

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFFEDIE, DISTRICT COURT JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 VS.)
)
 JUAN RAMON MATTA-BALLESTEROS,)
 RUBEN ZUNO-ARCE,)
 JUAN JOSE BERNABE-RAMIREZ,)
 AND JAVIER VASQUEZ-VELASCO,)
)
 DEFENDANTS.)

CASE NO: CR 87-422(F)-ER
C.A. NO: 91-50351

VOLUME 17

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JUNE 20, 1990; 9:30 A.M.
LOS ANGELES, CALIFORNIA

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SPANISH INTERPRETERS

1 LOS ANGELES + CALIFORNIA WEDNESDAY, JUNE 20, 1990

2 + 9:00 A.M.

3
4 (JURY PRESENT.)

5 THE COURTROOM: GOOD MORNING, YOUR HONOR.

6 THE COURT: GOOD MORNING. YOU MAY CONTINUE YOUR
7 CROSS-EXAMINATION.

8
9 MICHAEL P. MALONE + PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

10 CROSS-EXAMINATION + (CONTINUED)

11 BY MR. BURNS:

12 Q. GOOD MORNING, MR. MALONE.

13 A. HOW ARE YOU?

14 Q. YESTERDAY AFTERNOON I SPOKE TO YOU A LITTLE BIT ABOUT
15 THE CARPET FIBERS.

16 I'D LIKE TO SPEAK TO YOU NOW ABOUT THE FABRICS,
17 WHICH ARE ALSO FIBERS; IS THAT CORRECT?

18 A. THAT'S CORRECT, YES.

19 Q. AND YOU SAID WHEN YOU COMPARED THE FABRICS, YOU COMPARED
20 WHAT THEY'RE CONSTRUCTED OF, THE COLOR AND THE DESIGN?

21 A. AND THE COMPOSITION.

22 Q. AND THE COMPOSITION.

23 DID YOU DETERMINE IF THERE WAS A NAME FOR THIS
24 FABRIC COMMERCIALY?

25 A. IT'S A PLAIN WEAVE. IT'S JUST BASICALLY SHEET FABRIC.

1 Q. DO YOU KNOW IN ANY WAY IF IT WAS MEXICAN FABRIC AS
2 OPPOSED TO FABRIC MADE IN THE UNITED STATES OF AMERICA?

3 A. I DON'T THINK THERE'S ANY WAY TO TELL.

4 Q. SO YOU DID NOT GO TO ANY MANUFACTURERS TO TRY TO SEE IF
5 THEY COULD NAME THIS PARTICULAR FABRIC?

6 A. NO, I DIDN'T.

7 Q. SO YOU HAVE NO WAY OF KNOWING HOW MANY OF THESE -- HOW
8 MANY SQUARE YARDS OF THIS FABRIC WAS MANUFACTURED?

9 A. I HAVE NO IDEA.

10 Q. NOW, WITH THE ROPES, YOU SAID THE UNDRAWN POLYESTER
11 FIBER IN THE TRACER, WHICH IS TO SAY I BELIEVE THAT'S THE
12 CENTER PART OF THE ROPE THAT GOES DOWN?

13 A. WHEN YOU MANUFACTURE A ROPE, BRAID IT OR TWIST IT, YOU
14 HAVE GOT TO HAVE SOMETHING TO BRAID IT OR TWIST IT AROUND.
15 SO ALL ROPES HAVE A CENTRAL CORE CALLED A TRACER.

16 Q. AND THE TRACER YOU FOUND WAS VERY RARE? A VERY RARE
17 TRACER.

18 A. YES, IT WAS AN UNDRAWN POLYESTER. EVERY POLYESTER I'VE
19 SEEN HAS BEEN DRAWN OUT WHEN IT WAS MANUFACTURED TO GIVE IT
20 CERTAIN PROPERTIES THAT YOU NEED FOR TEXTILES.

21 AN UNDRAWN POLYESTER IS PROBABLY A CHEAPLY-MADE
22 POLYESTER -- WOULD NOT BE SUITABLE FOR FABRICS. THEREFORE,
23 YOU JUST DON'T SEE IT.

24 Q. WERE ANY OF THE RUGS THAT YOU HAD EVER EXAMINED IN YOUR
25 EXPERIENCE WITH THE F.B.I., DO YOU KNOW IF THEY WERE

1 MANUFACTURED IN MEXICO?

2 A. I HAVE NO IDEA.

3 Q. SO YOU HAVE NO IDEA WHERE THIS WAS MANUFACTURED EITHER,
4 DO YOU?

5 A. AS FAR AS I KNOW, THERE IS NO WAY TO TELL.

6 Q. AND IT IS FAIR TO SAY THAT THIS ROPE CAN BE PART OF A
7 LARGE AMOUNT OF FEET OF ROPE MANUFACTURED AT THE SAME TIME
8 WITH THE SAME MANUFACTURER?

