

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFEEDIE, DISTRICT COURT JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
)
 PLAINTIFF,)
)
)
 VS.)
)
)
 JUAN RAMON MATTA-BALLESTEROS,)
)
 RUBEN ZUNO-ARCE,)
)
 JUAN JOSE BERNABE-RAMIREZ,)
)
 AND JAVIER VASQUEZ-VELASCO,)
)
)
 DEFENDANTS.)

CASE NO: CR 87-422(F)-ER
C.A. NO: 91-50351

VOLUME 24

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TUESDAY, JULY 3, 1990; 9:30 A.M.
LOS ANGELES, CALIFORNIA

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JULIE A. CHURCHILL, CSR, RPR
OFFICIAL REPORTER
U.S. DISTRICT COURT
312 N. SPRING STREET, 442-C
LOS ANGELES, CA 90012
(213) 617-8227

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

GARY A. FEES,
UNITED STATES ATTORNEY
BY: MANUEL A. MEDRANO
JOHN L. CARLTON
ASSISTANT U.S. ATTORNEYS
1200 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012
(213) 894-0619/894-6682

FOR DEFENDANT JUAN RAMON MATTA-BALLESTEROS:

MARTIN R. STOLAR, ESQ.
MICHAEL J. BURNS, ESQ.
ADOLFO Z. AGUILA, ESQ.
ATTORNEYS AT LAW
351 BROADWAY, 4TH FLOOR
NEW YORK, NEW YORK 10013
(212) 219-1919; (213) 855-8888 EXT. 314

FOR DEFENDANT RUBEN ZUNO-ARCE:

MITCHELL, SILBERBERG & KNUPP
BY: EDWARD M. MEDVENE, ESQ.
JAMES BLANCARTE, ESQ.
RONALD DI NICOLA, ESQ.
MARY E. FULGINITI, ESQ.
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064-1683
(213) 312-3150

FOR DEFENDANT JUAN JOSE BERNABE-RAMIREZ:

MARY KELLY
ATTORNEY AT LAW
827 MORAGA DRIVE
BEL AIR, CALIFORNIA 90049
(213) 472-7121

AND

BRIDGMAN, MORDKIN, GOULD & SHAPIRO, INC.
BY: MICHAEL S. MEZA, ESQ.
17050 BUSHARD STREET, STE. 200
FOUNTAIN VALLEY, CALIFORNIA 92708
(714) 898-0461; (213) 924-6606

APPEARANCES (CONTINUED):

FOR DEFENDANT JAVIER VASQUEZ-VELASCO:

FEDERAL LITIGATORS GROUP
BY: GREGORY NICOLAYSEN, ESQ.
8530 WILSHIRE BOULEVARD, STE. 404
BEVERLY HILLS, CALIFORNIA 90211
(213) 854-5135

ALSO PRESENT:

DOUGLAS KUEHL, SPEC.AGT., D.E.A.
HECTOR BERRELLEZ, SPEC. AGT. D.E.A.

SPANISH INTERPRETERS

1 LOS ANGELES + CALIFORNIA TUESDAY, JULY 3, 1990
+ 9:30 A.M.

2 (JURY PRESENT.)

3 MR. STOLAR: WITH YOUR PERMISSION AND WITH CONSENT
4 OF COUNSEL OR ALL PARTIES OF THE CASE, WE'D LIKE TO INTERRUPT
5 THE TESTIMONY OF HECTOR BERRELLEZ, WHO WAS CALLED ON DIRECT,
6 AND CALL ON SKIP PALNICK, WHO'S A WITNESS HERE DUE TO SOME
7 TRAVEL ARRANGEMENTS, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9
10 SKIP JAMES PALNICK + DEFENDANT'S WITNESS, SWORN

11
12 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
13 RECORD AND SPELL YOUR LAST NAME.

14 THE WITNESS: SKIP JAMES PALNICK. P A L N I C K.

15
16 DIRECT EXAMINATION +

17 BY MR. BURNS:

18 Q. GOOD MORNING, SIR.

19 A. GOOD MORNING.

20 Q. COULD YOU PLEASE TELL US WHERE YOU ARE EMPLOYED.

21 A. I'M EMPLOYED AT LACRONE ASSOCIATES IN CHICAGO, ILLINOIS.

22 Q. WHAT DO YOU DO THERE AT LACRONE?

23 A. MY TITLE IS SENIOR RESEARCH MICROSCOPIST AND GROUP
24 LEADER.

25 Q. HOW LONG HAVE YOU BEEN THERE?

1 A. IT'S MY 17TH YEAR AT LACRONE ASSOCIATES.

2 Q. NOW, AS A SENIOR GROUP LEADER IN MICROSCOPY, WHAT ARE
3 YOUR JOB FUNCTIONS THERE?

4 A. THE FUNCTIONS OF A SCIENTIST IN MY PARTICULAR CASE WITH
5 LACRONE ASSOCIATES ARE THE EXAMINATION OF SMALL PARTICLES,
6 SMALL AMOUNTS OF MATERIALS FOR INDUSTRY, GOVERNMENT, FOR ART
7 MUSEUMS, IN FORENSIC CASES, TO LOOK AT MATERIALS WHEN THEY
8 OCCUR ON A MICROSCOPIC LEVEL, SMALL TRACES OF MATERIAL TO
9 IDENTIFY WHAT THEY ARE, TRY TO FIND THEIR SOURCE OR TO COMPARE
10 THEM TO OTHER MICROSCOPIC OBJECTS.

11 Q. DO YOU HAVE ANY EDUCATIONAL BACKGROUND IN THIS FIELD?

12 A. YES, I DO.

13 Q. COULD YOU TELL US ABOUT THAT.

14 A. I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY FROM THE
15 UNIVERSITY OF ILLINOIS.

16 I HAVE TAKEN GRADUATE COURSES IN VARIOUS ASPECTS OF
17 MICROSCOPY BUT IT'S NOT POSSIBLE TO GET AN ADVANCED DEGREE IN
18 MICROSCOPY.

19 SO I TEACH MICROSCOPY, I TAUGHT IT FORMERLY AT
20 ILLINOIS INSTITUTE OF TECHNOLOGY.

21 I TEACH IT NOW AT THE UNIVERSITY OF ILLINOIS IN THE
22 DEPARTMENT OF CRIMINAL JUSTICE COURSES IN VARIOUS ASPECTS OF
23 MICROSCOPY AND ALSO DO AT CRONE RESEARCH INSTITUTE.

24 I STUDY MICROSCOPY IN ADDITION TO COURSE WORK OR
25 VARIOUS ASPECTS OF MICROFACES I HAVE WRITTEN ON THE SUBJECT

1 BASED UPON MY OWN RESEARCH.

2 Q. DID YOU HAVE THE CHANCE TO ATTEND THE F.B.I. ACADEMY IN
3 WASHINGTON?

4 A. YES.

5 AMONGST THE COURSE WORK I HAD WAS I WAS FORTUNATE IN
6 BEING ALLOWED THE TAKE THE F.B.I.'S COURSE IN HAIR MICROSCOPY
7 SOME YEARS BACK.

8 Q. DID YOU PASS THEIR TESTS?

9 A. YES.

10 THE INTERPRETER: YOUR HONOR?

11 THE COURT: YES?

12 THE INTERPRETER: I'M HAVING A LITTLE PROBLEM
13 HEARING THE WITNESS.

14 THE COURT: HAVING A LITTLE TROUBLE HEARING?

15 THEN WE 'LL MOVE THE --

16 THE WITNESS: IS THAT BETTER?

17 THE INTERPRETER: THANK YOU.

18 THE COURT: CONTINUE, PLEASE.

19 BY MR. BURNS:

20 Q. AND BEFORE YOU WERE A SENIOR RESEARCH MICROSCOPIST AT
21 LACRONE, DID YOU HAVE ANY OTHER POSITIONS AT LACRONE?

22 A. WELL, MY INITIAL POSITION WAS SIMPLY RESEARCH
23 MICROSCOPIST, MY ENTRY LEVEL POSITION.

24 Q. AND HOW LONG WERE YOU AT THAT POSITION?

25 A. WELL, I STARTED JANUARY OF 1974, AND WAS ACTUALLY

1 MICROSCOPIST NOT BECAUSE I 'M A CHEMIST, BUT BECAUSE I HAD BEEN
2 LOOKING THROUGH A MICROSCOPE SINCE I WAS ABOUT EIGHT YEARS
3 OLD.

4 Q. WELL, HOW MANY HAIRS AND FIBERS DO YOU ESTIMATE YOU'VE
5 LOOKED AT IN YOUR CAREER?

6 A. HAIRS AND FIBERS?

7 Q. WELL, LET'S START WITH HAIRS FIRST.

8 HOW MANY HAIRS?

9 A. HAIRS? THOUSANDS OF HAIRS.

10 Q. NOW HOW MANY FIBERS?

11 A. MORE THAN THAT.

12 THE ORDERS OF MAGNITUDE, MORE THAN THAT IN TERMS OF
13 FIBERS.

14 Q. AND HAVE YOU EVER TAUGHT AT ANY LAW ENFORCEMENT
15 ORGANIZATIONS?

16 A. YES, I HAVE.

17 Q. COULD YOU TELL US WHICH ONES.

18 A. WELL, AS PART OF LAW ENFORCEMENT ASSISTANCE
19 ADMINISTRATION, WE PUT ON COURSES.

20 I WAS INVOLVED IN COURSES FOR TRAINING FORENSIC
21 SCIENTISTS IN THE UNITED STATES AND VARIOUS ASPECTS OF
22 MICROSCOPY.

23 I HAVE TAUGHT FOR THE ROYAL CANADIAN MOUNTED POLICE
24 AT THE CANADIAN POLICE COLLEGE IN OTTOWA.

25 I HAVE TAUGHT A COURSE IN HAIR EXAMINATION FOR THE

1 LOUISIANA STATE CRIME LABORATORY SYSTEM.

2 I HAVE TAUGHT A COURSE IN ANALYTICAL MICROSCOPY THAT
3 INCLUDES WORK ON HAIRS FOR UNITED STATES CUSTOMS.

4 Q. ARE YOU MEMBERS OF PROFESSIONAL ORGANIZATIONS IN THIS
5 FIELD?

6 A. YES, I AM.

7 Q. HOW MANY DO YOU KNOW?

8 A. 10 OR 12 VARIOUS SCIENTIFIC PROFESSIONAL ORGANIZATIONS.

9 Q. AND COULD YOU JUST TELL US YOUR LATEST PUBLICATION?

10 A. MY MOST RECENT HAS TO DO WITH THE EXAMINATION OF CROSS
11 SECTIONS OF FIBERS OF SINGLE SMALL FIBERS AND THE AMOUNT AND
12 TYPES OF INFORMATION WHICH ONE COULD OBTAIN FROM THOSE
13 SECTIONS AS AN AID INVESTIGATION OF CRIMINAL CASES.

14 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN
15 IDENTIFICATION AND COMPARISON OF HAIRS AND/OR FIBERS?

16 A. YES, I HAVE.

17 Q. AND TESTIFIED AS AN EXPERT IN COURT?

18 A. YES, I HAVE.

19 Q. HOW MANY TIMES, APPROXIMATELY?

20 A. I DON'T REALLY KEEP TRACK.

21 IT'S MORE THAN 50 AND PROBABLY, I WOULD IMAGINE,
22 APPROACHING A HUNDRED OR SO AT THIS POINT.

23 MR. BURNS: YOUR HONOR, AT THIS TIME WE WOULD
24 PROFFER MR. PALNICK AS AN EXPERT IN THE FIELD FOR THE
25 IDENTIFICATION OF HAIRS AND FIBERS?

1 THE COURT: ALL RIGHT.

2 HE MAY TESTIFY.

3 BY MR. BURNS:

4 Q. NOW, MR. PALNICK, WHAT IS THE PURPOSE OF HAIR COMPARISON?

5 A. WELL, HAIR COMPARISON IS SUCH AS OPPOSED TO HAIR
6 EXAMINATIONS, IS AN ATTEMPT USING THE TECHNIQUES THAT ARE
7 CURRENTLY AVAILABLE TO TRY TO ASSOCIATE AN UNKNOWN HAIR WITH A
8 KNOWN SOURCE.

9 THAT IS TO SAY THAT THE HAIR COULD HAVE ORIGINATED
10 FROM A PARTICULAR SOURCE OR THAT THE HAIR HAS BY THE SAME
11 TECHNIQUES BEEN EXCLUDED ON WHATEVER BASIS.

12 THAT'S THE -- THAT'S THE ULTIMATE PURPOSE IN A
13 NUTSHELL.

14 Q. WHEN YOU SAY THAT IT COULD HAVE ORIGINATED FROM ANOTHER
15 SOURCE, IS THAT BECAUSE THERE ARE PROBLEMS WITH THAT?

16 A. WELL, THERE -- I WOULDN'T SAY THERE ARE PROBLEMS AS SUCH.

17 WITH THE CURRENT STATE OF THE ART, WE CAN ASSOCIATE
18 HAIRS WITH -- WITH A REASONABLE CERTAINTY WE BELIEVE, BUT NOT
19 ABSOLUTE CERTAINLY.

20 A HAIR COMPARISON CONDUCTED UNDER THE MICROSCOPE IS
21 NOT LIKE COMPARING TWO FINGERPRINTS, WHERE ONE ASSOCIATES
22 CERTAIN FEATURES, WE SEE THE SAME FEATURES IN ONE CASE AND
23 WITH THOSE SAME FEATURES IN THE CASE OF THE -- TO START WITH,
24 LOOK AT THOSE FEATURES THAT ARE UNKNOWN HAIR AND WE HAVE HAIRS
25 FROM THE SUSPECT OR A KNOWN SOURCE, WE CAN'T LOOK AT THESE

1 FEATURES THE SAME WAY WE COULD TWO FINGERPRINTS.

2 THERE'S FEATURE BY FEATURE -- THEY CAN'T BE
3 COMPARED.

4 THERE'S MORE OF A RANGE OF VARIATION.

5 SO WHILE WE CAN COMPARE TWO HAIRS AND STATE THAT WE
6 BELIEVE THAT A PARTICULAR HAIR IS ASSOCIATED WITH AN
7 INDIVIDUAL.

8 WE CAN'T KNOW THAT WITH THE PRESENT STATE OF THE ART
9 WITH CERTAINLY AS WE CAN WITH THE FINGERPRINT, FOR EXAMPLE.

10 Q. YOU SAY THE WORD "STATE OF THE ART," IS HAIR COMPARISON
11 VERY OBJECTIVE, RIGID ART, THE WAY OTHER SCIENCES ARE OR IS IT
12 VERY SUBJECTIVE?

13 A. WELL, THERE ARE TWO ASPECTS OF IT.

14 THERE IS A PERFECTLY OBJECTIVE ASPECT, WHICH IS A
15 EXAMINATION AND ENUMERATION OF THE CHARACTERISTICS WHICH ONE
16 CAN OBSERVE ON A HAIR WHEN LOOKING AT IT THROUGH MICROSCOPE.
17 TO THAT POINT, HAIR COMPARISON CAN BE REASONABLY OBJECTIVE.

18 THE SUBJECTIVE ELEMENT COMES IN WHEN TRYING TO
19 COMPARE TWO HAIRS.

20 TO SAY ONE HAIR IS IDENTICAL TO ANOTHER HAIR FROM A
21 KNOWN SOURCE IN ALL ITS FEATURES AND CHARACTERISTICS.

22 IT IS, IN FACT, HOWEVER, THOUGH, THAT PROBABLY THE
23 MORE SUBJECTIVE EXAMINER IS THE BETTER HAIR EXAMINER, BECAUSE
24 HE OR SHE CAN SEE ALL THESE FINE FEATURES, WHERE A PERSON
25 LOOKING AT IT STRICTLY OBJECTIVELY MIGHT NOT.

1 Q. NOW WHAT KIND OF HAIRS ARE -- WHEN YOU'RE WORKING WITH A
2 KNOWN SAMPLE, HOW DO YOU COLLECT YOUR KNOWN AND CAN YOU GIVE
3 US SOME INFORMATION AS AN EXPLANATION ABOUT COLLECTING KNOWN
4 HAIR SAMPLES?

5 A. WELL, THE REASON FOR COLLECTING A KNOWN, OF COURSE, IS TO
6 HAVE SOMETHING TO COMPARE THE UNKNOWN HAIR WITH AND TO BE A
7 GOOD REFERENCE STANDARD, TO BE GOOD MATERIAL TO COMPARE IT
8 WITH, IT'S IMPORTANT THAT HAIRS COLLECTED ARE STANDARD,
9 CONTAIN HAIRS FROM THE ENTIRE -- OVER THE ENTIRE RANGE OF
10 HAIRS OF AN INDIVIDUAL.

11 AN EXAMPLE MIGHT BE A PERSON'S HAIR WAS SAID TO BE
12 SALT AND PEPPER.

13 THEY HAVE VERY LIGHT HAIRS AND VERY DARK HAIRS.

14 IF WE WERE TO COLLECT FROM THAT INDIVIDUAL AN
15 UNCOMPLETE SET OF KNOWNS, AS WE ONLY TOOK LET'S SAY THE DARK
16 HAIRS FROM THAT PERSON'S HEAD, FOR WHATEVER REASON, AND THEN
17 COMPARED IT LET'S SAY TO THE HAIR THAT THAT PERSON SHED ONCE
18 WE KNEW THEY SHOULD THAT HAIR AT THE CRIME SCENE, WE PICKED UP
19 THE HAIR THAT WAS A WHITE ONE, ONE OF THE PERSON'S WHITE HAIRS
20 AND THEN COMPARED THAT WHITE HAIR BACK WITH THE BLACK HAIRS OR
21 THE DARK HAIRS IN THE PERSON'S HEAD WE'D SAID THE HAIR WAS
22 EXCLUDED BECAUSE IT DIDN'T MATCH.

23 IT WASN'T THE FAULT OF THE EXAMINER IN THAT CASE.

24 IT WAS SIMPLY THE FAULT OF NOT COLLECTIONING A LARGE
25 ENOUGH, GOOD ENOUGH SAMPLE THAT WAS REPRESENTATIVE OF THE

1 PERSON'S HEAD.

2 SO IN ANSWER TO YOUR QUESTION, IT'S IMPORTANT TO GET
3 A REPRESENTATIVE SAMPLE FROM THE PERSON'S ENTIRE -- IT'S A
4 HEAD HAIR COMPARISON FROM THE PERSONS ENTIRE SCALP TO
5 REPRESENT THE LONGEST HAIRS, THE SHORTEST HAIRS, THE LIGHTEST
6 HAIRS, THE DARKEST HAIRS AND SO FORTH.

7 AND BY COLLECTING A REASONABLE SAMPLE WE -- WE
8 ASSUME DID.

9 THE BEST SAMPLE OF COURSE WOULD BE TO TAKE -- TO
10 PLOT ALL THE HAIRS OF A PERSON'S HEAD, BUT THAT IS GENERALLY
11 IMPRACTICAL.

12 Q. THAT EVENTUALLY HAPPENS ANYWAY, DOESN'T IT?

13 A. IN SOME CASES, YES.

14 Q. HOW MANY HAIRS MAKE UP A GOOD REPRESENTATIVE SAMPLE?

15 A. THAT'S VARIABLE WITH THE EXAMINERS AND IT'S ALSO VARIABLE
16 WITH THE TYPE OF HAIR THAT WE'RE LOOKING AT.

17 IT'S CONCEIVABLE THAT YOU CAN HAVE -- I'VE LOOKED AT
18 THE PEOPLE'S HAIRS WHERE ONE HAIR WOULD BE AN ADEQUATE SAMPLE,
19 BECAUSE THEIR HAIR VARIED SO LITTLE FROM HAIR TO HAIR OVER
20 THEIR HEAD.

21 ON THE OTHER HAND, 20, 30, 40, 50 OR MORE HAIRS ARE
22 NECESSARY FOR SOME PEOPLE'S HEAD.

23 AN ADEQUATE SAMPLE IS GENERALLY JUDGED BY THE
24 DEPARTMENT OR THE AGENCY, PERSON DOING THE EXAMINATION, BUT
25 WOULD RUN SOMEWHERE BETWEEN 20, 25, 50 OR 60 HAIRS.

1 GENERALLY, THE MORE THE BETTER, THE HAPPIER WE ARE
2 THE MORE HAIRS WE CAN GET, BECAUSE WE'RE MORE CERTAIN OF THE
3 RANGE OF CHARACTERISTICS.

4 Q. YOU SAY THERE'S A RANGE OF CHARACTERISTICS IN YOUR
5 EXAMPLE SALT AND PEPPER HAIR, THERE WOULD BE A RIDGE OF COLOR.

6 A. THAT'S CORRECT.

7 Q. ON THE CHARACTERISTICS THAT A HAIR COMPARISON EXPERT
8 COMPARES, THERE ARE ALWAYS A RANGE IN THESE CHARACTERISTICS?

9 A. ALMOST CERTAINLY.

10 HUMAN BEINGS ARE BIOLOGICAL ORGANISMS AND AS A
11 RESULT THEY HAVE VARIABILITY FROM OTHER HUMAN BEINGS, BUT ALSO
12 EVEN PARTS OF YOUR OWN -- OF A SINGLE PERSON.

13 FOR EXAMPLE, A HAIR SHOW A RANGE OF CHARACTERISTICS
14 AS I BRIEFLY ALLUDED TO BEFORE THOUGH, THE SITUATIONS WHERE A
15 PERSON'S HAIR MAY SHOW VERY SMALL RANGE OF CHARACTERISTICS,
16 MOST OF THE HAIRS MAY BE THE SAME LENGTH OR APPROXIMATELY THE
17 SAME DIAMETER, THE SAME PIGMENTATION, SAME COLORATION, SAME
18 SCALE CUTICLE THICKNESS.

19 I'VE HAD OTHER INDIVIDUALS THEY ARE -- HAVE A WIDER
20 RANGE OF VARIATION.

21 IN SOME CASE, IT'S APPARENT EVEN AS YOU LOOK AT IT,
22 YOU LOOK AROUND THE COURTROOM YOU SEE PEOPLE WHERE YOU CAN SEE
23 LIGHT AND DARK HAIR FOR EXAMPLE OR HAIR THAT'S BEEN TREATED IN
24 SOME WAY.

25 ON THE OTHER HAND, SOMETHING OF A VERY SMALL RANGE

1 OF CHARACTERISTICS.

2 SO IT'S REALLY DEPENDENT UPON THE INDIVIDUAL.

3 AND IT'S THOSE CHARACTERISTICS THAT WE MAKE USE OF
4 WHEN WE'RE EXAMINING AND COMPARING HAIRS.

5 Q. I WOULD LIKE YOU TO EXPLAIN HOW YOU DO WITH A HAIR -- HOW
6 YOU LOOK AT A HAIR AT LACRONE AND HOW YOU MAKE THE COMPARISON,
7 IF WOULD YOU EXPLAIN THE STEPS THAT YOU USE.

8 A. WELL, I THINK MOST EXAMINERS OF HAIRS THROUGHOUT MOST OF
9 THE -- MOST OF THE WORLD, THE EXCEPTION BEING ENGLAND WHERE
10 THEY DON'T BELIEVE A GREAT DEAL IN HUMAN HAIR COMPARISONS, ARE
11 CONDUCTED PRETTY MUCH THE SAME WAY.

12 WHICH HAIR DO YOU LOOK AT FIRST?

13 DO YOU LOOK AT QUESTIONED HAIR OR KNOWN HAIR?

14 A. DEPENDS ON THE CIRCUMSTANCES OF THE CASE AND THE
15 EXAMINER'S OWN PARTICULAR METHOD FOR DOING THINGS.

16 IN GENERAL, FIRST OF ALL, WHAT WE CALL LOW POWERED
17 EXAMINATION WE CONDUCT: SPREAD THE HAIRS OUT.

18 Q. WHAT IS LOW POWERED? CAN YOU TELL US?

19 A. IT CAN -- IT WILL RANGE FROM BETWEEN WHAT YOU SEE WITH
20 YOUR EYE ALONE AND WHAT YOU SEE WITH THE AID OF A LOW-POWERED
21 STEREO MICROSCOPE.

22 A STEREO MICROSCOPE IS JUST A LOW POWERED MICROSCOPE
23 THAT MAGNIFIES JUST A LITTLE MORE THAN A HAND MAGNIFYING GLASS
24 AND ALLOWS ONE TO SEE A NUMBER OF CHARACTERISTICS THEY LOOK
25 AT.

1 FOR EXAMPLE, YOU GET SOME GENERAL IDEA OF COLOR, THE
2 DIAMETER OF THE HAIR, THE LENGTH OF THE HAIRS INVOLVED.

3 THAT WOULD BE STEP NUMBER ONE.

4 Q. IS THE LENGTH OF A HAIR A CHARACTERISTIC THAT IS
5 DETERMINED AS TO LOW POWER?

6 A. YES.

7 YOU SIMPLY LOOK AT THE HAIR WITHOUT THE MAGNIFIER
8 AND SEE THAT YOU GOT LONG HAIRS OR SHORT HAIRS.

9 Q. AND WHAT IS THE NEXT STEP AFTER THAT?

10 A. THE NEXT STEP THEN DEPENDS ON WHAT ONE'S FOUND AT THAT
11 POINT IN WHAT THEY'RE LOOKING AT.

12 IF THEY'RE LOOKING AT THE STANDARD HAIRS OR LOOKING
13 AT QUESTIONED HAIRS.

14 WE ASSUME, FOR SOMETHING TO FOCUS ON, WE'RE LOOKING
15 AT A QUESTIONED HAIR.

16 AT THIS STAGE WE WOULD START TO LOOK AT THE HAIR
17 UNDER A COMPOUND MICROSCOPE, A HIGHER MAGNIFICATION
18 MICROSCOPE.

19 WE WOULD BEGIN TO LOOK AT OTHER FEATURES.

20 WE WOULD LOOK AT THE NATURE OF THE TIP OF THE TIP OF
21 THE HAIR, WE'D LOOK AT THE NATURE OF THE ROOT OF THE HAIR.

22 AS YOU MORE THAN LIKELY HAVE HEARD BEFORE, YOU
23 DETERMINE IF THE HAIR HAS BEEN RECENTLY CUT OR NOT.

24 SOMEBODY BY LOOKING AT THE TIP CAN TELL HOW IT'S
25 BEEN CUT.

1 THE ROOT OF THE HAIR WILL GIVE YOU SOME INDICATIONS
2 AS TO WHETHER THE HAIR HAS FALLEN OUT NATURALLY OR BEEN
3 PULLED, THE GREAT GROWTH STAGE IT WAS IN WHEN IT LEFT THE
4 PERSON ON WHOM IT GREW.

5 YOU THEN LOOK ALONG THE SHAFT OF THE HAIR, ALONG THE
6 LENGTH OF THE HAIR FROM ONE END TO THE OTHER, AND LOOK AT THE
7 MICROSCOPIC CHARACTERISTICS, THE FINE FEATURES THAT HAIR SHOWS
8 THAT ARE NOT VISIBLE TO OUR UNAIDED EYES.

9 THIS INCLUDES THE NATURE OF THE CUTICLE, THE SCALES
10 WHICH COVER THE HAIR; THE CORTEX, WHICH CONTAINS THE
11 PIGMENTATION, MAY CONTAIN OTHER CELLS OR MATERIALS; AND
12 FINALLY THE MEDULLA, THE CENTRAL CANAL OF THE HAIR; THE
13 PRESENCE OR ABSENCE, THE WAY IT APPEARS THROUGHOUT THE HAIR.

14 WE THEN COMPARE THAT HAIR.

15 WE HAVE THIS INFORMATION, EITHER IN THE FORM OF
16 NOTES OR JUST MENTALLY STORED AWAY, AND WE COMPARE THOSE WITH
17 ONE OR MORE OF THE KNOWN THAT WE HAD TO COMPARE IT WITH.

18 THE LOGICAL THING AT THAT POINT IS THAT IF THE HAIR
19 FALLS WITHIN THE RANGE OF ONE OF OUR KNOWN OR MORE OF OUR
20 KNOWN, THAT THOSE HAIRS WOULD BE SUBJECTED TO FURTHER
21 EXAMINATION.

22 IF AT THIS STAGE THE HAIR WE'RE LOOKING AT, THE
23 QUESTIONED HAIR, FALLS OUTSIDE THE RANGE OF THESE KNOWN
24 SAMPLES, OR RENAL SAMPLES, THEN WE CAN EXCLUDE THAT HAIR
25 REASONABLY.

1 WE HAVE A LIGHT QUESTIONED HAIR AND ALL THE HAIRS WE
2 HAVE ARE DARK, WE ASSUME WE HAVE A GOOD REFERENCE STANDARD OF
3 HAIRS, SO WE CAN AT THIS STAGE ELIMINATE THE HAIRS.

4 WE HAVE A MEDULLA IN ONE CASE AND IT'S ABSENT IN THE
5 OTHER,

6 UNIVERSALLY, THE HAIR CAN BE EXCLUDED.

7 WHEN WE GET TO THE POINT WHERE WE HAVE NOW SAID
8 EITHER WE HAVE HAIRS WHICH BEAR FURTHER EXAMINATION OR WE
9 DON'T.

10 IT'S NOW TIME TO GO TO THE COMPARISON MICROSCOPE.

11 AND THE RATIONAL BEHIND THE USE OF THE COMPARISON
12 MICROSCOPE -- AND THIS IS THE BASIS FOR EXAMINING AND
13 COMPARING HAIRS WITH KNOWN -- SINGLE HAIRS WITH KNOWN
14 STANDARDS.

15 WE CAN LOOK AT TWO HAIRS SIDE BY SIDE AND OBSERVE
16 FEATURES VERY CRITICALLY.

17 THE HUMAN EYE IS VERY GOOD AT MAKING SMALL, SUBTLE
18 DISTINCTIONS.

19 YOU CAN SEE FINE BITS OF DETAIL AND DIFFERENCE.

20 HOWEVER, OUR BRAIN IN MOST CASES, MY OWN CERTAINLY,
21 IS NOT REMEMBERING ALL THESE FINE SUBTLE DETAILS.

22 SO IT MAKES MUCH MORE SENSE THAT YOU LOOK AT
23 SOMETHING SIDE BY SIDE.

24 THAT'S EXACTLY WHAT A COMPARISON MICROSCOPE ALLOWS
25 US TO DO.

1 IT ALLOWS US TO LOOK THROUGH ONE CUBE OF VIEW, ONE
2 CIRCULAR FIELD OF VIEW TO SEE ON ONE SIDE A QUESTIONED HAIR
3 AND THE OTHER SIDE A KNOWN HAIR, AND COMPARE SUCH THINGS
4 DIRECTLY AS DIAMETER, AS THE PIGMENTATION, THICKNESS OF THE
5 CUTICLE, ALL THESE LITTLE SUBTLE DETAILS, WHICH WOULD BE
6 IMPOSSIBLE TO WRITE OUT THE NOTES AND COMPARE.

7 Q. IS THIS THE SUBJECTIVENESS PART OF THE EXAMINATION?

8 A. IT IS. IT'S A LITTLE BIT OF BOTH.

9 IF THERE IS A SUBJECTIVE ASPECT TO IT, CERTAINLY.

10 BUT IT IS OBJECTIVE IN THE SENSE THAT YOU SEE ONE
11 THING ON ONE SIDE AN ONE ON THE OTHER.

12 TWO EXAMINERS OF EQUAL ABILITY WOULD GENERALLY REACH
13 AT THIS POINT THE SAME CONCLUSION THAT THE HAIRS MATCH OR THAT
14 THEY DON'T.

15 BUT IT IS POSSIBLE TO HAVE SITUATIONS, TO USE AS AN
16 EXAMPLE, THE CASE -- IF YOU HAVE TO GIVE AN EXAMPLE, CERTAINLY
17 GOING --

18 THE COURT: GO RIGHT AHEAD.

19 THE WITNESS: WHAT WE ARE TRYING TO DO IS SET UP
20 BOTH SIDES OF THE MICROSCOPE IDENTICALLY.

21 WE WANT THE ILLUMINATION TO BE EXACTLY THE SAME ON
22 BOTH SIDES.

23 THE COURT: YOU BETTER EXPLAIN ILLUMINATION TO THE
24 JURY, PLEASE.

25 THE WITNESS: ILLUMINATION IS SIMPLY THE LIGHT

1 COMING THROUGH THE MICROSCOPE .

2 WITH GOOD MODERN MICROSCOPES , THEY'RE VERY HIGHLY
3 CORRECTED .

4 THE LENSES HAVE BEEN DESIGNED BY COMPUTERS .

5 YOU HAVE VERY BRILLIANT IMAGES WITH A LOT OF DETAIL ,
6 A LOT OF RESOLUTION .

7 THE ILLUMINATION IS A VERY IMPORTANT PART OF THIS
8 BECAUSE WHAT WE SEE WHEN WE LOOK THROUGH A MICROSCOPE IS NOT
9 ACTUALLY THE OBJECT ITSELF ; YOU SEE IMAGE OF THE OBJECT , AND
10 DEPENDING ON THE QUALITY OF THE OPTICS YOU'RE USING , THAT'S
11 WITH THE LENSES ; DEPENDING ON QUANTITY OF ILLUMINATION , THE
12 LIGHT COMING THROUGH THE MICROSCOPE , THE WAY IT'S SET UP TO
13 PASS THROUGH THE MICROSCOPE , THE MORE DETAIL OUR IMAGES SHOW ,
14 SO WE WANT A REALLY GOOD IMAGE , FIRST OF ALL .

15 NOW , IT'S -- SO IF WE USE A COMPARISON MICROSCOPE IN
16 THE PROPER FASHION WE SET THE ILLUMINATION SO IT'S THE SAME ON
17 BOTH SIDES , THE MAGNIFICATION'S THE SAME , THE OBJECTIVES OR
18 THE LENSES THAT ARE USED ARE ALL PAIRED SO YOU HAVE EXACTLY THE
19 SAME MAGNIFICATION ON BOTH SIDES OF THE MICROSCOPE .

20 WHEN WE DO THIS THEN WE CAN COMPARE WHEN LOOK THING
21 AT ONE SIDE AND ONE THING ON THE OTHER SIDE , FOR EXAMPLE ,
22 COLOR , WHICH IS GREATLY AFFECTED BY ILLUMINATION .

23 WE CAN OBSERVE WHETHER OR NOT THE HAIRS HAVE THE
24 SAME COLOR OR PIGMENTATION AND THEY SHOW THESE QUALITIES TO
25 THE SAME DEGREE .

1 Q. YOU SAY THERE 'RE GENERALLY A RANGE OF COLORS IN HAIR
2 COMPARISON?

3 A. YES. EVEN WITHIN AN INDIVIDUAL HAIR.

4 THIS IS WHAT MAKES IT JUST NOT AN EXAMINATION THAT
5 YOU CAN PUT ON A COMPUTER, FOR EXAMPLE, AND HAVE IT WORK THAT
6 WAY.

7 Q. ARE THERE TIMES WHEN IT'S NECESSARY WHEN AFTER
8 EXAMINING AN UNKNOWN HAIR THAT YOU MUST LOOK AT SEVERAL KNOWN
9 HAIRS?

10 A. YES, THAT'S -- IN FACT, THAT'S GENERALLY THE CASE.

11 IT'S NOT UNUSUAL TO HAVE THE QUESTIONED HAIR NOT
12 MATCH ALL THE HAIRS OF THE SAMPLE BUT MATCH ONE OR TWO OR A
13 FEW OF THEM.

14 IN SOME CASES WHERE THERE'S A VERY SMALL RANGE OF
15 VARIATION, THEN THE QUESTIONED HAIR CAN, IN FACT, MATCH ALMOST
16 ANY HAIR YOU PULL FROM THE PERSON'S HEAD.

17 BUT, IN GENERAL, ONE HAIR WILL HAVE IN IT -- ONE
18 QUESTIONED HAIR WILL HAVE, YOU KNOW, KNOWN STANDARDS ONLY
19 SEVERAL MATCHES.

20 THAT'S THE REASON FOR GETTING A GOOD STANDARD,
21 THAT'S THE REASON FOR DETERMINING THE RANGE OF VARIATION.

22 Q. I WANT TO ASK YOU ABOUT THE RACIAL CHARACTERISTICS OF
23 HAIR.

24 DO YOU KNOW ANYTHING ABOUT THEM?

25 A. YES.

1 Q. AND COULD YOU EXPLAIN HOW THAT TERM IS USED IN HAIR
2 ANALYSIS?

3 A. WHEN WE SPEAK OF DETERMINING -- DETERMINING THE RACE FROM
4 THE HAIR, WHAT WE'RE TRYING TO DO IS TO DETERMINE THROUGH
5 THE -- THROUGH THE FEATURES THAT THE HAIR SHOWS SOMETHING
6 ABOUT THE RACIAL ORIGIN OF THE PERSON FROM WHOM IT REALLY
7 ORIGINATED.

8 THIS WORK WAS BASICALLY STARTED IN THE 1930'S BUT
9 THE PRINCIPAL EXPONENTIST WAS A MILDRED TROTTER WHO WAS A
10 PHYSICAL ANTHROPOLOGIST AND SHE MADE OBSERVATIONS AND THESE
11 HAVE BEEN MADE BY OTHERS, SHE TRIED TO SYSTEMATIZE THEM A
12 LITTLE BIT, THAT WHEN YOU PICKED CERTAIN DISTINCT RACIAL
13 GROUPS AND SHE DIVIDED THEM INTO THREE GROUPS.

14 SHE USED, WHICH DON'T NECESSARILY GO ALONG WITH
15 MODERN USES, BUT SHE TALKED ABOUT CAUCAZIDE -- CAUCAZOID,
16 NEGROID, AND MONGOLOID RACES.

17 AND SHE FOUND AND IT HAS BEEN CONFIRMED BY OTHERS,
18 THAT THE HAIRS OF THESE INDIVIDUALS WERE IN GENERAL, HAVE
19 PARTICULAR CHARACTERISTICS ASSOCIATED WITH THEM.

20 FOR EXAMPLE, THE HAIR PEOPLE WE WOULD SAY BELONGED
21 TO THIS MONGOLOID CATEGORY, THIS WOULD INCLUDE PEOPLE LIKE
22 AMERICAN INDIANS, ESKIMOS, GENERALLY HAVE LONG STRAIGHT, THE
23 LENGTH AGAIN IS A SUBJECTIVE FACTOR, BUT STRAIGHT DARK, WHAT
24 WE WOULD CONSIDER BLACK HAIR.

25 IF WE LOOK AT A CROSS-SECTION OF THAT HAIR, THAT IS

1 WE TAKE ONE OF THESE HAIRS LIKE A TREE AND CUT IT IN HALF AND
2 LOOK DOWN THE AXIS OF THE HAIR, THOSE HAIRS GENERALLY HAVE A
3 PRACTICALLY CIRCULAR CROSS SECTION.

4 THE RESULT FROM A GENETICS STANDPOINT IS THE HAIR IS
5 A VERY STRONG AND DURABLE.

6 THE PEOPLE WHO WE WOULD LOOK AT AND SAY ARE
7 CAUCASIAN WOULD IN GENERAL HAVE HAIR WHICH WAS NOT CIRCULAR IN
8 SHAPE, BUT WAS -- IT WAS ELLIPTICAL, HAD ONE LARGE AXIS AND
9 ONE SMALL AXIS AND THAT HAIR WILL GENERALLY OFTEN BE STRAIGHT
10 AND SHOW TWISTS AND WAVES AND THE COLOR IS GENERALLY LIGHTER,
11 ALTHOUGH IT'S VARIABLE FROM DIFFERENT DARKEST HAIRS TO VERY
12 LIGHT HAIRS, THE HAIRS WITHOUT COLOR, THE BLOND HAIRS.

13 HAIRS THAT WOULD BE CLASSIFIED MICROSCOPICALLY AS
14 NEGROID WOULD BE HAIR THAT WOULD HAVE A PRACTICALLY FLATTENED
15 CROSS SECTION, NEARLY FLATTENED CROSS SECTION.

16 THE RESULT OF THAT WOULD BE THAT THE HAIR IN
17 LONGITUDINAL VIEW, WHEN WE LOOK AT LYING, LET'S SAY, ON A
18 TABLE OR A MICROSCOPE SLIDE, TENDS TO BE TWISTED A LOT, AND SO
19 SOMETIMES YOU LOOKING AT HAIR WHICH APPEARS VERY WIDE, WHEN
20 YOU'RE LOOKING DOWN THE MINOR AXIS OF THIS NARROW HAIR AND
21 WHICH APPEARS TO BE VERY SKINNY WHEN THE HAIR IS TURNED UP ON
22 EDGE SO THAT YOU'RE LOOKING DOWN IT THIS WAY.

23 THE RESULT OF THAT FROM AN ENGINEERING POINT OF VIEW
24 IS THAT HAIR OF THAT SORT FREQUENTLY TENDS TO BREAK BECAUSE
25 JUST FROM A STRUCTURAL POINT OF VIEW THERE'S NOT A LOT OF

1 DEPTH TO IT.

2 SO THOSE CHARACTERISTICS ARE THE ONES WE WOULD LOOK
3 AT. AND IT'S SIMPLY A WAY OF CLASSIFYING HAIRS.

4 IT DOES HAVE USE AND ONCE IN MOST CASES I WOULD SAY
5 AN EXAMINER WHO TRIED TO DETERMINE RACE FROM THE MICROSCOPY OF
6 THE HAIR WOULD BE CORRECT.

7 THERE ARE OCCASIONS, THOUGH, WHERE YOU WOULD BE
8 INCORRECT AND BECAUSE WHAT YOU'RE REALLY DOING IS CLASSIFYING
9 THE HAIRS.

10 SO THE MICROSCOPICALLY DETERMINED RACE DOESN'T
11 ALWAYS CLASS-- -- DOESN'T ALWAYS CORRESPOND WITH WHAT AN
12 ANTHROPOLOGIST WOULD SAY THAT PERSON'S RACE IS OR YOU MIGHT
13 SAY THAT PERSON'S RACE IS BY LOOKING AT THEM.

14 SO WE CAN FIND CAUCASIAN INDIVIDUALS WHO HAVE
15 NEGROID CHARACTERISTICS IN THEIR HAIR OR VICE VERSA.

16 Q. IS THIS ONE OF THE REASONS WHY IN ENGLAND THEY DON'T
17 HAVE -- AS YOU SAID -- MUCH FAITH A HAIR COMPARISON?

18 A. WELL, I DON'T KNOW THAT THAT WOULD BE A PARTICULAR
19 REASON.

20 THEY --

21 Q. ARE THERE ANY OTHER REASONS?

22 A. PART OF THE REASON IS THEY HAVEN'T USED IT A GREAT DEAL I
23 THINK.

24 I DON'T KNOW THAT THEY'VE HAD CASES WHERE IT HAS
25 CAUSED THEM PROBLEMS AND THERE IS A GREAT DEAL OF INTEREST

1 THERE IN TRYING TO USE HAIRS, BUT THEY JUST DON'T HAVE MUCH
2 RANGE OF EXPERIENCE.

3 Q. LET ME ASK YOU WHEN LOOKING AT DIFFERENT TYPES OF HAIRS
4 DOES A HAIR EXAMINER'S EXPERTISE INCREASE WITH MORE HAIRS OF A
5 PARTICULAR TYPE YOU'VE LOOKED AT?

6 A. PARTICULAR TYPE? CERTAINLY.

7 THE MORE HAIRS ALL OTHER -- ALL THINGS BEING EQUAL,
8 THE MORE HAIRS, THE BETTER THE EXAMINER.

9 Q. SO THAT IF A HAIR EXAMINER LOOKED AT ONE PARTICULAR
10 POPULATION FOR A VERY LONG TIME, THEY WOULD HAVE A LOT OF
11 EXPERTISE IN THAT POPULATION.

12 A. THAT'S CORRECT.

13 Q. AND IS THERE ANY RULE OF THUMB ON HOW MANY HAIRS OF A
14 PARTICULAR POPULATION A HAIR EXAMINER SHOULD LOOK AT BEFORE A
15 HAIR EXAMINER COULD CLAIM EXPERTISE?

16 A. NO.

17 Q. NO?

18 NOW, I WANT TO SPEAK ABOUT UNKNOWN HAIRS, HAIR
19 COMPARISON.

20 HOW DOES THE POOL SIZE OF UNKNOWNNS AFFECT A HAIR
21 COMPARISON?

22 A. WELL, MAYBE I COULD DO THAT BEST BY AN EXAMPLE, IF I MAY.

23 Q. GO RIGHT AHEAD, SIR.

24 A. PARTICULARLY A COMMON -- A COMMON CASE, A COMMON CIVIL
25 CASE IN WHICH HAIR COMPARISONS ARISE WOULD BE A SITUATION

1 WHERE YOU HAVE TWO INDIVIDUALS DRIVING A CAR AND THEY GET IN A
2 SERIOUS ACCIDENT OF SOME SORT AND THEY'RE THROWN AGAINST THE
3 WINDSHIELD AND THEN THEY GET OUT OF THE CAR, AND BY THE TIME
4 THE POLICE OR THE AUTHORITIES ARRIVE, EACH ONE CLAIMS A
5 DIFFERENT PERSON WAS DRIVING THE CAR.

6 AND IN THESE CASE THE INVESTIGATORS FREQUENTLY FIND
7 HAIRS THAT ARE BROKEN OFF AND STUCK TO THE WINDSHIELD OR THE
8 RIM AROUND THE WINDSHIELD AND ONE IS ASKED TO -- TO EXAMINE
9 THOSE HAIRS AND STATE WHETHER OR NOT -- YOU TELL FROM THAT BY
10 THE LOC- -- BY THE PHYSICIAN WHICH PERSON WAS DRIVING THE CAR,
11 BECAUSE WE HAVE NO DIRECT TESTIMONY, THE TESTIMONY'S IN
12 CONFLICT.

13 IN THOSE SITUATIONS THERE'S A VERY LIMITED POOL.

14 THERE ARE TWO POSSIBILITIES FOR HAIR STUCK ON THE
15 WINDSHIELD THEY HAVE TO ASSUME, EITHER DRIVER OR THE
16 PASSENGER.

17 AND IN THAT CASE, THE UNIVERSE OF POSSIBLE SOURCES
18 IS VERY SMALL SO IF WE FIND HAIR THAT MATCHES ONE INDIVIDUAL
19 AND DOESN'T MATCH THE OTHER, WE CAN SAY WITH A REASONABLY HIGH
20 DEGREE OF CERTAINTY THAT THE HAIR WAS FROM THE INDIVIDUAL.

21 AGAIN, STILL DRAW THE LINE AND SAY THE HAIR IS NOT
22 AN ABSOLUTE MEANS OF IDENTIFICATION, BUT THE CHANCES ARE
23 REALLY GOOD.

24 I THINK APPEALING TO MOST PEOPLE'S REASON AT THAT
25 POINT WOULD YOU SAY THAT GUY -- THAT GUY WAS DRIVING, HIS HAIR

1 WAS THERE .

2 THERE 'S SOMEBODY ELSE IN THE CAR .

3 WE HAVE NO TESTIMONY THAT ANYBODY ELSE HAD BEEN IN
4 AN ACCIDENT IN THAT CAR WHICH COULD HAVE CAUSED THE HAIR TO
5 TRANSFER TO THE WINDSHIELD .

6 Q. MR. PALNICK, WHAT IF THE UNIVERSE OF HAIRS BECAME 500
7 HAIRS?

8 A. WELL, WHEN THE -- WHEN THE UNIVERSE OR THE POOL OF HAIRS
9 IS MUCH LARGER, THE CONFIDENCE LEVEL WOULD GO DOWN SOMEWHAT,
10 BUT THAT AGAIN DEPENDS UPON THE NATURE OF THE HAIR COMPARISONS
11 OF HOW GOOD OR NOT IT WAS IN THE EXAMINER 'S EXPERIENCE, BUT IT
12 WOULD CERTAINLY BE LESS THAN THE SITUATION I -- I DESCRIBED.

13 Q. WHAT IF IT'S KNOWN THAT THE POOL IS INCOMPLETE?

14 WOULD THAT HAVE ANY EFFECT ON THE HAIR COMPARISON
15 ITSELF?

16 A. I DON'T KNOW -- I DON'T KNOW WHAT YOU MEAN BY THAT.

17 I CAN'T -- WHEN YOU SAY INCOMPLETE --

18 Q. WELL, I'LL GO ON THE SOMETHING ELSE.

19 WELL, WOULDN'T YOU WANT TO GET KNOWN EXEMPLARS FROM
20 ALL THESE INDIVIDUALS SHOW WERE AT A PARTICULAR SITE?

21 A. YES.

22 Q. AND WHEN YOU WORK WITH UNKNOWNNS, HOW MANY HAIRS WOULD YOU
23 GENERALLY WORK WITH TO COMPARE THEM TO A GOOD RANGE OF KNOWN
24 HAIRS?

25 A. IT CAN VARY.

1 WE 'VE HAD SITUATIONS WHERE I 'VE HAD A SINGLE HAIR TO
2 WORK WITH AND A SITUATION WHERE YOU 'VE GOT A HANDFUL OF HAIRS .
3 Q. AND THE MORE HAIRS YOU HAVE , DOES THAT MAKE THE
4 CONCLUSION MORE POPULAR ?

5 A. GENERALLY , WE ASSUME THE MORE HAIRS , THE BETTER , THE MORE
6 CONFIDENCE WE WOULD HAVE IN THE IDENTIFICATION .

7 Q. I WANT TO SPEAK TO YOU ABOUT THE FUTURE OF HAIR
8 COMPARISONS .

9 IS IT POSSIBLE NOW TO DO MORE THAN JUST VISUALLY
10 COMPARE HAIRS ?

11 A. WELL , A NUMBER OF TECHNIQUES HAVE BEEN TRIED OTHER THAN
12 MICROSCOPIC EXAMINATION , WHICH HAS BEEN WITH US FOR ABOUT 150
13 YEARS OR SO .

14 PEOPLE HAVE TRIED TO DETERMINE LIKE GROUPS ON HAIRS .
15 THERE IS SOME POSSIBILITY OF DOING THAT IN SOME
16 CASES USING BOTH REGULAR ELECTRIC SYSTEMS AND ALSO ENZYMES AND
17 PROTEINS THAT OCCUR IN HAIRS .

18 THOSE HAVE MET WITH MORE LIMITED SUCCESS .

19 IT 'S POSSIBLE IN SOME CASES TO SEX HAIRS USING A
20 COUPLE OF DIFFERENT TECHNIQUES .

21 AT ONE POINT BACK IN THE EARLY 1960 'S IT WAS THOUGHT
22 THAT THE TRACE ELEMENTS OF HAIRS WOULD OFFER A VERY -- AN
23 ABSOLUTE MEANS OF IDENTIFICATION OF HAIRS AND IT WAS USED IN A
24 CELEBRATED CASE IN CANADA AND LATER FOUND TO NOT BE THE CASE .

25 OTHER EXAMINATIONS ARE GOING ON AND AND IT 'S

1 PROBABLE IN THE FUTURE PAUL PERK WHO IS FROM CALIFORNIA WHO'S
2 ACTUALLY PROBABLY THE FATHER OF CRIMINALISTICS IN CALIFORNIA
3 STATES -- STATED IN HIS BOOK THAT IF HAIR WERE NOT INDIVIDUAL,
4 IT WOULD BE AN EXCEPTION TO THE GENERAL RULE OF BIOLOGICAL
5 INDIVIDUALITY.

6 SO THE MICROSCOPE CAN CLASSIFY HAIRS VERY WELL DOWN
7 TO THE VERY SMALL GROUP OF PEOPLE FROM WHOM THEY COULD HAVE
8 ORIGINATED, IT'S NOT THE FINAL -- FINAL ANSWER.

