

UNITED 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
)
) RUBEN ZUNO-ARCE, ET AL.,)
)
) DEFENDANTS.)
)

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, MARCH 26, 1990

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FOR DEFENDANT BERNABE-RAMIREZ:

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DOLORES MARTIN

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LOS ANGELES, CALIFORNIA, MONDAY, MARCH 26, 1990, 10:00 A.M.

1 THE COURT: NOW, WE HAVE A MOTION BY DEFENDANT
2 ZUNO FOR BILL OF PARTICULARS.

3 YOUR CLIENT IS BERNABE-RAMIREZ?

4 MS. KELLY: YES, YOUR HONOR. I DID JOIN IN THAT
5 MOTION.

6 THE COURT: HE HAS A MOTION, BUT IT WASN'T
7 SCHEDULED FOR HEARING AT THIS TIME.

8 MS. KELLY: THAT'S CORRECT. AS A MATTER OF
9 CAUTION I DID JOIN IN DEFENDANT'S ZUNO-ARCE'S MOTION.

10 THE COURT: ALL RIGHT. THE COURT HAS REVIEWED
11 THE REQUEST FOR BILL OF PARTICULARS AND THE OPPOSITION
12 THAT HAS BEEN FILED AND SEES IT THIS WAY.

13 WITH RESPECT TO THE REQUEST NO. 1 WHERE THE
14 DEFENDANT REQUESTS CLARIFICATION ON WHETHER HE IS INCLUDED
15 IN THE PHRASE "OTHERS" ALLEGED TO HAVE MURDERED WALKER AND
16 RADELAT, THIS DEFENDANT IS NOT CHARGED WITH THIS OFFENSE
17 AND IS NOT ENTITLED TO THIS INFORMATION ON THAT BASIS.
18 NOR MUST THE GOVERNMENT PROVIDE THIS INFORMATION IF IT
19 RELATES TO ZUNO'S PARTICIPATION IN THE ENTERPRISE, WHICH
20 WILL BE DISCUSSED IN REQUESTS 7 AND 8 IN JUST A MOMENT.

21 BUT REQUEST NO. 2, THE REQUEST CLARIFICATION ON
22 WHETHER HE IS INCLUDED IN THE PHRASE "OTHERS" ALLEGED TO
23 HAVE MURDERED ZAVALA, THE SAME ANALYSIS APPLIES TO THIS
24 REQUEST AS DID TO REQUEST NO. 1. THAT WOULD BE DENIED.

25 REQUEST NO. 3, DEFENDANT REQUESTS PARTICULAR

1 FACTS WHICH THE GOVERNMENT MAY INTRODUCE TO ESTABLISH THAT
2 ZUNO ENGAGED IN THE ALLEGED RACKETEERING ACTIVITY OF
3 CULTIVATING AND DISTRIBUTING MARIJUANA OR COCAINE. FIRST,
4 THE GOVERNMENT NEED NOT DEMONSTRATE THAT ZUNO ENGAGED IN
5 RACKETEERING ACTIVITIES AT ALL. IT NEED ONLY INDICATE
6 THAT HE HAS COMMITTED ACTS TO MAINTAIN HIS POSITION IN AN
7 ENTERPRISE ENGAGED IN RACKETEERING ACTIVITY.

8 THE INDICTMENT DOES NOT NEED TO REVEAL ALL THE
9 RACKETEERING ACTIVITY IN WHICH THE ENTERPRISE ENGAGED.
10 THE LAW IS THAT THE GOVERNMENT NEED NOT REVEAL ALL OVERT
11 ACTS OF THE CONSPIRACY. THAT IS FOUND IN THE GIESS AND DI
12 CESARE CASES.

13 THE INDICTMENT INDICATES NUMEROUS ACTIVITIES IN
14 WHICH THE ENTERPRISE ENGAGED. A GREAT DEAL OF DISCOVERY
15 HAS ALSO BEEN PROVIDED IN THIS REGARD. ZUNO IS ALLEGED TO
16 HAVE BEEN A MEMBER OF THIS ENTERPRISE.

17 THE COURT BELIEVES THAT THIS APPRISES THE
18 DEFENDANT OF THE GOVERNMENT'S THEORY OF THE CASE REGARDING
19 THE COMMISSION OF RACKETEERING ACTIVITY BY THE ENTERPRISE,
20 AND HE IS NOT ENTITLED TO ANY MORE EVIDENTIARY
21 INFORMATION.

22 REQUEST NO. 4, THE DEFENDANT REQUESTS
23 CLARIFICATION OF WHETHER THE GOVERNMENT INTENDS TO
24 INTRODUCE EVIDENCE THAT ZUNO WAS ENGAGED IN OTHER
25 RACKETEERING ACTIVITIES BEYOND THE SIX ACTS OF

1 RACKETEERING LISTED IN THE INDICTMENT. THAT IS COVERED
2 BY MY STATEMENT REGARDING THE PRIOR REQUEST. THAT WOULD
3 BE DENIED.

4 REQUEST 5 IS ALSO TO BE DENIED. HERE THE
5 DEFENDANT REQUESTS CLARIFICATION OF WHETHER DEFENDANT IS
6 AMONG THE OTHERS REFERRED TO IN THE INDICTMENT IN VARIOUS
7 PLACES. ESSENTIALLY ZUNO SEEKS TO DISCOVER WHETHER HE WAS
8 INVOLVED OR WAS ALLEGED TO HAVE BEEN INVOLVED IN SPECIFIC
9 ACTS ALLEGED IN THE INDICTMENT REGARDING THE CAMARENA
10 MURDER AND RACKETEERING ACTIVITY.

11 DEFENDANT IS NOT ENTITLED TO DISCOVER THE
12 GOVERNMENT'S EVIDENCE BY WAY OF A BILL OF PARTICULARS. IT
13 SHOULD BE NOTED THAT THE GOVERNMENT STATED THAT IT DOES
14 NOT INTEND TO OFFER EVIDENCE AS TO ANY OF THESE
15 ALLEGATIONS EXCEPT THAT HE PARTICIPATED IN THE KIDNAPPING
16 OF CAMARENA AND THAT ZUNO POSSESSED CERTAIN QUANTITIES OF
17 MARIJUANA MENTIONED IN PARAGRAPH 5, PAGE 15, OF THE FIFTH
18 SUPERSEDING INDICTMENT.

19 NOW, WITH RESPECT TO THESE REQUESTS 6 AND 9, THE
20 DEFENDANT REQUESTS CLARIFICATION OF WHETHER THE GOVERNMENT
21 SEEKS TO INTRODUCE EVIDENCE THAT ZUNO AIDED AND ABETTED IN
22 THE KIDNAP AND/OR INTERROGATION AND/OR MURDER OF CAMARENA,
23 OR SOME COMBINATION OF THESE, AND THE THEORIES REGARDING
24 THESE ACTS.

25 COUNT 4 OF THE INDICTMENT STATES THAT ZUNO IS

1 CHARGED WITH PARTICIPATING IN THE KIDNAPPING AND MURDER OF
2 CAMARENA. COUNT 7 CHARGES THAT HE PARTICIPATED IN THE
3 ABDUCTION AND HOLDING FOR THE PURPOSE OF INTERROGATING
4 CAMARENA. THESE CHARGES APPEAR TO BE FAIRLY CLEAR. SO
5 THE COURT IS NOT SURE WHAT THE DEFENDANT'S REQUEST IS IN
6 THIS REGARD, EXCEPT IF IT IS FOR EVIDENCE, THEN HE IS NOT
7 ENTITLED TO EVIDENCE OF THESE ALLEGATIONS.

8 WITH REGARD TO THE GOVERNMENT'S THEORY, THE
9 COURT HAS PREVIOUSLY HELD WITH RESPECT TO ANOTHER
10 DEFENDANT THAT THE GOVERNMENT SHOULD SPECIFY WHETHER
11 MR. ZUNO IS CHARGED AS A PRINCIPAL OR AN AIDER AND ABETTOR
12 IN THESE ACTS. THIS WAS THE RULING THE COURT MADE WITH
13 RESPECT TO VASQUEZ-VELASCO'S SIMILAR REQUEST.

14 SO IT APPEARS TO THE COURT THAT THE GOVERNMENT
15 SHOULD INDICATE WHETHER THEY WILL SEEK TO ESTABLISH
16 WHETHER ZUNO WAS A PRINCIPAL OR AN AIDER AND ABETTOR WITH
17 REGARD TO COUNTS 4 AND 7.

18 MS. KELLY: YOUR HONOR, I JOIN IN THAT MOTION AS
19 IT APPLIES TO DEFENDANT BERNABE-RAMIREZ AS WELL.

20 THE COURT: HE JOINS IN THAT MOTION, ALSO?

21 MS. KELLY: YES.

22 THE COURT: WELL, IT WOULD APPLY TO HIM, ALSO.

23 NOW, REQUESTS 7 AND 8 THE COURT BELIEVES SHOULD
24 BE DENIED. THE DEFENDANT REQUESTS THE NATURE OF ZUNO'S
25 INVOLVEMENT WITH THE GUADALAJARA NARCOTICS CARTEL, THE

1 ENTERPRISE, AND WHEN ZUNO JOINED THE ENTERPRISE.

2 THE GOVERNMENT ATTEMPTS TO ARGUE THAT THEY DO
3 NOT EVEN NEED TO PROVE THAT ZUNO WAS A MEMBER OF THE
4 ENTERPRISE. I AM NOT SURE THEY MEAN THAT. I THINK THIS
5 IS NOT CORRECT.

6 ZUNO IS CHARGED WITH THE CONSPIRACY TO MURDER
7 AND THE MURDER OF CAMARENA TO MAINTAIN OR INCREASE HIS
8 POSITION IN AN ENTERPRISE ENGAGED IN RACKETEERING
9 ACTIVITY, NAMELY, THE GUADALAJARA NARCOTICS CARTEL, UNDER
10 SECTION 1959.

11 WHILE ZUNO IS NOT ALLEGED NECESSARILY TO HAVE
12 BEEN ENGAGED IN RACKETEERING ACTIVITY, HE IS ALLEGED TO
13 HAVE BEEN A MEMBER OF AN ENTERPRISE ENGAGED IN
14 RACKETEERING ACTIVITY. THE GENERAL ALLEGATIONS CLEARLY
15 ALLEGE THAT AT ALL TIMES MENTIONED IN THE INDICTMENT,
16 MR. ZUNO WAS A MEMBER OF THE CARTEL.

