

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

- - -

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 TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, APRIL 9, 1990

VELMA B. THOMAS, CSR, RPR
OFFICIAL COURT REPORTER
4255 WEST FIFTH STREET
SUITE 108
LOS ANGELES, CALIFORNIA 90020
(213) 386-4492
CSR NO. 2683

APPEARANCES:

FOR PLAINTIFF:

ROBERT L. BROSIO
UNITED STATES ATTORNEY
MANUEL A. MEDRANO
ASSISTANT UNITED STATES ATTORNEY
JOHN L. CARLTON
ASSISTANT UNITED STATES ATTORNEY
1400 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT ZUNO-ARCE:

MITCHELL, SILBERBERG & KNUPP
BY: JAMES E. BLANCARTE, ESQ.
MARY E. FULGINITI, ESQ.
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064

FOR DEFENDANT BERNABE-RAMIREZ:

MARY E. KELLY, ESQ.
MICHAEL MEZA, ESQ.
1901 AVENUE OF THE STARS
SUITE 1708
LOS ANGELES, CALIFORNIA 90067

FOR DEFENDANT VASQUEZ-VELASCO:

GREGORY NICOLAYSEN, ESQ.
8630 WILSHIRE BOULEVARD
SUITE 404
BEVERLY HILLS, CALIFORNIA 90211-4534

OFFICIAL SPANISH INTERPRETERS:

DOLORES MARTIN
JOSE OROZCO
CYNTHIA PARKER

I N D E X

<u>PROCEEDINGS</u>	<u>PAGE</u>
MONDAY, APRIL 9, 1990	
DEFENDANT ZUNO-ARCE'S MOTION TO COMPEL DISCOVERY	2
THE COURT'S RULING	3
DEFENDANT ZUNO-ARCE'S REQUEST ENSURING WITNESSES NOT BE SUBJECT TO INCARCERATION	5
DEFENDANT ZUNO-ARCE'S MOTION FOR DISCLOSURE OF EVIDENCE	9
THE COURT'S RULING	10, 12
DEFENDANT VASQUEZ-VELASCO'S MOTION FOR AN ORDER AUTHORIZING THE TAKING OF FOREIGN DEPOSITIONS AND TO CONTINUE THE TRIAL DATE	15
THE COURT'S RULING	15
DEFENDANT BERNABE-RAMIREZ'S MOTION FOR DISCOVERY	32
THE COURT'S RULING	39
DEFENDANT VASQUEZ-VELASCO'S MOTION TO PRODUCE DOCUMENTS REGARDING NON-TESTIFYING PERCIPIENT WITNESSES	39
THE COURT'S RULING	41
DEFENDANT VASQUEZ-VELASCO'S MOTION TO DISMISS	46
THE COURT'S RULING	46
DEFENDANT'S EX POST FACTO MOTION	54
THE COURT'S RULING	54

LOS ANGELES, CALIFORNIA, MONDAY, APRIL 9, 1990, 10:00 A.M.

1 THE CLERK: ITEM NO. 2, CRIMINAL 87-422, UNITED
2 STATES OF AMERICA VERSUS RUBEN ZUNO-ARCE, JAVIER VASQUEZ-
3 VELASCO, AND JUAN JOSE BERNABE-RAMIREZ.

4 COUNSEL, PLEASE STATE YOUR NAMES FOR THE RECORD.

5 MR. MEDRANO: GOOD MORNING, YOUR HONOR. FOR THE
6 UNITED STATES MANUEL MEDRANO AND JOHN CARLTON.

7 MR. BLANCARTE: GOOD MORNING, YOUR HONOR. JAMES
8 BLANCARTE AND MARY FULGINITI, COUNSEL FOR MR. ZUNO.

9 MR. NICOLAYSEN: GOOD MORNING, YOUR HONOR. GREG
10 NICOLAYSEN APPEARING FOR MR. VELASCO, WHO IS PRESENT IN
11 THE COURTROOM.

12 MR. MEZA: GOOD MORNING, YOUR HONOR. MIKE MEZA
13 AND MARY KELLY ON BEHALF OF BERNABE-RAMIREZ, WHO IS
14 PRESENT.

15 THE COURT: THE FIRST MOTION I WANT TO DEAL WITH
16 IS THE ONE FILED BY RUBEN ZUNO, JOINED IN BY JUAN JOSE
17 BERNABE, TO COMPEL PRETRIAL DISCOVERY. THERE ARE THREE
18 REQUESTS BASICALLY. THERE IS REQUEST NO. 1, WHICH IS A
19 REQUEST FOR ALL DOCUMENTS AND TANGIBLE EVIDENCE RELATING
20 TO ALL MEXICAN INVESTIGATION FILES PERTAINING TO DEFENDANT
21 ZUNO-ARCE'S INVOLVEMENT AND/OR PARTICIPATION IN THE
22 GUADALAJARA NARCOTICS CARTEL, WHICH THE GOVERNMENT SAYS
23 THEY ARE NOT AWARE OF ANY SUCH REPORTS.

24 SECONDLY, ANY FILES OR DOCUMENTS PERTAINING TO
25 THE ALLEGED MEETINGS IN WHICH THE DEFENDANT ZUNO WAS

1 ALLEGED TO BE PRESENT IN OCTOBER OF 1984 AND FEBRUARY OF
2 1985, AND THE GOVERNMENT SAYS THEY ARE NOT AWARE OF ANY
3 SUCH DOCUMENTS OR FILES.

4 AND, THIRD, THE DEFENDANT IS ASKING FOR
5 DOCUMENTS AND FILES RELATING TO THE SALE OF THE LOPE DE
6 VEGA RESIDENCE AND ALL RELEVANT ACTIVITIES TAKING PLACE AT
7 THIS ADDRESS.

8 FIRST, WITH REFERENCE TO THE RELEVANT
9 ACTIVITIES, THAT IS AN AMBIGUOUS REQUEST, BUT THE
10 GOVERNMENT CONTENDS THAT IT HAS COMPLIED WITH THIS REQUEST
11 TO THE EXTENT THAT SUCH MATERIAL IS REQUIRED BY RULE 16
12 AND BRADY, AND THEY CONTEND TO THE EXTENT THAT SUCH IS
13 DISCOVERABLE UNDER THE JENCKS ACT OR GIGLIO MATERIAL, THE
14 GIGLIO WILL BE PRODUCED IN ACCORDANCE WITH THE ORDER OF
15 THE COURT, AND THE JENCKS ACT, WHICH I AM RECOMMENDING BE
16 PRODUCED AT THE SAME TIME, WILL BE PRODUCED PRIOR TO
17 TRIAL.

18 IT APPEARS THAT THIS MOTION SHOULD BE DENIED
19 WITH RESPECT TO THIS ITEM.

20 THE SECOND ITEM INCLUDES ALL DOCUMENTS RELATING
21 TO OR CONSTITUTING, CONTAINING, OR REFLECTING ANY
22 STATEMENT OR CONFESSION THAT THE GOVERNMENT HAS IN ITS
23 POSSESSION THAT WAS MADE BY ANY CO-CONSPIRATOR, INDICTED
24 OR UNINDICTED.

25 THIS DEFENDANT MADE THIS SAME REQUEST IN HIS

1 PRETRIAL DISCOVERY MOTION, WHICH WAS DENIED BY THIS COURT
2 ON FEBRUARY 26, 1990, AS REQUEST NO. 9.

3 THE GOVERNMENT CONTENDS THAT THEY HAVE COMPLIED
4 WITH THIS REQUEST AS REQUIRED BY RULE 16 AND BRADY AND
5 THAT THEY WILL CONTINUE TO PRODUCE SUCH MATERIALS IF AND
6 WHEN THEY ARE DISCOVERED.

7 THE GOVERNMENT CLAIMS THAT TO THE EXTENT SUCH
8 MATERIAL IS DISCOVERABLE UNDER THE JENCKS ACT OR GIGLIO
9 MATERIAL, IT WILL BE PRODUCED BEFORE THE TRIAL. SO THIS
10 REQUEST SHOULD BE DENIED.

11 DEFENDANT REQUESTS AN ADDITIONAL THREE DAYS TO
12 FILE THE APPROPRIATE AFFIDAVITS FOR THE COURT'S
13 CONSIDERATION OF DISCOVERY IN MEXICO PURSUANT TO FEDERAL
14 RULE OF CRIMINAL PROCEDURE 15.

15 YOU PREVIOUSLY MADE THIS REQUEST, WHICH WAS
16 UTTERLY DEVOID OF ANY SHOWING THAT IS REQUIRED. FIRST OF
17 ALL, THESE REQUESTS FOR DEPOSITIONS ARE NOT FAVORED.

18 SECONDLY, THE WITNESS MUST INDICATE A
19 WILLINGNESS TO TESTIFY AND PROBABLY SHOULD NOT BE A
20 FUGITIVE.

21 THIRDLY, IF THESE PEOPLE ARE IN CUSTODY, THEIR
22 AVAILABILITY TO TESTIFY MUST ALSO BE MADE FAIRLY CLEAR TO
23 THE COURT.

24 MY INCLINATION IS TO DENY THIS REQUEST, ALSO.
25 YOU SHOULD HAVE FILED -- WHEN YOU FILED YOUR RULE 15

1 REQUEST, YOU SHOULD HAVE MADE A PROPER SHOWING.

2 NOW, DO YOU WISH TO BE HEARD? I DON'T WANT A
3 LOT OF ARGUMENT ON THESE. IT SEEMS TO ME THAT THESE ARE
4 FAIRLY CLEAR AND SIMPLE. IF YOU HAVE SOMETHING TO SAY YOU
5 HAVEN'T ALREADY SAID IN YOUR PAPERS, I MIGHT HEAR YOU.

6 MS. FULGINITI: IN REGARDS TO THE REQUEST FOR
7 THE ADDITIONAL THREE DAYS, INITIALLY IN OUR PRETRIAL
8 DISCOVERY MOTION WE HAD REQUESTED FOR THE COURT TO ISSUE
9 AN ORDER. WE HAVE, IN CONDUCTING OUR INVESTIGATION, BEEN
10 CONFRONTED WITH QUITE A BIT OF PROBLEMS IN PROCURING THE
11 WITNESSES' PRESENCE IN THE UNITED STATES DUE TO THE FACT
12 OF THE HYPE OF THE CAMARENA TRIAL AND THE POSSIBILITY THAT
13 SOME OF THE POTENTIAL WITNESSES -- OR THE FEAR OF THE
14 WITNESSES THAT THEY MAY BECOME INCARCERATED AND HELD FOR
15 VARIOUS PURPOSES BY EITHER INS OR ANOTHER FACTION OF THE
16 GOVERNMENT.

17 INITIALLY WE HAD REQUESTED THAT THE COURT ISSUE
18 SOME SORT OF ORDER JUST BASICALLY ENSURING THAT THE
19 WITNESSES WOULD NOT BE SUBJECT TO SOME SORT OF
20 INCARCERATION; THAT THEY COULD COME VOLUNTARILY AND
21 TESTIFY --

22 THE COURT: THESE ARE NON-FUGITIVE WITNESSES?

23 MS. FULGINITI: EXCUSE ME?

24 THE COURT: THESE ARE NOT WITNESSES WHO ARE
25 FUGITIVES?

1 MS. FULGINITI: NO, THEY ARE NOT. YOUR HONOR,
2 THESE ARE WITNESSES THAT DEFENDANT ZUNO-ARCE, THROUGH THE
3 INVESTIGATION, WOULD LIKE TO PRESENT AT TRIAL ON BEHALF OF
4 ZUNO-ARCE'S DEFENSE. THEY ARE NOT FUGITIVES.

5 THE COURT: YOU HAVEN'T MADE A MOTION REGARDING
6 THAT, HAVE YOU?

7 MS. FULGINITI: WE HAVE, YOUR HONOR, IN OUR
8 INITIAL --

9 THE COURT: I HAVEN'T SEEN IT.

10 MS. FULGINITI: IN OUR INITIAL DISCOVERY PAPERS
11 WE HAD REQUESTED THAT THE COURT ISSUE SOME SORT OF ORDER,
12 AND THEN IN THIS SUPPLEMENTAL DISCOVERY MOTION I BELIEVE
13 WE ALSO --

14 THE COURT: DID YOU PROVIDE THE COURT WITH
15 AUTHORITY TO DO SO?

16 MS. FULGINITI: NO, WE DIDN'T, YOUR HONOR. WE
17 WERE JUST ASKING THE COURT GIVEN THE CIRCUMSTANCES OF THIS
18 PARTICULAR CASE.

19 THE COURT: IN OTHER WORDS, YOU WANT TO GIVE
20 THESE WITNESSES IMMUNITY FROM ARREST OR PROSECUTION IF
21 THEY COME HERE FOR THE PURPOSE OF TESTIFYING?

22 MS. FULGINITI: YES, YOUR HONOR.

23 THE COURT: THEY ARE NOT FUGITIVES?

24 MS. FULGINITI: THEY ARE NOT FUGITIVES, YOUR
25 HONOR.

1 THE COURT: AS FAR AS YOU KNOW?

2 MS. FULGINITI: AS FAR AS WE KNOW.

3 THE COURT: WELL, DO YOU KNOW OF ANY REASON WHY
4 THAT SHOULD NOT BE GRANTED?

5 MR. MEDRANO: MOST DEFINITELY, YOUR HONOR.
6 FIRST OF ALL, AS COUNSEL HAS READILY ADMITTED, THERE WAS
7 NO PROFFER OF LEGAL OR CASE AUTHORITY THAT WOULD PERMIT
8 THIS KIND OF GENERAL IMMUNITY OF WITNESSES THEY ARE
9 CONTEMPLATING.

10 SECOND OF ALL, YOUR HONOR, AT NO TIME HAS
11 DEFENSE COUNSEL IDENTIFIED THE NAMES OF THESE PEOPLE. HOW
12 CAN WE, THE GOVERNMENT, ADVISE THE COURT THAT WE HAVE NO
13 OBJECTION WHEN WE HAVE NO IDEA WHO THESE PEOPLE ARE? WE
14 CAN'T EVEN BEGIN TO CHECK, FOR EXAMPLE, WITH THE U.S.
15 MARSHALS AS TO WHETHER OR NOT THERE ARE OUTSTANDING BENCH
16 WARRANTS FOR UNRELATED CRIMINAL PROCEEDINGS AGAINST THE
17 WITNESSES.

18 SO THERE IS NO LEGAL AUTHORITY, NO
19 IDENTIFICATION OF WITNESSES. WITHOUT THAT, YOUR HONOR, WE
20 WOULD OBJECT VEHEMENTLY TO A BLANKET IMMUNITY ORDER
21 WITHOUT A GREATER SHOWING MADE BY DEFENSE COUNSEL.

