23 OPENING ARGUMENT

 24 BY MR. CONN:

 25 GOOD AFTERNOON, LADIES AND GENTLEMEN.

 26 IT'S BEEN A LONG TRIAL, AND I GUESS THERE WERE TIMES

 27 WHEN YOU THOUGHT WE WOULD NEVER GET HERE. BUT THIS

 28 IS THE END OF THE TRIAL, AND THIS IS OUR CHANCE TO

 1 ARGUE THE CASE TO YOU.

 2 I'D LIKE TO BEGIN BY, FIRST OF ALL,

 3 THANKING YOU ON BEHALF OF THE PEOPLE OF THE STATE OF

 4 THE CALIFORNIA AND ON BEHALF OF THE DISTRICT

 5 ATTORNEY'S OFFICE FOR THE ATTENTIVENESS THAT YOU

 6 HAVE SHOWN DURING THE COURSE OF THIS TRIAL. YOU

 7 HAVE BEEN DILIGENT IN YOUR ATTENDANCE, AND YOU HAVE

 8 FAITHFULLY FOLLOWED ALL OF THE INSTRUCTIONS OF THE

 9 COURT, INCLUDING THE REQUIREMENT THAT YOU AVOID

 10 OUTSIDE INFLUENCES, AND YOU HAVE SERVED AS EXEMPLARY

 11 JURORS. YOU ARE TO BE APPLAUDED FOR YOUR

 12 PERFORMANCE IN THIS CASE, AND WE SINCERELY THANK

 13 YOU, ON BEHALF OF MY OFFICE AND THE PEOPLE OF THE

 14 STATE OF CALIFORNIA, FOR YOUR PARTICIPATION IN THIS

 15 TRIAL. WE JUST CAN'T DO IT WITHOUT YOU.

 16 NOW, WE'VE BEEN HERE FOR A LONG TIME AND

 17 WE'RE GOING TO BE DISCUSSING A LOT OF DIFFERENT

 18 ISSUES. I'M GOING TO BE DISCUSSING THE LAW WITH

 19 YOU, AND I'M GOING TO BE DISCUSSING FACTS WITH YOU.

 20 THAT IS YOUR JOB IN THIS CASE; TO TAKE THE LAW AND

 21 TO APPLY IT TO THE FACTS.

 22 SO I WILL BE DISCUSSING ALL OF THE

 23 WITNESSES WHO TESTIFIED IN THIS TRIAL. I WILL BE

 24 DISCUSSING PROSECUTION WITNESSES. I WILL BE

 25 DISCUSSING THE DEFENSE WITNESSES, AND I WILL BE

 26 DISCUSSING THE WITNESSES THAT WE CALLED IN RESPONSE,

 27 THE REBUTTAL WITNESSES, DURING THE COURSE OF THE

 28 TRIAL.

 1 IT'S ALSO IMPORTANT FOR YOU TO

 2 UNDERSTAND THE LAW, AND SO I WILL BE DISCUSSING WITH

 3 YOU THE SPECIFIC RULES OF LAW THAT APPLY TO THIS

 4 CASE.

 5 AS THE JUDGE INDICATED, HE WILL INSTRUCT

 6 YOU ON THE LAW. HE WILL TELL YOU WHAT THE RULES OF

 7 LAW ARE. HE WILL NOT DO IT BY WAY OF EXAMPLE. THAT

 8 IS SOMETHING THAT IS LEFT TO THE ATTORNEYS TO

 9 EXPLAIN IN THEIR OWN WORDS, AND BOTH SIDES WILL BE

 10 TALKING ABOUT THE LAW, EXPRESSING IT IN OUR OWN

 11 WORDS, TO ASSIST YOU IN UNDERSTANDING THE VARIOUS

 12 CONCEPTS THAT APPLY TO THIS CASE. SO YOU'RE GOING

 13 TO HAVE A CRASH COURSE IN CRIMINAL LAW.

 14 BUT BEFORE I GET INTO THE DETAILS OF THE

 15 LAW, AND BEFORE I GET INTO THE DETAILS OF THE FACTS,

 16 BECAUSE IT IS GOING TO BE A LONG INSTRUCTION THAT

 17 YOU WILL RECEIVE FROM THE COURT, IT'S GOING TO BE A

 18 LONG PRESENTATION THAT YOU WILL RECEIVE FROM ME. I

 19 WANT TO GIVE YOU AN OVERVIEW OF BASICALLY WHAT OUR

 20 POSITION IS IN THIS CASE. SO THAT AS I BEGIN TO GO

 21 INTO THE DETAILS OF THE LAW AND THE DETAILS OF THE

 22 WITNESSES WHO TESTIFIED IN THIS CASE, YOU'LL BE ABLE

 23 TO PUT IT IN PERSPECTIVE, AND YOU WILL HAVE SOME

 24 SENSE OF WHERE I'M GOING DURING THE COURSE OF MY

 25 ARGUMENT.

 26 MY POSITION IN THIS CASE, LADIES AND

 27 GENTLEMEN, IS PRECISELY WHAT I TOLD YOU IN MY

 28 OPENING STATEMENT, AND THAT IS: THAT THIS IS A

 1 CLASSIC CASE OF FIRST-DEGREE MURDER. WE ASK YOU TO

 2 FIND THE DEFENDANTS GUILTY OF MURDER IN THE FIRST

 3 DEGREE, FOR BOTH THE KILLING OF THEIR MOTHER AND THE

 4 KILLING OF THEIR FATHER.

 5 THERE'S A THIRD CHARGE, WHICH IS

 6 CONSPIRACY TO COMMIT MURDER; AND WE ASK YOU TO FIND

 7 THE DEFENDANTS GUILTY OF THAT CHARGE AS WELL.

 8 I WILL BE SHOWING YOU A CHART SETTING

 9 FORTH ALL OF THE CHARGES IN THIS CASE AND THE

 10 FINDINGS THAT YOU'RE GOING TO BE CALLED UPON TO

 11 MAKE.

 12 LADIES AND GENTLEMEN, I SAY IT IS A

 13 CLASSIC FIRST-DEGREE MURDER CASE BECAUSE IT HAS ALL

 14 THE COMPONENTS OF, AS YOU WILL LEARN, PREMEDITATED

 15 AND DELIBERATE MURDER.

 16 WE HAVE DEMONSTRATED DURING THIS TRIAL

 17 THAT THE DEFENDANTS PURCHASED GUNS DAYS BEFORE THEY

 18 SHOT THEIR PARENTS TO DEATH. WE'VE DEMONSTRATED IN

 19 THIS TRIAL THAT THE DEFENDANTS HAD A MOTIVE TO KILL

 20 THEIR PARENTS; THAT THERE WAS A DISPUTE IN THE

 21 MENENDEZ HOME; THAT THERE WAS ONGOING TENSION AND

 22 ONGOING DISPUTES CONCERNING MONEY, CONCERNING

 23 RESPONSIBILITY, AND CONCERNING THE RELATIONSHIP

 24 BETWEEN THE DEFENDANTS AND THEIR PARENTS.

 25 WE PRESENTED EVIDENCE TO YOU OF A

 26 COVER-UP WHICH BEGAN THAT VERY NIGHT OF THE KILLING,

 27 WHICH INCLUDED EFFORTS TO CREATE AN ALIBI AND TO

 28 GIVE AN ALIBI TO THE POLICE.

 1 WE PRESENTED EVIDENCE OF FABRICATION OF

 2 EVIDENCE AND DESTRUCTION OF EVIDENCE.

 3 AND FINALLY, WE PRESENTED EVIDENCE OF

 4 FINANCIAL GAIN, THE ULTIMATE MONEY MOTIVE IN THIS

 5 CASE, WHICH PROVOKED THE DEFENDANTS TO KILL THEIR

 6 PARENTS.

 7 AND I SUBMIT TO YOU, LADIES AND

 8 GENTLEMEN, THAT IN PRESENTING THIS EVIDENCE OF

 9 FIRST-DEGREE MURDER -- AND THAT IS FIRST-DEGREE

 10 MURDER -- YOU WILL LEARN THERE ARE DIFFERENT

 11 THEORIES FOR FIRST-DEGREE MURDER. AND AS I WILL

 12 SHOW TO YOU, WE DEMONSTRATED FIRST-DEGREE MURDER BY

 13 MEANS OF SEVERAL DIFFERENT THEORIES.

 14 WE CAUGHT THE DEFENDANTS ESSENTIALLY

 15 RED-HANDED. WE HAVE THE DEFENDANTS IN THIS CASE

 16 ABSOLUTELY GUILTY OF KILLING THEIR PARENTS, AND

 17 THERE'S NO WAY THEY CAN GET AROUND THAT. THERE'S NO

 18 WAY THAT THE DEFENDANTS CAN DENY THEY KILLED THEIR

 19 PARENTS. WE HAVE THEM, OF COURSE, ON TAPE. THE

 20 DECEMBER 11 TAPE IS A TAPE-RECORDING IN WHICH THE

 21 DEFENDANTS SPEAK ABOUT KILLING THEIR PARENTS; AND AS

 22 I WILL SHOW TO YOU, THEY DO SO WITH WORDS THAT ARE

 23 THE EQUIVALENT OF PREMEDITATION.

 24 AND WE HAVE THEM PURCHASING THE GUNS.

 25 WE PROVED THAT THE TWO OF THEM PURCHASED GUNS DAYS

 26 BEFORE KILLING THEIR PARENTS.

 27 SO WE HAVE SOLID EVIDENCE IN THIS CASE

 28 OF THE GUILT OF THE DEFENDANTS.

 1 NOW, WHAT CAN THE DEFENDANTS DO TO TRY

 2 TO COUNTER THAT EVIDENCE? WHAT CAN THE DEFENDANTS

 3 DO TO TRY TO PUT ON A DEFENSE? WHAT TYPE OF A

 4 DEFENSE STEMS FROM THAT?

 5 WELL, LADIES AND GENTLEMEN, I WOULD

 6 SUBMIT TO YOU THAT THERE ARE REALLY ONLY TWO

 7 DEFENSES IN CRIMINAL LAW. THE FIRST DEFENSE IS:

 8 "I DIDN'T DO IT." AND THAT IS THE PREFERRED

 9 DEFENSE, BECAUSE THAT IS THE DEFENSE BY WHICH A

 10 PERSON CAN AVOID RESPONSIBILITY ALTOGETHER, AVOID

 11 PUNISHMENT ALTOGETHER. AND WE KNOW THAT THAT WAS

 12 THE PREFERRED POSITION OF THE DEFENDANTS IN THIS

 13 CASE, BECAUSE FROM THE VERY TIME OF THE COMMISSION

 14 OF THE MURDER THE DEFENDANTS IN THIS CASE DENIED

 15 THEIR INVOLVEMENT, COVERED UP THEIR ACTIVITIES, AND

 16 LIED. THEY LIED TO THE POLICE. THEY LIED TO

 17 FRIENDS, AND THEY LIED TO FAMILY MEMBERS.

 18 SO WE KNOW THAT THAT IS THEIR PREFERRED

 19 DEFENSE. BUT NOW THE EVIDENCE AGAINST THEM IS JUST

 20 TOO STRONG. THEY HAVE TO MOVE ON TO THE SECOND

 21 DEFENSE.

 22 SO I WOULD SUBMIT THAT THE SECOND

 23 DEFENSE, LADIES AND GENTLEMEN, IS, AS I INDICATED ON

 24 THIS CHART -- THE ONLY OTHER DEFENSE IN CRIMINAL LAW

 25 IS: "OKAY, I DID IT, BUT I DIDN'T DO IT THE WAY THAT

 26 THE PROSECUTION SAID I DID IT." THOSE ARE THE ONLY

 27 TWO DEFENSES.

 28 AND WHAT YOU HAVE TO UNDERSTAND IS THAT

 1 THE DEFENDANTS, ONCE THEY ARE ARRESTED AND ONCE THEY

 2 GO FROM DEFENSE NO. 1 TO DEFENSE NO. 2, THEY DO NOT

 3 GIVE UP THAT DRIVE, THAT ENERGY, THAT DESIRE TO

 4 AVOID PUNISHMENT. SO ALL OF THE EFFORT, ALL OF THE

 5 ENERGY THAT YOU WOULD EXPECT SOMEONE TO PUT INTO

 6 DEFENSE NO. 1: "I DIDN'T DO IT," IS ALL GOING TO GO

 7 INTO DEFENSE NO. 2. ALL THE CREATIVITY, ALL THE

 8 IMAGINATION, ALL THE EFFORT.

 9 AND YOU KNOW THAT THE DEFENDANTS IN THIS

 10 CASE HAVE BEEN IN CUSTODY FOR A PERIOD OF TIME, AND

 11 THEY HAVE HAD PLENTY OF TIME TO THINK THROUGH THEIR

 12 PREDICAMENT AND THINK ABOUT MANUFACTURING EVIDENCE

 13 AND PRESENTING A FALSE DEFENSE, AND THAT IS

 14 PRECISELY WHAT WE DEMONSTRATED HERE. WE

 15 DEMONSTRATED -- AND I WILL GO THROUGH EACH OF THESE

 16 WITNESSES -- EFFORTS ON THE PART OF THE DEFENDANTS TO

 17 FABRICATE EVIDENCE, TO DESTROY EVIDENCE, TO PRESENT

 18 FALSE EVIDENCE; AND THROUGH THE TESTIMONY OF ERIK

 19 MENENDEZ, TO TESTIFY FALSELY.

 20 YOU HAVE TO UNDERSTAND THAT ONCE SOMEONE

 21 LIKE THE DEFENDANTS HERE ARE ARRESTED, THEY DO NOT

 22 TURN INTO HONEST CITIZENS OVERNIGHT. YOU SHOULD NOT

 23 EXPECT THAT ONCE THEY ARE ARRESTED, THEY ARE GOING

 24 TO GO FROM A DESIRE TO AVOID RESPONSIBILITY

 25 ALTOGETHER, TO AN ADMISSION OF THEIR TRUE

 26 RESPONSIBILITY.

 27 DEFENSE NO. 2 IS SIMPLY A DEFENSE WHICH

 28 MINIMIZES RESPONSIBILITY. IT DOESN'T AVOID

 1 RESPONSIBILITY ALTOGETHER; IT DOESN'T AVOID

 2 PUNISHMENT ALTOGETHER. IT MINIMIZES PUNISHMENT.

 3 AND THAT'S PRECISELY WHAT THEY HAVE TO DO HERE.

 4 YOU COME TO A POINT WHERE YOU HAVE TO

 5 CUT YOUR LOSSES. YOU HAVE TO SAY, OKAY, THE

 6 PROSECUTION CAN PROVE THIS, AND THERE'S NO GETTING

 7 AROUND THAT. DEFENSE NO. 1 IS OUT OF THE QUESTION.

 8 A JURY WILL NEVER BUY THAT

 9 NOW, LET'S FOCUS ON DEFENSE NO. 2. WHAT

 10 CAN WE PUT TOGETHER? WHAT CAN WE MANUFACTURE? WHAT

 11 CAN WE CREATE TO MITIGATE PUNISHMENT TO GET OFF A

 12 LITTLE? WE'RE NOT JUST GOING TO ROLL OVER AND SAY

 13 FIRST-DEGREE MURDER. AND THAT'S WHERE THEY BEGAN,

 14 LADIES AND GENTLEMEN, A PATTERN OF LIES.

 15 WE HAVE THE TESTIMONY OF ERIK MENENDEZ,

 16 FOR EXAMPLE, WHO TESTIFIED IN THIS CASE AND WHO GAVE

 17 YOU A VERSION OF THE EVENTS. AND WHAT YOU HAVE TO

 18 UNDERSTAND, LADIES AND GENTLEMEN, IS THAT YOU

 19 SHOULDN'T BELIEVE WHAT THE DEFENDANT IS SAYING JUST

 20 BECAUSE HE IS ON THE STAND AND TESTIFYING. DON'T BE

 21 FOOLED BY THE FACT THAT SOMEONE TAKES THE STAND AND

 22 SAYS, "OKAY, I DID IT." THAT HE IS NECESSARILY

 23 TELLING THE TRUTH. ALL HE IS DOING NOW IS FOCUSING

 24 ON DEFENSE NO. 2, WHICH IS HOW TO MINIMIZE

 25 RESPONSIBILITY, HOW TO MINIMIZE PUNISHMENT IN THIS

 26 CASE.

 27 SO AS YOU WOULD VIEW SOMEONE CLAIMING

 28 DEFENSE NO. 1, WITH SKEPTICISM AND CRITICALLY

 1 EVALUATING THE PRESENTATION THAT THEY ARE MAKING TO

 2 YOU, SO TOO, LADIES AND GENTLEMEN, YOU SHOULD

 3 CRITICALLY EVALUATE DEFENSE NO. 2, DESPITE THE FACT

 4 THAT ERIK MENENDEZ HAS TESTIFIED.

 5 IT WAS POINTED OUT, FOR EXAMPLE, THAT

 6 ERIK MENENDEZ GAVE A STATEMENT TO PARK DIETZ.

 7 COUNSEL BROUGHT OUT THE FACT FROM PARK DIETZ: ISN'T

 8 IT TRUE THAT SOMETIMES YOU INTERVIEW PEOPLE, YOU

 9 INTERVIEW CRIMINAL DEFENDANTS WHO ARE ORDERED TO

 10 GIVE A STATEMENT TO AN EXPERT APPOINTED BY THE

 11 PROSECUTION, AND THAT PERSON REFUSES, AND ERIK

 12 MENENDEZ DID NOT REFUSE?

 13 WELL, THAT'S TRUE. ERIK MENENDEZ DID

 14 NOT REFUSE. BUT HE DID NOT REFUSE ONLY BECAUSE IT

 15 SERVED HIS OWN SELF-INTEREST NOT TO REFUSE. HOW

 16 WOULD IT LOOK IF HE HAD BEEN ORDERED TO SPEAK TO

 17 PARK DIETZ AND HE HAD REFUSED TO DO SO?

 18 SO DON'T ASSUME THAT JUST BECAUSE HE

 19 GAVE A STATEMENT TO PARK DIETZ, THAT HE'S AN HONEST,

 20 TRUSTWORTHY PERSON, AND DON'T ASSUME JUST BECAUSE HE

 21 TESTIFIED HERE IN COURT AND TOOK THE WITNESS STAND

 22 AND PROMISED TO TELL THE TRUTH, THAT HE'S

 23 NECESSARILY TELLING THE TRUTH.

 24 I'LL BE TALKING A GREAT DEAL ABOUT ERIK

 25 MENENDEZ AND HIS CREDIBILITY DURING THE COURSE OF

 26 THIS TRIAL. I'LL GET TO SOME OF THAT LATER.

 27 SO BEARING IN MIND, LADIES AND

 28 GENTLEMEN, THAT YOU CAN EXPECT SOMEONE TO MINIMIZE

 1 PUNISHMENT AND TO MINIMIZE THEIR RESPONSIBILITY IN A

 2 CRIME. I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT

 3 THIS DEFENSE THAT WAS PRESENTED TO YOU -- AND I WILL

 4 GIVE YOU ALL THE REASONS WHY -- WAS A ONE HUNDRED

 5 PERCENT TOTAL FABRICATION. IT WAS TOTALLY MADE UP

 6 OUT OF WHOLE CLOTH; AND WHAT WAS MADE UP OUT OF

 7 WHOLE CLOTH WAS NOT ONLY THE EVENTS OF AUGUST THE

 8 20TH 1989, THAT IS, THIS WHOLE STORY ABOUT WELL, I

 9 THOUGHT MY PARENTS WERE GOING TO KILL ME; AND I WAS

 10 RUNNING DOWN THE HALL; AND I WENT OUT TO THE CAR;

 11 AND I HAD TO LOAD AND UNLOAD. I SUBMIT TO YOU THAT

 12 ALL OF THAT IS MADE UP, A PRODUCT OF THE DEFENDANTS'

 13 IMAGINATION AND CREATIVITY, IN AN EFFORT TO MINIMIZE

 14 PUNISHMENT.

 15 BUT EVEN THE BACKGROUND INFORMATION IS

 16 ALSO A FABRICATION. THERE IS NO RELIABLE EVIDENCE

 17 IN THIS CASE THAT THE DEFENDANTS WERE EVER SEXUALLY

 18 ABUSED BY THEIR PARENTS. AND I WENT THROUGH THAT

 19 PAINSTAKINGLY, SOME OF THE WITNESSES, AND I THINK

 20 YOU GOT AN IDEA OF PRECISELY HOW I WOULD BE

 21 PRESENTING THAT TO YOU AT THE CONCLUSION OF THE

 22 CASE, BECAUSE I THINK I MADE, THROUGH MY

 23 EXAMINATION, MY POINT VERY CLEAR.

 24 THERE ARE NO EYEWITNESSES WHATSOEVER TO

 25 ANY OF THE PHYSICAL ABUSE THAT IS ALLEGED; THAT IS,

 26 THE SEXUAL ABUSE THAT IS ALLEGED BY ERIK MENENDEZ.

 27 NOT A SINGLE EYEWITNESS. THERE ARE NO REPORTS.

 28 THERE ARE NO -- THERE'S NO MEDICAL EVIDENCE. THERE

 1 IS SIMPLY NO WAY OF CORROBORATING THE ALLEGATIONS OF

 2 ERIK MENENDEZ THAT HE WAS SEXUALLY ABUSED BY HIS

 3 FATHER.

 4 WHAT THEY TRIED TO DO IN THIS CASE IS

 5 THEY TRIED TO BRING -- THEY TRIED TO PRESENT THE

 6 TESTIMONY OF EXPERTS TO BRIDGE THAT GAP. WHAT THEY

 7 WANTED TO DO WAS PUT DR. WILSON THERE ON THE STAND

 8 AND HAVE DR. WILSON SAY: WELL, I CONCLUDED HE WAS

 9 SEXUALLY ABUSED.

 10 LADIES AND GENTLEMEN, I'LL DISCUSS

 11 DR. WILSON'S TESTIMONY IN DETAIL WHEN I GET TO THAT

 12 PART OF THE CASE. BUT ESSENTIALLY EXPERT WITNESSES

 13 CAN'T SAY THAT FOR SURE. ALL THEY CAN DO IS HAVE AN

 14 OPINION, LIKE ANYONE ELSE. THEY CAN HAVE AN

 15 OPINION. THERE ARE NO TELL-TALE SYMPTOMS THEY CAN

 16 LOOK AT AND CAN SAY: BECAUSE OF THIS PARTICULAR

 17 SYMPTOM, I CAN TELL YOU THE DEFENDANT HAS BEEN

 18 ABUSED. THERE'S NO WAY OF DOING THAT.

 19 SYMPTOMS FROM ABUSE ARE JUST LIKE

 20 SYMPTOMS FROM ANYTHING ELSE. SOME PEOPLE GET THESE

 21 SYMPTOMS; SOME PEOPLE GET OTHER SYMPTOMS; SOME

 22 PEOPLE GET NO SYMPTOMS. THERE'S NO WAY AN EXPERT

 23 CAN TELL YOU THIS PARTICULAR PERSON WAS SEXUALLY

 24 ABUSED. IT JUST CAN'T BE DONE.

 25 THEY TRY TO PRESENT EXPERT TESTIMONY TO

 26 BRIDGE THAT GAP FOR YOU, BECAUSE YOU WOULD BE LEFT

 27 IN THE DARK, AND YOU WOULD WONDER TO YOURSELF: HOW

 28 CAN I DO IT? HOW CAN I DETERMINE WHETHER OR NOT HE

 1 WAS ABUSED? AND YOU WOULD DO IT THE ONLY WAY YOU

 2 CAN DO IT, WHICH IS BY MAKING YOUR OWN CREDIBILITY

 3 CALL, BY EVALUATING THE EVIDENCE FOR YOURSELF. YOU

 4 SEE?

 5 WHAT THEY TRIED TO DO IN THIS CASE WAS

 6 TO ASSERT THAT DECISION-MAKING OF THE JURY, TO PUT

 7 AN EXPERT WITNESS ON THE STAND AND TRY TO PRETEND

 8 THEY CAN PROVE IT THROUGH A WITNESS, WHEN, IN FACT,

 9 THEY CAN'T APPROVE IT THROUGH A WITNESS. THERE'S NO

 10 WAY TO PROVE THAT THROUGH AN EXPERT WITNESS.

 11 LADIES AND GENTLEMEN, I SUBMIT TO YOU

 12 THAT THE ABUSE IN THIS CASE WAS A TOTAL FABRICATION

 13 WHICH WAS DONE FOR A REASON, A VERY CONSCIOUS,

 14 STRATEGICAL REASON, AND THAT IS -- STRATEGY -- THE

 15 DEFENSE STRATEGY IS TO GET YOU TO HATE KITTY AND

 16 JOSE MENENDEZ. IT'S A VERY IMPORTANT PART OF THE

 17 DEFENSE. IF YOU CAN GET THE JURY TO HATE THE

 18 VICTIMS, THEN PERHAPS YOU'LL LEAN A LITTLE TOWARD

 19 THE DEFENDANT, AND PERHAPS WHEN THE DEFENDANT, ERIK

 20 MENENDEZ, TAKES THE STAND AND TESTIFIES, YOU WILL BE

 21 MORE INCLINED TO GO ALONG WITH HIS VERSION OF THE

 22 EVENTS, SIMPLY BECAUSE YOU'RE ALREADY PRECONDITIONED

 23 TO HATE THE VICTIMS IN THIS CASE.

 24 AND TO GET YOU TO HATE THE VICTIMS IN

 25 THIS CASE, WHAT THEY DID WAS -- WHAT ERIK MENENDEZ

 26 DID WAS HE ACCUSED HIS PARENTS OF ONE OF THE WORST

 27 CRIMES IMAGINABLE, SEXUAL ABUSE. LET'S ADMIT IT.

 28 WE ALL KNOW WHAT HORROR THAT STRIKES IN THE MINDS OF

 1 ALL OF US WHEN WE HEAR SOMETHING LIKE THAT. SEXUAL

 2 ABUSE OF A CHILD IS A HORRIBLE, HORRIBLE THING, AND

 3 THEY KNOW IT, YOU SEE. THEY KNOW IT.

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

 5 OBJECT. IMPROPER ARGUMENT, USING THE MORAL --

 6 THE COURT: OVERRULED. YOU MAY CONTINUE.

 7 MR. CONN: SEXUAL ABUSE IS THE PERFECT

 8 BACKDROP FOR ALLEGATIONS CONCERNING THE PARENTS.

 9 WELL, SEXUAL ABUSE HAPPENS BEHIND CLOSED

 10 DOORS. WELL, THAT'S TRUE. SEXUAL ABUSE DOES HAPPEN

 11 BEHIND CLOSED DOORS. BUT WHAT DOES THAT TELL YOU?

 12 DOES IT PROVE THAT IT HAPPENED JUST BECAUSE IT

 13 HAPPENS BEHIND CLOSED DOORS? NO. IT DOESN'T PROVE

 14 THAT IT HAPPENED.

 15 WHAT IT REALLY COMES DOWN TO, ONCE

 16 AGAIN, IS THE CREDIBILITY OF THE DEFENDANT. THERE'S

 17 NO WAY THEY CAN PROVE THAT TO YOU. BUT IT'S A

 18 PERFECT DEFENSE.

 19 SOMEONE ONCE SAID A GOOD DEFENSE -- THE

 20 PERFECT DEFENSE IS A GOOD OFFENSE. THAT'S PRECISELY

 21 WHAT THEY'RE DOING HERE. ACCUSE THE PARENTS, ACCUSE

 22 THE VICTIMS. PUT THE VICTIMS ON TRIAL.

 23 AND LADIES AND GENTLEMEN, THIS HAS BEEN

 24 THE TRIAL OF KITTY AND JOSE MENENDEZ. THEY WERE ON

 25 TRIAL IN THIS CASE, AND IT WAS THE DEFENDANTS WHO

 26 PUT THEM ON TRIAL, JUST AS MUCH AS THESE TWO

 27 DEFENDANTS WERE ON TRIAL. THEY PUT THEIR PARENTS ON

 28 TRIAL. AND IT HAS BEEN A JOINT TRIAL OF FOUR

 1 PEOPLE, DESIGNED TO PUT YOU IN THAT FRAME OF MIND

 2 WHERE YOU WOULD THEN BEGIN TO LEAN TOWARD THEM, FEEL

 3 SYMPATHY TOWARDS THEM, HATE THE PARENTS A LITTLE

 4 BIT, AND PERHAPS MAKE THE LEAP IN LOGIC THAT IS

 5 REQUIRED TO BUY THEIR DEFENSE.

 6 WHAT THEY PRESENTED HERE COULD BE CALLED

 7 "THE ABUSE EXCUSE." AN ABUSE EXCUSE, REFERRING TO

 8 I WAS ABUSED AND, THEREFORE, EXCUSE MY CONDUCT.

 9 THAT'S A LITTLE BUT TOO SIMPLISTIC. JURIES WON'T

 10 BUY THAT, YOU SEE. YOU HAVE TO DO IT IN A MORE

 11 DEVIOUS WAY, IN A MORE SUBTLE WAY; AND THE WAY YOU

 12 DO IT IS BY PUTTING THE VICTIMS ON TRIAL AND PUTTING

 13 YOUR MENTAL STATE IN ISSUE. THEN IT BECOMES A WAY

 14 OF TALKING ABOUT YOUR MENTAL STATE. YOU NO LONGER

 15 DIRECTLY ARE ACCUSING THE VICTIMS. YOU'RE NO LONGER

 16 DIRECTLY ATTACKING THE VICTIMS.

 17 YOU'RE NOT GOING TO HEAR MS. ABRAMSON,

 18 OR ANY OF THE DEFENSE ATTORNEYS GET UP AND TALK

 19 ABOUT WHAT A TERRIBLE MOTHER AND FATHER KITTY AND

 20 JOSE WERE. SHE DOESN'T WANT TO ADMIT THAT IS THE

 21 FOCUS OF HER ARGUMENT. SHE'S GOING TO SAY: I DON'T

 22 CARE ABOUT THEM. I'M JUST TALKING ABOUT THE MENTAL

 23 STATE OF ERIK MENENDEZ. BUT THE STRATEGICAL IMPORT

 24 OF THAT IS THE SAME, TO PUT THE VICTIMS ON TRIAL, TO

 25 GET YOU TO HATE THE VICTIMS.

 26 EVEN ERIK MENENDEZ PLAYED HIS CARDS

 27 PERFECTLY IN THIS TRIAL. WHAT HE DID IS HE TAKES THE

1. STAND. AND DID HE SAY THESE WERE HORRIBLE PARENTS?
2. NO. HE SAID: I LOVED MY MOTHER.

2 WHAT A GREAT STRATEGY THAT WAS. WHAT A

 3 GREAT STRATEGY THAT WAS. BECAUSE THEN HE DOESN'T

 4 HAVE TO BE THE BAD GUY. IT DOESN'T LOOK LIKE HE'S

 5 ATTACKING THE VICTIM. IT DOESN'T LOOK LIKE HE'S

 6 PUTTING ON TRIAL THE VERY TWO PEOPLE THAT HE

 7 KILLED. IT LOOKS LIKE HE'S JUST CAUGHT UP IN THIS

 8 SITUATION, AND HE DOESN'T WANT TO PUT THEM ON

 9 TRIAL.

 10 BUT THE FACTS SPEAK FOR THEMSELVES. AND

 11 HE SAYS IN SO MANY WORDS: LET MY MENTAL HEALTH

 12 PROFESSIONALS HANDLE THE REST FOR ME. YOU SEE?

 13 AND THEN DR. WILSON BECOMES THE BAD

 14 GUY. HE BECOMES THE HATCHET MAN. HE GETS UP ON THE

 15 STAND AND HE TALKS ABOUT WHAT A TERRIBLE MOTHER

 16 KITTY MENENDEZ WAS, WHAT A TERRIBLE FATHER JOSE

 17 MENENDEZ WAS; AND, SO INDIRECTLY, THEY ACCOMPLISH

 18 THEIR PURPOSE.

 19 AND YOU COULD BE SURE, LADIES GENTLEMEN,

 20 THAT AS MUCH AS ERIK MENENDEZ STOOD ON THE STAND AND

 21 SAID: I LOVE MY MOTHER, WHEN DR. WILSON WAS CALLED

 22 TO THE STAND, YOU COULD BE SURE ERIK MENENDEZ WAS

 23 SITTING THERE SAYING: GO TEAM, GO. NOW IS THE

 24 TIME. ATTACK MY MOTHER. ATTACK MY MOTHER.

 25 THAT IS THE STRATEGY, TO PUT THE PARENTS

 26 ON TRIAL. AND THE PURPOSE FOR MAKING THESE

 27 HORRIFYING ALLEGATIONS AGAINST THEIR PARENTS WAS

 28 SIMPLY TO CONDITION YOU TO ACCEPT THE DEFENSE, WHICH

 1 REQUIRES A TREMENDOUS LEAP IN LOGIC. THEY KNOW --

 2 ERIK MENENDEZ KNOWS THAT HIS DEFENSE MAKES NO SENSE

 3 WHATSOEVER. HE WANTS YOU TO BELIEVE SOMEHOW THAT HE

 4 WAS ACTING IN A PANIC EMOTIONAL STATE AND HAD TO

 5 KILL HIS PARENTS, OR THOUGHT IT WAS NECESSARY TO

 6 KILL HIS PARENTS. HOW COULD THAT POSSIBLY BE? THIS

 7 DEFENSE MAKES ABSOLUTELY NO SENSE WHATSOEVER. THIS

 8 DEFENSE FALLS LOGICALLY, PSYCHOLOGICALLY, AND

 9 LEGALLY. AND I WILL SHOW YOU DETAIL BY DETAIL WHY

 10 THAT IS SO.

 11 ERIK AND LYLE MENENDEZ WERE OUTSIDE

 12 THEIR HOUSE WITH LOADED GUNS AND WITH A CAR TO DRIVE

 13 AWAY; AND THERE WAS GAS IN THE CAR; AND THEY HAD CAR

 14 KEYS IN THEIR POCKET; AND THEY DECIDED TO COME INTO

 15 THE HOUSE? SHOOT THE PARENTS TO DEATH? HOW CAN

 16 THAT POSSIBLY BE? HOW CAN THAT POSSIBLY, POSSIBLY

 17 HAPPEN? THERE'S SIMPLY NO NEED THERE TO DO THAT.

 18 THE DEFENSE MAKES ABSOLUTELY NO SENSE.

 19 BUT TO BRIDGE THE GAP THEY TRY TO CALL

 20 AN EXPERT TO MAKE IT MORE UNDERSTANDABLE, TO ACCEPT

 21 WHAT YOUR NATURAL LOGIC AND NATURAL INTUITION WOULD

 22 CAUSE YOU TO REJECT; THAT PERHAPS BY SOME

 23 PSYCHIATRIC MUMBO-JUMBO, SOMEHOW THAT IS THE NATURAL

 24 AND LOGICAL CONSEQUENCE OF THEIR BEHAVIOR OR THEIR

 25 BACKGROUND OR SOMETHING LIKE THAT.

 26 BUT THE ONLY WAY THAT THEY CAN

 27 CONDITION, THE ONLY WAY THEY CAN TRULY PRECONDITION

 28 THE JURY TO ACCEPT THAT IS BY GETTING THE JURY TO

 1 HATE THE VICTIMS A LITTLE BIT, AND TO FEEL SYMPATHY

 2 FOR THEM, BECAUSE IF YOU JUST JUDGE THIS BASED UPON

 3 THE EVENTS OF THAT DAY, LADIES GENTLEMEN, I WOULD

 4 SUBMIT, THERE'S NO WAY YOU CAN BUY INTO THE

 5 DEFENSE.

 6 AND SO ERIK MENENDEZ DID WHAT HE HAD TO

 7 DO IN ORDER TO MAKE HIS DEFENSE WORK, AND THAT IS HE

 8 CAME UP WITH A STORY. HE CAME UP WITH A STORY THAT

 9 WOULD SUPPORT THE GOAL THAT HE WANTS TO ACHIEVE IN

 10 THIS CASE. AND WE ALL KNOW WHAT THE GOAL IS THAT HE

 11 WANTS TO ACHIEVE IN THIS CASE, BECAUSE HE ADMITTED

 12 THAT ON CROSS-EXAMINATION. I ASKED HIM: "ISN'T IT

 13 TRUE THAT WHAT YOU SEEK TO OBTAIN IS A VOLUNTARY

 14 MANSLAUGHTER?"

 15 AND HE ACKNOWLEDGES THAT THAT IS HIS

 16 GOAL. ONCE AGAIN, LADIES AND GENTLEMEN, THE

 17 VOLUNTARY MANSLAUGHTER IS HIS GOAL AS PART OF THE

 18 SECOND CRIMINAL DEFENSE. HE KNOWS HE CAN'T GO SCOTT

 19 FREE, BUT HE GOES FOR THE NEXT BEST THING, MINIMIZE

 20 RESPONSIBILITY, MINIMIZE PUNISHMENT AND GET A

 21 VOLUNTARY MANSLAUGHTER.

 22 SO HE SAYS WHAT HE HAS TO SAY, AND IT'S

 23 VERY EASY IF YOU KNOW WHERE YOU'RE GOING. IF YOU

 24 KNOW WHERE YOUR GOAL IS, IT'S VERY EASY TO COME UP

 25 WITH A RIGHT STORY. JUST KEEP THAT GOAL IN MIND AND

 26 START OUT AND ASK YOURSELF: WHAT CAN THE

 27 PROSECUTION PROVE? AND THEN COME UP WITH WHAT NEEDS

 28 TO BE FILLED IN BETWEEN.

 1 ONE WAY OF LOOKING AT IT IS LIKE

 2 THIS: HOW ERIK MENENDEZ PUT HIS STORY TOGETHER.

 3 YOU START OUT HERE. WHAT CAN THE PROSECUTION

 4 PROVE? AND YOU USE THAT AS A BASIS, AS YOUR

 5 GROUNDWORK, AND YOU LIST ALL THE EVIDENCE AGAINST

 6 YOU. WELL, ON ONE HAND WE PURCHASED SHOTGUNS TWO

 7 DAYS BEFORE WE KILLED OUR PARENTS. HOW CAN WE

 8 POSSIBLY CLAIM WE DID IT OUT OF FEAR IF WE'RE

 9 SITTING ON OUR SHOTGUNS FOR TWO DAYS AND DIDN'T KILL

 10 OUR PARENTS? HOW CAN WE POSSIBLY EXPLAIN THAT

 11 AWAY?

 12 WE WENT ON A FISHING TRIP UNARMED. HOW

 13 CAN WE POSSIBLY EXPLAIN THAT AWAY? IF WE WERE SO

 14 FRIGHTENED OF OUR PARENTS, HOW CAN WE EXPLAIN GOING

 15 ON A FISHING TRIP WITH NO GUNS?

 16 OF COURSE, WE CONFESSED. ERIK MENENDEZ

 17 SAYS: I CONFESSED TO DR. OZIEL. I CONFESSED TO

 18 CRAIG CIGNARELLI. AND I CAN GO ON AND ON AND LIST

 19 ALL THE PROSECUTION'S EVIDENCE IN THIS CASE. THESE

 20 ARE THE PROBLEMS PRESENTED TO HIM, AND HE HAS TO

 21 LOOK AT THIS, AND HE HAS TO FIGURE OUT: WHERE DO I

 22 GO FROM HERE? THIS IS HIS GOAL. WHERE I WANT TO GO

 23 IS VOLUNTARY MANSLAUGHTER BASED ON FEAR. THAT'S THE

 24 LEGAL THEORY, ROOTED IN FEAR, ROOTED IN THIS

 25 PASSION

 26 HOW CAN HE GET THERE? HOW CAN HE

 27 JUSTIFY KILLING THE PARENTS ON SUNDAY WHEN HE WENT

 28 TO PURCHASE GUNS TWO DAYS EARLIER? YOU FILL IN THE

 1 GAPS. YOU JUST START FROM HERE. GUNS PURCHASED TWO

 2 DAYS EARLIER. WELL, BECAUSE I THOUGHT MY PARENTS

 3 MIGHT KILL ME. THERE YOU GO. NOT SURE. THEY MIGHT

 4 KILL ME.

 5 AND WE WENT ON THE FISHING TRIP

 6 UNARMED. HOW CAN I HANDLE THAT? WELL, I WAS SURE

 7 THAT MY PARENTS WERE GOING TO KILL ME, BUT NOT TOO

 8 SURE. OKAY. NOT YET SURE. OKAY.

 9 AND YOU JUST WORK AROUND -- YOU JUST

 10 WORK AROUND EVERYTHING THE PROSECUTION CAN PROVE.

 11 AND THAT'S PRECISELY, I WOULD SUBMIT TO YOU, HOW

 12 ERIK MENENDEZ PUT HIS DEFENSE TOGETHER.

 13 I WILL GO THROUGH HIS TESTIMONY STEP BY

 14 STEP AND ESTABLISH THAT POINT, BECAUSE HE DID IT, HE

 15 DID IT, AND YOU CAN TELL THAT HE DID IT THAT WAY

 16 BECAUSE THEIR STORY, WHICH I WILL CALL HIS SCRIPT,

 17 REALLY MAKES NO SENSE. IT IS THE SILLIEST, MOST

 18 RIDICULOUS STORY EVER TOLD IN A COURTROOM. BUT HE

 19 HAS TO STICK TO IT BECAUSE IT'S THE ONLY WAY TO GET

 20 OVER HERE TO HIS END GOAL OF VOLUNTARY

 21 MANSLAUGHTER.

 22 HE CONFESSED TO CRAIG CIGNARELLI. SO

 23 WHAT CAN HE SAY ABOUT THAT? WELL, JUST SAY CRAIG IS

 24 LYING. WHY WOULD CRAIG LIE? I'LL GET INTO ALL THE

 25 DETAILS LATER.

 26 DR. OZIEL. WHAT CAN I SAY ABOUT

 27 DR. OZIEL? AFTER ALL, THE PSYCHIATRIST IS LYING.

 28 WELL, PUT WORDS IN MY MOUTH. THERE YOU GO.

 1 DR. OZIEL PUT WORDS IN MY MOUTH.

 2 AND THIS IS HOW HE PUT HIS DEFENSE

 3 TOGETHER, LADIES AND GENTLEMEN, BY JUST FILLING IN

 4 THE BLANKS.

 5 AS I GO THROUGH HIS STATEMENTS, AS I GO

 6 THROUGH HIS STORY, THROUGH HIS TESTIMONY HERE IN

 7 COURT, WE WILL SHOW YOU THAT THE ONLY REASONABLE

 8 CONCLUSION IS THAT'S PRECISELY HOW HE DID IT,

 9 BECAUSE HIS STORY IS SO ILLOGICAL AND SO

 10 CONTRADICTORY AND SO CONTRARY TO THE TESTIMONY OF

 11 ALL THE WITNESSES THAT WE PRESENTED IN THIS CASE,

 12 AND SO CONTRARY TO THE RELIABLE AND KNOWN FACTS,

 13 THAT THE ONLY EXPLANATION FOR SUCH A CRAZY STORY IS

 14 THAT HE HAD A GOAL IN MIND, AND IT'S ALL DIRECTED

 15 TOWARDS THAT GOAL.

 16 AND ONCE YOU SEE HOW IT'S ALL

 17 DIRECTED TOWARD THAT GOAL, THEN, OF COURSE, HIS

 18 STORY, AS CRAZY AS IT IS, MAKES SENSE IN A CRAZY,

 19 MIXED UP -- CRAZY KIND OF WAY. BUT, OF COURSE, IT

 20 IS A CRAZY STORY WHICH SHOULD NOT BE BELIEVED.

 21 I WOULD SUBMIT TO YOU, LADIES AND

 22 GENTLEMEN, THAT ERIK MENENDEZ WANTS A VOLUNTARY

 23 MANSLAUGHTER, AND HE WANTS IT VERY BAD. HE WANTS IT

 24 SO BAD HE CAN TASTE IT. BUT YOU SHOULD NOT GIVE IT

 25 TO HIM. BECAUSE IN THIS CASE THE EVIDENCE WARRANTS

 26 NOTHING LESS THAN FIRST-DEGREE PREMEDITATED MURDER.

 27 AND DON'T BE IMPRESSED, LADIES AND GENTLEMEN, WITH

 28 THE ELABORATENESS OF THE TALE THAT WAS TOLD TO YOU

 1 BY ERIK MENENDEZ, BECAUSE IT IS INDEED AN ELABORATE

 2 TALE.

 3 I MEAN, WE HEARD ABOUT ROUGH SEX AND

 4 NICE SEX AND PLAIN OLD SEX AND SO ON AND SO FORTH.

 5 AND WE HEARD ABOUT ABUSE GOING BACK TO THE AGE OF

 6 FIVE AND SIX, OR WHATEVER AGES IT STARTED; AND WE

 7 HEARD TALE AFTER TALE AFTER TALE.

 8 AS I TRIED TO SHOW IN MY

 9 CROSS-EXAMINATION OF ERIK MENENDEZ, WHERE IS THE

 10 CORROBORATION OF THAT? YES, YOU SHOWED US HOUSES

 11 WHERE IT TOOK PLACE, AND YOU SHOWED US PHOTOGRAPHS

 12 OF VASELINE THAT SUPPOSEDLY YOUR FATHER USED TO

 13 MOLEST YOU. WHERE IS THE CORROBORATION OF THAT? HE

 14 CAN'T CORROBORATE THAT.

 15 LADIES AND GENTLEMEN, IF YOU WERE IN

 16 JAIL FOR FIVE YEARS, AND IF YOU HAD TIME TO FIGURE

 17 OUT A SET OF CIRCUMSTANCES OR A SET OF FACTS TO

 18 MITIGATE YOUR RESPONSIBILITY, YOU COULD DO THE SAME

 19 THING. YOU COULD COME UP WITH A VERY ELABORATE

 20 TALE. YOU COULD REWRITE THE HISTORY OF WESTERN

 21 CIVILIZATION WITH A WHOLE NEW CAST OF CHARACTERS IF

 22 YOU HAD TO. ONCE YOU HAVE THE MOTIVATION AND TIME,

 23 YOU CAN BE VERY CREATIVE AND YOU CAN COME UP WITH A

 24 VERY GOOD STORY.

 25 AND I WOULD SUBMIT TO YOU THAT -- DO NOT

 26 BUY THE TALE OF THE DEFENDANT SIMPLY BECAUSE IT IS

 27 AN ELABORATE TALE. THAT'S NOT A VALID BASIS FOR

 28 ACCEPTING THAT TALE.

 1 I WILL ASK YOU, LADIES AND GENTLEMEN,

 2 AFTER I FINISH DISCUSSING THE LAW WITH YOU, AND I

 3 FINISH DISCUSSING MY CASE WITH YOU, WHICH POINTS

 4 TOWARDS A FIRST-DEGREE MURDER, AND AFTER I FINISH

 5 DISCUSSING THE DEFENSE WITH YOU, WHICH I WOULD ARGUE

 6 IS UNRELIABLE AND SHOULD BE REJECTED, THAT YOU

 7 SHOULD FIND THE DEFENDANTS GUILTY OF MURDER IN THE

 8 FIRST DEGREE, BECAUSE -- AND THAT YOU SHOULD REJECT

 9 THE TESTIMONY OF ERIK MENENDEZ, BECAUSE NOT ONLY

 10 DOES HE HAVE A MOTIVE TO LIE, NOT ONLY DOES HE HAVE

 11 A LONG HISTORY OF LYING, AS ESTABLISHED BY HIS

 12 BEHAVIOR BEFORE THE TIME OF HIS ARREST, NOT ONLY WAS

 13 HE INVOLVED IN THE DESTRUCTION OF EVIDENCE AND

 14 EFFORTS TO FABRICATE EVIDENCE, BUT BECAUSE HIS STORY

 15 MAKES ABSOLUTELY NO SENSE, IS CONTRADICTED BY OTHER

 16 EVIDENCE, AND IS SIMPLY UNWORTHY OF YOUR BELIEF.

 17 NOW, TURNING TO THE CHARGES IN THIS

 18 CASE. IT'S IMPORTANT THAT YOU KEEP AN EYE ON

 19 PRECISELY THE REASON WHY YOU ARE HERE, WHAT YOU ARE

 20 HERE TO DECIDE, AND WHAT YOU ARE NOT HERE TO

 21 DECIDE. AND BEFORE YOU IS A CHART WHICH ILLUSTRATES

 22 THE CHARGES IN THIS CASE.

 23 YOU HAVE, FIRST OF ALL, IN COUNT 1,

 24 MURDER IN THE FIRST DEGREE. THE DEFENDANTS ARE

 25 CHARGED WITH THE FIRST-DEGREE MURDER OF JOSE

 26 MENENDEZ, AND THERE IS SOMETHING CALLED A SPECIAL

 27 CIRCUMSTANCE THAT IS ALLEGED, AND I WILL BE

 28 EXPLAINING ALL OF THESE TERMS TO YOU. THIS GIVES

 1 YOU THE BROAD OVERVIEW, FIRST OF ALL.

 2 THE SPECIAL CIRCUMSTANCE THAT IS ALLEGED

 3 IS LYING IN WAIT. IN COUNT 2 IT IS ALLEGED THAT THE

 4 DEFENDANTS BOTH KILLED THEIR MOTHER, MARY LOUISE

 5 MENENDEZ, AND THAT IT WAS MURDER IN THE FIRST

 6 DEGREE. THE SAME SPECIAL CIRCUMSTANCE IS ALLEGED,

 7 THAT THE MURDER WAS COMMITTED WHILE THE DEFENDANTS

 8 WERE LYING IN WAIT.

 9 THEN THERE'S ANOTHER SPECIAL

 10 CIRCUMSTANCE, AND YOU CAN SEE I OFFSET IT A LITTLE

 11 BIT FROM THE FIRST TWO COUNTS, BECAUSE IT IS A

 12 SPECIAL CIRCUMSTANCE WHICH IS NOT ALLEGED

 13 INDIVIDUALLY AS TO EACH COUNT. IT IS ALLEGED ONCE

 14 AND ONLY ONCE, BUT IT APPLIES TO BOTH COUNTS; AND

 15 THAT IS, MULTIPLE MURDERS WERE COMMITTED IN THIS

 16 CASE, AND THAT IS THE EASIEST SPECIAL CIRCUMSTANCE

 17 TO EXPLAIN. SO I'LL JUST EXPLAIN THAT RIGHT NOW.

 18 THIS SIMPLY MEANS THAT IF YOU FIND THE

 19 DEFENDANT GUILTY, IF YOU FIND A DEFENDANT GUILTY OF

 20 MURDER IN THE FIRST DEGREE, YOU ARE THEN ASKED TO

 21 MAKE A SPECIAL FINDING, AND THAT IS, IN THIS CASE

 22 WAS THE DEFENDANT CONVICTED OF MORE THAN ONE COUNT

 23 OF MURDER? AND THE SECOND COUNT COULD BE MURDER IN

 24 THE SECOND DEGREE.

 25 SO, FOR EXAMPLE, IF YOU WERE TO FIND THE

 26 DEFENDANT, EITHER ONE -- AND YOU DO HAVE TO DECIDE

 27 RESPONSIBILITY INDIVIDUALLY, OF COURSE -- IF YOU

 28 WERE TO FIND THE DEFENDANT GUILTY OF FIRST-DEGREE

 1 MURDER FOR COUNT 1, FIRST-DEGREE MURDER IN COUNT 2,

 2 THEN YOU COULD FIND THE SPECIAL CIRCUMSTANCE OF

 3 MULTIPLE MURDERS TRUE. THAT'S THE ONLY FINDING

 4 YOU'RE ASKED TO MAKE. IS IT A TRUE ALLEGATION OR A

 5 FALSE ALLEGATION? AS YOU CAN SEE, IT FOLLOWS

 6 AUTOMATICALLY. IT'S JUST COMMON SENSE. IF YOU

 7 FOUND THEM GUILTY OF TWO COUNTS OF MURDER, THEN, OF

 8 COURSE, THE MULTIPLE MURDERS ALLEGATION IS TRUE.

 9 NEVERTHELESS, YOU ARE ASKED TO MAKE THAT

 10 SPECIFIC FINDING, AND YOU DO HAVE TO MAKE THAT

 11 FINDING. THE COURT DOESN'T MAKE THAT FINDING FOR

 12 YOU.

 13 IF YOU WERE TO FIND, FOR EXAMPLE -- JUST

 14 SAY HYPOTHETICALLY SPEAKING -- FIRST DEGREE FOR THE

 15 KILLING OF THEIR MOTHER, MARY LOUISE MENENDEZ, AND

 16 SECOND-DEGREE MURDER OF JOSE MENENDEZ, JUST SPEAKING

 17 HYPOTHETICALLY, WELL, THE SPECIAL CIRCUMSTANCE WOULD

 18 STILL BE TRUE, BECAUSE YOU FOUND THE DEFENDANT

 19 GUILTY IN THIS PROCEEDING OF MORE THAN ONE COUNT OF

 20 MURDER.

 21 OF COURSE, IT WOULDN'T APPLY IF YOU

 22 FOUND TWO COUNTS OF MURDER IN THE SECOND DEGREE,

 23 BECAUSE, LIKE I SAID, YOU ARE ONLY ASKED TO MAKE A

 24 FINDING OF A SPECIAL CIRCUMSTANCE IF YOU FIND THE

 25 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE.

 26 SO IF YOU HAVE TWO COUNTS OF MURDER OR

 27 ONE COUNT OF MURDER IN -- IF YOU HAVE TWO COUNTS OF

 28 MURDER IN THE FIRST DEGREE, OR ONE COUNT OF MURDER

 1 IN THE FIRST DEGREE, AND ONE COUNT OF MURDER IN THE

 2 SECOND DEGREE, YOU SHOULD, IN EVERY CASE, FIND THIS

 3 SPECIAL CIRCUMSTANCE OF MULTIPLE MURDERS TO BE

 4 TRUE. IT'S NECESSARILY TRUE. IT FOLLOWS, JUST AS A

 5 MATTER OF LOGIC.

 6 THEN, YOU HAVE ONE MORE CHARGE TO FIND

 7 IN THIS CASE, AND THAT IS CONSPIRACY TO COMMIT

 8 MURDER. THAT'S COUNT 3. THE DEFENDANTS ARE CHARGED

 9 WITH CONSPIRACY TO COMMIT MURDER; AND ONCE AGAIN, I

 10 WILL BE GOING THROUGH THE ELEMENTS OF ALL THESE

 11 DEFENSES WITH YOU SO YOU UNDERSTAND PRECISELY WHAT

 12 THESE MEAN. BUT THESE ARE ALL OF THE CHARGES IN

 13 THIS CASE, AND THESE ARE ALL OF THE FINDINGS THAT

 14 YOU WILL BE CALLED UPON TO MAKE. AND WHAT WILL BE

 15 ASKING YOU TO DO THEN, AS YOU CAN TELL VERY CLEARLY

 16 JUST FROM THIS CHART -- THE PROSECUTION WILL BE

 17 ASKING YOU TO FIND BOTH DEFENDANTS GUILTY OF MURDER

 18 IN THE FIRST DEGREE FOR COUNT 1; TO FIND THE SPECIAL

 19 CIRCUMSTANCE OF LYING IN WAIT TO BE TRUE; TO FIND

 20 BOTH DEFENDANTS GUILTY OF MURDER OF THE FIRST

 21 DEGREE; AND FINALLY, TO FIND THE SPECIAL

 22 CIRCUMSTANCE OF LYING IN WAIT TO BE TRUE; TO FIND

 23 THE SPECIAL CIRCUMSTANCE OF MULTIPLE MURDER TO BE

 24 TRUE, FIRST OF ALL, IN REGARD TO BOTH, AND ALSO TO

 25 FIND THE DEFENDANTS GUILTY OF CONSPIRACY TO COMMIT

 26 MURDER. AND WE SUBMIT, AT THIS POINT YOUR JOB WILL

 27 BE DONE.

 28 NOW, THOSE ARE THE SPECIFIC FINDINGS

 1 THAT YOU WILL BE ASKED TO MAKE. BUT IT'S ALSO

 2 IMPORTANT FOR YOU TO BEAR IN MIND WHY YOU ARE NOT

 3 HERE, JUST AS MUCH AS WHY YOU ARE HERE.

 4 ARE YOU HERE TO DECIDE IF JOSE MENENDEZ

 5 MISTREATED HIS SONS? ARE YOU HERE TO DECIDE IF JOSE

 6 MENENDEZ MOLESTED ERIK MENENDEZ? WELL, THAT IS NOT

 7 YOUR KEY PURPOSE FOR BEING HERE. THAT'S ONE OF THE

 8 ISSUES THAT HAS BEEN RAISED BY THE DEFENSE. IT WILL

 9 BE ARGUED BY THE DEFENSE, AND IT WILL BE ARGUED BY

 10 THE PROSECUTION. BUT IT'S IMPORTANT FOR YOU TO

 11 UNDERSTAND THE PRECISE ROLE OF THE JURY.

 12 YOU ARE BEING CALLED UPON TO ANSWER VERY

 13 SPECIFIC QUESTIONS, AND THAT IS NOT ONE OF THE

 14 SPECIFIC QUESTIONS THAT YOU ARE BEING CALLED UPON TO

 15 DECIDE: DID JOSE MENENDEZ DO THIS OR DO THAT? IT

 16 MAY EVENTUALLY BE PART OF YOUR DISCUSSION, AND IT

 17 SHOULD BE PART OF YOUR DISCUSSION. BUT IT'S

 18 IMPORTANT FOR YOU TO UNDERSTAND YOUR JOB SO THAT YOU

 19 CAN ALWAYS GET BACK ON TRACK, TO KNOW WHERE YOU ARE

 20 GOING, WHAT YOU ARE HERE TO DECIDE. SO YOU CAN

 21 DECIDE THE QUESTION OF WHETHER JOSE MENENDEZ

 22 MOLESTED HIS SONS OR ABUSED HIS SONS IN ANY WAY, AND

 23 AS MUCH AS YOU WANT, BUT ALWAYS COME BACK TO THE

 24 CHARGES IN THIS CASE, AND ALWAYS COME BACK TO THE

 25 ELEMENTS OF THE OFFENSE. DON'T GET CAUGHT UP INTO

 26 ANY OF THE DETAILS OF THE CASE. ALWAYS COME BACK TO

 27 THESE ISSUES; THAT IS, THE ACTIONS OF THE

 28 DEFENDANTS.

 1 AND, OF COURSE, THEY'RE NOT DENYING THE

 2 ACTIONS. BOTH COUNSEL IN THEIR OPENING STATEMENTS

 3 ADMITTED THAT THE DEFENDANTS COMMITTED THESE

 4 CRIMES. WE'RE REALLY TALKING ABOUT, IN THIS CASE,

 5 NOT WHETHER OR NOT THEY ARE GUILTY, BUT THE DEGREE

 6 OF HOMICIDE IN THIS CASE. THAT IS THE ISSUE BEFORE

 7 YOU.

 8 SO IN ORDER TO UNDERSTAND, IN ORDER TO

 9 MAKE A FINDING CONCERNING THE DEGREE OF HOMICIDE,

 10 YOU MUST UNDERSTAND THE LAW. YOU MUST APPLY THE LAW

 11 TO THE FACTS; AND THE FACTS ARE SIMPLY THE TOOLS BY

 12 WHICH YOU MAKE THE ULTIMATE DETERMINATION FOR WHICH

 13 YOU ARE HERE TO MAKE. SO STAY FOCUSED ON THE

 14 CHARGES. STAY FOCUSED ON THE ELEMENTS OF THE

 15 CHARGE, AND KEEP COMING BACK TO THAT ISSUE, BECAUSE

 16 JURORS MAY FEEL -- MAY SOMETIMES SEE EVIDENCE

 17 DIFFERENTLY, AND IT'S NOT SURPRISING THAT YOU WILL.

 18 PEOPLE -- YOU ALL COME FROM DIFFERENT BACKGROUNDS AND

 19 ALL LOOK AT THE WORLD DIFFERENTLY AND SEE EVIDENCE

 20 DIFFERENTLY; AND YOU MAY REACH DIFFERENT CONCLUSIONS

 21 CONCERNING SOME OF THE ISSUES THAT ARE IN DISPUTE

 22 HERE IN THIS TRIAL. YOU MAY SEE ONE WITNESS ONE

 23 WAY, AND THE THERE MIGHT BE ANOTHER JUROR WHO SEES

 24 THAT WITNESS TOTALLY DIFFERENTLY. AND THAT'S FINE.

 25 IN THE END THE ISSUE IS: DO YOU AGREE

 26 AS TO WHAT DEGREE OF HOMICIDE THE DEFENDANT IS

 27 GUILTY OF? DON'T WORRY TOO MUCH ABOUT THE FACT THAT

 28 YOU MIGHT VIEW SOME ISSUES OF EVIDENCE DIFFERENTLY.

 1 ALWAYS COME BACK TO THE PURPOSE FOR WHICH YOU ARE

 2 HERE; THAT IS, WHAT ARE THE DEFENDANTS GUILTY OF?

 3 NOW, HOW DO YOU MAKE THAT

 4 DETERMINATION? HOW DO YOU DETERMINE WHAT THE

 5 DEFENDANTS ARE GUILTY OF? BEAR IN MIND THAT YOU ARE

 6 HERE AS JUDGES NOW, AND AS JUDGES, YOU DON'T SHOOT

 7 FROM THE HIP. YOU HAVE TO BASE IT UPON THE LAW

 8 YOUR REASON SHOULD BE ROOTED IN THE LAW AND ROOTED

 9 IN A CAREFUL APPLICATION OF THE LAW TO THE FACTS OF

 10 THIS CASE. YOU DON'T DECIDE IT BASED UPON YOUR

 11 FEELINGS. YOU DON'T SAY, WELL, I FEEL DIFFERENTLY

 12 ABOUT THIS DEFENDANT THAN ONE DEFENDANT; OR THIS

 13 DEFENDANT SOMEHOW STRIKES ME AS BEING MORE CULPABLE

 14 OR MORE RESPONSIBLE ON SOME SORT OF A MORAL LEVEL

 15 THAN THE OTHER DEFENDANT. THAT'S NOT UNCOMMON, AND

 16 YOU MIGHT FEEL THAT. JUST AS YOU ALL COME FROM

 17 DIFFERENT BACKGROUNDS, TWO DEFENDANTS IN A TRIAL IN

 18 ANY GIVEN CASE MAY BOTH BE RESPONSIBLE FOR THE CRIME

 19 AND MAY BOTH BE LEGALLY RESPONSIBLE IN PRECISELY THE

 20 SAME WAY, AND YET THEY MAY BE TWO VERY DIFFERENT

 21 TYPES OF PERSONS, YOU SEE.

 22 SO AS YOU LOOK TO THE DEFENDANTS IN THIS

 23 CASE DON'T SAY: WELL, ERIK MENENDEZ STRIKES ME AS A

 24 VERY DIFFERENT PERSON THAN LYLE MENENDEZ, AND BASED

 25 UPON THAT I'M GOING TO DECIDE THIS CASE DIFFERENTLY

 26 FOR ONE AS OPPOSED TO THE OTHER.

 27 LADIES AND GENTLEMEN, IF YOU HAPPEN TO

 28 DECIDE THE CASE DIFFERENTLY FOR ONE OR THE OTHER, IT

 1 HAS TO BE BASED UPON THE LAW. IT CAN'T BE BASED

 2 UPON YOUR FEELINGS TOWARDS THEM AS PERSONS OR THAT

 3 THEY'RE DIFFERENT. YOU HAVE TO ASK YOURSELF: IS

 4 THERE A LEGAL DISTINCTION? IS THERE A LEGAL BASIS

 5 TO DECIDE THE CASE DIFFERENTLY FOR ONE AS OPPOSED TO

 6 THE OTHER?

 7 AND WHAT I SUBMIT TO YOU, LADIES AND

 8 GENTLEMEN, ALTHOUGH IT IS YOUR RESPONSIBILITY IN

 9 THIS CASE TO EVALUATE THE DEFENDANTS' RESPONSIBILITY

 10 INDIVIDUALLY AND SEPARATELY, THAT IS YOUR DUTY. I

 11 ASK YOU, LADIES AND GENTLEMEN, IN THE END -- AND I

 12 WILL SHOW YOU WHY -- TO FIND THE DEFENDANTS EQUALLY

 13 GUILTY OF THESE CHARGES, TO FIND BOTH DEFENDANTS

 14 GUILTY OF MURDER IN THE FIRST DEGREE FOR THE

 15 KILLINGS OF BOTH OF THEIR PARENTS, TO FIND TH

 16 SPECIAL CIRCUMSTANCES TRUE AS TO EACH OF THE

 17 DEFENDANTS, AND TO FIND BOTH DEFENDANTS GUILTY OF

 18 CONSPIRACY TO COMMIT MURDER.

 19 AND WHY? BECAUSE UNDER THE LAW, LADIES

 20 AND GENTLEMEN, BY A STRICT APPLICATION OF THE LAW TO

 21 THE FACTS OF THE CASE, THESE DEFENDANTS ARE EQUALLY

 22 RESPONSIBLE.

 23 NOW, YOU MIGHT FEEL THEY PLAYED A

 24 DIFFERENT ROLE, AND I DON'T THINK THERE'S ANY

 25 QUESTION ABOUT THAT. MANY OF YOU MAY FEEL AT THIS

 26 POINT THAT LYLE MENENDEZ WAS MORE OF A LEADER IN THE

 27 COMMISSION OF THIS CRIME, AND I THINK THERE'S

 28 SUBSTANTIAL EVIDENCE TO WARRANT THAT; AND NO DOUBT,

 1 AS YOU LISTEN TO THE EVIDENCE, MANY OF YOU PROBABLY

 2 GOT THAT SENSE OF IT TOO.

 3 BUT LADIES AND GENTLEMEN, IS THAT A

 4 DIFFERENT -- A LEGAL DIFFERENCE IN TERMS OF WHAT

 5 CRIME YOU ULTIMATELY HOLD THE DEFENDANTS RESPONSIBLE

 6 FOR? AS I WILL SHOW YOU, LADIES GENTLEMEN, THAT IS,

 7 LEGALLY SPEAKING, IT MAKES NO DIFFERENCE. BOTH

 8 DEFENDANTS ARE EQUALLY GUILTY.

 9 SO YOU CAN SEE THAT IT IS VERY IMPORTANT

 10 TO UNDERSTAND THE RULES OF LAW THAT APPLY TO THIS

 11 CASE AND TO DECIDE THIS CASE, NOT BASED UPON A GUT

 12 REACTION OF HOW EACH DEFENDANT STRIKES YOU, BUT

 13 BASED UPON THE LAW.

 14 NOW, BEFORE I GO TO SOME OF THE SPECIFIC

 15 RULES OF LAW, LET ME SPEAK FIRST ABOUT CRIMINAL

 16 RESPONSIBILITY IN CRIME AND HOW WE DETERMINE

 17 CRIMINAL RESPONSIBILITY FOR A CRIME. THERE ARE

 18 DIFFERENT THEORIES OF CRIMINAL RESPONSIBILITY THAT

 19 APPLY, AND EACH THEORY APPLIES TO THE SAME CRIMINAL

 20 ACT

 21 THERE'S SOMETHING IN THE LAW CALLED

 22 PRINCIPALS TO A CRIME; THAT IS, FOR INSTANCE, A

 23 CRIME REFERS TO THE PEOPLE WHO ARE ACTUALLY INVOLVED

 24 IN THE COMMISSION OF THE CRIME, WHO ACTUALLY GET

 25 INVOLVED IN COMMITTING THE CRIME.

 26 THERE ARE TWO TYPES OF INDIVIDUALS WHO

 27 GET INVOLVED IN THE COMMISSION OF THE CRIME; AND

 28 THAT IS THE PERSONS WHO ACTUALLY COMMIT IT, AND THEN

 1 THERE ARE THOSE WHO AID AND ABET. AID AND ABET --

 2 YOU WILL HEAR THE PRECISE INSTRUCTIONS BY THE

 3 COURT. IT MEANS ESSENTIALLY TO HELP OR TO ASSIST IN

 4 ANY WAY.

 5 AND WE WILL SUBMIT TO YOU, LADIES AND

 6 GENTLEMEN, THAT AS YOU EVALUATE THE ROLE OF EACH

 7 DEFENDANT IN THIS CRIME, YOU WILL SEE THAT EACH

 8 DEFENDANT IS RESPONSIBLE UNDER BOTH THEORIES OF

 9 RESPONSIBILITY, BECAUSE ACCORDING TO ERIK MENENDEZ,

 10 BOTH DEFENDANTS WENT INTO THAT ROOM AND SHOT THEIR

 11 PARENTS TO DEATH. BOTH DEFENDANTS HAD THEIR HANDS

 12 ON THE GUNS, FIRED SHOTS, PULLED THE TRIGGER AND

 13 SHOT THE PARENTS. BOTH OF THOSE DEFENDANTS ARE

 14 RESPONSIBLE FOR THE PERSONAL COMMISSION OF THE

 15 CRIME. BUT UNDER THE THEORY OF AIDING AND ABETTING,

 16 IT SAYS THAT A PERSON AIDS AND ABETS THE COMMISSION

 17 OF A CRIME WHEN, WITH KNOWLEDGE OF THE UNLAWFUL

 18 PURPOSE OF THE PERPETRATOR, AND WITH THE INTENT OR

 19 PURPOSE OF COMMITTING, ENCOURAGING, OR FACILITATING

 20 THE COMMISSION OF THE CRIME, BY ACT OR ADVICE, THAT

 21 PERSON PROMOTES, ENCOURAGES, OR INSTIGATES THE

 22 COMMISSION OF THE CRIME.

 23 SO YOU CAN SEE THAT THERE IS ANOTHER WAY

 24 OF BEING HELD RESPONSIBLE FOR A CRIME, EVEN IF YOU

 25 DON'T ACTUALLY PULL THE TRIGGER.

 26 NOW, PROBABLY AN EXAMPLE COMES TO MIND.

 27 WHEN YOU THINK OF AIDING AND ABETTING, FOR MOST

 28 PEOPLE IT IS THE IDEA OF THE BANK ROBBER AND THE

 1 GETAWAY MAN OUTSIDE. THAT'S PROBABLY THE EXAMPLE

 2 THAT'S FAMILIAR TO MOST PEOPLE, YOU SEE. THE BANK

 3 ROBBER IS THE ONE WHO GOES INSIDE AND STEALS THE

 4 MONEY. THE GETAWAY MAN STAYS OUTSIDE TO DRIVE AWAY

 5 THE CAR; AND HE NEVER POINTS A GUN AT ANYONE, YOU

 6 SEE. BUT HE IS EQUALLY RESPONSIBLE UNDER THE THEORY

 7 OF AIDING AND ABETTING, BECAUSE HE WAS A FULL

 8 PARTICIPANT IN THAT CRIME. HE HAD KNOWLEDGE OF THE

 9 UNLAWFUL PURPOSE OF THE ACT, HE INTENDED TO ASSIST

 10 IN THAT CRIME, AND HE DID SOMETHING; AND WHAT HE DID

 11 IS NOT IMPORTANT, AS LONG AS IT AIDED OR PROMOTED OR

 12 ENCOURAGED THE COMMISSION OF THE CRIME.

 13 SO WHY IS THAT PRINCIPAL IMPORTANT TO

 14 THIS CASE? THAT PRINCIPAL IS IMPORTANT TO THIS CASE

 15 BECAUSE THAT'S WHY IT'S NOT TOO IMPORTANT TO ASK

 16 YOURSELF, WELL, HOW MANY SHOTS DID ERIK MENENDEZ

 17 ACTUALLY FIRE? HOW MANY TIMES DID ERIK MENENDEZ

 18 ACTUALLY STRIKE HIS MOTHER VERSUS HIS FATHER?

 19 SUPPOSE HE ONLY SHOT HIS MOTHER AND HE DIDN'T SHOOT

 20 HIS FATHER? WHAT DIFFERENCE DOES IT MAKE?

 21 YOU SEE, IT DOESN'T MAKE ANY DIFFERENCE

 22 UNDER THE THEORY OF AIDING AND ABETTING. UNDER THE

 23 THEORY OF PERSONAL RESPONSIBILITY, HE'S RESPONSIBLE

 24 FOR SHOOTING HIS MOTHER TO DEATH. THE FACT HE SHOT

 25 HIS FATHER, UNDER THE THEORY OF AIDING AND ABETTING,

 26 IT DOESN'T MATTER WHETHER HE SHOT HIS FATHER AT

 27 ALL. YOU CAN FIND THAT BASED ON THE FACTS OF THIS

 28 CASE HE ENTERED THE ROOM -- DIDN'T HE TELL HIS

 1 BROTHER "HURRY, HURRY"? AND WASN'T HE THERE AT THE

 2 CAR WITH HIM, BY HIS OWN ADMISSION, LOADING THEIR

 3 GUNS TOGETHER, RUNNING IN TOGETHER, OPENING THE

 4 DOORS TOGETHER?

 5 SO YOU CAN FIND, BASED UPON ALL OF THESE

 6 ACTS, THAT EACH ONE WAS AN AIDER AND ABETTER.

 7 THAT'S WHY YOU DON'T HAVE TO GET CAUGHT UP INTO A

 8 DETERMINATION OF WHO SHOT WHO. IT DOESN'T MATTER.

 9 UNDER THE THEORY OF AIDING AND ABETTING THEY'RE BOTH

 10 RESPONSIBLE FOR THE KILLING OF THEIR PARENTS.

 11 THERE'S ONE MORE THEORY OF CRIMINAL

 12 RESPONSIBILITY THAT I WOULD LIKE TO DISCUSS, AND

 13 THAT IS THE THEORY OF CONSPIRATORIAL LIABILITY.

 14 THAT'S ANOTHER RULE OF LAW WHICH APPLIES TO THIS

 15 CASE, BECAUSE THE DEFENDANTS IN THIS CASE ARE

 16 CHARGED, AS YOU KNOW, WITH CONSPIRACY TO COMMIT

 17 MURDER. THERE'S A RULE OF LAW WHICH SAYS WHEN YOU

 18 CONSPIRE TO COMMIT A CRIME, YOU ARE RESPONSIBLE, NOT

 19 ONLY FOR THE PARTICULAR CRIME THAT YOU CONSPIRED TO

 20 COMMIT, BUT YOU'RE ALSO RESPONSIBLE FOR THE NATURAL

 21 AND PROBABLE CONSEQUENCE OF THAT CRIME.

 22 SO, FOR EXAMPLE, LET'S SAY YOU AND I

 23 CONSPIRE WE'RE GOING TO COMMIT A BURGLARY. OKAY

 24 AND AS PART OF THAT CONSPIRACY, THEN, YOU GO AND YOU

 25 BANG SOMEONE OVER THE HEAD TO GET INTO THE

 26 LOCATION. EVEN IF I'M NOT PRESENT AT THE TIME, IF

 27 THERE WAS, IN FACT, A CONSPIRACY, AND I KNOWINGL

 28 ENTERED INTO THAT CONSPIRACY, I'M RESPONSIBLE FOR

 1 THE FACT YOU BANGED SOMEONE OVER THE HEAD. A JURY

 2 CAN FIND ME RESPONSIBLE. WHY? BECAUSE WHEN YOU

 3 COMMITTED THE BURGLARY -- IT'S AN OCCUPIED

 4 RESIDENCE. IT'S VERY LIKELY SOMEONE IS GOING TO GET

 5 HIT OVER THE HEAD DURING THE COURSE OF THE CRIME.

 6 UNDER THAT THEORY YOU CAN FIND A PERSON

 7 RESPONSIBLE EVEN IF THEY'RE NOT PRESENT AT THE TIME,

 8 BECAUSE IT'S A NATURAL AND PROBABLE CONSEQUENCE.

 9 THE SPECIFIC LANGUAGE OF THE LAW SAYS THIS:

 10 "A MEMBER OF A CONSPIRACY IS NOT

 11 ONLY GUILTY OF THE PARTICULAR CRIME

 12 THAT TO HIS KNOWLEDGE HIS CONFEDERATES

 13 AGREE TO AND DID COMMIT, BUT IS ALSO

 14 LIABLE FOR THE NATURAL AND PROBABLE

 15 CONSEQUENCES OF ANY CRIME OF A

 16 COCONSPIRATOR TO FURTHER THE OBJECT OF

 17 THE CONSPIRACY, EVEN THOUGH SUCH CRIME

 18 WAS NOT INTENDED AS A PART OF THE

 19 AGREED-UPON OBJECTIVE, AND EVEN THOUGH

 20 HE WAS NOT PRESENT AT THE TIME OF T

 21 COMMISSION OF THE CRIME

 22 YOU SEE? SO I CAN'T USE AS AN EXCUSE,

 23 IF YOU AND I CONSPIRED TO COMMIT THAT BURGLARY, I

 24 CAN'T LATER SAY IN A COURT OF LAW, WELL, GEE, DON'T

 25 HOLD ME RESPONSIBLE FOR THE FACT THAT SOMEONE GOT

 26 HIT OVER THE HEAD. BUT THE LAW SAYS OTHERWISE. YOU

 27 REALIZED WHAT YOU WERE DOING. YOU ENTERED INTO THAT

 28 CONSPIRACY, AND THAT'S THE PROBLEM WITH CRIMINAL

 1 CONSPIRACIES. VERY OFTEN ONE PERSON WHO IS

 2 SUPPORTED AND REINFORCED BY ANOTHER WILL THEN BE

 3 EVEN MORE ENCOURAGED TO GO OUT AND COMMIT THAT

 4 CRIME. AND FOR THAT REASON EACH MEMBER OF THE

 5 CONSPIRACY IS HELD RESPONSIBLE.

 6 AND HOW DOES THAT RULE APPLY TO FACTS OF

 7 THIS CASE? YOU'LL RECEIVE THE FOLLOWING INSTRUCTION

 8 FROM THE COURT:

 9 (READING):

 10 "YOU DETERMINE WHETHER THE

 11 DEFENDANT IS GUILTY AS A MEMBER OF A

 12 CONSPIRACY TO COMMIT THE ORIGINALLY

 13 AGREED-UPON CRIME OR CRIMES."

 14 REMEMBER, THEY ARE CHARGED WITH

 15 CONSPIRACY TO COMMIT THE MURDER. OKAY?

 16 NOW, IF YOU FIND THE DEFENDANTS GUILTY

 17 OF CONSPIRACY TO COMMIT THE MURDER, OKAY, YOU CA

 18 ALSO FIND THE CRIME ALLEGED IN COUNT 1 AND 2, MURDER

 19 IN THE FIRST DEGREE -- YOU CAN THEN DECIDE WHETHER

 20 THESE CRIMES WERE PERPETRATED BY A COCONSPIRATOR IN

 21 FURTHERANCE OF SUCH CONSPIRACY, AND WAS A NATURAL

 22 AND PROBABLE CONSEQUENCE OF THE AGREED-UPON CRIMINAL

 23 OBJECTIVE OF SUCH CONSPIRACY.

 24 SO, YOU SEE, NOT ONLY IS IT NOT

 25 NECESSARY FOR THE PROSECUTION TO SHOW, JUST BY WAY

 26 OF EXAMPLE -- IT'S NOT NECESSARY FOR ME TO SHOW THAT

 28 UNDER THE THEORY OF AIDING AND ABETTING, HE

 27 ERIK MENENDEZ ACTUALLY SHOT HIS FATHER, BECAUSE

 1 EQUALLY RESPONSIBLE AS A PRINCIPAL TO THAT CRIME.

 2 BUT UNDER THE THEORY OF CONSPIRACY TO

 3 COMMIT MURDER, HE COULD ALSO BE HELD ACCOUNTABLE FOT

 4 THAT CRIME, EVEN IF HE WASN'T PRESENT THAT DAY. YOU

 5 SEE? I'LL GET BACK MORE LATER WITH YOU CONCERNING

 6 THE LAW OF CONSPIRACY. BUT THAT GIVES YOU AN

 7 OVERVIEW OF THE TYPES OF CRIMINAL RESPONSIBILITY

 8 THAT APPLIES TO THIS CASE.

 9 NOW, I'D LIKE TO DISCUSS WITH YOU AT

 10 THIS TIME THE LAW OF HOMICIDE, BECAUSE THEY ARE THE

 11 KEY CHARGES IN THIS CASE THAT ARE ALLEGED IN COUNT 1

 12 AND COUNT 2

 13 HOMICIDE. HOMICIDE IS DEFINED AS A

 14 KILLING OF ANOTHER HUMAN BEING. AND IT BREAKS DOWN

 15 INTO TWO DIFFERENT TYPES. THERE IS MURDER; THEN

 16 THERE'S MANSLAUGHTER. AND MURDER IS FURTHERROKEN

 17 DOWN IN TERMS OF DEGREES. FIRST-DEGREE MURDER AND

 18 SECOND-DEGREE MURDER; AND ONCE AGAIN, THIS IS THE

 19 CHART THAT GIVES YOU JUST THE OVERVIEW. AND I'LL BE

 20 DISCUSSING EACH OF THESE ELEMENTS AND EACH OF THESE

 21 CONCEPTS WITH YOU INDIVIDUALLY.

 22 YOU CAN SEE THAT ONE OF THE DIFFERENCES

 23 BETWEEN, OR -- I SHOULDN'T SAY NOT ONE OF THE

 24 DIFFERENCES, BUT THE KEY DIFFERENCE BETWEEN MURDER

 25 AND MANSLAUGHTER IS THE NOTION OF MALICE

 26 AFORETHOUGHT. MURDER INCLUDES MALICE AFORETHOUGHT;

 27 WHEREAS, MANSLAUGHTER AS KILLING WITHOUT MALICE

 28 AFORETHOUGHT.

 1 WHAT IS MALICE? MALICE DOESN'T MEAN --

 2 MALICE SHOULD NOT BE INTERPRETED IN TERMS OF THE

 3 GENERAL USE OF THE WORD. WE SOMETIMES USE THE WORD

 4 "MALICE" AS ILL-WILL OR HATRED OR ANGER OR

 5 SOMETHING LIKE THAT. THE COMMON LAY DEFINITION OF

 6 MALICE IS SUCH. IN THE LAW MALICE DOESN'T MEAN

 7 THAT. MALICE IS A TERM OF ART THAT IS USED IN THE

 8 LAW THAT HAS SPECIFIC MEANING.

 9 MALICE IS THE INTENTION UNLAWFULLY TO

 10 KILL ANOTHER HUMAN BEING, AND THAT IS DEMONSTRATED

 11 IN TWO CIRCUMSTANCES; WHERE THERE IS EXPRESS MALICE

 12 AND WHERE THERE IS IMPLIED MALICE.

 13 HERE'S A CHART WHICH BREAKS DOWN THOSE

 14 CONCEPTS FOR YOU. EXPRESS MALICE IS SHOWN WHERE

 15 THERE IS MANIFESTED AN INTENTION UNLAWFULLY TO KILL

 16 A HUMAN BEING.

 17 SO, IN OTHER WORDS, WHEN YOU INTEND TO

 18 KILL, YOU HAVE THAT SPECIFIC INTENT IN YOUR MIND TO

 19 KILL UNLAWFULLY; THAT IS EXPRESS MALICE. IN OTH

 20 WORDS, YOU KNOW YOU'RE GOING TO KILL SOMEONE, YOU

 21 KNOW IT'S UNLAWFUL, BUT YOU GO AHEAD AND DO IT

 22 ANYWAY. THAT IS EXPRESS MALICE, AND THAT IS

 23 MURDER.

 24 IMPLIED MALICE IS SHOWN WHEN THE

 25 FOLLOWING IS SHOWN: NUMBER ONE, A KILLING RESULTED

 26 FROM AN INTENTIONAL ACT; NUMBER TWO, THE NATURAL

 27 CONSEQUENCE OF THE ACT ARE DANGEROUS TO HUMAN LIFE;

 28 AND NUMBER THREE, THE ACT WAS DELIBERATELY PERFORMED

 1 WITH THE KNOWLEDGE OF THE DANGER TO AND CONSCIOUS

 2 DISREGARD FOR HUMAN LIFE

 3 LET ME GIVE YOU AN EXAMPLE THAT WILL

 4 SHOW YOU HOW MALICE IS DEMONSTRATED IN THE FOLLOWING

 5 TWO CIRCUMSTANCES: SUPPOSE YOU'RE SITTING IN YOUR

 6 HOME AND PEOPLE ARE WALKING BY OUTSIDE. IT'S A

 7 CROWDED STREET OUTSIDE AND YOU TAKE YOUR RIFLE AND

 8 YOU DECIDE TO SHOOT SOME OF THE PEOPLE WALKING BY,

 9 AND YOU STICK YOUR RIFLE OUT THE WINDOW AND YOU AIM;

 10 AND YOU KNOW THAT YOU'RE GOING TO KILL THEM, AND YOU

 11 SAY: "THAT'S OKAY WITH ME. I'LL JUST GO AHEAD AND

 12 KILL THEM." AND YOU FIRE YOUR RIFLE AT THAT PERSON

 13 AS THAT PERSON IS WALKING BY OUTSIDE YOUR WINDOW.

 14 THAT'S AN EXAMPLE OF EXPRESS MALICE. THAT IS

 15 MURDER. OKAY? BECAUSE, REMEMBER, MURDER IS SHOWN

 16 WHERE MALICE IS SHOWN, BECAUSE WHEN YOU ARE FIRING

 17 YOUR RIFLE OUTSIDE OF THAT WINDOW YOU ARE

 18 MANIFESTING, BY YOUR BEHAVIOR, AND A JURY CAN

 19 CONCLUDE YOUR STATE OF MIND BASED UPON THAT

 20 BEHAVIOR, THAT THERE IS -- THAT YOU HAVE AN

 21 INTENTION UNLAWFULLY TO KILL A HUMAN BEING. YOU

 22 KNOW WHAT YOU'RE DOING IS WRONG. YOU KNOW YOU'RE

 23 GOING TO KILL THEM, BUT YOU GO AHEAD AND YOU DO IT

 24 ANYWAY. THAT IS MURDER.

 25 LET'S SAY, NOW, YOU CLOSE YOUR EYES AND

 26 YOU'RE NOT LOOKING AT YOUR TARGET, AND WITH YOUR

 27 EYES CLOSED YOU'RE STICKING THAT RIFLE OUT THE

 28 WINDOW, AND YOU'RE STILL PULLING THE TRIGGER.

 1 OKAY? YOU DON'T KNOW IF YOU'RE GOING TO HIT

 2 SOMEONE. THERE'S ALWAYS THE POSSIBILITY THAT YOU'RE

 3 GOING TO MISS.

 4 NOW, IS THAT NOT MURDER? NO. THAT IS

 5 STILL MURDER. WHY? UNDER THE THEORY OF IMPLIED

 6 MALICE. IMPLIED MALICE IS SHOWN WHEN A KILLING

 7 RESULTS IN AN INTENTIONAL ACT, THE NATURAL

 8 CONSEQUENCES OF THE ACT ARE DANGEROUS TO HUMAN LIFE,

 9 AND THE ACT WAS DELIBERATELY PERFORMED WITH

 10 KNOWLEDGE OF THE DANGER TO AND CONSCIOUS DISREGARD

 11 FOR HUMAN LIFE.

 12 SO IF YOU HAVE YOUR EYES CLOSED AND YOU

 13 STICK YOUR RIFLE OUT THE WINDOW AND YOU'RE FIRING

 14 SHOTS, YOU KNOW YOU'RE GOING TO SHOOT SOMEONE. YOU

 15 KNOW YOU'RE GOING TO KILL SOMEONE. YOU MAY NOT

 16 SPECIFICALLY INTEND TO KILL A SPECIFIC PERSON.

 17 MAYBE YOU'RE PLAYING AND YOU JUST WANT TO SEE

 18 WHETHER OR NOT YOU KILL THEM. BUT, NEVERTHELESS,

 19 IT'S STILL MURDER UNDER THE THEORY OF IMPLIED

 20 MALICE. THAT GIVES YOU AN IDEA OF WHAT EXPRESS AND

 21 IMPLIED MALICE IS.

 22 HOW DOES THE THEORY OF IMPLIED MALICE

 23 HAVE APPLICATION TO THIS PARTICULAR CASE? WELL,

 24 LADIES AND GENTLEMEN, WHEN YOU RUSH INTO A ROOM AND

 25 YOU FIRE A GUN IN A ROOM -- LET'S SAY YOU FIRE A

 26 SHOTGUN AT TWO PEOPLE AND THE ROOM IS DARK, AND YOU

 27 KNOW WHAT'S GOING TO HAPPEN WHEN YOU SHOOT THAT GUN

 28 AT THOSE TWO PEOPLE. YOU KNOW YOU'RE GOING TO KILL

 1 THOSE TWO PEOPLE. IT DOESN'T MATTER WHETHER YOU

 2 INTEND TO KILL THOSE TWO PEOPLE IN THE ROOM OR NOT.

 3 JUST BY FIRING THAT GUN, SQUEEZING THAT TRIGGER AT

 4 THOSE PEOPLE IN THIS DARK ROOM, YOU KNOW YOU'RE

 5 GOING TO KILL THEM. YOU CAN'T SAY: WELL, I DIDN'T

 6 INTEND TO KILL. I DIDN'T HAVE EXPRESS MALICE. IT

 7 DOESN'T MATTER WHETHER YOU HAD EXPRESS MALICE. YOU

 8 STILL HAD IMPLIED MALICE. IT'S STILL MURDER, NO

 9 MATTER HOW YOU CUT IT, YOU SEE?

 10 I'M NOT ASKING YOU TO FIND THE

 11 DEFENDANTS GUILTY BASED ON THE THEORY OF IMPLIED

 12 MALICE. I THINK THAT IS THE WORST FINDING YOU CAN

 13 MAKE. I'M ASKING YOU TO FIND THEM GUILTY BASED UPON

 14 EXPRESS MALICE. I'M ASKING YOU TO FIND WHEN THEY

 15 WENT INTO THAT ROOM, THEY WENT IN WITH THE INTENT TO

 16 KILL. I WOULD ASK YOU, THAT'S THE ONLY REASONABLE

 17 CONCLUSION THAT COULD BE DRAWN IN THIS CASE, IS THAT

 18 THEY WENT IN THERE WITH THE INTENT TO KILL. BUT I

 19 DO WANT TO POINT THAT OUT TO YOU, THAT IMPLIED

 20 MALICE, IN ANY EVENT, WOULD APPLY TO THAT CASE. OUR

 21 THEORY IS BASED UPON EXPRESS MALICE.

 22 NOW, LET ME TALK ABOUT SOME OF THE

 23 CHARGES THAT APPLY TO THIS CASE. I ALREADY TOLD YOU

 24 THE CHARGES THAT APPLY TO THIS CASE. LET ME

 25 INTRODUCE YOU TO A CONCEPT CALLED LESSER-INCLUDED

 26 OFFENSES.

 27 NOW, YOU KNOW, AS I INDICATED TO YOU ON

 28 THE CHART, AND AS I INDICATED TO YOU IN MY OPENING

 1 STATEMENT, THAT THE DEFENDANTS ARE CHARGED WITH THE

 2 FIRST-DEGREE MURDER OF THEIR PARENTS.

 3 NOW, THE LAW DOES NOT SIMPLY SAY THEY

 4 ARE GUILTY OF THIS CRIME AND NOTHING ELSE. YOU

 5 EITHER FIND THEM GUILTY OR NOT GUILTY AND GO HOME.

 6 SOMETIMES WHAT THE LAW DOES IS THE LAW APPLIES,

 7 DEPENDING UPON THE FACTS OF THE CASE; AND IT DOES

 8 DEPEND UPON THE SPECIFIC FACTS OF THE CASE. THE LAW

 9 MAY PROVIDE FOR SOMETHING CALLED A LESSER-INCLUDED

 10 OFFENSE.

 11 AND WHAT THAT MEANS IS THAT IF THE JURY

 12 WERE TO FIND THAT THE DEFENDANT IS NOT GUILTY OF

 13 FIRST-DEGREE MURDER, FOR EXAMPLE, THERE'S KIND OF A

 14 BACK-UP CHARGE THAT APPLIES THAT YOU COULD FIND THE

 15 DEFENDANT GUILTY OF. YOU SEE? THAT'S CALLED A

 16 LESSER-INCLUDED OFFENSE. I'M NOT ASKING YOU TO FIND

 17 A LESSER-INCLUDED OFFENSE IN THIS CASE. IT IS MY

 18 POSITION, AND I WILL ARGUE MY POSITION OVER,

 19 THROUGHOUT THE COURSE OF MY ARGUMENT, AS TO WHY THIS

 20 IS ABSOLUTELY A FIRST-DEGREE MURDER.

 21 BUT NEVERTHELESS, YOU SHOULD BE FAMILIAR

 22 WITH THE CONCEPT, AND I WANT TO DISCUSS THAT CONCEPT

 23 WITH YOU.

 24 IN THE FOLLOWING CHART, WHAT I'VE

 25 DEMONSTRATED IS THE CHARGES THAT APPLY TO THIS CASE

 26 AND THE LESSER-INCLUDED OFFENSES.

 27 NOW, KITTY MENENDEZ, AS YOU KNOW, IS

 28 ALLEGED BY THE PROSECUTION TO HAVE BEEN KILLED B

 1 THE DEFENDANTS IN THE COURSE OF MURDER IN THE FIRST

 2 DEGREE; AND THAT IS WHAT WE ARE ASKING YOU TO FIND

 3 IN THIS CASE, AND NOTHING ELSE.

 4 BUT THERE IS A LESSER-INCLUDED OFFENSE

 5 TO MURDER IN THE FIRST DEGREE, WHICH IS MURDER IN

 6 THE SECOND DEGREE.

 7 JOSE MENENDEZ, AS YOU KNOW, IT IS

 8 ALLEGED BY THE PROSECUTION, THAT HE WAS KILLED BY

 9 THE DEFENDANTS IN THE COURSE OF THE CRIME OF MURDER

 10 IN THE FIRST DEGREE. ONCE AGAIN, THE CRIME OF

 11 MURDER IN THE SECOND DEGREE APPLIES AS TO HIM.

 12 NOW, AS TO JOSE MENENDEZ ALONE -- IT

 13 DOES NOT APPLY TO KITTY MENENDEZ -- THERE IS A

 14 LESSER-INCLUDED OFFENSE TO THE CRIME OF

 15 SECOND-DEGREE MURDER, WHICH IS CALLED, AS YOU KNOW,

 16 THE CRIME OF MANSLAUGHTER.

 17 NOW, THIS IS SOMETHING -- ONCE AGAIN,

 18 THE PROSECUTION IS NOT ASKING YOU TO FIND THIS TO BE

 19 TRUE.

 20 I PRESENT THIS CHART TO YOU JUST TO MAKE

 21 IT VERY CLEAR TO YOU THAT IN NO EVENT DOES THE CRIME

 22 OF MANSLAUGHTER APPLY TO KITTY MENENDEZ. IT IS A

 23 CRIME WHICH THEORETICALLY COULD APPLY TO JOSE

 24 MENENDEZ. BUT AGAIN, I'M ASKING YOU TO REJECT EACH

 25 OF THOSE LESSER-INCLUDEDS, TO FIND THE DEFENDANTS

 26 GUILTY OF MURDER IN THE FIRST DEGREE.

 27 NOW, I WOULD LIKE TO DISCUSS WITH YOU

 28 THEN WHAT IS MURDER IN THE FIRST DEGREE. THAT IS

 1 THE CHARGE THE PROSECUTION IS SEEKING, AND WE HAVE

 2 SEVERAL THEORIES OR SEVERAL ROADS BY WHICH YOU CAN

 3 GET THERE. THIS CHART ILLUSTRATES THE ROADS BY

 4 WHICH YOU CAN GET TO FIRST-DEGREE MURDER.

 5 THERE IS SOMETHING CALLED MURDER WHILE

 6 LYING IN WAIT; AND ONCE AGAIN, THIS IS ANOTHER

 7 OVERVIEW CHART. I'M SHOWING YOU A SERIES OF

 8 OVERVIEW CHARTS, GETTING DOWN INTO FINER AND FINER

 9 DETAIL AS TO WHAT THE LAW IS IN THIS CASE. I WILL

 10 BE EXPLAINING TO YOU, BY USE OF DIFFERENT CHARTS,

 11 JUST WHAT EACH OF THESE TERMS REFER TO.

 12 THERE'S SOMETHING CALLED MURDER WHILE

 13 LYING IN WAIT. THAT IS ONE WAY OF GETTING TO

 14 FIRST-DEGREE MURDER.

 15 ANOTHER THEORY FOR GETTING TO

 16 FIRST-DEGREE MURDER IS PREMEDITATED AND DELIBERATE

 17 MURDER.

 18 AND THE THIRD THEORY, ONE I ALREADY

 19 DISCUSSED WITH YOU BRIEFLY, IS THAT THE MURDER WAS A

 20 NATURAL AND PROBABLE CONSEQUENCE OF CONSPIRACY TO

 21 COMMIT THE MURDER, AND YOU KNOW THAT IS BASED UPON

 22 THE THEORY AS I ALREADY DISCUSSED; THAT IF THE

 23 DEFENDANTS, IN FACT, CONSPIRED TO COMMIT MURDER, AND

 24 THAT CRIME WAS COMMITTED, THEY ARE GUILTY OF THAT

 25 CRIME AND OF THE FIRST-DEGREE MURDER OF THEIR

 26 PARENTS.

 27 MS. ABRAMSON: YOUR HONOR, WE WOULD OBJECT AT

 28 THIS POINT TO THAT DEFINITION.

 1 UNDER SWAIN I THINK THIS IS MISLEADING.

 2 THE COURT: YOU HAVE TO ADD ANOTHER ELEMENT

 3 TO THE CONSPIRACY.

 4 MS. ABRAMSON: WE'D LIKE TO BE HEARD ON THE

 5 THRUST OF THE ARGUMENT, GIVEN THE SWAIN CASE, YOUR

 6 HONOR.

 7 THE COURT: OVERRULED. WITH THE

 8 UNDERSTANDING, AGAIN, THAT ARGUMENTS OF THE LAWYERS,

 9 BOTH AS TO THE FACTS AND AS TO THE LAW, ARE JUST

 10 THEIR INTERPRETATIONS. AS FAR AS THE LAW IS

 11 CONCERNED, I'LL GIVE YOU THE FINAL VERSION AS TO ALL

 12 LEGAL RULES.

 13 I'LL PERMIT THE ARGUMENT TO CONTINUE.

 14 BEAR IN MIND, THIS IS JUST AN

 15 INTERPRETATION AS PROVIDED BY MR. CONN.

 16 MR. CONN: ONE OF THE THINGS THAT I WILL

 17 POINT OUT TO YOU NOW, ALTHOUGH IT IS CONTAINED ON

 18 OTHER CHARTS, IS THIS: IN ORDER TO GET TO

 19 FIRST-DEGREE MURDER, YOU HAVE TO HAVE EXPRESS

 20 MALICE. OKAY. CAN'T BE BASED UPON IMPLIED MALICE.

 21 REMEMBER, I TOLD YOU THERE ARE TWO KINDS OF MALICE:

 22 EXPRESS MALICE AND IMPLIED MALICE. ONE, EXPRESS

 23 MALICE, IS WHERE YOU INTEND TO KILL. YOU FIRED THAT

 24 RIFLE OUT THE WINDOW. YOU KNOW YOU'RE GOING TO HIT

 25 SOMEONE. YOU DON'T HAVE TO HIT SOMEONE AND INTEND

 26 TO KILL THEM. THAT'S EXPRESS MALICE.

 1 IMPLIED MALICE IS WHEN YOU FIRE YOUR GU

 2 OUT THE WINDOW WITH YOUR EYES CLOSED. YOU'RE NOT SUR

 3 IF YOU'RE GOING TO HIT THEM, OR YOU REALLY DON'T CARE,

 4 BUT YOU KNOW IF YOU HIT THEM YOU'LL KILL THEM. THAT'S

 5 IMPLIED MALICE.

 6 FOR EACH OF THESE THEORIES, IT MUST BE

 7 NECESSARY TO SHOW THAT THE DEFENDANT'S STATE OF MIND HAD

 8 EXPRESS MALICE; THAT IS, IF MURDER WHILE LYING IS WAIT

 9 IS COMMITTED, IT WAS WITH EXPRESS MALICE; THAT THE

 10 PREMEDITATED AND DELIBERATE MURDER WAS WITH EXPRESS

 11 MALICE; THAT IS, INTENT TO KILL.

 12 AND ALSO IN REGARD TO THAT INTENT THEORY,

 13 LIABILITY, IT MUST BE SHOWN THAT AT THE TIME OF THE

 14 CONSPIRACY YOU INTENDED TO KILL. YOU HAD THAT STATE OF

 15 EXPRESS MALICE IN YOUR MIND AT THE TIME THAT YOU ENTERED

 16 INTO THAT CONSPIRACY.

 17 NOW, I WOULD LIKE TO BREAK DOWN THESE

 18 THEORIES FOR YOU, AND I WILL START FIRST WITH DELIBERATE

 19 AND PREMEDITATED MURDER

 20 WHAT IS MEANT BY DELIBERATE AND

 21 PREMEDITATED MURDER?

 22 WELL, YOU WILL RECEIVE A JURY INSTRUCTION

 23 WHICH TELLS YOU EACH OF THE ELEMENTS OF THIS OFFENSE,

 24 AND IT EXPLAINS EACH OF THESE CONCEPTS TO YOU.

 25 THAT INSTRUCTION SAYS THAT ALL MURDER WHICH

 26 IS PERPETRATED BY ANY KIND OF WILLFUL, DELIBERATE AND

 27 PREMEDITATED KILLING, WITH EXPRESS MALICE AFORETHOUGHT,

 28 IS MURDER OF THE FIRST DEGREE.

 1 NOW, LET ME GO BACK TO THE EXAMPLE OF

 2 SOMEONE FIRING OUT A WINDOW, YOU SEE. WHEN I SAY THAT

 3 THAT'S MURDER, AND IT'S MURDER BASED UPON TWO DIFFERENT

 4 THEORIES, EXPRESS MALICE OR IMPLIED MALICE, THAT DOESN'T

 5 AUTOMATICALLY MAKE IT A MURDER IN THE FIRST DEGREE.

 6 YOU CAN THINK OF MURDER IN THE SECOND

 7 DEGREE AS KIND OF PLAIN OLD MURDER. THAT'S ONE WAY OF

 8 LOOKING AT IT. PLAIN OLD MURDER.

 9 IN ORDER TO GET TO FIRST-DEGREE MURDER, YOU

 10 HAVE TO SHOW SOMETHING MORE. YOU HAVE TO SHOW THAT YOU

 11 CAN TAKE ONE OF THOSE ROADS TO GET TO THAT HIGHER LEVEL

 12 OF MURDER.

 13 SO, IF ALL WE KNOW IS YOU'RE FIRING OUT A

 14 WINDOW AND YOU INTEND TO HIT PEOPLE -- AND YOU INTEND TO

 15 HIT PEOPLE AND YOU KILL THEM -- AND YOU INTEND TO KILL

 16 THEM, THAT'S NOT ENOUGH FOR FIRST-DEGREE MURDER. IT'S

 17 EXPRESS MALICE, IT'S MURDER, BUT IT'S NOT NECESSARILY

 18 FIRST-DEGREE MURDER. YOU NEED TO KNOW MORE.

 19 THE SAME THING WHERE IMPLIED MALICE IS

 20 SHOWN. IMPLIED MALICE CANNOT BE THE BASIS FOR

 21 FIRST-DEGREE MURDER. AND SO YOU DO NOT HAVE

 22 FIRST-DEGREE MURDER BASED UPON AN IMPLIED MALICE THEORY.

 23 BUT HERE, TURNING TO PREMEDITATED AND

 24 DELIBERATE MURDER.

 25 ALL MURDER PERPETRATED BY A DELIBERATE,

 26 PREMEDITATED AND WILLFUL ACT IS MURDER IN THE

 27 FIRST-DEGREE. IT CONTAINS ALL OF THOSE CONCEPTS. LET

 28 ME EXPLORE THOSE WITH YOU.

 1 A WILLFUL KILLING SIMPLY MEANS AN

 2 INTENTIONAL KILLING. WELL, CERTAINLY FIRING OUT A

 3 WINDOW, AS I SAID, IS A WILLFUL KILLING.

 4 LET'S TAKE NO. 4. LET'S JUMP TO NO. 4 FOR

 5 A SECOND, INTENT TO KILL.

 6 I TOLD YOU THAT IF YOU FIRE OUT A WINDOW

 7 AND YOU INTEND TO KILL SOMEONE, THAT'S A -- THAT IS AN

 8 EXAMPLE OF EXPRESS MALICE AFORETHOUGHT.

 9 SO, FIRING OUT A WINDOW, YOU SEE, INTENDING

 10 TO KILL SOMEONE AND KILLING SOMEONE, DOES IN FACT

 11 SATISFY THESE REQUIREMENTS OF NO. 1 AND NO. 4.

 12 BUT THE PROBLEM WITH FIRING OUT THE WINDOW

 13 IS THAT THE OTHER ADDITIONAL ITEMS, TWO AND THREE, ARE

 14 NOT NECESSARILY PRESENT. THAT IS WHAT DISTINGUISHES

 15 FIRING OUT THE WINDOW FROM FIRST-DEGREE MURDER, ALTHOUGH

 16 THIS MAY BE PRESENT IN THAT SITUATION.

 17 PREMEDITATED MURDER MEANS YOU CONSIDERED IT

 18 BEFOREHAND. SO YOU WOULD HAVE TO SHOW THAT A PERSON

 19 CONSIDERED HIS ACTION BEFOREHAND.

 20 SECONDLY, DELIBERATE MEANS CAREFUL THOUGHT

 21 AND WEIGHING OF CONSIDERATIONS FOR AND AGAINST THE

 22 PROPOSED COURSE OF ACTION.

 23 SO, YOU SEE THAT FIRST-DEGREE MURDER, BASED

 24 UPON THE THEORY OF PREMEDITATION AND DELIBERATION, IS

 25 BASED UPON THE NOTION OF EVALUATING, OF CONSIDERING, OF

 26 USING YOUR JUDGMENT. WHAT IT REALLY COMES DOWN TO IS

 27 THE NOTION OF "SHOULD I OR SHOULDN'T I?" YOU SEE,

 28 BECAUSE THE LAW PUNISHES THOSE WHO ENGAGE IN THAT MENTAL

 1 PROCESS, "SHOULD I OR SHOULDN'T I", MORE HARSHLY THAN

 2 SIMPLY THE PERSON WHO FIRED OUT THAT WINDOW WITHOUT EVEN

 3 THINKING, YOU SEE. THAT'S WHAT DISTINGUISHES

 4 FIRST-DEGREE MURDER FROM SECOND DEGREE MURDER.

 5 SO NOW, CAN YOU HAVE A SITUATION WHERE THE

 6 PERSON IS FIRING OUT A WINDOW, AND IT IS FIRST-DEGREE

 7 MURDER?

 8 WELL, OF COURSE, PROVIDED THAT BEFORE HE

 9 STARTED FIRING AT THOSE PEOPLE, HE WENT THROUGH THIS

 10 BALANCING ACT, AND HE SAID: "SHOULD I OR SHOULDN'T I?"

 11 AND HE THOUGHT ABOUT IT, AND SAID: "ON THE ONE HAND, I

 12 DON'T WANT TO KILL ANYONE. BUT ON THE OTHER HAND, WHO

 13 CARES. I THINK I WILL. I AM GOING TO DO IT."

 14 ONCE HE ENGAGED IN THAT BALANCING ACT, AND

 15 ONCE HE FIRES THAT RIFLE OUT THE WINDOW, THEN IT IS A

 16 FIRST-DEGREE MURDER, YOU SEE; WHEREAS, THE PERSON WHO

 17 JUST FIRES OUT THE WINDOW WITHOUT THINKING INTENDS TO

 18 KILL, BUT WITHOUT ENGAGING IN THAT BALANCING ACT, IS

 19 RESPONSIBLE ONLY FOR SECOND-DEGREE MURDER.

 20 SO THAT'S AN EXAMPLE OF THE DIFFERENCE

 21 BETWEEN FIRST-DEGREE MURDER, PREMEDITATED MURDER, THAT

 22 IS, AND SECOND-DEGREE MURDER, BASED UPON THE THEORY OF

 23 EXPRESS MALICE. AND YOU ALREADY KNOW THE THEORY OF

 24 SECOND-DEGREE MURDER BASED ON IMPLIED MALICE, WHICH IS

 25 THE PERSON SHOOTING OUT THE WINDOW WITH HIS EYES CLOSED.

 26 OKAY.

 27 SO PREMEDITATION AND DELIBERATION, HOW MUCH

 28 THOUGHT IS REQUIRED HERE? YOU SEE, THAT'S THE KEY. HOW

 1 MUCH THOUGHT IS REQUIRED HERE? HOW MUCH THOUGHT MUST

 2 YOU GIVE INTO SHOOTING SOMEONE BEFORE YOU ACTUALLY DO

 3 IT, THAT YOU CAN SAY THIS IS A FIRST-DEGREE,

 4 PREMEDITATED AND DELIBERATE MURDER?

 5 IT CAN BE A VERY, VERY SHORT PERIOD OF

 6 TIME, YOU SEE, BECAUSE THE KEY UNDER THE LAW IS NOT THE

 7 LENGTH OF TIME. THE LAW DOESN'T CARE ABOUT THE TIME;

 8 WHETHER IT'S FIVE MINUTES, OR ONE MINUTE, OR TWENTY

 9 SECONDS. THE LAW DOESN'T CARE ABOUT THAT.

 10 WHAT THE LAW CARES ABOUT IS DID THIS PERSON

 11 CONDUCT THAT BALANCING TEST; BECAUSE IF THAT PERSON

 12 THOUGHT ABOUT IT, WEIGHED AND CONSIDERED HIS ACTIONS AND

 13 SAID: "YOU KNOW, I'M GOING TO DO IT," THAT'S

 14 FIRST-DEGREE MURDER.

 15 AND LISTEN VERY CAREFULLY TO THE

 16 INSTRUCTIONS THAT THE JUDGE WILL GIVE YOU IN THIS

 17 REGARD, BECAUSE THIS IS A KEY ELEMENT TO FIRST-DEGREE

 18 PREMEDITATED MURDER IN THIS CASE.

 19 "IF YOU FIND THAT THE KILLING WAS

 20 PRECEDED AND ACCOMPANIED BY A CLEAR,

 21 DELIBERATE INTENT ON THE PART OF THE

 22 DEFENDANT TO KILL, WHICH WAS THE RESULT OF

 23 DELIBERATION AND PREMEDITATION, SO THAT IT

 24 MUST HAVE BEEN FORMED UPON PRE-EXISTING

 25 REFLECTION AND NOT UNDER A SUDDEN HEAT OF

 26 PASSION, OR OTHER CONDITION PRECLUDING THE

 27 IDEA OF DELIBERATION, IT IS MURDER OF THE

 28 FIRST-DEGREE.

 1 "THE LAW DOES NOT UNDERTAKE TO

 2 MEASURE IN UNITS OF TIME THE LENGTH OF THE

 3 PERIOD DURING WHICH THE THOUGHT MUST BE

 4 PONDERED BEFORE IT CAN RIPEN INTO AN

 5 INTENT TO KILL WHICH IS TRULY DELIBERATE

 6 AND PREMEDITATED. THE TIME WILL VARY WITH

 7 DIFFERENT INDIVIDUALS AND UNDER VARYING

 8 CIRCUMSTANCES. THE TRUE TEST IS NOT THE

 9 DURATION OF TIME, BUT RATHER THE EXTENT OF

 10 REFLECTION. A COLD, CALCULATED JUDGMENT

 11 AND DECISION MAY BE ARRIVED AT IN A SHORT

 12 PERIOD OF TIME, BUT A MERE UNCONSIDERED

 13 AND RASH IMPULSE, EVEN THOUGH IT INCLUDE

 14 AN INTENT TO KILL, IS NOT SUCH

 15 DELIBERATION AND PREMEDITATION AS WILL FIX

 16 AN UNLAWFUL KILLING AS MURDER IN THE

 17 FIRST-DEGREE.

 18 "TO CONSTITUTE A DELIBERATE AND

 19 PREMEDITATED KILLING, THE SLAYER MUST

 20 WEIGH AND CONSIDER THE QUESTION OF KILLING

 21 AND THE REASONS FOR AND AGAINST SUCH A

 22 CHOICE, AND, HAVING IN MIND THE

 23 CONSEQUENCES, HE DECIDES TO AND DOES

 24 KILL."

 25 SO YOU SEE, WHEN YOU THINK ABOUT IT, WHEN

 26 YOU WEIGH IT IN YOUR MIND AND YOU SAY: "I'M GOING TO DO

 27 IT," THAT IS ENOUGH.

 28 SO LET ME GIVE YOU AN EXAMPLE. WHAT IS THE

 1 MINIMUM AMOUNT OF TIME THAT YOU CAN CONSIDER IN WHICH

 2 YOU CAN HAVE A PREMEDITATED ACT, A PREMEDITATED AND

 3 DELIBERATE ACT? WELL, CONSIDER THIS:

 4 A PERSON WALKS DOWN THE STREET, AND WALKING

 5 DOWN THE STREET DECIDES TO JAYWALK; CROSSES THE STREET,

 6 RIGHT IN THE MIDDLE OF THE STREET.

 7 NOW, DID THAT PERSON PREMEDITATE AND

 8 DELIBERATE UPON THAT ACT BEFORE HE DID IT? WELL, IT

 9 DEPENDS UPON THE SITUATION. MUST WE PROVE THAT IN ORDER

 10 FOR THAT TO BE A PREMEDITATED AND DELIBERATE ACT, THAT

 11 THE PERSON THOUGHT ABOUT IT A WEEK BEFORE? NO. A DAY

 12 BEFORE? NO. A MINUTE BEFORE? NOT NECESSARILY.

 13 IF THE PERSON WAS WALKING DOWN THE STREET,

 14 NOT PARTICULARLY INTENDING TO CROSS THE STREET, AND THEN

 15 SUDDENLY DECIDED TO JAYWALK, THE ISSUE BECOMES DID HE

 16 JUST JAYWALK WITHOUT CONSIDERING HIS ACTIONS, OR DID HE

 17 JAYWALK AFTER PONDERING THE RIGHTNESS OR THE

 18 WRONGFULNESS OF HIS ACTIONS? THAT IS THE KEY.

 19 IF HE JUST CROSSED THE STREET

 20 ABSENT-MINDEDLY AND JAYWALKED, THEN IT'S NOT A

 21 PREMEDITATED AND DELIBERATE ACT. BUT IF HE STOPPED AND

 22 SAID: "WAIT A MINUTE. I KNOW I'M NOT SUPPOSED TO

 23 JAYWALK. SHOULD I DO IT, OR SHOULDN'T I DO IT?"

 24 AND HE THOUGHT ABOUT IT, AND HE LOOKED TO

 25 SEE IF THERE WERE ANY POLICE AT THE CORNER, AND HE

 26 LOOKED OVER THERE, AND HE DIDN'T SEE ANY POLICE OVER AT

 27 THE CORNER, AND HE SAYS: "YOU KNOW, I AM NOT SUPPOSED

 28 TO JAYWALK, BUT IT'S A MINOR CRIME, AND WHO CARES.

 1 OKAY. I'LL JAYWALK." AND HE JAYWALKS.

 2 THAT IS A PREMEDITATED AND DELIBERATE ACT,

 3 YOU SEE. SO THE NOTION OF PREMEDITATION AND

 4 DELIBERATION DOES NOT MEAN A LONG PERIOD OF TIME. IT

 5 CAN BE LIKE THAT, YOU SEE. DEPENDING UPON WHETHER THE

 6 PERSON GAVE THOUGHT AND WEIGHING OF THE CONSIDERATION,

 7 CONSIDERED IT BEFOREHAND, AND THEN WENT AHEAD AND DID

 8 IT, YOU SEE.

 9 SO A PREMEDITATED MURDER CAN BE VERY QUICK,

 10 DEPENDING UPON THE CIRCUMSTANCES.

 11 NOW, IT'S VERY IMPORTANT THAT AS YOU

 12 DISCUSS THIS CASE YOU USE THE LANGUAGE OF THE LAW,

 13 BECAUSE SOMETIMES PEOPLE USE SYNONYMS WHICH SOUND CLOSE,

 14 AND IT'S REASONABLE. WE ALL SPEAK IN TERMS OF SYNONYMS,

 15 AND WE ALL USE LANGUAGE SOMEWHAT INACCURATELY AT TIMES.

 16 BUT WHEN YOU DECIDE THIS CASE, YOU DECIDE THIS CASE AS A

 17 JUDGE, AND IT'S VERY IMPORTANT THAT YOU USE THE LANGUAGE

 18 ACCURATELY.

 19 THIS IS OF PARTICULAR CONCERN WHEN YOU TALK

 20 ABOUT THE NOTION OF PREMEDITATED MURDER, YOU SEE,

 21 BECAUSE PREMEDITATED MURDER, SOMETIMES PEOPLE SAY: "OH,

 22 I KNOW WHAT PREMEDITATED MURDER IS. IT'S PLANNED

 23 MURDER," YOU SEE. PEOPLE SAY THAT.

 24 STOP PEOPLE ON THE STREET, "WHAT IS

 25 PREMEDITATED MURDER?"

 26 "IT'S PLANNED MURDER."

