

NITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. CR 87-422(F)-ER
)	
JUAN RAMON MATTA-BALLESTEROS)	
DEL POZA, RUBEN ZUNO-ARCE,)	
JUAN JOSE BERNABE-RAMIREZ,)	
JAVIER VASQUEZ-VELASCO,)	
)	
DEFENDANTS.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, OCTOBER 15, 1990

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MONDAY, OCTOBER 15, 1990

DEFENDANTS' MOTION FOR NEW TRIAL

3

THE COURT'S RULING

9

LOS ANGELES, CALIFORNIA, MONDAY, OCTOBER 15, 1990, 10:00 A.M.

1 THE CLERK: ITEM NO. 14, CRIMINAL NUMBER CR
2 87-422(F), UNITED STATES OF AMERICA VS. JUAN RAMON MATTA-
3 BALLESTEROS, RUBEN ZUNO-ARCE, JUAN JOSE BERNABE-RAMIREZ,
4 AND JAVIER VASQUEZ-VELASCO.

5 COUNSEL, PLEASE STATE YOUR NAMES FOR THE RECORD.

6 MR. CARLTON: GOOD MORNING, YOUR HONOR. JOHN
7 CARLTON AND MANUEL MEDRANO ON BEHALF OF THE UNITED STATES.

8 MR. MEDVENE: YOUR HONOR, MESSRS. BLANCARTE, DI
9 NICOLA, MEDVENE, AND MS. FULGINITI.

10 MR. BURNS: GOOD MORNING, YOUR HONOR. FOR
11 MR. MATTA MICHAEL BURNS, MARTIN STOLAR, AND ADOLFO Z.
12 AGUILA.

13 MS. KELLY: GOOD MORNING, YOUR HONOR. MARY
14 KELLY APPEARING ON BEHALF OF JUAN JOSE BERNABE-RAMIREZ.

15 MICHAEL MEZA IS ALSO PRESENT.

16 MR. NICOLAYSEN: GOOD MORNING, YOUR HONOR.
17 GREGORY NICOLAYSEN ON BEHALF OF THE DEFENDANT VASQUEZ-
18 VELASCO, WHO IS PRESENT.

19 THE COURT: IS EVERYBODY HERE AND SITUATED AND
20 READY?

21 AN INTERPRETER: ALMOST READY, YOUR HONOR.

22 THE COURT: ARE ALL INTERPRETERS IN PLACE?

23 AN INTERPRETER: ONE SECOND. WE NEED A
24 MICROPHONE.

25 (PAUSE.)

1 THE COURT: ALL RIGHT. BEFORE THE COURT IS A
2 MOTION FILED JOINTLY BY ALL DEFENDANTS FOR A NEW TRIAL.
3 THE COURT HAS READ AND CONSIDERED THIS MOTION AS WELL AS
4 THE OPPOSITION THAT HAS BEEN FILED BY THE GOVERNMENT, AND
5 BEFORE I TELL COUNSEL AND THE PARTIES THE TENTATIVE
6 CONCLUSIONS OF THE COURT, I THINK IT IS IMPORTANT TO
7 UNDERSTAND THE BACKGROUND OF THE LAW THAT DEALS WITH THIS
8 ISSUE.

9 FIRST, I THINK IT IS AXIOMATIC THAT FUNDAMENTAL
10 TO THE ADMINISTRATION OF JUSTICE IS A FAIR AND IMPARTIAL
11 JURY. THE INTRODUCTION OF OUTSIDE INFLUENCES, WHICH IS
12 ALLEGED HERE IN THIS MOTION, INTO THE DELIBERATIVE PROCESS
13 OF THE JURY IS INIMICAL TO OUR SYSTEM OF JUSTICE. THE
14 CASES HAVE HELD, AND IT IS WELL ESTABLISHED, THAT THE JURY
15 SHOULD REACH ITS DECISION ONLY UPON THE EVIDENCE PRODUCED
16 AT TRIAL SUBJECT TO JUDICIAL CONTROL AND THE RULES OF
17 EVIDENCE AND UNAFFECTED BY EXTRINSIC FACTS AND INFLUENCES.

18 THIS CASE OF UNITED STATES VS. BAGNARIOL, WHICH
19 IS A NINTH CIRCUIT 1981 DECISION, CITING THE U.S. SUPREME
20 COURT CASE OF TURNER VS. LOUISIANA, SETS A LOT OF THESE
21 GROUND RULES FOR THE CONSIDERATION OF THIS TYPE OF MOTION.
22 THAT CASE, BAGNARIOL, SAYS, FOR EXAMPLE, "THAT THE TRIAL
23 COURT, UPON LEARNING OF A POSSIBLE INCIDENT OF JUROR
24 MISCONDUCT, MUST HOLD AN EVIDENTIARY HEARING TO DETERMINE
25 THE PRECISE NATURE OF THE EXTRANEIOUS INFORMATION."

1 THE NINTH CIRCUIT RAISED THE TEST DIFFERENTLY IN
2 A CASE CALLED U.S. VS. MADRID, A 1988 CASE. THE COURT
3 SAID THAT A DISTRICT COURT, UPON FINDING A REASONABLE
4 POSSIBILITY OF PREJUDICE, NEEDS TO HOLD A FAIR HEARING.

5 IT SHOULD BE REMEMBERED OR KNOWN THAT NOT EVERY
6 ALLEGATION THAT EXTRANEOUS INFORMATION HAS REACHED THE
7 JURY REQUIRES A FULL DRESS HEARING. THE NINTH CIRCUIT AND
8 THE SUPREME COURT SO SAID. A HEARING IS NOT REQUIRED, FOR
9 EXAMPLE, WHERE THE TRIAL COURT KNEW THE EXACT SCOPE AND
10 NATURE OF THE EXTRANEOUS INFORMATION.

11 HOWEVER, IN ORDER TO ASCERTAIN IF THERE EXISTED
12 A REASONABLE POSSIBILITY THAT THE VERDICT WOULD HAVE BEEN
13 AFFECTED, IT IS FIRST NECESSARY TO KNOW -- I AM QUOTING
14 NOW FROM THE CASE -- "IT IS FIRST NECESSARY TO KNOW THE
15 PRECISE QUALITY OF THE JURY BREACH." THAT IS U.S. VS.
16 VASQUEZ.

17 I BELIEVE IN THIS CASE THAT THE COURT SHOULD
18 HOLD AN EVIDENTIARY HEARING TO DETERMINE THE PRECISE
19 NATURE OF THE EXTRANEOUS INFORMATION WHICH ACTUALLY MADE
20 IT TO THE JURY. IT IS UNCLER EXACTLY WHAT THE JURY WAS
21 EXPOSED TO FROM WHAT HAS BEEN FILED, FROM WHAT THE COURT
22 KNOWS.

23 FURTHERMORE, THE NINTH CIRCUIT HAS SPOKEN
24 STRONGLY IN FAVOR OF EVIDENTIARY HEARINGS IN THESE
25 SITUATIONS.

1 NOW, IF AN EVIDENTIARY HEARING IS HELD, IT HAS
2 TWO PURPOSES. THE FIRST IS TO DETERMINE THE TRUTHFULNESS
3 OF THE ALLEGATIONS OF JUROR MISCONDUCT OR PREJUDICE. IF
4 THE ALLEGATIONS ARE FOUND TO BE TRUE, THE INQUIRY DOES NOT
5 END THERE. THE COURT MUST DETERMINE IF THE BIAS OR
6 PREJUDICE AMOUNTED TO A DEPRIVATION OF THE FIFTH AMENDMENT
7 DUE PROCESS OR SIXTH AMENDMENT IMPARTIAL JURY GUARANTIES.
8 THE TEST IS WHETHER OR NOT THE MISCONDUCT HAS PREJUDICED
9 THE DEFENDANT TO THE EXTENT THAT HE HAS NOT RECEIVED A
10 FAIR TRIAL.

11 THE EXTENT OF THE HEARING OR THE WAY THE HEARING
12 IS CONDUCTED IS AT THE COURT'S DISCRETION. UNLESS THE
13 COURT CLEARLY ABUSES THIS DISCRETION, SUCH DECISIONS
14 SHOULD NOT BE DISTURBED.

15 THERE ARE SOME LIMITATIONS UPON WHAT THE TRIAL
16 JUDGE MAY HEAR, EVIDENTIARY CONSTRAINTS. THE TRIAL JUDGE
17 IS LIMITED BY FEDERAL RULES OF EVIDENCE 606(B) AS TO WHAT
18 EVIDENCE MAY BE CONSIDERED WHEN DETERMINING JUROR
19 MISCONDUCT. THAT RULE READS AS FOLLOWS:

20 "UPON AN INQUIRY INTO THE VALIDITY OF A
21 VERDICT OR INDICTMENT, A JUROR MAY NOT TESTIFY
22 AS TO ANY MATTER OR STATEMENT OCCURRING DURING
23 THE COURSE OF THE JURY'S DELIBERATIONS OR TO THE
24 EFFECT OF ANYTHING UPON HIS OR ANY OTHER JUROR'S
25 MIND OR EMOTIONS AS INFLUENCING HIM TO ASSENT TO

1 OR DISSENT FROM THE VERDICT OR INDICTMENT OR
2 CONCERNING HIS MENTAL PROCESSES IN CONNECTION
3 THEREWITH, EXCEPT THAT A JUROR MAY TESTIFY ON
4 THE QUESTION WHETHER EXTRANEOUS PREJUDICIAL
5 INFORMATION WAS IMPROPERLY BROUGHT TO THE JURY'S
6 ATTENTION OR WHETHER ANY OUTSIDE INFLUENCE WAS
7 IMPROPERLY BROUGHT TO BEAR ON ANY JUROR."

8 THAT IS EVIDENCE CODE 606(B). THAT IS HOW IT
9 READS.

10 THE TYPE OF AFTER-ACQUIRED INFORMATION THAT
11 POTENTIALLY TAINTS A JURY VERDICT SHOULD BE CAREFULLY
12 DISTINGUISHED FROM THE GENERAL KNOWLEDGE, OPINIONS,
13 FEELINGS, AND BIAS THAT EVERY JUROR CARRIES INTO THE JURY
14 ROOM. THAT WAS A QUOTE FROM HARD VS. BURLINGTON NORTHERN
15 RAILROAD COMPANY, NINTH CIRCUIT IN 1989.

16 THE COURT MAY CONSIDER ONLY TESTIMONY REGARDING
17 EXTRANEOUS PREJUDICIAL INFORMATION OR IMPROPER OUTSIDE
18 INFLUENCES. THIS RULE NOT ONLY LIMITS WHAT MAY BE
19 CONSIDERED, BUT ALSO RESTRICTS THE SCOPE OF INQUIRY INTO
20 EXTRANEOUS INFLUENCES. JURORS CANNOT BE QUESTIONED ABOUT
21 THE SUBJECTIVE EFFECTS OF THE EXTRANEOUS INFORMATION.
22 THIS IS FROM THE BAGNARIOL CASE. THAT IS AT PAGE 884-85.

