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Superior Court of California
County of Los Angeles

MAR 10 2025
David W. Slayton, Executive Officer/Clerk of Court

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES

18 PEOPLE OF THE STATE OF CALIFORNIA,

19 Plaintiff,

20 v.

21 ERIK GALEN MENENDEZ,
22 JOSEPH LYLE MENENDEZ,

23 Defendants.

Case No. BA068880

PEOPLE'S RESPONSE TO COURT'S
INITIATION OF 1172.1 RECALL OF
SENTENCE AND RESENTENCING
AND REQUEST TO WITHDRAW
PEOPLE'S MOTION REQUESTING
1172.1 RECALL OF SENTENCE AND
RESENTENCING; MEMORANDUM
OF POINTS AND AUTHORITIES;
PROOF OF SERVICE

Date: March 20, 2025

Time: 8:30 a.m.

Dept: S

24 TO THE HONORABLE MICHAEL V. JESIC, JUDGE PRESIDING; DEFENDANTS
25 ERIK GALEN MENENDEZ AND JOSEPH LYLE MENENDEZ;¹ AND THEIR
26 ATTORNEYS OF RECORD:
27

28 ¹ Defendant Erik Galen Menendez will be referred to as "Erik Menendez" or "Erik" and defendant Joseph Lyle Menendez will be referred to as "Lyle Menendez" or "Lyle." Collectively, they will be referred to as "Defendants" or the "Menendez brothers."

1 After a thorough and exhaustive review of the case, including the review of 10,000s of
2 pages of trial transcripts, thousands of pages of prison records, hundreds of hours of videotaped
3 trial testimony, and all relevant pleadings and exhibits as well as interviews with defense
4 counsel, Menendez family members, prior prosecutors, and law enforcement, the People are
5 prepared to go forward with the Court's initiation of proceedings to recall the sentence and
6 resentence under Penal Code Section 1172.1(a)(1) if the court deems it has jurisdiction, but
7 request to withdraw their initial Motion Requesting 1172.1 Recall of Sentence and Resentencing
8 in this case. This response and request shall be based on the attached memorandum of points and
9 authorities, the attached declarations and accompanying exhibits, the record of conviction, and
10 any other argument or evidence to be presented at a hearing on this matter.
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15 **I.**

16 **INTRODUCTION**

17 On July 2, 1996, the Court sentenced Erik and Lyle Menendez to life without the
18 possibility of parole following their convictions for the brutal and vicious first-degree murders of
19 their parents, Jose and Kitty Menendez, with special circumstances of lying-in-wait and multiple
20 murders. A jury had convicted each of them after a second seven-month trial, that followed a
21 first trial where the juries could not reach a verdict. At each trial, the Menendez brothers
22 presented a defense of self-defense, where they introduced testimony and exhibits and argued
23 that they each had an actual fear that their parents were going to kill them the night of the
24 murders, August 20, 1989. The convicting jury rejected this defense.
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26
27 To explain that defense and the motivation for their fear that their mother and their father
28 were each going to kill them that night, they introduced significant testimony and exhibits at

1 each trial. In particular, Erik testified at both trials, including the second trial, where he testified
2 for 7 days detailing explicit and graphic incidents over 12 years concerning the sexual abuse he
3 experienced from his father and his mother condoning it. Sexual abuse, however, was not their
4 defense at trial; **self-defense** constituted that defense. As Erik testified at his second trial:
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6 Q: Did you kill your father because he sexually molested you?

7 A: No.

8 Q: Did you kill your parents because you hated them?

9 A: Certainly No.

10 Q: Did you kill your parents because you wanted their money?

11 A: No.

12 Q: Did you kill your parents as an act of mercy?

13 A: No.

14 Q: Why, Mr. Menendez, did you kill your mother and your father?

15 A: Because we were afraid.

16 Q: What was it you were afraid of?

17 A: I was afraid of dying

18 Q: Who were you afraid was going to kill you?

19 A: My mom and my dad.

20 (257 RT 43073:1-23.) Lyle similarly testified at the first trial:

21 Q: And on August 20, 1989, did you and your brother kill your mother and
22 father?

23 A: Yes.

24 Q: Did you kill them for money?

25 A: No.

26 Q: Did you kill them because you wanted to pay them back for the way they
27 had treated you?

28 A: No.

Q: Why did you kill your parents?

A: 'Cause we were afraid.

(84 RT 14152:7-24.) Even Erik's own attorney, Leslie Abramson, acknowledged that Erik and
Lyle did not kill their parents due to sexual abuse, stating:

"We have never said that because you're abused, you're justified
in killing your abuser. We didn't argue that, and we never will."

(84 RT 14152:7-24.) The jury was accordingly never asked to render a verdict on sexual abuse.

1 After the second trial and resulting guilty verdicts, the trial moved to the penalty phase
2 where the jury was given the choice of the death penalty or life without the possibility of parole.
3 After weeks of evidence, the jury chose life without the possibility of parole, which is the
4 sentence that was imposed.
5

6 For almost the next 10 years, the Menendez brothers repeatedly tested their convictions
7 and sentences through the appellate process. They filed a direct appeal with the California Court
8 of Appeals challenging numerous aspects of the trial, the jury instructions and the court's rulings,
9 including the exclusion of certain testimony of sexual abuse – and they lost. They filed a petition
10 to the California Supreme Court on the same grounds – and they lost. They then filed a habeas
11 petition to the California Supreme Court along the same grounds – and they lost. They then filed
12 a habeas petition in the federal courts, with the U.S. District Court and the Ninth Circuit Court of
13 Appeals, along the same grounds – and they lost. Over and over and over again, the reviewing
14 courts ruled that the Menendez brothers had received a fair and just trial and had been properly
15 sentenced.
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18 From their last court loss in 2005, and for the next 18 years to 2023, the Menendez
19 brothers filed no legal motions.
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21 Then, in May 2023, they filed a new habeas petition with the Los Angeles Superior Court
22 in this case (BA068880). Pursuant to court order, the People have recently filed its informal
23 response to that petition. In addition to the habeas petition, the Menendez brothers have
24 submitted a petition to California Governor Gavin Newsom for clemency, asking him to
25 commute their sentences and release them immediately. The Governor has the unilateral,
26 constitutional power to grant that petition or not at any time – it is still pending. The third track
27 of the Menendez case is the instant resentencing matter before the Court.
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1 This resentencing matter is before the Court on both its own initiation of resentencing
2 proceedings under Penal Code Section 1172.1(a)(1) filed on November 25, 2024, and the prior
3 District Attorney’s motion for resentencing under Section 1172.1(a)(1) filed on October 24,
4 2024. The impact of a resentencing is profound: despite the fact that the jury convicted the
5 Menendez brothers of first-degree murders with special circumstances and every court reviewing
6 the case has affirmed the convictions and sentences of life without the possibility of parole for
7 the past 30 years, a resentencing may convert that sentence to a sentence of life with the
8 possibility of parole. While the People are prepared to go forward with a hearing on the Court’s
9 initiation of resentencing if the Court deems it appropriate to do so,² the People request to
10 withdraw its motion for resentencing based on multiple “legitimate reasons” after a thorough and
11 extensive review of the record.
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14 These reasons include that the prior motion failed to undertake any significant analysis of
15 whether the Menendez brothers have exhibited complete insight and accepted full responsibility
16 into the brutal murders of their parents and the lies and suborning and attempted suborning of
17 perjury that they told before and during trial. Such complete insight and acceptance of full
18 responsibility for one’s criminal actions is key to a resentencing analysis since it significantly
19 helps determine whether an inmate poses an unreasonable risk of a danger to the community. As
20 the below analysis will reveal, the Menendez brothers have continued to lie for over 30 years
21 about their self-defense—that is, their purported actual fear that their mother and their father
22 were going to kill them the night of the murders. Also, over those 30 years, they have failed to
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26 ² A resentencing based on the Court’s initiation of proceedings would not carry the statutory presumption in favor of
27 resentencing, found in Penal Code Section 1172.1(b)(2). Also, there is likely a jurisdictional issue with the court
28 conducting such a proceeding. (*See People v. Roe* (1983) 148 Cal.App.3d 112 [held that, due to a lack of
jurisdiction, resentencing could not take place on court’s initiated resentencing motion despite the consent of the
parties].)

1 accept responsibility for the vast number of lies they told in connection with that defense and
2 their suborning perjury and attempted suborning of perjury from people they enlisted to fabricate
3 their various defenses.
4

5 As the case of Sirhan Sirhan, the Governor's rejection of his parole recommendation and
6 case law demonstrates, significant rehabilitation efforts post-sentencing, the length of time in
7 prison, one's age at the time of the crime, and other mitigating factors may not be sufficient to
8 overcome the unreasonable risk of danger that a murderer poses to the community unless the
9 murderer exhibits full insight and accepts complete responsibility for their crimes. In the case of
10 Sirhan Sirhan, despite the parole board recommending parole for the first time in 40 years in
11 2021, Governor Newsom rejected parole for Sirhan Sirhan. Notwithstanding the pro-parole
12 factors that the murder occurred in 1968, Sirhan Sirhan was 24 years old at the time, had no past
13 criminal record, had grown up under violent circumstances, had been in prison for over 50 years,
14 was in his late 70s and in diminishing health, had completed a college degree in prison, engaged
15 in extensive rehabilitation efforts and programs while imprisoned, received supportive letters
16 from prison officials and several victim family members, and scored at the lowest risk number in
17 prison, Governor Newsom focused on Sirhan Sirhan's failure to fully exhibit insight into and
18 accept full responsibility for his crimes to deny him parole. Governor Newsom concluded in his
19 January 13, 2022 decision that "Mr. Sirhan currently poses an unreasonable danger to society if
20 released from prison."
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24 Here, the prior motion failed to examine at all how the continuity of failure of the
25 Menendez brothers to exhibit insight into and accept full responsibility for their lies of self-
26 defense, of their father purportedly violently raping Lyle's girlfriend, of their mother purportedly
27 trying to poison the family, of their attempts to get a handgun the day before the murders, and
28

1 other lies impacts their risk of danger to the community and justifies resentencing. Like with
2 Sirhan Sirhan, the Court should take into account and make findings on the Menendez brothers'
3 age at the time of the crime, the conditions they grew up in, any sexual, physical or emotional
4 abuse they experienced, how long they have served in prison, their present health, the
5 rehabilitation efforts they have engaged in in prison including any additional education they have
6 received, letters from prison officials and victim family members, and their prison risk score.
7 However, the Court must also analyze whether their lack of full insight and lack of complete
8 responsibility for their murders overcomes, like it did in Sirhan Sirhan's case, these other factors
9 to justify a resentencing to a sentence less than the sentence they have received and which has
10 been uniformly affirmed over the past 30 years: life without the possibility of parole. To see the
11 comparison between the Sirhan Sirhan and Menendez Brothers' cases pertaining to rehabilitation
12 factors, attached Exhibit 18 provides an instructive comparison chart.

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16 The People want to make clear that its request to withdraw its resentencing motion is
17 based on the current state of the record and the Menendez brothers' current and continual failure
18 to show full insight and accept full responsibility for their murders. If they were to finally come
19 forward and unequivocally and sincerely admit and completely accept responsibility for their lies
20 of self-defense and the attempted suborning and suborning of perjury they engaged in, see
21 Exhibit 19 detailing the unacknowledged lies and efforts at fabrications, then the Court should in
22 the future weigh such new insights into the analysis of rehabilitation and resentencing -- as will
23 the People.
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II.

BRIEF OVERVIEW OF THE MENENDEZ BROTHERS' SHIFTING STORIES AND DECEPTION

A detailed statement of facts is included in section III below. However, due to the length and complexity of the evidence and history of this case, a very brief overview of the inmates' shifting stories and deception is provided below:

- *Days before* the murders, on August 18, 1989, as part of their plan to murder their parents and to make it as difficult as possible for anyone to connect them to the murders, Erik and Lyle drove over 120 miles to San Diego to purchase shotguns and ammunition that they could have purchased in Los Angeles. Attempting to further conceal their connections to the murder weapons, they used a false identification and a fictitious address to purchase the shotguns and ammunition.
- *The day before* they killed their parents, on August 19, 1989, Erik and Lyle looked for a firing range to practice using their newly purchased shotguns and purchased additional, and even more lethal, ammunition.
- *Hours before* they killed their parents, on August 20, 1989, Erik and Lyle set up a pre-planned alibi where they would pretend to have been at the "Batman" movie at the time of the murders and then meet their friend, Perry Berman, afterwards at the "Taste of LA" event.
- *During* the murders, on August 20, 1989, Erik and Lyle staged the brutal killings to look like a Mafia hit by shotgunning their parents at least 12 times. They shot their father in the back of his head, killing him instantly, and then shot him through his kneecaps after he was dead. After running out of ammunition, they ran out to their car to reload while their mother, who had been shot but was still alive, writhed in pain on the ground. They then returned and shot her at point-blank range in her face and then shot her in her kneecaps as well to help complete the picture of a gangland killing.
- *Immediately* after the murders to hide their connections to them, Erik and Lyle picked up all shotgun shells from the den and then got rid of them and their bloody clothes in a gas station dumpster and the shotguns over the side of a cliff on Mulholland Drive.
- *Next*, Erik and Lyle rushed to follow through with their pre-planned alibi. When that failed, they then attempted to get Perry Berman to accompany them to their home while they "discovered" their parents' mutilated bodies.
- *Over an hour after* the murders, Erik and Lyle called 911 screaming about finding their parents murdered. They then met the police outside their home, convincingly lying to them that they had come home and found their parents murdered. Crying, Erik

1 emphatically proclaimed, "I'm gonna kill 'em. I'm gonna torture 'em. Who would do
2 this?"

- 3 • *After* the murders, Erik and Lyle lied to detectives, telling them that the murders were
4 potentially "business-related" due to their father's "seedy" business relationships.
- 5 • *Within days* of the murders, Erik and Lyle focused on ensuring that there was not a will
6 found on their father's computer or in his safe disinheriting them, including bringing in a
7 computer expert to delete all reference to them or a will from the father's computer,
8 transporting their father's safe to the neighbor's house where they were staying to
9 privately open it, and obtaining the contents of their father's safety deposit box from the
10 bank.
- 11 • In the *months following* the murders, Erik and Lyle convincingly and repeatedly lied to
12 the police, their family, friends, and the media, saying that the Mafia had killed their
13 parents.
- 14 • During these *months*, while Erik and Lyle remained free, they stuck with their initial lie
15 and freely spent their deceased parents' money and life insurance proceeds on expensive
16 cars, watches, a business, and a tennis coach.
- 17 • *Several months after* the murders, while feeling suicidal and racked with guilt, Erik
18 eventually visited his psychiatrist, Dr. Oziel, and confessed to killing to his parents. *Not*
19 *knowing that Dr. Oziel would reveal this confession*, Erik admitted that he killed his
20 father because his father was dominating and controlling, and he killed his mother
21 because he couldn't find a way of killing his father without also killing his mother. Erik
22 said his mother, if left alive, would have been a witness, that she could not have survived
23 without her husband anyway, and that it was more merciful to kill his mother to end her
24 miserable life.
- 25 • Dr. Oziel subsequently brought Lyle into the discussion, and Lyle also confessed.
- 26 • At no point did either Erik or Lyle ever tell Dr. Oziel that their parents posed any type of
27 threat to their safety for any reason whatsoever nor that their father sexually had abused
28 them.
- *Months after* the murders, upon the advice of Gerald Chaleff, their criminal defense
attorney, Erik and Lyle continued to see Dr. Oziel because Chaleff felt that disclosures
during therapy could be used to help their defense if they were ever charged with murder.
Despite this purpose, Erik and Lyle still never disclosed any abuse or that their parents
were a threat to their safety or that their father sexually abused them.
- The police learned that Erik and Lyle had confessed to their therapist and obtained
damaging tapes documenting the confessions. Based on the content of these tapes, Erik
and Lyle were arrested in March 1990.

- 1 • *After they were arrested*, during the summer of 1990, Lyle asked his girlfriend, Jamie
2 Pisarcik, to research cases where children had “gotten off after killing their parents.” She
3 provided Lyle cases where children were molested and subsequently acquitted for killing
4 their parents.
- 5 • *Preparing for trial while in jail*, in the summer of 1990, Erik’s defense team hired a
6 psychiatrist, Dr. William Vicary, to meet with Erik. In August of 1990, Erik told Dr.
7 Vicary that both a babysitter and his father had sexually assaulted him. However, at the
8 direction of Erik’s defense attorney, Dr. Vicary removed any reference to the babysitter
9 molestation from his records. Erik never testified about this alleged babysitter sexual
10 assault.
- 11 • *Preparing for trial while in jail*, in early December of 1990, Lyle offered to pay his
12 girlfriend, Jamie Pisarcik, to falsely testify that his father had drugged her, thrown her
13 onto a bed, ripped off her clothes, and violently raped her. However, Jamie refused to
14 perjure herself, stating “I can’t believe you’re asking me to do this, and it’s a lie and
15 nothing like this ever happened; [] your father would never do that to me, nor did he.”
- 16 • *Preparing for trial in a subsequent jail visit*, Lyle told Jamie that his *father had molested*
17 *Erik and his mother had molested him*. However, during this meeting, Lyle never said he
18 was molested by his father or claimed self-defense. Jamie told Lyle she did not believe
19 him.
- 20 • *Preparing for trial while in jail*, Lyle also told his uncle, Carlos Baralt, that his *father had*
21 *molested Erik and his mother had molested him*. Once again, Lyle never said he was
22 molested by his father or claimed self-defense.
- 23 • *At the first trial*, inconsistent with what Lyle told Jamie and Carlos Baralt, Erik and Lyle
24 testified that they had *both* been raped by their father.
- 25 • After becoming aware that sexual abuse is not a legal justification for murder, Erik and
26 Lyle further refined their defense. Erik and Lyle testified that they killed their parents in
27 self-defense because they feared their parents would kill them that very night.
- 28 • In 1992, two years after Erik told Dr. Vicary that he was sexually abused by his father, he
told Dr. Vicary that his father’s homosexual lover warned him that his father and mother
were going to kill him. According to Erik, this warning came just two days before the
murders. In a subsequent session with Dr. Vicary, Erik admitted that this entire story was
a lie.
- To support their fabricated self-defense claim, Erik and Lyle tried to portray their mother
as unpredictable and dangerous. To accomplish this goal, Lyle wrote and sent a script to
a girlfriend, Traci Baker (the “Baker Letter”), soliciting her to falsely testify that his
mother had tried to poison the whole family in her presence. Under oath, Traci Baker
perjured herself by repeating this fake script to the jury.