17 NEVERTHELESS, HE IS NOT ENTITLED TO DISCOVER HIS
18 ALLEGED ROLE IN THE ENTERPRISE, NOR THE EVIDENCE WHICH THE
19 GOVERNMENT WOULD USE TO ESTABLISH THAT ROLE. IN A
20 CONSPIRACY THE GOVERNMENT NEED NOT PROVIDE THE DEFENDANT
21 WITH ALL OVERT ACTS THAT MIGHT BE PROVEN AT TRIAL. NOR
22 MUST THE GOVERNMENT REVEAL THE ESSENTIAL FACTS REGARDING
23 THE EXISTENCE AND FORMATION OF THE CONSPIRACY. THEREFORE,
24 THE GOVERNMENT NEED NOT REVEAL THE OVERT ACTS TAKEN BY
25 ZUNO, IF ANY, IN FURTHERANCE OF THE ENTERPRISE BEYOND THE

1 ALLEGED OVERT ACT OF MURDERING CAMARENA -- ALLEGED.

2 REQUEST NO. 10 THE COURT BELIEVES SHOULD BE
3 DENIED. THIS REQUESTS SPECIFIC FACTS REGARDING HIS
4 INVOLVEMENT IN THE CONSPIRACY TO MURDER CAMARENA,
5 INCLUDING THE PRECISE DATES, TIME, PLACE, AND PERSONS
6 PRESENT AT THE TWO NAMED MEETINGS AT WHICH THESE ACTS WERE
7 DISCUSSED, AND ANY OTHER MEETINGS WHICH OCCURRED.

8 THE INDICTMENT GIVES THE APPROXIMATE TIME OF THE
9 TWO MEETINGS -- OCTOBER 1984 AND THE FIRST WEEK OF
10 FEBRUARY 1985 AND THE LOCATION OF THESE MEETINGS.

11 I DO NOT BELIEVE THAT THE DEFENDANT IS ENTITLED
12 TO MORE THAN THIS. THIS SEEMS ESPECIALLY SO SINCE A
13 DEFENDANT IS NOT ENTITLED TO KNOW ALL THE OVERT ACTS TAKEN
14 IN FURTHERANCE OF A CONSPIRACY, NOR IS A DEFENDANT
15 ENTITLED TO THE NAMES OF UNKNOWN CO-CONSPIRATORS. THIS IS
16 THE DI CESARE CASE AND THE GIESS CASE -- AND HE IS NOT
17 ENTITLED TO THE GOVERNMENT WITNESS LIST.

18 IN REQUEST NO. 11 THE DEFENDANT REQUESTS THE
19 NAMES OF ALL CO-CONSPIRATORS WHO WOULD IMPLICATE ZUNO IN
20 THE ALLEGED CONSPIRACY. DEFENDANT IS NOT ENTITLED TO THE
21 NAMES OF CO-CONSPIRATORS OR TO A WITNESS LIST. DI CESARE
22 SAYS THAT HE IS NOT ENTITLED TO KNOW THE NAMES OF UNKNOWN
23 CONSPIRATORS. HE IS NOT ENTITLED TO A GOVERNMENT WITNESS
24 LIST THROUGH A BILL OF PARTICULARS. THAT IS THE RODELA
25 CASE. SO ON THAT AUTHORITY THE COURT WOULD DENY THAT

1 REQUEST.

2 IN SUPPLEMENTAL REQUEST NO. 1 THE DEFENDANT
3 REQUESTS CLARIFICATION OF WHETHER HE IS ONE OF THE OTHERS
4 WHO SHOT A CONFIDENTIAL INFORMANT AND MACHINE GUNNED A DEA
5 AGENT'S AUTOMOBILE. THE GOVERNMENT NEED NOT REVEAL ALL
6 ALLEGED OVERT ACTS OF ZUNO THAT MAY INDICATE THAT HE WAS A
7 MEMBER OF THE ALLEGED ENTERPRISE. THE COURT WOULD DENY
8 THAT REQUEST.

9 AND SUPPLEMENTAL REQUEST NO. 2, THE DEFENDANT
10 REQUESTS THE DATE, TIME, AND PLACE OF THE OCTOBER 1984
11 MEETING AT THE BARBA-HERNANDEZ RESIDENCE AT WHICH ZUNO WAS
12 ALLEGEDLY PRESENT. THAT, I BELIEVE, IS COVERED BY WHAT I
13 SAID REGARDING REQUEST NO. 10. THAT WOULD BE DENIED.
14 THAT IS THE WAY THE COURT VIEWS THESE.

15 DO YOU WISH TO BE HEARD?

16 MR. MEDVENE: YES, YOUR HONOR.

17 THE COURT: REGARDING WHICH ONE?

18 MR. MEDVENE: WITH REGARD TO SEVERAL OF THE
19 REQUESTS, YOUR HONOR. AS YOU KNOW, THE PURPOSE OF THE
20 BILL OF PARTICULARS IS TO ENABLE THE DEFENDANT TO PREPARE
21 HIS DEFENSE AND AVOID SURPRISE AT TRIAL, AND WHAT WE ARE
22 SEEKING, YOUR HONOR, IS BASICALLY THE THEORY OF THE
23 GOVERNMENT'S CASE IN REGARD TO PARTICULAR ASPECTS THAT WE
24 WILL POINT OUT. IT IS NOT AT ALL AN ATTEMPT TO GET THE
25 GOVERNMENT'S EVIDENCE.

1 AS YOUR HONOR KNOWS, THERE ARE FOUR MURDERS
2 CHARGED. WE KNOW THAT MR. ZUNO IS CHARGED WITH THE
3 CAMARENA SITUATION. WE DON'T BELIEVE THAT THE GOVERNMENT
4 HAS CHARGED MR. ZUNO WITH ANYTHING HAVING TO DO WITH
5 ZAVALA, RADELAT OR WALKER, BUT WE'D LIKE THAT CONFIRMED SO
6 WE KNOW WHAT WE HAVE TO MEET. AND IT SEEMS ONLY FAIR, TO
7 AVOID SURPRISE, THAT THE GOVERNMENT BE PINNED DOWN SO THAT
8 ZUNO KNOWS WHAT HE HAS TO PREPARE AGAINST.

9 I MIGHT NOTE, YOUR HONOR, IN THIS REGARD THAT
10 COUNT 1 AND COUNT 2 AND COUNT 5 DEAL WITH THESE THREE
11 OTHER INDIVIDUALS, AND MR. ZUNO IS NOT NAMED, BUT IT DOES
12 SAY DEFENDANTS A, B, C, AND OTHERS. NOW, WE JUST WANT TO
13 MAKE SURE THAT THE GOVERNMENT IS NOT GOING TO AT TRIAL SAY
14 THAT HE IS ONE OF THE OTHERS, AND WE FEEL SEVERAL WEEKS
15 BEFORE TRIAL, THEY SHOULD BE MADE TO COMMIT BEFORE YOUR
16 HONOR THAT THEIR THEORY ISN'T THAT ZUNO HAD ANYTHING TO DO
17 WITH MESSRS. WALKER, RADELAT, OR ZAVALA. THAT IS THE
18 FIRST THING, YOUR HONOR.

19 THE COURT: WELL, LET'S FIND OUT IF THAT IS A
20 PROBLEM.

21 IN THESE INSTANCES WHERE YOU HAVE SAID THERE ARE
22 OTHERS, DO YOU INTEND TO OFFER PROOF OF THIS DEFENDANT'S
23 INVOLVEMENT, EVEN THOUGH HE IS NOT ACCUSED OF THE CRIME
24 CHARGED?

25 MR. MEDRANO: MAY I HAVE JUST ONE MOMENT, YOUR

1 HONOR?

2 THE COURT: YES.

3 (DISCUSSION OFF THE RECORD.)

4 MR. CARLTON: YOUR HONOR, AS THE GOVERNMENT
5 STATED IN ITS RESPONSE TO THE DEFENDANT'S MOTION, MR. ZUNO
6 HAS NOT BEEN CHARGED WITH THE RADELAT OR WALKER MURDERS.
7 IT IS NOT THE GOVERNMENT'S INTENTION AT THIS TIME TO
8 INTRODUCE ANY EVIDENCE THAT HE WAS PERSONALLY INVOLVED IN
9 THOSE MURDERS.

10 THE COURT: AS A GENERAL RULE OF EVIDENCE,
11 EVIDENCE OF UNCHARGED CRIMES IS NOT PERMISSIBLE.

12 MR. MEDVENE: WELL, I BELIEVE IT IS NOT CHARGED,
13 YOUR HONOR, BUT THEY HAVE "OTHERS." AND THEY DID MENTION
14 MR. ZAVALA AT THAT TIME. SO THE ONLY THING WE WANT IS A
15 CLARIFICATION, WITH DUE DEFERENCE, THAT HE IS NOT GOING TO
16 BE PUT ON TRIAL, NO EVIDENCE IS GOING TO BE INTRODUCED
17 THAT HE PARTICIPATED IN THESE ACTIVITIES WITH REGARD TO
18 MR. ZAVALA, WALKER, OR RADELAT. WE JUST WANT TO BE SURE.

19 THE COURT: WELL, IF THEY ATTEMPT TO DO THAT,
20 YOU CAN MAKE AN OBJECTION, AND I WILL SUSTAIN IT.

21 MR. MEDVENE: YES, SIR.

22 SECONDARY, YOUR HONOR, AND SIMILAR. AGAIN WE
23 ARE NOT LOOKING FOR THE EVIDENCE, BUT THEY HAVE PLED THAT
24 THERE WAS A SHOOTING OF A DEA INFORMANT AS PART OF THE
25 GUADALAJARA DRUG CARTEL'S ACTIVITIES. THEY HAVE CLAIMED

1 THAT THERE WAS A MACHINE GUNNING OF A CAR AS PART OF THE
2 ACTIVITIES. THEY ARE CLAIMING, I BELIEVE, THAT THERE WAS
3 A KIDNAPPING OF AN AGENT.