9 A. WELL, I'M SURE THEY DIDN'T MANUFACTURE JUST A SHORT
10 PIECE.

11 Q. AND WITH THE TAPE COMPARISONS, THAT'S FABRIC ALSO, ISN'T
12 IT?

13 A. IN THIS CASE, IT WAS FABRIC ADHESIVE TAPE WITH AN
14 ADHESIVE BACKING.

15 Q. WAS IT A FAIRLY COMMON TYPE OF TAPE?

16 A. NO, IT WASN'T. MOST OF YOUR TAPES ARE AN INCH, INCH AND
17 A HALF OR TWO AND A HALF. THIS MADE IT 15/16THS IN DIAMETER,
18 WHICH IS A LITTLE UNUSUAL.

19 Q. HAVE YOU EVER SEEN 15/16THS OF AN INCH IN DIAMETER WITH
20 TAPE BEFORE?

21 A. NO, THIS WAS THE FIRST TIME I HAD EVER SEEN IT.

22 Q. AND IT WOULD BE FAIR TO SAY THAT THERE WAS A LARGE
23 LENGTH OF THIS TAPE WITH ADHESIVE BACKING MANUFACTURED?

24 A. WELL, AGAIN, I DON'T KNOW HOW MUCH, BUT I'M SURE THEY
25 MADE QUITE A BIT.

1 Q. OKAY. NOW, WITH THE HAIR CHARACTERISTICS -- BEFORE I
2 GET TO THAT --

3 HOW MANY HAIRS IN TOTAL FROM ALL YOUR SWEEPINGS DID
4 YOU COLLECT FROM 881 LOPE DE VEGA?

5 A. I COLLECTED IN THE NEIGHBORHOOD OF APPROXIMATELY 500
6 UNKNOWN HAIRS.

7 Q. AND HOW MANY OF THESE DID YOU GET FROM THE GUEST HOUSE?

8 A. THE GUEST HOUSE, I'D SAY -- IT HAD MORE THAN ANY OTHER
9 ROOM -- I'D SAY THERE WAS AT LEAST 100 HAIRS IN THAT GUEST
10 HOUSE.

11 NOW, WHEN I SAY HAIRS, I'M TALKING ABOUT SUITABLE
12 HAIRS FOR COMPARISON.

13 Q. SO IF YOU ADD TO THE NUMBER OF SUITABLE HAIRS, HOW MANY
14 TOTAL UNSUITABLE HAIRS DID YOU COLLECT FROM 881 LOPE DE VEGA?

15 A. WITH LINT HAIRS, HAIR FRAGMENTS, THERE WERE PROBABLY
16 HUNDREDS MORE. I DIDN'T REALLY LOOK AT THESE TOO CLOSELY
17 BECAUSE THEY'RE NOT REALLY OF ANY VALUE.

18 Q. NOW, WHAT IS THE DIFFERENCE BETWEEN A SUITABLE HAIR AND
19 AN UNSUITABLE HAIR?

20 A. THE CRITERIA WE USE AT THE F.B.I. LAB, AS I EXPLAINED
21 EARLIER, YOU HAVE TO HAVE AT LEAST 15 SEPARATE POINTS OF
22 IDENTIFICATION FOR US TO CONSIDER HAIR SUITABLE.

23 Q. SO THE UNSUITABLE HAIRS, DID NOT HAVE 15
24 CHARACTERISTICS, TO MATCH IT?

25 A. THAT'S CORRECT.

1 Q. BUT THEY WERE WHOLE HAIRS, SOME OF THEM?

2 A. THINGS LIKE LINT HAIRS, EYEBROW HAIRS, YES, THEY'RE
3 WHOLE HAIRS, BUT YOU CANNOT COMPARE THEM.

4 Q. AND THAT'S FAIRLY COMMON, THAT EYEBROW HAIRS ARE NO GOOD
5 FOR HAIR COMPARISON?

6 A. THAT'S CORRECT.

7 Q. AND ARE THERE ANY OTHER BODY-TYPE HAIRS THAT ARE NO GOOD
8 FOR HAIR COMPARISON?

9 A. AT THE F.B.I. LAB, AND I THINK THIS IS GENERALLY
10 ACCEPTED, THE ONLY TWO CLASSES OF HAIRS THAT ARE SUITABLE FOR
11 COMPARISON ARE HEAD HAIRS AND PUBIC HAIRS.