23 A TRIAL JUDGE SHOULD NOT INVESTIGATE THE
24 SUBJECTIVE EFFECTS OF ANY SUCH BREACH UPON THE JURORS.
25 U.S. VS. HOWARD, 506 FED 2D 865.

1 THE JUDGE SHOULD REACH A JUDGMENT ON HIS OWN
2 WITHOUT THE BENEFIT OF JUROR OPINIONS WHICH MIGHT NEGATE
3 OR AFFIRM A CONCLUSION OF ACTUAL HARM.

4 IN OTHER WORDS, THESE CASES SAY THAT THE JUDGE
5 SHOULD DETERMINE WHAT, IF ANY, EXTRANEOUS MATERIAL WAS
6 RECEIVED BY THE JURY, WHETHER IT WAS DISCUSSED, WHEN IT
7 WAS DISCUSSED, AND DETERMINE FOR HIMSELF WHETHER OR NOT IT
8 IS OF SUCH A NATURE AS TO REQUIRE A NEW TRIAL.

9 I CONTINUE NOW TO READ FROM HARD VS. BURLINGTON
10 NORTHERN RAILROAD COMPANY:

11 "WHERE AFFIDAVITS OR JUROR TESTIMONY OR
12 OTHER EVIDENCE OF JUROR STATEMENTS ARE OFFERED
13 TO IMPEACH A VERDICT, THE DISTRICT COURT MUST
14 EXAMINE THIS MATERIAL TO DECIDE WHETHER IT FALLS
15 WITHIN THE CATEGORIES OF ADMISSIBLE TESTIMONY
16 PERMITTED BY RULE 606(B). RULE 606(B) PERMITS
17 TESTIMONY ONLY ON THE QUESTIONS OF WHETHER
18 EXTRANEOUS PREJUDICIAL INFORMATION WAS
19 IMPROPERLY BROUGHT TO THE JURY'S ATTENTION AND
20 WHETHER ANY OUTSIDE INFLUENCE WAS IMPROPERLY
21 BROUGHT TO BEAR ON ANY JUROR. JURORS MAY NOT
22 TESTIFY AS TO HOW THEY OR OTHER JURORS WERE
23 AFFECTED BY THE EXTRANEOUS PREJUDICIAL
24 INFORMATION OR OUTSIDE INFLUENCE; THEY MAY ONLY
25 TESTIFY AS TO ITS EXISTENCE."

1 THE POLICY BEHIND THIS RULE IS TO DISCOURAGE
2 HARASSMENT OF JURORS, INSULATE THE JURY ROOM TO FACILITATE
3 FREE AND OPEN DISCOURSE, REDUCE OPPORTUNITY AND INCENTIVE
4 FOR JURY TAMPERING, PROMOTE FINALITY OF VERDICTS, AND
5 RESPECT THE JURY AS THE FINDER OF FACTS. SEE MC DONALD
6 VS. PLESS, 238 U.S. 264.

7 THE APPARENT SOLE PURPOSE OF AN EVIDENTIARY
8 HEARING, THEREFORE, IS TO DETERMINE WHAT THE JURY WAS
9 EXPOSED TO, WHEN IT WAS EXPOSED, AND IF IT WAS CONSIDERED.
10 INQUIRY CANNOT CONCERN HOW THE JURY CONSIDERED IT OR
11 WHETHER IT INFLUENCED ANY DECISION OF THE JURY OR ANY
12 INDIVIDUAL JUROR. I BELIEVE THAT THE COURT IS REQUIRED TO
13 HOLD AN EVIDENTIARY HEARING TO DETERMINE EXACTLY WHAT, IF
14 ANY, NEWS REPORTS CONCERNING THE TRIAL WERE ACTUALLY SEEN
15 OR HEARD BY THE JURORS.

16 ALTHOUGH THE COURT HAS HAD A LIMITED HEARING ON
17 THIS BEFORE, THE MOTION THAT HAS BEEN FILED SUGGESTS A
18 FURTHER HEARING IS APPROPRIATE. THE DEFENDANTS HAVE
19 ATTACHED AS EXHIBITS EVERY NEWSPAPER ARTICLE CONCERNING
20 THE TRIAL. HOWEVER, THERE IS CURRENTLY EVIDENCE
21 INDICATING EXPOSURE TO ONLY A FEW ARTICLES AND ONE
22 BROADCAST, AND EVEN THIS IS INCONSISTENT. THE COURT NEEDS
23 TO KNOW ACTUALLY WHAT WAS SEEN OR HEARD SO AS TO BE ABLE
24 TO ANALYZE EACH INDEPENDENT PIECE OF EXTRINSIC INFORMATION
25 ACCORDING TO APPROPRIATE STANDARDS.

1 NOW, THIS MOTION IS COMPLICATED ALSO BY THE FACT
2 THAT THE DEFENDANTS HAVE TREATED IT AS AN OMNIBUS MOTION,
3 FORGETTING THE FACT THAT THIS JURY WAS DELIBERATING FOR 16
4 DAYS AND THAT THESE VERDICTS WERE RENDERED AT VARIOUS
5 TIMES DURING THAT PROCESS, DURING THAT PERIOD. THEREFORE,
6 BEFORE ANY INDIVIDUAL DEFENDANT CAN COMPLAIN TO HAVE BEEN
7 PREJUDICED, IT IS NECESSARY FOR THE COURT TO DETERMINE
8 THAT PRIOR TO REACHING THAT VERDICT ON THE PART OF THAT
9 DEFENDANT THE JURY WAS EXPOSED TO SOME EXTRANEOUS
10 INFORMATION, WHAT THAT INFORMATION WAS, WHETHER IT WAS
11 DISCUSSED, AND THE COURT IS THEN ABLE TO DETERMINE.

12 SO, HAVING THIS BACKGROUND OF LAW IN MIND, THIS
13 IS WHAT THE COURT BELIEVES OUGHT TO BE DONE IN THIS CASE.
14 THE COURT BELIEVES THESE ARE THE ISSUES ON WHICH FURTHER
15 INFORMATION MAY BE REQUIRED BY HOLDING AN EVIDENTIARY
16 HEARING.

17 FIRST, THE JURORS' DISCUSSIONS ABOUT MATTA BEING
18 A DRUG KINGPIN. GENERALLY THE INQUIRY THAT WILL BE MADE
19 WILL BE AS FOLLOWS: WHAT WAS THE SOURCE OF THIS
20 INFORMATION? WHEN WERE THE JURORS FIRST EXPOSED TO THIS
21 INFORMATION? AND WHEN WAS THIS INFORMATION DISCUSSED, IF
22 AT ALL? THOSE ARE THE AREAS OF INQUIRY THAT WILL PERTAIN
23 TO MOST OF THESE ISSUES.

24 THE NEXT ISSUE WOULD BE THE JURORS' DISCUSSIONS
25 ABOUT MATTA'S PRIOR CONVICTION. WHAT WAS THE SOURCE OF

1 THIS INFORMATION? WHEN WAS THE JURY OR THE JUROR FIRST
2 EXPOSED TO THIS INFORMATION? AND WHEN WAS IT DISCUSSED?

3 THE NEXT ISSUE WILL BE THE JURORS' DISCUSSIONS
4 ABOUT ATTORNEYS AND NEWS MEDIA'S DESCRIPTION OF THE MATTA
5 VERDICT AS INCONSISTENT. WHAT WAS THE SOURCE OF THIS
6 INFORMATION AND WHEN DID IT FIRST SURFACE? WAS IT
7 DISCUSSED?

8 THE NEXT ISSUE WOULD BE THE JURORS' DISCUSSIONS
9 ABOUT THE PRIOR CONVICTIONS IN AN EARLIER RELATED CASE.
10 WHAT WAS THE SOURCE OF THIS INFORMATION? WHEN WERE THE
11 JURORS FIRST EXPOSED TO THIS INFORMATION? WHEN WAS THIS
12 INFORMATION DISCUSSED, IF IT WAS?

13 THE NEXT ISSUE RAISED IS THE JURORS' DISCUSSIONS
14 ABOUT THE ABDUCTION OF DR. MACHAIN. WHAT WAS THE SOURCE
15 OF THIS INFORMATION? WHEN WERE THE JURORS FIRST EXPOSED?
16 AND WHEN, IF AT ALL, WAS IT DISCUSSED?

17 THE NEXT IS THE JURORS' DISCUSSIONS ABOUT
18 CORRUPTION IN CURRENT MEXICAN GOVERNMENT. THAT IS NOT THE
19 MEXICAN GOVERNMENT THAT WAS TESTIFIED TO AT THE TRIAL, BUT
20 THE CURRENT MEXICAN GOVERNMENT. THERE WAS SOME EVIDENCE
21 OF THAT IN THE DECLARATION. THE SOURCE OF THAT
22 INFORMATION HAS TO BE ASCERTAINED, WHEN IT WAS FIRST
23 EXPOSED TO THE JURY, AND WHEN IT WAS DISCUSSED.

24 THERE IS AN ALLEGATION THAT ONE OF THE JURORS
25 MADE A STATEMENT OF ALLEGED PRETRIAL BIAS. THAT IS

1 TREATED DIFFERENTLY. HOW DO YOU DEAL WITH THAT?
2 BASICALLY THAT IS NOT THE SAME TYPE OF ISSUE THAT WE HAVE
3 BEEN DEALING WITH HERE. THE COURT MUST INQUIRE WHETHER
4 THE JUROR WAS PREDISPOSED AGAINST THE DEFENDANT PRIOR TO
5 BEING SELECTED AS A JUROR, WHICH IS WHAT IS ALLEGED.

6 SECONDLY, THE JUROR SHOULD BE ASKED TO MAKE A
7 STATEMENT WHETHER SHE MADE THE STATEMENT ALLEGED TO HAVE
8 BEEN MADE BEFORE SHE WAS CHOSEN AS A JUROR.

9 AND THE JURY SHOULD BE ASKED WHETHER OR NOT SHE
10 RECALLS HAVING BEEN SWORN TO DECIDE THE CASE ON THE
11 EVIDENCE THAT WAS ADMITTED.

12 FOURTHLY, WHETHER OR NOT SHE WAS CAPABLE OR DID
13 IN FACT ACTUALLY DECIDE THE VERDICT SOLELY ON THE EVIDENCE
14 ADMITTED AT THE TRIAL.

