

1 VAN NUYS, CALIFORNIA; MONDAY, NOVEMBER 27, 1995

2 9:25 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5 * * * * *

6

7 (PAGES 41972 THROUGH 41979 WERE

8 HELD IN CAMERA AND SEALED BY

9 ORDER OF THE COURT.)

10

11 (THE FOLLOWING PROCEEDINGS WERE

12 HELD IN OPEN COURT, OUT OF THE

13 PRESENCE OF THE JURY:)

14

15 THE COURT: WE'RE IN SESSION WITH THE

16 DEFENDANTS AND COUNSEL HERE. MR. GESSLER ISN'T HERE

17 AT THE MOMENT.

18 YOU WANTED TO SAY SOMETHING ABOUT THIS

19 WITNESS.

20 MS. ABRAMSON: I JUST WANTED TO INDICATE THAT

21 WHAT OUR INTENTION IS ON DIRECT WITH THIS WITNESS,

22 IN THE HOPES THAT WE CAN EXAMINE HIM AS

23 EXPEDITIOUSLY AS POSSIBLE. HE HAS BEEN HERE ONCE

24 BEFORE AND DID NOT GET ON THE WITNESS STAND. SO I'D

25 LIKE TO HAVE HIS TESTIMONY COMPLETED, IF POSSIBLE,

26 BY THE END OF TODAY, IF NOT EARLY TOMORROW.

27 MY INTENTION WITH DR. WECHT IS TO TAKE,

28 AS HIS SECOND REPORT WHICH WAS TURNED OVER TO THE

1 PROSECUTION INDICATES, TO TAKE HIM THROUGH THE
2 SO-CALLED CONTROVERSIAL WOUNDS ON BOTH -- ON EACH OF
3 THE DECEDENTS; AND ABOVE AND BEYOND THAT, TO TALK
4 ABOUT HIS EXPERIENCE IN SO-CALLED RECONSTRUCTIONS
5 AND HIS OPINION ABOUT WHEN RECONSTRUCTIONS ARE
6 POSSIBLE AND NOT POSSIBLE, AND WHAT ARE THE FACTUAL
7 PREDICATES TO DO A RECONSTRUCTION ON A SHOTGUN
8 SHOOTING; AND HIS OPINION AS TO WHETHER OR NOT, FROM
9 HIS FORENSIC SCIENCE BACKGROUND, HE BELIEVES A
10 RECONSTRUCTION, SCIENTIFICALLY VALID ONE, WAS
11 POSSIBLE IN THIS CASE.

12 SO THAT'S BASICALLY THE SCOPE OF THE
13 TESTIMONY I INTEND TO ELICIT. I DO NOT INTEND TO
14 TAKE HIM THROUGH THE CARTOONS, THE ILLUSTRATIONS, AS
15 I FOUND I HAD TO DO WITH DR. FACKLER AFTER
16 CROSS-EXAMINATION WAS AS BROAD AS IT WAS, TO REFUTE
17 STEP BY STEP FAILURE ANALYSIS' WORK. SO IT IS NOT
18 MY INTENTION TO TAKE HIM THROUGH THOSE
19 ILLUSTRATIONS, BASICALLY, IS ALL. AND I INTEND TO
20 USE, WITH RESPECT TO HIS DISCUSSION OF CERTAIN
21 WOUNDS, PHOTOGRAPHS THAT ARE ON THE BOARDS THAT WE
22 HAVE FOR THE WOUNDS WHERE PHOTOGRAPHIC EVIDENCE IS
23 USEFUL.

24 SO THAT'S MY INTENTION, IS TO TRY TO DO
25 A FAIRLY EXPEDITIOUS AND TO-THE-POINT EXAMINATION OF
26 THIS WITNESS. I THINK THIS JURY HAS HEARD A GREAT
27 DEAL ABOUT THIS EVIDENCE BY NOW, AND I DON'T INTEND
28 TO BE DUPLICATIVE, BUT THIS IS THE ONLY FORENSIC

41982

1 PATHOLOGIST THAT WE HAVE CALLED AND HE DOES DISAGREE
2 WITH THE FORENSIC PATHOLOGIST THAT WAS CALLED BY THE
3 PROSECUTION, AND SO I THINK WE HAVE TO GO THROUGH
4 THOSE AREAS OF CONTROVERSY.

5 ALL RIGHT. AND WHAT IS THE PURPOSE OF
6 YOUR REMARKS?

7 MS. ABRAMSON: WELL, THE PURPOSE OF MY
8 REMARKS IS THAT I WOULD LIKE THE COURT TO -- I KNOW
9 THE COURT IS NOT GOING TO MAKE A RULING NOW BECAUSE
10 ANYTHING CAN HAPPEN. BUT I WANT THE COURT TO KNOW
11 WHERE I'M STEERING, SO IT'S CLEAR, WHEN MY DIRECT IS
12 OVER, WHAT ITS PURPOSE IS AND POINT WAS SO THAT THE
13 PEOPLE ARE NOT THEN IN A POSITION WHERE THEY CAN
14 EXAMINE HIM BEYOND THE SCOPE OF THAT DIRECT
15 EXAMINATION.

16 THE COURT: WELL, I'M NOT GOING TO --

17 MS. ABRAMSON: I KNOW.

18 THE COURT: -- ALLOW THE PEOPLE TO CALL

19 DR. WECHT AS THEIR OWN WITNESS AND GO BEYOND THE
20 SCOPE OF THE DIRECT, BUT I CANNOT, AT THIS POINT,
21 DETERMINE WHAT THAT SCOPE WILL BE UNTIL I HEAR HIS
22 TESTIMONY.

23 SO WE'LL NOW HAVE THE JURY OUT AND WE'LL
24 PROCEED.

25 MS. ABRAMSON: THANK YOU, YOUR HONOR.

26 THE COURT: WE HAVE ONE JUROR WHO'S FEELING A
27 LITTLE UNDER THE WEATHER SO WE MIGHT TAKE MORE
28 BREAKS THAN NORMAL.

41983

1 (THE JURY ENTERED THE COURTROOM
2 AND THE FOLLOWING PROCEEDINGS
3 WERE HELD:)

4

5 THE COURT: OKAY. THE JURY IS HERE. GOOD
6 MORNING, LADIES AND GENTLEMEN. WE'LL NOW RESUME
7 WITH THE TRIAL.

8 THE WITNESS IS HERE, SO THE DEFENSE MAY
9 CALL ITS NEXT WITNESS.

10 MS. ABRAMSON: THANK YOU, YOUR HONOR.

11 THE DEFENSE CALLS DR. CYRIL WECHT.

12

13 CYRIL WECHT,

14 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY
15 SWORN, AND TESTIFIED AS FOLLOWS:
16 THE CLERK: RAISE YOUR RIGHT HAND TO BE SWORN.
17 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
18 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS
19 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
20 NOTHING BUT THE TRUTH, SO HELP YOU GOD.
21 THE WITNESS: I DO.
22 THE CLERK: PLEASE TAKE THE STAND AND STATE
23 YOUR NAME FOR THE RECORD.
24 THE WITNESS: YOU SAID NAME, MA'AM?
25 THE CLERK: YES.
26 THE WITNESS: CYRIL H. WECHT, W-E-C-H-T.
27 THE COURT: ALL RIGHT.
28 MS. ABRAMSON: THANK YOU, YOUR HONOR.

41984

1 DIRECT EXAMINATION
2 BY MS. ABRAMSON:
3 Q WHAT IS YOUR OCCUPATION?
4 A PHYSICIAN, SPECIALIZING IN PATHOLOGY,
5 ANATOMIC, CLINICAL, AND FORENSIC PATHOLOGY.
6 Q AND HOW LONG HAVE YOU BEEN A PHYSICIAN?
7 A I GRADUATED FROM THE UNIVERSITY OF
8 PITTSBURGH, SCHOOL OF MEDICINE IN 1956; A YEAR OF

9 INTERNSHIP. SO THE M.D. DEGREE, '56; THE STATE
10 LICENSE, UPON COMPLETION OF INTERNSHIP ONE YEAR
11 LATER, ABOUT SEPTEMBER '57.

12 Q AND DID YOU THEN DO A RESIDENCY IN
13 PATHOLOGY?

14 A YES. AFTER THE ONE YEAR OF INTERNSHIP I
15 DID A FIVE-YEAR PROGRAM IN PATHOLOGY; TWO YEARS AT
16 THE UNIVERSITY VETERAN'S ADMINISTRATIVE HOSPITAL IN
17 PITTSBURGH, '57, '59; TWO YEARS IN THE UNITED STATES
18 AIR FORCE AT MAXWELL AIR FORCE BASE, MONTGOMERY,
19 ALABAMA, WHERE I WAS A CAPTAIN IN THE AIR FORCE AND
20 SERVED AS ASSOCIATE PATHOLOGIST.

21 AND THEN THE FIFTH YEAR WAS A
22 FELLOWSHIP. I WAS A RESEARCHER FELLOW IN FORENSIC
23 PATHOLOGY AND ASSOCIATE PATHOLOGIST IN THE OFFICE OF
24 THE CHIEF MEDICAL EXAMINER IN THE STATE OF
25 MARYLAND. THAT WAS IN BALTIMORE, FROM '61 TO '62.
26 THAT FINISHED THE FIVE YEARS OF PATHOLOGY TRAINING
27 AFTER THE ONE YEAR OF INTERNSHIP.

28 AND IN THE SUMMER OF '62 I RETURNED TO

41985

1 PITTSBURGH WHICH HAD BEEN MY HOME.

2 SO FOR THE PAST THREE AND A HALF YEARS

3 I'VE BEEN PRACTICING IN ALLEGHENY COUNTY, WHICH IS

4 IN PITTSBURGH, AND SURROUNDING SOUTHWESTERN

5 PENNSYLVANIA COUNTIES.

6 Q DO YOU CURRENTLY HOLD AN PUBLIC OFFICE
7 IN ALLEGHENY?

8 A YES AND NO. I WAS ELECTED CORONER OF
9 ALLEGHENY THREE WEEKS AGO, BUT I DON'T OFFICIALLY
10 TAKE OFFICE UNTIL I'M SWORN IN ON JANUARY 1ST.

11 Q AND HAVE YOU BEEN THE ELECTED CORONER OF
12 ALLEGHENY IN THE PAST AS WELL?

13 A YES. I WAS THE ELECTED CORONER FOR 10
14 YEARS, FROM 1970 TO 1980, AND CHIEF FORENSIC
15 PATHOLOGIST IN THE ALLEGHENY CORONER'S OFFICE FOR
16 FOUR YEARS BEFORE THAT, '66 TO '70.

17 Q AND WHAT IS THE FUNCTION OF -- STRIKE
18 THAT.

19 YOU'RE AWARE THAT DIFFERENT COUNTIES AND
20 DIFFERENT GOVERNMENT AGENCIES HAVE DIFFERENT TYPES
21 OF CORONERS?

22 A YES. I HAVE WRITTEN ON THIS.

23 Q OKAY. AND YOU'RE FAMILIAR WITH
24 BASICALLY THE ROLE AND THE TYPE OF CORONER THAT
25 LOS ANGELES COUNTY HAS?

26 A YES.

27 Q AND IS THE CORONER'S OFFICE IN ALLEGHENY
28 DIFFERENT?

1 A WELL, THE CORONER IN ALLEGHENY IS STILL
2 AN ELECTED OFFICIAL AND IN LOS ANGELES COUNTY HE OR
3 SHE IS APPOINTED. THE ROLES THEN ARE ESSENTIALLY
4 THE SAME. IN THEORY, THE ROLE OF ANY OFFICIAL
5 GOVERNMENTAL MEDICAL-LEGAL INVESTIGATIVE OFFICE IS
6 THE SAME, CORONER, MEDICAL EXAMINER, TO DETERMINE
7 CAUSE OF DEATH, MANNER OF DEATH, MECHANISM OF DEATH,
8 SOMETIMES TIME AND PLACE, SOMETIMES SEQUENCE,
9 RELATIONSHIP OF INJURY TO DISEASE, DISEASE TO
10 INJURY. THEN, IN MODERN DAY TIMES, IN A SOCIETY
11 LIKE OURS, WE DEAL WITH MANY OTHER THINGS:
12 ENVIRONMENTAL POLLUTANTS, AIR, LAND, WATER,
13 TOXICOLOGICAL SUBSTANCES, DRUG-ALCOHOL PROBLEMS,
14 RAPE-SEXUAL ASSAULT-TYPE THINGS, INJURY PATTERNS,
15 AND SO ON.

16 SO THESE ARE THE KINDS OF THINGS THAT A
17 FORENSIC PATHOLOGIST GETS INVOLVED IN, AND THE
18 MEDICAL EXAMINER OR CORONER'S OFFICE HAS THE
19 OFFICIAL RESPONSIBILITY IN DEATH CASES OF ISSUING
20 THE DEATH CERTIFICATE AND SETTING FORTH THE CAUSE OF
21 DEATH AND THE MANNER OF DEATH.

22 Q IN THE WAY THAT THE OFFICE IS STRUCTURED
23 IN ALLEGHENY, DO YOU SERVE IN CASES OF SUSPECTED
24 HOMICIDE? FOR EXAMPLE, DO YOU HAVE A
25 MAGISTRATE-LIKE FUNCTION --

26 A YES.

27 Q -- AS WELL AS MEDICAL EXAMINER FUNCTION?

41987

1 KIND OF A QUASI-MAGISTERIAL POSITION. EVERY KNOWN
2 SUSPECTED OR ALLEGED, OR, FOR THAT MATTER, POSSIBLE
3 HOMICIDE CASE, OR A CASE IN WHICH HOMICIDE CHARGES
4 MIGHT FOLLOW, THAT CASE MUST BE PRESENTED TO THE
5 CORONER'S OFFICE, AND THAT'S WITHOUT EXCEPTION, BE
6 IT AUTOMOTIVE-VEHICULAR, UP TO ANY AND ALL KINDS OF
7 MANSLAUGHTER, MURDER CASES, AND SO ON. THAT'S BEEN
8 THE FUNCTION AND IS OF THE ALLEGHENY CORONER.

9 Q WHEN YOU SAY MUST BE PRESENTED, WHO MUST
10 PRESENT IT TO THE CORONER'S OFFICE?

11 A THE CASE WILL BE PRESENTED BY ONE OF THE
12 DISTRICT ATTORNEYS, AN ASSISTANT DISTRICT ATTORNEY,
13 AND THE WITNESSES WILL BE DETERMINED BY THE
14 CORONER. THE DISTRICT ATTORNEY HAS A LOT OF INPUT
15 ON THAT, OF COURSE, BECAUSE AS IN ANY SITUATIONS
16 LIKE THAT, A PRIMA FACIE CASE MUST BE DEMONSTRATED
17 TO DETERMINE IF THERE IS A HOMICIDE; AND IF SO,
18 WHETHER CHARGES SHOULD -- WHERE THE CHARGES SHOULD
19 LIE.

20 Q AND DO YOU HAVE THE AUTHORITY AS THE
21 ELECTED CORONER, WHEN YOU'RE IN OFFICE, TO DECIDE
22 THESE ISSUES ON YOUR OWN OR MUST YOU IMPANEL A

23 CORONER'S JURY FOR THAT PURPOSE?

24 A YOU CAN DO IT ON YOUR OWN. YOU HAVE THE
25 PREROGATIVE, BUT IT IS NOT MANDATORY TO CONVENE A
26 JURY.

27 Q AND IN YOUR EXPERIENCE IN THE PAST,
28 WOULD YOU MAKE THESE DETERMINATIONS AND JUDGMENTS ON

41988

1 YOUR OWN AS TO WHETHER CERTAIN DEATHS WERE HOMICIDES
2 AND THAT CHARGES SHOULD BE FILED AGAINST THOSE WHO
3 HAVE CAUSED THE DEATH?

4 A I WOULD SAY MAYBE IN ABOUT 90 PERCENT OF
5 THE TIMES THE DETERMINATION IS MADE WITHOUT A JURY.
6 ROUGHLY, ONE OUT OF TEN WILL HAVE SOME SOCIETAL
7 CONFLICT, SOME ISSUE OF CONCERN TO THE PUBLIC, AND
8 IN SUCH INSTANCES A JURY MAY BE IMPANELED.

9 Q SO WHEN IT'S A CASE WHERE THE PUBLIC MAY
10 HAVE AN INTEREST IN IT, YOU WOULD THEN IMPANEL THE
11 JURY?

12 A WHEN I SAY AN INTEREST, THE PUBLIC IS
13 OFTEN INTERESTED IN MANY CASES. BUT I MEAN
14 SOMETHING THAT MIGHT BE A PUBLIC HEALTH MATTER. IT
15 MIGHT BE A PROBLEM INVOLVING A RACIAL OR A RELIGIOUS
16 OR NATIONALITY ISSUE. IT MIGHT BE SOMETHING
17 INVOLVING A POLICE AGENCY, SUCH AS A POLICE SHOOTING

18 OR A QUESTIONABLE DEATH IN A JAIL. IS IT A SUICIDE

19 OR IS IT A HOMICIDE?

20 IN THOSE KINDS OF CASES WE FOUND THAT

21 IT'S BETTER FOR EVERYBODY TO HAVE A JURY. THE JURY

22 COMES OVER FROM THE CRIMINAL JUSTICE PANEL SENT OVER

23 BY THE PRESIDING JUDGE OF THE CRIMINAL DIVISION. WE

24 DON'T HANDPICK THEM.

25 Q NOW, IN THE 33 AND A HALF YEARS SINCE

26 YOUR COMPLETION OF YOUR RESIDENCY IN PATHOLOGY HAVE

27 YOU PERFORMED A NUMBER OF AUTOPSIES?

28 A YES.

41989

1 Q AND HOW MANY AUTOPSIES HAVE YOU

2 PERSONALLY PERFORMED?

3 A WELL, GOING BACK TO THE RESIDENCY --

4 ACTUALLY, A FEW IN INTERNSHIP -- AND THEN GOING BACK

5 TO RESIDENCY, BECAUSE THAT'S THE -- THE LOAD WAS

6 PRETTY HEAVY TOO.

7 Q OKAY.

8 A I WOULD SAY, GOING BACK 38 OR 39 YEARS,

9 THAT I HAVE PERFORMED ABOUT 13,000 AUTOPSIES MYSELF,

10 AND I HAVE REVIEWED, SUPERVISED, OR SIGNED OFF ON

11 ABOUT 30,000 OTHER AUTOPSIES.

12 Q WHEN YOU SAY YOU'VE REVIEWED OR

13 SUPERVISED, ARE THESE AUTOPSIES THAT WERE PERFORMED
14 IN EITHER THE CORONER'S OFFICE OR IN HOSPITALS WITH
15 WHICH YOU WERE AFFILIATED MAINLY?

16 A YES. THE ONES IN WHICH I HAVE
17 SUPERVISED OR SIGNED OFF ON WERE PERFORMED BY
18 PATHOLOGISTS WHO WORKED ON MY STAFF AT THE CORONER'S
19 OFFICE, AND SOME BY PATHOLOGISTS AT HOSPITALS WITH
20 WHICH I HAVE ALWAYS BEEN AFFILIATED.

21 AND WHEN I REFER TO CASES WHICH I HAVE
22 REVIEWED, THOSE ARE CASES THAT HAVE COME TO ME IN
23 CONSULTATION, FOR ONE PURPOSE OR ANOTHER, WHERE AN
24 AUTOPSY HAS BEEN DONE BY SOMEONE WHO'S INDEPENDENT
25 OF ME OR MY OFFICE OR POSITION, AND I HAVE BEEN
26 GIVEN THE AUTOPSY MATERIAL, THE PROTOCOL, AND
27 MICROSCOPIC SLIDES, SOMETIMES TISSUES.

28 SO THOSE ARE THE KINDS OF CASES WHICH I

41990

1 REFER TO AS AMONG THOSE THAT I HAVE REVIEWED.

2 Q OKAY. AND HAVE YOU BEEN A PRIVATE
3 CONSULTANT, IN EFFECT, IN LITIGATION WHERE YOU HAVE
4 REVIEWED PREVIOUS AUTOPSIES IN CASES THAT ARE IN
5 LITIGATION, EITHER CIVIL OR CRIMINAL, AND TESTIFIED
6 AS AN EXPERT WITNESS IN THOSE CASES?

7 A YES.

8 Q AND ON HOW MANY OCCASIONS HAVE YOU, IN
9 THAT CAPACITY, TESTIFIED IN COURTS? LET ME BREAK IT
10 DOWN.

11 AS THE CORONER, I TAKE IT YOU'VE
12 TESTIFIED A GREAT DEAL IN ALLEGHENY ON CORONER
13 CASES.

14 A YES.

15 Q I'M ADDRESSING NOW THE PRIVATE
16 CONSULTING ASPECT OF YOUR PROFESSIONAL CAREER.
17 IN APPROXIMATELY HOW MANY CASES OUTSIDE
18 OF ALLEGHENY COUNTY HAVE YOU TESTIFIED?