12 Q. BECAUSE IT'S IMPOSSIBLE TO COMPARE ANY OTHER TYPE OF
13 HAIR?

14 A. WELL, YOU CAN COMPARE IT. I MEAN IT'S JUST A
15 MEANINGLESS COMPARISON.

16 Q. NOW, IN BEDROOM NUMBER ONE IN THE MAIN HOUSE, HOW MANY
17 SUITABLE HAIRS DID YOU FIND?

18 A. IF YOU'RE GOING TO TALK ABOUT EACH BEDROOM, I'LL HAVE TO
19 CONSULT MY NOTES.

20 Q. IF YOU DON'T MIND DOING THAT, I'D APPRECIATE THAT.

21 THE COURT: WHAT WAS THAT, COUNSEL?

22 MR. BURNS: I SAID I WOULD APPRECIATE THAT, IF HE
23 WOULD DO THAT.

24 THE COURT: YES. IF YOU HAVE SOME NOTES THAT YOU
25 CAN REFER TO, YOU MAY DO SO.

1 THE WITNESS: THANK YOU, YOUR HONOR.

2 (BRIEF PAUSE.)

3 THE WITNESS: THESE ARE ALL GOING TO BE ESTIMATES.

4 I'D SAY BEDROOM NUMBER ONE HAD BETWEEN 75 TO 100.

5 BY MR. BURNS:

6 Q. AND OF THESE, HOW MANY HAD BULBS AND HOW MANY DID NOT
7 HAVE BULBS?

8 A. I HAVE NO IDEA, I DIDN'T COUNT. THE ONLY ONES THAT I
9 LOOKED AT THE BULBS ON WERE THE ONES THAT I MATCHED TO
10 PARTICULAR INDIVIDUALS.

11 Q. SO THE BULB IS NOT A CHARACTERISTIC THAT YOU WOULD USE
12 TO MAKE A COMPARISON BECAUSE IT'S AFTER YOU GET 15 OR 20
13 CHARACTERISTICS, THEN YOU LOOK AT THE BULB?

14 THE BULB OR THE ROOT OF THE HAIR IS NOT AN
15 IDENTIFYING CHARACTERISTIC. WHERE THE BULB IS VERY IMPORTANT
16 IS DETERMINING HOW THE HAIR CAME OUT, WHETHER IT CAME OUT
17 FORCIBLY OR NATURALLY.

18 Q. HOW MANY SUITABLE HAIRS DID YOU FIND IN BEDROOM NUMBFR
19 TWO?

20 A. I'D SAY THERE WAS PROBABLY CLOSE TO 100 HAIRS IN THERE.

21 Q. AND BEDROOM THREE?

22 A. APPROXIMATELY THE SAME NUMBER.

23 Q. AND BEDROOM FOUR?

24 A. AGAIN, PROBABLY 75 TO 100 HAIRS.

25 Q. AND THE DINING ROOM AND LIVING ROOM?

1 A. THESE AREAS WERE NOT VACUUMED ON THAT SECOND TRIP BY THE
2 PEOPLE THAT DID THIS CRIME SCENE.

3 Q. AND YOU DID NOT VACUUM IT ON YOUR FIRST TRIP IN APRIL?

4 A. WELL, AS I SAID, WE GOT THROWN OUT THE FIRST TIME.

5 Q. BUT YOU DIDN'T VACUUM IT?

6 A. THAT'S CORRECT.

7 Q. WAS THE KITCHEN VACUUMED?

8 A. IT WAS NOT VACUUMED ON THE SECOND TRIP, EITHER, NO

9 Q.. AND ANY SUITABLE HAIRS IN YOUR NOTES FROM THE HALLWAY?

10 A. THE HALLWAY WAS NOT VACUUMED.

11 Q. NOW, HOW MANY ANIMAL HAIRS DID YOU FIND?

12 A. I DON'T LIST HAVING FOUND ANY.

13 Q. THERE WERE NO HAIRS THAT HAD THE DISTINGUISHING
14 MICROCHARACTERISTICS OF AN ANIMAL HAIR, OF A NON-HUMAN ANIMAL
15 HAIR?

16 A. THERE MAY HAVE BEEN, BUT I MAY NOT HAVE PAID ANY
17 ATTENTION TO THEM BECAUSE AT THE TIME, I WASN'T COMPARING ANY
18 ANIMALS.

19 Q. NOW, DID YOU SORT THESE HAIRS BY DIFFERENT
20 CHARACTERISTICS? FOR EXAMPLE, HOW MANY OF THESE WERE BROWN
21 HAIRS?

22 A. I GAVE THEM A COLOR, YES.

23 Q. AND COULD YOU GIVE ME THE DISTRIBUTION OF THE COLORS;
24 HOW MANY BROWN, HOW MANY BLACK, HOW MANY LIGHT BROWN, HOW
25 MANY GRAY, BLOND?

