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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

- - -
THE HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING
- - -

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CR-87-422(f)-ER
)
RUBEN ZUNO-ARCE,) MOTIONS OF ZUNO-ARCE
)
)
Defendant.)
)

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
Monday, March 18, 1991

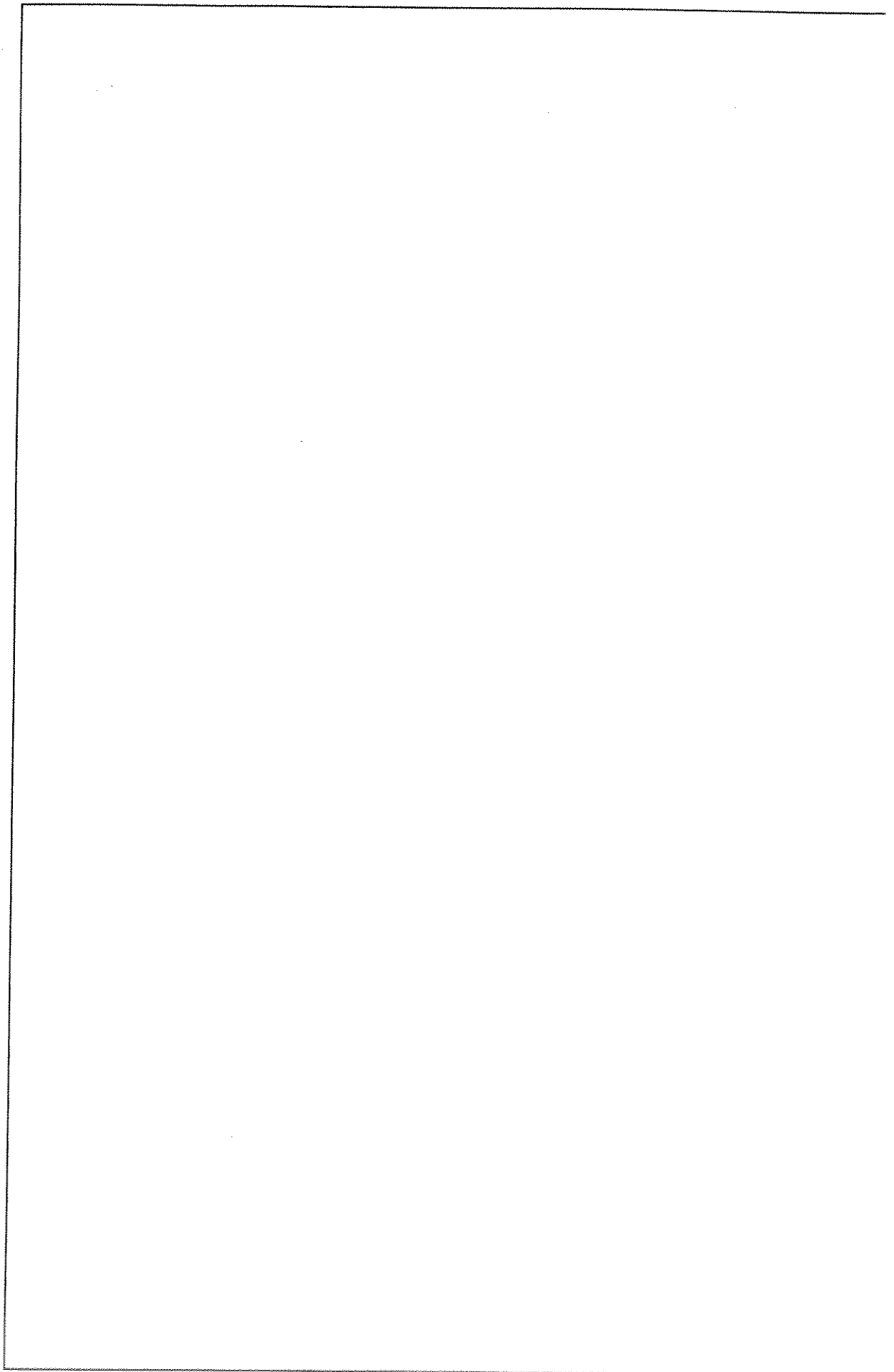
APPEARANCES:

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RONALD A. DI NICOLA

COPY

LUCILLE M. LITSHEIM, CSR #2409
U.S. Court Reporter
Room 442-D, U.S. Courthouse
312 N. Spring Street
Los Angeles, California 90012



1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 18, 1991; 1:43 P.M.

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3 * * *

4 (Defendants Matta and Bernabe Ramirez leave courtroom,
5 as do all counsel except Mr. Medvene and Mr. Di Nicola

6 THE COURT: Well, we can talk about that. You filed a
7 motion regarding Count Three asking for a motion for arrested
8 judgment with respect to Count Three. Count Three, if you will
9 remember, was dismissed by the court.

10 (Law clerk enters courtroom.)

11 THE COURT: Is that on my desk?

12 (Discussion held off the record.)

13 THE COURT: Yes. That is it.

14 This is the Defendant Zuno's motion for arrested
15 judgment on Count Three, which I find is somewhat mystifying
16 that this would be filed. First, it requests the court for
17 arrest of judgment on Count Three allegedly because Count Three
18 does not include the crime of conspiracy. But if you will
19 remember, in this case the defendant asked the court to dismiss
20 Count Three as being multiplicitous. And we agreed with that
21 and I issued an order in this case dismissing Count Three of
22 the 602 proceeding indictment as multiplicity of Count Four
23 since they both alleged a conspiracy to commit violent acts in
24 furtherance of racketeering.

25 Now, it is true the indictment as it presently reads

1 with the Count Three dismissed does not contain a count of
2 conspiracy, although it is alleged and set forth in Count Four.
3 The defendant's motion requests the court to overturn a verdict
4 on Count Three because of this discrepancy in the indictment.

5 Generally, however, discrepancies of this type, though
6 they've been called technical errors - although this was not an
7 error, it was done by design and intention - that an indictment
8 should not be set aside or reversed on that ground. There is
9 no question that the defendant here had notice that he was
10 charged with a conspiracy.

11 The reason the indictment no longer contained a
12 specific reference to a conspiracy is because defendant's
13 motion to have such language dismissed as duplicative of the
14 language which remains was granted by the court. And by the
15 defendant's own motion he admits that he was aware that the
16 indictment as it stands now alleged a conspiracy. The jury was
17 so instructed.

18 The defendant was not, in the view of the court,
19 prejudiced by the lack of the term "conspiracy" in Count Three.
20 The jury was instructed that Count Three charged a conspiracy.
21 Therefore the jury was not misled. The defendant does not
22 allege a problem with establishing double jeopardy and, as
23 already noted, the defendant had sufficient notice to formulate
24 and present a defense to the conspiracy charge, which he did.
25 The purposes of the indictment were therefore fulfilled and

1 there was no reason to grant arrest of judgment on Count Three.

2 And if you look in your files to the order that was
3 made dismissing Count Three, you will see that that describes
4 precisely what we did in this case and it states "accordingly
5 Count Three of the sixth superseding indictment is dismissed."
6 It is understood that Count Four alleges, among other things,
7 conspiracy to commit a violent act in furtherance of an
8 enterprise engaged in racketeering activity.

9 And it was that, the fact that that section charged a
10 conspiracy and sect- -- and Count Three was based on U.S.C.
11 18371 that caused the court to dismiss it, though the defendant
12 did not have to answer that conspiracy charges but only one.
13 So I don't think this requires any argument. The motion is
14 denied.

15 Now, we have a motion by Mr. Arce under Rule 29 for
16 judgment of acquittal on Counts Three, Five and Six. This, uh,
17 (Pause.) --

18 Bringing this motion under Rule 29 for judgment of
19 acquittal on the evidence presented against the defendant must
20 be viewed in the light most favorable to the government. The
21 court is not permitted to say that the government has not
22 presented evidence sufficient to sustain a verdict.

23 The government witness who testifies to defendant's
24 participation in the conspiracy, this testimony, when viewed in
25 the light most favorable to the government, is sufficient -- if

1 believed by the jury. It is sufficient if believed by the jury
2 and overcomes the motion for judgment of acquittal.

3 Defendant's argument that the testimony of witness
4 Cervantes was not credible is contrary to the standard that the
5 court must apply in this motion. By considering the
6 credibility of Cervantes, the court would not be viewing the
7 evidence in the light most favorable to the government, it
8 would be making its own separate substituted judgment on that
9 witness' credibility. And that would be taking it away from
10 the jury.