- 1 • Both Erik and Lyle also testified falsely under oath to the same facts contained in the fake
2 script of the Baker Letter, thereby confirming their willingness to commit perjury to
3 deceive the jury.
- 4 • To further support their claim that they feared that their parents would kill them, Lyle
5 wrote and sent another script to Erik's friend, Brian Eslaminia, (the "Eslaminia Letter"),
6 asking him to falsely testify that Erik and Lyle were so fearful of their parents the week
7 of the murders that they tried to borrow a handgun from Eslaminia for protection.
8 However, Eslaminia would not go along with this lie.
- 9 • Undeterred and desperate to push this false "we tried to get handguns to defend ourselves
10 from our violent parents" narrative, both Lyle and Erik testified that they went to a Big 5
11 Sporting Goods store in Santa Monica (before they bought their shotguns) to buy
12 handguns to defend themselves. After testifying that they looked at real handguns, they
13 claimed they were told that they couldn't purchase them without waiting the lawfully
14 required 14-day period. However, this was demonstrably false because the Big 5 store in
15 Santa Monica had stopped selling handguns in 1986, three years before the murders.
- 16 • At trial, and during a break in Dr. Oziel's testimony, Lyle told a reporter, Norma Novelli,
17 during a taped jail, call that he would have to admit that they made the confession to Dr.
18 Oziel but would have to "make something up" about him. Lyle ultimately concluded, "I
19 am going to just lie—and—and he understands it and I understand it." Lyle told Novelli
20 that he would testify that Erik and Lyle falsely confessed to the psychiatrist because the
21 psychiatrist had blackmailed them to do so.
- 22 • Both Erik and Lyle then followed through with this planned lie and testified that they
23 confessed to Dr. Oziel on tape because the psychiatrist had, in fact, blackmailed them,
24 once again confirming their willingness to commit perjury to deceive the jury.
- 25 • Though they both testified at their first trial (which resulted in a hung jury), Lyle chose
26 not to testify at his second trial and he therefore could not be confronted with his various
27 lies and attempts to fabricate evidence during the first trial.
- 28 • Erik, however, testified at the second trial and described in graphic and explicit detail
over 7 days the alleged sexual abuse that Erik allegedly suffered at the hands of Jose
Menendez for 12 years, from ages 6 to 18. Erik also testified about the sexual abuse Jose
allegedly committed against Lyle.
- In both trials, Eric and Lyle presented the defense that they were in actual fear of their
mother and their father killing them the night of August 20th and have maintained this
fabricated defense for over the past 30 years to the present day.
- The jury, rejecting their self-defense claim, convicted both Erik and Lyle Menendez of
two special-circumstance first degree murders and conspiracy to commit murder. Erik
and Lyle were sentenced to life without the possibility of parole.

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III.

STATEMENT OF FACTS

Jose Menendez's rise to financial success

Jose Menendez ("Jose") was born in Cuba and immigrated to the United States as a teenager. He married Kitty Andersen ("Kitty") and on January 10, 1968, they had a son, Joseph Lyle Menendez ("Lyle"). (84 RT 14148:24-28.)³ A little over two years later, Jose and Kitty had another son, Erik Galen Menendez ("Erik"). (276 RT 46343.) When Lyle was about four years old, the family moved to New Jersey. (84 RT 14154:3-11.) Eventually, the family moved to California in 1986 and lived in Calabasas before settling into a house in Beverly Hills. In this same home, on August 20, 1989, Erik and Lyle murdered their parents with shotguns.

Jose had arrived in the United States with no money. Through hard work, he was able to realize his ambitions and become a powerful and financially successful executive at L.I.V.E. Entertainment. At the time of his death, Jose was Chairman of the Board at L.I.V.E. with an annual salary and benefit package of approximately \$1,300,000 (or \$3,300,000 inflation adjusted). His assets included the family home in Beverly Hills valued at between \$3,500,000 and \$4,000,000 (\$8,900,000 to \$10,200,000 inflation adjusted) with a net value of approximately \$1,500,000 (\$3,800,000 inflation adjusted); property in Calabasas with a value of approximately \$1,350,000 (\$3,400,000 inflation adjusted); and stock in L.I.V.E. Entertainment valued at \$5,000,000 (\$12,000,000 inflation adjusted). (See Exhibit 3, *People v. Erik Galen Menendez et al.*, (February 27, 1998, B104022 [nonpub. opn.])

³ A complete copy of the reporter's transcript for both trials is included herein as Exhibit 17. The transcripts are numbered 1 through 329. Volumes 1 through 154 constitute the first trial. Volumes 155 through 329 constitute the second trial.

1 **Kitty Menendez abandons her career aspirations to care for her sons**

2 Kitty Menendez aspired to have a career as an actress or in broadcasting. (88 RT 14187.)
3 When she married Jose, she had a job in New York as a restaurant hostess, but then became
4 pregnant with Lyle. At that point, Jose forced Kitty to quit her job and potential career to
5 become a stay-at-home mother. (88 RT 14187.) Erik and Lyle’s friends described Kitty as a
6 sweet woman. (See, e.g., 224 RT 37029-31.) Their friend Perry Berman described Kitty as
7 being sweet and caring towards Erik and Lyle. (224 RT 37031:3-33:13.)
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11 **Jose and Kitty Menendez’s domineering parenting style**

12 By all accounts, Jose’s strong drive and success made him an intense, demanding, and
13 controlling father with very high expectations for his sons. According to his brother-in-law,
14 Carlos Baralt, for Jose, the success of his children “was one of his most important things in his
15 life.” (115 RT 19743:24-19744:6.) For Jose, success was not measured by effort, but as he told
16 his brother-in-law, “Winning is the only thing that’s important. And trying and coming in second
17 best is not enough.” (115 RT 19744:10-19.) To ensure his children succeeded, according to Erik
18 and Lyle, Jose made all of the important decisions in their lives. Jose decided where Erik and
19 Lyle would attend college, which classes they would take, what careers they would pursue, and
20 where they would live. In sum, Jose dictated their entire futures in life, sports, and work. (See,
21 e.g., 87 RT 14409:18-21; 94 RT 15659:24-15661:6; 94 RT 15663:3-9; 94 RT 15664:17-26; 94
22 RT 15668-15670.) According to Erik and Lyle, their mother Kitty similarly controlled their
23 lives. Their mother “never went against dad” and always acquiesced to and supported their
24 father’s decisions. (94 RT 15666:17-24.) Erik and Lyle also allege that Kitty took control of
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1 their academic careers, such as by personally completing their homework and filling out their
2 college applications. (87 RT 14410:5-26; 14411:22-1412:5.)

3
4 There is every indication that Jose and Kitty were also stern disciplinarians. At trial, both
5 Erik and Lyle also alleged that their parents were physically abusive.⁴ Erik testified that in his
6 childhood, Jose would hit both him and his brother growing up, often with a belt. (95 RT 15932-
7 33.)⁵ Frequently, according to Erik, this abuse left welts and bruises on Erik's butt, thighs, and
8 upper back. (265 RT 44224-34.)⁶ Erik's cousin, Brian Anderson ("Brian"), lived with the
9 Menendez family in the summer of 1977 when Erik was six years old. Brian testified that he
10 witnessed Jose intimidate Erik and Lyle with his belt by snapping it in front of them and taking it
11 off and placing it on the counter. He also frequently saw Jose take Erik and Lyle (sometimes
12 individually, sometimes together) into their room and shut the door, and then heard Jose striking
13 them with a belt. According to Brian, this physical punishment occurred weekly. Brian also
14 witnessed welts and bruises. (276 RT 46343-61.) Erik and Lyle's cousin, Joan Vandermolen,
15 lived with the Menendez family during the summer of 1976 and again in 1979. She testified that
16 she saw Jose try to "toughen" Erik up in the pool during swimming lessons by holding him under
17 water and tying his feet together so that he would learn to keep his feet together while
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22 ⁴ At trial, there was also extensive testimony by both Erik (in both trials) and Lyle (in the first trial) about sexual
23 abuse. That testimony will be discussed *infra*.

24 ⁵ They also testified that Jose was both physically and mentally abusive towards Kitty. According to Erik's
25 testimony at the second trial, Jose would "slap or hit" Kitty whenever she tried to stand up to him, and this would
26 result in "crying and bleeding." (259 RT 43367:7-13.) However, Erik also testified that after they moved to
27 California, Jose and Kitty actually became closer and overcame the fact that Jose had an affair. "They were more of
a team in the decisions. It had been decided that there would be no divorce; and so my father was much gentler to
my mother. . . and the relationship drastically changed in terms of my mother's strength or power when it concerned
my dad. She would yell at him. . . ." (259 RT 43366:21-28.) The evidence also demonstrated that Kitty would
actually strike Jose on several occasions. (115 RT 19775-76.)

28 ⁶ Erik conceded during cross-examination that no witnesses ever observed any of these assaults or injuries, even
though Jose encouraged Erik to participate in swimming, tennis, and other sports where he was frequently around
coaches, parents, and other children. (*Id.*)

1 swimming. Sometimes Jose would also drag Erik to the bottom of the swimming pool. (277 RT
2 46600-04.)

3 Erik and Lyle similarly testified that their mother Kitty also physically abused them.
4 According to Erik, his mother used to lock him in a closet, sometimes overnight, slap and hit him
5 (96 RT 16112), get drunk and hit him in a rage (259 RT 43243), and occasionally squeeze his
6 testicles (259 RT 43318.) Cousin Joan also observed Kitty have "dramatic rages" with Erik in
7 1978. She would clench her fists and teeth and yell, "I wish you were never born." Sometimes,
8 Joan testified that Kitty would "slap [Erik] upside the head" during these rages. (277 RT 46607-
9 11.)

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13 **Erik and Lyle feel tremendous pressure and realize they cannot live up to their father's**
14 **expectations**

15 Assuming the most favorable interpretation of the evidence for the inmates, Erik and Lyle
16 were arguably subjected to extensive physical and emotional abuse growing up. The evidence is
17 clear that Jose and Kitty were extremely demanding and controlling and that Erik and Lyle felt
18 extreme pressure and believed that they were living under highly stressful and demanding
19 conditions. According to Lyle, his father "just didn't believe in praise." (84 RT 14170:18.)
20 Describing his father's relationship with him, Lyle said his father "had his own dreams, and...he
21 wanted me to achieve those. And because I was the most important thing in his life...what I did
22 was serious." (84 RT 14163:15-18.) Lyle felt "tremendous pressure" to live up to his father's
23 expectations but felt that he could never meet them. (84 RT 14170:24 – 14171:4.) Despite his
24 feelings of inadequacy, Lyle yearned to please his father. (85 RT 14282:18 – 14283:4.)
25 Similarly, Erik felt intense pressure from both his father and mother to succeed, and he also
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1 believed that those expectations were too high. (94 RT 15644:9-15.) As Erik testified, “I
2 wanted to be a success in his eyes. It was one of the more important things in my life.” (265 RT
3 44381:4-7.)

4
5 As Lyle reached adulthood, he realized that he would neither live up to his father’s
6 expectations nor duplicate his father’s success. (88 RT 14512:10-16.) He noted, “I felt...that I
7 really was inadequate to do what my dad was doing, and it was making me nervous as I was sort
8 of getting older.” (88 RT 14512:10-16.) Lyle stated, “Just from working with my dad, business,
9 failing so miserably, and really in tennis not ever reaching the levels that we had set for me. In
10 school I felt completely inadequate. I wasn’t anywhere near as smart as the kids at Princeton,
11 and I could not do their work. I just really felt like I was way, way below what my dad could do.
12 He did things sort of by magic, and I struggled at the slightest thing.” (88 RT 14509:1-13.) Like
13 Lyle, Erik also believed that he could never achieve his father’s success on his own. As he
14 admitted, “I didn’t lack the drive . . . [but] I was not even comparable in intelligence . . . and I
15 had a very different personality . . . than my father.” (265 RT 44381:14-18.)
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19 **Erik and Lyle commit residential burglaries and Jose realizes that his sons will not live up**
20 **to his expectations**

21
22 These pressures—control, intense expectations and demands, and the realization that they
23 could never achieve their father’s success on their own—came to a head in 1989. In the fall of
24 1987, Lyle enrolled in Princeton University, where he played on the tennis team. To Jose, Lyle’s
25 enrollment was an important and crucial step for his son’s success in life. As Carlos Baralt
26 testified, Jose looked at his own experiences and felt “that it had been harder for him to get to
27 where he was because of the fact that he was not a graduate of an Ivy League School, and he saw
28

1 other people who were graduates who were not as capable as he [was, who] had it much easier
2 than he had.” (115 RT 19748:16-21.) Jose “felt that Princeton offered the background and life
3 that would permit [Lyle] to be very successful in terms of contact and...influences in general.”
4 (115 RT 19743:24-27.)
5

6 But in contrast to his father’s expectations, Lyle was not succeeding at Princeton. He
7 received poor grades and was placed on a one-year academic probation for failing a class. (88
8 RT 14531:25-14532:2.) He was also placed on disciplinary probation for property damage. (88
9 RT 14531:25-14532:2, 90 RT 14863:2 – 14866:10.) Lyle was eventually suspended for a year
10 from Princeton for cheating. (88 RT 14530:3-17.)
11

12 By July of 1988, Jose’s frustrations with his children increased when both Erik and Lyle
13 were arrested for committing felonious residential burglaries. (103 RT 17201:26-28.) During
14 one of these burglaries, Erik opened a safe and stole jewelry. During another, Erik and Lyle
15 stole a safe, fine china, silver, jewelry, a Solarflex machine, and cash. (103 RT 17201-05.) In
16 September of 1988, Erik and Lyle were turned in for these crimes and their father had to
17 accompany them to the Sherriff’s Station and return the property with a U-Haul truck. He also
18 had to pay restitution to the victims. (103 RT 17205-07.) Understandably, Jose was very
19 disappointed and upset.
20
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22 Not surprisingly, by the summer of 1989, just one month before the murders, Jose’s
23 disappointment with his sons’ behavior reached a tipping point. (115 RT:19790.) He told Carlos
24 Baralt that he intended to disinherit his sons. (115 RT: 19750:12-23; 19789:25 - 19790:16.) He
25 said that he wanted to disinherit them “because he...was very frustrated and disappointed with
26 his kids, and that he just didn't feel...that he could justify having them...in the will itself.” (115
27 RT: 19791:4-9.) Jose told Baralt, “I went to school and...had to work full-time at the same time
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1 as I was going to school. And all I'm asking Lyle is to pass. And he's having all kinds of
2 problems in passing and getting through school." (115 RT 19792:25 -19793:7.)
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5 **Disappointed with his sons' behavior, Jose tells Erik and Lyle he is considering removing**
6 **them from his will**

7 Importantly, Jose had personally told Erik and Lyle directly that he was disappointed
8 with them and interested in cutting them out of the will. As stated by Erik, "He told me I was
9 disinherited. The burglaries played into it. He told me that I did them stupidly. . . He was pretty
10 angry with me throughout that summer, mostly because I was ranked 70 in tennis. And because
11 he thought I was a pretty big failure." (115 RT 17210:20-28.) Ultimately, Jose told Erik that
12 because of the burglaries he was going to "cut [him] out of the will." (265 RT 44275:19-23.) In
13 fact, the burglaries were the "straw that broke the camel's back" because, in addition to his
14 failures in tennis, "the burglaries on top of it, I think may have just gotten to the point where he
15 said, you're disappointing me, you're a failure, you're out of my will." (265 RT 44276:1-7.)
16 Kitty had also told Erik that he was disinherited. (Exhibit 4, *Menendez v. Terhune* (2005) 422
17 F.3d 1012, 1020.) In the summer of 1989, Jose told Baralt that "he was going to write a will"
18 disinheriting Lyle and Erik but that "it had not been written yet." (115 RT 19802:24-19803:4;
19 19807:20-24.) To say the least, the Menendez family relationship had disintegrated, and tensions
20 had reached a boiling point. Erik and Lyle felt pressure to find a solution to their problem—a
21 solution that would emancipate them from their domineering parents and provide them the
22 financial independence they had grown to expect.
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1 **Erik and Lyle conspire to murder their parents and carefully prepare their alibi**

2 On Friday, August 18, 1989, two days before they murdered their parents, Erik and Lyle
3 drove 128 miles from Beverly Hills to San Diego to purchase firearms. Arriving between 8:00
4 and 8:30 p.m. at a Big 5 Sporting Goods store in San Diego, they purchased two 18.5-inch barrel
5 pump action, Mossberg 500 series shotguns with a six-shot capacity. Rather than purchase the
6 firearms under their own names, Erik pretended to be Donovan Goodreau, Lyle's former
7 roommate at Princeton. Erik signed the required firearm transaction documents as Donovan,
8 provided Donovan's California Driver License (that Lyle had obtained from Donovan when at
9 Princeton), and gave a non-existent San Diego address. (229 RT 38243:25 - 38299:11; Exhibit
10 3, *People v. Erik Galen Menendez et al.*, (February 27, 1998, B104022 [nonpub. opn.]
11

12
13 The next day, on Saturday, August 19, 1989, Erik and Lyle purchased additional, and
14 more lethal, buckshot ammunition for their shotguns. Based on their inquiry to the shopkeeper,
15 this buckshot was more effective at "stopping" burglars than the birdshot ammunition they had
16 purchased in San Diego. They also sought to practice using their newly purchased firearms at a
17 firing range but were unable to find one that allowed shotguns. (94 RT 15790-94.)
18

19 On Sunday afternoon August 20, 1989, just hours before the murders, Lyle called his
20 friend Perry Berman to set up an alibi. After exchanging messages, Perry eventually spoke with
21 Lyle at approximately five to six o'clock in the afternoon. Lyle asked Perry whether he wanted
22 to get together with him and Erik that evening. Lyle said that he and his brother were going to
23 see the movie "Batman," but that they could get together with Perry at the "Taste of LA" festival
24 after the movie got out at around 9:00 to 9:30 p.m. (224 RT 36879-84.) Not by coincidence, this
25 "pre-planned" movie and meeting at the Taste of L.A. just happened to align with the time Erik
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1 and Lyle eventually murdered their parents, and as discussed below, would serve as their alibi
2 during their initial questioning by the police.
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5 **Erik and Lyle murder their mother and father**

6 On the evening of Sunday, August 20, 1989, Jose and Kitty settled down in the den of
7 their Beverly Hills home to watch television together. At around 10:20 p.m., Lyle and Erik,
8 armed with their buckshot-loaded shotguns, burst through the doors of the den, and immediately
9 began shooting their defenseless and unarmed parents. (224 RT 36843:17-22; Exhibit 4,
10 *Menendez v. Terhune* (2005) 422 F.3d 1012, 1018.) Erik and Lyle unloaded their shotguns at
11 their parents. Lyle shot his father at close range in the back of his head. (88 RT 14629:6-12.)
12 Then, when Erik and Lyle heard their mother moaning in pain on the ground, they realized she
13 was still alive and ran outside to their car to get more ammunition and reload. Erik grabbed
14 more ammunition from his car and handed it to Lyle. Lyle grabbed the ammunition,
15 immediately reloaded his shotgun, and returned to the den to finish his mother off by shooting
16 her at point-blank range in the face as she laid defenseless on the floor. (Exhibit 4, *Menendez v.*
17 *Terhune* (2005) 422 F.3d 1012, 1018-19.) Together, Erik and Lyle fired 13 to 15 rounds at their
18 defenseless parents including rounds at their kneecaps after they were dead.⁷ The type of
19 shotgun blasts – through the back of Jose’s head, to Kitty’s face at point-blank range, and
20 through their kneecaps – was done to give the appearance of a Mafia gangland hit.
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28 ⁷ Even though, at trial, both Erik and Lyle testified that they believed they needed to defend themselves from their parents whom they believed were armed with rifles, there were no firearms inside the den when Erik and Lyle burst in, ambushed their parents, and shot them to death. (Exhibit 4, *Menendez v. Terhune* (2005) 422 F.3d 1012, 1018-19.)