1 A. WE'RE STILL TALKING ABOUT THE BEDROOMS, CORRECT?

2 Q. CORRECT. AND I'M GOING TO ASK YOU THROUGH EACH ROOM, SO
3 YOU CAN START ANYWHERE.

4 A. WELL, LET'S START AT THE REAR AND WORK OUR WAY TO THE
5 FRONT. WITH BEDROOM NUMBER FOUR, MOST OF THE HAIRS WERE DARK
6 BROWN IN COLOR, ALTHOUGH THERE WERE A FEW BROWN HAIRS.

7 Q. OKAY.

8 A. BEDROOM NUMBER TWO, MOST OF THE HAIRS WERE BROWN TO DARK
9 BROWN IN COLOR. NO LIGHT BROWN OR BLOND.

10 BEDROOM NUMBER THREE, MOST OF THE HAIRS WERE DARK
11 BROWN, BUT THERE WERE QUITE A FEW BROWN HAIRS.

12 AND BEDROOM NUMBER ONE, MOST OF THE HAIRS WERE DARK
13 BROWN, BUT THERE WERE QUITE A FEW BROWN HAIRS AS WELL.

14 Q. AND THESE ARE ALL IN THE SUITABLE HAIR CATEGORY,
15 CORRECT?

16 A. CORRECT.

17 Q. AND HOW MANY -- WHAT WERE THE DIFFERENT COLORS OF THE
18 HAIRS YOU FOUND THAT WERE SUITABLE HAIRS IN THE GUEST HOUSE?

19 A. WELL, I'LL BREAK IT UP INTO QUADRANTS IN THE GUEST
20 HOUSE, IF THAT'S SUITABLE.

21 QUADRANT A -- THAT'S THE FIRST QUADRANT, MOST OF
22 THE HAIRS WERE DARK BROWN TO BROWN, BUT THERE WAS ONE LIGHT
23 BROWN HEAD HAIR IN QUADRANT ONE.

24 Q. QUADRANT "A" OR 1?

25 A. 52-A IS QUADRANT ONE.

1 Q. OKAY.

2 A. GOING ON TO 52-B, THAT'S QUADRANT TWO. THE MAJORITY OF
3 THESE HAIRS WERE BROWN. THERE WERE, HOWEVER, DARK BROWN
4 HAIRS THERE, ALSO.

5 QUADRANT THREE, WHICH IS Q-52-C, MOST OF THE HAIRS
6 WERE BROWN, A FEW WERE DARK BROWN, AND THEN I HAD A VERY
7 LIGHT BROWN HEAD HAIR.

8 QUADRANT FOUR, THERE WERE DARK BROWN AND BROWN,
9 ABOUT THE SAME AMOUNT OF BOTH.

10 FROM THE BATHROOM, MOST OF THE HAIRS WERE BROWN.
11 THERE WERE TWO DARK BROWN HAIRS IN THE BATHROOM.

12 Q. NOW -- ARE YOU FINISHED?

13 A. NO, NOT QUITE. AND IN THE SINK DRAIN, MOST OF THE HAIRS
14 WERE BROWN. THERE WERE A FEW DARK BROWN.

15 Q. NOW, YOU SAID THAT THIS IS AN ACCURATE REPRESENTATION OF
16 THE LAYOUT OF 881 LOPE DE VEGA?

17 A. FAIRLY ACCURATE, AS ACCURATE AS YOU CAN MAKE OF A CRIME
18 SCENE SKETCH.

19 THE COURT: INDICATE THE EXHIBIT NUMBERS WHEN YOU
20 SAY "THIS."

21 BY MR BURNS:

22 Q. EXHIBITS 139 AND 138.

23 NOW, HOW MANY SQUARE FEET WAS THE GUEST HOUSE?

24 A. I HAVE NO IDEA.

25 Q. COULD YOU ESTIMATE FOR US?

1 A. I'D SAY 100 SQUARE FEET.

2 Q. AND HOW BIG WAS THE ROOM THAT YOU VACUUMED IN THE GUEST
3 HOUSE, IF YOU COULD GIVE US AN ESTIMATE?

4 A. WELL, THAT WAS PRIMARILY -- OH, THE ENTIRE GUEST HOUSE
5 WITH AN OUT BUILDING, PROBABLY TWO TO THREE HUNDRED SQUARE
6 FEET. MOST OF IT WAS STORAGE ROOMS, SEE.

