

1 VAN NUYS, CALIFORNIA; WEDNESDAY, NOVEMBER 29, 1995

2 9:25 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (THE FOLLOWING PROCEEDINGS WERE

7 HELD IN OPEN COURT OUT OF THE

8 PRESENCE OF THE JURY:)

9

10 THE COURT: EVERYONE IS HERE WITHOUT THE

11 JURY. YES.

12 MS. ABRAMSON: I JUST WANTED TO MARK SOME

13 ITEMS OF EVIDENCE BEFORE THE JURY COMES OUT.

14 THE COURT MAY RECALL YESTERDAY WE WERE

15 LOOKING FOR A PARTICULAR ITEM OF EVIDENCE THAT WAS

16 TAKEN FROM THE SCENE THAT WE COULDN'T FIND.

17 DETECTIVE ZOELLER HAS NOW BROUGHT IT TO COURT. IT'S

18 A PIECE OF THE WHITE BRACELET. AT THE SCENE IT WAS

19 IDENTIFIED AS ITEM 16.

20 I'D LIKE TO MAKE IT PART OF 48, WHICH IS

21 ALL THE OTHER THINGS COLLECTED FROM THE SCENE; AND

22 NEXT IN ORDER ON 48, YOUR HONOR, WOULD BE 48-T, AS

23 IN TOM.

24 THE COURT: OKAY. WE'LL MAKE IT 48-T.

25 MS. ABRAMSON: ALSO, YOUR HONOR, I'D LIKE TO

26 MARK NEXT IN ORDER WHAT WAS EXHIBIT 44 IN THE

27 PREVIOUS TRIAL, AND I THINK THAT WOULD BE 324 NOW.

28 THE COURT: YES.

1 THE COURT: AND IT WAS WHAT NUMBER AGAIN?

2 MS. ABRAMSON: 44, YOUR HONOR.

3 THE COURT: AND WHAT IS IT?

4 MS. ABRAMSON: IT'S A SHOT PATTERN, SHOTGUN

5 ROUND PATTERN CHART, THAT WAS USED WITH DEPUTY

6 VAN HORN'S TESTIMONY IN THE FIRST TRIAL.

7 THE COURT: OKAY. ALL RIGHT. AS SOON AS

8 YOU'RE SET UP LET ME KNOW AND WE'LL HAVE THE JURY

9 OUT.

10 MS. ABRAMSON: I'M SET UP, YOUR HONOR.

11 YOUR HONOR, I'D ASK THAT WE TAKE A

12 RECESS IN ONE HOUR.

13 THE COURT: OKAY.

14 MS. ABRAMSON: THANK YOU.

15 (THE JURY ENTERED THE

16 COURTROOM AND THE FOLLOWING

17 PROCEEDINGS WERE HELD:)

18

19 THE COURT: THE JURORS ARE IN THE JURY BOX.

20 GOOD MORNING. NICE TO SEE YOU ALL

21 BACK.

22 AND WE'RE NOW READY TO RESUME WITH THE

23 TRIAL AND THE DEFENSE MAY CALL ITS NEXT WITNESS.

24 MS. ABRAMSON: THANK YOU, YOUR HONOR. WE

25 CALL DEPUTY DWIGHT VAN HORN.

26

27

28 / / /

42093

1 DWIGHT VAN HORN,

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

3 TESTIFIED AS FOLLOWS:

4 THE CLERK: YOU DO SOLEMNLY SWEAR THE

5 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING

6 BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE

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

8 THE WITNESS: YES, I DO.

9 THE CLERK: PLEASE TAKE THE STAND AND STATE

10 YOUR NAME FOR THE RECORD.

11 THE WITNESS: DWIGHT VAN HORN.

12 THE CLERK: WOULD YOU SPELL YOUR LAST NAME,

13 PLEASE.

14 THE WITNESS: YES. V-A-N, H-O-R-N.

15 THE COURT: JUST FOR THE JURORS' INFORMATION,

16 THE WITNESS WHO WAS ON THE STAND WHEN WE BROKE,

17 DR. WECHT, HAD SOME OTHER COMMITMENTS AND WILL BE

18 COMING BACK LATER TO COMPLETE HIS TESTIMONY. IN THE

19 INTERIM, WE'RE TAKING UP TESTIMONY OF OTHER  
20 WITNESSES.

21 MS. ABRAMSON: THANK YOU, YOUR HONOR.

22

23 DIRECT EXAMINATION

24 BY MS. ABRAMSON:

25 Q DEPUTY VAN HORN, BY WHOM ARE YOU  
26 EMPLOYED?

27 A THE LOS ANGELES COUNTY SHERIFF'S  
28 DEPARTMENT.

42094

1 Q WHAT IS YOUR PARTICULAR ASSIGNMENT  
2 WITHIN THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT?

3 A I'M ASSIGNED TO THE DETECTIVE DIVISION'S  
4 CRIME LAB AS A FIREARMS EXAMINER IN THE CRIME LAB.

5 Q BASICALLY, WHAT DOES A FIREARM'S  
6 EXAMINER DO?

7 A THE BASICS OF WHAT A FIREARM'S EXAMINER  
8 DOES, GENERALLY, IS TO DETERMINE IF A BULLET OR  
9 CARTRIDGE CASE OR SOME OTHER AMMUNITION COMPONENT  
10 WAS FIRED IN OR FROM A PARTICULAR FIREARM.

11 ADDITIONALLY, A FIREARMS EXAMINER IS  
12 TASKED WITH KNOWING AS MUCH ABOUT FIREARMS AND  
13 AMMUNITION THAT HE CAN SO THAT HE CAN ANSWER

14 QUESTIONS THAT RELATE TO CRIMINAL CASES, BOTH TO  
15 HELP IN AN INVESTIGATION AND EXPLAIN THINGS IN A  
16 COURT OF LAW.

17 Q IN ADDITION TO FAMILIARITY WITH FIREARMS  
18 AND AMMUNITION, IS A FIREARMS EXAMINER REQUIRED TO  
19 KNOW HOW GUNS WORK, HOW AMMUNITION WORKS, WHAT  
20 HAPPENS WHEN CERTAIN KINDS OF AMMUNITION ARE FIRED  
21 FROM CERTAIN KINDS OF FIREARMS?

22 A YES.

23 Q AND HOW LONG HAVE YOU BEEN ASSIGNED TO  
24 THE SCIENTIFIC -- THE DETECTIVE DIVISION, SCIENTIFIC  
25 SERVICES BUREAU, FIREARMS IDENTIFICATION SECTION?

26 A IN EXCESS OF 10 YEARS.

27 Q AND HOW MANY DIFFERENT DIVISIONS ARE  
28 THERE IN THE -- BASICALLY, THE CRIME LAB FOR THE L.A.

42095

1 COUNTY SHERIFF'S DEPARTMENT?

2 A WE HAVE THE FIREARMS SECTION, THE  
3 QUESTIONED DOCUMENTS SECTION, SEROLOGY, BLOOD  
4 ALCOHOL, NARCOTICS, TOXICOLOGY, THE LATENT PRINT  
5 SECTION, AND THE PHYSICAL EVIDENCE SECTION, AND A  
6 PHOTOGRAPHY LAB.

7 Q ARE YOU, IN ADDITION TO BEING A FIREARMS  
8 EXAMINER, A SWORN DEPUTY SHERIFF, A PEACE OFFICER?

9 A YES, I AM.

10 Q AND PRIOR TO BECOMING A FIREARMS  
11 IDENTIFICATION -- OR FIREARMS EXAMINER, IF YOU WILL,  
12 DID YOU SERVE MORE ORDINARY DUTIES AS A DEPUTY  
13 SHERIFF?

14 A YES.

15 Q DID YOU GO THROUGH THE SAME SHERIFF'S  
16 ACADEMY TRAINING AS ALL OTHER DEPUTY SHERIFFS,  
17 INCLUDING THE ONES IN THIS COURTROOM?

18 A YES, I DID.

19 Q DID YOU SERVE A TOUR OF DUTY ON PATROL?

20 A YES, I DID.

21 Q WHAT OTHER TASKS DID YOU HAVE IN THE  
22 SHERIFF'S DEPARTMENT BEFORE YOU BECAME A FIREARMS  
23 EXAMINER?

24 A IN ADDITION TO ALSO WORKING THE CUSTODY  
25 DIVISION, I WORKED FOR THE SHERIFF'S DEPARTMENT AS A  
26 FIREARMS INSTRUCTOR FOR JUST UNDER TWO YEARS.

27 Q WHAT DOES A FIREARMS INSTRUCTOR DO?

28 A BASICALLY, A FIREARMS INSTRUCTOR ON A

42096

1 SHERIFF'S DEPARTMENT TEACHES THE BASICS OF  
2 MARKSMANSHIP TO ALL LEVELS OF LAW ENFORCEMENT  
3 OFFICERS, NOT ONLY FROM THE SHERIFF'S DEPARTMENT,

4 BUT ALL THE OTHER AGENTS WHO USE OUR FACILITIES AND  
5 OUR ACADEMY.

6 AND IN ADDITION TO TEACHING THE BASICS  
7 OF MARKSMANSHIP, WE ALSO TEACH THE SAME GROUP OF  
8 OFFICERS HOW TO BECOME FAMILIAR WITH AND SAFELY  
9 HANDLE FIREARMS THAT THEY COME IN CONTACT WITH  
10 DURING THEIR DUTIES AS PEACE OFFICERS SO THAT THOSE  
11 FIREARMS CAN BE SAFELY TRANSPORTED THROUGH THE  
12 EVIDENCE SYSTEM.

13 Q NOW, YOU MENTIONED THAT THERE ARE OTHER  
14 AGENCIES BESIDES THE SHERIFF'S DEPARTMENT THAT YOU  
15 AS AN INSTRUCTOR -- WHOSE MEMBERS YOU AS AN  
16 INSTRUCTOR WERE TEACHING.

17 DOES THE SHERIFF'S DEPARTMENT HAVE  
18 CONTRACTUAL RELATIONSHIPS WITH OTHER POLICE AGENCIES  
19 INSIDE THE COUNTY OF LOS ANGELES?

20 A YES.

21 Q AND DOES THE SHERIFF'S DEPARTMENT  
22 PROVIDE, ON A CONTRACTUAL BASIS, CERTAIN SERVICES TO  
23 SMALLER POLICE AGENCIES THAT THEY DON'T HAVE THE  
24 MEANS OR THE FACILITIES TO PROVIDE FOR THEMSELF?

25 A YES.

26 Q AND IS THE CRIME LAB AND THE FIREARMS  
27 IDENTIFICATION SECTION ONE OF THOSE AREAS OF THE  
28 SHERIFF'S DEPARTMENT WHERE SERVICES ARE PROVIDED

1 OUTSIDE THE SHERIFF'S -- FOR OUTSIDE AGENCIES?

2 A YES.

3 Q AND TO WHOM -- I DON'T MEAN LIST EVERY  
4 ONE, BUT WHAT KINDS OF OTHER ORGANIZATIONS DOES THE  
5 SHERIFF'S DEPARTMENT HAVE CONTRACTUAL ARRANGEMENTS  
6 WITH TO PROVIDE VARIOUS SERVICES?

7 A WELL, BASICALLY, THE SHERIFF'S  
8 DEPARTMENT PROVIDES CRIME LAB SERVICES TO EVERY  
9 OTHER LAW ENFORCEMENT AGENCY IN THE COUNTY OF  
10 LOS ANGELES, WITH THE EXCEPTION OF THE LOS ANGELES  
11 POLICE DEPARTMENT WHO HAVE THEIR OWN CRIME LAB.

12 Q SO ALL OF THE SMALLER CITIES AND  
13 SEPARATELY INCORPORATED AREAS CAN UTILIZE THE  
14 SHERIFF'S CRIME LAB IN INVESTIGATING THEIR CASES?

15 A YES.

16 Q NOW, AS A FIREARMS EXAMINER, HAVE YOU  
17 WORKED ON -- STRIKE THAT.

18 THE SHERIFF'S DEPARTMENT ITSELF  
19 INVESTIGATES ITS OWN CASES IN THE AREA OF THE COUNTY  
20 WHERE IT HAS ORIGINAL JURISDICTION?

21 A THAT'S CORRECT.

22 Q SO AS A FIREARMS EXAMINER FOR THE  
23 SHERIFF'S DEPARTMENT, I TAKE IT YOU WORK ON A NUMBER  
24 OF CASES THAT ARE BEING INVESTIGATED BY THE  
25 SHERIFF'S DEPARTMENT?

26 A YES.

27 Q AND IN ADDITION TO THAT, YOU DO FIREARMS



42098

1 A YES.

2 Q IS THERE ANY CONTRACTUAL ARRANGEMENT  
3 WITH THE SHERIFF'S DEPARTMENT TO DO WORK FOR ANY  
4 CRIMINAL DEFENSE ORGANIZATIONS?

5 A NOT A CONTRACTUAL AGREEMENT THAT I'M  
6 AWARE OF, NO.

7 Q AND FOR THE SHERIFF'S DEPARTMENT -- NOW --  
8 STRIKE THAT.

9 HOWEVER, IF THE SHERIFF'S DEPARTMENT HAS  
10 DONE INVESTIGATION WORK AND CRIME LAB WORK ON A  
11 PARTICULAR CASE, ARE THE SHERIFF'S DEPUTIES WHO HAVE  
12 PERFORMED THAT WORK, AND THE CIVILIAN SHERIFF'S  
13 PERSONNEL WHO HAVE PERFORMED THAT WORK, AVAILABLE BY  
14 SUBPOENA TO EITHER SIDE IN A LAWSUIT?

15 A YES.

16 Q AND AT SOME POINT, DEPUTY VAN HORN, DID  
17 YOU BECOME INVOLVED BY PERFORMING CERTAIN  
18 EXAMINATIONS IN THIS CASE?

19 A YES.

20 Q AND AT WHOSE REQUEST DID YOU BEGIN YOUR  
21 EXAMINATIONS IN THIS CASE?

22 A ORIGINALLY, IT WAS BY DEPUTY DISTRICT

23 ATTORNEY PAMELA BOZANICH.

24 Q AND WAS IT YOUR UNDERSTANDING THAT  
25 MRS. BOZANICH WAS LEAD COUNSEL FOR THE PROSECUTION  
26 IN THIS CASE THROUGH THE FIRST TRIAL?

27 A YES.

28 Q AND DO YOU HAVE A RECOLLECTION OF WHEN

42099

1 IT WAS THAT DISTRICT ATTORNEY BOZANICH CONTACTED  
2 YOU?

3 A I HAVE A REPORT AND IT WOULD BE SOMETIME  
4 PRIOR TO WHEN I ISSUED THE REPORT.

5 IS IT ALL RIGHT TO CHECK THAT, YOUR  
6 HONOR?

7 THE COURT: YES. GO AHEAD.

8 THE WITNESS: THANK YOU.

9 I WROTE A REPORT ON JULY 16TH, 1993. SO  
10 IT WOULD BE SOMETIME PRIOR TO THAT DATE. EXACTLY, I  
11 COULDN'T TELL YOU.

12 Q BY MS. ABRAMSON: AND WHAT WAS IT YOU  
13 WERE ASKED TO DO WHEN YOU WERE CONTACTED BY THE  
14 DISTRICT ATTORNEY IN THIS CASE?

15 A TO EXAMINE PIECES OF EVIDENCE THAT HAD  
16 BEEN RECOVERED FROM THE SCENE.

17 Q AND AS YOU'VE INDICATED, YOU ISSUED A

18 REPORT LISTING YOUR FINDINGS ON JULY 16TH, 1993?

19 A YES.

20 Q AND DID THAT REPORT INDICATE THAT YOU  
21 RECEIVED EVIDENCE TO EXAMINE FROM THE BEVERLY HILLS  
22 POLICE DEPARTMENT -- IN FACT, FROM DETECTIVE  
23 ZOELLER -- ON JULY 6TH, 1993?

24 A YES.

25 Q AND WERE YOU EVENTUALLY CALLED AS A  
26 WITNESS BY THE DISTRICT ATTORNEYS IN THE FIRST  
27 TRIAL?

28 A YES.

42100

1 Q NOW, WHAT TRAINING HAVE YOU RECEIVED  
2 THAT QUALIFIES YOU AS A FIREARMS EXAMINER?

3 A MY TRAINING AT THE RANGE WAS BASICALLY  
4 THE PREREQUISITE THAT LED TO ME BEING SELECTED TO  
5 WORK IN THE FIREARMS SECTION. WHILE THERE, I  
6 COMPLETED A TWO-YEAR TRAINING COURSE THAT WAS  
7 CONDUCTED BY FIVE OTHER MEMBERS OF THE FIREARMS  
8 IDENTIFICATION SECTION WHO HAD IN EXCESS OF 40 YEARS  
9 EXPERIENCE IN THE FIELD OF FIREARMS IDENTIFICATION.

10 DURING THAT TIME I READ AND BECAME  
11 FAMILIAR WITH MOST OF THE LEADING PERIODICALS AND  
12 PUBLICATIONS THAT RELATE TO THE FIELD OF FIREARMS

13 IDENTIFICATION.

14 I'VE HAD THE OPPORTUNITY TO TOUR AND  
15 ATTEND STUDY GROUPS WITH MOST OF THE LEADING  
16 MANUFACTURERS OF AMMUNITION AND FIREARMS THAT ARE  
17 LOCATED HERE ON THE WEST COAST.

18 I'VE ALSO BEEN BACK TO THE FEDERAL  
19 BUREAU OF INVESTIGATION AT THEIR HEADQUARTERS IN  
20 QUANTICO, VIRGINIA FOR TWO ONE-WEEK COURSES THAT  
21 PERTAIN TO THE FIELD OF FIREARMS IDENTIFICATION.

22 AND DURING THE COURSE OF MY DUTIES, I'VE  
23 TEST-FIRED IN EXCESS OF 6,000 FIREARMS, MADE MORE  
24 THAN 10,000 BALLISTIC COMPARISONS, AND I'VE  
25 TESTIFIED AS A FIREARMS EXPERT ON ABOUT 285 PRIOR  
26 OCCASIONS IN FEDERAL, SUPERIOR, AND MUNICIPAL  
27 COURTS.

28 Q BEFORE YOU BECAME A FIREARMS INSTRUCTOR,

42101

1 EVEN, IN THE SHERIFF'S DEPARTMENT, DID YOU CONSIDER  
2 YOURSELF A GUN HOBBYIST?

3 A YES.

4 Q ARE YOU SOMEONE WHO HAS BEEN FAMILIAR  
5 WITH GUNS OVER A LONG SPAN OF YOUR LIFE?

6 A BASICALLY, SINCE I BECAME A PEACE  
7 OFFICER, YES.

8 Q WERE YOU ALSO IN THE MILITARY, BY THE  
9 WAY, BEFORE YOU WERE IN THE SHERIFF'S DEPARTMENT?

10 A YES, I WAS.

11 Q WERE YOU A POLICE OFFICER IN THE  
12 MILITARY AS WELL?

13 A YES, I WAS.

14 Q YOU'VE INDICATED THAT YOU -- IN ACQUIRING  
15 YOUR EXPERTISE AS A FIREARMS EXAMINER, YOU READ AND  
16 WERE FAMILIAR WITH VARIOUS PERIODICALS AND  
17 PUBLICATIONS.

18 IS THERE A DIFFERENCE BETWEEN THE KINDS  
19 OF PERIODICALS AND PUBLICATIONS THAT ARE AVAILABLE  
20 OR IN WIDE-SPREAD DISSEMINATION AMONG AMATEURS WHO  
21 ARE HOBBYISTS IN GUN WORK VERSUS WHAT PROFESSIONAL  
22 FIREARMS EXAMINERS AND FIREARMS IDENTIFICATION  
23 PEOPLE ARE EXPOSED TO AND RELY ON?

24 A YES.

25 Q WHAT ARE -- DID YOU -- IF YOU WOULD TELL  
26 US YOUR OWN EXPERIENCE OF THAT POINT WHEN YOU  
27 CHANGED OVER FROM BEING A GUN HOBBYIST TO BEING A  
28 GUN EXPERT.

42102

1 A WELL, MOST PEOPLE WHO HAVE A PASSING  
2 INTEREST, OR EVEN MAYBE AN ACTIVE INTEREST IN

3 FIREARMS, GENERALLY WILL GET THEIR INFORMATION FROM  
4 EITHER OTHER HOBBYISTS OR FROM GUN MAGAZINES. AND  
5 THAT WOULD FIT THE -- WHAT I WAS EVEN AT THE TIME I  
6 WORKED AT THE RANGE, AS YOU GET MOST OF YOUR  
7 INFORMATION FROM MAGAZINES SUCH AS GUNS AND AMMO AND  
8 SHOOTING TIMES AND THINGS THAT ARE AVAILABLE ON THE  
9 NEWSSTAND. AND YOU COME TO RELY ON WHAT YOU READ IN  
10 THE MAGAZINES AS BEING GOSPEL.

11 BUT WHEN YOU TURN TO THIS AS A -- AS A  
12 FULL-TIME JOB, YOU REALIZE THAT MAGAZINES GENERALLY  
13 ARE MADE TO SELL MAGAZINES AND THE INFORMATION  
14 CONTAINED THEREIN IS NOT ALWAYS THE MOST ACCURATE.  
15 SO TO BUILD UPON YOUR FOUNDATION TO BE ABLE TO DO  
16 THIS TYPE OF WORK, YOU NEED TO READ TEXTBOOKS THAT  
17 ARE GEARED TO THIS TYPE OF TOPIC, AND ALSO YOU READ  
18 A JOURNAL THAT'S PUBLISHED BY THE ASSOCIATION OF  
19 FIREARM AND TOOL MARK EXAMINERS, WHICH IS A  
20 PROFESSIONAL ORGANIZATION OF PEOPLE WHO ARE FIREARMS  
21 EXAMINERS. AND IN THAT JOURNAL THEY SHARE WORK THAT  
22 THEY HAVE DONE, ODD THINGS THAT THEY HAVE SEEN IN  
23 THE COURSE OF THEIR DUTIES. AND THAT, AT THAT  
24 POINT, BECOMES THE SOURCE FOR YOUR NEW INFORMATION.

25 Q AND ARE YOU STILL LEARNING NEW  
26 INFORMATION ROUTINELY ABOUT FIREARMS AND FIREARM  
27 AMMUNITION BY BEING EXPOSED TO PROFESSIONAL  
28 ORGANIZATIONS AND THESE KINDS OF TEXTS AND

1 ARTICLES?

2 A YES. AND PART OF THAT -- IN FAIRNESS TO  
3 THE MAGAZINES, PART OF THAT EDUCATION DOES COME FROM  
4 THE MAGAZINES BECAUSE OFTEN TIMES YOU'LL FIND OUT  
5 WHAT'S COMING IN NEW INTO THE FIREARMS INDUSTRY BOTH  
6 IN THE WAY OF FIREARMS AND AMMUNITION; GENERALLY,  
7 THAT WILL BE IN A MAGAZINE SOME MONTHS BEFORE IT'S  
8 AVAILABLE FOR SALE.

9 AND GENERALLY, THE WAY THINGS WORK, IF --  
10 SAY, FOR INSTANCE, SOMETHING BECAME AVAILABLE IN  
11 OCTOBER, WE MIGHT NOT SEE IT UNTIL SOMETIME AFTER  
12 JANUARY. BUT YET THE MAGAZINES MIGHT HAVE AN  
13 ARTICLE ABOUT IT IN JULY. SO IT KIND OF GIVES US A  
14 HEADS-UP OF WHAT THE FIREARMS INDUSTRY IS GETTING  
15 READY TO THROW AT US.

16 Q WHEN YOU SAY GETTING READY TO THROW AT  
17 YOU, WHAT DO YOU MEAN?

18 A WELL, IT IS A CONTINUING EDUCATION  
19 PROCESS BECAUSE THE MANUFACTURERS OF BOTH FIREARMS  
20 AND AMMUNITION ARE CONSTANTLY COMING OUT WITH NEW  
21 PRODUCTS, IMPROVED PRODUCTS, AND IT'S OUR JOB TO  
22 KEEP UP ON THAT.

23 Q AND IT'S YOUR JOB TO KEEP UP ON THAT SO  
24 THAT YOU CAN IDENTIFY IN AN INVESTIGATIVE CAPACITY  
25 WHAT GUN OR GUNS ARE USED IN CRIMINAL ACTIVITY;

26 ISN'T THAT BASICALLY WHAT YOU'RE TRYING TO DO?

27 A YES, IT IS.

28 Q DOES THE SHERIFF'S DEPARTMENT MAKE AN

42104

1 EFFORT TO OBTAIN FOR ITS FIREARMS IDENTIFICATION  
2 SECTION IN THE CRIME LAB, ALL THE AVAILABLE  
3 AMMUNITION AND EXAMPLES OF NEW KINDS OF FIREARMS AS  
4 THEY'RE COMING OUT?

5 A IN A WAY, YES.

6 Q OKAY. COULD YOU DESCRIBE WHAT THEY DO  
7 IN THAT REGARD.

8 A WELL, AT OUR LAB WE HAVE JUST SHY OF  
9 5,000 FIREARMS AND THESE FIREARMS ARE RECOVERED FROM  
10 THE PROPERTY SECTION AFTER THEY HAVE BEEN ORDERED  
11 DESTROYED BY THE COURT. AND WE REGULARLY GO TO THE  
12 PROPERTY SECTION AND RETRIEVE FIREARMS FROM -- THAT  
13 ARE SLATED FOR DESTRUCTION THAT WE DON'T HAVE IN OUR  
14 POSSESSION SO THAT WE CAN HAVE WORKING EXAMPLES OF  
15 ALL THE DIFFERENT FIREARMS THAT ARE AVAILABLE.

16 WE ALSO HAVE A LARGE REFERENCE LIBRARY  
17 OF AMMUNITION AND WE GET OUR AMMUNITION THE SAME  
18 WAY, BY GOING TO PROPERTY AND CULLING FROM THE  
19 AMMUNITION OF PROPERTY THAT WHICH WE DON'T HAVE SO  
20 WE CAN HAVE EXAMPLES AT THE LAB.



21 Q AND THIS IS SO THAT THE TAXPAYERS DON'T  
22 HAVE TO FIND YOU'RE GOING OUT TO THE GUN  
23 MANUFACTURERS AND BUYING NEW ONES FOR YOUR TEST  
24 PURPOSES?

25 A THAT'S CORRECT.

26 Q AND DO YOU FIND THAT THE SHERIFF'S  
27 LABORATORY, THAT IT DOESN'T TAKE LONG AFTER A NEW  
28 GUN IS OUT THERE BEFORE SOMEONE'S ARRESTED WITH ONE

42105

1 AND IT'S SEIZED AND EVENTUALLY YOU CAN GET IT?

2 A THAT WOULD BE A FAIR STATEMENT.

3 Q ARE YOU A MEMBER OF THIS PROFESSIONAL  
4 ASSOCIATION YOU MENTIONED, THE ASSOCIATION OF  
5 FIREARMS AND TOOL MARK EXAMINERS?

6 A YES.

7 Q AND IN ADDITION TO PUBLISHING A JOURNAL,  
8 DO THEY SERVE AN EDUCATIONAL FUNCTION?

9 A YES. BOTH THROUGH THE JOURNAL AND ALSO  
10 THEY HAVE A WEEKLY -- OR EXCUSE ME -- A YEARLY MEETING  
11 THAT LASTS FOR A WEEK THAT CONSISTS OF TRAINING.

12 Q AND DO VARIOUS EXPERTS TEACH AT THESE  
13 SEMINARS AND BRING PEOPLE UP TO DATE ON THE LATEST  
14 KNOWLEDGE ABOUT FIREARMS AND AMMUNITION AND  
15 BALLISTICS ISSUES?

16 A YES.

17 Q AND HAVE YOU BEEN AN ACTIVE MEMBER IN  
18 THAT ORGANIZATION?

19 A YES.

20 Q HAVE YOU SERVED ON VARIOUS COMMITTEES?

21 A YES.

22 Q ARE YOU FAMILIAR WITH DR. MARTIN  
23 FACKLER?

24 A YES.

25 Q AND HAS THAT ORGANIZATION BEEN THE  
26 VEHICLE THAT'S BROUGHT THE TWO OF YOU TOGETHER?

27 A YES, IT IS.

28 Q AND IS DR. FACKLER RECOGNIZED AS THE

42106

1 LEADING WOUND BALLISTICS EXPERT IN THE UNITED  
2 STATES?

3 A YES.

4 Q NOW, DID YOU HAVE AVAILABLE, OR WAS IT  
5 MADE AVAILABLE TO YOU, A REPORT PREPARED BY FAILURE  
6 ANALYSIS ASSOCIATES CONCERNING THE CRIME SCENE IN  
7 THIS CASE?

8 A YES.

9 Q AND HAVE YOU ALSO HAD MADE AVAILABLE TO  
10 YOU THE TESTIMONY OF DR. ROGER MC CARTHY?

11 A YES.

12 Q AND IF I COULD FOCUS YOU TO TESTIMONY

13 THAT WAS OFFERED BY DR. MC CARTHY CONCERNING SHOTGUN

14 AMMUNITION.

15 DO YOU HAVE THAT TESTIMONY IN MIND?

16 A YES.

17 Q AND WAS DR. MC CARTHY'S TESTIMONY ABOUT

18 SHOTGUN AMMUNITION SCIENTIFICALLY ACCURATE?

19 A NO.

20 Q AND COULD YOU TELL US IN WHAT RESPECTS

21 HIS TESTIMONY WAS INACCURATE?

22 MR. CONN: OBJECTION. CALLS FOR A

23 NARRATIVE.

24 THE COURT: WELL, IT CERTAINLY HAS THAT

25 POTENTIAL. PERHAPS YOU CAN FOCUS IT A LITTLE BIT.

26 Q BY MS. ABRAMSON: LET'S TALK ABOUT,

27 FIRST OF ALL, THE WAY HE DESCRIBED THE COMPONENTS OF

28 A ROUND OF SHOTGUN AMMUNITION.

42107

1 WERE THERE ERRORS IN HIS DESCRIPTION FOR

2 THAT?

3 A YES.

4 Q WHY DON'T WE DO THIS, DEPUTY VAN HORN.

5 WHY DON'T YOU DESCRIBE FOR THE JURY,

6 FIRST OF ALL, HOW MANY DIFFERENT BASIC TYPES,  
7 GENERALLY SPEAKING, OF SHOTGUN AMMUNITION ARE  
8 THERE?

9 A A LOT. IT'S --

10 Q A LOT.

11 A AT ONE TIME THERE WERE THOUSANDS OF  
12 DIFFERENT COMBINATIONS OF SHOT SHELL AMMUNITION  
13 AVAILABLE. I THINK THAT IT'S BEEN PARED DOWN TO --  
14 I'LL TRY AND ZERO IN ON ONE MANUFACTURER, BECAUSE  
15 ESSENTIALLY ALL THE MANUFACTURERS PRODUCE ONE THING;  
16 TO WHERE THEY USED TO PRODUCE LITERALLY THOUSANDS OF  
17 DIFFERENT VARIATIONS OF SHOTGUN AMMUNITION WITHIN A  
18 MANUFACTURER, THEY'RE PROBABLY NOW DOWN TO PROBABLY  
19 TWO -- 250, 300 POSSIBLE COMBINATIONS THAT ARE  
20 AVAILABLE FOR SALE.

21 Q IS THERE A GENERAL DIFFERENCE BETWEEN  
22 WHAT'S CALLED BIRD SHOT-SIZED AMMUNITION OR BIRD  
23 SHOT-SIZED PELLETS AND BUCKSHOT-SIZED PELLETS?

24 A YES.

25 Q AND, BY THE WAY, IS THERE NOW, OR TO THE  
26 BEST OF YOUR KNOWLEDGE, HAS THERE EVER BEEN, A SIZE  
27 EIGHT AND A HALF BIRD SHOT AS DR. MC CARTHY  
28 TESTIFIED?

1 A WELL, THERE IS AN EIGHT-AND-A-HALF  
2 SHOT. BUT ONCE AGAIN, WE HAVE AN AMMUNITION  
3 COLLECTION THAT WE'VE HAD FOR IN EXCESS OF 40 YEARS  
4 AND WE HAVE NO EXAMPLE OF THAT. WE HAVE NEVER HAD  
5 EIGHT-AND-A-HALF SHOT ON A CASE. I'VE CHECKED WITH  
6 OTHER LABS. THEY'VE NEVER HAD EIGHT-AND-A-HALF SHOT  
7 ON A CASE. I'VE CHECKED WITH MANUFACTURERS, AND  
8 EIGHT-AND-A-HALF SHOT IS PRODUCED PRIMARILY AS A  
9 TARGET LOAD AND IT'S NOT A VERY POPULAR LOAD OF  
10 SHOTGUN AMMUNITION.

11 Q SO IT ISN'T ANYTHING THAT'S ACTUALLY  
12 AVAILABLE; IS THAT WHAT YOU'RE SAYING?

13 MR. CONN: OBJECTION. LEADING.

14 THE COURT: WELL, IT -- PERHAPS IT -- REPHRASE  
15 THE QUESTION.

16 Q BY MS. ABRAMSON: IS IT AVAILABLE?

17 A YES.

18 Q AND FOR SALE?

19 A YES.

20 Q WHERE?

21 A ACCORDING TO FEDERAL AMMUNITION COMPANY,  
22 IT'S WHAT THEY CONSIDER A TARGET LOAD AND MAINLY  
23 SOLD TO TEAMS THAT GO OUT AND SHOOT TRAP AND SKEET  
24 EVENTS.

25 Q COULD YOU PICK IT UP AT YOUR LOCAL  
26 BIG-5?

27 A I'VE NEVER SEEN IT.

28 Q YOU'VE NEVER, EVER SEEN IT?

1 A NO, MA'AM.

2 Q IS THAT A LIKELY-SIZED AMMUNITION TO  
3 HAVE BEEN USED, BASED ON YOUR EXPERIENCE, IN A  
4 PERSON-TO-PERSON SHOOTING?

5 MR. CONN: OBJECTION. CALLS FOR  
6 SPECULATION. NO FOUNDATION.

7 THE COURT: OVERRULED.

8 THE WITNESS: NO.

9 Q BY MS. ABRAMSON: NOW, IS THERE A  
10 SEVEN-AND-A-HALF LOAD OF BIRD SHOT?

11 A YES.

12 Q IS THAT COMMONLY SOLD HERE IN  
13 LOS ANGELES COUNTY AND IN SOUTHERN CALIFORNIA?

14 A YES.

15 Q IS THERE AN EIGHT LOAD OF BIRD SHOT?

16 A YES.

17 Q IS THAT ALSO AVAILABLE IN GUN STORES IN  
18 SOUTHERN CALIFORNIA?

19 A YES.

20 Q NOW, ARE THERE DIFFERENT SIZES OF --  
21 THERE ARE OTHER SIZES OF BIRD SHOT BEFORE -- BESIDES  
22 THIS SEVEN AND A HALF AND THE EIGHT THAT WE'VE JUST  
23 MENTIONED, CORRECT?

24 A YES, THERE ARE.

25 Q HOW MANY OTHER SIZES, DO YOU KNOW?  
26 A IT ACTUALLY GOES DOWN AS SMALL AS 12,  
27 WHICH IS USUALLY LOADED IN HANDGUN CALIBERS THAT ARE  
28 DESIGNED TO SHOOT SHOT CARTRIDGES FOR PESTS, SNAKES

42110

1 OR RATS OR SOMETHING LIKE THAT. AND THEN IT WOULD  
2 GO TWELVE, NINE, EIGHT, SEVEN AND A HALF, SEVEN,  
3 SIX, FIVE, FOUR, AND THEN YOU GET INTO WHAT'S CALLED  
4 B SIZES. THERE'S B AND BB. AND THEN THERE'S A FEW  
5 OTHER SIZES. AND THEN YOU GET INTO BUCKSHOT.  
6 AND THE SMALLER THE NUMBER, THE LARGER  
7 THE SHOT. IT'S EXACTLY THE OPPOSITE OF WHAT YOU  
8 WOULD THINK. SO IF YOU'RE TALKING ABOUT NO. 7 AND A  
9 HALF SHOT AND A NO. 4 SHOT, 4 SHOT'S BIGGER THAN A  
10 SEVEN AND A HALF.

11 Q IS NO. 4 A BIRD SHOT OR A BUCKSHOT?

12 A WELL, THERE'S NO. 4 BIRD SHOT AND NO. 4  
13 BUCKSHOT.

14 Q THAT'S CONFUSING.

15 A YES, IT IS.

16 Q DO YOU KNOW THE DIFFERENCE IN SIZE  
17 BETWEEN A NO. 4 BIRD SHOT AND A NO. 4 BUCKSHOT?

18 A IN THOUSANDTHS OF AN INCH -- EXCUSE ME --  
19 IN HUNDREDTHS OF AN INCH, NO. 4 WOULD BE POINT ONE

20 THREE. SO IT WOULD BE THIRTEEN HUNDREDS OF AN  
21 INCH.

22 AND IN NO. 4 BUCK THAT WOULD BE POINT  
23 TWO FOUR OR TWENTY-FOUR HUNDREDTHS OF AN INCH.

24 Q ALMOST DOUBLE IN SIZE FOR THE BUCKSHOT  
25 VERSUS BIRD SHOT?

26 A JUST ABOUT, YES.

27 Q WITH RESPECT TO NO. 4 BUCKSHOT, BASED ON  
28 YOUR EXPERIENCE, HOW GENERALLY IS NO. 4 BUCKSHOT

42111

1 PACKAGED?

2 A YOU MEAN WITHIN THE SHOT SHELL?

3 Q WITHIN THE SHOT SHELL.

4 A BUCKSHOT IS LOADED TO PELLET COUNT.

5 BIRD SHOT IS LOADED TO WEIGHT.

6 Q AND ARE THE INTERIOR COMPONENTS OF  
7 VARIOUS NO. 4 SHOT SHELLS, CAN THEY VARY FROM TYPE  
8 TO TYPE EVEN WITHIN THE SAME BRAND?

9 IN OTHER WORDS, THE MANUFACTURERS  
10 PACKAGE IT INTERNALLY IN DIFFERENT WAYS?

11 A YES.

12 Q AND WHAT ARE THE DIFFERENT WAYS THAT  
13 THAT NO. 4 BUCKSHOT IS PACKAGED, TO THE BEST OF YOUR  
14 KNOWLEDGE?



15       A    THERE'S BASICALLY THREE WAYS.

16           THE FIRST WAY WOULD BE WHERE THE

17 BUCKSHOT PELLETS ARE LOADED DIRECTLY INTO THE SHOT

18 SHELL.

19           THEN THE NEXT WAY WOULD BE THE BUCKSHOT

20 PELLETS ARE LOADED DIRECTLY INTO THE SHOT SHELL

21 ALONG WITH A PLASTIC FILLER MATERIAL THAT'S USUALLY

22 EITHER POLYETHYLENE OR POLYSTYRENE; AND THAT BUFFER

23 MATERIAL FILLS UP THE AIR SPACE THAT WOULD BE

24 BETWEEN THE PELLETS AS THEY STACK INSIDE THE SHOT

25 SHELL.

26           ACTUALLY, THERE'S TWO MORE WAYS.

27           THE OTHER WAY WOULD BE TO LOAD THE

28 PELLETS INTO A SHOT CUP, WHICH WOULD BE INSIDE THE

42112

1 SHOT SHELL, AND THEN THE PELLETS WOULD BE INSIDE THE

2 SHOT CUP, WHICH WOULD BE A LINER ON THE INSIDE OF

3 THE SHOT SHELL.

4           AND THEN THE LAST WAY IS TO LOAD THE

5 PELLETS INTO THE SHOT CUP AND ADD THE POLYSTYRENE OR

6 POLYETHYLENE FILLER MATERIAL.

7       Q    NOW, THIS FILLER MATERIAL IS ALSO CALLED

8 GRANULAR BUFFER?

9       A    YES. IT COULD BE CALLED THAT, YES.

10 Q AND TO THE BEST OF YOUR KNOWLEDGE, DOES  
11 THE FIOCCHI MANUFACTURING COMPANY USE GRANULAR  
12 BUFFER IN THEIR NO. 4 SHOT?

13 A SOME OF IT.

14 Q AND DO YOU KNOW IF THEY USE BUFFER WHEN  
15 THEY USE A SHOT CUP?

16 A I DON'T BELIEVE SO.

17 Q IN YOUR EXAMINATION OF THE AMMUNITION IN  
18 THIS CASE, DID YOU MAKE A DETERMINATION OF HOW THE  
19 BUCKSHOT ROUNDS IN THIS CASE WERE PACKED; WHAT THE  
20 INTERNAL CONSTRUCTION, IF YOU WILL, OF THOSE SHOT  
21 SHELLS WAS?

22 A YES. GENERALLY, IT WOULD BE THE  
23 INTERNAL COMPONENTS STARTING ALL THE WAY AT THE  
24 BOTTOM OF THE SHOT SHELL WOULD BE THE GUN POWDER.  
25 THEN IMMEDIATELY ON TOP OF THE GUN POWDER IS A SMALL  
26 PLASTIC DISK THAT'S CALLED AN OVER-POWDER WAD.  
27 IMMEDIATELY ON TOP OF THE OVER-POWDER WAD IS A  
28 PRESSED PAPER OR FIBER WAD THAT'S CALLED EITHER A

42113

1 SPACER OR A FILLER WAD. AND THEN THE BUCKSHOT  
2 PLACED ON TOP OF THE SPACER WAD. AND THEN  
3 EVERYTHING IS CONTAINED BY PUTTING A CRIMP ON THE  
4 TOP OF THE SHOT SHELL.

5 Q AND IS THAT PLASTIC DISK THAT YOU HAVE  
6 DESCRIBED AS AN OVER-POWDER WAD, IS THAT EVER CALLED  
7 A POWER PISTON?

8 A ONLY IF IT'S MADE BY REMINGTON. THAT'S  
9 A PATENTED OR COPYRIGHTED NAME THEY HAVE FOR A WAD.

10 Q AND TO THE BEST OF YOUR -- WELL, STRIKE  
11 THAT.

12 BASED ON YOUR OPINION, WAS THE  
13 AMMUNITION USED HERE REMINGTON?

14 A NO.

15 Q SO IS THE PLASTIC DISK THAT APPEARED IN  
16 THE BALLISTICS EVIDENCE HERE PROPERLY CALLED AN  
17 OVER-POWDER WAD AND NOT A POWER PISTON?

18 A YES.

19 Q AND IS THERE STILL NEW SHOTGUN  
20 AMMUNITION MANUFACTURED WHERE THERE IS A PAPER WAD  
21 AT THE VERY TOP OF THE COLUMN ABOVE THE BUCKSHOT?

22 A NOT CERTAINLY.

23 Q AND HOW LONG HAS IT BEEN SINCE  
24 AMMUNITION OF THAT CONFIGURATION HAS BEEN  
25 MANUFACTURED?

26 A A LONG TIME. PROBABLY IN EXCESS OF 20  
27 YEARS.

28 Q WAS THAT ONE AREA OF DR. MC CARTHY'S

1 TESTIMONY THAT YOU NOTED TO BE INACCURATE?

2 MR. CONN: OBJECTION. LEADING.

3 THE COURT: REPHRASE THE QUESTION.

4 Q BY MS. ABRAMSON: WAS THERE AN AREA OF  
5 DR. MC CARTHY'S TESTIMONY CONCERNING THE WAY SHOT  
6 SHELLS ARE PACKAGED THAT WAS INACCURATE?

7 A I BELIEVE SO.

8 Q AND WHAT WAS THAT?

9 A WHEN HE REFERS TO AN OVER-SHOT WAD, HE --  
10 BASICALLY, MY BONE OF CONTENTION THERE WAS THAT  
11 SOMEBODY WHO'S FAMILIAR WITH THE COMPONENTS OF SHOT  
12 SHELLS SHOULD BE ABLE TO EASILY TELL THE DIFFERENCE  
13 BETWEEN AN OVER-SHOT WAD AND AN OVER-POWDER WAD.  
14 THEY'RE TOTALLY DIFFERENT IN CONSTRUCTION.

15 Q AND IN HIS TESTIMONY DID HE APPEAR TO BE  
16 COMINGLING THE TWO?

17 MR. CONN: OBJECTION. LEADING AND  
18 ARGUMENTATIVE.

19 THE COURT: WELL, IT DOES CALL FOR A  
20 CONCLUSION ON THE PART OF THE WITNESS.

21 MS. ABRAMSON: HE READ THE TESTIMONY, YOUR  
22 HONOR.

23 THE COURT: ASK HIM TO CHARACTERIZE IT.

24 MS. ABRAMSON: ALL RIGHT.

25 Q CAN YOU CHARACTERIZE WHAT  
26 DR. MC CARTHY'S TESTIMONY -- HOW HE WAS DEALING WITH  
27 THOSE TWO DIFFERENT COMPONENTS.

42115

1 DIDN'T APPEAR THAT HE KNEW THAT THERE WAS A  
2 DIFFERENCE BETWEEN THE TWO.

3 MR. CONN: OBJECTION. CALLS FOR SPECULATION  
4 AND ARGUMENTATIVE.

5 THE COURT: SUSTAINED. THE ANSWER'S  
6 STRICKEN.

7 Q BY MS. ABRAMSON: DID HIS TESTIMONY  
8 APPEAR TO CONFUSE THE TWO?

9 MR. CONN: OBJECTION. CALLS FOR SPECULATION  
10 AND ARGUMENTATIVE.

11 THE COURT: SUSTAINED.

12 Q BY MS. ABRAMSON: IN READING  
13 DR. MC CARTHY'S TESTIMONY, DID HE CHARACTERIZE  
14 SOMETHING AS AN OVER-SHOT WAD THAT IS ACTUALLY AN  
15 OVER-POWDER WAD?

16 A YES.

17 Q NOW, YOU TESTIFIED A FEW MOMENTS AGO  
18 THAT BUCKSHOT IS LOADED BY THE MANUFACTURER TO  
19 PELLET COUNT.

20 A THAT'S CORRECT.

21 Q YOU'RE FAMILIAR WITH THE PELLET COUNT OF  
22 NO. 4 FIOCCHI BUCKSHOT, CORRECT?

23 A YES.  
24 Q WHAT'S THAT COUNT?  
25 A STANDARD LOAD WOULD BE 27 PELLETS.  
26 Q AND HOW MANY -- WELL, FIRST OF ALL, HAVE  
27 YOU YOURSELF OPENED UP ROUNDS OF SHOTGUN AMMUNITION  
28 THAT WERE LOADED TO PELLET COUNT?

42116

1 A YES.  
2 Q AND HOW MANY SUCH ROUNDS HAVE YOU  
3 PERSONALLY EXAMINED BY OPENING THEM UP?  
4 A JUST NO. 4 BUCK OR ARE YOU TALKING ABOUT  
5 ALL BUCKSHOT?  
6 Q LET'S START WITH NO. 4.  
7 A PROBABLY MORE THAN A HUNDRED.  
8 Q AND ARE YOU FAMILIAR WITH THE WORK THAT  
9 OTHER FIREARMS EXAMINERS AT THE SHERIFF'S DEPARTMENT  
10 HAVE DONE?  
11 A YES.  
12 Q DO THEY ROUTINELY OPEN UP SHOTGUN  
13 AMMUNITION AS WELL?  
14 A YES.  
15 Q AND HAVE THEY -- ARE YOU FAMILIAR WITH  
16 THE FACT THAT THEY'VE OPENED UP HUNDREDS OF ROUNDS  
17 AS WELL?

18 A YES.

19 Q HAVE YOU EVER HEARD OF A SHOTGUN SHELL  
20 THAT WAS LOADED -- OF NO. 4 THAT WAS LOADED WITH MORE  
21 THAN 27 WHEN 27 WAS SUPPOSED TO BE THE COUNT?

22 A NO.

23 Q IS THERE SOMETHING IN THE DESIGN AND  
24 CONSTRUCTION OF NO. 4 SHOTGUN AMMUNITION THAT MAKES  
25 IT IMPOSSIBLE TO LOAD MORE THAN 27 IN THE  
26 STANDARD-SIZED ROUND?

27 A I DON'T KNOW IF I'D WANT TO USE A WORD  
28 AS STRONG AS "IMPOSSIBLE." BUT IT WOULD MAKE IT TO

42117

1 ME VERY UNLIKELY.

2 Q AND WHAT IS THAT THAT MAKES IT VERY  
3 UNLIKELY THAT IT COULD HAVE MORE THAN THE 27 PELLETS  
4 IT'S SUPPOSED TO HAVE?

5 A WHEN YOU PLACE BUCKSHOT IN A SHOTGUN  
6 SHELL, IT NATURALLY STACKS INSIDE THE SHELL BASED  
7 UPON HOW MANY -- OR THE SIZE OF THE PELLETS THAT  
8 YOU'RE PLACING IN THERE.

9 FOR INSTANCE, WITH DOUBLE-UGHT BUCK,  
10 THEY'RE APPROXIMATELY .33 CALIBER, AND WHEN YOU  
11 PLACE DOUBLE-UGHT BUCKSHOT PELLETS INTO A SHOT  
12 SHELL, THREE WILL GO IN THE BOTTOM AND THEY'LL SIT

13 THERE AND LOOK LIKE A LITTLE TRIANGLE. AND THE NEXT  
14 THREE WILL GO IN THERE AND THEY'LL SIT THERE IN THE  
15 SPACES THAT ARE NOT OCCUPIED BY THE SPACES FROM THE  
16 BOTTOM THREE. SO THEY STACK.

17 SO IF YOU LOOK AT THEM FROM THE SIDE  
18 YOU'D SEE -- FOR INSTANCE, YOU'D SEE ONE PELLET HERE  
19 AND THEN ANOTHER PELLET HERE AND ANOTHER PELLET  
20 HERE. THEY STACK; BUT OBVIOUSLY THEY'RE ROUND, SO  
21 THEY CAN'T STACK DIRECTLY ON TOP OF ONE ANOTHER, SO  
22 THEY SETTLE INTO THE RECESSES MADE BY THE STACK ON  
23 THE BOTTOM. AND BASICALLY ALL BUCKSHOT STACKS.  
24 PELLETS ARE MUCH SMALLER AND THEY DON'T STACK IN THE  
25 SAME MANNER.