22 MS. FULGINITI: YOUR HONOR, IF I MAY. OUR MAIN
23 CONCERN IS WE JUST DON'T WANT OUR WITNESSES BEING HELD BY
24 INS, AS IN MANY CASES IT HAPPENS, AS MATERIAL WITNESSES
25 INDEFINITELY. THAT IS THEIR FEAR AND THEIR CONCERN.

1 THE COURT: IN OTHER WORDS, THEY ARE NOT
2 AUTHORIZED TO BE PERMANENT RESIDENTS HERE? THEY WANT TO
3 COME IN FOR THE PURPOSE OF TESTIFYING. AND WHAT IS
4 NECESSARY TO GET THEM HERE WITH THE AUTHORITY OF THE INS?
5 ISN'T THERE SOME PROCEDURE AVAILABLE TO DO THAT?

6 MS. FULGINITI: YES, YOUR HONOR. THEY CAN BE
7 PAROLED IN.

8 THE COURT: YOU SHOULD INVESTIGATE THAT AND
9 SUBMIT THAT TO THE COURT IN A PROPER WAY. I AM NOT GOING
10 TO MAKE BLANKET ORDERS WITHOUT SOME AUTHORITY JUSTIFYING
11 IT OR SUPPORTING IT. IF YOUR MAIN CONCERN IS THAT THESE
12 PEOPLE WILL BE CHARGED WITH BEING HERE ILLEGALLY AND
13 ARRESTED, THAT DOESN'T SOUND REASONABLE TO ME IF THEY COME
14 IN SOLELY FOR THE PURPOSE OF TESTIFYING. AND IF THERE IS
15 A PROCEDURE AVAILABLE, THEN YOU SHOULD INVESTIGATE WHAT IT
16 IS AND BRING IT TO THE ATTENTION OF THE COURT.

17 THE DEFENDANT OUGHT TO HAVE THE RIGHT TO BRING
18 INTO THIS COUNTRY WITNESSES WHO ARE NOT OTHERWISE
19 AUTHORIZED TO ENTER THE COUNTRY, AND IF THERE IS A
20 PROCEDURE AVAILABLE, THAT IS THE PROCEDURE THAT SHOULD BE
21 FOLLOWED.

22 MS. FULGINITI: YES, YOUR HONOR. AS I STATED
23 BEFORE, OUR ONLY CONCERN WAS THAT THEY BE HELD AS MATERIAL
24 WITNESSES. ALTHOUGH THEY CAN BE PAROLED IN, WHICH IS
25 UNDER THE INS GUIDELINES, THEY CAN STILL ALSO BE HELD, IF

1 THE INS ARBITRARILY CHOOSES, AS MATERIAL WITNESSES AND
2 DETAINED, AND THAT IS OUR CONCERN.

3 OUR WITNESSES HAVE BEEN EXPRESSING TO US --

4 THE COURT: YOU ARE DISCUSSING SOMETHING WHICH
5 YOU HAVE NOT PROVIDED ME WITH ANY LAW. IF YOU HAVE -- YOU
6 SHOULD INVESTIGATE THE MATTER, PROVIDE THE COURT WITH THE
7 LAW THAT GOVERNS IT, STATE SPECIFICALLY WHAT IT IS YOU ARE
8 REQUESTING, AND THE COURT WILL CONSIDER IT.

9 I WILL SAY THAT AS A GENERAL PROPOSITION THE
10 DEFENDANT IS ENTITLED TO HAVE FOREIGN WITNESSES COME TO
11 THIS COUNTRY TO TESTIFY IN HIS BEHALF EVEN THOUGH THEY ARE
12 NOT OTHERWISE AUTHORIZED TO ENTER THE COUNTRY. I BELIEVE
13 THAT THAT MUST BE PERMISSIBLE, AND THERE MUST BE A
14 PROCEDURE THAT ALLOWS FOR IT, AND THE GOVERNMENT SHOULD
15 NOT INTERFERE WITH THAT WITHOUT JUSTIFICATION IN ORDER TO
16 KEEP THE WITNESSES OUT.

17 MS. FULGINITI: VERY WELL, YOUR HONOR. WE WILL
18 PROVIDE THE COURT WITH THE NECESSARY INFORMATION.

19 THE COURT: ALL RIGHT.

20 NOW, WE HAVE ANOTHER MOTION BY THIS DEFENDANT,
21 MR. ZUNO, FOR DISCLOSURE OF EVIDENCE IN THE POSSESSION OF
22 THE CENTRAL INTELLIGENCE AGENCY, THE DRUG ENFORCEMENT
23 ADMINISTRATION, THE SINTAC, WHATEVER THAT IS, THE UNITED
24 STATES CUSTOMS, THE UNITED STATES IMMIGRATION AND
25 NATURALIZATION SERVICE, AND ANY OTHER AGENCY OF THE UNITED

1 STATES GOVERNMENT.

2 NOW, WHAT I BOIL THIS MOTION DOWN TO IS THIS:
3 IF ANY OF THESE AGENCIES PARTICIPATED IN THE INVESTIGATION
4 IN THIS CASE, THEN THEIR INVESTIGATIONS ARE SUBJECT TO THE
5 SAME RULES OF DISCLOSURE THAT GOVERN THE PRINCIPAL AGENCY
6 THAT CONDUCTED THE INVESTIGATION. THAT IS, IF THERE IS
7 MATERIAL DISCOVERABLE UNDER RULE 16, IF IT IS MATERIAL AND
8 IF IT IS GOING TO BE PRESENTED BY THE GOVERNMENT IN THEIR
9 CASE IN CHIEF OR IF IT WAS ACQUIRED FROM A DEFENDANT, OR
10 IF IT IS BRADY MATERIAL OR JENCKS ACT MATERIAL, THE SAME
11 RULES APPLY TO INVESTIGATIONS DONE BY OTHER AGENCIES.

12 DO YOU UNDERSTAND WHAT I MEAN BY THAT,
13 MR. MEDRANO? IF THERE WERE OTHER AGENCIES THAT
14 PARTICIPATED IN THIS INVESTIGATION, THEIR DOCUMENTS, THEIR
15 REPORTS, ET CETERA, ARE DISCOVERABLE TO THE SAME EXTENT
16 THAT THE DEA REPORTS AND DOCUMENTS ARE. THAT IS, THEY ARE
17 GOVERNED BY THE SAME RULES.

18 MR. MEDRANO: I UNDERSTAND THAT, YOUR HONOR.

19 THE COURT: I AM NOT SAYING THAT THEY ARE, BUT
20 YOU HAVE TO MAKE THAT DETERMINATION THE SAME AS YOU DO
21 WITH RESPECT TO THE DOCUMENTS AND INVESTIGATIVE FILES OF
22 THE DEA. SO THE REQUEST WOULD BE GRANTED TO THAT EXTENT,
23 AND THAT IS TO BE UNDERSTOOD TO MEAN THAT THESE
24 INVESTIGATIONS AND FILES ARE SUBJECT TO THE SAME RULES AS
25 THE DEA, THE PRIMARY AGENCY INVESTIGATING THIS CASE.

1 MR. MEDRANO: YOUR HONOR, MAY I MAKE ONE
2 INQUIRY.

3 THE COURT: YES.

4 MR. MEDRANO: I WANT TO MAKE SURE WE UNDERSTAND.
5 IN TERMS OF THE DEFINITION OF PARTICIPATION, BECAUSE I AM
6 NOT QUITE SURE THAT I DO UNDERSTAND -- THE COURT MAY
7 RECALL WHEN INS ADVISED THE DEA THAT THEY WERE HOLDING
8 ZUNO IN SAN ANTONIO, TEXAS, AND AS A RESULT OF THAT DEA
9 AND OUR OFFICE OBTAINED A MATERIAL WITNESS WARRANT, AND
10 THEN WE KNOW WHAT HAPPENED AFTER THAT, YOUR HONOR.

11 DOES THAT RISE TO THE LEVEL IN THE COURT'S
12 CONSTRUCTION OF THE TERM AS PARTICIPATING IN THE SAME
13 INVESTIGATION? I GUESS WHAT I AM ASKING FOR --

14 THE COURT: WELL, IT SHOULD BE DETERMINED ON THE
15 SAME BASIS AS YOU WOULD IF THE INVESTIGATION WAS DONE BY
16 THE DEA. IF IT IS REQUIRED TO BE DISCLOSED UNDER RULE 16
17 OR UNDER BRADY OR UNDER JENCKS, IT SHOULD BE DISCLOSED.
18 THE FACT THAT IT WAS DONE BY SOME OTHER AGENCY DOES NOT
19 CHANGE THINGS.

20 MR. MEDRANO: VERY WELL, YOUR HONOR.

21 THE COURT: THAT IS BASICALLY WHAT THE COURT
22 MEANS.

23 INsofar AS THIS MOTION, IT REQUESTS ALL
24 DOCUMENTS RELEVANT TO THE INVESTIGATION AND POSSESSION OF
25 THE GOVERNMENT WHICH FAIL TO MENTION MR. ZUNO, THERE IS NO

1 AUTHORITY THAT I AM ABLE TO FIND THAT WOULD JUSTIFY SUCH
2 AN ALL-INCLUSIVE DISCLOSURE. I WOULD DENY THAT.

3 TO THE EXTENT THAT THE MOTION REQUESTS A
4 STATEMENT FROM THE PROSECUTION AS TO THE NATURE AND EXTENT
5 OF THE SEARCH IN THE FILES OF OTHER GOVERNMENTAL AGENCIES
6 INVOLVED IN THIS LITIGATION, THE COURT WOULD DENY THAT FOR
7 THE SAME REASON. THERE IS NO AUTHORITY FOR SUCH A
8 REQUEST, NOR IS THERE ANY AUTHORITY FOR SUCH A REQUEST
9 THAT THE GOVERNMENT DISCLOSE ALL DOCUMENTS IN WHICH
10 MR. ZUNO'S NAME IS NOT MENTIONED ON THE THEORY THAT SUCH
11 DOCUMENTS ARE EXCULPATORY AND SUBJECT TO DISCLOSURE UNDER
12 BRADY.

13 IN FACT, THERE HAS BEEN A RECENT CASE, UNITED
14 STATES VS. BRYAN, WHICH APPEARS TO HAVE HELD QUITE THE
15 CONTRARY. SO THAT IS THE EXTENT TO WHICH THE COURT IS
16 WILLING TO GO WITH RESPECT TO THIS MOTION, AND THAT IS TO
17 RULE THAT INVESTIGATIONS DONE BY OTHER AGENCIES OF THE
18 GOVERNMENT ARE SUBJECT TO THE SAME RULES OF DISCLOSURE AND
19 TO THE SAME DISCOVERY RIGHTS.

20 MR. BLANCARTE: THANK YOU, YOUR HONOR. MAY WE
21 ASK THAT THE COURT REQUIRE THE GOVERNMENT TO REPORT BACK
22 TO THIS COURT WITHIN A WEEK AS TO THE RESULT OF THEIR
23 INVESTIGATION, GIVEN THE SHORT PERIOD BETWEEN NOW AND THE
24 TRIAL?

25 THE COURT: NO, I DON'T THINK THAT IS NECESSARY.

1 THE GOVERNMENT KNOWS THAT IT HAS THE OBLIGATION -- THE
2 DISCOVERY OBLIGATIONS THAT I HAVE JUST INDICATED, AND I
3 EXPECT THEM TO COMPLY.

4 MR. BLANCARTE: IS THERE A DATE BY WHICH THAT
5 SHOULD OCCUR, YOUR HONOR?

6 THE COURT: WELL, IT SHOULD OCCUR AS SOON AS
7 POSSIBLE.

8 ARE YOU READY TO REVIEW THOSE MATERIALS AND
9 DETERMINE WHETHER OR NOT THEY ARE SUBJECT TO DISCLOSURE,
10 OR HAVE YOU DONE SO?

11 MR. MEDRANO: YOUR HONOR, I BELIEVE NOT, BUT WE
12 WILL MAKE THESE INQUIRIES WITH THE OTHER AGENCIES TO THE
13 EXTENT THAT THERE ARE OTHER AGENCIES WHICH PARTICIPATED,
14 AND WE WILL DO THAT AS PROMPTLY AS POSSIBLE, YOUR HONOR.

15 THE COURT: WELL, DO SO BY THE END OF THE WEEK
16 AND NOTIFY COUNSEL ABOUT THE RESULT.

17 MR. MEDRANO: YOUR HONOR, IN RETURN COULD WE ASK
18 THE COURT TO ASK COUNSEL TO PROVIDE US WITHIN A WEEK OF
19 THEIR EFFORT TO FILE WITH THE COURT THE ADDITIONAL
20 INFORMATION NEEDED IN REGARD TO THE SUPPLEMENTARY
21 DISCOVERY REQUEST THAT THE COURT HAS ALREADY ADDRESSED?

22 THE COURT: I DON'T BELIEVE I GRANTED THAT.

23 MR. MEDRANO: WELL, YOU ADVISED THEM, YOUR
24 HONOR, THAT THEY NEEDED TO PROVIDE YOU WITH THE ADDITIONAL
25 LEGAL SUPPORT AND FACTUAL BASIS FOR --

1 THE COURT: OH, FOR THE --

2 MR. MEDRANO: IT WAS THEIR REQUEST --

3 THE COURT: THEY WERE TALKING ABOUT BRINGING
4 WITNESSES IN HERE TO TESTIFY AT THE TRIAL.

5 MR. MEDRANO: AND IN LIGHT OF THE SHORT TIME
6 FUSE, WE WOULD ASK THAT WITHIN THAT SAME TIME PERIOD WE
7 HAVE THAT SAME INFORMATION, YOUR HONOR.

8 MR. BLANCARTE: YOUR HONOR, WE WILL BE PROVIDING
9 THAT INFORMATION --

10 THE COURT: WELL, AS SOON AS IT IS FILED WITH
11 THE COURT IT SHOULD BE SERVED ON THE GOVERNMENT.

12 MR. BLANCARTE: CORRECT. THAT IS THE NORMAL
13 COURSE OF BUSINESS. WE WILL BE PROVIDING THE GOVERNMENT
14 WITH THOSE DOCUMENTS WHICH WE PROVIDE TO THE COURT.