15 THOSE ARE THE ISSUES WHICH WILL BE GOVERNED BY
16 THIS HEARING, AND IT WILL BE LIMITED AS I HAVE INDICATED.

17 NOW, THE COURT WILL NOT INQUIRE INTO THE
18 FOLLOWING ALLEGATIONS FOR THE FOLLOWING REASONS.

19 THE ALLEGATION THAT LOCAL NEWSPAPERS WERE IN THE
20 JURY ROOM. THE NEWSPAPERS THEMSELVES ARE NOT PREJUDICIAL.
21 ONLY IF THE DEFENDANTS CAN DEMONSTRATE THAT ARTICLES
22 CONCERNING THE TRIAL WERE STILL IN THE PAPERS AND THE
23 JURORS READ THESE ARTICLES WOULD THIS COURT BE ABLE TO
24 EVALUATE THE POTENTIAL FOR PREJUDICE. WE HAVE ALREADY
25 DEALT WITH THAT, THE NATURE OF THE ARTICLES EXPOSURE, WHEN

1 IT OCCURRED, WHETHER IT WAS DISCUSSED, ET CETERA. THE
2 COURT DOES NOT BELIEVE THAT ANYTHING FURTHER IS REQUIRED.

3 JURORS SKIMMING HEADLINES OF ARTICLES IS ONE OF
4 THE ALLEGATIONS MADE. THE DEFENDANTS HAVE ATTACHED AS
5 EXHIBITS ALL ARTICLES THEY BELIEVE ARE RELEVANT TO THIS
6 INQUIRY. THE COURT IS CAPABLE OF EVALUATING THE POTENTIAL
7 FOR PREJUDICE FROM THE HEADLINES THEMSELVES IF THEY ARE
8 SHOWN TO HAVE BEEN IN THE JURY ROOM AND TO HAVE BEEN
9 SKIMMED BY ANY JUROR.

10 THE L.A. TIMES ARTICLE ON THE MATTA VERDICT.
11 THE COURT BELIEVES THAT THERE IS SUFFICIENT EVIDENCE THAT
12 THE JURY WAS EXPOSED TO THIS ARTICLE. THE ARTICLE IS
13 ATTACHED AS AN EXHIBIT AND THEREFORE THERE IS NO FURTHER
14 INFORMATION NECESSARY.

15 THE GOVERNMENT'S PRESSURE ABOUT THE MATTA
16 VERDICT IS AN ALLEGATION THAT IS MADE. THE COURT BELIEVES
17 THAT INQUIRY INTO THIS ALLEGATION IS UNNECESSARY BECAUSE
18 THE COURT IS CAPABLE OF EVALUATING ANY POTENTIAL FOR
19 PREJUDICE FROM THE ALLEGATION ITSELF.

20 THE PESO/DOLLAR EXCHANGE RATE. THERE IS
21 ADEQUATE INFORMATION BEFORE THE COURT TO DETERMINE WHETHER
22 THE ACQUISITION WAS INAPPROPRIATE AND WHETHER THE
23 INFORMATION WAS PREJUDICIAL.

24 EX PARTE CONTACTS WITH COURT PERSONNEL. THE EX
25 PARTE CONTACTS ARE SUFFICIENTLY ALLEGED WITH SPECIFICITY

1 IN TIME FOR THE COURT TO DETERMINE ANY POTENTIAL FOR
2 PREJUDICE.

3 NOW, AFTER THE EVIDENTIARY HEARING, THE COURT
4 WILL REQUIRE EACH DEFENDANT TO FILE A MEMORANDUM WITH THE
5 COURT EXPLAINING HOW HE BELIEVES THE EVIDENCE ELICITED AT
6 THE EVIDENTIARY HEARING ESTABLISHES THAT THE JURY
7 CONSIDERED EXTRINSIC INFORMATION THAT COULD HAVE
8 PREJUDICED THE VERDICT AGAINST HIM. THE COURT THEN WILL
9 PERMIT THE GOVERNMENT TO FILE OPPOSITION TO THESE
10 MEMORANDA WITHIN TEN DAYS. THEREAFTER THE COURT WILL MAKE
11 ITS RULING ON THIS MOTION FOR NEW TRIAL, WHICH WILL BE
12 DEFERRED UNTIL SUCH TIME AS THE EVIDENTIARY HEARING AND
13 THIS BRIEFING HAS BEEN COMPLETED.

14 THAT IS BASICALLY WHAT THE COURT'S ANALYSIS OF
15 THESE MOTIONS IS, WHAT WOULD BE REQUIRED TO DECIDE, AND
16 WHEN TO HAVE THE EVIDENTIARY HEARING, WHO SHOULD BE
17 PRESENT, AND APPROXIMATELY HOW MUCH TIME WE NEED. WE NEED
18 TO FIT THIS IN SOMEHOW. ALL RIGHT.

19 DOES ANY COUNSEL WISH TO BE HEARD REGARDING THE
20 COURT'S TENTATIVE CONCLUSIONS?

21 MR. MEDVENE: I WOULD LIKE TO BRIEFLY ADDRESS
22 YOUR HONOR. WITH RESPECT TO THE PESO EXCHANGE RATE, YOUR
23 HONOR, THE DECLARATION, AS YOU KNOW, BEFORE THE COURT
24 INDICATES THAT THE INFORMATION FOR THE EXCHANGE RATE WAS
25 ACQUIRED OUTSIDE OF THE EVIDENCE. THE INFORMATION ABOUT

1 THE EXCHANGE RATE WAS BROUGHT INTO THE JURY ROOM BY TWO
2 PARTICULAR JURORS. THE TWO PARTICULAR JURORS WERE NAMED,
3 AND THE CIRCUMSTANCES WERE NAMED.

4 I RESPECTFULLY SUGGEST TO YOUR HONOR THAT UNLESS
5 YOUR HONOR IS PREPARED TO ACCEPT, AS WE SUGGEST YOU MIGHT
6 WELL, THE DECLARATION OF MR. PARRIS ON THE PARTICULAR
7 JURORS THAT BROUGHT IN THE EXCHANGE RATE AND THE
8 CIRCUMSTANCES UNDER WHICH THEY BROUGHT IT IN THAT THE
9 HEARING BE BROUGHT -- IF YOU ARE NOT PREPARED TO ACCEPT
10 THAT FOR PURPOSES OF THE RECORD, THAT A HEARING BE BROUGHT
11 TO INCLUDE THAT INQUIRY BECAUSE WE THINK THAT MR. PARRIS
12 IS VERY CLEAR THAT A CRITICAL FACTOR IN FINDING THE HOUSE
13 SALE AND RENTAL SHAM WAS THAT THE JURY BELIEVED THAT THE
14 SALE WAS FOR \$20 AND THE RENTAL FOR, IN EFFECT, TEN, THAT
15 THAT WAS BASED ON NOTHING THAT CAME IN EVIDENCE, BUT WAS
16 BASED STRICTLY ON WHAT MS. OVERHOLTZER AND MR. ESPINOZA
17 CAME INTO THE JURY WITH AS TO THEIR PRIOR EXPERIENCES.

18 SO FOR THE FIRST CATEGORY WE WOULD RESPECTFULLY
19 ASK: UNLESS YOU ARE PREPARED, AS WE SUGGEST YOU MIGHT
20 WELL, TO ACCEPT THE PARRIS DECLARATION ON THIS POINT, THAT
21 THE JURY INQUIRY BE PICKED UP ON THAT TO SEE IF THE
22 STATEMENTS OF MR. PARRIS ARE SUPPORTED BY THE OTHER
23 JURORS. THAT IS THE FIRST STEP.

24 THE SECOND THING, YOUR HONOR, IS WE THINK IN
25 ADDITION TO THE AREAS THAT WE HAVE INDICATED, THE STRAINED

1 RELATIONS BETWEEN THE UNITED STATES AND THE MEXICAN
2 GOVERNMENT OVER THE CAMARENA CASE AND THE EFFORTS OF THE
3 MEXICAN GOVERNMENT TO EXTRADITE AGENT BERRELLEZ BECAUSE OF
4 THE DR. MACHAIN INCIDENT, WE THINK WE SHOULD INQUIRE INTO
5 THAT. THERE IS THE RECORDED SPEECH OF ATTORNEY GENERAL OF
6 UNITED STATES THORNBURGH IN THE MIDST OF JURY
7 DELIBERATIONS THAT BANGS HOME PRETTY NEAR EVERY POINT IN
8 THIS AREA THAT WAS RAISED BY MR. PARRIS AS BEING DISCUSSED
9 BY THE JURORS, ALL EXTRANEOUS FACTORS -- THE STRAINED
10 RELATIONSHIP, WHICH IS IMPORTANT PARTICULARLY IN MR.
11 ZUNO'S CASE BECAUSE IT WOULD GIVE THE JURY A REASON TO
12 DISBELIEVE THE DOCUMENTARY EVIDENCE AND OTHER THINGS THAT
13 WERE INTRODUCED.

14 MR. THORNBURGH TALKS ABOUT THE IMPORTANCE OF THE
15 CAMARENA CASE AND THE IMPORTANCE OF THE LIFE OF ANY
16 AMERICAN PERSON AND THE SIGNIFICANCE OF THE CASE AND THAT
17 THERE WERE STRAINED RELATIONS, AND IT IS A SHAME THAT WE
18 HAD TO GO AND KIDNAP SOMEBODY, BUT IT IS IMPORTANT WHAT
19 THIS DOCTOR DID BECAUSE HE ALLEGEDLY KEPT SOMEBODY ALIVE,
20 WHICH IS A DIRECT CHARGE AND FOR WHICH THESE PEOPLE ARE
21 BASICALLY CHARGED WITH PLANNING THE KIDNAPPING AND
22 TORTURE, AND THIS IS AN ADDED INGREDIENT OF TORTURE THAT
23 WASN'T IN EVIDENCE, THE GIVING OF DRUGS TO KEEP ALIVE, ET
24 CETERA, AND THE EXTRA HEINOUS NATURE OF IT.

25 SO WE ARE RESPECTFULLY SUGGESTING, YOUR HONOR,

1 THAT DEAD BANG IN THE MIDDLE OF HEARING, IT IS DEAD BANG
2 ON WHAT PARRIS SAID. THORNBURGH SAYS MEXICO IS
3 RETALIATING IN THE JULY 26 L.A. TIMES, AND THAT SHOULD BE
4 INQUIRED INTO, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. MEDVENE: I DIRECT YOU AGAIN, YOUR HONOR, TO
7 THE JULY 26, 1990 NEWSPAPER AND THE SUBCAPTION UNDER
8 THORNBURGH SAYS MEXICO WAS RETALIATING. IT GIVES THE
9 CAMARENA CASE IN BOLD TYPE, THE ATTORNEY GENERAL CALLS ITS
10 ATTEMPT TO EXTRADITE A U.S. AGENT AND INFORMANT A MISTAKE.
11 THEN IT GOES INTO GREAT DETAIL, AND IN SIGNIFICANT PART
12 YOU ARE ABLE TO TRACK, IF YOU WILL, VARIOUS STATEMENTS IN
13 THE PARRIS DECLARATION PRETTY NEAR SPECIFICALLY AS COMING
14 FROM THIS ARTICLE. CERTAINLY IT IS A VERY REASONABLE
15 INFERENCE THAT THAT IS WHERE THE STATEMENTS CAME FROM --
16 ABOUT STRAINED RELATIONS, ABOUT THE PATRIOTISM FEELING,
17 ABOUT AGENT BERRELLEZ AND HOW THEY WORRIED ABOUT HIM EVERY
18 DAY, AND THAT KIND OF THING.

19 THE COURT: WELL, ASSUMING THAT TO BE TRUE, WHY
20 CAN'T THE COURT SIMPLY DECIDE IT? THIS IS WHAT THE CASES
21 SAY, THAT THE COURT SHOULD DETERMINE THE EXTRANEOUS
22 INFORMATION AND MAKE ITS OWN DETERMINATION OF WHETHER OR
23 NOT IT WAS PREJUDICIAL AS TO ANY DEFENDANT.