19 A WELL, INCLUDING CIVIL AND CRIMINAL
20 CASES, INCLUDING THE HOMICIDE CASES IN WHICH I'VE
21 TESTIFIED FOR ANOTHER COUNTY FOR WHOM I PERFORM
22 MEDICAL-LEGAL AUTOPSIES AS THEIR FORENSIC
23 PATHOLOGIST, BUT ON AN INDEPENDENT BASIS, SO TO
24 SPEAK, CONTRACTUAL AGREEMENT WITH THOSE COUNTIES,
25 INCLUDING ALL OF THOSE, AND WORKER'S COMPENSATION
26 CASES AND BLACK LUNG -- WE HAVE A LOT OF RETIRED
27 COAL-MINERS AND STEEL WORKERS IN PITTSBURGH,
28 ALLEGHENY COUNTY, AND I DO A FAIR NUMBER OF THOSE

41991

1 AUTOPSIES. AND I TESTIFY, I WOULD SAY -- WELL,
2 CERTAINLY MORE THAN 500 TIMES.

3 Q AND YOU QUALIFIED AS AN EXPERT WITNESS

4 IN FORENSIC PATHOLOGY IN THOSE CASES?

5 A YES. I HAVE TESTIFIED, I THINK, IN

6 PROBABLY MORE THAN 30 STATES IN MOSTLY STATE COURTS

7 AND SEVERAL FEDERAL COURTS, AND I HAVE TESTIFIED IN

8 PROBABLY ABOUT ONE HALF OF THE 67 COUNTIES IN THE

9 COMMONWEALTH OF PENNSYLVANIA.

10 Q AND HAVE YOU BEEN CONSULTED OR WERE YOU

11 CONSULTED, DR. WECHT, IN SOME RATHER FAMOUS OR

12 WELL-KNOWN CASES OVER THE YEARS?

13 A YES, I HAVE BEEN.

14 Q AND CAN YOU TELL US WHAT CASES YOU WERE

15 CONSULTED ON THAT HAD SOME NOTORIETY.

16 A I WAS CONSULTED IN THREE CASES HERE IN

17 LOS ANGELES COUNTY THAT I THINK HAD A FAIR AMOUNT OF

18 NOTORIETY.

19 Q WHAT WERE THOSE?

20 A ONE WAS THE ASSASSINATION OF SENATOR

21 ROBERT F. KENNEDY. I, IN FACT, CAME OUT HERE A FEW

22 DAYS AFTERWARDS. I WAS ACTUALLY IN CONSULTATION

23 STARTING BEFORE THE SENATOR WAS DEAD.

24 Q HOW DID THAT HAPPEN?

25 A DR. THOMAS NOGUCHI, WHO WAS THE CHIEF

26 MEDICAL EXAMINER-CORONER OF LOS ANGELES COUNTY,

27 CALLED ME AT MY HOME AFTER THE SHOOTING AND WANTED

28 TO TALK ABOUT HOW TO AVOID SOME OF THE PROBLEMS THAT

1 OCCURRED WITH PRESIDENT KENNEDY. HE DIDN'T CONSULT
2 ME ON HOW TO DO AN AUTOPSY. HE'S AN OUTSTANDING
3 FORENSIC PATHOLOGIST. HE DIDN'T NEED ANY INPUT FROM
4 ME. HE KNEW OF MY INVOLVEMENT AND INTEREST IN THAT
5 CASE.

6 Q IN THE J.F.K. ASSASSINATION?

7 A YES. IN THE JOHN F. KENNEDY
8 ASSASSINATION. AND HE WANTED TO MAKE SURE THE BODY
9 WASN'T TAKEN FROM CALIFORNIA ILLEGALLY, AS HAD BEEN
10 DONE WITH PRESIDENT KENNEDY FROM TEXAS, AND OTHER
11 THINGS. SO THAT WAS ONE CASE.

12 AND I CAME OUT AND REVIEWED EVERYTHING,
13 AND I WENT TO THE AMBASSADOR HOTEL WHERE THE
14 SHOOTING OCCURRED.

15 I WAS AN OFFICIAL CONSULTANT TO THAT
16 OFFICE IN THE CHARLES MANSON MURDER CASES, SHARON
17 TATE, THE LA BIANCA FAMILY. AND I WAS A CONSULTANT
18 TO THAT.

19 AND THE SYMBIONESE LIBERATION ARMY; THE
20 DEATH THAT FOLLOWED THE ABDUCTION OF PATTI HEARST
21 AND QUESTIONS THAT AROSE PERTAINING TO THOSE
22 DEATHS.

23 Q THE DEATHS NEAR LOS ANGELES BY FIRE?

24 A THE QUESTION WAS FIRE, GUNSHOT WOUND;
25 WERE THEY ALIVE OR DEAD BEFORE THE FIRE, THINGS LIKE

26 THAT.

27 Q YOU SAID YOU WERE A CONSULTANT IN THOSE
28 CASES. YOU WERE A CONSULTANT TO THE L.A. COUNTY

41993

1 CORONER'S OFFICE?

2 A YES. IN THOSE THREE INSTANCES, THAT'S
3 CORRECT.

4 I WAS CONSULTANT TO DISTRICT ATTORNEY
5 JAMES GARRISON IN THE CLAY SHAW CASE WHICH WAS
6 RELATED TO THE JOHN F. KENNEDY CASE.

7 I LATER TESTIFIED BEFORE THE ROCKEFELLER
8 COMMISSION IN WASHINGTON, D.C. IN '75 ON THE J.F.K.
9 CASE. AND I WAS NINE OF FORENSIC PATHOLOGISTS ON
10 THE FORENSIC PANEL OF THE HOUSE SELECT COMMITTEE ON
11 ASSASSINATIONS, APPOINTED BY THE UNITED STATES
12 CONGRESS IN '77 TO REVIEW THE ASSASSINATION DEATH OF
13 PRESIDENT KENNEDY AND DR. MARTIN LUTHER KING.

14 I WAS CONSULTANT IN THE CLAUS VON BULOW/
15 SONNIE VON BULOW CASE. I WAS CONSULTANT IN THE JEAN
16 HARRIS SHOOTING DR. HERMAN TARNOWER, THE SO-CALLED
17 DIET DOCTOR.

18 Q FOR WHOM WERE YOU A CONSULTANT IN THE
19 VON BULOW CASE?

20 A TO ATTORNEY ALAN DERSHOWITZ. HE WAS

21 REPRESENTING MR. VON BULOW IN THE SECOND TRIAL.

22 Q AND WHOM WERE YOU A CONSULTANT FOR IN
23 THE JEAN HARRIS CASE?

24 A DEFENSE ATTORNEY. JOEL ARNO.

25 I WAS A CONSULTANT TO A.B.C. NATIONAL
26 NETWORK IN THE DEATH OF ELVIS PRESLEY.

27 Q HOW WAS A.B.C. INVOLVED IN THE DEATH OF
28 ELVIS PRESLEY?

41994

1 A WELL, THEY WANTED TO GET AHOLD OF ALL
2 THE RECORDS AND THEY WANTED TO REVIEW THE AUTOPSY
3 AND THE TOXICOLOGY REPORTS. THEY WERE INTERESTED AS
4 A NEWS MEDIA ORGANIZATION IN WHAT KILLED ELVIS
5 PRESLEY.

6 Q DID YOU HAVE ACCESS TO THOSE MATERIALS?

7 A YES. EVENTUALLY, I HAD ACCESS TO THOSE
8 MATERIALS.

9 Q SO YOU REVIEWED THOSE MATERIALS?

10 A YES. AND I WAS INTERVIEWED BY THEM.

11 THE COURT: IS HE DEAD, BY THE WAY?

12 THE WITNESS: YOUR HONOR, THERE'S ONE MORE
13 GREEK ISLAND TO BE CHECKED FOR IT TO BE STATED WITH
14 CERTAINTY.

15 I HAVE BEEN CONSULTANT TO GOVERNMENTAL

16 AGENCIES IN TAIWAN ON TWO CONTROVERSIAL DEATHS OF
17 PROMINENT POLITICAL FIGURES; TO THE COUNTRY OF
18 PAKISTAN IN THE EXHUMATION AND AUTOPSY OF THEIR
19 FORMER COMMANDER-IN-CHIEF OF THE ARMY WHO WAS
20 THOUGHT TO HAVE BEEN POISONED.

21 I WAS RECENTLY A CONSULTANT TO THE
22 SINGAPORE GOVERNMENT IN A CASE INVOLVING THE DEATH
23 OF A PHILLIPINO MAID IN SINGAPORE IN WHICH ANOTHER
24 PHILLIPINO MAID WAS CHARGED WITH MURDER AND WAS
25 SUBSEQUENTLY EXECUTED BY THE SINGAPORE
26 GOVERNMENT;S A VERY CONTROVERSIAL ISSUE BETWEEN
27 THOSE TWO COUNTRIES.

28 I WAS MORE RECENTLY A CONSULTANT TO TWO

41995

1 ATTORNEYS IN THE WACO COMPOUND FIRE AND DID SECOND
2 AUTOPSIES ON DAVID KORESH AND STEVE AND JUDY
3 SCHNEIDER, HIS RIGHT-HAND MAN AND WIFE.

4 Q SO YOU ACTUALLY DID AN EXAMINATION AND
5 AUTOPSY ON THE BODY OF MR. KORESH?

6 A YES. AT THE FORT WORTH MEDICAL
7 EXAMINER'S OFFICE. I THINK THAT'S TARRANT COUNTY.
8 THAT WAS THE SECOND AUTOPSY. THEY HAD ALREADY
9 DONE --

10 Q YES. BUT THERE WAS A GREAT DEAL --

11 THERE WAS A CRIMINAL PROSECUTION THAT RESULTED FROM
12 WACO. WAS YOUR SECOND AUTOPSY DONE IN CONJUNCTION
13 WITH THAT PROSECUTION?

14 A YES. AND I THINK THERE ARE SOME CIVIL
15 MATTERS. I'M NOT SURE IF THEY'RE PENDING OR WHAT'S
16 GOING ON. I THINK THERE'S SOME CIVIL LITIGATION
17 TOO.

18 Q ALL RIGHT. NOW, HAVE YOU -- I DON'T
19 THINK WE COMPLETED ALL OF YOUR EDUCATIONAL
20 BACKGROUND.

21 AT SOME POINT YOU DETERMINED THAT
22 FORENSIC PATHOLOGY WOULD BE YOUR PARTICULAR
23 SPECIALTY; IS THAT CORRECT?

24 A YES.

25 Q AND WHEN WAS IT THAT -- WELL, COULD YOU
26 EXPLAIN JUST VERY BRIEFLY WHAT'S THE DIFFERENCE
27 BETWEEN A PATHOLOGIST AND A FORENSIC PATHOLOGIST.

28 A PATHOLOGY IS DIVIDED INTO TWO MAJOR

41996

1 CATEGORIES: ANATOMIC AND CLINICAL. ANATOMIC DEALS
2 WITH THE STUDY OF TISSUE, ALL SPECIMENS REMOVED BY
3 DOCTORS AT HOSPITALS. THE STUDY OF CELLS ON SLIDES
4 IS THE MOST COMMON AND WELL-KNOWN, WHICH WOULD BE
5 THE PAP SMEAR. BUT WE DO THAT WITH OTHER BODY

6 FLUIDS. SO THAT'S ALL ANATOMIC.

7 CLINICAL PATHOLOGY INCLUDES MANY

8 DIFFERENT AREAS. ALL THOSE THINGS YOU'LL SEE

9 DEPICTED SOMETIMES IN MOVIES WHERE PEOPLE ARE

10 WORKING AT THE BENCHES: HEMATOLOGY, CHEMISTRY,

11 IMMUNOLOGY, SEROLOGY, BLOOD BANKING, TRANSFUSIONS,

12 URINALYSIS; MICROBIOLOGY, WHICH IS SUBDIVIDED INTO

13 BACTERIOLOGY, VIRUSES, FUNGI. ALL OF THAT IS

14 CLINICAL.

15 THOSE ARE THE TWO MAJOR DISTINCTIONS

16 THEN. THERE ARE APPROXIMATELY EIGHT OR NINE

17 OFFICIALLY RECOGNIZED SUBSPECIALITIES THAT REQUIRE

18 ADDITIONAL TRAINING AND HAVE THEIR OWN SEPARATE

19 NATIONAL EXAMINATION FOR CERTIFICATION. ONE OF

20 THESE, CREATED IN 1959, WAS FORENSIC PATHOLOGY. AND

21 IT REQUIRES AN ADDITIONAL YEAR OF TRAINING AT AN

22 APPROVED MEDICAL-LEGAL INVESTIGATIVE OFFICE, CORONER

23 OR MEDICAL EXAMINER. YOU HAVE SUCH AN APPROVED

24 PROGRAM HERE IN LOS ANGELES. SAN FRANCISCO HAS ONE,

25 AND SO SON. THAT DEALS WITH THE KINDS OF CASES WE

26 TALKED ABOUT; VIOLENT, SUDDEN, UNEXPECTED,

27 UNEXPLAINED. MEDICALLY YOU WANT TO DETERMINE CAUSE

28 AND MANNER. AND LIKE ANY MEDICAL FIELD, IT INVOLVES

1 TEACHING, WRITING, RESEARCH, AND YOU CAN BE AN
2 INDEPENDENT CONSULTANT, AS WE'VE TALKED. BUT THAT'S
3 WHAT FORENSIC PATHOLOGY COVERS.

4 Q AND I THINK YOU'VE ALREADY TOLD US ABOUT
5 THE ADDITIONAL YEAR THAT YOU DID IN THE CORONER'S
6 OFFICE.

7 A MEDICAL EXAMINER'S OFFICE, RIGHT. THEY
8 HAVE AN APPOINTED MEDICAL EXAMINER AND THAT WAS A
9 FELLOWSHIP THAT I DID THERE.

10 Q WAS THAT WHAT QUALIFIED YOU TO TAKE THE
11 EXAMINATION IN FORENSIC PATHOLOGY?

12 A YES.

13 Q AND IF YOU TAKE THAT EXAMINATION, DOES
14 THAT RESULT IN WHAT'S KNOWN AS BOARD CERTIFICATION?

15 A YES. THERE WERE 24 NATIONAL BOARDS,
16 PRIMARY BOARD SPECIALITIES; AND ABOUT 28, 30,
17 SUBSPECIALITY BOARDS. AND THEY'RE ALL CALLED
18 AMERICAN BOARD OF -- AMERICAN BOARD OF OBSTETRICS
19 AND GYNECOLOGY, AMERICAN BOARD OF SURGERY, AMERICAN
20 BOARD OF INTERNAL MEDICINE. OURS IS AMERICAN BOARD
21 OF PATHOLOGY. TO TAKE THE EXAMINATION WITH WOMEN
22 AND MEN FROM ALL OVER THE COUNTRY WHO HAVE FINISHED
23 AT ACCREDITED PLACES. THEN YOU TAKE IT, AND IF YOU
24 PASS, THEN YOU ARE REFERRED TO AS HAVING BEEN
25 CERTIFIED BY THAT BOARD. IT'S THE SAME EXAMINATION
26 FOR EVERYBODY: CALIFORNIA, MAINE, WASHINGTON,
27 FLORIDA. IT'S THE SAME EXAM.

28 Q AND WHEN WERE YOU BOARD-CERTIFIED IN

1 FORENSIC PATHOLOGY?

2 A IN ANATOMIC AND CLINICAL, FIRST AS A
3 NECESSARY PREREQUISITE IN 1963, AND FORENSIC
4 PATHOLOGY IN 1964.

5 Q AND DID YOU SEEK AN ADDITIONAL
6 EDUCATIONAL BACKGROUND TO ASSIST YOU IN FORENSIC
7 PATHOLOGY BECAUSE OF ITS INTERACTION WITH THE COURTS
8 AND THE LEGAL SYSTEM?

9 A YES. MY INTERNSHIP -- WHEN I HAD
10 DECIDED THAT I WANTED TO GO INTO PATHOLOGY AND
11 FORENSIC PATHOLOGY, I FELT THAT IT WOULD BE GOOD TO
12 LEARN SOMETHING ABOUT THE LAW. SO I WENT TO THE
13 UNIVERSITY OF PITTSBURGH SCHOOL OF LAW FROM '57 TO
14 '59. THAT WAS INTERRUPTED BY THE AIR FORCE, WHICH
15 DIDN'T CARE ABOUT MY BEING A LAW STUDENT, AND I DID
16 THE THIRD YEAR AT THE UNIVERSITY OF MARYLAND SCHOOL
17 OF LAW WHEN I GOT OUT OF THE AIR FORCE, '61 TO '62.

18 I GOT MY LAW DEGREE IN JUNE OF '62 FROM
19 THE UNIVERSITY OF MARYLAND, AND I GOT THE SAME
20 DEGREE FROM PITT BUT, IT'S THE SAME DEGREE, JUST ONE
21 EARNED DEGREE.

22 Q YOU HAVE GOT A J.D. DEGREE JUST LIKE WE
23 ALL HAVE?

24 A YES, THAT'S RIGHT.

25 Q HAVE YOU EVER PRACTICED AS A LAWYER?

26 A VERY LITTLE. I'M LICENSED TO PRACTICE

27 IN THE STATE OF PENNSYLVANIA AND THE FEDERAL

28 DISTRICT COURT. I EVEN WENT DOWN TO THE UNITED

41999

1 STATES SUPREME COURT WITH A GROUP FROM THE BAR

2 ASSOCIATION.

3 I HAVEN'T HAD ANY CASES THERE YET. I'VE

4 DONE A FEW THINGS TO HELP FRIENDS SOMETIMES. I

5 REPRESENTED A COUPLE OF DOCTORS IN SOME MATTERS AT

6 HOSPITAL HEARINGS, DISCIPLINARY MEASURES, AND THINGS

7 LIKE THAT.

8 I'VE DONE A FEW THINGS WHERE I'VE BEEN

9 ABLE TO WRITE A LETTER, MAKE A PHONE CALL. BUT I

10 DON'T REALLY PRACTICE LAW IN TERMS OF TAKING CASES

11 AND FOLLOWING THROUGH AND FILING MOTIONS AND GOING

12 INTO COURT. I JUST HAVE NEVER HAD THE TIME.

13 Q YOU BASICALLY PRACTICE FORENSIC

14 PATHOLOGY?

15 A HOSPITAL PATHOLOGY ALWAYS AND FORENSIC

16 PATHOLOGY; AND I'VE ALSO BEEN INVOLVED WITH A

17 PRIVATE PATHOLOGY LABORATORY; NOT AT THIS TIME, BUT

18 FOR MANY YEARS MY OWN, AND THEN AS A CONSULTANT TO

19 OTHER PRIVATE PATHOLOGY LABORATORIES. MY CHIEF

20 POSITION NOW IS CHAIRMAN OF THE DEPARTMENT OF
21 PATHOLOGY AT ST. FRANCIS CENTRAL HOSPITAL IN
22 PITTSBURGH, SINCE THE HOSPITAL OPENED IN THE SUMMER
23 OF '74, AND CURRENTLY PRESIDENT OF THE MEDICAL
24 STAFF.

25 Q WOULD THAT CONTINUE WHEN YOU RESUME THE
26 DUTIES OF CORONER, OR DO YOU HAVE TO LEAVE THE
27 HOSPITAL?

28 A NO. I DON'T HAVE TO LEAVE. AND IT WILL

42000

1 CONTINUE. WHEN I WAS CORONER BEFORE, FROM '70 TO
2 '80, THERE WAS AN OVERLAPPING OF FIVE AND A HALF
3 YEARS. I JUST MENTIONED THE HOSPITAL OPENED IN THE
4 SUMMER OF '74, AND I'VE BEEN THERE SINCE THAT TIME.

5 SO I WAS CORONER FROM SEPTEMBER OF '74
6 TO '80. SO THERE WAS THAT FIVE-AND-A-HALF-YEAR
7 PERIOD AND THERE'S NO PROBLEM. THE BOARD AND THE
8 NUNS AND EVERYBODY, THEY KNOW ME, AND I HAVE -- THIS
9 WAS DISCUSSED WITH EVERYBODY, AND THERE'S NO
10 PROBLEM.

11 Q SO YOU'LL BE ABLE TO MAINTAIN YOUR
12 POSITION AT THE HOSPITAL AND YOUR COUNTY-ELECTED
13 OFFICE?

14 A YES. FORTUNATELY, THEY'RE ABOUT A

15 TWO-MINUTE RIDE AND FIVE-MINUTE WALK APART FROM EACH
16 OTHER. IT'S JUST A LONGER DAY. BUT I'LL BE ABLE TO
17 DO IT.

18 Q AND HAVE YOU HAD, OVER THE YEARS,
19 TEACHING POSITIONS?

20 A YES, I HAVE.

21 Q AND YOU DON'T HAVE TO GO THROUGH -- YOU
22 HAVE A RESUME' THAT'S ABOUT 45, 50 PAGES LONG?

23 A I REALLY DON'T KNOW. IT INCLUDES THE
24 BIBLIOGRAPHY.

25 Q MAYBE THE NUMBERS ARE ON THE TOP. WAIT
26 A SECOND. SOME OF THEM -- THEY ARE UNNUMBERED, MOST
27 OF THESE PAGE. ALL RIGHT. THIS IS IT. RIGHT.

