS, EITHER TREATED OR SEEN BY
27 MEDICAL EXAMINERS, WOULD PROBABLY BE ABOUT 93
28 PERCENT HANDGUN WOUNDS, ABOUT SIX PERCENT SHOTGUN

41655

1 WOUNDS, AND ABOUT ONE PERCENT RIFLE WOUNDS.

2 Q THOSE STATISTICS YOU GET FROM WHERE?

3 A THAT'S A COMPILATION OF VARIOUS
4 STATISTICS, STARTING WITH THE F.B.I. UNIFORM CRIME
5 REPORT, WHICH IS THE MOST RELIABLE.

6 Q WELL, WHAT ARE YOUR OWN STATISTICS FOR
7 TREATING SHOTGUN WOUNDS?

8 A MY OWN STATISTICS OF TREATING SHOTGUN
9 WOUNDS?

10 Q YES.

11 A I HAVEN'T TREATED ENOUGH SHOTGUN
12 WOUNDS -- I HAVE NOT KEPT MY OWN STATISTICS ON THE
13 TREATMENT OF GUNSHOT WOUNDS.

14 Q YOU DIDN'T SEE TOO MANY SHOTGUN WOUNDS
15 WHEN YOU WERE IN VIETNAM, DID YOU?

16 A NO, I DID NOT.

17 Q MOSSBERGS WERE NOT THE WEAPON OF CHOICE
18 FOR THE ENEMY IN VIETNAM, WAS IT?

19 A NO. THE MARINE OFFICERS HAD THE OPTION
20 OF CARRYING A SHOTGUN, AND I KNOW SEVERAL THAT DID.
21 BUT I NEVER SAW ANY WOUNDED AS A RESULT OF IT.

22 Q SO YOU DIDN'T SEE ANY SHOTGUN WOUNDS IN
23 VIETNAM?

24 A I DON'T RECALL SEEING A SINGLE SHOTGUN
25 WOUND.

26 AS I STATED EARLIER, 80 PERCENT OF WHAT
27 WE SAW WAS EXPLOSIVE DEVICE WOUNDS, WHICH ARE VERY
28 SIMILAR TO SHOTGUN WOUNDS IN THAT THEY'RE CAUSED BY

41656

1 MULTIPLE INDIVIDUAL FRAGMENTS.

2 Q THAT ENTAILS DIFFERENT-SIZED SHRAPNEL.
3 IT COULD BE LARGE PIECES, COULD BE SMALL PIECES; IS
4 THAT CORRECT?

5 A YEAH. THERE WERE VARIOUS-SIZE PIECES OF
6 SHRAPNEL, CERTAINLY.

7 Q IT COULD ALSO INVOLVE MULTIPLE OBJECTS
8 HITTING A PERSON IN ALL DIFFERENT PARTS OF THE
9 BODY?

10 A EXCUSE ME?

11 Q EXPLOSIVE DEVICES COULD INVOLVE MULTIPLE
12 OBJECTS STRIKING A PERSON IN ALL DIFFERENT PARTS OF
13 HIS BODY; IS THAT CORRECT?

14 A WELL, WE JUST MENTIONED IN THE PREVIOUS
15 QUESTION -- WE SAID DOESN'T SHRAPNEL COMES IN
16 VARIOUS SIZES. I ANSWERED THAT. NOW I UNDERSTAND
17 THE -- I DIDN'T UNDERSTAND.

18 Q OBJECTS FROM DIFFERENT SOURCES. IT
19 COULD INVOLVE MULTIPLE SOURCES, MULTIPLE OBJECTS,
20 RATHER THAN A SINGLE EXPLOSIVE DEVICE; IS THAT
21 CORRECT?

22 A YOU MEAN SEVERAL EXPLOSIVE DEVICES AT
23 THE SAME TIME SIMULTANEOUSLY? I DON'T UNDERSTAND
24 YOUR QUESTION.

25 Q LET ME -- WHEN AN EXPLOSIVE DEVICE
26 EXPLODES, IT COULD BLOW AWAY VARIOUS ITEMS THAT ARE
27 ON TOP OF THE EXPLOSIVE DEVICE AS WELL; IS THAT
28 CORRECT?

41657

1 A I SEE NOW WHAT YOU MEAN. AND WOULD, IN
2 FACT, THESE ALSO POSSIBLY CAUSE SOME DAMAGE? YES,
3 THAT'S A POSSIBILITY.

4 Q ALL RIGHT. SO WHEN YOU SAY THAT YOU
5 TREATED INJURIES FROM EXPLOSIVE DEVICES, IT'S NOT
6 EXACTLY LIKE A SHOTGUN WOUND, IS IT?

7 A NOT EXACTLY LIKE A SHOTGUN WOUND? WELL,
8 I'M NOT SURE WHAT YOU MEAN BY NOT EXACTLY LIKE A

9 SHOTGUN WOUND. THE SIMILARITIES INCLUDE MULTIPLE
10 PROJECTILES; AND THE FACT THAT THE PROJECTILES LOSE
11 VELOCITY AS THEY INCREASE DISTANCE, AND THE FACT
12 THAT THEY SPREAD FARTHER APART AS THEY INCREASE
13 DISTANCE, SO THEY HAVE VERY MANY SIMILARITIES.
14 NOW, THEY ARE NOT EXACTLY ALIKE BECAUSE
15 THE SHOTGUN WOUNDS MIGHT BE VISUALIZED AS, SAY, A
16 SMALL SEGMENT OF AN EXPLOSIVE DEVICE WOUND, RATHER
17 THAN THE ENTIRE THING. YOU'RE JUST TAKING A FEW OF
18 THE PROJECTILES. SO IN THAT WAY THEY'RE VERY, VERY
19 SIMILAR. NOT EXACTLY ALIKE, NO.

20 Q SO DO YOU HOLD YOURSELF OUT TO BE A
21 SHOTGUN EXPERT, A SHOTGUN WOUND EXPERT, BECAUSE YOU
22 TREATED SHRAPNEL WOUNDS?

23 A I DON'T BELIEVE I'VE EVER HELD MYSELF
24 OUT TO BE A SHOTGUN WOUND EXPERT AS -- I HOLD MYSELF
25 OUT TO BE AN EXPERT ON WOUND BALLISTICS, WHICH
26 INCLUDES THE PENETRATING PROJECTILES FROM ANY
27 SOURCE. I HAVE ALSO, YOU KNOW -- THAT COULD BE EVEN
28 ARROWS.

41658

1 Q HOW MANY SHOTGUN WOUNDS HAVE YOU TREATED
2 IN THE COURSE OF YOUR CAREER?

3 A CAN'T TELL YOU. PROBABLY NO MORE THAN

4 ABOUT A HALF DOZEN.

5 Q IN YOUR ENTIRE 31 YEARS AS A DOCTOR

6 YOU'VE TREATED NO MORE THAN A HALF DOZEN?

7 A PROBABLY. I DON'T REALLY KEEP THESE

8 STATISTICS. THAT'S PROBABLY TRUE. YOU DON'T SEE

9 VERY MANY OF THEM. IN THE ONES YOU DO SEE -- WELL,

10 THEY WERE USUALLY AT A DISTANCE. IF YOU HAVE

11 SHOTGUN WOUNDS THAT ARE CLOSE UP, THEY CAN BE VERY

12 DEADLY; AND, THEREFORE, I WOULDN'T BE TREATING THEM,

13 BECAUSE YOU MUST RECALL, I'M A SURGEON. IF A PERSON

14 IS KILLED WITH A WOUND, I'D NEVER SEE THEM. AND THE

15 ONES THAT MOST COMMONLY GET SHOTGUN INJURIES ARE

16 FROM A GREAT DISTANCE WHERE YOU'D ONLY SEE A FEW

17 BIRD SHOT PELLET.

18 NOW, OF THAT KIND, I'VE SEEN PROBABLY

19 MORE IN THOSE. BUT I REALLY DIDN'T INCLUDE THOSE

20 BECAUSE WHEN I INTERPRETED YOUR QUESTION, WHEN YOU

21 SAY TREATED, I ASSUMED A WOUND THAT WAS SERIOUS

22 ENOUGH TO CAUSE A PATIENT TO COME INTO THE HOSPITAL,

23 AND I WOULD TREAT HIM AS AN INPATIENT. THAT WAS

24 ABOUT A HALF DOZEN. IF WE WOULD INCLUDE JUST

25 INDIVIDUAL PELLET WOUNDS THAT I HAVE SEEN AND, YOU

26 KNOW, PUT A BAND-AID ON AND GIVE THE PERSON

27 PENICILLIN AND TELL HIM TO COME BACK LATER, THERE

28 ARE MORE.

1 Q YOU WERE RIGHT ABOUT THAT. I WASN'T
2 REFERRING TO THAT. I WAS REFERRING -- TO THE HALF
3 DOZEN YOU HAVE TREATED, CAN YOU TELL US A LITTLE BIT
4 ABOUT YOUR EXPERTISE IN THESE SIX AREAS.

5 A MY EXPERTISE?

6 MR. CONN: YES.

7 MS. ABRAMSON: OBJECTION. VAGUE.

8 THE COURT: SUSTAINED.

9 Q BY MR. CONN: CAN YOU TELL US A LITTLE
10 BIT ABOUT YOUR EXPERIENCE IN REGARD TO TREATING
11 THOSE SIX PEOPLE?

12 MS. ABRAMSON: OBJECTION. VAGUE.

13 THE WITNESS: IT WAS A VERY LONG TIME AGO AND
14 I HAVE DIFFICULTY REMEMBERING THEM.

15 THE COURT: THE OBJECTION'S SUSTAINED.

16 YOU MAY ASK YOUR NEXT QUESTION.

17 Q BY MR. CONN: WHEN YOU SAY IT'S BEEN A
18 VERY LONG TIME AGO, WHEN WAS THE LAST TIME YOU
19 TREATED A PERSON WITH A SHOTGUN WOUND?

20 A PROBABLY IN GERMANY.

21 Q THAT WAS IN WHAT YEAR?

22 A LET ME SEE. I WAS THERE FROM '75 TO
23 '80. SOMETIME DURING THAT FIVE-YEAR PERIOD. BUT I
24 REALLY CAN'T TELL YOU ANY MORE EXACTLY THAN THAT
25 WHEN, BECAUSE THERE WERE HUNTERS IN GERMANY AND OUR
26 FORCES TENDED TO HUNT.

27 ACTUALLY, I NOW RECALL THE LAST TIME I
28 WAS INVOLVED IN TREATING A SHOTGUN WOUND. ALTHOUGH

41660

1 I WASN'T THE PRIMARY SURGEON, I WAS ADVISOR ON THE
2 CASE. ACTUALLY, IT WAS A SHOT THAT OCCURRED WHILE I
3 WAS RUNNING THE WOUND BALLISTICS LAB. THIS OCCURRED
4 AT THE LETTERMAN ARMY HOSPITAL, AND THIS WAS A CASE
5 WHERE A .20-GAUGE SHOTGUN WITH NO. 6 BIRD SHOT WAS
6 FIRED AT A DISTANCE OF APPROXIMATELY TWO TO THREE
7 FEET, AND ENTERED AN UPPER ARM OF A FULL-GROWN ADULT
8 AND WENT THROUGH, JUST MISSING THE BONE, BUT
9 BREAKING THE BONE WITH TEMPORARY CAVITATION.

10 SINCE IT WENT MEDIAL TO THE BONE, IT
11 ACTUALLY DESTROYED THE ARTERY; AND WHAT WE HAD TO DO
12 WAS TAKE A VEIN FROM THIS PERSON'S LEG AND REPLACE
13 THAT ARTERY AND STABILIZE THE BONE.

14 BUT I REMEMBER THAT CASE VERY
15 SPECIFICALLY, BECAUSE IT WAS A CASE WHERE A
16 SHORT-RANGE SHOTGUN BLAST HAD BROKEN A MAJOR BONE BY
17 TEMPORARY CAVITATION. AND THAT WAS APPROXIMATELY
18 1988 AT LETTERMAN ARMY HOSPITAL.

19 Q SO THE LAST TIME YOU TREATED A SHOTGUN
20 WOUND WAS ABOUT 17 YEARS AGO?

21 A 1988. I GUESS.

22 MS. ABRAMSON: SEVENTEEN?
23 THE WITNESS: '88. NO. THAT'S NOT 17 YEARS.
24 Q BY MR. CONN: '88?
25 A '88.
26 Q ABOUT SEVEN YEARS AGO?
27 A YES.
28 Q AND THEN THE TIME BEFORE THAT WAS IN

41661

1 GERMANY ABOUT -- SOMEWHERE BETWEEN 15 TO 20 YEARS
2 AGO?
3 A THAT'S ABOUT RIGHT, YEAH.
4 Q AND WHAT TYPE OF WOUND WAS THAT?
5 A A HUNTING WOUND, WHERE THE DISTANCE
6 WAS -- IT'S VERY DIFFICULT TO KNOW THE EXACT
7 DISTANCE. BUT AGAIN, IT WAS BIRD SHOT, AND WE
8 ADMITTED A PERSON THAT MIGHT HAVE BEEN TREATED AS AN
9 OUTPATIENT, BUT THEY WERE CLOSE ENOUGH SO THAT WE --
10 I THINK WE ACTUALLY EXCISED A LITTLE BIT OF SKIN.
11 BUT WE DIDN'T HAVE TO DO ANY MAJOR KIND OF
12 OPERATION. WE PUT THE PATIENT IN THE HOSPITAL AND
13 PUT HIM ON ANTIBIOTICS AND KEPT HIM MAYBE A WEEK.
14 I'M NOT SURE EXACTLY HOW LONG.
15 Q THAT WAS A VERY MINOR WOUND?
16 A IT WAS NOT A MAJOR WOUND, ONE THAT

17 REQUIRED A VISIT TO AN OPERATING ROOM WITH A MAJOR
18 GENERAL ANESTHETIC.

19 Q SO YOU WERE NOT SURPRISED THAT THAT
20 PERSON DID NOT TELL YOU HOW MUCH PAIN HE WAS IN; IS
21 THAT CORRECT?

22 A CAN YOU RESTATE THE QUESTION, PLEASE.

23 Q SO YOU WERE NOT SURPRISED WHEN THAT
24 PERSON DID NOT TELL YOU ABOUT HOW MUCH PAIN HE WAS
25 IN AS A RESULT OF THAT WOUND?

26 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

27 THE COURT: SUSTAINED.

28 Q BY MR. CONN: WHAT OTHER WOUNDS DO YOU

41662

1 RECALL, SHOTGUN WOUNDS DO YOU RECALL WORKING ON IN
2 THE COURSE OF YOUR CAREER?

3 A WELL, THERE WERE SEVERAL IN THE --
4 SEVERAL AT MEMPHIS WHEN I WAS THERE. AGAIN, AS I
5 SAY, IT'S GETTING -- THAT'S EVEN A LONGER TIME AGO,
6 AND, YOU KNOW, IT'S VERY DIM IN MY MEMORY. BUT WE
7 HAD SEVERAL SHOTGUN WOUNDS, AND I DON'T RECALL IF I
8 WAS -- I DON'T BELIEVE I WAS THE PRIMARY SURGEON. I
9 WAS THE CHIEF OF THE DEPARTMENT OF SURGERY, AND
10 SINCE I WAS FULLY TRAINED IN PLASTIC SURGERY,
11 BECAUSE MANY TIMES SURGEONS WOULD ASK ME TO CONSULT

12 ON WOUNDS, AND I RECALL THERE WAS ONE THAT THERE WAS
13 A PROBLEM WITH. I THINK WE MIGHT HAVE REFERRED THIS
14 FOR RECONSTRUCTION. IT WAS AN ATTEMPTED SUICIDE
15 THAT FAILED. AND THIS IS THE KIND OF WOUND THAT IS
16 FAIRLY COMMON WITH A SHOTGUN.

17 AGAIN, IT'S BECAUSE OF THE LAYMAN'S
18 MISCONCEPTION ON MOVEMENT OF THE ANATOMY. MANY
19 PERSONS THAT TRY TO COMMIT SUICIDE WITH A SHOTGUN
20 WILL PUT THE BARREL OF THE SHOTGUN UNDER THEIR CHIN
21 AND TRY TO SHOOT THEMSELVES IN THE HEAD THIS WAY,
22 (DEMONSTRATING). AND COMMONLY, WHEN THEY THEN GO TO
23 PULL THE TRIGGER, AS THEY HAVE THE GUN HERE,
24 (DEMONSTRATING), THEY TEND TO LEAN IN ORDER TO REACH
25 THE TRIGGER. THEY LEAN AND TEND TO TILT THE HEAD
26 BACK; AND SO WHAT HAPPENED WAS THE SHOT COMES UP AND
27 DESTROYED THE FACE; AND THEN YOU TAKE THE NOSE AND
28 MANY PARTS OF THE FACE AWAY. AND THEN THESE

41663

1 PATIENTS VERY TYPICALLY DO NOT DIE, BUT REQUIRE
2 MULTIPLE OPERATIONS AND PLASTIC SURGEONS GET HEAVILY
3 INVOLVED IN THIS. AND I THINK THIS WAS A SOLDIER
4 THAT WE REFERRED DOWNTOWN TO THE UNIVERSITY. I DID
5 NOT DO THE ENTIRE RECONSTRUCTION OF THIS PATIENT.
6 WE EVALUATED HIM INITIALLY. AND THIS IS THE KIND OF

7 A WOUND THAT I HAVE SEEN MUCH OF. IT SEEMS THAT
8 EVERY PLACE I WOULD GIVE A TALK SOMEONE WOULD TALK
9 -- WOULD HAVE A CASE OF SUCH AND SHOW ME THE
10 SLIDES, BECAUSE IT'S A VERY COMMON WOUND.

11 Q ANY OTHER SHOTGUN CASES THAT YOU RECALL
12 WORKING ON?

13 A I CAN'T RECALL THE DETAILS OF ANY MORE.

14 Q SO YOU DO RECALL THE DETAILS OF THREE
15 SHOTGUN CASES THAT YOU WORKED ON?

16 A APPROXIMATELY -- YEAH. DID I SAY THREE?
17 YEAH. THE ONES I TALKED ABOUT.

18 Q SO I TAKE IT THAT YOU HAVE NOT WRITTEN
19 ANY PUBLICATIONS CONCERNING SHOTGUN WOUNDS; IS THAT
20 CORRECT?

21 A WELL, NOT ENTIRELY. THE CHAPTER,
22 MISSILE-CAUSED WOUNDS IN THE CURRENT -- WHICH IS
23 THE 1988 EDITION OF EMERGENCY WAR SURGERY, THE NATO
24 MANUAL, HAS A PHOTOGRAPH OF MY WOUND PROFILE, OF
25 NO. 4 BUCKSHOT, AND I HAVE EXPLAINED IN THE TEXT THE
26 USEFULNESS OF THIS TO -- BECAUSE OF ITS PARALLELISM
27 TO THE FRAGMENTING DEVICES THAT THE COMBAT SURGEON
28 GETS INVOLVED WITH. AND SO I HAVE WRITTEN ABOUT IT

2 TWO OTHER CASES MAYBE IN ONE OF THE BOOK CHAPTERS
3 I'VE WRITTEN. I KNOW I HAVE IT THERE AND I KNOW I
4 HAVE THE WOUND PROFILE, THAT ONE. I CAN'T RECALL
5 ANY OTHERS SPECIFICALLY, BUT IF I LOOK THROUGH MY
6 C.V. THERE MAY BE ONE OR TWO OTHERS.

7 Q WHAT DO YOU MEAN BY "WOUND PROFILE"?

8 A WOUND PROFILE IS WHAT WE HAVE PUT THE
9 USE -- WHEN WE CALIBRATED THE ORDINANCE GELATIN TO
10 HAVE THE SAME RESISTANCE AS ANIMAL TISSUE, THEN WE
11 WOULD TAKE GIVEN PROJECTILES OF VARIOUS KINDS AND
12 SHOOT THEM INTO BLOCKS OF ORDINANCE GELATIN AND
13 CATCH THE ENTIRE PROJECTILE PATH. AND THEN WE WOULD
14 CUT THE GELATIN -- FIRST THING WE WOULD DO IS X RAY
15 THE BLOCK IN CASE -- IF THERE WAS ANY
16 FRAGMENTATION. CERTAIN ONES WE DIDN'T HAVE TO
17 X RAY THE BLOCK BECAUSE IT WAS OBVIOUS THERE WAS NO
18 FRAGMENTATION. IF THERE WAS FRAGMENTATION OF THE
19 BULLET, IN ORDER TO DEFINE THE FRAGMENT SPREAD WE
20 WOULD X RAY. WE WOULD TAKE MEASUREMENTS OF THE
21 TEMPORARY CAVITY. WE COULD MEASURE BECAUSE THE
22 TEMPORARY CAVITY MAKES A RADIAL SPLIT AND YOU CAN
23 MEASURE IT, AND IT GIVES YOU A QUANTITATIVE SIZE OF
24 THE TEMPORARY CAVITY; AND SO I WOULD TAKE ALL THESE
25 MEASUREMENTS AND MAKE A ROUGH DRAWING, SCALED
26 DRAWING, AND GIVE IT TO OUR ARTIST AT THE LETTERMAN
27 ARMY INSTITUTE AND HE WOULD MAKE ME A FINAL COPY,
28 WHICH WAS ESSENTIALLY A GRAPH-LIKE DEPICTION OF --

1 THE THIGHS WERE ALL LIFE-SIZE -- DEPICTIONS OF HOW
2 DEEPLY THIS PROJECTILE WOULD PENETRATE AND THE
3 SHOTGUN -- HOW DEEPLY EACH FRAGMENT WOULD
4 PENETRATE. AND THESE HAVE BEEN WIDELY USED. I
5 PUBLISHED THEM MANY, MANY PLACES.

6 WE HAD -- I THINK WE'RE UP TO, I THINK,
7 ABOUT 27 INDIVIDUAL DIFFERENT KINDS OF PROJECTILES
8 THAT WE HAVE WOUND PROFILES OF. AND I'VE USED THESE
9 WIDELY IN MY PUBLICATION.

10 Q WHAT TYPE OF PROJECTILES DID YOU STUDY?

11 A WELL, ALL TYPES OF PROJECTILES. WE
12 STUDIED RIFLE WOUNDS OF THE MILITARY TYPE, RIFLE
13 WOUNDS OF THE BUCKSHOT TYPE, SHOTGUN WOUNDS OF BIRD
14 SHOT, NO. 4 BUCKSHOT AND NO. 0 BUCKSHOT, AND SEVERAL
15 KINDS OF RIFLED SLUGS.

16 WE'VE ALSO USED SOME -- ALMOST EVERY KIND
17 OF HANDGUN, IN BOTH THE MILITARY CONFIGURATION WHERE
18 IT'S A JACKETED HANDGUN BULLET, AND ALSO A HOLLOW
19 POINT, OR EXPANDING HANDGUN BULLET. WE STUDIED
20 THOSE.

21 IN ADDITION, WE HAVE SEVERAL
22 EXPERIMENTAL TYPES OF -- I HAD A LARGE ROUND BALL
23 SHOT FROM A SHOTGUN IN WHICH I LOWERED THE VELOCITY
24 540 FEET PER SECOND; AND WE HAVE THE WOUND PROFILE
25 OF THAT. WE HAVE THE WOUND PROFILE OF SMALL SPHERES

26 OF STEEL FIRED AT ABOUT 3000 FEET PER SECOND; AND I

27 GUESS THAT'S ABOUT ALL.

28 Q THE EXPERIMENTS THAT YOU CONDUCTED

41666

1 SHOOTING INTO PIGS, I TAKE IT THEY WERE LIVE PIGS?

2 A THEY WERE LIVE ANESTHETIZED PIGS.

3 Q DID YOU SHOOT SHOTGUN PELLETS INTO THE
4 PIG OR JUST OTHER TYPE PROJECTILES?

5 A I DON'T THINK I EVER SHOT A SHOTGUN IN A
6 LIVE PIG. IN ADDITION TO THE LIVE PIGS, WE USED FOR
7 CERTAIN PURPOSES, FRESHLY KILLED PIGS. AT OUR
8 INSTITUTE WE HAD OTHER RESEARCHERS, AND ONE OF THE
9 RESEARCH GROUPS WAS STUDYING HEMODYNAMIC SHOCK,
10 WHICH IS THE EFFECT OF LOSS OF BLOOD ON THE BATTLE
11 FIELD, AND THEY WERE USING SMALLER PIGS. THEY WERE
12 USING 100-POUND PIGS. SO WHEN THEY WOULD FINISH AN
13 EXPERIMENT, THE STANDARD WAY OF DESTROYING A PIG
14 WHEN YOU GET DONE WITH IT IS YOU GIVE THE PIG AN
15 INJECTION WITH A SEDATIVE AND THEN ADD A LETHAL
16 INJECTION ESSENTIALLY.

17 Q SO YOU HAVE NEVER DONE ANY RESEARCH INTO
18 THE EFFECTS OF CAVITATION BY FIRING SHOTGUN PELLETS
19 INTO ANIMALS?

20 A NO. WE'VE GOTTEN THE CAVITATION FROM

21 THE -- FROM THE GELATIN WHICH WE CALIBRATED AGAINST
22 ANIMAL TISSUE, AND I'VE CALIBRATED THE CAVITATION
23 ALSO IN -- WE DON'T HAVE -- IN ORDER TO CALIBRATE
24 THIS IN ANIMALS IT IS SOMEWHAT DIFFICULT BECAUSE IT
25 REQUIRES VERY EXPENSIVE HIGH-SPEED X RAYS WHICH HAS
26 AN EXPOSURE TIME OF TWO MICROSECONDS.

27 I VISITED THE BRITISH ARMY BALLISTICS
28 LAB AT PORTON DOWN, ENGLAND AND THEY WERE KIND

41667

1 ENOUGH TO SHOOT THE THIGHS OF FOUR LIVING PIGS FOR
2 ME AND TAKE THE SIZE OF THE TEMPORARY CAVITY FOR ME;
3 AND THEN I WENT BACK HOME AND TOOK THE SAME
4 PROJECTILES THAT WE USED IN ENGLAND AND I LOADED
5 THEM IN MY LABORATORY TO THE SAME SPEED; AND THEN I
6 CALIBRATED THIS WITH MY GELATIN AND FOUND OUT THAT
7 THE MEASURING OF OUR TEMPORARY CAVITY BY THE CRACKS
8 WAS WITHIN ABOUT 10 PERCENT OF THE SIZE THAT IT GOT
9 IN THE ACTUAL ANIMAL. WE HAVE CALIBRATED IT IN
10 LIVING ANIMALS.

11 MR. CONN: PERHAPS THIS WOULD BE A GOOD TIME
12 TO TAKE A BREAK, YOUR HONOR.

13 THE COURT: ALL RIGHT. YOU STILL HAVE YOUR
14 OTHER WITNESS HERE?

15 MS. ABRAMSON: YES, I DO, YOUR HONOR, AND I

16 WAS --

17 THE COURT: LET'S SEE IF WE CAN WORK UNTIL

18 12:15 AND SEE IF WE CAN CONTINUE ON.

19 MS. ABRAMSON: YOUR HONOR, COULD I JUST HAVE

20 TWO MINUTES TO BE EXCUSED, IF WE'RE GOING TO WORK

21 TILL 12:15?

22 THE COURT: ONE MINUTE.

23 MS. ABRAMSON: THIS IS THE GIRL'S. THEY TAKE

24 TWICE AS LONG.

25 THE COURT: THERE'S NO LINE PROBABLY.

26 MR. ABRAMSON: I'LL BE RIGHT BACK.

27 (BRIEF PAUSE IN THE PROCEEDINGS.)

28

41668

1 THE COURT: OKAY. WE'LL CONTINUE. WE MIGHT

2 TRY WORKING A LITTLE LATER THIS EVENING, BEYOND

3 4:30. IF THAT'S GOING TO CREATE ANY NEED BY ANYBODY

4 TO MAKE PHONE CALLS TO MAKE SOME ADJUSTMENTS IN YOUR

5 ARRANGEMENTS, PERHAPS YOU CAN DO IT DURING THE LUNCH

6 HOUR AS WELL. AND IF THERE'S A PROBLEM, LET THE

7 BAILIFF KNOW AND WE'LL TALK ABOUT IT LATER ON.

8 ALL RIGHT. YOU MAY CONTINUE.

9 MS. ABRAMSON: THANK YOU, YOUR HONOR.

10 Q BY MR. CONN: DIRECTING YOUR ATTENTION

11 BACK TO THE WOUND TO THE RIGHT ARM OF JOSE MENENDEZ,
12 YOU SAID THAT THE ENTRY TO THE -- TO THE INNER
13 FOREARM OF JOSE MENENDEZ, TO THE ANTECUBITAL FOSSA
14 EXITING OUT THE DORSAL ASPECT OF HIS FOREARM, CAN
15 YOU TELL US WHAT WAS THE DISTANCE THAT THAT SHOT WAS
16 FIRED FROM?

17 A FROM THE PATTERN SPREAD, IT APPEARS THAT
18 IT MIGHT -- THERE ARE VERY FEW PELLETS. SO IT'S
19 VERY DIFFICULT TO SAY. BUT THE PATTERN SPREAD I
20 WOULD GIVE A ROUGH ESTIMATE OF MAYBE 14 FEET, 12 OR
21 14 FEET.

22 Q DOES THAT ALSO COME WITH THE SAME --

23 A PLUS OR MY MINUS FOUR FEET? YES.

24 Q THIS PLUS OR MINUS FOUR FEET, WHERE DO
25 YOU GET THAT FROM? IS IT BASED UPON SOME REASON?

26 A NO. IT'S BASED ON AN ESTIMATE. BECAUSE
27 WE CANNOT ESTIMATE THESE THINGS EXACTLY, AND RATHER
28 THAN SAYING APPROXIMATE, AND LEAVING IT AT THAT, I'D

41669

1 LIKE TO GIVE YOU SOME KIND OF A MORE EXACT
2 ESTIMATE. I THINK WE CAN SAY IT WOULD BE BETWEEN,
3 IN THAT RANGE, AND MOST LIKELY THE MIDDLE OF THE
4 RANGE.

5 Q AND WHEN YOU SAY PLUS OR MINUS FOUR, CAN

6 YOU TELL US WHY YOU SAY PLUS OR MINUS, AS OPPOSED TO

7 PLUS OR MINUS THREE OR FIVE?

8 A NO. I JUST PICKED IT OUT OF MY HEAD.

9 WE CAN SAY THREE IF YOU WISH. I THINK FOUR IS

10 MORE --

11 Q IS THERE WHAT YOU CALL A SCIENTIFIC

12 WAY -- YOU JUST FIGURE IT OUT IN YOUR HEAD?

13 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 Q BY MR. CONN: THE SHOT TO BACK OF THE

16 RIGHT ARM OF JOSE MENENDEZ, CAN YOU TELL US HOW FAR

17 AWAY THAT SHOT WAS FIRED FROM?

18 A THAT ONE CAME FROM MUCH CLOSER. I WOULD

19 ESTIMATE POSSIBLY THREE FEET OR FOUR FEET.

20 Q THE WOUND TO THE LEFT CHEEK OF KITTY

21 MENENDEZ, WOULD YOU AGREE THAT THAT IS A CONTACT

22 WOUND?

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

24 OBJECT. THIS IS BEYOND THE SCOPE OF DIRECT. I

25 CALLED --

26 THE COURT: OVERRULED.

27 THE WITNESS: IT GIVES EVERY APPEARANCE OF

28 BEING CONTACT.

1 Q BY MR. CONN: THE WOUND THAT ENTERED THE
2 RIGHT EYE AREA AND NOSE AREA OF KITTY MENENDEZ, HOW
3 FAR WAS THAT FIRED FROM?