 27 AND THEY'RE KIND OF RIGHT. PLANNING OFTEN

 28 DOES GET INVOLVED IN PREMEDITATION, YOU SEE. BUT

 1 PREMEDITATION AND PLANNING ARE NOT SYNONYMOUS, AND

 2 YOU'VE GOT TO REMEMBER THAT WHEN YOU GO BACK INTO THE

 3 JURY ROOM AND YOU START TALKING ABOUT THIS CASE. TALK

 4 ABOUT A PLAN.

 5 YOU CAN VERY WELL TALK ABOUT A PLAN. JUST

 6 AS I SAID, YOU CAN TALK ABOUT, AS I SAID, THE NOTION OF

 7 WHETHER OR NOT JOSE MENENDEZ WAS ABUSING HIS SONS.

 8 THESE WERE ALL VALID ISSUES THAT YOU SHOULD DISCUSS, BUT

 9 IN THE END, GET BACK TO THE LANGUAGE OF THE LAW, AND

 10 DECIDE THE CASE BASED UPON THE LANGUAGE OF THE LAW AND

 11 NOT BASED UPON LAYMAN'S LANGUAGE.

 12 AND PLANNING IS A PARTICULAR ISSUE IN THIS

 13 CASE, BECAUSE PLANNING, WHAT DOES THE WORD "PLANNING"

 14 MEAN? PLANNING MEANS -- WELL, SINCE IT'S A LAY TERM, I

 15 DON'T HAVE A LEGAL DEFINITION FOR IT. IT'S A LAY TERM.

 16 YOU CAN TELL ME WHAT PLANNING MEANS.

 17 PLANNING CAN MEAN A LONG, DRAWN-OUT PLAN.

 18 IT COULD MEAN A WRITTEN PLAN. IT COULD MEAN SOMETHING

 19 TO DO WITH A COURSE OF ACTION, HOW WELL A PARTICULAR

 20 COURSE OF ACTION IS THOUGHT OUT IN ADVANCE, YOU SEE.

 21 BUT IT'S VERY IMPORTANT FOR YOU TO

 22 UNDERSTAND, WHEN YOU DISCUSS THE CONCEPT OF PREMEDITATED

 23 AND DELIBERATE MURDER, THAT THE DEFENDANTS ARE NOT

 24 CHARGED WITH A PLANNED MURDER, YOU SEE. YOU MAY VERY

 25 WELL FIND THAT THIS WAS INDEED A PLANNED MURDER, BUT

 26 THEY ARE NOT CHARGED WITH A PLANNED MURDER. YOUR

 27 DECISION AS TO WHETHER OR NOT THE DEFENDANTS ARE GUILTY

 28 OF A PREMEDITATED AND DELIBERATE MURDER SHOULD -- DOES

 1 NOT COME DOWN TO WHETHER OR NOT THERE WAS A PLAN, OR

 2 WHETHER IT WAS GOOD PLAN OR A BAD PLAN.

 3 IT DOESN'T MATTER IF THERE IT WAS A PLAN OR

 4 NOT. THERE CAN BE NO PLAN WHATSOEVER, AND IT COULD

 5 STILL BE A PREMEDITATED AND DELIBERATE MURDER. IT'S

 6 VERY IMPORTANT FOR YOU TO UNDERSTAND THAT, YOU SEE.

 7 SO, FOR EXAMPLE, LET'S TAKE THE CONFESSION

 8 TO CIGNARELLI, OKAY. THIS IS ANOTHER NOTION THAT I AM

 9 TELLING YOU NOW HAS A PARTICULAR APPLICATION IN REGARD

 10 TO THIS CONCEPT.

 11 WHAT IT WAS THAT CRAIG CIGNARELLI SAID? HE

 12 SAID THAT HE WENT OVER AND HE SPOKE WITH THE DEFENDANT

 13 AT HIS HOME, AND IT WAS THERE THAT THE DEFENDANT GAVE

 14 HIM A WALK-THROUGH OF THE CRIME, AND HE SAID: "THIS IS

 15 HOW IT HAPPENED," AND HE GAVE HIM ALL THE DETAILS.

 16 "AND WE RAN INTO THE ROOM -- WE RUSHED INTO

 17 THE ROOM, AND I WAS ON ONE SIDE AND LYLE MENENDEZ WAS ON

 18 THE OTHER SIDE."

 19 BUT THE IMPORTANT PART OF THAT CONFESSION,

 20 ONE OF THE IMPORTANT PARTS OF THAT CONFESSION, WAS THE

 21 FACT OF HOW THE MURDER CAME ABOUT. HE SAID:

 22 "WE WERE AT THE MOVIES, AND WE LEFT

 23 THE MOVIES. WE CAME BACK TO THE HOUSE,

 24 AND AFTER WE CAME BACK TO THE HOUSE,

 25 WENT IN TO GET MY IDENTIFICATION TO GO

 26 OUT, AND AT THAT POINT LYLE MENENDEZ

 27 HANDED ME THE GUNS -- HANDED ME A GUN. HE

 28 WAS STANDING THERE WITH TWO GUNS, AND I

 1 TOOK ONE, AND LYLE MENENDEZ SAID, 'LET'S

 2 DO IT.' AND WE WENT INSIDE AND WE SHOT

 3 OUR PARENTS TO DEATH."

 4 NOW, YOU SEE, LADIES AND GENTLEMEN, THE

 5 ISSUE THERE IS THIS: WAS THAT A PLANNED MURDER?

 6 THE DEFENDANTS ARE NOT CHARGED WITH A

 7 PLANNED MURDER. THE DEFENDANTS ARE CHARGED WITH A

 8 PREMEDITATED MURDER.

 9 IF YOU FIND THAT THE DEFENDANTS SHOT THEIR

 10 PARENTS TO DEATH AFTER ENGAGING IN A CONSPIRACY TO

 11 COMMIT MURDER; THAT IS, THAT THEY THOUGHT ABOUT IT, THEY

 12 INTENDED TO DO IT WITH EXPRESS MALICE, AND THEY DECIDED

 13 THAT THEY WERE GOING TO KILL THEIR PARENTS, IT DOESN'T

 14 MATTER AFTER THAT IF THERE WAS A SPECIFIC PLAN OR NOT.

 15 IF THEY THOUGHT ABOUT IT AND THEY DECIDED

 16 TO KILL THEIR PARENTS, THEY COULD HAVE DECIDED ON THE

 17 SPUR OF THE MOMENT. THEY COULD HAVE BEEN DEBATING,

 18 "SHOULD WE OR SHOULDN'T WE? YES, LET'S DO IT," OR "WHEN

 19 ARE WE GOING TO DO IT? I DON'T KNOW WHEN WE'RE GOING TO

 20 DO IT. I DON'T KNOW HOW WE'RE GOING TO DO IT."

 21 THEY COULD HAVE BEEN KICKING AROUND THIS

 22 IDEA FRIDAY. THEY COULD HAVE BEEN KICKING AROUND THIS

 23 IDEA SATURDAY. THEY COULD HAVE BEEN KICKING AROUND THIS

 24 IDEA SUNDAY, YOU SEE.

 25 BUT WHAT CRAIG CIGNARELLI DESCRIBED IN

 26 HIS -- IN THE STATEMENT MADE TO HIM BY ERIK MENENDEZ I

 27 MORE THAN SUFFICIENT FOR A FINDING OF A PREMEDITATE

 28 MURDER; BECAUSE IF ERIK AND LYLE MENENDEZ AT THAT POINT

 1 WITH GUNS IN THEIR HANDS, SAID: "WE THOUGHT ABOUT IT,"

 2 OR THOUGHT IT TO THEMSELVES, THEY DON'T HAVE TO

 3 CONSCIOUSLY SAY THIS. "WE THOUGHT ABOUT IT. SHOULD WE

 4 OR SHOULDN'T WE? WE DECIDE YES, WE'RE GOING TO DO IT.

 5 WE WEIGHED AND CONSIDERED. YES, LET'S DO IT."

 6 THEY COULD HAVE MADE THE DECISION RIGHT

 7 THEN, RIGHT AT THAT POINT. "LET'S DO IT."

 8 MS. ABRAMSON: EXCUSE ME, YOUR HONOR. COULD WE

 9 APPROACH FOR A SECOND? I DON'T MEAN TO INTERRUPT

 10 COUNSEL, BUT --

 11 THE COURT: BUT YOU DO.

 12 MS. ABRAMSON: I THINK IT'S NECESSARY, AND I WILL

 13 TELL COUNSEL WHY IN A MOMENT.

 14 THE COURT: ALL RIGHT, WE'LL LET YOU APPROACH.

 16 (THE FOLLOWING PAGE, 50914,

 17 WAS HELD OUT OF THE PRESENCE

 18 OF THE JURY AND ORDERED SEALED BY THE

 19 COURT:)

 1 (THE FOLLOWING PROCEEDINGS WERE

 2 HELD OUT OF THE PRESENCE OF

 3 THE JURY:)

 5 MR. GESSLER: THIS PART I DON'T WANT TO BE

 6 SEALED.

 7 YOUR HONOR, I AM INTERPOSING AN OBJECTION

 8 AT THIS POINT, BECAUSE I AM NOT SURE WHERE MR. CONN IS

 9 GOING, BUT WE HAD A HINT OF IT BEFORE, AND WE OBJECTED.

 10 THERE IS NO -- LET'S SAY AUTOMATIC

 11 FIRST-DEGREE MURDER IF A MURDER OCCURS AFTER A

 12 CONSPIRACY WAS ENTERED. WHAT SWAIN SAYS IS THAT IS

 13 CONSPIRACY TO MURDER, NOT DIVIDED INTO DEGREES, AS THE

 14 CRIME OF CONSPIRACY. BUT AS WE KNOW, IN SWAIN ITSELF,

 15 THE FINDING FOR MURDER WAS SECOND DEGREE.

 16 MS. ABRAMSON: ON THE IMPLIED MALICE.

 17 MR. GESSLER: AND THE FINDING OF THE CONSPIRACY

 18 WAS FIRST-DEGREE.

 19 THE COURT: LET ME ASK THE PEOPLE:

 20 IS IT YOUR POSITION YOU ARE ARGUING

 21 LIABILITY IN COUNTS 1 AND 2 ON THE THEORY OF

 22 CONSPIRACY, OR THEY CONSPIRED TO COMMIT SOMETHING OTHER

 23 THAN A FIRST-DEGREE MURDER?

 24 MR. CONN: NO.

 25 THE COURT: BECAUSE THE WAY YOU'RE DOING IT, IF

 26 YOU ARGUE IT ANY OTHER WAY, YOU DO CREATE SOME

 27 AMBIGUITY, AND WHAT YOU'RE SAYING IS CREATING

 28 CONFLICTING INSTRUCTIONS, BECAUSE -- AND IT ALSO CREATES

 1 CONFLICT IN WHAT YOUR THEORY IS, QUITE FRANKLY.

 2 MR. CONN: SO YOU'RE SAYING THAT IF THEY CONSPIRE

 3 TO COMMIT FIRST-DEGREE MURDER, BASED UPON THEORY ONE OR

 4 TWO -- I AM SORRY. I DIDN'T FOLLOW THE COURT.

 5 MS. ABRAMSON: THEN THEY HAVE TO HAVE COMMITTED

 6 FIRST-DEGREE. YOU CAN'T HAVE THEM COMMIT A SECOND AND

 7 THEN BOOT IT UP TO A FIRST BECAUSE SOMETIME PREVIOUSLY

 8 THEY AGREED TO A FIRST.

 9 THE COURT: THE THEORY OF LIABILITY FOR COUNTS 1

 10 AND 2 IS THAT THEY CONSPIRED TO COMMIT FIRST-DEGREE

 11 MURDER, OR THAT THEY AIDED AND ABETTED, OR THAT THEY'RE

 12 THE PRINCIPAL, BUT NOT THAT THEY CONSPIRED TO COMMIT

 13 MURDER, AND BY CONSPIRING TO COMMIT MURDER, WHICH CAN BE

 14 SECOND-DEGREE WITHOUT MALICE, THAT THEY SUDDENLY HAVE A

 15 MISDEMEANOR IN COUNTS 1 AND 2.

 16 SO YOU DO HAVE TO STAY AWAY FROM THAT.

 17 MR. CONN: ALL RIGHT. I WILL DO THAT.

 18 MS. ABRAMSON: AND THE MURDER ITSELF MUST BE A

 19 FIRST.

 20 MR. CONN: YES.

 21 MR. GESSLER: IN FACT, CONSPIRE TO COMMIT MURDER

 22 OF WHATEVER DEGREE. EVEN IF I CONSPIRE TO COMMIT MURDER

 23 OF THE SECOND-DEGREE, 30 MINUTES LATER OR A DAY LATER,

 24 NOW THERE IS A KILLING, A MURDER, DOESN'T MEAN THAT THAT

 25 IS THE NATURAL AND PROBABLE CONSEQUENCE OF MY CONSPIRACY

 26 TO COMMIT MURDER AUTOMATICALLY. IT MAY BE, BUT IT MAY

 27 NOT BE.

 28 THAT'S WHAT I FEEL WAS GETTING DANGEROUSLY

 1 CLOSE.

 2 THE COURT: YES, ESPECIALLY WHEN THE PEOPLE HAVE

 3 OTHER THEORIES THAT YOU'RE PUSHING HERE. THERE IS NO

 4 NEED TO GO INTO THAT.

 5 (THE FOLLOWING PROCEEDINGS WERE

 6 HELD IN OPEN COURT IN THE PRESENCE

 7 OF THE JURY:)

 8

 9 THE COURT: AT THIS TIME WE'LL TAKE A RECESS.

 10 DON'T DISCUSS THE MATTER. DON'T FORM ANY

 11 FINAL OPINIONS. WE WILL TAKE A RECESS, AND START UP

 12 AGAIN AT 3:30.

 13 (A RECESS WAS TAKEN FROM

 14 3:15 P.M. UNTIL 3:30 P.M.)

 15

 16 THE COURT: OKAY. WE'RE ALL SET HERE, AND WE

 17 WILL NOW RESUME WITH THE TRIAL

 18 WE WILL HAVE THE JURY OUT.

 19 (THE JURY ENTERS THE COURTROOM

 20 AND THE FOLLOWING PROCEEDINGS

 21 WERE HELD:)

 22

 23 THE COURT: OKAY. THE JURY IS BACK, AND WE WILL

 24 CONTINUE WITH THE ARGUMENT, GOING UNTIL AROUND 4:30.

 25 I TRIED TO ADJUST THE AIR-CONDITIONING TO

 26 GET IT A LITTLE COOLER IN HERE. IT WAS A LITTLE WARMER

 27 EARLIER IN THE AFTERNOON. AS THINGS NORMALLY GO, IT'LL

 28 PROBABLY GET A LITTLE TOO COLD. SO WE WILL JUST WAIT

 1 AND SEE HOW WE WILL HAVE TO DEAL WITH THAT ONE.

 2 SO, WE WILL NOW CONTINUE WITH THE ARGUMENT.

 3 MR. CONN: WE WERE SPEAKING ABOUT PREMEDITATION

 4 AND DELIBERATION, AND THE ELEMENTS THAT WILL CONSTITUTE

 5 PREMEDITATED AND DELIBERATE MURDER. AND I SPOKE ABOUT

 6 PREMEDITATION, AND HOW QUICKLY PREMEDITATION AND

 7 DELIBERATION CAN OCCUR.

 8 LET ME GIVE YOU ANOTHER EXAMPLE.

 9 HAVE YOU EVER BEEN IN A SITUATION WHERE YOU

 10 RAN THROUGH A YELLOW LIGHT; AND YOU KNOW THAT -- WELL,

 11 YOU MAY NOT GET INTO THAT INTERSECTION BEFORE IT TURNS

 12 RED, AND YOU MAY NOT GET THROUGH THE INTERSECTION.

 13 AND YOU EVALUATED YOUR SITUATION AND YOU

 14 DECIDED: "WELL, I'M LITTLE LATE FOR WORK. I KNOW IT'S

 15 SAFE. THERE'S NO ONE AROUND. THERE'S REALLY NO CARS

 16 GOING THROUGH THE INTERSECTION. SHOULD I PUSH IT A

 17 LITTLE BIT?"

 18 AND MAYBE MANY OF YOU HAVE BEEN IN THAT

 19 SITUATION, WHERE YOU HAVE EVALUATED A PROPOSED COURSE OF

 20 ACTION, FOR AND AGAINST.

 21 THAT'S ALL IT TAKES. ANY TIME YOU

 22 EVALUATE, THE PROCESS OF EVALUATION IS ENOUGH TO

 23 CONSTITUTE THE STATE OF MIND THAT THE LAW ELEVATES TO A

 24 HIGHER DEGREE OF MURDER, AND CALLS THAT FIRST-DEGREE

 25 MURDER.

 26 AND WITH THAT IN MIND, LET ME BRING YOUR

 27 ATTENTION BACK TO A CHART THAT YOU ALREADY SAW, ONE THAT

 28 I PRESENTED TO YOU IN OPENING STATEMENT WHEN I SAID THAT

 1 ONE OF THE PIECES OF EVIDENCE THAT WE WERE GOING TO BE

 2 PRESENTING TO YOU IN THIS CASE IS THE STATEMENTS OF THE

 3 DEFENDANT ON A TAPE-RECORDING, AND NOW WE KNOW THE DATE

 4 OF THAT TAPE-RECORDING AS DECEMBER THE 11TH, 1989; A

 5 SESSION BETWEEN DR. OZIEL AND ERIK MENENDEZ AND LYLE

 6 MENENDEZ, WHEN ERIK AND LYLE MENENDEZ, BEFORE THEY HAD A

 7 MOTIVATION TO COME UP WITH THE "ABUSE EXCUSE," SAT DOWN

 8 IN A CONVERSATION WITH DR. OZIEL, AND THEY TALKED ABOUT

 9 THIS CRIME.

 10 AND WHAT DID THEY SAY BACK THEN, BEFORE

 11 THEY WERE ARRESTED, BEFORE THEY HAD A REASON TO MAKE

 12 ALLEGATIONS AGAINST THEIR PARENTS, BEFORE THEY HAD A

 13 REASON TO SAY: "I THOUGHT MY FATHER AND MY MOTHER WERE

 14 GOING TO KILL ME"?

 15 IN THAT CONVERSATION WITH DR. OZIEL, THEY

 16 MAKE IT VERY CLEAR THAT THIS WAS A CRIME THAT THEY

 17 PREMEDITATED AND DELIBERATED. AND NO ABUSE IS

 18 MENTIONED. NO FEAR OF ATTACK BY THEIR PARENTS.

 19 AND THE WORDS OF LYLE MENENDEZ IN THAT

 20 TAPE -- AND THAT TAPE IS IN EVIDENCE AND YOU WILL BE

 21 ABLE TO HEAR IT AND READ THE TRANSCRIPT ONCE AGAIN.

 22 DO YOU REMEMBER LYLE MENENDEZ SAYING:

 23 "THERE WAS NO WAY I WAS GOING TO

 24 MAKE A DECISION TO KILL MY MOTHER WITHOUT

 25 ERIK'S CONSENT. I DIDN'T EVEN WANT TO

 26 INFLUENCE HIM IN THAT ISSUE. I JUST LET

 27 HIM SLEEP ON IT FOR A COUPLE OF DAYS.

 28 WELL, THIS PHRASE, LADIES AND GENTLEMEN:

 1 "I JUST LET HIM SLEEP ON IT FOR A COUPLE OF DAYS," IS

 2 THE ABSOLUTE PROOF POSITIVE OF PREMEDITATION.

 3 WHEN YOU SLEEP ON SOMETHING FOR A COUPLE OF

 4 DAYS, THAT IS ABSOLUTE PREMEDITATION. IF YOU CAN

 5 PREMEDITATE JUST BY LOOKING UP AND DOWN THE BLOCK AND

 6 CONSIDERING WHETHER OR NOT YOU SHOULD CROSS THE STREET

 7 AND JAYWALK BECAUSE THERE ARE NO POLICE AROUND -- WHEN

 8 YOU SLEEP ON SOMETHING FOR A COUPLE OF DAYS, WE ALL KNOW

 9 WHAT HE MEANS HERE.

 10 HE THOUGHT IT OVER. HE WEIGHED AND

 11 CONSIDERED. HE WANTED ERIK MENENDEZ TO WEIGH AND

 12 CONSIDER IT. THIS IS ABSOLUTELY INESCAPABLE

 13 PREMEDITATION AND DELIBERATION. AND THERE IS ABSOLUTELY

 14 NO WAY AROUND THIS. THIS IS THE PROSECUTOR'S DREAM

 15 STATEMENT RIGHT HERE. "I JUST LET HIM SLEEP ON IT FOR A

 16 COUPLE OF DAYS," BECAUSE THAT SAYS IT ALL.

 17 THAT SAYS IT ALL. THAT IS FIRST-DEGREE,

 18 PREMEDITATED MURDER. NO WAY OUT OF THAT PROPOSITION.

 19 THE CASE IS PROVEN BY THIS STATEMENT RIGHT HERE, BECAUSE

 20 GO BACK TO THE ELEMENTS.

 21 WAS THIS KILLING OF THE PARENTS

 22 INTENTIONAL? WELL, YES. LYLE MAKES IT VERY -- LYLE

 23 MENENDEZ MAKES IT VERY CLEAR IN THAT STATEMENT THAT IT

 24 WAS.

 25 WAS THERE INTENT TO KILL? YES. HE'S

 26 TALKING ABOUT: "I AM GOING TO KILL MY MOTHER. I AM

 27 GOING TO THINK ABOUT IT. I WANTED MY BROTHER, ERIK

 28 MENENDEZ, TO THINK ABOUT IT."

 1 SO OBVIOUSLY THERE WAS EXPRESS MALICE

 2 AFORETHOUGHT. THAT IS INTENT TO KILL BEFORE THEY WENT

 3 INTO THAT ROOM.

 4 WAS IT PREMEDITATED, DID HE CONSIDER IT

 5 BEFOREHAND? HE'S SAYING YES, HE DID CONSIDER IT

 6 BEFOREHAND. AND YOU KNOW WHAT PARTICULAR DAYS HE'S

 7 TALKING ABOUT. HE IS TALKING ABOUT FRIDAY WHEN HE

 8 PURCHASED THE GUNS IN SAN DIEGO, UP UNTIL SUNDAY. SO

 9 FOR THOSE TWO DAYS, THAT'S EXACTLY WHAT LYLE MENENDEZ IS

 10 TALKING ABOUT HERE.

 11 ONCE THEY HAD THE GUNS IN HAND, EVERYONE

 12 KNEW -- EVERYONE, I MEAN ERIK AND LYLE -- EVERYONE KNEW

 13 THAT THIS WAS A SERIOUS DEAL. THIS WAS A SERIOUS

 14 PROPOSITION. ARE THEY GOING TO DO IT OR NOT? AND

 15 THAT'S EXACTLY WHAT HE IS ADMITTING HERE. THEY HAD TWO

 16 DAYS TO THINK ABOUT IT.

 17 WAS THERE A CAREFUL THOUGHT AND WEIGHING OF

 18 CONSIDERATIONS FOR AND AGAINST THE PROPOSED COURSE OF

 19 ACTION? WELL, OF COURSE.

 20 IF YOU HAVE TWO DAYS TO THINK ABOUT IT,

 21 LADIES AND GENTLEMEN, OF COURSE YOU'RE GOING TO

 22 CONSIDER. AND IF YOU CAN MAKE THAT DECISION AND IT

 23 CONSTITUTES PREMEDITATION IN THE SECOND IT TAKES YOU TO

 24 JAYWALK OR THE SECOND IT TAKES YOU TO RUN THE LIGHT,

 25 WHEN YOU HAVE TWO DAYS TO THINK ABOUT IT. OBVIOUSLY

 26 THIS WAS PREMEDITATION. OBVIOUSLY THIS WAS A

 27 PREMEDITATED MURDER.

 28 NOW, THEY HAVE TO -- YOU WILL HEAR THE

 1 DEFENSE ATTORNEYS ARGUE THAT YOU SHOULD DISTRUST WHAT

 2 LYLE MENENDEZ IS SAYING IN THIS STATEMENT. THAT'S THE

 3 ONLY WAY THEY CAN GET OUT OF THIS, BECAUSE IF THIS IS

 4 TRUE -- IF THIS IS TRUE, THAT'S ABSOLUTELY PREMEDITATED

 5 MURDER. NO TWO WAYS ABOUT IT

 6 SO THEIR ONLY RECOURSE IS TO SAY: "OH,

 7 DR. OZIEL WAS PUTTING WORDS IN OUR MOUTH, AND WE WERE

 8 JUST TELLING HIM WHATEVER HE WANTED TO HEAR," WHICH IS A

 9 PREPOSTEROUS ALLEGATION. I WILL GET MORE INTO THE

 10 TRUTHFULNESS OF THE STATEMENT LATER, BUT YOU HAVE TO

 11 RECOGNIZE THAT THIS IS AN ABSOLUTELY CLEAR CASE OF

 12 PREMEDITATED MURDER.

 13 ALL RIGHT.

 14 NOW, LET ME TURN TO THE -- A SECOND THEORY

 15 FOR FIRST-DEGREE MURDER IN THIS CASE, AND THAT IS LYING

 16 IN WAIT.

 17 NOW, AS I SAID, WHEN YOU JUST KILL SOMEONE,

 18 WHEN YOU MURDER SOMEONE WITH EXPRESS OR IMPLIED MALICE,

 19 THAT'S JUST PLAIN OLD MURDER, OR SECOND-DEGREE MURDER.

 20 YOU NEED SOMETHING MORE TO ELEVATE IT TO FIRST-DEGREE

 21 MURDER.

 22 ONE WAY THAT YOU ELEVATE IT IS, AS I JUST

 23 INDICATED, IF YOU PREMEDITATE AND DELIBERATE. THEN THE

 24 LAW SAYS HERE WE ARE DEALING WITH A PERSON WHO WEIGHED

 25 AND CONSIDERED AND DECIDED TO DO IT ANYWAY, SO WE WILL

 26 PUT HIM ON THAT HIGHER LEVEL THAT WE CALL FIRST-DEGREE

 27 MURDER, BECAUSE HE CONSIDERED HIS ACTION.

 28 BUT THERE IS ANOTHER WAY OF GETTING TO THAT

 1 LEVEL, AND ANOTHER WAY YOU GET TO THAT HIGHER LEVEL OF

 2 MURDER, WHAT WE CALL FIRST-DEGREE MURDER BY LYING IN

 3 WAIT.

 4 NOW, THE TERM "LYING IN WAIT" APPLIES TO

 5 TWO DIFFERENT THINGS. LYING IN WAIT IS A ROAD TO

 6 FIRST-DEGREE MURDER, BUT LYING IN WAIT IS ALSO A SPECIAL

 7 CIRCUMSTANCE.

 8 REMEMBER, THERE ARE SPECIAL CIRCUMSTANCES,

 9 A SPECIAL FINDING THAT THE JURY IS ASKED TO MAKE IF THEY

 10 FIND A DEFENDANT GUILTY OF MURDER IN THE FIRST-DEGREE.

 11 SO IF YOU FIND THE DEFENDANTS GUILTY OF

 12 MURDER IN THE FIRST-DEGREE, SUCH AS ON A THEORY OF

 13 PREMEDITATION, YOU WILL ALSO BE REQUIRED TO MAKE A

 14 SPECIAL FINDING, WAS THERE LYING IN WAIT IN THIS CASE?

 15 SO, LYING IN WAIT CAN PROVIDE A BASIS FOR

 16 GETTING NOT ONLY TO FIRST-DEGREE MURDER, BUT ALSO TO GET

 17 TO A SPECIAL CIRCUMSTANCE, TO FIND A SPECIAL

 18 CIRCUMSTANCE TRUE.

 19 SO WHAT IS LYING IN WAIT? IT SHOULD BE

 20 CALLED MURDER WHILE LYING IN WAIT.

 21 LYING IN WAIT IS AN AMBUSH-TYPE OF A

 22 SITUATION ESSENTIALLY, AND THAT IS THAT IF YOU'RE

 23 HANGING AROUND WAITING TO KILL SOMEONE, AND YOU KILL HIM

 24 RIGHT AFTER HANGING AROUND WAITING TO KILL HIM, THE LAW

 25 SAYS, WELL, THAT'S THE EQUIVALENT OF PREMEDITATION IN

 26 MURDER. WE ARE NOT GOING TO REQUIRE THE JURY TO DECIDE

 27 THAT THERE IS PREMEDITATION AND DELIBERATION, BECAUSE

 28 THAT'S THE EQUIVALENT OF PREMEDITATION AND DELIBERATION.

 1 SO, THESE ARE THE SPECIFIC ELEMENTS.

 2 NUMBER ONE, THERE MUST BE WAITING AND

 3 WATCHING FOR AN OPPORTUNE TIME TO ACT.

 4 OKAY. SO FOR EXAMPLE IF YOU'RE -- IF YOU

 5 WANT TO KILL SOMEONE AND YOU WAIT FOR THE TIME TO

 6 STRIKE, AND YOU EVALUATE YOUR SITUATION WITH THE INTENT

 7 OF STRIKING OUT AGAINST THEM.

 8 NUMBER TWO, THERE MUST BE A CONCEALMENT BY

 9 AMBUSH OR BY SOME OTHER SECRET DESIGN TO TAKE BY

 10 SURPRISE.

 11 SO, ONE WAY OF SHOWING THIS IS THAT IT WAS

 12 AN AMBUSH SITUATION.

 13 AND IF YOU LOOK AT THE POSITION OF THE

 14 BODIES OF JOSE AND KITTY MENENDEZ IN THIS CASE, LADIES

 15 AND GENTLEMEN, I THINK YOU CAN REASONABLY CONCLUDE THAT

 16 KITTY AND JOSE MENENDEZ WERE AMBUSHED. THEY WERE TAKEN

 17 BY SURPRISE. THEY WERE CAUGHT UNAWARES. THAT THE

 18 DEFENDANTS CAME AT THEM SUDDENLY AND CAUGHT TEM AT

 19 THEIR MOST VULNERABLE MOMENT

 20 AND THEN THERE MUST BE A DURATION. THE

 21 DURATION OF LYING IN WAIT MUST BE SUCH THAT IT SHOWS

 22 STATE OF MIND THAT IS THE EQUIVALENT OF PREMEDITATION

 23 AND DELIBERATION.

 24 IN OTHER WORDS, BECAUSE THEY ARE

 25 EXCUSING -- THE LAW EXCUSES THE REQUIREMENTS FOR

 26 PREMEDITATION AND DELIBERATION IN THIS TYPE OF A

 27 SITUATION. THE LAW EXCUSES IT ONLY WHERE THERE IS

 28 SUFFICIENT TIME BY WHICH A JURY CAN CONCLUDE THAT THIS

 1 WAS THE FUNCTIONAL EQUIVALENT OF PREMEDITATION AND

 2 DELIBERATION.

 3 THERE WAS ENOUGH TIME FOR THE PERSON TO

 4 PREMEDITATE AND DELIBERATE, AND BY HIS ACTIONS; THAT IS,

 5 BY CONCEALING HIMSELF IN SOME WAY, BY AMBUSH OR SOME

 6 OTHER SECRET DESIGN, AND BY WAITING AND WATCHING FOR AN

 7 OPPORTUNE TIME TO STRIKE, THIS PERSON WAS TAKING THE

 8 VICTIM BY SURPRISE, TAKING THE PERSON UNAWARES.

 9 THE LAW SAYS THAT PHYSICAL CONCEALMENT IS

 10 NOT REQUIRED. THE VICTIM MAY BE AWARE OF THE PRESENCE

 11 OF THE PERSON, BUT IT'S A SECRET DESIGN TO SUDDENLY

 12 STRIKE AT THE VICTIM BY SURPRISE.

 13 SO I WOULD SUBMIT THAT THE KILLING OF KITTY

 14 AND JOSE MENENDEZ IN THIS CASE WAS A KILLING WHICH TOOK

 15 PLACE WHILE KITTY AND JOSE MENENDEZ WERE IN A

 16 PARTICULARLY VULNERABLE POSITION.

 17 THEY WERE RELAXING AT HOME AT NIGHT. IT

 18 WAS SUNDAY NIGHT, LATE IN THE EVENING, SOMETIME PAST

 19 10:00 O'CLOCK, WHEN THE DEFENDANTS IN THIS CASE SUDDENLY

 20 BURST INTO THE ROOM, TOOK THEM BY SURPRISE, AND KILLED

 21 THEM. AND I WOULD SUBMIT THAT THEY TOOK THEM BY

 22 SURPRISE AS THE VICTIMS IN THIS CASE WERE SITTING ON THE

 23 SOFA, RELAXING.

 24 IF YOU FIND THAT THE DEFENDANTS, PRIOR TO

 25 BURSTING INTO THAT ROOM, WERE WATCHING AND WAITING FOR

 26 AN OPPORTUNE TIME TO -- THAT THEY CONCEALED THEIR

 27 PURPOSE, THEIR TRUE PURPOSE UNTIL SUCH TIME AS THEY

 28 BURST INTO THAT ROOM, AMBUSHED THEIR PARENTS AND TOOK

 1 THEM BY SURPRISE, AND THERE WAS A PASSAGE OF TIME FOR

 2 LYING IN WAIT TO TAKE THEIR PARENTS BY SURPRISE, YOU

 3 SHOULD FIND THAT THIS WAS A KILLING BY MEANS OF LYING IN

 4 WAIT, INDEPENDENTLY OF MAKING A DETERMINATION AS TO

 5 WHETHER THEY ACTUALLY PREMEDITATED AND DELIBERATED THE

 6 MURDER OF THEIR PARENTS.

 7 BUT AGAIN, AS I SAID, IT'S NOT NECESSARY --

 8 IT'S NOT NECESSARY TO EVEN RELY UPON THAT THEORY,

 9 BECAUSE WE HAVE PREMEDITATED AND DELIBERATE MURDER SHOWN

 10 IN MANY OTHER WAYS; SUCH AS BY THE STATEMENTS OF LYLE

 11 MENENDEZ THAT HE LET HIS BROTHER, ERIK MENENDEZ, THINK

 12 ABOUT IT FOR A COUPLE OF DAYS.

 13 NOW, WE ALSO HAVE SECOND-DEGREE MURDER.

 14 AND AS I HAVE INDICATED A COUPLE OF TIMES ALREADY, THE

 15 PROSECUTION IS NOT RELYING UPON SECOND-DEGREE MURDER IN

 16 THIS CASE. WE ASK YOU NOT TO FIND SECOND-DEGREE MURDER.

 17 BUT I DO WANT TO, ONCE AGAIN, JUST ACQUAINT

 18 YOU WITH THESE CONCEPTS. YOU SHOULD BE FAMILILAR WITH

 19 THESE CONCEPTS. THEY ARE GOING TO COME TO YOU --

 20 DEFENSE COUNSEL, I AM SURE, ARE GOING TO BE ARGUING THAT

 21 THE KILLINGS IN THIS CASE WERE SOMETHING LESS THAN

 22 FIRST-DEGREE MURDER. THEY WILL ARGUE THAT IT'S

 23 SECOND-DEGREE MURDER AS TO KITTY MENENDEZ, AND THEY WILL

 24 ARGUE, I AM SURE, THAT IT'S A VOLUNTARY MANSLAUGHTER AS

 25 TO JOSE MENENDEZ, BECAUSE THAT IS EVEN A THEORETICAL

 26 OPTION AS TO HIM, EVEN THOUGH WE ASK YOU TO REJECT EACH

 27 OF THOSE OPTIONS.

 28 THESE ARE THE TYPES OF SECOND-DEGREE

 1 MURDER. AND YOU WILL NOTICE THAT THIS TRACKS

 2 IDENTICALLY WHAT I TOLD YOU ABOUT MALICE, BECAUSE -- YOU

 3 REMEMBER I SAID, THINK BACK TO THE MAN SHOOTING OUT THE

 4 WINDOW. THAT IS MALICE. AND I SAID THAT IF THAT PERSON

 5 SHOOTS OUT THE WINDOW, THAT IS MURDER, BECAUSE HE IS

 6 KILLING WITH MALICE.

 7 AND SO WHAT YOU HAVE HERE IS SECOND-DEGREE

 8 MURDER, OR YOU MIGHT CALL IT PLAIN OLD MURDER, WHICH IS

 9 BASED UPON BOTH OF THOSE THEORIES; THAT IS, EXPRESS

 10 MALICE. THE THEORY OF SECOND-DEGREE MURDER IS SIMPLY

 11 EXPRESS MALICE, WHAT I TOLD YOU PREVIOUSLY. THE

 12 INTENTION UNLAWFULLY TO KILL A HUMAN BEING.

 13 BUT HERE THERE IS INSUFFICIENT EVIDENCE OF

 14 PREMEDITATION AND DELIBERATION, YOU SEE. THAT'S THE

 15 REASON WHY YOU CAN'T GET UP TO THAT HIGHER LEVEL.

 16 AND IF YOU CAN'T GET UP TO THAT HIGHER

 17 LEVEL, IF YOU CAN'T FIND PREMEDITATION OR DELIBERATION,

 18 SUCH AS AN EXAMPLE, SAY A PERSON SHOOTS OUT HIS WINDOW

 19 AND IT'S A SPONTANEOUS ACT. HE DIDN'T THINK ABOUT IT

 20 BEFOREHAND, HE DIDN'T GO THROUGH THAT PROCESS THAT I

 21 DESCRIBED TO YOU OF WEIGHING AND CONSIDERING HIS

 22 ACTIONS.

 23 YOU WILL RECALL THAT I SPOKE ABOUT THE

 24 CONCEPT OF PREMEDITATION AND DELIBERATION INVOLVES

 25 CONSIDERING BEFOREHAND; CAREFUL THOUGHT AND WEIGHING OF

 26 CONSEQUENCES FOR AND AGAINST THE PROPOSED COURSE OF

 27 ACTION, AND CONSIDERING BEFOREHAND.

 28 IF THE MAN AT THE WINDOW WITH THE RIFLE

 1 JUST SUDDENLY PICKS IT UP AND FIRES OUT THE WINDOW,

 2 INTENDING TO KILL, BUT NOT EVEN WEIGHING HIS ACTIONS OR

 3 THINKING ABOUT IT, THAT COULD THEORETICALLY BE A SECOND

 4 DEGREE MURDER.

 5 BUT BEAR IN MIND THAT IT ONLY TAKES A

 6 MOMENT OF REFLECTION, A MOMENT OF THOUGHT, A MOMENT OF

 7 "SHOULD I OR SHOULDN'T I," TO TRANSPOSE HIS ACTIONS INTO

 8 FIRST-DEGREE MURDER.

 9 AND THEN THE IMPLIED MALICE THEORY OF

 10 SECOND-DEGREE MURDER.

 11 THERE IS NO INTENT TO KILL NECESSARILY IN

 12 THIS SITUATION WHERE YOU DO AN INTENTIONAL ACT,

 13 DANGEROUS TO HUMAN LIFE, DELIBERATELY PERFORMED WITH THE

 14 KNOWLEDGE OF THE DANGER TO HUMAN LIFE.

 15 ONCE AGAIN, THE SITUATION OF SHOOTING OUT A

 16 WINDOW WITH YOUR EYES CLOSED IS A PERFECT EXAMPLE OF

 17 SECOND DEGREE MURDER BASED UPON AN IMPLIED MALICE

 18 THEORY.

 19 AS I INDICATED, WE ARE NOT ASKING YOU IN

 20 THIS CASE TO FIND THE DEFENDANT GUILTY OF SECOND-DEGREE

 21 MURDER.

 22 AND THEN YOU WILL EVEN HEAR AS TO JOSE

 23 MENENDEZ, THAT ONE OF THE THEORETICAL -- AND I

 24 UNDERSCORE THE WORD "THEORETICAL".

 25 BEAR IN MIND THAT WHEN YOU ARE GIVEN -- YOU

 26 ARE TOLD THAT THESE ARE LESSER INCLUDEDS, THAT DOESN'T

 27 MEAN THAT YOU SHOULD NECESSARILY FIND FOR THEM, OR LEAN

 28 THAT WAY OR ANYTHING. IT JUST MEANS THAT THEY ARE

 1 THEORETICAL POSSIBILITIES.

 2 SO BECAUSE VOLUNTARY MANSLAUGHTER IS A

 3 THEORETICAL POSSIBILITY AS TO THE KILLING OF JOSE

 4 MENENDEZ, YOU WILL BE INSTRUCTED IN REGARD TO THE NOTION

 5 OF HEAT OF PASSION.

 6 AND JUST BRIEFLY LET ME TELL WHAT HEAT OF

 7 PASSION IS. HEAT OF PASSION IS THE THEORY OF A KILLING

 8 WHICH TAKES PLACE WHILE A PERSON IS IN SUCH AN EXCITED

 9 STATE THAT THERE IS AN ACTION RESULTING FROM THAT

 10 EXCITED STATE, RATHER THAN BASED UPON REFLECTION AND

 11 DELIBERATION.

 12 NOW, THAT IS, AS YOU KNOW, WHAT ERIK

 13 MENENDEZ IS GOING FOR IN THIS CASE. WE KNOW WHAT HIS

 14 ROLE IS IN THIS CASE, BUT I ASK YOU TO REJECT HIS

 15 EXPLANATION OF THE EVENTS OF AUGUST THE 20TH, WHICH HE

 16 DEVISED IN ORDER TO GET THIS THEORY APPLIED TO HIM. AND

 17 I WILL TELL YOU SEVERAL REASONS WHY IT DOESN'T APPLY TO

 18 THIS CASE.

 19 ONE OF THE REASONS IS BECAUSE, AS I WILL

 20 ARGUE TO YOU FURTHER WHEN I GET INTO THE DETAILS OF THE

 21 CRIME, DEFENDANT DID NOT ACT UNDER THE INFLUENCE OF

 22 PASSION.

 23 ERIK MENENDEZ AND LYLE MENENDEZ KILLED

 24 THEIR PARENTS, WE INTEND TO SHOW, AS PART OF A

 25 PRE-EXISTING DECISION AND INTENT TO KILL.

 26 AND ONCE AGAIN, IF THAT'S -- IT IS SHOWN IN

 27 SEVERAL WAYS. BUT ONE OF THE WAYS IT'S SHOWN IS RIGHT

 28 HERE, LYLE MENENDEZ TALKING ABOUT THE DECISION TO KILL;

 1 LYLE MENENDEZ SAYING THAT HE, BASICALLY, IN THE TAPE

 2 WITH DR. OZIEL. THEY DECIDED THEY WERE GOING TO KILL

 3 THEIR PARENTS. THEY THOUGHT ABOUT IT FOR SEVERAL DAYS,

 4 AND HE LET HIS BROTHER, ERIK MENENDEZ, SLEEP ON IT FOR A

 5 COUPLE OF DAYS.

 6 SO FOR THIS REASON ALONE IT'S A

 7 FIRST-DEGREE MURDER. IT'S NOT A HEAT OF PASSION. IT

 8 DOESN'T OCCUR AS ERIK MENENDEZ WAS CLAIMING, AND LYLE

 9 MENENDEZ BASICALLY SAYS AS MUCH RIGHT HERE.

 10 SO I ASK YOU TO REJECT THE THEORY OF

 11 VOLUNTARY MANSLAUGHTER, HEAT OF PASSION. FIRST OF ALL,

 12 BECAUSE IT'S NOT A TRUE STORY.

 13 THE PARENTS WERE KILLED BECAUSE THAT WAS

 14 THE PLAN, TO KILL THE PARENTS. BUT THERE ARE OTHER

 15 REASONS WHY I ASK YOU TO REJECT THAT THEORY. I ASK YOU

 16 TO REJECT THAT THEORY BECAUSE THERE WAS INADEQUATE

 17 PROVOCATION TO CAUSE A HEAT OF PASSION, AND HERE IS THE

 18 KEY.

 19 FOR HEAT OF PASSION TO APPLY, IT'S BASED

 20 UPON THE ORDINARY, REASONABLE MAN STANDARD. IN OTHER

 21 WORDS, EACH PERSON IS NOT PRE-SET THEIR OWN STANDARD

 22 UNDER THE LAW. YOU CAN'T JUST SAY: "I WAS IN A HEAT OF

 23 PASSION, AND IN THAT HEAT OF PASSION I KILLED SOMEONE.

 24 SO GIVE ME THE HEAT OF PASSION INSTRUCTION, OR GIVE ME A

 25 HEAT OF PASSION VERDICT." NO.

 26 THE LAW SAYS THAT A CRIME CAN BE REDUCED --

 27 A KILLING CAN BE REDUCED TO VOLUNTARY MANSLAUGHTER BASED

 28 UPON A HEAT OF PASSION WHERE THERE IS OBJECTIVE

 1 CIRCUMSTANCES, SUCH THAT THE ORDINARY, REASONABLE MAN

 2 WOULD HAVE BEEN AROUSED TO PASSION, YOU SEE.

 3 SO THIS WAY EACH INDIVIDUAL DOES NOT SET

 4 HIS OWN STANDARD. YOU ARE GOVERNED BY THE STANDARD

 5 WHICH APPLIES TO ALL PEOPLE. HERE IS WHAT IT SAYS.

 6 THE HEAT OF PASSION WILL REDUCE -- LET ME

 7 START WITH THE FIRST PARAGRAPH.

 8 "TO REDUCE AN INTENTIONAL FELONIOUS

 9 HOMICIDE FROM THE OFFENSE OF MURDER TO

 10 MANSLAUGHTER UPON THE GROUND OF SUDDEN

 11 QUARREL OR HEAT OF PASSION, THE

 12 PROVOCATION MUST BE OF SUCH CHARACTER AND

 13 DEGREE AS NATURALLY WOULD EXCITE AND

 14 AROUSE SUCH PASSION, AND THE ASSAILANT

 15 MUST ACT UNDER THE INFLUENCE OF THAT

 16 SUDDEN QUARREL OR HEAT OF PASSION.

 17 "THE HEAT OF PASSION WHICH WILL

 18 REDUCE A HOMICIDE TO MANSLAUGHTER MUST BE

 19 SUCH A PASSION AS NATURALLY WOULD BE

 20 AROUSED IN THE MIND OF AN ORDINARILY

 21 REASONABLE PERSON IN THE SAME

 22 CIRCUMSTANCES. A DEFENDANT IS NOT

 23 PERMITTED TO SET UP HIS OWN STANDARD OF

 24 CONDUCT AND TO JUSTIFY OR EXCUSE HIMSELF

 25 BECAUSE HIS PASSIONS WERE AROUSED, UNLESS

 26 THE CIRCUMSTANCES IN WHICH THE DEFENDANT

 27 WAS PLACED, AND THE FACTS THAT CONFRONTED

 28 HIM, WERE SUCH AS ALSO WOULD HAVE AROUSED

 1 THE PASSION OF AN ORDINARILY REASONABLE

 2 PERSON FACED WITH THE SAME SITUATION.

 3 "LEGALLY ADEQUATE PROVOCATION MAY

 4 OCCUR IN A SHORT OR OVER A CONSIDERABLE

 5 PERIOD OF TIME.

 6 "THE QUESTION TO BE ANSWERED IS

 7 WHETHER OR NOT, AT THE TIME OF THE

 8 KILLING, THE REASON OF THE ACCUSED WAS

 9 OBSCURED OR DISTURBED BY PASSION TO SUCH

 10 AN EXTENT AS WOULD CAUSE THE ORDINARILY

 11 REASONABLE PERSON OF AVERAGE DISPOSITION

 12 TO ACT RASHLY AND WITHOUT REFLECTION AND

 13 DELIBERATION, AND FROM SUCH PASSION RATHER

 14 THAN JUDGMENT.

 15 "IF THERE WAS PROVOCATION, BUT OF A

 16 NATURE NOT NORMALLY SUFFICIENT TO AROUSE

 17 PASSION, OR IF SUFFICIENT TIME ELAPSED

 18 BETWEEN THE PROVOCATION AND THE FATAL

 19 BLOW, FOR PASSION TO SUBSIDE AND REASON TO

 20 RETURN, AND IF AN UNLAWFUL KILLING OF A

 21 HUMAN BEING FOLLOWED SUCH PROVOCATION AND

 22 HAD ALL OF THE ELEMENTS OF MURDER, AS I

 23 HAVE DEFINED IT, THE MERE FACT OF SLIGHT

 24 OR REMOTE PROVOCATION WILL NOT REDUCE THE

 25 DEFENSE TO MANSLAUGHTER."

 26 SO WHAT THIS INSTRUCTION TELLS US IS THAT

 27 THE PROVOCATION MUST BE SUCH THAT WOULD CAUSE THE

 28 ORDINARY REASONABLE PERSON IN THE SAME SITUATION TO

 1 RESPOND IN A PASSIONATE STATE.

 2 AND I WILL GO THROUGH THE FACTS, AND I WILL

 3 ARGUE AT THE CONCLUSION OF ALL THE FACTS THAT THESE --

 4 THIS CIRCUMSTANCE, EVEN AS DESCRIBED BY ERIK MENENDEZ,

 5 WAS NOT SUCH THAT WOULD CAUSE THE ORDINARY REASONABLE

 6 PERSON IN THAT SAME SITUATION TO RESPOND IN THIS

 7 IMPASSIONED STATE IN WHICH THE DEFENDANT SAID HE RUSHED

 8 INSIDE THE HOUSE TO BLOW BOTH OF HIS PARENTS AWAY.

 9 THAT IS THE SECOND REASON FOR REJECTIN

 10 HEAT OF PASSION.

 11 THE THIRD REASON IS THIS:

 12 THE LAW FURTHER PROVIDES THAT EVEN IF A

 13 PERSON WAS AROUSED, EVEN IF THE ORDINARILY REASONABLE

 14 MAN WAS AROUSED TO THIS PASSIONATE STATE, YOU SHOULD NOT

 15 REDUCE THE KILLING TO A VOLUNTARY MANSLAUGHTER BASED

 16 UPON A PASSIONATE STATE, IF THE ORDINARY REASONABLE MAN

 17 HAD SUFFICIENT TIME TO -- FOR REASON TO RETURN, YOU SEE,

 18 AND TO ACT AS A RESULT OF REFLECTION RATHER THAN AS A

 19 RESULT OF PASSION.

 20 YOU SEE, IT DOESN'T APPLY WHERE THERE IS A

 21 COOLING PERIOD. THE LAW SAYS -- THE LAW READS AS

 22 FOLLOWS:

 23 "TO REDUCE A KILLING UPON A SUDDEN

 24 QUARREL OR HEAT OF PASSION FROM MURDER TO

 25 MANSLAUGHTER, THE KILLING MUST HAVE

 26 OCCURRED WHILE THE SLAYER WAS ACTING UNDER

 27 THE DIRECT AND IMMEDIATE INFLUENCE OF SUCH

 28 QUARREL OR HEAT OF PASSION. WHERE THE

 1 INFLUENCE OF THE SUDDEN QUARREL OR HEAT OF

 2 PASSION HAS CEASED TO OBSCURE THE MIND OF

 3 THE ACCUSED AND SUFFICIENT TIME HAS

 4 ELAPSED FOR ANGRY PASSION TO END, AND FOR

 5 REASON TO CONTROL HIS CONDUCT, IT WILL NO

 6 LONGER REDUCE AN INTENTIONAL KILLING TO

 7 MANSLAUGHTER.

 8 "THE QUESTION AS TO WHETHER THE

 9 COOLING PERIOD HAS ELAPSED AND REASON HAS

 10 RETURNED IS NOT MEASURED BY THE STANDARD

 11 OF THE ACCUSED, BUT THE DURATION OF THE

 12 COOLING PERIOD IS THE TIME IT WOULD TAKE

 13 THE AVERAGE OR ORDINARILY REASONABLE

 14 PERSON TO HAVE COOLED HIS HEAT OF PASSION,

 15 AND FOR THAT PERSON'S REASON TO HAVE

 16 RETURNED."

 17 SO LADIES AND GENTLEMEN, AS I WILL ARGUE --

 18 AND I WILL ARGUE THIS CASE MORE FULLY LATER IN THE

 19 TRIAL -- EVEN IF YOU WERE TO TAKE THAT ROAD DOWN THAT

 20 ERIK MENENDEZ WANTS YOU TO GO WITH HIM, WHICH I WILL

 21 SHOW YOU IS A PACK OF LIES, AND YOU SHOULDN'T GO DOWN

 22 THAT ROAD.

 23 BUT EVEN IF YOU WERE TO TAKE THAT ROAD AND

 24 GO DOWN THAT ROAD WITH HIM, HE DESCRIBED A SITUATION IN

 25 WHICH HE AND HIS BROTHER, LYLE MENENDEZ, LEFT THE HOUSE

 26 AFTER GOING UP TO HIS ROOM, GETTING HIS GUN, COMING

 27 DOWNSTAIRS, GOING OUT TO THE CAR. HE OPENED UP HIS CAR.

 28 HE SCRAMBLED AROUND FOR HIS SHOTGUN SHELLS. HE UNLOADED

 1 HIS GUN, RELOADED HIS GUN WITH ADDITIONAL AMMUNITION.

 2 AND AT THAT POINT, LADIES AND GENTLEMEN,

 3 THERE WAS NO THREAT WHATSOEVER TO HIM. HE AND HIS

 4 BROTHER WERE STANDING OUTSIDE THAT HOUSE, AND THEY HAD

 5 LOADED GUNS, AND THEY HAD A CAR WITH GAS IN IT, AND KEYS

 6 IN THEIR POCKET, AND THEY COULD HAVE DRIVEN AWAY.

 7 AND AT THAT POINT, LADIES AND GENTLEMEN, I

 8 WOULD SUBMIT TO YOU THAT EVEN IF THEIR STORY WERE TRUE,

 9 THE ORDINARY REASONABLE MAN OF AVERAGE DISPOSITION WOULD

 10 HAVE SUFFICIENTLY COOLED TO SAY: "WHAT AM I DOING? WHY

 11 AM I DOING THIS? AM I REALLY GOING TO GO INSIDE THIS

 12 HOUSE AND SHOOT MY PARENTS AWAY, BLOW MY PARENTS AWAY?"

 13 I WOULD SUBMIT TO YOU, LADIES AND

 14 GENTLEMEN, THAT THE HEAT OF PASSION DOESN'T APPLY TO

 15 THAT SITUATION, BECAUSE THERE WAS A REASONABLE -- THERE

 16 WAS A SUFFICIENT COOLING PERIOD; THAT THE ORDINARY

 17 REASONABLE MAN OF AVERAGE DISPOSITION WOULD NOT HAVE

 18 BEEN IN SUCH A PASSIONATE STATE AT THAT POINT IN TIME.

 19 SO THERE ARE SEVERAL REASONS WHY IT DOESN'T

 20 APPLY. BECAUSE IF YOU ACCEPT THE STORY OF THE

 21 DEFENDANT, SUFFICIENT TIME HAS ELAPSED. IF YOU ACCEPT

 22 THE STORY OF THE DEFENDANT, THERE WASN'T EVEN ADEQUATE

 23 PROVOCATION.

 24 WHAT DID JOSE MENENDEZ TELL HIM? "GO TO

 25 YOUR ROOM." ISN'T THAT WHAT HE SAID? "GO TO YOUR

 26 ROOM."

 27 AND BASED UPON THAT, THEY SAID: "WELL, OUR

 28 PARENTS ARE GOING TO KILL US."

 1 DOES THAT MAKE ANY SENSE TO YOU? THEY

 2 THOUGHT THEIR PARENTS WERE GOING TO KILL THEM BECAUSE

 3 JOSE MENENDEZ SAID, "GO TO YOUR ROOM"?

 4 IS THAT PROVOCATION THAT WOULD CAUSE THE

 5 ORDINARY REASONABLE MAN OF AVERAGE DISPOSITION TO ACT

 6 WITHOUT DELIBERATION AND REFLECTION? NO. ERIK MENENDEZ

 7 IS SETTING UP HIS OWN STANDARD OF CONDUCT HERE, WHICH

 8 THE LAW SAYS YOU CANNOT DO.

 9 SO THE ORDINARY REASONABLE MAN WOULD NOT

 10 FIND ADEQUATE PROVOCATION TO BE IN THIS HIGHLY

 11 PASSIONATE, EMOTIONAL STATE CLAIMED BY ERIK MENENDEZ,

 12 AND THE ORDINARY REASONABLE MAN WOULD HAVE COOLED OFF BY

 13 THE TIME HE GOT OUT TO HIS CAR AND HAD A LOADED GUN, AND

 14 HIS BROTHER HAD A LOADED GUN, AND THERE WAS A CAR THERE.

 15 THEY COULD HAVE DRIVEN AWAY. THERE WAS NOTHING STOPPING

 16 THEM FROM DRIVING AWAY.

 17 SO THE HEAT OF PASSION DOESN'T APPLY EVEN

 18 IF YOU GO DOWN THE ROAD HAND-IN-HAND WITH ERIK MENENDEZ.

 19 BUT LADIES AND GENTLEMEN, I ASK YOU NOT TO

 20 GO DOWN THAT ROAD WITH HIM, BECAUSE IT'S A PHONY STORY

 21 WHICH NEVER TOOK PLACE, AND I WILL ELABORATE UPON THAT

 22 AS I GET INTO A DISCUSSION OF THE FACTS.

 23 THEN THERE IS COUNT 3. COUNT 3 ALLEGES

 24 THAT THERE WAS A CONSPIRACY TO COMMIT MURDER, AND SO IT

 25 IS IMPORTANT FOR YOU TO UNDERSTAND THE LAW OF

 26 CONSPIRACY.

 27 A CONSPIRACY IS AN AGREEMENT ENTERED INTO

 28 BETWEEN TWO OR MORE PERSONS, WITH A SPECIFIC INTENT TO

 1 AGREE TO COMMIT THE OFFENSE; IN THIS CASE, OF MURDER,

 2 AND WITH A FURTHER SPECIFIC INTENT TO COMMIT SUCH

 3 OFFENSE, AND WITH A SPECIFIC INTENT TO KILL

 4 UNLAWFULLY -- IN OTHER WORDS, EXPRESS MALICE -- FOLLOWED

 5 BY AN OVERT ACT COMMITTED IN THIS STATE BY ONE OR MORE

 6 OF THE PARTIES FOR THE PURPOSE OF ACCOMPLISHING THE

 7 OBJECT OF THE AGREEMENT. CONSPIRACY IS A CRIME.

 8 SO HERE WE ARE DEALING WITH A SEPARATE AND

 9 INDEPENDENT CRIME. IN ADDITION TO THE CRIMES OF MURDER

 10 AS ALLEGED IN COUNTS 1 AND 2, WE HAVE THE CRIME OF

 11 CONSPIRACY TO COMMIT MURDER. THE ESSENTIAL ELEMENTS I

 12 HAVE OUTLINED HERE ON THE CHART, AND THEY'RE THE

 13 ELEMENTS THAT I JUST EXPRESSED TO YOU.

 14 NO. 1. IT'S AN AGREEMENT, FIRST OF ALL.

 15 TWO PEOPLE, AS APPLIED TO THE FACTS OF THIS CASE, AGREED

 16 TO COMMIT MURDER.

 17 SECONDLY, THERE WAS A SPECIFIC INTENT TO

 18 COMMIT MURDER, TO KILL UNLAWFULLY. EXPRESS MALICE.

 19 AND IT IS FOLLOWED UP BY AN OVERT ACT

 20 COMMITTED IN FURTHERANCE OF THE OBJECT OF THE

 21 CONSPIRACY. SO THIS IS WHAT THAT MEANS.

 22 SUPPOSE TWO PEOPLE SIT DOWN AND THEY TALK

 23 ABOUT COMMITTING A CRIME. IS IT A CRIME JUST TO ENGAGE

 24 IN TALK? CAN THAT MERE TALK CONSTITUTE THE CRIME? NO.

 25 THE MERE TALK ALONE CANNOT CONSTITUTE THE CRIME, BECAUSE

 26 SOMETHING ADDITIONAL IS REQUIRED, AND THAT IS WHAT WE

 27 CALL AN OVERT ACT.

 28 SO THE LAW DOESN'T PUNISH JUST

 1 CONVERSATIONS, EVEN WHEN THOSE CONVERSATIONS ARE

 2 CONVERSATIONS INVOLVING ACTUAL INTENT AND AGREEMENT TO

 3 KILL.

 4 SO IF YOU AND I SIT DOWN AND WE SAY:

 5 "LET'S KILL JOHN DOE," AND WE ACTUALLY AGREE, THE FIRST

 6 ELEMENT IS SHOWN. WE AGREE THAT WE ARE GOING TO KILL

 7 THAT PERSON.

 8 BUT WE MUST ALSO AGREE FURTHER THAT WE ARE

 9 GOING TO KILL HIM, AND WE'RE GOING TO KILL HIM

 10 UNLAWFULLY. THERE IS EXPRESS MALICE. WE SPECIFICALLY

 11 INTEND TO FOLLOW THROUGH WITH THIS AGREEMENT, AND WE

 12 INTEND TO KILL UNLAWFULLY.

 13 EVEN WITH THAT AGREEMENT, IT IS STILL NOT A

 14 CRIME. ONE OR MORE OF US HAS TO COMMIT AN OVERT ACT;

 15 THAT IS, SOME ACTION THAT IS DONE TO FACILITATE OR TO

 16 FURTHER THE OBJECT OF THE CONSPIRACY. ONE OF US HAS TO

 17 GET UP, GO OUTSIDE, AND DO SOMETHING, AND ONCE THAT IS

 18 DONE, THEN THE CONSPIRACY IS COMPLETE. THEN A CRIME HAS

 19 BEEN COMPLETED, YOU SEE.

 20 NOW, IT'S NOT NECESSARY THAT WE ACTUALLY

 21 COMMIT THE CRIME. IF YOU AND I ENTER INTO THIS

 22 AGREEMENT AND WE REALLY INTEND TO KILL SOMEONE, AND I GO

 23 OUT AND BUY A GUN, THAT IS CONSPIRACY TO COMMIT MURDER,

 24 EVEN IF WE NEVER GET AROUND TO COMMITTING THE MURDER.

 25 YOU SEE, IT'S STILL THE CRIME OF CONSPIRACY TO COMMIT

 26 MURDER.

 27 SO, IN THIS CASE, AS IN ALL CASES, WHAT THE

 28 PROSECUTION HAS TO DO IN ORDER TO PROVE THE CRIME IS WE

 1 HAVE TO ALLEGE SPECIFIC OVERT ACTS, SO THAT THE JURY CAN

 2 MAKE A FINDING AS TO WHETHER OR NOT THEY AGREE THAT

 3 OVERT ACTS WERE COMMITTED TO FURTHER THE OBJECT OF THE

 4 CONSPIRACY.

 5 AND SO IN THIS CASE THE PROSECUTION HAS

 6 ALLEGED THREE SPECIFIC OVERT ACTS.

 7 NOW, YOU HAVE HEARD FROM THE VARIOUS EVENTS

 8 OF THAT PARTICULAR WEEK THAT THERE ARE A NUMBER OF

 9 THINGS THAT MIGHT HAVE BEEN ALLEGED BY THE PROSECUTION.

 10 HERE WE FOCUS ON JUST THREE SPECIFIC THINGS, AND ANY ONE

 11 OF THEM IS SUFFICIENT TO CONSTITUTE AN OVERT ACT WHICH

 12 WILL COMPLETE THE CRIME OF CONSPIRACY.

 13 SO WE HAVE JUST CHOSEN THREE. THESE ARE

 14 THE SPECIFIC OVERT ACTS THAT WERE ALLEGED IN THE

 15 INDICTMENT.

 16 "OVERT ACTS COMMITTED BY THE

 17 DEFENDANTS IN THIS CASE IN FURTHERANCE OF

 18 A CONSPIRACY TO COMMIT MURDER:

 19 "NO. 1, THAT THE DEFENDANTS

 20 PURCHASED SHOTGUNS IN SAN DIEGO ON AUGUST

 21 THE 18TH.

 22 "NO. 2. THAT THE DEFENDANTS

 23 ACQUIRED AMMUNITION ON OR BEFORE AUGUST

 24 THE 20TH.

 25 "AND NO. 3. THAT LYLE MENENDEZ

 26 CONTACTED PERRY BERMAN BY PHONE ON AUGUST

 27 THE 20TH TO ARRANGE A MEETING LATER THAT

 28 NIGHT TO SERVE AS AN ALIBI."

 1 NOW, IF YOU FIND THAT ERIK AND LYLE

 2 MENENDEZ AGREED TO COMMIT A MURDER, AND THEY DID IT WITH

 3 THAT EXPRESS MALICE IN THEIR MINDS; THAT IS, THAT THEY

 4 WANTED TO KILL, THEY INTENDED TO KILL, AND WE ALSO ASK

 5 YOU TO FIND THAT IT WAS -- THEY WANTED TO COMMIT A

 6 FIRST-DEGREE MURDER; THAT IS, THAT THEY WANTED TO KILL

 7 AND MURDER IN THE FIRST-DEGREE AS A RESULT OF

 8 PREMEDITATION AND DELIBERATION.

 9 THESE ARE THE OVERT ACTS THAT WILL COMPLETE

 10 THAT CONSPIRACY. ANY ONE OF THESE. IF YOU ALL AGREE

 11 THAT THE DEFENDANTS PURCHASED SHOTGUNS IN SAN DIEGO ON

 12 AUGUST THE 18TH, THAT IS AN OVERT ACT THAT HAS BEEN

 13 PROVEN BY THE PROSECUTION, AND WILL COMPLETE THE CRIME

 14 OF CONSPIRACY.

 15 AND SO I ASK YOU, HOW COULD YOU NOT FIND

 16 THAT TO BE TRUE?

 17 ERIK MENENDEZ ON THIS WITNESS STAND SAID

 18 THAT ON AUGUST THE 18TH OF 1989, HE AND HIS BROTHER WENT

 19 DOWN TO SAN DIEGO, AND THEY PURCHASED SHOTGUNS ON THAT

 20 SPECIFIC DATE. SO THAT IS NOT EVEN IN DISPUTE IN THIS

 21 CASE.

 22 SO I WOULD SUBMIT THAT THE OVERT ACTS, IF

 23 WE JUST -- WE CAN EVEN PUT ASIDE -- WELL, NONE OF THE

 24 OVERT ACTS -- WELL, PERHAPS THREE IS IN DISPUTE, BUT

 25 LET'S JUST FOCUS ON NO. 1 RIGHT HERE.

 26 NO. 1 IS NOT EVEN IN DISPUTE IN THIS CASE.

 27 THERE IS NO DISPUTE THAT ERIK AND LYLE MENENDEZ

 28 PURCHASED SHOTGUNS IN SAN DIEGO ON THE 18TH. SO A

 1 FINDING OF AN OVERT ACT IN THIS CASE SHOULD NOT BE AN

 2 OBSTACLE TO THIS JURY, AND I DON'T SEE HOW THE DEFENSE

 3 WILL EVEN STAND BEFORE YOU AND SAY THAT THE OVERT ACTS

 4 WERE NOT SHOWN IN THIS CASE. CLEARLY THEY WERE. THE

 5 OVERT ACTS WERE DEFINITELY AND POSITIVELY PROVEN IN THIS

 6 CASE.

 7 THE DEFENDANTS WILL ALLEGE THEIR STATE OF

 8 MINDS, THE DEFENDANTS' STATE OF MINDS AT THE TIME THEY

 9 DROVE TO SAN DIEGO.

 10 YOU KNOW WHAT THEIR DEFENSE WAS. THE

 11 DEFENSE WAS: "WE WERE JUST DRIVING DOWN THERE FOR

 12 SELF-PROTECTION. WE WANTED TO HAVE GUNS JUST IN CASE."

 13 THAT'S WHAT THEY ARE GOING TO ARGUE.

 14 THAT'S WHAT THE DEFENSE IS GOING TO ARGUE. BUT THEY ARE

 15 NOT GOING TO ARGUE THAT THE OVERT ACT DID NOT OCCUR IN

 16 THIS CASE.

 17 SO I WOULD SUBMIT THIS IS ABSOLUTELY

 18 PROVEN.

 19 NO. 3 HERE IS ABSOLUTELY PROVEN. IT IS NOT

 20 SUBJECT TO ANY DISPUTE IN THIS CASE. THERE WAS AN OVERT

 21 ACT. THE QUESTION IS WHAT WERE THE DEFENDANTS' STATE OF

 22 MINDS AT THE TIME THEY DROVE TO SAN DIEGO. THAT'S THE

 23 ONLY ISSUE THAT THEY ARE GOING TO DISPUTE HERE.

 24 LET ME JUST BRIEFLY TOUCH ON ANOTHER COUPLE

 25 OF INSTRUCTIONS, AND THEN I AM GOING TO TURN MY FOCUS TO

 26 A DISCUSSION OF THE FACTS IN THIS CASE.

 27 I WOULD LIKE TO JUST BRIEFLY TOUCH UPON THE

 28 PROSECUTION'S BURDEN IN THIS CASE.

 1 YOU WILL BE INSTRUCTED IN THIS CASE THAT

 2 THE PROSECUTION HAS THE BURDEN OF PROOF. WE ARE

 3 ALLEGING FIRST-DEGREE MURDER, SPECIAL CIRCUMSTANCES, AND

 4 CONSPIRACY TO COMMIT MURDER.

 5 NOW, TO WHAT EXTENT DO WE HAVE TO CONVINCE

 6 YOU OF THIS? TO WHAT EXTENT MUST YOU BE SATISFIED IN

 7 YOUR MIND THAT THIS HAS BEEN PROVEN?

 8 AND TO ESTABLISH THAT WE LOOK TO THE

 9 INSTRUCTION THAT DEALS WITH THE PROSECUTION'S BURDEN OF

 10 PROOF.

 11 "A DEFENDANT IN A CRIMINAL ACTION

 12 IS PRESUMED TO BE INNOCENT UNTIL THE

 13 CONTRARY IS PROVED, AND IN A CASE OF A

 14 REASONABLE DOUBT WHETHER HIS GUILT IS

 15 SATISFACTORILY SHOWN, HE IS ENTITLED TO A

 16 VERDICT OF NOT GUILTY.

 17 "THIS PRESUMPTION PLACES UPON THE

 18 PEOPLE THE BURDEN OF PROVING HIM GUILTY

 19 BEYOND A REASONABLE DOUBT. REASONABLE

 20 DOUBT IS DEFINED AS FOLLOWS: IT IS NOT A

 21 MERE POSSIBLE DOUBT, BECAUSE EVERYTHING

 22 RELATING TO HUMAN AFFAIRS IS OPEN TO SOME

 23 POSSIBLE OR IMAGINARY DOUBT. IT IS THAT

 24 STATE OF THE CASE WHICH, AFTER THE ENTIRE

 25 COMPARISON AND CONSIDERATION OF ALL THE

 26 EVIDENCE, LEAVES THE MINDS OF THE JURORS

 27 IN THAT CONDITION THAT THEY CANNOT SAY

 28 THEY FEEL AN ABIDING CONVICTION OF THE

 1 TRUTH OF THE CHARGE."

 2 LADIES AND GENTLEMEN, I WILL NOW TURN TO A

 3 DISCUSSION OF THE FACTS WHICH SUPPORTS OUR POSITION IN

 4 THIS CASE THAT THE DEFENDANTS ARE GUILTY OF FIRST-DEGREE

 5 MURDER AND NOTHING LESS; THAT THE SPECIAL CIRCUMSTANCES

 6 HAVE BEEN PROVEN TO BE TRUE, AND THAT THEY ARE GUILTY OF

 7 THE CRIME OF CONSPIRACY TO COMMIT MURDER. AND THAT ANY

 8 DOUBT THAT YOU MAY HAVE AS TO THEIR GUILT OF THOSE

 9 CHARGES IS NOT A REASONABLE DOUBT BASED UPON ALL OF THE

 10 EVIDENCE BEING PRESENTED TO YOU, BECAUSE WE PROVED OUR

 11 CASE TO YOU BASED ON A COMBINATION OF CIRCUMSTANCIAL

 12 EVIDENCE AND DIRECT EVIDENCE, WHICH ALLOWS ONLY FOR ONE

 13 REASONABLE INTERPRETATION, AND THAT IS THAT THE

 14 DEFENDANTS IN THIS CASE PLANNED TO KILL THEIR PARENTS,

 15 AND CARRIED OUT THE KILLING PURSUANT TO THAT PLAN

 16 YOU WILL BE INSTRUCTED IN REGARD TO WHAT I

 17 MEANT BY CIRCUMSTANCIAL EVIDENCE AND DIRECT EVIDENCE,

 18 AND I WOULD LIKE TO BRIEFLY REFER TO THAT.

 19 "DIRECT EVIDENCE IS EVIDENCE WHICH

 20 DIRECTLY PROVES A FACT, WITHOUT THE

 21 NECESSITY OF AN INFERENCE. IT IS EVIDENCE

 22 WHICH, BY ITSELF, IF FOUND TO BE TRUE,

 23 ESTABLISHES THAT FACT."

 24 SO IN OTHER WORDS, IF YOU WANT TO KNOW IF

 25 IT'S RAINING OUTSIDE, AND YOU LOOK OUTSIDE AND YOU SEE

 26 WITH YOUR OWN EYES THE RAIN COMING DOWN, YOU CAN THEN

 27 TESTIFY AS A WITNESS. YOU HAVE DIRECT EVIDENCE OF THAT

 28 FACT, THAT IT WAS, IN FACT, RAINING.

 1 CIRCUMSTANCIAL EVIDENCE IS EVIDENCE WHICH,

 2 IF FOUND TO BE TRUE, PROVES THE FACT FROM WHICH AN

 3 INFERENCE OF THE EXISTENCE OF ANOTHER FACT MAY BE DRAWN.

 4 SO IN OTHER WORDS, IF YOU SEE A PERSON WHO

 5 WALKED IN FROM OUTSIDE, IF YOU'RE STANDING THERE ON THE

 6 FIRST FLOOR, AND THAT PERSON IS COVERED IN RAIN, AND HE

 7 HAS AN UMBRELLA AND HE IS SHAKING IT, AND IF THE WATER

 8 IS COMING OFF THE UMBRELLA, YOU CAN REASONABLY CONCLUDE

 9 THAT IT'S RAINING OUTSIDE.

 10 THAT IS CIRCUMSTANCIAL EVIDENCE OF THE FACT

 11 THAT IT IS RAINING OUTSIDE. BEAR IN MIND,

 12 CIRCUMSTANCIAL EVIDENCE AND DIRECT EVIDENCE, ACCORDING

 13 TO THE LAW, ARE EQUALLY ACCEPTABLE MEANS OF PROOF. THE

 14 LAW DOESN'T SAY THAT ONE IS BETTER THAN THE OTHER.

 15 SOMETIMES YOU HEAR ON TELEVISION AND SOME OF THE T.V.

 16 PROGRAMS USE PHRASES LIKE "MERE CIRCUMSTANCIAL EVIDENCE.

 17 THE PROSECUTION HAS MERE CIRCUMSTANCIAL EVIDENCE."

 18 WELL, CIRCUMSTANCIAL EVIDENCE DOESN'T MEAN

 19 WEAK EVIDENCE. IF YOU ARE STANDING DOWNSTAIRS -- IF YOU

 20 WERE STANDING DOWNSTAIRS THIS MORNING AND YOU SAW PEOPLE

 21 COMING IN ONE AFTER ANOTHER, SHAKING OFF THEIR

 22 UMBRELLAS, THAT IS PRETTY SOLID EVIDENCE THAT IT'S

 23 RAINING OUTSIDE.

 24 CIRCUMSTANCIAL EVIDENCE IS NOT WEAK

 25 EVIDENCE. IT'S EXTREMELY STRONG. IT COULD BE JUST AS

 26 GOOD, IF NOT BETTER THAN DIRECT EVIDENCE. THE PROBLEM

 27 WITH DIRECT EVIDENCE SOMETIMES DEPENDS UPON THE

 28 CREDIBILITY OF THE PERSON.

 1 YOU MIGHT HAVE A PERSON WHO TAKES THE

 2 WITNESS STAND AND SAYS: "I WAS THERE AND I SAW THIS,"

 3 BUT THAT PERSON COULD BE LYING OR MISTAKEN.

 4 BUT YET THAT'S DIRECT EVIDENCE, YOU SEE.

 5 YET YOU MAY DECIDE: "I DON'T BELIEVE THIS PERSON. I

 6 DON'T BELIEVE ANYTHING HE'S SAYING."

 7 DIRECT EVIDENCE IS NOT STRONGER THAN

 8 CIRCUMSTANCIAL EVIDENCE. THAT'S PARTICULARLY IMPORTANT

 9 IN THIS CASE WHEN YOU EVALUATE THE CREDIBILITY OF ERIK

 10 MENENDEZ. REMEMBER WHEN HE WAS ON THE WITNESS STAND,

 11 SEVERAL TIMES HE WOULD SAY: "YOU WEREN'T THERE,

 12 MR. CONN." YOU SEE? WHAT HE IS SUGGESTING IS HE HAS

 13 DIRECT EVIDENCE OF THIS, YOU SEE, AND SO HE'S SOMEHOW

 14 MORE RELIABLE, BECAUSE HE WAS SAYING HE WAS THERE AND

 15 THIS TOOK PLACE.

 16 "YOU WEREN'T THERE, MR. CONN," YOU SEE.

 17 BUT CREDIBILITY EVIDENCE DOESN'T NECESSARILY MEAN

 18 TRUTHFUL EVIDENCE.

 19 SO THE PROSECUTION IN THIS CASE CAN PROVE

 20 THIS CASE ENTIRELY THROUGH THE CIRCUMSTANCIAL EVIDENCE.

 21 IT DOESN'T MATTER IF WE HAD A WITNESS WHO WAS THERE

 22 WATCHING JOSE MENENDEZ GET SHOT TO DEATH, OR WATCHING

 23 KITTY MENENDEZ GET SHOT TO DEATH. WE DON'T NEED DIRECT

 24 EVIDENCE. WE DON'T NEED EYEWITNESSES.

 25 STATE OF MIND, A PERSON'S STATE OF MIND IS

 26 INFERRED FROM ALL OF THE CIRCUMSTANCES OF THE CRIME.

 27 YOU CAN FIND PREMEDITATION AND DELIBERATION, JUST LIKE

 28 ANYTHING ELSE, THROUGH CIRCUMSTANCIAL EVIDENCE.

 1 IF A PERSON GOES DOWN TO SHOP FOR SHOTGUNS

 2 IN SAN DIEGO TWO DAYS BEFORE HE PLANS AND COMMITS A

 3 KILLING, AND COVERS UP AND CONCEALS THE CRIME, AND

 4 DESTROYS EVIDENCE AND FABRICATES EVIDENCE, AND INHERITS

 5 MONEY, YOU CAN CONCLUDE, BASED UPON THAT, THAT'S VERY

 6 STRONG CIRCUMSTANCIAL EVIDENCE OF AN INTENTION TO KILL,

 7 OF A PLAN TO KILL. WE DON'T NEED DIRECT EVIDENCE.

 8 CIRCUMSTANCIAL EVIDENCE IS GOOD ENOUGH, AND BETTER THAN

 9 DIRECT EVIDENCE IN SOME CASES.

 10 THAT GIVES YOU A BRIEF OVERVIEW OF THE

 11 LAW. I WILL DISCUSS THE FACTS OF THE CASE NOW. I AM

 12 GOING TO DISCUSS THE WITNESSES THAT I CALLED, THE

 13 WITNESSES THAT THE DEFENSE CALLED, AND THE WITNESSES

 14 THAT WE CALLED IN REBUTTAL TO EACH OTHER.

 15 BUT AS I DISCUSS THOSE WITNESSES, I WILL

 16 FROM TIME TO TIME BE COMING BACK TO THE LAW, BECAUSE I

 17 AM GOING TO WANT TO SHOW YOU HOW, THROUGHOUT THE CASE

 18 THAT I PRESENTED TO YOU, WE HAVE PROVEN PREMEDITATION.

 19 WE HAVE EVIDENCE WHICH ESTABLISHES PREMEDITATION AND

 20 DELIBERATION. WE HAVE EVIDENCE WHICH PROVES THAT THIS

 21 IS A FIRST-DEGREE MURDER, AND THAT YOU SHOULD REJECT THE

 22 DEFENSE OF THE DEFENDANTS.

 23 HERE IS A LIST OF CHARACTERS THAT I THINK

 24 YOU'RE FAMILIAR WITH BY THIS TIME. I AM SURE NOT ALL OF

 25 THE NAMES ARE GOING TO JUMP OUT AT YOU. IT'S BEEN A

 26 LONG TRIAL, AND IT'LL TAKE SOME TIME TO GO THROUGH EACH

 27 OF THESE PERSONS, BUT I WILL REFRESH YOUR RECOLLECTION

 28 AS TO WHAT THEY TESTIFIED TO DURING THIS TRIAL.

 1 THESE ARE ALL THE WITNESSES THAT WE CALLED

 2 DURING THE COURSE OF OUR CASE, AND I WILL START WITH

 3 DETECTIVE ZOELLER.

 4 I BELIEVE YOU WILL FIND THIS LIST TO BE

 5 ACCURATE IN TERMS OF THE SEQUENCE OF THE WITNESSES AS

 6 WELL, STARTING WITH DETECTIVE ZOELLER ON THE UPPER LEFT

 7 AND ENDING UP WITH DR. ROGER MC CARTHY ON THE RIGHT.

 8 WE STARTED OUT WITH DETECTIVE ZOELLER, AND

 9 DETECTIVE ZOELLER TESTIFIED, FIRST OF ALL, TO THE CRIME

 10 SCENE IN THIS CASE, BECAUSE HE WAS THE INVESTIGATING

 11 OFFICER WHO RESPONDED TO THE CRIME SCENE, AND HE HAS

 12 BEEN THE LEAD INVESTIGATOR ON THIS CASE SINCE AUGUST THE

 13 20TH OF 1989.

 14 HE TESTIFIED THAT FOLLOWING A 911 CALL THAT

 15 WAS PLACED BY LYLE MENENDEZ TO THE POLICE STATION,

 16 DETECTIVE ZOELLER WAS AWAKENED AT HIS HOME 13 MINUTES

 17 LATER, AND HE LEFT HIS HOME AT THAT TIME TO RESPOND TO

 18 722 NORTH ELM WITH HIS PARTNER, TOM LINEHAN.

 19 AFTER ARRIVING AT THE CRIME SCENE, HE WENT

 20 INTO THE CRIME SCENE, AND HE MADE THE OBSERVATIONS THAT

 21 HE MADE AT THE TIME. AND THESE ARE THE KEY OBSERVATIONS

 22 THAT HE MADE AT THE TIME WHICH HAVE SOME BEARING UPON

 23 THE CRITICAL FACTS IN THIS CASE:

 24 HE TESTIFIED THAT THE LIGHTS TO THE DEN

 25 WHERE THE KILLING TOOK PLACE WERE OUT, BUT THE LIGHTS TO

 26 THE FOYER WERE ON.

 27 AND YOU CAN SEE WHY THAT IS SIGNIFICANT

 28 NOW. THE LIGHTS TO THE FOYER WERE ON. I EVEN ASKED

 1 ERIK MENENDEZ, BECAUSE THE ISSUE THERE IS WHETHER HE WAS

 2 ABLE TO SEE WHAT HE WAS DOING AS HE WAS SHOOTING HIS

 3 PARENTS TO DEATH.

 4 I SAID, "ISN'T IT TRUE THAT THE LIGHTS WERE

 5 ON WHEN YOU ENTERED INTO THAT ROOM, AND IT FLOODED --

 6 THE LIGHTS FLOODED THE DEN?"

 7 AND ERIK MENENDEZ SAID: "YES. I DIDN'T

 8 THINK ABOUT IT BEFORE, BUT I GUESS THAT'S RIGHT."

 9 AND WE KNOW THAT THAT'S RIGHT, BECAUSE

 10 DETECTIVE ZOELLER SAID WHEN HE ARRIVED, THE LIGHTS TO

 11 THE FOYER WERE ON.

 12 DETECTIVE ZOELLER ALSO SAID THAT THE

 13 TELEVISION WAS ON, AND THE SOUND OF THE TELEVISION WAS

 14 LOUD.

 15 A VERY IMPORTANT FACT WAS THE FACT THAT NO

 16 SHOTGUN SHELLS WERE FOUND ON THE FLOOR, INDICATING THAT

 17 SOMEONE HAD CAREFULLY RETRIEVED ALL OF THE SHOTGUN

 18 SHELLS. EVERY SINGLE SHOTGUN SHELL WAS PICKED UP IN

 19 THIS CASE.

 20 THAT TELLS YOU A LOT ABOUT THE DEFENDANTS

 21 AND THEIR STATE OF MIND AT THE TIME IMMEDIATELY

 22 FOLLOWING THE COMMISSION OF THE CRIME. THE CONCEALMENT

 23 AND DESTRUCTION OF EVIDENCE. THAT TELLS YOU THEIR

 24 MENTAL STATE; THAT THEY WERE ABLE TO THINK ABOUT WHAT

 25 THEY WERE DOING, AND THAT THEY WERE HIDING AND

 26 CONCEALING THEIR IDENTITY WITHIN MOMENTS OF KILLING

 27 THEIR PARENTS.

 28 ANOTHER CRITICAL FACT IS THAT NO WEAPONS

 1 WERE FOUND INSIDE THAT ROOM. SO YOU KNOW THAT KITTY AND

 2 JOSE MENENDEZ WERE NOT ARMED, AND POSED NO DANGER TO THE

 3 DEFENDANTS. THERE WERE NO WEAPONS INSIDE THAT ROOM.

 4 THE ONLY WEAPONS IN THE HOUSE, DETECTIVE

 5 ZOELLER SAID, WERE TWO .22 CALIBER RIFLES THAT WERE

 6 FOUND IN THE CLOSET OF KITTY MENENDEZ. THESE RIFLES

 7 WERE BOTH UNLOADED

 8 SO THERE WAS NO THREAT TO THE DEFENDANTS

 9 WHATSOEVER.

 10 DETECTIVE ZOELLER SAID THAT HE DID NOT

 11 SEIZE THE WEAPONS BECAUSE THEY HAD NO CONNECTION TO THE

 12 IMMEDIATE CRIME SCENE. HE IS NOT GOING TO GO AROUND THE

 13 HOUSE COLLECTING VARIOUS PIECES OF EVIDENCE THAT DOESN'T

 14 APPEAR TO HAVE ANY BEARING UPON THE SHOOTING, AND THOSE

 15 TWO RIFLES UP IN KITTY MENENDEZ' CLOSET HAD NO APPARENT

 16 BEARING UPON THIS SHOOTING. AND INDEED, LADIES AND

 17 GENTLEMEN, I WOULD SUBMIT, THEY HAVE NOTHING TO DO WITH

 18 THIS CASE.

 19 VERY IMPORTANT FACT. THE SHUTTERS TO THE

 20 DEN WERE OPEN, AS INDICATED IN THE PHOTOGRAPHS OF THE

 21 DEN. AND I DON'T HAVE A PHOTOGRAPH HERE, BUT YOU CAN

 22 SEE WHEN YOU LOOK AT A PHOTOGRAPH TAKEN FROM OUTSIDE THE

 23 DEN, LOOKING INTO THE DEN, THE SHUTTERS ARE OPEN. YOU

 24 CAN SEE INSIDE THE DEN. YOU CAN SEE THAT LITTLE CARD

 25 TABLE, YOU KNOW, THAT'S ON THE SIDE OF THE ROOM, AND YOU

 26 CAN SEE THE BOOK SHELVES AND SO FORTH AS YOU'RE LOOKING

 27 AT THIS PHOTOGRAPH TAKEN FROM OUTSIDE THE ROOM.

 28 WHY IS THAT IMPORTANT? HERE'S WHY THAT'

 1 IMPORTANT

 2 BECAUSE THE STORY OF THE DEFENDANTS, WHICH

 3 I WILL ANALYZE IN DETAIL LATER, IS THAT ERIK AND LYLE

 4 MENENDEZ WERE IN THIS PASSIONATE STATE, AND THEY RAN AND

 5 GOT THEIR GUNS, AND FELT THAT THEY HAD TO SHOOT THEIR

 6 PARENTS TO DEATH IN SUCH A HORRIBLE AND BRUTAL WAY.

 7 LYLE MENENDEZ PRESUMABLY AT THAT TIME WENT

 8 TO THE GUESTHOUSE. ISN'T THAT WHERE HIS SHOTGUN WAS AT

 9 THAT TIME?

 10 WE KNOW WHAT ERIK DID. HE TOLD US WHAT HE

 11 DID. BUT THE LAST WE HEARD ABOUT THE SHOTGUN OF LYLE

 12 MENENDEZ, PRESUMABLY THAT WAS OVER IN HIS GUESTHOUSE.

 13 SO EVEN THOUGH ERIK MENENDEZ WAS NOT

 14 PERMITTED TO SPECULATE AND SAY WHAT HE THOUGHT LYLE

 15 MENENDEZ DID DURING THAT PERIOD OF TIME, LYL MENENDEZ

 16 AGAIN -- AND I AM JUST PLAYING INTO THE DEFENSE CLAIM OF

 17 WHAT HAPPENED ON AUGUST THE 20TH OF 1989, I AM NOT

 18 SAYING THAT YOU SHOULD BELIEVE THIS REALLY TOOK PLACE.

 19 BUT JUST GOING DOWN THAT ROAD WITH THEM A

 20 LITTLE BIT, AND ANALYZING THE STORY THAT THEY WANT YOU

 21 TO BELIEVE IS A TRUE STORY, WHAT HAPPENED?

 22 AS ERIK MENENDEZ WENT UP TO HIS ROOM TO GET

 23 HIS SHOTGUN, LYLE MENENDEZ PRESUMABLY WENT OUT THROUGH

 24 THE LIVING ROOM. THE ROOM THAT IS -- I'LL SHOW YOU WITH

 25 THE DIAGRAM TOMORROW -- HE RAN OUT TO THE GUESTHOUSE,

 26 WENT ALONG BETWEEN THE POOL AND THE TENNIS COURTS, GOT

 27 TO THE GUESTHOUSE, GOT HIS SHOTGUN, CAME BACK FROM THE

 28 GUESTHOUSE WITH HIS SHOTGUN. PERHAPS I SHOULD USE THAT

 1 DIAGRAM NOW -- AND RAN OUT TO MEET HIS BROTHER AT THE

 2 CAR.

 3 IF THE DEFENDANTS WERE HERE AT THE ENTRY,

 4 LYLE MENENDEZ, I BELIEVE, ACCORDING TO ERIK MENENDEZ,

 5 WAS SOMEWHERE AROUND HERE. ERIK MENENDEZ WAS AT THE TOP

 6 OF THE STAIRS ON THE SECOND FLOOR.

 7 LYLE MENENDEZ RAN UP TO THE SECOND FLOOR,

 8 SPOKE TO HIS BROTHER, ERIK. ERIK THEN WENT TO HIS

 9 BEDROOM TO GET HIS GUN. LYLE MENENDEZ RAN DOWN THE

 10 STAIRS AND WENT TO GET HIS GUN.

 11 LYLE MENENDEZ MUST HAVE GONE THROUGH TH

 12 LIVING ROOM HERE ALONG THIS PATHWAY TO THE GUESTHOUSE.

 13 HE WENT UP TO THE GUESTHOUSE TO THE SECOND FLOOR. FROM

 14 THE SECOND FLOOR HE RETRIEVED HIS SHOTGUN, CAME BACK

 15 DOWN, RAN ALONG THE POOL AND THE TENNIS COURT, CAME THIS

 16 WAY, AND TO GET TO THE FRONT HERE, HE MUST HAVE GONE

 17 ALONG THIS ROUTE HERE, YOU SEE, AND THAT IS A GATE. YOU

 18 KNOW THIS LITTLE GATE OVER HERE AT THE END

 19 AND HE WENT THROUGH THE GATE, GOT OUT TO

 20 THE FRONT AND MET ERIK MENENDEZ OUT THERE, WHO HAD NOW

 21 FINISHED, OR WAS IN THE PROCESS OF UNLOADING AND

 22 RELOADING HIS GUN.

 23 THAT IS THE ROUTE -- THE ONLY ROUTE THAT

 24 LYLE MENENDEZ MUST HAVE TAKEN THAT DAY.

 25 WELL, THE INTERESTING THING ABOUT THAT IS

 26 THAT HERE ARE THE SHUTTERS TO THE DEN, AND THE SHUTTERS

 27 ARE OPEN. YOU CAN SEE THROUGH THE SHUTTERS. AND THI

 28 IS WHERE DETECTIVE ZOELLER'S OBSERVATION IS IMPORTANT,

 1 AND YOU CAN EVEN SEE IT IN THE PHOTOGRAPHS YOURSELF.

 2 IF THE SHUTTERS ARE OPEN, YOU CAN LOOK

 3 THROUGH. YOU CAN SEE WHAT'S GOING ON INSIDE THE ROOM.

 4 SO LYLE MENENDEZ HAD PLENTY OF OPPORTUNITY

 5 TO LOOK THROUGH THE SHUTTERS TO SEE HIS PARENTS, SEE

 6 WHAT HIS PARENTS WERE DOING, YOU SEE. WHY WOULD LYLE

 7 MENENDEZ BELIEVE THAT "IT'S HAPPENING NOW"? HIS PARENTS

 8 ARE LOADING GUNS INSIDE THE DEN.

 9 DID LYLE MENENDEZ TAKE THE TIME AND THE

 10 TROUBLE -- IF HE CARED ABOUT WHETHER OR NOT HE SHOT HIS

 11 PARENTS TO DEATH -- DID HE TAKE THE TIME AND TROUBLE TO

 12 EVEN LOOK THROUGH THE SHUTTERS AND SEE IF HIS PARENTS

 13 WERE LOADING GUNS?

 14 NO. APPARENTLY NOT, LADIES AND GENTLEMEN.

 15 I WOULD SUBMIT ONE OF THE REASONS WHY HE

 16 DID NOT WAS BECAUSE LYLE MENENDEZ, JUST LIKE ERIK

 17 MENENDEZ, WANTED TO KILL THEIR PARENTS. THEY WANTED TO

 18 SHOOT THEIR PARENTS TO DEATH. ANYONE WHO WAS REALLY IN

 19 THAT SITUATION, IF THAT SITUATION REALLY OCCURRED, WOULD

 20 HAVE TAKEN THE TIME AND THE TROUBLE TO LOOK THROUGH THE

 21 SHUTTERS, AND WOULD HAVE SEEN THAT THE MOTHER AND FATHER

 22 WERE JUST SITTING THERE WATCHING TELEVISION. THERE WAS

 23 NO DANGER.

 24 AND I SUBMIT TO YOU, LADIES AND GENTLEMEN,

 25 THAT THIS SITUATION NEVER EVEN OCCURRED.

 26 SO DETECTIVE ZOELLER TESTIFIED TO THE

 27 OBSERVATIONS OF THE CRIME SCENE. HE ALSO TESTIFIED

 28 TO -- LAID A FOUNDATION FOR THE PHYSICAL EXHIBITS THAT

 1 YOU SAW HERE IN COURT, WHICH WERE SIGNIFICANT.

 2 YOU SAW THE VIDEOTAPE OF THE CRIME SCENE

 3 THAT WAS MADE THAT NIGHT, WHICH INCLUDED THE DEN WHERE

 4 THE BLOODY BODIES OF KITTY AND JOSE MENENDEZ WERE LYING

 5 IN THE POSITION IN WHICH THEY WERE FOUND.

 6 YOU SAW PHOTOGRAPHS -- NUMEROUS PHOTOGRAPHS

 7 OF THE CRIME SCENE. DETECTIVE ZOELLER TESTIFIED THAT IS

 8 THE WAY THE HOME APPEARED THAT NIGHT, AND THESE

 9 PHOTOGRAPHS ARE ACCURATE DEPICTIONS OF WHAT I OBSERVED

 10 THAT NIGHT.

 11 AND THEN HE TESTIFIED IN REGARD TO THE

 12 RECOVERY OF PHYSICAL EVIDENCE; SUCH AS THE PELLETS AND

 13 WADDING THAT WAS FOUND AND RECOVERED FROM THE DEN.

 14 AND THEN, OF COURSE, HE LAID A FOUNDATION

 15 FOR ALL OF THE DIAGRAMS THAT WE HAVE HERE IN COURT, THE

 16 FIRST FLOOR AND THE SECOND FLOOR IN THE MENENDEZ ESTATE.

 17 HE ALSO TESTIFIED IN REGARD TO THE BEHAVIOR

 18 OF THE DEFENDANTS THAT NIGHT. YOU WILL RECALL THAT H

 19 SAID THAT HE STAYED AT THE CRIME SCENE, HE DID NOT

 20 INTERVIEW THE DEFENDANTS. THE DEFENDANTS WENT TO THE

 21 POLICE STATION -- WERE TRANSPORTED TO THE POLICE STATION

 22 WHERE THEY COULD BE INTERVIEWED BY ANOTHER DETECTIVE,

 23 WHO YOU NOW KNOW WAS DETECTIVE EDMONDS.

 24 BUT HE STAYED AT THE CRIME SCENE TO CONDUCT

 25 HIS INVESTIGATION, AND THEN DESCRIBED HOW THE DEFENDANTS

 26 CAME BACK THE NEXT MORNING. DO YOU REMEMBER? IT WAS AT

 27 5:30 THE NEXT MORNING. ERIK AND LYLE MENENDEZ CAME BACK

 28 TO THE RESIDENCE. THEY WANTED TO GO INTO THE DEN, AND

 1 THEY SAID THEY WANTED TO RECOVER THEIR TENNIS GEAR.

 2 THEY SAID THEY WANTED TO RECOVER TENNIS GEAR FROM THE

 3 DEN, AND HE TOLD THEM THEY COULDN'T GET IN AT THAT TIME.

 4 HE TOLD THEM TO COME BACK AT ABOUT 8:30, WHICH THEY DID,

 5 AND THEN TURNED THE HOUSE OVER TO THEM ABOUT THAT TIME,

 6 OR SHORTLY AFTERWARDS.

 7 DETECTIVE ZOELLER ALSO TESTIFIED TO

 8 ATTENDING THE AUTOPSY THAT WAS CONDUCTED BY THE LOS

 9 ANGELES CORONER'S OFFICE.

 10 THE COURT: OKAY. LET'S TAKE OUR BREAK AT THIS

 11 POINT, SINCE YOU'RE GOING ON TO A NEW SUBJECT. AND WE

 12 WILL RESUME TOMORROW AT 8:30.

 13 DON'T DISCUSS THIS CASE WITH ANYONE. DON'T

 14 FORM ANY FINAL OPINIONS ABOUT IT. DON'T PERMIT YOURSELF

 15 TO BE EXPOSED TO ANYTHING ABOUT THIS CASE OUTSIDE THE

 16 COURTROOM, AND WE WILL SEE YOU ALL BACK HERE TOMORROW AT

 17 8:30.

 18 (THE JURY ENTERED THE JURY ROOM

 19 AND THE FOLLOWING PROCEEDINGS

 20 WERE HELD:)

 21

 22 THE COURT: I WILL ASK THAT COUNSEL REMAIN TO

 23 TALK ABOUT A COUPLE OF EXHIBITS.

 24 FIRST OF ALL, THERE WAS A LIST OF EXHIBITS

 25 PROVIDED TO ME BY, I THINK, THE PROSECUTION. I ASSUME

 26 THE DEFENSE HAS SEEN IT AS WELL.

 27 MY QUESTION IS HE WHETHER OR NOT THERE HAS

 28 BEEN AN AGREEMENT AS TO THIS BEING THE LIST OF EXHIBITS,

 1 OR YOU HAVEN'T HAD A CHANCE TO REVIEW IT YET.

 2 MS. TOWERY: NO, WE HAVEN'T HAD A CHANCE TO

 3 REVIEW IT YET.

 4 THE COURT: WE WILL TALK ABOUT IT AFTER YOU DO

 5 THAT.

 6 (JURY EXITS THE COURTROOM AND

 7 THE FOLLOWING PROCEEDINGS

 8 WERE HELD:)

 9

 10 THE COURT: ALSO REGARDING THE DECEMBER 11TH

 11 TAPE, THOSE FEW DISPUTES THAT WERE UNRESOLVED. I STILL

 12 HAVE MR. LEVIN'S TAPE-RECORDER. I WILL GIVE IT BACK TO

 13 YOU.

 14 MR. LEVIN: THERE IS A CHARGE, YOUR HONOR.

 15 THE COURT: IT REALLY WASN'T A GREAT TAPE

 16 RECORDER.

 17 AND COUNSEL CAN FIND THE PORTION OF THE

 18 TAPE THAT YOU STILL WANT TO LITIGATE. WE WILL AT LEAST

 19 DISCUSS IT. I'LL BE HAPPY TO LISTEN TO IT.

 20 MS. TOWERY: I THINK THERE WERE ONLY -- I AM

 21 SORRY. I THINK THERE WERE ONLY TWO PORTIONS THAT WE HAD

 22 LEFT THAT WERE UNRESOLVED, AND THEY'RE VERY CLOSE

 23 TOGETHER ON THE TAPE, YOUR HONOR.

 24 THE COURT: OKAY. WELL, I WILL JUST GIVE IT TO

 25 YOU, AND YOU CAN FIND IT FOR ME.

 26 MS. TOWERY: I'M SORRY?

 27 THE COURT: I WILL GIVE IT TO YOU, AND YOU CAN

 28 FIND FOR ME.

 1 MS. TOWERY: I HAVE IT. I'VE CUED IT UP FOR THE

 2 ONE ON PAGE 21.

 3 THE COURT: OKAY.

 4 MS. TOWERY: WHERE WE HAD THE -- WHERE THE COURT

 5 THOUGHT THAT PERHAPS ERIK MENENDEZ WAS SAYING "BLOOD ON

 6 THE BATHROOM."

 7 THE COURT: YES.

 8 MS. TOWERY: AND WE HAD SUBMITTED THAT IT WAS

 9 "BLOOD ON THE BED," AND THE PROSECUTION INDICATED

 10 "UNINTELLIGIBLE."

