

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. CR 87-422(F)-ER
)	
RUBEN ZUNO-ARCE, ET AL.,)	
)	
DEFENDANTS.)	

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, APRIL 2, 1990

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LOS ANGELES, CALIFORNIA, MONDAY, APRIL 2, 1990, 10:00 A.M.

1 THE COURT: WHAT WE HAVE BEFORE US IN THIS
2 APPLICATION IS THE GOVERNMENT'S APPLICATION TO TRANSFER
3 POSSESSION OF MR. ZUNO'S BRIEFCASE TO THE GOVERNMENT. WE
4 HAVE THE DEFENDANT'S MOTION TO DISMISS THE INDICTMENT, OR
5 IN THE ALTERNATIVE, TO SUPPRESS THE EVIDENCE OBTAINED FROM
6 THE SEARCH AND SEIZURE OF THE BRIEFCASE. THE COURT HAS
7 READ AND CONSIDERED THE MOTION, AND THE COURT IS PREPARED
8 TO RULE.

9 WITH RESPECT TO THE MOTION TO SUPPRESS THE
10 EVIDENCE, THE COURT IS PREPARED TO RULE, ACCEPTING THE
11 GOVERNMENT'S EVIDENCE AS SUBMITTED. THE COURT IS PREPARED
12 TO RULE THAT THE MOTION TO SUPPRESS SHOULD BE GRANTED
13 BECAUSE UNDER NO THEORY ENUNCIATED BY THE GOVERNMENT WAS
14 THERE A RIGHT TO SEIZE -- NO. 1, TO SEIZE THE BRIEFCASE,
15 AND, NO. 2, TO SEARCH IT. SO THE COURT IS PREPARED TO
16 DENY THE GOVERNMENT'S APPLICATION TO TRANSFER POSSESSION
17 OF THE BRIEFCASE AND TO DENY THE DEFENDANT'S MOTION TO
18 DISMISS BECAUSE OF THE ILLEGAL SEIZURE OF THE BRIEFCASE
19 AND GRANT THE MOTION TO SUPPRESS THE EVIDENCE.

20 THE COURT DOES NOT SEE ANY NEED TO HOLD AN
21 EVIDENTIARY HEARING BECAUSE I AM ACCEPTING THE FACTS
22 SUBMITTED BY THE GOVERNMENT IN SUPPORT OF THIS SEIZURE AND
23 FIND THEM TO BE INADEQUATE, AND I WILL EXPLAIN THE COURT'S
24 REASONS FOR DOING THIS.

25 FIRST WITH RESPECT TO DISMISSAL, THE ALLEGED

1 CONSTITUTIONAL VIOLATION DOES NOT RISE TO A LEVEL WHICH
2 WARRANTS DISMISSAL OF THE INDICTMENT. FOR AN ILLEGAL
3 SEARCH OR SEIZURE THE PROPER SECTION IS THE EXCLUSIONARY
4 RULE, WHICH THE COURT IS APPLYING HERE, AND IT DOES NOT
5 REQUIRE A DISMISSAL.

6 THE GOVERNMENT IS SEEKING AN ORDER TO TRANSFER
7 JURISDICTION OF THE BRIEFCASE FROM THE COURT TO ITSELF,
8 BUT THE GOVERNMENT HAS NOT DEMONSTRATED THAT THE SEARCH
9 AND SEIZURE OF MR. ZUNO'S BRIEFCASE WAS PROPER, AND FOR
10 THAT REASON THE COURT HOLDS THAT IT IS NOT ENTITLED TO THE
11 BRIEFCASE.

12 THE GOVERNMENT CLAIMS THREE BASES FOR THE SEARCH
13 AND SEIZURE OF THE BRIEFCASE. THE FIRST IS THAT THIS IS A
14 BORDER SEARCH. SECOND, THEY CLAIM THIS IS A SEARCH
15 INCIDENT TO ARREST, AND, THIRD, AN INVENTORY SEARCH, ALL
16 OF WHICH CAN BE EXCEPTIONS TO THE REQUIREMENT OF A
17 WARRANT.

18 THE GOVERNMENT DOES NOT CLAIM, HOWEVER, THAT THE
19 DEA SEARCH WAS ITSELF A BORDER SEARCH. INSTEAD THE
20 GOVERNMENT ARGUES THAT MR. ZUNO ABANDONED HIS PRIVACY
21 INTEREST IN THE BRIEFCASE BY PERMITTING THE CUSTOMS SEARCH
22 AT THE AIRPORT, OVER WHICH HE HAD NO CHOICE. ALL PERSONS
23 COMING IN FROM FOREIGN COUNTRIES MAY BE SUBJECT TO CUSTOMS
24 SEARCHES AT THE AIRPORT. IT IS NOT A VOLUNTARY ACT.

25 THIS ARGUMENT FAILS BECAUSE IT WOULD MAKE LITTLE

1 SENSE UNDER THE FOURTH AMENDMENT THAT A PERSON WHO HAS
2 PROPERTY AND WITHOUT INCIDENT SENT LUGGAGE THROUGH CUSTOMS
3 AND HAD IT INSPECTED AND FOUND TO BE APPROPRIATE FOR
4 BRINGING INTO THE COUNTRY MUST THEN PERMIT THE GOVERNMENT
5 TO MAKE A MORE INTRUSIVE SEARCH OF THE CONTENTS OF HIS OR
6 HER PERSONAL DOCUMENTS. THE CASES WHICH THE GOVERNMENT
7 RELIES ON TO SUPPORT THIS PROPOSITION ARE INAPT IN THE
8 COURT'S VIEW.

9 NOW, THE GOVERNMENT ALSO CLAIMS THAT THE SEARCH
10 AND SEIZURE WAS PROPER AS INCIDENT TO THE ARREST OF
11 MR. ZUNO. THE GOVERNMENT APPEARS TO CONCEDE THAT THE BAG
12 WAS NOT IN THE AREA AROUND ZUNO WHEN HE WAS ARRESTED. THE
13 GOVERNMENT INSTEAD RELIES ON THAT THEORY THAT BECAUSE IT
14 HAD THE OPPORTUNITY TO ARREST ZUNO WITH THE BAG IN HIS
15 HAND, IT SOMEHOW ACQUIRED A VESTED RIGHT TO SEARCH THE BAG
16 LATER, EVEN THOUGH THE RATIONALE OF THE SEARCH INCIDENT TO
17 ARREST NO LONGER APPLIES.

18 THAT IS, AT THE TIME THIS BAG WAS SEIZED, IT WAS
19 APPARENTLY NOT IN THE IMMEDIATE VICINITY OF MR. ZUNO, BUT
20 WAS QUITE REMOTE FROM WHERE HE WAS. THE CASES CITED FOR
21 THIS PROPOSITION ARE DISTINGUISHABLE. ZUNO'S BRIEFCASE
22 COULD NOT HAVE BEEN SEARCHED AT THE TIME OF HIS ARREST,
23 AND SEARCH INCIDENT TO THE ARREST DOES NOT APPLY.

24 FINALLY, THE GOVERNMENT CLAIMS THAT THE SEARCH
25 AT THE DEA OFFICE WAS A PROPER INVENTORY SEARCH. THIS

1 THEORY MUST FAIL ON TWO GROUNDS: FIRST, BECAUSE THE
2 SEIZURE ITSELF WAS UNLAWFUL. YOU CANNOT HAVE THE RIGHT TO
3 SEARCH SOMETHING THAT YOU HAVE SEIZED UNLAWFULLY, AND IT
4 IS UNLAWFUL FOR THE REASONS THAT I HAVE ALREADY STATED.
5 BECAUSE OF THAT, THE LATER SEARCH CANNOT BE JUSTIFIED AS
6 AN INVENTORY SEARCH, AND, SECONDLY, THERE APPEARS TO HAVE
7 BEEN NO INVENTORY SEARCH ACCORDING TO A SET PROCEDURE,
8 WHICH IS ONE OF THE PREREQUISITES. THE DEA AGENT SIMPLY
9 LOOKED THROUGH THE CONTENTS OF THE BRIEFCASE.

10 SO BECAUSE THIS WAS A WARRANTLESS SEIZURE AND
11 SEARCH, IT VIOLATED THE DEFENDANT'S FOURTH AMENDMENT
12 RIGHTS, AND ANY EVIDENCE THAT RESULTED FROM THE SEIZURE OR
13 THE SEARCH SHOULD BE SUPPRESSED.

14 DO YOU WISH TO BE HEARD, COUNSEL?

15 MR. CARLTON: JUST ONE POINT OF CLARIFICATION,
16 YOUR HONOR. I AM NOT CERTAIN I UNDERSTOOD WHETHER YOUR
17 HONOR CONCLUDED THAT THE BRIEFCASE COULD NOT HAVE BEEN
18 SEARCHED EVEN IF MR. ZUNO HAD BEEN ARRESTED WITH IT IN HIS
19 HAND.

20 THE COURT: IF HE HAD BEEN ARRESTED WITH IT IN
21 HIS HAND, IT COULD HAVE BEEN.

22 MR. CARLTON: WELL, I WILL SUBMIT, YOUR HONOR.

23 THE COURT: ALL RIGHT. THAT IS THE ORDER OF THE
24 COURT.

25 MR. BLANCARTE: IF I MAY, YOUR HONOR, I WOULD

1 ONLY ASK THAT THE COURT'S ORDER INCLUDE THAT THE BRIEFCASE
2 BE RELEASED FROM THE GOVERNMENT'S POSSESSION IMMEDIATELY
3 SO THAT WE CAN HAVE THE OPPORTUNITY TO HAVE MR. ZUNO
4 INSPECT THE CONTENTS, AND WE RESERVE THE OPPORTUNITY TO
5 HAVE A HEARING AS TO WHETHER OR NOT THOSE CONTENTS ARE
6 INTACT OR WHETHER THERE MIGHT BE ANY ITEMS MISSING FROM
7 THE BRIEFCASE.

8 THE COURT: WELL, YOU DID NOT REQUEST A RETURN
9 OF THE PROPERTY, BUT IT WOULD BE APPROPRIATE UNDER THE
10 CIRCUMSTANCES.

11 DO YOU HAVE ANY OBJECTIONS TO THAT?

12 MR. CARLTON: YOUR HONOR, I THINK THE GOVERNMENT
13 MAY ASK FOR SOME DELAY IN THAT. WE INTEND AT THIS POINT
14 TO SEEK A SEARCH WARRANT TO OPEN THE BRIEFCASE, AND IF
15 YOUR HONOR BELIEVES THAT MAY BE APPROPRIATE, I WOULD ASK
16 FOR A ONE-DAY DELAY IN THE RETURN OF THE BRIEFCASE SO THAT
17 WE CAN PREPARE THAT WARRANT AND SUBMIT IT FOR THE COURT'S
18 CONSIDERATION.

19 MR. BLANCARTE: IF I MAY, YOUR HONOR, THE COURT
20 HAS GONE INTO GREAT DETAIL IN AN ANALYSIS OF CASE LAW
21 CONTROLLING THIS PARTICULAR MOTION.

22 THE COURT: JUST A MOMENT. ARE YOU SUGGESTING
23 THAT AN ILLEGAL SEARCH OR AN ILLEGAL SEIZURE MAY BE
24 JUSTIFIED BY AN AFTER-ACQUIRED WARRANT?

25 MR. CARLTON: NOT AN ILLEGAL SEARCH, YOUR HONOR,

1 BECAUSE THE WARRANT WOULD NOT CONTAIN -- OR THE
2 APPLICATION FOR THE WARRANT WOULD CONTAIN ABSOLUTELY NO
3 INFORMATION --

4 THE COURT: BUT IT WOULD CONTAIN INFORMATION
5 DERIVED FROM THE EVIDENCE THAT WAS IN THE --

6 MR. CARLTON: ABSOLUTELY NOT, YOUR HONOR. THE
7 AGENTS WHO DID LOOK THROUGH THE BRIEFCASE CURSORILY ONLY
8 WERE ABLE TO IDENTIFY, AS OUR PAPERS DISCUSSED, THE NATURE
9 OF SEVERAL DOCUMENTS; THAT THE CONTENTS OR ANYTHING ELSE
10 WAS NOT KNOWN, AND THAT WOULD BE INCLUDED IN THE
11 APPLICATION.

12 THE COURT: COUNSEL, I SUGGEST YOU FILE A MOTION
13 FOR THE RETURN OF THE PROPERTY.

14 AND YOU CAN DO WHATEVER YOU WANT TO DO. IF YOU
15 WANT TO APPLY FOR A SEARCH WARRANT, YOU MAY DO SO, BUT YOU
16 WILL HAVE TO OVERCOME THE PROBLEMS THAT I HAVE STATED IN
17 RESPECT TO THIS MOTION.

18 MR. BLANCARTE: IF I MAY BRIEFLY, YOUR HONOR.
19 THIS IS A CASE THAT HAS INVOLVED MANY COURT APPEARANCES,
20 AND THE ECONOMIES OF JUSTICE SEEM TO CALL FOR THE COURT TO
21 CARRY ITS DECISION --

22 THE COURT: JUST A MOMENT. COUNSEL, THE
23 ECONOMIES OF JUSTICE HAVE NOT DISCOURAGED YOU FROM FILING
24 SOME MOTIONS WHICH BORDER ON BEING FRIVOLOUS. IF YOU ARE
25 SAYING THAT I AM PUTTING YOU TO SOME UNNECESSARY WORK AND

1 THAT IT VIOLATES THE ECONOMIES OF JUSTICE, THE COURT DOES
2 NOT BUY THAT.

3 MR. BLANCARTE: NO, YOUR HONOR. WHAT I AM
4 SAYING, MOST RESPECTFULLY, IS THAT THIS BRIEFCASE, IF IT
5 HAS BEEN TAINTED BY ANY KIND OF IMPROPER OR ILLEGAL SEARCH
6 AND SEIZURE, AS THIS COURT HAS POINTED OUT IN GREAT DETAIL
7 COULD NOT BE CURED BY ANY SUBSEQUENT PROCEEDING, BE IT A
8 SEARCH WARRANT APPLICATION OR ANY OTHER PROCEEDING. I AM
9 SIMPLY STATING THAT I BELIEVE THAT THE COURT SHOULD CARRY
10 OUT ITS ORDER ON THIS MATTER WITHOUT THE SEARCH WARRANT.

11 MR. CARLTON: YOUR HONOR, MAY I POINT OUT THAT
12 THE ONLY EVIDENCE OF ANY TAMPERING OF THE BRIEFCASE WAS
13 DONE BY DEFENDANT'S ATTORNEY HIMSELF. THEY HAVE ALREADY
14 HAD ACCESS TO THE CONTENTS OF THE BRIEFCASE AND MADE
15 COPIES OF EVERYTHING IN IT. SO THERE ISN'T ANY IMMEDIATE
16 NEED FOR ACCESS TO --

17 THE COURT: WELL, I UNDERSTAND THAT WAS
18 PERMITTED TO BE DONE.

19 MR. BLANCARTE: BY COURT ORDER, YOUR HONOR.

20 THE COURT: THERE IS NO REASON TO RUSH IT. IF
21 THE GOVERNMENT HAS AN OPPORTUNITY AND WANTS TO BE HEARD ON
22 SOMETHING, THAT IS FINE. YOU MAY RESERVE YOUR RIGHTS TO
23 COMPLAIN ABOUT A TAIN T OR ILLEGALITY OR ANYTHING ELSE.

24 MR. BLANCARTE: THANK YOU, YOUR HONOR. WE WILL
25 ACCEPT THAT. WE ONLY WANT THE RECORD TO REFLECT THAT THE

1 INSPECTION OF THE BRIEFCASE BY DEFENSE COUNSEL WAS
2 PURSUANT TO COURT ORDER AND --

3 THE COURT: I AM AWARE OF THAT.

4 ALL RIGHT. WE HAVE A MOTION BY THE DEFENDANT
5 MATA TO SEVERE, WHICH INCLUDES AN ARGUMENT REGARDING
6 MULTIPLICITOUS OR DUPLICITOUS COUNTS.

