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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE EDWARD RAPEEDIE, JUDGE PRESIDING  
- - -

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) No. CR 87-422(f)-ER  
 )  
RUBEN ZUNO-ARCE, )  
 )  
Defendant. )  
-----

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

TUESDAY, MAY 7, 1991

4:30 P.M.

GEORGE A. HAAS  
OFFICIAL COURT REPORTER  
438 UNITED STATES COURTHOUSE  
312 NORTH SPRING STREET  
LOS ANGELES, CALIFORNIA 90012  
(213) 613-1228

1 A-P-P-E-A-R-A-N-C-E-S:

2 FOR THE PLAINTIFF:

3 LOURDES G. BAIRD  
United States Attorney  
4 ROBERT L. BROSIO  
Assistant United States Attorney  
5 Chief, Criminal Division  
MANUEL MEDRANO  
6 JOHN CARLTON  
Assistant United States Attorney  
7 1441A United States Courthouse  
312 North Spring Street  
8 Los Angeles, California 90012

9 FOR THE DEFENDANT RUBEN ZUNO-ARCE:

10 MITCHELL, SILBERBERG & KNUPP  
11 BY: EDWARD M. MEDVENE, ESQ.  
JAMES E. BLANCARTE, ESQ.  
12 DONALD A. DINICOLA, ESQ.  
MARY FUGINITI, ESQ.  
13 11377 West Olympic Boulevard  
Los Angeles, California 90064

14 ALSO PRESENT:

15 MARIA DOLOREZ MARTIN,  
16 Spanish/English Interpreter  
17  
18  
19  
20  
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HEARING: Motion by defendant for judgment of acquittal.  
Motion by defendant for new trial.

SENTENCING: Verdict Guilty/Right to appeal.

1           LOS ANGELES, CALIFORNIA; MAY 7, 1991; 4:30 P.M.

2                           \*   \*   \*   \*   \*

3           MR. MEDRANO: Good afternoon, your Honor,  
4           for the United States, Manuel Medrano and John Carlton.

5           THE COURT: Good afternoon.

6           MR. MEDVENE: If the Court please, for  
7           Ruben Zuno-Arce, Edward Medvene. Also present is James  
8           Blancarte, Donald DiNicola and Mary Fuginiti. Mr. Zuno  
9           is present.

10          THE COURT: Good afternoon.

11          We have this matter before the Court for  
12          pronouncement of judgment and imposition of sentence.

13          Before reaching that, there are still some  
14          unresolved motions that have to be decided.

15          The first is the defendant's motion, Rule  
16          29 motion for judgment of acquittal on Count 3, which  
17          the Court asked you to further brief and took under  
18          submission at the last time the matter was argued in  
19          court.

20          I have now read and considered the  
21          briefing that has been filed with the Court, and I have  
22          come to the tentative conclusion that this motion for  
23          judgment of acquittal on Count 3 should be denied for  
24          the following reasons:

25          The defendant argued that he is entitled

1 to judgment of acquittal on Count 3 because the count  
2 charges a conspiracy to kidnap and murder in the  
3 conjunctive, but the government only proved a  
4 conspiracy to kidnap. Convictions generally have been  
5 sustained as long as the proof upon which they are  
6 based corresponds to an offense that was clearly set  
7 out in the indictment; that is the Supreme Court  
8 speaking in United States versus Miller, 105 Supreme  
9 Court, a 1985 case. "Part of the indictment  
10 unnecessary to and independent of the allegations of  
11 the offense proved may normally be treated as a useless  
12 infirmity that may be ignored" according to the case of  
13 Ford versus United States, also from the Supreme Court.

14 "When a jury returns a guilty verdict on  
15 an indictment charging several acts in the conjunctive,  
16 the verdict stands if the evidence is sufficient with  
17 respect to any one of the acts charged." This is  
18 Turner versus United States, also the Supreme Court  
19 speaking.

20 Also the case of Crane versus United  
21 States, which is an older case from the Supreme Court,  
22 that holds that an indictment count that alleges in the  
23 conjunctive a number of meetings of committing a crime  
24 can support a conviction if any of the alleged meetings  
25 are proved.

1           In light of the Supreme Court case law on  
2           this subject going back almost 100 years, it is clear  
3           that the defendant's motion as to Count 3 must be  
4           denied.

5           Do you wish to be heard on that or do you  
6           wish to wait?

7           MR. MEDVENE: We'll wait, your Honor.

8           THE COURT: All right.

9           The next motion which this defendant has  
10          filed is a motion for a new trial based on several  
11          different grounds and under Rule 33. This motion is  
12          quite a bit troubling to the Court because after  
13          careful examination of the record of the proceedings  
14          that took place, including the arguments that were made  
15          by the government to the Court regarding this exhibit  
16          of La Primavera Park, the position taken by the  
17          government which the Court relied upon to exclude that  
18          exhibit from testimony and the representations that  
19          were made to the Court by the prosecutor at that time,  
20          which were not carried out in the closing argument,  
21          gives me a good deal of a problem.

22          Now, Cervantes -- both parties have said  
23          that Cervantes testified that the bodies were buried at  
24          La Primavera and they had to be moved because it  
25          belonged to Zuno. Nowhere do I find in the transcript

1 whose bodies he's referring to.

2 In fact, if you take his two responses in  
3 the succession in which they were presented, he first  
4 says that Pavon -- this is when he called -- this is  
5 Cervantes' testimony about the call he received from  
6 Javier Vasquez.

7 He said, the question by the  
8 prosecutor:

9 Q. Does he tell you what it is  
10 that he had to tell Barba?

11 A. Yes

12 Q. What?

13 A. That Pavon had killed everybody  
14 in the Bravo family.

15 Now, his very next answer,

16 A. And that the bodies were there  
17 at La Primavera. And that they  
18 would have to be moved because it  
19 belonged to Don Ruben and Don Ruben  
20 would be in trouble.