15 THE COURT: IS THERE ANY REASON YOU CAN'T FILE
16 IT BY THE END OF THE WEEK?

17 MR. BLANCARTE: I KNOW OF NO REASON WHY WE
18 CANNOT DO SO, SIR.

19 THE COURT: THEN YOU SHOULD FILE AND SERVE IT BY
20 FRIDAY.

21 MR. BLANCARTE: THE ONLY QUESTION WE HAVE IS AS
22 TO THE IDENTITY OF INDIVIDUALS WHO ARE NOT FUGITIVES, AND
23 WE SIMPLY WANT TO MAKE SURE THAT THEY ARE PAROLED INTO THE
24 UNITED STATES FOR THE SOLE PURPOSE OF TESTIFYING AT TRIAL.
25 THE NAMES WE NEED TO PROVIDE TO THE INS AUTHORITIES, AND I

1 WOULD ASK FOR CLARIFICATION. COUNSEL SEEMS TO BE ASKING
2 FOR THOSE IDENTITIES, ALSO.

3 MR. MEDRANO: WE THINK WE ARE ENTITLED TO --
4 THE COURT: NOW, LOOK, YOU HAVE ASKED FOR
5 CERTAIN RELIEF, AND I TOLD YOU TO RESEARCH THE LAW AND THE
6 PROCEDURE AVAILABLE AND PRESENT IT TO THE COURT. HOW YOU
7 DO IT IS YOUR BUSINESS. WHETHER OR NOT THE COURT WILL GO
8 ALONG WITH IT WILL DEPEND ON HOW WELL YOU DO IT.

9 WE HAVE A MOTION BY THE DEFENDANT JAVIER
10 VASQUEZ-VELASCO FOR AN ORDER AUTHORIZING THE TAKING OF
11 FOREIGN DEPOSITIONS AND TO CONTINUE THE TRIAL DATE, JOINED
12 IN BY THE DEFENDANT BERNABE-RAMIREZ.

13 THE COURT HAS READ AND CONSIDERED THIS MOTION
14 AND THE OPPOSITION TO THE MOTION, AND I HAVE TENTATIVELY
15 CONCLUDED THAT THIS MOTION SHOULD BE DENIED FOR THE
16 FOLLOWING REASONS: FIRST, RULE 15 PROVIDES THAT THE COURT
17 MAY ORDER DEPOSITIONS OF PROSPECTIVE WITNESSES BE TAKEN IN
18 A CRIMINAL CASE WHENEVER DUE TO EXCEPTIONAL CIRCUMSTANCES
19 IN THE CASE IT IS IN THE INTERESTS OF JUSTICE. THE BURDEN
20 IS ON THE MOVING PARTY TO ESTABLISH EXCEPTIONAL
21 CIRCUMSTANCES.

22 THE COURT'S DISCRETION UNDER THE LAW SHOULD BE
23 EXERCISED WITH AN EYE TO A POLICY THAT DEPOSITIONS ARE NOT
24 FAVORED IN CRIMINAL CASES. THE FACTORS USED IN
25 DETERMINING WHETHER TO GRANT THE MOTION INCLUDE, FIRST,

1 WHETHER THE PROSPECTIVE DEONENTS WILL BE UNAVAILABLE FOR
2 TRIAL AND WHETHER THE MOVING PARTY HAS MADE GOOD FAITH
3 EFFORTS TO OBTAIN A WITNESS'S PRESENCE AT TRIAL.

4 I UNDERSTAND THAT THESE PEOPLE ARE ALL IN
5 MEXICAN PRISONS.

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

7 THE COURT: THEREFORE THAT QUESTION OF
8 UNAVAILABILITY PROBABLY CAN'T BE SERIOUSLY DISPUTED. AND
9 YOUR GOOD FAITH EFFORT TO OBTAIN THE WITNESSES WOULD
10 PROBABLY BE FUTILE.

11 SECOND, THERE MUST BE AN ADEQUATE SHOWING THAT
12 THE TESTIMONY WOULD BE FAVORABLE TO THE DEFENDANT; THAT
13 THE WITNESSES WOULD BE AVAILABLE FOR DEPOSITION, AND THAT
14 INCLUDES AUTHORIZATION BY THE PRISON AUTHORITIES THAT THEY
15 WOULD PERMIT SUCH DEPOSITIONS TO BE TAKEN AND THAT THEY
16 WOULD BE WILLING TO TESTIFY.

17 NOW, ALL YOU HAVE SHOWN HERE BASICALLY IS THAT
18 THESE PEOPLE ARE UNAVAILABLE FOR TRIAL BECAUSE THEY ARE IN
19 MEXICAN PRISONS. YOU HAVE NOT MET THE BURDEN OF
20 ESTABLISHING THE OTHER REQUIREMENTS, AND YOUR ARGUMENT
21 THAT BECAUSE THE WITNESSES DID NOT MENTION THE DEFENDANT
22 IN THEIR STATEMENTS THAT THEY WOULD NECESSARILY EXCULPATE
23 THE DEFENDANT DOES NOT NECESSARILY FOLLOW. YOU HAVE NOT
24 SHOWN THAT THE WITNESSES' TESTIMONY WOULD BE FAVORABLE TO
25 THE DEFENDANT. YOU HAVE NOT MADE AN ADEQUATE SHOWING THAT

1 THE WITNESSES WOULD BE AVAILABLE FOR DEPOSITION OR THAT
2 THEY WOULD BE WILLING TO TESTIFY.

3 AND, THEREFORE, THE MOTION IN THE VIEW OF THE
4 COURT SHOULD BE DENIED.

5 MR. NICOLAYSEN: LET ME TAKE THOSE ELEMENTS ONE
6 BY ONE. WITH RESPECT TO THE ELEMENTS REQUIRING SOME
7 SHOWING THAT THE TESTIMONY WOULD BE FAVORABLE, I WOULD
8 EMPHASIZE, YOUR HONOR, THAT WHAT WE ARE DEALING WITH HERE
9 ARE STATEMENTS GIVEN BY EACH OF THESE WITNESSES BACK IN
10 THE EARLY PART OF 1985 TO THE MEXICAN LAW ENFORCEMENT
11 AUTHORITIES IN THE COURSE OF THEIR INVESTIGATION EARLY ON.

12 THESE STATEMENTS, WHICH WERE GIVEN TO US BY THE
13 U.S. ATTORNEY'S OFFICE ON MARCH 2ND, ARE ABOUT 20,
14 SOMETIMES 25, PAGES LONG, TYPEWRITTEN IN SMALL TYPE, I
15 WOULD ADD, VERY, VERY DETAILED, ALMOST EXHAUSTIVE,
16 NARRATIVE ACCOUNTS OF HOW THESE MURDERS WHICH MY CLIENT IS
17 CHARGED WITH HAVING COMMITTED DID TAKE PLACE.

18 NUMEROUS INDIVIDUALS ARE IDENTIFIED IN EACH OF
19 THESE WITNESS ACCOUNTS, SOME OF THEM BY STREET SLANG,
20 OTHERS BY FORMAL NAMES. MY CLIENT WAS NOWHERE NAMED.

21 MOREOVER, THESE WITNESSES -- AND I HAVE TWO
22 WITNESSES PARTICULARLY IN MIND, YOUR HONOR. I AM
23 PERFECTLY PREPARED TODAY TO NARROW THE FOCUS OF MY MOTION
24 TO THOSE TWO INDIVIDUALS BASED ON MY INVESTIGATION SINCE I
25 FILED THIS MOTION OVER A MONTH AGO. THE STATEMENTS OF THE

1 TWO PEOPLE I HAVE IN MIND, MR. JARAMILLO AND MR. RAMIREZ,
2 SHOW CLEARLY THAT THOSE TWO INDIVIDUALS BY THEIR OWN
3 ADMISSION WERE THE LEAD PERPETRATORS OF THOSE MURDERS.
4 THAT IS VERY CLEAR FROM THE STATEMENTS. IT ALMOST SEEMS
5 APPARENT AND ALMOST SELF-EVIDENT FROM READING THESE
6 STATEMENTS THAT ANYONE ELSE WHO MIGHT HAVE BEEN INVOLVED
7 IN THOSE MURDERS PARTICIPATED UNDER THE DIRECTION OR
8 SUPERVISION OR AT THE INSTRUCTION OF THESE TWO INDIVIDUALS
9 PRINCIPALLY.

10 NOW, THOSE STATEMENTS ARE BEING TRANSLATED BASED
11 ON YOUR HONOR'S ORDERS TO COURT STAFF TO HAVE FORMAL
12 ENGLISH TRANSLATIONS. NOW, THOSE TRANSLATIONS HAVEN'T
13 BEEN RETURNED TO ME YET, BUT IN THE INTERIM MONTH SINCE
14 THE MOTION WAS FILED, I HAVE BEEN IN REGULAR CONTACT WITH
15 THE COURT INTERPRETING STAFF MEMBER WHO IS PREPARING THEM,
16 AND THE REPRESENTATIVE HERE IN COURT TODAY, CYNTHIA
17 PARKER, WHO HAS BEEN ASSIGNED THIS CASE SINCE I WAS
18 BROUGHT IN LAST OCTOBER, MADE AN INITIAL REVIEW AND
19 CONFIRMED THE POINTS THAT I AM MAKING TO YOUR HONOR NOW
20 BECAUSE, AS THE COURT KNOWS, THESE STATEMENTS ARE IN
21 SPANISH.

22 WE ARE DEALING WITH THE VERY DEFINITION, IN MY
23 OPINION, OF A MATERIAL WITNESS. NOTHING COULD BE MORE
24 MATERIAL THAN THE INFORMATION POSSESSED BY THESE TWO
25 PEOPLE.

1 AGAINST THE BACKDROP OF WHAT I HAVE JUST SAID,
2 WE ARE DEALING WITH A CASE WHERE NO OTHER WITNESS HAS YET
3 BEEN BROUGHT TO THE ATTENTION OF THE DEFENSE ATTORNEYS IN
4 THIS CASE WHO IS GOING TO TESTIFY ON THE LA LANGOSTA
5 MURDERS. I AM EXPECTING THAT THE ONE INDIVIDUAL THAT THE
6 GOVERNMENT HAS REPRESENTED AS BEING A CONFIDENTIAL
7 INFORMANT IN THIS CASE, THAT THAT PERSON WILL BE DISCLOSED
8 TO US PURSUANT TO YOUR HONOR'S ORDER ON MARCH 24 --

9 THE COURT: APRIL 23.

10 MR. NICOLAYSEN: MARCH 23RD.

11 THE COURT: NO. APRIL 23RD.

12 MR. NICOLAYSEN: I AM SORRY. APRIL 23RD.

13 -- IN RESPONSE TO MY MOTION FOR PRODUCTION OF
14 THAT INFORMANT'S IDENTITY GOING BACK TO NOVEMBER OF LAST
15 YEAR, AND IN ITS OPPOSITIONS TO OTHER MOTIONS THE
16 GOVERNMENT HAS REPEATEDLY EMPHASIZED THAT IT HAS ONE
17 CONFIDENTIAL INFORMANT WHO WAS AN EYEWITNESSES TO THESE LA
18 LANGOSTA MURDERS THAT THE GOVERNMENT PLANS TO PUT ON THE
19 STAND. ONE WITNESS.

20 AND I THINK IN THE INTERESTS OF JUSTICE THE
21 SIXTH AMENDMENT TRULY MANDATES THAT THERE BE SOME
22 BALANCE --

23 THE COURT: BUT YOU HAVE TO SHOW ME THAT THIS
24 WITNESS WOULD BE WILLING TO TESTIFY.

25 MR. NICOLAYSEN: THAT IS A SEPARATE ELEMENT,

1 YOUR HONOR. LET ME JUST FINISH THE ISSUE OF MATERIALITY.
2 THERE CAN BE, IN MY OPINION, NO QUESTION THAT THIS WITNESS
3 IS MATERIAL. WOULD HE BE FAVORABLE? WE CAN ARGUE THE
4 LOGICAL POINT THAT THE GOVERNMENT RAISES IN ITS
5 OPPOSITION, THAT IS, AS YOUR HONOR JUST POINTED OUT, JUST
6 BECAUSE THE WITNESS DOESN'T MENTION MY CLIENT DOESN'T MEAN
7 HE NECESSARILY EXCULPATES HIM, EITHER. AND LOGICALLY
8 THERE IS SOME TRUTH TO THAT.

9 BUT I THINK, YOUR HONOR, WHAT WE ARE DEALING
10 WITH HERE ARE PRINCIPLES OF FAIRNESS AND JUSTICE AND
11 UNUSUAL CIRCUMSTANCES, TO SAY THE LEAST, THAT FALL WITHIN
12 THE EXCEPTIONAL CIRCUMSTANCES TEST OF RULE 15, AND SUCH A
13 LOGICAL DEDUCTION AS THAT SHOULD NOT BE THE DISPOSITIVE
14 FACTOR IN PURSUING THE INTERESTS OF EQUITY.

15 I WOULD RESPECTFULLY SUBMIT THAT WHEN WE LOOK AT
16 THE DETAIL IN THOSE STATEMENTS, THE EXCEPTIONAL AMOUNT OF
17 INFORMATION IN EACH OF THOSE STATEMENTS -- ALL OF THE
18 NAMES THAT ARE GIVEN BY EACH OF THE WITNESSES, I WOULD
19 SUBMIT PROBABLY 20 OR 30 NAMES IN EACH OF THE STATEMENTS
20 OF OTHER PEOPLE WHO WERE INVOLVED, AND NOT ONCE IN ANY OF
21 THOSE MEXICAN STATEMENTS IS MR. VASQUEZ MENTIONED. IN MY
22 OPINION, YOUR HONOR, THAT CERTAINLY WEIGHS IN FAVOR OF A
23 FINDING OF EXCULPATORY, EVEN THOUGH IT DOESN'T REACH THE
24 LEVEL OF EXPLICITNESS THAT WOULD BE DESIRABLE, BUT
25 CERTAINLY ENOUGH, IN MY JUDGMENT, TO MEET A THRESHOLD TEST

1 TO JUSTIFY THE DEPOSITIONS.

2 YOUR HONOR ALSO ADDRESSED THE QUESTION OF
3 WHETHER THE AUTHORITIES WOULD BE PREPARED TO ALLOW THE
4 TESTIMONY TO OCCUR. YOUR HONOR, I HAVE EXPLORED AT GREAT
5 LENGTH THAT ISSUE IN THE PAST MONTH SINCE I FILED THIS
6 MOTION. WE HAVE A MEMBER OF THE MEXICAN CONSULATE HERE IN
7 THE COURT TODAY, ANTONIO ORTIZ, WHO HAS BEEN VERY DILIGENT
8 IN INTERFACING WITH ME THROUGHOUT THE PAST MONTH TO WORK
9 OUT THE LOGISTICS SO THAT I COULD MAKE A PROFFER TO THE
10 COURT TODAY.