26 Q BIRD SHOT PELLETS YOU MEAN?

27 A YES. I'M SORRY.

28 Q COULD YOU DRAW AN ILLUSTRATION OF THIS

42118

1 STACKING -- WELL, BEFORE YOU DO THAT, IS THERE A WAY  
2 THAT NO. 4 BUCKSHOT STACKS?

3 A YES.

4 Q AND CAN YOU DESCRIBE THAT.

5 A THERE'S -- THERE'S 27 PELLETS STACKED IN  
6 SUCH A WAY THAT YOUR FIRST LAYER, IF YOU WILL, HAS  
7 SIX PELLETS AROUND THE INSIDE CIRCUMFERENCE OF THE



8 SHOT SHELL AND THEN A SEVENTH PELLETS ENDS UP IN THE  
9 SPACE IN BETWEEN THOSE SIX PELLETS BECAUSE THEY  
10 DON'T -- OBVIOUSLY, THEY DON'T FILL UP THE INTERIOR  
11 SPACE. SO THE SIX OF THEM SIT THERE AND THE SEVENTH  
12 PELLET SITS DOWN IN THE LITTLE DEFECT OR AREA LEFT  
13 BEHIND THE SIX, BUT THAT AREA IS NOT BIG ENOUGH FOR  
14 THE PELLET TO GO ALL THE WAY DOWN TO SIT AND REST ON  
15 THE WAD, SO IT SITS UP A LITTLE BIT.

16 SO NOW WHEN THE SECOND STACK GOES IN  
17 THERE, IT STACKS THE SAME WAY. NOW THEY HAVE  
18 SOMETHING TO BOUNCE OFF OF AND THEY ALL GO TO THE  
19 OUTSIDE OF THE SHOT SHELL AGAIN. AND THEN THAT  
20 SEVENTH ONE, FOR THE SECOND LAYER, ONCE AGAIN, SITS  
21 ON TOP. YOU HAVE THREE LAYERS OF SEVEN. AND THEY --  
22 THEIR GOAL IS TO GET 27 PELLETS IN THERE, BECAUSE  
23 NOW IF THAT FOURTH ROW, IF YOU HAVE A PELLET SITTING  
24 IN THE CENTER ON THAT FOURTH ROW WHEN THE SHELL IS  
25 CRIMPED, THE CRIMP NEEDS A PLACE FOR THE MATERIAL TO  
26 GO DOWN INTO, SO IT GOES DOWN INTO THE VOID THAT'S  
27 LEFT WHERE THAT SEVENTH PELLET FROM THE FOURTH LAYER  
28 WOULD GO.

42119

1 Q SO IF I UNDERSTAND THIS, YOU HAVE -- THE  
2 FIRST LAYER HAS SEVEN PELLETS, THE SECOND HAS SEVEN

3 FOR 14, THE THIRD HAS SEVEN FOR 21, BUT THE FOURTH

4 LAYER CAN ONLY TAKE SIX?

5 A WELL, I'M NOT GOING TO SAY IT COULD ONLY

6 TAKE SIX, BUT I'VE NEVER SEEN -- I'VE NEVER TAKEN ONE

7 APART THAT HAD MORE THAN 27 PELLETS.

8 Q YOU'VE TAKEN APART MORE THAN TWO OR

9 THREE?

10 A YES.

11 Q WHAT DO YOU THINK IS THE LIKELIHOOD IF

12 ONE WERE TO TAKE APART, SAY, EVEN 10, THAT WITHIN

13 THAT COUNT OF 10 YOU WOULD FIND THREE OR FOUR THAT

14 ARE OFF COUNT?

15 A BASED UPON MY EXPERIENCE, I'D SAY IT'S

16 UNLIKELY.

17 Q SO THE LAST ROW WOULD BE SIX BECAUSE THE

18 PLASTIC MATERIAL THAT CRIMPS IN IS DEPRESSED IN THE

19 CENTER; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q IF THAT SEVENTH PELLET WERE THERE, THE

22 CRIMPING MACHINE WOULDN'T BE ABLE TO DO THAT STAR

23 CRIMP ON THE TOP?

24 A WELL, ONCE AGAIN, I'M NOT POSITIVE THAT

25 THAT'S TRUE, BECAUSE I DON'T KNOW THE AMOUNT OF

26 FORCE THAT'S USED. IT'S POSSIBLE THAT THAT 28TH

27 PELLET COULD BE LOADED IN THERE, BUT I'VE NEVER SEEN

28 IT.

1 Q AND YOU'VE NEVER HEARD OF ANYBODY ELSE  
2 IN FIREARMS SEEING IT EITHER?

3 A NO.

4 Q IN 10 YEARS?

5 A NO.

6 Q NOW, COULD YOU DRAW THAT ILLUSTRATION OF  
7 WHAT WE WERE TALKING ABOUT.

8 COULD YOU DO A CROSS-SECTION OF THE  
9 STACKING OF NO. 4.

10 EASIEST WAY TO DO THIS IS TAKE THE SHEET  
11 OFF AND STICK IT TO THE BOARD.

12 I'D LIKE, YOUR HONOR, TO MARK THIS 325.

13 THE COURT: 325.

14 MS. ABRAMSON: AND WE HAVE DIFFERENT-COLORED  
15 MARKERS.

16 THE WITNESS: I'M NOT MUCH OF AN ARTIST, BUT  
17 THIS WOULD BE THE SIX PELLETS THAT WOULD LAY ON THE  
18 BOTTOM AND THE SEVENTH ONE WOULD FILL IN THE SPACE.  
19 IF YOU LOOKED AT THIS FROM THE SIDE, IT WOULD LOOK  
20 LIKE THIS. THIS WOULD BE THE TWO PELLETS THAT WOULD  
21 FACE YOU. THIS WOULD BE THE NEXT TWO. THERE'S TWO  
22 IN THE BACK, AND THAT SEVENTH PELLET SITS DOWN ON  
23 TOP OF HERE. BUT THE SPACE BETWEEN THEM IS LESS  
24 THAN .24 CALIBER, SO THIS SEVENTH PELLET WILL NOT  
25 SIT DOWN ON THE SAME PLANE AS THE OTHER PELLETS.

26 Q BY MS. ABRAMSON: BEFORE YOU RESUME YOUR

27 SEAT, COULD YOU, WHILE YOU'RE THERE, DRAW A CROSS

28 SECTION OF HOW FIOCCHI NO. 4 BUCKSHOT, THE FIOCCHI

42121

1 NO. 4 BUCKSHOT THAT WAS USED IN THIS CASE, IS LOADED  
2 IN THE SHOT SHELL.

3 COULD YOU DRAW IT A LITTLE BIGGER THAN  
4 THAT.

5 THE COURT: MAYBE YOU CAN GIVE HIM A LITTLE  
6 DIFFERENT TYPE OF PEN.

7 MS. ABRAMSON: YEAH, A BIGGER MARKER. THOSE  
8 ARE SMALL.

9 HOPEFULLY IT HAS INK.

10 THE WITNESS: OKAY. THE OUTSIDE LINE HERE IS  
11 THE SHOTGUN SHELL. THIS IS THE WEB OF THE SHOT  
12 SHELL. THIS IS WHERE THE GUN POWDER WOULD BE. AND  
13 THIS REPRESENTS THE HOLE WHERE THE PRIMER WOULD COME  
14 THROUGH AND IGNITE THE GUN POWDER.

15 THE FIRST WAD THAT FIOCCHI USES IS A  
16 SMALL PLASTIC DISK, SO THIS OVER-POWDER WAD IS  
17 PROBABLY ABOUT A QUARTER OF AN INCH THICK OR SO,  
18 WOULD BE THE FIRST THING THAT'S OVER TOP OF THE GUN  
19 POWDER. AND BASICALLY, THE PURPOSE OF THAT IS TO  
20 KEEP THE GUN POWDER DOWN AT THE BACK OF THE SHOT  
21 SHELL SO THAT THE WHEN THE PRIMER IS IGNITED IT CAN

22 IGNITE ALL THE GUN POWDER. SO IF YOU DIDN'T HAVE  
23 THESE WADS HERE, THE GUN POWDER WOULD BE FREE TO GO  
24 ALL OVER THE SHOT SHELL.  
25 THE NEXT ITEM THAT YOU SEE WOULD BE A  
26 SPACER WAD. AND BEAR IN MIND THAT THIS IS A  
27 .12-GAUGE SHOTGUN -- OR SHOTGUN SHELL. SO  
28 CONCEIVABLY IT COULD BE LOADED WITH ANYTHING FROM

42122

1 THE SMALLEST BIRD SHOT UP TO AND INCLUDING THE  
2 LARGEST BUCKSHOT. SO THE SIZE OF THIS SPACER WAD IS  
3 GOING TO DEPEND ON THE AMOUNT OF SHOT THAT'S PLACED  
4 IN THE TOP PORTION HERE.  
5 I DIDN'T -- WHAT THIS ARROW MEANS IS WE  
6 START WITH PELLETS AT THE BOTTOM AND THE PELLETS  
7 WOULD BE FILLED UP TO WHERE THE STAR CRIMP IS. I  
8 DIDN'T WANT TO DRAW ALL THOSE PELLETS IN THERE. SO  
9 THIS SPACER WAD, DEPENDING ON HOW MANY SHOT SHELLS --  
10 OR EXCUSE ME -- SHOT PELLETS ARE GOING TO BE IN HERE  
11 COULD BE VARYING IN THICKNESS. BUT ONCE THEY  
12 DETERMINE HOW MUCH SPACE THEY HAVE TO TAKE UP HERE  
13 TO GET THE BUCKSHOT OR THE BIRD SHOT, WHATEVER THE  
14 CASE MAY BE, ALL THE WAY UP TO THE CRIMP, THAT  
15 DETERMINES THE WIDTH OF THE SPACER WAD OR WHETHER  
16 THEY MIGHT USE ONE OR MORE SPACER WADS.

17 THE COURT: ARE THE SHELLS THEMSELVES ALWAYS  
18 THE SAME SIZE REGARDLESS OF THE SIZE OF THE SHOT?  
19 THE WITNESS: WELL, THEY COULD BE.  
20 GENERALLY, THE STANDARD LENGTH NOW IS TWO AND THREE  
21 QUARTER-INCH SHELLS AND THEY CURRENTLY NOW GO UP TO  
22 THREE AND A HALF. BUT THE MOST COMMON ARE TWO AND  
23 THREE-QUARTER AND THREE-INCH SHELLS. AND THAT'S  
24 MEASURED AFTER THE -- IF YOU MEASURED THE SHOT SHELL  
25 THAT WAS MARKED TWO AND THREE QUARTERS AND IT WAS  
26 LOADED LIKE THAT, AT THIS POINT IT WOULD MEASURE  
27 ABOUT TWO AND A QUARTER INCHES. BUT WHEN THE SHOT  
28 SHELL IS FIRED AND THEN THAT STAR CRIMP IS

42123

1 STRAIGHTENED OUT, IF YOU MEASURED THE SHOT SHELL AT  
2 THAT POINT, THAT'S WHERE YOU GET THE TWO AND THREE  
3 QUARTER INCHES.

4 THE COURT: I JUST MEAN AS YOU RECEIVE IT  
5 UNFIRED IN A BOX OF AMMUNITION, WOULD THE SIZE OF  
6 THE SHELL BE THE SAME REGARDLESS OF THE SIZE OF THE  
7 SHOT THAT'S WITHIN IT?

8 THE WITNESS: YES. THEY'D ALL BE LOADED TO  
9 THAT LENGTH TWO AND THREE QUARTER OR THREE, WHATEVER  
10 WAS MARKED ON THE BOX.

11 Q BY MS. ABRAMSON: DID YOU -- YOU'VE

12 INDICATED THAT YOU EXAMINED BALLISTICS EVIDENCE IN  
13 THIS CASE.

14 WHAT WAS THE PURPOSE OF THAT EXAMINATION  
15 THAT YOU MADE BACK IN JULY OF 1993?

16 A TO SEE IF A MANUFACTURER COULD BE  
17 DETERMINED AND ALSO TO SEE WHAT THE SIZES OF THE  
18 PELLETS WERE IN THE CASE.

19 Q AND WERE YOU ALSO ASKED TO DETERMINE  
20 WHETHER YOU COULD TELL, BY EXAMINING THE BALLISTICS  
21 EVIDENCE THAT WAS COLLECTED FROM THIS SCENE, WHETHER  
22 A CERTAIN, AT LEAST MINIMUM, NUMBER OF ROUNDS HAD  
23 BEEN FIRED?

24 A YES.

25 Q AND I'M JUST SHOWING YOU THIS ENVELOPE  
26 THAT IN THIS TRIAL HAS BEEN MARKED 48. THE LAST  
27 TIME YOU TESTIFIED ABOUT IT, IT WAS CALLED EXHIBIT  
28 16. I'LL JUST ASK YOU IF THIS CONTAINS THE

42124

1 BALLISTICS EVIDENCE THAT YOU HAVE PREVIOUSLY  
2 EXAMINED IN THIS CASE.

3 A YES, IT DOES.

4 Q AND WITHIN THESE ENVELOPES OF EVIDENCE,  
5 DID YOU IDENTIFY, FOR EXAMPLE, THIS ONE, WHICH IS  
6 NOW CALLED 48-E, ITEMS THAT APPEAR TO BE, FOR

7 EXAMPLE, THE SPACER, THE PAPER SPACER WAD THAT YOU  
8 HAVE DRAWN ON 325?

9 A YES.

10 Q AND DID YOU OBSERVE IN OTHER ENVELOPES  
11 THERE AS PART OF 48 THE PLASTIC OVER-POWDER PADS AS  
12 YOU'VE IDENTIFIED THAT IN 325?

13 A YES.

14 Q DID YOU SEE A NUMBER OF PELLETS OF  
15 BASICALLY TWO DIFFERENT SIZES?

16 A YES.

17 Q AND DID YOU MAKE A DETERMINATION OF WHAT  
18 SIZES THE PELLETS WERE THAT YOU SAW?

19 A YES.

20 Q WHAT SIZES DID YOU DETERMINE THEY WERE?

21 A THE ONE SIZE WAS NO. 4 BUCKSHOT AND THE  
22 OTHER SIZE COULD HAVE BEEN EITHER NO. 6 OR NO. 7 AND  
23 A HALF SHOT.

24 Q BIRD SHOT?

25 A BIRD SHOT.

26 Q AND WERE YOU ABLE TO DETERMINE THAT THE  
27 NO. 4 BUCKSHOT THAT YOU SAW HAD AFFILIATED WITH IT  
28 THE COMPONENTS OF A SHELL LOADED PRECISELY THE WAY

42125

1 YOU'VE DRAWN THAT IN 325; IN OTHER WORDS, WITH THE



2 PLASTIC OVER-POWDER WAD, A PAPER-SPACER WAD AND THEN

3 INDIVIDUAL PELLETS?

4 A YES.

5 Q NOW, THERE'S ALSO A WAY OF PACKING

6 SHOTGUN AMMUNITION, AS YOU'VE DESCRIBED, INSIDE A

7 SHOT CUP?

8 A YES.

9 Q AND IF IT WAS IN A SHOT CUP, YOU

10 WOULDN'T EXPECT TO FIND SPACER WADS OR LITTLE

11 PLASTIC OVER-POWDER WADS, WOULD YOU?

12 A WELL, GENERALLY, THE WAY SHOT CUPS ARE

13 USED NOW, THEY'RE THE TOP-MOST PORTION OF A SHOT

14 COLUMN WAD OR A WAD COLUMN. SO, GENERALLY, I WOULD

15 EXPECT TO SEE A SHOT CUP THAT WOULD BE INTEGRAL WITH

16 A SPACER WAD AND AN OVER-POWDER WAD.

17 Q IN OTHER WORDS, IT WOULD ALL BE ONE

18 PIECE?

19 A THAT'S CORRECT.

20 Q AND ALL PLASTIC?

21 A YES.

22 Q SO WHEN YOU SAW THAT WHAT HAD BEEN

23 GATHERED AT THE SCENE HERE CONSISTED OF SMALL

24 PLASTIC DISKS AND PAPER-SPACER WADS, DID THAT LEAD

25 YOU TO CONCLUDE THAT THE NO. 4 BUCK SHOT IN THIS

26 CASE WAS PACKED AS THE WAY YOU HAVE DRAWN RATHER

27 THAN IN THIS ONE-PIECE SHOT CUP?

28 A YES.

1 Q NOW, DID YOU ALSO EXAMINE TWO ITEMS OF  
2 BALLISTICS EVIDENCE THAT DID CONSIST OF ONE SOLID  
3 PLASTIC SHOT CUP WITH INTEGRAL SPACER PART, INTEGRAL  
4 OVER-POWDER PART?

5 A YES.

6 Q DID YOU DETERMINE THAT THOSE TWO SHOT  
7 CUPS WERE -- HAD BEEN PACKED WITH THE BIRD SHOT  
8 PELLETS THAT YOU FOUND?

9 A YES.

10 Q NOW, I WANT TO SHOW YOU WHAT'S  
11 PREVIOUSLY BEEN MARKED 313.

12 THIS IS A BOX OF LIVE AMMUNITION.

13 I JUST WANT TO PUT THESE ASIDE FOR THE  
14 MOMENT.

15 YOU'VE SEEN THIS BAG AND THIS BOX OF  
16 AMMUNITION BEFORE, HAVE YOU NOT?

17 A YES, I HAVE.

18 Q DID YOU, IN FACT, TAKE CUSTODY OF IT AND  
19 BRING IT INTO THIS BUILDING -- TAKE OVER CUSTODY FROM  
20 THE PUBLIC DEFENDER INVESTIGATOR?

21 A YES.

22 Q BECAUSE THE SHERIFF'S DEPARTMENT HAS TO  
23 BRING ALL AMMUNITION INTO THE BUILDING?

24 A YES.

25 Q I WOULD ASK YOU, DID YOU BRING WITH YOU

26 A TOOL THAT YOU ROUTINELY USE TO OPEN UP SHOT

27 SHELLS?

28 A YES.

42127

1 Q OKAY. I WOULD LIKE YOU TO OPEN ONE OF  
2 THESE AND I WOULD LIKE TO GET AN ENVELOPE FROM THE  
3 CLERK -- IN FACT, YOU CAN PICK WHICHEVER ONE YOU  
4 LIKE. I WON'T PICK ONE. I'LL PUT THIS BACK. TAKE  
5 ANY ONE YOU WANT.

6 AND I WANT TO GET --

7 THE COURT: WHY DON'T YOU PUT IT ON THIS  
8 PAPER.

9 THE WITNESS: I'M SORRY?

10 THE COURT: PUT IT ON THE PAPER SO IT DOESN'T  
11 GET ALL OVER.

12 MS. ABRAMSON: YES. I HAVE THREE DIFFERENT  
13 ENVELOPES BECAUSE WHAT WE'D LIKE TO DO IS GET THE  
14 GUN POWDER OUT SEPARATELY AND THEN THE PELLETS,  
15 UNTIL WE GET A PLASTIC ENVELOPE.

16 THE WITNESS: SO YOU WANT ME TO DO THAT NOW?

17 MS. ABRAMSON: YES.

18 Q NOW, YOU'RE CUTTING ACROSS --

19 A YES.

20 Q WHY DON'T YOU DESCRIBE WHAT YOU'RE

21 DOING.

22 A USING THIS TOOL THAT'S DESIGNED TO CUT  
23 SHOT SHELLS OPEN, IT'S NOW, YOU KNOW, MADE ITS  
24 PENETRATION INTO THE SHOT SHELL AND YOU JUST TURN IT  
25 AROUND AND CUT THROUGH. AND WHEN YOU REMOVE IT, IT  
26 GENERALLY CUTS IT IN THE VICINITY OF THE SPACER WAD  
27 AND THE SHOT -- THE OVER-POWDER WAD AND THE GUN  
28 POWDER ARE STILL CONTAINED IN HERE. SO -- GREAT.

42128

1 Q BROKE THE SPACER WAD?

2 A I DON'T HAVE MY KNIFE. WAIT A MINUTE.

3 OKAY. REMOVING THE SPACER WAD, WHICH IS  
4 NOW IN TWO PIECES, AND THE PELLETS -- DO YOU WANT ME  
5 TO COUNT THESE?

6 Q OH, YOU -- YOU CAN. GO AHEAD. THIS WILL  
7 BE VERY EMBARRASSING IF THERE WEREN'T 27 IN THERE.  
8 I'LL REST MY CASE AND GO HOME.

9 A TWENTY-TWO, 24, AND 27.

10 Q THANK YOU.

11 APART FROM THAT, DOES THE CONFIGURATION  
12 OF THE SPACER WAD -- WELL, STRIKE THAT.

13 THIS SPLIT WHEN YOU WERE OPENING IT.  
14 BUT HAVE YOU, OVER THE YEARS, COME UPON SPACER WADS  
15 THAT SORT OF WIND UP SLICED CROSS-SECTIONALLY AFTER

16 THEY'VE BEEN FIRED?

17 A YES.

18 Q AND DO THEY TEND TO COME APART INTO

19 SMALLER LITTLE DISKS?

20 A THEY CAN.

21 Q AND, IN FACT, WITHIN THE EVIDENCE

22 ENVELOPES THAT ARE STILL IN FRONT OF YOU, THE

23 EVIDENCE ACTUALLY FROM THIS SCENE, ARE THERE SOME

24 PARTS OF SPACER WADS THAT APPEAR TO BE

25 CROSS-SECTIONS SIMILAR TO THE ONE THAT YOU CUT?

26 A YES.

27 Q AND ARE THERE SOME THAT APPEAR TO

28 ACTUALLY BE THE WHOLE THING?

42129

1 A YES.

2 Q AND STILL WITHIN THE CUP IS THE

3 OVER-POWDER WAD THAT YOU DESCRIBED, AND DOES THAT

4 APPEAR TO BE IDENTICAL TO THE PLASTIC OVER-POWDER

5 WADS THAT WERE COLLECTED BY THE BEVERLY HILLS POLICE

6 DEPARTMENT AT THE SCENE HERE?

7 A YES.

8 Q SO DOES IT APPEAR, HAVING NOW LOOKED AT

9 ALL THE COMPONENT PARTS OF THIS NO. 4 FIOCCHI, THAT

10 THE COMPONENTS PARTS OF THIS NO. 4 FIOCCHI FROM THE

11 BOX APPEAR TO BE IDENTICAL TO THE COMPONENT PARTS

12 THAT WERE LOCATED AT THE SCENE HERE?

13 A YES.

14 Q AND IN LOOKING OVER ALL OF THE COMPONENT

15 PARTS OF SHOTGUN AMMUNITION THAT WERE TAKEN FROM THE

16 SCENE, DID YOU MAKE AN ASSESSMENT AS TO HOW MANY

17 ROUNDS YOU COULD SAY, WITH SOME DEGREE OF CERTAINTY,

18 OF NO. 4 BUCKSHOT WERE FIRED, AT LEAST NOT TOTAL

19 ROUNDS, BUT HOW MANY FIRED ROUNDS IS THERE BALLISTIC

20 EVIDENCE ACCOUNTING FOR THEM?

21 A IN THE NO. 4 BUCK?

22 Q IN THE NO. 4 BUCK.

23 A THERE WERE SIX OVER-POWDER WADS. SO I

24 WOULD SAY A MINIMUM OF SIX ROUNDS OF BUCKSHOT WERE

25 FIRED.

26 Q AND WERE THERE SPACER WADS FOUND AS

27 WELL?

28 A YES.

42130

1 Q AND FROM EXAMINING THOSE, DID YOU

2 CONCLUDE THERE MAY HAVE BEEN EIGHT FIRED?

3 A NO.

4 Q OKAY. SO SIX WAS -- SIX IS ALL YOU CAN

5 SAY WITH CERTAINTY?

6 A CORRECT. OF THE DOUBLE -- OF THE NO. 4

7 BUCK, YES.

8 Q AND THEN WERE THERE TWO SHOT CUPS THAT  
9 WERE FOUND, SHOT CUPS THAT HAD HELD BIRD SHOT?

10 A YES.

11 Q AND SO DID YOU COUNT EACH OF THOSE AS A  
12 SEPARATE ROUND THAT COULD HAVE -- THAT WAS FIRED?

13 A YES.

14 Q IS THAT WHERE I'M GETTING THE EIGHT  
15 FROM?

16 A YES.

17 Q SO FROM THE BALLISTICS EVIDENCE, WHAT  
18 YOU CAN SAY IS THAT EIGHT ROUNDS FOR CERTAIN WERE  
19 FIRED, POSSIBLY MORE WHERE THERE'S NO EVIDENCE TO  
20 ACCOUNT FOR THEM; WOULD THAT BE A FAIR STATEMENT?

21 A THAT'S A POSSIBILITY, YES.

22 MS. ABRAMSON: YOUR HONOR, NEXT I'M GOING TO  
23 MOVE ON TO THE GUN, SO THIS WOULD BE --

24 THE COURT: OKAY. WE'LL TAKE A RECESS AND  
25 WE'LL RESUME AT 20 MINUTES TO THE HOUR.

26 DON'T DISCUSS THE MATTER WITH ANYONE OR  
27 FORM ANY FINAL OPINIONS ABOUT IT. WE'LL RESUME AT  
28 20 MINUTES TO.

1 (A RECESS WAS TAKEN FROM

2 10:20 A.M. TO 10:40 A.M.)

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1 THE COURT: EVERYONE IS PRESENT.

2 ARE WE READY FOR THE JURY?

3 MR. ABRAMSON: YES, YOUR HONOR.

4 THE COURT: LET'S GET THE JURY OUT, PLEASE.

5 (THE JURY ENTERED THE COURTROOM

6 AND THE FOLLOWING PROCEEDINGS

7 WERE HELD:)

8

9 THE COURT: EVERYONE IS BACK. THE JURY IS

10 BACK.

11 WE'LL RESUME WITH THE DIRECT EXAMINATION

12 OF THE WITNESS.

13 MS. ABRAMSON: THANK YOU, YOUR HONOR.

14 Q DEPUTY VAN HORN, DURING THE BREAK DID

15 YOU FURTHER TAKE APART THE NO. 4 FIOCCHI SHOT SHELL

16 THAT YOU REMOVED FROM 313?

17 A YES, I.

18 Q AND WHAT COMPONENT DID YOU REMOVE FROM --

19 WHAT COMPONENTS, RATHER -- WHEN YOU TOOK IT APART

20 FURTHER?

21 A I REMOVED THE GUNPOWDER AND PLACED IT

22 INSIDE A WHITE LETTER-SIZE ENVELOPE. I ALSO REMOVED

23 THE PLASTIC OVER-POWDER WAD.

24 Q AND NOW, YOU HAVE ALL THE COMPONENTS NOW  
25 WITH THE EXCEPTION OF THE GUNPOWDER ITSELF.  
26 THESE THREE, THE ADDITIONAL COMPONENTS  
27 THAT YOU DIDN'T PREVIOUSLY PUT IN THE BAG?  
28 A YES.

42133

1 Q AND IS THERE PRIMER MATERIAL STILL  
2 INSIDE THIS BASE, THIS COPPER OR THIS BRASS-LOOKING  
3 BASE?  
4 A YES, THERE IS.  
5 Q AND IS THAT WHAT IS STRUCK FIRST BY THE  
6 FIRING PIN?  
7 A YES.  
8 Q DOES THAT THEN IGNITE THE GUNPOWDER?  
9 A YES.  
10 Q AND DOES THAT START THE PROCESS OF  
11 PUSHING STUFF OUT OF THE TUBE?  
12 A YES, IT DOES.  
13 Q THROUGH THE BARREL OF THE GUN?  
14 A YES.  
15 MS. ABRAMSON: WHAT I'D LIKE TO DO IS PUT  
16 THESE REMAINING PIECES NOW INTO THIS PLASTIC  
17 ENVELOPE, HAVE IT STAPLED, AND PUT IT INSIDE THE  
18 MANILA ENVELOPE. I'VE NUMBERED, FOR THE COURT'S

19 RECORDS, ALL OF THE COMPONENTS OF THAT ONE SHELL AS

20 326.

21 WITH THE AIR INSIDE IT'S HARD TO PUT IT

22 IN.

23 Q OKAY. NOW, I WANT TO SHOW YOU WHAT'S

24 PREVIOUSLY BEEN MARKED 305 AND ASK YOU TO TAKE OUT

25 THE MATERIALS THAT ARE INSIDE THAT BAG.

26 A REMOVING THREE PLASTIC BAGS FROM THE

27 MANILA ENVELOPE.

28 Q AND DO YOU RECOGNIZE WHAT THOSE PLASTIC

42134

1 BAGS COMPRISE?

2 A THIS ONE?

3 Q IF I TELL YOU HYPOTHETICALLY THERE'S

4 GUNPOWDER WADDED UP --

5 A OKAY. ONE PLASTIC BAG HAS A NUMBER OF

6 COPPER-PLATED SHOT PELLETS THAT APPEAR TO BE

7 CONSISTENT WITH NO. 4 BUCK BY SIZE.

8 AND IN THE OTHER PLASTIC BAG IS A

9 .12-GAUGE SHOTGUN SHELL WITH THE TOP CUT OPEN AND

10 REVEALING A COMBINATION WAD OR A WAD COLUMN.

11 Q AND THAT WAD COLUMN IS WHAT WE'VE ALSO

12 BEEN CALLING, AT LEAST WHAT I'VE BEEN CALLING IN

13 EXAMINING YOU, A SHOT CUP?

14 A IT'S GOT A SHOT CUP AS PART OF ITS

15 COMPONENTS, YES.

16 Q WHY DON'T YOU TAKE THAT OUT SO YOU CAN

17 TALK ABOUT THE THREE DIFFERENT COMPONENTS OF THAT.

18 THAT LOOKS LIKE ONE PIECE. HOW DOES IT

19 HAVE THREE COMPONENTS?

20 A TECHNICALLY, IT IS JUST ONE THING, BUT

21 IT TAKES THE PLACE OF THREE SEPARATE COMPONENTS WHEN

22 THEY WERE MADE OF SEPARATE COMPONENTS, I GUESS.

23 THE BOTTOM PORTION, THIS DISK RIGHT

24 HERE, SERVES AS THE OVER-POWER WAD.

25 THE NEXT PORTION THAT HAS THIS LITTLE

26 OVAL SHAPE, THAT'S RIGHT ON TOP OF THE DISK ON THE

27 BOTTOM, IS WHAT WOULD BE REFERRED TO NOW AS A SPACER

28 WAD.

42135

1 AND THEN THIS PORTION HERE, THIS TOP

2 PORTION, IS THE SHOT CUP. THAT'S THE PART THAT

3 WOULD ACTUALLY HOLD THE SHOT PELLETS.

4 SO THIS TAKES THE PLACE OF, ACTUALLY,

5 THREE COMPONENTS, WHEN SHOT CUPS WERE USED AS SPACER

6 WADS, AND OVER-POWDER WADS WERE USED.

7 Q AND, TO THE BEST OF YOUR UNDERSTANDING

8 RIGHT NOW, CURRENTLY, FIOCCHI IS STILL SELLING NO. 4

9 BUCKSHOT PACKED IN EXACTLY THE WAY THAT THE ROUNDS  
10 WERE REVEALED TO BE PACKED FROM THE BALLISTIC  
11 EVIDENCE IN THIS CASE, CORRECT?

12 A THAT'S CORRECT.

13 Q IF YOU WOULD TAKE A LOOK AT THE BASE OF  
14 THAT CARTRIDGE FROM THE ONE THAT YOU JUST TOOK APART  
15 TO SEE THE BRAND NAME OF IT, THE BASE THAT'S INSIDE  
16 THE BAG.

17 A YES.

18 Q IS THAT ALSO FIOCCHI?

19 A YES, IT IS.

20 Q IF YOU, DEPUTY VAN HORN, WANTED TO DO  
21 SOME TEST-FIRINGS IN ORDER TO GET A GENERAL RANGE OF  
22 DISTANCE, IN OTHER WORDS, TO GET A GENERAL IDEA OF  
23 HOW FIOCCHI NO. 4 SPREADS UPON FIRING, AND IF YOU  
24 WANTED TO DO THOSE TEST-FIRINGS IN RELATION TO THIS  
25 CASE, GIVEN THE BALLISTIC EVIDENCE THAT WAS  
26 COLLECTED HERE, WOULD YOU HAVE USED THAT AMMUNITION,  
27 THAT COPPER-PLATED AMMUNITION IN THE SHOT CUP?

28 MR. CONN: OBJECTION. IRRELEVANT.

42136

1 THE COURT: OVERRULED.

2 THE WITNESS: NO.

3 Q BY MS. ABRAMSON: WHY NOT?

4       A    THERE'S TWO THINGS HERE THAT ARE GOING  
5 TO MAKE A DISTINCT DIFFERENCE IN THE PATTERNS THAT  
6 WOULD BE PRODUCED BY THE BUCKSHOT.

7           NUMBER ONE IS THE COPPER-PLATING OF THE  
8 LEAD. COPPER IS HARDER THAN LEAD. LEAD IS VERY  
9 SOFT. IT'S A VERY DENSE METAL, BUT IT'S VERY SOFT.  
10 SO WHAT HAPPENS IS IT GETS DENTED VERY EASILY. SO  
11 BECAUSE IT'S DENTED, IT GETS OUT OF ROUND AND IT  
12 WON'T FLY AS TRUE AS SOMETHING NICE AND ROUND AND  
13 SPHERICAL. THAT'S ONE OF THE PURPOSES FOR PUTTING  
14 COPPER-PLATING ON SHOT IS TO MAKE IT FLY TRUER, AND  
15 IF IT FLIES TRUER, IT'S GOING TO CREATE SMALLER  
16 PATTERNS OF DISPERSION THAN WOULD BUCKSHOT THAT'S  
17 NOT PROTECTED BY THE COPPER-PLATING.

18          THAT'S ALSO THE EXACT SAME REASON THAT  
19 YOU PUT A SHOT CUP IN BUCKSHOT, BECAUSE AS THE  
20 SHOT -- AS THE PELLETS, THE BUCK PELLETS, ARE MAKING  
21 THEIR WAY DOWN THE BARREL, THEY'RE GOING DOWN THERE  
22 AT SOMEWHERE BETWEEN 12 AND 1400 FEET PER SECOND AND  
23 THEY GET OUT OF THERE PRETTY QUICKLY. BUT IN THAT  
24 TIME AS THEY'RE GOING DOWN THE BARREL THAT SHOT IS  
25 BOUNCING OFF THE BARREL, BOUNCING OFF ONE ANOTHER,  
26 AND THE SHOT BECOMES DEFORMED.

27          SO, ONCE AGAIN, BY PLACING A BARRIER,  
28 WHICH IS THIS CUP HERE, BETWEEN THE SHOT PELLETS AND

1 THE BARREL, IT HOLDS THE BUCKSHOT IN A LITTLE BIT  
2 TIGHTER GROUP, EVEN INSIDE THE BARREL, THAN IT WOULD  
3 IF IT WAS JUST LOOSE IN THE BARREL.

4 SO, IF YOU WERE TO SHOOT BUCKSHOT THAT  
5 WAS JUST STRAIGHT LEAD BUCKSHOT, AND THEN YOU WERE  
6 TO SHOOT IT THAT WAS CONTAINED IN A SHOT CUP, AND  
7 THEN YOU WERE TO SHOOT IT IN -- WITH COPPER-PLATED  
8 SHOT, AT THE SAME DISTANCE FROM THE SAME SHOTGUN,  
9 WITH AMMUNITION FROM THE SAME MANUFACTURER, YOU'D  
10 PROBABLY SEE THREE VERY DIFFERENT PATTERNS AT THE  
11 SAME RANGES.

12 Q SO, CAN YOU THINK OF ANY SCIENTIFIC  
13 PURPOSE IT WOULD SERVE TO DO TEST-FIRES WITH WHAT IS  
14 CLEARLY THE WRONG AMMUNITION IN A CASE?

15 A NO.

16 Q I WANT TO PACK THIS UP. LET ME JUST  
17 INDICATE WHAT EVIDENCE ITEM THAT WAS THAT YOU WERE  
18 JUST EXAMINING. THAT WAS 305.

19 LET'S PUT THE PIECES BACK TOGETHER.

20 NOW, THE SHOT CUP THAT IS CONTAINED  
21 WITHIN THIS FIOCCHI NO. 4 IS STANDARD SIZE FOR EACH  
22 AND EVERY ROUND, ISN'T IT?

23 A NO.

24 Q I'M TALKING ABOUT IF I BUY A BOX OF  
25 THOSE.

26 A YES.

27 Q WOULD YOU EXPECT THE SHOT CUP TO BE

42138

1 A YES.

2 Q AND WOULD YOU EXPECT IT TO HAVE THE SAME  
3 CAPACITY, IN OTHER WORDS, TO HOLD THE SAME NUMBER OF  
4 PELLETS IN EACH AND EVERY SHELL?

5 A YES.

6 Q IF YOU BOUGHT A CASE OF 200 OF THEM,  
7 WOULD THAT STILL BE TRUE, THE SHOT CUP WOULD ALWAYS  
8 BE THE SAME?

9 A IT SHOULD BE, YES.

10 Q THE SHOT CUP CAN ONLY HOLD SO MANY  
11 PELLETS, CORRECT?

12 A YES.

13 Q CAN YOU THINK OF ANY REASON WHY THAT  
14 PARTICULAR -- WELL, STRIKE THAT.

15 IS THAT A MORE ADVANCED DESIGN, IF YOU  
16 WILL, A MORE SCIENTIFICALLY ACCURATELY DESIGNED  
17 ROUND OF AMMUNITION THAN THE OTHER FIOCCHI-4 THAT  
18 YOU TOOK APART?

19 A WELL, I GUESS YOU COULD SAY THIS IS AN  
20 EVOLUTION. THIS IS WHAT PEOPLE ARE LOOKING FOR.  
21 GENERALLY YOU WANT THE BUCKSHOT TO HAVE TIGHTER  
22 PATTERNS IF YOU'RE TAKING LARGE GAME. IT INCREASES



23 YOUR CHANCE OF GETTING ALL YOUR PELLETS ON TARGET.

24 Q SO IT'S A BETTER PRODUCT IN A SENSE?

25 A IN A SENSE, YES.

26 Q WHAT DO YOU THINK THE LIKELIHOOD THAT IN

27 THIS BETTER PRODUCT THERE WOULD BE A WAD VARIATION

28 IN THE NUMBER OF PELLETS ACTUALLY PACKED IN EACH

42139

1 SHOT SHELL?

2 A SLIM.

3 MS. ABRAMSON: AND NOW, YOUR HONOR, WHAT I'D

4 LIKE TO DO IS PUT THE LIVE AMMUNITION BACK WITH THE

5 CLERK AND HAVE THE GUN BROUGHT OVER TO THE WITNESS.

6 THE COURT: LET'S VERIFY THERE'S NO LIVE AMMO

7 UP THERE.

8 THE WITNESS: I HAVE TWO LIVE ROUNDS OF

9 AMMUNITION I'VE BROUGHT, BUT I'LL BE HAPPY TO GIVE

10 THEM TO THE DEPUTY OR YOU.

11 (WITNESS HANDING AMMUNITION TO JUDGE.)

12

13 THE COURT: THAT'S IT THEN?

14 THE WITNESS: YES, SIR.

15 MS. ABRAMSON: WHILE WE'RE WAITING...

16 Q DEPUTY VAN HORN, IN THE FIRST TRIAL WHEN

17 YOU TESTIFIED DID YOU BRING TO COURT A SHERIFF'S

18 DEPARTMENT, FROM THE LAB, MOSSBERG-500 SERIES

19 SHOTGUN?

20 A YES, I DID.

21 Q AND DID YOU USE THAT TO DEMONSTRATE TO  
22 THOSE JURIES THE BASIC OPERATION OF THAT TYPE OF  
23 SHOTGUN?

24 A YES.

25 Q AND HAVE YOU, BEFORE YOU TOOK THE STAND  
26 THIS MORNING, ON AN EARLIER DAY WHEN YOU WERE HERE,  
27 TAKEN A LOOK AT -- I DON'T REMEMBER THE NUMBER OF  
28 THIS ITEM OF EVIDENCE -- BUT THE PARTICULAR SHOTGUN

42140

1 THAT -- 127. DID YOU TAKE A LOOK AT EVIDENCE ITEM  
2 127?

3 A YES, I DID.

4 THE COURT: WHY DON'T YOU GIVE IT TO THE  
5 WITNESS.

6 MS. ABRAMSON: YES.

7 Q AND DOES THAT GUN APPEAR TO OPERATE IN  
8 THE SAME FASHION AS THE GUN THAT YOU BROUGHT TO  
9 COURT LAST TIME?

10 A YES, MA'AM.

11 Q AND DOES THE SHERIFF'S DEPARTMENT, IN  
12 FACT, HAVE MORE THAN ONE MOSSBERG-500 SERIES SHOTGUN

13 IN ITS STOCK?

14 A IN OUR LIBRARY, YES, WE DO.

15 Q YOU CALL IT A LIBRARY?

16 A YES.

17 Q OR INVENTORY. OKAY.

18 COULD YOU DEMONSTRATE FOR THE JURY HOW

19 YOU WOULD GO ABOUT, FIRST OF ALL, LOADING THE

20 MAGAZINE IN THAT -- WELL, LET ME STRIKE THAT.

21 LET ME ASK YOU THIS: HOW MANY ROUNDS

22 DOES THE MAGAZINE IN THAT GUN HOLD?

23 A FIVE.

24 Q AND WHAT IS THE BARREL LENGTH OF THAT

25 GUN?

26 A EIGHTEEN AND A HALF INCHES.

27 Q AND WHAT IS THE LEGAL BARREL LENGTH FOR

28 GUNS IN CALIFORNIA?

42141

1 A FOR SHOTGUNS?

2 Q YES.

3 A IT'S 18 INCHES.

4 Q SO IT HAS TO BE AT LEAST 18 INCHES; IS

5 THAT CORRECT?

6 A THAT'S CORRECT.

7 Q ANYTHING SMALLER IS CONSIDERED SAWED OFF

8 OR ILLEGAL?

9 A IT'S CONSIDERED A SAWED-OFF SHOTGUN,  
10 YES, IT WOULD BE ILLEGAL.

11 Q SAWED-OFF SHOTGUNS, NO ONE IS ALLOWED TO  
12 POSSESS THOSE, CORRECT?

13 A WELL, NO PRIVATE PERSON, UNLESS THEY  
14 HAVE A PERMIT, YES. BUT GENERALLY THAT'S TRUE.

15 Q THE SHERIFF'S DEPARTMENT CAN HAVE THEM?

16 A AS A GOVERNMENT AGENCY, YES, THEY CAN  
17 HAVE THEM.

18 Q OKAY. THAT'S A HALF AN INCH LONGER THAN  
19 THE LEGAL MINIMUM, SO THAT IS A LEGAL GUN, CORRECT?

20 A YES.

21 Q ARE YOU FAMILIAR, AS PART OF YOUR  
22 NECESSARY EXPERTISE, WITH THE LAWS REGULATING THE  
23 SALE OF VARIOUS FIREARMS?

24 A TO A DEGREE, YES.

25 Q ARE YOU FAMILIAR WITH THE REQUIREMENTS  
26 THAT CERTAIN SHOTGUNS HAVE TO HAVE DOWELS, WOODEN  
27 DOWELS OR PLUGS IN THEM, SO THEY CANNOT LOAD MORE  
28 THAN THREE ROUNDS FOR HUNTING PURPOSES?

42142

1 A WELL, TECHNICALLY, THERE'S NO LAW THAT  
2 SAYS THAT A SHOTGUN MUST BE FURNISHED WITH A PLUG.

3 THE LAW THAT YOU'RE REFERRING TO IS A FISH AND GAME  
4 LAW THAT DOES NOT ALLOW YOU TO HAVE A SHOTGUN IN THE  
5 FIELD THAT WILL CONTAIN IN EXCESS OF THREE ROUNDS.

6 IN A SHOTGUN LIKE THIS YOU COULD HAVE  
7 EITHER THREE ROUNDS IN THE MAGAZINE OR YOU COULD  
8 HAVE TWO ROUNDS IN THE MAGAZINE AND ONE IN THE  
9 CHAMBER. BUT MOST SHOTGUNS THAT ARE SOLD FOR  
10 HUNTING PURPOSES DO, IN FACT, COME WITH PLUGS THAT  
11 ONLY ALLOW YOU TO PLACE TWO ROUNDS OF AMMUNITION IN  
12 THE MAGAZINE.

13 Q AND THEN ONE IN THE CHAMBER?

14 A AND THEN ONE IN THE CHAMBER, YES.

15 Q IS THAT PARTICULAR GUN, THE MOSSBERG  
16 50406, A GUN THAT IS DESIGNED OR MADE FOR HUNTING  
17 PURPOSES?

18 A NO.

19 Q AND WHAT'S THE MAIN PURPOSE, AS YOU  
20 UNDERSTAND IT, FOR A GUN OF THAT SIZE AND  
21 CONFIGURATION?

22 A IT'S A DEFENSIVE SHOTGUN.

23 Q AND TO THE BEST OF YOUR KNOWLEDGE, ARE  
24 GUNS LIKE THAT SOLD WITH DOWELS IN THEM?

25 A NOT USUALLY.

26 Q USUALLY THEY COME WITHOUT IT?

27 A THAT'S CORRECT.

28 Q THE EXPECTATION IS THEY'RE NOT GOING TO

1 BE USED FOR HUNTING ANYWAY?

2 A THAT'S CORRECT.

3 Q OKAY. NOW, DID YOU BRING IN A BUNCH OF  
4 DUMMY ROUNDS WITH YOU?

5 A YES, I DID.

6 Q CAN YOU DEMONSTRATE FOR THE JURY WHAT IT  
7 TAKES TO LOAD THE MAGAZINE.

8 A OKAY. THESE ARE CALLED DUMMY ROUNDS,  
9 OR, ACTUALLY, THEY'RE REALLY CALLED ACTION-PROVING  
10 ROUNDS. AND THEY HAVE NO PRIMER. THERE IS NO GUN  
11 POWDER, NO PRIMER; OTHERWISE, THEY'RE BASICALLY MADE  
12 JUST LIKE ANY OTHER SHOTGUN SHELL, SO THAT YOU CAN  
13 CHECK TO SEE HOW A FIREARM FUNCTIONS WITHOUT  
14 ACTUALLY HAVING TO FIRE IT.

15 Q DID YOU MAKE THOSE?

16 A NO. WE BOUGHT THESE FROM -- THIS IS A  
17 REMINGTON. WE HAVE A COUPLE DIFFERENT  
18 MANUFACTURERS. WE BUY THEM FROM THE MANUFACTURERS.

19 Q THE MANUFACTURERS PROVIDE THOSE FOR THAT  
20 VERY PURPOSE, SO THAT VARIOUS PEOPLE CAN CHECK TO  
21 SEE IF A FIREARM IS FUNCTIONING PROPERLY WITHOUT  
22 HAVING ANY ACTUAL EXPLOSIVE INSIDE?

23 A THAT'S CORRECT.

24 Q SO THERE'S NO PRIMER?

25 A NO.

26 Q IS THERE GUN POWDER IN THEM?  
27 A NO.  
28 Q IN ALL OTHER RESPECTS THEY HAVE THE SAME

42144

1 WEIGHT AND FEEL AS A SHOTGUN SHELL?

2 A YES.

3 Q OKAY. GO AHEAD AND DEMONSTRATE FOR THE  
4 JURY HOW YOU GO ABOUT LOADING THAT.

5 A OKAY. I'VE ALREADY CHECKED THE  
6 SHOTGUN. THERE'S NO ROUNDS IN THE MAGAZINE AND THE  
7 CHAMBER'S EMPTY AS WELL. THERE'S NO AMMUNITION IN  
8 HERE OF ANY TYPE.

9 TO LOAD THIS SHOTGUN --

10 Q WOULD YOU JUST STOP FOR A MOMENT, DEPUTY  
11 VAN HORN, AND SHOW THE JURY, WHAT DOES IT TAKE --  
12 LET'S SAY I CAME ACROSS THAT GUN AND I WANTED TO  
13 KNOW IF THERE WAS ANY AMMUNITION IN THE MAGAZINE.  
14 WHAT WOULD I HAVE TO DO, SHORT OF PULLING THE  
15 TRIGGER -- WHICH IS THE HARD WAY -- WHAT WOULD I  
16 HAVE TO DO TO VERIFY THAT THERE'S NO AMMUNITION IN  
17 THE MAGAZINE?

18 A OKAY. THIS IS CALLED A SLIDE HANDLE OR  
19 A PUMP HANDLE. AND NORMALLY -- THIS IS IN A PARTIAL  
20 RELOADING CONDITION RIGHT NOW -- SO WHAT WE'RE GOING

21 TO DO IS PUT YOUR THUMB ALL THE WAY FORWARD. WHAT  
22 YOU WOULD DO IS LOOK INTO THE LOADING PORT, WHICH IS  
23 IN THE BOTTOM OF THE SHOTGUN HERE. THERE'S A LITTLE  
24 PLUG HERE. IT'S A MAGAZINE PLUG. AND YOU'D LOOK  
25 THERE, AND WHAT YOU'RE LOOKING FOR IS A ROUND OF  
26 SHOTGUN AMMUNITION. WHEN YOU SEE THIS PLUG, THEN  
27 YOU KNOW THERE'S NO ROUNDS OF AMMUNITION INSIDE THE  
28 TUBE, THE MAGAZINE TUBE, WHICH IS THIS TUBE RIGHT

42145

1 HERE (INDICATING).

2 SO AT THIS POINT YOU KNOW THAT THE  
3 MAGAZINE IS EMPTY. OKAY?

4 Q WHAT DOES THE PLUG LOOK LIKE? IF I HAD  
5 NEVER SEEN ONE BEFORE, WOULD I KNOW IT'S A PLUG?

6 A MORE IMPORTANTLY, WHAT YOU'D KNOW IS  
7 IT'S NOT A SHOTGUN SHELL. IT'S A BLACK PLASTIC, OR  
8 IT MIGHT BE AN ALUMINUM PIECE INSIDE HERE.

9 Q SORT OF LOOKS LIKE A BUTTON?

10 A YES. TO FURTHER MAKE SURE THIS SHOTGUN  
11 IS OPEN, IF IT'S CLOSED AT THIS POINT THERE'S NO WAY  
12 TO TELL IF THERE'S A LIVE ROUND OF AMMUNITION IN THE  
13 CHAMBER, WHICH IS THE BACK PORTION OF THE BARREL,  
14 WHICH IS THE TOP OF THE TUBE. SO WHAT YOU'D HAVE TO  
15 DO IS OPERATE THE SLIDE RELEASE, WHICH IS IN THE



16 BACK OF THE TRIGGER HERE. YOU JUST DEPRESS IT AND  
17 THAT FREES THE SLIDE SO YOU CAN PULL THE SLIDE DOWN;  
18 AND NOW YOU WOULD LOOK IN THE EJECTION PORT AND  
19 YOU'RE ACTUALLY LOOKING IN THE BACK OF THE BARREL  
20 ONCE AGAIN. ACTUALLY, IF THERE'S A LIVE ROUND OF  
21 AMMUNITION, PULLING THE SLIDE BACK WOULD EJECT THE  
22 ROUND OF AMMUNITION. SO IF THERE IS A ROUND HERE IT  
23 SHOULD PULL IT OUT. THAT'S WHAT GETS PEOPLE HURT.  
24 YOU STILL LOOK INSIDE TO MAKE ABSOLUTELY SURE  
25 THERE'S NO AMMUNITION IN HERE.