7 THE ONLY HABITABLE ROOM WAS ABOUT A HUNDRED SQUARE
8 FEET.

9 Q. AND SO WAS THE CARPET ABOUT 100 SQUARE FEET?

10 A. YES. THE CARPET EXTENDED THE ENTIRE ROOM.

11 Q. SO HOW LONG DID IT TAKE YOU TO VACUUM THE 25 SQUARE FEET
12 OF CARPET PER QUADRANT?

13 A. I'D SAY IT TOOK ME AT LEAST AN HOUR TO VACUUM THE ENTIRE
14 RUG, SO I'D SAY ABOUT 15 MINUTES ON EACH QUADRANT.

15 Q. AND WAS THERE ONE FILTER IN THE VACUUM MACHINE PER
16 QUADRANT OR DID YOU DECIDE THE QUADRANTS BASED ON HOW MANY
17 FILTERS OR COULD THERE BE MORE THAN ONE FILTER PER QUADRANT?

18 A. BASICALLY, I ESTIMATED IT AS TO ABOUT HOW MUCH I THOUGHT
19 WOULD FIT IN THE COLLECTION CHAMBER OF THE VACUUM CLEANER.
20 AND EACH TIME I CHANGED QUADRANTS, I CHANGED FILTERS.

21 Q. YOU SAID YOU WERE ABLE TO TELL THE RACE OF AN INDIVIDUAL
22 BY LOOKING AT THEIR HAIRS?

23 A. YES, I CAN.

24 Q. AND DID YOU FIND ANY DISTRIBUTION OF RACIAL
25 CHARACTERISTICS IN THESE HAIRS?

1 A. THE VAST MAJORITY OF THE HAIRS ARE A RACIAL MIXTURE,
2 WHICH IS COMMON IN HISPANIC HAIRS. THE LIGHT BROWN HAIRS I
3 REFERRED TO WERE STRICTLY CAUCASIAN.

4 Q. WERE YOU ABLE TO TELL THE SEX OF ANY INDIVIDUAL BY THE
5 HAIRS?

6 A. NO. ALL THE HAIRS THAT I COMPARED AND MATCHED TO
7 SOMEBODY, NONE OF THEM WOULD HAVE BEEN SUITABLE FOR SEXING.

8 Q. OF THE BODY PARTS, THE HAIRS FROM DIFFERENT BODY PARTS,
9 THAT'S THE HEAD HAIRS, THE EYELASHES, THE EYEBROWS?

10 A. CORRECT.

11 Q. PUBIC HAIR? BEARD?

12 A. BEARD HAIRS.

13 Q. ARE THERE ANY OTHERS THAT I'VE MISSED?

14 A. THERE ARE A LOT OF LINT HAIRS.

15 Q. LINT HAIRS. THAT'S SIX. IS THERE ONE MORE CATEGORY?
16 SEVEN CATEGORIES?

17 A. YES, HEAD HAIRS. WELL, THERE'S AXILLARY HAIRS, TOO.
18 THOSE ARE ARMPIT HAIRS.

19 Q. AND THE ONLY ONES SUITABLE FOR COMPARISON ARE HEAD HAIRS
20 OR PUBIC HAIRS?

21 A. THAT'S OUR STANDARD, YES.

22 Q. THAT'S YOUR STANDARD. DO YOU KNOW IF ANYBODY IN THE
23 UNITED STATES USES A DIFFERENT STANDARD?

24 A. I DON'T KNOW OF ANY LEGITIMATE HAIR EXPERTS OR EXAMINERS
25 THAT USE ANYTHING BUT HEAD HAIRS OR PUBIC HAIRS. IT HAS BEEN

1 PRETTY MUCH STANDARDIZED IN THE SCIENCE THAT THOSE ARE THE
2 ONLY TWO THAT ARE SUITABLE.

3 Q. DID YOU SORT THESE HAIRS BY MICROCHARACTERISTICS?

4 A. BASICALLY, THE HAIRS THAT I DID NOT MATCH TO
5 INDIVIDUALS, OTHER THAN TO DETERMINE COLOR, RACIAL
6 CHARACTERISTICS AND BODY AREA, I DIDN'T TAKE IT ANY FURTHER
7 THAN THAT.

8 Q. SO, YOU ONLY GOT INTO THE MICRO COMPARISONS OF SMALL
9 CHARACTERISTICS WHEN YOU WERE COMPARING IT WITH THE KNOWN
10 HAIRS; IS THAT FAIR TO SAY?

11 A. OH, THAT'S CORRECT, YES.

12 Q. YOU DID NOT SORT THEM BY THE METHOD IN WHICH THEY CAME
13 OUT OF THE HEAD UNTIL YOU WERE COMPARING THE HAIRS WITH A
14 KNOWN SAMPLE; IS THAT ALSO FAIR TO SAY?