11 I HAVE ALSO SPOKEN WITH MR. PRESCADOR, WHO IS
12 THE LEAD MEXICAN CONSULAR GENERAL HERE AT THE CONSULATE
13 JUST ACROSS THE STREET. HE WAS KIND ENOUGH TO GIVE ME HIS
14 TIME AND REPRESENTED TO ME AND SUBSEQUENTLY THROUGH
15 MR. ORTIZ THAT THE MEXICAN GOVERNMENT IS PREPARED TO HONOR
16 LETTERS ROGATORY SHOULD YOUR HONOR ISSUE THE RULE 15
17 MOTION WHICH WOULD THEN AUTHORIZE ME TO PREPARE THOSE
18 LETTERS TO BE SUBMITTED TO THE MEXICAN EMBASSY AND THROUGH
19 DIPLOMATIC CHANNELS TO THE FEDERAL ATTORNEY IN MEXICO
20 CITY.

21 I FEEL COMFORTABLE --

22 THE COURT: THERE IS ONE THING MISSING -- THE
23 WILLINGNESS OF THESE PEOPLE TO TESTIFY.

24 MR. NICOLAYSEN: THAT IS THE FINAL ELEMENT, YOUR
25 HONOR, BUT I THINK JUST BEFORE WE GET TO THAT POINT, I

1 BELIEVE THAT FOR PURPOSES OF THE PROFFER REQUIRED UNDER
2 RULE 15, I HAVE MET THAT TEST AND I FEEL THAT I HAVE DONE
3 WHAT I REASONABLY CAN BE EXPECTED TO DO TO PROVIDE YOUR
4 HONOR WITH THE FOUNDATIONAL SHOWING THAT THE AUTHORITIES
5 ARE PREPARED TO RESPOND FAVORABLY.

6 NOW, FINALLY --

7 THE COURT: YOU HAVEN'T SHOWN ME THAT EXCEPT BY
8 YOUR OWN ASSERTION. I HAVEN'T SEEN ANY EVIDENCE THAT WAS
9 SUBMITTED TO THE COURT.

10 MR. NICOLAYSEN: IN DECLARATION FORM --

11 THE COURT: IN OTHER WORDS, THIS IS AN ASSERTION
12 THAT YOU MAKE IN COURT WHICH THE GOVERNMENT HAS NOT EVEN
13 HAD THE OPPORTUNITY TO HAVE NOTICE OF OR INVESTIGATE.
14 THAT IS THE PURPOSE OF A NOTICED MOTION.

15 MR. NICOLAYSEN: MY DECLARATION DOES REFER TO
16 THAT, YOUR HONOR, AND I AM CONFIRMING TO THE COURT NOW
17 THAT IN THE SUBSEQUENT MONTH I HAVE BEEN ABLE TO FOLLOW UP
18 ON THAT ISSUE.

19 ON PAGE 5 IT STATES FROM LINE 2 AND ON:

20 "I WAS ADVISED BY ROSA CORSO, WHO WAS THE
21 INITIAL CONTACT PERSON AT THE MEXICAN CONSULATE,
22 THAT IN THE EVENT THIS COURT WERE TO GRANT AN
23 ORDER AUTHORIZING THE TAKING OF FOREIGN
24 DEPOSITIONS IN MEXICO, THE MEXICAN CONSULATE
25 WOULD UNDERTAKE TO DETERMINE WHETHER THESE

1 INDIVIDUALS ARE IN MEXICO IN PRISON AND, IF SO,
2 TO PROVIDE ME WITH THE NECESSARY ASSISTANCE BY
3 WHICH TO OBTAIN ACCESS TO THE PRISON FACILITIES
4 TO CONDUCT DEPOSITIONS."

5 THAT IS IN MY DECLARATION THAT WAS SERVED ON THE
6 GOVERNMENT ON MARCH 7TH. I AM NOW PREPARED TO CONFIRM
7 THAT, YOUR HONOR. I HAVE BEEN FORTUNATE TO RECEIVE
8 CONFIRMATION FROM HIGHER AUTHORITIES HERE LOCALLY THAT
9 THAT IN FACT IS THE GOVERNMENT'S DECISION.

10 THEY DO WANT THE FORMALITY OF A LETTERS
11 ROGATORY. THAT IS ABSOLUTELY CLEAR. OF COURSE THAT WOULD
12 REQUIRE A RULE 15 --

13 THE COURT: I AM NOT SURE LETTERS ROGATORY
14 GOVERN THIS. DO THEY?

15 MR. NICOLAYSEN: YOUR HONOR, IT HAS BEEN PERHAPS
16 EVEN A TROUBLING PROCEDURAL ISSUE TO EXPLORE. MY OFFICE
17 HAS INQUIRED THROUGH THE STATE DEPARTMENT IN WASHINGTON,
18 THE MEXICAN EMBASSY IN WASHINGTON, THE OFFICE OF
19 INTERNATIONAL AFFAIRS, AND THE JUSTICE DEPARTMENT AND
20 VARIOUS LAW REVIEW ARTICLES.

21 PERHAPS, PECULIAR AS IT MAY SEEM, BECAUSE OF
22 THEIR LIMITING NATURE, LETTERS ROGATORY DO SEEM TO BE THE
23 GOVERNING PROCEDURE IN RELATION TO MEXICAN DISCOVERY.

24 THE COURT: HAVE YOU MADE ANY EFFORT TO CONTACT
25 THESE WITNESSES THROUGH AN INVESTIGATOR OR OTHERWISE, OR

1 THROUGH YOURSELF, TO ASCERTAIN WHETHER THEY WOULD BE
2 WILLING TO TESTIFY?

3 MR. NICOLAYSEN: I HAVE BEEN PHYSICALLY UNABLE
4 TO DO THAT. I HAVE EXPLORED ALL POSSIBLE CHANNELS THROUGH
5 THE DIPLOMATIC AUTHORITIES, YOUR HONOR.

6 THE COURT: WELL, I THINK YOU HAVE TO CONTACT
7 THE WITNESSES TO FIND OUT IF THEY ARE WILLING TO TESTIFY.

8 MR. NICOLAYSEN: I CAN'T DO IT.

9 THE COURT: WHY NOT?

10 MR. NICOLAYSEN: THEY ARE IN PRISON. I HAVE
11 ABSOLUTELY NO PHYSICAL ACCESS TO THESE PEOPLE.

12 THE COURT: WELL, IF YOU CAN GET ACCESS TO DO A
13 DEPOSITION, CAN'T YOU GET ACCESS TO TALK TO THE WITNESSES?

14 MR. NICOLAYSEN: THE FEEDBACK I RECEIVE, YOUR
15 HONOR, IS THAT IT IS NOT IN ANY WAY REALISTIC TO BE ABLE
16 TO GO TO A PRISON FACILITY WITHOUT --

17 THE COURT: WELL --

18 MR. NICOLAYSEN: IF I MAY JUST COMPLETE MY
19 THOUGHT.

20 -- WITHOUT THE ENDORSEMENT OF THE MEXICAN
21 AUTHORITIES. THAT ENDORSEMENT HINGES ON A RULING FROM
22 THIS COURT ON A RULE 15 AUTHORIZING A FORMAL QUESTIONING
23 OR DEPOSITION PROCEDURE. IT IS REALLY THAT SIMPLE.

24 GIVEN THE EXTRAORDINARY MATERIALITY OF THESE
25 WITNESSES BUTTRESSED AGAINST THE FACT THAT THE GOVERNMENT

1 HAS OPENLY STATED THAT IT HAS ONLY ONE WITNESS -- THE
2 CONFIDENTIAL INFORMANT, WHOSE IDENTITY I DON'T YET KNOW --
3 WHO WILL TESTIFY AGAINST MY CLIENT, WE CANNOT AFFORD TO
4 LEAVE THESE WITNESSES OUT OF THE TRIAL PROCESS.

5 I AM TROUBLED, IN FACT, PROFESSIONALLY BY THE
6 GOVERNMENT'S OBJECTION OR OPPOSITION TO THIS MOTION. IT
7 IS CERTAINLY A CONSTITUTIONAL RULE THAT THE GOVERNMENT HAS
8 A DUTY TO SEE THAT JUSTICE IS DONE -- NOT TO WIN CASES. I
9 WAS HOPING, AND I CONVEYED THIS OPENLY TO BOTH
10 PROSECUTORS, THAT THE GOVERNMENT WORK HAND IN HAND WITH
11 ALL OF THE DEFENSE ATTORNEYS SO THAT WE CAN HAVE A
12 STIPULATION --

13 THE COURT: ALL RIGHT, COUNSEL. THAT IS ENOUGH
14 ARGUMENT.

15 DO YOU WISH TO RESPOND TO THIS?

16 MR. MEDRANO: JUST VERY BRIEFLY, YOUR HONOR.
17 FIRST OF ALL, WHAT I THINK HAS TO BE BROUGHT TO THE
18 COURT'S ATTENTION IS THAT, ALTHOUGH MR. NICOLAYSEN IS
19 ACCURATE IN HIS GENERAL DESCRIPTION OF THE LENGTH OF THE
20 MEXICAN POST-ARREST STATEMENTS OF SOME OF THESE PURPORTED
21 WITNESSES, WHAT HE FAILS TO MENTION TO THE COURT ARE THAT
22 THESE STATEMENTS ARE BY NO MEANS AND NOT IN ANY FASHION
23 ALL-ENCOMPASSING STATEMENTS.

24 THESE STATEMENTS DO NOT PURPORT, YOUR HONOR, AND
25 NO INTERPRETATION OR CONSTRUCTION OF THESE STATEMENTS CAN

1 RESULT IN SUCH AN INTERPRETATION. THESE ARE STATEMENTS
2 WHICH DO NOT SUGGEST THAT THEY IDENTIFY ALL THE PEOPLE
3 THAT WERE PRESENT AT THE RESTAURANT WHERE THESE TWO
4 TOURISTS WERE MURDERED.

5 THE COURT: WELL, WERE THESE STATEMENTS OF
6 PERCIPIENT WITNESSES WHO WERE THERE AT THE RESTAURANT OR
7 OUTSIDE THE RESTAURANT AND OBSERVED SOME OF THE EVENTS
8 TAKING PLACE?

9 MR. MEDRANO: IT CERTAINLY SUGGESTS THAT, YOUR
10 HONOR, BUT STILL THE THRESHOLD QUESTION IS MATERIALITY,
11 AND YOU HAVE TO HAVE AN AFFIRMATIVE STATEMENT EITHER IN
12 THAT DECLARATION WHERE THEY SAY, FOR EXAMPLE, THAT THESE
13 PEOPLE THAT I HAVE ENUMERATED ARE ALL THE PEOPLE THAT WERE
14 IN THE RESTAURANT. THERE IS NO SUCH STATEMENT.

15 THE COURT MAY RECALL WHEN YOU DEALT WITH THIS
16 ISSUE IN 1988 WITH JESUS FELIX-GUTIERREZ. YOU GRANTED
17 THAT DEPOSITION MOTION, YOUR HONOR, BECAUSE THE DEFENSE
18 HAD SUBMITTED A DECLARATION OF CARO-QUINTERO IN WHICH HE
19 AFFIRMATIVELY EXCULPATED THE CLIENT OF THE DEFENSE
20 COUNSEL.

21 WE HAVE NOT MET THAT MATERIALITY THRESHOLD HERE,
22 YOUR HONOR. WE ARE STILL BACK TO SQUARE ONE, AND,
23 ALTHOUGH I CAN CERTAINLY UNDERSTAND THE CONSTITUTIONAL
24 ARGUMENT MADE BY MR. NICOLAYSEN, THE BOTTOM LINE IS THAT
25 WE ARE CONSTRAINED AND COMPELLED TO FOLLOW THE NINTH

1 CIRCUIT CRITERIA, WHICH ARE LAID OUT VERY EXPLICITLY.
2 THAT HAS NOT BEEN SATISFIED, YOUR HONOR.

3 IN ADDITION, PERHAPS THE PARAMOUNT PROBLEM OR
4 CONCERN WITH EMBARKING ON DEPOSITIONS OF SUSPECT
5 TESTIMONY, YOUR HONOR, IS THAT THESE PEOPLE -- THESE ARE
6 WITNESSES ADMITTEDLY IN A MEXICAN PRISON -- GOD KNOWS FOR
7 WHAT. YOU HAVE ABSOLUTELY NO LEVERAGE IN THE FORM OF
8 PERJURY OR FEDERAL RULES OF EVIDENCE OF UNDERSTANDING THE
9 OATH TO TELL THE TRUTH OR THE GRAVITY OF THE SITUATION AND
10 THEREFORE TO TELL THE TRUTH, SO --

11 THE COURT: THAT IS NOT BEFORE US. IS IT?

12 MR. MEDRANO: WELL, YES AND NO.

13 THE COURT: DO YOU MEAN THAT THERE SHOULD BE A
14 PRESUMPTION THAT THESE PEOPLE WOULD LIE?

15 MR. MEDRANO: NOT AT ALL, YOUR HONOR.

16 THE COURT: SOME PEOPLE SAY THAT ABOUT YOUR
17 WITNESSES.

18 MR. MEDRANO: THE PROBLEM IS THAT OUR WITNESSES
19 ARE HERE IN COURT TO FACE THE MUSIC. YOUR HONOR,
20 MR. NICOLAYSEN'S WITNESSES WOULD NOT BE. THEY WILL REMAIN
21 IN MEXICO. THE WAY THIS TESTIMONY WOULD BE ADMITTED IS IN
22 THE FORM OF VIDEO TAPE DEPOSITIONS, AND THERE IS
23 ABSOLUTELY NO PERJURY LEVERAGE ON THOSE WITNESSES.

24 THE COURT: YOU ARE ARGUING A GROUND THAT IS NOT
25 PERTINENT TO THIS INQUIRY.

1 MR. MEDRANO: VERY WELL, YOUR HONOR. WELL, OUR
2 OBJECTION REMAINS THAT IN TERMS OF THE MOST IMPORTANT
3 CRITERION THAT MR. NICOLAYSEN HAS TO SATISFY IS
4 MATERIALITY. THAT HAS NOT BEEN MET HERE.

5 THE COURT: YES, I AGREE.

6 MR. NICOLAYSEN: YOUR HONOR --

7 THE COURT: JUST A MOMENT. I THINK WITHOUT
8 STATEMENTS FROM THESE WITNESSES THAT THEY WOULD BE WILLING
9 TO TESTIFY -- AND I THINK YOU MAY BE ABLE TO OBTAIN THAT.
10 THESE WITNESSES MAY HAVE HAD LAWYERS. I DON'T KNOW HOW,
11 BUT THERE ARE WAYS TO OBTAIN IT. THEY DID OBTAIN A
12 STATEMENT FROM CARO-QUINTERO IN THE LAST TRIAL, AND THEN
13 HE REFUSED TO TESTIFY, AND THE ARRANGEMENTS WERE NEVER
14 WORKED OUT FOR OTHER WITNESSES. SO I DON'T BELIEVE THAT
15 IT IS AS EASY AS YOU THINK IT IS, BUT I AM NOT GOING TO
16 GRANT IT BECAUSE YOU HAVE NOT MADE THE SHOWING THAT IS
17 REQUIRED.