21 Now, both of you have seemed to accept the  
22 fact that the testimony here was when he was referring  
23 to the bodies being at La Primavera, and that they  
24 would have to be moved, that this was a reference to  
25 Camerena or Savala or perhaps the other two people, but

1 he had never said that. If you read those two  
2 questions in sequence, that Pavon had killed everyone  
3 the Bravo family and that the bodies were there at La  
4 Primavera and that they would have to be moved because  
5 it belonged to Don Ruben and that Don Ruben would be in  
6 trouble.

7 Well, aside from that, that is what his  
8 testimony was. Those are the questions and answers  
9 that he gave.

10 Cervantes testified that the bodies, some  
11 bodies were buried at La Primavera. I just read you  
12 his testimony. To me, it seems to be referring to the  
13 Bravo family bodies, because he does not mention any  
14 other bodies, and it is completely out of sequence to  
15 think that that's what that means, when you take those  
16 two questions in the sequence in which they were  
17 presented.

18 Now, the government argues to the Court  
19 not to admit the aerial photograph. This is where the  
20 defendants wanted to admit an aerial photograph  
21 certified by the Mexican government to be a photograph  
22 of La Primavera Park, establishing that it is a State  
23 owned park and does not belong to Mr. Zuno.

24 At this time, based solely upon the  
25 representation made to the Court by counsel for the



1 prosecution, that this witness, Cervantes, was not  
2 referring to La Primavera Park, that he was referring  
3 to the town of Primavera, and based solely on this  
4 representation and in fact I think it was -- the Court  
5 did not admit the exhibit and therefore deprived the  
6 defendant of the opportunity to use that as a rebuttal  
7 to the argument that was made by the prosecution at the  
8 closing argument.

9 Then, in closing argument the government  
10 tells the jury that soil samples link Camerena's body  
11 to a burial site at La Primavera Park. The government  
12 thus concluded that the bodies were buried at La  
13 Primavera Park.

14 Now, this is evidence that was presented,  
15 I think before Cervantes testified, not after. It  
16 should have been known to the government because it was  
17 evidence from the first trial, that there was soil on  
18 Mr. Camerena that was identified as having come or from  
19 or matching the soil at La Primavera Park. Yet the  
20 position you took in contesting the right of the  
21 defendants to admit this exhibit was that you were not  
22 contending that, that your witness had not said that,  
23 that he was speaking about the town of Primavera and  
24 you turn around the argue to the jury the very  
25 opposite. And you argue that the soil samples, which

1 were taken from Mr. Camerena's remains, match exactly  
2 the soil samples found at the grave of Radelet and  
3 Walker. And you argue to the jury that this is  
4 significant, in that it corroborates what Cervantes had  
5 said.

6 Cervantes had never said that any bodies  
7 were at Primavera Park, in the transcript. And I'd  
8 like you to show me that if he had. The only  
9 transcript that I have seen suggests that he was  
10 talking about the Bravo family when he mentioned the  
11 bodies at Primavera, on land owned by Mr. Zuno, that  
12 had to be moved or he would be in trouble.

13 Now, the government argues to the jury  
14 that this information is significant, because, and I  
15 quote here, "It serves to corroborate everything  
16 Cervantes is telling you."

17 What Cervantes was telling the jury was  
18 Camerena was buried on land owned by Zuno. That land,  
19 by the government's own argument, was La Primavera  
20 Park, which is exactly contrary to what you represented  
21 to me when you contested the admissibility of that  
22 exhibit. So this is directly contrary to what the  
23 government contended when the Court was considering  
24 whether to admit Exhibit CC.

25 Therefore, it appears here that the

1 government changed its position to the defendant's  
2 disadvantage after the Court's ruling on the  
3 admissibility of this exhibit. So the issue then  
4 becomes whether the government's change in position on  
5 the issue was prejudicial error.

6 If the Court had admitted the exhibit, the  
7 defendant would have been able to argue that the land  
8 on which the bodies were found did not belong to him.  
9 This would have contradicted what Cervantes had said,  
10 thus further impeaching that witness.

11 Furthermore, as the government pointed out  
12 in its closing, the corroboration was "significant"  
13 because it made it look like Cervantes was telling the  
14 truth because his testimony appeared to be consistent  
15 with what the soil analysis revealed. If the Court had  
16 admitted the exhibit, the government would have been  
17 without this admittedly significant piece of  
18 corroboration.

19 Now, this case was a close case against  
20 this defendant and turned entirely upon the credibility  
21 of the witness Cervantes. The jury apparently believed  
22 Cervantes and therefore convicted the defendant. If  
23 Cervantes had not been believed, this defendant could  
24 not have been convicted. And therefore it is very  
25 likely that this case could have turned upon this very

1 issue, on which the government changed its position  
2 after the Court's ruling.

3 The change in position, and I would like  
4 to hear from you about this, appears to the Court to  
5 have been prejudicial to the defendant. It appears to  
6 the Court that this was a significant argument by the  
7 government, which could not have been presented to the  
8 jury had the Court admitted Exhibit No. CC.

9 So this gives the Court pause to think  
10 whether or not the defendant here has made a good case  
11 for a new trial based on this.

12 I'd like to hear from you.

13 MR. MEDRANO: May I be heard on it?

14 THE COURT: Yes.

15 MR. MEDRANO: Thank you very much.

16 THE COURT: I first want to hear how you  
17 interpret this testimony of Mr. Cervantes.

18 MR. MEDRANO: That's the first thing I  
19 wanted to address, your Honor, if I may.

20 THE COURT: Yes.

21 MR. MEDRANO: Of course when we briefed  
22 this issue for you, and we filed our pleading on April  
23 1, we attached pertinent copies of the transcript.

24 THE COURT: Yes, I know.

25 MR. MEDRANO: I'd like to direct you to

1 that. My copy says, well, Exhibit A, Transcript 7:50.

