

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

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APPEARANCES (CONTINUED):

FOR DEFENDANT JAVIER VASQUEZ-VELASCO:

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ALSO PRESENT:

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

SPANISH INTERPRETERS

CR 87-422(F)ER, U.S.A. VS. MATTA, ET AL., 7-20-90, VOL. 35

9:00 A.M.

I N D E X

JURY NOTE

P. 4

1 1 FRIDAY, JULY 20, 1990; LOS ANGELES, CALIFORNIA

2 9:00 A.M.

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4 THE CLERK: CR 87-422(F), U.S. VERSUS RAFAEL CARO
5 QUINTERO.

6 THE COURT: LET THE RECORD THE SHOW ALL COUNSEL AND
7 ALL DEFENDANTS ARE PRESENT. YOU HAVE BEEN SHOWN THE COPY OF
8 INSTRUCTION NUMBER 57, THE ONE WE DISCUSSED YESTERDAY WHICH I'M
9 GOING TO GIVE TO THE JURY THIS MORNING.

10 MR. STOLAR: WE HAVE.

11 MR. CARLTON: YES, YOUR HONOR.

12 THE COURT: IN ADDITION, I MAY HAVE A FEW ADDITIONAL
13 COMMENTS FOR THE JURY CONCERNING WHAT THEIR RESPONSIBILITIES
14 ARE AND HOW THEY SHOULD APPROACH THEM.

15 MR. STOLAR: YOUR HONOR, IS THAT IN THE NATURE OF AN
16 ALLEN-TYPE CHARGE?

17 THE COURT: NO, IT ISN'T. NO, IT ISN'T. BUT MAYBE IT
18 SHOULD BE.

19 MR. STOLAR: THAT'S WHY I RAISED IT, TO LET YOU KNOW
20 THAT AT LEAST AS FAR AS WE'RE CONCERNED IT'S NOT RIGHT YET FOR
21 SUCH A CHARGE TO THE JURY.

22 THE COURT: IT IS ALWAYS RIGHT FOR SUCH A CHARGE BUT
23 THIS IS NOT AN ALLEN-TYPE CHARGE. I WANT THE JURY BROUGHT IN
24 HERE.

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

1 THE COURT: YES.

2 MR. MEDVENE: JUST HAD A CHANCE TO LOOK BRIEFLY AT THE
3 INSTRUCTION. I'M NOT SURE IF THE FIRST SENTENCE -- IT SEEMED
4 TO ME TO IMPLY THAT MORE THAN ONE COUNT WOULD BE EGREGIOUS TO
5 FIND SOMEBODY GUILTY OR NOT GUILTY WERE EXACTLY THE SAME.
6 THAT'S HOW I READ THE FIRST SENTENCE. YOU REJECTED THAT
7 SENTENCE AS IT IS, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. MEDVENE: THE OTHER THING WE ASK YOUR HONOR, IS IF
10 THERE'S ANY WAY TO BE TOLD IN ADVANCE WHAT YOU MIGHT SAY TO THE
11 JURY OUTSIDE OF THE INSTRUCTIONS.

12 THE COURT: I'M GOING TO REMIND THE JURORS THEY'RE NOT
13 PARTISANS OR ADVOCATES IN THIS CASE, THAT THEY ARE IMPARTIAL
14 JUDGES OF THE FACTS AND THEY SHOULD HAVE NO INTEREST IN THE
15 PARTICULAR OUTCOME OF THIS CASE. THE ONLY INTEREST SHOULD BE
16 TO REACH A RESULT WHICH IS COMPELLED BY THE EVIDENCE AND THE
17 LAW, EVEN IF THEY DON'T LIKE IT.

18 THEY MUST IN OTHER WORDS, GO WHERE THE EVIDENCE AND
19 THE LAW TAKES THEM. THEY SHOULD NOT BE INFLUENCED BY SYMPATHY,
20 PASSION, PREJUDICE, PUBLIC OPINION OR PUBLIC FEELING.

21 EACH CRIME CHARGED AGAINST EACH DEFENDANT HAS BEEN SET
22 OUT THAT THEY SHOULD EXAMINE THE ELEMENTS WHICH ARE THE FACTS
23 THAT MUST BE PROVED TO ESTABLISH THAT A CRIME HAS BEEN
24 COMMITTED.

25 AND THAT IF THEY HAVE -- IF THEY FIND THAT THE

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1 ELEMENTS HAVE BEEN PROVED BEYOND A REASONABLE DOUBT IN
2 ACCORDANCE WITH MY PRIOR INSTRUCTION THAT THEY SHOULD THEN
3 RETURN A VERDICT OF GUILTY.

