

1 UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 -----
4 HONORABLE EDWARD RAFFEDIE, JUDGE PRESIDING
5 -----

6
7 UNITED STATES OF AMERICA,)
8 PLAINTIFF,)

9 vs.)

10 JUAN RAMON MATTA BALLESTEROS DEL)
11 POZO, RUBEN ZUNO-ARCE, JUAN JOSE)
12 BERNABE-RAMIREZ, AND JAVIER)
13 VASQUEZ-VELASCO, ET AL.,)
14 DEFENDANTS.)

COPY

CASE NO: 87-422(F)-ER

15
16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 THURSDAY, APRIL 19, 1990; 4:00 P.M.

18
19
20
21
22 JULIE A. CHURCHILL, CSR
23 OFFICIAL COURT REPORTER
24 442-C U.S. COURTHOUSE
25 312 N. SPRING STREET
LOS ANGELES, CALIF. 90012
(213) 617-8227

1 APPEARANCES:

2 ON BEHALF OF THE GOVERNMENT:

3 GARY A. FEES
4 UNITED STATES ATTORNEY
5 BY: MANUEL A. MEDRANO
6 JOHN L. CARLTON
7 ASSISTANT U.S. ATTORNEYS
8 1200 U.S. COURTHOUSE
9 312 NORTH SPRING STREET
10 LOS ANGELES, CA 90012
11 (213) 894-0619 894-6682

8 ON BEHALF OF THE DEFENDANT JUAN RAMON MATTA BALLESTEROS:

9 MARTIN R. STOLAR
10 MICHAEL BURNS
11 ADOLFO Z. AGUILAR
12 ATTORNEYS AT LAW
13 351 NORTH BROADWAY, 4TH FLOOR
14 NEW YORK, NEW YORK 10013
15 (212)219-1919
16 (213)855-8888, EXT. 314

13 ON BEHALF OF DEFENDANT HUMBERTO ALVAREZ MACHAIN:

14 ROBERT K. STEINBERG
15 ATTORNEY AT LAW
16 9911 WEST PICO BOULEVARD, 8TH FLR.
17 LOS ANGELES, CA 90035
18 (213)284-8624

17 ALSO PRESENT:

18 DOUGLAS KUEHL, SPECIAL AGENT, D.E.A.

19 DENA KOHN, SPANISH INTERPRETER
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DONALD B. VALLES	52	--	--	--

E X H I B I T S

<u>DEFENDANTS'</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
A-1		60
A-2		60
A-3		61
A-4		61
A-5		63
A-6		63
A-7		65
A-8		70
A-9		70

1 LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 19, 1990

2 4:15 P.M.

3
4 THE CLERK: YOU MAY BE SEATED.

5 CRIMINAL 87-422, UNITED STATES OF AMERICA VS.
6 JUAN JOSE BERNABE-RAMIREZ, JAVIER VASQUEZ-VELASCO, JUAN ZUNO-
7 ARCE, JUAN RAMON MATTA AND HUMBERTO ALVAREZ-MACHAIN.

8 COUNSEL, PLEASE STATE YOUR NAMES FOR THE RECORD.

9 MR. MEDRANO: GOOD AFTERNOON, YOUR HONOR; FOR
10 THE UNITED STATES, MANUEL MEDRANO AND JOHN CARLTON.

11 MR. MEDVENE: GOOD AFTERNOON, MY NAME IS ED
12 MEDVENE FOR RUBEN ZUNO-ARCE, WHO IS PRESENT.

13 MR. MEZA: GOOD AFTERNOON, YOUR HONOR; MIKE MEZA
14 FOR THE ADVOCATE DEFENDANT BERNABE-RAMIREZ, WHO IS PRESENT
15 IN CUSTODY.

16 MR. STOLAR: FOR MR. MATTA, MARTIN R. STOLAR,
17 ADOLFO Z. AGUILA AND MICHAEL J. BURNS.

18 MR. STEINBERG: GOOD AFTERNOON, YOUR HONOR;
19 ROBERT K. STEINBERG APPEARING FOR DR. ALVAREZ-MACHAIN.

20 THE COURT: COUNSEL, YOU ALL REQUESTED THIS
21 STATUS CONFERENCE TO DISCUSS WITH THE COURT WHERE THIS CASE
22 IS GOING AND WHEN. AND I'M GOING TO ADVISE YOU ABOUT THAT
23 AT THE -- IT IS THE PRESENT INTENTION OF THE COURT TO
24 PROCEED WITH THIS CASE ON MAY THE 1ST, TO THE EXTENT THAT WE
25 ARE ABLE TO COMPLETE THE REMAINING PRETRIAL MATTERS.

1 IF THEY ARE NOT COMPLETED BY THAT TIME, THEN I
2 EXPECT THEY WILL BE COMPLETED WITHIN A DAY OR TWO OF THAT
3 DATE AND WE WILL COMMENCE THAT TRIAL.

4 NOW, I WANT TO ASK COUNSEL FOR DR. MACHAIN TO
5 STEP UP HERE, PLEASE, AND I WANT TO ASK YOU A FEW QUESTIONS.

6 WHEN YOU APPEARED IN COURT WITH YOUR CLIENT --
7 WHEN WAS IT, ON THE 10TH?

8 MR. STEINBERG: I BELIEVE THAT'S CORRECT, YOUR
9 HONOR.

10 THE COURT: -- ON THE 10TH OF APRIL, YOU
11 INDICATED TO THE COURT THAT YOU WOULD BE READY TO PROCEED TO
12 TRIAL WITH HIM ALONG WITH THE REMAINING DEFENDANTS ON MAY
13 THE 1ST.

14 IS THAT STILL YOUR POSITION?

15 MR. STEINBERG: YES, YOUR HONOR. WHAT I SAID
16 WAS THAT BASED ON WHAT I KNEW AT THE TIME, AND IF I HAD
17 COMPLETED DISCOVERY IN AMPLE TIME, I WOULD BE READY TO
18 PROCEED.

19 THE COURT: WELL, I DON'T RECALL YOU MAKING
20 THOSE QUALIFICATIONS. BUT HAVE YOU NOW CHANGED YOUR VIEW,
21 OR IS IT STILL YOUR INTENTION TO PROCEED TO TRIAL ON MAY THE
22 1ST?

23 MR. STEINBERG: YOUR HONOR, I WOULD RESPECTFULLY
24 REQUEST A CONTINUANCE IN VIEW OF EVENTS THAT HAVE OCCURRED
25 IN THE LAST THREE OR FOUR DAYS IN THIS CASE.

1 THE COURT: WHAT EVENTS HAVE OCCURRED IN THE
2 LAST THREE OR FOUR DAYS?

3 MR. STEINBERG: ONE, I HAVE NOT RECEIVED
4 COMPLETE DISCOVERY. THIS IS NOT THE UNITED STATES
5 ATTORNEY'S FAULT, IN MY VIEW, BY ANY MEANS. MR. MEDRANO
6 REPRESENTED TO ME WHEN HE HANDED ME A DEA-6 ON MONDAY --
7 THIS IS AFTER READING 7,000 PAGES, 19 VIDEO TAPES AND MANY
8 AUDIO TAPES -- THAT THIS WAS THE END OF DISCOVERY AND
9 EVERYBODY SHOULD BELIEVE SO.

10 I BELIEVE THE DAY BEFORE YESTERDAY, MR. CARLTON,
11 CO-COUNSEL FOR THE GOVERNMENT, RECEIVED SOME OTHER AUDIO
12 TAPES WHICH ARE CRUCIAL TO THE DEFENSE.

13 THE COURT: RECEIVED SOME WHAT?

14 MR. STEINBERG: AUDIO TAPES. AND CALLED ME
15 IMMEDIATELY THERETO.

16 TWO OF THESE TAPES ARE IN SPANISH AND HAVE NOT
17 BEEN TRANSCRIBED.

18 THE COURT: HAVE THEY BEEN TRANSCRIBED BY ANY
19 OTHER DEFENDANT?

20 MR. STEINBERG: NO, SIR.

21 THE COURT: HAVE THEY BEEN PROVIDED TO OTHER
22 DEFENDANTS, DO YOU KNOW?

23 MR. STEINBERG: I DO NOT KNOW THAT, YOUR HONOR.

24 IN ANY EVENT, WE ARE IN THE PROCESS NOW OF
25 TRANSCRIBING THOSE OURSELVES AND REVIEWING THOSE TWO TAPES --

1 THREE TAPES, EXCUSE ME, YOUR HONOR, ONE WAS TRANSCRIBED, TWO
2 OF THEM WERE NOT -- AND THE GOVERNMENT HADN'T TRANSCRIBED
3 THEM EITHER, THEY GAVE THEM TO ME AS SOON AS THEY GOT THEM.

4 SO THAT HAS JUST COME TO ME RECENTLY, YOUR
5 HONOR.

6 IN ADDITION TO THAT, EXCLUDING JENKS MATERIAL,
7 AS THE COURT IS WELL AWARE, THERE IS AN ONGOING DISCOURSE
8 BETWEEN THE ATTORNEY GENERAL OF THE UNITED STATES AND THE
9 ATTORNEY GENERAL OF MEXICO AS TO JUST HOW DR. MACHAIN
10 ARRIVED IN THIS COUNTRY. THE COURT IS WELL AWARE OF THE LAW
11 ON THAT MATTER.

12 AND WHEN I APPEARED AS COUNSEL FOR DR. MACHAIN,
13 IT WAS MY UNDERSTANDING THAT HE HAD VOLUNTARILY SURRENDERED
14 IN EL PASO, TEXAS.

15 THE COURT: WELL, I RECALL THAT HE MADE A
16 STATEMENT TO THE COURT AT THAT TIME THAT HE HAD COME HERE TO
17 CLEAR THIS MATTER UP. IT SOUNDED LIKE HE SAID THAT.

18 MR. STEINBERG: YOU ARE CORRECT, YOUR HONOR, HE
19 DID SAY THAT AND HE MEANT IT. THE PROBLEM IS THAT HE DIDN'T
20 EXPLAIN HOW HE GOT HERE. IT WAS ONLY THROUGH --

21 THE COURT: WELL, HOW DID HE GET HERE?

22 MR. STEINBERG: HOW DID HE GET HERE?

23 THE COURT: YES.

24 MR. STEINBERG: YES, YOUR HONOR. HE WAS IN HIS
25 OFFICE -- AND I'M TELLING IT TO YOU AS HE REPRESENTED IT TO

1 ME. HE WAS IN HIS OFFICE IN GUADALAJARA WHEN -- IT VARIES --
2 FIVE TO SIX MEN CAME INTO HIS OFFICE REPRESENTING THEMSELVES
3 AS MEMBERS OF THE FEDERAL POLICE OF MEXICO -- AS WE KNOW
4 THEM, FEDERALES -- TELLING HIM HE WAS UNDER ARREST.

5 HE ASKED, "FOR WHAT?"

6 THEY SAID, "FOR DOING ILLEGAL ABORTION."

7 HE REPLIED, "I DIDN'T DO ANYTHING LIKE THAT";

8 THEY TOOK HIM ANYWAY.

9 THEY TOOK HIM AND THEY PUT HIM IN A CAR, AND
10 DROVE WITH THE CAR OVER A DAY-AND-A-HALF PERIOD, STOPPING
11 OVERNIGHT. FINALLY THEY STOPPED IN THE CITY OF LEON IN
12 MEXICO, WHEREUPON HE WAS PUT ON A SMALL AIRCRAFT, PROPELLER-
13 DRIVEN AIRCRAFT, AND FLOWN TO EL PASO.

14 THE DOCTOR REPRESENTS THAT DURING THE FLIGHT,
15 ONE OF THE MEN LOOKED TO HIM LIKE A FOREIGNER -- WHAT THAT
16 MEANS, I DON'T KNOW -- AND HE ASKED THIS GENTLEMAN --

17 THE COURT: ONE OF THE MEN HE SAW IN EL PASO?

18 MR. STEINBERG: NO, SIR, ONE OF THE MEN WHO
19 KIDNAPPED HIM, OR IF I MAY USE THE WORD, TOOK HIM AGAINST
20 HIS WILL.

21 HE LOOKED LIKE A FOREIGNER, AND WHAT THAT MEANS
22 TO DR. MACHAIN, I DON'T KNOW. HE ASKED THIS GENTLEMAN IF
23 THIS GENTLEMAN WAS FROM THE D.E.A., AND THE GENTLEMAN STATED
24 "YES."

25 WHEN THE PLANE LANDED IN EL PASO, THE DOCTOR AND

1 SOME OF THE MEN GOT OUT. THE MAN WHO THE DOCTOR SAYS WAS
2 FROM THE D.E.A. GOT OUT, AND, OF COURSE, DR. MACHAIN GOT
3 OUT. THERAFTER THE PLANE TAXIED AWAY, AND I ASSUME WENT
4 BACK TO MEXICO.

5 AND THAT IS WHY THE ATTORNEY GENERAL OF THE
6 UNITED STATES, MR. THORNBERG, AND THE ATTORNEY GENERAL OF
7 MEXICO, DURING THEIR DISCOURSE ON OTHER EVENTS ON DRUGS,
8 HAVE MADE AN ISSUE NOW AND HAVE ASKED -- THE MEXICAN
9 GOVERNMENT HAS ASKED OUR GOVERNMENT TO STATE THE
10 CIRCUMSTANCES OF DR. MACHAIN'S ARRIVAL IN OUR COUNTRY.

11 MY CONCERN, YOUR HONOR, IS, PUTTING GUILT OR
12 INNOCENCE ASIDE FOR ONE MOMENT IN THIS CASE, IN THE EVENT
13 THAT DR. MACHAIN WAS KIDNAPPED, AND IN THE EVENT THERE WAS
14 ALLEGEDLY \$100,000 PAID AS ALLEGEDLY PRINTED IN VARIOUS
15 PERIODICALS --

16 THE COURT: WELL, THIS IS SOMETHING THAT --
17 WHERE DO YOU GET THIS INFORMATION?

18 MR. STEINBERG: YOUR HONOR, I DON'T KNOW THE
19 ACCURACY OF THAT.

20 THE COURT: ARE YOU REPORTING WHAT YOU READ IN
21 THE MEDIA?

22 MR. STOLAR: YES. I'M THE LAST ONE TO BELIEVE
23 WHAT I READ IN THE MEDIA, YOUR HONOR. MY POINT --

24 THE COURT: THE MEDIA WILL BE HAPPY TO HEAR
25 THAT. (LAUGHTER.)

1 MR. STEINBERG: WHAT I MEANT BY THAT, YOUR
2 HONOR, IS, YOU KNOW, THERE IS TRUTH IN THERE, TOO, BUT THERE
3 IS ALSO INTEREST TO THE READER.

4 BUT, IF, IN FACT, HE WAS BROUGHT HERE ILLEGALLY
5 BY AGENTS OF THIS GOVERNMENT, AND, IN FACT, KIDNAPPED, THEN
6 THAT KIDNAPPING BY THE AGENTS OF OUR GOVERNMENT IS ALMOST AS
7 BAD AS ANYTHING THAT MY CLIENT, DR. MACHAIN, MAY OR MAY NOT
8 BE ACCUSED OF OR, IN FACT, IF HE TURNS OUT TO BE GUILTY OF,
9 AND IS NOT TOLERABLE UNDER THE UNITED STATES CODE, AND OUR
10 ATTORNEY GENERAL HAS SAID THAT HE WILL REACT MOST
11 UNFAVORABLY IF IT TURNS OUT TO BE SO.

12 SO, YOUR HONOR, I DON'T WANT TO PROCEED WITH
13 TRIAL AND DEPRIVE MY CLIENT OF THE JURISDICTIONAL DISPUTE,
14 A, IN PERSONAM; AND B, MY RIGHT TO RAISE AN OUTRAGEOUS
15 GOVERNMENT MISCONDUCT ACTION IF, IN FACT, THE GOVERNMENT
16 TURNS OVER TO ME, EITHER WILLINGLY OR BY DISCOVERY TO YOU,
17 THE FACTS OF HOW THIS MAN CAME TO THIS COUNTRY.

18 SO FOR THOSE TWO REASONS, YOUR HONOR, UNTIL THIS
19 MATTER IS CLEARED UP AS TO HOW HE GOT HERE, HE HAS MADE HIS
20 REPRESENTATION AND IS PREPARED TO DO SO UNDER OATH, HOW HE
21 GOT HERE, AND THE FACT THAT I JUST GOT MORE DISCOVERY TWO
22 DAYS AGO -- AND I DON'T KNOW WHAT MORE IS COMING, AND QUITE
23 FRANKLY, I DON'T THINK THE GOVERNMENT DOES, EITHER.

24 SOMETHING TRICKLES DOWN, IT'S LIKE A DRAIN PIPE,
25 I'LL GET MY DISCOVERY AND WE ALL THINK WE'RE FINISHED, AND

1 ALL OF A SUDDEN SOMETHING ELSE POPS BACK IN.

2 THE COURT: WELL --

3 MR. STEINBERG: AND FOR THOSE REASONS, EVEN IF
4 THE GOVERNMENT CAN REPRESENT TO YOUR HONOR NOW THAT THERE IS
5 NO MORE DISCOVERY, AND IF SO THEY CANNOT USE IT, THEY ARE
6 PRECLUDED FROM USING IT, BUT FOR JENKS MATERIAL, I AM NOT
7 PREPARED WITH THESE TWO AUDIOS TO MUSTER THE DEFENSE THAT I
8 WOULD LIKE.

9 MY OTHER PROBLEM, AND YOUR CLERK WAS REALLY KIND
10 ENOUGH TO MENTION TO ME ON THE PHONE IF I NEEDED SOME HELP --
11 AND IF ANYBODY COULD USE SOME HELP -- I WOULD LIKE TO HAVE
12 THE ASSISTANCE, YOUR HONOR, IF I POSSIBLY COULD.

13 I DON'T NEED AN ADDITIONAL LAWYER, BUT I DO NEED
14 SOMEONE, IF THE COURT WOULD CONSIDER IT, TO AT LEAST DO SOME
15 OF THE LEG WORK ON THIS CASE. THE GOVERNMENT HAS --

16 THE COURT: COUNSEL, YOU DO THAT BY FILING AN
17 APPLICATION WITH THE COURT.

18 MR. STEINBERG: YES, SIR, I WILL.

19 BUT I'LL CUT IT SHORT, YOUR HONOR. I'M STILL
20 WITHIN THE 30-DAY PERIOD. MY INTENTIONS WERE HONORABLE TO
21 KEEP THIS CASE MOVING --

22 THE COURT: WHAT -- HOW LONG OF A CONTINUANCE DO
23 YOU CONTEMPLATE, IS THE QUESTION.

24 MR. STEINBERG: WELL, I DON'T MEAN TO THROW THIS
25 OVER TO THE GOVERNMENT, BUT IT REALLY DEPENDS, YOUR HONOR,

1 ON HOW FAST I CAN GET THIS INFORMATION, HOW DR. MACHAIN GOT
2 INTO THIS COUNTRY. IF HE WAS BROUGHT BY LEGAL MEANS AND
3 THEY'RE DONE WITH DISCOVERY, I CAN TRY THE CASE. IF THERE
4 IS STILL MORE DISCOVERY AND THEY WON'T COMPLY WITH HOW THIS
5 MAN GOT HERE, I'M STALEMATED.