9 AND THE POSSIBILITY NOW LIES IN THE WORK MAYBE YOU
10 READ ABOUT IN THE PRESS ABOUT D.N.A. TYPING.

11 THAT, WHILE IT STILL CAN'T COMPARE HAIRS TO THE
12 EXCLUSION OF ALL OTHERS HOLDS THE PROMISE FOR THE FUTURE OR OF
13 BEING ABLE TO DO JUST THAT.

14 SO THAT HAIRS SOME DAY WILL BE PROBABLY BE ABLE TO
15 BE STUDIED THE SAME AS FINGERPRINTS ARE.

16 MICROSCOPY WILL BE STILL USEFUL IN SELECTING THE
17 HAIRS WHICH THE D.N.A. EXPERT WILL RUN TO DO THEIR
18 EXAMINATIONS ON, BUT THAT WILL ONLY BE ONE MORE PRELIMINARY
19 STAGE TO THE FINAL ACTUAL EXCLUSION OR ASSOCIATION OF TWO
20 HAIRS.

21 Q. I'D LIKE TO ASK YOU WHAT DOES THE PHRASE "AN UNKNOWN HAIR
22 IS CONSISTENT WITH A KNOWN HAIR" MEANS?

23 A. SPECIFICALLY, IN THE SENSE OF A MICROSCOPIC EXAMINATION,
24 IT MEANS THAT TWO HAIRS, ONE KNOWN HAIR AND ONE QUESTIONED
25 HAIR, HAVE BEEN FOUND TO BE IDENTICAL IN ALL THEIR MICROSCOPIC

1 CHARACTERISTICS, ALONG THE LENGTHS OF THEIR SHAFT LENGTH FROM
2 ONE END TO THE OTHER, AND EVERYTHING THAT CAN BE SEEN IN TERMS
3 OF ALL THE CHARACTERISTICS THAT YOU'VE HEARD DESCRIBED.

4 AND THAT BEING THE CASE, THAT THAT HAIR, THAT
5 QUESTIONED HAIR COULD HAVE COME FROM AN INDIVIDUAL WHO -- WHO
6 DONATED THE STANDARD SAMPLE THAT YOU JUST COMPARED IT WITH OR
7 WITH ANOTHER INDIVIDUAL WHO HAD IDENTICAL HAIR
8 CHARACTERISTICS.

9 Q. SO YOU CAN'T TELL WITH ABSOLUTE CERTAINLY WHO THE UNKNOWN
10 HAIR CAME FROM?

11 A. THAT'S RIGHT.

12 ALL WE CAN DO IS CLASSIFY IT DOWN TO A VERY SMALL
13 GROUP.

14 Q. AND WHEN YOU WRITE YOUR REPORTS, DO YOU INCLUDE THIS
15 INFORMATION IN ALL YOUR REPORTS?

16 A. WE'LL GENERALLY -- WE -- OUR REPORTS ARE NARRATIVE
17 REPORTS.

18 USUALLY WE EXPLAIN THE REASONS FOR OUR CONCLUSION,
19 AND THEN WE DO MAKE SOME KIND OF STATEMENT THAT ONE SHOULD
20 REALIZE THAT IN A HAIR COMPARISON THAT THE HAIR IS NOT
21 ABSOLUTELY -- IT IS NOT AN ABSOLUTE FORM OF REAL
22 IDENTIFICATION.

23 Q. NOW, MR. PALNICK, DID YOU EXAMINE ANY HAIRS FOR ANYONE
24 INVOLVED IN THIS CASE?

25 A. NO, I DIDN'T.

1 Q. BUT ALL EXPERTS AGREE THAT YOU CAN'T TELL ABSOLUTELY WHO
2 AN UNKNOWN HAIR CAME FROM?

3 MR. CARLTON: OBJECTION; ASKED AND ANSWERED, YOUR
4 HONOR.

5 THE COURT: SUSTAINED.

6 MR. BURNS: MAY I HAVE A MOMENT, YOUR HONOR?

7 THE COURT: YES.

8 (BRIEF PAUSE.)

9 BY MR. BURNS:

10 Q. MR. PALNICK, WERE YOU SENT ANY RECORDS OF A TRANSCRIPT IN
11 THESE PROCEEDINGS TO READ BEFORE YOU TESTIFIED?

12 A. YES, I WAS.

13 Q. WOULD YOU TELL US WHAT THAT WAS.

14 A. I WAS SENT A NUMBER OF PAGES OF TRANSCRIPTS OF TESTIMONY
15 OF SPECIAL AGENT MIKE MALONE FROM THE F.B.I. THAT REFERRED TO
16 THE HAIRS IN THIS CASE.

17 A. AND DO YOU RECALL MR. MALONE TESTIFYING TO THE 15 TO 20
18 CHARACTERISTICS THAT HE FOUND COMPARING AN UNKNOWN HAIR SAMPLE
19 WITH A KNOWN SAMPLE OF MR. MATTA?

20 A. IN GENERAL TERMS, I READ THROUGH THAT.

21 Q. AND YET HE WAS NOT ABLE TO SAY ABSOLUTELY WHO THAT
22 UNKNOWN HAIR CAME FROM?

23 MR. CARLTON: I'LL OBJECT, YOUR HONOR. THIS IS
24 IMPROPER QUESTIONING.

25 THE COURT: THE OBJECTION IS SUSTAINED TO THE FORM

1 OF THE QUESTION.

2 MR. BURNS: NO FURTHER QUESTIONS, YOUR HONOR.

3 THE COURT: YOU MAY CROSS-EXAMINE THE WITNESS.

4

5

CROSS-EXAMINATION +

6

BY MR. MEDRANO:

7

Q. ARE YOU FAMILIAR WITH THE WORK AT THE HAIRS AND FIBERS
8 UNIT AT THE F.B.I. LABORATORY?

8

9

A. IN THE MOST GENERAL SENSE I KNOW SOME OF THE PEOPLE
10 THERE, YES I AM.

10

11

Q. IS THE HAIR AND FIBERS UNIT AT THE F.B.I. LABORATORY
12 WELL-REGARDED IN THE FIELD?

12

13

A. YES, IT IS.

14

MR. MEDRANO: NOTHING FURTHER.

15

THE COURT: ANY OTHER QUESTIONS FOR THIS WITNESS?

16

(NO RESPONSE.)

17

YOU MAY STEP DOWN.

18

THE WITNESS: THANK YOU, YOUR HONOR.

19

(WITNESS EXCUSED.)

20

MR. BURNS: YOUR HONOR, MAY I BE EXCUSED TO SHOW THE

21

WITNESS OUT?

22

THE COURT: CERTAINLY.

23

MR. MEDRANO?

24

MR. MEDRANO: I WOULD LIKE AGENT BERRELLEZ BACK,

25

YOUR HONOR.

1 THE COURT: AGENT?

2

3 HECTOR BERRELLEZ + DEFENSE WITNESS, PREVIOUSLY SWORN

4

5 THE CLERK: HAVING PREVIOUSLY BEEN SWORN, PLEASE

6 RESTATE YOUR NAME FOR THE RECORD, PLEASE.

7

THE WITNESS: HECTOR BERRELLEZ.

8

9

DIRECT EXAMINATION + (CONTINUED)

10

11 BY MR. MEDVENE:

12 Q. AGENT BERRELLEZ, I JUST HAVE A FEW MORE QUESTIONS.

13

WE WERE NEARLY FINISHED FRIDAY.

14

JUST A FEW FOLLOW-UP QUESTIONS.

15

A. YES, SIR.

16

Q. DID AGENT SALAZAR AT YOUR MEETING WITH CERVANTES SANTOS
17 ON JANUARY 11TH -- CERVANTES SANTOS MADE NO REFERENCE AT THAT
18 TIME TO A MEETING THAT ALLEGEDLY OCCURRED AT A BAPTISM, DID
19 HE, AND ASK FOR YOUR HELP IF YOU NEED IT?

20

I HAVE IN FRONT OF YOU WHAT 'S BEEN MARKED 3 W'S,
21 WHICH IS AGENT SALAZAR'S REPORT APPROVED BY YOU OF THE JANUARY
22 11TH MEETING WITH MR. CERVANTES.

23

A. YES, SIR.

24

AT THAT MEETING HE DID MAKE MENTION OF THAT, EVEN
25 THOUGH IT'S NOT REFLECTED IN THE REPORT, SIR.

1 Q. AND DO YOU HAVE ANY NOTES OF ANY KIND TO SHOW THAT ON
2 JANUARY 11, HE DID MAKE SUCH A MENTION?

3 A. NO, SIR. WE --

4 Q. EXCUSE ME.

5 I JUST WANT TO KNOW WHETHER OR NOT YOU HAVE ANY
6 NOTES, SIR?

7 A. NO.

8 Q. TO YOUR KNOWLEDGE, REGARDLESS IF THEY'RE YOUR NOTES OR
9 NOT, MR. BERRELLEZ, DO ANY NOTES EXIST OF ANY KIND SHOWING
10 THAT MR. CERVANTES MADE SUCH A REFERENCE ON JANUARY 11TH?

11 A. I HAVE NO KNOWLEDGE OF ANY NOTES OTHER THAN THE REPORTS
12 THAT ARE IN FRONT OF ME, SIR.

13 Q. THE REPORT IN FRONT OF YOU MAKES NO REFERENCE TO ANY KIND
14 OF A BAPTISM MEETING; IS THAT CORRECT, SIR?

15 A. THE REPORT DOESN'T, BUT THAT WAS MENTIONED DURING THE
16 MEETING.

17 Q. EXCUSE ME, SIR.

18 MY QUESTION WAS --

19 MR. CARLTON: OBJECTION; HE'S NOT ALLOWING THE
20 WITNESS TO ANSWER.

21 THE COURT: YOU ALREADY ASKED THE QUESTION
22 PREVIOUSLY.

23 THE OBJECTION IS SUSTAINED.

24 IT WAS PREVIOUSLY ASKED AND ANSWERED.

25 MR. MEDVENE: MIGHT I BRIEFLY ADDRESS, YOUR HONOR?

1 IT WAS AN EARLIER REPORT .

2 WE 'VE ASKED ABOUT THE NOVEMBER 30 REPORT , THE
3 JANUARY 30 REPORT .

4 I WAS NOW ASKING ABOUT THE JANUARY 11TH .

5 THE COURT: WELL , I KNOW IT .

6 YOU ALREADY ASKED HIM OF THE JANUARY 11 REPORT AND
7 HE HAS ANSWERED .

8 MR . MEDVENE: ALL RIGHT , SIR .

9 BY MR . MEDVENE:

10 Q. MR . BERRELLEZ , WITH YOUR APPROVAL , DID GARATE BUSTAMANTE
11 PLACE AN AD OR FURNISH INFORMATION TO A PAPER IN GUADALAJARA
12 AS LATE AS MARCH 1990 , STATING IN PART THAT THIS TRIAL WAS
13 COMING UP AND REQUESTING THE POTENTIAL WITNESSES TO COME
14 FORWARD?

15 MR . CARLTON: OBJECT ON THE GROUNDS OF RELEVANCE ,
16 YOUR HONOR .

17 THE COURT: OVERRULED .

18 THE WITNESS: I 'M NOT AWARE OF THAT ARTICLE .

19 MR . MEDVENE: MAY I APPROACH THE WITNESS , YOUR
20 HONOR --

21 THE COURT: YES .

22 MR . MEDVENE: -- WITH WHAT HAS PREVIOUSLY BEEN
23 MARKED 4 C 'S .

24 THE COURT: YES .

25 (DOCUMENT TENDERED TO THE WITNESS .)

1 (BRIEF PAUSE.)

2 BY MR. MEDVENE:

3 Q. NOW, I'VE PLACED IN FRONT OF YOU, SIR, WHAT'S PREVIOUSLY
4 BEEN MARKED AS 4 C'S.

5 NOW, WITHOUT GETTING INTO THE CONTENTS, PURPORTS TO
6 BE --

7 MR. CARLTON: OBJECTION, YOUR HONOR, AS TO HIS
8 READING WHAT THIS PURPORTS TO BE.

9 THE WITNESS CAN READ IT.

10 THE COURT: YES; THAT'S RIGHT.

11 THE OBJECTION IS SUSTAINED.

12 LET'S NOT GET INTO THE CONTENTS.

13 WE CAN HAVE THE WITNESS --

14 MR. MEDVENE: NO. I WASN'T GOING TO GET INTO THE
15 CONTENTS.

16 I JUST WANT TO -- FOR HIM TO IDENTIFY WHETHER OR NOT
17 IT'S AN ARTICLE PURPORTEDLY FROM A NEWSPAPER --

18 MR. CARLTON: OBJECTION, YOUR HONOR.

19 THIS IS GETTING IT IN INDIRECTLY.

20 THE WITNESS HAS SAID --

21 THE COURT: WELL, YOU HAVE TO ASK THE WITNESS IF HE
22 HAS EVER SEEN IT BEFORE FIRST.

23 BY MR. MEDVENE:

24 Q. WELL, IF YOU LOOK AT 4-C, SIR.

25 A. (WITNESS COMPLIES.)

1 Q. COULD YOU TELL ME IF YOU'VE EVER SEEN THAT ARTICLE
2 BEFORE, EITHER IN XEROX FORM OR THE ORIGINAL NEWSPAPER.

3 A. WITHOUT READING THE ARTICLE, IT'S HARD FOR ME TO SAY, BUT
4 THIS ARTICLE DOESN'T APPEAR TO BE ANYTHING THAT I'VE EVER SEEN
5 IN MY LIFE BEFORE.

6 Q. DID YOU ON OCCASION HAVE A CONVERSATION WITH GARATE
7 BUSTAMANTE IN TERMS OF HIM CAUSING INFORMATION TO BE
8 CIRCULATED IN GUADALAJARA AS LATE AS MARCH OF THIS YEAR
9 REQUESTING --

10 MR. CARLTON: OBJECTION, YOUR HONOR --

11 BY MR. MEDVENE:

12 Q. -- WITNESSES IN CONNECTION WITH THIS CASE?

13 MR. CARLTON: -- ON THE GROUND OF RELEVANCE, YOUR
14 HONOR.

15 THE COURT: WAIT UNTIL THE QUESTION IS FINISHED.

16 THE OBJECTION IS OVERRULED.

17 THE WITNESS: WHAT I DID TELL MR. GARATE WAS THAT --

18 BY MR. MEDVENE:

19 Q. EXCUSE ME, SIR.

20 MY QUESTION IS, DID YOU HAVE THAT CONVERSATION WITH
21 HIM IN SUBSTANCE OR EFFECT?

22 A. YOUR QUESTION WAS VERY LONG AND I DIDN'T FOLLOW IT
23 THOROUGHLY.

24 WOULD YOU REPEAT YOUR WHOLE QUESTION PLEASE.

25 Q. YES, SIR. CERTAINLY.

1 DURING THIS YEAR, IS IT TRUE THAT YOU HAD A
2 CONVERSATION WITH GARATE BUSTAMANTE ABOUT HIM CAUSING TO BE
3 CIRCULATED IN GUADALAJARA INFORMATION THAT YOU OR THE D.E.A.
4 WAS LOOKING FOR WITNESSES IN THIS CASE THAT WE'RE INVOLVED IN
5 TRYING HERE TODAY?

6 A. I DON'T RECALL ME HAVING A CONVERSATION TO THAT EFFECT IN
7 THIS REGARD, SIR.

8 Q. REGARDLESS OF WHETHER YOU HAD THAT SPECIFIC CONVERSATION,
9 AGENT BERRELLEZ, IS IT TRUE THAT IF GARATE BUSTAMANTE CAUSED
10 TO BE PLACED IN A GUADALAJARA PAPER AN ADVERTISEMENT FOR
11 WITNESSES IN THIS CASE AS LATE AS MARCH OF 1990, IT WOULD NOT
12 BE INCONSISTENT WITH ANYTHING YOU HAD PREVIOUSLY TOLD HIM?

13 MR. CARLTON: OBJECTION, YOUR HONOR; HYPOTHETICAL;
14 IRRELEVANT.

15 THE COURT: THE QUESTION IS IMPROPER; CLEARLY
16 IMPROPER IN FORM. THE FORM OF THE QUESTION IS IMPROPER.

17 MR. MEDVENE: I'M SORRY, SIR.

18 THE COURT: THE OBJECTION IS SUSTAINED.

19 BY MR. MEDVENE:

20 Q. DID YOU HAVE ANY CONVERSATION IN OR ABOUT MARCH OF THIS
21 YEAR ABOUT GARATE PUBLICIZING IN A PAPER THE GOVERNMENT'S NEED
22 FOR WITNESSES IN THIS CASE?

23 MR. CARLTON: OBJECTION; ASKED AND ANSWERED.

24 THE COURT: I'LL PERMIT THE WITNESS TO ANSWER.

25 THE WITNESS: AGAIN, I DON'T RECALL HAVING THAT

1 CONVERSATION BEFORE WITH MR. GARATE, SIR.

2 BY MR. MEDVENE:

3 Q. TO YOUR KNOWLEDGE, DURING THIS YEAR, DID ANY OTHER D.E.A.
4 AGENT OR INFORMANT FOR THE D.E.A., TO YOUR KNOWLEDGE, HAVE A
5 CONVERSATION WITH MR. GARATE IN WHICH -- PLACING AN
6 ADVERTISEMENT IN A GUADALAJARA PAPER FOR WITNESSES WAS
7 DISCUSSED?

8 A. I HAVE NO KNOWLEDGE OF THE AGENTS HAVING THAT TYPE OF
9 CONVERSATION WITH MR. GARATE, SIR.

10 Q. DO YOU HAVE ANY KNOWLEDGE IF OTHER D.E.A. OPERATIVES OR
11 AGENTS, HOWEVER BROADLY THAT'S DEFINED, CONFIDENTIAL
12 INFORMANT, FOR EXAMPLE, HAVE SUCH A CONVERSATION OR BEING
13 AUTHORIZED TO HAVE SUCH A CONVERSATION WITH MR. GARATE?

14 MR. CARLTON: OBJECTION; COMPOUND AND CALLS FOR
15 SPECULATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: ARE YOU TALKING ABOUT -- IS YOUR
18 QUESTION, DID --

19 DO I HAVE ANY KNOWLEDGE THAT OTHER WITNESSES IN THIS
20 CASE TALKED ABOUT MR. GARATE ABOUT -- OR TOLD MR. GARATE TO
21 PUBLISH AN ARTICLE IN THE PAPER IN MEXICO, OTHER INFORMANTS,
22 IS THAT -- OR OTHER PEOPLE?

23 MR. MEDVENE: YES.

24 THE WITNESS: DO I KNOW IF OTHER PEOPLE HAD THIS --

25 MR. MEDVENE: YES.

1 THE WITNESS: -- KIND OF CONVERSATION WITH MR.
2 GARATE?

3 NO, I DO NOT, SIR.

4 BY MR. MEDVENE:

5 Q. WERE THERE OTHER WITNESSES IN THIS CASE OR CONFIDENTIAL
6 INFORMANTS, TO YOUR KNOWLEDGE?

7 A. NO, SIR. I HAVE NO KNOWLEDGE OF THAT.

8 Q. DID YOU EVER ACQUIRE KNOWLEDGE, AGENT BERRELLEZ, AS TO
9 WHETHER OR NOT THERE HAD BEEN PRINTED IN A GUADALAJARA PAPER
10 IN OR ABOUT MARCH OF '90, A REQUEST THAT -- OR A REQUEST FOR
11 WITNESSES IN CONNECTION WITH THIS CASE?

12 MR. CARLTON: OBJECTION; ASKED AND ANSWERED, YOUR
13 HONOR.

14 THE COURT: OVERRULED.

15 THE WITNESS: NO, SIR.

16 I HAVE NO KNOWLEDGE OF THAT.

17 I HAVEN'T READ ANY ARTICLES TO THAT EFFECT, SIR.

18 BY MR. MEDVENE:

19 Q. A DIFFERENT AREA NOW:

20 APPROXIMATELY, MIDNIGHT DECEMBER 9TH OR THE EARLY
21 MORNING OF DECEMBER 10TH, IS IT TRUE THAT MR. ZUNO WAS
22 ARRESTED ON CHARGES RELATED TO THE PENDING CASE AS HE ARRIVED
23 AT L.A. INTERNATIONAL AIRPORT?

24 MR. CARLTON: OBJECTION IRRELEVANT YOUR HONOR.

25 THE COURT: SUSTAINED.

1 MR. MEDVENE: MAY WE BE HEARD ON THAT, YOUR HONOR,
2 AT SIDE BAR?

3 IT'S THE LAST AREA THAT I -- IT'S THE LAST TWO
4 QUESTIONS THAT I HAVE FOR MR. BERRELLEZ. OR AT AN APPROPRIATE
5 TIME?

6 THE COURT: AT AN APPROPRIATE TIME.

7 MR. MEDVENE: YES, YOUR HONOR.

8 WE'VE NOTHING FURTHER THEN AT THIS TIME, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. MEDVENE: EXCUSE ME. IF I MIGHT HAVE ANOTHER
11 MOMENT, YOUR HONOR.

12 BY MR. MEDVENE:

13 Q. AS GROUP SUPERVISOR OF LEYENDA, IS IT TRUE, SIR, THAT ONE
14 OF YOUR TASKS IS ATTEMPTING TO OBTAIN INTELLIGENCE BY READING
15 VARIOUS NEWSPAPER ARTICLES OR PERIODICALS THAT ARE PUBLISHED
16 IN MEXICO?

17 A. NO, SIR, IT'S NOT.

18 Q. DOES ANYONE UNDER YOUR SUPERVISION HAVE THE ASSIGNMENT TO
19 LOOK AT OR READ FROM TIME TO TIME NEWSPAPER ARTICLES THAT
20 APPEAR IN MEXICO?

21 A. I DON'T ENCOURAGE THAT PRACTICE.

22 IF THEY READ NEWSPAPER ARTICLES PRINTED IN MEXICO OR
23 HERE, THEY DO IT BECAUSE THEY WANT TO DO IT.

24 IT'S NOT SOMETHING THAT I DELEGATE DOWN TO ANY OF MY
25 AGENTS, SIR.

1 Q. AND THE LAST QUESTION, SIR:

2 IS IT YOUR TESTIMONY THAT NO AGENT OR OTHER
3 INDIVIDUAL HAS REPORTED TO YOU ANYTHING ABOUT WHETHER OR NOT
4 AN ARTICLE APPEARED IN A GUADALAJARA PAPER IN MARCH OF THIS
5 YEAR REQUESTING WITNESSES AND OFFERING COMPENSATION FOR THOSE
6 WITNESSES IN CONNECTION WITH THIS CASE?

7 MR. CARLTON: OBJECTION; ASKED AND ANSWERED, YOUR
8 HONOR.

9 THE COURT: SUSTAINED.

10 MR. MEDVENE: THANK YOU VERY MUCH.

11 THANK YOU, AGENT BERRELLEZ.

12
13 DIRECT-EXAMINATION +

14 BY MR. NICOLAYSEN:

15 Q. AGENT BERRELLEZ, WHEN THE FIRST TIME THAT THE D.E.A.
16 INTERVIEWED ENRIQUE PLACENCIA AGUILAR IN REGARD TO LA
17 LANGOSTA, DO YOU KNOW?

18 A. THE ONLY TIME THAT I KNOW THAT HE WAS ASKED OR HE WASN'T
19 ASKED THAT HE MENTIONED LA LANGOSTA WAS SOMETIME IN 1989, SIR.

20 Q. COULD YOU BE MORE SPECIFIC AS TO WHEN IN THE 1989 YEAR?

21 A. NO, SIR.

22 I DON'T REMEMBER THE MONTH, BUT IT WAS IN 1989.

23 Q. NOW, YOU WERE PRESENT, WERE YOU NOT, WHEN ENRIQUE
24 PLASCENCIA AGUILAR TESTIFIED HERE IN COURT LAST FRIDAY?

25 A. YES, SIR, I WAS.

1 Q. DO YOU RECALL THAT IN RESPONSE TO A QUESTION OF MINE HE
2 MENTIONED THAT HE WAS INTERVIEWED BY THE D.E.A. BACK IN 1987
3 REGARDING LA LANGOSTA?

4 DO YOU REMEMBER THAT TESTIMONY?

5 A. YES, SIR, I DO.

6 Q. AND TO THE BEST OF YOUR KNOWLEDGE, AS YOU SIT HERE TODAY,
7 WAS THAT STATEMENT BY MR. AQUILAR IN COURT INCORRECT?

8 A. I DON'T KNOW OF IT.

9 LIKE I SAID IT BEFORE, THE FIRST TIME I KNEW THAT HE
10 HAD ANY INFORMATION OF LA LANGOSTA WAS IN 1989.

11 Q. WELL, WHO WOULD KNOW, IF YOU DON'T, WHETHER MR. AQUILAR
12 WAS DEBRIEFED OR INTERVIEWED IN ANY WAY BACK IN 1987 REGARDING
13 LA LANGOSTA?

14 A. I DON'T KNOW, SIR.

15 WHOEVER INTERVIEWED HIM, IF HE WAS INTERVIEWED.

16 I DON'T KNOW WHO THAT PERSON WOULD HAVE BEEN.

17 Q. WHEN DID YOU BECOME THE CHIEF AGENT OF THE LEYENDA TEAM?

18 A. JANUARY THE 4TH, 1989, SIR.

19 Q. AND WHO WAS YOUR PREDECESSOR?

20 A. MY PREDECESSOR WAS SENIOR INSPECTOR JACK TAYLOR OUT OF
21 WASHINGTON, DC.

22 Q. NOW, YOU'VE TOLD US PREVIOUSLY, I BELIEVE, THAT AS PART
23 OF YOUR ONGOING RESPONSIBILITIES YOU DO REVIEW AND BECOME
24 FAMILIAR WITH MEMORANDA IN D.E.A. FILES THAT CONCERN THIS
25 INVESTIGATION, DO YOU NOT?

1 A. I TRY TO READ AS MUCH AS POSSIBLE, EVEN THOUGH I HAVEN'T
2 READ EVERY REPORT IN THE INVESTIGATION, SIR.

3 Q. NOW, I DON'T HAVE A REPORT ON THE 1987 MEETING WITH MR.
4 AQUILAR.

5 ARE YOU AWARE OF ANY INTERVIEW REPORT REGARDING ANY
6 INTERVIEW WITH MR. AQUILAR IN 1987 REGARDING LA LANGOSTA?

7 A. IF ONE EXISTS, SIR, I'VE NEVER SEEN IT.

8 Q. AND IF ONE EXISTED, WOULD IT BE FAIR TO SAY THAT YOU
9 WOULD HAVE SEEN IT BY NOW?

10 MR. CARLTON: OBJECTION; CALLS FOR SPECULATION, YOUR
11 HONOR.

12 THE COURT: OVERRULED.

13 THE WITNESS: I WOULD HOPE THAT IF IT DOES EXIST
14 THAT IT WOULD HAVE COME TO MY ATTENTION.

15 BY MR. NICOLAYSEN:

16 Q. IS IT SAFE TO SAY TODAY AT THIS POINT IN THE TRIAL THAT
17 IT DOESN'T EXIST?

18 A. I CAN'T ANSWER THAT, SIR.

19 Q. NOW, YOU ARE AWARE I TAKE IT THAT THE FIRST GRAND JURY
20 APPEARANCE THAT MR. AQUILAR MADE IN CONNECTION WITH THIS CASE
21 WAS MAY 10, 1989.

22 ARE YOU FAMILIAR WITH THAT DAY?

23 A. I BELIEVE THAT WAS THE DATE, SIR.

24 Q. AND WHEN YOU TELL US NOW THAT THE FIRST INTERVIEW ON LA
25 LANGOSTA WITH MR. AQUILAR WAS SOME TIME IN 1989, CAN WE SAFELY

1 ASSUME THAT IT WAS SOME POINT BEFORE THAT FIRST GRAND JURY
2 APPEARANCE?

3 A. IT HAD TO HAVE BEEN, SIR.

4 Q. BUT YOU DON'T KNOW FOR SURE?

5 A. I'M SURE THAT IT WAS BEFORE THAT DATE, SIR.

6 Q. WHO INTERVIEWED HIM?

7 A. I BELIEVE I DID, SIR.

8 Q. AND DID YOU PREPARE A REPORT ON THAT INTERVIEW?

9 A. AS A SUPERVISOR I DON'T THINK THAT I DID THE REPORT.
10 THERE MIGHT HAVE BEEN ONE PREPARED BY SOMEBODY ELSE.

11 I DON'T REMEMBER IF I DID PREPARE A REPORT MYSELF OF
12 THAT CONVERSATION, SIR.

13 Q. WHO ELSE WAS PRESENT DURING THE INTERVIEW?

14 A. I BELIEVE THERE WAS NUMEROUS AGENTS PRESENT.

15 I DON'T RECALL SPECIFICALLY WHO RIGHT NOW, SIR.

16 Q. HAVE YOU DONE ANY TYPE OF AN INQUIRY TO DETERMINE WHETHER
17 OR NOT A RECORD HAS BEEN PREPARED IN CONNECTION WITH THIS
18 INTERVIEW IN 1989?

19 A. DID I DO ANYTHING TO SPECIFICALLY SEE IF A REPORT WAS
20 WRITTEN ON THAT SPECIFIC CONVERSATION, SIR?

21 A. THAT'S RIGHT.

22 A. NOW, I HAVEN'T MADE ANY INQUIRIES TO THAT SPECIFIC
23 REPORT; NO, I HAVEN'T, SIR.

24 Q. AND DID YOU INSTRUCT ANY OF THE AGENTS WHO WERE PRESENT
25 DURING THAT MEETING TO PREPARE AN INTERVIEW REPORT?

1 A. I DON'T RECALL IF I INSTRUCTED ANYBODY OR ANYBODY WROTE A
2 REPORT, SIR.

3 Q. SO, NOW, TO THE BEST OF YOUR KNOWLEDGE, A REPORT MIGHT
4 EXIST, BUT YOU JUST DON'T KNOW AS YOU SIT HERE TODAY; IS THAT
5 RIGHT?

6 A. YES; AS I SIT HERE TODAY, I DON'T REMEMBER IF A REPORT
7 EXISTS.

8 MR. NICOLAYSEN: YOUR HONOR, I WOULD RESPECTFULLY
9 ASK THE COURT TO INSTRUCT THE AGENT TO SEARCH THE FILES DURING
10 THE RECESS.

11 THE COURT: THIS IS NOT A REQUEST TO BE MADE IN THE
12 PRESENCE OF THE JURY.

13 MR. NICOLAYSEN: I UNDERSTAND.

14 ALL RIGHT.

15 BY MR. NICOLAYSEN:

16 Q. NOW, YOU'RE FAMILIAR, I TAKE IT, WITH THE COOPERATION
17 AGREEMENT THAT MY CLIENT, JAVIER VASQUEZ VELASCO, SIGNED WITH
18 THE D.E.A. ON JULY 14, 1989, ARE YOU NOT?

19 A. SOMEWHAT, YES, SIR.

20 Q. YOU'RE AWARE THAT AGENT REYNOSO WAS IN THE PROCESS OF
21 SPEAKING WITH MY CLIENT AT THAT PARTICULAR POINT IN TIME;
22 CORRECT?

23 A. YES, SIR.

24 Q. AND YOU ARE AWARE, ARE YOU NOT -- OR I'LL STRIKE THAT.

25 AT THAT TIME IN JULY OF 1989 WHEN MY CLIENT WAS

1 INVITED TO SIGN THAT COOPERATION AGREEMENT, WAS D.E.A. SINCERE
2 ABOUT EXPLORING THE POSSIBILITY OF ENGAGING IN A COOPERATION
3 RELATIONSHIP WITH MY CLIENT?

4 MR. CARLTON: OBJECTION, YOUR HONOR; IMPROPER
5 QUESTION; VAGUE AND AMBIGUOUS AND IRRELEVANT.

6 THE COURT: OVERRULED.

7 THE WITNESS: THE D.E.A. WOULD HAVE BEEN SERIOUS
8 DEPENDING ON CERTAIN CIRCUMSTANCES, SIR.

9 BY MR. NICOLAYSEN:

10 Q. I'M SPECIFICALLY FOCUSING ON THE DATE JULY 14 OF 1989,
11 THE DATE THAT THE AGREEMENT WAS SIGNED BY MY CLIENT.

12 AND MY QUESTION IS:

13 ON THAT DATE, WHEN THE D.E.A. ACCEPTED MY CLIENT'S
14 SIGNATURE, WAS THE D.E.A. SINCERE ABOUT EXPLORING THE
15 POSSIBILITY OF A COOPERATING RELATIONSHIP WITH MY CLIENT?

16 A. AS I ANSWERED BEFORE, SIR, ONLY IF CERTAIN REQUIREMENTS
17 WERE MET BY YOUR CLIENT.

18 Q. AND IT'S TRUE, IS IT NOT, SIR, THAT ON THAT PARTICULAR
19 DATE, JULY 14TH, 1989, JAVIER VASQUEZ VELASCO WAS NOT A
20 SUSPECT IN THE LA LANGOSTA INVESTIGATION?

21 MR. CARLTON: OBJECTION; IRRELEVANT, YOUR HONOR.

22 THE COURT: RESTATE YOUR QUESTION.

23 BY MR. NICOLAYSEN:

24 Q. IT'S TRUE, IS IT NOT, AGENT BERRELLEZ, THAT ON JULY 14TH,
25 1989, THE DATE THAT MY CLIENT SIGNED THE COOPERATION AGREEMENT

1 WITH THE D.E.A., JAVIER VASQUEZ VELASCO WAS NOT A SUSPECT IN
2 THE LA LANGOSTA INVESTIGATION?

3 MR. CARLTON: SAME OBJECTION.

4 THE COURT: OVERRULED.

5 THE WITNESS: THAT IS NOT TRUE, SIR.

6 BY MR. NICOLAYSEN:

7 Q. IT'S NOT?

8 A. NO, SIR.

9 Q. OKAY.

10 WERE YOU PRESENT IN THE GRAND JURY ROOM ON MAY 10,
11 1990, WHEN MR. PLACENCIA AGUILAR FIRST TESTIFIED BEFORE THE
12 GRAND JURY?

13 A. NO, SIR.

14 AGENTS ARE NOT PERMITTED IN THOSE ROOMS WHEN
15 WITNESSES ARE PROVIDING TESTIMONY TO THE GRAND JURY.

16 WE ARE NOT PERMITTED IN THE GRAND JURY ROOM, SO WE
17 WERE NOT.

18 Q. YOU'VE READ THE GRAND JURY TRANSCRIPT OF MAY 1990, HAVE
19 YOU NOT, CONCERNING MR. AGUILAR'S TESTIMONY?

20 A. NO, SIR. I HAVE NOT.

21 Q. YOU'RE NOT FAMILIAR WITH IT?

22 A. I HAVE NOT READ IT, NO, SIR.

23 Q. NOW, AGENT REYNOSO WAS GIVEN THE RESPONSIBILITY OF BEING
24 ONE OF THE LEAD AGENTS, IF YOU WILL, IN THE LA LANGOSTA
25 INVESTIGATION, WAS HE NOT?

1 A. I WOULD NOT SAY THAT HE WAS, SIR.

2 Q. HE WAS ASSIGNED THE RESPONSIBILITY OF CONDUCTING
3 INTERVIEWS, WAS HE NOT, OF VARIOUS PEOPLE, INCLUDING MY
4 CLIENT?

5 A. AS WERE THE OTHER AGENTS IN THE TASK FORCE, SIR.

6 Q. WHAT IS THE FIRST DATE THAT YOU CAN RECALL, AGENT
7 BERRELLEZ, WHEN A D.E.A.-6 CONCERNING INTERVIEWS OF MR.
8 PLASCENCIA WAS PREPARED REGARDING LA LANGOSTA? THE FIRST
9 DATE?

10 A. I DON'T HAVE A RECOLLECTION OF -- OF THAT SPECIFIC
11 REPORT, SIR.

12 I HAVE REVIEWED SO MANY REPORTS, I CAN'T TELL YOU
13 WHAT DATE ONE ORIGINATED VERSUS ANOTHER REPORT.

14 Q. BUT ANY SUCH REPORTS WOULD BE UPSTAIRS IN YOUR FILES,
15 WOULD THEY NOT?

16 MR. CARLTON: OBJECTION; IRRELEVANT.

17 THE COURT: SUSTAINED.

18 BY MR. NICOLAYSEN:

19 Q. YOU WOULD BE IN A POSITION, WOULD YOU NOT, TO INQUIRE
20 UPSTAIRS IN YOUR OFFICE TO DETERMINE WHETHER ANY REPORTS DO
21 EXIST REGARDING INTERVIEWS WITH MR. PLASCENCIA ON THE SUBJECT
22 OF LA LANGOSTA?

23 MR. CARLTON: SAME OBJECTION.

24 THE COURT: OVERRULED.

25 THE WITNESS: I COULD HAVE THE -- THE FILES, THE

1 VAST FILES PURGED, YES, SIR, I COULD DO THAT.

2 BY MR. NICOLAYSEN:

3 Q. YOU COULD DO THAT, COULDN'T YOU, SIR?

4 A. YES, SIR.

5 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

6 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

7 I HAVE NOTHING FURTHER.

8 MR. STOLAR: WOULD IT BE POSSIBLE FOR TO US TAKE OUR
9 MIDMORNING RECESS A LITTLE EARLY THIS MORNING?

10 THERE'S A DESPERATE CALL OF NATURE THAT NEEDS TO BE
11 ANSWERED.

12 MR. NICOLAYSEN: AND, YOUR HONOR, I WOULD
13 RESPECTFULLY REQUEST TO ADDRESS THE COURT DURING THE RECESS,
14 IF I MAY.

15 THE COURT: WE'LL TAKE OUR MORNING RECESS AT THIS
16 TIME.

17 MR. NICOLAYSEN: THANK YOU.

18 THE CLERK: PLEASE RISE.

19 (JURY DISMISSED.)

20 MR. STOLAR: WITH YOUR PERMISSION, I WOULD WAIVE MR.
21 MATTA'S PRESENCE FOR THIS DISCUSSION.

22 WOULD THAT BE ALL RIGHT?

23 THE COURT: ALL RIGHT.

24 (MR. MATTA EXCUSED FROM THE COURTROOM.)

25 THE COURT: ALL RIGHT.

1 COUNSEL, WHAT IS IT?

2 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

3 YOUR HONOR, BASED ON AGENT BERRELLEZ'S TESTIMONY
4 RECORDING HIS UNCERTAINTY AS TO THE EXISTENCE OF ANY INTERVIEW
5 REPORTS OR D.E.A.-6'S CONCERNING DEBRIEFINGS OF MR. AQUILAR, I
6 WOULD RESPECTFULLY ASK THE COURT TO DIRECT THE AGENT TO SEARCH
7 THE FILES UPSTAIRS TODAY TO DETERMINE WHETHER THERE ARE ANY
8 SUCH REPORTS.

9 I CAN TRUTHFULLY REPRESENT TO THE COURT THAT I HAVE
10 NOT RECEIVED ANY D.E.A.-6 OR OTHER INTERVIEW REPORT FROM THE
11 GOVERNMENT REGARDING LA LANGOSTA AS TO MR. AGUILAR EARLIER
12 THAN OCTOBER 4TH, 1989, AND THAT REPORT DEALT ONLY WITH
13 PHOTOGRAPHIC DISPLAYS THAT DID NOT IN ANY WAY CONCERN A
14 SUMMARY OF ANY INTERVIEW ABOUT THE EVENTS AT LA LANGOSTA.

15 I THINK THERE'S ENOUGH UNCERTAINTY IN THE AGENT'S --
16 THE COURT: COUNSEL, YOU'VE MADE YOUR REQUEST.
17 THAT'S ENOUGH.

18 MR. NICOLAYSEN: ALL RIGHT.

19 THE COURT: NOW WHAT ABOUT THIS?

20 MR. MEDRANO: YOUR HONOR, THIS IS A REQUEST THAT'S
21 BEEN PREVIOUSLY BEEN MADE BY MR. NICOLAYSEN.

22 WE HAVE SEARCHED THE FILES AND ALL THE JENKS THAT
23 EXIST --

24 THE COURT: WHEN WAS IT MADE; PREVIOUSLY?

25 MR. NICOLAYSEN: YOUR HONOR, IT WAS NOT MADE

1 PREVIOUSLY. THIS IS ALL NEW MATERIAL.

2 THE COURT: THIS IS BASED ON THE THE TESTIMONY OF
3 THE WITNESS LAST FRIDAY.

4 MR. MEDRANO: I UNDERSTAND, YOUR HONOR.

5 NONETHELESS, THAT SEARCH HAS BEEN DONE ALREADY EVEN
6 BEFORE THIS WITNESS TOOK THE STAND.

7 THERE ARE NO OTHER 6'S.

8 MR. NICOLAYSEN: I DON'T KNOW WHERE THAT LEAVES US
9 BECAUSE THERE'S UNCERTAINLY IN THE AGENT'S TESTIMONY.

10 WHAT I'D LIKE TO DO THEN, IF THE COURT WILL PERMIT
11 ME, IS TO HAVE THE AGENT ASSERT MORE DEFINITELY THAT THERE
12 ARE NO SUCH REPORTS SO THAT MR. MEDRANO'S REPRESENTATIONS TO
13 THE COURT NOW CAN ESSENTIALLY BECOME PART OF THE TRIAL REPORT.

14 MR. MEDRANO: BUT THERE ARE NO INCONSISTENCIES, YOUR
15 HONOR.

16 THIS IS THE SUPERVISOR OF THE ENTIRE LEYENDA TEAM.

17 THE COURT: WELL, WHO CONDUCTED THE SEARCH?

18 MR. MEDRANO: I'VE HAD ONE OR TWO AGENTS, AND I CAN
19 FIND OUT WHO THEY WERE OVER THE RECESS, WHO WERE RESPONSIBLE
20 FOR GOING THROUGH OUR ENTIRE FILES FOR JENKS MATERIAL THAT
21 INCLUDED THE JENKS MATERIAL FOR PLASCENCIA AGUILAR.

22 ALL THE JENKS THAT THEY FOUND WAS PROVIDED TO ME, I
23 REVIEWED IT, AND THEN IT'S GONE OVER TO THE DEFENSE.

24 THAT WAS DONE ALREADY.

25 THE COURT: WHEN WAS IT DONE?

1 MR. MEDRANO: IT WAS DONE BEFORE THE COMMENCEMENT OF
2 TRIAL, YOUR HONOR.

3 THE COURT: WELL, IT SHOULD BE DONE AGAIN NOW.

4 IF THIS WITNESS TESTIFIES HE WAS INTERVIEWED IN
5 1987, THEN THERE SHOULD BE A SEARCH MADE TO SEE IF THERE WAS
6 ANY REPORT GENERATED IN 1987.

7 MR. MEDRANO: WE'LL SEARCH AGAIN.

8 THANK YOU.

9 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

10 THE OTHER POINT IS, YOUR HONOR, I WOULD RESPECTFULLY
11 ASK THE COURT TO PERMIT ME TO REQUEST OF THE GOVERNMENT IN THE
12 PRESENCE OF AGENT REYNOSO TO TESTIFY LATER TODAY OR FIRST
13 THING ON THURSDAY.

14 THE ORDER DOESN'T MATTER BASED ON AGENT BERRELLEZ'S
15 TESTIMONY TODAY.

16 IT WOULD BE VERY SHORT AND IT WOULD BE LIMITED TO A
17 COUPLE OF POINTS I RAISED WITH THE AGENT HERE TODAY.

18 THE COURT: HE CAN BE MADE AVAILABLE.

19 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

20 THE COURT: NOW, THERE ARE SOME MOTIONS BEFORE THE
21 COURT THAT I WANT TO DEAL WITH.

22 FIRST, MS. KELLY, YOU FILED A MOTION TO PERMIT
23 FURTHER CROSS-EXAMINATION OF THIS WITNESS RELATING TO THE
24 STATEMENT THAT YOUR CLIENT ALLEGEDLY MADE TO THE MEXICAN
25 POLICE.

1 I'M NOT QUITE SURE.

2 WE'VE ALREADY DISCUSSED THE IMPROPRIETY OF ELICITING
3 FROM THIS WITNESS THE CONTENTS OF THAT STATEMENT IF THEY'RE
4 OFFERED TO PROVE THE TRUTH OF WHAT THE STATEMENT CONTAINS.

5 WHAT IS IT THAT YOU WANT TO ELICIT FROM THIS
6 WITNESS?

7 MS. KELLY: YOUR HONOR, THAT IS NOT WHAT I'M
8 OFFERING IT TO PROVE.

9 THIS WITNESS HAS TESTIFIED THAT HE REVIEWED THE
10 DECLARATION IN CONNECTION WITH HIS INVESTIGATION TO DETERMINE
11 WHETHER OR NOT WHAT MY CLIENT WAS SAYING COULD BE CORROBORATED
12 AND --

13 THE COURT: WHEN DID HE SAY THAT?

14 MS. KELLY: DURING HIS TESTIMONY, YOUR HONOR.

15 THE COURT: TO DETERMINE WHAT YOUR CLIENT SAID TO
16 HIM COULD BE CORROBORATED?

17 MS. KELLY: YES.

18 ABOUT DECEIVING THE MEXICAN GOVERNMENT AS TO HIS
19 STATUS AS A SERVANT.

20 THE GIST OF WHAT AGENT BERRELLEZ IS TESTIFYING ON
21 RELEVANCE --

22 THE COURT: CAN YOU BE MORE SPECIFIC HERE?

23 GET TO THE POINT.

24 MS. KELLY: YES, HE --

25 THE COURT: WHAT DID HE SAY TO THE MEXICAN POLICE

1 THAT YOU WANT THIS WITNESS TO SAY TO THIS JURY?

2 MS. KELLY: YOUR HONOR, I WOULD LIKE TO BRING OUT
3 THE FACT THAT MY CLIENT DID, IN FACT, IDENTIFY LOCATIONS
4 KNOWN -- LOCATIONS BELONGING TO ERNESTO FONSECO -- FONSECA,
5 EXCUSE ME, YOUR HONOR -- AND ALSO THAT HE WAS AWARE THAT
6 ERNESTO FONSECA WAS A NARCOTICS TRAFFICKER WHO HARVESTED
7 MARIJUANA.

8 THE COURT: AND WHAT WOULD BE THE PURPOSE OF
9 ELICITING THIS?

10 MS. KELLY: YOUR HONOR, AGENT BERRELLEZ TESTIFIED
11 THAT MY CLIENT ASSERTED TO HIM THAT HE NEVER DIVULGED ANY
12 INFORMATION ABOUT FONSECA WHEN HE WAS ARRESTED BY THE MEXICAN
13 AUTHORITIES;

14 THAT HE MERELY STATED HE WAS A SERVANT AND HE NEVER
15 IMPLICATED FONSECA IN ANY WAY AND PROTECTED HIM COMPLETELY.

16 AND THAT HAS BEEN BROUGHT OUT REPEATEDLY, YOUR
17 HONOR, AND I THINK THAT, IN FACT, IF THE AGENT HAD READ THE
18 DECLARATION, WHETHER IT'S TRUE OR NOT, THAT FONSECA IS THOSE
19 THINGS OR NOT, IT SHOWS THAT MY CLIENT DID NOT, IN FACT,
20 PROTECT FONSECA;

21 THAT, IN FACT, HE ADMITTED BEING GOING TO HIM TO
22 PUERTO VALLARTA;

23 THAT HE KNEW THAT FONSECA HAD ARMS IN HIS HOME THAT
24 WERE RESERVED FOR MILITARY AND THE NAVY.

25 YOUR HONOR, THIS IS NOT CONSISTENT WITH SOMEONE

1 WHO'S TRYING TO PROTECT SOMEBODY.

2 THE COURT: AND THAT IS THE SOLE PURPOSE FOR WHICH
3 YOU'RE SEEKING THIS AND THAT IS THE EVIDENCE --

4 MS. KELLY: YES, YOUR HONOR.

5 THE COURT: -- THAT YOU WISH TO ELICIT FROM THIS
6 WITNESS?

7 MS. KELLY: YES, YOUR HONOR.

8 THE COURT: AND THAT IS THE EVIDENCE WHICH YOU WERE
9 NOT PERMITTED TO ELICIT BRIEFLY?

10 MS. KELLY: CORRECT.

11 THE COURT: DO YOU WISH TO BE HEARD?

12 MR. MEDRANO: VERY BRIEFLY, YOUR HONOR.

13 THIS IS -- IT'S SIMPLY A HEARSAY ISSUE.

14 WE HAVE YET TO DECIDE TO ANY HEARSAY EXCEPTION.

15 IT'S ANALAGOUS TO THE GONZALEZ/ONTIVEROS STATEMENTS
16 THAT MR. NICOLAYSEN IS TRYING TO ADMIT AND WHICH ALSO, YOUR
17 HONOR, IS BLATANT HEARSAY.

18 YOUR HONOR, JUST BECAUSE AN AGENT RELIES ON A
19 PREVIOUS MEXICAN STATEMENT WHICH WE HAVE NO IDEA HOW IT WAS
20 OBTAINED AND UNDER WHAT CIRCUMSTANCES, AND WE DON'T KNOW ITS
21 TRUSTWORTHINESS, DOES NOT MAKE IT JENKS, DOES NOT MAKE IT
22 IMPEACHMENT MATERIAL.

23 THIS IS A WHOLE NEW THEORY OF ADMISSIBILITY I AM
24 COMPLETELY UNFAMILIAR WITH BECAUSE IT SIMPLY DOES NOT EXIST.

25 AND THE GOVERNMENT'S RIGHT, YOUR HONOR, THE

1 CONFRONTATION TO BEING DENIED HERE SINCE WE DON'T KNOW WHO
2 TOOK THE STATEMENT AND UNDER WHAT CIRCUMSTANCES.

3 WE CANNOT CROSS-EXAMINE ANYONE ON THE REMAINDER OF
4 THE STATEMENT.

5 SO, BASICALLY, WHAT YOU HAVE IS MS. KELLY OFFERING
6 ONLY THE SELECT PARTS THAT SHE WANTS, AND YET WE CAN'T DEAL
7 WITH THE REST BECAUSE OF THE LACK OF CONFRONTATION PROBLEM.

8 IT IS HEARSAY, YOUR HONOR.

9 THAT'S WHAT IT'S BEING OFFERED FOR; INADMISSIBLE;
10 AND IT IS SIMPLY INADMISSIBLE UNDER ANY THEORY OF LAW.

11 MS. KELLY: YOUR HONOR, IT'S NOT BEING OFFERED FOR
12 THE TRUTH OF THE MATTER ASSERTED.

13 IT'S TO SHOW THAT MY CLIENT -- IF, IN FACT, AGENT
14 BERRELLEZ HAD DONE THE CORROBORATING, INVESTIGATING TECHNIQUES
15 THAT HE CLAIMED THAT HE DID, HE WOULD HAVE SEEN THAT MY CLIENT
16 DID, QUOTE/UNQUOTE, GIVE UP ERNESTO FONSECA IN HIS DECLARATION
17 TO THE POLICE.