1 **Erik and Lyle immediately dispose of the evidence of their crimes**

2 While their parents lay dead on the den floor, Erik and Lyle began extensive efforts to
3 cover up their connection to the murders. (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d
4 1012, 1018.) Concerned that they might be connected to the murders through fingerprints left on
5 the expended shotgun shells, the brothers picked up each of the shells. (261 RT 43643:1-26.)
6 They then disposed of these shells, along with their bloody clothes, in a dumpster at a gas station.
7 (88 RT 14633:15-19; 14637:16-19; Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d 1012,
8 1018-1019.) They also got rid of the murder weapons down a steep hill off of Mulholland Drive.
9 (261 RT 43659:15-43660:11.)
10
11

12
13 **Erik and Lyle try to follow through with their pre-planned fabricated alibi**

14 Having completed the murders, Erik and Lyle then followed through with their pre-
15 planned fabricated alibi by driving to the theater to buy tickets to the movie “Batman.”
16 However, they arrived after the movie had started, forcing them to buy tickets to a later
17 showtime. Erik learned that the movie tickets were time stamped with the movie’s start time
18 (which was after the time of the murders), so he ripped up the tickets and threw them away.
19 (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1018-1019.) Erik and Lyle then drove
20 to the Taste of L.A. event to meet Perry Berman as they had planned, but arrived too late and he
21 was already gone. (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1019.) At
22 approximately 11:00 p.m., still desperately trying to follow through with their planned alibi, Lyle
23 called Perry and said that they had gotten lost on the way to the festival, and it had closed by the
24 time they arrived. Lyle asked Perry to meet him and Erik at the Cheesecake Factory in Beverly
25 Hills instead. Perry was reluctant because it was so late, but agreed because Lyle was insistent.
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1 (Exhibit 3, *People v. Erik Galen Menendez et al.*, (February 27, 1998, B104022 [nonpub. opn.]
2 Erik admitted at trial that Lyle contacted Perry Berman simply to fabricate an alibi, stating that
3 they wanted to “try to have someplace where we could say we were when the police asked us.”
4 (44 RT 44017:2- 44018:11.) Lyle “expected that from the restaurant [he] could get Perry to
5 come back to the house.” (92 RT 15271.)
6
7

8 **Erik and Lyle’s First-Version Lie: an emotional staged 911 call and initial lies to**
9 **responding officers and the Mafia hoax**
10

11 After returning home at 11:47 p.m., Lyle made a staged call to 911 and created a false
12 police report. Crying, Lyle exclaimed, “someone killed my parents.” He did not admit that he
13 and his brother were the shooters. He did not admit that they planned the murders and purchased
14 the shotguns and ammunition ahead of time. Instead, he told the 911 operator that he had not
15 heard anything unusual but had just come home and discovered that his parents had been shot to
16 death. During this deceitful 911 call, Lyle cried dramatically while Erik could be heard in the
17 background screaming. (Exhibit 3, *People v. Erik Galen Menendez et al.*, (February 27, 1998,
18 B104022 [nonpub. opn.]
19

20 Continuing the charade, when the police arrived, Erik and Lyle ran out of the house to
21 meet the police while screaming and crying. (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d
22 1012, 1019.) Officer Angel stayed with Erik and Lyle for about an hour while other officers
23 entered and searched the home. Lyle constantly restrained Erik as Erik showcased his theatrical
24 skills by attempting to run towards the house, shouting and crying, “I’m gonna kill ‘em,” “I’m
25 gonna torture ‘em,” and “who would do this?” (Exhibit 5, p. 1 [police report dated 1/16/90].)
26
27 Lyle began pushing the false narrative that his father’s business associates may have killed his
28

1 parents, calmly telling Officer Angel that “his father’s business associates were ‘seedy’ and
2 bothered his father constantly . . .” (Exhibit. 5, p. 1 [police report dated 1/16/90.]) Even though
3 Erik seemed hysterical, when he spoke with Lyle he would speak in “hushed whispers” and in a
4 “controlled state.” (Exhibit. 5, p. 2 [police report dated 1/16/90.]) Eventually, Officer Angel
5 told Erik and Lyle that he would drive them to the police station for an interview. Once they
6 arrived, “they were no longer hysterical and appeared to be scared that they were in the police
7 station.” (Exhibit. 5, p. 2 [police report dated 1/16/90.]
8

9
10 At the Beverly Hills police station, detectives from the Beverly Hills Police Department
11 (“BHPD”) interviewed both Erik and Lyle. During these interviews, Erik and Lyle continued to
12 tell the same lie: they were not home when their parents were murdered. During the first
13 interview, Lyle again suggested, this time to detectives, that the killings were somehow related to
14 Jose’s business, stating that the murders were possibly “business related.” (Exhibit 3, *People v.*
15 *Erik Galen Menendez et al.*, (February 27, 1998, B104022 [nonpub. opn.]
16

17 In September 1989, BHPD detectives interviewed Erik and Lyle for a second time.
18 Again, both Erik and Lyle reiterated the same lie. This time, however, they provided even more
19 details. Erik gave detectives their fabricated pre-planned alibi: during the murders, they were out
20 of the home watching the “Batman” movie and then went to the Taste of L.A. event to meet
21 Perry Berman, before returning home to discover their parents’ bodies and promptly calling 911.
22 (Exhibit 6, p. 22-24 [police report .]) To bolster their “business associate” theory, Erik told
23 detectives that his mom was “real nervous” recently and had bought a gun. (Exhibit 7, p. 20
24 [transcript of police interview].) Like his brother, Lyle similarly stuck to their story. (Exhibit 6,
25 pp. 21-22 [police report].)
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1 In the ensuing months, Erik and Lyle remained out of custody and away from police
2 suspicion. During this time, they continued to tell the same lie to law enforcement, family,
3 friends, and even the media. (263 RT 43999:14-44000:28; 44006:13-44007:1; 44008:15- 22;
4 44013:10-44014:24.) Just a day after the murders, Erik told Randolph Wright, a family friend,
5 that the killings were possibly a “mafia murder.” (226 RT 37278.)
6

7 Within a few days of the murders, Lyle hired Richard Wenskoski to provide security
8 services. Wenskoski provided 24-hour “around the clock” protection while Lyle was on the East
9 Coast. Lyle told Wenskoski that either the Colombian Cartel or the Mafia were responsible for
10 the killings. Lyle also told his girlfriend Jamie Pisarcik that the killings must have been mob
11 related. Lyle again hired bodyguards to protect him during the Fall 1989 semester at Princeton
12 University. Erik similarly told people, in late September or early October, that the killings were
13 “business-related” and involved a man named Noel Bloom. (Exhibit 3, *People v. Erik Galen*
14 *Menendez et al.*, (February 27, 1998, B104022 [nonpub. opn.].) He also told his uncle, Brian
15 Anderson, that he and Lyle had been “contacted by the mafia and that they were told to be very
16 careful.” (236 RT 39590.) It is clear that, from the moment Erik and Lyle first contacted the
17 police, both brothers continued to perpetuate the Mafia hoax while they were still free from
18 suspicion and custody. In fact, as noted by the Ninth Circuit, “the gory scene of the slaughter of
19 Jose and Kitty Menendez is consistent with the notion that the killings were carried out with
20 the false mafia story already in mind. It appears from the record that the shotgun overkill
21 administered by Erik and Lyle was designed to simulate a gangland hit in order to enable
22 the brothers to deceive the police and to point them in the wrong direction.” (Exhibit 4,
23 *Menendez v. Terhune* (2005) 422 F.3d 1012, 1019 [emphasis added].)
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1 **Concerns about the will: Erik and Lyle display their true intentions**

2 On Monday, August 21, 1989, less than 24 hours after the murders and while the police
3 were trying to solve the crime, Erik and Lyle were already focused on taking control of their
4 deceased parents' estate. As previously discussed, Erik and Lyle had reason to fear that Jose
5 might have written a new will, one that would leave them nothing. (Exhibit 4, *Menendez v.*
6 *Terhune* (2005) 422 F. 3d 1012, 1019-20.) On Monday, Klara Wright, a friend of the Menendez
7 family, unaware of the murders, drove to the Menendez home. Her son played tennis in many of
8 the same tournaments as Erik. When she arrived at the Menendez home on August 21, 1989, she
9 saw Lyle and Erik in front of the house, which appeared to have considerable police activity. At
10 that time, Erik did not seem overly concerned about the murders. Instead, Erik approached Klara
11 and immediately said, "I'm so glad you're here. We need to speak to your husband." Klara's
12 husband was an attorney. Erik told Klara that "he was trying to get a hold of [her husband] or
13 that he wanted to get a hold of [her husband]." (225 RT 37148:21-28.) Klara invited Erik and
14 Lyle to come over to her house later that day so that they could speak with her husband.
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18 Later that day, when Erik and Lyle arrived at the Wright's house, Erik made his true
19 intentions clear. Erik asked Klara if they had knowledge about computers. Erik told her he "was
20 just very concerned about having a will in the computer" and "just wanted to make sure that
21 there wasn't one in there...that he already checked and he couldn't find nothing...that maybe if
22 somebody was good at it, they could go into different compartment to make sure that there is no
23 will in there." (225 RT 37155.)
24

25 When her husband Randy arrived, the conversation again focused on whether there was a
26 "will" on their computer. This time, however, the conversation turned to the possibility that
27 there were two outstanding wills. Randy asked Erik and Lyle "if they knew of a will" and
28

1 “[b]oth defendants said that, yes, they were sure there's a will.” (225 RT 37156:21-22.) Erik and
2 Lyle were focused on the legality of a certain type of will. “They asked...is it legal to write a will
3 in a computer?” (225 RT 37157:14-18.) Randy replied he did not know. They pressed further,
4 stating, “they have to locate the wills. There may be two of 'em...that possibly, he [Jose] was
5 writing a new will.” (225 RT 37160:12-16.)

7 At some point, Randy asked whether their father had a safe. (225 RT 37157:22-27.)
8 According to Randy’s wife Klara, “My husband asked them is it possible that the will would be
9 in a safe, and they said, well, yes, it's possible...one of them suggested...that they could bring the
10 safe over.” (225 RT 37161:4-8.) “They got up and they left, and they went to get the safe.”
11 (225 RT 37161:19-22.)

13 Later that evening, still less than 24 hours after they had murdered their parents, Lyle and
14 Erik returned to the Wright house with the safe. Randy “informed them that they can't open the
15 safe until their proper relatives come because it's not legal...he didn't let them open the safe.”
16 (225 RT 37163:10-14.) Randy “asked them to put it in the bedroom where Erik was going to
17 sleep.” (225 RT 37163:25-27.) “We offered for both of them to sleep there if--we didn't want
18 them to go back to the house. We offered for them to sleep there if they wanted.” (225 RT
19 37164:10-13.) Erik took them up on their offer and slept in the house with the safe for two or
20 three nights. However, “he did leave after the safe-opening.” (225 RT 37166:17-19.) “[T]he
21 locksmith picked up the safe and they put it in our garage, because my husband did not want to
22 be present, and I certainly didn't want to be present at the opening of the safe. We thought it was
23 a family matter. . . and they opened it with closed doors. . .and then they came out, and they said
24 nothing was in the safe.” (225 RT 37167:2-25.) Carlos Baralt, Jose’s brother-in-law, closest
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1 confidant, and executor of his will was present when the safe was opened. (226 RT 37351-53
2 37364.)

3 Subsequently, Baralt went with Lyle to the bank where Jose and Kitty had a safe deposit
4 box to search for a will. (115 RT 19750.) As the executor of the will, Carlos asked to be present
5 when the safe-deposit box was opened. Lyle, however, did not want him present, stating that he
6 wanted to go inside first “and see if there were any documents that could be embarrassing for the
7 family.” (226 RT 37370-71.) No will was found in the safe-deposit box.
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11 **Continued concerns about the will: trying to erase evidence of an alternate will**

12 On August 22, 1989, Lyle was still primarily focused on who would inherit his murdered
13 parents’ large estate. Lyle called Jose’s secretary and asked her “what would happen if they
14 didn’t find the will?” (237 RT 39778-79.)
15

16 Within a week after the murders, Menendez family members discovered three files on
17 Jose’s computer, entitled “Will,” “Erik,” and “Lyle.” (84 RT 14671:10-15.) These files,
18 however, could not be opened or recovered. (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d
19 1012, 1020.) After hearing about this from his family, Lyle flew back to Los Angeles from New
20 Jersey to delete the files before his family could open them. On August 31, 1989, Lyle called
21 Howard Witkins, a computer expert, and asked him to come to the Menendez house. (115 RT
22 19833:4-19834:28; 59 RT 8903:6-24.) When Witkins arrived that day, Lyle told him that “he
23 [Lyle] had a series of files that he desperately needed to recover; that they had been erased or
24 damaged, and he needed those files. And could I please try to find them on the computer for
25 him.” (59 RT 8906:8-13.) The files had the names “Lyle, Erik, Will and Menendez.” (59 RT
26 8906:15-16.) Witkins found files with the names “Menendez,” “Will,” “Erik,” and “Lyle.” (59
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1 RT 8911:6-13.) However, these files had already been written over and Witkins “was unable to
2 recover any useful or meaningful data for him.” (59 RT 8914:23-25.) Lyle responded “that was
3 very good, because, in fact, he didn't want to recover the information. He wanted to make sure
4 that the information was not, in fact, there and couldn't be recovered, even by someone who was
5 actively trying to recover the information.” (59 RT 8915 [emphasis added].) As Witkin
6 testified, “I told him I'd been unable to recover it, and then he asked, could I erase it to make sure
7 that even if...I hadn't been good enough at recovering it, maybe someone else could. Was there a
8 way I could erase the information to guarantee that it could never be recovered.” (59 RT 8915.)
9
10 Upon Lyle's request, Witkins permanently erased the hard drive.
11

12 The same day, August 31, 1989, Carlos Menendez, Jose's brother, called Edward
13 Hayman, a different computer specialist, to search the computer. Hayman drove from San Diego
14 to the Menendez house in Beverly Hills where he was met by Erik and Erik's friend Craig
15 Cignarelli. However, Hayman was too late; he arrived after Witkin had already permanently
16 erased the files. Hayman searched the computer and was of the “opinion it looks like another
17 program was used to clean the hard disk, and as a result there was nothing I could do to retrieve
18 any files that may have been there if there were, in fact, any there.” (59 RT 8850.) Lyle had
19 already had Witkins delete any possible version of a new will.
20
21

22 Later that day, Erik admitted to his friend, Craig Cignarelli, that Lyle “had had someone
23 come up and erase a family will – or had a computer expert come up and erase the family will
24 and that he knew that if it's not professionally done that you – there's still access inside the
25 computer, and that's why he was having this guy come up and try to find it.” (54 RT 7753.)
26 “[Erik] explained that the will - the original will that this expert was looking for was supposed to
27 be the one that his father was retyping. The old will, he said, left the - all the money to the kids,
28

1 and that this new will, that he had thought Lyle had erased, was supposed to leave some money
2 to the company, some money to the kids, and some money to someone else.” (54 RT 7754.)
3
4

5 **Spending Spree: Erik and Lyle enjoy the fruits of their crimes**

6 After murdering their parents, Lyle and Erik went on a spending spree with their
7 deceased parents’ money and life insurance proceeds. Among other things, Lyle bought three
8 Rolex watches, a Porsche, expensive clothes, a condominium, and a restaurant. (89 RT
9 14681:15-14684:9.) Erik likewise engaged in lavish consumption, purchasing a Rolex watch and
10 a Jeep and hiring an expensive tennis coach for private lessons.
11
12

13 **Erik confesses to Craig Cignarelli**

14 A day or two after the computer experts searched the family computer for files associated
15 with a will, Erik confessed to murdering his parents to his best friend Craig. While walking in
16 the foyer of the Beverly Hills house, Erik asked Craig, “Do you want to know how it
17 happened?”⁸ After Craig replied, “Yes,” Erik admitted that “he was coming home from a movie,
18 and that he was going inside to get . . . a fake I.D., to go out to the bars and he . . . went back
19 outside and his brother was standing there with two shotguns and said: ‘Let’s do it.’” (54 RT
20 7757:16-7758:12.) Erik then stated that as they walked towards the den, Lyle “put his shoulder
21 against the door . . . and Erik . . . looked in, saw his parents sitting on the couch. And Lyle
22 swung open the door and shot his father and looked at Erik and said: ‘Shoot mom.’ . . . Erik said
23 he shot his mom while she was standing up yelling.” (54 RT 7757:15-7758:21.) Erik never told
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28 ⁸ Craig spoke with police approximately 3 months after the murder. Initially, Craig was hesitant to tell the police what he knew. Police told Craig that if he had information, it could be relayed confidentially without revealing the source. Craig inquired about whether he could get witness protection. When he was told he could, he relayed this information to police. (Exhibit 8, p. 2 [police report dated 11/28/89].)

1 Craig that he or Lyle was acting in self-defense. He also never mentioned anything about him or
2 Lyle being abused by their parents. (54 RT 7760:11-19.)
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5 **Erik and Lyle retain the lawyer and psychiatrist who previously defended them in their**
6 **Calabasas burglaries**

7 As previously discussed, Erik was arrested and charged with the two Calabasas
8 residential burglaries in 1988. As a result, both brothers retained a criminal attorney, Gerald
9 Chaleff (“Chaleff”), to assist them regarding the burglaries. Formal charges were filed against
10 Erik in juvenile court, but Lyle was never charged. (Exhibit 4, *Menendez v. Terhune* (2005) 422
11 F. 3d 1012, 1020.) In pursuing court diversion, Chaleff suggested that Erik find a psychologist
12 to assist with their defense. The family engaged Dr. Jeromy Oziel (“Oziel”) to assist. Dr. Oziel
13 conducted therapy with Erik and prepared a report for the court. As a result, Erik received
14 diversion for one year and the eventual dismissal of all charges. (Exhibit 4, *Menendez v.*
15 *Terhune* (2005) 422 F. 3d 1012, 1021.) Together, Chaleff and Dr. Oziel were able to help Erik
16 get a very favorable resolution of his criminal burglary case.
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19 Erik and Lyle again used Chaleff to advise them regarding the murder investigation. The
20 day after the murders, on August 21, 1989, Chaleff advised the police that he would be “acting
21 on [Erik and Lyle’s] behalf as legal counsel.” Additionally, Erik and Lyle resumed therapy with
22 Dr. Oziel during September, October, and November 1989. Chaleff was unaware that Erik and
23 Lyle were meeting with Dr. Oziel until December of 1989. During these initial sessions, neither
24 Erik nor Lyle confessed their roles in the murder to Dr. Oziel. (Exhibit 4, *Menendez v. Terhune*
25 (2005) 422 F. 3d 1012, 1021.)
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1 **Erik confesses to his therapist, Dr. Oziel**

2 Eventually, Erik could not hold in the truth any longer. According to Erik, he saw Dr.
3 Oziel on October 31, 1989 “because I was afraid I was going to kill myself.” (96 RT 16205:25-
4 28.) Erik was having nightmares about killing himself and was having difficulty being around
5 his family without being able to tell them what he had done. (96 RT 16206.) Erik came to the
6 following realization: “I just decided that I needed to tell somebody, and I decided to tell [Dr.
7 Oziel] right then.” (96 RT 16206:25-28.) Ultimately, Erik wanted to tell Dr. Oziel because “I
8 **really wanted him, at that point, to tell me that I wasn’t a bad person and to tell me I**
9 **wasn’t this horrible, terrible person that I was thinking I was. And he couldn’t do that**
10 **unless he knew that I killed my parents.”** (96 RT 16209:8-16 [emphasis added].)

13 On October 31, 1989, Erik confessed to murdering his parents to Dr. Oziel. According to
14 Dr. Oziel, Erik said he decided to kill his parents when he was “watching a B.B.C.⁹ television
15 show or movie . . . that had to do with the theme of the person in the film killing their father.”
16 (61 RT 9351:11-18.) At that point, Erik called Lyle into the room and told him about the theme
17 of the movie. The two then discussed what it would be like if they killed their parents and “how
18 it would be if the person who was a dominating force and a negative force, a very controlling
19 person in their life, wasn’t there anymore.” (61 RT 935:19-28.) According to Dr. Oziel, Erik
20 said that his father “had just been completely dominating and controlling; was impossible to
21 please; had perfectionist standards; that he was controlling a lot of different aspects of Erik and
22 Lyle’s life in a very extreme way; and also that he had been very controlling and very damaging
23 to their mother; and, that she was also very miserable.” (61 RT 9352:8-15.) Erik admitted to Dr.
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28 ⁹ Although disputed by Erik and Lyle at trial, the People’s theory was that B.B.C. stood for the Billionaire Boys Club, a notorious group of young men who started an investment club which was in reality a Ponzi scheme. One of the young men eventually killed his father to take over his fortune.