26 Q BECAUSE THEY COULD GET STUCK AND BE  
27 THERE?

28 A THEY COULD.

42146

1 Q OKAY. IN ITS ORIGINAL CONDITION, LET'S  
2 SAY, IF I BOUGHT THIS GUN RIGHT NOW, IS THIS ITS  
3 STARTING POSITION, IF YOU WILL, WITH THIS SLIDE  
4 CLOSED, WITH THE SLIDING PART TOWARDS THE END OF THE  
5 MAGAZINE?

6 A YES.

7 Q OKAY.

8 A AND TO LOAD THIS THROUGH THE LOADING  
9 GATE HERE, OR LOADING PORT, YOU'VE GOT TO MAKE SURE  
10 THAT SLIDE HANDLE IS IN THE FRONT POSITION, THE

11 FORWARD POSITION. AND YOU TAKE A ROUND OF AMMUNITION.  
12 YOU PLACE IT IN HERE AND JUST PUSH IT IN WITH YOUR  
13 THUMB. THERE'S A DEVICE THAT'S CALLED A SHELL  
14 STOP. THAT'S WHAT HOLDS THE ROUNDS OF AMMUNITION IN  
15 MAGAZINE. YOU JUST CONTINUE LOADING.

16 Q DOES IT TAKE ANY FORCE OR EFFORT TO DO  
17 THAT?

18 A WELL, YOU HAVE TO OVERCOME THE SPRING  
19 PRESSURE, AND THE MORE ROUNDS YOU PUT IN, WHEN YOU  
20 PUT IN THE FOURTH OR FIFTH ROUND IT TAKES A LITTLE  
21 MORE PRESSURE, BUT IT'S NOT A LOT OF PRESSURE. SO  
22 THIS IS THE FIFTH ROUND. SO THIS SHOTGUN MAGAZINE  
23 TUBE IS NOW LOADED TO ITS CAPACITY OF FIVE ROUNDS.

24 Q IT'S LONGER THAN FIVE ROUNDS, THOUGH.  
25 WHAT KEEPS YOU FROM PUTTING MORE IN?

26 A WELL, THE SPRING, WHICH WOULD BE THE  
27 WHOLE LENGTH OF THE MAGAZINE TUBE HERE, HAS TO HAVE  
28 A PLACE TO COMPRESS. SO AS THE SPRING COMPRESSES,

42147

1 THAT TAKES UP SPACE; AND ALSO, THEY LIMIT IT TO THIS  
2 LENGTH, FOR WHATEVER REASON.

3 Q IS THE GUN NOW READY TO BE FIRED?

4 A NO.

5 Q WHAT DO YOU HAVE TO DO TO MAKE IT READY?

6       A   YOU NOW HAVE TO PLACE A ROUND OF  
7 AMMUNITION INTO THE CHAMBER. AND THE WAY YOU DO  
8 THAT IS, ONCE AGAIN, YOU PRESS THE SLIDE RELEASE OR  
9 THE PUMP RELEASE, OR WHATEVER YOU WANT TO CALL IT,  
10 BACK HERE AT THE BACK OF THE TRIGGER, FORWARD; AND  
11 WHEN YOU DO THAT, THAT FREES THE SLIDE. OTHERWISE,  
12 IF YOU DON'T DEPRESS IT, YOU CAN'T PULL THE SLIDE.  
13 SO YOU HAVE TO DEPRESS IN THE BUTTON HERE, PUT THE  
14 SLIDE DOWN; AND YOU CAN SEE A ROUND OF AMMUNITION  
15 HAS DROPPED OUT OF THE MAGAZINE ON TO THIS CHROME  
16 PIECE RIGHT HERE THAT'S CALLED AN ELEVATOR. THAT'S  
17 WHAT MOSSBERG CALLS IT. WHEN YOU PUSH THE PUMP BACK  
18 FORWARD YOU CAN SEE THE ELEVATOR COMES UP, AND AS IT  
19 CONTINUES FORWARD IT TAKES THE ROUNDS OF AMMUNITION  
20 AND PLACES IT IN THE CHAMBER, AND NOW THE FIREARM IS  
21 READY TO FIRE.

22       Q   OKAY. SO NOW, IF YOU PULL THE TRIGGER,  
23 WHICH I WON'T -- I DON'T THINK ANYTHING WILL HAPPEN  
24 IF YOU PULL THE TRIGGER HERE?

25       A   NO.

26       Q   IF YOU PULL THE TRIGGER, WHAT HAPPENS?

27       A   WHEN YOU PULL THE TRIGGER IT DOES TWO  
28 THINGS. OBVIOUSLY, IT FIRES THE ROUNDS OF

1 AMMUNITION. BUT IT ALSO INTERNALLY ACTIVATES THE  
2 SLIDE RELEASE, SO WHEN YOU PULL THE TRIGGER IT'S  
3 JUST GOING TO MAKE A CLICKING SOUND. YOU TAKE THE  
4 SAFETY OFF FIRST.

5 Q GOOD IDEA.

6 A OKAY. THAT WOULD BE -- YOU PULL THE  
7 TRIGGER, IT RELEASES THE HAMMER. THE HAMMER STRIKES  
8 THE FIRING PIN AND FIRES THE ROUND.

9 WELL, WHEN YOU DO THAT, YOU NO LONGER  
10 HAVE TO OPERATE THIS LITTLE BUTTON HERE. IT JUST  
11 DOES IT AUTOMATICALLY. SO AS YOU OPERATE THE SLIDE  
12 TO GET THE SPENT CARTRIDGE OUT OF THE CHAMBER, AND  
13 THAT'S HOW THAT HAPPENS, COMES OUT OF THIS PORT  
14 RIGHT HERE; AND, ONCE AGAIN, WHEN IT COMES ALL THE  
15 WAY TO THE BACK HERE IT DROPS ANOTHER ROUND OF  
16 AMMUNITION ON TO THE ELEVATOR AND YOU JUST CONTINUE  
17 WITH THAT PROCESS UNTIL YOU'RE DONE SHOOTING.

18 Q OKAY. ONCE YOU'VE LOADED THOSE FIVE  
19 ROUNDS AND PRESS THE RELEASE AND BROUGHT THE SLIDE  
20 BACK DOWN SO YOU CAN FIRE, OKAY, ONCE THAT IS  
21 COMPLETED, TO FIRE EACH OF THOSE FIVE ROUNDS, WHAT  
22 ALL DO YOU HAVE TO DO, JUST KEEP MOVING THE PUMP?

23 A WELL, KEEP MOVING THE PUMP ALL THE WAY  
24 BACK AND ALL THE WAY FORWARD, AND YOU HAVE TO PULL  
25 THE TRIGGER.

26 Q SO YOU JUST SLIDE THE PUMP AND PULL THE  
27 TRIGGER?

28 A RIGHT.

1 Q HOW QUICKLY CAN THAT BE DONE? TO FIRE  
2 FIVE ROUNDS WITH THIS TYPE OF PUMP ACTION SHOTGUN,  
3 HOW FAST CAN THAT BE DONE? DO YOU KNOW?

4 A WELL, IT WOULD DEPEND ON A LOT OF  
5 THINGS. IT WOULD DEPEND ON THE DEXTERITY OF WHO WAS  
6 OPERATING THE GUN. IF THE GUN WAS BEING FIRED FROM  
7 THE SHOULDER AND YOU TOOK THE GUN AWAY FROM YOUR  
8 SHOULDER TO PUMP THE GUN AND HAD TO BRING IT UP,  
9 THAT WOULD, OBVIOUSLY, TAKE MORE TIME.

10 YOU COULD FIRE FIVE SHOTS IN A PRETTY  
11 SHORT AMOUNT OF TIME.

12 Q FIVE SECONDS?

13 A I WOULD SAY SO.

14 Q SO IF YOU HAD, HYPOTHETICALLY, TWO  
15 PEOPLE, EACH FIRING FIVE SHOTS MORE OR LESS  
16 SIMULTANEOUSLY, YOU COULD FIRE TEN ROUNDS IN FIVE  
17 SECONDS, CORRECT?

18 A THAT'S A POSSIBILITY.

19 Q EVEN IF YOU WENT A LITTLE SLOWER YOU  
20 COULD FIRE TEN ROUNDS CERTAINLY IN 10 SECONDS?

21 A YES.

22 Q NOW, WITH RESPECT TO THE BASIC MANNER IN  
23 WHICH SHOTGUN AMMUNITION OPERATES, IS THERE A CHART  
24 THAT YOU HELPED ASSEMBLE FROM THE FIRST TRIAL THAT

25 WAS USED IN THAT TRIAL?

26 A YES.

27 MS. ABRAMSON: YOUR HONOR, I HAVE WHAT WAS

28 PREVIOUSLY 44. WE'VE REMARKED IT NOW AS 324.

42150

1 Q IS THIS THE CHART -- I DON'T KNOW. HIGH  
2 IS USUALLY NOT GOOD HERE. IS THAT VISIBLE? OKAY.

3 IS THIS THE CHART THAT YOU HELPED  
4 PREPARE IN 1993?

5 A YES.

6 Q AND WHAT DOES THIS CHART PURPORT TO  
7 ILLUSTRATE, DEPUTY VAN HORN?

8 A TO THE LEFT SIDE OF THE CHART AND ALSO  
9 IN THE MIDDLE, WOULD BASICALLY SHOW -- YOU WANT ME TO  
10 GET DOWN THERE?

11 Q YEAH. I THINK IF YOU COULD EXPLAIN IT.

12 A THIS WOULD -- THESE THREE DIAGRAMS HERE,  
13 A, B, C, AND D, WOULD BASICALLY SHOW THE STAGES OF  
14 SHOT DISPERSION AS IT LEAVES THE BARREL. IN FIGURE  
15 A HERE --

16 Q WHAT'S THE DARK COMPARED TO THE WHITE?

17 A OKAY. WHAT WE'RE REALLY LOOKING AT HERE  
18 IS THE INNER CIRCLE, THE INSIDE PORTION ON BOTH OF  
19 THESE WOULD REPRESENT WHAT YOU'D SEE IN ACTUALITY.

20           SO KIND OF DISCARD THE OUTSIDE CIRCLE  
21 HERE AND CONCENTRATE ON THE INSIDE. AND THIS WOULD  
22 REPRESENT, UP TO AND INCLUDING A CONTACT WOUND, A  
23 SHOTGUN, OUT TO SOME DISTANCE.

24           NOW, I CAN'T TELL YOU WHAT THAT DISTANCE  
25 IS WITHOUT A SPECIFIC SHOTGUN AND A SPECIFIC ROUND  
26 OF AMMUNITION. SO THEY WILL -- THE PELLETS WILL  
27 LEAVE -- NO MATTER WHAT SIZE THEY ARE, THEY'RE GOING  
28 TO LEAVE THE BARREL. AND FOR SOME DISTANCE THEY'RE

42151

1 GOING TO STAY TOGETHER AND THEY'RE GOING TO PUMP  
2 JUST ONE SINGLE HOLE THROUGH AN OBJECT WITHOUT  
3 LEAVING ANY INDICATION OF INDIVIDUAL PELLET  
4 IMPACTS.

5           NOW, WHEN YOU GET A LITTLE BIT FURTHER  
6 AWAY, SOME PLACE AFTER THIS PATTERN STARTS TO OPEN  
7 UP JUST A LITTLE BIT, AND WE'RE LOOKING AT THE  
8 INSIDE HERE, AND YOU CAN SEE WHAT'S CALLED -- WE  
9 CALL IT RAT-HOLING BECAUSE NOBODY ELSE TOLD US WHAT  
10 TO CALL IT.

11       Q   HOW ABOUT SCALLOPING?

12       A   SCALLOPING. AND WHAT HAPPENS HERE --  
13 AND THIS WOULD BASICALLY REPRESENT A BIRD SHOT  
14 PATTERN HERE, BUT THE SAME WOULD HOLD TRUE WITH

15 BUCK.

16 Q THE REASON THAT INDICATES BIRD SHOT IS  
17 THERE'S SO MANY LITTLE PELLETS REPRESENTED THERE; IS  
18 THAT RIGHT?

19 A YES. SO IF YOU LOOKED AT THIS PATTERN  
20 FROM THE TOP, WHAT YOU'D SEE IS LIKE JUST ONE SINGLE  
21 LEAD COLUMN GOING OUT.

22 FOR THE SAKE OF ARGUMENT, THE INTERNAL  
23 DIMENSION OF A .12-GAUGE SHOTGUN IS 729 THOUSANDTHS,  
24 OR JUST SHY OF THREE-QUARTERS OF AN ITCH.  
25 GENERALLY, THIS WOULD BE THREE QUARTERS OF AN INCH.

26 SO, NOW ONCE YOU GET PAST THE DISTANCE  
27 WHERE THIS PATTERN IS GOING TO BE PRODUCED, GETS A  
28 LITTLE BIT FURTHER FROM THE BARREL, AND IF YOU WERE

42152

1 TO TAKE A PICTURE DOWN FROM THE TOP YOU'D SEE THAT  
2 MAYBE NOW IT'S 775 THOUSANDTHS, OR NOW IT'S MORE  
3 THAN THREE-QUARTERS OF AN INCH. THE PELLETS ARE  
4 STARTING TO SPREAD AWAY FROM THE GROUP, BUT THEY'RE  
5 NOT INDIVIDUALLY LEAVING THE GROUP YET.

6 AS THE PATTERN CONTINUED ON DOWN RANGE,  
7 YOU START TO GET SOME PELLETS THAT ARE LEAVING THE  
8 MAIN GROUP, AND THEY CALL THESE INDEPENDENT OR  
9 SATELLITE PELLET STRIKES. BUT THE BULK OF THE



10 PATTERN IS STILL TOGETHER.

11 AND THEN AS THE PATTERN CONTINUES DOWN

12 RANGE YOU GET INDIVIDUAL PELLET STRIKES WHERE ALL OF

13 THE PELLETS ARE GOING TO TAKE THEIR OWN PATH AND

14 MAKE THEIR INDIVIDUAL HOLES IN THE TARGET.

15 DID YOU WANT THIS EXPLAINED TOO?

16 Q YES, I DO. ON THE RIGHT SIDE THERE

17 APPEARS TO BE PHOTOGRAPHS OF A GUN BARREL, AND THEN

18 VARIOUS THINGS COMING OUT OF IT. SO --

19 JUST SO THE COURT KNOWS, THE PHOTOGRAPHS

20 ARE SUB-LABELED A, B, C, AND D.

21 AND THE SHOT PATTERNS THAT YOU

22 PREVIOUSLY DESCRIBED WERE ALSO LABELED FROM A

23 THROUGH D?

24 A YES.

25 Q OKAY. WHY DON'T YOU EXPLAIN, FIRST OF

26 ALL, WHAT PHOTOGRAPH A SHOWS.

27 A OKAY. ON THE TOP PHOTOGRAPH, ON THE

28 LEFT SIDE OF THE PHOTOGRAPH YOU CAN SEE THE MUZZLE,

42153

1 WHICH IS THE FORWARD END OF A BARREL, WITH THE FRONT

2 SIDE ATTACHED TO IT; AND YOU SEE WHAT APPEARS TO BE

3 A CLOUD THAT'S COMING OUT OF HERE. AND WHAT THAT

4 IS, IS BASICALLY THE CLOUD OF GASES AND DEBRIS

5 THAT'S ALREADY INSIDE THE BARREL THAT ARE BEING  
6 PUSHED OUT THE BARREL BY THE APPROACHING OF THE SHOT  
7 COLUMN AND THE GASES. SO THAT'S WHAT WE SEE HERE.  
8 THERE'S NO PELLETS OR PRODUCTS OF COMBUSTION FROM  
9 THIS SHOT HAVING LEFT THE BARREL YET.

10 THE SECOND PHOTOGRAPH, PHOTOGRAPH B,  
11 ONCE AGAIN, YOU CAN SEE THE BARREL WITH THE FRONT  
12 SIGHT AND HERE'S THE SHOT PATTERN. IT'S PROBABLY  
13 ABOUT MAYBE AN INCH OR SO, TWO INCHES IN FRONT OF  
14 THE BARREL. AND RIGHT BEHIND THAT IN -- IS A BIG  
15 COLUMN OF SMOKE. IT'S JUST STARTING TO EXPAND.  
16 THOSE GASES ARE VERY, VERY HOT. THEY WANT TO  
17 EXPAND, LIKE ALL GASES DO. THEY WANT TO EXPAND AND  
18 GET OUT OF THERE TO WHERE THE AIR IS COOLER AND  
19 STUFF. SO THAT'S WHAT'S HAPPENING RIGHT HERE.

20 NOW, ONCE AGAIN, PART OF THE BARREL IS  
21 OBSCURED EVEN MORE THAN HERE. EVEN PART OF THE  
22 FRONT SIGHT IS OBSCURED. THE PELLETS ARE JUST A  
23 LITTLE BIT FURTHER DOWN RANGE; AND IF YOU LOOK AND  
24 COMPARE THE FRONT OF THE PATTERN IN PHOTOGRAPH B TO  
25 PHOTOGRAPH C, YOU CAN SEE THAT WE'RE JUST STARTING  
26 TO GET SOME SEPARATION HERE IN THE COLUMN OF SHOT.  
27 AND THE GAS CLOUD CONTINUES TO EXPAND UNTIL IT  
28 REACHES THE AMBIENT TEMPERATURE THAT'S OUTSIDE.

1           IN THE BOTTOM PHOTO WE CAN CLEARLY SEE  
2 THE MUZZLE ON THE FRONT SIGHT THE GAS CLOUD IS NOW  
3 QUITE A BIT LARGER, AND IN THIS PHOTOGRAPH WE CAN  
4 CLEARLY SEE -- AS A MATTER OF FACT, IF YOU LOOK AT  
5 THIS, THERE'S ONE PELLET THAT'S JUST OUT IN FRONT OF  
6 THE REST OF THE PELLETS. YOU CAN SEE THE WADDING  
7 THAT'S BEHIND THE PELLETS. AND THIS IS WHAT OCCURS  
8 AS YOU GET FURTHER AND FURTHER AWAY FROM THE BARREL.

9       Q   NOW, YOU'VE INDICATED THAT YOU COULD NOT  
10 GIVE A SPECIFIC DISTANCE AT WHICH YOU COULD PREDICT  
11 WHICH OF THESE TYPE OF PATTERNS YOU WOULD FIND  
12 UNLESS YOU'RE USING THE IDENTICAL GUN AND THE  
13 IDENTICAL AMMUNITION; IS THAT CORRECT?

14       A   THAT'S CORRECT.

15       Q   AND HOW -- STRIKE THAT.

16           IF YOU'RE INVESTIGATING A CASE, DEPUTY  
17 VAN HORN, AND THERE ARE SHOT PATTERNS, PELLET  
18 PATTERNS OBSERVABLE, EITHER ON PHYSICAL OBJECTS OR  
19 ON THE BODIES OF DECEDENTS, AND IT'S IMPORTANT FOR  
20 THE CASE THAT YOU HAVE SOME IDEA OF THE DISTANCE  
21 AWAY FROM THE OBJECT THAT BEARS THAT PATTERN THE  
22 MUZZLE OF THE GUN WAS, WHAT WOULD YOU DO IN ORDER TO  
23 COME UP WITH SOME IDEA OF WHAT POSSIBLE DISTANCES  
24 THE MUZZLE OF THE GUN COULD HAVE BEEN FROM THE  
25 ULTIMATE TARGET?

26       A   WITHOUT THE GUN AND THE AMMUNITION?

27       Q   LET'S ASSUME YOU DO HAVE THE GUN AND YOU

42155

1 OF AMMUNITION, WHAT AMMUNITION WAS USED?

2 A THEN I WOULD TAKE THAT GUN AND LIKE  
3 AMMUNITION AND GO OUT AND CONDUCT DISTANCE  
4 DETERMINATIONS AND GIVE THE INVESTIGATORS A  
5 BRACKETED RANGE THAT I FELT THAT THAT SHOT WAS FIRED  
6 IN.

7 Q OKAY. AND WHEN YOU SAY BRACKETED RANGE,  
8 WHAT DO YOU MEAN BY THAT?

9 A WELL, LET'S SAY, FOR INSTANCE, THAT THE  
10 PATTERN THERE, D -- JUST FOR THE SAKE OF ARGUMENT,  
11 WE'LL SAY FOUR INCHES ACROSS, AND THAT'S THE PATTERN  
12 THAT WE HAVE TO DEAL WITH.

13 THEN I WOULD TAKE THE SHOTGUN THAT WAS  
14 INVOLVED AND THE SAME TYPE OF AMMUNITION, THEN I  
15 WOULD GO OUT AND SHOOT FROM A DISTANCE TO WHERE I  
16 GOT A PATTERN THAT WAS FOUR INCHES, KNOWING FULL  
17 WELL THAT IF YOU TAKE A BOX OF AMMUNITION THAT'S THE  
18 SAME AND TAKE A SHOTGUN, THAT YOU'RE GOING TO GET A  
19 PRETTY GOOD VARIATION, EVEN WITHIN THAT SAME BOX OF  
20 SHOTGUN SHELLS. WHAT YOU WOULD HAVE TO DO, OR WHAT  
21 I WOULD DO, IS I WOULD GO TO A DISTANCE, MAYBE TWO  
22 FEET IN FRONT OF THAT, AND I WOULD SHOOT DISTANCE

23 PATTERNS UNTIL I GOT A PATTERN THAT WAS CONSISTENTLY  
24 SMALLER THAN THE PATTERN IN QUESTION.  
25 AND LET'S SAY, ONCE AGAIN FOR THE SAKE  
26 OF ARGUMENT, THAT THAT WAS SIX FEET. THEN I WOULD  
27 TAKE THE SAME TYPE OF AMMUNITION, AND I WOULD MOVE  
28 BACK TWO FEET FROM WHERE I GOT THIS PATTERN

42156

1 ORIGINALLY, AND I WOULD SHOOT PATTERNS UNTIL I GOT  
2 PATTERNS THAT WERE CONSISTENTLY LARGER THAN THE  
3 PATTERN IN QUESTION. AND LET'S SAY THAT WAS NINE  
4 FEET; AND, THEREFORE, THAT WOULD BE MY BRACKET,  
5 BETWEEN SIX FEET AND NINE FEET AWAY.

6 Q AND THAT'S -- EVEN THOUGH YOU MAY HAVE  
7 AT SEVEN AND A HALF FEET, LET'S SAY, GOTTEN THE  
8 IDENTICAL PATTERN, YOU WOULD STILL BRACKET IT?

9 A YES. ABSOLUTELY.

10 Q BECAUSE YOU CAN'T BE ABSOLUTELY CERTAIN  
11 THAT EVERY ROUND OF AMMUNITION FIRED AT EVERY TIME,  
12 EVEN THROUGH THE SAME GUN, WOULD PRODUCE THE  
13 IDENTICAL PATTERN AT THE IDENTICAL DISTANCE?

14 A THAT'S A GIVEN.

15 Q NOW, LET'S ASSUME YOU DO NOT HAVE THE  
16 SAME GUN BUT YOU DO HAVE A SIMILAR GUN, SAME  
17 MANUFACTURER, SAME EXACT MODEL NUMBER, AND YOU HAVE

18 THE IDENTICAL AMMUNITION, AND YOU WANT TO JUST GET A  
19 GENERAL RANGE.  
20 WOULD YOU DO TEST-FIRINGS AND COME UP  
21 WITH BRACKETED RANGES?  
22 A NO.  
23 Q WHY NOT?  
24 A BECAUSE, AS FAR AS I'M CONCERNED, IT'S A  
25 COMMANDMENT OF DOING DISTANCE DETERMINATIONS; IF YOU  
26 DON'T HAVE THE FIREARM, YOU DON'T DO DISTANCE  
27 DETERMINATIONS. FOR INSTANCE --  
28 Q I'M SORRY?

42157

1 A FOR INSTANCE --  
2 Q YES.  
3 A IF WE SAW THIS PATTERN, ONCE AGAIN, IN  
4 D, AND THE INVESTIGATOR WANTED TO KNOW HOW FAR AWAY  
5 THE SHOT WAS FIRED, BASICALLY THE ONLY THING I WOULD  
6 TELL HIM IS THAT IT'S NOT A CONTACT WOUND.  
7 Q THERE IS A GENERAL TRUISM, THOUGH, IS  
8 THERE NOT, THAT THE PATTERNS GET LARGER THE FARTHER  
9 AWAY YOU GO?  
10 A THAT'S A GIVEN, YES, MA'AM.  
11 Q AND THEY GET LARGER IN MORE OR LESS A  
12 GENERALLY CONSISTENT WAY?

13 A GENERALLY.  
14 Q FOR EXAMPLE, IF YOU'RE AT THE POINT  
15 WHERE -- IF YOU'RE AT THE POINT WHERE YOU HAVE A  
16 PARTIAL PATTERN -- LET'S SAY YOU KNOW YOU'RE DEALING  
17 WITH NO. 4 BUCKSHOT AS A HYPOTHETICAL; AND,  
18 THEREFORE, YOU KNOW THERE ARE 27 PELLETS TO BE  
19 ACCOUNTED FOR, OKAY?

20 A YES.

21 Q LET US SAY YOU FIND A PATTERN THAT  
22 EXISTS -- THAT CONSISTS OF WHAT APPEARS TO BE ABOUT  
23 HALF OF WHAT WE SEE ON DIAGRAM D HERE ON 324.  
24 OKAY? LET'S SAY YOU FIND 13 OR 14 PELLETS  
25 DISTRIBUTED IN THIS TYPE PATTERN, OKAY?

26 WOULD YOU EXPECT THE OTHER 13 PELLETS TO  
27 LOOK LIKE THAT, "A," TO BE TIGHTLY CLUMPED TOGETHER  
28 STILL?

42158

1 A NO.

2 Q WOULD YOU EVEN EXPECT THE OTHER 13  
3 PELLETS TO BE STILL IN A TIGHT ENOUGH CLUMP THAT  
4 THERE'S ONLY A LITTLE CLUMPING AROUND THE EDGE?

5 A NO.

6 Q WOULD YOU GENERALLY EXPECT THE REST OF  
7 THE 13 TO ALSO BE TRAVELING IN A STATE OF SEPARATION

8 SIMILAR TO THE ONES THAT YOU HAVE ON YOUR TARGET?

9 A YES.

10 Q IF A ROUND IS FIRED FROM A SHOTGUN, A  
11 BUCKSHOT ROUND, SAY, CONSISTING OF 27 PELLETS, AND  
12 THEY ARE AT A PARTICULAR DISTANCE SPREAD SUCH AS  
13 SHOWN IN DIAGRAM G, IS THERE ANY LAW OF NATURE THAT  
14 YOU ARE AWARE OF THAT WOULD HAVE PART OF THAT SHOT  
15 PATTERN COME BACK TOGETHER AND FORM A TIGHT PATTERN  
16 FOR THE SECOND TARGET?

17 A I'VE NOT SEEN THAT.

18 Q IS THAT ANYTHING THAT YOU COULD CONCEIVE  
19 OF HAPPENING?

20 A NO.

21 Q NOW, I WANTED TO GET BACK FOR JUST A  
22 MOMENT TO THE GUN.

23 BASED ON YOUR EXPERIENCE AS A FIREARMS  
24 EXAMINER, HOW MANY FIREARM CASES DID YOU SAY YOU'VE  
25 ACTUALLY WORKED ON, DONE EXAMINATIONS AND  
26 INVESTIGATIONS ON?

27 A YOU MEAN CASES OR GUNS THAT I'VE FIRED  
28 IN THE --

42159

1 Q THIS HAS TO DO WITH YOUR EXPERIENCE IN  
2 DEALING WITH CASES, WITH GUNS THAT HAVE BEEN USED IN



3 ALLEGEDLY CRIMINAL ACTIVITY, GUNS THAT HAVE BEEN  
4 FIRED IN THE COURSE OF ALLEGED CRIMINAL ACTIVITY.

5 A SEVERAL THOUSAND.

6 Q AND WITH RESPECT TO THE WAY GUNS ARE  
7 LOADED, PARTICULARLY SHOTGUNS, WHEN THEY ARE USED IN  
8 ACTIVITIES BETWEEN PEOPLE WHERE A PERSON IS SHOT BY  
9 A GUN THAT HAS BEEN LOADED BY ANOTHER PERSON, FOR  
10 EXAMPLE, ARE THERE PATTERNS THAT EMERGE AS TO HOW  
11 SHOTGUNS SUCH AS THE ONE THAT YOU HAVE THERE ARE  
12 USUALLY LOADED?

13 DO YOU UNDERSTAND THE QUESTION, OR AM I  
14 BEING OBTUSE?

15 A YES. YOU MEAN JUST WITH SHOTGUNS OR --

16 Q WELL, LET ME ASK YOU THIS: DID YOU FORM  
17 THE OPINION, WITH RESPECT TO THIS CASE, THAT THE  
18 NOTION THAT 12 ROUNDS WERE FIRED IS UNLIKELY, AND  
19 THAT A MORE LIKELY NUMBER WOULD HAVE BEEN 11?

20 A BASED UPON THE WAY I'VE SEEN GUNS IN  
21 CRIMINAL ACTIVITY LOADED, IT'S UNUSUAL TO FIND A GUN  
22 THAT HAS A MAGAZINE THAT'S SEPARATE FROM THE FIREARM  
23 LIKE THIS -- BASICALLY WHAT I'M TALKING ABOUT IS  
24 ANYTHING BUT A REVOLVER. WHERE A REVOLVER HAS A  
25 CYLINDER, YOU PRELOAD WITH SIX SHOTS, AND AS SOON AS  
26 YOU CLOSE THE CYLINDER THE FIREARM IS READY TO  
27 FIRE.

28 USUALLY FIREARMS THAT HAVE MAGAZINES

1 WITH THEM ARE LOADED TO THE CAPACITY OF THE  
2 MAGAZINE, AND WHEN THEY'RE PUT INTO, FOR LACK OF A  
3 BETTER TERM, PUT INTO ACTION, THE PERSON WILL CAUSE  
4 A ROUND OF AMMUNITION TO MAKE ITS WAY FROM THE  
5 MAGAZINE INTO THE CHAMBER, AND THAT'S THE EXTENT OF  
6 IT. IT'S UNUSUAL, OUTSIDE OF POLICE OFFICER  
7 SHOOTINGS, TO FIND A FIREARM WITH A MAGAZINE THAT IS  
8 LOADED TO THE CAPACITY OF THE FIREARM, WHICH MEANS  
9 THE MAGAZINE CAPACITY PLUS ONE ROUND.

10 Q IN ORDER TO GO BEYOND THE MAGAZINE, A  
11 GUN HAS TO BE MANIPULATED IN SUCH WAY THAT A SHELL  
12 IS THEN LOAD DIRECTLY INTO THE CHAMBER, CORRECT?

13 A YES.

14 Q WHEN YOU SAY OUTSIDE OF POLICE OFFICER  
15 SHOOTINGS, YOU MEAN OUTSIDE OF SITUATIONS WHERE  
16 POLICE OFFICERS HAVE THEMSELVES FIRED THE WEAPON?

17 A YES.

18 Q BECAUSE POLICE OFFICERS ARE TRAINED TO  
19 FULLY LOAD, INCLUDING INTO THE CHAMBER --

20 A YES.

21 Q -- OF NON-REVOLVERS?

22 A YES.

23 Q AND IN RECENT YEARS, IN FACT, HAVE MOST  
24 OF THE POLICE AGENCIES, IF NOT ALL OF THEM IN  
25 LOS ANGELES COUNTY, SWITCHED FROM REVOLVERS AS THEIR  
26 BASIC SERVICE WEAPON TO SEMI-AUTOMATIC HANDGUNS THAT

27 DO HAVE BOTH A MAGAZINE AND A CAPACITY TO ADD

28 ANOTHER ROUND TO THE CHAMBER?

42161

1 A YES.

2 Q AND IN THOSE CASES WHERE POLICE OFFICERS  
3 ARE USING THOSE KINDS OF GUNS, THEY DO LOAD EVEN  
4 INTO THE CHAMBER?

5 A YES.

6 Q BUT AMATEURS, IN YOUR EXPERIENCE, DO  
7 NOT?

8 A IT'S UNUSUAL, YES.

9 Q SO THAT IF YOU -- IF, HYPOTHETICALLY, YOU  
10 WERE INFORMED THAT IN THIS CASE TWO SHOTGUNS WERE  
11 USED AND EACH WERE LOADED TO THE CAPACITY OF ONLY  
12 FIVE ROUNDS EACH, AND THEN ONE GUN HAD AN ADDITIONAL  
13 ROUND LOADED AFTER THE FIRST FIVE WERE GONE, WOULD  
14 THAT BE TYPICAL OF HOW SHOTGUNS ARE USED?

15 MR. CONN: OBJECTION. ASSUMES FACTS NOT  
16 EVIDENCE.

17 THE COURT: SUSTAINED.

18 MS. ABRAMSON: IT'S A HYPOTHETICAL, YOUR  
19 HONOR.

20 THE COURT: HE'S ALREADY GIVEN HIS ANSWER AS  
21 FAR AS HOW THESE THINGS ARE DONE.

22 MS. ABRAMSON: ALL RIGHT. THANK YOU, YOUR  
23 HONOR.  
24 Q NOW, JUST TO GET THE OUTSIDE PARAMETERS,  
25 DETECTIVE VAN HORN, WOULD YOU EXPECT A DIFFERENT  
26 PATTERN WITH ANY SHOTGUN LOADED WITH NO. 4 BUCKSHOT  
27 IF THAT GUN WERE FIRED AT ONE FOOT VERSUS THIRTY  
28 FEET?

42162

1 A YES.

2 Q WOULD YOU EXPECT A DIFFERENT PATTERN, AN  
3 EVER-SPREADING PATTERN, FROM ANY, SAY, MOSSBERG  
4 SHOTGUN, IF THE GUN WERE FIRED FROM, SAY, THREE  
5 FEET, AS COMPARED TO FOURTEEN FEET?

6 A YES.

7 Q SO WHEN YOU SAY YOU REALLY CAN'T TELL A  
8 SPECIFIC RANGE, THERE ARE SOME GENERAL NOTIONS THAT  
9 AT CERTAIN DISTANCES YOU'LL GET A GREATER SPREAD OR  
10 A LESSER SPREAD?

11 MR. CONN: OBJECTION. LEADING.

12 THE COURT: OVERRULED.

13 Q BY MS. ABRAMSON: CORRECT?

14 A YES. THE FURTHER AWAY THE SHOT PATTERN  
15 GETS FROM THE END OF THE BARREL, THE BIGGER THE  
16 SPREAD OF THE PATTERN IS GOING TO BE, YES.

17 Q NOW, HAVE YOU EXAMINED THE CRIME-SCENE  
18 AND CORONER PHOTOGRAPHS IN THIS CASE?

19 A TO A DEGREE.

20 Q DID YOU LOOK AT THEM BACK IN '93 OR ONLY  
21 MORE RECENTLY?

22 A I LOOKED AT THEM IN '93 AND RECENTLY,  
23 YES.

24 Q AND DO YOU RECALL -- AND IF YOU DON'T I  
25 CAN SHOW IT TO YOU -- WELL, LET ME SHOW IT TO YOU.  
26 LET ME JUST PULL OUT ONE OF THE BOARDS THAT HAS A  
27 NUMBER OF THINGS MOUNTED.

28 THIS IS EXHIBIT 301. AND I'M JUST GOING

42163

1 TO STAND HERE FOR A MINUTE BECAUSE THIS IS SORT OF A  
2 LOW-TECH EVIDENCE PRESENTATION SYSTEM HERE.

3 IF YOU LOOK AT PHOTOGRAPH F, DO YOU  
4 RECOGNIZE THAT AS BEING A PHOTOGRAPH OF THE  
5 DECEDENT, JOSE MENENDEZ' LEFT ELBOW?

6 A YES.

7 Q AND IN YOUR OPINION, IS THERE A, QUOTE,  
8 SPREAD PATTERN OF PELLET MARKS ON THAT ELBOW?

9 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
10 EVIDENCE AND NO MEDICAL BASIS FOR THIS WITNESS'  
11 TESTIMONY.

12 THE COURT: OVERRULED.

13 THE WITNESS: YES, THERE'S INDIVIDUAL PELLET

14 STRIKES ON THE ELBOW.

15 Q BY MS. ABRAMSON: AND YOU ARE QUALIFIED

16 TO -- AND YOU CAN RECOGNIZE WHAT APPEARS TO BE

17 SHOTGUN PELLET WOUNDS ON THE EXTERIOR OF THE HUMAN

18 BODY?

19 MR. CONN: OBJECTION. NO FOUNDATION.

20 THE COURT: WELL, YOU CAN ESTABLISH HIS

21 QUALIFICATIONS IN THAT FIELD.

22 Q BY MS. ABRAMSON: HAVE YOU BEEN TRAINED

23 BY THE SHERIFF'S DEPARTMENT TO RECOGNIZE SHOTGUN

24 PELLET IMPACT ON A VARIETY OF SURFACES?

25 A YES.

26 Q INCLUDING THE HUMAN BODY?

27 A YES.

28 Q AND ARE YOU CALLED UPON ROUTINELY TO

42164

1 EXAMINE SHOTGUN PATTERN IMPRESSIONS ON HUMAN BODIES?

2 A WELL, NOT ROUTINELY. IT'S NOT SOMETHING

3 WE DO A LOT, BUT YES, I'VE DONE IT IN THE PAST, YES.

4 Q AND HAVE YOU DONE IT IN -- AND WHEN YOU

5 HAVE DONE IT IN THE PAST, HAVE YOU TESTIFIED IN

6 CASES CONCERNING, GENERALLY, THE ISSUE OF WHETHER

7 THERE IS AN INDIVIDUAL PELLET PATTERN ON A PORTION  
8 OF THE HUMAN BODY AS COMPARED TO A -- YOU KNOW -- A  
9 SINGLE SHOT COLUMN PATTERN AS YOU HAVE SHOWN US ON  
10 THE DIAGRAM?

11 A YES.

12 Q AND DO YOU FREQUENTLY CONSULT WITH OTHER  
13 SCIENTIFIC PERSONNEL AT THE SHERIFF'S CRIME LAB IN  
14 THESE INVESTIGATIONS AND EXAMINATIONS OF BALLISTICS  
15 EVIDENCE?

16 A SOMETIMES, YES.

17 Q NOW, YOU DO NOT -- WELL, DO YOU CONSIDER  
18 YOURSELF AN EXPERT ON WHAT HAPPENS TO BALLISTIC  
19 EVIDENCE ONCE IT PASSES INTO THE HUMAN BODY?

20 A ABSOLUTELY NOT.

21 Q DO YOU THINK AN ENGINEER IS MORE TRAINED  
22 TO KNOW WHAT A SHOT PATTERN SPREAD IS THAN YOU ARE?

23 MR. CONN: OBJECTION. ARGUMENTATIVE. CALLS  
24 FOR SPECULATION.

25 THE COURT: SUSTAINED.

26 Q BY MS. ABRAMSON: AND CAN YOU TELL US,  
27 DEPUTY VAN HORN, ON HOW MANY OCCASIONS HAVE YOU  
28 OBSERVED PHOTOGRAPHS, WHETHER CORONER'S PHOTOGRAPHS

1 OR CRIME-SCENE PHOTOGRAPHS, OF HUMAN BODIES THAT

2 SHOW EVIDENCE OF SHOTGUN PELLET IMPACTS?

3 A PROBABLY IN EXCESS OF A HUNDRED TIMES.

4 Q AND SO I WOULD CALL YOUR ATTENTION THEN

5 TO PHOTOGRAPHS A AND B AND ASK WHETHER, IN YOUR

6 OPINION -- THAT'S THESE TWO (POINTING) -- THESE

7 PHOTOGRAPHS ALSO SHOW EVIDENCE OF SHOTGUN PELLET

8 IMPACTS?

9 MR. CONN: OBJECTION. CALLS FOR

10 SPECULATION. NO FOUNDATION.

11 THE COURT: OVERRULED. YOU CAN ANSWER THE

12 QUESTION.

13 THE WITNESS: THANK YOU, YOUR HONOR.

14 THAT'S WHAT THEY APPEAR TO BE, SHOTGUN

15 PATTERNS, YES.

16 Q BY MS. ABRAMSON: DO THOSE ALSO APPEAR

17 TO BE A SPREAD PATTERN?

18 A YES.

19 Q NOW, ARE YOU -- DO YOU HAVE AN OPINION

20 AS TO WHETHER OR NOT THE PATTERN THAT'S DEMONSTRATED

21 IN PHOTOGRAPH F ON MR. MENENDEZ' LEFT ELBOW IS

22 SIMILAR OR DISSIMILAR TO THE PATTERN THAT'S SHOWN IN

23 A AND B ON MRS. MENENDEZ' LEFT BREAST?

24 MR. CONN: OBJECTION. VAGUE AND CALLS FOR

25 SPECULATION.

26 THE COURT: IT IS VAGUE.

27 MS. ABRAMSON: OKAY.

28 Q IS THE SPREAD SIMILAR, IN OTHER WORDS,



1 THE DISTANCE BETWEEN THE PELLETS?

2 A WELL, THERE'S A SPREAD. I DON'T SEE A  
3 SCALE IN THIS PHOTOGRAPH TO GIVE YOU AN IDEA OF WHAT  
4 THE SPREAD IS. THEY APPEAR THAT THEY COULD BE  
5 SOMEWHAT SIMILAR IN SPREAD.

6 Q OKAY. WOULD YOU, AS AN EXPERT FIREARMS  
7 EXAMINER AND BALLISTICS EXPERT, BE PREPARED,  
8 HOWEVER, TO VENTURE AN OPINION AS TO WHETHER OR NOT  
9 THE ROUND OF SHOTGUN AMMUNITION THAT CAUSED THE  
10 SPREAD ON MR. MENENDEZ' LEFT ELBOW ALSO CAUSED THE  
11 PELLET DEFECTS ON MRS. MENENDEZ' LEFT BREAST?

12 MR. CONN: OBJECTION. CALLS FOR  
13 SPECULATION. NO FOUNDATION.

14 THE COURT: SUSTAINED.

15 MS. ABRAMSON: I DON'T UNDERSTAND THAT, YOUR  
16 HONOR.

17 THE COURT: GO ON TO SOMETHING ELSE AND WE'LL  
18 DISCUSS IT.

19 MS. ABRAMSON: OKAY.

20 Q DO YOU FEEL YOU HAVE ENOUGH INFORMATION,  
21 BASED ON -- FIRST OF ALL, DID YOU READ THE CORONER'S  
22 AUTOPSY REPORTS IN THIS CASE?

23 A YES, I DID.

24 Q AND BASED ON THE AUTOPSY REPORTS AND THE  
25 PHOTOGRAPHS, DO YOU FEEL YOU HAVE ENOUGH INFORMATION

26 TO MAKE AN ASSOCIATION BETWEEN THE DEFECTS THAT ARE  
27 SHOWN ON MR. MENENDEZ' LEFT ELBOW AND THE DEFECTS  
28 THAT ARE SHOWN ON MRS. MENENDEZ' LEFT BREAST?

42167

1 A NO.

2 Q IS THAT BECAUSE OF YOUR LACK OF  
3 EXPERTISE OR FOR SOME OTHER REASON?

4 A WELL, I DON'T KNOW THE POSITION OF THE  
5 BODY WHEN EITHER BOTH SHOTS OR ONE SHOT WAS FIRED.  
6 THE FACT THAT BOTH APPEAR TO BE INCOMPLETE PATTERNS  
7 MEANS THAT THE PATTERNS COULD BE FAR GREATER THAN  
8 WHAT'S DEPICTED IN EITHER OF THE PHOTOGRAPHS.

9 SO I DON'T FEEL THERE'S ENOUGH  
10 INFORMATION THERE TO RENDER AN OPINION.

11 Q AND GIVEN THAT INFORMATION, YOU WOULDN'T  
12 JUST ASSUME IT WAS SHARED JUST BECAUSE NEITHER ONE  
13 IS A COMPLETE PATTERN, WOULD YOU?

14 A IT WOULD BE A POSSIBILITY, BUT NO, I  
15 WOULDN'T SAY CONCLUSIVELY THAT THEY'RE THE SAME.

16 Q SO, IT COULD BE AND IT ALSO COULD NOT  
17 BE?

18 A YES.

19 Q HAVE YOU EVER PARTICIPATED, DEPUTY  
20 VAN HORN, IN AN EFFORT TO WHAT IS CALLED RECONSTRUCT

21 THE SEQUENCE OF A MULTIPLE SHOOTING INCIDENT?

22 A I'VE BEEN ASKED TO PARTICIPATE IN

23 RECONSTRUCTIONS, YES.

24 Q AND WHAT WAS IT THAT WAS BEING

25 RECONSTRUCTED IN THOSE SITUATIONS? WHAT WAS IT THAT

26 WAS -- WELL, STRIKE THAT.

27 WHAT WAS BEING RECONSTRUCTED? WHAT WAS

28 THE GOAL?

42168

1 A TO TRY AND DETERMINE THINGS THAT WERE

2 NOT KNOWN BASED UPON INFORMATION THAT WAS AVAILABLE

3 AND ASSEMBLING PEOPLE TO SEE IF VARIOUS AREAS OF

4 EXPERTISE COULD COME TO AN OPINION AS TO WHAT

5 HAPPENED.

6 Q WHEN YOU SAY ASSEMBLING PEOPLE WITH

7 VARIOUS EXPERTISE, LET ME ASK YOU, HYPOTHETICALLY,

8 IF YOU WERE REQUESTED TO ATTEMPT A RECONSTRUCTION OF

9 A MULTIPLE SHOTGUN SHOOTING WITH MULTIPLE -- LET'S

10 SAY, TWO VICTIMS; AND LET'S SAY TWO GUNS AND TWO

11 PEOPLE FIRING THOSE GUNS AND MULTIPLE WOUNDS IN THE

12 AREA OF, LET'S SAY, IN EXCESS OF 10.

13 WHO WOULD YOU -- WHAT KIND OF PEOPLE

14 WOULD YOU ASSEMBLE BEFORE YOU WOULD ENDEAVOR TO TRY

15 TO RECONSTRUCT SUCH A SHOOTING?

16 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR  
17 SPECULATION. CUMULATIVE.  
18 THE COURT: OVERRULED.  
19 YOU CAN ANSWER THE QUESTION.  
20 THE WITNESS: THANK YOU, YOUR HONOR.  
21 I'D WANT TO CONSULT WITH THE CORONER WHO  
22 DID THE AUTOPSIES.  
23 Q BY MS. ABRAMSON: YOU MEAN IN PERSON,  
24 ACTUALLY TALK TO HIM?  
25 A YES.  
26 Q BEFORE YOU FORMED ANY OPINIONS?  
27 A YES. BECAUSE, GENERALLY, I CAN'T  
28 UNDERSTAND AUTOPSY REPORTS, OTHER THAN, IT WENT LEFT

42169

1 TO RIGHT AND UP AND DOWN OR BACK TO FRONT. BUT I  
2 DON'T UNDERSTAND THE MEDICAL TERMS.  
3 THE NEXT PERSON I'D WANT TO CONSULT  
4 WITH -- IF THERE WAS BLOOD EVIDENCE AT THE SCENE,  
5 I'D WANT TO CONSULT WITH A SEROLOGIST WHO COULD  
6 RECONSTRUCT THE BLOOD SPATTER PATTERNS THAT WERE  
7 THERE, AND ALSO WOULD BE ABLE TO DELINEATE, IF  
8 THERE'S TWO VICTIMS, WHICH BLOOD BELONGS TO WHICH  
9 VICTIM.  
10 THE OTHER PERSON I WOULD WANT TO TALK TO

11 IS THE HANDLING DETECTIVE WHO WAS OBVIOUSLY AT THE  
12 SCENE SO THAT HE COULD PROVIDE ANY EVIDENCE FROM  
13 EITHER EYE OR EAR WITNESSES THAT COULD SHED SOME  
14 LIGHT ON WHAT MIGHT HAVE HAPPENED.

15 Q AND IF THERE WAS AN ISSUE INVOLVING --  
16 OR POTENTIAL ISSUE INVOLVING CLOTHING AND THE  
17 DIRECTION OF ENTRY OR EXIT OF BALLISTICS MATERIAL  
18 THROUGH CLOTHING, WOULD YOU WANT TO CONSULT WITH A  
19 CLOTHING EXPERT, A FIBER EXPERT?

20 A THAT'S POSSIBLE, YES.

21 Q AND DOES THE SHERIFF'S DEPARTMENT, IN  
22 FACT, HAVE EXPERTS IN ALL THOSE FIELDS, IN SEROLOGY,  
23 IN HAIR AND FIBER EVIDENCE, AND OBVIOUSLY IN  
24 BALLISTICS EVIDENCE. THEY HAVE THEM ALL RIGHT THERE  
25 IN THE CRIME LAB, CORRECT?

26 A YES.

27 Q IS THIS A CASE, GIVEN ALL THE KNOWN  
28 EVIDENCE, FROM PHOTOGRAPHS, FROM THAT WHICH WAS

42170

1 GATHERED FROM THE CORONER'S REPORTS, IS THIS A CASE  
2 IN WHICH YOU, DEPUTY VAN HORN, WOULD EVER HAVE  
3 ATTEMPTED A RECONSTRUCTION?

4 A WELL, I DON'T KNOW WHAT LEVEL YOU MEAN  
5 THERE. I MEAN, CERTAINLY YOU MIGHT ATTEMPT IT. BUT

6 THERE'S A LOT OF THINGS HERE THAT FLY IN THE FACE OF  
7 DOING A RECONSTRUCTION, IN MY OPINION.

8 Q OKAY. CAN YOU GIVE US AN IDEA OF WHAT  
9 THOSE THINGS ARE.

10 A WELL, FROM THE PHYSICAL EVIDENCE THAT  
11 WAS SUBMITTED TO ME, I KNOW THAT AT LEAST EIGHT  
12 SHOTS WERE FIRED. BUT BASED UPON -- I'VE BEEN EITHER  
13 A POLICEMAN OR A DEPUTY SHERIFF FOR MORE THAN 22  
14 YEARS, SO I'VE SEEN A LOT OF SHOTGUN WOUNDS. IT'S A  
15 LITTLE HARD FOR ME TO BELIEVE THAT ALL THE WOUNDS  
16 THAT OCCURRED TO MR. AND MRS. MENENDEZ OCCURRED WITH  
17 ONLY SIX ROUNDS OF BUCKSHOT.

18 SO I WOULD ASSUME THAT THERE WAS  
19 EVIDENCE THAT WAS EITHER OVERLOOKED OR NOT COLLECTED  
20 THAT WOULD LEND ITSELF TO MORE THAN THE EIGHT SHOTS  
21 THAT I CAN SPECIFICALLY ATTRIBUTE TO SHOTS THAT WERE  
22 FIRED THERE.