28 A IT'S THE ONE I HAD GIVEN TO YOU OR MY

42001

1 SECRETARY SENT TO YOU?

2 Q RIGHT. IF YOU COULD JUST GIVE US
3 HIGHLIGHTS OF YOUR TEACHING CAREER.

4 A FOR MANY YEARS, AND AT THE PRESENT TIME,
5 I HAVE HAD SIX FACULTY POSITIONS. NOT ALL OF THEM
6 GO BACK AS FAR, BUT ALL OF THEM HAVE BEEN IN PLACES
7 FOR SEVERAL YEARS AND SOME MUCH LONGER.

8 I HAVE THREE AT THE UNIVERSITY OF
9 PITTSBURGH. I'M ASSOCIATE ADJUNCT PROFESSOR IN THE

10 DEPARTMENT OF PATHOLOGY AT THE SCHOOL OF MEDICINE AT
11 THE UNIVERSITY OF PITTSBURGH.

12 I'M AN ADJUNCT ASSOCIATE PROFESSOR OF
13 EPIDEMIOLOGY IN THE GRADUATE SCHOOL OF PUBLIC
14 HEALTH, AND I'M AN ADJUNCT PROFESSOR OF PATHOLOGY AT
15 THE SCHOOL OF DENTISTRY AT DUQUESNE UNIVERSITY IN
16 PITTSBURGH.

17 I'M AN ADJUNCT PROFESSOR IN THE GRADUATE
18 SCHOOL OF HEALTH SCIENCE; AN ADJUNCT PROFESSOR IN
19 THE SCHOOL OF PHARMACOLOGY AND AN ADJUNCT PROFESSOR
20 IN THE SCHOOL OF LAW.

21 Q SO YOU HAVE TAUGHT VARIOUS COURSES IN
22 THE SCHOOL OF LAW. WERE THOSE RELATING TO FORENSIC
23 PATHOLOGY AND LAW?

24 A YES. I'VE BEEN TEACHING A COURSE IN THE
25 LAW SCHOOL ON A REGULAR BASIS GIVEN ONCE EACH YEAR
26 AS AN ELECTIVE IN LEGAL MEDICINE.

27 FOR SOME YEARS I TAUGHT A SECOND COURSE,
28 PSYCHIATRY IN THE LAW, BUT NOT FOR THE LAST 10, 12

42002

1 YEARS OR SO. AND IN THAT COURSE I TRIED TO DEAL
2 WITH FORENSIC SCIENCE AS WELL AS MEDICAL-LEGAL
3 PROBLEMS OF A BROADER NATURE, LIKE ORGAN
4 TRANSPLANTATION, RIGHT TO DIE, AIDS AND THINGS LIKE

5 THAT; MEDICAL MALPRACTICE, AND SO ON.

6 AND THEN I INCLUDED HARD FORENSIC

7 SCIENCE; WHAT AS A CORONER-MEDICAL EXAMINER ARE YOUR

8 DUTIES AND SO ON.

9 Q NOW, HAVE YOU ALSO BEEN A MEMBER OF, AN

10 ACTIVE MEMBER OF, VARIOUS PROFESSIONAL ORGANIZATIONS?

11 A YES.

12 Q ARE THERE A NUMBER OF MEDICAL

13 PROFESSIONAL ORGANIZATIONS THAT YOU ARE INTERESTED

14 IN AND THAT YOU HAVE BEEN ACTIVE IN?

15 A YES.

16 Q WHAT ARE THEY AND WHAT'S BEEN YOUR

17 PARTICIPATION?

18 A WELL, I'VE BEEN A MEMBER OF OUR COUNTY,

19 STATE, AND AMERICAN MEDICAL ASSOCIATIONS FOR MANY

20 YEARS. THE LOCAL AND STATE PATHOLOGY

21 ORGANIZATIONS.

22 I'M A FELLOW OF THE COLLEGE OF AMERICAN

23 PATHOLOGISTS. I'M A FELLOW OF THE AMERICAN SOCIETY

24 OF CLINICAL PATHOLOGISTS. I'M A FELLOW AND FORMER

25 PRESIDENT OF THE AMERICAN ACADEMY OF FORENSIC

26 SCIENTISTS; FELLOW AND FORMER PRESIDENT OF THE

27 AMERICAN COLLEGE OF LEGAL MEDICINE.

28 I'M CHAIRMAN OF THE BOARD OF TRUSTEES OF

1 THE AMERICAN BOARD OF COLLEGE OF LEGAL MEDICINE
2 FOUNDATION.

3 CHAIRMAN OF THE BOARD OF TRUSTEES OF THE
4 AMERICAN BOARD OF LEGAL MEDICINE, WHICH GIVES
5 CERTIFICATION EXAMINATIONS TO WOMEN AND MEN WHO HAVE
6 DEGREES IN BOTH LAW AND MEDICINE FROM THE UNITED
7 STATES OR CANADA.

8 I'M A FELLOW OF THE BRITISH ACADEMY OF
9 FORENSIC SCIENCES.

10 I'M A FELLOW OF THE ROYAL SOCIETY OF
11 MEDICINE OF BRITAIN.

12 I'M A FELLOW AND FORMER VICE-PRESIDENT
13 OF THE INTERNATIONAL ASSOCIATION OF FORENSIC
14 SCIENTISTS.

15 FELLOW AND FORMER ADVISOR OF THE
16 INTERNATIONAL ACADEMY OF LEGAL MEDICINE AND SOCIAL
17 MEDICINE.

18 FELLOW AND FORMER SECRETARY GENERAL AND
19 THEN VICE-PRESIDENT OF THE INTERNATIONAL ASSOCIATION
20 OF ACCIDENT AND TRAFFIC MEDICINE.

21 I'M AN HONORARY LIGHT FELLOW OF THE
22 AMERICAN SOCIETY OF LAW AND MEDICINE AND OF THE
23 NATIONAL SOCIETIES OF FORENSIC SCIENCES AND LEGAL
24 MEDICINE OF SPAIN, BELGUIM, FRANCE, YUGOSLAVIA,
25 MEXICO, BRAZIL AND COLUMBIA.

26 Q WHAT DOES IT MEAN TO BE A FELLOW OF
27 THESE ORGANIZATIONS? I MEAN, ARE THERE LEVELS OF

28 MEMBERSHIP, IF YOU WILL, IN THESE ORGANIZATIONS?

42004

1 A YES. IN MOST OF THOSE PROFESSIONAL
2 ORGANIZATIONS IN MEDICINE, IN LAW, IN SCIENTIFIC
3 FIELDS, THEY'LL HAVE DIFFERENT LEVELS AND IT VARIES
4 SOMEWHAT. BUT THE HIGHEST LEVEL OF ACTIVE
5 INVOLVEMENT IS FELLOW. YOU REACH A CERTAIN AGE, YOU
6 CAN BE AN EMERITUS AND YOU DON'T HAVE TO PAY DUES.

7 USUALLY YOU START OFF AS A PROVISIONAL
8 NATIONAL MEMBER AND THEN A MEMBER AND THEN AFTER YOU
9 DO A CERTAIN NUMBER OF THINGS, MAYBE ATTEND CERTAIN
10 MEETINGS, PRESENT PAPERS, SUBMIT PAPERS TO BE
11 PUBLISHED IN THEIR JOURNALS, AND SO ON, THEN YOU CAN
12 BE MOVED UP TO FELLOWSHIP.

13 THOSE REQUIREMENTS VARY FROM ONE
14 ORGANIZATION TO ANOTHER.

15 Q SPEAKING OF PRESENTING PAPERS, DO YOU
16 PARTICIPATE ON A REGULAR BASIS IN TEACHING IN
17 SEMINARS AND PRESENTATION OF TECHNICAL PAPERS TO
18 VARIOUS GROUPS?

19 A WELL, I WOULDN'T SAY ON A REGULAR
20 BASIS. THE REGULARITY PERTAINS TO FIXED PROGRAMS IN
21 GRADUATE SCHOOLS. OTHER THINGS -- I'M INVITED TO
22 SOME. THE THEMES OFTEN VARY.

23 FOR EXAMPLE, I'VE SPOKEN FOUR OR FIVE
24 TIMES IN A ROW, EITHER ONE OR TWO OR THE ONLY
25 OUT-OF-STATE INVITED SPEAKER AT THE TEXAS TRIAL
26 LAWYERS ASSOCIATION EACH YEAR IN THE FALL.
27 BUT MOST OTHER THINGS ARE BY INVITATION
28 AND THEY COME WHENEVER PEOPLE CHOOSE TO INVITE YOU.

42005

1 Q WHEN I MEANT REGULAR I MEANT ON AN
2 ANNUAL BASIS, IS IT LIKELY YOU WOULD BE INVITED TO
3 GIVE SPEECHES AND PAPERS AND LECTURES TO
4 PROFESSIONAL ORGANIZATIONS AT LEAST ONCE --

5 A OH, YES. YES. A FAIR NUMBER EACH
6 YEAR. BUT WHEN YOU SAY ANNUAL BASIS, IT'S NOT
7 FIXED.

8 Q RIGHT. IN FACT, IN THE LAST, SAY, MONTH
9 AND A HALF ALONE, HOW MANY SUCH PROGRAMS HAVE YOU
10 PARTICIPATED IN?

11 A WELL, IN THE PAST SIX TO EIGHT WEEKS
12 THERE WERE TWO THAT I ORGANIZED AND WAS THE
13 MODERATOR. ONE WAS A TWO-DAY SEMINAR AT QUINNIPIAC
14 SCHOOL OF LAW IN NEW HAVEN, CONNECTICUT, DEDICATION
15 OF THEIR NEW LAW SCHOOL BUILDING. AND I ORGANIZED,
16 AT THE REQUEST OF THE DEAN AND BOARD OF TRUSTEES, A
17 TWO-DAY FORENSIC SCIENTIFIC AND MEDICAL-LEGAL

18 SEMINAR FOR ATTORNEYS AND FORENSIC SCIENTISTS AND
19 OTHERS, AS WELL AS THEIR FACULTY AND STUDENTS.
20 THEN ABOUT THREE WEEKS AGO I ORGANIZED A
21 DAY, DAY AND A HALF POSTGRADUATE SEMINAR FOR STATE
22 APPELLATE COURT JUDGES IN PENNSYLVANIA. THAT WAS A
23 REQUEST FROM THE SUPREME COURT JUSTICE IN CHARGE OF
24 THE EDUCATION COMMITTEE THROUGH DUQUESNE UNIVERSITY,
25 AND THE DEAN ASKED ME TO PUT TOGETHER THE PROGRAM,
26 WHICH I DID, AND THAT WAS HELD FOR THOSE APPELLATE
27 COURT JUDGES IN A COMMUNITY OUTSIDE OF PITTSBURGH.
28 Q AND HAVE YOU, IN CONJUNCTION WITH --

42006

1 WELL, STRIKE THAT.
2 YOU PARTICIPATED OVER THE YEARS IN
3 RESEARCHER PROJECTS FOR WHICH YOU'VE PUBLISHED OR
4 WRITTEN PAPERS OR MONOGRAPHS OR BOOKS?
5 A YES. I DON'T CONSIDER MYSELF A BASIC OR
6 PRIMARY RESEARCHER. I DON'T WORK WITH ANIMALS IN
7 THE LAB OR THINGS LIKE THAT. I'VE BEEN INVOLVED IN
8 SEVERAL RESEARCH PROJECTS THAT HAVE BEEN DONE
9 THROUGH THE CORONER'S OFFICE, SOME IN HOSPITALS WITH
10 WHICH I'VE BEEN AFFILIATED.
11 I'VE DONE RESEARCH IN TERMS OF THE
12 MEDICAL-LEGAL FORENSIC SCIENTIFIC LITERATURE, BUT I

13 DON'T CONSIDER MYSELF A BASIC OR PRIMARY
14 RESEARCHER.
15 I'VE PUBLISHED, YOU KNOW, A FAIR NUMBER
16 OF ARTICLES. BUT I DON'T CONSIDER THEM TO BE BASIC
17 RESEARCH WITH A COUPLE OF EXCEPTIONS.

18 Q ALL RIGHT. AND APPROXIMATELY -- I HAVE
19 YOUR BIBLIOGRAPHY HERE. WOULD IT BE FAIR TO SAY
20 YOUR BIBLIOGRAPHY CONSISTS OF 334 ENTRIES?

21 A YES. THERE ARE A FEW MORE. I HAVE
22 ABOUT 340 ARTICLES OF DIFFERENT KINDS IN THOSE
23 FIELDS OF FORENSIC SCIENCE, FORENSIC PATHOLOGY,
24 LEGAL MEDICINE, AND SO ON, THAT HAVE BEEN PUBLISHED
25 MOSTLY IN NATIONAL AND INTERNATIONAL JOURNALS, SOME
26 OF REGIONAL, AND THEY'VE COVERED A WIDE RANGE OF
27 THINGS, THE KIND OF TOPICS WE'VE TALKED ABOUT.

28 Q AND WHEN YOU TALK ABOUT THE JOURNALS,

42007

1 ARE MOST OF THESE ARTICLES PUBLISHED IN WHAT ARE
2 KNOWN AS PEER-REVIEWED JOURNALS?

3 A WELL, DEPENDS ON HOW YOU DEFINE PEER
4 REVIEW.

5 Q WHY DON'T YOU DEFINE IT FOR THE JURY.

6 A YES. WELL, THERE ARE A BUNCH OF THEM, I
7 WOULD SAY, AT LEAST 50, WHERE THEY WEREN'T REVIEWED

8 BY ANYBODY BUT ME BECAUSE THEY WERE PUBLICATIONS
9 THAT I'M RESPONSIBLE FOR.

10 Q IN OTHER WORDS, YOU WERE LIKE THE EDITOR
11 OR --

12 A YES. EXACTLY. I HAVE A LEGAL-MEDICINE
13 ANNUAL THAT'S BEEN OUT SINCE 1969 AND I HAVE SEVERAL
14 CHAPTERS I'VE WRITTEN.

15 I HAVE A FOUR-VOLUME SET OF FORENSIC
16 SCIENCE -- SINCE 1981, SEMI-ANNUAL SUPPLEMENTS, AND
17 I'VE CONTRIBUTED TO THAT.

18 AND THEN I'M EDITOR OF A PUBLICATION
19 "SCALPEL AND QUILL," PUT OUT BY THE PITTSBURGH
20 INSTITUTE OF LEGAL MEDICINE, OF WHICH I AM THE
21 PRESIDENT, AND I HAD SEVERAL THINGS PUBLISHED THERE.

22 SO I WOULD SAY, 50 TO 75, PROBABLY,
23 NOBODY'S REVIEWED BUT ME.

24 Q OKAY.

25 A AND THE OTHERS HAVE BEEN REVIEWED BY
26 SOME KIND OF A PEER. THERE'S PEER REVIEW WITH SOME
27 PUBLICATIONS WHICH REQUIRES THAT ARTICLES BE SENT
28 OUT TO USUALLY TWO PEOPLE. YOU DON'T KNOW WHO THEY

42008

1 WERE.

2 Q THEY'RE QUALIFIED IN THE SAME FIELD THAT

3 YOU'RE WRITING IN?

4 A WELL, EXACTLY. THAT'S THE IDEA. AND

5 THEN OTHERS ARE REVIEWED BY OTHER PEERS; MAYBE IN A

6 LESS FORMAL WAY, BUT THEY'RE REVIEWED BY OTHER

7 PEOPLE WHO HAVE TO MAKE A DECISION WHETHER IT'S

8 GOING TO BE PUBLISHED.

9 SO PEER REVIEW IS A PHRASE THAT HAS

10 SPECIFIC MEANINGS AND IT ALSO HAS BROADER SIGNIFICANCE.

11 Q GENERALLY SPEAKING, THOUGH, IN MEDICAL

12 AND SCIENTIFIC PUBLICATIONS, IS PEER REVIEW MEANT TO

13 BE A WAY TO ASSURE THAT ONLY SCIENTIFICALLY

14 ACCEPTABLE MATERIAL GETS PUBLISHED IN THOSE JOURNALS?

15 A YES. I GUESS THAT'S ONE OBJECTIVE.

16 Q DO YOU WANT TO ELABORATE ON THAT AS TO

17 ANY OTHER OBJECTIVE?

18 A I DON'T THINK IT'S RELEVANT. I MEAN, AS

19 FAR AS I'M CONCERNED -- WHAT YOU STATED IS CORRECT.

20 Q ALL RIGHT. NOW, TURNING TO THIS CASE,

21 WERE YOU SUBMITTED CERTAIN MATERIALS TO REVIEW

22 PERTAINING TO THE AUTOPSIES OF JOSE AND MARY LOUISE

23 MENENDEZ?

24 A YES.

25 Q AND CAN YOU TELL THE JURY WHAT THE

26 MATERIALS SPECIFICALLY WERE PERTAINING TO THE

27 AUTOPSIES THAT WERE DIRECTLY SUBMITTED TO YOU.

28 A I RECEIVED COPIES OF THE TWO AUTOPSY

1 REPORTS. I RECEIVED COPIES OF TWO BRIEF AMENDED
2 REPORTS, FOLLOWED BY THE PATHOLOGIST WHO DID THOSE
3 TWO AUTOPSIES, DR. IRWIN GOLDEN. ONE WAS IN 1992
4 AND ONE WAS IN 1995, I BELIEVE. THOSE ARE THE
5 AMENDED DATES; AND AUTOPSY PHOTOGRAPHS.

6 AND THEN THERE WERE PHOTOGRAPHS OF THE
7 BODIES TAKEN AT THE SCENE WHICH WOULD CORRELATE WITH
8 THE AUTOPSIES.

9 THEN THERE WERE DIAGRAMS TAKEN OR MADE
10 OF THE SCENE.

11 AND THEN THERE WERE DIAGRAMS AND
12 PHOTOGRAPHIC REPRESENTATIONS USING MANNEQUINS MADE
13 BY --

14 Q LET ME STOP YOU THERE.

15 A OH.

16 Q FIRST, I WANTED TO FOCUS ON MATERIALS
17 THAT ACTUALLY WERE PRIMARY SOURCE MATERIALS HAVING
18 TO DO WITH THE AUTOPSY.

19 A YES. OKAY. I THINK -- OH, LET ME JUST --
20 THERE WERE CRIME LAB REPORTS AND, OF COURSE, POLICE
21 DETECTIVE INVESTIGATIVE REPORTS. THOSE WERE THE
22 PRIMARY THINGS GENERATED BY WHAT I WOULD CALL
23 GOVERNMENTAL AGENCIES OF LOS ANGELES.

24 Q NOW, WERE YOU --

25 A I THINK I MENTIONED ALL OF THE ITEMS
26 THAT WOULD BE BOTH OFFICIAL, PRIMARY, AND DIRECTLY

27 RELATED TO THE AUTOPSIES.

28 Q NOW, WERE YOU ALSO FURNISHED WITH SOME

42010

1 DIAGRAMS AND PHOTOGRAPHS THAT THEY WERE CREATED BY A
2 COMPANY CALLED FAILURE ANALYSIS ASSOCIATES?

3 A YES. I RECEIVED QUITE A BIT OF MATERIAL
4 PREPARED BY F.A.A.

5 Q DID YOU ALSO RECEIVE A REPORT PREPARED
6 BY F.A.A. AND SIGNED BY A ROGER MC CARTHY AND A
7 DEVINDER GREWAL?

8 A YES.

9 Q NOW, DID YOU TALK WITH DR. MARTIN
10 FACKLER CONCERNING ASPECTS OF THE AUTOPSIES OF JOSE
11 AND MARY LOUISE MENENDEZ?

12 A YES. ON ONE OCCASION, A WEEK AGO
13 SUNDAY, HERE IN LOS ANGELES, AT YOUR OFFICE.

14 Q DID YOU EVER TALK TO DR. GOLDEN
15 CONCERNING THESE AUTOPSIES?

16 A NO.

17 Q WAS IT YOUR UNDERSTANDING THAT
18 DR. FACKLER HAD MET WITH DR. GOLDEN?

19 A YES.

20 Q AND DID DR. FACKLER RELAY TO YOU ANY
21 INFORMATION, WITHOUT TELLING US WHAT, THAT HE HAD

22 OBTAINED IN TALKING TO DR. GOLDEN?

23 A YES.

24 Q AND WERE YOU AWARE, DR. WECHT, THAT

25 THERE WERE TWO OTHER FORENSIC PATHOLOGISTS THAT THE

26 DEFENSE HAD CONSULTED, DOCTORS MICHAEL BODEN AND

27 BARBARA WOLF?

28 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

42011

1 IRRELEVANT.

2 THE COURT: SUSTAINED.

3 Q BY MS. ABRAMSON: WELL, DID YOU EVER

4 DISCUSS ANY OF THE ISSUES SURROUNDING THESE

5 AUTOPSIES WITH DRS. BODEN AND WOLF?

6 A YES. ON SEVERAL OCCASIONS.

7 Q AND WERE THOSE CONFERENCE CALLS IN WHICH

8 I PARTICIPATED AS WELL?

9 A YES. I THINK THERE HAVE BEEN A COUPLE

10 IN WHICH YOU WERE NOT ON THE LINE, BUT MOST YOU

11 INITIATED THE CALLS AND SET UP THE ARRANGEMENTS FOR

12 THE CONFERENCE CALL.

13 Q SO YOU HAD TALKS WITH DRS. BODEN AND

14 WOLF, JUST AMONG THE THREE OF YOU, AND THERE WERE

15 OTHER CALLS WHEN I WAS ON THE LINE AS WELL, CORRECT?

16 A YES.

17 Q NOW, AS A RESULT OF RECEIVING ALL THIS
18 INFORMATION, THE PRIMARY AND POLICE AND CORONER'S
19 INFORMATION CONCERNING THE AUTOPSIES OF JOSE AND
20 MARY LOUISE MENENDEZ, DID YOU FORM CERTAIN OPINIONS
21 ABOUT CERTAIN OF THE WOUNDS THAT WERE SUSTAINED BY
22 EACH OF THE DECEDENTS?