11 Obviously the jury believed this witness. The
12 testimony of the witness implicated the defendant, if believed,
13 and the court sees no basis for granting a Rule 29 motion for
14 judgment of acquittal on the grounds that the government's
15 chief witness was not credible and that the evidence was too
16 speculative to support the verdict.

17 Do you wish to be heard on this?

18 MR. MEDVENE: Very limited aspect of it, Your Honor.
19 If I might take less than two minutes. I just want to focus
20 you --

21 THE COURT: All right.

22 MR. MEDVENE: -- on one particular count. We'll
23 submit on the other. (Pause.)

24 We'll submit, Your Honor, other than on the new Count
25 Three, which, of course, is the old Count Four.

1 THE COURT: Yes.

2 MR. MEDVENE: And this limited point, Your Honor, even
3 taking Cervantes as credible for purposes of Rule 29 --

4 THE COURT: Yes.

5 MR. MEDVENE: The count charges that Mr. Zuno engaged
6 in a conspiracy to kidnap and murder Mr. Camarena.

7 The testimony in the record, without belaboring it, is
8 three meetings, discussions of kidnapping. Under no stretch of
9 the imagination was the word "murder" ever used as part of any
10 plan at any of those meetings. The record is devoid of any
11 evidence that the conspiracy was to kidnap and murder.

12 You can, if you find him credible, you can find under
13 Rule 29 there is sufficient for count -- the old Count Five,
14 which is conspiracy to kidnap. If you find him credible, Six
15 is the kidnapping himself. And under Pinkerton, once you get
16 by the point that they did charge conspiracy, it is aiding and
17 abetting but you read aiding and abetting as conspiracy, you
18 can say -- even though he wasn't there at the kidnapping, you
19 could say there is enough because one might argue that he's
20 responsible for his actions.

21 But you can't use Pinkerton on Count Three. Three, as
22 Your Honor knows, when you laid out the elements, one of the
23 elements is the basic element they have to prove beyond a
24 reasonable doubt he entered into a conspiracy to kidnap and
25 murder. And there is no evidence at all.

1 The government, as I read their reply, simply state -
2 and I believe there is no legal support for this - that because
3 he planned the kidnapping, if you were to believe that for this
4 purpose, you can assume it includes murder. You can assume the
5 kidnapping includes murder.

6 Without Pinkerton, you can't get there. And we think
7 Count Three has to go, unless --

8 THE COURT: Why do you think Pinkerton would not apply
9 if there was a conspiracy to kidnap which also later resulted
10 in the death?

11 MR. MEDVENE: Well, because the kidnapping, unlike
12 Six -- see, Six is different, Your Honor. Count Five --

13 Let me go backwards. Count Five talks conspiracy to
14 kidnap, Count Six says kidnapping. The reason you can find
15 sufficient against us if you think the evidence so holds is you
16 can find, if you found for purposes of 29 Zuno planned to
17 kidnap, he's liable for the natural consequences of his act;
18 which is, the kidnapping is natural consequences of conspiring
19 to kidnap. So that's Five and Six and that's 29 if you find
20 that way.

21 You can't get there on Four because they have to prove
22 the basic conspiracy. Before you get to the substantive act,
23 they have to prove --

24 THE COURT: Are you saying the basic conspiracy was
25 not only to kidnap but to kidnap and murder?

1 MR. MEDVENE: Yes, sir. On line 13, between line 13
2 and 14 they plead the basic conspiracy as kidnap and murder.
3 And there is absolutely no evidence that at any planning
4 meeting when Zuno allegedly participated, ever any discussion
5 about murder of any kind. Not one bit of evidence. And that's
6 the long and the short of it.

7 THE COURT: The only evidence that I recall is a state-
8 ment attributed to Mr. Matta to the effect that --

9 MR. CARLTON: Well, I believe, Your Honor, the
10 translation that came out at trial was "Silence is golden."

11 THE COURT: Silence is golden. I think that is. Well
12 go ahead.

13 MR. MEDVENE: But silence is golden with respect to --

14 THE COURT: It is a rule I believe in in court.

15 (Laughter.)

16 MR. MEDVENE: Well, yes, sir. Yes, Your Honor, good
17 rule.

18 But at the meetings they're -- I do want to spend time
19 on the 33 motion --

20 THE COURT: Yes, do.

21 MR. MEDVENE: -- I don't want to take time but --

22 THE COURT: Well, this is a good point. You're saying
23 that there was no sufficient proof of a conspiracy to kidnap
24 and murder.

25 MR. MEDVENE: And murder, yeah.

1 THE COURT: And murder.

2 MR. MEDVENE: Yeah. No evidence that --

3 THE COURT: And both are elements of that crime.

4 MR. MEDVENE: Yes. Yes, Your Honor. The way they
5 pled it. The way they pled it. There's a couple cases we cite,
6 Sloan and another case that get at it a different way. In
7 those cases the charge was doing X. The court in its
8 instruction gave a broader instruction of X but gave the
9 instruction in terms of the statute.

10 THE COURT: All right.

11 MR. MEDVENE: And the court said, "That's not good
12 enough, you've got to prove what's in the indictment."

13 THE COURT: So you're basically saying there was a
14 failure of proof on the conspiracy to kidnap, to murder.

15 MR. MEDVENE: To murder.

16 THE COURT: And because of that there was no
17 conspiracy to kidnap and murder in which your client was a
18 member.

19 MR. MEDVENE: Yes. Yes, Your Honor.

20 THE COURT: And therefor he should not be convicted of
21 this count.

22 MR. MEDVENE: Yes.

23 THE COURT: The Count Three.

24 MR. MEDVENE: Yes. Yes, Your Honor. Not Five or Six,
25 just Three.

1 THE COURT: All right. I have your argument now.
2 Let me hear what the government's argument is.
3 Mr. Carlton. First, you did plead it that way, didn't
4 you?

5 MR. CARLTON: The pleading as it stands now is a 1959
6 charge that says that the defendants kidnapped and murdered
7 Defendant Zuno. And incorporated in that obviously is a charge
8 that he conspired to commit the violent crimes that are alleged
9 in there, alleged in Count Three.

10 THE COURT: Well, I don't follow that, then.

11 MR. CARLTON: I believe, Your Honor, that the old
12 Count Three did say that he conspired to kidnap and murder.

13 THE COURT: That's the old count.

14 MR. CARLTON: The old Count Three.

15 THE COURT: The old count, it was conspiracy to kidnap
16 and murder.

17 MR. CARLTON: Yes.

18 THE COURT: And when we said that we would substitute
19 the conspiracy charged in 1959, that is a conspiracy to commit
20 a violent act in furtherance of act.

21 MR. CARLTON: May I have just a moment, Your Honor? I
22 have the indictment right here.

23 THE COURT: Yes. I have the indictment here.

24 Is this the indictment as redacted?

25 MR. CARLTON: Well, no, Your Honor. This is the old

1 indictment. I just wanted to get the language of the original
2 Count Three for you, if that has any relevance. And it was
3 charged in that original Count Three that:

4 The object of the conspiracy was to
5 kidnap, torture, interrogate and murder Special
6 Agent Enrique Camarena Salazar.

7 And in the new Count Three/old Count Four the language
8 was that all of the defendants:

9 Aided, abetted, counseled, induced, procured,
10 caused and otherwise willfully participated in the
11 kidnapping and murder of Special Agent Enrique Camarena
12 Salazar.

13 THE COURT: And conspired to.

14 MR. CARLTON: Pardon me.

15 THE COURT: Doesn't it say conspired to?

16 MR. CARLTON: I don't have the amended indictment,
17 redacted indictment.

18 THE COURT: All right.

19 MR. MEDVENE: If I may, Your Honor. It says

20 "aid, abet, counsel, induce, procure, cause
21 and otherwise willfully participate in the kidnapping
22 and murder of".....

23 MR. CARLTON: The conspiracy was the subject of
24 argument, as you alluded to earlier. But the object of that
25 conspiracy was to commit the violent crimes alleged in what is

1 the new Count Three.

