

1 VAN NUYS, CALIFORNIA; THURSDAY, NOVEMBER 30, 1995

2 9:15 A.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: IN THE TRIAL, THE DEFENDANTS ARE

7 IN COURT, THE LAWYERS ARE ALL HERE.

8 ANYTHING BEFORE THE JURY COMES OUT?

9 MS. ABRAMSON: NO, YOUR HONOR.

10 MR. GESSLER: NO, YOUR HONOR.

11 THE COURT: OKAY. LET'S GET THE JURY OUT.

12 (THE JURY ENTERED THE COURTROOM

13 AND THE FOLLOWING PROCEEDINGS

14 WERE HELD:)

15

16 THE COURT: THE JURY IS IN THE JURY

17 BOX.

18 GOOD MORNING TO YOU ALL. WE'RE READY TO

19 RESUME.

20 WE HAVE THE WITNESS ON THE WITNESS

21 STAND.

22 WOULD YOU STATE YOUR NAME.

23 THE WITNESS: RONALD R. LINHART.

24 THE COURT: I'LL REMIND YOU YOU'RE STILL

25 UNDER OATH, AND YOU MAY CONTINUE YOUR DIRECT

26 EXAMINATION.

27 MS. ABRAMSON: THANK YOU, YOUR HONOR.

28

1 RONALD R. LINHART,
2 THE WITNESS AT THE TIME OF ADJOURNMENT, RESUMED THE
3 STAND, AND TESTIFIED FURTHER AS FOLLOWS:

4

5 DIRECT EXAMINATION (CONTINUED)

6 BY MS. ABRAMSON:

7 Q MR. LINHART, I WANT TO DIRECT YOUR
8 ATTENTION TO THE CHART THAT'S UP ON THE EASEL RIGHT
9 NOW. 304 IS THE EXHIBIT NUMBER.

10 I WANTED TO ASK YOU, CONCERNING BLOOD
11 SPATTER ANALYSIS, DO AREAS THAT APPEAR TO CONTAIN
12 BLOOD HAVE DIFFERENT APPEARANCES DEPENDING ON THE
13 WAY IN WHICH THE BLOOD WAS PLACED THERE?

14 A THAT IS OFTEN THE CASE, YES. THE MANNER
15 OF DEPOSIT WILL AFFECT THE APPEARANCE OF THE BLOOD
16 PATTERN.

17 Q AND DO BLOOD DROPS, FOR EXAMPLE, THAT
18 FALL DIRECTLY FROM ABOVE HAVE A DIFFERENT SHAPE, AND
19 PERHAPS SIZE, THAN BLOOD THAT IS PROPELLED TO A
20 LOCATION AT AN ANGLE?

21 A YES. IT'S FREQUENTLY ABLE TO
22 DISTINGUISH THOSE TWO EVENTS BY THE SHAPE OF THE
23 BLOOD DROP.

24 Q IS THERE ALSO A TYPE OF BLOOD PATTERNING

25 THAT OCCURS WHEN THERE'S WHAT'S CALLED A CONTACT
26 TRANSFER?
27 A YES. BLOOD THAT IS TRANSFERRED BY
28 DIRECT CONTACT, RATHER THAN FALLING OR PROJECTED

42305

1 DROPS, WILL APPEAR DIFFERENT.

2 Q AND IS THERE ANOTHER KIND, A DIFFERENT
3 KIND OF BLOOD PATTERN THAT'S OBSERVABLE IF BLOOD IS
4 SMEARED ONTO A LOCATION?

5 A YES. THAT CAN OCCUR IN CONJUNCTION WITH
6 EITHER DROPS OR CONTACT TRANSFERS. BUT SMEARING,
7 THAT IS, MOTION CAUSED DURING THE TIME OF DEPOSIT OR
8 FOLLOWING DEPOSIT, CAN OFTEN BE DETECTED BY THE
9 APPEARANCE OF THE STAIN.

10 Q I WANT TO CALL YOUR ATTENTION TO SOME
11 TRANSFERS THAT ARE ON 304, NOTABLY B AND C.

12 DO YOU RECOGNIZE THOSE TO BE
13 ENLARGEMENTS OF SCENE PHOTOGRAPHS SHOWING
14 MR. MENENDEZ' INNER THIGHS -- HIS THIGHS IN GENERAL,
15 BUT PARTICULARLY FOCUSED ON THE INNER THIGHS?

16 A YES, I DO RECOGNIZE THEM AS SUCH.

17 Q AND CALLING YOUR ATTENTION TO THIS AREA
18 THAT APPEARS TO BE BLOOD, FOR EXAMPLE, ON HIS RIGHT
19 INNER THIGH, AS YOU CAN SEE IT IN THESE TWO

20 PHOTOGRAPHS, DOES THAT CONTAIN A PATTERN THAT
21 INDICATES TO YOU A PARTICULAR MANNER IN WHICH THAT
22 BLOOD WAS PLACED ON THAT PART OF HIS LEG?

23 A YES. WITHIN THE CONFINES OF THE
24 TERMINOLOGY THAT WE WERE JUST ADDRESSING, YES.

25 Q AND WHAT DO THOSE APPEAR TO BE?

26 A THE STAIN THAT YOU INDICATED ON THE
27 RIGHT THIGH IS CONTACT TRANSFER WITH SMEARING.

28 Q IS IT THE KIND OF PATTERN YOU WOULD

42306

1 EXPECT IF THE TWO LEGS HAD COME TOGETHER AND BLOOD
2 FROM THE LEG WOUND WAS TRANSFERRED, OR DOES IT
3 INDICATE A DIFFERENT TYPE OF MOTION?

4 A WELL, I WOULD EXPECT THERE TO BE SOME
5 ADDITIONAL MOTION INVOLVED WITH THAT. IT'S POSSIBLE
6 THAT THERE COULD HAVE BEEN TRANSFER AT SOME POINT
7 WITH MOVEMENT FROM ONE LEG TO THE OTHER, BUT THAT
8 DOESN'T ACCOUNT FOR THE TOTALITY OF THAT PATTERN.

9 Q AND DOES THE TOTALITY OF THAT PATTERN
10 APPEAR MORE CONSISTENT WITH, FOR EXAMPLE, A HAND
11 WITH BLOOD ON IT PULLING ACROSS THAT PART OF THE
12 THIGH?

13 MR. CONN: OBJECTION. LEADING.

14 THE COURT: REPHRASE THE QUESTION, PLEASE.

15 MS. ABRAMSON: OKAY.

16 Q FROM THE CONFIGURATION OF THAT PATTERN,
17 DO YOU HAVE AN OPINION AS TO WHETHER OR NOT IT'S
18 CONSISTENT WITH A HAND PULLING ALONG THE INSIDE OF
19 THE THIGH?

20 A I WOULDN'T BE ABLE TO EXCLUDE THAT AS A
21 POSSIBLE MANNER OF THAT HAVING OCCURRED.

22 Q IF IT WERE MERELY A CONTACT, LEG TO LEG,
23 WOULD YOU EXPECT THE PATTERN TO LOOK SOMEWHAT
24 DIFFERENT THAN HOW IT APPEARS?

25 A TAKING INTO ACCOUNT THAT PATTERN AND THE
26 OPPOSITE LEG, YES, I WOULD EXPECT IT TO APPEAR
27 DIFFERENTLY.

28 Q HOW WOULD YOU EXPECT IT TO BE DIFFERENT

42307

1 IF IT WAS NOTHING MORE THAN THE TWO LEGS TOUCHING
2 TOGETHER AS THE FORM OF TRANSFER?

3 A I WOULD EXPECT TO SEE A CORRESPONDINGLY
4 SIMILAR STAIN ON THE OTHER LEG, SOME INDICATION THAT
5 THAT WAS SIMPLY TRANSFERRED FROM THE INNER RIGHT
6 THIGH AND THE APPEARANCE ON THE RIGHT -- I'M SORRY --
7 ON THE LEFT THIGH. THE APPEARANCE ON THE LEFT THIGH
8 IS DIFFERENT.

9 Q SO IF IT WERE THESE TWO PARTS COMING

10 TOGETHER, IT WOULD LEAVE A SIMILAR PATTERN ON THE

11 INSIDE OF BOTH LEGS?

12 A THERE WOULD BE EVIDENCE ON THE LEFT

13 THIGH TO SHOW THAT IT WAS A DIRECT TRANSFER.

14 Q AND YOU DON'T SEE THAT EVIDENCE?

15 A NO. THAT DOESN'T APPEAR CONSISTENT.

16 Q OKAY. NOW I WANTED TO CHANGE AND PUT A

17 DIFFERENT EXHIBIT UP.

18 MR. LINHART, AND ON EXHIBIT 319 I WANT

19 TO CALL YOUR ATTENTION TO THE TWO PHOTOGRAPHS THAT

20 ARE SUB LABELED A AND B.

21 YOU HAVE SEEN THOSE IMAGES IN

22 PHOTOGRAPHS THAT YOU HAVE EXAMINED IN THIS CASE IN

23 THE PAST, HAVE YOU NOT?

24 A YES, I HAVE.

25 Q AND YOU ALSO INDICATE THAT YOU HAD ALL

26 THE PHOTOGRAPHS ON CD-ROM AT SOME POINT, CORRECT?

27 A THAT IS CORRECT.

28 Q NOW, CAN YOU TELL US, IN YOUR OPINION,

42308

1 PARTICULARLY FOCUSING ON PHOTOGRAPH B-AS-IN-BOY,

2 WHETHER YOU HAVE AN OPINION CONCERNING THE MANNER IN

3 WHICH THOSE BLOOD STAINS WERE PLACED ON THE COUCH

4 CUSHIONS AS THEY APPEAR IN THAT PHOTOGRAPH?

5 A THE STAINS THAT APPEAR ON PHOTOGRAPH B
6 ARE CONTACT TRANSFERS; THAT IS, THEY WERE PLACED
7 THERE BY CONTACT OF THE OBJECT CONTAINING BLOOD
8 DIRECTLY WITH THE COUCH AND THE COUCH CUSHION.

9 Q AND DO THEY ALSO INDICATE OR DEPICT
10 MOVEMENT RATHER THAN JUST PRESSURE CONTACT?

11 A IN SOME PORTIONS OF THE STAINS THERE IS
12 EVIDENCE OF MOVEMENT; IN OTHERS I DON'T SEE THAT
13 SAME EVIDENCE OF MOVEMENT.

14 Q AND WHEN THERE'S EVIDENCE OF MOVEMENT,
15 IS IT APPROPRIATE TO CHARACTERIZE THE STAIN AS A
16 SMEAR?

17 A THAT IS THE WORD THAT I WOULD USE TO
18 CHARACTERIZE A STAIN THAT WAS DEPOSITED WITH
19 MOVEMENT OR EXPERIENCE SOME OBJECT MOVING ACROSS IT
20 AFTERWARDS.

21 Q SO THERE COULD HAVE BEEN CONTACT AND
22 MOTION OR THAT CAN BE MOVEMENT DURING THE CONTACT?

23 A YES. BOTH WOULD RESULT IN A SMEAR.

24 Q IS THERE A PARTICULAR AREA OF B THAT
25 APPEARS TO HAVE -- STRIKE THAT.

26 IS THERE A PARTICULAR AREA OF THE STAINS
27 DEPICTED IN B THAT CONNOTE A MOVEMENT SMEAR AS
28 COMPARED TO OTHER AREAS THAT MIGHT SIMPLY BE DIRECT

1 PRESSURE CONTACT?

2 A I WOULD HAVE TO GET CLOSER TO THE
3 PHOTOGRAPH --

4 Q PLEASE DO.

5 A -- TO ANSWER THAT.

6 Q WE CAN TAKE -- WE HAVE ALL SORTS OF
7 MARKING DEVICES AROUND HERE.

8 DO THIS, BECAUSE IT MAKES A THINNER LINE
9 AND WON'T OBSCURE THE IMAGE.

10 A WHAT WOULD YOU WISH ME TO DO?

11 Q IF YOU WOULD POINT WITH AN ARROW, I
12 THINK IT'S LESS DESTRUCTIVE OF THE IMAGE.

13 A OKAY. I SEE EVIDENCE OF SMEARING OF THE
14 BLOOD PATTERNS SPECIFICALLY IN THESE REGIONS
15 (MARKING). THE BLOOD PATTERNS THAT ARE DEPOSITED
16 LOWER AND IN THIS REGION, I DON'T SEE SPECIFIC
17 EVIDENCE OF SMEARING.

18 Q SO THOSE APPEAR TO BE CONTACT TRANSFERS?

19 A THEY ARE CONTACT TRANSFERS.

20 Q AND THAT'S AN AREA ON THE SOFA WHERE
21 ORDINARILY ONE -- WHERE THE LEGS ARE USUALLY IN
22 CLOSE PROXIMITY IF A PERSON IS EITHER STANDING NEXT
23 TO THE SOFA OR SITTING ON IT; IS THAT CORRECT?

24 A THERE ARE A WIDE VARIETY OF POSSIBLE
25 CONFIGURATIONS THE LEGS COULD BE IN THAT REGION.

26 Q OKAY. NOW, ARE YOU FAMILIAR WITH THE
27 CONCEPT -- WELL, IS THERE A MANNER OF BLOOD TRANSFER

42310

1 A I HAVE HEARD THAT TERM USED TO DESCRIBE
2 A PATTERN OF VERY FINE DROPLETS; MIGHT ALSO BE
3 DESCRIBED AS AN AEROSOL.

4 Q IS AEROSOL THE WORD THAT YOU USE TO
5 DESCRIBE THAT KIND OF PATTERN-MAKING?

6 A THAT'S THE TERM THAT I USE.

7 Q AND WHEN YOU SAY THAT CONNOTES VERY FINE
8 DROPLETS, IS THERE A USUAL SOURCE FOR VERY FINE
9 DROPLETS OF BLOOD? HOW IS THAT CREATED?

10 A THE PATTERNS OF VERY SMALL DROPLETS ARE
11 PRODUCED GENERALLY BY IMPACTS OF HIGH ENERGY OR
12 OTHER EVENTS OF SIGNIFICANT ENERGY, WHERE THROUGH
13 IRREGULAR SURFACES IT WILL BREAK UP THE DROPLETS.

14 FOR EXAMPLE, GUNSHOT WOUNDS ARE
15 HIGH-ENERGY IMPACTS AND CAN PRODUCE FINE DROPLETS.
16 SNEEZING WITH BLOOD IN THE NOSE OR MOUTH CAN PRODUCE
17 PATTERNS OF FINE DROPLETS.

18 THERE ARE OTHER EVENTS THAT I HAVE
19 OBSERVED THAT WILL DO THAT AS WELL.

20 Q NOW, THIS PATTERN THAT YOU HAVE LOOKED
21 AT AND MADE MARKS ON THAT'S IN THE PHOTOGRAPH, B, ON
22 THE SOFA, IS THAT AN AEROSOL PATTERN?

23 A THAT IS NOT.

24 Q YOU HAVE ABSOLUTE CERTAINTY OF THAT?

25 A YES. I'M CONFIDENT IN THAT.

26 Q AND WHAT CAN YOU POINT TO SO THE JURY

27 WILL UNDERSTAND WHY THAT IS NOT AN AEROSOL OR

28 MISTING PATTERN?

42311

1 A WELL, THERE ARE NO VISIBLE FINE DROPLETS

2 OF BLOOD. THE BLOOD PATTERN IS, IN FACT, LARGER

3 AREAS WHERE THE BLOOD WAS DEPOSITED BY CONTACT.

4 SO IT'S WHAT'S NOT THERE THAT SHOWS IT'S

5 NOT AN AEROSOL PATTERN. THERE ARE NO FINE DROPLETS.

6 Q THESE ARE CONTIGUOUS LINES OF SMEAR AND

7 STAIN --

8 A THERE ARE.

9 Q -- THAT APPEAR?

10 A THERE ARE SEVERAL SEPARATE AREAS. NOT

11 ALL OF THE PATTERNS ARE CONTIGUOUS. THERE ARE AT

12 LEAST FIVE CONTACT AREAS.

13 Q BUT WITHIN THOSE AREAS, WHAT YOU'RE

14 SAYING IS AN EVEN DISTRIBUTION OF SMEAR INSTEAD OF

15 LITTLE CIRCLES?

16 A THAT'S CORRECT.

17 Q BASED ON THE METHOD THAT YOU USED TO

18 VIEW THESE AREAS OF STAIN, ARE YOU CONFIDENT THAT
19 YOU WERE ABLE TO FULLY VISUALIZE THIS STAIN?
20 A YES. I BELIEVE SO, FROM THE
21 PHOTOGRAPHS. I DIDN'T SEE THE OBJECT ITSELF, BUT I
22 VIEWED THE PHOTOGRAPHS AT MAGNIFICATION AND SAW NO
23 EVIDENCE OF DROPLETS.
24 Q NOW, CONCERNING THE HEAD WOUND THAT
25 MR. MENENDEZ RECEIVED IN THIS CASE, AS PART OF YOUR
26 EXPERTISE IN BLOOD SPATTER, ARE YOU FAMILIAR WITH
27 THE WAY IN WHICH HEAD WOUNDS CAUSE EMISSION, IF YOU
28 WILL, WHEN THEY'RE SHOT?

42312

1 A I HAVE WORKED ON A NUMBER OF CASES
2 INVOLVING GUNSHOT WOUNDS AND SHOTGUN WOUNDS TO THE
3 HEAD. SO I HAVE SEEN PATTERNS OF BLOOD PRODUCED BY
4 THAT SORT OF EVENT IN THE PAST.
5 Q AND, FIRST OF ALL, IN THIS PARTICULAR
6 CASE, DO YOU FEEL THAT THERE WAS SUFFICIENT EVIDENCE
7 OR SUFFICIENT INFORMATION TO DETERMINE PRECISELY
8 WHAT POSITION MR. MENENDEZ' HEAD WAS IN WHEN IT
9 RECEIVED THE CONTACT WOUND TO THE BACK?
10 A NO. I COULD NOT DETERMINE HIS PRECISE
11 LOCATION OR ORIENTATION AT THE TIME THAT WOUND WAS
12 INFLICTED.

13 Q AND IS THAT BASED ON SOMETHING
14 PARTICULAR TO THIS CASE, OR IS THAT SOMETHING MORE
15 GENERAL WHEN DEALING WITH HEAD WOUNDS?
16 A WELL, PART OF THE REASON FOR THAT, AT
17 LEAST, WAS THAT THE BLOOD THAT WAS SPATTERED FROM
18 THE HEAD WOUND WAS MIXED WITH TISSUE, PROBABLY BRAIN
19 TISSUE. THAT GIVES THE BLOOD A DIFFERENT
20 CONSISTENCY, AND IT DOESN'T SPATTER IN A REGULAR
21 PATTERN FROM WHICH I CAN CALCULATE ANGLES.
22 SO I WAS LIMITED, TO SOME EXTENT, IN
23 DOING A BACK CALCULATION TO A POINT OF ORIGIN BY THE
24 IRREGULAR CONFIGURATION OF MUCH OF THAT SPATTER.
25 Q AND THE SPATTER THAT YOU'RE REFERRING
26 TO, IS THAT -- WHAT PART OF THE ROOM DID THAT
27 SPATTER APPEAR IN?
28 A THERE WAS BLOOD AND TISSUE SPATTERED ON

42313

1 THE WALLS AND THE CEILING, ESSENTIALLY ON THE SOUTH
2 WALL, AND TO A LESSER EXTENT, ON THE OTHER WALLS.
3 Q AND IS A SPATTER OF THAT TYPE TYPICAL
4 WITH A WOUND TO THE HEAD BECAUSE OF THE BLOW-BACK
5 FROM A HEAD WOUND?
6 A THAT WOULD BE TYPICAL BECAUSE OF THE
7 DAMAGE TO THE BRAIN TISSUE, ESSENTIALLY MACERATING

8 THE BRAIN SO THAT WHAT WAS SPATTERED BY THE GAS

9 PRESSURE WAS AN ADMIXTURE OF BOTH.

10 SO IN A WOUND LIKE THAT, THAT WOULD BE
11 CONSIDERED TYPICAL.

12 Q WELL, FIRST OF ALL, DID YOU READ
13 DR. LAWRENCE'S TESTIMONY CONCERNING MISTING?

14 A I SKIMMED THROUGH THE TRANSCRIPTS, AND I
15 DID SEE REFERENCES IN HIS TESTIMONY TO MIST
16 PATTERNS.

17 Q DO YOU FIND ANYTHING WHATSOEVER IN THE
18 PHYSICAL EVIDENCE -- EXCUSE ME -- THAT WOULD CONNECT
19 THESE STAINS THAT YOU'VE SEEN ON PHOTOGRAPH B TO
20 MR. MENENDEZ' HEAD WOUND?

21 A NOT DIRECTLY, NO.

22 Q HOW ABOUT INDIRECTLY, IS THERE ANYTHING
23 THERE THAT SUGGESTS THAT WOULD BE COMING FROM HIS
24 HEAD WOUND?

25 A I CAN'T EXCLUDE THE POSSIBILITY THAT
26 SOME OTHER PERSON OR OBJECT WAS CONTAMINATED WITH
27 BLOOD FROM HIS HEAD WOUND AND SUBSEQUENTLY TOUCHED
28 THE COUCH. I DON'T KNOW WHAT OBJECT OR PERSON

42314

1 TRANSFERRED THAT.

2 SO I CAN'T EXCLUDE AN INDIRECT TRANSFER

3 AS A POSSIBILITY. BUT IT WAS NOT DIRECTLY FROM HIS
4 HEAD WOUND.

5 Q AND, IN FACT, ANYWHERE IN THE SCENE,
6 BASED ON YOUR EXAMINATION -- STRIKE THAT.

7 WHEN YOU WERE LOOKING THROUGH ALL THE
8 PHOTOGRAPHS FROM THE SCENE, DID YOU FOCUS ON ALL THE
9 BLOOD SPATTER EVIDENCE THAT WAS AVAILABLE FROM THOSE
10 PHOTOGRAPHS?

11 A I VIEWED ALL OF THE PHOTOGRAPHS THAT
12 WERE SUBMITTED TO ME, AND I REQUESTED THAT ALL THE
13 PHOTOGRAPHS THAT WERE TAKEN BE SUBMITTED TO ME, AND
14 I DID LOOK THOROUGHLY AT ALL OF THEM FOR BLOOD
15 PATTERNS.

16 Q AND DID YOU SEE ANYWHERE AT THIS SCENE
17 ANY EVIDENCE OF AEROSOL PATTERNS?

18 A NO, I DIDN'T FIND ANY.

19 Q NOW, I WANT TO TURN YOUR ATTENTION TO
20 THE NEXT CHART.

21 MR. LEVIN.

22 MR. LEVIN: SURE.

23 MS. ABRAMSON: WHICH IS EXHIBIT 295.

24 AND I WOULD ASK YOU TO LOOK AT 295-G, I,
25 AND J.

26 THE WITNESS: OKAY. MAY I APPROACH THE
27 PHOTOGRAPHS?

28 MS. ABRAMSON: CERTAINLY.

1 THE WITNESS: YES.

2 Q BY MS. ABRAMSON: OKAY. THESE ARE
3 IMAGES THAT YOU HAVE SEEN BEFORE, ALTHOUGH SOME OF
4 THEM MAY BE ENLARGED?

5 A YES. I RECOGNIZE THESE PHOTOS.

6 Q AND DO YOU RECOGNIZE THAT IN THOSE THREE
7 PHOTOGRAPHS WHAT'S DEPICTED IS MR. MENENDEZ' LEFT
8 SIDE AND LEFT ARM?

9 A YES. I RECOGNIZE IT AS SUCH.

10 Q DO YOU SEE WHAT APPEARS TO BE BLOOD
11 SPATTER ON THE LEFT SIDE OF HIS WHITE SHIRT?

12 A YES, I DO.

13 Q AND DO SOME OF THOSE SPATTERS -- WELL,
14 FIRST OF ALL, ARE THOSE -- THOSE ARE NOT AEROSOL
15 DROPS, I TAKE IT?

16 A NO. THERE ARE SOME RELATIVELY LARGE
17 DROPS THAT APPEAR ON THE SHIRT. THEY ARE PROJECTED
18 DROPS, BUT THEY'RE NOT WHAT I WOULD CLASSIFY AS AN
19 AEROSOL.

20 Q OKAY. AND DO THOSE PROJECTED DROPS, THE
21 ONES THAT YOU CAN VISUALIZE, INDICATE SOME DIRECTION
22 OF THE BLOOD FLOW TO YOU?

23 A SOME OF THEM DO.

24 Q AND WITH RESPECT TO THE ONES THAT SHOW
25 DIRECTION, WHAT DIRECTION DOES THE BLOOD THAT FORMED
26 THOSE SPATTERS APPEAR TO BE TRAVELING FROM?

27 A THEY ARE TRAVELING AS THEY IMPACT THE
28 SHIRT FROM RIGHT TO LEFT.

42316

1 Q FROM MR. MENENDEZ' RIGHT TO LEFT?

2 A THAT'S CORRECT.

3 Q AND WITH RESPECT TO -- DOES THERE APPEAR

4 TO BE A BLOOD SPATTER PATTERN ALONG THE -- I DON'T

5 KNOW IF IT'S THE INSIDE OR THE EDGE -- BUT

6 OBSERVABLE PARTICULARLY IN PHOTO NUMBER -- LETTER G,

7 ALONG THE INSIDE, YES, OF HIS LEFT ARM?

8 A YES, THERE IS SPATTERED BLOOD ON HIS

9 ARM, ON HIS LEFT ARM, ON THE INSIDE SURFACE.

10 Q AND DOES THAT SPATTER APPEAR TO HAVE A

11 DIRECTION TO IT AS WELL?

12 A A FEW OF THE DROPLETS DO INDICATE A

13 DIRECTION.

14 Q AND IS THAT THE SAME DIRECTION, RIGHT TO

15 LEFT?

16 A YES. THAT WOULD REFLECT THE SAME

17 DIRECTION, THOSE THAT HAVE DIRECTIONAL

18 CHARACTERISTICS.

19 Q YOU MAY RESUME YOUR SEAT, MR. LINHART.

20 A (WITNESS COMPLIES.)

21 Q NOW, MR. LINHART, IN YOUR EXPERIENCE AND

22 OPINION, DOES ONE USUALLY SEE -- WELL, LET'S STRIKE
23 THAT.
24 I WANT TO FOCUS YOUR ATTENTION ON WOUNDS
25 TO HUMAN LIMBS, PARTICULARLY ARMS, OKAY? BALLISTIC
26 WOUNDS TO HUMAN LIMBS. OKAY?
27 AS A PROJECTILE PASSES THROUGH A HUMAN
28 LIMB WOULD YOU EXPECT THERE TO BE BLOW-OUT; IN OTHER

42317

1 WORDS, IN THE DIRECTION IN WHICH THE PROJECTILE
2 PASSES, YOU WOULD EXPECT BLOOD TISSUE TO COME OUT IN
3 THAT DIRECTION?

4 A IF THERE IS AN EXIT WOUND, YES. IT
5 WOULD TYPICALLY -- BLOOD AND SOMETIMES TISSUE WOULD
6 BE PROJECTED FROM THE EXIT WOUNDS IN THE DIRECTION
7 OF TRAVEL OF THE BULLET.

8 Q AND THAT, OF COURSE, IS WHAT YOU WERE
9 TALKING ABOUT WHEN YOU FORMED THE CONCLUSION THAT
10 MR. MENENDEZ' LEG WOUND WAS NOT INFLICTED WHILE HE
11 WAS SEATED WHERE HE'S SEEN IN THE PHOTOGRAPHS,
12 CORRECT?

13 A YES. THAT WAS EVIDENCE THAT I LOOKED
14 FOR.

15 Q NOW, WITH RESPECT TO YOUR -- YOU'RE
16 AWARE OF THE FACT THAT MR. MENENDEZ HAS MORE THAN

17 ONE AREA OF WOUND ON HIS RIGHT ARM.

18 A YES.

19 Q AND WOULD YOU EXPECT, BASED ON YOUR --
20 STRIKE THAT AGAIN.

21 IN ADDITION TO WHAT WE CALL BLOW-OUT,
22 WHICH IS SOMETHING COMING FROM THE DIRECTION IN
23 WHICH THE PROJECTILE IS FLOWING, ARE THERE CERTAIN
24 KINDS OF WOUNDS ON THE HUMAN BODY THAT CAUSE
25 BLOW-BACK, IN OTHER WORDS, STUFF COMING OUT OF THE
26 ENTRY RATHER THAN COMING OUT OF THE EXIT?

27 A THAT CAN OCCUR ON OCCASION.

28 Q IS IT TYPICAL THAT YOU GET BLOW-BACK

42318

1 FROM A LIMB WOUND THAT HAS A LARGE EXIT?

2 A I HAVE -- CAN'T RECALL EVER HAVING
3 OBSERVED AN OCCASION OF SUCH A WOUND WHERE I WAS
4 ABLE TO IDENTIFY BLOW-BACK. BLOW-BACK IS LESS
5 COMMONLY OBSERVED THAN WHAT WE CALL BLOW-OUT IN THE
6 DIRECTION OF TRAVEL OF THE BULLET.

7 Q BASED ON THE BLOOD SPATTER THAT YOU CAN
8 SEE IN G AND IN I AND IN J, ON 295, THAT APPEARS ON
9 THE LEFT SIDE OF MR. MENENDEZ' SHIRT AND ON HIS ARM,
10 BOTH THE NATURE OF THE PATTERN AND THE QUANTITY OF
11 THE BLOOD, DO YOU HAVE AN OPINION AS TO WHETHER THAT

12 IS CONSISTENT WITH BLOW-OUT VERSUS BLOW-BACK?

13 A WELL, BASED UPON THOSE, PLUS AS WELL THE
14 SIZE DISTRIBUTION OF THE DROPLETS, I WOULD TAKE INTO
15 ACCOUNT THAT DOES NOT GIVE THE APPEARANCE OF BEING
16 BLOW-BACK; THAT IS, BACK IN THE DIRECTION OF TRAVEL
17 OF THE BULLET FROM THE ENTRANCE WOUND.

18 Q SO, DOES IT APPEAR TO BE BLOW-OUT; IN
19 OTHER WORDS, MIRRORING THE DIRECTION OF THE WOUND
20 FROM ENTRY THROUGH EXIT AND ACROSS?

21 A WELL, I CAN'T SAY THAT IT APPEARS
22 SPECIFICALLY TO BE BLOW-OUT. IT DOESN'T APPEAR TO
23 BE BLOW-BACK. IT IS BLOOD PROJECTED ACROSS HIS BODY
24 FROM RIGHT TO LEFT, BUT I CAN'T IDENTIFY IT
25 SPECIFICALLY AS BLOW-OUT FROM AN EXIT WOUND.

26 Q BASED ON WHAT YOU SEE, HOWEVER, IS IT
27 CONSISTENT WITH A WOUND THAT ENTERS ON THE BACK OF
28 THE RIGHT ARM, EXITS IN THE -- WHAT DOCTORS CALL THE

42319

1 MEDIAL ASPECT OF THE RIGHT ARM -- WHEN THE ARM IS
2 HELD IN A POSITION SUCH AS I'M DEMONSTRATING, THE
3 ELBOW BENT AND THE LEFT ARM IS IN A POSITION TO --
4 WHERE THE INNER ARM IS EXPOSED -- IS THAT PATTERN AT
5 LEAST CONSISTENT WITH THAT DIRECTION OF TRAVEL FROM
6 A WOUND IN THAT AREA?

7 A YES. THAT IS A POSSIBLE SOURCE OF THAT
8 BLOOD. THAT IS CONSISTENT.

9 MS. ABRAMSON: I HAVE NOTHING FURTHER, YOUR
10 HONOR.

11 THE COURT: CROSS-EXAMINATION?

12 MR. CONN: YES.

13

14 CROSS-EXAMINATION

15 BY MR. CONN:

16 Q MR. LINHART, YOU PREPARED A REPORT BACK
17 IN 1993; IS THAT CORRECT?

18 A YES. I BELIEVE IT WAS IN JULY THAT I
19 COMPLETED THE REPORT.

20 Q AND WHAT WERE YOU SEEKING TO DO AT THE
21 TIME THAT THIS MATERIAL WAS PRESENTED TO YOU BACK IN
22 1993?

23 A BY SEEKING TO DO, ARE WE REFERRING BACK
24 TO WHAT WAS THE WORK HYPOTHESIS IN THE
25 RECONSTRUCTION?

26 Q YES.

27 A YES. AT MS. BOZANICH'S REQUEST, AT THAT
28 POINT I WAS EVALUATING THE EVIDENCE TO DETERMINE

2 PHYSICAL CONFRONTATION INVOLVING, SPECIFICALLY,
3 MR. MENENDEZ, ASSOCIATED WITH THE TIME OF THE
4 SHOOTING.

5 SO I WAS LOOKING FOR EVIDENCE THAT WOULD
6 ADDRESS THAT POSSIBILITY. SINCE I COULDN'T ADDRESS
7 THE MOVEMENTS OF MR. MENENDEZ PRIOR TO THE BLEEDING
8 STARTING, I ADDRESSED HIS POSITION AND WHAT I COULD
9 OF HIS MOVEMENTS DURING THE TIME THAT THE SHOOTING
10 OCCURRED.

11 Q WELL, WASN'T THE WAY YOU WROTE IT UP IN
12 YOUR REPORT THAT YOU EXAMINED THE MATERIAL --

13 MS. ABRAMSON: OBJECTION. HEARSAY, YOUR
14 HONOR. ARGUMENTATIVE.

15 THE COURT: REPHRASE THE QUESTION IF YOU
16 INTEND TO IMPEACH THE WITNESS.

17 Q BY MR. CONN: ISN'T IT TRUE THAT THE WAY
18 YOU WROTE IT UP IN YOUR REPORT IS THAT YOU EXAMINED
19 PHOTOGRAPHS OF THE DEATH SCENE OF JOSE AND MARY
20 MENENDEZ FOR THE PURPOSE OF RECONSTRUCTING THEIR
21 LOCATIONS AND POSITIONS DURING THE INFLECTION OF THE
22 SHOTGUN WOUNDS THAT RESULTED IN THEIR DEATH?

23 A YES.

24 MS. ABRAMSON: OBJECTION. NOT IMPEACHMENT,
25 YOUR HONOR. HEARSAY.

26 THE COURT: OVERRULED.

27 THE WITNESS: YES. THAT IS WHAT I JUST
28 DESCRIBED WAS MY OBJECTIVE.

1 Q BY MR. CONN: SO YOU WERE SEEKING TO DO
2 A RECONSTRUCTION OF SORTS?

3 A YES.

4 Q AND HOW MANY -- HOW MUCH TIME DID YOU
5 SPEND REVIEWING -- WELL, WHAT MATERIAL WAS PRESENTED
6 TO YOU BACK IN '93 TO ENABLE YOU TO DO THAT?

7 A I HAD PHOTOGRAPHS, BOTH THOSE TAKEN BY
8 THE BEVERLY HILLS POLICE DEPARTMENT AND THOSE TAKEN
9 BY THE CORONER'S OFFICE; I HAD BOTH AUTOPSY
10 PROTOCOLS; I HAD AN INVESTIGATIVE REPORT FROM THE
11 BEVERLY HILLS POLICE DEPARTMENT; AND VERBAL
12 INFORMATION FROM THE DEPUTY DISTRICT ATTORNEY.

13 Q AND DO YOU REMEMBER HOW MANY -- HOW MUCH
14 TIME YOU SPENT SEEKING TO DO A RECONSTRUCTION BEFORE
15 YOU FINALLY REACHED YOUR CONCLUSIONS AND WROTE YOUR
16 REPORT?

17 A I DID NOT KEEP TRACK OF THE NUMBER OF
18 HOURS THAT I SPENT. I DON'T TYPICALLY DO THAT. BUT
19 RECONSTRUCTIONS OF THIS NATURE, ESPECIALLY WITH THE
20 LARGE NUMBER OF PHOTOGRAPHS THAT WERE AVAILABLE, ARE
21 VERY TIME-CONSUMING, AND I DID SPEND MANY, MANY
22 HOURS OVER A NUMBER OF DAYS EVALUATING PHOTOGRAPHS
23 AND THE OTHER EVIDENCE, THE AUTOPSY PROTOCOLS.

24 Q AND AFTER SPENDING ALL OF THAT TIME

25 WORKING ON THIS CASE, YOU THEN WROTE A REPORT WHICH
26 IS A PAGE-AND-A-HALF LONG; IS THAT CORRECT?
27 A YES, THAT'S CORRECT.
28 Q AND AS FAR AS THE RECONSTRUCTING OF THE

42322

1 LOCATIONS AND THE POSITIONS OF THE VICTIMS IN THIS
2 CASE, YOU BASICALLY SUMMED UP ALL OF YOUR
3 CONCLUSIONS IN TWO PARAGRAPHS; IS THAT CORRECT?

4 A I'D HAVE TO LOOK AT IT TO COUNT THE
5 PARAGRAPHS, BUT THAT SOUNDS ABOUT RIGHT.

6 Q AND WHAT CONCLUSIONS WERE YOU ABLE TO
7 REACH CONCERNING MARY MENENDEZ IN REGARD TO HER
8 LOCATION AND POSITIONS DURING THE INFLECTION OF THE
9 SHOTGUN WOUNDS?

10 A WORKING -- I HAVE A COPY OF MY REPORT.
11 MAY I REFRESH MY RECOLLECTION WITH THAT, PLEASE?

12 Q YES.

13 A OKAY. I CONCLUDED WITH REGARD TO
14 MRS. MENENDEZ THAT HER POSITIONS DURING THE TIME
15 THAT SHE RECEIVED THE SHOTGUN WOUNDS WAS CONFINED TO
16 EITHER ON THE COUCH, ON -- OR ON THE FLOOR BETWEEN
17 THE COUCH AND THE COFFEE TABLE. SHE NEVER LEFT THE
18 VICINITY OF THE NORTH-FACING COUCH AND THE COFFEE
19 TABLE DURING THE TIME OF THE SHOOTING.

20 I ALSO CONCLUDED THAT -- AT LEAST AT
21 SOME POINT AFTER HER -- AFTER THE SHOOTING BEGAN,
22 AFTER BLEEDING BEGAN, HER LEGS WERE MOBILE. SO SHE
23 WASN'T SIMPLY STILL DURING THE ENTIRE TIME OF THE
24 SHOOTING.

25 I ALSO CONCLUDED THAT AT LEAST ONE SHOT
26 WAS DELIVERED TO HER WHILE SHE WAS DOWN ON THE FLOOR
27 WITH HER HEAD NEAR -- AT LEAST IN THE GENERAL
28 LOCATION OF WHERE SHE WAS ULTIMATELY OBSERVED AND

42323

1 PHOTOGRAPHED.

2 Q SO ESSENTIALLY YOU REACHED THREE
3 CONCLUSIONS CONCERNING MARY MENENDEZ?

4 A THOSE ARE THE ONES THAT I REACHED AND
5 STATED IN MY REPORT, YES.

6 Q AND DID YOU FEEL THAT THOSE WERE THE
7 ONLY CONCLUSIONS THAT YOU WERE CAPABLE OF REACHING
8 AT THAT TIME, BACK IN 1993, BASED UPON THE PHYSICAL
9 EVIDENCE PRESENTED TO YOU?

10 A THOSE WERE THE CONCLUSIONS THAT I WAS
11 ABLE TO REACH THAT WERE RELEVANT TO THE QUESTION
12 THAT WAS POSED TO ME.

13 Q NOW, OTHER THAN THOSE THREE CONCLUSIONS,
14 HAVE YOU SINCE REACHED OTHER CONCLUSIONS CONCERNING

15 MARY MENENDEZ?

16 A NOT FORMALLY. I HAVE ANSWERED QUESTIONS
17 THAT I CAN ON FINER DETAIL, AND CAN CONTINUE TO DO
18 SO, FROM THE PHOTOGRAPHS AND THE EVIDENCE.

19 Q OKAY. ALL RIGHT. THEN LET'S GO THROUGH
20 THOSE THREE CONCLUSIONS THAT YOU REACHED THEN BACK
21 IN 1993.

22 YOU SAID THAT THE FIRST CONCLUSION WAS
23 THAT SHE WAS ON THE NORTH-FACING SOFA. AND YOU
24 UNDERSTAND THAT THE NORTH-FACING SOFA WOULD BE -- LET
25 ME USE THIS ONE HERE -- WE HAVE AN EXHIBIT THAT HAS
26 BEEN MARKED 252. 252 DEPICTS --

27 THE COURT: IF YOU'RE GOING LEAVE IT THERE,
28 YOU'LL HAVE TO SECURE IT SOME WAY TO THE BACK SO IT

42324

1 DOESN'T FALL.

2 Q BY MR. CONN: THAT ILLUSTRATION, YOU
3 UNDERSTAND, REPRESENTS THE SOFA THAT YOU WERE
4 REFERRING TO IN THE PHOTOGRAPHS THAT WERE PROVIDED
5 TO YOU; IS THAT CORRECT?

6 A YES. I UNDERSTAND THAT THAT IS MEANT TO
7 REPRESENT THAT.

8 Q OKAY. SO IT WAS YOUR CONCLUSION THAT
9 MARY MENENDEZ WAS EITHER ON THE SOFA OR ON THE FLOOR

10 RIGHT IN FRONT OF THE SOFA WHEN SHE RECEIVED ALL OF
11 THE WOUNDS IN THIS CASE; IS THAT CORRECT?

12 A SHE WAS CONFINED TO THAT AREA DURING THE
13 TOTAL TIME THAT SHE RECEIVED THE GUNSHOT WOUNDS.

14 Q AND YOU SAW NO EVIDENCE IN THIS CASE
15 THAT SHE EVER WAS SHOT IN ANY OTHER AREA OF THE
16 ROOM; IS THAT CORRECT?

17 A I DID NOT.

18 Q AND IS THAT STILL YOUR OPINION TODAY?

19 A YES.

20 Q OKAY. IT WAS YOUR OPINION AT THE TIME
21 THAT, WHEN SHE RECEIVED -- THAT AFTER RECEIVING ONE
22 OR MORE WOUNDS, SHE WAS IN AN UPRIGHT POSITION,
23 EITHER SITTING ON THE COUCH OR SITTING OR STANDING
24 ON THE FLOOR, BETWEEN THE COUCH AND THE COFFEE
25 TABLE; IS THAT CORRECT?

26 A YES.

27 Q AND HER FEET WERE MOBILE DURING THAT
28 TIME PERIOD; IS THAT CORRECT?

42325

1 A YES.

2 Q AND IS THAT STILL YOUR OPINION TODAY?

3 A YES, IT IS.

4 Q AND YOU REACH THAT CONCLUSION BASED UPON

5 BLOOD DROPS THAT YOU OBSERVED; IS THAT CORRECT?

6 A BLOOD DROPS AND SMEARS, THE PATTERNS OF
7 BLOOD THAT WERE ASSOCIATED WITH HER.

8 Q AND THE BLOOD DROPS THAT YOU'RE
9 REFERRING TO ARE WHICH BLOOD DROPS?

10 A WELL, THEY'RE A VARIETY OF BLOOD
11 PATTERNS THAT LEAD TO THOSE CONCLUSIONS. I COULD
12 LOOK BACK AT THE PHOTOGRAPHS AND POINT THEM OUT.

13 Q OKAY. JUST FROM MEMORY, CAN YOU TELL
14 US -- WITHOUT GETTING INTO THE SPECIFIC LOCATIONS,
15 WERE YOU REFERRING TO BLOOD DROPS ON ARTICLES OF
16 CLOTHING?

17 A ON CLOTHING, ON HER SHOES. I WOULD HAVE
18 TO LOOK AT THE PHOTOGRAPHS TO RECOVER MY ENTIRE
19 FOUNDATION FOR THAT CONCLUSION.

20 Q OKAY. AND YOU SAID THAT SHE WAS -- THAT
21 SHE WAS MOBILE DURING THIS TIME.

22 AND WHAT PRECISELY DO YOU MEAN BY
23 MOBILE?

24 A HER LEGS WERE MOVING. SHE WAS NOT
25 TOTALLY STATIONARY.

26 Q OKAY. AND YOU REACHED THAT CONCLUSION
27 FROM THE FACT THAT SHE APPARENTLY STEPPED ON SOME
28 BLOOD; IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q AND YOU OBSERVED BLOOD AT THE BOTTOM OF
3 HER SHOE; IS THAT CORRECT?

4 A YES, I DID.

5 Q LET ME SHOW YOU THE DIAGRAM THAT HAS
6 BEEN MARKED AS 256, WHICH DEPICTS A SHOT TO THE FACE
7 AREA OF KITTY MENENDEZ.

8 WOULD YOU SAY THAT IF KITTY MENENDEZ
9 WERE TO HAVE RECEIVED A SHOT SUCH AS IS ILLUSTRATED
10 IN THAT DEPICTION, THAT COULD ACCOUNT FOR THE BLOOD
11 THAT YOU OBSERVED ON HER CLOTHING?

12 A NO. THAT SHOT ALONE WOULDN'T ACCOUNT
13 FOR THE BLOOD THAT WAS ON HER CLOTHING.

14 Q OKAY. WHY IS THAT?

15 A SHE HAS BLOOD DISTRIBUTED AROUND AND
16 ASSOCIATED WITH OTHER WOUNDS THAT SHE RECEIVED.

17 SO THAT SINGLE SHOT DOES NOT ACCOUNT FOR
18 ALL OF THE BLOOD THAT WAS ON HER.

19 Q OKAY. DO YOU RECALL WHERE THE BLOOD IS
20 THAT YOU'RE REFERRING TO THAT WOULD NOT BE
21 ATTRIBUTED TO THIS SHOT HERE?

22 A PROBABLY MUCH OF THE BLOOD THAT WAS ON
23 HER WAS NOT REASONABLY ATTRIBUTABLE TO THAT SHOT.

24 Q YOU'RE NOT SAYING THAT ALL OF THE BLOOD
25 THAT WAS ON HER RESULTED FROM -- RESULTED WHILE SHE
26 WAS IN A STANDING OR IN AN UPRIGHT POSITION, ARE
27 YOU?

28 A NO, I'M NOT.

1 Q I'M FOCUSING ONLY ON THE BLOOD THAT YOU
2 SAID CAUSED YOU TO CONCLUDE THAT SHE WAS AT SOME
3 POINT IN AN UPRIGHT POSITION, EITHER SITTING ON THE
4 COUCH OR SITTING OR STANDING ON THE FLOOR BETWEEN
5 THE COUCH AND THE COFFEE TABLE.

6 THAT BLOOD, WHAT WOULD THAT BLOOD
7 CONSIST OF?

8 A IN ORDER FOR ME TO DO THAT EFFECTIVELY,
9 TO PROVIDE MY FOUNDATION FOR THAT, I WILL NEED TO
10 VIEW AND POINT OUT FOR YOU ON THE ACTUAL
11 PHOTOGRAPHS. THOSE SIMULATIONS DON'T PROVIDE ANY
12 ACCURATE DETAIL FOR ME TO DO THAT.

13 Q LET ME SEE IF I CAN FIND SOME
14 PHOTOGRAPHS THAT MIGHT BE OF ASSISTANCE TO YOU.

15 ONCE AGAIN, IF I CAN DIRECT YOUR
16 ATTENTION -- ARE YOU REFERRING PRIMARILY TO BLOOD ON
17 THE CLOTHING OR BLOOD ON HER BODY IN AREAS OTHER
18 THAN WHERE SHE'S CLOTHED?

19 A SHE HAD BLOOD ON BOTH HER SKIN SURFACES
20 AND HER CLOTHING. IN ORDER FOR ME TO ANSWER YOUR
21 QUESTION SPECIFICALLY AS TO WHICH BLOOD STAINS AND
22 BLOOD DROPS PROVIDED FOUNDATION FOR THAT CONCLUSION,
23 I WOULD HAVE TO SEE THE PHOTOGRAPHS AT THIS POINT

24 AND POINT THEM OUT TO YOU. I CAN'T DO THAT FROM

25 MEMORY.

26 Q ALL RIGHT. WE'LL GET ALL THE

27 PHOTOGRAPHS.

28 NOW, YOU SAY THAT SHE WAS IN -- HER FEET

42328

1 WERE MOBILE. WOULD THAT MEAN THAT IN ORDER FOR THE

2 BLOOD TO GET TO THE BOTTOM OF HER SHOE SHE WOULD

3 NECESSARILY HAVE BEEN STANDING?

4 A NOT NECESSARILY, NO.

5 Q WOULD SHE BE ABLE TO GET THE BLOOD TO

6 HER SHOE -- LET ME SHOW YOU THE ILLUSTRATION THAT HAS

7 BEEN MARKED AS 267.

8 THIS DEPICTS THE LEFT LEG OF KITTY

9 MENENDEZ IN SOMEWHAT OF AN UP-RAISED POSITION.

10 LET ME ASK YOU THIS: ON HOW MANY SHOES

11 DID YOU OBSERVE THE BLOOD TO THE BOTTOM OF THE SHOE?

12 A SHE DID HAVE BLOOD ON THE SOLES OF BOTH

13 SHOES.

14 Q OKAY. IF THE LEG OF KITTY MENENDEZ WERE

15 RAISED IN THE MANNER WHICH IS INDICATED IN THAT

16 ILLUSTRATION; AND THAT IS, WHILE SHE WAS LYING ON

17 HER BACK WITH HER KNEE IN AN UP-RAISED POSITION AND

18 HER FEET, AT LEAST HER LEFT FOOT, IN THAT

19 ILLUSTRATION CAPABLE OF BEING MOVED ABOUT THE FLOOR,
20 FLAT ON THE FLOOR, WOULD THAT BE CONSISTENT WITH THE
21 BLOOD THAT YOU OBSERVED AT THE BOTTOM OF THE SHOE?