2 I'd like to state the following, your  
3 Honor, because I would respectfully disagree with your  
4 conclusion that Cervantes is referring to the bodies as  
5 being the Bravo bodies.

6 THE COURT: I read you the testimony.

7 MR. MEDRANO: Pardon?

8 THE COURT: I read his answer, one after  
9 the other.

10 What do you think that means?

11 MR. MEDRANO: Let me tell you what I think  
12 it means.

13 THE COURT: All right.

14 MR. MEDRANO: When taken in the proper  
15 context, your Honor, and this is where I'd like to  
16 start in terms of setting up the context, is right  
17 before you get to that portion where Cervantes is  
18 discussing the bodies, there is testimony by Cervantes,  
19 in depth, about immediately after the abduction of  
20 Camerena, all hell breaks loose, everyone starts  
21 fleeing Guadalajara including Zuno. And Zuno asks,  
22 Barba Hernandez's help for getting men to move the  
23 hidden marijuana. You recall that?

24 THE COURT: Yes.

25 MR. MEDRANO: That, your Honor, is what

1 immediately comes before the series of questions that  
2 you just addressed. And I would suggest to you,  
3 respectfully, when Cervantes is going through his  
4 presentation about what is going on, the context is  
5 Camerena and Savala, and that's why when he mentions  
6 that bodies were at the park or La Primavera --

7 THE COURT: Can you point me to a line in  
8 the transcript from which this conclusion was based?

9 MR. MEDRANO: Yes. You have in front of  
10 you 7-50 or in that area.

11 THE COURT: Is that one of the exhibits?

12 MR. MEDRANO: Exhibit A.

13 THE COURT: I have Exhibit A.

14 MR. MEDRANO: Go to Page No. 7-50.

15 THE COURT: All right.

16 MR. MEDRANO: We only gave you the pages.

17 THE COURT: You gave me 7-51 is the first  
18 page.

19 MR. MEDRANO: 7-50 should be the first  
20 page. I apologize for that.

21 THE COURT: I don't have it.

22 MR. MEDRANO: Okay. But, actually, your  
23 Honor, here is the point.

24 THE COURT: Just a moment. Maybe it's in  
25 your first exhibit.

1 MR. MEDRANO: These are exhibits attached  
2 to government's response to the Court's order  
3 requesting additional information.

4 THE COURT: We have a supplemental brief.

5 MR. MEDRANO: That wouldn't be it, your  
6 Honor.

7 THE COURT: All right. I have 7-50.

8 MR. MEDRANO: Okay. Keep this in mind,  
9 your Honor, I gave you only the pages that deal with  
10 Cervantes talking about the bodies at La Primavera. If  
11 you go backwards, which you don't have in front of you,  
12 because you didn't ask at the time, but you have a  
13 transcript in the back, if not I can get it for you,  
14 from 7-49 working backwards, you will find, if you  
15 scrutinize that carefully, that Cervantes is talking  
16 about everyone fleeing Guadalajara after the abduction  
17 of Camerena. Everybody is getting out of town, Zuno  
18 wants Barba's help to move his five tons of hidden  
19 marijuana in his ranch at Mescota. This is the  
20 context. We are talking about Camerena.

21 Then we move into 7-50, where he then goes  
22 on to discuss the phone call he receives from Javier  
23 Vasquez.

24 Then you go to the top of 7-51 and that's  
25 when we start getting into what Javier Vasquez told him

1 over the phone. The context, I would respectfully  
2 submit to you, is Camerena.

3 Another thing I want to bring to your  
4 attention, your Honor, another reason this is not the  
5 Bravo bodies is the following: When the Bravo family  
6 was murdered by police officials in Mexico in an effort  
7 to cover up what happened, those bodies were out in the  
8 open. They were never buried. That was never an  
9 issue. The only bodies that were buried, as the  
10 evidence pointed out in the trial, were Camerena,  
11 Savala and Radelet and Walker. Those were not the  
12 Bravo bodies. They were never buried. We know that  
13 independently of anything Cervantes told us.

14 THE COURT: I'm speaking about what was  
15 told to the jury, not what -- your subjective knowledge  
16 was not before the jury. I'm talking about this  
17 testimony.

18 MR. MEDRANO: My point is this: Evidently  
19 you think it's a close call. You think it's referring  
20 to the Bravo bodies. I'm telling you, in light of the  
21 context --

22 THE COURT: Could it be interpreted by the  
23 jury -- here's what he said. First of all he said that  
24 the reason he called Barba, he wants to tell him  
25 something that has just happened.



1 MR. MEDRANO: Yes, your Honor.

2 What page are you on?

3 THE COURT: Well, I'm on 7-51.

4 MR. MEDRANO: Okay.

5 Q. Doesn't he tell you what it is  
6 that he had to tell Barba?

7 A. Yes.

8 Q. What?

9 A. That Pavon had killed everybody  
10 in the Bravo family.

11 Well, apparently this is not the right  
12 page.

13 The next question and answer is:

14 Q. Go ahead with the answer, I'm  
15 sorry.

16 There was an interruption. And the answer  
17 continues.

18 A. And that the bodies were  
19 there. That the bodies were there  
20 at La Primavera and that they would  
21 have to be moved because it  
22 belonged to Don Ruben and that Don  
23 Ruben would be in trouble.

24 MR. MEDRANO: Yes, your Honor that's  
25 exactly what it says.

1 THE COURT: That sounds like they are  
2 talking about the Bravo bodies.

3 MR. MEDRANO: That's where I would  
4 respectfully disagree, since the context, I would  
5 submit, is Camerena and everybody flees because of the  
6 abduction, I would submit to you what Cervantes is  
7 discussing is the bodies of Camerena.