2 I would suggest that the evidence, Your Honor, is this:
3 First, look at the nature of the crime that was proven. A
4 group of individuals, including Defendant Zuno, met on numerous
5 occasions to plan the kidnapping of a federal agent, a United
6 States government agent in Mexico. They were going to kidnap
7 that individual, take him to a particular location, and
8 question him about his activities in Mexico, about the DEA's
9 activities in Mexico, about the Zacatecas marijuana fields.
10 And in particular - and this goes directly to Defendant Zuno -
11 to question him about what he knew about what the DEA knew
12 about the involvement of General Gardoqui, the minister of
13 defense in Mexico about narcotics trafficking.

14 Now, it boggles the imagination to imagine that
15 anyone would enter into that kind of conspiracy under the
16 assumption that the agent is then going to be let go to go back,
17 tell what happened to his superiors in the United States
18 government and just sit back and take it. And I believe, Your
19 Honor, the record establishes that not only does that boggle
20 the imagination, it wasn't the intention of the conspirators.

21 You will recall, as we just discussed, that Defendant
22 Matta made a statement, at the very -- one of the very early
23 sessions that "Silence is Golden." That was the translation,
24 although I think the literal words that came out of the
25 witness' mouth were "No flies enter a closed mouth." Now, what

1 does that mean? I think that's open to very literal
2 interpretation. Beyond that, you recall there was evidence of
3 a meeting held at a residence known as La Bajadita in December
4 of '84.

5 Now Defendant Zuno was not present there but other
6 co-conspirators were. And a photograph at that time was passed
7 around which had a photograph of two persons. And one
8 individual in the photograph was Agent Camarena and another was
9 someone else. And you recall there was a discussion as that
10 photograph went around that, I believe it was Ernesto Fonseca,
11 wanted someone else to kill the other person in the photograph.
12 And when asked about Camarena, the reply was "He'll be taken
13 care of."

14 So, Your Honor, I think that there was evidence in the
15 record sufficient to establish that the conspirators certainly
16 intended that Agent Camarena would not walk out of the
17 interrogation room and go back to his job. It doesn't make any
18 sense that that would have happened. It couldn't have made
19 sense to Mr. Zuno in the planning sessions early on and
20 certainly Defendant Matta in making his statement at the very
21 beginning of the scheme, indicated that that wasn't his
22 intention and certainly shouldn't have been anybody else's
23 intention.

24 So, Your Honor, the conspiracy that Defendant Zuno
25 entered --

1 THE COURT: What is the conspiracy under which this
2 defendant was tried? After we dismissed Count Three.

3 MR. CARLTON: The conspiracy is to commit the violent
4 crimes charged in old Count Four/new Count Three. That's the
5 way I understand it because of the language in section 1959.

6 THE COURT: And the violent crime charged was?

7 MR. CARLTON: To kidnap and murder Agent Camarena.

8 THE COURT: To kidnap and murder.

9 MR. CARLTON: That's correct.

10 THE COURT: So in that sense he was accurate in saying
11 that this was one of the conspiracy charges.

12 MR. CARLTON: That was the conspiracy charged, Your
13 Honor, although I believe it is traditional in conspiracy law
14 that proof that someone conspired to commit only one objective
15 of a multiple-objective conspiracy is sufficient to satisfy
16 that element.

17 I should also point out, Your Honor, there are
18 numerous cases holding that the best/the better practice is to
19 allege in the conjunctive; in other words, use the word "and"
20 rather than the word "or." Because if you use the word "or,"
21 the nature of the charges against someone becomes too
22 speculative. In other words, if we had used "to kidnap or
23 murder" or do this or do that, then the objects of the
24 conspiracy again- -- that any particular defendant is being
25 charged with are very unclear.

1 THE COURT: Isn't it also the law that if conspiracy
2 has more than one object, the jury must be instructed that they
3 must unanimously agree on which object was the object that was--

4 MR. CARLTON: I believe that is the law as well, Your
5 Honor, yes. I don't have the instructions.

6 THE COURT: Wasn't there an instruction in this case
7 to that effect?

8 MR. CARLTON: I don't have them with me, Your Honor,
9 and I am -- I am certain. My co-counsel believes there was
10 was but I am not speaking authoritatively on that.

11 THE COURT: All right.

12 MR. CARLTON: Other than that, I have nothing else.

13 THE COURT: All right. Well, I want to look at this.

14 MR. MEDVENE: May I just briefly? 30 seconds?

15 THE COURT: Yes.

16 MR. MEDVENE: I think what's clear is that the
17 December meeting, which is going to come up on the 33 where
18 they talk about passing the picture around --

19 THE COURT: Yes.

20 MR. MEDVENE: -- where Aguilar says it's the first
21 kidnapping meeting. Where we say Aguilar says it's the first
22 kidnapping meeting. Significant in terms of Cervantes'
23 credibility. No Zuno. It's clear Zuno was not at that meeting.

24 I have no memory of him being at the "Fly in the mouth"
25 meeting, but I know he's not at the December meeting and they

1 don't place him there at the first kidnapping meeting.

2 Nothing more than what I said. No evidence that he
3 was at any meeting where any murder was planned.

4 And I might say this, Your Honor. Six, the old Six/
5 the new Five is conspiracy to kidnap. They don't charge him
6 with murder. They have him, if you believe them, on 29. We'll
7 get to 33. But they have him on conspiracy to kidnap, which is
8 the new Count Five. The issue is under Three that they have,
9 in addition to conspiracy to kidnap, conspiracy to kidnap and
10 murder. And you have to focus on whether they have him on
11 murder because they have him on Five. If they're talking
12 conspiracy. It says "aid, abet, counsel." But given their
13 strength that that means conspiracy, there is nothing on Zuno.

14 THE COURT: All right. With respect to this motion,
15 the Rule 29 motion, I will look at that though my tentative
16 ruling is it should be denied. But I want to look more
17 carefully at the issue that you have raised.

18 MR. MEDVENE: Thank you, Your Honor.

19 THE COURT: And I will issue a formal written order
20 that will explain the court's decision.

21 MR. MEDVENE: Thank you, Your Honor. May I address --

22 THE COURT: Now the --

23 MR. MEDVENE: Sorry.

24 THE COURT: The next motion is a motion by this
25 defendant based on a new standing - that is, a different

1 standard than the Rule 29 standard - and that is a motion for
2 new trial based on the weight of the evidence. Defendant here
3 asked the court to find that the weight of the evidence weighs
4 against the jury's verdicts against defendant, and the court
5 should, in the interest of justice, grant defendant a new trial.

6 Now, what the defendant does here is re-argues his
7 case - that he did very well during the trial - attacking the
8 credibility of the government's chief witness. And I suppose
9 this defendant could not be convicted unless the jury must have
10 believed Hector...?

11 MR. MEDVENE: Hector Cervantes. And Lawrence Harrison
12 as well, Your Honor.

13 THE COURT: Hector Cervantes. Well, Lawrence Harrison,
14 his only contribution to this was that he had seen the
15 defendant and Contrero trace at one particular time.

16 MR. CARLTON: Evidence of association, that's correct.
17 And Caro-Quintero's use of the Lopa de Vega house, if you
18 recall, in 1984. That's what Harrison said.

19 THE COURT: Yes. He testified that he heard a radio
20 transmission from that house in 1984 which I recognized as that
21 of Caro-Quintero. And that was at a time when this house
22 allegedly belonged to this defendant.

23 Is that it? Is that right, '84?

24 MR. CARLTON: Yes, it is. Yes, Your Honor.

25 THE COURT: Yes.

1 Now, so the court is asked here to determine that
2 Mr. Cervantes and these other witnesses are so lacking in
3 credibility and corroboration that the jury could not rely on
4 it as the defendant -- to convict the defendant. So the
5 question is whether the record as a whole, when it is
6 considered, does this evidence preponderate against the verdict?
7 And whether there is a miscarriage of justice that should be
8 cured by granting a new trial.

9 Now you wanted to be heard on this, Mr. --

10 MR. MEDVENE: Yes. Yes, Your Honor.

11 THE COURT: -- Medvene?

12 MR. MEDVENE: Yes, sir.

13 If the court please. As Your Honor has pointed out or
14 inferentially pointed out, we're not looking at a 29
15 sufficiency standard, we're looking at "against the weight of
16 the evidence standard." And as Your Honor knows, it's not
17 necessary under Rule 33 to view the evidence in the light most
18 favorable to the government. Under U.S. v Tibbs and under
19 Kotteakos the U.S. Supreme Court teaches us that the inquiry is
20 not "Was there enough to support the verdict aside from the
21 phase that was affected by the error" but rather "Did the error
22 have the substantial influence so that one may well have graded
23 out on the adequacy of the verdict?"