4 AND IF THEY FIND ON THE OTHER HAND THAT ONE OR SOME OF
5 THE ELEMENTS HAVE NOT BEEN PROVED BEYOND A REASONABLE DOUBT,
6 THEN AFTER THAT GIVEN COUNT, THEN A VERDICT ON THAT COUNT
7 SHOULD BE NOT GUILTY. THAT'S BASICALLY ALL I'M GOING TO TELL
8 THEM.

9 MR. STOLAR: IS THERE A PARTICULAR REASON WHY THAT
10 ADDITIONAL INSTRUCTION WOULD BE NECESSARY SINCE IT DOES
11 TRACK --

12 THE COURT: BECAUSE I'M NOT SURE THEY UNDERSTAND IT.

13 MR. NICOLAYSEN: FOR THE RECORD YOUR HONOR, I DON'T
14 BELIEVE WE HAVE ENOUGH GUIDANCE OR FEEDBACK FROM THE JURY TO
15 KNOW ONE WAY OR THE OTHER WHETHER THEY DO OR DON'T UNDERSTAND
16 IT. WE DON'T EVEN KNOW WHAT THE NATURE OF THE PROBLEMS IS THAT
17 THEY RAISED YESTERDAY.

18 THE COURT: ARE YOU OBJECTING TO THESE COMMENTS?

19 MR. NICOLAYSEN: I AM.

20 THE COURT: YOUR OBJECTION IS OVERRULED.

21 MR. NICOLAYSEN: WOULD THE COURT BE INCLINED TO ASK
22 THE JURY WHAT THE PROBLEMS ARE THAT THEY ARE EXPERIENCING?

23 THE COURT: NO, I WOULD NOT. BRING THE JURY IN.

24 MS. KELLY: YOUR HONOR, FOR THE RECORD, WE'LL JOIN IN
25 THE OBJECTIONS.

1 1 THE COURT: OF COURSE. BE CAREFUL I DON'T ASK YOU TO
2 REPEAT IT.

3 (LAUGHTER)

4 (JURY PRESENT)

5 THE CLERK: YOU MAY BE SEATED.

6 THE COURT: LADIES AND GENTLEMEN, LET ME FIRST
7 APOLOGIZE TO YOU FOR THE FACT THAT THE JURY ROOM WAS SO HOT
8 YESTERDAY. I HAVE TO CONFESS THAT MY CHAMBERS WERE ALSO HOT.
9 PEOPLE ARE TRYING TO DO WHAT THEY CAN ABOUT IT. WE WILL DO
10 WHATEVER WE CAN TO MAKE YOU AS COMFORTABLE AS WE CAN. IF IT'S
11 NOT BETTER TODAY LET ME KNOW.

12 I'M GOING TO ATTEMPT TO RESPOND TO ONE OF THE
13 QUESTIONS YOU ASKED THE COURT YESTERDAY. THE REASON IT TAKES
14 SO LONG IS BECAUSE EACH TIME A QUESTION IS SENT DOWN IT'S
15 NECESSARY TO CONVENE ALL COUNSEL AND DISCUSS THE QUESTION WITH
16 COUNSEL. SOMETIMES THEY'RE SCATTERED IN VARIOUS PLACES AND IT
17 TAKES A WHILE TO GET EVERYBODY HERE.

18 BUT FIRST, IN RESPONSE TO THE QUESTION WHETHER THE
19 DEFENDANTS ARE BEING CHARGED WITH THE SAME CRIME TWICE, THAT IS
20 NOT A MATTER THAT YOU SHOULD BE CONCERNED WITH. A PERSON MAY
21 BE CHARGED UNDER DIFFERENT STATUTES.

22 YOU SHOULD NOT BE CONCERNED WITH WHETHER A DEFENDANT
23 HAS BEEN CHARGED TWICE FOR THE SAME CRIME. THAT IS A MATTER
24 SOLELY FOR THE COURT. YOU HAVE TO DECIDE THE OFFENSES THAT YOU
25 HAVE BEEN ASKED TO DECIDE AND NOT BE CONCERNED ABOUT WHETHER

1 1 THEY CHARGE A PERSON TWICE OR NOT.

2 2 NOW, YOUR DUTY IS TO DETERMINE WHETHER THE GOVERNMENT
3 3 HAS PROVED BEYOND A REASONABLE DOUBT THE ELEMENTS OF THE
4 4 VARIOUS CRIMES CHARGED. THESE ELEMENTS ARE SPECIFIED IN THE
5 5 INSTRUCTIONS ALREADY PROVIDED TO YOU BY THE COURT. AND IN ONE
6 6 OF THESE INSTRUCTIONS I'M GOING TO MAKE A SLIGHT CHANGE;
7 7 INSTRUCTION NO. 32. YOU WILL BE PROVIDED WITH AN AMENDED COPY
8 8 OF THIS INSTRUCTION WHICH DEALS WITH THE CONSPIRACY ALLEGATION
9 9 OF COUNT 3.