4 MR. ZUNO IS NOT CHARGED WITH THESE THINGS, BUT
5 AGAIN IT TALKS ABOUT "OTHERS," AND THE THEORY OF THE
6 GOVERNMENT'S CASE, WITH DUE RESPECT, YOUR HONOR, WE THINK
7 WE ARE ENTITLED TO KNOW WHETHER WE HAVE TO FACE THAT OR
8 NOT. IF WE DON'T HAVE TO FACE IT, THEY SHOULD JUST SAY
9 SO. AND RIGHT NOW THE INDICTMENT IS UNCLEAR ON THAT.

10 THE COURT: WELL, IF YOU ARE TALKING ABOUT THE
11 GOVERNMENT TRYING TO IMPLICATE YOUR CLIENT WITH UNCHARGED
12 CRIMES, THAT CERTAINLY IS NOT GOING TO BE PERMITTED, EVEN
13 IF TRIED, IN THIS COURT BECAUSE THE COURT WOULD NOT PERMIT
14 THAT, AND THE JURY IS INSTRUCTED THAT A DEFENDANT IS NOT
15 ON TRIAL EXCEPT FOR THE THINGS ALLEGED AGAINST HIM IN THE
16 INDICTMENT, AND THEY SHOULD NEVER HEAR THOSE THINGS.

17 I WILL SAY THIS, THAT NO EFFORT SHOULD BE MADE
18 BY THE GOVERNMENT TO IMPLICATE THE DEFENDANT IN ANY OTHER
19 CRIME WITHOUT FIRST SEEKING THE PRIOR APPROVAL OF THE
20 COURT TO DO SO.

21 MS. KELLY: YOUR HONOR, THAT WOULD BE THE RULING
22 ALSO WITH REGARD TO BERNABE-RAMIREZ WITH RESPECT TO THE
23 RADELAT AND WALKER MURDERS?

24 THE COURT: YES.

25 MR. MEDVENE: FOR EXAMPLE, YOUR HONOR, ON PAGE 5

1 OF THE INDICTMENT, ALLEGATION 18, IT SAYS:

2 "ON OR ABOUT SEPTEMBER 30, 1984, A
3 CONFIDENTIAL INFORMANT WORKING FOR THE DEA WAS
4 SHOT IN GUADALAJARA, JALISCO, MEXICO, BY MEMBERS
5 OF THE GUADALAJARA NARCOTICS CARTEL."

6 NOW, IN THE USUAL SITUATION YOU WOULD PERMIT US
7 TO KNOW IF MR. ZUNO WAS INVOLVED IN THAT. THAT WOULD BE A
8 COUNT OF THE INDICTMENT. HERE THEY ALLEGE IT AS PART OF
9 THE GENERAL ALLEGATIONS.

10 WE ARE ENTITLED TO KNOW IS IT THEIR THEORY THAT
11 MR. ZUNO HAD ANY INVOLVEMENT IN THAT. ALL THEY HAVE TO
12 SAY IS YES OR NO SO THAT WE KNOW HOW TO TRY TO DEFEND. WE
13 ARE NOT ASKING FOR ANY EVIDENCE.

14 THE COURT: I DON'T THINK YOU ARE ENTITLED TO
15 KNOW THAT, BUT I HAVE MADE THE COURT'S POSITION VERY CLEAR
16 THAT THAT TYPE OF THING WOULD NOT BE PERMISSIBLE.

17 MR. MEDVENE: ALL RIGHT, SIR.

18 THE NEXT AREA, YOUR HONOR, IS REALLY VITAL TO
19 THE DEFENSE HAVING A FAIR CHANCE TO PREPARE. AND LET ME
20 TELL YOU WHAT IT IS. IT INVOLVES A GUADALAJARA DRUG
21 CARTEL, AND WHAT IS ALLEGED IS THAT THAT CARTEL WAS
22 INVOLVED IN TWO THINGS: ONE, CULTIVATING, IMPORTING, AND
23 DISTRIBUTING MARIJUANA; AND ANOTHER SEPARATE THING OF
24 IMPORTING AND DISTRIBUTING COCAINE.

25 AND IT IS ALLEGED THAT MR. ZUNO WAS A MEMBER OF

1 THE CARTEL WITH NO SPECIFICITY AS TO HOW HE FITS IN, AND,
2 WHILE WE DON'T WANT THE EVIDENCE, IN ANY CASE, YOUR HONOR,
3 WE'D BE ENTITLED TO KNOW IS HE CHARGED WITH HAVING
4 ANYTHING TO DO WITH COCAINE. THEY SHOULD MINIMALLY TELL
5 US THAT. IF HE IS NOT, THEN WE DON'T HAVE TO DEFEND
6 AGAINST THAT. IF HE IS, WE AT LEAST HAVE SOME WAY TO TRY
7 TO DEFEND.

8 IS HE CHARGED WITH CULTIVATION OR IMPORTATION OR
9 DISTRIBUTION OF MARIJUANA, OR ALL THREE? AT LEAST THEY
10 SHOULD TELL US THAT SO WE KNOW HOW TO DEFEND.

11 THE COURT: HE IS NOT CHARGED WITH ANY OF THAT
12 IN THIS INDICTMENT.

13 MR. MEDVENE: I AM SORRY.

14 THE COURT: HE IS CHARGED WITH BEING A MEMBER OF
15 THIS CARTEL.

16 MR. MEDVENE: YES, SIR, BUT --

17 THE COURT: THE CARTEL IS CHARGED WITH A NUMBER
18 OF TRAFFICKING ACTIVITIES.

19 MR. MEDVENE: IN ORDER TO FACE THE CHARGES IN
20 THE EARLIER PHASE OF THIS CASE IN EITHER THIS COURTROOM OR
21 ANOTHER COURTROOM, THE ALLEGATION WAS THAT MR. ZUNO,
22 BECAUSE OF HIS POSITION, HIS RELATIONSHIP WAS SOMEHOW OF
23 AN INTERMEDIARY --

24 THE COURT: I RECALL THAT.

25 MR. MEDVENE: YES, SIR. THEY DON'T CHARGE THAT

1 HERE, AND WE'D LIKE TO KNOW THROUGH YOUR HONOR IS THERE A
2 THEORY THAT HE WAS REALLY A DISTRIBUTOR OF COCAINE OR A
3 DISTRIBUTOR OF MARIJUANA? OR IS IT THAT NO, HE DIDN'T DO
4 THOSE THINGS; OUR THEORY IS THAT HE DID SOMETHING ELSE?
5 BECAUSE IT IS IMPOSSIBLE TO DEFEND UNLESS WE KNOW WHAT
6 THEY ARE CHARGING.

7 THE COURT: ALL RIGHT.

8 WHAT ABOUT THIS, COUNSEL? IS THIS SOMETHING
9 THAT THE DEFENDANT SHOULD KNOW TO PREPARE PROPERLY FOR A
10 DEFENSE? IS HE BEING CHARGED AS AN ACTIVE GROWER,
11 IMPORTER, SMUGGLER OF MARIJUANA OR OTHER NARCOTICS, OR IS
12 HE SIMPLY BEING CHARGED, AS HAS BEEN SAID TO THIS COURT,
13 AS BEING THE LIAISON BETWEEN THE NARCOTICS ORGANIZATION
14 AND THE CORRUPT OFFICIALS IN THE MEXICAN GOVERNMENT?

15 MR. CARLTON: MAY I CONFER JUST A MOMENT, YOUR
16 HONOR?

17 THE COURT: YES.

18 MR. CARLTON: I DON'T KNOW WHETHER THAT
19 REFERENCE WAS MADE TO THIS COURT, THAT HE WAS A LIAISON.
20 I DON'T REMEMBER THAT.

21 THE COURT: I THINK IT HAS BEEN MENTIONED HERE
22 IN CONNECTION WITH EITHER THE HEARINGS WE HAD WITH REGARD
23 TO THE MATERIAL WITNESS PROCEEDINGS OR -- BUT IT HAS BEEN
24 MENTIONED IN COURT.

25 RIGHT?

1 MR. MEDVENE: YES, SIR. YES, SIR.

2 THE COURT: IN OPEN COURT?

3 MR. MEDVENE: YES, SIR, OPEN COURT.

4 MR. CARLTON: WELL, YOUR HONOR, THE GOVERNMENT'S
5 POSITION IS THAT HE IS CHARGED WITH COMMITTING VIOLENT
6 CRIMES IN AID OF RACKETEERING. THERE ARE PRECISE
7 ALLEGATIONS IN THE INDICTMENT AS TO HIS INVOLVEMENT IN
8 THAT.

9 WHAT HE IS SEEKING ARE SPECIFICS CONCERNING THE
10 GOVERNMENT'S EVIDENCE AGAINST HIM. IF HE WANTS TO KNOW
11 THE SPECIFIC EVIDENCE ESSENTIALLY THAT THE GOVERNMENT HAS
12 CONCERNING HIS MEMBERSHIP IN THE CARTEL, WHETHER HE WAS A
13 COCAINE TRAFFICKER OR A MARIJUANA TRAFFICKER ISN'T
14 NECESSARY IN ORDER FOR HIM TO BE APPRISED OF THE THEORY OF
15 THE GOVERNMENT'S CASE. THAT DOESN'T RELATE TO THE VIOLENT
16 CRIMES IN AID OF RACKETEERING. THAT RELATES TO THE
17 MEMBERSHIP IN THE CARTEL.

18 I SUGGEST THAT EVIDENCE CONCERNING THE FACT THAT
19 HE WAS A MEMBER OF THE CARTEL ARE SIMPLY SPECIFICS THAT HE
20 IS NOT ENTITLED TO OBTAIN BY VIRTUE OF A BILL OF
21 PARTICULARS.

22 MR. MEDVENE: WE ARE NOT LOOKING FOR SPECIFICS,
23 JUDGE. JUST THINK, GOD FORBID, IF ONE OF US WAS ON TRIAL,
24 AND YOU DON'T KNOW IF YOU ARE GOING TO BE CHARGED WITH
25 COCAINE OR MARIJUANA OR DOING SOMETHING ELSE. THAT'S ALL

1 WE ARE ASKING. WE ARE NOT ASKING FOR EVIDENCE. WE ARE
2 JUST SAYING IF ANY OF THE EVIDENCE YOU ARE GOING TO PUT IN
3 ABOUT COCAINE, ARE YOU GOING TO TIE THAT TO ZUNO. OR
4 MARIJUANA, ARE YOU GOING TO TIE THAT TO HIM, OR IS YOUR
5 THEORY SOMETHING ELSE? JUST WHAT THEIR THEORY IS.