23 SO THAT WOULD BE ONE THING THAT WOULD  
24 BOTHER ME FOR RECONSTRUCTION.

25 Q WHY COULDN'T YOU JUST MAKE UP A NUMBER  
26 AND LOOK THROUGH THE EVIDENCE TO LOOK TO SEE IF YOU  
27 COULD MAKE THINGS FIT?

28 A I WOULDN'T HAVE A JOB VERY LONG IF I DID

1 THAT.

2 Q GO ON. WHAT ELSE IS IT ABOUT THIS SCENE  
3 OR THIS SITUATION THAT MILITATES AGAINST DOING A  
4 REAL RECONSTRUCTION?

5 A THE FACT THAT READING TESTIMONY FROM THE  
6 FIRST TRIAL AND ALSO SOME OF THE THINGS FROM THIS  
7 TRIAL, THAT AT LEAST AT SOME POINT THERE'S TESTIMONY  
8 THAT BOTH VICTIMS WERE MOBILE, AS WELL AS BOTH  
9 SHOOTERS BEING MOBILE. AND I THINK THAT WHEN YOU  
10 TAKE THAT INTO CONSIDERATION, THE POSSIBILITY OF  
11 BEING ABLE TO RECONSTRUCT -- OBVIOUSLY THINGS ONLY  
12 OCCUR ONE WAY.

13 MR. CONN: I WOULD MAKE A MOTION TO STRIKE AS  
14 CALLING FOR HEARSAY.

15 THE COURT: THE ENTIRE ANSWER?

16 MR. CONN: YES. CONCERNING TESTIMONY FROM  
17 THE FIRST TRIAL.

18 THE COURT: OBJECTION SUSTAINED. THE ANSWER  
19 IS STRICKEN.

20 Q BY MS. ABRAMSON: WELL, WHOSE TESTIMONY  
21 ARE YOU REFERRING TO?

22 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

23 THE COURT: WELL, THE QUESTION HAS NO BASIS  
24 SINCE THE ANSWER WAS STRICKEN. SO YOU'D HAVE TO --

25 MS. ABRAMSON: OH, OKAY.

26 Q IF YOU ACCEPT HYPOTHETICALLY -- WELL,  
27 FIRST OF ALL, YOU'VE REVIEWED SOME TESTIMONY FROM  
28 THE FIRST TRIAL?

1 A YES.

2 Q AND HAVE YOU ALSO TALKED TO RON LINHART,  
3 A CRIMINALIST AT THE SHERIFF'S CRIME LAB?

4 A YES.

5 Q AND ARE YOU AWARE THAT MR. LINHART  
6 ISSUED A REPORT CONCERNING CERTAIN ASPECTS OF THE  
7 CRIME-SCENE EVIDENCE?

8 A YES.

9 Q AND WAS ONE OF THE CONCLUSIONS OF HIS --  
10 MR. CONN: OBJECTION. CALLS FOR HEARSAY.  
11 MS. ABRAMSON: I'M OFFERING THIS AS A  
12 HYPOTHETICAL.

13 Q I WOULD ASK YOU TO ACCEPT,  
14 HYPOTHETICALLY, THAT BASED ON LINHART'S EVALUATION  
15 OF THE CRIME-SCENE EVIDENCE, MR. MENENDEZ HAD TO BE  
16 MOBILE AT SOME POINT IN ORDER TO RECEIVE THE LEFT  
17 THIGH WOUND BECAUSE HE DIDN'T RECEIVE IT SEATED IN  
18 HIS FINAL POSITION.

19 MR. CONN: OBJECTION. VAGUE AND ASSUMES  
20 FACTS NOT IN EVIDENCE.

21 THE COURT: WELL, THIS IS ASKED AS A  
22 HYPOTHETICAL QUESTION.

23 ASSUME THAT WAS THE INFORMATION YOU HAD



24 OBTAINED FROM MR. LINHART.

25 MS. ABRAMSON: OKAY.

26 Q ASSUME THAT, AND ASSUME ALSO THAT THERE  
27 WAS TESTIMONY FROM ERIK MENENDEZ THAT WHEN HE  
28 ENTERED THE DEN, JUST PRIOR TO THE SHOOTING, HIS

42173

1 FATHER WAS STANDING AND APPEARED TO BE MOVING; AND  
2 THAT SHORTLY THEREAFTER HIS MOTHER WAS STANDING AND  
3 APPEARED TO BE MOVING.

4 DOES THAT INDICATE TO YOU -- STRIKE  
5 THAT.

6 AND FURTHER ASSUME, HYPOTHETICALLY, THAT  
7 THERE'S TESTIMONY FROM ERIK MENENDEZ THAT BOTH HE  
8 AND HIS BROTHER WERE MOVING AND BOTH FIRING  
9 SIMULTANEOUSLY.

10 OKAY. WITH THAT AS A FOUNDATIONAL SET  
11 OF HYPOTHETICAL FACTS, BASED ON THOSE HYPOTHETICAL  
12 FACTS, DOES THAT INDICATE -- WOULD THAT INDICATE TO  
13 YOU, HYPOTHETICALLY, THAT BOTH DECEDENTS WERE MOBILE  
14 AND BOTH SHOOTERS WERE MOBILE DURING THIS SHOOTING?

15 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN  
16 EVIDENCE AND CALLS FOR SPECULATION.

17 THE COURT: WELL, REALLY, ALL IT SAYS IS THAT  
18 OTHER THAN WHAT MR. LINHART -- EVEN WHAT MR. LINHART

19 SAID, JUST ASSUMING THESE THINGS ACTUALLY OCCURRED  
20 AS THESE PEOPLE DESCRIBED THEM. IF HE ACCEPTS WHAT  
21 THEY SAY, THEN WE DON'T NEED THIS WITNESS TO SAY  
22 THAT.

23 Q BY MS. ABRAMSON: LET'S ASSUME,  
24 HYPOTHETICALLY, ALL FOUR PEOPLE ARE MOVING DURING  
25 THE SHOOTING, OKAY. IS THERE SOMETHING THAT WOULD  
26 INFLUENCE YOUR JUDGMENT ON WHETHER OR NOT THE  
27 SEQUENCE OF SHOTS AND THE EXACT POSITION OF THE  
28 DECEDENTS AND SHOOTERS FOR THOSE SHOTS COULD BE

42174

1 DETERMINED?

2 A YES.

3 Q AND HOW WOULD THAT -- WHAT, IN YOUR  
4 OPINION -- HOW, IN THAT OPINION, WOULD THAT  
5 INFLUENCE THAT DECISION?

6 A IT WOULD COMPLICATE IT.

7 Q COMPLICATE IT? DO YOU BELIEVE, BASED ON  
8 THE INFORMATION THAT IS AVAILABLE, THE ACTUAL  
9 FACTUAL EVIDENCE HERE, THAT THIS IS A SHOOTING  
10 INCIDENT THAT COULD BE RECONSTRUCTED RELIABLY WITH  
11 RESPECT TO THE SEQUENCE OF SHOTS AND THE POSITIONS  
12 OF BOTH THE SHOOTERS AND THE DECEDENTS?

13 MR. CONN: OBJECTION. ASKED AND ANSWERED.

14 THE COURT: WHEN YOU SAY THE FACTUAL  
15 INFORMATION, YOU'RE TALKING ABOUT THE INFORMATION --  
16 PHYSICAL EVIDENCE AT THE CRIME SCENE.

17 MS. ABRAMSON: PHYSICAL EVIDENCE AT THE CRIME  
18 SCENE, THE TESTIMONY, EVIDENCE AS OBSERVED BY THE  
19 CORONER, THE OPINION OF, HYPOTHETICALLY,  
20 MR. LINHART, THE BALLISTICS EVIDENCE, THE THINGS  
21 THAT YOU'VE SEEN IN THE PHOTOGRAPHS.

22 THE WITNESS: I'M SORRY. I'M GOING TO HAVE  
23 TO HAVE YOU REPEAT THE QUESTION.

24 THE COURT: WITH ALL THAT INFORMATION IN  
25 MIND, SHE'S ASKING YOU WHETHER OR NOT YOU COULD HAVE  
26 DONE A RECONSTRUCTION.

27 THE WITNESS: I DON'T BELIEVE SO.

28 Q BY MS. ABRAMSON: IN FACT, PRIOR TO THE

42175

1 FIRST TRIAL, DID THE DEPUTY DISTRICT ATTORNEY THEN  
2 ASSIGNED TO THE CASE COME TO YOU AND ASK YOU IF, IN  
3 YOUR OPINION, A RECONSTRUCTION COULD BE DONE OF THIS  
4 CASE?

5 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR  
6 HEARSAY.

7 THE COURT: SUSTAINED.

8 Q BY MS. ABRAMSON: NOW, YOU'RE AWARE OF

9 THE TESTIMONY OF ROGER MC CARTHY, ARE YOU NOT?

10 A YES.

11 Q YOU'RE AWARE OF THE REPORT THAT FAILURE

12 ANALYSIS -- HE AND MR. GREWAL PRODUCED?

13 A YES.

14 Q AND, IN YOUR OPINION, DID DR. MC CARTHY

15 CREATE WHAT YOU WOULD CALL A SCIENTIFICALLY RELIABLE

16 RECONSTRUCTION?

17 MR. CONN: OBJECTION. BEYOND THE EXPERTISE

18 OF THIS WITNESS. CALLS FOR SPECULATION AND IMPROPER

19 OPINION.

20 THE COURT: OVERRULED.

21 THE WITNESS: NO.

22 Q BY MS. ABRAMSON: I WANT TO GO BACK FOR

23 A MOMENT TO SOMETHING YOU MENTIONED EARLIER IN YOUR

24 TESTIMONY WHEN YOU WERE A FIREARMS INSTRUCTOR.

25 WAS IT PART OF YOUR JOB, NOT JUST TO

26 TRAIN EXPERIENCED OFFICERS, BUT TO TRAIN NEWCOMERS?

27 A YES.

28 Q AND WAS THERE, OR IS THERE AN ISSUE

42176

1 CONCERNING CROSS FIRE THAT WOULD COME UP ROUTINELY

2 WITH PEOPLE WHO WERE NOT FAMILIAR WITH THE OPERATION

3 OF GUNS WHO WERE USING GUNS ON THE RANGE?

4 A YES.

5 Q AND WOULD YOU DESCRIBE WHAT THAT MEANS  
6 AND HOW IT WOULD COME UP.

7 A A CROSS-FIRE SITUATION WOULD INVOLVE TWO  
8 PEOPLE WHO ARE TRYING TO ENGAGE THE SAME TARGET, BUT  
9 THEY PUT THEMSELVES IN THE FIELD OF FIRE OF THE  
10 OTHER PERSON; IN OTHER WORDS, IF THIS GENTLEMAN  
11 RIGHT HERE IN THE BLACK SHIRT WAS MY PARTNER AND  
12 THERE WAS SOMEBODY WITH A GUN IN FRONT OF US, AND WE  
13 NEEDED TO USE DEADLY FORCE TO STOP HIM FROM DOING  
14 WHAT HE WAS DOING, THIS WOULD NOT BE A GOOD POSITION  
15 FOR US TO DO THAT, BECAUSE IF I MISS I COULD STRIKE  
16 HIM; IF HE MISSES HE COULD STRIKE ME.

17 SO WE TRY AND INSTILL IN THEM, EVEN IN  
18 THE ACADEMY, TO BE VERY CAUTIOUS OF CROSS-FIRE  
19 SITUATIONS.

20 Q IS THIS SOMETHING THAT THE NEW TRAINEES  
21 AND RECRUITS SEEM TO KNOW INSTINCTIVELY, OR IS THIS  
22 SOMETHING THAT REALLY NEEDS TO BE TAUGHT?

23 A NO. IT'S GOT TO BE TAUGHT AND  
24 RE-TAUGHT.

25 Q EVEN WHEN THEY'VE BEEN TOLD, THEY STILL  
26 PUT THEMSELVES IN THOSE POSITIONS?

27 A YES.

28 Q NOW, CONCERNING THE WAY THAT THAT GUN

1 OPERATES, THE MOSSBERG-500 SERIES GUN, YOU'VE  
2 ALREADY SHOWN THE JURY THAT WHEN YOU SLIDE THE PUMP  
3 BACK DOWN AFTER THE TRIGGER IS PULLED, A ROUND WILL  
4 EJECT.

5 IS THERE ANY WAY TO DETERMINE THE  
6 EJECTION PATTERN ON SUCH A WEAPON?

7 A IT'S KIND OF TOUGH TO DO WITH A PUMP  
8 SHOTGUN.

9 Q WHY IS THAT?

10 A WELL, IT DEPENDS ON WHAT -- HOW THE  
11 SHOOTER HOLDS THE GUN.

12 IT'S OKAY TO HANDLE THIS, YOUR HONOR?

13 THE COURT: YES.

14 THE WITNESS: FOR INSTANCE, IF A SHOOTER WAS  
15 TO SHOULDER THE SHOTGUN AND FIRE A ROUND, AND THEN  
16 WHEN HE OPERATED THE PUMP THERE'S NOTHING TO STOP  
17 YOU FROM OPERATING THE PUMP IN THIS MANNER.

18 THERE'S ALSO NOTHING TO STOP SOMEBODY  
19 FROM BRINGING IT DOWN HERE, OR SOME OTHER POSITION,  
20 AND HOLDING THIS EJECTION PORT SOME PLACE WHERE IT'S  
21 OBVIOUSLY GOING TO THROW THE ROUNDS.

22 SO MOST GUNS THAT EJECT CARTRIDGE  
23 CASINGS, LIKE MOST SEMI-AUTOMATIC FIREARMS, YOU CAN  
24 TELL WHERE THEY'RE GOING TO EJECT THE SHELL  
25 CASINGS.

26 BUT WITH A SHOTGUN IT'S -- ALSO, ONE  
27 OTHER THING. IF I OPERATE THIS SLIDE HANDLE I CAN

42178

1 SHOT SHELLS OUT OF -- OUT WITH MY HAND; OR IF I DO IT  
2 WITH MEDIUM POWER, LET'S SAY, IT WILL KIND OF  
3 DRIBBLE OUT OF THE GUN. IF I REALLY RACK IT HARD, I  
4 CAN, YOU KNOW, MAYBE HIT THE BACK WALL OF THE  
5 COURTROOM.

6 IT JUST DEPENDS ON HOW THE PERSON THAT'S  
7 USING THE SHOTGUN IS OPERATING THE PUMP.

8 Q BY MS. ABRAMSON: BASICALLY, THAT GUN  
9 HAS AN EJECTION PORT ON THE RIGHT SIDE OF THE GUN,  
10 CORRECT?

11 A THAT'S CORRECT.

12 Q SO THAT AS YOU FIRST DEMONSTRATED, IF  
13 THE PERSON HOLDS THE GUN AT HIS SHOULDER AND ALWAYS  
14 KEEPS IT STABLE AND JUST EJECTS BY SLIDING THE PUMP  
15 WITHOUT MOVING THE GUN, GENERALLY SPEAKING, THE  
16 SHELLS WILL POP OUT TO THE RIGHT OF THE GUN?

17 A THAT'S CORRECT.

18 Q AND IF THEY'RE HOLDING IT RIGHT AT THEIR  
19 SHOULDER, PROBABLY TO THE RIGHT OF THE PERSON AS  
20 WELL?

21 A THAT'S CORRECT.

22 Q BUT IF YOU WERE TO EJECT FIVE ROUNDS OUT

23 OF THAT GUN, COULD YOU MAKE THEM ALL DROP DIRECTLY  
24 STRAIGHT DOWN IN A LITTLE LINE BENEATH YOU?  
25 A IF I WANTED TO, YES.  
26 Q BECAUSE YOU HAVE THE EXPERTISE TO DO  
27 THAT, CORRECT?  
28 A YES.

42179

1 Q AND I THINK -- IF YOU MOVE THE SLIDE  
2 SLOWLY, THEN IT DOESN'T EJECT VERY FAR?  
3 A THAT'S CORRECT.  
4 Q IF YOU MOVE IT A LITTLE FASTER, THEN IT  
5 EJECTS A LITTLE FARTHER AWAY?  
6 A THAT'S CORRECT.  
7 Q BUT GENERALLY SPEAKING, IF YOU JUST KEEP  
8 IT IN ONE POSITION AND PUMP THE SHELLS, WHETHER THEY  
9 EJECT NEAR OR FAR, IT WOULD BE OFF TO THE RIGHT OF  
10 YOU?  
11 A YES.  
12 Q IS THERE SOME OPINION OR SOMETHING THAT  
13 MAKES THEM EJECT, OR DOES IT WORK IN ANOTHER MANNER?  
14 A THERE'S A PIECE THAT'S INSIDE THE  
15 RECEIVER, WHICH IS -- THIS IS THE RECEIVER RIGHT HERE  
16 (INDICATING). AND THERE'S A PIECE THAT'S SCREWED TO  
17 THIS SIDE OR HELD IN WITH A RIVET. I CAN'T



18 SPECIFICALLY RECALL. BUT IT'S A LITTLE BAR THAT'S  
19 CALLED AN EJECTOR. EXTRACTORS GRAB A HOLD OF THE  
20 SHOT SHELL AND WITHDRAW THEM FROM THE CHAMBER, AND  
21 THE EJECTOR IS OVER ON THE LEFT SIDE OF THE GUN  
22 HERE, AND IT STICKS INTO THE RECEIVER. AND SO AS  
23 THE SHOTGUN COMES BACK, IT HITS THE EJECTOR, WHICH  
24 TIPS IT OUT OF THE EJECTION PORT. IT'S CALLED AN  
25 EJECTOR.

26 Q OKAY. AND THAT'S HOW IT WORKS?

27 A YES.

28 Q WAS THAT ACCURATELY DESCRIBED BY

42180

1 DR. MC CARTHY WHEN HE TESTIFIED?

2 A NO.

3 Q HAVE YOU EVER HEARD, IN REAL LIFE,  
4 DEPUTY VAN HORN, OF GLYCERIN BULLETS?

5 A NO.

6 Q HAVE YOU HEARD OF MERCURY BULLETS?

7 A IN REAL LIFE?

8 Q YES.

9 A NO.

10 Q WHERE ARE THOSE SORTS OF THINGS TALKED  
11 ABOUT, IF ANYWHERE, OR WRITTEN ABOUT?

12 A NOVELS, SPY MYSTERIES, STUFF LIKE THAT.

13 Q BUT IN ALL OF YOUR EXPERIENCE YOU'VE  
14 NEVER COME ACROSS EITHER A MERCURY BULLET OR A  
15 GLYCERIN BULLET, CORRECT?  
16 A THAT'S CORRECT.  
17 Q BASED ON YOUR EXPERIENCE IN EXAMINING  
18 THE EFFECTS OF SHOTGUN FIRINGS AT PEOPLE, COULD YOU  
19 IMAGINE A SCENARIO WHERE A SHOT COLUMN WOULD COME  
20 ACROSS SOMEONE'S CHEST WITH ENOUGH FORCE TO ACTUALLY  
21 COMPRESS THE CHEST AND YET MAKE NO HOLES IN THE  
22 CLOTHING THAT PERSON WAS WEARING, NO CUTS TO THE  
23 SKIN, NOTHING?  
24 MR. CONN: OBJECTION. LACK OF FOUNDATION.  
25 CALLS FOR SPECULATION.  
26 THE COURT: OVERRULED.  
27 THE WITNESS: NO.  
28 Q BY MS. ABRAMSON: IF A SHOT COLUMN CAME

42181

1 ACROSS A PERSON'S CHEST, A PERSON WHO'S WEARING  
2 ORDINARY CLOTHING, ORDINARY SHIRT -- NOT BODY ARMOR --  
3 IF A SHOT COLUMN CAME ACROSS A PERSON WITH ENOUGH  
4 FORCE TO PRESS DOWN THE FLESH OF THEIR CHEST, WHAT  
5 WOULD YOU EXPECT TO BE LEFT BY WAY OF EVIDENCE OF  
6 THAT? WHAT WOULD YOU EXPECT TO HAPPEN?  
7 MR. CONN: OBJECTION. LACK OF FOUNDATION.

8 CALLS FOR SPECULATION.

9 THE COURT: PERHAPS YOU COULD BE A LITTLE  
10 MORE SPECIFIC AS TO WHAT YOU'RE ASKING.

11 MS. ABRAMSON: OKAY.

12 Q I THINK YOU'VE INDICATED THAT SHOTGUN  
13 PELLETS EMERGE FROM THE GUN AT SOMETHING BETWEEN  
14 1200 AND 1400 --

15 MR. CONN: OBJECTION. LEADING AND ASSUMES  
16 FACTS NOT IN EVIDENCE.

17 THE COURT: REPHRASE THE QUESTION.

18 Q BY MS. ABRAMSON: AT WHAT VELOCITY DO  
19 SHOTGUN SHOTS EMERGE FROM THE BARREL OF THE SHOTGUN,  
20 ASSUMING WE'RE .12-GAUGE REGULAR LOAD NO. 4 BUCK?

21 A DEPENDS ON THE MANUFACTURER. BETWEEN 12  
22 AND 1400 FEET PER SECOND.

23 Q AND IF A COLUMN OF SHOT HAS ENOUGH  
24 FORCE, LET'S SAY, JUST TO USE LAYMAN'S TERMS, TO  
25 PENETRATE A LIMB OF THE HUMAN BODY, OKAY? IF IT'S  
26 STILL GOING FAST ENOUGH AND WHATEVER ELSE IS  
27 REQUIRED TO PENETRATE A LIMB OF THE HUMAN BODY, IF  
28 BEFORE PENETRATING THAT LIMB THAT COLUMN CAME ACROSS

42182

1 A PERSON'S CHEST SO AS TO DEPRESS THE CHEST INWARD  
2 BY TWO INCHES, WOULD YOU EXPECT THAT SHOT COLUMN TO

3 CAUSE DAMAGE OR INJURY DIRECTLY --

4 MR. CONN: OBJECTION.

5 Q BY MS. ABRAMSON: -- TO ANY CLOTHING THAT

6 IT CAME IN CONTACT WITH OR THE ACTUAL SURFACE OF THE

7 HUMAN CHEST BENEATH THE CLOTHING?

8 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

9 EVIDENCE AND CALLS FOR SPECULATION. LACK OF

10 FOUNDATION.

11 THE COURT: DO YOU UNDERSTAND THE QUESTION?

12 THE WITNESS: YES, I DO.

13 THE COURT: THE OBJECTION IS OVERRULED.

14 THE WITNESS: YES. I WOULD EXPECT TO SEE

15 DAMAGE -- I DON'T SEE HOW PELLETS COULD STRIKE THE

16 CHEST AND DEPRESS THE CHEST WITHOUT ENTERING THE

17 CHEST. THAT'S THE WAY BULLETS WORK. BY FORCE THEY

18 PENETRATE SKIN OR OTHER OBJECTS.

19 Q BY MS. ABRAMSON: SO YOU CAN'T IMAGINE

20 HOW THEY COULD ACT LIKE A HAND AND PRESS WITHOUT THE

21 INDIVIDUAL PELLETS ACTUALLY GOING INSIDE THE SKIN?

22 A THAT'S CORRECT, I CAN'T.

23 Q AND WOULD THE SAME BE TRUE ABOUT HOW

24 THEY COULD COMPRESS SHIRT FABRIC WITHOUT TEARING

25 HOLES ACROSS THE SHIRT?

26 A TO GET A MARK ON A SHIRT YOU'D HAVE TO

27 GET SUCH A CLOSE SHOT TO THE SHIRT THAT WOULD GO BY

28 THERE AND LEAVE LEAD WIPE AS THE PELLETS GO BY,

1 WIPING ACROSS THE SHIRT. BUT THE LEAD WIPE IS  
2 CHEMICALLY DETECTABLE AND YOU COULD TEST FOR THAT  
3 AND FIND IF IT'S THERE.

4 Q IF THEY'RE JUST BRUSHING ON THE OUTER  
5 EDGE, IF A SHOT COLUMN CAME ACROSS AND THE PELLETS  
6 JUST BARELY TOUCH THE SHIRT, YOU WOULD EXPECT LEAD  
7 WIPE?

8 A IT'S A POSSIBILITY.

9 Q IF THEY TOUCHED THE SHIRT HARD ENOUGH TO  
10 COMPRESS THE CHEST TWO INCHES, YOU WOULD EXPECT MORE  
11 THAN LEAD WIPE, WOULDN'T YOU?

12 A I'D EXPECT LEAD WIPES ON THE HOLE TO THE  
13 SHIRT.

14 Q YOU WOULD CERTAINLY EXPECT HOLES TO THE  
15 SHIRT?

16 A YES.

17 Q IF NUMEROUS PELLETS CAME ACROSS AND  
18 INDIVIDUALLY PRESSED AGAINST A SHIRT, WOULD YOU  
19 EXPECT NUMEROUS HOLES?

20 A YES.

21 THE COURT: HOW MUCH MORE DO YOU HAVE OF THE  
22 WITNESS?

23 MS. ABRAMSON: I MAYBE HAVE ONE QUESTION.  
24 THAT'S WHAT I'M TRYING TO CHECK TO SEE IF I EVEN  
25 HAVE THAT, YOUR HONOR.

26 YES. I KNOW WHAT.

27 Q TO THE BEST OF YOUR KNOWLEDGE, DEPUTY

28 VAN HORN, WAS THE CLOTHING OF THE DECEDENTS IN THIS

42184

1 CASE EVER SUBMITTED TO THE SHERIFF'S LABORATORY FOR  
2 TESTING APART FROM -- LET ME STRIKE THAT.

3 ARE YOU AWARE THAT A PAIR OF WHITE  
4 TENNIS SHOES WAS SUBMITTED TO THE SHERIFF'S  
5 LABORATORY FOR SEROLOGY TESTING IN THIS CASE?

6 A YES.

7 Q AND THAT A MR. CATALINI FROM YOUR  
8 LABORATORY WAS IN CHARGE OF THAT EXAMINATION?

9 A YES.

10 Q APART FROM THAT, ARE YOU AWARE OF ANY  
11 OTHER CLOTHING OF THE DECEDENTS BEING SUBMITTED TO  
12 THE SHERIFF'S LABORATORY FOR EXAMINATION OR TESTING?

13 A I'M UNAWARE OF THAT.

14 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR  
15 HONOR.

16 THE COURT: ALL RIGHT. WE'LL BE IN RECESS  
17 UNTIL 1:30.

18 DON'T DISCUSS THE CASE WITH ANYONE.  
19 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL  
20 RESUME AT 1:30.

21 (AT 12:04 P.M. PROCEEDINGS WERE  
22 ADJOURNED UNTIL 1:30 P.M. OF  
23 THE SAME DAY.)

24

25

26

27

28

1 VAN NUYS, CALIFORNIA; WEDNESDAY, NOVEMBER 29, 1995

2 1:40 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: ARE WE READY TO PROCEED?

7 MR. CONN: YES.

8 THE COURT: LET'S GET THE JURY OUT, PLEASE.

9 (THE JURY ENTERED THE

10 COURTROOM AND THE FOLLOWING

11 PROCEEDINGS WERE HELD:)

12

13 THE COURT: OKAY. THE JURY IS BACK AND THE

14 WITNESS IS STILL ON THE WITNESS STAND.

15 NOW WE'LL HAVE CROSS-EXAMINATION.

16 MR. CONN: THANK YOU.

17

18 CROSS-EXAMINATION

19 BY MR. CONN:

20 Q DEPUTY, I'D LIKE TO DIRECT YOUR

21 ATTENTION TO THIS EXHIBIT THAT HAS BEEN PLACED ON

22 THE BOARD FOR YOUR TESTIMONY, AND THAT IS EXHIBIT  
23 324, WHICH DEPICTS A SHOTGUN BEING FIRED AND A CLOUD  
24 IN FRONT OF THAT SHOTGUN.

25 CAN YOU TELL US WHAT THAT CLOUD  
26 REPRESENTS?

27 A YES, SIR. THAT'S THE PRODUCTS OF  
28 COMBUSTION FROM THE GUN POWDER BURNING INSIDE THE

42186

1 SHOT SHELL AND THEN EXITING THE BARREL OF THE  
2 SHOTGUN.

3 Q AND DOES THAT MEAN THAT WHEN YOU FIRE A  
4 SHOTGUN USING THE TYPE OF AMMUNITION IN THIS CASE  
5 THAT IT CREATES A BIG WHITE CLOUD THAT FILLS UP A  
6 ROOM?

7 A THAT FILLS UP THE ROOM?

8 Q YES.

9 A NO.

10 Q OKAY. WHEN YOU SAY THE PRODUCTS OF  
11 COMBUSTION, ARE YOU SAYING THAT THAT IS A SMOKE, A  
12 WHITE SMOKE?

13 A NO. GUN POWDER THAT'S USED IN MODERN  
14 CARTRIDGES IS WHAT'S REFERRED TO AS SMOKELESS  
15 POWDER. IT PRODUCES A MINIMUM OF SMOKE. THERE'S --  
16 THAT PICTURE HAS BEEN LIGHTED IN SUCH A WAY THAT IT



17 WOULD SHOW TO A BETTER VIEW THAN YOU COULD SEE WITH  
18 THE HUMAN EYE THE PRODUCTS OF COMBUSTION THAT EXIT  
19 OUTSIDE -- OR EXCUSE ME -- BEHIND THE PROJECTILES.

20 Q SO THE TYPE OF AMMUNITION THAT WAS USED  
21 IN THIS CASE IS A SMOKELESS POWDER?

22 A YES, SIR.

23 Q AND DOES THAT MEAN IT LEAVES NO SMOKE?

24 A NOT ABSOLUTELY NO SMOKE, BUT THERE --  
25 THERE MAY BE SOME SMOKE THAT'S GENERATED BY -- IN THE  
26 CASE OF THE BUCKSHOT PELLETS, AS THE BUCKSHOT GOES  
27 DOWN THE BARREL AND INTERACTS WITH THE OTHER PELLETS  
28 AND THE BARREL ITSELF, IT CAN CREATE SOMEWHAT OF A

42187

1 LEAD DUST THAT WOULD ALSO BE DEPICTED THERE.  
2 THERE'S GOING TO BE A MINIMAL AMOUNT OF SMOKE  
3 BECAUSE, ONCE AGAIN, THEY REFER TO IT AS SMOKELESS  
4 POWDER.

5 Q OKAY. IF YOU WERE TO FIRE 12 SHOTS,  
6 LET'S SAY, OF THIS SMOKELESS POWDER, WOULD IT MAKE  
7 IT DIFFICULT TO SEE IN THE ROOM?

8 MS. ABRAMSON: OBJECTION, YOUR HONOR.  
9 ASSUMES FACTS NOT IN EVIDENCE.

10 THE COURT: OVERRULED.

11 THE WITNESS: I DON'T BELIEVE SO.

12 Q BY MR. CONN: YOU WOULD NOT EXPECT 12  
13 SHOTS OF THIS TYPE OF AMMUNITION TO BE -- BEING  
14 FIRED, TO CREATE ANY VISIBILITY PROBLEMS?

15 MS. ABRAMSON: I'M GOING TO OBJECT, YOUR  
16 HONOR. CALLS FOR SPECULATION AND IMPROPER  
17 HYPOTHETICAL, "THIS TYPE OF AMMUNITION."

18 THE COURT: SUSTAINED AS TO THE FORM OF THE  
19 QUESTION.

20 Q BY MR. CONN: OKAY. DID YOU MAKE A  
21 DETERMINATION, AS A RESULT OF YOUR REVIEW OF THE  
22 MATERIAL, THAT FIOCCHI AMMUNITION WAS USED IN THIS  
23 CASE?

24 A THE COMPONENTS THAT I COULD IDENTIFY IS  
25 A MANUFACTURER OF THE WAD THAT'S CALLED GUALANDI,  
26 AND GUALANDI PRIMARILY LOADS IN FIOCCHI AMMUNITION.  
27 BUT IT'S NOT OUTSIDE THE REALM OF POSSIBILITY THAT  
28 THOSE COMPONENTS COULD BE LOADED IN OTHER SHOT

42188

1 SHELLS. BUT BEST BET IS YES, IT'S FIOCCHI  
2 AMMUNITION.

3 Q IS IT YOUR UNDERSTANDING THAT FIOCCHI  
4 USES SMOKELESS POWDER?

5 A YES.

6 Q WOULD YOU EXPECT 12 SHOTS OF THE

7 SMOKELESS POWDER TO CREATE ANY VISIBILITY PROBLEMS?

8 MS. ABRAMSON: I'M STILL GOING TO OBJECT,  
9 YOUR HONOR, AS INSUFFICIENT FACTUAL FOUNDATION.

10 THE COURT: OVERRULED.

11 BUT IT'S UNCLEAR WHAT YOU MEAN BY VISUAL  
12 PROBLEMS.

13 MR. CONN: OKAY.

14 Q WOULD YOU EXPECT THAT 12 SHOTS OF  
15 SMOKELESS POWDER BEING FIRED WOULD MAKE IT DIFFICULT  
16 FOR THE SHOOTER TO SEE?

17 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT  
18 ALSO, YOUR HONOR. INSUFFICIENT FACTUAL FOUNDATION  
19 FOR THE HYPOTHETICAL.

20 THE COURT: SUSTAINED AS TO THE FORM OF THE  
21 QUESTION.

22 Q BY MR. CONN: WOULD YOU EXPECT THAT THE  
23 SMOKE, IF ANY -- WELL, LET ME ASK YOU THIS: YOU SAID  
24 THAT THAT SMOKELESS POWDER CREATES A MINIMUM OF  
25 SMOKE.

26 HOW MUCH SMOKE WOULD THERE BE AFTER 12  
27 SHOTS ARE FIRED?

28 A THERE WOULD BE PERCEPTIBLE SMOKE. I

1 THINK YOU COULD SAY THAT THERE WOULD BE SMOKE IN THE

2 ROOM, YES, I THINK YOU COULD SAY THAT.

3 Q THAT YOU COULD PERCEIVE WITH YOUR EYE?

4 A YES.

5 Q WOULD IT BE SUCH THAT YOU WOULD

6 ANTICIPATE THAT IT WOULD MAKE IT DIFFICULT TO IMPAIR

7 VISION IN ANY WAY?

8 MS. ABRAMSON: OBJECTION, YOUR HONOR. I

9 THINK THAT'S --

10 THE COURT: IS THERE AN OBJECTION?

11 MS. ABRAMSON: WAS THE QUESTION DIFFICULT TO

12 IMPAIR VISION? DID I HEAR THAT RIGHT?

13 THE COURT: LET'S HAVE THE QUESTION READ

14 BACK.

15 MS. ABRAMSON: VAGUE AND AN IMPROPER

16 HYPOTHETICAL.

17 (THE LAST QUESTION WAS READ BACK

18 AS FOLLOWS:

19 "QUESTION: WOULD IT BE SUCH THAT

20 YOU WOULD ANTICIPATE THAT IT WOULD

21 MAKE IT DIFFICULT TO IMPAIR VISION?")

22

23 MR. CONN: I'LL REPHRASE THAT.

24 Q WOULD YOU EXPECT THAT 12 SHOTS WOULD

25 CREATE SMOKE SUCH THAT IT WOULD IMPAIR VISION?

26 MS. ABRAMSON: AGAIN, I'M GOING TO OBJECT AS

27 INSUFFICIENT FACTS FOR A PROPER HYPOTHETICAL.

28 THE COURT: ARE YOU TALKING IN AN OPEN AREA?

1 IN A ROOM? SIZE OF THE ROOM? THINGS OF THAT  
2 NATURE.

3 Q BY MR. CONN: IN A NORMAL-SIZE ROOM  
4 WOULD YOU EXPECT THAT THE SMOKE WOULD BE SUCH THAT  
5 IT WOULD IMPAIR VISION?

6 MS. ABRAMSON: OBJECTION. VAGUE.

7 THE COURT: DO YOU UNDERSTAND THE QUESTION?

8 THE WITNESS: YES, I DO.

9 THE COURT: OKAY. YOU MAY ANSWER IT.

10 THE WITNESS: NO.

11 Q BY MR. CONN: NOW, YOU INDICATED THAT IN  
12 ORDER FOR YOU TO MAKE A RELIABLE ESTIMATE OF THE  
13 SHOTGUN PATTERNS OR SPREAD PATTERNS THAT WOULD BE  
14 CAUSED BY A PARTICULAR WEAPON, YOU WOULD NEED THE  
15 ACTUAL WEAPON; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q DIRECTING YOUR ATTENTION ONCE AGAIN TO  
18 THE SAME EXHIBIT, I WOULD LIKE TO POINT OUT, FOR  
19 EXAMPLE, WHAT APPEARS IN THE CENTER OF THIS EXHIBIT,  
20 OF 324. THERE APPEARS TO BE A SPREAD HERE  
21 APPROXIMATELY THREE INCHES IN SIZE.

22 DO YOU FEEL THAT BASED UPON YOUR  
23 KNOWLEDGE OF SHOTGUNS AND SHOTGUN SPREADS, THAT YOU  
24 CAN LOOK AT THAT AND SAY, FOR EXAMPLE, THAT WAS SHOT  
25 FROM SO MANY FEET AWAY, GIVE OR TAKE SOME VARIABLE,

26 WITHOUT ACTUALLY HAVING THE ACTUAL SHOTGUN TO  
27 EXPERIMENT WITH?  
28 A NOT RELIABLY.

42191

1 Q SO, FOR EXAMPLE, IF SOMEONE WERE TO  
2 TESTIFY, I THINK THAT THIS SHOT WAS FIRED FROM 14  
3 FEET AWAY, GIVE OR TAKE FOUR FEET, WOULD YOU  
4 DISAGREE WITH THE RELIABILITY OF GIVING SUCH AN  
5 ESTIMATE WITHOUT HAVING THE SHOTGUN TO WORK WITH?

6 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS  
7 FOR SPECULATION WITHOUT A COMPLETE HYPOTHETICAL.

8 THE COURT: OVERRULED.

9 THE WITNESS: I'M SORRY. WOULD YOU REPEAT  
10 THE QUESTION, SIR.

11 MR. CONN: YES.

12 Q IF SOMEONE WOULD TESTIFY THAT HE COULD  
13 LOOK AT A SPREAD SUCH AS THAT AND SAY, IN MY  
14 OPINION, THIS WAS SHOT FROM 14 FEET AWAY, GIVE OR  
15 TAKE FOUR FEET, AND THAT PERSON HAD NO CONTACT WITH  
16 THAT WEAPON INVOLVED, WOULD YOU AGREE THAT THAT  
17 WOULD BE A RELIABLE ESTIMATE?

18 A WOULD I AGREE THAT IT IS RELIABLE? NO.

19 Q WHY IS THAT?

20 A WELL, ONCE AGAIN, BY LOOKING AT THE

21 PATTERN YOU REALLY DON'T KNOW WHAT TYPE OF  
22 AMMUNITION IS USED; YOU DON'T KNOW THE GUN  
23 INVOLVED.

24 Q YOU DIDN'T READ DR. FACKLER'S TESTIMONY  
25 IN THIS CASE?

26 A NO.

27 Q ALL RIGHT. YOU'RE A LAW ENFORCEMENT  
28 OFFICER?

42192

1 A YES, SIR.

2 Q YOU'VE BEEN A LAW ENFORCEMENT OFFICER  
3 FOR HOW LONG?

4 A SINCE FEBRUARY OF 1973.

5 Q AND YOU'VE WORKED FOR THE COUNTY OF  
6 LOS ANGELES THAT ENTIRE TIME?

7 A NO, SIR. I'VE WORKED FOR THE SHERIFF'S  
8 DEPARTMENT SINCE SEPTEMBER OF 1981.

9 Q WHERE DID YOU WORK BEFORE '81?

10 A FROM '79 TO '81 I WORKED FOR THE HERMOSA  
11 BEACH POLICE DEPARTMENT, AND PRIOR TO THAT FOR SEVEN  
12 YEARS I WORKED FOR THE TRENTON, NEW JERSEY POLICE  
13 DEPARTMENT.

14 Q WHAT IS YOUR EDUCATIONAL BACKGROUND?

15 A I HAVE AN ASSOCIATE'S DEGREE IN CRIMINAL

16 JUSTICE AND OTHER COLLEGE COURSES, BUT NO DEGREE

17 PAST AN ASSOCIATE'S DEGREE.

18 Q OKAY. ASSOCIATE'S DEGREE IS A TWO-YEAR

19 DEGREE?

20 A YES, SIR.

21 Q SO YOU HAVE HIGH SCHOOL PLUS TWO YEARS?

22 A YES, SIR.

23 Q YOU'RE NOT A DOCTOR OR AN ENGINEER?

24 A NO, SIR.

25 Q AND YOU'VE TESTIFIED AS AN EXPERT

26 WITNESS IN THE PAST?

27 A YES, SIR.

28 Q AND THE AREA IN WHICH YOU HAVE TESTIFIED

42193

1 AS AN EXPERT WITNESS IS AS A FIREARMS EXAMINER; IS

2 THAT CORRECT?

3 A THAT'S CORRECT.

4 Q IS THAT THE ONLY AREA IN WHICH YOU'VE

5 EVER QUALIFIED AS AN EXPERT WITNESS?

6 A YES.

7 Q YOU'VE NEVER DONE A RECONSTRUCTION OF A

8 SHOOTING?

9 MS. ABRAMSON: OBJECTION. MISSTATES HIS

10 TESTIMONY.



11 THE COURT: WELL, IT'S A QUESTION.  
12 THE WITNESS: I'VE --  
13 THE COURT: GO AHEAD.  
14 THE WITNESS: YES, SIR. THANK YOU.  
15 I'VE ASSISTED IN ATTEMPTING TO DO  
16 RECONSTRUCTIONS AND THEN DOING RECONSTRUCTIONS, YES.  
17 Q BY MR. CONN: SO YOU'VE COMPLETED  
18 RECONSTRUCTIONS OF SHOOTINGS?  
19 A YES.  
20 Q WHAT TYPE OF SHOOTINGS DID YOU  
21 RECONSTRUCT?  
22 A REGULAR HOMICIDES, IF THERE IS SUCH A  
23 THING AS REGULAR HOMICIDE, DEPUTY AND  
24 OFFICER-INVOLVED SHOOTINGS.  
25 Q WHAT TYPES OF RECONSTRUCTIONS? WHAT DO  
26 YOU MEAN BY RECONSTRUCTION?  
27 A OH, AN ATTEMPT TO VERIFY THROUGH  
28 EVIDENCE WHAT IS REPORTED BY WITNESSES, BASICALLY.

42194

1 Q WELL, HAVE YOU EVER LOOKED AT THE  
2 PHYSICAL EVIDENCE FROM A CRIME SCENE ALONE, AND  
3 BASED UPON THE INJURIES OR THE EVIDENCE OF SHOTS  
4 BEING FIRED AT THE SCENE, SOUGHT TO DETERMINE WHAT  
5 HAPPENED WITHOUT THE BENEFIT OF AN EYEWITNESS?

6 A PROBABLY.

7 Q WHAT DO YOU MEAN "PROBABLY"?

8 A WELL, I CAN'T RECALL ANY SPECIFIC  
9 INCIDENCES, BUT IN OCCASIONS WHERE WE HAVE BEEN  
10 CALLED OUT TO CRIME SCENES WHERE THE CRIME SCENE IS  
11 STILL FRESH, YOU'RE WORKING WITH THE HANDLING  
12 DETECTIVE IN AN ATTEMPT TO ANSWER QUESTIONS THAT  
13 WOULD HELP THEM PIECE TOGETHER THE CRIME IN THAT  
14 RESPECT, YES.

15 Q SO BASED UPON THE PHYSICAL EVIDENCE AT A  
16 CRIME SCENE, YOU FEEL THAT YOU SOMETIMES CAN FORM  
17 CONCLUSIONS CONCERNING MATTERS SUCH AS THE NUMBER OF  
18 SHOTS FIRED AND THE TRAJECTORIES INVOLVED?

19 A IN THE RAW NUMBER OF SHOTS FIRED, THAT'S  
20 POSSIBLE. AND YES, TRAJECTORIES, THAT'S POSSIBLE  
21 TOO.

22 Q OKAY. DO YOU FEEL THAT IN A GIVEN CASE  
23 YOU MIGHT ALSO BE ABLE TO REACH A CONCLUSION  
24 CONCERNING SEQUENCE OF SHOTS FIRED?

25 A I THINK THE PROBABILITY, THAT WOULD  
26 DEPEND ON A NUMBER OF THINGS, THE NUMBER OF SHOTS  
27 THAT WERE INVOLVED AND OTHER EVIDENCE THAT MIGHT NOT  
28 BE AVAILABLE AT THE CRIME SCENE. IN OTHER WORDS,

1 RELYING ON THE CORONER TO FIND OUT WHAT THE SHOTS  
2 WERE TO THE BODY, WHAT DAMAGE THOSE SHOTS HAVE  
3 DONE.

4 Q SO YOU DON'T DISAGREE WITH THE NOTION  
5 THAT RECONSTRUCTIONS CAN BE DONE. YOU'RE JUST  
6 SAYING THAT IN THIS CASE YOU DIDN'T DO A  
7 RECONSTRUCTION; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q NOW, IN YOUR CAPACITY AS A LAW  
10 ENFORCEMENT OFFICER, YOU HAVE BEEN CALLED BY THE  
11 PROSECUTION IN THE PAST; IS THAT CORRECT?

12 A YES.

13 Q IN FACT, WOULD YOU SAY THAT NORMALLY YOU  
14 ARE CALLED BY THE PROSECUTION RATHER THAN DEFENSE  
15 ATTORNEYS?

16 A YES.

17 Q HOW OFTEN HAVE YOU BEEN CALLED BY A  
18 DEFENSE ATTORNEY IN THE PAST?

19 A ACTUALLY CALLED OR ACTUALLY TESTIFIED?

20 Q TESTIFIED.

21 A I THINK THIS IS ABOUT THE FIFTH TIME.

22 Q SO I BELIEVE YOU SAID YOU QUALIFIED  
23 ABOUT 250 TIMES; IS THAT CORRECT?

24 A IT'S IN EXCESS OF 285.

25 Q TWO HUNDRED AND EIGHTY-FIVE TIMES. IN  
26 THOSE 285 TIMES YOU'VE ONLY BEEN CALLED BY THE  
27 DEFENSE FIVE TIMES; IS THAT CORRECT?

28 A WELL, IN CRIMINAL MATTERS FIVE TIMES.

1 IN CIVIL MATTERS I THINK PROBABLY, SAY, MAYBE EIGHT  
2 TO TEN TIMES.

3 Q AND YOU WERE CALLED BY THE PROSECUTION  
4 IN THE FIRST TRIAL; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AND YOU NORMALLY ASSIST THE PROSECUTION  
7 IN PREPARING A CASE; IS THAT CORRECT?

8 A YES.

9 Q AND YOU ASSISTED THE PROSECUTION IN THE  
10 FIRST CASE; IS THAT CORRECT?

11 A THAT'S CORRECT.

12 Q AND YOU GAVE THE PROSECUTION THE BENEFIT  
13 OF ALL YOUR ASSISTANCE, DIDN'T YOU?

14 A THAT'S CORRECT.

15 Q AND YOU TOLD THE PROSECUTION ALL THE  
16 CONCLUSIONS THAT YOU COULD REACH CONCERNING THIS  
17 CRIME SCENE; ISN'T THAT CORRECT?

18 A I BELIEVE SO.

19 Q AND YOU DIDN'T HOLD ANYTHING BACK FROM  
20 THE PROSECUTION. YOU BASICALLY GAVE THE PROSECUTION  
21 THE BENEFIT OF ALL YOUR EDUCATION AND KNOWLEDGE; IS  
22 THAT CORRECT?

23 A THAT'S CORRECT.

24 Q AND YOU WERE NOT ABLE TO DO A  
25 RECONSTRUCTION; IS THAT CORRECT?  
26 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
27 FORM OF THE QUESTION.  
28 THE COURT: REPHRASE THE QUESTION.

42197

1 Q BY MR. CONN: WELL, THE SHERIFF'S  
2 DEPARTMENT WAS NOT ABLE TO DO A RECONSTRUCTION OF  
3 THIS INCIDENT; IS THAT CORRECT?  
4 MS. ABRAMSON: SAME OBJECTION. ASSUMES FACTS  
5 NOT IN EVIDENCE, THEY WERE UNABLE.  
6 THE COURT: WELL, AS PHRASED IT'S  
7 ARGUMENTATIVE.  
8 MR. CONN: OKAY.  
9 Q BASED UPON YOUR REVIEW OF THE EVIDENCE  
10 IN THIS CASE, WERE YOU ABLE TO DO A RECONSTRUCTION?  
11 A SINGLY BY MYSELF?  
12 Q YES.  
13 A NO.  
14 Q DID YOU CONSULT WITH OTHER PEOPLE IN THE  
15 SHERIFF'S DEPARTMENT AS TO WHETHER OR NOT A  
16 RECONSTRUCTION COULD BE DONE IN THIS CASE?  
17 A NO.  
18 Q AND TO YOUR KNOWLEDGE, THE SHERIFF'S

19 DEPARTMENT IN THIS CASE DID NOT DO A RECONSTRUCTION;  
20 IS THAT CORRECT?  
21 A THAT'S CORRECT.  
22 Q AND THEN YOU BECAME AWARE THAT THE  
23 LOS ANGELES DISTRICT ATTORNEY'S OFFICE WAS GOING TO  
24 BE USING AN OUTSIDE EXPERT FOR THE PURPOSE OF  
25 OFFERING A RECONSTRUCTION; IS THAT CORRECT?  
26 MS. ABRAMSON: OBJECTION. HEARSAY.  
27 THE COURT: OVERRULED.  
28 YOU CAN ANSWER THE QUESTION.

42198

1 THE WITNESS: YES.  
2 Q BY MR. CONN: WHEN DID YOU BECOME AWARE  
3 THAT THE LOS ANGELES DISTRICT ATTORNEY'S OFFICE WAS  
4 GOING TO BE USING AN OUTSIDE EXPERT FOR THE PURPOSE  
5 OF PRESENTING A RECONSTRUCTION?  
6 A PROBABLY SEPTEMBER OF THIS YEAR,  
7 THEREABOUTS.  
8 Q AND SINCE YOU'VE BECOME AWARE THAT THE  
9 LOS ANGELES DISTRICT ATTORNEY'S OFFICE WAS GOING TO  
10 BE USING AN OUTSIDE EXPERT, HOW MUCH HAVE YOU  
11 CONSULTED WITH THE DEFENSE ATTORNEYS REPRESENTING  
12 ERIK AND LYLE MENENDEZ?  
13 MS. ABRAMSON: YOUR HONOR, I'M GOING TO

14 OBJECT AS IRRELEVANT AS PHRASED.

15 THE COURT: OVERRULED.

16 THE WITNESS: ONLY AFTER I WAS SUBPOENAED,  
17 AND I BELIEVE TWICE.

18 Q BY MR. CONN: WHEN WERE THOSE TWO  
19 OCCASIONS?

20 A ONE OF THEM WAS LAST WEEK, I BELIEVE,  
21 AND I DON'T RECALL THE FIRST DATE. I'D SAY WITHIN --  
22 ABOUT A MONTH BEFORE THAT.