4 A THAT'S VERY DIFFICULT TO SAY. THAT
5 WOUND APPEARED TO ME -- BECAUSE OF THE FLATTENING OF
6 THE PROJECTILE ON THE FRONT WALL OF THE SINUS, IT
7 APPEARED TO ME THAT THAT WOUND HAD TO GO THROUGH
8 SOMETHING FIRST. SO IT'S -- I DON'T THINK THAT IS A
9 PRIMARY WOUND. I THINK THAT'S A WOUND THAT HAS
10 PASSED THROUGH SOMETHING FIRST.

11 Q THE WOUND TO THE COLLAR BONE, TO THE
12 RIGHT COLLAR BONE OF KITTY MENENDEZ, ALSO CALLED THE
13 CLAVICLE, DO YOU ASSOCIATE THAT WOUND WITH THE WOUND
14 TO THE RIGHT JAW OR MANDIBLE OF KITTY MENENDEZ?

15 A PROBABLY. I THINK IT'S VERY DIFFICULT
16 TO SAY FOR SURE. BUT MOST LIKELY SHE COULD HAVE HAD
17 HER HEAD IN THE POSITION THAT WOULD HAVE LINED THEM
18 UP.

19 Q DO YOU ALSO ASSOCIATE THE HAND WOUND
20 FROM KITTY MENENDEZ WITH THOSE TWO WOUNDS?

21 MS. ABRAMSON: OBJECTION. VAGUE.

22 THE COURT: YOU UNDERSTAND WHAT HE'S
23 REFERRING TO?

24 THE WITNESS: YES, I DO, YOUR HONOR.

25 THE COURT: OKAY. YOU CAN ANSWER THE
26 QUESTION.

27 THE WITNESS: IT MAY WELL BE ASSOCIATED WITH
28 THAT. I DON'T ASSOCIATE IT WITH THAT BECAUSE I

1 HAVEN'T REALLY TRIED TO. I HAVE NOT, MYSELF, TRIED
2 TO MAKE A TOTAL RECONSTRUCTION OF THIS CASE, AND IT
3 MAY WELL HAVE BEEN UP THERE; IT MAY NOT. I DON'T
4 KNOW. IT COULD BE OR IT MIGHT NOT HAVE BEEN.

5 Q BY MR. CONN: DOCTOR, YOU TOLD US THAT
6 NO RECONSTRUCTION IN THIS CASE IS POSSIBLE; IS THAT
7 CORRECT, WHAT YOU'RE SAYING?

8 A THAT'S RIGHT. THAT'S WHAT I JUST -- I'M
9 TRYING TO REITERATE THAT I'M NOT TRYING TO DO A
10 RECONSTRUCTION. AND IT SEEMS TO ME YOU'RE TRYING TO
11 LEAD ME INTO ONE.

12 Q DOCTOR, DID YOU TRY TO SEE WHAT
13 CONCLUSIONS, IF ANY, YOU CAN DRAW FROM THIS CRIME
14 SCENE, GIVEN THE FACT THAT WHEN IT COMES TO DISTANCE
15 YOU CAN PIN IT DOWN PRETTY GOOD, CAN'T YOU?

16 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

17 THE COURT: ALSO COMPOUND.

18 Q MR. CONN: IN LIGHT OF THE FACT THAT YOU
19 HAVE A PRETTY GOOD ESTIMATE -- IN LIGHT OF THE FACT
20 THAT YOU HAVE AN ESTIMATE OF THE ENTRANCE, DID YOU
21 FEEL THAT THAT WOULD BE A PIECE OF INFORMATION FOR
22 WHICH YOU HAVE EVEN MORE INFORMATION THAN
23 DR. MC CARTHY, THAT YOU MIGHT BE ABLE TO MAKE SOME

24 PROGRESS TOWARDS RECONSTRUCTION IN THIS CASE?
25 MS. ABRAMSON: OBJECTION. COMPOUND.
26 THE COURT: OVERRULED.
27 THE WITNESS: I DON'T UNDERSTAND THE
28 QUESTION. DID I TRY TO MAKE SOME PROGRESS? I NEVER

41672

1 TRIED MAKING A RECONSTRUCTION IN THIS CASE.

2 MR. CONN: OKAY.

3 Q AND SO YOU REACHED THE CONCLUSION THAT A
4 RECONSTRUCTION WAS NOT POSSIBLE BEFORE YOU EVER
5 TRIED TO DO A RECONSTRUCTION; IS THAT WHAT YOU'RE
6 SAYING?

7 A WELL, I DON'T THINK I REACHED THIS
8 CONCLUSION. I JUST -- THAT REALLY IS NOT MY THOUGHT
9 PROCESS. JUST LOOKING AT THE SITUATION WHERE YOU
10 HAVE TWO SHOOTERS AND TWO VICTIMS AND THIS NUMBER OF
11 SHOTS, I DON'T HAVE TO THINK VERY HARD TO KNOW THAT
12 ANY ONE RECONSTRUCTION CANNOT BE DONE WITH ANY GREAT
13 DEGREE OF CERTAINTY.

14 Q SO YOU SAID THERE'S JUST TOO MANY
15 VARIABLES HERE, SO I'M NOT EVEN GOING TO TRY?

16 A WELL, I DIDN'T SEE ANY REASON TO TRY
17 BECAUSE I KNEW THAT ANYTHING -- THERE WOULD BE MANY,
18 MANY WAYS OF LINING UP THINGS, AND WE WOULD END UP

19 GOING AROUND IN A CIRCLE FOREVER; AND SO I SEE
20 ABSOLUTELY NO REASON, AND I HAVE RESISTED TRYING TO
21 DO A RECONSTRUCTION FOR THAT VERY REASON.

22 Q WHY HAVE YOU RESISTED TRYING TO DO A
23 RECONSTRUCTION?

24 A BECAUSE I DON'T THINK I CAN DO ONE
25 ACCURATELY; AND ANY THAT I MIGHT DO WOULD
26 POTENTIALLY MISLEAD THE JURY INTO ERROR.

27 Q DO YOU RECALL THAT YOU MIGHT BE ABLE TO
28 DO SO WITH THE HELP OF OTHERS?

41673

1 A NO, I DON'T.

2 Q LOOKING AT THE CRIME SCENE, DID YOU FEEL
3 WITH YOUR MEDICAL BACKGROUND THAT YOU CAN CONCLUDE
4 THAT ALL OF THE SHOTS WERE FIRED AT KITTY AND JOSE
5 MENENDEZ WHILE THEY WERE IN THE IMMEDIATE VICINITY
6 OF WHERE THEIR BODIES WERE FOUND?

7 A WHAT IS IMMEDIATE VICINITY? HOW MANY
8 FEET?

9 Q JOSE MENENDEZ, YOU UNDERSTAND, WAS FOUND
10 SITTING ON THE SOFA; IS THAT CORRECT?

11 A THAT'S MY UNDERSTANDING, YES.

12 Q AND KITTY MENENDEZ WAS FOUND LYING ON
13 THE FLOOR IN BETWEEN THE SOFA AND THE COFFEE TABLE;

14 IS THAT CORRECT?

15 A THAT'S MY UNDERSTANDING, YES.

16 Q AND THERE WAS ONE LARGE POOL OF BLOOD

17 UNDERNEATH JOSE MENENDEZ; IS THAT CORRECT?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR.

19 THERE'S BEEN NO SUCH TESTIMONY.

20 THE COURT: REPHRASE THE QUESTION.

21 Q BY MR. CONN: YES. WELL, DOCTOR, ON

22 THIS PHOTOGRAPH THAT IS UP ON THE BOARD HERE THAT

23 COUNSEL MARKED THIS MORNING AS 319, PHOTOGRAPH

24 NO. "A," THAT'S A PHOTOGRAPH WHICH SHOWS -- WHICH IS

25 MARKED "A," AND IT SHOWS A POOL OF BLOOD UNDERNEATH

26 THE AREA WHERE JOSE MENENDEZ WAS FOUND; IS THAT

27 CORRECT?

28 A I WOULDN'T DESCRIBE IT AS A POOL, BUT

41674

1 THERE IS WIDESPREAD BLOOD IN THE AREA, YES.

2 Q OKAY. ALL RIGHT. AND HAVE YOU SEEN

3 PHOTOGRAPHS OF THE BODY OF KITTY MENENDEZ REMOVED

4 FROM THE CRIME SCENE?

5 A YES.

6 Q AND WOULD YOU SAY THAT THERE WAS A POOL

7 OF BLOOD IN THE AREA WHERE THE BODY OF KITTY

8 MENENDEZ WAS FOUND?

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

10 HONOR.

11 THE WITNESS: THERE WAS A LOT.

12 THE COURT: WHAT'S THE LEGAL OBJECTION?

13 MS. ABRAMSON: IT'S CALLING FOR SPECULATION.

14 THE COURT: OVERRULED.

15 THE WITNESS: THERE WAS A LOT OF BLOOD IN

16 THAT AREA, YES.

17 Q BY MR. CONN: AND ASIDE FROM THOSE TWO

18 AREAS WHICH YOU CHARACTERIZE AS HAVING A LOT OF

19 BLOOD, DID YOU SEE A LOT OF BLOOD IN ANY OTHER AREAS

20 OF THE FAMILY ROOM OR THAT DEN?

21 A NOT ANY BLOOD THAT APPROACHES THE

22 MAGNITUDE OF THOSE TO THIS EXTENT, NO.

23 Q IN LIGHT OF YOUR MEDICAL BACKGROUND,

24 WOULD THAT ASSIST YOU IN DETERMINING THAT ALL OF THE

25 SHOTS MUST HAVE HAPPENED VERY CLOSE TO THOSE TWO

26 AREAS?

27 MS. ABRAMSON: OBJECTION. CALLS FOR

28 SPECULATION.

41675

1 THE COURT: OVERRULED.

2 THE WITNESS: I WISH YOU WOULD RESTATE IT. I

3 DIDN'T QUITE UNDERSTAND THE WHOLE --

4 Q BY MR. CONN: IN LIGHT OF YOUR MEDICAL
5 BACKGROUND, DOES THE FACT THAT ALL OF THE BLOOD,
6 MOST OF THE BLOOD, WAS FOUND IN JUST THOSE TWO SPOTS
7 IN THE ROOM, WOULD THAT ASSIST YOU IN DETERMINING
8 WHETHER THE SHOOTING OCCURRED JUST IN THOSE TWO
9 AREAS OR NOT?

10 A NO, IT WOULDN'T.

11 Q AND TELL US WHY NOT.

12 A WELL, BECAUSE, WHEN MULTIPLE SHOTS OCCUR
13 THERE DOES NOT -- IN THE FIRST PLACE, MANY GUNSHOT
14 WOUNDS BLEED VERY LITTLE.

15 Q UH-HUH.

16 A AND PEOPLE COULD EASILY BE MOVING
17 AROUND. AND WHEN THEY DO HAVE WOUNDS THAT ARE GOING
18 TO BLEED, WHEN THEY COME TO REST AND THEY REMAIN AT
19 A PARTICULAR PLACE FOR A LONG PERIOD OF TIME, THEN
20 THAT WOULD BE THE PLACE WHERE THE BLOOD WOULD
21 ACCUMULATE. IT DOESN'T MEAN SOMEONE WOULD HAVE BEEN
22 SHOT IN ANOTHER ROOM, LIE DOWN, AND THE BLOOD WOULD
23 APPEAR THERE, RATHER THAN WHERE HE OR SHE WAS SHOT.

24 Q UH-HUH.

25 A SO IT REALLY DOESN'T ASSIST, NO.

26 Q IT DOESN'T HELP YOU AT ALL IN PINNING
27 DOWN THE POSSIBLE RECONSTRUCTION OF THIS CRIME
28 SCENE?

1 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
2 OBJECT AS CALLING FOR SPECULATION, GIVEN THE
3 WITNESS' TESTIMONY.

4 THE COURT: YOU'RE REFERRING TO THE TWO AREAS
5 OF BLOOD THAT'S BEEN DESCRIBED EARLIER?

6 MR. CONN: YES.

7 THE COURT: OVERRULED.

8 YOU CAN ANSWER THE QUESTION.

9 THE WITNESS: OH, I AM SORRY. OKAY. I'VE
10 FORGOTTEN. NO.

11 Q BY MR. CONN: THAT DOESN'T HELP YOU AT
12 ALL. THE FACT THAT THE MAJORITY OF THE BLOOD IS
13 CONFINED JUST TO THOSE TWO SPOTS IN THE DEN, DOESN'T
14 ASSIST YOU AT ALL IN FORMULATING A RECONSTRUCTION OF
15 THIS CRIME?

16 A AS I'VE SAID ON MULTIPLE OCCASIONS, I
17 NEVER TRIED TO FORMULATE A RECONSTRUCTION. IT
18 WOULDN'T ASSIST ME IN SOMETHING I WASN'T TRYING TO
19 DO.

20 Q OKAY. THE WOUND TO THE RIGHT ARM OF
21 KITTY MENENDEZ, THAT IS, TO THE RIGHT FOREARM, DO
22 YOU ASSOCIATE THAT WOUND TO THE WOUND TO HER RIGHT
23 UPPER ARM?

24 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
25 OBJECT. THIS IS BEYOND THE SCOPE OF THIS WITNESS'
26 TESTIMONY.

27 THE COURT: OVERRULED.

41677

1 ISSUE, YOUR HONOR?

2 THE COURT: NO.

3 THE WITNESS: WHAT WAS THE QUESTION?

4 Q BY MR. CONN: DO YOU ASSOCIATE THE WOUND
5 TO THE RIGHT FOREARM OF KITTY MENENDEZ WITH THE
6 WOUND TO HER RIGHT UPPER ARM?

7 A I HAVEN'T REALLY THOUGHT MUCH OF IT.

8 Q WELL, YOU'VE READ THE REPORTS OF
9 DR. GOLDEN, HAVEN'T YOU?

10 A UH-HUH.

11 Q AND YOU'VE SPENT -- WHAT WERE YOU DOING
12 DURING THOSE 50 HOURS, BY THE WAY?

13 A I WAS GOING OVER THESE THINGS. I WAS
14 TALKING ON THE TELEPHONE AND TRAVELING AND LOOKING
15 AT A LOT OF PHOTOGRAPHS AND READING A LOT OF
16 TRANSCRIPTS. BUT THIS IS NOT A WOUND THAT -- I READ
17 WHAT WAS WRITTEN ABOUT THIS WOUND, AND I DIDN'T SEE
18 ANY GLARING ERRORS THAT I WOULD WORRY ABOUT.

19 SO IT'S NOT SOMETHING THAT I SPENT ANY
20 TIME TRYING TO RECONSTRUCT.

21 Q WHEN YOU SAY THAT YOU WOULDN'T WORRY
22 ABOUT IT, WHAT DO YOU MEAN BY THAT PHRASE?

23 A I MEAN, WHEN I READ -- WHEN I LOOKED AT
24 PHOTOGRAPHS OF A WOUND, AND I READ SOMEONE SAY,
25 WELL, I THINK THIS MIGHT BE ASSOCIATED WITH THIS.
26 IF WE MOVE THE ARM AND PUT IT IN THIS POSITION,
27 MAYBE THOSE TWO ARE ASSOCIATED. I SAID, OKAY.
28 MAYBE THEY'RE ASSOCIATED. HE'S WORKED IT OUT. AND

41678

1 I DON'T HAVE ANY PROBLEM WITH THAT. I AGREE WITH
2 THAT.

3 Q SO YOU DON'T HAVE ANY --

4 A IF SOMEONE SAYS I HAVE A WOUND HERE AND
5 IT'S ASSOCIATED WITH A WOUND IN THE BUTTOCK.

6 Q UH-HUH.

7 A THEN I CAN DISAGREE WITH THAT BECAUSE
8 THERE'S NO WAY YOU CAN GET YOUR HAND BACK TO THE
9 BUTTOCK. THEN I'LL SAY HEY, THERE'S SOMETHING -- I
10 HAVE TO FIND OUT WHY HE SAID THAT, AND THAT'S
11 WRONG. THAT'S SOMETHING THAT WOULD BE CALLED TO MY
12 ATTENTION. BUT OTHERWISE, YOU KNOW, IF THIS IS
13 ASSOCIATED WITH THIS OTHER WOUND OR NOT, YES. MAYBE
14 IT IS; MAYBE IT ISN'T. IT'S NOT SOMETHING THAT I
15 WOULD BE CONCENTRATING ON BECAUSE I'M CONCENTRATING
16 ON OTHER THINGS.

17 Q IN THIS CASE, THERE WAS NO ONE WHO WAS

18 ASSOCIATING A WOUND TO THE RIGHT HAND WITH A WOUND
19 TO THE BUTTOCK, WAS THERE?

20 A NO. I JUST USED THAT AS A RIDICULOUS
21 EXAMPLE TO TRY TO MAKE MY POINT.

22 Q AND GETTING BACK TO THE QUESTION THAT I
23 ASKED YOU, DO YOU HAVE ANY DISAGREEMENT WITH THE
24 ASSOCIATION OF THE WOUND TO THE RIGHT FOREARM OF
25 KITTY MENENDEZ WITH THE WOUND TO RIGHT UPPER ARM OF
26 KITTY MENENDEZ, WHICH WAS MADE BY DR. GOLDEN,
27 DR. LAWRENCE, AND DR. MC CARTHY?

28 A WELL, IF YOU INSIST ON ME ANSWERING THE

41679

1 QUESTION I'M GOING TO INSIST ON YOU GIVING ME THE
2 PHOTOGRAPHS AND WE'LL GO OVER IT.

3 MR. CONN: OKAY. WE'LL DO THAT.

4 THE COURT: ALL RIGHT. WE'LL RESUME AT
5 1:30.

6 DON'T DISCUSS THE MATTER WITH ANYONE AND
7 DON'T FORM ANY FINAL OPINIONS. AND WE'LL RESUME AT
8 1:30.

9 MS. ABRAMSON: COULD WE REMAIN SO I COULD BE
10 HEARD ON SOMETHING?

11 THE COURT: CERTAINLY.

12 (THE JURY EXITED THE COURTROOM AND

13 THE FOLLOWING PROCEEDINGS WERE HELD:)

14

15 THE COURT: OKAY. THE JURY HAS LEFT.

16 MS. ABRAMSON: YES, YOUR HONOR, I'VE BEEN

17 OBJECTING AND THE COURT HAS BEEN OVERRULING MY

18 OBJECTIONS THAT THE CROSS-EXAMINATION OF THIS

19 WITNESS IS GOING BEYOND THE SCOPE OF THE DIRECT.

20 THIS WITNESS IS NOT HERE TO SERVE AS OUR CORONER.

21 HE IS NOT A FORENSIC PATHOLOGIST. WE HAVE A

22 FORENSIC PATHOLOGIST WHO'S GOING TO TESTIFY AND

23 REVIEW ALL THE WOUNDS.

24 I QUESTIONED DR. FACKLER ABOUT THE WOUND

25 IN WHICH THE WOUND BALLISTICS ASPECTS BEST FIT HIS

26 EXPERTISE AND WHICH COUNSEL STARTS CROSS-EXAMINING

27 ABOUT WOUNDS THAT WE HAVEN'T PUT ON ANY EVIDENCE

28 FROM THIS WITNESS. I DON'T UNDERSTAND WHY THEY'RE

41680

1 BEING ALLOWED TO DO THAT.

2 THE COURT: BECAUSE IT'S WITHIN THE SCOPE OF

3 THE DIRECT EXAMINATION.

4 MS. ABRAMSON: BUT IT ISN'T. I DIDN'T ASK

5 ABOUT THOSE WOUNDS.

6 THE COURT: THAT'S NOT --

7 MS. ABRAMSON: THEY'RE NOT IN CONTROVERSY.

8 THE COURT: THERE'S NOT THE WAY I DEFINE THE
9 SCOPE OF THE DIRECT EXAMINATION, BY COUNSEL LIMITING
10 IT JUST TO A COUPLE OR SEVERAL OF THE WOUNDS AND
11 EXCLUDING THE OTHERS. HE'S TALKED ABOUT THE
12 ENTIRETY -- A REVIEW OF THE ENTIRETY OF THE
13 CORONER'S REPORT AND HE'S CRITICIZED THE ENTIRETY OF
14 MC CARTHY'S TESTIMONY.

15 MS. ABRAMSON: NO, HE HASN'T.

16 THE COURT: YES, HE HAS.

17 MS. ABRAMSON: NOT ON DIRECT HE HASN'T.

18 THE COURT: HE HAS IN THE NATURE OF HIS
19 EXAMINATION. IT'S PURELY, WITHOUT A DOUBT, WITHIN
20 THE SCOPE OF THE DIRECT EXAMINATION.

21 MS. ABRAMSON: FINE.

22 THE COURT: IT'S NOT EVEN A CLOSE QUESTION.

23 MS. ABRAMSON: MY CONCERN IS HOW MUCH --

24 THE COURT: YES.

25 MS. ABRAMSON: OKAY. HOW MUCH LONGER COUNSEL
26 HAS BECAUSE IF WE'RE NOT GOING TO GET DR. FACKLER
27 OFF BY TOMORROW I'M GOING TO CUT HIM LOOSE AND HAVE
28 HIM GO BACK TO FLORIDA TONIGHT. I DON'T WANT TO

41681

1 HANG HIM UP.

2 THE COURT: I'M ASKING HOW MUCH LONGER ARE

3 YOU GOING TO BE?

4 MR. CONN: A GOOD PART OF THE DAY.

5 MS. ABRAMSON: I'M GOING TO CUT DR. WECHT

6 LOOSE.

7 THE COURT: AS LONG AS YOU HAVE SOMEBODY

8 ELSE.

9 MS. ABRAMSON: I CAN'T BE SURE.

10 THE COURT: GET ON THE PHONE.

11 MS. ABRAMSON: WE WILL.

12 THE COURT: WE'LL BE IN RECESS UNTIL 1:30.

13 (AT 12:23 P.M. PROCEEDINGS WERE

14 ADJOURNED UNTIL 1:30 P.M. OF

15 THE SAME DAY.)

41682

1 VAN NUYS, CALIFORNIA; TUESDAY, NOVEMBER 21, 1995

2 1:45 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (THE FOLLOWING PROCEEDINGS WERE

7 HELD IN OPEN COURT OUT OF THE

8 PRESENCE OF THE JURY:)

9

10 THE COURT: ALL RIGHT. EVERYBODY IS

11 PRESENT. WE'LL NOW RESUME.

12 MS. ABRAMSON: YOUR HONOR, BEFORE WE DO THAT,

13 I JUST WANT THE COURT TO UNDERSTAND WHAT I'VE DONE
14 ABOUT SCHEDULING.
15 I HAVE RELEASED DR. WECHT, BECAUSE WE
16 KNEW WE COULD NOT GET HIM BACK HERE SUNDAY; AND,
17 THEREFORE, WE'D HAVE TO KEEP HIM AND HE DIDN'T --
18 OBVIOUSLY, HAS OBJECTIONS TO THAT. SO I'VE RELEASED
19 HIM. AND I HAVE TWO WITNESSES FOR TOMORROW, DWIGHT
20 VAN HORN AND RON LINHART, FROM THE SHERIFF'S
21 DEPARTMENT, AND I'M GOING TO HAVE MR. MORTON ON
22 MONDAY AND DR. WECHT RIGHT BEHIND HIM, AND THEN WE
23 HAVE A NICE SPAN OF TIME.
24 THE COURT: OKAY.
25 MS. ABRAMSON: NOW, I CAN'T SWEAR TO THE
26 COURT THAT LINHART AND VAN HORN WILL TAKE UNTIL 3:15
27 TOMORROW. THEY MAY END A LITTLE EARLY.
28 THE COURT: ALL RIGHT. WHATEVER. AT LEAST

41683

1 YOU HAVE TWO MORE WITNESSES FOR TOMORROW.
2 MS. ABRAMSON: YES, YOUR HONOR.
3 THE COURT: THANK YOU FOR LETTING ME KNOW.
4 ALL RIGHT. LET'S GET THE JURY OUT,
5 PLEASE.
6 (THE JURY ENTERED THE
7 COURTROOM AND THE FOLLOWING

8 PROCEEDINGS WERE HELD:)

9

10 THE COURT: AND THE JURY IS BACK. WE'LL

11 RESUME WITH THE CROSS-EXAMINATION.

12 MR. CONN: THANK YOU.

13

14 CROSS-EXAMINATION (CONTINUED)

15 BY MR. CONN:

16 Q DOCTOR, I THINK THAT JUST BEFORE WE

17 RECESSED YOU WERE GOING TO TAKE A LOOK AT THE WOUND

18 TO THE CLAVICLE AND MANDIBLE OF KITTY MENENDEZ TO

19 SEE IF YOU WOULD ASSOCIATE -- I'M SORRY -- I THINK YOU

20 WERE GOING TO TAKE A LOOK AT THE TWO WOUNDS TO THE

21 RIGHT ARM OF KITTY MENENDEZ, THE FOREARM AND THE

22 UPPER ARM, TO DETERMINE IF YOU WOULD ASSOCIATE THOSE

23 TWO WOUNDS TOGETHER.

24 DID YOU HAVE AN OPPORTUNITY TO DO SO?

25 A NO. I THOUGHT WHEN WE LEFT YOU SAID YOU

26 WERE GOING TO PROVIDE THEM FOR ME AND I WAS WAITING

27 FOR YOU TO DO THAT.

28 Q OKAY. WE CAN DO THAT NOW.

41684

1 I'LL SHOW YOU THE PHOTOGRAPH THAT HAS

2 BEEN MARKED 197 FOR IDENTIFICATION AND DIRECT YOUR

3 ATTENTION TO THE TWO WOUNDS THAT APPEAR TO THE RIGHT
4 ARM OF KITTY MENENDEZ, HER LOWER RIGHT ARM AND HER
5 UPPER RIGHT ARM.

6 A I'VE REVIEWED THEM, YEAH.

7 Q OKAY. AND DO YOU ASSOCIATE THOSE TWO
8 WOUNDS TOGETHER?

9 A THEY COULD BE ASSOCIATED. THEY MAY BE
10 AND THEY MAY NOT. I DON'T THINK ANYBODY CAN TELL.

11 Q OKAY. AND WHY IS IT THAT NO ONE CAN
12 TELL?

13 A WELL, YOU HAVE TWO INDIVIDUAL WOUNDS,
14 ONE IN THE LOWER -- IN THE FOREARM AND IN THE UPPER
15 ARM. AND THE FACT THAT YOU CAN BEND THE ARM IN SUCH
16 A POSITION THAT YOU COULD PROBABLY PUT A PROBE
17 THROUGH THEM AND APPEARED TO BE THE SAME WOUND, THAT
18 DOESN'T MEAN THEY ARE. MAYBE THEY ARE AND MAYBE
19 THEY AREN'T. I CAN SAY THAT'S A POSSIBILITY AND
20 MAYBE IT EVEN MIGHT BE A LIKELY POSSIBILITY, BUT I
21 CAN'T SAY THAT HAPPENED THAT WAY.

22 Q IS THAT KIND OF LIKE THE WOUND TO
23 KITTY'S LEFT BREAST AND THE WOUND TO KITTY'S LEFT
24 ARM, WHERE YESTERDAY COUNSEL HAD YOU COUNT THE 16
25 PELLETS IN THE BREAST AND THE FOUR PELLETS TO THE
26 LEFT ARM AND GET A TOTAL OF 20 PELLETS?

27 A I DIDN'T UNDERSTAND THE QUESTION.

28 Q DO YOU RECALL YESTERDAY THAT COUNSEL WAS

1 SHOWING YOU SOME PHOTOGRAPHS ON THE BOARD?

2 A YES.

3 Q OF KITTY'S LEFT BREAST?

4 A YES.

5 Q DO YOU RECALL THAT SHE WAS SHOWING YOU

6 SOME PHOTOGRAPHS OF THE WOUND TO KITTY'S LEFT ARM?

7 A YES.

8 Q AND DO YOU RECALL THAT YOU WERE DOING A

9 PELLET COUNT?

10 A YEAH. I THINK THAT -- YEAH, I RECALL

11 NOW.

12 Q AND DO YOU RECALL THAT YOU CAME UP WITH

13 16 PELLET DEFECTS FOR THE BREAST?

14 A YES.

15 Q AND YOU CAME UP WITH ANOTHER FOUR FOR

16 THE ARM?

17 A THERE WERE FOUR IN THE ARM, YES.

18 Q AND DO YOU RECALL HOW -- THEN COUNSEL

19 ASKED YOU HOW IF THIS MAKES A TOTAL OF 20?

20 A I'M NOT SURE HOW SHE ASKED THE QUESTION,

21 BUT THERE ARE CLEARLY 16 HOLES IN THE BREAST AND

22 THERE ARE CLEARLY THE FOUR HOLES IN THE ARM, AND I

23 THINK SHE WAS ASKING ME IF -- IF THE ARM HAD BEEN

24 PLACED IN FRONT OF THE BREAST AND IF THESE WERE PART

25 OF THE SAME SHOT COLUMN, IF IT ADDED UP TO 20, AND I

26 ANSWERED YES. I DIDN'T SAY IT HAD TO BE THAT WAY.

27 I SAID THAT WAS A POSSIBILITY.

28 Q OKAY. AND DO YOU RECALL HOW THEN SHE

41686

1 ASKED YOU IF THERE'S ANOTHER WOUND THAT COULD BE
2 ASSOCIATED WITH THE WOUND TO KITTY'S LEFT BREAST --
3 THE COURT: LET'S REFER TO THEM BY THEIR FULL
4 NAME.

5 MR. CONN: YES.

6 Q DO YOU RECALL COUNSEL ASKED YOU IF THERE
7 WAS ANOTHER WOUND THAT COULD BE ASSOCIATED WITH THE
8 LEFT BREAST OF KITTY MENENDEZ AND THE LEFT FOREARM
9 OF KITTY MENENDEZ AND AT THAT TIME YOU DISCUSSED A
10 WOUND TO THE -- TO THE DORSAL SIDE OF JOSE MENENDEZ'
11 RIGHT FOREARM?

12 DO YOU RECALL THAT?

13 A YES.

14 Q AND DO YOU RECALL HOW COUNSEL THEN USED
15 THAT COMBINATION OF THREE WOUNDS TO GET A TOTAL OF
16 APPROXIMATELY 27 PELLETS?

17 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT
18 MISSTATES THE TESTIMONY. NO SUCH COUNT WAS DONE.

19 THE COURT: REPHRASE THE QUESTION.

20 MR. CONN: OKAY.

21 Q LET ME ASK YOU THIS: WERE YOU SAYING

22 YESTERDAY THAT YOU ASSOCIATE THE WOUND TO THE LEFT
23 BREAST OF KITTY MENENDEZ WITH THE WOUND TO THE LEFT
24 FOREARM OF KITTY MENENDEZ?
25 A NO.
26 Q WHAT WERE YOU SAYING?
27 A I THINK I WAS ASKED IF IT WAS POSSIBLE
28 THAT A SHOT COLUMN CAME ACROSS THE ARM AND A PORTION

41687

1 OF THE SHOT COLUMN WAS ARRESTED BY THE ARM AND
2 CERTAIN PROJECTILES REMAINED IN THE ARM AND THE REST
3 OF THE SHOT COLUMN WENT ON, AND I SAID THAT'S
4 POSSIBLE.

5 Q SO TO YOU THAT REPRESENTS NOTHING MORE
6 THAN A POSSIBILITY, I TAKE IT?

7 A YES, THAT'S TRUE.

8 Q OKAY. AND THE SAME COULD BE SAID OF THE
9 TWO WOUNDS TO THE RIGHT ARM OF KITTY MENENDEZ, IS
10 THAT CORRECT, THAT I JUST SHOWED YOU IN PHOTOGRAPH
11 197?