15 A. THAT'S CORRECT, YES.

16 Q. SO YOU COULD NOT TELL ME NOW HOW MANY HAIRS WERE
17 FORCIBLY REMOVED OR WERE NATURALLY REMOVED WITHOUT GOING BACK
18 AND LOOKING AT EACH INDIVIDUAL HAIR AND THEN YOU WOULD HAVE
19 TO TELL ME?

20 A. WELL, BASICALLY, UNLESS I MATCH TO IT SOMEBODY, THERE'S
21 NO POINT IN DOING IT.

22 Q. OKAY.

23 NOW, IS THERE A HAIR COMPARISON OF THE KNOWN HAIR
24 SAMPLES OF MR. MATTA WITH THE UNKNOWN SAMPLES? YOU SAID YOU
25 FOUND 20 CHARACTERISTICS.

1 A. 20 CLASSES OF CHARACTERISTICS.

2 Q. 20 CLASSES OF CHARACTERISTICS.

3 A. CORRECT.

4 Q. COULD YOU TELL ME -- IF YOU NEED THE EXHIBITS --

5 YOUR HONOR, COULD HE GET THE EXHIBITS, IF HE NEEDS
6 THEM -- OR DO YOU JUST NEED YOUR NOTES?

7 A. I COULD DO IT FROM MY NOTES, I COULD DO IT FROM THE
8 EXHIBITS, OR BOTH.

9 Q. DO YOU NEED YOUR NOTES TO DO THIS OR CAN YOU DO IT FROM
10 MEMORY?

11 A. NOT THE 20 SEPARATE CHARACTERISTICS, NO. I WOULD NEED
12 MY NOTES.

13 Q. OKAY. IF YOU WOULD TAKE A LOOK AT YOUR NOTES, I'D LIKE
14 TO RUN THROUGH THEM WITH YOU.

15 A. OKAY.

16 Q. OKAY. WHAT WAS THE FIRST CHARACTERISTIC AT LOW POWER?
17 ARE THERE CHARACTERISTICS AT LOW POWER?

18 A. YES, THERE ARE.

19 Q. AND WHICH CHARACTERISTICS DID YOU FIND?

20 A. MR. MATTA BALLESTEROS' HAIRS ARE HUMAN.

21 Q. THAT'S NUMBER ONE.

22 A. THAT'S CORRECT, AS OPPOSED TO BEING ANIMAL.

23 SECOND LOW POWER CHARACTERISTICS, THEY ARE BROWN TO
24 DARK BROWN IN COLOR, PREDOMINANTLY DARK BROWN.

25 THIRDLY, THEY ARE HEAD HAIRS, AS OPPOSED TO THE SIX

1 OTHER BODY AREAS.

2 FOURTHLY, HIS HAIRS ARE MIXED RACIAL, PREDOMINANTLY
3 MONGOLOID CHARACTERISTICS, BUT THERE ARE MONGOLOID --
4 MONGOLOID-NEGROID CHARACTERISTICS IN HIS HAIR.