18 MR. NICOLAYSEN: NOW THAT WE HAVE ISOLATED YOUR
19 HONOR'S CONCERN AND THE BASIS FOR THE COURT'S POSITION TO
20 ONE SPECIFIC ELEMENT, I WOULD ASK THAT WE PUT OVER THE
21 RULING FOR ANOTHER WEEK OR MAYBE TWO WEEKS, AND I WILL
22 WORK AS DILIGENTLY AS I CAN IN SOME WAYS THROUGH
23 DIPLOMATIC CHANNELS AND IN OTHER WAYS TRYING TO CONTACT
24 THE ATTORNEYS DOWN IN MEXICO, IF THAT IS POSSIBLE, AND
25 FILE A SUPPLEMENTAL AFFIDAVIT TO ADDRESS THAT CONCERN.

1 YOUR HONOR, THESE ARE SO IMPORTANT, THESE
2 DEPOSITIONS, THAT I DO NOT WANT TO SEE THE OUTCOME OF
3 TODAY'S APPLICATION DISPOSED OF ON THAT ONE ISSUE.

4 FOR THE GOVERNMENT TO REPRESENT THAT THE
5 STATEMENTS MAY SUGGEST THAT THESE ARE PERCIPIENT WITNESSES
6 IS LUDICROUS. THESE ARE THE CONFESSIONS OF THE SO-CALLED
7 KILLERS THEMSELVES. THE STATEMENTS COULDN'T BE MORE
8 DESCRIPTIVE.

9 IF YOUR HONOR FEELS THAT LOOKING AT THE ENGLISH
10 TRANSLATIONS WOULD BE PRODUCTIVE IN RULING ON THIS MOTION,
11 I WILL ARRANGE TO GET THE TRANSLATIONS BY FEDERAL
12 EXPRESS --

13 THE COURT: YOU DO WHAT YOU CAN, BUT THIS
14 SHOWING HERE THAT YOU MADE IS INADEQUATE.

15 MR. NICOLAYSEN: MAY I HAVE A CONTINUANCE OF THE
16 RULING TODAY TO FILE A SUPPLEMENTAL AFFIDAVIT ON THAT ONE
17 ISSUE REGARDING THE WILLINGNESS?

18 THE COURT: HOW MUCH TIME?

19 MR. NICOLAYSEN: TWO WEEKS, YOUR HONOR.

20 THE COURT: ALL RIGHT. TWO WEEKS.

21 MR. MEDRANO: YOUR HONOR, ONE ADDITIONAL
22 SUGGESTION BECAUSE I THINK THE OBJECTIONS ARE TWOFOLD.
23 ONE IS PART 3, AS HE IS INDICATING, THE WILLINGNESS OF THE
24 WITNESSES TO TESTIFY.

25 BUT HOW ABOUT PART 2, YOUR HONOR: AN

1 AFFIRMATIVE STATEMENT IN THESE DECLARATIONS THAT WOULD
2 EXCULPATE THE DEFENDANT. THAT WAS DONE WITH RESPECT TO
3 CARO-QUINTERO. THESE DEFENSE COUNSEL WENT TO A MEXICAN
4 PRISON AND EVIDENTLY GOT A DECLARATION TO THAT EFFECT.

5 THE COURT: THAT IS ONE OF THE REQUIREMENTS THAT
6 MUST BE SHOWN, THAT THE EVIDENCE IS FAVORABLE.

7 MR. NICOLAYSEN: I AM GOING TO FILE WITH MY
8 SUPPLEMENTAL AFFIDAVIT THE ENGLISH TRANSLATIONS OF THESE
9 STATEMENTS THAT ARE BEING PREPARED BY THE COURT
10 INTERPRETING STAFF, AND I WILL --

11 THE COURT: JUST A MOMENT. THERE IS THIS 1989
12 CASE, UNITED STATES VS. BRYAN, THAT HAS SAID AND THE NINTH
13 CIRCUIT THEN IS IN THE POSITION OF REJECTING THE
14 CONTENTION THAT A STATEMENT THAT DOES NOT INCRIMINATE A
15 DEFENDANT NECESSARILY EXCULPATES AND NOTED IN THIS CASE
16 THAT THIS PROPOSITION IS SUPPORTED BY NEITHER LAW NOR
17 LOGIC.

18 SO I THINK YOU HAVE A PROBLEM IF YOU ARE RELYING
19 SIMPLY ON THE FACT THAT THESE PEOPLE DID NOT INCRIMINATE.

20 MR. NICOLAYSEN: BUT BRYAN IS NOT A DEPOSITION
21 CASE. IT IS A RULE 16 CASE, I BELIEVE, AND THAT RULING --

22 THE COURT: WELL, BUT --

23 MR. NICOLAYSEN: BRADY IN THE CONTEXT OF
24 RULE 16(C) IS SPECIFICALLY THE ELEMENT OF WHAT IS MATERIAL
25 TO THE DEFENSE, AND THE DEFENSE IN THAT PARTICULAR CASE,

1 WHICH IS A VERY WELL KNOWN RECENT CASE, TRIED TO ARGUE
2 THAT DOCUMENTS WERE MATERIAL TO THE DEFENSE BECAUSE THEY
3 SEEMED TO HAVE SOME EXCULPATORY VALUE.

4 THE COURT: THAT IS WHAT YOU ARE ARGUING. YOU
5 ARE ARGUING THAT THE FAILURE OF THESE WITNESSES TO
6 INCRIMINATE YOUR CLIENT IS TANTAMOUNT TO EXCULPATING.

7 MR. NICOLAYSEN: WHAT I AM SUGGESTING TO YOUR
8 HONOR IS THAT THE KIND OF INTEGRATION OF BRADY INTO THE
9 STANDARD ON RULE 15 IS NOT GOVERNED BY THE LANGUAGE OF
10 BRYAN BECAUSE BRYAN TOOK A SPECIFIC APPROACH IN
11 INTEGRATING BRADY INTO A SEPARATE RULE, RULE 16 AND THE
12 STANDARD FOR THE PRODUCTION OF DOCUMENTS. THESE ARE
13 APPLES AND ORANGES.

14 I SUBMIT TO YOUR HONOR --

15 THE COURT: LOOK, YOU CAN SUBMIT WHAT YOU WANT.
16 I AM SUGGESTING THAT IT WOULD BE MORE HELPFUL IF YOU HAD
17 STATEMENTS FROM THESE WITNESSES THAT AFFIRMATIVELY
18 EXCULPATED YOUR CLIENT, AND IF THEY ARE WILLING TO TESTIFY
19 TO THAT, THAT MAKES IT EVEN STRONGER.

20 MR. NICOLAYSEN: YOUR HONOR, I TOTALLY AGREE.
21 GIVEN THE EXTRAORDINARY --

22 THE COURT: ALL RIGHT. LET'S NOT CONTINUE.

23 MR. NICOLAYSEN: MAY I HAVE THE TWO-WEEK
24 CONTINUANCE TO MAKE THE --

25 THE COURT: THE MATTER WILL BE CONTINUED --

1 WELL, JUST A MOMENT.

2 WE WILL CONTINUE IT TO THE 20TH OF APRIL AT 9:30
3 A.M.

4 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

5 MR. MEDRANO: IS THAT THE HEARING, YOUR HONOR?

6 THE COURT: THE HEARING.

7 MR. MEDRANO: WOULD THESE AFFIDAVITS BE FILED
8 BEFORE THAT OR ON THAT DATE?

9 THE COURT: THEY SHOULD BE FILED BEFORE IF
10 POSSIBLE, BUT I WILL ACCEPT IT RIGHT UP TO THE END. YOU
11 SHOULD FILE AND SERVE IT.

12 MR. NICOLAYSEN: I WILL PERSONALLY SERVE IT ON
13 GOVERNMENT COUNSEL, YOUR HONOR. THANK YOU.

14 THE COURT: NOW THERE IS A MOTION BY BERNABE-
15 RAMIREZ FOR DISCOVERY WHICH CONTAINS A NUMBER OF REQUESTS,
16 MOST OF WHICH ARE ANSWERED BY THE GOVERNMENT. IT HAS
17 PROVIDED ALL BRADY MATERIAL THAT IS REQUIRED OF IT. IT
18 WILL PROVIDE THE JENCKS AND GIGLIO MATERIAL. THE GIGLIO
19 MATERIAL IS ORDERED ON APRIL 23 TO BE PROVIDED.

20 SO THERE DOESN'T APPEAR TO BE ANY BASIS FOR ANY
21 OF THE REQUESTS MADE IN THIS MOTION.

22 MR. MEZA: I DISAGREE WITH THAT, YOUR HONOR.

23 ATTACHED TO THE DECLARATION IT SETS FORTH WITH SOME
24 SPECIFICITY THE ITEMS THAT WE ARE PARTICULARLY INTERESTED
25 IN. ATTACHED TO THE DECLARATION IS AN EXHIBIT B, WHICH IN

1 FACT IS A LETTER WHICH WAS ADDRESSED TO THE GOVERNMENT,
2 DATED FEBRUARY 26, WHICH LISTS THE SPECIFIC REQUESTS THAT
3 WE MADE IN EARLY JANUARY PURSUANT TO THE COURT'S ORDER AT
4 THE DISCOVERY CONFERENCE, AND I LISTED, I BELIEVE, 17
5 ITEMS IN THE LETTER.

6 IN MY DECLARATION THERE WERE SOME ADDITIONAL
7 REQUESTS, AND IN REVIEWING THE DISCOVERY THAT HAS BEEN
8 PROVIDED BY THE GOVERNMENT, THERE IS AT LEAST ONE AREA
9 THAT HAS COME UP THAT I AM CONCERNED WITH THAT I HAVEN'T
10 SEEN ANYTHING YET, AND THAT SPECIFICALLY DEALS WITH THE
11 SCIENTIFIC REPORTS CONCERNING THE FINGERPRINT
12 IDENTIFICATION OF THE BODIES, SPECIFICALLY THE BODY
13 IDENTIFIED AS AGENT CAMARENA. WE HAVEN'T RECEIVED ANY OF
14 THE SCIENTIFIC EVIDENCE IN THAT REGARD, INCLUDING BUT NOT
15 LIMITED TO THE FINGERPRINT EXEMPLAR AND THE FINGERPRINTS
16 THAT WERE TAKEN FROM THE BODY.

17 THE COURT: WELL, I AM RELYING ON WHAT THE
18 GOVERNMENT HAS STATED, AND THAT IS THAT THEY HAVE PROVIDED
19 ALL THE BRADY MATERIAL REQUIRED AND WILL PROVIDE THE
20 GIGLIO MATERIAL AS ORDERED BY THE COURT.

21 WHAT ABOUT THIS INFORMATION THAT COUNSEL HAS
22 JUST REFERRED TO? IF THERE IS FINGERPRINT INFORMATION
23 REQUIRED TO BE PROVIDED --

24 MR. MEDRANO: THAT HAS BEEN DISCLOSED, YOUR
25 HONOR, AND I WILL CONFIRM THAT, BUT I BELIEVE THAT HAS

1 BEEN PROVIDED TO ALL DEFENSE ATTORNEYS.

2 THE COURT: ARE YOU AWARE OF IT?

3 MR. MEZA: I AM NOT AWARE OF IT. I HAVEN'T SEEN
4 ANYTHING THAT RESEMBLES THE FINGERPRINT EXEMPLAR. I
5 HAVEN'T SEEN IT.

6 MR. MEDRANO: I WILL CONSULT WITH OUR CASE
7 AGENTS AND SPECIFY FOR MR. MEZA THE EXACT PAGE NUMBER
8 BECAUSE THERE ARE OVER 6,000 PAGES OF DISCOVERY. I WILL
9 IDENTIFY IT FOR HIM. IF THROUGH AN OVERSIGHT WE HAVEN'T
10 GIVEN HIM A PHOTOCOPY OF THE EXEMPLAR, WE WILL IMMEDIATELY
11 PROVIDE THAT TO HIM, BUT I BELIEVE IT HAS BEEN TENDERED TO
12 DEFENSE COUNSEL ALREADY.

13 THE COURT: WAS THERE ANYTHING ELSE SPECIFICALLY
14 THAT YOU WANT TO POINT OUT?

15 MR. MEZA: YES, YOUR HONOR. IN EXHIBIT B I WILL
16 GO THROUGH EACH ITEM.

17 THE COURT: DON'T GO THROUGH EACH ITEM. MOST OF
18 THEM ARE NOT MERITORIOUS. WHAT ABOUT EXHIBIT B?

19 MR. MEZA: THAT IS THE LETTER DATED
20 FEBRUARY 22ND.

21 THE COURT: DO YOU MEAN THE LETTER YOU WROTE TO
22 THE GOVERNMENT?

23 MR. MEZA: YES.

24 THE COURT: WELL, ARE YOU SAYING NONE OF THAT
25 HAS BEEN FURNISHED TO YOU?

1 MR. MEZA: WELL, SOME OF IT HAS.

2 THE COURT: I WANT TO KNOW WHAT IT IS THAT YOU
3 REALLY WANT NOW THAT HAS NOT BEEN FURNISHED.

4 MR. MEZA: YES. THANK YOU. THE FINANCIAL
5 RECORDS OF AGENT CAMARENA.

6 THE COURT: WELL, THOSE ARE TOTALLY
7 INAPPROPRIATE IN MY VIEW.

8 MR. MEZA: YOUR HONOR, IF I COULD RESPOND TO
9 THAT. IN THE TAPES, COPIA 2 AND 4, THERE IS AN ALLEGATION
10 BY ONE OF THE INTERROGATORS THAT AGENT CAMARENA IS
11 RECEIVING MONEY FROM CARO-QUINTERO. AGENT CAMARENA
12 RESPONDS, IF I RECALL IT CORRECTLY, TO THE EFFECT: "I CAN
13 EXPLAIN THAT. I HAD TROUBLE CASHING MY PAYROLL CHECKS."
14 AND THEN THE CONVERSATION GOES SOMEPLACE ELSE. BUT THE
15 CLEAR INFERENCE IS THAT AGENT CAMARENA IS RECEIVING MONEY
16 FROM SOMEBODY OTHER THAN THE FEDERAL GOVERNMENT. THE
17 INTERROGATORS FEEL THAT HE MAY -- AT LEAST THE QUESTION
18 IMPLIES THAT HE WAS RECEIVING MONEY FROM CARO-QUINTERO --
19 NAMELY, FROM THE SO-CALLED DRUG CARTEL.