12 A YES, THAT'S ALSO A POSSIBILITY.

13 Q OKAY. LET'S TALK ABOUT THESE TWO
14 WOUNDS.

15 DIRECTING YOUR ATTENTION FIRST TO THE
16 FOREARM. HOW FAR AWAY WAS THAT SHOT FIRED FROM?

17 A I WOULD ESTIMATE THE DISTANCE TO BE JUST
18 A FEW FEET, MAYBE THREE, FOUR FEET APPROXIMATELY.

19 Q THE UPPER ARM, HOW FAR AWAY WAS THAT
20 FIRED FROM?

21 A I'D SAY APPROXIMATELY THE SAME
22 DISTANCE.

23 Q YOU INDICATED THAT THE WOUND TO THE
24 RIGHT HAND OF KITTY MENENDEZ COULD ALSO BE
25 ASSOCIATED WITH THE WOUNDS TO HER CLAVICLE AND
26 MANDIBLE AREAS; IS THAT CORRECT?

27 A YEAH. I THINK THAT'S ANOTHER
28 POSSIBILITY.

41688

1 Q AND HOW FAR WERE THOSE SHOTS FIRED
2 FROM?

3 A THEY APPEAR TO BE SOMEWHAT FURTHER.
4 THAT'S A LITTLE MORE DIFFICULT BECAUSE THE -- OF THE
5 DISTORTION OF THE TISSUES. AS A VERY ROUGH ESTIMATE
6 I WOULD SAY MAYBE 14 FEET OR SO. BUT THAT'S A VERY
7 ROUGH ESTIMATE. COULD BE EVEN FURTHER.

8 Q DIRECTING YOUR ATTENTION TO THE WOUND
9 THAT KITTY MENENDEZ RECEIVED BEHIND HER LEFT EAR AND
10 THE WOUND ALSO CAUSED BY BIRD SHOT THAT SHE RECEIVED
11 TO HER LEFT SHOULDER.

12 DO YOU ASSOCIATE THOSE TWO WOUNDS
13 TOGETHER?
14 A I THINK ALSO THAT'S A LOGICAL
15 ASSUMPTION, THAT THEY PROBABLY WERE THE SAME SHOT.
16 Q AND HOW FAR AWAY WERE THEY FIRED FROM?
17 A I'D LIKE TO TAKE A LOOK AT THE SHOULDER
18 WOUND, IF I MIGHT, THE PHOTOGRAPH.
19 AGAIN, THAT APPEARS PRETTY CLOSE-RANGE
20 SHOT. I WOULD SAY MAYBE THREE TO FOUR FEET.
21 Q AND DIRECTING YOUR ATTENTION TO THE SHOT
22 THAT APPEARS TO HER -- BEHIND THE LEFT EAR OF KITTY
23 MENENDEZ. LET ME SHOW YOU ANOTHER PHOTOGRAPH, 195,
24 WHICH YOU JUST ASSOCIATED WITH THE LAST SHOT.
25 MS. ABRAMSON: YOU JUST ASKED THAT.
26 THE COURT: NO. THE PREVIOUS QUESTION
27 RELATED TO THE SHOULDER.
28 MS. ABRAMSON: OKAY. I'M SORRY.

41689

1 Q BY MR. CONN: WOULD YOU AGREE, LOOKING
2 AT THE INJURY BEHIND THE LEFT EAR OF KITTY MENENDEZ,
3 THAT THAT ALSO APPEARS TO BE CONSISTENT WITH A SHOT
4 FIRED THREE TO FOUR FEET AWAY?
5 A WELL, IT -- IN THE FIRST PLACE IT'S
6 BEHIND AND IN THE FORWARD PART OF THE EAR AND IT

7 ENCOMPASSES THE EAR BOTH BEHIND AND FORWARD,
8 INFERIOR TO IT. AND IT APPEARS TO BE A -- IT COULD
9 EASILY BE A CONTINUATION OF THE SHOT COLUMN THAT
10 INITIALLY CAUSED THE WOUND TO HER SHOULDER, YES.

11 SO THAT WOULD MAKE IT -- DEPENDING ON
12 THE POSITION OF HER HEAD, THAT WOULD MAKE IT
13 SOMEWHAT FURTHER AWAY AND HAVING TO HAVE AN
14 INTERMEDIATE TARGET, WHICH WAS HER SHOULDER.

15 Q NOW, YOU GAVE THE OPINION, I BELIEVE,
16 THAT THE WOUND TO THE LEFT THIGH OF KITTY MENENDEZ
17 WAS INFLICTED FROM THE BACK OF THE THIGH TO THE
18 FRONT OF THE THIGH, RATHER THAN AS DR. GOLDEN HAD
19 SUGGESTED, FROM THE FRONT OF THE THIGH TO THE BACK
20 OF THE THIGH.

21 IS THAT CORRECT?

22 A YES, THAT'S CORRECT.

23 Q AND HOW FAR AWAY WAS THAT WOUND SHOT
24 FROM?

25 A WELL, THAT'S FAIRLY CLOSE RANGE TOO. I
26 THINK THAT -- I THINK THERE'S SOME POSSIBILITY THAT
27 MAY ALSO BE A CONTINUATION OF A SHOT. AND I SAY
28 THIS FOR SEVERAL REASONS.

41690

1 IF THE VOLUME OF THE DAMAGE IN THIS

2 WOUND APPEARS A LITTLE LESS THAN WHAT ONE WOULD
3 EXPECT, AND IF WE COMBINE IT WITH THE LARGE GAUGE
4 OUT OF HER LOWER LEG AS WE SHOWED THE LINE UP
5 YESTERDAY, THEN IT -- THEN THE DAMAGE, BOTH ADDED
6 TOGETHER, COMES UP TO MUCH MORE THAN THAT I WOULD
7 EXPECT WOULD BE THE VOLUME OF DAMAGE OF THIS
8 SHOTGUN. AND I WOULD THINK THE DISTANCE HERE WOULD
9 BE, AGAIN, APPROXIMATELY FOUR OR FIVE FEET,
10 SOMEWHERE AROUND THERE. IT'S A SHORT -- IT'S A
11 CLOSE RANGE.

12 Q AND YOU SAY THAT YOU ASSOCIATE THOSE TWO
13 WOUNDS TOGETHER, THAT IS, THE WOUND TO THE THIGH AND
14 THE WOUND TO THE CALF, BECAUSE ABSENT THE CALF WOUND
15 YOU WOULD EXPECT MORE DAMAGE TO THE THIGH?

16 A YES, THAT'S RIGHT. I THINK THE -- THE
17 ASSOCIATION OF THESE TWO WOUNDS HAS MORE TO -- MORE
18 EVIDENCE FOR IT BECAUSE OF THE -- BECAUSE OF THE
19 VOLUME, MORE THAN THE OTHER WOUNDS THAT WE'VE JUST
20 BEEN DISCUSSING, BECAUSE THIS WOUND ALONE I WOULD
21 EXPECT SOMEWHAT MORE DAMAGE THAN WE'VE SEEN IN THIS
22 WOUND; AND IF WE ADD THE DAMAGE IN THE THIGH -- IN
23 THE LOWER LEG IT MAKES MORE SENSE THAT IT MIGHT BE --
24 THEY MIGHT BE -- ADD THE TWO DAMAGES AND THEY -- IT
25 COMES UP TO MORE WHAT I WOULD EXPECT FROM A
26 SHORT-RANGE SHOTGUN BLAST.

27 Q ON WHAT BASIS DO YOU SAY YOU WOULD
28 EXPECT MORE DAMAGE? WHAT IS YOUR POINT OF

1 REFERENCE?

2 A WELL, ACTUALLY, ONE POINT OF REFERENCE
3 IS ALL THE WOUNDS WE HAVE IN THIS CASE AND THAT --
4 THE VOLUME OF THE WOUNDS. FOR INSTANCE, IF YOU LOOK
5 AT THE WOUND ON MR. MENENDEZ' LEFT LEG, IT APPEARS
6 TO ME THAT THE DAMAGE IS SIGNIFICANTLY MORE THAN
7 WE'RE SEEING HERE IN THIS ONE SINGLE WOUND. BUT IF
8 YOU ADD THE LARGE GAUGE OF TISSUE FROM THE LOWER LEG
9 TO THIS, THEN THE VOLUME OF THE WOUND APPEARS TO
10 BALANCE MORE LIKELY.

11 Q DOES IT APPEAR THAT HER LEFT THIGH IS
12 ALSO THICKER THAN THE AREA OF THE LEFT LEG OF JOSE
13 MENENDEZ WHERE HE WAS STRUCK?

14 A WELL, I DON'T THINK IT'S SIGNIFICANTLY
15 THICKER. HE'S STRUCK WELL ABOVE THE KNEE AND SHE'S
16 STRUCK A LITTLE BIT FURTHER ON UP. IF YOU MEASURED
17 IT, IT MAY BE AN INCH THICKER.

18 Q IF YOU MEASURED IT, IT MIGHT BE AN INCH
19 THICKER?

20 A I WOULD EXPECT SO.

21 Q FOR KITTY MENENDEZ?

22 A YES.

23 Q IN ADDITION TO BEING AN INCH THICKER,
24 IT'S ALSO NOT AT A DIRECTLY LATERAL ANGLE AS THE
25 WOUND TO JOSE MENENDEZ IS, IS IT?

26 A WELL, THAT'S TRUE. BUT IN ADDITION,
27 THIS WOUND DIDN'T PASS THROUGH THE ENTIRE THICKNESS
28 EITHER, SO THERE'S PLUSES AND MINUSES AND WAYS TO

41692

1 BALANCE IT.

2 Q AND GIVEN ALL THOSE PLUSES AND MINUSES,
3 HOW CAN YOU SAY, JUST LOOKING AT THIS PHOTOGRAPH, IN
4 LIGHT OF THE THREE SHOTGUN WOUNDS THAT YOU TREATED
5 IN YOUR 31 YEARS, THAT YOU WOULD EXPECT MORE DAMAGE
6 UNLESS THIS ROUND FIRST PASSED THROUGH SOMETHING
7 ELSE?

8 MS. ABRAMSON: OBJECTION. COMPOUND AND
9 ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

11 Q BY MR. CONN: JUST LOOKING AT THAT
12 PHOTOGRAPH, HOW CAN YOU SAY THAT JUST FROM THAT
13 ALONE YOU WOULD EXPECT MORE DAMAGE?

14 A WELL, I THINK YOU'VE BEEN SOMEWHAT
15 MISLED BY THINKING THAT MY EXPERTISE EXPRESSED HERE
16 IS BASED ON THE SMALL NUMBER OF SHOTGUN WOUNDS I
17 HAVE TREATED; RATHER, MY EXPERTISE HERE IS BASED ON
18 MY EXPERIENCE WITH THIS CASE AND OTHER SHOTGUN CASES
19 WHERE I HAVE WORKED WITH AUTOPSY PHOTOGRAPHS AS WE
20 HAVE IN THIS CASE.

21 NOW, I HAVE NOT WORKED ANY OTHER CASE
22 THAT APPROACHES THIS CASE IN THE NUMBER OF SHOTS.
23 MANY OF THE CASES I HAVE WORKED WITH HAVE JUST BEEN
24 ONE SHOT A PIECE, BUT THEY ADD UP. AND THAT IN
25 COMBINATION WITH MY EXPERIMENTAL WORK AND
26 RECOGNIZING THE AMOUNT OF TOTAL MOMENTUM THAT IS
27 INVOLVED IN A SHOTGUN BLAST AND RELATING THAT TO
28 VARIOUS RIFLE BLASTS, BASICALLY, THE WOUND

41693

1 BALLISTICS IS QUITE -- YOU KNOW, THE PRINCIPLES OF
2 THE WOUND BALLISTICS ARE THE SAME FOR A SHOTGUN
3 BLAST AND A RIFLE BLAST. IT JUST, YOU KNOW -- SO
4 THERE'S NO -- SO WHAT I'M SAYING IS I'M JUST GIVING
5 YOU THIS OPINION BASED ON MY EXPERIENCE IN COURT AND
6 MY EXPERIMENTAL RESULTS. AND REALLY, IT'S NOT
7 REALLY BASED IN ANY WAY ON MY EXPERIENCE IN TREATING
8 SHOTGUN WOUNDS.

9 Q OKAY. BUT THE THREE CASES OF SHOTGUN
10 WOUNDS THAT YOU PERSONALLY TREATED IN YOUR 31
11 YEARS --

12 A I THINK I SAID SIX.

13 Q OKAY. BUT YOU CAN REMEMBER THREE OF
14 THEM, RIGHT?

15 A I CAN REMEMBER SOME DETAIL OF ABOUT

16 THREE, YES, THAT'S CORRECT.

17 Q OKAY. OF THE THREE CASES THAT YOU

18 REMEMBER IN YOUR 31 YEARS, WERE ANY OF THEM TO THE --

19 IN THE AREA OF THE LEFT THIGH, THE AREA OF THE THIGH

20 SUCH AS THE WOUND TO KITTY MENENDEZ?

21 MS. ABRAMSON: OBJECTION. IRRELEVANT.

22 THE COURT: OVERRULED.

23 YOU CAN ANSWER THE QUESTION.

24 THE WITNESS: NO, THEY WERE NOT.

25 Q BY MR. CONN: AND WERE ANY OF THEM TO

26 THE AREA OF THE LEFT KNEE SUCH AS IN THE CASE OF

27 JOSE MENENDEZ?

28 A NO, THEY WERE NOT.

41694

1 Q SO YOU DIDN'T HAVE AN OPPORTUNITY TO --

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

3 LAST QUESTION. MOVE TO STRIKE. IT MISSTATES THE

4 EVIDENCE. THERE'S NO WOUND TO THE LEFT KNEE.

5 THE COURT: OVERRULED.

6 Q BY MR. CONN: SO YOU DIDN'T HAVE ANY

7 OPPORTUNITY ON FORMER OCCASIONS TO COMPARE WOUNDS,

8 SHOTGUN WOUNDS SUCH AS WE ARE NOW DOING, FOR THE

9 PURPOSE OF DETERMINING WHETHER THE SHOTGUN WOUNDS --

10 WHETHER THE SHOTGUN PELLETS PASSED THROUGH SOMETHING

11 PRIOR TO HITTING THE WOUND AREAS, DID YOU?

12 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

13 THE COURT: REPHRASE THE QUESTION.

14 MR. CONN: YES.

15 Q ON ANY PRIOR OCCASION DID YOU HAVE --

16 BEFORE YOUR INVOLVEMENT IN THIS CASE, DID YOU EVER

17 HAVE ANY REASON TO COMPARE SHOTGUN WOUNDS TO

18 DETERMINE THE DISTANCES AT WHICH THE SHOTGUN WOUNDS

19 WERE FIRED OR WHETHER THE SHOTGUN PELLETS HAD PASSED

20 THROUGH SOMETHING BEFORE HITTING THE SURFACE?

21 A OH, CERTAINLY.

22 Q AND WHAT REASON DID YOU HAVE TO DO THAT

23 IN THE PAST?

24 A WELL, THERE WAS A CASE, TING VERSUS -- IT

25 WAS ACTUALLY TING VERSUS THE F.B.I., BUT THERE WAS

26 THE NAME OF AN AGENT SPECIFICALLY NAMED WHOSE NAME

27 ESCAPES ME, AND THAT WAS TRIED IN UNITED STATES

28 COURT IN LOS ANGELES APPROXIMATELY A YEAR AND A HALF

41695

1 AGO.

2 AND IN THIS CASE A PERSON WHO WAS A DRUG

3 DEALER -- ALLEGED TO BE A DRUG DEALER, WAS BEING

4 ARRESTED AND WAS TRYING -- WAS BEING HANDCUFFED AND

5 HE BROKE AWAY AND TRIED TO ESCAPE, AND THE F.B.I.

6 AGENT PICKED UP A SHOTGUN AND SHOT HIM. THE SHOT
7 COLUMN ENTERED HIS LEFT UPPER ARM, BROKE THE BONE,
8 CONTINUED ON INTO HIS CHEST AND ONE OF THE SHOTGUN
9 PELLETS PENETRATED HIS SPINAL COLUMN AND MADE HIM A
10 QUADRIPLLEGIC. AND THE -- HE LIVED.

11 AND HIS STORY WAS THAT THE F.B.I. AGENTS
12 CAUGHT HIM AND HELD HIM DOWN ON THE FLOOR AND STOOD
13 OVER HIM WITH A SHOTGUN AND FIRED AT HIM CAUSING
14 THIS WOUND. AND THAT WOULD, GIVEN THE HEIGHT OF THE
15 F.B.I. AGENT AND THE SIZE OF THE GUN, THAT WE'D BE
16 TALKING OF A WOUND OF ABOUT A DISTANCE OF MAYBE TWO
17 FEET.

18 NOW, THE F.B.I. AGENT CLAIMED THAT WHAT
19 HAPPENED IS HE BOLTED AND HEADED FOR THE DOOR AND
20 THE F.B.I. AGENT FIRED AS HE WAS RUNNING. AND IN
21 THIS CASE, THE SHOT COLUMN WOULD HAVE HIT HIM AT
22 ABOUT SEVEN FEET.

23 AND SO BECAUSE THIS CASE WAS -- THIS
24 PERSON WAS ALIVE AND NOT KILLED, THERE'S A GREAT
25 DISADVANTAGE IN THIS TYPE OF CASE BECAUSE, ALTHOUGH
26 FORENSIC PATHOLOGISTS ARE QUITE GOOD ABOUT PUTTING
27 DOWN THE SIZE OF WOUNDS AND THINGS OF THIS SORT, MY
28 CLINICAL COLLEAGUES WHO TREAT PATIENTS ARE VERY

1 REMISS IN THIS AND RARELY DO IT. SO WE HAD VERY
2 LITTLE INFORMATION TO GO ON AND IT WAS SOMEWHAT
3 DIFFICULT BECAUSE OF THAT. BUT THE CRITICAL THING
4 IN THIS CASE WAS THE DISTANCE TO DIFFERENTIATE TWO
5 FEET FROM SEVEN FEET.

6 AND WE WON THAT CASE -- I ACTUALLY WENT
7 BACK TO THE F.B.I. ACADEMY. WE DID SOME TEST SHOTS
8 INTO GELATIN BACK THERE. AND OF COURSE WE HAD -- WE
9 HAD X RAYS OF THE SHOT SPREAD AND THESE WERE
10 IMPORTANT IN THE CASE.

11 AND THEN I HAD ANOTHER CASE ONE YEAR AGO
12 IN WHICH AN OFFICER WAS ALLEGED TO HAVE KILLED HIS
13 WIFE AND, IN FACT, SHE KILLED HERSELF WITH A
14 SHOTGUN -- A CONTACT SHOTGUN BLAST TO HER MID
15 ABDOMEN. THAT WAS WITH DOUBLE-UGHT BUCKSHOT IN A
16 .12-GAUGE AND THE TING CASE WAS ALSO WITH A
17 .12-GAUGE.

18 AND IN THIS CASE, IN FACT, THE SHOT WAS
19 FIRED -- IT WAS A CONTACT WOUND, BUT THE OFFICER WAS
20 BEING HELD BECAUSE THE STATE HELD THAT THIS SHOT WAS
21 FIRED FROM TWO-FEET DISTANCE, IN WHICH CASE IT WOULD
22 BE IMPOSSIBLE FOR HER TO REACH THE TRIGGER AND
23 COMMIT SUICIDE.

24 SO THAT WAS ANOTHER CASE THAT WAS JUST A
25 LITTLE LESS THAN ONE YEAR AGO IN WHICH DISTANCE WAS
26 A VERY IMPORTANT -- WAS THE CRITICAL DETERMINANT IN A
27 SHOTGUN WOUND CASE.

28 SO THOSE ARE THE TWO MOST RECENT.

1 Q AND NEITHER OF THOSE CASES INVOLVED
2 WOUNDS TO THE THIGH; IS THAT CORRECT?

3 A NO. ONE WAS THE ABDOMEN AND THE OTHER
4 WAS THE UPPER ARM.

5 MR. CONN: YOUR HONOR, I HAVE A PHOTOGRAPH OF
6 A WOUND TO THE LEFT THIGH OF JOSE MENENDEZ.

7 I WOULD ASK THAT THIS BE MARKED AS 320.

8 MS. ABRAMSON: YOUR HONOR, WE ALREADY HAVE
9 THAT IN IN ANOTHER COPY.

10 THE COURT: ALL RIGHT. HAS IT ALREADY BEEN
11 MARKED?

12 MS. ABRAMSON: I THINK ONE JUST LIKE IT HAS
13 ALREADY BEEN MARKED.

14 MR. CONN: I THINK THE ONE WE MARKED IS
15 DIFFERENT THAN THIS ONE. IT'S NOT A CLOSE-UP.

16 THE COURT: WHY DON'T YOU FIND THE ONE THEN.

17 YOU WERE GOING TO DO THAT YESTERDAY
18 ALSO, MS. ABRAMSON.

19 MS. ABRAMSON: I DID. I FOUND IT.

20 THE COURT: REGARDING 318?

21 MS. ABRAMSON: YES.

22 THE COURT: WAS IT THE SAME OR A DIFFERENT
23 ONE?

24 MS. ABRAMSON: WELL, I HAD PUT THEM HERE --
25 THE COURT: I DON'T WANT TO GET INTO A
26 DISCUSSION.
27 MS. ABRAMSON: I CAN SHOW YOU LATER. WE DID
28 FIND IT.

41698

1 THE COURT: WAS THERE ANOTHER ONE OF THAT?
2 MS. ABRAMSON: OF 318, THERE WAS.
3 THE COURT: OKAY. ALL RIGHT.
4 AGAIN, I DON'T WANT TO DUPLICATE THESE.
5 YOU'RE CERTAIN THERE'S NOT ANOTHER ONE LIKE THIS?
6 MR. CONN: NOT THIS ONE, YOUR HONOR.
7 THE COURT: ALL RIGHT. IT WILL BE 320. SHOW
8 IT TO COUNSEL SO THEY CAN SEE IT.
9 MR. CONN: YES.
10 Q OKAY. SHOWING YOU THE PHOTO THAT IS
11 DEPICTED, THE WOUND TO THE LEFT LEG OF JOSE
12 MENENDEZ. I'LL PUT THAT ON THE BOARD AFTER YOU'VE
13 HAD AN OPPORTUNITY TO LOOK AT IT.
14 A YES.
15 Q IN THIS CASE, IN ORDER FOR YOU TO
16 DETERMINE THAT THE WOUND TO THE LEFT THIGH OF KITTY
17 MENENDEZ SHOULD HAVE CAUSED GREATER DAMAGE UNLESS IT
18 HAD PASSED THROUGH SOMETHING FIRST IS BASED

19 PRIMARILY UPON SIMPLY LOOKING AT THE WOUND TO JOSE
20 MENENDEZ TO THE LEFT -- TO HIS LEFT KNEE AREA; IS
21 THAT CORRECT?
22 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
23 THE COURT: OVERRULED.
24 THE WITNESS: NO, THAT'S NOT CORRECT.
25 Q BY MR. CONN: SO WHAT IS IT BASED ON
26 THEN?
27 A IT'S BASED ON THE TOTALITY OF ALL THE
28 WOUNDS WE'RE LOOKING AT HERE, PLUS THE OTHER WOUNDS

41699

1 THAT I HAVE WORKED WITH AND MY EXPERIENCE AND WITH
2 HOW MUCH POTENTIAL; ALSO, SOME COMPARISON WITH
3 HANDGUNS AND RIFLE WOUNDS, BECAUSE THE PRINCIPLES
4 ARE THE SAME IN PENETRATING PROJECTILES.

5 Q NOW, HERE YOU HAVE THAT THE WOUND TO THE
6 LEFT CALF OF KITTY MENENDEZ MAY BE ASSOCIATED WITH
7 THE WOUND TO THE LEFT THIGH OF KITTY MENENDEZ; IS
8 THAT CORRECT?

9 A I THINK IT'S A POSSIBILITY.

10 Q OKAY. AND IS THIS SOMETHING THAT YOU
11 THINK IS JUST A MERE POSSIBILITY OR IT'S LOGICAL
12 THAT THEY WERE CONNECTED?

13 A I THINK IT'S MORE LOGICAL THAT THEY WERE

14 CONNECTED BECAUSE, AS I MENTIONED, THE -- YOU KNOW,
15 IF YOU ADD THE TWO DAMAGES TOGETHER, IT'S -- I KNOW
16 IT'S A ROUGH ESTIMATE, BUT YOU ASKED ME FOR AN
17 OPINION, AND MY BEST OPINION IS THAT IF YOU ADD --
18 BECAUSE OF THE FACT THAT THIS LACKS A LITTLE BIT OF
19 THE DAMAGE POTENTIAL I WOULD EXPECT, AND THAT WOULD
20 BE ADDED BY THE OTHER ONE, IT MAKES, TO ME, IT MAKES
21 MORE SENSE THAT THEY WOULD BE CONNECTED THAN SOME OF
22 THE OTHER ONES, LIKE HER RIGHT ARM WOULD BE.

23 Q AND THE WOUND THAT WE'RE TALKING ABOUT
24 NOW IS DEPICTED IN PHOTOGRAPH 198; IS THAT CORRECT?

25 A THAT'S CORRECT.

26 Q NOW, IS THAT THE TYPE OF WOUND THAT IS
27 SOMETIMES CALLED A GRAZE WOUND?

28 A I GUESS IT COULD BE CALLED A GRAZE

41700

1 WOUND. I TEND TO THINK OF A GRAZE WOUND AS A WOUND
2 THAT JUST TENDS TO GRAZE THE SKIN AND MAYBE
3 PENETRATES THROUGH THE SKIN, BUT NOT MUCH FURTHER
4 THROUGH THE SKIN. I THINK SOME PEOPLE WOULD CALL
5 THIS A GRAZE WOUND. SOME PEOPLE WILL CALL A GRAZE
6 WOUND ANY WOUND THAT THERE IS NO DISTINCT ENTRANCE
7 AND EXIT; IN OTHER WORDS, A WOUND WHERE YOU DON'T
8 HAVE A SKIN RIDGE IN THE MIDDLE. SOME PEOPLE WILL

9 CALL -- I -- I THINK IF YOU LOOK AT THE DICTIONARY
10 DEFINITION OF GRAZE, THE DICTIONARY DEFINITION OF
11 GRAZE IMPLIES A MUCH MORE SUPERFICIAL WOUND. I
12 WOULD CALL THIS A GUTTER WOUND OR GOUGED-OUT WOUND.

13 Q AND WOULD IT BE YOUR TESTIMONY THAT ALL
14 OF THE SHOT FIRED IN THE SHOT COLUMN STRUCK THAT
15 LEFT CALF?

16 A PROBABLY NOT. PROBABLY THE -- WELL, IT'S
17 DIFFICULT TO SAY. MOST OF THE SHOT COLUMN WOULD,
18 BUT I WOULD SUSPECT THAT THE ONES ON THE VERY TOP OF
19 THE -- IF YOU WILL, IF YOU CUT A CROSS-SECTION
20 THROUGH THE TOP COLUMN ON THROUGH THE SHOT COLUMN,
21 CERTAINLY THE ONES IN THE LOWER HALF OF THE SHOT
22 COLUMN WOULD HAVE. AND MAYBE -- MAYBE SOME ABOVE
23 THAT HALF, BUT I THINK THE ONES -- THE FEW ON TOP
24 WOULD NOT HAVE.

25 Q AND HOW FAR WOULD YOU SAY WAS THE
26 DISTANCE FROM THAT THAT WAS FIRED?

27 A I THINK ABOUT FOUR OR FIVE FEET
28 APPROXIMATELY.

41701

1 Q AND THEN DIRECTING YOUR ATTENTION TO THE
2 WOUND TO KITTY MENENDEZ, FOR WHICH THERE WAS
3 TESTIMONY THAT THE SHOT ENTERED THE BOTTOM PORTION

4 OF HER LEFT LEG AND PASSED THROUGH AND EXITED THE
5 UPPER PART OF HER LEG, DO YOU AGREE WITH THE WAY
6 THAT THOSE TWO WOUNDS WERE ASSOCIATED TOGETHER?

7 A YOU'RE SPEAKING OF THE ONE THAT WENT
8 ACROSS THE POPLITEAL FOSSA, CAME OUT AND REENTERED;
9 IS THAT THE ONE?

10 Q YES.

11 A YES. ARE YOU ASKING -- I AGREE WITH WHAT
12 NOW?

13 Q YES. SHOWING YOU PHOTOGRAPH 189, WHICH
14 DEPICTS WHAT I BELIEVE HAS BEEN REFERRED TO AS THE
15 ENTRY AND EXIT WOUNDS FOR THAT PARTICULAR SHOT.

16 A WHAT WAS THE QUESTION?

17 Q MY QUESTION WAS: DO YOU AGREE THAT
18 THOSE WOUNDS ARE -- YOU WOULD ASSOCIATE THOSE WOUNDS
19 TOGETHER AS BEING PART OF A SINGLE SHOT?

20 A YES. I WOULD NOT DISAGREE WITH THAT.
21 THAT WAS DOCTOR -- I THINK THAT WAS A REVISION OF
22 DR. GOLDEN'S, AND I THINK IT MAKES SENSE, YES.

23 Q OKAY. I'LL PUT THAT ON THE BOARD.

24 WHEN YOU SAY IT MAKES SENSE, ARE YOU
25 SAYING THAT YOU CAN SAY TO A REASONABLE MEDICAL
26 CERTAINTY THAT THAT WAS ALL PART OF ONE WOUND OR ARE
27 YOU SAYING THAT THAT WAS JUST ONE POSSIBILITY AMONG
28 MANY?

1 A WELL, I THINK IT'S LIKELY. I DON'T
2 KNOW -- YOU KNOW, DR. GOLDEN THOUGHT IT WAS AND IT
3 APPEARS -- I'VE SEEN THE X RAYS ALSO AND COMBINING
4 THEM WITH THIS IT APPEARS LIKELY THAT IT IS THE SAME
5 WOUND.

6 Q AND HOW FAR AWAY WAS THAT SHOT FIRED
7 FROM?

8 A SOMEWHERE ABOUT FIVE OR SIX FEET.

9 Q NOW, IN YOUR TESTIMONY YOU DISCUSSED
10 SOMETHING CALLED YAW. COULD YOU TELL US WHAT YAW
11 IS?

12 A YES. YAW IS THE ANGLE -- THE YAW ANGLE
13 IS THE ANGLE BETWEEN THE LONG AXIS OF A PROJECTILE
14 AND ITS LINE OF FLIGHT. SO IF A -- AN OBLONG -- IF AN
15 ELONGATED PROJECTILE, SAY THE POINT OF A BULLET, IS
16 GOING WITH ZERO DEGREES OF YAW, THAT MEANS IT'S
17 TRAVELING STRAIGHT AHEAD. IF IT'S GOING WITH 90
18 DEGREES OF YAW THAT MEANS IT'S TRAVELING SIDEWAYS.

19 Q NOW, YOU DON'T HAVE THAT SAME PROBLEM
20 WHEN YOU'RE DEALING WITH SHOTGUN PELLETS, DO YOU?

21 A NO. A CIRCULAR PROJECTILE DOESN'T HAVE
22 A YAW BECAUSE IT'S THE SAME -- IT HAS THE SAME AXIS.
23 NO MATTER HOW IT TURNS, IT DOESN'T CHANGE.