1 Oziel that these were the reasons they killed their father. With respect to their mother Kitty, Erik
2 told Dr. Oziel that she was killed because she was victimized as well, was suicidal, “and they
3 couldn’t find a way to accomplish the end of killing [their] father without also killing [their]
4 mother.” (61 RT 9353:1-6.) According to Dr. Oziel, Erik gave the following three reasons why
5 they killed their mother: “The mother would have been a witness, number one, and would have
6 reported them; number two, they didn’t believe that the mother could have survived emotionally
7 anyway, without the father; and three, they thought the mother was so miserable that it was . . .
8 sort of like a euthanasia situation.” (61 RT 9353:6-13.) Dr. Oziel testified that Erik wanted to
9 commit the murders quickly before he lost “the emotional ability to commit the act.” (61 RT
10 9354:22-24.) According to what Erik told Dr. Oziel, Lyle, however, “wanted to take some time
11 to plan it out more effectively, to make sure it was as perfect as could be.” (61 RT 9354:25-28.)
12 According to Erik, this discussion of planning the murders took place about a week before the
13 crime. (61 RT 9355:26-9354:6.)

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17 Erik continued telling Dr. Oziel that as they were shooting their parents, Jose said “no,
18 no” and turned away as he was shot. Kitty began to stand, was shot, and then fell to the floor.
19 Erik said his father died first, but his mother survived. They had to go to the car and reload and
20 then Lyle returned and finished her off. (61 RT 9359.) Erik then recounted the details about
21 how they cleaned up the crime scene, discarded the guns and their clothing, and tried to follow
22 through with their pre-planned alibi. (61 RT 9360-63.)
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25 **Lyle also confesses: Dr. Oziel invites Lyle to the therapy session with Erik**

26
27 Because Lyle did not know that Erik had confessed, Dr. Oziel was worried what Lyle
28 would do when he learned that Erik had confessed. Dr. Oziel therefore called Lyle and asked

1 him to come to the office. When Lyle arrived, Dr. Oziel told him about the confession and Lyle
2 became angry, yelling at Erik, “I can’t believe you did this! I can’t believe you told him! I don’t
3 even have a brother now.” (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1021.) Erik
4 pleaded with Lyle, telling him that he “needed to confess to somebody . . . and he knew that if he
5 had told Lyle about it ahead of time, that Lyle would have said ‘no’.” (61 RT 9377:11-17.)

7 During this session, Lyle was “extremely upset, threatened, threatening, menacing.” (61
8 RT 9375:16-21.) Dr. Oziel took Lyle’s demeanor and comments as a threat to his life. This
9 interpretation turned out to be accurate because, according to Dr. Oziel, Lyle told him during a
10 later session, on November 2nd, “[you] should have felt threatened because immediately after
11 the session he [Lyle] and Erik had sat in Erik’s new Jeep, and the first statement that Lyle had
12 made to Erik when he got into the Jeep was: ‘Now, how do we kill Oziel?’” (61 RT 9381:14-
13 9382:3.) Dr. Oziel explained to Erik and Lyle that their sessions were confidential unless they
14 were threatening him or posing a danger to someone.” (64 RT 329.)

17 On November 2, 1989, Erik and Lyle both returned to Dr. Oziel’s office. Dr. Oziel,
18 fearing for his safety, explained that Erik had no choice but to confess, **but that it might have**
19 **some benefit because he was a therapist and might be able to help them if they were ever**
20 **brought to trial.** (61 RT 9378-79.) He further explained that he could “put together some of the
21 factors that had been going on in their family that—specifically, the hatred and the emotional
22 abuse that they had had with respect to the relationship, with their father in particular, that could
23 have led to the murder taking place.” (61 RT 9380:15-20.) Despite this assurance that
24 disclosures could possibly help them in their defense, neither Erik nor Lyle told Dr. Oziel that
25 their parents had posed any threat to them whatsoever nor did they tell him about being sexually
26 abused by their father.
27
28

1 To protect himself, Dr. Oziel explained that he felt threatened by Erik and Lyle, that he
2 was taping his notes from the sessions, and that he had put them in a safe to be released if he
3 were ever harmed. (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1021.)
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5
6 **Chaleff negotiates a further therapy session to assist Erik and Lyle with a potential defense**

7 In early December, Erik and Lyle told Dr. Oziel to contact their attorney, Chaleff.
8 Chaleff and Dr. Oziel met on December 8, 1989, and Dr. Oziel told Chaleff that he planned to
9 continue his therapy with Erik and Lyle. Chaleff decided “that continuing therapy could be
10 helpful because if there was a trial . . . this might be good for the penalty phase, if there ever was
11 one.” (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1021.) Chaleff told Erik and
12 Lyle that meeting with Dr. Oziel **could possibly help them at a future trial**, and he met with
13 them on December 11, 1989, at Dr. Oziel’s office and authorized the therapy session. (Exhibit 4,
14 *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1022.)
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18 **Erik and Lyle confess to Dr. Oziel on audiotape, but again never mention abuse or self-**
19 **defense**

20 Dr. Oziel audiotaped the December 11, 1989 therapy session.¹⁰ Erik and Lyle disclosed
21 on tape their relationship with their parents and the emotional problems they were having. They
22 discussed how their father was controlling and their mother, who had attempted suicide, was
23 unhappy. They discussed the murders openly, including their thoughts and plans leading up to
24 them. In particular, they discussed the pressures they felt as the children of Jose Menendez. Erik
25 stated:
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¹⁰ A transcript of the recording of this therapy session between Dr. Oziel, Erik, and Lyle is attached hereto as Exhibit 9. The quotations below are taken directly from this transcript.

1
2 [Erik]: And we thought that whether we became the senator, or
3 whether we made hundreds of millions of dollars, it would all be
4 because my father was this incredible man, and we were just too
5 pushed.

[Oziel]: Uh, huh.

[Erik]: And, and pressures, and there was no question we felt that.

6
7 Regarding why they killed their mother, Erik and Lyle admitted:

8
9 [Erik]: Well, we, we were, we were doing almost, in my mom's case,
10 something that, that first of all, there was, there was no way, never
11 could she live without my father.

[Oziel]: Uh, huh.

[Erik]: It was...

12 [Lyle]: That was something that we had to really, it was a big thing
13 holding us back. Ah, from killing my father was that we thought that
14 we would just kill dad, and eliminate the problem.

15 They then discussed Jose's affair and how it caused Kitty to become suicidal. Turning again to
16 why they killed their father, Lyle said it was because of what Jose was doing to himself and to
17 his mother, stating:

18 [Lyle]: And ah, so ah, for my, for my mother's sake. I, I thought that
19 ah, we did it, it was we had to come, like I was saying before, we
20 had to make a decision. It was one of the harder ones, and it was a
21 separate issue. (unint). He's the reason. My father should be killed.
22 There's no question. What he's doing is, he's impossible to live with
23 for myself, and for. . . what he's doing to my mother.

24 Lyle reiterated that the primary motive for the murder had nothing to do with anything Jose had
25 done to harm or threaten to harm Erik or Lyle. As Lyle stated on tape:

26 [Lyle]: But I still don't think it had anything to do with, killing him
27 had nothing to do with us. It had to do with me realizing a number
28 of things that all culminated, which was, and could have culminated
at any point. And it was just a question of Erik and I getting together,
and somebody bringing it up. And us **realizing the value in it.**

1 Erik similarly stressed that the primary motivating factor for killing their father was the way he
2 treated their mother:
3

4
5 [Erik]: He was somebody that I loved and almost had no choice to
6 do what I did, and I hate myself for doing it. And ah, **I understand**
7 **why it was done . . .** And having to listen to the fights. And ah,
8 and somebody would be yelling and screaming. It was always
9 taking place downstairs. And ah, and finding blood on the . . . **And**
10 **it's more difficult because of my mother, because I realize what**
11 **an amazing tragedy of her life was compared to what it could**
12 **have been. Because of my father. And I hate him for that.** And
13 I love him. and, ah, and it's something that ah, way beyond control.
14 . . . **Eventually it had to happen.** It was basically ruining my life,
15 and I guess Lyle's. And, and, he was putting my mother through
16 torture.

17 Finally, Erik and Lyle told Dr. Oziel how they carefully conspired and premeditated the murders,
18 stating:
19

20 [Lyle:] There was no way I was gonna make a decision to kill my
21 mother without Erik's consent. I was going, I didn't even wanna
22 influence him in that issue. I just let him sleep on it for a couple of
23 days. Cause ah, I did...I, I, I'm in a very ah, good position to
24 influence Erik in a lot of things. Because he knows that I care, and
25 a whole number of issues. That I can talk eloquently or whatever.
26 And ah, but when it came to that issue. I wanted nothing to do with
27 it. It had to be his own personal issue. If he felt the same way I did
28 about killing mom.

29 Most importantly, **at no point during any of Erik or Lyle's discussions with Dr. Oziel after**
30 **the murders did either of them ever disclose that their parents wanted to kill them or had**
31 **sexually abused them.** Those allegations did not come until much later when they were pending
32 trial and preparing their defense.
33

1 In late February or early March of 1990, while Lyle was on a flight to Los Angeles with
2 his friends Hayden Rogers and Glenn Stevens, Lyle called the restaurant that he had bought and
3 was informed that the Beverly Hills Police Department had been looking for him. (56 RT
4 8257:20-8259:22.) After the call, Lyle gave about \$1,400 to Hayden and \$1,200 to Glenn and
5 said, "When we get into California, if anything should happen to me, you call Gerald Chaleff,
6 because he knows everything, and tell him what happened, if something was to happen." (56 RT
7 8260:9-16.) Lyle gave Chaleff's business card to Glenn and said, "that he [Lyle] had been going
8 to a psychologist, Jerome Oziel...and that Dr. Oziel had made some tapes of discussions between
9 himself and the doctor...[and]...if the police get their hands on those tapes...I'm fucked." (56
10 RT 8261:3-15.)

14 **Lyle and Erik are arrested**

15 At the time of Erik and Lyle's sessions, Dr. Oziel was having an affair with a woman
16 named Judalon Smyth. Smyth knew about the confessions. After their relationship ended,
17 Smyth went to the police and disclosed the confessions. Smyth also told the police about the
18 existence of the taped session. On March 8, 1990, almost six months after the murders, the
19 Beverly Hills Police Department executed a search warrant at Dr. Oziel's home and eventually
20 recovered the tape. Erik and Lyle were arrested and charged with murdering their parents.
21 (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1023.)

25 **Once arrested, Erik and Lyle begin fabricating a new defense**

26 Prior to their arrest, both Erik and Lyle were completely untruthful. They lied to the
27 police, their family, and friends to convince them that they were not involved in the killings.
28

1 (263 RT 44026.) According to Erik, they lied “to avoid punishment and responsibility.” (263
2 RT 43999-44000.)¹¹ Erik also admitted that he is capable of lying under oath. (263 RT 44033.)
3 Once arrested, Erik and Lyle knew that they had confessed to Dr. Oziel and that they could no
4 longer say that they did not kill their parents. When asked whether he knew the prosecutor had a
5 case against him after he was arrested, Erik testified, “I knew that I was responsible, and I was
6 arrested. Clearly.” (263 RT 44031:3-11.)
7

8 Erik and Lyle had three years in jail before their first trial to think about the various
9 reasons they could present to justify killing both their mother and their father. (263 RT 44040-
10 41.) During those three years, Erik learned about the difference between manslaughter and
11 murder. At trial, Erik admitted that his goal was to get a manslaughter conviction because “it’s
12 the only way I can go home.” (263 RT 44063; 44063:17-26.) Accordingly, once they arrived in
13 jail, Erik and Lyle began searching for a new story to explain why they killed their parents.
14
15

16
17 **Lyle asks his girlfriend to research cases where children got off for killing their parents**

18 During the summer of 1990, Lyle’s girlfriend, Jamie Pisarcik, visited him in county jail.
19 Before he ever publicly claimed to have been molested by his parents, Lyle asked Jamie to look
20 up court cases and obtain copies of them for him. Specifically, he wanted her to find cases
21 “where children had gotten off after killing their parents.” (129 RT 22267:10-28.) These “cases
22 were...child molestation [where] children had killed their parents and gotten off.” (129 RT
23 22268:1-8.)
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28 ¹¹ At trial, Erik admitted that after he had experienced jail, and before he testified, his motive to avoid punishment was even greater than when he first lied to the police. (263 RT 44028-29.) Regarding his motive to lie, he testified, “I don’t want to be in prison anymore. It’s a bad place, and I don’t want to spend the rest of my life in jail.” (263 RT 44029.)

1 **While in jail, Erik first told his defense-hired psychiatrist, Dr. William Vicary, that he was**
2 **molested—both by a babysitter and his father**

3 In June of 1990, the defense retained Dr. William Vicary (“Dr. Vicary”), an expert
4 psychiatrist, to assist with psychiatric issues related to the defense. (134 RT 23402-03; 297 RT
5 50456.) For the next year and a half, while awaiting trial, Dr. Vicary met with Erik on a weekly
6 basis. (297 RT 50457-58.) Dr. Vicary made detailed contemporaneous notes of these meetings.
7 (134 RT 23435:11-23.)
8

9 In 1990, Erik told Dr. Vicary that he had been raped by his babysitter when he was five
10 years old. (324 RT 54323:15-18.) This was the first and only time that Erik ever alleged that he
11 was molested by someone other than his father. He never raised this issue at trial, and Dr.
12 Vicary deleted this statement from his notes. Thus, the prosecutors at the first jury trial did not
13 know about it and could not cross-examine Erik regarding this allegation. (324 RT 54324.)
14

15 In approximately August of 1990, Erik also told Dr. Vicary that he had been molested by
16 his father. According to Dr. Vicary, Erik volunteered this information on his own without being
17 prompted or asked any specific questions. (134 RT 23432.) Dr. Vicary was the first person
18 whom the defense alleged Erik ever told after he was arrested that his father molested him. (135
19 RT 23506:6-26.)
20

21 Importantly, in 1992, Erik told Dr. Vicary that victim Jose had a homosexual lover in
22 California. Two days before the murder, his father’s homosexual lover allegedly told Erik that
23 Erik’s mother and father were going to kill him. (321 RT 53896-99.) This purported revelation
24 occurred two years after he began seeing Dr. Vicary, and two years after he told Dr. Vicary that
25 he was being molested. In a subsequent meeting, Erik admitted to Dr. Vicary that this revelation
26 was false.
27
28

1 Lyle asks his girlfriend to falsely testify that his father violently raped her

2 In early December of 1990, Jamie visited Lyle in jail, and Lyle asked her to testify falsely
3 at his trial to support a fabricated defense. Lyle asked Jamie to “say that his father had done
4 what was done to a character in a movie. . .called ‘At Close Range.’ And he had asked me to lie
5 and say that his father had done that to me.” (235 RT 39280:14-18.) Jamie had previously seen
6 the movie with Lyle and was therefore familiar with the movie. The scene Lyle asked Jamie to
7 falsely replicate was a violent rape scene where the character playing the father threw the victim
8 onto the bed, ripped off her clothes, pinned her down, and violently raped her. As understood by
9 Jamie, in the movie “...the father had given the girl a pill, a drug, and she was a little groggy.
10 And the father had asked her not to see the son anymore. And she said...she couldn't do that
11 because she loved this character. . . . And then the father said, I'm not asking you. And then he
12 pushed her down on the bed and proceeded to rape her.” (235 RT: 39280:26-39281:18.) Those
13 vile facts were the exact facts Lyle solicited Jamie to fabricate against Jose.

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17 Moreover, Lyle offered to pay Jamie money to give this false testimony against Jose.
18 (235 RT 39282:4-8.) Jamie replied, “...I can't believe you're asking me to do this, and it's a lie
19 and nothing like this ever happened; that your father would never do that to me, nor did he.”
20 (235 RT 39281:26-39282:1.) Lyle told Jamie that “he was **working on his defense** and
21 this...was going to be part of it.” (235 RT 39282:16-18 [emphasis added].) Up until December
22 of 1990, Lyle had insisted that he had not killed his parents. However, “[w]hen Lyle started to
23 ask me to do things, like lie for him regarding the movie, I mean, I obviously started to question,
24 because up until this point I believed 100 percent in his innocence and had--did not know that he
25 had committed this crime.” (235 RT 39283:8-13.)

26
27
28 Fortunately, Jamie refused to participate in this lie.

1 **The Rape Defense: Erik was molested by his father and Lyle was molested by his mother**

2 In mid-December 1990, during a jail visit, Lyle for the first time told Jamie that he and
3 Erik had killed their parents. However, at this time, Lyle told Jamie that they killed their parents
4 because they had been molested—**Erik by his father Jose and Lyle by his mother Kitty.**

5 Jamie testified that Lyle “held up a pre-written letter that had the admission, the confession, that
6 he did kill his parents.” (235 RT 39283.) “It started out by ... him apologizing to me for having
7 to have lied to me for such a long time; and that he was very sorry that he could not have told me
8 the truth during the nine, ten months that I had come down to see him and visit him . . . after he
9 apologized . . . he did . . . tell me the truth, that he killed his parents . . . he said that it was
10 because—that **his mother had sexually abused him** and his brother was also abused by his
11 father.” (Vol 235 RT 39285 [emphasis added].) At this juncture, Lyle **did not state** that he was
12 sexually molested by his father. Jamie “stopped reading [the letter] because it came to the part in
13 the letter that it said that his mother had sexually abused him, and I stopped and I said, I do not
14 believe this. And that’s when he ripped the letter away and would not let me continue reading it.”
15 (235 RT 39286.)

16
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19 Before their first trial, Erik and Lyle also told their uncle, Carlos Baralt, a similar story
20 during a joint conversation in the attorneys’ room in county jail. Lyle told Carlos that he had
21 been molested by his mother. **However, he did not say that he was molested by his father, as**
22 **he would later claim at trial.** Erik told Carlos that he had been molested by his father. (115 RT
23 19843:19-19845:9.)

24
25 Subsequently, during his trial testimony, Lyle admitted that he showed Jamie a letter
26 informing her that Erik had been molested by his father and that he had been molested by his
27
28

1 mother.¹² He also admitted that he did not tell Jamie that he had been molested by his father.
2 (89 RT 14701:13-18.) In an effort to explain why he didn't tell Jamie that his father sexually
3 abused him, Lyle testified that he "knew that Erik had talked to people about it, but I wasn't
4 going to say what happened to me...I just didn't want to say that my dad did those things. I
5 didn't want to say the things he did to me." (Vol 89; 14701-14702:4-12.) Lyle explained that he
6 felt that portraying his father as a sexual molester "felt like I betrayed my dad to some extent,"
7 though apparently portraying his father as a sexual molester of Erik was not a betrayal of his
8 father. (89 RT 14703:6-7.)
9
10

11 **Lyle never told Jamie that he and Erik killed their parents because they feared that**
12 **their parents were going to kill them.**
13

14 **Sexual abuse claims made at trial**

15
16 Eventually, Erik and Lyle had two jury trials. The first trial resulted in a hung jury; the
17 second trial a conviction. Both Erik and Lyle testified at the first trial, but at the second trial,
18 only Erik chose to testify while Lyle chose to exercise his right to remain silent. (Exhibit 4,
19 *Menendez v. Terhune* (2005) 422 F. 3d 1012, 1023.) At these trials, and for the first time, Erik
20 and Lyle publicly stated that they had been molested by their parents. **However, unlike what**
21 **Lyle had previously told both his girlfriend Jamie and his uncle Carlos Baralt, the story**
22 **changed during the trial so that both Erik and Lyle were purportedly molested by their**
23 **father.** As explained below, the sexual abuse alleged by both Erik and Lyle during their trial
24 testimony was, if true, the most predatory and vicious abuse that one could imagine.
25
26

27
28 ¹² On direct examination, Lyle agreed that the letter to Jamie told her that he had been molested by his mother. (89 RT 14701:16-18.) But on cross-examination, Lyle oddly disagreed with the characterization of his mother sexually abusing him, saying, "I didn't use those words...with my mother I just said what happened, and I think it was mutual." (90 RT 14784:12-13.)