7 MR. BLANCARTE: YOUR HONOR, WE ALSO HAVE A
8 SEVERANCE MOTION.

9 THE COURT: YOU HAVE A SEVERANCE MOTION. THEY
10 WILL BOTH BE DEALT WITH AT THIS TIME. YOU ARE ASKING TO
11 HAVE MR. MATA SEVERED FROM THE TRIAL OF MR. ZUNO AND THE
12 REMAINING CO-DEFENDANTS.

13 MR. BLANCARTE: THAT IS CORRECT.

14 THE COURT: SO IN EFFECT YOU ARE BOTH SEEKING
15 THE SAME THING. MR. MATA IS SEEKING THAT AND YOU ARE
16 SEEKING IT. IS THAT RIGHT?

17 MR. BLANCARTE: THAT IS CORRECT, YOUR HONOR.

18 THE COURT: SO YOU CAN BOTH BE HEARD AFTER I
19 EXPLAIN TO YOU WHAT I HAVE DONE.

20 YES, COUNSEL?

21 MR. STOLAR: I AM JUST ASKING IF WHAT YOU INTEND
22 TO DO NOW IS DEAL ONLY WITH THE MULTIPLICITOUS AND
23 DUPLICITOUS PART OF IT, BECAUSE WHEN IT COMES TO SEVERANCE
24 ON SOME OTHER GROUNDS, I THINK THERE IS SOMETHING I AM
25 OBLIGATED TO BRING THE COURT'S ATTENTION WITH RESPECT TO

1 THIS COURTS RULING ON MOTIONS. THAT IS THAT I THINK THE
2 COURT SHOULD CONSIDER WHETHER OR NOT IT SHOULD DISQUALIFY
3 ITSELF ON MR. MATA'S SEVERANCE MOTION, AND THAT IS BASED
4 ON PRIOR STATEMENTS THAT THE COURT HAS MADE ESSENTIALLY
5 DECIDING THE MOTION BEFORE IT WAS EVER FILED.

6 THE COURT: I KNOW ALL ABOUT THAT, COUNSEL.
7 THAT IS WHAT I TOLD YOU, AND I PREDICTED THAT YOU WERE
8 GOING TO REQUEST A SEVERANCE OF YOUR CLIENT FROM THIS CASE
9 SO THAT HIS OTHER CASE, WHICH IS BEFORE JUDGE RAE, COULD
10 PRECEDE THIS ONE.

11 MR. STOLAR: THAT'S RIGHT, AND YOU INDICATED
12 THAT YOU WERE NOT GOING TO TRY THE CASE THREE TIMES.

13 THE COURT: I SAID THAT I WAS NOT GOING TO
14 SEVERE IT FOR THAT PURPOSE AND TRY IT THREE TIMES. I DID
15 SAY THAT. THAT IS CORRECT.

16 MR. STOLAR: THAT IS A QUOTE: "I HAVE ALREADY
17 TRIED THIS CASE ONCE. I DON'T WANT TO TRY IT THREE
18 TIMES."

19 THE COURT: THAT IS CORRECT. THAT IS AN
20 ACCURATE STATEMENT OF WHAT I SAID. THAT MEANT THAT I
21 WOULD NOT, SO THAT YOU COULD PROCEED WITH THE OTHER TRIAL,
22 TRY THIS CASE A THIRD TIME. I DID NOT CONSIDER THAT TO BE
23 A VERY GOOD REASON. THAT IS ALL.

24 WITH RESPECT TO OTHER GROUNDS FOR SEVERANCE
25 WHICH YOU HAVE RAISED, THE COURT IS PREPARED TO DEAL WITH

1 THOSE. APPARENTLY THE NINTH CIRCUIT DID NOT CONSIDER IT A
2 VERY GOOD REASON, EITHER, SINCE YOU TOOK AN APPEAL UP
3 THERE AND IT WAS DENIED.

4 MR. STOLAR: YES, IT WAS.

5 THE COURT: I AM PREPARED TO DISCUSS WITH YOU
6 NOW -- FIRST, IF YOU ARE ASKING ME TO DISQUALIFY MYSELF
7 BECAUSE OF THAT STATEMENT, THE ANSWER IS, OF COURSE, NO.

8 NOW, THIS MOTION BY MR. MATA IS BROUGHT ON TWO
9 GROUNDS. IT IS SIMILAR TO THE MOTION THAT I HAVE ALREADY
10 DISCUSSED. FEDERAL RULE OF CRIMINAL PROCEDURE 8(B) IS ONE
11 GROUND, AND ALTERNATIVELY, I BELIEVE, UNDER RULE 14 ALSO.

12 THIS MOTION BY MR. MATA HAS BEEN BROUGHT TO
13 SEVERE THE TRIAL OF COUNTS 1, 2, 5, AND 9 FROM COUNTS 4,
14 6, 7 AND 8 WITH WHICH HE IS CHARGED, ASSERTING THAT THESE
15 COUNTS ARE IMPROPERLY JOINED UNDER RULE 8(B), AND
16 ALTERNATIVELY THAT SEVERANCE OF THESE COUNTS UNDER RULE 14
17 IS NECESSARY TO AVOID UNDUE OR MANIFEST PREJUDICE TO
18 DEFENDANT.

19 I HAVE ALREADY DISCUSSED THE RULE IN THIS
20 CIRCUIT WITH RESPECT TO 8(B) JOINDER. I HAVE DISCUSSED AN
21 INDICTMENT CHARGING OFFENSES ARISING OUT OF THE SAME
22 TRANSACTIONS, THE RULE FAVORING BROAD CONSTRUCTION IN
23 FAVOR OF INITIAL JOINDER, THE FLEXIBLE MEANING GIVEN IN
24 THE NINTH CIRCUIT TO WHAT A SERIES OF TRANSACTIONS ARE,
25 THE DEGREE OF RELATIONSHIP, AND THE AREA OF OVERLAPPING

1 PROOF. ALL OF THESE APPEAR TO BE APPROPRIATE IN THIS
2 CASE, COUNSEL.

3 MR. STOLAR: MAY I?

4 THE COURT: YES.

5 MR. STOLAR: IN DISCUSSING THIS SEVERANCE MOTION
6 BEFORE, YOU INDICATED THAT THE -- ESSENTIALLY IT IS THE
7 MARIJUANA TRANSACTIONS THAT ARE THE GUADALAJARA CARTEL'S
8 UNDERLYING RACKETEERING ACTIVITY, WHICH ARE THE OVERLAP.

9 MR. MATA HAS ALWAYS BEEN CHARGED BY THE
10 GOVERNMENT, NOT WITH BEING INVOLVED IN MARIJUANA AT ALL,
11 ONLY WITH BEING INVOLVED WITH COCAINE. THERE WERE FOUR
12 PENDING INDICTMENTS WHEN HE WAS FIRST BROUGHT BACK TO THIS
13 COUNTRY DEALING WITH COCAINE, AND COCAINE EXCLUSIVELY.

14 SO THERE ARE NO ALLEGATIONS IN THE INDICTMENT AS
15 PART OF THE GUADALAJARA CARTEL THAT MR. MATA IS INVOLVED
16 IN MARIJUANA DEALS. IN FACT, SOME OF THE DISCOVERY THAT
17 HAS BEEN TURNED OVER TO US DEALS WITH SOME OF THE EVIDENCE
18 THAT WAS SIMILARLY TURNED OVER TO US WITH RESPECT TO THE
19 CASE WE HAD BEFORE JUDGE RAE, NO. 88-129, WHICH WAS SOLELY
20 A COCAINE CONSPIRACY.

21 SO WE ARE DEALING WITH TWO SEPARATE ELEMENTS.
22 YOU HAD, AS FAR AS I KNOW, NO COCAINE EVIDENCE IN THE
23 FIRST TRIAL. I DON'T HAVE THE TRANSCRIPT YET. I HAVE
24 ORDERED IT. IT WAS ALL MARIJUANA. THAT IS THE
25 GUADALAJARA, CARO-QUINTERO ENTERPRISE.

1 MR. MATA THEN IS NO PART OF THAT. THE
2 GOVERNMENT HAS NEVER CHARGED HIM WITH BEING PART OF THAT,
3 AND I DOUBT VERY MUCH THAT THEY ARE GOING TO SAY THAT HE
4 WAS INVOLVED IN ANY KIND OF MARIJUANA DEALS. SO THAT DOES
5 NOT OVERLAP WITH RESPECT TO HIM.

6 THE COURT: WELL, WHAT ABOUT THAT, COUNSEL?

7 MR. CARLTON: YOUR HONOR, IT IS ALL GOOD AND
8 WELL FOR MR. STOLAR TO ALLEGE THAT MARIJUANA TRAFFICKING
9 AND COCAINE TRAFFICKING ARE TWO SEPARATE ELEMENTS, BUT THE
10 ALLEGATIONS IN THE INDICTMENT AND THE PROOF AT TRIAL THAT
11 THE GOVERNMENT INTENDS TO SUBMIT WILL ESTABLISH THAT THE
12 CARTEL, OF WHICH MR. MATA WAS A MEMBER, WAS ENGAGED IN
13 BOTH KINDS OF ACTIVITY; THAT THERE WAS COCAINE TRAFFICKING
14 AND MARIJUANA TRAFFICKING ENGAGED IN BY THE CARTEL IN
15 GUADALAJARA.

16 THAT ALLEGATION IS IN THE COMPLAINT, YOUR HONOR,
17 AND WE SUBMIT THAT THE EVIDENCE CONCERNING THE NATURE OF
18 THE CARTEL, WHICH WOULD ENCOMPASS WHETHER THERE ARE
19 SEPARATE TRIALS OR A JOINT TRIAL, WOULD ENCOMPASS COCAINE
20 AND MARIJUANA IN BOTH TRIALS. THERE WOULD BE A
21 SUBSTANTIAL AMOUNT OF EVIDENCE IN EACH CASE.

22 MR. STOLAR: THE UNDERLYING RACKETEERING ACTS IN
23 THE 1959 COUNTS, AS WELL AS THE OVERALL DESCRIPTIONS OF
24 WHAT THIS ENTERPRISE IS, ALL DEAL WITH MARIJUANA. THERE
25 IS NOT ONE WORD ABOUT ANY KIND OF SPECIFIC COCAINE

1 TRANSACTION, EXCEPT THERE ARE GENERAL ALLEGATIONS THAT
2 COCAINE WAS INVOLVED.

3 THE COURT: BUT THEY ALLEGE THAT YOUR CLIENT WAS
4 A MEMBER OF THIS CARTEL, DO THEY NOT, IN THE INDICTMENT?

5 MR. STOLAR: THAT IS WHAT THE INDICTMENT
6 ALLEGES.

7 THE COURT: THEY ALLEGE THAT HE PARTICIPATED IN
8 THE MURDER AND KIDNAPPING OF AGENT CAMARENA.

9 MR. STOLAR: THE INDICTMENT ALLEGES ONE SPECIFIC
10 THING, THAT HE PARTICIPATED IN A MEETING SOMETIME IN
11 OCTOBER OF 1984. ALL OF THE OTHER COUNTS COME UNDER
12 AIDING AND ABETTING OR THE PINKERTON THEORY, BUT THERE IS
13 NO SPECIFIC ALLEGATION THAT HE WAS PERSONALLY INVOLVED AS
14 FAR AS I CAN TELL --

15 THE COURT: NO, THERE WASN'T. THEY ACTUALLY DO
16 CHARGE DIRECT INVOLVEMENT AS WELL AS AIDING, ABETTING,
17 COUNSELING, AND PROCURING. IT IS ALL CHARGED.

18 MR. STOLAR: IT IS CHARGED IN THE INDICTMENT.

19 WITH RESPECT TO THE 1959 COUNTS, HE IS A COCAINE
20 DEALER ACCORDING TO THE GOVERNMENT. HE IS NOT INVOLVED IN
21 MARIJUANA. THE ENTERPRISE THEN WAS IN TWO SEPARATE KINDS
22 OF CONSPIRACIES.

23 THE COURT: ALL RIGHT. DO YOU WANT TO ADDRESS
24 THE RULE 14 ISSUE OF PREJUDICE IN THIS MATTER, WHICH IS
25 THE SECOND BASIS FOR YOUR MOTION?

1 MR. STOLAR: WELL, WE ARE GOING TO WIND UP, IT
2 SEEMS TO ME, WITH MR. MATA, WHO IS ONLY CHARGED APPARENTLY
3 IN CONNECTION WITH THE CAMARENA HOMICIDE AND KIDNAPPING
4 WITH PROOF COMING IN ABOUT THREE OTHER DEAD BODIES, TWO OF
5 WHICH, WHICH ARE TWO OF THE COUNTS IN THE INDICTMENT, TOOK
6 PLACE MUCH BEFORE. THAT KIND OF PROOF IS EXTREMELY
7 PREJUDICIAL TO A DEFENDANT WHEN THERE ARE FOUR HOMICIDES,
8 AND HE IS ONLY INVOLVED, ALLEGEDLY, IN ONE OF THEM. IT IS
9 VERY PREJUDICIAL BECAUSE THE JURY TENDS TO HAVE A
10 SPILLOVER EFFECT.

11 IN ADDITION, ALL OF THIS PROOF ABOUT MARIJUANA,
12 WITH WHICH MR. MATA HAS NO INVOLVEMENT, NOR HAS EVER BEEN
13 ALLEGED TO HAVE BEEN INVOLVED IN, IS GOING TO ALSO
14 PREJUDICE HIM.

15 SO TO SEVERE HIM FROM THE MARIJUANA CARTEL
16 BUSINESS AND ALL THE OTHER HOMICIDES WHICH ARE APPARENTLY
17 TIED TOGETHER ONE WAY OR ANOTHER THROUGH THAT MARIJUANA
18 TRAFFICKING CARTEL IS WHAT WE THINK IS APPROPRIATE TO
19 PRESERVE HIS RIGHT TO A FAIR TRIAL.

20 THE COURT: WHAT ABOUT THAT, COUNSEL? DO YOU
21 WISH TO RESPOND?

22 MR. CARLTON: WELL, YOUR HONOR, I THINK THAT THE
23 POINT TO BE MADE HERE IS ESSENTIALLY THE SAME ONE MADE
24 PREVIOUSLY. MR. STOLAR KEEPS ALLUDING TO A MARIJUANA
25 TRAFFICKING CONSPIRACY AND TO A COCAINE TRAFFICKING

1 CONSPIRACY, AND THE GOVERNMENT'S THEORY IS NOT THAT THEY
2 WERE SEPARATE CONSPIRACIES IN RELATION TO THIS CASE, BUT
3 THERE WAS AN ENTERPRISE ENGAGED IN BOTH, AND I DON'T
4 BELIEVE THAT IT --

5 THE COURT: WELL, HE IS TALKING ABOUT THE
6 PREJUDICIAL EFFECT OF HAVING THREE MURDERS BE THE SUBJECT
7 OF TESTIMONY WHERE HE IS NOT CHARGED AND WHERE HE IS ONLY
8 CHARGED WITH ONE.

9 MR. CARLTON: THAT'S CORRECT, BUT THE --

10 THE COURT: AND HE IS CLAIMING THAT IS
11 PREJUDICIAL UNDER RULE 14.

12 MR. CARLTON: THE ALLEGATIONS IN THE INDICTMENT,
13 YOUR HONOR, ARE THAT ALL OF THESE MURDERS WERE PART OF A
14 SERIES OF RETALIATORY ACTIONS BY THE CARTEL, OF WHICH HE
15 WAS A MEMBER, AGAINST THE DEA, AND THAT IT IS THE SERIES
16 OF MURDERS, AMONG OTHER THINGS, THAT CONSTITUTES EVIDENCE
17 OF THE MOTIVE FOR THE ONE MURDER, OF WHICH HE WAS
18 SPECIFICALLY CHARGED. EVIDENCE OF ALL OF THESE MURDERS
19 SHOULD BE ADMISSIBLE EVIDENCE WHETHER THESE TRIALS ARE
20 JOINT OR SEPARATE AS EVIDENCE OF THE UNDERLYING MOTIVE FOR
21 THE ONE MURDER OF WHICH MR. MATA IS CHARGED.