22 A IF THERE IS, IN FACT, SUFFICIENT BLOOD
23 WITHIN RANGE OF HER FOOT IN THAT POSITION; AGAIN, I
24 WOULD HAVE TO REFER BACK TO THE ACTUAL PHOTOGRAPHS
25 TO ACCURATELY ANSWER YOUR QUESTION. THE SIMULATIONS
26 DO NOT SHOW SUFFICIENT OF THE DETAIL OF THE CRIME
27 SCENE FOR ME TO ANSWER THE QUESTION FROM IT.

28 Q LET ME SHOW YOU ANOTHER LARGE PHOTOGRAPH

42329

1 OF THE CRIME SCENE. LET ME ASK YOU THIS: DID YOU
2 INSPECT -- DURING YOUR REVIEW OF THE PHOTOGRAPHS,
3 DID YOU INSPECT DIFFERENT AREAS OF THE FLOOR AS IT
4 APPEARS IN THE PHOTOGRAPHS, TO DETERMINE WHERE HER
5 FOOT MIGHT HAVE BEEN IN THIS MOBILE POSITION SUCH
6 THAT SHE WOULD HAVE MADE THAT TRANSFER FROM BLOOD ON
7 THE FLOOR TO THE BOTTOM OF HER SHOE?

8 A I DID, IN FACT, INSPECT ALL OF THE
9 PHOTOGRAPHS WHICH SHOWED ALL OF THE AREAS OF THE
10 FLOOR THAT WERE VISIBLE, AND I DO NOT RECALL BEING
11 ABLE TO DETERMINE WHAT WAS THE SPECIFIC AREA OF THE
12 FLOOR WHERE SHE OBTAINED THE CONTACT TRANSFER TO THE
13 SOLES OF HER SHOES.

14 Q OKAY. WERE YOU ABLE TO DETERMINE A
15 RANGE OF AREA? FOR EXAMPLE, IT IS YOUR OPINION, I
16 BELIEVE YOU STATED, THAT SHE WAS EITHER ON THE SOFA
17 OR BETWEEN THE SOFA AND THE COFFEE TABLE WHEN ALL
18 THE SHOTS WERE RECEIVED; IS THAT CORRECT?

19 A YES, THAT IS MY OPINION.

20 Q OKAY. GIVEN THAT OPINION, WOULD THAT
21 LIMIT THE SPACE ON THE FLOOR IN WHICH SHE COULD HAVE
22 BEEN MOBILE IN ORDER TO -- IN ORDER FOR THAT TRANSFER
23 TO TAKE PLACE?

24 A IT'S CONSISTENT WITH THE OPINION THAT
25 SHE WAS NOWHERE ELSE. SHE HAD TO HAVE OBTAINED THAT
26 SOMEWHERE IN THAT AREA BETWEEN THE COUCH AND THE
27 COFFEE TABLE.

28 Q OKAY. AND DID YOU FIND IN YOUR REVIEW

42330

1 OF THE PHOTOGRAPHS THAT THERE WERE MULTIPLE PLACES
2 THAT SHE MAY HAVE STOOD OR HAD THAT CONTACT WITH THE
3 FLOOR TO ALLOW THAT TRANSFER TO TAKE PLACE, OR WAS
4 THERE JUST ONE PLACE WHERE SUCH A TRANSFER COULD
5 HAVE TAKEN PLACE?

6 A AS I SAID BEFORE, I COULD NOT DETERMINE
7 WHERE SHE STEPPED FOR THAT TRANSFER TO OCCUR.
8 AGAIN, I COULD EVALUATE WITH YOU THE PHOTOGRAPHS TO

9 FURTHER ISOLATE THE POSSIBILITIES AT THIS POINT.

10 Q RIGHT. WE'RE PULLING THEM RIGHT NOW.

11 DO YOU RECALL THERE WERE A NUMBER, A
12 SPECIFIC NUMBER OF POSSIBILITIES THAT YOU CAME UP
13 WITH TO DETERMINE WHERE PRECISELY HER FOOT MIGHT
14 HAVE BEEN?

15 A I DID NOT -- DON'T HAVE A RECOLLECTION
16 OF HAVING ADDRESSED IT IN THE PROCESS OF TRYING TO
17 DETERMINE EXACTLY HOW MANY POSSIBLE LOCATIONS THERE
18 WERE. I DID NOT CONFINE IT ANY FURTHER THAN I'VE
19 ALREADY STATED, THAT IT WAS SOMEWHERE IN THE AREA
20 BETWEEN THE COUCH AND THE COFFEE TABLE, BECAUSE HER
21 POSITION -- HER MOVEMENT WAS LIMITED TO THAT
22 REGION.

23 IT WOULD ALSO BE FURTHER CONFINED TO
24 AREAS ON THE FLOOR WHERE THERE IS BLOOD THAT --
25 AVAILABLE TO TRANSFER.

26 Q UH-HUH. AND YOU ALSO SAID THAT -- I
27 BELIEVE THE THIRD CONCLUSION THAT YOU REACHED
28 CONCERNING MARY MENENDEZ WAS THAT AT LEAST ONE OF

42331

1 THE WOUNDS WAS INFLICTED INTO AN AREA OF HER BODY
2 THAT WAS AT THE TIME NEAR THE FLOOR AND NEAR THE
3 CENTER SECTION OF THE COUCH; IS THAT CORRECT?

4 A YES, THAT IS CORRECT.

5 Q AND BY THAT YOU MEAN THAT SHE WAS CLOSE
6 TO THE FLOOR, HER ENTIRE BODY WAS CLOSE TO THE FLOOR
7 AT THE TIME THAT ONE OR MORE WOUNDS WAS INFLICTED?

8 A ACTUALLY, A LITTLE MORE SPECIFICALLY,
9 THE AREA THAT RECEIVED THE WOUND WAS CLOSE TO THE
10 FLOOR.

11 Q UH-HUH.

12 A WHETHER HER ENTIRE BODY WAS CLOSE TO THE
13 FLOOR, AT THAT POINT IS NOT WITHIN THE CONFINES OF
14 THE OPINION I REACHED.

15 Q THE INFORMATION THAT YOU RELIED UPON TO
16 REACH THAT CONCLUSION IS BASED UPON BLOOD SPATTER
17 WHICH APPEARED ON ANOTHER SOFA; IS THAT CORRECT?

18 A APPEARS ON THE FRONT EDGE OF THE CENTER
19 SOFA SECTION.

20 Q OKAY. AND HOW FAR FROM THE FLOOR DID
21 YOU OBSERVE THAT BLOOD SPATTER?

22 A I DID NOT HAVE THE SOFA TO MAKE THOSE
23 MEASUREMENTS, NOR DID I HAVE SCALE PHOTOGRAPHY, SO I
24 COULD NOT DETERMINE MEASUREMENTS.

25 Q WELL, DID YOU CONCLUDE THAT THE WOUND
26 THAT SHE RECEIVED WAS A WOUND SHE RECEIVED WHILE SHE
27 WAS CLOSE TO THE FLOOR; IS THAT CORRECT?

28 A THAT'S CORRECT.

1 Q AND THAT'S BASED UPON THE FACT THAT THE
2 BLOOD SPATTER WAS CLOSE TO THE FLOOR; IS THAT
3 CORRECT?

4 A NOT JUST THAT IT WAS CLOSE TO THE
5 FLOOR. THERE WAS ADDITIONAL OBSERVATIONS THAT WERE
6 REQUIRED TO REACH THAT CONCLUSION. BLOOD CAN BE ON
7 THE FLOOR THAT DIDN'T ORIGINATE CLOSE TO THE FLOOR.

8 IT'S BASED UPON THE PATTERN OF BLOOD ON
9 THE FRONT EDGE OF THE COUCH WHICH, BASED UPON ITS
10 LOCATION, CONFIGURATION, AND THE FACT THAT THERE WAS
11 AN OVERHANGING CUSHION, APPEARED TO HAVE AN
12 ORIGINATION CLOSE TO THE FLOOR.

13 I CONCLUDED THAT IT WAS -- AND IT WAS
14 SPATTERED BLOOD SUCH AS COULD BE CREATED BY A
15 GUNSHOT WOUND.

16 I CONCLUDED THAT IT WAS MARY MENENDEZ,
17 AS OPPOSED TO JOSE MENENDEZ, BASED UPON HIS DISTANCE
18 FROM THE AREA AND NO EVIDENCE THAT HE BLED IN
19 RETURN.

20 THERE WERE A LOT OF THOSE SORTS OF
21 CONSIDERATIONS THAT WENT INTO THAT CONCLUSION.

22 Q LET ME PUT UP A PHOTOGRAPH NOW --
23 SHOWING YOU WHAT HAS BEEN MARKED AS 22.

24 DOES THAT PHOTOGRAPH DEPICT THE BLOOD
25 SPATTER THAT YOU WERE REFERRING TO?

26 A YES, IT DOES.

27 Q OKAY. LET ME PUT THAT UP FOR THE JURY.

28 IF YOU CAN PLEASE IDENTIFY, TELL US,

42333

1 WHERE IS THAT BLOOD SPATTER THAT YOU'RE REFERRING
2 TO?

3 A WOULD YOU LIKE ME TO CIRCLE IT OR JUST
4 POINT?

5 Q IF YOU COULD CIRCLE IT, THAT WOULD BE
6 GOOD.

7 A OKAY. I HAVE CIRCLED AN AREA THAT SHOWS
8 BLOOD SPATTER ON BOTH THE CENTER SECTION AND THE
9 SECTION BEYOND, THAT WERE ALL AREAS THAT I
10 CONSIDERED IN REACHING THAT CONCLUSION.

11 Q ALL RIGHT. THANK YOU. YOU MAY RETURN
12 TO YOUR SEAT.

13 SO, CAN YOU TELL US HOW FAR -- HOW FAR
14 THE WOUND THAT SHE RECEIVED MIGHT HAVE BEEN FROM THE
15 SOFA IN ORDER FOR THAT SPATTER TO OCCUR?

16 A NO, I COULD NOT DETERMINE THAT, OTHER
17 THAN SHE'S CONFINED TO THAT GENERAL AREA BETWEEN THE
18 TABLE AND THE SOFA.

19 Q UH-HUH. AND THE RANGE OF SPATTER THAT
20 YOU OBSERVED IN THIS WENT FROM THE BOTTOM OF THE
21 SOFA UP TO CLOSE TO THE CUSHION; IS THAT CORRECT?

22 A WELL, THERE'S ACTUALLY SOME SPATTER ON
23 THE FRONT EDGE OF THE CUSHION ITSELF.
24 Q UH-HUH. AND BASED ON THAT SPATTER
25 PATTERN, WOULD YOU BE ABLE TO TELL ANYTHING ABOUT
26 HOW HIGH FROM THE FLOOR -- HOW FAR FROM THE FLOOR,
27 THE WOUND ACTUALLY WAS IN ORDER FOR THAT SPATTER TO
28 OCCUR?

42334

1 A NOT IN SPECIFIC MEASUREMENTS, BUT ONLY
2 IN GENERAL TERMS; THAT IT WAS BELOW THE EDGE OF THE
3 CUSHION, BOTTOM EDGE OF THE CUSHION.

4 Q AND WHEN YOU SAY THAT AT LEAST ONE WOUND
5 WAS INFLICTED WHILE SHE WAS IN SUCH A POSITION,
6 YOU'RE NOT RULING OUT THE POSSIBILITY THAT THERE
7 MIGHT HAVE BEEN SEVERAL WOUNDS INFLICTED WHILE SHE
8 WAS IN SUCH A POSITION, I TAKE IT?

9 A NO. I CAN'T RULE THAT OUT.

10 Q SHOWING YOU -- LET ME ASK YOU THIS:
11 ASSUMING THAT THE -- ARE YOU AWARE OF THE -- WHAT WAS
12 DESCRIBED AS THE CONTACT WOUND TO THE CHEEK, TO THE
13 LEFT CHEEK OF KITTY MENENDEZ IN THIS CASE? ARE YOU
14 FAMILIAR WITH THAT WOUND?

15 A YES. I RECALL FROM THE AUTOPSY PROTOCOL
16 SUCH A WOUND BEING DESCRIBED AND TESTIMONY REGARDING

17 THAT WOUND.

18 Q ALL RIGHT. NOW, I TAKE IT THAT YOU
19 WOULD NOT EXPECT SUCH A SPATTER PATTERN FROM A
20 CONTACT WOUND; IS THAT CORRECT?

21 A IT COULD, DEPENDING UPON HOW TIGHT THE
22 CONTACT IS.

23 Q ARE YOU FAMILIAR WITH ANOTHER WOUND TO
24 THE BODY OF KITTY MENENDEZ WHICH STRUCK HER,
25 ACCORDING TO THE TESTIMONY OF SEVERAL PEOPLE, IN THE
26 LEFT SHOULDER AND THEN THE AREA OF THE LEFT EAR?

27 ASSUMING THAT SHE WAS LYING ON HER RIGHT
28 SIDE NEAR THAT SECTIONAL AT THE TIME, IS THAT A

42335

1 WOUND WHICH COULD HAVE CAUSED THAT SPATTER PATTERN?

2 A I'M NOT SUFFICIENTLY FAMILIAR WITH THAT
3 WOUND AT THIS POINT TO COMMENT. I KNOW OF NO REASON
4 WHY IT COULD NOT HAVE BEEN.

5 Q THERE WERE OTHER WOUNDS WHICH WERE
6 ILLUSTRATED. ARE YOU FAMILIAR WITH THE
7 ILLUSTRATIONS OF DR. MC CARTHY?

8 A NO, I'M NOT. ONLY THE ONES I'VE SEEN
9 HERE IN COURT.

10 Q LET ME SHOW YOU A PHOTOGRAPH.

11 MS. ABRAMSON: COULD WE SEE IT?

12 MR. CONN: 197.

13 MS. ABRAMSON: THANK YOU.

14 Q BY MR. CONN: THIS DEPICTS SOME OF THE
15 WOUNDS TO THE RIGHT SIDE OF KITTY MENENDEZ.

16 YOU'VE HAD AN OPPORTUNITY TO OBSERVE
17 THOSE WOUNDS BEFORE, THE PHOTOGRAPHS BEFORE?

18 A YES, I HAVE.

19 Q OKAY. ASSUMING THAT KITTY MENENDEZ WERE
20 LYING ON HER BACK IN THE AREA OF THE SPATTER PATTERN
21 TO WHICH YOU TESTIFIED, COULD WOUNDS SUCH AS A
22 SINGLE WOUND PASSING -- A SINGLE SHOT PASSING
23 THROUGH HER RIGHT FOREARM AND HER RIGHT UPPER ARM
24 ACCOUNT FOR THAT SPATTER PATTERN THAT YOU OBSERVED?

25 A THAT'S POSSIBLE IF SHE WERE IN THE
26 CORRECT ORIENTATION AT THE TIME THE SHOT WAS FIRED.

27 Q UH-HUH. AND THERE HAS ALSO BEEN
28 TESTIMONY THAT THE WOUNDS TO HER --

42336

1 MS. ABRAMSON: I'M GOING TO OBJECT TO THE
2 FORM OF THE QUESTION AS RELATING TO HEARSAY.
3 IMPROPER HYPOTHETICAL.

4 THE COURT: WELL, AS IT'S PHRASED IT IS
5 EITHER HEARSAY OR ARGUMENTATIVE, REFERRING TO OTHER
6 TESTIMONY.

7 SO REPHRASE THE QUESTION.

8 Q BY MR. CONN: OKAY. ASSUMING THAT THE
9 WOUND TO THE RIGHT MANDIBLE AND THE RIGHT CLAVICLE
10 AND THE RIGHT HAND CAN ALL BE ASSOCIATED TOGETHER AS
11 PART OF A SINGLE WOUND, ASSUMING FURTHER THAT KITTY
12 MENENDEZ WERE LYING ON HER BACK IN THE AREA OF THAT
13 SPATTER AT THE TIME THAT THAT SHOT WAS INFLICTED, DO
14 YOU FEEL THAT THAT IS A WOUND WHICH COULD ACCOUNT
15 FOR THE SPATTER PATTERN TO WHICH YOU TESTIFIED?

16 MS. ABRAMSON: I'M GOING TO OBJECT. IMPROPER
17 HYPOTHETICAL. NO MEDICAL FOUNDATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: AGAIN, THERE ARE UNDOUBTEDLY
20 SOME POSSIBLE ORIENTATIONS THAT COULD ACCOUNT FOR
21 THAT WOUND, OR THOSE WOUNDS, HAVING CONTRIBUTED TO
22 THAT PATTERN THAT I OBSERVED, IT ORIGINATING CLOSE
23 TO THE FLOOR.

24 Q BY MR. CONN: ALL RIGHT. I HAVE ANOTHER
25 PHOTOGRAPH I'D LIKE TO SHOW YOU. THIS HAS BEEN
26 MARKED 37 IN THIS PROCEEDING.

27 IS THIS ALSO A PHOTOGRAPH THAT YOU'VE
28 SEEN BEFORE?

42337

1 A YES, IT IS.

2 Q ALL RIGHT. AND DOES THAT PHOTOGRAPH
3 DEPICT THE AREA BETWEEN THE SOFA AND THE COFFEE
4 TABLE ONCE BODIES HAD BEEN REMOVED?

5 A YES, IT DOES.

6 Q ARE YOU ABLE TO IDENTIFY ON THAT
7 PHOTOGRAPH ANY OF THE AREAS WHICH YOU SAID YOU
8 OBSERVED BLOOD DROPS WHICH COULD ACCOUNT FOR THE
9 TRANSFER OF BLOOD FROM THE FLOOR TO THE SOLES OF THE
10 SHOES OF KITTY MENENDEZ?

11 MS. ABRAMSON: OBJECTION. MISSTATES THE
12 EVIDENCE. IT ASSUMES FACTS NOT IN EVIDENCE.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DID NOT CONCLUDE THAT THE
15 TRANSFER WAS FROM BLOOD DROPS, ONLY THAT IT WAS FROM
16 BLOOD. AND THERE ARE SIGNIFICANT AREAS HERE THAT
17 ARE POSSIBLE LOCATIONS THAT COULD HAVE BEEN THE
18 SOURCE OF THE TRANSFER TO THE BOTTOMS OF
19 MRS. MENENDEZ' SHOES.

20 MR. CONN: UH-HUH.

21 Q SO, IF IT WERE NOT FROM BLOOD DROPS,
22 THEN HOW COULD THE -- WHAT TYPE OF TRANSFER ARE YOU
23 CONTEMPLATING?

24 A IT COULD HAVE BEEN A BLOOD POOL. IT
25 COULD HAVE BEEN BLOOD THAT WAS TRANSFERRED BY
26 CONTACT AND THEN SECONDARILY TRANSFERRED TO THE
27 SHOES.

28 THERE WAS NOTHING IN THE PATTERN ON THE

1 SHOES THAT PERMITTED ME TO DISTINGUISH BETWEEN THOSE
2 VARIOUS POSSIBILITIES.

3 Q UH-HUH. I SEE. ALL RIGHT.

4 IF YOU CAN, ONCE AGAIN, GO TO THE BOARD
5 AND PLEASE INDICATE FOR THE JURY JUST SOME OF THE
6 LOCATIONS WHICH YOU FEEL COULD ACCOUNT FOR THE
7 TRANSFER OF BLOOD FROM THE SOLES OF KITTY MENENDEZ;
8 THAT IS, FROM THE FLOOR TO THE SOLES OF KITTY
9 MENENDEZ.

10 A AGAIN, WOULD YOU LIKE ME TO CIRCLE --

11 Q YES, PLEASE.

12 A -- THE AREA. OKAY. I'VE CIRCLED AN AREA
13 THAT DEPICTS PROBABLY ONE-THIRD TO ONE-HALF OF THE
14 TOTAL CARPET SPACE BETWEEN THE COUCH AND THE COFFEE
15 TABLE.

16 MR. CONN: ALL RIGHT. THANK YOU. YOU MAY
17 TAKE YOUR SEAT.

18 THE COURT: LET'S TAKE OUR RECESS HERE AND
19 WE'LL RESUME AT 10:30.

20 (A RECESS WAS TAKEN FROM 10:15 A.M.
21 TO 10:50 A.M.)

22

23 THE COURT: OKAY. THE DEFENDANTS ARE
24 PRESENT.

25 ARE WE READY TO PROCEED?

26 MS. ABRAMSON: YES, YOUR HONOR.
27 THE COURT: THE LAWYERS ARE ALL HERE. THE
28 WITNESS IS HERE.

42339

1 WE'LL GET THE JURY OUT, PLEASE.
2 (THE JURY ENTERED THE COURTROOM
3 AND THE FOLLOWING PROCEEDINGS
4 WERE HELD:)
5
6 THE COURT: THE JURY IS BACK IN THE BOX.
7 YOU MAY CONTINUE YOUR CROSS-EXAMINATION.
8 MR. CONN: THANK YOU, YOUR HONOR.
9 I HAVE FOUR PHOTOGRAPHS THAT I WOULD
10 LIKE TO MARK AT THIS TIME. THE FIRST ONE DEPICTS
11 JOSE AND KITTY MENENDEZ IN THE DEN.
12 MAY THAT BE MARKED AS -- I BELIEVE IT'S
13 329.
14 THE COURT: 329 IS THE NEXT.
15 MR. CONN: THE NEXT ONE IS A CLOSE-UP OF JOSE
16 MENENDEZ ALONE.
17 MAY THAT BE MARKED AS 330.
18 THE NEXT ONE DEPICTS KITTY MENENDEZ.
19 MAY THAT BE MARKED AS 331.
20 AND THE NEXT ONE IS A CLOSE-UP OF THE

21 FEET AREA OF KITTY MENENDEZ.

22 MAY THAT BE MARKED AS 332.

23 Q NOW, SIR, DURING THE BREAK DID YOU HAVE

24 AN OPPORTUNITY TO TAKE A LOOK AT A COUPLE OF

25 PHOTOGRAPHS?

26 A YES, I DID.

27 Q LET ME SHOW YOU TWO PHOTOGRAPHS THAT

28 HAVE BEEN MARKED WHICH DEPICT THE BODY AND THE FEET

42340

1 AREA OF KITTY MENENDEZ, 331 AND 332.

2 ARE THOSE TWO PHOTOGRAPHS THAT WE

3 DISCUSSED DURING THE RECESS?

4 A YES.

5 Q NOW, IN ONE OF THOSE PHOTOGRAPHS DO YOU

6 SEE WHAT YOU PREVIOUSLY DESCRIBED AS EVIDENCE THAT

7 KITTY MENENDEZ WAS IN A STANDING OR IN AN UPWARD

8 POSITION AT SOME POINT?

9 A YES.

10 Q AND WHAT IS IT THAT YOU'RE REFERRING TO?

11 A THERE ARE SEVERAL BLOOD PATTERNS THAT

12 SUPPORT THAT CONCLUSION. THERE ARE --

13 Q OKAY. LET ME JUST IDENTIFY -- THE ONE

14 YOU'RE LOOKING AT RIGHT NOW IS 332.

15 WHAT DO YOU SEE IN 332?

16 A 332 SHOWS A CLOSE-UP OF HER LEFT SHOE

17 AND LEG, LOWER LEG. THAT'S THE AREA OF THAT

18 PHOTOGRAPH I'M FOCUSING ON.

19 Q UH-HUH. GO AHEAD. AND WHAT IS IT?

20 A THERE ARE BLOOD DROPS THAT HAVE DRIPPED

21 FAIRLY STRAIGHT DOWN ON THE TOP OF THE SHOE.

22 Q UH-HUH.

23 A SOME AREA OF BLOOD WAS OVER THAT SHOE,

24 PERMITTING THE BLOOD TO FALL STRAIGHT DOWN.

25 THERE ARE BLOOD STAINS ON HER LEG THAT

26 HAVE A DIRECTION ALONG THE LINE OF THE LEG, SO IT

27 CAME IN FROM TOP TO BOTTOM.

28 Q PERHAPS WE CAN PUT THIS UP ON THE

42341

1 BOARD.

2 ONCE AGAIN, IF YOU WOULD TAKE THE MARKER

3 AND SHOW THE JURY WHAT AREAS YOU'RE REFERRING TO

4 WHICH INDICATE TO YOU THAT KITTY MENENDEZ WAS IN AN

5 UPRIGHT POSITION AT THE TIME ONE OR MORE SHOTS WERE

6 FIRED.

7 A ACTUALLY, MY CONCLUSION WAS JUST

8 SLIGHTLY DIFFERENT FROM AS YOU JUST STATED IT. I

9 WAS NOT REFERRING TO HER POSITION AT THE TIME THAT

10 THE SHOTS WERE FIRED. I SAID SHE WAS IN AN UPRIGHT

11 POSITION AFTER THE BLEEDING BEGAN. I CAN'T PLACE
12 HER POSITION AT THE ACTUAL MOMENT THAT ANY OF THE
13 SHOTS WERE FIRED.

14 Q OKAY. SO THAT WOULD ALLOW FOR THE
15 POSSIBILITY THAT KITTY MENENDEZ WAS INITIALLY SEATED
16 ON THE SOFA, AND SHE WAS SHOT ON THE SOFA, STOOD UP,
17 AND SOME OF THE BLOOD DRIPPED ONTO HER FOOT, ONTO
18 HER SHOE, AND ANKLE AREA; IS THAT CORRECT?

19 A THAT'S WITHIN THE RANGE OF
20 POSSIBILITIES. I CAN'T EXCLUDE THAT AS A
21 POSSIBILITY.

22 Q AND DIRECTING YOUR ATTENTION TO THE
23 OTHER PHOTOGRAPH WHICH IS PRESENTLY BEFORE YOU, 331,
24 DOES THAT PROVIDE ANY ADDITIONAL EVIDENCE OF BLOOD
25 DROPS INDICATING THAT KITTY MENENDEZ WAS IN AN
26 UPRIGHT POSITION SOMETIME AFTER RECEIVING ONE OR
27 MORE WOUNDS?

28 A ACTUALLY, THE AREAS THAT I WAS LOOKING

42342

1 AT AND CONSIDERING ARE ALL CONTAINED WITHIN THE
2 OTHER SHOT. THEY'RE VISIBLE IN THIS SHOT AS WELL.

3 Q OKAY. LET ME PUT THAT ONE UP FOR THE
4 JURY.

5 I TAKE IT THAT FROM THE BLOOD DROPS

6 ALONE YOU CAN'T DETERMINE WHETHER SHE WAS SHOT MORE
7 THAN ONE TIME BEFORE SHE WAS IN THAT UPRIGHT
8 POSITION; IS THAT CORRECT?

9 A NO. I CAN'T MAKE THAT DETERMINATION.

10 Q ALL RIGHT. THEN, TURNING TO JOSE
11 MENENDEZ, YOU ALSO REACHED SOME CONCLUSIONS
12 CONCERNING JOSE MENENDEZ AT THE TIME THAT YOU WROTE
13 YOUR 1993 REPORT, AND YOU STATED THOSE CONCLUSIONS
14 IN THAT REPORT; IS THAT CORRECT?

15 A THAT IS CORRECT.

16 Q DO YOU HAVE THAT REPORT WITH YOU RIGHT
17 NOW?

18 A YES. I HAVE IT IN FRONT OF ME.

19 Q ONCE AGAIN, CAN YOU TELL US WHAT
20 CONCLUSIONS YOU REACHED CONCERNING JOSE MENENDEZ
21 BACK IN 1993?

22 A I CONCLUDED THAT MR. MENENDEZ' POSITION
23 WAS DIFFERENT FROM THE POSITION IN WHICH HE WAS
24 PHOTOGRAPHED AT THE SCENE AT THE TIME THAT CERTAIN
25 OF THE GUNSHOTS WERE RECEIVED, SPECIFICALLY THE SHOT
26 IN THE LEFT ELBOW, THE SHOT IN THE LEFT LEG, AND THE
27 SHOT TO THE BACK OF THE HEAD.

28 I CONCLUDED THAT HE WAS NOT IN THAT

1 POSITION WHEN HE RECEIVED THE GUNSHOT WOUND TO --

2 WELL, THAT'S RESTATING WHAT I JUST SAID.

3 I CONCLUDED THAT AT SOME POINT AFTER
4 RECEIVING THE GUNSHOT WOUND TO THE HEAD HE WAS
5 SEATED ON THE COUCH IN A DIFFERENT POSITION THAN HE
6 FINALLY APPEARED, THAT IS, FURTHER FORWARD AND
7 SOMEWHAT TO THE RIGHT, TO ACCOUNT FOR BLOOD THAT
8 APPEARS ON THE CUSHION BESIDE HIM, ON THE SIDE OF
9 THE CUSHION; AND AT SOME POINT SUBSEQUENTLY HE WAS
10 MOVED TO HIS FINAL POSITION AS SHOWN IN THE
11 PHOTOGRAPHS.

12 Q ALL RIGHT. LET'S TAKE THOSE -- EACH OF
13 THOSE STATEMENTS ONE AT A TIME.

14 YOUR FIRST STATEMENT THAT JOSE MENENDEZ
15 WAS NOT IN THE POSITION WHICH HE APPEARS IN THE
16 PHOTOGRAPH AT THE TIME HE RECEIVED THE SHOTGUN
17 WOUNDS TO THE HEAD THE LEFT LEG AND THE ELBOW.

18 AND YOU SUGGESTED SOME POSSIBLE
19 POSITIONS; IS THAT CORRECT?

20 A WELL, I HAD SOME INFORMATION THAT
21 SHOWED -- THAT CONFINED HIS POSITION SUBSEQUENT TO
22 THE SHOT TO THE HEAD. I DID NOT REFLECT IN MY
23 REPORT THE VARIETY OF POSSIBLE POSITIONS THAT HE
24 COULD HAVE BEEN IN WHEN HE RECEIVED THE GUNSHOT
25 WOUNDS TO THE LEG OR THE ELBOW.

26 Q ALL RIGHT. LET ME START FIRST WITH YOUR
27 STATEMENT THAT HE WAS NOT IN THE POSITION IN WHICH
28 HE APPEARS IN THE PHOTOGRAPHS AT THE TIME HE

1 RECEIVED THE SHOTGUN WOUND TO THE HEAD.

2 WHAT WAS THE BASIS FOR THAT CONCLUSION?

3 A OKAY. THE LACK OF SIGNIFICANT SPATTER
4 DIRECTLY ON THE BACK OF THE COUCH. I BELIEVE HIS
5 HEAD WAS FURTHER FORWARD AND THE OBSERVATION THAT HE
6 BLED FURTHER TO HIS RIGHT ON THE COUCH CUSHION.

7 Q OKAY. LET ME PUT UP A COUPLE OF
8 PHOTOGRAPHS WHICH I HAVE JUST MARKED AS 329 AND
9 330.

10 SHOWING YOU THESE TWO PHOTOGRAPHS.

11 NOW, YOU'RE SAYING THAT IN REGARD TO THE
12 HEAD WOUND, YOU DID NOT SEE SOME SPATTER ON THE BACK
13 OF THE SOFA THAT YOU WOULD EXPECT TO SEE IF HIS HEAD
14 HAD BEEN IN THAT POSITION WHEN HE WAS SHOT?

15 A YES. FROM THE PLACEMENT OF THE WOUNDS
16 IN THE HEAD RELATIVE TO WHERE IT RESTS WITH REGARD
17 TO THE BACK OF THE SOFA AND THE PILLOW, I WOULD HAVE
18 EXPECTED SOME SPATTER. IF HE WERE IN JUST THAT
19 POSITION I WOULD PLACE HIM ELSEWHERE, OR IN A
20 DIFFERENT POSITION, IF NOT LOCATION.

21 Q SO BASED UPON YOUR REVIEW OF THE
22 PHYSICAL EVIDENCE IN THIS CASE, COULD HE HAVE BEEN
23 SITTING UPRIGHT OR LEANING A LITTLE BIT FORWARD AT

24 THE TIME THAT HE RECEIVED THE SHOT TO THE BACK OF

25 THE HEAD?

26 A YES.

27

28

42345

1 Q NOW, YOU SAID THAT HE WAS NOT IN THE

2 POSITION WHICH HE APPEARS AT THE TIME THAT HE

3 RECEIVED THE INJURY TO THE LEFT LEG.

4 WHAT WAS YOUR CONCLUSION -- WHAT WAS THE

5 BASIS FOR THAT CONCLUSION?

6 A AS I DISCUSSED EARLIER, THAT IS A

7 THROUGH-AND-THROUGH WOUND. SO THERE IS AN EXIT

8 WOUND. THE WOUND OF THAT NATURE WOULD NECESSARILY

9 CARRY BLOOD AND PROBABLY TISSUE OUT THROUGH THE EXIT

10 WOUND. THAT WOULD BE DEPOSITED ALONG THE TRAJECTORY

11 OF THE SHOTS.

12 I EXPLORED THE ENTIRE AREA THAT WOULD

13 HAVE HAD TO HAVE BEEN -- RECEIVED THAT PATTERN HAD HE

14 BEEN IN THAT POSITION, AND THERE WAS NO PATTERN OF

15 BLOOD CONSISTENT WITH AN EXIT WOUND IN THAT AREA;

16 THEREFORE, THAT MUST HAVE GONE ELSEWHERE.

17 THEREFORE, HE MUST HAVE BEEN IN A DIFFERENT

18 POSITION.

19 Q OKAY. NOW, WHEN YOU TALK ABOUT IN THAT
20 POSITION, YOU'RE REFERRING TO THE EXACT POSITION IN
21 WHICH HIS LEFT LEG APPEARS IN THAT PHOTOGRAPH; IS
22 THAT CORRECT?

23 A WELL, YES. BUT I ALSO CONSIDERED
24 WHETHER JUST A SIMPLE RE-ORIENTATION OF THE LEG WITH
25 HIM SITTING THERE LIKE THAT WAS POSSIBLE, AND I
26 COULDN'T FIND ANY SPATTER OR THE EXIT SPATTER THAT
27 WOULD ACT FOR THAT EITHER. SO HIS POSITION WAS
28 SIGNIFICANTLY DIFFERENT FROM WHAT IT IS RIGHT THERE.

42346

1 Q CAN YOU TELL US WHAT THE POSITION OF HIS
2 LEG WAS AT THE TIME THAT SHOT WAS FIRED?

3 A NOT WITH GREAT CERTAINTY. THERE ARE
4 SEVERAL POSSIBILITIES THAT I CONSIDERED, ONE I
5 CONSIDER TO BE THE MOST PROBABLE.

6 Q NOW, DID YOU SEE ANY EVIDENCE IN THESE
7 PHOTOGRAPHS OF ANY SPATTER ON THE FLOOR, ANY BLOOD
8 STAINS ON THE FLOOR, TO -- AWAY FROM THE SOFA THERE;
9 THAT IS, DID YOU SEE ANY EVIDENCE OF BLOOD STAINS
10 HERE SOME DISTANCE AWAY FROM THE SOFA?

11 A THERE ARE SOME BLOOD STAINS ON THE
12 CARPET THAT ARE NOT DIRECTLY UNDERNEATH HIM THAT ARE
13 AT SOME DISTANCE FROM THE SOFA.

14 Q OKAY. COULD THAT ACCOUNT FOR SOME

15 BLOW-OUT FROM THAT WOUND?

16 A NO. THOSE PATTERNS THAT I OBSERVED

17 THERE ARE A DIFFERENT CHARACTER THAN I WOULD SEE

18 FROM THE EXIT SPATTER FROM THE WOUND.

19 Q OKAY. NOW, DO YOU RECALL YOU CAME TO MY

20 OFFICE AT ONE POINT AND SPOKE WITH MYSELF AND DEPUTY

21 DISTRICT ATTORNEY CAROL NAJERA?

22 A YES.

23 Q DO YOU RECALL TELLING US AT THAT TIME --

24 MS. ABRAMSON: OBJECTION, YOUR HONOR.

25 HEARSAY. NO FOUNDATION. NO DISCOVERY.

26 THE COURT: IMPEACHMENT. OVERRULED.

27 Q BY MR. CONN: DO YOU RECALL TELLING US

28 AT THAT TIME THAT THE PHOTOGRAPHS IN THIS CASE ARE

42347

1 LACKING IN SUFFICIENT DETAIL TO REACH ANY

2 CONCLUSIONS CONCERNING WHETHER OR NOT HE WAS SHOT IN

3 A SEATED POSITION?

4 A I DON'T RECALL STATING JUST LIKE THAT,

5 NO.

6 Q DO YOU RECALL SAYING SOMETHING LIKE

7 THAT?

8 A NO. I BELIEVE THAT I STATED IT MORE

9 AKIN TO WHAT I JUST STATED IN ANSWER TO THE PREVIOUS
10 QUESTION THAT YOU ASKED; THAT I COULDN'T DETERMINE
11 IT DEFINITELY, BUT I DID NOT HAVE PHOTOS THAT
12 COVERED EVERY AREA OF THE ROOM. BUT I HAD
13 SUFFICIENT VIEWS OF THE AREA AROUND THE COUCH TO
14 EXCLUDE THE EXIT SPATTER FROM BEING IN THAT AREA
15 CONSISTENT WITH HIM BEING SEATED IN THAT POSITION.
16 Q NOW, DURING YOUR REVIEW OF THE MATERIAL
17 IN THIS CASE, DID YOU BECOME AWARE OF A PIECE OF
18 TISSUE THAT WAS -- I'LL SHOW YOU WHAT HAS BEEN MARKED
19 AS 299.

20 DID YOU BECOME AWARE OF THE FACT THAT
21 THERE WAS A PIECE OF TISSUE WHICH WAS LOCATED OVER
22 BY THE -- IN THE VICINITY OF THE DOORS GOING INTO THE
23 DEN?

24 A IN REVIEWING TRANSCRIPTS THAT I
25 RECEIVED, I SAW REFERENCE TO WHAT ONE OF THE
26 WITNESSES IDENTIFIED AS A PIECE OF TISSUE ON THE
27 FLOOR TOWARD THE DOOR.

28 Q AND ARE YOU REFERRING TO THE TESTIMONY

42348

1 OF DETECTIVE ZOELLER?

2 A NO. I HAVEN'T READ DETECTIVE ZOELLER'S
3 TESTIMONY.

4 Q OKAY. AND WOULD THAT PIECE OF TISSUE BE
5 CONSISTENT WITH BLOW-OUT FROM ONE OF THE WOUNDS IN
6 THIS CASE?

7 A IF, IN FACT, IT IS A PIECE OF TISSUE --
8 AND I CAN'T IDENTIFY IT AS SUCH FROM THE
9 PHOTOGRAPH -- BUT IF IT IS A SINGLE PIECE OF TISSUE,
10 THAT IS NOT THE TYPE OF PATTERN THAT ONE WOULD
11 OBSERVE FROM AN -- SPATTER FROM AN EXIT WOUND.

12 Q ASSUMING THAT THAT IS A PIECE OF TISSUE,
13 BASED UPON YOUR EXPERIENCE, CAN YOU TELL US HOW THAT
14 PIECE OF TISSUE MIGHT HAVE GOTTEN THERE?

15 MS. ABRAMSON: OBJECTION, YOUR HONOR.
16 IMPROPER HYPOTHETICAL. NO FOUNDATION.

17 THE COURT: REPHRASE THE QUESTION, PLEASE.

18 MR. CONN: YES.

19 Q BASED UPON YOUR EXPERIENCE -- YOU
20 INDICATED THAT THAT WOULD NOT BE CONSISTENT WITH
21 BLOW-OUT?

22 A NO. A BLOW -- THE EXIT SPATTER WOULD NOT
23 APPEAR AS A SINGLE PIECE OF TISSUE. BUT IT WILL
24 APPEAR AS PREDOMINANTLY BLOOD DROPLETS OF A VARIETY
25 OF SIZES, AND THEY WILL BE PROJECTED ON TO SOME
26 SURFACE AS BLOOD DROPS. I WOULD EXPECT TO SEE SOME
27 TISSUE MIXED WITH THE BLOOD DROPS.

28 Q SO YOU WOULD EXPECT THAT IN SEVERE

1 GUNSHOT WOUND YOU COULD HAVE SOME TISSUE BLOWN OUT
2 FROM THE BODY ALONG WITH BLOOD; IS THAT CORRECT?

3 A YES. SUCH AN EXIT WOUND AS THAT SHOULD
4 CARRY SOME TISSUE AS WELL AS BLOOD WITH IT.

5 Q OKAY. AND DO YOU BELIEVE THAT IN THIS
6 CASE, ASSUMING THAT THAT IS TISSUE AND IT IS NOT
7 BLOOD DROPS, WOULD SUCH A LOCATION FOR THAT PIECE OF
8 TISSUE BE CONSISTENT WITH BLOW-OUT?

9 MS. ABRAMSON: OBJECTION, YOUR HONOR. SAME
10 OBJECTION. NO FOUNDATION FOR THE HYPOTHETICAL.

11 THE COURT: ALL RIGHT. IS THERE SOME
12 ASSUMPTION AS TO WHAT THAT PIECE OF MATERIAL IS?

13 MR. CONN: YES. ASSUMING THAT THAT IS A
14 PIECE OF FLESH.

15 MS. ABRAMSON: THAT'S WHAT I'M OBJECTING TO,
16 YOUR HONOR.

17 THE COURT: WHEN YOU SAY FLESH, CAN YOU BE
18 MORE SPECIFIC.

19 MR. CONN: YES. A PIECE OF RED HUMAN FLESH
20 OBSERVED BY THE INVESTIGATING OFFICER.

21 THE COURT: NOT FROM ANY PARTICULAR PART OF
22 THE BODY?

23 MR. CONN: NO.

24 MS. ABRAMSON: STILL OBJECT AS NO FOUNDATION,
25 YOUR HONOR.

26 THE COURT: WELL, WITH THAT GENERALIZED
27 DESCRIPTION, SOME BODY TISSUE OF SOME SORT, IF YOU

42350

1 THE WITNESS: I'LL HAVE TO ASK FOR THE

2 QUESTION TO BE REASKED.

3 MR. CONN: YES.

4 Q ASSUMING THAT WHAT YOU OBSERVED IN THAT

5 PHOTOGRAPH AT THAT LOCATION IS, IN FACT, A PIECE OF

6 HUMAN FLESH, WOULD THE LOCATION OF THAT FLESH BE

7 CONSISTENT WITH BLOW-OUT IN THIS CASE?

8 A I CANNOT IDENTIFY THE EXIT SPATTER AS

9 SUCH FROM ITS LOCATION. I IDENTIFY IT FROM ITS

10 PATTERN. THEN FROM ITS LOCATION I CAN SOMETIMES

11 WORK BACK TO POSSIBLE POSITION OF THE EXIT WOUND

12 RELATIVE TO IT. BUT I DON'T IDENTIFY EXIT SPATTER

13 FROM ITS LOCATION. I IDENTIFY IT FROM ITS PATTERN.

14 Q OKAY. WELL, BASED UPON LOCATION, CAN --

15 DO YOU HAVE ANY IDEA, BASED UPON YOUR EXPERIENCE, AS

16 TO HOW THAT PIECE OF HUMAN FLESH COULD HAVE GOTTEN

17 TO THAT LOCATION?

18 MS. ABRAMSON: YOUR HONOR, I HAVE TO OBJECT

19 AGAIN. FLESH IS --

20 THE COURT: YES. I THINK THE TESTIMONY WAS

21 SOME SORT OF BODY TISSUE WITHOUT ANYTHING MORE

22 SPECIFIC.

23 MR. CONN: WE'LL PROVIDE ADDITIONAL
24 TESTIMONY, YOUR HONOR.
25 MS. ABRAMSON: I'M GOING TO OBJECT TO
26 COUNSEL'S REMARKS AND ASK THAT IT BE STRICKEN.
27 THE COURT: THE REMARK IS STRICKEN. AT THIS
28 POINT I BELIEVE THE TESTIMONY WAS BODY TISSUE.

42351

1 MR. CONN: I UNDERSTAND THAT, YOUR HONOR.
2 MS. ABRAMSON: AT THIS TIME I'D ASK TO
3 APPROACH THE BENCH VIS-A-VIS DISCOVERY.
4 THE COURT: ON THIS PARTICULAR SUBJECT?
5 MS. ABRAMSON: YES.
6 THE COURT: AT THIS POINT, IN REGARD TO THIS
7 WITNESS' TESTIMONY, THE REQUEST IS DENIED.
8 Q BY MR. CONN: ASSUMING THAT THAT IS, IN
9 FACT, A PIECE OF HUMAN FLESH --
10 MS. ABRAMSON: I'M GOING TO MAKE THE SAME
11 OBJECTION, YOUR HONOR. FLESH IS -- I DON'T WANT TO
12 DO A SPEAKING OBJECTION.
13 THE COURT: WE'VE ALREADY BEEN THROUGH THIS.
14 IT'S UNCLEAR WHAT YOU MEAN BY FLESH.
15 MR. CONN: WHAT I'M REFERRING TO IS MEAT FROM
16 THE BODY.
17 MS. ABRAMSON: YOUR HONOR, I'M GOING TO

18 OBJECT TO THAT AS NON-SCIENTIFIC.

19 THE COURT: AGAIN, IF YOU WANT TO IDENTIFY
20 SPECIFICALLY WHAT YOU PROPOSE HERE, THE BEST YOU
21 CAN, ASSUMING THAT -- I'LL LET YOU ASK THE QUESTION.
22 BUT, AGAIN, BE AS SPECIFIC AS YOU CAN.

23 Q BY MR. CONN: ASSUMING THAT WHAT IS
24 OBSERVABLE THERE IS TISSUE, WHICH IS NEITHER HAIR
25 NOR BONE NOR SKIN, BUT MUSCLE, WOULD YOU BE ABLE TO
26 TELL US, BASED UPON YOUR EXPERIENCE, HOW THAT PIECE
27 OF MATERIAL COULD HAVE GOTTEN THERE BASED UPON YOUR
28 OBSERVATIONS OF THE PHOTOS OF THE CRIME SCENE IN

42352

1 THIS CASE?

2 A NO. THAT HYPOTHETICAL ASSUMPTION DOES
3 NOT PROVIDE ME WITH SUFFICIENT INFORMATION TO
4 DETERMINE HOW THAT ITEM GOT THERE.

5 Q AND WOULD YOU EXPECT, BASED UPON YOUR
6 KNOWLEDGE CONCERNING BLOW-OUT, THAT IF A PERSON
7 SEATED IN A POSITION ON THE SOFA WERE SHOT FROM THE
8 INSIDE OF THE LEFT LEG TOWARD THE OUTSIDE OF THE
9 LEFT LEG, THAT THE BLOW-OUT FROM THAT SHOT COULD
10 SEND A PIECE OF THAT LEG, A PIECE OF FLESH, OVER TO
11 THE LOCATION WHERE THAT MATERIAL IS APPARENT IN THE
12 PHOTOGRAPH?

13 A UNDER THE CONDITIONS OF WHAT I OBSERVED
14 HERE, THE ANSWER IS NO, BECAUSE THE REST OF WHAT I
15 WOULD HAVE TO OBSERVE FOR THAT TO BE TRUE IS ABSENT
16 IN THE INTERVENING DISTANCE.

17 Q WELL, DID YOU SEE ANY EVIDENCE -- YOU'VE
18 INDICATED THAT ALL OF THE SHOTS FIRED AT MARY
19 MENENDEZ WERE FIRED, IN YOUR OPINION, WHILE SHE WAS
20 ON THE SOFA OR BETWEEN THE SOFA AND THE COFFEE
21 TABLE; IS THAT CORRECT?

22 A IN THAT AREA, EITHER STANDING OR SITTING
23 ON THE COUCH, OR THE FLOOR IN THE AREA BETWEEN THE
24 TABLE AND THE SOFA.