18 SO THAT, IN FACT, WHEN HE WAS DEALING WITH AGENT
19 BERRELLEZ IN AN UNDERCOVER CAPACITY, HE WAS ALSO BLUFFING.

20 THE COURT: ALL RIGHT.

21 MR. MEDRANO: YOUR HONOR, ONE FINAL THOUGHT, IF I
22 MAY.

23 THE COURT: YES?

24 MR. MEDRANO: THAT STATEMENT IS BEING OFFERED FOR
25 ITS TRUTH; THAT WHAT HE SAID AGES AGO IS THE TRUTH.

1 THAT'S HEARSAY.

2 THAT'S THE THE TRUTH OF THE MATTER ASSERTED.

3 WE WOULD OBJECT.

4 THE COURT: YES. THE OBJECTION IS SUSTAINED.

5 YOUR OTHER REQUEST HERE TO PERMIT FURTHER
6 CROSS-EXAMINATION ON THE USE OF PROFANITY IS ALSO DENIED.

7 MS. KELLY: VERY WELL, YOUR HONOR.

8 THE COURT: NOW, DEFENDANT ZUNO HAS FILED A MOTION
9 TO STRIKE THE TESTIMONY OF THE WITNESS HARRISON FOR DISCOVERY
10 ABUSE OR FOR AN EVIDENTIARY HEARING TO POSSIBLE DISCOVERY
11 ABUSES BY THE GOVERNMENT WITH RESPECT TO INTERVIEWS WITH
12 HARRISON.

13 AT THE SAME TIME AND PERHAPS IN RESPONSE, THE
14 GOVERNMENT HAS FILED AN EX-PARTE WITH THE COURT IN-CAMERA,
15 CERTAIN D.E.A. REPORTS UNDER SEAL REQUESTING THE COURT TO
16 DETERMINE WHETHER OR NOT THEY'RE PROPERLY JENKS MATERIAL THAT
17 SHOULD BE DISCLOSED.

18 THESE TWO MOTIONS ARE RELATED AND THE COURT PROPOSES
19 TO RULE ON THEM AT THIS TIME.

20 FIRST, THE COURT WILL HOLD AN EVIDENTIARY HEARING
21 REGARDING THE SEPTEMBER 7TH NOTES AS REQUESTED.

22 IN ORDER TO DETERMINE WHETHER OR NOT THERE HAS BEEN
23 ANY DISCOVERY ABUSE, THAT WOULD REQUIRE THE TESTIMONY OF AGENT
24 SCHMIDT, I ASSUME, OR PERHAPS OTHERS.

25 IS THAT THE AGENT THAT YOU WISH TO -- STRIKE THAT.

1 THE GOVERNMENT SHOULD DETERMINE WHAT EVIDENCE IT
2 WISHES TO PRODUCE ON THE ISSUE AND MAKE THE WITNESSES
3 AVAILABLE SO THAT THEY CAN BE EXAMINED BY THE DEFENDANT'S
4 COUNSEL .

5 NOW, WITH RESPECT TO THESE OTHER -- THE SECOND PART
6 OF THE DEFENDANT'S MOTION HERE IS THAT THE COURT ORDERS THE
7 EVIDENTIARY HEARING MAY BE NOT REQUIRED WITH RESPECT TO THE
8 EXISTENCE OF D.E.A.-6 REPORTS REGARDING HARRISON -- STRIKE
9 THAT -- THE D.E.A. 6 REPORT REGARDING HARRISON'S AGREEMENT
10 WHICH THE GOVERNMENT HAD CLAIMED THERE IS NO SUCH, MAY BE
11 INCLUDED IN THE EVIDENTIARY HEARING .

12 SO IT RELATES TO THE SEPTEMBER 7TH NOTES THAT HAVE
13 NOT BEEN PRODUCED AND THE D.E.A.-6 REPORTS REGARDING
14 HARRISON'S ALLEGED AGREEMENT WITH THE D.E.A. TO ACT AS
15 COMMUNICATIONS OR TO DO SOME COMMUNICATIONS WORK FOR THEM .

16 I AM PREPARED TO RULE AND I DON'T THINK I HAVE TO
17 RULE IN-CAMERA ON THIS OTHER MATTER .

18 I'M GOING TO ORDER THE DISCLOSURE OF THE REPORT
19 SUBMITTED TO ME BY THE COURT -- BY THE PROSECUTOR IN-CAMERA,
20 THAT THOSE BE DISCLOSED TO DEFENDANT'S COUNSEL .

21 AND I BELIEVE THAT WILL TAKE CARE OF THE REMAINDER
22 OF THE ZUNO MOTION .

23 MR. DI NICOLA: YOUR HONOR, WE ALSO HAVE PENDING A
24 MOTION TO PRECLUDE CERTAIN ARGUMENTS THAT THE GOVERNMENT HAS
25 RESPONDED TO .

1 THE COURT: WELL, YES, I'M DENYING THAT MOTION.

2 MR. DI NICOLA: MAY I BE HEARD ON THAT, YOUR HONOR?

3 THE COURT: YES, YOU MAY.

4 MR. DI NICOLA: IT IS A -- IT IS A NEW MOTION AND IT
5 IS DIFFERENT FROM --

6 THE COURT: I'VE READ IT. I HAVE READ THE MOTION.

7 MR. DI NICOLA: YOUR HONOR, WE HAVE -- WE WOULD
8 SUBMIT THE GOVERNMENT CAN'T HAVE IT BOTH WAYS HERE, YOUR
9 HONOR.

10 THEY HAVE SUBMITTED THROUGH LORENZO HARRISON
11 EVIDENCE THAT CARO QUINTERO WAS --

12 THE COURT: COUNSEL, ANY PARTY TO THIS LITIGATION
13 CAN ARGUE THE CASE BASED ON THE TESTIFIED THAT HAS BEEN
14 PRESENTED IN THE TRIAL.

15 WHATEVER INFERENCES THEY CHOOSE TO MAKE OUT OF IT OR
16 NOT, THAT'S ENTIRELY UP TO THE JURY TO DETERMINE.

17 MR. DI NICOLA: YES, YOUR HONOR.

18 THE COURT: AND TO PRECLUDE A CERTAIN ARGUMENT,
19 YOU'RE ASKING THE COURT TO MAKE A DETERMINATION THAT IS
20 PROPERLY BETTER LEFT TO THE JURY.

21 MR. DI NICOLA: YOUR HONOR, THEY'RE HOLDING THE VERY
22 EVIDENCE THAT WOULD ALLOW US TO RESPOND TO THE ARGUMENT.

23 THE COURT: WELL, YOU HAD AN OPPORTUNITY TO MAKE A
24 SHOWING ABOUT THAT CONFIDENTIAL INFORMANT UNDER ROVIERO
25 (PHONETIC) AND YOU DID NOT DO SO.

1 MR. DI NICOLA: WELL, YOUR HONOR, WE DID NOT RECEIVE
2 THE REPORT UNTIL MUCH LATER, YOUR HONOR, AND THE REPORT WAS
3 GIVEN IN CONNECTION WITH THE --

4 THE COURT: WELL, NO, YOUR MOTION WAS DENIED
5 PREVIOUSLY.

6 MR. DI NICOLA: WELL, THE MOTION FOR DISCOVERY OF
7 THE REPORT WAS DENIED, YOUR HONOR, BUT THE INFORMANT IN THAT
8 REPORT SAYS THAT HE SHOWED THE HOUSE TO QUINTERO FOR THE FIRST
9 TIME IN JANUARY OF 1985.

10 WHAT WE'RE SUBMITTING, YOUR HONOR, IS THAT THAT
11 CONFIDENTIAL INFORMANT'S IDENTITY AND HIS STATEMENT DIRECTLY
12 CONTRADICT THE GOVERNMENT'S PROFFERED EVIDENCE AND WE SHOULD
13 BE PERMITTED TO HAVE ACCESS TO THAT INFORMANT'S IDENTITY IN
14 ORDER TO REBUT THE GOVERNMENT'S ARGUMENT.

15 SIMILARLY, IT'S CLASSICALLY BRADY, YOUR HONOR, AND
16 WE WOULD SUBMIT CLASSICALLY GIGLIO TO THE EXTENT THAT IT
17 IMPEACHES THE CREDIBILITY OF MR. HARRISON WHO SAYS THAT
18 QUINTERO WAS IN THE HOUSE A YEAR EARLIER.

19 THE COURT: IT DOESN'T IMPEACH THAT AT ALL MAYBE HE
20 WAS IN THE HOUSE.

21 MR. DI NICOLA: IF THE JURY WOULD --

22 THE COURT: IT COULD BE BOTH WAYS.

23 MR. DI NICOLA: WELL, YOUR HONOR, IF THE JURY WERE
24 TO BELIEVE THIS INFORMANT, IF WE HAD HIS IDENTITY, IF THE JURY
25 WERE TO BELIEVE WHAT HE SAID WAS TRUE, THAT EVIDENCE STANDING

1 ALONE COULD RESULT IN MR. ZUNO'S ACQUITTAL.

2 IN THAT RESPECT IT'S CLASSICALLY BRADY.

3 IT'S BEEN DENIED TO US.

4 THE MOTION TO PRECLUDE THEIR ARGUMENT IS SIMPLY

5 BASED UPON THEIR REFUSAL TO GIVE US THAT INFORMATION.

6 WE'RE SUGGESTING THEY CAN'T HAVE IT BOTH WAYS.

7 THEY CAN'T MAKE THE ARGUMENT ON THE EVIDENCE AND

8 THEN DENY US THE VERY INFORMATION THAT WOULD ALLOW US TO

9 RESPOND TO IT.

10 THE COURT: ALL RIGHT.

11 THE MOTION IS DENIED.

12 INCIDENTLY, NOW THAT I HAVE ORDERED THAT DISCLOSED,

13 THE --

14 MR. MEDRANO: MAY I HAVE MR. BERRELLEZ RETURN TO

15 COUNSEL TABLE AT THIS TIME?

16 THE COURT: YES.

17 WELL, WE'RE GOING TO ADJOURN NOW.

18 THE CLERK: PLEASE RISE.

19 THIS COURT IS NOW IN RECESS.

20 (RECESS TAKEN.)

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AFTER THE RECESS

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(JURY PRESENT.)

MR. MEZA: YOUR HONOR, I'VE DISCUSSED WITH COUNSEL,
AND WITH THE COURT'S PERMISSION, WE HAVE A SHORT WITNESS TO
CALL OUT OF ORDER WITH THE COURT'S APPROVAL.

THE COURT: ALL RIGHT.

MR. MEZA: THANK YOU.

WE CALL TIM MULLEN.

TIMOTHY MULLEN + DEFENSE WITNESS SWORN

THE CLERK: PLEASE BE SEATED.

PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL
YOUR LAST NAME.

THE WITNESS: TIMOTHY MULLEN, M U L L E N.

DIRECT EXAMINATION +

BY MR. MEZA:

Q. NOW, MR. MULLEN, ARE YOU EMPLOYED?

A. I AM.

Q. BY WHOM?

A. EL TORITO RESTAURANTS.

Q. AND HOW LONG HAVE YOU BEEN EMPLOYED BY THEM?

A. ABOUT 5-1/2 YEARS.

1 Q. AND WHAT IS YOUR PRESENT POSITION WITH EL TORITO
2 RESTAURANTS?

3 A. I AM THE POINT OF SALE FIELD SYSTEMS MANAGER.

4 I HANDLE ALL OF THE COMPUTERIZED REGISTERS IN THE
5 RESTAURANTS.

6 Q. WHEN YOU SAY YOU HANDLE THEM, WHAT DO YOU MEAN BY THAT?

7 A. WELL, I PROGRAM FOR THEM AND I TROUBLESHOOT PROBLEMS AND
8 I TRAIN MANAGERS AND BOOKKEEPING PERSONNEL ON WHAT TO DO.

9 Q. ALL RIGHT.

10 AND COULD YOU EXPLAIN -- SO YOU'RE FAMILIAR WITH HOW
11 THE CASH REGISTERS WORK IN TABULATION AND THAT SORT OF THING;
12 IS THAT CORRECT?

13 A. SURE, YES.

14 Q. COULD YOU JUST GIVE US A BRIEF EXPLANATION AS TO HOW THAT
15 WORKS?

16 A. YES.

17 THE REGISTER SYSTEMS WORK OFF OF A CENTRAL PROCESSOR
18 IN EACH RESTAURANT AND THEY'RE CONNECTED TO -- IN SOME
19 CASES -- ONE OR TWO JOURNAL DETAIL PRINTERS.

20 AND ANY TIME ANYTHING IS RANG INTO ANY OF THE
21 TERMINALS IN THE RESTAURANT OR THE REGISTERS, THEN THOSE
22 TRANSACTIONS PRINT IN DETAIL ON THIS JOURNAL.

23 Q. THEY PRINT IN DETAIL ON THE PRINTER?

24 A. ON THE PRINTER.

25 Q. DOES THAT PRINTER PRODUCE ANY SORT OF A WRITING?

1 A. PARDON ME?

2 Q. DOES IT PRODUCE A WRITING OF ANY KIND, THE PRINTER?

3 A. A WRITING?

4 Q. YES.

5 A. WELL, IT PRINTS EVERYTHING -- EVERY TRANSACTION THAT IS
6 INPUT INTO THE SYSTEM AND, IN FACT, IF THE PRINTER ITSELF RUNS
7 OUT OF PAPER, GOES DOWN FOR SOME REASON, TRANSACTIONS CANNOT
8 BE CONTINUED, SO IT'S NECESSARY TO OPERATE THE SYSTEM.

9 Q. NOW, THIS PROCESS YOU'VE DESCRIBED, WAS THAT DONE IN THE
10 ORDINARY COURSE AND SCOPE OF THE BUSINESS AT EL TORITO?

11 A. YES.

12 Q. AND ARE THE TRANSACTIONS THAT ARE REFLECTED THROUGH THIS
13 PROCESS, ARE THEY MADE AT OR NEAR THE TIME OF THE TRANSACTION?

14 A. YES. IT PRINTS THE TIME. ON EVERY TRANSACTION THE TIME
15 IS PRINTED.

16 Q. WHEN YOU MENTIONED TERMINAL, THOSE ARE -- THOSE ARE CASH
17 REGISTERS, AREN'T THEY?

18 A. YES. WE USE SEVERAL TERMINALS IN EACH RESTAURANT.

19 SOMETIMES EIGHT, SOMETIMES TEN IN VARIOUS PARTS.

20 Q. SO EVERYTIME SOMETHING IS RUNG UP ON A CASH REGISTER OR
21 TERMINAL, THEN IT'S FED INTO THIS PROCESSOR WHICH PRINTS IT
22 OUT SOMEPLACE IN THE BUILDING; IS THAT RIGHT?

23 A. IT SENDS IT TO THE JOURNAL PRINTER, YES.

24 Q. NOW, IF I COULD DIRECT YOUR ATTENTION TO DEFENDANT'S
25 EXHIBIT 4 D'S IN THAT MANILA ENVELOPE THERE FOR IDENTIFICATION

1 AND ASK YOU TO OPEN IT AND REMOVE ITS CONTENTS.

2 A. (WITNESS COMPLIES.)

3 YES. THIS IS A JOURNAL TAPE HERE. THIS IS OFF A
4 JOURNAL PRINTER.

5 MR. MEZA: INDICATING FOR THE RECORD, WITH THE
6 COURT'S APPROVAL, THAT IT APPEARS TO BE A TAPE THAT IS ROLLED
7 UP.

8 THE COURT: IS THAT EXHIBIT -- WHAT'S THE EXHIBIT
9 NUMBER FOR IDENTIFICATION?

10 MR. MEZA: 4 D'S, YOUR HONOR, THE CONTENTS OF 4 D.

11 THE COURT: ALL RIGHT.

12 GO AHEAD.

13 BY MR. MESA:

14 Q. AND, AGAIN, WOULD YOU EXPLAIN WHAT THAT IS.

15 A. THIS IS THE JOURNAL TAPE.

16 THIS IS THE TAPE THAT I'VE TOLD YOU ABOUT THAT
17 PRINTS EVERY TRANSACTION AND THE INFORMATION WITHIN THAT
18 TRANSACTION.

19 Q. ALL RIGHT.

20 AND WHERE DID YOU GET THAT SPECIFIC TAPE?

21 A. I ORDERED THIS SPECIFIC TAPE TO BE PULLED FROM OUR
22 RECORDS RETENTION DEPARTMENT.

23 Q. AND WHERE IS YOUR RECORDS RETENTION DEPARTMENT?

24 A. IN IRVINE, CALIFORNIA.

25 Q. ALL RIGHT.

1 NOW WHAT DOES THAT TAPE SPECIFICALLY REFER TO?

2 A. WELL, THIS TAPE CONTAINS EVERYTHING THAT HAPPENED IN THE
3 BUSINESS DAY OF JULY 25TH, 1989, AND -- SHALL I GO ON.

4 Q. YES. DOES IT INDICATE WHICH EL TORITO?

5 A. IT DOES NOT INDICATE THE EL TORITO, NO.

6 Q. ALL RIGHT.

7 IS THERE ANY WAY OF DETERMINING WHICH EL TORITO IT
8 REFERS TO?

9 A. WELL, THESE TAPES ARE SENT INTO RECORD RETENTION BY THE
10 OFFICE PERSONNEL IN THE INDIVIDUAL RESTAURANTS AND THEY'RE
11 CLASSIFIED THAT WAY.

12 SO WHEN I ORDER A TAPE TO BE PULLED, I NEED THE
13 RESTAURANT -- THE NAME OF THE RESTAURANT AND THE DATE THAT I
14 WANT PULLED AND THESE TAPES ARE IN ENVELOPES AND SENT TWICE A
15 WEEK FROM THE RESTAURANTS LABELED BY THE OFFICE PERSONNEL THAT
16 WORK THERE.

17 Q. NOW, IF I COULD -- IN THIS TAPE THAT YOU HAVE IN FRONT OF
18 YOU NOW IN YOUR HAND, THAT IS THE ORIGINAL RECORD THAT WAS
19 TRANSFERRED FROM THE PARTICULAR EL TORITO RESTAURANT; IS THAT
20 CORRECT?

21 A. THIS IS, YES.

22 Q. AND WHICH RESTAURANT DID YOU TAKE A REQUEST OF OF THIS
23 PARTICULAR TAPE?

24 A. WEST COVINA LOCATION, NUMBER 27.

25 Q. NOW, THERE APPEARS TO BE SOME PINK HIGHLIGHTS ON THAT

1 TAPE; IS THAT CORRECT?

2 A. YES.

3 Q. NOW, ARE THOSE HIGHLIGHTS, ARE THEY PLACED THERE IN THE
4 ORDINARY COURSE AND SCOPE OF THE BUSINESS DAY?

5 A. NO, THEY'RE NOT.

6 Q. SO WHEN YOU RECEIVED THE TAPE, DID IT HAVE THOSE PINK
7 HIGHLIGHTS ON THEM?

8 A. NO, IT DIDN'T.

9 Q. DO YOU KNOW HOW THOSE PINK HIGHLIGHTS GOT ON THE TAPE?

10 A. I PUT THEM THERE.

11 Q. AND WHY DID YOU PUT THEM THERE?

12 A. I WAS REQUESTED TO FIND THE TRANSACTIONS OF AN INDIVIDUAL
13 SERVER NUMBER ON THIS TAPE, SO THAT'S WHAT I DID.

14 Q. FINE.

15 AND IF I COULD DIRECT YOUR ATTENTION TO JUST ONE OF
16 THE -- FOR EXAMPLE, THE FIRST PINK MARKING ON THERE.

17 A. OKAY. WELL, I DON'T HAVE THE FIRST ONE BUT --

18 Q. ALL RIGHT.

19 JUST WHICHEVER ONE IS THERE.

20 A. OKAY.

21 Q. IF YOU COULD, EACH -- THERE ARE A SERIES OF NUMBERS AND
22 WORDS IN THAT PARTICULAR SECTION, CORRECT?

23 A. YES.

24 Q. ALL RIGHT.

25 AND IF COULD YOU EXPLAIN TO US WHAT THE SIGNIFICANCE

1 IS OF EACH OF THOSE NUMBERS AND WORDS.

2 A. SURE. OKAY.

3 WHAT THE SYSTEM DOES IS IT PRINTS A -- IT'S CALLED A
4 TRAILER LINE AND IT HAS SOME INFORMATION, READING LIKE YOU'D
5 READ A BOOK FROM LEFT TO RIGHT AND THERE'S A TRANSACTION
6 NUMBER.

7 AT THE BEGINNING OF THE BUSINESS DAY, THE
8 TRANSACTION NUMBERS START AT ZERO AND EVERY TRANSACTION IS
9 NUMBERED, ANYTHING THAT IS DONE HAS ITS OWN NUMBER.

10 THAT'S THE NUMBER ON THE FAR LEFT THAT GOES UP INTO
11 THE THOUSANDS ON A BUSY DAY.

12 Q. WHICH NUMBER ARE YOU REFERRING TO?

13 A. THIS PARTICULAR ONE IS 3008.

14 Q. SO --

15 A. THE VERY LEFT NUMBER HERE.

16 Q. AND SO THAT'S REFERRING TO THE 3008TH TRANSACTION THAT
17 DAY?

18 A. FOR THAT DAY, YES.

19 Q. THAT OCCURRED IN THE BUILDING?

20 A. CORRECT.

21 Q. FROM ONE OF THE MULTIPLE TERMINALS THAT YOU'RE REFERRING
22 TO, RIGHT?

23 A. YES.

24 Q. AND WHAT IS THE NEXT NOTATION?

25 A. THE NEXT ONE WOULD BE THE SERVER NUMBER, THE NUMBER

1 THAT'S ASSIGNED TO AN INDIVIDUAL SERVER TO RING IN THEIR SALES
2 FOR THE DAY.

3 Q. AND WHAT IS THE SERVER NUMBER ON THAT DAY?

4 A. 33.

5 Q. AND WAS THAT THE NUMBER YOU WERE ASKED TO LOOK FOR ON
6 THAT PARTICULAR DAY?

7 A. YES, IT IS.

8 Q. SO EVERY ONE OF THOSE PINK MARKERS YOU MARKED OUT SERVER
9 NUMBER 33, CORRECT?

10 A. YES.

11 Q. WHAT'S THE NEXT NOTATION?

12 A. THE NEXT IS THE DATE.

13 Q. WHICH IS?

14 A. 25 JULY '89.

15 Q. AND THE NEXT NOTATION?

16 A. THE NEXT IS THE TERMINAL NUMBER.

17 I TOLD YOU THERE ARE SEVERAL TERMINALS IN MANY OF
18 THE RESTAURANTS.

19 IT PRINTS THE TERMINAL NUMBER THAT IT IS RUNG IN OFF
20 OF.

21 Q. WHICH TERMINAL WOULD IT BE IN THAT CASE?

22 A. IN THIS CASE IT'S TERMINAL 6.

23 Q. AND WHAT'S THE NEXT NOTATION?

24 A. THE NEXT ONE IS AN INSIGNIFICANT NUMBER, IT'S 01.

25 IT'S A LOCATION NUMBER THAT WE REALLY DON'T USE.

1 Q. AND THE NEXT NOTATION?

2 A. WOULD BE THE TIME.

3 Q. ALL RIGHT.

4 WHAT TIME DOES IT INDICATE?

5 A. THIS PARTICULAR ONE IS 1642 MILITARY TIME, WHICH WOULD BE
6 4:42.

7 Q. P.M.?

8 A. YES.

9 Q. NOW, OTHER THAN THE TRANSACTION NUMBER -- WELL, WHAT IS
10 THE SIGNIFICANCE OF HAVING THE TRANSACTION NUMBER AND THE DATE
11 AND THE TIME?

12 WHAT DOES IT REFLECT OR WHAT DOES IT CONNECT OR IS
13 IT CONNECTIONED TO ANY INFORMATION -- ADDITIONAL INFORMATION
14 ON THE TAPE?

15 A. WELL, OKAY.

16 THE WAY THE SYSTEM WORKS ABOVE THIS TRAILER LINE IS
17 WHERE YOU FIND THE ITEMS ASSOCIATED WITH THAT TRAILER LINE OR
18 THE TRANSACTION ASSOCIATED.

19 YOU KNOW, IF SOMEONE'S CLOCKING IN, IT'S GOING TO BE
20 ABOVE THE TRAILER LINE.

21 IF THEY'RE RINGING IN ITEMS, IF THE ITEMS ABOVE THE
22 TRIAL LOWER LINE UP UNTIL THE NEXT TRANSACTION NUMBER.

23 Q. SO IF COULD YOU JUST TELL US WHAT THE -- WHAT APPEARS
24 ABOVE THE TRAILER LINE?

25 A. THIS ONE HAS -- IT PRINTS THE PRICE AND THE ITEM

1 MNEMONICS THAT WE PROGRAM IN. THIS SAYS 295 IMPORT. THAT'S
2 AN IMPORT BEER.

3 Q. ALL RIGHT.

4 WHAT ELSE IS THERE?

5 A. \$2.00 DOMESTIC BEER, 3.25 CORONA, THAT'S A CORONA BEER.

6 \$1.25 SOFT DRINK, 8 CENT FOOD TAX ON THE SOFT DRINK,
7 9.53 CASH BAR, 9.53 CASH.

8 ALL OF THEM WILL LOOK LIKE THIS.

9 Q. SO BASICALLY AT ABOUT FOUR IN THE AFTERNOON, THOSE ITEMS
10 WERE PURCHASED FROM THAT TERMINAL AND SERVED BY NUMBER 33,
11 WHOEVER THAT HAPPENS TO BE; IS THAT RIGHT?

12 A. THAT'S CORRECT.

13 MR. MEZA: I HAVE NOTHING FURTHER, YOUR HONOR.

14 THE COURT: YOU MAY CROSS-EXAMINE THE WITNESS.

15 MR. MEZA: IF I MIGHT, CAN I OFFER EXHIBIT 4 D'S
16 INTO EVIDENCE.

17 THE COURT: YES, IT MAY BE RECEIVED.

18 MR. MEZA: THANK YOU.

19 (EXHIBIT DDDD # RECEIVED IN EVIDENCE.)

20 THE COURT: DO YOU WISH TO CROSS-EXAMINE THIS
21 WITNESS?

22 MR. CARLTON: ONE MOMENT, YOUR HONOR.

23 (BRIEF PAUSE.)

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CROSS-EXAMINATION +

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BY MR. CARLTON:

Q. MR. MULLEN, JUST REFERRING AGAIN TO EXHIBIT DDD, WHICH IS THIS JOURNAL PRINTOUT, IS THERE ANYTHING ON THIS PRINTOUT WHICH IDENTIFIES TO WHOM THESE PARTICULAR ITEMS ARE SOLD?

A. TO WHOM THEY'RE SOLD?

Q. YES.

A. NOT ON THIS PRINTOUT.

Q. AND YOU SAY THERE CAN BE --

WELL LOOKING AT EXHIBIT DDD, IS THERE SOME INDICATION AS TO HOW MANY TRANSACTIONS WERE COMPLETED ON THAT DATE?

A. YES. YOU COULD COUNT THE TRANSACTION FOR THE ENTIRE DAY OR FOR THAT PARTICULAR NUMBER. I'M SORRY.

Q. AND LOOKING AT THIS PARTICULAR TAPE, IS IT CORRECT THAT THERE WERE 3,596 TRANSACTIONS ON THAT DATE?

A. YOU COULD -- THE LAST TRANSACTION NUMBER ON THE END OF THE TAPE WOULD BE THE LAST TRANSACTION FOR THAT DAY.

Q. IF I REPRESENT TO YOU THAT THAT IS THE TRANSACTION NUMBER WHICH APPEARS AT ZERO COLON ZERO ZERO ON JULY 26TH, 1989, DOES THAT MAKE SENSE?

A. THAT WOULD MAKE SENSE BECAUSE WE'RE OPEN PAST MIDNIGHT.

THE COURT: MIDNIGHT IS THE CUTOFF TO START A NEW SERIES OF TRANSACTIONS AFTER MIDNIGHT?

THE WITNESS: NO, SIR.

1 WHAT STARTS THE TRANSACTIONS OVER WOULD BE A
2 FUNCTION PERFORMED ON THE SYSTEM CALLED THE START-A-DAY WHICH
3 THE BOOKKEEPER WOULD DO THE NEXT MORNING BUT ANY TRANSACTIONS
4 RANG IN AFTER MIDNIGHT ON THE SAME BUSINESS DAY WOULD THEN
5 CHANGE DATE AND TIME .

6 THE SYSTEM KEEPS TIME UNLESS IT'S RESET .

7 BY MR. CARLTON:

8 Q. AND THE TIME THAT'S REFLECTED IN THE RIGHT-HAND COLUMN OF
9 THIS TIME IS THE TIME THAT THE WAITER OR WAITRESS GOES TO THE
10 REGISTER AND RINGS IT UP?

11 A. THAT'S CORRECT .

12 THE COURT: NOW, DOES THIS TAPE COVER A PARTICULAR
13 PERIOD OF TIME OR A WHOLE DAY OR WHAT?

14 THE WITNESS: IT COVERS A WHOLE DAY .

15 THE COURT: A WHOLE DAY?

16 WHAT DAY?

17 THE WITNESS: WE HAVE ONE OF THESE FOR EVERY DAY .

18 THE COURT: FOR EVERY DAY?

19 THE WITNESS: YES, SIR .

20 THE COURT: NO, WHAT DID YOU HAVE HERE, THOUGH?

21 THE WITNESS: THIS COVERS THE BUSINESS DAY, JULY
22 25TH, 1989 .

23 THE COURT: AND WHAT HOURS DOES THAT INCLUDE?

24 THE WITNESS: IT WOULD INCLUDE, AS FAR AS SALES GO,
25 FROM 11:00 IN THE MORNING UNTIL, I WOULD SAY, AT LEAST

1 MIDNIGHT .

2 SEVERAL OF OUR RESTAURANTS, THE BARS ARE OPEN UNTIL
3 1:15, 1:30. SOME OF THEM ARE ONLY OPEN UNTIL MIDNIGHT, SIR .

4 MR. CARLTON: NOTHING FURTHER, YOUR HONOR .

5 THE COURT: ALL RIGHT .

6 YOU MAY STEP DOWN .

7 THE WITNESS: THANK YOU .

8 (WITNESS EXCUSED.)

9 MS. KELLY: YOUR HONOR, WE'RE TAKING ANOTHER WITNESS
10 OUT OF ORDER WITH THE COURT'S PERMISSION .

11 THE COURT: COME FORWARD PLEASE .

12 MS. KELLY: YOUR HONOR, THE DEFENSE IS CALLING TERRY
13 ALVAREZ .

14
15 TERRY ALVAREZ + DEFENSE WITNESS SWORN

16
17 THE CLERK: PLEASE BE SEATED .

18 PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL
19 YOUR LAST NAME .

20 THE WITNESS: MRS. TERRY ALVAREZ, A L V A R E Z .

21 MS. KELLY: YOUR HONOR, COULD I APPROACH WITH SOME
22 EXHIBITS .

23 THE COURT: YES .

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DIRECT EXAMINATION +

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BY MS. KELLY:

Q. GOOD MORNING, MRS. ALVAREZ.

A. GOOD MORNING.

Q. CAN YOU TELL US HOW YOU'RE EMPLOYED?

A. I'M EMPLOYED AT THE EL TORITO RESTAURANT IN WEST COVINA,
NUMBER 27.

Q. AND IN WHAT CAPACITY?

A. I'M A COCKTAIL WAITRESS.

Q. COCKTAIL WAITRESS FOR THE BAR AREA?

A. YES.

Q. AND WERE YOU EMPLOYED AS A COCKTAIL WAITRESS FOR THE BAR
AREA ON JULY 25TH, 1989?

A. YES.

Q. DO YOU SEE BEFORE YOU EXHIBIT DDDD, IT'S QUADRUPLE D, I'M
SORRY. IT'S IN THE ENVELOPE.

MS. KELLY: I'M SORRY, YOUR HONOR. I BELIEVE IT'S
ON THE COUNTER.

THE WITNESS: YES.

BY MS. KELLY:

Q. DO YOU RECOGNIZE THIS EXHIBIT?

A. YES.

Q. AND IS THIS A JOURNAL TAPE THAT RECORDS ALL THE
TRANSACTIONS FOR THE EL TORITO ON THE DATE OF JULY 25TH, 1989?

A. YES.

1 Q. SO THAT THIS PARTICULAR TAPE INCLUDES TRANSACTIONS FOR
2 SERVICE OTHER THAN YOURSELF; IS THAT CORRECT?

3 A. YES.

4 Q. NOW, MRS. ALVAREZ, IF YOU COULD PLEASE LOOK AT WHAT HAS
5 BEEN MARKED AS DDD-1 WHICH IS IN FRONT OF YOU WHICH IS A
6 PRINTED SUMMARY.

7 A. OKAY.

8 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

9 A. YES.

10 Q. AND IS THIS A SUMMARY OF ALL OF THE SALES THAT YOU HAD ON
11 JULY 25TH, 1989?

12 A. YES.

13 Q. AND IS THIS A SUMMARY THAT YOU COMPARED TO THE EXHIBIT OF
14 THE JOURNAL TAPE FOR JULY 25TH, 1989?

15 A. YES.

16 Q. AND YOU ARE THE SERVER WHO'S IDENTIFIED AS SERVER NUMBER
17 33?

18 A. YES.

19 Q. AND CAN YOU TELL FROM EXHIBIT DDD-1, WHAT TIME IT WAS
20 THAT YOU BEGAN WORKING AT THE EL TORITO ON JULY 25TH, 1989?

21 A. IT GIVES THE TIME AS 1315, WHICH WOULD BE A QUARTER PAST
22 1:00.

23 Q. NOW, WOULD YOU ALSO LOOK AT WHAT HAS BEEN MARKED AS
24 EXHIBIT DDD-2 AND TELL ME IF THAT'S AN EXHIBIT THAT YOU'VE
25 SEEN BEFORE.

1 A. YES.

2 Q. AND IS THIS A SUMMARY OF THE DRAFT AND BOTTLE BEER SALES
3 THAT YOU SERVED ON THE NIGHT OF JULY 25TH, 1989?

4 A. YES.

5 Q. AND HAVE YOU HAD AN OPPORTUNITY TO COMPARE THAT SUMMARY
6 WITH THE JOURNAL TAPE THAT IS MARKED AS QUADRUPLE D.

7 AND IS IT AN ACCURATE SUMMARY?

8 A. YES.

9 Q. NOW DIRECTING YOUR ATTENTION TO JULY 25TH, 1989, DO YOU
10 RECALL AN OCCASION WHERE FOUR GENTLEMEN CAME INTO YOUR BAR
11 AREA?

12 A. YES.

13 Q. AND WAS THERE -- HOW WAS IT THAT YOU CAN RECALL AT THIS
14 TIME THAT THERE WERE FOUR GENTLEMEN WHO CAME INTO THE BAR
15 AREA?

16 A. WELL, I CAN RECALL THAT FOUR GENTLEMEN HAD BEEN SEATED
17 TOWARDS THE BACK OF THE BAR.

18 I RECALL THIS BECAUSE THEY WERE SPEAKING IN SPANISH
19 AT THE TIME.

20 WHEN I APPROACHED THE TABLE, I BELIEVE THERE WAS ONE
21 GENTLEMEN WHO WOULD SPEAK ENGLISH TO ME.

22 I REMEMBER THAT -- I BELIEVE THERE WERE MAYBE EVEN
23 ANOTHER COUPLE OF GENTLEMEN THAT COULD PROBABLY SPEAK ENGLISH,
24 BUT THERE WAS ONE IN PARTICULAR THAT WOULD SPEAK DIRECTLY TO
25 ME.

1 Q. AND DO YOU REMEMBER WHAT THIS GENTLEMAN LOOKED LIKE?

2 A. YES.

3 Q. CAN YOU DESCRIBE HIM FOR US?

4 A. HE WAS A LARGER MAN, MORE THAN LIKELY IN HIS LATE 30'S,
5 MAYBE EARLY 40'S, HAIR GREY, VERY LARGE MOUSTACHE.

6 Q. AND HAVE YOU SEEN THIS MAN HERE TODAY?

7 A. I BELIEVE SO.

8 Q. AND WHERE IS IT THAT YOU SAW HIM?

9 A. OUTSIDE IN THE HALLWAY.

10 Q. NOW, LOOKING AT THE TICKET REGISTER AND THE SUMMARY OF
11 ALL OF THE SALES THAT YOU HAD FOR THAT DAY WHICH IS DDD-1, DO
12 YOU RECALL ANY OF THE -- OR IS THERE ANYTHING ON THIS
13 PARTICULAR REGISTER TAPE OR SUMMARY THAT CAUSES YOU TO
14 REMEMBER WHAT THE PERSONS THAT WERE SITTING AT THE TABLE WERE
15 DRINKING?

16 A. YES. IT SHOWS HERE ON THE SUMMARY THAT AT THE TIME 1642,
17 WHICH WOULD HAVE BEEN 4:42, WHICH WAS MY THIRD TRANSACTION,
18 IMPORT BEER, DOMESTIC BEER, SOFT DRINK, IT --

19 THE COURT: SPEAK UP A LITTLE BIT, PLEASE.

20 THE WITNESS: IT BRINGS TO MIND THAT SINCE THERE
21 WERE FOUR ITEMS HERE AND THERE WERE FOUR GENTLEMEN THERE,
22 SINCE I DID CLEARLY REMEMBER THAT THEY WERE -- THAT SOMEONE
23 HAD BEEN DRINKING AN IMPORT BEER, IT LEADS ME TO BELIEVE THAT
24 THIS WAS ONE OF THE TRANSACTIONS FOR THAT TABLE.

25 //

1 BY MS. KELLY:

2 Q. NOW, YOU ALSO SEE BEFORE YOU WHAT 'S BEEN MARKED AS -- A
3 SERIES OF PHOTOGRAPHS THAT 'S BEEN MARKED -- PREVIOUSLY MARKED
4 AS 4 D 'S, DDDD-3 AND DDDD-4 AND DDDD-5.

5 AND DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

6 A. YES.

7 Q. AND WHAT ARE THOSE PHOTOGRAPHS?

8 A. THEY'RE PHOTOGRAPHS OF THE BAR AREA IN THE RESTAURANT.

9 Q. AND DO YOU HAVE A RECOLLECTION OF WHERE THESE GENTLEMEN
10 WERE SITTING IN THE BAR?

11 A. YES.

12 Q. WHERE WAS THAT?

13 AND ON WHAT PICTURE IS THAT REPRESENTED?

14 A. THIS IS ON PICTURE DDDD-5.

15 IN THIS PICTURE THEY WERE SEATED IN THE CENTER ROW
16 AT THE FURTHEST TABLE TO THE BACK.

17 Q. NOW, THERE CAME A TIME WHEN YOU GOT OFF WORK; ISN'T THAT
18 RIGHT?

19 A. YES.

20 Q. DO YOU REMEMBER WHAT TIME THAT WAS?

21 A. APPROXIMATELY, IT WAS AFTER 9:00, IT WAS AFTER 9:00.

22 Q. AND DO YOU RECALL APPROXIMATELY HOW LONG THESE GENTLEMEN
23 WERE IN THE BAR TOGETHER?

24 A. IT WOULD HAVE BEEN A COUPLE OF HOURS. QUITE POSSIBLY
25 TWO, QUITE POSSIBLY THREE.

1 Q. NOW YOU WORKED IN AS A WAITRESS SERVING FOOD FOR A NUMBER
2 OF YEARS; IS THAT RIGHT?

3 A. YES.

4 Q. AND YOU WORKED SERVING COCKTAILS FOR A NUMBER OF YEARS;
5 IS THAT RIGHT?

6 A. YES.

7 Q. IN YOUR EXPERIENCE WORKING AS A COCKTAIL WAITRESS AND
8 FOOD SERVER, DO YOU TEND TO REMEMBER YOUR CUSTOMERS BY THE
9 TABLE AT WHICH THEY SIT?

10 A. YES.

11 Q. DO YOU ALSO TEND TO REMEMBER THEM BY WHAT THEIR DRINKING?

12 A. MORE EASILY, YES.

13 Q. AND OCCASIONALLY YOU WOULD RECALL CERTAIN OF THEIR
14 FEATURES; IS THAT RIGHT?

15 A. YES.

16 Q. AND WHAT WAS IT ABOUT THE LARGE GENTLEMEN WITH THE LARGE
17 MUSTACHE THAT MADE YOU RECALL HIM, IF YOU KNOW?

18 A. WELL, BECAUSE HE REMINDED ME OF SOMEONE THAT I KNEW OR
19 STILL KNOW.

20 MS. KELLY: YOUR HONOR, AT THIS TIME I'D LIKE TO
21 MOVE EXHIBITS DDD-1, DDDD-2, AND THE 3, 4 AND 5 SERIES.

22 MR. MEDRANO: YOUR HONOR, MAY THAT BE RESERVED UNTIL
23 AFTER CROSS-EXAMINATION?

24 THE COURT: YES.

25 MS. KELLY: ALL RIGHT.

1 IF I MAY HAVE A MINUTE .

2 (BRIEF PAUSE.)

3 BY MS. KELLY:

4 Q. NOW, CAN YOU -- CAN YOU TELL FROM LOOKING AT THE EXHIBIT,
5 THE SUMMARY OF ALL OF YOUR TRANSACTIONS FOR JULY 25TH 1989,
6 CAN YOU TELL WHETHER THE BAR WAS PARTICULARLY CROWDED ON THAT
7 DAY?

8 A. WELL, FROM THE SMALL AMOUNT OF TRANSACTIONS THAT ARE
9 SHOWN ON THE SUMMARY, IT WAS OBVIOUSLY A SLOW NIGHT .

10 Q. IS TUESDAY NIGHT GENERALLY A SLOW NIGHT AT THE EL TORITO
11 BAR AREA?

12 A. YES .

13 MR. MEDRANO: OBJECTION, YOUR HONOR .

14 NO TESTIMONY OF THE NIGHT OF THE WEEK .

15 ASSUMES A FACT NOT IN EVIDENCE .

16 MS. KELLY: OH, I 'M SORRY .

17 BY MS. KELLY:

18 Q. HAVE YOU HAD AN OPPORTUNITY TO DETERMINE WHAT DAY OF THE
19 WEEK JULY 25TH, 1989 WAS?

20 A. A TUESDAY NIGHT .

21 Q. I 'M SORRY .

22 DID YOU SAY AGAIN TUESDAY NIGHTS AS A GENERAL RULE
23 ARE SLOW NIGHTS FOR THE EL TORITO RESTAURANT?

24 A. AS A GENERAL RULE .

25 Q. NOW, ON EXHIBIT DDDD-5, ARE YOU ABLE TO MARK WHERE THE

1 TABLE IS?

2 A. YES.

3 MS. KELLY: YOUR HONOR, COULD I ASK THE WITNESS TO
4 MARK IT?

5 THE COURT: YES.

6 DESCRIBE HOW YOU HAVE MARKED IT.

7 THE WITNESS: I HAVE PLACED AN "X" OVER THE TABLE IN
8 THE PICTURE WHERE I BELIEVE THEY WERE SITTING.

9 BY MS. KELLY:

10 Q. AND THAT'S - WHAT? - WITH THE RED PEN?

11 A. WITH THE RED PEN.

12 Q. NOW, DIRECTING YOUR ATTENTION TO EXHIBIT DDDD-2, WHICH IS
13 THE SUMMARY OF ALL OF THE DRAFT AND BOTTLE BEER SALES, FROM
14 THIS PARTICULAR SUMMARY, WOULD YOU BE ABLE TO EXTRACT HOW MANY
15 SALES OF BOTTLED BEER YOU HAD VERSUS HOW MANY SALES OF DRAFT
16 BEERS YOU HAD FOR THE EVENING OF JULY 25TH, 1989?

17 A. YES.

18 MS. KELLY: VERY WELL, YOUR HONOR.

19 I HAVE NOTHING FURTHER.

20 BY MS. KELLY:

21 Q. I'M SORRY, MRS. ALVAREZ.

22 I FORGOT TO ASK YOU ABOUT THE SOUND SYSTEM THAT IS
23 FUNCTIONING IN THE BAR AREA.

24 THERE IS MUSIC PLAYING IN THE BAR AREA; IS THAT
25 RIGHT?

1 A. YES.

2 Q. AND IS THIS MUSIC SOMETHING THAT THE WAITRESSES ARE ABLE
3 TO TURN UP AND TURN DOWN?

4 A. ON OCCASION.

5 MS. KELLY: YOUR HONOR, I THINK THAT CONCLUDES MY
6 EXAMINATION.

7 THE COURT: YOU MAY CROSS-EXAMINE THE WITNESS.

8 MR. MEDRANO: MAY I HAVE ONE MOMENT, YOUR HONOR?

9 THE COURT: YES.

10 (BRIEF PAUSE.)

11

12

CROSS-EXAMINATION +

13 BY MR. MEDRANO:

14 Q. GOOD MORNING, MRS. ALVAREZ.

15 A. GOOD MORNING.

16 Q. IN THAT MONTH OF JULY OF 1989 LAST YEAR, WERE YOU ON A
17 REGULAR WORK SHIFT AT THAT EL TORITO?

18 A. PLEASE REPEAT THE QUESTION.

19 Q. LAST JULY WHEN YOU WERE WORKING AT EL TORITO, WERE YOU ON
20 A REGULAR TIME SHIFT, A SPECIFIC TIME?

21 A. YES.

22 Q. AND USUALLY WHAT WAS THAT SHIFT THAT YOU WORKED?

23 A. FROM ABOUT 4:00 TO AROUND 10:00.

24 Q. AND WAS THAT VERY CONSISTENT?

25 WERE YOU ALWAYS ON THE 4:00 TO 10:00 P.M. SHIFT?

1 A. WAS I ALWAYS ON THE 4:00 TO 10:00 P.M. SHIFT, YOU SAID?

2 Q. THE 4:00 TO 10:00 P.M. SHIFT LAST YEAR IN THE SUMMER.

3 A. YES.

4 Q. WELL, SOMETIMES YOU WOULD BE ON BE A DIFFERENT SHIFT,
5 CORRECT?

6 A. ON A TUESDAY.

7 Q. NO, JUST TALKING GENERALLY, NOT JUST TUESDAY.

8 SOMETIMES YOU'D HAVE A SHIFT OTHER THAN A 4:00 TO
9 10:00 P.M., CORRECT?

10 A. YES, SIR.

11 Q. AND WHAT HOURS WOULD THAT BE WHEN YOU DID A DIFFERENT
12 SHIFT?

13 A. I COULD START ANYWHERE FROM 5:00 OR 6:00 O'CLOCK TILL
14 MAYBE AS LATE AS 2:00.

15 Q. AND HOW LONG TOTAL HAVE YOU BEEN WORKING AT THIS
16 PARTICULAR EL TORITO RESTAURANT, THE ONE IN WEST COVINA?

17 A. THREE YEARS.

18 Q. AND WHEN DID YOU START WORKING THERE?

19 A. I STARTED WORKING AT THAT UNIT IN OCTOBER OF '86, '87.

20 Q. ABOUT OCTOBER OF '87?

21 A. OKAY.

22 Q. DOES THAT SOUND RIGHT TO YOU?

23 A. YES.

24 Q. WHEN YOU WENT TO THAT PARTICULAR UNIT IN WEST COVINA, DID
25 YOU THEN WORK THERE BASICALLY CONTINUOUSLY UNTIL THE PRESENT

1 TIME?

2 A. YES.

3 Q. NOW, BEFORE OCTOBER OF 1987, YOU WERE AT A DIFFERENT
4 UNIT, RIGHT?

5 A. YES.

6 Q. WHERE WAS THAT UNIT?

7 A. IN LA MIRADA.

8 Q. AND HOW LONG WITH YOU AT THAT PARTICULAR UNIT?

9 A. SINCE APRIL OF THAT YEAR.

10 Q. AND PRIOR TO THAT NOW, YOU WERE STILL WORKING WITH EL
11 TORITO?

12 A. NO.

13 Q. SO LA MIRADA WAS THE FIRST TIME YOU STARTED WORKING FOR
14 EL TORITO?

15 A. RIGHT.

16 Q. NOW, LET'S JUMP BACK TO THE EL TORITO AT WEST COVINA.

17 PARDON ME.

18 HOW MANY HOURS A WEEK WOULD YOU ESTIMATE THAT YOU
19 WERE WORKING AT THAT EL TORITO?

20 A. 35 TO 40 HOURS.

21 Q. NOW, IN ADDITION TO THAT JOB, MRS. ALVAREZ, DID YOU ALSO
22 HAVE ANY OTHER EMPLOYMENT IN ADDITION TO THE EL TORITO
23 EMPLOYMENT?

24 A. AT ONE TIME.

25 Q. AND WHAT WAS THAT?

1 A. I WAS ALSO A SERVER EMPLOYED BY THE RESTAURANT.

2 Q. AND SO YOU DOING BOTH JOBS AT THE SAME TIME?

3 A. YES.

4 Q. NOW, LET ME TAKE YOU TO THAT PARTICULAR NIGHT OF JULY 25
5 OF LAST YEAR.

6 DO YOU RECALL IT AS A TUESDAY NIGHT?

7 A. YES.

8 Q. NOW, WHEN WERE YOU WORKING THAT NIGHT, WOULD YOU SERVE
9 ONLY IN THE BAR AREA WHERE THESE FOUR MEN WERE SEATED?

10 A. ONLY IN THE BAR AREA.

11 Q. AND DID YOU EVER GET TO SERVE IN THE RESTAURANT AREA OR
12 DELIVER DRINKS IN THE RESTAURANT AREA?

13 A. RARELY.

14 Q. BUT THAT DOES HAPPEN, RIGHT?

15 A. ONLY IF THE DRINK IS ORDERED FROM THE BAR AND THEN SOME
16 OF THE CUSTOMERS GO INTO THE DINING AREA, THEN I MAY BRING THE
17 DRINKS TO THEM, BUT I WOULD NOT HAVE AN OCCASION TO WORK
18 SPECIFICALLY IN THE DINING AREA.

19 Q. BUT ON OCCASION A CUSTOMER COMES IN AND FIRST STARTS AT
20 THE BAR AREA AND HAS A DRINK THERE, RIGHT?

21 A. YES.

22 Q. WHILE THEY'RE WAITING FOR THEIR NAME TO BE CALLED TO BE
23 SEATED?

24 A. RIGHT.

25 Q. THAT PUTS YOU AT A VERY CROWDED TIME, CORRECT?

1 A. YES.

2 Q. AND IF THEY START IN THE BAR, BUT THEN THEIR NAME IS
3 CALLED, THEY 'LL GO TO THE RESTAURANT AREA TO EAT, RIGHT?

4 A. YES.

5 Q. AND THEN YOU 'LL ASSIST THEM IN CARRYING, IF NECESSARY,
6 THEIR DRINKS TO THEIR TABLE?

7 A. YES.

8 Q. AND AT THAT TIME YOU HAVE TO GO INTO THE RESTAURANT AREA
9 AS WELL, THE EATING AREA?

10 A. YES.

11 Q. ON JULY 25, YOU CAME ON DUTY AT WHAT TIME AGAIN?

12 A. 4:15.

13 Q. AND YOU QUIT AT WHAT TIME ON THAT DAY?

14 A. AFTER 9:00.

15 Q. SO IT'S ABOUT A FIVE-HOUR SHIFT THAT YOU DID THAT DAY; IS
16 THAT RIGHT?

17 A. ABOUT THAT, YES.

18 Q. NOW, TYPICALLY -- STRIKE THAT.

19 YOU SAID THAT YOU AVERAGE USUALLY ABOUT 30, 35 HOURS
20 A WEEK?

21 A. YES.

22 Q. SO THEN THAT WAS A REGULAR SHIFT FOR YOU THAT FIVE-HOUR
23 SHIFT ON TUESDAY THE 25TH?

24 A. YES.

25 Q. ON THAT DAY, THAT EVENING, JULY 25, THESE FOUR MEN THAT

1 YOU DISCUSSED FOR US WERE NOT THE ONLY MEN IN THE BAR AREA,
2 RIGHT?

3 A. NO.

4 Q. AND THERE WERE OTHER CUSTOMERS THAT EVENING AS WELL WHEN
5 YOU WORKED ON JULY 25?

6 A. YES.

7 Q. IN ADDITION TO THE FOUR MEN THAT YOU WERE SERVING THAT
8 YOU TESTIFIED ABOUT, YOU WERE ALSO SERVING OTHER CUSTOMERS?