8 And another point, your Honor, that  
9 reinforces that conclusion --

10 THE COURT: Well, maybe we are spending  
11 too much time on this.

12 Let's assume he said what he said he said,  
13 what you think he said. The bodies are at Primavera  
14 Park.

15 MR. MEDRANO: Yes, your Honor.

16 THE COURT: You think he said that?

17 MR. MEDRANO: That the bodies were at La  
18 Primavera, yes.

19 THE COURT: Not Primavera Park.

20 MR. MEDRANO: At La Primavera Park.

21 THE COURT: Do you think he said that the  
22 bodies are at La Primavera Park?

23 MR. MEDRANO: May I have just one moment,  
24 please, I want to confirm something?

25 THE COURT: Yes.

1 (Pause in proceedings.)

2 MR. MEDRANO: Here is a clarification,  
3 your Honor.

4 When Cervantes in another part of the  
5 transcript talks about Zuno owning land in La  
6 Primavera, that was referring to the town of La  
7 Primavera and we cited you the page for that from the  
8 transcript. At the portion we are at now and Zuno is  
9 talking --

10 THE COURT: That is also what you cited me  
11 when we were dealing with the admissibility of this  
12 exhibit.

13 You insisted that Cervantes had testified  
14 about the town of La Primavera, and therefore this  
15 exhibit need not come in, because it was not your  
16 position that the bodies were buried in La Primavera  
17 Park. That was what I understood from your  
18 representation. That is why I kept the exhibit out.

19 And you made that representation with the  
20 knowledge, apparently, that the soil expert had  
21 compared the soil in La Primavera Park and found to it  
22 be the same as the soil on Mr. Camerena, which would  
23 suggest that at least your theory of the case is that  
24 he had been buried in the same place where Walker and  
25 Radelet had been buried.

1 MR. MEDRANO: Yes, your Honor. Yes.

2 THE COURT: But your argument to me when  
3 we were considering the admissibility of the exhibit  
4 was that that was not your position at all; that  
5 Cervantes was talking about the town of Primavera, upon  
6 land owned by Mr. Zuno in the town of Primavera. I  
7 therefore said I didn't see any reason to be excited  
8 about that.

9 MR. MEDRANO: Yes.

10 THE COURT: The exhibit is not necessary.  
11 Now, let me just go on.

12 After doing that --

13 MR. MEDRANO: Your Honor, may I add  
14 something just for clarification as to the chronology?

15 THE COURT: Yes.

16 MR. MEDRANO: When that issue arose, and  
17 you are absolutely correct in your rendition, that  
18 document was being offered by the defendants to impeach  
19 Cervantes right at that moment, before we got to the  
20 other testimony that you are addressing right now,  
21 about Javier Vasquez. So it came before that, I  
22 believe.

23 THE COURT: The purpose of it was to  
24 impeach Cervantes; to show that the Primavera Park was  
25 a state owned park and could not belong to Mr. Zuno.

1 MR. MEDRANO: Yes.

2 THE COURT: Your witness had been saying  
3 that the land belonged to Mr. Zuno, never mentioned the  
4 park, but said that by adopting the answer or the  
5 questions of the cross-examiner.

6 MR. MEDRANO: May I add the following as  
7 well, your Honor?

8 In terms of your concern about the  
9 prejudicial impact, I would respectfully submit that  
10 the issue you are concerned with is whether or not this  
11 document would impeach Cervantes, I believe. Correct  
12 me if I'm wrong.

13 THE COURT: That was the purpose of it.

14 MR. MEDRANO: Yes.

15 And as I would submit, as we explained in  
16 our papers, that document, even if you admitted it --  
17 well, you properly kept it out for another reason, and  
18 that was, it doesn't impeach Cervantes.

19 For this reason: When you go through the  
20 transcript in the fashion that you just have, it is  
21 second hand information Cervantes is relaying. Javier  
22 Vasquez is telling him what Javier Vasquez knows.  
23 Correct?

24 As a result this exhibit, by the defense,  
25 cannot impeach Cervantes, because he's relying on

1 second hand information. It would only serve to  
2 impeach Javier Vasquez, who obviously did not testify.

3 It doesn't testify second hand hearsay  
4 type information. So it doesn't impeach anybody. And  
5 that was one of the key arguments we made in our papers  
6 to you.

7 So in terms of the prejudicial impact,  
8 which is what you are concerned about, well, they  
9 wouldn't have served to impeach him at all, for the  
10 reasons I just outlined.

11 THE COURT: Maybe I should read you your  
12 argument, here, that you made.

13 MR. MEDRANO: Well, your Honor, I don't  
14 dispute the argument, because I recall making it. But  
15 keep this in mind, what defense counsel has sought to  
16 do is --

17 Well, your Honor, my closing was a total  
18 of five hours over two separate days, and there were  
19 many points made by the government in its summation. I  
20 would respectfully submit that it is inappropriate to  
21 focus on one argument and then to claim that that one  
22 argument was so prejudicial that you have to throw out  
23 the verdict and retry the case.

24 THE COURT: This argument was used by you  
25 to support the credibility of Mr. Cervantes, on which

1 the entire case depended against this defendant.

2 MR. MEDRANO: Partially correct.

3 But what is also correct, respectfully,  
4 your Honor, there was also an abundance of other  
5 evidence that we threw out to further corroborate  
6 Cervantes.

7 What I'm trying to get at, we are all  
8 making -- at least the defense wants to make a leap of  
9 logic because of this one particular statement by the  
10 government in its summation; that that statement alone  
11 rises to the level of prejudicial impact, when in fact,  
12 even in the context of the enumerable arguments I made,  
13 to corroborate Cervantes, to show Zuno's role in the  
14 conspiracy, it wasn't a Cervantes based case.

15 And that brings up another important  
16 fact. If it was a Cervantes case, perhaps the defense  
17 argument of prejudicial impact --

18 THE COURT: It is a Cervantes case. He's  
19 the one that puts this defendant at the meetings where  
20 the alleged kidnappings were concocted.