20 AT THE FIRST TRIAL THE GOVERNMENT FELT IT WAS
21 IMPORTANT ENOUGH TO CALL NOT ONLY AGENT CAMARENA'S WIFE --

22 THE COURT: NO. SHE WAS NOT A WITNESS.

23 MR. MEZA: IT WAS STIPULATED TESTIMONY, AND SHE
24 EXPLAINED THAT THERE HAD BEEN SOME TROUBLE WITH RECEIVING
25 THE PAYROLL CHECKS OR HAVING THEM CASHED.

1 THE GOVERNMENT ALSO CALLED -- I DON'T RECALL HER
2 NAME -- ALSO CALLED THE WOMAN WHO WAS IN CHARGE OF
3 PROCESSING THE PAYROLL RECORDS TO EXPLAIN IF THERE WAS A
4 PROBLEM AND WHAT THE PROBLEM WAS. APPARENTLY THAT WAS
5 SUFFICIENT.

6 THE COURT: WHY DO YOU THINK THAT ENTITLES YOU
7 TO WHAT YOU HAVE REQUESTED?

8 MR. MEZA: WELL, MOST OF THE REQUESTS THAT I AM
9 CONCERNED WITH DEAL WITH THE ELEMENT OF WHETHER OR NOT
10 AGENT CAMARENA WAS ACTING WITHIN THE COURSE AND SCOPE OF
11 HIS EMPLOYMENT.

12 NOW, THERE IS CERTAINLY -- THE COURT IS PROBABLY
13 NOT AS FAMILIAR -- THE COURT HAS NO DOUBT HEARD SOME OF THE
14 RUMORS. I DON'T KNOW IF THERE IS ANY TRUTH TO THEM OR NOT.

15 THE COURT: THE DEFENDANTS IN THE OTHER CASE
16 RAISED THAT, AND I GAVE THEM TIME TO GO AND INVESTIGATE
17 IT, AND THEY CAME BACK AND TOLD ME THERE WAS NOTHING TO IT
18 AS FAR AS THEY WERE CONCERNED.

19 MR. MEZA: THAT IS FINE. SOME OF THE
20 INFORMATION --

21 THE COURT: YOU SHOULD BE ABLE TO INVESTIGATE
22 THAT YOURSELF.

23 MR. MEZA: WELL, SOME OF IT I CAN AND SOME OF IT
24 I CAN'T. FOR EXAMPLE, THE INFORMANTS WHO WERE IDENTIFIED
25 IN THE PREVIOUS TRIAL BY THEIR INFORMANT NUMBERS SR8850002

1 AND SMM830014, I DON'T HAVE ACCESS TO THAT INFORMATION.
2 THOSE ARE GOVERNMENT IDENTIFICATIONS, AND I WAS NEVER
3 PROVIDED WITH THAT INFORMATION.

4 THERE WAS A STATEMENT IN THAT SAME REGARD GIVEN
5 BY A JOHN DRUMMOND, WHO IS IN CUSTODY IN ARIZONA -- AT
6 LEAST BACK IN '88. I HAVEN'T BEEN PROVIDED THAT
7 INFORMATION, AND I CERTAINLY HAVE NO ACCESS TO IT.

8 I DON'T BELIEVE WE HAVE RECEIVED THE INFORMATION
9 CONCERNING AGENT CAMARENA'S UNDERCOVER ROLE AS IT RELATES
10 TO MANUEL CHAVEZ.

11 ALSO I AM TOLD, AT LEAST ACCORDING TO THE
12 PREVIOUS TRIAL TRANSCRIPT, THERE WAS A TRANSCRIPT OF A
13 DOCUMENT ENTITLED COPIA 5. APPARENTLY THERE WASN'T A TAPE
14 AVAILABLE, BUT AT LEAST THERE WAS A TRANSCRIPT. I DON'T
15 BELIEVE WE HAVE RECEIVED THAT.

16 THE COURT: WHY ARE YOU ENTITLED TO RECEIVE
17 THESE THINGS? UNDER WHAT THEORY? A DEFENDANT IS ONLY
18 ENTITLED TO RECEIVE WHAT IS PERMITTED BY RULE 16, WHAT IS
19 PERMITTED BY THE BRADY CASE. AND WHAT IS THE AUTHORITY
20 FOR GRANTING THESE REQUESTS THAT YOU HAVE MADE?

21 MR. MEZA: WELL, YOUR HONOR, I WOULD THINK THAT
22 IF THERE IS EVIDENCE WHICH TENDS TO OR IN FACT WOULD
23 DISPOSE OF ONE OF THE ELEMENTS OF THE CRIME, NAMELY, THAT
24 AGENT CAMARENA WAS ACTING WITHIN THE COURSE AND SCOPE --

25 THE COURT: I AM LOOKING FOR THAT EVIDENCE. I

1 HAVEN'T SEEN ANY IN YOUR PAPERS. ALL I HAVE SEEN IS WILD
2 SPECULATION.

3 MR. MEZA: WELL, YOUR HONOR, AS RELATES TO JOHN
4 DRUMMOND, APPARENTLY JOHN DRUMMOND MADE A STATEMENT TO A
5 DEA AGENT THAT AGENT CAMARENA WAS WORKING FOR THIS CARTEL.

6 THE COURT: MY RECOLLECTION IS THAT HE WAS
7 INTERVIEWED BY COUNSEL IN THE OTHER CASE, AND YOU HAVE A
8 RIGHT TO INTERVIEW HIM, TOO. IS HE STILL IN PRISON?

9 MR. MEZA: I DON'T KNOW. I DON'T HAVE ACCESS --

10 THE COURT: I THINK HE WAS IN PRISON. HAVE YOU
11 READ THE TRIAL TRANSCRIPT? WASN'T HE IN PRISON AT THE
12 TIME?

13 MR. MEZA: HE WAS IN PRISON SOMEWHERE IN
14 ARIZONA. I WASN'T MADE PRIVY TO THAT. I CERTAINLY DON'T
15 HAVE THE DEA REPORT.

16 THERE IS ALSO A DEA REPORT CONCERNING A
17 STATEMENT FROM A WITNESS THAT AGENT CAMARENA WAS SEEN AT
18 THE HOME OF FONSECA WITHIN A WEEK OF HIS ABDUCTION AND
19 THAT AGENT CAMARENA WAS GOING TO A PARTY THERE, APPARENTLY
20 A BIRTHDAY PARTY, AND ACCORDING TO THIS WITNESS, HE SAW
21 THE AGENT WALK IN WITH A BAG, TALK TO -- WENT TO A ROOM
22 WITH FONSECA AND SOME OTHER UNNAMED PEOPLE AND CAME OUT
23 ABOUT 10 OR 15 MINUTES LATER WITHOUT THE BAG. THERE WAS
24 REFERENCE TO THAT IN A PRIOR TRIAL TRANSCRIPT, BUT I DON'T
25 HAVE THE REPORT, AND I THINK WE ARE ENTITLED TO IT.

1 THE COURT: WELL, THE MOTION THAT IS PRESENTED
2 FOR DISCOVERY HERE IS DENIED.

3 MR. MEZA: THANK YOU, YOUR HONOR.

4 THE COURT: THE GOVERNMENT UNDERSTANDS WHAT ITS
5 OBLIGATION IS TO PROVIDE ALL OF THE MATERIAL REQUIRED BY
6 RULE 16 AND BY BRADY AND BY GIGLIO AND IN ANY OTHER
7 RESPECT THAT IS ORDERED BY THE COURT. IF THEY DON'T DO
8 IT, THEN THERE WILL BE CONSEQUENCES TO PAY. I HAVE MADE A
9 BROAD ORDER REGARDING DISCOVERY IN THIS CASE, AND I EXPECT
10 THEM TO COMPLY WITH IT.

11 MR. MEZA: THANK YOU, YOUR HONOR.

12 THE COURT: WE HAVE ANOTHER MOTION BY VASQUEZ-
13 VELASCO TO PRODUCE DOCUMENTS REGARDING NON-TESTIFYING
14 PERCIPIENT WITNESSES. WHOSE MOTION IS THIS?

15 MR. NICOLAYSEN: IT IS MY MOTION, YOUR HONOR, ON
16 BEHALF OF DEFENDANT VASQUEZ.

17 THE COURT: YOU ARE ASKING FOR DOCUMENTS
18 REGARDING NON-TESTIFYING PERCIPIENT WITNESSES?

19 MR. NICOLAYSEN: THAT'S CORRECT.

20 THE COURT: DO YOU MEAN STATEMENTS TAKEN FROM
21 THEM BY THE POLICE?

22 MR. NICOLAYSEN: IT WOULD INCLUDE THAT. FIRST
23 OF ALL DOCUMENTS IN THE POSSESSION OF THE UNITED STATES
24 GOVERNMENT -- THAT IS, ALL OF THE AGENCIES INVOLVED IN
25 THIS INVESTIGATION; DOCUMENTS PREPARED BY THE MEXICAN

1 AUTHORITIES THAT WERE GIVEN TO THE U.S. GOVERNMENT THAT
2 WOULD ESTABLISH THE IDENTITIES OF ALL OF THE INDIVIDUALS
3 INSIDE THE RESTAURANT ON THE NIGHT IN QUESTION AND,
4 SECONDLY, ALL STATEMENTS MADE BY ANY SUCH PERCIPIENT
5 WITNESSES -- PEOPLE THAT THE GOVERNMENT ITSELF IS NOT
6 INTENDING TO CALL AT THE TRIAL.

7 THE COURT: WHO SAW THE EVENTS TAKE PLACE?

8 MR. NICOLAYSEN: THAT'S CORRECT.

9 THE COURT: WHAT IS IT YOU WANT ABOUT THOSE
10 PEOPLE? THEIR NAMES?

11 MR. NICOLAYSEN: THEIR IDENTITIES AND ALL
12 STATEMENTS MADE BY THOSE PEOPLE, WHETHER IN DOCUMENTARY
13 FORM, AUDIO CASSETTE OR VIDEO TAPE, IF POSSIBLE, REGARDING
14 THE EVENTS IN QUESTION.

15 THE COURT: I WOULD THINK THAT THE DEFENDANT IS
16 ENTITLED TO THAT.

17 MR. MEDRANO: YOUR HONOR, THE MAIN FLAW WITH
18 THIS MOTION, I THINK, IS OTHER THAN THE GENERAL
19 PROPOSITION STATED BY MR. NICOLAYSEN ORALLY AND IN HIS
20 WRITTEN PAPERS, THERE IS UTTERLY NO AUTHORITY CITED,
21 STATUTORY OR CASEWISE, FOR THIS PROPOSITION. WHERE IS IT
22 IN HIS PAPERS? I DON'T SEE IT.

23 MR. NICOLAYSEN: VERY SIMPLE. IT IS ON PAGE 6,
24 FEDERAL RULE OF CRIMINAL PROCEDURE 16(A)(1)(C). THESE
25 DOCUMENTS ARE MATERIAL TO THE DEFENSE.

1 THAT LANGUAGE IS ALSO --

2 THE COURT: A DEFENDANT WHO IS CHARGED WITH A
3 CRIME SHOULD KNOW WHO THE OTHER PEOPLE WERE THAT SAW IT
4 HAPPEN OR SOME PARTS OF IT HAPPEN. THEY OUGHT TO KNOW WHO
5 THEY ARE TO BE ABLE TO TALK WITH THEM AND INVESTIGATE
6 WHAT, IF ANYTHING, THEY SAW. I DON'T SEE HOW IT COULD BE
7 ARGUED THAT THEY ARE NOT MATERIAL.

8 MR. MEDRANO: WELL, MATERIAL, AT LEAST THE WAY
9 WE ARE CONSTRUING THAT TERM, IT IS A BRADY OBLIGATION THAT
10 WE HAVE, AND TO THE EXTENT ANYTHING THESE PEOPLE SAY OR
11 KNOW IS BRADY AS TO MR. NICOLAYSEN'S CLIENT.

12 THE COURT: THERE ARE CASES THAT SAY THAT IF
13 THERE IS A PERCIPIENT WITNESS AND THE GOVERNMENT DOES NOT
14 INTEND TO CALL THEM, THAT RAISES A PRESUMPTION THAT
15 PERHAPS THAT WITNESS HAS FAVORABLE EVIDENCE FOR A
16 DEFENDANT, AND THAT SHOULD BE DISCLOSED.

17 MR. MEDRANO: VERY WELL, YOUR HONOR. DOES THIS
18 ORDER ENCOMPASS THE IDENTITIES OF NON-TESTIFYING
19 PERCIPIENT WITNESSES?

20 THE COURT: NON-TESTIFYING PERCIPIENT WITNESSES.

21 MR. MEDRANO: AS TO THE MURDERS OF RADELAT AND
22 WALKER?

23 THE COURT: THAT IS CORRECT.

24 MR. MEDRANO: WOULD THIS ALSO ENCOMPASS, YOUR
25 HONOR --

1 THE COURT: STATEMENTS MADE OR TAKEN FROM THOSE
2 WITNESSES, ALSO.

3 MR. MEDRANO: VERY WELL.

4 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

5 MR. MEDRANO: VERY WELL, YOUR HONOR.

6 THE COURT: I THINK THAT COMPLETES WHAT WE HAVE
7 THIS MORNING.

8 MR. MEDRANO: YOUR HONOR, MIGHT I JUST FLAG
9 SOMETHING FOR THE COURT? I BELIEVE IT WAS LAST WEEK, YOUR
10 HONOR, THAT THE COURT ORDERED THAT THE GOVERNMENT DISCLOSE
11 IDENTITIES OF WITNESSES AND GIGLIO MATERIAL WITH A STRONG
12 RECOMMENDATION THAT WE ALSO TURN OVER JENCKS ACT BY
13 APRIL 23.

14 THE COURT: YES.

15 MR. MEDRANO: AND THROUGH A MOTION ON OUR PART,
16 YOUR HONOR, WE FAILED TO ASK AND WOULD ASK AT THIS
17 JUNCTURE FOR RECIPROCAL RIGHTS TO DISCOVERY AT THAT POINT.
18 YOUR HONOR, IF WE ARE GOING TO TURN OVER NAMES AND
19 GIGLIO --

20 THE COURT: WELL, WHAT RIGHTS DO YOU THINK YOU
21 ARE ENTITLED TO?

22 MR. MEDRANO: WELL, UNDER RULE 16, YOUR HONOR,
23 WE ARE ENTITLED TO RECIPROCAL DISCOVERY, WHICH WE HAVE
24 MADE KNOWN TO ALL DEFENSE COUNSEL IN THIS CASE, BUT SINCE
25 WE ARE OPERATING UNDER THIS APRIL 23 DISCLOSURE ORDER, WE

1 WOULD ASK THE COURT TO INSTRUCT THE DEFENSE COUNSEL WHO
2 ARE PRESENT THAT THEY GIVE TO US ALSO ON APRIL 23 THE
3 NAMES AND IDENTITIES OF THEIR WITNESSES THAT THEY INTEND
4 TO USE, AND WE WOULD ASK FOR A RECIPROCAL JENCKS ON THE
5 SAME BASIS THAT WE TURN IT OVER TO THEM.