23 A YES.

24 Q AND WHAT I WOULD LIKE TO DO, DR. WECHT,
25 IS TAKE YOU THROUGH SOME OF THESE WOUNDS, AND WHAT I
26 WOULD LIKE TO DO IS START FIRST WITH MARY LOUISE
27 MENENDEZ AND CERTAIN WOUNDS THAT WERE OBSERVED BY
28 DR. GOLDEN IN PHOTOGRAPHS OF HER BODY.

42012

1 DID YOU PREPARE A BRIEF REPORT ON
2 NOVEMBER 19TH, 1995, ABOUT --

3 MR. LEVIN: YOUR HONOR?

4 THE COURT: YES. GO AHEAD.

5 JUROR NO. 1: I'M NOT GOING TO MAKE IT.

6 THE COURT: YOU WANT TO GO IN THE RESTROOM?

7 JUROR NO. 1: YES.

8 MS. ABRAMSON: ARE WE GOING TO TAKE A RECESS,
9 YOUR HONOR?

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

12 MS. ABRAMSON: THANK YOU, YOUR HONOR.

13 (THE JURY EXITED THE COURTROOM AND

14 THE FOLLOWING PROCEEDINGS WERE HELD:)

15

16 THE COURT: WE'LL BE IN RECESS. WE HAVE ONE

17 JUROR WHO'S FEELING ILL SINCE LAST NIGHT AND THE

18 IMPRESSION I HAVE IS SHE DOESN'T THINK SHE CAN

19 CONTINUE TODAY. BUT WE'LL HAVE THE BAILIFF CHECK ON

20 THAT.

21 MS. ABRAMSON: OH, LORD.

22 THE COURT: WE'LL TAKE A RECESS.

23 (A RECESS WAS TAKEN FROM

24 10:15 A.M. TO 10:25 A.M.)

25 (PAGES 42013 THROUGH 42026 WERE

26 HELD IN CAMERA AND SEALED BY

27 ORDER OF THE COURT.)

28

42027

1 VAN NUYS, CALIFORNIA; MONDAY, NOVEMBER 27, 1995

2 2:10 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 WITHOUT THE
9 DEFENDANTS PRESENT:)

10

11 THE COURT: OKAY. THE DEFENDANTS ARE NOT
12 HERE. WE HAVE MS. TOWERY AND MS. ABRAMSON AND
13 MS. NAJERA HERE.

14 ARE WE READY TO PROCEED?

15 MS. ABRAMSON: YEAH. THE GUYS WENT TO THE
16 MEN'S ROOM, YOUR HONOR, BUT THEY'LL BE BACK. WE ARE
17 READY TO PROCEED.

18 THE PEOPLE, MS. NAJERA, WHY DON'T YOU
19 ANNOUNCE WHAT THE PEOPLE ARE OFFERING AND --

20 THE COURT: I'LL GO BACK HERE JUST FOR A
21 SECOND.

22 WE HAD AT LEAST ONE EXHIBIT THAT WE HAD
23 DISCUSSED EARLIER THAT WAS WAITING FOR MY REVIEW OF
24 THE TRANSCRIPT.

25 220 -- I'M SORRY -- 89.

26 (MR. GESSLER ENTERED THE COURTROOM.)

27

28 THE COURT: MR. GESSLER IS BACK.

42028

1 MS. TOWERY: IF I CAN INTERJECT ON THAT.

2 THE COURT: YES.

3 MS. TOWERY: THAT WAS THE PERRY BERMAN
4 PORTION OF THE TAPE. I LOOKED AT THAT AND IT DOES
5 APPEAR THAT IT WAS USED TO REFRESH HIS RECOLLECTION
6 IN THE PORTION OF THE TRANSCRIPT. IT'S VOLUME 224
7 AT PAGE --

8 THE COURT: I READ IT.

9 MS. TOWERY: OH, OKAY. NEVER MIND.

10 THE COURT: AND AS SUCH, DO THE PEOPLE WISH
11 TO BE HEARD?

12 MS. NAJERA: NO, YOUR HONOR. I READ THAT AS
13 WELL AND THAT'S WHAT IT WAS USED FOR.

14 THE COURT: THEREFORE, THAT DOES NOT GO TO
15 THE JURY, SO 89 IS NOT TO BE RECEIVED.

16 ALL RIGHT, LET'S THEN GO TO -- THERE
17 MIGHT HAVE BEEN ONE OTHER LIKE THAT.

18 MS. TOWERY: THERE WAS. THE HEFFERNAN ONE.

19 MS. NAJERA: 125.

20 THE COURT: I DON'T RECALL LOOKING AT THE
21 TRANSCRIPT.

22 MS. TOWERY: I CAN GIVE YOU THE CITATION FOR
23 THAT TOO, IF YOU WANT. THAT ALSO APPEARS TO BE USED
24 TO REFRESH HIS RECOLLECTION AS TO THE TIME THAT HE
25 WAS INTERVIEWED, AND THAT'S AT VOLUME 229, PAGE
26 38134, ACCORDING TO MY NOTES.

27 THE COURT: OKAY. THAT WAS USED TO REFRESH
28 RECOLLECTION?

1 MS. TOWERY: RIGHT. THAT'S WHAT MY NOTES
2 INDICATE.

3 MS. NAJERA: FOR THE RECORD, YOUR HONOR, I
4 READ THAT TODAY AND THAT'S EXACTLY WHAT IT WAS USED
5 FOR.

6 THE COURT: OKAY. 125 WILL NOT BE RECEIVED.

7 OKAY. NOW, AS OF NOW WE'VE GOTTEN TO
8 166. THAT'S WHERE WE LEFT OFF.

9 ALL RIGHT. SO NOW --

10 MS. TOWERY: EXCUSE ME, YOUR HONOR. DID YOU
11 WANT TO DO THE JAMIE PISARCIK THINGS AS WELL,
12 BECAUSE WE SKIPPED OVER THOSE TOO?

13 THE COURT: SURE.

14 MS. TOWERY: BECAUSE THERE WERE A WHOLE BUNCH
15 OF THEM. AND I DO HAVE SOME NOTES ON THEM AS WELL.

16 THE COURT: IF YOU'RE READY TO DO THAT, WE
17 CAN.

18 THAT'S 151 AND FOLLOWING.

19 MS. TOWERY: 151 THROUGH 163.

20 MS. NAJERA: RIGHT.

21 THE COURT: OKAY. LET ME HEAR WHICH ONES ARE
22 BEING OFFERED.

23 MS. TOWERY: WELL, I THINK WE OFFERED ALL OF
24 THEM AND THE PEOPLE OBJECTED TO ALL OF THEM.

25 THE COURT: OKAY.

26 MS. TOWERY: AND AS I LOOK BACK THROUGH, 151
27 AND 152 WERE USED SOLELY TO REFRESH HER
28 RECOLLECTION, AND THE CITATIONS FOR THOSE, IF YOU

42030

1 WANT, ARE --

2 THE COURT: NO. THEN YOU'RE NOT GOING TO
3 OFFER THOSE?

4 MS. TOWERY: I THINK WE'LL JUST WITHDRAW
5 THOSE. THOSE ARE 151 AND 152.

6 THE COURT: THOSE WILL NOT BE OFFERED AND
7 WILL NOT BE RECEIVED.

8 MS. TOWERY: I THINK 155 ALSO WAS THE SAUB
9 PURCHASE CHECKS. I DON'T THINK WE EVER ESTABLISHED
10 A FOUNDATION FOR THAT, SO WE'LL WITHDRAW THAT.

11 THE COURT: OKAY. 155 WILL NOT BE OFFERED
12 AND NOT RECEIVED.

13 MS. TOWERY: THE REST OF THEM, I THINK
14 ARGUMENTS CAN BE MADE FOR RECEIPT OF THEM, THE REST
15 OF THE ONES WE OFFERED.

16 SO I'LL START, IF YOU WANT, WITH 153.
17 THAT WAS -- THAT'S OFFERED FOR IMPEACHMENT. SHE --
18 THAT WAS A PORTION OF A LETTER -- I DON'T REMEMBER IF
19 IT'S THE WHOLE LETTER, I THINK IT'S JUST A PAGE,
20 RELATING TO LYLE CALLING JAMIE EVERY NIGHT FROM

21 AUSTRALIA. SHE SAID THAT IT DID NOT REFRESH HER
22 RECOLLECTION, ALTHOUGH SHE, I BELIEVE, AUTHENTICATED
23 IT AS PAST-RECOLLECTION RECORDED, AND THAT IS
24 INCONSISTENT WITH HER TESTIMONY THAT HE DID NOT, IN
25 FACT, CALL HER EVERY NIGHT. SO WE'D OFFER THAT FOR
26 IMPEACHMENT.

27 THE COURT: MY NOTES INDICATE THAT THERE WAS
28 A SUFFICIENT FOUNDATION FOR PAST-RECOLLECTION

42031

1 RECORDED.

2 DO THE PEOPLE WISH TO BE HEARD?

3 MR. CONN: NO.

4 MS. NAJERA: NO, YOUR HONOR. WE WOULD OBJECT
5 TO IT. WE BELIEVE THAT NO FOUNDATION WAS LAID.

6 THE COURT: OKAY. 153 WILL BE RECEIVED.

7 MS. TOWERY: 154 WAS ALSO A --

8 MS. NAJERA: I'M SORRY, YOUR HONOR. DID YOU
9 SAY 153 WOULD BE RECEIVED?

10 THE COURT: YES. I SAID THERE WAS A
11 SUFFICIENT FOUNDATION.

12 HOLD ON A SECOND. IF PAST-RECOLLECTION
13 RECORDED, THE DOCUMENT ITSELF DOESN'T GET RECEIVED,
14 JUST IT IS READ TO THE JURY; AND IF IT WAS READ,
15 THEN IT WAS READ.

16 MS. TOWERY: I THINK THERE -- I THINK THERE
17 WAS AN OBJECTION TO ANYTHING BUT QUESTIONS ABOUT IT.
18 THE COURT: OKAY. I'LL HOLD OFF ON THAT
19 ONE.
20 MS. TOWERY: I CAN DO IT REAL QUICKLY.
21 THE COURT: LET'S MOVE ON AND WE CAN COME
22 BACK TO IT.
23 154.
24 MS. TOWERY: 154 WAS ALSO A PORTION OF A
25 LETTER RELATING TO LYLE MENENDEZ GOING THROUGH
26 DIFFICULT TIMES AT -- DURING CERTAIN MONTHS, WHICH
27 I'VE FORGOTTEN WHAT THEY ARE -- THROUGH JANUARY,
28 WHICH SHE -- THAT'S OFFERED FOR IMPEACHMENT. SHE DID

42032

1 AUTHENTICATE THE LETTER. SHE DID SAY THAT SHE WROTE
2 IT. BUT THEN SHE INDICATED THAT THE REASON THAT
3 SHE -- THAT SHE BROKE UP WITH LYLE IN JANUARY WAS
4 BECAUSE HE WAS SPENDING TOO MUCH MONEY, WAS OUT OF
5 CONTROL, WANTED TO GO ON A SKI TRIP TO ASPEN OR
6 VAIL, SOMEWHERE IN COLORADO, AND THAT SHE DIDN'T
7 WANT HIM TO PAY FOR HER TO GO ON THIS TRIP, WHICH I
8 BELIEVE THAT THE LETTER IMPEACHES THAT TESTIMONY.
9 SO WE WOULD OFFER IT FOR THAT PURPOSE.
10 THE COURT: OKAY. AND THE PEOPLE'S

11 POSITION?

12 MS. NAJERA: YOUR HONOR, IT DOESN'T REALLY
13 IMPEACH HER IN THAT RESPECT. IT OFFERS OTHER
14 REASONS WHY THEY WERE HAVING PROBLEMS; AND BASICALLY
15 THE LETTER ITSELF IS HEARSAY. SHE -- YEAH.

16 THE COURT: THERE WAS AN OBJECTION ON GROUNDS
17 OF HEARSAY. THE COURT SUSTAINED THE OBJECTION AS TO
18 THE READING OF THE LETTER. THE COURT FEELS IT'S
19 STILL HEARSAY AND IT DOESN'T IMPEACH THE WITNESS.
20 AND UNDER 352 OF THE EVIDENCE CODE ALSO ITS
21 PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY
22 PREJUDICIAL EFFECTS. SO 154 WILL NOT BE RECEIVED.

23 MS. TOWERY: JUST GOING BACK TO 153, YOUR
24 HONOR, THERE WAS AN OBJECTION TO THE READING OF THAT
25 LETTER WHICH WAS SUSTAINED BY THE COURT AT 39299 IN
26 VOLUME 235; AND THAT WAS BEFORE THE -- SHE STARTED TO
27 READ FROM THE LETTER AFTER SHE WAS ASKED WHETHER IT
28 REFRESHED HER RECOLLECTION. SHE STARTED TO DESCRIBE

42033

1 WHAT THE LETTER SAID AND THERE WAS AN OBJECTION ON
2 HEARSAY GROUNDS AND THE COURT SUSTAINED IT AND
3 STRUCK THE ANSWER.

4 THEN SHE SAID SHE DIDN'T RECALL WHETHER
5 OR NOT HE CALLED HER EVERY NIGHT AND SAID THAT THE

6 LETTER DIDN'T HELP HER REFRESH HER RECOLLECTION.

7 AND THEN A FOUNDATION WAS LAID FOR

8 PAST-RECOLLECTION RECORDED. AND THEN THERE WAS

9 AGAIN AN OBJECTION TO READING ANYTHING IN THE LETTER

10 AS IRRELEVANT WHICH THE COURT SUSTAINED.

11 SO THAT SEEMS TO BE ALL THAT HAPPENED

12 ABOUT THAT LETTER. THAT'S -- THE SECOND OBJECTION IS

13 39300.

14 THE COURT: OKAY. SO THEN THE COURT

15 SUSTAINED IT ON GROUNDS OF RELEVANCY?

16 MS. TOWERY: FIRST THE COURT SUSTAINED AN

17 OBJECTION ON GROUNDS OF HEARSAY AND SECOND THE COURT

18 SUSTAINED AN OBJECTION ON GROUNDS OF RELEVANCY. THE

19 SECOND OBJECTION HAD TO DO WITH A QUESTION ABOUT THE

20 BIRD THAT LYLE MENENDEZ BOUGHT JAMIE MENENDEZ --

21 JAMIE PISARCIK, WHICH WAS ALSO MENTIONED IN THE

22 LETTER.

23 THE COURT: ALL RIGHT. BUT THE READING OF

24 THE LETTER WAS SUBJECT TO AN OBJECTION ON GROUNDS OF

25 RELEVANCY AND THE COURT SUSTAINED IT?

26 MS. TOWERY: RIGHT. OR AT LEAST THAT PORTION

27 OF THE LETTER RELATING TO THE BIRD.

28 EARLIER THE COURT PRECLUDED READING OF

1 THE PORTION OF THE LETTER RELATING TO THE PHONE

2 CALLS ON GROUNDS OF HEARSAY.

3 THE COURT: ALL RIGHT. WAS THAT BEFORE OR

4 AFTER YOU FEEL THAT YOU ESTABLISHED A FOUNDATION?

5 MS. TOWERY: THAT WAS BEFORE I ESTABLISHED

6 THE FOUNDATION FOR PAST-RECOLLECTION RECORDED.

7 THE COURT: DID YOU EVER SEEK TO READ THAT

8 PORTION TO THE JURY AFTER ESTABLISHING A

9 FOUNDATION?

10 MS. TOWERY: NO. NO. MY VERY NEXT QUESTION

11 WAS RELATED TO THE BIRD AND THE COURT SUSTAINED THE

12 OBJECTION AS TO READING ANYTHING. SO I THINK I GAVE

13 UP AT THAT POINT.

14 THE COURT: OKAY. WELL, IF THAT IS WHAT

15 OCCURRED, IT DOESN'T SEEM THAT THE DEFENSE HAS

16 ESTABLISHED A FOUNDATION FOR THE RECEIPT OF THE

17 EXHIBIT.

18 IF YOU OFFER IT AS PAST-RECOLLECTION

19 RECORDED, YOU MUST ATTEMPT TO READ IT TO THE JURY,

20 WHICH YOU DIDN'T DO, BEFORE ESTABLISHING THE -- OR

21 AFTER ESTABLISHING THE FOUNDATION FOR

22 PAST-RECOLLECTION RECORDED.

23 MS. TOWERY: CAN WE READ IT TO THE JURY IN

24 THE DEFENSE CASE? IS THERE A TIME THAT IT HAS TO BE

25 READ?

26 THE COURT: I'D HAVE TO REVIEW THE -- IF YOU

27 WANT TO BRING IT UP AGAIN, YOU CAN.

28 MS. ABRAMSON: SHE'S GOING TO BE BACK.

1 THE COURT: AT THIS POINT, I'M GOING TO
2 SUSTAIN THE OBJECTION THAT YOU HAVEN'T --

3 MS. TOWERY: WE'RE ALSO OFFERING IT AS
4 IMPEACHMENT, YOUR HONOR. SO I'M ASSUMING THE
5 COURT'S RULING THAT IT'S NOT IMPEACHING.

6 THE COURT: WELL, WERE YOU OFFERING IT FOR
7 IMPEACHMENT PURPOSES AT THE TIME?

8 MS. TOWERY: YES.

9 THE COURT: WHAT IS THE PEOPLE'S POSITION
10 REGARDING WHETHER IT'S IMPEACHING OR NOT?

11 MS. NAJERA: YOUR HONOR, AS I RECALL, THE
12 ONLY AREA THAT THEY EVEN TOUCHED UPON WITH REGARDS
13 TO IMPEACHMENT WAS ONE LINE, AND I DON'T REMEMBER
14 THE EXACT LINE. BUT I RECALL THAT IT HAD TO DO WITH
15 WHETHER OR NOT SHE CALLED HIM EVERY NIGHT AND IN THE
16 LINE -- I BELIEVE THE LINE WAS "I HEARD FROM YOU
17 LAST NIGHT" OR "I'M LOOKING FORWARD TO HEARING FROM
18 YOU TONIGHT" AND I DON'T BELIEVE IT WAS ACTUALLY
19 IMPEACHMENT. I THINK IT WAS TOO VAGUE AND SUBJECT
20 TO INTERPRETATION.

21 THE COURT: WELL, I'LL REVIEW THE DOCUMENT
22 AND I'LL REVIEW THE TESTIMONY AND GIVE A RULING.

23 MY TENTATIVE FEELING IS THAT -- OR

24 TENTATIVE VIEW IS THAT THIS IS NOT THE TYPE OF THING
25 THAT SHOULD BE BROUGHT UP AGAIN IF IT WAS SUBJECT TO
26 EARLIER QUESTIONING AND SEEMS LIKE IT WAS. BUT IF
27 SHE DOES COME BACK AGAIN --

28 MS. TOWERY: NOT TO BEAT A DEAD HORSE, YOUR

42036

1 HONOR, BUT THE SAME LETTER WAS IMMEDIATELY INQUIRED
2 ABOUT AFTER FOUNDATION FOR PAST-RECOLLECTION
3 RECORDED WAS LAID AND THEN THE COURT SUSTAINED THE
4 VERY NEXT QUESTION ASKING ABOUT THE CONTENT -- AN
5 OBJECTION TO THE VERY NEXT QUESTION ASKING ABOUT THE
6 CONTENT OF THE LETTER.

7 THE COURT: WELL, I'LL REVIEW IT.

8 MS. TOWERY: SO IT -- I DON'T KNOW IF, YOU
9 KNOW, THE FORM THAT THE COURT REQUIRES IN THIS
10 INSTANCE WOULD REQUIRE THE LAWYER TO SAY, NOW I
11 WOULD ASK THE COURT TO READ THE LETTER UNDER THE
12 PAST-RECOLLECTION RECORDED EXCEPTION, IN FRONT OF
13 THE JURY. I'LL NOW BE HAPPY TO DO THAT IN THE
14 FUTURE IF THAT'S THE WAY THE COURT WANTS IT DONE.

15 THE COURT: THAT'S THE WAY WE'VE PROCEEDED
16 WHEN WE'VE HAD DEFENSE OBJECTIONS ON THOSE GROUNDS
17 AND SUBSTANTIAL LITIGATION WHEN THE PEOPLE WANTED TO
18 GET IN TWO SMALL THINGS OF PAST-RECOLLECTION

19 RECORDED.

20 AS I SAID, I'LL REVIEW THE TESTIMONY AND
21 I'LL REVIEW THE DOCUMENT ITSELF AND HOLD OFF RULING
22 ON IT UNTIL I DO SO.