21 MR. MEDRANO: There is also other  
22 evidence. Lawrence Harrison, who placed Zuno with Caro  
23 Quintero and Fonseca, who placed Caro at Lope de Vega  
24 before the purported sale of the house in January  
25 1985. It's never been solely a Cervantes case.

1 True, Cervantes was a percipient witness  
2 that placed Zuno in the meetings, but that was part of  
3 the evidence. We still had to show --

4 THE COURT: There could be no case without  
5 Cervantes.

6 MR. MEDRANO: I don't dispute that.

7 THE COURT: You couldn't convict this  
8 witness because Harrison saw Caro on a horse and saw  
9 him hugging the defendant. That certainly is not  
10 evidence of the guilt of the crime charged in the  
11 indictment. It's simply evidence that they know each  
12 other.

13 MR. MEDRANO: I understand that.

14 THE COURT: Nor is his presence at that  
15 house standing by itself.

16 The case against this defendant is  
17 Cervantes. I don't think we can quarrel with that.

18 MR. MEDRANO: And I would accept that,  
19 your Honor, but again, let me come back to my main  
20 argument at this point.

21 Number one, when you sought to keep that  
22 document out, it was offered solely to impeach on a  
23 collateral matter, point one.

24 Point two, there is no prejudicial impact  
25 when the document offered by the defense has no



1 impeachment value, because Cervantes was conveying  
2 hearsay information. That document does not serve to  
3 impeach me when I'm relaying to you something  
4 Mr. Carlton told me that.

5 And finally, your Honor, I would remind  
6 the Court when this arose there was, first of all, no  
7 objection by the defense. There is a plain error  
8 standard assuming this went up on appeal, a more  
9 difficult burden for the defense to meet, because they  
10 did not object at the time. Had they done so, your  
11 Honor, and for all we know that was a strategic choice  
12 on their part, you would have been in a position to  
13 give yet another curative instruction, and you gave  
14 many, before and during and after the trial. So it  
15 seems to me they are perhaps trying to have it both  
16 ways. They did object, so the plain error standard  
17 kicks in. And when you apply that standard, including  
18 the prejudicial impact standard you've outlined, it  
19 doesn't rise to that level, your Honor, that would  
20 require a new trial, not by any stretch of the  
21 imagination.

22 THE COURT: Well, can you explain to me  
23 how you can justify making this argument to the jury  
24 based on what had transpired before that time?

25 You said Mr. Ron Raywald of the FBI, an

1 expert in mineralogy, testified for you and his  
2 conclusions were as follows:

3 He took samples of soil from the right  
4 knee of Camerena. And he compared it to the soil found  
5 at Zamora, 70 miles away from Guadalajara. Absolutely  
6 dissimilar, no match at all.

7 He then takes the same soil from Camerena  
8 and matches it to soil found out at the grave site  
9 where the remains of Radelet and Walker were found at  
10 Primavera Park.

11 Do you recall that he told you there was  
12 virtually a perfect match between the soil?

13 You say here, Cervantes stays at La Quinta  
14 for a period of time and then the following happened,  
15 ladies and gentlemen: Javier Vasquez called on the  
16 phone. Cervantes answers the telephone and Javier  
17 Vasquez says the following: "It is me, Javier. The  
18 tierra libre. I am looking for Barba. I need to tell  
19 Barba that Pavon has killed the Bravo family."

20 And Javier Vasquez also tells Cervantes  
21 that the bodies are at La Primavera, they need to be  
22 moved because the property where they are belongs to  
23 Ruben, Ruben Zuno. And Ruben will get in trouble.

24 Cervantes says, "I'll report it to my  
25 boss."

1                   Now, this argument is suggesting that the  
2 bodies are at La Primavera, which is what your witness  
3 testified to and which is what you assured me your  
4 position was during the trial; that you were not  
5 contending it was the park, but La Primavera.

6                   Now you are arguing, and did argue to the  
7 jury, that because of this forensic comparison of the  
8 soils, that the bodies had been buried at La Primavera  
9 Park.

10                   Now, can you explain that inconsistency?

11                   MR. MEDRANO: Yes, your Honor. Most  
12 definitely.

13                   THE COURT: In fact, let me give you the  
14 rest of it here.

15                   It says -- you should hear the rest of  
16 this.

17                   "You know that the bodies of Camerena and  
18 Savala were dumped at the Bravo ranch, 70 miles  
19 southeast Guadalajara. They were not buried there  
20 originally because the soil did not match. The bodies  
21 are bruied at La Primavera Park." These are your own  
22 words. "There was concern somehow that Zuno might be  
23 implicated. The bodies are exhumed and dumped by the  
24 roadside in Zamora at the Bravo ranch. This is  
25 significant, ladies and gentlemen, because it serves to

1 corroborate everything Cervantes is telling you."

2 And I'm continuing now with your argument,  
3 "Thereafter, he had a conversation with Cervantes that  
4 spoke about how the Bravo family had been murdered and  
5 how the bodies, that is Camerena and Savala -- which  
6 the witness never said -- had to be taken off La  
7 Primavera Park because it would cause trouble for  
8 Zuno."

9 That's the argument you made.

10 MR. MEDRANO: Yes, your Honor. And I can  
11 explain it right now.

12 THE COURT: Wait a minute.

13 Explain to me this: Why did you tell me  
14 that you were not contending that the witness was  
15 testifying about La Primavera Park; that he was  
16 testifying about a lot somewhere else, in La Primavera,  
17 in the town of La Primavera? Why did you tell me  
18 that? Did you change your theory during the trial?

19 MR. MEDRANO: What happened, your Honor,  
20 that was the position at the time, because --

21 THE COURT: Wait a minute.

22 These soil samples that were testified to,  
23 were testified to in the earlier trial, I believe.

24 MR. MEDRANO: That's correct, your Honor.

25 THE COURT: They had been around for a

1 long time. You had known that the sample soil found on  
2 Mr. Camerena matched the soil at Primavera Park, but  
3 your witness never said Primavera Park, he said  
4 Primavera, the town of Primavera that he had visited,  
5 that he was familiar with land owned by Mr. Zuno at  
6 Primavera, that he had been there once. And that was  
7 the assurance you gave to the Court.