6 THE COURT: ALL RIGHT. THAT REQUEST IS DENIED,
7 AS INDICATED.

8 ANYTHING ELSE?

9 MR. MEDVENE: NOTHING ELSE.

10 THE COURT: ALL RIGHT.

11 MR. MEDVENE: NOTHING ELSE ON THE BILL OF
12 PARTICULARS.

13 THE COURT: DO YOU WISH TO BE HEARD?

14 MR. CARLTON: NO, YOUR HONOR.

15 MR. MEDVENE: I WOULD ONLY ASK, YOUR HONOR -- WE
16 ARE CERTAINLY NOT GOING TO REARGUE THE RULING. IS THERE
17 ANY WAY THAT THEORY-WISE YOU MIGHT ASK THE GOVERNMENT TO
18 LET US KNOW IF WE ARE TALKING ABOUT MARIJUANA OR COCAINE,
19 OR DEALING OR NOT DEALING? WE HAVE NO IDEA UNDER THE
20 INDICTMENT IF THEY CLAIM HE IS A GROWER, A DEALER, ANY
21 INVOLVEMENT IN COCAINE, ANY INVOLVEMENT IN MARIJUANA. IT
22 WOULDN'T BE DISCLOSING EVIDENCE JUST TO TELL US THEIR
23 THEORY. THAT IS ALL WE ARE TRYING TO GET.

24 THE COURT: THAT IS WHAT WE JUST COVERED,
25 COUNSEL, AND THAT IS DENIED.

1 MR. MEDVENE: YES.

2 THE COURT: NOW, THERE IS ONE REMAINING MOTION
3 HERE -- TWO. LET'S DEAL WITH THE SEVERANCE MOTION. THIS
4 DEFENDANT HAS FILED A MOTION FOR SEVERANCE.

5 HAS THE OTHER DEFENDANT JOINED IN THAT MOTION?
6 YOU FILED YOUR OWN?

7 MS. KELLY: I DID FILE MY OWN, YOUR HONOR.

8 THE COURT: THIS DEFENDANT ZUNO HAS BROUGHT A
9 MOTION TO SEVERE TRIAL OF COUNTS 1, 2, 5, 8, AND 9 FROM
10 COUNTS 3, 4, 6, AND 7 WITH WHICH HE IS CHARGED, ASSERTING
11 THAT THESE COUNTS ARE IMPROPERLY JOINED UNDER RULE 8(B),
12 AND ALTERNATIVELY THAT SEVERANCE OF THESE COUNTS UNDER
13 RULE 14 IS NECESSARY TO AVOID UNDUE OR MANIFEST PREJUDICE
14 TO THE DEFENDANT. I HAVE READ THE MOTION AND THE
15 OPPOSITION, AND IT IS THE COURT'S VIEW THAT THE MOTION FOR
16 SEVERANCE SHOULD BE DENIED FOR THE FOLLOWING REASONS.

17 UNDER RULE 8(B) JOINDER OF DEFENDANTS IS ONLY
18 PROPER IF ALL THE OFFENSES CHARGED IN THE INDICTMENT AROSE
19 OUT OF THE SAME SERIES OF TRANSACTIONS. RULE 8 SHOULD BE
20 CONSTRUED BROADLY IN FAVOR OF INITIAL JOINDER. SO SAYS
21 THE SATTERFIELD CASE.

22 IN CONSIDERING WHETHER DEFENDANTS ARE PROPERLY
23 JOINED, THE TERM TRANSACTIONS HAS A FLEXIBLE MEANING, AND
24 THE EXISTENCE OF A SERIES DEPENDS UPON THE DEGREE TO WHICH
25 THE EVENTS ARE LOGICALLY RELATED. THAT RELATION IS MOST

1 OFTEN ESTABLISHED BY SHOWING THAT THERE IS A LARGE AREA OF
2 OVERLAPPING TRUTH. OTHER LOGICAL RELATIONSHIPS MIGHT ALSO
3 BE SUFFICIENT TO ESTABLISH THAT A GROUP OF OFFENSES
4 CONSTITUTES A SERIES OF ACTS OR TRANSACTIONS. SUCH A
5 LOGICAL RELATIONSHIP MAY BE SHOWN BY A COMMON PLAN,
6 SCHEME, OR CONSPIRACY.

7 COUNTS 3, 4, 6, AND 7 ARE PROPERLY JOINED WITH
8 COUNTS 1, 2, 5, AND 9 UNDER RULE 8(B) BECAUSE THEY ARE
9 LOGICALLY RELATED TO ONE ANOTHER AND BECAUSE THERE IS A
10 LARGE AREA OF OVERLAP BETWEEN THE EVIDENCE WHICH THE
11 GOVERNMENT WILL PRESENT IN CONNECTION WITH COUNTS 1 AND 2
12 AGAINST DEFENDANT VASQUEZ-VELASCO, COUNT 4 AGAINST ZUNO-
13 ARCE, BERNABE-RAMIREZ, AND MATTA-BALLESTEROS, AND COUNT 5
14 AGAINST BERNABE-RAMIREZ.

15 UNDER THESE COUNTS EACH OF THE FOUR DEFENDANTS
16 IS CHARGED WITH VIOLATING 18 U.S.C. SECTION 1959, VIOLENT
17 CRIMES IN AID OF RACKETEERING ACTIVITY, AND IN ORDER TO
18 PROVE ITS CASE ON EACH OF THESE COUNTS, THE GOVERNMENT
19 MUST PROVE THE FOLLOWING AS TO EACH DEFENDANT: THE
20 EXISTENCE OF AN ENTERPRISE -- HERE THE GUADALAJARA
21 NARCOTICS CARTEL -- I MIGHT TELL YOU FROM MY EXPERIENCE IN
22 THE PRIOR CASE THAT THIS TOOK A GREAT DEAL OF THE TIME
23 THAT THIS TRIAL WAS IN PROGRESS.

24 SECOND, THAT THE ENTERPRISE ENGAGED IN
25 RACKETEERING ACTIVITY -- THE SIX INSTANCES OF DRUG

1 TRAFFICKING, FOR EXAMPLE, AS ALLEGED IN THE INDICTMENT.

2 THIRD, THAT THIS ACTIVITY AFFECTED INTERSTATE
3 COMMERCE; THAT THE DEFENDANT COMMITTED A VIOLENT CRIME --
4 THE MURDERS OF WALKER AND RADELAT FOR VASQUEZ AND THE
5 MURDER OF CAMARENA FOR ZUNO-ARCE AND MATTA-BALLESTEROS AND
6 THE MURDERS OF CAMARENA AND ZAVALA FOR BERNABE-RAMIREZ;
7 THAT THE ACTS WERE COMMITTED FOR THE PURPOSE OF INCREASING
8 AND MAINTAINING THE DEFENDANT'S POSITION IN THE NARCOTICS
9 ENTERPRISE. THIS IS A MOTIVE REQUIREMENT.

10 SO THE FIRST THREE ELEMENTS THAT I MENTIONED ARE
11 LIKELY TO BE ESTABLISHED BY IDENTICAL EVIDENCE AGAINST ALL
12 THE DEFENDANTS. THE GOVERNMENT MUST ESTABLISH THE
13 EXISTENCE OF THE CARTEL, THE WAY IT FUNCTIONED, AND THE
14 ACTIVITIES IN WHICH IT ENGAGED AGAINST ALL DEFENDANTS.
15 THEN SIMILAR EVIDENCE WILL BE INVOLVED IN ESTABLISHING
16 THAT THE VARIOUS DEFENDANTS COMMITTED THE VIOLENT ACTS IN
17 FURTHERANCE OF THE ENTERPRISE.

18 THAT IS ELEMENT 5, THAT THE INDICTMENT ALLEGES
19 THAT ALL THE MURDERS WERE ENGAGED IN FOR THE PURPOSE AND
20 INTENT OF WHICH WAS TO RETALIATE AGAINST THE DEA, ITS
21 AGENTS AND INFORMANTS IN MEXICO AND TO LEARN THE NATURE
22 AND EXTENT OF THE DEA'S KNOWLEDGE OF THE MEMBERSHIP AND
23 OPERATIONS OF THE CARTEL. THIS WOULD ALSO INVOLVE
24 OVERLAPPING PROOF.

25 THE GOVERNMENT HAS INDICATED THAT IT WILL

1 INTRODUCE EVIDENCE THAT ALL FOUR MURDERS WERE INTENDED AS
2 RETALIATION AGAINST THE DEA FOR DESTRUCTION OF THE
3 CARTEL'S MARIJUANA FIELDS IN CHIHUAHUA, ZACATECAS, AND
4 BUFALO, MEXICO. THE ONLY NON-OVERLAPPING EVIDENCE IN
5 THESE COUNTS WOULD GO TO THE SPECIFIC EVENTS SURROUNDING
6 EACH OF THESE ALLEGED MURDERS.

7 SO IT IS THE COURT'S VIEW THAT THERE IS A VERY
8 LARGE AREA OF OVERLAP IN THE EVIDENCE WHICH WILL BE
9 PRESENTED IN CONNECTION WITH COUNTS 1, 2, 4, AND 5. I
10 NOTE THAT THIS CIRCUIT HAS TAKEN A PRAGMATIC APPROACH TO
11 PROBLEMS OF JOINDER. IN THE FORD CASE, FOR EXAMPLE, THE
12 CIRCUIT SAID THAT THE COURT MAY GO BEYOND THE FACE OF THE
13 INDICTMENT IN DETERMINING WHETHER JOINDER IS PROPER. I
14 HAVE THE BENEFIT OF HAVING BEEN THROUGH ONE TRIAL
15 INVOLVING SOME OF THESE SAME ISSUES. THE COURT NOTES THAT
16 EVIDENCE OF THE ENTERPRISE AND RACKETEERING ACTIVITY AT
17 THE EARLIER TRIAL TOOK A SUBSTANTIAL TIME IN THAT TRIAL.