1 Lyle testified that “between the ages of six and eight” his father “just started with—after
2 sports practices he would massage me, and would have these talks, and ... he would fondle me,
3 and ask me to do the same with him, and I would touch him ... and we would undress.” (84 RT
4 14199:14-18.) This molestation occurred “two or three times a week.” (84 RT 14199:22.)
5

6 Lyle claimed that at around seven years old, the molestation intensified. His father
7 “would put me on my knees, and he would guide me, all my movements. And I would have oral
8 sex with him.” (84 RT 14200:3-6.) Eventually, his father would use “a toothbrush and some
9 sort of shaving utensil, brush” and “we’d have what we called the object session...he’d have a
10 tube of Vaseline, and he’d just play with me.” (84 RT 14200:15-24.) His father also raped him,
11 causing Lyle to bleed. (84 RT 14201:3-8.) During this time, Lyle said he would take Erik “out
12 to the woods...and I took a toothbrush, and I played with Erik in the same way.” (84 RT
13 14203:5-8.)
14

15 Lyle testified that he told his father “...that I didn’t want to do this, and that it hurt me.
16 And he said that he didn’t mean to hurt me. He loved me.” (84 RT 14201:13-17.) Because he
17 wanted the molestation to stop, Lyle told his mother “... to tell dad to leave me alone; that he
18 keeps touching me...she told me to stop it; and that I was exaggerating, and that my dad has to
19 punish me when I do things wrong, and she told me that he loved me.” (84 RT 14201:25-
20 14202:2.) Lyle said that he never told anyone because he “was afraid and my dad...said it was
21 our secret, that bad things would happen to me if I told anybody, and I told him I never would.”
22 (84 RT 14202:17-23.)
23

24 Without explanation, the sexual assault stopped when Lyle was eight years old. (84 RT
25 14202:24-25.)
26
27
28

1 When he was around 13 years old, Lyle claims that he began to believe that Erik was
2 being molested by his father because he was “hearing noises.” (85 RT 14252:8-23.) Lyle
3 “thought it would be worse if I talked to my brother about it first, because I figured he would
4 deny it, and then he might go to dad...” (85 RT 14253:14-17.) Eventually, Lyle decided to
5 confront his father, though he felt that his father “would probably beat me up, and he would
6 probably get incredibly angry, and he might hurt my brother.” (85 RT 14252:2-10.) When Lyle
7 confronted him, his father told him “. . . that Erik made things up sometimes, but that it would
8 stop. And we should keep it just between us, or he’d kill me.” (84 RT 14203:26-14204:1.) After
9 he talked to his father, Lyle talked with Erik who said that “he was glad I talked to dad, and that
10 things had gotten better. Things had changed.” (84 RT 14254:1-4.)

13 Erik also testified at both trials, including for 7 days at the second trial, about the
14 extensive sexual, physical, and emotional abuse his father committed against him. The
15 testimony was graphic and detailed. According to Erik, the molestation began when he was six
16 years old and continued until he killed his father when he was 18. (94 RT 15634-37.) The abuse
17 occurred in almost all places they ever resided or visited, including inside hotel rooms while on
18 vacation or at tennis tournaments. (257 RT 43082-85.) On numerous occasions, Jose told Erik
19 that he would kill him if he ever disclosed the abuse. (96 RT 16054-56.) Erik testified the
20 molestation included forced oral copulation, forced anal sex (sometimes with lubricant and
21 sometimes without), and sexual acts accompanied by physical violence. According to Erik, Jose
22 shaved Erik’s pubic hair when he was 15 years old. (96 RT 16066.) Erik testified that his father
23 would grab him by the hair and force him to massage his father’s penis with his mouth until he
24 gagged. (258 RT 43117-19.) Erik testified that his father watched as he forced Erik to shove a
25 long wooden object with a knob on the end into his anus. (258 RT 43129.) Erik testified that his
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1 father raped him with force. (258 RT 43131.) Erik testified that his father would sexually
2 assault him while using “a knife, rope, needles, tacks, candles . . .” (259 RT 43289:1-3.)
3 According to Erik, on some occasions, Jose would cut him with a knife during sex. (259 RT
4 43289-90.) On others, he would use a rope to tie up Erik’s penis and testicles. (259 RT 43291-
5 92.) Erik even testified that his father would force needles into his body while Erik performed
6 oral sex on him. (259 RT 43292-93.)¹³

8 In sum, while this alleged abuse was extensively presented as part of Erik and Lyle’s
9 defense at both trials, it ultimately was not their main defense since sexual abuse by itself did not
10 justify the murders of the parents. Only self-defense, the actual fear that their parents were going
11 to kill them the night of August 20th, constituted a legal defense to the murder charges. They
12 sought to connect the sexual abuse (specifically Lyle’s threat to disclose this abuse), and their
13 parents’ responses, to their claim to preemptively kill their parents in self-defense that night.
14
15

16
17 **Leslie Abramson, Erik’s attorney, directs her expert, Dr. Vicary, to delete extremely**
18 **damaging information he obtained from Erik from his notes; those deleted notes are**
19 **hidden from the prosecution during the first trial and the first jury therefore never hears**
20 **this evidence**

21
22 While preparing for trial and meeting with Dr. Vicary, defense attorney Leslie Abramson
23 realized that Dr. Vicary’s notes contained very damaging information to Erik’s case. Among
24 other things, Dr. Vicary’s detailed notes contained the following information that Erik had
25 relayed to Dr. Vicary:
26
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¹³ On cross-examination, the People demonstrated that none of this abuse was ever witnessed by anyone or reported to authorities, teachers, or coaches. (265 RT 44223-30.)

- 1 • Erik told Dr. Vicary that one week prior to the murders, Erik and Lyle discussed what
2 life would be like without their parents. According to the notes, “one week prior, he
3 was talkin’ about what it would be like to live without the parents.” (321 RT 53896.)
- 4 • Erik told Dr. Vicary that Lyle then suggested that Erik “wait a week,” and Erik said,
5 “I can’t take another week.” (324 RT 54035-36.)
- 6 • Jose threatened to “disown” Erik at least 3 times. One of these times was after Erik
7 was arrested for committing multiple residential burglaries. (324 RT 54314.)
- 8 • When Erik was five years old, he was molested (sodomized) by his male babysitter.
9 (324 RT 54323.)
- 10 • Lyle’s “incestuous” relationship with his mother was “in his head.” (324 RT 54331.)
11 In other words, Lyle had dreamed up the “incestuous” relationship with his mother he
12 had testified to.
- 13 • A week before the murders, Erik said that he hated his parents. According to the
14 notes, “Hate this man and this woman. Not my parents. Want them out of my life.”
15 (324 RT 54318.)

16 Believing that this information essentially demonstrated that the murders were
17 deliberated and premeditated and not in self-defense, **defense attorney Leslie Abramson**
18 **directed Dr. Vicary to delete all of this information from his notes.** (324 RT 53896-54318.)

19 Dr. Vicary contended that he had a “bitter” argument with Abramson about deleting the
20 information. Abramson told Dr. Vicary, “[I]f [you] did not take this out, that [you] were off the
21 case.” (324 RT 54320-21; 54317.) Knowing this information was potentially damaging because
22 it showed deliberation and premeditation, Dr. Vicary rewrote his notes without the damaging
23 information. (321 RT 53891.) Dr. Vicary then destroyed his original notes. (324 RT 54309.)
24 However, unbeknown to Dr. Vicary, Abramson inadvertently turned over copies of those
25 original notes to another psychiatrist hired by the prosecution after the first trial. This
26 psychiatrist, in turn, provided them to the prosecutors handling the second trial.

27 The prosecutors during the second trial did not realize that they possessed the original
28 undeleted notes. During cross-examination of Dr. Vicary during the second trial, the prosecutor

1 realized an initial discrepancy between the altered notes Dr. Vicary had with him on the stand
2 and the unaltered notes in the prosecutor's possession. Initially, the prosecutor did not realize
3 the extent of the deletions and Dr. Vicary tried to minimize them, saying "I don't think you'd
4 find more than maybe five or six changes," and that these changes were insignificant. (321 RT
5 53882; 52883.) As the cross-examination progressed, the prosecutor continued to notice other
6 discrepancies, some major, and continued to question the witness. When pressed on a specific
7 inconsistency going to the heart of premeditation and deliberation, the witness finally admitted,
8 "the honest answer to that is I did rewrite this page, and I left that section out at the request of
9 defense counsel. . . ." (321 RT 53891.)
10
11

12
13 **Andy Cano**

14 To support their molestation allegations, Erik claimed at trial that when he was 12 or 13
15 years old, he told his then nine-year-old cousin, Andy Cano ("Cano"), that his father was
16 molesting him. (96 RT 16080-83.) Erik testified that Andy was the only person he ever told
17 about the molestation. (259 RT 43351:1-5.) Cano claimed he never discussed this conversation
18 with anyone until he spoke with Leslie Abramson in January of 1991, approximately half a year
19 after Erik told Dr. Vicary that he was abused. (104 RT 17482:20-17483:10-12.)¹⁴ Cano visited
20 Erik in custody (104 RT 17474-75.)
21
22

23 Erik said Andy was the only person Erik "felt close enough to, that [he] could tell about
24 the molestation." (259 RT 43352:27-43353:5.) Erik testified that when he was 13 years old, he
25 discussed the molestation with Cano. Erik did not testify about any other times he discussed the
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¹⁴ It is also clear that Erik and Lyle have repeatedly solicited friends to lie for them at trial.

1 molestation with Cano, nor did he testify about ever sending a letter about the molestation to
2 Cano.

3
4 Cano also testified that Erik disclosed the molestation when Cano was 10 years old. (284
5 RT 48161:18-27.) Like Erik, Cano testified that they only discussed the molestation
6 approximately three times that year. In particular, when asked when they next discussed the
7 subject after the initial disclosure, Cano testified that they discussed it again “approximately
8 about a month [later.] It was the next time I saw him at his house.” (284 RT 48153:22-
9 48154:19.) He then said “I can recall one other time that it was brought up. . . . Probably,
10 again, another couple of months down the line. . . . We were in his bedroom in the Pennington
11 house.” (284 RT48155:2-12.) When questioned further, Cano specifically testified that they
12 only spoke about it three times, all within that same year. (284 RT 48163:5-14.) At trial, when
13 asked, “After Erik moved to California, did he ever bring up the molestation by his father to you
14 again?” Cano replied, “No.” (104 RT 17479:27-17480:4.) Further, Cano testified that besides
15 his conversations on the subject with 13-year-old Erik when Cano was only 10, the **only other**
16 **time** he had spoken of the alleged abuse disclosures was when he had first met Erik’s attorney
17 Leslie Abramson in 1991—**after** Erik Menendez had been arrested for the murders and **after**
18 Erik had gifted Cano a car. (284 RT 48173 7-25; 48176:3-6.)

19
20
21 In 2023, Erik and Lyle filed a Habeas Petition in the Los Angeles Superior Court alleging,
22 among other things, that a recently discovered letter allegedly written from Erik to Cano in or
23 around December 1988 warrants a new trial. The letter was purportedly found among Cano’s
24 personal effects in 2015 after Cano had passed away in 2003. Though Cano testified that the
25 only time Erik discussed the molestation was when Erik was 12-13 years old, in this letter
26 (purportedly written just 8 months before the murders in 1989 when Erik was 18 years old), Erik
27
28

1 writes to Cano confirming the alleged disclosure.¹⁵ Neither Erik nor Andy mentioned the
2 existence of this letter or its contents during their testimony at the first or second trials, though it
3 purports to show that the sexual abuse alleged by Erik committed by his father continued years
4 after Erik's prior conversations with Cano.
5

6
7 **Donovan Goodreau**

8 In February 1989, while at Princeton, Lyle met Donovan Goodreau. Though Donovan
9 was not a student at Princeton, he led Lyle to believe that he gained admission to Princeton and
10 was about to enroll in the university. (88 RT 14499:12-26.) Lyle and Donovan became very
11 close friends. (88 RT 14499:20-21.) Donovan had been roommates with Jamie Pisarcik, Lyle's
12 girlfriend. However, after suspecting that Donovan had stolen money from her bedroom, Jamie
13 asked him to leave. (235 RT 39323:16-39324:6.) Subsequently, in 1989, about halfway through
14 the spring semester, Lyle allowed Donovan to move into Lyle's two-bedroom dorm room at
15 Princeton. (88 RT 14498:20-1499:9; 234 RT 39089:19-28.) Eventually, Lyle's friends
16 discovered that Donovan had been dishonest with them and encouraged Lyle to insist that
17 Donovan move out. When Donovan moved out, he left his wallet with his California Driver
18 License in Lyle's dorm room. (234 RT 39091:2-39092:1.) After moving out, Donovan did not
19 talk to or see Lyle again until Donovan testified at the trial. (88 RT 14524:9-11.)
20
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22

23 At trial, Donovan was called by the prosecution to testify on issues related to his driver
24 license. On cross-examination, outside the presence of the jury, Donovan was questioned about
25 a dinner at a Chinese restaurant that he had with Lyle. Donovan testified that at that dinner he
26 confided in Lyle that he [Donovan] had been molested as a child. (54 RT 7937:3-7.) The
27
28

¹⁵ See Exhibit 10, alleged Letter from Erik to Andy Cano in approximately December 1988.

1 defense asked Donovan if Lyle, at the dinner, “ever [told him] that he and his brother had been
2 molested by their father?” Donovan testified, “No, he didn’t.” (54 RT 7936:19-21.) Donovan
3 was further asked, “Did Lyle Menendez ever tell you that he had been sexually abused by either
4 of his parents?” Donovan replied, “No. Never.” (55 RT 7988:3-6; 104 RT 1732:20-28.)
5
6 Donovan was subsequently confronted with audio from an interview conducted by journalist
7 Robert Rand, in which Donovan discussed Lyle’s molestation. Donovan explained that his
8 recorded statements were based on assumptions on Lyle’s “initial reaction to me telling him
9 about my sexual abuse, and just through living with him and hearing about his problems with his
10 father; just putting the pieces together in my own head.” (55 RT 7999:1-10.)
11

12 Later in the trial, Lyle testified in the presence of the jury that during a dinner at a
13 Chinese restaurant, Donovan revealed that “he had been molested by his uncle.” (88 RT
14 14515:11-16.) Lyle further testified that he told Donovan “...that the same thing happened to
15 myself and my brother.” (88 RT 14516:1-6.)
16

17 Subsequently, the defense called Donovan, this time in front of the jury, where they
18 confronted him with audio from his interview with journalist Robert Rand. In the recording,
19 Donovan related how he had dinner with Lyle at a Chinese restaurant and confided in Lyle that
20 he had been molested. Emotionally effected by the disclosure, Donovan excused himself to go
21 to bathroom and then “came back and he told me about his father.” Donovan continued, in the
22 recording, “one of the reasons we were friends is because we had so much in common...and then
23 to bring this into the relationship was an experience we both shared. We’d never spoken about to
24 anybody.” (Exhibit 11, CourtTV, “68-CA v. Menendez_ Witness Testimony,” at 00:23:33 –
25 00:27:27.)
26
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1 When asked about his recorded statements, Donovan said, “I really can’t recall why I
2 would have said that, whether it was the truth or not.” (104 RT 17318:9-10.) He went on to
3 testify that it was possible that he got the substance of what was in the audio recording from
4 either Glenn Stevens, a mutual friend of Lyle and Donovan’s, or from Robert Rand, but that
5 ultimately, he didn’t “know where [he] heard it from.” (104 RT 17318:11-17319:1.) However,
6 Donovan reiterated he did not recall Lyle ever telling him that Lyle had been abused, and he
7 stated that if Lyle had told him he “absolutely” would have remembered it. (104 RT 17316:1-9;
8 104 RT 17340:7-13; 104 RT 17341:20-17342:6.)
9
10

11
12 **Nude photos of Erik and Lyle**

13 Lyle testified that his father “would take photographs of us – of our private parts.” (84
14 RT 14191:27028.) Lyle explained, “if we were in the shower or bathtub or changing, he would
15 just...use the same camera that my mother used. And he would come in and take just a
16 photograph or two, and he wouldn’t say anything.” (84 RT 14192:3-7.) During his testimony,
17 the defense introduced a proof sheet of 12 negatives consisting of the proof sheet and the
18 corresponding 12 developed photographs from the negatives. The negatives consisted of a series
19 of mundane family photographs interspersed with two nude photographs of children. Three of
20 the photographs, including the two naked photographs, were framed in such a way as to not
21 present their subjects in full. One photograph shows a subject but was captured too close to be
22 able to identify the subject. In closing argument, prosecutor David Conn described the
23 photographs as likely to have been “not taken by an adult, but were taken by a child playing with
24 a camera.” (RT 302 51379:20-23.)
25
26
27
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1 **Lyle admits that he will lie at trial to reporter Norma Novelli**

2 In 1990, reporter Norma Novelli (“Novelli”) befriended Lyle through jail correspondence
3 and eventually began visiting him in person. From the end of 1990 through the end of the first
4 trial, Novelli either visited Lyle or Erik or spoke with them on the phone multiple times a week.
5 Many of the conversations centered around a potential book that Lyle and Novelli planned to
6 write together. (179 RT 28586-28591.) Eventually, Lyle gave Novelli permission to record their
7 conversations, which she did. (179 RT 28594.)
8

9 During a break in Dr. Oziel’s testimony, **but before Erik and Lyle realized that the**
10 **December 11, 1989, session would be admissible,**¹⁶ Lyle adamantly denied to Novelli (on
11 tape) that he had admitted the things that Dr. Oziel was testifying that Erik and Lyle had
12 admitted. Lyle told Novelli, “I want to get through this . . . big obstacle, which is this—this
13 fucking psychologist.” (Exhibit 12, Novelli Tape 11A, p. 7:17-19.) Concerned about Dr. Oziel’s
14 testimony, Lyle then adamantly denied that he made any admissions to Dr. Oziel, proclaiming,
15 “Oziel’s thrust is that this was a perfect murder. It was done for perfect murder reasons. And
16 because I hated the father because he was basically an asshole and dangerous. And the mother
17 was unstable. That’s what—what he’s saying.” (Exhibit 12, Novelli Tape 11A, p. 8:8-12.) Lyle
18 went on, “[T]he statements are kind of ridiculous. He, literally said—he said on the stand today,
19 in front of like fifty people—which really pissed me off—that, uh, the plan was to kill my dad,
20 but the mother had to go too, because there was no way that we could figure out to kill my dad,
21 uh—without killing the mother too.” (Exhibit 12, Novelli Tape 11A, p. 8:22-28.)
22

23
24
25 Once Dr. Oziel’s December 11 tape was released, it became widespread knowledge that
26 Erik and Lyle did, in fact, tell Dr. Oziel exactly the details they had uttered. However, at this
27

28

¹⁶ On this same recording, Lyle expressed his belief that the tape was inadmissible, stating, “at the moment, the tape is protected.” (Exhibit 12, Novelli Tape 11A, p. 373-4.)