24 Now that sets the stage. And I won't much discuss the
25 evidence itself except I think it's helpful to take two, three,

1 four minutes to put it in context, the errors we want to talk
2 about that we say occurred at the trial caused by the
3 prosecution.

4 Let's say what we think both sides agree on. No
5 forensic evidence touches Mr. Zuno. In addition, he's not at
6 the kidnapping. No participation in the murder itself. He's
7 not at the questioning. And aside from the Cervantes testimony,
8 and even giving Harrison, he knows none of the co-conspirators.

9 If you believe Cervantes, he knows five or six of them
10 but he's the only one that says that other than Harrison who
11 claims that he met, too. But by all testimony, he knows not
12 the bulk. And we know he's not at the murder, we know he's not
13 at the kidnapping, we know he's not at the interrogation.

14 Now, what does Cervantes say? And I'll do this
15 quickly but it's important to get the framework for the next
16 stage of the argument. He testifies about three meetings that
17 he claims Mr. Zuno attended. Because the guts of the case, if
18 I might, is the Cervantes testimony and the ownership of Lope
19 de Vega.

20 He testifies he was at the first time a baptism
21 meeting of Javier Barba's daughter Ureni. He said that was the
22 first meeting Mr. Zuno attended and spoke. And that was
23 September '84.

24 What do we have to counter that? We know the DEA
25 questioned Mr. Cervantes on November 23d and November 30

1 of '89 and January 2d of '90. He never mentions that meeting.

2 We know in the DEA reports he's told the DEA that at
3 the first meeting where kidnapping was discussed, Aldona Ibarra
4 Quintero/Fonseca, Ibarra Herrera and Monte were present. And
5 we know at trial he says none of them were present.

6 We know to the DEA he says he didn't recall any
7 conversation. At trial he claims he recalled conversation.

8 We know to the DEA he claimed the godfather was
9 Quintero; in the trial he says Pamequa.

10 Now, in addition to those inconsistencies, important
11 to Your Honor, as you just have listened to a lot of trials, in
12 the opening statement they got a one witness case, basically.
13 In opening statement they claim - and you know that they have
14 talked to Cervantes before - that Cervantes is going to talk
15 about the first meetings that he's going to claim Zuno was
16 present was two in October, one a week later, and one in
17 February. He gets on the stand and doesn't testify about the
18 two in October but for the first time mentions this alleged
19 September baptism meeting. And if you follow it through, he
20 doesn't place him at the two meetings on the same day in
21 October, he places them at one of two. And the third meeting
22 that the government in its opening says it affects Cervantes is
23 going to place Zuno a week later, he doesn't place him at at
24 all.

25 In addition, you have Enrique Avila the government

1 witness I believe the first kidnapping meeting. Not the first
2 one he's at but the first kidnapping meeting where they pass
3 around the pictures about maybe killing the man. Mr. Zuno is
4 not present.

5 We have Esperanza, Zaragoza and Teresa Vasquez-
6 Valesco who say there's no baptism. We have Macias, who
7 Cervantes said took Zuno to the first meeting, who says he
8 didn't do that. Now that is the first meeting.

9 You talk about the second meeting. He's only going to
10 have three. The second meeting, October of '84 Cervantes
11 claims it's after the wedding of Jorge Barba. If you look at
12 the DEA reports -- and you remember, he was paid right along,
13 paid right along when he gave information. November 23rd,
14 November 30 of '89; January 2d, January 11th of '90. If you
15 look at those debriefing memos, no mention of Zuno at any such
16 meeting.

17 Macias, who Cervantes says took him there, says it's
18 not true. Esperanza and Teresa say there was no wedding. He
19 claimed no detail to the DEA and then claimed detail at trial.
20 And we have discrepancies from the government open.

21 The last meeting is the February '85 meeting, which we
22 know the DEA agents when they testified, they said we told him
23 "Tell us everything, you know," and he doesn't mention this
24 meeting. He doesn't recall anything specifically being said.
25 And he claims on direct that Zuno said something about General

1 Gardoqui, "Find out what they know about Gardoqui." But on
2 cross we got from him that the person who said that was Fonseca.
3 And if Fonseca said it, why would Zuno repeat it? And he
4 doesn't tell the DEA agents of this meeting immediately.

5 Now, if Paris is questionable with no motive to lie,
6 Paris, what is this man, Your Honor, who we know gets fired and
7 discharged and within a week he's getting money and not even
8 telling these things until he's gotten more and more.

9 I'll touch two more things on Cervantes and that's the
10 heart of him. He talks about credentials. We're talking about
11 believability. I'm trying to get in context for you, it's a
12 long time, you have trials in between. The next stage --

13 THE COURT: I have all of these facts in mind because
14 I read your papers.

15 MR. MEDVENE: All right, Your Honor.

16 THE COURT: And I remember your argument.

17 MR. MEDVENE: All right. Then let me get, then, to
18 the next phase. Because we have numerous contradictions on the
19 amount of credentials and who and where and what and so forth.
20 But let me get to the next phase. Because we think, sitting as
21 a 13th juror, there's an injustice here without getting to the
22 next phase. But I think if we put the next -- what are we
23 talking about "the next phase"?

24 Against this record, thin at best, you have the
25 question of the Cervantes discharge. This is very important,

1 Your Honor. You have a document that says Cervantes is dis-
2 charged within a week of his coming up here to testify. And
3 he's discharged for theft. Your Honor basically admits that
4 record. The government says, "Your Honor, strike out the part
5 about theft." Your Honor then says, "Okay, I'll strike out the
6 part about theft, because really what's important here," Your
7 Honor says, "is how close the discharge was to coming up here
8 to testify." The government --

9 THE COURT: Well, that was -- I understood the purpose
10 of it was to show the economic necessity for this witness and
11 to show that he had just been terminated from his job.

12 MR. MEDVENE: Yes, sir.

13 THE COURT: That was the gist of the evidence.

14 MR. MEDVENE: Yes, sir. And so you said.

15 Against that background, Mr. Medrano argued to you
16 "Strike out the theft." After you agreed to strike out the
17 theft for the reason you said we're not for this purpose
18 quarreling with that ruling - Mr. Medrano argues to the jury,
19 knowing, knowing in his head --

20 THE COURT: Isn't that part of the other motion that
21 you have here?

22 MR. MEDVENE: No.

23 MR. CARLTON: That's the second motion, Your Honor.

24 THE COURT: You have a motion for new trial based upon
25 improper argument by counsel; errors by the court --

1 MR. MEDVENE: Yes, sir.

2 THE COURT: -- and insufficiency of the Castagar
3 hearing.

4 MR. MEDVENE: Yes, sir. What I'm doing is: There are
5 two stages. I'm not going to argue Castagar now. We're
6 submitting it. What I am arguing is weight. For purposes of
7 33, you as the 13th juror and consider the thinness, however
8 you come out on that, and the trial errors. And what we're
9 saying is, considering the record, and I abbreviated it because
10 Your Honor is good enough to say you read our papers.

11 THE COURT: I read it.

12 MR. MEDVENE: Yes, sir.

13 THE COURT: I know the record very well.

14 MR. MEDVENE: Yes, sir.

15 THE COURT: You gave a very good argument.

16 MR. MEDVENE: Yes, sir.

17 Here is what we could do, Your Honor. No matter how
18 good the argument, and I appreciate it. Mr. Medrano argues in
19 his closing "We can't touch him, we can't touch him." "Well,
20 if any of you have served in the military, ladies and gentlemen,
21 discharge does not mean you've been fired."

22 We didn't argue he'd been fired. "One can be
23 honorably discharged from the service, that doesn't mean you're
24 fired, you can leave of your own volition." And, in fact,
25 that's what happened to Cervantes. So Mr. Medrano --

1 THE COURT: Was there an objection made at the time
2 and a curative instruction?

3 MR. MEDVENE: Yes. Yes. There was an objection and
4 my memory is Your Honor said "Let them consider the evidence
5 and remember it as they remember it." And the difficulty --
6 and the difficulty with that, Your Honor, is there was nothing
7 to remember for this purpose, for purposes of our objection,
8 because Mr. Medrano had argued to you, "Take out theft" so the
9 jury couldn't go back and look and say "Was it theft or not?"
10 Mr. Medrano knew it was theft, he argued and kept it out, and
11 then he argued it was voluntary and honorably that he left.

12 And we think the system -- But I want to continue
13 because there are a number of things that Mr. Medrano did. But
14 that's basically the first one.