6 THE COURT: WELL, HOW HE WAS BROUGHT DOES NOT
7 RELATE TO THE TRIAL. HOW HE WAS BROUGHT HERE, THAT WOULD
8 RELATE TO A MOTION, IF THERE WAS A MOTION.

9 DO YOU INTEND TO FILE A MOTION ADDRESSING THE
10 JURISDICTION OF THE COURT BECAUSE OF THE MEANS BY WHICH YOUR
11 CLIENT WAS BROUGHT TO THIS COUNTRY?

12 MR. STEINBERG: I INTEND TO FILE TWO MOTIONS,
13 YOUR HONOR, DEPENDING ON THE FACTS, AND I DIDN'T WANT TO BE
14 PRECIPITOUS BECAUSE I'M NOT ACCUSING ANYBODY --

15 THE COURT: WHAT ARE THE MOTIONS YOU INTEND TO
16 FILE?

17 MR. STEINBERG: THE FIRST MOTION, YOUR HONOR,
18 WOULD BE A MOTION TO DISMISS, AND I WOULD ASK IN THE EVENT --

19 THE COURT: AND THAT WOULD BE BASED ON THE MEANS
20 BY WHICH YOUR CLIENT WAS BROUGHT INTO THIS COUNTRY?

21 MR. STEINBERG: YES, IF THERE WAS NO IN PERSONAM
22 JURISDICTION OF DR. MACHAIN. IF THE SOVERIGN NATION OF
23 MEXICO WOULD BE PLACED , OR IN THE ALTERNATIVE, IN
24 THE HAGUE, BUT CERTAINLY NOT HERE.

25 THE COURT: WELL, THAT'S A DIFFERENT MOTION THAN

1 YOU'VE TALKED ABOUT.

2 MR. STEINBERG: YES, IT IS. MY SECOND MOTION
3 WOULD BE IF THE COURT WOULD NOT ENTERTAIN THE MOTION TO
4 DISMISS IN PERSONAM JURISDICTION OR LACK THEREOF, WOULD BE A
5 MOTION FOR OUTRAGEOUS GOVERNMENT CONDUCT IN U.S. AGENTS
6 KIDNAPPING MY CLIENT FROM MEXICO AND DEPOSITING HIM HERE.

7 THE COURT: ALL RIGHT. LET ME HEAR FROM
8 GOVERNMENT'S COUNSEL HERE ADDRESSING THE ISSUES; FIRST OF
9 THE CONTINUANCE, SECONDLY OF THE DISCOVERY, THIRDLY OF THE
10 MEANS BY WHICH THIS DEFENDANT WAS BROUGHT TO THIS COUNTRY,
11 AND THE PROPRIETY OF PROCEEDING WITH THIS CASE ON THE 1ST OF
12 MAY.

13 MR. MEDRANO: IF I MAY ADDRESS FIRST THE
14 DISCOVERY REFERENCED BY MR. STEINBERG, YOUR HONOR.

15 LET ME STATE THAT THE GOVERNMENT HAS PROVIDED TO
16 MR. STEINBERG -- IMMEDIATELY, I MIGHT ADD -- ALL THE
17 DISCOVERY THAT HE IS ENTITLED TO. THE ONLY THING THAT HE
18 DOESN'T HAVE AS OF TODAY IS WHAT HIS CO-COUNSEL AND
19 CO-DEFENDANTS DO NOT HAVE, JENKS AND GIGLIO MATERIAL. BUT
20 HE HAS EVERYTHING ELSE.

21 HE MENTIONED THREE TAPES FOR YOU, YOUR HONOR.
22 ONE OF THOSE TAPES IS IN SPANISH, HE HAS THE TAPE AND WE
23 GAVE HIM THE ENGLISH TRANSLATION OF THE TAPE.

24 THE COURT: IS THAT BEING TRANSLATED BY OTHER
25 DEFENDANTS, AS WELL, OR NOT?

1 MR. MEDRANO: WELL, THAT TAPE AND THE ENGLISH
2 TRANSLATION HAVE GONE OUT TO ALL ATTORNEYS, YOUR HONOR.

3 THAT LEAVES TWO OTHER TAPES WITH REGARD TO
4 DR. ALVAREZ-MACHAIN, THOSE TWO TAPES HAVE BEEN GIVEN TO ALL
5 COUNSEL. THE GOVERNMENT DOES NOT HAVE A TRANSLATION AT THIS
6 TIME, ALTHOUGH WE'RE TRYING TO GET ONE DONE AS SOON AS
7 POSSIBLE, AND THE TURNOVER TIME ON THAT TRANSLATION WILL BE
8 VERY QUICK, YOUR HONOR.

9 AND AS SOON AS WE HAVE IT, OR ALTERNATIVELY, AS
10 SOON AS ANY DEFENSE COUNSEL OR MR. STEINBERG HAVE TRANSLATED
11 THE TAPE, THEN THAT CAN BE PROVIDED TO ALL ATTORNEYS. BUT
12 IT CAN BE DONE VERY, VERY RAPIDLY, SO THAT IS NOT THE BASIS
13 FOR ANY CONTINUANCE.

14 NOR IS THE SUGGESTION BY MR. STEINBERG THAT HE
15 DOESN'T HAVE EVERYTHING IN TERMS OF DISCOVERY THAT HE IS
16 ENTITLED TO. WE HAVE PROVIDED EVERYTHING.

17 MOVING ON, YOUR HONOR, TO THE ISSUE OF THE
18 MANNER IN WHICH HUMBERTO ALVAREZ-MACHAIN WAS BROUGHT INTO
19 THE UNITED STATES, THE DIFFICULTY WE HAVE WITH JUST THE
20 INITIAL PROFFER, YOUR HONOR, IS THAT IT'S VERY SCANTY AND
21 SPECULATIVE FACTS.

22 AND SECOND OF ALL, THERE IS NO CITATION OF
23 PERTINENT LEGAL PRINCIPLES THAT WOULD SUPPORT
24 MR. STEINBERG'S SUGGESTION TO THE COURT THAT THE MOTION OR
25 THE CASE AGAINST HIS CLIENT SHOULD BE DISMISSED OUTRIGHT.

1 SO WE WOULD ASK, YOUR HONOR, ONE BASIC THING:
2 THAT MR. STEINBERG FILE THAT MOTION FOR DISMISSAL
3 IMMEDIATELY. THE GOVERNMENT, IN ORDER TO GET THIS TRIAL
4 STARTED BY MAY 1, WOULD CERTAINLY HAVE NO OBJECTION TO
5 FILING OUR RESPONSE IN A MATTER OF ONE OR TWO DAYS. WE HAVE
6 NO OBJECTION TO AN ORDER SHORTENING TIME TO HEAR THIS
7 MOTION, WITHIN A WEEK, YOUR HONOR.

8 SO IN TERMS OF THAT ISSUE, I'M JUST RELUCTANT
9 TO -- JUST ON THE BASIS OF WHAT WE HEAR IN TERMS OF A
10 PROFFER, WITHOUT IT BEING SIGNED UNDER OATH, IT'S DIFFICULT
11 FOR ME TO REFUTE ANY OF THESE ALLEGATIONS.

12 THE COURT: WELL, YOU MUST KNOW SOMETHING ABOUT
13 IT.

14 MR. MEDRANO: I DO, YOUR HONOR, AND IF YOU WOULD
15 LIKE, I COULD CERTAINLY EXPLAIN THAT TO YOU.

16 THE COURT: WELL, I'D LIKE TO KNOW WHAT YOU
17 KNOW.

18 MR. MEDRANO: I'M SKETCHY ON THIS INFORMATION,
19 YOUR HONOR, BUT I WILL BE ABLE TO CORROBORATE IT WITH MORE
20 TIME.

21 IT IS MY UNDERSTANDING THAT FOR A SIGNIFICANT
22 PERIOD OF TIME, THE UNITED STATES GOVERNMENT HAS HAD
23 STANDING OFFERS IN THE REPUBLIC OF MEXICO, AND SPECIFICALLY
24 IN THE CITY OF GUADALAJARA IN THE STATE OF JALISCO, A
25 STANDING OFFER FOR REWARDS FOR THE ARREST AND DELIVERY TO

1 THE UNITED STATES OF ANY FUGITIVE THAT IS REFERENCED IN THE
2 PENDING SIXTH SUPERSEDING INDICTMENT. THAT INFORMATION HAS
3 BEEN, QUOTE, "ON THE STREET IN GUADALAJARA," FOR QUITE A
4 PERIOD OF TIME.

5 ON APRIL 2, YOUR HONOR, PURSUANT TO THIS SORT OF
6 STANDING OFFER THAT IS OUT ON THE TABLE, MEXICAN OFFICIALS
7 PLACED A TELEPHONE CALL LONG DISTANCE FROM MEXICO TO A
8 GOVERNMENT CONFIDENTIAL INFORMANT IN LOS ANGELES, AND
9 ADVISES THIS C.I. THAT MACHAIN -- ALVAREZ-MACHAIN IS IN
10 CUSTODY IN MEXICO, AND THAT HE WILL BE DELIVERED THE
11 FOLLOWING DAY, APRIL 3, AT THE EL PASO INTERNATIONAL
12 AIRPORT IN EL PASO, TEXAS.

13 THE C.I. IMMEDIATELY ADVISED US -- ONE OF THE
14 CASE AGENTS FOR LEYENDA, THE D.E.A. TEAM HERE IN
15 LOS ANGELES, AND BY EARLY MORNING OF APRIL 3, TWO OR THREE
16 OR MAYBE AS MANY AS FOUR D.E.A. AGENTS OUT OF LOS ANGELES
17 ARRIVED AT THE -- IN EL PASO TO SEE WHETHER OR NOT THIS WAS
18 GOING TO HAPPEN.

19 I'M NOT QUITE SURE ABOUT THE TIME THAT THIS
20 OCCURS ON APRIL 3, BUT EVIDENTLY, A SMALL, MEXICAN AIRCRAFT
21 FLIES INTO THE EL PASO INTERNATIONAL AIRPORT, AND THERE IS
22 APPROXIMATELY SIX OR SEVEN INDIVIDUALS WITHIN THIS AIRCRAFT,
23 ALL MEXICAN, INCLUDING THE DEFENDANT, ALVAREZ-MACHAIN.

24 ALVAREZ-MACHAIN WALKS OUT OF THE AIRPLANE, HE IS
25 NOT HANDCUFFED, HE WALKS OUT ON HIS OWN VOLITION -- ON HIS

1 OWN POWER WITHOUT ASSISTANCE. THE INDIVIDUALS WITHIN THE
2 AIRCRAFT DO NOT IDENTIFY THEMSELVES TO THE D.E.A. AGENTS AT
3 THE EL PASO INTERNATIONAL AIRPORT, OTHER THAN TO SAY THAT
4 THEY ARE MEXICAN LAW ENFORCEMENT OFFICIALS AND THAT'S IT.

5 HUBERTO ALVAREZ-MACHAIN, BECAUSE THERE IS A
6 PENDING ARREST WARRANT IN LOS ANGELES, OBVIOUSLY, IS PLACED
7 UNDER ARREST BY A D.E.A. AGENT AT THE EL PASO AIRPORT. THE
8 AIRCRAFT CONTAINING THE MEXICAN LAW ENFORCEMENT OFFICIALS
9 TAXIS AND LEAVES THE AREA.

10 IT IS MY UNDERSTANDING THAT AT NO TIME HAS ANY
11 UNITED STATES REPRESENTATIVE, AND SPECIFICALLY, ANY AGENT OF
12 THE D.E.A., DID THEY EVER SET FOOT ON MEXICAN FOREIGN SOIL
13 TO FACILITATE THIS OR TO ARREST MACHAIN IN MEXICO. HE WAS
14 DELIVERED IN EL PASO AND THAT'S WHERE HE WAS MET BY FEDERAL
15 AGENTS.

16 AFTER THAT, OF COURSE, YOUR HONOR, HE WAS
17 ARRAIGNED AS PROMPTLY AS POSSIBLE IN EL PASO, TEXAS, BEFORE
18 A FEDERAL DISTRICT JUDGE. THE DIFFICULTY AT THE OUTSET IS
19 THAT DR. MACHAIN CLAIMED TO BE SUFFERING A HEART ATTACK. HE
20 WAS IMMEDIATELY HOSPITALIZED AND ULTIMATELY THERE WAS A
21 BEDSIDE ARRAIGNMENT BY A FEDERAL DISTRICT JUDGE CONDUCTED IN
22 EL PASO, TEXAS.

23 UPON COMPLETION OF THAT ARRAIGNMENT AND UPON
24 COMPLETION OF THE RULE 40 IDENTITY HEARING TO ESTABLISH THAT
25 ALVAREZ-MACHAIN IS THE SAME MAN REFERENCED IN THE SIXTH

1 SUPERSEDING INDICTMENT, HE WAS BROUGHT, I BELIEVE THAT SAME
2 DAY, TO LOS ANGELES, AND THE COURT MAY RECALL HE WAS
3 ARRAIGNED HERE LAST WEEK IMMEDIATELY BEFORE YOU AND ADVISED
4 OF THE CHARGES AGAINST HIM.

5 I AM AWARE, YOUR HONOR, THAT PHOTOGRAPHS WERE
6 TAKEN OF DR. MACHAIN IMMEDIATELY UPON HIS ARRIVAL IN
7 EL PASO, TEXAS, TO AVOID ANY POSSIBLE ALLEGATIONS BY THE
8 DEFENDANT THAT HE WAS HARMED OR TORTURED IN ANY FASHION.

9 THOSE PHOTOGRAPHS ARE BEING MADE AVAILABLE TO
10 THE COURT, OF COURSE, WITH THE FILING OF MR. STEINBERG'S
11 MOTION, AND THOSE PHOTOGRAPHS WILL ESTABLISH UNEQUIVOCALLY
12 THAT ALVAREZ-MACHAIN WAS IN FINE CONDITION WHEN HE ARRIVED
13 AT THE AIRPORT AND WAS NOT HURT IN ANY FASHION.

14 YOUR HONOR, THIS IS MY UNDERSTANDING AS OF
15 TODAY, AND I'M TRYING TO DEVELOP MORE INFORMATION FOR THE
16 COURT'S EDIFICATION. BUT THIS IS WHAT I KNOW AS OF TODAY,
17 YOUR HONOR.

18 THE COURT: ARE YOU GIVEN TO UNDERSTAND THAT NO
19 AMERICAN AGENT WAS INVOLVED IN THE ACTUAL SEIZURE OF THE
20 DEFENDANT AT GUADALAJARA?

21 MR. MEDRANO: THAT IS ABSOLUTELY CORRECT, YOUR
22 HONOR.

23 THE COURT: AND THAT THERE WAS NO PRIOR
24 COMMUNICATION OR PLANNING OR PLOTTING THAT SET UP THIS
25 ALLEGED ABDUCTION BETWEEN THE AMERICAN AGENTS AND THE PEOPLE

1 WHO DELIVERED THE DEFENDANT HERE?

2 MR. MEDRANO: I WANT TO SPEAK AS ACCURATELY AS I
3 CAN, YOUR HONOR, BECAUSE IT'S ON THAT ASPECT THAT I'M NOT
4 100 PERCENT SURE, BUT IT IS MY BELIEF, YOUR HONOR, THAT WHAT
5 INITIATED THIS ENTIRE ENDEAVOR WAS THE FACT THAT THERE HAS
6 BEEN THIS REWARD ON THE TABLE, SO TO SPEAK, IN MEXICO, AND
7 SPECIFICALLY IN GUADALAJARA, FOR ANY OUTSTANDING FUGITIVES
8 WITH REGARD TO THE CAMARENA CASE.

9 SO TO THE EXTENT THAT THAT REWARD SET IT IN
10 MOTION, THAT IS CORRECT, THAT'S MY UNDERSTANDING.

11 THE COURT: WELL, IS IT YOUR CONTENTION THAT
12 THIS CASE AGAINST THIS DEFENDANT CAN PROCEED ALONG WITH THE
13 OTHERS?

14 MR. MEDRANO: MAY I HAVE JUST ONE MOMENT, YOUR
15 HONOR? THANK YOU.

16 (BRIEF PAUSE.)

17 MR. MEDRANO: YOUR HONOR, IF DEFENDANT ALVAREZ-
18 MACHAIN AND HIS COUNSEL, MR. STEINBERG, ARE READY TO PROCEED
19 ON MAY 1, IT IS THE GOVERNMENT'S REQUEST THAT ALL DEFENDANTS
20 BE TAKEN TO TRIAL MAY 1.

21 IF IT IS DR. MACHAIN'S REQUEST OR INCLINATION
22 THAT HE BE GIVEN ADDITIONAL TIME OR BE SEVERED OR WHATEVER,
23 YOUR HONOR, THE GOVERNMENT WOULD STILL LIKE TO PROCEED ON
24 MAY 1 WITH THE FOUR DEFENDANTS THAT HAVE BEEN IN CUSTODY
25 SOME -- FOR QUITE A SIGNIFICANT PERIOD OF TIME.

1 SO WE'D LIKE TO DO THEM ALL MAY 1. IF ALVAREZ-
2 MACHAIN NEEDS MORE TIME, YOUR HONOR, WE WOULD NOT OPPOSE HIS
3 SEVERANCE FROM THIS CASE BECAUSE WE ARE READY TO GO MAY 1
4 AND WOULD LIKE TO COMMENCE ON THAT DAY.

5 THE COURT: ALL RIGHT. WELL, LET ME HEAR FROM
6 THE OTHER COUNSEL HERE REGARDING THIS REQUEST FOR
7 CONTINUANCE FIRST.

8 MR. STOLAR: IF I MAY.

9 I FIND IT DIFFICULT TO CONTROL MYSELF IN
10 LISTENING TO THE GOVERNMENT AGREE TO A SEVERANCE OF SOMEBODY
11 BECAUSE THERE IS NOT SUFFICIENT TIME TO PREPARE THE CASE
12 WHEN I HAD TO SIT HERE AND LISTEN TO THE GOVERNMENT INSIST
13 THAT I'M PREPARED TO GO FORWARD.

14 THE COURT: WELL, COUNSEL, I'M NOT CONCERNED
15 ABOUT YOUR ANGER OR HOW YOU FEEL. LET'S ADDRESS WHAT'S
16 BEFORE THE COURT.

17 MR. STOLAR: IT IS MY POSITION THAT I HAVE NO
18 TROUBLE WITH THE DOCTOR HAVING ADDITIONAL TIME TO PREPARE
19 HIS CASE. I WOULD ASK THE COURT TO RECONSIDER MY REQUEST
20 FOR A CONTINUANCE AND A SEVERANCE TO GIVE ME ADEQUATE TIME
21 TO PREPARE THE CASE.