5 Q. IF I COULD INTERRUPT YOU FOR A MINUTE ON THIS. WHAT DO
6 YOU MEAN BY MONGOLOID OR NEGROID CHARACTERISTICS?

7 A. I MEAN HIS HAIRS ARE A RACIAL MIXTURE, SHOWING BOTH
8 MONGOLOID AND NEGROID HAIR CHARACTERISTICS.

9 Q. YOU HAVE NO WAY OF KNOWING WHICH PERCENTAGE OF WHICH
10 CHARACTERISTICS?

11 A. THEY'RE PREDOMINANTLY MONGOLOID.

12 Q. PREDOMINANTLY. GO ON TO CHARACTERISTIC NUMBER FIVE.

13 A. MOST OF THESE HAIRS HAD A -- WHAT IS CALLED A LARGE
14 DIAMETER VARIATION -- MODERATE TO LARGE DIAMETER VARIATION.

15 Q. WHICH MEANS THERE IS A VARIATION IN THEIR DIAMETER?

16 A. CORRECT. IT MEANS THEY'RE WIDER AT SOME POINTS AND
17 NARROWER AT OTHER POINTS.

18 Q. AND THAT'S A FAIRLY COMMON CHARACTERISTIC; ISN'T IT?

19 A. NOT WITH MONGOLOID HAIRS, IT'S NOT.

20 Q. HOW ABOUT WITH MIXED MONGOLOID AND NEGROID
21 CHARACTERISTICS?

22 A. WITH THAT MIXTURE, YES, IT WOULD BE.

23 Q. OKAY. NUMBER SIX?

24 A. THE ENDS OF THE HAIRS WERE CUT. THE TIPS WERE CUT

25 Q. IS THAT FAIRLY COMMON IN HEAD HAIRS, THAT THE TIPS ARE

1 CUT?

2 A. YES, IT IS. HIS DIAMETER VARIATIONS OF HIS HEAD HAIRS
3 VARIED FROM 59 TO 119 MICRONS.

4 Q. IS THERE ANY PATTERN IN THAT VARIATION OF THE DIAMETERS?

5 A. THAT VARIATION IS ONE OF THE NEGROID CHARACTERISTICS IN
6 HIS HAIR. THEIR HAIRS HAVE A LOT OF DIAMETER VARIATION.

7 Q. THIS IS DIAMETER VARIATION IN THE SINGLE INDIVIDUAL
8 HAIR?

9 A. IT'S A DIAMETER VARIATION AS YOU GO ALONG THE HAIR, AND
10 MOST OF THE HAIRS EXHIBITED THIS CHARACTERISTIC.

11 Q. AND WHAT I WOULD LIKE TO KNOW IS, IS THERE ANY PATTERN
12 TO THIS VARIATION? THE SAME WAY WITH YOUR
13 MICROSPECTROPHOTOMETER, THE ABSORPTION CURVE HAD A
14 CHARACTERISTIC PATTERN AT DIFFERENT WAVE LENGTHS, IS THERE
15 ANY WAY THAT THERE IS A PATTERN OF THE VARIATION OF THE HAIR
16 DIAMETER?

17 A. IT WAS A RANDOM VARIATION ALONG THE HAIR.

18 Q. A RANDOM VARIATION?

19 A. CORRECT.

20 Q. AND COULD YOU TELL THE JURY WHAT YOU MEAN BY THE WORD
21 "RANDOM"?

22 A. IN OTHER WORDS, IT WOULD GO ALONG AND HAVE A DIAMETER
23 VARIATION, AND THEN AT SOME POINT IT WOULDN'T. AND THERE
24 MIGHT BE SEVERAL AND AT SOME POINT THERE WOULDN'T.

25 AND IT WAS EXACTLY THE SAME WITH THE UNKNOWN AS THE

1 KNOWN.

2 Q. IT WAS NOT THE SAME RANDOM PATTERN, IT WAS JUST RANDOM?

3 A. THEY WERE EXACT, AS I FOUND ONE HAIR IN THERE THAT WAS
4 ABSOLUTELY EXACT IN THE SAME PATTERN.

5 Q. DID YOU MAKE A NOTE OF THAT?

6 A. YES, I DID.

7 Q. AND CHARACTERISTIC NUMBER SEVEN?

8 A. THESE ARE THE, WHAT I CALL THE LOW POWER OR GENERAL
9 CHARACTERISTICS.

10 Q. COULD YOU TELL US WHAT CHARACTERISTICS YOU FOUND?

11 A. THE NEXT CHARACTERISTICS ARE ALL THE INTERNAL
12 CHARACTERISTICS THAT YOU HAVE TO GET UP IN THE RANGE OF 250
13 TO 400 POWER TO SEE.

14 Q. OKAY. WHAT CHARACTERISTICS DID YOU FIND AT THE CUTICLE?

15 A. OKAY. THE CUTICLE OR THE OUTSIDE LAYER OF THE CUTICLE
16 WAS MEDIUM TO THICK IN THICKNESS. THE COLOR OF IT WAS CLEAR.

17 THERE WAS SLIGHT TO MODERATE SCALE PROTRUSION ALONG
18 THE HAIR, AND THE SCALES WERE VERY DISTINCT. IN OTHER WORDS,
19 VERY EASY TO SEE.

20 Q. WAS THIS WHILE THE SAMPLE WAS MOUNTED OR UNMOUNTED THAT
21 YOU --

22 A. THIS WAS WHILE IT WAS MOUNTED.

23 Q. WHILE IT WAS MOUNTED.

24 AND WHAT DID YOU FIND IN THE CORTEX?

25 A. THE CORTEX, THAT'S THE AREA BETWEEN THE CUTICLE AND

1 MEDULLA -- IN THE CORTEX, THE PIGMENT DISTRIBUTION -- I'M
2 SORRY -- PIGMENT DENSITY WAS MEDIUM TO HEAVY.

3 THE SIZE OF PIGMENT GRANULES WAS COURSE TO MEDIUM.
4 HE HAD STREAKING PRESENT IN HIS HAIR.

5 HE HAD NUMEROUS OVOID BODIES. THOSE ARE HIS LARGE
6 DARK STRUCTURES IN THE CORTEX THAT NOBODY KNOWS WHY THEY'RE
7 THERE, THEY'RE JUST THERE.