15 My objection, incidentally, Your Honor, when I say I
16 objected, it's at the July 13th, pages 30 -- I have A dash 28.

17 "Mr. Medvene: Excuse me, Your Honor. You
18 know, in light of the record that's an improper
19 argument. You know what the facts are --" because
20 I don't want to make a speaking objection. "You know
21 what the facts are. If that's an important argument,
22 counsel knows what the facts are and what 'discharge'
23 means."

24 Your Honor then said, at page 28, Your Honor said:

25 "Counsel, I instructed the jury already

1 that counsel's statements are not evidence. You
2 heard and saw the evidence and you decide. If your
3 recollection differs from counsel, you rely on your
4 own recollection."

5 You know, that's usually pretty good, Your Honor. But
6 here it wasn't pretty good because we didn't have it in
7 evidence. Because Mr. Medrano kept it out. He kept out theft
8 and then he argued against it.

9 Now, what else did he do?

10 THE COURT: Well, wasn't the fact that you are trying
11 to prove was that he had been terminated from his employment
12 therefor he needed money, therefor he was more likely to have
13 succumbed to an offer by the DEA to testify? And that was the
14 sole purpose --

15 MR. MEDVENE: No.

16 THE COURT: -- of admitting that evidence, as I
17 understood it.

18 MR. MEDVENE: No. In addition --

19 THE COURT: Doesn't prove he'd been discharged for
20 theft.

21 MR. MEDVENE: It's also for this reason, Your Honor:
22 On direct examination the prosecutor asked Mr. Cervantes if he
23 had ever been arrested. And Mr. Cervantes said no. We tried
24 to rebut that with this and I understand that you kept it out
25 for that purpose, if it was laying and you want to balance

1 those two, but here you had the added prosecutorial affirmative
2 in a very close case. At best for the prosecution, we submit,
3 of knowingly falsely arguing to the jury.

4 THE COURT: So your point is that that is a factor to
5 be viewed in this Rule 33 motion?

6 MR. MEDVENE: Yes, sir. Because what it gets down to,
7 as we understand 33, it's against the weight of the evidence
8 and in the interest of justice. And we're saying in the first
9 part of our argument that I cut short, it's against the weight
10 of the evidence, if you look at Cervantes and all the contra-
11 dictions, et cetera, et cetera, and you look at what's on the
12 other side of the table, Mr. Cervantes' voluntary return and
13 coming here, whatever. Whatever. But we're saying in addition
14 to that, if you look at the errors it's really in the interest
15 of justice to grant a new trial because you well may have an
16 innocent man here, Your Honor.

17 Now, what are the other improprieties? Mr. -- I'm
18 just going to argue a few of them. Mr. Medrano argued that
19 Mr. Zuno fled. He argued that, and I quote -- And I might say,
20 Your Honor, there is absolutely not one sentence --

21 It would be very easy for the prosecutor to get up and
22 say, "Mr. Medvene is deceiving you. Here's where it says
23 Mr. Zuno fled, Mr. Richardson said he fled." There is nothing
24 in the record. They argued flight consciousness of guilt. And
25 here's what he argues. There is not one word in the record

1 what are we going to do with it?

2 Here's Mr. Medrano closing:

3 "Because you know how and why the outcry
4 that resulted, every significant drug trafficker
5 was getting out of the city. And that included Zuno."

6 He continues.

7 "He, Zuno, had to move his marijuana first
8 but he, Zuno, got out of there because trouble was
9 coming down for everybody who was involved in the
10 abduction and murder of Camarena."

11 That's the July 11 transcript, page 28-116.

12 He later argues at 146 and 147:

13 "Ladies and gentlemen, look at the MO
14 of the defendants in this case. They all leave
15 town when trouble starts. Carroll gets out of there,
16 Fonseca gets out of there. Zuno was also fleeing."

17 Not one word of that in the record. Nothing. Nothing
18 to argue. Nothing.

19 Now, until addition to the problem that there was
20 nothing in the record to support it, the prosecution kept out
21 when we tried to get -- Well, the factual backdrop is we know
22 from Agent Hykendahl that Zuno came here voluntarily in '86 to
23 talk about whatever Hykendahl wanted him to talk about. There
24 was no warrant out for his arrest. He voluntarily came and
25 went.

1 But in light of the government's flight argument, we
2 had asked Cervantes: "Did Mr. Zuno, to your knowledge" -- to
3 your knowledge -- "remain in Mexico living openly?" Directly
4 goes to the flight.

5 Mr. Medrano objected. Objection sustained. Because
6 you didn't know this argument was going to come at a closing.
7 I mean, you're not clairvoyant.

8 In addition, Mr. Barrejas, as I remember, we don't
9 have the transcript though, but my mind is I asked him -- I was
10 trying to get did Mr. Zuno voluntarily come back for trial.
11 Which he did. I wanted to get it in the record. Objection.
12 Objection sustained. I understand.

13 But now in light of their ruling he fled. So they had
14 nothing in the record. They argued flight consciousness of
15 guilt. They put us in bed with the people that fled, the Caro-
16 Quinteros, the Fonsecas of the world and all of those people.
17 No evidence. And then they keep out our evidence that we were
18 not fleeing, we were staying around.

19 Third point. And this is one of the worst. Primavera
20 Park. This is what happened on Primavera Park. And I think
21 it's important to know and I am going to cite portions of the
22 transcript, so you can check.

23 THE COURT: Well, I want to hear that because I want
24 to know, first of all, the testimony of Cervantes regarding
25 Primavera Park. Do you have that?

1 MR. MEDVENE: Yes, sir.

2 THE COURT: Tell me what he says.

3 MR. MEDVENE: Okay.

4 (Pause in proceedings.)

5 MR. MEDVENE: I have the cites to Mr. Medrano's
6 comments. I can tell you --

7 THE COURT: Well, I know the dispute here is that
8 Mr. Medrano, you say, argued that Mr. Zuno owned -- there were
9 bodies in Primavera Park, that he owned that park, and I had
10 kept out evidence --

11 MR. MEDVENE: Yes.

12 THE COURT: -- that you were willing to offer to show
13 that this was public and not --

14 MR. MEDVENE: Yes.

15 THE COURT: -- private property.

16 MR. MEDVENE: Right. Let me just step you back for a
17 minute and then we'll get the cites for you.

18 What we heard Cervantes saying - and we'll get the
19 cite for you - was Zuno owned land in Primavera Park, was
20 concerned, get the bodies dug up. We then attempted to put in
21 CC to establish Primavera Park is a publicly owned park. The
22 government objected to that proffered evidence. We then had a
23 dispute about what did Cervantes say? And Your Honor just
24 asked, as you just asked me.

25 THE COURT: Yes.

1 MR. MEDVENE: What did Cervantes say? The government
2 represented to Your Honor - and we'll give you the cite - that
3 the documentary evidence was not relevant because they were not
4 contending the bodies were buried in Primavera Park. And --

5 THE COURT: But it was in the town of La Primavera.

6 MR. MEDVENE: Yeah. They switched and said, "It's in
7 the town of La Primavera." We then tried to put in evidence
8 that Zuno didn't own anything in the town of La Primavera. And
9 Your Honor said -- Your Honor didn't let it in because you felt
10 it was late.

11 THE COURT: Well, it was after the evidence had closed.
12 Was it also related to his present ownership?

13 MR. MEDVENE: I think we went -- I'm not positive.
14 I don't want to misstate. I think it was earlier. I think we
15 dealt with at that period of time.

16 But what Mr. Medrano argued to you in keeping out CC -
17 and it's July 6th, pages 26-1010 and 26-1011. And I am
18 purporting to quote Mr. Medrano.

19 On exhibit CC, that's our exhibit, which
20 is the photo of La Primavera Park - and that is a
21 national park - I think you ought to be aware of the
22 mischaracterization of Cervantes' testimony by defense
23 counsel. I reviewed my notes on what he told the jury.
24 He said he was aware that Zuno had property in a town
25 called La Primavera and that he had been there once.

1 Your Honor then ruled it wasn't relevant. Your Honor
2 kept it out.

3 Now, Mr. Medrano, despite arguing, it was La Primavera
4 and not Primavera Park and you keeping it out for that only
5 reason, Mr. Medrano then argues in closing:

6 He, the government expert then takes
7 soil from Camarena and matches it to soil found
8 at the grave site where the remains of Renalan and
9 Walker were found at Primavera Park. Do you recall
10 what he told you? There was virtually a perfect
11 match between soils. It means that's where the
12 bodies were originally buried before they were
13 exhumed and dumped by the road sign.