1 point, prior to learning that the Dr. Oziel's taped confession was admissible, Lyle lied and
2 incredulously proclaimed, "Do you believe he actually said that I said that to him? I'm like, Jill
3 [an attorney] . . . you tell me, you listened to that—did—is that something that somebody would
4 believe? I mean, I'm not a halfwit." (Exhibit 12, Novelli Tape 11A, p. 9:6-11.) Lyle then
5 expressed his plan to lie if necessary, stating "if they believe that, then . . . there's nothing I can
6 do, other than get on the stand and they'll look at me and they'll go, 'There's no way this kid
7 could say something like that. No way.'" (Exhibit 12, Novelli Tape 11A, p. 10:19-22.)
8

9
10 Later, after Dr. Oziel testified, but before Erik and Lyle testified, Lyle realized that the
11 December 11th confession tape was admissible. At that point, Lyle pondered with Novelli what
12 lie he should tell next, stating: "And this is my thinking and I have three days to figure out
13 what's the best angle and if it's the right angle." (Exhibit 13, Novelli Tape 25, p. 5:10-11.) Lyle
14 considered saying, "... this is not our voice on tape. . . . There is no way that we said any of this.
15 This is just straight bullshit. He never got any of our voices on tape." (Exhibit 13, Novelli Tape
16 25, p. 5:21-26.)
17

18 Lyle also considered a second approach—fabricating a story. Lyle said, "I'm going to
19 have to make something up to show this guy's motive because sometimes people can lie too
20 convincingly." Novelli said, "You've got to be just as convincing," to which Lyle responded,
21 "Oh, yeah, which is no problem for me."¹⁷ (Exhibit 13, Novelli Tape 25, p. 5:17-24.)
22

23 Ultimately, Lyle chose the second approach—straight out lying. "I'm going to just lie—
24 and—and he understands it and I understand it." (Exhibit 13, Novelli Tape 25, p. 8:16-17.) Lyle
25 told Novelli he would say that Dr. Oziel blackmailed Lyle and Erik to create a fabricated
26 audiotaped confession. (Exhibit 13, Novelli Tape 25, p. 5:10-15; pp. 7-10, p. 21:12-18.) Lyle
27

28

¹⁷ Lyle believed that he could lie convincingly because his credibility was not at issue, stating, "I'm also a nice guy." (Exhibit 13, Novelli Tape 25, p. 6:3-4.)

1 told Novelli that the fabricated story would have taken place on October 31. (Exhibit 13, Novelli
2 Tape 25, p. 12:20-24.) Lyle even discussed getting witnesses to back up his lie, stating, “What I
3 may then do is use a witness that’ll say, yeah, Lyle said he had to go to this meeting with a psych
4 at this restaurant.” (Exhibit 13, Novelli Tape 25, p. 10:1-3.) Regrettably, Lyle realized he had
5 already used up most of his friends to lie for him, stating, “I can bring in other people. It’s
6 unfortunate that I wasn’t aware of this problem earlier because a lot of the people that can help
7 me I’ve used for other things.” (Exhibit 13, Novelli Tape 25, p. 14:4-7.) Interestingly, Lyle
8 admitted to Novelli that his defense attorneys couldn’t stop him from lying, stating, “[T]hey’re
9 not going to do anything about it. They . . . don’t have a control issue over me.” (Exhibit 13,
10 Novelli Tape 25, p. 14:22-22.)

13 Ultimately, Lyle followed through with this lie and testified at trial that Dr. Oziel
14 blackmailed him and Erik to make a false taped confession on December 11, 1989.

17 **Self-defense claim: Jose and Kitty intended to imminently kill Lyle and Erik**

18 At trial, the brother’s sexual molestation claims alone would not amount to a legal
19 defense to murder. Accordingly, Erik and Lyle had to again modify their story. While Lyle and
20 Erik testified extensively about sexual molestation at the hands of their parents, they also insisted
21 that the reason they killed their parents was not because they had been sexually abused, but
22 rather because they believed that their parents intended on killing them that weekend. When
23 asked on cross-examination whether he killed his father “to get back at him for what you say he
24 did to you when you were a child sexually,” Lyle testified, “No. I killed him because we were
25 afraid and because of what was going on that weekend.” He was further asked, “So the things
26 that you told us that happened between yourself and your father, when you were age six to eight,
27
28

1 having nothing to do with your motivation for killing; is that correct?” Lyle replied, “That’s
2 right.” (90 RT 14785:8-17.) Erik also testified that he did not kill his parents because they
3 molested him. Rather, he killed them because “we were afraid. . . . I was afraid of dying. . . .”
4 When asked who was going to kill him, he said, “my mom and my dad.” (257 RT 43073.)
5

6
7 **To support their self-defense claim, Lyle instructs a witness to perjure herself about Kitty**
8 **being dangerous**

9
10 A significant portion of Erik and Lyle’s defense relied on justifying the execution of their
11 mother. To this end, Lyle and Erik characterized their mother as erratic and dangerous—a
12 woman willing to resort to extreme violence if the outward image of her family was to be
13 compromised. To support this defense, Erik and Lyle claimed that they feared Kitty for multiple
14 reasons. Among other things, she would allegedly get drunk and hit them in a rage, she would
15 work with Jose to startle and scare them (by hiding in a closet and jumping out at them wearing a
16 mask that Erik feared), she would throw things at them, and she would frequently lock them in a
17 closet. (259 RT 43254-43276.) Part of this characterization of why Erik and Lyle feared their
18 mother revolved around testimony claiming that Kitty had attempted to poison the family. To
19 support this false narrative, Lyle successfully solicited perjury.
20

21
22 Traci Baker was one of Lyle’s girlfriends and a witness in the first trial. (104 RT 17352,
23 17366.) She testified about a dinner at the Menendez house where Jose accused Kitty of attempting
24 to poison the family. However, after her testimony, the Los Angeles Police Department discovered
25 a letter Lyle had written Baker, the Baker Letter, instructing her on how to testify at trial. In the
26 Baker Letter, written before she testified, Lyle directed Baker to testify as follows:
27

28
Alright Traci this is the information we discussed on the phone about
visiting Erik. I’m going to get right to the point because after you read

1 this and feel you've absorbed it, I want you to throw it away. Do that
2 right away so you don't forget, maybe you can take some notes in your
3 handwriting. Ok well basically there are two incidents, they may seem
4 strange and irrelevant to my case but I assure you they will be very
5 helpful. You'll just have to trust me on it, later on I can explain why
6 but for now I'll just lay them out. I have given a lot of thought to this
7 and I really feel that you can do it, however, just let me know if you'd
8 rather not.

9 (Exhibit 1, Baker Letter.)

10 Lyle then instructed Baker to testify that Kitty had tried to poison her family:

11 [A]ll of a sudden Mr. Menendez said in a stern voice to Mrs.
12 Menendez who was standing behind you, "what did you do to the
13 food!" and Mr. Menendez shoved his plate forward, knocking over
14 some stuff.

15 (Exhibit 1, Baker Letter.)

16 At the first trial, Ms. Baker testified almost verbatim to what Lyle had instructed her
17 to say:

18 Q: When Mrs. Menendez put the food on the table, did something
19 unusual happen?

20 A: Yes. She was standing behind me, so I don't know if she did
21 something to provoke her husband. But before I knew it, he had
22 stood up and pushed his plates out of the way very violently,
23 knocking over all sorts of glasses and condiments, whatever were
24 on the table; and said something to her like: "What did you do to
25 this food? Why are you serving this food?"

26 (104 RT 17360:12-21.)

27 Also in the Baker Letter, Lyle directed Baker to testify:

28 [T]hen I [Lyle Menendez] got up immediately and said "come on
29 Traci" and we both walked out into the foyer. Erik walked out too. You
30 got your purse and jacket, we walked outside and stood in front of the
31 big Mercedes.

32 (Exhibit 1, Baker Letter.)

33 In accordance with the letter, Baker then testified:

34 A: And Lyle motioned to me to come with him. I was able to grab

1 my purse and coat, and whatever else, and we went out to the front
2 where the cars were parked.

3 (104 RT 17361:7-10.)

4 In the Baker Letter, Lyle further instructed Baker that she should testify:

5 [E]ither Erik or I, (you can't remember which) said to him "what's the
6 matter, Dad you think she tried something?"

7 (Exhibit 1, Baker Letter.)

8 Baker subsequently testified:

9 A: And Erik had asked his father something: "Do you think she tried
10 something on purpose? Or something like this.

11 (104 RT 17362:6-9.)

12 The Baker Letter included instructions to Baker to testify that they had all ended up
13 eating at "Hamburger Hamlet." (Exhibit 1, Baker Letter.)

14 Baker then testified, "We went to eat at a Hamburger Hamlet." (104 RT 17363:4-
15 5.)

16
17 At the first trial, Baker testified **after** both Lyle and Erik had already testified. Erik
18 supported the Baker poisoning lie and testified about a specific incident when Baker had
19 come over for dinner. He testified that his "mom had served dinner, and my dad pushed
20 the tray away, his plate, toward my mom and spilled something and told my brother and I
21 to get up from the table. [Jose] looked at my mom and then he said something like what
22 did you do to the food?... I believe that my dad though my mom poisoned the food."

23
24 (103 RT 17143:3-17144:27.)

25 During his testimony, Lyle similarly lied and claimed that his mother "would threaten to
26 poison herself and everybody, meaning my dad and Erik and myself." He asserted that his father
27 "at times refus[ed] to eat the food that she served; and we would actually leave." Lyle claimed,
28 "...there were just some days when my dad felt she might do something based on the way she

1 was acting...or things they had said...so we would all leave.” When questioned about “how
2 would you know when it was okay to eat the food?” Lyle replied, “We would just rely on my
3 dad.” (88 RT 14469:22 - 14471:5.)
4

5 Though Baker had been called as a defense witness in the first trial, after the Baker Letter
6 was discovered, Lyle and Erik unsurprisingly did not call her as a witness in the second trial.
7

8 **To support their self-defense claim, Lyle solicits another witness to provide perjured**
9 **testimony that they sought a handgun for self-protection**
10

11 To bolster their claims that they feared their parents, Lyle attempted to recruit his friend
12 Amir Brian Eslaminia (“Eslaminia”) to provide perjured testimony that, just prior to the murders,
13 Lyle and Erik had sought a handgun for self-protection from their parents. Eslaminia was a
14 classmate of Erik’s and had visited the brothers while they were in custody awaiting trial. Lyle
15 provided Eslaminia with a letter, the Eslaminia Letter, instructing him to testify that the brothers
16 had attempted to obtain a gun from him. (Exhibit 4, *Menendez v. Terhune* (2005) 422 F. 3d
17 1012, 1020.) The Eslaminia letter was recovered by law enforcement after the first trial.
18

19 The Eslaminia Letter first informed Eslaminia that “Leslie [defense attorney] wants to
20 interview you as soon as your (*sic*) in town. She may even come up to see you.” (Exhibit 2,
21 Eslaminia Letter.) The Eslaminia Letter then instructed Eslaminia in very specific detail to lie and
22 fabricate an incident where Lyle and Erik had been in fear and borrowed a handgun from Eslaminia.
23 In other parts of the Eslaminia Letter, Lyle scripted lies for Eslaminia to tell on various subjects,
24 including Lyle and Erik’s fear of their father; their belief that their father had been killed because of
25 Jose’s alleged mafia connections; that Erik had told Eslaminia that Jose had taken Erik out of the
26 will; and a fabricated statement from Jose about a father killing a son. (Exhibit 2, Eslaminia Letter.)
27
28

1 In the Eslamina Letter, Lyle wrote, “Here is an outline of what we **need**. It is not crucial
2 that your story match ours perfectly, so do not worry.” (Exhibit 2, Eslamina Letter [emphasis
3 added].) Lyle also wrote:

4 (Erik + I have told our lawyers this story already except we said their
5 (*sic*) was no gun. You will say their (*sic*) was and when Leslie says
6 but the boys said their (*sic*) was no gun, you say well I told Erik to say
7 there wasn’t a gun because of my mom.)

8 (*Ibid.*)

9 Lyle further instructed Eslamina:

10 (I have an untraceable handgun I can get for you to use as the one
11 you gave us if you don’t already have one. Let me know over the
12 phone.)(*sic*) I’ll have Beatrice get it for you, if necessary.)

13 (*Ibid.*)

14 After explicitly and comprehensively detailing the false statements that Lyle wanted
15 Eslamina to tell their lawyers and eventually testify to in trial, Lyle gave the following direction:

16 That is basically the important facts. There may be little things like
17 Erik told you we were taken out of the will awhile back by his Dad
18 and occasionally you used to watch videos over our house with my
19 Mom + Dad. You once watched a movie called At Close Range with
20 Sean Penn (watch it if you haven’t already) My Dad said the movie
21 was unrealistic because the Father would have killed the son as soon
22 as the trouble started, and not waited. You of course were shocked at
23 this statement. You always felt my Dad was a powerful scary person.
24 You never felt welcome.

25 Your memory on these things does not have to be that good. Leslie
26 will help tell you what she sort of needs. However, I think that the
27 Saturday Story and perhaps the movie incident will be enough. To
28 much is not good.

I’ll be calling you. Please leave a message on my service when you
receive this Letter 652 7329 and mail it back to Beatrice. . .

First write down all the facts you need to know so that you have them
to remind you later.

Also scribble over the writing of this Letter with magic marker so that
if it falls into the wrong hands its not legible. I obviously trust you
completely however I sleep better if Im (*sic*) sure things have been
destroyed. Mistakes have been made in the Past.

(Exhibit 2, Eslamina Letter.)

1 In the second trial, after the Eslamina Letter was discovered by the prosecution, Eslamina
2 pivoted and testified that his testimony was supposed to “add dynamics to fit what was needed for
3 trial.” (232 RT 38871: 18-25, 38872: 22-26.)
4

5 Eslamina also testified that he never watched the movie “At Close Range” and never heard
6 Jose mention anything about “At Close Range.” (232 RT 38884:20-28.) Eslamina testified that he
7 knew when he had received the Eslamina Letter from Lyle that this was a lie. (232 RT 38884: 26-
8 28.)
9

10
11 **Erik and Lyle both testify in their defense**

12 Notwithstanding their attempts to fabricate evidence and suborn perjury, at their first
13 trial, Erik and Lyle gave a synchronized and detailed account of the several days preceding the
14 murder. This account detailed the events leading to their alleged fear causing them to murder
15 their parents in self-defense.¹⁸ The following is what they claimed while testifying at trial:
16

17 Tuesday, August 15, 1989:

18 In testimony during the first trial, Lyle claimed that during an argument on Tuesday,
19 August 15, 1989, his mother “grabbed [his] hair piece and she just ripped it off.” (88 RT
20 14538:7-11.) Erik testified that he heard the end of the argument and saw his mother rip the
21 hairpiece off of Lyle’s head. (94 RT 15687-90.) After Lyle fled to the guest house in
22 embarrassment, Eric followed him to commiserate. (88 RT 14540:18-14541:4.) Lyle claimed
23 that Erik did not know that he had a hair piece. Erik said, “that we weren’t a family ‘cause there
24 were so many secrets” and that he “had never known about [Lyle’s] hair piece.” (88 RT
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27
28 ¹⁸ Lyle and Erik’s testimony was very emotional and compelling. However, Lyle admitted to Novelli on tape that he was capable of controlling his emotions in front of the jury, stating, “if he [prosecutor] pushes me I’ll get as emotional as I –as can be. . . . I held back some because I felt like I don’t want to show this guy too much of what I’m like.” (Exhibit 14, Novelli Tape 3, p. 18:5-13.)

1 14542:17-24.) Erik tried to make Lyle feel better, stating, "I knew he was very embarrassed, and
2 I wanted to tell him that there was no reason to be." (94 RT 15699:13-17.) During this moment
3 of vulnerability, Erik then confided in Lyle that their father was still sexually molesting him. (88
4 RT 15700-01.) Lyle told Erik that he "could sit down with dad when he came back" from his
5 business trip and if necessary "could threaten to tell people" to stop the sexual abuse. (88 RT
6 14548:16-20.)

7
8 Wednesday, August 16, 1989:

9
10 Lyle next claimed that when he confronted his mother the next day about the sexual
11 abuse, she replied, "Erik was lying." (88 RT 14558:24-14559:14.) Erik gave a different version.
12 Erik said he had lunch with Lyle and Lyle said that he had not told their mother because she
13 would have told their father. "She would always threaten to tell dad, and sometimes she'd do it
14 right in front of me at the dinner table, or I could hear it in the bedroom or when he got home."
15 (94 RT 15711:16-24.)

16
17 Thursday, August 17, 1989:

18 Lyle claimed that he confronted his father alone about the sexual abuse when Jose
19 returned from a business trip on Thursday, August 17, 1989. His father responded, "You listen
20 to me...what I do with my sons is none of your business...I warn you. Don't throw your life
21 away." (88 RT 14568:13-27.) In response, Lyle threatened to tell people about the sexual abuse.
22 With a relaxed demeanor, Jose purportedly replied, "We all make choices in life, son. Erik made
23 his. You've made yours." (88 RT 14570:20-14571:7.) Jose then got up and left the room. Based
24 on this conversation, Lyle testified that he believed that they "were in danger" because his father
25 "would kill us, that he would get rid of us in some way...because he thought I was going to ruin
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1 him..." (88 RT 14571:12-16.) Further, Lyle contended that his mother would also want to kill
2 them because she wanted to maintain the family image. (88 RT 14571:12-26.)

3 Lyle claimed that he then confronted his mother saying, "How could you not have done
4 anything?" She allegedly replied: "I knew and I know what was going on...nobody ever helped
5 [me]." (88 RT 14574:1-12.)

7 Erik testified that he got home after Lyle confronted his father and his father came to his
8 room and pounded on the door, yelling "Open the Goddamn door now." (94 RT 15718.) Erik
9 opened the door and his father entered and told Erik, "Lyle was going to tell everyone and that it
10 was my fault. And now Lyle was going to tell everyone and he was not going to let that
11 happen." (94 RT 15721:13-18.) Jose then charged Erik and grabbed him, but Erik got away and
12 ran. (94 RT 1521-24.) Erik then ran into his mother, and she said "I understand a lot more than
13 you know. . . . Oh, I know. I've always known." (94 RT 15724:12-26.) At this point, Erik and
14 Lyle decided that their mother would support their father and protect the family reputation at all
15 costs and that their lives were in danger.

18 Lyle claimed that he discussed running away with Erik but that Erik said "that he wasn't
19 going to just run away and let dad find him and kill him...with dad's power and who he was and
20 who my mother was...that there was no place that my parents could not find us and that would –
21 running away – we decided that we couldn't be positive that they were going to kill us. And we
22 certainly didn't know when or how, and that it might be safer to stay in the house and not, you
23 know, not bring it to a head by running away...he would immediately think I was telling people
24 and wasn't even going to wait...I didn't think he could kill us immediately. But I did think it was
25 just a matter of time." (88 RT 14576:17-14577:27.) "I felt my dad had the connections to find
26 us and to get rid of us; and if we ran away, he could do that at his leisure and, you know, he
27
28

1 could just tell a story that we ran away for whatever reasons. People would believe that and we
2 would disappear...after we have talked about it...we should stay in the house where it might be
3 more difficult to just kill us without anyone knowing, and we would at least know where they
4 are. Maybe they would never do it.” (88 RT 14580:2-13.)