22 IF YOU RECALL, I HAVE BEEN IN THE CASE
23 THEORETICALLY --

24 THE COURT: COUNSEL, I KNOW THE HISTORY OF THE
25 CASE.

1 MR. STOLAR: -- AND NOW I'M GOING TO BE ON TRIAL
2 85 DAYS AFTERWARDS.

3 THE COURT: I'M ASKING YOU IF YOU OBJECT TO A
4 CONTINUANCE OR NOT.

5 MR. STOLAR: I CERTAINLY DO NOT OBJECT TO A
6 CONTINUANCE, BY ANY MEANS.

7 THE COURT: ALL RIGHT, THAT'S ALL I WANTED TO
8 KNOW.

9 NOW, WHAT ABOUT YOU, COUNSEL?

10 MR. MEZA: YES, YOUR HONOR, WE WOULD HAVE NO
11 OBJECTION TO A CONTINUANCE. IN FACT, WE WERE GOING TO
12 REQUEST A SHORT CONTINUANCE OF APPROXIMATELY TWO WEEKS, TWO
13 TO THREE WEEKS PAST THE MAY 1ST TRIAL DATE.

14 THE COURT: WHAT WOULD BE THE REASON FOR YOUR
15 REQUEST?

16 MR. MEZA: THE COURT GRANTED AN ORDER FOR OUR
17 EXPERT TO OBTAIN THE ORIGINAL TAPES THAT WERE MADE OF OUR
18 CLIENT IN CONVERSATION WITH UNDERCOVER AGENTS AND A
19 CONFIDENTIAL INFORMANT. THAT WAS -- I BELIEVE THE COURT
20 MADE THE ORDER APPROXIMATELY TWO WEEKS AGO, IT'S MY
21 UNDERSTANDING THAT OUR EXPERT -- THOSE TAPES WERE FIRST MADE
22 AVAILABLE TO HIM TODAY.

23 HE'S IN THE PROCESS OF OBTAINING THOSE TAPES.
24 IT WILL TAKE HIM APPROXIMATELY ONE TO TWO DAYS TO DO,
25 COMPLETE THAT PROCESS, AND IT'S FURTHER MY UNDERSTANDING IT

1 WILL TAKE HIM APPROXIMATELY THREE WEEKS TO COMPLETE THE
2 PROCESS, ASSUMING ONE WEEK -- NEXT WEEK WILL BE ONE WEEK,
3 THERE WILL BE TWO ADDITIONAL WEEKS FOR HIM TO COMPLETE THE
4 PROCESS.

5 IF THE COURT WASN'T INCLINED TO GRANT THAT SHORT
6 CONTINUANCE, THEN THERE WOULD BE A DEFENSE REQUEST TO ORDER
7 THE GOVERNMENT TO LIMIT ITS EVIDENCE IN REGARD TO THE TAPES
8 OR ADMISSION OF THE TAPES IN FRONT OF THE JURY UNTIL OUR
9 PROCESS HAS BEEN COMPLETED.

10 THE COURT: ALL RIGHT.

11 ANY ADDITIONAL DEFENDANTS WISH TO BE HEARD ON
12 THIS?

13 MR. MEDVENE: IF I COULD BE HEARD FROM HERE OR
14 THE LECTURN, YOUR HONOR?

15 THE COURT: YOU MAY BE HEARD FROM THERE.

16 MR. MEDVENE: THANK YOU, YOUR HONOR.

17 WE WOULD LIKE TO PROCEED, YOUR HONOR, ON BEHALF
18 OF ZUNO-ARCE, ON MAY THE 1ST. BUT WE WOULD STATE, YOUR
19 HONOR, THAT WE WOULD RESPECTFULLY REQUEST THERE THERE BE AN
20 OPPORTUNITY TO DO A RECONSIDER OF ZUNO-ARCE'S SEVERANCE
21 MOTION, IF NOT THE OTHER SEVERANCE MOTIONS.

22 AS YOUR HONOR REMEMBERS, THE BASIC REASON FOR
23 DENIAL OF --

24 THE COURT: WELL, WHY SHOULD I RECONSIDER IT,
25 COUNSEL? I DID CONSIDER IT VERY CAREFULLY.

1 MR. MEDVENE: THE REASON YOU SHOULD RECONSIDER
2 IT, WITH DUE RESPECT, YOUR HONOR, IS THE BASIC REASON -- AS
3 I UNDERSTOOD IT -- WHY YOU DENIED THIS SEVERANCE MOTION, WAS
4 BECAUSE IT WAS YOUR FEELING AND YOU STATED ON NUMEROUS
5 OCCASIONS, THERE WOULD BE ONE TRIAL WITH ALL DEFENDANTS AND
6 THERE WAS A COMMONALITY OF A CERTAIN AMOUNT OF THE EVIDENCE.

7 IF THERE IS GOING TO BE ANOTHER TRIAL, IT SEEMS
8 TO ME THAT THE ANALYSIS OF YOUR HONOR, WITH DUE RESPECT, IS
9 UNDERCUT BECAUSE BY -- BY THE HYPOTHETICAL NOW, THERE IS
10 GOING TO BE MORE THAN ONE TRIAL. AND IF THERE IS GOING TO
11 BE MORE THAN ONE TRIAL, IT WOULD SEEM TO ME --

12 THE COURT: IF I ACCEPT THAT ANALYSIS, THEN I
13 WILL HAVE FIVE TRIALS HERE BECAUSE EACH OF THESE DEFENDANTS
14 HERE HAS REQUESTED A SEVERANCE, EACH OF THEM HAS MADE THE
15 SAME ARGUMENT THAT YOU ARE MAKING; THAT IS, UNDER RULE 8,
16 THIS IS NOT A PROPER JOINDER; AND UNDER RULE 14, THERE IS --
17 IT IS TOO PREJUDICIAL TO PROCEED TOGETHER.

18 MR. MEDVENE: ONE POSSIBILITY WOULD BE THAT,
19 YOUR HONOR, AND THAT'S BEEN DONE IN OTHER CASES.

20 IF YOUR HONOR WOULD NOT WANT TO DO THAT, IF
21 CERTAIN DEFENDANTS ARE NOT READY TO GO TO TRIAL NOW -- WE'RE
22 SAYING WE ARE WILLING TO GO AND READY TO GO ALONE OR WITH
23 ANOTHER DEFENDANT -- AND OTHER DEFENDANTS, AS LONG AS
24 THERE'S GOING TO BE ANOTHER TRIAL, CAN GO AT ANOTHER TIME.

25 BUT IT SEEMS TO ME THE UNDERPINNING OF YOUR

1 RULING, YOUR HONOR, WAS CLEARLY ONE TRIAL COMMONALITY. WE
2 NOW HAVE A DIFFERENT HYPO. UNLESS YOU GIVE A SHORT
3 CONTINUANCE AND EVERYBODY GOES TOGETHER, WE NOW KNOW WE HAVE
4 AT LEAST TWO TRIALS --

5 THE COURT: ALL RIGHT.

6 MR. MEDVENE: -- AND THE ISSUE IS WHO GOES IN
7 THEM AND WHEN. AND WE'D LIKE TO GO AS SOON AS POSSIBLE.

8 MR. NICOLAYSEN: YOUR HONOR, ON BEHALF OF JAVIER
9 VASQUEZ-VELASCO, I WOULD NOT OPPOSE A CONTINUANCE, AND I
10 WOULD JOIN IN ZUNO-ARCE'S COUNSEL'S REQUEST FOR THE COURT TO
11 REOPEN ARGUMENT ON SEVERANCE IF THE COURT DECIDES THAT THE
12 PROPER WAY TO PROCEED IS TO HAVE FOUR DEFENDANTS GO ON MAY 1
13 AND HAVE WHAT AMOUNTS TO A DEFACTO SEVERANCE AS TO THE NEWLY
14 ARRESTED DEFENDANT, I WOULD RESPECTFULLY OBJECT TO THAT
15 SITUATION.

16 MR. MEDRANO: MAY I BE HEARD BRIEFLY, YOUR
17 HONOR?

18 THE COURT: YES.

19 MR. MEDRANO: IN STRENUOUS OBJECTIONS TO ANY
20 EFFORT TO REOPEN A SEVERANCE EFFORT, I WOULD RESPECTFULLY
21 SUBMIT THAT THAT IS INAPPROPRIATE BECAUSE THE GROUNDS FOR
22 SEVERANCE -- IF THIS OCCURS AT ALL, YOUR HONOR -- FOR
23 MR. STEINBERG AND DR. MACHAIN, IS BASED ON ADEQUATE TIME TO
24 PREPARE FOR TRIAL.

25 NOW, THE GROUNDS FOR SEVERANCE FOR THE REMAINING

1 DEFENDANTS WERE UNRELATED TO THAT. THE COURT HEARD THAT,
2 THOSE ISSUES, AND AS A RESULT, THAT HAS NOT CHANGED, YOUR
3 HONOR. SO WE WOULD DEFINITELY OBJECT TO THAT.

4 IN ADDITION, YOUR HONOR, IF THERE IS THE SPECTER
5 OF A SECOND TRIAL IN THIS CASE, AND ASSUMING THAT IT
6 CONSISTED SOLELY OF DR. MACHAIN, WE CAN REPRESENT TO YOU,
7 YOUR HONOR, THAT THAT TRIAL, BECAUSE IT IS ONLY ONE
8 DEFENDANT, DOES NOT HAVE THE RADELAT-WALKER ANGLE, DOES NOT
9 HAVE THE MATTA ANGLE, COULD BE TRIED IN THREE WEEKS OR LESS.

10 NOW, IF, FOR WHATEVER REASON, ONE OF THESE OTHER
11 FOUR DEFENDANTS WAS SEVERED AND ADDED WITH MACHAIN, THEN IT
12 IS GOING TO BE A SECOND SIX- TO EIGHT-WEEK TRIAL. AND I
13 JUST WANTED TO BRING THAT TO THE COURT'S ATTENTION.

14 AND FINALLY, YOUR HONOR, IN TERMS OF WHY THE
15 GOVERNMENT URGES STRONGLY THAT THIS COURT -- THAT THIS TRIAL
16 START ON MAY 1 WITH FOUR OUT OF THE FIVE DEFENDANTS, IS THAT
17 HAVING TO PROTECT AND MAINTAIN THE MORALE OF INFORMANTS,
18 YOUR HONOR, WHO HAVE BEEN RELOCATED, AND THE ATTENDANT
19 TRAUMA AND FINANCIAL COSTS RELATED TO THAT, IS AN IMPACT
20 THAT IS NOT INSIGNIFICANT.

21 THEY HAVE BEEN BOUNCED AROUND LIKE PING-PONG
22 BALLS BECAUSE WE'VE HAD TO TELL THEM, "FIRST WE'RE STARTING
23 ON 'X' DAY," THEN IT GOES TO "Y," AND NOW WE'RE ON "Z" DAY.
24 AND IT'S VERY DEVASTATING --

25 THE COURT: OF COURSE, YOU HAVE BEEN RESPONSIBLE

1 FOR THAT BY BRINGING IN NEW DEFENDANTS.

2 MR. MEDRANO: I UNDERSTAND THAT, YOUR HONOR, BUT
3 THIS IS JUST A FINAL POSITION FOR THE GOVERNMENT WITH
4 REGARDS TO OUR RESPECTFUL REQUEST THAT WE DO START ON MAY 1.

5 THANK YOU.

6 THE COURT: ALL RIGHT.

7 WITH RESPECT TO THE REQUESTS REGARDING
8 SEVERANCE, THE COURT IS NOT INTENDING TO RECONSIDER, AND THE
9 COURT PREVIOUSLY CONSIDERED EACH REQUEST BY EACH DEFENDANT
10 FOR SEVERANCE, FOUND THAT THEY HAD NOT MADE THE SHOWING
11 NECESSARY UNDER RULE 8 OR RULE 14 FOR SEVERANCE. THERE IS
12 NO NEED FOR SEVERANCE, AND IT IS THE COURT'S INTENTION WITH
13 RESPECT TO THE DEFENDANTS TO PROCEED ON MAY THE 1ST OR AS
14 SOON THEREAFTER AS POSSIBLE.

15 WITH RESPECT TO THE NEW DEFENDANT HERE,
16 DR. MACHAIN, IT IS THE COURT'S INTENTIONS TO SEVER THAT
17 DEFENDANT FOR OBVIOUS REASONS. HE WAS FIRST BROUGHT TO THIS
18 COURT ONLY A WEEK AGO OR SO.

19 THIS QUESTION REGARDING THE JURISDICTION OF THE
20 COURT AND THE MANNER IN WHICH THIS DEFENDANT WAS BROUGHT TO
21 THIS COURT IS A MATTER OF CONSIDERABLE CONCERN TO THE
22 COURT. IT IS THE INTENTION OF THE COURT, AFTER THIS MOTION
23 IS FILED, TO HOLD A FULL AND COMPLETE HEARING ON THAT. AND
24 I WILL WANT EVERY WITNESS HERE THAT HAS ANY KNOWLEDGE OF THE
25 EVENTS THAT TRANSPIRED THAT RESULTED IN THE BRINGING OF THIS

1 DEFENDANT FROM MEXICO TO THIS COURT.

2 THEREFORE, WHEN THE MOTIONS HAVE BEEN BRIEFED
3 AND FILED, THE COURT WILL SET A HEARING DATE. AT THAT TIME,
4 I WILL EXPECT THE GOVERNMENT TO PRODUCE IN THIS COURT ALL
5 WITNESSES WHO HAD ANYTHING TO DO WITH THIS FOR A FULL AND
6 COMPLETE HEARING ON THE MATTER.

7 THAT WILL TAKE SOME TIME AND WILL INTERFERE WITH
8 THIS TRIAL. I DON'T THINK THAT THESE DEFENDANTS SHOULD HAVE
9 TO SIT AND WAIT THE OUTCOME OF THAT TRIAL.

10 AS I UNDERSTAND THE CHARGES AGAINST THIS
11 DEFENDANT, ALTHOUGH THEY ARE THE SAME, HIS ALLEGED
12 INVOLVEMENT IN THE OFFENSE APPEARS TO BE MORE NARROWLY
13 LIMITED THAN SOME OF THE OTHER DEFENDANTS. FOR THAT REASON,
14 I THINK THAT SEVERANCE WOULD BE APPROPRIATE, AS WELL.

15 NOW, WE HAVE THIS -- SCHEDULED AT THIS TIME,
16 ALSO, A HEARING WITH RESPECT -- WITH RESPECT TO THE
17 JURISDICTIONAL ISSUE THAT WAS RAISED BY MR. MATTA.

18 MR. STOLAR: JUDGE RAFEEDIE --

19 THE COURT: YES.

20 MR. STOLAR: -- IF I MAY, YOUR HONOR, I WOULD
21 ASK IF THE COURT RECONSIDER MY REQUEST FOR ADDITIONAL TIME
22 TO PREPARE THE TRIAL OF THIS MATTER, ON THE SAME BASIS OF
23 YOUR REASONING WITH RESPECT TO THE PREPARATION TIME OF THE
24 NEW DEFENDANT IN THE CASE IS SIMILARLY APPLICABLE TO MY
25 SITUATION IN TERMS OF ABILITY TO PREPARE AND --

1 THE COURT: COUNSEL, I DON'T WANT TO HEAR ANY
2 MORE ARGUMENT.

3 MR. STOLAR: WELL, NOTWITHSTANDING WHAT THE
4 GOVERNMENT SAYS --

5 THE COURT: AND I DO NOT LIKE BEING ASKED TO
6 RECONSIDER. I MADE THE DECISION AND THERE IS NO REASON TO
7 RECONSIDER IT. I HAVE CONSIDERED ALL YOUR ARGUMENTS, I'VE
8 HEARD THEM TIME AND AGAIN; I'VE HEARD THEM EXPRESSED ORALLY
9 AND ON PAPER, AND I DO NOT NEED TO HEAR THEM AGAIN.

10 THE COURT: NOW --

11 MR. MEZA: EXCUSE ME, YOUR HONOR. I'M SORRY, I
12 HATE TO INTERRUPT, BUT IN MY REQUEST FOR A TWO- TO THREE-
13 WEEK CONTINUANCE --

14 THE COURT: YOUR REQUEST WAS DENIED, TOO.

15 KEEP IN MIND, FIRST OF ALL, THAT BY THE TIME THE
16 FIRST WITNESS IS SWORN, YOUR EXPERT WILL PROBABLY HAVE THOSE
17 TAPES DONE. AND IF NOT, I DON'T CONSIDER THAT ANY GREAT
18 PREJUDICE, SINCE THE TAPES WILL BE PRODUCED, THE GOVERNMENT
19 WILL BE PUTTING ON THEIR WITNESSES, AND YOU'LL HAVE AMPLE
20 TIME TO DEAL WITH IT.

21 IF NOT, WE'LL ADJUST TO IT, WHATEVER IS
22 NECESSARY. I DON'T THINK IT REQUIRES A CONTINUANCE OF THE
23 TRIAL.

24 MR. MEZA: WELL, SUPPOSE IN THE ALTERNATIVE --
25 AND I'M JUST WONDERING WHAT THE COURT'S RULING, I BELIEVE

1 THE COURT'S ANSWERED IT --

2 THE COURT: YES.

3 MR. MEZA: -- BUT IF THE COURT WILL ACCOMMODATE
4 IT AS THE SITUATION ARISES.

5 THANK YOU.

6 THE COURT: NOW, COUNSEL, A NARROW PORTION OF
7 YOUR JURISDICTIONAL MOTION SURVIVED THE ESTOPPEL, AND I TOLD
8 YOU THAT WE WOULD HAVE A HEARING ON THAT AND HEAR THE
9 WITNESSES.

10 AND NOW, JUST TO KEEP THE GROUND RULES IN MIND --

11 MR. STOLAR: MAY I?

12 THE COURT: YES.

13 MR. STOLAR: I UNDERSTAND THAT IT -- WELL, WE
14 HAD -- IT WAS GOING TO BE OUR INTENTION TO PROCEED TODAY. I
15 AM GOING TO ASK YOU IF IT WOULD BE POSSIBLE TO CONTINUE THE
16 TESTIMONY OF MR. MATTA, WHO WAS EXPECTED TO BE OUR FIRST
17 WITNESS, TO TOMORROW, AND I WANT TO EXPLAIN THE REASONS WHY
18 I ASK THAT.

19 I TOLD YOU WHEN WE WERE HERE LAST THAT I WAS
20 HAVING TROUBLE HAVING PRIVATE CONVERSATIONS WITH MR. MATTA
21 AT LOMPOC PRISON WHERE THEY HAD HIM SPECIALLY INCARCERATED.
22 I SUBMITTED THAT TO THE COURT.