14 And then down a few lines page 28-116 and -117.

15 And Javier Velasquez also tells Cervantes
16 the bodies in La Primavera, they need to be moved
17 because the property where they are, belong to Zuno.
18 Ruben will get in trouble. The bodies were buried
19 at La Primavera Park. There was concern that Zuno
20 might be implicated.

21 And then later he says, at July 11, pages 28-139. He,
22 referring to Vasquez-Velasco:

23 had a conversation with Cervantes that
24 spoke about how the Bravo family had been murdered
25 and how the body, Camarena and Sevillas had to be

1 taken off La Primavera Park because it had caused
2 trouble for Zuno.

3 He goes on and says:

4 "This is significant, ladies and gentlemen,
5 because it serves to corroborate everything Cervantes
6 is telling you."

7 Now, you got a thin case to stretch anything that
8 corroborates Cervantes.

9 "This is significant, ladies and gentlemen,
10 because it serves to corroborate everything Cervantes
11 is telling you."

12 And we know from Paris' declaration that the jurors
13 discussed that Zuno had an interest in Primavera Park.

14 Now, the government -- and this is actually sad but I
15 want to bring it out to Your Honor. The government, we think,
16 realizing their difficulty, attempts to argue a number of
17 things, each of which is incorrect. I think the issue is
18 what's gone on? I mean, we really have the justice here.

19 The government objects and first they say:

20 Mr. Medrano argues that first he says:

21 When he was arguing about exhibit CC --

22 Oh, first the government argues: We really weren't
23 saying La Primavera, we really weren't saying that. We really
24 weren't saying we weren't going to talk about Primavera Park.

25 And I quote from Mr. Medrano, July 6, 1990, page

1 26-1010 to -1011. This is Mr. Medrano. This is the part I
2 read to you earlier where he specifically says:

3 "I reviewed my notes on what he told
4 the jury" --

5 I guess that means Mr. de la Corena. He said he was
6 aware Zuno had property in a town called La Primavera and
7 they'd been there once. So, in other words, Mr. Medrano argues
8 in his brief, if you look at the government papers, that he
9 never said they were talking about La Primavera.

10 Next he says that:

11 "You sustained all the government's objections
12 because of non-compliance with Federal Rule of Evidence
13 9023."

14 And that misstates the record. And I quote from Your
15 Honor at page 26-1005, July 6. This is Your Honor:

16 "Exhibit CC is an aerial photograph of
17 Primavera Park issued by the Forest Commission
18 of the State of Jalisco. This document is properly
19 certified, authenticated under Rule 9023."

20 That's Your Honor.

21 Next, Mr. Medrano argues:

22 "CC was excluded by the court because it
23 was not relevant."

24 Again I quote from Your Honor, July 6, page 26-1005.

25 This is Your Honor.

1 It was offered by the defendant as evidence
2 to establish that Primavera Park is a national park
3 and thereby impeaches Cervantes, who attributed ownership
4 of the park to Mr. Zuno-Arce.

5 It is relevant for that purpose.

6 Lastly, the document again misstates at this late date
7 and they say:

8 "The exhibit was excluded by Your Honor
9 because it constituted impeachment on a collateral
10 matter."

11 Again this is contrary to what Your Honor said.

12 July 6, Your Honor, at page 26-1003, again I quote
13 Your Honor:

14 "The court finds that exhibit CC has been
15 properly authenticated and may be admitted as proposed
16 to impeach by contradiction on a non-collateral matter."

17 Now it was after that that you kept it out because the
18 government argued, "We're talking La Primavera and we're not
19 talking Primavera Park."

20 And that's a gross violation, Your Honor. And when
21 you look at their closing argument and how they relied on it
22 after they misstated to Your Honor, which caused you to keep
23 out the exhibit, and argued that it buttresses Cervantes, who
24 gosh knows needed buttressing, the case cries out for new trial.

25 Lastly, lastly that I am going to argue because you've

1 been patient. We have a lot of other things that we've
2 mentioned. This is a very bad one, too. The Lope de Vega and
3 how they handled Lope de Vega. As you remember, the guts of
4 the case were Cervantes and Lope de Vega. And a little bit of
5 Lope de Vega, as the prosecutor stood up and said, was Harrison
6 and Quintero's there in '84. I.e. Quintero's there, that Zuno
7 knows Quintero.

8 Now let's look at what happened. After Dr. Machain is
9 picked up and brought here, for whatever reason, for the first
10 time on April 17th the government produces two redacted DEA
11 reports prepared by William Coonce, one dated May 17th, one
12 dated April 15th of '85. And, remember, the Zuno position on
13 Lope de Vega, pretty straightforward: One arms-length deal to
14 Quintero, never-in-the-house-before kind of thing.

15 They submit these two redacted reports. The reports
16 basically say, and I quote -- or one of the reports basically
17 says in relevant part. Quote:

18 In the first week of January 1985 --
19 redacted -- showed the house to Caro-Quintero, who
20 did not like it because the house was trashed out
21 and it has not -- as it had not been lived in for
22 some time and was in a state of poor repair.

23 Now, having seen that, the defense immediately moved --
24 Well, putting aside you have a Brady violation there. Because
25 Lope de Vega, important: Why didn't we get it until then? The

1 defense, Mr. Zuno, immediately moves. We get it April 17.
2 April 30 we make a request for, "Who is the redacted person?"
3 Because that obviously goes to a couple of things. This person
4 showed it to Quintero. That would tend to show that's the
5 first -- or may well show that is the first time Quintero saw
6 it; i.e., arm's-length purchase by sale by Zuno to Ruben Barba-
7 I mean, to Ruben Sanchez.

8 So it would show that really we had a legitimate sale.
9 And it would also tend to show that Mr. Quintero was not in the
10 house a couple of months before if the witness -- if he showed
11 the house to Quintero, who didn't like it because it was trashed
12 out in January. At least it appears very relevant.

13 Again Your Honor was misled. Your Honor was led to
14 believe by the government, and Your Honor said -- May 1st
15 transcript, page 53. Your Honor said, "They," referring to the
16 government, "have been contending long before today in this
17 trial that the only connection that your client," Zuno-Arce,
18 "had with this house was that he sold it at some point in time
19 to Quintero."

20 Mr. Medrano then confirms what Your Honor thought was
21 their position and he, Mr. Medrano, says, "It's going to be
22 part of our theory, Your Honor, that Zuno owned the house and
23 at one point sold it." Eventually that house ended up in the
24 possession of Quintero. That's how the evidence is going to
25 come out.

1 That is really what you thought, I believe from what
2 you said, why you didn't let us know who this relevant person
3 was who appears to have first shown the house to Quintero in
4 January of '85. First shown. How could he be there when
5 Harrison said he was there?

6 The government's actual position became apparent May
7 15th. Okay. We're still before the opening. Now May 15th.

8 In the opening statement Mr. Carlton asserts Quintero
9 occupied Lope de Vega in '84 while it's still owned by Zuno-Arce.
10 A week later Zuno files an ex parte application for an order
11 compelling, again, the disclosure of the redacted portion. A
12 motion to --

13 Your Honor denies that application because the govern-
14 ment is saying "Geez, what our theory really is about is Zuno
15 at one point owned the house and it was sold."

16 We filed another motion June 25th of '90 to preclude
17 any argument that Quintero was present at the Lope de Vega
18 house. And the government shouldn't be allowed to argue that,
19 that he was there in '84.

20 Your Honor again kept it out thinking the government's
21 position was, "Look, at one point in time he owned it and sold
22 it."

23 And in his closing Mr. Medrano bangs it home.
24 Harrison on the radio with Quintero at a time before Zuno sold
25 the property. Caro was at the house, ladies and gentlemen, he

1 is an associate. Quintero is already in the house. And so
2 forth.

3 Now we think on any theory - Brady, Brovario - if not
4 for the government misleading Your Honor, Your Honor would have
5 permitted the defense to know the name that was blanked out
6 that appears to have shown Quintero in the house for the first
7 time in January of '85, to show or to attempt to show that
8 Quintero was never there in late '84 when Harrison said he was
9 there and to show -- or attempt to show it was a legitimate
10 arms-length transaction. But for the government conduct, we
11 weren't given that.

12 And we might also say you didn't hold a Brovario
13 hearing. There was no balancing. Ostensibly you didn't think
14 it necessary because you didn't think it relevant because of
15 what the government had told you.