9 A. YES.

10 Q. AND YOU WERE ALSO SERVING THESE OTHER CUSTOMERS DRINKS,
11 CORRECT?

12 A. YES.

13 Q. NOW, IF I CAN ASK YOU TO LOOK AT THIS EXHIBIT, IT'S
14 EITHER TRIPLE D OR QUADRUPLE D-1 THAT SAYS, "ALL SALES OF
15 SERVER NUMBER 33."

16 A. YES?

17 Q. NOT THE ONE WITH JUST THE BOTTLED BEER, BUT ALL SALES.

18 A. YES.

19 Q. NOW, THIS FOUR PAGE -- IT'S ABOUT FIVE PAGES LONG, RIGHT?

20 A. YES.

21 Q. IT LOOKS ABOUT DOUBLE SPACED BETWEEN EACH TRANSACTION?

22 A. YES.

23 Q. AND YOU'RE THE SERVER FOR THE DRINKS -- STRIKE THAT.

24 THIS REFLECTS WHAT YOU SERVED ON THE EVENING WHEN
25 YOU WORKED ON JULY THE 25TH?

1 A. YES.

2 Q. AND THAT INCLUDES NOT ONLY BOTTLED AND DOMESTIC BEER, BUT
3 ALSO MIXED DRINKS OR WHATEVER FROM THE BAR, CORRECT?

4 A. YES.

5 Q. AND IT WOULD INCLUDE EXHIBIT D-1, WOULD INCLUDE THE SALES
6 TO ALL THE OTHER CUSTOMERS THAT YOU HAD THAT NIGHT AS WELL?

7 A. YES.

8 Q. NOW, YOU DO RECALL WHEN WERE YOU SERVING -- STRIKE THAT.
9 LET'S GO NOW TO THAT GROUP OF FOUR MEN.

10 I WANT YOU TO FOCUS ON THAT JUST FOR A MINUTE.

11 IN ADDITION TO SERVING THE DRINKS, YOU ALSO BROUGHT
12 THEM FOOD.

13 DO YOU REMEMBER DOING THAT THAT EVENING?

14 A. NO.

15 Q. SO ARE YOU SAYING THAT YOU DID NOT SERVE FOOD TO THEM, OR
16 YOU JUST DON'T REMEMBER WHETHER OR NOT YOU SERVED FOOD TO THEM
17 THAT EVENING?

18 A. I DID NOT SERVE FOOD TO THEM.

19 Q. NOW, IF I COULD ASK YOU TO LOOK AT D-1 AGAIN.

20 THERE'S A REFERENCE IN HERE FOR FOOD ITEMS, RIGHT,
21 TO BE DISTINGUISHED FROM BAR OR DRINK ITEMS?

22 A. YES.

23 Q. AND ON THIS EVENING YOU SERVED -- IF YOU JUST THUMB
24 THROUGH IT VERY QUICKLY -- AT LEAST ALMOST HALF A DOZEN TIMES
25 THAT YOU BROUGHT FOOD TO SOME CUSTOMER THAT NIGHT, RIGHT? ON

1 JULY 25?

2 A. ON THAT EVENING I MAY HAVE SOMETIMES BROUGHT FOOD TO THE
3 CUSTOMER.

4 Q. WELL, IN FACT, ISN'T THE WAY IT WORKS THAT IT'S ANOTHER
5 SERVER THAT BRINGS THE FOOD, YOU DON'T ACTUALLY CARRY THE FOOD
6 TO THE TABLE YOURSELF?

7 A. ACTUALLY, IT'S ANOTHER PERSON THAT IS DESIGNATED TO TAKE
8 THE ORDERS FOR THE FOOD AND TO TAKE THE FOOD OUT.

9 Q. SO THAT'S THE PERSON THAT WOULD SERVE FOOD IF ANY FOOD
10 WAS SERVED AT ALL IN THE BAR AREA?

11 A. YES.

12 Q. BECAUSE THAT'S NOT YOUR JOB, YOU JUST DO THE DRINKS,
13 RIGHT?

14 A. RIGHT.

15 UNLESS -- UNLESS THERE'S A NEED FOR IT, I'LL DO IT
16 MYSELF, BUT --

17 Q. BUT USUALLY IT'S THIS ADDITIONAL PERSON THAT SERVES THE
18 FOOD?

19 A. YES.

20 Q. AND IF YOU LOOK AT YOUR -- AGAIN, IT SAYS D-1 THAT HAS
21 ALL YOUR TRANSACTIONS -- THERE'S OCCASIONS ON THERE THAT A
22 GOOD HALF A DOZEN TIMES, APPROXIMATELY, ANOTHER SERVER
23 DELIVERED FOOD TO SOME OF YOUR CUSTOMERS, RIGHT?

24 A. HALF A DOZEN?

25 Q. IT ACTUALLY SAID FOOD, I THINK, BY THAT TRANSACTION,

1 DOESN'T IT?

2 A. I SEE FOOD POINTED OUT THREE TIMES ON MY EXHIBIT OF
3 DDDD-1.

4 Q. NOW, DO YOU RECALL IF FOOD WAS SERVED TO THIS GROUP OF
5 FOUR MEN THE EVENING YOU WERE ON DUTY, JULY 25TH?

6 A. CAN YOU REPEAT THAT, PLEASE.

7 Q. YES. THAT GROUP OF FOUR MEN THE ONE -- THAT YOU'VE
8 DESCRIBED FOR US ALREADY -- DO YOU RECALL IF THE FOOD SERVER
9 TOOK FOOD TO THOSE FOUR MEN THE EVENING YOU WERE ON DUTY, JULY
10 25?

11 A. I BELIEVE SO.

12 Q. I DIDN'T HEAR YOU. I'M SORRY.

13 A. I BELIEVE SO.

14 Q. STILL ASKING TO YOU FOCUS-- STRIKE THAT.

15 LET'S GO -- STRIKE THAT AGAIN.

16 LET'S GO TO THIS D-1 DOCUMENT ONE MORE TIME.

17 AND DO YOU RECALL THAT MS. KELLY ASKED YOU TO LOOK
18 AT ABOUT THE THIRD TRANSACTION, THE FOURTH TRANSACTION AND THE
19 FIRST PAGE, NUMBER 3008, THAT HAS FOUR DRINKS, THREE BEERS AND
20 A SOFT DRINK.

21 DO YOU SEE THAT?

22 A. YES.

23 Q. AND IS IT YOUR TESTIMONY, MRS. ALVAREZ, THAT YOU
24 ASSOCIATE THAT ONE TRANSACTION, NUMBER 3,008 WITH THE GROUP OF
25 FOUR MEN THAT YOU SERVED LAST SUMMER?

1 A. YES.

2 Q. AND THE REASON YOU ASSOCIATE IS BECAUSE IT HAS -- IT
3 SHOWS UP TO FOUR DRINKS BASICALLY?

4 A. YES.

5 Q. AND THE REMINING PAGES OF THAT DOCUMENT D-1, IT ALSO
6 DESCRIBES OTHER SALES OF BEER, RIGHT?

7 A. YES.

8 Q. AND OTHER OTHER SALES OF SOFT DRINKS?

9 A. YES.

10 Q. FINALLY, MRS. ALVAREZ, IN THAT PARTICULAR EL TORITO THERE
11 IS MUSIC THAT IS PIPED IN FOR THE CUSTOMERS IN THE BAR AREA
12 WHILE THEY'RE SITTING THERE HAVING DRINKS, RIGHT?

13 A. YES.

14 Q. AND THAT EL TORITO, IN FACT, ALSO HAS TELEVISIONS, DOES
15 IT NOT?

16 A. YES.

17 Q. AND AT TIMES I GUESS VIDEOS ARE PLAYED FOR THE CUSTOMERS?

18 A. YES.

19 Q. AND AT OTHER TIMES SUPPORTING EVENTS ARE ALSO BROADCAST
20 ON THOSE TELEVISIONS, CORRECT?

21 A. YES.

22 Q. NOW, IF I COULD DIRECT YOU TO LAST SUMMER WHEN YOU WORKED
23 ON JULY 25.

24 THAT'S THE DODGER SEASON, ISN'T IT?

25 A. IT COULD BE.

1 Q. AND THE ANGELS?

2 THEY'RE IN THAT SEASON AS WELL?

3 A. COULD BE.

4 Q. WELL, YOU DO KNOW AND YOU'VE SEEN, HAVEN'T YOU, THAT AT
5 TIMES THEY BROADCAST ONE SORT OR ANOTHER SUPPORTING EVENT ON
6 THE TELEVISION WHILE YOU'VE BEEN WORKING?

7 A. YES. THAT'S TRUE.

8 MR. MEDRANO: MAY I HAVE A MOMENT, YOUR HONOR.

9 (BRIEF PAUSE.)

10 BY MR. MEDRANO:

11 Q. FINALLY, MRS. ALVAREZ, IF YOU LOOK AT THAT OTHER DOCUMENT
12 D-2, IT GIVES JUST THE DRAFT AND BOTTLE BEER SALES FOR
13 YOURSELF, NUMBER 33?

14 A. YES.

15 Q. THAT'S A 3-PAGE DOCUMENT, RIGHT?

16 A. YES.

17 Q. AND THIS LISTS ALL THE BEER SALES BY YOURSELF ON THE
18 EVENING THAT YOU WORKED, RIGHT?

19 A. YES.

20 Q. TO ALL THE CUSTOMERS THAT YOU HAD ON THAT PARTICULAR
21 EVENING?

22 A. YES.

23 Q. THANK YOU, MRS. ALVAREZ.

24 MR. MEDRANO: THAT CONCLUDES IT, YOUR HONOR.

25 THE COURT: ANY REDIRECT?

1 MS. KELLY: QUICK, YOUR HONOR.

2

3 REDIRECT EXAMINATION +

4 BY MS. KELLY:

5 Q. MRS. ALVAREZ, DO YOU RECALL ANY OTHER GROUP OF FOUR MEN
6 WHO WERE IN THE RESTAURANT ON JULY 25TH, 1989, WHERE ONE OF
7 THE GENTLEMEN MATCHED THE DESCRIPTION YOU GAVE US EARLIER?

8 A. NO, I DON'T.

9 Q. AND YOU DID SAY THAT YOU SAW THIS GENTLEMAN THAT YOU
10 OBSERVED AT THE RESTAURANT ON JULY 25TH, 1989, YOU OBSERVED
11 HIM HERE IN THIS COURTHOUSE; IS THAT RIGHT?

12 A. YES.

13 Q. AND THAT WAS OUT IN THE HALLWAY OUTSIDE THE COURTROOM?

14 A. YES.

15 Q. WHAT DID HE LOOK LIKE, IF YOU COULD DESCRIBE HIM FOR US.

16 A. PARDON?

17 Q. CAN YOU DESCRIBE HOW HE APPEARED TO YOU?

18 A. A LARGE MAN, EARLY 40'S, LATE 30'S, GREYING HAIR, AND A
19 LARGE MOUSTACHE.

20 Q. AND ARE YOU QUITE CONFIDENT THAT'S THE GENTLEMAN THAT YOU
21 SAW ON JULY 25TH, 1989.

22 MR. MEDRANO: OBJECTION; ASKED AND ANSWERED, YOUR
23 HONOR.

24 THE COURT: OVERRULED.

25 THE WITNESS: FAIRLY CONFIDENT.

1 BY MS. KELLY:

2 Q. NOW, WITH RESPECT TO THE EXHIBIT THAT'S BEEN MARKED
3 DDDD-1, YOU WERE ASKED SOME QUESTIONS ON CROSS-EXAMINATION
4 CONCERNING FOOD.

5 EVERY EMPLOYEE IS GIVEN A NUMBER AS AN IDENTIFIER
6 FOR THIS PARTICULAR DATA ENTRY OF FOOD AND DRINK; ISN'T THAT
7 RIGHT?

8 A. YES.

9 Q. AND YOUR NUMBER IS 33; IS THAT RIGHT?

10 A. YES.

11 Q. AND WHERE IT APPEARS THAT FOOD WAS SERVED, THAT PERSON IS
12 GIVEN -- THERE APPEARS TO BE A SERVER NUMBER, A DIFFERENT
13 NUMBER; ISN'T THAT RIGHT?

14 A. YES.

15 Q. AND THAT NUMBER IS NUMBER 32, RIGHT?

16 A. CORRECT.

17 Q. NOW, IS THE T.V. AND THE MUSIC ON IN A LOUD -- IN YOUR
18 OPINION -- IN A LOUD FASHION IN THE EL TORITO BAR?

19 A. YES.

20 Q. AND THE FEWER CUSTOMERS THE LESS -- THE NOISIER IT IS.

21 HOW DOES IT GO?

22 A. AT TIMES, YES.

23 Q. AT TIMES IT'S NOISIER?

24 A. YES, AT -- FOR INSTANCE, DURING HAPPY HOUR THE MUSIC IS
25 TURNED UP TO KIND OF GO ABOVE THE DULL ROAR OF THE CROWD, BUT

1 THEN WHEN THE CROWD STARTS STANDING OUT, SOMETIMES THE MUSIC
2 STILL REMAINS PRETTY LOUD.

3 MS. KELLY: I HAVE NOTHING FURTHER, YOUR HONOR.

4 THE COURT: ANY FURTHER QUESTIONS?

5 MR. MEDRANO: NOTHING BY THE GOVERNMENT, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 YOU MAY STEP DOWN.

8 MS. KELLY: YOUR HONOR, I HAVE ONE REQUEST THAT I'D
9 LIKE TO MAKE IT -- BEFORE THE WITNESS IS EXCUSED.

10 I'D LIKE TO MAKE IT OUTSIDE THE PRESENCE OF THE
11 JURY.

12 I'M SORRY, YOUR HONOR.

13 I HAVE A REQUEST OF THE COURT, BUT I'D LIKE TO MAKE
14 IT OUTSIDE --

15 THE COURT: WELL, DO IT IN WRITING.

16 THE WITNESS WILL STAND BY FOR A FEW MINUTES.

17 CALL THE NEXT WITNESS.

18 MR. STOLAR: COULD WE HAVE AGENT BERRELLEZ BACK,
19 PLEASE.

20
21 HECTOR BERRELLEZ + DEFENSE WITNESS, PREVIOUSLY SWORN

22
23 THE CLERK: PLEASE RESTATE YOUR NAME FOR THE RECORD.

24 THE WITNESS: MY NAME IS HECTOR BERRELLEZ.

25 //

DIRECT EXAMINATION +

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BY MR. STOLAR:

Q. GOOD MORNING, SIR.

A. GOOD MORNING, SIR.

Q. DO YOU RECALL THE TESTIMONY OF HECTOR CERVANTES SANTOS THAT HE MADE A DEAL WITH THE D.E.A. TO GET \$3,000 A MONTH?

A. NO, I DON'T RECALL THAT, SIR.

Q. WAS THAT YOUR ARRANGEMENT WITH HECTOR CERVANTES SANTOS?

A. NO, SIR.

Q. WHAT IS THE ARRANGEMENT AS TO HOW MUCH HE'S PAID?

A. THERE IS ONLY THAT HE WOULD BE PAID EXPENSE MONEYS TO SUBSIST.

Q. FOR HOW LONG WILL THAT GO ON?

A. FOR AS LONG AS HIS LIFE IS IN DANGER, SIR.

Q. WHO MAKES THE DETERMINATION IF HIS LIFE IS IN DANGER? YOU?

A. MYSELF AND OTHER PEOPLE ABOVE ME, SIR.

Q. OTHER PEOPLE ABOVE YOU?

A. YES, SIR.

Q. WHO WOULD THAT BE?

A. MY SUPERVISORS.

Q. YOU ARE NOT THE HEAD OF OPERATION LEYENDA AS SUCH, ARE YOU?

A. I AM THE SUPERVISOR OF OPERATION LEYENDA.

Q. YOU ARE THE GROUP SUPERVISOR; IS THAT RIGHT?

1 A. THAT 'S RIGHT .

2 Q. THAT 'S HOW YOU SIGNED YOUR REPORTS , HECTOR BERRELLEZ G/S ,
3 CORRECT?

4 A. YES , SIR .

5 Q. THAT MEANS GROUP SUPERVISOR , CORRECT?

6 A. YES , SIR .

7 Q. THAT MEANS THAT THERE 'S SOMEBODY OR IS IT -- DOES THAT
8 MEAN THAT THERE IS SOMEBODY ABOVE YOU IN OPERATION LEYENDA?

9 A. NO , SIR .

10 Q. YOU 'RE IT ; IS THAT RIGHT?

11 A. WELL , I HAVE SUPERVISORS , I 'M NOT IT , BUT ASSIGNED TO
12 LEYENDA? NO , SIR .

13 I AM THE SUPERVISOR IN CHARGE OF THE TASK FORCE
14 KNOWN AS LEYENDA , BUT I DO REPORT TO A LOT OF PEOPLE ABOVE ME ,
15 SIR .

16 Q. ALL RIGHT .

17 WHO WOULD BE YOUR DIRECT SUPERVISOR?

18 A. WELL , I HAVE TWO .

19 I REPORT TO THE LOS ANGELES DIVISIONAL ASAC ,
20 ASSISTANT SPECIAL AGENT IN CHARGE , MR . JOHN MARSH AND I ALSO
21 REPORT TO SENIOR INSPECTOR GEORGE CASNAVET (PHONETIC) IN
22 WASHINGTON , D.C .

23 Q. HOW MANY PEOPLE -- I 'M SORRY . GO AHEAD .

24 A. THOSE ARE MY IMMEDIATE BUT THERE 'S MORE ABOVE -- ABOVE
25 THEM , SIR .

1 Q. WELL, THE D.E.A. IS PART OF THE JUSTICE DEPARTMENT; IS
2 THAT RIGHT?

3 A. YES, SIR.

4 Q. HOW FAR REMOVED ARE YOU PROGRAM THE ATTORNEY GENERAL OF
5 THE UNITED STATES? HOW MANY LAWERS DO WE HAVE TO GO THROUGH?

6 MR. CARLTON: OBJECT TO THE RELEVANCE, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 BY MR. STOLAR:

9 Q. WELL, DOES THE ATTORNEY GENERAL OF THE UNITED STATES
10 PARTICIPATE IN THE DECISION AS TO HOW LONG HECTOR CERVANTES
11 SANTOS REMAINS ON THE PAYROLL?

12 A. DOES THE ATTORNEY GENERAL?

13 Q. YES. TO YOUR KNOWLEDGE.

14 A. HE ORDERED IT.

15 I GUESS I WOULD FOLLOW HIS INSTRUCTIONS, BUT I DON'T
16 KNOW THAT HE DOES, SIR.

17 Q. WELL, WITH THE CONNECTION -- WHO IS IT THAT YOU MAKE THAT
18 DECISION WITH OR WILL MAKE THAT DECISION WITH AS TO HOW LONG
19 HE KEEPS GETTING PAID?

20 A. WELL, I GUESS THAT I WOULD BE THE PERSON MAKING THE
21 DECISION BUT AT SOME POINT IS LONGER IF HIS LIFE IS NOT IN
22 DANGER THAT MAYBE THESE SUBSISTENCE PAYMENTS WOULD END.

23 Q. HE'S GETTING ROUGHLY \$6,000 A MONTH, ISN'T HE?

24 A. HE'S BEING PAID I BELIEVE 3,000, AND ON OCCASION MORE
25 DEPENDING ON THE SITUATIONS THAT ARISE, SIR.

1 Q. WELL, IT'S TRUE, ISN'T IT, THAT IN THE MONTH OF DECEMBER
2 1989, HE RECEIVED \$8,640?

3 A. RELOCATION; TO RELOCATE.

4 Q. DID HE RECEIVE THAT AMOUNT OF MONEY?

5 A. TO RELOCATE, YES, SIR.

6 Q. DID HE THEN RELOCATE IN JANUARY?

7 A. HE RELOCATED NUMEROUS TIMES, SIR.

8 Q. SO HE GOT 6,000 IN JANUARY TO HELP HIM RELOCATE AS WELL;
9 IS THAT YOUR RECOLLECTION?

10 A. MY RECOLLECTION IS THAT HE MOVED ON NUMEROUS OCCASIONS
11 JUST FOR SECURITY CONCERNS AND HE WAS GIVEN -- HE WAS GIVEN
12 FUNDS TO PAY FIRST AND LAST MONTHS DIFFERENT LOCATION, PLUS AT
13 ONE TIME HE WAS TAKEN OUT OF HIS HOUSE DUE TO SECURITY
14 CONCERNS, PLACED IN A HOTEL ROOM, AT WHICH TIME HOTEL BILLS
15 WERE PAID FOR HIM AS LONG -- ALSO ALONG WITH PAYING RENT AND
16 UTILITIES AND TELEPHONE AND EVERYTHING ELSE AT A HOUSE, SIR.

17 Q. SO WHILE HE WAS IN A HOTEL, YOU GAVE HIM MONEY TO KEEP
18 HIS HOUSE UP; IS THAT RIGHT?

19 A. NOT JUST TO KEEP HIS HOUSE UP, SIR.

20 WHEN HE CAME -- HE DIDN'T HAVE -- HE AND HIS FAMILY
21 HAD ONLY THE CLOSING ON THEIR BACK.

22 THEY HAD NO UTENSILS, THEY HAD NOTHING, SO THE
23 MONEYS WERE TO FEED HIS FAMILY, CLOTH HIS CHILDREN AND ALSO
24 PAY FOR ALL THESE MOVES THAT WE WERE PUTTING THEM THROUGH
25 BECAUSE WE WERE CONCERNED WITH HIS SAFETY, SIR.

1 Q. IT IS TRUE, IS IT NOT, THAT THE MAIN REASON THAT MR.
2 CERVANTES IS COOPERATING WITH YOU IS BECAUSE HE WOULD LIKE TO
3 RELOCATE TO THE UNITED STATES?

4 THAT HE'S SEEKING A BETTER FUTURE FOR HIS FAMILY AND
5 FOR HIS CHILDREN AND BETTER EDUCATIONAL OPPORTUNITIES AND THAT
6 HE'S HOPING TO GET A JOB HERE?

7 ISN'T IT TRUE THOSE ARE THE MAIN REASONS WHY HE'S
8 COOPERATING WITH YOU?

9 A. I THINK THOSE ARE SOME OF THE REASONS. I'M SURE THERE
10 ARE OTHER REASONS.

11 Q. AREN'T THOSE THE MAIN REASONS?

12 A. WITHOUT BEING ABLE TO EXAMINE HIS MIND, SIR, I DON'T
13 KNOW.

14 HE DID EXPRESS THOSE REASONS TO ME, YES.

15 Q. YOU DO RECALL TESTIFYING BEFORE A GRAND JURY IN
16 CONNECTION WITH THIS CASE AND WEDNESDAY, JANUARY 10, 1990, DO
17 YOU NOT?

18 A. YES, SIR, I DO.

19 Q. DO YOU RECALL BEING ASKED THE FOLLOWING QUESTION AND
20 GIVING THE FOLLOWING ANSWER? PAGE 16:

21 "QUESTION: AND CAN YOU TELL THE GRAND JURY
22 WHY MR. CERVANTES, TO YOUR KNOWLEDGE AT
23 LEAST, IS ASSISTING OR COOPERATING WITH THE
24 D.E.A?

25 "ANSWER BY YOU: THE MAIN REASON THAT MR.

1 CERVANTES IS COOPERATING WITH US IS BECAUSE
2 HE LIKE TO RELOCATE TO THIS COUNTRY. HE IS
3 SEEKING A BETTER FUTURE FOR HIS FAMILY, FOR
4 HIS CHILDREN, BETTER EDUCATIONAL
5 OPPORTUNITIES, AND HE 'S ALSO HOPING TO GET A
6 GOOD JOB HERE."

7 WERE YOU ASKED THAT QUESTION AND DID YOU GIVE THAT
8 ANSWER IN THOSE WORDS?

9 MR. CARLTON: OBJECTION, YOUR HONOR. SPEAKS FOR
10 ITSELF.

11 THE COURT: OVERRULED. YES, STRIKE THAT. THAT 'S
12 CORRECT.

13 MR. STOLAR: MAY WE TAKE LUNCH NOW, YOUR HONOR?

14 THE COURT: ARE YOU FINISHED?

15 MR. STOLAR: NO, I 'M NOT FINISHED. I HAVE A LOT
16 MORE TO DO.

17 THE COURT: WE 'LL TAKE OUR NOON RECESS AT THIS
18 TIME.

19 (JURY EXCUSED.)

20 THE COURT: YOU MAY STEP DOWN.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 (WITNESS TERMPORARILY EXCUSED.)

23 THE CLERK: YOU MAY BE SEATED.

24 THE COURT: MS. KELLY.

25 MS. KELLY: YES, SIR.

1 YOUR HONOR, THE REQUEST THAT I HAVE IS I WANTED TO
2 KNOW IF IT WOULD BE POSSIBLE TO BRING AGENT SALAZAR INTO THE
3 COURTROOM AND HAVE THE WITNESS IDENTIFY HIM.

4 HE'S THE PERSON THAT SHE IDENTIFIED AS BEING OUT IN
5 THE HALLWAY, AND I THINK THE RECORD IS LESS THAN CLEAR.

6 HE HASN'T BEEN IN THE COURTROOM, SO SHE WASN'T ABLE
7 TO POINT HIM OUT.

8 UNLESS THE GOVERNMENT WILL STIPULATE THAT THAT WAS
9 THE IDENTIFICATION.

10 I'M WILLING TO DO THAT, YOUR HONOR.

11 THE COURT: SHE'S PREPARED TO IDENTIFY HIM AS ONE
12 OF THE PEOPLE THAT SHE SAW THAT NIGHT?

13 MS. KELLY: YES, YOUR HONOR.

14 THE COURT: HOW DO YOU KNOW?

15 MS. KELLY: WELL, SHE TOLD ME.

16 THE COURT: SHE POINTED HIM OUT TO YOU?

17 MS. KELLY: YES, YOUR HONOR. SHE SAID, "THAT'S THE
18 MAN."

19 MR. MEDRANO: YOUR HONOR, MY ONLY OBJECTION IS THE
20 FOLLOWING, AND I DON'T KNOW IF IT RAISES TO THE LEVEL OF A
21 SIMMONS ISSUE.

22 WE DON'T KNOW THE CIRCUMSTANCES UNDER WHICH THE
23 IDENTIFICATION WAS MADE; WHETHER OR NOT SHE RECEIVED ANY
24 COACHING OR INSTRUCTIONS PRIOR TO THE IDENTIFICATION.

25 I THINK THESE ARE ISSUES THAT NEED TO BE RESOLVED

1 BEFORE YOU PERMIT THAT KIND OF IDENTIFICATION BECAUSE IT'S
2 VERY UNUSUAL .

3 MS. KELLY: YOUR HONOR, I --

4 THE COURT: THE WITNESS MAY IDENTIFY THE AGENT AND
5 WE'LL ASK HIM TO COME IN AND SHE MAY DO SO .

6 MR. NICOLAYSEN: YOUR HONOR, MAY I ASK THE COURT TO
7 DIRECT THE UNITED STATES ATTORNEYS OFFICE TO LOOK FOR THOSE
8 D.E.A.-6'S AND SEE IF THEY EXIST IN REGARD TO MR. PLASCENCIA
9 AGUILAR DURING THE NOON HOUR, SO THE COURT MAY HAVE A PROFFER
10 AS TO WHETHER THEY DO EXIST BY 1:30 .

11 I WOULD LIKE TO RESOLVE THAT WITH THE COURT'S
12 PERMISSION ON THE RECORD BEFORE THE END OF TODAY .

13 THE COURT: WELL, I'VE ORDERED THAT TO BE DONE
14 ALREADY .

15 MR. NICOLAYSEN: I'M ASKING THAT IT BE DONE --

16 THE COURT: IF YOU CAN DO IT BY THEN, DO IT. IF
17 NOT, DO IT AS SOON AS CAN .

18 MR. MEDRANO: WE'LL DO IT AS SOON AS WE CAN, YOUR
19 HONOR .

20 MR. NICOLAYSEN: THANK YOU, YOUR HONOR .

21 THE CLERK: PLEASE RISE .

22 (LUNCHEON RECESS .)

23
24
25

1 LOS ANGELES + CALIFORNIA TUESDAY, JULY 3, 1990

2 + 1:30 P.M.

3
4 (JURY PRESENT.)

5 THE COURT: YOU MAY CONTINUE.

6 DIRECT EXAMINATION + (CONTINUED)

7 BY MR. STOLAR:

8 Q. AGENT BERRELLEZ, IS THE OFFICIAL NAME OF THE GROUP THAT
9 YOU ARE THE SUPERVISOR OF OPERATION LEYENDA OR THE LEYENDA
10 TASK FORCE OR SOME OTHER NAME?

11 A. WELL, IT IS A TASK FORCE AND IT IS REFERRED TO AS
12 LEYENDA TASK FORCE, AND IT'S ALSO REFERRED TO AS OPERATION
13 LEYENDA.

14 Q. HOW MANY D.E.A. AGENTS MAKE UP THE LEYENDA GROUP?

15 MR. CARLTON: OBJECTION; RELEVANCE, YOUR HONOR.

16 THE COURT: OVERRULED.

17 THE WITNESS: WELL, ON OCCASION WE BRING IN PEOPLE
18 T.D.Y. AND WE HAVE AS MANY AS 10 TO 12.

19 ON OTHER OCCASIONS WE MIGHT ONLY HAVE AS MANY AS 6.

20 BY MR. STOLAR:

21 Q. T.D.Y. MEANS?

22 A. TEMPORARY DUTY FROM OUT OF STATE, SIR.

23 Q. HAS THE SIZE OF THE TASK FORCE REMAINED CONSTANT OVER
24 TIME?

25 A. NO, SIR, IT HASN'T.

1 DURING THE PREPARATIONS FOR TRIAL, WE CALL IN EXTRA
2 HELP SO WE HAVE MORE AGENTS NOW THAN WE HAD MAYBE SIX MONTHS
3 AGO, SIR.

4 Q. AND AT THE TIME THAT AGENT CAMARENA DISAPPEARED IN
5 FEBRUARY OF 1985, IS THAT WHEN THE TASK FORCE WAS FORMED?

6 A. TO MY UNDERSTANDING, YES, SIR.

7 Q. DO YOU KNOW WHAT THE NAME MEANS?

8 A. LEYENDA?

9 Q. YES.

10 A. YES, SIR, I DO.

11 Q. COULD YOU TELL US?

12 MR. CARLTON: OBJECT TO THE RELEVANCE, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 BY MR. STOLAR:

15 Q. DID IT BEGIN TO BE CALLED OPERATION LEYENDA IN FEBRUARY
16 OF 1985?

17 A. I DON'T BELIEVE SO.

18 Q. WHEN WAS THAT TITLE APPENDED?

19 A. I DON'T RECALL WHEN, SIR.

20 Q. ARE THERE AGENTS FROM OTHER LAW ENFORCEMENT AGENCIES WHO
21 ARE ATTACHED TO OPERATION LEYENDA?

22 A. NO, SIR.

23 Q. NOBODY FROM THE U.S. MARSHAL SERVICE?

24 A. NO, SIR.

25 Q. OR FROM THE F.B.I.?

1 A. NO, SIR.

2 Q. NO CUSTOMS, NO I.R.S.?

3 A. NO, SIR.

4 Q. HAVE YOU ON OCCASION OR HAS THE TASK FORCE ON OCCASION
5 WORKED WITH OTHER LAW ENFORCEMENT AGENCIES?

6 A. YES, SIR, WE HAVE.

7 Q. ALL OF THE ONES THAT I MENTIONED?

8 A. YES, SIR.

9 Q. ANY OTHERS?

10 A. IMMIGRATION.

11 Q. LOCAL POLICE AS WELL?

12 A. I DON'T KNOW.

13 SINCE I'VE BEEN SUPERVISING IT, WE HAVEN'T AN
14 OCCASION TO WORK WITH LOCALES.

15 Q. NOW, WHEN YOU BECAME GROUP SUPERVISOR, WHERE DID YOU
16 COME FROM?

17 A. FROM MEXICO.

18 Q. AND HOW LONG HAD YOU BEEN STATIONED IN MEXICO?

19 A. I WAS THERE A YEAR AND TWO MONTHS.

20 Q. IS THAT THE ONLY TIME IN THE LAST FIVE YEARS YOU'VE BEEN
21 IN MEXICO AS AN AGENT?

22 A. NO, SIR.

23 I'VE TRAVELED INTO MEXICO ON NUMEROUS UNDERCOVER
24 INVESTIGATIONS.

25 Q. NOW, IT'S TRUE, IS IT NOT, THAT UP UNTIL VERY RECENTLY

1 D.E.A. AGENTS IN MEXICO WERE NOT PERMITTED BY THE AGREEMENT
2 BETWEEN THE UNITED STATES AND MEXICO TO CARRY GUNS?

3 A. WE HAD VERBAL PERMISSION BUT NOT WRITTEN TO CARRY GUNS,
4 SIR.

5 Q. SO THAT THE WHOLE AGREEMENT BETWEEN THE U.S. AND MEXICO
6 IS PROHIBITING D.E.A. AGENTS FROM CARRYING WEAPONS WITHOUT
7 PERMISSION; IS THAT WHAT YOUR UNDERSTANDING IS?

8 A. MY UNDERSTANDING WHEN I WAS DOWN THERE WAS THAT WE HAD
9 NO WRITTEN PERMISSION TO CARRY GUNS, BUT THAT WE HAD VERBAL
10 PERMISSION BY THE ATTORNEY GENERAL OF MEXICO TO CARRY THEM.

11 Q. AT THE TIME THAT AGENT CAMARENA WAS KIDNAPPED AND IN THE
12 MONTHS PRECEDING THAT, DO YOU KNOW WHETHER OR NOT THERE WAS
13 PERMISSION FOR THE AGENTS IN GUADALAJARA TO CARRY GUNS?

14 A. I BELIEVE THEY HAD VERBAL PERMISSION.

15 Q. BUT NOT WRITTEN PERMISSION; IS THAT CORRECT?

16 A. NO, SIR,, NOT WRITTEN PERMISSION.

17 Q. IT'S TRUE, IS IT NOT, THAT QUITE RECENTLY, THE AGREEMENT
18 THAT PERMITS D.E.A. TO OPERATE IN MEXICO HAS BEEN CHANGED TO
19 GIVE FORMAL PERMISSION TO AGENTS TO CARRY GUNS IN MEXICO; IS
20 THAT RIGHT?

21 MR. CARLTON: OBJECTION; RELEVANCE, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MR. STOLAR:

24 Q. THE PURPOSE OF OPERATION LEYENDA IS WHAT?

25 A. TO INVESTIGATE THE MURDER OF SPECIAL AGENT ENRIQUE

1 CAMARENA .

2 Q. PRIOR TO OPERATION LEYENDA BEING FORMED, THE MISSION OF
3 THE D.E.A. AND ALMOST ALL OF THE AGENTS CONNECTED WITH IT WAS
4 INVOLVED IN DRUG ENFORCEMENT; IS THAT CORRECT?

5 A. YES, SIR.

6 Q. THIS IS AN INVESTIGATION OF A MURDER AND KIDNAPPING
7 CASE; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. WOULD IT BE FAIR TO SAY THAT THE D.E.A. AGENTS AND THE
10 D.E.A. ITSELF ASKED FOR THE DEPARTMENT OF JUSTICE FOR THE
11 AUTHORITY TO HANDLE THIS MURDER AND KIDNAPPING INVESTIGATION?

12 MR. CARLTON: OBJECTION; RELEVANCE, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 BY MR. STOLAR:

15 Q. WOULD IT BE FAIR TO SAY THAT THERE'S A LARGE DEGREE OF
16 COMMITMENT AND DEDICATION ON THE PART OF THE AGENTS
17 INVESTIGATING THE KIDNAPPING AND MURDER OF AGENT CAMARENA?

18 MR. CARLTON: RELEVANCE; OBJECTION.

19 THE COURT: SUSTAINED.

20 BY MR. STOLAR:

21 Q. WOULD IT BE FAIR TO SAY THAT THE AGENTS WHO ARE ASSIGNED
22 TO LEYENDA ARE SOMEWHAT ZEALOUS IN THEIR WORK?

23 MR. CARLTON: OBJECTION AS ARGUMENTATIVE AND
24 RELEVANCE .

25 THE COURT: SUSTAINED.

1 BY MR. STOLAR:

2 Q. IS IT FAIR TO SAY --

3 THE COURT: ARE WE GOING TO CONTINUE WITH THIS?

4 MR. STOLAR: I HAVE A BETTER WAY TO PHRASE IT, YOUR
5 HONOR.

6 THE COURT: WELL --

7 BY MR. STOLAR:

8 Q. THAT THE AGENTS WHO ARE ASSIGNED TO LEYENDA HAVE
9 SOMETIMES NOT FOLLOWED ALL THE D.E.A. RULES AND PROCEDURES?

10 MR. CARLTON: OBJECTION; RELEVANCE AND UNCLEAR AS
11 TO TIME PERIOD; CALLS FOR SPECULATION.

12 THE COURT: SUSTAINED.

13 BY MR. STOLAR:

14 Q. WELL, WITH RESPECT TO THE WITNESS, HECTOR CERVANTES
15 SANTOS, THERE CAME TIMES WHEN YOU SHOWED HIM PHOTOGRAPHS OF
16 VARIOUS INDIVIDUALS AND YOU ASKED HIM TO IDENTIFY THEM; IS
17 THAT RIGHT?

18 A. YES - SIR.

19 Q. AND HE MADE SOME IDENTIFICATIONS; IS THAT RIGHT?

20 A. YES, SIR, HE DID.

21 Q. YOU NEVER WROTE OR ANY OTHER AGENT NEVER WROTE A
22 D.E.A.-6 REPORT DESCRIBING WHAT IDENTIFICATIONS WERE MADE
23 FROM WHAT PHOTOGRAPHS; ISN'T THAT RIGHT?

24 MR. CARLTON: OBJECTION, YOUR HONOR. COVERED ON
25 AGENT BERRELLEZ'S LAST TESTIMONY.

1 THE COURT: SUSTAINED.

2 BY MR. STOLAR:

3 Q. TAKE A LOOK AT GOVERNMENT'S EXHIBIT 171 WHICH IS IN
4 FRONT OF YOU.

5 A. (WITNESS COMPLIES.)

6 Q. DO YOU RECOGNIZE THAT?

7 A. YES, SIR.

8 Q. THAT IS A PHOTOGRAPH OF CERTAIN DEFENDANTS IN THIS CASE -
9 INCLUDING MY CLIENT MR. MATTA; IS THAT RIGHT?

10 A. YES, SIR.

11 Q. THE PHOTO OF MR. MATTA, TO YOUR KNOWLEDGE, IS A FAIRLY
12 RECENT PHOTO, ISN'T IT?

13 A. YES, SIR.

14 Q. IT WAS TAKEN BY THE U.S. MARSHALS SERVICE WHEN MR. MATTA
15 WAS BROUGHT TO LOS ANGELES; IS THAT YOUR UNDERSTANDING?

16 A. IT'S GOT THE UNITED STATES MARSHALS EMBLEM IN FRONT OF
17 HIM, SO I WOULD ASSUME THEY TOOK THE PHOTOGRAPHS, SIR.

18 Q. HE'S HOLDING A PLAQUE LIKE THIS?

19 A. YES, SIR.

20 Q. IT'S A MUG SHOT, TWO PICTURES, FRONT AND SIDE-VIEW; IS
21 THAT RIGHT?

22 MR. CARLTON: OBJECTION; ASKED AND ANSWERED.

23 THE COURT: OVERRULED.

24 THE WITNESS: YES, SIR.

25 //

1 BY MR. STOLAR:

2 Q. A COPY THAT XEROX OF MR. MATTA AND OTHER DEFENDANTS
3 HANGS IN THE OPERATION LEYENDA OFFICE UPSTAIRS, DOES IT NOT?

4 A. YES, SIR, IT DOES.

5 Q. ON THE WALL?

6 A. YES, SIR.

7 Q. IS THAT A ROOM THAT YOU USE TO INTERVIEW WITNESSES WHO
8 ARE GOING TO TESTIFY IN THIS CASE?

9 A. NOT NORMALLY.

10 Q. HOW ABOUT ABNORMALLY?

11 MR. CARLTON: OBJECTION, VAGUE AROUND AMBIGUOUS.

12 MR. STOLAR: THE ANSWER WAS VAGUE AND AMBIGUOUS.

13 THE COURT: WELL, RESTATE THE QUESTION.

14 "DO YOU SOMETIMES INTERVIEW WITNESSES THERE?"

15 WHY CAN'T ASK QUESTIONS LIKE THAT?

16 BY MR. STOLAR:

17 Q. DO YOU SOMETIMES INTERVIEW WITNESSES THERE?

18 A. NO, SIR. THEY HAVE BEEN IN THERE, BUT WE DON'T
19 INTERVIEW THEM THERE.

20 Q. THAT PHOTOGRAPH OF MR. MATTA OR THOSE TWO PHOTOGRAPHS OF
21 MR. MATTA, YOU WERE PRESENT, WERE YOU NOT, PRIOR TO THE TIME
22 THAT MR. CERVANTES SANTOS TESTIFIED WHEN THAT PHOTO WAS SHOWN
23 TO HIM; IS THAT RIGHT?

24 MR. CARLTON: OBJECTION. COVERED IN PRIOR
25 TESTIMONY, YOUR HONOR.

1 THE COURT: SUSTAINED.

2 MR. STOLAR: I BEG TO DIFFER IT WAS COVERED AT A
3 DIFFERENT PROCEEDING.

4 THE COURT: WELL, I'LL PERMIT THE ANSWER.

5 THE WITNESS: YES, SIR, I HEARD TESTIMONY THAT IT
6 WAS SHOWN TO HIM.

7 BY MR. STOLAR:

8 Q. YOU WERE PRESENT WHEN THAT WAS SHOWN TO HIM, WERE YOU
9 NOT?

10 A. IT BELIEVE SO, YES, SIR.

11 Q. ON HOW MANY OCCASION DID HE SEE THAT -- THOSE TWO
12 PICTURES OF MR. MATTA?

13 A. MR. CERVANTES?

14 Q. YES, SIR.

15 A. I ONLY RECALL ONCE.

16 Q. HOW MANY TIMES DID YOU WORK WITH MR. MEDRANO, IF YOU DID
17 AT ALL, IN HELPING PREPARE MR. CERVANTES SANTOS'S TESTIMONY?

18 MR. CARLTON: OBJECTION; THIS WAS COVERED, YOUR
19 HONOR, IN PRIOR TESTIMONY.

20 THE COURT: I DON'T RECALL IT.

21 YOU MAY ANSWER.

22 THE WITNESS: A COUPLE TWO OR THREE OCCASIONS I'VE
23 ASSISTED MR. MEDRANO.

24 BY MR. STOLAR:

25 Q. INCLUDING SHORTLY BEFORE HE TOOK THE WITNESS STAND; IS

1 THAT RIGHT?

2 A. I DON'T RECALL HOW SHORTLY BEFORE HE TOOK THE WITNESS
3 STAND, SIR.

4 Q. AND HE WAS SHOWN A PICTURE ON THAT OCCASION, WAS HE NOT?

5 A. I BELIEVE SO, YES, SIR.

6 Q. YOUR MEETING WITH MR. CERVANTES, YOUR FIRST CONTACT WITH
7 MR. CERVANTES HERE IN LOS ANGELES WAS ON THE 23RD OF
8 NOVEMBER; IS THAT RIGHT?

9 A. YES, SIR.

10 Q. DO YOU RECALL WHAT TIME OF DAY IT WAS?

11 A. I BELIEVE IT WAS AROUND NOON TIME, SIR.

12 Q. AND I BELIEVE YOU'RE GOING TO -- DO YOU WANT TO FINISH
13 YOUR ANSWER?

14 THE COURT: HE HAS ANSWERED THE QUESTION.

15 BY MR. STOLAR:

16 Q. I BELIEVE YOU RESPONDED TO THE QUESTION BY MR. MEDVENE
17 WAS THAT YOUR RECOLLECTION WAS THAT THAT MEETING LASTED
18 APPROXIMATELY 30 MINUTES; IS THAT RIGHT?

19 A. YES, SIR.

20 Q. BUT, IN FACT, THE MEETING LASTED MORE LIKE A COUPLE OF
21 HOURS, DIDN'T IT?

22 A. I DON'T RECALL IT LASTING THAT LONG, SIR.

23 Q. DO YOU RECALL GIVING TESTIMONY IN A PRIOR PROCEEDING IN
24 THIS CASE WHERE WERE YOU ASKED THE FOLLOWING QUESTIONS AND
25 YOU GAVE THE FOLLOWING ANSWERSM.

1 IT'S AT PAGE 10-251 OF THE TRIAL TRANSCRIPT.

2 MR. CARLTON: YOUR HONOR, I'LL OBJECT IF HE'S
3 READING TESTIMONY AT THIS TRIAL.

4 MR. STOLAR: I'M NOT.

5 THE COURT: OVERRULED.

6 BY MR. STOLAR:

7 Q. THE QUESTION HAD TO DO WITH YOUR FIRST CONTACT WITH MR.
8 CERVANTES ON NOVEMBER 23RD:

9 "QUESTION: HOW LONG WAS YOUR DISCUSSION
10 WITH HIM THEN?

11 "ANSWER: HOW LONG DID I WHAT, SIR?

12 "QUESTION: WAS YOUR DISCUSSION WITH HIM AT
13 THAT TIME?

14 "ANSWER: ON THE FIRST OCCASION?

15 "QUESTION: YES, SIR.

16 "ANSWER: PROBABLY A COUPLE OF OF HOURS,
17 SIR."

18 DO YOU RECALL BEING ASKED THOSE QUESTIONS AND
19 GIVING THOSE ANSWERS?

20 A. NO, SIR, I DON'T.

21 Q. DID YOU SEE THE TRIAL TRANSCRIPT -- THE TRANSCRIPT OF
22 PROCEEDINGS?

23 A. NO, SIR, I DON'T.

24 Q. YOU CO-SIGNED A REPORT OF THAT INITIAL MEETING WITH MR.
25 CERVANTES SANTOS, DID YOU NOT?

1 A. YES, SIR, I DID.

2 Q. I'M SORRY. I'LL WITHDRAW THAT.

3 YOU DIDN'T -- NO REPORT WAS WRITTEN ABOUT THAT
4 INITIAL MEETING WITH MR. CERVANTES SANTOS, WAS IT?

5 MR. CARLTON: OBJECTION. THIS HAS BEEN COVERED IN
6 CROSS-EXAMINATION, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 BY MR. STOLAR:

9 Q. ON THE NOVEMBER 30TH, WHICH IS THE NEXT TIME YOU SPEAK
10 TO HIM, A REPORT WAS ALSO WRITTEN; ISN'T THAT RIGHT?

11 THE COURT: THAT'S BEEN COVERED, TOO.

12 MR. STOLAR: I'LL UNDERSTAND THAT.

13 BY MR. STOLAR:

14 Q. THAT REPORT WAS ENTITLED "INITIAL DEBRIEFING OF MR.
15 CERVANTES SANTOS," WAS IT NOT?

16 A. YES, SIR.

17 Q. IS THAT BECAUSE YOU GOT NO INFORMATION FROM HIM ON THE
18 23RD THAT YOU COULD CHARACTERIZE AS A DEBRIEFING?

19 A. NO, SIR. THAT IS NOT CORRECT.

20 Q. YOU DID GET INFORMATION FROM HIM ON THE 23RD; IS THAT
21 RIGHT?

22 A. YES, SIR, I DID.

23 Q. WHEN YOU BECAME THE HEAD OF OPERATION LEYENDA, YOU
24 REVIEWED THE CASE FILE, DID YOU NOT?

25 A. YES, SIR, I DID.

1 Q. AND THE D.E.A. LEYENDA GROUP DEALING WITH THE
2 DISAPPEARANCE AND ULTIMATE HOMICIDE OF AGENT CAMARENA HAD AN
3 INTEREST IN MR. MATTA, DID THEY NOT?

4 MR. CARLTON: OBJECTION TO THE CHARACTERIZATION,
5 YOUR HONOR; IRRELEVANT.

6 THE COURT: RESTATE YOUR QUESTION.

7 BY MR. STOLAR:

8 Q. WELL, MR. MATTA WAS THOUGHT TO BE A SUSPECT AS EARLY AS
9 FEBRUARY THE 12TH, 1985, WAS HE NOT?

10 MR. CARLTON: OBJECTION, IRRELEVANT.

11 THE COURT: OVERRULED.

12 THE WITNESS: HE DEFINITELY WAS, YES, SIR.

13 BY MR. STOLAR:

14 Q. AGENTS WERE DISPATCHED TO GO SEE IF THEY COULD FIND HIM
15 IN GUADALAJARA, REMEMBER?

16 A. YES, SIR.

17 Q. HE REMAINED A MATTER OF INTEREST UP TO THE POINT WHERE
18 HE WAS DETAINED IN CARTAGENA IN APRIL OF 1985 AND QUESTIONED
19 ABOUT HIS KNOWLEDGE OF THE CAMARENA AFFAIR, WAS HE NOT?

20 MR. CARLTON: OBJECTION; LACKING FOUNDATION, YOUR
21 HONOR.

22 THE COURT: OVERRULED.

23 THE WITNESS: I HAVE NO KNOWLEDGE AS TO WHY HE WAS
24 DETAINED, THAT HE WAS QUESTIONED, YES.

25 I KNOW HE WAS ON THE MURDER OF CAMARENA.

1 BY MR. STOLAR:

2 Q. AND THROUGH ALL THE WAY UP UNTIL THE TIME, SAY, JANUARY
3 1ST OF 1990, MR. MATTA WAS OF INTEREST TO THE LEYENDA GROUP
4 AS A POSSIBLE SUSPECT IN THIS CASE, WAS HE NOT?

5 A. VERY MUCH SO.

6 Q. IN FACT, IN FEBRUARY OF 1989, MR. MATTA'S HAIR SAMPLE
7 WAS TAKEN FROM HIM AT A PRISON HE WAS IN, RIGHT?

8 A. YES, SIR.

9 Q. FOR SPECIFIC PURPOSES OF THIS CASE, CORRECT?

10 A. CORRECT.

11 Q. AND THE FIRST MENTION OF MR. MATTA OR AS A WITNESS ABOUT
12 MR. MATTA COMES ON JANUARY THE 2ND, 1990; IS THAT CORRECT?

13 MR. CARLTON: OBJECTION; LACK OF FOUNDATION, YOUR
14 HONOR.

15 THE COURT: OVERRULED.

16 THE WITNESS: WE HAD OTHER INFORMATION.

17 BY MR. STOLAR:

18 Q. BUT YOU FINALLY DEVELOPED A WITNESS ON JANUARY THE 2ND,
19 1909, CORRECT?

20 MR. CARLTON: OBJECT TO THE CHARACTERIZATION, YOUR
21 HONOR.

22 THE COURT: OVERRULED.

23 THE WITNESS: NO, WE'VE HAD WITNESSES, AGENT
24 WITNESSES BEFORE THEN.

25 //

1 BY MR. STOLAR:

2 Q. JANUARY 2ND, 1990, WAS THE FIRST TIME THAT HECTOR
3 CERVANTES SANTOS TOLD YOU ABOUT MR. MATTA BEING PRESENT AT
4 SOME MEETINGS THAT YOU CLAIMED, THE MAN YOU CLAIMED IS MR.
5 MATTA; ISN'T THAT RIGHT?