23 THE COURT: THAT'S AN ISSUE ON MY LIST OF THINGS
24 TO DISCUSS BECAUSE THERE HAS BEEN AN OBJECTION TO THAT
25 ORDER.

1 MR. STOLAR: LET ME TELL YOU WHAT HAPPENED.

2 I CAME OUT SUNDAY NIGHT TO LOMPOC; I WENT TO
3 LOMPOC ON MONDAY OF THIS WEEK FULLY EXPECTING TO SPEND ALL
4 OF MONDAY AND A GOOD PORTION OF TUESDAY PREPARING MY CLIENT
5 TO TESTIFY, PREPARING HIM FOR WHAT I EXPECT TO BE A RIGOROUS
6 CROSS-EXAMINATION.

7 WHEN I GOT THERE ON MONDAY MORNING, I FOUND I
8 WAS IN EXACTLY THE SAME POSITION IN TERMS OF HAVING TO TALK
9 TO MY CLIENT OVER A LOUDSPEAKER TELEPHONE WITH PEOPLE ON THE
10 OUTSIDE LISTENING THROUGH A GLASS WINDOW.

11 APPARENTLY, THE ORDER THAT THE COURT HAD SIGNED
12 HAD NOT BEEN SERVED BY THE MARSHALLS ON THE PRISON. I
13 TERMINATED THE INTERVIEW WITH MY CLIENT BECAUSE IT WAS NOT
14 PRIVATE. I GOT ON THE TELEPHONE, GOT THE MARSHALL SERVICE
15 DOWN HERE THAT AFTERNOON, HAD THE ORDER BACKED UP TO THE
16 PRISON, ALSO A COPY WAS FAXED TO ME, THE SIGNED ORDER, OF
17 WHICH THEY ACCEPTED SERVICE.

18 SINCE VISITING HOURS ARE OVER ABOUT 3:00 O'CLOCK
19 OR SO, I THEN CAME BACK TUESDAY MORNING, THAT IS, YESTERDAY
20 MORNING, WITH THE FULL INTENTION OF HAVING A FACE-TO-FACE
21 INTERVIEW WITH MY CLIENT IN PRIVACY.

22 WE CAME IN AT APPROXIMATELY 8:45, WE GOT IN TO
23 SEE MY CLIENT. THE SAME CONDITIONS. THE PRISON OFFICIALS
24 SAID, "I'M SORRY, WHAT YOU SAY IS FACE TO FACE IS JUST LIKE
25 IT IS, YOU HAVE TO TALK THROUGH THE GLASS, AND WE PROMISE

1 YOU THAT NOBODY IS LISTENING, WE PROMISE YOU THAT NOBODY IS
2 LISTENING TO THE TELEPHONE."

3 . AT THE SAME TIME, I CAN HEAR THE KEYS JIGGLING
4 OF THE GUARDS WALKING UP AND DOWN OUTSIDE THE WINDOW. AND I
5 KNOW THAT MY CONVERSATIONS ARE NOT PRIVATE.

6 IN ANY EVENT, WE STARTED TO TALK, AS MUCH AS WE
7 COULD, ABOUT PREPARATION, AND ALL OF A SUDDEN AT 10:15,
8 MR. MATTA -- THE INTERVIEW WAS TERMINATED BY THE PRISON
9 OFFICIALS, TERMINATED BY THEM, EVEN THOUGH I HAD ATTEMPTED
10 TO DO IT THROUGH THE GLASS AND ON THE TELEPHONE.

11 I HAVE HAD APPROXIMATELY ONE HOUR PREPARATION
12 TIME TO SIT DOWN AND TALK TO MY CLIENT ABOUT THIS, AND THAT
13 WAS NOT EVEN IN PRIVATE.

14 WE HAD A COUPLE OF HOURS THIS AFTERNOON, BUT
15 UNFORTUNATELY, GIVEN THE SECURITY CONSIDERATIONS, A MARSHAL
16 SITS FOR THE MOST PART IN THE SAME ROOM WHERE I HAVE TO SIT
17 WITH MR. MATTA AND DISCUSS WITH HIM WHAT HIS TESTIMONY WOULD
18 BE. THAT BREAKS THE PRIVILEGE IF SOMEBODY ELSE IS PRESENT
19 AND CAN OVERHEAR.

20 I HAVE MADE ARRANGEMENTS WITH THE MARSHAL
21 SERVICE, WHO HAVE BEEN COURTEOUS ENOUGH TO TELL ME THAT THEY
22 WOULD PROVIDE US WITH A SEPARATE, PRIVATE CELL DOWNSTAIRS IN
23 THIS BUILDING FOR A COUPLE OF HOURS TONIGHT AFTER WE
24 CONCLUDE COURT WHERE I WILL HAVE THE OPPORTUNITY TO
25 PRIVATELY TALK TO MY CLIENT ABOUT HIS TESTIMONY AND PREPARE

1 HIM TO TESTIFY AT THE HEARING IF YOU HAVE SOME TIME
2 TOMORROW.

3 BUT I HAVE HAD ONE HOUR TO DO IT, AND IT WASN'T
4 EVEN UNDER PRIVATE CIRCUMSTANCES. I CAN HAVE THOSE PRIVATE
5 CIRCUMSTANCES AT THIS BUILDING, BUT I WAS NOT ABLE TO GET
6 THEM AT LOMPOC.

7 THE COURT: WELL, COUNSEL, THE MERE FACT THAT
8 THERE IS A GLASS PANE BETWEEN YOU AND YOUR CLIENT DOES NOT,
9 IN MY VIEW, CONSTITUTE A VIOLATION OF THE ORDER.

10 MR. STOLAR: BUT WHAT IT MEANS IS THAT WE HAVE
11 TO COMMUNICATE WITH HIM THROUGH A SPEAKERPHONE.

12 THE COURT: A SPEAKERPHONE OR A TELEPHONE?

13 MR. STOLAR: NO, WELL, IT'S A SPEAKERPHONE
14 BECAUSE MY CLIENT DOES NOT SPEAK ENGLISH. I VISIT HIM WITH
15 MY CO-COUNSEL, MR. AGUILA, WHO SPEAKS ENGLISH AND SPANISH,
16 AND WE TALK OVER THE SPEAKERPHONE AND I'M ABLE TO HEAR
17 PHRASES AND INTONATIONS, AND IT IS -- ESSENTIALLY IT HAS TO
18 BE BROADCAST.

19 AND IT IS BROADCAST LOUD ENOUGH SO THAT IT CAN
20 BE HEARD OUTSIDE OF THE LITTLE FOUR-BY-SIX ROOM THAT BOTH OF
21 US HAVE.

22 THE COURT: WELL, WHY CAN'T YOU SPEAK ON THE
23 TELEPHONE WITH YOUR COLLEAGUE AND THEN HE CAN RECITE YOUR
24 QUESTION TO THE WITNESS?

25 MR. STOLAR: BECAUSE THEN I DON'T GET TO HEAR

1 HOW MY CLIENT IS TELLING THIS. HE SOMETIMES USES ENGLISH
2 WORDS, AND IT JUST BREAKS DOWN MEANINGFUL COMMUNICATION
3 BETWEEN THE TWO OF US.

4 THE COURT: WELL, YOU HAVE PRESENTED THIS VERY
5 SAME ARGUMENT IN THREE DIFFERENT COURTS ON THIS ISSUE. SO I
6 ASSUME BY NOW YOU KNOW WHAT YOUR CLIENT WILL TESTIFY.

7 MR. STOLAR: I'VE ALWAYS BEEN DENIED A HEARING;
8 I HAVE NEVER PREPARED HIM TO BE CROSS-EXAMINED ON THIS
9 QUESTION --

10 THE COURT: YOU HAVE NEVER HAD A HEARING?

11 MR. STOLAR: NEVER HAD A HEARING, SIR.

12 THE COURT: WELL, THEN, THIS TIME YOU'LL BE
13 PROVIDED IN THE MARSHAL'S

14 MR. STOLAR: IN THE LOCKUP DOWNSTAIRS.

15 THE COURT: -- IN THE LOCKUP WILL BE SUFFICIENT
16 TIME?

17 MR. STOLAR: YES, IT WILL.

18 THE COURT: BUT YOU'RE NOT READY TO PROCEED
19 TODAY?

20 MR. STOLAR: I WILL ASK THE COURT TO GIVE ME THE
21 TIME TO PROCEED. I'M NOT READY WITH RESPECT TO MY CLIENT.

22 THE COURT: WELL, THE WAY I HAD CONTEMPLATED
23 THAT WE WOULD DO THIS IS THAT BOTH SIDES HAVE SUBMITTED
24 DECLARATIONS, AND IT'S GENERALLY OUR PROCEDURE -- IF THAT IS
25 ACCEPTABLE TO EVERYBODY -- IS TO RECEIVE THE DECLARATIONS

1 THAT HAVE BEEN FILED BY BOTH SIDES IN EVIDENCE AS THE DIRECT
2 TESTIMONY OF THE WITNESS. WITH EACH WITNESS THAT HAS FILED
3 A DECLARATION THEN BEING SUBJECT TO CROSS-EXAMINATION HERE
4 IN COURT.

5 MR. STOLAR: I UNDERSTAND.

6 THE COURT: AND WITH EACH SIDE HAVING THE
7 ABILITY TO SUPPLEMENT THE DECLARATION BY TESTIMONY, IF
8 NEEDED.

9 IS THAT AN ACCEPTABLE PROCEDURE WITH YOU?

10 MR. STOLAR: IT IS AN ACCEPTABLE PROCEDURE,
11 ALTHOUGH I HAD INTENDED TO HAVE MR. MATTA GIVE A DIRECT
12 EXAMINATION BECAUSE OF THE NATURE OF THE DECLARATION THAT
13 WAS SUBMITTED.

14 THE COURT: WELL, THEY'RE VERY SKETCHY --

15 MR. STOLAR: YES.

16 THE COURT: -- I WOULD EXPECT YOU TO SUPPLEMENT
17 THAT.

18 MR. STOLAR: I WILL DO THAT.

19 THE COURT: AND AS FAR AS WHAT HE HAS FILED, HE
20 BASICALLY ADOPTED YOUR STATEMENT, YOUR DECLARATION.

21 MR. STOLAR: WHICH WAS BASED ON DISCUSSIONS WITH
22 HIM ORIGINALLY.

23 THERE IS ONE ADDITIONAL WITNESS -- WELL, TWO
24 ACTUALLY, BUT ONE ADDITIONAL WITNESS THAT WE HAVE WHO IS NOT
25 ESSENTIALLY A DECLARATION OF, AND THAT IS DR. VALLES.

1 THE COURT: WELL, IS THAT WITNESS HERE?

2 MR. STOLAR: YES, HE IS. HE IS THE PHYSICIAN AT
3 MARION WHO FIRST EXAMINED MR. MATTA AFTER HE WAS BROUGHT
4 THERE.

5 THE COURT: HE FILED A DECLARATION?

6 MR. STOLAR: NO, HE DID NOT.

7 THE COURT: HE DID NOT.

8 MR. STOLAR: THERE WAS A REPORT THAT IS AN
9 EXHIBIT TO OUR MOTION ON --

10 THE COURT: WELL, IS THERE A POSSIBILITY THAT
11 YOU COULD EXAMINE HIM TODAY?

12 MR. STOLAR: YES. IN FACT, I THINK HE WOULD
13 APPRECIATE US SEEING IF WE COULD DO HIM TODAY.

14 THE COURT: WELL, IF WE'RE HOLDING HIM UP HERE,
15 WE SHOULD TRY TO TAKE HIS EXAMINATION AND FINISH WITH HIM.

16 MR. STOLAR: THERE IS ONE FINAL --

17 THE COURT: WELL, FIRST, THIS PROCEDURE ABOUT
18 THE COURT RECEIVING IN EVIDENCE THE DECLARATIONS OF THE
19 DEFENDANT AS WELL AS YOURSELF, YOUR AGENTS, AS THEIR DIRECT
20 EXAMINATION SUBJECT TO CROSS-EXAMINATION, IS THIS ACCEPTABLE
21 TO YOU?

22 MR. MEDRANO: MOST DEFINITELY, YOUR HONOR. THE
23 ONLY THING THAT WE WOULD REQUEST IS TO HEAR SOME DIRECT FROM
24 MATTA BECAUSE IT'S DIFFICULT TO BLAME --

25 THE COURT: WELL, WE'RE GOING TO HEAR SOME.

1 MR. MEDRANO: VERY WELL. WE HAVE NO OPPOSITION,
2 THEN, AT ALL, YOUR HONOR.

3 THE COURT: AND YOUR CLIENT AGREES TO THIS, AS
4 WELL, MR. STOLAR?

5 MR. STOLAR: YES, BUT I BELIEVE BECAUSE OF THE
6 NATURE OF THE DECLARATION --

7 THE COURT: IS HE HERE?

8 MR. STOLAR: -- AND IT WAS NOT FILED
9 SPECIFICALLY FOR THIS PROCEEDING, IT WAS FILED FOR ANOTHER
10 PROCEEDING.

11 THE COURT: IS YOUR CLIENT PRESENT?

12 MR. STOLAR: SORRY?

13 THE COURT: YOUR CLIENT IS PRESENT.

14 MR. STOLAR: YES, HE IS.

15 THE COURT: OH, YES, BACK THERE.

16 MR. STOLAR: BUT I STILL WANT TO DO SOME
17 PREPARATION FOR HIM.

18 THE COURT: AND DO YOU AGREE TO THE PROCEDURE
19 THAT I HAVE JUST DESCRIBED TO YOUR ATTORNEY TO WHICH HE HAS
20 AGREED?

21 MR. MATTA: I'M IN AGREEMENT.

22 MR. STOLAR: YOUR HONOR, THERE WAS A THIRD
23 WITNESS, IN ESSENCE, THAT I HAD INTENDED TO OFFER, AS I
24 INDICATED TO THE COURT, WERE RECORDS OF THE UNITED STATES
25 MARSHAL SERVICE, WHICH INDICATED WHO AMONG THE MARSHALS

1 WERE PRESENT, THE GROUP THAT WAS TAKEN, AND WHAT WEAPONS
2 WERE IN THEIR POSSESSION.

3 TO THAT END, A SUBPOENA WAS DELIVERED TO THE
4 UNITED STATES MARSHAL SERVICE IN WASHINGTON D.C. THEY
5 RESPONDED TO THE SUBPOENA BY SUBMITTING A PILE OF DOCUMENTS
6 TO MR. MEDRANO, AND THOSE DOCUMENTS IN RESPONSE TO MY
7 SUBPOENA HAVE NOT BEEN TURNED OVER TO ME.

8 BUT THAT WAS THE THIRD ELEMENT OF THE HEARING
9 THAT I INTENDED TO BRING TO YOU BY A COPY OF THE SUBPOENA,
10 AND I DON'T KNOW WHAT MR. MEDRANO'S POSITION IS.

11 THE COURT: WELL, KEEP IN MIND THE NARROW LIMITS
12 OF THE HEARING THAT I GRANTED. YOU HAVE BASICALLY ALLEGED
13 THAT DURING THE TRANSPORTATION OF YOUR CLIENT FROM HONDURAS
14 TO THIS COUNTRY, HE WAS SUBJECTED TO VARIOUS FORMS OF
15 TORTURE OR BARBARIC TREATMENT.

16 MR. STOLAR: BY ELECTRONIC STUN GUNS.

17 THE COURT: SINCE THIS CIRCUIT IS THE ONE
18 CIRCUIT THAT PERMITS AN EXCEPTION TO THE KER-FRISBIE RULE,
19 TO THE EXTENT THAT IF A DEFENDANT WHO IS ABDUCTED AND
20 BROUGHT INTO THIS COUNTRY IS SUBJECTED TO SUB-HUMAN, CRUEL
21 OR GROSSLY BARBARIC PUNISHMENT OR TORTURE, THAT THAT MIGHT
22 BE A BASIS FOR AN EXCEPTION TO THE KER-FRISBIE RULE

23 SO YOU HAVE ALLEGED THAT YOU CAN BRING YOUR
24 CLIENT WITHIN THE CONFINES OF THIS EXCEPTION. I HAVE RULED
25 THAT THE GOVERNMENT -- DENIED THE GOVERNMENT'S MOTION TO

1 COLLATERALLY STOP YOU IN THIS BECAUSE IT WAS NOT TAKEN UP IN,
2 THE OTHER CASES WHERE YOU HAVE LITIGATED THAT ISSUE --

3 MR. STOLAR: CORRECT.

4 THE COURT: -- AND THE LAW WAS DIFFERENT IN
5 THOSE CIRCUITS.

6 SO THAT IS THE SOLE REMAINING ISSUE HERE. AND
7 AS I UNDERSTAND IT, FROM THE GOVERNMENT'S PAPERS, WERE THERE
8 ANY AMERICAN AGENTS ON THE AIRPLANE DURING THE
9 TRANSPORTATION?

10 MR. MEDRANO: YES, YOUR HONOR.

11 THE COURT: WELL, THERE ARE NO DECLARATIONS FILED
12 BY ANYONE.

13 MR. MEDRANO: YES, THERE IS, YOUR HONOR.

14 DEPUTY ROBERTO ESCOBAR, WE FILED A DECLARATION
15 YESTERDAY AND HAD IT WALKED DOWN TO CHAMBERS, AND I BELIEVE
16 MADAME CLERK HAS ADDITIONAL COPIES SHOULD THE COURT NEED
17 ONE, YOUR HONOR.

18 THE COURT: HE WAS ON THE AIRPLANE DURING THE
19 TRANSPORTATION?

20 MR. MEDRANO: YES, YOUR HONOR.

21 AND WITH REGARD TO MR. STOLAR'S INCREDIBLY BROAD
22 SUBPOENA TO THE U.S. MARSHALS, YOUR HONOR, THE U.S.
23 MARSHAL'S COUNSEL, A MR. JOE LASAR, CALLED ME WHEN HE
24 RECEIVED THE SUBPOENA AND ASKED FOR ADVICE, AND I SAID,
25 "YOU'RE AN INDEPENDENT AGENCY, YOU SHOULD DO WHATEVER YOU

1 DEEM APPROPRIATE."

2 THEY REPLIED THAT THEY FELT THE SUBPOENA WAS TOO
3 BROAD, WERE, AS A COURTESY, SENDING ME COPIES.

4 I'VE REVIEWED ALL OF THEM, YOUR HONOR, AND IF
5 MR. STOLAR HAS A COPY OF HIS SUBPOENA, I WOULD LIKE THE
6 COURT TO REVIEW IT BECAUSE IF YOU DO SO, YOU'LL FIND IT IS
7 WELL BEYOND THE PARAMETERS OF THE TYPE OF HEARING WE'RE
8 SUPPOSED TO HAVE HERE THIS AFTERNOON OR TOMORROW MORNING.