24 Q DID YOU SAY, HOWEVER, THAT THE CONCEPT
25 OF CAVITATION ALSO APPLIES TO SHOTGUN PELLETS?

26 A YES.

27 Q AND WHY DOES THAT APPLY TO SHOTGUN

41703

1 A WELL, THE CAVITATION IS A PHENOMENON
2 THAT'S -- IF WE COULD GO BACK TO MY ANALOGY OF IT
3 BEING A SPLASH, IT'S ASSOCIATED WITH THE AERODYNAMIC
4 SHAPE OF THE PROJECTILE; AND A POINTED PROJECTILE,
5 FOR INSTANCE, IS VERY AERODYNAMIC AND FLIES THROUGH
6 THE AIR WITH LITTLE DISTURBANCE OF THE AIR AND
7 DOESN'T LOSE AS MUCH VELOCITY.

8 THAT SAME PROJECTILE YAWED GOING
9 SIDEWAYS, OF COURSE, IS NOT AERODYNAMIC AND CAUSES A
10 BIGGER SPLASH IF IT HITS SOMETHING.

11 NOW, A ROUND BALL IS INHERENTLY WHAT WE
12 CALL A BLUNT PROJECTILE. INHERENTLY IT HAS A POOR
13 AERODYNAMIC SHAPE AND OF ITS VERY NATURE IT WOULD
14 CAUSE A LARGER SPLASH.

15 I THINK THE ANALOGY OF A DIVER GOING
16 INTO THE WATER STRAIGHT, MAKING A PERFECT DIVE,
17 CAUSING A LITTLE SPLASH AND THEN GOING IN SIDEWAYS
18 MAKING A LARGE SPLASH, IF YOU WANT TO EXTEND THAT
19 ANALOGY TO THE ROUND BALL, YOU COULD SAY IF THIS
20 PERSON DOES WHAT'S CALLED IN SOME CIRCLES A
21 CANNONBALL DIVE WHERE A PERSON WOULD GO OFF A DIVING
22 BOARD AND CLASP HIS ARMS AROUND HIS KNEES AND FORM

23 HIS BODY AS CLOSE TO A BALL SHAPE AS YOU COULD, HE
24 ALSO MAKES A BIG SPLASH.

25 Q THE CAVITATION FOR SHOTGUN PELLETS IS
26 SIMPLY THAT SPACE WITHIN THE BODY THAT WILL BE
27 INCLUDED WITHIN THE OUTER RANGE OF THE PELLETS?

28 A NO. THE CAVITATION OF SHOTGUN PELLETS

41704

1 VARIES GREATLY DEPENDING ON THE DISTANCE OF FIRE.
2 WHEN THE SHOTGUN PELLETS STRIKE AS A SINGLE
3 PELLET -- I MEAN AS A SINGLE PROJECTILE, IN OTHER
4 WORDS, THEY'RE IN ONE MASS, THEN THEY WILL CAUSE
5 CAVITATION VERY SIMILAR TO A SOLID MASS OF THAT
6 SIZE.

7 AND YOU CAN EQUATE THIS, I THINK, UNDER
8 DIRECT I EQUATED IT TO SOMETHING -- A RIFLE OR
9 SOMETHING UNDER THE NATURE OF A FORTY-FIVE SEVENTY
10 THAT HAS A 300 TO 500 GRAIN BULLET AT THE VELOCITY
11 OF 1300 FEET PER SECOND, WHICH GIVES YOU A CAVITY --
12 A LARGE TEMPORARY CAVITY OF -- WHEN IT MUSHROOMS IT
13 WOULD VERY SIMILARLY GIVE YOU A CAVITY OF WHAT YOU'D
14 LIKELY EXPECT FROM A -- THIS SHOTGUN COLUMN ACTING AS
15 A SINGLE PROJECTILE; AND WHICH WOULD BE A CAVITY,
16 OH, CERTAINLY LARGER THAN A CANTALOUPE BUT SMALLER
17 THAN A WATERMELON. SOMEWHERE IN THAT SIZE.

18 NOW, IF THIS -- THIS IS WHEN THEY'RE
19 GOING TOGETHER.
20 NOW, TO EXTEND THAT, AS THEY GO FURTHER
21 OUT, SAY, SHOTGUN PELLETS HITTING AT A DISTANCE OF
22 20 OR 30 FEET WHERE EACH INDIVIDUAL -- THEN EACH
23 INDIVIDUAL PELLET WILL HAVE A SMALL CAVITY OF ITS
24 OWN, AND THIS SMALL CAVITY MAY BE THE DIAMETER OF
25 THE PELLET, IN THIS CASE, POINT TWENTY-FOUR HUNDREDS
26 OF AN INCH; AND THE -- EACH CAVITY MAY BE ONLY AN
27 INCH IN DIAMETER. BUT THEN IF THEY'RE CLOSER
28 TOGETHER, THEN YOU'D HAVE ONE OR TWO OR ALL THESE

41705

1 WOULD TEND TO BE ADDED. BUT IT GETS VERY COMPLEX AS
2 YOU -- BETWEEN THE TWO EXTREMES OF ONE CAVITY BECAUSE
3 THEY'RE ALL TOGETHER AND ENTIRELY INDIVIDUAL
4 CAVITIES IF THEY'RE ALL SEPARATE.

5 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS
6 272 FOR IDENTIFICATION IN THIS CASE. THIS IS THE
7 ILLUSTRATION WHICH DEPICTS WHAT DR. MC CARTHY
8 DESCRIBED AS SHOT 12. THIS RECONSTRUCTION DEPICTS A
9 SHOT TO THE LEFT CHEEK AREA OF KITTY MENENDEZ.

10 HAVING VIEWED THAT WOUND IN THE
11 PHOTOGRAPH, YOU DO NOT QUARREL WITH THE CONCLUSION
12 THAT THAT WAS A CONTACT WOUND; IS THAT CORRECT?

13 A THAT'S CORRECT. THAT'S CORRECT, YES.

14 Q IS THERE ANYTHING ABOUT THE TRAJECTORY
15 THAT IS DEPICTED IN THIS PHOTOGRAPH THAT YOU WOULD
16 QUARREL WITH?

17 A NO. IT'S A LITTLE BIT DIFFICULT TO
18 ASCERTAIN THE TRAJECTORY UNTIL YOU GET RIGHT UP
19 THERE AND LOOK AT THE SIZE OF THE CIRCLE ON THE END
20 OF THE BAR. IT'S TILTING SOMEWHAT TOWARDS US. BUT
21 BASICALLY, NO, I DON'T HAVE ANYTHING TO QUARREL WITH
22 THAT TRAJECTORY.

23 Q AS FAR AS THE POSITION OF THE -- THE
24 RELATIVE POSITIONS -- YOU CAN VIEW THE PHOTOGRAPH, BY
25 THE WAY, 196.

26 DOES THAT SHOW THE WOUND THAT WE'RE
27 TALKING ABOUT?

28 A YES, IT DOES.

41706

1 Q AS FAR AS THE RELATIVE POSITIONS OF THE
2 VICTIM AND THE SHOOTER IN THIS ILLUSTRATION, DO YOU
3 HAVE ANY QUARREL WITH THE WAY THAT THE VICTIM IS
4 REPRESENTED AS LYING ON HER RIGHT SIDE AS SHE
5 RECEIVES THAT WOUND TO THE LEFT CHEEK?

6 A WELL, I'M NOT SURE -- IF YOU COULD
7 RESTATE THE QUESTION. I'M NOT SURE I'M GETTING

8 EVERYTHING YOU'RE SAYING.

9 Q THE QUESTION IS: AS FAR AS THE WAY IN
10 WHICH THIS ILLUSTRATION DEPICTS THE VICTIM LYING ON
11 HER RIGHT SIDE AS SHE RECEIVED THAT WOUND TO HER
12 LEFT CHEEK, DO YOU HAVE ANY MEDICAL BASIS UPON WHICH
13 YOU WOULD QUARREL WITH THE CONCLUSION THAT IS
14 DEPICTED HERE THAT SHE WAS LYING ON HER RIGHT SIDE
15 AT THE TIME THAT SHOT WAS FIRED?

16 A WELL, I DON'T THINK YOU CAN MAKE THE
17 CONCLUSION. YOU ASKED ME IF I HAD ANY QUARREL WITH
18 THE ANGLE RELATIVE TO HER HEAD AND I SAID I DON'T.
19 BUT CERTAINLY I HAVE A QUARREL SAYING THAT BECAUSE
20 OF THAT ANGLE SHE WAS IN THAT POSITION. THAT ANGLE
21 COULD BE DUPLICATED BY THOUSANDS OF DIFFERENT
22 POSITIONS.

23 Q ALL RIGHT. BUT I'M NOT ASKING YOU IF --
24 I'M NOT ASKING YOU IF YOU HAVE A MEDICAL BASIS UPON
25 WHICH YOU CAN CONCLUDE THAT THAT WAS THE ONLY ANGLE
26 AT WHICH IT WAS FIRED.

27 MY QUESTION TO YOU IS: DO YOU HAVE ANY
28 MEDICAL BASIS UPON WHICH YOU CAN CONCLUDE THAT THE

41707

1 VICTIM WAS NOT IN THAT POSITION AT THE TIME THAT
2 THAT SHOT WAS FIRED?

3 A OH, NO. I CAN'T RULE IT OUT. I CAN'T

4 RULE IT IN. OF COURSE NOT.

5 Q AND AS FAR AS THE RELATIVE POSITION OF

6 THE SHOOTER AT THE TIME THAT THAT SHOT WAS FIRED, DO

7 YOU HAVE ANY QUARREL WITH THE RELATIVE -- THE

8 SHOOTER'S RELATIVE POSITION AS REPRESENTED IN THIS

9 ILLUSTRATION?

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

11 OBJECT TO THE QUESTION. IT ASSUMES FACTS NOT IN

12 EVIDENCE.

13 THE COURT: WELL, THERE'S NO SHOOTER DEPICTED

14 IN THAT DRAWING, NUMBER ONE; AND NUMBER TWO, IT'S

15 NOT CLEAR WHAT YOU MEAN BY A QUARREL.

16 Q BY MR. CONN: DO YOU HAVE ANY MEDICAL

17 BASIS UPON WHICH YOU CAN CONCLUDE THAT AT THE TIME

18 THAT THIS SHOT WAS FIRED, THE SHOTGUN WAS NOT

19 POSITIONED IN THE MANNER THAT IS DEPICTED IN THAT

20 ILLUSTRATION?

21 MS. ABRAMSON: SAME OBJECTION, YOUR HONOR.

22 ASSUMES FACTS NOT IN EVIDENCE.

23 THE COURT: ARE YOU ABLE TO ANSWER THAT

24 QUESTION?

25 THE WITNESS: WELL, I THINK -- I'LL TRY.

26 THE COURT: OKAY.

27 THE WITNESS: IN THE FIRST PLACE, THERE'S NO

28 SHOTGUN DEPICTED HERE.

1 ARE YOU ASKING ME TO ASSUME THE ROD

2 THERE IS THE SHOTGUN?

3 Q YES. LET ME ASK YOU THIS FIRST.

4 YOU PREVIOUSLY SAID THAT THAT'S A

5 CONTACT WOUND; IS THAT CORRECT?

6 A YES.

7 Q OKAY. NOW, THIS ILLUSTRATION, HOW THE

8 SHOTGUN WOULD HAVE BEEN PLACED TO THE VICTIM TO

9 OBTAIN THAT SHOT; IS THAT CORRECT?

10 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

11 FOR SPECULATION.

12 THE COURT: WELL, WHY DON'T YOU ASK HIM TO

13 ASSUME THAT.

14 Q BY MR. CONN: ASSUMING THAT THIS

15 ILLUSTRATION DEPICTS HOW THE SHOTGUN WAS PLACED AT

16 THE TIME OF THAT FINAL SHOT TO KITTY MENENDEZ, DO

17 YOU HAVE ANY MEDICAL BASIS UPON WHICH YOU CAN SAY

18 THAT THE SHOTGUN WAS NOT SO POSITIONED?

19 A NO, I DON'T.

20 Q THERE IS NOTHING THAT YOU'VE SEEN IN ANY

21 OF THE AUTOPSY REPORTS OF DR. GOLDEN WHICH WOULD

22 CAUSE YOU TO SAY THAT THIS ILLUSTRATION IS WRONG IN

23 THE MANNER IN WHICH IT DEPICTS THAT SHOTGUN WOUND TO

24 KITTY MENENDEZ?

25 A NO. THAT'S TRUE. SURE, IF THE SHOTGUN

26 WAS THERE AND SHE WAS IN THAT POSITION, WHICH IS NOT
27 ESTABLISHED BY ANY MEDICAL EVIDENCE THAT I KNOW OF,
28 BUT IF THAT -- IF I'M ASKED TO ASSUME THAT AND THEN

41709

1 THE SHOT -- AND THAT ROD I'M ASKED TO ASSUME IS THE
2 SHOTGUN, SURE, THAT'S A POSSIBILITY.

3 Q AND YOU UNDERSTAND, YOU UNDERSTAND THAT
4 AT THE TIME THAT THE BODY OF KITTY MENENDEZ WAS
5 FOUND SHE WAS IN THAT POSITION; IS THAT CORRECT?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR. NO
7 FOUNDATION.

8 THE COURT: REPHRASE THE QUESTION.

9 MS. ABRAMSON: ASSUMES FACTS NOT IN EVIDENCE.

10 Q BY MR. CONN: HAVE YOU LOOKED AT THE
11 CRIME-SCENE PHOTOGRAPHERS OF THE BODIES OF KITTY AND
12 JOSE MENENDEZ?

13 A YES.

14 Q HAVE YOU SEEN THE ONES THAT DEPICT THE
15 POSITION OF THEIR BODIES AT THE TIME THAT THEY WERE
16 FOUND AT THE CRIME SCENE?

17 A YES.

18 Q AND DOES THAT ILLUSTRATION APPEAR TO
19 REPRESENT THE POSITION OF KITTY MENENDEZ AT THE TIME
20 THAT THE BODY WAS FOUND?

21 A WELL, FROM WHAT I CAN SEE OF THE BODY,
22 YES. BUT YOU ONLY SEE ABOUT LESS THAN HALF THE
23 BODY. BUT FROM WHAT I CAN SEE OF THE BODY, IT'S
24 CONSISTENT WITH IT.

25 Q HAVE YOU SEEN ANOTHER ILLUSTRATION WHICH
26 DEPICTS THE REMAINDER OF THE BODY BEHIND THE COFFEE
27 TABLE AT THE TIME OF SHOT 12?

28 A YOU MEAN THE ILLUSTRATION OF THE SAME

41710

1 FORMAT AS THESE?

2 Q YES.

3 A I'M NOT SURE IF I HAVE. I THINK I HAVE,
4 BUT IF YOU --

5 Q ALL RIGHT. LET ME SHOW YOU WHAT HAS
6 BEEN MARKED AS 273 FOR IDENTIFICATION.

7 DO YOU RECOGNIZE 273 AS AN ILLUSTRATION
8 THAT YOU'VE PREVIOUSLY SEEN?

9 A YES.

10 Q AND DOES THAT APPEAR TO BE CONSISTENT
11 WITH THE POSITION OF THE BODY OF KITTY MENENDEZ AT
12 THE TIME THAT SHE WAS -- HER BODY WAS DISCOVERED BY
13 THE POLICE?

14 A YES.

15 Q NOW, HAVING SEEN THE ENTIRE DEPICTION OF

16 THE BODY OF KITTY MENENDEZ AT THE TIME THAT SHE WAS
17 FOUND, DO YOU HAVE ANY MEDICAL BASIS UPON WHICH YOU
18 CAN SAY THAT THIS ILLUSTRATION DOES NOT ACCURATELY
19 DEPICT THE POSITION OF THE SHOTGUN AT THE TIME THAT
20 THAT CONTACT WOUND WAS INFLICTED TO HER LEFT CHEEK?

21 A MAY I MANIPULATE THOSE TWO AND LOOK AT
22 THE LAST TWO SEPARATELY?

23 THE COURT: YES.

24 MR. CONN: CERTAINLY.

25 THE COURT: PERHAPS YOU CAN SECURE THAT IN
26 SOME WAY, MR. CONN, SO IT DOESN'T FALL OFF.

27 THE WITNESS: THE REASON I WISHED TO SEE THEM
28 SEPARATELY IS BECAUSE WHEN I LOOKED AT THE SECOND

41711

1 ONE DOWN HERE IT APPEARED THAT IT WAS NOT THE SAME
2 ANGLE AS APPEARED IN THE OTHER ONE. AND NOW IN
3 LOOKING AT THE DIMENSIONAL CHANGE, I RECOGNIZE THAT
4 IT IS; AND, YES, I AGREE.

5 MR. CONN: OKAY.

6 Q SHOWING YOU THE EXHIBIT THAT HAS BEEN
7 MARKED AS 270 FOR IDENTIFICATION, THIS IS AN EXHIBIT
8 THAT HAS BEEN DESCRIBED AS REPRESENTING THE SHOT TO
9 KITTY MENENDEZ WHICH STRUCK BOTH THE LEFT SHOULDER
10 AREA AND THE AREA BEHIND THE LEFT EAR WHICH YOU

11 INDICATED WAS CONSISTENT WITH A SINGLE SHOT.

12 ASSUMING THAT THE GREEN BAR IN THAT

13 DIAGRAM REPRESENTS THE TRAJECTORY AT WHICH THE SHOT

14 WAS FIRED, IS THERE ANY MEDICAL BASIS UPON WHICH YOU

15 CAN SAY THAT THIS PARTICULAR SHOT WAS NOT INFLICTED

16 UPON KITTY MENENDEZ AS ILLUSTRATED IN THIS DIAGRAM?

17 A NO.

18 Q AND YOU HAVE PLACED THIS SHOT AT

19 APPROXIMATELY FIRED THREE TO FOUR FEET AWAY FROM THE

20 LEFT SHOULDER OF KITTY MENENDEZ. IF THIS DIAGRAM IS

21 CORRECT, THEN WOULD THAT PLACE THE SHOOTER SOMEWHERE

22 APPROXIMATELY RIGHT HERE (POINTING), THAT IS,

23 STANDING BETWEEN THE COFFEE TABLE AND THE SOFA AT

24 THE TIME HE IS FIRING THAT SHOT INTO THE LEFT

25 SHOULDER AND LEFT EAR OF KITTY MENENDEZ?

26 A ACTUALLY, IT APPEARS TO ME MORE LIKELY

27 THAT IN ORDER FOR THAT TO LINE UP, HE'D HAVE TO BE

28 STANDING ON THE COFFEE TABLE TO DO THAT TO GET THAT

41712

1 FAR AWAY.

2 Q I'M SORRY. THAT HE WOULD HAVE TO BE

3 WHERE?

4 A I THINK IN ORDER TO -- IF I COULD

5 ILLUSTRATE ON IT.

6 SEEMS TO ME THAT IN ORDER TO GET THE END
7 OF THE SHOTGUN BARREL HERE AT THAT DOWNWARD ANGLE, I
8 DON'T THINK THAT THE DEFENDANTS, WHOM LOOK TO BE
9 NORMAL-SIZED PEOPLE, COULD BE THAT HIGH. I THINK
10 ONE OF THEM WOULD HAVE TO BE STANDING ON THE TABLE
11 TO GET HIGH ENOUGH TO LINE IT UP AT THAT DISTANCE.

12 Q OKAY. AND IS THAT BECAUSE YOU ARE
13 SAYING THAT YOU CAN DETERMINE FROM LOOKING AT THE
14 WOUNDS THAT THE SHOT WAS FIRED AT THAT PARTICULAR
15 ANGLE, OR ARE YOU SAYING THAT IF THIS ANGLE AS
16 DEPICTED IN THIS ILLUSTRATION IS CORRECT, THEY WOULD
17 HAVE TO BE AT THAT HEIGHT?

18 A YES. THAT'S WHAT I THOUGHT THE QUESTION
19 WAS. I WAS ASKED TO ASSUME THIS ANGLE IS CORRECT.
20 IS THAT -- IS THAT NOT THE FORMAT OF YOUR QUESTION?

21 Q YES, THAT WAS MY QUESTION.

22 A YES. AND THEN MY ANSWER IS IF YOU
23 ASSUME THAT TO BE RIGHT, THEN IN MY OPINION SOMEONE
24 WOULD HAVE TO BE STANDING -- I DON'T THINK STANDING
25 ON THE FLOOR THEY COULD GET HIGH ENOUGH.

26 Q OKAY. NOW, DID YOU READ THE TESTIMONY
27 OF DR. MC CARTHY WHEN I ASKED DR. MC CARTHY WHAT WAS
28 THE ESSENTIAL INFORMATION THAT HE WAS SEEKING TO

1 COMMUNICATE THROUGH THIS ILLUSTRATION?

2 A I DON'T RECALL THAT, NO.

3 Q DO YOU RECALL DR. MC CARTHY SAYING THAT

4 ALL HE WAS REALLY --

5 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS,

6 YOUR HONOR, AS HEARSAY, WHAT DR. MC CARTHY SAID.

7 THIS WITNESS DIDN'T READ IT.

8 THE COURT: WE DON'T KNOW. HE SAID HE READ

9 MOST OF MC CARTHY'S TESTIMONY.

10 MS. ABRAMSON: I WOULD STILL OBJECT TO

11 RECITING MC CARTHY'S TESTIMONY WITHOUT A FOUNDATION.

12 THE COURT: I ASSUME IT'S A PREMISE TO A

13 QUESTION. AT THIS POINT IT'S OVERRULED SUBJECT TO A

14 MOTION TO STRIKE.

15 MS. ABRAMSON: THANK YOU, YOUR HONOR.

16 Q BY MR. CONN: DO YOU RECALL

17 DR. MC CARTHY TESTIFYING THAT THE ESSENTIAL

18 INFORMATION THAT HE WAS SEEKING TO COMMUNICATE

19 THROUGH THIS ILLUSTRATION WAS SIMPLY THAT THE SHOT

20 TO THE LEFT ELBOW -- OR TO THE LEFT SHOULDER AND THE

21 TO THE LEFT EAR, WAS PART OF A SINGLE SHOT FIRED

22 UPON THE VICTIM AT THE TIME THAT SHE WAS LAYING ON

23 HER RIGHT SIDE ON THE FLOOR?

24 A NO, I DON'T RECALL THAT TESTIMONY.

25 Q OKAY. DID YOU FEEL, BY VIRTUE OF THIS

26 ILLUSTRATION, THAT DR. MC CARTHY WAS SUGGESTING THAT

27 THIS PARTICULAR ANGLE, WHICH IS DEPICTED IN THIS

28 ILLUSTRATION, IS THE ONLY CORRECT ANGLE RATHER THAN

1 AN ANGLE SLIGHTLY LOWER?

2 A I DIDN'T ASSUME ANYTHING. YOU ASKED ME
3 TO ASSUME THIS IS THE CORRECT ANGLE AND I'VE
4 ANSWERED THE QUESTION BASED ON THAT.

5 Q ALL RIGHT. YOU TOLD US EARLIER THAT YOU
6 QUARRELED OR HAD DISAGREEMENT WITH VARIOUS ASPECTS
7 OF DR. MC CARTHY'S RECONSTRUCTION IN THIS CASE; IS
8 THAT CORRECT?

9 A YES.

10 Q NOW I'M NO LONGER ASKING YOU ABOUT THE
11 QUESTION I ASKED YOU. I'M ASKING YOU ANOTHER
12 QUESTION.

13 A OKAY.

14 Q MY QUESTION IS: AS YOU REVIEWED THESE
15 ILLUSTRATIONS, AND IN PARTICULAR THIS ILLUSTRATION
16 HERE FOR SHOT 11A, DID YOU ASSUME THAT WHAT
17 DR. MC CARTHY WAS SEEKING TO COMMUNICATE IN THIS
18 ILLUSTRATION WAS THAT THE ANGLE HAD TO BE IN THE
19 SAME PRECISE MANNER IN WHICH IT IS DEPICTED HERE
20 RATHER THAN IN A SLIGHTLY DIFFERENT ANGLE SUCH AS
21 THIS?

22 A WELL, I GUESS MY NATURAL ASSUMPTION,
23 SEEING AN ILLUSTRATION LIKE THIS, IS THAT THE PERSON
24 WHO DEPICTED IT WAS ESTABLISHING THE ANGLE THAT HE

25 FELT MOST ACCURATELY REPRESENTED THE REAL ANGLE. SO
26 I ASSUME HE WAS TRYING TO REPRESENT IT AS IT WAS.
27 Q OKAY. NOW, ASSUMING THE AUTHOR OF THAT
28 ANGLE WERE TO SAY THAT WHAT HE WAS SEEKING TO

41715

1 COMMUNICATE IN THIS ILLUSTRATION WAS NOT SO MUCH THE
2 PRECISE ANGLE, BUT SIMPLY THAT THE SHOULDER INJURY
3 AND THE EAR INJURY COULD BE CONNECTED TOGETHER AND
4 WAS INFLICTED WHILE THE VICTIM WAS ON THE RIGHT
5 SIDE, WOULD YOU THEN BE ABLE TO CONSIDER THE
6 POSSIBILITY, FOR PURPOSES OF DISCUSSION, THAT THIS
7 ANGLE WAS SLIGHTLY DIFFERENT THAN DEPICTED IN THIS
8 ILLUSTRATION?

9 MS. ABRAMSON: OBJECTION, YOUR HONOR.
10 THERE'S ABOUT SIX CHOICES. COMPOUND. CALLS FOR
11 SPECULATION. ULTIMATELY IRRELEVANT.

12 THE COURT: IT IS ARGUMENTATIVE AS PHRASED.

13 Q BY MR. CONN: ASSUMING, HYPOTHETICALLY,
14 THAT THIS ANGLE WHICH DEPICTS THE TRAJECTORY WERE
15 LOWERED SO THAT IT IS COMING MORE AT THIS ANGLE, AS
16 I AM NOW DEPICTING IT, THAN IN THE MANNER IN WHICH
17 IT IS DEPICTED IN THIS ILLUSTRATION --

18 MS. ABRAMSON: WELL, YOUR HONOR, I'M GOING TO
19 OBJECT TO ASSUMING THAT AS A HYPOTHETICAL UNLESS

20 THERE'S AN OFFER MADE THAT SOMEONE'S GOING TO
21 TESTIFY TO THAT.
22 THE COURT: OVERRULED.
23 THE WITNESS: ACTUALLY, I THINK THE LINE YOU
24 DREW WOULD -- YOU APPEARED TO DRAW ABOUT A 15-DEGREE
25 VARIATION FROM THAT. I THINK YOU'D HAVE TO COME
26 DONE ABOUT 10 MORE DEGREES FOR IT TO LINE UP.
27 Q BY MR. CONN: OKAY. TWENTY-FIVE
28 DEGREES?

41716

1 A I THINK IF YOU TAKE 25 DEGREES OFF THAT
2 ANGLE IT'S POSSIBLE, YES.
3 Q DO YOU THINK THAT IT IS MEDICALLY
4 POSSIBLE THAT KITTY MENENDEZ WAS SHOT IN BOTH HER
5 LEFT ELBOW AND IN THE AREA OF HER LEFT EAR --
6 THE COURT: YOU KEEP POINTING TO YOUR
7 SHOULDER AND TALKING ABOUT THE ELBOW.
8 MR. CONN: I'M SORRY. LEFT SHOULDER.
9 Q DO YOU THINK IT IS MEDICALLY POSSIBLE
10 THAT KITTY MENENDEZ WAS STRUCK IN HER LEFT SHOULDER
11 AND IN HER LEFT EAR AS PART OF A SAME SINGLE SHOT
12 WHILE SHE WAS LYING ON HER RIGHT SIDE ON THE FLOOR
13 AS THAT MUCH IS DEPICTED IN THE ILLUSTRATION?
14 A WAS THAT A QUESTION?

15 Q AS THAT IS DEPICTED IN THE ILLUSTRATION --
16 THAT IS, THIS DEPICTS THE BODY OF KITTY MENENDEZ
17 BEING STRUCK IN THE LEFT SHOULDER AND LEFT EAR AREA
18 WHILE SHE WAS LYING ON HER RIGHT SIDE; IS THAT
19 CORRECT?

20 A THAT IT DEPICTS, YES.

21 Q DO YOU FEEL THAT THAT IS MEDICALLY
22 POSSIBLE?

23 A IT'S MEDICALLY POSSIBLE, SURE.

24 Q OKAY. AND ASSUMING THAT THAT SHOT WAS
25 FIRED ABOUT 25 DEGREES LOWER THAN THE ANGLE THAT IS
26 DEPICTED IN THAT ILLUSTRATION, DO YOU FEEL THAT SUCH
27 AN ANGLE, IMAGINARY ANGLE NOW, COULD REPRESENT THE
28 TRAJECTORY IN THIS CASE; THAT IS, THE TRAJECTORY AT

41717

1 WHICH THE SHOT WAS FIRED TO THE BODY OF KITTY
2 MENENDEZ?

3 A NO.

4 Q IT COULD NOT?

5 A NO.

6 Q WHY IS THAT?

7 A WELL, IF YOU MAKE THE ANGLE 25 DEGREES
8 LOWER, YOU CAN'T HIT THE -- YOU CAN'T HIT THE
9 SHOULDER WITH THE -- AND HIT THE HEAD. I MEAN, IT

10 WOULD MISS THE HEAD.

11 Q SO WHAT YOU'RE SAYING THEN IS THAT IT IS
12 NOT POSSIBLE FOR SOMEONE TO STAND ABOVE KITTY
13 MENENDEZ AND TO FIRE A SHOT INTO HER SHOULDER AND
14 INTO HER HEAD AS SHE IS LYING ON HER RIGHT SIDE.

15 A WELL, IF SHE'S LYING IN THAT POSITION
16 IT'S -- NO, IT'S NOT.

17 AS YOU ASK IN THE HYPOTHETICAL, YOU
18 ASKED IF WE WOULD LOWER THIS LINE -- IF I COULD
19 DEMONSTRATE WHAT I'M TALKING ABOUT.

20 YOU SUGGESTED THAT GIVEN THE SHOULDER
21 WOUND -- AND IT'S PRETTY ACCURATELY -- IF WE TAKE
22 THIS AND LOWER THIS 25 DEGREES, IT MISSES HER HEAD
23 BY SEVERAL INCHES. THAT'S THE POINT I'M MAKING.

24 Q SO WHAT YOU'RE SAYING IS YOU'RE TELLING
25 US NOW THAT THE WOUND TO KITTY'S LEFT SHOULDER AND
26 THE WOUND TO KITTY'S -- TO KITTY MENENDEZ'S LEFT EAR
27 COULD NOT HAVE POSSIBLY BEEN INFLECTED BY A SINGLE
28 SHOT WHILE SHE WAS LYING ON HER RIGHT SIDE ON THE

41718

1 FLOOR?

2 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
3 MISSTATES THE TESTIMONY.

4 THE COURT: OVERRULED.

5 Q BY MR. CONN: IS THAT WHAT YOU'RE

6 SAYING, DOCTOR?

7 A NO. I'M SAYING IN THAT POSITION.

8 YOU ASKED ME -- ALL THESE QUESTIONS HAVE
9 BEEN BASED ON THE PREMISE THAT SHE'S LYING IN THE
10 POSITION THAT SHE IS DEPICTED HERE, WHICH IS THE
11 POSITION THAT WE'VE ESTABLISHED WAS THE POSITION SHE
12 WAS FOUND IN. YOU'RE ASKING ME ABOUT THIS
13 POSITION.

14 AND THEN THE NEXT QUESTION YOU ASKED ME
15 WAS ON HER RIGHT SIDE. THAT'S NOT THE ONLY POSITION
16 KITTY MENENDEZ COULD ASSUME ON HER RIGHT SIDE.

17 Q OKAY. HOW WOULD SHE BE DIFFERENT -- IN
18 ORDER FOR A SINGLE SHOT TO BE FIRED THAT WOULD
19 STRIKE HER IN BOTH HER LEFT SHOULDER AND IN HER LEFT
20 EAR WHILE SHE WAS LYING ON HER RIGHT SIDE? HOW
21 WOULD SHE HAVE TO BE DEPICTED DIFFERENTLY?