24 MR. MEDVENE: I AM NOT SUGGESTING THAT UNDER
25 ORDINARY CIRCUMSTANCES YOU MIGHT NOT. WHAT WE WERE GOING

1 TO ARGUE TODAY WAS THAT THERE IS NO NECESSITY OF A HEARING
2 BECAUSE -- BUT YOUR HONOR THOUGHT THROUGH YOUR OPINION,
3 AND I DIDN'T WANT TO ARGUE THAT, BUT I AM SIMPLY SAYING
4 THIS IN RESPONSE TO YOUR LAST COMMENT, SIR, THAT THERE IS
5 REALLY NO NEED FOR A HEARING BECAUSE THE GOVERNMENT HASN'T
6 RESPONDED TO THE SPECIFIC ALLEGATIONS. THERE IS CLEARLY
7 EXTRINSIC EVIDENCE OUTSIDE THE RECORD THAT MAY WELL HAVE
8 HAD AN EFFECT.

9 THEY HAVE A HEAVY BURDEN. THEY HAVEN'T CARRIED
10 IT. ALL THEY HAVE DONE IS TO MAKE SOME STATEMENTS ABOUT
11 WHY MR. PARRIS MAYBE IS NOT CREDIBLE, BUT NOTHING TO
12 INDICATE THAT ANYTHING HE SAID IS UNTRUE.

13 SO THEREFORE WE WERE GOING TO ARGUE THAT IT IS
14 INAPPROPRIATE TO HAVE A HEARING. THE GOVERNMENT HAD THEIR
15 CHANCE AND THEY DIDN'T COME UP WITH ANYTHING. THE ONLY
16 REASON I AM RAISING IT NOW, YOUR HONOR --

17 THE COURT: WITHOUT A HEARING I WOULD HAVE TO
18 DENY ALL OF THESE MOTIONS BECAUSE WE DON'T KNOW WHEN AND
19 WHERE. THAT IS THE CRITICAL ISSUE. THESE ARE FOUR
20 DEFENDANTS WHOSE VERDICTS CAME IN --

21 MR. MEDVENE: I UNDERSTAND, BUT YOU CERTAINLY
22 KNOW IN LARGE PART THE WHEN. IT WAS BEFORE A NUMBER OF
23 THE VERDICTS.

24 BUT PUTTING THAT TO THE SIDE, THE ONLY REASON --
25 I DON'T MEAN TO QUARREL WITH YOUR HONOR. THE ONLY REASON

1 I RAISE IT, THAT I AM CONCERNED IF YOU DIFFERENTIATE AND
2 DON'T PERMIT US OR YOURSELF -- HOWEVER YOU DECIDE TO DO
3 IT -- TO GET INTO THE THORNBURGH ARTICLE AND WAS THAT
4 DISCUSSED. WAS RETALIATION DISCUSSED? WAS THIS FEELING
5 OF PATRIOTISM AND THE WORRY OVER AGENT BERRELLEZ AND THE
6 KIDNAP DISCUSSED? IT JUST CONCERNS ME AS COUNSEL IF YOU
7 BREAK THAT OUT.

8 ON THE OTHER HAND, IF YOU ARE SAYING THAT YOU
9 AGREE, IT IS CLEAR THAT WAS THE L.A. TIMES ARTICLE; IT IS
10 CLEAR THAT IS WHAT MR. PARRIS SAID, THERE IS NO NEED TO GO
11 INTO IT FURTHER. I ACCEPT THAT AS A GIVEN. THE ONLY
12 THING I AM NOT TELLING YOU IS, SO WHAT. THEN THAT IS
13 DIFFERENT. IF YOU SAY, WELL, I KNOW IT WAS DURING
14 DELIBERATIONS; HERE IS THE ARTICLE AND IT WAS DURING
15 DELIBERATIONS, THEN WE DON'T HAVE TO GO FURTHER.

16 IT WAS FOR THAT REASON THAT I SUGGEST THAT YOU
17 RETHINK, IF YOU WILL, WHETHER THAT ALSO IS AN APPROPRIATE
18 TOPIC TO GO INTO.

19 I WOULD ALSO SUGGEST, YOUR HONOR, THAT IT WOULD
20 BE INAPPROPRIATE -- WITH DUE DEFERENCE, YOU SAID THAT WITH
21 RESPECT TO THE ONE JUROR WHO IT WAS INDICATED SAID THE
22 DEFENDANTS WERE GUILTY BEFORE THE TRIAL STARTED, THAT THE
23 ONE THING YOU WOULD TEND TO HAVE HER ASKED IS: WAS HER
24 VERDICT BASED ON THE EVIDENCE. AND I WOULD SAY, UNDER
25 DIXON, WITH DUE RESPECT, THAT WOULD BE AN INAPPROPRIATE

1 INQUIRY BECAUSE IT IS AN OBJECTIVE, NOT SUBJECTIVE TEST,
2 AND WHAT SHE SAYS IS REALLY NOT RELEVANT. WHAT IS
3 RELEVANT, WE THINK, UNDER THE CASES IS CERTAINLY ON
4 EXTRINSIC MATERIAL WAS THE JURY EXPOSED AND DID THEY HAVE
5 REASONABLE OPPORTUNITY TO SEE AND CONSIDER IT.

6 ON THE ISSUE OF MS. DOLAN'S BIAS, WE WOULD
7 RESPECTFULLY SUGGEST THAT THE OTHER AREAS OF INQUIRY ARE
8 APPROPRIATE. BUT WHETHER SHE RULED IN ACCORDANCE WITH THE
9 EVIDENCE GETS INTO THE SUBJECT THAT WE THINK IT IS UP TO
10 YOUR HONOR TO DECIDE -- DID SHE SAY THOSE THINGS?

11 THE COURT: WELL, ASSUMING SHE SAID THAT, SHE
12 ALSO TOLD THE JURY AND THE COURT REPEATEDLY, AS ALL OF THE
13 JURORS DID, THAT THEY WOULD CONFINE THEIR DISCUSSION AND
14 DELIBERATIONS IN THIS CASE BASED UPON THE EVIDENCE, THAT
15 THEY DID NOT HAVE ANY PRE-EXISTING BIAS OR PREJUDICE
16 AGAINST ANY DEFENDANT. SHE MADE THAT STATEMENT, AND THEY
17 ALL DID.

18 MR. MEDVENE: YES, SIR.

19 THE COURT: SO IF YOU ARE GOING TO JUST BASE IT
20 ON WHAT IT SAID, ASSUMING THAT SHE MADE BOTH THE
21 STATEMENTS THAT ARE ATTRIBUTED TO HER, WHICH WE DO NOT
22 KNOW, AND THE OTHER STATEMENTS WHICH SHE MADE DURING THE
23 JURY SELECTION TO THE COURT -- AS YOU KNOW THE COURT WAS
24 VERY CAREFUL ABOUT THAT WITH ALL THE JURORS -- HOW DO YOU
25 DECIDE?

1 MR. MEDVENE: I THINK, YOUR HONOR -- YOU KNOW,
2 THE CASES ARE VERY LIBERAL PERMITTING A NEW TRIAL IF THERE
3 IS SOME INTRUSION, DESPITE THE DIFFICULTY OF --

4 THE COURT: MY IMPRESSION IS THAT IT IS QUITE
5 THE CONTRARY. IT IS VERY DIFFICULT TO GET A NEW TRIAL
6 BASED ON THESE TYPES OF ALLEGATIONS FROM THE CASES THAT I
7 HAVE READ.

8 MR. MEDVENE: WELL, IT WOULD SEEM TO ME --
9 THE COURT: IT IS CLEAR.

10 MR. MEDVENE: IT WOULD SEEM TO ME THAT THE CASES
11 WE CITED INDICATE -- WE HAVE NOT SEEN A CASE AS HEINOUS AS
12 THIS ONE. BUT THIS ISN'T THE TIME TO ARGUE THAT. I AM
13 JUST SUGGESTING THAT MS. DOLAN -- IT WOULD BE
14 INAPPROPRIATE TO ASK IF SHE RULED BASED ON THE EVIDENCE,
15 AS IT WOULD WITH THE OTHER JURORS. THE PERTINENT INQUIRY
16 FOR ALL OF THEM IS: WAS THIS IN FRONT OF YOU, AND DID YOU
17 HEAR IT?

18 WE ARE SAYING IF ALL OF THEM DENY IT, BUT MR.
19 PARRIS SAYS IT WAS IN FRONT OF HIM AND HE CONSIDERED IT,
20 ALL YOU NEED IS ONE JUROR, AS YOUR HONOR KNOWS, WHICH IS
21 ANOTHER REASON WE SUGGEST A HEARING IS INAPPROPRIATE.

22 BUT PUTTING THAT TO THE SIDE, WE HAVE MADE OUR
23 POINT. I DON'T WANT TO TAKE MORE TIME THAN NECESSARY. I
24 WILL MOVE ON IF I MIGHT AND ASK YOUR HONOR FOR GUIDANCE SO
25 THAT WE CAN BE HELPFUL, AND THAT IS THE NATURE OF THE

1 HEARING YOU INTEND TO HAVE. WAS IT YOUR HONOR'S THOUGHT
2 THAT YOUR HONOR WOULD CONDUCT A HEARING, THAT COUNSEL
3 WOULD, A COMBINATION, OR WHAT?

4 THE COURT: IT IS THE COURT'S INTENTION TO
5 CONDUCT THE HEARING.

6 MR. MEDVENE: WITHOUT QUESTIONS COMING FROM
7 COUNSEL?

8 THE COURT: WITHOUT COUNSEL DIRECTING QUESTIONS
9 TO JURORS.

10 MR. MEDVENE: YES, YOUR HONOR. WOULD YOUR HONOR
11 CONSIDER IT APPROPRIATE IF ANY OF THE COUNSEL, IF THEY SAW
12 FIT, PRELIMINARILY SUBMITTED QUESTIONS TO YOUR HONOR THAT
13 THEY THOUGHT WERE APPROPRIATE?

14 THE COURT: YES.

15 MR. MEDVENE: ALL RIGHT, SIR.

16 THE COURT: AS LONG AS THEY WERE WITHIN THE
17 SCOPE OF WHAT I HAVE STATED.

18 MR. MEDVENE: YES, SIR. AS A SUGGESTION, YOUR
19 HONOR, MIGHT IT MAKE SENSE PRIOR TO THE TIME YOU SET FOR
20 HEARING TO HAVE A DATE WHERE EACH SIDE -- IF THERE IS SUCH
21 A THING, COUNSEL FOR THE GOVERNMENT OR THE DEFENSE SIDE
22 EXCHANGE QUESTIONS AND SUBMIT THEM TO YOUR HONOR SO THAT
23 WE CAN ARGUE OUT IF THAT IS THE APPROPRIATE QUESTION, AND
24 YOUR HONOR WILL, OF COURSE, DECIDE? THAT IS JUST A
25 SUGGESTION ABOUT THE EXCHANGE OF QUESTIONS.