16 Now, in addition, also on Lope de Vega, Gomez Hispania*,
17 I believe was his name, was a real estate broker for Terra Nova.
18 He testified on cross-examination that in the past he had
19 worked with Jesus Sanchez Barba. Jesus Sanchez Barba was a
20 brother of Ruben Sanchez Barba. That Jesus Sanchez Barba had
21 his own relationship with Quintero, had bought and sold houses
22 with Quintero, and he had testified what appeared to be that
23 Jesus Sanchez Barba - maybe and this Ruben, but at least Jesus -
24 were holding this house, fixing it up for sale.

25 The government at one point moved for release. I may

1 be wrong in this but I think at one point there is a paper that
2 says they moved for release on his Grand Jury testimony.

3 Pretty sure. Whether I'm right or wrong on that, it's our
4 understanding he testified before the Grand Jury. We moved for
5 his testimony because he'd obviously be relevant.

6 Jorge or Gomez Hispania put him at the house fixing up
7 the house in January - being a confidant of Quintero selling
8 double properties, double escrow - and no Zuno. We were not
9 given his Grand Jury testimony or an opportunity to see if it
10 was exculpatory.

11 So those are the basic points, Your Honor. We also
12 have that we offered the foreign documents to show that no
13 wedding took place and --

14 THE COURT: Yes, well, I'm familiar with that.

15 MR. MEDVENE: You're familiar with those, so, I am not
16 going to argue further. But we would say, Your Honor, when you
17 put this together, wear a 13th juror hat. Even if you don't
18 feel that the weight is sufficient without the errors, when you
19 look at the errors made and when you look at the catastrophic
20 consequences of a conviction, what naturally follows from it,
21 there is a real question here whether Mr. Zuno received a fair
22 trial, and we ask you, Your Honor, in the interest of justice,
23 to grant him a new trial.

24 Thank you.

25 THE COURT: All right.

1 Well, I was a little bit disturbed by this, Mr.
2 Medrano, this incident regarding Primavera Park. Did you find
3 any quarrel with the recital of the record that Mr. Medvene has
4 made in how those events transpired?

5 MR. MEDRANO: Entirely, Your Honor. He misrepresents
6 the record and I'd like to clarify it for you, if you give me a
7 couple of minutes. Are you referring -- Well, Mr. Medvene has
8 proceeded --

9 THE COURT: Well, I'm referring to this specifically.

10 MR. MEDRANO: Right.

11 THE COURT: I kept that evidence out because I believe
12 you told me that you were -- your witness was speaking of La
13 Primavera, the town of La Primavera and not La Primavera Park.
14 I kept that evidence out. And then you did argue in the
15 closing argument about La Primavera Park.

16 MR. MEDRANO: May I, Your Honor?

17 THE COURT: Yes.

18 MR. MEDRANO: There is two separate issues: The town
19 of La Primavera and La Primavera Park. As to the town,
20 Cervantes was on the stand and it was brought out on either
21 direct or cross that he thought he heard secondhand that Zuno
22 owned land in the town of La Primavera. So then counsel --

23 THE COURT: Can you cite any evidence in the record
24 for me? I've been asking for this for a long time; I just
25 don't seem to get it.

1 MR. MEDRANO: It is in there, Your Honor, and I will
2 here, after this hearing, find that cite for you. As to the
3 town of La Primavera.

4 I brought that to the court's attention because
5 Mr. Medvene was going off on this tangent about the park. And
6 I clarified it for the court, you found in our way and you kept
7 that stuff out.

8 But that's not the only reason you kept that document
9 out, Your Honor, just to refresh our recollection. You recall
10 he paint- -- Mr. Medvene comes forward the day after all
11 evidence is closed with this magical document which he claims
12 it shows that Zuno doesn't own land in the town of La Primavera.

13 You, of course, exercised your proper discretion to
14 exclude stuff under U.S. versus Sintob* if it's proffered far
15 too late.

16 You further questioned, I just remind you, on testing
17 the authenticity of that document. Do you recall? It was
18 stamped somewhere in the center of Mexico July 9 and it was
19 being waved in your face by Mr. Medvene July 10. It was
20 disconcerting to us and to you. And that was the second reason
21 you kept it out.

22 And there was a third, Your Honor, as I recall: it
23 was simply collateral impeachment. Who cares under Rule 608
24 whether or not that land is owned by Zuno or not, it's
25 collateral. And for that third reason you kept that piece of

1 evidence out.

2 Let me reconcile what I just told you about my closing
3 argument and bodies buried at the town -- pardon me, the park
4 of La Primavera. If I may.

5 This is exactly what happened. I gave this closing
6 argument and I know it well.

7 Cervantes testified for you and the jury (pause)
8 he said the following:

9 "After the abduction of Camarena, one of the
10 co-defendants, Javier Vasquez, comes to La Quinta,"
11 which you recall is the house of Barba. "He says, 'I
12 want to talk to Barba because I have something to tell
13 him. The bomb has exploded'" -- pardon me. He says,
14 "Pavon has gone too far, he has killed the American."

15 Pardon me. Let me correct that, Your Honor. Javier
16 Vasquez says to Cervantes that,

17 "Pavon has killed the Bravo family" and that
18 "the bodies need to be moved from La Primavera Park
19 because Zuno might be implicated."

20 That's what Cervantes told you and that's what we
21 cited for you from the transcript in our brief.

22 In addition to that, Ron Raywold*, the FBI agent, he
23 said that the dirt on Camarena's right knee didn't match where
24 they found the body 70 miles away from Guadalajara but matched
25 grain for grain the grave site at La Primavera Park where they

1 found Rabbit and Walker. You recall that. That's in the
2 record.

3 And on the basis of that, I then proceeded to tell the
4 jury on closing summation, as Mr. Medvene does accurately state,
5 what's in the record.

6 "Ladies and gentlemen, you can find that
7 perhaps Zuno had some contact with that park because
8 Cervantes told you what Javier Vasquez said."

9 It's in the record and based on that, Your Honor, I
10 made the argument and all possible inferences that can be drawn
11 therefrom. There is nothing, absolutely nothing wrong or
12 misrepresented by government counsel in this closing argument
13 as to the park, Your Honor.

14 Do you have any specific questions as to the park?
15 Because that's the reason we made that argument in summation.

16 Your Honor, Mr. Medvene basically combines these two
17 motions.

18 THE COURT: Yes.

19 MR. MEDRANO: So, if I may, let me just sort of hop
20 back and forth very quickly.

21 All we basically heard, Your Honor, in Mr. Medvene's
22 one-hour presentation, is another hour of summation added on to
23 his two hours on July 10. Nothing different, nothing new, same
24 old tired arguments made to the jury. Adamantly rejected by
25 the jury. No new information to come forward with.

1 Cervantes' credibility. Mr. Medvene spent 90 percent
2 of his closing argument attacking Cervantes' credibility. The
3 jury heard it all. They heard my rebuttal. Clearly, through
4 their verdict, they rejected it.

5 Now Mr. Medvene is after a standard, it's a different
6 legal standard that applies in Rule 33. However, Ninth Circuit
7 mandate as to judging the credibility of witnesses is not
8 different, Your Honor. A great deal of deference, is my
9 understanding, should be given to the trier of fact's ruling on
10 credibility of witnesses like Cervantes.

11 They made their decision and I respectfully submit
12 that we have to abide by it. Especially, Your Honor, because,
13 as the Ninth Circuit makes clear, a Rule 33 motion is granted
14 only in those rare exceptional circumstances where the evidence
15 weighs heavily against the verdict. That is not the case here.
16 There was an abundance of evidence tying Zuno to this
17 conspiracy.

18 What Cervantes told you. I won't belabor that.
19 Harrison. Association evidence placing Zuno with Gydo*, Zuno
20 with Conseto*, placing himself in '84 at the Lopa De Vegas
21 house when that home is still owned by Zuno.

22 This is not a one-witness case. No matter how much
23 Mr. Medvene tries to convince you of that fact -- because he
24 certainly tried to convince the jury. It didn't fly then, Your
25 Honor, and I would respectfully submit that it simply does not

1 fly right now.

2 Inconsistencies. You heard a brief regurgitation yet
3 again of how Cervantes was inconsistent. Well, we explained
4 that to the jury, Your Honor. The man was fresh from Mexico.
5 He distrusted the legal system. He thought he was going to be
6 arrested simply for having information. He was nervous,
7 tentative, distrustful. So, of course, at the very first
8 meeting he didn't come clean with everything he had.