23 MS. TOWERY: JUST SO THE RECORD IS CLEAR, 154
24 IS ALSO OFFERED FOR IMPEACHMENT, WHICH THE COURT HAS
25 RULED CAN'T COME IN.

26 156 IS -- LET ME SEE IF I CAN READ MY OWN
27 WRITING HERE -- OH, 156 WAS THE CARD WRITTEN BY JAMIE
28 PISARCIK TO LYLE MENENDEZ REGARDING THE RUNNING OF

42037

1 THE RESTAURANT AND HOW MUCH TO PAY THE EMPLOYEES;
2 AND IT WAS MY REQUEST TO HAVE HER READ THE CARD. IT
3 WAS OBJECTED TO AS HEARSAY AND IRRELEVANT, BUT I WAS
4 PERMITTED TO ASK QUESTIONS ABOUT THE CONTENT OF THE
5 CARD. SOME OF THE QUESTIONS -- OR ACTUALLY, I WAS
6 ALLOWED TO ASK SOME QUESTIONS ABOUT THE CONTENT OF
7 THE CARD; SOME OTHER QUESTIONS I WASN'T ALLOWED TO
8 ASK. SOME OF THE -- SOME OF THE WRITINGS ON THE CARD
9 IMPEACH THE WITNESSES' CHARACTERIZATION OF HER
10 ADVICE TO LYLE MENENDEZ AND SOME -- AND ALSO IMPEACH
11 OTHER ANSWERS IN WHICH SHE WAS EVASIVE AS TO WHAT
12 SHE TOLD HIM.

13 SO I WOULD ASK THAT THE ENTIRE DOCUMENT

14 BE ADMITTED AS IMPEACHMENT OF THE WITNESS' TESTIMONY
15 ABOUT THE TYPE OF ADVICE THAT SHE GAVE LYLE
16 MENENDEZ.

17 THE COURT: WHAT IS THE PEOPLE'S RESPONSE?

18 MS. NAJERA: MY UNDERSTANDING, YOUR HONOR, IS
19 THAT THIS LETTER CAME AS A RESULT OF ASKING HER
20 QUESTIONS ABOUT WHAT KIND OF BUSINESS ADVICE SHE
21 GAVE LYLE MENENDEZ. AND I DON'T BELIEVE THAT SHE
22 DENIED IT. I BELIEVE WHAT SHE SAID WAS THAT SHE HAD
23 WORKED IN A RESTAURANT AND THESE WERE THE THINGS
24 THAT SHE KNEW ABOUT AND SHE DISCOUNTED WHETHER OR
25 NOT SHE HAD ANY EXPERTISE ON THE SUBJECT. BUT IT
26 WASN'T ANYTHING THAT COULD BE CHARACTERIZED OF HER
27 SAYING SOMETHING DIFFERENT THAN WHAT WAS IN THAT
28 LETTER. I DON'T BELIEVE IT IMPEACHES HER. IF IT'S

42038

1 NOT IMPEACHMENT, IT WOULD BE HEARSAY, FOR WHICH
2 THERE'D BE NO RULE TO ALLOW IT TO BE ADMITTED.

3 MS. TOWERY: JUST IN RESPONSE, YOUR HONOR,
4 HER CHARACTERIZATION OF THE ADVICE THAT SHE GAVE
5 LYLE MENENDEZ IN HER TESTIMONY WAS QUITE DIFFERENT
6 FROM THE WRITING ABOUT WHICH SHE WAS ASKED. AND I
7 THINK IT'S UP TO THE JURY TO DECIDE WHETHER OR NOT
8 SHE WAS BEING TRUTHFUL IN HER CHARACTERIZATION OF

9 THE TYPE OF ADVICE THAT SHE GAVE HIM.

10 THE FACT OF ADVICE SHE DID ADMIT TO SOME
11 EXTENT; HOWEVER, SHE, AGAIN, CHARACTERIZED THAT
12 ADVICE IN A VERY DIFFERENT LIGHT FROM THE WAY IT
13 APPEARS IN HER OWN HANDWRITING, AND I THINK IT'S
14 PROPER IMPEACHMENT AS SOMETHING THAT THE QUESTION OF
15 HOW IMPEACHING IT IS REALLY GOES TO THE WEIGHT AND
16 NOT THE ADMISSIBILITY AND IS SOMETHING FOR THE JURY
17 TO DECIDE.

18 THE COURT: MY NOTES INDICATE THAT THE LETTER
19 WAS READ TO THE WITNESS AND SHE ACKNOWLEDGED THAT
20 SHE SAID THOSE THINGS IN IT.

21 MS. TOWERY: I NEVER READ FROM THE LETTER. I
22 ONLY ASKED HER QUESTIONS ABOUT MATTERS THAT SHE GAVE
23 HIM ADVICE ABOUT.

24 THE COURT: TALKING ABOUT 156?

25 MS. TOWERY: YES. I HELD THE LETTER, BUT I
26 ASKED HER A SERIES OF QUESTIONS ABOUT MATTERS THAT
27 SHE GAVE LYLE MENENDEZ ADVICE ABOUT.

28 THE COURT: ALL RIGHT. WELL, MY NOTES

42039

1 MIGHT -- FROM WHAT YOU'RE SAYING, MY NOTES ARE THERE
2 THAT YOU DID READ IT.

3 MS. TOWERY: I'M SORRY. YOUR NOTES ARE THAT

4 I DID OR DIDN'T?

5 THE COURT: I SUPPOSE MY NOTES ARE IN ERROR,
6 THEN, THAT YOU DID NOT READ IT TO THE WITNESS. MY
7 NOTES SAY THAT YOU DID. SO I'LL REVIEW THE
8 TRANSCRIPT IF YOU GIVE ME THE PAGE NUMBERS.

9 MS. TOWERY: THAT'S 39376 AND THEREAFTER.

10 MS. NAJERA: IT SHOULD GO TO 39382.

11 MS. TOWERY: I DIDN'T WRITE THE LAST PAGE. I
12 JUST HAVE THE BEGINNING PAGE.

13 THE COURT: ALL RIGHT. I'LL REVIEW IT AS TO
14 WHAT OCCURRED AND AS TO WHETHER OR NOT IT'S PROPER
15 IMPEACHMENT.

16 MS. TOWERY: 157 WERE THE TWO CHECKS THAT
17 LYLE MENENDEZ WROTE TO JAMIE PISARCIK, WHICH SHE
18 ACKNOWLEDGED HAVING RECEIVED.

19 THE COURT: OKAY. ANY OBJECTION TO THAT?

20 MS. NAJERA: I DON'T THINK IT'S RELEVANT,
21 YOUR HONOR. SHE GOT CHECKS FROM HIM. SHE
22 ACKNOWLEDGED THAT SHE GOT MONEY FROM HIM AND SHE
23 ACKNOWLEDGED THESE CHECKS.

24 THE COURT: ALL RIGHT. WELL, IT CAN BE
25 REGARDED AS IMPEACHMENT AND AS BIAS FOR VARIOUS
26 REASONS THAT WOULD JUSTIFY ITS ADMISSION ON A
27 GENERAL THEORY OF IMPEACHMENT. SO THEY'LL BE
28 RECEIVED. 157.

1 MS. TOWERY: 158 WAS THE ENVELOPE AND CARD
2 WHICH I THINK I MADE AN OFFER OF PROOF TO THE COURT
3 WAS FROM JAMIE PISARCIK'S MOTHER TO LYLE MENENDEZ.
4 AND THE COURT PRECLUDED FURTHER INQUIRY ALONG THOSE
5 LINES UNDER 352. AND I THINK I MADE A MOTION TO
6 STRIKE THE TESTIMONY BASED ON DENIAL OF
7 CONFRONTATION AND CROSS-EXAMINATION.

8 I ASSUME THAT THE COURT IS GOING TO
9 PRECLUDE THAT FROM GOING TO THE JURY. BUT I THINK
10 THAT TO PRESERVE THE RECORD I NEED TO OFFER IT, AND
11 ALSO WOULD OFFER THAT IT IMPEACHES THE WITNESS'
12 TESTIMONY THAT HER MOTHER WAS NOT PLANNING ON COMING
13 IN TO CONTRADICT HER TESTIMONY AT THE PRIOR TRIAL,
14 AND ALSO THAT HER MOTHER DOES NOT STAY IN CONTACT
15 WITH LYLE MENENDEZ; THAT LYLE MENENDEZ CONTACTS HER
16 MOTHER. AND THAT GOES TO THE BIAS OF THE WITNESS,
17 AMONG OTHER THINGS. AND I WOULD SUBMIT THAT IT IS
18 PROPER IMPEACHMENT. AND I WOULD ASK THAT THE COURT
19 RECONSIDER ITS PRIOR DECISION.

20 THE COURT: ALL RIGHT. THE COURT EARLIER
21 INDICATED THAT THE CARD AND THE WRITING ON IT IS
22 IRRELEVANT, BOTH IN CONTENT AND THE CARD ITSELF ARE
23 IRRELEVANT; AND ALSO ANY PROBATIVE VALUE IS
24 SUBSTANTIALLY OUTWEIGHED BY ITS POTENTIAL PREJUDICE
25 AND POTENTIAL FOR CONFUSION OF ISSUES. AND THE
26 COURT PREVIOUSLY SUSTAINED OBJECTIONS TO THAT ON
27 THOSE GROUNDS AND FEELS THAT THOSE RULINGS WERE

28 CORRECT; THEREFORE, 158 WILL NOT BE RECEIVED.

42041

1 MS. TOWERY: 159 IS ALSO A PORTION OF A
2 LETTER WRITTEN BY JAMIE PISARCIK TO LYLE MENENDEZ
3 WHILE HE WAS IN CUSTODY, AND THAT IS OFFERED AS
4 IMPEACHMENT OF HER TESTIMONY THAT THEY DID NOT HAVE
5 WEDDING PLANS. THAT'S THE DESCRIPTION OF THE
6 WEDDING THAT SHE WOULD LIKE TO HAVE WITH LYLE
7 MENENDEZ.

8 THE COURT: IT WAS NOT READ TO THE JURY AND
9 IT WAS USED TO REFRESH HER RECOLLECTION, WAS IT
10 NOT?

11 THIS IS A LETTER DATED MAY '90?

12 MS. TOWERY: IF I COULD JUST HAVE A MINUTE,
13 YOUR HONOR. I DON'T HAVE IN MY NOTES THAT IT WAS
14 USED TO REFRESH HER RECOLLECTION. LET ME JUST
15 CHECK.

16 THE COURT: THAT'S HOW I RECORDED IT WHEN IT
17 OCCURRED.

18 MS. TOWERY: SHE READ THE LETTER AFTER I
19 ASKED HER A QUESTION ABOUT HER HAVING DESCRIBED
20 PLANS FOR A WEDDING AND THEN SHE REVIEWED THE LETTER
21 AND TESTIFIED THAT THEY WEREN'T PLANS; THAT THEY
22 WERE ONLY HER DREAMS THAT SHE WAS DESCRIBING IN THE

23 LETTER.

24 SO, AGAIN, IT WOULD BE OFFERED AS

25 IMPEACHMENT OF THAT TESTIMONY.

26 THE COURT: OKAY. WHAT PAGES DID THIS ALL

27 OCCUR ON?

28 MS. TOWERY: I'M NOT SURE IF I HAVE THE PAGE

42042

1 NUMBERS. ONE OF THE REPORTER'S DISK DOESN'T HAVE

2 PAGE NUMBERS. THIS IS ONE OF THE ONES THAT I DON'T

3 HAVE THE PAGE NUMBER IN MY COMPUTER. IT SHOWS AS

4 PAGE 29. IT'S IN VOLUME 235 AND IT'S -- IT MUST BE

5 SHORTLY AFTER -- I DON'T HAVE THE HARD COPIES.

6 DO YOU HAVE THAT, CAROL?

7 MS. NAJERA: YOUR HONOR, I BELIEVE IT

8 STARTS -- THE DOCUMENT ITSELF AT PAGE -- AT 39425 AND

9 IT'S THOSE PAGES. 39425.

10 THE COURT: OKAY. I'LL LOOK AT THAT ON THE

11 ISSUE OF WHETHER IT SHOULD BE RECEIVED AS

12 IMPEACHMENT. OKAY.

13 MS. TOWERY: 160, YOUR HONOR, IS -- WAS A

14 LETTER WHICH WAS USED TO INQUIRE ABOUT WHETHER OR

15 NOT LYLE MENENDEZ WAS EMOTIONAL WITH JAMIE

16 PISARCIK. AND I BELIEVE I CAN CHECK THIS VERY

17 QUICKLY. I THINK THE COURT -- YES, IT WAS USED TO

18 REFRESH ON THAT ISSUE.

19 WHAT I'M OFFERING IT UNDER IS THERE'S
20 ALSO IMPEACHMENT IN THAT LETTER WHICH SHE DID
21 AUTHENTICATE AS A LETTER SHE WROTE TO LYLE MENENDEZ
22 AND INDICATED WHEN; AND THAT IMPEACHES HER -- THERE'S
23 A STATEMENT IN THE LETTER TO THE EFFECT THAT SHE
24 WISHES THAT SHE COULD HAVE GONE ON THE SKIING TRIP
25 TO COLORADO, WHICH IS OFFERED AS IMPEACHMENT OF HER
26 TESTIMONY THAT SHE BROKE UP WITH LYLE MENENDEZ
27 BECAUSE HE WANTED TO PAY FOR HER TO GO ON THAT TRIP
28 AND SHE DIDN'T WANT TO GO. IT SEEMS TO BE DIRECT

42043

1 IMPEACHMENT OF THAT TESTIMONY.

2 THE COURT: AND WHAT IS THE PEOPLE'S
3 RESPONSE?

4 MS. NAJERA: I BELIEVE IT WAS USED TO REFRESH
5 HER RECOLLECTION AS TO LYLE MENENDEZ' EMOTIONAL
6 STATE. I DON'T BELIEVE IT WAS EVER USED TO IMPEACH
7 HER ON THAT ONE POINT.

8 MS. TOWERY: I DIDN'T ASK HER ANY QUESTIONS
9 ON THAT POINT.

10 MS. NAJERA: IT WAS NEVER ELICITED. SO IT
11 WAS NOT ANYTHING THAT WE COULD HAVE IMPEACHED OR NOT
12 REHABILITATED HER ON. IT WAS NOT USED IN THAT

13 RESPECT.

14 MS. TOWERY: SHE HASN'T BEEN EXCUSED AND SHE
15 AUTHENTICATED IT AS A LETTER SHE WROTE TO LYLE
16 MENENDEZ.

17 MS. NAJERA: I BELIEVE THAT WE OBJECTED AT
18 THE TIME AS TO ITS RELEVANCY AND THE COURT SUSTAINED
19 THAT OBJECTION. AND I DON'T BELIEVE THAT IT WAS
20 USED FOR THE MANNER THAT COUNSEL IS NOW WISHING TO
21 USE IT FOR.

22 MS. TOWERY: THAT'S CORRECT. THE PEOPLE
23 OBJECTED, AFTER IT WAS AUTHENTICATED THROUGH THE
24 WITNESS, TO ANY QUESTIONS REGARDING HER REFERENCES
25 TO LYLE MENENDEZ BEING EMOTIONAL AS IRRELEVANT AND
26 THE COURT SUSTAINED THE OBJECTION. HOWEVER, THAT
27 DOESN'T PRECLUDE ITS USE AS IMPEACHMENT OF HER
28 TESTIMONY REGARDING THE ASPEN TRIP. AND AGAIN, IT'S

42044

1 DIRECT IMPEACHMENT OF WHAT SHE SAID.

2 THE COURT: SO YOUR POSITION IS EVEN THOUGH
3 THE WITNESS WASN'T ASKED ABOUT THIS SPECIFIC
4 DOCUMENT, YOU CAN INTRODUCE IT NOW TO IMPEACH HER
5 SINCE SHE HASN'T BEEN EXCUSED?

6 MS. TOWERY: YES.

7 THE COURT: AS A PRIOR INCONSISTENT

8 STATEMENT?

9 MS. TOWERY: CORRECT.

10 THE COURT: ALL RIGHT. I'LL REVIEW THE
11 DOCUMENT THEN.

12 MS. TOWERY: AND THAT'S -- AGAIN, I DON'T HAVE
13 THE PAGE NUMBERS FOR THAT AND MAYBE MS. NAJERA CAN
14 HELP US ON THAT TOO. THAT'S THE SAME DISK.

15 MR. CONN: YES. IT SHOULD BE THE AREA OF
16 PAGE 39439 AND 39440.

17 THE COURT: IS THERE SOME REASON YOU WOULD BE
18 OFFERING THE ENTIRETY OF THE DOCUMENT IF ONLY ONE
19 BRIEF PORTION OF IT WOULD BE RELEVANT?

20 MS. TOWERY: NO, YOUR HONOR.

21 (MR. CONN ENTERED THE COURTROOM.)

22

23 MS. TOWERY: I JUST OFFER THAT PAGE. I CAN'T
24 REMEMBER IT. I HAVEN'T LOOKED AT THESE EXHIBITS FOR
25 A WHILE. I CAN'T REMEMBER IF THAT IS JUST A PAGE
26 ITSELF OR IS AN ENTIRE LETTER. I THINK THAT MIGHT
27 BE -- THAT ONE MIGHT BE AN ENTIRE LETTER. SO IF THE
28 COURT WISHES TO EXCLUDE EVERYTHING BUT THAT PAGE,

42045

1 THAT'S FINE.

2 THE COURT: AGAIN, WHERE WAS THIS FOUND,

3 EXHIBIT 160?

4 MS. NAJERA: 39439 AND 39440.

5 THE COURT: AND 161?

6 MS. TOWERY: 161 IS HER FORMER STATEMENT
7 UNDER OATH THAT WAS ALSO THE STATEMENT THAT SHE
8 ADOPTED IN HER TESTIMONY AT THE PRIOR TRIAL
9 REGARDING THE FABRICATION INCIDENT THAT WAS USED
10 REPEATEDLY FOR IMPEACHMENT PURPOSES.

11 THE COURT: ANY OBJECTION BY THE PROSECUTION?

12 MS. NAJERA: YES, YOUR HONOR. I BELIEVE THIS
13 WAS THE STATEMENT FROM HER -- THIS IS A STATEMENT
14 THAT SHE MADE TO MR. KURIYAMA AND MS. BOZANICH, WHAT
15 WAS USED BECAUSE SHE COULD NOT TESTIFY TO THIS ISSUE
16 IN THE FIRST TRIAL. I BELIEVE THAT IN THE SECOND
17 TRIAL SHE ELABORATED ON THAT, BUT IT ISN'T
18 IMPEACHMENT IN TERMS OF SHE DIDN'T SAY ANYTHING IN
19 CONTRARY. SHE JUST SAID MORE BECAUSE SHE HAD AN
20 OPPORTUNITY TO BE QUESTIONED ABOUT IT. AND THERE'D
21 BE NO REASON TO ALLOW IT IN AT THIS POINT.

22 MS. TOWERY: I WOULD DISAGREE, YOUR HONOR,
23 THAT SHE DIDN'T SAY ANYTHING CONTRARY. SHE SAID A
24 COUPLE THINGS THAT WERE DIRECTLY CONTRARY TO THE
25 STATEMENT AND THAT THE PRIOR STATEMENT WAS GIVEN
26 UNDER OATH AT THE TIME SHE GAVE THE STATEMENTS TO
27 MS. BOZANICH AND MR. KURIYAMA. SHE SUBSEQUENTLY
28 ADOPTED THAT STATEMENT IN HER TESTIMONY AT THE

1 FORMER TRIAL. AND AGAIN, IT WAS USED REPEATEDLY TO
2 IMPEACH HER TESTIMONY IN THIS TRIAL AND IT SEEMS
3 THAT IT WOULD PROPERLY COME IN AS IMPEACHMENT AS A
4 PRIOR INCONSISTENT STATEMENT.

5 THE COURT: ALL RIGHT. THE OBJECTION'S
6 OVERRULED. IT WILL BE RECEIVED AS IMPEACHMENT OF
7 THE WITNESS.

8 MS. TOWERY: THE LAST TWO EXHIBITS ARE THE
9 LETTER FROM MS. LANSING AND MS. PISARCIK'S REPLY IN
10 WHICH MS. LANSING ASKED TO MEET WITH MS. PISARCIK TO
11 INTERVIEW HER AND MS. PISARCIK'S REFUSAL TO MEET
12 WITH MS. LANSING IN WRITING.

13 AND THAT, AGAIN, WAS DIRECT IMPEACHMENT
14 OF HER TESTIMONY THAT EVEN THOUGH SHE WAS CONTACTED
15 BY MS. LANSING, THAT MS. LANSING NEVER FOLLOWED UP
16 ON IT AND SHE WOULD HAVE TALKED TO MS. LANSING HAD
17 MS. LANSING FOLLOWED UP ON IT. SHE WAS THEN SHOWN
18 HER WRITTEN RESPONSE REFUSING TO MEET WITH
19 MS. LANSING, WHICH THE COURT DID PERMIT HER TO READ
20 TO THE JURY.