18 THE ONLY REMAINING COUNTS WHICH WOULD BE TRIED
19 IN WHICH MR. ZUNO IS NOT NAMED ARE COUNTS 8 AND 9. THE
20 TRIAL OF THESE COUNTS IS NOT LIKELY TO ENTAIL SIGNIFICANT
21 ADDITIONAL EVIDENCE NOT ALREADY ADMITTED AGAINST ZUNO-ARCE
22 ON COUNTS 3, 4, 6, AND 7.

23 SO THE COURT FINDS THAT UNDER RULE 8(B) THIS IS
24 A PROPER JOINDER.

25 THE DEFENDANT HAS A SECOND REASON FOR SEVERANCE,

1 AND THAT IS UNDER RULE 14. HE STATES THAT HE WILL BE
2 UNDULY OR MANIFESTLY PREJUDICED IF THE CASE IS TRIED
3 WITHOUT SEVERANCE.

4 THE DEFENDANT MUST SHOW THAT FAILURE TO SEVERE
5 WOULD BE SO MANIFEST AND PREJUDICIAL THAT THE PREJUDICE
6 OUTWEIGHED THE DOMINANT JUDICIAL CONCERN WITH JUDICIAL
7 ECONOMY. THAT IS IN UNITED STATES VS. CATABRAN.

8 THE PRIMARY CONSIDERATION IS WHETHER THE JURY
9 CAN REASONABLY BE EXPECTED TO COMPARTMENTALIZE THE
10 EVIDENCE APPLICABLE TO EACH COUNT.

11 THE PREJUDICIAL EFFECT OF EVIDENCE RELATING TO
12 THE GUILT OF CO-DEFENDANTS IS GENERALLY HELD TO BE
13 NEUTRALIZED BY CAREFUL INSTRUCTION TO THE JURY. AND
14 JURIES HAVE DEMONSTRATED TO ME OVER AND OVER AGAIN IN THE
15 20 YEARS THAT I HAVE BEEN ON THE BENCH THAT THEY ARE WELL
16 ABLE TO DO THIS. I HAVE NO DOUBT THAT PROPER INSTRUCTION
17 IN THIS CASE WILL ACCOMPLISH THAT PURPOSE.

18 SO I DO NOT BELIEVE THAT SEVERANCE IS
19 APPROPRIATE UNDER RULE 14, EITHER. I WILL GIVE YOU AN
20 OPPORTUNITY TO BE HEARD, BUT I WOULDN'T SPEND A GREAT DEAL
21 OF TIME ON IT, SINCE THERE ARE OTHER MATTERS THAT MAY BE
22 MORE IMPORTANT.

23 MR. DI NICOLA: YOUR HONOR, THE DEFENSE SUBMITS
24 THAT THE COURT HAD SET OUT THE CRITERIA UNDER RULE 8(B),
25 WHICH PROVIDES THE NECESSITY THAT THE GOVERNMENT ALLEGE

1 THAT THE DEFENDANT PARTICIPATED IN THE SAME ACTS OR
2 TRANSACTIONS, AND THE COURT MADE REFERENCE TO THE DECISION
3 IN FORD. FORD WAS PROCEDURALLY SOMEWHAT DIFFERENT BECAUSE
4 THAT WAS A CASE THAT WAS DECIDED AFTER THE CONVICTION, AND
5 THE COURT DECIDED ON A REVIEW OF THE EVIDENCE. BUT FORD
6 DID NOT COUNTENANCE AN ABROGATION OF THE EXPRESS
7 PROVISIONS OF 8(B), WHICH REQUIRED THAT THE ALLEGATIONS
8 SET FORTH THE SAME TRANSACTIONS OR EVENTS.

9 IN THIS CASE, YOUR HONOR, WE WOULD SUBMIT THAT
10 THERE ARE SEPARATE OFFENSES AGAINST SEPARATE VICTIMS AT
11 SEPARATE PLACES AND SEPARATE TIMES, AND THE ONLY THING
12 LINKING THE COUNTS TO THE OTHERS IS THE GUADALAJARA
13 NARCOTICS CARTEL. IT BEGAN, IF YOU REVIEW THE INDICTMENTS
14 AND THE HISTORY, AND THE COURT IS FAMILIAR WITH THEM, WITH
15 THE QUINTERO CARTEL. THEN IT EVOLVED INTO THE QUINTERO-
16 FONSECA CARTEL, AND NOW IT IS THE GUADALAJARA CARTEL.

17 IT IS SUCH A LOOSELY DEFINED ENTITY, AND NOTHING
18 IN THE INDICTMENT WHICH SUGGESTS THAT MR. ZUNO -- OR WHICH
19 INDICATES A PROMINENT ROLE FOR MR. ZUNO-ARCE, OR ANY ROLE,
20 OTHER THAN AS AN AIDER AND ABETTOR. THE PRINCIPALS ARE
21 ALLEGED TO BE QUINTERO, FONSECA, MATTA-BALLESTEROS AND
22 GALLARDO.

23 IT IS SIMPLY SUCH A LOOSE STRUCTURE UNDER WHICH
24 THE DEFENDANT IS BEING LUMPED IN ORDER TO JOIN HIM WITH
25 THE OTHER DEFENDANTS, NOT UNLIKE CHARACTERIZING AN

1 UNDERGROUND CRIMINAL ACTIVITY TO THE MAFIA OR SOMETHING OF
2 THAT SORT AND SAYING THAT DIFFERENT ELEMENTS OF THAT GROUP
3 PARTICIPATING IN DIFFERENT CRIMES AT DIFFERENT TIMES COULD
4 BE LUMPED TOGETHER IN THE SAME --

5 THE COURT: WELL, THIS IS THE SAME ARGUMENT YOU
6 MADE IN YOUR PAPERS. I DON'T WANT TO HEAR THAT OVER
7 AGAIN, COUNSEL.

8 WHAT I SAID TO YOU MEANT THAT THESE CASES STAY
9 TOGETHER.

10 MR. DI NICOLA: YOUR HONOR, WE WOULD SUBMIT WITH
11 RESPECT TO THE OVERLAPPING OF THE EVIDENCE, YOUR HONOR,
12 THAT THERE WILL BE NEED FOR SUBSTANTIAL INDIVIDUALIZED
13 EVIDENCE ON THE UNDERLYING OFFENSES, AND THAT THERE IS
14 SUBSTANTIAL --

15 THE COURT: WELL, I ASSUME THAT THE CONNECTING
16 EVIDENCE THAT CONNECTS THESE DEFENDANTS TO THIS ENTERPRISE
17 WILL DIFFER AND THE CIRCUMSTANCES SURROUNDING THE
18 COMMISSION OF EACH OF THE ALLEGED VIOLENT ACTS MIGHT
19 DIFFER WITH EACH DEFENDANT, BUT THAT DOES NOT CHANGE THE
20 FACT THAT THERE WOULD BE A GREAT DUPLICATION OF EVIDENCE
21 WHICH WOULD BE APPLICABLE TO ALL DEFENDANTS, AND THE CASE
22 IS PROPERLY TRIED TOGETHER.

23 MR. DI NICOLA: THE GOVERNMENT APPEARS TO HAVE
24 CONCEDED IN ITS OPPOSITION TO THE BILL OF PARTICULARS THAT
25 MR. ZUNO-ARCE IS NOT CHARGED IN WALKER, RADELAT, OR ZAVALA

1 AND SEEMS TO INDICATE THAT IT NEED NOT AS A PART OF ITS
2 CASE INTRODUCE EVIDENCE OF DRUG TRAFFICKING.

3 THE COURT: COUNSEL DOES NOT TAKE THE COURT'S
4 ADVICE. YOU CAN ARGUE FOR THE REST OF THE DAY, AND IT IS
5 NOT GOING TO CHANGE MY MIND ON THAT.

6 MR. DI NICOLA: VERY WELL, YOUR HONOR.

7 THE COURT: NOW, THE FINAL MOTION THAT WE HAVE
8 IS A DISCOVERY MOTION IN WHICH THERE ARE A NUMBER OF
9 REQUESTS MADE BY THE DEFENDANT, NOS. 1 THROUGH 14.

10 WHAT I AM PRESENTLY CONSIDERING IS THIS. THE
11 GOVERNMENT'S PROPOSED 48-HOUR RULE OF DISCLOSURE, IN MY
12 VIEW, IS UNWORKABLE AND DOES NOT PROVIDE ENOUGH TIME FOR
13 THESE DEFENDANTS. SO I AM CONSIDERING AT THIS TIME FIXING
14 A DATE BY WHICH ALL GIGLIO MATERIAL MUST BE TURNED OVER,
15 THAT THE IDENTITY OF INFORMANTS WHETHER THEY WILL BE
16 TESTIFYING OR NON-TESTIFYING, WHO WERE PRESENT AT THE
17 MEETING OF OCTOBER 1984 AND THE MEETING IN THE FIRST WEEK
18 OF FEBRUARY 1985 SHOULD BE DISCLOSED.

19 I WOULD DENY ALL OF THE OTHER REQUESTS WITH THE
20 EXCEPTION OF REQUEST NO. 3, WHICH IS THE DEFENDANT'S
21 REQUEST UNDER RULE 16(A)(1)(D) WHERE THE GOVERNMENT HAS
22 ADMITTED THAT THE BOOK OF PHOTOS PRESENTED BEFORE THE
23 GRAND JURY CONTAINS PHOTOGRAPHS OF MOST OF THE PERSONS
24 SUSPECTED OF BEING INVOLVED IN THIS CASE. AND THEY HAVE
25 OBJECTED TO PROVIDING THIS BECAUSE IT WOULD REVEAL THE

1 NATURE AND FOCUS OF THE GOVERNMENT'S INVESTIGATION, AND
2 THE GOVERNMENT HAS DECLINED TO PRODUCE IT.

3 THIS DEFENDANT IS SHOWN IN TWO OF THE PHOTOS.
4 BUT IF THESE ARE PHOTOS THAT WERE SHOWN TO THE DEFENDANT
5 AT A GRAND JURY APPEARANCE AND HE TESTIFIED REGARDING
6 THEM, I SEE NO HARM, AND IT IS PROBABLY APPROPRIATE THAT
7 THESE PHOTOGRAPHS THAT HE SAW AT THAT TIME BE PROVIDED.