8 And then the argument you gave was  
9 completely contrary to that.

10 MR. MEDRANO: I don't think you are  
11 inconsistent, your Honor, for these reasons.

12 First of all, let me flag something for  
13 you, because this is my recollection, and we will have  
14 to review the transcript to confirm it.

15 It is my recollection that before we gave  
16 closing argument, Mr. Medvene stood up and told you  
17 that he had this concern. And in fact -- and I'll have  
18 to check our form files, but I believe there was even a  
19 motion filed by the defense, before closing argument  
20 but during trial, to prevent government counsel from  
21 arguing at summation, the very point you are discussing  
22 right now.

23 THE COURT: Before argument.

24 MR. MEDRANO: Before argument.

25 THE COURT: This is when we all believed

1 that the town of Primavera was --

2 MR. MEDRANO: Your Honor, this is after  
3 all that but before, right before closing argument.  
4 I'm not talking early in the trial. This is my  
5 recollection and I do need to confirm this, by the way,  
6 and I'd like to check my notes on this.

7 You addressed it and I gave you many of  
8 the same explanations I'm endeavoring to at this time  
9 and you agreed, and allowed the government to proceed  
10 with this argument in summation.

11 That is one reason I would submit to you,  
12 your Honor, when I made that argument in summation  
13 there was no objection by the defense. I note for you  
14 this issue did not arise until after the jury  
15 misconduct issue arose. Until after counsel a chance  
16 to think about the summation, and then, at that point  
17 is when they raised the issue.

18 THE COURT: The Rule 33 motion is meant to  
19 be made after the trial.

20 MR. MEDRANO: I understand that.

21 I think my point is, this is sort of a  
22 two-bites-at-the-apple argument. They raised it  
23 initially right before closing argument. You addressed  
24 it. You overruled that motion. And by that time, all  
25 the evidence was on the table, including Raywald's

1 testimony about the park.

2 THE COURT: Keep in mind, what we are  
3 concerned with is a fair trial.

4 MR. MEDRANO: I understand that.

5 THE COURT: All that other doesn't really  
6 matter much if the defendant had not had a fair trial,  
7 which is guaranteed under our law. This is the problem  
8 I'm concerned with.

9 In a nut shell, here it is. Now, if you  
10 assume that what Cervantes meant was that he was  
11 talking about the bodies of Camerena and Savala. How  
12 do we know it wasn't Radelet and Walker that he was  
13 talking about? You never mentioned anybody's name.

14 MR. MEDRANO: I understand that.

15 THE COURT: This questioning was very  
16 imprecise and nobody followed up on it.

17 Cervantes testified that the bodies,  
18 whomever they were, were buried at La Primavera, and  
19 they had to be moved because it belonged to Zuno. "It"  
20 belonged to Zuno. I used that word "it." I don't know  
21 if it means "it" the town of La Primavera, whether it  
22 means "it" the park or whether it means "it" some other  
23 plot.

24 Based solely upon this, the Court did not  
25 admit the exhibit. And then in closing argument, the

1 government tells the jury that soil samples link  
2 Camerena's body to a burial site at La Primavera Park.  
3 The government thus concluded that the bodies were  
4 buried at La Primavera Park.

5 Then the government argued that the bodies  
6 had to be moved off the park because it would implicate  
7 Zuno. The government argues that this information is  
8 significant because it serves to corroborate everything  
9 Cervantes is telling you. End quote.

10 What Cervantes was telling the jury was  
11 Camerena was buried on land owned by Zuno. That land,  
12 by the government's own argument, was La Primavera  
13 Park.

14 The Court was considering whether to admit  
15 Exhibit CC, therefore it appears that the government  
16 changed its position to the defendant's disadvantage.  
17 And the issue becomes whether the government's change  
18 in position on the issue was prejudicial error.

19 Now, if the Court had admitted the  
20 exhibit, defendant would have been able to argue that  
21 the land on which the bodies were found did not belong  
22 to him. This would have contradicted what Cervantes  
23 had said, thus further impeaching the witness.

24 And further, the government pointed out in  
25 its closing, the corroboration was "significant"



1 because it made it look like Cervantes was telling the  
2 truth, because Cervantes' testimony was consistent with  
3 what the soil analysis revealed.

4 Therefore the government would have to be,  
5 that is would have been without this admittedly  
6 "significant" piece of corroboration.

7 So it appears that the government changed  
8 position after the Court's ruling. The change in this  
9 position appears to have been prejudicial. I'll be  
10 glad to consider an argument to the contrary.

11 Whether it rises to a level that the Court  
12 can conclude it prevented the defendant from having a  
13 fair trial is a question of fact which the Court is  
14 best able to determine after having sat through the  
15 trial and heard the evidence in the case. But you  
16 personally characterized this evidence as significant,  
17 to the jury. And this significant evidence could not  
18 have been presented had the Court admitted that  
19 exhibit.

20 So that is the dilemma and the problem  
21 that I have about this motion.

22 MR. MEDRANO: May I raise a couple of more  
23 points, your Honor, just to finish our thoughts on  
24 this?

25 THE COURT: Yes.

1 MR. MEDRANO: Just to also help the Court  
2 recall that after Raywald testified and he talks about  
3 the soil evidence and all that as you described, there  
4 was no effort by the defense to reintroduce that  
5 exhibit, your Honor. And I would submit to you that  
6 that suggests that the evidence was not regarded as  
7 that significant at the time.