6 Lyle testified that he and Erik “weren’t just going to stay around waiting to die. We were
7 going to try and get some ways of defending ourselves and protection...so we just decided that
8 we would buy our own [guns] the next day.” (88 RT 14580:20-28.)

9
10 Friday, August 18, 1989—Claims that Erik and Lyle Attempted to Purchase Handguns:

11 Lyle testified that the following day, Friday, August 18, 1989, he and Erik had attempted
12 to purchase handguns at the Big-5 in Santa Monica. He claimed that they had decided to “get
13 some guns to protect ourselves” from their parents. (88 RT 14582:1-4.) They “didn’t want to
14 buy shotguns and rifles [but rather] handguns, because [they] wanted them to walk around the
15 house” without creating a confrontation, and because handguns would be quickly accessible
16 when the need for self-defense arose. (88 RT 14582:1-4, 14583:28.) Lyle claimed that they
17 “were in the process of trying to buy a handgun” at the Big-5 in Santa Monica when they “were
18 told that they “weren’t going to be able to leave the store with the guns” because there was a
19 “two weeks...waiting period where they would have to check [their] credentials” and they’d
20 “have to wait two weeks” before they could take possession of the handguns. (88 RT 14582:27-
21 14583:9.) Lyle claimed that “the only thing you can buy over the counter is rifles, shotguns.”
22 (88 RT 14583:8-10.) Erik reiterated this same story. (94 RT 15771.)

25 However, contrary to Lyle and Erik’s testimony, Big-5 Sporting Goods did not sell
26 handguns in Santa Monica in 1989. Gabriel Friederichson was a senior operations manager at
27 the corporate office for Big-5 Sporting Goods. The Big-5 in Santa Monica, located at 3121
28

1 Wilshire Boulevard, was one of the stores that he supervised. Because “prior to March of 1986,”
2 Big-5 stopped selling handguns at that location, it would “definitely not” be possible to purchase
3 a handgun from that location in 1989. (287 RT 48826.) In direct contradiction of Lyle’s and
4 Erik’s testimony, no handguns would have even been displayed at that location in 1989. While
5 “there were long guns and there were air guns” that were sold at that location at that time, a 15-
6 day waiting period would not apply to any of the types of guns sold in Big-5 in Santa Monica in
7 1989. (287 RT 48827, 48828.)

8
9 Friday, August 18, 1989— Drive to San Diego to Buy Shotguns under a False Name:

10
11 According to Lyle, unable to purchase handguns in Santa Monica, they then drove to San
12 Diego where, for unexplained reasons, they bought the shotguns they could have bought in Santa
13 Monica. They had decided to buy shotguns because, for some unknown reason, they “felt if we
14 were going to get attacked, it would be at night more likely” and thus the need for concealability
15 was not as crucial. (88 RT 14589:2-6.) At around 8:00 to 8:30 p.m., at Big-5 in San Diego, they
16 purchased the shotguns using Donovan Goodreau’s identity. Lyle claimed this was only because
17 his license had been suspended. (88 RT 14589:16-14592:10; 229 RT 38243:25 -38299:11;
18 Exhibit 3, *People v. Erik Galen Menendez et al.*, (February 27, 1998, B104022 [nonpub. opn.]
19

20
21 On the way to San Diego, Erik purported told Lyle that “one of the reasons he had never
22 told me [about the molestation] before was because dad had always threatened his life” and had
23 said “that if he ever told me, he would kill me.” (88 RT 14586:11-19.) Lyle contends that he
24 told Erik that had he known “these things on Tuesday” when he confronted his dad, he would not
25 have confronted him because “dad was willing to kill over it.” (88 RT 14586:25-14587:17.)
26 Based on this, Lyle concluded his father was “more violent and dangerous than I knew.” (88 RT
27 14588:24-27.)
28

1 Saturday, August 19, 1989:

2 On Saturday August 19, 1989, Lyle and Erik went to a local gun shop to buy buckshot
3 ammunition. (88 RT 14602:2-9.) After acquiring the buckshot, Erik and Lyle aimlessly drove
4 around and stalled all day because they did not want to be home. (94 RT 15794-95.) They
5 testified that they stayed away from the home until they returned at the time they were supposed
6 to go on a boat fishing trip with their parents. They allegedly feared for their lives. (94 RT
7 15794-96.)

8
9 Grant Walker, a pool repairman for the Menendez family, contradicted this testimony.
10 Walker testified that he visited the Menendez family home on Saturday, August 19, 1989, to
11 repair a spa override switch. (128 RT 21972-22072.) While at the home, Walker observed Erik
12 and Lyle. Either Erik or Lyle was playing tennis while the other brother was nearby watching.
13 (128 RT 21980-81.) Walker witnessed Lyle use vulgar language and an angry tone against his
14 mother. (128 RT 21980.) On one occasion, he observed Erik join Lyle in disparaging their
15 mother. (128 RT 21982-83; 21997.) Walker believed that both boys were rude to their parents,
16 cursing at both of them. (128 RT 22016, 22032.) Neither victim Jose nor victim Kitty expressed
17 any anger towards their sons. (128 RT 22035-36.) Walker did not testify about anything that
18 would resemble fear on either Erik's or Lyle's part.

19
20 Erik and Lyle testified that they were in constant fear that they would be shot by their
21 parents on the boat during their fishing trip. As a result, they stayed towards the front of the
22 boat. However, when Erik and Lyle spoke with Dr. Oziel on tape on December 11, 1989, Lyle
23 recounted with fond memories the fun things they used to do with their parents, stating "I miss
24 all the things that we, you know, we had a boating trip right before the incident, and it had
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1 nothing to do with the problem, which, which required a lot of courage. But ah, we, I miss not
2 having my father. . . .” (Exhibit 9, p. 34 [December 11 Oziel Transcript].)

3
4 Later that night, after the fishing trip, Erik claimed that he was in his room when his
5 father again came pounding on his door. Erik said “he was sitting on the bed and had the gun
6 there” while his father “was pounding on the door, demanding that he open it...he was trembling
7 and he wasn’t sure if he was going to shoot dad through the door.” (88 RT 14615:27-
8 114616:12.)

9
10 Sunday, August 20, 1989—Murdering their Parents:

11 Lyle claimed that the following day, Sunday, August 20, 1989, after Kitty hysterically
12 refused to let Lyle and Erik go out to a movie, Jose told Erik “to go upstairs to his room and wait
13 for him while he finished his movie.” (88 RT 14624:10.) Lyle purported responded “No.
14 You’re not going to touch my brother.” (88 RT 14624:13-14.) Jose said, “I can do what I want
15 in my family. It’s not your little brother. It’s my son.” (95 RT 15859-60.) Erik believed that he
16 “thought my dad was going to come up to my room and have sex. And I thought they were
17 going to kill us.” (95 RT 15870:15-21.)

18
19 After Erik went up towards his room, his parents went to the den and closed the doors to
20 that room. This act convinced Lyle and Erik that their parents intended on arming themselves
21 and killing their children. Lyle “ran upstairs to tell my brother, ‘It’s happening. They’re going to
22 kill us.’” (88 RT 14623:27-28.) They then ran to their rooms to get their guns and met at Erik’s
23 car. There, they loaded the ammunition which for some reason they had not already loaded into
24 the shotguns that they kept in their rooms for self-defense against their parents. (88 RT 14626:1-
25 14627:5.) They walked to the closed doors of the den and “burst in the doors and...started
26 firing.” (88 RT 14626:1-14627:22-23.)
27
28

1 **Erik and Lyle are convicted for both conspiring to murder their parents and for first-**
2 **degree murder while lying in wait with the jury rejecting their self-defense claims**

3 After listening to all of the evidence and arguments of the attorneys, including evidence
4 that both Erik and Lyle were sexually molested and acted in self-defense, both Erik and Lyle
5 were convicted of two counts of first-degree murder. The jury also found true the allegation that
6 Erik and Lyle murdered their parents while lying in wait, a special circumstance within the
7 meaning of Penal Code Section 190.2(a)(3). Erik and Lyle were also found guilty of conspiring
8 to murder their parents. **In reaching this verdict, the second jury fully rejected their claims**
9 **of self-defense.**

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12
13 **Erik and Lyle continue to maintain their fabricated self-defense story and related lies**
14 **concerning their fabricated defenses for over 30 years to the present**

15 Both Erik and Lyle recently filed a habeas petition alleging, among other things, that the
16 Cano Letter, which was not used at trial, demands a new trial. Through this habeas petition, both
17 inmates still assert that they acted in self-defense when they murdered their parents over 30 years
18 before.

19
20 Erik continues to assert that his trial account of the events is honest and accurate. In the
21 recent 2024 Netflix documentary, “The Menendez Brothers,” Erik stated, “What the attorneys
22 were arguing was it was the honest but the unreasonable belief that I was going to die which I
23 didn’t agree with because I believed that it was an honest and reasonable belief that I was going
24 to die. I believe that any person, if they lived my life, I don’t see how they couldn’t have
25 believed that they were about to die.” (“Menendez Brothers” [Netflix 2024].)
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IV.

THE COURT MAY ALLOW THE PEOPLE TO WITHDRAW THEIR RESENTENCING REQUEST IF THE COURT FINDS THAT, AFTER CONDUCTING A SUBSTANTIAL REEVALUATION, THE PEOPLE HAVE A LEGITIMATE REASON TO DO SO

Pursuant to Penal Code section 1172.1, the District Attorney of the county in which a criminal defendant was sentenced may petition the court to recall and resentence that defendant. (Penal Code section 1172.1(a)(1).) However, upon a substantive reevaluation of the case, the District Attorney may withdraw that request with the court’s permission before the court has ruled on the petition. (*People v. Vaesau* [2023] 94 Cal. App. 5th 132.) In granting a motion to withdraw the resentencing petition, the court must decide whether the motion to withdraw is “based on a legitimate reason.” (*Id.* at 151.)

In *Vaesau*, then-district attorney for San Francisco County, Chesa Boudin, filed a petition to resentence defendant Vaesau under Penal Code section 1170.03 (subsequently amended to become Penal Code section 1172.1). (*Id.* at 140.) After the filing but prior to the resentencing hearing, Boudin was recalled by San Francisco voters and Brooke Jenkins was sworn in as the new district attorney. (*Id.*) After Jenkins assumed office, the appearing prosecutor on the *Vaesau* case sought to withdraw the petition for resentencing, “but she did not explain why.” (*Id.*) The hearing was continued. At a subsequent hearing, a new appearing prosecutor “reiterated the district attorney’s desire to withdraw the resentencing request.” (*Id.* at 141.) However, “she provided no substantive reason for the requested withdrawal.” (*Id.*) The trial court granted the prosecutor’s request to withdraw the petition.

Vaesau appealed, arguing that section 1172.1 requires “a trial court to reach the merits of resentencing once a request is made.” (*Id.* at 148.) The appellate court rejected this argument, holding that “a trial court may, but is not required to, allow a district attorney to withdraw a

1 resentencing request before the court reaches the merits.” (*Id.* at 151.) In so holding, the court
2 noted, “Jenkins, the new district attorney, was entitled to reconsider the recommendation, but
3 there is **no evidence that any substantive reevaluation occurred.**” (*Id.* at 152 [emphasis
4 added].) In granting a request to withdraw a resentencing petition, the court must find that the
5 people have articulated a “legitimate reason,” which is not based “on a whim” or “due to the
6 change in the political winds.” (*Id.*)

8 Here, upon assuming the office of District Attorney of Los Angeles County, Nathan
9 Hochman ordered and personally participated in a thorough and complete review of the People’s
10 Motion Requesting 1172.1 Recall of Sentence & Resentencing Hearing (“People’s Resentencing
11 Request”) filed on October 24, 2024. As part of this extensive and thorough review, the People
12 have, among other things: 1) reviewed a substantial portion of the 329 volumes of transcripts
13 from the first two trials, amounting to over 55,000 pages; 2) reviewed an extensive portion of
14 approximately 400 hours of videotaped testimony of the first trial; 3) reviewed relevant portions
15 of the original police reports; 4) reviewed the probation reports; 5) reviewed the Habeas Petition
16 filed in the Los Angeles Superior Court and supporting exhibits; 6) reviewed the inmates’ prison
17 records (“C-File”), consisting of over 3000 pages; 7) interviewed over 20 family members of the
18 victims; 8) interviewed one of the original prosecutors on the case; 9) interviewed prison
19 personnel; 10) interviewed a detective from the Beverly Hills Police Department; 11) reviewed
20 the original available exhibits, photographs, and evidence in the case; 12) watched
21 documentaries, which had excerpts from interviews of the inmates; 13) read the appellate
22 opinions on this case; 14) met with the prosecutor who filed the initial petition for resentencing;
23 15) read articles contemporary to the initial case; 16) reviewed the original petition filed with the
24 court and accompanying exhibits; and (17) met with defense counsel.

1 After conducting this thorough and exhaustive review, the District Attorney is prepared
2 to go forward with a resentencing hearing based on the Court's initiation of resentencing
3 proceedings under Penal Code section 1172.1(a)(1) but has made a substantive reevaluation of
4 the case and, for the reasons explained below, believes that legitimate reasons and the interests of
5 justice demand that the People seek to withdraw their initial People's Resentencing Request.
6

7
8 **V.**

9
10 **WITHDRAWAL OF THE PEOPLE'S INITIAL RESENTENCING MOTION IS**
11 **WARRANTED BECAUSE THE MOTION FAILED TO CONSIDER ERIK AND LYLE'S**
12 **LACK OF COMPLETE INSIGHT INTO AND ACCEPTANCE OF RESPONSIBILITY**
13 **FOR THEIR CRIMES**

14 Penal Code section 1172.1 provides that in "recalling and resentencing...the court shall
15 consider postconviction factors, including, but not limited to, the disciplinary record and record
16 of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time
17 served, and diminished physical condition, if any, have reduced the defendant's risk for future
18 violence, and evidence that reflects that circumstances have changed since the original
19 sentencing so that continued incarceration is no longer in the interest of justice." (Cal. Pen. Code
20 section 1172.1(a)(5).)

21 In determining whether "evidence that reflects whether time served [has]. . . reduced the
22 defendant's risk for future violence," a critical inquiry in this rehabilitation analysis, this Court
23 must determine whether the inmates are currently dangerous. Although there are no cases under
24 section 1172.1(a)(5) which provide guidance in this area, an examination of parole suitability
25 cases is instructive on the issue.

26 Generally, where an "inmate will pose an unreasonable risk of danger to society if
27 released from prison," the inmate is unsuitable for parole. (Title 15, Cal. Code Regs. section
28 2281(a)). In the case of *In re Lawrence*, the California Supreme Court held that a denial of

1 parole based purely on the circumstances of the original offense will generally be an insufficient
2 basis for the denial. In general, when considered alone, the original offense has lost its
3 “predicative steam” because there is no nexus between the crime and current dangerousness. (*In*
4 *re Lawrence, supra*, at 1221, 1227.) However, the California Supreme Court has made clear that
5 an inmate’s current attitude toward the crime they committed is a major factor in determining
6 future dangerousness and suitability for parole. (See, e.g., *In re Lawrence, supra*; *In re Shaputis*
7 (2008) 44 Cal.4th 1241; *In re Shaputis* (2011) 53 Cal.4th 192.) An inmate’s “lack of insight”
8 into the gravity of the crime and a lack of remorse can provide evidence that the inmate remains
9 a threat to public safety. The California Supreme Court has held, “...we have expressly
10 recognized that the presence or absence of insight is a significant factor in determining whether
11 there is a ‘rational nexus’ between the inmate’s dangerous past behavior and the threat the
12 inmate currently poses to public safety.” (*In re Shaputis* (2011) 53 Cal.4th 192, 218.)

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16 In sum, as stated by the Governor in overturning a parole grant to Sirhan Sirhan, “the
17 circumstances of the crime can provide evidence of current dangerousness when evidence in the
18 inmate’s pre- or post-incarceration history, or the inmate’s current mental state, indicate that the
19 crime remains probative of current dangerousness. (*In re Lawrence, supra*, 44 Cal.4th at p.
20 1214.) Furthermore, the gravity of the crime has ‘continuing predictive value as to current
21 dangerousness’ where the inmate lacks insight into their conduct and refuses to accept
22 responsibility for their role in a crime.” (*In re Smith* (2009) 171 Cal.App.4th 1631, 1639.)

23
24 Other cases have had held that “...an inmate with an implausible account [of the crime],
25 but an otherwise exemplary prison record, may be unsuitable for parole if the implausibility of
26 the inmate's account indicates the inmate does not appreciate the magnitude of the commitment
27 offense or its contributing causes and there is psychological evidence the inmate's character has
28

1 not appreciably changed since the commitment offense.” (*In re Busch* (2016) 246 Cal.App.4th
2 953, 970.) Further, “[a]n inmate’s lack of insight into, or minimizing of responsibility for,
3 previous criminality, despite professing some responsibility is a relevant consideration.” (*In re*
4 *Lazor* (2009) 172 Cal.App.4th 1185, 1202-1203.)
5

6 In sum, Erik and Lyle’s current “insight into their crimes” and acceptance of
7 responsibility must be considered in determining whether they are truly rehabilitated or whether
8 they pose an unreasonable risk of danger to the community. Here, the original motion for
9 resentencing completely failed to take into consideration Erik and Lyle’s lack of insight and full
10 acceptance of responsibility for their crimes in considering whether resentencing was
11 appropriate. Reviewing and considering this important factor, it is clear that resentencing at this
12 point is not appropriate and the District Attorney seeks to withdraw the People’s initial request.
13 If Erik and Lyle at some point going forward fully and completely accept responsibility for their
14 crimes by admitting for the first time ever that their self-defense story and related testimony were
15 fabricated, that they did not have an actual fear that their mother and their father were going to
16 kill them the night of August 20, 1989, and that they suborned perjury and attempted to suborn
17 perjury from multiple witnesses to lie about various versions of their fabricated defenses (e.g.,
18 Jamie Pisarcik—the lie of Jose as a violent rapist; Brian Eslaminia—the lie of the handgun story;
19 and Traci Baker—the lie of Kitty as family poisoner), then Erik and Lyle may be able to
20 demonstrate to the Court in the future that they exhibit sufficient insight into their violent,
21 criminal actions as to no longer pose an unreasonable risk of danger to the community. At that
22 point, the District Attorney’s Office may reconsider its request to withdraw the resentencing
23 motion.
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1 **A. The alleged need for self-defense relies solely on the credibility of Erik and**
2 **Lyle**

3 In this case, in order to believe that Jose and Kitty wanted to kill their children on the
4 night of August 20, 1989, one must believe Erik and Lyle. In other words, Erik and Lyle's
5 credibility is fundamental to evaluating whether Jose and Kitty actually wanted to murder their
6 sons that night. However, Erik and Lyle have a history of lying. They lied to police. They lied
7 to family and friends. They instructed witnesses to lie under oath. They themselves lied under
8 oath. Based on this history of lies, they significantly lack credibility.
9
10

11
12 **B. Erik and Lyle instructed witnesses to lie under oath**

13 Contrary to popular belief, it is exceedingly rare to obtain direct evidence that a witness
14 was instructed to lie under oath in front of a jury. Usually, determinations about whether a
15 witness is lying are made by evaluating, among other things, whether the account makes sense,
16 whether it is supported or refuted by independent evidence, and whether the witness has a history
17 of repeatedly lying. But here, there is **direct** evidence of Lyle instructing multiple witnesses to
18 lie under oath at Erik and Lyle's trial. Two of these instances, Traci Baker and Brian Elaminia,
19 occurred in writing.
20

21 Although Lyle wrote these letters, the only reasonable interpretation of this evidence is
22 that Erik was also involved in this perjured testimony because Eslaminia was Erik's friend, not
23 Lyle's. Erik and Eslaminia went to high school together, and Eslaminia first visited Erik in jail
24 before he ever met Lyle. In fact, Eslaminia did not even meet Lyle until after they were arrested.
25 (232 RT 38854-87.) It is unreasonable to conclude that Lyle would have solicited Erik's close
26 friend to commit perjury in open court in front of Erik without Erik's knowledge and consent.
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1 This is especially unlikely given the fact that Erik went along with the Baker Letter fraud by
2 personally repeating the fabricated story under oath at trial.