22 MR. STOLAR: THAT IS EXTRAORDINARY REASONING, IT
23 SEEMS TO ME, THAT THEY CAN PROVE THREE OTHER MURDERS IN
24 ORDER TO PROVE THAT THERE WAS A MOTIVE FOR THE FOURTH
25 MURDER, EVEN THOUGH THE DEFENDANT AGAINST WHOM THEY WANT

1 TO PROVE IT ISN'T CHARGED WITH IT. ALL THAT DOES IS
2 TOTALLY INFLAME THE JURY AGAINST THE PERSON WHO IS CHARGED
3 WITH THE ONE HOMICIDE BY CLAIMING THAT THESE OTHER PEOPLE
4 WHO WERE INVOLVED IN SOMETHING WITH THE THREE OTHER ONES,
5 THEREFORE THEY CAN CONVICT HIM OF THIS ONE.

6 THAT IS NOT THE MOTIVE. THE MOTIVE UNDER 1959
7 IS TO FURTHER THE ACTIVITIES OF THE ENTERPRISE. HE IS
8 ONLY CHARGED WITH CAMARENA, AND NO ONE ELSE.

9 THE COURT: ALL RIGHT.

10 COUNSEL FOR MR. ZUNO, SINCE YOU ARE ON THE SAME
11 SIDE OF THIS BECAUSE YOU ASKED THAT MR. MATA BE SEVERED
12 FROM MR. ZUNO, DO YOU WISH TO ADD ANYTHING TO WHAT COUNSEL
13 HAS SAID?

14 MR. BLANCARTE: YES, YOUR HONOR. FIRST, YOUR
15 HONOR, TAKING A POINT OF DEPARTURE FROM COUNSEL FOR
16 MR. BALLESTEROS, I JUST WANT TO SAY AND REITERATE THAT
17 AGAIN TO THE EXTENT IT'S BEEN ABBREVIATED, YOU HAVE
18 DEFENDANT MATA WHO, IN THE WORDS OF HIS OWN COUNSEL, NEVER
19 ASSOCIATED WITH MARIJUANA. YOU HAVE MR. MATA ASSOCIATED
20 WITH COCAINE.

21 YOU HAVE MR. ZUNO, THE DEFENDANT CURRENTLY AT
22 BAR, WHO WAS NEVER ASSOCIATED WITH COCAINE.

23 THE INDICTMENT ALLEGES LOOSELY THAT HE WAS A
24 MEMBER OF A CARTEL INVOLVED WITH MARIJUANA. THE TWO DO
25 NOT OVERLAP.

1 SECOND, ON THE RULE 14 POINT, VERY IMPORTANTLY,
2 AGAIN WE HAVE THREE MURDERS, TWO OF TOURISTS. CLEARLY
3 ZUNO IS NOT ASSOCIATED, INVOLVED, OR RELATED TO THOSE EVEN
4 THROUGH THE GOVERNMENT. AS TO THE MURDER OF THE DEA
5 AGENT, MR. ZUNO IS NOT CHARGED.

6 THERE IS EXTREME PREJUDICE ON THE FACE OF THOSE
7 FACTS ALONE TO CALL FOR A RULE 14 SEVERANCE, BUT LET US GO
8 FURTHER BECAUSE THE GOVERNMENT HAS CORRECTLY BROUGHT THE
9 COURT'S ATTENTION TO THE STANDARDS THAT THE NINTH CIRCUIT
10 HAS SO CAREFULLY PLOTTED OUT FOR A SEVERANCE MOTION AND
11 THE ANALYSIS THAT GOES WITH IT. THEY CITE TO THE COURT
12 THE DISLA CASE. THAT IS UNITED STATES VS. DISLA. THAT
13 SAYS THAT YOU HAVE TO SHOW MANIFEST PREJUDICE IN ORDER FOR
14 A SEVERANCE TO BE APPROPRIATE AND IN ORDER TO OVERCOME
15 RULE 8(B). THAT ASSUMES A SERIES OF TRANSACTIONS NO
16 MATTER HOW LOOSELY RELATED ARE SUFFICIENT FOR A PROPER
17 JOINDER.

18 WE TAKE ISSUE WITH THAT, AND WE WOULD NOT TAKE
19 THE COURT'S TIME AT THIS POINT TO GO INTO GREAT DETAIL,
20 BUT WE WOULD CERTAINLY BE PLEASED TO DO SO SHOULD THE
21 COURT WANT US TO, AS TO WHY THE 8(B) JOINDER IS IMPROPER.

22 RATHER, WE WOULD GO TO RULE 14 IMMEDIATELY, THE
23 STANDARD BY DISLA CALLING FOR THAT MANIFEST PREJUDICE. WE
24 ARE PREPARED TO MAKE A SHOWING OF THAT PREJUDICE THIS
25 MORNING.

1 ALSO THE COURT'S ATTENTION IS --
2 THE COURT: JUST A MOMENT. WHAT IS THE
3 PREJUDICE?

4 MR. BLANCARTE: THE PREJUDICE IS THIS, YOUR
5 HONOR. THIS IS A CASE WHERE, CONTRARY TO THE GOVERNMENT'S
6 ALLEGATIONS, THE OVERLAP OF EVIDENCE, AS WE HAVE POINTED
7 OUT AND AS MR. BALLESTEROS' COUNSEL HAS POINTED OUT, DOES
8 NOT ONLY NOT EXIST TO THE EXTENT THEY WOULD HAVE THE COURT
9 BELIEVE, BUT IN FACT THE LARGE VOLUME OF EVIDENCE WHICH
10 THE GOVERNMENT INTENDS TO BRING IN IN THIS CASE IS
11 EVIDENCE OF DRUGS. NOTHING MORE, NOTHING LESS. AND THE
12 DRUGS THEY INTEND TO BRING IN TO THE EXTENT THAT DEFENDANT
13 BALLESTEROS AND DEFENDANT ZUNO SIT SIDE BY SIDE ARE DRUGS
14 RELATED TO COCAINE. THEY GOING TO DO THIS, YOUR HONOR.
15 THEY ARE GOING TO BRING IN EVIDENCE TRYING TO SHOW THAT --
16 MAY I MAKE A POINT?

17 WE ARE NOT HERE, IF YOUR HONOR PLEASE, TO OFFER
18 ANY OPINION AS TO THE GUILT OR INNOCENCE OF MR. MATA
19 BALLESTEROS, BUT WE CANNOT AVOID AND WE WILL NOT AVOID THE
20 FACT THAT THE GOVERNMENT INTENDS TO INTRODUCE CERTAIN
21 EVIDENCE, AND THAT IS THE PREJUDICE.

22 THE GOVERNMENT INTENDS TO INTRODUCE EVIDENCE
23 THAT AS EARLY AS 1975 MR. BALLESTEROS HAD ENTERED INTO A
24 PARTNERSHIP WITH MEXICAN DRUG LORDS IN THE NORTHERN PART
25 OF MEXICO, LINKING, THEY WILL ALLEGE, FOR THE FIRST TIME

1 THE COLOMBIAN CARTELS WITH MEXICAN NARCOTICS TRAFFICKERS.
2 MR. ZUNO WILL NOT BE IN THAT PICTURE.

3 NEXT THE GOVERNMENT IS GOING TO TRY TO ALLEGE --
4 THEY WILL TRY TO INTRODUCE EVIDENCE THAT MATA BALLESTEROS
5 WAS INVOLVED, ALONG WITH OTHER DRUG LORDS, WITH A
6 MR. ISAAC CATTAN KASSIN, WHO IS CURRENTLY CONVICTED AND
7 SERVING A 30-YEAR SENTENCE FOR MONEY LAUNDERING, MONEY
8 LAUNDERING THAT INVOLVED AS MUCH AS \$100,000,000 PER YEAR.
9 MR. ZUNO WILL NOT BE WITHIN THE FOUR CORNERS OF THAT
10 EVIDENCE.

11 NEXT THEY ARE GOING TO TRY TO INTRODUCE EVIDENCE
12 SHOWING THAT DEFENDANT BALLESTEROS, ALONG WITH OTHER SO-
13 CALLED DRUG LORDS, HAD ALL FLED MEXICO WITHIN ONE WEEK
14 AFTER THE CAMARENA MURDER TOOK PLACE. THE FACT OF THE
15 MATTER IS THAT THIS COURT WILL SEE, SHOULD THAT EVIDENCE
16 COME IN, THAT MR. ZUNO WAS NOT ON THE RUN, BUT MR. ZUNO
17 WAS OPENLY CONDUCTING HIS AFFAIRS AND BUSINESS THROUGHOUT
18 HIS HOME TOWN OF MASCOTA, JALISCO, AND IN EVERY OTHER PART
19 OF THE COUNTRY, WHEREVER HE MIGHT BE AT THAT TIME, AND NOT
20 ON THE RUN.

21 NEXT THE GOVERNMENT IS GOING TO TRY TO INTRODUCE
22 EVIDENCE THAT AFTER THE CAMARENA MURDER, DEA AGENTS IN
23 EUROPE AND IN SOUTH AMERICA WERE WORKING HARD TO FIND
24 DEFENDANT MATA BALLESTEROS. THEY WILL ALSO TRY TO SHOW
25 THAT AT ONE POINT THEY WERE ABLE TO GET MR. BALLESTEROS

1 INTO THIS JURISDICTION BY PUTTING HIM ON A PLANE AND
2 HAVING U.S. MARSHALS ARREST HIM WHEN HE ENTERED U.S. AIR
3 SPACE.

4 WHAT THE EVIDENCE WILL SHOW IS THAT NOT ONLY WAS
5 THAT NOT THE CASE WITH MR. ZUNO, BUT THAT WHILE THEY WERE
6 WORKING HARD -- WHILE DEA AGENTS WERE WORKING HARD IN
7 EUROPE AND IN SOUTH AMERICA TO LOCATE DEFENDANT
8 BALLESTEROS, THE FACT IS THAT MR. ZUNO WAS MEETING WITH
9 DEA AGENTS IN SAN ANTONIO, TEXAS, WHERE HE HAD VOLUNTARILY
10 COME FROM MEXICO AT THE REQUEST OF AGENT KUYKENDALL IN
11 ORDER THAT HE MIGHT BE ABLE TO GIVE THEM INFORMATION THEY
12 WANTED ABOUT THE TRANSACTION INVOLVING THE SALE OF THE
13 LOPE DE VEGA HOUSE. THAT IS SOMETHING MR. ZUNO
14 VOLUNTARILY FLEW TO THE U.S. TO DO.

15 THEY WON'T TELL YOU THAT THAT IS NOT TRUE, YOUR
16 HONOR, BECAUSE THEY HAVE CONFIRMED IT. NOT ONLY HAVE THEY
17 CONFIRMED IT, BUT AGENT KUYKENDALL HAS STATED ON THE
18 RECORD THAT THE INFORMATION GIVEN TO HIM WAS TRUTHFUL.

19 THE COURT: COUNSEL, I THINK WE ARE STRAYING A
20 LITTLE BIT.

21 MR. BLANCARTE: THANK YOU. I WILL GET BACK ON
22 COURSE. THE GOVERNMENT WILL ALSO TRY TO SHOW AT THIS
23 TRIAL --

24 THE COURT: LET ME ASK YOU HOW HAVE YOU BECOME
25 SO INTIMATELY KNOWLEDGEABLE OF WHAT THE GOVERNMENT INTENDS

1 TO PRESENT SINCE THEY HAVE BEEN SO DISCREET ABOUT THAT.

2 MR. BLANCARTE: THESE ARE THE REPRESENTATIONS
3 THEY HAVE MADE TO THE EXTENT THAT THEY HAVE JOINED HANDS
4 WITH, AMONG OTHER PEOPLE, JOURNALISTS AND WITH PEOPLE WHO
5 WRITE BOOKS AND HAVE PROVIDED THAT INFORMATION TO THESE
6 PEOPLE. EACH ONE OF THE ITEMS THAT I HAVE MENTIONED TO
7 THIS COURT, I CAN TURN TO A PARTICULAR PAGE OR ANY NUMBER
8 OF PAGES OF, AMONG OTHER THINGS, ELAINE SHANNON'S BOOK
9 "DESPERADOS," WHERE, ONE, THE COURT NEEDS TO KNOW THAT
10 THERE WAS A DEA AGENT ASSIGNED TO THAT MINI-SERIES TO MAKE
11 SURE THAT IT WAS ACCURATE, AND THE PRODUCERS OF THAT MINI-
12 SERIES REPRESENT THAT IT IS A TRUE STORY BASED ON FACTS,
13 AND ELAINE SHANNON, THE AUTHOR, ALLEGES THAT HER BOOK IS
14 TRUTHFUL, AND THESE ARE INCIDENTS RELATED, AMONG OTHER
15 PLACES, IN THE BOOK.

16 THE COURT: ALL RIGHT.

17 MR. BLANCARTE: FURTHER, YOUR HONOR, THE
18 GOVERNMENT IS GOING TO TRY TO INTRODUCE EVIDENCE THAT BY
19 1987 MR. BALLESTEROS HAD IN FACT BEEN CAPTURED IN COLOMBIA
20 AND HAD PAID \$2,000,000 IN BRIBES FOR HIS RELEASE; AND, AS
21 STATED BY MS. SHANNON IN HER BOOK, HE WAS LIVING LIKE A
22 KING IN A FABULOUS VILLA IN HONDURAS.

23 AT THE SAME TIME MR. ZUNO, THE EVIDENCE WILL
24 SHOW, WAS LIVING IN A TWO-BEDROOM HOME IN A SMALL TOWN OF
25 10,000 INHABITANTS KNOWN AS MASCOTA, JALISCO.

1 THE GOVERNMENT IS GOING TO TRY TO SHOW THAT BY
2 1987 MR. BALLESTEROS HAD ESTABLISHED HONDURAS AS A CENTER
3 OF DISTRIBUTION FOR COCAINE. AT THIS SAME TIME THE
4 EVIDENCE WILL SHOW THAT MR. ZUNO'S FINANCES WERE IN FACT
5 DECLINING, AND HE WAS TRYING TO MAKE A GO OF IT AS THE
6 OWNER OF ONE GASOLINE STATION IN --

7 THE COURT: COUNSEL, YOU APPEAR TO BE PRESENTING
8 BOTH THE PROSECUTION'S CASE AND THE DEFENSE CASE, WHICH I
9 THINK IS STRAYING AWAY FROM THE ISSUE BEFORE THE COURT.
10 YOU HAVE SAID THAT THE TRIAL OF MR. ZUNO WITH MR. MATA IS
11 PREJUDICIAL, AND THIS RECITATION THAT YOU HAVE BEEN MAKING
12 IS IN SUPPORT OF THAT MOTION. LET ME ASK YOU THIS.

13 EACH DEFENDANT IN THIS CASE -- WE HAVE FOUR
14 DEFENDANTS. EACH ONE OF THE DEFENDANTS HAS FILED A MOTION
15 ASKING FOR SEVERANCE OF HIS CASE FROM THE OTHERS. EACH
16 ONE HAS SAID THAT THIS IS IMPROPER JOINDER UNDER RULE
17 8(B), AND EACH ONE HAS SAID THAT HE WOULD BE PREJUDICED.