25 Q OKAY. NOW, DID YOU SEE ANY EVIDENCE,
26 BASED UPON YOUR REVIEW OF THE PHOTOGRAPHS IN THIS
27 CASE, THAT JOSE MENENDEZ EVER MOVED FROM THE
28 LOCATION IN WHICH HE IS DEPICTED IN THAT

42353

1 PHOTOGRAPH?

2 A I ALSO CONFINED HIS LOCATION ONCE THE
3 SHOOTING STARTED, ONCE HE BEGAN BLEEDING, TO BE THE
4 AREA OF THE COUCH AND THE FLOOR BETWEEN THE COUCH
5 AND THE COFFEE TABLE.

6 Q OKAY. THE FLOOR BETWEEN -- LET ME GO TO
7 ANOTHER PHOTOGRAPH NOW.

8 WHEN YOU SAY YOU CONFINED HIS AREA TO
9 THE FLOOR BETWEEN THE COUCH AND THE COFFEE TABLE,
10 LET ME DIRECT YOUR ATTENTION TO WHAT HAS BEEN MARKED
11 AS 37.

12 CAN YOU TELL US SPECIFICALLY, BY
13 REFERENCE TO THAT PHOTOGRAPH, WHAT AREA YOU CONFINED
14 HIS MOBILITY TO.

15 A WOULD YOU LIKE ME TO CIRCLE IT?

16 Q YES, IF YOU WOULD, PLEASE.

17 MS. ABRAMSON: WAS THAT 87, DID YOU SAY?

18 MR. CONN: THAT WAS 37.

19 MS. ABRAMSON: THANK YOU.

20 THE WITNESS: YOU JUST MEAN FOR ME TO CIRCLE
21 THE FLOOR AREA; IS THAT CORRECT?

22 MR. CONN: YES. WHERE YOU CAN FIND HIS AREA
23 OF MOBILITY.

24 I THOUGHT THIS PHOTOGRAPH WOULD BE
25 BETTER. THIS IS 37 HERE.

26 THE WITNESS: ALL RIGHT. I MAY NEED TO LOOK
27 AT SOME OTHER PHOTOGRAPHS TO CAPTURE ALL THE BLOOD
28 STAINS.

42354

1 OKAY, I'VE DRAWN AN AREA EXTENDING,
2 ESSENTIALLY, ADJACENT TO THE AREA PREVIOUSLY CIRCLED

3 ON THIS PHOTOGRAPH, EXTENDING FROM THE RIGHT EDGE OF
4 THE FIRST COUCH CUSHION OR A LITTLE BEYOND,
5 ENCOMPASSING THE AREA TO THE COFFEE TABLE AND
6 EXTENDING ACROSS TO AN AREA JUST LEFT OF THE COUCH.

7 Q OKAY. THANK YOU.

8 AND YOU LIMITED IT TO THAT AREA BECAUSE
9 YOU OBSERVED NO EVIDENCE OF BLOOD FROM JOSE MENENDEZ
10 IN THIS AREA THAT I AM NOW POINTING TO, WHICH IS THE
11 LEFT-HAND CORNER OF 37; IS THAT CORRECT?

12 A I DID NOT OBSERVE BLOOD SPATTER IN THAT
13 AREA. I WASN'T ABLE TO DETERMINE SPECIFICALLY WHOSE
14 BLOOD WAS IN MOST LOCATIONS.

15 Q NOW, GIVEN THE FACT THAT YOU LIMIT THE
16 MOBILITY OF KITTY MENENDEZ TO THE AREA THAT YOU
17 INDICATED, AND GIVEN THE FACT THAT YOU LIMITED THE
18 MOBILITY OF JOSE MENENDEZ TO THE AREA THAT YOU
19 INDICATED, DO YOU HAVE ANY OPINION CONCERNING HOW
20 THAT MATERIAL, WHICH WAS PREVIOUSLY IDENTIFIED AS A
21 PIECE OF TISSUE, MAY HAVE ENDED UP BY THE DOOR?

22 A FROM THE INFORMATION GIVEN TO ME, WHICH
23 IS IN THE HYPOTHETICAL THAT YOU GAVE, I DO NOT HAVE
24 SUFFICIENT INFORMATION TO DRAW ANY CONCLUSIONS
25 REGARDING THAT.

26 Q DO YOU KNOW OF ANY TYPE OF PROFESSIONAL,
27 OTHER THAN YOURSELF, WHO CAN SHED SOME LIGHT ON HOW
28 THAT TYPE OF BODY PART COULD HAVE ENDED UP OVER BY

1 THE DOOR?

2 A BASED UPON THE INFORMATION THAT YOU GAVE
3 ME, I WOULD THINK NOT.

4 Q NOW, YOU SAID THAT JOSE MENENDEZ WAS NOT
5 IN THE POSITION WHICH HE NOW APPEARS IN THE
6 PHOTOGRAPH AT THE TIME THAT THE WOUND TO THE LEFT
7 ELBOW WAS RECEIVED; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND WHAT DO YOU MEAN BY THAT?

10 A THE WOUND AREA IN THE LEFT ELBOW IS
11 BELOW THE ARM OF THE COUCH. FOR HIM TO HAVE BEEN IN
12 THAT POSITION WOULD HAVE REQUIRED THE PELLETS
13 PENETRATING THE COUCH, AND I COULD SEE NO EVIDENCE
14 IN THE PHOTOGRAPHS THAT THE WOUNDS IN HIS LEFT ELBOW
15 CAME THROUGH THE COUCH. THEREFORE, THE ELBOW MUST
16 HAVE BEEN POSITIONED DIFFERENTLY.

17 Q OKAY. SO IF AT THE TIME THAT SHOT WAS
18 RECEIVED HIS -- HE WAS SEATED ON THE SOFA, BUT HIS
19 ELBOW WAS IN A RAISED POSITION, WOULD THAT ACCOUNT
20 FOR THAT WOUND?

21 A THAT WOULD BE A PERMITTED
22 CONFIGURATION.

23 Q OKAY. NOW, AFTER MAKING THE
24 OBSERVATIONS IN YOUR 1993 REPORT THAT HE WAS NOT IN
25 THE POSITION IN WHICH HE APPEARS AT THE TIME THOSE

26 WOUNDS WERE RECEIVED, YOU THEN STATE, DO YOU NOT, IN
27 THE SECOND -- IN THE NEXT SENTENCE, THAT HE WAS
28 EITHER SITTING ON THE WEST END OF THE COUCH,

42356

1 STANDING IN FRONT, OR MOVING BETWEEN A SITTING AND A
2 STANDING POSITION; IS THAT CORRECT?

3 A YES, AT THE TIME THAT THE WOUNDS WERE
4 RECEIVED. THAT'S COLLECTIVELY ALL OF THOSE WOUNDS.

5 Q OKAY. SO WERE YOU SAYING IN THIS
6 SENTENCE THAT HE COULD HAVE BEEN SEATED AT THE TIME
7 THAT ALL OF THE WOUNDS WERE RECEIVED?

8 A NO, I DON'T BELIEVE THAT'S THE CASE.

9 Q OKAY. CAN YOU TELL US WHY YOU CHOSE THE
10 LANGUAGE, "HE WAS EITHER SITTING ON THE WEST END OF
11 THE COUCH, STANDING IN FRONT OR MOVING BETWEEN A
12 SITTING AND STANDING POSITION"?

13 A YES. THAT WAS BASED UPON THE QUESTION
14 THAT WAS ADDRESSED TO ME AS TO WHETHER THERE WAS
15 EVIDENCE OF CONFRONTATION. AND IN ORDER TO PROVIDE
16 INFORMATION THAT MIGHT PERMIT ARGUMENT TO ADDRESS
17 THAT, I SOUGHT TO CONFINE THE AREA OF HIS MOVEMENT
18 DURING THE COURSE OF THE SHOOTING.

19 FOR THAT PURPOSE, I DID NOT GO INTO
20 GREATER DETAIL SHOT BY SHOT IN MY REPORT.

21 Q ALTHOUGH IN YOUR REPORT YOU DID INDICATE
22 THAT THE STATED PURPOSE WAS TO RECONSTRUCT THE
23 LOCATIONS AND POSITIONS AT THE TIME THE WOUNDS WERE
24 RECEIVED; IS THAT CORRECT?

25 A YES.

26 Q AND NOW YOU'RE -- WHAT YOU ARE SAYING IS
27 THAT BACK IN 1993 YOU WERE OF THE POSITION THAT HE
28 WAS NOT SEATED AT THE TIME THESE WOUNDS, ALL THE

42357

1 WOUNDS WERE RECEIVED, YOU DID NOT STATE THAT IN YOUR
2 REPORT?

3 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

4 THE COURT: OVERRULED.

5 THE WITNESS: WITH REGARD TO ONE SPECIFIC
6 WOUND, I DON'T BELIEVE HE COULD HAVE BEEN SEATED AT
7 THE TIME.

8 WITH REGARD TO THE -- AND THAT'S THE LEG
9 WOUND.

10 WITH REGARD TO THE OTHER WOUNDS, THE
11 HEAD WOUND AND THE WOUNDS TO BOTH ARMS, I CANNOT
12 EXCLUDE HIM BEING SEATED AT THE TIME.

13 Q BY MR. CONN: NOW, YOU SAID THAT YOUR
14 NEXT CONCLUSION IN YOUR '93 REPORT IS THAT HE WAS,
15 FOR A TIME, AFTER RECEIVING THE WOUND TO HIS HEAD,

16 SITTING ON THE COUCH LEANING FURTHER FORWARD AND

17 MORE TO HIS RIGHT THAN IS SHOWN IN THE PHOTOGRAPHS;

18 IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q AND THE REASON FOR THAT CONCLUSION IS

21 BECAUSE OF THE POOLING OF BLOOD THAT YOU OBSERVED ON

22 THE SOFA?

23 A ACTUALLY, BLOOD FLOW ON THE SOFA.

24 Q OKAY. LET ME GO TO THE OTHER

25 PHOTOGRAPHS.

26 THE BLOOD FLOW THAT YOU'RE REFERRING TO

27 IS THIS BLOOD FLOW THAT APPEARS ALONG HIS RIGHT

28 SIDE?

42358

1 A YES. AND, ACTUALLY, OVER THE EDGE OF

2 THE SOFA AND DOWN INTO THE CREVICE BETWEEN THE TWO

3 CUSHIONS.

4 Q OKAY. AND YOU CONCLUDED AT THE TIME

5 THAT BECAUSE THERE WAS A BLOOD FLOW OVER THE CUSHION

6 OF THE SOFA, THAT, THEREFORE, HIS HEAD HAD TO HAVE

7 BEEN ABOVE THAT POSITION AT THE TIME OF THAT BLOOD

8 FLOW?

9 A YES.

10 Q YOU ARE AWARE OF THE FACT THAT HE ALSO

11 RECEIVED SOME WOUNDS TO HIS RIGHT ARM?

12 A YES, I AM.

13 Q AND CAN YOU -- CAN YOU DETERMINE FROM

14 LOOKING AT THE PHOTOGRAPHS WHETHER THE BLOOD FLOW

15 THAT YOU'RE REFERRING TO THERE CAME FROM HIS HEAD OR

16 FROM HIS RIGHT ARM?

17 A I DO HAVE AN OPINION ON THAT BASED UPON

18 THE QUANTITY OF THE BLOOD THAT I OBSERVED THERE.

19 Q AND THAT OPINION IS WHAT?

20 A THAT THAT QUANTITY OF BLOOD IS MORE

21 CONSISTENT WITH HIS HEAD WOUNDS, SINCE HEAD WOUNDS

22 BLEED MUCH MORE PROFUSELY THAN WOUNDS TO OTHER PARTS

23 OF THE BODY, BECAUSE OF THE GREATER BLOOD SUPPLY.

24 Q WHAT IS THE QUANTITY OF BLOOD THAT

25 POOLED ON THE CUSHION THERE?

26 A IN TERMS OF A VOLUME MEASUREMENT?

27 Q YES.

28 A I CANNOT MEASURE THE EXACT VOLUME. I'M

42359

1 MAKING THAT AS A RELATIVE AMOUNT OF BLOOD. THE

2 APPEARANCE IS A SUBSTANTIAL QUANTITY OF BLOOD TO

3 HAVE FLOWED DOWN OVER THE EDGE OF THE COUCH AND ALSO

4 DOWN UNDER HIS BODY. THERE COULD BE SOME

5 CONTRIBUTION FROM THE ARM WOUND, BUT THE GENERAL

6 AMOUNT APPEARS TO BE TOO GREAT TO BE CONSISTENT WITH
7 THAT ALONE.

8 Q OKAY. NOW, ARE YOU AWARE OF THE SIZE OF
9 THE WOUND THAT HE RECEIVED TO THAT ARM?

10 A I'VE SEEN PHOTOGRAPHS OF IT, YES, AND
11 READ THE AUTOPSY PROTOCOL.

12 Q AND IT WAS A RATHER LARGE WOUND THAT HE
13 RECEIVED TO HIS RIGHT ARM; IS THAT CORRECT?

14 A IT WAS A THROUGH-AND-THROUGH SHOTGUN
15 WOUND. IT WAS --

16 Q IS IT YOUR OPINION, THEN, THAT A
17 THROUGH-AND-THROUGH SHOTGUN WOUND TO THE ARM COULD
18 NOT LEAVE ENOUGH BLOOD ON THE SURFACE OF THAT
19 CUSHION SUCH THAT IT MIGHT HAVE FLOWED DOWN IN
20 BETWEEN THE TWO CUSHIONS?

21 A IT WOULD REQUIRE SOME TIME FOR THAT TO
22 HAVE OCCURRED WITH HIM STILL ALIVE FOR THAT TO HAVE
23 HAPPENED. IT -- AGAIN, IT'S THE IMPRESSION -- THE
24 QUANTITY OF BLOOD APPEARS GREATER THAN I WOULD
25 ACCOUNT FOR WITH THE ARM WOUND ALONE. THEREFORE, I
26 BELIEVE THE HEAD WOUND CONTRIBUTED TO THAT BECAUSE
27 OF THE QUANTITY.

28 Q WELL, WHEN YOU CONSIDER THE QUANTITY OF

1 BLOOD, ARE YOU ALSO CONSIDERING THE AMOUNT OF BLOOD
2 WHICH IS ON THE SOFA ON THE CUSHION AND HAS NOT
3 SEEPED OVER IN BETWEEN THE TWO CUSHIONS?

4 A I'M LOOKING AT THE TOTAL BLOOD POOL.

5 Q OKAY. THAT TOTAL BLOOD POOL CAN CONSIST
6 OF BOTH BLOOD FROM HIS RIGHT ARM AND BLOOD FROM HIS
7 HEAD, CAN'T IT?

8 A VERY PROBABLY SO.

9 Q IS THERE ANY WAY FOR YOU TO DISTINGUISH
10 HOW MUCH OF THAT PARTICULAR BLOOD POOL CAME FROM HIS
11 RIGHT ARM OR CAME FROM HIS HEAD?

12 A NO. I CAN'T DIVIDE OUT THE BLOOD IN
13 SPECIFIC VOLUMES OF HOW MUCH IS HEAD WOUND OR HOW
14 MUCH IS ARM WOUND; NOR CAN I IN THE SURFACE AREA.

15 Q ISN'T IT POSSIBLE THAT A GREAT AMOUNT OF
16 THIS BLOOD WHICH APPEARS ON THE TOP OF THE CUSHION
17 COULD HAVE COME FROM HIS HEAD WOUND AND ONLY THAT
18 PORTION SPILLING OVER IN BETWEEN THE CUSHIONS CAME
19 FROM HIS ARM WOUND?

20 A AS I SAID, THE TOTAL VOLUME OF BLOOD
21 THAT'S OVER THE EDGE OF THE COUCH AND BETWEEN THE --
22 OR OVER THE EDGE OF THE CUSHION AND BETWEEN THE
23 CUSHIONS IS GREATER THAN I WOULD EXPECT FROM THE ARM
24 WOUND ALONE. I WOULD EXPECT THE HEAD WOUND TO HAVE
25 CONTRIBUTED TO THAT.

26 Q OKAY. I'LL SHOW YOU WHAT HAS BEEN
27 MARKED AS 183.

28 AND YOU'RE AWARE -- YOU'VE SEEN THAT

1 PHOTOGRAPH BEFORE?

2 A YES, I HAVE.

3 Q AND YOU'RE AWARE THAT THAT'S A
4 PHOTOGRAPH WHICH DEPICTS THE INJURY TO HIS RIGHT
5 ARM?

6 A YES.

7 Q AND GIVEN THE FACT THAT YOU CANNOT --
8 WELL, CAN YOU TELL US HOW MUCH BLOOD ACTUALLY SEEPED
9 OVER -- IN VOLUME, HOW MUCH BLOOD ACTUALLY SEEPED
10 OVER AND BETWEEN THE CUSHION?

11 A NO. AGAIN, I DIDN'T MAKE ANY EFFORT TO
12 DO THE EXPERIMENTS THAT WOULD BE REQUIRED TO
13 SPECIFICALLY ESTIMATE THE VOLUME. IT WAS AN
14 IMPRESSION BASED UPON THE RELATIVE QUANTITY THAT I
15 OBSERVED THERE.

16 Q SO HAVE YOU EXCLUDED THE POSSIBILITY
17 THAT WHAT HAPPENED HERE WAS THAT HE WAS SHOT IN THE
18 ARM AND JUST THE BLOOD FROM HIS ARM SEEPED DOWN IN
19 BETWEEN THE CUSHIONS AND THE REST OF THE BLOOD WHICH
20 WE SEE THERE ON THE SURFACE OF THE CUSHION IS BLOOD
21 FROM HIS HEAD?

22 A YES. BASED UPON THE QUANTITIES THAT ARE
23 THERE IN THAT POOL, I DON'T BELIEVE THAT'S LIKELY.

24 Q RIGHT. BUT HAVE YOU EXCLUDED IT?

25 A ABSOLUTELY EXCLUDED, PERHAPS NOT. I
26 CONSIDER IT HIGHLY UNLIKELY.
27 Q NOW, IN YOUR THIRD SENTENCE OF THE SAME
28 PARAGRAPH OF THE CONCLUSIONS THAT YOU REACHED

42362

1 CONCERNING JOSE MENENDEZ IN '93, I BELIEVE YOU SAID
2 THAT HE WAS SUBSEQUENTLY MOVED TO HIS FINAL POSITION
3 EITHER BY ANOTHER PERSON OR BY THE SHOTS FIRED INTO
4 HIS RIGHT ARM; IS THAT CORRECT?

5 A THAT'S WHAT I STATED IN MY REPORT.

6 Q WHAT DID YOU MEAN BY THAT?

7 A THAT SINCE HE WAS FURTHER FORWARD AND TO
8 HIS RIGHT AT ONE TIME AFTER RECEIVING THE HEAD
9 WOUND, HE WAS NOT CAPABLE OF VOLUNTARILY MOVING TO
10 ANOTHER POSITION BECAUSE THE HEAD WOUND WAS
11 IMMEDIATELY AND TOTALLY INCAPACITATING; THAT SOME
12 OTHER AGENCY CAUSED HIM TO BE MOVED TO THE FINAL
13 POSITION.

14 AT THAT TIME, I ATTRIBUTED IT RATHER
15 GENERALLY TO EITHER ADDITIONAL SHOTGUN WOUNDS OR THE
16 ACT OF ANOTHER PERSON.

17 IN RETROSPECT, I WOULD PROBABLY LIMIT IT
18 JUST TO THE ACT OF ANOTHER PERSON. I SUSPECT THAT
19 THE ADDITIONAL SHOTGUN WOUNDS ARE AN UNLIKELY

20 POSSIBILITY.

21 Q SO YOU BELIEVE THAT HE WAS PERHAPS

22 PUSHED BACK INTO THAT POSITION?

23 A WELL, THAT COULD HAVE HAPPENED OR THE

24 COUCH COULD HAVE BEEN BUMPED, WHICH WOULD CAUSE

25 SUFFICIENT MOTION TO CAUSE HIM TO SETTLE BACK.

26 Q OKAY. NOW, I BELIEVE THAT YOU STATED IN

27 YOUR DIRECT EXAMINATION THAT YOU RESPECT THE WORK OF

28 DR. GOLDEN; IS THAT WHAT YOU SAID?

42363

1 A I DON'T RECALL HOW I WORDED IT, BUT I

2 GENERALLY HAVE GOOD REGARD FOR HIS SKILLS AS A

3 FORENSIC PATHOLOGIST. I'VE WORKED WITH HIM ON A

4 NUMBER OF OCCASIONS.

5 Q AND YOU ARE SUFFICIENTLY FAMILIAR WITH

6 THE BODY OF WORK BY DR. GOLDEN TO MAKE THAT REMARK?

7 A BY "THE BODY OF WORK," IF YOU MEAN ALL

8 THE CASES HE HAS DONE, NO. I HAVE WORKED WITH HIM

9 ON A NUMBER OF CASES, AND BASED UPON MY EXPERIENCES

10 WITH HIM, HAVE GOOD REGARD, GENERALLY, FOR HIS

11 SKILLS AS A FORENSIC PATHOLOGIST.

12 Q ARE YOU FAMILIAR WITH THE CRITICISMS

13 THAT WERE LEVELED AGAINST DR. GOLDEN IN CONNECTION

14 WITH THE O.J. SIMPSON CASE?

15 MS. ABRAMSON: OBJECTION, YOUR HONOR.

16 IRRELEVANT. HEARSAY.

17 THE COURT: WELL, THE WITNESS HAS NOT

18 TESTIFIED ABOUT REPUTATION, ONLY HIS OWN PERSONAL

19 OPINION BASED UPON HIS EXPERIENCES WITH DR. GOLDEN.

20 OBJECTION SUSTAINED.

21 Q BY MR. CONN: BASED UPON YOUR REVIEW OF

22 THE CORONER'S REPORTS, DID YOU RECEIVE ALL OF THE

23 AMENDMENTS TO THE CORONER'S REPORTS?

24 A NO, I DID NOT.

25 Q WHAT DID YOU REVIEW THEN?

26 A I REVIEWED THE ORIGINAL CORONER'S REPORT

27 AT THE TIME THAT I DID MY RECONSTRUCTION.

28 Q DID YOU KNOW THAT SINCE 1993 DR. GOLDEN

42364

1 AMENDED HIS REPORT?

2 A YES. I'M AWARE THAT THERE HAVE BEEN

3 AMENDMENTS.

4 Q AND HAVE YOU ASKED TO SEE A COPY OF

5 THOSE REPORTS?

6 A NO, I HAVE NOT.

7 Q DID YOU FEEL THAT THAT MIGHT BE HELPFUL

8 TO ANY OF YOUR TESTIMONY HERE IN COURT?

9 A NO. WITHIN THE CONFINES OF THE OPINIONS

10 THAT I REACHED, THE ISSUES THAT WERE BEING DISCUSSED
11 WOULD HAVE NOT BEEN RELEVANT TO THE -- DEFINING MY
12 CONCLUSIONS.

13 Q NOW, IN REGARD TO THE LEG WOUND TO JOSE
14 MENENDEZ, I BELIEVE THAT YOU SAID THAT YOU OBSERVED
15 SOME BLOOD DROPS ON THE FLOOR NEAR THAT LEG WOUND;
16 IS THAT CORRECT?

17 A YES. THERE IS, IN FACT, A POOL OF BLOOD
18 ON THE FLOOR UNDERNEATH THE LEG WOUND AND THERE ARE
19 SOME BLOOD DROPS THAT APPEAR TO HAVE BEEN DRIPPING
20 STRAIGHT DOWN DUE TO THE FORCE OF GRAVITY IN THE
21 AREA NEAR THAT BLOOD POOL.

22 Q OKAY. NOW, THOSE BLOOD DROPS ALONE DO
23 NOT TELL YOU THAT JOSE MENENDEZ WAS STANDING AT THE
24 TIME THAT THE SHOT TO THE LEG WAS RECEIVED, DOES
25 IT?

26 A NO, THEY DON'T.

27 Q OKAY. AND WHY IS IT THAT THEY DO NOT
28 ALLOW YOU TO DRAW THAT CONCLUSION?

42365

1 A THEY COULD HAVE DRIPPED FROM THAT WOUND
2 WITH THE LEG MOVED TO A SLIGHTLY DIFFERENT POSITION;
3 OR THEY COULD HAVE DRIPPED FROM ANOTHER WOUND. I
4 CANNOT DETERMINE THE PRECISE SOURCE ON THE BODY FROM

5 WHENCE THEY CAME.

6 Q AND HOW FAR FROM THE SOFA DID YOU
7 OBSERVE THAT -- THE DRIPPING OF THAT WOUND?

8 A AGAIN, THERE ARE NO SCALES IN THE
9 PHOTOGRAPHS I OBSERVED, SO I CAN MAKE NO
10 MEASUREMENTS.

11 Q AND ARE ALL OF THOSE -- ARE ALL OF THOSE
12 DROPS THAT YOU SEE THERE CONSISTENT WITH -- WELL,
13 BOTH -- REFERRING BOTH TO THE DROPS, THE SEPARATE
14 DROPS OF BLOOD, AS WELL AS THE SMALL POOL OF BLOOD
15 THAT YOU SEE THERE, IS THAT ALL CONSISTENT WITH
16 BLEEDING FROM THAT WOUND?

17 A I CAN'T EXCLUDE ALL OF THAT BLOOD FROM
18 HAVING COME FROM THAT SINGLE WOUND. I JUST CAN'T
19 CONCLUDE THAT IT NECESSARILY MUST HAVE.

20 Q NOW, ASSUMING THAT THE SHOT TO THE BACK
21 OF THE HEAD OF JOSE MENENDEZ, WHICH YOU TESTIFIED
22 WOULD CREATE SOME SORT OF A SPATTER, DO YOU MEAN, BY
23 THE USE OF THAT TERM, BLOW-BACK FROM THAT HEAD
24 WOUND?

25 A YES. IT'S A LITTLE BIT DIFFERENT FROM A
26 CONFINED ENTRY WOUND. A SINGLE PROJECTILE CAUSES AN
27 ENTRY WOUND WHERE YOU CAN GET A DIFFERENT KIND OF
28 BLOW-BACK IN SOME CASES THAN WOULD BE EXPECTED OR --

1 AND WAS OBSERVED HERE FROM THE ESCAPE OF GASES FROM
2 THE CONTACT WOUND TO THE HEAD. SO IT'S A DIFFERENT
3 KIND OF BLOW-BACK THAN JUST FROM A SINGLE PROJECTILE
4 ENTRY.

5 Q WELL, BASED UPON YOUR REVIEW OF THE
6 PHOTOGRAPHS, HOW MUCH OF A BLOW-BACK OR HOW MUCH OF
7 A SPATTER WOULD YOU ANTICIPATE FROM THAT HEAD
8 WOUND?

9 A THE ONE THAT HE RECEIVED, I WOULD HAVE
10 EXPECTED IT TO BE RATHER EXTENSIVE.

11 Q WHAT DO YOU MEAN BY EXTENSIVE?

12 A THERE SHOULD BE A SIGNIFICANT AMOUNT OF
13 BLOOD, AND IN THIS CASE TISSUE, THAT WAS PROJECTED
14 UPON THE WOUND.

15 Q LET ME SHOW YOU SOME OF THE EXHIBITS
16 THAT WERE SHOWN TO YOU BY DEFENSE COUNSEL.

17 I WANT TO DIRECT YOUR ATTENTION, FIRST,
18 TO THE EXHIBIT THAT IS MARKED 304.

19 I BELIEVE THAT YOU SAID THAT YOU
20 OBSERVED IN REGARD TO THE PHOTOGRAPHS OF THE WOUND
21 TO THE LEFT LEG OF JOSE MENENDEZ SMEARING -- I'M
22 SORRY -- I BELIEVE THAT YOU SAID IN RELATIONSHIP TO
23 THE RIGHT LEG YOU OBSERVED SOME SMEARING AND THAT
24 WOULD BE HERE IN PHOTOGRAPH B ALONG HIS RIGHT LEG;
25 IS THAT CORRECT?

26 A YES. I WAS ASKED ABOUT THAT PARTICULAR
27 BLOOD SMEAR.

42367

1 CAUSE THAT PARTICULAR SMEARING THAT YOU'RE REFERRING
2 TO THERE?

3 A I COULD GIVE YOU SOME POSSIBILITIES, BUT
4 I CANNOT TELL YOU SPECIFICALLY WHAT DID CAUSE IT.

5 Q OKAY. CAN YOU TELL US WHAT THOSE
6 POSSIBILITIES WOULD BE?

7 A IT COULD COME FROM EITHER ONE OR BOTH OF
8 HIS HANDS. THERE IS BLOOD ON THE HANDS. IT COULD
9 COME FROM SOME OTHER CONFIGURATION OF THE LEGS
10 RELATIVE TO EACH OTHER THAN JUST BRINGING THE THIGHS
11 TOGETHER, SINCE THE COMPANION SMEAR APPEARS TO BE
12 ABSENT IN THE OPPOSITE AREA OF THE LEFT LEG.

13 IT COULD HAVE COME FROM SOME SECONDARY
14 TRANSFER FROM SOME OTHER BLOOD-CONTAMINATED OBJECT
15 SUCH AS THE COUCH. THERE ARE SOME CONCEIVABLE
16 RELATIVE POSITIONS THERE.

17 IT'S JUST THAT THERE ARE SO MANY
18 POSSIBILITIES THAT I CAN'T REALLY CONCLUDE HOW THAT
19 BLOOD WAS TRANSFERRED AND SMEARED.

20 Q AND YOU CAN'T TELL US WHICH WOUND TO THE
21 BODY OF JOSE MENENDEZ CAUSED THAT SMEAR, CAN YOU?

22 A NO, I CAN'T.

23 Q OKAY. AND THAT WOULD -- THE SMEAR THAT
24 YOU SEE THERE WOULD BE CONSISTENT, FOR EXAMPLE, WITH
25 JOSE MENENDEZ BEING SHOT IN HIS RIGHT ARM AND THEN
26 TOUCHING HIS LEG AFTER HE TOUCHED HIS RIGHT ARM; IS
27 THAT CORRECT?

28 A I CAN'T EXCLUDE THAT AS A POSSIBILITY.

42368

1 Q LET ME SHOW YOU ANOTHER PHOTOGRAPH. I'M
2 SHOWING YOU WHAT HAS BEEN MARKED AS 319.
3 NOW, HERE YOU TESTIFIED IN REGARD TO
4 SOME SMEARS ON THE SOFA THAT APPEARS IN PHOTOGRAPHS
5 A AND B; IS THAT CORRECT?

6 A YES.

7 Q AND YOU SAID THAT THOSE MARKS WHICH YOU
8 OBSERVED THERE ARE CONTACT TRANSFERS; IS THAT
9 CORRECT?

10 A YES, THEY ARE.

11 Q AND NOW THE PHOTOGRAPHS OF KITTY
12 MENENDEZ DEPICT HER VERY CLOSE TO THAT PARTICULAR
13 SMEAR LOCATION; IS THAT CORRECT?

14 MS. ABRAMSON: OBJECTION, YOUR HONOR.
15 ASSUMES FACTS NOT IN EVIDENCE.

16 THE COURT: OVERRULED.

17 THE WITNESS: IN THE PHOTOGRAPH SHOWING HER

18 FINAL POSITION, PORTIONS OF HER BODY ARE ON THE
19 FLOOR IN FRONT OF AND UNDERNEATH THAT AREA OF
20 CONTACT TRANSFER.

21 Q BY MR. CONN: SO WHAT WOULD YOU ESTIMATE
22 TO BE THE DISTANCE IN PHOTOGRAPH 329 BETWEEN THE
23 LEFT HIP AREA OF KITTY MENENDEZ AND THAT AREA OF
24 CONTACT TRANSFER THAT YOU'RE REFERRING TO?

25 A WHICH ONE SPECIFICALLY? THERE ARE
26 SEVERAL.

27 Q WELL, THE --

28 A THE CLOSEST ONE?

42369

1 Q YES. I'M REFERRING TO THE -- THIS ONE
2 HERE, THIS LARGE AREA THAT APPEARS TO HAVE CONTACT
3 TRANSFER BOTH ON THE BOTTOM OF THE SOFA AND THEN AS
4 WELL AS THE UPPER CUSHION.

5 A AGAIN, WITHOUT SCALES, IT WOULD BE JUST
6 A VERY ROUGH ESTIMATE THAT I COULD PROVIDE. BUT
7 FROM THE APPEARANCES, IT APPEARS TO BE IN THE
8 NEIGHBORHOOD OF A FOOT OR PERHAPS A LITTLE LESS.

9 Q OKAY. AND WOULD THAT CONTACT TRANSFER
10 BE CONSISTENT WITH KITTY MENENDEZ AFTER SHE HAS BEEN
11 SHOT LYING ON THE FLOOR BRUSHING HER LEFT HIP UP
12 AGAINST THE SIDE OF THE SOFA?

13 A SHE -- PORTIONS OF IT COULD RESULT FROM
14 THAT. IT WOULD REQUIRE MORE THAN JUST A RAISING OF
15 THE BODY TO DEPOSIT THE CONTACT TRANSFERS THAT
16 APPEAR ON THE TOP SURFACE OF THE COUCH.

17 Q LET ME PUT UP THE LARGE PHOTOGRAPH OF
18 THE SOFA ONCE AGAIN.

19 ALL RIGHT. NOW, YOU'RE SAYING THAT
20 THERE ARE PORTIONS OF THIS STAIN HERE, WHICH IS
21 PHOTOGRAPH B IN 319, WOULD BE CONSISTENT WITH KITTY
22 MENENDEZ BRUSHING UP AGAINST THAT SOFA AFTER SHE HAD
23 BEEN SHOT; IS THAT CORRECT?

24 A ALL OF THEM ARE CONSISTENT WITH HER AT
25 SOME POINT, AFTER SHE BEGINS BLEEDING, BRUSHING THE
26 RESPECTIVE AREAS OF THE SOFA WHERE THE CONTACT
27 TRANSFERS APPEAR.

28 Q OKAY. SO ALL OF THE STAINS THAT YOU SEE

42370

1 ON THAT CUSHION AND ON THAT SOFA ARE CONSISTENT WITH
2 KITTY MENENDEZ BRUSHING UP AGAINST IT AFTER SHE HAS
3 FALLEN TO THE FLOOR; IS THAT CORRECT?

4 A IF SHE GOT BACK UP AFTER SHE FELL TO THE
5 FLOOR, THEN THAT'S CONSISTENT. NOT ALL OF IT IS
6 ACCESSIBLE TO HER ONCE SHE'S DOWN ON THE FLOOR
7 SIMPLY BY ELEVATING THE BODY. SHE WOULD HAVE HAD TO

8 HAVE GOTTEN UP TO SOME GREATER EXTENT TO HAVE

9 DEPOSITED THE BLOOD ON THE TOP SURFACE.

10 Q RIGHT. ALTHOUGH SOME OF THE SURFACES ON
11 THE TOP SURFACE ARE CONSISTENT WITH HER TOUCHING THE
12 SURFACE WITH HER HAND; IS THAT CORRECT?

13 A WE -- YES, I CAN'T TELL YOU WHAT PORTION
14 OF HER BODY, IF IT WAS, IN FACT, HER BODY, THAT
15 CREATED ANY OF THAT CONTACT TRANSFER.

16 Q RIGHT. SO YOU CAN'T SAY JUST FROM
17 LOOKING AT THE SMEARS ON THE SOFA THAT SHE WAS
18 NECESSARILY ON THE SOFA AT THE TIME THAT ANY OF
19 THESE SHOTS WERE FIRED, CAN YOU?

20 A THAT IS CORRECT. I CAN'T SAY THAT.

21 Q OKAY. NOW, YOU ALSO INDICATED THAT
22 THERE WAS BLOOD AND TISSUE WHICH WAS -- WHICH WERE
23 SPATTERED ON THE WALLS AND THE CEILING?

24 A YES.

25 Q AND HOW DO YOU KNOW IT WAS TISSUE?

26 A BY THE IRREGULAR CONFIGURATION OF THE
27 SPATTERED DROPS. THEY HAD THE SAME CONFIGURATION I
28 HAVE SEEN IN OTHER CASES WITH SPATTERED TISSUE,

42371

1 WHERE I WAS ABLE TO OBSERVE THE ACTUAL DROP MORE

2 CLOSELY AND SEE THAT THE IRREGULAR SHAPE WAS CAUSED

3 BY A MIXTURE OF BLOOD AND TISSUE. IT HAD THAT
4 APPEARANCE, AND FROM THE PHOTOGRAPHS I RECOGNIZED
5 THE PATTERN; AND UNDER THE CIRCUMSTANCES HERE, WITH
6 THE HEAD WOUND THAT MR. MENENDEZ HAD RECEIVED,
7 CONCLUDED THAT THAT WAS WHAT CREATED THOSE DROPS
8 WITH THAT PARTICULAR REGULAR CONFIGURATION.

9 Q OKAY. AND WHERE INSIDE THE ROOM DID YOU
10 OBSERVE THE BLOOD AND TISSUE SPATTER?

11 A THEY WERE PREDOMINANTLY ON THE SOUTH
12 WALL. THERE WAS -- DISTRIBUTED ON TO OTHER WALLS
13 AND ON THE CEILING. AND THERE WAS ADDITIONAL DROPS
14 ON THE FLOOR BEHIND THE COUCH AS WELL.

15 Q WHEN YOU SAY OTHER WALLS, ARE YOU SAYING
16 THAT THERE WAS BLOOD OR TISSUE ON THE WEST WALL OR
17 THE EAST WALL?

18 A I WOULD HAVE TO REVIEW THE PHOTOGRAPHS
19 AGAIN AT THIS POINT TO SEE WHETHER THE PARTICULAR
20 DROPS THAT CONTAINED BOTH BLOOD AND TISSUE EXTENDED
21 ON TO THE WEST AND EAST WALLS. THERE WAS SPATTER
22 THAT EXTENDED ON TO THE WALLS.

23 Q THERE WAS WHAT?

24 A THERE WAS SPATTER THAT EXTENDED ON TO
25 THE OTHER WALLS.

26 Q WOULD THAT ASSIST YOU IN ANY WAY, THAT
27 IS, THE VARIOUS LOCATIONS OF THE BLOOD AND TISSUE,
28 ASSIST YOU IN ANY WAY IN DETERMINING, AS YOU SET OUT

1 TO DO IN YOUR '93 REPORT, TO RECONSTRUCT THE
2 LOCATIONS AND POSITIONS OF THE INFLICTION OF THE
3 SHOTGUN WOUNDS IN THIS CASE?

4 A IT DID, IN FACT, ASSIST ME. THAT WAS
5 PART OF THE FOUNDATION I USED FOR THE CONCLUSION I
6 DID REACH; THAT -- IN CONFINING HIM TO THAT
7 LOCATION.

8 WHAT I LOOKED FOR THERE WAS TO SEE IF
9 THERE WAS ANY OF THE PROJECTED SPATTERED BLOOD THAT
10 WAS INCONSISTENT WITH THAT LOCATION, SINCE THE
11 CHARACTERISTICS OF THOSE DROPS WEREN'T ADEQUATE FOR
12 ME TO DO SPECIFIC ANGLE MEASUREMENTS, AND THE
13 PHOTOGRAPHS WERE NOT ADEQUATE FOR THAT PURPOSE
14 EITHER. I WAS UNABLE TO CONFINE HIS LOCATION
15 WITHOUT EVIDENCE. WHAT I LOOKED FOR WAS ANY OF THAT
16 INCONSISTENT WITH THE OTHER EVIDENCE CONFINING HIS
17 LOCATION TO THE AREA IN FRONT OF THE COUCH AND IT
18 WAS NOT.

19 Q OKAY. SO THAT EVIDENCE WAS CONSISTENT
20 WITH YOUR FINDINGS -- WITH YOUR FINDINGS THAT KITTY
21 AND JOSE MENENDEZ -- THAT THEIR MOBILITY WAS
22 CONFINED, AS YOU INDICATED HERE IN YOUR TESTIMONY
23 TODAY; IS THAT CORRECT?

24 A YES. THAT WAS PART OF THE EVIDENCE THAT
25 I CONSIDERED IN REACHING THAT CONCLUSION.

26 Q OKAY. LET ME SHOW YOU SOME MORE

27 PHOTOGRAPHS.

28 NOW, IN REGARD TO EXHIBIT 295, I BELIEVE

42373

1 THAT YOU TESTIFIED THAT BY LOOKING AT THE BLOOD
2 SPATTER WHICH APPEARS ON THE SHIRT OF JOSE MENENDEZ,
3 THAT IS, HIS LEFT SIDE, YOU WERE ABLE TO DETERMINE
4 THE DIRECTION OF THE TRAVEL OF THAT BLOOD; IS THAT
5 CORRECT?

6 A YES. SOME OF THE DROPS SHOW DIRECTIONAL
7 CHARACTER. AND FROM THOSE I WAS ABLE TO DETERMINE
8 THE DIRECTION OF TRAVEL OF THOSE PORTIONS OF THE
9 PATTERN AT LEAST.

10 Q OKAY. NOW, WOULD YOU EXPECT, WHEN YOU
11 LOOK AT BLOOD SPATTER, THE WAY THAT YOU DETERMINED
12 THAT THERE IS A DIRECTION, IS BECAUSE YOU SEE SORT
13 OF A TAIL AT THE -- AT ONE SIDE OF THE BLOOD; IS THAT
14 CORRECT?

15 A YES, THAT'S A FAIR DESCRIPTION OF PART
16 OF WHAT I'M LOOKING AT IN DETERMINING THE DIRECTION
17 OF TRAVEL.

18 Q OKAY. AND THE TAIL THAT YOU OBSERVED BY
19 WHICH YOU DETERMINE DIRECTION IS WHAT YOU MIGHT CALL
20 A FORWARD TAIL, IN OTHER WORDS, IN THE DIRECTION OF
21 TRAVEL; IS THAT CORRECT?

22 A YES. THAT WHAT ESSENTIALLY IT IS IS A
23 SECONDARY CAST-OFF FROM THE MAJOR DROP DOES TRAVEL
24 IN THE DIRECTION OF TRAVEL OF THE DROP.

25 Q NOW, WOULD YOU EXPECT THAT IF YOU WERE
26 TO ATTRIBUTE -- IF YOU -- LET ME REPHRASE THAT.

27 WOULD YOU EXPECT THAT IF ALL OF THE
28 BLOOD THAT WE SEE HERE WAS ATTRIBUTED TO A SINGLE

42374

1 SHOT, THAT YOU WOULD SEE A TAIL ON EACH AND EVERY
2 SINGLE ONE OF THESE DROPS THAT WE SEE ON HIS SHIRT?

3 A NO. ON A SURFACE SUCH AS THAT I
4 WOULDN'T NECESSARILY EXPECT THAT.

5 Q WHY IS THAT?

6 A IT'S AN IRREGULAR SURFACE. THERE ARE
7 MULTIPLE POSSIBLE CONFIGURATIONS WITH WRINKLES IN
8 THE SHIRT, SO THAT THE ACTUAL ANGLE WITH RESPECT TO
9 THE PARTICULAR SPOT ON THE SHIRT CAN VARY SOMEWHAT.

10 SO ALL I CAN SEE IS AN OVERALL DIRECTION
11 OF TRAVEL OF THAT PATTERN. NOT ALL OF THE DROPS
12 WILL PRESERVE THAT DIRECTIONAL CHARACTERISTIC.

13 Q OKAY. NOW, JUST FROM LOOKING AT THE
14 SPATTER THAT YOU SEE IN THIS SHIRT, WERE YOU ABLE TO
15 DETERMINE WHICH WOUND TO WHICH PERSON CAUSED THAT
16 SPATTER?

17 A NO. I DIDN'T REACH ANY CONCLUSION ON
18 THAT.

19 Q OKAY. SO ONE OF THE POSSIBILITIES THAT
20 WAS SUGGESTED TO YOU BY DEFENSE COUNSEL WAS THAT
21 THAT MIGHT HAVE BEEN CAUSED BY A WOUND TO THE RIGHT
22 ARM OF JOSE MENENDEZ; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q BUT ACTUALLY JUST LOOKING AT THAT
25 SPATTER, YOU CAN'T RULE OUT THE POSSIBILITY THAT
26 THAT WAS CAUSED BY, FOR EXAMPLE, A WOUND TO KITTY
27 MENENDEZ AT THE TIME THAT SHE WAS NEAR JOSE
28 MENENDEZ; IS THAT CORRECT?

42375

1 A I DID NOT RULE THAT OUT, NO.

2 MR. CONN: THANK YOU. I HAVE NO FURTHER
3 QUESTIONS.

4 THE COURT: ANY REDIRECT?

5 MS. ABRAMSON: YES, YOUR HONOR. THANK YOU.

6

7 REDIRECT EXAMINATION

8 BY MS. ABRAMSON:

9 Q MR. LINHART, YOU HAD ACCESS, BOTH TO THE
10 ACTUAL PHOTOGRAPHS, PRINT PHOTOGRAPHS, AND THE
11 COMPUTERIZED VERSION OF THE PHOTOGRAPHS.

12 WHICH DID YOU FIND, IF EITHER, MORE
13 HELPFUL IN YOUR ABILITY TO GAIN INFORMATION ABOUT
14 THE DETAILS OF THIS CRIME SCENE?
15 A WELL, I PREFER USING THE ACTUAL
16 PHOTOGRAPHIC PRINTS. THAT'S WHAT I DID MY ORIGINAL
17 WORK ON THIS CASE FROM. THE PHOTOS ON THE CD WERE
18 SUFFICIENT FOR JUST REFRESHING MY RECOLLECTION. BUT
19 I DIDN'T LIKE WORKING WITH THEM, WOULDN'T LIKE
20 WORKING WITH THEM FOR AN ORIGINAL RECONSTRUCTION.
21 Q AND WHY IS THAT? WHAT'S THE ADVANTAGE
22 TO HAVING THE ACTUAL HARD PHOTOGRAPHS?
23 A WELL, ONE OF THE PRIMARY ADVANTAGES IS
24 THAT I CAN LOOK AT MULTIPLE PHOTOGRAPHS
25 SIMULTANEOUSLY. I CAN LAY OUT AS MANY AS I WANT.
26 SINCE IT'S VERY DIFFICULT TO RETAIN IN MEMORY THE
27 MINUTE DETAIL FROM PHOTOGRAPH TO PHOTOGRAPH, I CAN
28 ACTUALLY COMPARE PHOTOGRAPHS THAT SHOW SLIGHTLY

42376

1 DIFFERENT VIEWS OF THE SAME THING TO GET MORE
2 INFORMATION.
3 Q AND WAS YOUR PURPOSE IN LOOKING AT THE
4 PHOTOGRAPHS AND DOING THAT TO GAIN AS MUCH
5 INFORMATION ABOUT THE VARIOUS DETAILS OF THE CRIME
6 SCENE EVIDENCE HERE AS YOU COULD?

7 A WELL, YES. I WANTED TO BE FAMILIAR WITH
8 ALL OF THE BLOOD PATTERNS SO THAT I COULD ADDRESS IN
9 AS MUCH DETAIL AS I COULD THE QUESTIONS THAT WERE
10 ASKED ME AND PERHAPS, MORE IMPORTANTLY, ENSURE THAT
11 NONE OF THE CONCLUSIONS I REACHED WERE INCONSISTENT
12 WITH THE EVIDENCE.

13 Q AND SO TO MAKE SURE THAT YOU'RE NOT
14 INCONSISTENT WITH THE EVIDENCE, YOU TRY TO LOOK AT
15 EVERYTHING WITHIN YOUR AREA OF EXPERTISE, CORRECT?

16 A THAT'S CORRECT.

17 Q DO YOU THINK ANYONE COULD EFFECT A TRUE
18 RECONSTRUCTION OF THIS CRIME SCENE WHO HAD NO
19 EXPERTISE IN BLOOD SPATTER OR CHOSE TO IGNORE THE
20 BLOOD SPATTER EVIDENCE?

21 MR. CONN: OBJECTION. ARGUMENTATIVE.
22 ASSUMES FACTS NOT IN EVIDENCE.

23 THE COURT: IT'S COMPOUND AS PHRASED ALSO.

24 Q BY MS. ABRAMSON: DO YOU BELIEVE THAT
25 ANY VIABLE RECONSTRUCTION OF ANY ASPECT OF THIS
26 SHOOTING COULD BE ACCOMPLISHED BY IGNORING THE BLOOD
27 SPATTER EVIDENCE?