3 The Baker and Eslaminia letters are not only evidence of Erik and Lyle’s efforts to
4 undermine the truth-seeking function of a jury, but also evidence of their total and complete
5 disregard for the truth. At the end of the Eslaminia letter, Lyle instructed Eslaminia to destroy
6 the letter after reading. He explained why, stating “Mistakes have been made in the past.”
7 (Exhibit 2.) Clearly, this statement implies that Erik and Lyle had attempted to solicit other
8 witnesses to lie. To further support this fact, Lyle admitted on tape to reporter Novelli during his
9 first trial that he “uses witnesses” to support his lies. As Lyle explained to Novelli regarding
10 how he would handle Dr. Oziel’s damaging testimony, Lyle said, “It’s unfortunate that I wasn’t
11 aware of this problem earlier because a lot of the people that can help me **I’ve used for other**
12 **things.**” (Exhibit 13, Novelli Tape 25, p. 14:4-7 [emphasis added].)
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17 **C. Erik and Lyle carefully shaped and modified their lies to fit the known**
18 **evidence in this case**

19 From the beginning, Erik and Lyle crafted, told, and modified their lies with one goal in
20 mind—to escape responsibility for these murders. First, after they brutally murdered their
21 parents, Erik and Lyle lied to the police, their family, and their friends in an attempt to turn the
22 investigation away from themselves and towards the “Mafia.” Importantly, Erik and Lyle were
23 emotional, passionate, and believable in telling these lies. From the moment they called 911
24 screaming and crying that they walked into the house and found their parents murdered, to the
25 day they were arrested, Erik and Lyle convincingly sold their story, even to those who knew
26 them well. They convinced their family and friends they were innocent. They convinced
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1 seasoned detectives they were not guilty, so much so that the detectives did not even administer a
2 simple gunshot residue test on them at the time of their initial interview.

3 Erik's and Lyle's initial lie lasted for six months after they murdered their parents while
4 they spent their parents' money and lived lavish lifestyles. They knew that there was no physical
5 or eyewitness evidence connecting them to the murders, so they hid in plain sight, enjoying their
6 lives. In fact, they would have continued to live as free men had Erik not confessed to Dr. Oziel
7 in a moment of weakness. However, once their confession was made known to the police and
8 they were arrested, Erik and Lyle had to come up with a new story to fit the evidence as known
9 to the police. Erik and Lyle knew that they had slaughtered their parents with shotguns. They
10 knew that the shotgun purchases were now tied back to them. And they knew that their parents
11 were unarmed and that no weapons were found inside the den with their mutilated bodies. Now
12 Erik and Lyle had to craft a new script—one that would vilify their parents and justify shooting
13 them in such a grotesque manner.
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17 In preparing their script, Lyle asked his girlfriend to help him research cases where kids
18 "got off" for killing their parents. At this point, Lyle did not tell Jamie, "My dad molested me
19 when I was young or I shot him in self-defense." Rather, he focused on falsely painting his
20 father as a violent rapist and tried to pay Jamie to lie in court and say that his father had violently
21 raped her. Fortunately, Jamie did not go along.
22

23 Lyle then tested a new defense—"My mom had molested me and my dad had molested
24 Erik." Lyle did not say that he was molested by his father. Jamie cried when Lyle told her this
25 story and she expressed that she did not believe him. It was apparent to Lyle that Jamie would
26 not support this version either, and he ended up modifying it before he started trial. Instead, and
27 for the first time at trial, the new defense was that both he and Erik were molested by their father.
28

1 Once the trial began, Erik and Lyle realized that sexual abuse would not provide a legal
2 defense to murder. So, they had to again modify and tailor their defense to create a legal
3 justification for murder. Ultimately, Lyle and Erik ended up testifying that they were both
4 molested by their father and that they killed their parents because they feared retaliation from
5 them after Lyle threatened to disclose the molestation. This self-defense story was inconsistent
6 with known facts and common sense, and so incredulous the jury rejected it and convicted Erik
7 and Lyle of two counts of first-degree murder with special circumstances and conspiracy to
8 commit murder.
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12 **D. Erik and Lyle themselves lied under oath to support their defense**

13 Not only did they ask witnesses to lie under oath, Erik and Lyle themselves lied under
14 oath. In several of these instances, their lies were impeached by objective evidence.
15 Central to their defense, both Erik and Lyle testified that they were so fearful their parents would
16 kill them that they went to Big-5 sporting goods in Santa Monica two days before they killed
17 their parents to purchase handguns. After selecting handguns to purchase, they were informed
18 by an employee that they would not be able to leave with the handguns because there was a two-
19 week waiting period. However, contrary to Lyle and Erik’s manufactured testimony, Big-5
20 Sporting Goods did not sell handguns in Santa Monica in 1989. Big-5 had stopped selling
21 handguns in Santa Monica “[p]rior to March of 1986.” Further, in direct contradiction to Erik
22 and Lyle’s testimony, no handguns would have even been displayed at that location in 1989.
23 Additionally, as noted above, to prove that they feared their mother was volatile and dangerous,
24 Erik lied under oath when he testified about his mother attempting to poison the family at a
25 dinner with Traci Baker. This testimony was revealed to be fictitious and entirely scripted when
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1 the Baker Letter was recovered. Importantly, not only did Baker testify to this fictitious script to
2 the jury, both Erik and Lyle delivered these false lines as well.

3 Erik also lied to his own defense-hired psychiatrist in preparation for trial. As they
4 refined their defense, years after the initial molestation disclosure to this psychiatrist, Erik
5 fabricated a story that, just two days before the murders, his father's homosexual lover warned
6 him that Erik's parents intended to kill him. In a subsequent therapy session, Erik admitted that
7 he had fabricated this story. This fabrication, like the others, obviously was central to Erik and
8 Lyle's self-defense claims. They were trying to substantiate the idea that their lives were in
9 danger and thus self-defense was necessary.
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12 **Erik and Lyle continue to maintain their self-defense lie that their parents wanted to**
13 **kill them. Thus, the evidence demonstrates that Erik and Lyle lack full insight into their**
14 **crimes and are therefore neither rehabilitated nor suitable for resentencing.**


15 As indicated above, Erik and Lyle fabricated a story of imminent danger at the hands of
16 their parents based almost entirely on their own self-serving testimony and attempted to support
17 that story by recruiting their friends to provide perjured testimony.
18


19 They have never admitted that this story was a lie. They have never admitted that they
20 lied under oath and conscripted others to lie under oath. They continue to lie. In fact, judging
21 from his recent interviews, Erik continues to assert that his account of the events is honest and
22 accurate. In the recent 2024 Netflix documentary, "The Menendez Brothers," Erik stated, "What
23 the attorneys were arguing was it was the honest but the unreasonable belief that I was going to
24 die which I didn't agree with because I believed that it was an honest and reasonable belief that I
25 was going to die. I believe that any person, if they lived my life, I don't see how they couldn't
26 have believed that they were about to die." Erik and Lyle's continued efforts to deceive the court
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1 and the public demonstrates that they are not fully rehabilitated. They failure to exhibit full
2 insight into and accept complete responsibility for their crimes overcomes any mitigating
3 evidence of rehabilitation at this point since they still pose an unreasonable risk of danger to the
4 community.
5


6 Erik and Lyle have expressed contrition about how the killing of their parents affected
7 their family. But this is not a new sentiment. During direct examination in his first trial on
8 September 20, 1993, Lyle said, “I just miss the connection I had with him [his father] and I felt, I
9 guess, very guilty, and seeing my grandmother and people hurt.” (89 RT 14703.) However,
10 during that same trial, Lyle and Erik testified to a false claim of self-defense. They also both
11 attempted to, and actually did, suborn others to lie on their behalf under oath. Their insight into
12 their crimes is no greater today than it was at the time of these murders and subsequent trials.
13


14 To date, Erik and Lyle have only acknowledged a fraction of the lies they told and still
15 have never acknowledged the following lies and efforts to undermine the truth-seeking function
16 of their juries– see Exhibit 19:
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	<p>Erik and Lyle lied on the 911 call about “just discovering” their parents’ bodies.</p>
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	<p>Erik and Lyle lied to the police, family, friends, and the media about their involvement in the murders.</p>
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 <p>Admitted the lie</p>	<p>Erik and Lyle lied to the police, family, and friends suggesting the Mafia was involved in the murders.</p>
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 <p>Admitted the lie</p>	<p>Erik feared his parents would kill him because his father's homosexual lover warned him that he was in danger two days before the murders.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they claimed that their parents were going to kill them, and they had to act in self-defense by murdering them first.</p>
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 <p>Never admitted the lie</p>	<p>To support their self-defense claims, Erik and Lyle tried to suborn perjury by asking Erik's friend, Brian Eslamina, to testify that they borrowed one of his handguns the night before the murder to defend themselves against their parents.</p>
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 <p>Never admitted the lie</p>	<p>To support their self-defense claims, Erik and Lyle lied when they testified that they went to Big 5 Sporting Goods in Santa Monica the day before the murders and tried to purchase handguns.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified the purpose of their 120-mile drive to San Diego was not to buy shotguns when, in fact, that was the reason they made the trip.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that the reason they provided a fake identification and fictitious address to buy the shotguns was because they did not have their California driver's licenses in their possession when, in fact, they were trying to conceal their connection to the shotguns and ammunition purchased in San Diego.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that they were so fearful of their parents that they stayed away from their home all day Saturday, even though they were impeached by the testimony of Grant Walker, the pool repairman, who said they were playing tennis and disrespecting their parents in front of him.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that they did not plan their alibi before the murders.</p>
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 <p>Never admitted the lie</p>	<p>Lyle lied when he denied that he did not ask Perry Berman to come to their home for the purpose of being a witness to Erik and Lyle discovering their parents' mutilated bodies.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified they did not stage the murders to look like a Mafia-style hit.</p>
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 <p>Never admitted the lie</p>	<p>Lyle tried to suborn perjury by recruiting his girlfriend, Jamie Pisarcik, to falsely testify that his father had drugged and violently raped her.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that their mother was so dangerous and unpredictable that she tried to poison the whole family.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle suborned perjury when they solicited Lyle's girlfriend, Traci Baker, to testify that she was present when their mother tried to poison their family.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that they thought their parents would kill them during their Saturday afternoon fishing trip.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that they burst into the den with their shotguns, that it was too dark to see, but that their parents were standing up and/or moving towards them.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that they rushed into the den and shot their parents in self-defense because they feared that their parents were going to shoot them first that evening.</p>
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 <p>Never admitted the lie</p>	<p>Erik and Lyle lied when they testified that Dr. Oziel blackmailed them into confessing on tape to murdering their parents.</p>
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The initial People’s Resentencing Request completely failed to analyze, let alone address, each of these continued lies and Erik and Lyle’s lack of complete insight into their crimes. As stated by the Governor in his denial of parole for Sirhan Sirhan, an inmate who lacks insight still poses an unreasonable risk to public safety. The comparisons between Sirhan Sirhan and the Menendez brothers’ cases are instructive for the Court in ascertaining whether the failure of the Menendez brothers to exhibit full insight into their crimes overcomes various pro-resentencing factors, justifying a denial of resentencing. In Sirhan Sirhan’s case, where the parole board granted him parole, it argued that Sirhan Sirhan did not pose an unreasonable risk of danger to the community based on his age (77), his diminishing health, his lengthy time in prison (over 50 years), his age at the time of offense (24), his upbringing in a war zone, his significant rehabilitative efforts in prison, his letters of support from prison officials and victim family

1 members, and his low classification score in prison, among other factors. *See* Comparison Chart
2 attached as Exhibit 18. Notwithstanding these positive factors, Governor Newsom denied Sirhan
3 Sirhan parole, viewing his lack of full insight and complete acceptance of responsibility for his
4 crimes as overcoming these factors and demonstrating how Sirhan Sirhan continued to pose an
5 unreasonable risk of danger to the community. Similarly, notwithstanding all the positive factors
6 on behalf of the Menendez brothers, many of which are less compelling than Sirhan Sirhan's,
7 their failure to exhibit at this point full insight and complete responsibility for their crimes
8 demonstrates how they continue to be an unreasonable risk of danger to the community.
9 Consistent with *Vaesau*, there can be no greater legitimate interest than public safety justifying
10 withdrawal of a resentencing petition.
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13 VI.

14 **BOTH ERIK'S AND LYLE'S PRISON DISCIPLINARY RECORD DEMONSTRATE** 15 **SIGNIFICANT POSITIVE AND NEGATIVE ASPECTS OF THEIR TIME IN PRISON**

16
17 In Section III of the initial People's Resentencing Request, the People provided this Court
18 with a detailed description of many of the positive aspects of each inmate's rehabilitative efforts
19 and positive programming while in prison. For example, the People's Resentencing Request
20 detailed each inmate's post-conviction factors while incarcerated, including predictive scores,
21 education, self-help and recovery programming, sobriety maintenance, and work history. In
22 general, these comprehensive details outlined in the People's initial motion accurately
23 demonstrate that each inmate has performed exceptionally well in certain aspects of their prison
24 programming, and those details will not be repeated in this pleading but are incorporated herein
25 by reference.
26
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28 However, as described below, there are certain areas where the People's Resentencing

1 Request fails to sufficiently detail information contained within each inmate's prison files.

2
3 **A. Erik continues his pattern of deceit and manipulation in prison**

4
5 The People's Resentencing Request states that "Erik Menendez's overall disciplinary
6 record while incarcerated is reflective of his positive trajectory throughout his period of
7 incarceration." (People's Resentencing Request, p. 20, lines 15-17.) To support this proposition,
8 the People noted that Erik only received eight Rule Violations Reports ("RVRs") while
9 incarcerated. Upon a further and more complete review of Erik's C-File, the People have
10 discovered that Erik has been cited at least thirteen (13) times for violating prison rules. (See
11 Exhibit 15.) While this is not an excessive number of violations for a lengthy prison term, the
12 circumstances of some of these violations demonstrate a continued pattern of dishonesty and
13 manipulation.
14

15
16 For example, in 1999, Erik argued with and then assaulted a female visitor by pushing
17 her and then pulling her by the back of the neck. After being found guilty, Erik appealed this
18 violation and argued that the guard lied in his written report. However, a review of the
19 surveillance footage demonstrated that Erik was the one lying. As stated by the appeal officer,
20 "The videotape indisputably reveals you utilizing aggressive contact with your visitor." (See
21 Exhibit 15, pp. 18-26.)
22

23 In 2006, Erik again challenged a rules violation—inappropriate conduct with a visitor—
24 by again testifying that the allegations were false. Erik was again found guilty after surveillance
25 video demonstrated that he was lying during the hearing to deceive the hearing officer. (See
26 Exhibit 15, pp. 53-54.)
27

28 In yet another, and more blatant, example of Erik's manipulation and continued efforts to

1 falsify evidence, just over six years ago in 2018, Erik was caught laying on his top bunk with
2 unlawful contraband (a cellular telephone) hidden inside the mattress. Instead of admitting guilt,
3 Erik again falsely testified during this hearing, stating that he did not use the top bunk. However,
4 this time, Erik actually suborned perjury and called his cellmates to falsely testify on his behalf.
5 One of the cellmates testified that the phone belonged to him and that it was in the cell before
6 Erik became their cellmate. Another cellmate also testified that the phone did not belong to Erik.
7 However, the falsity of this testimony became clear when the inmate testified that Erik occupied
8 the top bunk. At that point, Erik became frazzled and shouted, “I sleep on what bunk?” to which
9 the witness changed his answer and testified “No wait. Low. I got mixed up.” The hearing
10 officer found Erik guilty, noting that two of the pictures on the phone were selfies taken by Erik
11 showing him on the same top bunk where the phone was hidden. (See Exhibit 15, pp. 64-79.)

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16 **B. Lyle continues his pattern of self-serving conduct while in prison**

17 The People’s Resentencing Request similarly asserted that Lyle’s disciplinary record is
18 “reflective of his positive trajectory.” (People’s Resentencing Motion, p. 43, lines 20-23.) The
19 motion then states that Lyle has only suffered five RVRs in over 30 years of incarceration.
20 However, after a full and complete review of Lyle’s C-File, the People have found that Lyle was
21 cited for violating the prison rules, including failures to report to work, at least 19 times. Most
22 notably, these violations demonstrate a continued pattern of circumventing the prison rules to
23 engage in improper behavior. For example, in 1997 Lyle was found guilty of circumventing the
24 prison mail rules by arranging to have his family members mail fellow inmates’ relatives
25 clothing and other items in exchange for receiving canteen items from those inmates. (See
26 Exhibit 16, pp. 11-15.) On multiple other occasions, Lyle circumvented the rules by having his
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1 preferred brands and types of shoes snuck into the prison so that he could wear what he wanted
2 to wear. (See Exhibit 16, pp. 16-21; 28.) He also continues to possess illegal contraband, such
3 as cellular telephones. (See Exhibit 16, pp. 6; 34-37; 38-44.) Lyle failed and/or refused to report
4 to his work assignment on numerous occasions, often because he preferred to hang out on the
5 yard. (See Exhibit 16, pp. 22; 23; 24; 30; 31.)

7 In sum, in evaluating whether the Menendez brothers pose an unreasonable risk of danger
8 to the community, their entire pattern of prison conduct – positive and negative – must be
9 presented and assessed, particularly in light of their continued failure to exhibit full insight into
10 their crimes. .

13 VII.

14 **THE COURT MUST DECIDE WHETHER TO PROCEED ON ITS OWN** 15 **RESENTENCING MOTION**

16
17 In the event the Court permits the People to withdraw their resentencing motion, the
18 Court must also decide whether it will proceed on its own resentencing motion. Previously, on
19 November 25, 2024, the Court indicated that it would proceed on its own resentencing motion if
20 the People withdrew their request.

21
22 The People would be prepared to proceed on the Court’s resentencing motion if the Court
23 determines that it has jurisdiction.¹⁹ The Court’s resentencing motion, however, does not have a
24 statutory presumption in favor of resentencing under Penal Code section 1172.1(b)(2).

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28 ¹⁹ The Court must decide whether it will allow the parties to proceed by stipulation to a hearing on the Court’s
motion. There are likely jurisdictional issues with the court conducting such a proceeding. (See *People v. Roe*
(1983) 148 Cal.App.3d 112 [held that, due to a lack of jurisdiction, resentencing could not take place on court’s
initiated resentencing motion despite the consent of the parties].)

VIII.

CONCLUSION


For the foregoing reasons, the People are prepared to go forward with the Court's initiated resentencing but request the Court to allow the People to withdraw their motion for resentencing.

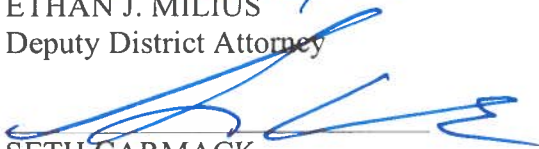
Dated: March 10, 2025

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