8 MR. MEDRANO: MAY I BE HEARD BRIEFLY ON THAT,
9 YOUR HONOR?

10 THE COURT: YES.

11 MR. MEDRANO: YOUR HONOR, THE DIFFICULTY WITH
12 THAT PROPOSITION IS THAT THERE ARE SEVERAL PROBLEMS WITH
13 IT. FIRST, AND I THINK I FLAGGED IT FOR THE COURT IN OUR
14 OPPOSITION, THE GRAND JURY INVESTIGATION FOR THE MURDERS
15 OF THE VARIOUS INDIVIDUALS CONTINUES, YOUR HONOR. CLEARLY
16 IT IS BACK BURNER TO THE EXTENT THAT WE ARE ALL HERE
17 PREPARING FOR A TWO-MONTH TRIAL, BUT IT IS GOING FORWARD
18 AND IT IS CONTINUING.

19 NOW, THE PHOTOGRAPHS THAT MR. MEDVENE REFERENCES
20 ARE PART AND PARCEL OF THE NATURE AND SCOPE AND DEFINITION
21 OF THE TARGETS OF THE PRESENTLY SITTING FEDERAL GRAND JURY
22 IN THE CAMARENA CASE.

23 NOW, MR. MEDVENE TWICE HAS COME BACK HERE TO
24 DEAL WITH THE KASTIGAR ISSUE BECAUSE HE IS QUITE VEHEMENT
25 IN HIS POSITION THAT NOTHING ELICITED OUT OF THAT GRAND

1 JURY TESTIMONY SHALL BE USED IN ANY FORM OR FASHION BY THE
2 GOVERNMENT. HE IS RIGHT, AND WE DON'T DISAGREE WITH THAT.
3 BUT HE CANNOT HAVE IT BOTH WAYS. THOSE PHOTOGRAPHS
4 CONSTITUTE AN IMPORTANT PART OF THIS INVESTIGATION. THEY
5 ARE PHOTOGRAPHS THAT HAVE BEEN ACCUMULATED LITERALLY SINCE
6 AGENT CAMARENA WAS KIDNAPPED IN FEBRUARY 1985.

7 HE HAS STOOD BEFORE YOU, AND WE HAVE AGREED,
8 THAT NONE OF THAT INFORMATION IS COMING OUT OF THIS CASE,
9 AND YET HE NOW WANTS TO ASK US FOR THE PHOTOGRAPHS. I
10 WOULD POINT OUT, YOUR HONOR, THAT THEY HAVE NOT SHOWN TO
11 YOU, CERTAINLY NOT TO US, ANY VIABLE, RELEVANT REASON WHY
12 THEY NEED THOSE PHOTOGRAPHS. THE TWO PHOTOGRAPHS HE HAS
13 GOTTEN, YOUR HONOR, ARE PHOTOGRAPHS OF THE TWO PEOPLE HE
14 WAS ABLE TO IDENTIFY. HE HAS GOTTEN COPIES OF THOSE, YOUR
15 HONOR, BUT THE REST OF THOSE PHOTOGRAPHS SIMPLY ARE
16 IRRELEVANT, AND IT WOULD HAMPER THIS CONTINUING
17 INVESTIGATION.

18 THE COURT: WHY DO YOU NEED THESE OTHER THAN
19 JUST GENERAL CURIOSITY? HOW ARE THESE HELPFUL TO YOU?
20 WHY ARE THEY MATERIAL?

21 MR. MEDVENE: WITH DUE DEFERENCE, YOUR HONOR, I
22 WILL ANSWER THAT. LET ME FIRST SAY THAT WE DON'T THINK WE
23 SHOULD EVEN HAVE TO ANSWER THAT. UNDER RULE 16 THE
24 DEFENDANT IS ENTITLED TO HIS STATEMENTS. NOW, IF WHAT THE
25 GOVERNMENT DOES IS SHOW HIM DOCUMENTS AND ASK HIM TO

1 COMMENT UPON THEM OR PHOTOGRAPHS, THAT IS PART OF HIS
2 TESTIMONY.

3 SO WE DON'T HAVE TO GET TO WHATEVER HE -- WE
4 DON'T EVEN HAVE TO GET THERE BECAUSE 16 SAYS THAT HE CAN
5 HAVE HIS GRAND JURY TRANSCRIPT, AND HE CAN'T PICK AND
6 CHOOSE. HIS GRAND JURY TRANSCRIPT INCLUDES WHAT HE WAS
7 SHOWN BEFORE THE GRAND JURY TO COMMENT ON. SO WE THINK IT
8 ENDS THERE. WE DON'T HAVE TO ASK.

9 BUT THE ANSWER IS THAT WE ARE ENTITLED. THE
10 GOVERNMENT HAS MADE ALLEGATIONS IN PHOTOGRAPHS WITH
11 MR. ZUNO-ARCE, AND WE ARE ENTITLED TO SEE WHAT THEY SHOWED
12 HIM IN FRONT OF THE GRAND JURY SO THAT WE CAN MAKE SENSE
13 OF THE PICTURES. THE HAVE MADE ALLEGATIONS BEFORE THAT
14 PICTURES OF HIM WERE TAKEN WITH CARO-QUINTERO. WE HAVE
15 ASKED FOR THOSE PICTURES, AND WE HAVEN'T SEEN THEM. WE
16 DON'T KNOW THE NATURE OF THE PICTURES. WE DON'T KNOW IF
17 THE GOVERNMENT CLAIMS THEY HAVE PICTURES OF MR. ZUNO AND
18 ANY OF THESE BAD PEOPLE. WE DON'T THINK THEY EXIST. IT
19 NEVER HAPPENED, BUT THE GOVERNMENT HAS MADE A CLAIM THAT
20 THEY HAVE THOSE PICTURES.

21 WE THINK UNDER DISCOVERY IF THEY HAVE PICTURES
22 OF MR. ZUNO AND ANY OF THE DEFENDANTS, WE ARE ENTITLED TO
23 SEE THEM, WHETHER OR NOT THEY WERE SHOWN BEFORE THE GRAND
24 JURY. AND WE THINK WE ARE ENTITLED TO ANY PICTURE THEY
25 SHOWED HIM AT THE GRAND JURY AND ASKED HIM TO COMMENT UPON

1 BECAUSE THAT IS PART OF HIS TESTIMONY AND IS INCLUDED, WE
2 RESPECTFULLY SUGGEST, IN RULE 16 WHEN IT SAYS THAT HE IS
3 ENTITLED TO HIS STATEMENTS.

4 THE COURT: WELL, YOU THINK THAT THOSE
5 PHOTOGRAPHS ARE PART OF HIS STATEMENTS?

6 MR. MEDVENE: SURE, IF THEY ASKED HIM ABOUT
7 THEM.

8 THE COURT: IT IS THE GRAND JURY TESTIMONY.

9 MR. MEDVENE: WE WERE GIVEN THE TRANSCRIBED
10 PORTION, BUT IF THE TESTIMONY SAYS, "LOOK AT THIS. DO YOU
11 KNOW THIS PERSON?" IT SEEMS TO ME THAT WE DON'T HAVE ALL
12 THE TESTIMONY --

13 THE COURT: ALL RIGHT. BUT WHY IS THAT MATERIAL
14 TO YOUR DEFENSE? IT IS BOOKS, PAPERS, AND TANGIBLE
15 OBJECTS UNDER RULE 16(A)(1) THAT ARE TO BE PROVIDED, WHICH
16 ARE MATERIAL TO THE PREPARATION OF THE DEFENDANT'S CASE OR
17 INTENDED FOR USE BY THE GOVERNMENT AS EVIDENCE IN ITS CASE
18 IN CHIEF AT TRIAL OR BELONGED TO OR WERE OBTAINED FROM THE
19 DEFENDANT.

20 MR. MEDVENE: YOUR HONOR, WE ARE NOT TALKING
21 ABOUT THAT RULE. THOUGH I THINK WE ARE ENTITLED TO IT
22 UNDER THAT RULE, WE ARE TALKING ABOUT 16(A) THAT SAYS THAT
23 THE DEFENDANT IS ENTITLED TO HIS STATEMENTS. THERE ARE NO
24 IF'S, AND'S, OR BUT'S. HE IS ENTITLED TO HIS STATEMENTS,
25 AND THE NARROW ISSUE BEFORE YOUR HONOR IS IS PART OF HIS

1 STATEMENT THINGS HE WAS SHOWN TO COMMENT ON DURING THE
2 TESTIMONY, AND WE SAY THAT IT CLEARLY IS. YOU DON'T HAVE
3 TO GET DOCUMENTS AND TANGIBLE OBJECTS THAT ARE RELEVANT.
4 WE ARE AT THE FIRST PART OF 16 THAT SAYS HIS STATEMENT,
5 AND HIS STATEMENT IS ANYTHING HE WAS ASKED ABOUT. IT IS
6 AS STRAIGHTFORWARD AS THAT AS FAR AS OUR POSITION IS
7 CONCERNED.

8 THE COURT: YOU ARE SAYING THAT THE PHOTOGRAPHS
9 ARE PART OF THE STATEMENT?

10 MR. MEDVENE: IF THEY ASKED HIM ABOUT THEM,
11 CERTAINLY, SIR.

12 THE COURT: DID YOU ASK HIM ABOUT ALL THE
13 PHOTOGRAPHS IN THAT BOOK?

14 MR. MEDRANO: THE DEFENDANT WAS SHOWN A VARIETY
15 OF PHOTOGRAPHS FROM THIS SUSPECT BOOK, YOUR HONOR.

16 THE COURT: AND ASKED ABOUT THEM?

17 MR. MEDRANO: HE WAS ASKED IF HE KNEW WHO THESE
18 PEOPLE ARE. THAT IS ALL THAT WAS ASKED. AND I MIGHT
19 POINT OUT, YOUR HONOR, THAT MR. MEDVENE HAS THE
20 TRANSCRIPT. THE TRANSCRIPT SPEAKS FOR ITSELF AND GIVES
21 THEM THE TYPE OF ASSISTANCE TO WHICH HE IS ALLUDING RIGHT
22 NOW.

23 THE COURT: BUT IF THE TRANSCRIPT ASKS THE
24 WITNESS A QUESTION, AND IN ORDER TO UNDERSTAND THE ANSWER
25 HE MUST LOOK AT THE PICTURE HE WAS ASKED ABOUT, HOW DOES

1 THAT HELP?

2 MR. MEDRANO: WELL, I UNDERSTAND THAT, YOUR
3 HONOR, BUT LET'S COME BACK TO PERHAPS OUR CENTRAL
4 OPPOSITION TO THIS, WHICH WE HAVE LAID OUT TO THE COURT IN
5 THE FORM OF AFFIDAVIT UNDER OATH THE FACT THAT THIS
6 INVESTIGATION IS CONTINUING.