1 THE COURT: I SUGGEST THAT YOU BOTH FILE THEM
2 SOMETIME BEFORE THE HEARING, THE QUESTIONS THAT YOU
3 SUGGEST ARE APPROPRIATE, AND BEFORE THE HEARING THE COURT
4 WILL TELL YOU WHAT IT CONSIDERS TO BE APPROPRIATE AND
5 WHICH IT DOES NOT, JUST AS I DO IN THE VOIR DIRE.

6 MR. MEDVENE: YES, YOUR HONOR. SO THAT WE KNOW
7 ABOUT SUBMITTING QUESTIONS, WOULD YOU RETHINK THE
8 THORNBURGH ARTICLE?

9 THE COURT: YES, I WILL, AND WHAT I WILL DO IS
10 IF THERE ARE ANY CHANGES IN THE TENTATIVE ORDER THAT I
11 HAVE MADE, I WILL LET YOU KNOW ABOUT IT IN ADVANCE OF THE
12 HEARING.

13 MR. MEDVENE: DO YOU DESIRE TO HAVE -- I MAY BE
14 GOING TOO FAR -- BUT DO YOU DESIRE TO HAVE THE HEARING
15 PRIOR TO THE OTHER MOTION FOR A NEW TRIAL, HEARINGS THAT
16 ARE NOW SET?

17 THE COURT: DON'T YOU THINK THAT IS THE MOST
18 APPROPRIATE WAY?

19 MR. MEDVENE: I WOULD THINK SO, YOUR HONOR.

20 THE COURT: THE OTHERS MAY NOT BE NECESSARY.

21 MR. MEDVENE: YES, SIR. WHEN DID YOU WANT IT?

22 THE COURT: I'D LIKE TO DO IT AS SOON AS
23 POSSIBLE. FIRST LET ME HEAR ANY OTHER COUNSEL WHO WISH TO
24 BE HEARD ON THIS.

25 MR. NICOLAYSEN: YES, GOOD MORNING, YOUR HONOR.

1 ON BEHALF OF DEFENDANT VASQUEZ-VELASCO, I WANTED TO
2 INQUIRE OF THE COURT AS TO THE GOVERNMENT'S BURDEN OF
3 PROOF AND HOW THE COURT WANTED TO BRING THAT INTO THE
4 MECHANICS OF THE HEARING. AS THE COURT VERY WELL KNOWS,
5 THE GOVERNMENT BEARS A HEAVY BURDEN UNDER CONSTITUTIONAL
6 STANDARDS TO PROVE ANY ERROR HARMLESS BEYOND A REASONABLE
7 DOUBT.

8 I WOULD RESPECTFULLY SUBMIT TO THE COURT THAT WE
9 HAVE CERTAINLY MET OUR INITIAL BURDEN BY FILING THE PARRIS
10 DECLARATION. AS THE COURT KNOWS, THERE HAS BEEN NO
11 RESPONSIVE DECLARATION AT ALL, SO THERE IS NOTHING FROM
12 THE GOVERNMENT FROM AN EVIDENTIARY POINT OF VIEW.

13 I WOULD SUBMIT THAT WE ARE NOW AT THE STAGE
14 WHERE IT WOULD BE APPROPRIATE TO PUT THE BURDEN SQUARELY
15 ON THE GOVERNMENT'S SHOULDERS TO DEMONSTRATE HARMLESS
16 ERROR.

17 MY CONCERN IS THAT IF THE COURT EXCLUSIVELY WERE
18 TO CONDUCT THE INQUIRY, IT WOULD ESSENTIALLY BE RELIEVING
19 THE GOVERNMENT OF THAT BURDEN, AND I DON'T BELIEVE THAT IS
20 WHAT THE NINTH CIRCUIT, PARTICULARLY IN DIXON AND
21 VELASQUEZ INTENDED.

22 SO I WANTED TO RAISE THAT FOR THE COURT'S
23 CONSIDERATION NOW AS THE PROCEDURAL GUIDELINES OF THIS
24 HEARING ARE BEING MAPPED OUT.

25 I ALSO WOULD SUBMIT ALONG THE SAME LINES THAT IT

1 WOULD BE PRODUCTIVE IF COUNSEL WERE PERMITTED TO INQUIRE
2 OF THE JURORS IN A LIMITED, STRUCTURED CONTEXT, AND, MOST
3 IMPORTANTLY, IF YOU FELT THE NEED TO DO SO, TO SUBMIT SOME
4 TYPE OF REBUTTAL EVIDENCE. I AM PROJECTING NOW. I AM NOT
5 SAYING THAT WE WILL NEED TO DO SO, BUT I WOULD LIKE TO
6 KNOW THAT THE OPTION AND THE AVENUE EXISTS AT THE TIME OF
7 THE HEARING TO DO THAT. SHOULD ANY OF THE JURORS MAKE
8 STATEMENTS TO THE COURT DURING THE HEARING THAT DIGRESS
9 FROM ANY STATEMENTS MADE TO ANY OF US IN THE COURSE OF OUR
10 PREPARATION FOR THE MOTION, I THINK IT WOULD BE IMPORTANT
11 FOR US TO BRING IT UP AND TO PRESENT IT TO THE COURT FOR
12 THE COURT'S CONSIDERATION REGARDING THE CREDIBILITY AND SO
13 ON OF THAT PARTICULAR JUROR.

14 AS THE HEARING HAS BEEN MAPPED OUT THUS FAR, I
15 DON'T KNOW THAT THAT OPTION OR THAT AVENUE EXISTS. SO I
16 WOULD ASK THE COURT TO OPEN IT UP A LITTLE BIT MORE
17 BROADLY SO THAT WE CAN AT LEAST UTILIZE IT.

18 THE COURT: WELL, THE COURT HAS TO MAKE FACTUAL
19 DETERMINATIONS OF WHAT EXTRANEOUS MATERIAL WAS INTRODUCED
20 TO THE JURY. TO THE EXTENT THERE ARE DISPUTES ABOUT THAT
21 IS A QUESTION OF FACT, AND THE COURT WOULD CERTAINLY BE
22 OPEN TO HEARING IT. I AM NOT GOING TO CONDUCT A TRIAL. I
23 AM GOING TO DO WHAT THE LAW REQUIRES TO BE DONE TO
24 DETERMINE WHAT EXTRANEOUS PREJUDICIAL INFORMATION WAS
25 EXPOSED TO THE JURY, WHEN IT WAS, AND DID IT IN FACT

1 PREJUDICE ANY GIVEN DEFENDANT IN A PARTICULAR WAY.

2 MR. NICOLAYSEN: THE WAY I SEE IT, WE ARE ALMOST
3 BACK TO WHERE WE WERE ON AUGUST 2ND WHEN THE COURT
4 CONDUCTED A LIMITED HEARING; THAT IS, IT IS AN EVEN
5 PLAYING FIELD ON BOTH SIDES. THE GOVERNMENT AND THE
6 DEFENSE ARE OBSERVERS IN THE HEARING THAT THE COURT IS NOW
7 INITIATING.

8 I THINK THE PLAYING FIELD OR THE TABLE IS TILTED
9 AT THIS POINT. WE HAVE MET A VERY IMPORTANT PART OF OUR
10 BURDEN OF GOING FORWARD, AND I WOULD LIKE TO SEE THE
11 HEARING SHIFT THE FOCUS TO THE GOVERNMENT'S SIDE.

12 THE COURT: I DON'T KNOW EXACTLY WHAT YOUR POINT
13 IS OF WHAT YOU ARE SAYING.

14 MR. NICOLAYSEN: THE GOVERNMENT NOW --

15 THE COURT: I DON'T KNOW WHAT YOU ARE
16 SUGGESTING.

17 MR. NICOLAYSEN: WELL, AS MR. MEDVENE INITIALLY
18 POINTED OUT, OUR INTENTION AT THE OUTSET WAS TO ASK THE
19 COURT NOT TO EVEN HOLD A HEARING, THAT A HEARING WOULDN'T
20 EVEN BE NECESSARY IN LIGHT OF THE CONSTITUTIONAL TEST BY
21 WHICH A SINGLE JUROR ALONE CAN TIP THE SCALES IN FAVOR OF
22 A NEW TRIAL. WE WOULD SUBMIT THAT THE PARRIS DECLARATION
23 ACCOMPLISHES THAT.

24 SHORT OF GIVING US THAT RULING, WE SUBMIT THAT
25 THE GOVERNMENT NOW SHOULD BE THE ONES TO GO FORWARD AND TO

1 DEMONSTRATE WHAT IS IN THE PARRIS DECLARATION SIMPLY DOES
2 NOT WARRANT --

3 THE COURT: WHEN YOU SAY THEY SHOULD GO FORWARD,
4 WHAT DO YOU MEAN?

5 MR. NICOLAYSEN: THEY SHOULD DEMONSTRATE THAT IF
6 IT IS AT ALL POSSIBLE -- I AM NOT SAYING IT IS POSSIBLE,
7 PROCEDURALLY, AT LEAST -- THAT THE GOVERNMENT SHOULD
8 ESTABLISH THAT THE CONTENTS OF THE PARRIS DECLARATION IS
9 SIMPLY NOT IN THE NATURE OF SUCH THAT A REASONABLE
10 POSSIBILITY TEST HAS BEEN MET. NOW, I DON'T THINK THE
11 GOVERNMENT CAN BEAR THAT BURDEN. THE PARRIS DECLARATION
12 IS VERY POWERFUL IN DEMONSTRATING ALL SORTS OF PREJUDICES,
13 BUT I AM SPEAKING ONLY ON A PROCEDURAL LEVEL AT THIS
14 MOMENT AND SUGGESTING THAT THE WAY THE HEARING IS NOW
15 BEING STRUCTURED PUTS US BACK ON THE SAME EVEN FOOTING AS
16 WE WERE INITIALLY ON AUGUST 2ND. I RESPECTFULLY SUBMIT
17 THAT WE HAVE GONE FAR BEYOND THAT POINT, AND I WANTED TO
18 JUST PRESENT THAT TO THE COURT FOR ITS CONSIDERATION.

19 I THINK THE BURDEN IS A VERY IMPORTANT ISSUE
20 THAT NEEDS TO BE BROUGHT INTO THE MECHANICS OF THE
21 HEARING.

22 FINALLY, YOUR HONOR, ON MY CLIENT'S BEHALF
23 SPECIFICALLY, I WOULD ASK THE COURT TO ADD TO ITS LIST OF
24 INQUIRIES THE EX PARTE COMMUNICATIONS BETWEEN THE MARSHALS
25 AND THE JURORS, SPECIFICALLY AS FAR AS THE COMMENTS THAT

1 WERE APPARENTLY MADE SHORTLY BEFORE THE VERDICT ON MY
2 CLIENT -- IT IS IN THE PARRIS DECLARATION -- TO THE EFFECT
3 THAT THE JURORS SHOULD HURRY UP AND REACH THEIR FINAL
4 VERDICT, THAT IS, MEANING SPECIFICALLY MY CLIENT -- IN
5 LIGHT OF CERTAIN DEATH THREATS WHICH WERE MADE AGAINST
6 THEM. I THINK THIS IS AN AREA THAT CERTAINLY NEEDS TO BE
7 EXPLORED, AND I WOULD ASK YOUR HONOR TO GIVE CONSIDERATION
8 TO THAT AND ADD IT TO YOUR LIST.