23 Q YOU CONSULTED WITH THEM JUST YESTERDAY,  
24 DIDN'T YOU?

25 A I REVIEWED EVIDENCE THAT I HAD NEVER  
26 SEEN BEFORE YESTERDAY.

27 Q OKAY. WHAT I'M ASKING YOU IS HOW MANY  
28 MEETINGS HAVE YOU HAD WITH THE DEFENSE LAWYERS IN

42199

1 THIS CASE?

2 A I GUESS, COUNTING YESTERDAY, WOULD BE  
3 THREE.

4 Q AND WAS THE PROSECUTION INVITED TO THE  
5 PRIOR MEETINGS THAT YOU HAD WITH THE DEFENSE LAWYERS  
6 IN THIS CASE?

7 MS. ABRAMSON: OBJECTION. IRRELEVANT, YOUR  
8 HONOR.

9 THE COURT: SUSTAINED.

10 Q BY MR. CONN: WAS THE PROSECUTION

11 PRESENT DURING ANY OF THE MEETINGS THAT YOU HAD WITH

12 THE DEFENSE LAWYERS IN THIS CASE?

13 MS. ABRAMSON: OBJECTION. IRRELEVANT.

14 THE COURT: OVERRULED.

15 THE WITNESS: NO.

16 Q BY MR. CONN: DID YOU KNOW WHETHER THE

17 PROSECUTION WANTED TO BE PRESENT DURING THE MEETINGS

18 THAT YOU HAD WITH THE DEFENSE LAWYERS IN THIS CASE?

19 MS. ABRAMSON: OBJECTION. IRRELEVANT.

20 THE COURT: SUSTAINED.

21 MR. CONN: YOUR HONOR, I THINK THIS GOES TO

22 BIAS, IF I MAY INQUIRE.

23 THE COURT: WELL, IT WOULD CALL FOR HEARSAY,

24 UNLESS YOU CAN ESTABLISH SOME FOUNDATION.

25 Q BY MR. CONN: DID YOU ASK -- DID YOU

26 INVITE THE PROSECUTORS TO ANY OF THE MEETINGS YOU

27 HAD WITH THE DEFENSE LAWYERS IN THIS CASE?

28 MS. ABRAMSON: OBJECTION. IRRELEVANT.

42200

1 THE COURT: OVERRULED.

2 THE WITNESS: THEY WEREN'T MY MEETINGS. IT

3 WASN'T UP TO ME TO INVITE ANYBODY TO THE MEETINGS.



4 Q BY MR. CONN: DID YOU HAVE CONVERSATIONS  
5 WITH MS. NAJERA IN WHICH SHE INDICATED TO YOU THAT  
6 SHE WOULD LIKE --

7 MS. ABRAMSON: OBJECTION. HEARSAY.

8 THE COURT: I HAVEN'T HEARD THE QUESTION YET.

9 MS. ABRAMSON: WELL, IT'S ABOUT TO BE  
10 HEARSAY, YOUR HONOR.

11 THE COURT: WELL, UNTIL I HEAR THE QUESTION,  
12 THERE MIGHT BE SOME EXCEPTION TO THE HEARSAY RULE.  
13 SO I CAN'T RULE UPON IT YET.

14 Q BY MR. CONN: DID YOU HAVE CONVERSATIONS  
15 WITH DEPUTY DISTRICT ATTORNEY NAJERA OR ANYONE IN  
16 THE DISTRICT ATTORNEY'S OFFICE CONCERNING OUR DESIRE  
17 TO BE PRESENT AT SUCH MEETINGS?

18 A YES.

19 Q AND DID YOU BECOME AWARE OF OUR INTEREST  
20 IN BEING PRESENT AT SUCH MEETINGS?

21 MS. ABRAMSON: OBJECTION, YOUR HONOR. THIS  
22 CALLS FOR HEARSAY.

23 THE COURT: YOU HAVE TO ESTABLISH A  
24 FOUNDATION FOR THIS.

25 OBJECTION SUSTAINED.

26 Q BY MR. CONN: WHO DID YOU HAVE SUCH  
27 CONVERSATIONS WITH?

28 A I BELIEVE BOTH OF YOU.

1 Q AND IN THOSE CONVERSATIONS, DID EITHER I  
2 OR DEPUTY DISTRICT ATTORNEY NAJERA TELL YOU THAT WE  
3 WANTED TO BE PRESENT DURING SUCH MEETINGS?

4 MS. ABRAMSON: OBJECTION. HEARSAY.

5 THE COURT: OVERRULED.

6 THE WITNESS: FOR THE FIRST MEETINGS YOU SAID  
7 YOU WANTED TO BE PRESENT.

8 Q BY MR. CONN: AND AFTER THAT?

9 A YOU WEREN'T RETURNING MY PHONE CALLS.

10 Q DID YOU CONTACT -- DID YOU ATTEMPT TO  
11 CONTACT THE DISTRICT ATTORNEY'S OFFICE TO TELL US  
12 THAT YOU WERE HAVING SUCH MEETINGS?

13 MS. ABRAMSON: OBJECTION. IRRELEVANT.

14 THE COURT: OVERRULED.

15 THE WITNESS: I ATTEMPTED TO -- AFTER YOU GUYS  
16 DIDN'T SHOW UP FOR THE FIRST MEETING AND DIDN'T  
17 RETURN MY PHONE CALLS, I FIGURED YOU WERE NO LONGER  
18 INTERESTED IN TALKING TO ME.

19 Q BY MR. CONN: WHEN YOU SAID THAT WE  
20 FAILED TO SHOW UP, YOU ATTENDED A MEETING IN WHICH  
21 WE WERE SUPPOSED TO SHOW UP; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND YOU -- WE ASKED TO MEET YOU AT A  
24 PARTICULAR PLACE; IS THAT CORRECT?

25 MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
26 OBJECT TO THIS AS HEARSAY AND COUNSEL'S TESTIFYING.

27 THE COURT: OVERRULED.

28 Q BY MR. CONN: IS THAT CORRECT?

42202

1 A YES.

2 Q AND IT IS YOUR CLAIM THAT YOU WERE  
3 PRESENT AND WE WERE NOT PRESENT; IS THAT CORRECT?

4 A I WAS WAITING FOR YOU ON THE DISTRICT  
5 ATTORNEY'S OFFICE ON THE 17TH FLOOR IN THE  
6 CONFERENCE ROOM. YOU GUYS DIDN'T SHOW UP.

7 Q IS THAT WHERE WE ASKED TO MEET YOU, ON  
8 THE 17TH FLOOR, OR DID WE ASK TO MEET YOU OUTSIDE  
9 THE BUILDING?

10 A OUTSIDE THE BUILDING.

11 Q AND YOU DIDN'T WAIT OUTSIDE THE  
12 BUILDING, YOU WAITED ON THE 17TH FLOOR; IS THAT  
13 CORRECT?

14 MS. ABRAMSON: YOUR HONOR, THIS IS  
15 ARGUMENTATIVE AND IT'S ALL HEARSAY.

16 THE COURT: OVERRULED.

17 THE WITNESS: THAT'S CORRECT.

18 Q BY MR. CONN: SO YOU DIDN'T ASK AT THE  
19 PLACE -- YOU DIDN'T WAIT AT THE PLACE THAT WE ASKED  
20 YOU TO MEET; IS THAT CORRECT?

21 A IT WAS REPRESENTED TO ME THAT AT THE  
22 TIME OF THE MEETING THAT THE CRIMINAL COURT'S

23 BUILDING WOULD BE LOCKED. WHEN I GOT THERE THE  
24 DOORS WERE OPEN, SO I WENT INSIDE THE BUILDING, WENT  
25 UP TO THE DISTRICT ATTORNEY'S OFFICE, AND  
26 IMMEDIATELY PAGED MS. NAJERA.

27 Q AND SHE WASN'T THERE, CORRECT?

28 A I'M SORRY?

42203

1 Q SHE WASN'T THERE?

2 A NO.

3 Q DID YOU REALIZE THAT SHE WOULD BE  
4 DOWNSTAIRS WAITING AS WE HAD ASKED YOU TO WAIT?

5 A WELL, I HAD NO IDEA WHERE SHE WAS,  
6 THAT'S WHY I PAGED HER.

7 Q BUT YOU DIDN'T WAIT AT THE PLACE THAT WE  
8 ASKED YOU TO WAIT; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND THE BOTTOM LINE IS THAT THE  
11 LOS ANGELES SHERIFF'S DEPARTMENT AND -- INCLUDING  
12 YOURSELF, HAVE BEEN MEETING WITH THE DEFENSE  
13 ATTORNEYS CONCERNING THE TESTIMONY IN THIS CASE  
14 WITHOUT INVITING THE DISTRICT ATTORNEY'S OFFICE; IS  
15 THAT CORRECT?

16 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS  
17 FOR HEARSAY. MATTERS BEYOND HIS PERSONAL KNOWLEDGE

18 AS TO WHAT THE DEPARTMENT IS DOING.

19 THE COURT: OBJECTION SUSTAINED.

20 Q BY MR. CONN: THE FACT OF THE MATTER IS  
21 THAT YOU HELD SEVERAL MEETINGS WITH THE DEFENSE  
22 LAWYERS WITHOUT INVITING THE DISTRICT ATTORNEY'S  
23 OFFICE; IS THAT CORRECT?

24 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE AND  
25 MISSTATES THE TESTIMONY.

26 THE COURT: AS PHRASED IT'S ARGUMENTATIVE.

27 Q BY MR. CONN: HOW MANY MEETINGS DID YOU  
28 ATTEND WITHOUT THE PRESENCE OF THE DISTRICT

42204

1 ATTORNEY'S OFFICE?

2 MS. ABRAMSON: ASKED AND ANSWERED.

3 THE COURT: OVERRULED.

4 YOU CAN ANSWER THE QUESTION.

5 THE WITNESS: ALL THE THREE MEETINGS.

6 Q BY MR. CONN: NOW, AS PART OF YOUR  
7 PREPARATION IN THIS CASE, DID COUNSEL FOR ERIK AND  
8 LYLE MENENDEZ ASK YOU TO REVIEW SOME MATERIALS?

9 A YES.

10 Q WHAT DID YOU REVIEW?

11 A I REVIEWED DR. MC CARTHY'S TESTIMONY AT  
12 THE PRETRIAL HEARING AND DR. MC CARTHY'S TESTIMONY

13 IN THE TRIAL, THIS TRIAL.

14 Q ANYTHING ELSE?

15 A I HAVE PART OF LYLE AND ERIK MENENDEZ'

16 TESTIMONY, BUT I'VE NEVER READ IT TO ANY DEGREE.

17 Q ANYTHING ELSE?

18 A THE REPORT FROM MR. MC CARTHY,

19 DR. MC CARTHY.

20 Q ANYTHING ELSE?

21 A I DON'T BELIEVE SO.

22 Q DID YOU ALSO SAY THAT YOU REVIEWED THE

23 CORONER'S REPORT?

24 A I HAVE THAT FROM THE ORIGINAL TIME I

25 LOOKED AT THIS CASE BACK IN 1993.

26 Q OKAY. SO YOU REVIEWED THE -- HOW MANY

27 VOLUMES DID THE TESTIMONY OF DR. MC CARTHY FROM THE

28 PRETRIAL HEARING AND FROM THE TRIAL CONSIST OF?

42205

1 A I DON'T KNOW.

2 Q IT WAS MORE THAN ONE VOLUME; IS THAT

3 CORRECT?

4 A YES.

5 Q WOULD YOU AGREE IT WAS ABOUT FIVE

6 VOLUMES?

7 A PROBABLY.

8 Q AND YOUR ASSIGNMENT, GIVEN TO YOU BY THE  
9 DEFENSE LAWYERS REPRESENTING ERIK AND LYLE MENENDEZ,  
10 WAS TO LOOK FOR ERRORS IN HIS TESTIMONY; IS THAT  
11 CORRECT?

12 MS. ABRAMSON: OBJECTION, YOUR HONOR.

13 THE COURT: SUSTAINED. ASSUMES FACTS NOT IN  
14 EVIDENCE.

15 Q BY MR. CONN: WHAT WAS YOUR ASSIGNMENT?

16 MS. ABRAMSON: OBJECTION, YOUR HONOR.

17 ASSUMES FACTS NOT IN EVIDENCE.

18 THE COURT: REPHRASE THE QUESTION.

19 Q BY MR. CONN: WHAT WERE YOU ASKED TO DO  
20 IN CONNECTION WITH THAT MATERIAL?

21 A REVIEW IT AND TESTIFY IN COURT.

22 Q AND NOT DISCUSS IT WITH DEFENSE COUNSEL  
23 PRIOR TO YOUR TESTIMONY?

24 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT AS  
25 ARGUMENTATIVE.

26 THE COURT: SUSTAINED.

27 Q BY MR. CONN: WAS IT YOUR UNDERSTANDING  
28 THAT COUNSEL WANTED TO DISCUSS IT WITH YOU BEFORE

42206

1 THEY CALLED YOU AS A WITNESS?

2 A YES.

3 Q AND DID YOU REVIEW IT AND RELATE TO THEM  
4 CERTAIN OBSERVATIONS THAT YOU MADE IN THAT  
5 TRANSCRIPT?

6 A YES.

7 Q AND DID YOU POINT OUT WHAT YOU PERCEIVED  
8 AS ERRORS?

9 A YES.

10 Q AND WAS THAT YOUR UNDERSTANDING OF WHY  
11 IT WAS GIVEN TO YOU, SO THAT YOU CAN GO THROUGH THAT  
12 TRANSCRIPT AND YOU CAN FIND ERRORS IN THE TESTIMONY  
13 OF ROGER MC CARTHY?

14 A YES. THE SAME ERRORS I POINTED OUT TO  
15 HER I TRIED TO POINT OUT TO YOU AND MS. NAJERA  
16 ALSO.

17 Q BUT THAT WAS YOUR ASSIGNMENT, TO FIND  
18 ERRORS IN THE PROSECUTION'S CASE AND POINT IT OUT TO  
19 DEFENSE COUNSEL; IS THAT CORRECT?

20 MS. ABRAMSON: OBJECTION, YOUR HONOR.  
21 ARGUMENTATIVE.

22 THE COURT: OVERRULED.

23 YOU CAN ANSWER THE QUESTION.

24 THE WITNESS: I DID NOT RECEIVE AN  
25 ASSIGNMENT. I RECEIVED A SUBPOENA. AND LIKE I DO  
26 FOR ALL SUBPOENAS, I TRY TO BE PREPARED SO I KNOW  
27 WHAT I'M TALKING ABOUT WHEN I COME TO COURT.

28 Q BY MR. CONN: IN THIS CASE WHAT YOU DID



1 WAS MORE THAN PREPARE. IN THIS CASE WHAT YOU DID  
2 WAS YOU PREPARED DEFENSE COUNSEL; IS THAT WHAT YOU  
3 DID?

4 MS. ABRAMSON: OBJECTION, YOUR HONOR.  
5 ARGUMENTATIVE.

6 THE COURT: SUSTAINED.

7 Q BY MR. CONN: DID YOU PREPARE DEFENSE  
8 COUNSEL AND POINT OUT TO DEFENSE COUNSEL THE  
9 QUESTIONS THAT SHOULD BE ASKED?

10 A NO.

11 Q WHAT DID YOU DO WITH THE MATERIAL -- WITH  
12 THE ERRORS THAT YOU OBSERVED IN THE TESTIMONY OF  
13 ROGER MC CARTHY?

14 A I MADE THEM AWARE -- MADE MS. ABRAMSON  
15 AWARE OF THEM.

16 Q AND YOU ARE AWARE OF THE FACT THAT SHE  
17 WOULD THEN USE THAT IN COURT TO TRY TO ATTACK THE  
18 TESTIMONY OF ROGER MC CARTHY; IS THAT CORRECT?

19 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS  
20 FOR SPECULATION AND IS ARGUMENTATIVE.

21 THE COURT: OVERRULED.

22 THE WITNESS: THAT WAS MY ASSUMPTION, YEAH.

23 Q BY MR. CONN: AND DID YOU -- ARE YOU  
24 BEING PAID AS AN EXPERT WITNESS?

25 A I'M WORKING FOR THE COUNTY OF

26 LOS ANGELES.

27 Q AND YOU DID THIS DURING REGULAR WORK  
28 HOURS?

42208

1 A THAT'S CORRECT.

2 Q DID YOU DISCUSS WITH YOUR SUPERVISORS  
3 THE FACT THAT YOU WOULD BE LOOKING FOR ERRORS IN THE  
4 PROSECUTION'S CASE AT THE REQUEST OF CRIMINAL  
5 DEFENSE COUNSEL BEFORE YOU UNDERTOOK THIS TASK?

6 A MY SUPERVISORS WERE AWARE THAT I WAS  
7 PREPARING FOR COURT TESTIMONY IN RESPONSE TO A  
8 LAWFUL SUBPOENA.

9 Q AND WERE THEY AWARE OF THE FACT THAT YOU  
10 WERE LOOKING FOR ERRORS IN THE PROSECUTION'S CASE TO  
11 ASSIST IN THE DEFENSE OF ERIK AND LYLE MENENDEZ?

12 A YES.

13 Q AND HOW MANY REPRESENTATIVES FROM THE  
14 SHERIFF'S DEPARTMENT ARE HERE TODAY IN THE  
15 AUDIENCE?

16 A TWO. THREE, EXCUSE ME. THREE.

17 Q WHO ARE THEY?

18 A CAPTAIN MICHAEL SODEBERG, WHO'S IN  
19 CHARGE OF THE CRIME LAB, SENIOR -- ASSISTANT LAB  
20 DIRECTOR, RONALD LINHART, AND DEPUTY PATRICIA

21 FINN (PHONETIC).

22 Q AND THEN YOU REVIEWED SOME EXHIBITS THAT  
23 ARE IN EVIDENCE TO ASSIST COUNSEL AS WELL; IS THAT  
24 CORRECT?

25 A WHAT EXHIBITS? WHAT DO YOU MEAN?

26 Q WERE YOU ASKED TO REMAIN THE OTHER DAY  
27 IN COURT TO REVIEW SOME COURT EXHIBITS AND GIVE  
28 COUNSEL THE BENEFIT OF YOUR OPINION CONCERNING

42209

1 CERTAIN EXHIBITS?

2 A I BELIEVE THE OTHER DAY WHEN I REMAINED  
3 BEHIND IT WAS TO LOOK AT THE MOSSBERG SHOTGUN.

4 Q DID YOU REVIEW ANY OTHER EXHIBITS?

5 A I DON'T RECALL. I DON'T BELIEVE SO.

6 Q NOW, I BELIEVE YOU SAID THAT AFTER  
7 REVIEWING THE TESTIMONY OF DR. MC CARTHY, YOU CAME  
8 UP WITH SOME BONES OF CONTENTION; IS THAT WHAT YOU  
9 SAID?

10 MS. ABRAMSON: OBJECTION, YOUR HONOR.

11 MISSTATES THE TESTIMONY.

12 THE COURT: OVERRULED.

13 THE WITNESS: I FOUND WHAT I BELIEVE TO BE  
14 ERRORS, YES.

15 Q BY MR. CONN: AND ONE OF YOUR BONES OF

16 CONTENTION WAS IN REGARD TO SIZE EIGHT-AND-A-HALF

17 BIRD SHOT?

18 A THAT WAS ONE OF THE THINGS I POINTED

19 OUT.

20 Q DR. MC CARTHY TESTIFIED THAT THERE IS

21 SIZE EIGHT-AND-A-HALF BIRD SHOT; IS THAT CORRECT?

22 A I BELIEVE HE IDENTIFIED THE SHOT IN THIS

23 CASE AS EIGHT-AND-A-HALF BIRD SHOT.

24 Q AND IT WAS YOUR CONTENTION THAT THERE IS

25 SIZE EIGHT-AND-A-HALF BIRD SHOT, BUT THAT JUST

26 WASN'T THE BIRD SHOT IN THIS CASE?

27 A THAT'S CORRECT.

28 Q YOU AGREE WITH DR. MC CARTHY THAT THERE

42210

1 IS SIZE EIGHT-AND-A-HALF BIRD SHOT?

2 A THAT'S CORRECT.

3 Q AND YOU MADE A DETERMINATION AS TO THE

4 SIZE OF THE SHOT IN THIS CASE BY LOOKING AT THE

5 PELLETS VISUALLY OR BY MEASURING THEM?

6 A BY WEIGHING THEM.

7 Q HOW MANY DID YOU WEIGH?

8 A OF THE BIRD SHOT?

9 Q MM-HMM.

10 A I DON'T REMEMBER. I BELIEVE 10.

11 Q HOW MUCH DID THEY WEIGH?

12 A I DON'T RECALL. I CAN TELL YOU

13 APPROXIMATELY WHAT 10 OF THEM WOULD HAVE WEIGHED.

14 Q I'M NOT ASKING FOR THE APPROXIMATE. I'M

15 ASKING FOR THE MEASUREMENT THAT YOU MADE IN THIS

16 CASE UPON WHICH YOU FORMED AN OPINION AND TESTIFIED

17 IN COURT THAT THE SIZE OF THE BIRD SHOT IN THIS CASE

18 IS EITHER SIX OR SEVEN AND A HALF.

19 A I DON'T RECALL THE SPECIFIC WEIGHT.

20 Q HOW MUCH SHOULD 10 PELLETS OF

21 EIGHT-AND-A-HALF BIRD SHOT WEIGH?

22 A EIGHT AND A HALF?

23 Q IS THAT WHAT -- I'M SORRY. YOU SAID IT

24 WAS EITHER SIX OR SEVEN AND A HALF; IS THAT

25 CORRECT?

26 A RIGHT.

27 Q HOW MUCH SHOULD 10 PELLETS OF SIZE SIX

28 BIRD SHOT WEIGH?

42211

1 A THE APPROXIMATE WEIGHT OF A GRAIN -- OR

2 EXCUSE ME -- A PELLET OF NO. 6 SHOT IS APPROXIMATELY

3 TWO GRAINS, SO IT WOULD BE ABOUT 20 GRAINS. THE

4 WEIGHT OF NO. 7 AND A HALF SHOT IS APPROXIMATELY ONE

5 AND A HALF GRAINS. SO 10 PELLETS OF NO. 7 AND A

6 HALF SHOT WOULD WEIGH 15 GRAINS.

7 Q AND HOW MUCH WOULD 10 PELLETS OF EIGHT

8 AND A HALF WEIGH?

9 A I DON'T KNOW.

10 Q DID YOU SEEK TO OBTAIN SIZE EIGHT AND A

11 HALF FOR THE PURPOSE OF WEIGHING THEM?

12 A WE DON'T HAVE ANY IN OUR EXEMPLAR

13 COLLECTION, SO I DIDN'T COMPARE THEM TO THAT. THEY

14 WOULD BE SMALLER THAN EITHER OF THE TWO WEIGHTS I

15 GAVE YOU.

16 Q YOU DON'T RECALL WHAT THE WEIGHT WAS IN

17 THIS CASE; IS THAT CORRECT?

18 A NO, I DON'T.

19 Q SO YOU CAN'T SAY HOW FAR OFF ROGER

20 MC CARTHY WAS; IS THAT CORRECT?

21 A WELL, I CAN TELL YOU THAT BASED UPON

22 LOOKING AT MANY SHOTGUN PELLETS AND WEIGHING THESE,

23 THAT IT WAS MY OPINION THAT THEY WERE EITHER NO. 6

24 OR NO. 7 AND A HALF SHOT.

25 Q AREN'T BIRD SHOT PELLETS ALSO MEASURED?

26 A NOT RELIABLY.

27 Q NOW, ANOTHER BONE OF CONTENTION THAT YOU

28 HAD WITH DR. MC CARTHY WAS THAT HE USED THE TERM

1 "OVER-SHOT WAD" RATHER THAN "OVER-POWDER WAD"; IS  
2 THAT CORRECT?

3 A YES.

4 Q IS THAT A BONE OF CONTENTION FOR YOU?

5 A WELL, BECAUSE SOMEBODY WHO TAKES THE  
6 STAND IN A CRIMINAL CASE SHOULD BE ABLE TO TELL THE  
7 DIFFERENCE ABOUT BASIC THINGS LIKE COMPONENTS OF A  
8 SHOT SHELL.

9 Q AND WHAT WAS YOUR UNDERSTANDING THAT  
10 DR. MC CARTHY WAS REFERRING TO?

11 A A PIECE -- I DON'T KNOW. I WASN'T HERE  
12 FOR HIS TESTIMONY. I DIDN'T SEE IT.

13 Q WELL, YOU READ HIS TESTIMONY AND YOU  
14 FOUND A PROBLEM WITH HIS TESTIMONY; IS THAT  
15 CORRECT?

16 A WELL, THE FACT OF -- IN 1995 OR EVEN 1989  
17 REFERRING TO OVER-SHOT WAD, YES.

18 Q ARE YOU SAYING THAT THERE'S NO SUCH TERM  
19 AS OVER-SHOT WAD?

20 A NO.

21 Q WHAT ARE YOU SAYING?

22 A I'M SAYING IT'S AN OLD TERM FOR OLD  
23 AMMUNITION. MODERN AMMUNITION IS CRIMPED, USING  
24 WHAT THEY CALL A STAR CRIMP, WHICH NEGATES THE NEED  
25 FOR A WAD ON TOP OF THE SHOT.

26 Q ARE YOU SAYING THAT ALL MODERN  
27 AMMUNITION IS STAR CRIMPED?

28 A NO.

1 Q YOU CAN STILL PURCHASE AMMUNITION THAT  
2 HAS THE OVER-SHOT WAD, CAN'T YOU?

3 A NOT THAT I'M AWARE OF.

4 Q WHAT IS AN OVER-SHOT WAD?

5 A IT'S A WAD THAT GOES OVER THE SHOT AND  
6 THE OLD FORM OF CRIMPING SHOT SHELLS IS A ROLL CRIMP  
7 WHERE IT ROLLS THE PLASTIC OR PAPER DOWN AND THEN  
8 THE OVER-SHOT WAD PRESSES THE COMPONENTS TOGETHER.

9 Q WHAT IS A STAR CRIMP?

10 A A STAR CRIMP IS WHERE THE SHOT SHELL IS  
11 FOLDED DOWN INTO OR ONTO THE TOP OF THE SHOT SHELL  
12 AND THAT RETAINS THE COMPONENTS OF THE SHOT SHELL.

13 MR. CONN: YOUR HONOR, I HAVE IN MY HAND  
14 THREE SHOTGUN SHELLS. I'D LIKE TO MARK THIS AS --  
15 COLLECTIVELY AS 326.

16 THE COURT: IT WOULD BE 327.

17 MS. ABRAMSON: COUNSEL CARE TO SHOW IT TO  
18 US?

19 (PAUSE IN PROCEEDINGS.)

20

21 THE COURT: SHOTGUN OVER THERE?

22 THE WITNESS: NO, SIR.

23 THE BAILIFF: SHOTGUN'S OVER HERE.

24 Q BY MR. CONN: SHOWING YOU 327, CAN YOU



25 TELL US WHAT THIS IS THAT YOU'RE LOOKING AT.

26 A YES. THREE TYPES OF AMMUNITION THAT  
27 WERE NOT USED IN THIS CASE.

28 Q AND WHAT TYPE OF -- WHAT TYPE OF WAD DOES

42214

1 THAT AMMUNITION HAVE?

2 A THEY HAVE OVER-SHOT WADS.

3 Q IS THAT THE TYPE OF WAD THAT  
4 DR. MC CARTHY WAS REFERRING TO?

5 A YES.

6 Q AND IS IT YOUR TESTIMONY THAT THAT  
7 AMMUNITION IS NO LONGER PURCHASED OR NO LONGER SOLD?

8 A I WAS REFERRING TO THE AMMUNITION THAT  
9 WAS USED IN THIS CASE.

10 Q WHEN DR. MC CARTHY WAS TESTIFYING,  
11 WASN'T HE REFERRING TO THE FACT THAT SOME  
12 AMMUNITION, NOT NECESSARILY IN THIS CASE, BUT SOME  
13 AMMUNITION IS MADE WITH OVER-SHOT WADS?

14 A I BELIEVED THAT HE WAS IDENTIFYING A  
15 COMPONENT FROM THIS CRIME SCENE AS AN OVER-POWDER  
16 WAD -- EXCUSE ME -- OVER-SHOT WAD.

17 Q BUT IT IS YOUR TESTIMONY HERE THAT THAT  
18 TYPE OF AMMUNITION IS NO LONGER MADE; IS THAT  
19 CORRECT?

20 A IN THE AMMUNITION THAT WAS USED IN THIS  
21 CASE, THAT'S MY TESTIMONY, YES.

22 Q I'M NOT ASKING YOU THAT. I'M ASKING  
23 YOU: WAS IT YOUR TESTIMONY HERE IN COURT THAT THE  
24 TYPE OF AMMUNITION THAT YOU SEE IN FRONT OF YOU  
25 RIGHT NOW IS NO LONGER MADE?

26 A NO. OBVIOUSLY, THIS IS CURRENT  
27 AMMUNITION, BUT THE CONTEXT OF MY REMARKS WAS IN THE  
28 AMMUNITION THAT WAS USED IN THIS CASE.

42215

1 Q AND WILL YOU AGREE THAT SIZE  
2 EIGHT-AND-A-HALF BUCK IS ALSO COMMERCIALY  
3 AVAILABLE?

4 A EIGHT-AND-A-HALF BIRD SHOT.

5 Q EIGHT-AND-A-HALF BIRD SHOT?

6 A YES.

7 Q WOULD YOU AGREE WITH THAT?

8 A YES.

9 MR. CONN: YOUR HONOR, I HAVE A BOX OF SIZE  
10 EIGHT-AND-A-HALF BIRD SHOT.

11 MS. ABRAMSON: YOUR HONOR, UNLESS THERE'S  
12 GOING TO BE A FOUNDATION AS TO WHERE ALL THESE  
13 MIRACULOUS ITEMS COME FROM --

14 THE COURT: WITHOUT THAT SORT OF REMARK FROM

15 COUNSEL, DO YOU HAVE SOME SPECIFIC OBJECTION?

16 MS. ABRAMSON: YES. I WOULD OBJECT, UNLESS  
17 THERE'S GOING TO BE A FOUNDATION LAID AS TO WHERE  
18 THESE MATERIALS HAVE COME FROM.

19 THE COURT: ALL RIGHT. WELL, AT THIS POINT  
20 IT'S NOT BEING RECEIVED, IT'S JUST BEING MARKED AND  
21 SHOWN TO THE WITNESS. SO AS WITH OTHER EXHIBITS,  
22 THAT'S THE WAY WE'LL PROCEED.

23 SO IT WILL BE MARKED AS 328.

24 MS. ABRAMSON: I'M GOING TO OBJECT TO THIS,  
25 YOUR HONOR. THIS IS .410-GAUGE, TOTALLY IRRELEVANT  
26 TO THIS.

27 THE COURT: I HAVEN'T HEARD IT YET, SO AT  
28 THIS POINT, AS I SAID, THE EXHIBIT IS BEING MARKED

42216

1 AND IT WILL REMAIN MARKED AS 328.

2 Q BY MR. CONN: SHOWING YOU 328, CAN YOU  
3 TELL US WHAT THIS IS.

4 A YES. THIS IS A BOX OF WINCHESTER TARGET  
5 AMMUNITION IN .410-GAUGE CONTAINING ONE AND A HALF  
6 OUNCE OF EIGHT AND A HALF SHOT.

7 Q DOES EIGHT-AND-A-HALF BIRD SHOT COME IN  
8 DIFFERENT GAUGES?

9 A YES.

10 Q WHAT TYPE OF GAUGE WAS USED IN THIS

11 CASE?

12 A .12.

13 Q IS IT AVAILABLE IN .12-GAUGE?

14 A YES.

15 Q NOW, DID YOU TELL DEPUTY DISTRICT

16 ATTORNEY CAROL NAJERA THAT YOU CAN GET MORE THAN 27

17 PELLETS IN A SIZE 4 BUCKSHOT?

18 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

19 FOR HEARSAY.

20 THE COURT: OVERRULED.

21 THE WITNESS: I BELIEVE THE QUESTION SHE

22 ASKED ME WAS, WAS IT POSSIBLE TO ENCOUNTER A ROUND

23 OF NO. 4 BUCKSHOT THAT HAD LESS THAN THE PRESCRIBED

24 27 PELLETS, AND I SAID ANYTHING'S POSSIBLE, OR WORDS

25 TO THAT EFFECT.

26 Q BY MR. CONN: DID YOU SAY IT HAPPENS BUT

27 IT'S RARE?

28 A I MAY HAVE USED THAT TERMINOLOGY.

42217

1 Q AND IS THAT YOUR TESTIMONY HERE TODAY,

2 THAT YOU CAN GET A COUNT OTHER THAN 27, IT HAPPENS,

3 BUT IT'S RARE?

4 A WELL, I BELIEVE I TESTIFIED TO THAT ON

5 DIRECT, THAT I THOUGHT IT WAS POSSIBLE, BUT

6 UNLIKELY.

7 Q NOW, IN THIS CASE YOU DIDN'T MAKE A

8 DETERMINATION THAT THERE WERE ONLY SIX NO. 4

9 BUCKSHOT FIRED AT THE CRIME SCENE, DID YOU?

10 A NO.

11 Q AND WHY IS IT THAT YOU CANNOT MAKE THAT

12 DETERMINATION?

13 A WHAT I DETERMINED, BASED UPON THE

14 OVER-POWDER WADS THAT I FOUND, THAT I COULD SEE,

15 THAT AT LEAST SIX SHOTS HAD BEEN FIRED WHERE

16 OVER-POWDER WADS WERE USED AND TWO ROUNDS WERE FIRED

17 WHERE COMBINATION WADS OR WAD COLUMNS WERE USED.

18 Q AND ONE OF THE REASONS WHY YOU CAN'T

19 DETERMINE HOW MANY SHOTS WERE FIRED IN THIS CASE IS

20 BECAUSE SOMEONE COULD HAVE PICKED UP SOME OF THE

21 EVIDENCE FROM THE CRIME SCENE AND TAKEN THAT

22 EVIDENCE WITH THEM; IS THAT CORRECT?

23 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS

24 FOR SPECULATION.

25 THE COURT: OVERRULED.

26 THE WITNESS: THAT'S POSSIBLE.

27 Q BY MR. CONN: AND, IN FACT, THERE WERE

28 NO CARTRIDGES FOUND AT THE CRIME SCENE; IS THAT

1 CORRECT?

2 A THAT'S CORRECT.

3 Q SO IT IS YOUR UNDERSTANDING THAT SOME OF  
4 THE PHYSICAL EVIDENCE WAS REMOVED FROM THE CRIME  
5 SCENE BEFORE THE POLICE EVEN GOT THERE; IS THAT  
6 CORRECT?

7 A YES.

8 Q NOW, YOU SAID THAT YOU FOUND IT UNLIKELY  
9 THAT ONLY SIX -- BASED UPON YOUR KNOWLEDGE OF SEEING  
10 WOUNDS, YOU SAID YOU FOUND IT UNLIKELY THAT ONLY SIX  
11 ROUNDS OF BUCKSHOT WERE USED; IS THAT CORRECT?

12 A YES.

13 Q HOW MANY ROUNDS OF BUCKSHOT WOULD YOU  
14 SAY WAS USED IN THIS CASE?

15 A I WOULDN'T PUT A SPECIFIC NUMBER ON IT.

16 Q WHY DO YOU RULE OUT SIX?

17 A BECAUSE THERE'S A LOT OF DAMAGE TO THE  
18 TWO VICTIMS IN THIS CASE THAT I THINK ARE -- SHOW  
19 THAT THERE WERE MORE THAN SIX SHOTS OF BUCKSHOT  
20 FIRED.

21 Q WELL, WHAT WOULD YOU SAY WOULD BE THE  
22 RANGE OF SHOTS FIRED IN THIS CASE, A NUMERICAL  
23 ESTIMATE?

24 A I WOULD SAY THAT USING A MAXIMUM AMOUNT  
25 OF SHOTS THAT COULD BE FIRED WITH AN ADMISSION FROM  
26 THE SUSPECTS THAT AT LEAST ONE ROUND WAS RELOADED --

27 Q AGAIN, I'M NOT ASKING YOU TO RELY UPON

42219

1 MS. ABRAMSON: I'M GOING TO OBJECT TO HIM  
2 INTERRUPTING THE WITNESS' ANSWER.

3 THE COURT: OVERRULED. HE MAY DO THAT TO  
4 CLARIFY THE QUESTION.

5 Q BY MR. CONN: MY QUESTION IS BASED UPON  
6 THE PHYSICAL EVIDENCE, YOUR OBSERVATION OF THE  
7 PHOTOGRAPHS, YOUR KNOWLEDGE OF SHOTGUNS AND THE  
8 INJURIES THAT THEY CAUSE. YOU SAID THAT YOU FIND IT  
9 DIFFICULT TO BELIEVE THAT THERE ARE ONLY SIX ROUNDS.

10 WHAT WOULD YOU SAY WOULD BE THE MORE  
11 LIKELY NUMBER OR THE RANGE OF SHOTS, REFERRING TO  
12 BUCKSHOTS, THAT WERE FIRED HERE?

13 A BUCKSHOT? I'D SAY AT LEAST 10 IS A  
14 POSSIBILITY.

15 Q AND IT IS ALSO YOUR OPINION THAT THERE  
16 WERE TWO ROUNDS OF BIRD SHOT FIRED HERE?

17 A YES.

18 Q SO THAT WOULD GIVE US A TOTAL OF 12; IS  
19 THAT CORRECT?

20 A THAT'S A POSSIBILITY, YES.

21 Q NOW, WHEN YOU TESTIFIED IN THE FIRST  
22 TRIAL, DID YOU USE THE GUN, THE SHOTGUN THAT IS HERE

23 IN COURT, TO ILLUSTRATE TO THE JURY HOW THE SHOTGUN  
24 IS OPERATED?

25 A NO.

26 Q WHAT TYPE OF WEAPON DID YOU USE IN THE  
27 FIRST TRIAL WHEN YOU WERE ILLUSTRATING TO THAT JURY  
28 HOW THE SHOTGUN IS OPERATED?

42220

1 A IT WAS A MOSSBERG SHOTGUN FROM OUR  
2 EXEMPLAR COLLECTION THAT IS FUNCTIONALLY IDENTICAL  
3 TO THIS WEAPON, ONLY COSMETICALLY DIFFERENT.

4 Q IS IT YOUR UNDERSTANDING THAT THIS  
5 SHOTGUN HERE IN COURT IS NOT ONLY FUNCTIONALLY  
6 EQUIVALENT TO THE WEAPON THAT WAS USED IN THIS CASE,  
7 BUT ALSO COSMETICALLY IDENTICAL?

8 A YES, I BELIEVE IT IS.

9 Q WHICH SHOTGUN WOULD YOU SAY IS CLOSER TO  
10 THE WEAPON THAT WAS USED IN THIS CASE, THE SHOTGUN  
11 THAT YOU USED IN THE FIRST TRIAL OR THE SHOTGUN THAT  
12 DR. MC CARTHY USED IN THIS TRIAL?

13 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
14 QUESTION AS VAGUE.

15 THE COURT: SUSTAINED AS TO WHAT IS MEANT BY  
16 "CLOSER."

17 Q BY MR. CONN: WHICH SHOTGUN WOULD YOU



18 SAY IS MORE SIMILAR TO THE SHOTGUN THAT WAS ACTUALLY  
19 USED IN THE COMMISSION OF THIS CRIME, THE SHOTGUN  
20 THAT YOU USED DURING THE FIRST TRIAL OR THE SHOTGUN  
21 THAT MC CARTHY REFERRED TO DURING THIS TRIAL?

22 MS. ABRAMSON: SAME OBJECTION.

23 THE COURT: OVERRULED.

24 THE WITNESS: THIS SHOTGUN.

25 Q BY MR. CONN: NOW, YOU INDICATED TO THE  
26 JURY THAT PERHAPS YOU CAN FIRE FIVE SHOTS AS QUICKLY  
27 AS FIVE SECONDS; IS THAT CORRECT?

28 A THAT MIGHT BE POSSIBLE.

42221

1 Q WHEN YOU WERE GIVING THAT TIME ESTIMATE,  
2 YOU WERE NOT TAKING INTO ACCOUNT THE ACCURACY OF  
3 THOSE SHOTS HITTING THEIR TARGETS, WERE YOU?

4 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
5 FORM OF THE QUESTION, YOUR HONOR. ARGUMENTATIVE.

6 THE COURT: OVERRULED.

7 THE WITNESS: NO. I TOOK THE QUESTION TO  
8 MEAN PURELY HOW FAST COULD ONE OPERATE THE SHOTGUN  
9 AND GET IT TO FIRE FIVE TIMES.

10 Q BY MR. CONN: HAVE YOU FORMED AN OPINION  
11 AS TO HOW MUCH TIME IT WOULD TAKE FOR AN  
12 INEXPERIENCED SHOOTER, WHO HAD NEVER FIRED A SHOTGUN

13 BEFORE, TO HIT ALL OF THE TARGETS THAT WERE HIT IN  
14 THIS CASE WITH THE ACCURACY THAT WAS FOUND IN THIS  
15 CASE?

16 MS. ABRAMSON: OBJECTION, YOUR HONOR.

17 THERE'S BEEN NO ACCURACY FOUND IN THIS CASE.

18 THE COURT: ALL RIGHT. WHAT WAS THE LEGAL  
19 BASIS OF YOUR OBJECTION?

20 MS. ABRAMSON: MISSTATES THE EVIDENCE.

21 THE COURT: ALL RIGHT. IN THE FUTURE, IF YOU  
22 CAN CONFINE YOUR OBJECTION TO THE LEGAL BASIS  
23 WITHOUT ARGUING IT.

24 OBJECTION SUSTAINED.

25 Q BY MR. CONN: YOU INDICATED THAT YOU  
26 WERE A FIREARMS INSTRUCTOR?

27 A YES.

28 Q AND YOU HAVE EXPERIENCE DEALING WITH

42222

1 UNEXPERIENCED SHOOTERS; IS THAT CORRECT?

2 A YES.

3 Q ONE OF THE THINGS THAT YOU OBSERVE IN  
4 REGARD TO INEXPERIENCED SHOOTERS IS THAT YOU HAVE TO  
5 ADMONISH THEM NOT TO GET INTO A CROSS FIRE  
6 SITUATION?

7 A YES.

8 Q AND DOES THAT HAPPEN AT THE SHERIFF'S  
9 DEPARTMENT, THAT INEXPERIENCED DEPUTIES GET INTO  
10 CROSS FIRE SITUATIONS AND SHOOT AND KILL EACH  
11 OTHER?

12 A NO, I DON'T THINK WE'VE HAD A CROSS FIRE  
13 SITUATION WHERE ONE DEPUTY HAS SHOT ANOTHER DEPUTY.

14 Q WHAT WERE YOU REFERRING TO WHEN YOU WERE  
15 TELLING THE JURY ABOUT THE FACT THAT YOU'VE  
16 ADMONISHED PEOPLE IN THE PAST NOT TO GET INTO CROSS  
17 FIRE SITUATIONS?

18 A BECAUSE IT'S -- ESPECIALLY WHEN DEALING  
19 WITH NEW PEOPLE, THEY TEND TO GET A REAL BAD CASE OF  
20 TUNNEL VISION AND ONLY FOCUS ON THAT WHICH THEY SEE  
21 RIGHT IN FRONT OF THEM, MAYBE NOT WHAT'S BEHIND  
22 THEM.

23 Q WHAT I'M ASKING IS: HAVE YOU HAD  
24 SITUATIONS WHERE YOU'VE HAD DEPUTIES FIRING AT EACH  
25 OTHER AND STRIKING EACH OTHER WITH FIREARMS BECAUSE  
26 OF THAT TUNNEL VISION?

27 A I DON'T BELIEVE WE HAVE, NO.

28 Q SO, ONCE AGAIN, LET ME GET BACK TO WHAT

42223

1 WERE THE CIRCUMSTANCES UNDER WHICH YOU FOUND IT  
2 NECESSARY TO ADMONISH SOMEONE TO BE MINDFUL OF THE

3 CROSS FIRE SITUATION?

4 A ONCE AGAIN, IT WAS -- WHEN YOU'RE TELLING  
5 PEOPLE, ONE OF THE THINGS THAT YOU TEACH WHEN YOU'RE  
6 TEACHING THE USE OF DEADLY FORCE, IS YOU HAVE TO BE  
7 COGNIZANT OF WHAT IS DOWN RANGE. AND WE TELL TO  
8 PEOPLE THAT SOMETIMES WHAT'S DOWN RANGE MAY BE YOUR  
9 PARTNER, BECAUSE IT SEEMS TO BE SOMETHING THAT  
10 STICKS IN THEIR MIND A LITTLE BETTER.

11 Q SO THIS ADMONISHMENT WAS AN ADMONISHMENT  
12 THAT WOULD APPLY TO A THEORETICAL SITUATION RATHER  
13 THAN A PROBLEM THAT YOU OBSERVED BEFORE YOU IN WHICH  
14 TWO DEPUTIES SHOOTING THEIR WEAPONS WOULD ACTUALLY  
15 TURN TO FIRE IN EACH OTHER'S DIRECTION; IS THAT  
16 CORRECT?

17 A IT'S HAPPENED WITH OTHER AGENTS; HENCE,  
18 THAT'S WHY WE TEACH THAT IN OUR ACADEMY.

19 Q BUT IN YOUR EXPERIENCE AS AN INSTRUCTOR,  
20 YOU HAVE NEVER SEEN TWO DEPUTIES GET INTO A CROSS  
21 FIRE SITUATION WHERE THEY WERE FIRING AT EACH OTHER;  
22 IS THAT CORRECT?

23 A NO. ACTUALLY, I HAVE SEEN THAT, BUT NOT  
24 WITH LIVE AMMUNITION. WHERE WE USUALLY SEE THIS IS  
25 IN ROLE-PLAYING, WHEN THEY'RE OUT USING BLANK GUNS  
26 AND THEY'RE STILL NEW; AND, YES, THEY DO, IN FACT,  
27 GET IN CROSS FIRE SITUATIONS, BUT THEY'RE NOT  
28 SHOOTING LIVE AMMUNITION.

1 Q I'M JUST TALKING ABOUT SITUATIONS IN  
2 WHICH DEPUTIES ARE ACTUALLY USING GUNS WITH LIVE  
3 AMMUNITION.

4 YOU'VE NEVER SEEN THAT OCCUR; IS THAT  
5 CORRECT?

6 A NO.

7 Q NOW, DID YOU SAY THAT IT WAS UNUSUAL  
8 FOR -- IT IS UNUSUAL TO FIRE -- I'M SORRY -- IT IS  
9 UNUSUAL TO FIND A FIREARM THAT -- SUCH AS THE ONE  
10 INVOLVED IN THIS CASE, LOADED TO FULL CAPACITY; THAT  
11 IS, FIVE ROUNDS PLUS ONE IN THE CHAMBER?

12 A YES.

13 Q AND WHY DO YOU SAY THAT IS UNUSUAL?

14 A JUST IN THE CASES THAT I HAVE HANDLED  
15 WORKING IN THE CRIME LAB, YOU ATTEMPT TO DETERMINE  
16 HOW MANY ROUNDS OF AMMUNITION THAT THE PERSON  
17 STARTED WITH, BY -- IF THEY DID, IN FACT, FIRE SHOTS  
18 AT THE SCENE, BY LOOKING AT THE CARTRIDGE CASES THAT  
19 ARE LEFT BEHIND AT THE SCENE AND WHAT'S LEFT OVER IN  
20 THE MAGAZINE OR THE FIREARM AS IT'S TAKEN FROM THE  
21 SUSPECT. AND, ONCE AGAIN, IT'S MY FINDINGS THAT  
22 IT'S UNUSUAL TO HAVE THEM LOADED UP TO FULL  
23 CAPACITY; IN OTHER WORDS, THE MAGAZINE PLUS THE  
24 ROUNDS IN THE CHAMBER.

25 Q BUT THERE'S NO REASON WHY THAT CAN'T  
26 OCCUR; IS THAT CORRECT?

27 A THERE'S NO REASON WHY THAT CAN'T OCCUR,  
28 THAT'S CORRECT.

42225

1 Q AND THERE'S NO REASON WHY A PERSON CAN'T  
2 JUST WALK INTO A GUN STORE AND SAY, TELL ME, HOW DO  
3 I LOAD THIS WEAPON TO FULL CAPACITY? AND COULD  
4 LEARN RIGHT THERE ON THE SPOT HOW TO PUT SIX ROUNDS  
5 INTO A SHOTGUN; IS THAT CORRECT?

6 A ABSOLUTELY.

7 Q AND SO YOU'VE MADE NO DETERMINATION AS  
8 TO WHETHER THE NUMBER OF SHOTS FIRED IN THIS CASE  
9 WAS 11 RATHER THAN 12 BASED UPON THE FACT THAT YOU  
10 DON'T ORDINARILY FIND WEAPONS SUCH AS THIS LOADED TO  
11 FULL CAPACITY, DID YOU?

12 A I'M SORRY. SAY THAT AGAIN, SIR.

13 Q YES.

14 COUNSEL ASKED YOU IF YOU HAD MADE A  
15 DETERMINATION AS TO WHETHER THE NUMBER OF SHOTS  
16 FIRED IN THIS CASE WAS 11 RATHER THAN 12.