18 NOW, IT IS THE COURT'S EXPERIENCE THAT IN EVERY
19 MULTI-DEFENDANT CASE THE PROVERBIAL MOTION TO SEVERE IS
20 FILED, AND THE COURT GIVES THEM DUE AND FULL CONSIDERATION
21 TO SEE IF THERE IS IN FACT A BASIS FOR SEVERING THE
22 DEFENDANTS. I HAVE TRIED HERE TO STATE TO YOU WHAT THE
23 RULES ARE THAT THE COURT GOVERNS ITSELF BY, AND I DON'T
24 THINK THAT THE CONTINUANCE OF THIS RECITATION IS VERY
25 HELPFUL. SOME OF IT HAS TOUCHED ON THE ISSUE OF

1 PREJUDICE, BUT I WISH YOU WOULD CONCISELY --

2 MR. BLANCARTE: I WILL DO SO, YOUR HONOR.

3 THE COURT: -- STATE IT SO THAT I CAN UNDERSTAND
4 THE MAIN THRUST OF YOUR POINT.

5 MR. BLANCARTE: IF I MAY PROCEED WITH THE
6 COURT'S PERMISSION, I WILL TRY TO DO JUST THAT.

7 THE FINAL POINT, YOUR HONOR -- PREJUDICIAL
8 EVIDENCE. NOTHING COULD BE MORE PREJUDICIAL THAN THE FACT
9 THAT THE GOVERNMENT WILL TRY TO INTRODUCE EVIDENCE THAT
10 FBI FORENSIC EXPERTS FOUND HAIR WHICH MATCHED
11 MR. BALLESTEROS'S HAIR AT THE LOPE DE VEGA RESIDENCE.
12 THOSE SAME FBI EXPERTS HAVE DOCUMENTED THE FACT NONE OF
13 MR. ZUNO'S HAIR WAS FOUND AT THAT RESIDENCE, EVEN THOUGH
14 IT HAS BEEN CONCEDED FROM THE VERY BEGINNING THAT HE WAS A
15 PRIOR OWNER ONCE REMOVED OF THAT RESIDENCE.

16 ALSO THE GOVERNMENT WILL TRY TO INTRODUCE
17 EVIDENCE TO THE EFFECT THAT MR. BALLESTEROS HAD AT LEAST
18 17 PRIOR ARRESTS. THE EVIDENCE WILL SHOW THAT MR. ZUNO
19 HAS NEVER BEEN ARRESTED, NOT IN THIS COUNTRY, NOT IN ANY
20 OTHER COUNTRY.

21 YOUR HONOR, THE FACT OF THE MATTER IS -- IT IS
22 AS SIMPLE AS THIS. THIS IS A VERY TOUGH CASE, AND THIS IS
23 A TOUGH PROSECUTION AND, WITH ALL DUE RESPECT TO THIS
24 COURT, YOU ARE A TOUGH JUDGE. NO ONE WHO IS GUILTY IS
25 GOING TO WALK OUT OF THIS COURTROOM A FREE MAN. MR. ZUNO,

1 HOWEVER, RUNS THE SEVERE EXTREME PREJUDICE OF BEING
2 INNOCENT BUT BEING FOUND GUILTY, NOT ON THE EVIDENCE, BUT
3 ON THE OVERWHELMING VOLUME OF EVIDENCE THAT THE GOVERNMENT
4 IS GOING TO TRY TO INTRODUCE WHICH DOES NOT RELATE TO HIM.

5 I WOULD SUBMIT RESPECTFULLY TO THIS COURT THAT
6 THE U.S. ATTORNEY HIMSELF COULD NOT SIT ELBOW TO ELBOW
7 WITH THIS VOLUME OF PREJUDICIAL EVIDENCE AND NOT BE FOUND
8 GUILTY OF SOMETHING AT THE END OF THE TRIAL.

9 THIS MAN DESERVES THE OPPORTUNITY TO NOT HAVE
10 HIS INNOCENCE BE DISTILLED IN A STEW CONJURED BY THE
11 GOVERNMENT IN WHICH EVERYONE IS THROWN IN AND WHO KNOWS
12 WHAT CORRESPONDS -- WHAT EVIDENCE CORRESPONDS TO WHOM.

13 U.S. VS. ESCALANTE. THAT CASE POINTS OUT THAT
14 THIS PREJUDICE IN SOME CASES CAN BE NEUTRALIZED BY
15 COMPARTMENTALIZING THE EVIDENCE. I WOULD RESPECTFULLY
16 SUBMIT TO THIS COURT THAT ANY JURY EXPOSED TO THE VOLUME
17 OF EVIDENCE THAT THE GOVERNMENT HAS NOT ONLY PUT ON IN
18 PRIOR TRIALS BUT INTENDS TO PUT ON IN THIS TRIAL WOULD BE
19 HARD PRESSED UNDER THE PRESENT CIRCUMSTANCES TO HONOR THE
20 ESCALANTE STANDARD AND TO COME OUT OF THIS COURTROOM WITH
21 THE INNOCENCE OF A MAN WHO IS NOT RELATED TO THE VOLUME OF
22 EVIDENCE, SEVERE PREJUDICIAL EVIDENCE, THAT WILL COME
23 FORTH NECESSARILY IF THIS TRIAL IS NOT SEVERED.

24 THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT.

1 COUNSEL, DO YOU WANT TO RESPOND TO THIS
2 ARGUMENT?

3 MR. MEDRANO: VERY BRIEFLY, YOUR HONOR.
4 INITIALLY LET ME STATE, YOUR HONOR, THAT THIS RENDITION OF
5 EVIDENCE OR FACTS BY MR. BLANCARTE AS TO WHAT HE BELIEVES
6 THE GOVERNMENT IS GOING TO PROVE HAS NO BASIS IN FACT OR
7 REALITY. OUR EVIDENCE IS VERY CONCISE. THE COURT AND
8 COUNSEL HAVE RECEIVED A FLAVOR OF THAT EVIDENCE THROUGH
9 THIS MULTI-PAGE INDICTMENT THAT THE GOVERNMENT HAS FILED.

10 YOUR HONOR, MR. BLANCARTE CONFUSES TWO THINGS:
11 PREJUDICE UNDER THE RULE 14 STANDARD, WHICH IS THE BASIS
12 FOR SEVERANCE VERSUS PREJUDICE WHICH IS TANTAMOUNT TO
13 EVIDENCE OF GUILT.

14 AS TO THE LATTER, YOUR HONOR, WE HAVE LOTS OF
15 THAT TYPE OF EVIDENCE. WE HAVE EVIDENCE, WHICH IS AGAIN
16 OUTLINED IN THE INDICTMENT, THAT HIS CLIENT AND MATA
17 BALLESTEROS ARE NOT WORKING IN THEIR SEPARATE WORLDS, BUT
18 IN FACT ARE MEETING TOGETHER AND DISCUSSING NOT ONLY
19 NARCOTICS BUT THE MURDER OF A FEDERAL AGENT. THAT TIE,
20 THAT UNDERPINNING, THAT BASIS, YOUR HONOR, IS THE LYNCH
21 PIN THAT HOLDS THIS CASE TOGETHER AND FROM WHICH ALL OF
22 THIS OTHER EVIDENCE THAT WE HAVE ALLUDED TO IN OUR
23 INDICTMENT IS ADMISSIBLE.

24 I WOULD JUST LIKE TO POINT OUT, YOUR HONOR, THAT
25 THERE IS THIS TREMENDOUS OVERLAP, NOT ONLY AS TO EVIDENCE

1 BUT COMMONALITY OF DEFENDANTS. WE HAVE DEFENDANTS WHO ARE
2 RESPONSIBLE NOT ONLY FOR COCAINE BUT ALSO FOR MARIJUANA
3 TRANSACTIONS. THE FACT THAT A DEFENDANT, EVEN ASSUMING
4 THAT MR. BLANCARTE'S REPRESENTATION IS TRUE THAT HIS
5 CLIENT WAS WORKING ONLY IN THE MARIJUANA FIELD, SO WHAT?

6 MR. BLANCARTE: I HAVE NEVER SAID THAT, YOUR
7 HONOR.

8 MR. MEDRANO: WELL, THE BOTTOM LINE IS -- I
9 BELIEVE MR. STOLAR WAS TRYING TO INDICATE SOMEHOW THAT THE
10 TWO DEFENDANTS CAN BECOME COMPARTMENTALIZED AND SEPARATED.
11 EVEN ASSUMING THAT THAT IS TRUE, YOUR HONOR, IT DOESN'T
12 MATTER BECAUSE THEY ARE BOTH MEMBERS OF THE SAME CARTEL,
13 AND THE FACT THAT ONE GROWS ORANGES AND THE OTHER GROWS
14 APPLE, IF THE GOAL OF BOTH WAS TO FURTHER THE ECONOMIC
15 GOALS OF THAT NETWORK AND INDEED MURDER AN AGENT, THEN ALL
16 OF THEM ARE RESPONSIBLE FOR THOSE ACTIVITIES.

17 FINALLY, YOUR HONOR --

18 THE COURT: THAT IS SUFFICIENT.

19 MR. MEDRANO: THANK YOU, YOUR HONOR.

20 THE COURT: MR. MATA HAS ASSERTED SEVERAL OTHER
21 GROUNDS FOR SEVERANCE WHICH I DIDN'T DISCUSS. ONE, HE
22 SAYS, IS REQUIRED BECAUSE OF THE DIVERGENT DEFENSES IN
23 THIS CASE. SEVERANCE ON THESE GROUNDS IS ONLY REQUIRED
24 WHEN CO-CONSPIRATORS' DEFENSES ARE MUTUALLY EXCLUSIVE.
25 THAT IS, WHEN THE ACQUITTAL OF ONE DEFENDANT NECESSARILY

1 RESULTS IN THE CONVICTION OF THE OTHER. YOU HAVE NOT MET
2 THE BURDEN OF ESTABLISHING THIS. IT IS NOT CLEAR WHAT THE
3 DEFENSES OF CO-DEFENDANTS WILL BE, AND IT IS PURE
4 SPECULATION TO SUGGEST OTHERWISE. THERE IS NO SHOWING
5 THAT THE DEFENSES ARE MUTUALLY EXCLUSIVE. THE MERE
6 PRESENCE OF HOSTILITY AMONG DEFENDANTS OR THE DESIRE OF
7 ONE TO EXCULPATE HIMSELF BY INculpATING THE OTHERS DOES
8 NOT GENERATE THE KIND OF PREJUDICE THAT MANDATES
9 SEVERANCE.

10 MR. ZUNO ALSO MAKES A GROUND WHICH WE HAVEN'T --
11 SEVERAL GROUNDS WHICH WE HAVE NOT DISCUSSED. THE FIRST
12 IS THAT THE POSSIBLE ADMISSION OF EVIDENCE SHOWING THAT
13 MR. MATA WAS A LEADER OF THE CARTEL WOULD BE MANIFESTLY
14 PREJUDICIAL.

15 THE SECOND IS ADDITIONAL SECURITY DUE TO MATA'S
16 PRESENCE, AND I WILL DEAL WITH THAT BY SAYING THAT
17 MR. MATA WAS NOT IN THE LAST TRIAL, AND THE SAME SECURITY
18 SEEMED TO PREVAIL.

19 AND THE THIRD GROUND TO WARRANT SEVERANCE IS TO
20 SECURE A CO-DEFENDANT'S TESTIMONY. THERE HAS BEEN A
21 COMPLETE FAILURE TO SHOW WHAT YOU MUST SHOW. ONE IS THAT
22 YOU MAY CALL A CO-DEFENDANT AT A SEVERED TRIAL, THAT THE
23 CO-DEFENDANT WOULD IN FACT TESTIFY, THAT THE TESTIMONY
24 WOULD BE FAVORABLE, AND GENERALLY COURTS REQUIRE A
25 DECLARATION FROM THE CO-CONSPIRATOR THAT HE WILL TESTIFY.

1 I REQUIRE THE CO-CONSPIRATOR TO COME INTO COURT AND BE
2 SWORN AND TO TESTIFY.

3 MR. BLANCARTE: YOUR HONOR, LET ME SPEAK TO
4 THAT.

5 THE COURT: I DON'T WANT YOU TO SPEAK TO IT.
6 YOU MADE NO SHOWING, AND IT DOESN'T WARRANT ANY FURTHER
7 ARGUMENT ON EITHER OF THESE GROUNDS.

8 MR. BLANCARTE: WE WILL MAKE A SHOWING NOW, YOUR
9 HONOR. THE SHOWING IS THAT WE WOULD CALL MATA BALLESTEROS
10 AS A WITNESS, ASK HIM IF HE KNOWS MR. ZUNO-ARCE, AND WITH
11 CONFIDENCE, WE WOULD SUBMIT TO THIS COURT, IF TESTIFYING
12 TRUTHFULLY, THE ANSWER WOULD BE NO, THAT MR. ZUNO DOES NOT
13 KNOW MR. BALLESTEROS IN TURN.

14 THE COURT: COUNSEL, YOU DIDN'T HEAR WHAT I
15 SAID. YOU HAVE TO SHOW FIRST THAT HE WOULD CALL THE CO-
16 DEFENDANT, THAT THE CO-DEFENDANT WOULD AGREE TO TESTIFY,
17 THAT THE TESTIMONY WOULD BE FAVORABLE TO THE MOVING PARTY,
18 AND THAT THERE WOULD BE SOME SWORN EVIDENCE FROM THE
19 WITNESS THAT HE WOULD TESTIFY. AND I SAY THAT I REQUIRE A
20 DEFENDANT TO BE SWORN AND TESTIFY TO THAT EFFECT. AND THE
21 OFFER OF A CO-CONSPIRATOR OR A CO-DEFENDANT TO TESTIFY
22 MUST BE UNCONDITIONAL, NOT CONTINGENT UPON THE COMPLETION
23 OF THE WITNESS'S TRIAL FIRST.

24 YOU HAVE MADE NO SHOWING OF ANY OF THOSE THINGS.

25 MR. STOLAR: IF I MAY, THERE IS SOMETHING I WISH

1 TO ADD. IT IS DIFFICULT, NOT BECAUSE WE MIGHT BE NOT
2 RELUCTANT TO, BUT BECAUSE OF SEVERE FIFTH AMENDMENT
3 PROBLEMS FOR MR. MATA TO MAKE ANY UNCONDITIONAL OFFERS OF
4 TESTIMONY BECAUSE WE HAVE, AS YOU WELL KNOW, 88-129
5 PENDING WITH JUDGE RAE DEALING WITH A COCAINE CONSPIRACY.

6 THE COURT: I AM WELL AWARE OF THAT, AND THAT IS
7 WHY I AM VERY SKEPTICAL.

8 MR. STOLAR: BUT IT IS A MATTER OF POSSIBILITY
9 AND NOT A LACK OF DESIRE NECESSARILY.

10 THE COURT: ALL RIGHT. BOTH OF THOSE MOTIONS
11 ARE DENIED, THAT IS, MR. MATA'S SEVERANCE MOTION AND
12 MR. ZUNO'S SEVERANCE MOTION.

13 THE MOTION TO DISMISS COUNTS AS MULTIPLICITOUS I
14 HAVE ALREADY DEALT WITH. I HAVE DISMISSED COUNT 3 AS
15 MULTIPLICITOUS BEFORE. I HAVE DEALT, I THINK, WITH THE
16 OTHER COUNTS, AND I HAVE DISCUSSED COUNT 4 AND COUNT 7 AS
17 NOT BEING MULTIPLICITOUS IN HEARING THE OTHER DEFENDANT'S
18 MOTION, AND MY POSITION IS UNCHANGED. THAT WOULD BE THE
19 SAME FOR THE SAME REASON. NEITHER COUNTS 7 OR 8 WILL BE
20 DISMISSED AS MULTIPLICITOUS. I HAVE DISCUSSED THAT AND MY
21 REASONS FOR THAT IN DEALING WITH MS. KELLY'S MOTION.