10 10 ON THE SECOND PAGE OF INSTRUCTION 32, LINES 9 THROUGH
11 11 HAVE BEEN CHANGED TO READ: "YOU MUST FIND BEYOND A
12 12 REASONABLE DOUBT THAT THERE WAS A JOINT PLAN TO KIDNAP AND
13 13 MURDER ENRIQUE CAMARENA SALAZAR." THIS DELETES THE LANGUAGE
14 14 THAT'S PRESENTLY THERE THAT SAYS: "YOU MUST FIND BEYOND A
15 15 REASONABLE DOUBT THAT THERE WAS A JOINT PLAN TO KIDNAP A
16 16 FEDERAL AGENT." SO THESE AMENDMENTS WILL BE PROVIDED TO YOU
17 17 AND YOU MAY SUBSTITUTE THIS NEW INSTRUCTION 32 FOR THE OLD ONE.

18 18 SO RATHER, TO FIND A DEFENDANT GUILTY OF THE
19 19 CONSPIRACY CHARGED IN COUNT 3 YOU MUST FIND THAT THE OBJECT OF
20 20 THE CONSPIRACY WAS TO KIDNAP AND MURDER ENRIQUE CAMARENA
21 21 SALAZAR WITH THE PURPOSE TO GAIN ENTRANCE TO OR MAINTAIN
22 22 POSITION IN AN ENTERPRISE ENGAGED IN RACKETEERING.

23 23 I DON'T THINK I HAVE TO DO THIS BUT I WILL SUMMARIZE
24 24 FOR YOU THE ALLEGATIONS OF COUNTS 3 THROUGH 7. COUNT 3 CHARGES
25 25 VIOLENT ACTS, KIDNAP AND MURDER OF ENRIQUE CAMARENA SALAZAR OR

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1 CONSPIRACY TO COMMIT VIOLENT ACTS, KIDNAP AND MURDER OF ENRIQUE
2 CAMARENA SALAZAR WITH THE PURPOSE TO GAIN ENTRANCE TO OR
3 MAINTAIN POSITION IN AN ENTERPRISE ENGAGED IN RACKETEERING
4 ACTIVITY.

5 COUNT 4 CHARGES VIOLENT ACTS, KIDNAP AND MURDER OF
6 ALFREDO ZAVALA AVELAR WITH THE PURPOSE TO GAIN ENTRANCE TO OR
7 MAINTAIN POSITION IN AN ENTERPRISE ENGAGED IN RACKETEERING
8 ACTIVITY.

9 COUNT 5 CHARGES CONSPIRACY TO KIDNAP A FEDERAL AGENT
10 WHILE ENGAGED IN OR ON ACCOUNT OF THE PERFORMANCE OF HIS
11 OFFICIAL DUTY.

12 COUNT 6 CHARGES KIDNAP OF A FEDERAL AGENT WHILE
13 ENGAGED IN OR ON ACCOUNT OF THE PERFORMANCE OF HIS OFFICIAL
14 DUTY.

15 COUNT 7 CHARGES MURDER IN THE PERPETRATION OF THE
16 KIDNAPPING OF DRUG ENFORCEMENT ADMINISTRATION SPECIAL AGENT
17 ENRIQUE CAMARENA.

18 I WANT TO REMIND THE JURORS YOU ARE NOT PARTISANS OR
19 ADVOCATES IN THIS CASE, YOU ARE IMPARTIAL JUDGES OF THE FACTS.
20 YOU SHOULD HAVE NO INTEREST IN A PARTICULAR OUTCOME OF THIS
21 CASE. YOUR ONLY INTEREST SHOULD BE TO REACH THE RESULT WHICH
22 IS COMPELLED BY THE EVIDENCE AND THE LAW EVEN IF YOU DON'T LIKE
23 THE RESULT. YOU MUST, IN OTHER WORDS, GO WHERE THE EVIDENCE
24 AND THE LAW TAKES YOU. YOU SHOULD NOT BE INFLUENCED BY
25 SYMPATHY, PASSION, PREJUDICE, PUBLIC OPINION OR PUBLIC FEELING.

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1 EACH CRIME CHARGED AGAINST EACH DEFENDANT HAS BEEN SET
2 OUT FOR YOU. YOU SHOULD EXAMINE THE ELEMENTS OF THE CRIME.
3 THESE ARE THE FACTS WHICH MUST BE PROVED TO ESTABLISH THAT THAT
4 CRIME WAS COMMITTED TO DETERMINE IF EACH ELEMENT HAS BEEN
5 PROVED BEYOND A REASONABLE DOUBT IN ACCORDANCE WITH MY PRIOR
6 INSTRUCTION.