6 A. HE TOLD ME THAT HE WAS AT A PRISON WHERE MR. MATTA
7 PLANNED WITH --

8 Q. IT WAS AT SOME MEETINGS.

9 A. -- OTHERS TO KILL SPECIAL AGENT CAMARENA.

10 Q. IT WAS AT SOME MEETINGS, RIGHT?

11 THAT'S WHAT HE TOLD YOU ABOUT IN JANUARY OF THIS
12 YEAR?

13 A. THAT THEY MADE PLANS TO KILL AGENT CAMARENA, YES, SIR.

14 Q. WELL, THEY DIDN'T TELL YOU THAT HE PLANNED TO KILL AGENT
15 CAMARENA AT THAT OCTOBER MEETING, DID THEY?

16 A. TO KILL AN AGENT, A D.E.A. AGENT WHICH WAS -- CAMARENA
17 WAS LATER KILLED, SIR.

18 Q. WELL, HE TOLD YOU ABOUT THE CONVERSATION ABOUT AN
19 ABDUCTION AND INTERROGATION OF AN AMERICAN OFFICIAL
20 UNIDENTIFIED; IS THAT RIGHT?

21 A. THAT'S RIGHT.

22 Q. THE WORD "KILL" WAS NOT PART OF WHAT MR. CERVANTES TOLD
23 YOU ON NOVEMBER -- ON JANUARY 2ND, WAS IT?

24 A. THE SPECIFIC WORD WAS NOT USED, YOU'RE RIGHT, SIR.

25 Q. THE WAY YOU GOT TO -- I'M SORRY.

1 THE WAY MR. CERVANTES SANTOS GOT TO YOU WAS THROUGH
2 MR. GARATE BUSTAMANTE, CORRECT?

3 MR. CARLTON: OBJECTION; COVERED IN CROSS, YOUR
4 HONOR.

5 THE COURT: SUSTAINED.

6 BY MR. STOLAR:

7 Q. ON FEBRUARY 23RD, FEBRUARY 22ND, 1989, MR. PLASCENCIA,
8 PLASCENCIA AGUILAR TOLD YOU THAT THE INITIAL PLANS TO MURDER
9 AGENT CAMARENA TOOK PLACE AT A MEETING IN DECEMBER, THE
10 LATTER PART OF DECEMBER OF 1984; IS THAT CORRECT?

11 MR. CARLTON: OBJECTION; HEARSAY.

12 THE COURT: OVERRULED.

13 THE WITNESS: THAT THE INITIAL PLANS THAT HE KNEW
14 OF OCCURRED THEN, SIR.

15 BY MR. STOLAR:

16 Q. AND HE TOLD YOU THAT AT THAT MEETING INITIAL PLANS WERE
17 MADE, WHICH IS LANGUAGE IN YOUR REPORT, ISN'T IT? ISN'T THAT
18 LANGUAGE IN YOUR REPORT? INITIAL PLANS?

19 A. IS IT MY REPORT, SIR?

20 Q. YES, SIR.

21 A. IF THAT'S WHAT THE REPORT READS THEN -- THEN I'LL HAVE
22 TO GO WITH THAT, SIR.

23 Q. TAKE MY WORD FOR IT.

24 A. I'LL TAKE YOUR WORD FOR IT, SIR.

25 Q. HE TOLD YOU THAT PRESENT AND PARTICIPATING AT THAT

1 MEETING LATE DECEMBER OF '84 WAS ANTONIO GARATE; ISN'T THAT
2 RIGHT?

3 MR. CARLTON: OBJECTION TO THE HEARSAY. LACK OF
4 RELEVANCE.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES, AT THOSE MEETINGS, SEPARATE
7 MEETINGS FROM THOSE MR. CERVANTES TOLD ME ABOUT, YES, SIR.

8 BY MR. STOLAR:

9 Q. HAS MR. GARATE BEEN CHARGED OR ARRESTED IN CONNECTION
10 WITH THE KIDNAPPING AND MURDER OF WITH AGENT CAMARENA?

11 MR. CARLTON: OBJECTION, YOUR HONOR. IRRELEVANT.

12 THE COURT: SUSTAINED.

13 BY MR. STOLAR:

14 Q. HAS MR. GARATE BEEN GIVEN IMMUNITY FROM PROSECUTION, TO
15 YOUR KNOWLEDGE?

16 MR. CARLTON: OBJECTION; IRRELEVANT.

17 BY MR. STOLAR:

18 Q. WITH RESPECT TO THE KIDNAPPING AND MURDER OF AGENT
19 CAMARENA?

20 THE COURT: OVERRULED.

21 THE WITNESS: NO, SIR.

22 BY MR. STOLAR:

23 Q. HAVE ANY PROMISES BEEN MADE TO MR. GARATE THAT HE WILL
24 NOT BE CHARGED IN CONNECTION WITH THE KIDNAPPING AND MURDER
25 OF AGENT CAMARENA?

1 A. NO, SIR. HE DIDN'T KILL AGENT CAMARENA, SIR.

2 Q. WELL, YOU HAD INFORMATION THAT HE WAS PRESENT AND
3 PARTICIPATED IN A MEETING WHERE PLANS, INITIAL PLANS WERE
4 MADE TO MURDER AGENT CAMARENA?

5 A. BUT NOT WHERE HE WAS ASKED TO KILL AGENT CAMARENA.

6 Q. BUT HE PARTICIPATED IN THE MEETING, DIDN'T HE?

7 MR. CARLTON: OBJECT TO THE ARGUMENT, YOUR HONOR.

8 THE COURT: OBJECTION SUSTAINED.

9 BY MR. STOLAR:

10 Q. DID YOU HAVE INFORMATION THAT HE PARTICIPATED IN A
11 MEETING WHERE PLANS WERE DISCUSSED TO KILL AGENT CAMARENA?

12 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

13 THE COURT: SUSTAINED.

14 BY MR. STOLAR:

15 Q. WAS YOUR FIRST CONTACT WITH CERVANTES SANTOS ARRANGED
16 THROUGH MR. PLASCENCIA?

17 MR. CARLTON: OBJECTION; ASKED AND ANSWERED IN
18 PRIOR TESTIMONY.

19 THE COURT: OVERRULED.

20 THE WITNESS: IT MIGHT HAVE BEEN INDIRECTLY.

21 I DON'T REMEMBER IF HE WAS INVOLVED INITIALLY, SIR.

22 BY MR. STOLAR:

23 Q. WELL, THE WAY HE GOT TO YOU WAS THAT HE CONTACTED A
24 PERSON THAT HE KNEW WAS TALKING TO YOU; IS THAT RIGHT?

25 A. YES, SIR.

1 Q. AND THAT OTHER PERSON WHO HE CONTACTED, CONTACTED YOU
2 AND ADVISED YOU THAT YOU HAD A GENTLEMAN WHO WANTED TO TALK
3 TO YOU ABOUT THE CAMARENA CASE, CORRECT?

4 A. YES, SIR.

5 Q. WHO WAS THAT GENTLEMAN?

6 A. I RECALL HAVING BEEN TOLD THAT BY ENRIQUE PLASCENCIA
7 AGUILAR AND ALSO BY ANTONIO GARATE BUSTAMANTE, SIR.

8 Q. YOU KNEW THEY WERE FRIENDS, DID YOU NOT?

9 A. I WAS AWARE THAT MR. AGUILAR AND MR. BUSTAMANTE WERE
10 FRIENDS, YES, SIR.

11 Q. AT THE TIME YOU GOT THE INITIAL CONTACT, WERE YOU ALSO
12 AWARE THAT MR. GARATE BUSTAMANTE HAD BEEN COMANDANTE FOR
13 HECTOR CERVANTES SANTOS AS WELL THAT HE WAS IN THE RIOT
14 POLICE?

15 A. I WAS TOLD THAT THIS PERSON, WHO I DIDN'T KNOW AT THE
16 TIME WHO TURNED OUT TO BE CERVANTES, I WAS TOLD THAT HE HAD
17 WORKED UNDER MR. BUSTAMANTE, YES, SIR.

18 Q. IS IT FAIR TO SAY THAT YOU INTERVIEWED HECTOR CERVANTES
19 SANTOS AT LENGTH?

20 A. I WOULD SAY THAT HE WAS INTERVIEWED AT LENGTH IN THE
21 COURSE OF FIVE OR SIX DIFFERENT TIMES THAT I MET WITH HIM,
22 SIR.

23 Q. WELL, YOU ACTUALLY INTERVIEWED HIM A LOT MORE THAN THAT,
24 DIDN'T YOU?

25 A. I DON'T RECALL, SIR, MORE THAN FIVE OR SIX OCCASIONS.

1 Q. YOU DO RECALL TESTIFYING TO THE GRAND JURY ON JANUARY
2 10, DO YOU NOT, 1990?

3 A. WHAT I RECALL I SAID DURING THAT PROCEEDING WAS THAT I
4 INTERVIEWED HIM FOR DAYS, NOT MEANING ALL DAYS AT A TIME,
5 JUST DIFFERENT DAYS.

6 Q. WELL, DO YOU RECALL BEING ASKED THE FOLLOWING QUESTIONS
7 AT PAGE 19 AND GIVING THE FOLLOWING ANSWERS:

8 "QUESTION: MR. BERRELLEZ, HAVE YOU HAD AN
9 OPPORTUNITY TO INTERVIEW HECTOR CERVANTES
10 SANTOS YOURSELF?

11 "THE WITNESS, YOU: YES, SIR.

12 "QUESTION: AND AT LENGTH?

13 "ANSWER: YES, SIR." THE ANSWER.

14 "QUESTION: FOR HOURS AT A TIME?

15 "ANSWER: FOR ALMOST DAYS AT A TIME."

16 THAT WAS YOUR TESTIMONY, RIGHT?

17 A. THAT I TALKED TO HIM FOR SEVERAL DAYS, YES, SIR, THAT
18 WAS MY TESTIMONY.

19 Q. NO. "FOR ALMOST DAYS AT A TIME."

20 A. WELL, WHAT I MEANT TO SAY WAS FOR DAYS NOT ALL DAYS,
21 SIR.

22 Q. YOU MISSPOKE IN THE GRAND JURY; IS THAT RIGHT?

23 A. I MISSPOKE?

24 WELL, MAYBE I SAID SOMETHING THAT I DIDN'T MEAN TO
25 SAY, BUT WHAT I MEANT TO SAY WAS IN THE COURSE OF NUMEROUS

1 DAYS, I HAVE TALKED TO HIM BUT, NO, NOT ALL DAY, SIR.

2 Q. AND EACH TIME YOU SPOKE TO HIM HE GAVE YOU SOME
3 INFORMATION; IS THAT RIGHT?

4 A. PIECES, YES, SIR.

5 Q. WERE -- WAS ANOTHER AGENT PRESENT DURING ALL OF THESE
6 OCCASIONS?

7 A. IT IS MY PRACTICE NEVER TO TALK TO A WITNESS BY MYSELF.
8 I ALWAYS HAD SOMEBODY WITH ME, YES, SIR.

9 Q. CAN YOU ACCOUNT FOR THE FACT THAT THERE ARE ONLY THREE
10 D.E.A.-6 REPORTS OF INFORMATION OBTAINED FROM HECTOR
11 CERVANTES SANTOS GIVEN FROM WHAT YOU TOLD US?

12 A. YES, I CAN.

13 MR. CARLTON: OBJECTION; ARGUMENTATIVE, YOUR HONOR.

14 THE COURT: OVERRULED.

15 THE WITNESS: YES, I CAN.

16 THERE ARE NUMEROUS REASONS WHY THERE WAS ONLY THREE
17 REPORTS WRITTEN.

18 ONE OF THE REASONS WAS BECAUSE WHEN MR. CERVANTES
19 FIRST CAME UP, HE WAS VERY AFRAID AND HE ASKED ME IF I WAS
20 GOING TO ARREST HIM AND I TOLD HIM THEN THAT, NO, THAT I WAS
21 NOT GOING TO ARREST HIM IF HE WAS HONEST WITH ME AND IF HE
22 TOLD ME THE TRUTH.

23 HE WAS VERY RELUCTANT AT FIRST TO TELL ME
24 EVERYTHING, AND HE TOLD ME THAT HE WAS BECAUSE HE HAD
25 RELATIVES IN MEXICO AND THAT HE FEARED FOR THEIR SAFETY.

1 I MADE IT A POINT NOT TO FRIGHTEN HIM MORE BY USING
2 A TAPE RECORDER TO TAKE HIS STATEMENT DOWN AND I MADE IT A
3 POINT NOT TO FURTHER FRIGHTEN THIS MAN INITIALLY BY SITTING
4 DOWN AND TAKING COPIOUS NOTES.

5 SO, THEREFORE, I DIDN'T SIT DOWN AND QUESTION HIM
6 IN THE TYPE OF QUESTION AND ANSWER TYPE OF ATMOSPHERE.

7 WHAT I TOLD HIM WAS, "YOU TALK TO ME AND YOU TELL
8 ME WITH WHAT YOUR COMFORTABLE TELLING ME. WE WILL MEET MORE
9 THAN ONCE."

10 AND I TOLD HIM MAYBE IT WOULD HELP IF WE WOULD
11 BRING YOUR FAMILY OUT HERE SO THAT YOU WOULD FEEL MORE
12 COMFORTABLE.

13 AT THE TIME HIS CONCERN WAS THAT HE WOULD BE
14 ARRESTED BY ME FOR INVESTIGATIVE PURPOSES.

15 I EXPLAINED TO MR. CERVANTES THAT IN THE UNITED
16 STATES WE DON'T ARREST WITHOUT PROBABLE CAUSE THAT HE, IN
17 FACT, HAD COMMITTED HAD A CRIME; THAT IN THAT THIS COUNTRY WE
18 DO NOT ARREST FOR PURPOSES OF INVESTIGATION.

19 I TOLD HIM THAT HE COULD TELL ME WHATEVER HE FELT
20 COMFORTABLE TELLING ME AND THAT AS WE GOT TO KNOW EACH OTHER
21 BETTER, MAYBE A TRUST WOULD BE DEVELOPED WHERE HE WOULD AT
22 ONE POINT FEEL COMFORTABLE IN TELLING ME THE TRUTH.

23 I TOLD HIM THAT IT WAS ALL RIGHT CONSIDERING THE
24 CIRCUMSTANCES; THAT HE TELL ME WHAT HE FELT COMFORTABLE
25 TELLING ME ONLY AT THAT TIME AND I DIDN'T WANT TO PUSH HIM

1 BECAUSE I ALSO REALIZED THE DIFFICULT SITUATION HE WAS IN
2 HAVING HIS CHILDREN AND WIFE IN MEXICO.

3 SO, THEREFORE --

4 BY MR. STOLAR:

5 Q. YOU ALSO REALIZED THAT WHAT HE REALLY WANTED TO DO WAS
6 COME TO THE U.S., DIDN'T YOU?

7 A. YES, SIR.

8 Q. WERE YOU AWARE OF THE CIRCUMSTANCES UNDER WHICH HE HAD
9 LOST HIS JOB AT THE TIME?

10 A. YES, SIR. HE TOLD ME THAT HE HAD LEFT --

11 Q. YES OR NO.

12 A. YES, HE TOLD ME HE HAD LEFT --

13 Q. YES OR NO.

14 YOU WERE AWARE OR YOU WERE NOT AWARE?

15 MR. CARLTON: HE'S TRYING TO DIRECT THE WITNESS'S
16 RESPONSE.

17 MR. STOLAR: I'D LIKE HIM TO ANSWER THE QUESTION.

18 THE COURT: THE QUESTION IS IRRELEVANT WHETHER HE
19 WAS AWARE.

20 BY MR. STOLAR:

21 Q. WELL --

22 A. WELL, I'M NOT DONE YET, SIR.

23 Q. THAT YOU KNOW -- THAT'S OKAY.

24 MR. STOLAR: THE UNITED STATES ATTORNEYS CAN
25 CROSS-EXAMINE YOU IF THEY WANT YOU TO GET THE FULL

1 EXPLANATION IN.

2 THE WITNESS: WELL, I'M NOT DONE, SIR, YOU KNOW,
3 WITH MY ANSWER.

4 THE COURT: WHICH ANSWER?

5 THE WITNESS: HE ASKED ME WHY WE ONLY WROTE THE
6 REPORTS, YOUR HONOR.

7 THE COURT: YOU MAY FINISH.

8 MR. STOLAR: THE WITNESS IS GIVING ME A NARRATIVE
9 WHICH IS NOT EXACTLY RELATIVE TO THE QUESTION.

10 THE COURT: WELL, IT IS RESPONSIVE.

11 YOU MAY FINISH YOUR ANSWER.

12 THE WITNESS: AND BEING THAT I WAS WORKED IN MEXICO
13 MYSELF AND I WAS FAMILIAR WITH THE DANGEROUS SITUATIONS DOWN
14 THERE, AND I WAS AWARE THAT NUMEROUS -- WE HAD LOST NUMEROUS
15 INFORMANTS IN MEXICO.

16 MR. STOLAR: NOW, I MOVE TO STRIKE THE ANSWER, YOUR
17 HONOR.

18 THE COURT: DENIED.

19 THE WITNESS: I TOLD HIM THAT AS WE GOT TO KNOW
20 EACH OTHER BETTER AND AS WE GOT TO TRUST EACH OTHER IN THE
21 COURSE OF DIFFERENT MEETINGS, THAT I WOULD HOPE THAT SOMETIME
22 SOON HE WOULD TELL ME EVERYTHING HE KNEW ABOUT THIS MURDER
23 BECAUSE WAS IT WAS IMPORTANT TO THIS GOVERNMENT AS WE WERE
24 DEALING WITH THE MURDER OF A U.S. GOVERNMENT AGENT THAT DIED
25 PERFORMING HIS DUTIES IN THAT COUNTRY.

1 BY MR. STOLAR:

2 Q. YOU TOLD HIM WAS IMPORTANT TO THIS GOVERNMENT; IS THAT
3 RIGHT?

4 A. YES, SIR, I DID.

5 Q. YOU WERE SPEAKING AS A REPRESENTATIVE IN THE SENSE OF
6 THE UNITED STATES, CORRECT?

7 A. AND I STILL BELIEVE THAT IT'S IMPORTANT TO THIS
8 GOVERNMENT, SIR.

9 Q. IN FACT, THIS IS PROBABLY THE BIGGEST CASE OF IMPORTANCE
10 TO THE GOVERNMENT THAT'S GOING ON RIGHT NOW?

11 MR. CARLTON: OBJECTION; IRRELEVANT.

12 THE COURT: SUSTAINED.

13 BY MR. STOLAR:

14 Q. IS IT FAIR TO SAY THAT IT'S THE BIGGEST CASE OF
15 IMPORTANCE, QUITE UNDERSTANDABLY, TO THE D.E.A. AND ALL OF
16 ITS AGENTS?

17 THE CARLTON: OBJECT TO THE RELEVANCE.

18 THE COURT: HE MAY ANSWER THAT.

19 THE WITNESS: IT IS VERY IMPORTANT FOR US TO SOLVE
20 THIS CRIME AND TO BRING TO JUSTICE THOSE INVOLVED, SO THAT
21 HOPEFULLY ANOTHER ONE OF OUR AGENTS WOULD NOT SUFFER WHAT
22 AGENT CAMARENA SUFFERED, SIR.

23 BY MR. STOLAR:

24 Q. IS IT ALSO PART OF YOUR MISSION THAT IF SOMEONE IS
25 ACCUSED OF A CRIME, BUT THERE IS NOT SUFFICIENT EVIDENCE,

1 THAT YOU WANT THAT PERSON FOUND NOT GUILTY?

2 A. YES, I DO, SIR.

3 Q. THANK YOU.

4 THE SECOND TIME THAT YOU MET MR. CERVANTES SANTOS
5 ON NOVEMBER 30TH, AGENT SALAZAR WAS WITH YOU DURING THAT
6 INTERVIEW; IS THAT CORRECT?

7 A. YES, SIR, HE WAS.

8 Q. WAS AGENT SALAZAR THERE THE ENTIRE TIME OF THE
9 INTERVIEW?

10 A. YES, SIR, I BELIEVE HE WAS.

11 Q. BY THE WAY, IN SOME OF THESE INTERVIEWS WHERE YOU DIDN'T
12 WANT TO TAKE NOTES, THERE WAS NOTHING TO PREVENT YOU FROM
13 GOING BACK TO THE OFFICE AND WRITING DOWN NOTES LATER, WAS
14 THERE?

15 MR. CARLTON: OBJECTION; IRRELEVANT, YOUR HONOR.

16 THE COURT: OVERRULED.

17 THE WITNESS: THESE WERE THE NOTES THAT WERE
18 GENERATED BACK AT THE OFFICE, THE REPORTS, SIR.

19 BY MR. STOLAR:

20 Q. SO THAT YOU ONLY HAD THREE MEETINGS THAT RESULTED IN
21 REPORTS?

22 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

23 THE COURT: SUSTAINED.

24 BY MR. STOLAR:

25 Q. AT YOUR INTERVIEW WITH MR. CERVANTES SANTOS OF JANUARY

1 THE 11TH, DID MR. CERVANTES SANTOS TELL YOU THAT BECAUSE OF
2 RECENT SEIZURES MANUEL IBARRA HERRERA -- WITHDRAWN.

3 DID HE TELL YOU AT THAT MEETING THAT MANUEL IBARRA
4 HERRERA SAID THAT BECAUSE OF THE RECENT SEIZURES, THE
5 SECRETARY OF GOBERNACION HAD RECEIVED A LOT OF NEGATIVE
6 EXPOSURE?

7 A. THOSE ARE AGENT SALAZAR'S WORDS. HE DID YOU TELL ME
8 THAT, BUT NOT IN THOSE SPECIFIC WORDS, SIR.

9 Q. WELL, AND THAT'S AGENT SALAZAR'S REPORT; IS THAT RIGHT?
10 THAT I WAS READING FROM?

11 A. AND THOSE ARE HIS WORDS, SIR, NOT MR. CERVANTES'S.

12 Q. AGENT SALAZAR'S REPORT DESCRIBES THE RECENT SEIZURES THAT
13 WERE TALKED ABOUT AS BEING THE SEIZURES OF ZACATECAS AND
14 BUFALO; ISN'T THAT CORRECT?

15 A. THOSE ARE HIS REPORTS -- I MEAN HIS WORDS IN HIS REPORT,
16 YES, SIR.

17 Q. AND YOU CO-SIGNED IT, RIGHT?

18 A. YES, SIR, I DID.

19 Q. AND IF IT WAS AN INCORRECT REPORT, YOU WOULD HAVE
20 CHANGED IT IN THE REPORT, WOULDN'T YOU?

21 A. THE REPORT IS NOT INCORRECT, SIR.

22 Q. SO THAT HE DID TALK ABOUT THE SEIZURES AT ZACATECAS AND
23 BUFALO.

24 A. HE SPECIFICALLY REFERRED TO THE FIELDS OF ZACATECAS,
25 OTHER SEIZURES IN CHIHUAHUA, BUT HE DIDN'T USE THE WORD

1 BUFALO, SIR. THAT IS -- THOSE ARE AGENT SALAZAR'S WORDS
2 THERE.

3 Q. ALL RIGHT.

4 DID HE TELL THEN THAT THE JANUARY 11 INTERVIEW THAT
5 THIS POLICE REPORT THAT MR. MATTA WAS SUPPOSED TO BE READING,
6 CONTAINED INFORMATION WHICH STATED WHICH AMERICAN AGENT WAS
7 RESPONSIBLE FOR SUPPLYING THE INFORMATION WHICH RESULTED IN
8 THE SEIZURE?

9 A. NOT SPECIFICALLY.

10 JUST THAT AN AMERICAN AGENT, WITHOUT ANYBODY BEING
11 MENTIONED BY NAME, SIR.

12 Q. DID HE NOT TELL YOU THAT THE REPORT CONTAINED
13 INFORMATION WHICH STATED WHICH AMERICAN AGENT WAS RESPONSIBLE
14 FOR SUPPLYING THE INFORMATION?

15 A. AS I SAID BEFORE, SIR, THAT IS AGENT SALAZAR'S REPORT.
16 THOSE ARE HIS WORDS.

17 Q. YOU SIGNED THIS REPORT, DIDN'T YOU?

18 A. YES, SIR.

19 Q. YOU WERE THERE FOR THE INTERVIEW, WEREN'T YOU?

20 A. YES, SIR, I WAS.

21 Q. YOU WOULDN'T LET SOMETHING GO IN THAT'S INCORRECT, WOULD
22 YOU?

23 A. I WOULD HOPE NOT, SIR.

24 Q. NOW, DID HE TELL YOU IN THAT JANUARY 11TH MEETING THAT
25 THE MAIN TOPIC OF CONVERSATION AT THIS MEETING THAT OCCURRED

1 IN OCTOBER OF '84, WAS SPECIAL AGENT ENRIQUE CAMARENA?

2 A. NOT BY NAME. SIR. THOSE ARE AGENT SALAZAR'S WORDS.

3 Q. YOU JUST SAID IT'S --

4 A. CONCLUSIONARY.

5 IT TURNED OUT TO BE CAMARENA CONCLUSIONARY BUT HE
6 TOLD ME THAT THEY DISCUSSED KILLING AN AGENT, SIR.

7 Q. WELL, ALL RIGHT.

8 AT THE NOVEMBER 30TH INTERVIEW, DID MR. CERVANTES
9 SANTOS SAY TO YOU, IN SUBSTANCE, THAT AT ONE OF THESE
10 MEETINGS OR AT THE MEETING DESCRIBED THEN THAT BARBA
11 HERNANDEZ SAID THAT IT WOULD BE HELPFUL TO FIND OUT WHAT THE
12 D.E.A. PERSON KNEW ABOUT HIGH-LEVEL MEXICAN POLITICIANS?

13 A. AGAIN, I DON'T RECALL IF THOSE WERE MR. CERVANTES'S
14 WORDS, BUT I DO RECALL THAT HE -- THAT THE CONVERSATION HE
15 DESCRIBED ALLUDED TO THAT THE AGENT SHOULD BE ASKED ABOUT
16 WHAT HE KNEW ABOUT HIGH-RANKING GOVERNMENT OFFICIALS WORKING
17 IN COLLUSION AND IN PROTECTION OF THE MAJOR DRUG LORDS IN
18 MEXICO.

19 Q. AND THAT BARBA HERNANDEZ IS THE PERSON WHO'S SUPPOSED TO
20 HAVE SAID THAT?

21 A. I BELIEVE THAT'S WHO SAID IT, YES, SIR.

22 Q. THE FIRST TIME MR. MATTA'S NAME COMES UP IN A DEBRIEFING
23 REPORT IS THE REPORT OF THE INTERVIEW OF JANUARY 2ND, 1990;
24 IS THAT RIGHT?

25 A. HIS NAME, AS FAR AS I KNOW, HAS COME UP SINCE 1985.

1 Q. NO, NO. FROM HECTOR CERVANTES SANTOS. I TAKE IT BACK.

2 A. OH, NO.

3 Q. I KNOW HIS NAME HAS COME UP. WE AGREED ON THAT. YOU
4 HAD A MAIN OR INTEREST IN MR. MATTA, RIGHT?

5 MR. CARLTON: OBJECTION; ASKED AND ANSWERED.

6 THE COURT: SUSTAINED.

7 BY MR. STOLAR:

8 Q. AS OF FEBRUARY OF 1989, YOU KNEW THAT AGENTS AGUILAR AND
9 LEYVA HAD SAID THAT THEY'D SEEN MR. MATTA OR SOMEBODY WHO
10 RESEMBLED MR. MATTA AT A HOTEL ON FEBRUARY 12, '84; IS THAT
11 RIGHT?

12 A. I KNEW THEY HAD SEEN MR. MATTA, YES, SIR.

13 Q. OR SOMEBODY WHO RESEMBLED MR. MATTA?

14 A. THEY TOLD ME THAT THEY SAW MR. MATTA. THEY DIDN'T TELL
15 ME HE RESEMBLED ANYBODY.

16 Q. WELL, THEN, YOU KNOW WHO MR. ED HEATH IS, DON'T YOU?

17 A. YES, SIR. I KNOW MR. HEATH.

18 Q. AND HE TOLD MR. HEATH RIGHT THEN AT THAT TIME THAT THEY
19 SAW SOMEBODY WHO RESEMBLED MR. MATTA. BUT IN ANY EVENT --

20 MR. CARLTON: OBJECT TO THE COMMENT.

21 THE COURT: STRIKE THE COMMENT.

22 BY MR. STOLAR:

23 Q. OKAY.

24 AS OF FEBRUARY 1989, A HAIR SAMPLE HAD BEEN TAKEN
25 OF MR. MATTA AND MICHAEL MALONE HAD GIVEN YOU A REPORT THAT

1 SAID THAT THE TWO HAIRS FOUND AT 881 LOPE DE VEGA WERE
2 CONSISTENT WITH THE KNOWN HEAD HAIRS OF MR. MATTA; IS THAT
3 LIGHT?

4 MR. CARLTON: OBJECT TO THE RELEVANCE, YOUR HONOR.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES, SIR.

7 BY MR. STO, LAR:

8 Q. AND YET IT WAS NOT UNTIL AFTER HECTOR CERVANTES TOLD YOU
9 ABOUT THESE MEETINGS IN OCTOBER THAT THE MAN WHO HE SAID WAS
10 MR. MATTA IS SUPPOSED TO HAVE BEEN AT -- THAT MR. MATTA WAS
11 INDICTED IN THIS CASE; IS THAT CORRECT?

12 MR. CARLTON: OBJECTION, YOUR HONOR. IRRELEVANT
13 AND ARGUMENTATIVE.

14 THE COURT: SUSTAINED.

15 BY MR. STOLAR:

16 Q. WAS MR. MATTA INDICTED BEFORE MR. HECTOR CERVANTES
17 SANTOS GAVE YOU INFORMATION?

18 MR. CARLTON: OBJECTION; IRRELEVANT.

19 THE COURT: SUSTAINED.

20 MR. STOLAR: I'D LIKE TO ARGUE THIS AT THE BREAK,
21 YOUR HONOR.

22 BY MR. STOLAR:

23 Q. AT THIS JANUARY 2ND INTERVIEW WHERE MR. MATTA'S NAME
24 COMES UP, HE TOLD AT THE FIRST MEETING WHICH TOOK PLACE AT
25 THE RESIDENCE OF JAVIER BARBA HERNANDEZ OCCURRED SOMETIME IN

1 EARLY OCTOBER 1984; IS THAT CORRECT?

2 A. ON OR ABOUT, YES, SIR.

3 Q. EARLY OCTOBER '84, RIGHT?

4 A. MR. CERVANTES WAS -- AS HE WAS TALKING, SIR, HE WAS
5 TRYING TO REMEMBER HIMSELF WHEN IT WOULD HAVE HAPPENED THAT
6 HE WAS TALKING ABOUT ON OR ABOUT THOSE DATES WITHOUT REALLY
7 BEING TOO SPECIFIC.

8 Q. HE TOLD YOU THAT THE SECOND MEETING AT THIS SAME
9 INTERVIEW -- MR. CERVANTES TOLD YOU THAT THE SECOND MEETING
10 TOOK PART -- TOOK PLACE IN THE LATTER PART OF 1984 AROUND THE
11 WEDDING OF JORGE BARBA HERNANDEZ; ISN'T THAT RIGHT?

12 A. YES, SIR.

13 AND, AGAIN, HE WAS TRYING TO REMEMBER WHEN HE WAS
14 NARRATING THIS TO ME.

15 AND I REMEMBER THAT HE ASSOCIATED THAT MEETING
16 BECAUSE HE SAID IT HAPPENED BEFORE JORGE BARBA GOT KILLED
17 BECAUSE HE GOT KILLED IN NOVEMBER, SO IT HAD TO HAVE HAPPENED
18 SOMETIME IN OCTOBER.

19 THAT'S THE WAY I RECALL IT, YES, SIR.

20 Q. SO WHAT HE DID, WHAT SALAZAR WROTE IN HIS REPORT, THE
21 REPORT THAT YOU CO-SIGNED BECAUSE WERE YOU PRESENT FOR THE
22 INTERVIEW AS WELL AS BEING GROUP SUPERVISOR, IS THAT THE
23 FIRST MEETING WAS EARLY OCTOBER, THE SECOND MEETING WAS THE
24 LATTER PART OF OCTOBER, CORRECT?

25 A. THOSE ARE AGENT SALAZAR'S WORDS?

1 A. OKAY.

2 Q. DID HE ALSO TELL YOU AT THIS SAME INTERVIEW THAT HE WENT
3 TO THE GUADALAJARA AIRPORT ONE DAY PRIOR TO THE WEDDING AND
4 PICKED UP A MAN WHO HE IDENTIFIED AS BEING MR. MATTA?

5 A. AGAIN, THOSE ARE AGENT SALAZAR'S WORDS.

6 I DON'T REMEMBER HIM BEING THAT SPECIFIC AS TO IF
7 IT WAS THE SAME DAY OR THE FOLLOWING DAY.

8 HE WAS TRYING, I RECALL, TO RECONSTRUCT THIS TIME
9 PERIOD IN HIS MIND AND, AS I STATED BEFORE, HE WASN'T THAT
10 CERTAIN WHEN HE TOLD US THAT, SO THOSE ARE MORE AGENT
11 SALAZAR'S WORDS FOR THE PURPOSES OF THE REPORTS.

12 Q. ARE YOU CERTAIN WHEN HE TOLD YOU THAT THE THIRD MEETING
13 TOOK PLACE SOMETIME IN JANUARY OF 1985?

14 A. ON OR ABOUT.

15 LIKE I SAID, WITH PROXIMITY TO TIME, SIR, NOT WITH
16 ANY CERTAINTY.

17 Q. AND HE TOLD YOU THAT AT THAT THIRD MEETING WHEN MR.
18 MATTA WAS PRESENT, DIDN'T HE, IN JANUARY OF '85?

19 A. I BELIEVE SO, YES, SIR.

20 Q. AND HE DID TELL YOU, THOUGH, THAT HE REALLY DIDN'T
21 OVERHEAR SPECIFICS ABOUT THE KIDNAPPING BECAUSE HE WASN'T
22 PRESENT THROUGHOUT THE ENTIRE MEETING?

23 DIDN'T HE TELL YOU THAT?

24 A. AGAIN, THOSE WERE MORE AGENT SALAZAR'S WORDS.

25 THIS IS WHEN WE'RE STILL TRYING TO BUILD CONFIDENCE

1 WITH THIS MAN WHO WAS --

2 Q. WELL, DID HE TELL YOU THAT HE WAS RESPONSIBLE FOR
3 PROVIDING ESSENTIAL NECESSITIES FOR ANY AND ALL BARBA
4 HERNANDEZ'S GUESTS, THAT WAS HIS JOB?

5 A. YES, SIR.

6 AND THOSE THINGS WERE IN --

7 Q. AND THAT, THEREFORE, YOU NEVER --

8 THE COURT: JUST A MOMENT.

9 LET THE WITNESS FINISH HIS ANSWER.

10 MR. STOLAR: I'M SORRY, JUDGE.

11 THE WITNESS KNOWS WHAT HE'S DOING.

12 THE COURT: FINISH YOUR ANSWER.

13 DID YOU FINISH YOUR ANSWER?

14 THE WITNESS: YES, YOUR HONOR.

15 THANK YOU, SIR.

16 WHAT HE TOLD US WAS THAT, YES, HE WAS THERE TO
17 SERVE COFFEE AND COKES AND THINGS OF THAT NATURE.

18 AND I ASKED HIM IF THESE THINGS WERE IN THE
19 PROXIMITY OF WHERE THE MEETINGS WERE HELD AND HE SAID,
20 "EVERYTHING WAS THERE IN THE ROOM, I HAD THE REFRIGERATOR
21 THERE AND BASICALLY WHAT I WOULD SERVE THEM WOULD BE COKES,
22 COFFEE, COLD CUTS AND THINGS OF THAT NATURE."

23 BY MR. STOLAR:

24 Q. NO ALCOHOL?

25 A. AND SOME ALCOHOL AND ALSO SOME COCAINE, SIR.

1 Q. ALL RIGHT.

2 AND DIDN'T HE ALSO TELL THAT HE WAS NEVER IN ONE
3 PLACE FOR AN EXTENDED PERIOD OF TIME DURING THESE MEETINGS?

4 A. AGAIN, THOSE ARE MORE AGENT SALAZAR'S WORDS.

5 I DON'T RECALL HIM SAYING THAT HE LEFT THE ROOM ON
6 NUMEROUS OCCASIONS.

7 I REMEMBER HE SAID THAT HE -- HE ATTENDED TO THEM
8 WITHIN THE ROOM, SIR.

9 Q. DO YOU KNOW HOW MUCH MONEY -- WHEN WAS THE FIRST TIME,
10 TO YOUR KNOWLEDGE, THAT MR. CERVANTES TESTIFIED BEFORE THE
11 GRAND JURY?

12 MR. CARLTON: OBJECTION; ASKED AND ANSWERED, YOUR
13 HONOR.

14 THE COURT: SUSTAINED.

15 BY MR. STOLAR:

16 Q. WAS HE GIVEN MONEY RIGHT AFTER HIS FIRST APPEARANCE
17 BEFORE THE GRAND JURY BY YOU?

18 MR. CARLTON: ASKED AND ANSWERED.

19 THE COURT: SUSTAINED.

20 BY MR. STOLAR:

21 Q. DID YOU OBTAIN --

22 THE COURT: THIS IS NOT A CONTINUATION OF THE
23 CROSS-EXAMINATION.

24 BY MR. STOLAR:

25 Q. AT THE INITIAL DEBRIEFING THAT YOU HAD ON NOVEMBER 30TH,

1 DID MR. CERVANTES SANTOS TELL YOU AND AGENT SALAZAR ABOUT THE
2 POSSIBLE KILLINGS THAT HE KNEW ABOUT OF SOME JEHOVAH'S
3 WITNESSES IN GUADALAJARA?

4 A. I DON'T RECALL IF HE TOLD US ON THAT DATE OR ANOTHER --
5 AT OTHER OCCASIONS.

6 Q. IF I SHOWED YOU YOUR REPORT FOR NOVEMBER 30TH OR A
7 REPORT, WOULD THAT HELP REFRESH YOUR RECOLLECTION?

8 A. IF IT'S IN MY REPORT, THEN MOST LIKELY HE DID, SIR.

9 Q. TAKE MY WORD FOR IT?

10 A. I DO, SIR.

11 Q. THANK YOU.

12 HE TOLD YOU THAT FONSECA HAD VISITED BARBA
13 HERNANDEZ AT HIS RESIDENCE AND THAT HE TOLD BARBA HERNANDEZ
14 THAT THERE WERE FOUR PEOPLE ROAMING THE STREETS OF
15 GUADALAJARA TRYING TO MAKE EVERYONE BELIEVE THAT THEY WERE
16 JEHOVAH'S WITNESSES BUT THAT, IN FACT, THEY WERE D.E.A. SPIES
17 AND THEY SHOULD BE TAKEN OFF THE STREETS.

18 DID HE TELL THAT TO YOU AND AGENT SALAZAR?

19 MR. CARLTON: OBJECTION; IRRELEVANT.

20 MR. STOLAR: PRIOR INCONSISTENT STATEMENT, YOUR
21 HONOR.

22 THE COURT: SUSTAINED.

23 MR. STOLAR: PRIOR INCONSISTENT STATEMENT, YOUR
24 HONOR.

25 THE COURT: OVERRULED. SUSTAINED. YOU'RE

1 OVERRULED .

2 (LAUGHTER .)

3 MR. STOLAR: AT THE BREAK I'LL TAKE IT UP THEN, IF
4 I MAY .

5 BY MR. STOLAR:

6 Q. AS THE LEYENDA TASK FORCE OR OPERATION LEYENDA WORKED
7 WITH MEXICAN POLICE AND DEPARTMENT -- OR JUSTICE DEPARTMENT
8 OFFICIALS IN CONNECTION WITH THEIR INVESTIGATION OF THE
9 CAMARENA CASE .

10 MR. CARLTON: IRRELEVANT, YOUR HONOR .

11 THE COURT: SUSTAINED .

12 BY MR. STOLAR:

13 Q. HAVE YOU PROVIDED ANY TESTIMONY TO THE COURTS IN MEXICO
14 CONCERNING YOUR KNOWLEDGE OF THE EVENTS SURROUNDING THE
15 KIDNAPPING AND DEATH OF AGENT CAMARENA?

16 MR. CARLTON: IRRELEVANT, YOUR HONOR .

17 THE COURT: SUSTAINED .

18 BY MR. STOLAR:

19 Q. IS THERE ANY KIND OF SIGNED AGREEMENT WITH HECTOR
20 CERVANTES SANTOS REGARDING HIS ROLE AS A CONFIDENTIAL
21 INFORMANT FOR YOU?

22 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR .

23 THE COURT: I DON'T RECALL IT .

24 YOU MAY ANSWER .

25 THE WITNESS: THE ONLY AGREEMENT THAT I HAVE WITH

1 HIM OR THE D.E.A. HAD WITH HIM IS THAT --

2 THE COURT: HE ASKED IF THERE WAS A SIGNED
3 AGREEMENT.

4 THE WITNESS: OH, A SIGNED AGREEMENT?

5 YES, YOUR HONOR, I BELIEVE THERE IS AND I WOULD
6 LIKE TO GET INTO WHAT THAT ENTAILS.

7 THE COURT: WELL, HE HASN'T ASKED FOR THAT.

8 MR. STOLAR: I PREFER THE SIGNED AGREEMENT, YOUR
9 HONOR.

10 THE COURT: WELL, HE'S ANSWERED THERE IS.

11 BY MR. STOLAR:

12 Q. THERE IS ONE.

13 DID YOU SAY THERE IS ONE; "YES"?

14 A. I BELIEVE THERE IS A SIGNED ONE.

15 I KNOW THERE IS SOME VERBAL AGREEMENT. I DON'T
16 KNOW WHETHER HE SIGNED IT OR NOT, SIR.

17 MR. STOLAR: SUBJECT TO THE FURTHER CROSS WITH
18 RESPECT TO THIS AGREEMENT, I HAVE NO FURTHER QUESTIONS.

19 THE COURT: DO YOU HAVE ANY?

20 MS. KELLY: YOUR HONOR, I HAVE SOME ADDITIONAL
21 QUESTIONS.

22 THE COURT: THIS SHOULD NOT RELATE TO ANY
23 CROSS-EXAMINATION THAT HAS BEEN PREVIOUSLY HELD.

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DIRECT-EXAMINATION +

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BY MS. KELLY:

Q. GOOD AFTERNOON, AGENT BERRELLEZ.

A. GOOD AFTERNOON.

Q. YOUR PRIOR EXPERIENCE BEFORE THE D.E.A. WAS WITH THE STATE LOCAL ENFORCEMENT, LAW ENFORCEMENT DIVISION; IS THAT RIGHT?

A. VERY BRIEF.

TWO YEARS WITH THE SOUTH TUCSON POLICE AND TWO YEARS WITH THE ARIZONA DEPARTMENT OF PUBLIC SAFETY.

Q. DID ANY OF THAT INVOLVE -- ANY OF THAT STATE EXPERIENCE INVOLVE HOMICIDE INVESTIGATIONS?

A. YES, I WORKED HOMICIDE AS A DETECTIVE WITH THE POLICE DEPARTMENT.

MS. KELLY: YOUR HONOR, COULD I HAVE ONE MOMENT?

I'D LIKE EXHIBIT 174-A, YOUR HONOR, PLACED BEFORE THE WITNESS.

BY MS. KELLY:

Q. DO YOU SEE THAT EXHIBIT BEFORE YOU AGENT BERRELLEZ, EXHIBIT 174-A?

A. YES, I DO.

Q. IS THIS THE -- ARE YOU FAMILIAR WITH IT?

A. YES, I AM.

Q. IT CONTAINS VARIOUS PHOTOGRAPHS; IS THAT RIGHT?

A. YES, IT DOES.

1 Q. IS THIS THE EXHIBIT THAT YOU SHOWED TO HECTOR CERVANTES
2 IN CONNECTION WITH IDENTIFICATION OF PHOTOGRAPHS?

3 A. YES, IT WAS.

4 Q. ISN'T IS THIS ALSO THE EXHIBIT THAT YOU SHOWED TO AGENT
5 LEYVA IN CONNECTION WITH DISPLAYING PHOTOGRAPHS TO HIM?

6 MR. CARLTON: OBJECTION. THIS HAS BEEN COVERED IN
7 PRIOR TESTIMONY.

8 THE COURT: SUSTAINED.

9 THIS IS NOT TO REOPEN CROSS-EXAMINATION.

10 NOW, IF YOU HAVE SOME NEW MATTER THAT YOU WERE
11 PREVENTED FROM COVERING BEFORE, YOU MAY GO INTO IT. I'M NOT
12 GOING TO HAVE ANYMORE CROSS EXAMINATION HERE.

13 MS. KELLY: YOUR HONOR, I DON'T BELIEVE THAT THIS
14 MATERIAL HAS BEEN BROUGHT OUT IN FRONT OF THE JURY, YOUR
15 HONOR.

16 THE COURT: WELL, IF YOU HAD THE OPPORTUNITY TO
17 BRING IT OUT, YOU CANNOT BRING IT OUT NOW.

18 MS. KELLY: VERY WELL, YOUR HONOR.

19 THE COURT: I'M GOING TO ASK THE JURY TO TAKE A
20 RECESS AT THIS TIME.

21 (JURY EXCUSED.)

22 THE COURT: YOU MAY STEP DOWN.

23 THE WITNESS: THANK YOU, YOUR HONOR.

24 (WITNESS TEMPORARILY EXCUSED.)

25 THE COURT: I THINK YOU FOLKS ARE ABUSING THE

1 PRIVILEGE THAT THE COURT HAS AFFORDED YOU WITH RESPECT TO
2 EXAMINING THESE WITNESSES.

3 THIS IS NOT FOR THE PURPOSE OF ALLOWING TO YOU
4 CROSS-EXAMINE ON MATTERS THAT SLIPPED YOUR MIND THE FIRST
5 TIME THAT THE WITNESS WAS ON THE STAND.

6 MR. NICOLAYSEN: MAY WE BE SEATED, YOUR HONOR?

7 THE COURT: YES.

8 MS. KELLY: YOUR HONOR, COULD I BE HEARD --

9 THE COURT: JUST A MOMENT.

10 MS. KELLY: I'M SORRY.

11 THE COURT: YOU, MR. STOLAR, ASKED THE -- THE LAST
12 TWO QUESTIONS YOU ASKED THIS WITNESS WERE BOTH OBJECTED TO
13 AND WERE SUSTAINED.

14 THEY WERE BOTH OBJECTED TO THE FIRST TIME YOU ASKED
15 THEM ON CROSS-EXAMINATION AND THEY WERE SUSTAINED.

16 THAT'S WHAT I CALL AN ABUSE OF THE PROCESS.

17 NOW, I PERMITTED YOU TO CALL WITNESSES WHERE I
18 PREVENTED YOU FROM GOING BEYOND THE SCOPE OF THE DIRECT
19 EXAMINATION AND YOU WANTED TO ELICIT SOME FACTS FOR YOUR OWN
20 DEFENSE, THAT'S PERMISSIBLE.

21 THAT IS THE ONLY REASON THESE WITNESSES SHOULD BE
22 HERE.

23 IT IS NOT AN OPPORTUNITY TO REOPEN YOUR
24 CROSS-EXAMINATION.

25 MS. KELLY: I UNDERSTAND THAT, YOUR HONOR.

1 WE DID NOT HAVE THE RED BOOK PRIOR TO THE SIMMONS
2 HEARING, YOUR HONOR, AND THAT'S WHY I THOUGHT IT WAS
3 APPROPRIATE TO QUESTION AGENT BERRELLEZ ON IT BECAUSE THAT
4 MATERIAL HAD NEVER BEEN BROUGHT OUT TO THE JURY.

5 THIS RED BOOK -- FIRST -- THE FIRST TIME WE LEARNED
6 OF THE RED BOOK WAS AFTER AGENT BERRELLEZ HAD TESTIFIED AND
7 DURING THE SIMMONS HEARING, YOUR HONOR.

8 AND SO WE WOULD LIKE TO HAVE THE OPPORTUNITY TO
9 BRING IT OUT TO THE JURY.

10 AND YOUR HONOR WILL RECALL SPECIFICALLY THAT YOU
11 SAID TO US THAT WE COULD ARGUE TO THE JURY THAT THE -- THAT
12 THE PLASTIC -- THERE WERE MATTERS THAT WENT TO WEIGHT RATHER
13 THAN ADMISSIBILITY OF THE IDENTIFICATION OF THE WITNESS, YOUR
14 HONOR.

15 AND WITHOUT ASKING AGENT BERRELLEZ ABOUT THE BOOK
16 AND ABOUT THE PLASTIC COVERING, THERE IS NO TESTIMONY BEFORE
17 THE JURY THAT WE'RE REALLY PRECLUDED FROM ARGUING ABOUT.

18 THE COURT: WELL, YOU MAY EXAMINE HIM ABOUT THE
19 BOOK.

20 MS. KELLY: THANK YOU.

21 THE COURT: WHAT ELSE DO YOU THINK THAT YOU NEED TO
22 GO INTO THAT YOU HAVE NOT PREVIOUSLY HAD AN OPPORTUNITY TO
23 COVER?

24 MS. KELLY: INTO SOME OTHER OF THE CONVERSATIONS,
25 THE TAPED CONVERSATIONS. SPECIFICALLY --

1 THE COURT: YOU DON'T THINK YOU'VE HAD ENOUGH
2 OPPORTUNITY TO COVER THAT?

3 I'M NOT GOING TO PERMIT TO YOU REOPEN
4 CROSS-EXAMINATION, YOU HAD A FULL AND COMPLETE
5 CROSS-EXAMINATION OF THIS WITNESS.

6 MS. KELLY: WELL --

7 THE COURT: AND THAT IS NOT THE PURPOSE FOR WHICH
8 HE IS BEING CALLED.

9 MS. KELLY: WELL, YOUR HONOR, IF YOU WILL RECALL
10 SPECIFICALLY DURING AGENT LEYVA'S TESTIMONY, I WAS PRECLUDED
11 FROM GOING INTO ANY OF THE SUBSTANCE OF THE CONVERSATIONS
12 WITH HIM.

13 AND YOUR HONOR SAID IT SOUNDED TO YOU LIKE I WAS
14 GETTING INTO MY DEFENSE.

15 THE COURT: YOU CROSS-EXAMINED THIS WITNESS ABOUT
16 THOSE TAPES EXTENSIVELY.

17 YOU'VE HAD EVERY OPPORTUNITY TO ASK HIM EVERYTHING
18 YOU WANTED TO AND YOU DID.

19 NOW, I DON'T KNOW WHY I SHOULD ALLOW YOU TO REOPEN
20 ON THIS SUBJECT.

21 MS. KELLY: WELL, YOUR HONOR, IF YOU WOULDN'T, I
22 MEAN --

23 THE COURT: AFTER ALL, THEY'VE HEARD THE TAPES,
24 THEY'VE SEEN THE PRINTED WORDS.

25 MS. KELLY: THAT'S NOT TRUE, YOUR HONOR.

1 THERE ARE SELECTED PORTIONS OF THE TAPE THAT HAVE
2 BEEN PLAYED TO THE JURY AND THAT'S ALL.

3 THE COURT: WELL, WHAT DO YOU WANT THIS WITNESS TO
4 DO?

5 MS. KELLY: I'D LIKE TO --

6 THE COURT: WELL, WHAT IS IT YOU WANT TO ASK HIM
7 ABOUT?

8 MS. KELLY: I WOULD LIKE TO BE ABLE TO ASK HIM
9 ABOUT THE CONVERSATIONS WHICH MY CLIENT INDICATED WHEN HE WAS
10 OUTSIDE THE HOUSE, THAT HE NEVER WENT INSIDE, HE WAS
11 SPECIFICALLY ASKED BY AGENT BERRELLEZ WHETHER HE WENT INSIDE
12 THE HOUSE.