28 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

2 THE COURT: OVERRULED.

3 THE WITNESS: WELL, THERE'S SOME LIMITED
4 FACTS THAT COULD BE DETERMINED WITHOUT THE BLOOD
5 SPATTER EVIDENCE. HOWEVER, SINCE THERE IS A LOT OF
6 BLOOD PATTERNS AROUND, THEY CERTAINLY CONTRIBUTE TO
7 AN UNDERSTANDING OF WHAT OCCURRED HERE. AND I WOULD
8 CONSIDER IT ILL-ADVISED TO ATTEMPT TO RECONSTRUCT
9 EVENTS WITHOUT CONSIDERING THAT PIECE OF THE
10 EVIDENCE.

11 Q BY MS. ABRAMSON: AND ALL THE VARIOUS
12 AREAS WHERE BLOOD SPATTER EVIDENCE IS OBSERVABLE AT
13 THIS SCENE?

14 A WELL, BOTH WHERE BLOOD SPATTER EVIDENCE
15 IS OBSERVABLE AND WHERE BLOOD SPATTER EVIDENCE IS
16 NOT OBSERVED, ONE SHOULD LOOK AT BOTH.

17 Q IN FACT, YOUR CONCLUSIONS CONCERNING
18 MR. MENENDEZ' LEG WOUND, THAT IS BASED, IS IT NOT,
19 ON THE ABSENCE OF BLOOD SPATTER EVIDENCE WHICH YOU
20 BELIEVE SHOULD HAVE BEEN THERE, CORRECT?

21 A BASED IN PART UPON THAT. IT'S NOT THE
22 TOTALITY OF THE FOUNDATION, BUT THAT WAS A
23 CONSIDERATION.

24 Q YOU INDICATED IN RESPONSE TO MR. CONN'S
25 QUESTIONING THAT YOU BELIEVE THAT MR. MENENDEZ WAS
26 IN A SIGNIFICANTLY DIFFERENT POSITION AT THE TIME HE
27 RECEIVED THAT LEG WOUND AND THAT THERE WAS SEVERAL
28 POSSIBILITIES, BUT THERE WAS ONE THAT YOU THOUGHT

1 WAS MOST PROBABLE.

2 DO YOU RECALL THAT?

3 A YES, I DO.

4 Q I'LL ASK YOU: WHAT IS THE ONE THAT YOU
5 THINK IS MOST PROBABLE?

6 A OKAY. LET ME REFER -- MAY I REFER TO ONE
7 OF THE PHOTOGRAPHS --

8 Q CERTAINLY.

9 A -- TO EXPLAIN THE FOUNDATION FOR WHY I
10 BELIEVE THAT?

11 Q CERTAINLY.

12 IS IT A PHOTOGRAPH THAT'S OBSERVABLE
13 RIGHT NOW OR DO YOU NEED TO MOVE SOMETHING?

14 A I CAN SEE THE PHOTOGRAPH, BUT IT DOESN'T
15 PROVIDE THE BEST SHOT. IF WE HAVE A CLOSE-UP THAT
16 SHOWS THE AREA OF THE COUCH BETWEEN MR. MENENDEZ'
17 LEGS, THAT WOULD BEST DEMONSTRATE IT.

18 Q YES. I BELIEVE YOU'LL FIND THAT THAT'S
19 ON -- WE'LL PUT OUT THE ONE THAT SAYS "7." THERE'S A
20 CLOSE UP HERE, I THINK.

21 DOES THIS HELP OR IS THAT GOOD ENOUGH?

22 A THE ONE THAT'S UP IS FINE.

23 Q LET'S MAKE SURE WE KNOW WHICH ONE THAT
24 IS. THEY'RE NOT MARKED ON THE FRONT.

25 YOU'RE REFERRING TO PHOTOGRAPH NO. 330?

26 A YES.

27 Q PHOTOGRAPH NO. 330 DOES SHOW SOME

28 PROJECTED BLOOD ON THE FRONT EDGE OF THE COUCH

42379

1 BETWEEN MR. MENENDEZ' LEGS. WHILE I CANNOT SEE
2 ENOUGH OF THAT PATTERN TO CONCLUDE DEFINITELY THAT
3 THAT IS A RESULT OF EXIT SPATTER FROM THE LEG WOUND,
4 THAT IS CONSISTENT WITH BEING A PORTION OF THAT
5 PATTERN.

6 SINCE I DON'T SEE THE PATTERN ANYWHERE
7 ELSE, THAT LEADS ME TO CONSIDER THAT THE MOST
8 PROBABLE LOCATION WHERE THAT EXIT SPATTER WENT. FOR
9 THAT TO HAVE BEEN ACHIEVED, MR. MENENDEZ WOULD HAVE
10 BEEN STANDING WITH HIS LEFT LEG ORIENTED WITH THE
11 OUTSIDE OF THE LEG TOWARD THE COUCH, EITHER STANDING
12 OR PARTIALLY STANDING. I CAN'T SAY HOW FAR HE HAD
13 GOTTEN INTO A STANDING POSITION. BUT THE AREA OF
14 THE EXIT WOULD NEED TO HAVE BEEN AT LEAST AS HIGH AS
15 THE FRONT EDGE OF THE COUCH.

16 THE AREA OF THE COUCH CUSHION WHERE THE
17 REMAINDER OF THAT PATTERN WOULD HAVE GONE IF THAT,
18 IN FACT, IS THE EXIT SPATTER, IS SUBSEQUENTLY
19 OBSCURED BY THE ADDITIONAL BLEEDING, THE POOLING OF

20 BLOOD UNDER HIS BODY. SO I CAN'T SEE WHETHER THE
21 ENTIRE PATTERN IS THERE OR NOT.
22 FOR THAT REASON, I STOP SHORT OF
23 CONCLUDING, NECESSARILY, THAT THAT'S WHAT OCCURRED.
24 BUT I FIND NO MORE LIKELY ALTERNATIVE FOR THE
25 EVIDENCE.
26 Q SO THAT'S THE MOST LIKELY ALTERNATIVE
27 THAT YOU FIND FROM THE EVIDENCE, THAT HE WAS MOST
28 PROBABLY STANDING IN FRONT OF THAT CUSHION?

42380

1 A STANDING OR SOMEWHERE BETWEEN A SITTING
2 AND STANDING POSITION.
3 Q PERHAPS SINKING? HAD BEEN STANDING --
4 MR. CONN: OBJECTION. LEADING.
5 MS. ABRAMSON: CAN I FINISH THE QUESTION?
6 THE COURT: GO AHEAD. FINISH.
7 MS. ABRAMSON: THANK YOU.
8 Q IS IT CONSISTENT WITH A SCENARIO IN
9 WHICH HE HAD BEEN STANDING, RECEIVED WOUNDS, AND IS
10 STARTING TO SINK DOWN TO A SITTING POSITION?
11 A THAT WOULD BE WITHIN THE RANGE OF
12 POSSIBILITIES. I CAN'T TELL FROM THAT WHETHER HE'S
13 IN A STATIONARY POSITION OR MOVING EITHER FROM A
14 SITTING TO STANDING OR STANDING TO SITTING.

15 Q ANY ONE OF THOSE THREE IS CONSISTENT
16 WITH YOUR FINDINGS ON THE SPATTER EVIDENCE?
17 A YES.
18 Q AND CONCERNING THAT AREA OF BLOOD
19 SPOTTING, YOU CAN ONLY SEE A BIT OF IT, I THINK, IN
20 330. THERE ARE TWO DISTINCT AREAS WHERE THERE
21 APPEAR TO BE DROPLETS OF A KIND TO BE FORMED BY
22 DROPPING STRAIGHT DOWN NEAR MR. MENENDEZ' POSITION
23 ON THE COUCH; IS THAT CORRECT?
24 A COULD YOU SAY THAT AGAIN.
25 Q THERE ARE TWO AREAS -- STRIKE THAT.
26 YOU PREVIOUSLY INDICATED THERE'S AN AREA
27 HERE -- YOU INCLUDED IT IN THE OTHER CIRCLING THAT
28 YOU DID. THERE'S AN AREA HERE SORT OF ALONG THIS

42381

1 PARALLEL LINE BORDER OF THE CARPETING THAT YOU CAN
2 SEE HERE WHERE IT GOES FROM BLUE TO WHITE, WHERE THE
3 CARPET GOES FROM BLUE TO WHITE?
4 A YES. THERE'S AN AREA OF BLOOD DROPS
5 THERE, CLOSER TO THE CABINET.
6 Q AND THEN THERE'S ANOTHER AREA OF
7 STRAIGHT-DOWN BLOOD DROPS WHICH ARE ADJACENT TO AND
8 SOME ARE IN FRONT OF THE POOL OF BLOOD THAT'S
9 DIRECTLY BENEATH MR. MENENDEZ' LEG?

10 A YES. THAT'S CORRECT.

11 Q AND THOSE ALSO APPEAR TO BE INDIVIDUAL
12 DROPLETS THAT CAME FROM ABOVE?

13 A THAT'S CORRECT.

14 Q IF WE CAN IMAGINE, THEN, HYPOTHETICALLY,
15 MR. LINHART, WHAT WE WERE JUST TALKING ABOUT,
16 MR. MENENDEZ IS STANDING UP IN FRONT OF THE COUCH
17 WHEN HE RECEIVES THE LEG WOUND, BUT A PORTION OF
18 HIS -- OR HIS OTHER LIMBS HAVE ALSO BEEN SHOT, COULD
19 THESE DROPLETS HERE BE CONSISTENT WITH, FOR EXAMPLE,
20 HIS RIGHT ARM DRIPPING AT THE TIME WHEN HE IS
21 RECEIVING THE WOUND TO THE LEFT LEG THAT YOU SEE THE
22 POTENTIAL BLOW-OUT PATTERN OF ON THE COUCH?

23 A LET ME SEE IF I UNDERSTAND THE PROPOSED
24 SITUATION; THAT HE HAS ALREADY RECEIVED THE WOUND TO
25 THE RIGHT ARM?

26 Q CORRECT.

27 A IT WOULD BE POSSIBLE TO CONFIGURE HIM IN
28 A PARTIAL STANDING POSITION WITH -- LEANING FORWARD

42382

1 WITH THE RIGHT ARM OVER THE AREA WHERE THE BLOOD
2 DROPS ARE OBSERVED NEAR THE COFFEE TABLE.

3 Q RIGHT. SO HE COULD BE --

4 A SO THAT REMAINS WITHIN THE RANGE OF

5 POSSIBLE SCENARIOS. I CAN'T CONCLUDE THAT THAT'S

6 ACTUALLY WHAT HAPPENED.

7 Q OKAY. BUT IT IS A POSSIBLE SCENARIO

8 THAT THE RIGHT ARM IS DRIPPING IN THAT AREA WHERE

9 THERE'S DROPS AND THE LEFT LEG WOUND IS PRODUCING

10 THE PATTERN THAT YOU SEE ON THE COUCH CUSHION?

11 A YES. THAT'S WITHIN THE RANGE OF

12 POSSIBILITY.

13 Q ARE YOU AWARE THAT IN THE AMENDMENT THAT

14 DR. GOLDEN WROTE IN 1995 HE CLARIFIES THAT THE UPPER

15 ARM WOUND TO MR. MENENDEZ PASSES FROM BASICALLY

16 OUTSIDE TO INSIDE?

17 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN

18 EVIDENCE. THE WITNESS INDICATED HE DIDN'T READ THAT

19 AMENDMENT.

20 THE COURT: ALL RIGHT. LET'S SEE IF YOU CAN

21 ESTABLISH A FOUNDATION THAT HE HAS CONSIDERED THAT

22 IN ANY WAY.

23 Q BY MS. ABRAMSON: WELL, I WANT TO ASK

24 YOU, FIRST, IF YOU'RE AWARE THAT THAT WAS ONE OF

25 THE -- THAT THAT WAS SOMETHING THAT APPEARED IN THE

26 AMENDMENTS. YOU SAID YOU WERE AWARE THAT THERE WERE

27 AMENDMENTS?

28 THE COURT: DID YOU READ THE AMENDMENTS?

1 THE WITNESS: I HAVE NOT.

2 Q BY MS. ABRAMSON: WERE YOU TOLD BY
3 ANYONE CONNECTED WITH THE CASE THAT THERE WAS SUCH
4 AN AMENDMENT?

5 A YES.

6 Q AND WHO TOLD YOU THAT, IF YOU RECALL?

7 A I BELIEVE THAT I WAS TOLD BY MR. CONN
8 THAT THERE WERE AMENDMENTS TO THAT REPORT WHEN WE
9 MET.

10 Q AND DID MR. CONN INDICATE THAT ONE OF
11 THE AMENDMENTS HAD TO DO WITH THE UPPER ARM WOUND
12 WHERE DR. GOLDEN CLARIFIED --

13 MR. CONN: OBJECTION. ASSUMES FACTS NOT IN
14 EVIDENCE AND CALLS FOR HEARSAY.

15 Q BY MS. ABRAMSON: THAT THE WOUND --

16 THE COURT: OVERRULED. GO AHEAD.

17 MS. ABRAMSON: THANK YOU, YOUR HONOR.

18 Q THAT THE WOUND WAS FROM OUTSIDE THE
19 UPPER ARM TO INSIDE THE UPPER ARM?

20 A I UNDERSTOOD THAT THERE WAS -- THAT THE
21 AMENDMENTS ADDRESSED THE WOUNDS INTO THE RIGHT ARM.
22 BUT QUITE FRANKLY, I DON'T RECALL ALL THE DETAIL OF
23 THAT.

24 Q LOOKING AT -- JUST TO GET BACK TO THE
25 MANNER IN WHICH YOU FRAMED YOUR ORIGINAL
26 CONCLUSIONS, LOOKING AT THE POSITION THAT
27 MR. MENENDEZ IS IN ON THE COUCH, HIS FINAL POSITION,
28 AND ASSUMING THAT WHAT WE SEE HERE, THIS WOUND THAT

1 WE SEE HERE, IS THE EXIT WOUND, AND THAT THE ENTRY
2 WOUND WOULD BE BEHIND THE SURFACE OF THE ARM THAT WE
3 SEE HERE; AND FURTHER ASSUMING, HYPOTHETICALLY, THAT
4 THERE IS NO SHOT THROUGH THE BACK OF THE COUCH -- DO
5 YOU FOLLOW WHAT I'M SAYING?

6 A YES, I DO.

7 Q IN YOUR OPINION, COULD THAT RIGHT ARM
8 WOUND HAVE BEEN ADMINISTERED WHILE MR. MENENDEZ WAS
9 IN THE POSITION THAT WE SEE HIM PICTURED ON 330?

10 A NO.

11 Q NOW, IS THERE ANYTHING IN THE EVIDENCE,
12 AS YOU EXAMINED IT, THAT PRECLUDES MR. MENENDEZ FROM
13 BEING STANDING WHEN HE RECEIVED ALL OF THE WOUNDS,
14 WITH THE EXCEPTION OF THE HEAD WOUND?

15 A NO. I CAN'T EXCLUDE A STANDING POSITION
16 FOR THE LEG WOUND OR THE WOUND IN THE LEFT ARM OR
17 THE RIGHT ARM.

18 Q AND WITH RESPECT TO MRS. MENENDEZ YOU
19 TESTIFIED THAT -- AND I THINK YOU CIRCLED ON THE
20 PHOTOGRAPH TO THE LEFT --

21 AND I JUST HAVE TO KEEP CHECKING THE
22 NUMBERS. I'M SORRY. THIS IS 22, EXHIBIT 22.

23 AND YOU CIRCLED THIS -- THESE AREAS ON

24 THE EAST PORTIONS OF THE SECTIONAL SOFA THAT HAVE
25 SOME BLOOD SPATTER AS INDICATIVE THAT AT LEAST A
26 PART OF HER BODY WAS CLOSE TO THE FLOOR AT THE TIME
27 THAT IT RECEIVED A SHOT WHICH CAUSED THAT SPATTER.
28 CORRECT?

42385

1 A YES.

2 Q WOULD YOU CALL THAT A LARGE AMOUNT OF
3 BLOOD SPATTER OR IS IT A MODEST QUANTITY OF BLOOD
4 THAT APPEARS IN THAT SPATTER?

5 A WELL, LARGE AND MODEST, AGAIN, ARE
6 RELATIVE TERMS. IT'S NOT A GREAT QUANTITY OF
7 BLOOD. THERE ARE A NUMBER OF DROPS OF VARIOUS SIZES
8 IN THAT AREA. BUT IN TERMS OF OVERALL VOLUME OF
9 BLOOD, IT'S NOT A GREAT DEAL OF BLOOD.

10 Q IS THE VOLUME THAT APPEARS THERE MORE
11 CONSISTENT WITH HER RECEIVING TWO WOUNDS TO THE BODY
12 WHILE SHE IS -- WHILE PARTS OF HER BODY ARE CLOSE TO
13 THE FLOOR AS COMPARED TO SIX OR SEVEN?

14 A WELL, IN FACT, I CAN'T DETERMINE THE
15 NUMBER OF WOUNDS. I SEE NOTHING IN THE PATTERN THAT
16 ACTUALLY SUGGESTS MORE THAN ONE EVENT CAUSING THE
17 SPATTER. BUT IT'S POSSIBLE FOR THERE TO BE MORE
18 THAN ONE EVENT THAT CAUSED THE SPATTER.

19 BUT, REALLY, IT'S CONSISTENT WITH ONE
20 EVENT SPECIFICALLY AND POSSIBLY MORE, BUT I CAN'T
21 DETERMINE THE NUMBER.

22 Q LET ME -- IN FACT, THAT AREA IS ALSO
23 OBSERVABLE, IS IT NOT, AT THE TOP OF THE PHOTOGRAPH
24 THAT'S BEEN MARKED 331, WHICH IS THE ONE I'M NOW
25 POSITIONING ON THE BOARD. HERE IS THE SAME AREA,
26 CORRECT?

27 A I CAN SEE THE AREA. I'LL HAVE TO GET
28 CLOSER TO ACTUALLY SEE THE BLOOD DROPS.

42386

1 Q SHINES A LOT?

2 A IT'S NOT NECESSARILY THE SHINE AS IT IS
3 MY VISION.

4 YES. I CAN SEE IT WELL THERE.

5 Q AND YOU CAN SEE IT THERE AT THE TOP END.

6 NOW, CAN I CALL YOUR ATTENTION TO AN
7 AREA BETWEEN HER TWO LEGS AND AN AREA ADJACENT TO
8 WHERE HER RIGHT LEG IS SHOWN IN THIS PHOTOGRAPH?

9 A YES, I SEE THAT.

10 Q DO YOU HAVE ANY OPINION ABOUT WHAT THE
11 LITTLE CIRCLES ARE IN THOSE AREAS?

12 A YOU MEAN THE STAINS THAT APPEAR AS BLOOD
13 DROPS?

14 Q WELL, THAT WAS WHAT I SAID.

15 ARE THOSE STAINS THAT APPEAR AS BLOOD
16 DROPS?

17 A YES. THEY -- MOST OF THEM APPEAR AS
18 BLOOD DROPS. THERE'S SOMETHING ELSE THERE IN THE
19 PHOTOGRAPH THAT THIS ALMOST LOOKS LIKE A COIN
20 PERHAPS.

21 Q DIME PERHAPS?

22 A BUT THERE ARE A NUMBER OF STAINS
23 APPEARING AS BLOOD DROPS.

24 AND LOOKING AS BLOOD DROPS OR DRIPS
25 STRAIGHT DOWN.

26 Q THAT CAME STRAIGHT DOWN?

27 A YES.

28 Q YOU DON'T KNOW WHOSE BLOOD THAT IS,

42387

1 WHETHER IT'S MR. MENENDEZ' BLOOD OR MRS. MENENDEZ'
2 BLOOD?

3 A NO. I HAVE NO OPINION ON THAT.

4 Q BUT IT'S WITHIN THAT AREA THAT YOU
5 BELIEVE BOTH OF THEM WERE IN AT THE TIME THAT THEY
6 WERE SHOT?

7 A THAT'S CORRECT.

8 Q DO YOU ALSO SEE FARTHER UP IN THE

9 PHOTOGRAPH SOME CIRCULAR AREAS?

10 A YES, I DO.

11 Q DID YOU FORM THE OPINION THAT THESE ALSO
12 APPEAR TO BE BLOOD DROPS?

13 A THOSE ARE ALSO CONSISTENT IN APPEARANCE
14 WITH THAT, YES.

15 Q WHEN WE TALK ABOUT DROPS, WE MEAN THE
16 KIND THAT COME STRAIGHT DOWN?

17 A YES.

18 Q AND THAT WOULD APPEAR, WITHOUT MEASURING
19 THE SOFA, AT LEAST, TO BE SEVERAL FEET AWAY FROM
20 EACH OTHER?

21 A YES. AGAIN, I DON'T HAVE THE ACTUAL
22 MEASUREMENTS, BUT IT IS SEVERAL FEET AT LEAST.

23 Q THE PHOTOGRAPH THAT APPEARS, THE SMALLER
24 PHOTOGRAPH THAT'S UP ON THE BOARD THAT APPEARS TO BE
25 A CORONER'S PHOTOGRAPH, YOU'VE SEEN THAT BEFORE,
26 HAVE YOU NOT?

27 A YES.

28 Q DID YOU UNDERSTAND THAT THE WOUND TO

42388

1 MR. MENENDEZ' ARM, AS SHOWN THERE, AS DESCRIBED BY
2 MR. CONN, IS VERY LARGE, HAS BEEN DISSECTED BEFORE
3 THAT PHOTOGRAPH WAS TAKEN?

4 A YES. I RECOGNIZED THAT IT HAD BEEN
5 DISSECTED.

6 Q THANK YOU.

7 NOW, YOU'VE INDICATED THAT YOU COULD
8 TELL FROM SOME OF THE SCENE PHOTOGRAPHS THAT THERE
9 APPEARED TO BE PORTIONS OF BODY TISSUE THAT HAD --
10 THAT WERE ON THE CEILING.

11 A THERE WAS SOME SPATTER ON THE CEILING,
12 AT LEAST ONE OF THOSE THAT I RECALL -- AND I WOULD
13 HAVE TO LOOK AGAIN AT THE PHOTOGRAPHS TO SEE THE
14 TOTAL EXTENT -- WAS A MIXTURE OF BLOOD AND TISSUE.

15 Q AND IS IT YOUR OPINION THAT THE SOURCE
16 OF MATERIAL THAT WOULD GO THAT FAR WOULD MOST LIKELY
17 BE THE HEAD WOUND TO MR. MENENDEZ OR COULD THAT HAVE
18 BEEN FROM OTHER WOUNDS THAT WERE INFLICTED TO EITHER
19 OF THE DECEDENTS IN THIS CASE?

20 A AFTER REVIEWING THE TOTALITY OF THE
21 WOUNDS DELIVERED IN THIS CASE, IT'S MY OPINION THAT
22 THAT SPATTER WAS FROM THE HEAD WOUND TO
23 MR. MENENDEZ.

24 Q MR. LINHART, WITHIN THE AREA THAT YOU
25 HAVE DESCRIBED AS THAT AREA IN WHICH YOU BELIEVE
26 BOTH DECEDENTS WERE AND WERE MOBILE DURING THE
27 SHOOTING, DO YOU HAVE ANY IDEA HOW MANY POSSIBLE
28 COMBINATIONS OF BODY MOVEMENTS ONE COULD SAY EACH OF

1 THEM COULD HAVE TAKEN DURING THIS SHOOTING?

2 A WELL, THE POSSIBLE CONFIGURATIONS ARE
3 LITERALLY INFINITE BECAUSE THERE WAS, IN FACT, AN
4 INFINITE NUMBER OF POSITIONS BETWEEN ANY TWO
5 POINTS. IT'S AN INFINITE NUMBER OF POSSIBLE
6 CONFIGURATIONS.

7 Q IS THERE SUFFICIENT EVIDENCE -- DO YOU
8 BELIEVE THERE'S SUFFICIENT EVIDENCE HERE TO DECIDE
9 THAT EITHER ONE OF THEM WAS IN A SPECIFIC POSITION
10 AT THE TIME THEY RECEIVED ALL BUT THE HEAD WOUNDS?
11 WHAT I MEAN BY THE HEAD WOUNDS IS THE CONTACT
12 WOUND. EACH HAD A -- LET ME START WITH THIS: YOU
13 RECALL THAT EACH HAD A CONTACT WOUND?

14 A YES.

15 Q AND EACH OF THOSE CONTACT WOUNDS WAS
16 DESCRIBED BY THE CORONER AS IMMEDIATELY FATAL?

17 A ALL RIGHT.

18 Q OKAY?

19 AND, IN FACT, ONE OF THEM HAS SINCE BEEN
20 DESCRIBED BY THE CORONER AS PROBABLY PERIMORTEM OR
21 POSTMORTEM.

22 A OKAY.

23 Q THAT'S THE ONLY PERIMORTEM OR POSTMORTEM
24 WOUND IN THE ENTIRE SCENE. OKAY?

25 A YES.

26 Q IS IT FAIR THEN TO ASSUME, BASED ON

27 EVERYTHING ELSE THAT YOU'VE SEEN HERE, THAT EACH OF
28 THOSE CONTACT HEAD WOUNDS WERE THE LAST WOUNDS THAT

42390

1 EACH OF THE VICTIMS RECEIVED?

2 A GIVEN THAT NONE OF THE OTHER WOUNDS ARE
3 POSTMORTEM, THOSE WOULD BE CONSISTENT WITH BEING THE
4 LAST WOUNDS. WHETHER THERE ARE OTHER REMOTE
5 POSSIBILITIES, I WOULD PREFER TO DEFER THAT KIND OF
6 CONCLUSION TO A FORENSIC PATHOLOGIST.

7 Q AND IF, INDEED, FOR EXAMPLE, THE HEAD
8 WOUND TO MR. MENENDEZ IS THE LAST WOUND, WOULD YOU
9 SAY IT'S UNLIKELY THAT HIS BODY WOULD HAVE MOVED
10 MUCH FROM WHERE YOU SEE IT IN THE PHOTOGRAPHS?

11 A WELL, HE WOULDN'T HAVE MOVED FAR FROM
12 THE COUCH. HE COULD HAVE HAD SOME POSITIONAL
13 MOVEMENT AS HE SAT ON THE COUCH FOLLOWING THAT.
14 AND, IN FACT, I BELIEVE HE DID.

15 Q OKAY. WE'LL TALK ABOUT THAT FOR A
16 MOMENT.

17 THAT'S WHAT YOU THINK; IT MIGHT HAVE
18 BEEN CAUSED BY A BUMPING OF THE COUCH?

19 A BUMPING OF THE COUCH OR HIM DIRECTLY. I
20 CAN'T DISTINGUISH BETWEEN THEM. BUT THOSE ARE
21 POSSIBLE EVENTS THAT COULD HAVE MOVED HIM.

22 Q OKAY. WITH RESPECT TO MRS. MENENDEZ, IF
23 THE LEFT CHEEK CONTACT WOUND WAS A PERIMORTEM OR
24 POSTMORTEM WOUND, YOU WOULDN'T EXPECT ANY MOVEMENT
25 BY HER AFTER THAT?

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

28 THE COURT: YOU'RE ASKING HIM TO ASSUME THAT?

42391

1 MS. ABRAMSON: YES, YOUR HONOR. I AM ASKING
2 HIM TO ASSUME THAT.

3 THE COURT: OVERRULED.

4 THE WITNESS: IN FACT, IT WAS POST OR
5 PERIMORTEM AND IT'S KIND OF SELF-EVIDENT THAT SHE
6 COULD NOT HAVE MOVED OF HER OWN VOLITION FOLLOWING
7 THAT.

8 Q BY MS. ABRAMSON: OKAY. SO WITH THE
9 EXCEPTION OF THOSE TWO WOUNDS, WHICH, BY WHAT WE'VE
10 JUST SAID, HAVE TO BE INFLICTED WHEN EACH OF THE
11 DECEDENTS WAS MORE OR LESS IN THE POSITION THAT
12 THEY'RE FOUND, IS THERE ANYTHING IN THE EVIDENCE
13 THAT INDICATES WHERE THEY WERE WHEN ANY OF THE OTHER
14 WOUNDS WERE INFLICTED?

15 A I CANNOT --

16 Q APART FROM THAT GENERAL DESCRIBED AREA

17 THAT YOU HAVE SHOWN.

18 A I CANNOT DEFINITELY LOCATE THE
19 POSITION, NOR LOCATION, AT THE TIME OF ANY ONE OF
20 THE OTHER WOUNDS WITH THE POSSIBLE EXCEPTION OF MY
21 PREFERRED GENERAL LOCATION FOR THE LEG WOUND OF
22 MR. MENENDEZ.

23 Q RIGHT.

24 A BUT I DON'T CONSIDER THAT CONCLUSIVE.
25 THAT'S JUST A -- WHAT I SEE AS THE MOST LIKELY
26 LOCATION.

27 Q IS THERE ANYTHING IN THE EVIDENCE THAT
28 YOU STUDIED THAT WOULD EXCLUDE MRS. MENENDEZ FROM

42392

1 BEING STANDING UP WHEN SHE RECEIVED MOST OF THE
2 WOUNDS TO HER BODY?

3 A I WOULD NOT BE ABLE TO CONCLUDE EITHER
4 THAT OR CONCLUDE DIFFERENTLY. I SIMPLY CAN'T TELL.

5 Q THERE'S NOTHING IN THE EVIDENCE THAT
6 SUGGESTS THAT SHE, FOR EXAMPLE, COULD NOT HAVE BEEN
7 STANDING UP WHEN SHE RECEIVED THE WOUNDS TO THE
8 RIGHT SIDE OF HER FACE?

9 A I FOUND NOTHING IN THE EVIDENCE --

10 Q NOTHING THAT WOULD --

11 A -- THAT WOULD ELIMINATE THAT AS A

12 POSSIBILITY.

13 Q ANYTHING THAT WOULD ELIMINATE THE
14 POSSIBILITY THAT SHE'S STANDING UP WHEN WE RECEIVES
15 THE WOUND TO HER RIGHT ARM, THE DOUBLE WOUND TO HER
16 RIGHT ARM?

17 A AGAIN, I FOUND NOTHING IN THE EVIDENCE
18 THAT WOULD ELIMINATE THAT AS A POSSIBILITY.

19 Q IS THERE ANYTHING YOU FOUND IN THE
20 EVIDENCE THAT ELIMINATES THE POSSIBILITY THAT SHE
21 COULD HAVE BEEN STANDING UP WHEN SHE RECEIVED THE
22 WOUND TO HER LEFT BREAST?

23 A NO.

24 Q LET ME ASK YOU THIS: IS THERE ANYTHING
25 IN THE EVIDENCE THAT IN ANY WAY INFORMS YOU ON THE
26 QUESTION OF WHETHER SHE COULD HAVE BEEN, IN FACT,
27 RECLINING ON THE COUCH OR HAD HER BODY IN SOME WAY
28 ON THE COUCH WHEN SHE RECEIVED THE WOUND TO HER

42393

1 THIGH THAT MR. CONN HAS DRAWN YOUR ATTENTION TO, A
2 WOUND THAT'S SHOWN IN THIS AREA WHERE THE -- YOU SEE
3 A TEAR IN THE FABRIC OF HER PANTS. IN THIS AREA
4 THERE'S A HIGH WOUND.

5 IS THERE ANYTHING THAT PRECLUDES HER
6 FROM, IN FACT, HAVING BEEN RECLINING, FOR HOWEVER

7 LONG, ON THE SOFA WHEN SHE RECEIVED THAT WOUND?

8 A WELL, CERTAINLY NOT IN THE BLOOD STAIN
9 PATTERNS. I WOULD HAVE TO STUDY THE INFORMATION ON
10 THE WOUND ITSELF TO ADDRESS IT FURTHER. BUT THE
11 BLOOD STAIN PATTERNS DON'T EXCLUDE THAT AS A
12 POSSIBILITY.

13 Q AND IF, IN FACT, SHE RECEIVED, SAY, A
14 WOUND TO HER CALF AND A WOUND TO HER THIGH WHILE ON
15 THE COUCH, AND THEN SLID OFF THE COUCH, COULD THAT
16 EXPLAIN THIS -- THESE STAINS, THESE CONTACT SMEARS
17 THAT YOU HAVE PREVIOUSLY TESTIFIED ABOUT?

18 A THAT'S WITHIN THE RANGE OF POSSIBILITY.

19 THE COURT: HOW MUCH LONGER DO YOU THINK YOU
20 HAVE?

21 MS. ABRAMSON: NOT MUCH, YOUR HONOR. PERHAPS
22 IF WE COULD JUST GO A FEW MORE MINUTES MORE.

23 THE COURT: IS THERE GOING TO BE SOME FURTHER
24 REDIRECT?

25 MR. CONN: YES, YOUR HONOR.

26 THE COURT: WE'LL DO IT AT 1:30.

27 DON'T DISCUSS THE MATTER WITH ANYONE.

28 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL SEE

2 (AT 12:05 P.M. THE NOON
3 RECESS WAS TAKEN UNTIL
4 1:30 P.M. OF THE SAME DAY.)

42395

1 VAN NUYS, CALIFORNIA; THURSDAY, NOVEMBER 30, 1995

2 1:40 P.M.

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

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 THE COURT: EVERYBODY IS PRESENT. WE'LL HAVE

7 THE JURY OUT, PLEASE.

8 (THE JURY ENTERED THE COURTROOM

9 AND THE FOLLOWING PROCEEDINGS

10 WERE HELD:)

11

12 THE COURT: ALL RIGHT. WE'LL RESUME WITH THE

13 REDIRECT.

14 MS. ABRAMSON: THANK YOU, YOUR HONOR.

15

16 REDIRECT EXAMINATION (CONTINUED)

17 BY MS. ABRAMSON:

18 Q MR. LINHART, CALLING YOUR ATTENTION TO

19 THE PHOTOGRAPH ON THE BOARD. MR. CONN POSITED A

20 HYPOTHETICAL TO YOU CONCERNING HOW, AT LEAST SOME --

21 JUST CHECK THE NUMBER AGAIN. SORRY. 331.

22 (CONTINUING) THE NOTION THAT THE SMEAR

23 AT THE FRONT OF THE CUSHIONS COULD HAVE OCCURRED
24 AFTER MRS. MENENDEZ WAS SHOT, BY HER RAISING UP HER
25 LEG AND BRUSHING IT AGAINST THE COUCH.

26 DO YOU RECALL THAT HYPOTHETICAL?

27 A YES, I DO.

28 Q IN ADDITION, HE OFFERED A HYPOTHETICAL

42396

1 HAVING TO DO WITH HER HAND TOUCHING THE TOP OF THE
2 COUCH.

3 ARE YOU AWARE OF ANY INJURIES THAT SHE
4 SUFFERED TO HER LEFT HAND?

5 A MY RECOLLECTION IS IT WAS THE RIGHT HAND
6 THAT WAS INJURED. I DON'T RECALL AN INJURY TO THE
7 LEFT HAND.

8 Q AND IF THE RIGHT HAND WERE INJURED, YOU
9 WOULD EXPECT, WOULD YOU NOT, BLEEDING FROM THE RIGHT
10 HAND, CORRECT?

11 A THAT PORTION -- YES, THE HAND WOULD BE
12 BLEEDING FOLLOWING THE INJURY.

13 Q WERE YOU AWARE OR DO YOU RECALL FROM
14 YOUR REVIEW OF THE PHOTOGRAPHS, AN AREA OF BLOOD
15 SMEARING AND BLOOD DROPPING ON THE COFFEE TABLE
16 DIRECTLY IN FRONT OF WHERE MRS. MENENDEZ' TORSO IS
17 SHOWN IN THESE PHOTOGRAPHS?

18 A YES, I DO.

19 Q AND IS THAT -- IS THE PRESENCE -- WAS IT

20 SMEARS AND DROPS BOTH?

21 A THERE WAS A COMBINATION OF BOTH

22 PROJECTED BLOOD DROPS AND SMEARED CONTACT TRANSFERS.

23 Q AND THOSE CONTACT TRANSFERS, WOULD THEY

24 BE CONSISTENT WITH HER TOUCHING THAT COFFEE TABLE

25 WITH HER RIGHT HAND?

26 A THAT IS A POSSIBILITY.

27 Q AND THE DROPS, WERE THEY CONSISTENT WITH

28 DROPS FALLING STRAIGHT DOWN OR DROPS COMING ACROSS

42397

1 AT AN ANGLE, IF YOU RECALL?

2 A MY RECOLLECTION IS THAT THERE WERE -- AT

3 LEAST SOME OF THE DROPS WERE PROJECTED AND

4 APPROACHED THE TABLE AT AN ANGLE.

5 Q AND WOULD THAT BE CONSISTENT WITH

6 SOMEONE STANDING NEXT TO THE TABLE AND RECEIVING A

7 WOUND TO THE PORTION OF THEIR BODY THAT -- DIRECTLY --

8 WELL, STRIKE THAT.

9 WOULD THAT BE CONSISTENT WITH SOMEONE

10 STANDING BETWEEN THE COUCH AND THE TABLE, FACING

11 TOWARDS THE TABLE, WHEN THAT PERSON IS STRUCK IN THE

12 FRONT OF THEIR BODY, IF THE FRONT OF THEIR BODY IS

13 CONTIGUOUS WITH THE TABLE OR NEXT TO THE TABLE?

14 A I WOULD HAVE TO RE-LOOK AT THAT

15 PHOTOGRAPH. MY RECOLLECTION IS THAT IS MOST

16 PROBABLY NOT BLOOD THAT IS DIRECTLY FROM A SHOTGUN

17 IMPACT, BUT PROBABLY APPLIED SUBSEQUENTLY DUE TO

18 OTHER MOTION OF A BLEEDING AREA.

19 Q SO LIKE A BLEEDING HAND HELD OVER?

20 A OR MOVED OVER IT OR SOME OTHER PART OF

21 THE BODY THAT -- OR OTHER OBJECT THAT HAD BLOOD ON

22 IT BEING MOVED SUFFICIENTLY TO PROJECT RELATIVELY

23 LARGE BLOOD DROPS.

24 Q YOU RECALL MR. CONN ALSO POSITED TO YOU

25 A HYPOTHETICAL BASED ON ONE OF THESE ILLUSTRATIONS.

26 I THINK IT WAS THIS ONE. NO. IT WAS 9. LET ME GET

27 9 OUT.

28 I THINK MR. CONN SHOWED YOU 9 IN ORDER

42398

1 TO ASK A QUESTION ABOUT WHETHER, IF MRS. MENENDEZ

2 RECEIVED A WOUND, AS DEMONSTRATED THERE, WITH A

3 TRAJECTORY CLOSE TO THE FLOOR THAT GOES THROUGH THE

4 LEFT LEG OF THIS ILLUSTRATION DUMMY AND DEPOSITS

5 BLOOD ON THE FLOOR, AND IF SHE THEN MOVES HER LEFT

6 FOOT IN SUCH A WAY AS TO PUT THE FLAT OF THE FOOT

7 OVER THAT BLOOD, COULD THAT HAVE CAUSED BLOOD SMEARS

8 TO APPEAR ON THE BOTTOM OF HER SHOE.

9 DO YOU RECALL, BASICALLY, THAT WAS THE
10 HYPOTHETICAL MR. CONN ASKED YOU?

11 A YES, I DO.

12 Q IN LOOKING AT THE REAL PHOTOGRAPH OF THE
13 AREA NEAR HER LEFT SHOE, IS THERE ANY BLOODY SHOE
14 PRINT IN THAT AREA?

15 A I SAW NOTHING THAT I COULD IDENTIFY
16 SPECIFICALLY AS A BLOODY SHOE PRINT IN THAT AREA OR
17 ANY OTHER AREA.

18 Q SO THERE ARE NO BLOODY SHOE PRINTS PER SE
19 ANYWHERE?

20 A NOT THAT I COULD FIND, NO.

21 Q SO, IF, FOR EXAMPLE, MRS. MENENDEZ WAS
22 STANDING, LET'S SAY -- DO YOU RECOGNIZE THIS, BY THE
23 WAY? WHAT I'M POINTING TO IS THE AREA OF THE COFFEE
24 TABLE WHERE THE SMEARS ARE.

25 A YES, I DO.

26 Q IF SHE WERE, FOR EXAMPLE, STANDING IN
27 FRONT OF THAT AREA AND RECEIVED A NUMBER OF WOUNDS
28 AND THEN STEPPED, OKAY, IN THAT SAME AREA AND PICKED

42399

1 UP THE BLOOD ON THE BOTTOM OF HER SHOE AND
2 SUBSEQUENTLY WAS DOWN, HER BODY WAS DOWN IN THAT

3 AREA, AND BLEEDING OVER WHERE SHE HAD STEPPED, WOULD

4 YOU THEN NOT EXPECT TO SEE ANY BLOODY FOOTPRINTS?

5 A THAT'S CERTAINLY A POSSIBLE MECHANISM

6 FOR OBSCURING A BLOODY SHOE PRINT ONCE IT HAD BEEN

7 DEPOSITED. THAT'S POSSIBLE.

8 Q YOU NOTICE IN 331, THE PHOTOGRAPH YOU

9 WERE LOOKING AT WHICH SHOWED THIS AREA OF BLOOD

10 DRIPPING IN HER ANKLE AND ON THE TOP OF HER LEFT

11 SHOE, YOU NOTICE HER RIGHT FOOT IS SHOWN STRAIGHT.

12 DID YOU NOTE THAT DETAIL?

13 A YES, I DID.

14 Q AND IS IT YOUR UNDERSTANDING THAT THAT

15 IS NOT THE POSITION IN WHICH HER BODY WAS FOUND BY

16 THE POLICE?

17 A YES. BASED UPON MY HAVING OBSERVED

18 OTHER PHOTOGRAPHS, I'M AWARE THAT THE LEG HAS BEEN

19 MOVED BY THE TIME THAT PHOTOGRAPH WAS TAKEN.

20 Q AND IS IT YOUR RECOLLECTION THAT THE

21 RIGHT LEG WAS, AT THE TIME THE POLICE CAME,

22 UNDERNEATH THE COFFEE TABLE, SUPPORTED BY THE SHELF

23 THAT RUNS THE FULL LENGTH OF THE COFFEE TABLE?

24 A YES. I NOTED THAT WHEN I EVALUATED THE

25 PHOTOGRAPHS.

26 Q AND SHOWING YOU WHAT'S PREVIOUSLY BEEN

27 MARKED 7, EXHIBIT 7 IN THIS CASE, DOES THAT

28 PHOTOGRAPH SHOW THE RIGHT FOOT PROTRUDING BETWEEN

1 THE SHELF OF THE COFFEE TABLE AND THE TOP OF THE
2 COFFEE TABLE?

3 A YES, IT DOES.

4 Q FROM THAT PHOTOGRAPH, CAN YOU SEE THAT
5 THERE IS BLOOD SMEARING ON THAT SHOE AS WELL?

6 A YES. THAT BLOOD IS APPARENT IN THIS
7 PHOTOGRAPH.

8 Q AND BASED ON THE HYPOTHETICAL MR. CONN
9 GAVE YOU, DO YOU SEE THAT EVEN IN THIS ILLUSTRATION,
10 9-B, THE SUGGESTION IS MADE THAT THE RIGHT FOOT, THE
11 RIGHT LIMB OF THE DUMMY, IS UNDERNEATH THE TABLE?

12 A IN THAT SIMULATION, YES, I SEE THAT.

13 Q CERTAINLY THIS SIMULATION DOESN'T
14 ACCOUNT AND COULDN'T ACCOUNT FOR GETTING BLOOD ON
15 THE BOTTOM OF THE RIGHT SHOE.

16 MR. CONN: OBJECTION. LEADING.

17 Q BY MS. ABRAMSON: IS THAT RIGHT?

18 THE COURT: OVERRULED.

19 THE WITNESS: THE BLOOD ON THE SHOE
20 DEFINITELY WAS NOT DEPOSITED ON THE SHOE WHILE THE
21 LEG WAS IN THAT POSITION.

22 Q BY MS. ABRAMSON: AND IT DOESN'T EXPLAIN
23 HOW THE BLOOD ON THE RIGHT SHOE COULD HAVE GOTTEN
24 THERE, DOES IT?

25 A THAT SIMULATION DOES NOT, NO.

26 Q NOW, OVER THE COURSE OF YOUR CRIMINALIST

27 CAREER, BOTH AT THE CORONER'S OFFICE AND AT THE
28 SHERIFF'S DEPARTMENT, HAVE YOU WORKED ON CASES WHERE

42401

1 IT WAS NECESSARY FOR YOU TO FORM AN OPINION AS TO
2 WHETHER CERTAIN WOUNDS WERE POSTMORTEM OR
3 PERIMORTEM?

4 A I HAVE WORKED ON CASES WHERE I'VE MADE
5 OBSERVATIONS AND HAVE HAD SUCH OPINIONS. I'VE NEVER
6 BEEN IN A POSITION WHERE I HAD TO RELY SOLELY UPON
7 MY OWN OPINION FOR MY CONCLUSIONS.

8 Q YOU'VE ALWAYS BEEN ABLE TO EITHER
9 CONSULT WITH OR RELY UPON OPINIONS OF FORENSIC
10 PATHOLOGISTS TO SUPPORT YOUR CONCLUSIONS, CORRECT?

11 A I'VE ALWAYS MADE IT A POINT TO DO THAT,
12 YES.

13 Q ARE YOU AWARE THAT IN THE AMENDMENT TO
14 HIS 1995 -- WELL, STRIKE THAT. IN THE 1995
15 AMENDMENT TO HIS AUTOPSY PROTOCOL CONCERNING
16 MRS. MENENDEZ, DR. GOLDEN INDICATES THAT THE CONTACT
17 WOUND TO HER LEFT CHEEK WAS EITHER PERIMORTEM OR
18 POSTMORTEM?

19 MR. CONN: OBJECTION. CALLS FOR HEARSAY.

20 MS. ABRAMSON: TALKING ABOUT DR. GOLDEN.

21 MR. CONN: WHICH HE DIDN'T READ.

22 THE COURT: HE SAID HE DIDN'T READ IT. SO
23 ARE YOU ASKING HIM TO ASSUME SOMETHING OR WHAT ARE
24 YOU ASKING?
25 Q BY MS. ABRAMSON: WE HAVE, IN FACT,
26 DISCUSSED THIS POINT, MR. LINHART, THAT YOU WERE
27 AWARE THAT THAT WAS A CHANGE THAT WAS MADE IN THAT
28 AUTOPSY --

42402

1 MR. CONN: OBJECTION. LEADING. NO
2 FOUNDATION.
3 THE COURT: WELL, HE'S TESTIFIED ABOUT IT IN
4 GENERAL.
5 MS. ABRAMSON: I'LL MAKE IT A HYPOTHETICAL IF
6 THAT'S EASIER, YOUR HONOR.
7 Q HYPOTHETICALLY, I'D LIKE YOU TO ASSUME
8 THAT ON SEPTEMBER 25TH, 1995 DR. GOLDEN WROTE AN
9 AMENDMENT TO HIS AUTOPSY PROTOCOL CONCERNING
10 MRS. MENENDEZ IN WHICH HE CHANGED HIS ORIGINAL
11 OPINION THAT THE CONTACT WOUND TO HER LEFT CHEEK WAS
12 ANTEMORTEM, TO THE OPINION THAT IT WAS EITHER
13 PERIMORTEM OR POSTMORTEM.
14 ASSUME THAT HYPOTHETICAL.
15 A YES.
16 Q DOES THAT OPINION, PERIMORTEM OR

17 POSTMORTEM, CONFIRM AN OPINION THAT YOU PREVIOUSLY
18 HAD ABOUT THAT WOUND?
19 MR. CONN: OBJECTION. NO FOUNDATION. CALLS
20 FOR SPECULATION.
21 THE COURT: OVERRULED.
22 THE WITNESS: YES, IT DOES.
23 Q BY MS. ABRAMSON: AND WAS YOUR OPINION,
24 EVEN PRIOR TO THAT AMENDMENT, THAT THAT WOUND WAS
25 MORE LIKELY POSTMORTEM THAN ANTEMORTEM?
26 MR. CONN: OBJECTION. CALLS FOR
27 SPECULATION.
28 THE COURT: WELL, IT DOESN'T CALL FOR

42403

1 SPECULATION FOR HIM TO SAY WHAT HIS OPINION WAS.
2 MR. CONN: NO FOUNDATION.
3 THE COURT: IT'S CERTAINLY LEADING AS
4 PHRASED.
5 MS. ABRAMSON: I'M SORRY.
6 Q COULD YOU TELL US WHAT YOUR OPINION WAS
7 OF THAT WOUND FROM THE TIME YOU WERE OBSERVING THE
8 PHOTOGRAPH BACK IN 1993 --
9 MR. CONN: OBJECTION. NO FOUNDATION. HE'S
10 NOT A DOCTOR.
11 THE COURT: OVERRULED.

12 THE WITNESS: AT THE TIME THAT I FIRST
13 EXAMINED THESE PHOTOGRAPHS THE SURFACE APPEARANCE OF
14 THAT WOUND APPEARED TO ME AS A POSTMORTEM WOUND.