17 DID YOU MAKE ANY SUCH DETERMINATION?

18 A NOT A HARD AND FAST DETERMINATION, NO.

19 Q NOW, YOU GAVE AN OPINION CONCERNING THE  
20 EFFECTS OF SHOTGUN BLASTS UPON CLOTHING.

21 DID YOU EXAMINE THE CLOTHING IN THIS

22 CASE?

23 A I LOOKED AT MR. MENENDEZ' SHIRT

24 YESTERDAY.

25 Q DID YOU FORM AN OPINION CONCERNING HOW

26 HE RECEIVED THE -- WELL, DID YOU SEE A TEAR TO THE

27 SHIRT?

28 A ABOUT IN THE MIDDLE OF THE SHIRT, ALMOST

42226

1 THE MIDDLE OF BOTH THE LENGTH AND THE WIDTH THERE'S

2 TWO FAIRLY LARGE HOLES THAT ARE RIGHT ADJACENT TO

3 ONE ANOTHER; AND THEN BELOW THAT IS A SMALLER HOLE,

4 AND THAT'S ALL I SAW. THE SHIRT IS HEAVILY

5 BLOOD-SOAKED AND IT'S HARD TO ACTUALLY SEE THE

6 MATERIAL OF THE SHIRT.

7 Q AND BASED UPON YOUR EXPERIENCE WITH

8 SHOTGUNS AND THE TYPE OF SPRAY PATTERNS THAT THEY

9 CAUSE AND SO FORTH, DID YOU FORM ANY OPINION

10 CONCERNING WHAT CAUSED THOSE HOLES?

11 A NO.

12 Q DID YOU READ THE TESTIMONY OF

13 DR. LAWRENCE CONCERNING WHAT HE CONCLUDED CAUSED

14 THOSE HOLES?

15 A NO, I DIDN'T.

16 Q NOW, YOU SAID THAT IF YOU WERE TO

17 ATTEMPT TO RECONSTRUCT A SHOOTING, THAT YOU WOULD

18 CONSULT WITH A CORONER; IS THAT CORRECT?

19 A YES.

20 Q WERE YOU AWARE OF THE FACT THAT THE

21 PROSECUTION IN THIS CASE DID CONSULT WITH

22 DR. GOLDEN?

23 A NO.

24 MS. ABRAMSON: OBJECTION, YOUR HONOR -- WELL,

25 I'M GOING TO OBJECT TO THIS, YOUR HONOR. CALLING

26 FOR HEARSAY AND IRRELEVANT.

27 THE COURT: SUSTAINED. THE ANSWER IS

28 STRICKEN.

42227

1 Q BY MR. CONN: YOU'RE AWARE THAT THE

2 PROSECUTION DID RECEIVE REPORTS FROM DR. GOLDEN; IS

3 THAT CORRECT?

4 MS. ABRAMSON: OBJECTION. IRRELEVANT.

5 THE COURT: SUSTAINED.

6 Q BY MR. CONN: ARE YOU AWARE OF THE

7 FACT -- YOU TESTIFIED IN REGARD TO REPORTS RECEIVED

8 FROM RON LINHART FROM YOUR OFFICE; IS THAT CORRECT?

9 A YES.

10 Q AND YOU READ AND YOU CONSIDERED THAT

11 REPORT?



12 A WELL, I DIDN'T REALLY CONSIDER IT  
13 BECAUSE -- ARE YOU ASKING THIS IN -- ASSUMING THAT AN  
14 ATTEMPT AT A RECONSTRUCTION WAS MADE?

15 Q NO. I'M ASKING YOU, IF AT ANY TIME YOU  
16 READ THE REPORT OF MR. LINHART?

17 A YES, I DID.

18 Q WAS IT YOUR UNDERSTANDING, BASED UPON A  
19 REVIEW OF THAT REPORT, THAT THE PROSECUTION, AS WELL  
20 AS THE INVESTIGATING AGENCY IN THIS CASE, DID, IN  
21 FACT, SEEK THE ADVICE AND CONCLUSIONS OF DOCTOR -- OF  
22 MR. LINHART?

23 MS. ABRAMSON: OBJECTION, YOUR HONOR. CALLS  
24 FOR HEARSAY.

25 THE COURT: SUSTAINED.

26 MS. ABRAMSON: SPECULATION.

27 THE COURT: SUSTAINED.

28 Q BY MR. CONN: YOU DO KNOW THE

42228

1 PROSECUTION IN THIS CASE SOUGHT ALL OF YOUR  
2 CONCLUSIONS SOME TIME AGO; IS THAT CORRECT?

3 A YES.

4 Q AND YOU GAVE THOSE CONCLUSIONS; IS THAT  
5 CORRECT?

6 A YES.

7 MR. CONN: THANK YOU. I HAVE NO FURTHER  
8 QUESTIONS.

9 THE COURT: REDIRECT.

10

11 REDIRECT EXAMINATION

12 BY MS. ABRAMSON:

13 Q DEPUTY VAN HORN, IS THE SHERIFF'S CRIME  
14 LAB A BRANCH OF THE DISTRICT ATTORNEY'S OFFICE IN  
15 THIS COUNTY?

16 A NO.

17 Q IS IT YOUR OBLIGATION AS A SWORN PEACE  
18 OFFICER WHEN YOU ARE SUBPOENAED TO TESTIFY IN A CASE  
19 TO TELL THE TRUTH NO MATTER WHO CALLS YOU?

20 A THAT'S MY JOB.

21 Q IS IT YOUR JOB TO BE BIASED AGAINST  
22 CRIMINAL DEFENDANTS AND REFUSE TO RESPOND TO  
23 CRIMINAL DEFENSE SUBPOENAS?

24 A NO.

25 Q IN ALL THE YEARS YOU'VE BEEN ON THE JOB  
26 HAVE YOU EVER BEEN AS RUDELY ATTACKED BY A  
27 PROSECUTOR AS YOU WERE IN THIS COURTROOM THIS  
28 AFTERNOON?

42229

1 A NO.

2 Q IS IT DISLOYAL FOR YOU TO RESPOND TO A  
3 SUBPOENA AND TESTIFY TRUTHFULLY TO YOUR EXAMINATION  
4 AS A FIREARMS EXAMINER IN THIS CASE?

5 A I THINK IT'S ILLEGAL.

6 Q ILLEGAL FOR WHAT?

7 A TO DISOBEY A SUBPOENA.

8 Q ARE YOU IN ANY WAY, SHAPE OR FORM  
9 WORKING FOR THE DEFENSE IN THIS CASE?

10 A NO.

11 Q AND IF YOU WERE, IN FACT, GIVING  
12 TESTIMONY THAT WAS BENEFICIAL TO THE DEFENSE IN THIS  
13 CASE, IS THAT ANY MORE THAN YOUR JOB?

14 A NO.

15 Q YOUR CAPTAIN IS IN THE COURTROOM, IS HE  
16 NOT?

17 A YES, HE IS.

18 Q AND WAS YOUR CAPTAIN PRESENT FOR THE  
19 VERY FIRST MEETING YOU HAD WITH ANY DEFENSE  
20 ATTORNEYS IN THIS CASE?

21 A YES.

22 Q AND WAS IT WITH THE SPECIFIC AGREEMENT  
23 AND COOPERATION OF YOUR CAPTAIN THAT WE WERE ABLE TO  
24 MEET WITH YOU?

25 A YES.

26 Q AND BEFORE WE EVER MET WITH YOU, DID YOU  
27 MEET WITH THE PROSECUTORS OR EITHER OF THEM IN THIS  
28 CASE?

1 A YES.

2 Q WERE WE INVITED TO THAT PARTY?

3 A YOU'D HAVE TO ASK THEM.

4 MR. CONN: OBJECTION. ARGUMENTATIVE.

5 THE COURT: SUSTAINED AS TO THE FORM OF THE  
6 QUESTION. THE ANSWER IS STRICKEN.

7 Q BY MS. ABRAMSON: WAS ANY DEFENSE LAWYER  
8 PRESENT FOR YOUR PREVIOUS CONVERSATIONS WITH  
9 MS. NAJERA OR MR. CONN IN THIS CASE?

10 A NO.

11 Q TO THE BEST OF YOUR KNOWLEDGE, WERE WE  
12 EVEN TOLD THAT THEY WERE MEETING WITH YOU?

13 A I HAVE NO WAY OF KNOWING.

14 Q TO THE BEST OF YOUR KNOWLEDGE, IS THERE  
15 ANY OBLIGATION ON THE PART OF ATTORNEYS FOR EITHER  
16 SIDE TO NOTIFY THE OTHER SIDE THAT THEY ARE HAVING A  
17 PRE-TESTIMONIAL MEETING WITH A SUBPOENAED WITNESS?

18 A I'M NOT AN ATTORNEY, SO I DON'T -- I  
19 DON'T KNOW THE RULES YOU FOLKS OPERATE UNDER.

20 Q FOR ALL THE HUNDREDS OF TIMES THAT YOU  
21 HAVE TESTIFIED FOR THE PROSECUTION, HAVE YOU  
22 INVARIABLY HAD CONTACT WITH THE PROSECUTING ATTORNEY  
23 WHO WAS GOING TO CALL YOU TO THE WITNESS STAND  
24 BEFORE YOU WERE ACTUALLY PUT ON THE WITNESS STAND?

25 A YES.

26 Q IS IT ABSOLUTELY ROUTINE THAT WHEN  
27 YOU'RE CALLED AS A WITNESS SOMEBODY HAS SOME KIND OF  
28 CONTACT WITH YOU BEFORE SO YOU WILL KNOW WHY?

42231

1 A YES.

2 Q AND IN THE OVERWHELMING MAJORITY OF YOUR  
3 EXPERIENCE HAS THAT CONTACT BEEN WITH THE DEPUTY  
4 DISTRICT ATTORNEY FROM THE L.A. COUNTY DISTRICT  
5 ATTORNEY'S OFFICE?

6 A YES.

7 Q WHEN YOU HAD THOSE PRE-TESTIMONIAL  
8 MEETINGS WITH DEPUTIES DISTRICT ATTORNEYS, WERE THE  
9 DEFENSE ATTORNEYS PRESENT?

10 A NO.

11 Q WHEN YOU LEARNED THAT THE PROSECUTION IN  
12 THIS CASE WAS SEEKING TO CALL A MECHANICAL ENGINEER  
13 TO TESTIFY TO A CRIME SCENE RECONSTRUCTION, DID YOU  
14 CONTACT THE DISTRICT ATTORNEY'S OFFICE AND TALK TO  
15 THEM ABOUT YOUR OPINION AS TO WHETHER OR NOT THAT  
16 WAS A RESPONSIBLE THING TO DO?

17 A YES.

18 Q AND DID YOU TELL THEM THAT ROGER  
19 MC CARTHY'S RECONSTRUCTION WAS JUNK SCIENCE?

20 MR. CONN: OBJECTION. CALLS FOR AN IMPROPER

21 OPINION.

22 THE COURT: OVERRULED.

23 THE WITNESS: YES, I DID.

24 Q BY MS. ABRAMSON: AND THAT IT WAS BOGUS  
25 AND SHOULD NOT BE USED BY THIS DISTRICT ATTORNEY'S  
26 OFFICE?

27 A YES, I DID.

28 Q AND THAT WAS BEFORE THE DEFENSE HAD ANY

42232

1 CONTACT WITH YOU --

2 A THAT'S CORRECT.

3 Q -- ISN'T IT?

4 NOW, WITH RESPECT TO YOUR CONTACTS WITH  
5 THE DISTRICT ATTORNEY'S OFFICE, THE SECOND MEETING  
6 THAT WE HAD, YOUR CAPTAIN WAS NOT PRESENT, CORRECT?

7 A THAT'S CORRECT.

8 Q BUT THE ASSISTANT DIRECTOR OF YOUR  
9 LABORATORY, MR. LINHART, WAS?

10 A THAT'S CORRECT.

11 Q AND THE NEXT MORNING AFTER THAT MEETING,  
12 DIDN'T YOU, ON YOUR OWN INITIATIVE, CALL MS. NAJERA  
13 AND TELL HER EVERYTHING THAT WE HAD DISCUSSED?

14 A YES. I --

15 MR. CONN: OBJECTION. LEADING.

16 THE COURT: SUSTAINED. THE ANSWER IS

17 STRICKEN.

18 Q BY MS. ABRAMSON: DID YOU MAKE A

19 TELEPHONE CALL THE MORNING AFTER OUR SECOND MEETING?

20 A YES.

21 Q AND WHO DID YOU CALL?

22 A MS. NAJERA.

23 Q WERE YOU REQUIRED TO DO SO?

24 A NO.

25 Q WHY DID YOU DO SO?

26 A BECAUSE IN THE PAST IT'S NOT UNUSUAL TO

27 RECEIVE CALLS FROM DEFENSE ATTORNEYS; AND IN THE

28 PAST EVERY TIME I HAVE BEEN CONTACTED BY A DEFENSE

42233

1 ATTORNEY, AS A MATTER OF PRACTICE, I NOTIFY THE

2 PROSECUTOR ON THE CASE TO LET THEM KNOW THAT THE

3 DEFENSE IS MAKING INQUIRIES.

4 Q SO DID YOU VOLUNTARILY, ON YOUR OWN,

5 CALL MS. NAJERA AFTER OUR LAST MEETING?

6 A YES, I DID.

7 Q AND DID YOU CONVEY TO HER INFORMATION

8 CONCERNING WHAT QUESTIONS YOU HAD BEEN ASKED AT OUR

9 MEETING AND WHAT ANSWERS YOU GAVE?

10 A YES.

11 Q DID YOU FREELY AND FULLY SHARE WITH HER

12 ALL OF THAT INFORMATION?

13 A AT THE TIME I TALKED TO HER, I GAVE HER

14 THE BEST RECOLLECTION OF WHAT HAD OCCURRED THE NIGHT

15 BEFORE, YES.

16 Q NOW, WOULD IT BE FAIR TO SAY, DEPUTY

17 VAN HORN, THAT WHEN YOU'RE BEING CALLED AS A WITNESS

18 FOR THE PROSECUTION YOU DON'T CALL UP THE DEFENSE

19 LAWYERS AND TELL THEM ABOUT YOUR CONVERSATIONS WITH

20 THE PROSECUTORS?

21 MR. CONN: OBJECTION. LEADING QUESTION.

22 THE COURT: SUSTAINED.

23 Q BY MS. ABRAMSON: HAVE YOU EVER DONE

24 THAT, CALLED UP THE DEFENSE ATTORNEYS FOLLOWING

25 MEETINGS WITH PROSECUTING ATTORNEYS WHEN THE

26 PROSECUTORS ARE CALLING YOU AS A WITNESS?

27 A NO.

28 Q AND APART FROM -- BY THE WAY, HOW MANY

42234

1 TIMES HAVE YOU HAD CONTACT WITH MS. NAJERA AND

2 MR. CONN?

3 A I HAD ONE FACE -- WELL, TWO FACE-TO-FACE

4 MEETINGS. I CAN'T REMEMBER WHEN THE FIRST ONE WAS.

5 IT WAS QUITE SOME TIME AGO. AND THEN WE HAD A



6 MEETING HERE AT THEIR OFFICE. ONCE AGAIN, I'M  
7 SORRY, I DON'T KNOW THE DATE. AND SEVERAL -- WELL,  
8 ACTUALLY, TWO OR THREE ACTUAL PHONE CONVERSATIONS  
9 AND SEVERAL PHONE CALLS THAT HAVE GONE UNRETURNED.

10 Q AND FOR THE FACE-TO-FACE MEETINGS THAT  
11 YOU'VE HAD WITH THEM AND THESE TELEPHONE  
12 CONVERSATIONS, THE DEFENSE WASN'T ANY PART OF THOSE,  
13 WERE THEY?

14 A NO.

15 Q DO YOU FEEL, DEPUTY VAN HORN, THAT YOU  
16 ARE, INDEED, AN EXPERT IN FIREARMS EXAMINATION AND  
17 BALLISTICS?

18 A THAT'S WHAT THE COURTS HAVE FOUND.

19 Q AND DID YOU NOTE IN ROGER MC CARTHY'S  
20 TESTIMONY THAT HE ADMITTED HE HAD NEVER QUALIFIED AS  
21 AN EXPERT IN BALLISTICS?

22 MR. CONN: OBJECTION. IRRELEVANT AND  
23 ARGUMENTATIVE.

24 THE COURT: SUSTAINED.

25 Q BY MS. ABRAMSON: DID YOU READ ROGER  
26 MC CARTHY'S TESTIMONY CONCERNING WHETHER HE HAD EVER  
27 QUALIFIED AS A BALLISTICS EXPERT?

28 A YES.

1 Q AND DO YOU RECALL WHAT HE SAID IN THAT  
2 REGARD?

3 MR. CONN: OBJECTION. IRRELEVANT. CALLS FOR  
4 HEARSAY.

5 THE COURT: SUSTAINED.

6 Q BY MS. ABRAMSON: DO YOU BELIEVE HAVING  
7 A PH.D. IN MECHANICAL ENGINEERING IS A SUBSTITUTE  
8 FOR BEING TRAINED AS A FIREARMS EXAMINER?

9 A NO.

10 Q WHEN YOU FORMULATE OPINIONS, DEPUTY  
11 VAN HORN, AND WHEN YOU TESTIFY, DO YOU TRY TO AVOID  
12 GIVING OPINIONS IN MATTERS WHERE YOU DON'T FEEL THAT  
13 YOU ARE A QUALIFIED EXPERT?

14 A YES.

15 Q WHY IS THAT, SIR?

16 A BECAUSE I KNOW MY LIMITATIONS. I KNOW  
17 WHAT MY FIELD IS AND I DON'T VENTURE FROM MY FIELD.

18 Q DO YOU FEEL THAT IT IS ETHICAL OR PROPER  
19 FOR PEOPLE TO VENTURE FROM THEIR FIELD WHEN THEY ARE  
20 NOT QUALIFIED TO DO SO?

21 A NO.

22 Q NOW, FOR MANY -- IS IT TRUE -- WELL,  
23 STRIKE THAT.

24 ARE THERE PUBLISHED IN THE LITERATURE  
25 CONCERNING SHOTGUN BALLISTICS DISTANCE RANGE CHARTS  
26 OF VARIOUS KINDS? IN OTHER WORDS, HAVE THERE BEEN  
27 DISTANCE RANGE FIGURES THAT HAVE BEEN KICKED AROUND  
28 THE BALLISTICS COMMUNITY FOR YEARS?

1       A   WELL, THERE'S A RULE OF THUMB THAT'S  
2 OFTEN MISUNDERSTOOD, AND THAT IS ONCE -- LET'S TAKE,  
3 FOR INSTANCE, THIS PATTERN THAT'S HERE ON D; AND  
4 ONCE AGAIN, LET'S SAY THAT THAT'S FOUR INCHES AND  
5 YOU ACHIEVE THAT PATTERN AT 10 YARDS. THE VERY  
6 GENERAL RULE OF THUMB IS THAT IF YOU MOVE A YARD  
7 CLOSER, THAT THE GROUP WILL BE AN INCH SMALLER; IF  
8 YOU MOVE AN INCH FURTHER AWAY, THE GROUP WILL BE AN  
9 INCH BIGGER.

10       UNFORTUNATELY, OVER THE YEARS, PEOPLE  
11 HAVE TOOK THAT TO MEAN THAT AT THREE FEET THE  
12 TARGET -- OR AT THE MUZZLE IT'S ONE INCH AND IT GETS  
13 AN INCH BIGGER AS YOU GO, BUT THAT'S NOT, IN FACT,  
14 WHAT HAPPENS. THAT SAYING OR THAT RULE OF THUMB HAS  
15 BEEN MISINTERPRETED OVER THE YEARS.

16       Q   OKAY. LET'S TALK ABOUT THIS, THEN.

17       ARE YOU AWARE THAT DR. FACKLER WAS ASKED  
18 ON CROSS-EXAMINATION TO OFFER GUESSTIMATES OF THE  
19 DISTANCES OF VARIOUS WOUNDS, THE DISTANCE FROM THE  
20 MUZZLE OF THE GUN OF VARIOUS WOUND PATTERNS, IN THIS  
21 CASE?

22       MR. CONN: OBJECTION. MISSTATES THE  
23 TESTIMONY AND CALLS FOR SPECULATION AND HEARSAY.

24 THE COURT: SUSTAINED.

25 Q BY MS. ABRAMSON: DID YOU READ

26 DR. FACKLER'S TESTIMONY?

27 A NO, I HAVE NOT READ HIS TESTIMONY.

28 Q YOU INDICATED ON CROSS-EXAMINATION --

42237

1 MR. CONN ASKED YOU A SERIES OF QUESTIONS ABOUT THE  
2 RELIABILITY OF ANY ESTIMATE.

3 IS A BROAD-RANGE ESTIMATE AN ACCEPTABLE  
4 THING TO GIVE? IN OTHER WORDS, IF SOMEONE SAYS  
5 THAT'S DISTANT, THAT'S CLOSE, IS THAT ACCEPTABLE IN  
6 YOUR OPINION?

7 A YES, IT WOULD BE.

8 Q AND IF -- IF YOU'RE PRESSED TO SAY, WELL,  
9 HOW DISTANT, IS IT YOUR PRACTICE WHEN YOU GIVE ANY  
10 KIND OF DISTANCES TO GIVE A LARGE BRACKET, A LARGE  
11 SPREAD OF POSSIBLE DISTANCE?

12 MR. CONN: OBJECTION. IRRELEVANT AS TO WHAT  
13 THIS WITNESS WOULD MEAN.

14 THE COURT: SUSTAINED. IT'S ALSO VAGUE.

15 MS. ABRAMSON: OKAY.

16 Q IF SOMEONE GIVES AN ESTIMATE FOR WHAT  
17 APPEARS TO BE A SPREAD PATTERN OF 10 TO 14 FEET,  
18 GIVE OR TAKE FOUR IN EITHER DIRECTION, DOES THAT

19 SOUND LIKE A SPECIFIC OPINION ON AN ACTUAL DISTANCE

20 OR IS THAT A RANGE, A POSSIBLE RANGE?

21 MR. CONN: OBJECTION. IMPROPER OPINION FOR

22 THIS WITNESS.

23 THE COURT: SUSTAINED.

24 Q BY MS. ABRAMSON: WELL, YOU INDICATED TO

25 MR. CONN THAT YOU WOULDN'T AGREE THAT IT IS RELIABLE

26 FOR SOMEONE TO SAY A PARTICULAR WOUND PATTERN COULD

27 HAVE BEEN PRODUCED FROM 10 TO 14 FEET. HE ASKED YOU

28 THAT A LITTLE WHILE AGO.

42238

1 DO YOU RECALL THAT?

2 A YES.

3 Q WOULD IT -- WOULD IT MATTER TO YOU AS TO

4 WHETHER OR NOT IT'S RELIABLE AS TO WHETHER THE RANGE

5 THAT WAS GIVEN, 10 TO 14 FEET, WAS GIVEN JUST AS A

6 GENERAL RANGE RATHER THAN AS AN ABSOLUTE DISTANCE?

7 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

8 EVIDENCE AND CALLS FOR SPECULATION.

9 THE COURT: DO YOU UNDERSTAND THE QUESTION?

10 THE WITNESS: YES, I THINK I DO, YOUR HONOR.

11 THE COURT: ALL RIGHT. YOU MAY RESPOND.

12 OVERRULED.

13 THE WITNESS: THAT'S EXACTLY WHY I JUST FLAT

14 REFUSE TO GIVE DISTANCE DETERMINATIONS UNLESS I HAVE  
15 THE SHOTGUN AND THE AMMUNITION, BECAUSE JUST FOR  
16 THIS REASON, THAT YOU END UP BACKING YOURSELF INTO A  
17 CORNER AND END UP BEING STUCK WITH DISTANCES THAT  
18 COULD BE VERY WELL ON THE MONEY, BUT BECAUSE OF THE  
19 WIDE VARIANCES INVOLVED, COULD ALSO BE FAR OFF.

20 LIKE I SAID BEFORE, LOOKING AT THAT  
21 PATTERN IN D, THE ONLY THING I WOULD BE COMFORTABLE  
22 TELLING SOMEONE IS IT'S NOT A CONTACT WOUND.

23 Q BY MS. ABRAMSON: OTHER PEOPLE,  
24 PARTICULARLY IF THEY'RE EXPERIENCED IN THE FIELD,  
25 MIGHT BE WILLING TO OFFER RANGES; IT'S JUST --

26 MR. CONN: OBJECTION. LEADING.

27 MS. ABRAMSON: STRIKE THAT.

28 Q THIS IS YOUR PERSONAL OPINION, CORRECT?

42239

1 MR. CONN: OBJECTION. ARGUMENTATIVE.

2 THE COURT: SUSTAINED.

3 Q BY MS. ABRAMSON: HAVE YOU JUST TOLD US  
4 YOUR OWN PERSONAL LIMIT, THAT YOU DON'T WANT TO GIVE  
5 ANY DISTANCE RANGES?

6 A BASICALLY, IT'S THE POLICY OF THE  
7 FIREARMS SECTION THAT WE DON'T DO THAT AND THAT'S  
8 BASED UPON TRAINING THAT WE RECEIVED FROM THE F.B.I.

9 AT THEIR GUN POWDER AND PRIMER RESIDUE SCHOOLS.

10 Q YOU UNDERSTOOD DR. MC CARTHY TO TESTIFY  
11 THAT HE STARTED OUT THINKING HE COULD COME UP  
12 ULTIMATELY WITH ACCURATE DISTANCE DETERMINATIONS IN  
13 THIS CASE?

14 A YES.

15 Q AND THAT'S SOMETHING -- ARE YOU TELLING  
16 US THAT THAT'S SOMETHING YOU WOULD NEVER EVEN TRY TO  
17 DO?

18 A THAT'S CORRECT.

19 Q IS THAT BECAUSE OF LACK OF ABILITY OR  
20 LACK OF SCIENTIFIC CERTAINTY?

21 A WELL, IT WOULD BE A LACK OF SCIENTIFIC  
22 CERTAINTY WHERE YOU DON'T HAVE THE FIREARM AND THE  
23 AMMUNITION INVOLVED.

24 Q NOW, WITH RESPECT TO THESE -- THE NOTION  
25 THAT THE SHERIFF'S DEPARTMENT WAS UNABLE TO EFFECT A  
26 RECONSTRUCTION; IS THAT TRUE? WAS THE SHERIFF'S  
27 DEPARTMENT UNABLE TO EFFECT A RECONSTRUCTION IN THIS  
28 CASE?

42240

1 A THIS CASE WAS HANDLED BY THE BEVERLY  
2 HILLS POLICE DEPARTMENT. WE PROVIDED SERVICES TO  
3 THE BEVERLY HILLS POLICE DEPARTMENT. AND BASICALLY

4 WE RESPOND TO REQUESTS FROM THE HANDLING AGENCY,  
5 WHETHER IT BE AN OUTSIDE AGENCY OR OUR OWN  
6 DETECTIVES, AND ASSIST THEM IN AREAS THAT THEY ASK  
7 FOR HELP IN. WE DON'T STICK OUR NOSES, PER SE, INTO  
8 OTHER PEOPLE'S BUSINESS.

9 Q AND, IN FACT, THE AGENCY THAT ASKED YOU  
10 TO GET INVOLVED, AT LEAST IN THIS CASE, WAS THE  
11 DISTRICT ATTORNEY'S OFFICE, CORRECT? BY -- IN THE  
12 PERSON OF MRS. PAMELA BOZANICH?

13 A WELL, I BELIEVE THAT SHE -- I CONTACTED  
14 HER BY -- OR SHE CONTACTED ME BY PHONE AT FIRST. BUT  
15 WE HAD A COUPLE OF MEETINGS AFTER THAT WITH DEPUTY  
16 D.A. BOZANICH AND DETECTIVE ZOELLER.

17 Q AND BY THE WAY, THE DEFENSE WASN'T  
18 PRESENT WHEN YOU WERE MEETING WITH THE PREVIOUS  
19 DISTRICT ATTORNEY IN THIS CASE EITHER; ISN'T THAT  
20 TRUE?

21 A THAT'S CORRECT.

22 Q AND YOU DIDN'T CALL US UP TO TELL US  
23 WHAT WAS SAID?

24 A NO.

25 Q AND WE NEVER ASKED YOU, DID WE?

26 A NO.

27 Q NOW, DID EITHER THE BEVERLY HILLS POLICE  
28 DEPARTMENT IN THE PERSONAGE OF DETECTIVE ZOELLER OR



1 MRS. BOZANICH EVER ASK YOU TO ATTEMPT TO RECONSTRUCT  
2 THIS SHOOTING?

3 A NO.

4 Q AND HAVE YOU CONSIDERED WHETHER OR NOT  
5 YOU WOULD, IF ASKED, HAVE TRIED TO RECONSTRUCT THIS  
6 SHOOTING?

7 A IF ASKED, I'M SURE THAT WE WOULD HAVE,  
8 YES.

9 Q AND IN YOUR OPINION, IS THIS SHOOTING  
10 RECONSTRUCTABLE?

11 A NO.

12 Q IS THAT BECAUSE THE SHERIFF'S DEPARTMENT  
13 DOESN'T HAVE THE ABILITY OR FOR SOME OTHER REASON?

14 A IT'S FOR SOME OTHER REASON.

15 Q AND WHAT IS THE REASON WHY, IN YOUR  
16 OPINION, THIS SHOOTING IS NOT RECONSTRUCTABLE?

17 A WELL, TO BEGIN WITH, THE NUMBER OF SHOTS  
18 THAT WERE FIRED. WE HAVE HARD EVIDENCE THAT AT  
19 LEAST SIX SHOTS WERE FIRED. BUT USING THE CAPACITY  
20 OF THE GUN AND -- OKAY. USING THE CAPACITY OF THE  
21 GUN ONLY, NOT CONSIDERING THE POSSIBILITY OF  
22 RELOADS, YOU'VE GOT A POSSIBILITY OF 12 SHOTS BEING  
23 FIRED.

24 SO WE DON'T HAVE ALL THE EVIDENCE. WE  
25 DON'T HAVE ENOUGH EVIDENCE HERE TO DO A  
26 RECONSTRUCTION.

27 Q WOULD YOU EVER ENGAGE IN JUST

42242

1 A NO.

2 Q IF YOU WERE TO GO ABOUT TRYING TO  
3 RECONSTRUCT A SHOOTING, WOULD YOU START OUT WITH A  
4 PRECONCEIVED NOTION OF HOW MANY SHOTS WERE FIRED OR  
5 WHAT THE POSITION OF THE VICTIMS WERE AND THEN TRY  
6 TO MAKE ALL THE EVIDENCE FIT THAT PRECONCEIVED  
7 NOTION?

8 A NO.

9 Q IF YOU WERE EVER DOING A RECONSTRUCTION,  
10 WOULD YOU SIMPLY LEAVE OUT WOUNDS AND WOUND PATTERNS  
11 THAT DIDN'T FIT YOUR PRECONCEIVED NOTION?

12 A NO.

13 Q EVEN IF YOU HAD EVIDENCE OF -- LET'S SAY  
14 YOU HAD AND KNEW YOU HAD ALL OF THE SHOT SHELL  
15 COMPONENTS THAT WERE USED HERE AND SO YOU KNEW THE  
16 EXACT NUMBER OF ROUNDS. WOULD THAT BE ENOUGH TO BE  
17 ABLE TO EFFECT A RECONSTRUCTION OF THE POSITION OF  
18 THE VICTIMS AND THE POSITION OF THE SHOOTERS AND THE  
19 EXACT SEQUENCE OF THE SHOTS IN A CASE LIKE THIS?

20 A NO.

21 Q WHY IS THAT?

22 A THAT WOULD ONLY BE ONE PIECE OF THE

23 PUZZLE THAT YOU WERE TRYING TO PUT TOGETHER.

24 Q ARE THERE TOO MANY MISSING PIECES?

25 A I THINK THERE'S TOO MANY -- WELL, AT THIS

26 POINT I BELIEVE THERE'S MISSING PIECES AND THEN

27 THERE'S, TO ME, WHAT SEEMED LIKE AN INFINITE NUMBER

28 OF VARIABLES.

42243

1 Q AN INFINITE NUMBER OF VARIABLES OF WHAT,

2 DEPUTY VAN HORN?

3 A THE POSITIONS OF THE VICTIMS, THE

4 POSITIONS OF THE SHOOTERS, THE WAY THEY HELD THE

5 SHOTGUNS.

6 Q NOW, JUST BRIEFLY, THIS NOTION OF CROSS

7 FIRE, WHEN THE SHERIFF'S DEPARTMENT IS TRAINING

8 PEOPLE, DO THEY TRAIN THEM WITHOUT LIVE AMMUNITION

9 UNTIL THEY GET THE HANG OF IT?

10 A WELL, IN ROLL-PLAYING THEY USE BLANK

11 GUNS, YES.

12 Q IS THAT WHERE YOU OBSERVED THAT

13 DEPUTIES, EVEN AFTER BEING TOLD ABOUT CROSS FIRE,

14 STILL PUT THEMSELVES IN CROSS FIRE TYPE POSITIONS?

15 A YES.

16 Q EVEN AFTER BEING TOLD?

17 A YES.

18 Q YOU DIDN'T WAIT TO SEE IF THEY'D SHOOT

19 EACH OTHER BEFORE YOU TRAIN THEM?

20 A NO.

21 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR

22 HONOR.

23 THE COURT: OKAY. WE'LL TAKE A RECESS UNTIL

24 FIVE MINUTES AFTER THE HOUR.

25 (A RECESS WAS TAKEN FROM

26 2:50 P.M. TO 3:15 P.M.)

27

28

42244

1 THE COURT: EVERYBODY IS PRESENT. AND WE'LL

2 HAVE THE JURY OUT, PLEASE.

3 MS. ABRAMSON: I HAVE TWO MORE QUESTIONS,

4 YOUR HONOR.

5 (THE JURY ENTERED THE COURTROOM

6 AND THE FOLLOWING PROCEEDINGS

7 WERE HELD:)

8

9 THE COURT: THE JURY IS IN THE JURY BOX.

10 YOU MAY CONTINUE YOUR REDIRECT.

11 MS. ABRAMSON: THANK YOU, YOUR HONOR.

12 Q DEPUTY VAN HORN, ARE YOU AWARE OF THE

13 FACT THAT -- OR STRIKE THAT.

14 TO YOUR KNOWLEDGE, WAS THE BALLISTIC  
15 EVIDENCE IN THIS CASE SUBMITTED TO THE SHERIFF'S  
16 CRIME LAB BY THE BEVERLY HILLS POLICE DEPARTMENT  
17 BACK IN 1989?

18 A YES, IT WAS.

19 Q AND WAS THERE A DIFFERENT FIREARMS  
20 EXAMINER WHO TOOK THE FIRST LOOK AT THAT EVIDENCE?

21 A YES.

22 Q AND WAS THAT MR. ROBERTS?

23 A YES.

24 Q AND WHEN YOU HAD THE EVIDENCE  
25 RESUBMITTED TO YOU IN 1992, WERE YOU MINDFUL OF THE  
26 EXAMINATION THAT MR. ROBERTS HAD MADE?

27 A YES.

28 Q AND HAD MR. ROBERTS' EXAMINATION MAINLY

42245

1 CONSISTED OF IDENTIFYING THE COMPONENT PARTS AND  
2 IDENTIFYING THE SIZE OF THE SHOT?

3 A YES.

4 Q AND WERE YOUR CONCLUSIONS IDENTICAL TO  
5 HIS ON THOSE ISSUES?

6 A MOSTLY.

7 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

8 THE COURT: OBJECTION SUSTAINED. THE

9 ANSWER'S STRICKEN.

10 Q BY MS. ABRAMSON: AND IN 1989 YOU HAD

11 JUST BECOME A FIREARMS EXAMINER, CORRECT?

12 A I HAD BEEN A FIREARMS EXAMINER FOR FOUR

13 YEARS IN 1989.

14 Q WAS MR. ROBERTS MORE SENIOR THAN YOU AT

15 THAT TIME?

16 A JIM ROBERTS HAD -- I CAN'T REMEMBER

17 EXACTLY WHEN THEY BROUGHT THE EVIDENCE IN. JIM

18 STARTED WITH US IN MAY OF 1989, BUT HE CAME TO US

19 FROM ILLINOIS, WHERE HE HAD BEEN A FIREARMS EXAMINER

20 IN THE ILLINOIS STATE CRIME LAB SYSTEM FOR, I

21 BELIEVE, 14 YEARS.

22 SO, YES, HE WAS SENIOR TO ME.

23 Q AND BY THE TIME THE EVIDENCE WAS

24 SUBMITTED TO YOU IN '93, WERE YOU -- YOU HAD HOW MANY

25 YEARS EXPERIENCE AT THAT POINT AS A FIREARMS

26 EXAMINER?

27 A JUST SHY OF EIGHT YEARS.

28 Q NOW, I JUST WANT TO GO BACK TO ONE OTHER

42246

1 ISSUE CONCERNING THE -- YOU'VE INDICATED THAT IF A

2 NUMBER OF ROUNDS OF NO. 4 BUCKSHOT WERE FIRED OFF IN

3 A ROOM, THE DIMENSIONS OF WHICH ARE APPROXIMATELY 24  
4 FEET BY 17 FEET, YOU'VE INDICATED THERE WOULD BE  
5 SOME QUANTITY OF OBSERVABLE OR VISIBLE SMOKE THAT'S  
6 PRODUCED; IS THAT CORRECT?

7 A YES. THERE WOULD BE SOME.

8 Q AND WOULD THE DENSITY OF THAT SMOKE BE  
9 GREATER IF THE ROUNDS WERE ALL FIRED OFF QUICKLY  
10 RATHER THAN IF THEY WERE SPACED OVER SEVERAL  
11 MINUTES, FOR EXAMPLE?

12 A YES.

13 Q AND IF YOU ASSUME, HYPOTHETICALLY, THE  
14 FOLLOWING FACTS: THAT THE ROOM IS DARK, THERE ARE  
15 NO DIRECT LIGHTS IN THE ROOM; THAT THE ONLY SOURCE  
16 OF LIGHT IS A TELEVISION SET THAT IS ON, AND THAT  
17 THAT TELEVISION SET IS SOME 17 FEET AWAY FROM --  
18 WELL, STRIKE THAT -- IS SOME 14 TO 15 FEET AWAY FROM  
19 THE DECEDENTS IN THE POSITIONS THAT THEY ARE IN  
20 DURING THE SHOOTING; AND THAT THE TELEVISION SET,  
21 THE SOURCE OF LIGHT, IS BEHIND THE SHOOTERS.

22 IS THERE SOME VISUAL OBSTRUCTION THAT  
23 COULD BE CAUSED BY THE ACCUMULATED SMOKE?

24 MR. CONN: OBJECTION. IMPROPER  
25 HYPOTHETICAL. CALLS FOR SPECULATION. ASSUMES FACTS  
26 NOT IN EVIDENCE.

27 MS. ABRAMSON: IT'S A HYPOTHETICAL.

28 THE COURT: WELL, STILL, IT HAS TO HAVE SOME

1 BASIS.

2 MS. ABRAMSON: WELL, IT WILL.

3 THE COURT: AS PHRASED IT WOULD CALL FOR  
4 SPECULATION. YOU'LL HAVE TO REPHRASE IT.

5 Q BY MS. ABRAMSON: WELL, IF YOU ASSUME  
6 THAT THERE'S -- ASSUME THAT ERIK MENENDEZ TESTIFIES --

7 THE COURT: REGARDLESS OF PROPOSED TESTIMONY,  
8 JUST GET TO A HYPOTHETICAL.

9 MS. ABRAMSON: WELL, THE HYPOTHETICAL IS  
10 THAT --

11 THE COURT: A HYPOTHETICAL DOESN'T REQUIRE  
12 TESTIMONY FROM ANY PARTICULAR PERSON, JUST A CERTAIN  
13 SETS OF FACTS.

14 YOU WANT TO PROCEED?

15 Q BY MS. ABRAMSON: THE ROOM IS DARK; THE  
16 ONLY SOURCE OF LIGHT IS A TELEVISION SET. THE  
17 SHOOTER IS STANDING WITH THE TELEVISION SET BEHIND  
18 HIM AND THE DECEDENTS IN FRONT OF HIM; AND THERE ARE  
19 AT LEAST 11 -- AT LEAST 10 ROUNDS FIRED OFF IN RAPID  
20 SUCCESSION.

21 WOULD YOU EXPECT THERE TO BE SMOKE THAT  
22 COULD IMPAIR SOME VISION?

23 A UNDER THE CIRCUMSTANCES YOU'RE  
24 DESCRIBING, I WOULD EXPECT THE SMOKE TO BE MORE  
25 NOTICEABLE THAN IT WOULD IN A BRIGHTLY LIT ROOM.



26 MS. ABRAMSON: I HAVE NOTHING FURTHER.  
27 THE COURT: ANY RECROSS?  
28 MR. CONN: YES.

42248

1 RECROSS-EXAMINATION

2 BY MR. CONN:

3 Q YOUR UNDERSTANDING IS THAT THE BEVERLY  
4 HILLS POLICE DEPARTMENT CONTACTED THE SHERIFF'S  
5 DEPARTMENT CONCERNING THE BALLISTICS IN THIS CASE  
6 PRIOR TO YOUR INVOLVEMENT; IS THAT CORRECT?

7 A YES.

8 Q AND THE DEPUTY WHO WAS CONTACTED WAS  
9 ROGERS; IS THAT CORRECT?

10 A HE WAS A SENIOR CRIMINALIST NAMED JIM  
11 ROBERTS.

12 Q AND HE WAS THE FIRST CRIMINALIST  
13 ASSIGNED TO THE CASE?

14 A YES.

15 Q AND THEN SOMETIME LATER YOU WERE  
16 CONTACTED BY A FORMER PROSECUTOR ON THIS CASE BY THE  
17 NAME OF PAMELA BOZANICH; IS THAT CORRECT?

18 A YES.

19 Q AND SHE ASKED YOU TO BECOME INVOLVED IN  
20 THE CASE?

21 A I BELIEVE I GOT INVOLVED IN THE CASE  
22 BECAUSE THERE WAS A POTENTIAL VACATION CONFLICT WITH  
23 JIM ROBERTS ON A PROPOSED TRIAL DATE.

24 Q AND WHEN WERE YOU CONTACTED?

25 A IT WOULD HAVE BEEN PRIOR TO RECEIVING  
26 THE EVIDENCE ON JULY 6TH, 1993.

27 Q OKAY. SO WAS IT YOUR UNDERSTANDING THAT  
28 ROGERS WAS WORKING ON THE CASE SINCE 1989?

42249

1 A ROBERTS.

2 MS. ABRAMSON: I'M GOING TO OBJECT. NEVER  
3 MIND.

4 Q BY MR. CONN: IS THAT CORRECT?

5 THE COURT: THE NAME IS ROBERTS.

6 MR. CONN: YES.

7 Q IS IT YOUR UNDERSTANDING THAT ROBERTS  
8 WAS ON THE CASE SINCE 1989?

9 A WELL, WHAT DO YOU MEAN BY "ON THE CASE"?  
10 THE CASE WAS BROUGHT TO HIS ATTENTION BACK IN 1989?

11 A YES.

12 Q SO HE WAS -- HE HAD BEEN CONSULTED ON THE  
13 CASE BETWEEN THE TIME PERIOD OF 1989 TO 1993; IS  
14 THAT CORRECT?

15 A I'M SURE HE HAD, YES.

16 Q OKAY. AND THEN IN 1993 HE HAD A  
17 VACATION COMING UP, AND THAT'S THE REASON WHY YOU  
18 WERE CONSULTED?

19 A I THINK SO.

20 Q OKAY. AND THAT VACATION DIDN'T  
21 INTERFERE WITH THE TESTIMONY AT THE TIME THAT THE  
22 TESTIMONY FROM THE SHERIFF'S DEPARTMENT WAS  
23 PRESENTED, DID IT?

24 A I REALLY DON'T RECALL.

25 Q IN ANY EVENT, YOU THEN BECAME THE  
26 CRIMINALIST ASSIGNED TO THE CASE?

27 A YES.

28 Q AND HE WAS OFF THE CASE?

42250

1 A AT THAT POINT WE HAD TWO PEOPLE THAT HAD  
2 EXAMINED THE EVIDENCE. THAT'S NOT UNUSUAL WHEN  
3 THERE'S A VACATION CONFLICT.

4 Q UH-HUH. AND THEN YOU'VE BEEN ON THE  
5 CASE SINCE '93?

6 A ONCE AGAIN, YOU SAID "BEEN ON THE  
7 CASE." ONCE YOU PREPARE YOUR REPORT, SOMETIMES  
8 THAT'S ALL YOU DO UNTIL YOU GO TO COURT.

9 SO IF THAT'S THE WAY YOU WANT TO LOOK AT  
10 IT, YES.

11 Q WHEN DID YOU LEARN OR HOW DID YOU LEARN  
12 THAT THE D.A.'S OFFICE WAS GOING TO BE USING OUTSIDE  
13 EXPERT TESTIMONY IN THIS CASE INSTEAD OF THE  
14 SHERIFF'S DEPARTMENT?

15 MS. ABRAMSON: OBJECT TO THE FORM OF THE  
16 QUESTION.

17 THE COURT: REPHRASE THE QUESTION.

18 Q BY MR. CONN: DID YOU LEARN AT SOME  
19 POINT THAT THE DISTRICT ATTORNEY'S OFFICE WOULD NO  
20 LONGER BE CALLING YOU, SIR, AS AN EXPERT, BUT WE  
21 WOULD BE CALLING AN EXPERT FROM THE OUTSIDE?

22 A WELL, NO. ACCORDING TO MS. NAJERA ABOUT  
23 TWO WEEKS -- I'M TRYING TO THINK WHEN IT WAS. I HAD  
24 VACATION IN LATE SEPTEMBER. AND WHEN I RETURNED  
25 FROM VACATION -- BECAUSE I HAD TALKED TO YOU  
26 PREVIOUSLY ABOUT GETTING MY TRANSCRIPT FROM THE  
27 FIRST TRIAL SO I COULD REVIEW IT -- WHEN I CAME BACK  
28 FROM VACATION, WHICH WAS THE END OF SEPTEMBER, I

42251

1 CONTACTED MS. NAJERA TO TELL HER THAT I HAD A CASE  
2 THAT I HAD TO GO TO IN OREGON, AND ASKED HER WHEN I  
3 WOULD BE TESTIFYING, AND SHE TOLD ME ABOUT TWO TO  
4 THREE WEEKS.

5 Q OKAY. AND THEN WHEN DID YOU LEARN THAT

6 THE D.A.'S OFFICE WAS NOT GOING TO BE CALLING YOU AS  
7 AN EXPERT, BUT WOULD BE CALLING DR. ROGER MC CARTHY?  
8 MS. ABRAMSON: OBJECT TO THE FORM OF THE  
9 QUESTION.  
10 THE COURT: ASSUMES FACTS NOT IN EVIDENCE.  
11 Q BY MR. CONN: DID YOU UNDERSTAND AT SOME  
12 POINT THAT YOU WOULD NOT BE CALLED AS A WITNESS, BUT  
13 THAT DR. MC CARTHY WOULD BE CALLED?  
14 MS. ABRAMSON: OBJECT TO THE FORM OF THE  
15 QUESTION.  
16 THE COURT: OVERRULED.  
17 THE WITNESS: I DON'T KNOW IF I EVER HAD A  
18 CLEAR UNDERSTANDING OF THAT BECAUSE MS. NAJERA TOLD  
19 ME I'D BE TESTIFYING IN A COUPLE OF WEEKS. SO I  
20 JUST ASSUMED I WAS GOING TO BE TESTIFYING FOR THE  
21 PROSECUTION.  
22 Q BY MR. CONN: ARE YOU SAYING THAT UP  
23 UNTIL THIS MORNING YOU STILL THOUGHT YOU WOULD BE  
24 CALLED BY THE PROSECUTION?  
25 A NO. I NEVER GOT A SUBPOENA FROM THE  
26 PROSECUTION. I ULTIMATELY GOT A SUBPOENA FROM THE  
27 DEFENSE.  
28 Q WHAT I'M ASKING YOU IS, AT SOME POINT

1 DID YOU REALIZE YOU WERE NOT GOING TO BE CALLED AS A  
2 WITNESS BY THE PROSECUTION?

3 A WHEN I GOT ONE FROM THE DEFENSE I  
4 THOUGHT THERE WAS A GOOD CHANCE I WOULDN'T BE  
5 GETTING ONE FROM THE PROSECUTION.

6 Q WHEN DID YOU GET THAT SUBPOENA?

7 A I DON'T HAVE IT WITH ME. IT'S GOT A  
8 DATE ON IT. I DON'T REMEMBER.

9 Q NOW, AT SOME POINT YOU LEARNED THAT THE  
10 PROSECUTION WAS GOING TO BE CALLING DR. ROGER  
11 MC CARTHY; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q WHEN DID YOU LEARN THAT?

14 A ONCE AGAIN, I DON'T HAVE A SPECIFIC DATE  
15 ON THAT.

16 Q CAN YOU GIVE US A ROUGH ESTIMATE?

17 A MAYBE THE MIDDLE OF SEPTEMBER.

18 Q AND HOW DID YOU LEARN THAT?

19 A I REALLY DON'T RECALL.

20 Q YOU'RE FRIENDS OF DR. FACKLER'S, AREN'T  
21 YOU?

22 A YES.

23 Q AND DR. FACKLER HAS BEEN TALKING TO YOU  
24 ABOUT THIS CASE, HASN'T HE?

25 A NO. AS A MATTER OF FACT, I TALKED TO  
26 DR. FACKLER -- AS A MATTER OF FACT, I CALLED TO  
27 CONSULT WITH DR. FACKLER AFTER WE HAD A MEETING WITH  
28 THE PROSECUTION. AND VERY EARLY INTO THE PHONE

1 CONVERSATION DR. FACKLER INFORMED ME THAT HE WAS  
2 BEING RETAINED BY THE DEFENSE, AND AT THAT POINT WE  
3 HAD TO CEASE OUR DISCUSSION, AND WE DID SO.

4 Q SO YOU HAVEN'T CONSULTED WITH HIM IN  
5 REGARDS TO THE FACTS OF THIS CASE?

6 A AFTER I GOT A DEFENSE SUBPOENA I CALLED  
7 HIM BACK AND WE TALKED.

8 Q AND WHY IS IT THAT YOU DIDN'T WANT TO  
9 CONSULT WITH HIM UNTIL YOU RECEIVED -- WHY IS IT THAT  
10 YOU DIDN'T WANT TO CONSULT WITH HIM PRIOR TO THE  
11 TIME YOU RECEIVED THE DEFENSE SUBPOENA, BUT YOU DID  
12 WANT TO CONSULT WITH HIM AFTER YOU RECEIVED THE  
13 DEFENSE SUBPOENA?

14 A BECAUSE WE BOTH FELT IT WOULD BE  
15 IMPROPER FOR US TO TALK BEING ON OPPOSITE SIDES OF  
16 THE CASE.

17 Q AND THEN ONCE YOU GOT A DEFENSE  
18 SUBPOENA, THEN YOU FELT YOU WERE BOTH ON THE SAME  
19 SIDE, RIGHT?

20 A I KNEW THAT I WAS BEING SUBPOENAED BY  
21 THE DEFENSE.

22 Q WELL, YOU NO LONGER FELT YOU WERE ON THE  
23 OPPOSITE SIDE; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q WHOSE SIDE ARE YOU ON?

26 A THE SIDE OF TRUTH.

27 Q AND WHOSE SIDE WERE YOU ON WHEN YOU

28 COULDN'T TALK TO DR. FACKLER?

42254

1 A I WAS OPERATING UNDER THE IMPRESSION  
2 THAT WE SHOULDN'T BE TALKING BECAUSE IT WAS A  
3 CONFLICT OF INTEREST.

4 Q AND IT WAS ONLY AFTER YOU LEARNED THAT  
5 WE WERE GOING TO USE THE SERVICES OF FAILURE  
6 ANALYSIS THAT YOU BEGAN TO MEET WITH THE DEFENSE; IS  
7 THAT CORRECT?