 11 I LISTENED TO THAT AGAIN, YOUR HONOR, AND I

 12 THINK IT DOES SAY "BLOOD ON THE BED," AND THEN

 13 THEREAFTER ARE UNINTELLIGIBLE WORDS.

 14 AND THEN THE NEXT PART OF THE TRANSCRIPT

 15 THAT WAS IN DISPUTE IS AT PAGE 22, LINE 20.

 16 THE PROSECUTION'S VERSION IS THAT ERIK

 17 MENENDEZ SAYS: "I JUST NEVER GAVE IT A CHANCE."

 18 AND THE DEFENSE VERSION WAS: "I GUESS THAT

 19 I WAS NEVER GIVEN A CHANCE."

 20 AGAIN, IN LISTENING TO IT, AGAIN I THINK

 21 THE DEFENSE VERSION IS CORRECT. I HAVE IT CUED UP.

 22 THE COURT: OKAY.

 23 MS. TOWERY: TO THE -- TO PAGE 21. IF THE COURT

 24 CAN FAST-FORWARD IT. I DON'T HAVE AN EXTRA TAPE. I

 25 GAVE THE COURT MY OTHER TAPE.

 26 THE COURT: I GAVE THE TAPE BACK TO YOU.

 27 MS. ABRAMSON: AND YOU CAN CUE IT UP AGAIN.

 28 MS. TOWERY: ARE YOU SURE YOU GAVE ME BACK THE

 1 OTHER TAPE?

 2 THE COURT: I GAVE IT TO THE CLERK, AND SHE GAVE

 3 IT BACK TO YOU.

 4 MS. TOWERY: I MUST HAVE MISPLACED IT.

 5 THE COURT: I ONLY HAVE THE EXHIBIT IN COURT, THE

 6 ORIGINAL EXHIBIT.

 7 MS. TOWERY: RIGHT NOW I ONLY HAVE ONE TAPE. I

 8 CUED IT UP TO PAGE 21, BUT IT'S PRETTY EASY TO FAST

 9 FORWARD IT.

 10 THE COURT: WE WILL DO IT HERE WHEN WE GET A

 11 LITTLE TIME TO DO IT, AND WE CAN ALL LISTEN AT THE SAME

 12 TIME.

 13 THERE IS ONE OTHER EXHIBIT HERE YOU WERE

 14 REDACTING?

 15 MS. ABRAMSON: YES. THESE ARE TWO PAGES, PAGE 19

 16 AND PAGE 16 FROM TWO DIFFERENT TABLETS OF DR. WILSON.

 17 19 IS FROM 11-18-95, AND I TAKE IT THAT'S HIS

 18 HANDWRITING. IT WAS HIS HANDWRITING.

 19 AND 16 IS FROM 12-9-95.

 20 MY POSITION WAS THAT NEITHER PAGE HAD TO BE

 21 REDACTED. BUT IF THE COURT RULES IT SHOULD BE REDACTED,

 22 PEOPLE ARE TRYING TO GET THEIR CAKE AND EAT IT HERE WITH

 23 THE ONE ON PAGE 16. THEY WANT TO LEAVE THE PART THAT

 24 DR. DIETZ THOUGHT WAS SIGNIFICANT: FRIDAY, SUNNY DAY,

 25 NEW DAY, AND THEN CUT OUT THE REST OF THAT PART,

 26 INCLUDING THIS DESCRIPTION BY MR. MENENDEZ OF THAT

 27 FRIDAY MORNING, WHERE HE SAYS SPECIFICALLY. "DAD AT

 28 WORK." SO --

 1 THE COURT: I DON'T RECALL THAT EVER BEING RAISED

 2 IN THE EXAMINATION OF DR. WILSON. THE ONLY PART THAT

 3 WAS RAISED HAD TO DO WITH THE DRIVER'S LICENSE.

 4 MS. ABRAMSON: SO IF THAT'S -- I WOULD INDICATE

 5 THAT WE CAN'T HAVE THEIR CAKE AND EAT IT. IF THEY'RE

 6 GOING TO REDACT, THEY HAVE TO TAKE OUT EVERYTHING BUT

 7 THE LITTLE PARAGRAPH.

 8 MS. NAJERA: THAT'S FINE.

 9 MS. ABRAMSON: ON THE BOTTOM.

 10 THE COURT: OKAY. AS I UNDERSTAND IT, ON BOTH OF

 11 THOSE PAGES THAT WAS ALL THAT WAS BROUGHT OUT. SO IT

 12 SEEMS TO ME THAT THOSE WOULD BE THE ONLY PORTIONS THAT

 13 ARE RECEIVED.

 14 MS. ABRAMSON: OKAY.

 15 THE COURT: OKAY. WE'LL BE IN RECESS UNTIL

 16 TOMORROW AT 8:30.

 17 MR. LEVIN: WE HAVE ONE MORE THING, YOUR HONOR.

 18 I BELIEVE WHEN WE DID THE EXHIBITS WE HAD

 19 NOT YET MARKED THE CALENDAR, EXHIBIT 441, AND I AM

 20 MOVING THAT INTO EVIDENCE.

 21 THE COURT: THERE WAS NO OBJECTION TO IT BEING

 22 RECEIVED; IS THAT RIGHT, MR. CONN?

 23 IT'LL BE RECEIVED.

 24 MS. NAJERA: I BEG YOUR PARDON, YOUR HONOR?

 25 THE COURT: THE CALENDAR, THE F.A.A. CALENDAR.

 26 MS. NAJERA: OKAY.

 27 MS. TOWERY: YOUR HONOR, ONE MORE EXHIBIT. I

 28 DON'T KNOW WHAT WE DID ABOUT 440. WAS THAT RECEIVED AS

 1 WELL? THAT'S THE CONTRACT WITH "HARD COPY."

 2 THE COURT: I THINK YOU WERE GOING TO LOOK AT THE

 3 CONTRACT AND REDACT IT. WE WILL TALK ABOUT IT TOMORROW.

 4 MS. NAJERA: OKAY. I DID THAT.

 5 THE COURT: WE WILL BE IN RECESS UNTIL TOMORROW.

 6 (AT 4:40 P.M. PROCEEDINGS WERE

 7 ADJOURNED UNTIL 8:30 A.M. THE

 8 FOLLOWING DAY.)

 2 MR. CONN: THANK YOU, YOUR HONOR.

 3 LADIES AND GENTLEMEN, ONE OF THE POINTS

 4 THAT I WAS MAKING YESTERDAY, YOU WILL RECALL, IS THAT

 5 YOU STAY FOCUSED ON THE ULTIMATE ISSUE IN THIS CASE.

 6 AND I GAVE YOU AS ONE OF THE EXAMPLES THAT

 7 COULD CAUSE A DEVIATION FROM YOUR FOCUS, OR A SIDESTEP

 8 FROM YOUR PROPER FOCUS, THE ISSUE OF ABUSE. IF YOU WERE

 9 TO SPEND ALL YOUR TIME TALKING ABOUT WHETHER OR NOT THE

 10 DEFENDANTS WERE ABUSED, THAT WOULD BE ONE WAY OF VEERING

 11 AWAY, OR STEERING AWAY FROM THE REAL ULTIMATE ISSUE IN

 12 THIS CASE, WHICH IS THE DEFENDANT'S STATE OF MIND AT THE

 13 TIME OF THE COMMISSION OF THE CRIME

 14 BUT I WANT TO EXPAND UPON THAT BEFORE I GO

 15 FURTHER IN DISCUSSING THE WITNESSES WHO TESTIFIED. I

 16 WANT TO MAKE THAT JUST A LITTLE BIT CLEARER TO YOU IN A

 17 SLIGHTLY DIFFERENT CONTEXT, AND THAT CONTEXT IS THIS:

 18 WHY DID THE DEFENDANTS KILL THEIR PARENTS?

 19 NOW, ONCE AGAIN, JUST AS WITH THE QUESTION

 20 OF ABUSE, IS THE QUESTION OF WHY THE DEFENDANTS KILLED

 21 THEIR PARENTS SOMETHING THAT YOU SHOULD DISCUSS? OF

 22 COURSE. OF COURSE. IT FOLLOWS, FROM THE NATURE OF THE

 23 EVIDENCE PRESENTED HERE. IT'S GOING TO BE ONE OF THE

 24 THINGS THAT YOU'RE GOING TO TALK ABOUT.

 25 ONCE AGAIN, AS WITH THE QUESTION OF WHETHER

 26 OR NOT THE DEFENDANTS WERE ABUSED, BEAR IN MIND THAT

 27 THAT IS NOT THE ULTIMATE ISSUE IN THIS CASE

 28 NOW, WHEN THE DEFENSE ATTORNEYS ARGUE, I

 1 SUSPECT THAT THEY ARE GOING TO TELL YOU THAT THAT IS THE

 2 ISSUE IN THIS CASE. THE ISSUE IS WHY DID THE DEFENDANTS

 3 KILL THEIR PARENTS. THAT'S REALLY NOT THE ULTIMATE

 4 ISSUE, AND HERE'S WHY.

 5 YOU CAN HAVE TOTALLY DIFFERENT OPINIONS

 6 REGARDING WHY THE DEFENDANTS KILLED THEIR PARENTS AND

 7 STILL AGREE THAT THIS WAS A PREMEDITATED AND DELIBERATE

 8 MURDER. LET'S SAY -- TAKE FOR EXAMPLE THE ISSUE OF

 9 ABUSE. JUST ASSUME FOR THE MOMENT THE DEFENDANTS WERE

 10 IN FACT ABUSED, OKAY.

 11 WHAT HAPPENS AS A RESULT OF ABUSE? ABUSE

 12 CAN LEAD TO ANGER. ANGER CAN LEAD TO RAGE. RAGE CAN

 13 LEAD TO THE DESIRE FOR RETALIATION OR REVENGE.

 14 BUT LADIES AND GENTLEMEN, REVENGE CAN LEAD

 15 TO PREMEDITATION AND DELIBERATION, AND THAT IN TURN CAN

 16 LEAD TO MURDER, YOU SEE.

 17 JUST AS I TOLD YOU THAT THERE WERE DISPUTES

 18 WITHIN THE FAMILY CONCERNING THE FINANCES. THE

 19 DEFENDANTS WERE NO LONGER BEING TREATED AS CHILDREN.

 20 THEY WERE OUT THERE SPENDING MONEY. LYLE MENENDEZ WAS

 21 SPENDING LARGE SUMS OF MONEY, AND THERE WERE DISPUTES

 22 CONCERNING THE MONEY BEING SPENT.

 23 THOSE TYPE OF DISPUTES, FINANCIAL DISPUTES

 24 AND THE INABILITY OF THE DEFENDANTS TO SPEND MONEY AS

 25 THEY CHOOSE, COULD LEAD TO FEELINGS OF GREED, ENVY, AND

 26 IT COULD ALSO LEAD TO PREMEDITATION AND DELIBERATION.

 27 THERE MAY BE A GREAT NUMBER OF REASONS WHY

 28 THE DEFENDANTS KILLED THEIR PARENTS. YOU KNOW, FOR

 1 EXAMPLE, THERE WAS A DISPUTE CONCERNING THE FAILURE OF

 2 LYLE MENENDEZ -- AND I AM GOING TO TALK ABOUT THIS A

 3 LITTLE BIT FURTHER BEFORE I GET INTO THE EVIDENCE.

 4 YOU KNOW THAT THERE WAS A FALL-OUT ABOUT

 5 THE EXPECTATIONS OF JOSE MENENDEZ, AND HOW HE EXPECTED

 6 HIS SONS TO BE ACHIEVERS, AND THEY WEREN'T

 7 OVER-ACHIEVERS. IF ANYTHING, THEY WERE UNDER-ACHIEVERS.

 8 AND HE WAS DISAPPOINTED IN THEM.

 9 AND SO THERE IS THE DISAPPOINTMENT IN THE

 10 FAMILY ABOUT THE WAY THE DEFENDANTS WERE MATURING AS

 11 YOUNG MEN. THERE WERE THE BURGLARIES, WHICH LED TO

 12 CONFLICT AND ANGER WITHIN THE FAMILY, AND THIS

 13 DISSOLUTIONMENT WITH THE WAY THE DEFENDANTS WERE

 14 MATURING AS YOUNG MEN COULD HAVE LED TO PREMEDITATION

 15 AND DELIBERATION.

 16 SO I SUBMIT TO YOU, LADIES AND GENTLEMEN,

 17 THAT THERE ARE MANY FEELINGS THAT COULD HAVE BEEN GOING

 18 ON IN THAT FAMILY. A LOT OF TENSION, FOR ANY NUMBER OF

 19 REASONS, THAT COULD HAVE LED TO THE DECISION TO KILL IN

 20 THIS CASE.

 21 AND I AM NOT SAYING IT WAS ANY ONE DECISION

 22 OR ANY ONE INFLUENCE. AS I TOLD YOU PREVIOUSLY, WHAT

 23 OUR THEORY IS IN THIS CASE IS THAT THE DEFENDANTS IN

 24 THIS CASE KILLED FOR REASONS OF INDEPENDENCE. THEY DID

 25 IN FACT HAVE THEIR FATHER ON THEIR BACK. JOSE MENENDEZ

 26 WAS A MAN WHO WAS VERY CONTROLLING, WHO HAD HIGH

 27 EXPECTATIONS OF HIS SONS, WHO WANTED HIS SONS TO

 28 ACHIEVE, AND THEY WERE NOT DOING IT, AND HE WAS

 1 PROFOUNDLY DISAPPOINTED IN THEM, AND THEY KNEW IT. THAT

 2 SHAME, THAT ANGER, COULD HAVE BEEN ONE OF THE MANY

 3 REASONS THAT CONTRIBUTED TO THE KILLING IN THIS CASE.

 4 YOU SEE, ALL OF THESE REASONS UP HERE CAN

 5 ALL BE GROUPED UNDER THE HEADING OF "WHY".

 6 NOW, YOU COULD DEBATE THE ISSUE OF WHY

 7 FOREVER BACK THERE IN THE JURY ROOM, AND PERHAPS YOU

 8 WILL ALL FEEL, AS I THINK IS THE REASONABLE CONCLUSION

 9 TO BE DRAWN IN THIS CASE, THAT IT WASN'T ANY ONE FACTOR.

 10 IT WAS A COMBINATION OF THINGS. IT WAS A COMBINATION OF

 11 THE DESIRE TO BE FREE OF THEIR PARENTS, TO HAVE THE

 12 MONEY, TO HAVE THE MONEY NOW, TO BE ABLE TO DO WHAT THEY

 13 WANT, AND TO ENJOY THAT FREEDOM. THAT WAS ONE OF THE

 14 MANY FACTORS THAT CONTRIBUTED TO THE KILLINGS IN THIS

 15 CASE AND THE RESENTMENT THAT THEY FELT TOWARD THEIR

 16 FATHER.

 17 I THINK THAT THE EVIDENCE SHOWS THAT JOSE

 18 MENENDEZ WAS JUST AS FRUSTRATED WITH THEM AS THEY WERE

 19 FRUSTRATED WITH HIM. IT WAS A TWO-WAY STREET. THERE

 20 WAS A LOT OF TENSION INSIDE THE HOUSE.

 21 BUT ALL OF THESE REASONS DO NOT PRECLUDE,

 22 OR SHOULD NOT CAUSE YOU TO DIVIDE AS TO WHETHER OR NOT

 23 THERE WAS PREMEDITATION AND DELIBERATION IN THIS CASE.

 24 ONE OF YOU MAY FEEL IT WAS PRIMARILY THE GREED: THEY

 25 WANTED THE MONEY, AND THEY WANTED THE MONEY NOW.

 26 ANOTHER ONE OF YOU MAY FEEL IT WAS JUST THE TENSION IN

 27 THE HOUSE. THEY JUST COULDN'T STAND TO LOOK AT EACH

 28 OTHER ANYMORE.

 1 AND ANOTHER ONE OF YOU -- ASSUMING

 2 HYPOTHETICALLY, I HOPE YOU DON'T REACH THIS

 3 CONCLUSION -- BUT ASSUME THERE WAS SOME SORT OF ABUSE IN

 4 THIS CASE. IF THAT ABUSE LED TO A DESIRE FOR REVENGE,

 5 THAT COULD VERY WELL BE A FIRST-DEGREE MURDER.

 6 IF ERIK MENENDEZ DECIDED, JUST

 7 HYPOTHETICALLY SPEAKING, AND I AM NOT SUGGESTING TO YOU

 8 THAT THIS IS THE CASE. I WOULD SUGGEST TO YOU THE

 9 EVIDENCE DOESN'T EVEN WARRANT THIS CONCLUSION.

 10 BUT IF ERIK MENENDEZ CONCLUDED, JUST

 11 HYPOTHETICALLY SPEAKING, THAT HE WAS NOT GOING TO ALLOW

 12 HIS FATHER TO ABUSE HIM ANYMORE, AND HE DECIDED ON THAT

 13 DAY, AUGUST THE 20TH OF 1989, "I AM NOT GOING TO ALLOW

 14 YOU TO ABUSE ME ANYMORE. I AM GOING TO GO OUT TO MY

 15 GUN -- I AM GOING TO GET THE GUN FROM MY ROOM. I AM

 16 GOING TO GO OUT TO THE CAR TO RELOAD, AND COME BACK IN

 17 AND SHOOT YOU TO DEATH, BECAUSE I DON'T WANT YOU TO

 18 ABUSE ME ANYMORE," THAT'S FIRST-DEGREE MURDER. THAT'S

 19 PREMEDITATION.

 20 SAME THING WITH LYLE MENENDEZ. IF LYLE

 21 MENENDEZ DECIDED AT THAT POINT IN TIME THAT, "I AM NOT

 22 GOING TO ALLOW MY FATHER TO DO THIS TO MY BROTHER

 23 ANYMORE, AND I AM GOING TO GO OUT TO THE GUESTHOUSE AND

 24 COME BACK WITH MY GUN, AND I AM GOING TO RELOAD AND GO

 25 INTO THE DEN AND SHOOT YOU TO DEATH, AND I AM GOING TO

 26 SHOOT MY MOTHER TO DEATH, TOO, BECAUSE SHE SAT BY AND

 27 ALLOWED THIS TO HAPPEN ALL THESE YEARS," THAT'S

 28 FIRST-DEGREE MURDER.

 1 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,

 2 THAT THE WHY IS NOT THE ULTIMATE ISSUE. AND DON'T LET

 3 YOUR DIFFERENCES OF FEELINGS, IF INDEED YOU DO HAVE

 4 DIFFERENCES IN FEELINGS CONCERNING WHY, STOP YOU FROM

 5 FOCUSING ON AND AGREEING UPON THE REAL ISSUE, THE LEGAL

 6 ISSUE THAT YOU ARE HERE TO DECIDE.

 7 REMEMBER, YOU'RE NOT HERE TO RECONSTRUCT

 8 THE FAMILY HISTORY. YOU ARE HERE TO ANSWER A LEGAL

 9 ISSUE FOR US; THAT IS, WHAT WAS THE DEFENDANT'S MENTAL

 10 STATE AT THAT PARTICULAR POINT IN TIME? IS THE ALLEGED

 11 MENTAL STATE IN THIS CASE PROVEN OR NOT? THAT'S ALL.

 12 BUT CONCERNING THE BACKGROUND OF THE

 13 FAMILY, I THINK YOU CAN CONCLUDE -- AND I WANT TO TALK

 14 TO YOU A LITTLE BIT ABOUT THIS, BECAUSE AS I GAVE YOU

 15 SORT OF AN OVERVIEW OF THE LAW AND HOW IT APPLIES TO

 16 THIS CASE -- BEFORE I GET INTO A DETAILED ANALYSIS OF

 17 HOW THE FACTS RELATE TO THE LAW; SO, TOO, I WANT TO TALK

 18 A LITTLE BIT ABOUT THE FAMILY. I WANT TO GIVE YOU AN

 19 OVERVIEW OF OUR EVALUATION OF THAT SITUATION, SO THAT AS

 20 WE GO THROUGH THE EVIDENCE, ONCE AGAIN, WE CAN SHOW HOW

 21 THE EVIDENCE SUPPORTS THIS CONCLUSION.

 22 AS I SAID, I BELIEVE THAT THE EVIDENCE

 23 SHOWS THAT THERE WAS TENSION IN THE FAMILY. THERE WAS

 24 ANGER, RESENTMENT. THERE WAS FRUSTRATION AND THERE WAS

 25 DESPAIR, AND THERE WAS HOSTILITY WITHIN THIS FAMILY.

 26 AND TO UNDERSTAND THAT -- AND, OF COURSE,

 27 NONE OF THOSE ARE EXCUSES FOR FIRST-DEGREE MURDER.

 28 TO UNDERSTAND THAT, YOU HAVE TO UNDERSTAND

 1 WHAT WAS HAPPENING IN 1989, AUGUST OF 1989, AND WHY THAT

 2 WAS DIFFERENT FROM WHAT WAS HAPPENING IN THE FAMILY

 3 PRIOR TO THAT TIME.

 4 IT WAS BECAUSE THE DEFENDANTS WERE YOUNG

 5 ADULTS. IT'S BECAUSE THEY WERE GOING THROUGH A

 6 TRANSITION PERIOD THAT IT CAUSED THE CONFLICT IN THE

 7 FAMILY. THERE WERE EXPECTATIONS OF THEM BY THEIR

 8 FATHER, AND THEY WERE NOT LIVING UP TO THOSE

 9 EXPECTATIONS. THE PROBLEM IS THAT THE DEFENDANTS WERE

 10 BECOMING YOUNG MEN. BUT THE PROBLEM WAS THAT THEY WERE

 11 NOT BECOMING THE KIND OF MAN -- OR THE KIND OF MEN THAT

 12 THEIR FATHER EXPECTED THEM TO BECOME; NOR WERE THE

 13 DEFENDANTS LIVING UP TO THEIR OWN EXPECTATIONS OF THE

 14 KIND OF MEN THEY WANTED TO BECOME.

 15 BOTH OF THE DEFENDANTS IN THIS CASE, NO

 16 DOUBT ABOUT IT, WANTED TO BE JOSE MENENDEZ. THEY WANTED

 17 TO BE JUST LIKE HIM. THEY WANTED TO BE JUST AS

 18 BRILLIANT, JUST AS SUCCESSFUL, JUST AS CREATIVE, JUST AS

 19 DEVOTED TO HIS OCCUPATION, AND TO ACHIEVE THE SAME

 20 THINGS THAT HE ACHIEVED. BUT THERE IS NO WAY THAT THEY

 21 WERE ABLE TO ACHIEVE THAT, BECAUSE NEITHER OF THESE

 22 DEFENDANTS HAD THE ABILITY TO ACHIEVE THAT, AND THEY

 23 KNEW IT.

 24 YOU HAVE TO LOOK AT WHO JOSE MENENDEZ WAS.

 25 JOSE MENENDEZ WAS A MAN OF EXTRAORDINARY DRIVE,

 26 EXTRAORDINARY INTELLECT, OF VISION AND DETERMINATION.

 27 JOSE MENENDEZ WAS A MAN WHO CAME TO THIS COUNTRY AT THE

 28 AGE OF 15 -- WE LEARNED THESE FACTS FROM CARLOS

 1 BARALT -- CAME TO THIS COUNTRY AT THE AGE OF 15, NOT A

 2 PENNY HIS POCKET, AND EVEN SPEAKING WITH AN ACCENT.

 3 AND YET HE WAS A PERSON WHO DIDN'T ALLOW

 4 OBSTACLES OR HANDICAPS TO GET IN HIS WAY. HE WAS A MAN

 5 WHO ROSE FROM THAT POSITION TO BECOME A TOP EXECUTIVE.

 6 HE CLIMBED UP THAT CORPORATE LADDER. AND THE ONLY WAY

 7 HE WAS ABLE TO DO THAT, LADIES AND GENTLEMEN, WAS BY

 8 BEING A VERY STRONG MAN. THERE IS NO DOUBT HE WAS A

 9 STRONG MAN. HE WAS DETERMINED TO WORK HARD AND TO

 10 ACHIEVE THOSE THINGS.

 11 THE EVIDENCE ALSO SHOWED THAT JOSE MENENDEZ

 12 LOVED HIS SONS VERY MUCH. AND AS HE IMPOSED DEMANDS

 13 UPON HIMSELF, AND AS HE MADE NO EXCUSES FOR HIMSELF, BUT

 14 PUSHED HIMSELF TO ACHIEVE GREATER AND GREATER THINGS;

 15 SO, TOO, HE PUSHED THE DEFENDANTS TO ACHIEVE GREATER AND

 16 GREATER THINGS.

 17 HE WANTED FOR THEM WHAT WE ALL WANT FOR OUR

 18 CHILDREN, AND THAT IS TO ACHIEVE SOMETHING EVEN GREATER

 19 THAN WHAT WE ACHIEVED IN OUR LIFETIME. AND LOOK HOW

 20 MUCH HE ACHIEVED. COMING TO THIS COUNTRY PENNILESS, AND

 21 EVENTUALLY HAVING AN ESTATE, WHICH BY SOME ACCOUNTS WAS

 22 WORTH 14 MILLION DOLLARS.

 23 THE DEFENDANTS KNEW THE PRESSURE THAT WAS

 24 ON THEM. THEY KNEW THAT THEY WERE THE ONES WHO,

 25 COMPARED TO JOSE MENENDEZ, WERE BORN WITH A SILVER SPOON

 26 IN THEIR MOUTH. YOU EVEN HEAR REFERENCES TO THIS ON THE

 27 DECEMBER 11TH TAPE, WHICH I WILL BE DISCUSSING IN A FEW

 28 MINUTES, HOW THE DEFENDANTS RECOGNIZED THE PRESSURE THAT

 1 WAS UPON THEM, THAT THEY WOULD BE EXPECTED TO ACHIEVE

 2 MORE. THEY WOULD BE EXPECTED TO EXCEL.

 3 AND YET, LADIES AND GENTLEMEN, I WOULD

 4 SUBMIT THAT THEY FELT TOTALLY INCAPABLE OF DOING THAT.

 5 BUT JOSE MENENDEZ PUSHED THEM TO EXCEL IN

 6 SPORTS. HE SAW SPORTS, FOR EXAMPLE, AS NOT SO MUCH A

 7 GAME, BUT ANOTHER ARENA OF COMPETITION. HE WANTED THE

 8 DEFENDANTS TO COMPETE, AND HE WANTED THE DEFENDANTS TO

 9 WIN. IT WAS JUST ANOTHER WAY OF EXCELLING.

 10 FOR JOSE MENENDEZ, SPORTS WAS NOT A GAME.

 11 IT WAS AN INVESTMENT, AN INVESTMENT OF TIME; TO ACHIEVE

 12 AND TO PREVAIL AND TO WIN. TIME WAS MONEY FOR JOSE

 13 MENENDEZ, AND TIME WAS PRECIOUS. AND YET JOSE MENENDEZ,

 14 THE EVIDENCE SHOWED, SPENT ALL OF HIS FREE TIME WITH HIS

 15 SONS. HE SPENT ALL OF HIS FREE TIME ATTENDING THE

 16 SPORTS EVENTS THAT HIS SONS COMPETED IN. AND THAT TELLS

 17 YOU A GREAT DEAL ABOUT THE LOVE THAT THIS MAN HAD FOR

 18 HIS SONS. I WOULD SUBMIT THAT JOSE MENENDEZ TRULY DID

 19 LOVE HIS SONS A GREAT DEAL.

 20 MS. ABRAMSON: YOUR HONOR, I AM GOING TO OBJECT.

 21 I THINK THIS IS BEYOND THE EVIDENCE.

 22 THE COURT: OVERRULED.

 23 MR. CONN: AND PART OF THE LOVE THAT HE HAD FOR

 24 HIS SONS WAS DEMONSTRATED IN THE GOALS THAT HE HAD FOR

 25 HIS SONS.

 26 TO GO TO PRINCETON WAS A VERY IMPORTANT

 27 GOAL FOR JOSE MENENDEZ. HE WANTED HIS SON TO HAVE EVEN

 28 A BETTER EDUCATION THAN HE HAD, AND TO ACHIEVE IN

 1 PRINCETON.

 2 BUT BY AUGUST OF 1989, LADIES AND

 3 GENTLEMEN, JOSE MENENDEZ CAME TO A VERY SAD CONCLUSION.

 4 HE REALIZED THAT HIS SONS WERE FAILURES. LYLE MENENDEZ,

 5 WHO HAD GONE TO PRINCETON, WAS SUSPENDED FROM PRINCETON

 6 FOR CHEATING. AND THEN WHEN HE RETURNED, HE WAS ON BOTH

 7 ACADEMIC PROBATION AND DISCIPLINARY PROBATION.

 8 LYLE MENENDEZ DID NOT HAVE THE DRIVE, DID

 9 NOT HAVE THE INTELLECT. HE DID NOT HAVE THE

 10 DETERMINATION. LYLE MENENDEZ WAS NEVER GOING TO WALK IN

 11 THE SHOES OF JOSE MENENDEZ, AND JOSE MENENDEZ KNEW THAT.

 12 AND ERIK MENENDEZ WAS EVEN A GREATER

 13 FAILURE, BECAUSE ERIK MENENDEZ WAS WEAK. ERIK MENENDEZ

 14 WAS VERY SOFT, AND HE WAS DESCRIBED AS A CRYBABY. AND

 15 THAT'S TRUE, AND THE EVIDENCE FROM HIS EARLY LIFE SHOWS

 16 THAT HE WAS A CRYBABY. UNLIKE LYLE, WHO WAS STOIC AND

 17 WHO COULD KEEP THINGS IN, ERIK MENENDEZ WOULD CRY AND

 18 DEMONSTRATE HIS EMOTIONS.

 19 AND JOSE MENENDEZ SAW THAT BOTH OF HIS SONS

 20 WERE INCAPABLE OF LIVING UP TO HIS EXPECTATIONS, AND HE

 21 WAS DISAPPOINTED IN THEM. BUT HE WAS EVEN MORE

 22 DISAPPOINTED IN THEM WHEN THEY BECAME INVOLVED IN THE

 23 BURGLARIES. HE THEN REALIZED THAT HIS SONS WERE TOTALLY

 24 OUT OF CONTROL.

 25 JOSE MENENDEZ, CONTRARY TO THE IMPRESSION

 26 THAT THE DEFENSE HAS TRIED TO PRESENT TO YOU HERE, WAS

 27 NOT A MAN WHO WAS ABLE TO CONTROL HIS SONS. HE WANTED

 28 TO. JOSE WAS A MAN WHO WANTED TO -- JOSE MENENDEZ WAS A

 1 MAN WHO WANTED TO CONTROL EVERYTHING IN HIS LIFE IF HE

 2 COULD. JUST AS HE CONTROLLED HIS BUSINESS; SO, TOO, IF

 3 HE COULD CONTROL HIS SONS AND TO NURTURE THEIR

 4 DEVELOPMENT, AND MAKE THEM ACHIEVE THINGS THAT HE WANTED

 5 THEM TO ACHIEVE, HE WANTED THAT TO HAPPEN.

 6 BUT HE WAS NOT ABLE TO DO THAT, AND HE

 7 REALIZED THAT WHATEVER HE ACCOMPLISHED AT WORK, IN HIS

 8 PROFESSIONAL LIFE, HIS PERSONAL LIFE WAS VERY MUCH A

 9 FAILURE. HIS SONS WOULD NEVER ACHIEVE THE THINGS THAT

 10 HE WANTED THEM TO ACHIEVE, AND HIS SONS WERE OUT OF

 11 CONTROL.

 12 AND HOW DID HE RESPOND TO THAT LOSS OF

 13 CONTROL? THEY WANT YOU TO BELIEVE THAT JOSE MENENDEZ

 14 WAS SUCH A HARSH MAN, EXTREMELY PUNITIVE. BUT LADIES

 15 AND GENTLEMEN, IF YOU LOOK AT THE EVIDENCE CAREFULLY,

 16 AND I WILL BE GOING THROUGH THAT EVIDENCE, YOU WILL SEE

 17 THAT JOSE WAS NOT A HARSH MAN. WHAT HE DID WAS HE

 18 FORGAVE HIS SONS TIME AND TIME AGAIN, AND HE GOT THEM

 19 OUT OF TROUBLE TIME AND TIME AGAIN.

 20 I ASKED ERIK MENENDEZ, WHAT WAS THE

 21 PUNISHMENT -- WHAT WAS THE PUNISHMENT FOR THESE

 22 BURGLARIES? CAN YOU IMAGINE WHAT A TRANSGRESSION THIS

 23 WAS FOR JOSE MENENDEZ, A MAN WHO EVEN THOUGHT OF

 24 BECOMING A SENATOR, A UNITED STATES SENATOR FOR THE

 25 STATE OF FLORIDA SOME DAY, WHO HAD TO MOVE IN SHAME FROM

 26 CALABASAS TO BEVERLY HILLS TO GET AWAY FROM THE

 27 NEIGHBORHOOD. AND WHAT WAS THAT MOVE FOR?

 28 I WOULD SUBMIT TO YOU THAT THAT MOVE WAS

 1 MORE FOR THE BENEFIT OF THE DEFENDANTS, WHO HAD TO GO TO

 2 SCHOOL -- OR AT LEAST ERIK MENENDEZ, WHO HAD TO GO TO

 3 SCHOOL IN THE NEIGHBORHOOD. THAT BENEFIT -- THAT MOVE

 4 BENEFITED ERIK MENENDEZ MORE THAN HIS OWN PERSONAL

 5 NEEDS. YET JOSE MENENDEZ WAS A PERSON WHO WAS

 6 FORGIVING.

 7 I ASKED ERIK MENENDEZ: "BEARING IN MIND

 8 YOU WERE SO FRIGHTENED OF YOUR FATHER, HE WAS ALWAYS

 9 GOING TO PUNISH YOU FOR EVERYTHING, WHAT WAS THE

 10 PUNISHMENT FOR THE BURGLARIES?"

 11 AND HE SAID: "NO PUNISHMENT." NO

 12 PUNISHMENT FOR THE BURGLARIES.

 13 LADIES AND GENTLEMEN, JOSE MENENDEZ WAS NOT

 14 A PUNITIVE MAN. JOSE MENENDEZ WAS A MAN WHO FORGAVE HIS

 15 SONS TIME AND TIME AGAIN, EVEN FOR THE MOST SERIOUS OF

 16 TRANSGRESSIONS. HE WAS A VERY PATIENT MAN, AND AS MUCH

 17 AS HE WAS DISAPPOINTED IN HIS SONS, HE FORGAVE THEM.

 18 BUT THERE WAS THE GROWING REALIZATION THAT

 19 HE HAD FAILED, AND THEY WOULD NEVER WALK IN HIS SHOES.

 20 AND SO, THERE BEGAN IN THE FAMILY A GREAT

 21 DEAL OF TENSION. CAN YOU IMAGINE KNOWING -- AND THEY

 22 KNEW. BOTH DEFENDANTS KNEW THAT THEIR FATHER WAS

 23 EXTREMELY DISAPPOINTED IN THEM, PROFOUNDLY DISAPPOINTED

 24 IN THEM, AND YET THEY WOULD HAVE TO LOOK AT THIS MAN FOR

 25 THE REST OF THEIR LIVES.

 26 JOSE MENENDEZ WAS ONLY 45 YEARS-OLD WHEN HE

 27 WAS KILLED BY THE DEFENDANTS, AND EVERY DAY, IF THEY

 28 WERE TO CONTINUE TO BENEFIT FROM HIS FINANCIAL

 1 GENEROSITY, THEY WOULD HAVE TO DEAL WITH HIM. THEY

 2 WOULD HAVE TO LOOK IN HIS EYES FOR THE REST OF HIS LIFE

 3 KNOWING THAT THEY WERE FAILURES; THAT THEY WOULD NEVER

 4 ACHIEVE WHAT HE WANTED; THAT THEY WOULD NEVER REALLY GET

 5 HIS RESPECT.

 6 AND HOW THAT MUST FEEL, TO LOOK IN YOUR

 7 FATHER'S EYES FOR THE REST OF YOUR LIFE, AND KNOW YOUR

 8 FATHER SEES YOU AS A FAILURE, AND YOU WILL NEVER ACHIEVE

 9 WHAT HE WANTS YOU TO ACHIEVE, AND YOU WILL NEVER GET

 10 HIS -- EARN HIS RESPECT.

 11 AND SO, THERE AGAIN, IS A PERIOD OF HOSTILE

 12 DEPENDENCY. BOTH DEFENDANTS CONTINUED TO TAKE THE

 13 FINANCIAL BENEFIT THAT HE OFFERED THEM, BUT THERE WAS

 14 RESENTMENT THERE, AND THERE WAS WAS HOSTILITY THERE, AND

 15 THERE WAS TENSION THERE. AND IT WAS AN UNCOMFORTABLE

 16 SITUATION FOR EVERYONE.

 17 AND LYLE MENENDEZ WOULD GO OUT SPENDING

 18 ENORMOUS AMOUNTS OF MONEY, AND HIS FATHER WOULD TRY TO

 19 STOP HIM. TRY. I USE THE WORD "TRY" INTENTIONALLY.

 20 BECAUSE WHAT DID HE DO? JOSE MENENDEZ COULD HAVE PULLED

 21 THE PLUG AT ANY TIME ON THE FINANCES. HE COULD HAVE

 22 SAID, "GIVE ME THE CARD. FROM NOW ON YOU GET $100 A

 23 WEEK. HERE YOU GO."

 24 BUT DID HE EVER DO THAT TO LYLE MENENDEZ?

 25 NO.

 26 ERIK MENENDEZ TOLD US ABOUT HOW FRUSTRATED

 27 HIS FATHER WAS AT BEING UNABLE TO CONTROL LYLE MENENDEZ

 28 AND HIS SPENDING HABITS. WHAT DOES THAT TELL YOU? THAT

 1 TELLS YOU THAT JOSE MENENDEZ WAS A MAN WHO KEPT GIVING

 2 MORE CHANCES. "OKAY, LYLE, ONE MORE CHANCE. DON'T DO

 3 IT AGAIN. DON'T DO IT AGAIN."

 4 AND YOU'VE HEARD -- I'LL BE GETTING INTO

 5 SOME OF THE SPECIFIC TESTIMONY THAT SUPPORTS THAT.

 6 LADIES AND GENTLEMEN, WHAT ULTIMATELY LED

 7 TO THE KILLINGS IN THIS CASE WAS NOT SO MUCH THESE

 8 FEELINGS OF HOSTILITY AND ANGER AND RESENTMENT AND SHAME

 9 WITHIN THE FAMILY, BUT ALSO THE LACK OF A TRUE

 10 RELATIONSHIP, A TRULY STRONG RELATIONSHIP BETWEEN THE

 11 DEFENDANTS AND THEIR PARENTS.

 12 I ASKED ERIK MENENDEZ: "WHAT IS IT ABOUT

 13 YOUR MOTHER THAT YOU LOVED? I KNOW YOU TOLD US YOU

 14 LOVED HER. THAT'S YOUR CLAIM, THAT YOU LOVED HER."

 15 THE EVIDENCE WOULD SUGGEST TO THE CONTRARY.

 16 YOU DON'T SHOOT YOUR MOTHER TO DEATH IF YOU LOVE HER,

 17 LADIES AND GENTLEMEN.

 18 SO THAT QUESTION THAT -- THAT ASSERTION,

 19 THAT CLAIM THAT HE LOVED HIS MOTHER IS EXTREMELY

 20 QUESTIONABLE TO BEGIN WITH. BUT, OKAY. WE'LL GIVE YOU

 21 THE BENEFIT OF THE DOUBT. "TELL US, WHAT WAS IT ABOUT

 22 THIS WOMAN THAT YOU LOVED?"

 23 AND COULD HE TELL US ANYTHING? WHAT DID HE

 24 TELL US? HER SMILE. AND I SAID: "NO. TELL US

 25 SOMETHING ABOUT HER. WHAT WAS IT ABOUT HER? WHAT DID

 26 YOU LOVE ABOUT THIS WOMAN? WHAT WAS GOOD ABOUT HER?"

 27 WHAT WAS THE CONTACT, WHAT WAS THE REASON?

 28 "IT WAS JUST HER SMILE. IT WAS JUST -- IT

 1 WAS JUST HER SMILE."

 2 WAS THAT THE DEPTH OF THE RELATIONSHIP

 3 BETWEEN HIM AND HIS MOTHER, JUST A SMILE? IT TELLS YOU

 4 A GREAT DEAL ABOUT WHY HE COULD HAVE KILLED HER, LADIES

 5 AND GENTLEMEN.

 6 AND JOSE MENENDEZ, AS MUCH AS HE LOVED HIS

 7 SONS, JOSE MENENDEZ WAS GUILTY OF WHAT MANY PARENTS ARE.

 8 HOW MANY PARENTS GO HOME AND TURN ON THE T.V. AND SAY

 9 WELL, THE T.V. IS ON, THE KIDS ARE ENTERTAINED.

 10 EVERYTHING IS TAKEN CARE OF. NOW I CAN DO WHATEVER I

 11 WANT. AND WE'RE ALL GUILTY OF THAT.

 12 AND JOSE MENENDEZ WAS ALSO GUILTY. HE

 13 PROVIDED THE MATERIAL NEEDS FOR HIS CHILDREN, AND HE WAS

 14 BY AND LARGE AN ABSENT FATHER. JOSE MENENDEZ WAS OFF

 15 SLAYING DRAGONS IN THE BUSINESS WORLD, AND HIS SONS WERE

 16 LEFT WITH THE MOTHER. AND HE WAS BY AND LARGE AN ABSENT

 17 FATHER, AND WHEN HE CAME -- WHEN HE CAME BACK AND SPENT

 18 TIME WITH THEM AT THEIR SPORTS GAMES, WHAT DID HE DO?

 19 HE INSISTED "WIN, PREVAIL, ACHIEVE. BE SUCCESSFUL."

 20 HE HAD DEMANDS. HE HAD EXPECTATIONS.

 21 WAS THERE LACK OF LOVE? PERHAPS NOT TRUE

 22 LOVE, BUT PERHAPS HE WAS JUST TOO BUSY TO EXPRESS THAT

 23 LOVE. BUT JOSE MENENDEZ WAS BY AND LARGE AN ABSENT

 24 FATHER.

 25 SO WITH AN ABSENT FATHER AND A MOTHER WHO

 26 JUST RAN THE HOUSE, AND PERHAPS DIDN'T GIVE THE

 27 DEFENDANTS THE LOVE THAT MIGHT BE EXPECTED, WHAT BECAME

 28 OF THAT? IT REACHED THE POINT WHERE, AS LYLE MENENDEZ

 1 SAYS ON THE DECEMBER 11 TAPE:

 2 "IT REACHED THE POINT WHERE WE JUST

 3 SAW THE VALUE OF IT; THAT IS, THE VALUE OF

 4 KILLING MY FATHER."

 5 THAT'S HOW HE WAS ABLE TO DO IT. THERE WAS

 6 SEETHING HOSTILITY IN THAT HOUSE, AND AFTER A WHILE IT

 7 BECAME UNBEARABLE. JOSE MENENDEZ WANTED TO CONTROL HIS

 8 SONS' LIVES, BUT WAS UNABLE TO DO SO. THE DEFENDANTS

 9 KNEW THAT THEY COULD NEVER SURPASS THEIR FATHER.

 10 SURPASSING HIM WAS OUT OF THE QUESTION. EVEN

 11 ACCOMPLISHING WHAT HE HAD ACCOMPLISHED WAS OUT OF THE

 12 QUESTION.

 13 AND I WOULD SUBMIT TO YOU THAT THE

 14 DEFENDANTS, WHAT THEY FELT WAS A SENSE OF RAGE, A SENSE

 15 OF RAGE TOWARD THEIR FATHER WHO RESENTED -- WHO WAS

 16 DISAPPOINTED IN HIS SONS, AND A RAGE THAT WAS NOT

 17 TEMPERED BY LOVE. THIS RAGE WAS INEVITABLE AND

 18 UNDENIABLE.

 19 THEN THE OTHER REASON WHY THEY WERE ABLE TO

 20 DO WHAT THEY DID WAS BECAUSE JOSE MENENDEZ HAD TAUGHT

 21 THEM SOMETHING, TAUGHT THEM A VERY VALUABLE LESSON. BUT

 22 THAT LESSON WAS TURNED AGAINST JOSE MENENDEZ. HE TAUGHT

 23 THEM TO BE STRONG. HE TAUGHT THEM TO BE RUTHLESS.

 24 JOSE MENENDEZ HAD TO BE RUTHLESS IN ORDER

 25 TO ACHIEVE WHAT HE ACHIEVED; IN ORDER TO CLIMB UP THAT

 26 CORPORATE LADDER; IN ORDER TO OVERCOME THE OBSTACLES

 27 FACING HIM. HE WAS IN FACT A VERY RUTHLESS MAN. BUT

 28 JOSE MENENDEZ NEVER TURNED THAT RUTHLESSNESS TOWARD HIS

 1 OWN FAMILY.

 2 BUT THE DEFENDANTS IN THIS CASE, WHO WERE

 3 TAUGHT TO BE RUTHLESS, AND WHO DIDN'T HAVE A FATHER

 4 THERE ALL THE TIME, OR A MOTHER TO MEET ALL OF THEIR

 5 NEEDS, DECIDED TO TURN THEIR RAGE AND USE THAT

 6 RUTHLESSNESS THAT THEY LEARNED FROM THEIR FATHER TOWARD

 7 THEIR OWN PARENTS.

 8 THE RAGE, THE SHAME, THE ANGER AND THE

 9 HOSTILITY ALL LED TO THE DEFENDANTS MAKING A DECISION IN

 10 THIS CASE, A DECISION TO KILL THEIR PARENTS. IT WAS THE

 11 ONLY WAY THAT THEY COULD TAKE THE POWER. IT WAS THE

 12 ONLY WAY THAT THEY COULD ACHIEVE WHAT THEY WANTED, AND

 13 WHAT THEY FELT THEY WERE ENTITLED TO AT THIS POINT IN

 14 TIME. THEY HAD GROWN UP.

 15 AND IF YOU READ IN BETWEEN THE LINES OF ALL

 16 THE TESTIMONY IN THIS CASE, WHAT YOU SEE IS TWO YOUNG

 17 MEN WHO FELT THAT THEY DESERVED EVERYTHING THEY GOT, WHO

 18 WERE SPOILED, AND WHO FELT ENTITLED TO EVERYTHING.

 19 AND THEY USED THAT RAGE, AND THEY TURNED

 20 THAT RAGE AND WHAT THEY LEARNED FROM JOSE. THE

 21 RUTHLESSNESS THEY LEARNED FROM JOSE THEY TURNED AGAINST

 22 HIM, AND THEY SEIZED THE POWER, AND THEY BECAME JOSE

 23 MENENDEZ IN THE ONLY WAY THAT THEY KNEW HOW, BY TAKING

 24 HIM OUT OF THE PICTURE, BY TAKING HIS MONEY AND TAKING

 25 HIS POWER.

 26 AND FOR SIX MONTHS, THEY DID WALK IN THE

 27 SHOES OF JOSE MENENDEZ.

 28 LADIES AND GENTLEMEN, AS I GO THROUGH THE

 1 EVIDENCE IN THIS CASE, YOU WILL SEE HOW THE EVIDENCE

 2 BEARS OUT ALL OF THOSE CONCLUSIONS.

 3 LET ME RETURN TO WHAT I WAS SAYING

 4 YESTERDAY, AS I WAS SPEAKING ABOUT DETECTIVE ZOELLER AND

 5 HIS WORK ON THIS CASE.

 6 I TOLD YOU THAT HE ATTENDED THE -- FIRST HE

 7 WENT TO THE CRIME SCENE, AND HE ATTENDED THE AUTOPSY AT

 8 THE CORONER'S OFFICE. AND FOLLOWING THAT, LADIES AND

 9 GENTLEMEN, HE CONTINUED TO REMAIN AS THE INVESTIGATOR IN

 10 THIS CASE. HE INTERVIEWED THE DEFENDANTS ON SEPTEMBER

 11 17TH -- ON SEPTEMBER THE 17TH OF 1989.

 12 NOW, OF COURSE, THERE WAS AN INTERVIEW WITH

 13 THE DEFENDANTS PRIOR TO THAT, THAT VERY NIGHT. THE

 14 DEFENDANTS WERE INTERVIEWED BY SERGEANT EDMONDS, AND I

 15 WILL BE SPEAKING ABOUT THOSE STATEMENTS LATER WHEN I

 16 TURN TO HIS TESTIMONY.

 17 BUT AS FAR AS SEPTEMBER 17TH IS CONCERNED,

 18 HE SPOKE TO BOTH DEFENDANTS BACK EAST, AND WE PRESENTED

 19 THOSE STATEMENTS TO YOU, SO THAT YOU CAN SEE THE PATTERN

 20 OF DECEITFULNESS IN THIS CASE; HOW THE DEFENDANTS

 21 CONTINUED TO LIE AND COVER UP, AND PRETEND THAT THEY

 22 WERE NOT INVOLVED IN THE COMMISSION OF THIS CRIME.

 23 AND WHAT IS SIGNIFICANT ABOUT SOME OF THE

 24 STATEMENTS THAT THEY MADE TO DETECTIVE ZOELLER ON

 25 SEPTEMBER 17TH OF 1989? BEAR IN MIND THIS IS ABOUT ONE

 26 MONTH AFTER THE KILLING.

 27 ASIDE FROM THE FACT THAT -- FOCUSING ON

 28 LYLE MENENDEZ -- ASIDE FROM THE FACT THAT HE LIED ABOUT

 1 THE KILLING, OF COURSE, NOTE SOME OF THE FOLLOWING

 2 STATEMENTS THAT HE MADE ON SEPTEMBER THE 17TH.

 3 HE SAID THAT HIS MOTHER AND FATHER WOULD

 4 SOMETIMES FALL ASLEEP ON THE COUCH WATCHING TELEVISION.

 5 BEAR THAT IN MIND, LADIES AND GENTLEMEN, AS

 6 YOU LOOK AT THE PHOTOGRAPHS OF JOSE MENENDEZ AND THE

 7 POSITION THAT HE WAS FOUND IN; THAT HIS BODY WAS FOUND

 8 IN, AND THEN YOU ASK YOURSELF WHETHER THIS WAS A KILLING

 9 BY AMBUSH, A KILLING BY LYING IN WAIT.

 10 I WOULD SUBMIT TO YOU, LADIES AND

 11 GENTLEMEN, THAT IF JOSE MENENDEZ WAS NOT SLEEPING AT THE

 12 MOMENT THAT THE DEFENDANTS ENTERED THAT ROOM, HE WAS

 13 CERTAINLY RELAXING COMFORTABLY ON THAT SOFA, IN THE VERY

 14 SAME POSITION IN WHICH HE WAS FOUND.

 15 LYLE MENENDEZ TOLD DETECTIVE ZOELLER THAT

 16 HE WENT TO THE MOVIE AT ABOUT 8:00 O'CLOCK.

 17 THAT'S INTERESTING, BECAUSE OF THE WAY IT

 18 CORRESPONDS SO CLOSELY WITH THE CONFESSION THAT ERIK

 19 MENENDEZ MADE TO CRAIG CIGNARELLI. BEAR IN MIND THAT

 20 CRAIG CIGNARELLI TOLD US -- AND CRAIG CIGNARELLI IS AND

 21 WAS ERIK MENENDEZ' BEST FRIEND. AND I ASKED ERIK

 22 MENENDEZ: "CAN YOU THINK OF ANYONE WHO WAS CLOSER TO

 23 YOU THAN CRAIG CIGNARELLI?" AND HE INDICATED THAT HE

 24 COULD NOT THINK OF A SINGLE PERSON WHO WAS CLOSER TO HIM

 25 THAN HIS BEST FRIEND, CRAIG CIGNARELLI.

 26 WHO WERE THE TWO PEOPLE THAT HE CONFESSED

 27 TO? HE CONFESSED TO HIS THERAPIST, DR. OZIEL, AND HIS

 28 BEST FRIEND, CRAIG CIGNARELLI.

 1 AND NOW HE WANTS YOU TO DISBELIEVE BOTH OF

 2 THOSE TWO PEOPLE, LADIES AND GENTLEMEN, THE TWO PEOPLE

 3 IN THIS WORLD WHO WERE CLOSEST TO HIM. OF ALL THE

 4 PEOPLE IN THE WORLD HE COULD HAVE CONFESSED TO, HE CHOSE

 5 THE TWO PEOPLE THAT HE FELT CLOSEST TO; CRAIG

 6 CIGNARELLI, HIS BEST FRIEND, AND DR. OZIEL.

 7 AND NOW HE WOULD HAVE YOU BELIEVE THAT

 8 CRAIG CIGNARELLI IS A TOTAL LIAR, AND DR. OZIEL IS --

 9 YOU HEARD THE ALLEGATIONS THAT HE MAKES CONCERNING

 10 DR. OZIEL, AND EVERYTHING HE SAID TO DR. OZIEL SHOULD

 11 NOT BE TRUSTED.

 12 LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU

 13 THAT ERIK MENENDEZ CONFESSED TO THE TWO PEOPLE THAT WERE

 14 CLOSEST TO HIM, BECAUSE HE RELIED UPON THOSE PEOPLE.

 15 AND THE INFORMATION THAT WE HAVE, BOTH IN THE DECEMBER

 16 11 TAPE, THE DECEMBER 11 INTERVIEW WITH DR. OZIEL IS A

 17 RELIABLE -- OR AT LEAST TO THE EXTENT THAT DR. OZIEL IS

 18 NOT PUTTING ANY WORDS IN THE DEFENDANT'S MOUTH -- IT IS

 19 A RELIABLE, UNCOERCED STATEMENT OF THE DEFENDANT

 20 AND AS FAR AS CRAIG CIGNARELLI IS

 21 CONCERNED; THAT, TOO, IS A RELIABLE ACCOUNT, BECAUSE

 22 CRAIG CIGNARELLI DOESN'T HAVE ANY MOTIVATION TO LIE

 23 AGAINST THE DEFENDANT. BUT I WILL BE GETTING BACK TO

 24 THAT LATER.

 25 BUT WHAT'S INTERESTING ABOUT LYLE MENENDEZ

 26 SAYING HE WENT TO THE MOVIES AT ABOUT 8:00 O'CLOCK IS

 27 THE FACT THAT THAT CORRESPONDS SO CLOSELY TO WHAT ERIK

 28 MENENDEZ TOLD CRAIG CIGNARELLI.

 1 HE TOLD CRAIG CIGNARELLI THAT THEY WENT TO

 2 THE MOVIES THAT NIGHT. THEY CAME BACK FROM THE MOVIES

 3 TO PICK UP THE I.D., AND IT WAS AFTER THE I.D., WHILE

 4 THEY WERE THERE TO GET THE I.D., THAT LYLE MENENDEZ THEN

 5 TOOK OUT TWO GUNS AND SAID: "LET'S DO IT," AND HANDED A

 6 GUN TO ERIK MENENDEZ.

 7 WELL, THE TIMING OF THIS WORKS OUT

 8 PERFECTLY, BECAUSE IF THEY HAD GONE TO THE MOVIES AT

 9 8:00 O'CLOCK, THAT WOULD HAVE WORKED OUT PERFECTLY FOR

 10 THIS TO HAVE TAKEN PLACE.

 11 SPENDING. LYLE MENENDEZ MAKES A VERY

 12 INTERESTING POINT ABOUT SPENDING IN THE SEPTEMBER 17TH

 13 STATEMENT. HE SAID THAT: "MY FATHER WAS PRETTY MUCH A

 14 FRUGAL PERSON, VERY FRUGAL, BECAUSE HIS FATHER HAD NO

 15 MONEY. HE WAS TRYING TO TEACH US THE VALUE OF MONEY,

 16 BUT THERE WERE A LOT FIGHTS."

 17 DO YOU SEE HOW THAT PLAYS HAND IN HAND WITH

 18 WHAT I WAS JUST TELLING YOU, THAT VERY OFTEN YOU GET THE

 19 ONE GENERATION WHO WORKS VERY HARD, AND WHO ACHIEVES

 20 SOMETHING FOR THEMSELVES; AND THEN THE YOUNGER

 21 GENERATION REALLY DOESN'T KNOW THE VALUE OF MONEY, OR

 22 THE MEANING OF WORK, OR HOW YOU GET THERE. THEY JUST

 23 GROW UP IN A COMFORTABLE SITUATION, AND THEY THINK:

 24 "HEY, THIS IS LIFE. THIS IS WHAT LIFE IS ALL ABOUT. IF

 25 MY FATHER HAS IT, I WILL HAVE IT, TOO," YOU SEE.

 26 BUT WHAT WE LEARNED FROM LYLE MENENDEZ IS

 27 THAT JOSE MENENDEZ WAS DESPERATELY TRYING TO TEACH THEM

 28 THE VALUE OF MONEY, AND THERE WERE FIGHTS BECAUSE THEY

 1 WOULD NOT LEARN THE VALUE OF MONEY.

 2 THAT WAS A SOURCE OF TENSION. THAT WAS A

 3 SOURCE OF HOSTILITY IN THE HOUSE.

 4 LYLE MENENDEZ TELLS DETECTIVE ZOELLER:

 5 "ERIK AND I USUALLY DON'T GO TO BED UNTIL ABOUT 1:00

 6 P.M."

 7 WHY IS THAT SIGNIFICANT? IT JUST SEEMS

 8 LIKE A TRIVIAL REMARK. BUT ONCE AGAIN, IT CONTRADICTS

 9 THE PICTURE THAT THE DEFENSE HAS BEEN TRYING TO PORTRAY

 10 TO YOU, A VERY DISTORTED PICTURE OF WHAT LIFE WAS LIKE

 11 FOR THESE TWO DEFENDANTS.

 12 ERIK AND LYLE MENENDEZ WERE PRETTY MUCH ON

 13 THEIR OWN. THEY DID WHAT THEY WANTED TO DO. THESE WERE

 14 NOT TWO YOUNG MEN WHO WERE UNDER THE HARSH THUMB OF

 15 THEIR FATHER. JOSE MENENDEZ WOULD HAVE PREFERRED IT IF

 16 HE COULD HAVE A LITTLE MORE CONTROL OVER THEIR LIFE, AT

 17 LEAST STOP THEM FROM COMMITTING RESIDENTIAL BURGLARIES.

 18 THAT WOULD BE A GOOD START.

 19 BUT JOSE MENENDEZ WASN'T ABLE TO CONTROL

 20 THESE TWO YOUNG MEN. THEY WERE PRETTY MUCH OUT OF

 21 CONTROL. THEY CAME AND WENT AS THEY PLEASED; ESPECIALLY

 22 LYLE MENENDEZ, WHO LIVED OUT OF THE HOME FOR THE LAST

 23 YEAR AND A HALF. OF THE THREE YEARS PRECEDING THE

 24 CRIME, LYLE MENENDEZ WAS OFF, ACCORDING TO ERIK

 25 MENENDEZ, A YEAR AND A HALF AWAY FROM THE HOME.

 26 SO LYLE MENENDEZ WAS NOT UNDER THE THUMB OF

 27 HIS FATHER. AND HE SAYS AS MUCH IN THE DECEMBER 11

 28 TAPE, WHICH I WILL BE GOING OVER WITH YOU IN A FEW

 1 MINUTES.

 2 SO THESE TWO YOUNG MEN WOULD COME AND GO AS

 3 THEY PLEASED; GO TO BED AT 1:00 O'CLOCK, COME HOME AT

 4 1:00 O'CLOCK, WHATEVER THEY WANTED TO DO. THEY WERE NOT

 5 UNDER THE CONTROL OF THEIR FATHER. HE WAS TOO BUSY OUT

 6 THERE SLAYING DRAGONS IN THE CORPORATE WORLD. HE DIDN'T

 7 HAVE THE TIME TO KEEP AN EYE ON HIS 18 YEAR-OLD AND 21

 8 YEAR-OLD SONS.

 9 KEEP IN MIND, LADIES AND GENTLEMEN, ONE OF

 10 THE TRICKS THE DEFENDANTS TRIED TO DO IN THIS CASE IS

 11 TAKE LIFE AS A YOUTH AND MIX IT UP IN A STEW AS TO LIFE

 12 AS AN ADULT. "ISN'T IT TRUE ERIK MENENDEZ COULDN'T GO

 13 OUT OF THE FRONT YARD?" YEAH. HE COULDN'T GO OUT OF

 14 THE FRONT YARD WHEN HE WAS EIGHT YEARS OLD. PROBABLY

 15 YOU COULDN'T GO OUT OF THE FRONT YARD WHEN YOU WERE

 16 EIGHT YEARS OLD.

 17 WE'RE TALKING ABOUT 18 YEARS OLD, WHEN HE

 18 WAS FREE TO COME AND GO. HE WAS FREE TO COME AND GO AS

 19 HE PLEASED. CRAIG CIGNARELLI TELLS US THAT. LYLE

 20 MENENDEZ TELL US THAT. ERIK MENENDEZ TELLS US THAT. HE

 21 WAS NOT UNDER THE HARSH THUMB OF HIS FATHER.

 22 LET'S TURN TO SOME OF THE STATEMENTS MADE

 23 BY ERIK MENENDEZ ON SEPTEMBER 17TH.

 24 ONCE AGAIN, ASIDE FROM THE FACT THAT HE

 25 CONTINUED TO LIE ABOUT THE KILLING, A LONG PATTERN OF

 26 LIES HERE, BEGINNING THE DAY OF THE KILLING AND

 27 EXTENDING SIX MONTHS UP UNTIL THE TIME OF THE ARREST,

 28 NOTE THE FOLLOWING

 1 NOTE HOW HE WAS -- AND I WOULD SUBMIT THE

 2 ONLY REASONABLE INTERPRETATION OF THIS EVIDENCE WAS THAT

 3 HE WAS TRYING TO PLAY GAMES WITH DETECTIVE ZOELLER, WHEN

 4 HE TELLS DETECTIVE ZOELLER: "DO YOU KNOW THERE WAS A

 5 BULLET HOLE IN MY JEANS, AND IN FACT I COMPARED THAT

 6 BULLET HOLE ON ONE SIDE OF THE JEANS WITH THE BULLET

 7 HOLE IN THE OTHER SIDE OF THE JEANS, AND IT SEEMS TO

 8 MATCH UP. AND IT SEEMS TO ME THIS WAS A SHOT THAT WAS

 9 FIRED. MAYBE MY JEANS WERE IN THE ROOM AT THE TIME OF

 10 THE SHOOTING."

 11 HE KNOWS VERY WELL THERE WEREN'T BULLETS

 12 FIRED IN THAT ROOM. ERIK MENENDEZ WAS JUST HAVING A

 13 GOOD TIME, JUST WANTED TO PLAY GAMES WITH ZOELLER, AND

 14 SEE WHAT DETECTIVE ZOELLER HAD TO SAY ABOUT ALL THAT.

 15 JUST LIKE HE TOLD DETECTIVE ZOELLER: "YOU

 16 KNOW, I WAS WONDERING WHAT KIND OF A GUN WAS USED IN THE

 17 SHOOTING."

 18 HOW CALLOUS, HOW COLD, UNLESS HE WAS

 19 PLAYING GAMES WITH DETECTIVE ZOELLER. HE SHOT HIS

 20 MOTHER AND FATHER TO DEATH, AND NOW HE'S PLAYING GAMES

 21 WITH DETECTIVE ZOELLER.

 22 "I WONDER WHAT KIND OF GUN WAS USED." HE

 23 ASKED DETECTIVE ZOELLER: "DO YOU THINK IT COULD HAVE

 24 BEEN SOMEONE THEY KNEW?"

 25 AGAIN, IS HE PLAYING GAMES OR PROBING FOR

 26 INFORMATION? BUT AGAIN, HE IS NOT TALKING SERIOUSLY.

 27 HE IS LYING.

 28 ERIK MENENDEZ ADMITS TO DETECTIVE ZOELLER:

 1 "I USUALLY DON'T COME HOME UNTIL AFTER MY PARENTS ARE

 2 ASLEEP." THAT TELLS YOU A LITTLE BIT ABOUT THE FREEDOM

 3 THAT THIS YOUNG MAN HAD. THE DEFENSE WANTS YOU TO

 4 BELIEVE THAT THIS IS LIKE A 13 YEAR-OLD CHILD KEPT IN A

 5 CLOSET. THAT'S THE PORTRAIT THAT THEY WANT TO PORTRAY

 6 OF ERIK MENENDEZ.

 7 ASIDE FROM THE FACT THAT THEY TRIED

 8 DESPERATELY -- AND EVEN ERIK MENENDEZ TRIED DESPERATELY

 9 TO PORTRAY HIMSELF AS A CHILD, RATHER THAN AS AN ADULT

 10 AT THE TIME OF THIS SHOOTING. THEY ALSO WANTED TO MAKE

 11 IT APPEAR AS IF HE WAS A MAN WITH NO FREEDOM.

 12 BUT HE ADMITS: "I USUALLY COME HOME AFTER

 13 MY PARENTS ARE ASLEEP."

 14 HE, TOO, ADMITTED THAT: "MY PARENTS HAVE A

 15 HABIT OF FALLING ASLEEP IN FRONT OF THE TELEVISION, WITH

 16 MY MOTHER IN MY FATHER'S LAP."

 17 IN FACT, HE SAID: "MY FATHER WAS IN THE

 18 POSITION THAT WE FOUND HIM WHEN WE CAME BACK FROM THE --

 19 FROM BEING OUT," HE SAID, "HE WAS IN THE SAME SPOT WHERE

 20 WE LEFT THAT DAY."

 21 THAT'S VERY INTERESTING, THAT HE ATTRIBUTES

 22 THAT SPOT WHERE THE BODY OF JOSE MENENDEZ WAS FOUND, HE

 23 SAYS THAT HE WAS THERE IN THAT SPOT WHEN HE AND HIS

 24 BROTHER HAD LEFT THAT DAY. AND I WOULD SUBMIT, LADIES

 25 AND GENTLEMEN, THAT'S PROBABLY EXACTLY THE TRUTH. JOSE

 26 MENENDEZ WAS SITTING IN THAT SPOT.

 27 AND HE SAID: "THAT IS WHERE MY FATHER

 28 NORMALLY SITS, AND THAT IS WHERE MY FATHER WAS WATCHING

 1 TELEVISION THAT DAY."

 2 HE ALSO TELLS DETECTIVE ZOELLER THAT:

 3 "LATELY, MY PARENTS HAVE BEEN LOCKING THE DOOR TO THE

 4 BEDROOM, AND MY MOTHER WAS VERY NERVOUS."

 5 IT TELLS YOU A LOT ABOUT THE FAMILY, LADIES

 6 AND GENTLEMEN, AND ABOUT THE FEELINGS OF THE FAMILY

 7 TOWARD THE DEFENDANTS IN THIS CASE.

 8 HE ADMITS TO DETECTIVE ZOELLER: "I DON'T

 9 WANT TO GO TO SCHOOL THIS YEAR." WHICH IS VERY TRUE.

 10 YOU LOOK AT THE BEHAVIOR OF WHAT ERIK AND LYLE MENENDEZ

 11 DID AFTER THEY KILLED THEIR PARENTS -- AFTER THEY SHOT

 12 THEIR PARENTS TO DEATH. DID THEY DO WHAT THEIR FATHER

 13 WANTED THEM TO DO, GO TO SCHOOL, PURSUE A CAREER, GET AN

 14 EDUCATION? NO.

 15 THAT TELLS YOU A LOT, LADIES AND GENTLEMEN.

 16 YOU KNOW, IT'S BEEN SAID BY POLITICIANS SOMETIMES,

 17 "JUDGE ME NOT BY WHAT I SAY, BUT JUDGE ME BY WHAT I DO."

 18 AND THAT'S EXACTLY THE WAY YOU SHOULD JUDGE

 19 PEOPLE, LADIES AND GENTLEMEN. ANYBODY CAN CLAIM

 20 ANYTHING. JUDGE PEOPLE BY WHAT THEY DO, DON'T JUDGE

 21 PEOPLE BY WHAT THEY CLAIM.

 22 AND YOU LISTEN TO ERIK MENENDEZ AND HIS

 23 TESTIMONY THERE, AND WHAT DOES HE TELL US? "YES, I

 24 WANTED TO GO TO SCHOOL AND I WANTED TO FULFILL

 25 EVERYTHING MY FATHER WANTED ME TO DO."

 26 NONSENSE. ERIK MENENDEZ WANTED TO PLAY

 27 TENNIS, AND HIS FATHER WAS GOING TO CUT OUT THE TENNIS.

 28 JOSE MENENDEZ WANTED HIM TO GO TO SCHOOL, AND ERIK

 1 MENENDEZ HAD NO INTEREST IN GOING TO SCHOOL. LYLE

 2 MENENDEZ HAD NO INTEREST IN GOING TO SCHOOL.

 3 THIS WAS THEIR WAY OF GETTING INDEPENDENCE.

 4 THIS WAS THEIR WAY OF ACHIEVING THE FINANCIAL SECURITY

 5 THEY NEEDED TO GET THEIR FATHER OFF THEIR BACK, AND THAT

 6 IS WHY THEY KILLED THEIR PARENTS.

 7 HE DESCRIBES HIMSELF AS HAVING NO PROBLEMS

 8 WITH HIS FATHER. HE SAYS: "MY FATHER IS LIKE A TYPICAL

 9 FATHER," AND HE SAID THAT HIS ALLOWANCE WAS ABOUT $180 A

 10 MONTH.

 11 THAT'S VERY INTERESTING, LADIES AND

 12 GENTLEMEN. $180 A MONTH, WHAT DOES THAT WORK OUT TO?

 13 ABOUT $45 A WEEK. NOT A LOT OF MONEY FOR A YOUNG MAN

 14 LIVING IN BEVERLY HILLS, AND CERTAINLY A FAR CRY FROM

 15 THE TYPE OF MONEY HE HAD AVAILABLE TO HIM AFTER HE

 16 KILLED HIS PARENTS, AND THE TYPE OF MONEY THAT HE

 17 PLANNED TO BE SPENDING AND INVESTING. AND I WILL GET

 18 BACK TO THAT LATER.

 19 ANOTHER INTERESTING THING THAT HE SAYS,

 20 LADIES AND GENTLEMEN, IN THAT SEPTEMBER 17TH STATEMENT,

 21 HE SAYS THAT LYLE MENENDEZ' LIFELONG AMBITION WAS TO GET

 22 A ROLEX WATCH. BUT DAD DIDN'T LIKE THAT. IT WAS SHOWY.

 23 ONCE AGAIN, TELLS YOU A LITTLE BIT ABOUT

 24 FAMILY DYNAMICS HERE. JOSE MENENDEZ WAS, AS LYLE

 25 MENENDEZ INDICATED, A FRUGAL PERSON. HE WOULDN'T GO OUT

 26 AND BE BUYING A ROLEX WATCH, AND CERTAINLY WOULDN'T HAVE

 27 A ROLEX WATCH FOR HIS YOUNG 21 YEAR-OLD SON.

 28 BUT THAT'S PRECISELY THE KIND OF THING THAT

 1 LYLE MENENDEZ WOULD LIKE TO HAVE, AND COULDN'T HAVE.

 2 WE HEARD THAT LYLE MENENDEZ USED TO RUN UP

 3 A LOT OF BIG BILLS. $40,000 IN CLOTHES. CAN YOU

 4 IMAGINE THAT? $40,000 IN CLOTHES. BUT STILL, HE

 5 COULDN'T GO OUT AND BUY ROLEX WATCHES AT $10,000 A CLIP.

 6 CERTAINLY COULDN'T DO THAT WHEN HIS FATHER WAS ALIVE.

 7 BUT FOUR DAYS AFTER HIS FATHER WAS DEAD,

 8 FOUR DAYS AFTER HE PUT THAT HUGE HOLE IN THE BACK OF HIS

 9 FATHER'S HEAD, HE WENT OUT AND GOT HIMSELF A $10,000

 10 ROLEX, THE FULFILLMENT OF A "LIFE-TIME AMBITION,"

 11 ACCORDING TO ERIK MENENDEZ.

 12 BUT ONE OF THE MOST IMPORTANT THINGS THAT

 13 DETECTIVE ZOELLER TESTIFIED TO WAS THE RECOVERY OF THE

 14 DECEMBER 11TH TAPE. AND AS I INDICATED TO YOU, LADIES

 15 AND GENTLEMEN, THIS TAPE-RECORDING IS A STATEMENT OF THE

 16 DEFENDANTS. THEY ARE SITTING DOWN. THEY ARE TALKING TO

 17 DETECTIVE OZIEL -- DR. OZIEL, AND THIS WAS BEFORE THEY

 18 WERE ARRESTED. THIS WAS BEFORE THEY HAD A REASON TO

 19 FABRICATE STORIES OF CHILD ABUSE. THIS WAS BEFORE THEY

 20 HAD A REASON TO FABRICATE THE HOSTILE AND TRAUMATIC

 21 EVENTS OF AUGUST THE 20TH OF 1989 MANY.

 22 AND SO, LADIES AND GENTLEMEN, I WOULD

 23 SUBMIT TO YOU THAT THIS IS A POWERFUL PIECE OF EVIDENCE

 24 WHICH IS MUCH, MUCH CLOSER TO THE TRUTH THAN ANYTHING

 25 YOU HEARD FROM ERIK MENENDEZ AS HE WAS ON THAT WITNESS

 26 STAND.

 27 FOR ALL PRACTICAL PURPOSES, LADIES AND

 28 GENTLEMEN, THIS IS THE SMOKING GUN IN THIS CASE. IF

 1 THERE IS ONE PIECE OF EVIDENCE THAT IS A SMOKING GUN, IT

 2 IS THIS, BECAUSE IT IS VERY CLEAR FROM THIS TAPE THAT

 3 THIS WAS A PREMEDITATED AND DELIBERATE KILLING.

 4 YOU KNOW NOW THE ELEMENTS OF

 5 PREMEDITATION -- THE ELEMENTS OF FIRST-DEGREE MURDER, I

 6 SHOULD SAY, WHAT PREMEDITATION AND DELIBERATION IS. AND

 7 YOU KNOW IT'S JUST A MATTER OF THINKING ABOUT IT,

 8 WEIGHING IT AND SAYING, "OKAY, I'LL DO IT." THAT'S ALL

 9 IT IS.

 10 AND THIS TELLS YOU, LADIES AND GENTLEMEN,

 11 VERY CLEARLY, THAT THESE TWO DEFENDANTS PREMEDITATED THE

 12 COLD-BLOODED KILLNG OF THEIR PARENTS.

 13 NOW, I'D LIKE TO GO THROUGH SOME OF THESE

 14 STATEMENTS THAT THE DEFENDANTS MAKE ON THIS TAPE.

 15 LYLE MENENDEZ DESCRIBES HIS MOTHER AS

 16 ALWAYS BEING VERY GOOD AT STRESSFUL SITUATIONS, VERY

 17 CALM.

 18 ISN'T THAT A VERY DIFFERENT PICTURE FROM

 19 WHAT WE HEARD IN THIS COURTROOM? YOU SEE, NOW THERE IS

 20 A REASON TO MAKE KITTY MENENDEZ OUT TO BE A MONSTER.

 21 YOU BET YOUR LIFE EVERY TIME A WITNESS TOOK THAT STAND,

 22 A COUSIN OR AN AUNT, AND TRIED TO PORTRAY KITTY AS AN

 23 IRRATIONAL, UNPREDICTABLE WOMAN, YOU CAN BE SURE ERIK

 24 MENENDEZ AND LYLE MENENDEZ WERE SITING THERE THINKING,

 25 "GO TEAM, GO. THAT'S THE WAY TO DO IT." THAT'S EXACTLY

 26 WHAT THEY WANT.

 27 AND YET, WHY IS LYLE MENENDEZ, WHEN HE'S

 28 TALKING TO DR. OZIEL BACK ON DECEMBER THE 11TH -- AND WE

 1 KNOW THE DATE NOW. THIS IS DECEMBER THE 11TH OF 1989,

 2 JUST A FEW MONTHS AFTER THE KILLING. WHY IS LYLE

 3 MENENDEZ DESCRIBING HER AS VERY GOOD AT STRESSFUL

 4 SITUATIONS, VERY CALM?

 5 LYLE MENENDEZ, IN SPEAKING ABOUT HIS

 6 MOTHER, THE KILLING OF HIS MOTHER, DESCRIBES IT AS ONE

 7 OF THE HARDER DECISIONS, UNLIKE THE KILLING OF THE

 8 FATHER, WHICH HE SAID: "WELL -- WELL, HE SHOULD BE

 9 KILLED. THERE'S NO QUESTION."

 10 THE WORDS THAT HE USED, HE SAYS:

 11 "AND FOR MY MOTHER'S SAKE, I

 12 THOUGHT THAT WE HAD TO COME TO LIKE WHAT I

 13 WAS SAYING BEFORE. WE HAD TO MAKE A

 14 DECISION. IT WAS ONE OF THE HARDER ONES,

 15 AND IT WAS A SEPARATE ISSUE. HE'S THE

 16 REASON. MY FATHER SHOULD BE KILLED.

 17 THERE'S NO QUESTION. WHAT HE'S DOING

 18 IS -- HE'S IMPOSSIBLE TO LIVE WITH FOR

 19 MYSELF."

 20 HE GOES ON TO TALK ABOUT HOW -- VERY

 21 SIGNIFICANT STATEMENT OF THE DEFENDANT -- WHICH IS SO

 22 FAR CONTRARY TO THE PORTRAIT THAT THEY NOW TRY TO

 23 PRESENT OF THEIR PARENTS. IT TELLS YOU A GREAT DEAL

 24 ABOUT HOW MUCH LOVE JOSE MENENDEZ HAD FOR HIS SONS,

 25 BECAUSE LYLE MENENDEZ ADMITS -- AND I EVEN QUESTIONED

 26 ERIK MENENDEZ ABOUT THIS WHILE HE WAS ON THE STAND, AND

 27 ERIK MENENDEZ DOESN'T DENY THE TRUTHFULNESS OF THIS

 28 ASSERTION -- THAT JOSE MENENDEZ CRIED WHEN HE HEARD

 1 ABOUT THE CALABASAS INCIDENT, AND JOSE MENENDEZ CRIED

 2 WHEN HE HEARD ABOUT HIS SON'S FAILURE IN PRINCETON.

 3 THIS TELLS YOU A GREAT DEAL, LADIES AND

 4 GENTLEMEN, ABOUT THE COMPASSION AND THE LOVE THAT JOSE

 5 MENENDEZ HAD FOR HIS SONS. IS THIS THE KIND OF MAN WHO

 6 WOULD BE ABUSING HIS SONS?

 7 HE SAID -- LYLE MENENDEZ SAYS: "AFTER THE

 8 CALABASAS ISSUE, HE CRIED, AND WE WERE TOGETHER. WE

 9 WERE CLOSE. THIS WAS THE FIRST TIME HE EVER CRIED IN

 10 FRONT OF ME."

 11 AND HE LATER GOES ON TO SAY: "HE CRIED

 12 AFTER THE CALABASAS ISSUE, AFTER I SAID THAT, YOU KNOW,

 13 ERIK AND I WERE VERY SORRY, AND THE WHOLE DEAL -- AND

 14 I'M SORRY FOR ALL THE TROUBLE THAT YOU WERE CAUSED

 15 THROUGH THIS WHOLE ISSUE," AND HE CRIED, AND HE FELT --

 16 I THINK HE CRIED A LOT AFTER THE PRINCETON ISSUE, AND I

 17 CAME TO HIM AND I SAID THIS AND THAT."

 18 AGAIN, THEY WANT YOU TO SEE JOSE MENENDEZ

 19 AS A COLD MONSTER. EASY TO MAKE THOSE CLAIMS, LADIES

 20 AND GENTLEMEN. IT'S VERY EASY, ESPECIALLY WHEN YOU SAY,

 21 "WELL, MR. CONN, THIS HAPPENED BEHIND CLOSED DOORS, YOU

 22 SEE. THAT'S THE REASON WHY I DON'T HAVE ANY WITNESSES,

 23 MR. CONN. IT, ALL HAPPENED BEHIND CLOSED DOORS."

 24 BUT LADIES AND GENTLEMEN, JOSE MENENDEZ WAS

 25 A MAN WHO WANTED THE BEST FOR HIS SONS. TIME WAS

 26 PRECIOUS TO HIM, YET HE TOOK TIME OUT OF HIS OWN

 27 SCHEDULE TO ATTEND ALL OF THE SPORTING EVENTS OF HIS

 28 SONS, AND HE WAS A MAN WHO CRIED FOR HIS SONS.

 1 TURNING TO THE REASONS FOR THE KILLING.

 2 LYLE MENENDEZ MAKES IT VERY CLEAR IN THIS

 3 DECEMBER 11TH TAPE, LADIES AND GENTLEMEN, THAT THE

 4 KILLINGS IN FACT HAD NOTHING TO DO WITH ERIK AND LYLE

 5 MENENDEZ. THIS IS HIS CLAIM. I'LL GET BACK TO THE

 6 RELIABILITY OF THAT CLAIM IN A MOMENT.

 7 HE SAID THE FOLLOWING: DR. OZIEL ASKED

 8 HIM -- WELL, HE MAKES THE FOLLOWING STATEMENT TO

 9 DR. OZIEL:

 10 "BUT I STILL DON'T THINK IT HAD

 11 ANYTHING TO DO WITH -- KILLING HIM HAD

 12 NOTHING TO DO WITH US. IT HAD TO DO WITH

 13 ME REALIZING A NUMBER OF THINGS THAT ALL

 14 CULMINATED, WHICH WAS -- AND COULD HAVE

 15 CULMINATED AT ANY POINT, AND IT WAS JUST A

 16 QUESTION OF ERIK AND I GETTING TOGETHER

 17 AND SOMEBODY BRINGING IT UP, AND US

 18 REALIZING THE VALUE OF IT."

 19 AND THAT'S EXACTLY WHAT HAPPENED HERE,

 20 LADIES AND GENTLEMEN. THE DECISION TO KILL THEIR

 21 PARENTS WAS SIMPLY AN ANALYSIS OF WAS IT WORTH IT OR

 22 WASN'T IT WORTH IT, AND AT SOME POINT, YOU KNOW, THEY

 23 SAID: "IT'S WORTH IT." AND THAT'S PRECISELY WHAT

 24 PREMEDITATION IS. AND THERE IS NO WAY YOU CAN LISTEN TO

 25 THE DECEMBER 11 TAPE AND WALK AWAY WITH ANY OTHER

 26 CONCLUSION OTHER THAN THE FACT THAT THIS WAS A

 27 PREMEDITATED AND COLD-BLOODED KILLING.

 28 HERE IS ANOTHER PASSAGE IN WHICH ERIK

 1 MENENDEZ IS SPEAKING, AND ERIK MENENDEZ SAYS THE

 2 FOLLOWING:

 3 "HE WAS SOMEBODY THAT I LOVED, AND

 4 ALMOST HAD NO CHOICE TO DO WHAT I DID."

 5 ALMOST NO CHOICE. HE DOESN'T SAY, "I HAD

 6 TO DO IT." HE NEVER ONCE TELLS DR. OZIEL THAT THIS WAS

 7 A SITUATION IN WHICH HE WAS ACTING IN SELF-DEFENSE OR IN

 8 FEAR. HE SAYS "ALMOST NO CHOICE."

 9 "AND I HATE MYSELF FOR DOING IT,

 10 AND I UNDERSTAND WHY IT WAS DONE, BUT I --

 11 SOMEHOW IN MY MIND, I CAN'T RATIONALIZE

 12 IT."

 13 YOU SEE, BECAUSE THAT'S WHAT THEY ARE

 14 SEEKING TO DO IN THIS MEETING. THEY ARE SEEKING TO

 15 RATIONALIZE THEIR BEHAVIOR.

 16 "BECAUSE -- BECAUSE THE LOVE THAT I

 17 HAD FOR HIM AND MY MOTHER, AND THE

 18 MISCONCEPTION IN THE FAMILY, AND NO ONE

 19 ELSE -- AND NO ONE UNDERSTOOD. AND HAVING

 20 TO LISTEN TO THE FIGHTS, AND SOMEBODY

 21 WOULD BE YELLING AND SCREAMING, AND IT WAS

 22 ALWAYS TAKING PLACE DOWNSTAIRS, AND

 23 FINDING BLOOD ON THE BED.

 24 "AND I JUST TRIED TO RATIONALIZE

 25 EVERYTHING. AND I BREAK DOWN EVERY ONCE

 26 IN A WHILE, BECAUSE IT'S DIFFICULT. I

 27 DON'T MEAN -- I LOVE MY FATHER, AND IT'S

 28 MORE DIFFICULT BECAUSE OF MY MOTHER,

 1 BECAUSE I REALIZE WHAT AN AMAZING TRAGEDY

 2 HER LIFE WAS COMPARED TO WHAT IT COULD

 3 HAVE BEEN, BECAUSE OF MY FATHER, AND I

 4 HATE HIM FOR THAT, AND I LOVE HIM, AND IT

 5 WAS SOMETHING THAT WAS BEYOND MY CONTROL."

 6 AND THE QUESTION WAS ASKED, "WHAT WAS

 7 BEYOND YOUR CONTROL THAT YOU HAD TO KILL HIM? "AND

 8 HERE'S THE ANSWER OF LYLE MENENDEZ. "EVENTUALLY IT HAD

 9 TO HAPPEN."

 10 AND IT'S VERY CLEAR WHAT HE'S TALKING

 11 ABOUT. HE IS SAYING THAT EVENTUALLY THE KILLING HAD TO

 12 HAPPEN. THAT WAS THE QUESTION:

 13 "THAT YOU HAD TO KILL HIM?"

 14 "EVENTUALLY IT HAD TO HAPPEN."

 15 HE DENIED THAT ON THE WITNESS STAND, BUT

 16 THAT'S WHAT HE IS SAYING HERE. HE IS SAYING, JUST AS

 17 LYLE MENENDEZ WAS SAYING, IT WAS JUST A MATTER OF TIME,

 18 GETTING TOGETHER, SEEING THE VALUE OF IT, TALKING ABOUT

 19 IT AND SAYING, "NOW IS THE TIME".

 20 ERIK MENENDEZ GOES ON TO SAY:

 21 "IT WAS BASICALLY RUINING MY LIFE,

 22 AND I GUESS LYLE'S, AND HE WAS PUTTING MY

 23 MOTHER THROUGH TORTURE, AND IT GOT TO THE

 24 POINT WHERE -- HE WAS AMAZING. HE WOULD

 25 DO GREAT THINGS FOR ME, AND HE WOULD -- I

 26 WOULDN'T UNDERSTAND WHY. I KNOW THAT SHE

 27 LOVED ME. SOMEHOW WE COULD JUST. . ."

 28 HERE ERIK MENENDEZ TRIES TO SAY THAT HE WAS

 1 TALKING ABOUT THE ABUSE; THAT HIS FATHER WAS ABUSING

 2 HIM. BUT NOWHERE DOES HE TALK ABOUT ABUSE AGAINST HIM

 3 BY HIS FATHER. IT'S VERY CLEAR IN THIS PASSAGE HE IS

 4 TALKING ABOUT -- HE IS MAKING AN ALLEGATION ABOUT THE

 5 WAY HIS FATHER WAS MISTREATING HIS MOTHER, AND THAT IS

 6 WHAT HE WAS SAYING WAS THAT IT WAS RUINING HIS LIFE,

 7 "AND I GUESS LYLE'S, AND HE WAS PUTTING MY MOTHER

 8 THROUGH TORTURE."

 9 THAT'S EXACTLY WHAT HE WAS TALKING ABOUT,

 10 THE RELATIONSHIP BETWEEN HIS MOTHER AND FATHER. HE

 11 WASN'T TALKING ABOUT HIS OWN ABUSE, BECAUSE IF HE WANTED

 12 TO TALK ABOUT HIS ABUSE, HE WOULD HAVE. THERE IS NOT A

 13 SINGLE REFERENCE TO THAT IN THIS TRANSCRIPT.

 14 ERIK MENENDEZ ALSO INDICATES, CONTRARY TO

 15 THE IMPRESSION THAT THEY WANT TO PRESENT TO YOU HERE,

 16 THAT HE WAS A HELPLESS KIND OF CHILD WHO COULDN'T EVEN

 17 LEAVE HIS HOME. HE INDICATES IN THIS TRANSCRIPT THAT HE

 18 FELT HE COULD LEAVE HOME. HE SAID AT ONE POINT -- HE

 19 WAS ASKED BY DR. OZIEL:

 20 "DID YOU EVER TRY TO TELL YOUR MOM,

 21 OR TALK TO YOUR MOM ABOUT WHAT YOUR FATHER

 22 WAS DOING?"

 23 "NO. I COULDN'T FACE THAT. I LEFT

 24 THAT UP TO MY BROTHER. I COULDN'T EVEN

 25 FACE THAT ISSUE. I TOLD MY BROTHER OVER

 26 THE PHONE, AND HE COULDN'T -- I DIDN'T

 27 WANT TO FACE IT. BUT I KNEW THAT IF MY

 28 MOM DIED, I WOULD HAVE TO LEAVE. I WOULD

 1 HAVE TO LEAVE, AND IT DIDN'T MATTER,

 2 BECAUSE I ALWAYS THOUGHT THAT I COULD. I

 3 COULD MAKE ALL THIS MONEY OR WHATEVER, AND

 4 IT WOULDN'T MAKE A DIFFERENCE, AND LEAVING

 5 WOULDN'T BE A PROBLEM."

 6 SO HE RECOGNIZES, DESPITE ALL THESE

 7 THEORIES -- I WILL GET MORE INTO THESE THEORIES LATER

 8 ABOUT THIS LEARNED HELPLESSNESS STUFF. ERIK MENENDEZ

 9 KNEW HE COULD LEAVE THE HOUSE. HE COULD LEAVE THE HOUSE

 10 ANY TIME HE WANTED TO, AS ANY YOUNG MAN OF 18 YEARS OLD

 11 KNOWS, IF HE REALLY WANTED TO GO, HE COULD GO.

 12 ERIK MENENDEZ ADMITS THIS IN THE DECEMBER

 13 11 TAPE. BUT THEN HE GOES ON TO SAY:

 14 "I WOULD HAVE TO DO IT, AND I

 15 COULDN'T LIVE WITH THEM ANYMORE, AND I

 16 GUESS I WAS TAUGHT TO LOVE HIM BECAUSE HE

 17 WAS MY FATHER, AND I GUESS BECAUSE I

 18 WANTED TO LOVE LOVE HIM, AND PROBABLY FACE

 19 THE FACT THAT -- THAT MY MOTHER HAD TO BE

 20 KILLED, AND THAT WAS THE ONLY WAY OUT. IT

 21 WAS THE ONLY WAY OUT FOR HER, AND THAT'S

 22 WHY HE CANNOT EVEN FACE IT. HE WOULD HAVE

 23 TO FACE THAT AND UNDERSTAND THAT. IT

 24 WOULD KILL YOU, BECAUSE IT'S JUST -- IT'S

 25 JUST SO SAD."

 26 AND SO WHAT HE WAS SAYING -- HE WAS BUYING

 27 INTO THIS PROPOSITION THAT BOTH ERIK AND LYLE MENENDEZ

 28 ARE TRYING TO EXPRESS TO DR. OZIEL THAT THE MOTHER HAD

 1 TO BE KILLED; THAT IT WAS A MERCY KILLING.

 2 I WOULD SUBMIT, LADIES AND GENTLEMEN --

 3 BEFORE I READ THE REMAINDER OF THIS, LET ME JUST COMMENT

 4 ON WHAT IS GOING ON HERE, WHAT IS GOING ON IN THIS

 5 DECEMBER 11TH SESSION.

 6 FIRST OF ALL, ERIK MENENDEZ TRIES TO GIVE A

 7 NONSENSICAL EXPLANATION FOR WHY YOU SHOULD IGNORE THIS

 8 PARTICULAR RECORDING OF HIMSELF AND HIS BROTHER SPEAKING

 9 TO DR. OZIEL.

 10 HE WANTS YOU TO BELIEVE THAT HE WAS TELLING

 11 DR. OZIEL SOMETHING THAT DR. OZIEL WANTED TO HEAR, AND

 12 THAT IS ABSOLUTELY RIDICULOUS. TAKE A LOOK AT THE

 13 CHRONOLOGY OF THE RELATIONSHIP BETWEEN HIMSELF AND

 14 DR. OZIEL, AND WHAT WAS GOING ON IN THIS SESSION.

 15 YOU KNOW THAT RIGHT AFTER THE CALABASAS

 16 BURGLARIES, THAT'S WHEN ERIK MENENDEZ STARTED TO SEE

 17 DR. OZIEL, AND HE WAS TIED INTO THE COURT PROCEEDINGS

 18 RELATING TO THE CALABASAS BURGLARIES IN SOME WAY. HIS

 19 ATTORNEY AT THE TIME, GERRY CHALEFF -- YOU WILL HEAR HIS

 20 NAME THROUGHOUT THIS CASE -- GERRY CHALEFF, WHO WAS

 21 REPRESENTING HIM IN THE CALABASAS PROCEEDING, SUGGESTED

 22 THAT TREATMENT MIGHT BE A WAY OF PERSUADING THE COURT

 23 FOR A MORE LENIENT SENTENCE.

 24 AND YOU KNOW, THAT'S WHAT HAPPENED IN THIS

 25 CASE. HE RECEIVED STRAIGHT PROBATION FOR WHAT HE CALLED

 26 TWO BURGLARIES, TWO RESIDENTIAL BURGLARIES. AND GERRY

 27 CHALEFF, WHO HE ACKNOWLEDGED TO BE ONE OF THE MORE

 28 PROMINENT CRIMINAL DEFENSE ATTORNEYS IN LOS ANGELES,

 1 SERVED HIM VERY WELL, GOT HIM PROBATION FOR TWO

 2 RESIDENTIAL BURGLARIES.

 3 AND WE KNOW THAT THAT STARTED RIGHT AFTER

 4 THE CALABASAS INCIDENT, WHICH WAS IN '88, AND WE KNOW

 5 THAT HE CONTINUED TO SEE DR. OZIEL THROUGH 1989. WE

 6 KNOW THAT HE WENT TO SEE DR. OZIEL FOLLOWING THE

 7 KILLINGS, ON OCTOBER 31ST, AND I WOULD SUBMIT TO YOU

 8 THAT HE WOULDN'T HAVE GONE TO DR. OZIEL. HE WOULDN'T

 9 HAVE CONFESSED TO DR. OZIEL THAT HE HAD SHOT HIS PARENTS

 10 TO DEATH. HE WOULDN'T HAVE IMPLICATED HIS BROTHER IN

 11 THAT INCIDENT, UNLESS HE TRUSTED DR. OZIEL.

 12 AND I WOULD SUBMIT TO YOU THAT ERIK

 13 MENENDEZ DID INDEED TRUST DR. OZIEL. THAT'S THE REASON

 14 WHY HE ADMITTED THE BURGLARIES -- THE KILLINGS TO HIM.

 15 AND WE KNOW THAT HE SAW HIM AGAIN IN NOVEMBER.

 16 I BELIEVE THAT WAS NOVEMBER THE 2ND. AND

 17 THEN FINALLY WE HAVE THIS TAPE-RECORDING BEING MADE ON

 18 DECEMBER THE 11TH.

 19 SO THOSE ARE THE KEY DATES THAT WE ARE

 20 LOOKING AT HERE.

 21 NOW, HE WANTS YOU TO BELIEVE THAT HE MADE

 22 THIS ADMISSION TO DR. OZIEL, ADMITTED THE KILLINGS TO

 23 HIM, BUT THAT DR. OZIEL NEVER ASKED HIM WHY HE DID THE

 24 KILLINGS. HE WANTS YOU TO BELIEVE THAT.

 25 WE KNOW THAT DR. OZIEL QUESTIONED HIM A

 26 GREAT DEAL ABOUT THE KILLINGS. HE ADMITTED THAT WHILE

 27 HE WAS ON THE WITNESS STAND. HE SAID: "YEAH, I TOLD

 28 DR. OZIEL A LOT ABOUT THE CASE."

 1 ISN'T IT TRUE YOU TOLD HIM THIS, AND ISN'T

 2 IT TRUE YOU TOLD HIM THAT, AND HE ADMITTED TO ALL THAT?"

 3 AND HE SAID, "SURE, I TOLD HIM THAT."

 4 "WHY DID YOU TELL HIM ALL THAT?

 5 DR. OZIEL WAS ASKING HIM A LOT OF

 6 QUESTIONS. WHERE DID YOU GET THE GUNS? WHAT DID YOU DO

 7 WITH THE GUNS? WHERE ARE THE GUNS NOW?

 8 WITH ALL OF THE QUESTIONS DR. OZIEL ASKED

 9 OF HIM, ERIK MENENDEZ IS ASKING YOU TO BELIEVE THAT

 10 DR. OZIEL NEVER SAID TO HIM, "WHY'D YOU DO IT?" THAT'S

 11 ABSURD.

 12 THE FIRST QUESTION THAT DR. OZIEL WOULD

 13 HAVE ASKED WAS, "WHY'D YOU DO IT?" YOU'RE NOT GOING TO

 14 SIT THERE AND TALK TO SOMEONE ALL THIS TIME, "AND TELL

 15 ME ABOUT THE GUNS, AND TELL ME WHY YOU WENT INTO THE

 16 ROOM."

 17 AND THAT'S REAL INTERESTING, AND DR. OZIEL

 18 IS SATISFYING HIS CURIOSITY. HE IS A THERAPIST, AND HE

 19 IS NOT GOING TO ASK THE KEY QUESTION HERE, THE

 20 MOTIVATION OF "WHY DID YOU DO IT"? IT'S ABSOLUTELY

 21 ABSURD.

 22 BUT ERIK MENENDEZ HAS TO STICK TO THAT

 23 STUPID, RIDICULOUS STORY FOR ONE REASON. HE HAS TO

 24 EXPLAIN WHY IT IS THAT ON THIS TAPE HE IS TALKING ABOUT

 25 A PREMEDITATED MURDER. AND SO HIS THEORY IS: "WELL,

 26 DR. OZIEL TOLD ME THAT THIS IS WHY I KILLED MY PARENTS,

 27 AND I DECIDED TO JUST GO ALONG WITH IT. I JUST KEPT

 28 SAYING: 'THAT'S TRUE, DR. OZIEL. THAT'S TRUE,

 1 DR. OZIEL. THAT'S TRUE, DR. OZIEL.' I WASN'T SAYING IT

 2 WAS PREMEDITATED, THE CRIME, BUT THIS IS WHAT DR. OZIEL

 3 WAS TELLING ME, AND SO I AGREED WITH THAT."

 4 LADIES AND GENTLEMEN, HOW COULD YOU BELIEVE

 5 THAT STORY? HOW CAN YOU POSSIBLY BELIEVE THAT STORY?

 6 THERE'S JUST NO WAY THAT THAT COULD HAVE HAPPENEDIN THE

 7 REAL WORLD. DR. OZIEL WOULD HAVE ASKED HIM, "WHY ID

 8 YOU KILL YOUR PARENTS?"

 9 THIS CONVERSATION THAT TAKES PLACE ON THIS

 10 TAPE, LADIES AND GENTLEMEN, TAKES PLACE BECAUSE ERIK AND

 11 LYLE MENENDEZ ARE TELLING DR. OZIEL THINGS ON THIS TAPE.

 12 IT DOES NOT TAKE PLACE BECAUSE DR. OZIEL IS TELLING ERIK

 13 AND LYLE MENENDEZ WHY THEY KILLED THEIR PARENTS.

 14 NOW, WHAT THE DEFENSE RELIES UPON ARE THOSE

 15 PASSAGES IN THE TAPE WHERE DR. OZIEL IS KIND OF SUMMING

 16 THINGS UP. HE SAYS, FOR EXAMPLE -- HE SHAPES IT, IN SO

 17 MANY WORDS, "THE WAY I SEE IT, YOUR MOTHER WAS LIKE

 18 THIS. YOUR FATHER WAS LIKE THIS. THE FAMILY WAS LIKE

 19 THIS. THIS WAS GOING ON, THIS WAS GOING ON."

 20 BUT WHAT DR. OZIEL IS SIMPLY DOING IS HE IS

 21 SUMMING UP. THAT'S ALL HE IS DOING. HE'S NOT TELLING

 22 THEM WHY THEY KILLED THEIR PARENTS. AND IF THEY

 23 DISAGREED WITH DR. OZIEL, AT ANY TIME THEY COULD HAVE

 24 SAID, "NO, THAT'S WRONG." AND IN FACT THEY DO THAT FROM

 25 TIME TO TIME. THEY DISAGREE WITH DR. OZIEL, AND THEY

 26 TELL HIM, "WELL, NO. THAT'S NOT EXACTLY RIGHT. LET ME

 27 CLARIFY THAT FOR YOU."

 28 AND SO, LADIES AND GENTLEMEN, THE NOTION

 1 THAT THEY ARE TELLING DR. OZIEL WHAT HE WANTS TO HEAR ON

 2 THIS TAPE IS ABSOLUTELY PREPOSTEROUS AND RIDICULOUS, AND

 3 SHOULD BE REJECTED. THIS IS THE DEFENDANT'S CLEAR

 4 ADMISSION TO DR. OZIEL OF THE PREMEDITATED MURDER,

 5 BEFORE THEY HAD A REASON TO FABRICATE THESE TALES OF

 6 ABUSE, AND THAT'S WHY IT IS SO RELIABLE, AND THAT'S WHY

 7 IT IS SO DETRIMENTAL TO THE DEFENSE.

 8 THE COURT: LET'S TAKE OUR RECESS AT THIS TIME.

 9 WE WILL RESUME AT 10 MINUTES AFTER 11:00.

 10 DON'T DISCUSS THIS WITH ANYONE. DON'T FORM

 11 ANY FINAL OPINIONS ABOUT IT. WE WILL RESUME AT 10

 12 MINUTES AFTER 11:00.

 13 (A RECESS WAS TAKEN FROM

 14 11:00 A.M. TO 11:15 A.M)

 1 THE COURT: EVERYBODY IS BACK.

 2 MS. ABRAMSON: I WANTED TO BE HEARD

 3 CONCERNING MR. CONN'S ARGUMENT.

 4 WE OBJECT -- FIRST OF ALL, WE THINK

 5 WE'RE BEING TOTALLY SANDBAGGED BY STATEMENTS THE

 6 PROSECUTION'S MADE ALL THROUGH THIS CASE IN SEEKING

 7 TO LIMIT THE EVIDENCE WE COULD PRESENT CONCERNING

 8 THE BAD CHARACTER OF JOSE AND MARY LOUISE MENENDEZ,

 9 AND THE PROSECUTION INDICATED ALL ALONG THEY WERE

 10 NEVER GOING TO GET INTO IRRELEVANT ISSUES OF

 11 CHARACTER.

 12 AND THIS WHOLE FANTASY ARGUMENT ABOUT

 13 JOSE MENENDEZ' LOVING HIS SONS AND -- 90 PERCENT OF

 14 WHAT HE SAID IS NOT SUPPORTED BY THE EVIDENCE, IS A

 15 TOTAL PAY-ON TO THE MAN'S CHARACTER, AND WE WERE NOT

 16 PERMITTED TO PUT ON DOZENS OF WITNESSES TO TESTIFY

 17 TO WHAT HIS CHARACTER TRULY WAS, AND WHAT HIS

 18 ATTITUDE TOWARDS HIS SONS TRULY WAS.

 19 I OBJECT TO THIS ARGUMENT. IN ORDER OF

 20 PREFERENCE, WE MOVE FOR A MISTRIAL.

 21 SECONDARILY, WE ASK THAT THAT PORTION OF

 22 THE ARGUMENT BE STRICKEN AND THE JURY BE ADMONISHED

 23 TO DISREGARD IT.

 24 THIRD, IF "A" AND "B" DON'T WORK, WE ASK

 25 TO REOPEN AND PUT ON THE EVIDENCE OF WHAT HIS

 26 TREATMENT OF HIS CHILDREN TRULY WAS; AND WE ASK AT

 27 THIS POINT THAT HE NOT BE PERMITTED TO GET UP THERE

 28 NOW AND MAKE UP SOME FANCY VERSION OF MRS. MENENDEZ,

 1 WHEN WE WERE PROHIBITED FROM PUTTING ON THE EVIDENCE

 2 OF WHAT SHE REALLY WAS LIKE; AND SPECIFICALLY, HOW

 3 SHE REALLY TREATED HER CHILDREN.

 4 AT EVERY TURN, WHEN WE TRIED TO ELICIT

 5 INFORMATION CONCERNING THE REAL INTERACTION -- APART

 6 FROM PHYSICAL ABUSE AND TERRORIZING, WHICH IS ALL WE

 7 WERE ALLOWED TO DO, WHEN -- THIS IS THE FATHER WHO

 8 LOVES HIS CHILD SO MUCH HE SENDS HIM DOWN THE HILL

 9 ON A BICYCLE WITH BRUISES --

 10 THE COURT: LET'S TRY TO TALK IN A TEMPERATE

 11 TONE. YOU'RE NOT ARGUING YOUR CASE TO THE JURY.

 12 YOU'RE JUST PRESENTING THE MERITS OF YOUR ARGUMENTS

 13 TO ME. LET'S DO IT IN A TEMPERATE FASHION.

 14 MS. ABRAMSON: WE WERE PREVENTED FROM PUTTING

 15 ON EVIDENCE THAT SHOWED THE DEPTH OF THE

 16 MALTREATMENT BY THESE PARENTS TOWARDS THE CHILDREN,

 17 AND THE WAY THEY TALKED ABOUT THEM TO OTHER PEOPLE.

 18 IN EVERY WAY, WE HAVE BEEN CONSTRAINED

 19 IN PUTTING ON OUR DEFENSE IN THIS CASE; AND THEN THE

 20 PROSECUTOR GETS UP THERE AND MAKES UP A FAIRY STORY

 21 ABOUT WHAT THESE PEOPLE WERE LIKE BASED SOLELY ON A

 22 CHARACTER ASSESSMENT, WHEN WE WERE NEVER PERMITTED

 23 TO BRING IN CHARACTER EVIDENCE.

 24 SO WE ASK FOR A MISTRIAL. WE ASK TO

 25 STRIKE THIS ARGUMENT, AND WE ASK LEAVE TO REOPEN TO

 26 PUT ON THE TRUTH.

 27 MR. GESSLER: WE JOIN IN THIS ARGUMENT, MOST

 28 SPECIFICALLY, BECAUSE WE WERE PROHIBITED FROM

 1 PUTTING ON PETER CANO, WHO I THINK HIS EVIDENCE

 2 CONCERNING LYLE WETTING THE FLOOR WHEN HIS FATHER

 3 SIMPLY HELD HIM, AND TAKING HIM INTO THE ROOM AND

 4 PUNCHING HIM IN THE CHEST; AND PETER CANO GETTING

 5 INTO AN ARGUMENT WITH MR. MENENDEZ AND LEAVING THE

 6 HOUSE OVER THIS PARTICULAR TREATMENT.

 7 THAT DOES NOT EXACTLY SHOW THE LOVING

 8 PICTURE OF A LOVING FATHER, NOW PORTRAYED BY

 9 MR. CONN, WHO HAS PREVENTED US FROM PUTTING ON THIS

 10 EVIDENCE.

 11 WE WERE PREVENTED FROM PUTTING ON THE

 12 EVIDENCE FROM DIANE VANDERMOLEN CONCERNING THE

 13 COMPLAINT LYLE MADE TO HER OF SEXUAL TOUCHING BY THE

 14 FATHER, AND THE MOTHER'S INACTION CONCERNING IT; AND

 15 ACTUALLY, PUTTING HER OFF, CERTAINLY DOES NOT SHOW

 16 THE LOVING PROTECTIVE PICTURE OF THE MOTHER THAT I

 17 THINK MR. CONN IS BEGINNING TO PAINT.

 18 WE HAVE BEEN PROHIBITED FROM SHOWING

 19 THIS OTHER SIDE. I THINK MR. CONN IS MISUSING

 20 WHATEVER HE COULD DRAW ON FROM A TRANSCRIPT TO

 21 OZIEL -- OR A TRANSCRIPT TO ZOELLER -- REMARKS OUT

 22 OF CONTEXT, AND HE'S USING THEM TO SHOW LOVING AND

 23 GOOD CHARACTER FOR THE TWO DECEASEDS IN THIS CASE,

 24 WHEN WE WERE PREVENTED FROM DOING THAT.

 25 WE'VE ALSO BEEN PREVENTED FROM PUTTING

 26 ON DR. HART AND SHOWING EVIDENCE OF PSYCHOLOGICAL

 27 MALTREATMENT, AND WHAT HE WOULD SAY CONCERNING THE

 28 LACK OF LOVE IN THIS HOME BY JOSE AND MARY MENENDEZ,

 1 RATHER THAN THE LOVING PICTURE THAT IS NOW BEING

 2 PRESENTED BY THE PROSECUTOR.

 3 WE HAVE BEEN SANDBAGGED. WE HAVE BEEN

 4 PREVENTED FROM FILLING OUT THAT PICTURE. THEY'RE

 5 USING THESE STATEMENTS FOR AT LEAST AN IMPROPER

 6 PURPOSE.

 7 WE'RE GOING TO ALSO BE ASKING FOR A

 8 MISTRIAL BECAUSE OF THE MISUSE OF THIS EVIDENCE IN

 9 THE PEOPLE'S ARGUMENT AT THIS TIME. IF NOT, WE

 10 WOULD ASK THAT THE ARGUMENT BE STOPPED AT THIS TIME,

 11 AND WE BE ALLOWED TO REOPEN THE CASE TO PUT ON THOSE

 12 WITNESSES WHO WERE DENIED TO US IN THE DEFENSE

 13 ITSELF. AND IF THAT DOESN'T -- I THINK THAT'S THE

 14 SECOND THING THAT WE'RE ASKING FOR IN ORDER OF

 15 PREFERENCE, ALTHOUGH A MISTRIAL IS PROBABLY THE ONLY

 16 WAY AT THIS TIME TO CURE THIS ERROR.

 17 THIRDLY, IF THE COURT DOES NOT SEE

 18 EITHER OF THOSE TWO ALTERNATIVES, AND WITHOUT GIVING

 19 UP ON THEM, BECAUSE I THINK THEY'RE THE ONLY

 20 ALTERNATIVES TO CURE THIS, AT LEAST STRIKING THAT

 21 PORTION OF THE ARGUMENT FROM THE JURY, AND THE JURY

 22 BEING ADMONISHED TO DISREGARD IT; THAT IT WAS

 23 MISCONDUCT FOR THE DISTRICT ATTORNEY TO BRING THAT

 24 PICTURE TO THE JURY, KNOWING THEY HAVE PREVENTED US

 25 FROM PUTTING ON THE FULL PICTURE.

 26 THE COURT: PEOPLE WISH TO RESPOND?

 27 MR. CONN: YES. I THINK THAT BOTH SIDES ARE

 28 FREE TO ARGUE THE STATE OF THE EVIDENCE. THE

 1 PROSECUTION COULD DO THE SAME IN REGARD TO ANY

 2 ARGUMENT MADE BY THE DEFENSE. WE COULD SAY IF THE

 3 COURT HAD ALLOWED IN THE SCREENPLAY, I THINK THE

 4 SCREENPLAY WOULD TEND TO NEGATE VARIOUS THINGS THAT

 5 THE DEFENSE IS GOING TO SAY DURING THE COURSE OF

 6 THEIR ARGUMENT.

 7 THERE'S OTHER ITEMS OF EVIDENCE THAT THE

 8 PROSECUTION WANTED TO PRESENT, AND THE PROSECUTION

 9 WAS NOT PERMITTED TO PRESENT. AND I THINK THAT

 10 WOULD HELP ASSIST THE PROSECUTION IN REFUTING SOME

 11 OF THE THINGS THAT THE DEFENSE IS GOING TO SAY.

 12 WILL I BE PERMITTED THEN TO POINT TO THE

 13 VARIOUS PIECES OF EVIDENCE THAT I WAS NOT ABLE TO

 14 PRESENT, OR PERMITTED TO PRESENT TO THIS JURY, AND

 15 USE THAT AS A BASIS FOR PRECLUDING DEFENSE

 16 ARGUMENTS? I DON'T THINK SO.

 17 I THINK BOTH SIDES ARE PERMITTED TO

 18 ARGUE THE EVIDENCE, AND THAT'S WHAT I'M DOING. IT'S

 19 A REASONABLE COMMENT ON THE EVIDENCE.

 20 MR. GESSLER: I'D LIKE TO RESPOND TO THAT.

 21 THAT IS TRUE IN SOME CONTEXTS, BUT

 22 CERTAINLY NOT IN OTHERS. THE PROSECUTION'S NEVER

 23 FREE TO TALK ABOUT EVIDENCE THAT'S BEEN PRECLUDED

 24 FROM THE CASE. THEY'RE NOT FREE TO PRECLUDE THE

 25 DEFENSE; FOR INSTANCE, FROM PUTTING ON SOME PIECE OF

 26 PHYSICAL EVIDENCE AND THEN SAYING: "WELL, IF THEY

 27 HAD A DEFENSE, WHERE'S THE PHYSICAL EVIDENCE?"

 28 ANYMORE THAN THE DEFENSE, IF THEY HAD

 1 SUCCEEDED IN A 1538.5 IN EXCLUDING A WEAPON -- LET'S

 2 SAY A GUN -- IS NOT FREE TO THEN ARGUE TO THE JURY,

 3 "IF MY CLIENT DID IT, WHY DON'T THEY HAVE THE GUN?"

 4 THERE ARE LIMITATIONS AS TO WHAT YOU

 5 COULD ARGUE AS TO THE EVIDENCE THAT'S PRESENTED, AND

 6 LIMITATIONS AS TO WHAT YOU CAN PRESENT WHEN YOU HAVE

 7 PRECLUDED THE OTHER SIDE FROM PUTTING ON CERTAIN

 8 EVIDENCE.

 9 SO I STAND BY THE ARGUMENT THAT I HAD

 10 MADE EARLIER.

 11 THE COURT: ALL RIGHT. THE PROSECUTION'S

 12 ARGUING THE EVIDENCE AND EVERYTHING RELATING TO THE

 13 EVIDENCE THAT HAS BEEN PRESENTED. AND FOR THE

 14 DEFENSE TO SAY, "WELL, THE DEFENSE WAS ONLY ABLE TO

 15 PUT ON EVIDENCE OF PHYSICAL ABUSE, ONLY ABLE TO PUT

 16 ON EVIDENCE OF SEXUAL ABUSE, ONLY ABLE TO PUT ON

 17 THIS, AND WASN'T ABLE TO PUT ON OTHERS."

 18 THERE WAS A SUBSTANTIAL AMOUNT OF

 19 EVIDENCE PRESENTED BY THE DEFENSE REGARDING THE

 20 RELATIONSHIP OF THE DEFENDANTS WITH THE VICTIMS, AND

 21 IT WAS NOT A ROSY PICTURE PORTRAYED BY THE DEFENSE.

 22 IT WAS JUST THE OPPOSITE OF THAT. YOU JUST SEEM TO

 23 IGNORE THAT WHEN YOU MAKE THESE ARGUMENTS.

 24 THERE WAS A SUBSTANTIAL AMOUNT OF

 25 EVIDENCE. MOST OF THE DEFENSE CASE WAS PRESENTED

 26 WITH THAT IN MIND. SO THAT'S ALL BEFORE THE JURY,

 27 ALL THE MATERIAL YOU WILL BE ARGUING, MATERIAL THAT

 28 HAS BEEN REFERRED TO IN THE ARGUMENT BY LYLE

 1 MENENDEZ' COUNSEL, THAT YOU WEREN'T ABLE TO PRESENT

 2 THE COMPLAINT OF MS. VANDERMOLEN, THE SITUATION WITH

 3 MR. CANO. THAT IS ALL DERIVED FROM THE FACT IT WAS

 4 NOT RELEVANT EVIDENCE AND NOT ADMISSIBLE EVIDENCE,

 5 BECAUSE THE DEFENDANT NEVER TESTIFIED. THERE WAS NO

 6 BASIS FOR ITS ADMISSION.

 7 SO THERE WERE GOOD REASONS FOR IT NOT TO

 8 COME IN. YOUR CLIENT NEVER TESTIFIED. THERE WAS NO

 9 BASIS FOR THE EVIDENCE TO COME IN.

 10 AS FAR AS DR. HART, THAT EVIDENCE WAS

 11 NOT RELEVANT EVIDENCE TO ISSUES IN DISPUTE IN THIS

 12 CASE.

 13 MR. GESSLER: WITH ALL DUE RESPECT, THAT HAS

 14 NOTHING TO DO WITH WHETHER OR NOT MY CLIENT

 15 TESTIFIED OR DID NOT TESTIFY. IT HAS TO DO WITH THE

 16 PROSECUTION PUTTING ON AN UNFAIR-SIDED PICTURE AS TO

 17 WHAT THE PARENTS WERE LIKE, WITHOUT ALLOWING THE

 18 DEFENSE TO SHOW THE OTHER.

 19 WHAT IT IS IS THE PROSECUTION NOW

 20 TALKING TO THE JURY AND SAYING: "SMELL THESE

 21 BEAUTIFUL ROSES. REACH DOWN AND TAKE THAT STEM IN

 22 YOUR HANDS AND GET THE ROSE UP CLOSE TO YOUR NOSE,"

 23 WITHOUT TELLING THEM THERE'S THORNS. AND WE WEREN'T

 24 PERMITTED TO PUT ON THE THORNS, YOUR HONOR.

 25 AND I THINK THAT'S AN UNFAIR PICTURE,

 26 WITH AN UNFAIR USE NOW OF THE DISTRICT ATTORNEY.

 27 IT'S A VIOLATION OF DUE PROCESS FOR THEM TO PREVENT

 28 THE EVIDENCE COMING IN, AND THEN MISUSE THAT TO

 1 THEIR OWN BENEFIT. AND I AM ARGUING NOW FOR A

 2 MISTRIAL, ALSO BASED ON THE UNITED STATES

 3 CONSTITUTION, AS WELL AS STATE LAW.

 4 THE COURT: OKAY. WELL, THE ARGUMENT IS

 5 MISPLACED TO THE EXTENT THAT IT WAS THE PEOPLE WHO

 6 PREVENTED THIS EVIDENCE FROM COMING IN. THE

 7 EVIDENCE DIDN'T COME IN BECAUSE THE COURT RULED IT

 8 WAS NOT ADMISSIBLE EVIDENCE, FOR THE REASONS I

 9 ARTICULATED AND STATED ON THE RECORD AT THE TIME

 10 EACH ONE OF THESE ITEMS WAS OFFERED BY THE DEFENSE.

 11 AND THERE WERE SUBSTANTIAL ARGUMENTS INVOLVED WITH

 12 THE EFFORT OF THE DEFENSE TO INTRODUCE EACH OF THESE

 13 THINGS, AND THE RULINGS MADE AT THE TIME, BASED UPON

 14 THE MERITS OF YOUR ARGUMENTS AND THE ADMISSIBILITY

 15 OF THEIR EVIDENCE.

 16 THIS IS NOT A SITUATION WHERE THE

 17 PROSECUTION WAS PERMITTED TO PUT ON CERTAIN EVIDENCE

 18 AND THE DEFENSE WAS FORECLOSED FROM PUTTING ON

 19 CONTRARY EVIDENCE ON THE SAME SUBJECT. ALL THAT'S

 20 HAPPENING RIGHT NOW IS THAT THE PROSECUTION'S

 21 ARGUING BASED UPON THE EVIDENCE BEFORE THE JURY

 22 PRESENTED ON BOTH SIDES. THAT'S ALL THAT'S

 23 OCCURRING HERE. AND I DON'T FIND THERE'S ANY

 24 UNFAIRNESS IN THIS.

 25 THEREFORE, THE REQUEST FOR MISTRIAL,

 26 REQUEST TO AUGMENT THE EVIDENCE, AND REQUEST TO

 27 STRIKE THE ARGUMENT AND ADMONISH THE JURY, THOSE

 28 REQUESTS ARE DENIED.

 1 MR. GESSLER: I'M JUST MAKING SURE THE RECORD

 2 SHOWS THAT I'M TALKING ABOUT THE SUBJECT. THE

 3 SUBJECT IS THE CHARACTER OF THE DECEASED. AND WE

 4 DID OFFER EVIDENCE ON THE CHARACTER OF THE DECEASED

 5 WHICH WAS DENIED.

 6 THE COURT: WELL, THE PROSECUTION DIDN'T

 7 OFFER EVIDENCE CONTRARY, EVIDENCE ABOUT THE

 8 CHARACTER OF THE DECEASED. WHAT YOU HAVE HERE IS

 9 THE EVIDENCE. THAT'S THE EVIDENCE. THAT'S IT.

 10 MR. GESSLER: I KNOW, BUT THEY'RE TAKING ONE

 11 SIDE PART OF THE EVIDENCE, WITHOUT LETTING US PUT ON

 12 THE OTHER SIDE OF THE EVIDENCE. IT'S THE SAME

 13 SUBJECT, WHICH IS THE CHARACTER OF JOSE MENENDEZ,

 14 THE CHARACTER OF MARY MENENDEZ; AND THAT'S WHAT WE

 15 WERE NOT ALLOWED TO ATTACK. AND YET THEY ARE NOW

 16 PRESENTING AN UNFAIR PICTURE TO THE JURY OF WHAT

 17 THEY PUT ON THAT WE WERE NOT ALLOWED TO REBUT.

 18 MR. LEVIN: YOUR HONOR, ONE OTHER POINT.

 19 THE COURT: ALL THAT HAS HAPPENED HERE IS THE

 20 PROSECUTION'S ARGUING TO THE JURY AND GIVING THEIR

 21 IMPRESSION AND INTERPRETATION OF THE EVIDENCE;

 22 NOTHING MORE. THE PEOPLE WERE NOT PERMITTED TO PUT

 23 ON EVIDENCE OF THE GOOD CHARACTER OF JOSE MENENDEZ

 24 AND THE GOOD CHARACTER OF MRS. MENENDEZ, AND THEN

 25 THE DEFENSE WAS FORECLOSED FROM INTRODUCING CONTRARY

 26 EVIDENCE. THAT DIDN'T HAPPEN. ALL THAT HAPPENED IS

 27 WE HAD ARGUMENT ABOUT WHAT HAS BEEN RECEIVED.

 28 MR. LEVIN: I THINK THE COURT IS IGNORING THE

 1 FACT THAT MR. CONN IS GIVING HIS INTERPRETATION OF

 2 WHAT HE WANTS THE EVIDENCE TO BE.

 3 WHERE IN THIS RECORD WAS IT EVER

 4 DEMONSTRATED THE AGE AT WHICH JOSE MENENDEZ CAME TO

 5 THIS COUNTRY, THE LEVEL OF EDUCATION HE HAD, HOW

 6 MUCH ENGLISH HE COULD SPEAK, AND HOW MUCH MONEY HE

 7 HAD IN HIS POCKET? IF THAT DOESN'T CONJURE UP

 8 EMOTION IN THE MINDS OF THE JUROR (SIC), IN ANY

 9 JUROR.

 10 IN FACT, WHAT HE WANTS TO PORTRAY IS

 11 THIS PERSON THAT MR. CONN WANTS HIM TO BE, THAT IS

 12 NOT SUPPORTED BY THE EVIDENCE, AND THAT'S WHAT I SEE

 13 TO BE THE PROBLEM

 14 THE COURT: OKAY.

 15 MR. LEVIN: THERE IS NO EVIDENCE IN THE

 16 RECORD FOR THAT.

 17 THE COURT: I DON'T RECALL ANY PARTICULAR

 18 REFERENCE IN THE EVIDENCE TO THE AMOUNT OF MONEY

 19 MR. MENENDEZ HAD WHEN HE CAME TO THE UNITED STATES.

 20 THERE WAS SOME TESTIMONY ABOUT FAMILY BACKGROUND

 21 FROM MR. BARALT, MRS. BARALT, AND MRS. CANO. I

 22 DON'T RECALL SPECIFICALLY IF IT RELATED TO THE

 23 RESOURCES OF MR. MENENDEZ OR THE FAMILY.

 24 I DON'T RECALL ANY REFERENCE TO HIS

 25 ACCENT OR HIS ABILITY TO SPEAK ENGLISH, QUITE

 26 FRANKLY, ON THE RECORD. BUT IT COULD VERY WELL BE

 27 THERE. THESE ARE RATHER SMALL POINTS. IF THEY ARE

 28 SIGNIFICANT TO THE DEFENSE, YOU CAN CERTAINLY ARGUE

 1 IN REBUTTAL THAT THERE IS NO EVIDENCE OF THIS IN THE

 2 RECORD; AND ALSO, YOU COULD HAVE OBJECTED AT THE

 3 TIME AS TO THOSE TWO REFERENCES IF YOU FELT THE

 4 PEOPLE WERE GOING BEYOND THE RECORD.

 5 MR. LEVIN: I OBJECT NOW, AND I'M ASKING THE

 6 COURT, IN THE INTEREST OF FAIRNESS, TO ADMONISH THE

 7 JURY TO DISREGARD THOSE STATEMENTS, OR ALLOW US TO

 8 PUT ON EVIDENCE TO THE CONTRARY.

 9 THE COURT: I DON'T SEE THAT THESE ARE

 10 SIGNIFICANT ISSUES. THEY CAN BE DEALT WITH BY

 11 ARGUMENT. HAD THEY BEEN OBJECTED TO AT THE TIME,

 12 THE COURT COULD HAVE DEALT WITH THEM. IT'S LONG

 13 PAST THE TIME FOR OBJECTION; AND THEREFORE, THE

 14 REQUESTS ARE DENIED.

 15 LET'S GET THE JURY OUT.

 16 (THE JURY ENTERED THE COURTROOM

 17 AND THE FOLLOWING PROCEEDINGS

 18 WERE HELD:)

 19

 20 THE COURT: THE JURY IS BACK.

 21 AND WE'LL RESUME WITH ARGUMENT.

 22 MR. CONN: THANK YOU.

 23 I SPOKE ABOUT ONE OF THE REASONS WHY THE

 24 DEFENDANT'S EFFORT TO EXPLAIN AWAY THE DECEMBER 11

 25 TAPE IS PREPOSTEROUS.

 26 ERIK MENENDEZ CLAIMS THAT DR. OZIEL

 27 SIMPLY DIDN'T ASK HIM WHY HE KILLED HIS PARENTS, AND

 28 HE JUST WENT ALONG WITH DR. OZIEL'S INTERPRETATION.

 1 NOT ONLY IS THAT ABSURD, WHAT IS ALSO

 2 ABSURD IS THE FACT THAT HE WOULD ALLOW DR. OZIEL TO

 3 HAVE THAT INTERPRETATION.

 4 YOU'LL RECALL THAT HE ADMITTED THAT ONE

 5 OF THE CONCERNS OF HIS BROTHER AND HIMSELF WAS THE

 6 FACT THAT DR. OZIEL WOULD BE FEARFUL, BECAUSE HE

 7 SAID THAT HE UNDERSTOOD THAT THERE WAS A

 8 CONFIDENTIALITY ISSUE INVOLVED HERE; THAT THE

 9 CONVERSATION WOULD REMAIN PRIVILEGED.

 10 HOWEVER, IF DR. OZIEL FELT IT WAS

 11 NECESSARY TO GO TO THE POLICE, IF DR. OZIEL WAS

 12 FEARFUL AND FELT THAT HIS OWN LIFE WAS IN JEOPARDY,

 13 THEN THE CONFIDENTIALITY MIGHT BE BREACHED, AND

 14 DR. OZIEL MIGHT GO TO THE POLICE.

 15 SO, LADIES AND GENTLEMEN, IF YOU WERE IN

 16 THAT SITUATION -- PUT YOURSELF IN THAT SITUATION

 17 NOW. YOU GO TO YOUR THERAPIST AND YOU TELL YOUR

 18 THERAPIST THAT YOU ARE RESPONSIBLE, YOU AND YOUR

 19 BROTHER ARE RESPONSIBLE FOR SHOOTING YOUR PARENTS TO

 20 DEATH. WE ALL KNOW HOW COLD-BLOODED AND HOW BRUTAL

 21 THIS MURDER WAS. YOU LEAD YOUR THERAPIST TO BELIEVE

 22 THAT YOU AND YOUR BROTHER ARE RESPONSIBLE FOR THE

 23 KILLING.

 24 IF YOU HAVE SOME MITIGATING ASPECT AS TO

 25 WHY YOU DID THAT KILLING THAT WOULD PREVENT HIM FROM

 26 GOING TO THE POLICE, WELL, YOU'RE CERTAINLY GOING TO

 27 TELL HIM ABOUT THAT. YOU'RE NOT GOING TO ALLOW HIM

 28 TO BELIEVE THAT THIS WAS SUCH A COLD-BLOODED AND

 1 DELIBERATE MURDER, BECAUSE THAT WILL ONLY MAKE HIM

 2 MORE IN FEAR, AND THAT WILL CAUSE HIM TO GO TO THE

 3 POLICE AND TO BREACH THE CONFIDENTIALITY.

 4 ERIK MENENDEZ ADMITTED IN COURT THAT HE

 5 WANTED -- HE AND LYLE MENENDEZ WANTED TO CALM OZIEL

 6 DOWN. HE ALSO ADMITTED IN COURT THAT OZIEL

 7 EXPRESSED FEAR. HE ALSO ADMITTED IN COURT THAT HE

 8 UNDERSTOOD FROM OZIEL'S REMARKS ABOUT HIS NOTES

 9 BEING REVEALED THAT OZIEL WAS SAYING THAT THEY

 10 BETTER NOT HURT HIM, BECAUSE OZIEL SAID SOMETHING TO

 11 THE EFFECT OF: "I HAVE NOTES, AND IF ANYTHING

 12 HAPPENS TO ME, THOSE NOTES ARE GOING TO BECOME

 13 PUBLIC."

 14 IT'S VERY CLEAR, LADIES AND GENTLEMEN.

 15 DR. OZIEL WAS FRIGHTENED, FRIGHTENED OUT OF HIS MIND

 16 OF THESE TWO DEFENDANTS, AND HE WAS WARNING --

 17 MS. ABRAMSON: I'M GOING TO OBJECT TO THAT.

 18 THERE'S NO EVIDENCE --

 19 THE COURT: OKAY. AS FAR AS ARGUMENTS OF

 20 COUNSEL, AS I SAID YESTERDAY, COUNSEL ARE ARGUING

 21 WHAT THEY RECALL OF THE TESTIMONY AND THE EVIDENCE

 22 PRESENTED HERE IN THE TRIAL. YOU ARE THE JUDGES OF

 23 WHAT WAS SAID, AND WHAT THE WITNESSES TOLD ON THE

 24 WITNESS STAND, AND ALL THE EVIDENCE THAT'S BEEN

 25 PRESENTED.

 26 IF THE LAWYERS RECALL IT DIFFERENTLY,

 27 THEY'RE JUST REFERRING TO WHAT HAS BEEN SAID HERE IN

 28 COURT. IF THEY DON'T SAY IT THE WAY YOU REMEMBER

 1 IT, YOUR RECOLLECTION, YOUR INTERPRETATION OF THE

 2 EVIDENCE IS WHAT COUNTS. AND KEEP THAT IN MIND

 3 DURING ARGUMENT OF ALL COUNSEL.

 4 YOU MAY PROCEED.

 5 MR. CONN: THANK YOU.

 6 BEAR IN MIND, LADIES AND GENTLEMEN,

 7 EVERYTHING I SAY TO YOU IS BASED UPON THE EVIDENCE

 8 THAT WAS PRESENTED HERE IN COURT, AND NOTHING MORE.

 9 I AM ONLY ARGUING THE EVIDENCE PRESENTED HERE IN

 10 COURT, AND THE REASONABLE INFERENCES THAT CAN BE

 11 DRAWN FROM THAT EVIDENCE.

 12 BUT I DIRECT YOUR ATTENTION BACK TO

 13 ADMISSIONS OF ERIK MENENDEZ HIMSELF IN THIS TRIAL

 14 AND WHAT HE SAID CONCERNING DR. OZIEL. AND I ASKED

 15 HIM IN REGARD TO THIS TOPIC WHETHER HE UNDERSTOOD

 16 FROM DR. OZIEL'S REMARKS THAT IF HIS NOTES WERE

 17 REVEALED -- THAT HIS NOTES WOULD BE REVEALED UNDER

 18 CERTAIN CIRCUMSTANCES, WHAT CONCLUSIONS HE DREW FROM

 19 THAT. AND ERIK MENENDEZ SAID SOMETHING TO THE

 20 EFFECT OF HE UNDERSTOOD THAT FROM DR. OZIEL'S

 21 REMARKS ABOUT HIS NOTES NOT BEING REVEALED, THAT

 22 OZIEL WAS SAYING TO HIM THAT THEY BETTER NOT HURT

 23 HIM.

 24 SO THE EVIDENCE PRESENTED IN THIS TRIAL,

 25 LADIES AND GENTLEMEN, WARRANTS THE CONCLUSION THAT

 26 DR. OZIEL WAS, IN FACT, FRIGHTENED OF, SCARED OF

 27 LYLE AND ERIK MENENDEZ.

 28 HE ALSO SAID IN THIS TRIAL THAT

 1 DR. OZIEL EXPRESSED FEAR.

 2 HE ALSO SAID THAT HE AND HIS BROTHER

 3 WERE CONCERNED THAT DR. OZIEL WOULD GO TO THE POLICE

 4 IF HE FELT THREATENED, AND THAT THEY WANTED TO CALM

 5 HIM DOWN. AND THAT'S WHERE HIS STORY BECOMES

 6 TOTALLY RIDICULOUS, LADIES AND GENTLEMEN. BECAUSE

 7 IF YOU WANTED TO CALM THE MAN DOWN, YOU WOULD NOT

 8 ALLOW HIM TO CONCLUDE, AS THIS TAPE CLEARLY

 9 INDICATES, THAT THIS WAS A PREMEDITATED MURDER,

 10 BECAUSE THAT'S GOING TO FRIGHTEN HIM ALL THE MORE.

 11 IN THAT CIRCUMSTANCE, LADIES AND

 12 GENTLEMEN, WHAT YOU, OR ANY OTHER REASONABLE PERSON

 13 WOULD DO, IS YOU WOULD TELL HIM SOME INFORMATION

 14 THAT WOULD, IN FACT, CALM HIM DOWN. IF YOU WERE

 15 TRULY ABUSED, AND THAT IS THE REASON WHY YOU KILLED,

 16 OR IF YOU KILLED BECAUSE YOU WERE IN FEAR, OR YOU

 17 THOUGHT YOU WERE ACTING IN SELF-DEFENSE, THAT'S

 18 PRECISELY WHAT YOU WOULD TELL HIM.

 19 YOU WOULD SAY -- ERIK MENENDEZ SAYS:

 20 "I DIDN'T WANT TO TELL HIM THAT BECAUSE I DIDN'T

 21 WANT TO GIVE HIM ALL THE DETAILS, AND I DIDN'T WANT

 22 TO TALK ABOUT THE ABUSE."

 23 COME ON. YOU'RE TALKING ABOUT THIS MAN

 24 GOING TO THE POLICE NOW. YOU'RE TALKING ABOUT THIS

 25 MAN GOING TO THE POLICE AND SPILLING THE BEANS AND

 26 TELLING THE POLICE THAT YOU AND YOUR BROTHER

 27 COMMITTED THE MURDER IN THIS CASE.

 28 NOW, LADIES AND GENTLEMEN, WHEN YOUR

 1 LIBERTY IS AFFECTED LIKE THAT, WHETHER OR NOT YOU

 2 WANT TO TALK ABOUT THE ABUSE, YOU'RE GOING TO DO

 3 SOMETHING TO PROTECT YOURSELF, AND YOU'RE GOING TO

 4 REVEAL WHAT YOU HAVE TO REVEAL, OR AT LEAST YOU'RE

 5 GOING TO MAKE AN EFFORT TO TRY TO STOP DR. OZIEL

 6 FROM GOING TO THE POLICE.

 7 SO IF YOU OR I WERE IN THAT SITUATION,

 8 LADIES AND GENTLEMEN, WHAT WE WOULD SAY IS SOMETHING

 9 TO THE EFFECT OF: "DR. OZIEL, LOOK. TRUST ME. I

 10 DON'T WANT TO GIVE YOU ALL THE DETAILS. I DON'T

 11 WANT TO TELL YOU SOME BACKGROUND ABOUT MY FAMILY. I

 12 DON'T WANT TO SAY BAD THINGS ABOUT MY MOTHER AND MY

 13 FATHER, BUT THERE ARE THINGS ABOUT THIS KILLING THAT

 14 YOU REALLY DON'T UNDERSTAND. I WAS ACTING IN

 15 SELF-DEFENSE, OR I BELIEVE I WAS ACTING

 16 SELF-DEFENSE, OR I WAS IN A STATE OF FEAR AT THE

 17 TIME OF THE COMMISSION OF THE CRIME. PLEASE,

 18 DR. OZIEL, DON'T THINK THAT MY BROTHER AND I JUST

 19 WALKED INTO THAT ROOM AND COLD-BLOODEDLY SHOT MY

 20 PARENTS TO DEATH. WE WOULD NOT DO THAT TYPE OF

 21 THING. WE ARE NOT DANGEROUS PEOPLE LIKE THAT."

 22 LADIES AND GENTLEMEN, YOU WOULD DO THAT

 23 IF YOU WERE IN THAT SITUATION, AND THAT'S ANOTHER

 24 REASON WHY ERIK MENENDEZ' STORY IS ABSOLUTELY

 25 PREPOSTEROUS, THAT HE DIDN'T TELL DR. OZIEL THAT

 26 "OH, BECAUSE I DIDN'T WANT TO TALK ABOUT THE ABUSE,"

 27 HE SAID.

 28 I SAID, "WELL, YOU DIDN'T HAVE TO TALK

 1 ABOUT THE ABUSE."

 2 I CROSS-EXAMINED HIM ON THIS. I SAID,

 3 "YOU DIDN'T HAVE TO TALK ABOUT THE ABUSE THING. YOU

 4 COULD HAVE JUST WENT SO FAR. YOU COULD HAVE JUST

 5 SAID YOU KILLED FOR REASON OF FEAR OR SOME OTHER

 6 REASON, WITHOUT TALKING ABOUT ABUSE."

 7 HE SAID, "NO. HOW WOULD I DO THAT

 8 WITHOUT TALKING ABOUT ABUSE?"

 9 IF YOU COULD TALK ABOUT KILLING WITHOUT

 10 TALKING ABOUT THE REASON FOR KILLING, YOU COULD

 11 CERTAINLY SAY YOU KILLED IN FEAR WITHOUT TALKING

 12 ABOUT ALL THE BACKGROUND LEADING UP TO THE FEAR.

 13 SO HIS STORY SIMPLY DOESN'T HOLD ANY

 14 WATER, LADIES AND GENTLEMEN. IF HE WAS IN THAT

 15 SITUATION, IF HE TRUSTED DR. OZIEL ENOUGH TO SAY:

 16 "I KILLED MY PARENTS, AND MY BROTHER DID IT WITH

 17 ME," AND HE CLAIMED THAT HE LOVED HIS BROTHER MORE

 18 THAN ANYONE ELSE, HE WOULD CERTAINLY BE ABLE TO TELL

 19 HIM: "I WAS ABUSED BY MY PARENTS."

 20 EVEN ASIDE FROM THE ISSUE OF FEAR, EVEN

 21 ASIDE FROM DR. OZIEL GOING TO THE POLICE, IF HE WAS

 22 ABLE TO TELL HIM THAT MUCH, "I KILLED MY PARENTS" --

 23 IMAGINE YOURSELF -- PUT YOURSELF IN THAT SITUATION.

 24 BECAUSE WHEN YOU TRY TO VISUALIZE -- AND I'M GOING

 25 TO BE ASKING YOU TO DO THAT AS I GO THROUGH ALL THE

 26 TESTIMONY OF ERIK MENENDEZ. IF YOU TRY TO PUT

 27 YOURSELF IN ERIK MENENDEZ' SHOES, AND FOLLOWING

 28 ALONG WITH HIS STORY, THIS IS THE MOST RIDICULOUS

 1 STORY YOU EVER HEARD. I'LL BE SHOWING THAT POINT BY

 2 POINT.

 3 PUT YOURSELF RIGHT NOW IN THE SHOES OF

 4 ERIK MENENDEZ. IF YOU WERE ABLE TO GO TO YOUR

 5 THERAPIST AND TELL HIM YOU SHOT YOUR PARENTS TO

 6 DEATH, YOU WOULD BE ABLE TO TELL HIM YOU DID IT

 7 FOLLOWING YEARS OF ABUSE. AND EVEN ASSUMING YOU

 8 COULDN'T, WOULDN'T YOU CERTAINLY BE ABLE TO TELL HIM

 9 THAT YOU DID IT BECAUSE YOU WERE FRIGHTENED FOR YOUR

 10 LIFE? OF COURSE, YOU WOULD BE ABLE TO TELL HIM

 11 THAT; AND, OF COURSE, YOU WOULD TELL HIM THAT. YOU

 12 WOULD NOT SPLIT THESE HAIRS.

 13 BUT ERIK MENENDEZ PICKS AND CHOOSES THE

 14 FACTS AS HE PLEASES IN ORDER TO EXPLAIN WHY --

 15 THERE'S NO REFERENCE ON HERE TO FEAR OR ABUSE OR

 16 PANIC STATE OR THIS WHOLE WEEK IN CRISIS THAT LED UP

 17 TO THE KILLING. THERE'S ABSOLUTELY NOTHING ON HERE

 18 ABOUT THAT. WHY, LADIES AND GENTLEMEN? BECAUSE IT

 19 DIDN'T HAPPEN. NONE OF IT EVER HAPPENED. THE

 20 DEFENDANT HAS HAD PLENTY OF TIME IN CUSTODY TO

 21 FIGURE OUT ALLEGATIONS AGAINST HIS PARENTS, TO MAKE

 22 UP A REAL GOOD TALE.

 23 THAT'S WHAT YOU HEARD, LADIES AND

 24 GENTLEMEN, A VERY GOOD TALE, PRESENTED BY THE

 25 DEFENDANT WITH A LOT OF DETAIL TO IT, A VERY

 26 ELABORATE STORY. BUT IT'S ALL FALSE, AND THIS

 27 PROVES IT'S FALSE.

 28 LADIES AND GENTLEMEN, WE ARE GOING TO GO

 1 THROUGH EVERY DEFENSE WITNESS THAT WAS CALLED IN

 2 THIS CASE. AND THERE IS NOT ONE SINGLE DEFENSE

 3 WITNESS WHO DISPROVED THE STRENGTH OF WHAT IS ON

 4 THIS TAPE, NOT ONE SINGLE WITNESS. IT ALL COMES

 5 DOWN TO ERIK MENENDEZ SAYING: "OH, I HOPE THIS JURY

 6 DOESN'T BELIEVE OR RELY ON THIS TAPE." THIS TAPE IS

 7 TOO POWERFUL, TOO STRONG TO DISREGARD. THIS IS A

 8 SMOKING GUN.

 9 THERE'S ANOTHER REASON WHY YOU SHOULD

 10 REJECT THE DEFENDANT'S CLAIM THAT -- HE ALSO

 11 SAID: "I NEVER DISCUSSED WITH MY BROTHER, LYLE

 12 MENENDEZ, THE POSSIBILITY OF TELLING OZIEL THAT WE

 13 KILLED IN FEAR WITHOUT TELLING HIM THE REASONS FOR

 14 THE FEAR."

 15 CAN YOU BELIEVE THAT? I MEAN, HE COMES

 16 ON OCTOBER 31ST AND CONFESSES TO DR. OZIEL.

 17 DR. OZIEL SAYS TO HIM: "DOES YOUR BROTHER LYLE KNOW

 18 YOU'RE HERE AND YOU'RE CONFESSING TO ME?

 19 AND HE SAYS "NO."

 20 DR. OZIEL BECOMES CONCERNED AND GETS

 21 LYLE ON THE PHONE AND SAYS: "COME OVER HERE. YOU

 22 BETTER BE A PART OF THIS."

 23 LYLE MENENDEZ COMES OVER. THERE'S MORE

 24 DISCUSSION. THERE'S A MEETING LATER, ON NOVEMBER

 25 THE 2ND, AND THEN THERE'S THIS LAST MEETING ON

 26 DECEMBER THE 31ST (SIC).

 27 AND ERIK MENENDEZ WANTS YOU TO BELIEVE

 28 THE FOLLOWING: "I NEVER DISCUSSED WITH LYLE MENENDEZ

 1 THE POSSIBILITY OF TELLING OZIEL THAT WE KILLED IN

 2 FEAR WITHOUT TELLING HIM THE REASONS FOR THE FEAR."

 3 ABSOLUTELY INCREDIBLE. ABSOLUTELY

 4 INCREDIBLE. DON'T YOU THINK YOU WOULD SAY TO YOUR

 5 BROTHER: "HEY, LYLE, DON'T YOU THINK WE'VE GOT TO DO

 6 SOMETHING TO PUT DR. OZIEL AT EASE? DON'T YOU THINK

 7 WE SHOULD TELL HIM THAT WE KILLED IN FEAR? WE DON'T

 8 HAVE TO LAY OUT OUR MOTHER AND FATHER FOR ALL THE

 9 YEARS OF ABUSE. DON'T YOU THINK WE SHOULD TELL

 10 DR. OZIEL THAT WE KILLED IN FEAR?"

 11 ERIK MENENDEZ WANTS YOU TO BELIEVE THAT

 12 HE NEVER HAD THAT DISCUSSION WITH HIS BROTHER LYLE

 13 MENENDEZ. ABSOLUTELY INCREDIBLE. COULDN'T HAPPEN.

 14 THAT WOULD BE THE FIRST THING YOU WOULD SAY TO YOUR

 15 BROTHER. "HOW ARE WE GOING TO PUT DR. OZIEL AT EASE?

 16 AND THE ONE WAY WE COULD DO IT IS BY TELLING HIM WE

 17 KILLED IN FEAR. DOCTOR, DON'T GO TO THE POLICE.

 18 WE'RE NOT AS DANGEROUS AS YOU MIGHT THINK."

 19 ONE OF MANY REASONS WHY ERIK MENENDEZ'

 20 STORY IS TOTAL NONSENSE. AND I'LL BE GOING THROUGH

 21 ALL OF THE REASONS WHY.

 22 ONE MORE REASON WHY THE TAPE -- WHY --

 23 ONE MORE REASON WHY HE'S ASKING THAT YOU DISREGARD

 24 THIS TAPE AS TOTALLY PREPOSTEROUS.

 25 NOT ONLY IS IT UNBELIEVABLE THAT

 26 DR. OZIEL DID NOT ASK HIM WHY HE KILLED --

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

 28 OBJECT. THAT'S THE FOURTH TIME COUNSEL HAS

 1 MISSTATED THE EVIDENCE ON THAT POINT.

 2 THE COURT: OVERRULED.

 3 MR. CONN: NOT ONLY IS IT UNBELIEVABLE THAT

 4 HE WOULDN'T TELL DR. OZIEL SOMETHING TO PUT HIM AT

 5 EASE, BUT ALSO REMEMBER THE PRESENCE OF GERRY

 6 CHALEFF. JERRY CHALEFF IS THE ATTORNEY WHO

 7 REPRESENTED HIM IN THE CALABASAS BURGLARIES.

 8 DO YOU REMEMBER THAT GERRY CHALEFF WAS

 9 THERE THAT DAY OF DECEMBER THE 31ST (SIC)? HE WAS

 10 IN DR. OZIEL'S OFFICE JUST BEFORE THE TAPING TOOK

 11 PLACE, A PROMINENT LOS ANGELES CRIMINAL ATTORNEY.

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

 13 OBJECT TO THAT ALSO. THERE'S NO EVIDENCE CONCERNING

 14 MR. CHALEFF'S STATUS.

 15 THE COURT: OVERRULED. I THINK THERE WAS

 16 SUCH.

 17 BUT THE DATE -- I THINK YOU SAID

 18 "DECEMBER 31ST."