9 THE COURT: WELL, WHAT DOES THE SUBPOENA CALL
10 FOR?

11 MR. STOLAR: THE SUBPOENA CALLS FOR RECORDS
12 INVOLVED IN THE PLANNING AND ACTUAL SEIZURE OF JUAN RAMON
13 MATTA BALLESTEROS ON APRIL 5 --

14 THE COURT: ALL RIGHT, LET'S STOP RIGHT THERE.
15 THAT'S OUTSIDE THE SCOPE OF THE HEARING THAT WE'RE GOING TO
16 HAVE.

17 MR. STOLAR: -- INCLUDING THE INDIVIDUALS
18 INVOLVED IN THE SEIZURE, THE TRANSPORTATION ROUTES AND
19 METHODS USED, AND THE WEAPONS, ARMS, STUNS GUNS AND OTHER
20 EQUIPMENT CARRIED BY THE TEAM INVOLVED IN THE SEIZURE.

21 THOSE SPECIFIC THINGS, SINCE THE GOVERNMENT HAS
22 TAKEN THE POSITION THAT "WE DIDN'T TOUCH HIM, WE NEVER LAID
23 A GLOVE ON HIM," I THINK ARE IMPORTANT FOR US TO PROVE THAT
24 THEY DID LAY A GLOVE ON HIM, THAT THOSE WEAPONS WERE IN THE
25 POSSESSION OF THE GOVERNMENT AGENTS WHO SEIZED MATTA.

1 REMEMBER, THOSE ARE THE ONES WHO ACTUALLY
2 PHYSICALLY TOOK HIM. THIS IS NOT A QUESTION OF FOREIGN
3 PEOPLE KIDNAPPING SOMEBODY, IT WAS THE U.S. GOVERNMENT
4 AGENTS THEMSELVES WHO TOOK MATTA IN A FOREIGN COUNTRY.

5 SO THE ONLY WAY WE FIND THAT OUT IS BY ASKING
6 THE GOVERNMENT, WHO HAS THE RECORDS THEMSELVES, TO TURN THE
7 RECORDS OVER TO US SO WE CAN PROVE EXACTLY WHAT IT IS THAT
8 WE'RE SAYING. THOSE RECORDS WERE SUBPOENAED.

9 THE COURT: WELL, THERE SHOULD BE A MOTION FILED
10 TO QUASH THIS SUBPOENA. FRANKLY, I THINK IT IS OVERBROAD.

11 I GAVE YOU -- AND BENT OVER BACKWARDS TO GIVE
12 YOU THIS LIMITED HEARING. I DON'T -- IT'S REALLY
13 QUESTIONABLE THAT YOU'RE ENTITLED TO IT BECAUSE EACH OF
14 THESE COURTS THAT HAVE CONSIDERED THIS ISSUE DEALT WITH THE
15 TORTURE ISSUE AND FOUND IT NOT TO SUPPORT A DISMISSAL.

16 BUT BECAUSE IT IS NOT AN ISSUE NECESSARY TO
17 THEIR DECISION, THAT IS, NOT BEING THE LAW OF THEIR CIRCUIT,
18 I HAVE DECIDED IT WOULD NOT -- THAT YOU ARE NOT ESTOPPED TO
19 RAISE IT AGAIN HERE. BUT IT'S A NARROW ISSUE AND I WOULD
20 THINK THAT IT RELATES ONLY TO WHO WAS ON THAT AIRPLANE
21 BECAUSE THAT --

22 MR. STOLAR: I DON'T KNOW, MY CLIENT HAD A HOOD
23 OVER HIS HEAD, TIGHTLY STRUNG AROUND NECK.

24 THE COURT: ALL RIGHT.

25 MR. STOLAR: SO THEREFORE, THE GOVERNMENT IS

1 SOLELY IN POSSESSION -- SOLELY IN POSSESSION OF THE
2 INFORMATION THAT IS NEEDED TO PROVE MY CASE, AND THEY REFUSE
3 TO TURN IT OVER.

4 THE COURT: WELL, WE'LL NEED A MOTION ON THAT.
5 IN THE MEANTIME, WE WILL HEAR -- IF WE GET TIME TODAY TO
6 HEAR FROM THIS ONE WITNESS.

7 I'M GOING TO START THE MOTION FOR -- THAT WOULD
8 RESERVE FOR THIS DATE A HEARING ON THE JURISDICTION MOTION
9 FILED BY THE DEFENDANT MATTA. AND I'M GOING TO RECEIVE INTO
10 EVIDENCE BOTH HIS DECLARATION AND ALL OTHER DECLARATIONS
11 THAT HAVE BEEN FILED BY THE GOVERNMENT SUBJECT TO THE RIGHT
12 OF EACH PARTY TO CROSS-EXAMINE THE DECLARANTS.

13 AND THE COURT WILL RETURN IN A MOMENT TO THAT
14 AND TAKE THE TESTIMONY OF THIS DOCTOR FROM MARION, ILLINOIS.
15 IF WE CAN FINISH WITH HIM TODAY, THAT WOULD BE HIGHLY
16 PREFERABLE.

17 BUT WE HAVE SOME OTHER MATTERS THAT -- WE'VE
18 DEALT WITH THE TRIAL DATE. WE HAVE -- ALTHOUGH I HAVE NOT
19 SET A DATE FOR THE DEFENDANT MACHAIN, THE COURT WILL ORDER
20 THAT ANY MOTION TO BE FILED BY THAT DEFENDANT ON THE ISSUE
21 OF JURISDICTION ALONE SHALL BE FILED WITHIN 15 DAYS.

22 IS THAT SUFFICIENT TIME?

23 MR. STEINBERG: YES, YOUR HONOR, I CAN DO IT.

24 THE COURT: FILE AND SERVE IT WITHIN 15 DAYS.
25 THE GOVERNMENT SHALL HAVE 7 DAYS TO RESPOND -- YOU'VE HAD A

1 LOT OF RESPONSES TO THIS ISSUE -- AND THE REPLY 3 DAYS
2 AFTER. AND I THINK WE SHOULD SET A HEARING DATE FOR THAT
3 MOTION.

4 TODAY IS APRIL THE 23RD -- STRIKE THAT, APRIL
5 19TH, AND THE MOTION SHALL BE FILED NOT LATER THAN MAY THE
6 11TH. THE OPPOSITION BY THE GOVERNMENT SHALL BE FILED BY
7 MAY 18TH; REPLY BY MAY 21; THE HEARING ON MAY 25.

8 MR. STEINBERG: AT WHAT TIME, YOUR HONOR?

9 THE COURT: AT 9:30 A.M.

10 MR. STEINBERG: THANK YOU, YOUR HONOR.

11 THE COURT: NOW, WE HAVE A NUMBER OF OTHER
12 QUESTIONS TO DISCUSS REGARDING THE TRIAL WHICH WILL COMMENCE
13 ON MAY 1ST. THE QUESTION OF THE JURY QUESTIONNAIRE, THE
14 PROPOSED VOIR DIRE QUESTIONS, ATTORNEY PARTICIPATION AND
15 VOIR DIRE QUESTIONS, MOTION FOR ADDITIONAL PREEMPTORY
16 CHALLENGES, CLARIFICATION -- STRIKE THAT.

17 WE ALSO HAVE A MOTION FOR SUPPRESSION OF
18 STATEMENTS. IN THE APRIL 16TH HEARING OF DEFENDANT MATTA'S
19 MOTION TO SUPPRESS STATEMENTS MADE BY MR. MATTA TO U.S.
20 AGENTS, THE GOVERNMENT ARGUED THAT MATTA WAS COLLATERALLY
21 ESTOPPED FROM RELITIGATING THESE ISSUES.

22 THE COURT GRANTED LEAVE TO FILE A SUPPLEMENTAL
23 BRIEF ADDRESSING THIS ISSUE, WHICH HAS BEEN DONE AND WHICH I
24 HAVE CONSIDERED.

25 MR. STOLAR: EXCUSE ME, I DID NOT RECEIVE SUCH A

1 BRIEF.

2 THE COURT: DID YOU SERVE COUNSEL WITH THE
3 BRIEF?

4 MR. MEDRANO: OF COURSE, YOUR HONOR, IT WAS
5 SERVED ON ALL COUNSEL.

6 THE COURT: WELL, THEN WHERE DID YOU SERVE IT?

7 MR. STOLAR: MAY I ASK WHEN -- WHEN IT WAS
8 SERVED?

9 DO YOU HAVE A DECLARATION AT THE BACK OF IT,
10 YOUR HONOR?

11 THE COURT: NO. LET ME SEE IF I CAN FIND IT
12 HERE.

13 MR. MEDRANO: I DON'T HAVE MY COPY,
14 UNFORTUNATELY, WITH ME, YOUR HONOR.

15 THE COURT: HERE IT IS.

16 IT WAS FILED APRIL 12TH. COUNSEL, FILED
17 APRIL 12TH 1990.

18 MR. STOLAR: MAILED?

19 THE COURT: AND MAILED APRIL 11TH TO ALL
20 COUNSEL. AND YOU ARE SHOWN HERE -- STRIKE THAT. YOU'RE
21 SHOWN HERE AS HAVING BEEN MAILED AT 351 BROADWAY, FOURTH
22 FLOOR, NEW YORK, NEW YORK 10013, IN YOUR NAME.

23 MR. STOLAR: I UNDERSTAND THAT. I HAVE JUST
24 DONE A QUICK SURVEY OF CO-COUNSEL IN THE ROOM, AND NONE OF
25 THEM SEEM TO RECALL GETTING A COPY OF IT, EITHER.

1 THE COURT: IS THAT CORRECT?

2 MR. NICOLAYSEN: THAT'S CORRECT, YOUR HONOR.

3 GREGORY NICOLAYSEN ON BEHALF OF VASQUEZ-VELASCO.

4 THE COURT: THIS IS ENTITLED "GOVERNMENT
5 SUPPLEMENTAL FILING, RE: DEFENDANT MATTA'S MOTION TO
6 SUPPRESS STATEMENTS."

7 MR. STOLAR: I REPRESENT TO YOU THAT AT LEAST UP
8 UNTIL LAST SUNDAY WHEN I LEFT NEW YORK CITY, THAT HAD NOT
9 ARRIVED AND I DO NOT HAVE IT.

10 THE COURT: WELL, I CAN TELL YOU THAT I HAD
11 INTENDED TO DENY THE GOVERNMENT'S MOTION TO FIND THAT THE
12 DEFENDANT IS COLLATERALLY ESTOPPED.

13 MR. STOLAR: THAT GIVES ME GREAT ASSISTANCE.
14 THEN I'LL SIT DOWN.

15 THE COURT: THAT WAS MY INTENTION --

16 MR. STOLAR: THANK YOU.

17 THE COURT: -- FOR THE FOLLOWING REASONS:
18 FIRST, THIS DOCTRINE OF COLLATERAL ESTOPPEL APPLIES TO
19 CRIMINAL CASES THROUGH THE CONSTITUTIONAL PROTECTION AGAINST
20 DOUBLE JEOPARDY. THE GOVERNMENT ARGUED THAT MATTA WAS
21 COLLATERALLY ESTOPPED FROM RELITIGATING THESE ISSUES BECAUSE
22 HE HAS RELITIGATED -- HE HAS LITIGATED THEM IN OTHER COURTS.

23 THE CIRCUIT HERE, THE 9TH CIRCUIT, HAS SET OUT A
24 THREE-PART TEST FOR COLLATERAL ESTOPPEL ANALYSIS IN CRIMINAL
25 CASES. FIRST, THE ISSUE IN THE TWO ACTIONS ARE IDENTIFIED

1 SO THAT WE MAY DETERMINE -- WE'RE DEALING HERE WITH
2 ESSENTIALLY THE SAME SUBJECT MATTER.

3 HOWEVER, ALL THE CASES WHICH HAVE USED THIS
4 STANDARD INVOLVE A DEFENDANT INVOLVING COLLATERAL ESTOPPEL
5 AGAINST THE GOVERNMENT.

6 IN THE UNITED STATES VS. BEJAR METRACIOUS,
7 618F.2d81, THE 9TH CIRCUIT RECOGNIZED THAT BECAUSE OF ITS
8 POTENTIAL IMPLICATION FOR A DEFENDANT'S RIGHT TO
9 CONFRONTATION AND JURY TRIAL, OTHER COURTS HAVE BEEN
10 RELUCTANT TO DECIDE WHETHER THE DOCTRINE OF COLLATERAL
11 ESTOPPEL IS APPROPRIATE IN SUCCESSIVE CRIMINAL PROCEEDINGS.

12 AS I MENTIONED EARLIER, THE DOCTRINE APPLIES TO
13 CRIMINAL CASES THROUGH THE CONSTITUTIONAL PROTECTION AGAINST
14 DOUBLE JEOPARDY. IT'S QUESTIONABLE HOW THE GOVERNMENT MAY
15 INVOKE THE PROTECTION OF THIS DOUBLE JEOPARDY DOCTRINE.

16 NEVERTHELESS, IN TWO CASES IN THIS CIRCUIT, THE
17 9TH CIRCUIT HAS EXTENDED THIS DOCTRINE OF COLLATERAL
18 ESTOPPEL TO PRECLUDE A DEFENDANT IN A LATER CRIMINAL
19 PROCEEDING FROM RELITIGATING FACTS.

20 THE IMPORTANT THING ABOUT THESE TWO CASES,
21 HOWEVER, IS THAT BOTH COURTS FOUND THAT THE EARLIER
22 LITIGATED FACTS WERE ESSENTIAL TO THE DETERMINATION OF THE
23 CASE OR ESSENTIAL TO THE JUDGMENT IN THE CASE.

24 THIS CASE AND THIS STANDARD DIFFERS FROM THE
25 THIRD PRONG OF THE STANDARD IN THE SCHWARTZ CASE. IN THAT,

1 AS I MENTIONED EARLIER, THE COURT IS OF THE VIEW THAT A
2 CRIMINAL DEFENDANT CAN BE COLLATERALLY ESTOPPED ONLY FROM
3 RELITIGATING AN ULTIMATE FACT ESSENTIAL TO THE JUDGMENT IN
4 THE EARLIER CRIMINAL CASE.

5 AND WHILE THE 5TH AMENDMENT AND MIRANDA ISSUES
6 WHICH MR. MATTA NOW RAISES IN THIS MOTION WERE CLEARLY
7 IDENTIFIED AND LITIGATED IN JUDGE RYMER'S COURT IN RELATION
8 TO MATTA'S SUPPRESSION HEARING BEFORE THAT COURT, I CANNOT
9 SAY THAT THE ADMISSIBILITY OF MATTA'S STATEMENTS WERE
10 ESSENTIAL TO THE JUDGMENT IN THAT CASE.

11 THEREFORE, THIS DEFENDANT IS NOT COLLATERALLY
12 ESTOPPED FROM RELITIGATING THE VOLUNTARINESS OF HIS
13 STATEMENTS OR WHETHER THE MIRANDA WARNING WAS GIVEN, AND
14 THOSE WOULD BE THE ISSUES. AND HE IS ENTITLED TO A HEARING
15 ON THOSE ISSUES.

16 DO YOU WISH TO BE HEARD OR DO YOU ACCEPT THAT?

17 MR. MEDRANO: WELL, YOUR HONOR, WE WILL ACCEPT
18 THAT. I JUST ASK THE COURT THAT WE NEED TO BRING BACK
19 CERTAIN WITNESSES FOR THAT HEARING. MANY -- ONE IS COMING
20 FROM COLUMBIA --

21 THE COURT: WELL, IT'S NOT SET FOR TODAY.

22 MR. MEDRANO: VERY WELL.

23 THE COURT: I KNOW AND I EXPECTED THAT.

24 MR. MEDRANO: ALL WE NEED IS AMPLE NOTICE, YOUR
25 HONOR, TO GIVE THE WITNESSES APPROPRIATE NOTICE.

1 THE COURT: I THINK YOU OUGHT TO WORK OUT BETTER
2 WAYS TO SERVE THIS COUNSEL.

3 DON'T YOU HAVE LOCAL COUNSEL HERE?

4 MR. STOLAR: I CERTAINLY DO.

5 THE COURT: WHO IS THAT?

6 MR. STOLAR: BARRETT LITT OF LITT & STORMER.

7 THE COURT: DO YOU WANT HIM TO BE SERVED WITH
8 THESE --

9 MR. STOLAR: NO, GENERALLY SPEAKING, PAPERS DO
10 ARRIVE FROM MR. MEDRANO, BUT I DIDN'T GET IT AND IT SHOULD
11 HAVE COME. AND THE FACT THAT OTHER COUNSEL DIDN'T GET IT,
12 TOO, TELLS YOU THAT SOMETHING IS MESSED UP SOMEPLACE
13 COMPLETELY THROUGHOUT. BUT OTHERWISE, I GET MOSTLY
14 EVERYTHING HE DOES SERVE.

15 THE COURT: NOW, ON THE QUESTION OF WHETHER WE
16 SHOULD HAVE A JURY QUESTIONNAIRE, I PERMITTED A LIMITED JURY
17 QUESTIONNAIRE TO BE USED IN THE LAST CASE.

18 WELL, NEEDLESS TO SAY, I WOULD PERMIT THE USE OF
19 A QUESTIONNAIRE. THE ONLY DISPUTE WE MIGHT HAVE IS THE
20 NATURE AND EXTENT OF THE QUESTIONNAIRE. I WILL BE GOING
21 OVER THIS MORE CAREFULLY AND I WILL PRESENT YOU AT THE
22 PROPER TIME WITH WHAT I CONSIDER TO BE AN APPROPRIATE
23 QUESTIONNAIRE FOR THIS CASE.

24 OUR MAIN CONCERN IS A QUESTION OF PUBLICITY.
25 BUT SOME OF THE OTHER INFORMATION THAT IS SOUGHT MIGHT BE

1 HELPFUL IN SELECTING THE JURY SO THAT IS SOMETHING I WILL
2 TAKE UP WITH YOU.

3 SIMILARLY, IT IS NOT LIKELY THAT I WILL PERMIT
4 ATTORNEY PARTICIPATION IN VOIR DIRE. I WILL DO THE VOIR
5 DIRE AND I WILL DO IT COMPREHENSIVELY.

6 AND MOTIONS FOR ADDITIONAL PREEMPTORY
7 CHALLENGES, I'M CONSIDERING.

8 NOW, I THINK WE NEED TO DO -- WHAT WE NEED TO DO
9 IS SET A HEARING ON THIS MOTION TO SUPPRESS. I SUGGEST THAT
10 THAT BE SET ON MAY THE 1ST. THE HEARING ON MR. MATTA'S
11 MOTION TO SUPPRESS SHOULD BE SET ON MAY THE 1ST.

12 NOW, LET ME UNDERSTAND BEFORE WE PROCEED WITH
13 THIS WHAT IT IS YOU'RE SEEKING TO HAVE SUPPRESSED.

14 MR. STOLAR: BASED ON MY UNDERSTANDING OF THE
15 COURT'S RULING, THERE WERE TWO TYPES OF EVIDENCE OBTAINED IN
16 CARTAGENA IN 1985. ONE WAS DOCUMENTARY EVIDENCE, WHICH WAS
17 SEIZED WITH OR WITHOUT A WARRANT. VERDUGO ESSENTIALLY HAS
18 TAKEN THAT QUESTION OUT OF THE CASE.