22 A WELL, THERE'S SEVERAL WAYS IT'S
23 POSSIBLE. IF I MAY ILLUSTRATE.

24 Q SURE.

25 A IF YOU WANT TO KEEP HER BODY IN THE SAME
26 POSITION, IF YOU PUT HER HEAD STRAIGHT UP THAT WOULD
27 DO IT. SEE, HER HEAD IS DROPPED DOWN TO THE SIDE.
28 IF SHE PUT HER HEAD STRAIGHT UP, THEN THAT WOULD

1 LINE UP. THAT WOULD BE ONE WAY OF DOING IT.

2 SO IF SOMEHOW SHE DROOPED HER SHOULDER
3 DOWN OUT OF THE WAY OR SOME OTHER -- I GUESS THERE'S
4 LOTS OF WAYS OF DOING IT, BUT YOU CAN'T DO IT THIS
5 WAY WITHOUT CHANGING THE ANGLE. AND IF YOU CHANGE
6 THE ANGLE, YOU MISS THE HEAD.

7 Q MY QUESTION IS: ARE YOU QUARRELLING
8 WITH THE CONCEPT THAT KITTY MENENDEZ COULD HAVE BEEN
9 SHOT BOTH IN THE LEFT SHOULDER AND IN THE LEFT EAR
10 OR ARE YOU -- WHILE SHE WAS LYING ON HER RIGHT SIDE
11 ON THE FLOOR, OR ARE YOU QUARRELLING WITH THE
12 ARTIST'S DEPICTION OF HER IN THIS ILLUSTRATION?

13 A I'M NOT QUARRELLING WITH ANYONE. I'M
14 JUST TRYING TO POINT OUT TO YOU AND TRYING TO ANSWER
15 YOUR QUESTIONS, YOUR HYPOTHETICAL, AS BEST I CAN,
16 SHOWING YOU WHY IT DOESN'T WORK IN THIS POSITION.

17 I THINK THAT, CERTAINLY, I THINK IT IS
18 VERY LIKELY THAT THE SAME SHOT THAT HIT KITTY
19 MENENDEZ'S SHOULDER ALSO HIT HER EAR. AND THIS IS --
20 THIS DEPICTION, IT MAKES IT VERY DIFFICULT.

21 BUT THERE ARE VARIOUS OTHER POSITIONS
22 SHE COULD HAVE BEEN IN, STANDING AND SITTING AND
23 DOING VARIOUS THINGS WHERE IT WOULD BE POSSIBLE.
24 CERTAINLY, IT CAN'T HAPPEN THERE IN THIS POSITION,
25 WHICH IS THE POSITION SHE WAS FOUND IN.

26 Q OKAY. WHAT YOU'RE -- IT COULD NOT HAVE
27 BEEN -- IT COULD NOT HAVE HAPPENED IN THE POSITION

41720

1 A NOT ACCORDING TO THE DIAGRAM YOU'VE
2 SHOWN ME HERE AND ASKED ME TO ASSUME IT'S CORRECT.

3 Q ARE YOU TALKING NOW ABOUT THE DIAGRAM OR
4 ARE YOU TALKING ABOUT THE MANNER IN WHICH SHE WAS
5 FOUND?

6 A WELL, WE JUST ESTABLISHED THAT THEY'RE
7 THE SAME, DIDN'T WE?

8 Q IS THAT, IN FACT, CORRECT? ARE YOU
9 SAYING THAT AT THE TIME SHE WAS FOUND HER BODY WAS
10 PRECISELY AS DEPICTED IN THAT ILLUSTRATION?

11 A WELL, I THOUGHT WE HAD AGREED THAT IT
12 WAS -- I CAN'T SAY PRECISELY, BUT VERY CLOSE TO THE
13 POSITION THAT I SAW ON THE CRIME-SCENE PHOTOGRAPHS.

14 Q DO YOU FEEL THAT THAT ILLUSTRATION
15 ACCURATELY REPRESENTS THE MANNER IN WHICH SHE WAS --
16 THE MANNER IN WHICH HER BODY APPEARED AT THE TIME
17 SHE WAS FOUND AT THE CRIME SCENE?

18 A I FEEL IT DOES, YES.

19 Q AND SO YOU FEEL, BASED UPON YOUR REVIEW
20 OF THE PHOTOGRAPHS IN THIS CASE, THAT THE LAST SHOT
21 COULD NOT HAVE BEEN INFLICTED TO HER -- TO HER WHILE
22 SHE WAS IN THAT PRECISE OPINION?

23 MS. ABRAMSON: OBJECTION, YOUR HONOR. THAT
24 MISSTATES THE TESTIMONY.

25 THE COURT: SUSTAINED.

26 Q BY MR. CONN: I'M ASKING YOU: DO YOU
27 FEEL THAT THE LAST SHOT TO HER LEFT SHOULDER -- I'M
28 SORRY -- DO YOU FEEL THAT THE SHOT TO HER LEFT

41721

1 SHOULDER AND TO THE AREA OF HER LEFT EAR COULD HAVE
2 BEEN INFLICTED WHILE SHE WAS IN THE SAME POSITION IN
3 WHICH SHE WAS FOUND AT THE TIME OF THE POLICE
4 ARRIVAL?

5 A WELL, IT SEEMS FROM -- IT SEEMS FROM THIS
6 DEPICTION HERE BASICALLY PROVES THAT IT'S -- IT
7 COULDN'T.

8 Q AGAIN, SIR, I GOT AWAY FROM THAT PICTURE
9 THERE IN MY LAST QUESTION.

10 WHAT I'M ASKING YOU ABOUT -- LET ME SHOW
11 YOU WHAT HAS BEEN MARKED AS 7 FOR IDENTIFICATION.

12 DO YOU RECOGNIZE THAT TO BE A PHOTOGRAPH
13 OF THE CRIME SCENE?

14 A YES, I DO.

15 Q OKAY. NOW, I'M NOT ASKING YOU ABOUT THE
16 ILLUSTRATION. I'M ASKING YOU ABOUT THE BODY OF
17 KITTY MENENDEZ AT THE CRIME SCENE. OKAY?

18 A YES.

19 Q NOW, DO YOU FEEL THAT A SHOT COULD HAVE
20 BEEN INFLICTED TO THE BODY OF KITTY MENENDEZ,
21 STRIKING BOTH HER LEFT SHOULDER AND HER LEFT EAR,
22 WHILE SHE WAS LYING ON HER RIGHT SIDE AS DEPICTED IN
23 THE PHOTOGRAPH OF HER AT THE CRIME SCENE?

24 A IF I MAY.

25 ACTUALLY, THE ANGLE LINES UP QUITE WELL
26 WITH THE ONE THAT'S PREDICTED HERE, WHICH WE'VE
27 ESTABLISHED CAN'T HAPPEN. SO THE ANSWER TO THE
28 QUESTION IS: I DON'T THINK SHE COULD HAVE BEEN

41722

1 SHOT, UNLESS THE SHOOTER STOOD ON THE COUCH OR THE
2 TABLE.

3 Q OKAY. NOW, PUTTING ASIDE, PUTTING ASIDE
4 THE PRECISE MANNER IN WHICH SHE IS DEPICTED HERE AT
5 THE CRIME SCENE --

6 THANK YOU. YOU MAY RETURN TO YOUR
7 SEAT.

8 PUTTING ASIDE THE PRECISE MANNER IN
9 WHICH SHE IS DEPICTED IN THE PHOTOGRAPH, DO YOU
10 THINK IT IS MEDICALLY POSSIBLE THAT SHE COULD HAVE
11 BEEN SHOT IN HER LEFT SHOULDER AND IN THE AREA OF
12 HER LEFT EAR WHILE LYING ON HER RIGHT SIDE?

13 A IN ANY POSITION ON HER RIGHT SIDE?
14 Q ANY POSITION.
15 A OR THE POSITION YOU SEE HERE?
16 Q ANY POSITION ON HER RIGHT SIDE.
17 A WELL, AS I'VE TESTIFIED EARLIER, IF
18 SHE -- IF SHE WERE CONSCIOUS, AND RATHER THAN HAVING
19 HER HEAD DROOPED, IF SHE HAD HER HEAD ERECT IT WOULD
20 BE POSSIBLE. BUT IT'S NOT POSSIBLE WITH HER
21 UNCONSCIOUS OR ANYHOW IN HAVING HER HEAD DRAPED LIKE
22 SHE DOES HERE. IT'S NOT POSSIBLE.
23 Q OR ANOTHER POSSIBILITY IS THAT ASIDE
24 FROM HER HEAD BEING MORE ERECT, HER SHOULDER MIGHT
25 HAVE BEEN IN A SLIGHTLY DIFFERENT POSITION; IS THAT
26 TRUE TOO?
27 A I WAS THINKING OF THAT AND THAT'S A
28 LITTLE BIT MORE DIFFICULT TO DO. I GUESS IT'S

41723

1 POSSIBLE. BUT I THINK IT WOULD BE VERY DIFFICULT TO
2 BE HAVING THE -- YOU HAVE TO -- YOU KNOW, YOU HAVE A
3 CERTAIN MINIMUM WIDTH OF THE CHEST, AND IN ORDER TO
4 GET THAT SHOULDER DOWN AND -- YOU'D HAVE TO EITHER
5 PUT HER MORE SIDEWAYS OR SOMETHING. I DON'T THINK
6 YOU CAN DO IT WITH THE SHOULDERS RELATIVELY
7 PERPENDICULAR TO THE GROUND.

8 Q I'M NOT ASKING YOU TO ASSUME HER
9 SHOULDER AS RELATIVELY PERPENDICULAR TO THE GROUND
10 BECAUSE I'M NOT TALKING TO YOU ABOUT A PHOTOGRAPH
11 RIGHT NOW.

12 I'M TALKING TO YOU ABOUT WHETHER IT
13 WOULD BE POSSIBLE IF HER SHOULDER WERE IN A
14 DIFFERENT POSITION THAN THAT WHICH IS DEPICTED IN
15 THE PHOTOGRAPH, WHETHER A SINGLE SHOT COULD HAVE
16 CAUSED THE INJURY TO BOTH HER LEFT SHOULDER AND TO
17 THE AREA NEAR HER LEFT EAR.

18 A WAS AN ASSUMPTION IN THIS QUESTION THAT
19 SHE IS LYING ON THE GROUND RESTING ON HER RIGHT
20 SIDE?

21 Q SOMEHOW ON HER RIGHT SIDE, THAT'S
22 CORRECT.

23 A SOMEHOW ON HER RIGHT SIDE. THAT'S VERY
24 DIFFICULT TO IMAGINE THAT AS A POSSIBILITY.

25 Q SO HER HEAD WOULD HAVE TO BE UP
26 SOMEWHAT?

27 A HEAD WOULD HAVE TO BE ERECT.

28 Q OKAY. AND IN THAT SCENARIO SHE WOULD

41724

1 HAVE TO BE ALIVE FOR HER HEAD TO BE ERECT SOMEWHAT?

2 A THAT WOULD BE THE BEST WAY TO HAVE IT

3 THERE. I GUESS IF THERE WERE SOMETHING ELSE FOUND
4 THAT HER HEAD WAS RESTING ON, IF -- IF SHE'S NOT
5 ALIVE SHE CAN'T HOLD HER HEAD UP VOLUNTARILY. SO
6 UNLESS THERE'S SOMETHING UNDER HER HEAD TO HOLD IT
7 UP, YES.

8 Q OKAY. SO THEN ASSUMING THAT -- ASSUMING
9 THAT THIS WAS THE NEXT TO THE LAST SHOT FIRED, I
10 UNDERSTAND YOU DISAGREE WITH THAT, JUST AS A
11 MATTER --

12 A DISAGREE WITH WHAT?

13 Q THE SEQUENCE OF THE WOUNDS IN THIS
14 CASE.

15 A THE SEQUENCE OF THE WOUNDS IN THIS CASE,
16 YEAH, I CAN'T ESTABLISH -- I CAN'T AGREE OR DISAGREE
17 BECAUSE I THINK THEY CANNOT BE ESTABLISHED.

18 Q OKAY. I UNDERSTAND THAT. BUT JUST
19 ASSUMING THAT THIS IS THE NEXT TO THE LAST SHOT THAT
20 WAS FIRED, WOULD IT BE YOUR OPINION, THEN, THAT AT
21 THE TIME THAT THIS SHOT WAS FIRED STRIKING KITTY
22 MENENDEZ IN HER LEFT SHOULDER AND IN HER LEFT EAR,
23 KITTY MENENDEZ WAS NECESSARILY ALIVE DURING THIS
24 SHOT BECAUSE HER HEAD HAD TO BE IN AN ERECT POSITION
25 IN ORDER FOR THAT SHOT TO TAKE PLACE?

26 A IF I ASSUME THAT THIS IS -- I'M TO ASSUME
27 THIS IS THE NEXT TO THE LAST SHOT AND THEN YOU'RE
28 ALSO -- IN THIS THE ASSUMPTION IS THE CONTACT WOUND

1 IS THE LAST SHOT; IS THAT IT?

2 Q I DON'T THINK THAT'S NECESSARY FOR THE
3 ASSUMPTION.

4 A OKAY.

5 Q ASSUMING THAT THIS IS THE NEXT TO THE
6 LAST SHOT IN THE SEQUENCE OF SHOTS THAT WERE FIRED,
7 FOR PURPOSES OF THAT ASSUMPTION, FOR PURPOSES OF
8 THAT HYPOTHETICAL, IT WOULD BE YOUR OPINION THAT
9 KITTY MENENDEZ WAS ALIVE AT THE TIME THAT THIS SHOT
10 WAS FIRED BECAUSE HER HEAD HAD TO BE LIFTED IN ORDER
11 FOR THAT SHOT TO TAKE PLACE; IS THAT CORRECT?

12 A WELL, NO, BECAUSE YOU -- IF YOU MAKE THE
13 ASSUMPTION THAT THIS IS THE NEXT TO THE LAST SHOT
14 FIRED, THAT MEANS THAT THE SHOTS -- THE OTHER SHOTS
15 THAT HIT HER FRONT ON, YOU HAD TWO SHOTS OF NO. 2 --
16 OR NO. 4 BUCKSHOT THAT HIT HER STRAIGHT ON, AND I
17 THINK THE CHANCES OF HER REMAINING CONSCIOUS AFTER
18 THOSE TWO ARE REMOTE. AND, THEREFORE, BECAUSE OF
19 THAT, I DON'T THINK IF THIS IS THE NEXT TO THE LAST
20 SHOT SHE WOULD HAVE BEEN CONSCIOUS. SO, THEREFORE,
21 NO, THE HYPOTHETICAL CAN'T HOLD UP BECAUSE OF THAT.

22 Q YOU'RE SAYING KITTY MENENDEZ WOULD NO
23 LONGER BE CONSCIOUS AFTER SHE WAS SHOT IN THE FACE?

24 A THOSE TWO SHOTS IN THE FACE, YEAH. THIS
25 IS VERY UNCERTAIN BECAUSE OF THE NUMBER OF SHOT IN
26 THE -- IN THE SKULL FILM, EVEN WITH TWO VIEWS, THE

27 FRONT AND THE SIDE VIEW, BECAUSE OF THE TREMENDOUS
28 NUMBER OF SHOT IN THAT, FROM THE BIRD SHOT ADDED TO

41726

1 THE TWO BUCKSHOT, IT'S EXTREMELY DIFFICULT TO
2 ESTABLISH WHERE THOSE SHOT WENT.
3 BUT, YOU KNOW, GIVEN TWO BUCKSHOT SHOTS
4 INTO THE FACE, AND THERE'S CERTAINLY INDICATION ON
5 THOSE X RAYS THAT SEVERAL OF THOSE BUCKSHOTS APPEAR
6 TO BE BACK VERY LIKELY IMBEDDED IN BRAIN TISSUE IN A
7 VERY CRITICAL AREA OF THE BRAIN, WHICH IS NEAR THE
8 BASE OF, YOU KNOW, THE CEREBELLUM AND THE BRAIN STEM
9 AND THE VERY CRITICAL PORTIONS OF THE BRAIN,
10 CERTAINLY HIGHLY UNLIKELY THAT SHE WOULD REMAIN
11 CONSCIOUS AFTER THAT.

12 Q SO WHAT TWO BUCKSHOT WOUNDS ARE YOU
13 REFERRING TO AS BEING THE TWO BUCKSHOT WOUNDS THAT
14 WOULD HAVE CAUSED UNCONSCIOUSNESS?

15 A WELL, WE HAD TWO -- I'LL LOOK THE NUMBERS
16 UP IN JUST A SECOND.

17 NO. 2 IS ONE OF THEM AND NO. 3 IS
18 ANOTHER.

19 THE COURT: ONCE AGAIN, THOSE WERE
20 DR. GOLDEN'S DESIGNATIONS?

21 THE WITNESS: YES, YOUR HONOR.

22 Q BY MR. CONN: SO NO. 2 THEN IS -- THAT
23 WOULD BE THE ONE THAT WENT INTO THE AREA OF HER
24 LEFT -- I'M SORRY -- HER RIGHT EYE, THIS SHOT HERE; IS
25 THAT CORRECT?

26 A AND THE ONE IN THE FOREHEAD WOULD BE
27 INCLUDED IN THAT, YES.

28 Q OKAY. ALL RIGHT.

41727

1 AND NO. 3 IS WHAT DR. GOLDEN DESCRIBED
2 AS THE WOUND TO THE MANDIBLE AND CLAVICLE AREA; IS
3 THAT CORRECT?

4 A YES, THAT'S RIGHT.

5 Q AND IS IT YOUR UNDERSTANDING THAT THE
6 SHOT TO THE MANDIBLE AND CLAVICLE AREA, WHICH IS THE
7 JAW AND THE COLLAR BONE, SENT BUCKSHOT UP INTO HER
8 BRAIN?

9 A OH, IT'S VERY POSSIBLE BECAUSE OF -- THE
10 TRAJECTORY ALONG THE MANDIBLE IS FRONT TO BACK AND
11 CERTAINLY SOME OF THE PROJECTILES BROKE THE
12 MANDIBLE. AND ONE -- A LITTLE MEDIAL TO THAT WOULD
13 ACTUALLY COME, YOU KNOW, RIGHT INTO THE BRAIN.

14 Q OKAY. SO WE'RE TALKING THEN, GETTING
15 BACK TO THIS PHOTOGRAPH I JUST SHOWED YOU, 194,
16 YOU'RE REFERRING TO THESE WOUNDS HERE, WHICH ARE TO

17 THE RIGHT JAW?

18 A YES, THAT'S RIGHT.

19 Q AS BEING WOUNDS THAT MAY HAVE CAUSED

20 BUCKSHOT TO GO UP INTO HER BRAIN?

21 A OH, CERTAINLY, CERTAINLY. POSSIBLY --

22 YOU DON'T RECOGNIZE THAT THE BRAIN COMES DOWN BELOW

23 THE EAR AS YOU GET BACK TO THE BACK PART OF IT.

24 IT'S NOT ALL UP IN THE FRONT.

25 Q NOW, DO YOU KNOW WHICH SPECIFIC --

26 PERHAPS IF YOU CAN GO TO THE PHOTOGRAPH AND SHOW US

27 WHICH SPECIFIC AREAS IN THE MANDIBLE AREA APPEAR TO

28 SHOW PELLET DEFECTS THAT COULD ACCOUNT FOR PELLETS

41728

1 GOING UP INTO HER BRAIN.

2 A RIGHT HERE IS A HOLE THAT MIGHT BE A

3 DOUBLE WITH TWO BUCKSHOT. HERE'S ANOTHER ONE.

4 HERE'S A GRAZE WOUND RIGHT IN THIS DARK AREA HERE.

5 I CAN'T TELL HOW MANY WOUNDS THERE ARE. AND RIGHT

6 HERE THERE APPEARS TO BE ONE ON THE EDGE OF HER

7 MOUTH AND MAYBE ONE HERE. IT'S VERY DIFFICULT TO

8 SAY. BUT THERE ARE SUFFICIENT AREAS THERE WHERE

9 THAT COULD ENTER.

10 Q ALL RIGHT. THANK YOU.

11 A AND AS I SAY, IF YOU GO FROM THAT AREA,

12 IF YOU GO FROM THE MOUTH BACK, YOU GET NEAR THE BASE
13 OF THE BRAIN AREA. THE BRAIN DROOPS DOWN BACK
14 THERE.

15 Q BASED UPON DR. GOLDEN'S REPORT FROM
16 1989, DID YOU SEE ANY INDICATION IN HIS REPORT THAT
17 HE WAS ABLE TO TRACE THE PATH OF PELLET DEFECTS
18 EXTENDING FROM THE MANDIBLE TO THE AREA OF THE
19 BRAIN?

20 A ACTUALLY, I THINK HE SAYS THAT IT'S VERY
21 DIFFICULT TO SEPARATE THE TRAJECTORY OF THE TWO
22 BECAUSE THEY'RE SO CLOSE TOGETHER. BUT HE DOES SAY
23 HERE A COUPLE THINGS THAT ARE INTERESTING. LET ME
24 SEE.

25 I NOTICE HERE ON PAGE 3 WHERE HE
26 SAYS: "SHOULD BE NOTED THAT SHOTGUN
27 WOUND NO. 1 IS CLOSE AND CONTIGUOUS TO
28 SHOTGUN WOUND NO. 2 LIKEWISE INVOLVING

41729

1 THE HEAD AND SHOTGUN WOUND NO. 2
2 INVOLVING THE RIGHT MANDIBULAR" -- AND
3 I CAN -- "HENCE ALL THE THREE CAN'T BE
4 EXACTLY DISTINGUISHED. ALL HAVE
5 PRODUCED MULTIPLE COMMINUTED FRACTURES
6 OF THE CALVARIUM AND BASE OF THE

7 SKULL."

8 SO ANY FRACTURE THAT -- YOU KNOW,
9 ANYTHING THAT PRODUCES A FRACTURE OF THE BASE OF THE
10 SKULL IS LIKELY TO CAUSE UNCONSCIOUSNESS -- HIGHLY
11 LIKELY TO CAUSE UNCONSCIOUSNESS.

12 AND ALSO HIS OPINION ON SHOT NO. 2, HIS
13 OPINION, THIS IS CONSIDERED A FATAL WOUND TO THE
14 HEAD.

15 Q BUT THERE HE WAS TALKING ABOUT THE -- HOW
16 SHOTGUN WOUND NO. 1 AND SHOTGUN WOUND NO. 2 WERE
17 CONTIGUOUS, AND THOSE TWO WOUNDS ARE THE WOUNDS TO
18 THE LEFT SIDE OF HER HEAD; THAT IS, THE BIRD SHOT,
19 TO THE LEFT EAR AREA, AND THE WOUND TO THE RIGHT EYE
20 AREA; IS THAT CORRECT?

21 A OKAY. ONE AND TWO. BUT THEN HE
22 CONTINUES ON TO NO. 3 HERE ALSO WHEN HE WAS
23 TALKING.

24 "AS DESCRIBED ABOVE THERE ARE
25 INDIVIDUAL PELLET WOUND DEFECTS OF THE
26 TONGUE MOST LIKELY RELATED TO
27 NO. 3 BUT SPREAD FROM -- BUT CANNOT BE
28 EXCLUDED THAT THEY WERE SPREAD FROM

41730

1 NO. 2."

2 SO HE MIXES 2 AND 3. THIS IS ON PAGE 5,
3 BOTTOM OF THE SECOND PARAGRAPH, STARTING WITH AS
4 DESCRIBED ABOVE.

5 Q OKAY. BUT HERE IN THE PHOTOGRAPH THAT
6 YOU'RE REFERRING TO, HE IS DESCRIBING SHOTGUN WOUND
7 NO. 3; THAT IS THE WOUND TO THE MANDIBLE AND
8 CLAVICLE AREA; IS THAT CORRECT?

9 A YES. I'M TRYING TO SHOW THAT THE --
10 THESE THREE, BECAUSE THESE THREE WOUNDS ARE SO CLOSE
11 TOGETHER AND THE PATHS, ONE GETS THE IMPRESSION THAT
12 IT'S VERY DIFFICULT FOR HIM TO DISSECT OUT
13 SEPARATELY; AND SINCE THERE'S SO MANY FRACTURES IT
14 WOULD BE ALMOST IMPOSSIBLE TO FOLLOW ONE THROUGH
15 WITHOUT KNOWING YOU MAY BE GOING OVER INTO ANOTHER
16 ONE. IT'S AN EXTREMELY DIFFICULT THING.

17 Q YES, YES. BUT EARLIER WHEN HE SPEAKS
18 ABOUT HOW SHOTGUN WOUND NO. 1 AND NO. 2 MAY BE
19 INTERRELATED, HE IS MAKING REFERENCE TO AREAS INSIDE
20 THE BRAIN; WHEREAS, IN THE PARAGRAPH THAT YOU ARE
21 CURRENTLY REFERRING TO, THAT IS, IN A DISCUSSION OF
22 THE WOUND TO THE RIGHT MANDIBLE, HE IS SIMPLY
23 SPEAKING ABOUT PELLET WOUND DEFECTS IN THE AREA OF
24 THE TONGUE; IS THAT CORRECT?

25 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE AND
26 COMPOUND.

27 THE COURT: OVERRULED.

28 THE WITNESS: NO. THE TONGUE IS WHERE HE'S

1 PICKING IT UP, BUT IT'S A TRACK THAT GOES THROUGH
2 THE TONGUE AND IS CONTINUING BACKWARD AND IN BACK OF
3 THE TONGUE IS THE BRAIN.

4 Q BY MR. CONN: I UNDERSTAND THAT. BUT
5 WHERE IN THE DISCUSSION OF THIS PARTICULAR WOUND
6 DOES DR. GOLDEN GIVE THE OPINION THAT SOME OF THE
7 PELLETS DID, IN FACT, ENTER -- GO SO FAR AS TO ENTER
8 UP INTO THE BRAIN?

9 A WELL, LET ME POINT OUT TO YOU ON SHOT
10 NO. 2 -- THIS IS ON PAGE 4 -- THE OPINION. THIS IS
11 CONSIDERED A FATAL GUN -- FATAL WOUND OF THE HEAD.
12 AND THEN AGAIN ON PAGE 5, WHICH HE'S
13 NOW -- THAT WAS NO. 2 HE WAS TALKING ABOUT. NOW HE'S
14 TALKING ABOUT NO. 3 AND HE SAYS ON PAGE 5, AGAIN
15 UNDER THE LAST PARAGRAPH UNDER 3: "OPINION: THIS
16 IS CONSIDERED A FATAL GUNSHOT WOUND." SO BOTH OF
17 THESE HE CONSIDERS FATAL GUNSHOT WOUNDS.

18 AND YOU'RE ASKING ME TO ASSUME THAT
19 NEITHER OF THESE WOUNDS WOULD HAVE CAUSED
20 UNCONSCIOUSNESS AND KITTY COULD HAVE BEEN CONSCIOUS
21 AFTER THEY WERE INFLICTED, AND THIS IS WHY I THINK
22 YOUR HYPOTHETICAL IS UNLIKELY.

23 Q YOU'RE SAYING THAT BECAUSE THIS WOUND TO
24 THE RIGHT MANDIBLE IS A FATAL -- WAS, IN THE OPINION
25 OF DR. GOLDEN, A FATAL WOUND, THAT THAT IN AND OF

26 ITSELF NECESSARILY MEANS THAT DR. GOLDEN WAS OF THE
27 OPINION THAT SOME OF THE PELLETS WENT UP INTO THE
28 BRAIN?

41732

1 A HE WAS OF THE -- WELL, I WOULD THINK
2 THE -- THEY WOULD EITHER GO UP INTO THE BRAIN OR THEY
3 WOULD HAVE CAUSED -- HE -- EACH OF THESE WOUNDS, BOTH
4 OF THESE WOUNDS, HE SAYS THESE ARE FATAL WOUNDS.

5 Q RIGHT. WHAT DOES FATAL MEAN, THAT IT
6 WOULD CAUSE DEATH?

7 A YES.

8 Q NOW, WHERE DOES DR. GOLDEN SAY THAT THIS
9 PARTICULAR WOUND RESULTED IN SOME PELLETS GOING UP
10 INTO THE BRAIN?

11 A WELL, THE REASON I POINTED THIS OUT IS
12 TO INDICATE THAT THAT IS PROBABLY WHAT HE WAS
13 ASSUMING BECAUSE THERE'S ONLY TWO WAYS OF -- WHEN YOU
14 SAY A FATAL WOUND, THERE'S TWO THINGS THAT YOU WOULD
15 THINK OF: EITHER YOU HAVE INJURED THE BRAIN
16 DIRECTLY OR YOU HAVE CAUSED ENOUGH CONTUSION AROUND
17 THE BASE OF THE BRAIN SO YOU -- YOU'VE CONTUSED THE
18 SPINAL CORD OR YOU HAVE PUT HOLES IN VERY LARGE
19 BLOOD VESSELS LIKE THE CAROTID BLOOD VESSELS. THOSE
20 ARE THE ONLY REASONS THAT ONE COULD SAY ANY

21 INDIVIDUAL SHOT IN THIS AREA WOULD BE FATAL.

22 Q LET ME SHOW YOU THE PHOTOGRAPH THAT HAS
23 BEEN MARKED 190.

24 DO YOU RECOGNIZE THAT ONE?

25 A YES, I DO.

26 Q OKAY. AND THE ONE THAT WE'RE TALKING
27 ABOUT HERE, WE'VE BEEN REFERRING TO IT AS THE WOUND
28 TO THE MANDIBLE AREA; ALTHOUGH, IN FACT, TO BE MORE

41733

1 PRECISE, THIS WOUND IS DESCRIBED BY DR. GOLDEN AS
2 THE WOUND WHICH GOES INTO HER RIGHT CLAVICLE AREA
3 AND ALSO IS PART OF THIS WOUND INTO HER RIGHT
4 MANDIBLE AREA; IS THAT CORRECT?

5 A THAT'S THE WAY HE DESCRIBES IT, YES.

6 Q AND IT COULD BE, BASED UPON WHAT HE
7 DISCUSSED IN HIS REPORT, THAT SOME OF THE PELLETS
8 ALSO WENT INTO THE AREA OF THE TONGUE AND THE MOUTH;
9 IS THAT CORRECT?

10 A YES.

11 Q ALL RIGHT. ARE YOU TELLING US THAT
12 UNLESS SOME OF THOSE PELLETS WENT INTO THE BRAIN
13 THAT THAT WOUND THAT WE ARE NOW LOOKING AT IS NOT A
14 FATAL WOUND?

15 A WHICH WOUND?

16 Q THE WOUNDS THAT WE'VE BEEN DESCRIBING --
17 A THE ONE TO THE CLAVICLE.
18 Q -- AS CONSISTING OF THE WOUND THAT
19 EXTENDS OR INCLUDES NOT ONLY THE CLAVICLE, BUT ALL
20 THESE LARGE PELLET DEFECTS, BUT ALSO THIS WOUND UP
21 HERE INTO HER JAW, INTO THE RIGHT SIDE OF HER JAW.
22 YOU'RE SAYING UNLESS THESE PELLETS GO UP
23 INTO THE BRAIN THIS IS NOT A FATAL WOUND?
24 A SURELY. THAT'S EXACTLY WHAT I'M SAYING.
25 Q IT'S NOT NECESSARY FOR THE PELLETS TO GO
26 UP INTO THE BRAIN TO BE A FATAL WOUND, IS IT?
27 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.
28 THE WITNESS ANSWERED TO THE CONTRARY.