22 MR. MATA ASSERTS THAT COUNT 4 IS DUPLICITOUS,
23 AND I HAVE DEALT WITH THAT ALSO. THAT BASICALLY MIRRORS
24 THE MOTION MADE BY MS. KELLY ON BEHALF OF MR. BERNABE.

25 FINALLY, MR. MATA SUGGESTS THAT HE HAS BEEN

1 SUBJECTED TO DOUBLE JEOPARDY BY THE CHARGES PENDING IN
2 JUDGE RAE'S COURT AND THIS COURT, AND I SIMPLY REMIND YOU
3 THAT JEOPARDY HAS NOT YET ATTACHED IN EITHER COURT ON
4 EITHER CASE, AND THIS ISSUE IS NOT RIPE FOR ADJUDICATION.

5 MR. STOLAR: THE DUPLICITOUS PROBLEM IS ONE THAT
6 WAS ALLUDED TO BEFORE, AND THAT IS THAT THE INDICTMENT
7 THAT LISTS THE UNDERLYING RACKETEERING ACTIVITY,
8 ESSENTIALLY A CARO-QUINTERO/FONSECA MARIJUANA TRAFFICKING
9 ENTERPRISE, IS ESSENTIALLY WHAT YOU OUTLINED OF WHAT THE
10 PROOF WAS IN THE FIRST TRIAL. EVEN THOUGH IT IS NOT
11 LISTED IN THE INDICTMENT, THE RACKETEERING ACTIVITY THAT
12 IS GOING TO BE OFFERED WITH RESPECT TO MR. MATA IS
13 EVIDENCE OF -- OR ALLEGED EVIDENCE OF COCAINE DEALING, A
14 TOTALLY SEPARATE ENTERPRISE, A TOTALLY SEPARATE
15 CONSPIRACY, NOT REFERRED TO AT ALL IN THE INDICTMENT. IT
16 IS THE TWO MULTI-CONSPIRACIES RUNNING AT THE SAME TIME
17 WHICH IS WHAT MAKES THE COUNTS DUPLICITOUS.

18 THE COURT: WELL, IF THERE ARE MULTIPLE
19 CONSPIRACIES, AS YOU SAY, AND IT IS SHOWN BY THE EVIDENCE,
20 YOU WOULD BE ENTITLED TO A MULTI-CONSPIRACY INSTRUCTION,
21 AND THE JURY WILL BE TOLD THAT IF YOU FIND THE DEFENDANT
22 WAS IN A CONSPIRACY THAT IS NOT CHARGED, HE CANNOT BE
23 FOUND GUILTY OF THE CHARGE OF CONSPIRACY.

24 MR. STOLAR: IT IS NOT THE CONSPIRACY NOT
25 CHARGED BECAUSE THERE IS NO CHARGE HERE OF CONSPIRING TO

1 DEAL IN COCAINE, NOR IS THERE A CHARGE OF CONSPIRING TO
2 DEAL IN MARIJUANA. ALL THERE IS IS A CHARGE OF A GROUP OF
3 PEOPLE ACTING TOGETHER TO DO VIOLENCE IN AID OF
4 RACKETEERING, THE RACKETEERING BEING MARIJUANA DEALING.

5 IF WE ARE GOING TO HAVE COCAINE DEALING, WHICH
6 IS NOT CHARGED IN THE INDICTMENT, NOT SPECIFIED IN THE
7 INDICTMENT, COMING IN AS ALLEGED RACKETEERING ACTIVITY,
8 THAT IS UNCONNECTED. SO THERE ARE TWO SEPARATE THINGS
9 GOING ON AT THE SAME TIME. THAT IS MY PROBLEM.

10 THE COURT: COUNSEL, THE COURT WILL BE VERY,
11 VERY -- THE COURT WILL SCRUPULOUSLY PROTECT THE INTERESTS
12 OF THESE DEFENDANTS. I AM NOT GOING TO ALLOW THEM TO BE
13 SUBJECTED TO ANY UNFAIR PROCEDURES. THEY WILL HAVE AS
14 FAIR A TRIAL AS CAN BE OBTAINED.

15 I DO NOT BELIEVE SEVERANCE IS APPROPRIATE IN
16 THIS CASE FOR THE REASONS THAT I HAVE STATED, AND IN TERMS
17 OF MAKING SURE THAT THE JURY DOES ITS FUNCTION -- AND,
18 BELIEVE ME, I HAVE GREAT FAITH IN THESE JURORS,
19 PARTICULARLY AFTER LAST WEEK WHEN I FINISHED AN ALMOST
20 THREE-MONTH TRIAL AND TALKED TO THE JURORS AFTERWARDS.
21 FORTUNATELY THE TRIAL WAS SETTLED JUST BEFORE WE
22 INSTRUCTED THEM. BUT I GAINED IMMENSE RESPECT FOR THE
23 JURY'S ABILITY TO GRASP AND UNDERSTAND VERY COMPLEX
24 ISSUES, MUCH MORE COMPLEX THAN THE ONES BEFORE US, AND TO
25 BE ABLE TO SEPARATE AS TO EACH PARTY INVOLVED IN THE

1 VARIOUS ISSUES. I THINK THEY CAN. I THINK WE TEND TO
2 UNDERESTIMATE JURORS.

3 IN THE IDEAL WORLD EACH DEFENDANT WOULD BE TRIED
4 SEPARATELY. THE LAW, RECOGNIZING THE IMPROPRIETY -- NOT
5 IMPROPRIETY, BUT THE IMPRACTICALITY OF THAT, HAS ALLOWED
6 FOR JOINDER OF DEFENDANTS UNDER CERTAIN CIRCUMSTANCES SO
7 THAT IT BECOMES A BALANCING OF THE JUDICIAL ECONOMY VERSUS
8 THE RIGHTS OF THE DEFENDANTS THAT ARE BASICALLY INVOLVED
9 IN THESE CASES, AND I HAVE INDICATED TO YOU THAT IN EVERY
10 CASE IN WHICH THERE ARE MULTIPLE DEFENDANTS, EVERY
11 DEFENDANT HAS FILED A MOTION TO SEVERE. THAT HAS BEEN
12 TRUE IN THIS CASE AND WAS TRUE IN THE PREVIOUS CASE. THAT
13 HAS BEEN TRUE IN EVERY MULTI-DEFENDANT CASE THAT I BELIEVE
14 THAT I HAVE EVER HAD.

15 ACCORDING TO THE DEFENDANTS, THEY CANNOT HAVE A
16 FAIR TRIAL UNLESS THEY ARE TRIED SEPARATELY. THE ENORMOUS
17 BURDEN THAT WOULD BE PLACED ON THE GOVERNMENT, THE COURT,
18 THE WITNESSES, AND EVERYBODY ELSE TO KEEP REPEATING THESE
19 TRIALS IS SIMPLY NOT ANYTHING THAT WE CAN CONDONE, AND SO
20 THE ALTERNATIVE IS TO TRY THE DEFENDANTS JOINTLY WHEREVER
21 POSSIBLE AND FOR THE COURT TO ASSUME THE OBLIGATION OF
22 PROTECTING THEIR RIGHTS, AND THIS WE WILL DO, YOU MAY BE
23 SURE. THAT IS ENOUGH ON SEVERANCE.

24 WE HAVE SOME OTHER MOTIONS HERE THAT NEED TO BE
25 DISPOSED OF, INCLUDING ONE THAT YOU HAVE. YOU HAVE A

1 MOTION, AND SINCE YOU ARE HERE, WE WILL DEAL WITH THAT.
2 IT IS NOT A MODEL MOTION SINCE IT DOES NOT PROVIDE THE
3 COURT WITH A SINGLE CASE CITATION OR AUTHORITY FOR A
4 NUMBER OF CLAIMS THAT HAVE BEEN MADE. THE ONLY REFERENCE
5 TO ANY CASE IS THE REFERENCE TO PINKERTON, WHICH CONTAINS
6 NO CITATION WHATSOEVER.

7 YET THE MOTION PURPORTS TO BE A MOTION TO
8 DISMISS FOR FAILURE TO STATE A CLAIM AS TIME BARRED, AND
9 ALSO BURIED IN THIS MOTION, WHICH WE HAD TO DIG OUT, IS
10 THE REQUEST TO REVEAL ALL GRAND JURY PROCEEDINGS. SO IT
11 DOESN'T LOOK LIKE ANYBODY SPENT A LOT OF TIME ON THIS.

12 MR. BURNS: IF I MAY SAY, YOUR HONOR, THAT WE
13 WERE PRESSED FOR TIME WHEN WE MADE THE MOTION, AND WHAT
14 STRUCK US IN THE INDICTMENT WAS THAT THE CLIENT WAS NAMED
15 IN ONLY ONE OVERT ACT WHICH OCCURRED SOMETIME IN OCTOBER
16 OF 1984. ACCORDING TO THE INDICTMENT AND ACCORDING TO
17 WHEN THE COUNTS CHARGED IN THE INDICTMENT BECAME LAW, THEY
18 WERE NOT -- IT WAS NOT AGAINST THE LAW TO MEET IN OCTOBER
19 OF 1984 IF THAT MEETING OCCURRED BETWEEN OCTOBER 1ST AND
20 OCTOBER THE 11TH. THE GOVERNMENT DID NOT SPECIFY THAT
21 THEY KNOW WHEN THE DATE WAS IN OCTOBER OF 1984 WHEN THIS
22 ALLEGED OVERT ACT MAY HAVE BEEN COMMITTED, BUT WITHOUT --
23 IF THE DATE OCCURRED BEFORE THESE STATUTES WERE ENACTED,
24 WE SUBMIT TO THE COURT THAT NO CRIME HAS BEEN COMMITTED.

25 THE COURT: WELL, THE ONLY PROBLEM WITH THAT IS

1 THAT A CONSPIRACY IS DEEMED TO HAVE BEEN COMPLETED WHEN
2 THE LAST OVERT ACT IS COMMITTED.

3 WE WILL TAKE A SHORT RECESS.

4 (RECESS FROM 11:30 A.M. UNTIL 11:40 A.M.)

5 THE COURT: NOW, COUNSEL, BEFORE YOU GO ON, LET
6 ME FIRST -- LET THE RECORD SHOW THAT ALL DEFENDANTS AND
7 COUNSEL ARE PRESENT AS HERETOFORE STATED.

8 THIS IS A MOTION TO DISMISS FOR FAILURE TO STATE
9 A CLAIM AS TIME BARRED AND A REQUEST TO REVIEW ALL GRAND
10 JURY PROCEEDINGS. I WANT TO TELL YOU FIRST, AFTER HAVING
11 READ THE MOTION AND THE RESPONSE, THE TENTATIVE VIEW OF
12 THE COURT IS THAT THE CONSPIRACY CHARGE STATES A CLAIM.
13 ALL THAT IS REQUIRED IS AN ALLEGATION OF AN AGREEMENT
14 BETWEEN TWO OR MORE PERSONS TO VIOLATE THE LAW AND AN
15 OVERT ACT ALLEGED IN FURTHERANCE OF THAT AGREEMENT.

16 THERE ARE 12 OVERT ACTS ALLEGED BY MEMBERS OF
17 THE CONSPIRACY, IN ADDITION TO THE ALLEGED MEETING OF
18 OCTOBER 1984 COMPLAINED OF BY THIS DEFENDANT. EACH OF
19 THESE 12 OVERT ACTS ARE ALLEGED TO HAVE OCCURRED AFTER THE
20 PASSAGE OF THE RELEVANT STATUTES. THE CONSPIRACY OF WHICH
21 MATA IS ALLEGED TO BE A MEMBER IS ALLEGED TO HAVE
22 CONTINUED THROUGH FEBRUARY 9, 1985, WELL AFTER THE PASSAGE
23 OF THE STATUTE. SO THESE COUNTS, IN MY VIEW, STATE AN
24 OFFENSE.

25 COUNTS 4 AND 7 STATE AN OFFENSE. THE ALLEGED

1 CONDUCT FOR WHICH MATA IS ACCUSED OCCURRED AFTER PASSAGE
2 OF THE STATUTE. THESE COUNTS ARE NOT BARRED BY THE FIVE-
3 YEAR STATUTE OF LIMITATIONS. THE ALLEGED CONSPIRACY
4 CONTINUED WELL INTO THE STATUTORY PERIOD, AND NUMEROUS
5 OVERT ACTS WERE COMMITTED DURING THIS PERIOD. THE ALLEGED
6 ACTS UNDERLYING COUNTS 4, 7 AND 8 CONTINUED INTO THE
7 STATUTORY PERIOD. AT LEAST, THESE ARE THE ALLEGATIONS
8 CONTAINED IN THE INDICTMENT.

9 THE DEFENDANT'S REQUEST FOR DISCLOSURE AND
10 EXAMINATION OF ALL GRAND JURY PROCEEDINGS IS DENIED. IN
11 MY VIEW IT IS NOT APPROPRIATE BECAUSE THE DEFENDANT MERELY
12 SPECULATES AND DOES NOT PRESENT THE COURT A PARTICULARIZED
13 SHOWING OF NEED. IN FACT, THE ASSERTIONS MADE HERE THAT
14 THIS IS THE WAY OF FINDING OUT WHETHER ANY PROSECUTORIAL
15 MISCONDUCT OCCURRED DOES NOT CONSTITUTE A PARTICULARIZED
16 NEED FOR THE GRAND JURY PROCEEDINGS. SO THAT IS THE WAY
17 THE COURT VIEWS THE REQUEST MADE IN THIS MOTION.

18 NOW, COUNSEL, DO YOU WISH TO BE HEARD?

19 MR. BURNS: NO, YOUR HONOR. WE WILL RELY ON THE
20 PAPERS.

21 THE COURT: ALL RIGHT.

22 BERNABE HAD A MOTION TO DISMISS COUNTS 4 AND 5
23 AS BARRED BY THE STATUTE OF LIMITATIONS.

24 MS. KELLY: YES, YOUR HONOR.

25 THE COURT: THE COURT HAS READ AND CONSIDERED

1 THAT MOTION AND THE OPPOSITION TO IT. IT IS THE COURT'S
2 VIEW, AFTER READING THE DOCUMENTS, THAT THE MOTION SHOULD
3 BE DENIED.

4 THE STATUTE OF LIMITATIONS BEGINS TO RUN WHEN
5 THE CRIME IS COMPLETE, AS I INDICATED EARLIER TO OTHER
6 COUNSEL. THE CRIME IS COMPLETE WHEN EACH ELEMENT OF THE
7 CRIME HAS OCCURRED. THIS CRIME WAS NOT COMPLETE UNTIL A
8 VIOLENT ACT OCCURRED. THEREFORE, COUNTS 4 AND 5 ARE NOT
9 BARRED BY THE STATUTE OF LIMITATIONS.

10 TO THE EXTENT THAT THE GOVERNMENT MUST PROVE THE
11 EXISTENCE OF AN ENTERPRISE ENGAGED IN RACKETEERING
12 ACTIVITY, THIS REQUIREMENT IS SIMILAR TO THAT UNDER RICO,
13 THAT THE GOVERNMENT PROVE THAT DEFENDANT ENGAGED IN A
14 PATTERN OF RACKETEERING ACTIVITY. UNDER RICO THE TWO OR
15 MORE RACKETEERING ACTS NEED NOT ALL HAVE OCCURRED WITHIN
16 THE FIVE-YEAR STATUTE OF LIMITATIONS, PROVIDED ONE OF THE
17 RACKETEERING ACTS OCCURRED WITHIN THE FIVE-YEAR PERIOD.
18 SO THIS MAKES A GOOD ANALOGY IN THE COURT'S VIEW.