 19 MR. CONN: I'M SORRY. DECEMBER 13TH.

 20 MS. ABRAMSON: DECEMBER 13TH?

 21 MR. CONN: I'M SORRY. DECEMBER 11TH.

 22 DECEMBER 11TH.

 23 GERRY CHALEFF IS SITTING THERE IN HIS

 24 OFFICE. HE'S SITTING THERE IN DR. OZIEL'S OFFICE.

 25 WHAT DID GERRY CHALEFF DO NOW? ERIK MENENDEZ WANTS

 26 US TO BELIEVE THERE WAS NO DISCUSSION ABOUT THIS

 27 TAPE BEING MADE FOR PURPOSES OF LITIGATION IN THE

 28 EVENT THAT HE WERE TO BE PROSECUTED SOME DAY?

 1 LADIES AND GENTLEMEN, IT'S ABSOLUTELY

 2 PREPOSTEROUS THAT ERIK MENENDEZ' CLAIM -- HE'S

 3 CLAIMING: "WELL, WE SAID THESE THINGS TO DR. OZIEL

 4 BECAUSE DR. OZIEL, WE WERE AFRAID, MIGHT MAKE FALSE

 5 ALLEGATIONS AGAINST US, AND WE WANTED TO KEEP HIM

 6 HAPPY BY MAKING THESE STATEMENTS."

 7 AND I SAID TO HIM ON CROSS-EXAMINATION:

 8 "ARE YOU TELLING ME THAT YOU FELT YOU WERE BEING

 9 BLACKMAILED BY DR. OZIEL, YET YOU CONTINUED TO MAKE

 10 INCRIMINATING STATEMENTS AGAINST YOURSELF? YOU SAT

 11 DOWN IN THIS MEETING AND YOU BASICALLY ADMITTED THIS

 12 WAS A PREMEDITATED CRIME, WHEN IN FACT IT DIDN'T GO

 13 DOWN THAT WAY?"

 14 ERIK MENENDEZ, HERE ON THE STAND, WAS

 15 SAYING: "YEAH, THAT'S BASICALLY WHAT HAPPENED."

 16 I SAID: "WHY DID YOU THINK THAT MAKING

 17 THOSE KINDS OF REMARKS AGAINST YOURSELF, MAKING THE

 18 CRIME APPEAR TO BE HARSHER THAN IT ACTUALLY WAS, IS

 19 SOMETHING THAT WOULD SATISFY DR. OZIEL, OR WHY WOULD

 20 YOU BE EVEN WILLING TO DO THAT?"

 21 AND ERIK MENENDEZ HAD NO GOOD

 22 EXPLANATION FOR THAT. ERIK MENENDEZ WOULD HAVE YOU

 23 BELIEVE THAT HE ACTUALLY SAT DOWN AND MADE THIS

 24 INCRIMINATING TAPE, WHICH IS FALSE, MINUTES AFTER

 25 GERRY CHALEFF LEAVES DR. OZIEL'S OFFICE.

 26 NO, LADIES AND GENTLEMEN. THAT'S JUST

 27 TOO FARFETCHED TO BELIEVE. IT JUST DIDN'T HAPPEN

 28 THAT WAY. GERRY CHALEFF WAS THERE FOR A REASON.

 1 AND GERRY CHALEFF WOULD NOT ALLOW ERIK MENENDEZ TO

 2 SIT DOWN WITH A THERAPIST AND MAKE FALSE STATEMENTS

 3 ABOUT A PREMEDITATED MURDER.

 4 MS. ABRAMSON: OBJECTION, YOUR HONOR.

 5 OUTSIDE THE SCOPE OF THE EVIDENCE.

 6 THE COURT: SUSTAINED. THAT REMARK IS

 7 STRICKEN. THE JURY IS ADMONISHED TO DISREGARD IT.

 8 MR. CONN: NOW, IN ADDITION TO -- NOW, AS FAR

 9 AS THIS OZIEL TAPE IS CONCERNED, LET ME SAY THIS:

 10 THE DEFENSE WILL ARGUE, WHERE IS DR. OZIEL? THEY

 11 WILL SAY THAT THE PROSECUTION SHOULD HAVE CALLED

 12 DR. OZIEL.

 13 WELL, LET ME SAY THIS TO YOU. YOU WILL

 14 HEAR AN INSTRUCTION THAT NEITHER SIDE HAS THE

 15 OBLIGATION TO PRODUCE ALL EVIDENCE. NEITHER SIDE

 16 HAS THE OBLIGATION TO CALL ANY PARTICULAR WITNESS.

 17 BOTH SIDES ARE FREE TO CALL WITNESSES IF THEY SO

 18 CHOOSE.

 19 SO THE QUESTION I PUT TO YOU IS THIS:

 20 THIS TAPE SPEAKS FOR ITSELF. THIS TAPE MAKES IT

 21 VERY CLEAR THAT ERIK AND LYLE MENENDEZ ARE SPEAKING

 22 ABOUT A PREMEDITATED MURDER. IT DOESN'T ALLOW FOR

 23 TWO DIFFERENT INTERPRETATIONS, BECAUSE WHEN THEY

 24 TALK ABOUT HOW THEY SLEPT ON IT FOR A COUPLE OF

 25 DAYS, AND THEY CONSIDERED IT, IT SATISFIES ALL OF

 26 THESE ELEMENTS OF A PREMEDITATED MURDER.

 27 SO I WOULD SAY TO YOU, LADIES AND

 28 GENTLEMEN, THIS TAPE AUTHENTICATES ITSELF. IT

 1 ESTABLISHES THE PREMEDITATED STATE OF MIND OF THE

 2 DEFENDANTS. THEY DO, IN FACT, ADMIT AND CONCEDE TO

1. A PREMEDITATED STATE OF MIND ON THIS TAPE.

 4 IF THEY WANT TO CALL DR. OZIEL, THEY CAN

 5 CALL DR. OZIEL. I PUT THE SAME ISSUE BACK TO THEM.

 6 WHY DON'T THEY CALL DR. OZIEL? I DARE THEM. LET

 7 THEM CALL DR. OZIEL.

 8 DETECTIVE ZOELLER TESTIFIED THAT AFTER

 9 THE SEIZURE OF THIS TAPE-RECORDING, AND AFTER THE

 10 ARREST OF THE DEFENDANTS IN MARCH OF 1990, THERE WAS

 11 A SEARCH OF THE BIG-5 GUN STORE. AND IT WAS IN THAT

 12 SEARCH OF THE BIG-5 GUN STORE DOWN IN SAN DIEGO THAT

 13 HE CAME ACROSS PURCHASE RECORDS, WHICH INCLUDED THE

 14 NAME OF DONOVAN GOODREAU; AND THAT RANG A BELL. HE

 15 RECOGNIZED DONOVAN GOODREAU AS BEING A FRIEND OF THE

 16 DEFENDANTS, AND HE KNEW THAT THAT WAS POSSIBLY

 17 LINKED TO THIS CRIME, BECAUSE THE PURCHASE WAS FOR

 18 TWO SHOTGUNS BEARING -- BY SOMEONE BEARING THE

 19 IDENTIFICATION OF DONOVAN GOODREAU. AND YOU LATER

 20 LEARNED, OF COURSE, THAT DONOVAN GOODREAU WAS IN NEW

 21 YORK AT THE TIME OF THE PURCHASE.

 22 AND SO, LADIES AND GENTLEMEN, THAT WAS

 23 THE TESTIMONY OF OUR FIRST WITNESS IN THIS CASE,

 24 DETECTIVE LES ZOELLER. AND I WILL SUBMIT TO YOU

 25 THAT WITH OUR VERY FIRST WITNESS IN THIS CASE WE

 26 PRESENTED -- IN ADDITION TO EVIDENCE CONCERNING THE

 27 CRIME SCENE -- WE PRESENTED THE TESTIMONY OF THE

 28 DECEMBER 11 TAPE AT THAT TIME, EVEN THOUGH IT WAS

 1 SOMEWHAT OUT OF SEQUENCE. YOU COULD SEE THAT.

 2 OTHERWISE, I WENT THROUGH THE EVENTS OF AUGUST 20TH

 3 IN SEQUENCE. PERHAPS I SHOULD HAVE PUT THE TAPE WAY

 4 DOWN THERE, BECAUSE IT DIDN'T OCCUR UNTIL DECEMBER

 5 11TH.

 6 I PUT IT ON FOR A PURPOSE. I WANTED YOU

 7 TO HEAR THAT DECEMBER 11 TAPE AS EARLY IN THE TRIAL

 8 AS POSSIBLE, BECAUSE I WANTED YOU TO KNOW RIGHT

 9 THROUGH OUR VERY FIRST WITNESS THAT PREMEDITATION

 10 AND DELIBERATION IS ABSOLUTELY SHOWN, AND IT'S SHOWN

 11 THROUGH THAT TAPE-RECORDING, AND IT IS NOT REFUTED

 12 BY ANY WITNESS IN THIS CASE.

 13 WE THEN HEARD FROM OUR SECOND WITNESS,

 14 WHICH WAS CHRISTINE NYE. AND CHRISTINE NYE

 15 TESTIFIED TO THE 911 CALL. SHE IS THE DISPATCHER AT

 16 THE BEVERLY HILLS POLICE DEPARTMENT.

 17 AND WHY DO WE PRESENT THAT CALL TO YOU?

 18 WE WANTED TO SHOW YOU THAT THIS WAS AN ATTEMPT ON

 19 THE PART OF THE DEFENDANTS TO INFLUENCE THE POLICE,

 20 PRETENDING TO BE IN A STATE OF SHOCK, AND HOW THEY

 21 CAN DO IT IN A VERY CONVINCING WAY.

 22 AND I ASK YOU TO FIND THAT THIS WAS A

 23 PRETENSE ON THEIR PART; NOT THAT IT WOULDN'T BE

 24 UNSETTLING, UPSETTING, TO SHOOT YOUR PARENTS TO

 25 DEATH, AND YOU WOULDN'T BE IN AN EXCITED STATE

 26 FOLLOWING THAT; NOT THAT, EVEN AS PARK DIETZ SAID,

 27 FOLLOWING THE KILLING OF YOUR PARENTS THAT'S ENOUGH

 28 TO PUT YOU INTO P.T.S.D. YOU CAN BECOME EXTREME

 1 UPSET BY SHOOTING YOUR PARENTS TO DEATH AND COMING

 2 BACK AND LOOKING AT YOUR PARENTS AND HAVING TO THINK

 3 ABOUT WHAT YOU DID. THAT'S CERTAINLY A

 4 POSSIBILITY.

 5 THE INTERESTING THING, LADIES AND

 6 GENTLEMEN, IS THIS:

 7 WERE THE DEFENDANTS CRYING WHEN THEY

 8 WERE PICKING UP THE SHELLS AND RECOVERING EVIDENCE

 9 IMMEDIATELY AFTER SHOOTING THEIR PARENTS TO DEATH?

 10 NO, THEY WEREN'T, NOT ACCORDING TO ERIK MENENDEZ.

 11 THEY WEREN'T CRYING AT THAT TIME. I ASKED HIM THAT

 12 QUESTION. THERE WAS NO DISCUSSION. THEY JUST WENT

 13 ABOUT DUTIFULLY DOING THEIR DUTY THERE, PICKING UP

 14 SHELLS, GATHERING THE EVIDENCE AND GETTING OUT OF

 15 THE HOUSE. THEY WEREN'T CRYING AT THAT TIME.

 16 WERE THEY CRYING IN LINE WHEN THEY WERE

 17 STANDING IN LINE AT THE MOVIE THEATER TRYING TO

 18 PURCHASE ALIBI TICKETS, AS THEY CLAIM? THEY WEREN'T

 19 CRYING AT THAT TIME. ERIK MENENDEZ EVEN ADMITTED TO

 20 THAT. THERE WERE NO TEARS BEING SHED AT THAT TIME.

 21 LOOK AT HOW FAR THEY GOT THAT NIGHT.

 22 LOOK AT ALL THEY DID FROM THE TIME OF THE SHOOTING,

 23 WHICH WE KNOW WAS ABOUT 10:00 O'CLOCK OR 10:10.

 24 REMEMBER HOW FAR THEY TRAVELED BEFORE THEY CAME

 25 BACK. AND THEY GOT BACK TO THE HOME SHORTLY BEFORE

 26 MIDNIGHT.

 27 I MEAN, THEY WENT FROM THEIR HOME UP

 28 HERE (POINTING) SUPPOSEDLY, TO THE MOVIE THEATERS.

 1 THEY WENT WAY UP THERE (POINTING). ERIK MENENDEZ

 2 MARKED A SPOT ON MULHOLLAND WHERE THEY SUPPOSEDLY

 3 GOT RID OF THE GUNS.

 4 THEY WENT TO THE "TASTE OF L.A.," WHICH

 5 IS DOWN HERE (POINTING), USED THE TELEPHONE. TOOK

 6 THE TIME AND THE TROUBLE TO MAKE TELEPHONE CALLS TO

 7 PERRY BERMAN. THEY WERE VERY -- THEY HAD A VERY

 8 ACTIVE SCHEDULE THAT NIGHT. MUCH TOO BUSY TO IT

 9 AROUND CRYING, VERY MUCH ON THE GO.

 10 WHEN YOU LOOK AT THE AMOUNT OF DISTANCE

 11 THAT THEY COVERED DURING THE COURSE OF THAT NIGHT,

 12 YOU CAN SEE HOW MUCH THEY GOT ACCOMPLISHED THAT

 13 NIGHT. THEY DIDN'T HAVE TIME TO SIT AROUND CRYING.

 14 THEN THEY WANT YOU TO BELIEVE, LADIES

 15 AND GENTLEMEN, THAT JUST WHEN THEY GET HOME, JUST

 16 WHEN THEY COME HOME, AT THE CONCLUSION OF ALL OF

 17 THAT, SUDDENLY THEY SEE THEIR PARENTS, AND THEY JUST

 18 SPONTANEOUSLY AND SINCERELY BURST INTO TEARS.

 19 I EVEN ASKED HIM, I ASKED ERIK

 20 MENENDEZ: "WAS THIS SOMETHING YOU DISCUSSED WITH

 21 LYLE MENENDEZ, WHAT YOU WERE GOING TO SAY ON THE

 22 PHONE, OR HOW YOU WERE GOING TO SOUND, HOW YOU WERE

 23 GOING TO APPEAR TO THE POLICE?"

 24 AND HE WANTS YOU TO BELIEVE NO, THEY

 25 DIDN'T DISCUSS THAT AT ALL. THEY DISCUSSED ALL OF

 26 THESE OTHER THINGS, LADIES AND GENTLEMEN, AND THEY

 27 DISCUSSED GETTING RID OF EVIDENCE, PICKING UP THE

 28 SHELLS, DISPOSING OF THE SHOTGUNS, WHAT THEY MIGHT

 1 TELL THE POLICE. THEY DISCUSSED AN ALIBI. THEY

 2 DISCUSSED ALL OF THESE OTHERS THINGS; AND YET, A

 3 VERY IMPORTANT PART OF THEIR STORY, HOW THEY WOULD

 4 SOUND TO THE POLICE, WHAT THEY WOULD SAY TO THE

 5 POLICE, THEY DIDN'T DISCUSS THAT?

 6 OF COURSE THEY DISCUSSED THAT, LADIES

 7 AND GENTLEMEN. JUST ONE OF THE VERY MANY WAYS IN

 8 WHICH ERIK MENENDEZ WAS LYING TO YOU WHEN HE TOOK

 9 THE STAND.

 10 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,

 11 THAT IT WAS AT THAT POINT THAT ERIK MENENDEZ WENT

 12 INTO THE ACTING MODE, WHEN THEY FIRST CALLED THE

 13 POLICE AND MADE THAT 911 CALL. THAT'S WHEN THE

 14 ACTING MODE STARTED.

 15 WELL, CHRISTINE NYE TESTIFIED TO ANOTHER

 16 THING THAT WAS VERY IMPORTANT TOO. CHRISTINE NYE

 17 TESTIFIED THAT SHE WAS THE DISPATCHER THAT NIGHT

 18 FROM THE TIME OF THE SHOOTING, BECAUSE SHE SAID SHE

 19 GOT ON AT ABOUT 10:00 O'CLOCK OR SO THAT NIGHT. AND

 20 SHE TESTIFIED THAT SHE RECEIVED NO REPORTS OF ANY

 21 SHOTS FIRED THAT NIGHT, EVEN THOUGH SHE HAD BEEN

 22 WORKING FROM ABOUT 10:00 P.M. NO ONE CALLED THE

 23 POLICE. NO ONE SAID THAT SHOTS WERE FIRED IN THE

 24 NEIGHBORHOOD.

 25 WHY IS THAT SIGNIFICANT? IT'S BECAUSE

 26 IT REFLECTS THE DEFENDANTS' KNOWLEDGE, OR CONFORMS

 27 WITH THE DEFENDANTS' BELIEF THAT THEY COULD COMMIT

 28 THIS CRIME; THAT THEY COULD SHOOT IN THAT

 1 NEIGHBORHOOD AND IT WOULDN'T EVEN BE REPORTED; THAT

 2 THEY COULD GET AWAY WITHOUT IT BEING REPORTED.

 3 YOU'RE GOING TO HEAR A DEFENSE ARGUMENT,

 4 I'M SURE, JUST JUDGING BY SOME OF THE WITNESSES THAT

 5 THEY CALLED IN THIS CASE, THAT OH, LADIES AN

 6 GENTLEMEN, THIS COULDN'T BE A PLANNED CRIME FOR THE

 7 FOLLOWING REASON: BECAUSE IF THIS WERE A PLANNED

 8 CRIME, WHY WOULD THE DEFENDANTS USE NOISY SHOTGUNS

 9 IN BEVERLY HILLS AT 10:00 O'CLOCK AT NIGHT?

 10 WELL, THERE'S A COUPLE OF FLAWS WITH

 11 THAT ARGUMENT. THE FIRST FLAW, YOU WILL RECALL, IS

 12 THAT THE DEFENDANTS ARE NOT CHARGED WITH A PLANNED

 13 CRIME. YOU REMEMBER THE DISTINCTION THAT I DREW

 14 BETWEEN A PLANNED CRIME AND A PREMEDITATED CRIME?

 15 MAY VERY WELL BE THE DEFENDANTS NEVER ACTUALLY

 16 WORKED OUT AT WHAT TIME THEY WERE GOING TO SHOOT

 17 THEIR PARENTS. BUT LIKE CRAIG CIGNARELLI SAID, WHEN

 18 THEY CAME BACK FROM THE MOVIE, LYLE SAID: "LET'S DO

 19 IT NOW," AND THEY DID IT. THAT'S A PREMEDITATED

 20 CRIME, WHETHER OR NOT THE DETAILS WERE WORKED OUT.

 21 THERE'S ANOTHER FLAW WITH THE ARGUMENT,

 22 AND THE FLAW WITH THE ARGUMENT IS THAT JUST BECAUSE

 23 YOU FIRE SHOTS IN THE NEIGHBORHOOD, THAT DOESN'T

 24 MEAN THAT PEOPLE ARE GOING TO RECOGNIZE THAT ITS

 25 GUNSHOTS. THAT DOESN'T MEAN THAT THEY'RE GOING TO

 26 KNOW WHERE THE GUNSHOTS CAME FROM. THAT DOESN'T

 27 MEAN THAT THEY'RE GOING TO CALL THE POLICE; AND THAT

 28 DOESN'T MEAN THAT YOU WON'T HAVE TIME TO GET AWAY.

 1 SO FOR ALL OF THOSE ARGUMENTS, LADIES

 2 AND GENTLEMEN, FOR ALL OF THOSE REASONS, A VERY

 3 REASONABLE CONCLUSION TO BE DRAWN IS THAT THE

 4 DEFENDANTS CORRECTLY REALIZED -- CORRECTLY BECAUSE

 5 THEIR CONDUCT WAS PROVEN TO BE CORRECT -- THAT THEY

 6 COULD SHOOT THEIR PARENTS AND GET AWAY WITH IT.

 7 AND I RAISE THAT ISSUE ONLY BECAUSE THEY

 8 CALLED TWO WITNESSES JUST FOR THE PURPOSE OF MAKING

 9 THAT ARGUMENT.

 10 I'LL SKIP AHEAD AT THIS TIME TO A COUPLE

 11 OF WITNESSES CALLED BY THE DEFENSE. WELL, I SHOULD

 12 SAY WE CALLED A WITNESS CONCERNING THE SHOOTING. WE

 13 CALLED MRS. KROM.

 14 MRS. KROM TESTIFIED THAT SHE HEARD THE

 15 SHOTS SOMETIME AFTER 10:00 O'CLOCK. I THINK SHE

 16 MIGHT HAVE SAID 10:10 OR SOMETHING LIKE THAT. AND

 17 MRS. KROM SAID THAT SHE THOUGHT IT SOUNDED LIKE

 18 CHINESE FIRECRACKERS, A RAPID SEQUENCE OF SHOTS,

 19 FOLLOWED BY A PAUSE, AND THEN ANOTHER RAPID

 20 SEQUENCE. SHE WAS CALLED AS A WITNESS ONLY TO

 21 ESTABLISH THE TIME OF THE SHOTS.

 22 BUT THE DEFENSE SOUGHT TO USE HER TO

 23 MAKE THEIR ARGUMENT THAT THIS COULDN'T HAVE BEEN A

 24 PLANNED CRIME.

 25 WELL, AS I INDICATED, LADIES AND

 26 GENTLEMEN, MRS. KROM DID NOT ASSUME THAT IT WAS

 27 GUNSHOTS. TO THE CONTRARY. MRS. KROM ASSUMED THAT

 28 IT WAS FIRECRACKER.

 1 THEY CALLED A WITNESS -- LET ME SKIP

 2 AHEAD TO THE DEFENSE FOR A SECOND. THEY CALLED HER

 3 SON, JOSH KROM, JUST TO MAKE THIS VERY ARGUMENT THAT

 4 I'M NOW DISCUSSING WITH YOU, BECAUSE JOSH KROM SAID

 5 THAT IN 1989 HE WAS 13 YEARS OLD. ON THE DAY OF THE

 6 KILLINGS HE HEARD WHAT HE THOUGHT SOUNDED LIKE

 7 GUNSHOTS, AS OPPOSED TO FIREWORKS. HE WAS THE ONE

 8 AND ONLY PERSON WHO SUSPECTED THAT IT MIGHT BE

 9 GUNSHOTS. THERE'S NO EVIDENCE OF ANY OTHER PERSON

 10 IN THAT NEIGHBORHOOD SUSPECTING THAT IT WAS

 11 GUNSHOTS

 12 BUT EVEN JOSH KROM SAID HE LOOKED UP TO

 13 THE SKY JUST TO BE SURE. YOU SEE? SO EVEN JOSH

 14 KROM DIDN'T RULE OUT THE POSSIBILITY OF FIREWORKS.

 15 HE SAID HE ONLY HEARD FIVE OR SIX SHOTS, WHICH

 16 SUGGESTS THAT EVEN ASIDE FROM THE RELOAD, PERHAPS

 17 THERE WAS ANOTHER VOLLEY OF SHOTS THAT HE DIDN'T

 18 EVEN HEAR. SO IT'S QUESTIONABLE WHETHER JOSH KROM

 19 EVEN HEARD ALL OF THE SHOTS.

 20 JOSH KROM SEEMED TO EXPLAIN WHAT WOULD

 21 BE THE REACTION OF SOMEONE IN THAT NEIGHBORHOOD. HE

 22 SAID: "WHO WOULD HAVE THOUGHT THAT IT WOULD BE

 23 GUNSHOTS IN THE NEIGHBORHOOD?" YOU SEE? THAT'S

 24 EXACTLY THE ASSUMPTION THAT THE DEFENDANTS WERE

 25 OPERATING UNDER THAT NIGHT, NO DOUBT. THEY KNEW.

 26 THEY LIVED IN A BEVERLY HILLS NEIGHBORHOOD. WHEN

 27 ARE SHOTS FIRED IN A BEVERLY HILLS NEIGHBORHOOD?

 28 THE WITNESSES THAT TESTIFIED HERE SORT OF TESTIFIED

 1 THAT'S NEVER HAPPENED BEFORE.

 2 I THINK VIRGINIA LORD IS ONE OF THOSE

 3 WITNESSES THAT INDICATED THAT. SHE HAD LIVED IN

 4 THAT NEIGHBORHOOD FOR A LONG PERIOD OF TIME. AND

 5 VIRGINIA LORD DESCRIBED -- HAD NO BELIEF THAT IT WAS

 6 SHOTS FIRED.

 7 THESE WITNESSES, LADIES AND GENTLEMEN,

 8 SUCH AS VIRGINIA LORD AND MRS. KROM, THEY DIDN'T

 9 EVEN SUSPECT THAT IT WAS GUNSHOTS UNTIL THE

 10 FOLLOWING DAY, AFTER THE POLICE GOT THERE.

 11 VIRGINIA LORD -- LET ME CHECK HER OFF --

 12 SHE WAS THE SECOND WITNESS THAT WAS CALLED JUST FOR

 13 THIS POINT. VIRGINIA LORD TESTIFIED THAT SHE LIVED

 14 ACROSS THE STREET FROM THE HOME, AND SHE SAID ON

 15 THAT NIGHT SHE HEARD WHAT COULD BE DESCRIBED AS

 16 POPPING SOUNDS. SHE ASSUMED THAT IT WAS

 17 FIRECRACKERS, AND SHE RECALLS ASKING HERSELF: "WHAT

 18 CRAZY KIDS WOULD DO THIS AT THIS TIME OF NIGHT?"

 19 AND SHE LOOKED AT THE CLOCK, AND SHE

 20 NOTED THAT IT WAS ABOUT 10:00 P.M. SHE DESCRIBED

 21 THE SOUND OF GUNFIRE IN THE NEIGHBORHOOD AS, QUOTE,

 22 A NONEXISTENT OCCURRENCE. . ALTHOUGH SHE DID SAY

 23 THAT SHE DID HEAR FROM TIME TO TIME THE SOUNDS O

 24 FIRECRACKERS IN THE NEIGHBORHOOD. IT WAS NOT AN

 25 UNFAMILIAR OCCURRENCE, AND SUCH FIRECRACKERS WERE

 26 NOT LIMITED TO THE 4TH OF JULY.

 27 SO I WOULD SUBMIT THAT THE DEFENDANTS

 28 CORRECTLY ASSUMED THAT PEOPLE IN THAT NEIGHBORHOOD

 1 WHO HEARD THE SOUND OF GUNSHOTS WOULD, NUMBER ONE,

 2 ASSUME THAT IT WAS THE SOUND OF FIRECRACKERS; AND

 3 YET, EVEN IF SOMEONE DID ASSUME THAT -- EVEN IF

 4 SOMEONE DID ASSUME THAT IT WAS GUNSHOTS RATHER THAN

 5 FIRECRACKERS, WHERE -- HOW WOULD THEY BE ABLE TO

 6 DETERMINE WHERE THE SOUNDS CAME FROM?

 7 JOSH KROM TESTIFIED THAT HE COULD NOT

 8 TELL THE DIRECTION FROM WHICH THE SHOTS HAD

 9 ORIGINATED.

 10 SO, I WOULD SUBMIT, LADIES AND

 11 GENTLEMEN, THAT THE ARGUMENT OF THE DEFENSE, THAT

 12 THEY WILL BE MAKING TO YOU, THAT THE DEFENDANTS

 13 WOULD NOT HAVE FIRED THEIR GUNS UNDER THESE

 14 CIRCUMSTANCES, IS NOT A VALID ARGUMENT, BECAUSE

 15 THEIR ACTIONS AND THE AFTERMATH OF THEIR ACTIONS

 16 PROVES ONLY ONE THING, THAT THEY KNOW THEIR

 17 NEIGHBORHOOD BETTER THAN WE KNOW THEIR

 18 NEIGHBORHOOD. THEY WERE ABLE TO FIRE THE SHOTS, AND

 19 THEY WERE ABLE TO GET AWAY FROM THE CRIME SCENE,

 20 ACCORDING TO CHRISTINE NYE, WITHOUT A SINGLE PERSON

 21 CALLING THE POLICE AND REPORTING GUNSHOTS BEING

 22 FIRED.

 23 MR. CONN: DOES THE COURT WISH TO BREAK NOW?

 24 THE COURT: OKAY. WE'LL RESUME AT 1:30.

 25 DON'T DISCUSS THE MATTER, AND DON'T FORM

 26 ANY FINAL OPINIONS ABOUT IT. AND WE'LL RUME AT

 27 1:30.

 28 (AT 12:04 P.M. PROCEEDINGS WERE

 1 ADJOURNED UNTIL 1:30 P.M. OF

 2 THE SAME DAY.)

 12 THE COURT: THE JURY IS BACK, AND WE WIL

 13 CONTINUE WITH THE ARGUMENT

 14 MR. CONN: LADIES AND GENTLEMEN, BEFORE I PROCEED

 15 WITH THE WITNESSES, I WOULD LIKE TO GO BACK FOR ONE

 16 FURTHER MOMENT TO THE DECEMBER 11 TAPE, BECAUSE THERE

 17 WERE TWO PASSAGES THAT I WOULD LIKE TO MAKE REFERENCE TO

 18 THAT I DIDN'T MAKE REFERENCE TO.

 19 THE FIRST IS THE ONE THAT YOU'VE ALREADY

 20 SEEN, THAT I BLEW UP IN THE DIAGRAM, THAT SAYS: "I LET

 21 MY BROTHER SLEEP ON IT FOR A COUPLE OF DAYS."

 22 BUT THERE IS MORE ONE MORE IMPORTANT

 23 PASSAGE IN THE DECEMBER 11TH TAPE, WHICH IS A LENGTHY

 24 PASSAGE RIGHT AT THE END OF THE CONVERSATION WITH

 25 DR. OZIEL, WHERE LYLE MENENDEZ MAKES REFERENCE TO THE

 26 KILLING, AND SAYS THE FOLLOWING. HE SAYS:

 27 "GETTING BACK TO WHAT ERIK WAS

 28 FEELING, I WANTED TO SAY THAT WE -- YOU

 1 KNOW, IT WOULD BE GREAT IF -- IF WE WERE

 2 ABLE TO WORK ON IT, BECAUSE EVEN -- YOU

 3 KNOW, OUR RELATIONSHIP, BECAUSE EVEN THE

 4 PLANNING OUT OF THIS, THE REASON IT TOOK

 5 SUCH A SHORT PERIOD OF TIME TO FIGURE IT

 6 OUT WAS; ONE, BECAUSE IT COULD HAVE

 7 HAPPENED AT ANY MOMENT."

 8 SO THERE HE IS SAYING THAT THIS KILLING

 9 COULD HAVE HAPPENED AT ANY MOMENT. AND THEN HE SAYS:

 10 "ALL THE THINKING BEFOREHAND WAS DONE."

 11 SO ALREADY HE'S TALKING ABOUT A STATE OF

 12 MIND IN WHICH, PRIOR TO THE ACTUAL SHOOTING, THIS HAD

 13 ALL BEEN CONSIDERED. THIS HAD ALL BEEN THOUGHT OUT.

 14 DR. OZIEL SAYS:

 15 "YOU ALREADY KNOW WHAT YOU FELT?"

 16 AND HE SAYS:

 17 "AH, WE KNOW WHAT WE FELT, AND WE

 18 KNEW EVERYTHING ABOUT THAT. AND HONESTLY,

 19 I NEVER THOUGHT IT WOULD HAPPEN, EVEN

 20 THOUGH I HAD THOUGHT ABOUT IT, AH, BUT IT

 21 WAS -- IT WAS DONE SO QUICKLY, AND SORT OF

 22 CARELESSLY ALMOST, BECAUSE, ONE, IF YOU'D

 23 THOUGHT ABOUT IT TOO MUCH, THE FEELINGS OF

 24 NOT HAVING YOUR PARENTS AROUND, AND SO ON,

 25 WOULD GET IN THE WAY OF WHAT WAS MORE

 26 IMPORTANT, WHICH WAS HELPING YOUR MOTHER

 27 REALLY, AND THINKING ABOUT THAT

 28 "THE FEELING FOR HER WAS SO EASY TO

 1 SEPARATE YOURSELF. I HAVE DONE IT TOO

 2 LONG INTO MY OWN LIFE, AND I DON'T WANT TO

 3 DEAL WITH MOTHER'S -- I THINK AGONY IS THE

 4 WORD -- AND IT WAS JUST A COWARDICE WAY

 5 OUT.

 6 "AND FOR ONE MOMENT, BEFORE I WENT

 7 BACK TO SCHOOL, I HAD A CHANCE, EVEN

 8 THOUGH MY LIFE WAS GOING REALLY WELL

 9 AND -- TO SHOW SOME COURAGE, I FELT, AND

 10 HELP ERIK AND I, HELP MY MOTHER.

 11 "AND WE GOT TOGETHER, AND IT WAS

 12 THE FACT THAT WE CAN'T COMMUNICATE --

 13 COULDN'T COMMUNICATE TOGETHER, AND SIT

 14 DOWN AND FACE EACH OTHER AND TALK ABOUT

 15 THE REAL ISSUES, THAT IT WAS ALMOST DONE

 16 LOOKING IN DIFFERENT DIRECTIONS. IT WAS

 17 JUST A LITTLE WORD HERE, A LITTLE WORD

 18 THERE, AND A LITTLE WORD HERE. AND THIS

 19 SORT OF THING DOESN'T -- YOU KNOW, YOU

 20 DON'T KILL YOUR PARENTS BASED ON A LITTLE

 21 WORD HERE AND A LITTLE WORD THERE. IT WAS

 22 OBVIOUS WE FELT A TREMENDOUS AMOUNT OF

 23 EMOTION."

 24 BEAR IN MIND HERE THAT EVEN IF EMOTION

 25 ENTERS INTO THE EQUATION, IT DOESN'T MEAN IT'S NOT

 26 PREMEDITATED.

 27 SO WE ARE NOT SAYING, DON'T MISUNDERSTAND,

 28 THAT IF THE DEFENDANTS DIDN'T HAVE SOME RESERVATIONS OR

 1 EMOTION DIDN'T ENTER INTO IT IN SOME WAY, THAT'S NOT A

 2 FIRST-DEGREE MURDER. YOU SAW THE ELEMENTS OF A

 3 PREMEDITATED MURDER. IT'S THE WEIGHING AND CONSIDERING,

 4 AND THIS DECISION TO GO AHEAD AND COMMIT THE MURDER, NOT

 5 WHETHER THERE IS RESERVATIONS INVOLVED, OR WHETHER THERE

 6 WAS SOME EMOTION INVOLVED. THAT MAY VERY WELL BE TRUE.

 7 IN THE HIERACHY OF CRIMINAL RESPONSIBILITY

 8 FOR MURDER, THERE IS VARIOUS WAYS IN WHICH YOU CAN HOLD

 9 PEOPLE THEORETICALLY ACCOUNTABLE FOR DIFFERENT DEGREE

 10 OF MURDER.

 11 YOU CAN SAY, FOR EXAMPLE, THAT WE ARE GOING

 12 TO PUNISH MORE SEVERELY THOSE WHO KILL FOR REASON OF

 13 GREED, THAN THOSE WHO KILL FOR REASON OF ABUSE, FOR

 14 EXAMPLE. THAT MIGHT BE ONE LEGITIMATE WAY OF

 15 DISTINGUISHING BETWEEN DEGREES OF HOMICIDE, DEGREES OF

 16 MURDER.

 17 BUT WE DON'T DO IT THAT WAY. THE WAY WE DO

 18 IT, THE WAY OUR LAW DOES, IS BASED UPON THIS NOTION OF

 19 PREMEDITATION. AND PROVIDED YOU HAVE THAT MENTAL STATE

 20 WHERE YOU WEIGH IT AND YOU CONSIDER IT AND YOU THOUGHT

 21 ABOUT IT, THAT IS FIRST-DEGREE MURDER, REGARDLESS OF THE

 22 REASON WHY YOU DID IT, AND REGARDLESS OF WHETHER OR NOT

 23 THERE IS AN ELEMENT OF EMOTION IN THERE.

 24 AND HE GOES ON TO SAY:

 25 " IT JUST TOOK A LITTLE WORD HERE

 26 AND THERE, ALMOST AS IF A THIRD PARTY WAS

 27 DISCUSSING, AND IT WAS JUST A MEETING OF

 28 THE MINDS. THE TIME IS NOW. IT'S NOT A

 1 GREAT TIME. I AM DOING WELL, YOU'RE READY

 2 TO GO TO U.C.L.A. WE'RE STARTING TO BUY A

 3 LOT OF THINGS. BUT WE CAN'T IGNORE THE

 4 FACT THAT MY MOTHER HAS TO LIVE WITH THIS,

 5 AND -- IT WAS THAT. IT WAS -- IT WAS ERIK

 6 WAS AT -- I MEAN, I REMEMBER --"

 7 AND THIS IS AN INTERESTING PASSAGE. I

 8 SUBMIT THAT WHAT HE'S TALKING ABOUT HERE, HE IS TALKING

 9 ABOUT THAT FRIDAY.

 10 DO YOU REMEMBER ON FRIDAY WHEN ERIK

 11 MENENDEZ AND LYLE MENENDEZ LEAVE TO GO AND BUY THE GUNS

 12 IN SAN DIEGO, AND DO YOU REMEMBER THE DESCRIPTION GIVEN

 13 BY ERIK MENENDEZ WAS THAT HE WAS OUT ON THE TENNIS

 14 COURT, AND LYLE MENENDEZ HAD TO COME OUT AND SAY, "COME

 15 ON, LET'S GO DO IT." AND THAT HE TOOK HIM DOWN TO SAN

 16 DIEGO AND THEY WENT DOWN AND THEY PURCHASED THE GUNS IN

 17 SAN DIEGO.

 18 LISTEN TO THIS REFERENCE, BECAUSE I THINK

 19 THAT THIS IS WHAT LYLE MENENDEZ IS DESCRIBING, PRECISELY

 20 THAT INCIDENT.

 21 "IT WAS -- ERIK WAS AT -- I MEAN, I

 22 REMEMBER WHEN WE HAD TO GO DOWN WHEREVER,

 23 TO TAKE CARE OF AN IMPORTANT ISSUE

 24 CONCERNING, AH -- HE SAID, 'I CAN'T DO IT.

 25 I'VE GOT TO -- I'VE GOT TO PRACTICE,

 26 BECAUSE I HAVE A TOURNAMENT COMING UP,'

 27 AND HE WAS -- HE WAS COMPLETELY BLOCKING

 28 OUT.

 1 "AND I WOULD, YOU KNOW, I COULDN'T

 2 EVEN TELL HIM WHAT I WAS FEELING. HE

 3 DOESN'T REALIZE THE IMPACT OF WHAT HE'S

 4 DOING. HE WANTS TO TAKE CARE OF THIS

 5 PROBLEM AND WISH HIS LIFE WAS THE SAME,

 6 AND HE STILL HAD NORMAL PARENTS, BUT HE

 7 COULD NEVER HAVE. HE DOESN'T REALIZE THAT

 8 WHAT HE'S DOING, THERE WILL BE NO MORE

 9 TOURNAMENTS LIKE THAT. THERE IS GOING TO

 10 BE NO MORE. ALL THE -- ALL THE LITTLE

 11 GOOD THINGS THAT ARE IN OUR RELATIONSHIP:

 12 "AND I THINK ONE OF THE BIGGEST

 13 PAINS HE HAS IS THAT YOU MISS JUST HAVING

 14 THESE PEOPLE AROUND. I MISS NOT HAVING MY

 15 DOG AROUND, IF I CAN MAKE SUCH A GROSS

 16 ANALOGY."

 17 WHAT A CALLOUS REMARK. WHAT A CALLOUS

 18 REMARK FOR LYLE MENENDEZ TO TALK ABOUT MISSING HIS

 19 PARENTS IN THE SAME WAY THAT HE MISSES NOT HAVING HIS

 20 DOG AROUND.

 21 BUT YOU CAN SEE THE REFERENCE HERE SEEMS TO

 22 BE TO THAT FRIDAY, WHEN ERIK MENENDEZ WAS NOT AS EAGER

 23 TO GET DOWN TO SAN DIEGO WITH LYLE MENENDEZ AND PURCHASE

 24 THE GUNS.

 25 NEVERTHELESS, LADIES AND GENTLEMEN, THE

 26 EVIDENCE SHOWS VERY CLEARLY THAT ERIK MENENDEZ WENT

 27 ALONG WITH HIM AND IS FULLY RESPONSIBLE FOR THIS CRIME.

 28 HE GOES ON TO SAY THAT:

 1 "YOU KNOW, WHETHER I HATED THE

 2 THING WHEN IT WAS AROUND -- HE SEEMS TO BE

 3 TALKING ABOUT THE DOG HERE -- "WHETHER I

 4 HATED THE THING WHEN IT WAS AROUND, AND

 5 I'VE GIVEN IT AWAY, NOW THAT IT'S GONE --"

 6 HE SEEMS TO SKIP TOPICS NOW -- "I MISS ALL

 7 THE THINGS THAT WE -- YOU KNOW, WE HAD A

 8 BOATING TRIP RIGHT BEFORE THE INCIDENT,

 9 AND IT HAD NOTHING TO DO WITH THE MAIN

 10 PROBLEM WHICH -- WHICH REQUIRED A LOT OF

 11 COURAGE, BUT I MISS NOT HAVING MY FATHER,

 12 AND I -- IT'S ALMOST WORSE AFTER I FIND

 13 OUT MORE AND MORE HOW HE WAS SUCH A

 14 GENIUS, AND ALL OF THE THINGS HE WAS ABLE

 15 TO DO, AND MORE AND MORE ABOUT THE AGONY

 16 OF MY MOTHER THAT I -- INSTEAD OF HER

 17 BEING A SHELL, I REALIZE SHE WAS REALLY

 18 FEELING A LOT OF EMOTION THAT I WISH I

 19 COULD HAVE NOW CONFRONTED HER, AND

 20 DISCUSSED THINGS WITH HER THAT I CAN'T,

 21 AND -- I DON'T KNOW. I THINK I WOULD

 22 HAVE. . . "

 23 AND IT ENDS THERE

 24 BUT YOU CAN SEE HERE HOW HE'S TALKING -- HE

 25 EVEN TALKS ABOUT THE BOAT TRIP. AND HE DOESN'T TALK

 26 ABOUT THE BOATING TRIP AS BEING SOME SITUATION OF

 27 FEARFULNESS INVOLVING HIS PARENTS. HIS REFLECTION OF

 28 THE BOATING TRIP IN THIS CONVERSATION WITH DOCTOR --

 1 WITH DR. OZIEL SEEMS TO BE AS A PLEASANT MEMORY. HE

 2 SAYS -- HE IS TALKING ABOUT HOW HE MISSES THINGS.

 3 "I MISS THE THINGS THAT WE -- YOU

 4 KNOW, WE HAD A BOATING TRIP RIGHT BEFORE

 5 THE INCIDENT, AND IT HAD NOTHING TO DO

 6 WITH THE MAIN PROBLEM."

 7 SO AGAIN, YOU CAN SEE HOW THAT BOATING TRIP

 8 WAS MISCHARACTERIZED IN THIS CASE BY ERIK MENENDEZ. HE

 9 DESCRIBES IT AS THIS -- BEING FRIGHTENED OF THE PARENTS

 10 AND SO FORTH.

 11 BUT LYLE MENENDEZ IS LOOKING BACK ON IT

 12 WITH SOMEWHAT FOND MEMORIES. IT WAS ONE OF THE LAST

 13 OUTINGS THAT THE FAMILY HAD TOGETHER.

 14 MICHAEL BUTKUS WAS A POLICE OFFICER FOR THE

 15 BEVERLY HILLS POLICE DEPARTMENT, AND HE TESTIFIED TO THE

 16 DEFENDANTS RUNNING OUT OF THE HOME, POUNDING THEIR FISTS

 17 TO THE GROUND. HE SAID THAT BOTH DEFENDANTS SAID, "OH,

 18 MY GOD. I CAN'T BELIEVE IT. " AND HE ALSO RECALLS THAT

 19 AFTER POUNDING THEIR FISTS TO THE GROUND, THEY WOULD

 20 SOMETIMES LOOK UP AT HIM, YOU SEE.

 21 AND I WOULD SUBMIT TO YOU, LADIES AND

 22 GENTLEMEN, THAT THE WORDS OF THE DEFENDANTS DURING THIS

 23 PERIOD OF TIME: "OH, MY GOD. I CAN'T BELIEVE IT," ARE

 24 NOT GENUINE REFLECTIONS THERE OF STATE OF MIND. HAT IS

 25 NOT SOMETHING THAT YOU WOULD SAY AFTER YOU HAD KILLED

 26 YOUR PARENTS; SHOT THEM TO DEATH, DRIVEN ALL AROUND LOS

 27 ANGELES, COME BACK, CALL THE POLICE.

 28 WOULD YOU TRULY BE SAYING, "OH, MY GOD.

 1 CAN'T BELIEVE IT. OH, MY GOD. I CAN'T BELIEVE IT"?

 2 NO. THIS IS MORE ACTING, LADIES AND

 3 GENTLEMEN. THIS ACTING MODE PART TWO. YOU KNOW, THE

 4 FIRST ACTING WAS WHEN THEY CALLED THE POLICE AT 911, AND

 5 THEY ARE PRETENDING TO BE SORROWFUL IN THAT CALL. NOW

 6 THEY'RE SAYING: "I CAN'T BELIEVE IT." THOSE WORDS

 7 CAN'T BE GENUINE. THEY COULD CERTAINLY BELIEVE IT.

 8 THEY DID IT.

 9 WE THEN HEARD FROM PERRY BERMAN. AND YOU

 10 WILL RECALL THAT PERRY BERMAN IS A FRIEND OF THE

 11 DEFENDANTS, AND HE WAS APPARENTLY INTENDED TO BE THEIR

 12 ALIBI WITNESS FOR THAT NIGHT, AND IT JUST NEVER WORKED

 13 OUT THAT WAY.

 14 LYLE MENENDEZ CALLED PERRY BERMAN THAT

 15 SUNDAY, AND HE LEFT A MESSAGE. PERRY BERMAN RETURNED

 16 THE CALL AND SPOKE TO JOSE MENENDEZ, WHO TOLD HIM THAT

 17 HIS SON HAD GONE SHOPPING.

 18 LATER THAT DAY, LYLE MENENDEZ GOT BACK TO

 19 PERRY BERMAN AND ASKED HIM IF THEY COULD GET TOGETHER

 20 THAT EVENING, AFTER HE AND ERIK MENENDEZ WENT TO THE

 21 MOVIE THEATER. AND PERRY BERMAN SAID THAT THEY COULD

 22 MEET, IF HE WANTED TO. IT WOULD HAVE TO BE AT A FOOD

 23 FESTIVAL, BECAUSE HE WAS GOING TO THE "TASTE OF L.A."

 24 FOOD FESTIVAL WITH A FRIEND BEING HELD AT THE SANTA

 25 MONICA CIVIC CENTER. AND HE WAITED FOR THE DEFENDANTS

 26 TO SHOW UP, AND WHEN THEY DIDN'T SHOW UP, HE WENT HOME.

 27 LYLE MENENDEZ CALLED HIM THAT NIGHT AT

 28 11:07. AND YOU WILL RECALL THAT WE HAVE TELEPHONE

 1 RECORDS TO PROVE THE TIME OF THESE TWO CALLS. THE FIRST

 2 CALL WAS AT 11:07, AND WE NOW KNOW THAT BY 11:07, THIS

 3 IS ABOUT ONE HOUR AFTER THE MURDERS, AND LYLE MENENDEZ

 4 INSISTED THAT THEY GET TOGETHER THAT EVENING.

 5 WELL, I SUBMIT TO YOU, LADIES AND

 6 GENTLEMEN, THAT LYLE MENENDEZ WANTED TO GET TOGETHER

 7 WITH PERRY BERMAN INITIALLY SO THAT HE COULD BE WITH

 8 PERRY BERMAN RIGHT AFTER THE KILLINGS, AND HE WOULD HAVE

 9 SOMEONE AVAILABLE TO SAY, "GEE, LYLE WAS WITH ME, AND HE

 10 LOOKED OKAY TO ME." HE WOULD KIND OF BE A PERSON WHO

 11 WOULD TESTIFY TO LYLE'S STATE OF MIND, MAKE IT APPEAR AS

 12 IF LYLE MENENDEZ AND HIS BROTHER COULD NOT HAVE POSSIBLY

 13 COMMITTED THE MURDERS, BECAUSE THEY APPEARED TO BE OKAY.

 14 AND THEN IT APPEARS THAT ANOTHER PART OF

 15 THIS PLAN WAS THAT PERRY BERMAN WAS TO BE BROUGHT TO THE

 16 HOME, SO THAT PERRY BERMAN COULD BE PRESENT WHEN LYLE

 17 MENENDEZ AND HIS BROTHER PRETENDED TO DISCOVER THE

 18 BODIES. AND THEN LYLE MENENDEZ AND ERIK MENENDEZ COULD

 19 RESPOND IN HORROR, "OH, MY GOD. LOOK AT THIS. ISN'T IT

 20 TERRIBLE?" AND PERRY BERMAN WOULD BE A WITNESS WHO

 21 WOULD SAY, "YEAH. I SAW THE SHOCK AND THE HORROR IN

 22 THEIR FACES."

 23 NOW THAT LYLE MENENDEZ HAD APPARENTLY

 24 MISSED HIS RENDEVOUS WITH PERRY BERMAN, APPARENTLY HE

 25 TRIED SALVAGING THE SITUATION. SO WHEN HE CALLED HIM AT

 26 11:07, HE STILL INSISTED, "LET'S GET TOGETHER TONIGHT.

 27 LET'S GET TOGETHER."

 28 SO YOU CAN SEE LYLE MENENDEZ' INSISTENCE.

 1 WHY WOULD LYLE MENENDEZ WANT TO GET TOGETHER WITH PERRY

 2 BERMAN AT THAT TIME, AFTER KILLING THE PARENTS? THERE'S

 3 NO NEED TO BE GETTING TOGETHER WITH HIM. CLEARLY, HE

 4 WANTS TO USE HIM. HE WANTS TO USE HIM AS A PROP IN THIS

 5 SCHEME, AND THE PROP, I SUBMIT, WAS DESIGNED TO BE

 6 PRESENT WHEN HE DISCOVERED THE BODIES.

 7 PERRY BERMAN BY THAT TIME WANTD TO GO TO

 8 SLEEP. IT WAS VERY LATE, AND HE HAD TO GO TO WORK THE

 9 NEXT DAY. AND PERRY BERMAN RESISTED. LYLE MENENDEZ

 10 INSISTED. FINALLY PERRY BERMAN RELENTED AND HE SAID,

 11 "ALL RIGHT. I WILL MEET YOU AT THE CHEESECAKE FACTORY."

 12 IT TOOK HIM ABOUT SIX MINUTES TO TALK PERRY

 13 BERMAN INTO IT. IT WAS AT ABOUT 11:13 WHEN THAT PHONE

 14 CALL ENDED. BUT IT WAS AT 11:15 WHEN LYLE MENENDEZ

 15 CALLED BACK, AND NOW LYLE MENENDEZ INSISTED -- OR

 16 REQUESTED, AT LEAST, THAT PERRY BERMAN MEET THEM FIRST

 17 AT THEIR HOME BEFORE THEY GO TO THE CHEESECAKE FACTORY.

 18 NOW, WHY DO YOU SUPPOSE THAT IS? I SUBMIT

 19 TO YOU, LADIES AND GENTLEMEN, THAT THE REASON WHY LYLE

 20 MENENDEZ DECIDED TO MAKE A SECOND TELEPHONE CALL TO

 21 PERRY BERMAN WAS THE FOLLOWING.

 22 BEAR IN MIND WHERE THESE LOCATIONS ARE NOW.

 23 THIS IS WHERE THIS MAP COMES IN HANDY.

 24 HERE IS THE MENENDEZ HOME OVER HERE

 25 (POINTING). THERE IS THE PERRY BERMAN HOME, TO THE

 26 EAST, AND THE CHEESECAKE FACTORY IS TO THE SOUTH.

 27 NOW, WHAT THEY WANTED TO DO WAS THEY WANTED

 28 PERRY BERMAN TO COME TO THE CHEESECAKE FACTORY, NO DOUBT

 1 PLANNING THAT THEY CAN STILL THEN TALK HIM INTO COMING

 2 TO THE MENENDEZ HOME RIGHT AFTERWARDS, AND HE COULD BE

 3 PRESENT WHEN THE BODIES ARE DISCOVERED.

 4 THE PROBLEM WITH THAT IS THAT NOW THINGS

 5 WERE RUNNING MUCH TOO LATE, AND PERRY BERMAN WAS GOING

 6 TO GO TO WORK THE NEXT DAY. NOW LYLE MENENDEZ, I

 7 SUBMIT, MUST HAVE THOUGHT TO HIMSELF, "WHAT IS THE

 8 LIKELIHOOD THAT I CAN TALK PERRY BERMAN INTO COMING TO

 9 MY HOME? HE DOESN'T EVEN WANT TO MEET ME AT THE

 10 RESTAURANT, PERIOD. HE HAS RELUCTANTLY AGREED TO MEET

 11 ME AT THE RESTAURANT, AT THE CHEESECAKE FACTORY. I AM

 12 NOT GOING TO BE ABLE TO GET HIM TO COME TO MY HOME

 13 AFTERWARD, WHEN HE WANTS TO GO TO SLEEP TO GO TO WORK

 14 THE NEXT DAY."

 15 SO HE REALIZED THERE WAS NO POINT IN

 16 MEETING HIM AT THE CHEESECAKE FACTORY ATTHAT POINT,

 17 BECAUSE HE DIDN'T REALLY WANT TO GET TOGETHER WITH PERRY

 18 BERMAN AT THE CHEESECAKE FACTORY. THE SOLE PURPOSE IS

 19 TO GET HIM TO COME TO THE HOME. IF HE'S NOT GOING TO

 20 COME TO THE HOME, WHY WASTE TIME AND HAVE HIM GO TO THE

 21 RESTAURANT?

 22 SO AT THAT POINT LYLE MENENDEZ, AT 11:15,

 23 CALLED HIM BACK. HE SAID, "WHY DON'T YOU DO THIS. WHY

 24 DON'T YOU MEET ME AT MY HOME?"

 25 AND, OF COURSE, PERRY BERMAN ABSOLUTELY

 26 REFUSED. "I AM NOT GOING TO MEET YOU AT YOUR HOME. I

 27 DON'T EVEN WANT TO GO TO THE RESTAURANT TONIGHT. IT'S

 28 LATE, AND I'VE GOT TO GO TO WORK TOMORROW." PERRY

 1 BERMAN INSISTED. "I'M NOT GOING TO MEET YOU AT THE

 2 RESTAURANT (SIC). YOU KNOW, "I AM NOT GOING TO MEET YOU

 3 AT YOUR HOME," PERRY BERMAN SAID. SO LYLE MENENDEZ SAID

 4 "OKAY. I WILL MEET YOU AT THE RESTAURANT."

 5 SO WHY DID LYLE MENENDEZ NOT GO TO THE

 6 RESTAURANT? THERE WAS NO POINT AT THAT POINT TO

 7 RENDEVOUS WITH PERRY BERMAN AT THE RESTAURANT, BECAUSE

 8 PERRY BERMAN WASN'T GOING TO GO WITH LYLE MENENDEZ TO

 9 THE HOME. LYLE MENENDEZ MADE HIS LAST-DITCH EFFORT TO

 10 TRY AND TALK PERRY BERMAN INTO GOING TO THE HOME, AND

 11 WHEN THAT FAILED, THERE WAS NO REASON FOR LYLE MENENDEZ

 12 AND ERIK MENENDEZ TO GO TO THE CHEESECAKE FACTORY.

 13 SO THEY ABANDONED THAT PLAN ALTOGETHER, AND

 14 THEY WENT STRAIGHT HOME, KNOWING THAT THEY'RE JUS GOING

 15 TO HAVE TO DISCOVER THE BODIES WITHOUT THE PRESENCE OF A

 16 WITNESS TO TESTIFY TO THEIR SHOCK AND HORROR.

 17 AND THEN THE INTERESTING THING IS, THAT AS

 18 SOON AS THEY ARRIVE HOME, YOU NOTICE HOW ERIKMENENDEZ

 19 GETS ON THE PHONE AND TRIES TO CALL MARK HEFFERNAN. SO

 20 APPARENTLY THEY HAVEN'T TOTALLY ABANDONED THIS IDEA OF

 21 IT WOULD BE NICE TO HAVE SOMEONE THAT WE KNOW, A FRIEND,

 22 TESTIFY TO OUR HORROR OR OUR -- HOW UPSET WE WERE.

 23 SO ERIK MENENDEZ, AS SOON AS HE GETS HOME,

 24 GETS ON THE PHONE AND CALLS UP MARK HEFFERNAN AND TRIES

 25 TO GET HIM TO COME OVER.

 26 PERRY BERMAN HAD SOMETHING INTERESTING TO

 27 SAY, TOO, IN ADDITION TO THAT, BECAUSE LATER HE WENT TO

 28 THE POLICE STATION. HE WAS CONTACTED BY THE POLICE, AND

 1 HE DID IN FACT GO TO THE POLICE STATION AND SPOKE TO THE

 2 POLICE THAT NIGHT.

 3 AND WHILE HE WAS AT THE POLICE STATION, HE

 4 SPOKE TO LYLE MENENDEZ THAT VERY NIGHT, AND HE RECALLS A

 5 CONVERSATION THAT HE HAD WITH LYLE MENENDEZ. HE SAID

 6 THAT LYLE MENENDEZ TOLD HIM THAT THE KILLINGS MAY B

 7 BUSINESS-RELATED.

 8 SO YOU CAN SEE, IS THIS JUST -- IS THIS

 9 JUST SOMETHING THAT JUST OCCURRED TO LYLE MENENDEZ, OR

 10 WAS THIS PART OF A PLAN, SOMETHING THAT HE HAD THOUGHT

 11 ABOUT BEFOR

 12 WE NOW KNOW THAT AS SOON AS HE SITS DOWN

 13 WITH DETECTIVE EDMONDS, HE STARTS TALKING ABOUT THE

 14 KILLINGS BEING BUSINESS-RELATED. NOW HE'S TELLING PERRY

 15 BERMAN THAT VERY SAME NIGHT THAT THE KILLINGS MAY BE

 16 BUSINESS-RELATED. AND ALTHOUGH HE DIDN'T ELABORATE AT

 17 THAT TIME WITH PERRY BERMAN CONCERNING HOW IT IS

 18 BUSINESS-RELATED, PERRY BERMAN SAID THAT LYLE MENENDEZ

 19 REPEATED THIS CLAIM SOMETIME LATER, AND HE EXPLAINED IN

 20 MORE DETAIL ABOUT NOEL BLOOM, A MAN WHO WAS SUSPECTED OF

 21 ORGANIZED CRIME CONNECTIONS, AND THE FACT THAT THERE WAS

 22 A DISPUTE BETWEEN NOEL BLOOM AND HIS FATHER. AND HE

 23 EVEN SAID THAT SOMETIME LATER.

 24 SOMETIME AFTER THAT, ERIK MENENDEZ ALSO

 25 POINTED THE FINGER AT ORGANIZED CRIME WHEN HE SPOKE TO

 26 PERRY -- WHEN HE SPOKE TO PERRY ABOUT THE KILLINGS.

 27 SO I WOULD SUBMIT, LADIES AND GENTLEMEN, IN

 28 ALL THESE REFERENCES TO ORGANIZED CRIME, THIS IS NOT

 1 PURE HAPPENSTANCE. THIS IS MUCH TOO PERSISTENT AND TOO

 2 IMMEDIATE FOLLOWING THE KILLINGS TO BE PURE

 3 HAPPENSTANCE. IT CAN ONLY BE CONCLUDED THAT THIS WAS

 4 PART OF SOMETHING THAT THE DEFENDANTS PREVIOUSLY

 5 DISCUSSED; THAT IS, NOT ONLY ARE WE GOING TO KILL OUR

 6 PARENTS, BUT WE WILL LEAD THE POLICE IN THE RIGHT

 7 DIRECTION, JUST IN CASE THERE'S ANY DOUBT IN THEIR MIND

 8 AS TO WHICH DIRECTION THEY SHOULD GO WITH THIS.

 9 BUT THEN PERRY BERMAN TESTIFIED TO

 10 SOMETHING THAT WAS VERY INTERESTING. HE WAS ASKED ABOUT

 11 THE PHONE CALL THAT HE MADE -- THE PHONE CONVERSATION

 12 THAT HE HAD WITH LYLE MENENDEZ AFTER HE HAD SPOKEN --

 13 PERRY BERMAN HAD SPOKEN WITH JOSE MENENDEZ.

 14 NOW, YOU WILL RECALL THAT ONE OF THE THINGS

 15 THAT ERIK MENENDEZ WAS AND LYLE MENENDEZ WERE SUPPOSEDLY

 16 UPSET ABOUT WAS THE FACT THAT JOSE MENENDEZ HAD

 17 SUPPOSEDLY TOLD PERRY BERMAN THAT LYLE MENENDEZ WAS NOT

 18 HOME, WHEN, ACCORDING TO ERIK MENENDEZ, LYLE MENENDEZ

 19 HAD IN FACT BEEN HOME ALL DAY SUNDAY.

 20 NOW, YOU RECALL ERIK MENENDEZ MADE THIS A

 21 PART OF HIS STORY. ERIK MENENDEZ SAID, "WELL, THAT'S

 22 ONE OF THE THINGS THAT CONCERNED US. AFTER DRIVING

 23 AROUND ALL DAY SUNDAY ON MY OWN, I CAME BACK, AND LYLE,

 24 MY BROTHER, TOLD ME THAT MY FATHER HAD TOLD PERRY BERMAN

 25 THAT LYLE MENENDEZ HAD BEEN OUT SHOPPING THAT DAY, AND

 26 THAT WASN'T TRUE. AND THAT CAUSED US GREAT CONCERN,

 27 BECAUSE IT LOOKED LIKE MY FATHER WAS UP TO SOMETHING,"

 28 YOU SEE.

 1 SO THAT'S AN ELEMENT THAT ERIK MENENDEZ

 2 INCORPORATED IN HIS EXPLANATION OF WHY HE WAS IN FEAR OF

 3 HIS FATHER THAT DAY.

 4 BUT THE TRUTH OF THE MATTER IS, LADIES AND

 5 GENTLEMEN, PERRY BERMAN WAS ASKED ABOUT THIS ON THE

 6 WITNESS STAND, AND PERRY BERMAN SAID THAT WHEN HE SPOKE

 7 TO LYLE MENENDEZ THAT DAY, LYLE MENENDEZ TOLD HIM THAT

 8 HE HAD BEEN OUT SHOPPING WITH HIS BROTHER.

 9 SO YOU SEE, THERE IS A DIRECT CONTRADICTION

 10 BETWEEN ERIK MENENDEZ' STORY AND THE TESTIMONY OF PERRY

 11 BERMAN.

 12 BY THE TIME THIS CASE IS CONCLUDED, LADIES

 13 AND GENTLEMEN, AS I SAID, ASIDE FROM THE FACT THAT ERIK

 14 MENENDEZ' STORY JUST DOESN'T MAKE SENSE, IT JUST

 15 DOESN'T -- IT JUST IS NOT LOGICAL.

 16 I AM GOING TO HAVE A LONG LIST OF WITNESSES

 17 THAT ERIK MENENDEZ -- WITH WHOM ERIK MENENDEZ IS IN

 18 DIRECT CONFLICT WITH, WITNESSES WHO SAY SOMETHING WHICH

 19 JUST TOTALLY CONTRADICTS THE TESTIMONY OF ERIK MENENDEZ,

 20 AND WHICH PROVES THAT ERIK MENENDEZ IS LYING, BECAUSE

 21 YOU JUST CAN'T BELIEVE BOTH OF THEM. WHY WOULD LYLE

 22 MENENDEZ TELL PERRY BERMAN THAT HE HAD BEEN SHOPPING

 23 WITH HIS BROTHER ON SUNDAY UNLESS THAT WERE TRUE?

 24 SO, THERE IS A DIRECT CONFLICT THERE

 25 BETWEEN PERRY BERMAN AND ERIK MENENDEZ.

 26 NOW, SERGEANT EDMONDS -- OF COURSE, THE

 27 DEFENDANTS, AFTER THEY ARE DETAINED AT THE CRIME SCENE,

 28 ARE TRANSPORTED TO BEVERLY HILLS POLICE DEPARTMENT FOR

 1 THE PURPOSE OF INTERVIEWING THEM, AND IT IS SERGEANT

 2 EDMONDS WHO CONDUCTS THAT INTERVIEW.

 3 HE TESTIFIED THAT ERIK MENENDEZ WAS THE

 4 FIRST ONE THAT HE INTERVIEWED, AND WE KNOW NOW THAT ERIK

 5 MENENDEZ WAS THE FIRST ONE TO TELL THE LIE ABOUT WHERE

 6 THEY HAD BEEN AND WHAT THEY HAD DONE THAT NIGHT.

 7 SO, ASIDE FROM THE -- ASIDE FROM THE FACT

 8 THAT ERIK MENENDEZ WAS LYING ABOUT THEIR ENTIRE

 9 ACTIVITIES THAT NIGHT, WHAT ELSE OF SIGNIFICANCE DID

 10 ERIK MENENDEZ SAY TO SERGEANT EDMONDS DURING THAT

 11 INTERVIEW?

 12 WELL, WHAT'S SIGNIFICANT IS THAT SERGEANT

 13 EDMONDS WAS SEEKING TO FIND OUT IF ERIK MENENDEZ HAD ANY

 14 INFORMATION CONCERNING WHO MIGHT HAVE COMMITTED THIS

 15 CRIME, AND HE ASKED ERIK MENENDEZ: "DO YOU HAVE ANY

 16 IDEAS WHO MAY HAVE DONE THIS? " AND ERIK MENENDEZ SAID

 17 THE FOLLOWING. AND THEN THIS IS SOMETHING THAT YOU HAVE

 18 TO LISTEN TO THE TAPE, BECAUSE YOUR INTERPRETATION OF

 19 THE WORDS HERE ARE GOING TO BE IMPORTANT. BUT I WOULD

 20 SUBMIT TO YOU THAT THIS IS WHAT THE RESPONSE OF ERIK

 21 MENENDEZ IS.

 22 HE SAYS: "NO. MY FAMILY HAS NO ENEMIES,

 23 BUT MY DAD DOESN'T HAVE A LOT OF FRIENDS, YOU KNOW, IN

 24 HIS BUSINESS."

 25 HE THEN GOES ON TO SAY: "MY BROTHER MAY

 26 KNOW."

 27 SO I WOULD SUBMIT, LADIES AND GENTLEMEN,

 28 THAT WHAT WE SEE FROM ERIK MENENDEZ AT THIS POINT IN

 1 TIME IS LEADING THE POLICE DOWN THAT ROAD. TELLING THE

 2 POLICE IT'S BUSINESS-RELATED IN SO MANY WORDS.

 3 IS THIS A MERE COINCIDENCE, LADIES AND

 4 GENTLEMEN? ERIK MENENDEZ WOULD HAVE US BELIEVE THAT HE

 5 AND HIS BROTHER NEVER DISCUSSED ANYTHING ABOUT POINTING

 6 THE FINGER AT SOMEONE ELSE AS THEY WERE DRIVING AROUND

 7 THAT NIGHT. IS THIS A MERE COINCIDENCE?

 8 THIS CAN'T BE A COINCIDENCE. THIS ISSUE

 9 GOES HAND IN HAND, ERIK MENENDEZ AND LYLE MENENDEZ

 10 WORKING HAND IN HAND TO POINT THE FINGER AT ORGANIZED

 11 CRIME.

 12 NOT ONLY DOES HE SAY -- USE THE WORDS, "MY

 13 FATHER DOESN'T HAVE FRIENDS IN HIS BUSINESS," BUT THEN

 14 HE GOES ON TO SAY, "MY BROTHER MAY KNOW."

 15 HE'S TELLING THE POLICE, "THAT'S AS FAR AS

 16 I AM GOING TO GO WITH IT, BUT ASK MY BROTHER WHEN HE

 17 COMES IN NEXT."

 18 SURE ENOUGH, TRUE TO FORM, LYLE MENENDEZ,

 19 WHEN HE COMES INTO THAT ROOM, HE FOLLOWS UP ON IT WITH

 20 GREATER DETAIL THAN ERIK MENENDEZ. THIS WOULD SUGGEST

 21 THIS IS NOT A COINCIDENCE, IT'S PART OF A PLAN.

 22 THE OTHER THING THAT ERIK MENENDEZ SAYS TO

 23 SERGEANT EDMONDS AT THAT TIME IS WHEN HE ASKS SERGEANT

 24 EDMONDS, "ARE THEY DEAD?"

 25 NOW, ONCE AGAIN, HERE WE GO INTO ACTING,

 26 PART THREE: "ARE THEY DEAD?" WHY WOULD HE BE ASKING

 27 SERGEANT EDMONDS IF THEY WERE DEAD?

 28 ERIK MENENDEZ TOLD US HE WAS SO SURE HIS

 1 PARENTS WERE DEAD. HE WAS SITTING IN THE FOYER. AFTER

 2 HE WALKS OUT OF THE -- ACCORDING TO HIS STORY, AFTER HE

 3 WALKS OUT OF THE DEN, AFTER SHOOTING HIS PARENTS TO

 4 DEATH, AND HE IS SITTING THERE IN THE FOYER, LYLE THEN

 5 COMES OUT AND SITS DOWN ACROSS FROM HIM.

 6 DO YOU REMEMBER WHAT ERIK MENENDEZ SAID,

 7 BEFORE THEY EVEN THOUGHT ABOUT PICKING UP THE SHELLS?

 8 HE WAS GOING TO GET UP AND GO. THEY JUST WERE GOING TO

 9 GO OUT THE FRONT DOOR. AND I EVEN ASKED HIM ABOUT THIS.

 10 "WHY DID YOU GO OUT THE FRONT DOOR? WEREN'T YOU GOING

 11 TO GO IN AND CHECK TO SEE IF THEY WERE DEAD?"

 12 HE SAYS: "NO, I KNEW THEY WERE DEAD."

 13 HE KNEW THEY WERE DEAD BEFORE HE EVEN WENT

 14 BACK IN TO PICK UP THE SHOTGUN SHELLS.

 15 NOW, HERE HE IS PRETENDING WITH SERGEANT

 16 EDMONDS, AND SAYING, "ARE THEY DEAD?"

 17 I ASKED HIM ABOUT THAT. "WHY DID YOU ASK

 18 SERGEANT EDMONDS IF THEY WERE DEAD?"

 19 AND HE LAPSES BACK INTO PLAYING THE

 20 HELPLESS CHILD. "WELL, I JUST HAD TO HEAR IT FROM

 21 SOMEONE. I JUST HAD TO HAVE SOMEONE TELL ME." JUST

 22 MORE PRETENSION.

 23 THEN AFTER SERGEANT EDMONDS INTERVIEWED

 24 ERIK MENENDEZ, HE INTERVIEWED LYLE MENENDEZ. ASIDE FROM

 25 THE FACT THAT LYLE MENENDEZ KEPT TRUE TO THE STORY AND

 26 STUCK TO THE PHONY ALIBI, WHAT ELSE DID HE SAY OF

 27 SIGNIFICANCE? HE POINTED THE FINGER AT ORGANIZED CRIME.

 28 HE SAID -- SERGEANT EDMONDS ASKED HIM, "DO YOU HAVE ANY

 1 IDEAS ON THIS THAT'S GOING TO HELP US SOLVE IT?" AND

 2 LYLE MENENDEZ, ACCORDING TO THE TRANSCRIPT, SAYS -- AND

 3 THEN THE QUESTION IS ASKED: "WE HAVE TO GET PERSONAL,

 4 YOU UNDERSTAND. IF THERE'S ANY PROBLEM, WE'VE GOT TO

 5 SOLVE IT."

 6 AND LYLE MENENDEZ SAYS: "WELL, ONE OF MY

 7 CONCERNS IS THAT I DON'T LIKE ANY BAD PRESS ABOUT MY

 8 FATHER NOW."

 9 AND EDMONDS SAYS: "WE'RE NOT REPORTERS,

 10 WE'RE POLICEMEN. WHAT YOU TELL US IS" -

 11 LYLE MENENDEZ SAYS: "I UNDERSTAND."

 12 EDMONDS SAYS: "STAYS INSIDE THIS ROOM UNTIL

 13 IT GOES TO COURT AND WE PROSECUTE THE PEOPLE. WE WANT

 14 TO GET THESE PEOPLE, OR PERSON, WHOEVER DID IT, TO

 15 ANSWER FOR THEIR CRIMES. SO YOU'VE GOT TO HELP US."

 16 AND HERE'S WHAT LYLE MENENDEZ SAYS.

 17 "WELL, UH, I CAN'T IMAGINE THAT MY

 18 MOTHER HAS EVER DONE -- I'VE BEEN WITH MY

 19 MOTHER. USUALLY MY BROTHER AND I ARE WITH

 20 MY MOTHER ALL THE TIME. SHE'S BUSY WITH

 21 US, AND WORKING ON THE OTHER HOUSE, AND

 22 YOU KNOW, IT'S HARD TO SAY. I MEAN,

 23 I'VE -- I THOUGHT ABOUT A LOT OF THINGS

 24 OUTSIDE. I THOUGHT MAYBE THAT MARK SAID

 25 IT MIGHT BE A ROBBERY OR SOMETHING. BUT

 26 FROM THE LOOKS OF IT, IT'S -- IT DIDN'T

 27 LOOK LIKE THAT. IT LOOKED -- LOOKED LIKE

 28 THEY DEFINITELY WANTED TO MAKE A MESS, AND

 1 IT WAS REALLY, UH, SAD."

 2 SO, TWO SIGNIFICANT THINGS HERE.

 3 NUMBER ONE, MARK -- HE'S REFERRING TO MARK

 4 HEFFERNAN, WHO HAS NOW JOINED UP WITH THEM AND IS AT THE

 5 POLICE STATION. HE SAYS, "MARK SAYS IT MIGHT BE A

 6 ROBBERY," AND LYLE MENENDEZ IS MAKING SURE THAT THE

 7 POLICE DON'T GO DOWN THAT ROAD. HE'S SUGGESTING, DON'T

 8 GO DOWN THAT ROAD. MARK IS SUGGESTING THAT IT MIGHT BE

 9 A ROBBERY. SO HE IS TELLING THE POLICE THAT'S NOT THE

 10 ANGLE TO TAKE.

 11 AND THEN -- AGAIN, WHAT A COLD, CALLOUS

 12 REMARK. I MEAN, THROUGHOUT THIS YOU SEE EXTREMELY COLD

 13 AND CALLOUS REMARKS FROM LYLE MENENDEZ. JUST AS HE

 14 REFERRED TO AN ANALOGY BETWEEN "I MISS MY PARENTS LIKE I

 15 MISS MY DOG."

 16 LISTEN TO THIS. WITHIN A COUPLE OF HOURS

 17 OF HIS PARENTS BEING DEAD, HE SAYS, "IT LOOKS LIKE THEY

 18 WANTED TO MAKE A MESS."

 19 IS THAT HOW YOU WOULD REFER TO YOUR PARENTS

 20 AFTER YOU SHOOT YOUR PARENTS TO DEATH? YOU SAW THOSE

 21 PHOTOGRAPHS. YOU SAW HOW GORY THOSE PHOTOGRAPHS WERE,

 22 AND HOW HORRIBLE THAT CRIME WAS.

 23 AND LYLE MENENDEZ, WHO ACTUALLY COMMITTED

 24 THAT, WHO ACTUALLY SHOT THOSE SHOTS INTO HIS PARENTS,

 25 CAN SAY SOMETHING LIKE: "LOOKS LIKE THEY DEFINITELY

 26 WANTED TO MAKE A MESS."

 27 I SUBMIT TO YOU, LADIES AND GENTLEMEN, LYLE

 28 MENENDEZ WANTED TO MAKE A MESS, AND THAT'S EXACTLY WHAT

 1 HE DID. AND HE WANTED TO MAKE A MESS FOR A REASON. HE

 2 WANTED TO MAKE IT LOOK LIKE AN ORGANIZED-CRIME KILLING,

 3 AND HE KNEW AN ORGANIZED-CRIME KILLING WOULD BE MESSY.

 4 IT WOULD INVOLVE --

 5 MS. ABRAMSON: OBJECTION, YOUR HONOR. THERE'S NO

 6 EVIDENCE.

 7 THE COURT: OVERRULED.

 8 THIS AGAIN IS ARGUMENT OF COUNSEL, AND

 9 COUNSEL'S INTERPRETATION OF THE EVIDENCE.

 10 MR. CONN: THE KEY HERE, LADIES AND GENTLEMEN, IS

 11 NOT WHAT ORGANIZED-CRIME WOULD TRULY DO, YOU SEE.

 12 ORGANIZED-CRIME IS A -- IS SOMETHING OF COMMON KNOWLEDGE

 13 IN OUR SOCIETY THAT IS REFERRED TO AS THE SUBJECT OF

 14 MOVIES, AS THE SUBJECT OF BOOKS.

 15 AND THE ISSUE HERE IS NOT WHAT

 16 ORGANIZED-CRIME WOULD EVER ACTUALLY DO OR NOT DO. THE

 17 QUESTION IS IF SOMEONE WANTED TO MAKE IT LOOK LIKE IT

 18 WAS AN ORGANIZED-CRIME KILLING, WHAT THAT PERSON MIGHT

 19 WANT TO DO TO MAKE IT LOOK LIKE THAT.

 20 SO, WHAT IS MORE IMPORTANT HERE IS

 21 FOLKLORE. WHAT IS THE FOLKLORE ABOUT THE MAFIA? THAT'S

 22 WHAT'S MORE IMPORTANT HERE THAN WHAT THE MAFIA WOULD

 23 ACTUALLY DO. I DON'T CARE WHAT THE MAFIA WOULD ACTUALLY

 24 DO. SHOTGUNS, KNEE-CAPPING, MESSY --

 25 MS. ABRAMSON: OBJECTION, YOUR HONOR. THERE IS

 26 NO EVIDENCE ABOUT THE FOLKLORE OF THE MAFIA

 27 THE COURT: AGAIN, COUNSEL IS JUST ARGUING IN

 28 GENERAL, AND AT THIS POINT HE HAS INDICATED THIS IS NOT

 1 EVIDENCE IN THE CASE, AND HE IS JUST REFERRING TO WHAT

 2 HE BELIEVES IS COMMON KNOWLEDGE.

 3 MR. CONN: AND YOU DECIDE, LADIES AND GENTLEMEN,

 4 YOU DECIDE FOR YOURSELVES WHAT YOU THINK IS COMMON

 5 KNOWLEDGE.

 6 BUT WHAT YOU KNOW FOR SURE IS HERE IS LYLE

 7 MENENDEZ, AFTER SHOOTING HIS PARENTS TO DEATH, SAYING,

 8 "WHOEVER DID IT LOOKED LIKE THEY DEFINITELY WANTED TO

 9 MAKE A MESS."

 10 AND THAT MUCH YOU CAN RELY UPON, LADIES AND

 11 GENTLEMEN; THAT LYLE MENENDEZ, BY THAT CONCESSION, IS

 12 INDICATING IN SO MANY WORDS THAT HE WANTED TO MAKE A

 13 MESS. YOU WOULD NEVER USE THOSE WORDS, I SUBMIT, UNLESS

 14 YOU DID WANT TO MAKE A MESS, AND, YOU KNOW, LOOKING BACK

 15 ON WHAT YOU DID, THAT YOU DID IN FACT ACCOMPLISH THAT

 16 PURPOSE. YOU DID IN FACT MAKE A MESS.

 17 LYLE MENENDEZ KNEW HE MADE A MESS, AND

 18 THAT'S WHY HE USED THOSE WORDS. AND THEN HE GOES ON TO

 19 EXPLAIN WHY THEY MIGHT WANT TO LOOK AT ORGANIZED-CRIME.

 20 "SO I DON'T KNOW -- I MEAN, I WOULD

 21 THINK THAT UNLESS THEY FIND THINGS THAT

 22 ARE MISSING FROM THE HOUSE, OR SOMETHING

 23 STRANGE LIKE THAT, I THINK THAT THEY

 24 WOULD -- IT WOULD BE MY FATHER THAT WOULD

 25 BE THE REASON THAT THIS WOULD HAPPEN."

 26 YOU SEE. IT'S SAYING:

 27 "LOOK AT MY FATHER IN HIS BUSINESS.

 28 AND HE -- YOU KNOW, HE USED TO WORK FOR

 1 R.C.A. RECORDS, WHICH WAS LOT BIGGER THAN

 2 WHAT HE DOES NOW. HE WORKS IN A SMALLER

 3 COMPANY, AND WITH A GROUP OF PEOPLE THAT

 4 ARE -- FROM THE STORIES THAT HE BRINGS

 5 HOME, AND THE PEOPLE THAT I'VE MET, THESE

 6 ARE A REAL SEEDY GROUP. AND EVEN THOUGH

 7 HE WAS VERY AWARE OF THAT, AND -- YOU

 8 KNOW, I DON'T KNOW IF ANYONE WOULD TRY TO

 9 KILL MY FATHER."

 10 AND THEN LATER IN THAT TRANSCRIPT HE SAYS

 11 THE FOLLOWING:

 12 "AND I TALKED TO MY BROTHER, AND HE

 13 SAID THAT, UH, YOU KNOW, HE IS IN THE

 14 BUSINESS WHERE THERE IS LITTLE -- LITTLE

 15 SMALL COMPANIES, AND THEY'RE BEING

 16 SQUEEZED OUT, AND THEY'RE GOING DOWN, AND

 17 MY DAD IS A PRETTY -- PRETTY RUTHLESS

 18 BUSINESSMAN, AND HE BELIEVES IN THE BOTTOM

 19 LINE. AND WE HAVE -- WE'VE LAUGHED A LOT

 20 OVER A LOT OF STORIES OF HIM TRYING TO

 21 PUSH THESE GUYS OUT OF -- AND YOU KNOW, IT

 22 MIGHT BE BUSINESS-RELATED."

 23 SO IT'S VERY CLEAR, LADIES AND GENTLEMEN,

 24 THAT LYLE MENENDEZ, WITHIN SUCH A SHORT PERIOD OF TIME

 25 OF SHOOTING HIS PARENTS TO DEATH, IS VERY CLEARLY

 26 FOCUSING THE POLICE IN A PARTICULAR DIRECTION. AND I

 27 WOULD SUBMIT THAT THAT'S NOT CHANCE, NOT WHEN YOU LOOK

 28 AT THE PATTERN OF ERIK MENENDEZ DOING THE SAME, LYLE

 1 MENENDEZ DOING THE SAME. NOT JUST WITH THE POLICE, BUT

 2 WITH ALL OF THE OTHER WITNESSES THAT HE TELLS THE SAME

 3 STORY TO. AND I WILL BE GOING THROUGH THAT, AND YOU

 4 WILL SEE LYLE MENENDEZ TOLD THAT TO A WHOLE STRING OF

 5 WITNESSES. THAT'S NOT CHANCE, THAT'S A PLAN.

 6 KLARA WRIGHT WAS AN EXTREMELY IMPORTANT

 7 WITNESS IN THIS CASE, BOTH HER AND HER ATTORNEY -- HER

 8 ATTORNEY-HUSBAND, I SHOULD SAY. AND YOU KNOW THAT THESE

 9 TWO WITNESSES, FROM THE TESTIMONY, ARE PEOPLE WHO JUST

 10 SPOKE TO THE PROSECUTION SINCE THE FIRST TRIAL, AND

 11 THESE ARE BOTH PEOPLE WHO PROVIDED A VERY IMPORTANT,

 12 VERY CRITICAL INSIGHT INTO THE MINDS OF BOTH DEFENDANTS

 13 WITHIN HOURS AFTER THE SHOOTING OF THEIR PARENTS TO

 14 DEATH.

 15 KLARA WRIGHT TESTIFIED THAT SHE IS A FRIEND

 16 OF THE MENENDEZ FAMILY, AND SHE WENT TO THE MENENDEZ

 17 HOME THAT MORNING -- THIS WOULD NOW BE THE MONDAY

 18 MORNING. SHE WAS GOING THERE TO PICK UP A TENNIS RACKET

 19 THERE, BECAUSE HER SON PLAYS TENNIS. HE HAD PLAYED UP

 20 IN KALAMAZOO, AND THE RACKET WAS BEING RESTRINGED, OR

 21 SOMETHING LIKE THAT, AND SHE WENT TO PICK IT UP.

 22 WHEN SHE GOT THERE, SHE SAW THE POLICE

 23 TAPE. SHE REALIZED THAT SOMETHING HAD HAPPENED. AND

 24 SHE SPOKE TO ERIK MENENDEZ, AND AFTER SOME CONVERSATION

 25 WITH HIM, SHE INVITED HIM TO COME OVER TO HER HOME,

 26 BECAUSE HE HAD INDICATED THAT HE WANTED TO SPEAK TO HER

 27 HUSBAND, THE ATTORNEY.

 28 AND HE CAME OVER THAT AFTERNOON, AND HE

 1 SPOKE TO HER BRIEFLY BEFORE THE HUSBAND ARRIVED. I

 2 BELIEVE THAT SHE SAID THAT HE GOT THERE ABOUT 3:00

 3 O'CLOCK, AND THEY SPOKE FOR ABOUT 20 MINUTES BEFORE THE

 4 HUSBAND ARRIVED. AND THEN AFTER RANDY WRIGHT ARRIVED

 5 HOME, HE THEN GOT INTO A DISCUSSION WITH BOTH ERIK AND

 6 LYLE MENENDEZ.

 7 WHAT'S VERY IMPORTANT ABOUT THIS, LADIES

 8 AND GENTLEMEN, IS THAT IT SHOWS THE FOCUS OF THE

 9 DEFENDANTS, WHERE THEIR MINDS WERE AT RIGHT AFTER

 10 SHOOTING THEIR PARENTS TO DEATH.

 11 AND WHERE WAS IT? IT WAS ON THE MONEY. IT

 12 WAS ON THE MONEY. THEY WERE TOTALLY FOCUSED ON THE

 13 MONEY.

 14 AND ERIK MENENDEZ, IT WAS INTERESTING IN

 15 HIS CROSS-EXAMINATION, BECAUSE HE TOTALLY

 16 MISCHARACTERIZED THIS INCIDENT. I MEAN, ACCORDING TO

 17 ERIK MENENDEZ, HE MADE IT SEEM AS IF HE GOT TOGETHER

 18 WITH THE WRIGHTS THAT DAY BECAUSE THEY WERE JUST OLD

 19 FRIENDS, AND HE JUST WANTED TO BE WITH SOMEONE THAT DAY.

 20 I MEAN, THAT'S THE WAY HE MADE IT SOUND.

 21 BUT THAT'S NOT THE WAY THAT KLARA WRIGHT

 22 TELLS THE STORY, LADIES AND GENTLEMEN. ERIK MENENDEZ

 23 WOULD WANT TO MAKE IT SEEM AS IF, OH, HE REALLY DIDN'T

 24 HAVE A SPECIFIC PURPOSE OR A SPECIFIC INTENT. HE JUST

 25 KIND OF ENDED UP AT THE WRIGHT'S HOUSE.

 26 BUT THAT'S NOT THE WAY KLARA WRIGHT TOLD

 27 THE STORY. SHE MADE IT VERY CLEAR IN HER TESTIMONY, AND

 28 SHE DIRECTLY CONTRADICTS ERIK MENENDEZ ON THIS POINT,

 1 THAT ERIK MENENDEZ WAS VERY FOCUSED ON MEETING WITH HER

 2 HUSBAND, AND THEN WE LEARN WHY AFTER HE ARRIVES AT THE

 3 HOUSE. IT IS BECAUSE HE IS INTERESTED IN FINDING

 4 SOMEONE TO PROBATE THE WILL.

 5 CONTRARY TO THE TESTIMONY OF ERIK MENENDEZ

 6 THAT HE WAS JUST KIND OF INVITED OVER, AND JUST HAPPENED

 7 TO GO OVER.

 8 AND I ASKED HIM WHY. HE SAID: "WELL,

 9 RANDY WRIGHT IS SUCH A JOLLY FELLOW." YOU MAY RECALL

 10 THAT CHOICE OF WORDS ON HIS PART. "HE'S SUCH A JOLLY

 11 FELLOW, AND I JUST WANTED TO BE WITH SOMEONE THAT DAY."

 12 WELL, THAT'S NOT THE WAY THAT KLARA WRIGHT

 13 TELLS THE STORY, LADIES AND GENTLEMEN. SHE SAID:

 14 "QUESTION: NOW WHEN YOU SAW THE

 15 DEFENDANT, ERIK MENENDEZ, SITTING IN THE

 16 CAR AND HE CAME UP TO YOU, WHAT WAS THE

 17 FIRST THING THAT HAPPENED?

 18 "ANSWER: ERIK SAID TO ME:

 19 'MRS. WRIGHT, I'M SO GLAD

 20 YOU'RE HERE. WE NEED TO SPEAK TO YOUR

 21 HUSBAND,' AND EITHER HE WAS -- HE SAID

 22 EITHER THAT HE WAS TRYING TO GET AHOLD OF

 23 HIM, OR THAT HE WANTED TO GET AHOLD OF

 24 HIM."

 25 SO IT'S VERY CLEAR RIGHT THERE. CONTRARY

 26 TO THE IMPRESSION THAT ERIK MENENDEZ TRIED TO LEAVE YOU

 27 WITH, WHICH IS THAT THIS WAS JUST A FRIENDLY VISIT, ERIK

 28 MENENDEZ WAS FOCUSED. HE WANTED TO TALK TO HER HUSBAND.

 1 AND WHY? IT WAS BECAUSE OF THE PROBATE. THAT BECOMES

 2 VERY CLEAR FROM THE TESTIMONY OF RANDY WRIGHT.

 3 SHE WAS ASKED:

 4 "QUETION: AFTER HE TOLD YOU" --

 5 THE QUESTION WAS "WELL, DID HE TELL YOU

 6 WHAT HAPPENED AT THE MENENDEZ HOME? WHAT

 7 DID HE SAY?

 8 "ANSWER: I ASKED HIM -- I SAID, YOU

 9 KNOW, OBVIOUSLY THERE WAS SOMETHING

 10 TERRIBLE GOING ON, AND I SAID TO HIM, I

 11 SAID TO ERIK, 'WHAT'S GOING ON HERE?'

 12 "AND HE SAID, 'MY PARENTS WERE

 13 KILLED DURING THE NIGHT,' AND I WAS

 14 DEVASTATED. I FELT SO BAD FOR THEM.

 15 "QUESTION: AFTER HE TOLD YOU THAT,

 16 DID HE TELL YOU ANYTHING ELSE?

 17 "ANSWER: THAT HE NEEDED TO SPEAK

 18 TO MY HUSBAND. AND I TOLD HIM I WOULD GET

 19 AHOLD OF MY HUSBAND, BECAUSE HE'S TOUGH TO

 20 GET AHOLD OF."

 21 ERIK MENENDEZ IS VERY FOCUSED.

 22 LADIES AND GENTLEMEN, IF YOU SHOT YOUR

 23 PARENTS TO DEATH ALL OF A SUDDEN, YOU DIDN'T PLAN TO DO

 24 IT, IT JUST HAPPENED, SOMETHING THAT YOU REALLY DIDN'T

 25 WANT TO DO, IS THAT WHAT YOU WOULD BE DOING? DO YOU

 26 THINK BY THE NEXT MORNING YOU WOULD BE RUNNING AROUND

 27 LOOKING FOR AN ATTORNEY TO FIND A WAY TO GET INTO THE

 28 WILL, TO FIND OUT HOW TO GET INTO THE WILL, HOW TO GET

 1 INTO PROBATE?

 2 OF COURSE NOT. OF COURSE NOT. IF THIS

 3 SILLY STORY ERIK MENENDEZ IS TELLING WAS TRUE, HE WOULD

 4 BE DEVASTATED. IF YOU SHOOT YOUR PARENTS LIKE THAT, IF

 5 YOU DID TO YOUR PARENTS WHAT THESE DEFENDANTS DID TO

 6 THEIR PARENTS, YOU WOULD BE A BASKET CASE THAT MORNING.

 7 YOU WOULD NOT BE OUT LOOKING FOR AN ATTORNEY.

 8 "MRS. WRIGHT, I AM SO GLAD TO FIND YOU. I

 9 NEED TO SPEAK TO YOU HUSBAND."

 10 THAT TELLS YOU SO MUCH ABOUT THESE

 11 DEFENDANTS, TELLS YOU WHAT THEY WERE THINKING ABOUT THAT

 12 DAY. IT TELLS ABOUT THEIR STATE OF MIND, WHAT THEY WERE

 13 THINKING THAT DAY. THEY ARE COLD-BLOODED KILLERS.

 14 AND THE DEFENDANT ALSO CHARACTERIZES THE

 15 CONVERSATION THAT HE HAD WITH KLARA WRIGHT BEFORE HER

 16 HUSBAND RETURNED HOME, BECAUSE SHE MADE IT VERY CLEAR IN

 17 HER TESTIMONY THAT WHEN SHE SAT DOWN AND SPOKE TO ERIK

 18 MENENDEZ BEFORE HER HUSBAND ARRIVED HOME, ERIK MENENDEZ,

 19 SHE SPECIFICALLY RECALLED, WAS INTENT ON FINDING SOMEONE

 20 WHO KNEW ABOUT COMPUTERS, AND HE SPECIFICALLY SAID THAT

 21 THERE MIGHT BE A NEW WILL ON A COMPUTER.

 22 NOW, ERIK MENENDEZ DOESN'T ADMIT THAT ON

 23 THE STAND. ERIK MENENDEZ DENIED THAT WHEN I SPOKE TO

 24 HIM, AND HE MADE IT -- WHEN I QUESTIONED HIM, HE MADE IT

 25 SOUND LIKE, OH, THERE WAS SOME CONVERSATION, AND THAT

 26 WAS AFTER RANDY WRIGHT ARRIVED HOME, AND SO ON AND SO

 27 FORTH.

 28 BUT NO. ERIK MENENDEZ SHOWED HIS HAND EVEN

 1 BEFORE RANDY WRIGHT ARRIVED HOME. HE MADE IT VERY CLEAR

 2 THAT HE WAS CONCERNED ABOUT COMPUTERS AND THE EXISTENCE

 3 OF A NEW WILL.

 4 ONCE AGAIN, IS THAT WHAT YOUR STATE OF MIND

 5 WOULD BE IF YOU SHOT YOUR PARENTS TO DEATH? ABSOLUTELY

 6 NOT.

 7 RANDY WRIGHT THEN GOT HOME, AND RANDY

 8 WRIGHT MADE IT CLEAR IN HIS TESTIMONY THAT THE

 9 DEFENDANTS WERE THERE TO TALK ABOUT PROBATING THE WILL.

 10 HE SAID THAT YEAH, THERE WAS CERTAINLY SMALL TALK. HE

 11 KNEW THEM. HE HAD KNOWN THEIR PARENTS. AND THERE WAS

 12 SMALL TALK, AND THE NATURAL CONDOLENCES, AND "GEE, I'M

 13 SORRY, AND HOW ARE YOU FEELING?"

 14 BUT AFTER ALL THE SMALL TALK WAS OVER WITH,

 15 HE SPECIFICALLY RECALLS THE DEFENDANTS ASKING HIM ABOUT

 16 PROBATING THE WILL. ERIK MENENDEZ DOESN'T TELL THE

 17 STORY THAT WAY.

 18 AGAIN, DIRECT CONTRADICTION BETWEEN ERIK

 19 MENENDEZ AND KLARA WRIGHT AND RANDY WRIGHT. AND YOU

 20 HAVE TO DECIDE WHO TO BELIEVE. ARE YOU GOING TO BELIEVE

 21 ERIK MENENDEZ, WHO HAS A MOTIVE TO LIE, NUMBER ONE; A

 22 PLAIN, PLAIN MOTIVE TO LIE, A LONG HISTORY OF LYING

 23 BEFORE HE WAS ARRESTED, AND TELLING AN UNBELIEVABLE

 24 STORY. AND I WILL GIVE YOU A LONG LIST OF WITNESSES WHO

 25 HE CONTRADICTS.

 26 ARE YOU GOING TO BELIEVE ERIK MENENDEZ, OR

 27 ARE YOU GOING TO BELIEVE THE LONG LIST OF WITNESSES I AM

 28 GOING TO GIVE TO YOU.

 1 DIRECT CONTRADICTION BETWEEN HIM AND KLARA

 2 WRIGHT. DIRECT CONTRADICTION BETWEEN HIM AND RANDY

 3 WRIGHT. ERIK MENENDEZ KNOWS HOW WELL THE WRIGHTS COME

 4 ACROSS AS WITNESSES. SO ERIK MENENDEZ, WHEN HE WAS

 5 TESTIFYING, HE SORT OF DIDN'T WANT TO GO AGAINST THEM,

 6 AND SORT OF SAID: "OH, THEY'RE NICE PEOPLE, AND I

 7 REALLY LIKE THEM, AND I KNOW THEY WOULDN'T LIE. BUT YOU

 8 KNOW, IT DIDN'T HAPPEN THAT WAY."

 9 WELL, YES, IT DID, MR. MENENDEZ. YES, IT

 10 DID HAPPEN THAT WAY. AND KLARA WRIGHT IS VERY CLEAR

 11 ABOUT IT. RANDY WRIGHT IS VERY CLEAR ABOUT IT. DON'T

 12 TRY TO ATTRIBUTE IT TO A MISTAKE.

 13 HE DOESN'T WANT TO TAKE ON RANDY WRIGHT OR

 14 KLARA WRIGHT HEAD-ON, BECAUSE KLARA WRIGHT AND RANDY

 15 WRIGHT HAVE NO AX TO GRIND, AND THEY CAME ACROSS AS VERY

 16 DECENT PEOPLE, AND TRUTHFUL PEOPLE, WHO HAVE NO AX TO

 17 GRIND, DIDN'T WANT TO MAKE UP ANYTHING AGAINST ERIK

 18 MENENDEZ. IF THEY WERE NOT SURE, THEY WOULD HAVE SAID

 19 "I'M NOT SURE THIS IS WHAT HAPPENED."

 20 ERIK MENENDEZ IS LOOKING FOR A WAY -- HOW

 21 DO I GET OUT OF THIS ONE? LET ME COMPLIMENT THEM, TELL

 22 THEM THEY'RE NICE PEOPLE, BUT I REMEMBER IT DIFFERENTLY.

 23 YOU'RE JUST TELLING IT DIFFERENTLY,

 24 MR. MENENDEZ. YOU ARE TELLING IT DIFFERENTLY.

 25 AND I ASK YOU, LADIES AND GENTLEMEN, TO

 26 FIND THAT IT IS KLARA WRIGHT AND RANDY WRIGHT WHO ARE

 27 TELLING IT TRUTHFULLY, AND WHAT RANDY WRIGHT SAID IS

 28 THAT THE DEFENDANTS DID NOT BELIEVE THAT THEY WERE

 1 NECESSARILY OUT OF THE WILL.

 2 YOU WOULD HAVE THE DEFENSE -- THE DEFENSE

 3 SUGGESTED TO YOU, EVEN FROM THE TIME -- SUGGESTED TO YOU

 4 EVEN FROM THE TIME OF OPENING STATEMENTS THAT ERIK AND

 5 LYLE MENENDEZ WOULD NOT HAVE KILLED THEIR PARENTS,

 6 BECAUSE THEY KNEW THEY WERE OUT OF THE WILL. THAT IS

 7 NOT THE TRUTH, LADIES AND GENTLEMEN. THAT IS ABSOLUTELY

 8 NOT THE TRUTH.

 9 YES, THERE WAS A DISPUTE. AND YES, THERE

 10 WAS TALK ABOUT WRITING A NEW WILL. AND WE WILL GET INTO

 11 CARLOS BARALT AND THE INFORMATION THAT HE HAD ABOUT THE

 12 NEW WILL.

 13 BUT DID THE DEFENDANTS BELIEVE THAT THEY

 14 WERE OUT OF THE WILL? THEY ABSOLUTELY DID NOT. THEY

 15 RECOGNIZED THE DANGER. THEY RECOGNIZED THE POSSIBILITY

 16 THAT THERE COULD BE A NEW WILL, AND THAT'S WHY THEY HAD

 17 A TWO-FOLD PLAN RIGHT FROM THE START.

 18 THE FIRST PART OF THE PLAN WAS TO GET THEIR

 19 HANDS ON THE OLD WILL, AND THE SECOND PART OF THE PLAN

 20 WAS TO GET THEIR HANDS ON AND DESTROY THE NEW WILL, IF

 21 ONE INDEED EXISTED. AND THEY DIDN'T KNOW IF ONE EXISTED

 22 FOR SURE.

 23 SO WE KNOW THAT FROM RANDY WRIGHT, BECAUSE

 24 IN THE CONVERSATIONS THAT RANDY WRIGHT HAD WITH THEM, HE

 25 SAID THEY EXPRESSED A CONCERN THAT THERE MIGHT BE A NEW

 26 WILL; THAT THE NEW WILL MIGHT BE ON A COMPUTER, AND THEY

 27 ASKED IF A WILL ON A COMPUTER WOULD BE A VALID LEGAL

 28 DOCUMENT. AND HE TOLD THEM THAT HE WAS NOT -- THAT HE

 1 WOULD HAVE TO RESEARCH IT.

 2 AND LYLE MENENDEZ -- HE SPECIFICALLY SPOKE

 3 ABOUT LYLE MENENDEZ, AND HE SAID NEVER SAID THAT HE WAS

 4 CUT OUT OF THE WILL, ONLY THAT HIS FATHER HAD BEEN

 5 THINKING ABOUT CHANGING THE WILL. AND THEN HE SAID THAT

 6 ERIK AND LYLE MENENDEZ ACTUALLY CARRIED THE FAMILY SAFE

 7 OVER TO HIS HOME THAT VERY NIGHT.

 8 NOW IMAGINE THAT, LADIES AND GENTLEMEN.

 9 YOU SHOOT YOUR PARENTS TO DEATH AT POINT BLANK RANGE IN

 10 THEIR HEADS, AND WITHIN 24 HOURS YOU'RE CARRYING THEIR

 11 SAFE, POSSIBLY CONTAINING THEIR WILL, OVER TO THE HOME

 12 OF A PROBATE ATTORNEY.

 13 WHAT DOES THAT TELL YOU? I MEAN, IF THERE

 14 WAS ANYTHING THAT REVEALS THE DEFENDANTS' STATE OF MIND

 15 AT THAT PERIOD OF TIME, IT IS THAT FACT.

 16 NOW, THERE IS A LOT OF AVOIDANCE OF

 17 RESPONSIBILITY IN THIS CASE. YOU HEARD ERIK MENENDEZ

 18 MANY TIMES THROUGHTOUT HIS TESTIMONY TRY TO AVOID

 19 RESPONSIBILITY FOR BIG THINGS AND SMALL, AND YOU HEARD

 20 THE DEFENSE ATTORNEYS IN THE QUESTIONS THAT THEY ASKED,

 21 AND IN THE ARGUMENT THAT THEY WILL SOON BE MAKING TO

 22 YOU, SUGGEST AN AVOIDANCE OF RESPONSIBILITY.

 23 AND I HAVE A LONG LIST, WHICH YOU WILL FIND

 24 INTERESTING, OF AVOIDANCE OF RESPONSIBILITY IN THIS CASE

 25 ABOUT BIG THINGS AND SMALL.

 26 BUT IN REGARD TO THIS AREA ALONE, THEY TRY

 27 TO AVOID RESPONSIBILITY. DEFENSE COUNSEL TRIES TO AVOID

 28 RESPONSIBILITY HERE BY SUGGESTING THAT THE DEFENDANTS

 1 BROUGHT THE SAFE TO RANDY WRIGHT'S HOME ONLY BECAUSE

 2 RANDY WRIGHT SAID, "BRING THE SAFE TO MY HOME."

 3 WELL, THAT'S TRUE, HE DID SAY THAT. BUT

 4 PUT IT INTO CONTEXT. WHY WERE THEY THERE. WHY DID HE

 5 SAY IT? I MEAN, IT'S VERY CLEAR THAT THE DEFENDANTS

 6 WANTED RANDY WRIGHT TO PROBATE THE WILL AT THAT POINT.

 7 THEY ASKED HIM IF HE WOULD, IF HE COULD, AND HE

 8 INDICATED THAT THAT IS POSSIBLE.

 9 THEY JUST WENT THERE TO DISCUSS ABOUT THE

 10 EXISTENCE OF THE WILL, AND THEY TOLD RANDY WRIGHT THAT

 11 IT MIGHT BE IN THE FAMILY SAFE. LYLE MENENDEZ

 12 VOLUNTEERED THAT HE COULD GO GET IT, AND AT THAT POINT

 13 IT WAS RANDY WRIGHT WHO SAID, "WELL THEN, BRING IT TO MY

 14 PLACE." THAT'S TRUE. RANDY WRIGHT DID TECHNICALLY SAY

 15 "BRING THE SAFE TO MY PLACE."

 16 BUT WHY DID HE SAY IT? HE SAID IT BECAUSE

 17 THAT WAS THE REASON WHY THE DEFENDANTS WERE THERE. THEY

 18 WANTED THE WILL. THEY WANTED IT PROBATED. THAT WAS THE

 19 PURPOSE OF THE VISIT, AND IT WAS THEIR RESPONSIBILITY

 20 FOR BRINGING THAT SAFE OVER TO HIS HOME.

 21 LADIES AND GENTLEMEN, ONCE AGAIN, IMAGINE

 22 YOURSELF IN THAT SITUATION. IS THAT WHAT YOU WOULD BE

 23 UP TO WITHIN 24 HOURS OF SHOOTING YOUR PARENTS IN THE

 24 HEADS, RUNNING AFTER THE MONEY? ONLY IF YOU WERE AFTER

 25 THEIR MONEY IN THE FIRST PLACE, LADIES AND GENTLEMEN.

 26 NOT IF YOU HAD KILLED THEM OUT OF NECESSITY OR OUT OF

 27 FEAR.

 28 AND THEN WHAT DID ERIK MENENDEZ DO WITH

 1 THAT SAFE? HE BABYSAT THAT SAFE FOR TWO DAYS. HE

 2 STAYED IN THE HOUSE WITH THAT SAFE, SLEPT IN THE SAME

 3 ROOM WITH THAT SAFE. AND THEN AFTER THE SAFE WAS OPENED

 4 AND AFTER THE SAFE WAS REMOVED, HE DIDN'T GO BACK TO THE

 5 WRIGHTS ANY MORE.

 6 SO WHAT DOES THAT TELL YOU? WAS THIS A

 7 FRIENDLY VISIT? THIS WASN'T A FRIENDLY VISIT. HE WAS

 8 THERE ON BUSINESS, AND AS SOON AS THE BUSINESS OF THE

 9 SAFE WAS TAKEN CARE OF, HE WASHED HIS HANDS OF KLARA

 10 WRIGHT AND RANDY WRIGHT.

 11 MORE REFERENCE TO THE MAFIA. NOT ONLY DO

 12 WE HAVE SERGEANT EDMONDS AND PERRY BERMAN TELLING US

 13 ABOUT HOW LYLE MENENDEZ WAS POINTING HIS FINGER AT THE

 14 MAFIA, BUT EVEN RANDY WRIGHT SAID LYLE MENENDEZ WAS

 15 CLEARLY POINTING THE FINGER AT THE MAFIA.

 16 ONCE AGAIN, COINCIDENCE OR PART OF A PLAN?

 17 THE LIFE INSURANCE. HE SAID, RANDY WRIGHT

 18 SAID, THAT LYLE MENENDEZ WAS ALSO AWARE OF A LIFE

 19 INSURANCE POLICY THAT WAS IN EFFECT FOR HIMSELF FOR

 20 ABOUT $300,000.

 21 NOW, LADIES AND GENTLEMEN, THEY CALLED

 22 MARTHA CANO, AND WITHOUT FLIPPING OVER THE CHART, LET ME

 23 JUST MAKE BRIEF REFERENCE TO HER TESTIMONY AT THIS TIME.

 24 THEY CALLED MARTHA CANO TO TESTIFY TO THE FACT THAT ERIK

 25 AND LYLE MENENDEZ THOUGHT THEY WERE OUT OF THE WILL.

 26 SHE SAYS THAT THEY TOLD HER THAT. AND ERIK AND LYLE

 27 MENENDEZ DIDN'T KNOW ABOUT THE LIFE INSURANCE POLICY.

 28 SO THROUGH AUNT MARTHA, THE DEFENDANTS SEEK

 1 TO REMOVE A MOTIVE FOR KILLING THEIR PARENTS.

 2 WELL, LADIES AND GENTLEMEN, WHAT AUNT

 3 MARTHA TESTIFIED TO IN THIS COURTROOM CAN'T POSSIBLY BE

 4 THE TRUTH, BECAUSE WE KNOW THAT AUNT MARTHA DIDN'T

 5 ARRIVE UNTIL LATER IN THE WEEK. THEY WERE OVER AT RANDY

 6 WRIGHT'S HOUSE THE VERY NEXT DAY, AND THEY WERE TELLING

 7 RANDY WRIGHT THERE MIGHT BE A NEW WILL. "IT'S POSSIBLE

 8 WE'RE OUT OF THE NEW WILL, IF THERE IS A NEW WILL." AND

 9 LYLE MENENDEZ ALSO SPOKE ABOUT THE LIFE INSURANCE POLICY

 10 OF $300,000.

 11 SO, LADIES AND GENTLEMEN, THIS IS THE FIRST

 12 STATEMENT OF THE DEFENDANTS IMMEDIATELY FOLLOWING THE

 13 MURDER. AND SO IT MAKES NO SENSE. AND AUNT MARTHA JUST

 14 SHOULDN'T BE BELIEVED WHEN IT COMES TO HER CLAIM, HER

 15 UNCORROBORATED CLAIM, THAT LATER IN THE WEEK LYLE

 16 MENENDEZ AND ERIK MENENDEZ SAID: "GEE, AUNT MARTHA,

 17 WE'RE OUT OF THE WILL." THAT JUST COULDN'T HAVE

 18 HAPPENED, LADIES AND GENTLEMEN, BECAUSE IT'S

 19 CONTRADICTED BY RANDY WRIGHT.

 20 IT'S ALSO INCONSISTENT WITH THE TESTIMONY

 21 OF BRIAN ANDERSEN AND CARLOS BARALT, BECAUSE CARLOS

 22 BARALT WAS THE EXECUTOR OF THE ESTATE. BRIAN ANDERSEN

 23 WAS THERE, AND VERY MUCH INVOLVED IN THE SEARCH FOR THE

 24 WILL. AND AT NO TIME DID THE DEFENDANTS EVER SAY

 25 ANYTHING LIKE THAT TO THEM. WHY WOULDN'T THEY EVEN

 26 MENTION THAT TO CARLOS BARALT, IF THEY FELT THEY WERE

 27 OUT OF THE WILL? WHY WOULDN'T THEY MENTION THAT TO HIM?

 28 HE SAID, CARLOS BARALT SAID, IN THE ENTIRE

 1 TIME THAT HE WAS IN CALIFORNIA, ERIK AND LYLE MENENDEZ

 2 NEVER TOLD HIM THAT THEY BELIEVED THAT THEY WERE OUT OF

 3 THE WILL. NOW, DON'T YOU THINK THAT WOULD BE SOMETHING

 4 THAT WOULD COME UP AS THEY'RE RUNNING AROUND LOOKING FOR

 5 THE WILL?

 6 BEAR IN MIND, IT'S NOT AS IF THEY JUST ALL

 7 WENT THEIR SEPARATE WAYS HERE IN CALIFORNIA. REMEMBER

 8 WHAT THEY WERE DOING. THEY WERE ACTIVELY INVOLVED IN

 9 THE SEARCH FOR THE WILL AND THE SAFE. THEY WERE

 10 ACTIVELY INVOLVED IN THE SEARCH FOR THE WILL IN THE

 11 SAFETY DEPOSIT BOX. THEY WERE ALL TOGETHER FOR THESE

 12 INCIDENTS. AND IF THEY WERE ALL ACTIVELY INVOLVED IN

 13 THE SAME PURSUIT TOGETHER, DON'T YOU THINK AT SOME POINT

 14 IN TIME THEY WOULD HAVE SAID TO HIM: "OH, BY THE WAY,

 15 UNCLE CARLOS, WE ARE NOT IN THE WILL."

 16 THAT WILL CONVERSATION NEVER CAME UP. WHY

 17 DID IT NOT COME UP? FOR THE REASON I TOLD YOU. THEY

 18 NEVER BELIEVED THEY WERE OUT OF THE WILL.

 19 AND THEN ERIK MENENDEZ, WHEN HE TESTIFIED

 20 ON THIS WITNESS STAND, HE SUGGESTED HE MIGHT HAVE BEEN

 21 OUT OF THE WILL. I SAID, "YOU NEVER RULED OUT THE

 22 POSSIBILITY THAT YOU WERE OUT OF THE WILL, DID YOU?"

 23 AND HE SAID "NO." HE ADMITTED THAT.

 24 LADIES AND GENTLEMEN, THERE IS NO REASON TO

 25 BELIEVE THAT THE DEFENDANTS EVER THOUGHT THAT THEY WERE

 26 ABSOLUTELY OUT OF THE WILL, AND THERE IS EVERY REASON TO

 27 BELIEVE THAT THEY VERY MUCH WANTED TO INHERIT THE MONEY,

 28 AND THAT THEY WERE GOING TO INHERIT THE MONEY. AND BUT

 1 FOR THE ARREST IN THIS CASE, THAT'S EXACTLY WHAT WOULD

 2 HAVE HAPPENED.

 3 ONCE AGAIN, THEY WERE ABSOLUTELY RIGHT.

 4 YOU RECALL MR. BARALT FURTHER TESTIFIED THAT HE IS THE

 5 BROTHER-IN-LAW TO JOSE MENENDEZ. HE SPOKE ABOUT THE

 6 VALUE OF THE ESTATE, AND THERE HAS BEEN VARYING

 7 ESTIMATES OF THE VALUE OF THE ESTATE.

 8 BUT REGARDLESS, THE SPECIFIC NUMBER OF

 9 MILLIONS DOESN'T MATTER. IT WAS CLEAR THAT IT WAS IN

 10 THE MILLIONS. WHETHER IT'S 5 OR 14 IS NEITHER HERE NOR

 11 THERE. PEOPLE HAVE KILLED FOR A LOT LESS THAN THAT.

 12 AND HE ALSO MADE IT VERY CLEAR IN HIS

 13 TESTIMONY THAT THE DEFENDANTS WOULD NOT HAVE INHERITED

 14 THE MONEY IF ONLY JOSE MENENDEZ HAD BEEN KILLED; THAT

 15 KITTY MENENDEZ WAS NEXT IN LINE. ERIK AND LYLE MENENDEZ

 16 STOOD TO INHERIT THAT MONEY ONLY IN THE EVENT OF THE

 17 DEATH OF BOTH THE MOTHER AND THE FATHER.

 18 AND I WOULD SUBMIT TO YOU, LADIES AND

 19 GENTLEMEN, IT TELLS YOU WHY KITTY MENENDEZ HAD TO BE

 20 KILLED IN THIS CASE.

 21 SO WHEN THEY TALK ABOUT IT TO DR. OZIEL IN

 22 SOMEWHAT SELF-SERVING TERMS, PORTRAYING THEMSELVES AS,

 23 IN THEIR OWN MINDS, SOMEWHAT MORE HEROIC OR BRAVE

 24 BECAUSE THEY WERE ACTING OUT OF SOME CONCERN FOR THEIR

 25 MOTHER, YOU KNOW THAT THEY'RE JUST GIVING A VERSION THAT

 26 MAKES THEM LOOK AS GOOD AS POSSIBLE. IT'S THE BEST

 27 VERSION THEY CAN COME UP WITH AT THE TIME.

 28 AND IN FACT, LADIES AND GENTLEMEN, THEY

 1 KILLED THEIR MOTHER FOR THE SIMPLE REASON THAT THEY HAD

 2 TO IF THEY WERE TO INHERIT THE MONEY.

 3 CARLOS BARALT ALSO SAID NOT ONLY DID THE

 4 DEFENDANTS IN THE ENTIRE TIME THAT HE WAS IN CALIFORNIA

 5 NOT EXPRESS ANY CONCERN ABOUT BEING OUT OF THE WILL, BUT

 6 WHEN THEY FINALLY DID FIND THE WILL, YOU WILL RECALL

 7 THAT HE WENT OVER TO THE HOME WITH LYLE MENENDEZ. HE

 8 WAS THERE AT THE TIME THAT HE LYLE MENENDEZ READ IT IN

 9 HIS PRESENCE, AND HE SAID HE SAW NO SURPRISE ON THE FACT

 10 OF LYLE MENENDEZ. NO INDICATION OF SURPRISE. ONCE

 11 AGAIN, CONSISTENT WITH THE TESTIMONY OF RANDY WRIGHT.

 12 THE DEFENDANT KNEW HE WAS IN THAT WILL.

 13 HE DID SAY THAT JOSE MENENDEZ HAD TOLD HIM

 14 THAT HE WANTED TO WRITE A NEW WILL, AND HE ALSO SAID

 15 JOSE MENENDEZ TOLD HIM, HE SAID: "I TOLD MY SONS THAT

 16 THEY WERE OUT OF THE WILL."

 17 LISTEN TO THAT LANGUAGE VERY CAREFULLY. "I

 18 TOLD MY SONS THAT THEY WERE OUT OF THE WILL." AND IT'S

 19 VERY DIFFERENT FROM SAYING: "I HAVE WRITTEN A NEW WILL,

 20 AND I TOLD MY SONS THAT THEY ARE NO LONGER IN THE NEW

 21 WILL."

 22 WHAT CARLOS BARALT SPECIFICALLY RECALLS IS

 23 THAT JOSE MENENDEZ WANTED TO WRITE THEM OUT OF THE WILL,

 24 AND SAID, "I TOLD MY SONS THEY'RE OUT OF THE WILL."

 25 YOU USE THAT PHRASE, "YOU'RE OUT OF THE

 26 WILL," IT COULD BE AN INDICATION OF NOT THAT THERE IS A

 27 NEW, CURRENTLY EXISTING WILL, AND YOU ARE NO LONGER

 28 INCLUDED IN THAT WILL, BUT THAT FOR ALL PRACTICAL

 1 PURPOSES YOU ARE NO LONGER GOING TO INHERIT, AS FAR AS I

 2 AM CONCERNED.

 3 SO JOSE MENENDEZ NEVER SPECIFICALLY TOLD

 4 HIS SONS THERE IS A NEW WILL, AND YOU ARE OUT OF THE NEW

 5 WILL.

 6 SO WE KNOW FROM MANY SOURCES THAT ERIK

 7 MENENDEZ AND LYLE MENENDEZ STILL BELIEVED THAT THEY WERE

 8 EITHER IN THE OLD WILL, OR THAT EVEN IF THERE WAS A NEW

 9 WILL, THEY WEREN'T SURE WHETHER OR NOT THEY WERE OUT OF

 10 THE NEW WILL. WE KNOW THAT NOT ONLY FROM RANDY WRIGHT,

 11 BUT FROM THE OBSERVATIONS OF CARLOS BARALT AND BRIAN

 12 ANDERSEN. AND AS I SAID, EVEN ERIK MENENDEZ ON THE

 13 STAND CONCEDED HE NEVER RULED HIMSELF AS NECESSARILY OUT

 14 OF THE WILL.

 15 CARLOS BARALT ALSO PROVIDED US WITH A

 16 LITTLE BACKGROUND OF -- A LITTLE BACKGROUND OF THE

 17 FAMILY, AND HE SPOKE ABOUT HOW JOSE MENENDEZ WAS VERY

 18 FRUSTRATED WITH BOTH HIS SONS. AND THIS IS SOMETHING

 19 THAT I MENTIONED EARLIER IN MY DISCUSSION WITH YOU. AND

 20 HOW FRUSTRATED HE WAS WITH LYLE MENENDEZ OVER HIS

 21 SPENDING.

 22 AND HE WAS ALSO AWARE -- CARLOS BARALT WAS

 23 ALSO AWARE OF LYLE MENENDEZ BEING SUSPENDED FOR THE

 24 PLAGERISM INCIDENT.

 25 CARLOS BARALT ALSO TESTIFIED TO A LITTLE

 26 BIT OF THE SPENDING THAT THE DEFENDANTS DID FOLLOWING

 27 THE KILLINGS. HE SAID HE LOANED A HALF MILLION DOLLARS

 28 TO LYLE MENENDEZ, A LOAN THAT CAME FROM THE ESTATE, TO

 1 ALLOW LYLE MENENDEZ TO PURCHASE THE CHUCK'S SPRING

 2 STREET CAFE.

 3 SO NOW WE HAVE LYLE MENENDEZ FULFILLING ONE

 4 OF HIS OTHER DREAMS, WHICH WAS TO RUN THAT LITTLE

 5 RESTAURANT IN PRINCETON WHICH HE PURCHASED FOR HALF A

 6 MILLION DOLLARS. LYLE MENENDEZ WAS FINALLY PLAYING THE

 7 ROLE OF JOSE MENENDEZ, THE ENTREPRENEUR.

 8 CARLOS BARALT TOLD US A LITTLE BIT ABOUT

 9 JOSE MENENDEZ, BECAUSE HE IS THE ONE PERSON WHO KNEW

 10 JOSE MENENDEZ PERHAPS BETTER THAN ANYONE ELSE.

 11 HE SAID THAT HE KNEW JOSE MENENDEZ FROM THE

 12 TIME HE WAS 15 YEARS OLD UP UNTIL THE TIME OF HIS DEATH

 13 AT THE AGE OF 45. HE KNEW JOSE MENENDEZ FOR 30 YEARS.

 14 AND IN THAT 30 YEARS, HE WAS HIS BROTHER-IN-LAW FOR A

 15 LARGE PART OF THAT TIME, AND HE WORKED WITH HIM IN

 16 VARIOUS COMPANIES, AND HE LIVED NEARBY FOR MANY YEARS.

 17 AND NO ONE KNEW JOSE MENENDEZ BETTER THAN CARLOS BARALT.

 18 AND HE SAID HE NEVER SAW ANY INDICATION THAT HE MOLESTED

 19 HIS SONS, OR HAD ANY BEHAVIOR ALONG THOSE LINES.

 20 HOWARD WITKIN. NOW THAT WE KNOW THAT THE

 21 DEFENDANTS WERE TRYING GET THEIR HANDS ON THE OLD WILL,

 22 AND DID THEIR BEST TO DO SO, INCLUDING CARRYING THE SAFE

 23 OVER TO THE HOME OF RANDY WRIGHT, THEY ALSO WANTED TO

 24 DESTROY THE NEW WILL, IF ONE EXISTED. AND THAT'S WHERE

 25 HOWARD WITKIN COMES IN.

 26 HOWARD WITKIN TESTIFIED THAT HE WORKS FOR A

 27 COMPUTER FIRM, A COMPUTER CONSULTANT FIRM, OR SOMETHING

 28 LIKE THAT. HE RECEIVED A CALL ON ABOUT AUGUST THE 31ST

 1 OF 1989, WHICH WOULD BE ABOUT TEN OR ELEVEN DAYS AFTER

 2 THE KILLING, AND THE CALL WAS FOR HIM TO RESPOND TO THE

 3 HOME OF THE MENENDEZ RESIDENCE. AND WHILE HE WAS THERE,

 4 HE SPOKE TO LYLE MENENDEZ, WHO TOLD HIM THAT HE WANTED

 5 MR. WITKIN TO DO A SEARCH ON THE HOME COMPUTER, TO LOOK

 6 UNDER FOUR NAMES AS FOLLOWS: ERIK, LYLE, WILL AND

 7 MENENDEZ.

 8 AND WHEN HE TOLD LYLE MENENDEZ THAT HE

 9 COULDN'T FIND ANY OF THOSE ENTRIES ON THE COMPUTER, LYLE

 10 MENENDEZ TOLD HIM: "VERY GOOD." LYLE MENENDEZ WAS

 11 PLEASED WITH THAT. AND LYLE MENENDEZ THEN ASKED HIM IF

 12 HE COULD ERASE ANYTHING THAT WAS ON THE COMPUTER AND

 13 MAKE IT LOOK LIKE NO ONE HAD BEEN THERE. HE ASKED

 14 MR. WITKIN TO DO THAT. MR. WITKIN DID IT, AND HE PAID

 15 MR. WITKIN FOR HIS SERVICE.

 16 SO, I WOULD SUBMIT, LADIES AND GENTLEMEN,

 17 THAT WHAT THIS SHOWS, ONCE AGAIN, WHAT IS ON THE MIND OF

 18 THE DEFENDANT TEN DAYS AFTER SHOOTING HIS PARENTS TO

 19 DEATH: A DESIRE TO DESTROY ANY EXISTENCE OF A NEW WILL,

 20 IF ONE -- EVIDENCE OF A NEW WILL, IF ONE IN FACT

 21 EXISTED. HE HAD THE OLD WILL. HE KNEW HE INHERITED

 22 UNDER THE OLD WILL, AND NOW HE WANTED TO MAKE SURE THAT

 23 NOTHING WAS GOING TO RUIN THAT.

 24 MARZI EISENBERG. I DON'T HAVE THESE

 25 NECESSARILY IN ORDER HERE. MARZI EISENBERG WAS A

 26 WITNESS WHO -- I'LL GET BACK TO HER LATER.

 27 LET ME DISCUSS GRANT WALKER.

 28 GRANT WALKER WAS A WITNESS WHO TESTIFIED

 1 THAT HE WAS A POOL MAN, AND HE ESTABLISHED TWO THINGS

 2 THROUGH HIS TESTIMONY. HE SPOKE ABOUT OBSERVING THE

 3 DEFENDANTS AND THE VICTIMS ON SATURDAY. THIS WOULD BE

 4 THE DAY BEFORE THE KILLINGS.

 5 HE RECALLED THAT THE DEFENDANTS WERE

 6 PLAYING TENNIS ON SATURDAY, AND HE SPECIFICALLY RECALLS

 7 THE BEHAVIOR OF THE DEFENDANTS. AND HE DESCRIBED THE

 8 DEFENDANTS AS BEING ANGRY AND DISRESPECTFUL TOWARD THEIR

 9 PARENTS. THEY WERE TALKING TO THEIR PARENTS IN AN ANGRY

 10 AND DISRESPECTFUL TONE, USING SWEAR WORDS TOWARD THEM.

 11 THIS IS SUPPOSED TO BE ON SATURDAY, LADIES

 12 AND GENTLEMEN. AND HERE IS A CONFLICT WITH THE STORY

 13 TOLD BY THE DEFENDANTS. THE DEFENDANTS WOULD HAVE YOU

 14 BELIEVE THAT AS OF THAT THURSDAY, THE PRECEDING

 15 THURSDAY, THEY WERE IN SOME SORT OF A FEAR THAT THE

 16 PARENTS MIGHT KILL THEM, AND SATURDAY THEY WENT SHOPPING

 17 FOR ADDITIONAL AMMUNITION AFTER THEY HAD PURCHASED THE

 18 SHOTGUNS ON FRIDAY.

 19 DO YOU THINK, LADIES AND GENTLEMEN, THAT IF

 20 YOU WERE IN FEAR THAT YOUR PARENTS WERE GOING TO KILL

 21 YOU, AND YOU WENT OUT SHOPPING FOR SHOTGUNS ON FRIDAY,

 22 THAT SATURDAY MORNING YOU'D BE OUT ON THE TENNIS COURT

 23 SWEARING AT THEM?

 24 LADIES AND GENTLEMEN, THIS IS ANOTHER

 25 WITNESS WHO DIRECTLY CONTRADICTS ERIK MENENDEZ, BECAUSE

 26 WHAT DOES ERIK MENENDEZ SAY ABOUT THIS? IT JUST DIDN'T

 27 HAPPEN. THAT'S ALL ERIK MENENDEZ CAN SAY ABOUT IT. IT

 28 JUST DIDN'T HAPPEN.

 1 SO IT COMES DOWN TO A CREDIBILITY CALL.

 2 ARE YOU GOING TO BELIEVE THE POOL MAN, WHO HAS NO AX TO

 3 GRIND, OR ARE YOU GOING TO BELIEVE THE KILLER OVER HERE,

 4 WHO SHOT HIS PARENTS TO DEATH, WHO LIED EVER SINCE THE

 5 DAY HE SHOT HIS PARENTS TO DEATH, AND WHO TOLD THIS

 6 INCREDIBLE STORY IN THIS COURTROOM?

 7 NOW, MR. WALKER WAS ATTACKED BY THE DEFENSE

 8 AS SEEKING TO -- SOMEONE WHO WAS SEEKING TO GET INVOLVED

 9 IN A HIGH PROFILE CASE, SAW IT ON TELEVISION AND DECIDED

 10 HE WAS GOING TO INJECT HIMSELF INTO THE PROCEEDINGS.

 11 BUT IF THERE IS ANY WITNESS THAT I WISH WE

 12 HAD ON VIDEOTAPE, LADIES AND GENTLEMEN, I WISH IT WERE

 13 MR. WALKER. BECAUSE THAT ONE MAN WAS UP HERE, AND IF

 14 YOU WOULD LOOK AT THAT MAN'S FACE, YOU COULD SEE ON THAT

 15 MAN'S FACE THAT MAN DIDN'T WANT TO BE HERE. THAT MAN

 16 DIDN'T WANT TO SIT UP HERE ON THE WITNESS STAND AND BE

 17 CROSS-EXAMINED BY LESLIE ABRAMSON. IF THAT MAN DIDN'T

 18 HAVE TO BE HERE, THAT MAN WOULD NOT BE HERE.

 19 SO, THIS WAS NOT A MAN WHO WAS INJECTING

 20 HIMSELF INTO THE PROCEEDINGS FOR SOME ULTERIOR MOTIVE.

 21 THIS IS A MAN, HE IS A DECENT MAN, A POOL MAN, WHO

 22 SIMPLY REMEMBERS WHAT HE REMEMBERS. AND HE CAME HERE TO

 23 TELL YOU WHAT HE REMEMBERS. AND IT'S IN CONTRADICTION

 24 TO THE TESTIMONY OF ERIK MENENDEZ.

 25 MARY MAHAR WAS A WITNESS WHO WE CALLED

 26 BECAUSE OF THE SPENDING OF THE DEFENDANTS IMMEDIATELY

 27 AFTER THE KILLING OF THEIR PARENTS.

 28 SHE SAID THAT SHE WORKED AT SLAVICK'S

 1 JEWELRY ON SANTA MONICA BOULEVARD IN CENTURY CITY, AND

 2 SHE SAID SHE SAW BOTH DEFENDANTS, WHO APPEARED TO BE

 3 LOOKING AT WATCHES TOGETHER, AND THEY WERE TRYING THEM

 4 ON. LYLE MENENDEZ PURCHASED THREE ROLEX WATCHES IN

 5 ADDITION TO MONEY CLIPS, PAYING ALMOST $10,000 FOR THE

 6 SOLID GOLD PRESIDENTIAL MODEL, $4700 DOLLARS FOR THE

 7 STAINLESS STEEL SUB-MARINER WATCHES, AND ANOTHER $390

 8 FOR MONEY CLIPS, FOR A TOTAL OF -- I THINK IT COMES OUT

 9 TO ABOUT $15,000.

 10 WITHIN FOUR DAYS OF SHOOTING THEIR PARENTS

 11 TO DEATH, LADIES AND GENTLEMEN, THESE TWO DEFENDANTS ARE

 12 ACTIVELY SPENDING THE MONEY ON EXPENSIVE JEWELRY.

 13 LYLE MENENDEZ, YOU WILL RECALL, FINALLY

 14 GETS HIS LIFELONG AMBITION FULFILLED. DO YOU REMEMBER

 15 THAT? ERIK MENENDEZ TOLD DETECTIVE ZOELLER BACK ON

 16 SEPTEMBER THE 17TH OF 1989 IN NEW JERSEY THAT THAT WAS

 17 HIS LIFELONG AMBITION, TO HAVE A ROLEX WATCH.

 18 HOW LONG DID IT TAKE FOR HIM TO GET THAT,

 19 AFTER PUTTING A HOLE IN THE BACK OF HIS FATHER'S HEAD?

 20 FOUR DAYS. FOUR DAYS LATER HE'S OUT THERE FULFILLING

 21 HIS LIFELONG AMBITION.

 22 WHAT DOES THAT TELL YOU ABOUT WHY LYLE

 23 MENENDEZ REALLY SHOT HIS FATHER TO DEATH, LADIES AND

 24 GENTLEMEN? THAT TELLS YOU SOMETHING.

 25 TALK ABOUT AVOIDANCE OF RESPONSIBILITY. I

 26 ASKED ERIK MENENDEZ WHILE HE WAS ON THE WITNESS STAND:

 27 "WHY DID YOU PURCHASE GOLD MONEY CLIPS?"