15 Q BY MS. ABRAMSON: AND ONE FINAL THING.
16 YOU'VE INDICATED THAT BECAUSE OF THE BLOOD POOLING
17 PATTERN AND THE FLOW PATTERN THAT YOU SEE ON THAT
18 RIGHT CUSHION OF THE SOFA, YOU BELIEVE THAT
19 MR. MENENDEZ AT SOME POINT MIGHT HAVE BEEN -- HIS
20 BODY MIGHT HAVE BEEN LEANING MORE TO THE RIGHT THAN
21 IN ITS FINAL RESTING POSITION, CORRECT?

22 A THAT IS CORRECT.

23 Q AND YOU INDICATE THAT HIS BODY MAY HAVE
24 SHIFTED BACK INTO THAT POSITION AS THE RESULT OF THE
25 COUCH BEING BUMPED?

26 A THAT IS ONE POSSIBLE MECHANISM FOR
27 SHIFTING HIS BODY.

28 Q AND CALLING YOUR ATTENTION TO PHOTOGRAPH

42404

1 331, CAN YOU DISCERN IN THAT PHOTOGRAPH THAT
2 MRS. MENENDEZ' BACK IS RIGHT UP AGAINST THAT COUCH?

3 A 331 BEING THE ONE IN THE UPPER LEFT-HAND
4 CORNER?

5 Q YES.

6 A YES, THAT'S CORRECT.

7 Q AND IF WE -- LET ME ASK YOU A

8 HYPOTHETICAL.

9 IF MRS. MENENDEZ FELL TO THE FLOOR AND

10 ROLLED HER BACK -- HER BACK ROLLED INTO THAT COUCH,

11 COULD THAT BE THE TYPE OF BUMP THAT YOU HAD IN MIND

12 THAT COULD HAVE THEN SHIFTED MR. MENENDEZ' BODY

13 SLIGHTLY BACK?

14 MR. CONN: OBJECTION. LEADING AND

15 ARGUMENTATIVE.

16 THE COURT: LEADING AND WHAT?

17 MR. CONN: ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 YOU MAY ANSWER THE QUESTION.

20 THE WITNESS: YES. THAT I CONSIDER A

21 POSSIBLE SOURCE OF THE ACTION THAT SHIFTED

22 MR. MENENDEZ' POSITION.

23 MS. ABRAMSON: THANK YOU, MR. LINHART.

24 I HAVE NOTHING FURTHER.

25 THE COURT: ANY RECROSS?

26 MR. CONN: YES.

27 ///

28 ///

2 BY MR. CONN:

3 Q SIR, ARE YOU COMMONLY CALLED UPON TO
4 TESTIFY ABOUT WHETHER WOUNDS ARE ANTEMORTEM OR
5 POSTMORTEM?

6 A NO, I'M NOT.

7 Q HAVE YOU EVER DONE THAT BEFORE IN A
8 COURT?

9 A I MAY HAVE. I DON'T RECALL.

10 Q AS FAR AS YOU CAN RECALL, THIS IS THE
11 FIRST TIME YOU'VE EVER OFFERED SUCH AN OPINION?

12 A I HAVE OFFERED THAT OPINION IN
13 CONSULTATION WITH DETECTIVES AND ATTORNEYS ON MANY
14 OCCASIONS. I DON'T RECALL WHETHER I'VE EVER BEEN
15 ASKED TO TESTIFY IN COURT ON THAT.

16 Q SO YOU CAN'T THINK OF A SINGLE INSTANCE
17 IN WHICH YOU'VE EVER GIVEN, UNDER OATH, TESTIMONY AS
18 TO WHETHER A WOUND WAS ANTEMORTEM OR POSTMORTEM?

19 A I DON'T RECALL.

20 Q HOW DO YOU NORMALLY GO ABOUT MAKING A
21 DETERMINATION AS TO WHETHER A WOUND IS ANTEMORTEM OR
22 POSTMORTEM?

23 A FOR PURPOSES OF MY FOUNDATION FOR MY
24 RECONSTRUCTIONS, WHEN I REQUIRE THAT INFORMATION, I
25 OBTAIN THAT FROM THE AUTOPSY PROTOCOL OR
26 CONSULTATION WITH THE PATHOLOGIST.

27 Q OKAY. NOW, WHAT -- SO DO YOU EVER REACH
28 YOUR OWN PERSONAL CONCLUSIONS WITHOUT CONSULTATION

1 WITH A PATHOLOGIST AS TO WHETHER A WOUND IS
2 ANTEMORTEM OR POSTMORTEM?

3 A I WILL REACH CONCLUSIONS BASED ON THE
4 LIMITS OF MY KNOWLEDGE. AS FAR AS APPLYING THAT TO
5 FOUNDATION FOR A FORMAL OPINION RECONSTRUCTING THE
6 EVENT, I WILL RELY UPON THE ULTIMATE DETERMINATION
7 BY THE FORENSIC PATHOLOGIST.

8 Q NOW, YOU READ THE -- DR. GOLDEN'S REPORT
9 OF 1989 CONCERNING THE AUTOPSY THAT HE PERFORMED
10 UPON KITTY MENENDEZ; IS THAT CORRECT?

11 A YES, I DID.

12 Q AND YOU WERE AWARE FROM THAT AUTOPSY
13 REPORT THAT HE SAID THAT THE WOUND TO KITTY'S LEFT
14 CHEEK WAS AN ANTEMORTEM WOUND; IS THAT CORRECT?

15 A THAT WAS MY READING OF HIS AUTOPSY
16 PROTOCOL, YES.

17 Q AND ARE YOU ALSO AWARE OF THE FACT THAT
18 THE WAY BY WHICH IT IS DETERMINED WHETHER A WOUND IS
19 ANTEMORTEM OR POSTMORTEM, IS NOT SO MUCH BY LOOKING
20 AT A PHOTOGRAPH, BUT BY LOOKING TO THE WOUND TO SEE
21 WHETHER THERE IS HEMORRHAGING INTO THE WOUND?

22 MS. ABRAMSON: OBJECTION, YOUR HONOR.
23 ARGUMENTATIVE.

24 THE COURT: AS PHRASED IT'S ARGUMENTATIVE.

25 MR. CONN: OKAY.

26 Q IN REVIEWING THE CONCLUSION OF
27 DR. GOLDEN IN HIS 1989 REPORT THAT THIS WAS AN
28 ANTEMORTEM WOUND, DID YOU CONSIDER THE STATEMENT OF

42407

1 DR. GOLDEN IN THAT REPORT THAT THERE WAS
2 HEMORRHAGING INTO THE WOUND?

3 MS. ABRAMSON: OBJECTION, YOUR HONOR.
4 MISSTATES THE REPORT.

5 THE COURT: OVERRULED.

6 THE WITNESS: I DON'T HAVE DETAILED ENOUGH
7 RECOLLECTION OF THE WORDS USED IN THE REPORT TO
8 RECALL HIS SAYING THAT. I WOULD HAVE TO READ IT
9 AGAIN AT THIS POINT TO DETERMINE THE WORDS HE USED.

10 I HAVE A COPY.

11 Q BY MR. CONN: DO YOU HAVE A COPY OF THE
12 REPORT WITH YOU?

13 A YES. I HAVE IT IN MY FILE.

14 Q IF YOU COULD TAKE OUT YOUR COPY OF THE
15 REPORT.

16 A (WITNESS COMPLIES.)

17 Q OKAY. IF I COULD DIRECT YOUR ATTENTION
18 TO PAGE 2 OF THAT REPORT.

19 MS. ABRAMSON: PAGE 2?

20 MR. CONN: UNDER DESCRIPTION OF THE SHOTGUN

21 WOUNDS.

22 Q DO YOU RECALL DR. GOLDEN INDICATING IN
23 THAT REPORT THAT ALL THE INJURIES DESCRIBED ARE
24 ANTEMORTEM UNLESS OTHERWISE SPECIFIED?

25 A YES. I HAD RECALLED HIS USING THOSE
26 WORDS. I SEE THEM HERE NOW.

27 Q AND AS YOU READ THE DESCRIPTION OF THAT
28 PARTICULAR WOUND, WHICH IS WOUND NO. 1, DID YOU SEE

42408

1 ANY INDICATION IN THE DESCRIPTION OF THAT WOUND THAT
2 IT WAS NOT ANTEMORTEM?

3 A NO. HE DID NOT SAY THAT IT WAS NOT
4 ANTEMORTEM; IN OTHER WORDS, HE PROVIDED NO EXCEPTION
5 TO THAT GENERAL STATEMENT THAT ALL WOUNDS ARE
6 ANTEMORTEM UNLESS OTHERWISE SPECIFIED.

7 Q NOW, YOUR CONCLUSION THAT JOSE MENENDEZ
8 WAS MOST LIKELY STANDING AT THE TIME THAT HE
9 RECEIVED THE WOUND TO HIS LEFT LEG IS BASED UPON THE
10 FACT THAT YOU FAILED TO OBSERVE ANY BLOW-OUT
11 ALONGSIDE OF THE COUCH; IS THAT CORRECT?

12 A IT'S BASED IN PART UPON THAT
13 DETERMINATION, YES.

14 Q WHAT ELSE IS IT BASED UPON?

15 A IT'S BASED UPON THE ABSENCE OF THAT

16 BLOW-OUT ELSEWHERE AND OR IN THAT AREA; THEREFORE,
17 IT MUST HAVE BEEN IN SOME OTHER LOCATION, BASED UPON
18 THAT FACT HE HAD TO HAVE BEEN TURNED TO SOME OTHER
19 ORIENTATION.

20 IT'S ALSO BASED IN PART ON MY POTENTIAL
21 FINDING A POSSIBLE SPOT FOR THAT ON THE COUCH
22 CUSHION.

23 Q AND YOU HAVEN'T TESTIFIED HERE IN COURT
24 TO A PHOTOGRAPH WHICH DEPICTS THAT BLOW-OUT THAT
25 YOU'RE REFERRING TO?

26 A YES. I POINTED IT OUT IN EARLIER
27 TESTIMONY, AND I DON'T KNOW THE NUMBER OF THE
28 PHOTOGRAPH. BUT ON THE EASEL IT'S THE ONE IN THE

42409

1 LOWER RIGHT CORNER.

2 Q IS THIS THE PHOTOGRAPH THAT YOU'RE
3 REFERRING TO HERE? ARE YOU REFERRING TO SOMETHING
4 THAT YOU CAN SEE WHILE HE'S STILL IN THE SEATED
5 POSITION?

6 A YES, I AM.

7 Q LET ME SHOW YOU 230.

8 IF YOU CAN TELL US WHAT YOU'RE REFERRING
9 TO IN THAT PHOTOGRAPH AS BEING POTENTIAL BLOW-OUT.

10 A THERE ARE SOME BLOOD DROPLETS ON THE

11 FRONT AND OF THE TOP RIGHT, AT THE FRONT EDGE OF THE
12 PHOTOGRAPH THAT COULD BE PART OF AN EXIT SPATTER
13 PATTERN.

14 Q OKAY. AND WHAT WE'RE LOOKING AT THERE
15 IS JUST A VERY FEW DROPLETS.

16 A THERE ARE JUST A FEW. THAT'S NOT
17 ADEQUATE TO ACCOUNT FOR THE ENTIRE EXIT SPATTER.
18 THAT'S WHY I'M UNABLE TO CONCLUDE THAT'S, IN FACT,
19 WHAT IT IS.

20 Q RIGHT ABOVE THOSE FEW DROPLETS THERE'S
21 WHAT APPEARS TO BE A FAIRLY CLEAN SPACE THERE.
22 THERE'S NOT MUCH BLOOD IN THE AREA IMMEDIATELY ABOVE
23 THIS?

24 A THERE ARE SOME AREAS WHERE THERE IS NO
25 BLOOD DROPLETS. IT'S A FAIRLY SMALL AREA.

26 Q IS IT YOUR OPINION THAT THE BLOW-OUT IN
27 THIS CASE WOULD HAVE JUST CAUSED A FEW DROPLETS
28 THERE AND THE REST OF THE BLOW-OUT WOULD HAVE GONE

42410

1 ABOVE IT ON THE SEAT WHERE WE CAN'T SEE IT?

2 A YES. THAT IS, IN FACT -- PART OF THAT
3 PATTERN WOULD BE ON THE SEAT IN AN AREA SUBSEQUENTLY
4 OBSCURED BY ADDITIONAL BLEEDING. THE FACT OF THAT
5 SUBSEQUENT POSSIBILITY OF OBSCURING IT MAKES IT

6 IMPOSSIBLE FOR ME TO DETERMINE DEFINITELY THAT'S,
7 IN FACT, WHAT IT IS.

8 Q ASIDE FROM DEFINITELY, YOU HAVE NO
9 BASIS UPON WHICH YOU CAN JUST LOOK AT THAT
10 PHOTOGRAPH AND SAY THAT'S BLOW-OUT, IS THERE?

11 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

12 THE COURT: DID YOU UNDERSTAND THE QUESTION?

13 THE WITNESS: YES, I DID.

14 THE COURT: REGARDING ARGUMENTATIVE,
15 OBJECTION OVERRULED.

16 THE WITNESS: YEAH. THAT IS TRUE. I CANNOT
17 DEFINITELY IDENTIFY THAT AS EXIT SPATTER. IT JUST
18 PROVIDES ME ONE POSSIBILITY.

19 Q BY MR. CONN: IT PROVIDES YOU WITH ONE
20 THEORY WITHOUT ANY SUBSTANTIATION?

21 MS. ABRAMSON: OBJECTION.

22 THE WITNESS: WELL, NO.

23 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

24 THE COURT: OVERRULED.

25 THE WITNESS: NO. IT IS NOT WITHOUT ANY
26 SUBSTANTIATION. THERE'S SOME EVIDENCE FOR THAT
27 BEING THE CASE BASED UPON THE APPEARANCE OF THE
28 SPATTER IN THAT REGION. THE ABSENCE OF THE SPATTER

1 WHICH NECESSARILY OCCURRED IN ANY OTHER REGION MAKES
2 THAT THE MOST LIKELY OF THE POSSIBILITIES THAT I CAN
3 IDENTIFY, AS I TESTIFIED. BUT I CANNOT CONCLUDE
4 THAT THAT'S NECESSARILY THE CASE, AND I DON'T MEAN
5 AT THIS POINT TO IMPLY THAT.

6 Q BY MR. CONN: AND ONCE THE BODY WAS
7 REMOVED FROM THAT POSITION, WERE THERE PHOTOGRAPHS,
8 WHICH INDICATED TO YOU FROM LOOKING AT THE PLACE
9 WHERE HE WAS SEATED, THAT THERE WAS A BLOW-OUT
10 THERE?

11 A THERE WERE PHOTOGRAPHS TAKEN OF THE SEAT
12 WHICH SHOWED THE POOL -- THE BLOOD THAT HAD POOLED
13 UNDERNEATH HIM; AND, UNFORTUNATELY, IT IS IMPOSSIBLE
14 TO DETERMINE WHETHER OR NOT THERE WERE BLOOD DROPS
15 INITIALLY THAT WERE SUBSEQUENTLY OBSCURED BY THAT
16 POOLING OF BLOOD UNDER HIS BODY. THAT'S THE REASON
17 THE CONCLUSION REMAINS INCONCLUSIVE.

18 Q SO WE HAVE NO PHYSICAL EVIDENCE FROM
19 LOOKING AT WHERE HE WAS ACTUALLY SEATED, WHICH
20 SUPPORTS THE THEORY THAT HE WAS STANDING AT THE TIME
21 THAT THAT SHOT WAS FIRED; IS THAT CORRECT?

22 A THAT'S NOT CORRECT. WE HAVE SOME
23 EVIDENCE, BUT INSUFFICIENT TO CONCLUDE CONCLUSIVELY
24 THAT THAT WAS THE ORIENTATION WHEN THE SHOT WAS
25 FIRED.

26 Q I'M TALKING ABOUT FROM WHERE HE WAS
27 SEATED. I'M NOT TALKING ABOUT THOSE FEW BLOOD DROPS
28 IN FRONT THAT YOU ALREADY TOLD US ABOUT. I'M JUST

1 TALKING ABOUT FROM WHERE HE WAS ACTUALLY SEATED,
2 THERE IS NO PHYSICAL EVIDENCE WHICH SUPPORTS THE
3 THEORY THAT HE WAS STANDING AT THE TIME THAT THE
4 SHOT WAS FIRED TO HIS LEG, IS THERE?

5 A THERE'S NO OTHER SPATTER VISIBLE IN THAT
6 AREA THAT WAS SUBSEQUENTLY OBSCURED BY THE FLOW OF
7 BLOOD, NO. I WOULDN'T EXPECT TO BE ABLE TO
8 DETERMINE THAT.

9 Q IS YOUR OPINION, THAT WHAT HAPPENED IN
10 THIS CASE WAS THAT HE WAS STANDING WITH HIS LEFT LEG
11 NEAR THE SIDE OF THE COUCH, THAT HE WAS THEN SHOT IN
12 THE INSIDE OF THE LEFT LEG, THERE WAS SPATTER WHICH
13 CAME OUT THE LEFT SIDE OF HIS LEG, AND THAT HE
14 TURNED AROUND ON THAT WEAKENED LEG, AND SAT DOWN IN
15 THIS COMFORTABLE POSITION?

16 MS. ABRAMSON: OBJECTION, YOUR HONOR.
17 ASSUMES FACTS NOT IN EVIDENCE.

18 THE COURT: WELL, REMOVING THE DESCRIPTION OF
19 "COMFORTABLE" FROM IT, YOU CAN ANSWER THE QUESTION.

20 THE WITNESS: THERE ARE OTHER ANSWERS OF THE
21 SCENARIO THAT YOU DESCRIBED THAT I CANNOT CONCLUDE.
22 I CAN'T CONCLUDE, FOR EXAMPLE, THAT HIS WEIGHT WAS
23 RESTING ON THE INJURED LEG AT THE TIME THAT HE WAS

24 SHOT. BUT -- AND, IN FACT, AS I PREVIOUSLY STATED,
25 I CAN'T CONCLUDE, IN FACT, THAT THAT WAS THE
26 ORIENTATION HE WAS IN WHEN THE SHOT WAS FIRED TO HIS
27 LEG. WHAT I STATED IS THAT THAT IS ONE OF THE
28 POSSIBILITIES; AND ACTUALLY, THE MOST LIKELY

42413

1 POSSIBILITY THAT I COULD FIND, BASED UPON THE
2 ABSENCE OF ANY EVIDENCE OF THE EXIT SPATTER IN ANY
3 OTHER LOCATION THAT I COULD SEE AND SOME SPATTER IN
4 THAT LOCATION THAT COULD REASONABLY BE EXIT SPATTER,
5 THAT WOULD SUGGEST THAT THAT IS A POSSIBILITY.

6 SO BEYOND THAT, I CANNOT FURTHER
7 DESCRIBE HIS POSITION AND HIS SUBSEQUENT MOVEMENT.
8 HE COULD NOT HAVE PLACED -- BORNE WEIGHT ON THAT LEG
9 BASED UPON THE CORONER'S DESCRIPTION OF THE
10 FRACTURED FEMUR FOLLOWING THAT. BUT I DON'T KNOW
11 THAT THE WEIGHT WAS ON THAT LEG AT THE TIME THE
12 WOUND WAS RECEIVED.

13 Q AND THIS THEORY OF YOURS THAT HE WAS
14 SHOT IN THE LEFT LEG AND THAT THERE IS NO BLOW-OUT
15 ALSO FAILS TO TAKE INTO ACCOUNT IN ANY WAY THAT
16 PIECE OF TISSUE THAT WAS FOUND HERE IN THE ENTRY
17 INTO THE DEN; IS THAT CORRECT?

18 A YOU'VE MISSTATED MY OPINION THAT THERE

19 WAS NO BLOW-OUT, AS YOU PUT IT, OR EXIT SPATTER FROM
20 THAT WOUND. I DON'T BELIEVE THAT TO BE THE CASE,
21 NO. THAT POSSIBLE SCENARIO THAT I PROVIDED, WHAT I
22 REFERRED TO AS THE MOST PROBABLE BASED UPON THE
23 EVIDENCE THAT I SAW, DOES NOT ACCOUNT FOR WHAT HAS
24 BEEN DESCRIBED AS TISSUE IN ANOTHER PART OF THE
25 ROOM.

26 Q WELL, ONE OF THE CRITICISMS THAT YOU HAD
27 OF MR. MC CARTHY'S TESTIMONY WAS THAT HE IGNORED
28 SOME PHYSICAL EVIDENCE IN THIS CASE; IS THAT

42414

1 CORRECT?

2 A YES. I FIRMLY BELIEVE THAT HE DID.

3 Q CAN YOU TELL US HOW YOU ACCOUNT FOR THAT
4 PIECE OF TISSUE OVER BY THE DOOR?

5 A I DON'T KNOW THAT IT IS TISSUE. IT WAS
6 AN OBJECT THAT APPEARED IN THE PHOTOGRAPH, THAT
7 FRONT PHOTOGRAPH, THAT I SAID I COULD NOT IDENTIFY.

8 I AM CONFIDENT THAT IT IS NOT A DIRECT
9 RESULT OF THE EXIT SPATTER FROM THAT WOUND BECAUSE
10 NONE OF THE OTHER FEATURES OF AN EXIT SPATTER ARE
11 PRESENT, EVEN IF IT IS A PIECE OF TISSUE.

12 SO NOW, I DID NOT IGNORE THAT AS A PIECE
13 OF EVIDENCE, INDICATING THAT THAT WAS A PORTION OF

14 THE EXIT SPATTER. IT IS AN UNKNOWN OBJECT IN
15 ANOTHER PORTION OF THE ROOM. I CANNOT USE IT
16 FURTHER FOR MY RECONSTRUCTION BECAUSE I DON'T KNOW
17 WHAT IT IS.

18 Q WELL, WHEN YOU TELL US THAT ALL THE
19 WOUNDS TOOK PLACE TO KITTY RIGHT ABOUT THAT AREA
20 WHERE SHE IS FOUND, AND WHEN YOU ALSO TELL US THAT
21 SHOTS TO JOSE MENENDEZ TOOK PLACE AS YOU INDICATED,
22 YOUR ACCOUNT OF THIS SHOOTING IGNORES THAT PIECE OF
23 PHYSICAL EVIDENCE, DOESN'T IT?

24 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

25 THE COURT: OVERRULED.

26 THE WITNESS: NO. I HAVE NOT IDENTIFIED THAT
27 AS AN ITEM THAT IS, IN FACT, EVIDENCE. I DON'T KNOW
28 WHAT IT IS. AS FAR AS THAT PROVIDING POTENTIAL

42415

1 EVIDENCE THAT ONE OF THEM WAS IN THAT AREA OF THE
2 ROOM WHEN THEY WERE SHOT, IF THAT'S WHAT YOU MEAN TO
3 SUGGEST BY THAT QUESTION, I THINK THERE IS OTHER
4 CONTRAINDICATING EVIDENCE TO THAT SCENARIO IN THAT
5 THE AREA BETWEEN THAT OBJECT, WHATEVER IT IS, AND
6 THE BODIES, IS TOTALLY FREE OF ANY BLOOD TRAIL THAT
7 WAS SUGGESTED ANYONE INJURED AND BLEEDING SUFFICIENT
8 TO DRIP BLOOD WAS MOVING ACROSS THAT AREA OF THE

9 FLOOR.

10 SO WHAT IT IS AND HOW IT GOT THERE, I DO
11 NOT KNOW. BUT IT DOES NOT PROVIDE EVIDENCE, DUE TO
12 THE SURROUNDING FEATURES THAT SOMEONE WAS IN THAT
13 REGION WHEN HE OR SHE WAS SHOT.

14 Q GETTING BACK TO WHAT I ASKED YOU A
15 MOMENT AGO ABOUT YOUR OPINION CONCERNING THE WOUND
16 TO THE LEFT CHEEK OF KITTY MENENDEZ, AND BEING
17 POSSIBLY PERIMORTEM OR POSTMORTEM, DID YOU ALSO READ
18 THE PART OF THE REPORT OF DR. GOLDEN -- DIRECTING
19 YOUR ATTENTION TO PAGE 3 -- WHICH INDICATED IN THAT
20 THIRD PARAGRAPH FROM THE BOTTOM, THE LAST LINE --

21 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
22 OBJECT TO COUNSEL READING SELECTED PARTS OUT OF
23 CONTEXT.

24 THE COURT: OVERRULED.

25 Q BY MR. CONN: DID YOU READ THAT LAST
26 LINE WHICH SAYS:

27 "THERE IS HEMORRHAGING ALONG THE
28 ENTIRE WOUND PATH AS DESCRIBED, AND IN

42416

1 THE CASE OF GUN SHOT WOUND NO. 1, DARK
2 BLACK SOOT DEPOSIT ADMIXED WITH BONE
3 FRAGMENTS"?

4 A YES, I READ THAT.

5 Q DID YOU UNDERSTAND THAT THE FACT THERE
6 WAS HEMORRHAGING ALONG THE ENTIRE WOUND PATH IS THE
7 MOST RELIABLE INDICATOR THAT THAT WAS, IN FACT, AN
8 ANTEMORTEM WOUND?

9 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
10 OBJECT TO THAT STATEMENT AS BEING ARGUMENTATIVE.
11 IT'S MISLEADING.

12 THE COURT: OVERRULED. THIS IS
13 CROSS-EXAMINATION.

14 THE WITNESS CAN RESPOND.

15 THE WITNESS: YES. I UNDERSTAND THE
16 OBSERVATION OF WOUND HEMORRHAGING AND BLOOD IN THE
17 TISSUE AS A PART OF THE DETERMINATION OF WHETHER A
18 WOUND IS ANTEMORTEM OR POSTMORTEM. WHAT I TESTIFIED
19 TO WAS THAT IT WAS MY OPINION, BASED UPON JUST AN
20 OBSERVATION OF THE SURFACE OF THE WOUND, THAT IT
21 APPEARED TO BE A POSTMORTEM WOUND TO ME. AS I
22 STATED, I UNDERSTAND THAT IS NOT A COMPLETE
23 EVALUATION OF THE WOUND AND DID NOT RELY UPON THAT
24 CONCLUSION FOR ANY SUBSEQUENT RECONSTRUCTION.

25 Q BY MR. CONN: WELL, ASSUMING THAT THERE
26 WAS HEMORRHAGING ALONG THE ENTIRE WOUND PATH, DON'T
27 YOU THINK THAT IS -- ASSUMING THAT A PATHOLOGIST
28 OBSERVED HEMORRHAGING ALONG THE ENTIRE WOUND

1 PATH -- DON'T YOU THINK THAT THAT IS A MORE RELIABLE
2 INDICATOR AS TO WHETHER OR NOT THIS WAS AN
3 ANTEMORTEM WOUND, THAN YOU, A CRIMINALIST, SIMPLY
4 LOOKING AT A PHOTOGRAPH?

5 A IF THAT WERE THE FINAL CONCLUSION, I
6 WOULD HAVE TO AGREE, THAT THERE'S MUCH MORE THAN MY
7 LOOKING AT THE SURFACE OF THE WOUND TO DETERMINE
8 THAT. I MERELY STATED, UPON BEING ASKED WHAT MY
9 IMPRESSION, MY CONCLUSION WAS, BASED ON AN
10 OBSERVATION OF THE PHOTOS OF THE SKIN SURFACE.

11 Q NOW, YOU SAID THAT IN REGARD TO THE --
12 WELL, LET'S GO TO THIS PHOTOGRAPH HERE OF JOSE
13 MENENDEZ, 183, WHICH SHOWS THAT WOUND TO HIS LEFT
14 ARM.

15 COUNSEL ASKED YOU IF YOU WERE AWARE OF
16 THE FACT THAT IN THAT WOUND -- IN THAT PHOTOGRAPH
17 THE WOUND HAS ALREADY BEEN PARTIALLY DISSECTED; IS
18 THAT CORRECT?

19 A YES. THAT HAS THE APPEARANCE OF BEING A
20 WOUND THAT HAS BEEN CUT OPEN.

21 Q ARE YOU AWARE OF THE FACT FROM
22 DR. GOLDEN'S REPORT THAT THAT WOUND RIGHT THERE WAS
23 SIX INCHES BY FOUR INCHES IN SIZE BEFORE THE
24 DISSECTION?

25 A I DON'T HAVE THAT MEMORIZED. I COULD
26 REFER TO THE AUTOPSY REPORT TO SEE WHAT DIMENSIONS
27 HE DESCRIBED FOR IT.

28 Q DO YOU HAVE A COPY OF THAT REPORT BEFORE

42418

1 YOU?

2 A YES, I DO.

3 Q LET ME DIRECT YOUR ATTENTION TO THE '89
4 REPORT OF JOSE MENENDEZ, PAGE 6, THE SECOND FULL
5 PARAGRAPH, FIRST SENTENCE.

6 DO YOU RECALL UPON READING THAT
7 PARAGRAPH THAT DR. GOLDEN SAID THAT THAT WOUND WAS
8 SIX INCHES BY FOUR INCHES?

9 MS. ABRAMSON: OBJECTION. THAT MISSTATES THE
10 REPORT.

11 THE COURT: WHY DON'T YOU READ THE SPECIFIC
12 WORDS.

13 MR. CONN: UH-HUH.

14 Q DO YOU RECALL DR. GOLDEN WRITING IN HIS
15 REPORT:

16 "ALSO CONFIRMING DISTAL PROXIMAL
17 IS AN EXIT LACERATION ON THE MEDIAL
18 ASPECT OF THE RIGHT UPPER ARM ADJACENT
19 TO THE AXILLA MEASURING APPROXIMATELY
20 SIX BY FOUR INCHES AND LOCATED
21 APPROXIMATELY NINE TO FOURTEEN INCHES
22 BELOW THE TOP OF THE RIGHT SHOULDER.

23 THIS APPEARS TO BE RELATED TO ONE OF
24 THE SHOTGUN WOUNDS OF THE RIGHT UPPER
25 EXTREMITY, EITHER 2 OR 3; LIKEWISE
26 CONFIRMING THAT THE TRAJECTORY IS
27 DISTAL/PROXIMAL AND LATERAL/MEDIA"?
28 A YES, I RECALL THE DESCRIPTION.

42419

1 Q DO YOU RECALL THAT WOUND WE'RE TALKING
2 ABOUT THERE IS SIX INCHES BY FOUR INCHES IN SIZE; IS
3 THAT CORRECT?

4 A HE DESCRIBED IT AS SUCH, YES.

5 Q AND EVEN THOUGH HE DESCRIBED A WOUND TO
6 HIS RIGHT ARM AS SIX INCHES BY FOUR INCHES IN SIZE,
7 YOU STILL DON'T FEEL THAT THE BLOOD FROM THAT WOUND
8 COULD ACCOUNT FOR THE BLOOD THAT SEEPED DOWN IN
9 BETWEEN THOSE TWO CUSHIONS; IS THAT CORRECT?

10 A YES. BASED UPON THE TOTALITY OF MY
11 OBSERVATIONS, I STILL BELIEVE THAT THAT WAS
12 PREDOMINANTLY FROM THE HEAD WOUND.

13 Q LET'S MOVE ON TO SOMETHING ELSE.

14 SHOWING YOU 319 NOW, DIRECTING YOUR
15 ATTENTION, ONCE AGAIN, TO THOSE CONTACT -- IF I MAY
16 HAVE JUST A MOMENT.

17 DIRECTING YOUR ATTENTION TO WHAT YOU

18 REFER TO AS CONTACT SMEARS THERE, COUNSEL POINTED
19 OUT TO YOU JUST A SHORT WHILE AGO THAT IT WAS
20 KITTY'S RIGHT HAND THAT HAD BEEN BADLY INJURED IN
21 THIS INCIDENT RATHER THAN HER LEFT HAND; IS THAT
22 CORRECT?

23 A I DO RECALL A DESCRIPTION OF INJURIES TO
24 THE RIGHT HAND. I DON'T RECALL ANY TO THE LEFT.

25 Q WERE YOU SAYING JUST A LITTLE WHILE AGO
26 THAT BECAUSE THE INJURY TO THE RIGHT HAND WAS TO THE
27 RIGHT HAND RATHER THAN THE LEFT, THAT, THEREFORE,
28 KITTY MENENDEZ COULD NOT HAVE MADE ANY OF THESE

42420

1 MARKS ON THE SOFA WITH HER LEFT HAND?

2 A NO. I WASN'T ASKED THE QUESTION TO
3 WHICH I COULD RESPOND REGARDING THAT.

4 Q OKAY. AND, IN FACT, KITTY'S -- THE LEFT
5 HAND OF --

6 MS. ABRAMSON: YOUR HONOR, I'M GOING TO
7 OBJECT TO THE WAY COUNSEL IS CHARACTERIZING THE
8 DECEDENTS.

9 THE COURT: ALL RIGHT. HE WAS ABOUT TO DO
10 OTHERWISE.

11 SO YOU MAY PROCEED.

12 Q BY MR. CONN: IN FACT, THE LEFT HAND OF

13 KITTY MENENDEZ WAS, IN FACT -- HAD A GREAT DEAL OF
14 BLOOD ON IT, DIDN'T IT?

15 A THERE IS BLOOD ON HER LEFT HAND AS SHOWN
16 IN THE PHOTOGRAPHS OF HER AT THE SCENE.

17 Q LET ME SHOW YOU 96 FOR IDENTIFICATION.

18 IS THAT ONE OF THE PHOTOGRAPHS THAT
19 DEPICTS HER AT THE TIME THAT SHE WAS DISCOVERED?

20 A YES.

21 Q OKAY. AND DOES THAT SHOW, IN FACT, THAT
22 THERE IS A GREAT DEAL OF BLOOD -- THAT THERE'S A
23 GREAT DEAL OF BLOOD ON THE BACK OF HER LEFT HAND AND
24 HER LEFT ARM?

25 A YES. THERE IS BLOOD ON HER LEFT HAND
26 AND HER LEFT ARM.

27 Q AND BECAUSE THIS WAS SUCH A BLOODY CRIME
28 SCENE, ALL OF THE STAINS ON THAT CUSHION -- WELL, IN

42421

1 PARTICULAR, I'M REFERRING TO THE STAIN ON THE TOP OF
2 THE CUSHION, COULD HAVE BEEN CAUSED BY HER LEFT HAND
3 TOUCHING THAT, EVEN THOUGH HER LEFT HAND HAD NOT
4 BEEN INJURED; ISN'T THAT CORRECT?

5 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

6 THE COURT: OVERRULED.

7 THE WITNESS: I WOULD CONSIDER THAT WITHIN

8 THE REALM OF POSSIBILITY. IF THE LEFT HAND HAD BEEN
9 CONTAMINATED WITH BLOOD, THEN THAT PROVIDES A
10 POSSIBLE SOURCE OF TRANSFER OF BLOOD TO THE COUCH.

11 Q BY MR. CONN: AND YOU KNOW THAT AT
12 SOMETIME DURING THIS -- THIS SHOOTING HER HAND WAS,
13 IN FACT, CONTAMINATED BECAUSE BY THE TIME HER BODY
14 WAS FOUND SHE'S BLOODY ALL OVER, INCLUDING HER LEFT
15 HAND AND ARM; IS THAT CORRECT?

16 MS. ABRAMSON: OBJECTION. ARGUMENTATIVE.

17 THE COURT: AS PHRASED IT'S ARGUMENTATIVE.

18 OBJECTION SUSTAINED.

19 Q BY MR. CONN: IS IT CORRECT THAT AT THE
20 TIME HER BODY WAS FOUND HER LEFT HAND AND HER LEFT
21 ARM WAS BLOODY?

22 A YES.

23 Q NOW, COUNSEL ASKED YOU IF IT WAS
24 POSSIBLE THAT KITTY MENENDEZ RECEIVED MANY OF THE
25 WOUNDS TO HER BODY WHILE SHE WAS STANDING UP AND YOU
26 AGREED THAT SHE COULD HAVE; IS THAT CORRECT?

27 A THAT'S CORRECT. THAT'S WITHIN THE RANGE
28 OF POSSIBILITY.

42422

1 Q DO YOU THINK SHE COULD HAVE RECEIVED ALL
2 THE WOUNDS TO HER LEGS WHILE SHE WAS STANDING UP AND

3 REMAIN STANDING?

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

6 THE COURT: OVERRULED.

7 THE WITNESS: I DON'T KNOW THAT I CAN
8 CONCLUDE THAT SHE COULD HAVE REMAINED STANDING. I
9 WOULD HAVE TO REVIEW THE AUTOPSY PROTOCOL TO SEE HOW
10 SERIOUSLY THE INJURY WAS TO THE LEG TO OFFER AN
11 OPINION AT THIS POINT WHETHER SHE COULD HAVE
12 REMAINED STANDING AFTER RECEIVING THE LEG WOUNDS.

13 Q BY MR. CONN: WELL, DID YOU LOOK AT THE
14 X RAYS IN THIS CASE TO GET AN IDEA OF HOW SEVERE THE
15 WOUNDS TO THE LEFT LEG WERE?

16 A TYPICALLY, I DO NOT RELY UPON THE
17 X RAYS, BUT RATHER ON THE PATHOLOGIST'S DESCRIPTION.

18 Q BASED UPON THE DESCRIPTION OF THE
19 PATHOLOGIST, ARE YOU AWARE THAT SHE HAD SOME SEVERE
20 FRACTURES TO LEFT LEG?

21 A I COULD REVIEW THE COPY OF THE AUTOPSY
22 PROTOCOL AT THIS POINT AND REFRESH MY RECOLLECTION
23 AS TO THAT.

24 Q WELL, ASSUMING THAT SHE HAD FRACTURES TO
25 THE LEFT LEG WHICH APPEAR IN X RAYS, AND ASSUMING
26 168 IS ONE OF THE X RAYS OF HER LEFT LEG, WOULD YOU
27 AGREE THAT IT'S UNLIKELY THAT KITTY MENENDEZ COULD
28 HAVE BEEN STANDING AFTER SHE RECEIVED THAT SHOT TO

1 HER LEFT LEG?

2 A BASED UPON WHAT APPEARS TO BE A COMPLETE
3 FRACTURE OF THE FEMUR IN THIS PHOTOGRAPH, I WOULD
4 BELIEVE THAT SHE COULDN'T REMAIN STANDING, PLACING
5 WEIGHT ON THAT LEG, NO.

6 Q SO DOES THAT HELP YOU AT ALL?

7 A MAY I COMPLETE MY --

8 Q YES.

9 A IN ORDER TO REMAIN STANDING, SHE WOULD
10 HAVE TO HAVE HER WEIGHT ON THE OTHER LEG, IF IT IS
11 NOT SIMILARLY INJURED.

12 Q AND YOU USED THE TERM "LIKELY" AND
13 "UNLIKELY" AT VARIOUS TIMES DURING THE COURSE OF
14 YOUR TESTIMONY, HAVEN'T YOU, SIR?

15 A YES, I HAVE.

16 Q AND CAN YOU TELL HOW LIKELY IT IS THAT
17 YOU THINK THAT THIS WOMAN WAS STANDING THERE WHILE
18 SHOT AFTER SHOT AFTER SHOT WAS BEING INFLICTED UPON
19 HER BODY?

20 MS. ABRAMSON: OBJECTION, YOUR HONOR. VAGUE.

21 THE COURT: DO YOU UNDERSTAND THE QUESTION?

22 THE WITNESS: YES. I UNDERSTAND WHAT HE
23 MEANS. IT'S -- YOU WANT ME TO GO AHEAD?

24 THE COURT: YES.

25 THE WITNESS: IT'S A DIFFICULT QUESTION TO

26 ANSWER BECAUSE THERE'S ADDITIONAL FACTORS NOT
27 INCLUDED IN YOUR QUESTION TO CONSIDER, AND THAT IS
28 HOW RAPIDLY THE SHOTS OCCURRED TO HER. THERE WOULD

42424

1 BE SOME DISCRETE TIME FOR HER TO REACT TO A SHOT.
2 SO IF THE SHOTS WERE SPACED OUT OVER A LONG PERIOD
3 OF TIME, I WOULD CONSIDER THE LIKELIHOOD OF HER
4 REMAINING STANDING DURING THE ENTIRE TIME TO BE LESS
5 THAN IF THE SHOTS OCCURRED RAPIDLY.

6 Q BY MR. CONN: DID YOU FORM ANY OPINION
7 AS TO HOW MANY SHOTS SHE MIGHT HAVE RECEIVED BEFORE
8 SHE FELL TO THE FLOOR?

9 A NO. I WASN'T ABLE TO FORM ANY OPINIONS
10 AS TO WHETHER OR NOT THE SHOTS WERE RECEIVED
11 STANDING OR WHICH PORTION OF THEM WERE RECEIVED
12 STANDING OR WHICH PORTION WERE RECEIVED AFTER SHE
13 WAS ALREADY ON THE FLOOR.

14 Q OKAY. NOW, IN REGARD TO -- IN REGARD TO
15 THE BLOOD THAT WAS OBSERVED ON THE SOLE OF THE SHOE
16 OF KITTY MENENDEZ -- I'M REFERRING TO THE RIGHT SHOE
17 -- COULD THAT BLOOD HAVE GOTTEN THERE AS A RESULT
18 OF THE -- LET'S SEE IF I CAN FIND THAT PHOTOGRAPH.

19 LET ME DIRECT YOUR ATTENTION HERE TO
20 332, WHICH IS A CLOSE-UP SHOWING THE FLOOR AROUND

21 THE FEET OF KITTY MENENDEZ.

22 COULD THAT BLOOD TO THE RIGHT SHOE OF

23 KITTY MENENDEZ HAVE GOTTEN THERE FROM ANY OF THESE

24 SPOTS THAT APPEAR NEAR HER SHOE?

25 A BLOOD ON RIGHT SHOE ARE WE TALKING

26 ABOUT?

27 Q WELL, HOW MANY DROPS OF BLOOD DID SHE

28 HAVE TO THE RIGHT SHOE?

42425

1 A OH, I DON'T KNOW HOW MANY DROPS THERE

2 WERE. THERE WAS AT LEAST SMEARED BLOOD. I'D HAVE

3 TO LOOK -- I HAVE A PHOTO HERE. THERE WAS AT LEAST

4 ONE LARGE AREA THAT APPEARED TO BE A DROP ON THE TOP

5 OF THE SHOE. THE REST OF THE BLOOD THAT'S VISIBLE

6 TO ME IN THIS PHOTOGRAPH -- AND THAT IS NOT DROP

7 BLOOD, BUT RATHER CONTACT TRANSFER.

8 Q WHICH PART OF HER SHOE WAS THAT STAIN

9 FOUND?

10 A WHICH --

11 Q WHICH PART OF HER SHOE?

12 A WHICH STAIN FOUND?

13 Q THE ONE YOU'RE REFERRING TO THAT WAS A

14 CONTACT TRANSFER.

15 A THERE'S A CONTACT TRANSFER VISIBLE ON

16 THE BACK SURFACE OF THE SHOE, ALSO VISIBLE ON THE
17 SIDE OF THE SHOE CLOSER TO THE FRONT, AND ON THE
18 SOLE.

19 Q WERE YOU REFERRING TO THIS HERE ON THE
20 BACK OF THE SHOE?

21 A THAT'S THE PORTION OF BLOOD I'M
22 REFERRING TO. THERE'S MORE.

23 Q COULD YOU TELL US HOW THAT COULD HAVE
24 GOTTEN THERE?

25 A BY CONTACT WITH AN AREA OF WET BLOOD
26 FROM THE APPEARANCE OF THE STAIN AS IT IS CONTIGUOUS
27 WITH THE CONTACT TRANSFER ON THE BACK OF HER LEG, IT
28 WOULD APPEAR THAT IT WAS PROBABLY FROM THE SAME

42426

1 CONTIGUOUS SOURCE, THAT THE LEG AND THE SHOE
2 CONTACTED BLOOD SOURCE AT THE SAME TIME.

3 Q UH-HUH. UH-HUH. WHAT ARE THE VARIOUS
4 SOURCES FROM WHICH THAT MIGHT HAVE BEEN OBTAINED
5 FROM?

6 A THE FLOOR OR SOME OTHER BLOODIED PORTION
7 OF HER CLOTHING WOULD BE THE MOST LIKELY.

8 Q OKAY. JUST BY LOOKING AT THE STAINS TO
9 HER SHOE YOU CAN'T TELL THAT SHE WAS NECESSARILY
10 STANDING WHEN SHE RECEIVED THE STAINS TO THE BOTTOM

11 OF THE SHOE, RATHER THAN LYING ON HER BACK AND
12 HAVING THE SOLE OF HER SHOE PRESSED AGAINST THE
13 FLOOR; IS THAT CORRECT?

14 A THAT IS CORRECT. I CAN ONLY TELL THAT
15 THE LEGS THEMSELVES WERE IN AN UPRIGHT POSITION --
16 WELL, AT THAT POINT I CAN ONLY TELL THAT THE SOLES
17 OF THE SHOES WERE DOWN TO CONTACT THE BLOODY AREA.

18 Q NOW, I THINK THAT COUNSEL ALSO HAD YOU
19 TESTIFY TO THE FACT THAT THERE WAS SOME DROPS -- NOT
20 ONLY WERE THERE DROPS OF BLOOD WHICH WERE FOUND DOWN
21 BY THE FEET OF KITTY MENENDEZ, BUT THAT THERE WERE
22 ALSO DROPS OF BLOOD FOUND UP HERE IN THE UPPER PART
23 AROUND KITTY MENENDEZ; IS THAT CORRECT?

24 A ARE WE ARE TALKING ABOUT THE ONES THAT
25 APPEAR ON THE TABLETOP?

26 Q YES. AMONG -- WELL, THERE WERE SOME
27 FOUND ON THE FLOOR; IS THAT CORRECT?

28 A AGAIN, IT'S IMPOSSIBLE FOR ME TO

42427

1 REMEMBER EVERY DROP. I WOULD HAVE TO REVIEW IT
2 AGAIN TO ADDRESS THAT.

3 Q OKAY. LET ME DIRECT YOUR ATTENTION TO
4 96. THIS PHOTOGRAPH SHOWS KITTY MENENDEZ AND THE
5 TOP PORTION OF THE COFFEE TABLE. YOU WERE

6 TESTIFYING IN REGARD TO THE SPATTER THAT YOU SEE IN
7 THAT AREA.

8 A I HADN'T PREVIOUSLY BUT --

9 Q DO YOU SEE SPATTER IN THAT AREA?

10 A ON THE FLOOR AT THE END OF THE COFFEE
11 TABLE, YES, I DO.

12 Q OKAY. AND DO YOU ALSO SEE SPATTER ON
13 THE COFFEE TABLE ITSELF?

14 A YES, I DO, ON PAPERS ON TOP OF THE
15 COFFEE TABLE.

16 Q BY LOOKING AT THE SPATTER, BOTH ON THE
17 PAPERS ON THE FLOOR, AS WELL AS THE SPATTER ON THE
18 COFFEE TABLE, CAN YOU DETERMINE THE DIRECTION OF
19 TRAVEL OF THAT SPATTER?

20 A I CAN DETERMINE THE DIRECTION OF TRAVEL
21 OF MANY OF THE DROPS WITH RESPECT TO THE SURFACE
22 THAT THEY APPEAR ON. THE COMPLICATION IS THAT MOST
23 OF THOSE DROPS FALL ON LOOSE PAPERS THAT ARE
24 THEMSELVES MOVEABLE; AND THAT MAKES IT UNRELIABLE TO
25 DETERMINE THE DIRECTION OF TRAVEL AT THE TIME THEY
26 WERE DEPOSITED RELATIVE TO MORE FIXED OBJECTS SUCH
27 AS THE TABLE. IN OTHER WORDS, THE PAPERS COULD HAVE
28 BEEN IN A DIFFERENT POSITION. SO WHILE I CAN

1 DETERMINE THE DIRECTION RELATIVE TO THE OBJECT THAT
2 IT'S ON, I CAN'T NECESSARILY DETERMINE THE DIRECTION
3 OF TRAVEL WITH RESPECT TO THE FLOOR.

4 Q OKAY. WELL, YOU HAVE NO EVIDENCE BEFORE
5 YOU AT THIS TIME THAT THOSE PAPERS WERE MOVED FROM
6 THE TIME OF THE SHOOTING TO THE TIME THAT THE
7 PHOTOGRAPHS WERE TAKEN; IS THAT CORRECT?

8 A I REALLY DON'T KNOW AT WHAT POINT THEY
9 WERE MOVED.

10 Q WELL, ASSUMING FOR THE MOMENT THAT THOSE
11 PAPERS WERE NOT MOVED FROM THE TIME OF THE SHOOTING
12 TO THE TIME THE PHOTOGRAPH WAS TAKEN, WOULD YOU BE
13 ABLE TO GIVE AN INDICATION AS TO DIRECTION OF TRAVEL
14 OF THE BLOOD SPATTER?