9 THE COURT: ALL RIGHT.

10 MR. NICOLAYSEN: THANK YOU VERY MUCH.

11 MR. MEZA: WE WOULD JOIN IN THE COMMENTS OF
12 COUNSEL, SPECIFICALLY EMPHASIZING MR. MEDVENE'S REQUEST
13 THAT THE COURT CONDUCT ITS INQUIRY CONCERNING PRESS
14 ACCOUNTS AS IT RELATES TO AGENT BERRELLEZ, AND I WON'T GO
15 INTO THE DETAIL.

16 WE FILED A MOTION FOR A NEW TRIAL, ONE OF THE
17 GROUNDS OF WHICH WAS THIS ALLEGED JUROR'S CONDUCT. IN
18 THAT MOTION WE SPECIFICALLY FOCUSED ON THE NEWS ACCOUNTS
19 OF AGENT BERRELLEZ'S EXPLOITS PRIOR TO THIS TRIAL, AND
20 ALSO AS IT RELATES TO HIS ABDUCTION OF DR. MACHAIN, AND I
21 HAVE GONE INTO IT IN THE MOTION AND I WOULD NOT TAKE THE
22 COURT'S TIME, BUT I WOULD ASK THE COURT TO READ OUR RULE
23 33 MOTION FILED ON AUGUST 27 AND RECONSIDER ITS POSITION
24 IN TERMS OF THE INQUIRY INTO AGENT BERRELLEZ'S PRESS
25 CLIPPINGS.

1 FINALLY, THE COURT, I BELIEVE -- I AM NOT EVEN
2 SURE IT IS PROPER TO ASK, BUT I WILL. I THINK THE COURT
3 PREPARED A MEMORANDUM OF ITS OPINION TODAY. I WONDER IF
4 IT IS POSSIBLE IF A COPY OF THAT COULD BE PROVIDED TO
5 COUNSEL. I DON'T KNOW WHAT THE COURT'S POLICY WOULD BE.

6 THE COURT: WELL, THIS IS AN INTERNAL
7 MEMORANDUM. IT IS NOT AN OPINION. IT IS NOT INTENDED FOR
8 COUNSEL. I THINK YOU HAD BETTER GET A TRANSCRIPT.

9 MR. MEZA: THERE ARE SOME CASES THAT THE COURT
10 CITED THAT DIDN'T REFER TO A SPECIFIC CITATION. THAT IS
11 ALL THAT I WOULD HAVE. THANK YOU.

12 MR. BURNS: YOUR HONOR, I'D LIKE TO RAISE A
13 DELICATE MATTER. THE SEVEN ITEMS THAT YOU SAID YOU WOULD
14 MAKE AN INQUIRY ABOUT, FOUR OF THEM, THE FIRST FOUR,
15 PERTAIN TO MR. MATTA'S ALLEGED -- WELL, PRIOR CONVICTION
16 AND HIS UPCOMING TRIAL AND HIS STATUS AS AN ALLEGED DRUG
17 KINGPIN.

18 THE COURT: YES.

19 MR. BURNS: IN THE GOVERNMENT'S ANSWER TO
20 DEFENDANT'S MOTION, TO JOIN IN THE COMMENTS OF THE OTHER
21 COUNSEL, THE GOVERNMENT STATES THAT IT WAS MR. MATTA'S
22 COUNSEL THAT BROUGHT THIS TO THE ATTENTION OF THE JURORS
23 IN COURT.

24 NOW, THE REASON WHY THIS IS A DELICATE MATTER IS
25 BECAUSE, AS THE COURT REMEMBERS, BEFORE THIS CASE STARTED

1 WITH MR. MATTA, THERE WAS A CONFLICT BETWEEN CASE
2 88-129 --

3 THE COURT: I KNOW HE IS ON TRIAL IN ANOTHER
4 CASE IF THAT IS WHAT YOU ARE GETTING AT.

5 MR. BURNS: WELL, THAT IS THE INFORMATION THAT
6 WE WISHED TO BRING BEFORE THE JURY IN THE CAMARENA CASE,
7 AND THE GOVERNMENT IN THEIR ANSWER SAID THAT WE TRIED TO
8 BRING BEFORE THE JURY A PRIOR CASE IN 1989 IN FRONT OF
9 JUDGE RYMER, 85-606. NOW, THE REASON WHY THIS IS A
10 DELICATE MATTER IS BECAUSE IN ATTEMPTING TO PUT INTO
11 EVIDENCE PAPERS IN INDICTMENT 88-129, THE COURT REFUSED TO
12 TAKE THOSE DOCUMENTS IN EVIDENCE.

13 SO AT A CERTAIN POINT YOUR HONOR HAS TO BECOME A
14 TRIER OF FACT AS TO WHETHER OR NOT INFORMATION ABOUT MR.
15 MATTA'S ALLEGED KINGPIN STATUS AND ANY PRIOR CONVICTION
16 WAS BROUGHT TO THE ATTENTION OF THE JURY BY COUNSEL, AND
17 WE ASK YOUR HONOR IN THE INTERESTS OF A FAIR TRIAL, AND AS
18 THE BAGNARIOL CASE SAYS, IN LIGHT OF THE ENTIRE RECORD OF
19 THE TRIAL, THAT YOUR HONOR WOULD RECUSE ITSELF FROM THIS
20 HEARING AND GIVE IT TO SOMEONE ELSE.

21 IT DOESN'T MEAN THAT THE WAY THE HEARING WOULD
22 BE CONDUCTED HAS TO BE DIFFERENT, BUT IF YOUR HONOR IS
23 GOING TO DECIDE THE FACT OF WHETHER OR NOT IT WAS
24 MR. MATTA'S COUNSEL THAT BROUGHT THESE THINGS BEFORE THE
25 ATTENTION OF THE JURY, AND WITH THE SITUATION THAT THE

1 TRANSCRIPT OF THE TRIAL IS SORT OF UNDER LOCK AND KEY, WE
2 WOULD ASK YOUR HONOR TO RECUSE ITSELF IN THE INTEREST OF
3 FAIRNESS.

4 THE COURT: THANK YOU.

5 MR. BURNS: AND GIVE IT TO SOMEONE ELSE.

6 THE COURT: ALL RIGHT.

7 DOES ANY OTHER COUNSEL WISH TO BE HEARD? DO YOU
8 WISH TO BE HEARD FOR THE GOVERNMENT?

9 MR. CARLTON: BRIEFLY, YOUR HONOR, YES. WE
10 FIRST DEAL WITH THE ISSUE OF THE BURDEN OF PROOF THAT
11 MR. NICOLAYSEN RAISED, AND I HAVE TO AGREE WITH YOUR HONOR
12 THAT I AM NOT AT ALL CERTAIN WHERE HE WAS GOING WITH THAT,
13 BUT I DO WANT TO MAKE A COUPLE OF COMMENTS.

14 AS YOU ARE WELL AWARE FROM READING THE
15 GOVERNMENT'S OPPOSITION, WE BELIEVE THAT THERE IS
16 SUBSTANTIAL BASIS FOR DENYING ANY CREDIBILITY TO
17 MR. PARRIS' DECLARATION AND THAT THEIR MOTION COULD BE
18 DENIED ON THAT BASIS.

19 BUT WE DO THINK -- AND I WON'T BELABOR THAT
20 ISSUE -- BUT IN LIGHT OF YOUR HONOR'S DECISION TO PROCEED
21 WITH AN EVIDENTIARY HEARING, THAT IS ENTIRELY CONSISTENT
22 WITH THE GOVERNMENT'S POSITION, AND THAT THE BURDEN HAS
23 NOT SHIFTED TO THE GOVERNMENT AT THIS POINT.

24 THE ISSUE TO BE RESOLVED AT THIS POINT IS
25 WHETHER THE EXTRANEOUS INFORMATION THAT MR. PARRIS ALLEGES

1 WAS IN FACT PRESENTED TO THE JURY, AND UNTIL THAT ISSUE IS
2 RESOLVED, THERE IS NO BURDEN SHIFT TO THE GOVERNMENT.

3 I AM MERELY REMARKING, YOUR HONOR, THAT THE
4 PROCEDURE THAT YOU HAVE SUGGESTED WHEREBY YOU QUESTION THE
5 JURORS IS THE APPROPRIATE PROCEDURE AT THIS POINT, AND THE
6 GOVERNMENT HAS NOT FAILED TO OPPOSE THIS MOTION WHICH WE
7 HAVE ARGUED, I THINK, RATHER STRENUOUSLY WAS SUFFICIENT ON
8 ITS FACE.

9 MOVING FROM THAT TO MR. MEDVENE'S SUGGESTION
10 THAT THE PESO TO DOLLAR EXCHANGE RATE BE A TOPIC OF
11 CONSIDERATION, PUTTING ASIDE THE ISSUE OF WHETHER IN FACT
12 THAT WHOLE SEQUENCE OF EVENTS TRANSPIRED IN FRONT OF THE
13 JURY, ALL THAT MR. PARRIS HAS SAID IS THAT TWO JURORS
14 INDICATED THAT THE PESO TO DOLLAR EXCHANGE RATE THAT THEY
15 WERE FAMILIAR WITH IN THEIR EXPERIENCE WITH MEXICO AND
16 THAT ONE JUROR THEN TOOK A PESO TO DOLLAR EXCHANGE RATE OF
17 2200 PESOS AND MADE THE CALCULATION ON WHICH SOME
18 DETERMINATION WAS MADE.

19 YOUR HONOR, THE RECORD DEMONSTRATES, AND WE HAVE
20 ATTACHED TO OUR OPPOSITION THAT WRITTEN PORTION OF THE
21 RECORD THAT THAT IS ALMOST PRECISELY THE EXACT PESO TO
22 DOLLAR EXCHANGE RATE THAT WAS PUT INTO EVIDENCE. THAT WAS
23 THE ONLY PESO TO DOLLAR EXCHANGE RATE THAT WAS PUT INTO
24 EVIDENCE. IF THE JURORS RELIED ON THAT, IT NECESSARILY
25 MUST BE HARMLESS ERROR, AND THERE IS ABSOLUTELY NO REASON

1 FOR FURTHER INQUIRY INTO THAT, AS YOUR HONOR HAS
2 TENTATIVELY CONCLUDED.

3 ADDRESSING THE ISSUE OF WHETHER STRAINED
4 RELATIONS BETWEEN MEXICO AND THE UNITED STATES SHOULD BE A
5 TOPIC OF FURTHER INQUIRY, LET ME SUGGEST, YOUR HONOR,
6 THAT, AS YOU ARE WELL AWARE, YOU CANNOT TAKE INTO ACCOUNT
7 MR. PARRIS' DESCRIPTION OF HOW THE JURORS RESPONDED TO ANY
8 OF THIS KIND OF INFORMATION. HIS RATHER LENGTHY
9 DESCRIPTION OF THE EFFECT THAT THIS INFORMATION HAD ON THE
10 JURORS, THE EFFECT THAT IT HAD ON THEIR DISCUSSION OR
11 ANALYSIS OF AGENT BERRELLEZ'S TESTIMONY IS ABSOLUTELY
12 IRRELEVANT AND INADMISSIBLE. YOU CAN'T TAKE IT INTO
13 ACCOUNT, AND THE ONLY WAY TO ANALYZE THIS IS TO LOOK AT
14 THE INFORMATION OBJECTIVELY, AND THEN YOU HAVE TO MAKE A
15 DETERMINATION IF THERE IS A DIRECT AND REASONABLE
16 POSSIBILITY OF HARM FROM THE NOTION THAT THERE WERE
17 STRAINED RELATIONS BETWEEN THE UNITED STATES AND MEXICO OR
18 FROM THIS COMMENT THAT ATTORNEY GENERAL THORNBURGH MADE IN
19 JULY.