 28 AND LYLE MENENDEZ SAID -- I MEAN, NOT LYLE

 1 MENENDEZ, I ASKED ERIK MENENDEZ. AND ERIK MENENDEZ

 2 SAID: "BECAUSE THAT'S WHAT THEY WERE SELLING." AS IF

 3 IT'S THE RESPONSIBILITY OF THE PERSON WHO'S SELLING IT.

 4 IT'S NOT HIS RESPONSIBILITY FOR BUYING IT. THEY WERE

 5 SELLING THE MONEY CLIPS, AND HE BOUGHT IT FOR THAT

 6 REASON.

 7 ANY WAY TO AVOID RESPONSIBILITY, LADIES AND

 8 GENTLEMEN. YOU CAN BE SURE THAT ERIK MENENDEZ WILL TRY

 9 TO FIND A WAY. BLAME IT ON THE PERSON WHO WAS SELLING

 10 THE MONEY CLIPS, DON'T BLAME IT ON HIM. HE JUST BOUGHT

 11 IT.

 12 BRIAN AMIR ESLAMINIA.

 13 MR. ESLAMINIA SAID THAT HE IS A FRIEND OF

 14 ERIK MENENDEZ. HE KNEW ERIK MENENDEZ FROM BEVERLY HILLS

 15 HIGH SCHOOL, AND AFTER HE LEARNED THAT ERIK MENENDEZ'

 16 PARENTS HAD BEEN KILLED, HE FELT SYMPATHETIC TOWARD HIM.

 17 AND AFTER HIS ARREST, HE BEGAN TO VISIT ERIK MENENDEZ IN

 18 COUNTY JAIL. ONLY THEN DID HE MEET LYLE MENENDEZ. AND

 19 BELIEVING THAT THE TWO DEFENDANTS WERE INNOCENT OF THE

 20 CHARGES AGAINST THEM, BRIAN ESLAMINIA OFFERED TO DO

 21 WHATEVER HE COULD TO ASSIST THEM. AND HE CANDIDLY

 22 ADMITTED ON THE WITNESS STAND THAT HE WOULD COMMIT

 23 PERJURY FOR THEM, IF THAT'S WHAT IT CAME DOWN TO.

 24 HERE IS A PERSON WHO WAS WILLING TO LIE

 25 FALSELY UNDER OATH AND COMMIT A CRIME TO HELP THE

 26 DEFENDANTS' EFFORTS IN THIS CASE.

 27 NOW, MR. ESLAMINIA HAS GIVEN INCONSISTENT

 28 STATEMENTS, AND THAT PRESENTS A PROBLEM. WHAT DO YOU DO

 1 WITH A WITNESS LIKE MR. ESLAMINIA, WHO TELLS ONE THING

 2 TO THE POLICE, WHO TELLS ONE THING TO DETECTIVE ZOELLER,

 3 AND NOW TELLS A TOTALLY DIFFERENT STORY?

 4 LADIES AND GENTLEMEN, WE PRESENTED THE

 5 TESTIMONY OF BRIAN ESLAMINIA TO YOU FOR A COUPLE OF

 6 REASONS. NO. 1, BECAUSE THERE IS CORROBORATION. THERE

 7 IS A LETTER WHICH CORROBORATES THE STORY THAT HE IS

 8 TELLING, AND BECAUSE WHEN YOU LOOK AT THE STATEMENTS

 9 THAT HE GAVE TO DETECTIVE ZOELLER, YOU LOOK AT THEM IN

 10 THE CHRONOLOGY AND HOW THOSE STATEMENTS CAN -- HOW THOSE

 11 STATEMENTS CAME ABOUT, AND WHAT HIS MOTIVATION WAS FOR

 12 GIVING THOSE STATEMENTS. I THINK YOU CAN FORM SOME

 13 PRETTY RELIABLE CONCLUSIONS CONCERNING WHAT REALLY TOOK

 14 PLACE IN THIS CASE, EVEN THOUGH THIS IS A SLIPPERY

 15 CHARACTER. AND I WILL BE THE FIRST ONE TO TELL YOU THAT

 16 MR. BRIAN ESLAMINIA IS A SLIPPERY CHARACTER.

 17 BUT WE HAVE CORROBORATION OF WHAT HE IS

 18 SAYING. WE HAVE A LETTER FROM LYLE MENENDEZ -- AND THIS

 19 IS IN THE HANDWRITING OF LYLE MENENDEZ -- AND I BELIEVE

 20 THERE WAS A STIPULATION IN THIS CASE THAT THIS WAS, IN

 21 FACT, THE HANDWRITING OF LYLE MENENDEZ. SO IT'S A

 22 PROVEN FACT THAT LYLE MENENDEZ WROTE THIS LETTER, AND

 23 THAT'S WHAT SUPPORTS THE CREDIBILITY OF BRIAN ESLAMINIA.

 24 BRIAN ESLAMINIA TOLD DETECTIVE ZOELLER THAT

 25 HE MET WITH BOTH ERIK MENENDEZ AND LYLE MENENDEZ IN

 26 COUNTY JAIL, AND THEY HAD A DISCUSSION ABOUT

 27 MR. ESLAMINIA TESTIFYING TO A FABRICATED STORY, IN WHICH

 28 ERIK AND LYLE MENENDEZ CAME TO HIM THE DAY BEFORE THE

 1 KILLINGS, SEEKING A HANDGUN FOR PROTECTION.

 2 NOW, FIRST OF ALL, WHY WOULD SUCH A STORY

 3 BE FABRICATED? HERE'S WHY. THIS WHOLE BUSINESS ABOUT

 4 USING THE SHOTGUNS FOR THE KILLINGS HAS A PROBLEM WITH

 5 IT, AND THAT IS WHY WOULD YOU PURCHASE A SHOTGUN IF YOU

 6 INTEND TO PROTECT YOURSELF? IT'S SUCH AN AWKWARD WEAPON

 7 TO PROTECT YOURSELF.

 8 THE DEFENDANTS ARE STUCK WITH THE SHOTGUNS,

 9 BECAUSE THEY DID IN FACT PURCHASE SHOTGUNS, AND THEY DID

 10 IN FACT KILL THEIR PARENTS WITH THE SHOTGUNS. AND WHY?

 11 BECAUSE, AS LYLE MENENDEZ SAID, LYLE MENENDEZ WANTED TO

 12 MAKE IT LOOK LIKE A MESS. THAT'S WHY THEY PURCHASED THE

 13 SHOTGUNS. THAT'S WHY THEY PURCHASED THE MORE POWERFUL

 14 AMMUNITION. THEY DIDN'T RELY UPON JUST THE BIRD SHOT,

 15 THEY WENT OUT THE NEXT DAY AND GOT BUCKSHOT, BECAUSE

 16 THEY REALLY WANTED TO MAKE IT A MESS.

 17 AND NOW THEY HAVE A PROBLEM, AND THE

 18 PROBLEM IS HOW DO YOU GET FEAR AND SELF-DEFENSE OUT OF

 19 THAT, YOU SEE. BECAUSE IF YOU'RE TRULY IN FEAR, YOU'RE

 20 GOING TO HAVE -- YOU WOULD WANT TO PURCHASE A HANDGUN.

 21 A HANDGUN IS GOING TO BE MUCH MORE EFFECTIVE TO DEFEND

 22 YOURSELF WITH THAN A SHOTGUN, BECAUSE A SHOTGUN IS A BIG

 23 AND AWKWARD WEAPON. YOU CAN'T CONCEAL IT AND WHIP IT

 24 OUT AT THE MOMENT THAT YOU NEED IT. SO NOW THEY HAVE A

 25 PROBLEM. HOW DO YOU EXPLAIN THIS AWAY?

 26 SO THERE'S TWO WAYS THEY TRY TO EXPLAIN IT

 27 AWAY. FIRST YOU HAVE THE TESTIMONY OF ERIK MENENDEZ, IN

 28 WHICH HE SAYS THAT HE WENT TO A GUN STORE HERE IN LOS

 1 ANGELES WITH HIS BROTHER, AND THEY TRIED TO PURCHASE A

 2 HANDGUN, BUT THERE WAS A 15-DAY WAITING PERIOD, AND THEY

 3 COULDN'T PURCHASE A HANDGUN.

 4 BUT THAT STORY IS A LIE. I'LL GET TO THAT

 5 SOON WITH ANOTHER WITNESS, WHO DEMONSTRATED THAT THAT

 6 STORY IS A LIE.

 7 BUT THE OTHER WAY THAT THEY TRIED TO SHOW

 8 THAT THEY WANTED A HANDGUN, BECAUSE A HANDGUN WOULD BE

 9 THE WEAPON OF CHOICE, THE WEAPON OF SELF-DEFENSE, IS BE

 10 GETTING BRIAN ESLAMINIA TO COME UP WITH THIS STORY AND

 11 TO CLAIM: "OH, THEY CAME TO ME, AND THEY WANTED TO GET

 12 A HANDGUN," YOU SEE.

 13 THEN ERIK AND LYLE MENENDEZ WOULD BE ABLE

 14 TO SAY: "SEE, WE WERE REALLY ACTING IN SELF-DEFENSE.

 15 WE WANTED TO GET A HANDGUN. HERE IS MR. ESLAMINIA

 16 SAYING THAT WE WANTED TO GET A HANDGUN," YOU SEE.

 17 SO THAT IS THE PURPOSE FOR GETTING -- FOR

 18 BRIAN ESLAMINIA TO COME UP WITH THIS STORY.

 19 THE PROBLEM IS, ALTHOUGH IT IS -- ALTHOUGH

 20 NOW THAT BRIAN ESLAMINIA IS TESTIFYING, NOW HE

 21 CONTRADICTS WHAT HE PREVIOUSLY TOLD DETECTIVE ZOELLER.

 22 NOW HE'S SAYING: "OH, NO. IT WASN'T ERIK MENENDEZ THAT

 23 I HAD THIS CONVERSATION WITH, IT WAS JUST LYLE

 24 MENENDEZ."

 25 WELL, YOU KNOW, HE'S SAYING IT IS JUST LYLE

 26 MENENDEZ, LADIES AND GENTLEMEN, BECAUSE WE HAVE THE

 27 LETTER FROM LYLE MENENDEZ WHICH PROVES IT TO BE TRUE.

 28 IF WE DIDN'T HAVE THIS LETTER, LADIES AND GENTLEMEN, HE

 1 WOULD SAY: "I NEVER TOLD DETECTIVE ZOELLER ANYTHING."

 2 BUT JUST AS THE DEFENDANTS CUT THEIR

 3 LOSSES, YOU KNOW, IF THEY CAN'T GO FOR DEFENSE NO. 1, "I

 4 AM TOTALLY NOT GUILTY," LET ME GO FOR DEFENSE NO. 2,

 5 WHICH IS "OH, I DID IT, BUT I DID IT OUT OF FEAR."

 6 WELL, IT IS THE SAME THING BRIAN ESLAMINIA

 7 DID. HE IS CUTTING HIS LOSSES. HE KNOWS HE CAN NO

 8 LONGER HELP BOTH ERIK AND LYLE MENENDEZ, SO HE'S CUTTING

 9 HIS LOSSES. HE IS CUTTING OFF LYLE, BUT STILL

 10 PROTECTING ERIK. YOU SEE, HE IS NOW DENYING HIS

 11 CONVERSATION WITH DETECTIVE ZOELLER. HE TRIES TO MAKE

 12 IT SOUND LIKE, "OH, DETECTIVE ZOELLER JUST

 13 MISUNDERSTOOD," YOU SEE.

 14 THAT DOESN'T HOLD UP, LADIES AND GENTLEMEN,

 15 BECAUSE DETECTIVE ZOELLER CALLED HIM ON THE PHONE AND

 16 WENT OVER THIS WITH HIM, AND ENSURED THAT HE HAD HIS

 17 STATEMENT ACCURATE. AND BRIAN ESLAMINIA CONFIRMED THE

 18 STATEMENT OVER THE TELEPHONE.

 19 DETECTIVE ZOELLER TESTIFIED THAT HE SPOKE

 20 TO BRIAN ESLAMINIA, AND HE WAS SPECIFICALLY TOLD THAT

 21 ERIK MENENDEZ WAS INVOLVED. HE SAYS -- BEFORE I GET TO

 22 THAT, FIRST LET ME GO INTO THE LETTER WITH YOU.

 23 SO HERE'S WHAT WE HAVE, THIS LETTER FROM --

 24 IN THE HANDWRITING OF LYLE MENENDEZ. AND WHAT DOES THIS

 25 SHOW, LADIES AND GENTLEMEN? IT SHOWS AN INTENTION ON

 26 THE PART OF LYLE MENENDEZ TO FABRICATE EVIDENCE TO BE

 27 PRESENTED BEFORE A JURY.

 28 NOW, NOT ONLY DO WE HAVE DESTRUCTION OF

 1 EVIDENCE, WE HAVE DESTRUCTION OF THE SHOTGUN SHELLS. WE

 2 HAVE DESTRUCTION OF THE WEAPONS. NOW WE HAVE EVIDENCE

 3 OF FABRICATION IN THIS CASE, THAT LYLE MENENDEZ WAS

 4 ACTIVELY INVOLVED IN FABRICATING A FALSE DEFENSE TO BE

 5 PRESENTED BEFORE A JURY.

 6 AND THIS IS SOMETHING THAT YOU MUST TAKE

 7 INTO CONSIDERATION AS YOU EVALUATE THE GUILT OF BOTH

 8 DEFENDANTS IN THIS CASE. THIS IS A PIECE OF EVIDENCE

 9 WHICH YOU MAY CONSIDER AGAINST BOTH DEFENDANTS. THIS

 10 LETTER COULD -- IN THIS LETTER THERE'S REFERENCES TO

 11 ERIK MENENDEZ AS WELL.

 12 WHAT THIS DEMONSTRATES, LADIES AND

 13 GENTLEMEN, NOT ONLY THROUGH THE PRIOR INCONSISTENT

 14 STATEMENT OF BRIAN ESLAMINIA, IN WHICH HE INDICATED TO

 15 DETECTIVE ZOELLER THAT ERIK MENENDEZ WAS FULLY A PART OF

 16 THIS CONSPIRACY TO MANUFACTURE FALSE EVIDENCE; BUT THE

 17 LETTER FROM LYLE MENENDEZ CONFIRMS THAT ERIK MENENDEZ

 18 WAS A PART OF THIS CONSPIRACY TO MANUFACTURE FALSE

 19 EVIDENCE TO BE PRESENTED TO A JURY

 20 AND HERE IS WHAT THE LETTER SAYS. AND YOU

 21 WILL HAVE THIS EXHIBIT, SO YOU DON'T HAVE TO WORRY ABOUT

 22 TAKING SPECIFIC NOTES. IT'S KIND OF A LONG LETTER,

 23 BUT -- A FEW PAGES, AND I WILL READ IT TO YOU.

 24 HE SAYS:

 25 "BRIAN, HELLO. I HOPE YOU'RE WELL

 26 AND YOUR BROTHER IS UP IN SPIRITS. I AM

 27 SURE HE HAS LEARNED PATIENCE BY NOW. HERE

 28 IS AN OUTLINE OF WHAT WE NEED." OF WHAT

 1 WE NEED.

 2 "IT IS NOT CRUCIAL THAT YOUR STORY

 3 MATCH OURS PERFECTLY, SO DON'T WORRY."

 4 AGAIN, MATCH OURS PERFECTLY.

 5 BRIAN ESLAMINIA WILL NOW HAVE YOU BELIEVE

 6 THAT HE NEVER DISCUSSED THIS WITH ERIK MENENDEZ. IN

 7 ORDER TO CUT HIS LOSSES AND JUST GIVE UP LYLE, HE WOULD

 8 HAVE YOU BELIEVE THAT THIS IS JUST SOMETHING THAT HE AND

 9 LYLE MENENDEZ DISCUSSED.

 10 LADIES AND GENTLEMEN, HOW CAN YOU BUY THAT?

 11 HE WAS ERIK MENENDEZ' FRIEND. HE WASN'T LYLE MENENDEZ'

 12 FRIEND. HE DIDN'T EVEN KNOW LYLE MENENDEZ UNTIL AFTER

 13 THE ARREST AND HE BEGAN TO VISIT ERIK MENENDEZ IN JAIL.

 14 IT'S INCONCEIVABLE THAT THIS WAS A CONSPIRACY TO

 15 MANUFACTURE EVIDENCE JUST BETWEEN BRIAN ESLAMINIA AND

 16 LYLE MENENDEZ. IT'S INCONCEIVABLE FOR SEVERAL REASONS.

 17 NUMBER ONE, BECAUSE OF THE NATURE OF THE

 18 RELATIONSHIP BETWEEN BRIAN ESLAMINIA AND ERIK MENENDEZ.

 19 WITH THAT FRIENDSHIP, THEY ARE THE TWO TIGHTEST ONES

 20 HERE. THOSE ARE THE TWO THAT ARE GOING TO HAVE THE

 21 DISCUSSIONS.

 22 SECONDLY, BRIAN ESLAMINIA'S PRIOR

 23 CONCESSION TO DETECTIVE ZOELLER THAT ERIK MENENDEZ WAS

 24 FULLY PART OF THIS CONSPIRACY TO MANUFACTURE FALSE

 25 EVIDENCE TO BE PRESENTED TO A JURY;

 26 AND THIRDLY, ALL OF THE REFERENCES TO ERIK

 27 MENENDEZ IN THIS LETTER.

 28 BUT EVEN WITHOUT THE REFERENCES, DO YOU

 1 REALLY THINK THAT LYLE MENENDEZ WOULD BE PUTTING THIS

 2 TOGETHER WITHOUT INVOLVING ERIK MENENDEZ, BECAUSE THIS

 3 CALLS FOR A COLLECTIVE STRATEGY. IT CALLS FOR A

 4 SITUATION IN WHICH EVERYONE WOULD HAVE TO BE A

 5 PARTICIPANT. BRIAN ESLAMINIA, LYLE MENENDEZ, ERIK

 6 MENENDEZ WOULD ALL HAVE TO WORK HAND IN HAND TO TRICK

 7 THE JURY. IF YOU ONLY HAVE TWO PEOPLE TELLING THE

 8 STORY, AND ONE PERSON IS NOT IN THE LOOP, WELL THEN, HE

 9 IS GOING TO SCREW UP THE PLAN.

 10 SO, OBVIOUSLY THIS WAS A CONSPIRACY OF ALL

 11 THREE OF THEM TO MANUFACTURE FALSE EVIDENCE TO BE

 12 PRESENTED TO A JURY.

 13 AND WHAT IS THE RELEVANCE OF ALL OF THIS?

 14 WHAT IT TELLS YOU, LADIES AND GENTLEMEN, IS WHY ARE THEY

 15 MANUFACTURING FALSE EVIDENCE? THEY ARE MANUFACTURING

 16 FALSE EVIDENCE BECAUSE NONE OF THIS EVER HAPPENED. NONE

 17 OF THIS EVER HAPPENED. THE ABUSE NEVER HAPPENED.

 18 THIS WEEKEND CRISIS, YOU MIGHT CALL IT,

 19 FROM THE TIME THAT THEY GET INTO A DISPUTE WITH THEIR

 20 FATHER UP UNTIL THE TIME OF THE SHOOTING, NONE OF THAT

 21 EVER HAPPENED, AND THE SHOOTING DID NOT GO DOWN ON

 22 AUGUST THE 20TH OF 1989 AS THEY PLANNED. BECAUSE IF IT

 23 DID, THEN WHY DOESN'T ERIK MENENDEZ JUST TELL THE TRUTH?

 24 NO. HIM AND HIS BROTHER ARE ACTIVELY INVOLVED IN THE

 25 MANUFACTURE OF FALSE EVIDENCE TO TRICK A JURY, AS HE IS

 26 TRYING TO TRICK YOU NOW.

 27 HERE IS WHAT HE SAYS TO BRIAN ESLAMINIA IN

 28 THE LETTER.

 1 " YOU RECEIVED A CALL AT YOUR

 2 APARTMENT OR HOUSE ON AUGUST THE 19TH, A

 3 SATURDAY, IN THE LATE MORNING. YOU

 4 ANSWERED THE PHONE, AND IT WAS ERIK. HE

 5 SOUNDED VERY NERVOUS."

 6 LISTEN TO THE DETAIL, BECAUSE IT'S REALLY

 7 GOOD. IT'S REALLY GOOD THE WAY THAT LYLE MENENDEZ

 8 INCORPORATES ALL THE DETAIL THAT IS NECESSARY TO PRESENT

 9 THIS FABRICATED STORY TO THE JURY, SO CONSISTENT WITH

 10 THE STORY THAT YOU HEARD HERE FROM ERIK MENENDEZ. THE

 11 DETAIL IS VERY INTERESTING.

 12 "ERIK MENENDEZ SOUNDED VERY

 13 NERVOUS. HE ASKED IF HE COULD MEET YOU

 14 OUTSIDE YOUR APARTMENT TO TALK WITH HIS

 15 BROTHER, LYLE. YOU AGREED, AND GAVE HIM

 16 DIRECTIONS. YOU DECIDE WHERE WE MET,

 17 PERHAPS A PARKING LOT, AND LET ME KNOW

 18 OVER THE PHONE.

 19 "WE ARRIVED 20 MINUTES OR SO LATER

 20 IN ERIK'S MAROON FORD ESCORT. IT'S A

 21 TWO-DOOR, AND ERIK WAS DRIVING. YOU SAT

 22 ALONE IN THE BACK. THE CAR WAS VERY

 23 MESSY. THERE WERE ALL KINDS OF CLOTHES,

 24 SHOES AND TENNIS RACQUETS THAT YOU PUSHED

 25 INTO THE SPACE BEHIND YOUR SEAT. THE CAR

 26 IS A HATCHBACK. THE WHEELS ARE BLACK

 27 SPOKE. THE INTERIOR IS GRAY FELT. THERE

 28 IS A SUNROOF, YOU THINK."

 1 INTERESTING HOW HE TELLS -- HE IS EVEN

 2 TELLING BRIAN ESLAMINIA WHAT HE SHOULD BE SURE ABOUT AND

 3 NOT SURE ABOUT. SO HE TELLS HIM THERE IS A SUNROOF, YOU

 4 SEE.

 5 "LYLE SAID HELLO AND WAS SITTING IN

 6 THE FRONT. ERIK BEGAN TO DRIVE AROUND.

 7 ERIK SAID THEY WERE IN GREAT DANGER, AND

 8 NEEDED TWO HANDGUNS. BOTH OF US SEEMED

 9 JUMPY, RUSHED AND NERVOUS."

 10 AND RUSHED IS UNDERLINED.

 1 YOU SEE HOW IT FITS INTO THE MENTAL

 2 DEFENSE PRESENTED BY ERIK MENENDEZ AND HIS MENTAL

 3 HEALTH EXPERTS? HE'S PRESENTING A SCENARIO

 4 CONSISTENT WITH HIS STATE OF MIND, YOU SEE, THIS

 5 WHOLE BUSINESS. BUT I WAS IN AN EXCITED STATE, A

 6 PANICKED STATE. CAREFULLY PREMEDITATED, CAREFULLY

 7 PLANNED, JUST AS CAREFULLY AS THE CRIME WAS PLANNED,

 8 THIS WHOLE MENTAL DEFENSE YOU HEARD FROM ERIK

 9 MENENDEZ AND HIS WITNESSES IS JUST AS CAREFULLY

 10 PLANNED. YOU SEE IT RIGHT HERE.

 11 "ERIK WAS RUSHED. YOU ASKED HIM

 12 WHY YOU WERE IN DANGER. ERIK SAID HE

 13 COULDN'T SAY, BUT YOU WOULD HAVE TO

 14 TRUST HIM.

 15 "YOU SUGGESTED THAT THEY GET HELP

 16 FROM THE POLICE AND HIDE OUT WITH

 17 THEM. ERIK SAID NO, THE POLICE WON'T

 18 BELIEVE THEM, AND THEY WOULD ONLY PUT

 19 THEM IN GREATER DANGER.

 20 "YOU SUGGESTED PERHAPS THEIR

 21 FATHER COULD HELP, SINCE ERIK HAD

 22 ALWAYS TOLD YOU HE HAD POWERFUL

 23 CONNECTIONS."

 24 AND THEN IT SAYS, "MAFIA." SEE, RIGHT

 25 THERE. ONCE AGAIN, GETTING INTO THE MAFIA

 26 ALLEGATION.

 27 "LYLE SAID YOU DON'T UNDERSTAND.

 28 WE DON'T HAVE TIME TO EXPLAIN. CAN

 1 YOU HELP US OR NOT? IT WAS CLEAR BY

 2 HIS TONE OF VOICE THAT HE WAS VERY

 3 SERIOUS AND AFRAID. YOU'VE NEVER SEEN

 4 LYLE SO NERVOUS OR EVER AFRAID. SO

 5 YOU STOPPED ASKING QUESTIONS AND SAID,

 6 'YES, YOU HAD ONE HANDGUN AT THE

 7 HOUSE.'

 8 "WE ALL DROVE BACK, AND YOU RAN

 9 IN AND GOT IT. LYLE TOOK IT AND THEY

 10 SAID THEY WOULD BE IN TOUCH. WE THEN

 11 DROVE OFF.

 12 "YOU TOLD NOBODY ABOUT THE

 13 INCIDENT, AND YOU WERE VERY NERVOUS

 14 THAT WE WERE IN TROUBLE. THE GUN YOU

 15 GAVE WAS LOADED. YOU DIDN'T GIVE ANY

 16 AMMUNITION WITH IT.

 17 "WHEN YOU HEARD ABOUT OUR PARENTS'

 18 DEATHS YOU WERE SHOCKED, AND YOU

 19 REALIZED LYLE AND ERIK WERE RIGHT.

 20 THERE WAS REAL DANGER.

 21 "ERIK CAME OVER AROUND TUESDAY

 22 WITH A .22 AND GAVE BACK THE GUN. YOU

 23 SAID, 'KEEP IT AND HIDE.'

 24 "ERIK WAS STILL VERY NERVOUS, BUT

 25 SAID, NO, HE AND LYLE WOULD BE FINE;

 26 THAT, OBVIOUSLY, WHOEVER IT WAS ONLY

 27 WANTED HIS PARENTS.

 28 "ERIK WAS ADAMANT AND DIDN'T WANT

 1 TO DISCUSS IT. HE LEFT PROMPTLY.

 2 "SINCE THEN YOU HAVE KEPT IT A

 3 SECRET, AND YOU FELT THAT ONLY WHAT

 4 YOU HAVE IN YOUR MIND IS PROOF WE

 5 DIDN'T DO IT, BECAUSE WHY WOULD WE

 6 NEED HANDGUNS IF WE SUPPOSEDLY BOUGHT

 7 SHOTGUNS THE DAY BEFORE ON FRIDAY?

 8 HOWEVER, AFTER LISTENING TO ALL THE

 9 EVIDENCE THE MEDIA TALKS ABOUT, YOU

 10 THINK PERHAPS YOU DON'T KNOW THE WHOLE

 11 STORY.

 12 YOU TOLD ERIK NOT TO LET THE

 13 LAWYERS KNOW ABOUT ACTUALLY GIVING US

 14 A GUN, BECAUSE THE GUN IS ILLEGAL AND

 15 YOUR MOM WOULD FREAK OUT.

 16 "I HAVE AN UNTRACEABLE HANDGUN.

 17 I CAN GET IT FOR YOU TO USE, AS THE

 18 ONE YOU GAVE US, IF YOU DON'T ALREADY

 19 HAVE ONE. LET ME KNOW OVER THE

 20 PHONE. I'LL HAVE BEATRICE GET IT FOR

 21 YOU IF NECESSARY.

 22 "ANYWAY, YOU HAVE DECIDED THAT IT

 23 MAY BE IMPORTANT FOR LYLE AND ERIK TO

 24 TELL THEIR LAWYERS ABOUT THE GUN.

 25 "THAT IS BASICALLY THE IMPORTANT

 26 FACTS. THERE MAY BE LITTLE THINGS,

 27 LIKE ERIK TOLD YOU WE WERE TAKEN OUT

 28 OF THE WILL AWHILE BACK BY MOM AND

 1 DAD; AND OCCASIONALLY YOU USED TO

 2 WATCH VIDEOS OVER OUR HOUSE WITH OUR

 3 MOM AND DAD. YOU ONCE WATCHED THE

 4 MOVIE AT 'AT CLOSE RANGE' WITH SEAN

 5 PENN. WATCH IT IF YOU HAVEN'T

 6 ALREADY. MY DAD SAID THE MOVIE IS

 7 UNREALISTIC BECAUSE THE FATHER WOULD

 8 HAVE KILLED THE SON AS SOON AS THE

 9 TROUBLE STARTED, AND NOT WAITED.

 10 "YOU, OF COURSE, WERE SHOCKED AT

 11 THE STATEMENT. YOU'VE ALWAYS FELT MY

 12 DAD WAS A POWERFUL AND SCARY PERSON.

 13 YOU NEVER FELT WELCOME."

 14 NOT ONLY DID HE ASK HIM HERE TO

 15 FABRICATE THIS STORY OF THE GUN, BUT HE IS ALSO

 16 ASKING HIM TO FABRICATE ADDITIONAL DETAILS. HE'S

 17 TELLING HIM ERIK TOLD YOU THAT WE WERE OUT OF THE

 18 WILL. YOU SEE HOW HE'S TRYING TO BUTTRESS UP HIS

 19 CASE WITH MORE FALSE TESTIMONY, BECAUSE HE KNOWS OF

 20 THE EVIDENCE IN THIS CASE INDICATING THAT HE WAS

 21 AWARE OF BEING IN THE WILL, OR AT LEAST NOT OUT OF

 22 THE WILL. BUT NOW HE WANTS MORE FALSE TESTIMONY

 23 THAT THEY WERE OUT OF THE WILL.

 24 AND THIS BUSINESS ABOUT "AT CLOSE RANGE."

 25 THE TESTIMONY JAMIE PISARCIK. WE HAVEN'T GOTTEN TO

 26 HER YET. I'LL GET TO HER SHORTLY. THIS IS THE SAME

 27 THING HE WANTED JAMIE PISARCIK TO DO. LYLE MENENDEZ

 28 TRIED TO GET JAMIE PISARCIK TO PRESENT PERJURED

 1 TESTIMONY IN FRONT OF THE JURY. SEE HOW ACTIVE LYLE

 2 MENENDEZ HAS BEEN TO TRY TO GET PERJURY, ACTIVELY

 3 INVOLVED IN TRICKING A JURY. THAT'S BEEN HIS GOAL.

 4 HE WRITES LETTERS AND TALKS TO PEOPLE TO

 5 THAT EFFECT, ACTIVELY SEEKING PERJURY TO TRICK A

 6 JURY.

 7 HE WANTED BRIAN ESLAMINIA TO TESTIFY TO

 8 SEEING THE MOVIE "AT CLOSE RANGE." THE REMARK OF

 9 THE FATHER ABOUT THE SON WOULD HAVE BEEN -- THE

 10 FATHER WOULD HAVE KILLED THE SON, ATTACKING HIS --

 11 SUGGESTING THAT JOSE MENENDEZ WAS THE TYPE OF PERSON

 12 WHO WOULD HAVE THOSE THOUGHTS IN HIS MIND.

 13 AGAIN, WHY IS HE MAKING UP FALSE STORIES

 14 ABOUT HIS FATHER? WHY IS HE DOING THIS? HE'S DOING

 15 IT BECAUSE HE DOESN'T HAVE A DEFENSE, LADIES AND

 16 GENTLEMEN. HE DOESN'T HAVE A DEFENSE. THAT'S THE

 17 TRUTH. ALL HE HAS IS HIS LIE THROUGH BRIAN

 18 ESLAMINIA HERE, AND TESTIMONY OF ERIK MENENDEZ HERE

 19 ON THE WITNESS STAND, BECAUSE WHEN IT COMES DOWN --

 20 THE ABUSE IS JUST LIKE THIS WEEK IN CRISIS

 21 TESTIMONY. WHEN IT COMES DOWN TO THE REAL SEXUAL

 22 ABUSE, THERE'S NO CORROBORATION TO CORROBORATE SUCH

 23 ALLEGATION. AND WHEN IT COMES DOWN TO THIS WHOLE

 24 WEEK IN CRISIS AND THE EVENTS OF SUNDAY AUGUST 20TH,

 25 THERE'S NO CORROBORATION.

 26 YOU RECALL ERIK MENENDEZ' TESTIMONY.

 27 THIS WHOLE THING ABOUT I THOUGHT MY FATHER WAS GOING

 28 TO COME OUT OF THE DEN, AND I RAN TO THE DOOR, AND I

 1 DID THIS AND I DID THAT. THERE'S NO CORROBORATION

 2 TO ANY OF THAT. THAT'S JUST THE STORY OF ERIK

 3 MENENDEZ.

 4 HERE WE HAVE LYLE MENENDEZ GOING AROUND

 5 TRYING TO GET THOSE LIARS ON BOARD, TRYING TO GET

 6 THEM TO COME IN AND BUTTRESS UP THE STORY, BECAUSE

 7 OTHERWISE IT JUST COMES DOWN TO THE WORD OF ERIK

 8 MENENDEZ UP THERE ON THE STAND.

 9 IT GOES ON TO SAY:

 10 "YOUR MEMORY OF THESE THINGS DOES

 11 NOT HAVE TO BE THAT GOOD. HOWEVER, I

 12 THINK THE SATURDAY STORY, AND PERHAPS

 13 THE MOVIE INCIDENT WILL BE ENOUGH.

 14 TOO MUCH IS NOT GOOD," HE SAID.

 15 "I'LL BE CALLING YOU. PLEASE

 16 LEAVE A MESSAGE.

 17 "ALSO, SCRIBBLE OVER THE WRITING

 18 OF THIS LETTER WITH MAGIC MARKER, SO

 19 THAT IF IT FALLS INTO THE WRONG HANDS

 20 IT'S NOT LEGIBLE. I OBVIOUSLY TRUST

 21 YOU COMPLETELY; HOWEVER, I SLEEP

 22 BETTER IF I'M SURE THINGS HAVE BEEN

 23 DESTROYED. MISTAKES HAVE BEEN MADE IN

 24 THE PAST.

 25 "LISTEN, I REALIZE THAT OUR

 26 COMMUNICATION HAS BEEN SPARSE, BUT I

 27 PREFER IT THAT WAY FOR NOW. I REALLY

 28 CAN'T EXPRESS ENOUGH HOW MUCH I

 1 APPRECIATE YOUR LOYAL FRIENDSHIP FOR

 2 MY BROTHER AND I. OF COURSE, IF THERE

 3 IS ANYTHING WE CAN EVER DO FOR YOU,

 4 LET US KNOW.

 5 "TAKE CARE."

 6 AND THEN THERE'S AN "L" FOR "LYLE."

 7 THEN ON THE BACK PAGE, HERE'S WHAT IT SAYS.

 8 "YOU CAN TELL LESLIE YOU WOULD

 9 RATHER TALK IN PERSON TO BUY TIME IF

 10 SHE GETS AHOLD OF YOU. I'D WAIT UNTIL

 11 WE STRAIGHTEN OUT WHAT GUN YOU WILL

 12 USE FIRST. IT WOULD SAVE ME TROUBLE

 13 IF YOU ALREADY HAD A HANDGUN. I WILL,

 14 OF COURSE, REPLACE IT FOR YOU. IF

 15 NOT, I AM TRYING TO GET AN OLD ONE YOU

 16 CAN SAY YOUR DAD OWNED.

 17 "I THINK IF YOU TELL YOUR BROTHER

 18 TO SAY YOU TOLD HIM THAT WE HAD

 19 BORROWED THE GUN WAY BACK, SHORTLY

 20 AFTER MY PARENTS' DEATH, THAT WOULD BE

 21 GOOD, BECAUSE THEN YOU CAN TELL LESLIE

 22 YOU DIDN'T KEEP IT TOTALLY A SECRET,

 23 SINCE YOU TOLD YOUR OLDER BROTHER.

 24 "IF SHE WANTS TO SEE HIM TO

 25 VERIFY IT, THAT'S COOL. YOUR BROTHER

 26 DOESN'T HAVE TO KNOW ANY DETAILS, JUST

 27 THAT YOU TOLD HIM, WHENEVER THE DATE

 28 OF THE FIRST TIME YOU VISITED HIM

 1 AFTER MY PARENTS' DEATH, THAT WE

 2 BORROWED THE HANDGUN. DON'T FALL --

 3 DO YOU NOT FALL FOR ANY OF LESLIE'S

 4 TRICKS. SHE MAY SAY,'ERIK TOLD ME

 5 THAT THIS STORY IS NOT TRUE.' JUST

 6 MAINTAIN THAT IT IS ALL TRUE, TO THE

 7 BEST OF YOUR MEMORY.

 8 "ALL RIGHT. YOU CAN HANDLE IT

 9 FROM HERE.

 10 "CIAO."

 11 AND ONCE AGAIN, "L" FOR "LYLE."

 12 WAS THE COURT GOING TO TAKE AN AFTERNOON

 13 RECESS?

 14 THE COURT: OKAY. WE'LL TAKE A RECESS AND

 15 WE'LL RESUME AT 25 AFTER THE HOUR.

 16 DON'T DISCUSS THE MATTER WITH ANYONE.

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

 18 SEE YOU AT 25 AFTER.

 19 (A RECESS WAS TAKEN FROM

 20 3:10 P.M. TO 3:30 P.M.)

 21

 22 THE COURT: OKAY. LET'S GET THE JURY OUT,

 23 PLEASE.

 24 (THE JURY ENTERED THE COURTROOM

 25 AND THE FOLLOWING PROCEEDINGS

 26 WERE HELD:)

 27

 28 THE COURT: ALL RIGHT. THE JURY IS BACK.

 1 YOU MAY CONTINUE YOUR ARGUMENT.

 2 MR. CONN: THANK YOU.

 3 AFTER MR. ESLAMINIA TESTIFIED, DETECTIVE

 4 ZOELLER WAS CALLED TO GIVE YOU THE BACKGROUND OF

 5 MR. ESLAMINIA AND PUT HIS TESTIMONY IN PERSPECTIVE

 6 SO THAT YOU WOULD BE ABLE TO DETERMINE WHAT WAS

 7 RELIABLE IN TERMS OF WHAT MR. ESLAMINIA WAS SAYING

 8 AND WHAT MIGHT BE UNRELIABLE.

 9 DETECTIVE ZOELLER TESTIFIED THAT HE MET

 10 WITH MR. ESLAMINIA IN OCTOBER OF '94, AND AT THAT

 11 TIME MR. ESLAMINIA TOLD DETECTIVE ZOELLER ABOUT A

 12 SEVEN-PAGE LETTER THAT HE HAD RECEIVED FROM LYLE

 13 MENENDEZ. BUT HE DECLINED TO TURN IT OVER TO

 14 DETECTIVE ZOELLER AT THAT TIME. INSTEAD, HE SAID

 15 THAT HE HAD TWO ARREST WARRANTS THAT HAD BEEN ISSUED

 16 FOR HIM; ONE FOR FAILURE TO FULFIL THE TERM OF A

 17 PROBATIONARY SENTENCE ON A PETTY THEFT CONVICTION,

 18 AND ANOTHER ONE FOR A TRAFFIC OFFENSE. BOTH OF

 19 THESE WERE MINOR WARRANTS; AND ALSO SAID THAT HIS

 20 GIRLFRIEND HAD A TRAFFIC WARRANT AS WELL. AND,

 21 OBVIOUSLY, HE WAS LOOKING FOR SOME HELP.

 22 SO THIS COOPERATION HE WAS OFFERING WAS

 23 NOT FREE OF CHARGE. HE WAS LOOKING FOR A LITTLE TIT

 24 FOR TAT. HE WAS HOPING THAT THE POLICE AND

 25 PROSECUTORS MIGHT BE ABLE TO HELP HIM OUT WITH HIS

 26 CASES. HE ACTUALLY DOWN-PLAYED THAT ON THE STAND A

 27 LITTLE BIT. HE REFUSED TO ACKNOWLEDGE THAT THAT WAS

 28 REALLY WHAT HE WANTED

 1 BUT THAT'S NOT REALLY GENUINE, BECAUSE

 2 DETECTIVE ZOELLER MADE IT VERY CLEAR THAT HE GOT THE

 3 CLEAR IMPRESSION FROM

 4 MR. ESLAMINIA THAT HE WANTED A LITTLE HELP WITH HIS

 5 WARRANTS. THAT'S NOT UNHEARD OF IN THE CRIMINAL

 6 JUSTICE SYSTEM, THAT PROSECUTION MIGHT PLEA BARGAI

 7 OR HELP SOMEONE -- PLEA BARGAIN A CASE AWAY, OR GIVE

 8 SOMEONE SOME LENIENCY IN COOPERATION FOR TESTIMONY.

 9 MR. ESLAMINIA REALIZED THAT THOSE THINGS

 10 HAPPENED, AND HE WAS LOOKING FOR SOMETHING. HE WAS

 11 LOOKING FOR SOME LENIENCY; AND, OF COURSE, THAT'S

 12 THE REASON WHY HE JUST WOULDN'T TURN OVER THE LETTER

 13 TO DETECTIVE ZOELLER, BECAUSE IF HE HAD, THEN THERE

 14 WOULD BE NOTHING LEFT TO TANTALIZE THE POLICE AND

 15 THE PROSECUTION WITH.

 16 SO HE HELD ONTO THE LETTER; AND THEN

 17 DETECTIVE ZOELLER MADE IT CLEAR THAT EVENTUALLY,

 18 BECAUSE HE DIDN'T TURN OVER THE LETTER, AND EVEN

 19 AFTER MR. ESLAMINIA LATER INDICATED THAT HE DIDN'T

 20 WANT ANYTHING, HE DIDN'T WANT ANY FAVORABLE

 21 TREATMENT, MR. ESLAMINIA STILL REFUSED TO TURN OVER

 22 THE LETTER, AND DETECTIVE ZOELLER HAD TO GET A

 23 SEARCH WARRANT AND GO UP NORTH AND OBTAIN THE LETTER

 24 FROM MR. ESLAMINIA, BECAUSE HE DIDN'T WANT TO TURN

 25 IT OVER.

 26 I WOULD SUBMIT, LADIES AND GENTLEMEN,

 27 THAT THIS WAS HIS CLEAR MOTIVATION, THAT HE WANTED

 28 TO GET SOMETHING OUT IT. HE WAS LOOKING OUT FOR

 1 HIMSELF. HE WAS THINKING, WHAT'S IN IT FOR ME? AND

 2 THAT'S THE ONLY REASON WHY HE DECIDED TO COOPERATE.

 3 BUT THEN HE HAD SECOND THOUGHTS ABOUT

 4 IT. HE NO LONGER WANTED TO COOPERATE, AND HE

 5 THOUGHT HE WOULD JUST FORGET ABOUT THE WHOLE THING.

 6 BUT BY THAT TIME WE SNATCHED THE LETTER AWAY FROM

 7 HIM WITH A SEARCH WARRANT, AND THEN IT WAS TOO

 8 LATE. HE WAS KNEE DEEP IN THIS CASE, WHETHER HE

 9 LIKED IT OR NOT.

 10 BUT PRIOR TO TIME THAT -- DURING THE

 11 TIME THAT DETECTIVE ZOELLER WAS DEALING WITH

 12 MR. ESLAMINA, HE WAS WRITING REPORTS, AND HE WROTE A

 13 REPORT, AND HE READ THE FOLLOWING BACK, TO SEE IF

 14 THIS WAS CORRECT. AND WHAT HE READ TO HIM HE

 15 TESTIFIED TO HERE IN COURT.

 16 "DURING THESE VISITS WITH ERIK

 17 AND LYLE THEY DISCUSSED WITH HIM WHAT

 18 THEY, ERIK AND LYLE, THOUGHT HE COULD

 19 DO TO HELP THEM WITH THEIR CASE. IT

 20 WAS THEN DISCUSSED BY THE THREE OF

 21 THEM THAT AMIR WOULD TESTIFY TO A

 22 SCENARIO WHERE HE HAD GIVEN ERIK A

 23 HANDGUN FOR PROTECTION. THIS WAS TO

 24 HAVE TAKEN PLACE BEFORE THEIR PARENTS

 25 WERE KILLED. ERIK AND LYLE EMPHASIZED

 26 THAT THE GUN WAS DUE TO FEAR, AND THAT

 27 THEY HAD --"

 28 I DON'T HAVE THE LAST PART OF THAT

 1 CORRECT.

 2 "...THAT THE GUN WAS DUE TO

 3 FEAR."

 4 THERE'S ANOTHER LINE THERE.

 5 "AMIR SAID THAT AS TIME WENT ON

 6 THE THREE OF THEM, ERIK, LYLE, AND

 7 HIMSELF, WOULD ADD DYNAMICS TO FIT

 8 WHAT WAS NEEDED FOR TRIAL."

 9 THIS WAS SOMETHING THAT DETECTIVE

 10 ZOELLER READ BACK TO MR. ESLAMINIA OVER THE PHONE,

 11 AND ESLAMINIA DID NOT CORRECT THE REPORT, DESPITE

 12 HIS OPPORTUNITY TO DO SO; AND, THEREFORE, HIS CLAIM

 13 THAT, OH, ERIK MENENDEZ WAS NOT INVOLVED IN THIS

 14 CONSPIRACY. THIS WAS JUST ME AND LYLE MENENDEZ, IS

 15 JUST UNBELIEVABLE. IT JUST DOESN'T MAKE SENSE,

 16 BECAUSE ERIK MENENDEZ WAS HIS FRIEND, AND IF HE HAD

 17 NEVER INTENDED TO LEAD DETECTIVE ZOELLER TO BELIEVE

 18 THAT THE THREE OF THEM WERE INVOLVED IN THIS

 19 CONSPIRACY, THAT WHEN DETECTIVE ZOELLER READ THAT

 20 PARAGRAPH BACK TO HIM IN HIS REPORT, HE CERTAINLY

 21 WOULD HAVE CORRECTED HIM RIGHT THEN AND THERE, AND

 22 SAID:

 23 " DETECTIVE ZOELLER. YOU

 24 HAVE THE STORY WRONG. THIS IS WHAT

 25 HAPPENED. IT WAS JUST ME AND LYLE

 26 MENENDEZ WHO CONSPIRED TO PUT TOGETHER

 27 THIS FALSE EVIDENCE."

 28 BUT HE DIDN'T DO THAT. IN FACT, HE EVEN

 1 TOLD DETECTIVE ZOELLER: "ERIK HAD THE WHOLE STORY.

 2 HE WAS IN ON IT."

 3 SO IT'S VERY CLEAR, LADIES AND

 4 GENTLEMEN, THAT BRIAN ESLAMINIA TOLD DETECTIVE

 5 ZOELLER THAT ERIK MENENDEZ WAS INVOLVED IN IT, AND

 6 THAT'S CONSISTENT WITH WHAT YOU WOULD EXPECT; THAT

 7 LYLE MENENDEZ WOULD HAVE NEVER WRITTEN THAT LETTER,

 8 WOULD HAVE EVEN GOTTEN INVOLVED WITH BRIAN

 9 ESLAMINIA, UNLESS ERIK MENENDEZ WAS A FULL PARTY TO

 10 THAT CONSPIRACY TO COMMIT PERJURY.

 11 AND BRIAN ESLAMINIA, OF COURSE, NEVER

 12 GOT ANY LENIENCY, NEVER GOT HIS TRAFFIC WARRANTS

 13 TAKEN CARE OF BY THE PROSECUTION.

 14 WE THEN CALLED ON MARK HEFFERNAN. MARK

 15 HEFFERNAN, YOU KNOW, IS A FRIEND OF ERIK MENENDEZ.

 16 AND ERIK MENENDEZ TESTIFIED THAT HE CALLED HIM AFTER

 17 ARRIVING HOME ABOUT THE TIME THAT LYLE MENENDEZ WAS

 18 DIALING 911 TO CALL THE POLICE. NOT ONLY DID HE

 19 TESTIFY TO THE ACTIONS OF THE DEFENDANTS ON THE DAY

 20 OF THE KILLINGS, BECAUSE OF COURSE, HE SAID THAT

 21 AFTER GOING TO THE POLICE STATION, HE LEFT WITH ERIK

 22 AND LYLE MENENDEZ AND BROUGHT THEM TO HIS HOME.

 23 THEY LEFT AT ABOUT 2:33 IN THE MORNING

 24 TO GO HOME. WELL, THE INTERVIEW ENDED AT 2:33, AND

 25 THEY LEFT IMMEDIATELY AFTER THE INTERVIEW.

 26 THE NEXT MORNING, WHEN HE AWOKE, THE

 27 DEFENDANTS WERE NOT AT HIS HOME. WE NOW KNOW FROM

 28 DETECTIVE ZOELLER WHERE THEY WERE. THEY APPARENTLY

 1 WENT BACK TO THE CRIME SCENE.

 2 THEY RETURNED TO HIS HOME LATER THAT

 3 DAY, AND THEN HE BROUGHT THEM BACK TO THE CRIME

 4 SCENE SOMETIME LATER THAT DAY, AT ABOUT -- BETWEEN

 5 7:00 AND 9:00, WHICH IS CONSISTENT WITH WHAT

 6 DETECTIVE ZOELLER SAID, WHO TESTIFIED THAT THEY CAME

 7 BACK TO THE CRIME SCENE AT ABOUT 8:30.

 8 WE CALLED MARK HEFFERNAN FOR SEVERAL

 9 REASONS. ONE WAS TO TESTIFY IN REGARD TO THE

 10 ACTIVITIES OF ERIK MENENDEZ ON THAT FRIDAY, AUGUST

 11 18TH.

 12 NOW, YOU REMEMBER, ACCORDING TO ERIK

 13 MENENDEZ, THIS IS SUPPOSED TO BE THE DAY IN WHICH HE

 14 STARTS OUT PLAYING TENNIS BY HIMSELF, AND LYLE

 15 MENENDEZ CAME OVER TO HIM AND WANTED TO GO DOWN TO

 16 SAN DIEGO TO PURCHASE THE GUNS, AND THAT IS WHAT

 17 THEY DID.

 18 BUT MARK HEFFERNAN CONTRADICTS THIS

 19 STORY, BECAUSE MARK HEFFERNAN SAID THAT HE WAS

 20 GIVING TENNIS LESSONS TO THE DEFENDANTS THAT WEEK.

 21 AND IT WAS ON THAT DAY, THAT FRIDAY, AUGUST THE

 22 18TH, THAT HE GAVE TENNIS LESSONS TO EITHER ONE OR

 23 TO BOTH OF THE DEFENDANTS, AND HE BELIEVED IT WAS

 24 PROBABLY ERIK MENENDEZ, FOR TWO HOURS ON THAT DAY.

 25 HE SAID THAT HE RECALLS THAT IT WAS FRIDAY,

 26 SEPTEMBER (SIC) THE 18TH, BECAUSE THE DEFENDANTS

 27 WERE GOING TO GO FISHING THE VERY NEXT DAY, SO THAT

 28 IS HOW HE REMEMBERS THAT DAY.

 1 WE DO KNOW THEY DID GO FISHING ON

 2 SATURDAY, THE 19TH.

 3 SO, ONCE AGAIN, WE HAVE A CLEAR

 4 CONTRADICTION BETWEEN THE TESTIMONY OF ERIK MENENDEZ

 5 AND MARK HEFFERNAN. AND WHY IS THAT IMPORTANT?

 6 BECAUSE MARK HEFFERNAN TESTIFIED THAT THERE WAS

 7 NOTHING UNUSUAL ABOUT THE DEMEANOR OF ERIK MENENDEZ

 8 THAT STANDS OUT IN HIS MIND. SO THAT IS SIGNIFICANT.

 9 BEAR IN MIND THE STORY OF ERIK MENENDEZ, THAT IT WAS

 10 THURSDAY THAT HE HAD THIS CONFRONTATION WITH THE

 11 FATHER. HIS FATHER WAS GOING TO KILL HIM.

 12 NOW, AS FAR AS MARK HEFFERNAN CAN SEE,

 13 IT'S JUST ANOTHER DAY. SO, OF COURSE, ERIK MENENDEZ

 14 DOESN'T WANT THAT TO BE THE CASE. SO ERIK MENENDEZ

 15 INSISTS THAT MARK HEFFERNAN HAS THE WRONG DAY. ERIK

 16 MENENDEZ SUGGESTS THAT IT WAS ON THURSDAY MORNING

 17 THAT HE PLAYED TENNIS WITH MARK HEFFERNAN. BUT WE

 18 HAVE A CONTRADICTION IN TESTIMONY. SO WHO ARE YOU

 19 GOING TO BELIEVE, MARK HEFFERNAN OR THE KILLER DOWN

 20 THE TABLE HERE, WHO HAS A REASON TO LIE?

 21 WE ALSO CALLED MARK HEFFERNAN TO TESTIFY

 22 TO THE SPENDING; THAT ERIK MENENDEZ, AFTER THE

 23 KILLING OF HIS PARENTS, HIRED HIM TO BE HIS COACH.

 24 HE WAS TO BE PAID $5,000 A MONTH IF HE PROVIDED

 25 LESSONS TO ONE DEFENDANT, OR $6,000 PER MONTH IF HE

 26 PROVIDED LESSONS TO BOTH OF THE DEFENDANTS; AND FOR

 27 THE FIRST FEW MONTHS HE PROVIDED LESSONS TO BOTH.

 28 BUT THEREAFTER, LYLE MENENDEZ MADE PLANS.

 1 AND HE ALSO SAID THAT HE WENT ON TOUR

 2 WITH ERIK MENENDEZ TO ISRAEL. IT WAS DURING THAT

 3 TRIP TO ISRAEL WHEN ERIK MENENDEZ WAS NOTIFIED OF

 4 THE ARREST AND SURRENDERED HIMSELF. OF COURSE, ALL

 5 OF THE EXPENSES WERE PAID BY ERIK MENENDEZ. AND HE

 6 ALSO SPOKE ABOUT OTHER EXPENSES.

 7 HE SPOKE ABOUT ERIK MENENDEZ HIRING AN

 8 OLYMPIC WEIGHTLIFTING COACH. HE SPOKE ABOUT ERIK

 9 MENENDEZ HIRING A HOLISTIC DOCTOR TO DO NUTRITIONAL

 10 ASSESSMENT, BOTH OF WHICH INVOLVED CERTAIN

 11 EXPENSES.

 12 NOW, THE DEFENSE WILL ARGUE, NO DOUBT,

 13 THAT WELL, GEE, ERIK MENENDEZ WAS PLAYING TENNIS

 14 ANYWAY. SO WHAT DOES THIS SHOW? WHY SHOULD HE KILL

 15 HIS PARENTS JUST FOR THAT?

 16 WELL, LADIES AND GENTLEMEN, WHETHER OR

 17 NOT HIS PARENTS WOULD HAVE PAID FOR THESE EXPENSES

 18 IS NOT THE ISSUE. THE ISSUE IS, ONCE AGAIN, WHAT

 19 WAS ERIK MENENDEZ' MOTIVE TO KILL IN THIS CASE? AND

 20 I SUBMIT TO YOU, HE WANTED TO BE FREE OF HIS

 21 PARENTS. AND IT MAKES A BIG DIFFERENCE WHETHER YOU

 22 PAY YOUR OWN MONEY TO PAY FOR THE THINGS THAT YOU

 23 WANT, OR YOU'RE LIVING ON THE GENEROSITY OF YOUR

 24 PARENTS, WHO ARE LOOKING OVER YOUR SHOULDER AND

 25 CHECKING YOUR EVERY MOVE.

 26 SO THERE'S A BIG DIFFERENCE BETWEEN ERIK

 27 MENENDEZ PAYING FOR HIMSELF AND HAVING HIS FATHER

 28 PAY FOR IT. HE WANTED TO BE ON HIS OWN. HE WANTED

 1 TO PAY HIS OWN EXPENSES.

 2 BUT THE TRUTH OF THE MATTER IS THAT ERIK

 3 MENENDEZ' TENNIS CAREER WAS BECOMING VERY

 4 QUESTIONABLE AT THAT POINT. YOU WILL RECALL -- AND

 5 I'LL GET INTO IT IN FURTHER DETAIL WHEN WE GET INTO

 6 THE TESTIMONY OF ERIK MENENDEZ -- THAT AS SOON AS

 7 HIS FATHER TOLD HIM HE MIGHT NOT EVEN LET HIM BE ON

 8 THE TENNIS TEAM AT U.C.L.A. -- HIS FATHER HAD

 9 APPARENTLY LOST PATIENCE WITH HIM BECAUSE HE WAS

 10 JUST NOT LIVING UP TO HIS EXPECTATIONS OF HIM AS A

 11 TENNIS PLAYER.

 12 LIKE I SAID, FOR JOSE MENENDEZ, TENNIS

 13 WAS NOT A GAME. IT WAS AN ARENA OF COMPETITION. IF

 14 YOU'RE NOT GOING TO PREVAIL AND BE A CHAMPION, BE A

 15 WINNER, THEN GET OUT OF IT, AND DON'T WASTE YOUR

 16 TIME. AND JOSE MENENDEZ WAS GETTING READY TO PULL

 17 THE PLUG ON ERIK MENENDEZ AND HIS TENNIS CAREER.

 18 THAT'S NOT WHAT ERIK MENENDEZ WANTED.

 19 ERIK MENENDEZ VERY MUCH WANTED TO CONTINUE HIS

 20 TENNIS CAREER. HIS TENNIS CAREER WAS MORE IMPORTANT

 21 TO HIM THAN SCHOOL, AS DEMONSTRATED BY HIS ACTIONS

 22 AFTER HE KILLED HIS PARENTS.

 23 AGAIN, HIS SPENDING SHOWS THAT ERIK

 24 MENENDEZ WAS LIVING A LIFE WHICH WAS, ONCE AGAIN, A

 25 FAR CRY FROM THE LIFE HE WAS ABLE TO PAY FOR HIMSELF

 26 WHEN HE WAS ONLY LIVING ON A HUNDRED AND EIGHTY

 27 DOLLARS A MONTH.

 28 THEN WE HAVE MARK HEFFERNAN TESTIFYING

 1 TO ERIK MENENDEZ' INTEREST IN ATTENDING U.C.L.A. WE

 2 GOT THIS FROM A COUPLE OF WITNESSES.

 3 YOU'LL RECALL LATE IN OUR REBUTTAL CASE

 4 WE PRESENTED THE TESTIMONY OF ANOTHER WITNESS

 5 CONCERNING THIS, MR. FENNO. BUT HERE, AT THIS STAGE

 6 OF THE PROCEEDING, WE PRESENTED THE TESTIMONY OF

 7 MARK HEFFERNAN, WHO SAID THAT ERIK MENENDEZ' GOAL

 8 WAS TO BE A PROFESSIONAL TENNIS PLAYER. THAT'S WHAT

 9 HE WANTED. THAT'S WHAT ERIK MENENDEZ WANTED TO DO.

 10 HE WANTED TO PLAY TENNIS. HE WAS OBVIOUSLY MORE

 11 INTERESTED IN PLAYING TENNIS THAN HE WAS IN GOING TO

 12 SCHOOL. BUT HE WANTED TO GO TO U.C.L.A. BECAUSE IT

 13 WAS ONE OF THE TOP FIVE TENNIS TEAMS IN THE NATION;

 14 AND HE AND ERIK MENENDEZ WENT TO U.C.L.A. TO TALK TO

 15 THE SCHOOL ABOUT HIM PLAYING ON THE TEAM. AND HE

 16 WAS TOLD THAT HE WOULD HAVE TO WORK VERY HARD IN

 17 ORDER TO BE ON THE TEAM.

 18 SO THIS DEMONSTRATES TWO THINGS: NUMBER

 19 ONE, INTENT ON ERIK MENENDEZ' PART TO STICK WITH

 20 TENNIS, RATHER THAN GIVE IT UP AND GO TO SCHOOL AND

 21 STUDY THE SUBJECTS THAT HIS FATHER WANTED HIM TO

 22 STUDY; BUT ALSO, IT TELLS US ABOUT -- WHY WOULD ERIK

 23 MENENDEZ BE INTERESTED IN GOING TO SCHOOL AT

 24 U.C.L.A. IF HE WAS BEING MOLESTED SO BADLY BY HIS

 25 FATHER? DIDN'T HE SAY IN HIS TESTIMONY THAT THE ONE

 26 THING HE WANTED TO GET AWAY FROM, THE MOST IMPORTANT

 27 THING IN HIS LIFE WAS TO GET AWAY FROM HIS FATHER,

 28 AND TO TERMINATE THE ABUSE?

 1 WELL, IF THAT WERE TRUE, LADIES AND

 2 GENTLEMEN, IF THAT WERE THE MOST IMPORTANT THING IN

 3 HIS LIFE, WHY WOULD HE BE GOING -- TAKE THE TIME AND

 4 THE TROUBLE TO GO WITH MARK HEFFERNAN TO APPLY TO

 5 U.C.L.A. AND THE TENNIS TEAM THERE? WOULDN'T HE BE

 6 DEAD SET ON GETTING OUT OF THE STATE, OR PERHAPS TO

 7 SOME SCHOOL IN NORTHERN CALIFORNIA? WHY WOULD HE

 8 EVEN BE INTERESTED IN GOING TO U.C.L.A. IF HE WAS

 9 TRULY BEING ABUSED?

 10 I SUBMIT, HE WAS NOT BEING ABUSED, AND

 11 THERE WAS NO PROBLEM IN GOING TO U.C.L.A. THE

 12 DEFENSE WILL TRY TO SAY HE WAS GOING TO BE IN THE

 13 DORMS IN U.C.L.A. YOU SEE, THAT WAS HIS GOAL. THAT

 14 IS HOW HE WOULD GET AWAY FROM HIS FATHER. HOW FAR

 15 IS IT FROM BEVERLY HILLS TO U.C.L.A.? A FEW

 16 MINUTES? HOW FAR? HOW LONG WOULD IT TAKE FOR JOSE

 17 MENENDEZ TO GIVE HIM A CALL ON THE PHONE AND SAY,

 18 " ERIK, I WANT TO SEE YOU."

 19 HE KNEW IF HE WENT TO U.C.L.A. HE WOULD

 20 CONTINUE TO SEE HIS FAMILY, AND HE WOULD CONTINUE TO

 21 GO HOME. THERE WAS NO REASON TO BE CONCERNED WITH

 22 THAT, I SUBMIT, LADIES AND GENTLEMEN, BECAUSE ERIK

 23 MENENDEZ WAS NOT BEING ABUSED BY HIS FATHER, AND

 24 ERIK MENENDEZ HAD NO INTENT TO AVOID U.C.L.A. HE

 25 MAY VERY WELL HAVE WANTED TO GO TO BROWN, AS HE

 26 SAID, BUT HE HAD NO PROBLEM WITH U.C.L.A., BECAUSE

 27 IT HAD A GOOD TENNIS TEAM, AND THAT'S WHAT HE WANTED

 28 TO DO. AND HE WAS NOT BEING ABUSED BY HIS FATHER.

 1 THEN WE HEARD THE TESTIMONY OF AMANDA

 2 GEIER. AND YOU WILL RECALL THAT AMANDA GEIER WAS

 3 THE SALESPERSON WHO WORKS FOR BIG-5 DOWN IN SAN

 4 DIEGO. AND AMANDA GEIER TESTIFIED THAT SHE WAS

 5 WORKING THERE ON FRIDAY, AUGUST THE 18TH OF 1989,

 6 AND SHE RECALLS THAT SHE SOLD TWO SHOTGUNS THAT

 7 DAY.

 8 WE KNOW NOW THAT THE DEFENDANT, ERIK

 9 MENENDEZ, CAME IN AND PURCHASED THOSE GUNS. AND SHE

 10 SAID THAT THE PERSON WHO CAME IN JUST CAME IN,

 11 POINTED OUT WHAT HE WANTED. SHE DIDN'T DESCRIBE ANY

 12 EXPLANATIONS OF THE OPERATION OF A WEAPON OR

 13 ANYTHING LIKE THAT.

 14 THIS PERSON PRESENTED IDENTIFICATION OF

 15 DONOVAN GOODREAU. HE FILLED OUT THE PAPERWORK IN

 16 THAT NAME, AND HE PAID IN CASH.

 17 ONE OF THE SIGNIFICANT THINGS THAT SHE

 18 TESTIFIED TO, LADIES AND GENTLEMEN, IS THAT THIS

 19 OCCURRED AT NIGHT. AND SHE GAVE AN ESTIMATE OF IT

 20 OCCURRING AT APPROXIMATELY 8:00 OR 8:30 AT NIGHT.

 21 WHY WOULD THAT BE SIGNIFICANT? WELL, BECAUSE ERIK

 22 MENENDEZ WOULD HAVE US BELIEVE THAT, ALTHOUGH HE

 23 WOKE UP THAT MORNING INTENDING TO GO OUT AND

 24 PURCHASE WEAPONS TO POSSIBLY BE USED AGAINST THE

 25 PARENTS, AND THOUGH HE DROVE DOWN TO SAN DIEGO THAT

 26 DAY, HE DIDN'T DRIVE TO SAN DIEGO TO PURCHASE

 27 WEAPONS.

 28 WELL, THAT'S SORT OF RIDICULOUS. WHAT

 1 WOULD HE BE DOING DRIVING DOWN TO SAN DIEGO IF NOT

 2 FOR THE PURPOSE OF PURCHASING THESE WEAPONS? THE

 3 TRUTH OF THE MATTER, LADIES AND GENTLEMEN, IS THAT

 4 THE DEFENDANT WANTED TO GO OUT OF TOWN TO GET AWAY

 5 FROM L.A., SO THEY COULD PURCHASE WEAPONS TO AVOID

 6 THE WEAPONS BEING TRACED BACK TO THEM. THEY TOOK

 7 SEVERAL PRECAUTIONS TO ENSURE THAT THESE WEAPONS

 8 WOULD NOT BE TRACED BACK TO THEM, BECAUSE THEY KNEW

 9 THEY WERE GOING TO KILL THEIR PARENTS.

 10 AND SO THEY INTENTIONALLY USED FALSE

 11 IDENTIFICATION. ERIK MENENDEZ FORGED THE NAME OF

 12 DONOVAN GOODREAU. THEY PAID IN CASH. THEY CREATED

 13 A STREET ADDRESS WHICH DOESN'T EXIST. AND THIS WAS

 14 ALL DESIGNED TO AVOID THE WEAPONS BEING TRACED BACK

 15 TO THEM.

 16 SO IT WASN'T BY PURE CHANCE, LADIES AND

 17 GENTLEMEN, THAT THEY JUST HAPPENED TO DRIVE DOWN TO

 18 SAN DIEGO; AND IF INDEED THIS DID OCCUR LATE AT

 19 NIGHT, AS SHE RECALLS, 8:00 TO 8:30, THEN THAT MEANS

 20 THEY WOULD HAVE TO DEAL WITH THE FREEWAY TRAFFIC,

 21 SAN DIEGO FREEWAY TRAFFIC, WHICH WOULD BE MUCH MORE

 22 HORRENDOUS IF THEY WERE TO MAKE THAT TRIP LATE IN

 23 THE DAY, RATHER THAN EARLY IN THE DAY. SO THAT IS

 24 IMPORTANT, BECAUSE YOU DON'T PUT UP WITH SAN DIEGO

 25 TRAFFIC UNLESS THERE'S A SPECIFIC NEED TO.

 26 AND SO THIS WAS NO CASUAL DRIVE DOWN TO

 27 SAN DIEGO, LADIES AND GENTLEMEN. THEY HAD A

 28 SPECIFIC NEED TO GO DOWN TO SAN DIEGO, A SPECIFIC

 1 PURCHASE TO BE PURCHASED OUT OF TOWN, OR ELSE THEY

 2 WOULDN'T PUT UP WITH THIS TRAFFIC.

 3 WE THEN HEARD FROM VALERIE HART. SHE

 4 WAS ANOTHER SPENDING WITNESS. WE WANTED TO SHOW

 5 YOU, GIVE YOU SOME IDEA OF THE VARIOUS AMOUNTS OF

 6 SPENDING THAT THE DEFENDANTS DID FOLLOWING THE

 7 KILLING OF THEIR PARENTS.

 8 VALERIE HART TESTIFIED THAT SHE WAS

 9 EMPLOYED BY THE MARINA CITY CONDOMINIUMS, AND SHE

 10 SPOKE TO ERIK AND LYLE MENENDEZ ON OCTOBER THE 15TH

 11 OF 1989. LYLE MENENDEZ SAID THAT HE WAS INTERESTED

 12 IN, QUOTE, THE LARGEST CONDOMINIUM THAT SHE HAD

 13 AVAILABLE. OBVIOUSLY, LYLE MENENDEZ DIDN'T WANT TO

 14 GO SECOND CLASS. YOU ONLY KILL YOUR FATHER ONCE AND

 15 BECOME RICH ONCE. HE WANTED THE LARGEST CONDOMINIUM

 16 THAT SHE HAD AVAILABLE, AND SHE SAID THAT AT THE

 17 TIME THE MARINA CITY CONDOMINIUMS WERE THE MOST

 18 EXCLUSIVE, THE MOST EXPENSIVE CONDOMINIUMS IN THE

 19 MARINA AREA.

 20 SHE SHOWED HIM A CONDOMINIUM THAT WENT

 21 FOR $990,000. LYLE MENENDEZ SAID THAT HE WAS ALSO

 22 INTERESTED IN HAVING ADDITIONAL WORK DONE ON IT

 23 CONCERNING APPLIANCES AND CARPET. ERIK MENENDEZ

 24 WROTE OUT A CHECK FOR $29,000. THE DEAL NEVER WENT

 25 THROUGH; HOWEVER, SOMETIME LATER LYLE MENENDEZ

 26 CANCELED. HE SAID HE WOULD BE OPENING UP A

 27 RESTAURANT ON THE EAST COAST AND WOULD NOT BE IN

 28 TOWN, AND THE CHECK WAS RETURNED. THE DEFENDANTS

 1 CONTINUED TO RENT AT THE MARINA, AND SHE

 2 OCCASIONALLY SAW THE DEFENDANTS COMING AND GOING.

 3 DONOVAN GOODREAU WAS OUR NEXT WITNESS.

 4 AND HE WAS CALLED FOR THE PURPOSE OF TESTIFYING TO

 5 THE FACT THAT HE WAS NOT THE ONE WHO PURCHASED THE

 6 SHOTGUNS. ALTHOUGH IT WAS HIS IDENTIFICATION THAT

 7 WAS USED IN THAT PURCHASE, WE KNOW NOW HE HAD LOST

 8 HIS WALLET. HE LEFT IT BEHIND WHEN HE LEFT THE

 9 RESIDENCE HE WAS LIVING IN WITH LYLE MENENDEZ, AFTER

 10 THEY GOT INTO A FALLING OUT, AND LYLE MENENDEZ THREW

 11 HIM OUT OF THAT RESIDENCE.

 12 SO LYLE MENENDEZ HAD ACCESS TO HIS

 13 DRIVER'S LICENSE, AND HE COULD PROVE HE WAS NOT IN

 14 SAN DIEGO ON AUGUST THE 18TH OF 1989, BECAUSE HE WAS

 15 WORKING THE NEW YORK CITY AT THAT TIME AT "BOXERS"

 16 RESTAURANT, AND HE HAS WORK RECORDS TO PROVE THAT HE

 17 WAS IN NEW YORK CITY THAT DAY AND HAD NOTHING TO DO

 18 WITH THE PURCHASE OF THE SHOTGUNS.

 19 THEN WE HEARD FROM RICHARD WENSKOSKI.

 20 MR. WENSKOSKI WAS CALLED FOR A NUMBER OF REASONS.

 21 MR. WENSKOSKI IS YET ANOTHER WITNESS OF LYLE

 22 MENENDEZ POINTING THE FINGER AT THE MAFIA, BECAUSE

 23 LYLE MENENDEZ REALLY WENT ALL THE WAY WITH HIM BY

 24 HIRING HIM TO PROTECT HIM FROM THE MAFIA. WENSKOSKI

 25 SAID HE WORKED AS A MANAGER OF INVESTIGATION FOR

 26 D.B. KELLY PRIVATE INVESTIGATION PROTECTION AGENCY,

 27 AND THAT HE FORMERLY WORKED AS A POLICE OFFICER FOR

 28 18 YEARS.

 1 WHEN LYLE MENENDEZ HIRED THE SERVICE FOR

 2 24-HOUR PROTECTION, AND MR. WENSKOSKI AND HIS

 3 PARTNER BEGAN TO PROVIDE BODYGUARD SERVICE FOR HIM,

 4 HE HAD TO TAKE SPECIAL SECURITY PRECAUTIONS IN THIS

 5 CASE BASED UPON INFORMATION THAT HE RECEIVED FROM

 6 LYLE MENENDEZ. HE SAID THAT ALTHOUGH HE NORMALLY

 7 CARRIES A GUN, IN THIS CASE, HE TOOK SPECIAL

 8 PRECAUTIONS, BECAUSE LYLE MENENDEZ TOLD HIM THAT HIS

 9 PARENTS WERE KILLED BY THE COLUMBIAN CARTEL OR THE

 10 MAFIA. HE ALSO TOLD MR. WENSKOSKI THAT THE KILLING

 11 WAS A MESSAGE-TYPE MURDER, AND THAT HE WAS FEARFUL

 12 THAT THE MAFIA MIGHT ALSO KILL HIM AND HIS BROTHER.

 13 SO BEING AGAIN, IT TIES BACK, HAND IN

 14 HAND WITH -- YOU RECALL LYLE MENENDEZ TELLING

 15 DETECTIVE EDMONDS THAT WHOEVER DID THIS REALLY

 16 WANTED TO MAKE A MESS. AND NOW HE'S TELLING

 17 WENSKOSKI THAT IT WAS A MESSAGE-TYPE MURDER.

 18 SO AS A RESULT OF THESE CONCERNS,

 19 MR. WENSKOSKI PURCHASED A BULLET-PROOF VEST FOR

 20 HIMSELF AND HIS PARTNER. HE EVEN LOOKED INTO THE

 21 POSSIBILITY OF PURCHASING A BULLET-PROOF LIMOUSINE,

 22 BECAUSE LYLE MENENDEZ TOLD HIM THAT HE WAS

 23 INTERESTED IN SUCH A PURCHASE. AND HE GAVE

 24 WENSKOSKI THE IMPRESSION THAT HE WAS NOT CONCERNED

 25 WHATSOEVER ABOUT THE COST THAT MIGHT ENTAIL.

 26 WENSKOSKI EMPLOYED A CRASH CAR THAT

 27 WOULD RUN INTERFERENCE IN THE EVENT UPON THE ATTEMPT

 28 OF THE LIFE OF LYLE MENENDEZ WHILE LYLE MENENDEZ WAS

 1 DRIVING IN THE LIMOUSINE. SO FOR THE LATTER PART OF

 2 AUGUST AND EARLY SEPTEMBER, LYLE MENENDEZ WAS DRIVEN

 3 AROUND IN A CHAUFFEURED LIMOUSINE, FOLLOWED BY

 4 WENSKOSKI AND HIS PARTNER IN A CRASH CAR. HE

 5 TRANSPORTED LYLE MENENDEZ AND HIS GUESTS HERE AND

 6 THERE.

 7 LYLE MENENDEZ, HE WOULD GO TO THE GYM

 8 AND WORK OUT WITH TWO ARMED GUARDS STANDING

 9 OUTSIDE. NOTHING BUT FIRST CLASS.

 10 THE ODD THING ABOUT THE SECURITY,

 11 HOWEVER, IS THAT LYLE MENENDEZ WAS NOT REALLY

 12 CONCERNED ABOUT SECURITY. YOU SEE, NOW WHAT THE

 13 DEFENSE IS GOING TO SAY IS THIS: THE DEFENSE IS

 14 GOING TO SAY: OH, LYLE MENENDEZ WAS REALLY

 15 CONCERNED ABOUT THE MAFIA. HE WASN'T JUST TRYING TO

 16 GIVE THE APPEARANCE OF THE MAFIA BEING AFTER HIM AS

 17 A COVER UP FOR THE KILLING OF THE PARENTS. BUT HE

 18 WAS TRULY CONCERNED THAT THE MAFIA WAS AFTER HIM.

 19 WELL, THAT DOESN'T REALLY FLY. THAT

 20 DOESN'T REALLY WORK, BECAUSE IT FLIES IN THE FACE OF

 21 THE TESTIMONY OF RICHARD WENSKOSKI, BECAUSE RICHARD

 22 WENSKOSKI SAID THAT LYLE MENENDEZ DID NOT APPEAR TO

 23 BE CONCERNED ABOUT SECURITY AFTER ALL. HE SAID HE

 24 WOULD STAY, FOR EXAMPLE, AT THE PRINCETON HYATT, AND

 25 WENSKOSKI HAD ADVISED HIM NOT TO STAY THERE, BECAUSE

 26 THAT POSED A NUMBER OF SECURITY PROBLEMS, BECAUSE IT

 27 WAS TOO EXPOSED. BUT LYLE MENENDEZ DIDN'T SEEM TO

 28 CARE ABOUT THAT. LYLE MENENDEZ, FOR EXAMPLE, WOULD

 1 ALSO HOP OUT OF HIS LIMOUSINE BEFORE THE SECURITY

 2 GUARDS IN THE CRASH CAR WERE PREPARED TO ACCOMPANY

 3 HIM.

 4 AGAIN, EVEN THOUGH HE RECEIVED THESE

 5 ADMONISHMENTS FROM WENSKOSKI, LYLE MENENDEZ WASN'T

 6 REALLY CONCERNED ABOUT THE MAFIA. LYLE MENENDEZ WAS

 7 JUST PUTTING UP THIS SHOW ABOUT THE MAFIA.

 8 WENSKOSKI ALSO RECALLS THE SPENDING

 9 SPREE THAT LYLE MENENDEZ WENT ON IN PRINCETON, AND

 10 HE TESTIFIED HOW LYLE MENENDEZ SHOPPED FOR A

 11 PORSCHE, FOR HOMES, FOR CLOTHING; HOW HE WOULD GO

 12 INTO A STORE AND SPEND THOUSANDS OF DOLLARS IN A

 13 STORE; AND HOW HE ACCOMPANIED LYLE MENENDEZ WHEN HE

 14 WENT ON THE TEST DRIVE OF HIS PORSCHE, WHICH HE

 15 EVENTUALLY BOUGHT FOR $70,000. $70,000 FOR A CAR HE

 16 PURCHASED.

 17 HE ALSO STROLLED WITH HIM THROUGH

 18 HOUSING COMPLEXES LOOKING FOR TWO HOMES LYLE

 19 MENENDEZ WAS LATER INVOLVED IN, OR AT LEAST

 20 INTERESTED IN PURCHASING.

 21 WENSKOSKI ALSO CORROBORATED THE

 22 TESTIMONY OF HOWARD WITKIN. HOWARD WITKIN TESTIFIED

 23 TO MEETING WITH LYLE MENENDEZ ON AUGUST THE 31ST

 24 WHEN LYLE MENENDEZ WANTED THE COMPUTER ERASED.

 25 WELL, IT WAS WENSKOSKI WHO DROVE HIM TO THE AIRPORT

 26 SO HE COULD GET BACK TO LOS ANGELES TO ERASE THE

 27 COMPUTER. HE DROVE HIM TO THE AIRPORT JUST BEFORE

 28 THAT AND PICKED HIM UP RIGHT AFTER THAT.

 1 VERY IMPORTANT PART OF WENSKOSKI'S

 2 TESTIMONY IS IN REGARD TO A QUESTION THAT LYLE

 3 MENENDEZ HAD FOR HIM ABOUT SHOTGUN SHELLS AND

 4 TRACING SHOTGUN SHELLS BACK TO SHOTGUNS FROM WHICH

 5 THEY WERE FIRED. YOU SEE, ONE OF THE ARGUMENTS THAT

 6 THE DEFENSE IS GOING TO MAKE IN THIS CASE IS THIS:

 7 THEY'RE GOING TO SAY: "LADIES AND GENTLEMEN, THIS IS

 8 NOT A PLANNED MURDER."

 9 ONCE AGAIN, THE DEFENDANTS ARE NOT

 10 CHARGED WITH A PLANNED MURDER. THEY'RE CHARGED WITH

 11 PREMEDITATED MURDER. THEY'RE GOING TO SAY THIS WAS

 12 NOT A PLANNED MURDER BECAUSE LYLE MENENDEZ AND ERIK

 13 MENENDEZ WENT AROUND AND PICKED UP ALL THE SHOTGUN

 14 SHELLS; AND, OBVIOUSLY, THEY WANTED TO RECOVER THE

 15 SHOTGUN SHELLS SO THAT THEY CAN -- SO THAT THE

 16 FINGERPRINTS ON THE SHOTGUN SHELLS WOULD NOT BE

 17 TRACED BACK TO THEM.

 18 AND SO THE DEFENSE WILL ARGUE, IF ERIK

 19 AND LYLE MENENDEZ TRULY HAD PLANNED TO COMMIT THIS

 20 MURDER IN ADVANCE, WHY WOULD THEY HAVE PLACED

 21 SHOTGUN SHELLS WITH THEIR FINGERPRINTS INSIDE THE

 22 SHOTGUN, BECAUSE THAT WOULD JUST THEN REQUIRE THEM

 23 TO TAKE THE TIME AND THE TROUBLE AFTERWARDS TO PICK

 24 UP THOSE SHOTGUN SHELLS?

 25 SURELY, THE DEFENSE WILL ARGUE, IF

 26 YOU'RE GOING TO PLAN A MURDER SUCH AS THIS, WHAT YOU

 27 DO IS YOU WEAR GLOVES, OR YOU WIPE OFF THE SHOTGUN

 28 SHELLS IN SOME WAY AS YOU ARE PLACING THEM INTO THE

 1 GUN, SO YOU DO NOT LEAVE PRINTS. YOU SEE? BUT THE

 2 MERE FACT THAT THEY PICKED UP THE SHOTGUN SHELLS,

 3 THE DEFENSE WILL ARGUE, IS EVIDENCE THAT THIS MURDER

 4 WAS NOT PLANNED IN ADVANCE.

 5 WELL, THAT DOESN'T FOLLOW, LADIES AND

 6 GENTLEMEN, FOR THE FOLLOWING REASON: LYLE MENENDEZ

 7 WAS WITH RICHARD WENSKOSKI IN THE PRINCETON HYATT

 8 WHEN LYLE MENENDEZ BEGAN TO QUESTION WENSKOSKI, WHO

 9 WAS A FORMER POLICE OFFICER, ABOUT HOW YOU GET

 10 BALLISTICS FROM FIREARMS. LYLE MENENDEZ ASKED HIM

 11 IF EXPENDED BULLETS CAN BE TRACED BACK TO THE

 12 PARTICULAR FIREARM THAT THEY WERE FIRED FROM, AND

 13 WENSKOSKI EXPLAINED THAT BECAUSE OF THE RIFLING IN

 14 THE BARREL OF FIREARMS, THAT YOU CAN INDEED TRACE

 15 BULLETS BACK TO THE GUN FROM WHICH THEY WERE FIRED,

 16 BECAUSE AS THEY PASS THROUGH THE BARREL, IT LEAVES A

 17 GROOVE ON THE BULLET.

 18 BUT THEN CAME THE KEY QUESTION. LYLE

 19 MENENDEZ ASKED HIM: CAN YOU TRACE SHOTGUN SHELLS

 20 BACK TO THE SHOTGUN FROM WHICH THEY WERE FIRED?

 21 AND THAT'S VERY SIGNIFICANT, LADIES AND

 22 GENTLEMEN, BECAUSE WHAT THAT TELLS YOU THEN, IS THAT

 23 IN LATE AUGUST AND EARLY SEPTEMBER OF 1989, AFTER HE

 24 HAD KILLED HIS PARENTS, HE DID NOT KNOW WHETHER OR

 25 NOT YOU CAN TRACE SHOTGUN SHELLS BACK TO THE

 26 SHOTGUNS FROM WHICH THEY WERE FIRED.

 27 SO I SUBMIT TO YOU, LADIES AND

 28 GENTLEMEN, THE REASON THAT THEY PICKED UP THOSE

 1 SHOTGUN SHELLS WAS NOT SO MUCH BECAUSE OF THE

 2 FINGERPRINTS, BUT BECAUSE HE DIDN'T KNOW WHETHER OR

 3 NOT YOU CAN TRACE THE SHOTGUN SHELLS BACK TO THE

 4 SHOTGUN. IT WAS JUST ONE MORE PIECE OF EVIDENCE

 5 AGAINST HIM THAT HE DIDN'T WANT TO LEAVE AT THE

 6 CRIME SCENE, EVEN THOUGH THEY HAD PURCHASED THE GUNS

 7 ANONYMOUSLY FOR ALL PRACTICAL PURPOSES. IF YOU CAN

 8 TRACE THE SHOTGUN SHELLS BACK TO THE SHOTGUN, THERE

 9 MIGHT BE A WAY OF EVENTUALLY GETTING BACK TO THE

 10 SALE OF THIS PARTICULAR FIREARM, THE FALSE

 11 IDENTIFICATION OF DONOVAN GOODREAU, AND EVENTUALLY

 12 GETTING BACK TO HIM AND HIS BROTHER, ERIK MENENDEZ.

 13 SO THE FACT THAT THEY TOOK THE TIME AND

 14 THE TROUBLE TO PICK UP THE SHOTGUN SHELLS IN THIS

 15 CASE DOES NOT PROVE THAT THEY WERE CONCERNED ABOUT

 16 FINGERPRINTS, ALTHOUGH MAYBE THEY WERE, AND MAYBE

 17 THEY WEREN'T. WHO KNOWS?

 18 ONE OF THE REASON WHY THEY PICKED UP

 19 THOSE SHOTGUN SHELLS IS THEY WERE CONCERNED THAT IT

 20 COULD BE TRACED BACK TO THE PARTICULAR SHOTGUNS THAT

 21 THEY HAD PURCHASED.

 22 LYLE MENENDEZ CONTINUED TO HINT THAT HE

 23 WAS AFRAID ABOUT THE MAFIA RIGHT UP UNTIL THE TIME

 24 HE TERMINATED WITH THE SERVICE OF D.B. KELLY, WHICH

 25 OCCURRED DURING LABOR DAY WEEKEND, SEPTEMBER OF

 26 1989.

 27 IT WAS FOLLOWING THAT WEEKEND THAT HE

 28 TOLD WENSKOSKI THAT HE NO LONGER HAD NEED FOR

 1 PROTECTION FROM THE AGENCY. HE SAID THAT HIS UNCLE

 2 CONTACTED SOMEONE IN THE MAFIA IN NEW YORK, A DEAL

 3 HAD BEEN MADE, AND LYLE MENENDEZ AND HIS BROTHER

 4 WERE NO LONGER IN DANGER. WHAT AN ACTIVE

 5 IMAGINATION LYLE MENENDEZ HAS. HE FINALLY DECIDED

 6 THAT HE IS NOW GOING TO TERMINATE THE CHARADE ABOUT

 7 THE MAFIA. IT WORKED LONG ENOUGH TO KEEP THE POLICE

 8 OFF HIS TAIL. IT'S BEEN MORE THAN TWO WEEKS SINCE --

 9 THAT HE HAS GOTTEN AWAY NOW WITH THE KILLING, AND I

 10 THINK HE'S COMING TO THE REALIZATION THAT HE NO

 11 LONGER NEEDS TO PRETEND THAT THE MAFIA IS INVOLVED;

 12 AND, IN FACT, IT'S LATER THAT MONTH, CONSISTENT WITH

 13 WHAT HE SAID ON SEPTEMBER 17TH, DETECTIVE ZOELLER

 14 INTERVIEWS HIM IN NEW JERSEY.

 15 YOU RECALL, ON SEPTEMBER 17TH, ABOUT TWO

 16 WEEKS AFTER HE TERMINATED WITH D.B. KELLY AND HE

 17 TELLS HIM, WELL, I DON'T KNOW ABOUT THIS MAFIA

 18 STUFF. I'LL BELIEVE IT WHEN I SEE IT. UNTIL I SEE

 19 IT, I DON'T BELIEVE IT.

 20 WELL, IT'S FINE, EXCEPT THAT HE'S BEEN

 21 TELLING THAT STORY FOR A LONG TIME, UP TO THIS POINT

 22 IN TIME. HE WAS POINTING TO THE MAFIA EVERY CHANCE

 23 HE HAD. BUT THEN HE BEGAN TO ABANDON THE STORY

 24 LABOR DAY WEEKEND, AND BY THE TIME HE TALKED TO

 25 DETECTIVE ZOELLER ON SEPTEMBER 17, THAT WAS IT.

 26 THERE WAS NO LONGER ANY REASON TO BE POINTING THE

 27 FINGER TO THE MAFIA. IT SERVED ITS PURPOSE. HE GOT

 28 AWAY FOR AT LEAST TWO WEEKS, AND NOW THE POLICE WERE

 1 GOING TO DRAW WHATEVER CONCLUSIONS THEY WERE GOING

 2 TO DRAW. IT WAS NO LONGER A MATTER OF HIS POINTING

 3 THE FINGER TO THE MAFIA.

 4 FINALLY, WENSKOSKI SAID THAT HE

 5 TESTIFIED TO THE DEMEANOR OF LYLE MENENDEZ DURING

 6 THIS TIME PERIOD, WHEN HE SERVED AS BODYGUARD FOR

 7 HIM AT PRINCETON. HE SAID LYLE MENENDEZ NEVER

 8 SHOWED REMORSE. TO THE CONTRARY, HE CALLED HIM,

 9 QUOTE, QUITE JOVIAL. THAT TELLS YOU A LITTLE BIT

 10 ABOUT LYLE MENENDEZ.

 11 LARRY COHEN WAS A REALTOR IN MARINA DEL

 12 REY IN FEBRUARY OF 1990 WHO SAID THAT ERIK MENENDEZ

 13 CONTACTED HIM, SAYING THAT HE WAS INTERESTED IN

 14 PURCHASING A HOME ON THE SILVER STRAND IN THE

 15 MARINA, AN UPSCALE RESIDENTIAL AREA, ABOUT 500 YARDS

 16 FROM THE OCEAN, WITH A CANAL RUNNING ALONG THE

 17 COMPLEX. ERIK MENENDEZ SAID THAT HE WAS LOOKING FOR

 18 A LARGE HOME IN THE AREA, WHICH MR. COHEN SAID WAS

 19 ONE OF THE NICEST IN THE MARINA. THE HOME THAT THE

 20 DEFENDANT WAS INTERESTED IN PURCHASING WAS A

 21 THREE-LEVEL MEDITERRANEAN SPANISH STYLE PRICED AT

 22 1.4 MILLION DOLLARS. ERIK MENENDEZ MADE AN OFFER OF

 23 1.1 MILLION DOLLARS, AND THE SELLER COUNTERED WITH A

 24 1.35 MILLION DOLLAR SALE PRICE.

 25 THE SALE NEVER WENT THROUGH, HOWEVER,

 26 BECAUSE ERIK MENENDEZ WAS ARRESTED SHORTLY AFTER,

 27 AND HE HAD NO FURTHER CONTACT WITH THE DEFENDANT.

 28 ONCE AGAIN, AN INTEREST OF ERIK MENENDEZ

 1 IN SPENDING THOSE BIG DOLLARS.

 2 VICKI RIVAS WAS AN EMPLOYEE OF THE JEEP

 3 DEALERSHIP IN LOS ANGELES, AND SHE RECALLS SOME

 4 SPENDING OF ERIK MENENDEZ FOLLOWING THE KILLING OF

 5 HIS PARENTS. SHE RECALLS HE CAME IN FOR THE PURPOSE

 6 OF PURCHASING A JEEP. HE WAS WITH ANOTHER MAN BY

 7 THE NAME OF STEVE GOLDBERG, THOUGH I DON'T THINK SHE

 8 RECALLS HIS NAME. IT'S CLEAR FROM THE QUESTIONING

 9 THAT'S WHO'S BEING REFERRED TO. HE WANTED TO

 10 PURCHASE A JEEP WRANGLER. HE PURCHASED IT FOR A

 11 CASH PRICE OF $21,000. AND SHE SAW HIM OCCASIONALLY

 12 THEREAFTER.

 13 MARK SLOTKIN TESTIFIED TO SOME SPENDING

 14 ON THE PART OF THE DEFENDANT, TESTIFYING TO

 15 GAMBLING, THE DEFENDANT GAMBLING IN TAHOE, WITH

 16 LARGE AMOUNTS OF MONEY. HE HAD TO LOAN THE

 17 DEFENDANT FIVE TO $8,000 TO COVER HIS GAMBLING

 18 DEBT.

 19 ONCE AGAIN, A VERY DIFFERENT LIFE-STYLE

 20 FROM A HUNDRED AND EIGHTY A MONTH.

 21 WESLEY GROSS WAS CALLED TO TESTIFY

 22 BECAUSE HE IS A HANDWRITING EXPERT, AND NOW THAT WE

 23 GOT IN THE DOCUMENTS FROM AMANDA GEIER FROM BIG-5

 24 CONCERNING THE PURCHASE OF THE SHOTGUNS, WE WANTED

 25 TO DEMONSTRATE TO YOU WHO IT WAS THAT ACTUALLY MADE

 26 THAT PURCHASE. THIS WAS, OF COURSE, PRIOR TO THE

 27 TIME THAT ERIK MENENDEZ TESTIFIED IN FRONT OF YOU.

 28 AND SO TO PROVE THAT FACT PRIOR TO HIS

 1 TESTIMONY, WE CALLED WESLEY GROSS, AND HE SAID THAT

 2 HE COMPARED THE VARIOUS HANDWRITING OF ERIK

 3 MENENDEZ, LYLE MENENDEZ, AND DONOVAN GOODREAU, AND

 4 HE CONCLUDED THAT THE MOST LIKELY PERSON SIGNING THE

 5 PAPERWORK, WHO FILLED OUT THAT PAPERWORK, WAS ERIK

 6 MENENDEZ.

 7 NOW, DEPUTIES GUTHRIE AND DULLAR WERE

 8 TWO WITNESSES WHO I'M SURE YOU DIDN'T UNDERSTAND THE

 9 SIGNIFICANCE OF THIS TESTIMONY WHEN THEY TESTIFIED,

 10 BECAUSE ALL THEY SAID WAS THAT THEY RECOVERED A

 11 DOCUMENT. AND YOU NEVER GOT TO SEE WHAT THAT

 12 DOCUMENT WAS, AND YOU DIDN'T GET TO SEE IT BECAUSE

 13 THERE WERE NO SPECIFIC QUESTIONS CONCERNING THAT

 14 DOCUMENT. I COULDN'T JUST THROW THAT DOCUMENT IN

 15 FRONT OF YOU. I HAD TO WAIT. I HAD TO WAIT FOR

 16 ARGUMENT FOR YOU TO ACTUALLY SEE WHAT THE DOCUMENT

 17 WAS THAT THEY RECOVERED.

 18 BUT THEY TESTIFIED THAT THEY WERE

 19 EMPLOYED BY THE LOS ANGELES SHERIFF'S DEPARTMENT.

 20 THEY RECOVERED AND BOOKED NINE PAGES OF NOTES FOUND

 21 IN THE CELL OF LYLE MENENDEZ. AND THAT'S BASICALLY

 22 ALL THEY TESTIFIED TO.

 23 NOW YOU GET TO SEE WHAT IT IS THEY

 24 RECOVERED. WHAT THEY RECOVERED, LADIES AND

 25 GENTLEMEN, IS WHAT CAN ONLY BE CALLED "ESCAPE

 26 PLANS." THE INTENTION OF LYLE MENENDEZ TO ESCAPE

 27 FROM JAIL. THE ACTUAL DOCUMENT I HAVE HERE. I HAVE

 28 A XEROX COPY OF THE DOCUMENT HERE, AND YOU'LL GET TO

 1 SEE THIS IN THE JURY ROOM.

 2 BUT RIGHT NOW, WHAT I CAN DO -- I HAD

 3 SOME OF THIS BLOWN UP SO YOU CAN GET AN IDEA OF WHAT

 4 IT IS RIGHT NOW, THOUGH WHAT THIS REFLECTS HERE IS

 5 -- WHERE YOU SEE THIS BLUE LINE IS WHERE -- THIS IS

 6 THE OPPOSITE SIDE OF THE PAGE.

 7 SO, FOR EXAMPLE, YOU SEE THESE FIRST

 8 FOUR ITEMS HERE. THAT'S ONE SIDE OF ONE PAGE.

 9 THERE'S A BLUE LINE, AND THAT REFLECTS THE OTHER

 10 SIDE OF THAT VERY SAME PAGE. I WILL GO THROUGH THIS

 11 DOCUMENT WITH YOU. WHEN THERE'S NO BLUE LINE, OF

 12 COURSE, IT REFLECTS A SINGLE PAGE OF DOCUMENT SUCH

 13 AS THAT, THE BLUE LINE REPRESENTING A BREAK IN THE

 14 PAGE. WHAT THIS DOCUMENT SHOWS, LADIES AND

 15 GENTLEMEN, IS WENSKOSKI AGAIN. THE ACTIVITIES OF

 16 ERIK MENENDEZ --

 17 MS. ABRAMSON: OBJECTION, YOUR HONOR.

 18 MR. CONN: I'M SORRY. LYLE MENENDEZ. THE

 19 ACTIVITIES OF LYLE MENENDEZ. YOU KNOW HOW ACTIVE HE

 20 WAS IN SOLICITING PERJURY DURING THE TIME THAT HE

 21 WAS IN JAIL, TRYING TO SOLICIT PERJURY FROM JAMIE

 22 PISARCIK, TRYING TO SOLICIT PERJURY FROM BRIAN

 23 ESLAMINIA.

 24 WELL, HE'S BEEN EVEN MORE ACTIVE THAN

 25 THAT, AS DEMONSTRATED IN THIS DOCUMENT. YOU CAN SEE

 26 HOW LYLE MENENDEZ WANTED TO ESCAPE FROM COUNTY

 27 JAIL. AND I'LL GO THROUGH SOME OF THESE ENTRIES ON

 28 THESE VARIOUS NOTES, AND YOU CAN SEE HOW CAREFULLY

 1 HE CONSIDERED THE ESCAPE IN MANY WAYS. THE

 2 DOCUMENTS WHICH ARE IN FRONT OF YOU RIGHT NOW

 3 REFLECT A CONSIDERATION OF ALL OF THE FOLLOWING

 4 ITEMS:

 5 NO. 1, THE ACTUAL PLACE OF THE VEHICLE

 6 THAT WILL TAKE HIM TO SAFETY. THERE'S A DRAWING OF

 7 WHERE HIS PORSCHE SHOULD BE. WHEN HE BREAKS OUT, OF

 8 COURSE, HE WANTS TO BREAK OUT IN HIS PORSCHE. SO HE

 9 SHOWS WHERE HIS PORSCHE SHOULD BE SO HE CAN GET OUT

 10 OF THE JAIL CELL AND GO RIGHT TO THE PORSCHE WHICH

 11 WILL TAKE HIM TO SAFETY.

 12 POSSIBLE DESTINATIONS AND POSSIBLE

 13 ROUTES WHERE HE CAN GET TO THOSE DESTINATIONS; NOTES

 14 IN THERE CONCERNING EXTRADITION; THE COST OF THE

 15 ESCAPE; FINANCING OF THE ESCAPE; VISAS; PASSPORTS.

 16 THE NEED FOR WEAPONS AND SILENCERS IN

 17 PARTICULAR; THE NEED FOR MONEY; THE NEED FOR

 18 SECURITY; THE NEED FOR SAFE HOUSES TO HIDE IN PRIOR

 19 TO THE ARRIVAL AT DESTINATION POINTS; THE NEED FOR

 20 PERSONS WHO COULD PROVIDE SOME ASSISTANCE; THE NEED

 21 FOR CHANGES OF APPEARANCE IN IDENTITIES; THE EFFORTS

 22 THAT WILL BE MADE --

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

 24 OBJECT AND ASK TO APPROACH.

 25 THE COURT: OKAY. THAT REQUEST IS DENIED.

 26 BUT JUST TO REFRESH THE JURIES'

 27 RECOLLECTION, THE EVIDENCE RELATING TO THE MATERIAL

 28 THAT WAS RECOVERED IN THE CELL OF LYLE MENENDEZ IS

 1 BEING REFERRED TO AS RECEIVED ONLY AS TO DEFENDANT

 2 LYLE MENENDEZ. IT IS TO BE CONSIDERED ONLY AS TO

 3 DEFENDANT, LYLE MENENDEZ.

 4 MR. CONN: OKAY. THE NEED FOR A CHANGE OF

 5 APPEARANCES AND IDENTITY; THE EFFORTS THAT WILL BE

 6 MADE TO SEARCH FOR HIM; THE PATH OF LEAST LIKELY

 7 PURSUIT; A CONSIDERATION OF WHO ELSE ALREADY HAS

 8 BEEN INFORMED ABOUT THE ESCAPE PLANS, SUGGESTING

 9 THAT HE HAS DISCUSSED THE PLAN WITH ONE OR MORE

 10 OTHER PERSONS; A CONSIDERATION OF WHO ELSE MIGHT

 11 LEARN ABOUT SOME ASPECT OF THE PLAN; THE NEED FOR

 12 FUTURE FINANCIAL SECURITY; CONSIDERATION OF WHETHER

 13 HE WILL BE ABLE TO OWN HIS OWN BUSINESS, BUSINESSES

 14 IN THIS PLACE WHERE HE MAY EVENTUALLY END UP, IN A

 15 CONSIDERATION OF WHETHER YOU CAN BLEND INTO THE

 16 CULTURE IN WHICH HE CHOOSES TO LIVE; CONSIDERATION

 17 OF FOREIGN LANGUAGE; DIFFICULTY AND CONSIDERATION

 18 THAT FOR A PERIOD OF TIME HE MIGHT HAVE TO REMAIN IN

 19 THAT FOREIGN CULTURE; AND FINALLY, CONSIDERATION OF

 20 EVEN HOW HIS GIRLFRIEND FITS INTO HIS PLAN.

 21 SO ALL OF THESE CONSIDERATIONS YOU WILL

 22 FIND TO BE CONTAINED IN THESE ESCAPE PLANS OF LYLE

 23 MENENDEZ, WHICH YOU MAY CONSIDER AS CONSCIOUSNESS OF

 24 HIS GUILT AND STATE OF MIND. OBVIOUSLY, LYLE

 25 MENENDEZ IS NOT A PERSON PLANNING ON STANDING TRIAL

 26 IF HE DOESN'T HAVE TO. HE DID HIS BEST TO TRY TO

 27 CONJURE UP THE PERJURY THAT MIGHT POSSIBLY RESULT IN

 28 A FAVORABLE DISPOSITION BY A JURY, IF HE COULD TRICK

 1 A JURY. HE HAD PLANS BEHIND PLANS, YOU SEE, BEHIND

 2 PLANS, TO TRICK A JURY, WAS THE PLAN TO ESCAPE. AND

 3 THAT IS REFLECTED HERE IN THESE DOCUMENTS.

 4 PLEASE EXPLAIN FURTHER THE DIFFERENT

 5 WAYS TO ENTER MEXICO. DO YOU HAVE A SECURE PLACE TO

 6 STAY IN COLUMBIA? DO YOU NEED VISAS TO GO TO

 7 LONDON? IS IT SAFE TO TRAVEL FROM LEBANON TO SOUTH

 8 AMERICA? WHAT OTHER ROUTES WOULD BE GOOD, TO GO

 9 THROUGH BELGIUM? LEAST LIKELY PURSUIT, CANADA,

 10 LONDON. MOST LIKELY PURSUIT CONNECTION. COLUMBIA,

 11 LEBANON, FRANCE, SAN DIEGO, TRAVEL EAST O.N.S.

 12 SMALL PLANE TO CANADA, OR BRIAN'S HOME

 13 TO GRANDDAD'S CAMP. YOU REMEMBER THERE WAS

 14 REFERENCE TO THE GRANDFATHER LIVING IN CANADA.

 15 THEN BY CAR OR TORONTO. MARK H.

 16 CONNECTION. MARK HEFFERNAN. TO LONDON, ED'S

 17 CONNECTION

 18 HERE'S THE ACTUAL ESCAPE. HERE'S WHERE

 19 HE WANTS HIS PORSCHE TO BE. IF YOU'RE GOING TO

 20 BREAK OUT OF JAIL, YOU MIGHT AS WELL DRIVE YOUR

 21 PORSCHE. L.A. TO LEBANON. THREE PASSPORTS,

 22 DIFFERENT NAMES. ASK IF COULD HIDE IN NEW JERSEY.

 23 TOLD LENNY ESCAPE. L.C.M.C. HOSPITAL, 7,000 MOST

 24 WANTED.

 25 NEED SILENCER, NEED FINANCING. HOW TO

 26 TRANSFER MONEY, HOW TO COMMUNICATE OVERSEES, PAY FOR

 27 LENNY FLIGHT MONEY. WHO'S THE CONTACT? ED PAYS,

 28 LEBANON, SECURITY, EXTRADITION. CHANGE NAME.

 1 CHANGE APPEARANCE. PLASTIC SURGEON. SEPARATE

 2 PASSPORTS. BEVERLY HILLS PHONE TAPPED.

 3 SAFE HOUSES, REFERENCE TO SAFE HOUSES

 4 DOWN THERE IN LONDON. LIST OF NAMES, JULIE P.,

 5 JAMIE KERRY P., MARK HEFFERNAN. MARK HEFFERNAN,

 6 ALIA, A-L-I-A. P. BREAK. PRISON BREAK, PERHAPS.

 7 NO. 2, RIDE SAFE HOUSE, MARK H. CANADA,

 8 LONDON. MARK S., MEXICO. COLUMBIA. TERRY, CARLOS

 9 MENENDEZ. WHERE IS DESTINATION. LEBANON. WHY?

 10 WHAT IS THE PROTECTION? ED A CITIZEN? CAN BLEND IN

 11 HOW? WHAT IF ED DIES? PRIVATE PROTECTION. HOW

 12 WILL IT ALL BE ARRANGED? WHAT FINANCIAL SECURIT

 13 WILL WE HAVE? EVENTUALLY MOVE. GIRLFRIEND -- HOW

 14 GIRLFRIEND FITS IN. THE SWISS BANK SECURITY. CAN

 15 GET APPEARANCE CHANGED. WHO WILL THEY BE LOOKING

 16 FOR? OWN PROPERTY. BUSINESSES. THAT'S ALL.

 17 THIS IS SOMETHING THAT YOU CAN CONSIDER

 18 AGAINST LYLE MENENDEZ AND HIS CONSCIOUSNESS OF GUILT

 19 IN CONNECTION WITH THESE CRIMES.

 20 THEN WE HEARD FROM GLENN STEVENS, AND

 21 GLENN STEVENS SAID THAT HE WAS CALLED TO TESTIFY TO

 22 SEVERAL INCRIMINATING STATEMENTS BY LYLE MENENDEZ

 23 WE KNOW FROM DONOVAN GOODREAU THAT THE WALLET WAS

 24 LEFT BEHIND AT PRINCETON WHILE GLENN STEVENS WAS

 25 THERE, ALSO ONE OF THE FRIENDS OF LYLE MENENDEZ WHO

 26 WAS FAMILIAR WITH THAT OCCASION. HE SAID THAT HE

 27 HUNG OUT WITH SOME OF THOSE NAMES THAT YOU'VE HEARD

 28 AS BEING FRIENDS OF LYLE MENENDEZ, PEOPLE LIKE GREG

 1 GUEST, HAYDEN ROGERS, AND DONOVAN GOODREAU.

 2 HE SAID THAT HE RECALLED THE DAY THAT

 3 LYLE MENENDEZ ASKED DONOVAN GOODREAU TO LEAVE HIS

 4 APARTMENT. AND HE AND OTHERS HAD CONFRONTED LYLE

 5 MENENDEZ WITH THAT FACT THAT GOODREAU WAS NOT ALWAYS

 6 HONEST, AND FELT IT WAS TIME THAT LYLE MENENDEZ

 7 ASKED DONOVAN GOODREAU TO LEAVE. THEY FELT THAT

 8 GOODREAU WAS RESPONSIBLE FOR TAKING SOME MONEY OR

 9 SOMETHING.

 10 YOU'LL RECALL THAT WITHIN AN HOUR OF

 11 DONOVAN GOODREAU LEAVING THE APARTMENT, LYLE

 12 MENENDEZ HELD UP DONOVAN'S WALLET AND HE LAUGHED,

 13 ADMITTING THAT HE HAD KEPT THE WALLET, AND THEY

 14 LOOKED THROUGH IT TOGETHER, AND THEY SAW, AMONG

 15 OTHER THINGS, THE DRIVER'S LICENSE THAT LYLE

 16 MENENDEZ LATER USED, ALONG WITH HIS BROTHER, TO

 17 PURCHASE THE SHOTGUN IN SAN DIEGO. THE WALLET ALSO

 18 CONTAINED A CREDIT CARD, AND GLENN STEVENS TESTIFIED

 19 THAT LYLE MENENDEZ WANTED TO RECOVER MONEY THAT HE

 20 HAD ASSUMED HAD BEEN TAKEN BY DONOVAN GOODREAU.

 21 WE KNOW THAT LYLE MENENDEZ WAS EAGER TO

 22 PURCHASE THE PORSCHE. HE PUSHED THE PORSCHE SHORTLY

 23 AFTER THE KILLING OF HIS PARENTS; AND GLENN STEVENS

 24 GAVE US A LITTLE INSIGHT INTO WHY HE WAS SO EAGER TO

 25 PURCHASE THAT PORSCHE. HE SAID THAT LYLE MENENDEZ,

 26 WHO USED TO DRIVE AN ALFA ROMEO, WHICH WAS A

 27 GRADUATION PRESENT FROM HIS PARENTS, WOULD REFER TO

 28 THAT CAR -- AN ALFA ROMEO AS, QUOTE, A PIECE OF

 1 SHIT. HE RECALLED LYLE'S COMMENT AT THE WAKE IN

 2 PRINCETON THAT THE GOLD WATCH THAT HE WAS WEARING

 3 WAS HIS FATHER'S WATCH.

 4 IT'S A VERY INTERESTING COMMENT, AND I

 5 WANT TO JUMP FORWARD AT THIS POINT A LITTLE BIT TO

 6 MARZI EISENBERG, BECAUSE THIS TIES IN VERY CLOSELY

 7 WITH SOMETHING THAT MARZI EISENBERG TESTIFIED TO.

 8 YOU REMEMBER THAT MARZI EISENBERG

 9 TESTIFIED THAT SHE WAS A SECRETARY FOR JOSE

 10 MENENDEZ. AND SHE RECALLS THAT FOLLOWING THE

 11 KILLINGS SHE WAS -- SHE ATTENDED THE SERVICE, THE

 12 FUNERAL SERVICE THAT WAS HELD HERE IN LOS ANGELES,

 13 AND SHE WAS RIDING IN THE LIMOUSINE. AND WHILE SHE

 14 WAS RIDING IN THE CAR WITH LYLE MENENDEZ, ERIK

 15 MENENDEZ, AND CARLOS MENENDEZ, SHE HAD A

 16 CONVERSATION WITH LYLE MENENDEZ IN WHICH HE MADE A

 17 REMARK TO HER, WHICH WAS SOMETHING TO THE EFFECT

 18 OF: "HEY, MARZI, WHOEVER SAID I COULDN'T FILL MY

 19 FATHER'S SHOES?"

 20 AND SHE SAID SOMETHING TO THE EFFECT:

 21 "WELL, YOU HAVE TO MAKE YOUR OWN TRACKS IN LIFE," OR

 22 SOMETHING LIKE THAT.

 23 AND HE SAID: "WELL, YOU DON'T

 24 UNDERSTAND. THESE ARE MY FATHER'S SHOES."

 25 LADIES AND GENTLEMEN, I THINK THAT IT'S

 26 JUST A PASSING REMARK, BUT IT PROVIDES SOME INSIGHT

 27 INTO LYLE MENENDEZ AND HIS STATE OF MIND, AS I

 28 INDICATED. THE CONCERN IN THAT HOUSEHOLD WAS THE

 1 FUTURE OF LYLE MENENDEZ IN CONNECTION WITH HIS

 2 FATHER'S EXPECTATIONS, AS WELL AS THE FUTURE OF ERIK

 3 MENENDEZ IN REGARDS TO HIS FATHER'S EXPECTATIONS,

 4 AND WHETHER THEY WERE EVER GOING TO LIVE UP TO THE

 5 EXPECTATIONS OF THEIR FATHER.

 6 LYLE MENENDEZ WAS VERY PREOCCUPIED WITH

 7 LIVING UP TO THE MENENDEZ NAME AND ACCOMPLISHING

 8 THINGS, AND BEING THE NEXT JOSE MENENDEZ; AND HERE

 9 HE MAKES A REMARK WHICH APPEARS TO MIRROR, IF ONLY

 10 IN A VERY METAPHORICAL WAY, THE FACT THAT HE WAS TO

 11 WALK IN HIS FATHER'S SHOES ONE DAY.

 12 NOW, THE DEFENSE TOOK THAT REMARK VERY

 13 LITERALLY. WE PRESENTED THE EVIDENCE OF MARZI

 14 EISENBERG, AND THE DEFENSE WENT OUT AND BROUGHT IN A

 15 VIDEO. YOU RECALL THE VIDEO REPRESENTED A STILL

 16 SHOT FROM A VIDEO SHOWING THAT MARZI EISENBERG

 17 DESCRIBED THE SHOE DIFFERENTLY, OR THAT THE VIDEO,

 18 WHICH SHOWS LYLE MENENDEZ AND THE SHOES THAT HE WAS

 19 WEARING ON THAT PARTICULAR DAY, APPEAR TO BE

 20 DIFFERENT THAN HOW MARZI EISENBERG DESCRIBED THE

 21 SHOE HERE IN COURT. THEY ALSO PRESENTED EVIDENCE

 22 THAT LYLE MENENDEZ WORE A DIFFERENT SHOE SIZE THAN

 23 JOSE MENENDEZ.

 24 BUT I THINK WHAT THE DEFENSE DID WAS

 25 THEY TOOK THAT REMARK A LITTLE TOO LITERALLY. WE

 26 ARE NOT SUGGESTING THAT THOSE SHOES WERE LITERALLY

 27 THE SHOES OF JOSE MENENDEZ. WE COULD CARE LESS

 28 WHETHER OR NOT THEY'RE JOSE MENENDEZ' SHOES. THE

 1 POINT IS THAT LYLE MENENDEZ MADE A REMARK ABOUT,

 2 "LOOK, I CAN WEAR MY FATHER'S SHOES, OR I CAN FILL

 3 MY FATHER'S SHOES."

 4 THAT IS THE POINT OF THAT TESTIMONY. SO

 5 IT DOESN'T MATTER WHETHER OR NOT HE WEARS A

 6 DIFFERENT SHOE SIZE OR WHETHER OR NOT THEY WERE HIS

 7 FATHER'S SHOES. THERE IS -- THIS GOES HAND IN HAND

 8 WITH THE REMARK THAT HE MADE -- GOING BACK NOW TO

 9 GLENN STEVENS, BECAUSE JUST LIKE THE SHOES MAY NOT

 10 HAVE BEEN HIS ACTUAL FATHER'S SHOES, HE WAS WEARING

 11 WHEN HE SPOKE TO GLENN STEVENS, A GOLD WATCH -- AND

 12 HE SAID -- AND THAT WAS THE GOLD ROLEX WATCH -- HE

 13 SAID THAT THIS WAS HIS FATHER'S WATCH. GLENN

 14 STEVENS TESTIFIED THAT ONLY LATER DID HE FIND OUT

 15 THAT IT WAS LYLE WHO HAD PURCHASED THE WATCH.

 16 SO ONCE AGAIN, WE HAVE LYLE MENENDEZ

 17 SPEAKING MORE METAPHORICALLY, OR FIGURATIVELY, ON

 18 TWO DIFFERENT OCCASIONS ABOUT HIS FATHER AND FILLING

 19 THE ROLE OF HIS FATHER, OR BECOMING HIS FATHER OR

 20 WEARING HIS FATHER'S PROPERTY OR POSSESSIONS, NOT SO

 21 MUCH A LITERAL INTERPRETATION OF WHAT HE IS DOING.

 22 IT DEMONSTRATES LYLE MENENDEZ'

 23 PREOCCUPATION WITH FULFILLING HIS AMBITION TO BECOME

 24 THE NEXT JOSE MENENDEZ.

 25 IN FACT, WHAT GLENN STEVENS RECALLS LYLE

 26 MENENDEZ SPECIFICALLY SAYING IS: "I'VE BEEN

 27 PREPARING" -- WHEN ASKED BY GLENN STEVENS HOW HE'S

 28 HANDLING THINGS, LYLE MENENDEZ SAID: "I'VE BEEN

 1 PREPARING FOR THIS FOR SO LONG THAT THE TRANSITIO

 2 WAS QUITE EASY."

 3 AND THAT, I THINK, REFLECTS HIS STATE OF

 4 MIND, THAT HE ALWAYS INTENDED TO BECOME THE NEXT

 5 JOSE MENENDEZ.

 6 AND, AGAIN, TALES OF THE MAFIA, YET

 7 AGAIN, FROM GLENN STEVENS. GLENN STEVENS RECALLS

 8 HOW HE SAW LYLE MENENDEZ WITH BODYGUARDS AND RECALLS

 9 THAT LYLE MENENDEZ TOLD HIM ABOUT NOEL BLOOM AND HIS

 10 FATHER'S QUESTIONABLE BUSINESS DEALINGS, AND LYLE

 11 MENENDEZ SPECIFICALLY TOLD HIM THAT THE MAFIA HAD

 12 SOMETHING TO DO WITH THE KILLINGS.

 13 HE ALSO RECALLS LYLE MENENDEZ TALKING

 14 ABOUT A WILL IN A VERY SIGNIFICANT WAY. AS I

 15 INDICATED TO YOU, LYLE MENENDEZ HAD A TWOFOLD PLAN.

 16 NUMBER ONE WAS TO GET HIS HANDS ON THE OLD WILL AS

 17 SOON AS POSSIBLE; AND NUMBER TWO, GET HIS HANDS ON

 18 THE NEW WILL, IF ONE EXISTED, AND DESTROY IT. IF IT

 19 WAS ON THE COMPUTER, DESTROY IT ON THE COMPUTER.

 20 THAT'S WHY HE HIRED HOWARD WITKIN, TO DESTROY THE

 21 WILL IN THE COMPUTER.

 22 STEVENS RECALLED THE TRIP THAT LYLE

 23 MENENDEZ TOOK TO LOS ANGELES. LYLE MENENDEZ HAD

 24 TOLD HIM THAT FAMILY MEMBERS FOUND THREE ENTRIES ON

 25 THE FAMILY COMPUTER: MENENDEZ, LIST, AND WILL.

 26 LYLE MENENDEZ TOLD HIM THE OLD WILL HAD LEFT

 27 EVERYTHING TO HIM AND HIS BROTHER, AND THAT HE WAS

 28 NOT SURE THAT HE WOULD BE IN THE NEW WILL, IF ONE

 1 WERE TO BE FOUND. AND HE LATER TOLD HIM THAT --

 2 AFTER THE TRIP TO LOS ANGELES -- LYLE MENENDEZ TOLD

 3 HIM THAT HE HAD FOUND, QUOTE, A LITTLE JEWISH GUY --

 4 OBVIOUSLY, HE WAS REFERRING TO MR. WITKIN, IN THE

 5 YELLOW PAGES WHO COULD GET INTO COMPUTERS AND ERASE

 6 WHAT WAS IN THE COMPUTER.

 7 SO, AGAIN, WE HAVE THE CONCERN HERE OF

 8 LYLE MENENDEZ EXPRESSING TO GLENN STEVENS THAT HE

 9 WAS CONCERNED HE MIGHT NOT BE IN THE NEW WILL IF ONE

 10 WERE TO BE FOUND. ONCE AGAIN, A CONFIRMATION FROM

 11 LYLE MENENDEZ THAT HE DID NOT BELIEVE THERE WAS

 12 NECESSARILY A WILL. NO ONE KNEW WHETHER THERE WAS

 13 ANOTHER WILL.

 14 MORE ABOUT THE MAFIA. STEVENS WAS WITH

 15 LYLE MENENDEZ WHEN HE TEST-DROVE AND LATER BOUGHT

 16 THE PORSCHE. YOU RECALL THAT AFTER LYLE MENENDEZ

 17 HAD DROPPED THE BODYGUARDS AND HIRED HAYDEN ROGERS

 18 TO RUN THE RESTAURANT, HE WANTED TO OBTAIN A HANDGUN

 19 PERMIT SO HE COULD HIRE -- HAVE HIM HIRE A

 20 BODYGUARD.

 21 HE EXPRESSED CONCERN ABOUT HIS SAFETY.

 22 HE SAID THAT LYLE TOLD STEVENS THAT WHEN STEVENS

 23 STEPPED OUT OF THE MEETING FOR A MOMENT WITH HIS

 24 FATHER'S EX-PARTNER, HIS FATHER'S EX-PARTNER HAD

 25 TOLD HIM HE KNEW WHO WAS RESPONSIBLE FOR THE KILLING

 26 OF HIS PARENTS, AND HE WOULD PUT OUT THE WORD TO

 27 LEAVE LYLE ALONE.

 28 ONCE AGAIN, LYLE IS STILL GOING AROUND,

 1 AT THIS POINT, TOYING WITH THIS MAFIA THEORY AS

 2 BEHIND THE KILLING OF HIS PARENTS.

 3 AND THEN WE HAVE ONE OF THE MOST

 4 SIGNIFICANT THINGS THAT GLENN STEVENS TESTIFIES TO,

 5 IN REGARD TO STATEMENTS MADE TO HIM BY LYLE MENENDEZ

 6 ON THE FLIGHT TO LOS ANGELES IMMEDIATELY BEFORE HE

 7 WAS ARRESTED IN LOS ANGELES. LYLE MENENDEZ MADE A

 8 PHONE CALL ON THE PLANE AND LEARNED THAT THE BEVERLY

 9 HILLS POLICE DEPARTMENT HAD BEEN ASKING QUESTIONS AT

 10 CHUCK'S SPRING STREET CAFE, WHICH LYLE HAD RECENTLY

 11 RENAMED "MR. BUFFALOS".

 12 LYLE MENENDEZ BECAME VERY NERVOUS AFTER

 13 THIS PHONE CALL, AND GAVE STEVENS THE BUSINESS CARD

 14 OF HIS ATTORNEY, GERRY CHALEFF, AND HE SPLIT A

 15 COUPLE OF THOUSAND DOLLARS BETWEEN HIM AND HAYDEN

 16 ROGERS, AND HE SAID IF ANYTHING HAPPENED TO HIM IN

 17 LOS ANGELES, THAT STEVENS SHOULD CALL GERRY

 18 CHALEFF. AND THEN CAME THE BOMBSHELL. HE SAID THAT

 19 CHALEFF AND HIS PSYCHIATRIST, DR. OZIEL, WERE THE

 20 ONLY ONES WHO, QUOTE, KNEW EVERYTHING.

 21 SO LYLE MENENDEZ TOLD GLENN STEVENS

 22 GERRY CHALEFF KNEW EVERYTHING. DR. OZIEL KNEW

 23 EVERYTHING. HE TOLD HIM THAT ON THE PLANE COMING TO

 24 LOS ANGELES JUST BEFORE HIS ARREST.

 25 AND HE SAID, REGARDING THE

 26 TAPE-RECORDINGS, THAT DR. OZIEL HAD IN HIS SAFETY

 27 BOX, HE SAID: "IF THE POLICE EVER GET THEIR HANDS ON

 28 THESE TAPES," -- AND EXCUSE MY LANGUAGE. IT'S HIS

 1 CHOICE OF WORDS -- HE SAID, "I'M FUCKED."

 2 GLENN STEVENS ALSO DESCRIBED LYLE

 3 MENENDEZ AS BEING MORE ARROGANT AND CONDESCENDING

 4 FOLLOWING THE KILLING OF HIS PARENTS. HE DESCRIBED

 5 HOW LYLE MENENDEZ WOULD BERATE EMPLOYEES AT, QUOTE,

 6 MENENDEZ INVESTMENT ENTERPRISES. THAT WAS GOING TO

 7 BE HIS BUSINESS. HOW HE WOULD LAUGH AT SUGGESTIONS

 8 BY HIS EMPLOYEES, CALLING THEM RIDICULOUS.

 9 ONCE AGAIN, TRYING TO FILL THE SHOES OF

 10 JOSE MENENDEZ, PRETENDING TO BE JOSE MENENDEZ,

 11 PRETENDING TO BE THE RUTHLESS BUSINESSMAN.

 12 DOES THE COURT WISH TO BREAK AT THIS

 13 TIME?

 14 THE COURT: OKAY. WE'LL RESUME TOMORROW AT

 15 8:30

 16 HOPEFULLY, WE'LL GET A PROMPT START

 17 TOMORROW MORNING. DON'T DISCUSS THE MATTER WITH

 18 ANYONE, AND DON'T FORM ANY FINAL OPINIONS. DON'T

 19 LOOK AT ANY OF THE NEWS COVERAGE.

 20 SEE YOU ALL BACK HERE AT 8:30.

 21 (AT 4:30 P.M. PROCEEDINGS WERE

 22 ADJOURNED UNTIL 8:30 A.M THE

 23 FOLLOWING DAY.)

 16 CLOSING ARGUMENT

 17 BY MS. ABRAMSON:

 18 GOOD MORNING, LADIES AND GENTLEMEN. I

 19 DIDN'T WRITE ENOUGH ARGUMENT TO GO FROM 4:00 TO

 20 4:30.