19 THE COURT: WELL, I MEAN, YOUR MOTION WAS TO
20 SUPPRESS THE EVIDENCE OF STATEMENTS.

21 MR. STOLAR: YES.

22 THE COURT: WHAT STATEMENTS?

23 MR. STOLAR: THERE ARE STATEMENTS, IF I
24 UNDERSTAND --

25 THE COURT: ARE THEY INCULPATORY STATEMENTS?

1 MR. STOLAR: I'M SORRY?

2 THE COURT: ARE THEY INCULPATORY STATEMENTS?

3 MR. STOLAR: THE GOVERNMENT THINKS SO, THAT'S
4 WHY THEY WANT TO OFFER THEM IN EVIDENCE. AND THEY WILL
5 ARGUE THAT THE STATEMENTS ARE INCULPATORY STATEMENTS,
6 INDICATING THAT MATTA HAD SOME KNOWLEDGE ABOUT THE EVENTS
7 THAT UNDERLIE THIS TRIAL.

8 WHAT EVIDENTIARY VALUE THEY HAVE WILL LATER BE
9 ARGUED, BUT I CERTAINLY WOULD CONSIDER THAT NOT TO BE THE
10 CASE.

11 THE COURT: OKAY. WELL --

12 MR. STOLAR: YOUR HONOR, I THINK THERE ARE TWO
13 SETS OF STATEMENTS; ONE MADE IN CARTAGENA, AND THE OTHER
14 MADE IN BOGOTA.

15 YOU'RE ONLY PUTTING IN THE BOGOTA STATEMENT?

16 THE COURT: WELL, LET'S FIND OUT IF YOU'RE
17 INTENDING TO USE THESE STATEMENTS.

18 MR. MEDRANO: YES, STATEMENTS MADE BY MATTA POST-
19 MIRANDA IN COLUMBIA IN CARTAGENA, THE GOVERNMENT IS SEEKING
20 TO ADMIT THAT EVIDENCE, YOUR HONOR.

21 THE COURT: ALL RIGHT. THEN THE HEARING ON THE
22 MOTION TO SUPPRESS WILL BE ON MAY THE 1ST AT 9:30.

23 MR. MEDRANO: 9:30 ON MAY 1, YOUR HONOR?

24 THE COURT: YES.

25 MR. STOLAR: THERE MAY BE TWO SETS OF

1 STATEMENTS, ONE MADE TO THE AGENTS, LIKE I SAID, IN
2 CARTAGENA, THE OTHER MADE TO --

3 THE COURT: ALL RIGHT, BUT WE'LL BE DEALING WITH
4 STATEMENTS AND THEIR VOLUNTARINESS.

5 MR. STOLAR: CORRECT.

6 THE COURT: ALL RIGHT.

7 NOW, IS THIS WITNESS HERE ON THE -- THAT WAS
8 SUMMONED FOR THE MATTA'S MOTION TO DISMISS FOR LACK OF
9 JURISDICTION BASED ON THE ALLEGED TORTURE?

10 MR. MEDRANO: I BELIEVE HE JUST MIGHT BE
11 OUTSIDE. MAY I STEP OUTSIDE TO GET HIM, YOUR HONOR?

12 MR. STOLAR: GO AHEAD.

13 MR. BURNS: HE'S OUR WITNESS, YOUR HONOR. WE
14 MET HIM FOR THE FIRST TIME AROUND 2:30 WITH MR. MEDRANO.
15 I'LL GO SEE IF I CAN LOCATE DR. VALLES.

16 THE COURT: ALL RIGHT.

17 MR. NICOLAYSEN: YOUR HONOR, MAY I BE HEARD
18 BRIEFLY? I'D JUST LIKE TO CONFIRM WITH THE COURT THAT
19 MONDAY, THE 23RD, IS, IN FACT, THE GO-AHEAD DATE.

20 THE COURT: WHY DO YOU HAVE TO DO THAT, COUNSEL?

21 MR. NICOLAYSEN: I'M SORRY.

22 THE COURT: WHY DO YOU HAVE TO DO THAT? THAT'S
23 THE ORDER OF THE COURT. THERE IS NO DOUBT ABOUT IT, IS
24 THERE?

25 MR. NICOLAYSEN: I DON'T KNOW IF THE GOVERNMENT

1 IS INTENDING TO DISCLOSE THE NON-PERCIPIENT WITNESS
2 INFORMATION.

3 THE COURT: I MADE AN ORDER AND I EXPECT THE
4 GOVERNMENT TO LIVE UP TO IT.

5 MR. NICOLAYSEN: THERE WAS NO DATE SET FOR
6 DISCLOSURE, YOUR HONOR, THAT'S WHY I WANTED TO ASK THE
7 COURT. THAT WAS STILL UNDER SUBMISSION AS OF THE END OF THE
8 LAST HEARING.

9 THE COURT: I DON'T UNDERSTAND WHAT YOU'RE -- I
10 MADE AN ORDER THAT THE DISCLOSURE BE MADE ON THE 23RD OF
11 APRIL.

12 MR. NICOLAYSEN: DOES THAT APPLY TO THE ORDER AS
13 TO THE NON-SPECIFIED PERCIPIENT WITNESSES?

14 THE COURT: IT APPLIES TO WHATEVER I RULED ON ON
15 THAT DATE. I DON'T HAVE THAT IN MY MIND AT THE MOMENT.

16 MR. NICOLAYSEN: YOUR HONOR, AS I RECALL, THE
17 COURT STILL HAD THAT PARTICULAR QUESTION, THE QUESTION OF
18 THE TIMING OF THE DISCLOSURE, UNDER SUBMISSION.

19 THE COURT: I'M NOT AWARE OF HAVING ANYTHING
20 UNDER SUBMISSION.

21 MR. NICOLAYSEN: THEN THE 23RD, YOUR HONOR.
22 THANK YOU.

23 THE COURT: WERE YOU ABLE TO LOCATE THIS
24 WITNESS?

25 MR. MEDRANO: YES, I WAS, YOUR HONOR.

1 MR. BURNS: YOUR HONOR, I WOULD CALL A
2 DR. DONALD VALLES TO THE WITNESS STAND, PLEASE.

3 THE COURT: STATE YOUR NAME, PLEASE.

4 MR. BURNS: MICHAEL BURNS, B-U-R-N-S.

5

6 DR. DONALD B. VALLES, DEFENSE WITNESS, SWORN,

7

8 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
9 RECORD AND SPELL YOUR LAST NAME.

10 THE WITNESS: MY NAME IS DONALD B. VALLES.

11 THE CLERK: SPELL YOUR LAST NAME, PLEASE.

12 THE WITNESS: IT'S SPELLED V-A-L-L-E-S.

13

14

DIRECT EXAMINATION

15 BY MR. BURNS:

16 Q DR. VALEZ, GOOD AFTERNOON.

17 A GOOD AFTERNOON, SIR.

18 Q COULD YOU PLEASE STATE FOR THE COURT WHERE YOU ARE
19 EMPLOYED?

20 A I AM PRESENTLY EMPLOYED AT U.S. PENITENTIARY OF
21 MARION, ILLINOIS.

22 Q AND COULD YOU PLEASE TELL US WHAT YOUR JOB IS THERE?

23 A I AM THE CHIEF OF HEALTH PROGRAMS.

24 THE COURT: YOU ARE WHAT?

25 THE WITNESS: CHIEF OF HEALTH PROGRAMS, SIR.

1 BY MR. BURNS:

2 Q AND HOW LONG HAVE YOU WORKED AT MARION?

3 A I HAVE BEEN THERE SINCE 1981.

4 Q AND HOW LONG HAVE YOU BEEN THE CHIEF OF HEALTH
5 PROGRAMS AT MARION?

6 A SINCE THEN.

7 Q SINCE 1981?

8 A YES, SIR.

9 Q AND WHAT DO YOU DO AS THE CHIEF OF HEALTH PROGRAMS?

10 A I SUPERVISE THE OVERALL FUNCTION OF THE MEDICAL
11 CLINICAL SERVICES OF THE INSTITUTION.

12 Q AND HOW MANY PEOPLE DO YOU --

13 THE COURT: JUST A MOMENT.

14 IS THERE ANY REASON FOR THE REMAINING DEFENDANTS
15 TO BE HERE? IF YOU DON'T WANT TO BE, YOU DON'T HAVE TO BE.

16 DO YOU HAVE ANY INTEREST IN THIS MOTION?

17 MR. NICOLAYSEN: I HAVE NO OBJECTION TO MY
18 CLIENT RETURNING TO THE LOCKUP, YOUR HONOR, VASQUEZ-VELASCO.

19 THE COURT: ALL RIGHT.

20 MR. MEDVENE: FOR RUBEN ZUNO, THERE IS NO
21 OBJECTION.

22 THE COURT: ALL RIGHT.

23 MR. STEINBERG: NO OBJECTION ON BEHALF OF
24 DR. MACHAIN, YOUR HONOR.

25 THE COURT: VERY WELL. THEN IF THE MARSHALS

1 ARE ABLE TO DO THAT, THEN WE CAN TAKE CARE OF THAT.

2 ALL RIGHT, GO AHEAD, COUNSEL.

3 BY MR. BURNS:

4 Q TELL US HOW MANY PEOPLE YOU SUPERVISE AS THE CHIEF OF
5 MEDICAL SERVICES AT MARION.

6 A IN THE -- INSIDE THE MAIN BUILDING, THERE ARE ABOUT
7 475 INMATES, AND THERE ARE ABOUT 250 AT THE CAMP.

8 Q AND HOW MANY -- SO THOSE ARE THE INMATES THAT YOU ARE
9 RESPONSIBLE FOR?

10 A YES, SIR.

11 Q AND HOW MANY PEOPLE WHO ARE NOT INMATES, BUT WHO ARE
12 MEDICAL PERSONNEL, DO YOU SUPERVISE?

13 A FOR EMERGENCY REASONS, I TAKE CARE OF THE EMPLOYEES OF
14 THE INSTITUTION.

15 Q YOU TAKE CARE OF EVERYONE AT MARION?

16 A I WOULD SAY YES, FOR THE EMPLOYEES ON EMERGENCY CASES
17 ONLY.

18 Q EMERGENCY CASES OF EMPLOYEES.

19 I WOULD CALL YOUR ATTENTION TO APRIL 6, 1988.

20 WERE YOU WORKING AT MARION AT THAT TIME?

21 A YES, SIR.

22 Q AND DO YOU RECALL THAT GENTLEMAN SITTING OVER THERE,
23 INDICATING MR. MATTA?

24 A YES, SIR.

25 Q DO YOU RECALL SEEING HIM ON APRIL 6TH 1988?

1 A YES, SIR.

2 Q AND COULD YOU TELL US --

3 THE COURT: WHAT WAS THE YEAR, 1988?

4 MR. BURNS: 1988, YES, YOUR HONOR.

5 Q COULD YOU TELL US WHAT YOU WERE DOING THAT DAY WHEN
6 YOU FIRST MET MR. MATTA?

7 THE WITNESS: WOULD THE COURT PERMIT ME TO OPEN
8 THE MEDICAL CHART FOR MY --

9 THE COURT: YOU MAY REFER TO YOUR CHART, YES.

10 THE WITNESS: THANK YOU, YOUR HONOR.

11 (WITNESS REFERS TO DOCUMENT.)

12 THE WITNESS: ON THAT DATE, THE MORNING OF THAT
13 DATE, I WAS GIVEN INSTRUCTION TO SEE THE PATIENT, WHO AT
14 THAT TIME WAS AT THE X-RAY ROOM.

15 BY MR. BURNS:

16 Q AND DID YOU SEE THIS PATIENT?

17 A YES, SIR.

18 Q AND DID YOU EXAMINE THIS PATIENT?

19 A I DID, SIR.

20 Q AND DID YOU MAKE WRITTEN REPORTS CONCERNING THIS
21 PATIENT?

22 A I WROTE A REPORT ON WHAT I DID.

23 Q AND THAT IS YOUR -- PART OF YOUR JOB AT MARION TO MAKE
24 THOSE MEDICAL ENTRIES; IS THAT TRUE?

25 A YES, SIR.

1 Q AND WHAT DID YOU OBSERVE OF THE PATIENT?

2 A IN WHAT ASPECT ARE YOU TRYING TO ASK ME, SIR?

3 Q DID YOU GIVE HIM A MEDICAL EXAMINATION AT THAT TIME?

4 A I DID, SIR.

5 Q AND WHAT WERE THE RESULTS OF THAT MEDICAL
6 EXAMINATION? YOU MAY REFER TO YOUR NOTES, IF YOU WANT.

7 THE COURT: WHAT WERE YOUR FINDINGS? DID YOU
8 MAKE SOME FINDINGS?

9 THE WITNESS: YES, I FOUND SOME FINDINGS, YOUR
10 HONOR.

11 THE COURT: THAT'S WHAT WE WANT TO KNOW, WHAT
12 YOU FOUND.

13 BY MR. BURNS:

14 Q MAY I SHOW YOU --

15 A I OBSERVED THAT HE LOOKED TEARFUL AND DEPRESSED.

16 THE COURT: HE LOOKED WHAT?

17 THE WITNESS: HE LOOKED TEARFUL.

18 THE COURT: TEARFUL?

19 THE WITNESS: TEARFUL.

20 THE COURT: YOU MEAN T-E-A -- OKAY, TEARFUL AND
21 DEPRESSED?

22 THE WITNESS: YES, SIR.

23 BY MR. BURNS:

24 Q ANYTHING ELSE?

25 A AND ON MY PHYSICAL EXAMINATION, I FOUND THAT HE HAD

1 SOME SIGNS OF INJURIES.

2 Q AND WHAT SORT OF INJURIES?

3 A I FOUND ON HIS BACK OF HIS NECK -- I FOUND LINEAR
4 ABRASIONS AT LEFT AND BACK OF HIS NECK.

5 THE COURT: LET'S GET THAT AGAIN.

6 ON THE BACK OF HIS NECK YOU FOUND SOME LINEAR
7 ABRASIONS?

8 THE WITNESS: LINEAR ABRASIONS.

9 THE COURT: HOW MANY?

10 MR. BURNS: IF I MAY INTERRUPT AT THIS POINT,
11 YOUR HONOR, I HAVE NINE PHOTOGRAPHS WHICH, FOR THE SAKE OF
12 TIME, I WOULD OFFER --

13 THE COURT: WELL, IF YOU'LL SHOW THEM TO THE
14 WITNESS, AND IF THE WITNESS HAS A RECOLLECTION OF THEM AND
15 CAN IDENTIFY THEM, THAT WOULD BE FINE.

16 WHO TOOK THESE, BY THE WAY, COUNSEL? DO YOU
17 KNOW WHO TOOK THESE?

18 THE WITNESS: IT WAS THE S.I.S. OFFICER, YOUR
19 HONOR.

20 THE COURT: YOU WERE PRESENT WHEN THEY WERE
21 TAKEN?

22 THE WITNESS: WHEN IT WAS GOING ON.

23 BY MR. BURNS:

24 Q CAN YOU TELL US WHAT AN S.I.S. OFFICER IS?

25 A THAT'S SPECIAL INVESTIGATION SERVICE OF THE

1 INSTITUTION.

2 Q THEY WORK FOR THE BUREAU OF PRISONS OR THE ATTORNEY
3 GENERAL'S OFFICE?

4 A BUREAU OF PRISONS.

5 Q BUREAU OF PRISONS.

6 THE PHOTOGRAPHS YOU HAVE BEFORE YOU, DO YOU
7 RECOGNIZE WHAT THEY ARE PICTURES OF?

8 A YES, SIR.

9 Q WOULD YOU PLEASE DESCRIBE THEM TO US?

10 A THIS IS THE --

11 THE COURT: YOU'RE POINTING, THIS IS THE LEFT
12 SIDE OF THE NECK?

13 THE WITNESS: LEFT SIDE OF THE NECK AND HERE
14 (INDICATING).

15 THE COURT: AND IN THE BACK OF THE NECK?

16 THE WITNESS: YES, SIR.

17 THE COURT: YOU CALL THOSE LINEAR ABRASIONS?

18 THE WITNESS: YES, SIR.

19 THE COURT: HOW MANY ARE THERE ON THE BACK OF
20 THE NECK?

21 THE WITNESS: THESE ARE ONE, BUT IT CONTINUES TO
22 THE OTHER SIDE.

23 THE COURT: IT CONTINUES TO THE FRONT?

24 THE WITNESS: TO THE SIDE AND TO THE BACK.

25 THE COURT: WAS IT THE SAME ABRASION --

1 THE WITNESS: THE SAME.

2 THE COURT: -- OR A DIFFERENT ABRASION?

3 THE WITNESS: THE SAME ABRASION, BUT IT'S A
4 LINEAR FASHION, FROM HERE AROUND TOWARDS THE BACK
5 (INDICATING).

6 THE COURT: SO IT'S ALMOST ALL AROUND THE NECK?

7 THE WITNESS: NO, IT'S JUST FROM HERE TO HERE.

8 THE COURT: "FROM HERE TO HERE" MEANING FROM THE
9 BACK OF THE NECK TO THE --

10 THE WITNESS: TO THIS SIDE.

11 THE COURT: -- NEAR THE COLLAR BONE AREA.

12 THE WITNESS: YES, SIR.

13 THE COURT: ON ONE SIDE.

14 THE WITNESS: NO.

15 THE COURT: ON THE LEFT SIDE.

16 THE WITNESS: ON PART OF THE BACK AND PART OF
17 THE LEFT SIDE.

18 THE COURT: YES.

19 BY MR. BURNS:

20 Q DO YOU HAVE ANY IDEA WHAT COULD HAVE CAUSED SUCH
21 ABRASIONS?

22 A NO, SIR.

23 Q DR. VALLES, I SHOW YOU --

24 THE COURT: WELL, LET'S MARK THESE EXHIBITS. DO
25 YOU WISH TO HAVE THESE OFFERED AS AN EXHIBIT?

1 MR. BURNS: YES, I HAVE NINE ALL TOGETHER. THEY
2 CAN BE MARKED --

3 THE COURT: THEY CAN BE MARKED 9-A, B, C --
4 STRIKE THAT, I MEAN THEY CAN BE MARKED A-1 THROUGH 9, AND
5 I'LL MARK THE ONE OF THE BACK OF THE NECK AS A-1 AND THE ONE
6 ON THE FRONT OF THE NECK AS A-2. THESE SHOULD BE MARKED
7 CONSECUTIVELY A-3 THROUGH 9.

8 FOR THE RECORD, THE DEFENDANT IDENTIFIED THE
9 BACK OF THE NECK ABRASION AS THE PHOTOGRAPH IN A-1.

10 IS THIS WHAT THE DEFENDANT LOOKED LIKE WHEN YOU
11 FIRST SAW HIM?

12 THE WITNESS: YES, YOUR HONOR.

13 THE COURT: AND THIS -- THAT IS, SHOWING YOU A-1
14 AND A-2, IS ALSO AN ACCURATE PHOTOGRAPH OF WHAT HIS -- SIDE
15 OF HIS NECK LOOKED LIKE AT THE TIME YOU EXAMINED HIM?