6 MR. NICOLAYSEN: FROM MY STANDPOINT, YOUR HONOR,
7 I WOULD ASK THAT WE BE ALLOWED THE SAME TIME FRAME AS THE
8 GOVERNMENT. THAT IS, WE GET THEIR MATERIAL A WEEK BEFORE
9 THEIR CASE, AND LIKEWISE, WE WOULD BE PREPARED TO GIVE THE
10 GOVERNMENT ANY RECIPROCAL DISCOVERY A WEEK BEFORE
11 PRESENTATION OF MY CASE.

12 THE COURT: WHAT DOES RULE 16 PROVIDE?

13 MR. NICOLAYSEN: IT HAS A GENERAL OMNIBUS
14 RECIPROCAL DISCOVERY OBLIGATION. MR. MEDRANO IS CORRECT
15 TO THAT EXTENT. IT IS A TWO-WAY STREET.

16 THE ONLY QUESTION NOW TO BE RESOLVED IS THE
17 TIMING FACTOR, AND I THINK IT IS ONLY FAIR THAT THE
18 GOVERNMENT DO NOT HAVE MORE LEAD TIME THAN THE DEFENSE HAS
19 IN THIS CASE.

20 MR. MEDRANO: YOUR HONOR, WITH ALL DUE RESPECT,
21 THE GOVERNMENT'S CASE IN CHIEF IS GOING TO TAKE TEN TIMES
22 LONGER THAN ANY CONTEMPLATED DEFENSE CASE. SO BY THE
23 SHEER NATURE AND VOLUME OF THE EVIDENCE THEY HAVE WHAT
24 APPARENTLY IS AN UNFAIR ADVANTAGE. WE ARE TURNING IT OVER
25 EVEN BEFORE THE JENCKS ACT REQUIRES, AND IT SEEMS A

1 DISPARATE RESULT IF THEY HAVE IT FOR SIX WEEKS, AND WE
2 HAVE THEIRS FOR SIX DAYS.

3 IT JUST SEEMS UNFAIR, AND WE WOULD ASK FOR A
4 MEDIAN OR COMPROMISE AREA THAT WOULD BE FAIR TO BOTH
5 SIDES, YOUR HONOR.

6 THE COURT: WELL, WHAT DO YOU SUGGEST?

7 MR. MEDRANO: WE SUGGEST, YOUR HONOR, THAT IF
8 NOT BY APRIL 23, AT LEAST MIDWAY THROUGH THE GOVERNMENT'S
9 CASE IN CHIEF THAT WE BE PROVIDED WITH THE IDENTITIES OF
10 THESE WITNESSES. AGAIN GOING BACK TO THE UNFAIR
11 ADVANTAGE, IF THEY HAVE SIX WEEKS TO TRY TO DIG UP, FOR
12 EXAMPLE, GIGLIO OR IMPEACHMENT TYPE OF MATERIAL, WE
13 SHOULD --

14 THE COURT: YOU ARE MISCONSTRUING THE FACTS WHEN
15 YOU SAY YOU ONLY HAVE SEVEN DAYS OR EIGHT DAYS BEFORE THE
16 TRIAL BEGINS. YOU HAVE ALL THE TIME THAT THE TRIAL IS IN
17 PROGRESS.

18 MR. NICOLAYSEN: HOW DO I KNOW THAT? IF THE
19 GOVERNMENT PUTS ON THEIR CONFIDENTIAL INFORMANT AS THEIR
20 FIRST WITNESS AT TRIAL, THEN I HAVE ONLY ONE WEEK LEAD
21 TIME.

22 THE COURT: IT COULD BE. IT IS VERY POSSIBLE,
23 BUT MORE LIKELY IT WILL NOT BE, AND MORE LIKELY YOU WILL
24 HAVE PLENTY OF TIME, AS THE OTHER DEFENDANTS DID IN THE
25 LAST CASE BECAUSE THREE DAYS A WEEK THE COURT WILL NOT BE

1 IN SESSION DURING THE TRIAL. THERE WILL BE AN EIGHT- OR
2 NINE- OR TEN-DAY PERIOD WHEN THE COURT IS GOING TO BE IN
3 RECESS IN JUNE. SO THERE IS PLENTY OF TIME.

4 MR. NICOLAYSEN: THERE IS AN ELEMENT OF
5 SPECULATION HERE, YOUR HONOR. I DO ACKNOWLEDGE THE
6 COURT'S POINT.

7 ALTHOUGH WE DON'T KNOW ONE WAY OR THE OTHER WHAT
8 THE ORDER IS GOING TO BE OF THE GOVERNMENT'S CASE, IF YOUR
9 HONOR WERE TO HAVE THE GOVERNMENT AT LEAST MAKE A PROFFER
10 AS TO THE SEQUENCE OF PRESENTATION SO THAT I DON'T GET
11 SURPRISED ON A WEEK'S NOTICE WITH THIS INFORMANT BEING THE
12 FIRST WITNESS AND LESS PREPARATORY TIME THAN THE
13 GOVERNMENT HAS --

14 THE COURT: I THINK YOU CAN FIGURE THAT OUT FROM
15 THE NATURE OF THE CHARGES IN THE INDICTMENT AND THE
16 PROCESS WHICH WE FOLLOWED IN THE LAST TRIAL.

17 MR. NICOLAYSEN: WELL, CHRONOLOGICALLY IT MAKES
18 SENSE, AND THAT IS MY CONCERN. MY CLIENT IS THE ONE
19 PERSON CHARGED WITH THE FIRST TWO MURDERS. SO I THINK IT
20 IS APPROPRIATE TO HAVE SOME CONCERN THAT IF THE GOVERNMENT
21 WERE TO TAKE THE CHRONOLOGICAL APPROACH, MY CLIENT IS
22 FIRST IN ORDER.

23 ALL I AM ASKING IS THAT THERE BE BALANCE IN
24 TERMS OF LEAD TIME. THAT IS ALL.

25 THE COURT: I WILL RULE ON WHEN THE DEFENDANTS

1 HAVE TO -- I DON'T THINK THEY HAVE TO TURN IT OVER ON THE
2 23RD OF APRIL, BUT I WILL FIX A DATE BY WHICH IT MUST BE
3 COMPLIED WITH.

4 MR. NICOLAYSEN: YOUR HONOR, THERE IS ONE OTHER
5 MOTION THAT I DID CONFIRM WITH YOUR CLERK ON FRIDAY THAT
6 ACTUALLY WAS FILED BACK IN JANUARY, AND A REPLY BRIEF WAS
7 FILED IN THE MIDDLE OF FEBRUARY. IT WAS TAKEN OFF
8 CALENDAR ON TWO SUBSEQUENT HEARING DATES, AND IT STILL
9 HASN'T BEEN HEARD. I WOULD ASK THAT IT BE HEARD THIS
10 MORNING.

11 THE COURT: WHAT IS IT?

12 MR. NICOLAYSEN: MY BRADY MOTION TO DISMISS,
13 WHICH IS --

14 THE COURT: YES, THAT IS ON CALENDAR THIS
15 MORNING.

16 MR. NICOLAYSEN: I HAVE CONFIRMED WITH YOUR
17 CLERK THE NARROW SCOPE --

18 THE COURT: DO YOU MEAN BASED ON THESE TWO
19 WITNESSES?

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

21 THE COURT: OCHOA AND RICARDO?

22 MR. NICOLAYSEN: THAT IS CORRECT, YOUR HONOR.

23 THE COURT: I READ THAT. I AM READY TO RULE ON
24 THAT TODAY.

25 I HAVE READ AND CONSIDERED THE MOTION AND THE

1 OPPOSITION TO THIS MOTION. THE DEFENDANT HAS MET THE
2 BURDEN OF SHOWING THAT THE TESTIMONY OF RICARDO VASQUEZ
3 AND THE OTHER WITNESS MAY HAVE BEEN HELPFUL TO THE
4 DEFENSE, BUT THERE ARE OTHER THINGS THAT ARE REQUIRED TO
5 BE SHOWN BEFORE AN INDICTMENT SHOULD BE DISMISSED FOR A
6 BRADY VIOLATION.

7 FIRST, THE GOVERNMENT MUST HAVE HAD MATERIAL
8 EVIDENCE HELPFUL TO THE DEFENDANT.

9 SECOND, IT WAS NOT TURNED OVER TO THE DEFENSE AT
10 A TIME WHEN IT WOULD BE OF VALUE TO THE DEFENSE.

11 AND, THIRD, THAT THERE IS A REASONABLE
12 PROBABILITY THAT FAILURE TO DISCLOSE IN A TIMELY FASHION
13 WILL DENY THE DEFENDANT A FAIR TRIAL.

14 WITH RESPECT TO OCHOA, HE HAD DEPARTED FROM THE
15 COUNTRY BEFORE YOUR CLIENT WAS INDICTED.

16 MR. NICOLAYSEN: ACCORDING TO THE AGENT WHO
17 SUBMITTED AN AFFIDAVIT, IT SAYS THAT TO HIS BEST KNOWLEDGE
18 THAT IS CORRECT. WE DON'T HAVE THAT CONFIRMED.

19 THE COURT: IF THAT IS TRUE, AND I HAVE NO
20 REASON TO DOUBT IT SINCE IT IS THE ONLY EVIDENCE IN FRONT
21 OF ME, IF IT IS TRUE THAT HE LEFT THE COUNTRY BEFORE YOUR
22 CLIENT BECAME AN ACCUSED, THEN I DON'T THINK THAT ANY
23 OBLIGATION WAS TRIGGERED ON THE PART OF THE GOVERNMENT.

24 MR. NICOLAYSEN: I'D LIKE TO ADDRESS THAT ONE
25 POINT IF I MAY BECAUSE THERE IS A VERY SPECIFIC FOCUS THAT

1 GOES RIGHT TO THE HEART OF WHAT YOUR HONOR HAS JUST
2 POINTED OUT. THE QUESTION OF WHEN MY CLIENT BECAME AN
3 ACCUSED. CERTAINLY THE MOST OBVIOUS TRIGGER IS THE
4 ISSUANCE OF THE INDICTMENT ON OCTOBER 11, 1989. THAT
5 WOULD CERTAINLY BE A CLEAR STARTING POINT, BUT IT IS
6 BROADER THAN THAT.

7 THE AGENT HAD BEEN DEBRIEFING MY CLIENT AS EARLY
8 AS JULY OF '89, AND I FINALLY DID RECEIVE IN THE COURSE OF
9 DISCOVERY THE AUDIO CASSETTES OF THOSE MEETINGS.

10 AFTER MAKING AN EX PARTE APPLICATION, I DID
11 RECEIVE ALSO, IN ADDITION TO THOSE TAPES OF MY CLIENT, THE
12 TAPES OF OCHOA. MUCH TO MY INTEREST, OCHOA WAS TAPE
13 RECORDED IN MEETINGS WITH MY CLIENT SITTING BY HIS SIDE,
14 AT LEAST IN ONE OF THOSE MEETINGS, AND THEY WERE ALSO IN
15 JULY.

16 THE GOVERNMENT HAS EXPRESSED SOME INTENTION IN
17 THE COURSE OF OUR DEALINGS THAT SOME OF THE STATEMENTS
18 MADE BY MY CLIENT MAY IN FACT BE INTRODUCED OR OFFERED AT
19 TRIAL AGAINST HIM, AND I WOULD SUBMIT TO YOUR HONOR THAT
20 WE NEED A HEARING TO DETERMINE PRECISELY THE CRITERION
21 THAT YOUR HONOR JUST ADDRESSED -- THAT IS, WHEN DID MY
22 CLIENT BECOME AN ACCUSED? IT WASN'T AS CLEAR-CUT AS THE
23 INDICTMENT DATE WOULD SEEM TO SUGGEST. I WOULD
24 RESPECTFULLY SUBMIT THAT IT INITIATED BACK IN THE EARLY
25 PART OF JULY OF '89 WHEN --

1 THE COURT: WELL, AN ACCUSED IN THE SENSE THAT I
2 UNDERSTAND IT IS WHEN THERE IS A FORMAL INDICTMENT OR
3 ACCUSATORY PLEADING FILED.

4 MR. NICOLAYSEN: I WOULD SUBMIT THAT WE CAN TAKE
5 THE WORD ACCUSED AND LOOK AT IT FROM THE TARGET
6 PERSPECTIVE. I THINK HE WAS CLEARLY A TARGET OF THE
7 INVESTIGATION, THAT THE GOVERNMENT WAS TREATING HIM WITH
8 THE EXPECTATION OF INDICTING HIM. I WOULD SUBMIT THAT A
9 HEARING COULD SHOW THAT INDEED MY CLIENT WAS INDUCED INTO
10 A FALSE UNDERSTANDING AS TO WHAT HIS RELATIONSHIP WAS TO
11 THE GOVERNMENT DURING THE DEBRIEFING PERIOD IN JULY.

12 THE GOVERNMENT TOOK EVERYTHING IT COULD FROM MY
13 CLIENT, TOOK EVERYTHING IT COULD FROM OCHOA. FOR STRANGE
14 AND UNKNOWN REASONS THAT I THINK A HEARING SHOULD EXAMINE,
15 IT ALLOWED OCHOA TO LEAVE THE COUNTRY AND INDICTED MY
16 CLIENT.

17 OCHOA WAS ADMITTEDLY AT LA LANGOSTA. THAT IS
18 CLEAR FROM THE EXHIBITS ATTACHED TO MY SUPPORTING PAPERS.
19 MY CLIENT NEVER MADE ANY SUCH ADMISSION.

20 AND WHAT MAKES THIS PARTICULARLY INTRIGUING,
21 YOUR HONOR, IS THAT OCHOA ADMITTED BEING IN LA LANGOSTA
22 AND DESCRIBED THE EVENTS THERE IN ONE OF THE MEETINGS WITH
23 THE AGENT WITH MY CLIENT SEATED BY HIS SIDE.