41734

1 THE COURT: THE WAY HE ANSWERED IT IS A
2 LITTLE AMBIGUOUS.
3 WHY DON'T YOU EXPLAIN YOUR ANSWER.
4 THE WITNESS: YES. I'D LIKE TO EXPLAIN THE
5 ANSWER.
6 THE AREA IN THE CLAVICLE, IF ONE OF
7 THESE DIVIDED THE SUBCLAVIAN ARTERY, WHICH IS NOT IN
8 EVIDENCE, THEN THAT COULD MAKE IT A FATAL WOUND
9 BECAUSE THIS IS A VERY LARGE ARTERY.
10 NOW, IF ONE OF THE ONES IN THE MANDIBLE

11 HAPPENED TO HIT THE INTERNAL CAROTID ARTERY, WHICH
12 AGAIN IS NOT IN EVIDENCE, THAT WOULD MAKE IT A FATAL
13 WOUND.

14 FAILING THAT, THE OTHER WAY A FATAL
15 WOUND IS CAUSED IS WOUNDS PENETRATING THE BRAIN OR
16 ACTUALLY COMING CLOSE ENOUGH TO THE BRAIN WHERE
17 THE -- OR HITTING THE OUTSIDE OF THE BRAIN WHERE THE
18 FRACTURES OF THE BASE OF THE BRAIN COULD CONTUSE THE
19 BRAIN SO IT WOULDN'T WORK LONG ENOUGH SO THE PERSON
20 WOULD DIE OF ASPHYXIA. THOSE ARE THE ONLY WAYS TO
21 CAUSE DEATH.

22 THIS WOUND TO THE MANDIBLE, PEOPLE CAN
23 LIVE WITH THEIR MANDIBLE ENTIRELY SHOT AWAY. I
24 MEAN, AS I DESCRIBED EARLIER ON CROSS-EXAMINATION,
25 PEOPLE THAT TRY TO COMMIT SUICIDE BLOW THE MIDDLE
26 PART OF THEIR FACE AWAY AND MUCH OF THE MANDIBLE
27 WILL BE BLOWN AWAY AND THAT'S NOT A FATAL WOUND.

28 Q SO YOU GAVE US THREE POSSIBILITIES FOR

41735

1 HOW THIS WOUND COULD BE A FATAL WOUND; IS THAT
2 CORRECT? ONE IS THAT IT COULD SEVER THE SUBCLAVIAN
3 ARTERY; THE SECOND ONE IS THAT IT COULD SEVER THE
4 CAROTID ARTERY; AND THE THIRD IS THAT IT COULD
5 PENETRATE THE BRAIN; IS THAT CORRECT?

6 A PENETRATE THE BRAIN OR HIT THE SKULL AND
7 CAUSE FRACTURE OF THE SKULL WHICH WOULD CAUSE
8 SUFFICIENT SUDDEN MOVEMENT OF A BRAIN CALLED A
9 SEVERE CONCUSSION TO CAUSE DEATH.

10 Q WHEN DR. GOLDEN INDICATED IN HIS REPORT
11 THAT THIS WAS A FATAL WOUND, YOU DON'T KNOW WHICH
12 POSSIBILITY HE WAS RELYING UPON BECAUSE NONE OF
13 THOSE POSSIBILITIES WERE MENTIONED IN HIS REPORT; IS
14 THAT CORRECT?

15 A THAT IS CORRECT.

16 Q OKAY. SO YOU DON'T HAVE ANY EVIDENCE
17 FROM DR. GOLDEN'S REPORT OF 1989 THAT ANY OF THE
18 PELLETS FROM THIS SHOT WENT INTO THE BRAIN; IS THAT
19 CORRECT?

20 A THAT'S RIGHT, I DON'T. I DID, HOWEVER,
21 GO OVER THE X RAYS.

22 Q OKAY.

23 A AND WE HAVE, IN THIS INSTANCE, WE HAVE
24 X RAYS OF BOTH VIEWS, THE FRONT AND THE SIDE.

25 Q AND IN LOOKING AT THE X RAYS YOU SAW
26 PELLETS?

27 A WELL, I THINK THERE'S A GOOD POSSIBILITY
28 THAT THERE'S A BUCKSHOT IN THE BRAIN, THE BACK OF

1 THE BRAIN, THE SERIOUS PART, THE MOST IMPORTANT PART

2 IS THE BACK OF THE BRAIN, THE BRAIN STEM AREA.

3 Q AND YOU CAN'T SAY FROM LOOKING AT THE

4 X RAYS WHICH SHOT PUT THAT PELLET IN THE BACK OF THE

5 BRAIN, CAN YOU?

6 A NO, I CAN'T. BUT IT IS A BUCKSHOT

7 RATHER THAN A BIRD SHOT; SO, THEREFORE, IT DESTROYS

8 YOUR HYPOTHETICAL, BECAUSE YOU ASKED ME TO ASSUME

9 THIS BIRD SHOT WAS NEXT TO THE LAST SHOT AND THE

10 LAST SHOT WAS THE OTHER BIRD SHOT.

11 SO IF IT'S A BUCKSHOT IT'S GOT TO BE ONE

12 PREVIOUS TO YOUR HYPOTHETICAL, WHICH WOULD HAVE VERY

13 LIKELY RENDERED MRS. MENENDEZ UNCONSCIOUS AT LEAST;

14 AND, THEREFORE, SHE WOULD NOT HAVE BEEN ABLE TO HOLD

15 HER HEAD UP.

16 Q OKAY. NOW, WE'RE TALKING ABOUT -- BEFORE

17 YOU SAID THAT THERE WERE TWO WOUNDS -- BEFORE YOU

18 SAID THAT THERE WERE TWO WOUNDS WHICH WOULD HAVE

19 CAUSED UNCONSCIOUSNESS. NOW WE'RE DOWN TO ONE

20 WOUND; IS THAT CORRECT? BECAUSE WE CAN ONLY SAY FOR

21 SURE THAT ONE WOUND PUT A BUCKSHOT TO THE BACK OF

22 THE BRAIN OF KITTY MENENDEZ AND THAT MIGHT HAVE BEEN

23 THE WOUND TO THE AREA OF THE RIGHT EYE; IS THAT

24 CORRECT?

25 A NO --

26 MS. ABRAMSON: OBJECTION, YOUR HONOR.

27 ARGUMENTATIVE AND COMPOUND.

28 THE COURT: SUSTAINED.

1 THE ANSWER'S STRICKEN.

2 Q BY MR. CONN: IS IT POSSIBLE THAT THE
3 WOUND THAT PUT THE BUCKSHOT TO THE BACK OF THE BRAIN
4 TO KITTY MENENDEZ WAS THE WOUND TO THE AREA OF THE
5 RIGHT EYE?

6 A I THINK THAT'S MOST UNLIKELY.

7 Q WHY IS THAT UNLIKELY?

8 A BECAUSE THE PENETRATION DEPTH OF THE
9 WOUNDS, AS I RECALLED -- AS YOU RECALL, I EXPLAINED
10 EARLIER, ONE OF THE BUCKSHOT IS FLATTENED OUT
11 WITHOUT EVEN PENETRATING THE OUTER WALL OF THE
12 FRONTAL SINUS, WHICH IS NOT VERY THICK. AND THE
13 OTHERS TEND TO BE -- HAVE PENETRATED SOME FACIAL
14 BONES AND BROKEN SOME FACIAL BONES BUT NOT GONE MUCH
15 DEEPER. I FEEL THAT THESE MOST CERTAINLY HAD TO BE
16 SECONDARY -- HAD TO HAVE GONE THROUGH SOMETHING
17 FIRST. AND SO, THERE ARE -- THEREFORE, I DON'T
18 THINK ONE OF THOSE COULD HAVE GOTTEN AROUND TO THE
19 BACK OF THE BRAIN.

20 Q COULD IT HAVE GONE IN NEAR THE AREA, THE
21 ORBIT OF THE RIGHT EYE?

22 DIRECTING YOUR ATTENTION NOW TO 194,
23 WHICH SHOWS TWO LARGE DEFECTS ABOVE THE ORBIT OF THE

24 RIGHT EYE. COULD ONE OF THOSE DEFECTS HAVE CAUSED
25 THE PELLET TO GO THROUGH INTO THE BACK OF HER
26 BRAIN?

27 A WELL, AS I JUST SAID, BECAUSE OF THE
28 PENETRATION DEPTH, I THINK THAT'S HIGHLY UNLIKELY,

41738

1 BECAUSE THE OTHER PELLETS IN THAT SAME GROUP DID NOT
2 PENETRATE NEARLY DEEPLY ENOUGH TO GET THE WHOLE WAY
3 TO THE BACK OF THE BRAIN.

4 Q SO BECAUSE NONE OF THE PELLETS DID IT,
5 YOU CONCLUDED THAT -- BECAUSE MOST OF THE PELLETS
6 DIDN'T, YOU CONCLUDED THAT NONE OF THE PELLETS COULD
7 HAVE DONE THAT?

8 A WELL, YEAH. I THINK IT'S -- WHEN YOU'RE
9 DEALING WITH A GROUP OF PELLETS THAT HITS A
10 SUBSTANCE AND THEY'VE COME FROM THE SAME SHOTGUN AND
11 HAVE HIT AT THE SAME DISTANCE AND SHOOTING INTO
12 GELATIN OR ANYTHING ELSE, THEY'LL HAVE RELATIVE -- AT
13 A GIVEN VELOCITY THEY'LL HAVE CLOSE TO THE SAME
14 PENETRATION DEPTH. IT WOULD BE HIGHLY UNLIKELY FOR
15 ALL OF THEM BUT ONE TO STOP IN THE PENETRATION DEPTH
16 OF ONE AND A HALF INCHES OR SO AND ONE TO GO EIGHT
17 INCHES.

18 Q OKAY. SO YOU CONCLUDED, THEN, THAT THE

19 SHOT TO THE RIGHT EYE AREA OF KITTY MENENDEZ

20 DEFINITELY MADE HER UNCONSCIOUSNESS (SIC) AND THERE

21 WAS NO FURTHER MOVEMENT ON HER PART?

22 A EXCUSE ME?

23 Q ARE YOU CONCLUDING THEN THAT THIS SHOT

24 TO THE RIGHT EYE AREA OF KITTY MENENDEZ DEFINITELY

25 RENDERED HER UNCONSCIOUS AND THAT THERE WAS NO

26 FURTHER VOLITIONAL MOVEMENT FROM HER AFTER THIS SHOT

27 WAS INFLICTED?

28 A NO. NO, I'M NOT SAYING THAT AT ALL.

41739

1 WHAT I'M SAYING IS I DON'T KNOW WHICH OF

2 THE SHOTS, AND I DON'T THINK DR. GOLDEN KNOWS;

3 THAT'S WHY HE PROBABLY -- HE CALLED TWO OF THEM

4 FATAL SHOTS. AND AS HE SAID, HE -- BETWEEN SHOTS 2

5 AND 3 HE COULDN'T TELL -- HE COULDN'T DIFFERENTIATE

6 THE PATHS APART.

7 NOW, IF HE SAW THIS BUCKSHOT IN THE BACK

8 OF HER BRAIN AND SAID THAT'S FATAL AND THEN HE SAYS,

9 WELL, I CAN'T TELL IF IT'S 2 OR 3, THEN MAYBE HE

10 CALLED THEM BOTH FATAL BECAUSE OF THAT. I DON'T

11 KNOW.

12 Q I'M NOT ASKING YOU RIGHT NOW IF IT WAS

13 FATAL.

14 WHAT I'M ASKING YOU IS: IS IT YOUR
15 OPINION THAT ONCE THAT SHOT WAS INFLICTED TO THE
16 RIGHT EYE OF KITTY MENENDEZ, THAT THEREAFTER SHE WAS
17 UNCONSCIOUS AND THERE WAS NO FURTHER VOLITIONAL
18 MOVEMENT ON HER PART?

19 A THAT'S A POSSIBILITY. I CAN'T SAY IT'S
20 CERTAIN, NO.

21 Q OKAY. SO BECAUSE YOU CAN'T SAY IT'S
22 CERTAIN, THEN YOU CAN'T RULE OUT THE HYPOTHETICAL
23 THAT I GAVE YOU THAT AT THE TIME THAT THIS SHOT WAS
24 INFLICTED, SHOT NO. 11, SHE WAS MOVING EITHER HER
25 HEAD OR HER SHOULDER?

26 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

27 THE COURT: OVERRULED.

28 THE WITNESS: LET ME SEE IF I CAN EXPLAIN

41740

1 THIS. WE WOULD HAVE TO RULE OUT -- FOR YOUR
2 HYPOTHETICAL TO BE TRUE YOU ASSUME -- WE'RE TALKING
3 ABOUT THE LAST TWO SHOTS. YOU'RE SAYING THOSE ARE
4 THE TWO BIRD SHOTS.

5 Q BY MR. CONN: AT THE MOMENT I'M SIMPLY
6 ASKING YOU WHETHER KITTY MENENDEZ COULD HAVE HAD HER
7 HEAD RAISED FOR THE SHOT 11, BEING THE NEXT TO THE
8 LAST SHOT IN THE SEQUENCE, SUCH THAT A SINGLE SHOT

9 COULD HAVE STRUCK BOTH HER LEFT SHOULDER AND THE
10 AREA OF HER LEFT EAR.

11 A I THINK IT'S HIGHLY UNLIKELY AFTER SHOTS
12 2 AND 3, BOTH OF WHICH WERE BUCKSHOT, ONE OF WHICH
13 PRODUCED A PELLET BACK NEAR THE BRAIN STEM; AND
14 WHICH ONE I CAN'T TELL AND I DON'T -- FROM READING
15 THE AUTOPSY I DON'T THINK DR. GOLDEN CAN TELL
16 EITHER.

17 BUT THE X RAY SHOWS ONE BACK THERE,
18 SPECIFICALLY NEAR A VERY VITAL AREA OF THE BRAIN;
19 AND WHICH IT CAME FROM, SO IF YOU ASK ME JUST THIS
20 ONE, I CAN'T SAY; OR IF YOU ASK ME JUST THE OTHER
21 ONE, I CAN'T SAY. BUT IT'S FROM ONE OF THEM BECAUSE
22 IT'S THE NO. 4 BUCKSHOT. IT'S NOT BIRD SHOT.

23 THE COURT: LET'S TAKE OUR RECESS AND WE'LL
24 RESUME AT 3:30. DON'T DISCUSS THE MATTER WITH
25 ANYONE. DON'T FORM ANY FINAL OPINIONS ABOUT IT.

26 (A RECESS WAS TAKEN FROM

27 3:15 P.M. TO 3:45 P.M.)

28

41741

1 THE COURT: ALL RIGHT. EVERYONE IS PRESENT.
2 WE'LL RESUME.

3 GET THE JURY OUT, PLEASE.

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

7

8 THE COURT: OKAY. WE'LL RESUME WITH THE
9 TRIAL. THE JURY IS IN COURT.

10 YOU MAY CONTINUE YOUR CROSS-EXAMINATION.

11 MR. CONN: THANK YOU.

12 Q DOCTOR, YOUR OPINION THAT THE SHOTS TO
13 THE AREA OF THE RIGHT EYE OF KITTY MENENDEZ WOULD
14 HAVE CAUSED UNCONSCIOUSNESS WAS BASED UPON WHAT YOU
15 OBSERVED TO BE A PELLET TO THE BACK OF THE BRAIN
16 AREA OF KITTY MENENDEZ; IS THAT CORRECT?

17 A NO. I THINK YOUR QUESTION ASSUMES
18 SOMETHING I NEVER SAID.

19 Q CAN YOU TELL US WHY YOU ASSUMED THEN
20 THAT SHE WOULD BE UNCONSCIOUS AT THE TIME OF OR
21 FOLLOWING THAT SHOT TO THE RIGHT EYE?

22 A NO. I NEVER SAID THAT THE SHOT TO THE
23 RIGHT EYE -- I NEVER SAID SHE WOULD BE UNCONSCIOUS
24 AFTER THAT SHOT TO THE RIGHT EYE.

25 Q ISN'T THAT WHAT WE WERE DISCUSSING?

26 A I DON'T BELIEVE WE WERE. WE WERE
27 DISCUSSING A COMBINATION OF SHOTS, AND I SAID -- WE
28 TALKED ABOUT THE SHOT TO THE RIGHT EYE, PLUS THE

1 SHOT TO THE MANDIBLE. BOTH OF THESE SHOTS HAD BEEN
2 SAID BY DR. GOLDEN AS FATAL SHOTS, AND YOU COMBINED
3 BOTH THOSE SHOTS.

4 NOW YOU'VE ASKED A QUESTION ON JUST ONE
5 OF THE SHOTS. I NEVER SEPARATED THEM.

6 Q OKAY. SO YOU'RE SAYING THAT FOLLOWING
7 THOSE TWO FATAL SHOTS SHE WOULD HAVE BEEN
8 UNCONSCIOUS; IS THAT YOU'RE SAYING?

9 A SHE MIGHT HAVE BEEN. CAN'T SAY FOR
10 CERTAIN, BUT SHE MIGHT HAVE BEEN.

11 Q AND YOU CAN'T SAY FOR CERTAIN THAT SHE
12 WOULD HAVE BEEN UNCONSCIOUS AT THE TIME THAT SHOT 11
13 WAS FIRED?

14 A CERTAINLY NOT. I COULDN'T BE CERTAIN
15 ABOUT ANY OF THIS.

16 Q OKAY. AND DID YOU MAKE REFERENCE TO IN
17 YOUR TESTIMONY TO A PELLET THAT YOU OBSERVED TO THE
18 BACK OF HER BRAIN?

19 A IN THE AREA OF THE BRAIN. WE COULDN'T
20 SAY IT WAS IN THE BRAIN, BUT IT MAY BE IN THE SKULL
21 BESIDE THE BRAIN; IN OTHER WORDS, IT PENETRATED BACK
22 IN THAT AREA, AND I SPECULATED THAT THAT MAY BE ONE
23 OF THE REASONS THAT DR. GOLDEN SUGGESTED BOTH OF
24 THESE WOULD BE FATAL SHOTS, BECAUSE HE DOESN'T SAY
25 THAT THE SUBCLAVIAN WAS INVOLVED OR THE CAROTID
26 ARTERY. IF EITHER THE SUBCLAVIAN ARTERY OR THE
27 CAROTID ARTERY WAS INVOLVED, OR BOTH, THAT WOULD BE

41743

1 DEPENDING ON HOW LONG THIS WHOLE THING TOOK, SHE
2 MIGHT BE UNCONSCIOUS AND MIGHT NOT, BECAUSE IT
3 WOULDN'T CAUSE -- WHEN HE SAYS DEATH, HE DOESN'T SAY
4 IMMEDIATE DEATH.

5 Q NOW, WHERE WAS IT IN THE BACK OF THE
6 BRAIN THAT YOU OBSERVED THAT PELLET FOR KITTY
7 MENENDEZ?

8 A WELL, I'D HAVE TO SEE THE X RAYS. IT'S
9 NEAR THE BACK OF THE BRAIN. BECAUSE -- EVEN WITH THE
10 TWO VIEWS YOU CAN'T SAY IT'S IN OR OUTSIDE OF THE
11 BRAIN. IT'S NEAR THE BACK OF THE BRAIN.

12 IN OTHER WORDS, IT PENETRATED A FAIR
13 DISTANCE AND HE COULDN'T SAY -- HE WAS SOMEWHAT
14 MIXED UP IN TRAJECTORIES AND COULDN'T SAY WHICH IT
15 CAME FROM.

16 Q LET ME SHOW YOU --

17 A YES, GO AHEAD.

18 Q I'M SORRY. LET ME SHOW YOU WHAT HAS
19 BEEN MARKED AS 171, AND 174.

20 CAN YOU SEE THE PELLET YOU'RE REFERRING
21 TO IN THOSE X RAYS?

22 A OH, BOY. IT'S NOT --

23 Q LET ME SHOW YOU 180.

24 A WHAT'S THIS? I'VE NEVER SEEN ANY OF
25 THIS.

26 Q ARE YOU REFERRING TO SOMETHING THAT
27 APPEARS IN 171 OR 174?

28 A I'M REFERRING TO THIS RIGHT HERE

41744

1 (POINTING).

2 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. COULD
3 I APPROACH AND SEE WHAT "THIS RIGHT HERE" IS?

4 THE COURT: YES.

5 THE WITNESS: YES. OKAY. THAT'S A
6 POSSIBILITY OF A NO. 4 BUCK.

7 THE COURT: MAYBE IF WE COULD JUST PUT IT UP
8 ON THE BOARD AND THE JURY CAN SEE IT AND THE WITNESS
9 CAN POINT TO IT.

10 Q BY MR. CONN: PERHAPS YOU CAN CIRCLE
11 IT. LET'S GET A RED PEN AND YOU CAN CIRCLE WHAT YOU
12 DESCRIBED AS POSSIBLY BEING A NO. 4 BUCKSHOT.

13 A (WITNESS COMPLIES.)

14 THE COURT: WHY DON'T YOU PUT IT UP THERE.

15 Q BY MR. CONN: NOW, THAT CIRCLE YOU JUST
16 MADE DOESN'T OUTLINE WHAT APPEARS TO CLEARLY BE A
17 LARGE CIRCULAR SHAPE, DOES IT?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR.

19 ARGUMENTATIVE.

20 THE COURT: OVERRULED.

21 Q BY MR. CONN: YOU CAN POINT TO IT,

22 DR. FACKLER. IT'S A LITTLE DIFFICULT TO SEE FROM

23 HERE. USE THE POINTER. YOU CAN'T SEE IT. HE'S

24 GOING TO POINT TO IT -- YOU CAN'T SEE IT BECAUSE OF

25 THE REFLECTION YOU MEAN?

26 JUROR NO. 1: YES.

27 THE COURT: YOU HAVE TO MOVE THE BOARD OR

28 MOVE IT DOWN A LITTLE BIT. THERE'S A REFLECTION OFF

41745

1 THE LIGHT. I THINK IT HAS TO BE DOWN LOWER IN THE

2 DIAGRAM, AS I RECALL. YOU HAVE TO TACK IT DOWN

3 LOWER. STILL CAN'T SEE IT?

4 JUROR NO. 1: NO.

5 THE COURT: IT HAS TO BE TOWARDS THE MIDDLE

6 OF THE BOARD OR OUTSIDE OF IT. DO YOU HAVE ANY

7 TACKS?

8 ANY BETTER? OKAY.

9 Q BY MR. CONN: YOU'RE SAYING RIGHT THERE

10 THERE APPEARS TO BE A LARGE CIRCLE SIMILAR TO A

11 NO. 4 BUCKSHOT?

12 A I SAID THAT THERE'S A POSSIBILITY. I

13 SAID I DIDN'T EVER SAY IT WAS CERTAIN THAT IT WAS.

14 POSSIBLY. AND I CAN'T SAY FOR SURE.

15 Q THERE'S NO CLEAR INDICATION THAT THAT'S

16 NO. 4 BUCK. AND EVEN IF IT WERE NO. 4 BUCK, YOU'RE

17 NOT SAYING SHE WAS NECESSARILY UNCONSCIOUS AS A

18 RESULT OF THAT?

19 A I CAN'T SAY SHE WAS NECESSARILY

20 UNCONSCIOUS, CERTAINLY NOT.

21 Q GETTING BACK TO SHOT NO. 11, DO YOU SEE

22 ANY MEDICAL REASON WHY THE ELEVENTH SHOT IN THIS

23 CASE COULD NOT HAVE BEEN INFLICTED TO KITTY MENENDEZ

24 WHILE SHE WAS LYING ON HER RIGHT SIDE, A SHOT WHICH

25 WENT THROUGH HER LEFT SHOULDER AND INTO HER LEFT

26 EAR?

27 A THE QUESTION WAS: IS THERE ANY MEDICAL

28 REASON WHY IT COULD NOT HAVE HAPPENED?

41746

1 Q RIGHT.

2 A NO.

3 Q ALL RIGHT. LET ME MOVE ON THEN TO SHOT

4 NO. 10. THIS IS 268.

5 THIS IS THE SHOT WHICH APPEARS TO GO

6 THROUGH THE LOWER LEFT LEG OF KITTY MENENDEZ AND

7 THROUGH -- COMING OUT THE UPPER LEFT LEG.

8 I BELIEVE THAT YOU TESTIFIED THAT THESE
9 TWO WOUNDS ARE LIKELY TO BE PART OF A SINGLE SHOT;
10 IS THAT CORRECT?

11 A YES.

12 Q AND YOU ALSO SAID THAT THE -- YOUR
13 ESTIMATE OF THIS DISTANCE WOULD HAVE BEEN
14 APPROXIMATELY FIVE FEET AWAY; IS THAT CORRECT, FIVE
15 OR SIX FEET?

16 A YES.

17 Q AND DO YOU SEE ANY REASON WHY THIS SHOT
18 COULD NOT HAVE OCCURRED AS ILLUSTRATED IN THAT
19 DIAGRAM?

20 A NO, I DON'T.

21 Q GOING BACK, BRIEFLY, TO SHOT NO. 12, AND
22 THAT WOULD BE THE WOUND THAT HAS BEEN DESCRIBED AS A
23 CONTACT WOUND TO THE CHEEK OF KITTY MENENDEZ.

24 LOOKING AT THE PHOTOGRAPH OF THAT WOUND,
25 WERE YOU ABLE TO DETERMINE IF THAT WOUND WAS
26 ANTEMORTEM, PERIMORTEM, OR POSTMORTEM?

27 A NO.

28 Q AND WERE YOU AWARE THAT DR. GOLDEN

41747

1 PREVIOUSLY INDICATED IN HIS 1989 REPORT THAT THAT
2 WOUND TO THE CHEEK OF KITTY MENENDEZ WAS AN

3 ANTEMORTEM WOUND BECAUSE HE OBSERVED IT IN REGARD TO
4 THAT WOUND AS WELL AS ALL OF THE OTHER WOUNDS TO
5 KITTY MENENDEZ, THAT THERE WAS HEMORRHAGING INTO THE
6 WOUND?

7 A YES.

8 Q AND BASED UPON THE -- DID YOU SEE ANY
9 MEDICAL BASIS FOR DR. GOLDEN TO INDICATE IN HIS 1995
10 AMENDMENT THAT, IN FACT, THAT WOUND WAS OR COULD BE
11 PERIMORTEM OR EVEN POSTMORTEM?

12 A NO.

13 Q ALL RIGHT. MOVING ON TO SHOT 9.

14 DIRECTING YOUR ATTENTION TO THE
15 ILLUSTRATION THAT HAS BEEN MARKED AS 266 FOR
16 IDENTIFICATION.

17 I BELIEVE THAT YOU TESTIFIED THAT --
18 THE COURT: THOSE ARE GOING TO FALL OFF
19 UNLESS YOU SECURE THEM IN SOME WAY.

20 Q BY MR. CONN: I BELIEVE THAT YOU
21 TESTIFIED THAT THIS WOUND IS A WOUND THAT YOU COULD
22 ASSOCIATE WITH THE WOUND TO THE LEFT THIGH OF KITTY
23 MENENDEZ; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q SO, IN OTHER WORDS, IF I CAN PUT UP THE
26 OTHER ONE AT THIS POINT.

27 ALL RIGHT. IS IT YOUR OPINION THEN,
28 DOCTOR, THAT IF WE COMBINE WHAT DR. MC CARTHY

1 REFERRED TO AS TWO SEPARATE SHOTS, SHOT 9A AND SHOT
2 8A, THAT A SINGLE SHOT COULD HAVE COME THROUGH THE
3 LOWER PORTION OF KITTY'S LEFT CALF, STRUCK THE UPPER
4 LEG, AND THEN COME OUT THE TOP OF HER LEFT THIGH?

5 A YES.

6 Q AND YOU FEEL THAT THAT SINGLE PATH WOULD
7 BE CONSISTENT WITH THE MEDICAL EVIDENCE IN THIS
8 CASE?

9 A YES. IF YOU LOOK AT THE PHOTOGRAPH, THE
10 SHOT MARKED 9A, I DON'T THINK THAT'S AN ACCURATE
11 DEPICTION OF THE ANGLE. I THINK THE ANGLE TILTS
12 UPWARDS AT LEAST 20 DEGREES MORE THAN THAT. WHEN
13 YOU LINE THAT UP, AS WE SHOWED YESTERDAY USING
14 COUNSEL'S LEG, IT'S NOT DIFFICULT TO LINE UP.

15 Q UH-HUH. AND THE DISTANCE OF THAT WOUND,
16 YOU INDICATED, WOULD BE ABOUT FOUR TO FIVE FEET; IS
17 THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND WOULD THAT BE -- WOULD THE ANGLE OF
20 THAT WOUND BE CONSISTENT WITH THE SHOOTER STANDING
21 FOUR TO FIVE FEET TO THE LEFT OF THE VICTIM, AS SHE
22 APPEARS IN SHOT 9A, LYING ON HER BACK?

23 A WELL, I DON'T THINK IT HAPPENED. IT
24 COULDN'T HAVE HAPPENED IN THAT POSITION. IT'S
25 SERIOUSLY NOT LINED UP IN THAT POSITION.

26 Q RIGHT.

27 A YOU HAVE TO -- YOU KNOW, YOU'D HAVE TO
28 CHANGE THE POSITION.

41749

1 Q UH-HUH. YES. I UNDERSTAND WHAT YOU'RE
2 SAYING. ALL I'M ASKING YOU AT THIS POINT IS WHETHER
3 YOU FEEL THAT THAT IS A SHOT THAT COULD HAVE
4 OCCURRED WITH KITTY MENENDEZ LYING ON HER BACK.

5 A WELL, ARE YOU ASKING ME IF I BELIEVE
6 THAT 9B COULD HAVE OCCURRED IN THE EXACT POSITION
7 DEPICTED WITH THE ANGLE DEPICTED THERE?

8 Q NO. WHAT I'M ASKING YOU IS IF THE
9 SINGLE SHOT WHICH WE ARE DISCUSSING, AND WHICH IS
10 REFLECTED, I BELIEVE, IN PHOTOGRAPHS 198 AND 186;
11 WOULD THAT BE CORRECT?

12 A YES, THAT'S CORRECT.

13 Q AND HERE'S THE OTHER ONE, 186.

14 A YES. THOSE ARE CORRECT. YES.

15 Q ALL RIGHT. WHAT I'M ASKING YOU AT THIS
16 POINT IS WHETHER -- WHAT I'M ASKING YOU AT THIS POINT
17 IS WHETHER THAT SINGLE SHOT COULD HAVE BEEN
18 INFLECTED WHILE KITTY MENENDEZ WAS LYING ON HER BACK
19 ON THE FLOOR.

20 A ARE YOU SAYING THE SINGLE SHOT, COMBINE

21 THE TWO?

22 Q YES.

23 A AND ASSUMING THAT WE CHANGE THE ANGLES
24 TO REALISTICALLY DEPICT WHAT IS SHOWN ON THE
25 PHOTOGRAPHS WHICH WOULD INDICATE WE'D HAVE TO ADD AT
26 LEAST 20 DEGREES TO THE 9B AND PROBABLY TAKE --
27 CHANGE THIS 8A MAYBE 10 DEGREES, AND IF YOU MODIFIED
28 THAT AND THEN MOVED THE LEG INTO AN UP -- HIGHER UP

41750

1 POSITION AND BEND IT MORE, YES, THEY'D LINE UP.

2 Q OKAY. AND THERE'S NO MEDICAL REASON
3 THAT WOULD PRECLUDE THAT POSSIBILITY?

4 A NO. NOT GIVEN -- THE -- WHAT I EXPRESSED
5 IN MY ANSWER, NO.

6 Q AND THAT WOULD PLACE THE SHOOTER --
7 ACCORDING TO YOUR ESTIMATE OF DISTANCE, THAT WOULD
8 PLACE THE SHOOTER SOMEWHERE NEAR THE LEFT KNEE AREA
9 OF JOSE MENENDEZ AT THE TIME OF THE FIRING OF THE
10 SHOT?