21 SO WE WOULD BE OFFERING BOTH THE LETTER
22 WHICH SHE INDICATED SHE RECEIVED, IN ORDER TO GIVE
23 REASONING TO THE RESPONSE, AND THE RESPONSE AS
24 IMPEACHMENT AND GOING TO THE BIAS OF THE WITNESS.

25 THE COURT: WHAT IS THE PEOPLE'S POSITION?

26 MS. NAJERA: I BELIEVE AT 39498 THE COURT
27 RULED THAT THE CONTENT OF THE LETTER FROM JILL
28 LANSING WAS HEARSAY AND WOULD NOT BE ALLOWED IN

42047

1 FRONT OF THE JURY.

2 AS TO EXHIBIT 163, THE LETTER SENT, I
3 BELIEVE SHE READ THAT LETTER ALOUD AND THAT
4 EXPLAINED IT. THE LETTER ITSELF IS HEARSAY, FOR
5 WHICH THERE'D BE NO EXCEPTION, AND WE'D OBJECT TO
6 BOTH 162 AND 163.

7 MS. TOWERY: YOUR HONOR, IN RESPONSE TO THE
8 HEARSAY OBJECTION, NEITHER OF THESE LETTERS IS
9 OFFERED FOR THE TRUTH. THEY'RE OFFERED TO SHOW THE
10 BIAS OF THE WITNESS AND ALSO TO IMPEACH THE WITNESS'
11 TESTIMONY THAT SHE NEVER REFUSED TO MEET WITH THE
12 DEFENSE. THE DEFENSE SIMPLY FAILED TO PURSUE A
13 MEETING WITH HER AS THE PROSECUTION PURSUED. IT WAS
14 ONLY AFTER I SHOWED HER THE LETTER AND HAD HER READ
15 HER OWN LETTER RESPONDING TO JILL LANSING'S REQUEST
16 THAT SHE THEN STARTED TESTIFYING ABOUT BEING
17 SUBPOENAED BY THE PROSECUTION AND VARIOUS OTHER
18 METHODS BY WHICH THE PROSECUTION FORCED HER TO TALK
19 TO THEM. SO IT WAS DIRECT IMPEACHMENT OF HER
20 STATEMENT THAT SHE DIDN'T REFUSE TO TALK TO THE

21 DEFENSE; THEY SIMPLY DIDN'T FOLLOW UP.
22 THE COURT: I'LL ASK THE CLERK TO FIND 162
23 AND 163 WHEN SHE HAS A CHANCE AND I'LL REVIEW THEM.
24 MS. TOWERY: AND AGAIN, THEY'RE NOT OFFERED
25 FOR THEIR TRUTH. THEY'RE OFFERED TO OFFER THE STATE
26 OF MIND OF THE WITNESS FOR BIAS AS WELL AS
27 IMPEACHMENT.
28 THE COURT: I'VE BEEN GIVEN THEM NOW, SO HOLD

42048

1 ON ONE SECOND.
2 (PAUSE IN PROCEEDINGS.)
3
4 THE COURT: I'VE READ BOTH 162 AND 163.
5 AS FAR AS 162, THE OFFER IS THAT IT
6 WOULD MAKE -- OR GIVE MEANING TO 163, SINCE IT IS A
7 LETTER THAT CAUSED 163 TO BE WRITTEN. BUT THE
8 COURT, IN LOOKING AT THE CONTENT OF THE LETTER, HAS
9 TO EVALUATE ITS POTENTIAL FOR PREJUDICE AND
10 CONFUSION OF ISSUES; AND THERE IS, TO A GREAT
11 EXTENT, MUCH HEARSAY IN THE DOCUMENT, WHICH IS
12 PERSONAL OPINIONS OF MS. LANSING AND HER ANALYSIS OF
13 THE LAW AND VARIOUS ISSUES THAT WOULD TEND TO
14 CONFUSE THE JURY AND WOULD MAKE IT DIFFICULT FOR THE
15 JURY TO DISREGARD THE TRUTH OF THE MATTERS ASSERTED

16 THEREIN, AND REALLY HAVE VERY LITTLE VALUE AS FAR AS
17 SUBSTANTIATING THE PURPOSE FOR WHICH IT WAS OFFERED,
18 JUST TO ESTABLISH THAT MS. PISARCIK HAD BEEN
19 CONTACTED AND SHE RESPONDED IN THE FASHION SHE DID
20 IN 163.

21 MS. TOWERY: WE WOULD STIPULATE TO A LIMITING
22 INSTRUCTION TO THE JURY THAT THEY NOT CONSIDER
23 MATTERS THAT ARE MS. LANSING'S PERSONAL OPINION OR
24 NOT CONSIDER THE LETTER FOR THE TRUTH OF ANY
25 STATEMENT IN THERE, BUT ONLY TO THE EXTENT THAT IT
26 GIVES MEANING TO THE RESPONSE BY MS. PISARCIK. WE'D
27 BE HAPPY TO HAVE A LIMITING INSTRUCTION TO THAT
28 EFFECT.

42049

1 THE COURT: WELL, LIMITING INSTRUCTIONS ARE
2 VERY EFFECTIVE, BUT IN THIS CASE I DON'T SEE THE
3 VALUE OF THIS DOCUMENT AT ALL, QUITE FRANKLY. IT'S
4 REALLY ONLY ESTABLISHED BY THE RESPONSE AND THE
5 RESPONSE IS THE ONLY ISSUE HERE.

6 MS. TOWERY: I THINK PRIMARILY THE VALUE IS
7 TWO-FOLD; NUMBER ONE, IS THE TONE OF THE LETTER,
8 WHICH IS ALMOST A PLEADING ON THE PART OF
9 MS. LANSING FOR MS. PISARCIK TO SPEAK TO HER, IF FOR
10 NO OTHER REASON --

11 (MR. CONN EXITED THE COURTROOM.)

12

13 MS. TOWERY: -- WITH RESPECT TO A POTENTIAL
14 PENALTY PHASE IN THIS CASE. SO TONE IS IMPORTANT TO
15 GIVE MEANING TO THE RESPONSE; AND SECONDLY,
16 MS. LANSING INDICATES THAT SHE WOULD NOT PUT JAMIE
17 PISARCIK ON THE STAND AS A WITNESS AGAINST HER
18 WISHES AND EXPLAINS WHY IN THE LETTER, AND
19 MS. PISARCIK REFERS TO THAT IN HER RESPONSE. SO IN
20 ISOLATION MS. PISARCIK'S RESPONSE IS SOMEWHAT
21 CONFUSING AND MEANINGLESS.

22 SO I THINK THAT IT IS IMPORTANT THAT THE
23 JURY SEE THE REQUEST FOR THOSE TWO REASONS FOR THE
24 JURY TO FULLY UNDERSTAND THE RESPONSE.

25 AND AGAIN, WHATEVER LIMITING
26 INSTRUCTIONS THAT THE COURT THINKS IS APPROPRIATE TO
27 PROTECT AGAINST MISUSE OF THE LETTER BY THE JURY
28 WOULD BE STIPULATED TO.

42050

1 MR. GESSLER INDICATES -- AND AGAIN, WE
2 WOULD PREFER THAT THE ENTIRE LETTER BE SUBMITTED
3 BECAUSE OF THE TONE ISSUE -- BUT IF THE COURT IS
4 CONCERNED ABOUT SPECIFIC ASPECTS OF THE LETTER FROM
5 MS. LANSING, THEN WE WOULD AGREE TO REDACTION OF

6 WHATEVER PORTION THE COURT FEELS MIGHT BE CONFUSING
7 OR PREJUDICIAL, IF THE COURT'S NOT INCLINED TO GIVE
8 A LIMITING INSTRUCTION, IF THE COURT FEELS THAT'S
9 INSUFFICIENT TO PROTECT AGAINST THE MISUSE OF THE
10 DOCUMENT BY THE JURY.

11 THE COURT: WELL, I DON'T THINK 163 IS
12 AMBIGUOUS IN ANY WAY. I THINK IT CLEARLY STATES THE
13 POSITION OF MS. PISARCIK, WHICH IS THE ONLY ISSUE.
14 AND I DON'T THINK 162 HAS ANY RELEVANCE IN THAT
15 REGARD.

16 BOTH UNDER 352 OF THE EVIDENCE CODE AND
17 GROUNDS OF RELEVANCE, THE OBJECTION OF THE
18 PROSECUTION IS SUSTAINED. IT IS NOT RECEIVED.

19 163 MAY BE RECEIVED.

20 MS. TOWERY: THANK YOU, YOUR HONOR.

21 SO WE STILL HAVE THE COURT TAKING UNDER
22 SUBMISSION, JUST SO I HAVE MY NOTES RIGHT --

23 THE COURT: 153, 156, 159 AND 160.

24 MS. NAJERA: THANK YOU, YOUR HONOR.

25 MS. ABRAMSON: MOVING RIGHT ALONG.

26 THE COURT: OKAY. NOW LET'S GO.

27 MS. ABRAMSON: OKAY, YOUR HONOR. THE PEOPLE
28 ARE OFFERING 167 TO 205. THERE'S NO OBJECTION TO

1 167 TO 203.

2 THE COURT: OKAY. HOLD ON THEN. THOSE ARE
3 ALL GOING TO BE RECEIVED THEN SINCE THERE'S NO
4 OBJECTION. SO LET ME JUST GET THOSE OUT OF THE
5 WAY.

6 INCLUDING 203? NO OBJECTION TO 203
7 EITHER?

8 MS. ABRAMSON: RIGHT.

9 THE COURT: ALL RIGHT.

10 MS. ABRAMSON: WE DO OBJECT TO 204 AND 205,
11 THE DOLLS.

12 THE COURT: OKAY.

13 MS. ABRAMSON: DO YOU WANT TO HOLD ALL
14 OBJECTIONS TO THE END?

15 THE COURT: NO. LET'S HEAR THEM NOW.

16 MS. ABRAMSON: THEY'RE HIGHLY INACCURATE,
17 EVEN AS TESTIFIED TO BY DR. LAWRENCE. WITHOUT GOING
18 THROUGH THEM WOUND BY BORING WOUND, THE MOST GLARING
19 EXAMPLE ON 205, FOR EXAMPLE, THE DOLL THAT'S
20 SUPPOSED TO REPRESENT MRS. MENENDEZ' WOUNDS IS THIS
21 STICK THAT'S GOING THROUGH THE THIGH, DR. LAWRENCE
22 ACKNOWLEDGED IS GOING THROUGH -- EVEN IF DR. GOLDEN'S
23 VERSION THAT THE ENTRY IS ON TOP AND THE EXIT IS ON
24 BOTTOM, IT'S GOING IN BACKWARDS AND THERE'S NO WAY
25 TO FIX THESE LITTLE THINGS BECAUSE THEY'RE GLUED IN
26 THERE. THERE ARE OTHER PROBLEMS WITH THEM AS WELL.

27 THE COURT: IT GOES THROUGH, THOUGH, DOESN'T
28 IT, TO THE BACK?

1 MS. ABRAMSON: IT GOES THROUGH THE BACK, BUT
2 THE REAL EXIT HOLE IS DOWN HERE. IT'S COMPLETELY
3 THE WRONG ANGLE AND DOESN'T WORK IN ANYBODY'S
4 VERSION.

5 MOREOVER, THINGS THAT ARE GUTTER WOUNDS
6 OR GRAZE WOUNDS, BECAUSE OF THE LIMITATION OF THE
7 MATERIAL, HE SHOWS AS HAVING CLEAR ENTRIES AND
8 EXITS, WHICH IS GOING TO COMPLETELY MISLEAD THE
9 JURY. THEY'LL NEVER BE ABLE TO ALIGN WOUNDS
10 DEMONSTRATED ON "DOLLY" HERE WITH THE PHOTOGRAPHS
11 WHICH ARE THE ONLY REAL EVIDENCE OF THE WOUNDS.

12 AND THE SAME IS TRUE OF WHAT HE'S
13 SHOWING OF THE LEFT BREAST WOUND, WOUND NO. 6,
14 ACCORDING TO DR. GOLDEN. HERE HE HAS IT COMING IN
15 ON THE SIDE, THE FLANKING SIDE OF THE CHEST WALL.
16 IT ISN'T THERE.

17 HE SHOWS ONE ASPECT OF WOUND NO. 3,
18 WHICH IS THE MANDIBLE-CLAVICLE, BUT ALL HE SHOWS IS
19 THE CLAVICLE, NOT THE MANDIBLE AREA.

20 ALL IN ALL, IT MIGHT HAVE BEEN USEFUL TO
21 HELP HIM IN HIS TESTIMONY, BUT I THINK IT'S HIGHLY
22 MISLEADING TO THE JURY. I THINK THE PHOTOGRAPHS ARE
23 THE BEST EVIDENCE AND THE MOST RELIABLE EVIDENCE OF
24 WHERE THESE WOUNDS WERE. AND THIS DOLL MISLEADS

25 WITH RESPECT TO THAT.

26 AND SO UNDER 352 I THINK THAT IT'S

27 CONFUSING THE ISSUES FOR THE JURY, MISLEADING THE

28 JURY, AND LESS LIKELY TO BE PROBATIVE THAN

42053

1 PREJUDICIAL.

2 THE COURT: WHAT IS THE PEOPLE'S RESPONSE?

3 MS. NAJERA: YOUR HONOR, I CAN UNDERSTAND

4 COUNSEL'S POSITION HAD THESE DOLLS BEEN PRESENTED

5 WITHOUT THE TESTIMONY. BUT CLEARLY WE'VE TAKEN A

6 LOT OF TESTIMONY ON THESE DOLLS, EXPLAINING THAT

7 THEY'RE REALLY HERE FOR DEMONSTRATIVE PURPOSES.

8 THEY'RE NOT THE ACTUAL SCALED-DOWN SIZES AND BODIES

9 OF JOSE AND KITTY MENENDEZ AND THEY'RE NOT

10 ANATOMICALLY PERFECT AND WE'VE TAKEN TESTIMONY THAT

11 THEY'RE NOT. THEY ARE SIMPLY USED FOR ILLUSTRATIVE

12 PURPOSES AND THERE IS EVIDENCE AS TO EVERY -- THE

13 REASONS AND TESTIMONY TAKEN ON EVERY ONE OF THE BARS

14 THAT ARE IN BOTH DOLLS I THINK EXPLAIN IT AND WAS

15 EXPLAINED VERY CLEARLY TO THE JURY. IF COUNSEL HAS

16 SOME DISPUTE ABOUT THEM, OR THEIR EXPERTS HAVE SOME

17 DISPUTE, THAT'S ONE THING. THAT REALLY DOESN'T GO

18 TO ADMISSIBILITY.

19 AND I THINK THAT GIVEN WHAT THESE DOLLS

20 ARE USED FOR AND EXCEPTING THE LIMITATIONS THAT WE
21 HAVE PRESENTED TO THE COURT AND TOLD TO THE JURY, I
22 THINK THAT IN TERMS OF LAYING AN ADEQUATE FOUNDATION
23 AS TO WHAT THEY ARE AND WHAT THEY'RE BEING USED FOR,
24 THAT HAS BEEN DONE.

25 THE COURT: ALL RIGHT. THE COURT UNDERSTANDS
26 THE OBJECTIONS, BUT THOSE DEFECTS OR INACCURACIES,
27 IF THEY ARE INACCURACIES, AND THE DOLLS WERE COVERED
28 DURING THE EXAMINATION OF DR. LAWRENCE AND OTHER

42054

1 WITNESSES, AND I DON'T BELIEVE THAT THESE WOULD BE
2 MISLEADING TO THE JURY, WOULD BE OF ASSISTANCE TO
3 THEM, UNDERSTANDING AT LEAST THE TESTIMONY OF
4 DR. LAWRENCE.

5 AND, THEREFORE, ANY POTENTIAL PREJUDICE
6 OR POTENTIAL FOR CONFUSION OF ISSUES IS MINIMAL AND
7 THE PROBATIVE VALUE SUBSTANTIALLY OUTWEIGHS ANY
8 POTENTIAL; THEREFORE, THEY WILL BE RECEIVED.

9 WHAT ELSE?

10 MS. ABRAMSON: THE PEOPLE OFFER -- OH, LET ME
11 GET TO WHAT THE DEFENSE OFFERS THAT'S UNOBJECTED TO
12 BY THE PEOPLE.

13 THE COURT: WE'VE GOTTEN TO 205. WHAT ABOUT
14 206, ET CETERA?

15 MS. ABRAMSON: THE DEFENSE IS OFFERING 206,

16 208, 209 --

17 THE COURT: THE PEOPLE AREN'T OFFERING

18 ANYTHING ELSE NOW?

19 MS. ABRAMSON: I'M TRYING TO STAY WITHIN THE

20 NUMBERING SYSTEM. THEY'RE NOT OBJECTING TO ANYTHING

21 WE'RE OFFERING.

22 THE COURT: TELL ME THEN IF THERE ARE NO

23 OBJECTIONS SO I CAN GO THROUGH HERE.

24 MS. ABRAMSON: THE REASON I'M READING THEM IS

25 BECAUSE WE'RE NOT OFFERING EVERYTHING EITHER.

26 THE COURT: WHAT YOU'RE SAYING NOW IS THINGS

27 YOU'RE OFFERING AND THE PEOPLE ARE NOT OBJECTING

28 TO?

42055

1 MS. ABRAMSON: YES.

2 THE COURT: 206. WHAT ELSE?

3 MS. ABRAMSON: 208, 209, 210, 212, 213. SO

4 FAR.

5 THE COURT: OKAY. THEY'LL BE RECEIVED.

6 MS. ABRAMSON: THE PEOPLE ARE OFFERING 214

7 THROUGH 218. NO OBJECTION.

8 THE COURT: 214 THROUGH 218 WILL BE RECEIVED.

9 MS. ABRAMSON: DEFENSE IS OFFERING 219, NO

10 OBJECTION.

11 THE COURT: IT WILL BE RECEIVED.

12 MS. ABRAMSON: NOW THE PEOPLE ARE OFFERING
13 220 THROUGH 241 AND WE OBJECT.

14 THE COURT: OKAY.

15 MS. ABRAMSON: THESE ARE -- JUST SO THE COURT
16 CAN CONSIDER BOTH ISSUES TOGETHER, BECAUSE I THINK
17 THAT THE COURT WILL, THESE ARE THE SMALL VERSIONS OF
18 THE FAILURE ANALYSIS ILLUSTRATIONS.

19 WE ARE ALSO OBJECTING TO 250 TO 273,
20 WHICH ARE THE BIG VERSION.

21 AND WE'RE OBJECTING TO BOTH ON THE SAME
22 BASIS, THAT THEY ARE MISLEADING AND CONFUSING AND
23 UNDER 352 THEIR PROBATIVE VALUE IS OUTWEIGHED BY THE
24 CHANCE THEY WILL CONFUSE THE ISSUES AND MISLEAD THE
25 JURY, EVEN -- THEY'RE MADE TO APPEAR AS IF THEY ARE
26 AUTHORITATIVE ILLUSTRATIONS OF WHAT -- OF EVEN WHAT
27 DR. MC CARTHY HAS IN MIND; AND YET HE HAS TESTIFIED
28 THAT THEY'RE JUST AN APPROXIMATION; THEY'RE JUST A

42056

1 GENERALIZATION. HE DOESN'T MEAN THE ANGLES TO MEAN
2 THE ANGLES. HE DOESN'T MEAN THE BODY POSITIONS TO
3 BE TAKEN AS HIS ACTUAL BODY POSITIONS.

4 UNLIKE THE DOLLS, IF YOU WILL, WHICH AT

5 LEAST ARE FLEXIBLE AND THE JURY CAN SEE HOW BODY
6 PARTS MOVE AND CHANGE, THESE FROZEN-IN-ASPECT
7 ILLUSTRATIONS ARE HIGHLY MISLEADING WHEN, IN FACT,
8 WHEN YOU FINALLY -- WHEN ALL IS SAID AND DONE AND
9 DR. MC CARTHY IS EXAMINED AND CROSS-EXAMINED, HE
10 BACKS OFF OF WHAT IS REPRESENTED IN THOSE
11 ILLUSTRATIONS.

12 THE COURT: GIVE ME AGAIN THE EXHIBIT
13 NUMBERS.

14 MS. ABRAMSON: OKAY, JUDGE. THE SMALL
15 VERSIONS WERE 220 THROUGH 241 AND THEY WERE MARKED
16 WITH RESPECT TO DR. LAWRENCE BEFORE WE WERE AWARE OF
17 WHAT DR. MC CARTHY WAS GOING TO SAY ABOUT HIS
18 ILLUSTRATIONS.