9 Recall what the agents told you? To allay his concern
10 and his tension, he didn't take notes. And it was only weeks
11 later that the agents drafted the DEA-6's that contain the
12 purported inconsistencies. And yet these very same agents told
13 you and the jury that they wrote those reports from memory,
14 without notes, and Cervantes never reviewed or adopted the 6's.
15 So purported inconsistencies, Your Honor, are of no value.

16 Consistently Mr. Medvene harps about inconsistencies
17 in government's opening statement and the proof at trial. Am I
18 missing something here? So what?

19 There's changes in tactics. We had only 45 minutes to
20 give our opening statement. We're not going to spend five
21 hours, like I did, boring the jury, Your Honor, with all the
22 summation of the evidence. That is an inconsequential argument.

23 In terms of misrepresentation, Your Honor, Mr. Medvene
24 focused it on, you'll recall Victor Placentia Aguilar who says
25 that the first meeting he was aware of was December of 1984 at

1 La Bajadita. Well, magically that's transformed into arguing
2 by Mr. Medvene that the first meeting occurred in December of
3 '84. Well, that's preposterous.

4 The two CI's did not know each other, they did not
5 interrelate. All it means is that they had more than one
6 meeting to discuss the kidnapping of this federal agent.

7 Your Honor, if anyone in this court is to be chastised
8 for the types of witnesses that it brought forward for the
9 trier of fact, let it be David Macias. Let it be Teresa. And
10 Esperanza. And Sanchez. Who were biased, who lied. David
11 Macias with two felony convictions, et cetera, et cetera. All
12 put on by Zuno, Your Honor. So clearly lying and biased that
13 the jury simply rejected that evidence.

14 Finally, Your Honor, on this issue of the Grand Jury
15 transcript. It is covered quite adequately in our papers. I
16 might add -- this is a digression, Your Honor. All these
17 things were raised at least three or four times in pretrial
18 motions.

19 Again nothing new for you to consider. All you have
20 in Mr. Medvene's effort to procure this Grand Jury transcript
21 are idle speculation and generalizations. That does not meet
22 the particularized standards as required under Rule 6. It is
23 mere speculation, it is not enough to delve into the Grand Jury
24 transcripts.

25 Your Honor, let me close with this final thought.

1 This was a difficult case. The government came forward with
2 Cervantes and with Harrison. Mr. Medvene/Mr. Stolar had four
3 almost five days of cross-examination. Which drove all of us
4 in this courtroom crazy until you finally cut it off. They
5 gave it their best.

6 They lost, Your Honor. The jury didn't accept their
7 explanations. The jury went and found that Cervantes and
8 Harrison and others were credible. Now for you to find right
9 now in the manner that Mr. Medvene would like you to, it would
10 pose great difficulty. Because arguably you would also have to
11 find for Matta - because Cervantes was the key witness against
12 Matta - and also against Bernabe to some degree.

13 I would submit respectfully that that's not a possible
14 or fair result. And I would ask you to uphold this verdict
15 because it was fair and based on the evidence and uphold the
16 verdict at trial.

17 THE COURT: All right. No further argument will be
18 required.

19 MR. MEDVENE: Your Honor, I know it's not required
20 but --

21 THE COURT: That's enough.

22 MR. MEDVENE: -- 30 seconds.

23 THE COURT: All right. 30 seconds.

24 MR. MEDVENE: Nothing to do with Matta. Nothing to do
25 with Bernabe. The parting of all, the pleading. The Lopa de

1 Vegas house. Only Zuno. Separately. Nothing to do with the
2 others. Separate verdicts.

3 So it's not confused, Your Honor, it's clear Mr.
4 Medrano, he can dance all he wants but he says "Don't let in
5 that Zuno doesn't own Primavera Park." He says, "I reviewed my
6 notes and they're talking about the City of Primavera not
7 Primavera Park." Then he argues that contrary to the jury.

8 I mean, he can't have it both ways. That's why you kept it
9 out.

10 THE COURT: All right. Your time is up.

11 MR. MEDVENE: Yes, sir.

12 THE COURT: On these remaining motions, the court will
13 issue an order after I've considered some of the argument and
14 looked at the record that has been cited.

15 We should pick a date also for Mr. Zuno at which we
16 are to either decide these motions or to proceed with
17 sentencing if necessary.

18 MR. MEDVENE: Could you, Your Honor, there are dates
19 we've cited -- this isn't argument, Your Honor, I am just going
20 to ask you something. We cited part of the reporter's
21 transcript where we questioned Zuno or questioned Cervantes on
22 this point. May 24th. I think it would be important to have
23 the 23rd, 25th and 26th because what we're telling you is
24 gospel in terms of what the arguments were and why you kept it
25 out. We don't have those transcripts.

1 THE COURT: You do not have?

2 MR. MEDVENE: Wait. Wait. We might.

3 MR. MEDRANO: Your Honor, that's erroneous.

4 MR. MEDVENE: Wait. We have Cervantes. We don't have
5 the oral argument between Mr. Di Nicola and Mr. Medrano. We
6 have Cervantes' testimony but we think in the oral argument it
7 deals with these various points and what Mr. Medrano was
8 arguing or not arguing.

9 MR. MEDRANO: Respectfully, Your Honor, this is a
10 dilatory tactic. You have the entire Cervantes transcript.
11 Whatever is in there, good or bad for the government or for the
12 defense, it is in there. Oral argument is immaterial.

13 I would submit that with that transcript, if there's
14 other briefing to be done for the court -- We will give you the
15 cites, by the way, and I will give it to Mr. Medrano.

16 THE COURT: I asked you to do that at the very
17 beginning.

18 MR. MEDVENE: What we're talking about is what Mr.
19 Medrano said to you to cause to you keep out that exhibit.
20 That's what is important. And that's what we want to try to
21 give you.

22 THE COURT: Well, there's no transcript of that? Why
23 not? I mean, the reporter took it down, didn't she? Didn't
24 you order that?

25 MR. MEDVENE: Let us do this, Your Honor, so we're

1 accurate. Let us look. And if we don't have it, we'll get
2 something to your clerk and the government right away just as
3 fast as we can.

4 THE COURT: I would like to have all transcripts of
5 any part of this incident that has been referred to in your
6 argument.

7 MR. MEDVENE: Yes. Yes, Your Honor.

8 THE COURT: Including Cervantes' testimony that you
9 feel is pertinent.

10 MR. MEDVENE: Yes, sir.

11 THE COURT: Including what was said to the court and
12 the court's decision in that regard.

13 MR. MEDVENE: Yes, sir. Could we have -- Assuming we
14 have the transcript, may we have a week?

15 THE COURT: Oh, sure. Yes, you can.

16 MR. MEDVENE: Is that all right? Okay. Thank you
17 very much, Your Honor.

18 THE COURT: One week.

19 MR. MEDVENE: Thank you, Your Honor.

20 THE COURT: And then you can respond.

21 MR. MEDRANO: Do we have a sentencing date, then, Your
22 Honor?

23 THE COURT: Well, we'll pick a date just to have a
24 date which will be to dispose of all these motions and to
25 proceed with sentencing, if necessary, at that time. What is

1 the date?

2 You have a date you wish in mind? Something around
3 the dates of the others?

4 MR. MEDVENE: Yes, sir.

5 THE CLERK: May 7, 1991, at 4:30 p.m.

6 THE COURT: May 7 at 4:30.

7 mr.medrano: And the same filing schedule for
8 sentencing memos, Your Honor?

9 THE COURT: Yes. Any sentencing memorandum should be
10 filed two weeks before that date and response one week later.

11 MR. MEDVENE: Your Honor, is it too aggressive to ask
12 for two weeks?

13 THE COURT: Pardon?

14 MR. MEDVENE: Is it too much to ask for two weeks?

15 THE COURT: Two weeks for --

16 MR. MEDVENE: To get back on their papers?

17 THE COURT: No. Two weeks is fine.

18 MR. MEDVENE: Thank you very much.

19 -oOo-

20 I certify that the foregoing is a correct transcript of the
21 proceedings held in the above-entitled matter.

22 NOTE: Asterisk (*) indicates phonetic spelling.

23

24

25 Lucille M. Litsheim
LUCILLE M. LITSHEIM
U. S. COURT REPORTER
CSR NO. 2409

DATE: June 13, 1991