20 WE SUGGEST THAT THERE IS ABSOLUTELY NO DIRECT,
21 REASONABLE CONCLUSION OF HARM THAT COULD BE DERIVED FROM
22 THAT, AND NOTHING FRUITFUL WOULD BE GAINED FROM PURSUING
23 AN INQUIRY INTO THAT LINE OF THOUGHT. WE WOULD SUGGEST
24 THAT THE STATEMENT IN THE PARRIS DECLARATION AS TO THE
25 EFFECT THAT THIS INFORMATION HAD ON THE JURORS WAS PUT

1 THERE FOR THE VERY PURPOSE OF POISONING THE WELL, OF
2 PUTTING BEFORE THE COURT WHAT IS IN REALITY AN IRRATIONAL
3 CONCLUSION AND TO SAY, WELL, THIS IS WHAT HAPPENED SO IT
4 MUST BE RATIONAL. WE DISAGREE. IT IS IRRATIONAL.

5 JUROR DOLAN'S STATEMENTS AS TO THE EFFECT OF ANY
6 BIAS THAT SHE MIGHT HAVE HAD. THE GOVERNMENT AGREES WITH
7 YOUR HONOR THAT THAT IS AN APPROPRIATE AREA OF INQUIRY.
8 THE STANDARD WITH REGARD TO WHETHER A JUROR HAD A
9 PREDISPOSITION AGAINST THE DEFENDANT IS DIFFERENT FROM THE
10 STANDARD THAT APPLIES FROM EXTRINSIC INFORMATION THAT HAS
11 BEEN INTRODUCED. THE STANDARD HERE IS WHETHER THE
12 DEFENDANTS CAN SHOW THERE WAS ACTUAL PREJUDICE, AND WE
13 WOULD SUBMIT THERE IS NO WAY OF DETERMINING WHETHER THERE
14 WAS ANY ACTUAL PREJUDICE UNLESS JUROR DOLAN CAN RESPOND AS
15 TO HOW ANY PRE-EXISTING BIAS THAT MIGHT HAVE EXISTED
16 AFFECTED.

17 THERE ARE A NUMBER OF HOUSEKEEPING MATTERS WHICH
18 I'D LIKE TO ADDRESS, YOUR HONOR.

19 THE COURT: I AM NOT SURE I WANT TO ADDRESS
20 HOUSEKEEPING MATTERS, COUNSEL.

21 MR. CARLTON: THERE ARE CERTAIN THINGS --

22 THE COURT: I AM NOT USING MY LUNCH HOUR TO HEAR
23 HOUSEKEEPING MATTERS.

24 MR. CARLTON: YOUR HONOR, IT SEEMS TO ME THAT IT
25 IS OBVIOUS THAT AT LEAST SOME OF THE DEFENSE LAWYERS HAVE

1 ALREADY CONTACTED AT LEAST ONE OF THE JURORS. I THINK IT
2 IS REASONABLE TO CONCLUDE THAT THEY HAVE CONTACTED AS MANY
3 AS THEY POSSIBLY COULD. WE THINK IT WOULD BE ADVISABLE
4 THAT BETWEEN NOW AND THE DATE OF THE HEARING THERE BE AN
5 ORDER PRECLUDING COUNSEL OR ANY OF THE PARTIES OR
6 REPRESENTATIVES FROM FURTHER MEETINGS WITH THE JURORS AND
7 POSSIBLY EXERTING SOME INFLUENCE, DIRECT OR INDIRECT, ON
8 THEIR ULTIMATE TESTIMONY.

9 ALONG THESE LINES WE WOULD ASK THAT THE COURT
10 CONTINUE IN EFFECT OR REINSTATE ITS ORDER THAT COUNSEL FOR
11 THE PARTIES NOT TALK TO THE PRESS ABOUT THIS MATTER UNTIL
12 THE ISSUE IS RESOLVED, UNTIL THE JURORS HAVE APPEARED FOR
13 THIS HEARING. I THINK THAT IS THE ONLY WAY TO MINIMIZE
14 THE POTENTIAL FOR ANY HARMFUL EXPOSURE TO EXTRINSIC
15 EVIDENCE THAT THEY MIGHT OBTAIN.

16 IN ADDITION, YOUR HONOR, AS MR. NICOLAYSEN HAS
17 INDICATED, IT IS POSSIBLE, PERHAPS LIKELY, THAT SOME OF
18 THESE JURORS HAVE ALREADY GIVEN STATEMENTS TO ONE OR MORE
19 OF THE DEFENSE LAWYERS IN RELATION TO THESE ISSUES. HE
20 WANTS THE OPPORTUNITY TO INTRODUCE SOME OF THESE
21 STATEMENTS AS REBUTTAL EVIDENCE IF THE TESTIMONY OF THE
22 JUROR IS INCONSISTENT WITH ANYTHING THEY HAVE ALREADY
23 SAID.

24 THE GOVERNMENT WOULD RESPECTFULLY REQUEST THAT
25 THE DEFENSE, IN ORDER TO ALLOW THE COURT AND COUNSEL FOR

1 THE GOVERNMENT AN OPPORTUNITY TO ANALYZE FULLY THE
2 CREDIBILITY OF THE JURORS AND WHAT THEY HAVE TO SAY AT
3 THIS HEARING, THAT THE DEFENSE ITEMIZE WHETHER THEY HAVE
4 HAD ANY CONTACT WITH THE JURORS, WHO HAD THE CONTACT, AND
5 WHEN IT WAS AND WHAT INFORMATION THE JURORS PROVIDED AT
6 THAT TIME.

7 MAY I HAVE JUST A MOMENT, YOUR HONOR?

8 THE COURT: WHAT WAS THE LAST QUESTION?

9 MR. CARLTON: THAT THE DEFENSE ITEMIZE FOR THE
10 COURT AND FOR THE GOVERNMENT WHETHER THEY OR ANY OF THEIR
11 REPRESENTATIVES SUBSEQUENT TO THE VERDICT HAVE HAD ANY
12 CONTACTS WITH THE JURORS, WHO IT WAS THAT HAD THE CONTACT
13 AND WHO WAS CONTACTED, AND WHAT WAS THE INFORMATION THAT
14 THE JURORS PROVIDED AT THAT TIME.

15 THE COURT: ALL RIGHT.

16 MR. MEDVENE: YOUR HONOR --

17 MR. MEDRANO: JUST A MOMENT, COUNSEL.

18 (PAUSE.)

19 MR. CARLTON: JUST TO CLARIFY, WILL THIS BE AN
20 IN CAMERA HEARING?

21 THE COURT: I AM NOT SURE YET. THESE CASES TEND
22 TO SUGGEST IT SHOULD BE IN CAMERA TO PROTECT THE JURY
23 AGAINST A CIRCUS ATMOSPHERE AND AGAINST HARASSMENT AND
24 CROSS-EXAMINATION AND THAT SORT OF THING. THEY HAVE BEEN
25 THROUGH ENOUGH ALREADY.

1 MR. CARLTON: HOW SHOULD THE JURORS BE CONTACTED
2 TO COME INTO THE HEARING?

3 THE COURT: THAT IS SOMETHING WE ARE GOING TO
4 HAVE TO WORK OUT. I AM NOT SURE.

5 MR. CARLTON: IS IT ACCURATE THAT ALL OTHER
6 MOTIONS THAT WERE PENDING ARE TEMPORARILY OFF CALENDAR
7 UNTIL THIS IS RESOLVED?

8 THE COURT: WELL, THESE ARE GOING TO BE RESOLVED
9 FIRST. THE OTHER MOTIONS WILL BE RESCHEDULED.

10 I SUPPOSE WE CAN HAVE THE JURY DEPARTMENT
11 CONTACT THESE PEOPLE AND ASK THEM TO COME IN.

12 MR. CARLTON: THANK YOU, YOUR HONOR.

13 MR. STOLAR: JUST IN TERMS OF TIME, I THINK THE
14 COURT IS AWARE THAT MR. BURNS AND MR. AGUILA AND I ARE IN
15 TRIAL WITH JUDGE RAE TUESDAY THROUGH FRIDAYS.

16 THE COURT: I UNDERSTAND.

17 MR. STOLAR: MONDAYS WOULD BE AVAILABLE.

18 THE COURT: THAT IS WHAT I AM THINKING ABOUT,
19 MONDAY AFTERNOON PERHAPS.

20 MR. MEDVENE: I HAVE LESS THAN TWO MINUTES, YOUR
21 HONOR, FOR FOUR QUICK POINTS. ON THE PESO EXCHANGE, WHEN
22 YOU ARE THINKING ABOUT IT, IT WOULD BE UNFORTUNATE IF THE
23 CONVICTION WAS ON AN ARGUMENT THAT THE GOVERNMENT NEVER
24 RAISED. THEY NEVER ARGUED SHAM TRANSACTION. IF THE JURY
25 THOUGHT SHAM TRANSACTION MEANT THAT THE SALE WAS FOR \$10

1 INSTEAD OF \$300,000, THE SYSTEM OUGHTN'T TO WORK THAT WAY.
2 YOUR HONOR OUGHT TO HAVE INFORMATION ABOUT WHAT DID THEY
3 CONSIDER, DID THEY CONSIDER IT SHAM, IF THEY THOUGHT IT
4 WAS \$10. THIS IS AN ARGUMENT THAT THE GOVERNMENT NEVER
5 MADE.

6 SECONDLY, ON THE STRAINED RELATIONS BETWEEN THE
7 PARTIES, WE JUST CITE YOU AGAIN TO THE THORNBURGH ARTICLE.

8 THIRDLY, ON THE GOVERNMENT'S REQUEST ON WHATEVER
9 CONTACT HAS BEEN MADE WITH THE JURORS, IF THE GOVERNMENT
10 HAS NOT DONE AN INVESTIGATION, THEY OUGHT NOT TO BE ABLE
11 TO PIGGY-BACK OFF THE DEFENSE INVESTIGATION. WHAT THEY
12 ARE ASKING FOR APPEARS TO BE WORK PRODUCT.