13 THE COURT: WHY DIDN'T YOU ASK HIM THAT IF YOU
14 DIDN'T?

15 YOU ALREADY DID ASK HIM THAT, TO MY RECOLLECTION

16 MS. KELLY: WELL, YOUR HONOR, I BELIEVE THAT DURING
17 MY DEFENSE CASE -- WELL, I DIDN'T THINK I DID COVER THAT,
18 YOUR HONOR, BECAUSE I THOUGHT YOU HAD INDICATED THAT IT
19 SEEMED LIKE I WAS GETTING INTO MY DEFENSE CASE WITH RESPECT
20 TO AGENT SALAZAR.

21 AND SO THAT THOSE MATTERS SHOULD BE TAKEN UP ON --
22 AND I SPECIFICALLY ASKED YOU IF I COULD RECALL HIM.

23 I CAN DO IT THROUGH HIM IF YOU PREFER, YOUR HONOR.

24 THE COURT: THROUGH WHO?

25 MS. KELLY: AGENT SALAZAR.

1 THE COURT: I HAVE NO PREFERENCE.

2 ALL I WANT YOU TO DO IS NOT COVER WHAT'S ALREADY
3 BEEN COVERED.

4 I DON'T WANT YOU TO REOPEN YOUR CROSS-EXAMINATION
5 BECAUSE THAT IS NOT PERMITTED WITHOUT THE COURT'S APPROVAL.

6 IF YOU HAVE NEW MATTER THAT YOU WERE PREVENTED FROM
7 COVERING BEFORE -- THAT IS WHY I PERMITTED YOU TO CALL THESE
8 WITNESSES BACK.

9 MS. KELLY: YOUR HONOR, I BELIEVE THAT YOU
10 SPECIFICALLY SAID THAT IT SOUNDED LIKE I WAS GETTING INTO MY
11 DEFENSE AND YOU PERMITTED ME TO RECALL THEM.

12 THE COURT: WELL, TO THAT EXTENT YOU MAY EXAMINE
13 THE WITNESS REGARDING FACTS THAT ARE DEFENSES AND NOT
14 CROSS-EXAMINATION THAT HAS ALREADY BEEN COVERED OR YOU HAD AN
15 OPPORTUNITY TO COVER.

16 MS. KELLY: YES, YOUR HONOR; BUT I WOULD LIKE TO BE
17 ABLE TO BRING OUT THOSE PORTIONS OF THE TRANSCRIPT THAT WERE
18 NOT PLAYED FOR THE JURY WHERE MY CLIENT SPECIFICALLY SAID, "I
19 WASN'T IN THE HOUSE," AND WHERE THE AGENTS SPECIFICALLY ASKED
20 HIM, "DID YOU GO INSIDE?"

21 THE COURT: WELL, YOU CAN ASK HIM THAT, BUT I DON'T
22 KNOW WHY YOU DIDN'T ASK HIM THAT ON CROSS-EXAMINATION.

23 MS. KELLY: YOUR HONOR ADMONISHED ME THAT I WAS
24 GETTING INTO THE DEFENSE.

25 THE COURT: I CERTAINLY DID NOT ADMONISH YOU THAT

1 YOU COULD NOT CROSS-EXAMINE THIS WITNESS ABOUT THE
2 CONVERSATION CONTAINED IN THE TAPE.

3 MS. KELLY: VERY WELL, YOUR HONOR.

4 I MISINTERPRETED YOUR HONOR'S RULE.

5 THE COURT: I CERTAINLY WOULDN'T DO THAT.

6 MR. STOLAR: MAY I BE HEARD ON TWO MATTERS, YOUR
7 HONOR?

8 THE COURT: ON WHAT?

9 MR. STOLAR: TWO MATTERS.

10 THE COURT: YES.

11 MR. STOLAR: THE FIRST HAS TO DO WITH THE QUESTION
12 TO WHICH YOU SUSTAINED AN OBJECTION, WHICH I BELIEVE I'M
13 ENTITLED TO AN ANSWER ON, BECAUSE IT HAD PRIOR INCONSISTENT
14 STATEMENT.

15 THE WITNESS --

16 THE COURT: WHOSE PRIOR INCONSISTENT STATEMENT?

17 MR. STOLAR: HECTOR CERVANTES SANTOS.

18 THE COURT: WELL, WAIT A MINUTE.

19 YOU'RE ASKING THIS WITNESS ABOUT A PRIOR --

20 MR. STOLAR: HECTOR CERVANTES SANTOS DENIED TELLING
21 SALAZAR AND BERRELLEZ AT THE NOVEMBER 30TH BRIEFING ANYTHING
22 ABOUT JEHOVAH'S WITNESSES OR FOUR PEOPLE ROAMING THE STREETS
23 OF GUADALAJARA WHO WERE, IN FACT, D.E.A. SPIES.

24 AND HE SAID, "NO, I NEVER SAID THAT."

25 AND HE SAID, "I DON'T KNOW WHAT YOU'RE TALKING

1 ABOUT. I DID NOT SAY THAT TO AGENT SALAZAR AND BERRELLEZ."

2 HE DENIED SAYING THAT.

3 I'M ENTITLED, THEREFORE, TO BRING OUT FROM THE
4 AGENT THAT HE DID SAY THAT.

5 HE DENIED THE TESTIMONY AND ALL I WANT TO DO IS
6 BRING OUT THE PRIOR INCONSISTENCY.

7 MR. MEDRANO: YOUR HONOR, THIS IS TERRIBLY
8 PREJUDICIAL UNDER 403.

9 THE FOUR JEHOVAH'S WITNESSES HAVE NOTHING TO DO
10 WITH THIS CASE.

11 ARGUABLY, IT'S GROUNDS FOR APPEAL BY A CO-DEFENDANT
12 BECAUSE OF SOME ALLEGATION THAT THERE HAS BEEN SOME PREJUDICE
13 TO THE JURY.

14 THAT'S AN IRRELEVANT ISSUE, YOUR HONOR.

15 HE'S JUST TRYING TO INFLAME THE JURY BY MERELY
16 ASKING THE QUESTION.

17 WE WOULD OBJECT.

18 MR. STOLAR: THERE WAS NO OBJECTION MADE.

19 THE COURT: JUST A MOMENT.

20 LET'S ASK THE CO-DEFENDANTS IF THEY OBJECT.

21 MR. NICOLAYSEN: YOUR HONOR, I DO OBJECT BECAUSE IF
22 IT COMES OUT THAT THIS FOUR-PERSON ISSUE REGARDING THE
23 JEHOVAH'S WITNESSES OCCURRED IN DECEMBER OF '84, IT IS CLOSE
24 ENOUGH IN TIME TO THE LA LANGOSTA SCENARIO WHERE IT MIGHT
25 CAUSE THE JURY TO BELIEVE THAT THE LA LANGOSTA MURDERS DID

1 INVOLVE PEOPLE SUSPECTED OF BEING D.E.A. AGENTS AND THAT GOES
2 AGAINST MY DEFENSE.

3 AND I DON'T THINK THIS IS RELEVANT ENOUGH TO PUT MY
4 CLIENT IN THAT POSITION, SO I DO OBJECT.

5 THE COURT: WELL, I AGREE AND IT IS PURELY
6 COLLATERAL AND IT DOES AFFECT THE RIGHTS OF OTHER DEFENDANTS
7 SO I WILL KEEP IT OUT.

8 MR. STOLAR: FOR WHAT REASON?

9 LET ME SUGGEST IT THIS WAY THEN:

10 CERVANTES WAS ASKED THE QUESTION ABOUT WHETHER HE
11 HEARD --

12 THE COURT: WE'RE NOT GOING TO DEAL WITH IT.

13 MR. STOLAR: THERE WAS NO OBJECTION MADE WHEN THE
14 QUESTION WAS ASKED OF CERVANTEZ SANTOS.

15 THE COURT: THERE WAS AN OBJECTION MADE BY THE
16 GOVERNMENT.

17 MR. STOLAR: NOT WHEN I ASKED CERVANTES SANTOS.

18 IT'S IN THE TRANSCRIPT. HE -- I ASKED THE
19 QUESTION, HE ANSWERED IT. I ASKED THE QUESTION, HE ANSWERED
20 IT.

21 HE SAYS, "I NEVER SAID ANYTHING LIKE THAT."

22 NOW I WANT TO PROVE THAT HE DID SAY SOMETHING LIKE
23 THAT.

24 I'LL KEEP OUT THE PART ABOUT D.E.A. SPIES, BUT HE
25 DID SAY SOMETHING THAT IS IN THE 6 ABOUT JEHOVAH'S WITNESSES.

1 THE COURT: YES?

2 MR. MEZA: YOUR HONOR, WE WOULD HAVE AN OBJECTION
3 TO IT BEING BROUGHT OUT.

4 WE WOULD HAVE NO OBJECTION IF THE COURT WOULD ALLOW
5 THAT TESTIMONY AND TO ADMONISH THE JURY THAT IT WAS NOT
6 ADMISSIBLE AS AGAINST, AT LEAST, OUR CLIENT.

7 THE COURT: I'M NOT GOING TO ALLOW IT.

8 THAT'S THE END OF IT.

9 MR. STOLAR: ALL RIGHT.

10 THE SECOND MATTER THAT THE OBJECTION WAS SUSTAINED
11 TO IS A MATTER WHICH I THINK IS CRUCIAL TO THE DEFENSE OF MR.
12 MATTA.

13 IT IS ESTABLISHED AS OF FEBRUARY 1989, ALL OF THE
14 EVIDENCE THAT THE JURY HAS HEARD AGAINST MR. MATTA WITH THE
15 EXCEPTION OF THE WITNESS CERVANTES SANTOS WAS IN.

16 THE D.E.A. KNEW ALL ABOUT IT.

17 CERVANTES SANTOS IS THE ONLY NEW INGREDIENT.

18 THEREFORE, TO SHOW THAT MATTA WAS NOT CHARGED OR
19 INDICTED PRIOR TO THE TIME THAT CERVANTES SANTOS GAVE THEM
20 INFORMATION ABOUT MATTA, GOES TO PROVE MY CONTENTION THAT
21 ESSENTIALLY WE HAVE A ONE-WITNESS CASE AND THEY HAVE TO
22 BELIEVE OR DISBELIEVE MR. CERVANTES SANTOS.

23 THAT'S WHY I WOULD LIKE TO HAVE IT BROUGHT OUT THAT
24 HE WAS NOT INDICTED UNTIL CERVANTES APPEARED ON THE SCENE.

25 MR. MEDRANO: MR. STOLAR IS TRYING TO GET IN

1 THROUGH THE BACK DOOR WHAT YOU WOULDN'T ALLOW HIM TO GET IN
2 IN THE FRONT DOOR .

3 REMEMBER, THOSE FIVE OR SIX INDICTMENTS THAT HE
4 TRIED TO ADMIT AND ACCOMODATE THE PRIOR SUPERSEDING
5 INDICTMENTS?

6 THEY'RE BEING OFFERED FOR THE SAME PURPOSE, YOUR
7 HONOR .

8 IT GOES TO PROSECUTORIAL DISCRETION .

9 IF HE OPENS UP THAT DOOR ARGUABLY UNDER 40- --
10 WELL, WE HAVE TO EXPAND IN OUR REBUTTAL CASE THE REASONS FOR
11 THE GOVERNMENT'S PROSECUTORIAL DECISIONS .

12 MR. STOLAR: BUT WHY --

13 MR. MEDRANO: THERE'S A 403 PRONG IS THE ISSUE,
14 YOUR HONOR .

15 IT'S A CONSUMPTION OF TIME AND IT'S A CUNFUSION OF
16 ISSUES FOR THE JURY .

17 AND COUNSEL'S BEEN AROUND LONG ENOUGH TO KNOW THAT
18 THE EVIDENCE IS BUILT UP AND IT'S UP TO THE GOVERNMENT TO
19 DECIDE WHEN TO PROSECUTE IT AND THIS IS AN IRRELEVANT ISSUE .

20 MR. STOLAR: WELL, IT'S NOT IRRELEVANT AT ALL, YOUR
21 HONOR .

22 THE COURT: IT IS IRRELEVANT AND THE OBJECTION IS
23 SUSTAINED .

24 MR. MEDRANO: YOUR HONOR, MAY I FLAG SOMETHING FOR
25 THE COURT .

1 AND THIS WILL TAKE JUST 30 SECONDS.

2 I WANTED TO ADVISE THE COURT THAT MR. STOLAR ISSUED
3 A SUBPOENA TO MIRIAM PENITENTIARY FOR THE ENTIRE FILE FOR
4 MATTA BALLESTEROS.

5 THAT CUSTODIAN HAS SHOWN UP TODAY AND IN THE
6 INDICTMENT -- PARDON ME, IN THE SUBPOENA MR. STOLAR WANTS
7 ONLY EDUCATIONAL RECORDS CONCERNING HIS CLIENT.

8 THOSE EDUCATIONAL RECORDS HAVE BEEN GIVEN TO MR.
9 STOLAR.

10 DESPITE THAT FACT, YOUR HONOR, HE STILL WANTS
11 ACCESS TO THE ENTIRE FILE AND I'M REPRESENTING TO YOU ON
12 BEHALF OF THE MIRIAM FACILITY THAT THERE'S AN OBJECTION ON
13 SEVERAL GROUNDS.

14 ONE IS RELEVANCE; TWO, OVERBROAD; AND THREE,
15 THERE'S A FREEDOM OF INFORMATION ACT ISSUE AND THEY'RE
16 RELUCTANT TO DISCLOSE ANY OF THE INFORMATION.

17 MR. STOLAR: THERE'S NO FOIA ISSUE.

18 THE COURT: FIRST OF ALL, MAYBE IT WILL HELP SOLVE
19 THIS TO TELL YOU THAT I'M NOT GOING TO PERMIT YOU TO GET INTO
20 EVIDENCE AND STATEMENTS FROM THE MEDICAL REPORT.

21 MR. STOLAR: MAY I AT LEAST PUT THE WITNESS ON THE
22 STAND OUTSIDE THE PRESENCE OF THE JURY AND LET ME MAKE A
23 RECORD AS TO WHAT THOSE RECORDS ARE, HOW THEY'RE MAINTAINED,
24 WHY THEY'RE MAINTAINED --

25 THE COURT: WHAT IS THE RELEVANCE OF THE RECORDS?

1 MR. STOLAR: THE RECORD COMES IN AS MEDICAL REPORT
2 AND AS A BUSINESS RECORD IT IS ORDINARILY --

3 THE COURT: TO PROVE WHAT ISSUE?

4 MR. STOLAR: TO SAY THAT MATTA SAID HE'S
5 ILLITERATE. MATTA SAID IT.

6 THAT IS AN ISSUE IN THE CASE.

7 THE COURT: I WILL EXPLAIN TO YOU WITH REASON WHY
8 THAT EVIDENCE CANNOT COME IN. I HAVE A MEMO ON IT. I'M
9 GOING TO RULE AGAINST YOU.

10 YOU WILL NOT BE PERMITTED TO GET THAT EVIDENCE IN
11 THROUGH THE RECORD THAT YOU OFFERED HERE THE OTHER DAY.

12 MR. STOLAR: THAT'S THE CUSTODIAN OF THE RECORDS
13 WHO HAS THE ENTIRE FILE.

14 THE COURT: THE REASON HAS NOTHING TO DO WITH THE
15 AUTHENTICITY. THAT IS NOT IN DISPUTE.

16 MR. STOLAR: ALL RIGHT.

17 THE COURT: I'LL GET THAT IN JUST A MOMENT HERE.

18 THE MAIN REASON IS THAT IN ORDER TO QUALIFY UNDER
19 THAT EXCEPTION WHICH YOU RELIED ON THAT THIS WAS A STATEMENT
20 MADE TO A MEDICAL DOCTOR --

21 MR. STOLAR: RIGHT.

22 THE COURT: -- AND THEREFORE PRESUME TO BE RELIABLE
23 AND TRUTHWORTHY, IT MUST BE A STATEMENT MADE FOR THE PURPOSE
24 OF TREATMENT.

25 THIS WAS NOT THE CASE HERE.

1 IN FACT, THE DOCUMENT ITSELF IS REplete WITH
2 STATEMENTS BY YOUR CLIENT THAT THERE WAS NOTHING WRONG WITH
3 HIM, THAT HE DID NOT NEED ANY TREATMENT, AND IT'S VERY CLEAR
4 THAT THIS WAS NOT A VOLUNTARY DOCTOR/PATIENT RELATIONSHIP.

5 MR. STOLAR: YOUR HONOR --

6 THE COURT: IN ORDER FOR THAT TO ADMISSIBLE, IT
7 MUST BE A STATEMENT MADE BY A PERSON, A PATIENT THROUGH HIS
8 DOCTOR FOR THE PURPOSE OF TREATMENT.

9 THAT WAS NOT THE CASE HERE.

10 MR. STOLAR: THIS IS A MENTAL STATUS EXAMINATION
11 CONDUCTED BY DR. URBANICK.

12 IT IS ON A FORM CALLED PSYCHIATRIC CONSULTATIONS
13 SHEET.

14 THE PROVISIONAL DIAGNOSIS IS DEPRESSION AND SEVERE
15 SITUATIONAL ANXIETY. HE GIVES TWO AXES. HE GIVES AN AXIS
16 ONE --

17 THE COURT: NO, SIR, YOU HAVE NOT READ THE LAW. I
18 KNOW ALL THAT. I READ IT.

19 YOU HAVE NOT READ THE LAW OR THE PERTINENT CASES
20 RELATING TO THIS OR YOU WOULDN'T BE ARGUING. MAYBE YOU
21 WOULD.

22 NOW, IS THERE ANYTHING FURTHER?

23 LET ME GET -- I'LL -- (PAUSE).

24 ALL RIGHT.

25 IN CONNECTION WITH THE ADMISSIBILITY OF THE

1 PSYCHIATRIST'S STATEMENT THAT MATTA STATED HE WAS ILLITERATE,
2 THERE'S A TWO-PART TEST FOR ADMITTING HEARSAY STATEMENTS MADE
3 TO A TREATING PHYSICIAN.

4 FIRST- THE DECLARANT'S MOTIVE IN MAKING THE
5 STATEMENT MUST BE CONSISTENT WITH THE PURPOSES OF PROMOTING
6 TREATMENT.

7 AND, SECOND, THE CONTENT OF THE STATEMENT MUST BE
8 SUCH AS IS REASONABLY RELIED ON BY A PHYSICIAN IN TREATMENT
9 OR DIAGNOSIS.

10 IN THE PRESENT CASE, MR. MATTA DENIED AT THE
11 INTERVIEW THAT HE WAS SUICIDAL AND THUS THE STATEMENT WAS NOT
12 MADE IN A MANNER CONSISTENT FOR THE PURPOSE OF PROMOTING
13 TREATMENT.

14 THE REASON HE WAS SENT TO SEE THE PSYCHIATRIST WAS
15 BECAUSE OF SOME SUSPICION THAT HE MAY HAVE BEEN SUICIDAL.

16 IT IS CLEAR FROM THE REPORT THAT HE WAS NOT SEEKING
17 TREAT IN THE INTERVIEW.

18 HE DENIED THAT HE HAD ANY MENTAL PROBLEMS AND THUS
19 THE STATEMENT CANNOT FALL WITHIN THE EXCEPTION BECAUSE IT
20 DOES NOT MEET THE TESTS AS THE MOTIVE FOR MAKING THE
21 STATEMENT MUST BE CONSISTENT WITH THE PURPOSE OF PROMOTING
22 TREATMENT OR THE CONTENT OF THE STATEMENT MUST BE SUCH AS IS
23 REASONABLY RELIED ON BY A PHYSICIAN IN TREATMENT OR
24 DIAGNOSIS.

25 THAT IS THE REASON FOR THE COURT'S DENIAL OF THE

1 ADMISSIBILITY OF THIS STATEMENT .

2 MR. STOLAR: LET ME JUST STATE THE FOLLOWING .

3 THAT I HAVE READ MORE PSYCHIATRIC AND MEDICAL
4 RECORDS THAN I WANT TO AND PEOPLE WHO ARE SUICIDAL DO NOT
5 ALSO SAY THAT THEY'RE SUICIDAL .

6 PEOPLE WHO ARE DEPRESSED DENY DEPRESSION .

7 IT'S A DENIAL FOR THE PROFESSIONAL TO MAKE A
8 JUDGMENT BASED ON HOW THE PERSON SAYS AND WHAT THEIR
9 BACKGROUND IS AND THINGS OF THAT NATURE .

10 THAT'S WHAT A PSYCHIATRIC DEGREE -- THAT'S WHAT THE
11 M.D. OR PSYCHIATRIC WORKER IS ALL ABOUT. BECAUSE PATIENTS
12 ALWAYS DENY THIS STUFF .

13 I STILL WANT TO CALL MR. MANN FOR OTHER PURPOSES

14 THE COURT: FOR WHAT PURPOSES?

15 MR. STOLAR: I WANT TO -- MR. MANN WAS SUBPOENAED
16 TO BRING WITH HIM NOT ONLY EDUCATIONAL RECORDS BUT THE
17 CENTRAL FILE RECORDS .

18 I WANT TO KNOW IF HE BROUGHT THEM WITH HIM AND I
19 WANT TO KNOW IF THERE ARE ANY EDUCATIONAL RECORDS ON MR .
20 MATTA THAT ARE IN THE POSSESSION, CUSTODY OR CONTROL OF THE
21 UNITED STATES PRISON SYSTEM .

22 THE COURT: WHAT IS THE RELEVANCE?

23 MR. STOLAR: THE ANSWER IS GOING TO BE, NO, HE'S
24 NOT BEEN EDUCATED BY THEM .

25 THE COURT: HE'S NOT BEEN .

1 WHAT 'S THE RELEVANCE OF THAT?

2 MR. STOLAR: HE'S NOT BEEN GIVEN ANY EDUCATIONAL
3 COURSES.

4 THE COURT: WELL, WHAT IS THE RELEVANCE?

5 MR. STOLAR: HE'S ILLITERATE.

6 I'LL ARGUE TO THE JURY THERE'S AN INFERENCE FOR
7 THAT.

8 MR. MEDRANO: OBJECTION, YOUR HONOR.

9 JUST SO YOU WILL KNOW, MR. MANN, WHO I'VE ALREADY
10 SPOKEN TO, WOULD SAY THAT MIRIAM MAINTAINS NO EDUCATIONAL
11 RECORDS UNLESS THE INMATE REQUESTS IT.

12 MR. STOLAR: NO, THAT'S NOT TRUE. I SPOKE WITH THE
13 PROGRAM, EDUCATION PROGRAM SUPERVISOR.

14 THE COURT: JUST A MOMENT.

15 MR. MEDRANO: TO COMPLETE MY THOUGHTS, YOUR
16 HONOR -- AND MR. MANN SAYS THERE'S NO REQUEST BY MATTA FOR
17 SUCH EDUCATIONAL RECORDS.

18 SO, AGAIN, UNDER 403, IT OPENS UP A WHOLE CAN OF
19 WORMS.

20 IF HE GETS INTO THIS AREA THEN WE'RE GOING TO ARGUE
21 OR OTHER WITNESSES TO ESTABLISH THAT MATTA NEVER EVEN ASKED
22 FOR SUCH RECORDS.

23 SO IT'S AN IRRELEVANT ISSUE, YOUR HONOR

24 THERE'S NO RECORDS BECAUSE HE NEVER ASKED FOR THEM.

25 MR. STOLAR: I SPOKE TO THE EDUCATIONAL PROGRAM

1 SUPERVISOR WHO SAID THEY COULD NOT FIND MR. MATTA'S
2 EDUCATIONAL JACKET.

3 THAT DOESN'T MEAN HE WAS NOT GIVEN RECORDS.

4 THERE MAY BE SOMETHING IN THE CENTRAL FILE THAT
5 INDICATES THAT HE WAS GIVEN SOME EDUCATION. I DON'T KNOW, I
6 HAVEN'T SEEN THE EDUCATION FILE IN ALMOST TWO YEARS.

7 THE COURT: DO YOU WANT TO PROVE THAT THEY DIDN'T
8 EDUCATE HIM?

9 IS THAT WHAT YOUR --

10 MR. STOLAR: YES. MAYBE I CAN ARGUE THAT HE WAS
11 UNEDUCATABLE.

12 THERE'S A RECORD FROM 1971 IN THAT FILE SHOWING AND
13 IQ OF 34.

14 THE COURT: WHETHER OR NOT THEY CAN EDUCATE HIM IS
15 TOTALLY IRRELEVANT AS FAR AS THE COURT IS CONCERNED.

16 AND IF THAT'S THE SOLE PURPOSE FOR CALLING THIS
17 WITNESS, I WOULD SUSTAIN AN OBJECTION TO THE FIRST QUESTION.

18 MR. STOLAR: WILL I BE PERMITTED TO PROVE THAT MR.
19 MATTA CAME INTO THE CUSTODY OF MIRIAM PRISON IN APRIL OF
20 1988?

21 THE COURT: THAT SOUNDS IRRELEVANT, TOO.

22 MR. MEDRANO: WE'LL STIPULATE TO THAT, YOUR HONOR.

23 MR. STOLAR: HE'LL STIPULATE EVEN THOUGH IT'S
24 IRRELEVANT. HOW'S THAT?

25 MR. MEDRANO: WELL, FIRST OF ALL -- I'LL WITHDRAW

1 THAT, YOUR HONOR.

2 FIRST OF ALL, YOUR JUDGMENT IS RELEVANCE.

3 AGAIN, WHAT DOES THAT HAVE TO WITH WHEN HE CAME
4 INTO CUSTODY?

5 THE COURT: WELL, IT DOESN'T HAVE ANYTHING TO DO
6 WITH IT.

7 MR. MEDRANO: IT'S NO MORE RELEVANT THAN WHEN THE
8 OTHER CO-DEFENDANTS CAME INTO CUSTODY. NOBODY CARES. THAT'S
9 NOT THE ISSUE HERE.

10 THE COURT: I THINK THAT YOU SHOULD BE CAREFUL
11 ABOUT WHO YOU LAY SUBPOENAS ON BECAUSE IT'S KIND OF A
12 RECKLESS THING TO DO.

13 MR. STOLAR: YOUR HONOR, I BROUGHT THIS TO YOUR
14 ATTENTION LATE LAST WEEK SPECIFICALLY TO TRY TO GET AN
15 ADVANCED RULING AND THE GENTLEMAN DID NOT FLY OUT UNTIL
16 TODAY.

17 I WAS HOPING THAT WE'D HAVE A RULING EARLIER SO
18 THAT HE WOULD NOT HAVE TO DO WHAT HE HAD TO DO.

19 THERE IS ONE OTHER MATTER OF A WRITTEN MOTION TO
20 QUASH THE SUBPOENA IN OPPOSITION THAT WE FILED THIS MORNING
21 WHICH I HOPE THE COURT HAS HAD A CHANCE TO TAKE A LOOK AT OR
22 IF NOT WOULD YOU BE --

23 THE COURT: WHICH MOTION?

24 MR. STOLAR: IT'S A MOTION -- I'M ASKING FOR, AS MY
25 SUBPOENA IS NOW LIMITED, THE PICTURES OF MR. MATTA THAT

1 WERE -- THAT LEYVA AND AGUILAR WERE SHOWN BEFORE THEY WENT TO
2 THE HOTEL .

3 THAT IS THEY WENT TO THE HOTEL ON FEBRUARY 12TH .

4 THEY TESTIFIED THAT THEY KNEW WHO THEY WERE WORKING
5 FOR BECAUSE THEY SAW PICTURES OF MR. MATTA .

6 I'M ASKING FOR PICTURES OF MR. MATTA IN THE
7 D.E.A.'S POSSESSION SPECIFICALLY THAT WERE SHOWN TO THEM OR
8 THE OFFICES THEY WERE AT AS OF FEBRUARY 7, 1985 .

9 THE COURT: WELL, THOSE SHOULD BE PRODUCED IF
10 AVAILABLE .

11 MR. MEDRANO: WELL, YOUR HONOR, JUST TO REFRESH THE
12 COURT'S RECOLLECTION .

13 WE HAVE FILED A MOTION TO QUASH AND I WOULD ASK THE
14 COURT TO LOOK AT IT BRIEFLY, BECAUSE WHAT HE HAS IN THE
15 SUBPOENA IS ENTIRELY DIFFERENT FROM WHAT HE STANDS UP IN
16 COURT AND SAYS .

17 THE SUBPOENA SAYS EVERY SINGLE PHOTO. EVERYTHING
18 YOU HAVE OF MATTA BEFORE FALL OF 1985 AND THAT'S WHY WE
19 OBJECTED TO IT AND THAT'S WHY WE FILED OUR MOTION TO QUASH.
20 NOW HE COMES IN WITH THIS WALK-IN SERVICE AND TELLS YOU,
21 "WHAT I REALLY WANT MEANT WAS JUST ONE OR TWO PHOTOS."

22 YOUR HONOR, WE CAN'T READ HIS MIND AND IT'S A
23 SUBPOENA THAT'S OVERLY BROAD .

24 HE ABUSES THESE SUBPOENAS, YOUR HONOR .

25 HE DOESN'T GET YOUR PERMISSION TO ISSUE THEM .

1 HE GIVES THEM TO PEOPLE WHO COME HALFWAY WHICH
2 ACROSS THE COUNTRY.

3 HE RAISES IT FOR THE FIRST TIME IN COURT AND THEN
4 THEY HAVE TO WASTE THEIR TIME AND GO HOME BECAUSE THE
5 EVIDENCE IS IRRELEVANT.

6 I WOULD ONLY ASK THE COURT, YOUR HONOR, JUST TO
7 LOOK AT OUR MOTION TO QUASH BRIEFLY.

8 THE COURT: WELL, I'LL LOOK AT IT.

9 MR. STOLAR: WHILE YOU'RE LOOKING AT THE MOTION TO
10 QUASH, LOOK AT THE WRITTEN RESPONSE THAT I FILED THIS MORNING
11 THAT MR. MEDRANO DIDN'T HAVE THE PATIENCE TO SIT DOWN AND
12 READ WHERE I SAID I LIMIT THE SUBPOENA.

13 IF HE READ IT, HE WOULDN'T STAND UP AND WHINE ABOUT
14 THINGS HE DOESN'T KNOW WHAT HE'S TALKING ABOUT.

15 THE COURT: LET'S BE PROFESSIONAL HERE.

16 MR. MEDRANO: I CERTAINLY DON'T WHINE HERE.

17 THE CLERK: ALL RISE.

18 (RECESS TAKEN.)
19
20
21

22 AFTER THE RECESS

23
24 (JURY PRESENT.)

25 THE COURT: ALL RIGHT.

1 COUNSEL?

2 MR. KELLY: THANK YOU, YOUR HONOR.

3 BY MS. KELLY:

4 Q. AGENT BERRELLEZ, DIRECTING YOUR ATTENTION AGAIN TO THE
5 EXHIBIT 174-A.

6 THIS IS THE EXHIBIT THAT YOU DID SHOW TO AGENT
7 LEYVA WHEN YOU WERE DISPLAYING THE PHOTOGRAPHS; IS THAT
8 CORRECT?

9 A. YES, IT IS.

10 Q. DO YOU RECALL WHAT IT IS THAT YOU SHOWED AGENT LEYVA AT
11 THIS PARTICULAR EXHIBIT?

12 A. NOT THE EXACT DATE SEVERAL MONTHS AGO.

13 Q. WAS IT SHORTLY BEFORE YOU TESTIFIED BEFORE THE GRAND
14 JURY IN AUGUST OF 1989?

15 A. I BELIEVE SO.

16 Q. AND IT WAS AFTER MY CLIENT MR. BERNABE RAMIREZ WAS
17 ARRESTED, CORRECT?

18 A. YES, IT WAS.

19 Q. DO YOU RECALL WHEN YOU SHOWED THIS EXHIBIT TO MR.
20 CERVANTES?

21 A. AGAIN SEVERAL MONTHS PRIOR.

22 Q. WOULD IT HAVE BEEN SOME TIME BEFORE -- A FEW WEEKS
23 BEFORE YOUR GRAND JURY TESTIMONY IN JANUARY OF 1990.

24 A. I BELIEVE SO, YES.

25 Q. DO YOU REMEMBER HOW MANY TIMES YOU SHOWED THIS EXHIBIT

1 TO MR. CERVANTES?

2 A. ONLY ONCE.

3 Q. THE INFORMATION THAT YOU HAVE WITH RESPECT TO COMANDANTE
4 CASTEL WAS THAT HE WAS A COMANDANTE WITH THE D.F.S.; IS THAT
5 RIGHT.

6 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 BY MS. KELLY:

9 Q. IS THE D.F.S. THE EQUIVALENT OF THE C.I.A.?

10 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

11 BEYOND THE SCOPE.

12 THE COURT: SUSTAINED.

13 BY MS. KELLY:

14 Q. DIRECTING YOUR ATTENTION TO THE JULY 21ST MEETING THAT
15 YOU HAD -- UNDERCOVER MEETING THAT YOU WITH MY CLIENT MR.
16 BERNABE RAMIREZ, DO YOU RECALL THAT WHEN WERE YOU ASKING HIM
17 ABOUT THE DATE IN WHICH HE SHOWED UP TO A HOUSE WHERE HE
18 OBSERVED CONFRONTATION BETWEEN CARO QUINTERO AND MR. FONSECA?
19 DO YOU HAVE THAT IN MIND?

20 A. YES, I DO.

21 Q. AND DO YOU RECALL ASKING HIM IF THE GRINGO, THOSE WERE
22 YOUR WORDS, WAS BEATEN UP AND HE TOLD YOU THAT WAS WHAT HE
23 HAD HEARD?

24 A. ON THAT OCCASION HE TOLD ME THAT'S WHAT HE HEARD.

25 ON ANOTHER OCCASION HE TOLD ME THAT HE HAD BEEN

1 PRESENT .

2 Q. I'M DIRECTING YOUR ATTENTION JUST TO JULY 21ST, IF YOU
3 NEED TO REFER TO THE TRANSCRIPTS THAT ARE IN FRONT OF YOU.

4 DO YOU RECALL THAT HE TOLD YOU THAT THAT'S WHAT HE
5 UNDERSTOOD AND THAT'S WHAT HE HAD HEARD?

6 A. ON THAT OCCASION.

7 Q. IS THAT A "YES"?

8 A. YES.

9 Q. DO YOU RECALL ON THAT DATE THAT HE ALSO TOLD YOU THAT HE
10 HAD REMAINED OUTSIDE THE HOUSE WHILE MR. FONSECA WENT INSIDE?

11 MR. CARLTON: THIS HAS BEEN ASKED AND ANSWERED,
12 YOUR HONOR.

13 THE COURT: OVERRULED.

14 ANSWER THE QUESTION.

15 THE WITNESS: ON THAT OCCASION HE TOLD ME HE STAYED
16 OUTSIDE.

17 ON ANOTHER OCCASION HE TOLD ME HE WAS PRESENT.

18 BY MS. KELLY:

19 Q. I'M JUST ASKING YOU ABOUT JULY 21ST RIGHT NOW, OKAY?
20 JUST DESCRIBE JULY 21ST.

21 ON THAT PARTICULAR OCCASION, DO YOU RECALL THAT MR.
22 BERNABE RAMIREZ TOLD YOU THAT HE STAYED OUTSIDE THE HOUSE
23 WHILE MR. FONSECA WENT IN?

24 A. THAT'S WHAT HE TOLD ME ON THAT OCCASION.

25 Q. DO YOU RECALL -- AGAIN, I'M DEALING WITH JULY 21ST --

1 THAT HE TOLD YOU THAT HE DIDN'T EVEN KNOW ANYTHING ABOUT WHAT
2 WAS GOING ON, BUT THAT LATER HE LEARNED THAT THERE WAS
3 SOMETHING GOING ON WITH AGENT CAMARENA?

4 A. YES. HE TOLD ME THAT LATER HE HAD FOUND OUT THAT IT HAD
5 BEEN AGENT CAMARENA THAT HAD BEEN -- THAT WAS BEING HELD
6 CAPTIVE INSIDE THAT HOUSE.

7 Q. AND ON THAT DATE, ON JULY 21ST, HE ALSO TOLD THAT HE
8 DIDN'T LIVE IT OR ANYTHING BUT THAT'S HOW IT WAS TOLD TO HIM?

9 A. ON THAT DATE HE DIDN'T ADMIT HE WAS INSIDE THE HOUSE

10 Q. NO, I'M ASKING YOU ON THAT DATE, DID HE TELL YOU THAT I
11 DID NOT LIVE IT OR ANYTHING THAT'S HOW IT WAS TOLD TO HIM?

12 A. YES. HE TOLD ME THAT, ON THAT OCCASION, THAT'S WHAT HE
13 SAID, EVEN THOUGH IT CHANGED LATER.

14 Q. WELL, I'M JUST -- ONCE AGAIN, JUST ASKING ABOUT JULY
15 21ST, WE'LL GET TO THE JULY 25TH CONVERSATION.

16 NOW, DO YOU RECALL THAT HE TOLD THAT -- AGAIN
17 DEALING WITH JULY 21 -- THAT WHEN WERE YOU QUESTIONING HIM
18 ABOUT WHETHER FONSECA WAS ANGRY WITH QUINTERO, DO YOU RECALL
19 THAT HE TOLD YOU HE WAS INSIDE THE CAR BUT HE COULD TELL THAT
20 YOUR COMPADRE LOOKED SCARED?

21 A. HE TOLD ME ABOUT -- WHAT I RECALL OF THE CONVERSATION IS
22 THAT HE TOLD ME THAT HE OVERHEARD FONSECA TO TELL CARO
23 QUINTERO THAT THEY SHOULD GO AHEAD AND BUMP THE AGENT OFF.

24 THAT'S WHAT I RECALL.

25 Q. I DIRECT YOUR ATTENTION OR TO THE JULY 21ST -- JULY 21ST

1 TRANSCRIPT AT PAGE 6905 WHICH I BELIEVE IS IN FRONT OF YOU.

2 A. JULY 25TH?

3 Q. JULY 21ST.

4 AND THAT WOULD BE AT PAGE 53 OF 58 AT THE TOP OR
5 6907.

6 A. 6907, PAGE NUMBER?

7 Q. I'M SORRY. 6905. I MISSPOKE.

8 I'M DIRECTING YOUR ATTENTION TO THE SECOND
9 STATEMENT THAT IS ATTRIBUTED TO MY CLIENT ON THAT PAGE, "NO,
10 WELL," HE SAID, "NO, NO, BUT IT JUST LIKE HE HAD BEEN SCARED
11 OF SOMETHING, I MEAN WE WERE IN THE PICKUP."

12 AND LATER ON HE SAID, "IT COULD BE SEEN THAT, THAT
13 BOTH OF THEM WERE DISCUSSING SOMETHING."

14 IS THAT RIGHT?

15 A. YES.

16 Q. NOW CONTINUING WITH THE DATE OF JULY 21ST, 1989, MR.
17 BERNABE ALSO TOLD THAT YOU WHAT HE HAD HEARD AND HE HAD
18 GOTTEN THE GIST THAT BY THE TIME HE HAD ARRIVED AT THE HOUSE,
19 THAT THE PERSON WHO WAS INSIDE THE HOUSE WAS ALREADY MESSED
20 UP.

21 DO YOU RECALL THAT?

22 A. YES, I DO. VERY MESSED UP.

23 Q. AND YOU ASKED HELP SPECIFICALLY IF HE WAS ALREADY PRETTY
24 BEATEN UP, AND HE SAID THAT WAS WHAT HE UNDERSTOOD; ISN'T
25 THAT RIGHT?

1 A. THAT'S WHAT HE SAID ON THAT OCCASION, YES.

2 Q. AND HE ONCE AGAIN TOLD THAT HE DIDN'T KNOW, EVEN KNOW
3 WHO IT WAS UNTIL AFTERWARDS, RIGHT?

4 A. THAT HE LATER FOUND OUT IT WAS SPECIAL AGENT CAMARENA.

5 Q. BUT HE TOLD YOU THAT HE DIDN'T EVEN KNOW WHO IT WAS
6 UNTIL AFTERWARDS, RIGHT?

7 A. THAT HE LATER FOUND OUT IT HAD BEEN SPECIAL AGENT
8 CAMARENA.

9 Q. WELL, MY QUESTION TO YOU IS DIDN'T HE SAY, HE TOLD YOU
10 THAT HE DIDN'T KNOW -- EVEN KNOW WHO IT WAS UNTIL AFTERWARDS?

11 A. YES. AND THAT AFTERWARDS HE FOUND OUT IT WAS SPECIAL
12 AGENT CAMARENA.

13 Q. AGAIN, ON JULY 21ST HE INDICATED TO YOU AGAIN THAT HE
14 WAS LEFT OUTSIDE OF THE HOUSE, RIGHT?

15 A. ONLY ON THAT OCCASION?

16 Q. NOW DO YOU RECALL ON JULY 21ST THAT YOU ASKED HIM
17 SPECIFICALLY, "YOU DIDN'T GO IN."

18 YOU ASKED HIM THAT QUESTION?

19 A. I BELIEVE I DID.

20 Q. AND DO YOU RECALL THAT HE TOLD YOU "NO, NO, NO"?

21 A. I BELIEVE THAT'S WHAT HE ANSWERED ON THAT OCCASION.

22 Q. NOW, YOU NEVER ASKED HIM THAT SPECIFIC QUESTION ABOUT
23 GOING INSIDE THE HOUSE AGAIN, DID YOU?

24 A. ON THAT DATE?

25 Q. ON ANY OTHER DATE?

1 A. YES. HE LATER TOLD ME HE WAS PRESENT WHEN CAMARENA WAS
2 BEING TORTURED.

3 Q. NO, NO, MY QUESTION WAS DID YOU ASK HIM THE SPECIFIC
4 QUESTION.

5 I'M DIRECTING YOUR ATTENTION TO PAGE 58 OF THE JULY
6 21ST TRANSCRIPT WHICH IS LOCATED AT 6906.

7 YOU SPECIFICALLY ASKED MR. BERNABE, "YOU DIDN'T GO
8 IN," QUESTION MARK, AND HE ANSWERED "NO, NO, NO."

9 NOW, MY QUESTION TO YOU IS DID YOU EVER
10 SPECIFICALLY ASK HIM THAT QUESTION, "DID YOU GO INSIDE THE
11 HOUSE?"

12 DID YOU EVER ASK HIM THAT QUESTION AGAIN?

13 A. ON THAT DATE?

14 Q. ON ANY OTHER DATE?

15 A. I DON'T HAVE TO TOLD ME THAT HE HAD BEEN INSIDE THE
16 HOUSE WHILE AGENT CAMARENA WAS BEING TORTURED.

17 Q. I UNDERSTAND YOU WANT TO GET THAT INFORMATION OUT AND
18 YOU'VE GOTTEN IT OUT.

19 A. NO, BUT THE TRUTH IS I DIDN'T HAVE TO.

20 Q. OKAY.

21 MY QUESTION IS DID YOU ASK AGAIN THE SPECIFIC
22 QUESTION, DID HE GO INSIDE THE HOUSE?

23 DID YOU ASK HIM THAT QUESTION?

24 A. I DIDN'T HAVE TO, TO ANSWER YOUR QUESTION.

25 Q. IS THE ANSWER -- IS THE ANSWER "NO"?

1 A. NO, BECAUSE I DIDN'T HAVE TO.

2 Q. NOW, DIRECTING YOUR ATTENTION TO THE JULY 24TH
3 CONVERSATION THAT YOU HAD WITH MY CLIENT AND THAT TRANSCRIPT
4 IS BEFORE YOU, IF YOU NEED TO REFER TO IT, DURING THIS
5 CONVERSATION, YOU WERE TRYING TO ATTEMPT TO ELICIT ASSISTANCE
6 FROM MY CLIENT IN OBTAINING PHOTOSTATIC COPIES OF
7 DECLARATIONS FROM PEOPLE WHO HAD BEEN ARRESTED IN CONNECTION
8 WITH THE CAMARENA CASE IN MEXICO, RIGHT?

9 A. YES.

10 Q. AND YOU TOLD AND YOU TOLD HIM THAT -- YOU TOLD HIM AGAIN
11 THAT YOU WERE CONCERNED THAT YOU HAD BEEN MENTIONED; IS THAT
12 RIGHT?

13 ON THAT DATE YOU TOLD HIM THAT YOU WERE CONCERNED
14 THAT YOU HAD BEEN MENTIONED IN CONNECTION WITH THE
15 INVESTIGATION OF THE GRINGO?

16 A. YES. AS PART OF THE UNDERCOVER ROLE THAT I WAS PLAYING
17 THAT DATE.

18 Q. DO YOU RECALL SPECIFICALLY ASKING HIM AFTER SOME GENERAL
19 CONVERSATION THAT FROM WHAT YOU UNDERSTAND, THE GRINGO HAD
20 MENTIONED YOUR NAME AND HE ASKED YOU, "GRINGO?"

21 DO YOU RECALL THAT?

22 AND IF YOU NEED TO REFRESH YOUR RECOLLECTION, IT'S
23 ON PAGE 7075 OF THE JULY 24TH TRANSCRIPT.

24 DO YOU SEE THAT WHERE YOU MENTIONED BEING CONCERNED
25 FROM WHAT YOU UNDERSTOOD THE GRINGO HAD MENTIONED YOUR NAME

1 AND MR. BERNABE RAMIREZ RESPONDS, "THE GRINGO?"

2 A. YES.

3 Q. QUESTION MARK.

4 A. YES, YES.

5 Q. NOW, MR. BERNABE RAMIREZ REPEATEDLY TOLD YOU THAT HE
6 WOULD BE WILLING TO OBTAIN THE PHOTOCOPIES FOR YOU OF THE
7 DECLARATIONS; ISN'T THAT RIGHT?

8 A. YES. HE TOLD ME HE WAS GOING TO OBTAIN THEM THROUGH AN
9 ATTORNEY.

10 Q. HE TOLD YOU THAT ON THE THE 21ST, THE 24TH, AND THE
11 25TH, RIGHT?

12 A. HE ALWAYS MAINTAINED THAT HE COULD GET THEM, YES.

13 Q. AND AT VARIOUS POINTS IN THE CONVERSATION, THE
14 CONVERSATIONS THAT YOU HAD WITH HIM, HE REFERRED TO HIMSELF
15 AS A PEE-ON; IS THAT RIGHT?

16 A. YES, I BELIEVE HE DID.

17 Q. AND AT ONE POINT HE TOLD THAT YOU IN REALITY HE REALLY
18 DIDN'T KNOW ANYTHING WHEN HE WAS DISCUSSING HIS ROLE AS A
19 SERVANT?

20 MR. CARLTON: THIS HAS BEEN ASKED AND ANSWERED,
21 YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MS. KELLY:

24 Q. NOW, IN THE DISCUSSIONS ABOUT QUESTIONING MR. BERNABE
25 RAMIREZ ABOUT HIS PRESENCE AT THE HOUSE WHERE AGENT CAMARENA

1 WAS HELD, YOU FREQUENTLY WOULD USE -- WOULD ASK HIM ABOUT THE
2 STATEMENTS IN CONNECTION WITH THAT, THE STATEMENTS BEING
3 DECLARATIONS FROM THE PERSONS WHO WERE ARRESTED IN MEXICO?

4 DO YOU RECALL THAT?

5 A. WE TALKED ABOUT THAT, YES.

6 Q. AND ON JULY 25TH, 1989. DIRECTING YOUR ATTENTION TO THAT
7 PARTICULAR DATE, WHEN YOU ASKED HUM IF HE WAS PRESENT, HE
8 SAID, "YES"; ISN'T THAT RIGHT?

9 A. HE ANSWERED THAT HE WAS PRESENT.

10 WHAT I ASKED HIM IS, "YOU WERE PRESENT WHEN AGENT
11 CAMARENA WAS BEING TORTURED?"

12 AND HE SAID HE WAS PRESENT, "YES," HE ANSWERED.

13 Q. WELL, IF I COULD, AND WE'LL USE YOUR TRANSCRIPT, THESE
14 ARE TRANSCRIPTS THAT -- LET ME BACK UP. STRIKE THAT.

15 DURING THE TIME PERIOD THAT YOU HAD THE TAPES, THE
16 UNDERCOVER TAPES THAT WERE RECORDED IN CONNECTION WITH THE
17 UNDERCOVER OPERATION INVOLVING MY CLIENT, YOU HAD THOSE IN
18 YOUR POSSESSION FOR AT LEAST BETWEEN JULY 25TH, 1989 AND
19 AUGUST 17TH, 1989, RIGHT?

20 A. YES. THEY WERE LOCKED UP IN MY SAFE.

21 Q. AND AT SOME POINT DURING THAT TIME PERIOD YOU CAUSED
22 TRANSCRIPTS TO BE MADE, ENGLISH TRANSCRIPTS AND SPANISH
23 TRANSCRIPTS TO BE MADE OF THESE CONVERSATIONS, RIGHT?

24 A. YES, I DID.

25 Q. AND DIRECTING YOUR ATTENTION TO THE JULY 25TH TRANSCRIPT

1 THAT YOU HAD PREPARED, AND SPECIFICALLY DIRECTING YOUR
2 ATTENTION TO PAGE -- TO PAGE 37 OF THAT TRANSCRIPT, IS THIS
3 THE SECTION THAT YOU ARE REFERRING TO WHERE MY CLIENT SAID
4 THAT HE WAS PRESENT DURING THE BEATING AND TORTURE OF AGENT
5 CAMARENA?

6 MR. CARLTON: OBJECTION, YOUR HONOR.

7 THIS HAS ALL BEEN ASKED AND ANSWERED.

8 MS. KELLY: YOUR HONOR --

9 THE COURT: IT HAS BEEN.

10 MS. KELLY: YOUR HONOR, I JUST WANT TO I INQUIRE IF
11 IF THIS THE AREA THAT THE AGENT IS REFERRING TO.

12 HE HAS REPEATEDLY BROUGHT IT OUT AS A RESPONSE TO
13 HIS QUESTIONS.

14 I MEAN IN RESPONSE TO MY QUESTIONS THAT ON THE 25TH
15 MY CLIENT SAID HE WAS PRESENT, AND I WANT TO KNOW IF THIS IS
16 WHERE IN THE CONVERSATION THE AGENT BELIEVES IT OCCURS.

17 THE COURT: THIS HAS BEEN COVERED ABOVE.

18 MS. KELLY: I DON'T BELIEVE I ASKED THAT PARTICULAR
19 QUESTION.

20 THE COURT: THAT'S ENOUGH, COUNSEL.

21 BY MS. KELLY:

22 Q. DURING THE -- AT SOME POINT ON THE 25TH WHEN YOU WERE
23 HAVING A CONVERSATION WITH MY CLIENT, MR. CASTEL LEFT THE
24 CAR; IS THAT RIGHT?

25 A. YES, HE DID.

1 Q. AND AGENT SALAZAR REMAINED IN THE CAR WITH YOU; IS THAT
2 RIGHT?

3 A. NO, HE DID NOT.

4 Q. SO YOU'RE SAYING THAT AGENT SALAZAR LEFT THE CAR WITH
5 AGENT -- MR. CASTEL?

6 A. I ASKED AGENT SALAZAR TO LEAVE ME ALONE WITH MR. BERNABE
7 RAMIREZ AND THE CONVERSATION THAT WE HAD IN THE CAR AT THAT
8 POINT THAT YOU'RE ALLUDING TO WAS ONLY BETWEEN MR. BERNABE
9 RAMIREZ AND MYSELF WHICH IS -- WAS TAPE RECORDED AS WE ALL
10 KNOW.