 21 YOU'RE LOOKING AT THIS LITTLE NOTEBOOK

 22 AND SAYING, "GEE, THAT DOESN'T LOOK TOO BAD," BUT

 23 GUESS WHAT? I HAVE ANOTHER NOTEBOOK. SO...

 24 THE LAST TIME, IN THE FIRST TRIAL IN

 25 THIS CASE, I ARGUED FOR TWO AND A HALF DAYS, AND I

 26 TOOK A RIBBING FOR IT FOR YEARS. "WHY WOULD YOU EVER

 27 HAVE TO ARGUE SO LONG?" I WAS ASKED.

 28 NOW MR. CONN HAS SET THE RECORD, I

 1 THINK, FOR ARGUMENT IN CRIMINAL CASES. AND BEING A

 2 VERY COMPETITIVE SPIRIT YOU'D THINK NOW I'VE GOT TO

 3 GO LONGER, BUT I'M NOT GOING TO DO THAT TO YOU. I

 4 DON'T FEEL THAT MY CASE IS SO WEAK THAT IT NEEDS

 5 THREE AND A HALF DAYS TO ARGUE.

 6 LAWYERS LIKE TO THINK THAT WHAT THEY DO

 7 MATTERS, ESPECIALLY TRIAL LAWYERS. WE THINK EVERY

 8 QUESTION WE ASK IS, YOU KNOW, BRILLIANT; AND EVERY

 9 ARGUMENT WE MAKE IS DETERMINATIVE OF THE OUTCOME OF

 10 THE CASE.

 11 NOW, I'VE BEEN PRACTICING CRIMINAL

 12 DEFENSE FOR 27 YEARS, AND I HAVE TALKED TO A LOT OF

 13 JURIES, AND THEY KEEP ASSURING ME THEY HAD THEIR

 14 MIND MADE UP BEFORE ARGUMENT. THEY DIDN'T NEED ME

 15 TO TELL THEM WHAT WAS OBVIOUS TO THEM. IT WAS A

 16 WASTE OF TIME.

 17 AND BASED ON THAT, YOU'D THINK I'M NOW

 18 GOING TO SIT DOWN AND GO AWAY. BUT I CAN'T DO THAT,

 19 BECAUSE I'M NOT -- I'M TOO INSECURE, NUMBER ONE; AND

 20 NUMBER TWO, I DO THINK THAT TO BE REALISTIC, IN

 21 SPITE OF WHAT YOU'RE TOLD ABOUT KEEPING AN OPEN MIND

 22 FOREVER, IT IS IMPOSSIBLE FOR PEOPLE TO SIT THROUGH

 23 THE UNRAVELING OF A COMPLICATED STORY AND NOT DRAW

 24 SOME CONCLUSIONS AS THEY GO ALONG. THE HUMAN MIND

 25 NEEDS TO UNDERSTAND WHAT IT'S HEARING, AND PEOP

 26 SIFT THROUGH INFORMATION AS THEY GET IT, FORM

 27 CERTAIN OPINIONS AND CONCLUSIONS, AND THAT'S FINE.

 28 THERE'S NOTHING VIOLATIVE OF THE JUROR' OATH IN

 1 DOING THAT.

 2 WHAT I STILL THINK FINAL ARGUMENT MAY BE

 3 USEFUL FOR IS TO GIVE YOU A BROADER PICTURE OF HOW

 4 THINGS FIT TOGETHER; AND MORE IMPORTANTLY, TO TRY TO

 5 TAKE THE FACTS AS YOU HAVE, OR WILL, DECIDE THEM,

 6 AND APPLY THEM TO THE LAW THAT'S BEING GIVEN BY THE

 7 JUDGE IN THIS CASE, SO THAT YOU CAN RENDER A JUST

 8 VERDICT.

 9 D I BELIEVE THAT IT IS YOUR DESIRE,

 10 EVERY ONE OF YOU, TO RENDER A JUST VERDICT IN THIS

 11 CASE, IN ANY CASE IN WHICH YOU WOULD SERVE AS A

 12 JUROR.

 13 NOW, I MUST SAY, IN LISTENING TO

 14 MR. CONN'S FINAL ARGUMENT, I FOUND A NEW PURPOSE FOR

 15 FINAL ARGUMENT, ONE THAT I MUST ADMIT, IN ALL THESE

 16 YEARS I HAVE NEVER BEFORE BEEN EXPOSED TO. AND THAT

 17 WAS THE NOTION THAT YOU COULD COMPLETELY

 18 MISREPRESENT SIX MONTHS OF TRIAL, THAT YOU COULD

 19 FLAT OUT TELL THE JURY THINGS THAT WERE FALSE, AND

 20 SOMEHOW EXPECT THEM TO FORGET EVERYTHING THEY'VE

 21 HEARD, EVERYTHING THEY'VE THOUGHT FOR SIX MONTHS,

 22 AND IMPOSE YOUR OWN EXTREMELY BIASED AND DISTORTED

 23 VIEW OF THINGS ON THEM.

 24 IT'S NOT MY GENERAL PRACTICE TO START

 25 OUT MY CLOSING ARGUMENT BY REBUTTING WHAT THE

 26 PROSECUTION HAS SAID. I HAVE MY OWN AGENDA. I HAVE

 27 THINGS I WANT TO TELL YOU, AND CAST THEM IN A

 28 FRAMEWORK THAT I THINK IS MEANINGFUL, AND CERTAINLY

 1 MEANINGFUL FOR THE DEFENSE CASE.

 2 BUT I AM GOING TO TAKE A FEW MINUTES--

 3 AND THIS IS THE NOTEBOOK THAT I'M DOING IT WITH --

 4 TO SHOW YOU HOW YOU WERE DECEIVED.

 5 AND OF EVERYTHING I CITE TO YOU, I WILL

 6 GIVE YOU THE PAGE, AND I WILL GIVE YOU THE DATE,

 7 WHEN I HAVE IT, AND I WILL TELL YOU WHOSE TESTIMONY

 8 IT IS.

 9 MR. CONN ARGUED AT 51,029:

 10 "THEY DISCUSSED AN ALIBI. THEY

 11 DISCUSSED ALL OF THESE OTHER THINGS,

 12 AND YET A VERY IMPORTANT PART OF THEIR

 13 STORY, HOW THEY WOULD SOUND TO THE

 14 POLICE, WHAT THEY WOULD SAY TO THE

 15 POLICE, THEY DIDN'T DISCUSS THAT."

 16 MY CLIENT'S TESTIMONY, CROSS-EXAMINATION,

 17 PAGE 45,107:

 18 "BY MR. CONN: "ARE YOU SAYING

 19 THAT THE POSSIBILITY OF TELLING THE

 20 POLICE THAT YOUR PARENTS HAD BEEN

 21 ARMED WAS NEVER CONSIDERED?

 22 "ANSWER: ACTUALLY, IT WAS JUST

 23 THE OPPOSITE. IT WAS AFTER -- AFTER I

 24 TOLD LYLE THAT I DIDN'T WANT TO TALK

 25 TO THE POLICE AND TELL THEM WHAT

 26 HAPPENED. IT WAS -- WE WERE TRYING TO

 27 DO JUST THE OPPOSITE, AND SAY THAT WE

 28 WERE NOT HOME.

 1 "I REMEMBER BEING WORRIED AND

 2 LYLE BEING WORRIED AND SAYING: 'ARE

 3 YOU GOING TO BE ABLE TO TELL THE

 4 POLICE THAT YOU WERE AT THE MOVIES

 5 INSTEAD OF -- INSTEAD OF AT HOME AT THE

 6 SHOOTING,' AND BEING UNSURE WHETHER OR

 7 NOT I WAS GOING TO BE ABLE TO SAY

 8 SOMETHING DIFFERENT THAN WHAT

 9 HAPPENED."

 10 MY CLIENT'S TESTIMONY AT PAGE 45,098:

 11 "I DIDN'T THINK THAT FAR AHEAD.

 12 I JUST THOUGHT --" THAT'S LINE 25 --

 13 "I JUST THOUGHT IT WAS SOMETHING

 14 TO SHOW THE POLICE, TO SHOW THAT WE

 15 WENT THERE.

 16 "QUESTION: YOU GOT FAR ENOUGH TO

 17 KNOW THAT THIS IS SOMETHING THAT YOU

 18 MIGHT HAVE TO SHOW THE POLICE, CORRECT?

 19 "ANSWER: RIGHT."

 20 PAGE 45,113. THIS IS MY CLIENT'S ANSWER:

 21 "NO. I REMEMBER THAT THE NEXT

 22 TIME I SAW HIM WAS HIM SAYING THAT WE

 23 HAD TO GO OUTSIDE, THAT THE POLICE

 24 WANTED US TO GO OUTSIDE. AND THEN HIM

 25 ASKING ME IN THE BACK OF THE POLICE

 26 CAR WHETHER OR NOT I WAS GOING TO BE

 27 ABLE TO -- WHETHER OR NOT I WAS GOING

 28 TO BREAK DOWN AND TELL THE POLICE WHAT

 1 HAPPENED."

 2 THESE ARE IN NO PARTICULAR ORDER, BY THE

 3 WAY. YOU SEE THE NUMBERS, HOW HUGE THIS RECORD IS.

 4 "SO OVER THE WEEKEND WE JUST TOOK A REPRESENTATIVE

 5 SAMPLE, A DROP IN THE OCEAN, OF THE DECEPTION THAT

 6 YOU WERE FACED WITH HERE.

 7 MR. CONN ARGUED AT PAGE 50,998.

 8 "NOW HE WANTS YOU TO BELIEVE THAT

 9 HE MADE THIS ADMISSION TO DR. OZIEL,

 10 ADMITTED THE KILLINGS TO HIM, BUT THAT

 11 DR. OZIEL NEVER ASKED HIM WHY HE DID

 12 THE KILLINGS. HE WANTS YOU TO BELIEVE

 13 THAT."

 14 AND AT 50,999:

 15 "WITH ALL OF THE QUESTIONS

 16 DR. OZIEL ASKED HIM, ERIK MENENDEZ IS

 17 ASKING YOU TO BELIEVE THAT DR. OZIEL

 18 NEVER SAID: 'WHY YOU'D DO IT?'

 19 "THAT IS BE ABSURD. THE FIRST

 20 QUESTION THAT DR. OZIEL WOULD HAVE

 21 ASKED IS 'WHY YOU'D DO IT?'"

 22 AND ON AND ON.

 23 MY CLIENT'S TESTIMONY, PAGE 45,324:

 24 "QUESTION: AT WHAT POINT DID HE

 25 SAY TO YOU, 'TELL ME WHY YOU KILLED

 26 YOUR PARENTS'?

 27 "ANSWER: BACK IN THE OFFICE. I

 28 BELIEVE IT WAS AFTER HE HAD CALLED

 1 LYLE.

 2 "QUESTION: AND WHEN HE ASKED

 3 YOU, 'TELL ME WHY YOU KILLED YOUR

 4 PARENTS,' WHAT DID YOU TELL HIM?

 5 "ANSWER: I TOLD HIM THAT I

 6 DIDN'T KNOW WHY. I WASN'T EXPECTING

 7 THE QUESTION, AND AT THIS POINT HE HAD

 8 CALLED LYLE."

 9 PAGE 45,325:

 10 "HE WAS SAYING, 'I UNDERSTAND

 11 THAT YOU DON'T KNOW WHY. I WOULD BE

 12 SURPRISED IF YOU KNEW WHY.'".

 13 PAGE 45,328:

 14 "QUESTION BY MR. CONN: AT WHAT

 15 POINT DID DR. OZIEL GET BACK TO THE

 16 ISSUE OF WHY DID YOU KILL YOUR

 17 PARENTS, MR. MENENDEZ?

 18 "ANSWER: NOVEMBER 2ND."

 19 PAGE 43,873, MY CLIENT'S ANSWER:

 20 "HE KEPT ASKING ME WHY I THINK I

 21 DID IT. I SAID I DIDN'T KNOW. HE

 22 SAID THAT HE WOULDN'T EXPECT ME TO

 23 KNOW, THAT I NEEDED TO DO EXTENSIVE

 24 THERAPY

 25 PAGE 51,021, MR. CONN'S ARGUMENT:

 26 "ERIK MENENDEZ WANTS YOU TO

 27 BELIEVE THAT HE NEVER HAD THAT

 28 DISCUSSION WITH HIS BROTHER, LYLE

 1 MENENDEZ. ABSOLUTELY INCREDIBLE.

 2 COULDN'T HAPPEN. THAT WOULD BE THE

 3 FIRST THING YOU WOULD SAY TO YOUR

 4 BROTHER: 'HOW ARE WE GOING TO PUT

 5 DR. OZIEL AT EASE?'

 6 "'THE ONE WAY WE COULD DO IT IS

 7 BY TELLING HIM WE KILLED IN FEAR.

 8 DOCTOR, DON'T GO TO POLICE. WE'RE NOT

 9 AS DANGEROUS AS YOU MAY THINK.'

 10 "ONE OF THE MANY REASONS WHY ERIK

 11 MENENDEZ' STORY IS TOTAL NONSENSE."

 12 PAGE 43,863, MY CLIENT'S TESTIMONY:

 13 "AND WE DISCUSSED WHAT TO DO. I

 14 SUGGESTED THAT MAYBE WE SHOULD TELL

 15 DR. OZIEL EVERYTHING, THE TRUTH OF

 16 WHAT HAPPENED, SO THAT HE WOULDN'T NO

 17 LONGER FEEL UNCOMFORTABLE, KNOWING THE

 18 INFORMATION. LYLE THOUGHT THAT WAS A

 19 HORRIBLE IDEA, AND I PROMISED NOT TO

 20 TELL. AND I WASN'T SO KEEN ON TELLING

 21 ANYWAY, BUT THAT WAS DISCUSSED."

 22 PAGE 45,356, MY CLIENT'S TESTIMONY:

 23 "BUT THE WAY TO CALM DR. OZIEL

 24 DOWN, I TOLD LYLE, WAS TO HAVE HIM

 25 THINK THAT I WASN'T A BAD PERSON,

 26 WHICH IS WHAT I WANTED HIM TO TELL ME,

 27 THAT I WASN'T A BAD PERSON, WAS TO

 28 TELL HIM WHAT HAPPENED. I DIDN'T HAVE

 1 ANY DESIRE TO DO IT, AND I DIDN'T

 2 REALLY WANT TO DO IT. BUT I BROUGHT

 3 THAT UP TO LYLE, AND HE SAID, 'NO,

 4 WE'LL CALM HIM DOWN, AND HE WON'T GO

 5 TO THE POLICE, AND WE WILL GIVE HIM

 6 WHAT HE WANTS AND SATISFY HIM,' BUT HE

 7 DID NOT WANT TO GET INTO THOSE ISSUES,

 8 AND HE WAS ADAMANT ABOUT IT. AND I

 9 AGREED."

 10 MR. CONN'S ARGUMENT, PAGE 51,241:

 11 "ERIK MENENDEZ SIMPLY DOESN'T

 12 WANT TO ADDRESS HIS OWN MORAL

 13 RESPONSIBILITY IN ANY WAY. HE DOESN'T

 14 WANT TO ADDRESS HIS MORAL

 15 RESPONSIBILITY FOR THE BURGLARY, ANY

 16 MORE THAN HE WANTS TO ADDRESS HIS

 17 MORAL RESPONSIBILITY FOR THE

 18 KILLINGS. THIS IS WHY HE PRETENDS HE

 19 DOESN'T KNOW."

 20 MY CLIENT'S TESTIMONY AT PAGE 43,997:

 21 "QUESTION BY MR. CONN: YOU BLAME

 22 YOUR FATHER FOR THIS BURGLARY, MR. MENENDEZ?

 23 "ANSWER: NOT IN ANY WAY.

 24 "QUESTION: ISN'T THAT WHAT YOU

 25 WERE TRYING TO SUGGEST TO THE JURY,

 26 THAT YOU WERE TAUGHT TO CHEAT BY YOUR

 27 FATHER; AND, THEREFORE, YOUR FATHER IS

 28 SOMEHOW RESPONSIBLE FOR THIS -- THESE

 1 BURGLARIES?

 2 "ANSWER: MY FATHER IS NOT

 3 RESPONSIBLE FOR THESE BURGLARIES.

 4 "QUESTION: IS HE RESPONSIBLE FOR

 5 HIS DEATH IN ANY WAY?

 6 "ANSWER: I'M RESPONSIBLE FOR HIS

 7 DEATH.

 8 "QUESTION: AND HE IS NOT,

 9 CORRECT?

 10 "ANSWER: YES.

 11 "QUESTION: AND YOUR MOTHER IS

 12 NOT, CORRECT?

 13 "ANSWER: SHE IS NOT.

 14 "QUESTION: AND YOUR BROTHER IS

 15 RESPONSIBLE ALONG WITH YOU; IS THAT

 16 CORRECT?

 17 "ANSWER: YES."

 18 MR. CONN'S AUMENT, PAGE 51,254:

 19 "THEN I ASKED THE QUESTION: 'WHAT

 20 MADE YOU BELIEVE THAT YOUR FATHER

 21 WOULD NO LONGER SEXUALLY ABUSE YOU

 22 ONCE YOU BEGAN TO GO TO U.C.L.A., JUST

 23 A FEW MILES AWAY?'

 24 "AND ONCE AGAIN, IN RESPONSE TO

 25 THAT HE SAID, 'I DON'T KNOW.'"

 26 PAGE 44,326, MY CLIENT'S TESTIMONY:

 27 ANSWER TO A QUESTION: "I WAS

 28 HOPING IT WOULD END RIGHT AFTER HIGH

 1 SCHOOL. THEN I THOUGHT IT WOULD

 2 CERTAINLY END WHEN I WENT AND STARTED

 3 AT U.C.L.A.

 4 "QUESTION: THESE --" THESE ARE NOT IN

 5 DIRECT ORDER. I'M LEAPING.

 6 44,327:

 7 "QUESTION: YOU WERE CONVINCED

 8 THAT ONCE YOU WENT TO U.C.L.A., THAT

 9 THE SEXUAL ABUSE BY YOUR FATHER WAS

 10 GOING TO STOP; IS THAT CORRECT?

 11 "ANSWER: IT WAS MY FANTASY THAT

 12 IT WOULD, MY STRONG HOPE.

 13 "QUESTION: AND YOU THOUGHT THAT

 14 YOUR FATHER, WHO TOLD YOU THAT H

 15 WOULD KILL YOU IF YOU LEFT THE HOME,

 16 WAS GOING TO STOP SEXUALLY ABUSING YOU

 17 BECAUSE YOU WERE A FEW MILES AWAY?"

 18 YOU CAN TELL WHO'S ASKING THIS

 19 QUESTION.

 20 "ANSWER: NO. THIS WAS A FANTASY

 21 THAT I DEVELOPED AND THE DREAM THAT I

 22 GRASPED ONTO WHEN IT STARTED UP AGAIN

 23 IN CALIFORNIA; AND SO I HAD IT FOR

 24 YEARS UP TO THIS POINT. IN MY MIND IT

 25 DIDN'T MATTER WHETHER I WENT TO

 26 U.C.L.A. OR TO BROWN."

 27 ON AND ON, ERIK AND HIS RESCUE FANTASY.

 28 "QUESTION: BUT ONCE YOU FOUND

 1 OUT THAT YOUR FATHER WAS GOING TO --

 2 WOULD PREFER YOU IN U.C.L.A., YOU

 3 STILL THOUGHT THAT THE SEXUAL ABUSE

 4 WAS GOING TO STOP BECAUSE YOU WERE A

 5 FEW MILES AWAY?

 6 "ANSWER: YES.

 7 "QUESTION: THAT MADE SENSE TO

 8 YOU?

 9 "ANSWER: IT DID IN MY WORLD.

 10 "QUESTION: AND WHY IN YOUR WORLD

 11 DID THAT MAKE SO MUCH SENSE, TO THINK

 12 YOUR FATHER, WHO HAD THE POWER TO

 13 CHASE YOU AROUND THE WORLD, COULDN'T

 14 DRIVE A FEW MILES AWAY AND SEXUALL

 15 ASSAULT YOU IN U.C.L.A.?"

 16 IN THE DORM?

 17 "NO. I THINK IT WAS A DREAM. IT

 18 WAS A HOPE THAT I NEEDED TO HAVE, AND

 19 WITHOUT IT I DON'T THINK THAT I WOULD

 20 HAVE LIVED UNTIL I WAS 18."

 21 SKIPPING A FEW. 44,329:

 22 "MAYBE IT WASN'T BUILT ON

 23 RATIONAL OR SENSE, EVEN THOUGH IT MADE

 24 SENSE TO ME. IT MADE SENSE IN MY

 25 WORLD. I DON'T REMEMBER READING

 26 THAT."

 27 MR. CONN'S ARGUMENT, 51,257:

 28 "HE HAD NO INTEREST IN GOING TO

 1 SCHOOL. HE DID NOT GO TO SCHOOL. HE

 2 PLAYED TENNIS."

 3 MY CLIENT'S TESTIMONY, 45,256:

 4 "QUESTION: AND DID YOU TELL

 5 DETECTIVE ZOELLER ON SEPTEMBER 17TH,

 6 THAT 'I DON'T WANT TO GO TO SCHOOL

 7 THIS YEAR'?"

 8 "ANSWER: I TALKED ABOUT SCHOOL.

 9 I THINK I TOLD HIM THAT I HAD --

 10 SEPTEMBER 17TH WAS JUST AFTER I HAD

 11 TALKED TO THE DEAN AT PRINCETON

 12 UNIVERSITY, AND FOUND OUT THAT I WOULD

 13 NOT BE ABLE TO GO TO PRINCETON, WHICH

 14 IS WHAT I THINK I SAID, AND THAT AS A

 15 RESULT, I WAS NOT GOING TO GO TO

 16 SCHOOL. I WAS PROBABLY GOING TO GO ON

 17 TO PLAY TENNIS."

 18 MR. CONN'S ARGUMENT, 51,286:

 19 "HE DOES NOT RECALL WHETHER THEY

 20 DISCUSSED HOW THEIR PARENTS MIGHT KILL

 21 THEM AND GET AWAY WITH IT. HE SAID

 22 'I'M SURE WE DID.' I'M SURE THAT WE

 23 DID, AS JUST A WAY OF AVOIDING FURTHER

 24 CROSS-EXAMINATION ON THE TOPIC. OH

 25 I'M SURE WE TALKED ABOUT IT.'

 26 "WELL, WHAT DID YOU DISCUSS --

 27 "WELL, TO -- BECAUSE, LIKE I

 28 SAID, I DON'T REMEMBER TALKING ABOUT

 1 THAT."

 2 HE DOES NOT RECALL A DISCUSSION

 3 CONCERNING WHERE IT WAS LIKELY TO HAPPEN OR WHEN IT

 4 WAS LIKELY TO HAPPEN."

 5 HIS TESTIMONY, 44,563:

 6 "QUESTION: DID YOU REACH ANY

 7 CONCLUSIONS CONCERNING WHETHER YOUR

 8 FATHER WOULD DO IT PERSONALLY OR GET

 9 SOMEONE TO DO IT FOR HIM?

 10 "ANSWER: LYLE THOUGHT THAT DAD

 11 WOULD NOT GET OTHER PEOPLE INVOLVED.

 12 "QUESTION: WHAT WAS YOUR

 13 THOUGHTS ON THAT SUBJECT?

 14 "ANSWER: I DIDN'T KNOW MY FATHER

 15 WELL ENOUGH TO KNOW. ALL I KNOW IS

 16 THAT -- WAS THAT I HAD FEAR OF HIM. I

 17 DIDN'T KNOW WHETHER HE WOULD HIRE

 18 PEOPLE OR NOT. LYLE THOUGHT THAT HE

 19 WOULD DO IT MORE LIKELY PERSONALLY

 20 THAN GET OTHER PEOPLE INVOLVED.

 21 "QUESTION: DID YOU REACH ANY

 22 CONCLUSIONS CONCERNING WHERE IT WAS

 23 LIKELY TO HAPPEN?

 24 "ANSWER: NO.

 25 "QUESTION: DID YOU REACH ANY

 26 CONCLUSIONS CONCERNING WHAT TIME OF

 27 DAY IT WAS LIKELY TO HAPPEN?" .

 28 PAGE 44,566:

 1 "I REMEMBER BELIEVING, FOR

 2 EXAMPLE, THAT IT WOULD HAPPEN WHEN WE

 3 WERE TOGETHER. I DON'T KNOW HOW I

 4 CAME TO THAT CONCLUSION. I KNOW THAT

 5 LYLE AND I WERE DISCUSSING SUCH

 6 THINGS. I DON'T REMEMBER HOW I

 7 ARRIVED AT THAT CONCLUSION."

 8 MR. CONN'S ARGUMENT, 51,268:

 9 HE'S TALKING ABOUT HIS CLAIM THAT ERIK

 10 MENENDEZ NEVER TRIED TO CONTACT HIS BROTHER ON

 11 THURSDAY TO FIND OUT IF HE HAD HAD THE CONVERSATION

 12 YET WITH HIS FATHER, IF THAT CONFRONTATION HAD

 13 OCCURRED.

 14 AND MR. CONN ARGUES:

 15 "AND YET, WHILE HE WANTED ADVANCE

 16 NOTICE IF HIS BROTHER WAS STILL ALIVE

 17 AND HIS FATHER WAS UPSET, HE DOESN'T

 18 EVEN BOTHER TO MAKE CONTACT WITH LYLE

 19 MENENDEZ BEFORE HIS FATHER CAME HOME.

 20 WOULDN'T IT BE A WISE THING TO CALL

 21 LYLE MENENDEZ ON THE PHONE AND

 22 SAY,'HOW DID THE MEETING GO? IS THE

 23 COAST CLEAR? CAN I COME HOME? IS

 24 EVERYTHING OKAY?'

 25 "NO. HE DIDN'T MAKE ANY EFFORTS

 26 TO ENSURE HIS SAFETY."

 27 MIND YOU, HE'S TALKING ABOUT MAKING

 28 CONTACT BEFORE HIS FATHER CAME HOME.

 1 43,044, MY CLIENT'S TESTIMONY:

 2 "WHEN I CALLED IN -- I BELIEVE IT

 3 WAS ON THE PHONE WHEN I CALLED IN,

 4 AFTER 6:00, BUT I DON'T REMEMBER. I

 5 KNOW I FOUND OUT AT SOME POINT.

 6 "QUESTION: WHY DID YOU CALL AT

 7 6:00 CLOCK?

 8 "ANSWER: THAT WAS WHAT M

 9 RECOLLECTION IS, THAT MY DAD WAS GOING

 10 TO BE COMING HOME.

 11 "QUESTION: WHAT WAS THE PURPOSE

 12 OF CALLING BACK TO YOUR HOUSE?

 13 "ANSWER: TO FIND OUT HOW THE

 14 CONVERSATION WITH MY BROTHER WENT."

 15 43,445 -- HE TESTIFIES HE MAKES SEVERAL

 16 PHONE CALLS THAT DAY.

 17 "WELL, I KNEW FROM PREVIOUS

 18 CONVERSATIONS THAT MY DAD'S FLIGHT HAD

 19 BEEN DELAYED UNTIL LATE THAT NIGHT,

 20 AND HE WOULD BE ARRIVING BACK AT THE

 21 HOUSE SOMETIME AFTER 11:00."

 22 NOW, THAT'S NOT AN OUTRIGHT FABRICATION,

 23 JUST A STORY.

 24 51,327, MR. CONN ARGUES:

 25 "IF THAT WERE TRUE, LADIES AND

 26 GENTLEMEN, IF THEY REALLY WANTED TO

 27 REASSURE THEIR FATHER THAT THEY WERE

 28 NOT GOING TO GO TO THE POLICE, DON'T

 1 YOU THINK THEY WOULD HAVE DONE

 2 SOMETHING TO FACILITATE THAT GOAL?

 3 DON'T YOU THINK AT SOME POINT THEY

 4 WOULD HAVE TOLD THEIR FATHER, 'HEY,

 5 WE'RE NOT GOING TO GO TO THE POLICE?"

 6 MR. MENENDEZ' TESTIMONY, 43,454:

 7 "QUESTION: DID YOU TRY TO

 8 EXPLAIN OR TELL YOUR FATHER ANYTHING

 9 AFTER HE EXPRESSED HIS REACTION TO

 10 LYLE MENENDEZ?

 11 "ANSWER: I JUST TOLD MY DAD THAT

 12 LYLE WASN'T GOING TO TELL ANYONE.

 13 "MY DAD SAID SOMETHING ALONG THE

 14 LINES OF 'YOU'VE MADE YOUR DECISION,

 15 AND ERIK MADE HIS,' AND NOW HE HAD TO

 16 MAKE HIS."

 17 THIS IS REFERRING TO WHAT LYLE MENENDEZ

 18 TOLD ERIK MENENDEZ OCCURRED IN THE CONVERSATION WITH

 19 HIS FATHER.

 20 "MY DAD WAS AT THE DOOR. HE WAS

 21 TELLING HIM HE WAS NOT GOING TO TELL

 22 ANYONE. HE DIDN'T WANT TO TELL ANYONE."

 23 MR. CONN'S ARGUMENT AT 51,287, HE'S

 24 TALKING ABOUT THAT THEY NEVER HAD A DISCUSSION ABOUT

 25 LEAVING, ABOUT GOING SOMEWHERE ELSE. AND HE SAYS:

 26 "DON'T YOU THINK THAT LYLE

 27 MENENDEZ, UNDER THOSE CIRCUMSTANCES,

 28 WOULD HAVE SAID, 'WAIT A MINUTE. WHY

 1 ARE WE DOING THIS? LET'S CONSIDER

 2 SOME OPTIONS HERE. LET MOVE AWAY.

 3 LET'S AVOID KILLING OUR PARENTS.'"

 4 MY CLIENT'S TESTIMONY AT 44,525:

 5 "SO SINCE THAT WAS A POSSIBILITY,

 6 THAT YOUR FATHER WAS GOING TO COME AND

 7 KILL YOU THURSDAY NIGHT, DID YOU AND

 8 YOUR BROTHER LEAVE THE HOUS

 9 "ANSWER: THAT'S WHAT LYLE WANTED

 10 TO DO.

 11 "QUESTION: AND DID YOU GIVE YOUR

 12 BROTHER A REASON WHY YOU DIDN'T WANT

 13 TO LEAVE?

 14 "ANSWER: I TOLD HIM THAT I

 15 COULDN'T, AND THAT IF HE LEFT HE WOULD

 16 HAVE TO LEAVE ME HERE, AND THAT I

 17 WOULD DIE. IN FACT, I EVEN TOLD HIM

 18 THAT I WOULD KILL MYSELF. I TOLD HIM

 19 THAT HE HAS TO STAY, AND THAT THERE'S

 20 NO WHERE WE CAN GO; THAT ANYWHERE WE'D

 21 GO DAD WILL FIND US, AND THAT WE CAN'T

 22 LEAVE."

 23 PAGE 44,538:

 24 "QUESTION: WELL, DID YOUR

 25 BROTHER, LYLE MENENDEZ, SAY TO YOU,

 26 'WHY DON'T WE JUST GO TO THE POLICE?

 27 "ANSWER: THAT'S PRETTY MUCH WHAT

 28 HE SAID.

 1 "QUESTION: WHAT DID YOU SAY

 2 "ANSWER: I SAID, 'THAT'S

 3 IMPOSSIBLE. WHAT ARE THEY GOING TO

 4 DO?' SOMETHING ALONG THESE LINES.

 5 AND HE AGREED TOO, THAT THE POLICE --

 6 WE WERE MUCH BETTER OFF RUNNING AWAY,

 7 NOT GOING TO ANYONE, THAN GOING TO THE

 8 POLICE."

 9 THIS IS 44,540:

 10 "QUESTION: SO YOU HAD NO FURTHER

 11 CONVERSATION WITH YOUR BROTHER, LYLE

 12 MENENDEZ, CONCERNING GOING TO THE

 13 POLICE, OTHER THAN WHAT YOU JUST TOLD

 14 US HERE TODAY; IS THAT CORRECT?

 15 "ANSWER: I DON'T REMEMBER ANY

 16 FURTHER DISCUSSIONS ABOUT GOING TO THE

 17 POLICE. I REMEMBER DISCUSSIONS ABOUT

 18 HIM WANTING TO GET AWAY, EVEN ON

 19 FRIDAY. I DON'T REMEMBER SPECIFICALLY

 20 GOING TO THE POLICE."

 21 MR. CONN'S ARGUMENT AT 51,265, HE'S

 22 TALKING ABOUT WEDNESDAY, AND THE FACT THAT AT LUNCH

 23 THAT DAY ERIK MENENDEZ TESTIFIED HIS BROTHER

 24 INFORMED HIM THAT HE, LYLE MENENDEZ, HAD HAD SOME

 25 CONVERSATION WITH THEIR MOTHER CONCERNING LYLE'S

 26 INTENTION OF TALKING TO JOSE MENENDEZ ON THURSDAY

 27 NIGHT.

 28 MR. CONN ARGUED:

 1 "WELL, HE CERTAINLY SHOULD HAV

 2 SAW IT AS ODD --" MEANING GOING TO THE

 3 POLICE -- "HE CERTAINLY SHOULD HAVE

 4 DISCUSSED IT WITH LYLE. HE COULD HAVE

 5 SAID, 'LYLE, WHAT DID YOU DO THAT

 6 FOR? WHY DID YOU TELL OUR MOTHER?

 7 HOW DOES IT ADVANCE OUR CAUSE IN ANY

 8 WAY?'

 9 "IT JUST MAKES NO SENSE, LADIES

 10 AND GENTLEMEN."

 11 MY CLIENT'S TESTIMONY AT 43,429, ALSO,

 12 ERIK MENENDEZ TALKING ABOUT WEDNESDAY.

 13 "I KNEW, THAT HE," MEANING LYLE

 14 MENENDEZ, "WAS DEFINITELY PLANNING ON

 15 ASSISTING ME. HE TOLD ME THAT HE HAD

 16 HAD A CONVERSATION EARLIER IN THE DAY

 17 WITH MY MOTHER. AND I SAID, 'YOU

 18 DIDN'T TELL HER -- TELL HER WHAT I TOLD

 19 YOU, DID YOU?'

 20 "AND HE SAID, 'NO.'

 21 "HE JUST TOLD HER THAT HE WANTED

 22 TO TALK TO DAD WHEN DAD GOT HOM

 23 SOMETHING TO DO WITH ME."

 24 "QUESTION BY MR. CONN AT THE 44,427:

 25 "AND YOU DIDN'T ASK HIM, 'WHAT

 26 DID YOU DO THAT FOR LYLE'? YOU'RE

 27 JUST GOING TO TIP MY FATHER OFF THAT

 28 SOMETHING IS UP.

 1 "ANSWER: I DIDN'T SAY THAT. I

 2 SAID OTHER THINGS.

 3 "QUESTION: DID YOU THINK THAT?

 4 "ANSWER: NO. I WAS MORE

 5 CONCERNED ABOUT HOW MUCH HE HAD TOLD

 6 HER."

 7 I'M SKIPPING A FEW.

 8 MR. CONN'S ARGUMENT AT 51,320. HE'S

 9 TALKING ABOUT THE FACT THAT ERIK MENENDEZ TOOK HIS

 10 GUN ON SATURDAY AND HAD LOOKED UP A RIFLE RANGE

 11 WHICH HAD A GUN STORE AFFILIATED WITH IT. AND ALL

 12 OF THIS IS HIS ARGUMENT THAT EVERYTHING THAT MY

 13 CLIENT SAID IS A LIE. IT'S SORT OF A CLEAN WAY FOR

 14 THE PROSECUTION TO ARGUE A CASE.

 15 IN ANY EVENT, THIS IS WHAT HE SAYS.

 16 "NOW, DOES THAT MAKE ANY SENSE?

 17 HE DOESN'T KNOW WHY HE TOOK HIS GUN

 18 WITH HIM ON SATURDAY. HE JUST ENDS UP

 19 IN A RIFLE RANGE FOR THE PURPOSE OF

 20 TARGET PRACTICE. AND YET HE DOESN'T

 21 KNOW WHY HE TOOK THE GUN WITH HIM ON

 22 SATURDAY."

 23 TESTIMONY AT 43,557.

 24 "QUESTION: DID YOU TAKE YOUR

 25 SHOTGUN ANYWHERE ON SATURDAY?

 26 "ANSWER: YES.

 27 "QUESTION: WHERE DID YOU TAKE

 28 IT?

 1 "ANSWER: I PUT IT IN MY CAR.

 2 "QUESTION: HOW DID YOU GET IT TO

 3 YOUR CAR?

 4 "ANSWER: I CARRIED IT TO MY CAR

 5 IN MY TENNIS BAG.

 6 "QUESTION: WHY DID YOU TAKE YOUR

 7 SHOTGUN AND PUT IT IN YOUR CAR?

 8 "ANSWER: BECAUSE IN MY MIND I

 9 WANTED TO KNOW MORE ABOUT IT. I WAS

 10 UP LATE THAT NIGHT, AND I JUST DECIDED

 11 I WANTED TO KNOW MORE. I'D NEVER

 12 FIRED IT BEFORE. AND I DIDN'T KNOW

 13 WHAT WAS GOING TO HAPPEN ON THE

 14 FISHING TRIP, AND I JUST WAS TAKING

 15 THE GUN WITH ME.

 16 "QUESTION: WELL, WHAT DO YOU

 17 MEAN WHEN YOU SAY YOU WANTED TO KNOW

 18 MORE?

 19 "ANSWER: I'D NEVER FIRED A GUN.

 20 AT SOME POINT, I DON'T REMEMBER IF IT

 21 WAS FRIDAY NIGHT OR SATURDAY MORNING,

 22 LYLE WASN'T SURE IF THESE SHELLS WERE

 23 ACTUALLY SUPPOSED TO BE USED IN THIS

 24 GUN. HE WANTED TO CHECK THAT OUT.

 25 "AND AT SOME POINT I WANTED

 26 SEE IF THERE WAS A FIRING RANGE WHERE

 27 I COULD SEE HOW YOU FIRED THIS GUN."

 28 I DON'T HAVE THE ACTUAL CITE HERE IN MY

 1 NOTES, BUT IT INDICATES THAT IN HIS ARGUMENT,

 2 MR. CONN CLAIMED THAT MR. MENENDEZ HAD NO REACTION

 3 WHEN HE WENT INTO THE ROOM AND SAW THERE WERE NO

 4 GUNS.

 5 MY CLIENT'S TESTIMONY, 44,185:

 6 "NO. I GOT OVERLY EMOTIONAL WHEN

 7 I REALIZED AND SAW MY PARENTS, AND SAW

 8 THERE WERE NO GUNS IN THE ROOM, AND

 9 SAW THE SIGHT THAT HORRIFIED ME. AND

 10 THAT'S WHEN I COMPLETELY LOST

 11 CONTROL."

 12 45,072:

 13 "I KNOW I SAW THAT THERE WERE NO

 14 GUNS THAT I COULD SEE, WEAPONS OF ANY

 15 KIND. I REMEMBER STARING AT THEM. I

 16 REMEMBER MY EMOTIONS OVERWHELMING ME."

 17 NOW, MR. CONN MADE A GREAT DEAL OUT OF

 18 THE FACT THAT WHILE TESTIFYING MY CLIENT OFTEN ASKED

 19 FOR CLARIFICATION OF THE QUESTION OR ASKED FOR

 20 CLARIFICATION OF HOW A WORD OR A PHRASE IS BEING

 21 USED. AND MR. CONN ARGUED THAT THIS WAS PROOF OF

 22 EVASION ON MY CLIENT'S PART; THAT THIS WAS SOMETHING

 23 DONE TO MR. CONN TO FRUSTRATE HIM AS A

 24 CROSS-EXAMINER.

 25 I WANT TO READ YOU SOME OF MY CLIENT'S

 26 TESTIMONY, JUST BRIEF BITS.

 27 THIS IS FROM PAGE 43,171:

 28 "QUESTION: DID YOU HAVE ANY

 1 FRIENDS AT THE TIME YOUR FATHER

 2 MOLESTED YOU?

 3 "ANSWER: I HAD -- WHAT DO YOU

 4 MEAN BY FRIENDS? KIDS THAT I KNEW, OR

 5 KIDS THAT I WOULD INVITE OVER TO MY

 6 HOUSE?"

 7 PAGE 43,297:

 8 "QUESTION: WOULD IT BE A

 9 SITUATION WHERE NIGHTTIME SEX WOULD

 10 OCCUR AFTER YOU WENT TO BED AND WHEN

 11 YOUR FATHER WAS NOT HOME?

 12 "ANSWER: I DON'T UNDERSTAND WHAT

 13 YOU'RE ASKING.

 14 "QUESTION: IN OTHER WORDS, THOSE

 15 TIMES WHEN NIGHTTIME SEX TOOK PLACE,

 16 WOULD THE SITUATION GENERALLY BE --"

 17 AND ON AND ON. THEN HE ANSWERS, AFTER

 18 CLARIFICATION, PAGE 43,304:

 19 "NOW DURING THE TIME THAT YOUR

 20 FATHER WAS SODOMIZING YOU, DID HE EVER

 21 HIT YOU?

 22 "ANSWER: WHAT DO YOU MEAN BY

 23 'HIT'?"

 24 AND THEN THE QUESTION IS LATER CLARIFIED.

 25 "WELL, DID HE EVER SLAP YOU?"

 26 PAGE 43,351:

 27 "AND YOU INDICATED THAT YOU HAD

 28 TOLD ANDY CANO SOMETHING. DID ANDY

 1 CANO EVER SAY ANYTHING BACK TO YOU

 2 AFTER YOU TOLD HIM THE INFORMATION YOU

 3 TOLD THE JURY?

 4 "ANSWER: WHAT DO YOU MEAN BY

 5 'BACK TO ME'?

 6 "QUESTION: WELL, DID HE SAY

 7 ANYTHING IN RETURN TO YOU LIKE, WHAT

 8 SHOULD HE DO?

 9 "ANSWER: HE WANTED ME TO TALK T

 10 HIS MOTHER."

 11 AND ON AND ON.

 12 PAGE 43,372:

 13 "DID THINGS START TO COME INTO

 14 YOUR MIND THAT CAUSED YOU TO

 15 REEVALUATE YOUR POSITION WITH RESPECT

 16 TO YOUR FATHER'S DESIRES WITH YOU?

 17 "ANSWER: I DON'T UNDERSTAND WHAT

 18 YOU MEAN."

 19 NOW, WHAT I'M READING TO YOU, LADIES AND

 20 GENTLEMEN, IS HIS DIRECT EXAMINATION BY MR. LEVIN,

 21 WHICH JUST GOES TO SHOW YOU, MR. LEVIN DOESN'T

 22 ALWAYS ASK TOTALLY UNDERSTANDABLE QUESTIONS EITHER.

 23 THIS IS NOT AN EFFORT ON MY CLIENT'S

 24 PART.

 25 AND I HAVE MORE. I COULD KEEP GOING.

 26 ALL OF THEM FROM DIRECT. THIS IS NOT AN EXAMPLE OF

 27 HIS BEING EVASIVE. THIS IS HIS ANXIOUS DESIRE TO BE

 28 ACCURATE IN HIS ANSWER AND TO MAKE SURE HE

 1 UNDERSTANDS THE QUESTION. AND IT DOESN'T BEAR ON

 2 HIS CREDIBILITY, ALTHOUGH IT MAY TELL SOMETHING

 3 ABOUT THE SERIOUSNESS WITH WHICH HE REGARDS THESE

 4 PROCEEDINGS.

 5 NOW, I REALIZE THAT ORDINARILY IT'S VERY

 6 RUDE TO BE DRINKING SOMETHING IN FRONT OF PEOPLE WHO

 7 THEMSELVES ARE NOT. THIS IS THE LONG-RANGE

 8 AFTER-EFFECTS OF PNEUMONIA, WHICH NEVER, I'M AFRAID,

 9 COMPLETELY LEAVES YOU. THIS IS TO AVOID COUGHING,

 10 WHICH IS FAR MORE OFFENSIVE. SO FORGIVE ME.

 11 MR. CONN'S RATHER REMARKABLE ARGUMENT,

 12 LADIES AND GENTLEMEN, I THINK, WAS MAINLY GEARED TO

 13 MAKING YOU CONFUSE THE ROLE OF THE PROSECUTION AND

 14 THE ROLE OF THE DEFENSE IN A CRIMINAL CASE. THE

 15 PROSECUTION IN THIS CASE, AS IN EVERY OTHER CASE,

 16 HAS THE BURDEN OF PROOF.

 17 WE MAKE THAT BURDEN IN THIS COUNTRY VERY

 18 HIGH. THAT REVEALS A BELIEF OF VALUE THAT I HOPE WE

 19 STILL ALL HOLD, ALTHOUGH SOMETIMES I'M NOT TOO SURE,

 20 BUT THAT WE CERTAINLY HELD AT THE TIME THAT WE

 21 ADOPTED THIS NOTION OF ENGLISH COMMON LAW; THAT IT

 22 IS FAR WORSE TO CONVICT AN INNOCENT PERSON THAN TO

 23 LET A GUILTY ONE GO FREE. AND A RECOGNITION THAT

 24 VERY FEW CITIZENS -- AND WE ALL CAN THINK OF THE

 25 NOTABLE EXCEPTION -- BUT VERY FEW CITIZENS HAVE THE

 26 RESOURCES, THE MONEY, THE PEOPLE, THE HELP, TO PROVE

 27 THEMSELVES INNOCENT.

 28 SO WE REQUIRE THE PROSECUTION TO PROV

1 SOMEONE GUILTY AND TO PROVE IT TO AN EXTREMLY HIGH

 2 LEVEL, GUILT BEYOND A REASONABLE DOUBT.

 3 NOW, ON THE BOARD RIGHT NOW IS THE

 4 DEFINITION OF REASONABLE DOUBT, COUCHED, AS I'M

 5 AFRAID ALL THE INSTRUCTIONS ARE, IN A LANGUAGE

 6 SPOKEN NOWHERE ELSE BUT AT THE END OF A TRIAL IN A

 7 COURTROOM. AND THE REASON WE USE THESE VERY

 8 TECHNICAL TERMS IS BECAUSE THEY HAVE BEEN THRASHED

 9 OUT OVER THE YEARS IN COURTS AND IN COMMITTEES; AND

 10 THIS ONE IN PARTICULAR, YOU CANNOT DEVIATE FROM.

 11 AND IT TALKS ABOUT PRESUMPTION OF INNOCENCE UNTIL

 12 THE CONTRARY IS PROVEN.

 13 AND I WOULD SUBMIT, UNLESS THE CONTRARY

 14 IS PROVEN, AND IN A CASE OF A REASONABLE DOUBT

 15 WHETHER HIS GUILT IS SATISFACTORILY SHOWN, HE IS

 16 ENTITLED TO A VERDICT OF NOT GUILTY.

 17 NOW, BEING ENTITLED TO A VERDICT OF NOT

 18 GUILTY DOES NOT MEAN YOU HAVE TO LIKE SOMEONE TO

 19 VOTE TO ACQUIT THEM. YOU DON'T HAVE TO LIKE THEM.

 20 YOU DON'T HAVE TO LIKE WHAT THEY DID. YOU DON'T

 21 EVEN HAVE TO BE COMFORTABLE WITH YOUR VERDICT. BUT

 22 YOU ARE DUTY BOUND TO FOLLOW THIS RULE, AND THIS

 23 RULE GOES THROUGHOUT ALL OF YOUR DELIBERATIONS. IN

 24 EVERY ASPECT OF YOUR DECISION-MAKING, THIS RULE IS

 25 SUPPOSED TO BE THE GUIDING LIGHT, THE BEACON, TO

 26 MAKE SURE THAT INJUSTICE DOES NOT OCCUR, WHETHER YOU

 27 LIKE IT OR NOT.

 28 BECAUSE HE IS PRESUMED INNOCENT, THE

 1 PRESUMPTION PLACES UPON THE PEOPLE THE BURDEN OF

 2 PROVING HIM GUILTY BEYOND A REASONABLE DOUBT.

 3 NOW, THE REST TELLS YOU HOW TO EVALUATE

 4 REASONABLE DOUBT. BUT THE SIMPLEST WAY TO

 5 UNDERSTAND IT IS A DOUBT, A HESITATION, A SECOND

 6 THOUGHT, A CONCERN, A WONDER EVEN, BASED ON LOGIC,

 7 BASED ON REASON.

 8 WHEN A CASE SUCH AS THIS ONE DEPENDS IN

 9 SUCH A LARGE PART ON YOUR BELIEVING THE PERSON WHO'S

 10 ACCUSED, THAT RULE DOES NOT EVAPORATE. THAT IS

 11 STILL THE LAW.

 12 MR. CONN ARGUED THERE IS NO PRESUMPTION

 13 OF TRUTHFULNESS. TECHNICALLY SPEAKING, THAT'S

 14 RIGHT. THERE'S NO PRESUMPTION OF TRUTHFULNESS

 15 EITHER FOR WITNESSES CALLED BY THE PROSECUTION.

 16 HAVING THAT LABEL, "PROSECUTION WITNESS," DOESN'T

 17 MEAN HONEST, DOESN'T MEAN QUALIFIED, DOESN'T MEAN

 18 TRUTHFUL, DOESN'T MEAN RELIABLE.

 19 AND THE SAME IS TRUE FOR WITNESSES

 20 CALLED BY THE DEFENSE. THERE IS NO PRESUMPTION THAT

 21 ANYBODY IS GOING TO TELL YOU THE TRUTH. THAT'S WHY

 22 WE NEED YOU. YOU'RE SUPPOSED TO DECIDE WHO'S

 23 TRUTHFUL, WHO'S BELIEVABLE.

 24 BUT WHEN ELEMENTS OF THE DEFENSE, WHEN

 25 THAT INFORMATION WHICH DEFEATS THE PROSECUTION'S

 26 CASE, IF YOU WILL, COMES FROM THE MOUTH OF THE

 27 ACCUSED -- WE USE THE LABEL DEFENDANT FOR IT -- THE

 28 BURDEN OF PROOF DOES NOT SHIFT OVER TO THE DEFENSE.

 1 THIS IS SOMETHING I KNOW IT'S HARD FOR

 2 PEOPLE TO CONCEPTUALIZE. WE ALL IMAGINE THE CASE

 3 WHERE THE PROSECUTION PUTS ON ALL THEIR EVIDENCE AND

 4 THE DEFENSE DOES NOTHING, AND SAYS:

 5 "THE BURDEN OF PROOF IS BEYOND A

 6 REASONABLE DOUBT. I SHALL SIT HERE AT

 7 THE COUNSEL TABLE LOOKING CUTE AND SAY

 8 NOTHING. NO ONE WILL PUT ON ANY

 9 EVIDENCE ABOUT WHETHER I WAS INVOLVED

 10 OR NOT. AND YOU HAVE TO STRUGGLE WITH

 11 THE PROSECUTION'S CASE AND LOOK AT THE

 12 PRESUMPTION OF INNOCENCE AND THE

 13 BURDEN OF PROOF, AND UNLESS THEY'VE

 14 PROVEN ME GUILTY BEYOND A REASONABLE

 15 DOUBT, I GET OUT OF HERE."

 16 THAT'S HOW MOST PEOPLE THINK OF HOW TO

 17 APPLY REASONABLE DOUBT AND THE PRESUMPTION OF

 18 INNOCENCE, AND IT GETS CONFUSING SOMETIMES WHEN THE

 19 DEFENSE PUTS ON AN AFFIRMATIVE DEFENSE AS WE HAVE.

 20 THE FACT OF THE MATTER IS, THAT DOES

 21 NOTHING TO CHANGE THE BURDEN OF PROOF. AND TO PUT

 22 IT IN THE SHORTEST HAND POSSIBLE, MY CLIENT DOES NOT

 23 HAVE TO CONVINCE YOU BEYOND A REASONABLE DOUBT. HE

 24 DOES NOT HAVE TO BE BELIEVED BY YOU BY A

 25 PREPONDERANCE OF THE EVIDENCE, WHICH IS THE CIVIL

 26 STANDARD, WHICH MEANS MORE ON HIS SIDE THAN ON THE

 27 OTHER SIDE. HE DOESN'T, IN FACT, HAVE TO CONVINCE

 28 YOU AT ALL FOR YOU TO STILL BE ABLE TO ACQUIT HIM,

 1 BECAUSE HE DOES NOT HAVE THE BURDEN OF PROOF

 2 THE PROSECUTION HAS TO HAVE PRESENTED

 3 EVIDENCE THAT CONVINCES YOU BEYOND A REASONABLE

 4 DOUBT THAT MY CLIENT LIED ABOUT EVERYTHING MATERIAL

 5 IN HIS TESTIMONY, OR ELSE YOU CANNOT ACCEPT THEIR

 6 THEORY OF THE CASE. ALL HIS TESTIMONY HAS TO DO IS

 7 RAISE A DOUBT BASED ON REASON IN YOUR MIND.

 8 WHAT THAT MEANS IS, UNLESS YOU CAN SAY

 9 HE IS LYING BEYOND A REASONABLE DOUBT: "I DON'T HAVE

 10 THE SLIGHTEST HESITATION. ALL OF THIS IS ABSOLUTE

 11 BOLOGNA."

 12 UNLESS YOU CAN SAY THAT, YOU CANNOT

 13 CONVICT HIM, AS MR. CONN HAS ARGUED THAT YOU

 14 SHOULD.

 15 NOW, TO BE REALISTIC, SOME OF YOU MAY

 16 THINK THAT. I'M NOT NAIVE. I'VE BEEN HERE FOR SIX

 17 YEARS TRYING TO GET A RESOLUTION FOR THIS CASE.

 18 SOME OF YOU MAY BELIEVE HE'S LYING. HE'S LYING

 19 BEYOND A REASONABLE DOUBT. IF YOU BELIEVE THAT,

 20 YOU'RE GOING TO BE VERY BORED WITH THE NEXT DAY AND

 21 A HALF OR SO AS I ARGUE TO YOU.

 22 SOME OF YOU MAY BELIEVE THE OTHER.

 23 THERE IS TRUTH IN WHAT HE SAYS. YOU DON'T HAVE TO

 24 BE CONVINCED BEYOND A REASONABLE DOUBT. YOU DON'T

 25 HAVE TO BE CONVINCED BY A PREPONDERANCE THAT THERE

 26 IS TRUTH IN WHAT HE SAYS; AND, THEREFORE, I CANNOT

 27 ACCEPT THE PROSECUTION'S VERSION OF THIS CASE.

 28 AND SOME OF YOU MAY STILL BE ON THE

 1 FENCE, AND THOSE ARE THE PEOPLE I'M TALKING TO.

 2 NOW, THE REPORTER CHANGING HER PAPER

 3 REMINDS ME OF SOMETHING ELSE I WANTED TO TELL YOU.

 4 YOU KNOW THAT THE JUDGE HAS TOLD YOU ALL

 5 ALONG THAT THE ARGUMENTS OF COUNSEL ARE NOT

 6 EVIDENCE, AND THEY'RE NOT. OTHERWISE, I COULD GET

 7 UP HERE AND LIE TO YOU, MR. CONN COULD GET UP HERE

 8 AND LIE TO YOU, AND YOU'D BE COMPLETELY CONFUSED AS

 9 TO WHAT TO WEIGH AND MEASURE IN MAKING YOUR

 10 DECISION.

 11 BUT THROUGH BEAUTY OF MODERN TECHNOLOGY

 12 EVERY WORD THAT WAS TESTIFIED TO ON THE WITNESS

 13 STAND WAS TAKEN DOWN AND THE RECORD IS MADE. THERE

 14 ARE TRANSCRIPTS OF EVERY SINGLE DAY. NOW, YOU DON'T

 15 GET TO LOOK AT THEM. BUT IF YOU ARE UNSURE ABOUT

 16 ANY FACT OF ANY IMPORTANCE TO ANY PART OF YOUR

 17 DECISION-MAKING, YOU CAN ASK TO HEAR THE TESTIMONY

 18 AGAIN.

 19 AND IF -- YOU DON'T HAVE TO KNOW AT WHAT

 20 PAGE IT WAS GIVEN OR WHAT DAY. IF THERE'S AN AREA,

 21 AN ISSUE, OR A TOPIC THAT YOU'RE NOT CLEAR ON, ALL

 22 YOU HAVE TO DO IS SEND A NOTE OUT TO THE JUDGE

 23 INDICATING WHAT IT IS YOU NEED TO HEAR AGAIN, AND

 24 ALL OF US THEN GO THROUGH THE RECORD AND FIND THE

 25 AREAS WHERE THAT WAS DISCUSSED, AND THE REPORTER CAN

 26 READ IT BACK TO YOU.

 27 SHE GETS TO SIT ON THE STAND AND ROLE

 28 PLAY. IT'S VERY CUTE.

 1 IN ANY EVENT, IT'S ALL THERE. THAT'S

 2 WHY IT DOESN'T MATTER WHAT WE SAY, UNLESS IT HELPS

 3 YOU UNDERSTAND THE EVIDENCE, HELPS YOU APPLY THE

 4 LAW.

 5 NOW, ANOTHER AREA IN WHICH I THINK

 6 MR. CONN WAS TRYING TO MISLEAD YOU, OR AT LEAST DID

 7 SAY MISLEADING THINGS IN HIS ARGUMENT, IS THE NOTION

 8 THAT THE ISSUE OF MENTAL STATE IS SOMEHOW DIFFERENT

 9 WHEN WE'RE TALKING ABOUT AN AIDING AND ABETTING, OR

 10 A CONSPIRACY THEORY, VERSUS WHEN WE'RE TALKING ABOUT

 11 WHAT THE PERSON HIMSELF DID. AND THAT TOO IS N

 12 TRUE.

 13 AT THE END OF MY ARGUMENT I'M GOING TO

 14 TALK MORE SPECIFICALLY ABOUT THE INSTRUCTIONS AND

 15 THE LAW. BUT FOR RIGHT NOW LET ME JUST TELL YOU

 16 THIS BASIC PREMISE:

 17 IN OUR SYSTEM OF JUSTICE, AND MOST

 18 SYSTEMS OF JUSTICE, IN TRUE -- IN COUNTRIES WHERE

 19 THERE IS JUSTICE -- WE DO NOT PUNISH PEOPLE FOR

 20 MERELY WHAT THEY THINK, OR WE'D ALL BE GUILTY OF

 21 SOMETHING ALL THE TIME. WE DO NOT PUNISH PEOPLE

 22 SOLELY FOR WHAT THEY DO. WE ONLY JUDGE PEOPLE UNDER

 23 THE CRIMINAL LAW, AND PUNISH PEOPLE IF THERE'S A

 24 COMING TOGETHER OF WHAT WE CALL A CERTAIN MENTAL

 25 STATE AND AN ACT.

 26 NOW, IN LAW SCHOOL WE KNOW IT'S CALLED

 27 MENS REA AND ACTUS REUS, WHICH IS THE LATIN. BUT IN

 28 REAL LIFE IT MEANS YOU HAVE TO HAVE A PARTICULAR

 1 STATE OF MIND WHILE YOU'RE DOING SOMETHING FOR YOU

 2 TO BE GUILTY OF THE CRIME.

 3 THERE ARE SOME TINY EXCEPTIONS, BUT NOT

 4 IN THE AREA OF HOMICIDE. HOMICIDE IS THAT ONE AREA

 5 WHICH AT EVERY LEVEL OF POTENTIAL CRIMINAL

 6 RESPONSIBILITY THERE MUST BE A COMING TOGETHER OF

 7 PARTICULAR MENTAL STATE AND THE DOING OF THE ACT.

 8 AND THAT IS, FOR THE ERIK MENENDEZ DEFENSE, THE

 9 CRUCIAL DECISION YOU HAVE TO MAKE, THE KEY ISSUE.

 10 THE MAIN ISSUE IN THIS CASE IS WHAT WAS

 11 MY CLIENT'S MENTAL STATE AT THE TIME HE FIRED THOSE

 12 GUNS -- THAT GUN. AND WHATEVER HIS BROTHER'S MENTAL

 13 STATE WAS AT THAT TIME IS HIS BROTHER'S MENTAL

 14 STATE, BECAUSE HE IS A PRINCIPAL, MY CLIENT. HE IS

 15 ACTING HIMSELF. HE IS DOING THINGS HIMSELF, AND HIS

 16 STATE OF MIND IS WHAT GUIDES THE DECISION CONCERNING

 17 WHAT HIS RESPONSIBILITY SHOULD BE.

 18 I DON'T WANT YOU TO LOSE SIGHT OF THAT

 19 SIMPLY BECAUSE YOU'RE GOING TO BE INSTRUCTED ON

 20 AIDING AND ABETTING, AND YOU'RE GOING TO BE

 21 INSTRUCTED ON A CONSPIRACY TO COMMIT MURDER. AND

 22 ALL THE FUN OF TALKING ABOUT THOSE THINGS I'M GOING

 23 TO PUT OFF UNTIL LATER. MAYBE TOMORROW MORNING WHEN

 24 WE'RE ALL FRESH AGAIN.

 25 NOW, IT IS TRUE, THAT MOTIVE PER SE --

 26 AND YOU'RE GOING TO BE GIVEN AN INSTRUCTION ON THIS --

 27 IS NOT AN ELEMENT OF THE CRIME. YOU'LL BE

 28 INSTRUCTED ON WHAT THE ELEMENTS, FOR EXAMPLE, OF

 1 MURDER ARE, WHAT THE ELEMENTS OF MANSLAUGHTER ARE.

 2 AND MOTIVE ISN'T ONE OF THEM. AND THERE ARE MANY

 3 CASES IN WHICH YOU SIMPLY CANNOT FIGURE OUT WHAT

 4 SOMEONE'S REASON WAS FOR DOING SOMETHING, BUT YOU

 5 CAN FIGURE OUT WHAT DID THEY DO UNDER THE LAW? WHAT

 6 ARE THEY RESPONSIBLE FOR?

 7 THIS IS NOT ONE OF THOSE CASES. THE

 8 ENTIRE PROSECUTION THEORY OF THIS CASE, THAT THIS IS

 9 A PREMEDITATED, PLANNED, COLD-BLOODED HOMICIDE, IS

 10 DEPENDENT ON FIGURING OUT A REASON. WHY? BECAUSE

 11 USUALLY KIDS DON'T KILL THEIR PARENTS. THAT'S

 12 PRETTY OBVIOUS.

 13 WHAT'S PRETTY OBVIOUS, IF YOU STEP BACK

 14 FROM ALL THE TALK IN THIS TRIAL AND ALL THE EVIDENCE,

 15 IS THIS: FOR A FAMILY TO WIND UP IN THIS DISASTER

 16 THERE HAS TO BE A REASON WHY THIS HAPPENED. AND

 17 WHERE DO YOU LOOK FOR REASONS? WE LOOK IN ONE

 18 PLACE, THE NATURE OF THE RELATIONSHIP BETWEEN THESE

 19 PEOPLE, WHAT THE IMPACT WAS ON MY CLIENT AND WHO HE

 20 IS, WHAT KIND OF PERSON HE IS, AND WHAT POSSIBLY

 21 COULD HAVE COMPELLED SOMEONE LIKE HIM TO DO THIS.

 22 IF OUR REASONS ARE THE RIGHT REASONS, HE

 23 IS NOT GUILTY OF MURDER AT ALL.

 24 MR. CONN HAS HIS THEORY, HIS REASONS,

 25 AND THE CHIEF REASON -- AND I SAY IT'S CHIEF BECAUSE

 26 OF HOW MUCH TIME WAS SPENT IN TRYING TO PROVE IT --

 27 IS THEY DID IT FOR THE MONEY.

 28 NOW, PEOPLE DO THINGS, PRETTY ROTTEN

 1 THINGS, FOR MONEY.

 2 I'M GOING TO PUT THIS LOW JUST BECAUSE

 3 IT REALLY DOESN'T MATTER THAT YOU SEE THEM ALL. I

 4 JUST WANT TO SHOW YOU SOMETHING HERE.

 5 NOW, ONE OF THE WAYS WE IN THE LAW,

 6 TALKING ABOUT THEY DID IT FOR MONEY, AS WE CALL IT,

 7 IS FINANCIAL GAIN AS THE MOTIVE. AND I HAVE A CHART

 8 THAT I WILL SHOW YOU LATER ABOUT FINANCIAL GAIN AS

 9 MOTIVE. BUT I JUST WANT TO SHOW YOU HOW DESPERATE

 10 THIS PROSECUTION WAS TO TRY TO COME UP WITH A

 11 MOTIVE, OTHER THAN THE OBVIOUS ONE, THAT THERE WAS

 12 SOMETHING VERY, VERY BAD GOING ON INSIDE THIS

 13 FAMILY; THAT THE CHILDREN OF THIS FAMILY WERE BEING

 14 TREATED VERY BADLY BY THE PARENTS OF THIS FAMILY.

 15 AND SO THEIR THEORY IS, THEIR DESPERATE THEORY IS

 16 MONEY.

 17 AND HERE ARE THE WITNESSES THAT THEY

 18 CALLED TO TRY TO SHOW A MONEY THEORY.

 19 WE HAVE KLARA WRIGHT. WE HAVE RANDY

 20 WRIGHT. WE HAVE CARLOS BARALT. WE HAVE HOWARD

 21 WITKIN. WE HAVE MARY MAHAR. WE HAVE AMANDA GEIER.

 22 WE HAVE VALERIE HART. WE HAVE RICHARD WENSKOSKI.

 23 WE HAVE LARRY COHEN. WE HAVE VICKI RIVAS. WE HAVE

 24 MARK SLOTKIN. WE HAVE GLENN STEVENS, BRIAN

 25 ANDERSEN.

 26 THEY DID IT FOR THE CAMCORDER.

 27 AND THAT -- LOOK AT HOW MANY OF THEIR

 28 WITNESSES THEY USED IN THEIR DESPERATE ATTEMPT TO

 1 TRY TO SHOW THEY DID IT FOR THE MONEY.

 2 NOW, YOU DID NOT HEAR -- OH. SILLY.

 3 MOST OBVIOUS THING I HAVE TO TALK TO YOU ABOUT.

 4 YOU ARE EACH TWO PEOPLE. DIDN'T YOU

 5 KNOW THAT? ONE OF YOU IS THE PERSON WHO HAS TO

 6 JUDGE THE GUILT OR INNOCENCE OF ERIK MENENDEZ. AND

 7 THE OTHER ONE IS THE PERSON WHO HAS TO JUDGE THE

 8 GUILT OR INNOCENCE OF LYLE MENENDEZ.

 9 NOW, TO BE HONEST, I'M NOT SURE YOU

 10 REALLY CAN DO THAT. I'M NOT SURE ANYBODY CAN REALLY

 11 DO THAT. I'M NOT HAPPY WITH ONE JURY IN THIS CASE,

 12 BUT ONE JURY IS ALL WE HAVE, AND THE ONLY HONORABLE,

 13 JUST AND DUTIFUL THING FOR YOU TO DO IS, AS TH

 14 JUDGE HAS TOLD YOU YOU MUST DO, YOU MUST WEIGH THE

 15 EVIDENCE AGAINST EACH OF THEM SEPARATELY.

 16 MR. CONN MADE UP A NEW PERSON DURING HIS

 17 FINAL ARGUMENT, SOMEONE THAT NONE OF US HAS EVER

 18 SEEN. I CALL HIM "LYLRIK." HE IS SOME COMBINATION

 19 OF BOTH LYLE AND ERIK MENENDEZ; WHERE MR. CONN TAKES

 20 FEATURES OF EACH AND SMUSHES THEM TOGETHER IN ONE

 21 PERSON, AND CLAIMS THAT PERSON HAD CERTAIN MOTIVES,

 22 AND THAT PERSON BEHAVED IN A CERTAIN WAY.

 23 THAT PERSON DOESN'T EXIST. THERE ARE

 24 TWO SEPARATE AND DISTINCT PEOPLE HERE, TWO OF THEM

 25 WHOSE FATE IS ENTIRELY IN YOUR HANDS, TWO OF THEM

 26 WHO YOU MUST JUDGE AND EVALUATE SEPARATELY.

 27 SO THAT GETS ME BACK TO "THEY DID IT FOR

 28 THE MONEY."

 1 MY CLIENT'S NAME IS ERIK MENENDEZ. YOU

 2 HAVE NOT HEARD ONE SCINTILLA, AS WE SAY IN LAW,

 3 WHICH MEANS, AS BY BABY SON WOULD SAY, "TINY BIT."

 4 YOU HAVE NOT HEARD ONE TINY BIT OF EVIDENCE THAT MY

 5 CLIENT, ERIK MENENDEZ, HAD ANY NEED FOR MONEY AT

 6 ALL, BEYOND WHAT HE WAS GETTING FROM HIS PARENTS,

 7 AND WAS HAPPY GETTING FROM HIS PARENTS, BEFORE THE

 8 KILLINGS OCCURRED.

 9 HE DIDN'T SPEND WILDLY, UNWILDLY. YOU

 10 HEARD NO EVIDENCE AT ALL THAT THERE WAS EVER A

 11 CONFLICT WITH HIM OVER SPENDING MONEY; THAT HE LIVED

 12 A LIFE-STYLE THAT WAS IN ANY WAY EXTRAVAGANT. H

 13 GOT A HUNDRED AND EIGHTY A MONTH, AND IT WAS

 14 OBVIOUSLY ENOUGH.

 15 MR. CONN CLAIMS -- STRANGE REVERSAL OF

 16 LOGIC -- THAT'S NOT ENOUGH FOR A KID LIVING IN

 17 BEVERLY HILLS. IT WOULD BE A ENOUGH FOR MY KID,

 18 BEVERLY HILLS, OR NO BEVERLY HILLS; AND IT WAS

 19 OBVIOUSLY ENOUGH FOR ERIK MENENDEZ.

 20 YOU NEVER HEARD ANYONE SAY THAT HE EVER

 21 EXPRESSED A DESIRE FOR MORE MONEY, THAT HE EVER

 22 COMPLAINED THAT HIS PARENTS WERE NOT GENEROUS. THEY

 23 WERE GENEROUS. I THINK IT'S VERY OBVIOUS FROM THE

 24 EVIDENCE THAT YOU HEARD THAT THESE PEOPLE WERE

 25 RICH, AND THEY WERE FREE WITH THE MONEY, AND THEIR

 26 KIDS GOT WHAT THEY NEEDED, AND THERE WAS NO BIG

 27 STRUGGLE.

 28 YOU ALSO NEVER HEARD OF ANY OF THE KIND

 1 OF ACTIVITIES OR INVOLVEMENTS THAT LEAD SOME KIDS TO

 2 REALLY NEED MONEY. NO DRUG USE, NO ALCOHOL USE, NO

 3 WILD PARTIES, NO CRASHING UP THE FAMILY CAR, NONE OF

 4 THE THINGS -- NO GAMBLING DEBTS. WE'LL TALK ABOUT

 5 GAMBLING AFTER. NOTHING LIKE IT. NOTHING. NO

 6 REASON WHATSOEVER TO BELIEVE THAT HE EVER WOULD HURT

 7 ANYBODY FOR MONEY.

 8 YOU ALSO NEVER HEARD, CONCERNING THIS

 9 AFFILIATED ARGUMENT, THAT HE EVER SAID A NEGATIVE

 10 WORD ABOUT HIS PARENTS, EVER. NOT A SOUL CAME INTO

 11 THIS COURT -- WE ALL READ MYSTERY BOOKS AND WATCH

 12 TV. WE HEAR ABOUT OTHER CASES. WE KNOW THAT WHEN

 13 YOU'RE TRYING TO PROVE A PREMEDITATED MURDER, THAT

 14 OFTEN THERE IS EVIDENCE OF A PERSON SAYING: "I WANT

 15 TO KILL HIM. HELP ME KILL 'EM. BOY, I HATE SO AND

 16 SO. HE MESSED ME OVER. I'M GOING TO GET 'EM."

 17 ET CETERA.

 18 AND PARTICULARLY IN FAMILY SITUATIONS

 19 WHEN YOU'RE IN CONSTANT CONTACT WITH THE PERSON, YOU

 20 WOULD EXPECT THAT YOU WOULD HAVE HEARD -- IF ERIK

 21 MENENDEZ WAS THIS HEARTLESS, CRUEL CREATURE THAT

 22 MR. CONN TRIES TO TELL YOU HE IS, YOU WOULD HAVE

 23 HEARD FROM ONE HUMAN BEING ON THE PLANET WHO WOULD

 24 HAVE SAID: "YEAH, BOY, HE COMPLAINED ABOUT HIS

 25 PARENTS ALL THE TIME." HE DIDN'T COMPLAIN ABOUT HIS

 26 PARENTS.

 27 HE SHOULD HAVE -- THAT'S THE OTHER THING

 28 THAT'S HELD AGAINST HIM, THAT HE DIDN'T COMPLAIN

 1 ABOUT HIS PARENTS ALL THE TIME. IN FACT, HE DID

 2 NOT. AND THAT IS VERY UNUSUAL. SOME OF YOU HAVE

 3 TEENAGERS. ALL OF YOU WERE TEENAGERS. IT'S PRETTY

 4 COMMON TO GRIPE ABOUT THE FOLKS. NOT HERE. BECAUSE

 5 OF THE NATURE OF THIS FAMILY, WHICH I'LL TALK ABOUT

 6 LATER, NOT HERE.

 7 BUT THE POINT IS, THERE IS NO EVIDENCE

 8 OF ANY PREEXISTING DESIRE FOR MONEY OR HATRED OF

 9 THESE PEOPLE. NONE.

 10 AND SO WE SPENT ALL THIS TIME WITH ALL

 11 THESE WITNESSES TO TRY TO PROVE WHAT? THAT THEY HAD

 12 A DESIRE FOR MONEY BEFORE? NO. THIS WAS TO PROVE

 13 THAT AN 18-YEAR-OLD AND A 21-YEAR-OLD, WHEN THEY GOT

 14 THEIR HANDS ON $325,000 APIECE, SPENT IT. THAT'S

 15 ALL IT WAS. IT'S THE SAME MONEY OVER AND OVER

 16 AGAI

 17 APART FROM THE WATCHES THAT WERE

 18 PURCHASED ON A CREDIT CARD -- THAT WASSSUED TO

 19 MR. MENENDEZ BY HIS BUSINESS -- EVERYTHING ELSE THAT

 20 HAD HE CLAIMED ERIK MENENDEZ SPENT WAS THE SAM

 21 MONEY OVER AND OVER AGAIN.

 22 FIRST WE PROVED THAT THEY GOT THE LIFE

 23 INSURANCE MONEY FROM THE SUN LIFE POLICY THAT THEIR

 24 AUNT MARTHA CANO WROTE, AND THEN THE PEOPLE GO ON TO

 25 PROVE HOW THEY SPENT IT. I MEAN, TALK ABOUT

 26 MEANINGLESS EVIDENCE OVER AND OVER AGAIN.

 27 HE BOUGHT A JEEP. KILLED HIS PARENTS

 28 FOR A JEEP? HE BOUGHT FURNITURE. KILLED HIS

 1 PARENTS FOR FURNITURE? HE HIRED AND GOT TO PAY FOR

 2 HALF A YEAR FOR A TENNIS COACH, SAME TENNIS COACH

 3 HIS PARENTS WERE PAYING. HE KILLED HIS PARENTS FOR

 4 A TENNIS COACH?

 5 WHAT ELSE DID HE GET? HUM. HE DIDN'T

 6 BUY ANY REAL ESTATE. YOU EVEN HEARD WHEN HE DIDN'T

 7 BUY SOMETHING. DIDN'T BUY A CONDO.

 8 BOUGHT A POOL TABLE. THAT PROVES IT.

 9 AND WENT TO TAHOE. AND WHILE UP THERE WITH WHO

 10 SHOULD HAVE BEEN A RESPONSIBLE ADULT, MR. SLOTKIN,

 11 GAMBLED MONEY AND BORROWED FROM MR. SLOTKIN TO PAY

 12 HIS GAMBLING DEBT.

 13 AND THAT IS SUPPOSED TO PROVE TO YOU --

 14 I'M SORRY -- THIS MAY HAPPEN (COUGHING). THIS IS

 15 SUPPOSED TO PROVE TO YOU THAT HE KILLED HIS PARENTS

 16 FOR MONEY, THAT HE SPENT THIS $325,000. IN FACT,

 17 BASED ON THE TESTIMONY WE HEAR, HE DIDN'T SPEND THE

 18 $325,000. HE STILL HAD A BUNCH OF IT LEFT SO HE

 19 COULD PAY PEOPLE LIKE ME, AND DID IN FACT.

 20 THAT MONEY WAS USED, WHAT WAS LEFT OVER --

 21 BECAUSE HE DIDN'T SPEND IT ALL -- WAS USED, WE WERE

 22 TOLD, TO PAY THE INITIAL ROUND OF LEGAL FEES.

 23 SO ALL OF THIS EFFORT TO SHOW THEY SPENT

 24 MONEY, WHICH STILL DOESN'T GET YOU ANY CLOSER TO TRY

 25 TO UNDERSTAND WHY THIS HAPPENED.

 26 LET ME SHOW YOU -- I SHOULDN'T DO THIS.

 27 I'M SUPPOSED TO GO IN ORDER HERE. I'M GOING TO GO

 28 IN ORDER. I'M GOING TO BE GOOD, OTHERWISE IT WILL

 1 TAKE TOO LONG.

 2 SO WHAT'S THE NEXT THEORY THAT THE

 3 PROSECUTION -- THE THEORIES KEEP SHIFTING ALONG; AND

 4 IN FACT, MR. CONN, RECOGNIZING THAT HE DOES NOT HAVE

 5 A COHERENT THEORY OF A PLANNED, PREMEDITATED

 6 COLD-BLOODED KILLING HERE TELLS YOU: YOU DON'T HAVE

 7 TO AGREE. EACH OF YOU PICK A DIFFERENT ONE.

 8 YOUR HONOR, THIS ISN'T A GREAT TIME, BUT

 9 I HAVE TO TAKE MY MEDICINE OR ELSE THIS WILL KEEP

 10 GOING.

 11 THE COURT: WE'LL TAKE A RECESS AND WE'LL

 12 RESUME AT 20 MINUTES TO. IT'S ABOUT A 15-MINUTE

 13 RECESS.

 14 DON'T DISCUSS THE CASE OR FORM ANY FINAL

 15 OPINIONS ABOUT IT. WE'LL RESUME IN 15 MINUTES.

 16 (RECESS WAS TAKEN FROM

 17 10:40 A.M. TO 10:55 A.M.)

 1 THE COURT: OKAY. WE'LL HAVE THE JURY OUT,

 2 PLEASE.

 9 MS. ABRAMSON: THANK YOU.

 10 I WAS TALKING ABOUT THE FACT THAT THE

 11 PROSECUTION DOES NOT HAVE A COHERENT THEORY IN THIS CASE

 12 TO PROVE MURDER. SO MR. CONN HAS INVITED YOU TO PICK

 13 AMONG A VARIETY OF CHOICES, OR CONVICT WITHOUT ANY

 14 UNDERSTANDING OR ANY DECISION ABOUT WHY THIS HAPPENED.

 15 I DON'T BELIEVE FOR A MINUTE YOU WOULD DO

 16 THAT, BECAUSE PEOPLE NEED TO UNDERSTAND, THE LAW NEED

 17 TO UNDERSTAND, WHY SOMETHING HAPPENS. BUT PEOPLE NEE

 18 TO UNDERSTAND WHY SOMETHING HAPPENS SO THAT THEY CA

 19 UNDERSTAND WHAT IS THE LEVEL OF LEGAL RESPONSIBILITY

 20 NOW, I SHOWED YOU THE MONEY THING, AND I

 21 PUT ONE OF MY STICKUMS IN THE WRONG PLACE. AMANDA GEIER

 22 WAS THE LADY WHO SOLD THE SHOTGUNS, MARK HEFFERNAN I

 23 THE OTHER WITNESS WHO WAS CALLED TO TALK ABOUT SPENDING,

 24 ABOUT THE CONTRACT FOR HIM TO COACH ERIK MENENDEZ 1

 25 HOURS A DAY, EVERY SINGLE DAY.

 26 SO, THE MONEY MOTIVE WAS ONE OPTION YOU'V

 27 BEEN GIVEN. THE OTHER OPTION IS RATHER INTERESTING,

 28 THIS NOTION THAT THIS WAS A BID FOR FREEDOM.

 1 NOW, WHERE -- WHERE DOES MR. CONN GET THIS

 2 FROM

 3 WELL, HE SAYS, AND RIGHTLY SO, THAT THERE

 4 HAD TO BE SOME CONFLICT, SOME CRISIS IN THIS FAMILY,

 5 BECAUSE WE KNOW THE PARENTING STYLE OF MR. AND

 6 MRS. MENENDEZ DIDN'T CHANGE OVER THE YEARS. THERE WAS

 7 ALWAYS PLENTY OF MISERY IN THIS HOUSEHOLD.

 8 SO WHAT HAPPENED TO BRING THIS ABOUT? WHAT

 9 WAS THE TRIGGERING EVENT?

 10 WELL, MR. CONN DOESN'T WANT TO POINT TO THE

 11 TRIGGERING EVENT, BECAUSE OBVIOUSLY THE TRIGGERING

 12 EVENT, WHICH IS THIS CONFRONTATION OVER MOLESTATION,

 13 DOES NOT SUPPORT HIS THEORY; INSTEAD, SUPPORTS OURS.

 14 SO HE HAS TO MAKE UP SOME OTHER POSSIBLE

 15 TRIGGERING ISSUE, AND THE ISSUE HE COMES UP WITH IS A

 16 CONFLICT CONCERNING SPENDING MONEY AND IRRESPONSIBILITY

 17 AND A DESIRE FOR FREEDOM.

 18 WELL, AS WE KNOW, THERE IS NO CONFLICT OVER

 19 ERIK MENENDEZ SPENDING MONEY, AND THERE IS NO INDICATION

 20 OF HIS BEING IRRESPONSIBLE. AND I WILL GET TO THAT IN A

 21 MOMENT.

 22 SO, WHAT IS THIS CONFLICT ABOUT? IT'S A

 23 DESIRE FOR FREEDOM, SAYS MR. CONN. AND HE GETS THAT

 24 FROM WHERE? FROM ERIK MENENDEZ' TESTIMONY THAT HIS

 25 FATHER WAS GOING TO CHOOSE HIS COURSES FOR HIM AT

 26 U.C.L.A., AND SAID THERE WAS A POSSIBILITY THAT HE WOULD

 27 NOT BE PLAYING TENNIS.

 28 SO HE HAS NOW SELECTED FROM THE TESTIMON

 1 OF THE PERSON THAT HE CALLED A LIAR 50 TIMES LAST WEEK,

 2 THIS PART THAT HE WANTS TO RELY UPON AS MOTIVE.

 3 SO NOW YOU ARE TO BELIEVE THAT ERIK

 4 MENENDEZ KILLED HIS PARENTS BECAUSE HE WANTED TO TAKE

 5 HISTORY INSTEAD OF ECONOMICS; BECAUSE HE WANTED TO PLAY

 6 TENNIS SO BADLY -- TO HAVE THE CONTINUING PRESSURE, THE

 7 SCREAMING AT, THE BELITTLING, THE DENIGRATING, THE

 8 PRESSURE OF TENNIS TO CONTINUE FOR ANOTHER FOUR YEARS OF

 9 HIS LIFE, AS IT HAD GONE ON FROM THE TIME HE WAS 11.

 10 AND THAT NOW IS THE SUPPOSED MOTIVE OR THEORY THAT MR.

 11 CONN GIVES YOU.

 12 OF COURSE, THERE IS A SEVERE CRISIS IN THIS

 13 FAMILY THAT WEEK. THERE ALWAYS IS A CRISIS WHEN

 14 PARRICIDE OCCURS, AND DR. WILSON GAVE YOU SOME INSIGHT

 15 AS TO WHEN AND WHY PARRICIDE DOES OCCUR.

 16 WHAT IS KNOWN ABOUT CASES WHERE CHILDREN

 17 KILL PARENTS IS THAT THESE ARE, BY AND LARGE, FAMILIES

 18 WHERE THERE HAS BEEN SEVERE ABUSE, AND WHAT IS OCCURRING

 19 IS THERE IS AN EFFORT TO STOP IT OR ESCAPE IT.

 20 AND WHAT WE ALL KNOW ABOUT CHILD

 21 DEVELOPMENT IS THAT WHEN A PERSON REACHES ADOLESCENCE,

 22 THEY HAVE A NEED TO HAVE A SENSE OF INDEPENDENCE, A

 23 SENSE OF PERSONAL INTEGRITY. AND IF YOU GROW UP IN A

 24 FAMILY WHERE THERE IS NO FREEDOM, WHERE THERE ARE NO

 25 CHOICES THAT HAVE BEEN LEFT TO YOU, WHERE YOU ARE

 26 COMPLETELY MANIPULATED BY PARENTAL AUTHORITARIANISM, IT

 27 IS VERY DIFFICULT IN THOSE FAMILIES TO REBEL. IT IS

 28 VERY DIFFICULT IN THOSE FAMILIES TO SEPARATE IN THE

 1 NORMAL WAY.

 2 SO HERE WAS ERIK MENENDEZ, WHO HAD LIVED

 3 WITH HIS FAMILY FOR 18 YEARS, WHOSE COPING MECHANISM,

 4 THE ONLY THING HE HAD TO GET HIM THROUGH, WAS THE NOTION

 5 THAT HE WOULD BE LEAVING THAT HOME, WOULD NOT BE

 6 SLEEPING THERE, WOULD NOT BE AVAILABLE TO HIS FATHER.

 7 AND STAYING AT THE DORMS AT U.C.L.A. AND EVERYTHING, ALL

 8 OF HIS HOPES AND EXPECTATIONS WERE THERE.

 9 THAT WAS HOW HE GOT HIMSELF TO AGE 18, AND

 10 AT THAT POINT HE KNEW HE COULD NOT TOLERATE ANY FURTHER

 11 ABUSE FROM HIS FATHER. HE COULD NOT. AND THAT IS

 12 TYPICAL OF HOW AN ADOLESCENT COMES TO TERMS WITH: "I

 13 HAVE TO BE A PERSON NOW. YOU'VE GOT TO LET ME BE A

 14 PERSON." AND THIS WAS THE WORST PART OF THE DEPRIVATION

 15 OF HIS PERSONHOOD, IF YOU WILL, IN THAT FAMILY.

 16 SO, WHAT PRECIPITATES THE CRISIS MAKES

 17 PERFECT PSYCHOLOGICAL SENSE.

 18 NOW, YOU KNOW, A LOT OF PEOPLE DON'T LIKE

 19 PSYCHOLOGY. THEY THINK IT'S MUMBO-JUMBO, MR. CONN TOLD

 20 US, BUT YOU KNOW WHAT? PEOPLE ARE NOT LOWER FORMS OF

 21 ANIMALS. PEOPLE HAVE MINDS, PEOPLE HAVE FEELINGS, AND

 22 PSYCHOLOGY HELPS TO EXPLAIN A GREAT DEAL OF WHAT GOES ON

 23 IN PEOPLE'S LIVES. AND DEVELOPMENTAL PSYCHOLOGY, THAT

 24 SIMPLY TALKS ABOUT WHAT DO CHILDREN NEED AT VARIOUS

 25 TIMES, IS TOTALLY NON-CONTROVERSIAL. SO THIS IS A

 26 NON-CONTROVERSIAL POINT.

 27 HE COULDN'T GO ON BEING TREATED THAT WAY.

 28 SO WHAT DOES HE DO? DOES HE RUN OUT AND BUY A SHOTGUN

 1 TO KILL HIS PARENTS? NO. HE TURNS TO THE ONLY ALLY HE

 2 HAD IN THAT FAMILY -- IN THE WORLD IN FACT -- AND TELLS

 3 HIM. AND HE IS SEEKING HELP, AND IT IS THAT SEEKING OF

 4 HELP THAT STARTS THE SNOWBALL EFFECT THAT WINDS UP IN

 5 THESE SHOOTINGS.

 6 AND I HAVE UP THERE, WHICH WE WILL GET TO

 7 LATER, THE CHART OF HOW THAT SNOWBALL ROLLS DOWN THE

 8 HILL THAT WEEK

 9 BUT THERE IS CONFLICT. THERE IS A TENSION

 10 THAT MAKES SOME SENSE AS A TRIGGERING EVENT FOR THE

 11 VIOLENCE THAT ENSUES HERE. NOT "I WANT TO TAKE HISTORY

 12 AND DADDY WANTED ME TO TAKE ECONOMICS."

 13 DR. DIETZ, THE PROSECUTION'S $40,000

 14 WITNESS, CONFIRMED THE DEFENSE IN THIS CASE. IT WAS

 15 REALLY QUITE -- AS YOU KNOW -- YOU KNOW ME BY NOW. YOU

 16 KNOW HOW I AM AN ATTACK DOG. IF SOMEONE IS UP THERE AND

 17 HE IS HURTING ME, I AM GOING TO GO AFTER HIM. AND I

 18 THINK YOU NOTICED I HAD NO PROBLEMS WITH DR. DIETZ

 19 AND THAT'S WHAT WAS SO AMAZING ABOUT THE

 20 PROSECUTION'S INVESTMENT IN THIS WITNESS, BECAUSE HOW

 21 DOES HE DESCRIBE ERIK MENENDEZ? PASSIVE, COMPLIANT,

 22 SUGGESTIBLE, WANTING TO BE LIKED, COOPERATIVE.

 23 I MEAN, I DIDN'T HAVE THE $40,000, BUT IF I

 24 HAD, I WOULD HAVE PAID HIM TO SAY IT.

 25 SO HERE IS THIS PERSON -- AND, OF COURSE,

 26 DR. WILSON SAYS THE SAME THING. HERE IS THIS PERSON WHO

 27 HAS BEEN PASSIVE, WHO HAS BEEN, WE WOULD SAY, RENDERED

 28 HELPLESS. AND PUT UP WITH THIS SITUATION, HE HAD IN

 1 MIND HOW IT WAS GOING TO END. A RESCUE FANTASY. WHEN

 2 IT'S DESTROYED, THAT'S WHAT STARTS THIS FUSE ON THE

 3 FIRECRACKER THAT WINDS UP IN THE SHOOTINGS.

 4 NOW, I FOUND MR. CONN'S DESCRIPTIONS OF MY

 5 CLIENT, DEPENDING ON THE MINUTE OF THE DAY IN WHICH HE

 6 WAS SPEAKING, AMAZING. TO CALL THEM HYPOCRITICAL AND

 7 INCONSISTENT IS ABOUT AS MILD A CRITICISM I CAN GIVE.

 8 IF I GOT IT RIGHT, MY CLIENT IS (A), THE

 9 RUTHLESS CRYBABY WEAKLING, OR (B), THE CONFIDENT,

 10 COMPETENT CHAMPION WITH STATUS AND SKILLS. HE IS BOTH

 11 OF THOSE THINGS.

 12 MR. CONN STOOD HERE IN FRONT OF YOU AND

 13 VALIDATED JOSE MENENDEZ' VICIOUS NOTIONS OF PARENTING.

 14 HE STOOD HERE AND ARGUED TO YOU THAT JOSE MENENDEZ WAS

 15 DISAPPOINTED IN HIS DESPICABLE, FAILURE SONS, AND

 16 THAT -- AND THAT IT WAS APPROPRIATE THAT HE SHOULD BE

 17 DISGUSTED WITH THESE FAILURES. LET'S DESCRIBE THE

 18 FAILURES.

 19 LET'S SEE IF YOU WOULD AGREE, IF YOU HA

 20 SUCH A CHILD, WOULD HE BE A FAILURE.

 21 HERE IS SOMEONE WHO IS RANKED 44TH IN THE

 22 UNITED STATES AT THE AGE OF 18 IN AMATEUR JUNIOR TENNIS.

 23 PIFFLE. A FAILURE. HE'S NOT NUMBER ONE. JOSE

 24 MENENDEZ' SON HAS TO BE NUMBER ONE OR DIE. HE'S NOT

 25 NUMBER ONE. HE'S ONLY 44TH.

 26 NUMBER TWO, HERE WE HAVE SOMEONE WHO

 27 DR. DIETZ AGREES WAS SHOWING SYMPTOMS OF AN ANXIETY

 28 MENTAL DISORDER. WE'RE NOT TALKING NERVOUS HERE. A

 1 MENTAL DISORDER IN THE MAGIC RED BIBLE BOOK, THE DSM-IV.

 2 MOST OF HIS CHILDHOOD, WHO -- DR. WILSON TOLD YOU IN THE

 3 SCHOOL RECORDS, WHICH DR. DIETZ DIDN'T BOTHER TO READ --

 4 IT IS SHOWN HE WAS DIAGNOSED AS HAVING ATTENTION DEFICIT

 5 DISORDER.

 6 NOW, THAT WAS PROBABLY WRONG. IT WAS

 7 P.T.S.D. BUT IT LOOKED LIKE ATTENTION DEFICIT DISORDER.

 8 HE WAS DIAGNOSED WITH DYSLEXIA AND OTHER LEARNING

 9 DISABILITIES, NATURALLY CAUSED, CAUSED BY ABUSE.

 10 DOESN'T MATTER. THIS IS WHO HE WAS.

 11 WE HEARD THE TESTIMONY IN THIS COURTROOM OF

 12 NORMAN PULS, HIS HIGH SCHOOL TUTOR. HE GOES IN THERE TO

 13 BE TUTORED. HE WORKS HARD, RIGHT?

 14 AND WHAT HAPPENS? HE GETS ACCEPTED TO THE

 15 UNIVERSITY OF CALIFORNIA AT BERKELEY. IF MY DAUGHTER

 16 HAD BEEN ACCEPTED AT THE UNIVERSITY OF CALIFORNIA AT

 17 BERKELEY, I WOULD FALL DOWN IN A DEAD FAINT, AND SHE HAS

 18 AN I.Q. OF 165, AND I SWEAR TO GOD I NEVER HIT HER.

 19 THAT IS THE FINEST PUBLIC SCHOOL IN THE

 20 UNITED STATES OF AMERICA, BAR NONE. THIS FAILURE WAS

 21 ACCEPTED TO THE UNIVERSITY OF CALIFORNIA, BERKELEY, AND

 22 AT MY ALMA MATER, U.C.L.A., WHICH IS GOOD, BUT NOT THAT

 23 GOOD. BUT GOOD.

 24 HE DOES NOT USE DRUGS. HE DOES NOT DRINK.

 25 HE DOES NOT GO TO WILD PARTIES. HE DOES NOT CRASH THE

 26 FAMILY CAR. HE IS NEVER ABSENT WITHOUT LEAVE. HE

 27 DOESN'T DISAPPEAR ON HIS PARENTS. HE GOES HOME EVERY

 28 NIGHT. HE DOES WHAT HE'S TOLD. HE PRACTICES TENNIS

 1 FIVE HOURS A DAY. HE WORKS HARD TO PLEASE THESE PEOPLE.

 2 HE IS OBEDIENT. HE IS DUTIFUL AT 18. AND THIS IS A

 3 FAILURE?

 4 WELL, JOSE MENENDEZ THOUGHT HE WAS A

 5 FAILURE, AND MR. CONN APPARENTLY HAS SOMETHING IN COMMON

 6 WITH MR. MENENDEZ, AND SO HE THINKS HE IS A FAILURE.

 7 THIS IS THE KIND OF SON THAT YOU WANT TO

 8 WRITE OFF? THIS IS THE KIND OF SON THAT YOU ARE

 9 JUSTIFIED IN BEING DISGUSTED WITH? YES. HE COMMITTED

 10 TWO CRIMES. HE WAS WITH HIS FRIEND, THE GRANDIOSE, AS

 11 DESCRIBED BY MR. CONN, CRAIG CIGNARELLI, AT A FRIEND'S

 12 HOUSE IN THE SUMMER OF '88.

 13 IT MIGHT HAVE FLOWN RIGHT PAST YOU, BUT

 14 ERIK MENENDEZ TESTIFIED THAT IN THE SUMMER OF '88 HE HAD

 15 BROKEN HIS ANKLE, AND HAD A FRACTURED ANKLE, AND HE

 16 DIDN'T PLAY TENNIS THAT SUMMER. HE DIDN'T TOUR THAT

 17 SUMMER, PLAYING IN ONE TOURNAMENT AFTER ANOTHER WITH HIS

 18 PARENTS THERE TO WATCH, TO CRITIQUE IT, TO PRESSURE.

 19 BUT NOT THE SUMMER OF '88. HE WAS IDLE

 20 THAT SUMMER, AND THAT'S THE SUMMER OF IDLENESS WHEN HE

 21 AND CRAIG CIGNARELLI ARE STAYING AT THEIR FRIEND, JOHN

 22 LIST'S HOUSE, AND THEY ARE GOING TO PLAY A PRANK.

 23 NOW, IS HE A FAILURE BECAUSE HE WANTED TO

 24 PLAY A PRANK? AND THE PRANK THEY ARE GOING TO PLAY IS

 25 TO MOVE JOHN LIST'S VAN. AND THEY GO LOOKING FOR THE

 26 KEYS, AND THEY FIND A COMBINATION TO A SAFE, AND THEY

 27 OPEN THE SAFE, AND THEY REMOVE THINGS FROM THE SAFE.

 28 NOW, ULTIMATELY, WHEN ERIK MENENDEZ GOES TO

 1 THE POLICE WITH HIS FATHER AND HIS LAWYER AND THE STOLEN

 2 PROPERTY AND TELLS THEM THAT HE IS RESPONSIBLE, HE DOES

 3 NOT RAT ON CIGNARELLI.

 4 CRAIG CIGNARELLI HAS NEVER PAID THE PIPER

 5 FOR THAT LITTLE ESCAPADE, BUT HE HAS CERTAINLY

 6 PARTICIPATED IN PAY-BACK IN THIS COURTROOM. HE'S GOING

 7 TO BE A CONGRESSMAN, FOLKS, DON'T YOU KNOW? AND HOW'S

 8 IT GOING TO LOOK FOR THE CONGRESSMAN WHEN HIS FORMER

 9 BEST FRIEND HAS SAID HE WAS INVOLVED IN A BURGLARY? NOT

 10 GOOD. SEX SCANDALS ARE BAD ENOUGH. BURGLARIES ARE A

 11 NO-NO FOR CONGRESSMEN.

 12 AND THAT, I SUBMIT TO YOU, IS THE BASIS FOR

 13 HIS OBVIOUS VENGEFUL BIAS. WE'LL GET TO THE REST OF HIM

 14 LATER.

 15 BUT THIS IS THEFT NUMBER ONE.

 16 THEFT NUMBER TWO, ERIK MENENDEZ SHOWS HIS

 17 BROTHER THESE THINGS THAT HE TOOK, AND BETWEEN THEM, AS

 18 DR. DIETZ DESCRIBES, IS ACTING-OUT BEHAVIOR FROM HAVING

 19 LIVED IN AN OPPRESSIVE FAMILY. THEY COMMIT THE SECOND

 20 BURGLARY, WHICH IS A BAD THING.

 21 DOES THAT JUSTIFY WRITING YOUR SONS OFF?

 22 MOREOVER, IT HAPPENED TO HAPPEN A YEAR BEFORE. AND WHEN

 23 IT HAPPENED A YEAR BEFORE, MR. MENENDEZ TOLD HIS

 24 CHILDREN THEY WERE DISINHERITED, A YEAR BEFORE. THAT

 25 WAS ROUND ONE OF DISINHERITING.

 26 SO THIS IS THE FAILURE, A KID WHO -- NOW, I

 27 REMEMBER, I USED TO LIVE IN A CONDOMINIUM COMMUNITY IN

 28 THE VALLEY, AND THE NEIGHBORHOOD KIDS, MY NEIGHBOR'S

 1 KIDS, BURGLARIZED MY HOUSE. WE HAD A REALLY NICE WINE

 2 COLLECTION AT THAT TIME. THE LITTLE STINKERS TOOK ALL

 3 THE WINE. THEY DIDN'T EVEN DRINK IT. THEY SMASHED ALL

 4 THE WINE BOTTLES, STOLE ALL MY JEWELRY, RIGHT? THAT

 5 FAMILY DIDN'T MOVE OUT. THEY CAME AND APOLOGIZED, OKAY?

 6 THE KID WENT TO JUVENILE COURT. I GOT A RESTITUTION

 7 CHECK FOR 50 BUCKS, THAT WAS IT. AND THAT WAS THAT.

 8 AND I DIDN'T THINK THEIR KIDS WERE KILLERS,

 9 AND I DIDN'T THINK THEIR KIDS WERE JUVENILE DELINQUENTS.

 10 I THOUGHT THEY NEEDED SOME -- SOMETHING WAS GOING ON

 11 THERE, AND IT WAS NONE OF MY BUSINESS WHAT.

 12 BUT THIS IS NOT UNHEARD OF, TEENAGERS

 13 COMMITTING BURGLARIES. YOU DON'T HAVE TO APPROVE OF IT,

 14 BUT IT DOESN'T MAKE YOU A CRIMINAL. BUT OBVIOUSLY,

 15 ENOUGH FOR JOSE MENENDEZ TO NOT CARE ABOUT HIS KIDS

 16 ANYMORE.

 17 NOW, WHEN YOU HAVE BEEN THREATENED WITH

 18 DEATH BY SOMEONE, WHEN YOU HAVE A FATHER WHO IS

 19 DESCRIBED AS BRUTAL AND RUTHLESS AND CONTROLLING, WHO

 20 ENJOYS BEST OF ALL HURTING THE WEAKEST PEOPLE, THEN

 21 MAYBE WHEN HE SAYS HE'S DISOWNING YOU AND WRITING YOU

 22 OFF, IT'S SCARY. NOT JUST DISPOINTING, SCARY. BECAUSE

 23 IF YOU ARE INDEED WORTHLESS, WHAT DOES HE CARE IF YOU

 24 ARE ALIVE?

 25 NOW, MR. GESSLER IS GOING TO TALK ABOUT

 26 LYLE MENENDEZ, WHO IS HIS CLIENT. BUT JUST ON THE VERY

 27 SURFACE OF THESE TWO FAILURES, HERE IS LYLE MENENDEZ,

 28 WHO IS A REALLY ACCOMPLISHED TENNIS PLAYER, WHO IS AT

 1 PRINCETON UNIVERSITY, WHERE HE DOESN'T WANT TO BE, AND

 2 WHERE HE DOESN'T BELONG, BUT WHERE HIS FATHER IS

 3 INSISTING HE REMAIN. AND HE HAS ALSO PARTICIPATED IN

 4 ONE OF THESE THEFTS.

 5 THIS, TOO, IS A FAILURE, A SON YOU WOULD

 6 WRITE OFF? YOU HEARD HIS AUNT TERESITA BARALT TALK

 7 ABOUT HIM, AND HOW SHE FELT ABOUT HIM. SHE WOULD BE

 8 PROUD TO HAVE HIM AS A SON.

 9 BUT JOSE MENENDEZ WASN'T PROUD, BECAUSE

 10 JOSE MENENDEZ WAS NOT NORMAL. THERE WAS SOMETHING

 11 SERIOUSLY WRONG WITH THAT MAN. HIS IDEAS OF WHAT

 12 CHILDREN ARE WERE PARTICULARLY PERVERSE.

 13 SO, MR. CONN'S THEORY THAT THESE BROKEN

 14 DOWN FAILURE KIDS, KNOWING THEY COULD NEVER BE THEIR

 15 FATHER -- THANK YOU, GOD -- NOW RISE UP TO KILL HIM,

 16 BECAUSE THEY WANT THEIR FREEDOM. FREEDOM FROM WHAT?

 17 FREEDOM FROM GETTING A -- HAVING HIM BUY YOU A

 18 CONDOMINIUM IN NEW JERSEY? FREEDOM FROM HIM PAYING FOR

 19 YOUR TENNIS COACHES? FREEDOM FROM HIM SUPPLYING ALL OF

 20 YOUR NEEDS? FREEDOM FROM WHAT?

 21 ALL ERIK MENENDEZ WANTED TO DO WAS TO GET

 22 OUT OF THE HOUSE AND SLEEP SOMEWHERE ELSE. HE DIDN'T

 23 WANT TO DIVORCE HIMSELF FROM THIS FAMILY. HE ADMIRED

 24 HIS FATHER. YOU CAN HEAR IT IN THAT WEIRD TAPE THAT

 25 WE'VE BEEN TALKING ABOUT. HE IDOLIZED HIM. HE THOUGHT

 26 HE WAS A SUCCESS. MR. CONN STOOD HERE AND ARGUED TO YOU

 27 THAT JOSE MENENDEZ WAS THIS AMERICAN DREAM IMMIGRANT

 28 STORY, A GREAT SUCCESS.

 1 TWO THINGS I WANT TO SAY ABOUT THAT.

 2 FIRST OF ALL, THIS IS AN ENTIRE NATION OF

 3 IMMIGRANTS, AND I DON'T BUY THAT THE AMERICAN DREAM IS

 4 MAKING MONEY, BEING RUTHLESS TO PEOPLE, AND ABUSING YOUR

 5 CHILDREN. THAT'S NOT THE AMERICAN DREAM THAT MY

 6 IMMIGRANT GRANDMOTHER HAD WHEN SHE GOT HERE IN 1905, AND

 7 WORKED IN SWEAT SHOPS AND WATCHED HER FRIENDS DIE AS

 8 THEY LEAPT FROM THE WINDOWS OF THE TRIANGLE SHIRTWAIST

 9 COMPANY, SO SHE BECAME A LABOR ORGANIZER AND WORKED HARD

 10 HER ENTIRE LIFE AND RAISED CHILDREN WHO LOVED HER AND

 11 WHO SHE LOVED AND WAS WONDERFUL TO HER GRANDCHILDREN,

 12 AND NEVER RAISED A HAND IN ANGER, AND NEVER USED A MOUTH

 13 TO BELITTLE. THAT'S THE AMERICAN DREAM, THANK YOU.

 14 AND FOR EVERY IMMIGRANT FAMILY IN THIS

 15 COUNTRY WHERE PEOPLE WORK HARD AND ARE GOOD TO THEIR

 16 KIDS AND DON'T HAVE TO BE MR. BIGSHOT, THAT WAS AN

 17 INSULT.

 18 MONEY IS NOT SUCCESS. AND WHAT KIND OF

 19 SUCCESS IS A MAN WHO IS KILLED BY HIS OWN CHILDREN? THE

 20 ONLY THING HE WAS SUCCESSFUL AT, HE WAS A VERY

 21 SUCCESSFUL SADIST.

 22 HE TOLD YOU, MR. CONN: "I AM NOT GOING TO

 23 CALL THEM TERRIBLE PEOPLE."

 24 I DON'T CARE WHAT KIND OF PEOPLE THEY WERE.

 25 HE WAS A MONSTROUS FATHER. THIS WAS NOT A PARENT. WHAT

 26 IS A PARENT? IS IT A BIOLOGICAL CONNECTION, IS THAT IT?

 27 IS THAT WHAT A PARENT IS? OR IS A PARENT THE PERSON WHO

 28 NURTURES YOU, WHO LOVES YOU? FORGET ABOUT LOVE. SOME

 1 PARENTS CAN'T LOVE, THEY CAN'T DO IT. AT LEAST THEY'RE

 2 NICE, THEY'RE KIND, THEY'RE HELPFUL, THEY'RE SUPPORTIVE.

 3 THEY TAKE CARE OF YOU. THEY CARE ABOUT YOU AS A PERSON.

 4 THEY SHOW YOU SOME RESPECT. THEY WANT YOU TO DEVELOP IN

 5 A WAY WHERE YOU WILL BE YOU AND YOU WILL BE HAPPY. IF

 6 THEY CAN'T ACTUALLY LOVE YOU, THEY'RE SUPPOSED TO BE A

 7 SAFE HAVEN FROM THE CRUEL, IMPERSONAL WORLD.

 8 THAT IS A PARENT, A REAL PARENT. AND THE

 9 TRAGEDY IS THAT THERE ARE AN AWFUL LOT OF PEOPLE WHO

 10 HAVE CHILDREN IN THIS COUNTRY WHO AREN'T CAPABLE OF

 11 BEING REAL PARENTS, FOR WHATEVER REASON.

 12 AND THE REALLY PATHETIC PART OF ALL THAT IS

 13 THAT THEIR CHILDREN LOVE THEM ANYWAY. ABUSED CHILDREN

 14 LOVE THEIR PARENTS. THE LITTLE SUCKERS ARE SO HELPLESS

 15 THEY HAVE NO CHOICE. THEY'RE VULNERABLE. WHO ELSE ARE

 16 THEY GOING TO HOOK UP TO?

 17 SO, HERE IS ERIK MENENDEZ RUNNING AROUND,

 18 LOVING HIS MOTHER, CLINGING TO HER, COLD AND HOSTILE AND

 19 UNGIVING AND UN-NURTURING AS SHE WAS, FOR WHATEVER

 20 REASONS

 21 DOES THIS MEAN SHE'S A BAD PERSON? SHE AND

 22 GOD HAVE WORKED THAT OUT BY NOW. I DON'T KNOW WHAT KIND

 23 OF PERSON SHE WAS. I KNOW THAT SHE WAS A HORRIBLY

 24 INADEQUATE MOTHER, THAT SHE ALLOWED HER CHILDREN TO BE

 25 TREATED A CERTAIN WAY WITHIN HER OWN HOME WHEN SHE WAS

 26 PHYSICALLY CAPABLE OF STOPPING IT. I KNOW SHE DIDN'T

 27 SHOW THEM ANY LOVE. DID SHE FEEL LOVE? WE'LL NEVER

 28 KNOW.

 1 WHAT DID SHE SHOW? ONCE IN A WHILE SHE

 2 SMILED, AND MY CLIENT WAS EXCORIATED BECAUSE THE ONLY

 3 THING HE CAN REMEMBER THAT LOOKED LIKE AFFECTION FROM

 4 HIS MOTHER WAS A SMILE, AND HE CLUNG TO THAT SMILE.

 5 NOW, THIS, CONTRARY TO WHAT MR. CONN

 6 SUGGESTS, AND SOMETHING I WILL TALK ABOUT A LITTLE BIT

 7 LATER ON -- THIS IS NOT A NEW STORY THAT HE MADE UP SIX

 8 YEARS LATER. HIS MOTHER SMILED. IT'S IN THE VICARY

 9 NOTES, AS DR. WILSON REFERRED TO THEM. IT GOES BACK

 10 FOREVER.

 11 EVERYBODY WHO HAS EVER WORKED ON THIS CASE

 12 HAS LEARNED SOMETHING ABOUT CHILD-REARING AS A RESULT, I

 13 CAN VOUCH. AND I HAVE A TWO-YEAR-OLD, TWO YEARS,

 14 TWO-MONTH-OLD SON WHO I SMILE AT EVERY SECOND THAT HE'S

 15 LOOKING IN MY DIRECTION, BECAUSE I KNOW -- AND A WHOLE

 16 LOT MORE THAT I WILL NOT DESCRIBE -- BUT EVERY TIME I

 17 KNOW HE'S LOOKING AT ME, I SMILE, BECAUSE I KNOW HOW

 18 IMPORTANT IT IS FOR HIM TO GET SMILED AT, BECAUSE THAT'S

 19 ALL HE EVER HAD.

 20 MR. CONN: I WILL OBJECT AT THIS POINT TO COUNSEL

 21 TESTIFYING. SHE IS NOT ARGUING THE EVIDENCE.

 22 THE COURT: OKAY. WELL, SHE WAS GOING BEYOND, TO

 23 PERSONAL EXPERIENCE, AND WE CAN REFRAIN FROM PERSONAL

 24 LIFE EXPERIENCE AND ANECDOTES AND GET BACK TO THE FACTS.

 25 MS. ABRAMSON: AND EVERY CHILD LOOKS FOR APPROVAL

 26 FROM THEIR PARENTS, AND HOW THE PARENT GIVES IT IS THEIR

 27 HANG UP, NOT THE CHILD'S.

 28 NOW, THE THEORY MR. CONN SUGGESTS TO YOU IS

 1 THE SMOKING GUN THEORY. HE HAS TOLD YOU THAT THE TAPE

 2 THAT WAS MADE ON DECEMBER 11TH, 1989 IS THE SMOKING GUN.

 3 I GUESS THEY USED SMOKE-FILLED AMMUNITION, NOT SMOKELESS

 4 AMMUNITION, IN THE SMOKING GUN. WHAT DOES A SMOKING GUN

 5 MEAN?

 6 IT'S SLANG FOR CAUGHT RED-HANDED. SLANG

 7 FOR THE SPORTS TERM "A SLAM DUNK." THIS IS A SLAM-DUNK

 8 CASE FOR THE PROSECUTION. HE STOOD HERE FOR THREE AND A

 9 HALF DAYS ARGUING ON A SLAM-DUNK CASE, BECAUSE IT ISN'T

 10 A SLAM-DUNK.

 11 THIS IS A REAL DESPERATION PROSECUTION.

 12 ROGER MC CARTHY IS THE PROOF OF THAT. AND WHEN WE GET

 13 TO ROGER MC CARTHY, I WILL TELL YOU WHY. BUT HE CLAIMS

 14 HE HAS THE SMOKING GUN, AND YET WHAT IS CONTAINED ON THE

 15 SMOKING GUN HE DOESN'T WANT TO USE, AND HE DIDN'T WANT

 16 TO TALK ABOUT.

 17 MR. LEVIN, WOULD YOU TAKE THE BIG ONE DOWN?

 18 I AM GOING TO PROP THIS HIGHER. SO I GET TO ORDER

 19 MR. LEVIN AROUND THE LAST COUPLE OF DAYS. I CAN DO

 20 THAT.

 21 NOW, RIGHT AT THE BEGINNING OF THEIR CASE,

 22 THE PROSECUTION PLAYED THE TAPE OF THIS THING, THIS

 23 MEETING, BETWEEN A PERSON YOU HAVE NEVER SEEN, NAMED

 24 JEROME OZIEL, A PSYCHOLOGIST, AND ERIK AND LYLE

 25 MENENDEZ.

 26 AND IT IS LIKE ALMOST EVERY OTHER TAPE THAT

 27 WINDS UP IN A COURTROOM. NOT OF THE VERY BEST QUALITY,

 28 AND NOT EASY TO HEAR. SO YOU HAVE A TRANSCRIPT THAT IS

 1 ALSO A COBBLED-TOGETHER JOB AT THIS POINT TO FOLLOW

 2 ALONG WITH THAT TAPE.

 3 AND YOU WILL HAVE AN OPPORTUNITY WHEN YOU

 4 GO TO DELIBERATE TO SEE OUR BEST -- TO OUR BEST ABILITY,

 5 WE HAVE A TRANSCRIPT THAT'S AS GOOD AS, BELIEVE ME,

 6 EVERYBODY LISTENING TO THAT TAPE COULD MAKE IT. AND IT

 7 IS STILL NOT PERFECT. THERE ARE WORDS THAT ARE

 8 AMBIGUOUS ON THAT TAPE. AND IF YOU WANT, YOU CAN PLAY

 9 THE TAPE. BUT I SUSPECT THAT WHAT YOU WILL DO IS READ

 10 THE TRANSCRIPT, AND YOU WILL BE STRUCK BY THE UTTER AND

 11 COMPLETE MADNESS OF THIS THING.

 12 BECAUSE WHAT -- IF YOU READ IT, AND YOU

 13 DON'T NEED TO READ BETWEEN THE LINES. I CAN TELL YOU

 14 WHAT I THINK IS BETWEEN THE LINES. BUT RIGHT ON THE

 15 LINES, WHAT THIS IS ALL ABOUT IS THIS:

 16 WHAT DR. OZIEL AND ERIK AND LYLE

 17 MENENDEZ -- ALTHOUGH ERIK, TO A MUCH LESSER EXTENT THAN

 18 LYLE -- ARE TALKING ABOUT IS THAT THEIR MOTHER WAS

 19 KILLED OUT OF MERCY, AND THEIR FATHER WAS KILLED BECAUSE

 20 OF WHAT HE WAS DOING TO THE MOTHER. IT MAKES PERFECT

 21 SENSE, DOESN'T IT? OF COURSE NOT. IT IS ABSOLUTELY

 22 WACKO, WHAT'S ON THAT TAPE.

 23 AND WHAT IS OBVIOUS WHEN YOU GO THROUGH THE

 24 TRANSCRIPT, AND I WILL TRY TO GO THROUGH SOME OF IT WITH

 25 YOU NOW, TO POINT OUT WHERE IT IS OBVIOUS THAT THIS

 26 CRAZY IDEA ORIGINATED BEFORE THIS TAPE WAS EVER TURNED

 27 ON

 28 NOW, ERIK MENENDEZ TESTIFIED THAT THERE

 1 WERE THREE TAPES PLAYED THAT DAY, AND YOU'VE ONLY GOT

 2 ONE OF THEM. AND THE ONE YOU HAVE STARTS IN THE MIDDLE

 3 AND ENDS IN THE MIDDLE OF A CONVERSATION. AND THERE ARE

 4 REFERENCES IN THAT TAPE, PARTICULARLY LYLE MENENDEZ SAYS

 5 TO DR. OZIEL AT ONE POINT: "WELL, IT'S LIKE YOU SAID

 6 BEFORE," THUS AND SUCH, "CONCERNING MOM BEING KILLED AS

 7 A MERCY KILLING."

 8 WELL, HE DOESN'T SAY IT BEFORE ON THE TAPE

 9 THAT YOU HAVE.

 10 NOW, WHAT ERIK MENENDEZ TESTIFIED TO WAS

 11 THIS:

 12 HE WENT TO SEE DR. OZIEL ON HALLOWEEN,

 13 OCTOBER 31ST, AND AT THAT TIME HE WAS FEELING VERY

 14 SUICIDAL, VERY GUILTY, VERY REMORSEFUL. THAT'S BEEN

 15 TRUE THROUGHOUT. YOU CAN HEAR IT ON THE TAPE. IT WAS

 16 TRUE WHEN HE TALKED TO EDMONDS. IT'S BEEN TRUE -- WELL,

 17 HE GOES TO SEE HIM BECAUSE HE'S FEELING SO GUILTY.

 18 HIS WAY OF EXPRESSING HIS HORROR WITH

 19 HIMSELF FOR WHAT HE'S DONE IS TO SAY: "I THOUGHT I WAS

 20 A BAD PERSON. I THOUGHT I WAS A HORRIBLE PERSON." AND

 21 HE COULDN'T LIVE WITH THAT.

 22 SO HE GOES TO GET VALIDATION FROM SOMEONE

 23 WHO HE THINKS WILL SAY, "YOU DID A TERRIBLE THING, BUT

 24 THAT DOES NOT NECESSARILY MAKE YOU A TERRIBLE PERSON."

 25 AND HE SAYS ALL HE WANTED WAS FOR SOMEONE

 26 TO HELP HIM DEAL WITH THIS EXTREME DEPRESSION. BUT HE

 27 COULDN'T KEEP IT AWAY FROM DR. OZIEL. THEY WALKED, THEY

 28 TALKED. HE TELLS DR. OZIEL HE KILLED HIS PARENTS.

 1 AND WHAT HE IS SEEKING IS "THAT'S A

 2 TERRIBLE THING, BUT I KNOW YOU. YOU'RE NOT A TERRIBLE

 3 PERSON."

 4 INSTEAD, WHAT HE GETS IS 20 QUESTIONS ON

 5 "HOW'D YOU DO IT? AND WHAT HAPPENED? AND WHERE'D YOU

 6 GET THE GUNS?" AND OTHER THINGS.

 7 AND HE SAYS THAT HE ANSWERS -- HE'S

 8 HYSTERICAL WHEN THIS PART OF THE CONVERSATION IS GOING

 9 ON. HE ANSWERS THESE SPECIFIC QUESTIONS ABOUT BUYING

 10 GUNS IN SAN DIEGO, DETAILS ABOUT THE KILLINGS. AND THEN

 11 OZIEL STARTS TO ASK HIM "WHY, WHY, WHY," AS I HAVE

 12 POINTED OUT TO YOU ALREADY. AND MR. MENENDEZ TELLS HIM

 13 "I DON'T KNOW WHY."