19 AND THE BIG ONES ARE 250 THROUGH 273.

20 THE COURT: OKAY. GO AHEAD. SORRY TO
21 INTERRUPT.

22

23

24

25

26

27

28

1 THE COURT: I'M SORRY.

2 MS. ABRAMSON: SO THAT'S OUR POSITION, THAT
3 THESE ILLUSTRATIONS, BOTH IN LARGE AND SMALL FORM,
4 APPEAR ON THE FACE OF THEM TO REPRESENT A POINT OF
5 VIEW OR A POSITION OR AN OPINION CONCERNING THE
6 POSITIONS OF THE DECEDENTS AND ANGLES OF SHOT, BUT
7 WHEN ACTUALLY EXAMINED ABOUT IT, DR. MC CARTHY
8 VIRTUALLY BACKS OFF OF ALL OF THEM EXCEPT SHOT
9 NO. 3, WHICH IS THE ROUND THROUGH THE WINDOW AS FAR
10 AS TRAJECTORY. BUT EVEN THERE, HE CAN'T SAY THAT HE
11 PLACED THE FIGURE OF MRS. MENENDEZ IN THAT
12 PARTICULAR POSITION FOR ANY REASON BASED ON ANY
13 FACTUAL INFORMATION.

14 UNLIKE, AT LEAST, WHAT DR. LAWRENCE WAS
15 -- CLAIMS HE WAS TRYING TO DO BY SHOWING WOUNDS ON
16 THE BODIES THROUGH THE PHOTOGRAPHS, WE DON'T KNOW
17 WHAT DR. MC CARTHY AT THIS POINT WAS TRYING TO DO,
18 BECAUSE HE BACKS OFF OF HIS ORIGINAL CERTAINTY OF
19 THE CORRECTNESS OF HIS WAY BEING THE ONLY WAY.

20 SO I THINK AT THIS POINT THOSE
21 ILLUSTRATIONS DO NOTHING BUT CONFUSE THE JURY, ARE
22 UNSUPPORTED BY ANY TESTIMONY THAT ANYBODY IS NOW OF
23 THE OPINION THAT THE THINGS DEPICTED IN THEM ARE, IN
24 FACT, WHERE THE PEOPLE WERE, EITHER THE VICTIMS OR
25 THE SHOOTERS, AT THE TIME THAT ANY OF THESE INJURIES
26 WERE INFLICTED.

27 MR. GESSLER: I WOULD LIKE TO ADD OBJECTIONS

42058

1 YOUR HONOR, ON THE GROUNDS THAT THEY ARE NOT TRULY
2 EXPERT TESTIMONY; THAT THEY ARE NOT ILLUSTRATIVE OF
3 ANY SCIENTIFIC PRINCIPLE. DR. MC CARTHY, ON THE
4 LAST DAY OF TESTIMONY, REPEATEDLY SAID THAT ALL THEY
5 ARE IS ONE OF AN INFINITE RANGE OF POSSIBILITIES,
6 NOT ONLY BECAUSE OF THE WAY THE ARMS AND THE LEGS
7 FLEX ON HUMAN BEINGS, BUT BECAUSE ANGLES ARE ALL
8 DEPENDENT ON THE RESTING POSITION, PARTICULARLY MARY
9 MENENDEZ, AT THE END. HE REALLY BACKED OFF THEM
10 TOTALLY. THOSE LINES COULD BE ALMOST ANY PLACE IN A
11 WIDE RANGE OF VECTORS.

12 AND ACTUALLY, HE SAID, AND I WOULD JUST
13 READ SIX LINES FROM HIS TESTIMONY AT PAGE 40669 ON
14 CROSS-EXAMINATION, WHEN I ASKED HIM BASICALLY FOR
15 THE SCIENTIFIC PRINCIPLES THAT ARE INVOLVED HERE AND
16 HIS FIELD OF ENGINEERING:

17 "NOW, DO YOU USE MATHEMATICAL
18 FORMULAS TO WORK OUT THIS GEOMETRY?

19 "NO. BUT THE DATA DOES NOT
20 PERMIT EXACT POSITIONS.

21 "QUESTION: GEOMETRY IS A BRANCH
22 OF MATHEMATICS, ISN'T IT?

23 "ANSWER: YES. AND IF YOU HAVE
24 PRECISE POSITIONS AND SHAPES OF
25 OBJECTS YOU CAN DO VERY PRECISE
26 CALCULATIONS.
27 "QUESTION: SO WHEN YOU USE THE
28 TERM 'GEOMETRY' IN THIS COURTROOM,

42059

1 THEN, YOU ARE NOT REFERRING TO
2 MATHEMATICAL CALCULATIONS THAT YOU HAD
3 DONE?

4 "ANSWER: THAT IS CORRECT. THERE
5 JUST ISN'T ENOUGH DETAILED DATA FOR
6 THAT.

7 "QUESTION: YOU MEANT GEOMETRY
8 SIMPLY IN THE SENSE OF, AS I SAY,
9 WHERE THE OBJECTS WERE IN RELATION TO
10 ONE ANOTHER?

11 "ANSWER: YES.

12 "QUESTION: DOCTOR, I TAKE IT
13 THERE'S NO MATHEMATICAL WORK THAT WE
14 COULD LOOK AT THAT YOU'VE DONE HERE,
15 NO CALCULATIONS?

16 "ANSWER: NO. THERE JUST IS NOT
17 ENOUGH DETAIL."

18 YOUR HONOR, THIS MAN IS AN ENGINEER. HE
19 CERTAINLY STATES LOTS OF QUALIFICATIONS. THEY DON'T
20 SEEM TO PERTAIN AT ALL TO THE ACTUAL TESTIMONY THAT
21 HE GAVE TO THE JURY HERE. BASICALLY, I DON'T THINK
22 THE TESTIMONY THAT WAS GIVEN BEFORE THE JURY,
23 PARTICULARLY AFTER CROSS-EXAMINATION, LIVED UP TO
24 THE PROMISE THAT HE GAVE OF WHAT HE COULD DO IN THE
25 402 HEARING IN WHICH HE SAID HE WAS GOING TO BE ABLE
26 TO GIVE, BASICALLY, THE ONE AND ONLY ANSWER TO A
27 RECREATION HERE, SOMETHING THAT NOBODY ELSE COULD
28 DO.

42060

1 WHEN YOU GET RIGHT DOWN TO IT, AND YOU
2 LOOK AT ALL HIS QUALIFICATIONS, ALL HE'S REALLY
3 DOING IS OFFERING THE JURY A LAYMAN'S SPECULATION AS
4 TO A SEQUENCE OF SHOTS BASED ON WHAT HE SAYS IS
5 COMMON SENSE. BUT COMMON SENSE IS WHAT THE LAY
6 PERSON AND THE LAY JUROR BRINGS TO THIS FORAY. IT'S
7 NOT SOMETHING THAT'S SUBJECT TO THE EXPERT OPINION
8 OF TELLING THE JURORS SOMETHING BEYOND THEIR NORMAL
9 KNOWLEDGE.

10 THE COURT: WELL, WAS THERE SOME OBJECTION TO
11 MR. MC CARTHY'S TESTIMONY OVERALL BY THE DEFENSE?

12 MR. GESSLER: YES, THERE WAS.

13 THE COURT: WHAT WAS THAT?

14 MR. GESSLER: THERE WAS A 402 HEARING BROUGHT
15 TO THIS COURT. I DON'T MEAN THE ONE WHERE WE TOOK
16 EVIDENCE. I MEAN THE 402 HEARING THAT WAS PUT ON --
17 IF I MAY I HAVE A MOMENT. I CAN FIND WHERE THAT
18 WAS. THIS WAS AFTER DR. LAWRENCE TESTIFIED; AND ON
19 THE GROUNDS THAT MR. MC CARTHY'S OFFER OF PROOF WAS
20 NOT REALLY IN CORROBORATION OF OPINIONS STATED BY
21 DR. LAWRENCE, SINCE DR. LAWRENCE ORIGINALLY HIMSELF
22 HAD SAID THAT SHOT 1 WAS NOT ALL CONNECTED, ALTHOUGH
23 HE BACKED OFF THAT TO A CERTAIN EXTENT AND SAID IT
24 WAS POSSIBLE.

25 AND, BASICALLY, WHERE THE COURT SAID --
26 YOU OVERRULED OUR OBJECTION BASED ON THE OFFER OF
27 PROOF THAT WAS MADE AT THE PRIOR 402 HEARING AND
28 WHICH REALLY HAS NOT BEEN LIVED UP TO. IN THE 402

42061

1 HEARING HE SAID HE WAS APPLYING SCIENTIFIC
2 PRINCIPLES. HE DID NOT.

3 THE COURT: THE 402 HEARING, NUMBER ONE, WAS
4 A HEARING -- THAT WAS THE ONLY HEARING THAT WE HAD.

5 MS. ABRAMSON: NO.

6 MR. GESSLER: NO, YOUR HONOR.

7 THE COURT: THAT WAS A HEARING THAT WE

8 STARTED AND THEN THE DEFENSE WITHDREW YOUR

9 OBJECTION.

10 MS. ABRAMSON: THAT WAS THE 801 HEARING.

11 THE COURT: YOU COULD CALL IT WHAT YOU WANT,

12 THERE WAS A HEARING WHERE YOU WERE CHALLENGING THE

13 ADMISSIBILITY OF MC CARTHY'S TESTIMONY TOTALLY, IN

14 TOTAL, PERIOD.

15 MS. ABRAMSON: RIGHT.

16 THE COURT: HE SHOULDN'T GET ON THE WITNESS

17 STAND AND SHOULDN'T BE PERMITTED TO TESTIFY IN FRONT

18 OF THE JURY.

19 NOW YOU'RE REFERRING TO SOMETHING ELSE

20 ENTIRELY.

21 MR. GESSLER: PAGE 40341 THROUGH PAGE 40352,

22 THIS IS IN VOLUME 240 AND WAS WEDNESDAY, NOVEMBER 8,

23 1995, FOLLOWING DR. LAWRENCE'S TESTIMONY, AND

24 IMMEDIATELY PRECEDING DR. MC CARTHY'S TESTIMONY.

25 THE COURT: OKAY. AND YOU'VE JUST REFERRED

26 TO THAT AND SUMMARIZED IT AS YOU FEEL IT OCCURRED ON

27 THAT DATE; IS THAT CORRECT?

28 MR. GESSLER: YES, YOUR HONOR. IT'S A

42062

1 SUMMARY IN WHICH FINALLY THE COURT SAID, THEREFORE,

2 THE OBJECTIONS ARE OVERRULED. AND LET'S SEE IF I

3 CAN FIND THE EXACT PHRASE. YOU MENTIONED THAT WE
4 HAD, BASED ON WHAT WE SAID IN THE 402, AN AREA OF
5 CROSS-EXAMINATION AND IMPEACHMENT OF DR. MC CARTHY
6 AS TO THE UNDERPINNINGS OF HIS OPINION.

7 THIS IS AT PAGE 40352, AND I THINK WE
8 DID THAT. HE JUST DID NOT LIVE UP TO THE PROMISE OF
9 THE 402 HEARING WHEN HE SAYS HE USED NO MAGICAL
10 PRINCIPLES WHATSOEVER FOR THESE PARTICULAR ANGLES,
11 AND THEY'RE SIMPLY ONE ILLUSTRATION OF INFINITE
12 VARIATIONS IN WHICH THEY COULD REFLECT THE ACTUAL
13 SHOT PATTERNS; AND AS HE SAYS, GEOMETRY OF THE
14 SHOTS.

15 THE COURT: OKAY. DID THE PEOPLE WISH TO
16 RESPOND?

17 MS. ABRAMSON: I JUST WANTED TO ADD ONE OTHER
18 THING ABOUT DR. MC CARTHY AND THE DIAGRAMS. WE HAD
19 BEEN OBJECTING BEFORE HE TESTIFIED THAT DR. LAWRENCE
20 DID NOT PROVIDE SUPPORT FOR MR. MC CARTHY'S
21 OPINIONS, AND THE COURT FELT THAT THERE WAS
22 SUFFICIENT, HOWEVER AMBIGUOUS, INFORMATION ON THE
23 RECORD FROM DR. LAWRENCE, IN COMBINATION WITH
24 DR. GOLDEN, TO SUPPORT DR. MC CARTHY'S TESTIMONY.
25 BUT THEN DR. MC CARTHY TESTIFIED AND IT WAS
26 PERFECTLY OBVIOUS THAT HE WASN'T RELYING ON ANYBODY,
27 NO OTHER EXPERTS, FOR HIS MEDICAL OPINIONS, BESIDES
28 THE FACT THAT HE CHOSE TO DENY THAT DR. LAWRENCE

1 SAID THINGS THAT WE ALL HEARD DR. LAWRENCE SAY. IT
2 BECAME OBVIOUS THAT HE SIMPLY HELD HIS OWN MEDICAL
3 OPINIONS, FOR WHICH HE WAS NOT QUALIFIED TO TESTIFY,
4 IN SPITE OF THE FACT THAT THEY WERE CONTRARY TO BOTH
5 DR. LAWRENCE AND DR. GOLDEN.

6 SO BASED ON THAT, JUST TO GET BACK TO
7 WHAT WE'RE DEALING WITH HERE, WHICH IS EXHIBITS,
8 THESE EXHIBITS REPRESENT A LAYMAN'S OPINION OF ONE
9 OUT OF ENUMERABLE POSSIBILITIES. THEY ARE NO MORE
10 THAN A VISUAL VERSION OF A NARRATIVE OF HIS DECISION
11 TO RECONSTRUCT IN THE MANNER IN WHICH HE HAS, IN
12 SPITE OF THE FACT THAT THERE IS NO QUALIFIED EXPERT
13 OPINION TO SUPPORT THOSE RECONSTRUCTIONS.

14 SO THAT'S THE REASON WHY AT THIS POINT,
15 SINCE WE'RE TALKING ABOUT EXHIBITS, WE'RE OBJECTING
16 TO THESE, WHICH IS, YOU KNOW, THE LAYMAN'S VIEW OF
17 HOW THESE THINGS OCCURRED. AT THE TIME THAT WE MAKE
18 THE 1118 WE ALSO INTEND TO MOVE TO STRIKE ALL OF
19 DR. MC CARTHY'S TESTIMONY, APART FROM HIS QUALIFYING
20 HIMSELF AS AN ENGINEER, ON THE BASIS IT'S
21 UNSUPPORTED, THAT HE DID NOT PROVIDE EXPERT
22 SCIENTIFIC TESTIMONY IN ANY FIELD IN WHICH HE WAS
23 QUALIFIED, AND THAT HE DID NOT STAY WITHIN THE
24 CONFINES OF OPINIONS THAT WERE SUPPORTED BY THE
25 TESTIMONY OR WORK OF ACKNOWLEDGED EXPERTS IN THE
26 FIELD.

27 THE COURT: DID THE PEOPLE WISH TO RESPOND?

28 MS. NAJERA: JUST BRIEFLY, YOUR HONOR. I

42064

1 BELIEVE THAT COUNSEL WHEN THEY -- WHEN THE PEOPLE
2 CALLED DR. LAWRENCE, COUNSEL FOR THE DEFENSE PULLED
3 A LITTLE BIT OF A LEGAL SLIGHT OF HAND IN THAT THEY
4 BROUGHT OUT MR. MC CARTHY'S DIAGRAMS WITHOUT HAVING
5 HAD -- WITHOUT THE PEOPLE HAVING FIRST PUT ON THE
6 TESTIMONY OF DR. MC CARTHY TO EXPLAIN THESE. AND
7 DR. LAWRENCE PROCEEDED TO EXPLAIN THEM IN HIS -- HE
8 PROCEEDED TO INTERPRET THEM AND THEN GIVE
9 EXPLANATIONS AS TO THEM.

10 I THINK THAT DR. MC CARTHY, WHEN HE
11 TESTIFIED UNDER DIRECT BY MR. CONN, WENT INTO, VERY
12 PAINSTAKINGLY, WHAT THESE DIAGRAMS ACTUALLY
13 REPRESENTED, AND I THINK THAT WHEN THAT HAPPENED
14 THAT CLEARED UP A GREAT DEAL OF CONFUSION THAT WAS
15 CAUSED WHEN THEY WERE SHOWN TO DR. LAWRENCE, AND
16 DR. LAWRENCE WAS ASKED TO INTERPRET THEM WITH NO
17 OTHER EXPLANATIONS.

18 IN DR. MC CARTHY'S TESTIMONY HE
19 EXPLAINED THAT THESE WERE, ONCE AGAIN, USED FOR
20 ILLUSTRATIVE PURPOSES OF WHAT HIS TESTIMONY WAS AND
21 WHAT HE BELIEVED HAPPENED HERE. THERE WAS MUCH

22 INFORMATION IN EACH DIAGRAM AND HE WENT THROUGH EACH
23 PIECE OF INFORMATION AND EXPLAINED WHAT IT WAS THAT
24 HE WAS RELYING ON, WHAT IT WAS HE WAS TRYING TO
25 CONVEY TO THE JURY, WHAT IT WAS THAT WAS JUST THERE
26 SIMPLY FOR AESTHETIC PURPOSES, AND ALL OF THAT --
27 MUCH OF THAT TESTIMONY WAS TAKEN AND EVERY PART OF
28 THOSE VARIATIONS WERE EXPLAINED. WHEN THAT HAPPENED

42065

1 THAT, ONCE AGAIN, PUT INTO CONTEXT FOR DR. LAWRENCE
2 AND ALSO FOR DR. MC CARTHY, BECAUSE, ONCE AGAIN,
3 WHEN DR. MC CARTHY TOOK THE STAND AND WAS ASKED,
4 ONCE AGAIN, PAINSTAKINGLY BY MR. CONN, THE VARIOUS
5 ASPECTS THAT SUPPORT WHAT IT WAS DR. MC CARTHY WAS
6 TRYING TO SHOW, MUCH OF IT WAS, IN FACT, SUPPORTED
7 BY DR. FACKLER.

8 I THINK, ONCE AGAIN, YOU CAN GO THROUGH
9 THESE CHARTS AND ILLUSTRATIONS AND DISCUSS MANY -- A
10 GREAT DEAL OF INFORMATION IS ON THERE. BUT AS TO
11 WHAT PEOPLE VIEWED WAS THE RELEVANT INFORMATION AND
12 WHAT IT WAS THAT WAS BEING ILLUSTRATED FROM THOSE
13 ILLUSTRATIONS, I THINK PEOPLE GOT THAT INFORMATION
14 OUT IN FRONT OF THE JURY, AND I THINK IT WAS MADE
15 VERY CLEAR TO THEM WHAT IT WAS THAT WAS BEING
16 OFFERED AS A RESULT OF THOSE ILLUSTRATIONS.

17 MS. ABRAMSON: YOUR HONOR, IF I COULD RESPOND
18 BRIEFLY. I THINK COUNSEL'S ARGUMENT ILLUSTRATES
19 PRECISELY WHAT'S WRONG WITH THESE ILLUSTRATIONS.
20 THEY APPEAR TO DEPICT SOMETHING, BUT APPARENTLY THEY
21 AREN'T MEANT TO DEPICT WHAT THEY APPEAR TO DEPICT,
22 AND THEY NEEDED A GREAT DEAL OF TALKING AROUND BY
23 DR. MC CARTHY AS TO WHAT THEY DIDN'T MEAN TO DEPICT
24 EVEN THOUGH THEY DEPICTED. THAT'S WHAT'S CONFUSING
25 ABOUT THEM; THAT THEY DON'T HAVE LITTLE NAME TAGS
26 THAT SAY WE DON'T MEAN THIS PART OR THIS IS JUST A
27 GUESS OR THIS IS AN APPROXIMATION.

28 THE FACT OF THE MATTER IS, THEY ARE

42066

1 MISLEADING. THEY SUGGEST RELATIONSHIPS THAT ARE
2 PHYSICALLY IMPOSSIBLE. THEY SUGGEST A SEQUENCE OF
3 SHOTS THAT IS NO MORE THAN A GUESS BY A LAYMAN.
4 THEY SUGGEST ANGLES OF SHOTS AND PLACEMENT OF THE
5 SHOOTERS THAT ARE PROBABLY GRAVITATIONALLY
6 IMPOSSIBLE. BUT THERE'S NO LITTLE TAGS THAT SAY WE
7 ONLY MEAN THIS MAYBE, BUT WE MEAN THE REST OF THIS
8 FOR REAL.

9 SO I THINK THEY'RE HIGHLY MISLEADING AND
10 CONFUSING TO THE JURY. WE WERE LED TO BELIEVE WHEN
11 WE WERE PRESENTED WITH THESE THAT THIS IS WHAT

12 DR. MC CARTHY MEANT, THAT THEY WERE WHAT HE MEANT
13 AND WHAT HE BELIEVED.
14 NOW, WHEN THEY WERE SHOWN TO
15 DR. LAWRENCE, WE STILL HAVEN'T BEEN GIVEN SOME
16 SUPPLEMENTAL REPORT FROM MR. MC CARTHY THAT SAID I
17 DIDN'T EXACTLY MEAN THIS. THIS IS JUST A FOR
18 INSTANCE, AND THE FOR INSTANCE ONLY CAME ABOUT WHEN
19 HE WAS TESTIFYING. AND IF THAT'S TRUE, THIS IS ONLY
20 A FOR INSTANCE, A LAYMAN'S GUESS, THEN THEY ARE --
21 IT'S INAPPROPRIATE THAT THEY BE SUBMITTED TO THE
22 JURY, WHO, BECAUSE THEY ARE A PICTORIAL
23 REPRESENTATION, MAY BE INFLUENCED BY THEM, AND THEIR
24 PREJUDICIAL VALUE FAR OUTWEIGHS THE PROBATIVE VALUE
25 OF A LAYMAN.
26 MR. GESSLER: IF I MAY JUST HAVE ONE MORE
27 MOMENT, YOUR HONOR, AT THIS POINT.
28 THE COURT: SURE.