11 Q. WELL, THE ENTIRE CONVERSATION IN THE CAR WAS TAPE
12 RECORDED, RIGHT?

13 A. YES.

14 Q. NOW, PRIOR TO THAT ENCOUNTER IN THE CAR, YOU PICKED UP
15 MY CLIENT AND MR. CASTEL DEL ORO AT THE EMBASSY SUITES?

16 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

17 MS. KELLY: I'M JUST TRYING TO FOCUS TO A
18 PARTICULAR TIME. THIS AREA, YOUR HONOR --

19 THE COURT: YOU CROSS-EXAMINED THIS WITNESS
20 EXTENSIVELY ON THOSE CONVERSATIONS AND THIS IS NOT AN
21 OPPORTUNITY FOR YOU TO DO IT AGAIN.

22 IF YOU HAVE SOME NEW MATTER THAT YOU DIDN'T HAVE AN
23 OPPORTUNITY TO COVER BEFORE UNDER THE CONDITIONS I INDICATED
24 TO YOU, YOU MAY ASK ABOUT IT.

25 I'M NOT GOING TO PERMIT THIS WASTE OF TIME.

1 BY MS. KELLY:

2 Q. WELL, WHEN YOU ARRIVED TO PICK UP MY CLIENT AT THE
3 EMBASSY SUITES HOTEL, YOU MET HIM IN A BAR; IS THAT RIGHT?

4 A. YES.

5 Q. AND HE HAD BEEN THERE WITH MR. CASTEL DEL ORO, CORRECT?

6 A. WHAT TIMEFRAME?

7 Q. WELL, WHEN YOU -- DIRECTING YOUR ATTENTION TO JULY 25TH.

8 YOU WENT FIRST TO THE EMBASSY SUITES HOTEL TO PICK
9 MY CLIENT AND MR. CASTEL UP, AND I'M ASKING YOU WHEN YOU
10 PICKED HIM UP, DID YOU PICK THEM UP FROM A BAR IN THE HOTEL?

11 A. I DON'T RECALL PICKING THEM UP IN THE BAR.

12 I THINK THEY WERE IN THE LOBBY THE BEST THAT I CAN
13 RECALL.

14 Q. THE CAR WERE YOU DRIVING WAS A MERCEDES BENZ 450 SL?

15 A. I'M NOT THAT FAMILIAR WITH THE TYPE OF MERCEDES. ALL I
16 KNOW IS IT'S A MERCEDES. I DON'T KNOW WHAT NUMBER IT WAS.

17 Q. WAS IT A CONVERTIBLE?

18 A. NO, IT WAS A HARDTOP, I BELIEVE.

19 MS. KELLY: YOUR HONOR, IN VIEW OF YOUR RULING, I
20 DON'T HAVE ANYTHING FURTHER.

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

23 MR. CARLTON: JUST BRIEFLY, YOUR HONOR.

24 //

25 //

CROSS-EXAMINATION +

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BY MR. CARLTON:

Q. AGENT BERRELLEZ, LOOKING AT THE TRANSCRIPT OF THE JULY 25TH CONVERSATION WHICH IS IN FRONT OF YOU, I BELIEVE THAT'S EXHIBIT 165?

A. YES, SIR.

Q. THAT WAS PREPARED AT YOUR DIRECTION?

A. YES, SIR, IT WAS.

Q. THAT WAS PREPARED BY A FEDERALLY CERTIFIED COURT INTERPRETER, WAS IT NOT?

A. YES, IT WAS, SIR.

MR. CARLTON: ONE MOMENT.

(BRIEF PAUSE.)

MR. CARLTON: NOTHING FURTHER, YOUR HONOR.

MS. KELLY: YOUR HONOR, JUST BRIEFLY.

THE COURT: WITHIN THE SCOPE OF WHAT WAS ASKED HIM?

MS. KELLY: YES, YOUR HONOR.

REDIRECT EXAMINATION +

BY MS. KELLY:

Q. AGENT BERRELLEZ, THE TRANSCRIPTS OF JULY 21ST AND JULY 24TH WERE DONE BY A D.E.A. CONTRACT PERSON, NOT A FEDERALLY CERTIFIED COURT INTERPRETER; ISN'T THAT RIGHT?

A. I DON'T KNOW WHAT HER QUALIFICATIONS WERE.

Q. DO YOU KNOW WHO IT WAS?

1 A. NO, I DON'T.

2 Q. AND DO YOU KNOW WHO WAS THE PERSON WHO PREPARED THE JULY
3 25TH TRANSCRIPT?

4 A. I DON'T KNOW THAT EITHER.

5 THE COURT: YOU MAY STEP DOWN.

6 THE WITNESS: THANK YOU, YOUR HONOR.

7 THE COURT: CALL THE NEXT WITNESS.

8 MR. STOLAR: WE CALL AGENT SALAZAR.

9

10 DELBERT A. SALAZAR + DEFENSE WITNESS, PREVIOUSLY SWORN

11

12 THE CLERK: PLEASE BE REMINDED THAT YOU ARE STILL
13 UNDER OATH.

14 PLEASE BE SEATED.

15 STATE YOUR NAME FOR THE RECORD.

16 THE WITNESS: DELBERT A. SALAZAR.

17

18 DIRECT EXAMINATION +

19 BY MR. NICOLAYSEN:

20 Q. AGENT SALAZAR, I'M GOING TO DIRECT YOUR ATTENTION TO
21 YOUR MEETING WITH HECTOR CERVANTES SANTOS ON NOVEMBER 30,
22 1989.

23 SIR, YOU PREPARED A D.E.A.-6 INTERVIEW REPORT
24 SUMMARIZING THAT MEETING; ISN'T THAT CORRECT?

25 A. IT WAS NOVEMBER 30, 1989.

1 Q. YES, I BELIEVE I SAID THAT, DID I NOT?

2 A. YOU SAID 1990.

3 Q. DID I? ALL RIGHT. THANK YOU FOR CORRECTING ME.

4 SO LET'S GO BACK.

5 ON NOVEMBER 30, 1989 YOU INTERVIEWED HECTOR
6 CERVANTES SANTOS AND PREPARED A WRITTEN D.E.A.-6 REPORT
7 SUMMARIZING THAT MEETING, DID YOU NOT?

8 A. I DID.

9 Q. AND IN THE COURSE OF THAT MEETING, YOU DISCUSSED WITH
10 MR. CERVANTES THE LA LANGOSTA EVENT, DO YOU RECALL?

11 A. YES, SIR.

12 Q. AND IT'S TRUE, IS IT NOT, THAT MR. CERVANTES TOLD YOU
13 AND I BELIEVE, IF I'M CORRECT, THAT AGENT BERRELLEZ WAS ALSO
14 PRESENT AT THAT MEETING, WAS HE NOT?

15 A. YES, HE WAS.

16 Q. AND MR. CERVANTES TOLD YOU THAT BARBA HERNANDEZ AND
17 ANTONIO OCHOA WENT TO THE LA LANGOSTA RESTAURANT I BELIEVE IT
18 WAS JANUARY 30TH OF 1985, CORRECT?

19 A. NO, SIR. THAT'S NOT THE WAY I RECALL IT.

20 Q. DO YOU RECALL MR. CERVANTES TELLING YOU THAT IN HIS
21 RECOLLECTION BARBA HERNANDEZ AND MR. OCHOA VASQUEZ, THAT'S
22 ANTONIO, JUNIOR, RETURNED TO THE RESIDENCE WITH BLOOD ON
23 THEIR CLOTHES?

24 DO YOU RECALL MR. CERVANTES MENTIONING THAT TO YOU?

25 A. YES, I DO.

1 Q. AND DO YOU RECALL MR. CERVANTES TELLING YOU THAT
2 CERVANTES CLEANED THE BLOOD OFF OF BARBA HERNANDEZ'S WEAPON?

3 DO YOU RECALL MR. CERVANTES SAYING THAT TO YOU?

4 A. YES, I DO.

5 Q. AND THAT MR. VASQUEZ, THAT'S ANTONIO, JUNIOR, CLEANED
6 HIS OWN WEAPON?

7 DO YOU REMEMBER MR. CERVANTES MENTIONING THAT TO
8 YOU?

9 A. YES, I DO.

10 Q. AND MR. CERVANTES SAID TO YOU, DID HE NOT, THAT HE WAS
11 NOT STARTLED BY WHAT HAD HAPPENED UNTIL A FEW DAYS LATER WHEN
12 HE HEARD IN THE NEWS THAT TWO AMERICANS WERE REPORTED MISSING
13 AND PRESUMED DEAD?

14 DO YOU RECALL MR. CERVANTES TELLING YOU THAT?

15 A. YES, SIR. I DO.

16 Q. THANK YOU.

17 MR. NICOLAYSEN: I HAVE NOTHING FURTHER.

18

19 DIRECT-EXAMINATION +

20 BY MR. STOLAR:

21 Q. GOOD AFTERNOON, SIR.

22 A. GOOD AFTERNOON.

23 Q. IN YOUR -- YOU HAD A CONVERSATION WITH HECTOR CERVANTES
24 SANTOS ON JANUARY 2ND, 1990, ALONG WITH AGENT BERRELLEZ, DID
25 YOU NOT?

1 A. YES, SIR.

2 Q. AND YOU WROTE -- YOU PREPARED A REPORT THE NEXT DAY
3 SUMMARIZING WHAT IT WAS THAT HE TOLD YOU; IS THAT CORRECT?

4 A. I DO NOT RECALL IF I PREPARED THE REPORT THE FOLLOWING
5 DAY.

6 Q. BUT YOUR REPORT SAYS, "DATE PREPARED JANUARY 3, 1990,"
7 WOULD THAT BE A FAIR WAY TO FIND OUT WHEN YOU PREPARED THE
8 REPORT?

9 A. NOT NECESSARILY.

10 IT MAY BE WHEN THE REPORT WAS STARTED.

11 Q. OKAY.

12 YOU SIGNED IT ON THE 25TH, THE TYPED VERSION, SO IT
13 WAS THE 3RD OR 4TH. OKAY?

14 A. OR THE 5TH.

15 Q. OKAY.

16 DID HECTOR CERVANTES -- HECTOR CERVANTES TELL YOU
17 THAT PRIOR TO THE ABDUCTION OF AGENT CAMARENA, PRELIMINARY
18 PLANS WERE DISCUSSED ABOUT KIDNAPPING AN AGENT, AN AMERICAN
19 AGENT OR OFFICIAL?

20 A. YES, HE DID.

21 Q. DID HE TELL YOU THAT THE FIRST MEETING OCCURRED SOMETIME
22 IN EARLY OCTOBER OF 1984?

23 A. NOT IN THOSE SPECIFIC WORDS, NO.

24 Q. DID YOU WRITE THOSE WORDS IN YOUR REPORT, EARLY OCTOBER?

25 A. YES, SIR, I DID.

1 Q. DID HE ALSO TELL YOU THAT THE SECOND MEETING OCCURRED IN
2 THE LATTER PART OF OCTOBER 1984?

3 A. HE DIDN'T SAY THAT IN THOSE SPECIFIC WORDS, NO.

4 Q. DID YOU WRITE THAT IN YOUR REPORT? THE LATTER PART OF
5 OCTOBER OF '84?

6 A. YES, SIR, I BELIEVE I DID.

7 Q. WOULD IT BE FAIR TO SAY THAT AT THE JANUARY 2ND
8 INTERVIEW MR. CERVANTES SANTOS, BASED UPON WHAT YOU WROTE IN
9 YOUR REPORT, SEPARATED IN TIME THE FIRST MEETING AND THE
10 SECOND MEETING AT WHICH PRELIMINARY PLANS WERE DISCUSSED
11 ABOUT KIDNAPPING AN AMERICAN AGENT OR OFFICIAL?

12 A. I DON'T UNDERSTAND WHAT YOU MEAN BY IF IT WOULD BE FAIR
13 TO SAY THAT.

14 Q. WELL, IN YOUR REPORT YOU WROTE THAT THE FIRST MEETING --
15 THAT I TOLD YOU THAT THE FIRST MEETING THAT OCCURRED EARLY
16 OCTOBER, AND THAT THE SECOND MEETING OCCURRED IN LATTER PART
17 OF OCTOBER.

18 THAT WOULD IMPLY THAT THE MEETINGS DID NOT TAKE
19 PLACE ONE DAY AFTER THE OTHER, WOULDN'T IT?

20 A. YES, SIR.

21 Q. THE SECOND MEETING HE SAID TOOK PLACE WHILE THE WEDDING
22 OF JORGE BARBA HERNANDEZ WAS ONGOING, RIGHT?

23 A. WORDS TO THAT EFFECT, YES.

24 Q. DID HE YOU THAT HE RECALLED GOING TO THE GUADALAJARA
25 AIRPORT ONE DAY PRIOR TO THE WEDDING TO PICK UP A MAN WHO HE

1 IDENTIFIED IN COURT AS MR. MATTA?

2 A. YES, SIR, HE DID.

3 Q. DID HE TELL YOU THAT THE THIRD MEETING THAT HE RECALLED
4 TAKING PLACE OCCURRED SOMETIME IN JANUARY OF 1985?

5 A. THROUGH DEDUCTIVE REASONING WE ARRIVED AT THAT DATE,
6 YES.

7 Q. DID HE TELL YOU THAT MR. MATTA WAS PRESENT AT THAT THIRD
8 MEETING?

9 A. I DON'T RECALL RIGHT NOW IF HE MENTIONED MR. MATTA BEING
10 PRESENT AT THE THIRD MEETING.

11 Q. YOU DESCRIBED HIM SAYING MR. MATTA WAS PRESENT AT THE
12 FIRST MEETING AND AT THE SECOND MEETING ALONG WITH SEVERAL
13 OTHER PEOPLE HE IDENTIFIED, DO YOU RECALL PUTTING THAT IN THE
14 REPORT?

15 A. YES, SIR.

16 Q. IN YOUR REPORT, YOU INDICATED THAT THE THIRD MEETING WAS
17 ATTENDED BY ALL THE PREVIOUSLY MENTIONED INDIVIDUALS TO
18 INCLUDE GARCIA PANIAGUA.

19 DOES THAT MEAN THAT HE TOLD YOU THAT MATTA WAS
20 PRESENT AT THE THIRD MEETING?

21 A. THAT'S WHAT I HAD IN MY REPORT, YES.

22 Q. THAT IS WHAT YOU HAVE IN YOUR REPORT, IS IT NOT?

23 A. YES, SIR.

24 Q. DID HE TELL YOU IN THAT INTERVIEW THAT HE DID NOT
25 OVERHEAR SPECIFICS ABOUT THE KIDNAPPING BECAUSE HE WAS NOT

1 PRESENT THROUGHOUT THE ENTIRE MEETING?

2 A. NOT IN THOSE WORDS, NO.

3 Q. DID HE TELL YOU THAT HE WAS RESPONSIBLE FOR PROVIDING
4 THE ESSENTIAL NECESSITIES TO ANY AND ALL OF BARBA HERNANDEZ'S
5 GUESTS AND THEREFORE WAS NEVER IN ONE PLACE FOR AN EXTENDED
6 PERIOD OF TIME DURING THE GATHERING?

7 A. THOSE ARE NOT HIS SPECIFIC WORDS, THOSE ARE MY WORDS.

8 Q. WHAT WERE HIS WORDS THAT YOU INTERPRETED INTO THAT
9 REPORT?

10 A. THAT HE WAS PRESENT IN THE ROOM WHERE THE MEETING TOOK
11 PLACE AND THAT EVERYTHING WAS PRETTY WELL ADJACENT OR IN THAT
12 SAME ROOM AND HE WOULD RETRIEVE THINGS AS THEY BECAME
13 NECESSARY FOR PEOPLE THAT WERE IN ATTENDENCE AT THE MEETING.

14 Q. ANYTHING ELSE?

15 A. ABOUT THAT PARTICULAR STATEMENT?

16 Q. YES.

17 A. NO, THAT'S IT.

18 Q. AND THAT, WHAT YOU JUST TOLD US, GETS INTERPRETED IN
19 YOUR REPORT, IT SHOULD BE NOTED CERVANTES DID NOT OVERHEAR
20 SPECIFICS ABOUT THE KIDNAP BECAUSE HE WAS NOT PRESENT
21 THROUGHOUT THE ENTIRE MEETING.

22 CERVANTES WAS RESPONSIBLE FOR PROVIDING THE
23 ESSENTIAL NECESSITIES TO ANY AND ALL OF BARBA HERNANDEZ'S
24 GUESTS AND THEREFORE WAS NEVER IN ONE PLACE FOR AN EXTENDED
25 PERIOD OF TIME DURING THE GATHERING?

1 A. THAT IS MY INTERPRETATION OF WHAT HE TOLD US.

2 Q. YOU HAD ANOTHER CONVERSATION WITH HIM ON JANUARY 11, DID
3 YOU NOT?

4 A. YES, SIR.

5 Q. HIM BEING HECTOR CERVANTES SANTOS?

6 A. YES, SIR.

7 Q. AT THAT TIME, DID HE TELL YOU THAT AT ONE OF THOSE
8 OCTOBER MEETINGS, MANUEL IBARRA HERRERA HAD STATED THAT
9 BECAUSE OF RECENT SEIZURES THAT HAD OCCURRED THE SECRETARY OF
10 GOBERNACION HAD RECEIVED A LOT OF NEGATIVE EXPOSURE?

11 A. DID CERVANTES TELL ME THAT?

12 Q. YES.

13 A. YES, SIR, HE DID.

14 Q. DID HE TELL YOU THAT THE RECENT SEIZURES THAT HE WAS
15 TALKING ABOUT WERE SEIZURES AT ZACATECAS AND BUFALO?

16 A. NO, SIR, HE DID NOT.

17 Q. YOU WROTE THAT THE RECENT SEIZURES THAT CERVANTES
18 DESCRIBED WERE ZACATECAS AND BUFALO IN YOUR REPORT, DID YOU
19 NOT?

20 A. IN PARENTHESES I DID, YES.

21 Q. WHERE DID YOU GET THAT INFORMATION FROM?

22 A. THOSE WERE THE SEIZURES THAT WE KNEW OF THAT HAD CAUSED
23 PEOPLE SOME CONSTERNATION IN MEXICO.

24 Q. BUFALO SEIZURE DIDN'T TAKE PLACE UNTIL NOVEMBER, DID IT?

25 A. THAT 'S CORRECT.

1 Q. SO HE COULDN'T HAVE BEEN TALKING ABOUT THAT, COULD HE?

2 A. THAT'S CORRECT.

3 Q. BUT YOU PUT IT IN YOUR REPORT?

4 A. YES, I DID.

5 Q. MAYBE HE SAID IT, ISN'T THAT POSSIBLE?

6 MR. CARLTON: OBJECT TO THE ARGUMENTATIVE NATURE
7 AND ALSO SPECULATION. YOUR HONOR.

8 THE COURT: SUSTAINED.

9 BY MR. STOLAR:

10 Q. NOW, DID YOU MAKE OR DID ANY AGENT OF THE D.E.A. OR ANY
11 OTHER LAW ENFORCEMENT AGENT THAT HAD BEEN THERE OR ANY OTHER
12 LAW ENFORCEMENT ORGANIZATION MAKE AN ARRANGEMENT WITH HECTOR
13 CERVANTES SANTOS TO PROVIDE HIM \$3,000 PER MONTH?

14 A. I DID NOT MAKE THAT ARRANGEMENT, NO.

15 Q. ARE YOU AWARE OF ANYBODY ELSE WHO MADE AN ARRANGEMENT OF
16 THAT NATURE?

17 MR. CARLTON: I'LL OBJECT TO THIS AS CUMULATIVE,
18 YOUR HONOR.

19 MR. STOLAR: NOT FROM THIS WITNESS, YOUR HONOR.

20 THE COURT: OVERRULED.

21 THE WITNESS: I BELIEVE THERE IS THAT ARRANGEMENT,
22 YES.

23 BY MR. STOLAR:

24 Q. DO YOU KNOW WHO MADE IT?

25 A. I BELIEVE SPECIAL AGENT HECTOR BERRELLEZ DID.

1 Q. THANK YOU.

2 MR. STOLAR: I HAVE NOTHING ELSE.

3 THE COURT: DO YOU HAVE ANY QUESTIONS FOR THIS
4 WITNESS?

5 MS. KELLY: YES, YOUR HONOR.

6 YOUR HONOR, FIRST I'D LIKE TO READ A STIPULATION
7 THAT HAS BEEN ENTERED INTO BETWEEN THE PARTIES. THAT THE
8 WITNESS --

9 THE COURT: STIPULATION BETWEEN ALL THE PARTIES OR
10 JUST YOUR CLIENT AND THE GOVERNMENTMENT?

11 MS. KELLY: MY CLIENT AND THE GOVERNMENT, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT.

14 THE JURY WILL LISTEN.

15 MS. KELLY: THE STIPULATION IS THAT THE WITNESS
16 TERRY ALVAREZ IDENTIFIED SPECIAL AGENT DELBERT SALAZAR AS
17 BEING THE PERSON SHE DESCRIBED AS THE BIG MAN WITH THE LARGE
18 MOUSTACHE AND GREYING HAIR WHO WAS AMONG THE FOUR MEN AT THE
19 EL TORITO RESTAURANT ON JULY 25TH, 1989.

20 THE COURT: IS THAT THE STIPULATION?

21 MR. MEDRANO: SO STIPULATED, YOUR HONOR.

22 THE COURT: YOU MAY CONSIDER THAT TO HAVE BEEN
23 DONE.

24 ALL RIGHT.

25 //

1 DIRECT EXAMINATION +

2 BY MS. KELLY:

3 Q. GOOD AFTERNOON, AGENT SALAZAR.

4 A. GOOD AFTERNOON.

5 Q. AGENT SALAZAR ON JULY 25TH, 1989, WHEN YOU WENT WITH
6 AGENT BERRELLEZ TO PICK UP MY CLIENT AND THE INFORMANT AT
7 TESTIMONY EMBASSY SUITES HOTEL, DID YOU PICK HIM UP -- DID
8 YOU MEET HIM IN THE HOTEL BAR?

9 A. YES, MA 'AM.

10 Q. DID YOU NOTICE WHETHER HE WAS DRINKING ANY BEER?

11 A. YES, MA 'AM.

12 Q. YOU DID NOTICE THAT HE WAS DRINKING A BEER?

13 A. YES, HE WAS.

14 Q. AND DID YOU NOTICE WHAT THE INFORMANT CASTEL DEL ORO WAS
15 DRINKING?

16 MR. CARLTON: OBJECTION, YOUR HONOR. IRRELEVANT.

17 THE COURT: SUSTAINED.

18 MS. KELLY: YOUR HONOR --

19 THE COURT: JUST GO ON, PLEASE.

20 BY MS. KELLY:

21 Q. AGENT SALAZAR, WERE YOU PRESENT DURING THE CONVERSATION
22 THAT WAS RECORDED ON JULY 25TH, 1989, IN THE CAR?23 MR. CARLTON: OBJECTION, ASKED AND ANSWERED, YOUR
24 HONOR.

25 MS. KELLY: YOUR HONOR, THIS HASN'T BEEN ASKED OF

1 THIS WITNESS .

2 THE COURT: YOU MAY ANSWER .

3 THE WITNESS: I WAS PRESENT FOR A PORTION OF THE
4 CONVERSATION THAT WAS RECORDED IN THE CAR .

5 BY MS. KELLY:

6 Q. SO IT'S YOUR TESTIMONY THAT YOU LEFT THE CAR AT SOME
7 POINT?

8 A. YES, MA'AM.

9 Q. NOW IN CONNECTION WITH YOUR INVESTIGATION IN THIS CASE
10 HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE REPORT THAT WAS
11 WRITTEN BY AGENT BERRELLEZ CONCERNING THE JULY 25TH, 1989
12 EVENTS?

13 A. YES, MA'AM.

14 Q. AND DO YOU RECALL IN THAT REPORT THAT YOU REFERRED TO
15 QUESTIONS ASKED BY THE AGENTS IN THE PLURAL .

16 MR. CARLTON: OBJECTION, YOUR HONOR. HEARSAY AND
17 IRRELEVANT .

18 THE COURT: SUSTAINED.

19 BY MS. KELLY:

20 Q. AGENT SALAZAR, HOW MANY MEETINGS WERE YOU PRESENT AT,
21 UNDERCOVER MEETINGS WITH MY CLIENT .

22 A. I BELIEVE IT WAS FOUR .

23 Q. AND WERE YOU PRESENT DURING ALL FOUR OF THEM.

24 THE COURT: HE JUST ANSWERED THAT QUESTION .

25 //

1 BY MS. KELLY:

2 Q. WHAT WAS YOUR UNDERCOVER NAME THAT YOU WERE USING?

3 A. PARDON.

4 Q. WHAT WAS THE UNDERCOVER NAME THAT YOU WERE USING DURING
5 THE INVESTIGATION?

6 A. IT'S BETO. B E T O, B AS IN BOY.

7 Q. WAS ANYBODY USING THE NAME JOSE CHAVEZ?

8 MR. CARLTON: OBJECTION; IRRELEVANT.

9 THE COURT: OVERRULED.

10 THE WITNESS: I DON'T KNOW THAT.

11 BY MS. KELLY:

12 Q. AND DO YOU KNOW WHO PAID FOR THE HOTEL BILL WHO ACTUALLY
13 PAID THE CASH HOTEL BILL FOR THE INFORMANT AND MY CLIENT?

14 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.
15 PREVIOUSLY COVERED.

16 MS. KELLY: THIS IS NOT MATERIAL THAT HAS BEEN
17 COVERED.

18 THE COURT: ANSWER THE QUESTION.

19 THE WITNESS: COULD I ASK WHAT HOTEL BILL?

20 BY MS. KELLY:

21 Q. YES. THE EMBASSY SUITES?

22 A. NO, I DON'T KNOW WHO PAID THAT BILL.

23 Q. NOW, DID YOU HAVE ANY CONVERSATIONS WITH THE INFORMANT
24 MR. CASEL DEL ORO CONCERNING THE PLANNING OF THE UNDERCOVER
25 OPERATION?

1 A. NO, MA'AM. NOT, PER SE, BETWEEN THE INFORMANT AND
2 MYSELF SPECIFICALLY.

3 Q. CAN YOU EXPLAIN WHAT YOU MEAN BY, "PER SE"; NOT
4 SPECIFICALLY"?

5 A. THE CONVERSATIONS BETWEEN THE INFORMANT -- WERE
6 BASICALLY BETWEEN THE INFORMANT AND SPECIAL AGENT BERRELLEZ
7 AND ANY PLANNING THAT WAS DONE WAS BASICALLY DONE BETWEEN
8 THOSE TWO INDIVIDUALS.

9 Q. AND WERE YOU PRESENT DURING THOSE TWO PLANNING
10 DISCUSSIONS?

11 A. AT TIMES.

12 Q. DO YOU RECALL WHAT TIMES?

13 A. WELL, AT TIMES WHENEVER WE WOULD BE OUT OF EARSHOT OF
14 MR. BERNABE?

15 Q. LET'S START WITH JULY 20TH, 1989.

16 WAS THERE A CONVERSATION BETWEEN THE INFORMANT AND
17 AGENT BERRELLEZ THAT YOU WITNESSED OR OBSERVED OUTSIDE THE
18 PRESENCE OF MY CLIENT?

19 A. THAT I WITNESSED OR OBSERVED?

20 YES, THERE WAS.

21 Q. AND IS THIS WHAT WERE YOU CHARACTERIZE AS A PLANNING
22 MEETING AS TO WHAT WOULD -- WHAT THE UNDERCOVER RULES, WHAT
23 SHAPE THEY WOULD TAKE AND WHAT COURSE THE UNDERCOVER
24 INVESTIGATION WOULD TAKE?

25 A. WELL, I WOULDN'T EXACTLY CALL THEM RULES.

1 IT WAS JUST CONVERSATIONS BETWEEN THE INFORMANT AND
2 MR. BERRELLEZ AND I -- IF YOU'RE ASKING ME IF I SAW THEM
3 MEET, YES, I DID.

4 Q. WAS THIS BEFORE YOU WENT TO THE AIRPORT?

5 A. NO, MA 'AM.

6 Q. DID YOU EVER WITNESS ANY CONVERSATIONS BETWEEN AGENT
7 BERRELLEZ AND THE INFORMANT BEFORE YOU WENT TO THE AIRPORT ON
8 JULY 20TH, 1989.

9 A. NO, MA 'AM. THE INFORMANT FLEW IN ON THAT DAY ALSO.

10 Q. DID YOU HAVE ANY TELEPHONE CONTACT WITH THE INFORMANT
11 ON -- PRIOR TO JULY 20TH, 1989?

12 A. NO, MA 'AM,

13 Q. NOW, THE CONVERSATION THAT YOU DID OBSERVE BETWEEN THE
14 INFORMANT AND AGENT BERRELLEZ ON JULY 20TH, 1989, DID THAT
15 OCCUR AFTER MY CLIENT LEFT THE CAR AND WENT TO THE
16 REGISTRATION AREA OF THE HOTEL?

17 A. I DON'T RECALL THAT INSTANCE SPECIFICALLY, BUT I CAN SAY
18 THAT AGENT BERRELLEZ AND THE INFORMANT DID HAVE A
19 CONVERSATION OUTSIDE OF EARSHOT OF YOUR CLIENT.

20 Q. ON JULY 20TH, 1989?

21 A. YES, MA 'AM.

22 Q. AND WAS THE CONVERSATION ABOUT THE UNDERCOVER OPERATION?

23 A. THE CONVERSATION I RECALL THEM HAVING HAD TO DO WITH THE
24 FLIGHT, WHETHER EVERYTHING WAS ALL RIGHT, ET CETERA, AT THE
25 AIRPORT.

1 IT WAS OUTSIDE OF THE EARSHOT OF YOUR CLIENT.

2 Q. ASIDE FROM THE GENERAL CONVERSATION THAT YOU OVERHEARD
3 WAS THERE ANY CONVERSATION ABOUT WHAT WAS TO TRANSPIRE AT THE
4 NEXT UNDERCOVER MEETING OR WHEN ANOTHER CONVERSATION SHOULD
5 OCCUR BETWEEN AGENT BERRELLEZ AND THE INFORMANT ABOUT WHAT
6 WOULD HAPPEN AT THE NEXT MEETING?

7 A. NO, MA'AM. I DON'T RECALL A SPECIFIC CONVERSATION ALONG
8 THOSE LINES.

9 Q. SO THE ONLY THING YOU RECALL IS GENERAL CONVERSATION
10 BETWEEN AGENT BERRELLEZ AND THE INFORMANT ON JULY 20TH, 1989?

11 A. YES, MA'AM.

12 Q. DID YOU CONTACT THE INFORMANT BEFORE THE JULY 21ST, 1989
13 UNDERCOVER OPERATION AND MAKE ANY ARRANGEMENTS AS TO WHAT WAS
14 TO TAKE PLACE THAT DAY?

15 A. EXCUSE ME? WHAT DAY WAS THAT?

16 Q. JULY 21ST.

17 A. NO, I DID NOT CONTACT THE INFORMANT.

18 Q. DID AGENT BERRELLEZ IN YOUR PRESENCE CONTACT THE
19 INFORMANT?

20 THAT WOULD BE ON THE 21ST OF JULY?

21 A. NOT IN MY PRESENCE, NO.

22 Q. DID AGENT BERRELLEZ TELL YOU THAT HE HAD CONTACTED THE
23 INFORMANT?

24 MR. CARLTON: OBJECTION; HEARSAY.

25 MS. KELLY: I'M NOT ASKING FOR THE SUBSTANCE OF THE

1 CONVERSATION, YOUR HONOR. JUST WHETHER IT OCCURRED.

2 THE COURT: YOU MAY ANSWER.

3 THE WITNESS: I DON'T RECALL, BUT I BELIEVE THERE
4 WOULD HAVE HAD TO HAVE BEEN SOME CONTACT BETWEEN THE
5 INFORMANT AND SPECIAL AGENT BERRELLEZ IN ORDER FOR THERE TO
6 BE A MEETING.

7 BY MS. KELLY:

8 Q. DID YOU HAVE ANY CONTACT WITH THE INFORMANT OUTSIDE MY
9 CLIENT'S PRESENCE ON JULY 21ST CONCERNING THE SUBSEQUENT
10 MEETINGS THAT WOULD TAKE PLACE?

11 A. SUBSEQUENT UNDERCOVER MEETINGS?

12 I HAD SOME CONVERSATIONS WITH THE INFORMANT OUTSIDE
13 EARSHOT OF YOUR DEFENDANT ON THE 21ST.

14 Q. AND DID THOSE CONCERN THE PLANS FOR THE SUBSEQUENT
15 UNDERCOVER MEETINGS?

16 A. NO, MA'AM.

17 Q. WAS IT JUST GENERAL CONVERSATION?

18 A. WELL IT CONCERNED THE TRAVELING OF THE FAMILY MEMBERS TO
19 DISNEYLAND.

20 I DON'T KNOW IF THAT'S GENERAL CONVERSATION OR NOT.

21 Q. BUT YOU HAD NO CONVERSATION WITH THE INFORMANT ON THE
22 21ST CONCERNING ANY PLANS FOR SUBSEQUENT UNDERCOVER MEETINGS.

23 A. NO, MA'AM.

24 Q. DID AGENT BERRELLEZ HAVE ANY CONVERSATIONS IN YOUR
25 PRESENCE WITH THE INFORMANT CONCERNING SUBSEQUENT PLANS FOR

1 UNDERCOVER MEETINGS WITH MY CLIENT?

2 A. NOT IN MY PRESENCE, NO.

3 Q. DID YOU OVERHEAR ANY TELEPHONE CONVERSATION CONCERNING
4 THAT MATTER?

5 A. NO, MA'AM.

6 Q. AND ON JULY 24TH 1989, STRIKE THAT. I'M SORRY.

7 ON EITHER JULY 22ND OR JULY 23RD ARE 1989, DID YOU
8 HAVE ANY CONVERSATION THE INFORMANT CONCERNING THE UNDERCOVER
9 MEETING THAT WAS SET UP FOR JULY 24TH, 1989?

10 A. NO, MA'AM.

11 Q. AND DID AGENT BERRELLEZ HAVE ANY CONVERSATION WITH THE
12 INFORMANT CONCERNING THE MEETING ON JULY 24TH, 1989, IN THE
13 YOUR PRESENCE ON EITHER OF THOSE DATES, THE 22ND OR THE 23RD?

14 A. NOT IN MY PRESENCE THAT I RECALL.

15 Q. AND I TAKE IT THERE WERE NO CONVERSATIONS ON THE 24TH
16 EITHER CONCERNING THE 25TH UNDERCOVER TRANSACTION?

17 NO CONVERSATIONS WITH YOU AND THE INFORMANT?

18 A. THAT'S CORRECT.

19 Q. AND IN YOUR PRESENCE AGENT BERRELLEZ HAD NONE WITH THE
20 INFORMANT CONCERNING THE PLANS FOR THE FOLLOWING UNDERCOVER
21 OPERATION?

22 A. THAT'S CORRECT.

23 Q. WERE YOU -- ON JULY 20TH, 1989, WERE YOU INTRODUCED TO
24 THE FAMILY MEMBERS CASTEL AND MY CLIENT?

25 A. YES, MA'AM.

1 Q. AND HOW WERE YOU INTRODUCED?

2 A. I DON'T UNDERSTAND WHAT YOU MEAN BY HOW WAS I
3 INTRODUCED.

4 Q. WAS YOUR NAME GIVEN?

5 A. YES, MA'AM. I MENTIONED THAT IT WAS BETO.

6 Q. AND WERE YOU INTRODUCED AS BETO TO ALL OF THE PEOPLE
7 THAT ARRIVED ON THE AIRPLANE FROM GUADALAJARA WITH THE
8 INFORMANT?

9 A. YES, MA'AM.

10 Q. AND YOU ARE THE PERSON WHO TOOK THE FAMILY MEMBERS TO
11 DISNEYLAND?

12 A. YES, MA'AM.

13 Q. AND DID YOU ALSO PROVIDE -- STRIKE THAT.

14 MRS. CASTEL AND MRS. BERNABE ARE THE PERSONS WHO
15 WENT TO DISNEYLAND?

16 A. THEY WERE INCLUDED IN THE GROUP, YES.

17 Q. WHO ELSE WENT TO DISNEYLAND?

18 A. THE INFORMANT'S CHILDREN AND THE TWO VETERINARY DOCTORS
19 WERE ALSO INCLUDED IN THE GROUP.

20 Q. DID YOU PROVIDE MONEYS FOR THEM TO GO TO DISNEYLAND?

21 A. PARDON?

22 Q. DID YOU PROVIDE MONEY FOR THEM TO GO TO DISNEYLAND?

23 MR. CARLTON: OBJECTION; IRRELEVANT, YOUR HONOR.

24 MS. KELLY: YOUR HONOR, I'LL TIE IT UP LATER.

25 THE COURT: OVERRULED.

1 THE WITNESS: NO, MA'AM.

2 BY MS. KELLY:

3 Q. DID YOU GIVE CASTEL -- MR. CASTEL DEL ORO CASH FUNDS AT
4 ANY TIME FOR PURPOSES OF THE UNDERCOVER INVESTIGATION?

5 A. I DON'T RECALL AT THIS TIME. I MAY HAVE.

6 Q. AND ON JULY THE 21ST, 1989 WERE YOU PRESENT DURING THE
7 ENTIRE UNDERCOVER MEETING BETWEEN AGENT BERRELLEZ AND MY
8 CLIENT?

9 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

10 THE COURT: SUSTAINED.

11 MS. KELLY: YOUR HONOR, COULD I HAVE A MOMENT?

12 YOUR HONOR, I HAVE NOTHING FURTHER OF THIS WITNESS.

13 THE COURT: ANY FURTHER QUESTIONS?

14 MR. STOLAR: MAY I ASK ONE QUESTION I FORGOT, YOUR
15 HONOR?

16 THE COURT: YES.

17 MR. STOLAR: THANK YOU.

18

19 REDIRECT EXAMINATION +

20 BY MR. STOLAR:

21 Q. IN THE, I BELIEVE IT'S THE NOVEMBER -- NO, I'M SORRY.

22 IN THE JANUARY 11TH INTERVIEW, DID HECTOR CERVANTES
23 SANTOS TELL YOU THAT THE POLICE REPORTS THAT MY CLIENT WAS
24 SUPPOSED TO BE LOOKING AT CONTAINED INFORMATION WHICH STATED
25 WHICH AMERICAN AGENT WAS RESPONSIBLE FOR SUPPLYING THE

1 INFORMATION WHICH RESULTED IN THE SEIZURES OF MARIJUANA?

2 A. YES, SIR, I BELIEVE HE DID.

3 Q. THANK YOU.

4 THE COURT: ANYTHING FURTHER FROM THE GOVERNMENT?

5 MR. CARLTON: YES, YOUR HONOR.

6 RE-CROSS-EXAMINATION +

7 BY MR. CARLTON:

8 Q. AGENT SALAZAR, YOU MET WITH HECTOR CERVANTES SANTOS ON
9 NOVEMBER 30TH OF LAST YEAR, CORRECT?

10 A. YES, SIR, I DID.

11 Q. AND WHO ELSE WAS PRESENT WITH YOU DURING THAT MEETING?

12 A. SPECIAL AGENT HECTOR BERRELLEZ.

13 Q. WHERE DID YOUR MEETING TAKE PLACE?

14 THE COURT: SAME RULE APPLIES TO YOU, YOU KNOW.
15 THIS HAS BEEN COVERED BEFORE.

16 MR. CARLTON: ALL RIGHT.

17 BY MR. CARLTON:

18 Q. HAD YOU EVER MET HECTOR CERVANTES BEFORE?

19 A. THE PREVIOUS NIGHT.

20 Q. DID YOU TAKE ANY NOTES DURING THIS MEETING WITH MR.
21 CERVANTES?

22 A. NO, SIR.

23 Q. DID AGENT BERRELLEZ TAKE ANY NOTES?

24 A. NO, SIR.

25 Q. WHY WAS THAT?

1 WHY DID NEITHER OF YOU TAKE NOTES, IF YOU KNOW?

2 A. EXCUSE ME.

3 THERE WAS A CONFIDENCE FACTOR INVOLVED.

4 WE WERE TRYING TO ESTABLISH A RAPPORT WITH MR.
5 CERVANTES.

6 Q. DID MR. CERVANTES APPEAR TO YOU TO BE SOMEWHAT
7 UNCOMFORTABLE?

8 A. YES, SIR. HE WAS VERY UNCOMFORTABLE.

9 Q. WHAT WAS THE FORMAT OF THE CONVERSATION.

10 A. IT WAS EXACTLY THAT, A CONVERSATION, IT WAS JUST TALKING
11 BACK AND FORTH.

12 Q. DID YOU HAVE ANY PREPARED QUESTIONS THAT YOU ASKED HIM?

13 A. NONE.

14 Q. DID YOU ESSENTIALLY LISTEN AS HE TOLD YOU WHAT WANTED TO
15 TELL YOU?

16 A. YES, SIR.

17 Q. YOU DIDN'T RECORD THIS CONVERSATION, DID YOU?

18 A. NO, SIR, WE DID NOT.

19 Q. AND AGAIN, WHY WAS THAT?

20 A. BECAUSE HE SEEMED VERY ILL AT EASE WITH US.
21 PARTICULARLY ME.

22 Q. NOW YOU WROTE SUBSEQUENTLY A REPORT ABOUT THIS
23 CONVERSATION; IS THAT CORRECT?

24 A. YES, SIR.

25 Q. HOW DID YOU GO ABOUT WRITING THAT REPORT?

1 MR. NICOLAYSEN: I'M GOING TO OBJECT, YOUR HONOR.
2 THE REPORT IS NOT IN DISPUTE. IT'S IRRELEVANT.

3 THE COURT: SUSTAINED.

4 WELL, STRIKE THAT.

5 YOU MAY ANSWER THE QUESTION.

6 THE WITNESS: IN SPEAKING WITH AGENT BERRELLEZ,
7 WE -- THE CHRONOLOGY OF THE REPORT AS BEST WE COULD AND THE
8 BEST OF OUR RECOLLECTION FROM THE MEETING THAT WE HAD WITH
9 MR. CERVANTES AND ANY CHRONOLOGY IN THE REPORT IS BASICALLY
10 PROVIDED BY WHAT WE RECALL OF THE CONVERSATION.

11 BY MR. CARLTON:

12 Q. SO YOUR CONVERSATION WITH MR. CERVANTES WAS NOT
13 STRUCTURED CHRONOLOGICALLY?

14 A. THAT'S CORRECT.

15 Q. AND IN CREATING YOUR REPORT, WERE YOU ESSENTIALLY TRYING
16 TO IMPOSE A STRUCTURE THAT DIDN'T EXIST DURING THE
17 CONVERSATION?

18 A. FOR CLARIFICATION'S SAKE, YES.

19 Q. AND THE REPORT IS THE BEST RECOLLECTION OF YOU AND
20 SPECIAL AGENT BERRELLEZ WITHOUT ASSISTANCE OF NOTES, CORRECT?

21 A. THAT'S CORRECT.

22 Q. NOW, YOU MET AGAIN WITH MR. CERVANTES ON JANUARY 2ND; IS
23 THAT CORRECT?

24 A. YES, SIR.

25 Q. AND WHO ELSE WAS PRESENT DURING THAT MEETING?

1 A. SPECIAL AGENT HECTOR BERRELLEZ.

2 Q. WHERE DID THIS MEETING TAKE PLACE?

3 A. IN A HOTEL ROOM.

4 Q. NOW AT THE BEGINNING OF THIS MEETING, WAS MR.
5 CERVANTES 'S FAMILY PRESENT?

6 A. YES, SIR, THEY WERE.

7 Q. WHAT DID THEY DO? DID THEY LEAVE?

8 A. YES, THEY DID.

9 Q. WHERE 'D THEY GO?

10 A. OUTSIDE HOTEL ROOM, OUTSIDE THE HOTEL ROOM INTO AN OPEN
11 AREA OF THE HOTEL.

12 Q. OPEN MEANING OUTSIDE?

13 A. YES, OUTSIDE.

14 Q. WHAT WAS THE WEATHER LIKE THAT DAY?

15 MR. NICOLAYSEN: OBJECTION; RELEVANCE.

16 THE COURT: SUSTAINED.

17 BY MR. CARLTON:

18 Q. AGAIN, DID YOU -- DID YOU TAKE ANY NOTES DURING THIS
19 MEETING?

20 A. NO, SIR.

21 Q. DID YOU MAKE ANY RECORDINGS?

22 A. NO, SIR.

23 Q. AND WAS THIS FOR THE SAME REASON YOU APPROACHED THE
24 FIRST CONVERSATION WITHOUT TAKING NOTES OR MAKING A
25 RECORDING?

1 A. YES, SIR.

2 Q. AT SOME POINT DURING THE MEETING, DID MR. CERVANTES'S
3 FAMILY COME BACK INTO THE ROOM?

4 A. YES, THEY DID.

5 Q. AND DO YOU RECALL WHAT WERE YOU TALKING ABOUT AT THE
6 TIME THEY RETURNED INTO THE ROOM?

7 A. HE WAS ABOUT TO BEGIN TO TELL US ABOUT SPECIFIC
8 STATEMENTS THAT HAD BEEN MADE AT THESE MEETINGS WHEN HIS
9 FAMILY CAME IN FROM OUTSIDE.

10 Q. AND WHEN THEY CAME IN FROM OUTSIDE, WHAT DID HE DO?

11 MR. MEDVENE: OBJECTION, YOUR HONOR. CALLS FOR
12 HEARSAY.

13 THE COURT: SUSTAINED.

14 BY MR. CARLTON:

15 Q. WHEN THEY CAME IN FROM OUTSIDE, WHAT DID HE DO?

16 A. HE GESTURED TO US IN A --

17 MR. MEDVENE: OBJECTION. YOUR HONOR. IT'S OFFERED
18 FOR THE TRUTH OF THE MATTER.

19 IT'S HEARSAY AS TO WHAT MR. CERVANTES -- YOU CAN'T
20 GET HEARSAY IN.

21 THE COURT: OVERRULED.

22 THE WITNESS: HE GESTURED TO US IN A MANNER THAT
23 WOULD -- THAT LED TO US BELIEVE THAT HE DIDN'T WANT TO
24 CONTINUE ON OUR -- CONTINUE THE CONVERSATION.

25 BY MR. CARLTON:

1 Q. IS THAT WHEN THE CONVERSATION ENDED?

2 A. YES, SIR.

3 Q. AND AGAIN DID THEN GO AND PREPARE A REPORT OF THIS
4 MEETING?

5 A. YES, SIR, I DID.

6 Q. DID THIS MEETING, BY THE WAY, THIS JANUARY 2ND MEETING,
7 PROCEED ON THE BASIS OF PREPARED QUESTIONS?

8 A. NO PREPARED QUESTIONS.

9 Q. WAS IT LIKE THE FIRST MEETING ALSO CONVERSATIONAL?

10 A. YES, SIR.

11 Q. MIGHT ONE SAY, WOULD IT BE FAIR TO SAY THAT MR.
12 CERVANTES TALKED ABOUT WHAT CAME INTO YOU HIS MIND AT THE
13 TIME?

14 MR. MEDVENE: OBJECTION; CALLS FOR A CONCLUSION AND
15 SPECULATION.

16 THE COURT: SUSTAINED.

17 BY MR. CARLTON:

18 Q. DID THIS MEETING PROCEED IN SOME CHRONOLOGICAL FASHION?

19 A. NO, SIR, IT DID NOT.

20 Q. AND IN CREATING YOUR REPORT, HOW DID YOU COME TO THE
21 DATES THAT APPEAR IN THE REPORT?

22 A. MR. CERVANTES WAS USING ONE DATE AS A REFERENCE POINT
23 AND WHERE IT WENT PRIOR TO THAT DAY AND AFTER THAT DATE,
24 REMEMBERING THINGS AS THEY CAME TO HIS MIND AND THAT WAS THE
25 INFORMATION THAT HE WAS PROVIDING TO US.

1 Q. NOW SO THERE WAS A REFERENCE POINT --

2 MR. MEDVENE: OBJECTION; MOVE TO STRIKE WHAT MR.
3 CERVANTES WAS DOING, YOUR HONOR, AS PURE HEARSAY.

4 THE COURT: OVERRULED.

5 BY MR. CARLTON:

6 Q. WAS THERE A REFERENCE POINT THAT YOU USED?

7 A. YES, SIR, THERE WAS.

8 Q. AND WHAT WAS THAT?

9 A. THE DEATH OF JORGE BARBA HERNANDEZ.

10 Q. YOU WERE PRESENT ALSO, WERE YOU NOT, DURING A THIRD
11 MEETING WITH MR. CERVANTES ON JANUARY 11TH?

12 A. YES, SIR, I WAS.

13 Q. AND DID THIS THIRD MEETING ALSO PROCEED IN THE SAME
14 FASHION AS THE FIRST TWO YOU JUST DESCRIBED?

15 A. YES, SIR, IT DID.

16 Q. YOU PREPARED NO NOTES?

17 A. NO NOTES.

18 Q. YOU PREPARED NO RECORDING, CORRECT?

19 A. NO RECORDING.

20 Q. AND WERE YOU STILL ATTEMPTING TO DEVELOP A RELATIONSHIP
21 OF TRUST WITH MR. CERVANTES?

22 A. YES, SIR, WE WERE.

23 Q. AND THE REPORT THAT YOU PREPARED WAS BASED ON YOUR BEST
24 RECOLLECTION OF WHAT HAD TRANSPIRED SEVERAL DAYS PREVIOUSLY?

25 A. THAT'S CORRECT.

1 Q. TO YOUR KNOWLEDGE DID MR. CERVANTES READ ANY OF THE
2 REPORTS THAT YOU PREPARED?

3 A. NO, SIR, HE DID NOT.

4 MR. CARLTON: MAY I HAVE JUST A MOMENT, YOUR HONOR?
5 NOTHING FURTHER, YOUR HONOR.

6 FURTHER REDIRECT EXAMINATION +

7 BY MR. STOLAR:

8 Q. THOSE THREE INTERVIEWS WERE NOT THE ONLY TIMES THAT YOU
9 SPOKE TO HECTOR CERVANTES SANTOS AND GOT INFORMATION FROM
10 HIM, WERE THEY?

11 A. NO, SIR.

12 Q. AND YET THESE ARE THE ONLY THREE REPORTS THAT YOU
13 PREPARED; IS THAT CORRECT?

14 A. IN REGARD TO MR. CERVANTES, YES.

15 Q. YES, THAT'S CORRECT. THOSE ARE THE ONLY THREE, RIGHT?

16 A. YES, SIR.

17 Q. EVEN THOUGH THERE WERE NUMEROUS OTHER MEETINGS WHERE
18 INFORMATION WAS DEVELOPED AND GIVEN TO YOU BY MR. CERVANTES,
19 CORRECT?

20 MR. CARLTON: OBJECTION, YOUR HONOR, AS VAGUE AND
21 AMBIGUOUS AS TO WHETHER THE INFORMATION RELATES TO THIS CASE.

22 THE COURT: I ASSUME THAT YOU MEAN FOR THIS CASE.

23 MR. STOLAR: OF COURSE.

24 THE WITNESS: NUMEROUS MEETINGS? NO.

25 BY MR. STOLAR:

1 Q. MANY? A LOT? HOW MANY?

2 A. PERSONALLY, I'VE HAD QUITE A FEW MEETINGS WITH MR.
3 CERVANTES, NOT NECESSARILY FOR HIS DISSEMINATION OF
4 INFORMATION FOR US.

5 Q. WOULD IT BE FAIR TO SAY, HOWEVER, THAT THERE ARE MORE
6 THAN THREE -- THERE WERE MORE THAN THREE OCCASIONS WHERE YOU
7 IMPARTED INFORMATION THAT WAS OF RELEVANCE IN THIS CASE?