7 IF YOU UNANIMOUSLY FIND THAT EACH ELEMENT OF ANY
8 OFFENSE HAS BEEN PROVED AGAINST A GIVEN DEFENDANT BEYOND A
9 REASONABLE DOUBT THEN YOUR VERDICT ON THAT COUNT AS TO SUCH
10 DEFENDANT SHOULD BE GUILTY.

11 IF ON THE OTHER HAND, YOU UNANIMOUSLY FIND THAT ONE OF
12 SOME OF THE ELEMENTS HAVE NOT BEEN PROVEN BEYOND A REASONABLE
13 DOUBT AS TO ANY GIVEN COUNT THEN YOUR VERDICT ON THAT COUNT
14 SHOULD BE NOT GUILTY.

15 I THINK IT WOULD BE HELPFUL, AND I THINK MAYBE THAT'S
16 WHAT YOU'RE DOING, BUT IT WOULD BE HELPFUL TO SIMPLY TAKE THESE
17 COUNTS -- AND YOU ALREADY KNOW THAT YOU HAVE TO DETERMINE THE
18 CASE OF EACH DEFENDANT SEPARATELY. SO YOU SHOULD TAKE EACH
19 COUNT AGAINST EACH DEFENDANT SEPARATELY, GO OVER THE ELEMENTS
20 THAT HAVE BEEN SET OUT FOR YOU IN INSTRUCTIONS, DETERMINE IF
21 EACH ELEMENT HAS BEEN PROVED.

22 IF THERE ARE CONFLICTS ABOUT -- BETWEEN JURORS AS TO
23 WHETHER OR NOT THEY HAVE BEEN PROVED, YOU SHOULD DISCUSS THEM
24 FULLY WITH EACH OTHER AND TRY YOUR BEST TO REACH A DECISION.
25 AND THE COURT WILL HELP YOU IN ANY WAY THAT THAT I CAN.

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1 I HOPE THAT THIS HAS ANSWERED THE QUESTION THAT YOU
2 SENT YESTERDAY IN TERMS OF DISTINCTION BETWEEN COUNTS 3 AND 4
3 AND THE REMAINING COUNTS. THE DISTINCTION IS FOUND IN THE
4 STATEMENT OF THE LAW REGARDING THOSE COUNTS; THAT IS, THE
5 ELEMENTS.

6 YOU WILL NOTE THAT EACH CRIME REQUIRES THE PROOF OF
7 CERTAIN ELEMENTS. AND IF THERE'S A DISTINCTION, IF ONE CRIME
8 DOES NOT CONTAIN AN ELEMENT THAT ANOTHER CRIME CLAIMS, THAT
9 WOULD BE THE DISTINCTION. BUT I THINK YOU CAN READ THEM AND
10 SEE WHAT, IF ANY, DISTINCTION EXISTS.

11 DO YOU THINK THAT I HAVE ANSWERED YOUR QUESTION, MR.
12 FOREMAN, THAT YOU SENT YESTERDAY?

13 FOREMAN PARRIS: MAY I CAUCUS WITH THE JURY FOR A
14 SECOND?

15 THE COURT: YES.

16 (BRIEF PAUSE)

17 FOREMAN PARRIS: YES, YOUR HONOR, I THINK YOU HAVE.

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18 THE COURT: WELL, THEN I WILL ASK YOU TO RETURN TO THE
19 JURY ROOM AND COMMENCE YOUR DELIBERATIONS.

20 (JURY EXCUSED)

21 THE CLERK: YOU MAY BE SEATED.

22 THE COURT: WELL, THE OTHER JURY IS HERE. DO YOU HAVE
23 ANYTHING FURTHER, COUNSEL?

24 MR. STOLAR: NO, JUST WHETHER WE'RE ON 30-MINUTE CALL
25 AS BEFORE.

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THE COURT: WELL, I SUPPOSE YOU ARE. I THINK THE JURY IS SETTLED IN NOW FOR A WHILE. BUT BE AVAILABLE WHEN WE NEED YOU.

MR. STOLAR: ABSOLUTELY. THANK YOU, JUDGE.

MR. MEDVENE: THANK YOU, YOUR HONOR.

MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

(PROCEEDINGS ADJOURNED)

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C E R T I F I C A T E

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT OF THE ABOVE-ENTITLED PROCEEDING, PAGES 1-11. DATED FEBRUARY 11, 1992; LOS ANGELES, CALIFORNIA.

Lynne Smith

LYNNE SMITH
OFFICIAL COURT REPORTER