11 MS. ABRAMSON: OBJECT, YOUR HONOR. MISSTATES
12 THE TESTIMONY AND THE EVIDENCE.

13 THE COURT: REPHRASE THE QUESTION, PLEASE.

14 MR. CONN: YES.

15 Q WOULD THAT PLACE THE SHOOTER, BASED UPON

16 THAT CONFIGURATION WHICH YOU SUGGESTED -- IS NOT
17 PRECLUDED BY ANY MEDICAL EVIDENCE -- WOULD THAT
18 PLACE THE SHOOTER ABOUT FOUR TO FIVE FEET TO THE
19 LEFT OF THE WOUND IN THE AREA OF THE LEFT KNEE OF
20 KITTY -- OF JOSE MENENDEZ?

21 MS. ABRAMSON: OBJECT, YOUR HONOR. MISSTATES
22 THE EVIDENCE. THERE'S NO EVIDENCE OF THE DISTANCE
23 OF JOSE MENENDEZ FROM KITTY MENENDEZ.

24 THE COURT: YES. SUSTAINED.

25 MR. CONN: OKAY.

26 Q DID YOU INDICATE THAT THE -- THAT SHOT
27 WAS FIRED ABOUT FOUR OR FIVE FEET AWAY?

28 A YES. THAT DISTANCE IS FROM THE END OF

41751

1 THE BARREL TO THE -- NOT FROM THE SHOOTER, BUT TO
2 THE END OF THE BARREL, YOU UNDERSTAND.

3 Q AND WHERE WOULD YOU -- ON THIS DIAGRAM,
4 WHERE WOULD YOU ESTIMATE FOUR TO FIVE FEET AWAY FROM
5 POINT OF IMPACT WOULD BE?

6 A THE SHOOTER WOULD BE STANDING OFF THE
7 PHOTOGRAPH ON BOTH SIDES.

8 Q OKAY. LEFT OF THE COUCH, SO WE COULDN'T
9 SEE THE SHOOTER IN THIS PHOTOGRAPH?

10 A YES. NOT IN THE PHOTOGRAPH.

11 Q OKAY. SO, NOW, DIRECTING YOUR ATTENTION
12 BACK TO SHOT 10, A SHOT WHICH IS ILLUSTRATED HERE AS
13 A SHOT THAT HIT THE LOWER LEG OF KITTY MENENDEZ AND
14 ENTERED THE UPPER LEG OF KITTY MENENDEZ, YOU
15 ESTIMATED THAT THAT SHOT WAS ALSO ABOUT FIVE OR SIX
16 FEET AWAY; IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q ONCE AGAIN, FOR THAT SHOT YOU WOULD PUT
19 THE SHOOTER SOMEWHERE JUST TO THE LEFT OF THE COUCH
20 THERE?

21 A YES. A LITTLE BIT OFF THE PICTURE,
22 BECAUSE YOU HAVE TO CONSIDER THE GUN BARREL. IT'S
23 NOT WHERE THE BODY OF THE SHOOTER IS. IT'S THE
24 DISTANCE, WE'RE SPEAKING, FROM THE END OF THE GUN
25 BARREL TO THE HIT.

26 Q SO IF WE COMBINE THOSE SHOTS THEN, WHAT
27 YOU ENVISION THEN, ONE POSSIBLE -- WOULD YOU AGREE
28 FOR SHOT 10A KITTY MENENDEZ COULD HAVE BEEN ON HER

41752

1 BACK ON THE FLOOR AT THE TIME THAT THIS SHOT WAS
2 FIRED?

3 A I SEE NOTHING TO CONTRAINDICATE THAT.

4 Q OKAY. SO IF WE WERE TO COMBINE, THEN,
5 ALL OF THOSE SHOTS, WHAT YOU ARE SAYING IS THAT

6 KITTY MENENDEZ MIGHT VERY WELL HAVE BEEN SHOT WHILE
7 SHE WAS LYING ON HER BACK ON THE FLOOR BY TWO SHOTS
8 COMING FROM -- TO THE LEFT OF THE COUCH, THE ONE SHOT
9 BEING AS DEPICTED IN SHOT 10A, AND A SECOND SHOT
10 HITTING HER LOWER HERE ON THE THIGH, ENTERING
11 THROUGH THE UPPER THIGH, IN ALMOST A PARALLEL
12 CONFIGURATION TO THE TRAJECTORY THAT IS SHOWN IN
13 SHOT 10A; IS THAT CORRECT?

14 MS. ABRAMSON: OBJECTION. MISSTATES THE
15 WITNESS' TESTIMONY.

16 THE COURT: OVERRULED.

17 THE WITNESS: WELL, THE PARALLEL SCENARIO
18 MIGHT WORK OUT, GIVEN A CHANGE IN THE POSITION OF
19 THE LEG. IT'S POSSIBLE THAT COULD BE -- IT COULD BE
20 CLOSE TO PARALLEL, YES. I CAN'T SAY ANYTHING ABOUT
21 THE ORDER OF THE SHOTS.

22 Q BY MR. CONN: I UNDERSTAND. AND YOU
23 UNDERSTAND THAT DR. MC CARTHY ALSO SAID HE CAN'T
24 REACH ANY HARD CONCLUSION CONCERNING THE ORDER OF
25 THE SHOTS?

26 MS. ABRAMSON: I'M GOING TO OBJECT.
27 MISSTATES MR. MC CARTHY'S TESTIMONY.

28 THE COURT: WELL, IT DOESN'T USE THE LANGUAGE

1 OF THE WITNESS. SO SUSTAINED.

2 Q BY MR. CONN: OKAY. LET'S MOVE ON TO
3 SHOT 7. I'M SHOWING YOU WHAT HAS BEEN MARKED AS
4 263. AND THAT IS A SHOT WHICH DEPICTS -- AN
5 ILLUSTRATION WHICH DEPICTS WHAT DR. MC CARTHY
6 DESCRIBED AS SHOT NO. 7, THE SHOT TO THE LEFT KNEE
7 AREA OF JOSE MENENDEZ.

8 NOW, IT IS YOUR OPINION THAT THIS
9 ILLUSTRATION DOES NOT CORRECTLY DEPICT THE ANGLE AT
10 WHICH THE SHOT ENTERED HIS LEFT LEG AREA; IS THAT
11 CORRECT?

12 A THAT'S CORRECT.

13 Q YOU AGREE THAT IT WAS A SHOT WHICH, AS
14 WE LOOK AT THIS DIAGRAM, BEGAN ON THE LEFT AND
15 PASSED THROUGH HIS KNEE TOWARD THE RIGHT; IS THAT
16 CORRECT?

17 A THAT'S CORRECT.

18 Q BUT YOU FEEL THAT THE TRAJECTORY FOR
19 THIS PARTICULAR SHOT SHOULD BE TILTED SUCH THAT THIS
20 GREEN BAR WOULD BE LOWERED TO ALMOST A PARALLEL
21 POSITION TO THE SOFA?

22 A YES. THAT'S ROUGHLY CORRECT, YES.

23 Q NOW, DID YOU HAVE A POSITION AS TO
24 WHETHER OR NOT JOSE MENENDEZ WAS STANDING AT THE
25 TIME THAT THIS SHOT WAS FIRED?

26 A I HAVE ABSOLUTELY NO WAY OF KNOWING.

27 Q AND THERE'S NOTHING ABOUT THE CRIME
28 SCENE WHICH CAUSES YOU TO CONCLUDE THAT HE WAS

1 STANDING?

2 A NO. I HAVEN'T -- AS I SAY, I DON'T HAVE
3 ANY WAY OF KNOWING WHERE HE WAS -- IF HE WAS
4 STANDING OR IF HE WAS SITTING. I JUST DON'T KNOW.

5 Q SO BASED UPON WHAT YOU OBSERVED AT THAT
6 CRIME SCENE, YOU WOULD NOT RULE OUT THE POSSIBILITY
7 THAT HE WAS SITTING AT THE TIME THAT THAT SHOT WAS
8 INFLICTED?

9 A NO. I CAN'T TELL WHAT POSITION HE WAS
10 IN WHEN THE SHOT WAS INFLICTED.

11 Q AND YOU INDICATED THAT HE WAS -- THAT
12 SHOT WAS INFLICTED WHILE -- OR APPROXIMATELY THREE
13 TO FIVE FEET AWAY; IS THAT CORRECT?

14 A I THOUGHT I MIGHT HAVE SAID FIVE OR SIX,
15 BUT IT'S RELATIVELY THE SAME, YEAH. THREE TO FIVE.
16 OKAY. BUT MAYBE -- MAYBE FIVE, MAYBE SIX. IT'S --
17 CAN'T BE REAL EXACT IS WHAT I'M TRYING TO INDICATE.

18 Q UH-HUH. OKAY. AND IS IT YOUR OPINION
19 THAT THIS PARTICULAR SHOT DID OR DID NOT STRIKE THE
20 BONE OF HIS LEFT FEMUR?

21 A I BELIEVE IT GRAZED THE BONE.

22 Q AND WHAT IS YOUR CONCLUSION BASED UPON
23 THAT IT GRAZED BONE?

24 A BASED ON SOME VERY TINY LEAD FRAGMENTS,

25 VERY, VERY TINY, AND THE BONE BREAKING, BASICALLY, A
26 SIMPLE-TYPE FRACTURE, WHICH IS CHARACTERISTIC OF
27 BONES BROKEN BY TEMPORARY CAVITATION.

28 Q SO YOU SAW -- IN THE X RAY YOU SAW

41755

1 SOMETHING THAT WAS INDICATIVE OF ONE OR MORE OF THE
2 PELLETS STRIKING?

3 A YES. SOME VERY, VERY TINY SCRAPES. I
4 MEAN, STRIKING A GLANCING BLOW. CERTAINLY NOT A
5 SOLID STRIKE, BUT A GLANCING BLOW, BECAUSE THEY'RE
6 VERY, VERY TINY. THE FRAGMENTS I'M TALKING ABOUT
7 ARE LESS THAN ABOUT A HALF MILLILITER, VERY, VERY
8 TINY FRAGMENTS.

9 Q UH-HUH. DO YOU KNOW THE SPEED AT WHICH
10 A PELLET ENTERS THE HUMAN BODY FIRED FROM A SHOTGUN?

11 A YOU MEAN THIS SHOTGUN WITH NO. 4
12 BUCKSHOT?

13 Q YES.

14 A OH, I CAN GIVE YOU WITHIN MAYBE A COUPLE
15 OF HUNDRED FEET PER SECOND. I WOULD THINK THIS
16 WOULD BE ABOUT 1300 FEET PER SECOND.

17 Q AND DO YOU KNOW HOW MUCH FORCE WOULD BE
18 CAUSED BY PELLETS STRIKING THE BONE?

19 A FORCE? I DON'T UNDERSTAND THE QUESTION.

20 Q YES. WOULD THE FORCE OF A PELLET
21 TRAVELING AT THIS SPEED AND STRIKING THE BONE BE
22 SUFFICIENT TO BREAK THE BONE?
23 A IF IT STRUCK IT DIRECTLY, YES.
24 Q UH-HUH. AND STRIKING IT AT THE ANGLE
25 THAT YOU BELIEVED IT STRUCK, IT WOULD HAVE BEEN
26 SUFFICIENT TO BREAK THE BONE?
27 A IF THE SHOT COLUMN HAD LINED UP AND HIT
28 THE BONE DIRECTLY, MOST CERTAINLY. BUT IN THAT CASE

41756

1 YOU WOULD HAVE HAD MANY MORE FRAGMENTS OF BONE AND
2 LEAD IN THE AREA, AS WE CLEARLY SHOWED IN SOME OF
3 THE OTHER WOUNDS IN THIS CASE WHERE WE KNOW BULLETS
4 STRUCK BONES.

5 Q AT THE ANGLE THAT IT DID STRIKE THE BONE
6 IN THIS CASE, WAS THAT SUFFICIENT TO BREAK THE BONE?

7 A NO. I'M SORRY. IT WASN'T SUFFICIENT TO
8 STRIKE THE BONE BY THE STRIKING OF THE PELLETS. IS
9 THAT WHAT YOU MEAN? IT BROKE IT BY CAVITATION.
10 THAT'S THE POINT --

11 Q YES. I UNDERSTAND. YOU'RE SAYING THAT
12 IT WAS CAUSED -- IN YOUR OPINION, THE BREAKING OF
13 THE BONE TO THE LEFT LEG OF JOSE MENENDEZ WAS CAUSED
14 BY CAVITATION?

15 A ABSOLUTELY, YES.

16 Q AND WHAT I'M ASKING IS: WOULD THE FORCE
17 AT WHICH THE PELLETS STRUCK THE BONE IN THIS CASE BE
18 SUFFICIENT TO ALSO CAUSE A BREAK OF THE BONE?

19 A NO. ABSOLUTELY NOT.

20 Q OKAY. NOW, SOMETIMES WHEN PELLETS
21 STRIKE BONE THEY ARE DEFLECTED BY THE BONE; IS THAT
22 CORRECT?

23 A YES.

24 Q AND IN THIS CASE, IN REGARD TO THE WOUND
25 TO THE LEFT LEG OF JOSE MENENDEZ, WERE THE PELLETS
26 DEFLECTED BY THE BONE?

27 A NO. THEY WERE ONLY DEFLECTED IF THEY
28 STRIKE THE BONE AND ONLY, AS I ANSWERED ONE OF YOUR

41757

1 PREVIOUS QUESTIONS -- PROBABLY ONLY ONE PELLET
2 STRUCK THE BONE AND IT STRUCK AT A VERY GLANCING
3 TANGENTIAL BLOW. ONE PELLET MIGHT HAVE BEEN
4 DEFLECTED SLIGHTLY, BUT NONE OF THE OTHER PELLETS
5 WOULD HAVE BEEN.

6 Q HERE WE HAVE THEN A PATH WHICH WAS NOT
7 DEFLECTED BY THE STRIKE OF A BONE; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND IN FORMING YOUR OPINION CONCERNING

10 THE ANGLE AT WHICH THAT SHOT PASSED THROUGH THE LEG,
11 DID YOU RELY UPON MEASUREMENTS CONTAINED -- INDICATED
12 BY DR. GOLDEN IN HIS 1989 REPORT?

13 A WELL, THAT, AMONG OTHER THINGS. THE
14 MAIN THING I RELIED ON WAS THE PHOTOGRAPHS, AND THE
15 MEASUREMENTS BASICALLY CONFIRMED IT.

16 Q AND WHAT DID YOU LEARN FROM THE
17 PHOTOGRAPH CONCERNING THE DISTANCE OR THE RELATIVE
18 EXIT AND ENTRY WOUNDS AS THEY APPEAR ON THE LEG?

19 MS. ABRAMSON: THIS HAS BEEN ASKED AND
20 ANSWERED BEFORE ON CROSS.

21 THE COURT: OVERRULED.

22 THE WITNESS: I DON'T UNDERSTAND THE
23 QUESTION.

24 I'M SORRY, YOUR HONOR.

25 MR. CONN: YES.

26 Q THE MEASUREMENTS THAT DR. GOLDEN TOOK
27 REGARDING THE WOUND ON THE LEG, WHAT TYPE OF
28 MEASUREMENTS WERE THEY?

41758

1 A HE MEASURED THE DISTANCE FROM THE HEEL
2 TO THE ENTRANCE AND DISTANCE OF THE HEEL TO THE
3 EXIT.

4 Q AND WHAT DID THOSE MEASUREMENTS REVEAL?

5 A THEY WERE WITHIN ONE INCH OF ONE

6 ANOTHER.

7 Q WHICH SIDE BEING THE LONGER?

8 A OH, I DON'T RECALL. ONE OR THE OTHER.

9 IT DOESN'T MAKE ANY DIFFERENCE. IT'S WITHIN 11

10 DEGREES UP OR DOWN. IT'S WITHIN THE 11 DEGREES OF

11 HORIZONTAL. IF YOU CALCULATE WHAT ONE INCH MAKES A

12 DIFFERENCE IT'S 11 DEGREES; AND SO I'M NOT SURE IF

13 IT'S UP OR DOWN. I DON'T REMEMBER.

14 Q ALL RIGHT. SO GIVEN THAT -- GIVEN THAT

15 MEASUREMENT BY DR. GOLDEN, AS WELL AS THE

16 PHOTOGRAPHS THAT YOU RELIED UPON, IF WE WERE TO NOW

17 SHIFT THE ANGLE OF THIS TRAJECTORY AS IT APPEARS IN

18 SHOT 7B, TO BRING IT DOWN PARALLEL TO THE SOFA,

19 EITHER UP OR DOWN 11 DEGREES, WOULD YOU HAVE ANY

20 DISAGREEMENT WITH THIS ILLUSTRATION REPRESENTING HOW

21 THE SHOT TO THE LEFT KNEE OF JOSE MENENDEZ MAY HAVE

22 BEEN INFLICTED?

23 A WELL, IF THE -- IF YOU BRING IT DOWN

24 HORIZONTAL, THIS PUTS THE GREEN LINE OVER -- NOT THE

25 SHOT -- THE COUCH THAT MR. MENENDEZ IS SITTING ON.

26 BUT IT WOULD BE BEHIND THE COUCH; THAT IS AT RIGHT

27 ANGLES TO THAT. AND IF THE SHOOTER IS STANDING OVER

28 THERE IT SEEMS TO ME THAT THAT WOULD BE A LITTLE FAR

1 TO EXPLAIN THE SIZE OF THE WOUNDS. ALTHOUGH IT
2 MIGHT STILL BE WITHIN THE REALM OF POSSIBILITY, IT'S
3 SORT OF STRETCHING IT.

4 Q WELL, COULD THE SHOOTER BE OVER BY THE
5 HEAD OF KITTY MENENDEZ TO ACCOUNT FOR THAT WOUND?

6 A NO. I THINK HE WOULD HAVE TO BE, AS YOU
7 JUST EXPLAINED IN YOUR HYPOTHETICAL -- IF WE DROP
8 THAT LINE DOWN TO PARALLEL WITH THE COUCH, THAT
9 WOULD EXPLAIN IT PRETTY WELL.

10 Q OKAY. BY PARALLEL TO THE COUCH -- I WAS
11 REFERRING TO A LINE LIKE THIS; IS THAT CORRECT?

12 A YEAH. THAT'S WHAT I THOUGHT YOU WERE
13 REFERRING TO.

14 Q RIGHT. NOW, COULD THE SHOOTER BE
15 STANDING OVER HERE AND FIRING THAT SHOT INTO HIS
16 LEG?

17 A I THINK IT GETS A LITTLE TOO CLOSE IF
18 HE'S STANDING IN THERE. HE HAS THE RANGE -- THEN
19 HE'S PROBABLY WITHIN TWO FEET. I THINK THAT'S A
20 LITTLE CLOSE FOR THAT. BUT STILL POSSIBLY, BUT
21 UNLIKELY.

22 Q COULD THE SHOOTER BE STANDING OVER HERE
23 JUST BEHIND THE CORNER OF THAT SECTIONAL WHERE IT
24 CURVES?

25 A I THINK THAT'S POSSIBLE IF HE'S LEANING
26 STRONGLY FORWARD AND PUSHING THE SHOTGUN AHEAD OF
27 HIM AS FAR AS HE CAN. IT'S POSSIBLE.

41760

1 ESTIMATE ON YOUR PART; IS THAT CORRECT?

2 A THAT'S CORRECT, YES.

3 Q AND AS YOU SAID, THAT 14-FOOT ESTIMATE
4 COMES -- HAS A VARIABLE OF, I THINK, FOUR FEET
5 VARIABLE, WHICH YOU SUGGESTED THE FIVE-OR-SIX FOOT
6 ESTIMATE ALSO HAS A VARIABLE IN THERE?

7 A WELL, I DON'T THINK -- WHY FIVE OR SIX
8 FOOT -- I THINK IT WOULD BE MORE OR LESS, YOU KNOW,
9 LIKE PLUS OR MINUS A FOOT AND A HALF OR TWO.

10 FOR THAT REASON, I SAID THAT BOTH OF
11 THESE WOULD BE POSSIBLE, BUT AT SOMEWHAT EXTREMES OF
12 WHAT WOULD BE EXPECTED. I CAN'T SAY EITHER WOULD BE
13 IMPOSSIBLE.

14 Q LET ME SHOW YOU THEN SHOT 6.

15 I'M SHOWING YOU THE ILLUSTRATION THAT
16 HAS BEEN MARKED AS 260 FOR IDENTIFICATION.

17 AND THIS IS A WOUND WHICH DEPICTS AN
18 ILLUSTRATION WHICH DEPICTS THE WOUND TO THE
19 CLAVICLE-MANDIBLE AND RIGHT HAND OF KITTY MENENDEZ.

20 I BELIEVE THAT YOU TESTIFIED THAT THIS
21 WAS A WOUND WHICH, IN YOUR OPINION, OCCURRED
22 APPROXIMATELY 14 FEET OR FURTHER AWAY; IS THAT

23 CORRECT?

24 A YES.

25 Q IS IT YOUR OPINION THAT THIS WOUND COULD
26 NOT HAVE BEEN INFLICTED WHILE KITTY MENENDEZ WAS
27 LYING ON HER BACK?

28 A NO.

41761

1 Q IS THERE ANYTHING ABOUT THE ANGLE; AND
2 ONCE AGAIN, I WILL SHOW YOU PHOTOGRAPH 199.
3 IS THERE ANYTHING ABOUT THE ANGLE OF
4 THIS WOUND THAT WOULD ASSIST YOU IN DETERMINING
5 WHETHER OR NOT SHE WAS LYING ON HER BACK AT THE TIME
6 THAT THAT WOUND WAS INFLICTED?

7 A I DON'T SEE THE ANGLE WOULD HELP ME.
8 NOW, WHEN I SAID LYING ON HER BACK, I MEAN -- I
9 DIDN'T MEAN WITH THIS -- WITH THE ANGLE AS DEPICTED
10 HERE, BECAUSE IF WE FOLLOW THE ANGLE AS DEPICTED
11 HERE, THE SHOOTER WOULD BE UP IN THE CEILING. BUT I
12 WAS ASSUMING YOU WERE TALKING ABOUT A LOWER ANGLE.

13 Q UH-HUH. YES. ASSUMING IT WAS A LOWER
14 ANGLE --

15 A I THINK THERE ARE MANY ANGLES POSSIBLE,
16 AS WELL AS MANY POSITIONS, AND I JUST DON'T KNOW.

17 Q UH-HUH. OKAY. LOOKING AT THE WOUND TO

18 THE AREA OF THE RIGHT JAW, DOES THAT WOUND -- DO YOU
19 ASSOCIATE THIS WOUND, WHICH IS SOMEWHAT UNDER THE
20 CHIN, AS BEING PART OF THAT SAME WOUND?

21 A YES.

22 Q WOULD THAT INDICATE TO YOU THAT AT THE
23 TIME THE SHOT WAS FIRED HER HEAD MUST HAVE BEEN
24 PUSHED BACK AWAY FROM THE SHOOTER?

25 A NO. I DON'T THINK THAT THAT'S A
26 NECESSARY ASSUMPTION. I THINK THERE ARE LOTS OF
27 ANGLES. I THINK THE -- THERE'S LOTS OF WAYS YOU
28 COULD LINE THAT UP WITH THE SHOOTER, AND -- SO I

41762

1 DON'T THINK I CAN SAY WHICH WAY IS MORE LIKELY THAN
2 WHICH OTHER WAY.

3 Q WELL, IS THAT A WOUND WHICH APPEARS TO
4 BE A DIRECT WOUND IN WHICH SHE IS EYE-TO-EYE LEVEL
5 WITH THE SHOOTER?

6 A WHICH WOUND?

7 Q THE WOUND TO HER MANDIBLE WHICH APPEARS
8 TO BE SOMEWHAT UNDER HER JAW.

9 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
10 OBJECT TO COMPOUND AND -- COMPOUND.

11 THE COURT: OVERRULED.

12 THE WITNESS: SHE'S RELATIVELY FACING PRETTY

13 MUCH TOWARDS THE SHOOTER.

14 Q BY MR. CONN: WHEN YOU SAY FACING TOWARD
15 THE SHOOTER, ARE YOU SAYING THAT IN AN EYE-TO-EYE
16 HORIZONTAL LEVEL WITH THE SHOOTER, IS HER HEAD IN A
17 BACK POSITION?

18 MS. ABRAMSON: WELL, I OBJECT. THAT'S A
19 COMPOUND QUESTION, YOUR HONOR.

20 THE COURT: NO. IT GIVES HIM AN OPTION
21 HERE.

22 OVERRULED.

23 THE WITNESS: WELL, EYE TO EYE IS DIFFICULT
24 TO ESTABLISH TOO. THE ANGLE OF THE JAW APPEARS TO
25 BE PARALLEL TO THE ANGLE OF THE SHOT. THE SHOOTER
26 MAY BE A LITTLE BIT TO THE SIDE. ALL YOU HAVE TO DO
27 IS PUT A POINTER ON YOUR OWN JAW IN THE SAME WAY AND
28 LOOK AT WHERE IT GOES; AND IT'S PRETTY EASY TO

41763

1 FIGURE OUT.

2 MR. CONN: UH-HUH. OKAY.

3 Q AND YOU AGREE THAT IT IS POSSIBLE TO
4 ASSOCIATE THE WOUNDS TO THE RIGHT HAND WITH THAT
5 PARTICULAR SHOT?

6 A YEAH. I THINK THAT'S POSSIBLE.

7 Q UH-HUH. OKAY. LET ME SHOW YOU SHOT 5.

8 APPEARS TO BE AN ILLUSTRATION WHICH HAS BEEN MARKED

9 A LITTLE 258.

10 THIS IS AN ILLUSTRATION DEPICTING THE
11 WOUND TO THE RIGHT ARM OF KITTY MENENDEZ, THE LOWER
12 RIGHT ARM AND THE UPPER RIGHT ARM.

13 YOU INDICATED THAT, IN YOUR OPINION,
14 THIS IS A WOUND -- THESE ARE TWO WOUNDS WHICH COULD
15 BE ASSOCIATED TOGETHER; IS THAT CORRECT?

16 A YES.

17 Q AND YOU ALSO INDICATED THAT THESE WOUNDS
18 WERE INFLICTED FROM ABOUT THREE-TO-FOUR FEET AWAY;
19 IS THAT CORRECT?

20 A APPROXIMATELY, YES.

21 Q IS IT POSSIBLE THAT KITTY MENENDEZ -- DO
22 YOU SEE ANY MEDICAL REASON WHY KITTY MENENDEZ COULD
23 NOT HAVE BEEN LYING ON HER BACK AT THE TIME THESE
24 TWO WOUNDS WERE INFLICTED TO HER RIGHT ARM?

25 A NO, I DON'T.

26 Q IF SHE WERE SHOT WHILE SHE WAS LYING ON
27 HER BACK IN THAT POSITION, WHERE WOULD THAT PLACE
28 THE SHOOTER?

41764

1 A IT WOULD PLACE THE SHOOTER SOMEWHERE
2 OVER NEAR THE KNEES OF MR. MENENDEZ.

3 Q OKAY. LET ME SHOW YOU THE DIAGRAM THAT
4 HAS BEEN MARKED AS 256, THE DIAGRAM THAT DEPICTS
5 WHAT DR. MC CARTHY IDENTIFIED AS SHOT NO. 4 IN THIS
6 CASE.

7 NOW, YOU INDICATED THAT ONE OF THE
8 THINGS THAT YOU DISAGREE WITH ABOUT MR. MC CARTHY'S
9 REPORT CONCERNING THIS WOUND WAS THAT DR. MC CARTHY
10 INDICATED TO YOU -- I'M SORRY -- INDICATED IN HIS
11 REPORT, THAT THIS IS A WOUND WHICH WOULD HAVE CAUSED
12 KITTY MENENDEZ TO FALL; IS THAT CORRECT?

13 A I THINK HE SAID IT WOULD HAVE KNOCKED
14 HER DOWN, AS I RECALL, SOMETHING OF THAT SORT; AND
15 IT WAS BECAUSE THERE WAS A SHOT IN THE FRONTAL LOBE
16 OF THE BRAIN, AND THAT WAS HIS REASON, AND I
17 DISAGREED WITH BOTH.

18 Q I BELIEVE THAT YOU WERE ASKED BY COUNSEL
19 CONCERNING HIS REPORT, AND I WOULD LIKE TO DIRECT
20 YOUR ATTENTION TO A COPY OF HIS REPORT -- DO YOU HAVE
21 A COPY OF HIS REPORT WITH YOU?

22 A SOMEWHERE IN HERE. I'D RATHER USE
23 YOURS. IT WOULD SAVE TIME.

24 Q LAST PARAGRAPH ON PAGE 1.

25 DO YOU RECALL WHAT HE SAID CONCERNING
26 THAT WOUND IN HIS REPORT?

27 A YES. "THIS SHOT WOULD CAUSE HER TO FALL
28 TO THE GROUND ON HER BACK BETWEEN THE COUCH AND

1 TABLE." YES.

2 Q OKAY. AND YOU DISAGREED WITH THAT
3 BECAUSE YOU FEEL THAT THIS SHOT THAT WE ARE NOW
4 DISCUSSING WOULD NOT BE A SHOT THAT WOULD CAUSE HER
5 TO FALL; IS THAT CORRECT?

6 A IT MIGHT OR IT MIGHT NOT; AND I DON'T
7 THINK THERE'S ANYBODY THAT CAN SAY. I DISAGREED
8 WITH IT BECAUSE HE SAID HE DID.

9 HE ALSO SAYS IT WOULD CAUSE HER TO FALL
10 ON HER BACK. IF YOU'RE GOING TO DO A SHOT THAT
11 CAUSES A PERSON TO FALL, YOU CAN'T TELL HOW IT --
12 HE'S CLAIMING THE SHOT IS PUSHING HER BACKWARD,
13 OBVIOUSLY, WHICH IT DOES NOT.

14 Q THAT WAS YOUR CONCLUSION WHEN YOU
15 REFERRED TO HIS REPORT; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q BUT NOW AFTER READING HIS REPORT YOU
18 ALSO READ SOME OF HIS TESTIMONY; IS THAT CORRECT?

19 A YES.

20 Q AND DID HIS TESTIMONY CLARIFY SOME
21 ASSUMPTIONS IN YOUR MIND AS TO WHAT HE WAS REFERRING
22 TO?

23 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
24 QUESTION.

25 THE COURT: AND THE LEGAL BASIS?

26 MS. ABRAMSON: WELL, IT'S COMPOUND AND IT'S

27 ALSO ARGUMENTATIVE.

28 THE COURT: DO YOU UNDERSTAND THE QUESTION?

41766

1 THE WITNESS: NO, YOUR HONOR, I DON'T.

2 MR. CONN: OKAY.

3 Q YOU INDICATED THAT YOU READ SOME OF HIS
4 TESTIMONY; IS THAT CORRECT?

5 A YES.

6 Q OKAY. AND YOU RECALL DR. MC CARTHY
7 BEING ASKED THE FOLLOWING AT PAGE 41097.

8 "NOW, WHY IS IT, IN YOUR OPINION,
9 THAT THIS SHOT --"

10 MS. ABRAMSON: I'M GOING TO OBJECT TO COUNSEL
11 READING A SPECIFIC PAGE WITHOUT SEEING IF THAT'S
12 SOMETHING THE WITNESS READ BY SHOWING IT TO HIM.