24 I WOULD SUBMIT THAT UNDER THOSE SOMEWHAT STRANGE
25 CIRCUMSTANCES THAT THAT WOULD BE EXCULPATORY JUST IN THE

1 JUXTAPOSITION OF THE TWO PEOPLE THERE. IF MY CLIENT WERE
2 INVOLVED, THEN IT WOULD BE FAIR TO EXPECT THAT THE AGENT
3 WOULD HAVE TURNED TO MY CLIENT AND ASKED HIM ABOUT WHAT
4 HAPPENED, OR HE WOULD HAVE ASKED OCHOA IF MY CLIENT WAS
5 THERE. MY CLIENT NEVER CAME UP AT ANY TIME IN THE MIDST
6 OF THAT MEETING. IT WAS STRICTLY OCHOA THAT WAS PRESENT
7 AT THE RESTAURANT THAT WAS DISCUSSED.

8 NOW, THE GOVERNMENT CLEARLY, IN MY JUDGMENT, HAD
9 SOME BASIS FOR ANTICIPATING THAT ON THE BASIS OF THESE
10 STATEMENTS THAT OCHOA AND MY CLIENT GAVE THAT MY CLIENT
11 WOULD ULTIMATELY BE ON THE RECEIVING END OF AN INDICTMENT,
12 AND THAT THEREFORE OCHOA'S PARTICIPATION AS AN EYEWITNESS
13 WOULD BE MATERIAL DOWN THE ROAD.

14 THE COURT: YOU ARE SUGGESTING THAT A PERSON CAN
15 BE HELD AS A WITNESS AGAINST A DEFENDANT NOT YET INDICTED
16 ON THE THEORY THAT HE IS PRESUMPTIVELY INDICTABLE. AFTER
17 ALL, WHO MAKES THE DECISION TO INDICT? NOT THE AGENT. IT
18 IS THE GRAND JURY WHO MAKES THAT DECISION TO INDICT.

19 WHAT YOU ARE SUGGESTING HERE IS THAT THIS PERSON
20 BE PRECLUDED FROM LEAVING THE COUNTRY BECAUSE THERE WAS A
21 FAIR CHANCE THAT HE MIGHT BE INDICTED, AND THAT DOESN'T
22 SOUND VERY LEGAL TO ME.

23 MR. NICOLAYSEN: NOW, I HAVE KNOWLEDGE THAT
24 THERE IS AN ELEMENT OF NOVELTY IN THE APPLICATION OF THE
25 VALENZUELA-BERNAL PRINCIPLE TO THIS CASE. WORKING WITH

1 THE PRINCIPLE THAT YOUR HONOR HAS JUST STATED, I WOULD
2 ARTICULATE IT THIS WAY: I AM ASKING YOUR HONOR TO ENDORSE
3 THE PROPOSITION THAT WHERE THE GOVERNMENT HAS A
4 FORESEEABLE INTENTION TO INDICT AN INDIVIDUAL -- MY CLIENT
5 HERE -- AND BY THAT I MEAN THAT THERE HAS BEEN DISCUSSION
6 WITH THE U.S. ATTORNEY AND A CLEAR UNDERSTANDING THAT THIS
7 MATTER WILL BE SUBMITTED TO THE GRAND JURY, THEN AT THAT
8 TIME TO THE EXTENT THE GOVERNMENT KNOWS THAT THERE ARE
9 WITNESSES WHO WOULD BE MATERIAL TO THE DEFENSE, THEY
10 SHOULD BE DETAINED SO THAT WHEN THE INDICTMENT COMES DOWN,
11 THERE HAS NOT BEEN A DEPRIVATION OF ACCESS TO MATERIAL
12 EVIDENCE THAT WOULD SUBVERT THE DEFENDANT'S ABILITY TO
13 DEFEND THE TRIAL, AND THAT DID HAPPEN HERE.

14 THE COURT: I DON'T THINK VALENZUELA-BERNAL GOES
15 THAT FAR, AND I AM UNWILLING TO EXTEND IT THAT FAR WITH
16 RESPECT TO THIS WITNESS WHO LEFT THE COUNTRY BEFORE THE
17 INDICTMENT. IF YOU HAVE EVIDENCE THAT HE DID NOT LEAVE
18 THE COUNTRY BEFORE THE INDICTMENT, BUT WAS STILL HERE
19 AFTER THE INDICTMENT WAS HANDED DOWN, THAT IS A DIFFERENT
20 MATTER. THAT COULD BE CONSIDERED.

21 AS A MATTER OF FACT, THIS ENTIRE QUESTION OF
22 WHETHER A DISMISSAL SHOULD OCCUR HAS BEEN DEALT WITH BY
23 THE SUPREME COURT IN A WAY THAT APPEALS TO ME. THAT IS,
24 THAT THE COURT SHOULD NOT DECIDE THIS ISSUE OF DISMISSAL
25 UNTIL AFTER THE TRIAL HAS BEEN PRESENTED TO DETERMINE IT.

1 THE SUPREME COURT HAS SAID THAT BECAUSE DETERMINATION OF
2 MATERIALITY IS OFTEN BEST MADE IN LIGHT OF ALL THE
3 EVIDENCE ADDUCED AT TRIAL, JUDGES MAY WISH TO DEFER RULING
4 ON MOTIONS UNTIL AFTER THE PRESENTATION OF THE EVIDENCE.

5 MR. NICOLAYSEN: AND THAT IS IN THE VALENZUELA-
6 BERNAL OPINION, PER SE, BUT IT IS NOT A MANDATORY RULING.
7 IT ACKNOWLEDGES THAT WHEN WE DEFINE MATERIALITY AND CITE
8 FAMOUS OPINIONS LIKE BRADY AND EGGARS AND OTHERS, THE
9 DEFINITION OF MATERIALITY THAT WE WORK WITH TENDS TO IMPLY
10 A HINDSIGHT ANALYSIS -- THAT IS, WOULD THE OUTCOME HAVE
11 BEEN DIFFERENT NOW THAT WE HAVE HAD A CHANCE TO SEE ALL
12 THE EVIDENCE IF WE FACTOR THESE TWO WITNESSES INTO
13 ACCOUNT.

14 I WOULD ASK --

15 THE COURT: I THINK THAT BOTH OF THESE
16 STATEMENTS MADE BY THE WITNESSES TEND TO BE MATERIAL.
17 CERTAINLY THE WITNESS WHO WAS PERCIPIENT, I HAVE ALREADY
18 ORDERED THAT HIS STATEMENT BE MADE AVAILABLE IF HE IS A
19 NON-TESTIFYING WITNESS, AND THAT HIS IDENTITY BE MADE
20 AVAILABLE. OF COURSE YOU KNOW THAT ALREADY.

21 MR. NICOLAYSEN: YES. UNFORTUNATELY AS TO OCHOA
22 AND RICARDO, THAT ORDER ISN'T HELPFUL, ALTHOUGH I DO
23 APPRECIATE IT AS TO THE OTHER WITNESSES.

24 WHAT TROUBLES ME IS THAT THE GOVERNMENT DID NOT
25 EXERCISE DUE CARE IN ALLOWING THE WITNESS TO LEAVE THE

1 COUNTRY WITHOUT PROPERLY CONSIDERING THE IMPLICATIONS.

2 THE COURT: WELL, IF THAT WORKS TO THE PREJUDICE
3 OF THIS DEFENDANT, AND I DETERMINE THAT THEY IN FACT DID
4 NOT ACT APPROPRIATELY, I WOULD NOT HESITATE TO DISMISS THE
5 INDICTMENT. I AM NOT GOING TO DO SO AT THIS STAGE.

6 MR. NICOLAYSEN: IF I UNDERSTAND THE COURT THEN,
7 IT WOULD BE APPROPRIATE AFTER THE GOVERNMENT HAS CONCLUDED
8 ITS CASE, WHEN THE USUAL RULE 29 MOTIONS ARE MADE, TO
9 RAISE THIS ISSUE ONCE AGAIN?

10 THE COURT: WELL, EITHER THEN OR EVEN AFTER THE
11 TRIAL. IT CAN BE RAISED DURING THE TRIAL OR AFTER THE
12 TRIAL.

13 MR. NICOLAYSEN: VERY WELL. THANK YOU, YOUR
14 HONOR.

15 THE COURT: I THINK WE ARE FINISHED.

16 MR. BLANCARTE: YOUR HONOR, MAY I ASK THE
17 COURT'S INDULGENCE ON A COUPLE OF MATTERS?

18 THE COURT: NO WALK-IN BUSINESS PERMITTED.

19 MR. BLANCARTE: A CLARIFICATION, YOUR HONOR.
20 THE COURT RULED THIS MORNING IN FAVOR OF MR. NICOLAYSEN'S
21 MOTION THAT THE IDENTITY OF WITNESSES BE DISCLOSED. I
22 BELIEVE THAT WE PREVIOUSLY JOINED IN THAT MOTION.

23 THE COURT: I PREVIOUSLY RULED THAT YOU ARE
24 ENTITLED TO THAT SAME INFORMATION WITH RESPECT TO
25 WITNESSES WHO ATTENDED THOSE MEETINGS THAT YOUR CLIENT IS

1 ALLEGED TO HAVE ATTENDED.

2 MR. BLANCARTE: THANK YOU. THAT WAS THE
3 CLARIFICATION THAT I WANTED.

4 YOUR HONOR, ALSO THERE IS A MOTION THAT YOU TOOK
5 UNDER SUBMISSION, THE EX POST FACTO MOTION. IF THE COURT
6 IS READY --

7 THE COURT: I AM READY TO DENY THAT, AND I
8 INTENDED TO. I HAVE REVIEWED WHAT YOU HAVE SUBMITTED, AND
9 THE COURT'S INITIAL RULING PRONOUNCED LAST WEEK IS
10 UNCHANGED.

11 MR. BLANCARTE: AND ONE LAST ITEM. AT THE
12 BEGINNING OF THIS CASE, YOUR HONOR, SOMETIME AT THE END OF
13 SUMMER OR IN SEPTEMBER, WE MENTIONED TO THIS COURT THAT
14 THERE WAS SEVERE DISCOMFORT AND PAIN BEING ENDURED BY
15 MR. ZUNO AS A RESULT OF SURGERY COMPOUNDED BY THE CUFFING
16 BEHIND HIS BACK, AND AT THAT TIME I BELIEVE THE COURT
17 ORDERED THAT THE CUFFING OF MR. ZUNO TO AND FROM THIS
18 COURT BE IN FRONT TO TRY TO ALLEVIATE THAT PAIN.

19 I WOULD LIKE TO ASK THAT THAT PRACTICE BE
20 ADHERED TO OR DO WHATEVER ELSE THE COURT REQUIRES SO THAT
21 HE WILL NOT HAVE TO ENDURE THE PULLING OF HIS ARMS AND
22 SHOULDERS BEHIND HIS BACK.

23 MR. MEDRANO: THAT IS NOT MY RECOLLECTION OF THE
24 ORDER.

25 THE COURT: THAT IS WHY I DON'T LIKE WALK-IN

1 BUSINESS. IF YOU HAVE A MOTION TO MAKE, IT SHOULD BE
2 ADDRESSED TO THE COURT IN WRITING. FIRST OF ALL, THE
3 CONDITIONS OF CONFINEMENT ARE NOT GENERALLY THE BUSINESS
4 OF THE COURT. THEY SHOULD BE TAKEN UP WITH THE
5 AUTHORITIES WHO ARE DEALING WITH IT. IF IT IS INVOLVING
6 THE PRISON, THAT IS THE DETENTION CENTER, IT SHOULD BE
7 TAKEN UP WITH THE AUTHORITIES THERE.

8 MR. BLANCARTE: WE HAVE DONE SO, AND THEY HAVE
9 SAID THAT THEY REQUIRE A COURT ORDER IN ORDER TO ALTER IT.

10 THE COURT: TO ALTER WHAT?

11 MR. BLANCARTE: THE NORMAL PROCEDURE OF CUFFING
12 BEHIND THE BACK.

13 THE COURT: BUT IT IS NOT THE PRISON PEOPLE WHO
14 DO THAT. IS IT?

15 MR. BLANCARTE: I BELIEVE THAT IS PART OF THE
16 PROCEDURE CARRIED OUT --

17 THE COURT: WELL, I NEED TO BE SATISFIED THAT
18 THIS DOES NOT PRESENT A PROBLEM. IF I AM SATISFIED TO
19 THAT EFFECT, THEN I WON'T HESITATE TO MAKE AN ORDER.

20 MR. BLANCARTE: THANK YOU, YOUR HONOR.

21 MS. KELLY: YOUR HONOR, THIS IS NOT WALK-IN
22 BUSINESS. WE DID JOIN ALSO IN MR. NICOLAYSEN'S MOTION,
23 AND I JUST WANTED TO BE CLEAR THAT NON-TESTIFYING
24 PERCIPIENT WITNESSES WOULD BE DISCLOSED TO US.

25 THE COURT: WELL, IT SHOULD APPLY TO ALL

1 DEFENDANTS. DID YOU FILE A FORMAL JOINDER?

2 MS. KELLY: YES, YOUR HONOR.

3 THE COURT: WHATEVER RULING OCCURRED INCLUDES
4 YOUR CLIENT.

5 MS. KELLY: THANK YOU, YOUR HONOR.

6 MR. NICOLAYSEN: YOUR HONOR, LIMITED TO LA
7 LANGOSTA, I WOULD SUGGEST THAT IT IS APPROPRIATE TO MAKE
8 THAT A BROAD ORDER THAT WOULD ENCOMPASS ALL THE COUNTS,
9 NOT SIMPLY COUNTS 1 AND 2, BASED ON MY COLLEAGUES --

10 THE COURT: I HAVE RULED ON THESE MOTIONS. IN
11 CONNECTION WITH YOUR CLIENT WITH RADELAT AND WALKER, THE
12 PERCIPIENT WITNESSES PERCIPIENT TO THOSE EVENTS AT THE
13 RESTAURANT OR AFTER THAT LEAD TO THE ALLEGED KILLING OF
14 THESE PEOPLE, THOSE ARE THE WITNESSES I AM REFERRING TO.

15 MR. NICOLAYSEN: ARE YOU ALSO NOW GOING TO
16 EXTEND THAT BASED ON MS. KELLY'S JOINDER TO THE CAMARENA
17 AND ZAVALA MURDERS? I WOULD SUGGEST THAT IT WOULD BE
18 APPROPRIATE TO BROADEN THE SCOPE OF THE ORDER ON THE
19 RECORD.

20 THE COURT: I HAVE RULED ON THESE MOTIONS. I AM
21 NOT EXPLAINING THEM. SHE HAS JOINED IN THE MOTION. THE
22 RULING APPLIES TO HER AS WELL.

23 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

24 (PROCEEDINGS CONCLUDED.)

25

- - -

1
2
3
4
5
6

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

W. B. Thomas

4/14/70

OFFICIAL REPORTER

DATE