8 What all this amounts to, I would  
9 respectfully submit, by the defense, is a form of  
10 Monday morning quarterbacking, where after the trial,  
11 after the heat of battle, in closing argument, there is  
12 an effort to dissect specific portions of the  
13 summation. And again, your Honor, I come back this and  
14 I said it already. Yes, I used the word "significant,"  
15 but I can assure you I used "significant" with probably  
16 a half dozen other pieces of evidence in the trial. I  
17 guess my difficulty is agreeing with the Court in  
18 perhaps its suggestion that that one use of the word  
19 "significant" in that context suddenly requires a new  
20 trial.

21 THE COURT: Let me suggest this is a  
22 problem that bothers me, too.

23 It appears to the Court that your witness  
24 never intended to testify to the bodies being at La  
25 Primavera Park, because the park, La Primavera Park was

1 raised in cross-examination.

2 So it is troubling for me to see that the  
3 government has basically said that this witness will  
4 testify that the bodies were in La Primavera. You told  
5 me that. Not the park. But because of the fortuitous  
6 interjection of Primavera Park caused by the witness'  
7 adoption on his cross-examination, because the defense  
8 counsel on cross-examination used La Primavera Park,  
9 even though the witness never did, the witness never  
10 corrected them.

11 Now, that could be miscommunication. It  
12 could be translation. It could be something else. But  
13 the witness never corrected this. So it appears to me  
14 you rode along with it; that you were going to take  
15 advantage of the fact that the defense counsel  
16 introduced La Primavera Park and the witness' answers  
17 and the soil samples to change your theory from the  
18 town of La Primavera to La Primavera Park.

19 MR. MEDRANO: Your Honor, you raise an  
20 interesting point in terms of the circumstances under  
21 which this arose.

22 As I recall from the transcript, this  
23 wasn't part of our direct. Mr. Medvene raised it on  
24 cross, and out of necessity we had to get back into it  
25 to clarify the record, I imagine, on redirect by the

1 government.

2 I guess there is a partial equities  
3 argument there in that we didn't affirmatively seek  
4 this out. It came out. And after it came out by  
5 Mr. Cervantes, after much cross-examination, what he  
6 said in conjunction with Raywald and all the other  
7 evidence in the case, your Honor, I respectfully  
8 submit, allowed that particular closing argument.  
9 Especially, your Honor, and I come back to this again,  
10 when Mr. Medvene tried to foreclose that before closing  
11 argument and you overruled him and basically gave the  
12 government the green light.

13 So now we are between a rock and hard  
14 place. We had permission to go forward with that  
15 argument and it was based on the evidence. And we  
16 firmly stick to that, your Honor.

17 And I guess I just don't know. We --

18 THE COURT: Well, all right. I want to  
19 hear from the defendant's counsel.

20 MR. MEDVENE: We can't state the argument  
21 any clearer than your Honor did.

22 There is no question that the Court found  
23 CC properly authenticated, relevant and proper  
24 impeachment, not collateral impeachment. There is no  
25 question that your Honor solely excluded CC based on

1 the misrepresentation of the prosecutor, that -- the  
2 statement of prosecutor that he was not going to argue  
3 Primavera Park was where the bodies were buried. That  
4 was clear. We tried to get the evidence in, not before  
5 Radelet, but after. There is nothing about  
6 interjection by cross-examination.

7 The bottom line of all the  
8 cross-examination was, we thought Cervantes had said  
9 Primavera Park. The prosecutor argued he did not say  
10 Primavera Park, he said La Primavera.

11 You said, I agree with you prosecutor, he  
12 adopted defense counsel's cross-examination word. What  
13 he said was La Primavera.

14 The prosecutor said, since he said La  
15 Primavera, keep it out, keep CC out, because Primavera  
16 Park doesn't have anything to do with anything.

17 Then we tried again before we closed, to  
18 get the exhibit in again. And the prosecutor argued  
19 again, basically it's not talking Primavera Park.

20 We then have the prosecutor sandbagging in  
21 effect. And the critical thing on the fair trial issue  
22 -- the stakes are so great. We are just asking for a  
23 new trial. That's all.

24 The critical thing is, it's a one witness  
25 case on the meetings. There is nobody else at the

1 meetings. And the prosecutor says, not only is this  
2 significant, but as your Honor said once, this is  
3 significant, ladies and gentlemen, because it serves to  
4 corroborate everything Cervantes is telling you.  
5 Everything he's telling you.

6 We would say, your Honor, that in the  
7 interests of basic fairness, a new trial be granted.  
8 How could we sleep at night with the argument the  
9 prosecutor makes to the jury, this serves to  
10 corroborate everything that Cervantes is telling you,  
11 and there is not one other speck of evidence that  
12 Mr. Zuno attended any kidnapping meetings except  
13 Cervantes' testimony, and he dearly needed  
14 corroboration. There was so much impeachment he needed  
15 corroboration. The prosecutor struggled for  
16 corroboration. And here he says, "La Primavera Park,  
17 ladies and gentlemen, that gives you the corroboration  
18 you need for Cervantes."

19 We ask respectfully for a new trial, your  
20 Honor.

21 MR. MEDRANO: One final comment your  
22 Honor.

23 THE COURT: Yes.

24 MR. MEDRANO: Your Honor, there was an  
25 abundance of other corroboration of Cervantes as well.

1 It did not turn on the issue of La Primavera Park.  
2 Harrison places Caro at Lope de Vega. We know from  
3 forensic evidence Camerena was held at Lope de Vega.  
4 Enrique Pacencia Ibar says that one of the body guards  
5 was Javier Vasquez. Cervantes says that one of the  
6 body guards was Javier Vasquez. Your Honor, there are  
7 countless other examples we can enumerate in further  
8 briefing if you deem it appropriate.

9 THE COURT: Well, I want to tell you, my  
10 tentative conclusion here is to grant this motion for a  
11 new trial.

12 You have cited the things that were done  
13 and said during the trial, which are were not produced  
14 here as a part of this motion.