7 THE COURT: WELL, THIS IS A QUESTION OF WHETHER
8 OR NOT THIS IS A STATEMENT. THAT IS WHAT HE HAS NARROWED
9 IT DOWN TO.

10 UNDER RULE 16(A)(1)(A), A DEFENDANT IS ENTITLED
11 TO HIS OWN WRITTEN OR RECORDED STATEMENTS WHICH ARE
12 RELEVANT IN CONTROL OF THE GOVERNMENT AND CAN THROUGH
13 REASONABLE DILIGENCE BECOME KNOWN TO THE AUSA.

14 WHY ARE THESE RELEVANT?

15 MR. MEDVENE: THEY ARE RELEVANT, YOUR HONOR,
16 BECAUSE THEY QUESTION HIM ABOUT --

17 THE COURT: IF THE DEFENDANT SAID HE DIDN'T KNOW
18 THEM, WHY IS IT RELEVANT, ANYWAY?

19 MR. MEDVENE: I BELIEVE HE SAID THAT CERTAIN OF
20 THEM HE SAID HE KNEW AND CERTAIN OF THEM HE SAID HE
21 DIDN'T.

22 THE COURT: WELL, THEY SAID THEY GAVE YOU THE
23 PICTURES OF THE ONES HE SAID HE KNEW.

24 MR. MEDVENE: NO. NO. WE DIDN'T GET ANY
25 PICTURES OF ANY KIND. NONE.

1 MR. MEDRANO: THAT IS INACCURATE, YOUR HONOR.
2 HE HAS RECEIVED PHOTOCOPIES OF THE TWO PERSONS HE WAS ABLE
3 TO IDENTIFY. WE HAVE A DISCOVERY LETTER IN MY OFFICE TO
4 CONFIRM THAT FACT. IF HE HAS MISPLACED THEM, WE WILL GIVE
5 HIM ANOTHER PHOTOCOPY.

6 MR. MEDVENE: WAIT, WAIT. SO THAT WE ARE CLEAR,
7 IF THE GOVERNMENT SAYS THEY HAVE GIVEN US THE PICTURES
8 THAT HE WAS SHOWN BEFORE THE GRAND JURY --

9 THE COURT: THE PICTURES THAT HE IDENTIFIED,
10 PICTURES OF THE PEOPLE HE SAID HE KNEW.

11 MR. MEDVENE: WELL, IF THEY WERE GIVEN TO US,
12 THEY WEREN'T GIVEN IN THAT SENSE. WE WERE SHOWN CERTAIN
13 DISCOVERY. WHAT PICTURES DOES THE GOVERNMENT SAY THEY
14 GAVE US ON PEOPLE HE KNEW? THAT IS THE FIRST PART.

15 AND THE SECOND PART IS THE PEOPLE HE SAID HE
16 DIDN'T KNOW, IT SEEMS TO ME, IF WE HAVE TO GET TO IT, IS
17 CERTAINLY RELEVANT BECAUSE THERE IS AN ALLEGATION THAT THE
18 GUADALAJARA CONSPIRACY IS MADE UP OF A NUMBER OF NAMED AND
19 UNNAMED PEOPLE. ARE ANY OF THESE PEOPLE SUPPOSED TO BE
20 PART OF THE CONSPIRACY? IF HE SAID HE DIDN'T KNOW THEM,
21 IT SEEMS TO ME THAT THAT IS RELEVANT TO OUR DEFENSE. HE
22 IS TAKING A POSITION HE DOESN'T KNOW THESE PEOPLE.

23 SO I GUESS WE WOULD ASK YOUR HONOR TWO
24 QUESTIONS: WHICH TWO PEOPLE DID HE SAY HE KNEW FOR WHICH
25 THEY GAVE US PICTURES? AND WE THINK WE ARE ENTITLED TO

1 THE OTHER PICTURES THEY SHOWED HIM.

2 THERE IS CERTAINLY NO SECURITY PROBLEM. THERE
3 CAN BE WHATEVER SECURITY PRECAUTIONS YOUR HONOR WANTS.
4 BUT MR. ZUNO HAS ALREADY SEEN THE PICTURES. THEY SHOWED
5 THEM TO HIM IN THE GRAND JURY.

6 THE COURT: ALL RIGHT.

7 MR. MEDVENE: AND I MIGHT ALSO SAY THAT I DON'T
8 BELIEVE RELEVANCY IS THE ISSUE IN 16, YOUR HONOR. I THINK
9 THE ISSUE IS NARROWER. IT IS HIS STATEMENT.

10 MR. MEDRANO: YOUR HONOR, ONE FINAL THOUGHT,
11 WITH THE COURT'S PERMISSION.

12 THE COURT: YES.

13 MR. MEDRANO: AGAIN LET ME REMIND THE COURT OF
14 THE FACT THAT NONE OF THAT STUFF IS ADMISSIBLE IN THIS
15 CASE. MR. MEDVENE HAS BROUGHT THAT TO THE COURT'S
16 ATTENTION. WE DON'T INTEND TO USE ANY OF THAT. THAT IN
17 AND OF ITSELF NIPS IN THE BUD ANY SUGGESTION THAT THIS
18 INFORMATION IS RELEVANT TO THE PENDING CASE, YOUR HONOR.
19 THAT IS IN THE PERJURY CASE. IT IS A DIFFERENT GRAND
20 JURY.

21 WE HAVE DONE TWO KASTIGAR HEARINGS. ALL
22 MR. MEDVENE SERVES TO DO RIGHT NOW IS TO JUST MAKE THE
23 GENERAL SPECULATIVE ALLEGATION OF RELEVANCY WITHOUT GIVING
24 YOU THE NUTS AND BOLTS THAT YOU NEED. WITHOUT THAT, YOUR
25 HONOR, WE WOULD SUBMIT THAT THERE IS NO BASIS FOR

1 DISCLOSING THOSE PHOTOS, ESPECIALLY IN LIGHT OF THE FACT
2 THAT THIS GRAND JURY INVESTIGATION IS GOING TO CONTINUE
3 AFTER THIS TRIAL FINISHES.

4 WE WOULD SUBMIT, YOUR HONOR.

5 THE COURT: ALL RIGHT. I AM CONTEMPLATING
6 DISCLOSURE OF GIGLIO MATERIALS AND THE NAMES OF INFORMANTS
7 BY NEXT MONDAY, THE 2ND. I'D LIKE TO HEAR ABOUT THAT FROM
8 YOU.

9 MR. MEDRANO: MAY I HAVE JUST ONE MOMENT, YOUR
10 HONOR?

11 THE COURT: YES.

12 MR. MEDVENE: THERE ARE TWO OTHER POINTS I WANT
13 TO RAISE, YOUR HONOR, AT AN APPROPRIATE TIME.

14 THE COURT: VERY WELL.

15 (PAUSE.)

16 MR. MEDRANO: YOUR HONOR, IN LIGHT OF THE
17 COURT'S INCLINATION, MIGHT I SUGGEST A DIFFERENT
18 ALTERNATIVE TO BE ABLE TO STILL DO A FAIR BALANCING OF THE
19 CLEARLY CONFLICTING POSITIONS HERE?

20 BY APRIL 2, A WEEK FROM TODAY, YOUR HONOR, I
21 THINK WE COULD PROVIDE TO DEFENSE COUNSEL THE GIGLIO AND
22 C.I. IDENTITIES FOR THOSE AGENTS AND CIVILIAN WITNESSES
23 AND INFORMANTS WHO TESTIFIED FOR THE GOVERNMENT IN THE
24 LAST TRIAL IN 1988. CLEARLY AS TO THOSE C.I.'S THE
25 GOVERNMENT HAS DONE WHATEVER IT HAS TAKEN TO RELOCATE THEM

1 AND ASSURE THEIR SAFETY. SO LET ME THROW THAT OUT AS A
2 FIRST POSSIBILITY.

3 THE SECOND POSSIBILITY THAT I WOULD STRONGLY
4 RECOMMEND, YOUR HONOR, IS FOR THE REMAINING PERCIPIENT
5 C.I.'S, WHICH ARE A MERE HANDFUL, WE WOULD ASK THE COURT,
6 WITH ALL DUE RESPECT, TO GIVE US AN OPPORTUNITY TO ABIDE
7 BY THAT 48-HOUR RULE FOR A VARIETY OF REASONS.

8 I WON'T BEAT A DEAD HORSE, BUT WE HAVE TRIED TO
9 CONVEY TO YOUR HONOR THAT THERE ARE SECURITY CONCERNS IN
10 THIS CASE. THESE C.I.'S, YOUR HONOR, ALTHOUGH I ADMIT
11 NOTHING BEFORE THESE DEFENSE COUNSEL, BUT LET'S ASSUME
12 HYPOTHETICALLY THAT A C.I. AND HIS NUCLEAR FAMILY HAVE
13 BEEN RELOCATED IN THE UNITED STATES. YOUR HONOR, THERE IS
14 STILL THE PROFOUND CONCERN OF RETALIATORY ACTS AGAINST
15 EXTENDED FAMILY MEMBERS.

16 IF THOSE RETALIATORY ACTS ARE PERPETRATED BEFORE
17 THE C.I. TAKES THE STAND -- YOUR HONOR, WE HAVE ALL BEEN
18 PLAYING THIS GAME FOR QUITE A WHILE. WE ALL KNOW OR CAN
19 ANTICIPATE THE DEVASTATING EFFECT IT WOULD HAVE ON THE
20 MORALE OF THAT C.I. AND INDEED OTHER CIVILIAN WITNESSES
21 THAT THE GOVERNMENT INTENDS TO USE.