42067

1 MR. GESSLER: AGAIN, IN THE 402 HEARING THAT
2 WE HAD BASED ON THE 801 -- THE 801 HEARING, I SHOULD
3 SAY, WHERE EVIDENCE WAS TAKEN OVER A PERIOD OF A
4 COUPLE OF DAYS AND DR. MC CARTHY TESTIFIED TO HIS
5 QUALIFICATIONS AND WHAT HE COULD DO AND HAD DONE.
6 AT PAGE 35402 DR. MC CARTHY IS TALKING

7 ABOUT THE GENERAL RECONSTRUCTION ASPECT THAT HE HAS
8 DONE FOR FAILURE ANALYSIS IN THE PAST, BUT SAYS AT
9 LINE 27:

10 "BUT BASICALLY YOU ATTEMPT TO
11 AVAIL YOURSELF OF WHAT SCIENTIFIC
12 TOOLS ARE AVAILABLE CONSISTENT WITH
13 THE STATE AND THE PRESERVATION OF THE
14 EVIDENCE TO TRY TO FIGURE OUT WHAT
15 HAPPENED. AND IT JUST VARIES MORE
16 LOOSELY FROM CASE TO CASE, DEPENDING
17 ON THE ISSUE."

18 THE CONTENTION THAT I'M MAKING, AND
19 PARTICULARLY AFTER HAVING HEARD HIM, IS THAT HE DID
20 NOT LIVE UP TO THAT PROMISE WHICH HE MADE TO THE
21 COURT AND COUNSEL OF SCIENTIFIC PRINCIPLES WHEN HE
22 SAID HE NEVER USED ANY SCIENTIFIC PRINCIPLES.

23 THE COURT: WELL, THE COURT DIDN'T RELY UPON
24 ANY REPRESENTATIONS MADE DURING THE 801 HEARING PER
25 SE BECAUSE THE COURT WAS NEVER PUT TO THE TEST TO
26 RULE UPON THE DEFENSE OBJECTIONS. YOU WITHDREW YOUR
27 OBJECTION AND THE PEOPLE PROCEEDED TO MAKE OPENING
28 STATEMENTS ABOUT THE PROPOSED TESTIMONY; AND THEN

42068

1 YOU HAD A VERY BRIEF OBJECTION ARGUED BEFORE

2 MC CARTHY TESTIFIED.

3 MR. GESSLER: YOUR HONOR, I THINK YOU WERE
4 PUT TO THE TEST LATER WHEN WE OBJECTED, AFTER
5 DR. LAWRENCE'S TESTIMONY, AS TO WHAT THE STATE OF
6 THE MEDICAL EXPERTISE HE COULD BRING TO THIS FIELD
7 WAS.

8 THE COURT: THAT WAS A SEPARATE ISSUE; NOT AS
9 TO THESE DIAGRAMS OR AS TO MC CARTHY'S GENERAL
10 TESTIMONY, BUT ONLY AS TO WHAT HE COULD SAY VERSUS
11 WHAT HE WOULD HAVE TO RELY UPON SOMEONE ELSE HAVING
12 SAID. AND THAT WOULD BE THE MEDICAL EVIDENCE. AND
13 WHEN OBJECTIONS WERE MADE THE COURT RULED UPON THEM
14 AS THEY WERE MADE.

15 NOW, YOU CAN LOOK AT THE RECORD AND
16 ARGUE AS TO WHETHER EACH OBJECTION WAS PROPERLY
17 RULED UPON, BUT THAT DOESN'T GO TO THE OVERALL
18 ADMISSIBILITY OF THESE DIAGRAMS OR MC CARTHY'S
19 TESTIMONY. THAT SHOULD HAVE BEEN ADDRESSED AND
20 COULD HAVE BEEN ADDRESSED AT THIS SO-CALLED 801
21 HEARING WHICH WAS ABORTED AT THE REQUEST OF THE
22 DEFENSE.

23 MR. GESSLER: BUT IT WAS ADDRESSED AT THE 402
24 HEARING AT PAGE 40341, WHICH MS. ABRAMSON MADE AN
25 OBJECTION UNDER 402, PARTICULARLY CONCERNING THE
26 SCOPE OF MR. MC CARTHY'S TESTIMONY, AND SPECIFIC
27 ILLUSTRATIONS THAT WE UNDERSTAND HE INTENDS TO USE.
28 AND THE COURT, IN RULING ON THAT, SAID, BASICALLY,

1 IF HE LIVES UP TO THE OFFER OF PROOF AT THE 801
2 HEARING, IT'S OKAY. AND OUR CONTENTION IS AFTER
3 FULL CROSS, WHICH IT TOOK TO SHOW THAT HE DIDN'T
4 LIVE UP TO THE 801, HE DID NOT LIVE UP TO 801. HE
5 DID NOT LIVE UP TO THE PROMISE HE MADE TO US ALL AS
6 TO PRINCIPLES THAT HE USED AND WHAT HE SAID HE'S
7 DONE. IN FACT, HE USED NO MAGICAL FORMULAS OR
8 COMPUTATIONS WHATSOEVER.

9 AND SO WE HAD TO TAKE THINGS ONE STEP AT
10 A TIME, YOUR HONOR, AND WE DID TAKE IT AT THE 401
11 AND THE COURT -- TO LIMIT HIM IN EFFECT, AND THE
12 COURT SAID IF HE DOES WHAT HE SAYS HE CAN DO, IT'S
13 OKAY. AND NOW WE'RE SAYING, JUDGE, HE DIDN'T DO
14 WHAT HE SAID HE COULD DO. HE NEVER APPLIED A
15 MATHEMATICAL PRINCIPLE AT ALL.

16 THE COURT: ALL RIGHT. AS I UNDERSTAND IT,
17 THESE OBJECTIONS WILL AGAIN BE MADE IN REGARD TO THE
18 DEFENSE MOTION UNDER 1118.1. AT THIS POINT WE'RE
19 DEALING WITH THE OFFER OF THE EXHIBITS THAT HAVE
20 BEEN IDENTIFIED HERE AS EXHIBITS 220 THROUGH 241 AND
21 250 THROUGH 273.

22 MS. ABRAMSON: YES, YOUR HONOR.

23 THE COURT: THEY'RE CLEARLY ILLUSTRATIVE OF
24 THE WITNESS' TESTIMONY. THEY ARE EXPLAINED AND HAVE
25 BEEN EXPLAINED THROUGH THE TESTIMONY OF THE WITNESS

26 THAT CERTAIN DEPICTIONS, ESPECIALLY AS TO SPECIFIC
27 FEATURES OF THE VICTIMS, THAT'S WHERE THEY WERE
28 POSITIONED, HOW THEY WERE POSITIONED, AND THINGS OF

42070

1 THAT NATURE, WERE FULLY EXPLAINED BY THE WITNESS.
2 AND IT'S QUITE CLEAR THAT THEY ARE MEANT AS
3 ILLUSTRATIVE AND FOR NO OTHER PURPOSE. AND THEY
4 HAVE BEEN THE SUBJECT OF A SUBSTANTIAL AMOUNT OF
5 TESTIMONY THROUGHOUT BY DR. LAWRENCE,
6 DR. MC CARTHY, AND DR. FACKLER. AND TO GIVE THAT
7 TESTIMONY ANY MEANING WHATSOEVER, THESE EXHIBITS
8 MUST BE AVAILABLE TO THE JURY, AND THE COURT FINDS
9 THAT THEIR PROBATIVE VALUE SUBSTANTIALLY OUTWEIGHS
10 ANY POTENTIAL FOR CONFUSING OF ISSUES OR PREJUDICE;
11 THEREFORE, THE OBJECTIONS WILL BE OVERRULED.

12 220 THROUGH --

13 MR. GESSLER: IN ADDITION TO THE PROBATIVE
14 VALUE OBJECTIONS, YOUR HONOR, WE WERE ALSO OBJECTING
15 AS TO FOUNDATION. IN OTHER WORDS, WHETHER OR NOT
16 THERE WERE SCIENTIFIC PRINCIPLES USED, THAT THERE
17 WAS NO MATH USED. I THINK THIS GOES BEYOND JUST THE
18 352 OBJECTION.

19 THE COURT: THAT GOES TO WHAT YOU COULD HAVE
20 PURSUED UNDER 801 OF EVIDENCE CODE, WHICH YOU

21 DIDN'T.

22 MR. GESSLER: BUT WE DID UNDER 402.

23 THE COURT: YOU DIDN'T. MY VIEW IS YOU

24 DIDN'T.

25 MR. GESSLER: WE DID NOT PURSUE IT TO A

26 CONCLUSION UNDER 801, YOUR HONOR, THAT'S TRUE. WE

27 DID, HOWEVER, REPHRASE IT UNDER 401/402 AT A TIME

28 BEFORE HE TESTIFIED ASKING FOR LIMITATIONS BASED ON

42071

1 THE STATE OF THE EVIDENCE AT THAT TIME.

2 THE COURT: THOSE LIMITATIONS WERE ADDRESSED

3 BY SPECIFIC OBJECTIONS MADE BY THE DEFENSE DURING

4 THE COURSE OF HIS TESTIMONY AND THE COURT'S RULING

5 UPON THOSE OBJECTIONS; AND AS I SAID, YOU CAN ARGUE

6 ABOUT THE CORRECTNESS OF A PARTICULAR RULING OF THE

7 COURT, BUT OVERALL, THAT'S HOW THE ISSUE WAS

8 ADDRESSED, NOT BY A MOTION TO FORECLOSE OR PRECLUDE

9 HIS TESTIMONY IN ITS ENTIRETY WHICH, IF THE DEFENSE

10 WISHED AND HAD A DESIRE TO PURSUE IT, SHOULD

11 PROPERLY HAVE BEEN PURSUED TO ITS COMPLETION DURING

12 THE HEARING UNDER 801.

13 MR. GESSLER: BUT IN ADDITION TO THAT,

14 WHETHER WE SHOULD OR SHOULD NOT HAVE PRELUDED HIS

15 TESTIMONY IN ITS ENTIRETY, WE ALSO HAVE AN

16 OBLIGATION TO OBJECT NOW TO THESE ILLUSTRATIONS,
17 WHICH IS THE BEST TERMS THEY'VE BEEN PUT ON, SHOULD
18 BE ADMITTED TO THE JURY BASED ON BOTH QUALIFICATIONS
19 FOR THEM FROM THIS ENGINEER AND THE SCIENCE THAT HE
20 DID NOT USE, AND AS THE COURT HAS RULED UNDER 352.

21 SO I JUST WANTED TO MAKE CLEAR THAT BOTH
22 OBJECTIONS WERE BEING MADE AT THIS TIME TO THE
23 EXHIBITS THAT WE HAVE MENTIONED HERE.

24 THE COURT: OKAY. THOSE OBJECTIONS ARE
25 OVERRULED.

26 MS. TOWERY: YOUR HONOR, IS THE COURT
27 RECEIVING THE BIG ONES AND LITTLE ONES?

28 THE COURT: THEY WERE REFERRED TO IN

42072

1 DIFFERENT WAYS. I THINK THE JURY NEEDS THEM ALL.

2 MS. TOWERY: THAT'S 220 THROUGH 241 AND 250
3 THROUGH 273?

4 THE COURT: RIGHT.

5 MS. ABRAMSON: JUST TO CONTINUE HERE.

6 THE COURT: HOLD ON. LET ME JUST FINISH MY
7 LITTLE SCRATCHES HERE.

8 MS. ABRAMSON: OKAY?

9 THE COURT: OKAY. YES.

10 MS. ABRAMSON: THE PEOPLE ARE OFFERING 242

11 THROUGH 249 AND THERE'S NO OBJECTION.

12 THE COURT: THERE IS OR IS NOT?

13 MS. ABRAMSON: IS NOT.

14 THE COURT: 242 THROUGH 249 WILL BE RECEIVED.

15 MS. ABRAMSON: I'M REFERRING TO 274 AND THERE

16 IS AN OBJECTION. THAT'S WHERE DR. MC CARTHY DREW A

17 SHOT SHELL THAT'S COMPLETELY IRRELEVANT TO THIS

18 CASE. HE DREW A DRAWING OF A SHOT SHELL THAT

19 INDICATED BUCKSHOT IN A SHOT CUP, WHICH WAS THE

20 AMMUNITION THAT HE BOUGHT, BUT IT'S NOT THE

21 AMMUNITION THAT WAS USED IN THIS CASE EITHER. HAVE

22 BIRD SHOT AND WE HAVE UNCUPPED BUCK. WE WOULD

23 OBJECT THAT THAT'S CONFUSING TO THE JURY AND MAY

24 MISLEAD THEM INTO BELIEVING THAT WAS AN AMMUNITION

25 THAT WAS USED HERE.

26 THE COURT: WELL, IT WAS HIS UNDERSTANDING OF

27 HOW A SHOTGUN SHELL IS CONSTRUCTED, NOT NECESSARILY

28 THE ONES USED IN THIS CASE.

42073

1 IS THAT CORRECT?

2 MS. NAJERA: THAT'S CORRECT, YOUR HONOR.

3 MS. ABRAMSON: YES.

4 THE COURT: THE OBJECTION IS OVERRULED.

5 MS. ABRAMSON: ALL RIGHT. LET ME GET -- GO

6 WITH THE NUMBERS. WE ARE OFFERING, UNOPPOSED, 275,
7 276, 277, 278, 291 -- NO. WE'RE NOT OFFERING 292. I
8 TAKE THAT BACK. 292.

9 THE COURT: YOU'RE NOT OFFERING 291?

10 MS. ABRAMSON: NOT AT THIS POINT. SOME OF
11 THE THINGS WE ARE NOT OFFERING NOW BECAUSE WE'RE
12 WAITING FOR OTHER TESTIMONY.

13 WE'RE OFFERING 292; AND BASED ON THE
14 COURT'S PREVIOUS RULING JUST NOW, WE ARE OFFERING
15 294, 295, 296, AND 297.

16 THE COURT: OKAY.

17 MS. ABRAMSON: THE PEOPLE ARE OFFERING 298
18 AND 299, AND THERE'S NO OBJECTION.

19 WE ARE OFFERING 300 THROUGH 305, AND
20 THERE IS NO OBJECTION.

21 THE COURT: THESE WILL ALL BE RECEIVED THAT
22 ARE OFFERED WITHOUT OBJECTION.

23 MS. ABRAMSON: THE PEOPLE ARE OFFERING 307,
24 AND THERE'S NO OBJECTION.

25 WE DO OBJECT --

26 THE COURT: LET ME JUST HEAR THOSE WHERE
27 THERE ARE NO OBJECTIONS. I'M GOING TO HAVE TO BREAK
28 THIS OFF IN A MINUTE OR TWO.

1 MS. ABRAMSON: WE'RE ALMOST THERE.

2 WE'RE HOLDING ON 306 FOR THE MOMENT.

3 WE HAVE NO OBJECTION TO 310.

4 WE'RE OFFERING 311, 312, 313, WITH NO

5 OBJECTION.

6 THE PEOPLE ARE OFFERING 314. WE DO NOT

7 OBJECT.

8 WE ARE OFFERING 315, 316, AND 317.

9 THERE'S NO OBJECTION BY THE PEOPLE.

10 THE PEOPLE ARE OFFERING 318. WE DO NOT

11 OBJECT.

12 WE ARE OFFERING 319. THERE'S NO

13 OBJECTION.

14 THE PEOPLE ARE OFFERING 320 THROUGH

15 322. WE OBJECT TO 320 ONLY BECAUSE IT'S A DUPLICATE

16 OF 182, BUT IT MAY BE TOO LATE TO DO ANYTHING ABOUT

17 THAT.

18 AND WE ARE OFFERING --

19 THE COURT: 320 THROUGH 322 WILL BE RECEIVED

20 BECAUSE 320 IS --

21 MS. ABRAMSON: BIGGER.

22 THE COURT: -- A CLOSE-UP OR ENLARGEMENT.

23 MS. ABRAMSON: AND 323, WE ARE OFFERING.

24 THE COURT: NO OBJECTION?

25 MS. ABRAMSON: RIGHT. NO OBJECTION. SO

26 THAT'S WHERE WE ARE. THE LAST REMAINING OBJECTIONS

27 ARE --

28 MS. NAJERA: 308 AND 309.

1 MS. ABRAMSON: 308 IS MR. MC CARTHY'S RAW
2 DRAWING, WHICH I THINK IS UTTERLY INCOMPREHENSIBLE.

3 THE COURT: I WON'T HEAR ARGUMENT NOW BECAUSE
4 I HAVE TO GET OUT OF HERE.

5 MS. ABRAMSON: 309, WE ARE ASKING THAT THE
6 BRAIN BE CROPPED OUT. CAN'T MAKE IT ANY MORE
7 STRAIGHTFORWARD THAN THAT.

8 THE COURT: WE'LL HEAR YOU WHEN WE GET A
9 MOMENT.

10 306 YOU'RE NOT OFFERING?

11 MS. ABRAMSON: NOT AT THIS TIME.

12 THE COURT: AND EVERYTHING ELSE THAT YOU
13 HAVEN'T TALKED ABOUT IS NOT BEING OFFERED AT THIS
14 POINT?

15 MS. ABRAMSON: CORRECT.

16 THE COURT: ALL RIGHT. WE'LL BE IN RECESS
17 UNTIL TOMORROW AT 8:30.

18 MS. ABRAMSON: THANK YOU.

19 THE COURT: YOUR WITNESSES TOMORROW?

20 MS. ABRAMSON: VAN HORN AND LINHART.

21 MS. NAJERA: ANYBODY ELSE?

22 MS. ABRAMSON: WE'VE JUST BE GIVEN A MOTION
23 CALLED "PEOPLE'S MOTION TO EXCLUDE OR LIMIT THE

24 TESTIMONY OF MARTA CANO," AND WE TAKE THE POSITION
25 THIS IS UNTIMELY; THAT ALL THESE MATTERS WERE
26 LITIGATED PRETRIAL.
27 THE COURT: WE'LL BE IN RECESS UNTIL TOMORROW
28 8:30.

42076

1 (AT 3:25 P.M. PROCEEDINGS WERE ADJOURNED
2 UNTIL 8:30 A.M. THE FOLLOWING DAY.)
3

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)
6 PLAINTIFFS,)
7)
7 VS.) NO. BA 068880
8)
8 ERIK GALEN MENENDEZ, AND)
9 JOSEPH LYLE MENENDEZ,)
10)
10 DEFENDANTS.)
11)

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 MONDAY, NOVEMBER 27, 1995

14 VOLUME 250

15 PAGES 41972 THROUGH 42076

16

17

18

19

APPEARANCES:

20 (SEE APPEARANCE PAGE)

21

22

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25

26

27

28

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI

3

DISTRICT ATTORNEY

BY: DAVID CONN, DEPUTY

4

AND

CAROL NAJERA, DEPUTY

5

18000 CRIMINAL COURTS BLDG.

210 WEST TEMPLE STREET

6

LOS ANGELES, CA 90012

7

8
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

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22 CSR NO. 8608
MARILYN FADALE,
23 CSR NO. 4547
OFFICIAL REPORTERS

24

25

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	DAY	DATE	SESSION	PAGE	VOL.
3	<hr/>				
4	TUESDAY,	NOVEMBER 27, 1995	A.M.	41972	250
5	TUESDAY,	NOVEMBER 27, 1995	P.M.	42027	250
6					
7	PROCEEDINGS				
8	DISCUSSION RE EXHIBITS			42027	
9					
10	CHRONOLOGICAL INDEX OF WITNESSES				
11	WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.				
12	DR. WECHT,				
13	CYRIL	41984-A		250	
14					
15					
16					
17					
18					
19	LEGEND:				
20	A = MS. ABRAMSON		C = MR. CONN		
21	G = MR. GESSLER		L = MR. LEVIN		
22	N = MS. NAJERA		T = MS. TOWERY		
23					
24					
25					
26					
27					
28					

1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 (EXHIBIT 157 WAS RECEIVED @ PAGE 42039.)

4 (EXHIBIT 161 WAS RECEIVED @ PAGE 42046.)

5 (EXHIBIT 163 WAS RECEIVED @ PAGE 42050.)

6 (EXHIBITS 167-203 WERE RECEIVED @ PAGE 42050.)

7 (EXHIBITS 204-205 WERE RECEIVED @ PAGE 42054.)

8 (EXHIBITS 214-219 WERE RECEIVED @ PAGE 42055.)

9 (EXHIBITS 220-241 WERE RECEIVED @ PAGE 42069.)

10 (EXHIBITS 242-249 WERE RECEIVED @ PAGE 42072.)

11 (EXHIBITS 250-273 WERE RECEIVED @ PAGE 42069.)

12 (EXHIBIT 274 WAS RECEIVED @ PAGE 42072.)

13 (EXHIBITS 275-278, 291-292, 294-305, AND 307
WERE RECEIVED @ PAGE 42073.)

14
15 (EXHIBITS 310-323 WERE RECEIVED @ PAGE 42069.)

16

17

18

19