15 MS. ABRAMSON: OBJECTION, YOUR HONOR.
16 IMPROPER HYPOTHETICAL.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES. I CAN FORM SOME OPINIONS
19 WITH REGARD TO THAT.

20 MR. CONN: PERHAPS WE COULD PUT THAT ON THE
21 BOARD AND YOU CAN TELL THE JURY WHAT YOUR OPINION IS
22 CONCERNING THAT TRAVEL OF THE BLOOD SPATTER.

23 LET ME GIVE YOU THE PEN ONCE AGAIN.

24 DIRECTING YOUR ATTENTION BOTH TO THE
25 SPATTER ON THE PAPERS HERE AND TO THE SPATTER THAT
26 APPEARS ON THE COFFEE TABLE, CAN YOU TELL US WHAT
27 THE DIRECTION OF TRAVEL IS? PERHAPS YOU CAN MAKE AN
28 ARROW AND INDICATE.

1 A OKAY. THE TOTALITY OF THE PATTERN ON
2 THE PAPERS ON THE FLOOR, WITH RESPECT TO THE FLOOR
3 ITSELF AS IT APPEARS IN THIS PHOTOGRAPH, IS
4 TRAVELING GENERALLY IN -- TRYING TO FIND A PLACE TO
5 MARK. I'LL JUST MARK OVER THE PAPER. IN THIS
6 DIRECTION.

7 Q TO THE TABLE?

8 A DROPS ON THE TABLE. THERE'S ACTUALLY AT
9 LEAST TWO EVENTS THAT LEAD TO DEPOSIT OF BLOOD ON
10 THESE PAPERS, AND CERTAIN OF THE DROPS ARE TRAVELING
11 IN THIS DIRECTION; AND ALTHOUGH I ONLY HAVE A
12 PARTIAL VIEW OF THE APPEARANCE OF THIS LARGER DROP
13 HERE; THAT IS, IT IS TRAVELING IN THAT DIRECTION AT
14 THE TIME RELATIVE TO THE PAPER AT THE TIME IT WAS
15 APPLIED.

16 Q ALL RIGHT. THANK YOU.

17 NOW, THOSE ARROWS, DO THOSE ARROWS
18 INDICATE OR SIGNIFY THE DIRECTION OF THE SHOT, OR DO
19 THOSE ARROWS SIMPLY SIGNIFY THAT HOWEVER THE SHOT
20 STRUCK THE VICTIM, THE BLOOD SPATTERED IN THAT
21 DIRECTION?

22 A WELL, I CAN'T EVEN CONCLUDE THAT THOSE
23 ARE DIRECTLY SPATTERS FROM THE GUNSHOTS. THEY COULD
24 BE SPATTERED FROM OTHER ACTIVITY, SUCH AS MOVEMENT

25 OF THE DECEDENTS AFTER THE SHOOTING HAD BEGAN WHILE
26 THEY WERE STILL MOBILE.
27 SO IT WOULD BE UNFAIR FOR ME TO ATTEMPT
28 TO ADDRESS THEM ALL WITH RELATION TO THE DIRECTIONS

42430

1 OF THE SHOT, SINCE I DON'T KNOW THAT THEY ARE
2 DIRECTLY FROM THE SHOTS. THEY COULD BE SECONDARY
3 DUE TO BLEEDING AND MOVEMENT AFTERWARDS.

4 Q I SEE. SO WHAT YOU'RE SAYING IS THAT
5 VICTIMS THEMSELVES, AFTER THEY HAD BEEN SHOT, THEY
6 MIGHT HAVE MOVED THEIR ARM AND, FOR EXAMPLE, FLICKED
7 THEIR OWN BLOOD?

8 A THAT'S CERTAINLY POSSIBLE.

9 Q THIS IS A HYPOTHETICAL. ASSUMING THOSE
10 BLOOD SPATTERS REPRESENT SPATTER FROM THE SHOT
11 ITSELF, WOULD THAT INDICATE TO YOU THE DIRECTION
12 THAT THE SHOT WAS FIRED OR SIMPLY THAT WHATEVER
13 DIRECTION THE SHOT WAS FIRED, BLOOD SPURTED AWAY
14 FROM THE VICTIM IN THAT DIRECTION?

15 A WELL, I REALLY AM UNWILLING TO CONCLUDE
16 THAT THOSE ARE DIRECTLY FROM THE SHOTS; AND BEING ON
17 MOVEABLE OBJECTS, UNWILLING TO CONCLUDE THAT THE
18 PAPERS WERE IN THOSE POSITIONS ORIGINALLY. THERE'S
19 A LOT OF UNCERTAINTY TO CONCLUDE THAT.

20 MR. CONN: THANK YOU.

21 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

22 THE COURT: ANYTHING ELSE?

23 MS. ABRAMSON: BRIEFLY, YOUR HONOR.

24

25 FURTHER REDIRECT EXAMINATION

26 BY MS. ABRAMSON:

27 Q IF I UNDERSTAND YOU, MR. LINHART, YOU'RE

28 SAYING YOU DON'T KNOW IF THOSE PAPERS WERE ON THE

42431

1 FLOOR AT THE TIME THAT THE BLOOD WAS CONNECTED WITH

2 THEM, OR WHETHER THEY WERE ON THE TABLE, OR

3 SOMEWHERE ELSE?

4 A I REALLY CAN'T TELL.

5 Q AND NOBODY ELSE COULD TELL EITHER

6 LOOKING AT THAT, COULD THEY?

7 A I DON'T THINK RELIABLY, NO.

8 Q I JUST WANT TO GO BACK TO -- YOU SAID

9 YOU HAVE THE 1989 CORONER'S PROTOCOL IN FRONT OF

10 YOU. I BELIEVE YOU HAD STARTED TO READ ABOUT WOUND

11 NO. 1 TO MRS. MENENDEZ AND THEN YOU WERE ASKED SOME

12 QUESTIONS BEFORE YOU FINISHED.

13 I WOULD INVITE YOU, SIR, TO LOOK AT PAGE

14 3 OF THE MARY L. MENENDEZ PROTOCOL OF 1989. IF YOU

15 WANT TO READ THE COMPLETE DESCRIPTION OF WOUND
16 NO. 1, THE FIRST TWO SENTENCES REFERRING TO IT ARE
17 AT THE VERY BOTTOM OF THE PAGE, NO. 2, AND I WOULD
18 INVITE YOU, MR. LINHART, TO READ THROUGH THE ENTIRE
19 DESCRIPTION BEFORE I ASK YOU ANY QUESTIONS.

20 A ALL RIGHT. I'LL TAKE A MOMENT.

21 Q THANK YOU, SIR.

22 A (WITNESS READING.) ALL RIGHT.

23 Q AND DO YOU NOTE, MR. LINHART, THAT
24 DR. GOLDEN, IN TRYING TO FIND THE WOUND PATH FOR
25 THIS WOUND, THE CONTACT WOUND, INDICATES THAT IT IS
26 CONTIGUOUS TO TWO OTHER HEAD WOUNDS THAT
27 MRS. MENENDEZ SUSTAINED?

28 A YES, I DID NOTE THAT HE DESCRIBED THAT.

42432

1 Q AND DID YOU ALSO NOTE THAT HE SAID HE
2 CANNOT DISTINGUISH THE THREE WOUND TRACKS FROM EACH
3 OTHER?

4 MR. CONN: OBJECTION. MISSTATES THE REPORT.

5 THE COURT: WHY DON'T YOU READ THAT
6 PARTICULAR PORTION.

7 Q BY MS. ABRAMSON: AFTER DESCRIBING HOW
8 THESE THREE WOUNDS ARE CLOSE TO AND CONTIGUOUS TO
9 EACH OTHER, DOES DR. GOLDEN SAY: "HENCE, ALL THE

10 THREE CANNOT BE EXACTLY DISTINGUISHED."

11 A YES. THIS IS A DIRECT QUOTE FROM HIS
12 AUTOPSY PROTOCOL.

13 Q AND IN THE NEXT PARAGRAPH, WHEN HE MAKES
14 THE STATEMENT:

15 "THERE IS HEMORRHAGING ALONG THE
16 ENTIRE WOUND PATH, AS DESCRIBED, AND
17 IN THE CASE OF GUN SHOT WOUND NO. 1,
18 DARK BLACK SOOT DEPOSIT ADMIXED WITH
19 THE BONE FRAGMENTS."

20 IS HE DESCRIBING THIS UNIFIED WOUND
21 PATH?

22 MR. CONN: OBJECTION. THE DOCUMENT SPEAKS
23 FOR ITSELF.

24 THE COURT: OVERRULED.

25 THE WITNESS: I WOULD HAVE TO REFER TO
26 DR. GOLDEN TO DESCRIBE THAT. HAD I REQUIRED THAT
27 INFORMATION FOR MY RECONSTRUCTION, I WOULD HAVE HAD
28 TO HAVE CLARIFIED THOSE ISSUES.

42433

1 Q BY MS. ABRAMSON: AND HE DOES NOT
2 CLARIFY IN THIS REPORT WHETHER HE WAS ABLE TO
3 SEPARATE THE THREE WOUND PATHS OR TO DETERMINE WHICH
4 OF THE THREE INJURY AREAS TO HER HEAD CAUSED THE

5 WOUND PATH THAT -- OR CAUSED THE HEMORRHAGING THAT HE
6 SEES?

7 MR. CONN: OBJECTION. ARGUMENTATIVE. THE
8 DOCUMENT SPEAKS FOR ITSELF.

9 THE COURT: OVERRULED.

10 THE WITNESS: NO. I DON'T SEE WHERE THAT'S
11 CLARIFIED.

12 Q BY MS. ABRAMSON: OKAY. NOW, I WOULD
13 LIKE TO SHOW YOU THE 1995 SUPPLEMENT AND ASK YOU,
14 FIRST OF ALL, TO TURN BACK TO PAGE 3, WHICH WE HAVE,
15 AND COUNT DOWN TO PARAGRAPH 5. AND PARAGRAPH 5
16 BEGINS WITH THE WORD "OPINION"?

17 A THAT'S CORRECT.

18 Q AND DO YOU SEE IN THE 1995 SUPPLEMENT
19 WHERE DR. GOLDEN, REFERRING TO THAT PARAGRAPH,
20 INDICATES THAT THE FOLLOWING SHOULD BE ADDED TO HIS
21 OPINION ABOUT WOUND NO. 1:

22 "DUE TO LACK OF REACTION,
23 PARENTHESIS, HEMORRHAGE, CLOSED
24 PARENTHESIS, THE WOUND APPEARS
25 PERIMORTEM OR POSSIBLY POSTMORTEM"?

26 A YES. I SEE THAT WRITTEN ON THIS
27 DOCUMENT.

28 Q AND DOES THAT DESCRIPTION OF LACK OF

1 REACTION AND THE CHANGE IN OPINION TO PERIMORTEM OR
2 POSTMORTEM, IS THAT CONSISTENT WITH WHAT YOU SAW ON
3 THE EXTERNAL EVIDENCE OF THAT WOUND?

4 MR. CONN: OBJECTION. MISSTATES THE
5 TESTIMONY THAT IT WAS A CHANGE FROM PERIMORTEM TO
6 POSTMORTEM.

7 THE COURT: OVERRULED.

8 THE WITNESS: THAT IS CONSISTENT WITH MY
9 INITIAL IMPRESSION OF THAT WOUND, BASED UPON JUST
10 THE SURFACE OBSERVATION, THAT IT WAS -- THAT IT
11 APPEARED TO BE A POSTMORTEM WOUND.

12 Q BY MS. ABRAMSON: IF BELOW THE SURFACE
13 DR. GOLDEN COULDN'T TELL WHAT THE WOUND PATH WAS OR
14 WHETHER THERE WERE HEMORRHAGING ALONG THE WOUND PATH
15 SOLELY DESCRIBABLE TO NO. 1, WOULD IT BE FAIR TO
16 SAY, THEN, THERE'S NOTHING INCONSISTENT INSIDE THE
17 BODY WITH WHAT YOU OBSERVED ON THE OUTSIDE OF THE
18 BODY?

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

21 THE COURT: ASSUMING THAT THAT WAS THE STATE
22 OF THE REPORT, YOU CAN ANSWER THE QUESTION.

23 THE WITNESS: OKAY. LET ME ASK YOU TO REASK
24 IT.

25 MS. ABRAMSON: I'LL TRY TO DO THAT AGAIN.
26 ALL RIGHT.

27 Q IF, IN FACT -- I WANT YOU TO ASSUME THAT

42435

1 TRACKS COMMINGLED, THAT THERE WAS, IN FACT, ANY
2 HEMORRHAGE ALONG THE WOUND PATH OF THE INJURY THAT
3 WE'RE TALKING ABOUT THAT YOU OBSERVED THE CONTACT
4 WOUND TO ON THE CHEEK. IF HE CANNOT SAY THERE'S
5 HEMORRHAGING ALONG THAT WOUND PATH AND HE HAS
6 CHANGED HIS OPINION FROM ANTEMORTEM TO PERIMORTEM OR
7 POSTMORTEM BASED ON THE APPEARANCE OF THE WOUND, IS
8 THAT CONSISTENT WITH YOUR OPINION BASED ON THE
9 APPEARANCE OF THE EXTERNAL WOUND?

10 A YES. I WOULD ASSESS THAT AS A
11 CONSISTENT FINDING WITH MY INITIAL OBSERVATIONS AS
12 TO THE SURFACE CHARACTERISTICS OF THE WOUND.

13 Q NOW, LET ME CALL YOUR ATTENTION TO THE
14 AUTOPSY PROTOCOL FOR JUST -- IT SAYS "JOSEPH," BUT IT
15 IS JOSE MENENDEZ, PAGE 7 OF THAT '89 PROTOCOL.

16 ARE YOU FAMILIAR WITH DR. GOLDEN'S
17 DESCRIPTION OF THE INTERIOR OF THAT WOUND?

18 A I SHOULD REREAD IT AT THIS MOMENT TO
19 REFRESH MY RECOLLECTION, IF I MIGHT.

20 Q PLEASE DO.

21 A WE'RE TALKING ABOUT NO. 5, SHOTGUN WOUND
22 OF THE LEFT THIGH?

23 Q THE LEFT THIGH WOUND THAT WE CAN SEE
24 THAT WE'VE BEEN LOOKING AT IN ALL THESE
25 PHOTOGRAPHS.

26 A (WITNESS READING.)

27 ALL RIGHT. I'VE COMPLETED READING.

28 Q AND BASED ON THAT DESCRIPTION, AND ALSO

42436

1 BASED ON YOUR OBSERVATIONS, DOES IT APPEAR THERE'S
2 ONLY ONE WOUND TRACK THROUGH THE LEFT LEG OF
3 MR. MENENDEZ?

4 A THAT'S ALL HE DESCRIBES. HE DESCRIBES
5 ONE OR TWO SATELLITE ENTRY WOUNDS ADJACENT TO IT.

6 Q HE CALLS THEM, I BELIEVE, SUPERFICIAL;
7 TWO SATELLITE PELLET WOUND DEFECTS HE SAYS.

8 A YES, RIGHT.

9 Q NOW, DOES HE --

10 A HE APPEARS TO BE DESCRIBING THAT AS A
11 SINGLE SHOTGUN WOUND.

12 Q AND THERE'S ONLY ONE WOUND PATH THAT HE
13 DESCRIBES IN THE AUTOPSY REPORT?

14 A THAT'S CORRECT.

15 Q AND HE DIDN'T INDICATE THERE'S ANY
16 CONFUSION OR COMMINGLING OF THAT WOUND PATH WITH ANY
17 OTHER?

18 A NOT THAT I SEE, NO.
19 Q BUT HE DOES, DOES HE NOT, DESCRIBE THIS
20 WOUND PATH IN PART WITH THE FOLLOWING
21 SENTENCE: "THERE IS HEMORRHAGING ALONG THE ENTIRE
22 WOUND PATH."
23 A YES, HE DOES DESCRIBE IT AS SUCH.
24 MS. ABRAMSON: THANK YOU.
25 I HAVE NOTHING FURTHER.
26 MR. CONN: NOTHING FURTHER.
27 THE COURT: OKAY. THANK YOU. YOU MAY STEP
28 DOWN. YOU'RE EXCUSED.

42437

1 WE'LL TAKE A RECESS.
2 WHO'S YOUR NEXT WITNESS?
3 MS. ABRAMSON: EXCUSE ME. MY NEXT WITNESS IS
4 MR. MORTON, YOUR HONOR.
5 THE COURT: WE'LL TAKE A RECESS UNTIL 3:00.
6 DON'T FORM ANY FINAL OPINIONS ABOUT IT AND WE'LL
7 RESUME AT 3:00.
8 MS. ABRAMSON: THERE IS A MATTER WE'D LIKE TO
9 TAKE UP WITH THE COURT.
10 THE COURT: OKAY. WE'LL STAY IN SESSION FOR
11 THAT.
12 (THE JURY EXITED THE COURTROOM

13 AND THE FOLLOWING PROCEEDINGS

14 WERE HELD:)

15

16 THE COURT: THE JURORS HAVE LEFT. YOU SAID

17 THERE WAS SOME MATTER YOU WANTED TO TAKE UP?

18 MS. ABRAMSON: IT'S A MATTER OF DISCOVERY,

19 YOUR HONOR.

20 MR. CONN INCORPORATED INTO A QUESTION,

21 OR MADE A COMMENT WHILE THIS WITNESS WAS ON THE

22 STAND, THAT HE INTENDS TO PROVE CERTAIN THINGS, AND

23 WE WOULD LIKE TO HAVE NOTICE OF WHAT WITNESSES HE

24 INTENDS TO CALL TO PROVE THESE THINGS, BECAUSE THERE

25 ARE NO MEDICAL --

26 THE COURT: IT HAS TO DO WITH THE BODY

27 TISSUE.

28 MS. ABRAMSON: WE HAVE NO NOTICE OF ANY NEW

42438

1 WITNESSES.

2 THE COURT: WAS THAT THE ITEM THAT YOU

3 REFERRED TO?

4 MS. ABRAMSON: THAT WAS WHEN HE MADE THE

5 REMARK, YES. HE ALSO ASKED A SERIES OF

6 HYPOTHETICALS FOR WHICH THERE IS NO MEDICAL SUPPORT.

7 THE COURT: OKAY. WELL, FIRST OF ALL, AS TO

8 THE DESCRIPTION OF BODY TISSUE, MR. CONN?

9 MR. CONN: YES. THAT'S BASED UPON -- I

10 INQUIRED OF DETECTIVE ZOELLER FURTHER WHAT HE MEANT

11 BY TISSUE WHEN HE DESCRIBED TISSUE, AND HE INDICATED

12 TO ME THAT THAT'S WHAT HE OBSERVED THAT NIGHT. SO

13 HE WILL CLARIFY HIS TESTIMONY. I DON'T THINK THAT

14 CLARIFICATION WAS NECESSARY PRIOR TO THE TIME

15 THAT -- I THINK IT WAS DR. FACKLER WHO BEGAN TO SAY

16 THAT TISSUE COULD MEAN HAIR OR TISSUE COULD ALSO

17 MEAN BONE, BECAUSE THAT IS TECHNICALLY TISSUE.

18 DETECTIVE ZOELLER DID NOT MEAN HAIR OR

19 TISSUE (SIC). HE WAS REFERRING TO WHAT THE ORDINARY

20 PERSON REFERS TO BY THE USE OF THE TERM "TISSUE."

21 MS. ABRAMSON: YOUR HONOR, I HAVE TO NOTE FOR

22 THE RECORD THAT I BELIEVE MR. CONN HAS COMMITTED

23 MISCONDUCT IN ASKING A WITNESS, SPECIFICALLY AFTER

24 THE COURT INQUIRED REPEATEDLY, OR REQUESTED

25 REPEATEDLY, MR. CONN BE SPECIFIC ABOUT WHAT HE MEANT

26 BY TISSUE; AND THEN MR. CONN ASKED THE QUESTION AS

27 IF IT WERE MUSCLE.

28 NOW, MUCH AS I ADMIRE DETECTIVE ZOELLER,

42439

1 HE IS NOT A MEDICAL EXPERT AND CANNOT OFFER AN

2 OPINION THAT THAT WAS MUSCLE AS COMPARED TO ANYTHING

3 ELSE. AND I THINK IT WAS EXTREMELY DECEPTIVE OF
4 MR. CONN TO SUGGEST IN FRONT OF THE JURY THAT THERE
5 WAS SOME KIND OF MEDICAL SUPPORT FOR THE SPECIFIC
6 DESCRIPTION OF THAT MATERIAL AS A PARTICULAR PART OF
7 THE HUMAN ANATOMY, TO WIT, MUSCLE, OR EVEN --

8 THE COURT: WE'RE ARGUING ABOUT SOMETHING
9 THAT HASN'T OCCURRED, AND WE DON'T KNOW EXACTLY WHAT
10 DETECTIVE ZOELLER'S TESTIMONY WOULD BE.

11 MS. ABRAMSON: WELL, WHAT OCCURRED IS HE
12 ASKED A HYPOTHETICAL AND I KEPT OBJECTING TO IT.
13 THE COURT ASKED HIM TO BE SPECIFIC. HE SAID
14 "MUSCLE." OBVIOUSLY, DETECTIVE ZOELLER IS NOT
15 QUALIFIED TO OFFER THAT OPINION.

16 THE COURT: THAT HASN'T OCCURRED YET. WE
17 HAVEN'T HEARD WHAT DETECTIVE ZOELLER HAS TO SAY. IF
18 HE IS GOING TO OFFER FURTHER TESTIMONY ON THAT
19 SUBJECT, PERHAPS HE CAN WRITE A LITTLE REPORT
20 INDICATING EXACTLY WHAT IT IS HE WOULD SAY.

21 MS. ABRAMSON: YES. THAT WOULD BE VERY
22 USEFUL, YOUR HONOR. THANK YOU.

23 THE COURT: WE'LL BE IN RECESS UNTIL 3:00.

24 (A RECESS WAS TAKEN FROM
25 2:44 P.M. TO 3:10 P.M.)

26

27 THE COURT: EVERYONE IS PRESENT.

28 WE'LL HAVE THE JURY OUT, PLEASE.

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

4
5 THE COURT: OKAY. THE DEFENSE MAY CALL ITS
6 NEXT WITNESS.

7 MS. ABRAMSON: THANK YOU, YOUR HONOR. THE
8 DEFENSE CALLS CHARLES MORTON.

9
10 CHARLES V. MORTON,

11 WAS CALLED AS A WITNESS BY THE DEFENSE WAS DULY
12 SWORN, AND TESTIFIED AS FOLLOWS:

13 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
14 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
15 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
16 TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

17 THE WITNESS: YES, I DO.

18 THE CLERK: PLEASE TAKE THE STAND AND STATE
19 YOUR NAME FOR THE RECORD.

20 THE WITNESS: THANK YOU. MY NAME IS CHARLES
21 V. MORTON, M-O-R-T-O-N.

22
23 DIRECT EXAMINATION

24 BY MS. ABRAMSON:

25 Q MR. MORTON, WHAT IS YOUR OCCUPATION?

26 A I'M A CRIMINALIST AND FORENSIC

27 SCIENTIST.

28 Q AND ARE YOU EMPLOYED BY A PUBLIC AGENCY

42441

1 OR ARE YOU IN PRIVATE INDUSTRY?

2 A PRIVATE.

3 Q AND WHAT IS THE NAME OF THE PRIVATE
4 BUSINESS THAT YOU ARE PART OF?

5 A IT'S THE INSTITUTE OF FORENSIC SCIENCE,
6 CRIMINALISTICS LABORATORY; ACTUALLY, A SERIES OF
7 THREE SEPARATE LABORATORIES.

8 Q THE INSTITUTE OF FORENSIC SCIENCE IS A
9 SERIES OF THREE LABORATORIES?

10 A YES.

11 Q WHAT ARE THE THREE DIFFERENT
12 LABORATORIES?

13 A THERE'S MY LABORATORY, WHICH IS
14 CRIMINALISTICS; THERE'S A LABORATORY OF FORENSIC
15 PATHOLOGY, WHICH DOES ALL OF THE WORK FOR THE
16 ALAMEDA COUNTY CORONER'S OFFICE, AND WE HAVE A
17 TOXICOLOGY LAB, WHICH DOES DRUG AND ALCOHOL WORK FOR
18 THE DISTRICT ATTORNEY'S OFFICE, CORONER'S OFFICE,
19 POLICE DEPARTMENT, AND CALIFORNIA HIGH PATROL.

20 THE REPORTER: YOUR HONOR, COULD I ASK THE
21 WITNESS TO MOVE THE MICROPHONE DOWN A LITTLE.

22 MS. ABRAMSON: ALSO, GO SLOW ENOUGH SO THAT
23 THE REPORTER CAN GET IT WITHOUT HER FINGERS
24 SMOKING.
25 THE WITNESS: THANK YOU.
26 Q BY MS. ABRAMSON: WITH RESPECT TO THE
27 FORENSIC PATHOLOGY LABORATORY BRANCH OF THE
28 INSTITUTE OF FORENSIC SCIENCE, IS THERE A DOCTOR IN

42442

1 CHARGE OF THAT LABORATORY?

2 A YES.

3 Q AND WHAT THAT IS DOCTOR'S NAME?

4 A DR. PAUL HERMANN.

5 Q AND WITH RESPECT TO THE TOXICOLOGICAL
6 LABORATORY, IS THERE SOMEONE IN CHARGE OF THAT LAB?

7 A DR. HERMANN AND DR. JAMES MEEKER,
8 TOXICOLOGIST.

9 Q AND WITH RESPECT TO THE CRIMINALISTICS
10 LAB, WHO'S IN CHARGE OF THAT LABORATORY?

11 A THAT'S MY LABORATORY.

12 Q AND WHEN YOU SAY IT'S YOUR LABORATORY,
13 ARE YOU BOTH THE OWNER OF IT AND THE HEAD OF IT?

14 A YES.

15 Q AND HOW LONG, MR. MORTON, HAVE YOU BEEN
16 A CRIMINALIST AND FORENSIC SCIENTIST?

17 A THIRTY-TWO YEARS.

18 Q WHAT IS YOUR EDUCATIONAL BACKGROUND THAT
19 PREPARED YOU FOR THIS CAREER?

20 A I'VE A BACHELOR OF SCIENCE DEGREE IN
21 CRIMINALISTICS FROM THE UNIVERSITY OF CALIFORNIA AT
22 BERKELEY. AND I ALSO HAVE A MASTER'S DEGREE IN
23 CRIMINALISTICS FROM THE UNIVERSITY OF CALIFORNIA AT
24 BERKELEY.

25 Q AND WHEN DID YOU RECEIVE YOUR MASTER'S
26 DEGREE FROM BERKELEY?

27 A 1971.

28 Q NOW, YOU WERE IN THE COURTROOM WHEN

42443

1 MR. LINHART, A CRIMINALIST FROM THE SHERIFF'S
2 DEPARTMENT, TESTIFIED TO WHAT CRIMINALISTICS ARE.

3 DO YOU AGREE WITH HIS DEFINITION, OR
4 WOULD YOU EXPAND ON IT OR --

5 A YES. I CERTAINLY AGREE WITH IT. IT'S A
6 BROAD RANGE OF DISCIPLINES IN WHICH EXAMINATION OF
7 PHYSICAL EVIDENCE IS INVOLVED. THE ONE THING THAT
8 YOU FIND IS THAT DIFFERENT PEOPLE HAVE DIFFERENT
9 SPECIALTIES. SOME PEOPLE DO ALMOST EXCLUSIVELY DRUG
10 AND ALCOHOL; MYSELF, I NEVER HAVE DONE ANY
11 SIGNIFICANT DRUG AND ALCOHOL WORK.

12 Q WHEN YOU SAY DRUG A ALCOHOL WORK, THAT
13 MEANS THE SORT OF CHEMISTRY OF FIGURING OUT IF A
14 PARTICULAR -- IF A PERSON HAS A PARTICULAR DRUG OR
15 PARTICULAR LEVEL OF ALCOHOL IN THEIR SYSTEM?

16 A IT'S BOTH THE ANALYSIS OF BIOLOGICAL
17 SPECIMENS FOR ALCOHOL OR OTHER DRUGS, AS WELL AS THE
18 EXAMINATION AND IDENTIFICATION OF SOLID DOSAGE
19 FORMS.

20 Q IN OTHER WORDS, ITEMS THAT ARE SUSPECTED
21 TO BE -- A DRUG-TESTNG TO SEE IF THEY ARE, IN FACT,
22 A PARTICULAR DRUG OR NOT?

23 A PILLS AND POWDERS AND THINGS LIKE THAT.

24 Q OKAY. THE STUFF THAT'S SEIZED USUALLY
25 IN DRUG ARRESTS?

26 A YES.

27 Q ALL RIGHT. SO YOU'VE INDICATED THAT,
28 HOWEVER, THE DRUG AND ALCOHOL AREA IS ONE IN WHICH

42444

1 YOU HAVE NOT BEEN INVOLVED.

2 WHAT ARE THE OTHER AREAS OF
3 CRIMINALISTICS IN WHICH YOU HAVE BEEN TRAINED?

4 A MY PRIMARY AREAS -- ACTUALLY, I WAS
5 TRAINED IN DRUG AND ALCOHOL AS WELL. I DIDN'T DO
6 ANY OF IT.

7 BUT THE AREAS THAT I'VE BEEN TRAINED IN,
8 THE BROAD AREA OF CRIMINALISTICS, FROM FINGERPRINTS,
9 TRACE EVIDENCE, WHICH INCORPORATE AS HAIR FIBERS,
10 SOIL, GLASS, THOSE KINDS OF THINGS; FIREARMS.
11 ACTUALLY, BLOOD ANALYSIS. EARLY IN MY CAREER I DID
12 SOME SEROLOGY, ALTHOUGH SUBSEQUENTLY I HAD ON STAFF
13 SEROLOGISTS WHO WOULD DO THOSE ANALYSES, AND I GOT
14 OUT OF THAT FIELD.

15 I DO BLOOD SPATTER ANALYSIS. I DO AN
16 OVERVIEW OF PHYSICAL EVIDENCE TO HELP IDENTIFY WHAT
17 THE PROBLEMS ARE IN TERMS OF PHYSICAL EVIDENCE IN
18 THE CASE. THIS IS WITH THE OBJECTIVE OF FINDING
19 WHAT KIND OF PHYSICAL EVIDENCE IS THERE, WHETHER IT
20 CAN BE USED TO TELL ABOUT WHAT HAPPENED IN ANY
21 PARTICULAR INCIDENT. AND SO I MIGHT THEN FARM OUT
22 VARIOUS PROBLEMS OR IDENTIFY PEOPLE WHO NEED TO BE
23 INVOLVED IN EVALUATING CERTAIN KINDS OF PHYSICAL
24 EVIDENCE THAT MIGHT BE INVOLVED IN THAT PARTICULAR
25 CASE.

26 Q AND WHEN YOU SAY PEOPLE WHO YOU MIGHT
27 NEED TO GET INVOLVED, IS THAT PEOPLE WHO HAVE A
28 DIFFERENT AREA OF EXPERTISE THAN YOUR OWN?

42445

1 A YES.

2 Q TYPICALLY, IF YOU'RE TRYING TO ANSWER
3 THE QUESTIONS OF FINDING OUT WHAT HAPPENED IN A
4 PARTICULAR CRIME SCENE, AND PART OF THE PHYSICAL
5 EVIDENCE ARE WOUNDS ON HUMAN BODIES, IS THERE A
6 PARTICULAR KIND OF ADDITIONAL PERSON THAT YOU WOULD
7 WANT TO BRING IN OR TALK TO?

8 A YES. ACTUALLY, IN TERMS OF WOUNDS ON
9 BODIES, I WORK CLOSELY WITH THE ALAMEDA COUNTY.
10 ACTUALLY, I'M NOT SO MUCH WITH THE CORONER'S OFFICE
11 AS WITH THE FORENSIC PATHOLOGY GROUP AT OUR
12 LABORATORY, WHICH HAS A CONTRACT WITH ALAMEDA
13 COUNTY. WE FREQUENTLY REFER TO EACH OTHER'S
14 EXPERTISE FOR THE EVALUATION OF WOUNDS ON THE BODY.
15 I GET CALLED TO THE CORONER'S OFFICE ON OCCASION AND
16 THEY ASK ME QUESTIONS ABOUT VARIOUS ISSUES THAT HAVE
17 TO DO WITH WOUNDS.

18 Q AND WHAT ARE THE ISSUES THAT HAVE TO DO
19 WITH WOUNDS WHERE YOU ARE THE EXPERT?

20 A FIRING DISTANCE, GENERALLY, IS THE
21 PRIMARY ONE THAT I'M INVOLVED WITH. SOMETIMES THE
22 ISSUE OF SEQUENCING HAS COME UP AND THE PATHOLOGISTS
23 HAVE CALLED ON ME FOR THAT.

24 Q AND WHEN YOU'RE TALKING ABOUT THE
25 FORENSIC PATHOLOGY GROUP, THAT'S DR. HERMANN'S
26 GROUP, THAT'S A PART OF THE INSTITUTE?

27 A THEY'RE ACTUALLY THREE COMPANIES THAT
28 MAKE UP THE INSTITUTE OF FORENSIC SCIENCES.

1 Q AND DID, IN FACT, YOU HAVE ANY
2 CONSULTATIONS WITH DR. HERMANN CONCERNING THIS CASE?

3 A YES, I DID.

4 Q DID YOU ALSO HAVE CONSULTATIONS ON THIS
5 CASE WITH DR. MARTIN FACKLER?

6 A YES, I DID.

7 Q AND DID YOU KNOW OF DR. FACKLER, IN
8 FACT, BEFORE HE BECAME INVOLVED IN THIS CASE?

9 A YES. AS A MATTER OF FACT, I THINK --
10 YES. I'VE KNOWN HIM FOR QUITE A WHILE.

11 Q IN FACT, YOU SUGGESTED HIM TO US?

12 A YES.

13 Q NOW, AFTER YOU RECEIVED YOUR MASTER'S
14 DEGREE FROM THE UNIVERSITY OF CALIFORNIA, BERKELEY,
15 WHAT DID YOU DO FOR A CAREER AT THAT TIME?

16 A WELL, ACTUALLY, I WENT TO WORK FOR
17 PAUL L. KIRK ASSOCIATES IN BERKELEY. HE WAS THE
18 PROFESSORS WHO HEADED CRIMINALISTICS PROGRAM, AND I
19 WENT TO WORK FOR HIM AS AN UNDERGRADUATE. MY LAST
20 YEAR AT BERKELEY AS AN UNDERGRADUATE I WORKED IN HIS
21 PRIVATE CRIME LABORATORY WHILE I WAS WORKING ON MY
22 MASTER'S DEGREE.

23 I CONTINUED WORKING FOR HIM UNTIL 1969,
24 AT WHICH TIME I TOOK A POSITION WITH THE CALIFORNIA
25 STATE UNIVERSITY AT LOS ANGELES. IN '69 I CAME DOWN

26 AND TOOK OVER THE FORENSIC SCIENCE PROGRAM, WHICH IS
27 A MASTER'S DEGREE PROGRAM IN FORENSIC SCIENCE AT
28 CALIFORNIA STATE UNIVERSITY AT LOS ANGELES.

42447

1 Q DID YOU NOT YET HAVE YOUR MASTER'S YET
2 WHEN YOU DID THAT?

3 A THAT'S CORRECT.

4 Q BUT YOU WERE TEACHING THE MASTER'S
5 PROGRAM AT CALIFORNIA STATE L.A.?

6 A YES.

7 Q AND HOW LONG DID YOU TEACH THE MASTER'S
8 PROGRAM AT CALIFORNIA STATE L.A.?

9 A UNTIL 1975.

10 Q SO, IN THE INTERIM YOU OBTAINED YOUR OWN
11 MASTER'S FROM BERKELEY?

12 A YES.

13 Q HOW DID YOU DO THAT IF YOU WERE DOWN
14 HERE TEACHING?

15 A I FLEW BACK AND FORTH A LOT. ACTUALLY,
16 I WAS JUST COMPLETING MY THESIS, SO...

17 Q THAT'S THE WRITTEN PAPER YOU HAVE TO
18 COMPLETE TO GET A MASTER'S DEGREE?

19 A YES.

20 Q SO YOU DIDN'T HAVE TO GO TO CLASS?

21 A THAT'S CORRECT.

22 Q NOW, DO YOU KNOW WHO IS CURRENTLY THE
23 HEAD OF THE L.A. COUNTY SHERIFF'S CRIME LABORATORY?

24 A BARRY FISHER. HE'S THE TECHNICAL HEAD.

25 I BELIEVE THESE POLICE DEPARTMENTS HAVE VARIOUS
26 LEVELS OF ADMINISTRATION. BUT I THINK THE
27 SCIENTIFIC HEAD OF THE LAB THERE IS BARRY FISHER.

28 Q YOU'VE SEEN IN COURT THE POLICE HEAD OF

42448

1 THE LABORATORY, CAPTAIN SODERBERG?

2 A YES.

3 Q WHO'S BEEN PRESENT DURING THE TESTIMONY
4 OF DEPUTY VAN HORN AND MR. LINHART?

5 A YES.

6 Q TO YOUR UNDERSTANDING, IS CAPTAIN
7 SODERBERG A LAW ENFORCEMENT HEAD, THE SWORN DEPUTY
8 HEAD OF THE LAB?

9 A I'M NOT SURE OF THE CHAIN OF COMMAND IN
10 THAT, BUT THAT'S MY UNDERSTANDING.

11 Q BUT THE TECHNICAL HEAD, THE SCIENCE
12 HEAD, IF YOU WILL, IS BARRY FISHER?

13 A YES.

14 Q AND DO YOU KNOW MR. FISHER?

15 A YES.

16 Q AND HOW DO YOU KNOW HIM?
17 A HE WAS A STUDENT OF MINE.
18 Q WAS HE A STUDENT IN YOUR MASTER'S
19 PROGRAM?
20 A YES.
21 Q SO HE WAS ONE OF THE MASTER'S CANDIDATES
22 THAT YOU TAUGHT?
23 A YES.
24 Q IN FACT, MR. MORTON, ARE THERE A NUMBER
25 OF LAW ENFORCEMENT EMPLOYED CRIMINALISTS WHO
26 RECEIVED THEIR EDUCATION FROM YOU AT CAL STATE
27 LOS ANGELES?
28 A YES. I HAD STUDENTS FROM ORANGE COUNTY,

42449

1 SAN BERNARDINO, LOS ANGELES POLICE DEPARTMENT,
2 LOS ANGELES SHERIFF'S DEPARTMENT, VENTURA POLICE
3 DEPARTMENT -- VENTURA SHERIFF'S DEPARTMENT. QUITE
4 AN ARRAY OF PEOPLE. RIVERSIDE, DEPARTMENT OF
5 JUSTICE.

6 I HAVE STUDENTS WHO ARE IN ALL OF THOSE.

7 Q DO YOU STILL DO ANY TEACHING OR TRAINING
8 IN THE FIELD OF CRIMINALISTICS AND FORENSIC SCIENCE?

9 A OCCASIONALLY I'M ASKED TO PUT ON A
10 SEMINAR FOR SOMEONE LIKE A BLOOD SPATTER -- I WAS

11 INVOLVED IN A BLOOD SPATTER SEMINAR AT THE
12 DEPARTMENT OF JUSTICE IN SACRAMENTO. I GET CALLED
13 UPON TO DO THINGS LIKE THAT OCCASIONALLY.

14 Q DO YOU GET CALLED UPON TO DO THAT BOTH
15 FROM MEMBERS OF GOVERNMENT AGENCIES AND LAW
16 ENFORCEMENT, AS WELL AS FOR PRIVATE CRIMINALISTS?

17 A YES. ACTUALLY, I DON'T THINK IN THAT --
18 I'M NOT SURE IF THERE ARE ANY PRIVATE PEOPLE IN THAT
19 PROGRAM. I THINK THEY'RE ALL GOVERNMENT.

20 Q THAT PARTICULAR SEMINAR WAS FOR THE
21 DEPARTMENT OF JUSTICE, WHICH IS A PROSECUTORIAL
22 AGENCY, RIGHT?

23 A RIGHT.

24 Q AND HAD YOU, IN FACT, IN THE COURSE OF
25 PUTTING ON SEMINARS OR -- WELL, STRIKE THAT.

26 DO THE OTHER BRANCHES OF THE INSTITUTE
27 OF FORENSIC SCIENCE, THE DOCTORS AND FORENSIC
28 SCIENTISTS INVOLVED IN THOSE OTHER BRANCHES, ALSO

42450

1 PUT ON TRAINING PROGRAMS AND SEMINARS?

2 A THE INSTITUTE OF FORENSIC SCIENCE, AS A
3 GROUP OF THE THREE COMPANIES, PUT ON ANNUALLY --
4 USED TO BE TWICE A YEAR, BUT NOW IT'S JUST ONCE A
5 YEAR -- PUT ON A PROGRAM WHERE WE INVITE PEOPLE FROM

6 AROUND THE STATE, EVERYTHING FROM POLICE OFFICERS
7 AND INVESTIGATORS AND CORONERS, ASSISTANTS TO
8 PATHOLOGIST, CRIMINALISTS, AND WE PUT ON AN ANNUAL
9 SEMINAR.

10 Q IN THE COURSE OF THIS TEACHING AND
11 TRAINING, DID YOU MAKE THE ACQUAINTANCE OR GET TO
12 KNOW DR. LAWRENCE?

13 A YES. I BELIEVE THAT'S WHERE I MET HIM
14 THE FIRST TIME.

15 Q HE CAME TO YOUR TRAINING SESSION?

16 A I BELIEVE SO, YES.

17 Q NOW, AFTER YOUR TEACHING STINT AT
18 CALIFORNIA STATE LOS ANGELES -- THAT WAS FIVE YEARS?

19 A YES.

20 Q AFTER THOSE FIVE YEARS, WHAT DID YOU DO?

21 A I WENT BACK UP TO THE SAN FRANCISCO BAY
22 AREA TO THE INSTITUTE OF FORENSIC SCIENCE, WHICH AT
23 THAT TIME WAS ONE COMPANY, WHICH WAS AN OFFSHOOT OF
24 WESTERN MEDICAL LABORATORIES, A LARGE CLINICAL
25 LABORATORY. IT WAS SUBSEQUENTLY BOUGHT OUT BY ONE
26 OF ANOTHER OF A SERIES OF CONGLOMERATES WHICH TOOK
27 IT OVER; AND BASICALLY, SHUNNED IT ASIDE. THE
28 INSTITUTE OF -- THE FORENSIC PORTION, WHICH HAD

1 BECOME THE SEPARATE ENTITY, THE INSTITUTE OF
2 FORENSIC SCIENCE AND WESTERN LABORATORY ACTUALLY
3 STARTED BACK IN THE THIRTIES, AND HAD BEEN DOING
4 WORK FOR THE DISTRICT ATTORNEY'S OFFICE AND
5 CORONER'S OFFICE THERE IN ALAMEDA COUNTY. AND IN
6 THE EARLY SEVENTIES, I THINK IT WAS, THEY SPLIT OFF
7 THE INSTITUTE OF FORENSIC SCIENCE FROM WESTERN
8 LABORATORIES.

9 Q SO YOU WENT TO WORK THERE FOR THE
10 INSTITUTE AS AN EMPLOYEE AT THAT TIME?

11 A YES.

12 Q AND WHAT DID YOU DO FOR THEM AS AN
13 EMPLOYEE AT THAT TIME?

14 A I WAS A CRIMINALIST WHO EXAMINED
15 PHYSICAL EVIDENCE AND SUPERVISED OTHERS, SEROLOGISTS
16 AND OTHERS WHO WERE DOING EXAMINATIONS OF PHYSICAL
17 EVIDENCE, WORKING FOR AN ARRAY OF DIFFERENT AGENCIES
18 AND ATTORNEYS. AND THAT LASTED ONE YEAR.

19 AND THEN I BECAME DIVISION MANAGER OF
20 THE CRIMINALISTICS DIVISION OF THE COMPANY, WHICH
21 WAS BASICALLY -- IT WAS THE CRIMINALISTICS DIVISION,
22 PATHOLOGY AND TOXICOLOGY; AND AT THAT TIME I BECAME
23 DIVISION MANAGER.

24 THEN A COUPLE OF YEARS LATER, MAYBE IT
25 WAS A YEAR LATER, I BOUGHT OUT THAT SECTION AND WE
26 SET IT UP AS THREE SEPARATE COMPANIES.

27 Q SO YOU BOUGHT THE LABORATORY, THE
28 CRIMINALISTICS LABORATORY AT THAT TIME?

1 A YES.

2 Q NOW, AT SOME POINT WERE YOU ASKED TO
3 JOIN A PRESTIGIOUS NATIONAL PANEL THAT WAS
4 REEXAMINING THE ASSASSINATION OF SENATOR ROBERT
5 KENNEDY?

6 A IN 1975 I WAS ONE OF SEVEN FIREARMS
7 EXAMINERS FROM AROUND THE COUNTRY THAT WAS SELECTED
8 TO REEXAMINE THE EVIDENCE IN THE ASSASSINATION OF
9 ROBERT KENNEDY, YES.

10 Q AND AS A RESULT -- WHO WAS DOING THE
11 SELECTING FOR THAT?

12 A ACTUALLY, IT WAS -- SOME OF IT WAS DONE
13 BY THE SUPERIOR COURTS HERE IN LOS ANGELES. I'M NOT
14 SURE ALL OF THE DETAILS OF HOW IT WENT ON. THEY
15 BASICALLY -- EACH PARTY IN THIS LAWSUIT WAS TO HAVE
16 THE EVIDENCE. THE CASE OPENED UP AND REEXAMINED --
17 WAS GIVEN THE OPPORTUNITY TO SELECT SOMEBODY, AND
18 THE OTHER MEMBERS WOULD CONFIRM WHETHER THAT WAS
19 ACCEPTABLE TO THEM.

20 Q AS A CONSEQUENCE OF YOUR WORK ON THAT
21 PROJECT, THE REEXAMINATION OF THE ROBERT KENNEDY
22 KENNEDY ASSASSINATION, DID YOU GAIN NATIONAL
23 PROMINENCE AS A FIREARMS EXPERT?

24 A I GUESS YOU COULD CALL IT THAT, YES.

25 Q AND DID YOU THEN -- AND CONTINUING TO
26 THE PRESENT TIME, HAVE YOU BEEN RETAINED BY VARIOUS
27 INDIVIDUALS AND AGENCIES ALL OVER THE COUNTRY TO
28 LEND YOUR EXPERTISE TO THE REEVALUATION OF CRIME

42453

1 SCENES?

2 A YES.

3 Q AND HOW MANY CASES DO YOU HANDLE,
4 TYPICALLY, IN A YEAR, MR. MORTON?

5 A SOMEWHERE BETWEEN 250 AND 300.

6 Q AND ARE SOME OF THESE CASES MORE
7 COMPLICATED THAN OTHERS?

8 A YES.

9 Q AND AS OF THIS TIME, CAN YOU GIVE US --
10 APPROXIMATELY HOW MANY HOMICIDE CASES HAVE YOU BEEN
11 INVOLVED IN WHERE YOU'VE BEEN ASKED TO EXAMINE SOME
12 OR ALL OF THE PHYSICAL EVIDENCE?

13 A I HAVEN'T KEPT TRACK OF IT. I THINK MY
14 OFFICE MANAGER LOOKED THE OTHER DAY, AND THE LAST
15 FIVE YEARS IT WAS SOMETHING LIKE 300. AND I EXPECT
16 THAT I'M APPROACHING SOMETHING LIKE A THOUSAND
17 HOMICIDES.

18 Q NOW, WITH RESPECT TO -- IN THE LAST

19 COUPLE OF YEARS WERE YOU INVOLVED IN WHAT'S BECOME A
20 VERY CONTROVERSIAL CASE HAVING TO DO WITH A
21 GENTLEMAN NAMED WEAVER WHO LIVED IN A PLACE CALLED
22 RUBY RIDGE, AND WHERE THERE WAS A SHOOTING INVOLVING
23 FEDERAL AGENTS AND THE WEAVER FAMILY?