13 TWO MORE POINTS, YOUR HONOR. WITH RESPECT TO
14 THE THIRD PARTY CONTACTS, MR. NICOLAYSEN HIT ONE AND
15 RAISED IT TO YOU. THERE IS ONE OTHER IN PARTICULAR THAT
16 THE MARSHAL NAMED CLAY, ACCORDING TO MR. PARRIS, TOLD
17 JURORS HE SHOULDN'T SERVE ON A JURY BECAUSE HE WOULD ONLY
18 BE ABLE TO VOTE ONE WAY. WE THINK IF THAT WERE SAID --
19 BECAUSE MR. PARRIS SAID IT WAS SAID -- IN LIGHT OF HAVING
20 LUNCH TOGETHER AND BEING IN THE JURY ROOM AND SEEING
21 CHARTS UP THERE AND INGRATIATING HIMSELF INTO DISCUSSIONS,
22 ET CETERA, THAT IS SOMETHING THAT YOUR HONOR OUGHT TO HAVE
23 IN FRONT OF HIM IN DETERMINING WHETHER THAT COULD HAVE
24 AFFECTED THE VERDICT.

25 WE RESPECTFULLY SUGGEST YOU ASK QUESTIONS ON

1 THIRD PARTY CONTACTS, AND, IN PARTICULAR, IN ADDITION TO
2 MR. NICOLAYSEN'S QUESTION, THE QUESTION ABOUT HE COULD
3 ONLY VOTE ONE WAY.

4 LASTLY, YOUR HONOR, WHEN YOU SAID THE MOTIONS
5 WOULD BE OFF UNTIL AFTER THIS IS OVER, WOULD YOU ALSO
6 INCLUDE THE SENTENCING? I ASSUME --

7 THE COURT: YES. OF COURSE THERE COULD BE NO
8 SENTENCING UNTIL THE VERDICT IS FINALIZED.

9 MR. MEDVENE: I UNDERSTAND. COULD I GO QUICKLY
10 TO MY FIVE POINTS THAT I HAVE?

11 THE COURT: NO.

12 MR. MEDVENE: THANK YOU VERY MUCH, SIR.

13 THE COURT: ALL RIGHT. FIRST WITH RESPECT TO
14 THESE ADDITIONAL AREAS OF INQUIRY, LET ME SAY THAT YOU CAN
15 COUNT ON THE ONES I HAVE MENTIONED HERE TODAY, AND I WILL
16 CONSIDER EACH OF THE OTHERS THAT HAVE BEEN SUGGESTED.

17 FIRST, I THINK IT IS A VERY GOOD IDEA, AND THE
18 COURT IS GOING TO ORDER, THAT THERE BE NO CONTACT WITH ANY
19 MEMBERS OF THE JURY FROM THIS POINT FORWARD BY ANY
20 COUNSEL, GOVERNMENT OR DEFENSE OR ANY MEMBERS OF THEIR
21 STAFF, EITHER DIRECTLY OR INDIRECTLY.

22 SECONDLY, I BELIEVE THAT IT IS APPROPRIATE UNDER
23 THE CIRCUMSTANCES, SINCE I DO NOT NOW HAVE CONTROL OVER
24 THESE JURORS, AND I THINK TO ENSURE THE INTEGRITY OF THE
25 PROCEDURE THAT WE ARE GOING TO FOLLOW, THAT COUNSEL OUGHT

1 TO BE ORDERED NOT TO DISCUSS WITH THE PRESS ANY MATTERS
2 RELATING TO THE ISSUES THAT HAVE BEEN RAISED IN THIS CASE.
3 I DON'T WANT THESE JURORS TO BE READING THINGS IN THE
4 PRESS THAT MIGHT EITHER CONTAMINATE OR INFLUENCE THEM. I
5 WANT THEM TO THE EXTENT POSSIBLE BE ABLE TO COME IN
6 WITHOUT THAT TYPE OF INFLUENCE. SO I AM ORDERING ALL
7 COUNSEL AND ALL MEMBERS OF THEIR STAFFS, ANYONE CONNECTED
8 WITH THEM, NOT TO DISCUSS THESE MATTERS WITH MEMBERS OF
9 THE PRESS.

10 NOW, WITH RESPECT, MR. BURNS, TO THIS MOTION TO
11 RECUSE, THIS LAW THAT I READ TO YOU SUGGESTS THAT ONE OF
12 THE KEY FACTORS IN DECIDING THIS MOTION IS THAT THE JUDGE
13 IS FAMILIAR WITH THE EVIDENCE THAT WAS PRESENTED AT THE
14 TRIAL. THERE IS NO OTHER JUDGE THAT IS FAMILIAR WITH THE
15 EVIDENCE THAT WAS PRESENTED HERE AT THE TRIAL. THERE IS
16 NO WAY THAT ANY OTHER JUDGE COULD INTELLIGENTLY HANDLE
17 THIS WITHOUT HAVING SEEN AND HEARD ALL THE WITNESSES WHO
18 HAVE TESTIFIED IN THIS CASE AND WHO HAS HEARD THE LEGAL
19 ARGUMENTS THAT HAVE BEEN MADE. EVEN THE READING OF THE
20 FULL TRIAL TRANSCRIPT WOULD NOT, IN MY VIEW, BE SUFFICIENT
21 FOR ANY OTHER JUDGE TO RULE ON THIS MOTION.

22 THE FACT THAT THE COURT MADE AN EVIDENTIARY
23 RULING DURING THE COURSE OF THE TRIAL ON THESE OTHER
24 MATTERS WOULD IN NO WAY AFFECT THE COURT'S ABILITY TO RULE
25 ON WHETHER OR NOT YOUR CLIENT HAS BEEN PREJUDICED IN THE

1 WAY THAT HAS BEEN SUGGESTED IN THIS MOTION. SO THAT
2 MOTION IS DENIED.

3 I WOULD LIKE TO PROCEED WITH THIS, IF IT IS NOT
4 TOO SOON, NEXT MONDAY AFTERNOON IF WE HAVE THE TIME
5 AVAILABLE.

6 MR. MEDRANO: THAT DATE IS DIFFICULT FOR HALF OF
7 THE PROSECUTION TEAM. WOULD IT BE POSSIBLE TO GO TO ANY
8 DATE PAST THE 24TH, YOUR HONOR? WE WOULD RESPECTFULLY
9 REQUEST THAT, YOUR HONOR. THIS IS PREDICATED ON
10 ARRANGEMENTS MADE LITERALLY A MONTH OR A MONTH AND A HALF
11 OR TWO MONTHS AGO, YOUR HONOR, SO IT WOULD BE DIFFICULT TO
12 CHANGE IT. THE 29TH IF THAT IS A CONVENIENT DATE FOR
13 DEFENSE COUNSEL AND YOUR HONOR.

14 THE COURT: IS THAT AN AGREEABLE DATE WITH
15 EVERYONE?

16 MR. STOLAR: YES. IN FACT, THE WEEK OF THE 29TH
17 AND THE WEEK OF NOVEMBER THE 5TH OUR TRIAL IS DOWN. JUDGE
18 RAE WILL BE OUT, AND WE HAVE A TWO-WEEK BREAK IN THE
19 TRIAL.

20 THE COURT: THE WEEK OF THE 29TH?

21 MR. STOLAR: YES.

22 THE COURT: AND THE WEEK OF THE 5TH?

23 MR. STOLAR: YES. WE ARE AVAILABLE, ALTHOUGH I
24 SORT OF HAD PLANS FOR THAT TIME. IF YOU WANT TO RECESS
25 YOUR TRIAL FOR A DAY, WE COULD RUN IT ON A MONDAY AND

1 TUESDAY AND SEE IF WE CAN GET THROUGH ALL THE JURORS.

2 MS. KELLY: YOUR HONOR, IF YOU ARE CONTEMPLATING
3 TWO DAYS, I HAVE OTHER MATTERS ON TUESDAY.

4 THE COURT: WHAT DATE?

5 MS. KELLY: THE WEEK OF THE 5TH, YOUR HONOR, IF
6 YOU ARE CONSIDERING THAT THE HEARING IS GOING TO RUN OVER
7 TWO DAYS. IF YOU ARE ANTICIPATING THAT THE HEARING WOULD
8 TAKE MORE THAN A DAY, I WOULD REQUEST NOVEMBER 5TH.

9 THE COURT: NOVEMBER 5TH? IS THAT THE DAY YOU
10 ARE REQUESTING, NOT THE DATE YOU ARE NOT AVAILABLE?

11 MS. KELLY: YES, YOUR HONOR.

12 THE COURT: DO WE HAVE A LOT OF THINGS PRESENTLY
13 SET ON THAT DATE?

14 (CONFERENCE BETWEEN THE COURT AND THE CLERK.)

15 THE COURT: THE HEARING WILL COMMENCE ON
16 NOVEMBER THE 5TH AT 10:00 A.M. IF IT IS NECESSARY, WHICH
17 I HOPE IT IS NOT, WE WILL GO INTO THE NEXT DAY.

18 A VOICE: EXCUSE ME, JUDGE. COULD I ASK A
19 QUESTION ON BEHALF OF THE PRESS?

20 THE COURT: NO, SIR, YOU CANNOT.

21 THAT WILL BE AT 10:00 O'CLOCK.

22 MR. MEDRANO: MAY I INQUIRE OF THE COURT WHAT
23 YOUR INCLINATION OR DECISION IS ON OUR REQUEST FOR
24 ESSENTIALLY NOTES AND INTERVIEWS OF THE JURORS. YOUR
25 HONOR, THAT WAS UNETHICAL TO DO THAT, AS CITED FOR YOU IN

1 OUR OPPOSITION PAPERS. THAT IS THE REASON WE DID NOT
2 EMBARK UPON THAT DISINGENUOUS PROGRAM.

3 WE THINK THAT IF IT IS UNETHICAL TO DO IT AND IN
4 VIOLATION OF THE CODE OF ETHICS, IT IS NOT WORK PRODUCT,
5 AND IN FAIRNESS, NOT SO MUCH FOR US, BUT FOR YOURSELF SO
6 THAT YOU WILL HAVE THE WHOLE BIG PICTURE THAT ANY
7 INTERVIEW NOTES, STATEMENTS, OR WHATEVER OF ANY JUROR
8 INTERVIEWED BY ANY DEFENSE LAWYER OR INVESTIGATOR IN THIS
9 CASE SHOULD BE DISCLOSED AT A MINIMUM TO EVERYBODY, YOUR
10 HONOR, BUT CERTAINLY AT LEAST FOR YOURSELF IN CAMERA SO
11 THAT YOU CAN PERUSE THOSE MATTERS. WE WOULD ASK YOU TO DO
12 THAT, YOUR HONOR.

13 THE COURT: THAT IS DENIED.

14 MR. MEDRANO: THANK YOU, YOUR HONOR.

15 (PROCEEDINGS CONCLUDED.)

16 - - -

17 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
18 TRANSCRIPT OF THE PROCEEDINGS HAD ON THE RECORD
19 IN THE ABOVE-ENTITLED MATTER.

20
21 Verma B. Thomas

22 OFFICIAL REPORTER

10/18/90

DATE