22 THE COURT: WELL, THAT IS THE SAME ARGUMENT THAT
23 IS USED IN ALL OF THESE CASES, COUNSEL.

24 MR. MEDRANO: ONE FINAL ADDITION THEN, YOUR
25 HONOR. WHAT DISTINGUISHES OUR CASE FROM THE TYPICAL

1 ARGUMENT THAT IS MADE INVARIABLY IN NARCOTICS CASES IS
2 THAT THERE IS THE MEAT BACKING THESE ALLEGATIONS UP, YOUR
3 HONOR, AS OUTLINED IN THE ALLEGATIONS IN THE INDICTMENT
4 WHERE A VARIETY OF PEOPLE HAVE BEEN INJURED, ASSAULTED, OR
5 MURDERED. WE HAVE FLAGGED FOR THE COURT, OR TRIED TO, IN
6 DETAIL THE TYPES OF ASSAULTS AND MURDERS THAT HAVE BEEN
7 ATTENDANT TO THIS MURDER INVESTIGATION.

8 SO IT IS NOT LIKE WE ARE SIMPLY SPEAKING IN
9 HYPOTHETICALS OR MAKING ALLEGATIONS WITHOUT ANY
10 FOUNDATION. IN FACT, YOUR HONOR, THERE IS A VARIETY OF
11 EVIDENCE THAT SUPPORTS ALL OF THESE ALLEGATIONS.

12 I WOULD SUBMIT TO YOU, RESPECTFULLY, THAT THAT
13 TAKES US OUT OF THE ROUND OF THE USUAL HYPERBOLE
14 CONCERNING THE CONCERNS FOR C.I.'S. THESE CONCERNS ARE
15 VERY REAL, YOUR HONOR.

16 SO JUST LET ME SUMMARIZE AS FOLLOWS. YOUR
17 HONOR, WOULD THE COURT CONSIDER IN TERMS OF A FAIR
18 DISPOSITION OF THIS GIGLIO AND IDENTITIES FOR AGENTS AND
19 C.I.'S THAT TESTIFIED IN THE 1988 TRIAL AND PERMIT US --

20 THE COURT: THOSE ARE A MATTER OF RECORD.

21 MR. MEDRANO: I UNDERSTAND THAT, YOUR HONOR.
22 AND THE WAY COUNSEL SPEAKS IS AS IF THEY DON'T HAVE THAT
23 STUFF, BUT WE WILL TURN THAT STUFF OVER BECAUSE I AM
24 ASSUMING THAT THEY HAVE ACCUMULATED ALL OF IT.

25 THE COURT: YOU WILL TURN WHAT STUFF OVER?

1 MR. MEDRANO: GIGLIO MATERIAL AND IDENTITIES OF
2 THE C.I.'S OF THE 1988 TRIAL WITNESSES, YOUR HONOR, AND
3 ALLOW US, GIVE US THE OPPORTUNITY TO GO FORWARD WITH THIS
4 CASE WITHOUT FEAR OF RETALIATION AGAINST SOME OF THESE
5 C.I.'S. IF YOU PERMIT US TO DO THAT -- THE 48-HOUR RULE
6 FOR C.I. IDENTITIES, GIGLIO, AND JENCKS MATERIAL --

7 AND ALL OF THIS IS PREDICATED, YOUR HONOR, ON
8 THE GOVERNMENT'S GUARANTY THAT IF THE BALL WAS DROPPED BY
9 THE GOVERNMENT IN THE LAST TRIAL IN TERMS OF THE TIMELY
10 STICKING TO THAT 48-HOUR RULE, IT IS NOT GOING TO HAPPEN
11 AGAIN. YOU HAVE MY GUARANTY ON THAT, YOUR HONOR. WE ARE
12 TRYING TO PUT IT TOGETHER, AND IT WILL BE READY SO THAT IT
13 WILL BE TIMELY DISCLOSED PURSUANT TO THE 48-HOUR RULE.

14 THE COURT: OF COURSE I HAVE BEEN GIVING YOU
15 ADVANCE NOTICE THAT IT WAS THE INTENTION OF THE COURT. I
16 HAVE NOT AT ANY TIME BELIEVED THAT 48 HOURS WAS
17 SUFFICIENT, AND I TOLD YOU THAT A LONG TIME AGO IN THIS
18 CASE. I PUT YOU ON NOTICE SO THAT YOU WOULD HAVE TO TAKE
19 WHATEVER STEPS ARE NECESSARY TO PROTECT YOUR WITNESSES.

20 MY INCLINATION IS TO MAKE AN ORDER PROVIDING FOR
21 THE RELEASE OF THE GIGLIO MATERIAL AS WELL AS THE
22 INFORMANT IDENTITY, AND I RECOMMEND THAT THE JENCKS
23 MATERIAL ALSO BE RELEASED AT THAT TIME. OF COURSE I CAN'T
24 ORDER THAT. THAT IS TO BE RELEASED BY APRIL 2.

25 MR. MEDRANO: AND THAT IS FOR ALL WITNESSES --

1 ALL C.I.'S?

2 THE COURT: WELL, THAT SHOULD BE DEALING WITH
3 THOSE THAT HAVE BEEN THE SUBJECT OF MOTIONS.

4 MR. MEDRANO: VERY WELL, YOUR HONOR.

5 THE COURT: I THINK THAT CONCLUDES THESE MOTIONS
6 THAT I HAD FOR THIS DEFENDANT.

7 MR. MEDVENE: MAY I ADDRESS YOU JUST FOR ONE
8 MOMENT? ONE THING MAY NOT BE INCLUDED. WE HAD ASKED FOR,
9 YOUR HONOR, AND WE THINK IT CLEARLY COMES UNDER 16, ANY
10 PICTURES -- THIS IS DIFFERENT PICTURES, JUDGE -- ANY
11 PICTURES THE GOVERNMENT HAS THAT THEY CLAIM SHOW MR. ZUNO
12 WITH ANY OF THE DEFENDANTS OR CO-DEFENDANTS. WE THINK
13 THAT IS CLEARLY DISCOVERABLE. WE HAVE BASICALLY GOT NO
14 SUCH PICTURES. WE THINK WE ARE ENTITLED TO THOSE IF THEY
15 HAVE ANY. THEY HAVE MADE REPRESENTATIONS BEFORE THE GRAND
16 JURY THEY HAD SUCH PICTURES. THEY WEREN'T SHOWN. WE ASK
17 THROUGH YOUR HONOR --

18 THE COURT: UNDER WHAT RULE ARE YOU ENTITLED TO
19 THOSE?

20 MR. MEDVENE: 16(A)(1)(C), YOUR HONOR. THE
21 PICTURES ARE CERTAINLY RELEVANT.

22 THE COURT: 16(A)(1)(C)?

23 MR. MEDVENE: THE PICTURES ARE CERTAINLY
24 MATERIAL TO OUR PREPARATION FOR DEFENSE. IF THEY HAVE A
25 PICTURE OF MR. ZUNO AND ANY OF THE DEFENDANTS, IT IS --

1 THE COURT: WELL, MR. ZUNO AND ANY OF THE
2 DEFENDANTS YOU MEAN WHO ARE NOT BEFORE THE COURT?

3 MR. MEDVENE: ANY PICTURES THAT THEY HAVE OF
4 MR. ZUNO AND ANY CO-DEFENDANT IS CERTAINLY MATERIAL IN
5 CONNECTION WITH PREPARATION OF MR. ZUNO'S DEFENSE, AND WE
6 ARE ASKING FOR THOSE PICTURES IF THEY HAVE THEM.

7 THE COURT: WHAT ABOUT THAT?

8 MR. MEDRANO: YOUR HONOR, AS TO THE REQUEST
9 UNDER 16(A)(1)(C), THAT GOES TO DOCUMENTS AND TANGIBLE
10 OBJECTS, AND THE GOVERNMENT HAS COMPLIED FULLY WITH THAT
11 REQUEST. HE HAS EVERYTHING THAT HE IS ENTITLED TO.

12 MR. MEDVENE: WELL, THAT IS A CONCLUSIONARY
13 STATEMENT. DO THEY HAVE PICTURES? WE HAVEN'T SEEN IT. I
14 WILL SAY IN FRONT OF YOUR HONOR THAT WE HAVEN'T SEEN IT.
15 DOES THE GOVERNMENT HAVE IT OR NOT?

16 THE COURT: IS IT YOUR UNDERSTANDING THAT THAT
17 RULE REQUIRES THE PRODUCTION OF PICTURES OF THAT TYPE THAT
18 HE HAS MENTIONED?

19 MR. MEDRANO: MY UNDERSTANDING IS THAT TO THE
20 EXTENT SUCH PHOTOGRAPHS EXISTED AND THEY FALL WITHIN
21 16(A)(1)(C), THEY HAVE BEEN DISCLOSED TO THE DEFENSE, YOUR
22 HONOR. THAT IS OUR POSITION.

23 MR. MEDVENE: IT IS SOFT, YOUR HONOR, TO THE
24 EXTENT THEY EXISTED AND TO THE EXTENT THAT THEY FALL
25 WITHIN. THE ISSUE IS DO THEY HAVE THE PHOTO OR NOT. IT

1 IS REALLY CLEAN. DO THEY HAVE IT OR NOT? IF THEY HAVE
2 IT, LET THEM SAY THEY HAVE IT. IF THEY ARE NOT GOING TO
3 GIVE IT TO US, THEN I WILL UNDERSTAND IT. BUT I DON'T
4 UNDERSTAND WHAT HE SAID. I AM ASKING RESPECTFULLY THROUGH
5 YOUR HONOR DO THEY HAVE THE PICTURES.

6 THE COURT: I THINK WE COULD USE A CLEARER
7 STATEMENT.

8 MR. MEDRANO: AS OF TODAY, YOUR HONOR, THE
9 GOVERNMENT DOES NOT POSSESS ANY PHOTOGRAPHS THAT DEPICT
10 DEFENDANT ZUNO WITH ANY CO-DEFENDANT.

11 THE COURT: ALL RIGHT.

12 MR. MEDVENE: THANK YOU.

13 THE COURT: WE WILL ADJOURN.

14 MR. MEDVENE: AS I UNDERSTAND YOUR HONOR'S
15 ORDER, IF THEY SHOULD COME UP WITH SUCH A PICTURE BETWEEN
16 NOW AND THE TRIAL, THEY WILL FURNISH IT TO US?

17 MR. MEDRANO: WE HAVE NO OBJECTION TO THAT.

18 THE COURT: ALL RIGHT. THAT WILL BE THE ORDER.

19 (PROCEEDINGS CONCLUDED.)

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

24

John E. Thomas

2/25/20

25

OFFICIAL REPORTER

DATE