19 THE MOTION TO DISMISS COUNTS 4 AND 5 AS BARRED
20 BY THE STATUTE OF LIMITATIONS IS NOT WELL TAKEN IN MY
21 VIEW.

22 MS. KELLY: YOUR HONOR, I UNDERSTAND THAT YOUR
23 RULING IS SAYING THAT THE DEFENDANT HAS TO BE ENGAGED IN A
24 PATTERN OF RACKETEERING. THERE ARE NO ALLEGATIONS AND
25 THERE HAS BEEN NO EVIDENCE THAT THIS DEFENDANT HAS BEEN

1 INVOLVED IN THOSE ACTIVITIES.

2 THE COURT: JUST A MOMENT. I GAVE YOU AN
3 ANALYSIS. THAT IS NOT THE BASIS FOR THE RULING. THE
4 BASIS IS THAT THIS CRIME WAS NOT COMPLETE UNTIL THE
5 VIOLENT ACT OCCURRED. THE VIOLENT ACT OCCURRED WITHIN THE
6 STATUTORY PERIOD. THEREFORE, IT IS NOT BARRED BY THE
7 STATUTE OF LIMITATIONS.

8 MS. KELLY: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MS. KELLY: YOUR HONOR, MY POSITION ONLY IS THAT
11 THE UNDERLYING RACKETEERING ACTIVITIES ARE ESSENTIAL
12 JURISDICTIONAL ELEMENTS, AND I BELIEVE THAT THAT HAS BEEN
13 STATED IN MY PREVIOUS MOTION WITH RESPECT TO THE EX POST
14 FACTO AS WELL.

15 THE COURT: YES.

16 MS. KELLY: THANK YOU.

17 THE COURT: WE HAVE TWO REMAINING MOTIONS, ONE
18 BY MR. ZUNO-ARCE REQUESTING AN ORDER REQUIRING A PRETRIAL
19 JAMES HEARING. THE COURT HAS READ AND CONSIDERED THIS
20 MOTION AND THE OPPOSITION TO IT, AND I WILL NOT HAVE ANY
21 ARGUMENT ON THIS. THIS IS THE DEFENDANT'S REQUEST FOR A
22 PRETRIAL HEARING IN WHICH THE GOVERNMENT WOULD HAVE TO
23 PROVE THE EXISTENCE OF THE CONSPIRACY, THE DEFENDANT'S
24 PARTICIPATION IN IT, AND THE STATEMENTS THAT WERE MADE IN
25 THE COURSE AND FURTHERANCE OF THE CONSPIRACY PRIOR TO

1 INTRODUCING ANY CO-CONSPIRATOR'S STATEMENTS AT THE TRIAL.

2 THIS IS REFERRED TO AS A JAMES HEARING, AND THIS
3 CIRCUIT HAS EXPRESSLY HELD THAT SUCH HEARINGS ARE NOT
4 REQUIRED, NOR IS IT APPROPRIATE IN THIS CASE, IN THE VIEW
5 OF THE COURT, TO HOLD A JAMES HEARING, WHICH WOULD IMPOSE
6 SUCH A SUBSTANTIAL AND NEEDLESS BURDEN ON THE PROCESS.
7 WITNESSES WOULD HAVE TO BE CALLED TWICE WITH CONSIDERABLE
8 PROBLEMS INVOLVED.

9 THIS CIRCUIT PERMITS THE COURT TO RECEIVE
10 PROVISIONALLY CO-CONSPIRATORS' STATEMENTS WITH THE
11 UNDERSTANDING THAT IF THE REMAINING REQUIREMENTS ARE NOT
12 ESTABLISHED BY THE EVIDENCE, THAT IS, THE PROOF OF THE
13 EXISTENCE OF THE CONSPIRACY, THE DEFENDANT'S PARTICIPATION
14 IN IT, AND THAT THE STATEMENTS WERE MADE IN THE COURSE AND
15 IN FURTHERANCE OF THE CONSPIRACY, AN AFFECTED DEFENDANT
16 CAN MOVE TO HAVE THAT TESTIMONY STRICKEN.

17 THAT IS THE WAY WE WILL PROCEED IN THIS CASE,
18 THAT IS, THE GOVERNMENT MAY PRESENT ITS CASE. THE COURT
19 WILL RECEIVE CO-CONSPIRATORS' STATEMENTS. IF THEY COME IN
20 BEFORE THE CONSPIRACY HAD BEEN ESTABLISHED, THE COURT --
21 IF IT IS NOT ESTABLISHED -- WILL CONSIDER A REQUEST TO
22 STRIKE THE TESTIMONY AND ASK THE JURY TO DISREGARD IT.

23 BUT NO JAMES HEARING IS REQUIRED, IN MY VIEW,
24 FOR THIS CASE, AND I SPEAK FROM A PERSPECTIVE OF HAVING
25 HEARD ANOTHER CASE SIMILAR TO THIS AND MY FAMILIARITY WITH

1 WHAT HAS BEEN GOING ON IN THIS CASE SINCE THE MOTIONS
2 BEGAN.

3 NOW, YOU HAVE ONE LAST MOTION, MR. ZUNO, AND
4 THAT IS FOR VIOLATION OF THE EX POST FACTO CLAUSE. YOU
5 HAVE ASSERTED HERE THAT COUNT 4 VIOLATES THE EX POST FACTO
6 CLAUSE BECAUSE TWO OF THE ALLEGED ACTS OF RACKETEERING
7 COMMITTED BY THE CARTEL, AS ALLEGED IN THE INDICTMENT,
8 OCCURRED PRIOR TO THE PASSAGE OF 18 U.S.C. 1959B, WHICH WE
9 HAVE ALREADY DEALT WITH WITH OTHER DEFENDANTS IN THIS
10 CASE, I THINK.

11 AS I POINTED OUT EARLIER, THE ACTIVITY FOR WHICH
12 AN INDIVIDUAL IS PUNISHED UNDER SECTION 1959 IS THE
13 VIOLENT ACT, NOT THE UNDERLYING RACKETEERING ACTIVITY.

14 THE CONSPIRACY COUNTS DO NOT VIOLATE THE EX POST
15 FACTO CLAUSE. IN APPLYING THE EX POST FACTO PROVISION TO
16 CONSPIRACIES WHICH MUST BE EVIDENCED BY OVERT ACTS, THE
17 CONSPIRACY IS REGARDED AS HAVING BEEN COMMITTED ON THE
18 DATE OF THE LAST OVERT ACT. THAT IS THE LAW IN THE NINTH
19 CIRCUIT.

20 NUMEROUS OVERT ACTS ARE ALLEGED TO HAVE BEEN
21 COMMITTED SUBSEQUENT TO THE EFFECTIVE DATE OF THE CHARGED
22 STATUTES. FOR THOSE REASONS THE COURT DOES NOT SEE ANY EX
23 POST FACTO VIOLATIONS.

24 DO YOU WISH TO BE HEARD ON THAT?

25 MS. FULGINITI: YES, YOUR HONOR. I WOULD JUST

1 LIKE TO POINT OUT A FEW INCONSISTENCIES THAT HAVE NOT BEEN
2 PREVIOUSLY PRESENTED TO THE COURT.

3 FIRST, IN REGARD TO THE GOVERNMENT'S PROPOSITION
4 AND THE COURT'S ASSERTION THAT THE GRAVAMEN OF 1959 IS THE
5 FINAL CRIME, THE DEFENDANT CONTENDS THAT IN ORDER FOR AN
6 INDIVIDUAL TO BE CHARGED WITH SECTION 1959 AND BE FOUND
7 GUILTY AND THEREFORE PUNISHED, THAT EVIDENCE MUST BE
8 PROFFERED OF THE EXISTENCE OF THE CONSPIRACY AND THAT THE
9 ENTERPRISE ENGAGED IN RACKETEERING ACTIVITY AS WELL. IF
10 THAT EVIDENCE IS NOT PROFFERED TO THE JURY, ANY OF THE
11 DEFENDANTS SHOULD NOT BE FOUND GUILTY OF SECTION 1959.

12 THE COURT: THAT IS CORRECT.

13 MS. FULGINITI: THEREFORE, WE ASSERT THAT THE
14 RACKETEERING ACTIVITY ALLEGED IN COUNT 4 IS IMPERATIVE TO
15 AN INDIVIDUAL BEING FOUND GUILTY AND PUNISHED UNDER
16 SECTION 1959; AND SINCE THE MAJORITY OF THE RACKETEERING
17 ACTIVITY IN COUNT 4 OCCURRED PRIOR TO THE ENACTMENT OF
18 SECTION 1959, THAT IS IN VIOLATION OF THE EX POST FACTO
19 PROHIBITION.

20 WE HAVE SORT OF A UNIQUE ARGUMENT FOR DEFENDANT
21 CONTENDS THAT IT IS IMPOSSIBLE IN THIS CASE TO ASCERTAIN
22 WHETHER OR NOT THE DEFENDANT WAS PROPERLY INDICTED BECAUSE
23 THE INDICTMENT ITSELF, ESPECIALLY IN REGARD TO COUNT 4,
24 MIXES PRE AND POST-STATUTORY ENACTMENT CONDUCT. THE POWER
25 TO INDICT WAS SOLELY WITH THE GRAND JURY. WE CAN ONLY

1 ASSUME THAT THE GRAND JURY TOOK INTO CONSIDERATION AND
2 POSSIBLY RELIED ON THESE ALLEGATIONS THAT WERE NOT ILLEGAL
3 WHEN THEY TOOK PLACE.

4 CLEARLY CONDUCT --

5 THE COURT: JUST A MOMENT. WHAT DO YOU MEAN
6 THEY WERE NOT ILLEGAL WHEN THEY TOOK PLACE?

7 MS. FULGINITI: WELL, SECTION 1959 DID NOT COME
8 INTO EXISTENCE UNTIL OCTOBER 12, 1984. THE FIRST FOUR
9 ACTS PRESENTED OR ALLEGATIONS REGARDING RACKETEERING IN
10 COUNT 4 ALL TOOK PLACE PRIOR TO OCTOBER 12, 1984.
11 ALTHOUGH THE ACTS MAY THEMSELVES HAVE BEEN PROHIBITORY
12 UNDER OTHER STATUTES, UNDER 1959 IN THE WAY I AM SURE THAT
13 THE EVIDENCE WAS PRESENTED TO THE GRAND JURY IT WAS NOT
14 ILLEGAL.

15 A CASE THAT WOULD HOPEFULLY OR POSSIBLY ASSIST
16 IN UNDERSTANDING THIS WOULD BE UNITED STATES VS. BROWN.
17 IN THAT SCENARIO DEFENDANT CONTENDS IT IS ANALOGOUS TO
18 THIS SCENARIO HERE, FOR THERE THE COURT FOUND THAT THE
19 CONVICTIONS WERE DEFECTIVE BECAUSE EVIDENCE OF
20 RACKETEERING AND CONSPIRACY --

21 THE COURT: DO YOU HAVE A CITATION FOR THAT
22 CASE?

23 MS. FULGINITI: I HAVE A COPY FOR YOUR HONOR.

24 THE COURT: HAND IT TO THE CLERK.

25 MS. FULGINITI: IF I CAN FOCUS THE COURT'S

1 ATTENTION TO PAGE 419 OF THE CASE, WHICH DISCUSSES THE EX
2 POST FACTO PROHIBITION AS IT IS COUCHED IN THE DUE PROCESS
3 ARGUMENT.

4 THE COURT: WHAT IS YOUR POINT HERE, COUNSEL?

5 MS. FULGINITI: IN THIS CASE, YOUR HONOR, THE
6 COURT FOUND THE CONVICTIONS DEFECTIVE BECAUSE EVIDENCE OF
7 RACKETEERING ACTIVITY AND CONSPIRACY ACTS THAT TOOK PLACE
8 PRIOR TO AND AFTER THE EFFECTIVE DATE OF THE STATUTE, THE
9 STATUTE BEING THE ORGANIZED CRIME CONTROL ACT, WERE
10 PRESENTED TO THE JURY WITHOUT SPECIFICALLY INFORMING THEM
11 THAT THEY WOULD HAVE TO FIND EVIDENCE OF THE CRIMES
12 CHARGED AFTER THE EFFECTIVE DATE OF THE ACT.

13 SIMILARLY, AS THE GRAND JURY WAS PRESENTED WITH
14 EVIDENCE OF ACTS AND AS OUTLINED IN COUNT 4, THE MAJORITY
15 OF THOSE ACTS TOOK PLACE PRIOR TO THE ENACTMENT OF SECTION
16 1959. SINCE WE DON'T KNOW WHY THE GRAND JURY INDICTED
17 DEFENDANT ZUNO-ARCE, WE CAN ONLY ASSUME THAT IT CONSIDERED
18 EVIDENCE OUTLINED IN THE INDICTMENT WHICH INCLUDES ACTS
19 THAT WERE NOT A CRIME AT THE TIME THEY OCCURRED.

20 THUS, IT IS FUNDAMENTALLY UNFAIR TO ALLOW AN
21 INDIVIDUAL TO BE INDICTED FOR ACTS DONE BEFORE THE PASSAGE
22 OF A LAW WHICH BASICALLY MADE THE ACTS CRIMINAL.

23 IN ADDITION, YOUR HONOR, JUST TO TOUCH ON THE
24 OTHER ASPECTS OF YOUR ARGUMENT -- EXCUSE ME -- YOUR
25 HOLDING WHERE YOU STATE THE PROPOSITION THAT OVERT ACTS

1 ARE REGARDED AS HAVING BEEN COMMITTED ON THE DATE OF THE
2 LAST ACT --

3 THE COURT: THE CRIME, I THINK I SAID.

4 MS. FULGINITI: THE CRIME, YES, YOUR HONOR. THE
5 CASES THAT RELY ON THAT PROPOSITION ARE CLEARLY
6 DISTINGUISHABLE FROM THE CASE AT BAR. FIRST, WHAT MAKES
7 THESE CASES DISTINGUISHABLE IS THAT AT LEAST THE
8 DEFENDANTS IN THOSE CASES HAD KNOWLEDGE THAT THEY WERE
9 ENGAGING IN A PROHIBITORY CONDUCT.

10 HERE THE STATUTES DO NOT MERELY ENHANCE THE
11 PENALTY AS THEY DO IN THOSE CASES. HERE THE DEFENDANT IS
12 BEING CHARGED WITH A WHOLE NEW CRIME. IN ADDITION, THOSE
13 CASES NARROWLY CONFINE THE PROPOSITION TO SITUATIONS IN
14 WHICH GENERAL CONSPIRACY WAS CHARGED UNDER 18 U.S.C.
15 SECTION 371, NOT A SPECIFIC CONSPIRACY ACCORDING TO
16 STATUTE.

17 BASED ON THIS AND THE FACT THAT THE GRAND JURY
18 WAS PRESENTED WITH ALLEGATIONS THAT WE PROPOSE THEY
19 POSSIBLY COULD HAVE RELIED ON SOLELY AND INDICTED
20 DEFENDANT ZUNO-ARCE, COUNT 4 ESPECIALLY SHOULD BE
21 DISMISSED.

22 THE COURT: WELL, THE COURT WILL READ THIS CASE
23 AND CONSIDER YOUR ARGUMENT, AND I WILL TAKE THE MATTER
24 UNDER SUBMISSION WITH RESPECT TO COUNT 4.

25 MS. FULGINITI: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 I BELIEVE THAT CONCLUDES THE MOTIONS THAT WE ARE
3 PREPARED TO DEAL WITH TODAY. ARE THERE ANY OTHERS THAT I
4 HAVE OVERLOOKED?