15 I may give you an opportunity to try to  
16 show that the things that I had pointed out here were  
17 somehow ameliorated by other things that transpired  
18 during the trial, by other positions taken by the  
19 defendant or otherwise. But I do think that this was  
20 basically a one witness case. That this was extremely  
21 prejudicial.

22 I'm not going to repeat. I've stated my  
23 reasons for the record. And my inclination is to grant  
24 a new trial.

25 Now, you have a transcript of the entire

1 trial?

2 MR. MEDRANO: No, your Honor, for the  
3 reasons that you probably are aware of in terms of the  
4 prior court reporter, those problems.

5 THE COURT: What are those things you are  
6 referring to? You have transcripts of some things,  
7 don't you?

8 MR. MEDRANO: We have partial  
9 transcripts. We have to dig into them to see if we  
10 have the pertinent transcripts that we need.

11 We would like the opportunity, your Honor,  
12 to show you these very things that we have been arguing  
13 for the last 30 minutes.

14 THE COURT: Frankly, the argument has not  
15 been very persuasive. It does not get around the  
16 central things that I have pointed out.

17 So, if you think you can do better, I  
18 would want it down in a hurry.

19 MR. MEDRANO: That can be done, your  
20 Honor.

21 MR. MEDVENE: If the Court please.

22 We would respectfully ask you rule now,  
23 your Honor, the reason you just said. Mr. Medrano  
24 argued to you he wasn't going to use La Primavera Park  
25 as anything Mr. Zuno had anything to do with. Unless



1 he can say to you now that he didn't say that, which he  
2 did, it's in the transcript, and he then argued La  
3 Primavera as to Mr. Zuno's corroboration. Unless he  
4 can argue and say to you he didn't say that, and he  
5 did, we both read it.

6 THE COURT: I know what he said and what  
7 is in the transcript that I've seen. I quoted from it  
8 liberally.

9 MR. MEDRANO: I think the issue is what  
10 you stated yourself, your Honor. If anything else  
11 happened that is in the transcript that will ameliorate  
12 the --

13 THE COURT: Are you just fishing or do you  
14 have something?

15 MR. MEDRANO: Not at all, your Honor. I'm  
16 reasonably certain these things happened in the manner  
17 I've described.

18 We would just like a brief opportunity to  
19 track it down in the transcript and give you citations  
20 to show you that there was no impact, no prejudicial  
21 impact in the big picture, the totality.

22 THE COURT: All right. Here's what I will  
23 do. I will continue this matter for one week. I will  
24 expect you to, that is one week from today. I will  
25 expect you, in three days, to provide me whatever it is

1 that you believe is material to the issues that I have  
2 raised.

3 I will give the defense counsel -- maybe I  
4 better make it two days not counting today. The next  
5 two days. I want it at the end of the -- it would be  
6 Thursday. The defense counsel may have until Monday to  
7 file a response. And then the Court will rule on this  
8 matter Tuesday of next week at the same time.

9 Is that time available?

10 THE CLERK: Yes, your Honor. 4:30 P.M.

11 MR. MEDRANO: Thank you, your Honor.

12 THE COURT: But I'm going to tell you,  
13 nothing I've heard so far convinces me this motion  
14 should not be granted.

15 MR. MEDVENE: May I ask a favor, your  
16 Honor?

17 I had a longstanding trip planned. Is it  
18 at all possible if the government gets their papers in  
19 by Thursday afternoon we would have our papers in by  
20 Thursday evening and to hear in matter on Friday?  
21 Because I suspect there is nothing more and I would  
22 like to be here. I suspect there is nothing more. I  
23 was to leave on Friday. I'll delay it if I could. If  
24 there is any possible way. They are going to take  
25 Thursday afternoon. I suspect there will be nothing to

1 reply to.

2 The issue is what did he say to your  
3 Honor, and what did you do.

4 THE COURT: Well, I mean, you put yourself  
5 at a disadvantage. I have no objection if you can be  
6 ready at Friday afternoon at 4:30.

7 MR. MEDVENE: We'll be ready.

8 THE COURT: You have your papers in here  
9 by Thursday of this week.

10 MR. MEDVENE: May we have our papers in by  
11 9:00 Friday morning?

12 MR. MEDRANO: That's not two days.

13 We'd like to end of the workday Thursday.  
14 We can fax them directly to counsel and they can have  
15 them by the end of day Thursday.

16 MR. MEDVENE: If we get them by the end of  
17 workday Thursday, we'll have our papers to you 9:00  
18 Friday morning, your Honor.

19 THE COURT: All right. That's fine.

20 MR. MEDVENE: And the hearing Friday  
21 afternoon?

22 THE COURT: Yes.

23 MR. MEDRANO: At 4:30?

24 THE COURT: 4:30.

25 MR. MEDRANO: At the same time that we'll

1 have the sentencing hearing for the last defendant,  
2 Javier Vasquez?

3 THE COURT: Is that set next Friday?

4 MR. MEDRANO: This Friday at 4:30.

5 THE COURT: Well, we may be able to  
6 advance that a little bit. Same time. 4:30 next  
7 Friday.

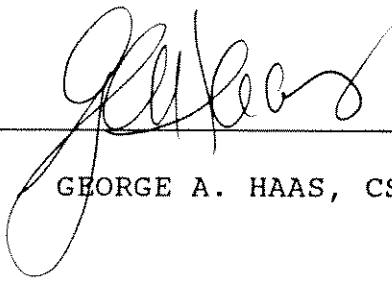
8 MR. MEDRANO: This Friday?

9 THE COURT: This Friday, yes.

10 THE CLERK: Please rise. This court is  
11 now in recess.

12 ooo

13 I certify that the foregoing is a correct  
14 transcript from the record of proceedings in the  
15 above-entitled matter.

16   
17 \_\_\_\_\_  
18 GEORGE A. HAAS, CSR

19 5-8-91  
20 \_\_\_\_\_  
21 DATE

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24  
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