24 A YES.

25 Q AND WERE YOU RETAINED AS A FIREARMS AND
26 CRIMINALISTICS EXPERT FOR ONE OF THE PARTIES IN THAT
27 CASE?

28 A YES, I WAS.

42454

1 Q AND DID YOU, IN FACT, TESTIFY IN THAT
2 CASE?

3 A THE DEFENSE PUT ON NO DEFENSE.

4 Q YOU WERE A DEFENSE EXPERT IN THAT CASE?

5 A YES.

6 Q AND THROUGH YOUR CONSULTATION, DID YOU
7 ADVISE THE DEFENSE ATTORNEYS IN HOW TO DEAL WITH THE
8 FEDERAL GOVERNMENT, TESTIMONY ABOUT THEIR VERSION OF
9 HOW THAT SHOOTING OCCURRED?

10 A WELL, FIRST, I WAS REQUESTED -- I
11 REQUESTED TO EXAMINE ALL OF THE EVIDENCE AND THE
12 PHYSICAL EVIDENCE IN THE CASE BECAUSE IT WAS A
13 MOUNTAIN OF IT -- NO PUN INTENDED. RUBY RIDGE WAS A

14 MOUNTAIN.

15 Q I DIDN'T HEAR THE PUN. MAYBE I'M

16 FALLING SLEEP. I'M SORRY.

17 A I WAS ASKED TO EXAMINE THE EVIDENCE. SO

18 I EXAMINED IT THERE IN THE STATE LABORATORY IN

19 BOISE, IDAHO. I WAS GIVEN ACCESS TO THE FACILITIES

20 THERE TO EXAM IT.

21 Q AND WAS THE WORK THAT YOU DID, WAS THAT

22 WORK COMMUNICATED BY YOU TO THE DEFENSE ATTORNEYS

23 FOR THE TRIAL?

24 A YES, IT WAS.

25 Q AND WAS THAT CASE IN WHICH, TO A LARGE

26 EXTENT, THE DEFENSE PREVAILED?

27 A YES.

28 Q AND DID THAT PREVAIL ON THE ISSUE OF

42455

1 UNDERMINING OR CONTRADICTING THE SUPPOSED

2 RECONSTRUCTION OF THE SHOOTING THAT THE FEDERAL

3 AGENTS HAD CLAIMED OCCURRED?

4 A I NEVER TRY TO DETERMINE WHY PEOPLE COME

5 TO JUDGMENTS, PARTICULARLY JURIES.

6 Q GOOD IDEA.

7 A BECAUSE THEY HAVE A LOT THAT I DON'T

8 HAVE, AND THEY HAVE A DIFFERENT RESPONSIBILITY THAN

9 I HAVE. SO I DON'T GET INVOLVED IN WHAT THEIR -- HOW

10 THEY REACH THEIR JUDGMENT.

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42456

1 Q OKAY. FAIR ENOUGH.

2 YOU'RE AWARE THAT THERE'S BEEN A

3 CONGRESSIONAL INVESTIGATION INTO THE RUBY RIDGE

4 AFFAIR?

5 A YES.

6 Q AND FOCUSING ON HOW THE ACTUAL SHOOTINGS
7 OCCURRED?

8 A YES, AND SOME PROBLEMS WITH PHYSICAL
9 EVIDENCE.

10 Q THERE WAS SOME PROBLEMS IN THAT CASE,
11 WAS THERE NOT, ABOUT BALLISTICS EVIDENCE HAVING BEEN
12 MOVED AND REPLACED?

13 A YES.

14 Q BY THE FEDERAL AGENTS?

15 A YES.

16 Q AND THEIR FAILING TO TELL PEOPLE THAT
17 THAT HAD HAPPENED?

18 A THAT'S CORRECT.

19 Q NOW, ARE YOU ALSO -- IN ADDITION TO
20 ACTUALLY DOING YOUR CRIMINALIST AND FORENSIC SCIENCE
21 WORK, DO YOU BELONG TO VARIOUS PROFESSIONAL
22 ORGANIZATIONS IN WHICH YOU RECEIVE ADDITIONAL
23 TRAINING AND EDUCATION AND SHARE INFORMATION WITH
24 OTHER PROFESSIONALS IN THE FIELD?

25 A YES.

26 Q AND WHAT PROFESSIONAL ORGANIZATIONS ARE
27 YOU AN ACTIVE MEMBER IN?

28 A THE AMERICAN ACADEMY OF FORENSIC

1 SCIENCES, THE CALIFORNIA ASSOCIATION OF
2 CRIMINALISTS, THE INTERNATIONAL ASSOCIATION OF WOUND
3 BALLISTICS AND THE CALIFORNIA ASSOCIATION OF CRIME
4 LABORATORY DIRECTORS.

5 Q AND WITH -- HAVE YOU BEEN AN OFFICER OF
6 ANY OF THESE ORGANIZATIONS?

7 A YES. I WAS ON THE BOARD OF DIRECTORS
8 FOR SEVEN YEARS AND WAS PRESIDENT OF THE CALIFORNIA
9 ASSOCIATION OF CRIMINALISTS.

10 Q NOW, WE JUST OBVIOUSLY INDICATED THAT IN
11 THE RUBY RIDGE CASE YOU WERE TESTIFYING IN THE STATE
12 OF IDAHO.

13 HAVE YOU BEEN QUALIFIED AS AN EXPERT IN
14 CRIMINALISTICS AND FORENSIC SCIENCE IN NUMEROUS
15 STATE AND FEDERAL COURTS?

16 A YES.

17 Q CAN YOU JUST GIVE US AN IDEA OF WHICH
18 STATES AND WHICH FEDERAL DISTRICTS YOU'VE QUALIFIED
19 IN?

20 A FEDERAL DISTRICT, I THINK THE NINTH
21 FEDERAL DISTRICT IN SAN FRANCISCO AND GUAM.

22 Q 9TH CIRCUIT?

23 A 9TH CIRCUIT. I'M SORRY.

24 TESTIFIED IN ALASKA ON MANY OCCASIONS.
25 IN ALASKA, WASHINGTON, OREGON, CALIFORNIA, NEVADA,
26 ARIZONA, IDAHO; TESTIFIED IN KENTUCKY, FLORIDA,
27 MONTANA. THOSE ARE THE ONES THAT COME TO MIND.

42458

1 COURTS?

2 A YES.

3 Q AND AS A CRIMINALIST, WHAT ARE YOUR
4 SPECIFIC -- WELL, I THINK YOU'VE TOLD US THAT --
5 STRIKE THAT. STRIKE ALL OF THAT.

6 HAVE YOU QUALIFIED, FIRST OF ALL, AS A
7 FIREARMS EXAMINER AND BALLISTICS EXPERT?

8 A YES, I HAVE.

9 Q HAVE YOU QUALIFIED AS AN EXPERT IN BLOOD
10 SPATTER?

11 A YES.

12 Q HAVE YOU QUALIFIED AS AN EXPERT IN TRACE
13 EVIDENCE, HAIR AND FIBER?

14 A YES.

15 Q HAVE YOU QUALIFIED AS AN EXPERT IN CRIME
16 SCENE INVESTIGATION?

17 A NOT THE FIELD INVESTIGATION. THAT'S AN
18 AREA THAT -- I MEAN, I HAVE TAUGHT IN THAT AREA, BUT
19 I DON'T TESTIFY IN THE AREA OF CRIME-SCENE
20 INVESTIGATION.

21 Q THAT'S BECAUSE YOU DON'T WORK FOR A
22 POLICE AGENT?

23 A IT'S BECAUSE I DON'T GET TO -- WELL, I
24 GET TO SOME CRIME SCENES, BUT THEY'RE NOT -- THEY'RE
25 USUALLY NOT HOT CRIME SCENES, AS THEY CALL THEM,
26 EVERYTHING'S STILL THERE.

27 Q THEY'RE USUALLY WHERE EVERYTHING STILL
28 ISN'T THERE?

42459

1 A THAT'S CORRECT. MY INTEREST IS
2 PRIMARILY IN THE PHYSICAL EVIDENCE. AND I DO -- I'VE
3 TAUGHT CLASSES -- I TAUGHT WHEN I WENT BACK UP TO
4 NORTHERN CALIFORNIA AT THE DIABLO VALLEY COLLEGE,
5 TEAM-TAUGHT A COURSE WITH SOMEONE FROM THE CONTRA
6 COSTA COUNTY WHO IS NOW WITH THE ALCOHOL, TOBACCO
7 AND FIREARMS LAB. AND WE TEAM-TAUGHT A COURSE ON
8 CRIME-SCENE INVESTIGATION. SO I HAVE QUITE A BIT OF
9 EXPERIENCE WITH THAT. BUT I DON'T CONSIDER MYSELF
10 AN EXPERT ON CRIME-SCENE HANDLING. I THINK THAT'S
11 AN AREA THAT EXPERIENCE HELPS OUT ON.

12 Q WHEN YOU SAY CRIME-SCENE HANDLING, DOES
13 THAT MEAN IN THE AREAS OF HOW TO GATHER AND STORE
14 PHYSICAL EVIDENCE FROM CRIME SCENES?

15 A YES. THERE'S A WHOLE PROCESS OF ROPING
16 OFF THE CRIME SCENE, IDENTIFYING AREAS THAT NEED TO
17 BE EVALUATED, INSTITUTING A SEARCH, DIRECTING THE

18 SEARCH, CALLING THE APPROPRIATE RESPONSE PEOPLE,

19 SUCH AS THE CORONER'S OFFICE, AND ALL OF THAT.

20 Q SO THOSE ARE NOT -- THAT'S NOT AN AREA

21 BECAUSE YOU DON'T GET THAT OPPORTUNITY TO GO TO THE

22 CRIME SCENE AND CONDUCT THOSE INVESTIGATIONS IN

23 WHICH YOU'VE REALLY BEEN CALLED UPON TO TESTIFY?

24 A THAT'S CORRECT.

25 Q WHAT ABOUT THE AREA OF TRYING TO FIGURE

26 OUT HOW THINGS HAPPENED DURING THE COURSE OF AN

27 ALLEGEDLY CRIMINAL EVENT, WHAT HAS BEEN CALLED HERE

28 RECONSTRUCTION?

42460

1 A THAT'S LARGELY WHAT I DO. I GET CASES

2 SENT TO ME FROM ATTORNEYS WHO BASICALLY HAVE A LOT

3 OF REPORTS, A LOT OF PHOTOGRAPHS, A LOT OF

4 DOCUMENTATION, AND THEY WON'T -- AND THERE'S EVIDENCE

5 THAT NEEDS TO BE EXAMINED. THEY WANT TO KNOW WHAT

6 ALL OF THIS MEANS, HOW TO INTERPRET IT, HOW TO

7 EVALUATE WHETHER IT'S SIGNIFICANT OR NOT

8 SIGNIFICANT, HOW TO REEXAMINE THE EVIDENCE AND

9 DETERMINE WHAT IT MIGHT TELL.

10 Q AND DO YOU START -- WHEN YOU LOOK OVER

11 WHAT'S SUBMITTED TO YOU ON THESE CASES, ALL OF THESE

12 VARIOUS KINDS OF MATERIALS, PHOTOGRAPHS, DOCUMENTS,

13 WHATEVER, DO YOU START OUT WITH A PRECONCEIVED
14 NOTION OF WHAT HAPPENED OR ARE YOU LOOKING TO FIND
15 OUT?

16 A I SPEND A LOT OF TIME LOOKING AND
17 PRIMARILY ACCUMULATING INFORMATION DURING THE EARLY
18 STAGE OF THE INVESTIGATION, FINDING OUT WHAT
19 INFORMATION IS THERE, WHAT INFORMATION IS MISSING,
20 WHETHER THAT INFORMATION IS STILL AVAILABLE, IF IT
21 CAN BE ACQUIRED, AND TRYING TO ACCUMULATE ALL OF
22 THAT BEFORE TRYING TO SIT DOWN AND DETERMINE WHAT
23 MAY HAVE HAPPENED.

24 Q AND HAVE YOU EVER SEEN IT AS YOUR ROLE,
25 MR. MORTON, WHEN YOU'RE DOING THIS KIND OF
26 EXAMINATION OF EVIDENCE, TO COME UP WITH A THEORY TO
27 SUPPORT WHICHEVER SIDE HIRED YOU IN SPITE OF WHAT
28 THE REAL CONDITION OF THE EVIDENCE MAY BE?

42461

1 A THAT'S -- THAT WOULD NEVER BE SOMETHING
2 THAT I WOULD APPROACH. I'M BASICALLY TRYING TO GET
3 AT WHAT THE PHYSICAL EVIDENCE IS CAPABLE OF SAYING
4 ABOUT WHAT DID OR DID NOT HAPPEN.

5 Q AND IN THE RANGE OF CASES THAT YOU HAVE
6 BEEN INVOLVED IN, DOES THE PHYSICAL EVIDENCE ANSWER
7 ALL THE QUESTIONS ALL THE TIME?

8 A NO.

9 Q AND DOES THE ABILITY OF THE PHYSICAL
10 EVIDENCE TO ANSWER ALL THE QUESTIONS DEPEND TO ANY
11 EXTENT ON HOW COMPLICATED THE CRIME SCENE IS?

12 A THAT'S ONE OF THE THINGS IT DEPENDS ON,
13 YES.

14 Q AND WHAT ARE SOME OF THE OTHER THINGS
15 THAT IT DEPENDS ON?

16 A HOW ADEQUATE THE ORIGINAL INVESTIGATION
17 WAS, HOW ADEQUATE THE DOCUMENTATION WAS, HOW WELL
18 THE EVIDENCE WAS COLLECTED AND PRESERVED. THOSE
19 KINDS OF ISSUES.

20 Q WHETHER OR NOT THE PHOTOGRAPHS SHOW
21 EVERYTHING THAT YOU'D LIKE TO HAVE THEM SHOW?

22 A YES. OR THE DIAGRAMS SHOW THE LOCATION
23 OF EVIDENCE, WHETHER ALL OF THE EVIDENCE HAS BEEN
24 COLLECTED, WHETHER ITS LOCATION HAS BEEN DOCUMENTED
25 ADEQUATELY.

26 Q NOW, MR. MORTON, HOW LONG HAVE YOU BEEN
27 INVOLVED IN THIS CASE?

28 A 1992.

42462

1 Q AND IN THE COURSE OF YOUR INVOLVEMENT IN
2 THIS -- IN ALL THAT TIME YOU HAVE BEEN

3 COURT-APPOINTED TO ASSIST THE DEFENSE, CORRECT?

4 A THAT'S CORRECT.

5 Q AND IN THE COURSE OF YOUR INVOLVEMENT IN

6 THIS CASE, HAVE YOU LOOKED AT A LOT OF THINGS?

7 A YES, I HAVE.

8 Q AND WOULD YOU TELL THE JURY WHAT -- YOU

9 DON'T HAVE TO MENTION EACH ONE, BUT WHAT THINGS YOU

10 HAVE LOOKED AT.

11 A I STARTED OUT LOOKING ORIGINALLY AT

12 PHOTOGRAPHS AND REQUESTED ACCESS TO EVIDENCE.

13 I LOOKED AT PHYSICAL EVIDENCE THAT WAS

14 COLLECTED IN THE CASE.

15 Q LET ME SLOW YOU DOWN A LITTLE BIT.

16 WITH RESPECT TO PHYSICAL EVIDENCE

17 COLLECTED IN THE CASE, WAS ONE TYPE OF PHYSICAL

18 EVIDENCE COLLECTED WHAT APPEARED TO BE PARTS OF

19 SHOTGUN ROUNDS?

20 A YES.

21 Q SO-CALLED BALLISTICS EVIDENCE?

22 A YES.

23 Q AND DID YOU HAVE THOSE ITEMS PHYSICALLY

24 IN YOUR POSSESSION FOR SOME PERIOD OF TIME?

25 A YES, I DID.

26 Q AND WHERE DID YOU HAVE THEM IN YOUR

27 POSSESSION?

28 A AT MY LABORATORY IN OAKLAND.

1 Q AND AT YOUR LABORATORY IN OAKLAND, DID
2 YOU HAVE AVAILABLE TO YOU ALL THE EQUIPMENT YOU
3 NEEDED TO THOROUGHLY EXAMINE THAT BALLISTICS
4 EVIDENCE?

5 A FOR THE EXAMINATION I DID, YES. THERE'S
6 ALWAYS MORE EQUIPMENT THAT YOU CAN USE.

7 Q YOU CAN GET A NUCLEAR REACTOR AND DO
8 NUCLEAR ANALYSIS?

9 A EXACTLY.

10 Q YOU DON'T HAVE A NUCLEAR REACTOR?

11 A NO.

12 Q DID YOU ALSO EXAMINE SOME ITEMS THAT
13 HAVE BEEN IDENTIFIED AS WHITE PLASTIC PARTS OF A
14 BRACELET?

15 A YES.

16 Q DID YOU EXAMINE THOSE AS WELL IN YOUR
17 LABORATORY IN OAKLAND?

18 A YES.

19 Q AND WHEN YOU REFERRED EARLIER TO
20 PHOTOGRAPHS THAT YOU HAD, WERE THOSE BOTH CRIME
21 SCENE AND CORONER'S PHOTOGRAPHS?

22 A YES.

23 Q SO IN ADDITION TO THOSE THINGS, WHAT
24 ELSE DID YOU LOOK AT?

25 A I'VE LOOKED AT -- SUBSEQUENTLY, I'VE

26 LOOKED AT SOME CD-ROMS THAT HAD THE PHOTOGRAPHIC
27 IMAGES, I GUESS, FROM ALL OF THE PHOTOGRAPHS TAKEN
28 IN THE CASE. I LOOKED AT A REPORT BY FAILURE

42464

1 ANALYSIS ASSOCIATES AND --

2 Q LET ME GO BACK IN TIME THOUGH.

3 PREVIOUSLY WHEN YOU GOT THE PHYSICAL
4 EVIDENCE, YOU GOT PHYSICAL EVIDENCE FROM THE SCENE.
5 DID YOU ALSO GET PHYSICAL EVIDENCE THAT HAD BEEN
6 COLLECTED AT THE CORONER'S OFFICE?

7 A YES. THAT WAS -- I'M SORRY. I FORGOT
8 ABOUT THAT. THE BALLISTICS EVIDENCE FROM THE
9 CORONER'S OFFICE, PELLETS AND PARTS OF SHOTGUN
10 CARTRIDGES THAT WERE REMOVED FROM BODIES AND
11 CLOTHING.

12 Q THAT'S WHAT WE'RE GOING TO GET TO.

13 WITH RESPECT TO CLOTHING, WHOSE CLOTHING
14 DID YOU GET?

15 A BOTH JOSEPH MENENDEZ AND MARY MENENDEZ.

16 Q AND DID YOU DO AN EXAMINATION OF THE
17 CLOTHING OF THE DECEDENTS AGAIN AT YOUR LABORATORY
18 IN OAKLAND?

19 A YES.

20 Q AND HOW LONG AGO WAS IT THAT -- WHEN YOU

21 DID YOUR EXAMINATION OF THE DECEDENTS' CLOTHING?

22 A JUNE OF '93.

23 Q JUNE OF '93?

24 A YES.

25 Q AND ARE YOU THE TYPE OF SCIENTIST,

26 MR. MORTON, WHO DOES TAKE NOTES?

27 A YES, I DO.

28 Q AND FOR EVERY ITEM OF EVIDENCE THAT YOU

42465

1 EXAMINED, DID YOU MAKE NOTE OF ITS APPEARANCE IN ANY

2 SIGNIFICANT CHARACTERISTICS?

3 A I EITHER DOCUMENTED VERBAL, IN WRITING,

4 OR MADE SOME DIAGRAMS.

5 Q SO THINGS THAT --

6 A OR PHOTOGRAPHS.

7 Q I'M SORRY?

8 A OR PHOTOGRAPH.

9 Q AND DID YOU, IN FACT, TAKE PHOTOGRAPHS

10 OF THE VARIOUS ITEMS OF CLOTHING AT THE TIME THAT

11 YOU EXAMINED THEM IN 1993?

12 A I TOOK PHOTOGRAPHS OF SOME OF THE ITEMS

13 OF CLOTHING, BUT NOT ALL.

14 Q AND AMONG THE ITEMS OF CLOTHING THAT YOU

15 OBSERVED, WAS A SHIRT REMOVED FROM MR. MENENDEZ ONE

16 OF THOSE ITEMS?

17 A YES.

18 Q DID YOU ALSO EXAMINE A BRA THAT WAS
19 REMOVED FROM MRS. MENENDEZ?

20 A YES.

21 Q DID YOU ALSO EXAMINE MRS. MENENDEZ'
22 PANTS --

23 A YES.

24 Q -- THAT SHE WAS WEARING?

25 AND DID YOU ULTIMATELY EXAMINE
26 MRS. MENENDEZ' TENNIS SHOES?

27 A YES, I DID.

28 Q DID YOU EXAMINE THOSE IN '93 OR MORE

42466

1 RECENTLY?

2 A MORE RECENTLY.

3 Q DID YOU HAVE, HOWEVER, PHOTOGRAPHS OF
4 MRS. MENENDEZ' TENNIS SHOES?

5 A YES, I DID.

6 Q DID YOU ALSO RECEIVE REPORTS PREPARED BY
7 MR. LINHART, DEPUTY VAN HORN, AND A MR. CATALANI,
8 ALL OF THE SHERIFF'S CRIME LAB?

9 A YES.

10 Q DID YOU RECEIVE THOSE REPORTS BACK IN

11 ' AND '93?

12 A YES.

13 Q DID YOU ALSO PURCHASE A FIREARM BACK IN

14 ' TO '93 IN ORDER TO DO FURTHER WORK IN THIS

15 CASE?

16 A YES.

17 Q AND WHAT KIND OF FIREARM DID YOU

18 PURCHASE?

19 A MOSSBERG 500, MODEL 50406.

20 Q WAS IT YOUR UNDERSTANDING THAT A

21 MOSSBERG 50406 WAS THE MODEL NUMBER OF GUNS THAT

22 ERIK AND LYLE MENENDEZ PURCHASED AND USED IN THIS

23 CASE?

24 A YES.

25 Q AND HAVE YOU SEEN THE MOSSBERG 50406

26 THAT DR. MC CARTHY OBTAINED?

27 A YES.

28 Q AND DOES THE GUN THAT YOU OBTAINED

42467

1 APPEAR IDENTICAL TO THE ONE THAT HE OBTAINED?

2 A YES.

3 Q AND YOU'VE HAD THAT GUN FOR, WHAT, TWO

4 AND A HALF, THREE YEARS?

5 A YES.

6 Q I'M SORRY?

7 A TWO AND A HALF YEARS.

8 Q TWO AND A HALF.

9 AND IN ADDITION TO GETTING A SIMILAR

10 GUN, DID YOU GET THE SAME TYPE OF AMMUNITION AS WHAT

11 WAS USED IN THIS CASE?

12 A YES.

13 Q AND WAS THAT FIOCCHI NO. 4 PACKED IN THE

14 IDENTICAL MANNER THAT THE AMMUNITION USED IN THIS

15 CASE WAS PACKED?

16 A YES.

17 Q AND DID YOU, IN FACT, PRESERVE AND HAVE

18 WITH YOU THE BOX IN WHICH THE AMMUNITION THAT YOU

19 OBTAINED CAME?

20 A YES.

21 Q WOULD YOU TAKE THAT OUT FOR A MOMENT.

22 MR. MORTON, I'M REMOVING FROM THE BAG,

23 WHICH IS MARKED 313, A BOX AND I BELIEVE THE BOX IS

24 313-A.

25 LOOK LIKE THE SAME?

26 A YES, EVEN THE SAME PRICE TAG.

27 Q EVEN THE SAME -- YOU MEAN THE PRICE

28 HASN'T GONE UP IN --

1 A OH, I'M SORRY. IT'S 5.59. IT'S GONE UP

2 40 CENTS.

3 Q EITHER THAT OR YOU BOUGHT IT AT A

4 CHEAPER STORE.

5 A COULD BE.

6 Q AND YOU INDICATE THERE'S -- THERE'S SOME

7 NUMBERS AND A DATE ON THE BOX THAT YOU HAVE IN FRONT

8 OF YOU?

9 A YES.

10 Q AND WHAT DOES -- WHAT DO THOSE SIGNIFY?

11 A THAT'S MY CASE NUMBER AND THE DATE THAT

12 THIS WAS PURCHASED.

13 Q AND IT SHOWS THAT IT WAS PURCHASED IN

14 AUGUST OF 1993?

15 A YES.

16 Q AND IF I WERE TO TELL YOU,

17 HYPOTHETICALLY, THAT THE BOX THAT'S PART OF 313 WAS

18 PURCHASED ON NOVEMBER 17TH, 1995, WOULD THAT

19 INDICATE TO YOU THAT THEY'RE STILL SELLING THIS

20 STUFF?

21 A YES, IT WOULD.

22 Q NOW, IS THERE ANYTHING ELSE THAT YOU CAN

23 RECALL THAT WAS SUBMITTED TO YOU FOR YOUR

24 EXAMINATION IN THIS CASE THAT WE HAVEN'T ALREADY

25 COVERED?

26 A YOU MEAN IN '93?

27 Q EITHER IN '93 -- WELL, FIRST OF ALL, IN

28 '.

1 ANYTHING ELSE FROM THAT YEAR?

2 A REPORTS -- I ALREADY MENTIONED THE
3 REPORTS, AUTOPSY REPORTS, POLICE REPORTS, DIAGRAM.

4 Q THE DIAGRAM THAT YOU'RE REFERRING TO,
5 WAS THAT A BEVERLY HILLS POLICE DEPARTMENT DIAGRAM?

6 A YES.

7 Q AND HAVE YOU, IN '95, RECENTLY RECEIVED
8 SOME ADDITIONAL DIAGRAMS THAT WERE PREPARED BY THE
9 BEVERLY HILLS POLICE DEPARTMENT?

10 A YES.

11 Q NOW, WHAT OTHER MATERIALS HAVE YOU
12 REVIEWED THAT WERE SUBMITTED TO YOU IN 1995, PRIOR
13 TO YOUR COMING TO COURT TODAY?

14 A I REVIEWED THE REPORT FROM FAILURE
15 ANALYSIS ASSOCIATES, WHICH I MENTIONED. I'VE
16 REVIEWED TRANSCRIPTS, TESTIMONY TRANSCRIPTS, FROM --

17 Q WHOSE TESTIMONY?

18 A DR. MC CARTHY, DR. LAWRENCE, AND
19 DR. FACKLER.

20 Q OKAY. ANYTHING ELSE THAT YOU'VE
21 REVIEWED?

22 A I'VE REVIEWED THE CD-ROM -- THE PHOTO
23 CD'S THAT HAVE THE IMAGES OF ALL THE NEGATIVES.

24 Q AND DID YOU ALSO REVIEW IN THE PAST FEW

25 MONTHS, ONE OR TWO DIFFERENT VERSIONS OF THE FAILURE

26 ANALYSIS ILLUSTRATIONS?

27 A YES, I HAVE.

28 Q AND WAS ONE VERSION OF THOSE INCLUDED ON

42470

1 THE CD-ROMS THAT YOU REVIEWED?

2 A YES.

3 Q AND WHEN YOU REVIEWED THE PHOTOGRAPHS ON

4 THOSE CD-ROMS, DID YOU DO IT WITH A PARTICULAR

5 SOFTWARE PROGRAM?

6 A YES, I DID.

7 Q WHAT PROGRAM WAS THAT?

8 A PHOTO SHOP, 3.0.

9 Q ADOBE PHOTO SHOP?

10 A YES.

11 Q AND WERE YOU INFORMED THAT THAT WAS THE

12 PROGRAM THAT DR. MC CARTHY STATES THAT HE USED TO

13 LOOK AT THE PHOTOGRAPHS?

14 A HE USED ADOBE PHOTO SHOP. I USED IT ON

15 A POWER MACINTOSH AND I THINK HE USED IT ON AN IBM.

16 SO I THINK IT'S A SLIGHTLY DIFFERENT PROGRAM, BUT

17 ESSENTIALLY THE SAME.

18 Q IT HAS THE SAME CAPACITY TO ALLOW YOU TO

19 LOOK AT PHOTOGRAPHS?

20 A YES.

21 Q AND DID YOU FIND THAT LOOKING AT THE
22 PHOTOGRAPHS ON COMPUTER WAS MORE HELPFUL THAN
23 LOOKING AT THE HARD COPY PHOTOGRAPHS?

24 A WELL, EACH PROCEDURE HAS ITS ADVANTAGES
25 AND DRAWBACKS. IT'S VERY NICE TO BE ABLE TO TAKE
26 THAT MANY IMAGES AND BE ABLE TO LOOK AT THEM AS IF
27 THEY WERE BLOWN UP TO A MUCH LARGER SIZE.

28 Q AND THAT'S WHAT YOU CAN DO ON THE

42471

1 COMPUTER. YOU CAN FOCUS IN AND BLOW IT UP?

2 A YES. YOU CAN LOOK AT SPECIFIC DETAILS.
3 YOU CAN ENHANCE THEM. YOU CAN INCREASE THE
4 BRIGHTNESS OR THE DARKNESS TO GET A BETTER LOOK AT
5 SOME THINGS.

6 BUT THE THING YOU LOSE WITH THAT IS THE
7 ABILITY TO LAY THEM ALL OUT AT THE SAME TIME OR LAY
8 OUT AS MANY AS YOU NEED AT THE SAME TIME AND
9 INTERRELATE OR CORRELATE VARIATIONS IN DIFFERENT
10 OBJECTS.

11 WHENEVER YOU HAVE A NUMBER OF DIFFERENT
12 PHOTOGRAPHS OF AN OBJECT AT A CRIME SCENE, YOU'LL
13 GET A DIFFERENT PERSPECTIVE AND IT MAY TELL YOU
14 SOMETHING ABOUT WHERE IT IS OR HOW THAT IS IN THE

15 SCENE OR HOW IT RELATES TO OTHER THINGS. THAT IS
16 REALLY MUCH MORE DIFFICULT TO DO ON THE COMPUTER
17 THAN IT IS ON THE HARD COPY PHOTOGRAPHS.

18 Q AND IN YOUR OPINION WOULD IT BE EVEN
19 MORE DIFFICULT IF YOU'RE A PERSON WHO NEVER TAKES
20 NOTES ABOUT WHAT YOU'VE SEEN?

21 MR. CONN: OBJECTION. CALLS FOR SPECULATION.

22 THE COURT: SUSTAINED.

23 Q BY MS. ABRAMSON: NOW, WITH RESPECT TO
24 THE NOTION, MR. MORTON, OF RECONSTRUCTION, FIRST OF
25 ALL, DO YOU HAVE AN IDEA OF HOW MANY HOMICIDE CASES
26 YOU'VE BEEN INVOLVED IN OVER THE YEARS?

27 A I THINK IT MUST BE GETTING PRETTY CLOSE
28 TO A THOUSAND. SOME OF THOSE ARE MULTIPLE

42472

1 HOMICIDES, AS MANY AS 25.

2 Q WHEN YOU SAY SOME OF THOSE ARE AS MANY
3 AS 25, THAT'S LIKE SERIAL KILLING CASES?

4 A YES.

5 Q SO ONE HOMICIDE CASE COULD BE 25
6 DIFFERENT HOMICIDES?

7 A THAT'S CORRECT.

8 Q DO YOU HAVE AN IDEA OF HOW MANY OF THOSE
9 HOMICIDES INVOLVED FIREARMS?

10 A I DON'T REALLY HAVE A VERY GOOD IDEA,
11 BUT I WOULD SAY A FAIRLY LARGE PERCENTAGE OF THEM.

12 Q MORE THAN 50 PERCENT?

13 A MAYBE NOT 50 PERCENT, BUT I WOULD SAY
14 IT'S PROBABLY PRETTY CLOSE TO THAT.

15 Q SO SOMEWHERE AROUND FOUR TO FIVE
16 HUNDRED, WOULD THAT BE A SAFE BET?

17 MR. CONN: OBJECTION. LEADING.

18 THE COURT: WELL, YOU CAN ANSWER THE
19 QUESTION.

20 OVERRULED.

21 THE WITNESS: THAT SOUNDS PRETTY REASONABLE.
22 NOW THAT YOU MENTION THE NUMBER, IT SOUNDS LIKE IT'S
23 PROBABLY MORE THAN THAT, BUT I HAVE NOT KEPT TRACK
24 OF NUMBERS.

25 Q BY MS. ABRAMSON: YOU THINK IT MIGHT BE
26 MORE THAN 500 FIREARM-RELATED HOMICIDE CASES?

27 A COULD BE.

28 Q AND HAVE YOU, IN SOME OF THOSE CASES,

42473

1 BEEN ABLE TO FIGURE OUT HOW THE SHOOTING HAPPENED?

2 A WELL, YOU CAN TELL SOME OF THE THINGS
3 ABOUT HOW THE SHOOTING HAPPENED. OBVIOUSLY, YOU
4 CAN'T GET INTO THE MINDS OF THE PARTICIPANTS. BUT

5 YOU CAN TELL SOMETHING ABOUT HOW THEY WERE

6 INTERACTING, THE DISTANCE, THE SPACIAL

7 RELATIONSHIPS, THAT KIND OF THING.

8 Q AND WHAT KINDS OF CASES HAVE YOU BEEN

9 ABLE TO TELL THOSE KINDS OF THINGS? IF YOU COULD

10 GIVE US AN EXAMPLE OF A SITUATION WHERE YOU WERE

11 ABLE TO FIGURE THOSE THINGS OUT.

12 A WELL, SIMPLE EXAMPLE WOULD BE A SHOOTING

13 ON THE STREETS OF SAN FRANCISCO ONE TIME WHERE ALL

14 THE WITNESSES SAID THAT THE PARTICIPANTS WERE AT A

15 CERTAIN DISTANCE APART; AND THE DEFENDANT, I

16 BELIEVE, SAID THAT HE WAS BEING ATTACKED BY THIS MAN

17 WHO HAPPENED TO BE THE BOYFRIEND OF HIS WIFE, I

18 BELIEVE. AND SO HE SAID THEY WERE IN A DIRECT

19 CONFRONTATION. AND AS IT TURNED OUT, THE POWDER

20 PATTERN ON THE CLOTHING SHOWED THAT THEY WERE VERY

21 CLOSE TO EACH OTHER.

22 Q SO EVEN THOUGH WITNESSES HAD THEM FAR

23 APART, THE POWDER PATTERN ON THE CLOTHING SHOWED

24 THAT THE SHOT THAT WAS FIRED WAS AT CLOSE RANGE?

25 A YES.

26 Q SO THAT WAS REALLY DETERMINING ONE

27 ASPECT OF PHYSICAL EVIDENCE THAT RESOLVED THE ISSUE

28 THAT YOU WERE ASKED TO INVESTIGATE?

1 A THAT'S CORRECT.

2 Q WOULD YOU SAY THAT WAS A FAIRLY SIMPLE
3 TASK, THEN, TO FIGURE OUT AT LEAST THAT FACT?

4 A YES.

5 Q COULD YOU FIGURE OUT OR WAS IT NECESSARY
6 FOR YOU TO FIGURE OUT IN THAT CASE AT PRECISELY WHAT
7 POSITION EITHER THE SHOOTER'S BODY WAS OR THE
8 DECEDENT'S BODY WAS WHEN THE -- I TAKE IT IT WAS ONE
9 SHOT?

10 A YES.

11 Q WHEN THE ONE SHOT WAS FIRED?

12 A NO. AS A MATTER OF FACT, THAT'S ONE
13 THING THAT IS RARELY POSSIBLE, BECAUSE IN ORDER TO
14 ESTABLISH A TRAJECTORY, EVEN ON A BULLET, AS OPPOSED
15 TO SHOTGUN PELLETS, OR EVEN LIKE SHOTGUN PELLETS, TO
16 SOME EXTENT, IS WHEN YOU ESTABLISH A TRAJECTORY IN A
17 BODY, ALL IT DOES IS SHOW THE RELATIONSHIP BETWEEN
18 THE BODY AND THE FIREARM. AND IT MAY TELL YOU -- IF
19 YOU KNOW THE TRAJECTORY THROUGH THE BODY AND YOU
20 HAVE THAT, YOU KNOW THE TRAJECTORY THROUGH THE BODY
21 AND POSITION OF THE FIREARM RELATIVE TO THE BODY.
22 IF YOU KNOW AND CAN ESTABLISH TO SOME EXTENT THE
23 FIRING DISTANCE, THEN YOU CAN PUT THE GUN AT A
24 PARTICULAR POSITION RELATIVE TO THE BODY --

25 Q AT LEAST A PARTICULAR DISTANCE?

26 A A PARTICULAR DISTANCE AND IN A
27 PARTICULAR ORIENTATION. THERE'S -- ALL OF THESE

42475

1 BECAUSE DEFINING AN ANGLE THAT PRECISELY MAY NOT BE
2 THAT EASY. BUT IT -- YOU CAN BE WITHIN A MATTER OF A
3 DEGREE OR TWO. AND THE SAME WAY WITH THE FIRING
4 DISTANCE. BUT THE POWDER PATTERNS, IF YOU HAVE THE
5 SAME GUN, THE SAME AMMUNITION, YOU CAN DETERMINE THE
6 POWDER PATTERNS SO THAT YOU CAN SAY, WELL, THIS WAS
7 ABOUT TWO FEET, PLUS OR MINUS SIX INCHES, OR TEN
8 FEET PLUS OR MINUS THREE FEET. SO YOU CAN HAVE SOME
9 IDEA. SO THAT NARROWS DOWN WHAT THE RELATIONSHIP IS
10 BETWEEN THE PARTICIPANTS IN THIS EVENT. BUT IT
11 DOESN'T TELL YOU MUCH ABOUT WHERE IT IS OCCURRING
12 BECAUSE OF THE ABILITY TO MOVE THE BODY.

13 IN OTHER WORDS, THE RELATIONSHIP OF THE
14 BODY TO THE GUN IS FIXED, BUT THE INFORMATION OF THE
15 BODY CAN BE QUITE VARIABLE, AND THAT'S PARTICULARLY
16 TRUE WHEN YOU'RE TALKING ABOUT LIMBS, BECAUSE IF YOU
17 HAVE A BULLET COMING IN TO THE HEAD, AND YOU KNOW
18 PRECISELY WHAT THAT TRAJECTORY IS, YOU DON'T KNOW
19 WHETHER THE PERSON WAS LOOKING LIKE THIS OR LIKE
20 THAT OR UP IN THE AIR OR DOWN AT THE GROUND OR
21 WHATEVER. ALL YOU KNOW IS THAT YOU HAVE THE BULLET
22 COMING OUT THIS WAY AND THERE ARE PRACTICAL INFINITE

23 NUMBER OF POSITIONS THAT WOULD ALLOW.

24 Q AND IF -- IF I CAN INTERRUPT YOU FOR A

25 MINUTE.

26 IF THERE ARE AN INFINITE NUMBER OF

27 POSITIONS OF THE HEAD THAT WOULD STILL SHOW THE SAME

28 TRAJECTORY INFORMATION, THAT MEANS -- DOES THAT MEAN

42476

1 THAT THERE'S A WIDE VARIETY OF PLACES THAT THE BODY

2 CARRYING THE HEAD COULD HAVE BEEN AND THAT THE

3 SHOOTER CARRYING THE GUN COULD HAVE BEEN?

4 A THAT'S RIGHT. IT ESTABLISHES A WHOLE

5 ARRAY OF POSSIBILITIES. EVEN IF THE SITUATION WHERE

6 YOU HAVE JUST ONE GUNSHOT, IT ESTABLISHES CERTAIN

7 INFORMATION THAT IS HELPFUL. AND IT DOES ESTABLISH

8 A CERTAIN RANGE OF POSSIBILITIES WHICH ARE

9 RELATIVELY INFINITE IN NUMBER IF YOU TAKE ALL THE

10 NUANCES. BUT IF YOU TAKE THE REALISTIC NUMBER OF

11 POSSIBILITIES, IT MAY LIMIT YOU TO A CERTAIN ANGLE.

12 THERE MAY BE OTHER THINGS THAT RESTRICT YOU WITHIN

13 THE ENVIRONMENT.

14 IN OTHER WORDS, SOMEONE MAY BE UP

15 AGAINST A WALL. SO YOU KNOW THAT HE WASN'T OUT THAT

16 WAY. SO YOU KNOW THAT THE SHOT MUST HAVE BEEN FIRED

17 SOMEWHERE OUT TO A POINT WHERE YOU COME TO ANOTHER

18 RESTRICTION OR SOMETHING ELSE THAT LIMITS YOU; OR IT
19 MAY REQUIRE THAT THE GUN, IF YOU TAKE THAT DISTANCE
20 AND THE ANGLE, IT CAN'T BE UP HIGH BECAUSE THE
21 PERSON WOULD HAVE TO BE STANDING --

22 Q ON THE CEILING?

23 A -- ON THE CEILING. BUT IT MAY BE, AND
24 YOU HAVE THIS HAPPEN, SOMEONE WAS STANDING UP ON A
25 BALCONY. SO IT COULD.

26 SO YOU HAVE TO TAKE INTO ACCOUNT THE
27 ENVIRONMENT WHERE YOU'RE TRYING TO RECONSTRUCT THIS
28 AND SEE HOW IT LIMITS OR RESTRICTS WHAT THAT SAYS

42477

1 ABOUT THAT PARTICULAR TRAJECTORY THAT YOU HAVE.

2 AND, SO, THAT'S A LIMITING FACTOR THAT YOU HAVE.

3 BUT WHAT IT REALLY MEANS IS THAT WHEN
4 YOU DO A RECONSTRUCTION, WHAT YOU'RE DOING IS YOU'RE
5 SETTING THE BOUNDARIES FOR WHAT'S REALISTIC RATHER
6 THAN SAYING WHAT HAPPENED. YOU'RE TRYING --

7 Q WHY CAN'T YOU JUST SAY WHAT HAPPENED?

8 A BECAUSE OF THIS FACT THAT THERE ARE TOO
9 MANY POSSIBILITIES THAT ARE VARIABLE WITHIN THE SAME
10 SET OF PHYSICAL FACTS. YOU HAVE THE SAME SET OF
11 PHYSICAL FACTS THAT ARE CONSISTENT WITH A WHOLE
12 ARRAY OF POSSIBILITIES.

13 Q IS THAT TRUE EVEN IN CASES WHERE THERE'S

14 PERHAPS ONLY ONE WOUND?

15 A YES.

16 Q AND WHAT HAPPENS WHEN YOU'VE GOT A CASE

17 WHERE THERE ARE TWO WOUNDS?

18 A AS YOU ADD ADDITIONAL WOUNDS, IT ADDS

19 ADDITIONAL COMPLEXITY TO THE INVESTIGATION OR THE

20 ASSESSMENT OF THE PHYSICAL EVIDENCE. IN SOME WAYS,

21 IN SOME TIMES, IT CAN ACTUALLY HELP TO DEFINE THINGS

22 EVEN BETTER. OTHER TIMES IT MAKES IT MORE COMPLEX.

23 Q GIVE US AN EXAMPLE OF HOW IT CAN MAKE

24 THINGS -- DEFINE THINGS BETTER.

25 A IF YOU HAVE, FOR EXAMPLE, TWO BULLET

26 HOLES TO SOMEBODY AND ONE OF THEM GOES ALL THE WAY

27 THROUGH AND STRIKES SOMETHING ELSE, THEN YOU HAVE A

28 WAY OF RELATING IT TO THE SCENE; OR IF IT GOES

42478

1 THROUGH A WALL YOU CAN SAY THIS BULLET HOLE GOES

2 THROUGH THE WALL. WE KNOW ONE OF THE BULLETS GOES

3 THROUGH, THE OTHER ONE DOES NOT.

4 SO THIS BULLET HOLE GOES THROUGH THE

5 WALL. WE CAN ESTABLISH A TRAJECTORY ON THAT WALL

6 MAYBE 25 DEGREES DOWN FROM -- OR ABOVE THE

7 HORIZONTAL. IT MAY BE EIGHT FEET -- IT MAY BE, SAY,

8 TWO FEET OFF THE GROUND, AND IT MAY BE AT A CERTAIN
9 ANGLE RELATIVE TO THE WALL. SO THAT ESTABLISHES
10 ANOTHER TRAJECTORY.

11 AND IF YOU FIND THAT THE BULLET ON THE
12 OTHER SIDE IS THE ONE THAT WENT THROUGH THE BODY,
13 THEN YOU CAN TAKE THAT TRAJECTORY AND BASICALLY HANG
14 THE PERSON'S BODY TRAJECTORY ON THAT LINE.

15 AND SO THAT WILL LIMIT WITHIN THE SCENE
16 WHERE THAT PARTICULAR PART OF THE SHOOTING COULD
17 HAVE OCCURRED.

18 Q AND IS THAT HELPFUL, BECAUSE IF THERE
19 WAS ANOTHER BULLET HOLE THAT HAD NO EXIT AND HAD NO
20 WAY TO ALIGN IT TO ANYTHING FIXED AT THE SCENE, YOU
21 WOULD HAVE NO IDEA WHERE AT THE SCENE THE PERSON WAS
22 WHEN THEY WERE SHOT?

23 A THAT'S RIGHT. THE ONLY THING THAT YOU
24 MIGHT LOOK AT, AND IT'S ONE THING THAT CAN BE
25 MISLEADING, IS BLOOD PATHS. A LOT OF TIMES PEOPLE
26 LOOK AT A SCENE AND THEY SEE WHERE ALL THE BLOOD IS
27 AND THEY THINK, UH-HUH, THAT'S WHERE IT HAPPENED.
28 BUT FREQUENTLY YOU DON'T SEE A LOT OF BLOOD UNTIL

42479

1 THE PERSON IS DOWN ON THE GROUND OR YOU DON'T SEE
2 MUCH AND YOU MAY NOT SEE A TRAIL OR IT MAY NOT START

3 HITTING THE GROUND UNTIL THERE'S BEEN A FAIR AMOUNT
4 OF MOVEMENT.

5 SO YOU HAVE TO TAKE INTO CONSIDERATION
6 WHAT MAY BE HAPPENING WITH THIS WOUND BEFORE IT GETS
7 TO THE POINT WHERE BLOOD IS AFFECTING THE SCENE.

8 AND SO EACH ONE OF THESE THINGS HAS -- IS COMPLICATED
9 BY THOSE KINDS OF FACTORS OF SOMETHING HAPPENS LIKE
10 A GUNSHOT WOUND. WHAT'S THE NEXT THING THAT
11 HAPPENS? AND THEN HOW DOES THAT AFFECT WHAT YOU SEE
12 AS A RESULT OF THAT SHOOTING?

13 Q NOW, THERE HAS BEEN SUGGESTED IN THIS
14 COURTROOM THE NOTION THAT A COMPLETE RECONSTRUCTION
15 CAN BE DONE BASED ON THIS CRIME SCENE WITH ITS
16 EVIDENCE.

17 WHAT IS YOUR OPINION WITH RESPECT TO
18 THAT NOTION?

19 A WELL, IT WOULD BE PRETTY AMAZING TO ME
20 IF A COMPLETE RECONSTRUCTION COULD BE DONE WITH ALL
21 OF THE EVIDENCE THAT MIGHT HAVE BEEN AVAILABLE FROM
22 A CRIME SCENE.

23 IN THIS SITUATION THERE'S QUITE A BIT
24 MISSING. THERE ARE -- ALL OF THE SHOT SHELLS ARE
25 MISSING, SOME OF THE SHOT PELLETS AND WADDING ARE
26 MISSING. SO THERE'S SOME EVIDENCE THAT'S MISSING.

27 YOU ALSO HAVE A NUMBER OF SHOTS HERE
28 WHICH HAVE NO POINTS TO RELATE TO OUTSIDE OF THE

1 BODY. IN OTHER WORDS, THEY BASICALLY GO THROUGH THE
2 BODY, BUT YOU HAVE NO WAY OF KNOWING WHERE THEY GO
3 AFTER THEY LEAVE THE BODY.

4 THE EVIDENCE -- IT'S CLEAR THAT THIS
5 OCCURRENCE WAS WITHIN A FAIRLY LIMITED AREA. THE
6 RESULT HAS BEEN THAT MOST OF THE EVIDENCE IS IN THAT
7 AREA AND IT'S MIXED TOGETHER. AND SO TRYING TO SORT
8 OUT THAT EVIDENCE IS VERY DIFFICULT. AND
9 PARTICULARLY SINCE PORTIONS OF IT WERE NOT
10 WELL-DOCUMENTED AND PORTIONS OF IT WERE NOT
11 COLLECTED.

12 Q DOES A RECONSTRUCTION OF A SHOOTING BY
13 DEFINITION REQUIRE OPINIONS OR CONCLUSIONS ABOUT THE
14 SEQUENCE OF SHOTS, IF YOU HAVE A MULTIPLE-SHOT
15 SHOOTING?

16 A I'M NOT SURE I UNDERSTAND YOUR
17 QUESTION.

18 Q OKAY. WOULD YOU SAY THERE ARE VARIOUS
19 KINDS OF -- OR THERE ARE DIFFERENT QUESTIONS THAT YOU
20 CAN HOPE TO ANSWER BY EXAMINING THE PHYSICAL
21 EVIDENCE FROM A CRIME SCENE?