5 MR. STOLAR: WELL, THERE ARE SEVERAL MOTIONS --
6 THE COURT: YOU HAVE SOME PENDING NEXT WEEK,
7 DON'T YOU?

8 MR. STOLAR: WELL, WE HAVE A DATE WITH YOU ON
9 THE 10TH OF NEXT WEEK.

10 THE COURT: DON'T YOU HAVE SOME MOTIONS
11 SCHEDULED FOR NEXT MONDAY?

12 MR. STOLAR: NO. ALL OF MY MOTIONS WERE NOTICED
13 FOR TODAY.

14 THE COURT: ALL RIGHT.

15 MR. STOLAR: INCLUDING A MOTION THAT WAS FILED
16 LAST WEEK RIGHT AFTER THE CIRCUIT DENIED MY PETITION TO
17 THEM FOR A 90-DAY CONTINUANCE OF THE TRIAL FOR US TO BE
18 ABLE TO PROPERLY INVESTIGATE THE CASE AND DEVELOP THE
19 EVIDENCE. THAT IS A MOTION WHICH WE TAKE WITH SOME
20 SERIOUSNESS BECAUSE OF THE VERY SHORT PERIOD OF TIME THAT
21 WE HAVE HAD, THAT IS, THE ROUGHLY 64 DAYS BETWEEN THE TIME
22 OF THE DEFENDANT'S ARRAIGNMENT AND THE TIME OF TRIAL THAT
23 IS SCHEDULED TO COMMENCE.

24 SO THAT IS ONE OF THE MOTIONS THAT WAS SCHEDULED
25 FOR TODAY.

1 THE COURT: I HAVEN'T SEEN THAT MOTION. HAS IT
2 BEEN FILED?

3 MR. STOLAR: YES, SIR.

4 THE COURT: WELL, YOU ARE REQUIRED TO NOTICE A
5 MOTION HERE. WHEN DID YOU FILE IT? FRIDAY?

6 MR. STOLAR: IT WAS FILED EITHER WEDNESDAY OR
7 THURSDAY.

8 THE COURT: AND NOTICED FOR TODAY?

9 MR. STOLAR: YES, SIR.

10 THE COURT: WHAT IS THE MOTION?

11 MR. STOLAR: IT IS A MOTION FOR A CONTINUANCE.

12 THE COURT: WHAT ARE THE GROUNDS FOR THE
13 CONTINUANCE?

14 MR. STOLAR: THE GROUNDS FOR A CONTINUANCE ARE
15 THE DEFENDANT AND THE DEFENDANT'S COUNSEL'S INABILITY TO
16 PROPERLY PREPARE FOR TRIAL IN A VERY COMPLICATED CASE,
17 PARTICULARLY GIVEN THE KIND OF TIME CONSTRAINTS THAT WE
18 ARE UNDER.

19 AS THE COURT KNOWS, MR. BURNS, MYSELF, AND
20 MR. AGUILAR HAVE BEEN PREPARING FOR A COMPLETELY DIFFERENT
21 TRIAL WHEN WE HAD TO START WORK IN CONNECTION WITH THIS
22 TRIAL ONLY ON FEBRUARY THE 5TH. A TON OF DISCOVERY
23 MATERIAL WAS PROVIDED TO US.

24 INCLUDED IN THAT DISCOVERY MATERIAL WAS A HAIR
25 SAMPLE ANALYSIS THAT WAS DONE BY THE FBI. WHEN WE GOT

1 THAT, WE COMMENCED CONTACTING A COUPLE OF EXPERTS, AND THE
2 EXPERTS NEED SOME TIME IN ORDER TO DO THEIR EXAMINATIONS
3 AND TO MAKE ARRANGEMENTS WITH THE GOVERNMENT TO HAVE THEM
4 EXAMINE THESE SO-CALLED HAIR SAMPLES BOTH BY LIGHT
5 MICROSCOPE AND BY ELECTRON MICROSCOPE AND POSSIBLY BY DNA
6 ANALYSIS IF THAT IS AVAILABLE TO THEM. THAT IS SOMETHING
7 WE CANNOT ACCOMPLISH, ACCORDING TO WHAT THE EXPERTS HAVE
8 TOLD US, IN ORDER TO BE READY TO GO TO TRIAL ON APRIL 10.
9 THERE IS GOING TO BE SOME TIME THAT IS NEEDED TO GET THOSE
10 SAMPLES, TO GET THEM TO OUR EXPERTS, AND TO PREPARE US TO
11 CROSS-EXAMINE THE GOVERNMENT'S EXPERTS. THAT IS ONE
12 SPECIFIC THING.

13 THE OTHER IS THAT THE INVESTIGATIONS THAT ARE
14 NECESSARY FOR US TO DO IN CONNECTION WITH THIS CASE ARE
15 SOMEWHAT EXTENSIVE. NOT ONLY DO WE HAVE TO DEAL WITH
16 THINGS IN LOS ANGELES AND THE CENTRAL DISTRICT OF
17 CALIFORNIA, THERE ARE EVENTS THAT TAKE PLACE IN MEXICO, IN
18 SPAIN, EVENTS THAT TAKE PLACE APPARENTLY IN NEW YORK CITY,
19 IF I UNDERSTAND THE GOVERNMENT'S PROOF. THERE ARE EVENTS
20 THAT TAKE PLACE IN PHOENIX, ARIZONA, AND COSTA RICA.

21 WE DO NOT HAVE THE UNLIMITED RESOURCES THAT THE
22 GOVERNMENT HAS AND THE DEA OFFICE IN EVERY AREA OF THE
23 WORLD HAS IN ORDER TO BE ABLE TO ADEQUATELY INVESTIGATE
24 WHAT SOME OF THE ALLEGATIONS ARE, INCLUDING THE FACT THAT
25 SOME OF THE ALLEGATIONS HERE IN THE INDICTMENT ITSELF

1 DOESN'T EVEN TALK ABOUT COCAINE DEALING, BUT WE THINK THAT
2 THAT IS WHAT WE ARE GOING TO SEE WHEN THE GOVERNMENT PUTS
3 ITS CASE ON.

4 SO WE JUST HAVEN'T HAD SUFFICIENT TIME TO
5 PREPARE ADEQUATELY TO DEFEND MR. MATA UNDER THE
6 CIRCUMSTANCES OF THIS CASE, INCLUDING THE SCIENTIFIC
7 EVIDENCE AND INCLUDING THE INVESTIGATION OF WHAT IS NOT A
8 SIMPLE BUY AND BUST. THIS IS A VERY COMPLICATED CASE AND
9 ONE THAT IN ORDER TO PROPERLY REPRESENT MR. MATA WE NEED
10 TO HAVE SOME MORE TIME TO PREPARE FOR IT.

11 THE COURT: ALL RIGHT. DO THE OTHER DEFENDANTS
12 WISH TO BE HEARD IN THIS MOTION?

13 MR. BLANCARTE: NO, YOUR HONOR. WE WERE JUST
14 GOING TO APPRISE THE COURT THAT THE DEFENDANT ZUNO-ARCE
15 ALSO HAS ANOTHER MOTION THAT TO THE BEST OF OUR KNOWLEDGE
16 HAS NOT BEEN CALENDARED.

17 THE COURT: WHAT IS THE MOTION?

18 MR. BLANCARTE: IT WAS A MOTION FILED ON MARCH 7
19 FOR DISCLOSURE OF EVIDENCE IN POSSESSION OF VARIOUS
20 FEDERAL AGENCIES, INCLUDING THE DEA, CUSTOMS, CIA, AND
21 OTHER FEDERAL AGENCIES.

22 THE COURT: WHEN IS THAT NOTICED FOR HEARING?

23 MR. BLANCARTE: IT WAS ORIGINALLY NOTICED FOR
24 MARCH 28. THOSE MOTIONS THAT WERE HEARD TODAY WERE PUT
25 OVER TO TODAY'S DATE, BUT THE PHONE CALL FROM THE COURT

1 DID NOT INCLUDE THIS MOTION WHICH WAS FILED ALONG WITH THE
2 OTHERS TO BE HEARD TODAY.

3 THE COURT: WHAT ABOUT THIS MOTION TO CONTINUE?
4 MR. BLANCARTE: THE DEFENDANT ZUNO-ARCE OPPOSES
5 ANY CONTINUANCE, YOUR HONOR.

6 MS. KELLY: YOUR HONOR, I WISH TO BE HEARD ON
7 THAT BRIEFLY. YOUR HONOR, AT THIS POINT -- I BELIEVE IT
8 WAS MARCH 30TH OR MARCH 15TH I RECEIVED DISCOVERY
9 CONCERNING THE AUTOPSY OF PILOT ZAVALA AND AGENT CAMARENA.
10 YOUR HONOR, I DO BELIEVE THAT WE HAVE EVIDENCE THAT THERE
11 IS SOME QUESTION ABOUT THE PROPER IDENTIFICATION. YOU
12 WILL RECALL THAT IN THE PRIOR TRIAL THE DEFENDANTS ALL
13 STIPULATED THAT THE BODY THAT WAS IN FACT FOUND WAS AGENT
14 CAMARENA. YOUR HONOR --

15 THE COURT: DO YOU DISPUTE THAT?

16 MS. KELLY: YES, YOUR HONOR, I DO. THERE IS
17 SOME RECENT EVIDENCE. AT THIS POINT, YOUR HONOR, IT IS
18 HEARSAY. I AM TRYING TO INVESTIGATE THE REPORTS THAT
19 APPARENTLY THERE IS --

20 THE COURT: WELL, WHAT IS YOUR POINT IN TELLING
21 ME THIS?

22 MS. KELLY: MY POINT IS THAT I JOIN IN THE
23 MOTION FOR THE CONTINUANCE, YOUR HONOR.

24 THE COURT: YOU ARE GOING TO JOIN IN THE MOTION
25 TO CONTINUE?

1 MS. KELLY: YES, YOUR HONOR.

2 THE COURT: WHERE IS THE OTHER DEFENDANT HERE?

3 MR. STOLAR: HE WAS IN COURT EARLIER. THAT IS
4 MR. NICOLAYSEN.

5 MS. KELLY: YOUR HONOR DOES RECALL THAT HE DOES
6 HAVE A MOTION REQUESTING FOREIGN DEPOSITIONS, AND HE DID
7 WANT A CONTINUANCE.

8 THE COURT: WHAT ABOUT YOU, COUNSEL?

9 MR. MEDRANO: WE WOULD OPPOSE, YOUR HONOR, ANY
10 MOTION FOR A CONTINUANCE AND ALSO WOULD JUST LIKE TO FLAG
11 SOMETHING ELSE FOR YOU, YOUR HONOR.

12 YOUR ORDER OF LAST WEEK ASKING THE GOVERNMENT TO
13 DISCLOSE GIGLIO AND C.I. IDENTITIES, AS FAR AS WE
14 UNDERSTAND, WAS PREDICATED ON THE NOTION OF COMMENCING
15 TRIAL ON APRIL 10. TO THE EXTENT, YOUR HONOR, THAT THIS
16 ISSUE IS UNRESOLVED AND TO THE EXTENT THAT THERE IS SOME
17 SLIGHT POSSIBILITY THAT THAT TRIAL WOULD GO PAST APRIL 10,
18 WE WOULD ASK YOUR HONOR FOR TWO THINGS: ONE, THAT THE
19 MOTION FOR CONTINUANCE BE RESOLVED PRIOR TO DISCLOSURE OF
20 THE GIGLIO AND C.I. IDENTITY INFORMATION, AND THE
21 GOVERNMENT WOULD NOT OBJECT, YOUR HONOR, TO COMING BACK
22 LATER THIS AFTERNOON IF THAT IS CONDUCIVE TO THE COURT'S
23 SCHEDULE TO DEAL WITH THIS ISSUE WITH FINALITY.

24 IN ADDITION, YOUR HONOR, IF THE COURT WOULD LIKE
25 FURTHER ARGUMENT AS TO WHY WE WOULD OPPOSE A CONTINUANCE,

1 I CAN DEAL WITH THAT NOW OR LATER ON THIS AFTERNOON,
2 WHATEVER THE COURT WANTS. BUT WE OPPOSE IT.

3 THE COURT: YOU OPPOSE IT?

4 MR. MEDRANO: WE DO, YOUR HONOR.

5 THE COURT: MR. NICOLAYSEN, YOU WERE NOT HERE
6 WHEN WE TOOK UP THE MOTION. YOUR CLIENT IS NOT HERE, BUT
7 THERE HAS BEEN A MOTION MADE BY DEFENDANT MATA TO CONTINUE
8 THE TRIAL FOR 90 DAYS. DO YOU HAVE A POSITION ON THAT?

9 MR. NICOLAYSEN: MY POSITION IS THAT I WOULD
10 SEEK A CONTINUANCE FOR ONE PURPOSE ONLY, AND THAT IS TO
11 PROVIDE SUFFICIENT LEAD TIME TO CONDUCT DEPOSITIONS IN
12 MEXICO. YOUR HONOR MAY RECALL THAT I HAVE NOTICED A
13 MOTION FOR TODAY, WHICH THE COURT TOOK OFF CALENDAR, A
14 MOTION UNDER RULE 15 FOR AN ORDER PERMITTING DEPOSITIONS
15 IN MEXICO AND SEEKING A CONTINUANCE FOR THAT LIMITED
16 PURPOSE.

17 YOUR HONOR, I AM COMFORTABLE WITH A RECESS
18 DURING TRIAL TO TAKE THOSE DEPOSITIONS IF THE COURT IS
19 INCLINED TO GRANT THE ORDER, BUT I FEEL THAT A CONTINUANCE
20 OF 30 DAYS WOULD BE SUFFICIENT.

21 I AM PRESENTLY WORKING AS WELL AS I CAN WITH THE
22 MEXICAN CONSULATE TO FACILITATE THE LOGISTICS SO THAT I
23 CAN MAKE A VIABLE PROFFER TO THE COURT REGARDING THE
24 FEASIBILITY OF THOSE DEPOSITIONS BEFORE GOING ON THE
25 RECORD AND ASKING FOR AN ACTUAL ORDER. I EXPECT THAT YOUR

1 HONOR WILL PROBABLY WANT ME TO BE HEARD ON THAT NEXT
2 MONDAY, AND I EXPECT THAT I WILL BE ABLE TO TAKE A
3 POSITION AS TO WHETHER THOSE DEPOSITIONS WILL OR WON'T GO
4 FROM THE MEXICAN GOVERNMENT'S STANDPOINT. MY POSITION ON
5 A CONTINUANCE RESTS ON THAT. AT THIS POINT I WOULD NOT
6 OPPOSE A 30-DAY CONTINUANCE, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. STOLAR: 30 DAYS IS BETTER THAN SEVEN AS FAR
9 AS I AM CONCERNED. ANYTHING TO ALLOW ME TO GET THIS
10 TOGETHER. THE OTHER DEFENDANTS IN THIS CASE HAVE HAD
11 ALMOST TWICE AS MUCH TIME TO GET PREPARED FOR IT.

12 I HAVE ORDERED THE TRIAL TRANSCRIPT. I HAVEN'T
13 EVEN RECEIVED IT YET TO BE ABLE TO SIT DOWN AND READ IT.
14 IT IS REALLY A TREMENDOUS AMOUNT OF PRESSURE.

15 MR. MEDRANO: ON THAT SUBJECT, YOUR HONOR, LET
16 ME JUST SAY THAT WE ARE PREPARED TO ARGUE IT RIGHT NOW,
17 BUT I DON'T KNOW HOW MUCH DETAIL YOU WOULD WANT TO GO INTO
18 AS TO EACH OF THE POSITIONS OF THE RESPECTIVE DEFENSE
19 COUNSEL. EACH ONE CAN BE PROPERLY REBUTTED, YOUR HONOR.

20 THE COURT: THE MORE SERIOUS ONE IS MR. MATA'S
21 CONTINUANCE. HE HAS BEEN IN THE CASE THE SHORTEST PERIOD
22 OF TIME, AND HE STATES THAT HE HAS NOT HAD THE OPPORTUNITY
23 TO PREPARE.