8 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

9 THE COURT: OVERRULED.

10 THE WITNESS: MY FIRST MEETING WAS WITH YOU  
11 TO EXPLAIN MY CONCERNS TO YOU.

12 MR. CONN: UH-HUH.

13 Q AND AFTER THAT MEETING WITH ME IN WHICH  
14 WE MADE IT CLEAR TO YOU THAT WE WERE GOING TO BE  
15 CALLING --

16 MS. ABRAMSON: OBJECTION.

17 Q BY MR. CONN: IN THAT MEETING DID WE  
18 MAKE IT CLEAR TO YOU THAT WE WERE GOING TO BE  
19 CALLING



20 DR. MC CARTHY TO THE STAND?

21 A I DON'T REMEMBER IF YOU DID OR NOT, TO  
22 TELL YOU THE TRUTH.

23 Q AND AFTER THAT MEETING YOU BEGAN TO MEET  
24 WITH THE DEFENSE; IS THAT CORRECT?

25 A I DID NOT MEET WITH THE DEFENSE UNTIL  
26 AFTER RECEIVING A SUBPOENA FROM THE DEFENSE AND  
27 HAVING A PHONE CALL REQUESTING A MEETING.

28 Q UH-HUH. AND IT WASN'T UNTIL AFTER YOU

42255

1 LEARNED THAT WE WERE GOING TO USE DR. ROGER  
2 MC CARTHY THAT YOU BEGAN TO REVIEW TRANSCRIPTS FOR  
3 THE PURPOSE OF ADVISING DEFENSE COUNSEL AS TO HOW  
4 THEY COULD BEST GO ABOUT ATTACKING THIS PROSECUTION  
5 WITNESS; IS THAT CORRECT?

6 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.  
7 ASSUMES FACTS NOT IN EVIDENCE.

8 THE COURT: IT IS ARGUMENTATIVE AS PHRASED.

9 Q BY MR. CONN: WAS IT AFTER WE INFORMED  
10 YOU THAT WE WERE GOING TO USE THE SERVICE OF  
11 DR. MC CARTHY THAT YOU BEGAN MEETING WITH THE  
12 DEFENSE ATTORNEYS OR THAT YOU BEGAN REVIEWING  
13 TRANSCRIPTS AT THE REQUEST OF THE DEFENSE ATTORNEYS,  
14 FOR THE PURPOSE OF LOOKING FOR ERRORS IN THE

15 TESTIMONY OF A PROSECUTION WITNESS?

16 MS. ABRAMSON: OBJECTION. ASSUMES FACTS NOT  
17 IN EVIDENCE.

18 THE COURT: OVERRULED.

19 THE WITNESS: COULD YOU REPEAT THE QUESTION.

20 Q BY MR. CONN: YES. WAS IT AFTER YOU  
21 LEARNED THAT WE WERE GOING TO BE USING DR. MC CARTHY  
22 AS A WITNESS THAT YOU BEGAN REVIEWING TRANSCRIPTS OF  
23 DR. MC CARTHY FOR THE PURPOSE OF FINDING ERRORS THAT  
24 YOU COULD POINT OUT TO DEFENSE COUNSEL?

25 A NO. AFTER I RECEIVED A DEFENSE SUBPOENA  
26 AND A REQUEST FOR A MEETING WITH MS. ABRAMSON, I MET  
27 WITH HER.

28 Q UH-HUH. AND THEN AFTER YOU MET WITH HER

42256

1 ONCE, YOU HAD THAT SUBPOENA IN HAND, THEN YOU  
2 STARTED REVIEWING TRANSCRIPTS; IS THAT CORRECT?

3 A IT WAS NOT TILL PROBABLY TWO WEEKS AGO,  
4 TWO OR THREE WEEKS AGO, THAT I GOT MR. MC CARTHY --  
5 DR. MC CARTHY'S TESTIMONY FROM THE TRIAL HEARING.

6 Q AND YOU READ ALL THOSE TRANSCRIPTS; IS  
7 THAT CORRECT?

8 A NO. I READ THE COMPLETE TRANSCRIPT FROM  
9 THE PRETRIAL HEARING. AND I'VE SKIMMED OVER SOME OF

10 THE TESTIMONY THAT DR. MC CARTHY GAVE IN THE TRIAL.

11 Q OKAY. NOW, YOU SAID IN THE APPROXIMATE

12 250 TIMES THAT YOU TESTIFIED AS A WITNESS, AS AN

13 EXPERT WITNESS, YOU WERE CALLED BY THE DEFENSE ON

14 ONLY ABOUT FIVE OF THOSE OCCASIONS; IS THAT CORRECT?

15 A ABOUT, YES.

16 Q OKAY. NOW, IN THOSE FIVE OCCASIONS IN

17 WHICH YOU WERE CALLED AS A DEFENSE WITNESS, HOW MANY

18 OF THOSE OCCASIONS DID YOU REVIEW THE TRANSCRIPTS OF

19 PROSECUTION WITNESSES SO YOU COULD ADVISE A CRIMINAL

20 DEFENSE ATTORNEY HOW TO GO ABOUT ATTACKING THAT

21 PROSECUTION WITNESS?

22 MS. ABRAMSON: OBJECTION, YOUR HONOR.

23 ASSUMES FACTS NOT IN EVIDENCE AND ARGUMENTATIVE.

24 THE COURT: OVERRULED.

25 YOU MAY ANSWER THE QUESTION.

26 THE WITNESS: NONE.

27 Q BY MR. CONN: SO THIS IS THE FIRST TIME

28 YOU'VE EVER DONE SOMETHING LIKE THIS?

42257

1 A YES.

2 Q AND DOES THE LOS ANGELES SHERIFF'S

3 DEPARTMENT CUSTOMARILY REVIEW TRANSCRIPTS OF THE

4 TESTIMONY OF PROSECUTION WITNESSES FOR THE PURPOSE

5 OF ADVISING DEFENSE COUNSEL HOW TO GO ABOUT

6 ATTACKING THOSE PROSECUTION WITNESSES?

7 A IT'S MY JOB WHEN I TESTIFY IN COURT TO

8 BE PREPARED FOR THE TESTIMONY.

9 Q WHAT YOU DID IN THIS CASE WAS MORE THAN

10 PREPARE YOURSELF. YOU PREPARED A CRIMINAL DEFENSE

11 ATTORNEY IN REGARD TO MATTERS THAT WERE BEYOND HER

12 COMPETENCE; IS THAT CORRECT?

13 MS. ABRAMSON: OBJECTION. INSULTING AND

14 ARGUMENTATIVE.

15 THE COURT: IT IS ARGUMENTATIVE AS PHRASED.

16 OBJECTION SUSTAINED.

17 Q BY MR. CONN: DIDN'T YOU DO MORE THAN

18 PREPARE YOURSELF, SIR? YOU PREPARED DEFENSE COUNSEL

19 IN THIS CASE.

20 A WHAT DO YOU MEAN BY PREPARED?

21 Q DIDN'T YOU WORK WITH THE DEFENSE TO LOOK

22 FOR PROBLEMS IN THE PROSECUTION'S CASE SO THAT THE

23 DEFENSE ATTORNEYS COULD BETTER ATTACK THE

24 PROSECUTION'S CASE?

25 MS. ABRAMSON: OBJECTION, YOUR HONOR.

26 ASSUMES FACTS NOT IN EVIDENCE. ARGUMENTATIVE.

27 THE COURT: OVERRULED.

28 THE WITNESS: I REVIEWED THE TESTIMONY IN THE

1 PRETRIAL HEARING AND SOME OF THE TESTIMONY IN THIS  
2 TRIAL AND ANSWERED QUESTIONS AS THEY WERE POSED TO  
3 ME BY COUNSEL, BY MS. ABRAMSON.

4 Q BY MR. CONN: AND YOU REVIEWED THAT  
5 TESTIMONY SO THAT WHEN SHE ASKED YOU THOSE QUESTIONS  
6 YOU WOULD BE ABLE TO GIVE HER INFORMATION THAT SHE  
7 COULD USE TO ATTACK THE PROSECUTION'S CASE; ISN'T  
8 THAT CORRECT?

9 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

10 THE COURT: OVERRULED.

11 THE WITNESS: I GAVE HER THE ANSWERS TO THE  
12 QUESTIONS SHE ASKED ME.

13 Q BY MR. CONN: MY QUESTION IS WHY YOU  
14 REVIEWED THAT TESTIMONY. YOU REVIEWED IT FOR THE  
15 PURPOSE OF PREPARING DEFENSE COUNSEL TO ATTACK THE  
16 PROSECUTION'S CASE; ISN'T THAT CORRECT?

17 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE,  
18 ASSUMES FACTS NOT IN EVIDENCE, AND ASKED AND  
19 ANSWERED.

20 THE COURT: IT IS ARGUMENTATIVE AS YOU'RE  
21 PHRASING IT, MR. CONN. IF YOU CAN REPHRASE THE  
22 QUESTION.

23 Q BY MR. CONN: DID YOU REVIEW THAT  
24 TESTIMONY FOR THE PURPOSE OF ASSISTING CRIMINAL  
25 DEFENSE COUNSEL IN ATTACKING THE PROSECUTION'S CASE?

26 A IF THAT'S WHAT SHE ULTIMATELY DID WITH  
27 IT, THAT'S WHAT SHE ULTIMATELY DID WITH IT.

42259

1 IDEA WHAT SHE WAS GOING TO DO WITH THAT WHEN SHE  
2 SAID, SIR, WOULD YOU REVIEW THESE TRANSCRIPTS?

3 A I KNEW EXACTLY WHAT SHE WAS GOING TO DO  
4 WITH IT BECAUSE THESE ARE THE EXACT THINGS I TOLD  
5 HER THAT I TOLD YOU ABOUT THIS CASE.

6 Q WHAT WAS SHE GOING TO DO?

7 A USE IT IN THIS TRIAL.

8 Q TO HELP HER CLIENTS?

9 A I DIDN'T THINK SHE WAS GOING TO USE IT  
10 JUST FOR GENERAL INFORMATION.

11 Q SHE WAS GOING TO USE IT TO ATTACK  
12 PROSECUTION WITNESSES, RIGHT?

13 MS. ABRAMSON: I'M GOING TO OBJECT TO THE  
14 FORM OF THE QUESTION.

15 THE COURT: IT IS ARGUMENTATIVE AS PHRASED.

16 Q BY MR. CONN: TURNING TO YOUR BALLISTICS  
17 TESTIMONY, HAVE YOU RECEIVED ANY MATERIAL FROM  
18 MR. MORTON CONCERNING BALLISTICS TESTS THAT HE DID  
19 IN THIS CASE?

20 A MS. ABRAMSON GAVE ME A CHART THAT --

21 MS. ABRAMSON: YOUR HONOR, I'M GOING TO  
22 OBJECT. THIS IS BEYOND THE SCOPE OF REDIRECT.

23 THE COURT: SUSTAINED.

24 Q BY MR. CONN: WELL, YOU WERE TALKING

25 ABOUT WHETHER YOU CAN LOOK AT SHOTGUN PATTERNS AND

26 REACH CONCLUSIONS CONCERNING DISTANCES BASED UPON

27 SHOTGUN PATTERNS; IS THAT CORRECT?

28 MS. ABRAMSON: OBJECTION, YOUR HONOR. BEYOND

42260

1 THE SCOPE OF REDIRECT.

2 THE COURT: THIS WAS COVERED IN REDIRECT.

3 OVERRULED.

4 THE WITNESS: YOUR QUESTION, AGAIN, SIR?

5 MR. CONN: YES.

6 Q YOU TESTIFIED TODAY ABOUT LOOKING AT

7 SHOTGUN SPREADS AND GIVING ESTIMATES IN REGARD TO

8 THE DISTANCES AT WHICH SUCH SHOTS WERE FIRED; IS

9 THAT CORRECT?

10 A ONLY WHEN I HAD THE GUN THAT WAS USED

11 AND LIKE AMMUNITION.

12 Q OKAY. NOW, IN THIS CASE WERE YOU GIVEN

13 SOME MATERIAL FROM A MR. MORTON FOR YOUR REVIEW TO

14 DETERMINE IF SUCH CONCLUSIONS REGARDING THE FIRING

15 OF A SHOTGUN WERE ACCURATE?

16 MS. ABRAMSON: OBJECTION. BEYOND THE SCOPE

17 OF DIRECT.

18 THE COURT: OVERRULED.

19 THE WITNESS: I WAS GIVEN A GRAPH THAT

20 MS. ABRAMSON GAVE ME, A GRAPH THAT MR. MORTON HAD

21 PREPARED, OF SHOTGUN SHOTS THAT HE HAD FIRED AT

22 DIFFERENT DISTANCES.

23 Q BY MR. CONN: AND THIS WAS FOR THE

24 PURPOSE OF ADVISING COUNSEL AS TO THE ACCURACY OF

25 THE GRAPH?

26 A NO. IT WAS JUST BASICALLY IN PASSING.

27 I DON'T EVEN KNOW WHAT I DID WITH IT. I DON'T THINK

28 I STILL HAVE IT.

42261

1 Q HAVE YOU ADVISED COUNSEL WHAT YOU HAVE

2 BEEN TELLING US TODAY, THAT YOU NEEDED THE SAME

3 SHOTGUN TO ACCURATELY DETERMINE --

4 MS. ABRAMSON: OBJECTION. CALLS FOR HEARSAY.

5 THE COURT: OVERRULED.

6 THE WITNESS: THAT'S WHAT I'VE TOLD EVERY

7 PROSECUTOR AND DEFENSE COUNSEL IN THIS CASE. AND

8 THAT'S WHAT I TELL EVERY PROSECUTOR.

9 MR. CONN: OKAY. THANK YOU.

10 THE COURT: ANY FURTHER REDIRECT?

11 MS. ABRAMSON: JUST BRIEFLY.

12



13 FURTHER REDIRECT EXAMINATION

14 BY MS. ABRAMSON:

15 Q DEPUTY VAN HORN, BEFORE YOU GOT THE  
16 DEFENSE SUBPOENA, YOU ALREADY KNEW THAT WE HAD  
17 RETAINED DR. MARTIN FACKLER AS AN EXPERT WITNESS IN  
18 THIS CASE, CORRECT?

19 A YES.

20 Q AND BEFORE WE EVER MET WITH YOU, YOU  
21 ALSO KNEW, DID YOU NOT, THAT WE HAD RETAINED  
22 MR. CHARLES MORTON FROM THE INSTITUTE OF FORENSIC  
23 SCIENCE?

24 A YES.

25 Q AND DID YOU KNOW THAT MR. MORTON HAD  
26 BEEN RETAINED BY THE DEFENSE YEARS AGO ON THIS CASE?

27 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

28 THE COURT: SUSTAINED.

42262

1 Q BY MS. ABRAMSON: AND DO YOU KNOW  
2 CHARLES MORTON TO BE A QUALIFIED BALLISTICS EXPERT  
3 FIREARMS EXAMINER?

4 A YES, I DO.

5 Q WAS IT YOUR UNDERSTANDING THAT WE  
6 SUBPOENAED YOU BECAUSE I NEEDED YOUR ADVICE AS TO  
7 HOW TO ATTACK ROGER MC CARTHY?

8 A COULD YOU REPEAT THAT.

9 Q DID YOU THINK THAT I HAD SUBPOENAED YOU  
10 TO TESTIFY BECAUSE I NEEDED YOUR ADVICE AS TO HOW TO  
11 ATTACK ROGER MC CARTHY?

12 A NO.

13 Q YOU RECEIVED THE TRANSCRIPTS FROM THE  
14 PRETRIAL HEARING AT WHICH I CROSS-EXAMINED ROGER MC  
15 CARTHY, CORRECT?

16 A YES.

17 Q AND I DID THAT BEFORE WE EVER TALKED;  
18 ISN'T THAT TRUE?

19 A THAT'S CORRECT.

20 Q THOSE TRANSCRIPTS WERE BACK IN EARLY  
21 OCTOBER, CORRECT?

22 A I BELIEVE SO, YES.

23 Q AND IT WAS SOME MONTHS LATER THAT I HAD  
24 MY FIRST CONTACT WITH YOU, CORRECT?

25 A IT WAS A TIME -- A TIME LATER, YES.

26 Q IN FACT, DEPUTY VAN HORN, APART FROM  
27 CROSS-EXAMINING YOU THE LAST TIME THAT YOU APPEARED  
28 IN THIS CASE AT TRIAL, AND PRIOR TO YOUR RECEIVING

42263

1 THIS SUBPOENA, HAD WE EVER SPOKEN?

2 A PRIOR TO THE FIRST TRIAL IN 1993?

3 Q YEAH.

4 A NO.

5 Q AND EXCEPT FOR CROSS-EXAMINING YOU, WE  
6 DIDN'T EVEN TALK BEFORE OR DURING THAT TRIAL, DID  
7 WE?

8 A NO, MA'AM.

9 Q AND SINCE THAT TIME, UNTIL WE SUBPOENAED  
10 YOU, WE DIDN'T TALK?

11 A THAT'S CORRECT.

12 Q AND WHEN WE DID TALK, DID IT APPEAR TO  
13 YOU FROM OUR CONVERSATION THAT I HAD PRETTY MUCH  
14 FIGURED OUT HOW TO ATTACK ROGER MC CARTHY?

15 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

16 THE COURT: SUSTAINED.

17 MS. ABRAMSON: NOTHING FURTHER.

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

19 THE COURT: OKAY. THANK YOU, SIR. YOU MAY  
20 STEP DOWN.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 THE COURT: YOUR NEXT WITNESS.

23 MS. ABRAMSON: MR. RON LINHART, YOUR HONOR.

24 THE COURT: MAKE SURE YOU DON'T HAVE ANY OF  
25 OUR EXHIBITS.

26 THE WITNESS: YES. I DON'T. THANK YOU.

27 I'D LIKE TO HAVE A COUPLE OF THESE  
28 BECAUSE WE DON'T HAVE ANY.

1 MS. ABRAMSON: I'LL SEE IF I CAN GET YOU SOME  
2 LATER, DEPUTY VAN HORN.

3 ALL RIGHT. MR. LINHART.

4

5 RONALD LINHART,  
6 WAS CALLED AS A WITNESS BY THE DEFENSE, WAS DULY  
7 SWORN, AND TESTIFIED AS FOLLOWS:

8 THE CLERK: RAISE YOUR RIGHT HAND TO BE  
9 SWORN.

10 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY  
11 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS  
12 COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND  
13 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

14 THE WITNESS: I DO.

15 THE CLERK: PLEASE TAKE THE STAND AND STATE  
16 YOUR NAME FOR THE RECORD.

17 THE WITNESS: RONALD R. LINHART,  
18 L-I-N-H-A-R-T.

19

20 DIRECT EXAMINATION

21 BY MS. ABRAMSON:

22 Q MR. LINHART, BY WHOM ARE YOU EMPLOYED,  
23 SIR?

24 A I'M EMPLOYED BY THE LOS ANGELES COUNTY  
25 SHERIFF'S DEPARTMENT.

26 Q AND WHAT IS YOUR POSITION WITH THE

27 LOS ANGELES COUNTY SHERIFF'S DEPARTMENT?

28 A I'M AN ASSISTANT DIRECTOR IN THE

42265

1 SCIENTIFIC SERVICES BUREAU, COMMONLY KNOWN AS THE  
2 CRIME LAB.

3 Q AND ARE YOU A SWORN LAW ENFORCEMENT  
4 OFFICER, OR ARE YOU A CIVILIAN EMPLOYEE?

5 A I AM A CIVILIAN EMPLOYEE.

6 Q AND WHAT IS YOUR EDUCATIONAL BACKGROUND  
7 AND TRAINING THAT QUALIFIES YOU FOR ASSISTANT  
8 DIRECTORSHIP OF THE CRIME LAB?

9 A THE ASSISTANT DIRECTOR POSITION IS IN  
10 THE CRIMINALISTICS SERIES. SO MY EDUCATIONAL  
11 QUALIFICATIONS FOR THIS POSITION ARE THOSE THAT  
12 QUALIFY ME FOR CRIMINALIST.

13 THAT CONSISTS OF A BACHELORS OF SCIENCE  
14 DEGREE IN CHEMISTRY, WHICH I RECEIVED FROM THE  
15 UNIVERSITY OF CALIFORNIA AT RIVERSIDE IN 1972.  
16 AFTER BEING EMPLOYED BY -- I'M SORRY. IN 1971.

17 AFTER BEING EMPLOYED BY THE SHERIFF'S  
18 DEPARTMENT IN 1972, I DID PURSUE SOME COURSES  
19 TOWARDS A MASTERS OF SCIENCE DEGREE IN  
20 CRIMINALISTICS AT CALIFORNIA STATE UNIVERSITY AT  
21 LOS ANGELES.

22 I HAVE RECEIVED A NUMBER OF OTHER  
23 SHORTER TRAINING COURSES IN VARIOUS AREAS OF  
24 CRIMINALISTICS AT VARIOUS PLACES FOR VARIOUS  
25 INSTITUTIONS, SOME OF WHICH HAVE BEEN COLLEGE CREDIT  
26 COURSES.

27 Q WILL YOU EXPLAIN TO THE JURY, BASICALLY,  
28 WHAT IS A CRIMINALIST?

42266

1 A A CRIMINALIST IS ONE WHO EMPLOYS THE  
2 PHYSICAL OR NATURAL SCIENCE IN THE EVALUATION OF  
3 PHYSICAL EVIDENCE IN CRIMINAL MATTERS.

4 Q AND WHAT IS THE RANGE OF PHYSICAL  
5 EVIDENCE THAT A CRIMINALIST CAN BE CALLED UPON TO  
6 EVALUATE?

7 A OH, MY. VIRTUALLY ANYTHING THAT IS  
8 TANGIBLE IN NATURE CAN POTENTIALLY BE PHYSICAL  
9 EVIDENCE. THE TYPICAL BROAD AREAS OF CRIMINALISTICS  
10 PRACTICE ARE IN NARCOTICS ANALYSIS, TOXICOLOGY; THAT  
11 IS THE IDENTIFICATION OF CHEMICAL SUBSTANCES IN  
12 BODIES FLUIDS AND TISSUE. TRACE EVIDENCE ANALYSIS;  
13 THAT WOULD BE THE EXAMINATION OF VARIOUS TYPES OF  
14 MICROSCOPIC EVIDENCE, OR SMALL PARTICLES, SUCH AS  
15 HAIRS, FIBER PAINTS, SOILS, GAS, ET CETERA.  
16 SEROLOGY, THAT IS GENERALLY THE

17 EXAMINATION OF BLOOD AND OTHER BODY FLUIDS;  
18 CRIME-SCENE INVESTIGATIONS, CRIME-SCENE  
19 RECONSTRUCTIONS. ONE OF THE SPECIALITIES IN  
20 CRIME-SCENE RECONSTRUCTION IS BLOOD STAIN PATTERN  
21 INTERPRETATION.

22 Q THAT'S KNOWN AS BLOOD SPATTER  
23 INTERPRETATION ALSO?

24 A THAT'S ANOTHER WAY OF SAYING IT.  
25 FIREARMS IDENTIFICATION; QUESTIONED DOCUMENTS. I  
26 DON'T KNOW IF I'VE EXHAUSTED THE POSSIBILITIES, BUT  
27 VIRTUALLY ANYTHING CAN BE PHYSICAL EVIDENCE AND  
28 SUBJECT TO OUR EXAMINATION.

42267

1 Q AND YOU HAVE -- HAVE YOU BEEN WITH THE  
2 L.A. SHERIFF'S DEPARTMENTS CRIME LAB SINCE 1972?

3 A NOT FOR THE ENTIRE TIME. I'VE BEEN WITH  
4 THE COUNTY OF LOS ANGELES, EMPLOYED AS A CRIMINALIST  
5 SINCE 1972, BUT A LITTLE MORE THAN FIVE YEARS OF  
6 THAT TIME I SPENT AT THE LOS ANGELES COUNTY  
7 CORONER'S OFFICE AS A SUPERVISING CRIMINALIST.

8 Q AND WHAT YEARS WAS THAT THAT YOU WERE AT  
9 THE CORONER'S OFFICE?

10 A I WAS AT THE CORONER'S OFFICE BETWEEN  
11 THE YEARS OF 1982 AND 1988.

12 Q AND WHILE YOU WERE AT THE CORONER'S  
13 OFFICE DID YOU BECOME FAMILIAR WITH, BOTH PERSONALLY  
14 AND THE WORK, OF DR. GOLDEN?

15 A YES. I'VE KNOWN DR. GOLDEN FOR SOME  
16 YEARS AND HAVE WORKED WITH HIM ON VARIOUS CASES.

17 Q AND DO YOU RESPECT DR. GOLDEN AND HIS  
18 WORK?

19 MR. CONN: OBJECTION. IRRELEVANT.

20 THE COURT: OVERRULED.

21 THE WITNESS: YES. I'VE HAD SOME SUCCESSFUL  
22 WORKING RELATIONSHIPS WITH HIM ON VARIOUS CASES, AND  
23 HAVE GENERALLY GOOD REGARD FOR HIS ABILITIES AS A  
24 FORENSIC PATHOLOGIST.

25 Q BY MS. ABRAMSON: AND IS IT TYPICAL THAT  
26 A CRIMINALIST, PARTICULARLY A CRIMINALIST WITH THE  
27 CORONER'S OFFICE, HAS TO WORK CLOSELY WITH THE  
28 FORENSIC PATHOLOGIST?

42268

1 A YES. THAT WAS A ROUTINE PART OF THE  
2 WORK THAT I DID THERE.

3 Q AND NOW, WAS IT -- JUST TO STAY WITH THIS  
4 FOR A MOMENT. THE CORONER'S OFFICE -- WAS THE  
5 CORONER'S OFFICE ROUTINELY CALLED UPON TO TRY TO  
6 EFFECT SHOOTING RECONSTRUCTIONS?



7 A THAT IS AN AREA OF SPECIALTY THAT I HAVE  
8 PRACTICED; NOT JUST SHOOTING, BUT CRIME-SCENE  
9 RECONSTRUCTIONS IN GENERAL. AND DURING THE TIME  
10 THAT I WAS THERE I DID PARTICIPATE IN A VARIETY OF  
11 THOSE.

12 Q AND LET ME ASK YOU WHAT AREAS OF  
13 CRIMINALISTICS HAVE YOU QUALIFIED AS AN EXPERT IN  
14 OVER THE YEARS?

15 A OKAY. LET ME TRY TO TAKE THEM IN ORDER  
16 SO THAT I DON'T MISS ANY.

17 I BEGAN MY CAREER IN NARCOTICS ANALYSIS  
18 AND QUALIFIED AS AN EXPERT IN THAT AREA. I THEN DID  
19 BLOOD ALCOHOL ANALYSES, MOSTLY IN DRUNK-DRIVING  
20 CASES, AND QUALIFIED AS AN EXPERT IN THAT AREA.

21 I DID SOME ANTEMORTEM TOXICOLOGY; THAT  
22 IS, OTHER DRUGS IN THE BODY FLUIDS OF LIVING  
23 INDIVIDUALS, AND I DID QUALIFY IN THAT AREA.

24 I HAVE DONE SOME TRACE EVIDENCE  
25 ANALYSIS. SPECIFIC AREAS THAT I HAVE QUALIFIED IN  
26 BEING HAIR ANALYSIS, PHYSICAL MATCHES.

27 Q WHAT DO YOU MEAN BY PHYSICAL MATCHES?

28 A THAT'S TAKING DIFFERENT PIECES OF

1 OBJECTS THAT WERE ONCE ONE AND SEEING IF THEY FIT

2 TOGETHER TO DEMONSTRATE THAT THEY WERE, IN FACT, ONE  
3 OBJECT.

4 AN EXAMPLE WOULD BE IN A VEHICULAR  
5 COLLISION, TO TAKE PIECES OF A TAIL LIGHT, ONE FROM  
6 THE VEHICLE, ONE FROM THE SCENE, AND SEE IF THEY  
7 MATCH TOGETHER SO WE COULD SAY THAT YES, THE  
8 FRAGMENT FROM THE HIGHWAY WAS, IN FACT, FROM THAT  
9 PARTICULAR VEHICLE. THAT'S AN EXAMPLE OF PHYSICAL  
10 MATCH.

11 Q THAT WOULD BE AN EXAMPLE OF SOMETHING  
12 THAT MIGHT BE USEFUL IF THERE WAS A HIT AND RUN CASE  
13 AND YOU WERE TRYING TO DETERMINE WHAT CAR MIGHT HAVE  
14 BEEN INVOLVED IN CAUSING AN INJURY AND THERE'S A  
15 PIECE OF CAR LEFT BEHIND; AND THEN YOU TRY TO MATCH  
16 IT TO A VEHICLE THAT HAS A PIECE MISSING?

17 A THAT WOULD BE A TYPICAL SCENARIO. IT  
18 CAN BE DONE IN OTHER TYPE CASES AS WELL.

19 Q OKAY.

20 A LET'S SEE.

21 Q PHYSICAL EVIDENCE MATCHES.

22 A OKAY. I HAVE -- WAS THEN ASSIGNED TO  
23 SEROLOGY AND SPENT MOST OF MY CAREER, ACTUALLY,  
24 DURING THE TIME THAT I WAS WORKING AT THE BENCH, AS  
25 A SEROLOGIST AND QUALIFIED A NUMBER OF TIMES IN  
26 FORENSIC SEROLOGY.

27 I PARTICIPATED THROUGHOUT MY CAREER IN  
28 CRIME-SCENE INVESTIGATIONS AND HAVE QUALIFIED A

1 NUMBER OF TIMES IN THE EXAMINATION OF CRIME SCENES.

2 I ALSO SPECIALIZED SPECIFICALLY IN BLOOD  
3 STAIN PATTERN INTERPRETATION AND CRIME-SCENE  
4 RECONSTRUCTION, AND HAVE QUALIFIED A NUMBER OF TIMES  
5 IN THAT PARTICULAR PURSUIT.

6 MORE RECENTLY I'VE QUALIFIED ON ONE  
7 OCCASION AS AN EXPERT IN D.N.A. ANALYSIS; NOT IN THE  
8 ANALYSIS OF D.N.A., BUT IN THE -- THE THEORY OF  
9 D.N.A. ANALYSIS.

10 Q SO, GIVING THE THEORETICAL BASIS FOR  
11 D.N.A. ANALYSIS?

12 A WELL, THERE WERE QUESTIONS THAT WERE  
13 ASKED OF ME IN THAT CASE THAT REQUIRED A THEORETICAL  
14 UNDERSTANDING, AND I QUALIFIED AS AN EXPERT FOR THAT  
15 PURPOSE.

16 Q I PROMISE WE'RE NOT GOING TO ASK ANY  
17 D.N.A. QUESTIONS HERE.

18 NOW, WHERE, APART FROM YOUR BACHELOR'S  
19 DEGREE, WERE YOU TRAINED IN THE SPECIFIC AREAS OF  
20 CRIMINALISTICS WHILE EMPLOYED BY THE SHERIFF'S  
21 DEPARTMENT?

22 A YES. I HAVE RECEIVED ON-THE-JOB  
23 TRAINING IN MOST OF THE ROUTINE AREAS, AND IN MANY  
24 OF THE MORE SPECIALIZED AREAS I ATTENDED SPECIALIZED  
25 TRAINING COURSES OUTSIDE THE LABORATORY.

26           FOR EXAMPLE, IN FORENSIC SEROLOGY, WHICH  
27 WAS MY PRIMARY ANALYTICAL SPECIALTY, I HAVE ATTENDED  
28 BLOOD-TYPING CLASSES AT THE AMERICAN RED CROSS EARLY

42271

1 ON; SEVERAL FORENSIC SYMPOSIA OFFERED BY THE FEDERAL  
2 BUREAU OF INVESTIGATION AT THEIR TRAINING ACADEMY.

3           IN THE AREA OF CRIME-SCENE INVESTIGATIONS,  
4 I ATTENDED A COURSE SPECIFICALLY IN THAT TOPIC AREA  
5 OFFERED BY THE F.B.I. AT THEIR TRAINING ACADEMY  
6 EARLY IN MY CAREER.

7           IN BLOOD STAIN PATTERN INTERPRETATION,  
8 AS FAR AS FORMAL COURSES ARE CONCERNED, I ATTENDED A  
9 WEEK-LONG COLLEGE CREDIT COURSE IN EL MIRA, NEW  
10 YORK. I BELIEVE IT WAS IN 1979. AND A WEEK-LONG  
11 ADVANCED SYMPOSIUM IN BLOOD STAIN PATTERN  
12 INTERPRETATION IN 1983.

13           AND AT THAT POINT WE FORMED A  
14 PROFESSIONAL ORGANIZATION KNOWN AS INTERNATIONAL  
15 ASSOCIATION OF BLOOD STAIN PATTERN ANALYSTS AND I AM  
16 A CHARTER MEMBER OF THAT ORGANIZATION.

17       Q   DOES THAT ORGANIZATION SERVE AS AN  
18 EDUCATIONAL FUNCTION AS WELL AS, I GUESS, A SOCIAL  
19 OR CAMARADERIE ONE?

20       A   I THINK ITS PRIMARY PURPOSE IS AS AN

21 EDUCATIONAL FUNCTION AND TO PROMOTE THE USE OF BLOOD  
22 STAIN PATTERN INTERPRETATION IN CRIMINAL MATTERS.  
23 IT'S NOT PRIMARILY A SOCIAL ORGANIZATION.  
24 Q NOW, HOW MANY -- IN HOW MANY CASES HAVE  
25 YOU APPLIED YOUR EXPERTISE IN EITHER CRIME-SCENE  
26 INVESTIGATION, CRIME-SCENE RECONSTRUCTION, OR BLOOD  
27 SPATTER PATTERNS?  
28 A I HAVE NEVER KEPT TRACK OF THE NUMBERS

42272

1 OF TIMES THAT I HAVE TESTIFIED OVERALL OR IN ANY  
2 SPECIFIC TOPIC AREA, BUT I COULD PROVIDE VERY, VERY  
3 IMPRECISE ESTIMATES FOR YOU IF YOU DESIRE.  
4 Q WELL, WHY NOT.  
5 A OKAY. I HAVE PROBABLY TESTIFIED ON THE  
6 AREA OF CRIME-SCENE INVESTIGATION OR RECONSTRUCTION  
7 WELL IN EXCESS OF A HUNDRED TIMES.  
8 Q AND IS IT YOUR OPINION THAT THERE ARE  
9 CRIME SCENES IN WHICH A SCIENTIFICALLY VALID  
10 RECONSTRUCTION CAN BE DETERMINED?  
11 A WELL, RECONSTRUCTION OF ONE SORT OR  
12 ANOTHER CAN OFTEN BE DONE, PROBABLY IN MOST CRIME  
13 SCENES. COMPLETE RECONSTRUCTION OF ALL EVENTS, I  
14 WOULD SAY CAN RARELY BE DONE.  
15 SO, YES, CRIME-SCENE RECONSTRUCTION CAN

16 BE DONE AND OFTEN IS POSSIBLE. BUT THE DEGREE OF  
17 RECONSTRUCTION OF THE CRIME SCENE WILL REQUIRE ON --  
18 WILL DEPEND ON A WHOLE HOST OF FACTORS, THE  
19 COMPLEXITY OF THE CRIME SCENE, AND THE AVAILABILITY  
20 OF EVIDENCE PRESERVED FROM WHICH TO RECONSTRUCT IT.

21 Q AND WHEN YOU USE THE TERM "COMPLETE  
22 RECONSTRUCTION," WHAT DO YOU MEAN BY THAT?

23 A WELL, TO DO A COMPLETE RECONSTRUCTION  
24 WOULD BE TO DETAIL EVERY EVENT THAT OCCURRED DURING  
25 THE COURSE OF THE COMMISSION OF THE CRIME; AND AS I  
26 SAID, THAT'S RARELY, IF EVER, POSSIBLE.

27 Q I NEED YOU TO EITHER GET CLOSER TO THE  
28 MIKE OR BRING IT CLOSER TO YOU. THERE'S SOMETHING

42273

1 WRONG WITH MY HEARING.

2 A OKAY.

3 Q THAT'S BETTER. EVERY EVENT THAT  
4 OCCURRED DURING THE COMMISSION OF THE CRIME?

5 A YES. AS I SAID THAT IS RARELY POSSIBLE.

6 Q AND DOES THE ABILITY TO DO THAT -- WELL,  
7 STRIKE THAT.

8 WHEN YOU PARTICIPATE IN CRIME-SCENE  
9 RECONSTRUCTION, TO WHATEVER DEGREE, ARE YOU  
10 FOLLOWING CERTAIN SCIENTIFIC PRINCIPLES?

11 A YES, I AM.

12 Q AND WHEN YOU'RE TALKING ABOUT THE  
13 ABILITY TO COME UP WITH A RECONSTRUCTION OR A  
14 COMPLETE RECONSTRUCTION, DO YOU MEAN THE ABILITY TO  
15 COME UP WITH ONE THAT IS SCIENTIFICALLY SOUND?

16 A A RECONSTRUCTION, TO BE A VALID  
17 RECONSTRUCTION, MUST BE SCIENTIFICALLY SOUND. AND  
18 BY THAT I MEAN IT MUST BE BASED UPON THE FOUNDATION  
19 OF THE EVIDENCE. THE HYPOTHESIS REACHED IN THE  
20 CONSTRUCTION MUST MEET THE TEST OF THE EVIDENCE  
21 AVAILABLE IN THE CASE.

22 Q AND IF THERE ISN'T SUFFICIENT EVIDENCE  
23 AVAILABLE, FOR WHATEVER REASON, IS IT APPROPRIATE IN  
24 YOUR OPINION TO SIMPLY COME UP WITH A HYPOTHETICAL  
25 SCENARIO BASED ON ASSUMPTIONS ABOUT EVIDENCE?

26 A IF ASSUMPTIONS ARE USED IN A  
27 RECONSTRUCTION, THEY MUST BE CLEARLY STATED SO THAT  
28 WHEN EVALUATING THE RELIABILITY OF THE

42274

1 RECONSTRUCTION, YOU CAN EVALUATE IT IN LIGHT OF THE  
2 RELIABILITY OF THE ASSUMPTION.

3 I OCCASIONALLY WILL USE ASSUMPTIONS IN A  
4 RECONSTRUCTION, BUT I FEEL OBLIGATED TO STATE THEM  
5 CLEARLY IN MY REPORT.

6 Q AT SOME POINT, MR. LINHART, WERE YOU  
7 ASKED TO TAKE A LOOK AT THIS CRIME SCENE FOR SOME  
8 PURPOSE?

9 A YES, I WAS.

10 Q AND WHO ASKED YOU TO DO THAT?

11 A I WAS ASKED TO EVALUATE THE EVIDENCE IN  
12 THIS SCENE BY DEPUTY DISTRICT ATTORNEY PAMELA  
13 BOZANICH.

14 Q AND WHAT DID YOU DO IN ORDER TO EVALUATE  
15 THE EVIDENCE IN THIS SCENE?

16 A AT THE POINT THAT I AGREED WITH  
17 MS. BOZANICH TO ATTEMPT TO RECONSTRUCT EVENTS IN  
18 THIS SCENE, I ASKED FOR ALL OF THE PHOTOGRAPHS THAT  
19 WERE AVAILABLE. I ASKED THAT I BE SUPPLIED WITH THE  
20 AUTOPSY PROTOCOL AND CRIME SCENE REPORT FROM THE  
21 BEVERLY HILLS POLICE DEPARTMENT, AND A DESCRIPTION  
22 OF ANY WITNESS INFORMATION THAT SHE HAD THAT MIGHT  
23 BE RELEVANT TO THE CRIME SCENE; AND I BEGAN TO STUDY  
24 THAT INFORMATION.

25 Q AND WHEN YOU STUDIED THAT INFORMATION,  
26 PARTICULARLY WHEN YOU STUDIED THE PHOTOGRAPHS, DID  
27 YOU USE ANYTHING TO ENHANCE YOUR ABILITY TO SEE THE  
28 PHOTOGRAPHS, SUCH AS SEE DETAIL ON THEM?



1       A   YES. FOR CERTAIN OF THE PHOTOGRAPHS I  
2 RECEIVED THEM AS EIGHT-BY-TEN ENLARGEMENTS TO  
3 ENHANCE SOME OF THE DETAILS; AND IN CASES WHERE I  
4 NEEDED TO SEE THEM MORE CLEARLY THAN I COULD SEE IN  
5 AN EIGHT-BY-TEN, I WOULD PLACE THE PHOTOGRAPH UNDER  
6 A STEREO MICROSCOPE, WHICH IS A REFLECTED LIGHT  
7 BINOCULAR MICROSCOPE WHICH I CAN CONTROL THE  
8 MAGNIFICATION OF LOW POWER. I CAN ESSENTIALLY BLOW  
9 UP THE PHOTOGRAPH TO THE POINT WHERE DETAIL IS LOST  
10 IN THE GRAIN OF THE FILM.

11       Q   AND HAVE YOU MORE RECENTLY ALSO RECEIVED  
12 A SET OF THE CRIME-SCENE PHOTOGRAPHS ON COMPUTER  
13 DISK, CD-ROM DISK?

14       A   YES, I DID.

15       Q   AND DOES THE LOS ANGELES COUNTY  
16 SHERIFF'S CRIME LAB HAVE COMPUTERS AND COMPUTER  
17 PROGRAMS AVAILABLE THROUGH WHICH YOU COULD VIEW  
18 THOSE PHOTOGRAPHS ON CD-ROM?

19       A   YES, WE DO. I WAS ABLE TO VIEW THEM AT  
20 THE LABORATORY ON THE CD-ROM.

21       Q   AND DID VIEWING THEM ON CD-ROM ADD  
22 ANYTHING, IN YOUR OPINION, TO WHAT YOU COULD SEE  
23 WHEN YOU VIEWED THEM PREVIOUSLY IN ENLARGEMENTS AND  
24 UNDER THE STEREO MICROSCOPE?

25       A   ACTUALLY, NO. I USED THEM. THEY WERE  
26 SUPPLIED TO ME FOR THIS, MORE RECENTLY AT MY  
27 REQUEST, SIMPLY TO REFRESH MY RECOLLECTION FOR  
28 PROVIDING TESTIMONY, SINCE PART OF MY FOUNDATION FOR

1 MY OPINION WAS FROM THE PHOTOGRAPHS.

2 BUT, ACTUALLY, I BELIEVE I COULD SEE  
3 WHAT I NEEDED TO SEE MUCH MORE CLEARLY FROM THE  
4 ACTUAL PHOTOGRAPHS IN A STEREO MICROSCOPE THAN I WAS  
5 ABLE TO ON THE COMPUTER SCREEN WITH THE PHOTOGRAPHS  
6 ON THE CD-ROM.

7 Q AND DID YOU HAVE A SPECIAL PROGRAM ON  
8 THE COMPUTER, A "PHOTO SHOP" PROGRAM THAT PURPORTS  
9 TO LET YOU CLARIFY IMAGES AND DO THAT SORT OF THING?

10 A I ACTUALLY DIDN'T USE "PHOTO SHOP." I'M  
11 NOT SURE WHAT THE PROGRAM IS. I LET OUR PERSONNEL  
12 IN THE LABORATORY WHO ARE SPECIALIZED IN THE USE OF  
13 THE COMPUTER, FOR THAT PURPOSE, SET IT UP FOR ME. I  
14 DON'T KNOW THE NAME OF THE PROGRAM.

15 Q SO YOU HAD ANOTHER PROGRAM WITH WHICH  
16 YOU USED TO VIEW THE PHOTOGRAPHS?

17 A YES. OR THE PROGRAM THAT WAS SUPPLIED  
18 ON THE CD-ROM.

19 Q OKAY. PRIOR TO THE FIRST TRIAL, DID YOU  
20 PREPARE A REPORT CONCERNING SOME OF THE THINGS THAT  
21 YOU -- SOME OF THE OPINIONS THAT YOU WERE ABLE TO  
22 FORMULATE AFTER VIEWING THE MATERIAL IN THIS CASE?

23 A YES, I DID PREPARE A REPORT OF OPINIONS

24 THAT I REACHED AFTER MY REVIEW OF THE EVIDENCE.

25 Q AND WAS THAT REPORT DATED JULY 15TH,  
26 1993?

27 A THAT SOUNDS ABOUT RIGHT. I HAVE A COPY.  
28 I COULD CONFIRM THE DATE IF YOU WISH.

42277

1 Q I DON'T THINK ANYONE IS GOING TO DISPUTE  
2 IT.

3 HOW LONG HAD YOU BEEN INVOLVED WITH  
4 REVIEWING THE EVIDENCE IN THE CASE BEFORE YOU ISSUED  
5 THAT REPORT?

6 A I ACTUALLY FIRST RECEIVED THE  
7 PHOTOGRAPHS AND CONTACT FROM MS. BOZANICH SOME  
8 CONSIDERABLE TIME PRIOR TO THAT DATE. I DID NOT DO  
9 ANYTHING MORE AT THAT POINT THAN A PRELIMINARY  
10 REVIEW AND CONSULT WITH MS. BOZANICH. I DIDN'T  
11 BEGIN THE WORK FOR RECONSTRUCTION UNTIL ABOUT JUNE  
12 1993.

13 Q AND WERE YOU ABLE, BASED ON THE  
14 AVAILABLE EVIDENCE AND YOUR 20 SOME ODD YEARS  
15 EXPERIENCE AS A CRIMINALIST, TO CONCLUDE OR COME TO  
16 A SERIES OF CONCLUSIONS THAT COMPRISED A COMPLETE  
17 RECONSTRUCTION OF THIS SHOOTING?

18 A NO. I COULD NOT DO THAT.

19 Q AND WHY COULD YOU NOT DO THAT? WERE YOU  
20 UNSKILLED?

21 A I DO NOT BELIEVE THAT THE LIMITATIONS IN  
22 RECONSTRUCTING THIS CRIME SCENE ENTIRELY ARE  
23 PRIMARILY BASED UPON LIMITATIONS IN MY SKILLS.

24 Q WHAT DO YOU BELIEVE THE LIMITATIONS IN  
25 RECONSTRUCTING THIS CRIME SCENE ENTIRELY ARE BASED  
26 UPON?

27 A IT'S BASED UPON THE COMPLEXITY OF THE  
28 SCENE; THE LARGE NUMBER OF VARIOUS POSSIBILITIES,

42278

1 GIVEN THE CIRCUMSTANCES HERE; THAT IS, TWO SHOOTERS,  
2 TWO DECEDENTS. ALL FOUR OF WHOM WERE, FROM THE  
3 EVIDENCE, MOBILE DURING AT LEAST PORTIONS OF THE  
4 TIME OF THE SHOOTING.

5 THE COMPLEXITY IS BASED UPON THE FACT  
6 THAT WOUNDS ARE RECEIVED IN MOBILE PARTS OF THE  
7 BODY, SO THAT IT MAKES IT DIFFICULT TO KNOW WHAT THE  
8 RELATIVE POSITIONS OF EVEN THE LIMBS ARE WITH THE  
9 TORSO.

10 IT'S ALSO BASED UPON THE LIMITED  
11 AVAILABILITY OF EVIDENCE FROM THE CRIME SCENE. I  
12 HAD ONLY PHOTOGRAPHS. THE PHOTOGRAPHS WERE NOT  
13 TAKEN FOR THE SPECIFIC PURPOSE OF CRIME-SCENE

14 RECONSTRUCTION OR BLOOD STAIN PATTERN

15 INTERPRETATION. SO THERE WERE SOME AREAS THAT WERE

16 NOT FULLY VISIBLE.

17 SO THERE WERE A VARIETY OF LIMITATIONS

18 IN THE EVIDENCE AND EXTREME COMPLEXITY BASED UPON

19 THOSE THINGS I JUST DISCUSSED, THAT IN MY OPINION,

20 PREVENTED ANY POSSIBILITY OF A COMPLETE

21 RECONSTRUCTION.

22 Q WAS IT ALSO AN INHIBITING FACTOR THAT

23 THERE WAS NO SAMPLING TAKEN OF ANY OF THE BLOOD

24 SPATTER OR TISSUE SPATTER THAT WAS OBSERVABLE AT THE

25 SCENE THROUGH THE PHOTOGRAPHS?

26 A THAT WAS A LIMITING FACTOR THAT, SINCE

27 THERE WERE TWO INDIVIDUALS, AT LEAST, WHO HAD BLED

28 AT THAT LOCATION. IT WASN'T POSSIBLE FROM JUST THE

42279

1 PHOTOGRAPHS TO DETERMINE WHOSE BLOOD WAS IN WHICH

2 LOCATION; AND IN MANY CASES, I WAS UNWILLING TO MAKE

3 ASSUMPTIONS AS TO WHOSE BLOOD IT MIGHT BE BECAUSE I

4 CONSIDERED THE REALITY TRULY IN DOUBT.

5 IN OTHER WORDS, I COULDN'T MAKE A

6 REASONABLE GUESS AS TO WHOSE BLOOD WAS IN A

7 PARTICULAR LOCATION.

8 YES, THAT WAS ANOTHER LIMITING FACTOR.

9 Q DO YOU HAVE A PARTICULAR METHODOLOGY, IF  
10 YOU WILL, A MENTAL METHODOLOGY THAT YOU USE,  
11 MR. LINHART, WHEN YOU ARE ATTEMPTING TO EFFECT A  
12 CRIME-SCENE RECONSTRUCTION?

13 A YES, I DO.

14 Q AND COULD YOU EXPLAIN HOW YOU APPROACH  
15 THE ISSUES OF RECONSTRUCTION, WHAT METHODOLOGY YOU  
16 USE?

17 A YES. SINCE, IN RECONSTRUCTING A CRIME  
18 SCENE, THERE'S USUALLY A LARGE AMOUNT OF EVIDENCE,  
19 THERE ARE A LARGE NUMBER OF CONCLUSIONS THAT CAN BE  
20 REACHED, MANY OF WHICH ARE TRIVIAL OR NOT RELEVANT  
21 TO ANY ISSUE IN THE CASE. IT WOULD BE A WASTE OF  
22 TIME TO TRY TO PURSUE EVERY SINGLE TRIVIAL DETAIL.  
23 SO I LIKE TO START WITH A HYPOTHESIS, A QUESTION:  
24 WHAT IS IT THAT IS AT ISSUE THAT WE ARE ADDRESSING  
25 IN THIS CASE?

26 I THEN REVIEW THE EVIDENCE BASED UPON  
27 THE HYPOTHESIS REACHED FROM THE QUESTION, OR FROM  
28 STATEMENTS MADE BY WITNESSES OR DEFENDANTS OR

42280

1 VICTIMS. I REVIEW THE HYPOTHESIS AGAINST THE  
2 EVIDENCE TO DETERMINE WHETHER THE HYPOTHESIS IS TRUE  
3 OR NOT OR POSSIBLE OR NOT. AND THERE ARE AT LEAST

4 THREE POSSIBILITIES. I MAY EITHER ACCEPT THE  
5 HYPOTHESIS. I MAY REJECT THE HYPOTHESIS, OR  
6 DETERMINE THE HYPOTHESIS IS UNPROVEN.