22 A YES.

23 Q IS ONE OF THE QUESTIONS THAT ONE CAN
24 ROUTINELY ANSWER QUESTIONS HAVING TO DO WITH THE
25 SEQUENCE, IN WHAT ORDER SHOTS WERE FIRED IN MULTIPLE
26 SHOT CASES?

27 A THAT'S ONE OF THE MORE DIFFICULT THINGS
28 TO DETERMINE, BECAUSE IF YOU HAVE A NUMBER OF SHOTS

42481

1 TO A BODY, UNLESS THERE'S A DIFFERENCE BETWEEN THEM
2 IN TERMS OF WHETHER THEY'RE ANTEMORTEM OR
3 POSTMORTEM, THERE'S REALLY NOTHING TO TELL THEM
4 APART.

5 OCCASIONALLY -- AND THIS IS WHERE I GET
6 CALLED INTO THE CORONER'S OFFICE ON OCCASION -- IS
7 WHERE YOU HAVE MULTIPLE SHOTS OF THE SKULL OR AN
8 AREA WHERE YOU HAVE BONE FRACTURES, AND THE BONE
9 FRACTURE WAS SOMETIMES -- ONE FRACTURE WHERE THE
10 FIRST BULLET GOES DOWN AND THE SECOND ONE COMES AND
11 THE FRACTURES FROM THAT ONE RUN INTO THE FRACTURES
12 FROM THE FIRST ONE. IN THAT SITUATION YOU COULD SAY
13 THIS ONE WAS FIRST AND THIS ONE WAS SECOND.

14 Q HOW CAN YOU DO THAT?

15 A BECAUSE YOU HAVE THE ABILITY TO SHOW
16 THAT THE FRACTURE LINES -- ONE SET OF FRACTURE LINES
17 OCCURRED AND ANOTHER ONE RAN INTO IT. IT WOULDN'T
18 RUN INTO IT IF IT WASN'T ALREADY THERE.

19 WE SEE THE SAME THING IN GLASS
20 FRACTURES. SOMETIMES YOU CAN ASSOCIATE GLASS
21 FRACTURES. EVEN THERE YOU HAVE TO BE VERY CAREFUL

22 BECAUSE SOMETIMES WHEN OTHER THINGS ARE HAPPENING,
23 AND TYPICALLY THESE THINGS ARE RELATIVELY COMPLEX
24 EVENTS THAT INVOLVE A LOT OF FACTORS, WHAT YOU CAN
25 HAVE IS YOU CAN HAVE SOMETHING THAT IS FIRED -- A
26 BULLET IS FIRED AND THEN YOU GET SUBSEQUENT
27 EXTENSIONS OF CRACKS, SO THAT ONE THAT WAS ACTUALLY
28 THERE LATER THEN DEVELOPS A CRACK THAT GETS RUN INTO

42482

1 BY ONE THAT WAS THERE ACTUALLY SOONER. AND SO YOU
2 HAVE TO BE CAREFUL OF THINGS LIKE THAT.

3 Q IN YOUR OPINION, MR. MORTON, AFTER BEING
4 ON THIS CASE FOR THESE THREE YEARS, DO YOU BELIEVE
5 THAT A SCIENTIFICALLY VALID RECONSTRUCTION OF THIS
6 CRIME SCENE, TO THE EXTENT OF DETERMINING THE
7 POSITION OF THE DECEDENTS AND THE POSITION OF THE
8 SHOOTER OR SHOOTERS, AT THE TIME EACH DECEDENT
9 RECEIVED THEIR VARIOUS WOUNDS, IS POSSIBLE?

10 A NO.

11 Q AND IS THAT AN OPINION THAT YOU REACHED
12 IN 1993?

13 A I DIDN'T LOOK AT IT CRITICALLY FROM THE
14 STANDPOINT OF TRYING TO RECONSTRUCT IT AND PUT IT
15 ALL TOGETHER. BUT IT'S NOT SOMETHING THAT I WOULD
16 HAVE DONE.

17 Q WHY NOT?

18 A BECAUSE IT WAS, OBVIOUSLY, SUCH A

19 COMPLEX CRIME SCENE THAT TO TRY TO DO THAT, TO

20 ATTEMPT TO DO THAT, WOULD BE VERY TIME-CONSUMING AND

21 EXPENSIVE, AND IT PROBABLY WOULDN'T CONTRIBUTE

22 ANYTHING TO THE INVESTIGATION.

23 Q WHAT DO YOU MEAN BY IT WOULDN'T

24 CONTRIBUTE ANYTHING?

25 A WELL, IT WOULDN'T TELL ANYTHING THAT

26 WOULD MAKE A SIGNIFICANT DIFFERENCE IN THE

27 INVESTIGATION OR THE PROSECUTION OR DEFENSE OF THE

28 CASE, AS FAR AS I COULD SEE.

42483

1 Q WELL, YOU'RE AWARE OF WHAT DR. MC CARTHY

2 CLAIMS TO HAVE BEEN ABLE TO RECREATE OR RECONSTRUCT

3 IN THIS CASE, ARE YOU NOT?

4 A YES.

5 Q WHAT IS YOUR OPINION CONCERNING THE

6 SCIENTIFIC VALIDITY OF HIS WORK?

7 MR. CONN: OBJECTION. ASKED AND ANSWERED.

8 THE COURT: OVERRULED.

9 THE WITNESS: I THINK IT'S RIFE WITH ERRORS

10 AND ASSUMPTIONS.

11 Q BY MS. ABRAMSON: FALSE ASSUMPTIONS?

12 A YES. AND ASSUMPTIONS THAT I DON'T KNOW
13 HOW YOU MAKE, THAT WE DON'T NORMALLY MAKE IN THIS
14 BUSINESS ABOUT WHAT PEOPLE ARE THINKING AND WHAT
15 THEY ARE ATTEMPTING TO DO OR WHAT THEY ARE AIMING AT
16 NECESSARILY.

17 Q IN THAT YOU'RE REFERRING TO THINGS THAT
18 APPEARED IN HIS REPORT THAT HE DID NOT TESTIFY
19 ABOUT; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q WITH RESPECT TO THOSE THINGS, HOWEVER,
22 THAT HE DID TESTIFY ABOUT, WERE THOSE MATTERS ALSO
23 RIFE WITH ERRORS AND ASSUMPTIONS THAT PEOPLE IN YOUR
24 FIELD OF EXPERTISE DO NOT ENGAGE IN?

25 A I BELIEVE SO.

26 Q WERE YOU ABLE TO REACH -- STRIKE THAT.
27 YOU WERE IN THE COURTROOM WHEN
28 MR. LINHART AND DEPUTY VAN HORN TESTIFIED, WERE YOU

42484

1 NOT?

2 A YES.

3 Q AND YOU HEARD, DID YOU NOT, SOME
4 OPINIONS AND CONCLUSIONS THAT THEY WERE ABLE TO
5 REACH ABOUT SOME OF THE EVIDENCE IN THIS CASE?

6 A YES.

7 Q WERE YOU LIKEWISE ABLE TO FORMULATE SOME
8 OPINIONS, COME TO SOME CONCLUSIONS, ABOUT SOME
9 THINGS WITH RESPECT TO THE POSITION, PARTICULARLY OF
10 THE DECEDENTS, THAT OCCURRED HERE OR MAY PROBABLY
11 HAVE OCCURRED HERE?

12 A I THINK THERE'S SOME STRONG EVIDENCE TO
13 SUPPORT CERTAIN ELEMENTS OF THE RELATIONSHIP BETWEEN
14 THE PARTICIPANTS, IF YOU WILL, OR THE PEOPLE
15 INVOLVED IN THIS INCIDENT.

16 Q AND COULD YOU TELL US WHAT YOU THINK IS
17 THE STRONGEST EVIDENCE SUPPORTING CERTAIN ELEMENTS
18 OF RELATIONSHIP? I MEAN, IN OTHER WORDS, ARE THERE
19 THINGS, IN EXAMINING THE PHYSICAL EVIDENCE, THAT YOU
20 FEEL YOU CAN INDICATE WITH SOME CONFIDENCE HAPPENED
21 OR DIDN'T HAPPEN?

22 A YES. THERE'S CERTAIN THINGS IN THE
23 BLOOD SPATTER AND THE INJURY PATTERNS THAT MAKE
24 PRETTY STRONG ARGUMENTS FOR PARTS OF THE
25 RECONSTRUCTION OF THIS.

26 Q OKAY. AND COULD YOU TELL US, THEN,
27 COULD YOU START WITH WHAT OPINIONS YOU HAVE BY WAY
28 OF YOUR EFFORTS TO RECONSTRUCT THIS HOMICIDE.

42485

1 A YES. THE -- STARTING OFF WITH THE ISSUE

2 OF JOSEPH MENENDEZ.

3 Q IT'S JOSE, BY THE WAY. THE CORONER

4 WROTE "JOSEPH." IT'S JOSE.

5 A JOSE.

6 I THINK THERE'S STRONG EVIDENCE TO

7 SUPPORT THE IDEA THAT HE WAS STANDING AT THE TIME HE

8 WAS SHOT THROUGH THE LEG AND HE WAS FACING THE SOFA

9 AT THE TIME. AND THAT HE ROTATED AND DROPPED IN A

10 POSITION WHERE HE WAS SUBSEQUENTLY SHOT TO THE

11 HEAD.

12 Q I WANT TO GO THROUGH A LIST OF THESE

13 THINGS BEFORE WE GO BACK AND DISCUSS THEM IN DETAIL.

14 WHAT OTHER OPINIONS DID YOU FORM WITH

15 WHICH YOU HAVE A HIGH DEGREE OF CONFIDENCE?

16 A WITH REGARD TO THE TWO BIRD SHOT WOUNDS,

17 THEY APPEAR TO BE EITHER CONTACT OR VERY CLOSE, AND

18 THE LAST OF THE SHOTS, AT LEAST RELATIVE TO MARY

19 MENENDEZ. I CAN'T SAY THAT THE SHOT TO

20 MR. MENENDEZ' HEAD WOULD HAVE BEEN BEFORE OR AFTER

21 THAT.

22 Q AND WHAT ELSE CAN YOU SAY WITH RESPECT

23 TO EITHER YOUR OWN CONCLUSIONS OR WITH RESPECT TO

24 DISAGREEMENT WITH THE CONCLUSIONS THAT DR. MC CARTHY

25 CAME UP WITH?

26 A I THINK IT'S -- THERE IS NO EVIDENCE TO

27 ESTABLISH WHETHER THE SHOT TO -- THROUGH MARY

28 MENENDEZ' HAND, WHICH APPARENTLY WENT INTO HER FACE

1 AND CLAVICLE, WAS WHILE SHE WAS ON THE GROUND OR
2 WHEN SHE WAS STANDING. COULD HAVE BEEN WHILE SHE
3 WAS STANDING.

4 THE SHOT TO HER ARM, THE PHYSICAL
5 EVIDENCE THAT I EXAMINED --

6 Q LET ME JUST STOP YOU.

7 WHEN YOU SAY THE SHOT TO HER ARM, YOU'RE
8 TALKING ABOUT WHAT THE CORONER CALLS WOUND 5?

9 A YES.

10 Q OKAY.

11 A INVOLVES BOTH HER FOREARM AND HER UPPER
12 ARM.

13 EXAMINATION OF THE BRACELET PARTS IN
14 THAT -- ON THAT IS -- I THINK ON THAT WOUND SHOWED
15 THAT THE BRACELET HAD BEEN IMPACTED WITH LEAD AND
16 BROKE AND THE THREE PIECES APPEARED -- ENDED UP ON
17 THE OTHER SIDE OF THE SOFA, ONE OF THEM CLOSE TO A
18 HOLE IN THE WINDOW, THE EAST DOOR OF ONE OF THE
19 DOORS ON THE SOUTH WALL, AND ONE OF THEM ON THE SOFA
20 NEXT TO JOSE.

21 Q AND WHAT DID --

22 A AND THAT, TO ME, INDICATED THAT SHE WAS
23 STANDING AND THAT THAT SHOT OCCURRED WHILE SHE WAS
24 STANDING. BUT THAT'S A GOOD EXAMPLE OF A CASE -- OF
25 A SHOT WHERE YOU HAVE SOMETHING OUTSIDE THE BODY TO

26 RELATE A TRAJECTORY TO.

27 Q AND WHAT WAS IT THAT WAS OUTSIDE OF THE

28 BODY THERE THAT WOULD HELP YOU RELATE A TRAJECTORY

42487

1 TO THAT SHOT?

2 A THERE WAS WADDING, PELLET, HOLE THROUGH

3 THE WINDOW, AND SPATTER ALL IN THAT SAME AREA AROUND

4 THAT HOLE.

5 Q AND YOU'RE TALKING ABOUT THE SAME AREA

6 THAT CONTAINED A PIECE OF THE BRACELET?

7 A THAT'S CORRECT.

8 Q AND THE PARTICULAR PIECE OF THE BRACELET

9 THAT HAD LEAD ON IT?

10 A YES.

11 Q NOW, DID YOU INITIALLY, IN 1993, FORM

12 THE TENTATIVE CONCLUSION THAT THERE WAS LEAD ON THAT

13 BRACELET BASED ON THE PHYSICAL APPEARANCE OF THE --

14 RATHER LEAD ON THAT PIECE OF THE BRACELET BASED ON

15 THE PHYSICAL APPEARANCE OF THAT PIECE OF BRACELET?

16 A YES.

17 Q AND WITHOUT HAULING OUT THE CHARTS RIGHT

18 NOW, IS IT YOUR UNDERSTANDING THAT THAT WHOLE

19 CLUSTER OF PHYSICAL EVIDENCE, THE PIECE OF THE

20 BRACELET WITH LEAD, THE WADDING, THE PELLET THAT WAS

21 NEXT TO THE EAST DOOR AND UNDER BLOOD SPATTER, WAS
22 LABELED BY THE BEVERLY HILLS POLICE DEPARTMENT ITEM
23 21?

24 A THAT'S CORRECT.

25 Q AND HAVE YOU SUBSEQUENTLY, JUST TO
26 CONFIRM YOUR OPINION, DONE ACTUAL CHEMICAL TESTS ON
27 THAT PIECE OF THE BRACELET TO DETERMINE WHETHER THE
28 SMEAR THAT WAS ON IT WAS, IN FACT, LEAD?

42488

1 A YES. ACTUALLY, IN LOOKING AT THE
2 PHOTOGRAPH, THERE LOOKED LIKE THERE WAS A LITTLE BIT
3 OF RED -- OF BROWNISH RESIDUE ASSOCIATED WITH IT, AND
4 I WAS CURIOUS ABOUT THAT AND WANTED TO MAKE SURE IT
5 WAS, IN FACT, LEAD. SO I GOT THE ITEMS OUT OF --
6 BOTH THAT ITEM, WHICH IS 21, AND ITEM 5 AND ITEM 16,
7 WHICH ARE THE TWO OTHER PIECES OF BRACELET, AND
8 RECONSTRUCTED THE BRACELET; AND IT SHOWED THAT THE --
9 I WANTED TO SEE THE -- ONE OF THE THINGS I WANTED TO
10 SEE IS IF YOU HAVE A BREAK, IF YOU HAVE AN OBJECT
11 THAT'S BROKEN BY SOMETHING, AND THE RESIDUE GOES
12 RIGHT UP TO THE EDGE OF THE BREAK, THEN IF YOU LOOK
13 AT THE OTHER PIECE AND YOU -- YOU SHOULD BE ABLE TO
14 SEE LEAD GOING RIGHT UP TO THAT EDGE AS WELL. IN
15 OTHER WORDS, IF YOU HAVE IT ON BOTH SIDES.

16 IF YOU DON'T SEE IT ON BOTH SIDES, IF
17 YOU HAVE BOTH SIDES AND ONE OF THEM SHOWS IT AND THE
18 OTHER ONE DOESN'T, THAT SUGGESTS THAT THAT GOT ON
19 THERE AFTERWARDS, AFTER THE BREAK TOOK PLACE.

20 SO I WANTED TO MAKE THAT -- AND SEE IF
21 THERE WAS EVIDENCE OF THAT.

22 Q AND WAS THERE?

23 A WELL, WHAT HAPPENED WAS IN PUTTING IT
24 TOGETHER I COULD SEE THAT THERE WERE ACTUALLY -- ONE
25 OF THE PIECES WAS -- FIVE, WAS ACTUALLY TWO PIECES,
26 I BELIEVE, AND IT HAD A THIRD PIECE THAT WAS
27 MISSING.

28 SO THE PIECE ADJACENT TO THE PORTION

42489

1 THAT HAD LEAD ON IT WAS ACTUALLY BROKEN OUT
2 COMPLETELY.

3 Q DID THAT CONFIRM THAT IT HAD BEEN HIT BY
4 PELLET OR PELLETS?

5 A YES.

6 Q DID YOU PERFORM A CHEMICAL TEST ON THE
7 PIECE OF BRACELET THAT WAS PART OF ITEM 21 THAT
8 STILL HAD WHAT LOOKED LIKE A LEAD SMEAR ON IT?

9 A YES. I PERFORMED A SODIUM RHODIZONATE
10 TEST WHICH IS A STANDARD TEST FOR LEAD WHICH WE USE

11 FOR DETERMINING FIRING DISTANCES AND OTHER
12 FIREARM-RELATED ISSUES WHEN YOU'RE INTERESTED IN
13 LEAD.
14 Q AND WHAT WAS THE RESULT OF THAT TEST?
15 A IT WAS POSITIVE.
16 Q POSITIVE FOR LEAD?
17 A YES.
18 Q DID YOU NOTE, BY THE WAY, IN
19 DR. MC CARTHY'S PROPOSED RECONSTRUCTION, THAT HE HAD
20 OFFERED BOTH IN HIS REPORT AND, IN FACT, IN HIS
21 TESTIMONY AND IN HIS ILLUSTRATIONS, NO EXPLANATION
22 WHATSOEVER FOR WHAT CAUSED THE HOLE IN THE EAST DOOR
23 OF THE FRENCH DOORS?
24 A THAT'S CORRECT.
25 Q WAS THERE ANY OTHER ASPECT OF THE
26 PHYSICAL EVIDENCE IN THE CASE THAT YOU FELT YOU
27 COULD FORM CERTAIN CONCLUSIONS ABOUT? EITHER
28 POSITIVE OR NEGATIVE, IF YOU WILL, THAT THINGS

42490

1 EITHER DID HAPPEN OR COULDN'T HAVE HAPPENED?
2 A YES. IT WAS CLEAR FROM -- AND
3 MR. LINHART DISCUSSED THIS -- THE ISSUE THAT SHE
4 MUST HAVE BEEN STANDING AT SOME PERIOD AFTER THE
5 BLEEDING STARTED BECAUSE THERE WAS BLOOD ON THE

6 BOTTOM OF HER -- PARTICULARLY BLOOD ON THE BOTTOM OF
7 HER RIGHT SHOE, TO A LESSER EXTENT ON THE BOTTOM OF
8 HER LEFT SHOE, AND SUBSTANTIAL DRIPPING ON HER LEFT
9 SHOE.

10 Q AND IN YOUR OPINION, THE SUBSTANTIAL
11 DRIPPING ON HER LEFT SHOE SUGGESTS THAT SHE MAY,
12 INDEED, HAVE BEEN SHOT IN THE LEG AND STANDING AFTER
13 A LEG SHOT?

14 MR. CONN: OBJECTION. LEADING.

15 THE COURT: OVERRULED.

16 THE WITNESS: IT DID SUGGEST THAT, YES.

17 MS. ABRAMSON: I NEED A MOMENT, YOUR HONOR,
18 TO TALK TO MR. GESSLER.

19 (ATTORNEYS ABRAMSON AND GESSLER
20 CONFER SOTTO VOCE.)

21

22 Q BY MS. ABRAMSON: MR. MORTON, DO YOU
23 HAVE YOUR NOTEBOOK UP THERE WITH YOU?

24 A YES.

25 Q DO YOU HAVE A COPY OF YOUR NOTES THAT --
26 THE REPORT THAT YOU PROVIDED TO ME?

27 A THE REVIEW OF MR. --

28 Q THE REVIEW OF MR. MC CARTHY'S THING. I

1 TURNED MINE OVER TO SOMEONE ELSE AND THEY DIDN'T

2 GIVE ME BACK A COPY.

3 A I HAVE -- THIS WAS AN EARLY REVIEW BEFORE

4 WE ACTUALLY GOT A CHANCE TO LOOK AT THE CD-ROM, AS I

5 RECALL, AND I MADE SOME NOTATIONS ON IT THAT HAVE

6 CHANGED.

7 Q SOME ADDITIONAL NOTATIONS?

8 A YES. I DON'T REMEMBER. DID I GIVE YOU

9 THIS? THIS IS A SYNOPSIS.

10 Q WELL, I HAD AN EARLIER VERSION OF THAT

11 SYNOPSIS WHICH YOU INDICATED YOU NEEDED TO CORRECT.

12 HAVE YOU SINCE CORRECTED IT?

13 A ACTUALLY, I HAVE NOT CHANGED IT.

14 Q OKAY. DID YOU EVER FORM AN OPINION WITH

15 RESPECT TO FAILURE ANALYSIS' WORK CONCERNING WHAT

16 THEY CALL THE SHOT NO. 1 AND ALL THE VARIOUS

17 COMPONENTS OF THAT?

18 A YES.

19 Q AND WHAT WAS YOUR OPINION CONCERNING

20 THEIR SHOT NO. 1?

21 A IT WAS IMPOSSIBLE BECAUSE IT

22 INCORPORATED PARTS OF SHOTS THAT WERE GOING IN

23 OPPOSITE DIRECTIONS.

24 Q DID YOU FIND ANYTHING IN THE PHYSICAL

25 EVIDENCE TO SUPPORT THE NOTION THAT MRS. MENENDEZ

26 RECEIVED -- LET'S SEE, WHAT DOES HE CLAIM? SIX SHOTS

27 WHILE ON THE GROUND?

28 A NO.

1 Q DID YOU, IN FACT, EXAMINE CAREFULLY THE
2 PHOTOGRAPHIC EVIDENCE TO SEE IF THERE WAS PELLETS OR
3 OTHER DEBRIS IN AREAS WHERE YOU WOULD EXPECT IT TO
4 BE IF THE FAILURE ANALYSIS ILLUSTRATIONS WERE AT ALL
5 ACCURATE CONCERNING SHOTS THAT SHE SUPPOSEDLY
6 RECEIVED ON THE GROUND? AND THIS IS WITH THE
7 EXCEPTION OF THE BIRD SHOT ROUNDS.

8 A THAT AREA WAS SUCH A MIX OF EVIDENCE
9 FROM, OBVIOUSLY, A NUMBER OF WOUNDS, THAT I -- I
10 DON'T KNOW THAT I COULD ACCURATELY HAVE SEEN IT.
11 BUT IT WAS THE ONE WOUND TO THE LEFT THIGH, I THINK
12 IT WAS NO. 7.

13 Q YES. IT WAS DR. GOLDEN'S NO. 7, YOU
14 MEAN?

15 A YES.

16 BUT I HAD A PROBLEM -- THERE WAS NO
17 RESIDUE IN THE AREA WHERE THAT WOULD HAVE ENDED UP.
18 BUT BEFORE THAT I HAD A PROBLEM WITH THAT BEING AN
19 ENTRY WOUND. IT JUST DID NOT HAVE THE APPEARANCE OF
20 AN ENTRY WOUND.

21 Q YOU'RE TALKING ABOUT WHAT DR. GOLDEN
22 DESCRIBED IN HIS ORIGINAL REPORT AS THE ENTRY WOUND
23 BEING ON THE TOP OR FRONT -- NOBODY'S GOING TO SEE

24 THAT -- ON THE TOP OR FRONT PART OF THE LEG?

25 A YES.

26 Q NOW, YOU'RE AWARE THAT DR. FACKLER HAS
27 TESTIFIED THAT, IN FACT, IN HIS OPINION THAT'S THE
28 EXIT WOUND, NOT THE ENTRY WOUND?

42493

1 A YES.

2 Q THE WAY THAT FAILURE ANALYSIS DIAGRAMED
3 IT, HOWEVER, THEY MADE THE -- I DON'T REMEMBER WHAT
4 HE CALLED IT.

5 HE MADE THE TOP THE ENTRY AND THE BOTTOM
6 THE EXIT AND HAD THAT SHOT COMING FROM A -- I'VE GOT
7 TO -- EASTERLY DIRECTION; IS THAT YOUR
8 RECOLLECTION?

9 A YES.

10 Q YES. THIS IS WHAT DR. MC CARTHY CALLED 8,
11 AND IT PURPORTED TO SHOW THE SHOT COMING IN THE TOP
12 OF THE THIGH AND OUT THE BOTTOM AND TOWARDS THE
13 BACK?

14 A YES.

15 Q SO DID YOU INITIALLY LOOK TO SEE IF --
16 THERE ARE PHOTOGRAPHS THAT VISUALIZE THIS AREA OF
17 WHAT WOULD BE THAT AREA OF THE RUG.

18 A THAT'S CORRECT.

19 Q AND THAT'S NOT AN AREA THAT'S STEEPED IN
20 POOLS OF BLOOD, AS IS THE AREA, FOR EXAMPLE,
21 UNDERNEATH MRS. MENENDEZ THAT BECOMES VISIBLE AFTER
22 HER BODY WAS REMOVED; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q DID YOU SEE, FIRST OF ALL, ANY
25 INDICATION IN THAT AREA OF BLOW-OUT FROM SUCH A
26 WOUND?

27 A NO.

28 Q AND -- BUT AT SOME POINT YOU DETERMINED

42494

1 THAT -- DID YOU DETERMINE THAT THIS WAS WRONG BECAUSE
2 THE ENTRY AND THE EXIT IS CONFUSED ANYWAY?

3 A YES.

4 Q AND WAS THAT SOMETHING THAT OCCURRED TO
5 YOU ON YOUR OWN INITIALLY?

6 A NO.

7 Q DID YOU CONSULT WITH MEDICAL EXPERTS TO
8 DETERMINE WHETHER THE ENTRY AND EXIT HAD BEEN
9 CONFUSED BOTH, APPARENTLY, BY DR. GOLDEN AND THEN BY
10 DR. MC CARTHY?

11 A YES.

12 Q AND WHO WERE THE MEDICAL EXPERTS THAT
13 YOU CONSULTED WITH CONCERNING THAT WOUND?

14 A DR. FACKLER. BUT IN GOING BACK AND
15 LOOKING AT IT, THE CONFIGURATION OF THAT WOUND, IT'S
16 ISOLATED PELLETS AND A FRAG- -- A WADDING UNDERNEATH
17 THE SKIN, AND YOU HAVE SORT OF AN INTERNAL CONTROL
18 IN THAT SCENE IN TERMS OF SHOTS THAT -- WHAT THOSE
19 SHOTS APPEAR LIKE.

20 Q WHAT DO YOU MEAN BY THAT?

21 A THE SHOT THROUGH MR. MENENDEZ' LEG, YOU
22 SAW HOW LARGE THAT WOUND WAS. THIS IS A RATHER MILD
23 WOUND, IF YOU WILL, AT WHAT'S SUPPOSED TO BE THE
24 ENTRY HOLE, AND THE CONFIGURATION OF -- IF THESE
25 WERE -- IF THIS WAS A MORE DISTANT SHOT WHERE THE
26 PELLETS ARE SEPARATED, AS THEY APPEAR TO BE THERE,
27 THEY WOULD SHOW A MORE UNIFORM APPEARANCE. THESE
28 ARE RATHER IRREGULAR-LOOKING.

42495

1 SO IT'S NOT LIKE I WOULD EXPECT TO SEE
2 FROM A SERIES OF PELLETS WHICH HAVE SPREAD ENOUGH
3 BECAUSE THEY'RE AT A GREAT ENOUGH DISTANCE.

4 Q YOU'RE SAYING IF IT WERE AN ENTRY, AND
5 IF THE SEPARATION OF HOLES WAS BECAUSE THE -- IT WAS
6 BEING FIRED FROM SUCH A DISTANCE THAT THE SPREAD
7 THAT, FOR EXAMPLE, DEPUTY VAN HORN WAS TALKING
8 ABOUT, HAD OCCURRED, YOU WOULD EXPECT TO SEE MORE

9 REGULARITY IN THE SIZE AND PLACEMENT OF THE HOLES?

10 A CORRECT.

11 Q IT DOESN'T LOOK -- STRIKE THAT.

12 IS SUCH A REGULAR PATTERN OBSERVABLE,
13 FOR EXAMPLE, ON THE LEFT BREAST WOUND, NO. 6, TO
14 MRS. MENENDEZ?

15 A YES.

16 Q SO DOES THAT ALONE, THE APPEARANCE OF
17 THOSE DIFFERENT HOLES OF DIFFERENT SIZES AND
18 DIFFERENT RELATIONSHIP TO EACH OTHER, FROM THE TOP
19 OF THE THIGH, DID THAT SUGGEST TO YOU, EVEN WITHOUT
20 MEDICAL ADVICE, THAT THAT PROBABLY WASN'T AN ENTRY
21 SITE?

22 A YES, THAT'S CORRECT.

23 Q AND THE OTHER WOUND THAT'S ASSOCIATED
24 WITH THAT ON HER LEFT LEG, WHICH IS JUST ONE LARGE
25 HOLE, DID YOU FORM AN OPINION ABOUT WHETHER THAT WAS
26 MORE TYPICAL OF SHOTGUN ENTRY SITE?

27 A THAT I LEFT TO -- THERE WAS SOME
28 INDICATION OF SCALLOPING AT THE EDGE OF IT,

42496

1 SUGGESTED THAT.

2 THE THING THAT THREW ME WAS THE
3 DESCRIPTION THAT DR. GOLDEN HAD IN HIS AUTOPSY

4 REPORT AROUND THE -- WHAT HE HAD CALLED THE ENTRY
5 WOUND. AND THAT WAS SOMETHING THAT I'M NOT
6 MEDICALLY QUALIFIED TO EVALUATE AND I FELT
7 DR. FACKLER OR A PATHOLOGIST WOULD HAVE TO DEAL WITH
8 THAT.

9 Q HE TALKED ABOUT SOME KIND OF ABRASION
10 AROUND IT?

11 A YES.

12 Q DID YOU LOOK CLOSELY AT THE
13 PHOTOGRAPHS?

14 A YES.

15 Q DO YOU SEE ANY ABRASION AROUND IT?

16 A I DON'T LIKE TO EVALUATE THOSE KINDS OF
17 MEDICAL ISSUES ON MY OWN.

18 Q ALL RIGHT. ARE YOU AWARE --
19 EXCUSE ME. I'M SORRY.

20 COLD, BUT IT'S LIQUID, THANK YOU.

21 YOU'RE AWARE THAT DR. WECHT HAS
22 FORMULATED CERTAIN CONCLUSIONS ABOUT THE MEDICAL
23 EVIDENCE IN THIS CASE?

24 A I UNDERSTAND HE'S INVOLVED. I AM NOT
25 AWARE OF WHAT HIS OBSERVATIONS ARE.

26 Q ALL RIGHT. IF I WERE TO OFFER YOU,
27 HYPOTHETICALLY, FOR YOU TO ASSUME THAT DR. WECHT --
28 DR. WECHT IS OF THE OPINION, AS WELL AS DR. FACKLER,

1 THAT THAT WOUND ON HER LEFT LEG, DR. GOLDEN'S
2 DESCRIPTION HAS THE ENTRY AND THE EXIT REVERSED,
3 THAT THE ENTRANCE IS THE ONE THAT'S LOWER DOWN AND
4 TO THE BACK AND THE EXITS ARE THESE INDIVIDUAL
5 IRREGULAR-SIZE HOLES, DOES THAT FURTHER CONFIRM YOUR
6 OWN OPINIONS ABOUT THAT WOUND?

7 A YES.

8 Q DO YOU BELIEVE THAT THERE'S ANY WAY IN
9 THIS CASE TO DETERMINE THE SEQUENCE OF ALL OF THE
10 SHOTS?

11 A NO.

12 Q DO YOU THINK THAT THERE WAS SUFFICIENT
13 EVIDENCE FOR DR. MC CARTHY TO RELY ON FOR HIM TO
14 ASSERT THAT OTHER THAN THE BIRD SHOT, THAT CERTAIN
15 WOUNDS WERE INFLICTED ON MRS. MENENDEZ WHILE SHE WAS
16 LYING DOWN IN ONE POSITION OR ANOTHER?

17 A THE LOW DIRECTION OF THE SHOTS TO THE
18 LEFT LEG, BOTH SUGGEST THAT THAT WOULD BE A
19 POSSIBILITY.

20 Q IS THAT -- I'M SORRY.

21 A BUT AS FAR AS THE OTHERS, THERE'S
22 NOTHING TO SUGGEST THE INDIVIDUAL WOULD BE LYING
23 DOWN WHEN THOSE OCCURRED.

24 Q AND WITH RESPECT TO THE SHOTS TO THE
25 LEFT LEG, IS THERE ANYTHING THAT DETERMINES THAT IF,
26 INDEED, MRS. MENENDEZ WAS LYING DOWN WHEN SHE
27 RECEIVED THEM, THAT SHE WAS LYING ON THE FLOOR

42498

1 A YOU HAVE VERY MOVABLE LIMBS. I WOULD
2 THINK THAT YOU COULD GET CORRESPONDENCE IN EITHER
3 ONE OF THOSE.

4 Q SO YOU CAN'T RULE ONE OUT OR THE OTHER?

5 A THAT'S CORRECT.

6 Q AND ARE YOU AWARE OF -- WELL, YOU'VE SAID
7 YOU'VE READ DR. FACKLER'S TESTIMONY AND
8 DR. LAWRENCE'S TESTIMONY, IN FACT. AND YOU'RE AWARE
9 OF THE ASSOCIATION THAT DR. FACKLER MADE BETWEEN THE
10 GRAZE WOUND TO HER LEFT CALF AND THE THIGH WOUND
11 THAT WE'VE BEEN TALKING ABOUT.

12 A YES.

13 Q AND IS THERE ANYTHING IN THE PHYSICAL
14 EVIDENCE THAT WOULD RULE OUT THAT GRAZE THIGH
15 COMBINATION OCCURRING WHILE MRS. MENENDEZ IS LEANING
16 BACK ON THE COUCH?

17 A I DON'T KNOW THAT -- IT WOULD REQUIRE A
18 RELATIVELY LOW SHOT, BUT THAT'S POSSIBLE.

19 Q WELL, WOULDN'T IT REQUIRE EVEN A LOWER
20 SHOT IF SHE WAS LYING ON THE FLOOR FOR THAT?

21 A YES.

22 Q SO IT WOULD BE A HIGHER SHOT IF SHE'S ON

23 THE COUCH?

24 A WELL, YOU GET INTO WHAT THE POSITION IS
25 OF THE GUN RELATIVE TO WHERE THE EVIDENCE WOULD END
26 UP AFTER IT WENT THROUGH THERE. AND THAT'S THE
27 PROBLEM IN TRYING TO RELATE THESE THINGS IS WHERE A
28 LOT OF THIS EVIDENCE ENDS UP IS CONFUSED.

42499

1 Q SO IT'S REALLY HARD TO TRACK WHERE THE
2 EVIDENCE ENDS UP FROM MOST OF THESE WOUNDS?

3 A YES.

4 Q AND WOULD YOU WANT TO BE ABLE TO DO THAT
5 WITH SOME DEGREE OF CERTAINTY BEFORE YOU, AS A
6 FORENSIC SCIENTIST, WOULD EVER CLAIM THAT A WOUND
7 OCCURRED IN A PARTICULAR PLACE?

8 A YES. I MEAN, THERE MIGHT HAVE BEEN
9 EVIDENCE AT THAT SCENE TO HELP ANSWER SOME OF THESE
10 QUESTIONS, BUT IT IS NOT -- IT'S NOT A CRITICISM OF
11 THE INVESTIGATION. THESE ARE COMPLEX INVESTIGATIONS
12 AND SOMETIMES THINGS GET OVERLOOKED.

13 Q HAVE YOU --

14 A BUT THERE MAY HAVE BEEN SOME EVIDENCE
15 THERE THAT WOULD HELP RESOLVE SOME OF THESE. BUT IN
16 THIS CASE WE DON'T HAVE THAT INFORMATION.

17 Q SO IT WASN'T GATHERED?

18 A CORRECT.

19 Q AS A CRIMINALIST AND FORENSIC SCIENTIST,
20 MR. MORTON, WOULD YOU ASSUME THAT A MULTIPLE
21 DECEDENT, MULTIPLE SHOOTER, MULTIPLE SHOTGUN-ROUND
22 CASE SUCH AS THIS WOULD EVER BE ATTEMPTED TO BE
23 RECONSTRUCTED ON A SEQUENCE -- AN EXACT LOCATION,
24 EXACT SEQUENCE OF SHOT BASIS?

25 A WELL, YOU CAN ATTEMPT TO DO ANYTHING.

26 Q BUT, I MEAN, DID YOU THINK SOMEBODY --

27 A IN TERMS OF A REALISTIC EFFORT TO TRY
28 TO -- I MEAN, YOU CAN ATTEMPT TO DO THAT, AND

42500

1 SOMETIMES YOU MIGHT ATTEMPT IT TO SEE IF IT'S
2 POSSIBLE TO SEE IF THERE ARE ELEMENTS THAT ARE
3 DEFINABLE. BUT YOU DON'T JUST -- WHEN YOU COME TO A
4 POINT WHERE YOU'VE GOT A NUMBER OF DIFFERENT
5 OPTIONS, YOU DON'T JUST PICK ONE OF THEM AND GO
6 AHEAD AS IF IT'S THE ONLY POSSIBILITY.

7 WHAT IT DOES IS IT SAYS, OKAY, WE'VE GOT
8 THIS PART, BUT NOW THIS ONE WE HAVE TO BE CAREFUL OF
9 BECAUSE THERE ARE SEVERAL OPTIONS AT THIS JUNCTURE.
10 AND WE CAN SAY -- WE DON'T SAY, WELL, YOU KNOW,
11 ONE'S 55 PERCENT, THAT ONE'S 50 PERCENT, I'LL TAKE
12 THAT ONE, BECAUSE THESE THINGS AREN'T JUST A MATTER

13 OF WHICH IS SLIGHTLY MORE LIKELY. THESE ARE A
14 MATTER OF WHAT ACTUALLY HAPPENED. WELL, NOBODY
15 KNOWS WHAT ACTUALLY HAPPENED. WHAT WE'RE TRYING TO
16 DO IS RECONSTRUCT AS MUCH AS POSSIBLE WHAT THE
17 LIMITS ARE ON DEFINING WHAT IT IS THAT DID HAPPEN.

18 Q AND CAN YOU THINK OF ANYTHING IN THE
19 LITERATURE, OR ANYTHING WITHIN THE FORENSIC
20 COMMUNITY, THAT WOULD HAVE TOLD THE INVESTIGATING
21 OFFICERS HERE THAT IT WAS NECESSARY FOR THEM TO PICK
22 UP EVERY PELLET OR TO DO MORE OR TO TAKE APART THE
23 COUCHES OR DO MORE THAN THEY ACTUALLY DID HERE?

24 A WELL, I MEAN, IT'S ALWAYS NICE TO DO THE
25 WORK I DO, MONDAY-MORNING-QUARTERBACKING, AND SAY
26 YOU REALLY SHOULD HAVE PICKED UP EVERYTHING. IT
27 WOULD BE NICE.

28 BUT AS I TAUGHT WHEN I WAS TEACHING AT

42501

1 CAL STATE L.A., EVERY CRIME SCENE HAS AN INFINITE
2 AMOUNT OF EVIDENCE, AND WHAT YOU NEED TO DO IS
3 ATTEMPT TO COLLECT AS MUCH OF THAT AS IS IMPORTANT.
4 AND USUALLY THAT'S EVERYTHING THAT LOOKS LIKE IT'S
5 ASSOCIATED WITH THE CRIME. BUT SOMETIMES YOU HAVE
6 TO RECOGNIZE THAT UNLESS YOU HAVE THE TIME AND THE
7 RESOURCES TO DO IT, THAT'S GOING TO BE A LONG AND

8 TIME-CONSUMING EFFORT. AND IT MAY BE THAT WHAT
9 YOU'RE GOING TO GAIN BY THAT IS NOT WORTH THE
10 EFFORT.

11 FOR EXAMPLE, IN THE ROBERT KENNEDY
12 ASSASSINATION THERE WAS AN ARGUMENT OVER DOING
13 NEUTRON ACTIVATION ANALYSIS.

14 Q WOULD YOU TELL THE JURY WHAT THAT IS.

15 A IT'S A TECHNIQUE WHERE MATERIALS ARE
16 BOMBARDED WITH NEUTRONS AND THEY'RE MADE RADIOACTIVE
17 AND THE RADIATION ALLOWS YOU TO CHARACTERIZE WHAT
18 THE ELEMENTS ARE IN THIS MATERIAL. SO IT'S
19 BASICALLY JUST AN ANALYTICAL TECHNIQUE. IT WAS
20 GOING TO BE THE SOLUTION TO ALL OF OUR PROBLEMS BACK
21 IN THE 60'S, AND LIKE SO MANY SOLUTIONS TO ALL OF
22 OUR PROBLEMS, IT DIDN'T WORK OUT THAT WAY. IT WAS
23 ONE THAT WAS BEING PROMOTED AT THAT TIME. AND --

24 Q WAS IT BEING PROMOTED AS A WAY TO MATCH,
25 FOR EXAMPLE, A BULLET THAT HAS ENTERED THE BODY OF
26 SOMEONE WITH THE POTENTIAL SOURCE FOR THAT BULLET?

27 A IT WAS GOING TO MATCH EVERYTHING.

28 Q OH, EVERYTHING.

42502

1 A HAIR. YOU COULD BE ABLE TO TELL
2 SOMEBODY'S HAIR FROM TRACE ANALYSIS, THAT TYPE OF

3 THING. ANY MATERIAL COULD BE TRACE-ANALYZED AND
4 FOUND TO COMPARE TO SOMETHING ELSE. THEN THEY
5 ACTUALLY WENT INTO COURT WITH SOME OF IT, WHICH I
6 WAS A LITTLE DISTRESSED WITH. BUT THEY FINALLY
7 REALIZED THAT IT WAS NOT ABLE TO DO THAT.

8 BUT THE QUESTION CAME UP IN THE ROBERT
9 KENNEDY ASSASSINATION OF, WELL, SHOULDN'T YOU DO
10 EVERYTHING, WHEN YOU HAVE A SENATOR, PRESIDENTIAL
11 CANDIDATE, WHO'S BEEN MURDERED, SHOULDN'T YOU DO
12 EVERYTHING POSSIBLE? AND MY ANSWER IS NO BECAUSE IN
13 THAT CASE IF YOU DID THE ANALYSIS, IF IT CAME OUT
14 ONE WAY, IT WOULDN'T GIVE YOU ANY ANSWER THAT WAS
15 DIFFERENT IF IT CAME OUT THE OTHER WAY, BECAUSE IF
16 YOU SHOWED THEY WERE IDENTICAL, IT WOULDN'T MEAN
17 THEY WERE FROM THE SAME MANUFACTURER. IF YOU SHOWED
18 THAT THEY WERE DIFFERENT, IT WOULDN'T MEAN THAT THEY
19 CAME FROM A DIFFERENT BOX OF AMMUNITION. SO, OKAY,
20 IF YOU DO THIS ANALYSIS AND YOU COME UP WITH THE
21 SAME ANSWER, THEN DON'T -- WHY DO IT?

22 Q AND HOW DO YOU ANALOGIZE THAT TO WHAT
23 WAS DONE HERE?

24 A WELL, IF YOU GET TO A POINT WHERE YOU'VE
25 ANSWERED -- YOU'VE COLLECTED THE EVIDENCE THAT WILL
26 ALLOW YOU TO ANSWER MOST OF THE QUESTIONS THAT ARE
27 EVIDENT AT THAT TIME, THEN STOP. BUT IN THIS
28 SITUATION THERE WAS SO MUCH EVIDENCE I THINK THERE

1 WAS JUST NOT ENOUGH THAT WAS COLLECTED AND IT WASN'T
2 BASED ON THE DECISION THAT IT WASN'T NECESSARY.

3 Q WELL, EVEN IF THE BEVERLY HILLS POLICE
4 DEPARTMENT HAD, FOR EXAMPLE, COLLECTED EVERY PELLET
5 IN THE POOL OF BLOOD UNDER MRS. MENENDEZ, WOULD
6 THAT, IN THAT POOL AREA, WOULD THAT HAVE ACTUALLY
7 BEEN ABLE TO TELL YOU WHERE THE SHOTS ORIGINATED
8 FROM?

9 A WELL, IT WORKS BOTH WAYS. IN OTHER
10 WORDS, IF YOU DOCUMENTED IT PROPERLY AND COLLECTED
11 EVERYTHING, THEN YOU'D BE ABLE TO ANSWER SOME OF
12 THESE QUESTIONS THAT ARE SORT OF LEFT THERE FOR
13 GUESSING RIGHT NOW.

14 FOR EXAMPLE, THE ISSUE OF WHETHER OR NOT
15 THIS SHOT THROUGH HER LEG WENT THROUGH HER LEG AND
16 THEN INTO THE CARPET IN THAT AREA, THAT WE DON'T SEE
17 ANY EVIDENCE OF THAT.

18 IF THAT HAD BEEN -- IF THAT SECTION OF
19 CARPET HAD BEEN CUT OUT OR IF THE CARPET HAD BEEN
20 LIFTED UP TO SEE IF THERE ARE ANY HOLES BELOW AND
21 YOU COULD SHOW THAT THAT, YOU KNOW, CLEARLY WAS NOT
22 THE WAY IT HAPPENED. SO YOU'D BE ABLE TO ANSWER
23 THAT QUESTION DIRECTLY.

24 SO SOMETIMES WHAT'S NOT THERE CAN BE AS
25 IMPORTANT AS WHAT IS THERE.

26 MS. ABRAMSON: ON THAT HAPPY NOTE, YOUR
27 HONOR.
28 THE COURT: ALL RIGHT. WE'LL RESUME TOMORROW

42504

1 AT 8:30. DON'T DISCUSS THE MATTER WITH ANYONE.
2 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE'LL SEE
3 YOU ALL BACK HERE TOMORROW AT 8:30.
4 (THE JURY EXITED THE COURTROOM.)
5
6 (PAGES 42505 THROUGH 42516 WERE
7 HELD IN CAMERA AND SEALED BY
8 ORDER OF THE COURT.)
9
10 (AT 4:45 P.M., AN ADJOURNMENT
11 WAS TAKEN UNTIL FRIDAY,
12 DECEMBER 1, 1995, AT 8:30 A.M.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE
4
5 THE PEOPLE OF THE STATE OF)
6 CALIFORNIA,)

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

11

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 THURSDAY, NOVEMBER 30, 1995

14 VOLUME 253

15 PAGES 42303 THROUGH 42516

16 (PAGES 42505 THROUGH 42516 WERE SEALED.)

17

18

19

20

21 APPEARANCES:
 (SEE APPEARANCE PAGE)

22

23

24

25

26

27

28

1 APPEARANCES:

2

FOR THE PEOPLE: GIL GARCETTI
DISTRICT ATTORNEY
BY: DAVID CONN, DEPUTY
AND
CAROL NAJERA, DEPUTY
18000 CRIMINAL COURTS BLDG.
210 WEST TEMPLE STREET
LOS ANGELES, CA 90012

7

8

FOR THE DEFENDANT
JOSEPH LYLE MENENDEZ: MICHAEL P. JUDGE,
PUBLIC DEFENDER
BY: CHARLES GESSLER, DEPUTY
AND
TERRI TOWERY, DEPUTY
210 WEST TEMPLE
LOS ANGELES, CA 90012

13

14

FOR THE DEFENDANT
ERIK GALEN MENENDEZ: LESLIE ABRAMSON
ATTORNEY AT LAW
4929 WILSHIRE BOULEVARD
SUITE 940
LOS ANGELES, CA 90010

BARRY LEVIN, ESQ.
11661 SAN VICENTE BOULEVARD
LOS ANGELES, CA 90049

20

21

ANNAMARIE PAPA
CSR NO. 8608
MARILYN FADALE,
CSR NO. 4547
OFFICIAL REPORTERS

24

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23	LEGEND:				
24	A = MS. ABRAMSON	C = MR. CONN			
25	G = MR. GESSLER	L = MR. LEVIN			
26	N = MS. NAJERA	T = MS. TOWERY			
27					
28					

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2 EXHIBITS: MARKED RECEIVED VOL.

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