 14 AND DR. OZIELHAS HIS OWN IDEAS.

 15 NOW, WHAT YOU KNOW IS DR. OZIEL KNEW JOSE

 16 AND MARY LOUISE MENENDEZ. HE HAD MET THEM. HE IS THEIR

 17 CHOSEN PIPELINE TO THEIR SON, ERIK MENENDEZ.

 18 FOLLOWING THE BURGLARIES -- AS YOU HAVE

 19 HEARD, IN ORDER TO WHATEVER, GAIN SOME KIND OF

 20 UNDERSTANDING IN COURT, ERIK MENENDEZ IS SENT TO

 21 DR. OZIEL, AND HE'S SELECTED BY MRS. MENENDEZ. THERE IS

 22 A CONDITION PLACED ON THIS THERAPY, WHICH IS THAT ERIK

 23 MENENDEZ HAS TO WAIVE HIS RIGHT OF CONFIDENTIALITY,

 24 WHICH WE ALL HAVE WITH THERAPISTS, SO THAT HIS PARENTS

 25 CAN FIND OUT WHAT HE'S TALKING ABOUT.

 26 NOW, THIS IS JUST LIKE TAPPING HIS PHONE TO

 27 FIND OUT WHAT HE'S TALKING ABOUT.

 28 THIS IS THEIR WAY OF MAKING SURE THAT

 1 NOTHING SECRET IS REVEALED. AND IT'S ABSOLUTELY A

 2 GUARANTEED WAY TO MAKE SURE YOUR KID DOESN'T GET ANY

 3 REAL THERAPY. HE CAN'T GET BETTER WHEN HE CAN'T TALK

 4 ABOUT WHAT THE PROBLEMS ARE.

 5 SO HERE HE IS SEEING THIS OZIEL PERSON,

 6 WITH THESE WAIVERS, AND THAT, OF COURSE, IS WHY HE CAN

 7 NEVER TELL DR. OZIEL THAT HE IS ABUSED BY THESE FOLKS IN

 8 ANY WAY, LET ALONE MOLESTED.

 9 AND AFTER THE OCTOBER 31ST MEETING WHERE

 10 HE, OZIEL, BRINGS LYLE MENENDEZ INTO SOMEBODY ELSE'S

 11 THERAPY SESSION, WHICH IS PRETTY AMAZING RIGHT THERE,

 12 AND LYLE MENENDEZ IS, OF COURSE, SHOCKED TO FIND OUT

 13 WHAT'S BEEN GOING ON HERE BEHIND HIS BACK, THERE IS

 14 ANOTHER MEETING ON NOVEMBER 2ND.

 15 AND ERIK MENENDEZ TELLS YOU THAT OZIEL IS

 16 BEHAVING IN A WAY THAT'S VERY UNETHICAL FOR A THERAPIST.

 17 HE IS TALKING ABOUT MONEY AND INVESTMENTS. HE'S

 18 CLAIMING TO FEEL THREATENED, BECAUSE HE KNOWS THAT THEY

 19 KILLED PEOPLE, AND HE'S THE ONLY ONE WHO KNOWS -- OF

 20 COURSE, HE ISN'T. CRAIG CIGNARELLI ALREADY KNOWS. BUT

 21 HE DOESN'T KNOW THAT.

 22 SO HE IS CLAIMING HE FEELS THREATENED, AND

 23 THEY HAVE TO DO SOMETHING NOW TO KEEP HIM FROM FEELING

 24 THREATENED AND GOING TO THE POLICE.

 25 CAN YOU IMAGINE A THERAPIST THREATENING TO

 26 GO TO THE POLICE? I CAN NOW.

 27 IN ANY EVENT, WHAT ULTIMATELY COMES OUT OF

 28 THIS IS THEY'RE GOING TO MAKE A TAPE-RECORDING SO THAT

 1 DR. OZIEL HAS SOMETHING TO HOLD OVER THEIR HEADS FOR HIS

 2 PROTECTION. WELL, THAT'S WHAT HE CLAIMS.

 3 BUT ERIK MENENDEZ TOLD YOU HE DIDN'T REALLY

 4 BELIEVE THAT DR. OZIEL FELT THREATENED. WHY WOULD THEY

 5 HURT DR. OZIEL?

 6 SO, THE IDEA WAS ACTUALLY THIS WAS GOING TO

 7 BE OZIEL'S LITTLE ACE IN THE HOLE, SO HE COULD GET HIS

 8 HANDS ON WHAT HE THOUGHT AND WHAT WAS EARLY-BELIEVED TO

 9 BE 14 MILLION DOLLARS.

 10 NOW, MR. CONN ATTACKS ERIK MENENDEZ --

 11 WELL, HE ATTACKS HIM THROUGHOUT HIS 11 DAYS OR 12 DAYS

 12 OF CROSS-EXAMINATION. THE ATTACK MODE WAS THE ONLY MOD

 13 WE SAW. HE ATTACKS HIM AND SAYS: "YOU DON'T -- YOU'RE

 14 TRYING TO TELL US THAT HE WAS BLACKMAILING YOU FOR 14

 15 MILLION DOLLARS? WHERE IS THE PROOF OF THAT?"

 16 AND ERIK MENENDEZ TELLS HIM, IN THE FIRST

 17 TRIAL A TAPE-RECORDING WAS PLAYED IN WHICH DR. OZIEL

 18 ADMITTED WANTING THE 14 MILLION DOLLARS.

 19 ERIK MENENDEZ ANSWERED: "DETECTIVE

 20 ZOELLER'S GOT THE TAPE."

 21 HAS THAT BEEN DISPROVEN? NO.

 22 SO HERE'S THE WORLD ACCORDING TO OZIEL. HE

 23 KNEW THE PARENTS, AND AS I WILL SHOW YOU FROM SOME

 24 TESTIMONY FROM DR. WILSON, THE NATURE OF THIS FAMILY

 25 DYNAMIC WAS NOT A MYSTERY. THE FACT THAT MR. MENENDEZ

 26 WAS CONTROLLING AND OVERBEARING AND RUTHLESS AND

 27 INSENSITIVE, AND ALL THE REST OF THAT, IS A GIVEN,

 28 UNCHALLENGED IN THIS TRIAL BY ANYBODY.

 1 AND OZIEL GETS INTO HIS MIND, BECAUSE THIS

 2 TAPE IS THE PROOF THAT ERIK MENENDEZ DID NOT GIVE HIM

 3 ANY KIND OF REASON WHY THE PARENTS WERE KILLED.

 4 THROUGHOUT THE TAPE -- THROUGHOUT THE TRANSCRIPT, OZIEL

 5 IS POSITING HYPOTHESES, THE HYPOTHETICAL QUESTIONS THAT

 6 I AM SURE YOU ARE ALL SICK OF HEARING THAT WE HAVE TO DO

 7 WITH EXPERT WITNESSES UNDER THE RULES. "IMAGINE THIS,

 8 IMAGINE THAT. COULD IT HAVE BEEN THIS? COULD IT HAVE

 9 BEEN THAT?"

 10 I MEAN, IT STARTS OUT WITH HIS VERY FIRST

 11 SPEECH -- AND HE IS DOING AN AWFUL LOT OF SPEECHIFYING

 12 ON THIS THING.

 13 "THE OTHER SENSE I FELT, OR I HAD, IS THAT

 14 YOU FELT TOTALLY TRAPPED. I REALLY THINK THAT THERE

 15 JUST -- YOU KNOW, THERE REALLY WASN'T A FAMILY,"

 16 BLAH-BLAH-BLAH-BLAH-BLAH-BLAH-BLAH.

 17 HE IS PUTTING OUT HIS INTERPRETATION OF WHO

 18 WAS JOSE MENENDEZ, WHO WAS MARY LOUISE MENENDEZ, WHAT

 19 WAS THE NATURE OF THE RELATIONSHIP.

 20 NOW, THIS ISN'T WHAT THERAPISTS ARE

 21 SUPPOSED TO DO, FOLKS. YOU'RE SUPPOSED TO TELL THEM

 22 WHAT'S GOING ON. THEY DON'T LIVE IN YOUR HOME, AND THEY

 23 DON'T LIVE IN YOUR HEAD.

 24 AND AS ANY OF YOU WHO DEAL WITH PEOPLE

 25 KNOW, IF YOU WANT TO FIND OUT THE TRUTH, JUST ASK. YOU

 26 DON'T TELL.

 27 BUT THE WAY THIS TAPE UNFOLDS IS OZIEL IS

 28 DOING ALL THE TELLING. IT'S HE WHO POSITS: "OH, YOUR

 1 MOTHER WAS A SHELL OF A PERSON. SHE WAS SUCH A WRECK."

 2 OF COURSE, WE HAVEN'T HEARD ANY EVIDENCE

 3 THAT THAT WAS TRUE AT ALL. AND ON AND ON AND ON. "AND

 4 YOUR FATHER WAS THIS, AND THEN YOU COULDN'T LET THAT GO

 5 ON." AND THEY SIGN ON.

 6 THE DIALOGUE IS PLAINLY BETWEEN DR. OZIEL

 7 AND LYLE MENENDEZ. BUT PERIODICALLY ERIK CHIRPS IN WITH

 8 A WORD OR TWO, SIGNING ONTO THIS PICTURE THAT OZIEL IS

 9 PAINTING OF A MERCY KILLING, AND OF A FATHER KILLED

 10 BECAUSE OF WHAT HE WAS DOING TO MOM.

 11 NOW, THAT MAY SEEM COMPLETELY CRAZY TO US,

 12 BUT THE BOTTOM LINE IS IT REALLY DIDN'T MATTER TO OZIEL

 13 WHAT VERSION, OR WHAT REASONS THEY GAVE. HE JUST NEEDED

 14 A CONFESSION TO PUT IN HIS SAFE DEPOSIT BOX SO HE COULD

 15 GET HIS HANDS ON THE MONEY.

 16 IT DIDN'T MATTER. HE CAME UP WITH A THEORY

 17 BECAUSE THEY WOULDN'T GIVE HIM AN ANSWER, AND THEY WENT

 18 ALONG WITH IT BECAUSE WHAT ERIK MENENDEZ SAID WAS

 19 DR. OZIEL HAD THIS THEORY THAT: "MY MOM WAS SUCH A

 20 WRECK, WE WERE DOING HER A FAVOR BY KILLING HER. AND MY

 21 DAD WAS SUCH A MONSTER, AND WE KILLED HIM BECAUSE OF

 22 WHAT HE DID TO MOM." AND WE WENT ALONG WITH IT.

 23 AND WHAT HE ASKED US TO DO WAS TO MAKE THIS

 24 TAPE SOUND BELIEVABLE SO THAT HE COULD USE IT FOR HIS

 25 PURPOSES, WAS TO GIVE HIM THINGS -- EXPERIENCES, EVENTS

 26 FROM THE PAST THAT WOULD SUPPORT THIS TOTALLY DISTORTED

 27 PICTURE OF THE PARENTS THAT OZIEL WAS HELPING TO PAINT.

 28 SO WHAT DO THEY GIVE HIM?

 1 THEY GIVE HIM HER MISERY OVER HER HUSBAND

 2 HAVING AN AFFAIR, WHICH SHE -- WE UNDERSTAND FROM ERIK

 3 MENENDEZ' TESTIMONY, AND FROM WHAT'S RIGHT INSIDE THE

 4 TAPE, THAT SHORTLY AFTER THE FAMILY MOVED TO CALIFORNIA,

 5 WHICH WAS IN 1986, MRS. MENENDEZ DISCOVERED THAT HER

 6 HUSBAND HAD BEEN HAVING A LENGTHY AFFAIR, AND IT THREW

 7 HER FOR A MAJOR LOOP. SHE WAS DEPRESSED. SHE WAS

 8 MISERABLE. SHE CRIED ALL THE TIME. ALL OF WHICH WE CAN

 9 UNDERSTAND. THESE THINGS HAPPEN. AND SHE DWELLED ON

 10 THIS, AND SHE WAS SUICIDAL.

 11 THERE IS STUFF IN THE TRANSCRIPT OF THE

 12 TAPE THAT TALKS ABOUT HER BEING HOSPITALIZED FOR AN

 13 OVERDOSE. THERE IS TESTIMONY THAT WE HEARD FROM ERIK

 14 MENENDEZ, AND IT'S ON THIS TAPE, THAT SHE LEFT A SUICIDE

 15 LETTER AROUND THAT HE SAW, AND THERE HAS BEEN NO

 16 CONTROVERSY OVER THAT FACT; THAT SHE WAS IN THAT

 17 CONDITION AT THAT TIME HISTORICALLY.

 18 AND AS ERIK MENENDEZ SAID, EVERYTHING

 19 THAT'S ON THAT TAPE IS TALKING ABOUT THINGS THAT

 20 HAPPENED THREE YEARS BEFORE, NOT AT THE TIME OF THE

 21 HOMICIDES.

 22 WE ALSO HEARD THE TESTIMONY OF MARTA CANO

 23 THAT THERE WAS A BIG CHANGE SUDDENLY. SHE GOES THROUGH

 24 THIS BAD PERIOD OF DEPRESSION, ACCORDING TO WHAT'S HERE,

 25 AND WHAT ERIK MENENDEZ HAS SAID. AND THEN THERE IS THIS

 26 BIG CHANGE WHERE SHE AND JOSE MENENDEZ ARE ALL

 27 LOVEY-DOVEY, AND THEY HAVE A WONDERFUL RELATIONSHIP NOW,

 28 AND HE IS NOT BEING MEAN AND NASTY TO HER.

 1 NONE OF THOSE THINGS THAT OZIEL IS CLAIMIN

 2 ARE TRUE WERE TRUE BY FEBRUARY OF '87, AT THE TIME O

 3 THE FUNERAL OF JOSE MENENDEZ' FATHER, WHEN JOSE MENENDEZ

 4 AND MARY LOUISE MENENDEZ WENT BACK EAST, AND THE REST OF

 5 THE FAMILY SAW THEM. LOVEBIRDS SHOWED UP.

 6 AND I'VE ALWAYS WONDERED ABOUT LOVEBIRDS,

 7 WHAT THAT REALLY MEANS. I THINK WHEN THREATENED WITH

 8 DIVORCE AND EXPOSURE, MR. MENENDEZ STARTED TO TREAT HER

 9 BETTER.

 10 BUT THE POINT IS THAT THE EVENTS AND THE

 11 RELATIONSHIP BETWEEN THE PARENTS THAT IS TALKED ABOUT ON

 12 THIS TAPE IS ANCIENT HISTORY. IT IS NOT AT ALL WHAT WAS

 13 GOING ON IN 1989 AT THE TIME OF THE HOMICIDES.

 14 NOW, MR. CONN OBVIOUSLY DOESN'T LIKE THAT

 15 THEORY, THE MERCY KILLING THEORY, AND THE "KILL DAD

 16 BECAUSE OF WHAT HE WAS DOING TO MOM."

 17 I MEAN, OBVIOUSLY IF MOM'S DEAD, WHAT DOES

 18 IT MATTER, OR WHY KILL MOM? WHY NOT JUST KILL DAD?

 19 IT MAKES NO SENSE, THIS THEORY, TO ANYBODY.

 20 THEY HAD THEIR BIG GUNS ON THE WITNESS STAND HERE.

 21 "DR. DIETZ, DO PEOPLE DO THIS? DOES THIS MAKE SENSE,

 22 THESE KIND OF MOTIVES FOR KILLING?" AND THEY DIDN'T ASK

 23 HIM THIS, BECAUSE YOU CAN PRETTY MUCH FIGURE OUT WHAT

 24 THE ANSWER WOULD BE. IT'S INSANITY. BUT IT'S NOT THE

 25 INSANITY OF THE MENENDEZ BROTHERS.

 26 IT'S THE INSANITY OF THE MYSTERIOUS

 27 DR. OZIEL.

 28 WHEN THE PEOPLE PUT THE TAPE ON, THEY PUT

 1 THE TAPE ON WITHOUT THE PERSON WHO MADE IT. THEY DIDN'T

 2 GIVE YOU ANY INFORMATION, AND YOU DIDN'T EVEN KNOW THE

 3 DATE. RIGHT OUT OF NOWHERE, THE BOLT OF LIGHTENING,

 4 WHEN THERE ISN'T EVEN A THUNDERSTORM GOING ON. AND THEY

 5 PUT IT ON BECAUSE IT SPEAKS FOR ITSELF. YES, IT SPEAKS

 6 GIBBERISH BY ITSELF, AND THEY NEVER BROUGHT IN OZIEL TO

 7 EXPLAIN ANY OF IT.

 8 NOW, MR. CONN SAYS WE COULD HAVE CALLED

 9 HIM. WE DON'T HAVE THE BURDEN OF PROOF. WE ARE NOT THE

 10 PROPONENTS OF THIS LUNACY. THIS IS THEIR EVIDENCE.

 11 THIS IS THEIR SMOKING GUN. IT FIRES BLANKS, THIS

 12 SMOKING GUN.

 13 THERE IS ONE PHRASE IN THIS WHOLE TAPE THAT

 14 IS USEFUL TO THE PROSECUTION, SO THEY RIP IT RIGHT OUT

 15 OF CONTEXT, AND THAT'S WHAT THEY WANT YOU TO THINK THIS

 16 TAPE IS ABOUT; HOW THEY PLANNED AND PREMEDITATED THIS

 17 KILLING, AND THAT IS NOT WHAT THIS TAPE IS ABOUT. IT'S

 18 ABOUT CRAZINESS.

 19 IT'S ABOUT THIS THEORY FOR WHY THE KILLINGS

 20 HAPPENED. AND ALSO, WHEN YOU READ THE TRANSCRIPT -- AND

 21 I WANT YOU TO DO SO, AND I HOPE YOU WILL -- IT IS VERY

 22 CLEAR WHAT MOTIVES THEY'RE ALL DISMISSING, INCLUDING

 23 OZIEL, WHO KNEW THE PARENTS. NOT BECAUSE OF CONTROL.

 24 AND LYLE MENENDEZ, WHO IS DOING MOST OF THE

 25 TALKING, SAYS THIS A NUMBER OF TIMES. "IT HAD NOTHING

 26 TO DO WITH US. IT HAD TO DO WITH MOM." NOT BECAUSE OF

 27 MONEY. OZIEL STATES ON THE TAPE HE KNOWS FROM THE PAST

 28 THAT THEY HAVE BEEN DISINHERITED; THAT HE HAD

 1 INFORMATION THEY HAD BEEN IN THE PAST DISINHERITED.

 2 NOT BECAUSE OF HATRED. THERE IS NO HATRED

 3 TOWARDS THESE PARENTS DESCRIBED ANYWHERE ON THIS TAPE.

 4 BUT WHAT HAPPENS TOWARDS THE END OF -- GOD KNOWS HOW

 5 MANY HOURS THEY WERE ACTUALLY TAPING AT THIS POINT --

 6 WHAT HAPPENS AT THE END OF THE FRAGMENT OF THIS SESSION

 7 THAT WE HAVE ON THIS TAPE, IS ERIK MENENDEZ' BREAKING

 8 DOWN. ACTING, I SUPPOSE MR. CONN WOULD CALL IT. BUT

 9 THERE WAS NO AUDIENCE FOR THIS ACTING.

 10 HE IS CRYING. HE IS SOBBING. HE IS UPSET.

 11 YOU CAN HEAR IT. AND HE STARTS TALK ABOUT, IN VERY

 12 MYSTERIOUS TERMS: "IT WAS RUINING MY LIFE. I HAD NO

 13 CHOICE."

 14 HE DOESN'T SAY: "I ALMOST HAD NO CHOICE."

 15 THAT'S THE LAST TIME HE SAID IT. SIX TIMES, HE SAID:

 16 "I HAD NO CHOICE."

 17 ONE OF THEM HE PHRASES: "I ALMOST HAD NO

 18 CHOICE," AND THAT'S THE ONLY PART THAT MR. CONN MENTIONS

 19 TO YOU. HAD NO CHOICE ABOUT WHAT? WHAT WAS RUINING HIS

 20 LIFE?

 21 WHEN YOU SEE HOW THIS SUPPOSED THERAPY

 22 SESSION IS CONDUCTED, YOU WILL SEE THAT OZIEL MISSES ALL

 23 THE HINTS, NEVER FOLLOWS UP IN THE WAY THAT ANY

 24 PERSON -- OR LET ALONE, ANY THERAPIST, WOULD.

 25 "WHAT ARE YOU TALKING ABOUT? TELL ME."

 26 UH-HUH. HE IS SETTING THE STAGE. HE IS

 27 DOING ALL THE TALKING. NOW, HERE ARE THE -- I THINK THE

 28 TRANSCRIPT IS ABOUT -- I AM NOT SURE. THERE'S SO MANY

 1 DIFFERENT VERSIONS, I'M NOT SURE I HAVE THE LATEST BEST,

 2 BUT HERE IS PAGES 27 AND 28 FROM MY COPY, OR A COPY.

 3 AND THIS IS THE PART WHEN ERIK MENENDEZ STARTS TO FALL

 4 APART, AND HERE IS OZIEL SAYING ALL THESE ROTTEN THINGS,

 5 AND EXAGGERATED THINGS AND SILLY THINGS, ABOUT THE

 6 PARENTS, AND TALKING ABOUT HIS FATHER.

 7 AND ERIK HAS BEEN SILENT FOR PAGES AND

 8 PAGES AND PAGES OF THIS DIALOGUE BETWEEN LYLE MENENDEZ

 9 AND DR. OZIEL. ERIK IS SAYING ABSOLUTELY NOTHING.

 10 WELL, THIS ISN'T GOING TO HELP OZIEL'S

 11 BLACKMAIL PURPOSES, IF ERIK IS QUIET. SO HE HAS TO GET

 12 HIM TO TALK.

 13 NOW, YOU ARE GOING TO GET AN INSTRUCTION AT

 14 THE END ABOUT SOMETHING CALLED "ADOPTIVE ADMISSIONS".

 15 WHETHER YOU COULD USE, FOR EXAMPLE, AGAINST MR. LEVIN

 16 SOMETHING THAT I SAY, RIGHT? AND THE NOTION IS IF

 17 IT'S -- IF SOMETHING I SAY IS AN ACCUSATION, MR. LEVIN

 18 AND I COMMITTED A HIGHJACKING THREE YEARS AGO IN CUBA,

 19 AND HE IS NEXT TO ME, AND HE DOESN'T SAY: "NO, WE

 20 DIDN'T," THEORETICALLY IF IT'S AN ACCUSATORY STATEMENT

 21 THAT A PERSON WOULD HAVE DENIED, DEPENDING ON THE

 22 CIRCUMSTANCES, AND HE DOESN'T DENY IT, HE IS ADOPTING IT

 23 AS HIS OWN, AND IT BECOMES HIS ADMISSION.

 24 THAT'S THE BASIC RULE, BUT THE INSTRUCTION

 25 IS MORE COMPLICATED.

 26 AND THAT'S EASY TO KNOW IF YOU'RE WATCHING

 27 ME AND LEVIN, ME AND MR. LEVIN, AND I SAY THIS THING TO

 28 YOU AND HE HEARS ME, AND HE'S GOING LIKE THIS

 1 (INDICATING), OR HE'S GOING LIKE THAT. THEN YOU KNOW HE

 2 IS NOT ADOPTING IT, BUT WHEN ALL YOU HAVE IS A TAPE AND

 3 YOU CAN'T SEE ERIK MENENDEZ, AND YOU DON'T EVEN KNOW IF

 4 HE'S IN THE ROOM FOR ALL THIS, AND YOU DON'T KNOW IF

 5 HE'S CRYING, AND YOU DON'T KNOW IF HE'S GOING LIKE THIS

 6 (INDICATING), YOU DON'T KNOW ANYTHING ABOUT WHAT HIS

 7 REACTION IS.

 8 I SUBMIT TO YOU THE ONLY THINGS YOU CAN

 9 RELY UPON IN THIS TAPE AND CAN ATTRIBUTE TO HIM ARE THE

 10 THINGS HE SAYS; OR THERE ARE A FEW TIMES WHEN HE CLEARLY

 11 IS RESPONDING TO WHAT HIS BROTHER IS SAYING. HE'S

 12 ADDING SOMETHING TO A PART OF WHAT HIS BROTHER IS

 13 SAYING. AND FOR THAT PURPOSE YOU HAVE TO FIGURE OUT

 14 WHAT PART IS HE ACCEPTING, WHAT PART IS HE ADDING ON TO?

 15 BUT ANYWAY, HERE IS OZIEL TRYING TO GET

 16 ERIK INTO THE STEW, AND HE SAYS: "WHAT DO YOU THINK

 17 ERIK? HOW ABOUT YOU SAYING SOMETHING HERE. YOU HAVEN'T

 18 SAID A WHOLE LOT. WHAT DO YOU THINK?"

 19 AND WHAT DOES ERIK SAY?

 20 "I JUST DON'T LIKE HEARING IT."

 21 "WHAT DOES THAT MEAN?"

 22 "I DON'T LIKE HEARING IT."

 23 "YOU DON'T LIKE HEARING WHAT?"

 24 "I DON'T LIKE HEARING THESE THINGS ABOUT MY

 25 FATHER."

 26 THIS IS A PERSON WHO SUPPOSEDLY KILLED FOR

 27 A JEEP? THIS IS THE PERSON WHO SUPPOSEDLY KILLED FOR

 28 HATRED? THIS IS THE PERSON WHO SUPPOSEDLY KILLED

 1 BECAUSE HE MUCH WANTED TO TAKE HISTORY INSTEAD OF

 2 ECONOMICS?

 3 "I DON'T LIKE HEARING THESE THINGS ABOUT MY

 4 FATHER." HE LOVES HIS FATHER.

 5 LYLE SAYS THE SAME THING.

 6 "OZIEL: WHAT ARE YOU FEELING?"

 7 "ERIK MENENDEZ: UPSET."

 8 OZIEL, AGAIN, SUGGESTING THINGS RATHER THAN

 9 JUST ASKING. "HURT, SAD, WHAT? WANT TO TELL ME?"

 10 AND ERIK SAYS: "WELL, I HAD PUSHED HIM OUT

 11 OF MY MIND, AND UH, MY FATHER AND MY MOTHER WERE -- WERE

 12 TWO PEOPLE THAT I LOVED, AND I JUST DON'T WANT TO HEAR

 13 ANYTHING ABOUT IT."

 14 NOW, ARE THESE EXPRESSIONS OF HIS FEELINGS

 15 TOWARDS HIS PARENTS -- WHICH ARE REALLY THE ONLY ONES

 16 THAT YOU WILL SEE ON THIS TAPE -- IS THIS A LIE ALSO?

 17 MR. CONN WANTS TO SUGGEST THIS -- THIS TAPE

 18 WAS MADE TO CREATE A DEFENSE. WHAT KIND OF DEFENSE IS

 19 IT THAT YOU KILLED YOUR MOTHER OUT OF MERCY, AND YOU

 20 KILLED YOUR FATHER BECAUSE OF WHAT HE DID TO THE MOTHER?

 21 ANY IDIOT WOULD KNOW THAT'S NOT A DEFENSE. AND IF ANY

 22 IDIOT DIDN'T KNOW IT, WHAT DID GLENN STEVENS TESTIFY TO?

 23 HE SAID THAT LYLE MENENDEZ MADE A STATEMENT TO HIM JUST

 24 BEFORE LYLE MENENDEZ GOT ARRESTED CONCERNING OZIEL AND

 25 THESE TAPES. "IF THE POLICE GET THEIR HANDS ON THOSE

 26 TAPES, I AM FUCKED."

 27 NOW, YOU THINK HE'S GOING TO SAY THAT ABOUT

 28 A TAPE THAT HE BELIEVES IS GOING TO SAVE HIM IN COURT?

 1 IS IT GOING TO BE USEFUL FOR LEGAL PURPOSES? OF COURSE

 2 NOT.

 3 THIS IS OZIEL'S BLACKMAIL TAPE. THIS

 4 SERVES NO USEFUL PURPOSE FOR THEM BUT TO KEEP OZIEL FROM

 5 GOING TO THE POLICE.

 6 SO THEY DON'T EXPECT THIS TO COME OUT IN

 7 COURT. THEY NEVER IMAGINED I'D BE STANDING HERE WITH

 8 THIS HIGHLIGHTED IN BLUE TALKING TO YOU ALL ABOUT WHAT

 9 WAS SAID THAT DAY, DECEMBER 11TH, 1989 IN THE PRESENCE

 10 OF OZIEL.

 11 OKAY. HE SAID: "I JUST DON'T WANT TO HEAR

 12 ANYTHING ABOUT IT. IT DOESN'T MATTER WHAT THEY WERE.

 13 SEE -- OR WHAT THEY ACTUALLY WERE. I -- WHETHER IT'S A

 14 FANTASY."

 15 HOW MUCH MORE DO YOU NEED TO KNOW TO KNOW

 16 THAT THE PICTURE ISN'T CLEAR HERE, OR IT WASN'T.

 17 "UM, I -- THEY WERE VERY APPARENT IN MY

 18 MIND"-- INTERESTING TERM -- "BEFORE THIS LED UP TO THE

 19 FACT WHERE I HAD NO OTHER CHOICE. I WOULD HAVE TAKEN

 20 ANY OTHER CHOICE."

 21 NOW, WHAT IS HE TALKING ABOUT? HE

 22 CERTAINLY HAD A CHOICE NOT TO KILL HIS MOTHER FOR A

 23 MERCY KILLING, WHICH IS THE THEME OF THIS THING. H

 24 CERTAINLY HAD A CHOICE NOT TO KILL HIS FATHER, BECAUS

 25 HE WAS CRUEL TO HIS MOTHER. BUT WHAT HE HAD NO CHOICE

 26 ABOUT WAS SURVIVAL.

 27 "AND BECAUSE I LOOKED BACK ON IT, AND

 28 REALIZING WHAT PEOPLE ARE WORTH, I VERY MUCH REGRET IT.

 1 I MAY NOT HAVE HAD A CHOICE AT THE TIME, BUT I REGRET IT

 2 NOW. AND I AM SIMPLY -- UM, I'M LIKE -- THE MEMORIES

 3 THAT I HAD FROM WHEN I WAS 14 YEARS OLD, YOU KNOW, I HAD

 4 A MOTHER AND A FATHER THAT LOVED EACH OTHER AND LOVED

 5 ME."

 6 NOW, THAT'S PART OF THE FANTASY IN HIS

 7 HEAD.

 8 BECAUSE CHILDREN BELIEVE THEIR PARENTS LOVE

 9 THEM, EVEN WHEN THERE'S NO EVIDENCE TO PROVE IT. YOU

 10 HAVE TO BELIEVE THAT; THAT YOUR OWN PARENTS LOVE YOU.

 11 "IT WAS THAT KIND OF RELATIONSHIP,

 12 AND I TRY TO BRING THAT BACK IN MY MIND.

 13 IT WAS KIND OF LIKE -- IT WAS LIKE THAT,

 14 AND I LIKED THAT, PLAIN AND SIMPLE, AND

 15 FEELING -- AND I DON'T LIKE HEARING MY

 16 FATHER PUT IN THIS SORT OF WAY."

 17 THIS IS A PERSON WHO HATES HIM, REMEMBER,

 18 KILLED HIM FOR MONEY.

 19 AND OZIEL SAYS: "IT'S TOO PAINFUL," AND

 20 ERIK SAYS "YES."

 21 AND OZIEL SAYS: "TALK ABOUT IT," AND ERIK

 22 SAYS HE CAN'T.

 23 AND THEN ERIK MENENDEZ SAYS: "HE WAS

 24 SOMEBODY THAT I LOVED, AND ALMOST HAD NO CHOICE TO DO

 25 WHAT I DID."

 26 WELL, NOW, OF COURSE, HE REALIZES BY THEN

 27 HE DID HAVE A CHOICE. HE COULD HAVE DIED. HE COULD

 28 HAVE, I GUESS, BEEN SOMEONE ELSE, SOMEONE CAPABLE OF

 1 RUNNING AWAY, OF DOING SOMETHING ELSE.

 2 EVERY OTHER TIME HE MENTIONS IT, HE'S

 3 TALKING ABOUT NOT HAVING A CHOICE. AND EVEN HAD YOU HAD

 4 NO CHOICE BUT TO KILL YOUR MOTHER OUT OF MERCY, COME ON.

 5 THIS PART IS WHAT WE CALL COGNITIVE DISSIDENCE. DOES

 6 NOT FIT ANYTHING THAT CAME BEFORE. IT CLEARLY IS -- THE

 7 TRUTH IS CREEPING OUT; AND, IN FACT, YOU WILL NOTICE,

 8 WHEN YOU READ THIS TRANSCRIPT FROM THIS POINT OUT, WHEN

 9 ERIK IS BREAKING DOWN AND STARTING TO GET VERY CLOSE TO

 10 THE TRUTH, LYLE SUDDENLY STARTS AGREEING WITH WHATEVER

 11 OZIEL SAYS. "YEAH, YOU'RE RIGHT. YOU'RE RIGHT. YOU'RE

 12 RIGHT. AND LET'S GET OUT OF HERE," BECAUSE ERIK CAN'T

 13 KEEP IT TOGETHER.

 14 AND HE TALKS ABOUT HATING HIMSELF, WHICH WE

 15 KNOW IS WHY HE'S WITH THIS PERSON, AND TALKS ABOUT THE

 16 LOVE THAT HE HAD FOR HIS PARENTS. THAT'S THE SMOKING

 17 GUN.

 18 THERE IS SO MANY WEIRD THINGS ABOUT THIS

 19 TAPE THAT YOU WILL SEE. MR. CONN TALKED ABOUT HOW -- I

 20 MEAN, I DON'T KNOW. EVEN HIS DESCRIPTION OF JOSE

 21 MENENDEZ SEEMS TO GO AROUND IN CIRCLES. BUT THERE IS A

 22 PART IN HERE WHERE LYLE MENENDEZ IS TALKING, AND I

 23 NOTICE ERIK MENENDEZ IS NOT JOINING IN ON THIS PART OF

 24 THE CONVERSATION.

 25 SO I DON'T KNOW THAT YOU COULD EVEN USE

 26 THIS AS AN ADOPTIVE ADMISSION AGAINST ERIK MENENDEZ.

 27 AND IF IT ISN'T, YOU CAN'T USE IT AT ALL.

 28 BUT ON THE CHANCE YOU DECIDE YOU CAN, LYLE

 1 MENENDEZ IS TALKING ABOUT JOSE MENENDEZ CRYING. THIS IS

 2 THE PERSON WHO WE KNOW THOUGHT EMOTION WAS WEAKNESS, WHO

 3 CHIDED ERIK MENENDEZ FOR CRYING.

 4 I MEAN, MY LORD, LOOK AT THIS. LOOK AT

 5 THIS THING. THIS IS A POSTCARD. THIS IS A XEROX OF A

 6 POSTCARD. HERE IS A PARENT, HE'S OFF IN HAMBURG,

 7 GERMANY. HE IS GOING TO WRITE HOME TO HIS LITTLE SON.

 8 "HAVING A WONDERFUL TIME, WISH YOU WERE HERE?" OH, NO.

 9 "DEAR ERIK --" AND HE MISSPELLS HIS SON'S

 10 NAME. "I TRUST THAT YOU ARE NOT CRYING MUCH."

 11 RIGHT HERE. I MEAN: "YOU LITTLE WEAKLING.

 12 YOU BETTER NOT BE," IS THE PARENTHETICAL.

 13 AND YOU WANT -- THEY WANT YOU TO BELIEVE

 14 THAT JOSE MENENDEZ CRIED WHEN HIS SONS COMMITTED THE

 15 CALABASAS BURGLARIES? NO. WHAT HE DID WAS TOLD THEM

 16 THEY WERE STUPID, BECAUSE THEY GOT CAUGHT. HE NEVER GOT

 17 CAUGHT. AND HE WAS COMMITTING CRIMES ON ERIK MENENDEZ

 18 FROM THE TIME HE WAS SIX UNTIL THE TIME HE WAS 18, AND

 19 HE NEVER GOT CAUGHT. SO WHY COULDN'T HIS KIDS BE AS

 20 CLEVER AS HE WAS?

 21 THAT'S WHAT HE WRITES TO A LITTLE KID ABOUT

 22 CRYING.

 23 BUT HERE ON THIS TAPE, I HAVE NO IDEA WHAT

 24 WAS GOING THROUGH LYLE MENENDEZ' MIND. ON THE ONE HAND,

 25 HE TALKS ABOUT HOW HIS DAD CRIED, AND THEN HE SAYS, ON

 26 THE VERY NEXT PAGE: "BUT WITH ME HE WAS VERY COLD. I'D

 27 CRY. I NEVER SAW HIM. HE WOULD BE VERY UPSET IF I SAW

 28 HIM CRYING, OR ANYTHING." COMPLETELY CONTRADICTS WHAT'S

 1 ON THE PRECEDING PAGE.

 2 AND THERE ARE SEGMENTS HERE, FOR EXAMPLE,

 3 ON PAGE 29, AND THAT IS HERE'S OZIEL PONTIFICATING,

 4 GOING ON AND ON. BUT HE TALKS ABOUT THE FACT, AS ERIK

 5 MENENDEZ SAID HE TOLD DR. OZIEL, THAT ERIK HAS ALL KIND

 6 OF PROBLEMS WITH HAVING ANYTHING TO DO WITH THE MONEY.

 7 AND THIS MEANS THE INSURANCE MONEY, AND THE

 8 FUTURE ESTATE MONEY. HE IS FEELING VERY GUILTY, VERY

 9 BAD ABOUT IT. HE IS HAVING DIFFICULTIES OF SPENDING ANY

 10 OF THESE AMOUNTS OF MONEY. HE HAS A GUILTY CONSCIENCE.

 11 HE SHOULD HAVE A GUILTY CONSCIENCE. HE DOES HAVE A

 12 GUILTY CONSCIENCE.

 13 SO THE BIG -- THE SMOKING GUN PART OF ALL

 14 THIS COMES ON MY VERSION OF THE TRANSCRIPT, WHICH I

 15 THINK WILL BE THE SAME PAGINATION AS YOURS, ON PAGE 31,

 16 WHERE LYLE MENENDEZ IS TALKING IN THE MIDDLE OF A HUGE

 17 SPEECH THAT ACTUALLY BEGINS ON 30, AND SAYS: "LETTING

 18 ERIK SLEEP ON IT FOR A COUPLE OF DAYS," THE QUOTE,

 19 "DECISION TO KILL HIS MOTHER." AND THIS IS SUPPOSED TO

 20 BE SO OMINOUS AND SUCH PROOF OF PREMEDITATION, AND SO

 21 CALLOUS AND SO COLD, AND ON AND ON.

 22 WELL, WHAT IS HE REALLY TALKING ABOUT HERE,

 23 BECAUSE THERE ARE BITS SURFACING THROUGH THIS THING;

 24 JUST LIKE WHEN ERIK MENENDEZ STARTS TO FALL APART.

 25 THERE'S LITTLE BITS THAT FIT IN WITH THE TRUTH.

 26 YOU MAY REMEMBER OR YOU MAY NOT, AND I HOPE

 27 THAT I CAN REMIND YOU NOW, THAT ERIK MENENDEZ SAID FROM

 28 THE MINUTE THEY STARTED TALKING ABOUT THEY MIGHT NEED TO

 1 BUY GUNS TO PROTECT THEMSELVES, THERE WAS THE OBVIOUS

 2 QUESTION OF COULD YOU EVER REALLY USE THEM?

 3 AND HE TALKED ABOUT HOW IN THE CAR ON

 4 FRIDAY, COMING BACK FROM SAN DIEGO, THERE WAS

 5 PARTICULARLY CONCERN ABOUT, "COULD I EVER SHOOT MY

 6 MOTHER? EVEN IF SHE'S COMING AT ME, EVEN IF SHE'S

 7 TRYING TO KILL ME. COULD I SHOOT MY MOTHER?"

 8 AND HE DOESN'T KNOW. HE DOESN'T KNOW THAT

 9 HE COULD EVER DO THAT. THAT'S SATURDAY NIGHT. HE'S

 10 SITTING THERE WITH A GUN ACROSS HIS LAP. HIS DAD IS

 11 POUNDING ON THE DOOR. HE DOESN'T EVEN KNOW THEN IF HE

 12 COULD SHOOT HIS FATHER, WHO WAS VIOLENT TOWARDS HIM ALL

 13 THOSE YEARS.

 14 SO THE SHOOTINGS DON'T OCCUR UNTIL SUNDAY,

 15 WHEN THERE HAS BEEN ADDITIONAL REASONS TO BELIEVE THAT

 16 MOTHER HAS LETHAL INTENTIONS, AND THAT IS ALL THIS

 17 REFERENCE IS. TWO DAYS LATER, OBVIOUSLY, IN THE PANIC

 18 STATE THAT WE'LL TALK ABOUT, HE COULD SHOOT HIS MOTHER.

 19 THAT'S IT.

 20 THAT'S THE WHOLE SMOKING GUN THEORY FROM

 21 THIS TAPE. AND READ IT. IT'S ABSOLUTELY BIZARRE.

 22 NOW, MY CLIENT HAS SAT ON THE WITNESS STAND

 23 IN THIS TRIAL THAT'S COVERED BY THE MEDIA, AND MAKING A

 24 FORMAL RECORD ACCUSING THIS MAN, DR. OZIEL, OF

 25 BLACKMAIL; OF SETTING UP THIS FAKE STORY, OF THREATENING

 26 TO GO TO THE POLICE. AND WE KNOW FROM DETECTIVE

 27 ZOELLER, THEY GOT ARRESTED BECAUSE OF DR. OZIEL'S MOUTH,

 28 BECAUSE HE TOLD SOMEONE. AND THAT'S WHY THEY GOT

 1 ARRESTED. THIS IS A THERAPIST WHO DOESN'T KNOW ANYTHING

 2 ABOUT CONFIDENTIALITY, THAT MUCH WE KNOW. AND THEY

 3 DON'T CALL HIM EVEN IN REBUTTAL TO DENY IT.

 4 NOW, DRAW YOUR OWN CONCLUSIONS FROM THAT.

 5 IT IS TRUE, NEITHER SIDE HAS TO CALL EVERY POSSIBLE

 6 WITNESS WHO MAY KNOW SOMETHING, AND NEITHER SIDE CAN

 7 CALL EVERY POSSIBLE WITNESS WHO KNOWS SOMETHING. THERE

 8 ARE RULES ABOUT WHAT YOU CAN PUT ON DIRECTLY WITH

 9 WITNESSES VERSUS WHAT YOU HAVE TO PUT ON THROUGH

 10 EXPERTS, FOR EXAMPLE.

 11 BUT DO YOU MEAN TO TELL ME THAT IT WASN'T

 12 IMPORTANT, IF WHAT ERIK MENENDEZ WAS SAYING ABOUT OZIEL

 13 WASN'T TRUE, TO CALL OZIEL AND LET HIM DENY IT IF HE

 14 WOULD? IT IS VERY CLEAR THEY DON'T WANT YOU TO LAY EYES

 15 ON THE VOICE ON THAT TAPE.

 16 SO I SUBMIT TO YOU THAT THE SMOKING GUN IS

 17 A CAP PISTOL, AND DOESN'T GET YOU ANYWHERE ON THE

 18 JOURNEY TO TRY AND FIND OUT WHY THIS HAPPENED.

 19 SO WHAT OTHER EVIDENCE DO THEY HAVE TO

 20 SUPPORT MURDER OF EITHER DEGREE, BUT PARTICULARLY THE

 21 BIG ONE, FIRST-DEGREE MURDER? NOT ORDINARY MURDER, AS

 22 MR. CONN TALKED ABOUT. THERE IS NO SUCH THING AS

 23 ORDINARY MURDER. MURDER IS AS BAD AS IT GETS.

 24 ALL RIGHT. WE HAVE TALKED ABOUT THEIR

 25 FIRST THEORY, THIS "SLEEP ON IT" REMARK IN THE 12-11

 26 TAPE. THAT'S WHAT THEY'VE GOT TO SUPPORT THE NOTION

 27 THAT THERE WAS AN AGREEMENT TO KILL.

 28 NOW, WHAT ARE THE OTHER FACTS THAT MAY BEAR

 1 ON THIS? OF COURSE, I CAN ALWAYS THINK OF SOMETHING

 2 ELSE. I HAVE A FEW MORE ON MY VERSION THAN WHAT'S UP

 3 THERE, SO I WILL TALK ABOUT THE EXTRAS. BUT FIRST I

 4 WILL GO THROUGH WHAT'S THERE.

 5 THE AMBIGUOUS FACTS. THE AMBIGUOUS FACTS,

 6 WHICH ARE FACTS THAT CAN EITHER WEIGH ON THE ISSUE OF

 7 PLANNING AHEAD, PREMEDITATING AHEAD, WANTING TO KILL

 8 THEIR PARENTS, INTENDING TO KILL THEIR PARENTS.

 9 ANYWAY YOU CONSTRUCT IT, THIS IS THE CORE

 10 OF THE PROSECUTION'S THEORY. THEY PLANNED TO DO IT. IT

 11 WAS NOT THIS SUDDEN, EMOTIONAL CRISIS SITUATION.

 12 SO, WHO HAVE THEY GOT?

 13 THEY'VE GOT CRAIG CIGNARELLI, WHO TELLS

 14 THIS STORY IN VARIOUS FORMS OVER DIFFERENT PERIODS OF

 15 TIME, THAT ERIK MENENDEZ SAID TO HIM THEY CAME BACK --

 16 HE SAID -- I'M NOT GOING TO TRY AND QUOTE IT DIRECTLY,

 17 JUST THE GENERAL GIST HERE -- ERIK MENENDEZ TOLD HIM

 18 THEY CAME BACK FROM GOING TO THE MOVIES TO GET SOME

 19 FALSE I.D.

 20 THAT'S NOT WHAT ERIK MENENDEZ TOLD THE

 21 POLICE. SO HE IS OBVIOUSLY NOT TELLING CRAIG CIGNARELLI

 22 THE TRUTH AT THAT TIME.

 23 CAME BACK FROM THE MOVIES TO GET SOME I.D.

 24 HE WENT IN THE HOUSE, HE COMES OUTSIDE, AND HIS BROTHER,

 25 LYLE, IS STANDING THERE WITH TWO SHOTGUNS AND SAYS:

 26 "LET'S DO IT."

 27 AND YOU'RE SUPPOSED TO NOW BELIEVE THAT

 28 THAT'S THE TRUE STORY OF WHAT HAPPENED: "LET'S DO IT."

 1 AND TWO YOUNG MEN GO OFF AND KILL THEIR PARENTS. "LET'S

 2 DO IT."

 3 OR MAYBE IT'S UNPLANNED. I MEAN, THE

 4 THEORY IS THEY BOUGHT THE GUNS WAITING FOR THE MOMENT TO

 5 "LET'S DO IT," AND THAT'S ALL IT TOOK: "LET'S DO IT."

 6 OR MAYBE WHAT THIS MEANS, WHY THIS IS

 7 AMBIGUOUS, IS THAT IT NEVER OCCURRED TO THEM. THEY

 8 BOUGHT THE GUNS TO GO DOVE HUNTING. IT NEVER OCCURRED

 9 TO THEM TO KILL THEIR PARENTS. BECAUSE CRAIG CIGNARELLI

 10 TESTIFIES HE DOESN'T ASK WHY. HE HAS NO INFORMATION

 11 WHATSOEVER OF WHAT LED UP TO THIS. THIS IS JUST A SPUR

 12 OF THE MOMENT, "LET'S DO IT." SURE.

 13 THE OTHER FACTS: THEY PURCHASE THE GUNS ON

 14 AUGUST 18TH, AND THEY PURCHASED ADDITIONAL AMMUNITION ON

 15 AUGUST 19TH. AND THOSE ARE AMBIGUOUS FACTS. WHY?

 16 BECAUSE PLANNING TO DEFEND YOURSELF IS NOT THE SAME

 17 THING AS PLANNING TO MURDER SOMEONE ELSE.

 18 YOU CAN EASILY IMAGINE A SITUATION, LET'S

 19 SAY, WHERE PEOPLE ARE IN THEIR HOME, AND A BURGLAR TRIES

 20 TO BREAK IN, AND THEY'RE TERRIFIED.

 21 AND FOR WHATEVER REASON, THE BURGLAR

 22 REALIZES THEY'RE THERE. THEY RUN TO THE DOOR. THEY

 23 MAKE NOISES. THE BURGLAR RUNS AWAY. AND THESE PEOPLE

 24 DECIDE THAT: "IT WAS A CLOSE ONE. I AM NOT GOING TO BE

 25 HERE LYING IN BED WITH NOTHING TO DEFEND MYSELF THE NEXT

 26 TIME THIS HAPPENS. LET'S GO GET GUNS SO WE CAN PROTECT

 27 OURSELVES IN OUR HOME."

 28 AND THOSE PEOPLE GO AND THEY BUY WHATEVER;

 1 HANDGUNS, SHOTGUNS, WHATEVER THE PEOPLE AT THE GUN STORE

 2 TELL THEM IS BEST TO PROTECT THEMSELF FROM BURGLARS.

 3 NOW, ARE THEY PLANNING TO KILL THE NEXT

 4 BURGLAR WHO COMES? ARE THEY PLANNING MURDER? OR ARE

 5 THEY GETTING THESE GUNS BECAUSE THEY MIGHT HAVE TO USE

 6 THEM IF A REALLY THREATENING SITUATION OCCURS?

 7 NOW, I KNOW PEOPLE -- WE ALL KNOW PEOPLE

 8 WHO HAVE GUNS IN THEIR HOMES FOR PROTECTION, WHO ASK

 9 THEMSELVES ALL THE TIME: "AM I REALLY GOING TO USE

 10 THIS? WHAT IF IT'S MY NEIGHBOR'S KID BREAKING IN?" I

 11 MEAN, HOW DO YOU KNOW IN ADVANCE WHAT THE NATURE AND

 12 QUALITY OF YOUR BURGLAR IS GOING TO BE?

 13 BUT WE ALL KEEP THESE GUNS IN OUR HOUSES,

 14 AND WHEN THE TIME COMES THAT WE'RE FACED WITH THE

 15 THREAT, THAT'S WHEN WE REALLY KNOW FOR THE FIRST TIME,

 16 ARE WE GOING TO USE IT OR NOT?

 17 SO, GOING TO BUY GUNS IS NO MORE CONSISTENT

 18 WITH THE PROSECUTION THEORY OF THE CASE THAN THE DEFENSE

 19 THEORY OF THE CASE. AND I WOULD SUBMIT TO YOU, DOWN THE

 20 RIGHT-HAND COLUMN, THAT THE WAY IN WHICH THIS IS DONE IS

 21 INCONSISTENT WITH PREMEDITATION AND DELIBERATION. AND

 22 HERE IS THE MAIN REASON WHY.

 23 IF THEY WERE PLANNING ON KILLING THEIR

 24 PARENTS -- I MEAN, I DON'T HAVE TO BE A PRINCETON

 25 UNIVERSITY STUDENT OR SOMEONE COMPETENT ENOUGH TO GET

 26 INTO U.C. BERKELEY TO FIGURE OUT THAT HANDGUNS ARE

 27 BETTER. THEY'RE BETTER FOR MURDER, JUST AS THEY'RE

 28 BETTER FOR SELF-DEFENSE. THEY'RE BETTER. THEY'RE

 1 SMALL. THEY'RE CONCEALABLE. THEY DON'T MAKE AS MUCH

 2 NOISE. HANDGUNS ARE BETTER.

 3 SO WHY DIDN'T THEY GET HANDGUNS IF THEY'RE

 4 PLANNING ON KILLING THEIR PARENTS? BECAUSE THERE IS A

 5 TWO-WEEK WAITING PERIOD? WHY DIDN'T THEY WAIT TWO

 6 WEEKS, IF YOU WANT TO BUY THEM AT A GUN STORE.

 7 BUT YOU DON'T HAVE TO BUY THEM AT A GUN

 8 STORE. THERE ARE -- HOW MANY GUNS? I HAD THIS NUMBER

 9 ONCE. TWENTY MILLION IN THE STATE OF CALIFORNIA ALONE,

 10 HANDGUNS OUT THERE. EVERY GANG BANGER SEEMS TO GET

 11 THEIR HANDS ON AS MANY AS THEY WANT. YOU DRIVE UP

 12 SOMEWHERE AND YOU BUY GUNS. IT'S NOT HARD, TWO RICH

 13 KIDS FROM BEVERLY HILLS, TO BUY A GUN ON THE STREETS.

 14 UNFORTUNATELY, IT'S NOT HARD FOR ANYBODY TO

 15 BUY A GUN ON THE STREET IF YOU CAN'T WAIT. BUT WHY

 16 CAN'T THEY WAIT? THE ONE THING THE PROSECUTION NEVER

 17 ADDRESSES, IF THIS IS A PREMEDITATED KILLING, IS WHY

 18 NOW -- WHY DOES IT HAVE TO BE RIGHT THEN AND THERE?

 19 WHAT'S THE PROBLEM? LYLE MENENDEZ ISN'T GOING BACK TO

 20 PRINCETON FOR A MONTH. WHAT'S THE HURRY? AND EVEN WHEN

 21 HE DOES, HE'S ON AIRPLANES ALL THE TIME. HE'S IN

 22 CALIFORNIA, EVEN WHEN HE'S GOING TO SCHOOL IN PRINCETON.

 23 JAMIE PISARCIK, OF ALL PEOPLE, ESTABLISHED THAT. HE'S

 24 BACK HERE EVEN WHEN HE'S IN SCHOOL.

 25 SO WHAT IS THE URGENCY HERE? WHAT IS IT,

 26 IF IT ISN'T WHAT THE DEFENSE SAYS IT IS. WHY NO

 27 HANDGUNS? WHAT'S THE HURRY?

 28 AND THE ANSWER, OF COURSE, IS THEY'RE

 1 OPERATING IN A PANIC. THEY DON'T KNOW WHAT'S GOING TO

 2 HAPPEN TO THEM, OR HOW SOON. THAT'S WHY IT'S URGENT.

 3 THAT'S WHY IT'S QUICK. AND THAT'S WHY THERE IS NO

 4 HANDGUNS.

 5 SO HERE ARE THE FACTS ABOUT HOW THIS

 6 OCCURRED THAT INDICATE THIS COULDN'T HAVE BEEN

 7 PREMEDITATED. THEY'RE JUST NOT THAT STUPID.

 8 FIRST OF ALL, THE NATURE OF THE KILLING

 9 ITSELF. WE WILL TALK ABOUT WHY ROGER MC CARTHY WAS A

 10 DESPERATE MOVE BROUGHT INTO THIS CASE AT THIS POINT.

 11 BUT WHAT'S OBVIOUSLY APPARENT IS IT DOESN'T

 12 TAKE THIS MANY ROUNDS TO KILL PEOPLE, IT JUST DOESN'T.

 13 AND WHEN YOU ARE ACTING IN A PANIC, AND WHEN YOU ARE

 14 ACTING IN A HIGHLY EMOTIONAL STATE, YOU FIRE OFF

 15 EVERYTHING YOU HAVE IN YOUR GUN. WHEN YOU ARE AFRAID OF

 16 THE PERSON THAT YOU'RE KILLING, WHEN YOU SEE THEM AS

 17 LARGER THAN LIFE, AS POWERFUL PEOPLE, WHICH IS CERTAINLY

 18 HOW THEIR CHILDREN SAW THEM, YOU FIRE OFF EVERYTHING IN

 19 YOUR GUN, AND THAT IS WHAT'S CALLED "OVERKILL", AND IT

 20 DEMONSTRATES A HIGH LEVEL OF EMOTIONALITY.

 21 I MEAN, I DON'T KNOW WHAT FOLKLORE ABOUT

 22 THE MAFIA MR. CONN HAS BEEN EXPOSED TO, BUT I COULD

 23 SWEAR WHAT I HEAR IS THEY GO IN THERE WITH A .22

 24 CALIBER, ONE SHOT TO THE BACK OF THE HEAD. NEAT, CLEAN,

 25 QUIET. THAT'S HOW THE MAFIA KILLS PEOPLE. THAT'S HOW

 26 PROFESSIONALS KILL PEOPLE.

 27 AND PEOPLE WHO PLAN CRIMES DO NOT STAND IN

 28 THEIR DEN IN BEVERLY HILLS ON A HOT SUMMER NIGHT FIRING

 1 OFF 11 OR 12 ROUNDS FROM LOUD SHOTGUNS IF THEY HAD A

 2 PLAN. BECAUSE WHAT IS THE PURPOSE OF A PLAN? THE

 3 PURPOSE OF A PLAN IS TO GET AWAY WITH IT. THE PURPOSE

 4 OF A PLAN IS TO AVOID DETECTION. AND THE BEST WAY TO

 5 BRING DOWN DETECTION IS TO SHOOT UP A HOUSE IN BEVERLY

 6 HILLS ON A SUNDAY NIGHT.

 7 NOW, MR. CONN HAS THIS NOTION THAT THEY DID

 8 A SURVEY TO SEE HOW OFTEN IS THERE GUNFIRE IN BEVERLY

 9 HILLS. THAT'S CRAZINESS, SILLINESS.

 10 I'LL TELL YOU WHAT, THOUGH. IF HE'S RIGHT,

 11 THAT THIS IS A KILLING BECAUSE THERE WERE SOME FAMILY

 12 DISPUTES ABOUT ONE OF THE KIDS SPENDING TOO MUCH MONEY,

 13 AND THE OTHER ONE WANTING TO TAKE DIFFERENT COURSES, IF

 14 THAT WAS ENOUGH TO RESULT IN THESE KILLINGS, THERE WOULD

 15 BE GUNFIRE IN BEVERLY HILLS EVERY NIGHT OF THE WEEK.

 16 THESE ARE ORDINARY, NORMAL FAMILY ISSUES. THOSE KIND OF

 17 ISSUES DON'T RESULT IN HOMICIDE.

 18 SO WE HAVE THE OVERKILL. NO HANDGUNS. USE

 19 OF THESE HORRIBLY LOUD WEAPONS. THE FACT THAT -- I

 20 MEAN, THIS IS SUPPOSED TO BE PLANNED, AND THEY COULDN'T

 21 FIGURE OUT WHAT KIND OF AMMUNITION TO BUY? THEY'RE NOT

 22 RESEARCHING AMMUNITION, OBVIOUSLY. IF THEY INTEND TO

 23 KILL SOMEBODY, YOU'RE GOING TO ASK THEM QUESTIONS WHEN

 24 YOU FIRST BUY AMMUNITION.

 25 THAT DOESN'T HAPPEN, BECAUSE THEY ARE NOT

 26 INTENDING TO KILL. THEY ARE AFRAID. THEY ARE TRYING TO

 27 DEFEND THEMSELVES, AND THEY ARE EXTREMELY AMBIVALENT.

 28 WILL THEY DO THIS? DO THEY WANT TO DO THIS? THEY DON'T

 1 KNOW.

 2 IT'S LIKE THE ON AND ON OFF SWITCH, YOU

 3 KNOW. THAT'S WHY HE DIDN'T LOAD THE GUN. YOU TELL

 4 YOURSELF YOU'RE GOING TO DO SOMETHING AWFUL, THAT YOU

 5 DON'T WANT TO DO. THAT'S WHY HE DOESN'T LOAD THE GUN

 6 UNTIL THE LAST MINUTE. AND FOR HEAVEN'S SAKE, HOW WOULD

 7 YOU HAVE KNOWN HE DIDN'T LOAD THE GUN UNTIL THE LAST

 8 MINUTE, UNLESS HE TOLD YOU? THAT'S A FACT YOU COULD

 9 HAVE HIDDEN.

 10 OKAY. SO, WE HAD THIS MIXED AMMUNITION.

 11 NOT ONLY DID THEY NEVER FIGURE IT OUT, THEY FIGURE OUT

 12 BY TALKING TO SOMEBODY THE NEXT DAY THAT BIRD SHOT IS

 13 NOT AN EFFECTIVE ROUND OF AMMUNITION. AND, OF COURSE,

 14 IT ISN'T. SO THEY BUY MORE.

 15 HOW MUCH DO THEY BUY? THEY BUY 10 ROUNDS.

 16 THAT'S ALL THEY BUY. SO WHEN IT HAPPENS, THEY'RE USING

 17 MIXED AMMUNITION, BECAUSE THERE IS A LACK OF THINKING

 18 THROUGH. THERE IS A LACK OF CALM, DELIBERATE,

 19 PREMEDITATED THOUGHT HERE.

 20 AND, OF COURSE, THE LOCATION. IS THIS THE

 21 ONLY PLACE -- IF THEY WERE PLANNING TO KILL THEIR

 22 PARENTS -- IS THIS THE ONLY PLACE THEY COULD HAVE DONE

 23 IT; IN A PLACE WHERE THERE'S BOUND TO BE WITNESSES, EAR

 24 WITNESSES IF NOT EYEWITNESSES?

 25 AND, OF COURSE, WHERE DO THEY DO THIS

 26 LOADING AND UNLOADING THAT MR. CONN HAS MADE SO MUCH OF?

 27 RIGHT IN THE FRONT. THERE IS LOTS OF PICTURES OF THE

 28 HOUSE. WE ARE TALKING ABOUT -- THIS ISN'T A CARPORT

 1 THAT MY CLIENT USES. THIS IS THE DRIVEWAY. IT'S GOT A

 2 CIRCULAR-LIKE PULL-IN DRIVEWAY. IT'S RIGHT ADJACENT TO

 3 THE SIDEWALK ON A PUBLIC STREET. THERE ARE NO BIG, HIGH

 4 WALLS AROUND THE HOUSE. IN THIS PART OF BEVERLY HILLS,

 5 YOU CAN BE SEEN. THAT'S WHERE THEY ARE DOING THEIR

 6 LOADING AND UNLOADING. THAT'S SUPPOSED TO SHOW A PLAN?

 7 THEN THERE IS THIS: NOT MAKING THE HOUSE

 8 LOOK BURGLARIZED. TECHNICALLY, THAT'S CALLED A LACK OF

 9 POST-CRIME STAGING. THAT'S WHAT THE F.B.I CALLS THAT.

 10 MR. CONN: OBJECTION. NO EVIDENCE OF THAT IN

 11 THIS TRIAL.

 12 THE COURT: ALL RIGHT. OVERRULED.

 13 ARE YOU ABOUT READY TO TAKE A BREAK?

 14 MS. ABRAMSON: LET ME JUST FINISH THIS LITTLE

 15 PIECE ABOUT THIS, JUDGE, AND THEN I DON'T HAVE TO GO

 16 BACK TO THAT.

 17 I MEAN, THE EASIEST THING IN THE WORLD

 18 HERE, TO HAVE AVOIDED ANY SUSPICION FALLING ON THEM,

 19 WOULD HAVE BEEN TO STEAL A FEW THINGS. NOW THERE ARE

 20 BURGLARIES IN BEVERLY HILLS, YOU KNOW, AS COMPARED TO

 21 HOMICIDES, AS COMPARED TO GUNFIRE.

 22 SO MAKE THE HOUSE LOOK BURGLARIZED. THEN

 23 IT'S -- YOU'VE GOT THE EASIEST EXCUSE IN THE WORLD WHEN

 24 THE POLICE ASK YOU: "WELL" -- AS THEY DID -- "WAS

 25 ANYTHING MISSING?"

 26 AND WHAT DO THEY SAY? NO, HM-MM.

 27 I MEAN, ALL OF THIS EFFORT ON THE

 28 PROSECUTION'S PART TO SAY OH, WHAT ROTTEN PEOPLE THEY

 1 ARE. THEY'RE POINTING THE FINGER AT SOMEONE ELSE.

 2 THEY'RE POINTING THE FINGER AT THE MAFIA. THAT'S

 3 USEFUL, WHEN THE EASIEST THING WOULD BE TO POINT THE

 4 FINGER AT THE BURGLAR. AND YOU DON'T HAVE TO DO MUCH.

 5 YOU DON'T HAVE TO TAKE OUT THE T.V. JUST TAKE THE

 6 JEWELRY. JUST SAY SOMETHING IS MISSING. YOU DON'T EVEN

 7 HAVE TO DO THAT. OH, NO, IT WASN'T A BURGLARY.

 8 OKAY, YOUR HONOR. I CAN STOP THERE NOW.

 9 THE COURT: OKAY, WE WILL TAKE A RECESS, IT'S

 10 NOON, AND WE WILL RESUME AT 1:30.

 11 DON'T DISCUSS THE MATTER WITH ANYONE.

 12 DON'T FORM ANY FINAL OPINIONS.

 13 (AT 12:00 P.M. PROCEEDINGS WERE

 14 ADJOURNED UNTIL 1:30 P.M OF THE

 15 SAME DAY.)

 14 THE COURT: OKAY. THE JURY IS BACK. AND YOU

 15 MAY CONTINUE YOUR ARGUMENT.

 16 MS. ABRAMSON: THANK YOU, YOUR HONOR.

 17 I WAS GOING THROUGH THIS CHART THAT

 18 INDICATES SOME OF THE ISSUES. I HAVE SOME MORE ON A

 19 HANDWRITTEN VERSION OF IT THAT POINTS AWAY FROM THE

 20 NOTION OF PREMEDITATION AND PLANNING, WHICH IS THE

 21 PROSECUTION'S BASIC THEORY FOR WHATEVER MOTIVE.

 22 I THINK WHEN WE BROKE FOR LUNCH WE WERE

 23 TALKING ABOUT THE FACT THAT THEY DIDN'T MAKE THE

 24 HOUSE LOOK BURGLARIZED.

 25 THERE WAS SOMETHING ELSE THAT COULD HAVE

 26 BEEN DONE HERE, AND THAT WAS TO HAVE STAGED A

 27 SELF-DEFENSE SCENARIO. THERE WERE GUNS IN THE

 28 HOUSE. WE KNOW, BASED ON THE RECEIPT THAT IS IN

 1 EVIDENCE, THAT AT THE TIME THAT MRS. MENENDEZ

 2 PURCHASED THE NEWER OF THE TWO RIFLES, IN JUNE OF

 3 1988, SHE ALSO PURCHASED AMMUNITION. SO THERE WERE

 4 GUNS AND AMMUNITION IN THE HOUSE THAT THEY COULD

 5 HAVE LOADED UP AND STAGED AN ENTIRE SELF-DEFENSE

 6 SCENARIO, BUT THEY DIDN'T DO THAT.

 7 THE NEXT ITEM HERE IS PICKING UP THE

 8 SHELLS. THE PROSECUTION ARGUES THAT THAT'S SOME

 9 KIND OF EVIDENCE OF CALCULATION, POST-CRIME

 10 CALCULATION, IF YOU WILL.

 11 BUT I SUBMIT TO YOU THAT THE FACT THAT

 12 THEY STAYED AROUND SAYS TWO THINGS. FIRST OF ALL,

 13 THE FACT THAT THEY NEEDED TO PICK UP THE SHELLS IS

 14 IMPORTANT, AND THAT LINKS UP WITH THIS ITEM HERE, NO

 15 GLOVES. ACTUALLY, YOU DON'T NEED TO USE GLOVES TO

 16 KEEP FROM GETTING FINGERPRINTS ON A SHELL. YOU CAN

 17 USE A PIECE OF TISSUE TO PUT IT IN THE GUN.

 18 THE FACT THE GUNS WERE NOT LOADED IN

 19 ADVANCE, WHEN YOU WOULD HAVE HAD PLENTY OF TIME TO

 20 PUT SHELLS IN THE GUN. THERE WOULD HAVE BEEN NO

 21 FINGERPRINTS LEFT TO TRACE IN CONNECTION WITH THAT

 22 KIND OF EVIDENCE. THAT WOULD HAVE INDICATED

 23 PREMEDITATION AND PLANNING.

 24 THE FACT THAT THE GUNS WERE NOT LOADED

 25 IN ADVANCE, THE FACT THAT THE SHELLS WERE PUT IN

 26 WITH BARE HANDS, THUS LEAVING FINGERPRINTS,

 27 INDICATES THERE WAS NO PREMEDITATION.

 28 NOW, MR. CONN MAKES A BIG THING OUT OF

 1 THE FACT THAT WHEN RACING OUT OF THE HOUSE LATER ON,

 2 ONE OR THE OTHER OF THE MENENDEZ BROTHERS

 3 SAID: "OOPS, THE SHELLS."

 4 NOW, ERIK MENENDEZ TESTIFIED THAT HE'S

 5 TAKING RESPONSIBILITY FOR A LOT OF THINGS HERE,

 6 INCLUDING THAT. BUT HE SAYS THAT HIS BROTHER

 7 CLAIMED THAT HE, LYLE MENENDEZ, WAS THE ONE WHO

 8 THOUGHT OF IT; AND IF YOU REMEMBER, ERIK MENENDEZ

 9 TESTIFIED THAT WHEN HIS BROTHER HAD GONE BACK INTO

 10 THE DEN AND THE LAST SHOT -- WE ALL KNOW WHICH ONE

 11 IT WAS -- WAS FIRED, HIS BROTHER LEFT HIS GUN, FOR

 12 SOME REASON, IN THE DEN; AND, THEREFORE, HAD TO GO

 13 BACK IN THE DEN WHEN THEY DECIDED, AFTER WAITING

 14 AROUND AND THE POLICE DIDN'T COME, LYLE MENENDEZ HAD

 15 TO GO BACK INTO THE DEN TO PICK UP THE GUN, BECAUSE

 16 THEY ALREADY DECIDED AT THIS POINT TO GET OUT OF

 17 THERE.

 18 AND SO WHEN HE WENT BACK IN THE DEN,

 19 ARGUABLY HE SAW THE SHELLS. MOREOVER, LYLE MENENDEZ

 20 HAD, ACCORDING TO ERIK MENENDEZ' TESTIMONY,

 21 UNEXPENDED ROUNDS, LIVE ROUNDS IN HIS POCKET, THAT,

 22 FOR SOME REASON, ERIK MENENDEZ DIDN'T KNOW ABOUT

 23 BEFORE THE SHOOTING. AND LYLE MENENDEZ DIDN'T

 24 REMEMBER IT BECAUSE HE WAS IN SUCH A PANIC AT THE

 25 TIME THEY RAN OUT TO DO THE RELOAD. THE RUNNING OUT

 26 TO DO THE RELOAD WAS COMPLETELY UNNECESSARY, BECAUSE

 27 LYLE MENENDEZ HAD SHELLS IN HIS POCKET. BUT

 28 OBVIOUSLY, IN THIS STATE HE DIDN'T THINK OF THAT.

 1 SO, I SUBMIT THAT IT'S MOST LIKELY -- I

 2 CAN'T SAY IT'S FOR SURE -- BUT IT'S MOST LIKELY THAT

 3 LYLE MENENDEZ IS THE ONE WHO SUGGESTED THE SHELLS,

 4 BECAUSE HE HAD JUST BEEN IN THE DEN AND THE SHELLS

 5 WERE RIGHT THERE NEAR THE ENTRY WAY.

 6 AND WITH RESPECT TO RIGHT THERE NEAR THE

 7 ENTRY WAY, MR. CONN GAVE YOU A SPECULATIVE THEORY

 8 THAT THE REASON WHY ERIK MENENDEZ IS SAYING THE

 9 SHELLS, THE EXPENDED ROUNDS, WERE RIGHT NEAR THE

 10 ENTRY WAY IS BECAUSE HE DOESN'T WANT TO ADMIT THAT

 11 HE WENT NEAR THE BODIES OF HIS PARENTS. THAT'S

 12 RIDICULOUS.

 13 THE REASON IS -- IF YOU REMEMBER THE

 14 TESTIMONY OF DEPUTY VAN HORN, THE MUCH MALIGNED

 15 DEPUTY VAN HORN, AND I WILL SPEND SOME TIME TALKING

 16 LATER ABOUT DEPUTY VAN HORN -- HE INDICATED THAT, FOR

 17 ONE THING, ON THIS KIND OF A WEAPON THE SHELLS EJECT

 18 TO THE RIGHT. AND IF YOU ARE NOT SKILLED THE WAY HE

 19 IS -- HE SAID HE COULD STAND THERE, STAND ANYWHERE,

 20 TAKE THAT GUN, AND BECAUSE HE IS AN EXPERT, HE COULD

 21 EJECT IT IN SUCH A WAY AS ALL THE SHELLS WOULD DROP

 22 STRAIGHT DOWN, BECAUSE HE'S AN EXPERT AND KNOWS HOW

 23 TO DO THAT.

 24 BUT IF YOU DO IT VERY FAST, THEY FLY

 25 WHERE? TO THE RIGHT. WHERE WAS ERIK MENENDEZ

 26 STANDING? HE SHOWED YOU WHERE HE WAS STANDING. HE

 27 RAN IN, HE FIRED AS HE RUNS, HE WINDS UP HALFWAY

 28 INTO THE ROOM. ALL THE CASINGS WOULD HAVE GONE TO

 1 THE RIGHT, WHICH IS AWAY FROM WHERE MR. AND MRS.

 2 MENENDEZ' BODIES WERE.

 3 AND THE SAME IS TRUE -- YOU MAY RECALL

 4 ERIK MENENDEZ ALSO SAID THAT SOME OF THE SHELL

 5 CASINGS WERE UNDERNEATH THE OCTAGONAL TABLE, WHICH

 6 IS OFF IN THE CORNER, AND THAT'S THE AREA THAT TABLE

 7 WOULD HAVE BEEN, TO THE RIGHT OF WHERE LYLE MENDEZ

 8 WAS WHEN HE WAS FIRIN

 9 SO, THE LOCATION OF THE SHELL CASING

 10 CORROBORATES ERIK MENENDEZ' TESTIMONY ABOUT WHAT

 11 HAPPENED INSIDE THE ROOM WHEN HE WENT IN.

 12 THE NEXT FACTOR HERE SHOWING A LACK OF

 13 PREMEDITATION IS THERE WAS NO DISPOSAL PLAN. IF

 14 YOU'RE PLANNING TO DO THIS, THEN ONE WOULD THINK

 15 YOU'D HAVE IN MIND: HOW ARE WE GOING TO GET RID OF

 16 EVIDENCE LATER? THE FACT THEY HAD TO GO BACK AND

 17 BUY MORE AMMUNITION SHOWS A LACK OF PLAN, BUT IN

 18 FACT THEY DID DO THAT.

 19 SO THERE WERE BOXES, AS YOU SAW HERE, AS

 20 IS IN EVIDENCE. I DON'T THINK YOU'RE GOING TO BE

 21 ALLOWED BY THE BAILIFF TO PLAY AROUND WITH THE LIVE

 22 AMMUNITION. THERE IS, AS TESTIFIED TO, A BOX OF

 23 LIVE AMMUNITION. IT COMES IN A CARDBOARD BOX.

 24 HERE THEY HAD SCRAMBLED THROUGH THE BACK

 25 OF THE CAR TO LOAD THE GUNS ORIGINALLY, AND THEN

 26 WHEN THEY WENT BACK AND ERIK MENENDEZ, SCRAMBLING,

 27 CAME UP WITH A SHELL AND HANDED IT TO HIS BROTHER.

 28 THERE'S A MESS IN THE BACK OF THAT CAR.

 1 YOU WOULD HAVE THOUGHT THAT THEY WOULD

 2 HAVE HAD A PLAN, AND PART OF THAT PLAN WOULD HAVE

 3 BEEN TO LOAD EARLIER. BUT APART FROM THAT, TO

 4 DISPOSE OF ALL OF THESE MATERIALS IN A RATIONAL AND

 5 SIMPLE WAY

 6 INSTEAD, THEY WIND UP GOING TO

 7 MULHOLLAND, CLIMBING HALFWAY DOWN THE MOUNTAIN,

 8 LEAVING THE GUNS ON A MOUNTAIN, WHERE IT IS MERE

 9 FORTUITY THEY HAVE NEVER BEEN FOUND. THE SERIAL

 10 NUMBERS ARE NOT TAKEN OFF THE GUNS. THE GUNS ARE

 11 NOT WIPED TO REMOVE FINGERPRINTS.

 12 IN FACT, IN REGARD TO THAT, AND EVEN

 13 WITH RESPECT TO WIPING THE SHELL CASINGS, ERIK

 14 MENENDEZ TESTIFIED THAT CONCERNING THE BURGLARIES,

 15 WHEN HIS FAMILY WAS PREPARING TO RETURN ALL THE

 16 STOLEN PROPERTY, HIS MOTHER INSISTED THAT THEY WIPE

 17 EVERYTHING DOWN TO TAKE THE FINGERPRINTS OFF OF IT.

 18 AND THAT'S EVEN HIS FINGERPRINTS. EVEN THOUGH HE IS

 19 ADMITTING IT, HE'S GOING TO THE SHERIFF'S

 20 DEPARTMENT, GOING TO TAKE THE BLAME FOR THESE

 21 BURGLARIES, HIS MOTHER INSISTED THAT NONE OF THEIR

 22 FINGERPRINTS BE ON IT.

 23 SO THERE'S ALREADY SOMEWHERE, STORED IN

 24 THE BACK OF HIS HEAD, THE NOTION THAT YOU WIPE OFF

 25 FINGERPRINTS, WHICH MAY HAVE ALSO COME INTO PLAY AT

 26 THE TIME THAT IT OCCURS TO THEM TO PICK UP SHELLS.

 27 BUT IN SUCH A RACE NOW, THEY DON'T EVEN

 28 THINK TO WIPE OFF THE GUNS, TAKE OFF THE SERIAL

 1 NUMBERS. THEY JUST DON'T DO IT.

 2 SIMILARLY, WHEN THEY STOP AT THE GAS

 3 STATION IN SANTA MONICA, I BELIEVE HE THOUGHT IT

 4 WAS, AND DUMP THE REST OF THE MATERIAL, INCLUDING

 5 HIS PANTS AND PROBABLY SHOES; EVEN THEN THERE IS NO

 6 THOROUGH SEARCH TO GET RID OF ALL POTENTIAL

 7 EVIDENCE.

 8 AND SO THE NEXT MORNING, HERE THEY ARE,

 9 AT THE HOUSE. THE POLICE HAVE GOT YELLOW TAPE

 10 AROUND HIS CAR, RIGHT? AND THEY MANAGE TO GET

 11 INSIDE THE CAR AND REMOVE THINGS, INCLUDING, HE

 12 SAID, THERE WAS ONE, HE BELIEVED, LIVE ROUND ON THE

 13 FRONT FLOORBOARD OF THE CAR.

 14 NOW, WHAT MUST BE PERFECTLY OBVIOUS TO

 15 ALL OF YOU, IS THAT IT WAS NOTHING BUT THE WILDEST

 16 OF LUCK, SHEER CHANCE, NOT PLAN, THAT THEY DIDN'T

 17 GET ARRESTED THAT VERY MORNING.

 18 DETECTIVE ZOELLER -- DON'T BLUSH.

 19 DETECTIVE ZOELLER TESTIFIED THAT

 20 DETECTIVE EDMONDS WAS THE SENIOR DETECTIVE, THAT IF

 21 GUNSHOT RESIDUE SIMPLY HAD BEEN DONE ON THE MENENDEZ

 22 BROTHERS' HANDS, IT WOULD HAVE BEEN DETECTIVE

 23 EDMONDS WHO WOULD HAVE REQUESTED IT.

 24 DETECTIVE ZOELLER WAS AT THE SCENE,

 25 AND EDMONDS NEVER DID REQUEST IT. AND I SUBMIT TO

 26 YOU THAT IF THAT TESTING HAD BEEN DONE AND GUNSHOT

 27 RESIDUE WAS THERE, IT WOULD HAVE BEEN FOUND. THEY

 28 WOULD HAVE BEEN ARRESTED THAT VERY NIGHT, AND THIS

 1 WOULD HAVE BEEN A MUCH SHORTER TRIAL, WITH A LOT

 2 FEWER ISSUES WE HAVE TO DISCUSS.

 3 THE FACT IS, THEY WERE NOT ARRESTED THAT

 4 NIGHT. THE FACT IS THAT THEY WERE BEING TREATED BY

 5 THE POLICE AS WITNESSES, VICTIMS, AND I THINK THE

 6 REASON FOR THAT IS OBVIOUS. ERIK MENENDEZ'

 7 EMOTIONAL STATE INDICATED THAT HE WAS HORRIFIED BY

 8 THE DEATH OF HIS PARENTS, AND THAT IS NOT

 9 INCONSISTENT WITH THE FACT THAT HE KILLED THEM.

 10 BECAUSE OF THE WAY IN WHICH THIS

 11 SHOOTING CAME ABOUT, THE FACT THAT HE WAS HORRIFIED

 12 BY WHAT HE FELT HE HAD NO CHOICE TO DO, IS NOT

 13 INCONSISTENT.

 14 MR. CONN WOULD HAVE YOU BELIEVE ALL THAT

 15 EMOTION WAS ACTING, AND THAT ALL THOSE POLI

 16 OFFICERS WERE STUPID. I MEAN, HE'S AT THE SCENE,E

 17 IS HYSTERICAL. THERE IS HYSTERIA ON THE 911 CALL.

 18 CHRISTINE NYE TESTIFIED IT SOUNDED LIKE GENUINE

 19 UPSET.

 20 DETECTIVE EDMONDS, WHO HAS INTERVIEWED

 21 NUMEROUS PEOPLE, WHO HAS BEEN A DETECTIVE FOR A LONG

 22 TIME, SAW WHAT HE BELIEVED WAS GENUINE GRIEVING. HE

 23 DESCRIBED HIM AS -- IN FACT, I HAVE IT. THIS ISN'T

 24 ALL MY WORDS, YOU'LL BE HAPPY TO KNOW. THIS IS

 25 TRANSCRIPT.

 26 HE SAID HIS EMOTIONAL CONDITION MADE IT

 27 IMPOSSIBLE TO CONTINUE THE INTERVIEW. HE SAID IT

 28 WAS APPROPRIATE TO SAY HE APPEARED DISTRAUGHT. HE

 1 DESCRIBED HIM AS SOBBING AND HIS BODY WAS SHAKING

 2 FROM THE SOBBING AT THE END OF THE INTERVIEW, AND

 3 THAT'S WHY THE INTERVIEW STOPPED.

 4 THAT'S NOT FAKING. THAT'S REAL. AND

 5 BECAUSE THERE'S REAL EMOTION HERE, THE POLICE DID

 6 NOT THINK IN TERMS OF SEXUAL MOLESTATION AND CHILD

 7 ABUSE IN BEVERLY HILLS. THEY WEREN'T THINKING IN

 8 TERMS OF A FAMILY CRISIS, SUCH AS WE KNOW HAPPENED

 9 HERE.

 10 AND THAT'S THE ONLY REASON THEY DIDN'T

 11 GET ARRESTED THAT VERY MORNING. THAT'S THE REASON

 12 WHY PATROL OFFICERS DIDN'T SCRUTINIZE THEM

 13 CAREFULLY. IT DOESN'T TAKE ANY GREAT DERRING-DO, IF

 14 YOU'RE BEING TREATED LIKE THE GRIEVING SONS WHEN

 15 THEY ARE THE GRIEVING SONS, NOTWITHSTANDING WHAT

 16 THEY DID. AND SO THEY GOT INTO THE CAR AND WERE

 17 ABLE TO REMOVE THAT SHELL AND BOXES, I BELIEVE, ERIK

 18 MENENDEZ SAID.

 19 THIS IS A SUBTLE POINT, THE NOTION

 20 THAT -- THE FACT IS, AS I REMEMBER THE TESTIMONY,

 21 THEY WAITED AROUND. THEY WERE IN THAT NUMB STATE

 22 THAT DR. WILSON HAS TESTIFIED FOLLOWS A

 23 HYPER-REACTIVE, HYPER-AROUSED STATE IN P.T.S.D.

 24 ERIK MENENDEZ TESTIFIED HE'S IN THAT

 25 NUMB STATE. THEY'RE SITTING AROUND IN THE FOYER

 26 AREA. MR. CONN SAYS THEY ONLY WAITED THREE OR FOUR

 27 MINUTES. MR. MENENDEZ TESTIFIED, YOU KNOW, THEY

 28 WEREN'T WATCHING THEIR WATCHES. IT SEEMED LIKE A

 1 LONG TIME. MAYBE IT WAS THREE OR FOUR MINUTES. WE

 2 HAVE NO WAY OF KNOWING EXACTLY HOW LONG.

 3 BUT THE BOTTOM LINE IS THE POLICE DIDN'T

 4 COME. THE POLICE DIDN'T COME.

 5 AND SO, THEY WENT AND PICKED -- LYLE

 6 MENENDEZ PICKED UP HIS GUN. THEY DECIDED TO PICK UP

 7 THE SHELLS. BUT THIS ALL MEANS THEY DIDN'T RACE

 8 RIGHT OUT THE DOOR. THE FACT THEY PICKED UP SHELLS

 9 AT ALL MEANS THEY DID NOT RACE RIGHT OUT THE DOOR.

 10 THE POLICE WERE NOT RIGHT UPON THEM, EVEN THOUGH THE

 11 STATION'S A MINUTE AWAY, ONE MINUTE AWAY.

 12 AND THEN, OF COURSE, THERE IS THE FACT

 13 THAT, ALTHOUGH THE WORD HAS BEEN USED VERY LOOSELY

 14 IN THIS TRIAL, THERE WAS NO ALIBI. AN ALIBI MEANS

 15 THAT YOU CAN PUT YOURSELF SOMEWHERE ELSE AT THE TIME

 16 THAT A CRIME IS OCCURRING.

 17 NOW, THEY COULD SAY WE WERE AT THE

 18 MOVIES, AND THEY DID SAY WE WERE AT THE MOVIES.

 19 BUT, OF COURSE, THEY HAD NO PROOF THAT THEY WERE AT

 20 THE MOVIES, AND IT WAS THE EASIEST THING IN THE

 21 WORLD TO GET. YOU GO TO THE MOVIE, IF YOU'RE

 22 PLANNING TO DO THIS, EARLIER THAT DAY, AND YOU BUY

 23 TICKETS, AND YOU GO INTO THE MOVIE. YOU GO IN.

 24 THEY LIVE FIVE MINUTES AWAY FROM THIS MOVIE

 25 THEATRE. YOU GO INTO THE MOVIE. YOU LET THEM TEAR

 26 THE TICKETS. YOU BUY POPCORN. BE SEEN BY PEOPLE.

 27 AND THEN YOU LEAVE AFTER THE MOVIE BEGINS.

 28 AND THEN YOU HAVE YOUR PROOF THAT YOU

 1 WENT TO THE MOVIES. I MEAN, AT THE CENTURY-14, YOU

 2 CAN EVEN CALL UP AND RESERVE TICKETS IN ADVANCE.

 3 YOU DON'T EVEN HAVE TO WAIT IN LINE TO DO THIS.

 4 WILL-CALL, AMERICAN EXPRESS AT THE MOVIE THEATERS,

 5 EVEN IN '89.

 6 BUT NONE OF THAT WAS DONE. IF THEY WERE

 7 PLANNING TO DO THIS, IF THE PROSECUTION IS RIGHT, IF

 8 TALKING TO PERRY BERMAN -- AND I'LL SHOW YOU WHY

 9 THAT'S A FALLACIOUS THEORY -- BUT IF TALKING TO PERRY

 10 BERMAN IS AN EFFORT TO SATISFY AN ALIBI, GO GET

 11 YOURSELF A MOVIE TICKET. IT ONLY COST SEVEN BUCKS.

 12 BUT THEY DIDN'T DO IT. SO THEY'RE LEFT

 13 AFTERWARDS, WHEN SURVIVAL HAS OVERWHELMED THEM AND

 14 THEY WANT TO ESCAPE RESPONSIBILITY AT THAT POINT, TO

 15 THE LAW, AT LEAST -- THEY RUSH TO THE MOVIE THEATER

 16 AND FIND OUT THEY CAN'T GET TICKETS TO THE MOVIE

 17 THAT WAS PLAYING AT THE TIME OF THE SHOOTINGS, WHICH

 18 IS THE ONLY MOVIE TICKET THAT'S GOING TO GIVE THEM

 19 AN ALIBI. THEY BUY A TICKET. THEY SEE IT'S THE

 20 WRONG TIME. THROW IT AWAY

 21 SO THAT CERTAINLY, SAYING, "I WAS AT THE

 22 MOVIES," IS NOT TOO TERRIFIC, ESPECIALLY WHEN YOU

 23 COULD HAVE EASILY COME UP WITH SOMETHING TO PROVE

 24 THEY WERE AT THE MOVIES.

 25 NOW, THIS BUSINESS OF PERRY BERMAN AS AN

 26 ALIBI. YOU DON'T TELL SOMEONE YOU'RE GOING TO MEET

 27 THEM AT A PARTICULAR TIME AFTER YOU HAVE COMMITTED A

 28 CRIME AND THINK THAT PERSON IS GOING TO PROVIDE YOU

 1 WITH AN ALIBI FOR WHEN YOU DID COMMIT THE CRIME.

 2 THAT'S PART ONE.

 3 PART TWO: IF YOU DO SET SOMEONE UP TO

 4 BE A WITNESS THAT YOU DIDN'T SHOW UP, OKAY -- THAT'S

 5 WHAT PERRY BERMAN WOUND UP -- TRY TO GET THERE IN

 6 TIME TO TALK TO HIM. GET THERE IN TIME TO TALK TO

 7 HIM AND SAY, "BOY, WE'VE BEEN DRIVING AROUND FOR AN

 8 HOUR TRYING TO FIND THIS PLACE." AT LEAST HE COULD

 9 SAY YOU SAID THAT, AND THAT WOULD COVER THE TIME OF

 10 YOUR CRIME.

 11 BUT IN THIS CASE ALL THEY DO IS TIP

 12 SOMEBODY OFF THAT THEY WEREN'T WHERE THEY WERE

 13 SUPPOSED TO BE AT THE CRUCIAL TIME THAT THIS OFFENSE

 14 IS HAPPENING

 15 SO THEY SET UP PERRY BERMAN TO BE A

 16 WITNESS AGAINST THEM. THAT'S NOT AN ALIBI. THE

 17 WHOLE DISCUSSION WITH PERRY BERMAN THAT AFTERNOON,

 18 FOLKS, WAS A SOCIAL PLAN. THEY WERE GOING TO MEET

 19 PERRY BERMAN, AND HERE'S THE PROOF.

 20 PERRY BERMAN TESTIFIED TO THIS. THEY

 21 ASKED HIM TO GO TO THE MOVIES WITH THEM THAT

 22 AFTERNOON, AND HE TESTIFIED TO IT. I'VE GOT THE

 23 TESTIMONY. THEY ASKED HIM TO GO TO THE MOVIES WITH

 24 THEM. THEIR ONLY PLAN WAS TO GO TO THE MOVIES THAT

 25 DAY, AND PERRY BERMAN WOULD HAVE BEEN WITH THEM.

 26 THEY WEREN'T PLANNING ON KILLING THEIR PARENTS.

 27 THEY WERE GOING TO GO TO THE MOVIES WITH PERRY

 28 BERMAN, AND HE SAID: "NO, I'VE GOT OTHER PLANS.

 1 I'M GOING TO BE AT THE "TASTE OF L.A." SO WHAT IS

 2 MADE IS A SOCIAL PLAN. OKAY?

 3 "AFTER WE GO TO THE MOVIES, WE'LL MEET

 4 YOU AT "TASTE OF L.A." THAT'S NOT AN ALIBI. THAT'S

 5 A SOCIAL PLAN THAT THEY DIDN'T KEEP, WHICH IS PROOF

 6 AGAINST THEM.

 7 AND THE SAME THING IS TRUE ABOUT THIS

 8 PERSON NAMED CAREY PARKER. WHAT ERIK MENENDEZ SAID

 9 IS THAT FOR A WEEK HIS BROTHER HAD A DATE TO GO SEE

 10 "BATMAN" WITH CAREY PARKER, THAT 8:00 SHOWING,

 11 RIGHT? WELL, THEY DIDN'T SHOW UP. FOR ALL THEY

 12 KNEW, CAREY PARKER WAS INSIDE THAT THEATRE WAITING

 13 FOR THEM, AND THEY DIDN'T SHOW UP. AND AS HE

 14 EXPLAINED IT, WHEN THEY DID GET TO THE MOVIE THEATRE

 15 LATER, AFTER THE SHOOTINGS, THEY TRIED TO BUY

 16 TICKETS FOR A DIFFERENT SHOW, BECAUSE THEY DIDN'T

 17 WANT TO WALK INTO THE "BATMAN" SHOW AND HAVE CAREY

 18 PARKER SAY, "I BEEN WAITING FOR YOU GUYS FOR TWO

 19 HOURS," AND ANOTHER WITNESS WOULD HAVE BEEN READY TO

 20 SAY THEY ABSOLUTELY DIDN'T SHOW UP, ANOTHER WITNESS

 21 THAT COULD HAVE PROVEN THAT THEY WERE THE PEOPLE WHO

 22 KILLED THEIR PARENTS, RATHER THAN BEING PEOPLE WHO

 23 WERE SOMEWHERE ELSE AT THE TIME.

 24 THAT'S NOT ALIBI-MAKING.

 25 AND HERE'S ANOTHER PIECE. DETECTIVE

 26 ZOELLER TESTIFIED THAT HE TRACED THE PHONE CALLS

 27 THAT WERE MADE FROM THE SANTA MONICA CIVIC -- YOU MAY

 28 RECALL THEY GOT TO THE SANTA MONICA CIVIC TOO LATE

 1 TO FIND PERRY BERMAN THERE. THE PLACE WAS CLOSING

 2 DOWN. LYLE MENENDEZ MADE A PHONE CALL, OR PHONE

 3 CALLS, CAME BACK, AND TOLD ERIK MENENDEZ: "WE'RE

 4 GOING TO MEET PERRY AT THE CHEESECAKE FACTORY."

 5 AND THEY LEAVE. AND THAT'S THEIR

 6 INTENTION. AND ON THE WAY BACK, ERIK MENENDEZ

 7 CANNOT KEEP IT TOGETHER. HE CANNOT GO OUT IN PUBLIC

 8 AND SEE ANYBODY. HE IS TOO DISTRAUGHT. HE IS TOO

 9 UPSET.

 10 AND SO THEY DECIDED AT THAT POINT TO

 11 JUST GO HOME AND CALL THE POLICE, WHICH IS ALL THEY

 12 THOUGHT TO DO, GO HOME AND CALL THE POLICE; NOT

 13 LEAVE TOWN, NOT HIDE OUT, NOT GO SOMEWHERE AND HAVE

 14 TIME TO MAKE UP A STORY THAT "WE WERE ON VACATION

 15 WHEN THIS THING HAPPENED," NONE OF THAT.

 16 AND, YOU KNOW -- WELL, I'LL GET BACK TO

 17 THIS IN A MINUTE ABOUT WHO SAW THIS ISOLATED FAMILY

 18 THAT WHOLE WEEK, THAT WHOLE WEEK THIS STUFF IS GOING

 19 ON. THERE'S NOBODY, REALLY, AROUND THEM, AND THIS

 20 BESPEAKS THIS ISOLATION. BUT ANYWAY...

 21 THEY ARE AT THE SANTA MONICA CIVIC.

 22 HERE'S LYLE MENENDEZ, ACCORDING TO THE PROSECUTION'S

 23 THEORY, TRYING TO MAKE AN ALIBI. THEY GOT TO THE

 24 MOVIES AND THE SANTA MONICA CIVIC AT 11:00

 25 SOMETHING. AT THIS POINT A LONG TIME HAS GONE BY.

 26 SO HE PLACES THESE CALLS TO CAREY PARKER ON HIS

 27 CREDIT CARD.

 28 REMEMBER, DETECTIVE ZOELLER TALKED ABOUT

 1 HE GOT THE SPRINT RECORDS? THESE ARE CREDIT CAR

 2 CALLS. THIS WILL SHOW EXACTLY WHAT TIME HE MADE

 3 THOSE CALLS AND SHOW EXACTLY THAT HE HAD THE

 4 OPPORTUNITY TO COMMIT THESE SHOOTINGS, BECAUSE HE

 5 WASN'T IN SANTA MONICA UNTIL THE TIME THAT THESE

 6 CALLS WERE MADE. EVEN IF PERRY BERMAN DISAPPEARED

 7 OFF THE FACE OF THE EARTH, HERE WE HAVE LYLE

 8 MENENDEZ USING A PHONE OUT THERE WELL AFTER THE TIME

 9 THAT HE NEEDED TO COVER HIM FOR AN ALIBI.

 10 I WANT TO TALK A LITTLE BIT ABOUT THE

 11 GUN PURCHASE, IF I CAN FIND MY NOTES ON THE GUN

 12 PURCHASE. BACK TO HERE. AND WHY THE WHOLE WAY THAT

 13 THAT WAS DONE DOES NOT INDICATE PREMEDITATION.

 14 I REMEMBER WHAT I WAS GOING TO SAY.

 15 IT'S CALLED "BUYING THE GUNS IN SAN DIEGO AND THE

 16 FAKE I.D."

 17 ALL RIGHT. NOW, WHAT'S THE

 18 PROSECUTION'S THEORY? IT'S SUSPICIOUS AND SINISTER

 19 THAT THEY WENT TO SAN DIEGO TO BUY THESE GUNS.

 20 WHY? WHY DOES BUYING THESE GUNS IN SAN DIEGO

 21 SUPPORT A PREMEDITATION OR PLANNING THEORY? IF YOU

 22 ARE GOING TO USE FAKE -- I MEAN, IF YOU'RE GOING TO

 23 USE FAKE IDENTIFICATION, WHAT DIFFERENCE DOES IT

 24 MAKE WHAT CITY YOU BUY THE GUNS IN? WHAT POSSIBLE

 25 DIFFERENCE COULD IT MAKE?

 26 WELL, YOU MAY SAY THEY DIDN'T WANT TO BE

 27 SEEN. THEY DIDN'T WANT TO BE SEEN. BUT THEY WENT

 28 TO THE BIG-5 IN SANTA MONICA. THEY DIDN'T WANT TO

 1 BE SEEN BUYING ANYTHING, SO THEY WENT TO THE TARGET

 2 PLACE HERE IN VAN NUYS. I MEAN, IT DOESN'T MATTER

 3 WHERE YOU BUY GUNS IF YOU'RE BUYING THEM WITH A FAKE

 4 I.D.

 5 BUT IT MAKES NO SENSE TO SAY THEY DROVE

 6 DOWN TO SAN DIEGO TO HIDE OUT TO BUY GUNS, WHEN THE

 7 VERY NEXT DAY THEY HIDE OUT ALL THE WAY IN VAN NUYS

 8 AND BUY AMMUNITION, AND EXPECT WHEN THEY GO THERE

 9 THAT THEY'RE GOING TO BE -- AT LEAST ERIK MENENDEZ

 10 EXPECTED THAT HE'S GOING TO GET AN OPPORTUNITY TO

 11 FIGURE OUT HOW THIS GUN WORKS, AND HOW IT FEELS AND

 12 WHETHER OR NOT HE CAN DO THAT, AND ALL THAT THOSE

 13 OTHER ISSUES. AND HE'S GOING TO DO THAT IN

 14 LOS ANGELES COUNTY, BE SEEN WITH A GUN IN

 15 LOS ANGELES COUNTY.

 16 SO WHAT POSSIBLE DIFFERENCE DOES IT MAKE

 17 THAT THEY BOUGHT THE GUNS IN SAN DIEGO?

 18 I MEAN, THE FACT THAT THEY ARE IN SAN

 19 DIEGO SIMPLY CORROBORATES WHAT ERIK MENENDEZ IS

 20 SAYING, WHICH IS THEY WANTED TO GET OUT OF THE

 21 HOUSE, AND THEY STARTED DRIVING, AND THEY WERE

 22 TALKING A GREAT DEAL ABOUT THE PAST, WHAT ERIK

 23 MENENDEZ WAS TELLING HIS BROTHER, ALL THE GRUESOME

 24 DETAILS ABOUT THE RELATIONSHIP WITH HIS FATHER, THE

 25 SEXUAL RELATIONSHIP, THE THREATS, WHY IT WAS SO

 26 SCARY. ALL OF THAT IS HAPPENING ON THIS LONG DRIVE

 27 TO SAN DIEGO.

 28 THERE'S NO OTHER REASON TO GO TO SAN

 1 DIEGO EXCEPT TO TAKE THAT LONG DRIVE.

 2 AND, IN FACT, BEING TOTALLY UNFAMILIAR

 3 WITH SAN DIEGO, IT MAKES IT HARDER TO COME UP WITH A

 4 FAKE ADDRESS. AND, IN FACT, WHAT HAPPENED WAS, AS

 5 ERIK MENENDEZ TESTIFIED, HE COULDN'T REMEMBER THE

 6 FAKE ADDRESS HE LOOKED UP IN THE PHONE BOOK AT

 7 MCDONALD'S, OR WHEREVER IT WAS HE HAD LUNCH. HE

 8 FORGOT IT, SO HE USED AUGUST STREET, WHICH IS THE

 9 MONTH.

 10 HERE'S THE OTHER THING. IF YOU'RE

 11 PLANNING ON BUYING GUNS AND YOU'RE PLANNING ON USING

 12 FAKE I.D., WHY USE THE I.D. OF YOUR BROTHER'S FORMER

 13 ROOMMATE, WHEN YOU HAVE A TOTALLY FICTITIOUS FAKE

 14 I.D.?

 15 REMEMBER DR. DIETZ MADE A BIG DEAL OUT

 16 OF THE FACT THAT OH, IT WAS A TERRIBLE, TERRIBLE

 17 CRIME. THAT ERIK MENENDEZ WENT TO THE D.M.V. WITH A

 18 BIRTH CERTIFICATE, GOT A TOTALLY FAKE I.D. IN THE

 19 NAME OF RICHARD STEVENS.

 20 WELL, THERE'S NO RICHARD STEVENS. IF

 21 YOU ARE PLANNING ON BUYING GUNS AND YOU UNDERSTAND

 22 YOU NEED I.D., WHICH YOU'D THINK CONSPIRATORS WOULD

 23 FIGURE OUT, WHY NOT USE THE TOTALLY UNTRACEABLE I.D.

 24 OF RICHARD STEVENS, INSTEAD OF A REALLY COMMON NAME,

 25 DONOVAN GOODREAU, YOUR BROTHER'S FORMER ROOMMATE?

 26 MR. CONN ALSO ATTACHES SINISTER

 27 CONNOTATIONS TO THE FACT THAT THEY USED A FAKE I.D.

 28 ERIK MENENDEZ EXPLAINED HE CARRIED DONOVAN

 1 GOODREAU'S I.D. TO GET INTO CLUBS. IT WAS ONE OF

 2 THE FAKE I.D.'S HE USED, AND HE DIDN'T HAVE A

 3 CALIFORNIA DRIVER'S LICENSE. THE RICHARD STEVENS

 4 WAS NOT A DRIVER'S LICENSE. IT WAS AN I.D.

 5 SO HE DIDN'T HAVE HIS CALIFORNIA

 6 DRIVER'S LICENSE. MR. CONN WILL NOT CONCEDE A

 7 SINGLE POINT IN THIS CASE, BECAUSE OF A DESPERATE

 8 NEED FOR A CONVICTION IN THIS CASE, FOR ALL SORTS OF

 9 POLITICAL REASONS. HE WON'T EVEN CONCEDE WHEN WE

 10 HAVE PROOF HE GOT A TICKET IN JULY FOR DRIVING

 11 WITHOUT A LICENSE, AND THEN HE'S WITH HIS AUNT

 12 MARTHA CANO, AND HE HAS NO LICENSE.

 13 WHY WOULD HE HIDE HIS DRIVER'S LICENSE

 14 FROM HIS AUNT MARTHA CANO IF HE HAD ONE? HE DIDN'T

 15 HAVE ONE. SO SHE TAKES HIM TO THE D.M.V. IN FLORIDA

 16 AND HE GETS ONE. BUT THEY CAN'T EVEN CONCEDE THAT

 17 POINT, THAT HE DIDN'T HAVE A LICENSE IN HIS

 18 POSSESSION.

 19 THE OTHER THING ABOUT THIS PARTICULAR

 20 GUN PURCHASE IS THEY CHOSE A PLACE TO BUY THESE

 21 GUNS, THESE SUPPOSED CONSPIRATOR-PLANNERS, THAT HAD

 22 A VIDEO CAMERA VISIBLE; IN FACT, TWO OF THEM VISIBLE

 23 IN PHOTOGRAPHS. YOU CAN SEE THEM YOURSELVES. THEY

 24 DIDN'T KNOW, BECAUSE IT WAS NOT ADVERTISED, THAT THE

 25 VIDEO CAMERA WASN'T WORKING.

 26 NOW, YOU DON'T HAVE ANY INFORMATION

 27 ABOUT WHETHER THE OTHER GUN STORE IN SAN DIEGO OR

 28 THE TARGET STORE HERE IN VAN NUYS HAS A VIDEO

 1 CAMERA. I'VE BEEN IN A LOT GUN STORES, AND THEY

 2 DON'T ALL HAVE VIDEO CAMERAS. THEY DIDN'T EVEN

 3 CARE. THEY DIDN'T EVEN SHOP FOR ONE WITHOUT A VIDEO

 4 CAMERA

 5 AND FINALLY, ALTHOUGH THIS IS A

 6 STATEMENT MADE AFTER THE SHOOTING, IT SHOWS A STATE

 7 OF MIND OF ERIK MENENDEZ HAVING TO DO WITH WHAT HE

 8 TOLD DR. WILSON. AND THERE'S SOMETHING ELSE HERE

 9 TOO HAVING TO DO WITH CREDIT CARDS.

 10 WE KNOW LYLE MENENDEZ HAD CREDIT CARDS.

 11 ERIK MENENDEZ TESTIFIED THERE WAS A VISA CARD THAT

 12 BELONGS TO HIS MOM THAT LYLE MENENDEZ WAS NOT

 13 SUPPOSED TO USE. AND THE REASON WHY HIS MOTHER GOT

 14 UPSET OVER THE PURCHASE OF THE CAMCORDER IS BECAUSE

 15 SHE THOUGHT IT WAS ON HER VISA CARD, WHEN THIS WAS,

 16 IN FACT, THE JUMBO AMERICAN EXPRESS CARD, THE ONE

 17 WITH THE $250,000 LIMIT THAT JOSE MENENDEZ GAVE LYLE

 18 MENENDEZ TO USE FOR PURCHASES.

 19 SO THEY HAVE TWO CREDIT CARDS,

 20 SUPPOSEDLY THAT THEY COULD USE. BUT THEY DON'T USE

 21 THEM.

 22 NOW, IF THEY THINK THEIR PARENTS ARE

 23 GOING TO BE DEAD WITHIN A DAY OR TWO, WHY NOT?

 24 THEY'RE NOT GOING TO GET THE BILL. THEY'RE NOT

 25 GOING TO SEE IF YOU BOUGHT GUNS. IT'S THE SAME MIND

 26 SET AS WHAT ERIK MENENDEZ TOLD DR. WILSON.

 27 EVEN IF HE HAD HAD HIS OWN I.D., HE

 28 WOULDN'T HAVE USED IT BECAUSE HE THIS THE GUN

 1 STORE -- ONCE YOU BUY A GUN, MAYBE THE N.R.A. GET

 2 THE LIST OF PEOPLE WHO BUY GUNS. I DON'T KNOW IF

 3 THEY DO OR NOT. IT WOULD MAKE SENSE. AND THEY MAY

 4 GET LITERATURE. AND THAT WOULD TIP JOSE MENENDEZ

 5 OFF THAT HIS SONS HAD BOUGHT GUNS, WHICH HE PROBABLY

 6 WOULDN'T LIKE.

 7 WELL, WHY WOULD YOU BE CONCERNED ABOUT

 8 YOUR FATHER GETTING THE BILL IF YOU'RE PLANNING ON

 9 KILLING HIM IN A DAY OR TWO? OBVIOUSLY, YOU

 10 WOULDN'T.

 11 I JUST WANT TO SEE IF I'M LEAVING

 12 ANYTHING OUT. I DON'T WANT TO HAVE TO GO BACK.

 13 ALL RIGHT. NOW, MORE SPECIFICALLY, I

 14 WANT TO DEAL WITH THE SUPPOSED GREED EVIDENCE IN

 15 THIS CASE. AND LOGICALLY ENOUGH, WE CALL THIS CHART

 16 "EVIDENCE OF GREED AS MOTIVE."