7 Q WOULD YOU GIVE US AN EXAMPLE, JUST SO I  
8 UNDERSTAND. SO IT'S A LITTLE MORE CONCRETE, CAN YOU  
9 GIVE US AN EXAMPLE OF WHAT A TYPICAL HYPOTHESIS  
10 WOULD BE, PERHAPS KEEPING IN MIND A CASE WHERE YOU  
11 WERE ABLE, BASED ON THE EVIDENCE, TO DO A  
12 RECONSTRUCTION OF THE SHOOTING SCENE.

13 A I CAN GIVE A GENERAL EXAMPLE THAT IS  
14 FAIRLY SIMPLE TO EXPLAIN THAT'S BASED UPON AN ACTUAL  
15 CASE THAT'S LONG BEEN ADJUDICATED IN WHICH THERE WAS  
16 AN INDIVIDUAL KILLED BY BLUNT FORCE TRAUMA. AND THE  
17 SUSPECTED KILLER ALLEGED THAT HE HAD ATTEMPTED TO  
18 RENDER AID AND THAT THE BLOOD ON HIS SHIRT SLEEVE  
19 WAS FROM CRADLING THE INJURED PERSON'S HEAD IN HIS  
20 HAND. THERE WAS, IN FACT, BLOOD ON HIS SHIRT  
21 SLEEVE.

22 SO THE HYPOTHESIS IS THAT THE BLOOD ON  
23 THE SHIRT SLEEVE WAS TRANSFERRED BY CRADLING THE  
24 INJURED PERSON'S HEAD IN THE HAND IN THE EFFORT TO  
25 RENDER AID.

26 I EXAMINED BLOOD STAINS ON THE SHIRT  
27 SLEEVE, DETERMINED THEM TO BE, IN FACT, DROPLETS  
28 THAT HAD BEEN PROJECTED THROUGH THE ACTION OF SOME

1 FORCE; AND THUS, WAS ABLE TO REJECT THE HYPOTHESIS  
2 THAT THIS BLOOD WAS OBTAINED BY CRADLING THE  
3 INDIVIDUAL'S HEAD IN THE HANDS, PROVIDING AN  
4 INCONSISTENCY IN THE DEFENDANT'S ACCOUNT.

5 SO THAT AS FORM OF RECONSTRUCTION WHERE  
6 DID I NOT REACH AN AFFIRMATIVE CONCLUSION BUT DENIED  
7 OR REBUTTED THE HYPOTHESIS.

8 Q WELL, IF I WERE TO ASK YOU TO POSE --  
9 WELL, LET ME STRIKE THAT.

10 I WANTED YOU TO CONTINUE WITH WHAT  
11 HAPPENS WHEN YOU'RE TRYING TO DO A SEQUENTIAL  
12 RECONSTRUCTION, TRYING TO FIGURE OUT WHAT HAPPENS  
13 NEXT AND WHAT HAPPENED NEXT.

14 WHAT ARE THE STEPS THAT YOU GO THROUGH?

15 A IN A SEQUENTIAL RECONSTRUCTION I WILL  
16 ENDEAVOR TO FIND WHAT EVENTS COULD HAVE PRECEDED  
17 OTHER EVENTS. IF THERE WERE ONLY TWO EVENTS THAT  
18 I'M TRYING TO SEQUENCE, AND I'M ABLE TO DETERMINE  
19 WHICH PRECEDED THE OTHER, THEN I HAVE SUCCESSFULLY  
20 RECONSTRUCTED THE SEQUENCE. IF THERE ARE MULTIPLE  
21 EVENTS, MORE THAN THREE, I MAY BE ABLE TO SEQUENCE  
22 TWO WITH RESPECT TO EACH OTHER, WITHOUT BEING ABLE  
23 TO SEQUENCE THE THIRD OR THE FOURTH.

24 SO I WILL LOOK AT THE EVIDENCE TO SEE  
25 WHICH OF THE EVENTS I CAN SEQUENCE RELATIVE TO EACH  
26 OTHER, AND THEN PUT THE SETS OF THOSE TOGETHER TO  
27 SEE IF I CAN SEQUENCE THE ENTIRE SET OF EVENTS THAT



42282

1           OFTEN, I WILL BE LEFT WITH RELATIVE  
2 SEQUENCING OF ONLY A FEW EVENTS IN A RECONSTRUCTION  
3 AND BE UNABLE TO SEQUENCE THE WHOLE THING, BUT I  
4 HAVE STILL DONE A RECONSTRUCTION IN THE RELATIVE  
5 SEQUENCE OF TWO OR MORE EVENTS.

6       Q   IF, IN YOUR EFFORTS TO RECONSTRUCT A  
7 SERIES OF EVENTS, SUCH AS A SHOOTING, YOU COME TO A  
8 POINT WHERE THERE ARE TWO POSSIBILITIES, TWO  
9 POSSIBLE INTERPRETATIONS OF THE EVIDENCE; ONE OF  
10 WHICH, FOR EXAMPLE, WOULD SUPPORT THE STARTING  
11 HYPOTHESIS, AND THE OTHER ONE WOULD BE INCONSISTENT  
12 WITH THAT STARTING HYPOTHESIS, WHAT DO YOU DO?

13       A   UNLESS I HAVE SOME FOUNDATION IN THE  
14 EVIDENCE FOR SELECTING ONE OF THOSE POSSIBILITIES, I  
15 WILL HAVE TO CONSIDER THE HYPOTHESIS OF SEQUENCE  
16 UNPROVEN BASED UPON THAT EVIDENCE. SO THAT WILL  
17 TERMINATE MY ABILITY TO SEQUENCE THOSE EVENTS UNTIL  
18 I CAN FIND SOMEWHERE ELSE IN THE EVIDENCE SOME  
19 REASON TO PREFER ONE OF THE POSSIBILITIES OVER THE  
20 OTHER WITH SUFFICIENT CERTAINTY TO RENDER AN OPINION  
21 AS TO WHICH IS TRUE OR MORE LIKELY.

22       Q   WHEN YOU'RE DOING THIS, PLAYING OUT THIS

23 HYPOTHESIS, AND YOU COME TO A POINT WHERE THERE ARE  
24 TWO POSSIBILITIES, IS THAT WHAT YOU CALL A BRANCH IN  
25 THE LINE OF TRYING TO CREATE THIS RECONSTRUCTION?

26 A WELL, ONE CAN THINK OF IT AS A BRANCH  
27 POINT OR A TREE. IF WE COME TO A POINT WHERE THERE  
28 ARE TWO POSSIBILITIES AND I CANNOT SELECT BETWEEN

42283

1 THOSE WITH SUFFICIENT RELIABILITY, THEN THERE ARE --  
2 I WOULD HAVE TO FOLLOW TWO PATHS THEN IN THE  
3 SUBSEQUENT RECONSTRUCTION.

4 SO I WOULD END UP WITH MORE THAN ONE  
5 REASONABLY POSSIBLE ALTERNATIVE.

6 IF, AT ANOTHER POINT IN THE SEQUENTIAL  
7 RECONSTRUCTION, I REACH ANOTHER BRANCH POINT WHERE  
8 THERE ARE TWO OR MORE POSSIBILITIES WHERE I CAN'T  
9 SELECT BETWEEN THEM, THEN IT BRANCHES FURTHER.

10 SO YOU CAN SEE THAT THE NUMBER OF  
11 POSSIBILITIES CAN INCREASE TREMENDOUSLY IN A COMPLEX  
12 SEQUENTIAL RECONSTRUCTION IF THERE IS UNCERTAINTY AS  
13 TO WHICH OF SEVERAL POSSIBILITIES IS THE CORRECT ONE  
14 AT VARIOUS PLACES.

15 Q LET'S SAY, HYPOTHETICALLY, THERE ARE TWO  
16 POSSIBLE HYPOTHESES; ONE SUPPORTS THE DISTRICT  
17 ATTORNEY'S OFFICE OR THE PROSECUTION'S THEORY ABOUT

18 A CRIME SCENE, AND THE OTHER ONE SUPPORTS THE  
19 DEFENSE THEORY ABOUT A CRIME SCENE. I MEAN, YOU  
20 WORK FOR LAW ENFORCEMENT. WHY DON'T YOU JUST PICK  
21 THE D.A.'S VERSION AND IGNORE ALL OF THE  
22 INCONSISTENT EVIDENCE THAT POINTS THE OTHER WAY?

23 A I SELECT THE ALTERNATIVE BASED UPON THE  
24 FOUNDATION IN THE EVIDENCE RATHER THAN THE MORE  
25 SOCIAL CONCERNS OF WHO DESIRES WHICH ALTERNATIVE.

26 Q FIRST OF ALL, DO YOU RELY ON YOUR OWN  
27 MEDICAL EXPERTISE WHEN YOU'RE DEALING WITH A  
28 SHOOTING RECONSTRUCTION WHERE FORENSIC PATHOLOGY OR

42284

1 THE OPINIONS OF FORENSIC PATHOLOGISTS ARE NECESSARY?

2 A NO. I WILL REVIEW -- I MAKE IT A ROUTINE  
3 TO REVIEW, IN DEATH CASES, THE CORONER'S AUTOPSY  
4 PROTOCOL, AND WILL USE THAT AS FOUNDATION FOR  
5 OPINIONS THAT I MAY REACH. IF I FIND INSUFFICIENT  
6 DETAIL IN THE AUTOPSY PROTOCOL TO ANSWER QUESTIONS  
7 THAT I THINK MAY BE ANSWERABLE, I WILL CONTACT THE  
8 AUTOPSY SURGEON, THE PATHOLOGIST WHO CONDUCTED THE  
9 AUTOPSY, AND CONFER WITH THEM AND ASK QUESTIONS TO  
10 SEE IF WE CAN FURTHER CLARIFY SOME OF THE ISSUES.  
11 IF WE CAN, THEN I USE THAT AS FOUNDATION. IF THEY  
12 CAN'T ANSWER MY QUESTIONS, THEN I CANNOT PROCEED

13 WITH THAT AS FOUNDATION.

14 Q WOULD YOU EVER, MR. LINHART, IF YOU HAD  
15 A HYPOTHESIS IN MIND, AND FOR YOUR HYPOTHESIS TO BE  
16 TRUE, A PARTICULAR WOUND WOULD HAVE TO BE POSTMORTEM  
17 AND YOU'RE CONFRONTED WITH A CORONER'S PROTOCOL THAT  
18 CALLS THE WOUND ANTEMORTEM, WOULD YOU SIMPLY, ON  
19 YOUR OWN, CONSIDER IT POSTMORTEM BECAUSE IT FITS  
20 YOUR HYPOTHESIS AND REJECT THE CORONER'S ENTRY  
21 BECAUSE IT'S --

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

24 THE COURT: OBJECTION SUSTAINED.

25 Q BY MS. ABRAMSON: DO YOU FEEL THAT AS A  
26 CRIMINALIST, EVEN WITH 20 SOME ODD YEARS EXPERIENCE,  
27 THAT YOU ARE QUALIFIED TO MAKE CALLS ON WHAT IS  
28 ANTEMORTEM AND WHAT IS POSTMORTEM IN WOUNDS?

42285

1 A I HAVE SOME SKILLS IN THAT AREA THAT  
2 I'VE DEVELOPED OVER THE YEARS WITH OBSERVATION AND  
3 SOME COURSES OF STUDY, BUT IT IS CERTAINLY NOT TO  
4 THE LEVEL OF SKILLS THAT A FORENSIC PATHOLOGIST WILL  
5 USUALLY HAVE DEVELOPED. SO I WOULD NOT TAKE IT UPON  
6 MYSELF TO ATTEMPT TO OVERTURN THE PATHOLOGIST'S  
7 CONCLUSION, EVEN IF IT APPEARED TO ME TO BE

8 INCORRECT. IF IT APPEARED TO ME TO BE INCORRECT, I  
9 MAY NOT USE IT AS FOUNDATION. BUT TO REJECT HIS  
10 OPINION I THINK WOULD BE OUTSIDE OF THE AREA OF MY  
11 EXPERTISE.

12 Q HOW MANY WOUNDS HAVE YOU OBSERVED  
13 THROUGH PHOTOGRAPHS OR IN PERSON OVER THE YEARS, HOW  
14 MANY BULLET WOUNDS OF VARIOUS KINDS?

15 A OH, MY. WELL, LIKE MY TESTIMONY, I HAVE  
16 MADE NO EFFORT TO COUNT, BUT I'M SURE I HAVE  
17 OBSERVED THOUSANDS OF BULLET WOUNDS.

18 Q AND IT HAS BEEN PART OF YOUR WORK TO BE  
19 MINDFUL OF THE APPEARANCE OF BULLET WOUNDS TO ASSIST  
20 YOU IN YOUR WORK OF CRIME-SCENE INVESTIGATION AND  
21 RECONSTRUCTION?

22 A YES. THAT'S AN AREA THAT I HAVE PAID  
23 ATTENTION TO.

24 Q AND WITH ALL THAT EXPERIENCE, YOU STILL  
25 WOULD NOT FEEL THAT IT WAS APPROPRIATE FOR YOU TO  
26 OVERRULE THE OPINION OF A PATHOLOGIST, ESPECIALLY  
27 WHEN YOU HADN'T SPOKEN TO HIM?

28 A NO. I WOULD CONSIDER IT INAPPROPRIATE

42286

1 FOR ME TO DO THAT BECAUSE MY TRAINING HAS BEEN  
2 DIFFERENTLY FOCUSED, AND I HAVE NOT STUDIED

3 MEDICINE, NOR STUDIED THE APPEARANCE OF WOUNDS TO  
4 THE EXTENT THAT IS REQUIRED FOR A FORENSIC  
5 PATHOLOGIST.

6 Q NOW, WITH RESPECT TO THIS PARTICULAR  
7 CASE, YOU INDICATED THAT ONE OF THE THINGS THAT  
8 COMPLICATED AND MADE COMPLEX THIS SCENE WAS THE  
9 MOBILITY OF THE PERSONS INVOLVED.

10 DO YOU RECALL THAT?

11 A YES, I RECALL THAT.

12 Q AND WITH RESPECT TO -- DOES THAT INCLUDE  
13 THE MOBILITY OF THE DECEDENTS?

14 A YES. I BELIEVE I STATED THAT  
15 SPECIFICALLY. I OBSERVED EVIDENCE IN BOTH CASES  
16 THAT WOULD -- THAT SUGGESTED THAT BOTH WERE MOBILE  
17 AT SOME POINT DURING THE COURSE OF THE SHOOTING.

18 Q IF WE COULD TURN TO THAT. I WOULD ASK  
19 YOU TO DESCRIBE, WITH RESPECT FIRST TO  
20 MRS. MENENDEZ, WHAT EVIDENCE YOU SAW THAT INDICATED --  
21 WELL, STRIKE THAT.

22 WHEN YOU TALK ABOUT MOBILE, ARE YOU  
23 TALKING ABOUT A FULL RANGE OF MOBILITY? IN OTHER  
24 WORDS, DID YOU FIND EVIDENCE THAT SUGGESTS THAT EACH  
25 OF THE DECEDENTS MAY HAVE BEEN STANDING UP OR GOING  
26 FROM SITTING TO STANDING AT TIMES AFTER THEY WERE  
27 SHOT, OR WHILE THEY WERE SHOT, THAT KIND OF MOBILE?

28 A YES. THAT'S THE KIND OF MOBILE I'M

1 TALKING ABOUT.

2 Q AND WHAT EVIDENCE DID YOU FIND THAT  
3 SUPPORTED YOUR CONCLUSION OF THAT KIND OF MOBILITY  
4 FOR MRS. MENENDEZ, IF WE COULD BEGIN WITH HER?

5 A SHE HAD CONTACT TRANSFERRED BLOOD ON THE  
6 SOLE OF HER SHOES THAT WAS READILY VISIBLE. BY THAT  
7 I MEAN BLOOD THAT WAS TRANSFERRED TO THE SHOES BY  
8 CONTACT OF THE SHOE WITH THE SOURCE OF WET BLOOD;  
9 SIMPLY STATED, SHE STEPPED IN BLOOD.

10 Q AND THAT WOULD --

11 A AND THAT WAS -- WOULD HAVE REQUIRED HER  
12 FEET TO BE IN A DIFFERENT POSITION THAN THEY WERE IN  
13 HER FINAL POSITION AS SHOWN IN THE PHOTOGRAPH. IT  
14 WOULD HAVE REQUIRED THE FEET TO BE DOWN ON TO THE  
15 BLOOD SOURCE.

16 Q WOULD IT ALSO INDICATE THAT THERE WAS  
17 SOMEONE SHOT AND SOMEONE BLEEDING, AND THEN SHE WAS  
18 STEPPING, PLACING HER FOOT DOWN ON THE SURFACE OF  
19 THAT BLOOD OR BLEEDING?

20 A STEPPING, OR SHE CAN HAVE BEEN DOWN WITH  
21 HER FEET ON THE FLOOR, BUT SHE WAS STILL MOVING.

22 Q WHAT OTHER EVIDENCE DID YOU FIND THAT  
23 INDICATED, WITH RESPECT TO MRS. MENENDEZ, THAT SHE  
24 WAS MOBILE? LET ME ASK YOU THIS:

25 DID YOU SEE EVIDENCE THAT SUGGESTED THAT

26 THERE WERE BLOOD PATTERNS SHOWING BLOOD MOVING DOWN  
27 ONE OR BOTH OF HER LEGS?  
28 A IT IS MY RECOLLECTION THAT THE PATTERN

42288

1 OF BLOOD THAT WAS -- THAT FLOWED ON HER LEGS WAS  
2 INDICATIVE OF HER LEGS BEING IN AN UPRIGHT POSITION  
3 DURING A PORTION OF THE TIME AFTER THE BLEEDING HAD  
4 STARTED.

5 Q AND COULD YOU DETERMINE -- IN OTHER  
6 WORDS, JUST TO MAKE THAT SIMPLE, SHE WAS STANDING UP  
7 AFTER SHE WAS BLEEDING?

8 A WELL, STANDING OR SITTING WITH THE LEGS  
9 POSITIONED SUCH THAT THE FEET WERE DOWN SO THAT  
10 BLOOD WAS FLOWING DOWN THE LEG.

11 Q AND WERE YOU ABLE TO FORM AN OPINION OR  
12 CONCLUSION ABOUT WHETHER THE BLEEDING THAT WAS  
13 OBSERVED IN THAT PATTERN WAS BLEEDING FROM A LEG  
14 WOUND?

15 A I DON'T KNOW THAT I COULD DETERMINE WHAT  
16 THE NUMBER -- WITH THE NUMBER OF WOUNDS THAT SHE  
17 HAD, THAT ALL OF THE BLOOD THAT I OBSERVED WAS  
18 NECESSARILY FROM A PARTICULAR WOUND. SHE COULD HAVE  
19 BLED FROM ONE WOUND OVER ANOTHER AND HAD IT DRIP  
20 DOWN.



21 SO I DON'T FEEL COMFORTABLE WITH  
22 IDENTIFYING IN EVERY CASE EXACTLY WHICH WOUND THE  
23 BLOOD CAME FROM.

24 Q OKAY. WAS THERE ALSO EVIDENCE THAT YOU  
25 OBSERVED THAT INDICATED THAT AT SOME POINT SHE  
26 PROBABLY RECEIVED A WOUND WHILE LYING DOWN AT OR  
27 NEAR HER FINAL POSITION?

28 A YES, I DID.

42289

1 Q AND WHAT EVIDENCE DID YOU FIND THAT  
2 SUPPORTED THAT CONCLUSION?

3 A THERE WAS BLOOD SPATTERED NEAR HER HEAD  
4 IN HER FINAL RESTING POSITION THAT WAS ON THE FACING  
5 EDGE OF THE COUCH THAT ITS CONFIGURATION WAS SUCH  
6 THAT IT APPEARED TO HAVE A POINT OF ORIGIN NEAR THE  
7 FLOOR; AND IT WAS UNDERNEATH A PORTION OF THE COUCH  
8 CUSHION THAT WAS PULLED OUT A BIT, WHICH WOULD HAVE  
9 SHIELDED THE APPROACH OF THAT BLOOD FROM A HIGHER  
10 LEVEL. SO THAT MEANT THAT THE POINT OF ORIGIN WAS  
11 NEAR THE FLOOR. IT WAS A CONSIDERABLE DISTANCE FROM  
12 MR. MENENDEZ.

13 SO IT SEEMED MUCH MORE LIKELY THAT IT  
14 WAS FROM HER; AND AT THE POINT THAT IT WAS FROM HER,  
15 AS SHE WAS NEAR THE FLOOR.

16 Q OKAY. AND WAS THAT A LARGE QUANTITY OF  
17 SPATTER OR A RATHER MODEST QUANTITY OF SPATTER, AS  
18 YOU RECALL?

19 A THOSE ARE RELATIVE TERMS, BUT RELATIVE  
20 TO THE DISTRIBUTION OF BLOOD ABOUT THAT SCENE, IT  
21 WAS A FAIRLY LARGE QUANTITY.

22 Q NOW, WERE THERE OTHER THINGS INDICATED  
23 TO YOU OR SUGGESTED TO YOU, THE POSSIBILITY THAT  
24 MRS. MENENDEZ MAY HAVE BEEN STANDING WHILE SHE  
25 RECEIVED OR AFTER SHE RECEIVED ANY WOUNDS?

26 A IF I HAD ADDITIONAL FOUNDATION FOR THOSE  
27 OPINIONS, I DON'T RECALL IT AT THIS POINT. I DID MY  
28 ORIGINAL REVIEW SOMETIME AGO, AND THEN JUST RECENTLY

42290

1 REVIEWED THE PHOTOGRAPHS SUFFICIENT TO ESTABLISH A  
2 FOUNDATION FOR MY OPINIONS. I DIDN'T MAKE AN EFFORT  
3 TO RE-ESTABLISH THE ENTIRETY OF THE FOUNDATION.

4 SO I DON'T RECALL ADDITIONAL FOUNDATION.

5 Q OKAY. LET'S TALK THEN ABOUT  
6 MR. MENENDEZ.

7 YOU INDICATED THAT YOU SAW EVIDENCE THAT  
8 INDICATED THAT HE WAS MOBILE DURING THE TIME OF THE  
9 SHOOTING.

10 CAN YOU TELL US WHAT THAT WAS.

11 A YES. THE PHOTOGRAPHS CLEARLY SHOWED A  
12 THROUGH-AND-THROUGH WOUND IN HIS LEFT LEG, WHICH WAS  
13 DESCRIBED IN THE AUTOPSY REPORT AS A SHOTGUN WOUND  
14 ORIGINATING ON THE INNER SURFACE OF THE LEG AND  
15 EXITING ON THE OUTER SURFACE OF THE LEG. I OBSERVED  
16 A NUMBER OF PHOTOGRAPHS THAT SHOWED THAT LEG WOUND  
17 AND THE AREA SURROUNDING THE LEG WOUND. THAT KIND  
18 OF WOUND WILL NECESSARILY RESULT IN SOME SPATTER  
19 FROM THE EXIT WOUND; AND I WAS UNABLE TO LOCATE  
20 SPATTER SUFFICIENT TO ACCOUNT FOR THAT, OR ANY  
21 SPATTER THAT COULD HAVE BEEN FROM THAT, ANYWHERE IN  
22 THE AREA OF THE DIRECTION OF TRAVEL OF THAT WOUND,  
23 IF HE HAD BEEN SITTING IN THAT LOCATION; THEREFORE,  
24 HE MUST HAVE BEEN IN A DIFFERENT LOCATION OR  
25 POSITION THAN HE WAS IN THAT PHOTOGRAPH AT THE TIME  
26 THAT THAT WOUND WAS DELIVERED TO HIS LEG; THEREFORE,  
27 HE MUST HAVE BEEN ABLE TO MOVE.

28 Q THEREFORE, HE WASN'T DEAD BEFORE HE GOT

42291

1 THAT LEG INJURY; WOULD THAT BE A FAIR STATEMENT?

2 A YES. I WOULD CONCLUDE FROM THAT, SINCE  
3 HE MUST HAVE MOVED TO THAT POSITION THAT HE WAS IN  
4 IN THAT PHOTOGRAPH AFTER HE RECEIVED THAT WOUND,  
5 THAT HE WAS ALIVE AT THE TIME THAT HE RECEIVED THAT

6 WOUND. THAT'S SUPPORTED FURTHER IN THE AUTOPSY  
7 PROTOCOL, IN THE PATHOLOGIST'S STATEMENT, THAT THAT  
8 WAS AN ANTEMORTEM WOUND, THAT IS, BEFORE DEATH.

9 Q LET ME PUT UP A CHART HERE THAT HAS SOME  
10 PHOTOGRAPHS THAT I THINK YOU MAY BE REFERRING TO.

11 THIS IS EXHIBIT 304, MR. LINHART. IF  
12 YOU LOOK CAREFULLY YOU WILL SEE THAT EACH  
13 PHOTOGRAPH -- I THINK I'LL REMARK THEM IN SOMETHING  
14 DARKER. I'LL JUST GO OVER THE MARKING SO THEY CAN  
15 BE SEEN EASIER. EACH ONE HAS A LETTER.

16 THE WITNESS: THAT'S STABLE?

17 MS. ABRAMSON: OH, RELATIVELY. IT'S STABLE  
18 ENOUGH. IT'S ALL VERY LIGHT.

19 Q DID YOU, FIRST OF ALL, RECOGNIZE THAT  
20 THESE PHOTOGRAPHS A, B, C, F, G, AND H, ARE SCENE  
21 PHOTOGRAPHS AND, IN SOME CASES, ENLARGEMENTS OF  
22 PORTIONS OF SCENE PHOTOGRAPHS FROM THIS CRIME SCENE?

23 A YES. I RECOGNIZE THEM AS SUCH. BACK  
24 THERE.

25 Q WHEN YOU INDICATED YOU SAW IN THE  
26 PHOTOGRAPHS NO EVIDENCE OF ANY SPATTER EMANATING  
27 FROM THAT LEG WOUND, DID THESE PHOTOGRAPHS THAT ARE  
28 UP ON THE BOARD INDICATE THE AREAS IN WHICH YOU AS A

1 CRIME-SCENE INVESTIGATING CRIMINALIST WOULD HAVE  
2 EXPECTED TO FIND SOMETHING?

3 A YES. THOSE PHOTOGRAPHS AND OTHERS THAT  
4 I OBSERVED SHOWED FAIRLY CLEARLY ALL OF THE AREAS  
5 WHERE THE SPATTER WOULD HAVE HAD TO HAVE GONE HAD  
6 HIS LEG BEEN IN THAT POSITION AT THE TIME THE WOUND  
7 WAS RECEIVED.

8 Q AND IN DOING THAT, DID YOU ALSO NOTE  
9 EVIDENCE BY WAY OF BLOOD DROPS IN THE VICINITY OF  
10 THE EDGE OF THE COUCH ON THE RUG THAT INDICATED TO  
11 YOU THAT AT SOME POINT AFTER HE WAS SHOT  
12 MR. MENENDEZ WAS STANDING UP?

13 A THERE ARE SOME BLOOD DROPS NEAR THE  
14 BLOOD POOL THAT IS UNDER THE LEG WOUND THAT ARE  
15 SEPARATE AND DISTINCT FROM THE BLOOD POOL THAT ARE  
16 OF A SIZE AND SHAPE THAT ARE CHARACTERISTIC OF BLOOD  
17 THAT IS DRIPPING STRAIGHT DOWN, SUCH AS COULD OCCUR  
18 FROM A WOUND. IT SEEMS LIKELY THAT THAT WOULD BE  
19 MR. MENENDEZ' BLOOD. I COULDN'T CONCLUDE THAT  
20 DEFINITELY. BUT WERE THAT HIS BLOOD, THAT WOULD  
21 INDICATE THAT SOME WOUND OF HIS WAS OVER THAT AREA,  
22 AND NO PORTION OF HIS BODY IN THAT PHOTOGRAPH IS  
23 OVER THAT AREA.

24 SO I WOULD STOP SHORT OF SAYING THAT  
25 THAT WAS IN AND OF ITSELF EVIDENCE THAT HE WAS  
26 STANDING UP. BUT IT IS IN AND OF ITSELF EVIDENCE  
27 THAT, ASSUMING THAT IT IS HIS BLOOD, THAT HIS BODY  
28 WAS IN A DIFFERENT POSITION THAN APPEARS IN THAT

1 PHOTOGRAPH.

2 Q LET ME ALSO CALL YOUR ATTENTION, IF I  
3 CAN, MR. LINHART, TO SOME OTHER BLOOD DROPS.

4 DID YOU OBSERVE, IN YOUR REVIEW OF THE  
5 PHOTOGRAPHS, WHAT APPEAR TO BE BLOOD DROPS IN THIS  
6 AREA HERE (POINTING) WHICH IS APPROXIMATELY, OH, A  
7 FOOT TO A FOOT AND A HALF AWAY FROM THE COUCH, THE  
8 AREA THAT I'M CIRCLING?

9 A YES. THERE ARE SOME BLOOD DROPS THERE.

10 Q AND ARE THEY OF THE SIZE AND TYPE THAT  
11 INDICATE DRIPPING STRAIGHT DOWN FROM A WOUND?

12 A AS I RECALL, THERE WERE BLOOD DROPS IN  
13 THAT AREA THAT APPEARED TO HAVE DRIPPED STRAIGHT  
14 DOWN.

15 Q AND IF, HYPOTHETICALLY, ONE WERE TO  
16 HYPOTHESIZE THAT THOSE DROPS WERE MR. -- WERE  
17 MR. MENENDEZ' BLOOD, DOES THAT SUGGEST THAT HIS  
18 PERSON WAS A FOOT TO 18 INCHES AWAY FROM THE COUCH,  
19 OR AT LEAST PART OF HIS PERSON WAS THAT FAR AWAY  
20 FROM THE COUCH IN ORDER TO LEAVE THOSE BLOOD DROPS  
21 ON THE RUG?

22 A YES. IF WE TAKE, HYPOTHETICALLY, THAT  
23 IS, IN FACT, MR. MENENDEZ' BLOOD, THEN THAT WOULD  
24 INDICATE THAT SOME PORTION OF HIS BODY WAS OVER THAT

25 AREA, BECAUSE THEY DO APPEAR TO HAVE BEEN DROPS THAT  
26 DRIPPED STRAIGHT DOWN.

27 Q DID YOU, WHEN YOU WERE EXAMINING THIS  
28 CRIME-SCENE FROM A RECONSTRUCTION STANDPOINT, REACH

42294

1 A CONCLUSION AS TO WHETHER OR NOT THIS WAS A CRIME  
2 SCENE WHERE A COMPLETE RECONSTRUCTION COULD BE  
3 OBTAINED?

4 A YES, I DID REACH A CONCLUSION ON THAT.

5 Q AND WHAT WAS THAT CONCLUSION?

6 A FROM THE EVIDENCE AVAILABLE IN THIS  
7 PARTICULAR CASE, I COULD NOT RECONSTRUCT THE EVENTS,  
8 NOR THE SEQUENCE OF EVENTS ACCURATELY.

9 Q AND THAT WAS SIMPLY GIVEN THE COMPLEXITY  
10 AND WHAT WAS AVAILABLE BY WAY OF EVIDENCE?

11 A YES. IT'S BASED UPON BOTH FACTS. WITH  
12 A CASE OF THIS COMPLEXITY, I SERIOUSLY DOUBT THAT  
13 ANY AMOUNT OF EVIDENCE THAT WOULD HAVE BEEN  
14 AVAILABLE AFTER THE FACT WOULD HAVE PERMITTED A  
15 COMPLETE RECONSTRUCTION. BUT WITH THE EVIDENCE THAT  
16 WAS AVAILABLE, IT WAS CERTAINLY IMPOSSIBLE.

17 Q AND YOU'RE AWARE THAT THE EVIDENCE THAT  
18 WAS AVAILABLE TO YOU IS THE SAME EVIDENCE THAT'S  
19 AVAILABLE TO ANYBODY ELSE WHO COMES UPON THIS AFTER

20 THE FACT TO TRY AND RECONSTRUCT?

21 MR. CONN: OBJECTION. ARGUMENTATIVE.

22 THE COURT: REPHRASE THE QUESTION.

23 Q BY MS. ABRAMSON: DO YOU KNOW OF ANY

24 EVIDENCE THAT WAS NOT MADE AVAILABLE TO YOU THAT HAS

25 BEEN MADE AVAILABLE TO ANYBODY ELSE THAT WOULD

26 ASSIST IN A RECONSTRUCTION OF THIS CRIME SCENE?

27 A THE ONLY ITEMS OF EVIDENCE THAT I KNOW

28 OF THAT OTHERS MAY HAVE REVIEWED FROM THE CRIME

42295

1 SCENE DIRECTLY THAT I HAVE NOT ARE THE X RAYS, AND I

2 KNEW OF THE EXISTENCE OF THOSE X RAYS AND WOULD HAVE

3 REQUESTED THEM HAD IT APPEARED TO ME THAT THERE WAS

4 ANY POSSIBILITY OF THEM CONTRIBUTING FURTHER TO MY

5 CONCLUSIONS.

6 Q AND DO YOU THINK THE X RAYS SOLVED THE

7 PROBLEM OF THE COMPLEXITY AND LACK OF EVIDENCE HERE?

8 A NO. I CANNOT SEE HOW THEY COULD DO

9 THAT. I HAD A REASONABLE DESCRIPTION OF THE PLACE,

10 OF THE WOUNDS FROM THE AUTOPSY PROTOCOL ALREADY, AND

11 THE NATURE OF THE WEAPONS USED. I UNDERSTOOD -- THE

12 X RAYS WERE DESCRIBED TO ME THAT THEY DEMONSTRATED

13 THE PLACEMENT OF PELLETS WITHIN THE BODIES, AND I

14 DIDN'T SEE HOW I COULD USE THAT FURTHER.



15 Q SO THE PLACEMENT OF PELLETS INSIDE THE  
16 BODIES WASN'T SOMETHING -- I MEAN, THE SPECIFIC PLACE  
17 WASN'T SOMETHING THAT YOU FELT WOULD ALLOW YOU TO  
18 RECONSTRUCT THIS SHOOTING SEQUENCE; IS THAT CORRECT?

19 A IT WOULD HAVE CONTRIBUTED NOTHING  
20 FURTHER TO THE CONCLUSIONS THAT I WAS ABLE TO REACH.

21 Q NOW, ARE YOU FAMILIAR WITH THE TESTIMONY  
22 AND THE OPINIONS OF ROGER MC CARTHY OF FAILURE  
23 ANALYSIS?

24 A I WAS PROVIDED WITH A WRITTEN REPORT  
25 THAT WAS PRODUCED BY HIM AND HAVE READ PORTIONS OF  
26 TRANSCRIPTS OF TESTIMONY HE HAS OFFERED IN THIS  
27 CASE.

28 Q AND BASED ON READING THOSE MATERIALS, DO

42296

1 YOU HAVE AN OPINION CONCERNING THE METHODOLOGY THAT  
2 WAS UTILIZED BY DR. MC CARTHY IN COMING UP WITH WHAT  
3 HE IS CALLING RECONSTRUCTION?

4 MR. CONN: OBJECTION. NO FOUNDATION. CALLS  
5 FOR SPECULATION.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES, I DO.

8 Q BY MS. ABRAMSON: WOULD YOU SHARE WITH  
9 US WHAT THAT OPINION IS.

10 A IT'S MY OPINION THAT MANY OF THE  
11 CONCLUSIONS THAT WERE REACHED IN THE WRITTEN REPORT  
12 AND IN PORTIONS OF TESTIMONY THAT I READ WERE  
13 REACHED WITHOUT ADEQUATE FOUNDATION; AND IN SOME  
14 CASES, WERE REACHED BY IGNORING CERTAIN PORTIONS OF  
15 THE EVIDENCE THAT WERE AVAILABLE.

16 Q AND DO YOU HAVE IN MIND WHAT PORTIONS --  
17 WELL, STRIKE THAT.

18 ARE THOSE PORTIONS OF THE EVIDENCE,  
19 THOSE THAT WERE IGNORED, THOSE THAT IN YOUR OPINION  
20 MIGHT HAVE LED TO CONTRARY CONCLUSIONS THAN THE ONES  
21 THAT DR. MC CARTHY EXPRESSED?

22 A IN SOME CASES, YES.

23 Q AND DO YOU HAVE IN MIND WHAT THOSE  
24 PORTIONS OF THE EVIDENCE, SHALL WE SAY, INCONVENIENT  
25 PORTIONS OF THE EVIDENCE THAT ARE BEING IGNORED?

26 MR. CONN: OBJECTION. ARGUMENTATIVE.

27 THE COURT: SUSTAINED AS BEING ARGUMENTATIVE.

28 Q BY MS. ABRAMSON: CAN YOU TELL US WHAT

42297

1 THOSE PORTIONS ARE THAT YOU BELIEVE HE IGNORED THAT  
2 MIGHT HAVE LED TO OPPOSITE CONCLUSIONS?

3 A WITHIN THE REALM OF THE EVIDENCE THAT I  
4 SPECIFICALLY EXAMINED AND THOSE AREAS IN WHICH I

5 HAVE EXPERTISE, ONE SPECIFICALLY WAS THE POSITION OF  
6 MR. MENENDEZ AT THE TIME HE RECEIVED THE LEG WOUND  
7 AND THE ORDERING OF THE LEG WOUNDS RELATIVE TO THE  
8 HEAD WOUND.

9 Q AND YOU'VE PRETTY MUCH TESTIFIED HERE AS  
10 TO WHAT YOUR OPINIONS ARE CONCERNING THOSE THINGS.

11 IS IT BECAUSE OF THE BASIS OF YOUR  
12 OPINION THAT YOU FIND THAT HIS OPINION IN THOSE  
13 AREAS ARE WRONG?

14 A THAT'S CORRECT.

15 Q NOW, DID YOU TAKE NOTE WHEN YOU WERE  
16 REVIEWING -- WE'LL GET BACK TO THAT IN A MOMENT.

17 DID YOU TAKE NOTE WHEN YOU WERE  
18 REVIEWING THE PHOTOGRAPHS OF A PIECE OF WHAT APPEAR  
19 TO BE HUMAN TISSUE THAT WAS ON THE COUCH CUSHION  
20 IMMEDIATELY ADJACENT TO THE BODY OF MR. MENENDEZ,  
21 IN THE POSITION THAT BODY WAS IN WHEN IT WAS FOUND  
22 BY THE POLICE?

23 A YES. I DID OBSERVE IN VARIOUS OF THE  
24 PHOTOGRAPHS A PIECE OF TISSUE ON THE COUCH SECTION  
25 ADJACENT TO MR. MENENDEZ.

26 Q AND DID YOU RECOGNIZE WHAT TYPE OF  
27 TISSUE THAT WAS?

28 A YES, I DID.

1 Q AND WHAT TYPE OF TISSUE DID YOU  
2 RECOGNIZE IT TO BE?

3 A THAT APPEARED TO ME TO BE BRAIN TISSUE.

4 Q AND DID THE EXISTENCE OF THAT PIECE OF  
5 BRAIN TISSUE ON THE COUCH, DID THAT CONSTITUTE  
6 ANOTHER PIECE OF EVIDENCE THAT, IN YOUR OPINION,  
7 DR. MC CARTHY IGNORED IN REACHING HIS CONCLUSIONS?

8 A AS I UNDERSTAND THE CONCLUSIONS HE  
9 REACHED IN THE REPORT REGARDING THE POSITION OF  
10 MRS. MENENDEZ AT THE TIME THAT MR. MENENDEZ RECEIVED  
11 THE HEAD WOUND, THAT BRAIN TISSUE AND OTHER EVIDENCE  
12 ON THAT AREA OF THE COUCH WOULD SEEM TO CONTRADICT  
13 THE CONCLUSION THAT SHE WAS SEATED NEXT TO HIM AT  
14 THE TIME THAT HE RECEIVED THE HEAD WOUND.

15 NOW, WHILE MY RECOLLECTION OF THE REPORT  
16 IS NOT THAT HE SPECIFICALLY STATED THAT SHE WAS  
17 SEATED THERE AT THE TIME, IT WAS STATED THAT HEAD  
18 WOUND WAS RECEIVED IMMEDIATELY FOLLOWING THE  
19 PRECEDING WOUND, AT WHICH TIME SHE WAS ON THE  
20 COUCH.

21 SO, IF IMMEDIATELY MEANS, AS I WOULD  
22 USUALLY TAKE IMMEDIATELY, THEN I WOULD DISAGREE WITH  
23 THAT.

24 Q LET ME CALL YOUR ATTENTION TO THIS. THIS  
25 IS AN F.A.A. ILLUSTRATION, FAILURE ANALYSIS  
26 ILLUSTRATION, THAT'S SUPPOSED TO SHOW POSITIONS OF  
27 THE DECEDENTS AT THE TIME WHEN THAT THE HEAD WOUND

42299

1 MR. CONN: OBJECTION. MISSTATES THE  
2 TESTIMONY OF DR. MC CARTHY CONCERNING THAT  
3 ILLUSTRATION.

4 THE COURT: WITHOUT CHARACTERIZING THE  
5 TESTIMONY, YOU CAN JUST SHOW IT TO THE WITNESS.

6 MS. ABRAMSON: JUST SO YOU CAN ORIENT  
7 YOURSELF, THE FIGURE HERE IS SUPPOSED TO REPRESENT  
8 MR. MENENDEZ. THE FIGURE TO HIS RIGHT IS SUPPOSED  
9 TO REPRESENT MRS. MENENDEZ, AND THIS IS SUPPOSED TO  
10 CAPTURE THE MOMENT AT WHICH -- AS YOU CAN SEE, THE  
11 HEAD WOUND IS ADMINISTERED.

12 MR. CONN: OBJECTION. MISSTATES THE  
13 TESTIMONY OF DR. MC CARTHY EXPLAINING THE  
14 ILLUSTRATION.

15 THE COURT: THE ILLUSTRATION SPEAKS FOR  
16 ITSELF. THE WITNESS, I ASSUME, HAS SEEN IT BEFORE.

17 Q BY MS. ABRAMSON: HAVE YOU SEEN IT  
18 BEFORE?

19 A I DON'T RECALL HAVING SEEN THAT  
20 PARTICULAR ILLUSTRATION BEFORE. I DID NOT REVIEW  
21 THE ILLUSTRATIONS THAT WERE PRESENT ON THE CD-ROM.  
22 I JUST LOOKED AT THE PHOTOS TO REFRESH MY

23 RECOLLECTION.

24 THE COURT: WHY DON'T YOU REPHRASE THE  
25 QUESTION. YOU CAN ASK HIM TO ASSUME CERTAIN THINGS.

26 MS. ABRAMSON: YES.

27 Q I WANT YOU TO ASSUME THAT THIS  
28 ILLUSTRATION-- THAT THE FIGURE ON THE FAR RIGHT OF

42300

1 THE COUCH IS SUPPOSED TO REPRESENT MR. MENENDEZ AT  
2 THE TIME THAT HE RECEIVED THE HEAD WOUND; AND THE  
3 FIGURE NEXT TO HIM IS SUPPOSED TO REPRESENT  
4 MRS. MENENDEZ, OKAY?

5 A ALL RIGHT.

6 Q NOW, DOES YOUR OPINION ABOUT THE  
7 REFERENCE OF THE BRAIN TISSUE ON THE COUCH  
8 CONTRADICT THIS ILLUSTRATION?

9 A YES. IF THE GREEN LINE PURPORTS TO  
10 REPRESENT THE SHOTGUN WOUND TO MR. MENENDEZ' HEAD,  
11 THEN THAT WOULD BE AN INACCURATE CHARACTERIZATION OF  
12 MRS. MENENDEZ' POSITION.

13 Q THANK YOU.

14 BEFORE WE FINISH UP FOR THE DAY, LET ME  
15 ASK YOU THIS: AT THE TIME OF THE FIRST TRIAL DID  
16 YOU COME HERE TO VAN NUYS TO THE DISTRICT ATTORNEY'S  
17 OFFICE AND HAVE A JOINT MEETING WITH MRS. BOZANICH,

18 THE PROSECUTOR, MYSELF, AND MR. BURT, WHO WAS AT  
19 THAT TIME ONE OF THE LAWYERS FOR ONE OF THE  
20 DEFENDANTS IN THIS CASE?

21 A I HAD SUCH A MEETING. I RECALL YOUR  
22 PRESENCE AND MS. BOZANICH' PRESENCE. I DON'T RECALL  
23 WHO ELSE WAS PRESENT.

24 Q OKAY. HE MADE BIG IMPRESSION ON YOU.  
25 IN ANY EVENT, DID YOU DISCUSS AT THAT  
26 TIME, AMONG OTHER THINGS, OR MOST SPECIFICALLY, THIS  
27 INFORMATION ABOUT THE LEG WOUND TO MR. MENENDEZ AND  
28 HOW, IN YOUR OPINION, HE COULD NOT HAVE BEEN IN THAT

42301

1 POSITION AT THE TIME HE RECEIVED THAT LEG WOUND?

2 A I RECALL DISCUSSING THAT WITH YOU AND  
3 MS. BOZANICH AT THAT TIME.

4 Q AND AFTER THAT DAY WHEN WE HAD THAT  
5 JOINT DISCUSSION, WHEN WAS THE NEXT TIME THAT YOU  
6 AND I HAD ANY CONTACT WHATSOEVER?

7 A YOU CONTACTED ME A DAY OR TWO AFTER  
8 OPENING STATEMENTS WERE MADE IN THIS CASE TO ADVISE  
9 ME THAT I WAS A POTENTIAL WITNESS FOR THE DEFENSE.

10 Q AND WAS THERE A MEETING ARRANGED AT THE  
11 CRIME LAB?

12 A THERE WAS A FEW DAYS OR WEEKS AFTER

13 THAT. I DON'T REMEMBER THE DATE.

14 Q AND WAS THAT MEETING AT THE CRIME LAB  
15 THE FIRST MEETING THAT YOU AND I HAD BOTH  
16 PARTICIPATED IN SINCE THE MEETING THAT WE HAD  
17 PARTICIPATED IN HERE WITH MRS. BOZANICH TWO YEARS  
18 AGO?

19 A YES, IT WAS. I BELIEVE THAT WAS THE  
20 NEXT OCCASION THAT I SAW YOU IN PERSON.

21 Q AND WHO ELSE WAS PRESENT AT THAT  
22 MEETING -- WELL, THERE WERE A LOT OF PEOPLE. LET ME  
23 MAKE IT EASIER. WAS MR. CONN AND MS. NAJERA THERE?

24 A YES. BOTH WERE THERE.

25 Q WAS ANOTHER MEMBER OF THE DISTRICT  
26 ATTORNEY'S OFFICE ALSO THERE?

27 A I BELIEVE SO.

28 Q MR. MEJIA?

42302

1 A JUAN MEJIA.

2 Q WAS MYSELF AND MR. GESSLER PRESENT?

3 A YES, BOTH OF YOU.

4 Q AND WAS YOUR CAPTAIN PRESENT?

5 A YES, CAPTAIN SODEBERG WAS PRESENT.

6 Q AND ANYBODY ELSE THAT YOU CAN REMEMBER?

7 A I BELIEVE WALTER KRSTULJA WAS THERE, IF



8 MY RECOLLECTION SERVES.

9 Q AND MR. KRSTULJA IS A DEPUTY PUBLIC  
10 DEFENDER?

11 A YES, HE IS.

12 Q AND HE IS ALSO A FORMER EMPLOYEE OF THE  
13 L.A. COUNTY SHERIFF'S CRIME LAB?

14 A YES. MR. KRSTULJA WAS EMPLOYED FORMERLY  
15 BY THE L.A. COUNTY SHERIFF'S CRIME LAB.

16 Q AND AT THAT MEETING DID WE DISCUSS THE  
17 REPORT THAT YOU HAD PREPARED TWO YEARS AGO AND SOME  
18 OF YOUR OPINIONS CONCERNING THIS CRIME SCENE?

19 A YES, WE DID.

20 THE COURT: WE'LL RESUME TOMORROW AT 8:30.  
21 DON'T DISCUSS THE MATTER WITH ANYONE. DON'T FORM  
22 ANY FINAL OPINIONS ABOUT IT. WE'LL ASK THAT YOU  
23 RETURN TOMORROW AT 8:30.

24 (AT 4:35 P.M. PROCEEDINGS WERE  
25 ADJOURNED UNTIL 8:30 A.M. THE  
26 FOLLOWING DAY.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE

4 THE PEOPLE OF THE STATE OF )  
5 CALIFORNIA, )  
6 PLAINTIFFS, )  
 )

VS. )  
 ) NO. BA 068880

8 )  
 ERIK GALEN MENENDEZ, AND )  
 9 JOSEPH LYLE MENENDEZ, )  
 )  
 10 DEFENDANTS. )  
 )

REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, NOVEMBER 29, 1995

VOLUME 252

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APPEARANCES:

21 (SEE APPEARANCE PAGE)

## 1 APPEARANCES:

2  
 3 FOR THE PEOPLE: GIL GARCETTI  
 4 DISTRICT ATTORNEY  
 5 BY: DAVID CONN, DEPUTY  
 6 AND  
 7 CAROL NAJERA, DEPUTY  
 8 18000 CRIMINAL COURTS BLDG.  
 9 210 WEST TEMPLE STREET  
 10 LOS ANGELES, CA 90012  
 11  
 12  
 13  
 14 FOR THE DEFENDANT  
 15 JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,  
 16 PUBLIC DEFENDER  
 17 BY: CHARLES GESSLER, DEPUTY  
 18 AND  
 19 TERRI TOWERY, DEPUTY  
 20 210 WEST TEMPLE  
 21 LOS ANGELES, CA 90012  
 22  
 23  
 24 FOR THE DEFENDANT  
 25 ERIK GALEN MENENDEZ: LESLIE ABRAMSON  
 26 ATTORNEY AT LAW  
 27 4929 WILSHIRE BOULEVARD  
 28 SUITE 940  
 29 LOS ANGELES, CA 90010  
 30  
 31 BARRY LEVIN, ESQ.  
 32 11661 SAN VICENTE BOULEVARD  
 33 LOS ANGELES, CA 90049  
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10

11 WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

12

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13 DWIGHT 42093-A 42185-C 42228-A 42248-C 252  
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14

15 LINHART,

RONALD R. 42264-A 252

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### LEGEND:

24 A = MS. ABRAMSON C = MR. CONN

G = MR. GESSLER L = MR. LEVIN

25 N = MS. NAJERA T = MS. TOWERY

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1                   EXHIBITS INDEX

2 EXHIBITS:               MARKED   RECEIVED    VOL.

3 48T- PART OF WHITE  
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5     SHOT  
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6     325- DRAWING BY  
7     VAN HORN           42120               252

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