16 THE WITNESS: YES, YOUR HONOR.

17 THE COURT: THESE MAY BE RECEIVED IN EVIDENCE.

18 MR. BURNS: THANK YOU VERY MUCH, YOUR HONOR.

19 (EXHIBITS A-1 AND A-2 RECEIVED IN
20 EVIDENCE.)

21 BY MR. BURNS:

22 Q DR. VALLES, I'LL SHOW YOU WHAT IS MARKED FOR
23 IDENTIFICATION AS DEFENDANT'S EXHIBITS A-3 AND A-4. PLEASE
24 TELL US IF YOU RECOGNIZE WHAT THESE ARE.

25 A YES, I HAVE MADE A RECORD OF THIS, LINEAR ABRASIONS AT

1 THE DISTAL PARTS OF BOTH FOREARMS, MOSTLY AT THE LATERAL AND
2 POSTERIOR SIDES.

3 THE COURT: NOW, WILL YOU SHOW ME THE PICTURE
4 THAT SHOWS THAT?

5 THE WITNESS: HERE, YOUR HONOR.

6 THE COURT: AND WOULD YOU POINT TO WHAT YOU'RE
7 REFERRING TO.

8 (WITNESS COMPLIES WITH REQUEST.)

9 THE COURT: THIS ABRASION HERE. WOULD YOU
10 CIRCLE IT? DO YOU HAVE A PEN THERE?

11 CIRCLE THE AREA WHERE YOU FOUND YOUR -- THAT
12 YOUR FINDINGS REFER TO.

13 YOU'RE DOING THAT NOW ON A-4? MAY I SEE THAT?
14 WOULD YOU DO THE SAME NOW ON A-3, PLEASE.

15 THE WITNESS: YES, YOUR HONOR.

16 THE COURT: A-3 AND A-4 MAY BE RECEIVED IN
17 EVIDENCE.

18 (EXHIBITS A-3 AND A-4 RECEIVED IN
19 EVIDENCE.)

20 BY MR. BURNS:

21 Q DR. VALLES, ARE THOSE ABRASIONS SIMILAR TO THE TYPE OF
22 ABRASIONS THAT YOU SAW AROUND MR. MATTA'S NECK?

23 A THEY ARE DIFFERENT ABRASIONS, SIR.

24 Q I SHOW YOU WHAT'S MARKED --

25 THE COURT: WHAT IS THE DIFFERENCE BETWEEN

1 THESE, THE ONES ON THE WRIST AND THE ONES ON THE NECK?

2 THE WITNESS: ON THE LOCATIONS, SIR.

3 THE COURT: PARDON?

4 THE WITNESS: LOCATION.

5 THE COURT: WELL, OTHER THAN THE LOCATION, ARE
6 THEY THE SAME TYPE OF ABRASIONS?

7 THE WITNESS: YES, SIR, IN TERMS OF THE DEGREE
8 OF SEVERITY THAT THIS -- I WOULD CLASSIFY THAT AS MILD.

9 THE COURT: DID THEY REQUIRE ANY TREATMENT?

10 THE WITNESS: NO, SIR.

11 THE COURT: YOU DID NOT TREAT THE DEFENDANT FOR
12 EITHER OF THESE ABRASIONS, ANY OF THEM?

13 THE WITNESS: I DON'T RECALL I DID, SIR.

14 THE COURT: OKAY.

15 BY MR. BURNS:

16 Q DR. VALLES, I SHOW YOU WHAT IS MARKED FOR
17 IDENTIFICATION AS DEFENDANT'S EXHIBITS A-5 AND A-6.

18 COULD YOU PLEASE TELL US IF YOU RECOGNIZE THEM?

19 A I WROTE HERE, THERE IS AN ABRASION ABOUT ONE AND ONE-
20 THIRD BY ONE-HALF CENTIMETER AT THE DORSAL OF LEFT FOOT.

21 (PHOTOGRAPH TENDERED TO THE COURT.)

22 THE COURT: THIS IS ON THE LEFT FOOT?

23 THE WITNESS: YES, YOUR HONOR.

24 THE COURT: AND THIS IS EXHIBIT 5 HERE.

25 WHAT DID YOU DESCRIBE THIS AS; AN ABRASION?

1 THE WITNESS: AS AN ABRASION ABOUT ONE AND ONE-
2 THIRD BY ONE-HALF CENTIMETER.

3 THE COURT: A CALIBRATION --

4 THE WITNESS: NO.

5 THE COURT: -- OR AN ABRASION?

6 THE WITNESS: ABRASION.

7 THE COURT: ALL RIGHT.

8 BY MR. BURNS:

9 Q DR. VALLES, IN THE PHOTOGRAPH THAT'S MARKED A-6, DID
10 YOU EXAMINE THE BOTTOM OF THE DEFENDANT'S FEET?

11 A YES, SIR.

12 Q IS THAT A PICTURE OF WHAT YOU SAW WHEN YOU EXAMINED
13 THE DEFENDANT'S FEET?

14 A I DIDN'T MAKE A NOTE ON IT, SIR.

15 Q OKAY.

16 THE COURT: MAY I SEE THAT?

17 (PHOTOGRAPH TENDERED TO THE COURT.)

18 THE COURT: ALL RIGHT.

19 BY MR. BURNS:

20 Q DR. VALLES --

21 THE COURT: DO YOU WISH TO OFFER 5 AND 6?

22 MR. BURNS: YES, YOUR HONOR.

23 THE COURT: THEY MAY BE RECEIVED.

24 (EXHIBITS A-5 AND A-6 RECEIVED IN
25 EVIDENCE.)

1 BY MR. BURNS:

2 Q I SHOW YOU WHAT'S MARKED FOR IDENTIFICATION AS
3 DEFENDANT'S EXHIBIT A-7.

4 DO YOU RECOGNIZE THAT?

5 A YES, SIR. I MADE NOTE.

6 Q DID YOU MAKE NOTATIONS ON THAT?

7 A I MADE NOTE ON THIS.

8 Q COULD YOU TELL US WHAT IT'S A PHOTOGRAPH OF?

9 A THESE ARE MULTIPLE ERYTHEMATOUS SPOTS OF ABOUT THREE
10 TO FIVE MILLIMETERS.

11 THE COURT: DID YOU SAY MULTIPLE HEMATOMAS?
12 MULTIPLE HEMATOMAS, IS THAT WHAT YOU SAID?

13 THE WITNESS: MULTIPLE ERYTHEMATOUS, MEANING --
14 ERYTHEMATOUS MEANS RED SPOTS.

15 THE COURT: LET'S MOVE THIS MIKE BACK, I THINK
16 IT'S INTERFERING WITH -- WOULD YOU PUSH THAT MIKE BACK A
17 LITTLE?

18 MAY I SEE WHAT YOU'VE JUST DESCRIBED? YOU'RE
19 HANDING ME EXHIBIT A-7?

20 (EXHIBIT A-7 TENDERED TO THE COURT.)

21 THE COURT: AND YOU'RE REFERRING TO THE --

22 THE WITNESS: THOSE ARE MULTIPLE ERYTHEMATOUS
23 SPOTS OF ABOUT THREE TO FIVE MILLIMETERS AT THE BACK.

24 BY MR. BURNS:

25 Q DR. VALLES, IS THAT THREE TO FIVE MILLIMETERS

1 SEPARATING THE DOTS, THE ERYTHEMATOUS SPOTS?

2 A THOSE ARE SEPARATE FROM EACH OTHER, GENERALLY
3 SPEAKING.

4 Q AND THERE WERE MULTIPLE SETS OF THOSE SPOTS?

5 A YES, SIR. FEW OF THESE SPOTS HAVE DENUDED SKIN.

6 Q IS THAT COMPATIBLE WITH ANY MEDICAL FINDING?

7 A IT IS COMPATIBLE WITH RUPTURED BLISTER.

8 THE COURT: RUPTURED WHAT?

9 THE WITNESS: BLISTER.

10 BY MR. BURNS:

11 Q ARE YOU SAYING THAT BLISTERS WERE FORMED IN THOSE
12 AREAS AND THE BLISTERS POPPED OR CHANGED IN SOME WAY?

13 A IT LOOKED COMPATIBLE TO THAT, SIR.

14 MR. BURNS: I'D ASK THAT BE TAKEN INTO EVIDENCE,
15 YOUR HONOR.

16 THE COURT: YES, I'LL RECEIVE THIS.

17 (EXHIBIT A-7 RECEIVED IN EVIDENCE.)

18 BY MR. BURNS:

19 Q DR. VALLES, I SHOW YOU WHAT IS MARKED FOR
20 IDENTIFICATION AS DEFENDANT'S EXHIBIT A-8.

21 WOULD YOU TELL US WHAT THAT IS A PHOTOGRAPH OF?

22 A THIS IS A PHOTOGRAPH OF THE DEFENDANT'S GENITAL PART.

23 Q DR. VALLES, WHY WAS A PHOTOGRAPH TAKEN OF THE
24 DEFENDANT'S GENITAL PARTS, CAN YOU TELL US?

25 A I DON'T EXACTLY KNOW.

1 Q DID YOU MAKE ANY FINDING AS REGARDS TO THE DEFENDANT --

2 A SINCE I SAW UNUSUAL --

3 THE COURT: PARDON?

4 THE WITNESS: SINCE I SAW UNUSUAL APPEARANCE OF
5 THE SKIN, I MADE A NOTE TO THAT.

6 THE COURT: WHAT WAS YOUR NOTE?

7 THE WITNESS: MY NOTE WAS "PRESENCE OF
8 DEPIGMENTED AREA WITH SOME SCALING AT THE LEFT BASE OF THE
9 PROXIMAL SHAFT OF THE PENIS."

10 THE COURT: NOW, WOULD YOU CIRCLE THAT AND SHOW
11 ME WHERE IT IS?

12 (WITNESS COMPLIES WITH REQUEST.)

13 THE COURT: IS THAT THE WHITE AREA HERE IN THE
14 MIDDLE?

15 THE WITNESS: YES, YOUR HONOR.

16 THE COURT: AND WHAT DID YOU CALL THAT?

17 THE WITNESS: IT'S A DEPIGMENTED AREA WITH SOME
18 SCALING.

19 THE COURT: IT'S A PIGMENTED AREA?

20 THE WITNESS: DEPIGMENTED.

21 THE COURT: DEPIGMENTED, MEANING THE SKIN IS OFF
22 THERE?

23 THE WITNESS: MEANING THE COLOR.

24 THE COURT: THE COLOR.

25 THE WITNESS: YES, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 DID YOU TAKE A HISTORY FROM THIS DEFENDANT
3 BEFORE YOU EXAMINED HIM?

4 THE WITNESS: AS I WENT ALONG.

5 THE COURT: PARDON?

6 THE WITNESS: AS I WENT ALONG.

7 THE COURT: AS YOU WENT ALONG?

8 THE WITNESS: YES, IN THE EXAMINATION.

9 THE COURT: ALL RIGHT.

10 WHAT HISTORY DID THE DEFENDANT GIVE YOU? CAN
11 YOU SUMMARIZE THE HISTORY THAT HE GAVE YOU?

12 THE WITNESS: I DID NOT ASK ON THIS PARTICULAR
13 FINDING, YOUR HONOR.

14 THE COURT: YOU DID NOT ASK.

15 HOW ABOUT THE OTHER FINDINGS?

16 THE WITNESS: I ASKED ABOUT WHAT CAUSED THE --

17 THE COURT: WHEN YOU SAY "THIS FINDING," YOU'RE
18 REFERRING TO THIS AREA ON THE PENIS?

19 THE WITNESS: YES, YOUR HONOR.

20 BY MR. BURNS:

21 Q DID YOU MAKE ANY INQUIRY OF THE DEFENDANT AS TO WHY?

22 A I MADE AN INQUIRY AS TO WHAT CAUSED THE BURNS ON THE
23 BACK.

24 Q AND DID YOU SPEAK WITH THE DEFENDANT DIRECTLY, OR WAS
25 THERE AN INTERPRETER THERE?

1 A I WAS SPEAKING TO THE DEFENDANT THROUGH AN
2 INTERPRETER.

3 Q DO YOU UNDERSTAND SPANISH, DR. VALLES?

4 A JUST A LITTLE BIT.

5 Q SO YOU'RE NOT FLUENT IN SPANISH, ANYWAY?

6 A NO, SIR.

7 Q DID THE DEFENDANT TELL YOU HOW HE GOT THOSE MARKS ON
8 HIS BACK?

9 A YES, SIR.

10 Q PLEASE TELL US WHAT HE SAID.

11 A HE SAID THAT HE WAS TORTURED WITH ELECTRIC MEANS.

12 Q DR. VALLES, YOU HAVE BEEN -- AT THAT POINT IN TIME,
13 YOU HAD BEEN AT MARION APPROXIMATELY SEVEN OR EIGHT YEARS;
14 IS THAT CORRECT?

15 A NINE YEARS, I MEAN TO SAY.

16 THE COURT: HE'S BEEN THERE SINCE '81, HE SAID.

17 THE WITNESS: WELL, SINCE 1981?

18 MR. BURNS: THAT WOULD BE SEVEN YEARS, YES.

19 Q AND HAVE YOU SEEN SPOTS LIKE THAT, AND AS MANY OF
20 THEM, BEFORE IN YOUR WORK AT THE PRISON?

21 A NOT LIKE THAT, SIR.

22 Q IF I MAY SHOW YOU WHAT IS MARKED FOR IDENTIFICATION AS
23 DEFENDANT'S EXHIBIT A-9.

24 COULD YOU TELL US WHAT THAT IS?

25 A I HAD MADE A NOTE ON THIS.

1 Q PLEASE TELL US WHAT THAT NOTE WAS.

2 A AND I SAID "PALM MARK, SIDE OF BOTH HANDS ARE SMEARED
3 LIGHT RED."

4 Q WERE YOU ABLE TO FIND OUT WHETHER THAT WAS BLOOD OR
5 NOT, DR. VALLES?

6 A ACCORDING TO THE PATIENT, HE SAID THEY WERE BLOOD-
7 SMEARED.

8 THE COURT: WILL YOU CIRCLE THE AREAS THAT YOU
9 MADE YOUR FINDINGS ABOUT?

10 (WITNESS COMPLIES WITH REQUEST.)

11 THE WITNESS: ALMOST THE WHOLE HAND, YOUR HONOR.

12 THE COURT: THE WHOLE HAND, YOU SAY, ON EACH
13 HAND?

14 THE WITNESS: YES, YOUR HONOR.

15 THE COURT: WELL, ARE YOU REFERRING TO THESE
16 DARKER AREAS --

17 THE WITNESS: NO.

18 THE COURT: -- LIKE THE ONE NEAR THE LEFT THUMB
19 HERE?

20 THE WITNESS: NO, THIS WHOLE HAND WAS SMEARED
21 LIGHT RED, YOUR HONOR.

22 THE COURT: OH, I SEE, THE WHOLE HAND WAS
23 SMEARED, HAD A REDDISH SMEAR ON IT, THEN?

24 THE WITNESS: REDDISH, LIGHT REDDISH SMEAR.

25 THE COURT: ALL RIGHT.

1 MR. BURNS: YOUR HONOR, WE WOULD OFFER EXHIBITS
2 A-8 AND 9.

3 THE COURT: YES, THEY MAY BE RECEIVED.

4 MR. BURNS: DR. VALLES, WOULD YOU PLEASE HAND
5 THE PHOTOGRAPH IN FRONT OF YOU TO THE JUDGE.

6 THE COURT: THANK YOU.

7 (EXHIBITS A-8 AND A-9 RECEIVED IN
8 EVIDENCE.)

9 BY MR. BURNS:

10 Q DR. VALLES, WAS THERE A RECTAL EXAMINATION DONE ON THE
11 PATIENT?

12 A I BEG YOUR PARDON, SIR?

13 Q WAS THERE ANY RECTAL EXAMINATION PERFORMED ON THE
14 PATIENT?

15 A NO, SIR.

16 Q WAS THAT DEFERRED?

17 A IT WAS DEFERRED.

18 Q COULD YOU TELL US WHY?

19 A IT WAS -- HE WAS NOT IN MY ROOM.

20 Q WOULD YOU PLEASE EXPLAIN.

21 A HE WAS INSIDE THE X-RAY ROOM.

22 Q BEING PHOTOGRAPHED?

23 A YES, SIR.

24 Q DID YOU PRESCRIBE ANY MEDICATION?

25 A I DID NOT, SIR, EXCEPT I ORDERED ROUTINE LABORATORY

1 PROCEDURES AND IMMUNIZATIONS.

2 Q WHAT IMMUNIZATION DID YOU ORDER TO BE GIVEN TO
3 MR. MATTA?

4 A HE WAS GIVEN TETANUS TOXOID.

5 Q AND IS THAT DONE WHEN THERE ARE OPEN ABRASIONS AND
6 POSSIBILITIES OF INFECTION?

7 A THAT IS GIVEN TO ALMOST EVERY INMATE THERE.

8 Q HOW MANY OTHER PATIENT EXAMINATIONS DID YOU PERFORM ON
9 APRIL 6TH 1988, DO YOU RECALL?

10 A NO, SIR.

11 Q DID MR. MATTA TELL YOU THROUGH THE INTERPRETER ANY WAY
12 HOW HE RECEIVED ALL THE INJURIES?

13 A ON HIS BACK, HE TOLD ME THAT HE WAS TORTURED WITH
14 ELECTRIC MEANS BY POLICE ALONG THE WAY.

15 Q AND DURING HIS STAY AT MARION, DID MR. MATTA HAVE
16 CONTINUING COMPLAINTS CONCERNING HIS PHYSICAL CONDITION,
17 THAT YOU RECALL?

18 A THERE ARE ENTRIES ON THE CHART WHERE HE COMPLAINED OF
19 PAINS ON HIS BACK. HE HAD OTHER COMPLAINTS, LIKE UNABLE TO
20 GO TO SLEEP --

21 Q AND DID YOU PRESCRIBE MEDICATION TO HELP HIM TO SLEEP?

22 A I REMEMBER I DID.

23 Q DO YOU RECALL WHAT THAT MEDICATION WAS?

24 A IT WAS CALLED BENADRYL.

25 MR. BURNS: YOUR HONOR, MAY WE HAVE A MOMENT.

(BRIEF PAUSE.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BY MR. BURNS:

Q DR. VALLES, COULD YOU TELL US WHERE THE TETANUS INJECTION IS GIVEN TO A PATIENT, OR WHERE IT WAS GIVEN TO MR. MATTA?

A WE USUALLY GIVE IT ON THE ARM, UPPER ARM (INDICATING).

Q INDICATING THE RIGHT UPPER ARM?

A YES, IN THE DELTOID AREA.

Q DELTOID, IS THAT ABOVE THE SHOULDER OR BELOW THE SHOULDER?

A OVER HERE, SIR (INDICATING).

THE COURT: THE DELTOID IS THE UPPER PART OF THE SHOULDER.