 17 NOW, I'VE ALREADY MENTIONED THIS TO YOU,

 18 BUT WITH RESPECT TO THAT TIME PERIOD BEFORE THE

 19 SHOOTINGS, THERE WAS ABSOLUTELY NO EVIDENCE

 20 WHATSOEVER PRESENTED THAT ERIK MENENDEZ HAD ANY

 21 FINANCIAL-BASED MOTIVE TO KILL HIS PARENTS, NO

 22 TROUBLE OVER MONEY, NO ARGUMENTS OVER MONEY. BUT

 23 THERE IS SOMETHING VERY INSIGHTFUL, I THINK, ON THE

 24 WAY THIS FAMILY OPERATED THAT YOU CAN GLEAN FROM THE

 25 TESTIMONY OF BRIAN ANDERSEN.

 26 ANDERSEN IS MARY LOUISE MENENDEZ'

 27 BROTHER, AND HE TESTIFIED -- HE WAS ONE OF THE FIRST

 28 WITNESSES CALLED -- HE TESTIFIED HE LIVES IN

 1 ILLINOIS, YOU MAY RECALL. HE HAS HIS OWN PLANE. HE

 2 IS THE UNCLE BRIAN THAT ERIK MENENDEZ TESTIFIED WAS

 3 A REAL ESTATE INVESTOR, AND HE TALKED TO ERIK

 4 MENENDEZ ABOUT INVESTING WITH HIM IN THE FUTURE,

 5 AFTER THE INHERITANCE, AND MAKING A 30-MILLION-DOLLAR

 6 RETURN. THAT'S WHERE THAT CAME FROM. OKAY?

 7 HERE'S UNCLE BRIAN ANDERSEN ON TH

 8 WITNESS STAND, AND HE TESTIFIES THAT IN AUGUST HE

 9 SEES HIS SISTER AND HIS NEPHEW AT HIS HOME IN

 10 DOWNERS GROVE, ILLINOIS. THEY'RE GOING TO BE GOING

 11 TO THE FINALS OF THE JUNIOR AMATEUR TENNIS

 12 TOURNAMENT IN KALAMAZOO.

 13 AND HE DISCOVERS, AFTER ERIK MENENDEZ

 14 AND MARY LOUISE MENENDEZ HAVE ARRIVED AT HIS HOME,

 15 THAT ERIK MENENDEZ WANTS TO USE THE PHONE. HE'S

 16 CONCERNED BECAUSE HE HAS LEFT SOMETHING ON THE

 17 AIRPLANE THAT HE CAME IN ON. OBVIOUSLY, HE CAME IN

 18 SEPARATELY FROM HIS MOTHER. AND HE'S CONCERNED

 19 ABOUT THIS, THE RECKLESS, IRRESPONSIBLE PERSON THAT

 20 HE WAS. HE IS CONCERNED ABOUT THIS.

 21 SO HE'S CALLING THE AIRLINE TO FIND OUT

 22 IF -- IT TURNED OUT IT WAS A VIDEO CAMERA, CAMCORDER,

 23 THAT HE LEFT IN THE BAGGAGE DEPARTMENT, THIS IS

 24 SOMETHING MR. CONN LIKES TO LABEL AS IRRESPONSIBLE

 25 AND RECKLESS, BUT HE'S TRYING TO FIND THIS

 26 $900-CAMERA, WHICH HE THINKS IS A GREAT DEAL OF

 27 MONEY, HIS UNCLE BRIAN ANDERSEN TESTIFIED TO.

 28 HOWEVER, THE EVIDENCE COMES OUT ALSO

 1 THAT ERIK MENENDEZ DIDN'T BUY THIS. MARK HEFFERNAN

 2 TESTIFIED HE SUGGESTED THAT LYLE MENENDEZ PURCHASE

 3 THIS CAMCORDER WHEN HE AND LYLE MENENDEZ WERE IN NEW

 4 YORK EARLIER THAT SUMMER, BECAUSE IT IS A USEFUL

 5 TOOL FOR TRAINING, SO YOU CAN SEE PLAYBACKS OF HOW

 6 YOU'RE PLAYING SO YOUR COACH CAN COACH YOU MORE

 7 EFFECTIVELY. THIS IS NOT A FRIVOLOUS THING. THIS

 8 IS NOT BEING DONE TO MAKE HOME MOVIES. IT'S FOR,

 9 YOU KNOW, THEIR WORK, TENNIS. TENNIS IS THEIR JOB.

 10 SO THIS IS ALL EXPLAINED, THAT LYLE

 11 MENENDEZ PURCHASED IT WITH MARK HEFFERNAN FOR A

 12 LEGITIMATE PURPOSE. AND WHAT DOES MRS. MENENDEZ

 13 DO? WHAT SHE DID HER WHOLE LIFE. SHE TURNED ON

 14 ERIK MENENDEZ. "YOU KIDS HAVE TO STOP DOING THIS."

 15 DOING WHAT? LEAVING CAMCORDERS ON AIRPLANES? SHE'S

 16 BLAMING HIM AND JUMPING ON HIM.

 17 NOW, THE PEOPLE WANTED TO TRY TO USE

 18 THAT EVIDENCE TO SHOW STOP SPENDING, BUT THERE'S NO

 19 EVIDENCE ERIK MENENDEZ EVER EXCEEDED HIS ALLOWANCE.

 20 SO SHE JUST TURNED ON HIM. IT'S HIS FAULT THAT LYLE

 21 MENENDEZ AND MARK HEFFERNAN, WHEN HE WASN'T EVEN

 22 THERE, BOUGHT A CAMCORDER, AND SHE BLAMES HIM.

 23 SHE TENDED TO BLAME HER CHILDREN FOR

 24 EVERYTHING THAT MADE HER UNHAPPY, AND HERE SHE'S

 25 BLAMING ERIK MENENDEZ FOR SOMETHING HE DIDN'T DO.

 26 YES, HE WAS NOT CAREFUL. HE LEFT THE CAMCORDER ON

 27 THE AIRPLANE, BUT IT'S THERE. IT'S NOT LOST. AND

 28 HE'S CONCERNED ABOUT IT. AND THEY GO BACK TO THE

 1 AIRPORT, AND THEY GET THE CAMCORDER.

 2 NOW, WAS SHE REALLY UPSET OVER THE

 3 SPENDING OF THIS MONEY? THERE'S NOT A MENTION MADE,

 4 ACCORDING TO BRIAN ANDERSEN, OF RETURNING IT AND

 5 GETTING THE MONEY BACK. INSTEAD SHE USES IT. SHE

 6 TAKES 12 VIDEOS WITH THAT CAMCORDER THAT WEEKEND.

 7 SO ALTHOUGH SHE'S VERY HOSTILE TO HER

 8 SONS, THE BASIS OF THAT HOSTILITY, I SUBMIT TO YOU,

 9 HAS NOTHING TO DO WITH ANYTHING BAD THAT THEY ARE

 10 ACTUALLY DOING.

 11 OKAY. SO THERE IS NO EVIDENCE THAT ERIK

 12 MENENDEZ HAD ANY EXTRAORDINARY NEED FOR MONEY OR

 13 SPENT MONEY RECKLESSLY, OR IN ANY OTHER WAY, OR

 14 EXCEEDED HIS ALLOWANCE. NONE OF THAT, NOTHING, OR

 15 SAID ANYTHING, NOTHING, BEFORE THE SHOOTING.

 16 NOW, AFTER THE SHOOTINGS THERE'S

 17 EVIDENCE THAT, AS I'VE SAID BEFORE, HE SPENT PART OF

 18 THE $325,000, AND HE ALLOWED HIS BROTHER TO PAY FOR

 19 A ROLEX WATCH FOR HIM AT THE JEWELRY STORE.

 20 NOW, HE TAKES RESPONSIBILITY FOR THAT

 21 WATCH TOO. HE SAID, "I BOUGHT IT." BUT YOU HEARD

 22 THE TESTIMONY OF MS. MAHAR. AND LYLE MENENDEZ WAS

 23 DOING MOST OF THE TALKING; AND AGAIN, IT'S

 24 INTERESTING. LYLE MENENDEZ SPEAKS TO CARLOS BARALT

 25 WHILE AT THE JEWELRY STORE ABOUT THE FACT THAT THESE

 26 WATCHES ARE BEING PURCHASED.

 27 NOW, THAT EVIDENCE IS NOT INTRODUCED TO

 28 BLAME UNCLE CARLOS BARALT FOR PURCHASE OF THESE

 1 WATCHES. IT'S INTRODUCED TO SHOW THAT THEY ARE NOT

 2 ON SOME WILD SPREE. IT'S NOT SOME PENT-UP DESIRE,

 3 BECAUSE IF THAT WERE TRUE, YOU WOULDN'T TELL PEOPLE

 4 WHAT YOU'RE DOING. I'D KEEP IT A SECRET, AND

 5 THERE'S NO SECRET ABOUT ANYTHING THAT WAS SPENT

 6 HERE.

 7 IN ANY EVENT, WHAT WE HAVE -- THE WATCH

 8 IS NOT ON THERE, SO I'LL BE FAIR. I'LL PUT IT ON.

 9 ERIK MENENDEZ WANTS TO TAKE RESPONSIBILITY FOR IT.

 10 NOW HE'S GOT IT.

 11 HOWEVER, AGAIN, MR. CONN TALKS ABOUT THE

 12 MONEY CLIPS. HE'S BLAMING THE STORE FOR SELLING

 13 THEM. THAT'S NOT WHAT HE SAID. "WHY DID YOU BUY

 14 MONEY CLIPS?"

 15 "BECAUSE I WAS CARRYING AROUND MONEY, A

 16 LOT OF MONEY, FOR THE FIRST TIME IN MY LIFE, BECAUSE

 17 I HAD TO PAY FOR ALL MY OWN EXPENSES. AND THEY SOLD

 18 MONEY CLIPS THERE, SO I BOUGHT IT." PERIOD.

 19 OKAY. THEN HE SPENT PART, AS WE'VE

 20 SAID, AND AS YOU HEARD AD NAUSEAM, PART OF THE MONEY

 21 ON A JEEP, ON FURNITURE, ON A TENNIS COACH, ALL OF

 22 THAT. FINE.

 23 NOW, WHAT CONTRADICTS THE NOTION THAT

 24 THIS WAS DONE FOR MONEY? HOW ABOUT FIVE MILLION

 25 DOLLARS? FIVE MILLION SMACKERS. IF YOU WANT TO

 26 KILL YOUR FATHER, AND AS WE KNOW, THERE IS NO HURRY

 27 HERE. ACCORDING TO THIS THEORY, NOTHING IS

 28 HAPPENING, FOLKS. OKAY?

 1 HE'S GOING TO TAKE A PHYSICAL, AND ONCE

 2 HE TAKES -- I THINK ERIK MENENDEZ SAID IN TWO WEEKS

 3 HE'S SUPPOSED TO TAKE THIS PHYSICAL. HE'S THEN

 4 GOING TO BE INSURED FOR FIVE MILLION DOLLARS. WHY

 5 NOT WAIT? IF YOU'RE GOING TO KILL 'EM, WAIT FOR THE

 6 FIVE MILLION. THAT'S BIG MONEY. THAT'S THE KIND OF

 7 MONEY THAT SENDS MY HUSBAND TO THE 7-ELEVEN TO BUY

 8 LOTTERY TICKETS. WE LOST AGAIN.

 9 THAT JUST CUTS COMPLETELY AGAINST THE

 10 NOTION OF A PLANNED KILLING FOR MONEY.

 11 MOREOVER -- AND THIS IS WHERE THE MIND

 12 BOGGLES WITH THE WAY THE PROSECUTION ARGUES THEIR

 13 CASE. ALL THIS EVIDENCE ABOUT WILLS, WILLS, WILLS.

 14 WE KNOW FROM CARLOS BARALT THAT CARLOS

 15 BARALT TESTIFIES JOSE MENENDEZ HIMSELF, A VOICE FROM

 16 THE GRAVE, TOLD HIM THAT JOSE MENENDEZ TOLD HIS

 17 SONS, "YOU'RE OUT OF THE WILL." THIS MAN USES MONEY

 18 AS POWER. POWER AS POWER. HE'S VERY MATERIALISTIC.

 19 IN MY FAMILY WE DON'T TALK ABOUT THE WILL. WE GET

 20 MAD AT THE KIDS, WE DON'T TALK ABOUT THE WILL. THIS

 21 FAMILY, IT'S PART OF THE PARENTING STYLE. THEY TALK

 22 ABOUT THE WILL.

 23 OKAY. "I'LL SHOW YOU. YOU'RE OUT."

 24 OKAY. FINE. HE TELLS THAT TO HIS BROTHER-IN-LAW,

 25 AND TELLS HIM HE'S ALREADY TOLD HIS SONS THAT

 26 THEY'RE OUT OF THE WILL. ALL RIGHT. SO YOU GOT

 27 THIS INFORMATION. "YOU'RE OUT OF THE WILL."

 28 NOW, YOU'RE KILLING SOMEBODY FOR MONEY

 1 WHEN YOU BELIEVE YOU'RE OUT OF THE WILL? OKAY.

 2 ERIK MENENDEZ TESTIFIES HE WASN'T

 3 A-HUNDRED-PERCENT CERTAIN HE WAS OUT OF THE WILL.

 4 HE COULD HAVE LIED ABOUT THAT, AND I'LL GET TO THAT

 5 WHEN WE TALK ABOUT THINGS HE COULD HAVE LIED ABOUT,

 6 BUT DIDN'T. HE'S BEING HONEST.

 7 HE DIDN'T KNOW ONE HUNDRED PERCENT FOR

 8 SURE. HOW ABOUT FINDING OUT BEFORE YOU KILL THEM,

 9 FOLKS? IF THIS IS DONE FOR MONEY, WHY DON'T YOU GO

 10 LOOKING FOR THIS WILL BEFORE THEY ARE DEAD? BECAUSE

 11 WILLS ARE USUALLY WRITTEN BY LAWYERS, AND LAWYERS

 12 ARE SUPPOSED TO KEEP ORIGINAL COPIES OF WILLS IN

 13 SAFE PLACES FOR CLIENTS. EVEN I, A CRIMINAL LAWYER,

 14 HAVE A SAFETY DEPOSIT BOX WITH SOME WILLS IN IT FOR

 15 CLIENTS, BECAUSE PEOPLE LOSE THINGS. LAWYERS ARE

 16 THE REPOSITORY OF WILLS, USUALLY; AND THEN, USUALLY,

 17 CLIENTS GET THE COPY.

 18 SO WHY NOT FIND OUT BEFORE YOU DO THIS,

 19 IF YOU'RE DOING THIS FOR MONEY, WHETHER OR NOT THERE

 20 REALLY HAS BEEN A NEW WILL WRITTEN? BUT THERE'S NO

 21 EVIDENCE THAT THAT WAS DONE.

 22 NOW, THEY DID NOT KNOW ABOUT THE SUN

 23 LIFE POLICY. THAT WAS ERIK MENENDEZ' TESTIMONY.

 24 THAT WAS THE TESTIMONY OF HIS AUNT, MARTHA CANO.

 25 THERE WASN'T EVEN A COPY OR A REFERENCE TO THAT

 26 POLICY HERE IN CALIFORNIA IN ANY OF THE PARENTS'

 27 PAPERS, NOTHING AT THE HOUSE, NOTHING AT JOSE

 28 MENENDEZ' OFFICE, WHICH SHE WENT THROUGH. OKAY

 1 NOTHING.

 2 WHAT IS THE EVIDENCE TO COUNTER THAT?

 3 I'LL GET TO THAT A LITTLE LATER. THAT'S RANDY

 4 WRIGHT. MR. CONN MADE EXCUSES ABOUT JAMIE PISARCIK

 5 NOT KNOWING WHAT TIME OF YEAR IT WAS, BECAUSE HER

 6 INWARD CALLING UPON IS FIVE YEARS OLD.

 7 WELL, PEOPLE, WITH THE WRIGHTS WE'RE

 8 CALLING UPON A SIX-YEAR-OLD MEMORY. AFTER THEY'VE

 9 WATCHED COURT TV AND TELEVISION MOVIES ABOUT THIS

 10 CASE, THEN RANDY WRIGHT CLAIMS THAT LYLE MENENDEZ

 11 MADE MENTION TO HIM OF A $300,000-LIFE INSURANCE

 12 POLICY. I DON'T BELIEVE IT. AND YOU SHOULD NOT

 13 BELIEVE IT EITHER.

 14 FIRST OF ALL, THERE WAS NO

 15 $300,000-POLICY. IT WAS $650,000.

 16 AND SECOND OF ALL, THERE IS NO EVIDENCE

 17 WHATSOEVER THAT ANYBODY KNEW ABOUT THAT POLICY

 18 EXCEPT MARTHA MENENDEZ CANO.

 19 THEY ALSO WERE TOLD A YEAR BEFORE THAT

 20 THEY WERE DISINHERITED, IN 1988, AND THERE'S

 21 REFERENCE TO THAT IN THE 12/11 TAPE. ALL OF THOSE

 22 THINGS WOULD MAKE YOU THINK THIS ISN'T A GOOD TIME

 23 TO GET GREEDY. "WE SHOULD WAIT UNTIL WE'RE BACK IN

 24 DAD'S GOOD GRACES, AND THEN IF WE HATE HIM AND WANT

 25 TO KILL HIM, THAT'S WHEN WE SHOULD DO IT."

 26 ALL OF THIS CONTRADICTS THEIR MOTIVE OF

 27 GREED. THAT'S ALL THE PRE-THINGS THAT THEY KNEW

 28 BEFOREHAND, THINGS THAT WERE TRUE BEFOREHAND.

 1 NOW, LET'S LOOK AT THINGS THAT

 2 CONTRADICT IT THAT ARISE AFTER THE SHOOTINGS.

 3 THE DECEMBER 11TH TAPE, THERE'S

 4 DR. OZIEL TALKING ABOUT THE FACT THAT ERIK MENENDEZ

 5 HAS TOLD HIM BEFORE DECEMBER 11 EVEN, THAT HE HAS

 6 GUILT ABOUT SPENDING THE MONEY; THE FACT THAT AFTER

 7 HE GOT THE INSURANCE MONEY, ERIK MENENDEZ GAVE IT TO

 8 HIS AUNT TO MANAGE.

 9 YOU KNOW, HE DOESN'T BLAME HIS AUNT.

 10 THIS DOESN'T MEAN HE WASN'T KEEPING IT. YES, HE WAS

 11 KEEPING IT. HE WASN'T GIVING IT AWAY TO CHARITY,

 12 WHICH HIS FATHER WOULDN'T HAVE APPROVED OF, HE

 13 TESTIFIED TO. HE WAS KEEPING IT.

 14 BUT HE'S NOT -- YOU KNOW, I MEAN, WHEN

 15 YOU THINK THAT SOMEBODY, YOU KNOW, YOUNG PEOPLE KILL

 16 FOR MONEY. THEY GET THEIR HANDS ON THE MONEY AND

 17 RUN OFF TO JAMAICA AND LIE ON THE BEACH.

 18 THAT'S NOT WHAT'S GOING ON HERE.

 19 THERE'S NO SECRETIVENESS ABOUT THIS. HE'S NOT

 20 HAVING THE THRILL ABOUT THROWING LARGE AMOUNTS OF

 21 MONEY AROUND. HE GAVE IT TO HIS AUNT, WHO WAS A

 22 BROKER WHO WAS HANDLING IT FOR HIM.

 23 BUT THIS IS WHAT'S REALLY INTERESTING,

 24 AND HOW THE PROSECUTION HAS DISTORTED ALL THIS

 25 EVIDENCE ABOUT WILLS AND COMPUTERS AND SAFES AND

 26 SAFETY DEPOSIT BOXES. OKAY?

 27 THEY ARE THE ONES WHO ARE TELLING PEOPLE

 28 THERE IS PROBABLY A SECOND WILL, A WILL THAT WE HAVE

 1 EVERY REASON TO BELIEVE HAD EXISTED, ACCORDING T

 2 CARLOS BARALT, WOULD HAVE DISINHERITED THEM. WHY

 3 ARE THEY RINGING THAT BELL IF THEY KILLED FOR

 4 MONEY? WHY TELL ANYBODY? "LOOK FOR A SECOND WILL."

 5 THEY TELL THIS TO RANDY WRIGHT.

 6 NOW, I DON'T CARE IF YOU DON'T BELIEVE

 7 ANYTHING RANDY WRIGHT SAYS. IF YOU'RE GOING TO

 8 BELIEVE SOMETHING HE SAYS, HOW ABOUT THIS ONE? THEY

 9 TELL HIM THERE'S A SECOND WILL. "LET'S GO LOOK FOR

 10 THE THING THAT WILL LEAVE US PENNILESS, BECAUSE WE

 11 ARE GREEDY, KILLING LIARS." IT'S RIDICULOUS.

 12 THE PROSECUTION TALKS ABOUT WANTING TO

 13 DESTROY A WILL. OKAY, FINE. YOU WANT TO DESTROY A

 14 WILL, SO YOU TAKE THE SAFE THAT MAY HAVE THE WILL

 15 INSIDE OF IT TO A LAWYER, TO SOMEONE -- YOU GET A

 16 WITNESS?

 17 I MEAN, IT'S THE SAME THING WITH THE

 18 BUSINESS ABOUT THE COMPUTER, WHICH I'LL GET TO IN A

 19 MINUTE.

 20 THEY TAKE THE SAFE TO A LAWYER. THERE

 21 IS A KEY AND DIRECTIONS TO A SAFE DEPOSIT BOX INSIDE

 22 THE SAFE. THEY DO NOT SECRETE IT, AND TAKE IT AND

 23 PUT IT IN THEIR POCKET AND KEEP IT A SECRET. NO,

 24 SIREE. THEY TAKE ANOTHER LAWYER, STEVE GOLDBERG,

 25 AND BOTH OF THEIR UNCLES TO THE BANK, TO THE SAFE

 26 DEPOSIT BOX WHERE THE NEW WILL MAY BE, SINCE IT

 27 WASN'T IN THE SAFE. MORE WITNESSES TO THE EXISTENCE

 28 OF THE THING THAT WILL DISINHERIT YOU

 1 SO THEY TAKE THEIR UNCLES -- ACTUALLY,

 2 BRIAN ANDERSEN TESTIFIED BOTH ERIK AND LYLE MENENDEZ

 3 WENT TO THE BANK. CARLOS BARALT SAID NO, IT WAS

 4 STEVE GOLDBERG AND LYLE MENENDEZ. BUT EITHER WAY,

 5 COME ALONG UNCLES. COME SEE THE SECOND WILL THAT

 6 DISINHERITS US. COME ALONG, UNCLES, AND COME TO

 7 MR. WRIGHT'S HOUSE AND SEE THE SECOND WILL THAT

 8 DISINHERITS US.

 9 I'M NOT GOING TO SAY ANYTHING MORE ABOUT

 10 THE SILLINESS ABOUT THE PROSECUTION'S ARGUMENT, THAT

 11 ERIK MENENDEZ STAYED AT THE WRIGHTS' HOUSE TO SLEEP

 12 ON THE SAFE. OKAY. THEY'RE THE ONES SETTING UP THE

 13 ALARM BELL THAT THERE'S POSSIBLY A SECOND WILL.

 14 NOW, WHAT DO WE KNOW ABOUT WILLS AND

 15 COMPUTERS? WELL, WE'VE GOT GOOD REASON TO BELIEVE A

 16 WILL ON A COMPUTER IS NOT A VALID WILL, SINCE YOU

 17 NEED WITNESSES TO SIGN ONE, OR IF YOU WENT TO LAW

 18 SCHOOL YOU KNOW THERE'S SOMETHING CALLED A

 19 HOLOGRAPHIC WILL THAT YOU CAN SIGN YOURSELF, BUT YOU

 20 HAVE TO WRITE IT IN YOUR OWN HANDWRITING. NEITHER

 21 OF THOSE EXISTED ON A COMPUTER. OKAY?

 22 BEYOND THAT, BEYOND ALL OF THAT,

 23 MR. WITKIN LOOKED AT THE COMPUTER. HE'S THE

 24 FELLOW -- THIS IS KIND OF CONFUSING, WITH THE WAY

 25 THE EVIDENCE WAS PRESENTED IN THIS TRIAL. SO LET ME

 26 MAKE SURE I'M STAYING WITHIN WHAT WAS PRESENTED IN

 27 THIS TRIAL. I HAVE TOO BIG A MEMORY FOR THINGS THAT

 28 GO WAY BEFORE THIS. I'M GOING TO STAY WITHIN WHAT I

 1 BELIEVE WAS PROVEN HERE. OKAY.

 2 BETWEEN THE TESTIMONY -- THIS COMES FROM

 3 THE TESTIMONY, IN COMBINATION WITH ERIK MENENDEZ, ON

 4 THE ONE HAND, AND MR. WITKIN ON THE OTHER.

 5 MR. WITKIN GETS A CALL ON AUGUST 31ST TO

 6 GO TO THE HOUSE ON ELM DRIVE; NOT STREET, DRIVE.

 7 AND HE GETS THERE AND HE MEETS LYLE MENENDEZ. AND

 8 HE'S ASKED TO LOOK UP CERTAIN FILES IN THIS I.B.M.

 9 COMPUTER THAT'S IN THE PARENTS' BEDROOM. AND ONE OF

 10 THE FILE NAMES -- AND I DON'T KNOW HOW MANY OF YOU

 11 ARE COMPUTER LITERATE OR NOT. BUT YOU HIT THE

 12 SCREEN AND UP COMES A LIST OF THINGS. OKAY? ONE OF

 13 THE FILE NAMES, OR NAMES, TURNED OUT IT ISN'T EVEN A

 14 FILE NAME. A NAME. A WORD. A WORK. "WILL" SHOWS

 15 UP. AND THERE'S AN INDICATION ON THE SCREEN OF THE

 16 COMPUTER OF HOW MANY CHARACTERS, IT'S CALLED, OR

 17 BYTES, ACTUALLY. BUT HOW MANY CHARACTERS ARE

 18 AFFILIATED, IF YOU WILL, WITH THIS WORD "WILL."

 19 NOW, I DIDN'T LOOK WHEN I TYPED THIS HOW

 20 MANY CHARACTERS THIS THING HAS. BUT WHEN I CREATED

 21 THIS DOCUMENT, WHICH THEN GOT BLOWN UP ON MY

 22 COMPUTER, THEN I WENT BACK AND -- I SAVED IT. SO

 23 WHEN I GO BACK, IF YOU WANT TO CALL IT UP AGAIN,

 24 IT'S LISTED ON THE SCREEN UNDER -- I WON'T GIVE YOU

 25 MY WHOLE CODE, BUT IT'S IN THE MENENDEZ FILE IN MY

 26 COMPUTER UNDER THE "FINAL ARGUMENT DIRECTORY," AND

 27 UP POPS ALL THE FINAL ARGUMENT BYTES, MOST OF WHICH

 28 YOU SEE HERE, THAT ARE IN THERE. AND IT SAYS RIGHT

 1 NEXT TO THIS ONE, I THINK I CALLED -- I KNOW WHAT I

 2 CALLED THIS. FINE -- "FINE-ARG DOLLAR SIGN."

 3 NEXT TO "FINE-ARG DOLLAR SIGN" ON MY

 4 SCREEN YOU WOULD SEE HOW MANY CHARACTERS, AND

 5 CHARACTERS ARE EVERY LETTER, EVERY SPACE, EVERY

 6 SPACING DOWN. THIS IS LIKE A HARD RETURN, IT'S

 7 CALLED, TO GET DOWN TO HERE. AND YOU WOULD SEE HOW

 8 MANY BYTES OF COMPUTER THINGS ARE TAKEN UP BY THAT

 9 DOCUMENT. OKAY?

 10 NOW, MR. WITKIN TESTIFIED THERE WERE

 11 VERY, VERY FEW OF THESE BYTES THAT WERE TAKEN UP

 12 NEXT TO THIS WORD "WILL." THIS WAS NOT A WILL.

 13 THIS WAS PROBABLY NOT EVEN A SENTENCE. COULDN'T

 14 HAVE BEEN A SENTENCE WITH THAT MANY BYTES.

 15 BUT WHATEVER THAT LOOKED LIKE ON THE

 16 SCREEN, WHAT ULTIMATELY BECAME OBVIOUS TO THOSE OF

 17 YOU WHO UNDERSTAND COMPUTERS, AND THOSE OF YOU WHO

 18 UNDERSTAND, FOLLOWED WHAT OUR COMPUTER LITERATE

 19 CO-COUNSEL, MS. TOWERY, DID HERE. SHE IS OUR

 20 HACKER.

 21 IN ANY EVENT, WHAT SHE DEMONSTRATED IN

 22 HER EXAMINATION OF MR. WITKIN IS THAT IN ALL

 23 LIKELIHOOD THE EFFORT OF THE RELATIVES, SOME OF WHOM

 24 ARE IN COURT, TO FIND A WILL, CREATED THAT WORD

 25 "WILL" ON THE COMPUTER.

 26 IN SEARCHING, TELL ME, COMPUTER "WILL."

 27 FIND ME, COMPUTER, "WILL," WHATEVER THE DYNAMICS

 28 WERE. I HAVE NO -- I'M NOT NEARLY AS GOOD AS SHE IS

 1 WITH COMPUTERS. WHATEVER IT WAS, SHE DEMONSTRATED

 2 VERY CLEARLY, AND THERE'S A CHART THAT DEMONSTRATED

 3 WITH MR. WITKIN THAT MERE EFFORT, IN THE HANDS OF

 4 NOT VERY SKILLED PEOPLE, TO FIND A WILL, CREATED

 5 THIS ENTRY THAT CAUSED SO MUCH CONFUSION LATER,

 6 PERIOD. END OF STORY.

 7 THERE NEVER WAS A WILL ON THE COMPUTER.

 8 THERE WASN'T A WILL ON THE COMPUTER. NO WILL WAS

 9 ERASED FROM THE COMPUTER, PERIOD.

 10 MR. WITKIN'S THERE. HE COMES UP WITH

 11 THIS THING. IT CLEARLY ISN'T A WILL, AND LYLE

 12 MENENDEZ TELLS HIM TO ERASE IT. I'M SORRY HE DID

 13 THAT, BECAUSE WE COULD HAVE SAVED A LOT OF TIME AND

 14 EFFORT IN LITIGATION IF HE HADN'T DONE IT. HE DID

 15 DO IT. HE DID NOT DESTROY A WILL. THERE WASN'T

 16 ONE.

 17 NOW, LATER THAT DAY, AFTER THIS IS DONE,

 18 ERIK MENENDEZ COMES TO CALIFORNIA. REMEMBER, HE AND

 19 LYLE MENENDEZ WERE IN NEW JERSEY. THE PARENTS'

 20 FUNERAL WAS HELD IN NEW JERSEY. THEY REMAINED THERE

 21 SOME DAYS AFTER THE FUNERAL, AND THEN LYLE MENENDEZ,

 22 BEING ON HIS OWN, ACCORDING TO WENSKOSKI, WAS TAKEN

 23 TO NEWARK AIRPORT EARLY IN THE MORNING THAT DAY.\

 24 AND OFF HE GOES TO CALIFORNIA, WHERE WE LATER SEE HE

 25 HAS CALLED MR. WITKIN. HE HAS DONE THIS SILLINESS

 26 WITH THE COMPUTER.

 27 LATER THAT DAY ERIK MENENDEZ SHOWS UP.

 28 HE COMES TO CALIFORNIA. NOW, HE'S COMING TO

 1 CALIFORNIA TO TRY TO FIND A WILL ON THE COMPUTER,

 2 BECAUSE HE HAS LEARNED, WHILE IN NEW JERSEY, THAT

 3 RELATIVES -- NOW WE KNOW -- PROBABLY CREATED, BUT

 4 THOUGHT THEY FOUND A FILE NAME OF "WILL," AND HIS

 5 COUSIN, CARLOS MENENDEZ, HAS ARRANGED WITH SOMEONE

 6 HERE WHO WORKS FOR CARLOS MENENDEZ COMPANY, TO HELP

 7 ERIK MENENDEZ FIND THE WILL ON THE COMPUTER. AND SO

 8 ERIK MENENDEZ FLIES ACROSS THE COUNTRY, NOT TO

 9 DESTROY SOMETHING; AGAIN, TO FIND THE THING THAT

 10 MIGHT COMPLETELY DISINHERIT HIM.

 11 WHEN HE GETS HERE AND THE COMPUTER

 12 PERSON THAT HIS COUSIN, CARLOS MENENDEZ, HAS SET UP

 13 GETS HERE, HE FINDS OUT THAT THE COMPUTER HAS BEEN

 14 ERASED, FROM HIS -- THE COMPUTER EXPERTS OF CARLOS

 15 MENENDEZ, SOMEONE NAMED HAYMAN.

 16 AND HE IS SURPRISED, AND HE SAYS HE

 17 LATER FOUND OUT WHAT HE DIDN'T KNOW, WHICH IS THAT

 18 LYLE HAD PRECEDED HIM OUT HERE AND ARRANGED FOR THE

 19 COMPUTER TO BE ERASED. THAT'S THE WHOLE STORY.

 20 AND, I ASSURE YOU, ON THE DAYS WHEN THAT

 21 STORY WAS TESTIFIED TO IN THE FIRST TRIAL, JUST LIKE

 22 EVERY OTHER DAY, IT WAS TELEVISED ON COURT TV.

 23 HERE IS MRS. WRIGHT.

 24 NOW, MR. CONN'S BASIC POSTURE IS THAT

 25 EVERYONE WHO TESTIFIED FOR THE DEFENSE IS A LIAR.

 26 EVERYONE WHO TESTIFIED FOR THE DEFENSE SWORE UNDER

 27 OATH TO TELL THE TRUTH, AND IF THEY LIED, THEY

 28 COMMITTED A FELONY CALLED PERJURY. THAT DOESN'

 1 STOP THEM. THEY'RE ALL LIARS, BECAUSE THEY AL

 2 TESTIFIED -- I MEAN, EVEN THE RELATIVES OF THE

 3 DEFENDANTS ARE LIARS. AFTER ALL, THEY'RE JUST THE

 4 RELATIVES OF THE DEFENDANTS, RIGHT? WRONG.

 5 THEY'RE THE RELATIVES OF THE VICTIMS. THEY'RE THE

 6 RELATIVES OF THE VICTIMS WHO HAVE BEEN SITTING ON

 7 OUR SIDE, IF YOU WILL, OF THE CHAPEL, SINCE THIS

 8 BEGAN.

 9 THE WITNESSES WHO TESTIFIED FOR THE

 10 DEFENSE ARE JOSE MENENDEZ' SISTERS. THE WITNESSES

 11 WHO TESTIFIED FOR THE DEFENSE ARE MARY LOUISE

 12 MENENDEZ' SISTER AND NIECES AND NEPHEWS. THAT'S WHO

 13 THEY ARE. THEY ARE NOT LIARS. THEY ARE THE ONLY

 14 PEOPLE IN THIS COURTROOM, BESIDES ERIK AND LYLE

 15 MENENDEZ, WHO CARED A FIG ABOUT THESE PEOPLE, WHO

 16 LOVED THEM, WHO MISSED THEM, WHO ARE DESTROYED BY

 17 THEIR DEATHS. THE FOUR LIVES DESTROYED HERE, THE

 18 ONLY PEOPLE WHO CARE ABOUT THEM ARE THERE, NOT

 19 HERE.

 20 THESE PEOPLE CARE ABOUT WINNING. THEY

 21 DON'T CARE ABOUT TRAGEDY. THEY DON'T CARE ABOUT

 22 LOVE. THEY DON'T CARE ABOUT FAMILY BETRAYAL. THEY

 23 JUST GET UP HERE AND CALL THOSE PEOPLE LIARS.

 24 NOW, LET'S TALK ABOUT LIARS. YOU CAN

 25 TALK ABOUT CRAIG CIGNARELLI, IF YOU WANT TO TALK

 26 ABOUT LIARS.

 27 NOW, LET'S TALK ABOUT MRS. WRIGHT.

 28 MRS. WRIGHT TOLD YOU AT THE END OF HER TESTIMONY

 1 THAT IF SHE DOESN'T KNOW THE ANSWER, SHE MAKES IT

 2 UP. THAT'S WHAT SHE SAID. I'LL READ IT TO YOU.

 3 MR. CONN SAID THESE ARE THE PERFECT

 4 WITNESSES, MR. AND MRS. WRIGHT. THE PERFECT

 5 WITNESSES.

 6 THERE'S BEEN A DEBATE IN THE CRIMINAL

 7 JUSTICE COMMUNITY -- IN FACT, THE ENTIRE LEGAL

 8 COMMUNITY -- FOR YEARS ABOUT THE IMPACT OF CAMERAS

 9 IN THE COURTROOM, AND I'M SURE YOU HEARD A LOT ABOUT

 10 THAT DEBATE DURING SIMPSON. AND I HOPE YOU DON'T

 11 CONSIDER ME HYPOCRITICAL, GIVEN SIMPSON. BUT I'VE

 12 ALWAYS BEEN OPPOSED TO CAMERAS IN THE COURTROOM, AND

 13 THE REASON IS WHAT WE SEE HAPPENING IN THIS TRIAL.

 14 IT TAINTS PEOPLE. PEOPLE COME THROUGH

 15 HERE; GOOD PEOPLE, NOT LIARS, AND THEY TESTIFY TO

 16 THINGS THEY DON'T REALLY KNOW. THEY'VE BEEN TAINTED

 17 BY THE MEDIA, AND IT'S IMPOSSIBLE FOR MEMORY TO

 18 SEPARATE THESE THINGS OUT FIVE YEARS LATER.

 19 AND THAT'S WHAT HAPPENED, I BELIEVE,

 20 WITH KLARA WRIGHT, CLAIMING THAT ERIK MENENDEZ, ON

 21 MONDAY MORNING TALKED TO HER ABOUT WILLS ON

 22 COMPUTERS. WILLS ON COMPUTERS WAS LARGE IN THE TV

 23 AND MOVIES, WHICH SHE SAW AND CERTAINLY TALKS ABOUT

 24 ON COURT TV.

 25 SO SHE COMES ROLLING OUT -- WHEN WAS IT

 26 THEY TALKED TO THEM -- MAY OF '94, FOR THE FIRST

 27 TIME, AND SHE SAID -- SHE'S INCONSISTENT ABOUT A

 28 NUMBER OF THINGS. LET ME TELL YOU WHAT SHE'S

 1 PLAINLY INCONSISTENT ABOUT.

 2 FIRST, SHE CLAIMS THEIR CONVERSATION

 3 ABOUT A WILL PRECEDES HER HUSBAND COMING HOME. THEN

 4 SHE CONCEDES THAT THE CONVERSATION ABOUT A WILL IS

 5 BROUGHT UP BY HER HUSBAND, AND ONLY HAPPENS AFTER

 6 HE'S COME HOME.

 7 SO WHEN SHE'S CONFRONTED WITH THE FACT

 8 THAT HER RECOLLECTION ABOUT THE SPECIFICS OF THE

 9 CONVERSATION THAT SHE HAD WITH ERIK MENENDEZ ABOUT A

 10 WILL ON A COMPUTER HAS CHANGED, THIS IS HOW -- AND

 11 WHEN IT HAPPENED -- THIS IS HOW THE COLLOQUY GOES.

 12 IT GOES ON FOR PAGES. LET ME SEE IF I CAN MAKE IT

 13 SHORTER. IT GETS TOO COMPLICATED. LET'S CUT TO THE

 14 CHASE.

 15 THE POINT IS, SHE'S CONFRONTED ABOUT THE

 16 FACT SHE'S CHANGING HER STORY ABOUT THIS, AND THEN

 17 SHE SAYS -- OKAY. AT THIS POINT, TOWARD THE END OF

 18 HER TESTIMONY, WHEN SHE'S CONCEDED THAT THE

 19 CONVERSATION ABOUT THE WILL PROBABLY HAPPENED AFTER

 20 HER HUSBAND CAME HOME, AND WHEN IT'S POINTED OUT TO

 21 HER THAT HER HUSBAND'S THE ONE WHO'S TALKING TO ERIK

 22 AND LYLE MENENDEZ, AND NOT HER, SHE'S JUST AN

 23 OBSERVER OF IT; AND, THEREFORE, SHE WOULDN'T BE PART

 24 OF ANY EXCHANGE ABOUT A WILL.

 25 SHE THEN SAYS:

 26 "WELL, I HAVE THIS IMAGE THAT ERIK WAS SITTING NEXT

 27 TO ME, AND MAYBE HE LEANED OVER AND WE HAD THIS

 28 CONVERSATION BY OURSELVES."

 1 SO MR. LEVIN -- THIS IS THE 37,233:

 2 "WHY DID YOU JUST NOW CONJURE UP

 3 THE IMAGE, THE VISION THAT MY CLIENT

 4 WAS LEANING OVER ON THE COUCH AND

 5 SAYING SOMETHING TO YOU ABOUT THE WILL

 6 BEING POSSIBLY IN THE COMPUTER WHILE

 7 RANDY WRIGHT WAS HAVING ANOTHER

 8 CONVERSATION WITH LYLE MENENDEZ?

 9 "ANSWER: BECAUSE I SORT OF

 10 REMEMBER SOMETHING LIKE THAT. I

 11 REMEMBER TALKING TO ERIK, JUST THE TWO

 12 OF US, SOMETIME WHEN RANDY WAS TALKING

 13 TO LYLE."

 14 AND YOU MAY RECALL, WE -- THERE WAS A

 15 HEARING WHERE THE WRIGHTS TESTIFIED BEFORE THE TRIAL

 16 EVER STARTED, SO WE REFERRED IN THEIR EXAMINATION TO

 17 PRIOR TESTIMONY. IT WASN'T FROM THE FIRST TRIAL.

 18 IT WAS FROM A PRETRIAL HEARING. AND HERE MR. LEVIN

 19 BRINGS THAT UP TO HER.

 20 "HAVE YOU EVER TESTIFIED BEFORE,

 21 BEFORE JUST NOW, OF THAT INFORMATION,

 22 OF ERIK LEANING OVER AND HAVING A

 23 CONVERSATION WITH YOU WHILE RANDY

 24 WRIGHT WAS TALKING TO LYLE IN THE

 25 MANNER THAT YOU --"

 26 SHE INTERRUPTS AND SAYS:

 27 "NO. BECAUSE I --"

 28 "MR. LEVIN: I'M SORRY. HAVE YOU

 1 EVER SAID THAT BEFORE?

 2 "ANSWER: NO. I WASN'T SURE

 3 ABOUT IT.

 4 "MR. LEVIN: OKAY. NOW, THAT

 5 INFORMATION THAT YOU JUST GAVE US

 6 TODAY WAS AFTER YOU WERE INTERVIEWED

 7 BY THE POLICE ON MARCH THE 1ST, 1994,

 8 CORRECT? YOU WERE INTERVIEWED BY

 9 DETECTIVE ZOELLER ON MARCH THE 1ST,

 10 1994?

 11 "ANSWER: YES.

 12 "QUESTION: AND YOU WERE AGAIN

 13 INTERVIEWED BY THE DISTRICT ATTORNEYS

 14 IN MAY OF 1994, CORRECT?

 15 "ANSWER: YES.

 16 "QUESTION: AT BOTH THOSE

 17 OCCASIONS YOU WERE ASKED SPECIFICALLY

 18 TO RECALL EVERY DETAIL OF THE EVENTS

 19 THAT YOU'VE BEEN TESTIFYING TO HERE

 20 TODAY?

 21 "ANSWER: AND I DID.

 22 "QUESTION: AND DURING THOSE TWO

 23 CONVERSATIONS --" SKIPPING A LITTLE

 24 AHEAD.

 25 "YOU HAVE NEVER RECALLED OR

 26 STATED ANYTHING ABOUT THIS

 27 CONVERSATION CONCERNING ERIK MENENDEZ

 28 AND YOURSELF WHILE ON THE COUCH, AND

 1 RANDY WRIGHT WAS PRESENT?"

 2 SHE SAID: "NO, BECAUSE I'M STILL

 3 NOT SURE THAT'S HOW IT HAPPENED."

 4 NOT SURE IT'S HAPPENED, BUT SHE'S

 5 TESTIFIED TO IT UNDER OATH.

 6 LET ME JUST MOVE A LITTLE BIT AHEAD TO

 7 SEE WHERE THIS ALL WINDS UP.

 8 THEN MR. LEVIN ASKS AT PAGE 37,243,

 9 CONCERNING THE DISCUSSION SHE HAD WITH ERIK MENENDEZ

 10 ABOUT THIS:

 11 "BUT THE SPECIFICS OF THAT

 12 DISCUSSION AREN'T CLEAR TO YOU NOW

 13 THAT YOU SIT HERE, SIX YEARS LATER; IS

 14 THAT A FAIR STATEMENT?

 15 "ANSWER: NO. THE DISCUSSION IS

 16 CLEAR TO ME. THE STORY IS CLEAR IN MY

 17 MIND. IT'S JUST THAT I DON'T KNOW

 18 EXACTLY IN DETAIL WHEN IT WAS SAID,

 19 EXCEPT THAT IT WAS SAID THAT EVENING."

 20 WELL, THERE'S A BIG DIFFERENCE HERE AND

 21 SIGNIFICANCE ABOUT WHEN IT WAS SAID, BECAUSE RANDY

 22 WRIGHT TESTIFIES THAT HE'S THE ONE WHO BROUGHT UP

 23 WITH ERIK AND LYLE MENENDEZ: "DID YOUR FATHER HAVE A

 24 WILL? WHERE COULD IT BE?"

 25 AND THAT'S WHEN ONE OR THE OTHER OF THEM

 26 SAID: "WELL, THEY HAVE A COMPUTER. MAYBE THERE'S A

 27 WILL ON THE COMPUTER. THERE'S A SAFE. MAYBE IT'S

 28 IN THE SAFE."

 1 THAT'S HOW IT HAPPENED. WHEN THE LAWYER

 2 IS ASKING THE LAWYER-LIKE QUESTIONS. OKAY?

 3 SO HERE SHE'S ADMITTING: "I DON'T KNOW

 4 EXACTLY IN DETAIL WHEN IT WAS SAID, EXCEPT THAT IT

 5 WAS SAID THAT EVENING."

 6 "QUESTION: WELL, YOU ALSO DON'T

 7 KNOW EXACTLY IN DETAIL WHAT WORDS WERE

 8 USED, DO YOU? "

 9 THAT'S ALREADY BEEN PROVEN IN HER

 10 EXAMINATION.

 11 "ANSWER: NO. BUT --

 12 "MR. LEVIN: AND YOU DON'T KNOW

 13 EXACTLY IN DETAIL WHO SAID WHAT, DO

 14 YOU?

 15 "ANSWER: WELL, YES. I WOULDN'T

 16 BE HERE --

 17 "QUESTION: YOU DO?

 18 "ANSWER: I WOULDN'T BE HERE IF I

 19 DIDN'T KNOW WHAT I'M SAYING.

 20 "QUESTION: WHEN YOU WERE ASKED

 21 THAT QUESTION, YOU DIDN'T SAY, 'I

 22 DON'T KNOW,' DID YOU?

 23 "ANSWER: NO. I USUALLY TRY TO

 24 GIVE AN ANSWER THE BEST I CAN. I

 25 DON'T LIKE TO SAY 'I DON'T KNOW.'

 26 "QUESTION: SO IF YOU'RE ASKED A

 27 QUESTION, YOU TRY TO GIVE AN ANSWER?

 28 "ANSWER: THE BEST I CAN.

 1 I MEAN, DON'T YOU GET THE DRIFT OF THIS?

 2 YOU KNOW, SHE JUST GIVES WHATEVER ANSWER POPS INTO

 3 HER HEAD, BASED ON A CONVERSATION SHE HAD FIVE YEARS

 4 BEFORE SHE EVER TALKED TO THE POLICE, WHERE SHE TOOK

 5 NO NOTES, WHERE SHE'S BEEN EXPOSED TO ALL OF THIS

 6 PRETRIAL PUBLICITY, AND THIS IS WHO MR. CONN CALLS

 7 THE PERFECT WITNESS.

 8 SO, THAT'S ALL I HAVE TO SAY FOR THE

 9 MOMENT ABOUT EVIDENCE OF GREED AS A MOTIVE.

 10 JUDGE, THIS WOULD BE A GOOD TIME TO

 11 BREAK. DO YOU WANT TO BREAK NOW, OR I CAN KEEP

 12 GOING

 13 THE COURT: WE'LL TAKE A RECESS, BECAUSE I'VE

 14 LEARNED THAT ONE OF THE JURORS WILL HAVE TO LEAVE AT

 15 4:00 O'CLOCK. WE'LL GO BACK UNTIL 4:00. WE'LL TAKE

 16 OUR BREAK NOW. WE'LL RESUME AT 3:00.

 17 DON'T DISCUSS THE MATTER WITH ANYONE AND

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

 19 RESUME AT 3:00 O'CLOCK.

 20 (A RECESS WAS TAKEN FROM

 21 2:45 P.M. TO 3:00 P.M.)

 1 THE COURT: OKAY. EVERYBODY IS PRESENT.

 2 LET'S GET THE JURY OUT

 3 (THE JURY ENTERS THE COURTROOM

 4 AND THE FOLLOWING PROCEEDINGS

 5 WERE HELD:)

 6

 7 THE COURT: OKAY. EVERYBODY IS BACK, AND WE WILL

 8 CONTINUE WITH ARGUMENT.

 9 MS. ABRAMSON: THANK YOU, YOUR HONOR.

 10 THIS IS MY PYRAMID. I DON'T COLLECT THEM.

 11 I ACTUALLY DID THIS ONE.

 12 AND THE PURPOSE OF THIS PYRAMID IS TO

 13 CONVEY GRAPHICALLY WHAT IS HARD SOMETIMES TO UNDERSTAND

 14 IN THE WAY THAT TESTIMONY COMES OUT IN A TRIAL, AND THAT

 15 IS CONTRARY TO THE APPLICATIONS OF THE PROSECUTION'S

 16 THEORY. ERIK MENENDEZ DOES NOT STAND ALONE HERE ON THE

 17 ISSUE OF HIS CREDIBILITY. HE IS NOT JUST ONE WITNESS

 18 WHO CAN BE DISMISSED OUT OF HAND CONCERNING THE ENTIRE

 19 DEFENSE THEORY OF THIS CASE.

 20 HE IS ONLY THE TOP OF A PYRAMID OF

 21 INFORMATION AND EXPERTISE THAT SUPPORTS EVERYTHING HE

 22 SAID.

 23 AND LET'S START AT THE VERY BASE OF THIS

 24 PYRAMID AND TELL YOU HOW ALL THIS CONNECTS UP.

 25 DR. WILSON'S FUNCTION IN THIS CASE WAS

 26 BASICALLY TO EXPLAIN TO YOU THAT ERIK MENENDEZ SUFFERED

 27 FROM A MENTAL DISORDER CALLED POST-TRAUMATIC STRES

 28 DISORDER; TO EXPLAIN HOW HE GOT IT, AND WHY HE GOT IT,

 1 AND WHAT IT IS, AND HOW IT AFFECTED HIM IN HIS LIFE,

 2 EVERY DAY OF HIS LIFE FROM THE TIME HE DEVELOPED IT.

 3 AND MOST PARTICULARLY, HOW IT AFFECTED HIM AT THE TIME

 4 OF THE SHOOTINGS.

 5 BUT DR. WILSON COULD NOT KNOW ALL THESE

 6 THINGS HIMSELF, AND WOULD NOT RELY, BECAUSE HE IS A

 7 CONSCIENTIOUS EXPERT WITNESS, ON JUST TALKING TO ERIK

 8 MENENDEZ.

 9 SO HE RELIED ON EVERYTHING THAT'S BELOW HIM

 10 IN THIS PYRAMID. AND IT IS NOT NECESSARY, IN ORDER TO

 11 SUPPORT DR. WILSON'S CREDIBILITY, OR THE CREDIBILITY OF

 12 ERIK MENENDEZ THAT ALL OF THIS ALSO SUPPORTS; THAT WE

 13 ACTUALLY CALLED ALL THE PEOPLE, OR SHOWED YOU ALL THE

 14 DOCUMENTS THAT SUPPORTED DR. WILSON'S CONCLUSIONS.

 15 WE STARTED OUT WITH THE BIGGEST PART OF

 16 THIS INFORMATION PYRAMID, IF YOU WILL, WHAT ARE TH

 17 THINGS THAT DR. WILSON RELIED UPON, AND THAT WAS WRITTE

 18 STATEMENTS OF PEOPLE -- REAL PEOPLE. NOT RESEARCH. NO

 19 THE STUFF IN THE BIBLE, THE DSM-IV BIBLE, BUT REA

 20 STATEMENTS OF REAL PEOPLE WHO ARE RELATIVES OF TH

 21 MENENDEZ FAMILY, ALL FOUR OF THEM. FRIENDS OF THEIR'S

 22 COACHES FOR THEIR SONS, TEACHERS OF THEIR SONS, BUSINES

 23 ASSOCIATES OF MR. MENENDEZ. AND THAT TOTALED 49

 24 DIFFERENT PEOPLE WHOSE WITNESS STATEMENTS DR. WILSO

 25 SAID HE RELIED ON

 26 NOW, THOSE SAME EXACT IDENTICAL 49 PEOPLE

 27 WHO DR. WILSON RELIED UPON, THOSE STATEMENTS WERE

 28 PROVIDED TO DR. DIETZ, AND HE DIDN'T READ THEM.

 1 MOVING UP THE PYRAMID WAS THE NUMBER OF --

 2 NUMBER OF WITNESSES. YOU WERE NOT TOLD EXACTLY HOW

 3 MANY, BUT YOU WERE TOLD THEY WERE MULTIPLE WITNESSES,

 4 CONSISTING AGAIN OF RELATIVES OF THE MENENDEZ FAMILY,

 5 TEACHERS OF THE MENENDEZ SONS, COACHES OF THE MENENDEZ

 6 SONS, AND FRIENDS OF THAT FAMILY, ALL OF WHOM TESTIFIED

 7 IN THE PREVIOUS TRIAL.

 8 AND I KNOW IT HAS OCCURRED TO SOME OF YOU,

 9 "WELL, WHY DIDN'T THEY TESTIFY HERE?" AND I CAN'T GIVE

 10 YOU THE ANSWER. YOU'RE JUST GOING TO HAVE TO TRUST M

 11 THAT THERE IS A REASON, AND THEY DIDN'T TESTIFY HERE.

 12 BUT ALL THEIR TESTIMONY FROM THE FIRST

 13 TRIAL WAS VIDEOTAPED, THANKS TO COURT TELEVISION,

 14 TRANSCRIBED, AS OUR REPORTER RIGHT NOW IS TRANSCRIBING

 15 IT. AND IT WAS SWORN TESTIMONY, JUST AS THE TESTIMONY

 16 YOU HAVE SEEN HERE WAS.

 17 AND DR. WILSON WATCHED THOSE VIDEOTAPES,

 18 READ THAT TESTIMONY OF ALL OF THOSE WITNESSES FROM THE

 19 PREVIOUS TRIAL. AND HE WATCHED THE VIDEOTAPES, BECAUSE

 20 IT IS SO MUCH BETTER IF YOU'RE GOING TO RELY ON

 21 INFORMATION FROM PEOPLE THAT YOU SEE -- WHAT DO THEY

 22 LOOK LIKE? HOW DO THEY SOUND?

 23 HE SAID HE WANTED TO DETERMINE ARE THEY

 24 CREDIBLE? ARE THEY RELIABLE? WHAT DEMEANOR DO THEY

 25 SHOW? WHAT EMOTION DO THEY CONVEY IN TELLING THEIR

 26 STORIES ABOUT THE MENENDEZ FAMILY?

 27 AND SO THAT WAS A HUGE AMOUNT OF MATERIAL.

 28 IT TOOK A GREAT DEAL OF TIME FOR HIM TO REVIEW IT.

 1 DR. DIETZ WAS NOT GIVEN THIS TESTIMONY BY

 2 THE PROSECUTION, AND FORMULATED, HE TOLD US, HIS

 3 OPINIONS BEFORE HE EVER EVEN CONDUCTED HIS 15 HOURS OF

 4 INTERVIEW WITH ERIK MENENDEZ

 5 AFTER THE INTERVIEWS WERE OVER, HE WAS

 6 GIVEN AND READ SUMMARIES PREPARED BY THE PROSECUTION OF

 7 THE TESTIMONY OF THESE SAME PEOPLE.

 8 AND MIND YOU, DR. DIETZ TESTIFIED THAT HE

 9 RELIED UPON THE FACT -- I MEAN, HE WAS RELYING UPON THE

 10 INFORMATION THAT PROVED THAT ERIK MENENDEZ SUFFERED FROM

 11 THE SYMPTOMS OF AN ANXIETY DISORDER OVER THE COURSE OF

 12 HIS CHILDHOOD.

 13 NOW, WHERE DID HE GET THAT FROM IF HE

 14 WASN'T RELYING ON ERIK MENENDEZ, BECAUSE HE MADE UP HIS

 15 MIND BEFORE HE EVER MET HIM? AND I AM NOT EVEN CLEAR ON

 16 WHAT THE HECK HE WAS RELYING ON BEFORE HE GOT THESE

 17 SUMMARIES. BUT HE HAD NO PROBLEM IN ACCEPTING THE

 18 SYMTOMATOLOGY, BASICALLY, THAT DR. WILSON TESTIFIED TO,

 19 WITH TWO EXCEPTIONS, WHICH I'LL GET TO WHEN WE TALK MORE

 20 ABOUT DR. DIETZ

 21 SO, THESE TWO AT THE BASE OF THE PYRAMID,

 22 INFORMATION FROM PEOPLE WHO KNEW ALL OF THE FAMILY

 23 MEMBERS.

 24 THEN THERE WERE EXPERT WITNESSES: ANN

 25 BURGESS AND ANN TYLER AND DR. VICARY, WHO TESTIFIED AT

 26 THE FIRST TRIAL, AND THEIR TESTIMONY WAS TRANSCRIBED,

 27 AND DR. WILSON READ THAT, AND HE TESTIFIED THAT THEIR

 28 CONCLUSIONS AND OPINIONS WERE ENTIRELY CONSISTENT --

 1 HAVING TO DO WITH ERIK MENENDEZ' HISTORY AND HIS STATE

 2 OF MIND -- ENTIRELY CONSISTENT WITH DR. WILSON'S

 3 OPINIONS AND CONCLUSIONS.

 4 HE ALSO TESTIFIED THAT HE READ THOSE 101

 5 PAGES OF NOTES THAT DR. VICARY COMPILED, AND HE

 6 TESTIFIED THAT DR. VICARY'S NOTES, THE CONTENTS OF HIS

 7 NOTES, WHICH WERE NOTES OF HIS INTERVIEWS, DR. VICARY'S

 8 INTERVIEWS WITH ERIK MENENDEZ, WERE ENTIRELY CONSISTENT

 9 WITH THE INFORMATION THAT DR. WILSON GOT FROM ERIK

 10 MENENDEZ HIMSELF. AND THOSE NOTES WERE WRITTEN, LADIES

 11 AND GENTLEMEN, IN 1990. AND THAT INFORMATION WAS THERE,

 12 THE INFORMATION YOU HEARD FROM THE WITNESS STAND, IN

 13 1990.

 14 THEN ALSO CONTRIBUTING TO THIS PYRAMID ARE

 15 THE TESTIMONY OF THE WITNESSES AT THIS TRIAL WHO

 16 CORROBORATED ERIK MENENDEZ, AND I WILL TELL YOU WHO THEY

 17 ARE IN A FEW MINUTES.

 18 RECORDS AND DOCUMENTS OF ALL KINDS YOU'VE

 19 SEEN. THERE'S BEEN A GAZILLION PHOTOGRAPHS. DR. WILSON

 20 SAW CRIME-SCENE PHOTOGRAPHS. THERE ARE SCHOOL RECORDS,

 21 THERE ARE MEDICAL RECORDS, THERE ARE DOCUMENTS OF ALL

 22 SORTS THAT YOU'VE HEARD ABOUT THAT DR. WILSON RELIED

 23 UPON THAT SUPPORT THE TESTIMONY OF ERIK MENENDEZ.

 24 THEN THERE'S DR. WILSON'S TESTIMONY; HIS

 25 OPINIONS, HIS EXPERTISE.

 26 AND THEN THE LAST PIECE OF THE PYRAMID,

 27 THERE IS ERIK MENENDEZ' TESTIMONY.

 28 NOW, I WANT TO POINT SOME THINGS OUT TO YOU

 1 ABOUT THIS PYRAMID.

 2 THIS WHOLE BASE OF THE PYRAMID THAT

 3 DR. WILSON RELIED ON THAT YOU WERE TOLD WAS CONSISTENT;

 4 EVERYTHING, IN FACT, FROM DR. VICARY'S NOTES ON DOWN,

 5 WAS COMPLETELY UNCONTESTED BY THE PROSECUTION IN THIS

 6 CASE. AND THAT IS A VERY SIGNIFICANT FACT. THAT'S

 7 CALLED UNCONTROVERTED TESTIMONY. UNCONTROVERTED

 8 EVIDENCE.

 9 THEY COULD HAVE CHALLENGED DR. WILSON IN

 10 HIS OPINION BY POINTING OUT, IF IT EXISTED,

 11 INCONSISTENCIES AT ANY ONE OF THESE LEVELS, OR ANYTHING

 12 AT ANY ONE OF THESE LEVELS THAT SUPPORTED THEIR THEORY

 13 OF THE CASE, RATHER THAN THE DEFENSE THEORY OF THE CASE,

 14 AND THEY DIDN'T DO IT.

 15 THEY DID NOT CAST ANY CREDIBILITY

 16 ASPERSIONS ON ANY OF THESE 49 PEOPLE, OR ON ANY OF THE

 17 PEOPLE WHO TESTIFIED AT THE TRIAL, OR ON THE OPINIONS OF

 18 THE EXPERTS FROM THE FIRST TRIAL, OR ON DR. VICARY'S

 19 NOTES. AND DR. VICARY SAT HERE, AND THEY HAVE HIS

 20 NOTES, AND THEY DIDN'T ASK HIM A SINGLE QUESTION.

 21 AND THEY DIDN'T CONFRONT DR. WILSON WITH

 22 ANY INCONSISTENCIES. THAT IS UNCONTROVERTED EVIDENCE IN

 23 SUPPORT OF WHAT ERIK MENENDEZ TESTIFIED TO. NO CONTEST.

 24 NOW, ALSO UNCONTROVERTED, BECAUSE IT IS

 25 BASED ON THIS PYRAMIDAL MOUNTAIN, WAS THE WAY DR. WILSON

 26 CHARACTERIZED THE NATURE OF THE FAMILY DYNAMIC, IF YOU

 27 WILL, IN THE MENENDEZ FAMILY, AND I HAVE THOSE

 28 CHARACTERIZATIONS. I DON'T KNOW IF I WILL GET TO THEM

 1 TODAY. BUT HOW JOSE MENENDEZ PARENTED, HOW MARY LOUISE

 2 MENENDEZ PARENTED, HOW THEY TREATED THEIR CHILDREN.

 3 UNCONTESTED IN THIS TRIAL.

 4 NOW, CONTINUING THE MODE OF CHARACTER

 5 ASSASSINATION THAT THE PROSECUTION HAS ENGAGED IN IN

 6 THIS CASE, DR. WILSON WAS ATTACKED. HE IS OUR "HIRED

 7 GUN."

 8 WELL, ACTUALLY, I'D LIKE TO HAVE DR. WILSON

 9 IN ANY FIGHT, IF YOU'D LIKE TO KNOW THE TRUTH. BUT HE

 10 IS SUPPOSED TO BE UNBELIEVABLE BECAUSE WE PAID HIM

 11 $13,000 FOR HUNDREDS OF HOURS WORTH OF WORK.

 12 AND IN THE ARGUMENTS THAT MR. CONN MAKES

 13 ABOUT THIS ISSUE, PAYING OR NOT PAYING EXPERTS, I MUST

 14 TELL YOU, I FEEL LIKE ALICE THROUGH THE LOOKING GLASS.

 15 LET ME SEE IF I FOLLOW THE LOGIC.

 16 IF YOU'RE PAID $13,000, YOU'RE A HIRED GUN,

 17 YOU'RE A LIAR, YOU CAN'T BE BELIEVED, BECAUSE YOU'RE

 18 BOUGHT AND PAID FOR, OKAY?

 19 IF YOU'RE PAID $40,000, YOU TELL THE TRUTH.

 20 I DON'T GET IT. OH, I FORGOT. THAT'S

 21 BECAUSE THE $40,000 WAS PAID OUT OF TAXPAYER MONEY TO

 22 DR. DIETZ, WHO WAS A PROSECUTION WITNESS. THAT GOES

 23 ALONG WITH THE BASIC THEORY -- THE PROSECUTION CALLS A

 24 WITNESS, THEY'RE TELLING THE TRUTH. IF THE DEFENSE

 25 CALLS A WITNESS, THEY'RE LYING.

 26 THAT'S HOW THEY ATTACK DR. WILSON, BECAUSE

 27 HE'S PAID. BUT DR. DIETZ IS OKAY, BECAUSE HE'S WORTH

 28 IT.

 1 THEN WE GET TO ROGER MC CARTHY. HE WASN'T

 2 PAID ANYTHING AT ALL. RIGHT.

 3 NOW THAT'S SUPPOSED TO MAKE HIM A GREAT

 4 WITNESS, IF YOU'RE NOT PAID ANYTHING AT ALL. OF COURSE,

 5 ROGER MC CARTHY SAT UP HERE AND TOLD YOU HE HAD NOTHING

 6 TO GAIN BY BEING ON THIS CASE. HE LAUGHED: "HA, HA,

 7 HA," WHEN I SUGGESTED HE WAS SEEKING CRIMINAL LAW

 8 BUSINESS. "OH, NO, I WOULDN'T DO THAT," HE SAID. "I'M

 9 NOT INTERESTED IN PROMOTING MY PARTICIPATION IN CRIMINAL

 10 CASES," AND OUT POPS THE NEXT ANNUAL EDITION OF THE

 11 FAILURE ANALYSIS CALENDAR.

 12 AND WHAT ARE THEY PROMOTING THEMSELVES ON?

 13 THE MENENDEZ CASE AND THE SIMPSON CASE.

 14 NOW, AS SOME OF YOU KNOW, I KIND OF WATCHED

 15 THE SIMPSON CASE, AND SOME OF YOU DID, TOO. AND HE IS

 16 PROMOTING A COMPUTER ANIMATION THAT FAILURE ANALYSIS

 17 SUPPOSEDLY DID OF THE SIMPSON CASE. THIS WASN'T IN THE

 18 SIMPSON TRIAL.

 19 MR. CONN: OBJECTION. THERE IS NO EVIDENCE OF

 20 THAT.

 21 THE COURT: SUSTAINED AS TO THE LAST REMARK.

 22 MS. ABRAMSON: ONE CAN ASSUME THAT PROSECUTORS

 23 WITH INTEGRITY DON'T USE FRAUDULENT ANALYSIS.

 24 BUT RETURNING FOR A MOMENT TO

 25 UNCONTROVERTED EVIDENCE. THERE WAS NOT A SINGLE WITNESS

 26 CALLED IN THIS CASE WHO DESCRIBED JOSE AND MARY LOUISE

 27 MENENDEZ' STYLE OF PARENTING ANY DIFFERENTLY THAN THE

 28 WAY ERIK MENENDEZ DESCRIBED IT, FROM THE WAY DR. WILSON

 1 DESCRIBED IT.

 2 NO ONE WAS CALLED, BECAUSE I SUBMIT TO YOU,

 3 NO ONE EXISTS WHO COULD SAY THAT WITH RESPECT TO THEIR

 4 CHILDREN, THEY WERE KIND OR SUPPORTIVE OR LOVING OR

 5 NURTURING. EVEN MRS. MENENDEZ' BROTHER, AS I HAVE TOLD

 6 YOU, POINTED OUT AN INCIDENT WHERE MRS. MENENDEZ IS

 7 BLAMING ERIK MENENDEZ FOR SOMETHING THAT WASN'T HIS

 8 FAULT, FOR BEING CONCERNED ABOUT SOMETHING.

 9 NOT A SINGLE WITNESS WAS EVER CALLED,

 10 BECAUSE I SUBMIT TO YOU, NONE EXIST, TO SAY THAT ERIK

 11 MENENDEZ EVER EXPRESSED ANY KIND OF NEGATIVE FEELINGS

 12 TOWARDS HIS PARENTS, OR ANY NEED FOR MONEY. AND IT IS

 13 UNCONTROVERTED IN THIS CASE THAT, AT A MINIMUM, THERE

 14 WAS EXTENSIVE AND PERVASIVE PSYCHOLOGICAL MALTREATMENT

 15 AND ABUSE EVERY DAY OF ERIK MENENDEZ' LIFE BY HIS

 16 PARENTS.

 17 WHY IS THAT UNCONTROVERTED? WELL, WE HEARD

 18 THAT TESTIMONY FROM ALAN ANDERSEN. WE HEARD THAT

 19 TESTIMONY FROM DIANE VANDERMOLEN. WE HEARD THAT KIND OF

 20 TESTIMONY FROM KATHY SIMONTON. BUT MORE IMPORTANTLY, WE

 21 KNOW THAT, BECAUSE DR. DIETZ BELIEVES IT TO BE TRUE.

 22 WHAT DID DR. DIETZ TELL YOU HE DID DURING

 23 THE COURSE OF HIS INTERVIEW WITH ERIK MENENDEZ? HE

 24 CHALLENGED HIM. HE CALLED IT A CHALLENGE, AND HE SAID

 25 WHAT HE WAS DOING WAS RE-ENACTING FOR ERIK MENENDEZ

 26 SOMETHING THAT HAD HAPPENED OVER AND OVER AGAIN IN HIS

 27 LIFE. HE WAS BELITTLING HIM AND DEMEANING HIM, AND

 28 WANTED TO SEE HIS REACTION

 1 AND IT'S CLEAR THAT DR. DIETZ ACCEPTED THA

 2 IN THAT HOUSEHOLD ERIK MENENDEZ WAS BELITTLED AND

 3 DEMEANED AND DENIGRATED, AND ALL THE OTHER THINGS YOU

 4 HAVE HEARD, ON A ROUTINE BASIS. AND DR. DIETZ DOES THE

 5 SAME THING WHEN HE IS INTERVIEWING ERIK MENENDEZ, AND

 6 GETS, I SUBMIT TO YOU, THE SAME KIND OF REACTION. NOT

 7 ANGER, BUT HURT.

 8 NOW, APART FROM THIS MOUNTAIN OF EVIDENCE

 9 THAT IS UNCONTROVERTED, WHAT IS THE CORROBORATED

 10 EVIDENCE? EVIDENCE THAT THE PEOPLE DO CHALLENGE, AT

 11 LEAST IN ARGUMENT, ALTHOUGH THEY COULD NOT DISPROVE.

 12 FIRST OF ALL, HERE IS AN INTERESTING FACT THAT MAY HAVE

 13 GONE BY YOU.

 14 ERIK MENENDEZ TESTIFIED THAT THE PARENTS --

 15 THAT HE AND HIS BROTHER STAYED AWAY THAT SATURDAY

 16 BECAUSE THEY WANTED TO MISS THE FISHING TRIP. THEY GOT

 17 BACK AN HOUR LATE

 18 WHAT DID THE FISHING CAPTAIN TELL YOU?

 19 THEY WERE LATE BY AN HOUR TO AN HOUR AND A HALF FROM

 20 WHEN THE FISHING TRIP WAS SUPPOSED TO START. THAT IS

 21 CORROBORATION. THE PROSECUTION DIDN'T EVEN WANT TO TELL

 22 YOU ABOUT THE FISHING TRIP THAT SATURDAY.

 23 HERE IS WHAT I HAVE CALLED "THE WEEK IN

 24 CRISIS." HERE IS MR. CONN SAYING NONE OF THIS HAPPENED.

 25 THERE WAS NO WEEK IN CRISIS. AND WERE THEY ABLE TO COME

 26 UP WITH ANY EVIDENCE CONCERNING WHAT HAPPENED THAT WEEK?

 27 YES.

 28 THEY CAME UP WITH GRANT WALKER, THE POOL

 1 REPAIR GUY. GRANT WALKER, WHO CLAIMS THAT HE WAS AT THE

 2 HOUSE THAT SATURDAY AT 2:00 O'CLOCK, FROM HALF AN HOUR

 3 TO 45 MINUTES, FIXING SOMETHING. AND EVERYBODY WAS

 4 THERE. THE BROTHERS WERE PLAYING TENNIS WITH A COACH OR

 5 AN INSTRUCTOR, THE MYSTERY INSTRUCTOR, AND THERE WAS

 6 THIS CURSING GOING ON.

 7 I AM NOT GOING TO GO INTO ALL OF HIS

 8 TESTIMONY NOW. I'LL GET BACK TO IT LATER.

 9 BUT THE POINT IS, HE CLAIMS HE'S THERE AT

 10 2:00 O'CLOCK, AND THESE PEOPLE ARE SUPPOSED TO BE ON

 11 FISHING TRIP AT 3:00 O'CLOCK, AND THEY WERE ALL

 12 TOGETHER. AND IF HE WAS TELLING THE TRUTH, THE

 13 WOULDN'T HAVE BEEN LATE. THEY'RE ALL THERE. BUT, OF

 14 COURSE, THEY HEAR NOTHING FROM THESE PEOPLE ABOUT, "TIME

 15 TO PACK THE COOLER UP, WE'RE GOING ON THE FISHING TRIP."

 16 NOTHING WHATSOEVER ABOUT IT.

 17 THE BOAT CAPTAIN TELLS YOU THEY WERE INDEED

 18 LATE, JUST AS ERIK MENENDEZ SAID THEY WERE, THEREFORE

 19 CORROBORATING ERIK MENENDEZ' VERSION AND DISPUTING GRANT

 20 WALKER, BY THE WAY, THAT THAT IS WHAT HAPPENED ON THAT

 21 SATURDAY.

 22 NOW, WHERE ELSE IS ERIK MENENDEZ

 23 CORROBORATED?

 24 HIS ACCOUNT OF THE ACTUAL SHOOTINGS AND THE

 25 POSITIONS OF HIS PARENTS WERE COMPLETELY AND TOTALLY AN

 26 THOROUGHLY CORROBORATED BY DR. MARTIN FACKLER, B

 27 DR. CYRIL WECHT, BUT MR. RON LINHART, BY MR. CHARLES

 28 MORTON, AND BY DEPUTY DWIGHT VAN HORN.

 1 WE SPENT A MONTH -- I'M SURE IT SEEMED

 2 LONGER -- BUT IT WAS A MONTH LITIGATING FRAUDULENT

 3 ANALYSIS' (SIC) VERSION OF THIS SHOOTING SO THAT I COULD

 4 CORROBORATE MY CLIENT'S TESTIMONY, BECAUSE I KNEW THAT

 5 WHAT WOULD HAPPEN EVENTUALLY IS THE PROSECUTOR WOULD GET

 6 UP AND SAY: "HE IS THE ACCUSED. HE IS FACING THE DEATH

 7 PENALTY. THEREFORE, HE'S LYING. DISCOUNT EVERYTHING HE

 8 SAYS."

 9 AND THE WHOLE CASE IS GOING TO STAND OR

 10 FALL -- THEY WANT YOU TO BELIEVE THE WHOLE CASE STANDS

 11 OR FALLS ON ERIK MENENDEZ' TESTIMONY, INSTEAD OF THIS

 12 MOUNTAIN THAT IS HOLDING HIM UP, THIS FIRM BASE UPON

 13 WHICH HE GAVE HIS TESTIMONY.

 14 AND SO THEY BRING IN ROGER MC CARTHY TO

 15 COME UP WITH A LAST DITCH, DESPERATE EFFORT TO FORMULATE

 16 SOME KIND OF THEORY OF PREMEDITATION.

 17 AND WHAT IS THE THEORY OF PREMEDITATION

 18 THAT MR. CONN USES ROGER MC CARTHY FOR NOW IN ARGUMENT?

 19 THE MAFIA THEORY. THEY WANTED TO MAKE IT LOOK LIKE THE

 20 MAFIA, INVOLVING SHOTGUNS, WHICH WE ALL KNOW THE MAFIA

 21 USE -- OF COURSE, WE ALL KNOW THEY DON'T -- AND

 22 KNEE-CAPPING. AND WHAT KNEE-CAPPING HAS TO DO WITH

 23 THIS, I HAVEN'T A CLUE. BUT I WILL TELL YOU WHAT I

 24 BELIEVE THE FOLKLORE ABOUT KNEE-CAPPING IS IN A FEW

 25 MINUTES.

 26 SO THEY BRING IN ROGER MC CARTHY. THIS IS

 27 HIS JOB, TO SHOW THE PARENTS WERE SEATED, TO MAKE ERIK

 28 MENENDEZ A LIAR. TO SHOW WHAT? THAT THEY WERE SHOT IN

 1 THE KNEE, WHEN THEY'RE NOT SHOT IN THE KNEE? HE'S GOING

 2 TO TRY AND SAY THAT.

 3 TO SHOW AN AMBUSH FOR THEIR LYING-IN-WAIT

 4 THEORY. AGAIN, HAVING TO DO WITH THE PARENTS BEING

 5 SEATED.

 6 SO THEY BRING IN THIS MAN WHO HAS

 7 ABSOLUTELY NOT ONE SINGLE CREDENTIAL TO SUPPORT THE KIND

 8 OF TESTIMONY THEY ELICITED FROM HIM. HE MAY BE THE

 9 WORLD'S GREATEST MECHANICAL ENGINEER, BUT I AM NOT GOING

 10 TO LET HIM DO BRAIN SURGERY.

 11 I AM A PRETTY GOOD LAWYER. I'M NOT GOING

 12 TO GO OUT AND RECONSTRUCT BRIDGE BURNINGS.

 13 HE HAS -- I DON'T CARE HOW MANY

 14 PRESIDENTIAL MEDALS HE HAS. HE DOESN'T HAVE THEM IN THE

 15 FIELDS THAT MATTER HERE. WHAT MATTERS HERE, FOR

 16 ANALYZING THIS CRIME SCENE, OR ANY CRIME SCENE, IS

 17 MEDICINE, FIRST AND FOREMOST.

 18 SO, WHO DID WE BRING IN? MARTIN FACKLER,

 19 WHO ROGER MC CARTHY SAID IS THE LEADING EXPERT IN TH

 20 U.S. OF A. IN WOUND BALLISTICS. THAT'S WHAT ROGER

 21 MC CARTHY SAID.

 22 MR. CONN TRASHED DR. FACKLER ALSO. I ASK

 23 YOU FOLKS, IF YOU HAD A RELATIVE, SOMEONE NEAR AND DEAR

 24 TO YOU WHO HAD A GUNSHOT WOUND, WHO WOULD YOU LIKE TO

 25 HAVE OPERATE ON THAT PERSON, MARTIN FACKLER OR ROGER

 26 MC CARTHY, JUST FOR OPENERS? WOUND BALLISTICS IS THE

 27 KEY TO THIS KIND OF RECONSTRUCTION.

 28 SECONDLY, CONCERNING THESE ISSUES OF

 1 ANTEMORTEM AND POSTMORTEM WITH WHICH MR. MC CARTHY HAS

 2 NO EXPERTISE, BUT NEVERTHELESS OFFERS OPINIONS ABOUT

 3 WOUNDS BEING ANTEMORTEM AND POSTMORTEM.

 4 WE BRING IN DR. CYRIL WECHT, WHO, AS YOU

 5 KNOW, IS THE ONLY PERSON WHO KNOWS WHETHER ELVIS IS

 6 ALIVE OR NOT. HE IS UNQUESTIONABLY ONE OF THE LEADING

 7 FORENSIC PATHOLOGISTS IN THE UNITED STATES, AND HE CAME

 8 HERE AND TESTIFIED IN THIS CASE, AND YOU TELL ME IF YOU

 9 CAN FIND FAULT WITH THE TESTIMONY OF DR. CYRIL WECHT.

 10 AND HE DESTROYED ROGER MC CARTHY.

 11 AND WE CALLED MR. CHARLES MORTON FROM THE

 12 INSTITUTE OF FORENSIC SCIENCE, THE MAN WHO TAUGHT THE

 13 MAN WHO IS DWIGHT VAN HORN'S BOSS.

 14 NOW, MR. CONN ARGUED THAT -- I MEAN, TALK

 15 ABOUT HIS ARGUMENTS ABOUT VAN HORN. BUT ONE OF THE

 16 THINGS HE SAID ABOUT DEPUTY VAN HORN IS HE IS MORE

 17 EXPERIENCED IN BALLISTICS THAN MR. MORTON, AND I DON'T

 18 THINK HE GOT THAT RIGHT. MR. MORTON TRAINED THE HEAD OF

 19 THE LABORATORY, THE CRIMINALISTIC HEAD OF THE

 20 LABORATORY. HE WAS ONE OF HIS STUDENTS.

 21 BUT THIS IS ALSO THE EFFORT, YOU KNOW, TO

 22 JUST TRASH WHATEVER THE DEFENSE DOES.

 23 SO FACKLER COMPLETELY DESTROYED MC CARTHY'S

 24 OPINIONS. WECHT DESTROYED THEM, LINHART DESTROYED THEM,

 25 MORTON DESTROYED THEM, AND VAN HORN DESTROYED THEM.

 26 NOW FOLKS, LIKE I HAVE TOLD YOU, I HAVE

 27 BEEN DOING THIS FOR 27 YEARS. IF ROGER MC CARTHY WAS

 28 NOT COMPLETELY DISCREDITED AS A WITNESS, IT CANNOT BE

 1 DONE, AND THAT IS ALL I AM GOING TO SAY ABOUT THE

 2 PHYSICAL EVIDENCE. ONE MONTH WE DID THIS IN FRONT OF

 3 YOU, ONE MONTH IN EXCRUCIATING DETAIL. I AM CONFIDENT

 4 THAT YOU GOT IT

 5 BUT I WANT TO TALK ABOUT DEPUTY VAN HORN,

 6 BECAUSE THE ATTACK -- THE ASSAULT ON DEPUTY VAN HORN

 7 TELLS YOU EVERYTHING YOU NEED TO KNOW ABOUT THE

 8 INTEGRITY OF THIS PROSECUTION. IT TELLS YOU HOW

 9 DESPERATE THEY ARE FOR A CONVICTION, AND IT SHOULD

 10 UNDERMINE YOUR CONFIDENCE IN MR. CONN'S ANALYSIS OF THE

 11 EVIDENCE.

 12 HERE IS WHAT DEPUTY VAN HORN ACTUALLY

 13 TESTIFIED TO. I HAVE A FEW PAGES OF TRANSCRIPT. THESE

 14 ARE MY NOTES, MY SUMMARIES.

 15 NUMBER ONE, HE SAYS THAT NO. 4 BUCKSHOT

 16 COMES 27 TO THE LOAD, PERIOD. ROGER MC CARTHY TESTIFIED

 17 THAT HE CUT OPEN 10 OF THEM, AND THE COUNT WAS OFF.

 18 THAT'S A LIE. THAT'S A LIE. THEY ARE

 19 PACKED 27 -- HE DREW A DIAGRAM, YOU WILL SEE IT, OF HOW

 20 THEY STACK INSIDE THE SHELL. SO HE DID THAT. THAT MUST

 21 HAVE BEEN SOMETHING FROM MR. CONN.

 22 HE TALKED ABOUT THE ONLY RELIABLE EVIDENCE,

 23 ACTUAL SCIENTIFIC EVIDENCE THAT YOU COULD RELY ON

 24 CONCERNING HOW MANY SHOTS WERE FIRED, AND THAT A REAL

 25 SCIENTIST, SUCH AS HIMSELF, WOULD NOT SPECULATE AND COME

 26 UP WITH AN ABSOLUTE NUMBER OUTSIDE OF THAT REAL PHYSICAL

 27 EVIDENCE, AND THE SHOT COUNT WAS BASED ON THE GATHERED

 28 EVIDENCE THAT THE BEVERLY HILLS POLICE DEPARTMENT PICKED

 1 UP, WHICH IS SIX OVER-POWDER WADS, INDICATING SIX

 2 BUCKSHOT FOR SURE, AND TWO BIRD SHOT CUPS.

 3 HE THEN POINTED OUT THAT ROGER MC CARTHY

 4 USED THE WRONG AMMUNITION FOR HIS EXPERIMENT, WHICH I

 5 POINTED OUT WHILE MC CARTHY WAS ON THE STAND. YOU WILL

 6 SEE -- AND I KNOW THIS IS A LONG TIME AGO, AND YOU

 7 DIDN'T HAVE ALL THE FUN OF DOING IT, AS I DID -- BUT THE

 8 AMMUNITION, THE FIOCCHI AMMUNITION USED HERE DOES NOT

 9 COME IN A SHOT CUP.

 10 THE FIOCCHI AMMUNITION USED HERE -- AND I

 11 AM TALKING ABOUT THE BUCKSHOT -- DOES NOT COME

 12 COPPER-PLATED. IF YOU USE COPPER-PLATED AMMUNITION, AND

 13 YOU USE IT IN A SHOT CUP, YOU'RE GOING TO GET A

 14 COMPLETELY DIFFERENT KIND OF SHOT PATTERN THAN IF YOU'RE

 15 USING JUST THE LEAD PELLETS SITTING LOOSELY IN THE SHOT

 16 SHELL. THAT WAS ATTESTED TO BY BOTH VAN HORN AND MR.

 17 MORTON.

 18 SO DEPUTY VAN HORN TESTIFIED ROGER

 19 MC CARTHY USED THE WRONG AMMUNITION. HE TOOK THIS

 20 COPPER-PLATED STUFF IN A SHOT CUP TO MAKE HIS CHARTS,

 21 AND HE DECIDED IT WAS SO VARIABLE, THE AMMUNITION HE WAS

 22 USING WAS SO VARIABLE, THAT HE COULDN'T DO ANY DISTANCE

 23 SHOTS FROM IT. AND THAT WAS THE END OF HIS

 24 DISSERTATION.

 25 MR. MORTON, TO FAST FORWARD AHEAD, USED THE

 26 RIGHT AMMUNITION WITH THE SAME KIND OF GUN, AND HE GOT

 27 SOME PATTERNS WITHIN A WIDE RANGE HE WAS COMFORTABLE

 28 WITH.

 1 THEN DEPUTY VAN HORN TESTIFIED THAT THIS

 2 PARTICULAR MODEL MOSSBERG. CONTRARY TO THE TESTIMONY OF

 3 THE YOUNG WOMAN FROM THE BIG-5, IT IS NOT USUALLY SOLD

 4 WITH A DOWEL IN IT, THAT THING THAT HAS TO BE PULLED

 5 OUT, BECAUSE IT'S NOT DESIGNED AS A HUNTING GUN. IT'S A

 6 CHEAP DEFENSE WEAPON.

 7 SO HE IS NOW CASTING SOME IMPEACHMENT ON

 8 ANOTHER PROSECUTION WITNESS.

 9 THEN DEPUTY VAN HORN TESTIFIED THAT YOU

 10 COULD FIRE OFF FIVE SHOTS -- WHICH IS WHAT MY CLIENT

 11 SAID HE HAD LOADED IN HIS GUN -- IN FIVE SECONDS, USING

 12 THIS GUN. BUT TO BE GENEROUS, CERTAINLY IN 10 SECONDS.

 13 AND I AM SURE THAT WAS NOT APPRECIATED BY THE

 14 PROSECUTION, BECAUSE THEY WANT YOU TO PICTURE THIS

 15 SHOOTING AS IF IT WERE A SLOW, DELIBERATE SET OF

 16 ACTIVITIES, WHEN IN FACT IT'S "BOOM-BOOM-BOOM-BOOM-BOOM.

 17 BOOM."

 18 THAT'S ALL IT IS. THAT'S ALL IT IS TO

 19 WRECK HAVOC. THAT'S ALL IT IS TO KILL PEOPLE AND

 20 DESTROY YOUR OWN LIFE. THAT'S ALL IT IS. FAST. AND

 21 THAT'S WHAT VAN HORN TESTIFIED TO.

 22 AND HE DREW A DIAGRAM FOR YOU, A SHOT

 23 DISPERSAL DIAGRAM THAT SHOWS THAT THE SHOT FROM A

 24 SHOTGUN SHELL EXPANDS IN SPACE, AND THE FARTHER AWAY YOU

 25 GET, THE WIDER IT IS.

 26 THE SHERIFF'S DEPARTMENT POLICY IS NOT TO

 27 GIVE ESTIMATES; BUT NEVERTHELESS, IT GETS WIDER AND

 28 WIDER THE FARTHER AWAY YOU GO. AND WHAT HE TESTIFIED TO

 1 IS ONCE IT STARTS EXPANDING, IT DOES NOT COME BACK

 2 TOGETHER AGAIN, AS ROGER MC CARTHY TRIED TO CLAIM, IN

 3 ORDER TO SUPPORT ROGER MCCARTHY'S SHOT 1 SCENARIO, WHERE

 4 YOU HAVE A WIDE SPREAD FROM THE ELBOW, AND IT ALL FORMS

 5 BACK AGAIN TO GO INTO THE WRONG SIDE OF MR. MENENDEZ'

 6 ARM, AND COME OUT THE OTHER SIDE AND THEN SPREAD OUT

 7 AGAIN. IT DOESN'T HAPPEN THAT WAY.

 8 SO THAT, NO DOUBT, MADE MR. CONN UNHAPPY

 9 WITH DEPUTY VAN HORN.

 10 AND THEN DEPUTY VAN HORN ESTIMATED, BASED

 11 ON THE FACT THAT THERE ARE AN EXTENSIVE NUMBER -- A

 12 LARGE NUMBER OF WOUNDS HERE, AND WOUND LOCATIONS, AND

 13 BASED ON HIS EXPERIENCE AS A LAW ENFORCEMENT OFFICER --

 14 AGAIN, THAT ROGER MC CARTHY DOESN'T HAVE -- THAT GIVEN

 15 THE WAY AMATEURS, AS COMPARED TO POLICE OFFICERS, LOAD

 16 WEAPONS, HE ESTIMATED 11 SHOTS HERE AS THE MOST LIKELY;

 17 THAT INEXPERIENCED PEOPLE WOULD LOAD FIVE AND NOT GO

 18 THROUGH THE COMPLEXITY -- AND I STILL CAN'T FIGURE OUT

 19 HOW TO DO IT -- OF OPENING UP THE GUN AND GETTING THE

 20 SIXTH ONE IN. AND SINCE THERE WAS, BY THE ADMISSION OF

 21 ERIK MENENDEZ, AND WITH NO OTHER POSSIBLE PROOF, A

 22 RELOAD. SO HE CAME UP WITH AN ESTIMATE OF 11 SHOTS.

 23 AND THEN HE TESTIFIED AS FOLLOWS: THA

 24 ROGER MC CARTHY DID NOT DO A SCIENTIFICALLY RELIABLE

 25 RECONSTRUCTION;

 26 THAT ROGER MC CARTHY'S RECONSTRUCTION --

 27 AND IF YOU BOTHER TO LOOK AT THESE THINGS NOW, THESE

 28 CARTOONS, YOU WILL SEE THAT THE RECONSTRUCTION HAS GOT

 1 PEOPLE SHOOTING FROM BOTH SIDES OF THE ROOM,

 2 BAM-BAM-BAM-BAM-BAM. THAT'S WHAT THE EAR WITNESSES

 3 HEARD. AND HE'S GOT IT COMING FROM TWO DIFFERENT

 4 DIRECTIONS. AND IF THAT HAD HAPPENED, THEY'D BE DEAD

 5 AND YOU WOULDN'T BE HERE, AND NONE OF THIS WOULD BE

 6 HAPPENING.

 7 SO HE TALKED ABOUT DEPUTY VAN HORN'S

 8 CROSS-FIRE AND THE PROBLEMS OF CROSS-FIRE, ROGER

 9 MC CARTHY.

 10 AND BY THE WAY, MR. CONN SAYS: "OH,

 11 FORGIVE ROGER, IT'S THE ILLUSTRATOR'S FAULT."

 12 ROGER MC CARTHY IS THE ILLUSTRATOR. HE IS

 13 THE PERSON WHO SAID WHERE THE FIGURES GO AND WHERE THE

 14 LINES GET DRAWN, AND THAT'S WHAT HE TESTIFIED TO. THESE

 15 ARE HIS CARTOONS. SO THAT THIS SCENARIO THAT HE'S

 16 WRITTEN WOULD HAVE RESULTED IN CROSS-FIRE AND DEATH FOR

 17 THE PEOPLE DOING THE SHOOTING.

 18 I'VE ALREADY TOLD YOU WHAT HE SAID ABOUT

 19 HOW TO EJECT, THAT THEY EJECT TO THE RIGHT, AND THEY CAN

 20 FLY VERY FAR, PARTICULARLY IF YOU'RE DOING IT VERY, VERY

 21 FAST. THE FASTER, THE FARTHER THEY FLY TO THE RIGHT.

 22 THEN HE TESTIFIED -- IMPEACHING SOME RATHER

 23 EXTRAORDINARY TESTIMONY FROM DR. LAWRENCE -- THAT A SHOT

 24 COLUMN GOING ACROSS SOMEONE'S CHEST CAN COMPRESS TWO

 25 INCHES, AND YET MAKE NO HOLES IN THE SHIRT. AND MORE

 26 IMPORTANTLY, NO HOLES IN THE CHEST.

 27 AND THAT'S WHAT DR. LAWRENCE TESTIFIED TO.

 28 YOU MAY NOT REMEMBER THAT FAR BACK. THE SHOT COLUMN

 1 COMPRESSED THIS CHEST TWO INCHES. DIDN'T SCRATCH THE

 2 SKIN. EVEN VAN HORN, WITH HIS ASSOCIATE OF ARTS DEGREE

 3 AND HIS TEN YEARS AT THE SHERIFF'S DEPARTMENT, KNOWS

 4 THAT THAT'S RIDICULOUS.

 5 THEN HE TESTIFIED THAT, ALTHOUGH THIS TYPE

 6 OF AMMUNITION IS TECHNICALLY CALLED SMOKELESS POWDER,

 7 THAT DOES NOT MEAN, CONTRARY TO WHAT MR. CONN JUST

 8 ARGUED TO YOU THE OTHER DAY, THAT THERE IS NO SMOKE AT

 9 ALL. HE SAYS THERE MAY WELL BE SMOKE, PARTICULARLY IF

 10 YOU'VE GOT 12 ROUNDS BEING FIRED RAPIDLY. BECAUSE IN

 11 ADDITION TO SMOKE, THERE IS LEAD DUST. AND SO THERE IS

 12 GOING TO BE SOMETHING VISIBLE IN THE AIR THAT YOU CAN

 13 SEE.

 14 NOW, IT WON'T MAKE IT IMPOSSIBLE TO SEE,

 15 AND MY CLIENT DIDN'T TESTIFY THAT HE WAS BLINDED BY THE

 16 SMOKE. HE TESTIFIED THAT HE SAW SMOKE IN THE ROOM AT

 17 SOME POINT -- IN FACT, HE WENT AND TOLD THE POLICE THAT

 18 HE SAW SMOKE IN THE ROOM AT A TIME WHEN YOU SHOULDN'T

 19 HAVE SEEN SMOKE IN THE ROOM, LONG AFTER THE SHOOTING.

 20 THE FACT OF THE MATTER IS, VAN HORN IS CORROBORATED BY

 21 MY CLIENT ON THAT POINT. HE SAID AT PAGE 42,188, AFTER

 22 12 ROUNDS THERE WOULD BE PERCEPTIBLE SMOKE, PARTICULARLY

 23 ONCE HE WAS GIVEN THE ROOM DIMENSIONS, AND HE SAID IN A

 24 DARKENED ROOM IT WOULD BE MORE NOTICEABLE THAN IN A

 25 BRIGHTLY LIT ONE. HE SAID THAT AT 42,246.

 26 NOW, HERE'S THE REAL BONE OF CONTENTION FOR

 27 THE DISTRICT ATTORNEY'S OFFICE WITH THIS LAW ENFORCEMENT

 28 OFFICER. AND MOST OF THIS CAME OUT ON

 1 CROSS-EXAMINATION.

 2 HE TOLD THE PROSECUTORS IN THIS CASE,

 3 BEFORE THE DEFENSE EVER SPOKE TO HIM, BEFORE THE DEFENSE

 4 EVER SUBPOENAED HIM, THAT WHAT ROGER MC CARTHY WAS

 5 PROMOTING WAS JUNK SCIENCE; BOGUS, FAKE, FRAUDULENT.

 6 AND HE ASKED THEM: "DON'T DO THAT. DON'T SET BACK

 7 FORENSIC SCIENCE."

 8 AND YOU SAW THE REAL FORENSIC SCIENTISTS IN

 9 MARTY FACKLER AND IN CHARLES MORTON AND IN RON LINHART

 10 AND IN VAN HORN. "DON'T PUT THIS CHARLETON ON THE

 11 WITNESS STAND AND SET A PRECEDENT THAT UNDERMINES ALL

 12 THE SCIENCE THAT WE'VE BEEN TRYING -- ALL THE CARE THAT

 13 WE HAVE PUT IN THIS WORK." AND THAT'S WHAT MOST UPSET

 14 MR. CONN. AND THEN HE ATTACKED HIM.

 15 NOW, MR. CONN HAS THE SAME KIND OF

 16 EXTRAORDINARILY BIASED ATTITUDE ABOUT THE ROLE OF LAW

 17 ENFORCEMENT AS HE DOES ABOUT THE HONESTY OF WITNESSES.

 18 ALONG WITH HIS THEORY THAT ALL DEFENSE WITNESSES LIE,

 19 AND THAT ALL PROSECUTION WITNESSES ARE TO BE PRESUMED

 20 TRUTHFUL, WHICH OF COURSE TURNS THE PRESUMPTION OF

 21 INNOCENCE, REASONABLE DOUBT UPSIDE DOWN, IS THE NOTION

 22 THAT THE LAW ENFORCEMENT AGENCIES WORK FOR THE

 23 POLITICALLY-ELECTED PROSECUTOR'S OFFICE. NOW THAT

 24 DOESN'T HAPPEN, I HOPE AND PRAY, TO BE TRUE.

 25 HIS NOTION IS DEPUTY VAN HORN DID SOMETHING

 26 WRONG BECAUSE HE TOLD THE TRUTH. MR. CONN GOT UP HERE

 27 AND SAID: "YES, I ASKED HIM WHOSE SIDE WAS HE ON."

 28 BUT HE FORGOT TO TELL YOU WHAT VAN HORN

 1 ANSWERED. HIS ANSWER WAS: "THE SIDE OF THE TRUTH."

 2 AND IF MR. CONN WANTS TO ARGUE THAT THAT MEANS THAT

 3 DEPUTY HORN IS ON THE DEFENSE SIDE, I AGREE, BECAUSE WE

 4 ARE THE SIDE OF THE TRUTH IN THIS CASE.

 5 NOW, HE TRIES TO MAKE DWIGHT VAN HORN A

 6 REBEL -- YOU KNOW, HE IS A WILD ELEPHANT CUT LOOSE FROM

 7 THE HERD IN THE SHERIFF'S DEPARTMENT.

 8 UH-HUH. NO, HE'S NOT. HIS CAPTAIN WAS

 9 SITTING IN THE AUDIENCE WHEN HE TESTIFIED. HIS CAPTAIN

 10 ATTENDED THE FIRST MEETING WITH THE DEFENSE. RON

 11 LINHART WAS SITTING IN THE AUDIENCE, THE ASSISTANT

 12 DIRECTOR OF THE LABORATORY WHEN HE TESTIFIED. RON

 13 LINHART ATTENDED THE SECOND MEETING WITH THE DEFENSE.

 14 HE HAD PERMISSION FROM HIS SUPERVISORS TO TESTIFY FOR

 15 THE DEFENSE. HE HAD PERMISSION FROM HIS SUPERVISORS TO

 16 TESTIFY -- TO TALK TO US BEFORE WE PUT HIM ON THE

 17 WITNESS STAND. AND HE DID NOT HELP ME PREPARE TO

 18 CROSS-EXAMINE ROGER MC CARTHY.

 19 AND YOU DIDN'T REALLY THINK, WHEN I WAS

 20 CROSS-EXAMINING ROGER MC CARTHY, THAT I NEEDED ANY

 21 FURTHER HELP AT THAT POINT, DID YOU? I HAD MARTY

 22 FACKLER, I HAD CHARLES MORTON, I HAD CYRIL WECHT. I

 23 DIDN'T NEED TO BE COACHED BY DWIGHT VAN HORN.

 24 BUT HE, LIKE ANY RESPONSIBLE WITNESS, DID

 25 NOT WANT TO TAKE THE WITNESS STAND WITHOUT ADEQUATELY

 26 PREPARING BY KNOWING WHAT I WAS GOING TO ASK HIM. AND

 27 HE TESTIFIED THAT THESE MEETINGS THAT SO OFFENDED

 28 MR. CONN'S BIASED VIEW OF THE WORLD -- AT THESE MEETINGS

 1 ALL I DID WAS ASK HIM QUESTIONS, AND HE GAVE ME ANSWERS,

 2 AND THOSE WERE THE SAME QUESTIONS I ASKED HIM ON THE

 3 WITNESS STAND, AND I GOT THE SAME ANSWERS.

 4 NOW, WHERE -- IF YOU LOGICALLY PLAY OUT

 5 MR. CONN'S VIEW OF LAW ENFORCEMENT, WHAT DOES THAT MAKE

 6 DETECTIVE ZOELLER, IN HIS VIEW?

 7 NOW, YOU SAW WE CALLED DETECTIVE ZOELLER TO

 8 THE STAND. I MEAN, I AM GLAD I'VE KNOWN DETECTIVE

 9 ZOELLER FOR SIX YEARS. I KNEW HIM BEFORE MR. CONN GOT

 10 TO KNOW HIM. BECAUSE I WOULD BE VERY SUSPICIOUS NOW OF

 11 ANY OFFICER WHO IS WORKING WITH MR. CONN, GIVEN MR.

 12 CONN'S VIEW THAT LAW ENFORCEMENT IS SUPPOSED TO LIE FOR

 13 THE PROSECUTION. I DON'T BELIEVE DETECTIVE ZOELLER LIED

 14 AT ALL.

 15 BUT I KNEW HIM FOUR YEARS EARLIER THAN

 16 MR. CONN DID, AND WE CALLED DETECTIVE ZOELLER AS A

 17 WITNESS TWO OR THREE TIMES IN THIS CASE. DON'T YOU

 18 THINK I ASKED HIM: "DETECTIVE ZOELLER, I AM GOING TO

 19 ASK YOU THIS QUESTION. WHAT'S YOUR ANSWER?" DON'T YOU

 20 THINK HE TOLD ME BEFORE I PUT HIM ON THE WITNESS STAND?

 21 DO YOU THINK I'M AN IDIOT? DO YOU THINK WE PUT

 22 WITNESSES UP THERE WITHOUT LETTING HIM KNOW THAT IS WHAT

 23 WE'RE GOING TO ASK HIM?

 24 I DIDN'T SEE THIS ASSAULT ON DETECTIVE

 25 ZOELLER, WHO WE CALLED AS A WITNESS, ONLY ON DWIGHT VAN

 26 HORN.

 27 THIS WAS AN EFFORT TO DESTROY DEPUTY VAN

 28 HORN'S REPUTATION, WITH HIS OWN CAPTAIN SITTING IN THE

 1 AUDIENCE.

 2 SO NOW THE SHERIFF'S DEPARTMENT, SINCE WE

 3 KNOW HE WAS AUTHORIZED, IS ON THE SIDE OF THE DEFENSE IN

 4 THIS CASE.

 5 WELL, I WOULD BE VERY HAPPY IF THAT WERE

 6 TRUE. AFTER ALL, THE SHERIFF'S DEPARTMENT HAS KEPT MY

 7 CLIENT ALIVE AND WELL FOR SIX YEARS IN SHERIFF'S

 8 CUSTODY. THE SHERIFF'S DEPARTMENT, WHICH MR. CONN IS

 9 ATTACKING, AND THE SHERIFF'S DEPUTIES, ARE SITTING IN

 10 THIS COURTROOM. THESE ARE THE GENTLEMEN WHO TAKE CARE

 11 OF YOU. AND HE HAS CAST ASPERSIONS UPON THE ENTIRE

 12 SHERIFF'S DEPARTMENT BY ATTACKING DWIGHT VAN HORN, WHO

 13 WAS JUST A BALLISTICS EXPERT.

 14 AND WHAT IS THE REASON WHY DWIGHT VAN HORN

 15 WOULD TURN -- THAT HE WASN'T GOING TO BE CALLED AS A

 16 WITNESS? OH, I AM SURE IT JUST BROKE HIS HEART THAT HE

 17 DOESN'T HAVE ANOTHER SUBPOENA TO ANSWER TO, AND GET ON

 18 THE WITNESS STAND IN THIS CASE. NO

 19 FIRST OF ALL, ROGER MC CARTHY AND WHAT HE

 20 WAS USED TO DO, CREATED AN ISSUE IN THIS CASE WHERE

 21 THERE WASN'T REALLY ONE. THERE WAS NEVER ANY QUESTION

 22 THAT THE SHOOTING HAPPENED EXACTLY THE WAY THAT ERIK

 23 MENENDEZ DESCRIBED IT. THEY HAD TO CREATE THIS ISSUE IN

 24 ORDER -- IN THEIR DESPERATION TO GET THIS CONVICTION --

 25 TO CREATE A THEORY OF PREMEDITATION THAT WOULD WORK FOR

 26 THEM

 27 VAN HORN WAS CALLED BY THE PROSECUTION IN

 28 THE LAST TRIAL. DR. GOLDEN WAS CALLED BY THE

 1 PROSECUTION IN THE LAST TRIAL. THE CORONER.

 2 IT DIDN'T MATTER. NONE OF THAT EVIDENCE

 3 MATTERED. IT ONLY MATTERS WHEN YOU'RE GOING TO TRY TO

 4 FABRICATE SOME NEW THEORY OF PREMEDITATION. IT ONLY

 5 MATTERS WHEN YOU'RE THE KIND OF PROSECUTOR WHO HAS TO

 6 CALL THE DEFENDANT A LIAR 50 TIMES IN HIS FINAL

 7 ARGUMENT.

 8 THIS CASE WASN'T MADE OR NOT MADE ON THE

 9 BALLISTICS EVIDENCE. SO IT DIDN'T MATTER TO DWIGHT VAN

 10 HORN WHETHER HE WAS CALLED OR NOT.

 11 BUT IT DEFINITELY MATTERED TO THE

 12 SELF-PROMOTING ROGER MC CARTHY THAT HE BE FEATURED IN

 13 THIS TRIAL. AND YET ON THIS FLIMSY NOTION THAT VAN HORN

 14 WAS -- "GEE, WE FELT SO REJECTED," THAT HE THEN MAKES

 15 SOMETHING UP FOR THE DEFENSE.

 16 THAT'S ABSOLUTELY LUDICROUS. THE REAL AX

 17 TO GRIND WITH VAN HORN IS THAT HE TOLD HIM THEY WERE

 18 DOING SOMETHING IMPROPER, AND THEY DID IT ANYWAY.

 19 AND LET ME TELL YOU, WITH RESPECT TO V

 20 HORN AND HIS MEETING WITH US, HE CALLS HIM UP AFTER OUR

 21 MEETINGS AND TELLS THEM EXACTLY WHAT WENT ON IN THEM,

 22 WHICH IS FINE WITH ME. HE DIDN'T TELL ME HE WAS GOING

 23 TO DO IT, BUT HE DID IT. NOW, I NEVER GET CALLS FROM

 24 SHERIFF'S EXPERTS AFTER THEIR MEETINGS WITH THE

 25 PROSECUTORS.

 26 HE IS BEING VERY CAREFUL TO BE NEUTRAL.

 27 BUT HE GETS ATTACKED. I HAVE NEVER SEEN ANYTHING LIKE

 28 THAT ATTACK ON DEPUTY VAN HORN, AND I HOPE YOU

 1 UNDERSTAND THAT IT SHOWS HOW DESPERATE, HOW BIASED THIS

 2 PROSECUTION IS.

 3 YOU KNOW, THERE IS A RULE THAT PROSECUTORS

 4 ARE SUPPOSED TO SEEK JUSTICE. THEY'RE NOT SUPPOSED TO

 5 JUST WANT TO WIN. IN THIS CASE, THEY JUST WANT TO WIN,

 6 BAD.

 7 NOW, ASIDE FROM, OF COURSE, ATTACKING VAN

 8 HORN, THE PROSECUTION KEEPS UP THE DRUM-BEAT THAT

 9 EVERYBODY WHO TESTIFIED FOR THE DEFENSE IS BAD NEWS AND

 10 ATTACKS MARTY FACKLER.

 11 MARTY FACKLER IS THE HEAD OF THE ARMY

 12 RESEARCH LABORATORY IN WOUNDS. HE CLAIMS MARTY FACKLER

 13 ONLY TREATED ONE SHOTGUN WOUND; THEREFORE, HE'S NOT

 14 QUALIFIED.

 15 ROGER MC CARTHY NEVER SAW A WOUND. HE

 16 ADMITTED IT. HE'S NEVER SEEN A BODY WITH A WOUND. HE'S

 17 NEVER SEEN A WOUND, NOTHING. IT'S DESPICABLE. THE

 18 ATTACK ON THOSE WITNESSES IS DESPICABLE. WE EITHER

 19 PROVED THAT ROGER MC CARTHY WAS A FRAUD, OR WE DIDN'T.

 20 I HAVE A LITTLE POINT HERE THAT I WANT TO

 21 MAKE. I HAVE NO IDEA IF IT'S GOING TO HAVE ANY

 22 SIGNIFICANCE TO YOU, BUT I WANT TO CLEAR UP THE RECORD

 23 ABOUT ONE THING.

 24 MR. CONN TESTIFIED -- TESTIFIED -- ALMOST.

 25 MR. CONN ARGUED THAT, IN GOING OVER DETECTIVE ZOELLER'S

 26 TESTIMONY, AND HE WENT OVER LITTLE BITS OF IT, THAT WHEN

 27 DETECTIVE ZOELLER ARRIVED AT THE CRIME SCENE, THE LIGHTS

 28 IN THE DEN WERE OFF.

 1 I JUST WANT TO REMIND YOU THAT THERE IS AN

 2 OFFICER NAMED BUTKUS WHO TESTIFIED HERE, WHO AS THE

 3 FIRST ONE INSIDE THE HOUSE, IF I HAVE IT RIGHT, OR AT

 4 LEAST WITH THE FIRST TEAM, LONG BEFORE DETECTIVE ZOELLER

 5 GOT THERE.

 6 AND HE INDICATED IN A STATEMENT THAT WAS

 7 WRITTEN DOWN BY THE PREVIOUS PROSECUTORS THAT WHEN HE

 8 ENTER THE HOUSE, THE LIGHTS IN THE DEN WERE ON.

 9 AND I JUST WANT YOU TO KNOW THAT, BECAUSE I

 10 DON'T WANT YOU TO THINK THAT MY CLIENT LIED IN ANY WAY

 11 ABOUT THE FACT THAT THEY TURNED THE LIGHTS ON WHEN THEY

 12 WENT IN TO PICK UP THE CASINGS, AND WHEN THEY CAME BACK

 13 HOME THE LIGHTS WERE STILL ON, AND THEY DIDN'T DO

 14 ANYTHING TO THOSE LIGHTS BEFORE THE POLICE GOT THERE.

 15 SO I JUST WANTED TO POINT THAT OUT. I

 16 DON'T KNOW WHY MR. CONN MENTIONED THAT ASPECT OF

 17 DETECTIVE ZOELLER'S TESTIMONY, BUT SINCE HE DID, I

 18 WANTED YOU TO KNOW THE OTHER SIDE OF IT

 19 IT'S VERY -- I MEAN, IT'S QUITE LIKELY TE

 20 LIGHTS WERE TURNED DOWN AFTER BUTKUS GOT THERE. BUT IN

 21 ANY EVENT, THAT'S WHAT WAS SEEN FIRST.

 22 NOW, HE CAN CALL MY CLIENT A LIAR ALL HE

 23 LIKES. LET ME ASK YOU THIS. BEAR WITH ME. LET'S JUST

 24 PLAY A LITTLE GAME HERE FOR A SECOND:

 25 ASSUME -- ASSUME I'M NOT EVEN TALKING ABOUT

 26 THE PRESUMPTION OF INNOCENCE. ASSUME THAT EVERYTHING HE

 27 TOLD YOU WAS TRUE, JUST FOR A SECOND. NOW, HOW WOULD HE

 28 GO ABOUT PROVING IT?

 1 EVERYTHING IS TRUE. HOW DO YOU PROVE IT?

 2 AND LET'S START WITH THE UNDERLYING CAUSE

 3 OF THE CRISIS.

 4 MR. CONN WANTS YOU TO NOT PAY ATTENTION TO

 5 THESE THINGS. DON'T GET TIED UP IN THE DETAILS, HE

 6 SAYS. WE'RE TALKING ABOUT A CRISIS. WE'RE TALKING

 7 ABOUT A RATIONAL NOTION OF WHY TWO YOUNG MEN WOULD KILL

 8 THEIR OWN PARENTS. THERE HAS TO BE A REASON. AND WE'RE

 9 TALKING ABOUT A CRISIS THAT LED TO THAT, AND WHAT IS AT

 10 THE BASE OF THAT CRISIS, WHAT IS THE FOUNDATION OF THAT

 11 CRISIS?

 12 WE ARE TELLING YOU INCEST. IF THAT IS

 13 TRUE, IF IT IS INCEST -- IF THAT IS TRUE, THEN YOU

 14 CANNOT CONVICT MY CLIENT OF MURDER. THAT'S -- YOU KNOW,

 15 IT'S VERY EASY TO SHOW YOU WHY, BUT YOU CANNOT.

 16 NOW, HOW WOULD YOU PROVE IT? HOW WOULD YOU

 17 GO ABOUT PROVING IT? WE ARE EXCORIATED. MY CLIENT IS

 18 CALLED A LIAR A ZILLION TIMES. THERE IS NO PROOF OF

 19 LYING. IT'S THE ALLEGATION. IT'S THE BIG LIE. HE SAYS

 20 IT OVER AND OVER AND OVER AGAIN. MAYBE YOU WILL BELIEVE

 21 IT.

 22 HOW WOULD YOU GO ABOUT PROVING IT IF IT

 23 WERE TRUE? WELL, I AM SURE THAT YOU ARE AWARE THAT

 24 PEOPLE ARE PROSECUTED FOR MOLESTING CHILDREN EVERYWHERE

 25 IN THIS COUNTRY EVERY DAY.

 26 WHAT KIND OF EVIDENCE CAN YOU HAVE THAT

 27 PROVES THAT A CHILD WAS MOLESTED? LET'S GO DOWN THE

 28 LIST OF POSSIBILITIES. I PUT DOWN ELEVEN POSSIBILITIES.

 1 NUMBER ONE, THIS IS MR. CONN'S ARGUMENT,

 2 "WELL, WE DON'T HAVE ANY EYEWITNESSES."

 3 OH, RIGHT. PEOPLE WHO WITNESS SEX ACTS

 4 BETWEEN A PARENT AND A CHILD. HOW OFTEN DO YOU THINK

 5 THAT HAPPENS? MAYBE ONCE, TWICE. PEOPLE DON'T DO THIS

 6 TO THEIR CHILDREN IN FRONT OF WITNESSES, UNLESS THE

 7 WITNESSES ARE IN ON IT THEMSELVES.

 8 SO, I AM SORRY, I DON'T HAVE THAT. I CAN'T

 9 PROVE IT THAT WAY.

 10 TWO, YOU CAN PLAY VIDEOTAPES MADE BY THE

 11 MOLESTER OF SEX ACTS WITH THE CHILD.

 12 NOW, THERE ARE A FEW CASES, STRANGELY

 13 ENOUGH, WHERE SUCH THINGS EXIST. THERE ARE CHILD

 14 PORNOGRAPHY CASES WHERE THERE HAVE BEEN VIDEOTAPES MADE

 15 OF CHILDREN IN SEX ACTS.

 16 THIS WAS NOT THAT KIND OF CASE. SO I DON'T

 17 HAVE THE VIDEOTAPES TO PLAY FOR YOU. JOSE MENENDEZ

 18 WASN'T TAPING IN ERIK'S BEDROOM.

 19 I FORGOT TO PUT SOMETHING ON HERE THAT

 20 REALLY WOULD WORK, BUT UNFORTUNATELY THERE IS NO SCIENCE

 21 FOR IT YET. WE SHOULD ASK ROGER MC CARTHY TO INVENT IT,

 22 A TIME MACHINE, AND WE COULD ALL GET IN IT AND GO BACK

 23 TO ERIK'S BEDROOM AND WATCH.

 24 NOW LET'S GO TO THREE. SHOW BIZARRE NAKED

 25 PHOTOGRAPHS OF CHILD'S GENITALS TAKEN BY MOLESTER.

 26 THAT WE HAVE. WELL, TALK ABOUT THE

 27 PICTURES. IN THIS THEORY, THE CHILDREN DID IT. NOW THE

 28 CHILDREN ARE PERVERTS, NOT THE FATHER. THAT'S THE IDEA.

 1 FOUR. TESTIMONY OF PEOPLE WHO SAW OVERLY

 2 SECRETIVE BEHAVIOR BETWEEN MOLESTER AND CHILD, AND THE

 3 DEVELOPMENT OF BEHAVIORAL SYMPTOMS -- SYMPTOMS OF

 4 MOLESTATION IN THE CHILD. THAT WE HAVE.

 5 INTRODUCE MEDICAL EVIDENCE THAT

 6 CONCLUSIVELY PROVES, OR CONCLUSIVELY PROVING A SEX ACT.

 7 YOU HEARD THE TESTIMONY OF DR. KERRY

 8 ENGLISH, WHO IS A PEDIATRICIAN WHO SPECIALIZED IN SEXUAL

 9 MOLESTATION, RUNS PROGRAMS DEALING WITH IT. HE TOLD YOU

 10 EVEN RIGHT AFTER, WITH SMALL CHILDREN, THERE RARELY -- I

 11 THINK IT'S LESS THAN FIVE PERCENT OF THE CASES -- THERE

 12 RARELY IS PHYSICAL EVIDENCE THAT POINTS DIRECTLY AT

 13 SEXUAL MOLESTATION.

 14 IT'S A SHAME. IT SHOULD SHOW MORE, SO THAT

 15 CHILDREN WOULD BE BETTER PROTECTED. SOME MARK SHOULD BE

 16 RAISED ON THEM TO SAY THEY'VE BEEN TOUCHED IMPROPERLY,

 17 SO THAT WE COULD PROTECT THEM.

 18 BUT UNFORTUNATELY NATURE DOESN'T WORK THAT

 19 WAY, SO WE COULDN'T DO THAT. BUT WE DID PUT AN EXPERT

 20 ON TO EXPLAIN TO YOU WHY THERE CERTAINLY WOULDN'T BE

 21 PHYSICAL EVIDENCE SO MANY YEARS LATER, AND WE HAD THEM

 22 EXAMINE ERIK MENENDEZ, NOTHING TO HIDE, TO SEE IF -- WHO

 23 KNOWS -- MAYBE SOMETHING STRANGE ABOUT HIS ANATOMY WOULD

 24 POINT TO IT. BUT IT DIDN'T.

 25 INTRODUCE MEDICAL EVIDENCE CONSISTENT WITH

 26 SEX ACT

 27 WE DID THAT. MR. CONN DENIGRATES THAT

 28 ALSO. WHAT DR. ENGLISH TALKED ABOUT AT AGE SEVEN, THE

 1 MEDICAL RECORD IS IN. AT AGE SEVEN ERIK MENENDEZ IS

 2 TAKEN TO HIS OWN PEDIATRICIAN, TOLD -- HE IS TOLD

 3 APPARENTLY THAT THERE WAS A PREVIOUS VISIT TO AN

 4 EMERGENCY ROOM, AND THE PEDIATRICIAN DESCRIBES SOMETHING

 5 AT THE BACK OF HIS THROAT THAT HE DESCRIBES AS: "HURT

 6 BACK OF THROAT, UVULA AND SOFT PALATE" -- THE LITTLE

 7 DINGLE-DANGLE, AND THE PALATE ABOVE IT.

 8 AND DR. ENGLISH TESTIFIED THAT THAT IS

 9 CONSISTENT -- CONSISTENT WITH A BRUISE FROM A PENIS

 10 BEING FORCIBLY INSERTED.

 11 NOW, HE SAID IT WAS NOT A POPSICLE STICK.

 12 THE AREA THAT'S INVOLVED, TOP OF THE PALATE AND THE

 13 UVULA IS NOT -- A POPSICLE STICK IS TOO NARROW, TOO

 14 SMALL. IT HAS TO BE SOMETHING MUCH LARGER, AND IT ISN'T

 15 DESCRIBED AS A CUT, AND IT ISN'T DESCRIBED AS A SCRAPE,

 16 AND IT ISN'T DESCRIBED AS A BURN.

 17 SO IT DOES NOT, BY ITSELF, PROVE

 18 MOLESTATION. BUT IT IS CONSISTENT WITH IT.

 19 TESTIMONY OF A WITNESS TO WHOM THE CHILD

 20 REVEALED MOLESTATION BEFORE THE CHILD'S CREDIBILITY WAS

 21 AT STAKE. BEFORE THE CHILD'S CREDIBILITY IS AT STAKE.

 22 HERE WE HAVE THAT. THAT'S HIS COUSIN, ANDY

 23 CANO.

 24 AND I WANT TO TALK A LITTLE BIT ABOUT ANDY

 25 CANO. I'VE GOT ABOUT FOUR MINUTES TO TALK ABOUT ANDY

 26 CANO. I THINK I'LL GO DOWN THE CHECKLIST, AND GO BACK,

 27 AND THAT MAY TAKE UP THE FOUR MINUTES ANYWAY.

 28 TESTIMONY OF CHILD, NOW AN ADULT, THAT IS

 1 DETAILED, COHERENT, CONSISTENT OVER TIME, AND RELIABLE

 2 TO AN EXPERT EVALUATOR.

 3 THIS IS TESTIMONY ABOUT THE MOLESTATION.

 4 NOW, YOU KNOW VERY WELL THAT DR. WILSON IS

 5 NOT THE FIRST EXPERT EVALUATOR TO TALK TO ERIK MENENDEZ.

 6 DR. VICARY DID

 7 DR. ANN BURGESS, WHO DR. DIETZ DOESN'T

 8 LIKE, I AM SORRY TO SAY, BUT WHO NEVERTHELESS WAS

 9 DESCRIBED BY DR. JOHN WILSON AS ONE OF THE LEADING

 10 RESEARCHERS IN SEXUAL ASSAULT VICTIMIZATION, SHE

 11 TESTIFIED AT THE FIRST TRIAL. DR. WILSON SAID HER

 12 FINDINGS WERE CONSISTENT WITH HIS FINDINGS, VICARY'S

 13 FINDINGS, AND NOTES WERE CONSISTENT WITH HIS FINDINGS.

 14 DO YOU UNDERSTAND WHAT THAT MEANS? THAT

 15 MEANS THAT WHAT ERIK MENENDEZ HAS TOLD ALL THOSE PEOPLE

 16 OVER ALL THESE YEARS, STARTING IN 1990, ABOUT THE SEXUAL

 17 MOLESTATION IS CONSISTENT AND COHERENT.

 18 CONSISTENT WITH WHAT? CONSISTENT WITH WHAT

 19 MOLESTED CHILDREN SAY. CONSISTENT WITH PATTERNS OF

 20 MOLESTATION.

 21 THESE PEOPLE EVALUATE PEOPLE ALL THE TIME.

 22 THEY CAN TELL A FAKE STORY. HIS HAS BEEN --

 23 MR. CONN: I WILL OBJECT TO THIS, YOUR HONOR.

 24 THIS IS IMPROPER ARGUMENT NOT SUPPORTED BY THE EVIDENCE

 25 RECEIVED IN THIS TRIAL.

 26 THE COURT: OBJECTION SUSTAINED AS TO THE LAST

 27 REFERENCE TO OTHER WITNESSES WHO HAVE NOT TESTIFIED

 28 MS. ABRAMSON: NO. DR. WILSON TESTIFIED THEY

 1 WERE CONSISTENT, YOUR HONOR.

 2 THE COURT: AS FAR AS WHAT THESE OTHER PEOPLE DO

 3 AND THEIR CONVERSATIONS AND THINGS OF THAT NATURE, WHICH

 4 ARE NOT BEFORE THE JURY, IT'S BEYOND THE RECORD.

 5 MS. ABRAMSON: IT WAS, YOUR HONOR.

 6 THE COURT: IT'S BEYOND THE RECORD.

 7 MS. ABRAMSON: ALL RIGHT, FINE. I WILL CITE TO

 8 YOU TOMORROW EXACTLY WHERE DR. WILSON DESCRIBED

 9 DR. BURGESS' EXPERIENCE.

 10 IN ANY EVENT, WE HAVE THAT, AND WE HAVE IT

 11 MULTIPLE TIMES.

 12 NEXT -- I MEAN, LET ME GIVE YOU AN EXAMPLE

 13 OF SOMETHING. IT'S VERY EASY TO SAY: "OH, HE MADE IT

 14 ALL UP.

 15 NOW, YOU MAY RECALL THERE'S TESTIMONY IN

 16 THIS CASE, THE SPECIFICS OF WHICH ARE LIMITED TO LYLE

 17 MENENDEZ ALONE. AND THAT'S THE TESTIMONY OF TWO DEPUTY

 18 SHERIFFS WHO WORK THE JAIL WHO SEARCHED THE CELL,

 19 REMEMBER THAT? THAT'S DEPUTY DULLA AND DEPUTY GUTHRIE,

 20 AND THEY TOOK SOME PAPERS FROM THAT CELL THAT MR. CONN

 21 HAS TALKED ABOUT, AND MR. GESSLER WILL TALK ABOUT.

 22 THEY TALKED ABOUT A JAIL SEARCH. THEY

 23 SEARCHED BOTH OF THEIR CELLS IN JUNE OF 1990, OKAY.

 24 NOW, DON'T YOU THINK -- AND THEY TOOK ALL

 25 THESE PAPERS AWAY.

 26 NOW, I AM ASKING YOU JUST TO USE YOUR

 27 LOGICAL POWERS HERE. IF THERE WAS MATERIAL IN ERIK

 28 MENENDEZ' CELL, JUST AT THIS TIME WHEN HE'S STARTING TO

 1 TALK TO DR. VICARY ABOUT SEXUAL MOLESTATION, OR

 2 P.T.S.D., OR ANYTHING ELSE, DON'T YOU THINK YOU WOULD

 3 HAVE HEARD THAT?

 4 CLEARLY, THERE WAS NO SUCH MATERIAL FROM

 5 WHICH HE COULD HAVE FABRICATED A STORY SO DETAILED, AND

 6 OF THE RIGHT TEXTURE TO BE CONSIDERED RELIABLE BY

 7 SOMEONE LIKE DR. WILSON, OR ANYBODY ELSE WHO IS AN

 8 EXPERT EVALUATOR.

 9 LET ME TALK TO YOU ABOUT JUST SOME ASPECTS

 10 OF THAT STORY. HE TALKED ABOUT HOW WHEN IT BEGAN, WHEN

 11 THE MOLESTATION BEGAN, IT BEGAN AS MASSAGES, AND HIS

 12 AUNT, MARTHA CANO, TESTIFIED THAT SHE SAW JOSE MENENDEZ

 13 MASSAGING ERIK MENENDEZ AFTER SPORTING EVENTS.

 14 AND ERIK SAID IT ESCALATED FROM SOMETHING

 15 THAT HAD STARTED OUT AT A SPORTING-RELATED THING TO

 16 SOMETHING THAT BECAME INTIMATE AND SEXUAL. AND HE

 17 TESTIFIED THAT HE LIKED IT. THAT HE ENJOYED IT. THAT

 18 HE THOUGHT IT WAS LOVE. THAT IT WAS SPECIAL ATTENTION

 19 FOR HIM.

 20 AND HE WAS -- AS I THINK DR. WILSON EVEN

 21 EXPRESSED IT, HE WAS THE THROW-AWAY KID IN THIS FAMILY.

 22 HE WAS THE WEAK ONE THAT JOSE MENENDEZ DIDN'T APPROVE

 23 OF. HE WAS TOO SENSITIVE. HE WAS TOO EMOTIONAL. H

 24 HAD TOO MANY FEELINGS FOR HIS FATHER, TO SUIT HIS

 25 FATHER. HE WAS THE SECOND SON, NOT THE HEIR APPARENT.

 26 SO, HE WASN'T GETTING THE ATTENTION, AND I

 27 THINK ALAN ANDERSEN MAY HAVE SAID THE SAME THING. HE

 28 WASN'T GETTING THE ATTENTION THAT HIS BIG BROTHER WAS

 1 GETTING, SO HE WELCOMED THESE ATTENTIONS OF HIS FATHER.

 2 NOW, IF YOU WERE GOING TO MAKE UP A STORY

 3 OF SEXUAL MOLESTATION, AND IF IT HAD NEVER HAPPENED TO

 4 YOU, WOULD YOU KNOW TO SAY YOU LIKED IT? WOULDN'T YOU

 5 MAKE UP A STORY OF RAPE AND PAIN RIGHT OFF THE BAT?

 6 WOULDN'T YOU TRY TO MAKE -- I MEAN, THE SORT OF THING

 7 DR. WILSON SAYS TO HIM WHEN SOMEONE SAYS: "OH, DR.

 8 WILSON, I'M SO MISERABLE. I'VE GOT P.T.S.D. AND HERE'S

 9 WHAT I'VE GOT." JUST EXACTLY THE OPPOSITE OF THE KIND

 10 OF THING THAT ERIK MENENDEZ TOLD DR. WILSON.

 11 IT'S TIME, YOUR HONOR.

 12 THE COURT: OKAY. IT'S 4:00 O'CLOCK, AND WE WILL

 13 RECESS UNTIL TOMORROW AT 8:30.

 14 DON'T DISCUSS THE MATTER WITH ANYONE.

 15 DON'T FORM ANY FINAL OPINIONS ABOUT IT. WE WILL SEE YOU

 16 BACK HERE TOMORROW AT 8:30.

 17 (AT 4:00 P.M. PROCEEDINGS WERE

 18 ADJOURNED UNTIL 8:30 A.M THE

 19 FOLLOWING DAY.)