8 A. YES, SIR.

9 Q. WOULD IT BE FAIR TO SAY THERE WERE MAYBE A DOZEN MORE
10 OCCASIONS WHEN HE IMPARTED INFORMATION RELEVANT TO THIS CASE?

11 A. IN MY PRESENCE?

12 Q. YES.

13 A. POSSIBLY.

14 Q. I'LL ACCEPT IT AS AN ESTIMATE.

15 IS THAT A REASONABLE ESTIMATE?

16 A. REASONABLE ESTIMATE, YES.

17 Q. ALL RIGHT.

18 AND THERE ARE NO RECORDS PREPARED BY YOU, OR TO
19 YOUR KNOWLEDGE, ANY OTHER AGENT CONCERNING THOSE CASES; IS
20 THAT RIGHT?

21 A. THAT'S CORRECT.

22 Q. IN ANY INTERVIEW WITH MR. CERVANTES SANTOS, WHEN
23 INFORMATION WAS PROVIDED ABOUT THIS CASE, DID ANYBODY EVER
24 TAKES NOTES, EVER?

25 MR. CARLTON: I'LL OBJECT; LACK OF FOUNDATION.

1 MR. STOLAR: TO WHICH HE WAS PRESENT, OBVIOUSLY.

2 THE COURT: WITH THAT QUALIFICATION, YOU MAY
3 ANSWER.

4 THE WITNESS: IF I COULD ANSWER IF ANY AGENT OF THE
5 D.E.A. TOOK NOTES, NO, SIR.

6 BY MR. STOLAR:

7 Q. YOU'RE REFERRING TO MR. MEDRANO AS THE PERSON WHO MIGHT
8 HAVE TAKEN NOTES DURING AN INTERVIEW?

9 A. YES, SIR.

10 Q. ANYBODY ELSE TO YOUR KNOWLEDGE?

11 A. NO, SIR.

12 Q. AND YOU INDICATED THAT YOU DIDN'T WANT TO RECORD THE
13 INTERVIEWS WITH MR. CERVANTES BECAUSE YOU DIDN'T WANT TO
14 SCARE HIM OFF; IS THAT A FAIR CHARACTERIZATION?

15 A. YES, SIR.

16 Q. YOUR OFFICE DOES NOT LACK HIDDEN RECORDING EQUIPMENT,
17 DOES IT?

18 A. NO, IT DOES NOT.

19 Q. IN FACT, SOME OF THE THINGS THAT YOU'VE TAPED ON HIDDEN
20 RECORDERS THAT WERE NOT DETECTABLE BY THE OTHER PARTY WHO
21 DIDN'T KNOW WHAT WAS GOING ON, HAVE BEEN INTRODUCED IN
22 EVIDENCE IN THIS CASE; ISN'T THAT RIGHT?

23 A. I DON'T KNOW WHAT HAS BEEN INTRODUCED IN EVIDENCE IN
24 THIS CASE.

25 I HAVEN'T BEEN IN THE COURTROOM.

1 Q. YOU DID PUT SOME TAPES OR YOU HAVE SOME TAPES MARKED FOR
2 IDENTIFICATION PERHAPS --

3 A. YES, SIR.

4 Q. -- WHEN YOU WERE ON THE WITNESS STAND PREVIOUSLY, RIGHT?

5 MR. CARLTON: OBJECTION, YOUR HONOR. IRRELEVANT.

6 BY MR. STOLAR:

7 Q. THOSE WERE RECORDED BY HIDDEN MICROPHONES AND SECRET
8 RECORDERS, WERE THEY NOT?

9 A. YES, SIR, THEY WERE.

10 Q. ANY YOU INDICATED IN RESPONSE TO MR. CARLTON'S QUESTION
11 THAT YOUR REPORTS -- BECAUSE THERE WERE NO NOTES OF
12 RECORDINGS OR A RESTRUCTURING OR A MEMORY, THE NEXT DAY'S
13 MEMORY, OR MAYBE THAT DAY'S MEMORY OF WHAT CERVANTES HAD TOLD
14 YOU; IS THAT RIGHT?

15 A. YES, SIR.

16 O. IS THERE ANYTHING WRONG WITH YOUR MEMORY, TO YOUR
17 KNOWLEDGE?

18 A. TO MY KNOWLEDGE, NO.

19 Q. THANK YOU.

20 MR. STOLAR: NOTHING FURTHER.

21

22

23

DIRECT EXAMINATION +

24 BY MR. MEDVENE:

25 Q. AGENT SALAZAR, YOU HAVE TOLD US OF THE FACT THAT NO

1 NOTES WERE TAKEN THE NOVEMBER 30TH MEETING WITH MR.
2 CERVANTES.

3 IS IT TRUE, SIR, THAT AFTER THAT MEETING -- AND I
4 DIRECT YOU TO TRIPLE S THAT'S IN FRONT OF YOU FOR YOUR
5 MEMORY -- THERE WAS A FOUR-PAGE REPORT PREPARED BY YOU?

6 A. IF YOU'RE REFERRING TO THE NOVEMBER 30TH MEETING, I
7 PREPARED THAT REPORT, YES.

8 Q. THE FOUR-PAGE REPORT, SIR?

9 A. I DON'T KNOW IF IT WAS FOUR PAGES.

10 MR. MEDVENE: MAY I APPROACH THE CLERK, YOUR HONOR,
11 FOR PURPOSES OF PUTTING THE REPORTS -- MAY I ASK MADAM
12 CLERK --

13 THE COURT: IS THIS SOMETHING THAT CAN BE
14 STIPULATED TO?

15 WHAT DO WE NEED THIS RUNNING BACK AND FORTH FOR?

16 MR. MEDVENE: I WOULD JUST BE -- WELL, I HAD A
17 QUESTION BEFORE AND I'LL BE LESS THAN THREE MINUTES, I THINK.

18 THE COURT: WHAT IS IT THAT YOU WANT, COUNSEL?

19 MR. MEDVENE: I'LL ASK THE WITNESS, IF I MIGHT,
20 YOUR HONOR.

21 I ASKED THE WITNESS IF, AFTER THE NOVEMBER 30
22 MEETING, WHETHER HE SAID THERE WERE NO NOTES.

23 BY MR. MEDVENE:

24 Q. DID YOU PREPARE AN APPROXIMATELY FOUR-PAGE REPORT, SIR?

25 A. YES, SIR.

1 Q. AFTER THE JANUARY 2ND MEETING WHERE YOU SAID THERE WERE
2 NO NOTES, DID YOU PREPARE A THREE-PAGE REPORT, SIR?

3 A. AGAIN, I DON'T KNOW IF IT'S A THREE-PAGE REPORT.

4 I PREPARED A REPORT OF THE JANUARY 2ND MEETING,
5 YES.

6 Q. APPROXIMATELY THREE PAGES?

7 A. APPROXIMATELY, YES.

8 Q. AND JANUARY 11TH WHEN YOU SAW MR. CERVANTES, YOU
9 PREPARED A SEVERAL PAGE REPORT; IS THAT CORRECT, SIR?

10 A. YES, SIR.

11 Q. AND MR. BERRELLEZ APPROVED EACH REPORT, TO YOUR
12 KNOWLEDGE; IS THAT CORRECT, SIR?

13 A. YES, SIR.

14 Q. DO YOU HAVE ANY REASON, SIR, OTHER THAN THE FACT THAT NO
15 FACTS OF SIGNIFICANCE TO THE CAMARENA INVESTIGATION, WERE
16 BROUGHT OUT WHY HECTOR BERRELLEZ MET MR. CERVANTES FOR
17 SEVERAL HOURS ON NOVEMBER 23RD, HE WROTE NO REPORT OF ANY
18 KIND?

19 MR. CARLTON: OBJECTION, YOUR HONOR; LACK OF
20 FOUNDATION.

21 THE COURT: SUSTAINED.

22 BY MR. MEDVENE:

23 Q. DO YOU HAVE ANY INFORMATION ABOUT WHY HECTOR BERRELLEZ
24 DID NOT WRITE A REPORT OF A SEVERAL HOUR MEETING WITH MR.
25 CERVANTES ON NOVEMBER 23RD OTHER THAN THE FACT THAT MR.

1 CERVANTES MENTIONED NOTHING OF SIGNIFICANCE WITH REGARD TO
2 THE CAMARENA INVESTIGATION, SIR?

3 MR. CARLTON: OBJECTION AGAIN. LACK OF FOUNDATION,
4 YOUR HONOR, COMPOUND QUESTION.

5 THE COURT: YOU'RE ASKING ABOUT WHAT SOMEBODY ELSE
6 DID OR DIDN'T DO OR WHY.

7 MR. MEDVENE: I'M JUST ASKING IF HE HAS ANY
8 KNOWLEDGE.

9 THE COURT: OBJECTION SUSTAINED.

10 BY MR. MEDVENE:

11 Q. TO YOUR KNOWLEDGE, PRIOR TO THE NOVEMBER 30 MEETING AND
12 AFTER THE NOVEMBER 23RD, 24TH MEETING, IS IT TRUE MR.
13 CERVANTES, TO YOUR KNOWLEDGE, WAS PAID MONEY?

14 A. PRIOR TO NOVEMBER 30TH, I DIDN'T KNOW THAT HECTOR
15 CERVANTES EXISTED.

16 Q. DO YOU KNOW THAT NOW THAT PRIOR TO YOUR MEETING ON
17 NOVEMBER 30TH, IN FACT, ON NOVEMBER 24TH, MR. CERVANTES WAS
18 PAID MONEY?

19 MR. CARLTON: HEARSAY, YOUR HONOR.

20 THE COURT: WERE YOU PRESENT?

21 LET'S ASK -- GET THE PERSONAL KNOWLEDGE HERE.

22 THIS HAS BEEN COVERED BEFORE WITH OTHER WITNESSES
23 OVER AND OVER AGAIN.

24 MR. MEDVENE: ALL RIGHT.

25 BY MR. MEDVENE:

1 Q. THANK YOU VERY MUCH, MR. SALAZAR.

2 THE COURT: DO YOU HAVE ANY QUESTIONS?

3 MR. CARLTON: NO YOUR HONOR.

4 THE COURT: YOU MAY STEP DOWN.

5 (WITNESS EXCUSED.)

6 THE COURT: IS THERE ANOTHER WITNESS?

7 MS. KELLY: YES, YOUR HONOR.

8 MS. BERNABE.

9 MR. MEDRANO: I DIDN'T HEAR THAT NAME.

10 THE COURT: I DIDN'T HEAR IT EITHER.

11 MR. STOLAR: I BELIEVE SHE SAID MS. BERNABE.

12 MR. MEDRANO: OBJECTION, YOUR HONOR.

13 NO NOTICE HAS BEEN GIVEN.

14 THIS THE FIRST TIME IT WAS BROUGHT TO OUR
15 ATTENTION.

16 THERE ARE OTHER WITNESSES AVAILABLE THAT COULD BE
17 CALLED OUT OF ORDER TO FILL THE REST OF THE DAY.

18 THE COURT: WELL, IS THIS THE FIRST YOU'VE HEARD OF
19 THIS?

20 MR. MEDRANO: FIRST TIME, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 THE WITNESS CAN'T BE CALLED NOW.

23 MS. KELLY: VERY WELL.

24 MR. NICOLAYSEN: MAY WE CALL AGENT REYNOSO?

25 I BELIEVE HE'S OUTSIDE IN THE HALLWAY.

1 THE COURT: WHO?

2 MR. NICOLAYSEN: AGENT ABEL REYNOSO, YOUR HONOR.

3 THE COURT: IS HE THE ONE THAT WAS RESERVED?

4 MR. NICOLAYSEN: HE WAS.

5 WITH THE COURT'S PERMISSION, HE WAS TO BE ASKED TO
6 BE AVAILABLE TODAY.

7

8 ABEL REYNOSO + DEFENSE WITNESS, PREVIOUSLY SWORN

9

10 THE COURT: HAVE YOU BEEN PREVIOUSLY SWORN?

11 THE WITNESS: YES, I HAVE.

12 THE CLERK: PLEASE BE ADVISED THAT YOU ARE STILL
13 UNDER OATH.

14 PLEASE BE SEATED.

15 STATE YOUR NAME FOR THE RECORD.

16 THE WITNESS: ABEL, A B E L, REYNOSO,
17 R E Y N O S O.

18 THE CLERK: THANK YOU.

19

20 DIRECT EXAMINATION +

21 BY MR. NICOLAYSEN:

22 Q. AGENT REYNOSO, I'M GOING TO DIRECT YOUR ATTENTION TO
23 JULY 14TH, 1989, THE DATE THAT JAVIER VASQUEZ VELASCO SIGNED
24 THE COOPERATING INDIVIDUAL AGREEMENT WITH THE D.E.A.

25 MR. MEDRANO: OBJECTION, YOUR HONOR.

1 THAT ITEM HAS BEEN COVERED BRIEFLY ON EXAMINATION
2 OF THIS WITNESS. IT'S CUMULATIVE.

3 MR. NICOLAYSEN: SIMPLY DIRECTING THE WITNESS'S
4 ATTENTION TO THAT DATE, YOUR HONOR. THAT'S ALL.

5 THE COURT: WHAT IS YOUR QUESTION?

6 BY MR. NICOLAYSEN:

7 Q. AGENT REYNOSO, ON THAT PARTICULAR DAY ON JULY 14TH OF
8 '89, IT IS TRUE, IS IT NOT, THAT SPECIFICALLY AS TO THE LA
9 LANGOSTA INVESTIGATION ITSELF, JAVIER VASQUEZ VELASCO WAS NOT
10 A SUSPECT, CORRECT?

11 MR. MEDRANO: OBJECTION, YOUR HONOR. COVERED
12 ALREADY; RELEVANCE.

13 THE COURT: SUSTAINED.

14 MR. NICOLAYSEN: I DON'T WANT TO ARGUE IN FRONT OF
15 THE JURY, YOUR HONOR, BUT IT DOES PERTAIN TO A --

16 THE COURT: THEN DON'T ARGUE.

17 MR. NICOLAYSEN: MAY I ASK THE COURT THEN TO
18 RESERVE AGENT REYNOSO'S AVAILABILITY FOR THURSDAY MORNING,
19 PENDING YOUR HONOR'S RULING ON MY DISCUSSION OF THIS --

20 THE COURT: WELL, WE'LL STRAIGHTEN THAT OUT TODAY.

21 MR. NICOLAYSEN: THEN WE WILL RESOLVE THIS AT
22 4:30 --

23 THE COURT: YES.

24 MR. NICOLAYSEN: -- AS SOON AS WE'RE DONE, BUT I
25 WOULD ASK THAT THE AGENT COULD BE MADE AVAILABLE THURSDAY

1 MORNING PENDING YOUR HONOR'S RULING ON THAT.

2 THANK YOU VERY MUCH.

3 THEN I HAVE NOTHING FURTHER AT THIS TIME.

4 THE COURT: IS THERE ANOTHER WITNESS THAT CAN BE --

5 MR. STOLAR: THE ONLY OTHER WITNESS I HAD TODAY, WE
6 HAD A PRIOR DISCUSSION ABOUT AND HE PROBABLY WOULD HAVE TAKEN
7 UP THE 15 MINUTES THAT ARE REMAINING.

8 THE COURT: IS THERE ANY OTHER WITNESS THAT CAN BE
9 CONCLUDED IN THE NEXT FEW MINUTES?

10 (NO RESPONSE.)

11 THE COURT: ALL RIGHT.

12 THEN WE'LL ADJOURN AT THIS TIME, LADIES AND
13 GENTLEMEN.

14 WE WILL NOT CONVENE TOMORROW. AS YOU KNOW, THAT'S
15 THE 4TH OF JULY.

16 PLEASE KEEP IN MIND YOUR DUTY NOT TO DISCUSS THIS
17 CASE WITH EACH OTHER OR WITH ANYONE ELSE; NOT TO FORM OR
18 EXPRESS ANY OPINION OR CONCLUSION ABOUT THIS CASE, AND MOST
19 IMPORTANTLY, NOT TO READ OR HEAR OR WATCH ANYTHING THAT
20 MIGHT -- THAT YOU MIGHT COME ACROSS ABOUT THIS CASE.

21 MAKE AN EFFORT TO DO THAT. THAT'S VERY IMPORTANT.

22 SO ENJOY THE 4TH AND WE WILL RESUME ON THURSDAY
23 HERE AT THE USUAL TIME.

24 (JURY EXCUSED.)

25 THE COURT: WELL, WHY IS IT YOU THINK IT'S RELEVANT

1 WHETHER OR NOT YOUR CLIENT WAS A SUSPECT ON JULY 14TH?

2 LOTS OF PEOPLE WEREN'T SUSPECT ON THAT DAY.

3 MR. NICOLAYSEN: THAT COULD BE, BUT AS YOUR HONOR
4 WILL RECALL, THERE IS A QUESTION HERE AS TO THE CHRONOLOGY OF
5 MR. PLASCENCIA AGUILAR'S COMMENCEMENT, IF YOU WILL, AS AN
6 INFORMANT ON LA LANGOSTA.

7 AGENT BERRELLEZ CANNOT TELL US WHEN HE GIVE
8 STATEMENTS OR ANY INTERVIEW ON LA LANGOSTA AND I WANT TO
9 ESTABLISH THAT MY CLIENT WAS NOT EVEN MENTIONED OR EVEN
10 THOUGHT OF AS ANY TYPE OF A SUSPECT UNTIL THE FALL OF 1989
11 WHEN THE PHOTOS WERE SUDDENLY PICKED UP.

12 THAT'S IMPORTANT BECAUSE THE GOVERNMENT TRIED TO
13 SUGGEST TO AGENT -- OR MR. AGUILAR THAT HE MENTIONED JAVIER'S
14 NAME PREVIOUSLY, BUT THAT'S NOT TRUE.

15 AND AGENT BERRELLEZ SAID EARLIER TODAY THAT JAVIER
16 VASQUEZ WAS A SUSPECT IN JULY OF '89, AND I KNOW THAT'S NOT
17 TRUE AND AGENT REYNOSO HAS CONFORMED THAT IT WAS NOT.

18 IT'S IN THE FALL OF 1989 WHEN THE PHOTOGRAPHS
19 SUDDENLY GET PICKED OUT THAT MY CLIENT SUDDENLY BECOMES A
20 SUSPECT.

21 THE REASON THAT'S IMPORTANT IS IT ISOLATES THE
22 ISSUE OF MY CLIENT'S INVOLVEMENT TO ONE DEFINITIVE
23 PERSPECTIVE, AND THAT IS THE IDENTIFICATION OF MY CLIENT AND
24 THAT'S IT.

25 AS SOON AS MR. AQUILAR IDENTIFIES MY CLIENT IN

1 THOSE PHOTOS, SUDDENLY THE GOVERNMENT IS OF THE BELIEF THAT
2 HE WAS INVOLVED IN LA LANGOSTA.

3 IT NARROWS THE FOCUS OF THE GOVERNEMENTS CASE VERY
4 SPECIFICALLY AS TO IDENTIFICATION AND AS TO CHRONOLOGY.

5 IN ORDER TO MAKE THAT CLEAR, I WANT TO ESTABLISH TO
6 THIS WITNESS THAT IN JULY '89, HE WASN'T YET A SUSPECT.

7 I WOULD ASK YOUR HONOR TO ALLOW ME TO DO THAT.

8 THE COURT: ALL RIGHT.

9 THE REQUEST IS DENIED.

10 MR. NICOLAYSON: I WOULD ASK THEN, YOUR HONOR, THAT
11 I AT LEAST CAN ARGUE THAT IN CLOSING. I BELIEVE --

12 THE COURT: YOU CAN ARGUE THE EVIDENCE IN CLOSING.

13 I'M NOT GOING TO TELL YOU WHAT YOU CAN AND CANNOT
14 ARGUE.

15 YOU CAN ARGUE ANYTHING THAT'S WITHIN THE SCOPE OF
16 THE EVIDENCE OR WITHIN THE PERMISSIBLE INFERENCE OF THE
17 EVIDENCE.

18 MR. NICOLAYSEN: NOW, IF I MAY THOUGH, YOUR HONOR,
19 AGENT BERRELLEZ DID SAY EARLIER TODAY -- AND I BELIEVE THIS
20 IS INCORRECT BASED ON WHAT AGENT REYNOSO TOLD ME -- THAT MY
21 CLIENT WAS ALREADY A SUSPECT ON LA LANGOSTA AS EARLY AS JULY
22 OF '89. I BELIEVE THAT'S INCORRECT.

23 AND I WOULD LIKE TO BE ABLE TO CLEAN THAT UP.

24 I'VE TALKED TO AGENT REYNOSO DIRECTLY SO I HAVE A
25 GOOD FAITH BASIS FOR BELIEVING THAT I COULD CLARIFY THIS, AND

1 I THINK IT'S IMPORTANT ENOUGH TO DO THAT.

2 I'M REALLY UPSET IF I HAVE TO IMPEACH AGENT
3 BERRELLEZ IN TALKING IN TECHNICAL TERMS.

4 MR. CARLTON: OBJECTION TO THAT, YOUR HONOR.
5 AGAIN, ONLY THE REASONABLE INFERENCES.

6 IF THE EVIDENCE ISN'T THERE HE CAN'T ARGUE IT.

7 HE CAN'T BASE IT ON PRIVATE CONVERSATIONS IN THE
8 HALL, YOUR HONOR.

9 WE WOULD OBJECT.

10 MR. NICOLAYSEN: I'M GIVING YOUR HONOR MY GOOD
11 FAITH BASIS FOR WHAT I EXPECT THE TESTIMONY TO BE.

12 WHEN I TELL YOU ABOUT A CONVERSATION I HAD WITH THE
13 AGENT, THAT'S WHAT I'M REFERRING TO HERE.

14 I'M NOT FISHING AND I'M NOT GUESSING.

15 I HAVE A DIRECT REPRESENTATION TO ME FROM THE AGENT
16 AS TO WHAT I EXPECT THE TESTIMONY TO BE.

17 THE COURT: WELL, I THINK SINCE THE -- THERE WAS
18 EVIDENCE OFFERED BY AGENT BERRELLEZ THAT THIS DEFENDANT WAS
19 UNDER SUSPICION PRIOR TO THAT TIME AND HE MAY NOW TRY TO
20 REBUT THAT WITH THIS OTHER WITNESS.

21 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

22 MR. STOLAR: ONE MATTER, IF I MAY.

23 MR. MEDRANO: YOUR HONOR, THERE'S ONE POINT FINALLY
24 ON THAT ISSUE, HOWEVER, IF I MAY.

25 FIRST OF ALL, JUST TO REMIND YOU, THE PEOPLE WHO

1 BROUGHT THAT TESTIMONY OUT WAS ON CROSS-EXAMINATION BY THE
2 DEFENSE .

3 THEY'RE THE ONES WHO RAISED IT, NOT THE GOVERNMENT,
4 YOUR HONOR .

5 WE DIDN'T ASK THAT AS PART OF OUR DIRECT, SO IT'S
6 UNFAIR IT SEEMS TO ME FOR THEM TO ASK THE QUESTION TO GET THE
7 ANSWER AND THEN TRY TO ALTER THIS TESTIMONY .

8 THE COURT: WE'LL PERMIT THE TESTIMONY .

9 MR. MEDRANO: VERY WELL, THANK YOU .

10 MR. STOLAR: THE CUSTODIAN OF THE RECORDS OF MIRIAM
11 PENITENTIARY WAS OUTSIDE IN THE HALL EARLIER AND I WANTED TO
12 JUST CHECK THE INTAKE SHEET OF THE INITIAL -- WHEN MARTA WAS
13 INITIALLY BROUGHT INTO MIRIAM TO SEE WHETHER THE INITIAL DATA
14 AND INFORMATION SHEET IS THERE AND WHAT EVALUATIONS WERE MADE
15 OF HIM BY THE PRISON OFFICIALS UPON HIS ARRIVAL AT THE
16 INSTITUTION, ESSENTIALLY A CLASSIFICATION SHEET TO SEE IF WE
17 COULD FIND SOME DATA ON THE QUESTION THAT I WANT .

18 MR. MEDRANO DIRECTED THE MAN NOT TO LET ME LOOK AT
19 THE FILE .

20 SO I'LL BRING IT TO THE COURT'S ATTENTION .

21 I WANT TO SEE THE INTAKE SHEETS. I WANT TO FIRST
22 LOOK AT THEM TO SEE IF THERE'S ANYTHING RELEVANT THAT I WANT
23 FOR THE PURPOSE THAT I'M DOING IT .

24 I DO HAVE EDUCATIONAL RECORDS FROM A PRIOR
25 INCARCERATION OF MR. MATTA, BUT THAT'S BACK IN 1971 AND THOSE

1 WOULD OTHERWISE BE ADMISSIBLE BECAUSE THEY DO DISCUSS READING
2 AND IQ AND ALL THOSE THINGS.

3 SO THEY'RE APPARENTLY -- TO LOOK AT THESE RECORDS
4 OF EDUCATION --

5 THE COURT: WELL --

6 MR. STOLAR: SO I WANT THE INTAKE SHEET AND I'D
7 LIKE THE COURT TO DIRECT THEM TO LET ME DO THAT.

8 MR. MEDRANO: YOUR HONOR, FOR CLARIFICATION AFTER
9 YOU MADE YOUR RULING, SUSTAINING ALL OBJECTIONS TO THIS
10 TESTIMONY, YOU FIND MR. STOLAR OUTSIDE STILL ASKING TO LOOK
11 AT THE FILE FOR THE SUBPOENA THAT THAT HAD BEEN QUASHED.

12 IN LIGHT OF THAT RULING, I ADVISED THE GENTLEMAN
13 FROM MIRIAM THAT HE WAS UNDER NO OBLIGATION TO TURN IT OVER
14 BECAUSE THERE WAS NO SUBPOENA AND HE WAS RELEASED.

15 AND HE'S GONE BACK TO MIRIAM SO THAT'S WHAT
16 OCCURRED, YOUR HONOR.

17 EVEN AFTER YOUR RULING, STOLAR'S STILL OUT THERE
18 TRYING TO HUNT THROUGH THAT FILE.

19 HE HAS NO RIGHT TO --

20 MR. STOLAR: THE SUBPOENA WAS NOT QUASHED.
21 THE WITNESS WAS JUST RULED INCOMPETENT.

22 THE SUBPOENA WAS STILL IN FORCE.

23 MR. MEDRANO: EITHER WAY, YOUR HONOR, THAT'S --

24 MR. STOLAR: IT'S MY SUBPOENA.

25 I DON'T LIKE THE AGENTS GOING UP TO THEIR OFFICE --

1 I MEAN, THE INDEPENDENT PEOPLE GOING TO THEIR OFFICE WHEN I
2 SUBPOENA THEM AND -- IT'S NOT FAIR.

3 MR. MEDRANO: ONLY WHEN IT'S THE ABUSE OF THE
4 SUBPOENA PROCESS.

5 THE COURT: THE WITNESS IS GONE AND THE RECORDS ARE
6 GONE?

7 MR. MEDRANO: YES, YOUR HONOR.

8 IN LIGHT OF YOUR RULING THAT NONE OF THAT TESTIMONY
9 WAS ADMISSIBLE. THIS ISN'T --

10 THE COURT: WELL, I'M NOT GOING TO ORDER HIM BACK,
11 COUNSEL.

12 MR. STOLAR: MAY I ASK THEN THE FOLLOWING:

13 TO HAVE THE COURT INQUIRE OF MR. MEDRANO WHETHER HE
14 HAS A COPY OF THE INTAKE SHEET IN HIS RECORDS.

15 MR. MEDRANO: I HAVE NO SUCH COPY, YOUR HONOR.

16 THE ONLY COPIES I HAVE ARE WHAT I ALREADY GAVE TO
17 MR. STOLAR.

18 MR. STOLAR: FINALLY, I WOULD ASK THE COURT TO
19 INQUIRE OF THE PROSECUTION TEAM WHETHER THE SIGNED AGREEMENT
20 WITH HECTOR CERVANTES SANTOS HAS BEEN LOCATED.

21 THE COURT: HAS IT?

22 MR. MEDRANO: MAY I HAVE JUST ONE MOMENT, YOUR
23 HONOR?

24 YOUR HONOR, WHEN MR. BERRELLEZ SAID THAT ON THE
25 STAND, THAT'S THE FIRST TIME MR. CARLTON OR I HAD EVER EVEN

1 HEARD OF SUCH A DOCUMENT .

2 WHAT WE WILL DO IS SPEAK TO MR. BERRELLEZ AND GET A
3 CLARIFICATION .

4 IF THERE IS SUCH A DOCUMENT, WE'LL IMMEDIATELY GIVE
5 IT TO THE DEFENSE, YOUR HONOR .

6 THE COURT: WELL, DO IT BY TOMORROW MORNING .

7 MR. MEDRANO: YES, YOUR HONOR. WE WILL .

8 THE COURT: OR IF NOT TOMORROW, THURSDAY --

9 MR. STOLAR: MAKE IT THURSDAY .

10 THE COURT: THURSDAY MORNING .

11 MR. MEDRANO: WE'LL TAKE CARE OF IT IMMEDIATELY,
12 YOUR HONOR .

13 MR. NICOLAYSEN: YOUR HONOR, MAY WE HAVE A
14 REPRESENTATION FROM THE GOVERNMENT AS TO WHETHER THERE HAS
15 BEEN ANY FOLLOW-UP INQUIRY AS TO THAT PLASCENCIA AGUILAR
16 D.E.A.-6'S TODAY?

17 MR. MEDRANO: THAT WAS DONE, YOUR HONOR .

18 AGAIN, OVER THE LUNCH HOUR, I BELIEVE, AND THERE
19 ARE NO OTHER 6'S OR JENKS MATERIAL FOR THAT WITNESS AS I'VE
20 REPRESENTED PREVIOUSLY .

21 MR. NICOLAYSEN: FINE. I ACCEPT THAT .

22 MAY I HAVE THE COURT'S PERMISSION TO RECALL HECTOR
23 BERRELLEZ SIMPLY TO ESTABLISH THAT?

24 THAT THERE ARE NO REPORTS AND THAT THE FOLLOW-UP
25 INQUIRY WAS MADE .

1 JUST FOR THE RECORD SO THE TRIAL IS CLEAR IN THE
2 JURY'S PRESENCE .

3 THE COURT: THE RECORD IS CLEAR .

4 WHY DOES THE JURY NEED TO HEAR THAT?

5 MR. NICOLAYSEN: I THINK IT'S IMPORTANT TO MY CASE
6 THAT THERE ARE NO REPORTS .

7 THE COURT: WELL, THAT'S ALREADY IN EVIDENCE .

8 MR. NICOLAYSEN: WELL, I WOULD SUBMIT, YOUR HONOR,
9 THAT WE DON'T HAVE ANYTHING DIFINITIVE ON THAT .

10 WE HAVE THE AGENT STATING THAT HE DOESN'T KNOW OF
11 ANY REPORTS .

12 HE'S NOT SURE AND THAT IF CALLED UPON HE COULD PICK
13 UP AN INQUIRY .

14 THAT'S WHERE WE'VE ESSENTIALLY LEFT IT AND I
15 APPRECIATE YOUR HONOR ASKING THE GOVERNMENT TO CHECK .

16 NOW THAT THEY HAVE CHECKED, I WOULD LIKE TO JUST
17 MAKE IT CLEAR .

18 THE COURT: NO. THERE HAS TO BE AN END TO
19 RECALLING AND RECALLING WITNESSES AND THE END HAS COME .

20 MR. MEDVENE: MAY I ADDRESS YOU FOR A MOMENT?

21 THE COURT: YES .

22 MR. MEDVENE: THE DEFENSE CASE IS COMING TO A
23 CLOSE .

24 WE HAVE A HOLIDAY TOMORROW .

25 WE DO NOT WANT TO ASK FOR ANY EXTRA TIME AND I'VE

1 ASKED THE GOVERNMENT SEVERAL TIMES, THE PROSECUTION, IF THEY
2 HAVE ANY REBUTTAL TESTIMONY OF ANY KIND AGAINST MR. ZUNO.

3 AND WE'RE TRYING TO GET THE NAME A DAY OR TWO
4 AHEAD, SO WE WE DON'T HAVE TO ASK YOUR HONOR FOR ANYMORE
5 TIME.

6 WE FURNISHED AND WERE COOPERATIVE WITH THE
7 GOVERNMENT, TELLING THEM WHO WE MIGHT PUT ON AND I -- THE
8 GOVERNMENT HAS TOLD ME AS RECENTLY AS AN HOUR AGO AS OF THIS
9 MOMENT IN TIME THEY HAVE NO REBUTTAL WITNESSES PLANNED
10 AGAINST MR. ZUNO.

11 NOW, IF I MISHEARD THAT, I'D LIKE THEM TO SAY; AND
12 IF THEY HAVE ANYBODY, I'D LIKE THEM TO TELL YOU, SO WE CAN
13 GET READY, BECAUSE WE'VE GOT THE 4TH AND, IF WE'RE GOING TO
14 GO ON THURSDAY AND THEY'RE GOING TO CALL ANYBODY, I DON'T
15 THINK IT'S FAIR.

16 THE COURT: WELL, LET'S FIND OUT FIRST IF WE ARE
17 GOING TO HEAR ANYMORE DEFENSE WITNESSES.

18 MS. KELLY: YES, YOUR HONOR.

19 THE COURT: HOW MANY?

20 MS. KELLY: I'M NOT SURE, YOUR HONOR, EXACTLY.
21 TWO, I BELIEVE. TWO HOPEFULLY.

22 THE COURT: THE LADY YOU HAD TODAY?

23 MS. KELLY: YES, YOUR HONOR.

24 THE COURT: AND ANOTHER ONE?

25 MR. MEDRANO: MAY WE HAVE THE IDENTITY OF THE

1 SECOND WITNESS, YOUR HONOR, SINCE IT WILL BE THURSDAY, YOUR
2 HONOR.

3 THE COURT: YES, YOU SHOULD TELL --

4 MS. KELLY: YOUR HONOR, I ONLY KNOW THE PERSON'S
5 FIRST NAME. FIRST NAME IS ALBA.

6 SHE'S THE OTHER WAITRESS AT THE EL TORITO.

7 THE COURT: OH.

8 MS. KELLY: I'M JUST NOT SURE IF SHE'LL BE
9 AVAILABLE TO TESTIFY OR NOT.

10 THE COURT: ALL RIGHT.

11 AND THOSE WILL BE YOUR ONLY TWO WITNESSES?

12 MS. KELLY: WELL, YOUR HONOR, I DON'T KNOW.

13 WE'RE ON THE FENCE ABOUT WHETHER OUR CLIENT WILL
14 TESTIFY OR NOT.

15 THE COURT: PARDON?

16 MS. KELLY: WE'RE ON THE FENCE ABOUT WHETHER OUR
17 CLIENT WILL TESTIFY OR NOT.

18 THE COURT: OH, ALL RIGHT.

19 WELL, THAT'S OKAY.

20 OTHER THAN THAT IS THERE ANY OTHER DEFENSE COUNSEL
21 EXPECTING TO CALL WITNESSES?

22 MR. NICOLAYSEN: NO FURTHER WITNESSES FOR DEFENDANT
23 VASQUEZ, YOUR HONOR.

24 AS THE COURT KNOWS, THERE'S A PENDING MOTION UNDER
25 RULE 804.

1 THE COURT: MR. MEDVENE, YOU DON'T EXPECT TO CALL
2 ANYMORE?

3 MR. MEDVENE: WE DON'T EXPECT PRESENT STATE OF THE
4 CASE TO CALL ANYMORE I JUST SAVE THE PROVERBIAL SAUCE FOR THE
5 GOOSE.

6 MR. MEDRANO SAYS TELL US THE NAMES, IT'S THURSDAY
7 AND THEN THURSDAY THEY DON'T HAVE ANYTHING NOW TO TELL US.

8 MR. STOLAR: I WOULD ASK FOR THE SAME THING WITH
9 RESPECT TO THE REBUTTAL CASE AGAINST MR. MATTA.

10 THE COURT: WELL, ARE YOU -- ASSUMING THAT THE
11 DEFENSE FINISHES ON THURSDAY, ARE YOU ANTICIPATING ANY
12 REBUTTAL WITNESS?

13 MR. MEDRANO: YOUR HONOR, I HAVEN'T HEARD FROM MR.
14 STOLAR WHETHER HE HAS ANY OTHER WITNESSES.

15 MR. MEDVENE HAS REPLIED. I'D LIKE TO HEAR FROM MR.
16 STOLAR.

17 MR. STOLAR: WELL, THE ONLY OTHER WITNESS I WOULD
18 HAVE WOULD BE -- I WOULD LIKE TO ESTABLISH THAT THE STATUTE
19 OF LIMIT- -- FOR THE JURY, THE STATUTE OF LIMITATIONS ON THE
20 RACKETEERING COUNT AT A MINIMUM EXPIRED FIVE YEARS FROM THE
21 TIME THAT THE EVENTS OCCURRED.

22 THE SIGNIFICANCE OF THAT HAS TO DO WITH THE
23 GOVERNMENT'S MOTIVE IN DRAGGING MR. MATTA INTO THIS CASE
24 WHERE HE DOESN'T BELONG AND I'D LIKE TO ARGUE THAT.

25 THAT HE WAS INDICTED -- THAT MR. MATTA WAS INDICTED

1 DAYS BEFORE THE STATUTE OF LIMITATIONS AND -- THAT'S MY
2 ARGUMENT FOR THE JURY, YOUR HONOR.

3 THE COURT: WELL, WHAT -- YOU DON'T EXPECT TO CALL
4 A WITNESS, DO YOU?

5 MR. STOLAR: WELL, I DON'T EXPECT THE GOVERNMENT TO
6 AGREE WITH A STIPULATION ON IT, SO I MIGHT HAVE TO CALL A LAW
7 PROFESSOR.

8 THE COURT: I WOULDN'T PERMIT THAT.

9 MR. STOLAR: WOULD YOU TAKE JUDICIAL NOTICE OF IT
10 FOR THE JURY?

11 THE COURT: IT IS NOT RELEVANT.

12 MR. STOLAR: I BELIEVE IT IS FOR THE D.E.A. MOTIVES
13 FOR GOING AFTER AN INNOCENT MAN.

14 THE COURT: WE'RE NOT TRYING THEIR MOTIVES HERE,
15 COUNSEL.

16 MR. STOLAR: I BELIEVE WE ARE, YOUR HONOR.

17 THE COURT: WE'RE TRYING THE EVIDENCE THAT HAS BEEN
18 PRESENTED AGAINST YOUR CLIENT.

19 MR. STOLAR: THERE IS EVIDENCE OF MOTIVE AGAINST MY
20 CLIENT.

21 THE COURT: WELL, I'M NOT GOING TO TAKE JUDICIAL
22 NOTICE OF THE STATUTE OF LIMITATIONS FOR THE JURY, NOR WILL I
23 PERMIT A WITNESS TO TESTIFY TO THE STATUTE OF LIMITATIONS.

24 MR. STOLAR: THEN, OTHER THAN IF MR. MATTA TWISTS
25 MY ARM AND WANTS TO TESTIFY, I HAVE NO OTHER WITNESSES TO

1 TESTIFY HERE, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 THEN ARE YOU ANTICIPATING ANY REBUTTAL?

4 MR. MEDRANO: MAY I HAVE ONE MOMENT, YOUR HONOR, TO
5 CONSULT WITH MR. CARLTON?

6 MS. KELLY: YOUR HONOR, ALSO, I DO WANT TO MAKE IT
7 CLEAR THAT WE ARE ATTEMPTING TO LOCATE ANOTHER WITNESS, BUT
8 IT'S -- I DON'T EVEN KNOW THE PERSON'S NAME AND THE
9 INVESTIGATION IS STILL CONTINUING.

10 THE COURT: IS THIS SOMEBODY ELSE FROM THE TORITO?

11 (LAUGHTER.)

12 THE COURT: NO.

13 MS. KELLY: JUST ABOUT EVERYBODY WE'VE TALKED TO AT
14 THE TORITO, YOUR HONOR, BUT ALSO AT THE EMBASSY, ALSO AT THE
15 EMBASSY SUITES.

16 MR. STOLAR: I'M SORRY.

17 THERE IS ONE OTHER POSSIBILITY.

18 THERE'S A PENDING MOTION TO QUASH THE PHOTOGRAPHS
19 THAT LEYVA AND AGUILAR SAW BEFORE THEY WENT TO THE HOTEL IN
20 GUADALAJARA.

21 THE COURT: WELL, OKAY.

22 MR. MEDRANO: MAY I HAVE JUST ONE MOMENT, YOUR
23 HONOR?

24 THIS IS PRELIMINARY AND I STILL NEED TO MEET WITH
25 MY TEAM AND CONSOLE THE OTHER WITNESS, BUT AS OF NOW THE

1 PEOPLE WE INTEND TO CALL CONSIST OF A A GENTLEMAN NAMED
2 CONICK (PHONETIC), ANOTHER INTERPRETER, YOUR HONOR, WITH
3 REGARD TO A PORTION OF UNDERCOVER TAPE WITH REGARD TO BERNABE
4 RAMIREZ, MR. HECTOR BERRELLEZ.

5 THAT'S THREE; MR. ABEL REYNOSO, THAT'S FOUR.

6 THESE ARE THE ONES WE'RE DEFINITELY INTENDING TO
7 CALL, YOUR HONOR.

8 AND, YOUR HONOR, OF COURSE WITH THE CAVIAT THAT
9 THERE MAY BE OTHERS ONCE WE MEET THIS EVENING.

10 TO THE EXTENT WE DETERMINE THAT WE'RE GOING TO CALL
11 A WITNESS, WE WILL TELEPHONICALLY ADVISE EVERY DEFENSE
12 COUNSEL IN THE CASE.

13 THE COURT: WHO'S THE INTERPRETER?

14 MR. MEDRANO: WE, AS OF YET, KNOW OF NO IDENTITY
15 YET, YOUR HONOR.

16 WE'RE TRYING TO FIND ONE.

17 AND AS SOON AS THAT IDENTITY IS ESTABLISHED, WE
18 WILL ADVISE THE DEFENSE.

19 MR. NICOLAYSEN: YOUR HONOR, IF I MAY ASK THE COURT
20 TO DIRECT THE GOVERNMENT TO FAX US A STANDARD MEMO WITH THE
21 NAMES OF THE WITNESSES RATHER THAN TRYING TO REACH US
22 TELEPHONICALLY BECAUSE THIS IS THE JULY 4TH WEEKEND.

23 I THINK IT WOULD BE A LOT MORE EFFICIENT AND WE'RE
24 ALL SET UP TO RECEIVE SUCH A FAX.

25 THE COURT: WELL, YOU CAN DO THAT, CAN'T YOU?

1 MR. MEDRANO: THAT'S NOT A PROBLEM, YOUR HONOR.

2 MR. NICOLAYSEN: THANK YOU, YOUR HONOR. I
3 APPRECIATE IT.

4 MR. STOLAR: AND ANY 3500 MATERIAL THAT GOES ALONG
5 WITH THEM.

6 THE COURT: WELL, IF THERE IS ANY --

7 MR. STOLAR: OBVIOUSLY.

8 THE COURT: -- THAT HAS TO BE PROVIDED, IT SHOULD.

9 THE COURT: ALL RIGHT. THAT'S ALL.

10 DON'T BLOW YOURSELVES UP.

11 MR. MEDVENE: EXCUSE ME, YOUR HONOR.

12 IF THE COURT PLEASE -- I KNOW, DON'T GET UPSET WITH
13 ME, I TRIED TO DO IT WITHOUT THIS, I TRIED TO ASK THEM AND
14 THEY WON'T TELL ME. AT LEAST MR. MEDRANO WON'T -- I JUST
15 SAID, "WHO'S BRUCE CONICK?"

16 AND I THINK THEY OUGHT TO TELL US. WE GAVE THEM
17 OUR PEOPLE. IT SHOULDN'T BE A GAME.

18 THEY SHOULD JUST SAY WHO HE HAS TO DO WITH, AT
19 LEAST WHAT DEFENDANT HE HAS TO DO WITH.

20 MR. MEDRANO: YOUR HONOR, WHEN MR. MEDVENE GAVE US
21 HIS WITNESS LIST, HE GAVE US 12 NAMES AND NOTHING ELSE.

22 HE WOULDN'T TELL US WHAT THEIR TESTIMONY WAS OR WHO
23 THEY WERE.

24 SO WE'RE SIMPLY DOING THE SAME.

25 HE HAS NO RIGHT TO IT OTHER THAN THE NAME.

1 SO, HE'S ONLY GETTING WHAT HE GAVE US IN HIS
2 DEFENSE, YOUR HONOR. HE'S NOT ENTITLED TO ANYMORE.

3 AND IF THERE'S JENKS, WE'LL IMMEDIATELY TURN THAT
4 OVER TO DEFENSE COUNSEL.

5 MR. MEDVENE: WE'RE JUST ASKING WHO CONICK PERTAINS
6 TO. I MEAN IT SHOULDN'T BE A SPORTING EVENT.

7 THE COURT: HE'S GIVING YOU THE NAME. THAT'S ALL
8 THAT'S REQUIRED.

9 MR. MEDVENE: CAN HE TELL US WHAT DEFENDANT IT
10 PERTAINS TO, YOUR HONOR? WHAT DOES IT HURT HIM?

11 THE COURT: HE DOESN'T HAVE TO.

12 THE CLERK: ALL RISE.

13 (PROCEEDINGS ADJOURNED.)

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15

16

C E R T I F I C A T E

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18

I CERTIFY THAT THE FOREGOING IS A CORRECT

19

TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

20

ABOVE-ENTITLED MATTER.

21

22

Julie A. Churchill

JULIE A. CHURCHILL, CSR, RPR
OFFICIAL COURT REPORTER

23

2-1-92

DATE

24

25

		PG	LN
(EXHIBIT DDDD # RECEIVED IN EVIDENCE.)		71	19
LOS ANGELES	+ CALIFORNIA TUESDAY, JULY	4	1
JULY 3, 1990	+ 9:30 A.M.	4	1
SKIP JAMES PALNICK	+ DEFENDANT'S WITNESS, SWORN	4	10
DIRECT EXAMINATION	+ BY MR. BURNS: Q. GOOD	4	16
CROSS-EXAMINATION	+ BY MR. MEDRANO: Q.	31	5
HECTOR BERRELLEZ	+ DEFENSE WITNESS, PREVIOUSLY	32	3
DIRECT EXAMINATION	+ (CONTINUED) BY MR.	32	9
DIRECT-EXAMINATION	+ BY MR. NICOLAYSEN: Q.	41	13
TIMOTHY MULLEN	+ DEFENSE WITNESS SWORN	62	11
DIRECT EXAMINATION	+ BY MR. MEZA: Q.	62	18
CROSS-EXAMINATION	+ BY MR. CARLTON: Q.	72	1
TERRY ALVAREZ	+ DEFENSE WITNESS SWORN	74	15
DIRECT EXAMINATION	+ BY MS. KELLY: Q.	75	1
CROSS-EXAMINATION	+ BY MR. MEDRANO: Q.	83	12
REDIRECT EXAMINATION	+ BY MS. KELLY: Q. MRS.	94	3
HECTOR BERRELLEZ	+ DEFENSE WITNESS, PREVIOUSLY	96	21
DIRECT EXAMINATION	+ BY MR. STOLAR: Q.	97	1
LOS ANGELES	+ CALIFORNIA TUESDAY, JULY	105	1
JULY 3, 1990	+ 1:30 P.M.	105	2
DIRECT EXAMINATION	+ (CONTINUED) BY MR.	105	6
DIRECT-EXAMINATION	+ BY MS. KELLY: Q. GOOD	143	1
CROSS-EXAMINATION	+ BY MR. CARLTON: Q.	178	1
REDIRECT EXAMINATION	+ BY MS. KELLY: Q.	178	19
DELBERT A. SALAZAR	+ DEFENSE WITNESS, PREVIOUSLY	179	10
DIRECT EXAMINATION	+ BY MR. NICOLAYSEN:	179	18
DIRECT-EXAMINATION	+ BY MR. STOLAR: Q.	181	19
DIRECT EXAMINATION	+ BY MS. KELLY: Q.	189	1
REDIRECT EXAMINATION	+ BY MR. STOLAR: Q. IN	198	19
RECROSS-EXAMINATION	+ BY MR. CARLTON: Q.	199	6
REDIRECT EXAMINATION	+ BY MR. STOLAR: Q.	206	6
DIRECT EXAMINATION	+ BY MR. MEDVENE: Q.	209	23
ABEL REYNOSO	+ DEFENSE WITNESS, PREVIOUSLY	214	8
DIRECT EXAMINATION	+ BY MR. NICOLAYSEN: Q.	214	20
TO DEFENDANT'S	EXHIBIT 4 D'S IN THAT MANILA	64	25
THE COURT: IS THAT	EXHIBIT -- WHAT'S THE EXHIBIT	65	8
EXHIBIT -- WHAT'S THE	EXHIBIT NUMBER FOR	65	8
I MIGHT, CAN I OFFER	EXHIBIT 4 D'S INTO EVIDENCE.	71	15
YOU. (EXHIBIT DDDD # RECEIVED IN	71	19
REFERRING AGAIN TO	EXHIBIT DDD, WHICH IS THIS	72	3
WELL LOOKING AT	EXHIBIT DDD, IS THERE SOME	72	10
DO YOU SEE BEFORE YOU	EXHIBIT DDDD, IT'S QUADRUPLE	75	15
DO YOU RECOGNIZE THIS	EXHIBIT ? A. YES. Q.	75	21
YOU COMPARED TO THE	EXHIBIT OF THE JOURNAL TAPE	76	13

			PG	LN
AND CAN YOU TELL FROM	EXHIBIT	DDD-1, WHAT TIME IT	76	19
HAS BEEN MARKED AS	EXHIBIT	DDD-2 AND TELL ME IF	76	24
TELL ME IF THAT'S AN	EXHIBIT	THAT YOU'VE SEEN	76	24
FROM LOOKING AT THE	EXHIBIT	, THE SUMMARY OF ALL	81	4
RULE. Q. NOW, ON	EXHIBIT	DDDD-5, ARE YOU ABLE	81	25
YOUR ATTENTION TO	EXHIBIT	DDDD-2, WHICH IS THE	82	12
YOU TO LOOK AT THIS	EXHIBIT	, IT'S EITHER TRIPLE	88	13
AND IT WOULD INCLUDE	EXHIBIT	D-1, WOULD INCLUDE	89	5
OUT THREE TIMES ON MY	EXHIBIT	OF DDDD-1. Q.	91	2
WITH RESPECT TO THE	EXHIBIT	THAT'S BEEN MARKED	95	2
LOOK AT GOVERNMENT'S	EXHIBIT	171 WHICH IS IN FRONT	111	3
I'D LIKE	EXHIBIT	174-A, YOUR HONOR,	143	16
DO YOU SEE THAT	EXHIBIT	BEFORE YOU AGENT	143	19
YOU AGENT BERRELLEZ,	EXHIBIT	174-A? A. YES, I	143	20
Q. IS THIS THE	EXHIBIT	THAT YOU SHOWED TO	144	1
IS THIS ALSO THE	EXHIBIT	THAT YOU SHOWED TO	144	4
AGAIN TO THE	EXHIBIT	174-A.	165	5
THIS IS THE	EXHIBIT	THAT YOU DID SHOW TO	165	6
AT THIS PARTICULAR	EXHIBIT	? A. NOT THE	165	11
WHEN YOU SHOWED THIS	EXHIBIT	TO MR. CERVANTES?	165	19
TIMES YOU SHOWED THIS	EXHIBIT	TO MR. CERVANTES?	165	25
YOU, I BELIEVE THAT'S	EXHIBIT	165? A. YES, SIR.	178	5