MR. BURNS: YOUR HONOR, I WOULD OFFER THIS AS --

THE COURT: WHAT IS THAT?

MR. BURNS: -- IT'S MARKED FOR IDENTIFICATION AS DEFENDANT'S EXHIBIT B.

Q DR. VALEZ, ARE THESE COPIES OF PARTS OF THE REPORT, THE MEDICAL REPORT THAT YOU HAVE IN YOUR POSSESSION THAT I SHOWED YOU PREVIOUSLY TO THIS HEARING AND THAT YOU AGREED YOU HAD THE ORIGINALS IN YOUR POSSESSION WHICH YOU HAD BROUGHT WITH YOU FROM MARION?

A I AGREED THESE ARE XEROX COPIES.

MR. BURNS: WE WOULD OFFER THAT -- JUST THOSE XEROXES OF MEDICAL REPORTS THAT I HAVE GIVEN TO DR. VALEZ

1 NOW AND HAVE MARKED AS EXHIBIT B, YOUR HONOR.

2 MR. MEDRANO: WE WOULD OBJECT, YOUR HONOR, FOR
3 TWO REASONS. ONE, THE TESTIMONY OF THE LIVE WITNESS WILL
4 ESTABLISH THE MEDICAL CONDITION ON APRIL 6 WHEN THE
5 DEFENDANT WAS EXAMINED; AND SECOND OF ALL, THIS IS AN ENTIRE
6 MEDICAL FILE, WHICH WE HAVEN'T ESTABLISHED THAT THE WHOLE
7 FILE IS RELEVANT TO THE SPECIFIC ISSUE HERE.

8 FOR EXAMPLE, THERE IS LAB TESTS FOR BLOOD THAT
9 ARE DONE THAT HAVE ABSOLUTELY NOTHING TO DO WITH THE
10 ALLEGATIONS OF TORTURE. THERE IS OTHER NOTATIONS FOR OTHER
11 MEDICATION UNRELATED TO THIS.

12 THE COURT: THAT'S ENOUGH.

13 I'M NOT GOING TO RECEIVE THIS IN EVIDENCE. YOU
14 HAVE PROVIDED PHOTOGRAPHS OF THE INJURIES, THE WITNESS HAS
15 TESTIFIED TO HIS TO HIS EXAMINATION AND FINDINGS. IF THERE
16 ARE ANY OTHER THINGS IN THE REPORT THAT YOU WISH TO ELICIT
17 FROM THE WITNESS, YOU SHOULD DO SO.

18 MR. BURNS: OKAY, YOUR HONOR. EXCUSE ME, YOUR
19 HONOR, THAT'S FINE.

20 THE COURT: DO YOU HAVE ANY QUESTIONS FOR THIS
21 WITNESS?

22 MR. MEDRANO: VERY BRIEFLY, YOUR HONOR.

23 / /

24 / /

25 / /

CROSS-EXAMINATION

1

2 BY MR. MEDRANO:

3 Q DR. VALLES, LET ME DIRECT YOU TO YOUR -- TO THE
4 PHOTOGRAPH DEALING WITH THE NET LINEAR ABRASIONS, THAT WOULD
5 BE -- EXHIBIT A-1 THROUGH 2.

6 DO YOU HAVE THOSE IN FRONT OF YOU, SIR?

7 A YES, SIR.

8 Q DO YOU KNOW WHAT CAUSED THOSE LINEAR ABRASIONS?

9 A I DON'T KNOW, SIR.

10 Q WOULD YOU DESCRIBE THEM AS MINOR ABRASIONS?

11 A THEY ARE MINOR ABRASIONS, SIR.

12 Q CAN I DIRECT YOU NOW TO EXHIBITS A-3 THROUGH 4, THE
13 FOREARMS PHOTOGRAPHS.

14 DO YOU HAVE THOSE IN FRONT OF YOU?

15 A YES, SIR.

16 Q ARE THOSE MINOR ABRASIONS?

17 A THEY ARE MINOR, SIR.

18 Q DO YOU KNOW THE CAUSE OF THOSE LINEAR ABRASIONS?

19 A NO, SIR.

20 Q IF I CAN DIRECT YOU TO EXHIBITS A-5 THROUGH 6,
21 PHOTOGRAPHS OF THE FEET, I BELIEVE.

22 THE LEFT FOOT ABRASION, WAS THAT A MINOR
23 ABRASION?

24 A THERE IS -- THIS IS A MINOR ABRASION, SIR.

25 Q DO YOU KNOW THE CAUSE OF THE FOOT ABRASIONS, SIR?

1 A NO, SIR.

2 Q IF YOU LOOK NOW AT THE BACK PHOTOGRAPHS, A-7, I
3 BELIEVE, IT'S ONE PHOTOGRAPH.

4 DO YOU HAVE THAT IN FRONT OF YOU?

5 A YES, SIR.

6 Q ARE THE INJURIES ON THAT BACK MINOR, IN YOUR OPINION?

7 A THEY ARE MINOR, SIR.

8 Q DO YOU KNOW THE CAUSE OF THOSE BACK INJURIES?

9 A NO, SIR.

10 Q YOU MENTIONED THAT SOME OF THOSE BACK SPOTS HAVE
11 DENUDED SKIN; IS THAT CORRECT?

12 A YES, SIR.

13 Q NOW, YOU SAID "FEW."

14 DOES THAT MEAN A FEW OF ALL THE SPOTS ON THE
15 BACK? COULD YOU ELABORATE ON THAT?

16 A THERE WAS -- THERE ARE THIS MULTIPLE RED SPOTS, BUT
17 FEW OF THEM APPEARED LIKE THEY HAD DENUDED SKIN.

18 Q ARE YOU SAYING A FEW OF THEM, OR VERY FEW OF THEM?

19 A VERY FEW.

20 Q WAS DEFENDANT MATTA ON APRIL 6 WHEN YOU EXAMINED HIM
21 IN THE MORNING, ESSENTIALLY PHYSICALLY HEALTHY, SIR?

22 A YES, SIR.

23 Q I'D LIKE TO DIRECT YOU TO PHOTOGRAPH EXHIBIT A-9, THE
24 PALMS, I BELIEVE.

25 DO THEY APPEAR TO BE SMEARED WITH A LIGHT RED

1 SUBSTANCE?

2 A THEY LOOK LIGHT RED SMEARED.

3 Q DO YOU KNOW WHAT THAT SMEAR IS?

4 A NOT EXACTLY, SIR, BUT I HEARD FROM THE P.A., THE
5 PHYSICIAN ASSISTANT, HE TOLD ME THAT --

6 MR. BURNS: OBJECTION, YOUR HONOR; IT'S HEARSAY.

7 MR. MEDRANO: YOUR HONOR, UNDER RULE 803, THERE
8 IS AN EXCEPTION TO THE HEARSAY RULE DEALING WITH TREATMENT
9 OF PATIENTS, AND A DOCTOR CAN RELY NOT ONLY ON HIS PERSONAL
10 OBSERVATIONS, BUT ON INFORMATION TRANSMITTED TO THE PATIENT
11 BY ASSISTANTS.

12 IN THIS CASE, THERE IS A PHYSICAL -- I BELIEVE
13 IT'S CALLED A PHYSICIAN'S ASSISTANT, WHO WAS HELPING
14 DR. VALLES, AND OF COURSE, DR. VALLES IN MAKING HIS ULTIMATE
15 CONCLUSIONS, CAN RELY NOT ONLY ON HIS PERSONAL OBSERVATIONS,
16 BUT WHAT THE PHYSICIAN'S ASSISTANT TOLD HIM. AND WE WOULD
17 ADMIT IT, YOUR HONOR, AS AN EXCEPTION --

18 THE COURT: WELL, HE HASN'T STATED THAT HE MADE
19 ANY CONCLUSION REGARDING THIS SUBSTANCE ON THE HAND, AND HE
20 HASN'T STATED WHAT HE TOOK INTO ACCOUNT TO MAKE THAT
21 CONCLUSION. THAT IS A FOUNDATION YOU WOULD NEED FOR THIS.

22 MR. MEDRANO: VERY WELL, YOUR HONOR, THEN I WILL
23 MOVE ON.

24 Q WHEN YOU LOOKED AT THE HANDS OF DEFENDANT MATTA,
25 DR. VALLES, DID YOU SEE ANY OPEN CUTS OF ANY SORT?

1 A NONE, SIR.

2 Q DID YOU SEE ANY BLOOD FROM ANY TYPE OF OPENING OR CUT
3 ON ANY OF THE PALMS?

4 A WELL, THEY WERE -- THIS WERE RED SMEARS. I CANNOT
5 DEFINITELY SAY THAT THIS WAS BLOOD BECAUSE I DID NOT MAKE A
6 TEST.

7 Q WHEN A NEW INMATE ARRIVES AT THE FEDERAL PENITENTIARY
8 AT MARION, IS THERE A SPECIFIC ROUTINE IN TERMS OF MEDICAL
9 EXAMINATION THAT IS CONDUCTED FOR EVERY INMATE?

10 A THERE IS.

11 Q AND AS PART OF THIS ROUTINE EXAMINATION, ARE SHOTS OF
12 ANY SORT ADMINISTERED TO EVERY NEW INMATE THAT ARRIVES AT
13 YOUR FACILITY?

14 A THEY ARE GIVEN IMMUNIZATION SHOTS, SIR.

15 Q CAN YOU TELL US WHAT MATTA RECEIVED IN THE WAY OF
16 IMMUNIZATION SHOTS ON APRIL 6TH?

17 A THAT IS IMMUNIZATION TO PREVENT THE CONDITION CALLED
18 LOCK JAW.

19 Q AND WHAT WAS -- WHAT EXACTLY WAS HE GIVEN? WHAT SHOT
20 WAS HE GIVEN?

21 A THAT IS TETANUS TOXOID.

22 Q ANY OTHER SHOTS THAT YOU ARE AWARE OF THAT WERE
23 ADMINISTERED?

24 A HE WAS GIVEN A SKIN TEST FOR T.B.

25 Q ANY OTHER SHOTS OF THAT NATURE, OR TESTS?

1 A NO, I CANNOT RECALL ANYTHING MORE, SIR.

2 Q I WANT TO DIRECT YOU NOW TO THE PHOTOGRAPH, EXHIBIT
3 A-8, THE PHOTOGRAPH OF THE GENITALIA.

4 DO YOU HAVE THAT IN FRONT OF YOU, SIR?

5 A YES, SIR.

6 Q NOW, DO YOU HAVE ANY OPINION AS TO THE TYPE OF
7 PHYSICAL MANIFESTATION ON THE GENITALIA AS TO WHAT POSSIBLY
8 CAUSED IT?

9 A FROM HIS APPEARANCE, MY IMPRESSION OF THIS WAS
10 SUPERFICIAL SKIN FUNGUS.

11 THE COURT: SUPERFICIAL WHAT?

12 THE WITNESS: FUNGUS.

13 THE COURT: HOW DO YOU SPELL THAT?

14 THE WITNESS: F-U-N-G-U-S.

15 THE COURT: IS THAT SOMETHING THAT IS COMMON?

16 THE WITNESS: YES, SIR. YOU HEARD ABOUT JOCK

17 ITCH?

18 THE COURT: ABOUT WHAT?

19 THE WITNESS: JOCK ITCH.

20 THE COURT: JACKETS?

21 THE WITNESS: JOCK ITCH.

22 THE COURT: JOCK ITCH. FORTUNATELY, I HAVE ONLY
23 HEARD ABOUT IT. (LAUGHTER.)

24 BY MR. MEDRANO:

25 Q THE PENIS PHYSICAL MANIFESTATION IS COMPATIBLE WITH A

1 SUPERFICIAL FUNGUS INFECTION?

2 A IT IS, SIR.

3 MR. MEDRANO: MAY I HAVE JUST ONE MOMENT, YOUR
4 HONOR?

5 (BRIEF PAUSE.)

6 MR. MEDRANO: THAT CONCLUDES THE EXAMINATION,
7 YOUR HONOR.

8 THE COURT: ANY REDIRECT?

9 MR. BURNS: YES, YOUR HONOR, VERY BRIEFLY.

10
11 REDIRECT EXAMINATION

12 BY MR. BURNS:

13 Q DR. VALLES, MR. MATTA WAS GIVEN A T.B. SHOT.

14 COULD YOU TELL US WHERE HE WAS GIVEN THAT
15 INJECTION?

16 A WE USUALLY GIVE THAT ON THE FOREARM.

17 Q TO WHICH FOREARM DID YOU INJECT MR. MATTA?

18 A WHERE HIS SKIN IS FREE OF SCARS OR INFECTED AREAS. A
19 NORMAL-LOOKING SKIN, IT'S USUALLY ON THE FRONT PART OF THE
20 FOREARMS (INDICATING).

21 Q INDICATING THE FOREARM.

22 THE COURT: WELL, INDICATE -- YOU MEAN WHERE THE
23 INSIDE OF THE ELBOW WOULD BE, THAT SIDE OF THE FOREARM?

24 THE WITNESS: THIS IS CALLED THE FRONT PART OF
25 THE FOREARM.

1 THE COURT: FRONT PART.

2 THE WITNESS: YES. THIS IS THE BACK PART.

3 THE COURT: YES. AND THIS IS WHERE YOU GIVE IT,
4 IN THE FRONT PART?

5 THE WITNESS: FRONT PART.

6 BY MR. BURNS:

7 Q DR. VALLES, AS FAR AS DEFENDANT'S EXHIBIT A-8, THE
8 PICTURE OF MR. MATTA'S GENITALIA, DID YOU WRITE DOWN YOUR
9 BELIEF THAT IT WAS A FUNGUS INFECTION?

10 A YES, SIR.

11 Q WHERE DID YOU WRITE THAT DOWN? COULD YOU JUST READ
12 FROM THAT?

13 A I WROTE HERE, "PRESENCE OF DEPIGMENTED AREA WITH SOME
14 SCALING AT THE LEFT SIDE OF PROXIMAL SHAFT OF THE PENIS."

15 AND ON ONE OF THESE -- MY ENTRIES HERE, I
16 TREATED THAT WITH ANTIFUNGAL MEDICATION.

17 Q AND WHAT DATE WAS THAT THAT YOU ORDERED IT TREATED
18 WITH ANTIFUNGAL MEDICATION?

19 A I'D HAVE TO LOOK FOR IT, SIR.

20 Q FINE.

21 (WITNESS REVIEWS DOCUMENT.)

22 BY MR. BURNS:

23 Q IS IT SOME WEEKS LATER, DR. VALLES?

24 THE COURT: YOU DID NOT MAKE THE ENTRY?

25 THE WITNESS: THIS IS IT.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: YOU FOUND IT?

THE WITNESS: YES. THAT IS AUGUST 19.

THE COURT: AUGUST, WHAT DATE?

THE WITNESS: 19TH.

BY MR. BURNS:

Q 1988?

A YES, SIR.

THE COURT: AND YOU FIRST EXAMINED THIS DEFENDANT ON APRIL 6TH?

THE WITNESS: YES, SIR.

THE COURT: WHAT OCCASION, THIS ENTRY IN AUGUST? WHY DID YOU MAKE THAT ENTRY IN AUGUST?

THE WITNESS: (INAUDIBLE.)

THE COURT: WAS IT IN AUGUST THAT YOU SAW THE DEFENDANT? I THOUGHT YOU SAID IT WAS APRIL 6TH.

THE WITNESS: YES, BUT I SAW HIM AGAIN ON AUGUST 19TH.

THE COURT: AND ON AUGUST 19TH, HE STILL HAD THE SAME CONDITION ON --

THE WITNESS: YES, SIR.

THE COURT: AND YOU LOOKED AT IT AT THAT TIME?

THE WITNESS: YES, SIR.

THE COURT: AND THAT'S WHEN YOU DIAGNOSED IT?

THE WITNESS: WELL, HE CAME IN FOR FUNGUS MEDICATION ON AUGUST 19TH.

1 THE COURT: AND WAS THAT FOR A FUNGUS ON THE
2 PENIS?

3 THE WITNESS: I DID NOT WRITE THIS HERE. I
4 FOUND HE HAD SOME SCALING ON THE LEFT SIDE OF THE SCROTUM,
5 ON THE CROTCH AREA.

6 THE COURT: ON WHAT DATE?

7 THE WITNESS: AUGUST 19TH.

8 THE COURT: AND WHAT DID THAT HAVE TO DO WITH
9 WHAT YOU FIRST FOUND?

10 THE WITNESS: I WOULD SAY I OVERLOOKED THAT,
11 SIR.

12 THE COURT: WAS THAT THE SAME --

13 (BRIEF PAUSE.)

14 THE WITNESS: I TAKE IT BACK. THAT IS, WHEN I
15 GAVE THIS TREATMENT FOR FUNGUS, IT WAS FOR THE FUNGUS ON HIS
16 CROTCH ON THE SIDE OF HIS SCROTUM, NOT ON THE PENIS.

17 THE COURT: WELL, WHEN WAS THAT THAT YOU GAVE
18 HIM THIS?

19 THE WITNESS: AUGUST 19TH.

20 THE COURT: AND DID HE COME TO YOU WITH SOME
21 COMPLAINT AT THAT TIME?

22 THE WITNESS: YES, SIR.

23 THE COURT: WHAT WAS THE COMPLAINT?

24 THE WITNESS: HE WAS COMPLAINING OF ITCHING AT
25 HIS SCROTUM.

1 THE COURT: AND IS THIS -- DID THE INFECTED AREA
2 OR THE AREA THAT WAS AFFECTED LOOK THE SAME AS HIS PENIS DID
3 ON THE PREVIOUS OCCASION THAT YOU SAW IT?

4 THE WITNESS: I'M SORRY, SIR, I DID NOT NOTE
5 THIS NO MORE ON THE SPOT FROM HIS PENIS.

6 THE COURT: ALL RIGHT.

7 MR. BURNS: NO FURTHER QUESTIONS.

8 THE COURT: YOU MAY STEP DOWN.

9 (WITNESS IS EXCUSED.)

10 THE COURT: WE'LL CONTINUE THIS HEARING TOMORROW
11 AFTERNOON AT 4:30. WE ARE ADJOURNED BECAUSE WE ARE IN A
12 JURY TRIAL.

13 MR. MEDRANO: MAY WE EXCUSE THIS WITNESS, YOUR
14 HONOR?

15 THE COURT: YES, I THINK THIS WITNESS CAN BE
16 EXCUSED.

17 MR. STOLAR: YES, WE HAVE NO PROBLEM.

18 THANK YOU, YOUR HONOR.

19 THE CLERK: ALL RISE. COURT IS NOW IN RECESS.

20 (COURT IS ADJOURNED FOR THE DAY.)

21 -----
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I CERTIFY THAT THIS IS A TRUE AND ACCURATE
TRANSCRIPT MADE FROM THE STENOGRAPHIC NOTES OF THE ABOVE-
ENTITLED MATTER.

JULIE A. CHURCHILL, RPR
CSR #6155

DATED: _____