13 THE COURT: ALL RIGHT. THAT WOULD BE
14 APPROPRIATE, IF YOU'D JUST SHOW IT TO HIM.

15 MR. CONN: OKAY.

16 MS. ABRAMSON: COULD WE HAVE THE DATE OF THAT
17 TRANSCRIPT?

18 MR. CONN: I HAVE THE PAGE. I DON'T HAVE THE
19 DATE.

20 MS. ABRAMSON: WELL, I WOULD OBJECT TO THAT.

21 THE WITNESS HAS ALSO INDICATED HE DIDN'T GET THEM

22 EVERY DAY.

23 THE COURT: OVERRULED.

24 MR. CONN: LET ME SHOW YOU PAGE 41097; AND I

25 WOULD ASK YOU TO READ THE PART IN YELLOW THERE THAT

26 I'VE HIGHLIGHTED.

27 THE WITNESS: THE WHOLE THING?

28 MR. CONN: YES. TO YOURSELF.

41767

1 THE WITNESS: I'M SORRY. I THOUGHT YOU SAID

2 OUT LOUD.

3 (READING)

4

5 MS. ABRAMSON: WELL, YOUR HONOR, I DON'T HAVE

6 A COPY OF THAT TRANSCRIPT.

7 THE COURT: OKAY. WELL, IF YOU SIT DOWN,

8 PERHAPS COUNSEL CAN SHOW IT TO YOU AFTER THE WITNESS

9 IS FINISHED READING IT IF YOU DON'T HAVE IT.

10 MS. ABRAMSON: NOW I HAVE IT. LET COUNSEL

11 REVIEW IT.

12 MR. CONN: OKAY.

13 THE COURT: ALL RIGHT. HAVE YOU READ IT,

14 MS. ABRAMSON?

15 MS. ABRAMSON: OH, YES, I HAVE READ IT.

16 THE COURT: THAT'S WHAT WE'RE WAITING FOR.

17 MS. ABRAMSON: OH, YES.

18 Q BY MR. CONN: NOW, DID THAT TESTIMONY OF
19 ROGER MC CARTHY ASSIST YOU IN CLARIFYING SOME OF THE
20 ASSUMPTIONS THAT YOU HAD CONCERNING WHAT HE MEANT
21 WHEN HE WROTE HIS REPORT?

22 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS
23 FOR SPECULATION. IT'S ARGUMENTATIVE.

24 THE COURT: WELL, IT WOULDN'T CALL FOR
25 SPECULATION, OBVIOUSLY, IF THE WITNESS IS ANSWERING
26 AS FAR AS HIS OWN MENTAL STATE. LET'S ESTABLISH
27 SOME FOUNDATION HERE AS TO WHETHER OR NOT HE'S EVER
28 SEEN THIS BEFORE.

41768

1 MR. CONN: YES.

2 Q DID YOU READ THAT -- DID YOU READ THAT
3 TESTIMONY BEFORE I SHOWED IT TO YOU?

4 A NO, I DIDN'T.

5 Q OKAY. NOW THAT YOU'VE READ THAT
6 TESTIMONY, DOES THAT ASSIST YOU ANY IN CLARIFYING
7 YOUR ASSUMPTIONS THAT YOU HAD CONCERNING WHAT
8 DR. MC CARTHY MEANT WHEN HE SAID THAT THAT SHOT
9 WOULD CAUSE HER TO FALL TO THE FLOOR?

10 A WELL, I'M NOT SURE IT ASSISTS ME. IT
11 INDICATES A WAFFLING OF HIS OPINION. HE SAYS -- HE

12 CHANGED HIS MIND APPARENTLY.

13 Q WHY DO YOU SAY THAT HE CHANGED HIS
14 MIND?

15 A WELL, HE NOW DOES NOT SAY THAT THE
16 FRONTAL LOBE -- THAT HE MEANT THE FRONTAL LOBE
17 PENETRATION CAUSED HER TO FALL OVER.

18 Q ARE YOU SAYING THAT IN HIS REPORT HE
19 INDICATED THAT THE FRONTAL LOBE PENETRATION CAUSED
20 HER TO FALL?

21 A THESE WERE ALL MIXED UP. HE DOESN'T SAY
22 EXACTLY WHY IN HIS REPORT. HE HAS THEM ALL IN THE
23 SAME AREA. HERE HE SAYS IT DID.

24 AND SO I'LL GIVE HIM THE BENEFIT OF THE
25 DOUBT AND ASSUME HE -- WELL, IN THE FIRST PLACE,
26 HE'S STILL TALKING ABOUT A FRONTAL LOBE PENETRATION,
27 WHICH THERE WASN'T. I GUESS HERE HE'S INDICATING
28 EVEN IF THERE WAS A FRONTAL LOBE PENETRATION, IT

41769

1 MIGHT NOT HAVE CAUSED HER TO FALL OVER, I ASSUME.

2 IT'S GETTING VERY CONFUSED.

3 Q IS IT TRUE THAT DR. MC CARTHY IN HIS
4 TESTIMONY INDICATED THAT WHAT HE MEANT IN HIS REPORT
5 WAS NOT THAT THE SHOT WOULD NECESSARILY CAUSE ANYONE
6 TO FALL; ONLY THAT IT IS HIGHLY PLAUSIBLE THAT IT

7 DID CAUSE HER TO FALL IN THIS PARTICULAR CASE?

8 THAT'S WHAT HE SAID?

9 MS. ABRAMSON: OBJECTION, YOUR HONOR. I'M

10 GOING TO OBJECT TO ASKING THIS WITNESS ABOUT

11 DR. MC CARTHY'S TESTIMONY. IT'S JUST HEARSAY WITH

12 NO PURPOSE.

13 THE COURT: SUSTAINED, UNLESS THERE IS

14 SOMETHING FURTHER.

15 SO OBJECTION SUSTAINED.

16 Q BY MR. CONN: OKAY. YOU INDICATED THAT

17 ONE OF THE REASONS WHY YOU REJECTED THE OPINION OF

18 DR. MC CARTHY THAT -- CONCERNING THIS PARTICULAR

19 SHOT, CAUSING HER TO FALL, WAS BECAUSE IT WAS YOUR

20 UNDERSTANDING FROM READING HIS REPORT THAT THAT SHOT

21 WOULD NECESSARILY CAUSE HER TO FALL; IS THAT

22 CORRECT?

23 A THAT'S WHAT HE SAID, YES.

24 Q OKAY. NOW, DID YOU READ JUST NOW A

25 PORTION OF MR. MC CARTHY'S TESTIMONY BEFORE THIS

26 JURY IN WHICH HE INDICATED THAT HE DIDN'T KNOW IF

27 THAT SHOT WOULD CAUSE ANYONE TO FALL, ONLY THAT HE

28 FELT IT WAS HIGHLY PLAUSIBLE THAT IT DID, IN FACT,

1 CAUSE HER TO FALL?

2 A YES, I READ THAT.

3 Q NOW THAT YOU HAVE READ THAT, DO YOU
4 STILL DISAGREE WITH DR. MC CARTHY THAT THAT IS A
5 SHOT THAT COULD CAUSE HER TO FALL?

6 A I NEVER HAVE DISAGREED WITH THAT. I
7 SAID THAT ALL ALONG. HE'S CHANGED HIS MIND. I
8 HAVEN'T.

9 Q OKAY. AND HE CHANGED HIS MIND IN REGARD
10 TO WHAT, DR. --

11 A HE SAID AT FIRST IT WOULD CAUSE HER TO
12 FALL OVER AND NOW HE SAYS IT MIGHT NOT. I HAVE SAID
13 ALL ALONG IT MIGHT AND MIGHT NOT.

14 Q AND YOU'RE SAYING HE CHANGED HIS MIND
15 BECAUSE YOU ARE REFERRING TO A ONE-AND-A-HALF-PAGE
16 REPORT BY DR. MC CARTHY; IS THAT CORRECT?

17 A I GUESS THAT'S HOW LONG IT WAS. I
18 DIDN'T COUNT THE PAGES.

19 Q AND IN THIS ONE AND A HALF PAGES HE IS
20 TRYING TO SUM UP ALL OF THE SHOTS?

21 MS. ABRAMSON: I'M GOING TO OBJECT. THIS IS
22 OBVIOUSLY CALLING FOR SPECULATION ABOUT WHAT WAS
23 GOING ON --

24 THE COURT: SUSTAINED.

25 AGAIN, COUNSEL, DON'T ARGUE YOUR
26 OBJECTION. STATE THE LEGAL BASIS AND NOTHING MORE.
27 IF YOU CONTINUE TO DO WHAT YOU'RE DOING, THERE WILL
28 BE FURTHER REPERCUSSIONS.

1 Q BY MR. CONN: IN THIS
2 ONE-AND-A-HALF-PAGE REPORT THAT YOU'RE REFERRING TO,
3 DOCTOR, DR. MC CARTHY GIVES A VERY BRIEF SUMMARY OF
4 THE SEQUENCE OF THE SHOTS IN THIS CASE --

5 MS. ABRAMSON: OBJECTION. CALLS FOR
6 HEARSAY. NO FOUNDATION.

7 THE COURT: SUSTAINED.

8 Q BY MR. CONN: OKAY. YOUR DISAGREEMENT
9 WITH -- YOUR CONCLUSION THAT DR. MC CARTHY HAS NOW
10 CHANGED HIS OPINION IS BASED UPON THE LINE IN HIS
11 REPORT WHERE HE SAYS: "THIS SHOT WOULD CAUSE HER TO
12 FALL TO THE GROUND ON HER BACK BETWEEN THE COUCH AND
13 THE TABLE."

14 IS THAT CORRECT?

15 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: YES. OKAY.

18 Q BY MR. CONN: LET ME SHOW YOU WHAT HAS
19 BEEN MARKED AS SHOT 3 IN THIS CASE. SHOT 3 WAS A
20 MISS.

21 LET ME SHOW YOU WHAT HAS BEEN MARKED AS
22 SHOT 2 IN THIS CASE, AN EXHIBIT THAT HAS BEEN MARKED
23 253.

24 IN THIS PHOTOGRAPH -- I'M SORRY. THIS
25 ILLUSTRATION DEPICTS A WOUND TO THE BACK OF THE HEAD

26 OF JOSE MENENDEZ.

27 DID YOU FORM AN OPINION CONCERNING

28 WHETHER OR NOT JOSE MENENDEZ WAS SEATED OR STANDING

41772

1 AT THE TIME THAT THIS WOUND WAS INFLICTED?

2 A I DID NOT.

3 Q YOU AGREED WITH THE DETERMINATION MADE

4 BY DR. GOLDEN THAT THIS WAS A CONTACT WOUND?

5 A YES.

6 Q CAN YOU SEE ANY MEDICAL REASON WHY THE

7 SHOT -- WHY THE ILLUSTRATION THAT HAS BEEN REFERRED

8 TO AS SHOT 2B DOES NOT ACCURATELY PORTRAY HOW JOSE

9 MENENDEZ MAY HAVE BEEN POSITIONED AT THE TIME THAT

10 SHOT WAS FIRED?

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

12 QUESTION, YOUR HONOR. IT'S COMPOUND.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DON'T HAVE ANY OBJECTION TO

15 THIS, NO.

16 MR. CONN: OKAY.

17 Q LET ME TURN TO THE LAST ILLUSTRATION

18 THEN, SHOT 1A.

19 NOW, THIS IS -- LET ME ASK YOU THIS: YOU

20 DISAGREED WITH THE CONCLUSION OF DR. MC CARTHY THAT

21 THE WOUNDS TO THE LEFT ELBOW AREA, THE RIGHT ARM
22 AREA, AND THE WOUNDS TO THE RIGHT BREAST AREA OF
23 KITTY MENENDEZ, ALL COULD HAVE BEEN CAUSED BY ONE
24 SHOT, CORRECT?

25 MS. ABRAMSON: OBJECTION, YOUR HONOR.
26 MISSTATES THE EVIDENCE.

27 THE COURT: REPHRASE THE QUESTION.

28 MR. CONN: YES.

41773

1 Q DO YOU AGREE -- YOU DID AGREE WITH
2 MR. MC CARTHY'S CONCLUSION THAT THE WOUNDS TO BOTH
3 ARMS OF JOSE MENENDEZ AND THE RIGHT BREAST OF --

4 MS. ABRAMSON: SAME OBJECTION.

5 THE COURT: WHY DON'T YOU REPHRASE IT AND ASK
6 DOES HE AGREE.

7 MS. ABRAMSON: HE'S GOT THE WRONG BREAST,
8 THAT'S THE OBJECTION.

9 MR. CONN: OH, OKAY.

10 Q YOU DISAGREED WITH THE CONCLUSION OF
11 DR. MC CARTHY THAT THE WOUNDS TO BOTH ARMS OF JOSE
12 MENENDEZ AND THE WOUNDS TO THE LEFT BREAST AREA OF
13 KITTY MENENDEZ WERE ALL CAUSED BY THE SAME SHOT; IS
14 THAT CORRECT?

15 A THAT'S CORRECT, YES.

16 Q HOW MANY SHOTS DO YOU BELIEVE COULD HAVE
17 CAUSED ALL OF THOSE WOUNDS?

18 A I THINK IT WOULD TAKE AT LEAST THREE.

19 Q OKAY. AND WHY DO YOU SAY THREE?

20 A I THINK THE SHOT TO THE BREAST WAS FRONT
21 TO BACK IN A SINGLE SHOT. I DON'T THINK IT WAS --
22 AND I THINK CERTAINLY THERE WERE TWO SHOTS TO HIS --
23 MR. MENENDEZ' RIGHT ARM; AND SO THAT WOULD BE TWO
24 THERE.

25 NOW, WHETHER OR NOT THE SHOT OF
26 MR. MENENDEZ' RIGHT AND LEFT ARM WERE CONNECTED,
27 IT'S POSSIBLE, BUT WHO KNOWS IF IT WAS ONE OR TWO.
28 I CAN'T SAY. I JUST -- CERTAINLY IT'S NOT --

41774

1 CERTAINLY, THAT ONE SHOT DID NOT CAUSE THE DAMAGE TO
2 BOTH MR. MENENDEZ' ARM AND THE BREAST OF KITTY
3 MENENDEZ, AND THAT'S VERY CLEAR.

4 Q OKAY. COULD ONE SHOT HAVE CAUSED THE
5 WOUNDS TO THE LEFT ELBOW OF JOSE MENENDEZ, THE SIX
6 PELLET DEFECTS GOING INTO THE RIGHT ARM OF JOSE
7 MENENDEZ, AS WELL AS THE WOUNDS TO THE BREAST OF
8 KITTY MENENDEZ?

9 A I DON'T THINK SO. CERTAINLY NOT WITH
10 HER IN THIS POSITION.

11 Q SUPPOSE HER POSITION WERE ROTATED
12 SOMEWHAT, COULD ONE SHOT HAVE CAUSED ALL OF THOSE
13 THREE WOUNDS?
14 A I THINK IT'S UNLIKELY, BUT I CAN'T
15 ABSOLUTELY RULE IT OUT, GIVEN YOU'D HAVE TO BOX HER
16 AROUND. BUT THE THING THAT WE'D HAVE TO SAY IS THAT
17 THE -- CERTAINLY -- WELL, THE NUMBER OF PELLETS ALONE
18 WOULD RULE OUT EVERYTHING BEING CAUSED BY THAT, AND
19 I DON'T THINK THAT'S POSSIBLE.
20 CERTAINLY WE HAVE ANOTHER DIFFERENT SHOT
21 IN HIS RIGHT ARM. DR. MC CARTHY MIXES THOSE TWO
22 TOGETHER AS ONE SHOT.
23 AND ALSO, DR. MC CARTHY IN HIS REPORT
24 DEPICTS THIS SHOT AS CAUSING A -- THE CONTUSION ON
25 THE CHEST OF MR. MENENDEZ, AND I DON'T KNOW IF
26 THAT'S SUPPOSED TO BE INDICATED HERE OR NOT.
27 Q WELL, NO. MY CURRENT QUESTION DOESN'T
28 INCORPORATE THE SHOT TO THE CHEST OF JOSE MENENDEZ.

41775

1 WHAT I'M SIMPLY ASKING YOU IS WHETHER A
2 SINGLE SHOT, IN YOUR OPINION, COULD HAVE CAUSED THE
3 WOUNDS TO THE LEFT ELBOW OF JOSE MENENDEZ, THE RIGHT
4 INNER ARM OF JOSE MENENDEZ, AND THE LEFT BREAST OF
5 KITTY MENENDEZ.

6 A I THINK IT'S MUCH MORE LIKELY THAT ONE
7 OF THEM MIGHT HAVE LINED UP WITH THE BREAST OF KITTY
8 MENENDEZ, AND THE WOUNDS THAT HIT THE ARM WOULD NOT
9 BE THE PELLETS, OF COURSE, THAT WENT INTO THE
10 BREAST, BECAUSE I THINK THE 16 PELLETS THAT HIT
11 KITTY MENENDEZ IN THE BREAST HIT HER FIRST THERE IN
12 THE BREAST. I DON'T THINK THEY WENT IN ANYTHING
13 ELSE FIRST.

14 Q IT WAS YOUR OPINION THAT THE -- GOING
15 BACK A BIT IF I COULD -- THE SHOT TO THE RIGHT EYE OF
16 KITTY MENENDEZ, THE ONE THAT DR. MC CARTHY CALLS
17 SHOT NO. 4, IT WAS YOUR OPINION THAT IT STRUCK
18 SOMETHING FIRST BEFORE IT WENT INTO HER RIGHT EYE;
19 IS THAT CORRECT?

20 A THAT'S CORRECT, YES.

21 Q AND BASED UPON THE VARIOUS BODY PARTS
22 THAT YOU HAVE OBSERVED IN THESE PHOTOGRAPHS, DID YOU
23 FORM AN OPINION AS TO WHAT OTHER BODY PART IT MIGHT
24 HAVE STRUCK BEFORE GOING INTO HER RIGHT EYE?

25 A I DIDN'T REALLY SEARCH FOR ONE, NO.

26 Q WOULD IT BE CONSISTENT WITH FIRST
27 STRIKING HER RIGHT HAND AND THEN GOING INTO HER
28 RIGHT EYE?

1 A I GUESS THAT'S POSSIBLE. I DIDN'T THINK
2 OF IT.

3 Q OKAY. CONCERNING THE WOUNDS TO THE --
4 OR INJURY TO THE CHEST AREA OF JOSE MENENDEZ, YOU
5 DESCRIBED THE WOUNDS AS BEING AN ABRASION -- I'M
6 SORRY -- A CONTUSION, RATHER AN ABRASION; IS THAT
7 CORRECT?

8 A THAT'S CORRECT, YES.

9 Q AND WERE YOU AWARE OF THE FACT THAT
10 DR. GOLDEN REFERRED TO THE WOUND AS AN ABRASION
11 RATHER THAN A CONTUSION?

12 A YES. I'M AWARE OF THAT.

13 Q AND DO YOU FEEL THAT A PATHOLOGIST IS
14 SOMEONE WHO APPRECIATES AND UNDERSTANDS THE
15 DIFFERENCE BETWEEN AN ABRASION AND A CONTUSION?

16 A I THINK SOMETIMES THERE'S A FINE LINE,
17 AND I THINK WHEN I SPOKE TO DR. GOLDEN HE EXPRESSED
18 CONTUSION TO ME.

19 MR. CONN: OKAY. I WANT TO MAKE A MOTION TO
20 STRIKE AS CALLING FOR HEARSAY, YOUR HONOR.

21 THE COURT: SUSTAINED. THE ANSWER'S
22 STRICKEN. IT'S ALSO NONRESPONSIVE.

23 MR. CONN: I WOULD LIKE TO ASK YOU.

24 Q IF THIS WERE A BRUISE RATHER THAN AN
25 ABRASION, THAT MEANS IT COULD HAVE BEEN CAUSED BY
26 ANY BANG ON THE CHEST; IS THAT CORRECT?

27 A OF COURSE.

28 Q IT COULD HAVE BEEN CAUSED BY SOMEONE

1 KICKING HIM IN THE CHEST; IS THAT CORRECT?

2 A POSSIBLE.

3 Q AND IT COULD HAVE BEEN CAUSED BY SOMEONE

4 BANGING A SHOTGUN BUTT INTO HIS CHEST; IS THAT

5 CORRECT?

6 MS. ABRAMSON: I'M GOING TO OBJECT. THESE

7 ARE NOT HYPOTHETICALS UPON WHICH THE PEOPLE HAVE ANY

8 POTENTIAL PROOF.

9 THE COURT: OBJECTION OVERRULED.

10 THE WITNESS: IT'S POSSIBLE.

11 Q BY MR. CONN: THERE'S NO WAY OF TELLING

12 WHAT CAUSED THAT CONTUSION TO HIS CHEST, IF INDEED

13 IT IS A CONTUSION; IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q NOW, YOUR CONCLUSION CONCERNING HOW THE

16 WOUNDS TO THE BACK OF HIS LEFT ARM STRUCK AND CAME

17 OUT -- I'M SORRY -- HIS RIGHT ARM, AND CAME OUT HIS

18 RIGHT ARM IS BY HIM -- CALLS FOR HIM PLACING HIS

19 RIGHT ARM OVER HIS CHEST; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q IN THAT SITUATION WHERE WOULD THE

22 PELLETS GO?

23 A THE PELLETS WOULD END UP SOMEWHERE TO

24 HIS LEFT.

25 Q OKAY.

26 A IN FRONT.

27 Q OKAY. HAVE THOSE PELLETS BEEN ACCOUNTED

28 FOR, TO YOUR KNOWLEDGE, AT THE CRIME SCENE?

41778

1 A I HAVEN'T THE FOGGIEST IDEA.

2 Q YOU INDICATED THAT JOSE MENENDEZ HAD
3 SOME BLOOD SPATTERS ON HIS SHIRT, ON THE LEFT SIDE
4 OF HIS SHIRT; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q YOU INDICATED THAT BLOOD SPATTER WOULD
7 BE CONSISTENT WITH A WOUND TO HIS RIGHT ARM; IS THAT
8 CORRECT?

9 A THAT'S CORRECT.

10 Q WOULD IT ALSO BE CONSISTENT WITH ANOTHER
11 PERSON'S BLOOD, SUCH AS THE BLOOD OF KITTY MENENDEZ,
12 STRIKING THE SHIRT?

13 A WELL, IF SHE WAS CLOSE ENOUGH.

14 Q OKAY. AND YOU DON'T KNOW WHETHER THAT
15 BLOOD WAS THE BLOOD OF KITTY MENENDEZ OR JOSE
16 MENENDEZ; IS THAT CORRECT?

17 A OF COURSE, I DON'T.

18 Q OKAY. NOW, CONCERNING THE WOUND TO THE

19 LEFT ELBOW OF JOSE MENENDEZ, ARE YOU AWARE OF THE
20 FACT THAT THERE WERE NINE PELLET DEFECTS OBSERVED
21 THERE, ALTHOUGH ONLY FIVE PELLETS WERE RECOVERED?

22 A YES.

23 Q AND IS IT YOUR OPINION THAT THE PELLETS
24 WHICH MIGHT HAVE PENETRATED THE SKIN AND WHICH WERE
25 NOT RECOVERED MIGHT HAVE JUST BOUNCED OFF HIS ELBOW?

26 A WHAT WAS THAT AGAIN?

27 Q YES. DO YOU THINK THAT PELLETS, WHICH
28 PENETRATED HIS SKIN, BUT WHICH WERE NOT RECOVERED

41779

1 FROM HIS ARM, MIGHT HAVE JUST BOUNCED OFF HIS ELBOW?

2 A YOU MEAN -- IS IT MY OPINION THAT THE
3 PELLETS HIT THE ELBOW WITHOUT STRIKING ANYTHING
4 FIRST AND BOUNCED OFF?

5 Q NO. ACTUALLY PENETRATE THE SKIN AND
6 BOUNCED OFF AFTER PENETRATING THE SKIN.

7 A BOUNCED OFF WHAT?

8 Q BOUNCED OFF HIS ARM.

9 A YOU MEAN WENT INTO THE SKIN AND BOUNCED
10 OUT AGAIN?

11 Q YES.

12 A OF COURSE NOT. I'VE NEVER HEARD SUCH A
13 THING.

14 Q YOU WOULD AGREE THAT'S RIDICULOUS?

15 A YES.

16 Q NOW, IN ADDITION TO THE BRUISES TO THE
17 CHEST OF JOSE MENENDEZ, DID YOU NOTICE BRUISES TO
18 ANY -- WERE YOU AWARE IN THE REPORTS OF BRUISES TO
19 ANY OTHER PARTS OF HIS BODY?

20 A I DIDN'T NOTICE ANY, NO.

21 Q DID YOU NOTE THAT JOSE MENENDEZ ALSO HAD
22 BRUISES IN THE AREA OF HIS RIGHT KNEE OR RIGHT THIGH
23 AREA?

24 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
25 OBJECT AS OUTSIDE THE SCOPE OF HIS EXAMINATION.

26 THE COURT: OVERRULED.

27 THE WITNESS: I DIDN'T NOTICE ANY.

28 MR. CONN: OKAY.

41780

1 Q AND YOU REVIEWED ALL OF THE PHOTOGRAPHS
2 IN THIS CASE?

3 A BRIEFLY, YES.

4 Q AND DID YOU NOT -- NO BRUISES TO HIS
5 RIGHT LEG OR RIGHT KNEE WAS EVER POINTED OUT TO YOU?

6 A I CONCENTRATED STRONGLY ON THE GUNSHOT
7 WOUND. I DID NOT NOTICE, AS I'VE ALREADY STATED,
8 ANY BRUISES, AND I'M SORRY. NO, I DIDN'T.

9 Q WERE YOU SHOWN THE -- AT SOME POINT DID
10 YOU SEE THE ACTUAL SHIRT THAT JOSE MENENDEZ WAS
11 WEARING AT THE TIME OF THE KILLING?

12 A YES.

13 Q AND DID YOU OBSERVE HOLES TO THAT
14 SHIRT?

15 A YES.

16 Q WAS IT PREVIOUSLY YOUR BELIEF THAT THERE
17 WERE NO HOLES TO THE SHIRT OF JOSE MENENDEZ PRIOR TO
18 THE TIME THAT YOU OBSERVED THE HOLES ON THE SHIRT?

19 A NOT THERE WERE NO HOLES; THERE WERE NO
20 HOLES OF THE TYPE I WOULD EXPECT IF THE SHOT PATTERN
21 HAD COME ACROSS PARALLEL TO THIS SHIRT AS STATED BY
22 MR. MC CARTHY AND CAUSED THE -- HE POSTULATED THAT
23 THIS BRUISE WAS CAUSED BY THE SHOT COLUMN COMING
24 ACROSS HERE, AND THAT WOULD BE PARALLEL TO THE
25 CHEST. AND IF THAT HAD BEEN THE CASE, THE HOLE TYPE
26 WOULD HAVE BEEN A LONG, ELONGATED HOLE, AND I DIDN'T
27 SEE ANY OF THAT TYPE. HE HAD SOME SHORTER HOLES AND
28 I DON'T KNOW WHAT THEY WERE MADE BY, BUT THEY'RE NOT

41781

1 THE KIND THAT WOULD -- WHEN I SAID -- IF I SAY NO
2 HOLES, I MEAN -- I'M LOOKING FOR A HOLE OF THE TYPE
3 THAT WOULD EXPLAIN WHAT DR. MC CARTHY'S TRYING TO

4 EXPLAIN. I DIDN'T SEE ANY OF THAT TYPE HOLE.

5 Q OKAY. DID YOU OBSERVE A HOLE TO THE --

6 SOMEWHERE ON THE RIGHT SIDE OF THE SHIRT WORN BY

7 JOSE MENENDEZ?

8 A YES, FAIRLY LOW ON THE RIGHT SIDE, YES.

9 I THINK THERE WAS MORE THAN ONE.

10 Q DID YOU FORM AN OPINION CONCERNING WHAT

11 CAUSED THAT HOLE?

12 A NO.

13 MR. CONN: THANK YOU, DOCTOR. I HAVE NO

14 FURTHER QUESTIONS.

15 THE COURT: REDIRECT.

16

17 REDIRECT EXAMINATION

18 BY MS. ABRAMSON:

19 Q DR. FACKLER, YOU CONCLUDED THAT THE LEG

20 WOUND TO MR. MENENDEZ' THIGH WAS AN ANTEMORTEM

21 WOUND, CORRECT, THE LEG WOUND TO MR. MENENDEZ'

22 THIGH?

23 A WELL, I DIDN'T CONCLUDE IT WAS ANY -- I

24 THINK IT WAS PROBABLY ANTEMORTEM. I DON'T THINK I

25 CAN SAY FOR SURE IF IT WAS ANTE- OR POSTMORTEM, BUT

26 I THOUGHT IT WAS LIKELY ANTEMORTEM.

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

28 THAT WE RESUME TOMORROW MORNING BECAUSE IT'S GOING

1 TO TAKE QUITE A WHILE WITH THIS WITNESS AND I'M VERY
2 TIRED.

3 THE COURT: IT IS 12 MINUTES TO FIVE.

4 HOW LONG DO YOU THINK YOUR EXAMINATION
5 WILL BE?

6 MS. ABRAMSON: ABOUT AN HOUR AND A HALF.

7 THE COURT: MY CONCERN IS THAT WE FINISH WITH
8 HIM SO HE DOESN'T STAY BEYOND TOMORROW.

9 MS. ABRAMSON: OH, NO, HE WON'T.

10 THE COURT: OKAY. WE'LL RESUME TOMORROW AT
11 8:30. DON'T DISCUSS THE MATTER WITH ANYONE. DON'T
12 FORM ANY FINAL OPINIONS ABOUT IT. WE'LL ASK THAT
13 YOU ALL RETURN TOMORROW AT 8:30.

14 (AT 4:48 P.M., AN ADJOURNMENT
15 WAS TAKEN UNTIL WEDNESDAY,
16 NOVEMBER 22, 1995, AT 8:30 A.M.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

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

4 THE PEOPLE OF THE STATE OF)
5 CALIFORNIA,)

6 PLAINTIFFS,)
7)

8 VS.) NO. BA 068880
)

ERIK GALEN MENENDEZ, AND)
9 JOSEPH LYLE MENENDEZ,)
)
10 DEFENDANTS.)
)
11

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 TUESDAY, NOVEMBER 21, 1995

14 VOLUME 248

15 PAGES 41556 THROUGH 41782

16

17

18

19

APPEARANCES:

20 (SEE APPEARANCE PAGE)

21

22

23

24

25

26

27

28

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

4 BY: DAVID CONN, DEPUTY
AND
5 CAROL NAJERA, DEPUTY
18000 CRIMINAL COURTS BLDG.
6 210 WEST TEMPLE STREET
LOS ANGELES, CA 90012

7
8
9 FOR THE DEFENDANT

9 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,
PUBLIC DEFENDER
10 BY: CHARLES GESSLER, DEPUTY
AND
11 TERRI TOWERY, DEPUTY
210 WEST TEMPLE
12 LOS ANGELES, CA 90012

13
14
15 FOR THE DEFENDANT

15 ERIK GALEN MENENDEZ: LESLIE ABRAMSON
ATTORNEY AT LAW
16 4929 WILSHIRE BOULEVARD
SUITE 940
17 LOS ANGELES, CA 90010
18 BARRY LEVIN, ESQ.
11661 SAN VICENTE BOULEVARD
19 LOS ANGELES, CA 90049

20
21
22 MARILYN FADALE,
CSR NO. 4547
ANNAMARIE PAPA
23 CSR NO. 8608
OFFICIAL REPORTERS
24
25
26
27
28

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6

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7

8

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9

10 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

11 FACKLER,
MARTIN

12 (CON'D) 41557-A 41587-C 41781-A 248

13

14

15

LEGEND:

16 A = MS. ABRAMSON C = MR. CONN

G = MR. GESSLER L = MR. LEVIN

17 N = MS. NAJERA T = MS. TOWERY

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 320- PHOTOGRAPH 41697 248