24 MR. MEDRANO: WITH ONE MINUTE, YOUR HONOR, I CAN
25 ADDRESS THAT RIGHT NOW IF YOU WOULD ALLOW ME.

1 THE COURT: ALL RIGHT.

2 MR. MEDRANO: YOUR HONOR, LET ME JUST REMIND THE
3 COURT OF SOMETHING. WHEN DEFENDANT ZUNO WAS ARRESTED AND
4 ARRAIGNED BEFORE YOU AS TO THE CAMARENA CASE, YOU SET A
5 TRIAL CALENDAR THAT GAVE HIM APPROXIMATELY 60 TO 65 DAYS
6 FOR TRIAL PREPARATION. MR. MEDVENE CAME INTO COURT AND AT
7 ALL TIMES FROM HIS ENTRY INTO THIS CASE HAS ADAMANTLY
8 STATED THAT HE IS READY TO GO TO TRIAL.

9 I FLAG THAT FOR YOU, YOUR HONOR, BECAUSE IT IS
10 THE GOVERNMENT'S POSITION THAT ZUNO AND MATA ARE SIMILARLY
11 PLACED IN TERMS OF CALIBER OF DEFENDANT AND THE EVIDENCE
12 THAT EXISTS AS TO BOTH OF THOSE DEFENDANTS.

13 IN ADDITION, YOUR HONOR, I'D LIKE TO FLAG FOR
14 YOU, AS YOU YOURSELF HAVE INDICATED ALREADY, THAT THE
15 NINTH CIRCUIT HAS BRIEFLY AND CURSORILY HANDLED
16 MR. STOLAR'S EMERGENCY MOTION ASKING FOR A CONTINUANCE,
17 AND THAT WAS SUMMARILY DENIED WITHOUT EVEN ASKING
18 GOVERNMENT COUNSEL TO PROVIDE PAPERS ON THE ISSUE.

19 THE COURT: WELL, THEY DIDN'T CONSIDER THE
20 MERITS OF HIS MOTION.

21 MR. STOLAR: IT WAS NOT A MOTION FOR --

22 THE COURT: IT WAS A MOTION TO TRY THE OTHER
23 CASE AHEAD OF THIS ONE.

24 MR. MEDRANO: ON THAT ISSUE, YOUR HONOR, I'D
25 LIKE TO ADVISE THE COURT THAT I AM OF THE UNDERSTANDING

1 THAT WHEN MR. STOLAR AND GOVERNMENT COUNSEL AND JUDGE RAE
2 ON THE CCE CASE APPEARED BEFORE JUDGE RAE, MR. STOLAR
3 STATED QUITE FRANKLY AND BLUNTLY THAT HE WAS READY TO
4 PROCEED ON THE TRIAL FOR THAT CCE, AND HE HAS BEEN READY
5 TO DO THAT FOR A BIT OF TIME. IF THAT IS THE CASE, YOUR
6 HONOR, IT IS NOT A QUESTION OF PREPARING TWO COMPLEX CASES
7 SIMULTANEOUSLY, BUT RATHER HAVING 65 DAYS, IF PERMITTED,
8 TO PREPARE SIMPLY FOR THIS TRIAL.

9 THE COURT: WELL, IT IS A QUESTION OF WHAT WAS
10 DONE IN THE 65 DAYS THAT YOU WERE PERMITTED.

11 MR. MEDRANO: ON THAT ISSUE, YOUR HONOR --

12 THE COURT: AND WHY WASN'T IT IF IT WASN'T?

13 MR. STOLAR: AS SOON AS WE STARTED KNOWING WHAT
14 CASE WE ARE GOING TO GO TO TRIAL ON, WE --

15 THE COURT: BUT YOU WAITED A LONG TIME.

16 MR. STOLAR: NO. NO. WE STARTED PREPARING,
17 READING THROUGH THE DISCOVERY MATERIAL THAT WE GOT FROM
18 THE GOVERNMENT ON THIS CASE AT THE SAME TIME THAT WE
19 DIDN'T KNOW WE WERE NOT GOING TO TRIAL ON THE OTHER CASE
20 WITH JUDGE RAE AND AT THE SAME TIME WE WERE DOING MOTIONS
21 FOR YOU, AND WE ARE JUST NOT ON UNLIMITED RESOURCES.

22 EVEN WITH THE 65 DAYS IF WE HAD DONE NOTHING
23 FROM THE FIRST DAY THAT WE APPEARED BEFORE YOU FOR
24 ARRAIGNMENT EXCEPT TO TRY TO GET READY FOR THIS CASE, WE
25 STILL WOULDN'T HAVE HAD ENOUGH TIME. BUT YET WE STILL

1 DIDN'T KNOW, AT LEAST UP UNTIL THE POINT WHEN YOU AND
2 JUDGE RAE HAD A CONFERENCE ON THE TELEPHONE, WHICH CASE WE
3 WERE GOING TO GO TO TRIAL ON AND WHAT TO GET READY FOR.

4 THE COURT: YOU KNEW YOU WERE GOING TO TRIAL ON
5 MY CASE. THAT BUSINESS OF HAVING JUDGE RAE CALL ME WAS
6 NOT ONLY INAPPROPRIATE, BUT TO GO TO ANOTHER JUDGE AND TRY
7 TO AFFECT A CALENDAR DATE THAT I TOLD YOU WAS FIRM, I
8 DON'T UNDERSTAND THAT.

9 MR. STOLAR: THAT MOTION WAS THE GOVERNMENT'S
10 MOTION FOR THAT CONFERENCE BEFORE JUDGE RAE. THEY WANTED
11 THE CASE TO --

12 THE COURT: WELL, IT WAS CLEARLY INAPPROPRIATE.

13 MR. STOLAR: THAT WAS THE GOVERNMENT THAT DID
14 IT, AND THAT WAS THE GOVERNMENT FROM WASHINGTON AS OPPOSED
15 TO THE GOVERNMENT IN THE CENTRAL DISTRICT. MR. MATA IS
16 WHIP-SAWED BETWEEN THE GOVERNMENT REGARDLESS OF WHERE THEY
17 ARE FROM.

18 MR. MEDRANO: BUT THE ISSUE AGAIN, YOUR HONOR,
19 IS HAS THERE BEEN ADEQUATE TIME TO PREPARE FOR THIS CASE.
20 WITH ALL DUE RESPECT, I THINK THE MOST VIABLE ISSUE, IF
21 ANY, THAT MR. STOLAR PROFFERS IS THE ISSUE ON HAIR
22 EXAMINATION AND HAIR EXPERTS. FIRST OF ALL, HE WAS AWARE
23 OF THAT FINDING EVEN BEFORE THE INDICTMENT IN THIS CASE,
24 AND, SECOND OF ALL, YOUR HONOR, HE WAS GIVEN THE DISCOVERY
25 LITERALLY DAYS AFTER MATA'S ARRAIGNMENT IN THIS COURT.

1 NOW, I NOTE THAT THERE IS A DECLARATION BY
2 COUNSEL MICHAEL BURNS IN THEIR MOTION FOR CONTINUANCE, AND
3 WHAT IS UNIQUELY LACKING IN THE DOCUMENT, YOUR HONOR, ARE
4 THE DATES AS TO WHICH THEY REACHED OUT AND TRIED TO GET A
5 HAIR EXPERT. I DON'T SEE THOSE DATES IN THERE. I SUBMIT
6 TO YOU THAT THE REASON THOSE DATES ARE NOT IN THERE IS
7 BECAUSE THEY WOULD SHOW YOU AND SUGGEST TO YOU THAT
8 DEFENSE COUNSEL DID NOT QUICKLY AND EXPEDITIOUSLY MOVE ON
9 THIS CASE IN TERMS OF PREPARATION.

10 THE COURT: WELL, I SENSED SOME OF THAT
11 MYSELF -- THAT YOU DIDN'T TAKE THAT DATE SERIOUSLY, AND
12 YOU SOUGHT TO USE THE OTHER TRIAL AS A MEANS OF AVOIDING
13 THIS TRIAL.

14 MR. STOLAR: THE GOVERNMENT, WITH RESPECT TO THE
15 HAIR EVIDENCE, SPEAKS A LITTLE BIT SLYLY. THE REPORT THAT
16 THEY GAVE US IS INCOMPLETE. IN ADDITION, THE REPORT SAYS
17 THAT THERE IS A REPORT MISSING. NOW, EVEN IF I HAD AN
18 EXPERT IN HAND, HOW AM I GOING TO HAVE SOMEBODY LOOK AT
19 SOMETHING, A PIECE OF EVIDENCE, THAT IS PARTIAL AND A
20 SECOND REPORT THAT IS MISSING COMPLETELY?

21 THE COURT: ALL RIGHT. THE COURT IS READY TO
22 RULE ON THIS. I WILL CONTINUE THE TRIAL TO MAY 1 AT 9:30
23 A.M. I WILL EXPECT EVERYBODY TO BE READY AT THAT TIME,
24 MAY 1. THE ORDER FOR DISCLOSURE OF INFORMANTS AND GIGLIO
25 MATERIAL, WHICH I PREVIOUSLY ORDERED TO BE MADE TODAY, IS

1 ORDERED STAYED TO APRIL 30TH.

2 MR. STOLAR: COULD WE HAVE IT A WEEK BEFORE?

3 THE COURT: YES. STRIKE THAT. APRIL 23.

4 MR. MEDRANO: YOUR HONOR, MAY I JUST BRING
5 SOMETHING TO THE COURT'S ATTENTION? PERHAPS THE COURT IS
6 AWARE OF IT. IF SO, I APOLOGIZE. MR. STOLAR AND THE
7 DEPARTMENT OF JUSTICE NARCOTICS ATTORNEYS ARE CURRENTLY
8 SCHEDULED TO COMMENCE TRIAL IN MATA'S CCE ON APRIL 24.

9 THE COURT: THEY ARE NOT GOING TO MAKE IT. THAT
10 CASE IS GOING TO BE GOING INTO MAY, AS I UNDERSTAND IT
11 FROM THE JUDGE.

12 MR. MEDRANO: OUR SOLE CONCERN, YOUR HONOR, IS
13 THE POSSIBILITY OF ANY SEVERANCE BECAUSE WE DON'T WANT TO
14 DO IT TWO MORE TIMES. I JUST WANTED TO FLAG THAT FOR THE
15 COURT. THANK YOU.

16 THE COURT: ALL RIGHT.

17 MR. STOLAR: MAY I INQUIRE, SINCE WE HAVE NOT
18 DEALT WITH THE DISCOVERY MOTION THAT I ALSO SCHEDULED FOR
19 THIS MORNING, WHETHER OR NOT THE ORDER WITH RESPECT TO THE
20 INFORMANTS AND THE GIGLIO MATERIAL APPLIES TO MR. MATA AS
21 WELL?

22 THE COURT: WELL, HAVE YOU FILED A MOTION?

23 MR. STOLAR: THERE ARE THREE MOTIONS THAT YOU
24 DID NOT CALENDAR.

25 THE COURT: RELATING TO THAT?

1 MR. STOLAR: IT IS A DISCOVERY MOTION. IT
2 EFFECTIVELY TRACKS YOUR OWN DISCOVERY ORDER, WHICH THEY DO
3 NOT WANT TO COMPLY WITH, BUT WHICH IS EQUIVALENT OF THE
4 ORDER WHICH YOU MADE.

5 THE COURT: WELL, YOU HAD BETTER LET ME LOOK AT
6 WHAT YOU FILED.

7 MR. STOLAR: YOU HAVE IT. IT IS A DISCOVERY
8 MOTION.

9 THE COURT: IT WAS SCHEDULED FOR HEARING?

10 MR. STOLAR: IT WAS SCHEDULED FOR TODAY.

11 THE COURT: TODAY?

12 MR. STOLAR: YES, AND IT WAS FILED ON TIME.

13 THE COURT: DID WE CHANGE THE HEARING DATE ON
14 IT?

15 MR. STOLAR: NOBODY INFORMED ME.

16 MR. MEZA: YOUR HONOR, LIKEWISE ON BEHALF OF
17 BERNABE-RAMIREZ --

18 THE COURT: WHAT ABOUT RAMIREZ?

19 MR. MEZA: WE ALSO FILED A DISCOVERY MOTION
20 CONSISTENT WITH THE COURT'S DISCOVERY ORDER.

21 THE COURT: THESE UNHEARD MOTIONS WILL BE HEARD
22 NEXT MONDAY.

23 MR. BLANCARTE: DOES THAT INCLUDE MR. ZUNO-
24 ARCE'S DISCLOSURE WHICH WE DISCUSSED EARLIER, YOUR HONOR?

25 THE COURT: WHEN DID YOU FILE IT?

1 MR. BLANCARTE: MARCH 7.

2 THE COURT: THAT SHOULD BE HEARD, YES.

3 MR. STOLAR: ALSO WE HAVE A MOTION TO DISMISS
4 FOR LACK OF JURISDICTION.

5 THE COURT: THAT SHOULD CERTAINLY BE HEARD
6 FIRST. THAT SHOULD BE HEARD NEXT MONDAY.

7 DID YOU ALL FILE THESE BEFORE THE MOTION CUTOFF
8 DATE?

9 MR. STOLAR: YES.

10 MR. MEZA: YES, YOUR HONOR, AND THE GOVERNMENT
11 DID RESPOND WITH RESPECT TO BERNABE-RAMIREZ.

12 MR. STOLAR: ALSO WITH RESPECT TO MATA.

13 THE COURT: WE WILL COORDINATE WITH THE LAW
14 CLERK AND SEE WHICH OF THESE MOTIONS REMAIN UNRESOLVED,
15 AND WE WILL SCHEDULE THEM PREFERABLY FOR NEXT MONDAY.

16 MR. STOLAR: MAY I REQUEST, AS A MATTER OF SOME
17 DIFFICULTY IN GETTING OUT HERE FROM NEW YORK, THAT WE
18 SCHEDULE THE PROCEEDINGS FOR 2:00 O'CLOCK IN THE AFTERNOON
19 RATHER THAN IN THE MORNING?

20 THE COURT: WELL, WE COULD SCHEDULE YOURS AT
21 THAT TIME.

22 MR. STOLAR: FINE.

23 MR. NICOLAYSEN: WOULD IT BE APPROPRIATE TO
24 INTERFACE, YOUR HONOR, WITH YOUR CLERK TO GET CLEAR WHICH
25 MOTIONS THE COURT IS INTENDING TO HEAR ON BEHALF OF MY

1 CLIENT?

2 THE COURT: WELL, PRESUMABLY BY NOW WE HAVE
3 HEARD ALL THE PENDING MOTIONS EXCEPT THE FEW MOTIONS THAT
4 HAVE BEEN MENTIONED TODAY. IS THAT RIGHT?

5 MR. NICOLAYSEN: AND THOSE THAT ARE STILL
6 PENDING FOR DEFENDANT VASQUEZ. THERE ARE TWO REMAINING
7 FROM THE END OF FEBRUARY.

8 THE COURT: THOSE SHOULD BE HEARD.

9 MR. NICOLAYSEN: MY THOUGHT WAS JUST BECAUSE
10 YOUR STAFF IS BURDENED BY DEFENDANTS' MOTIONS ALL OVER THE
11 PLACE, WE MAY WANT TO JUST GET CLEAR AS TO THE CHECKLIST
12 OF MOTIONS --

13 THE COURT: I THINK THAT IS QUITE APPROPRIATE.

14 MR. NICOLAYSEN: MAY I HAVE PERMISSION TO CALL
15 CHAMBERS FOR THAT PURPOSE?

16 THE COURT: YES.

17 MR. NICOLAYSEN: THANK YOU.

18 THE COURT: ALL RIGHT. WE WILL ADJOURN.

19 (PROCEEDINGS CONCLUDED.)

20

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21 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
22 TRANSCRIPT OF THE PROCEEDINGS HAD ON THE RECORD
23 IN THE ABOVE-ENTITLED MATTER.

24

Delma B. Thomas

4/2/90

25

OFFICIAL REPORTER

DATE