8 HE HAD SOME CORTICAL FUSI THROUGHOUT HIS HAIR - AND
9 THIS IS AIR SPACES. AND YOU COULD NOT SEE THE CORTICAL
10 CELLS AT ALL. THEY WERE OBSCURED BY THE PIGMENT.

11 Q. HOW ABOUT IN THE MEDULLA?

12 A. THE MEDULLA, THAT'S THE CENTRAL CORE -- HIS MEDULLA
13 RANGED FROM ABSENT IN SOME AREAS TO TRACES OF MEDULLA IN
14 OTHER AREAS.

15 THE COLOR OF IT WAS LIGHT AND DISTINCT, AND THE
16 UNIQUENESS OR DISTINCTNESS RANGED FROM LIGHT AND DISTINCT TO
17 LIGHT TO INDISTINCT. THERE WAS ONE SMALL AREA, VERY SMALL
18 AREA WHERE THE MEDULLA WAS DARK AND DISTINCT

19 AND THE OVERALL WIDTH OF HIS MEDULLA WAS NARROW.

20 Q. NOW, ON MANY OF THESE CHARACTERISTICS - THESE MICRO-
21 CHARACTERISTICS, YOU'VE GIVEN US A RANGE.

22 A. CORRECT.

23 Q. NOW, TO REALLY DETERMINE THIS RANGE, YOU HAVE TO MAKE A
24 SUBJECTIVE DETERMINATION ON THIS; IS THAT NOT TRUE?

25 A. THAT'S CORRECT, YES.

1 Q. YOU CAN HOOK THESE HAIRS UP TO A COMPUTER AND GET THE
2 SAME DETERMINATION?

3 A. THIS IS EXACTLY WHY WE HAVE TO LOOK AT HAIRS FOR A FULL
4 YEAR BEFORE THEY ALLOW US TO TESTIFY ABOUT HAIRS. IT TAKES A
5 TREMENDOUS AMOUNT OF EXPERIENCE TO DETERMINE THIS RANGE.

6 Q. NOW, HOW MANY MEXICAN HAIRS HAVE YOU LOOKED AT
7 PREVIOUSLY, IF YOU KNOW?

8 A. HUNDREDS.

9 Q. HUNDREDS. HOW MANY HONDURAN HAIRS HAVE YOU LOOKED AT
10 PREVIOUSLY?

11 A. WELL, SPECIFICALLY FROM THE COUNTRY OF THE HONDURAS,
12 NONE.

13 Q. HAVE YOU -- HOW MANY HAIRS HAVE YOU LOOKED AT PRIOR TO
14 THIS INVESTIGATION THAT WERE MIXED RACIAL HAIRS?
15 MEXICAN/AMERICAN, FOR EXAMPLE?

16 A. THOUSANDS.

17 Q. THOUSANDS.

18 HOW MANY COLOMBIAN HAIRS?

19 A. THEY DON'T SAY THE NATIONALITY OF THE PERSON WHEN THEY
20 SEND IT IN. WE DON'T CLASSIFY HAIRS BY NATIONALITY, WE
21 CLASSIFY HAIRS BY RACE.

22 Q. SO YOU CAN'T TELL THE COUNTRY OF ORIGIN OF AN INDIVIDUAL
23 BASED ON HIS HAIR COMPARISON UNLESS SOMEONE ELSE TELLS YOU?

24 A. THAT'S CORRECT.

25 Q. AND TO YOUR KNOWLEDGE, HAVE THERE BEEN ANY STUDIES ON

1 THE PERCENTAGE OF DIFFERENT RACIAL CHARACTERISTICS AND
2 DIFFERENT POPULATIONS OF THE WORLD?

3 A. THERE MAY HAVE BEEN. IF THERE WAS, I DON'T KNOW OF IT.

4 Q. NOW, YOU'RE FAMILIAR WITH A MAN BY THE NAME OF GAUDETTE,
5 ARE YOU NOT?

6 A. YES. GARY GAUDETTE. YES, I AM.

7 Q. AND YOU'VE HEARD HIM SPEAK OR YOU'VE READ HIS ARTICLES,
8 I BELIEVE?

9 A. WELL, I'VE HEARD HIM SPEAK, I'VE READ HIS ARTICLES, I'VE
10 MET HIM.

11 Q. HE'S WELL-RESPECTED IN THE FIELD; IS HE NOT?

12 A. YES, HE IS.

13 Q. NOW, ISN'T IT TRUE THAT MR. GAUDETTE BELIEVES THERE
14 SHOULD BE 40 OR 50 CHARACTERISTICS THAT SHOULD BE USED TO
15 COMPARE HAIR?

16 A. WHEN I SAY THERE'S 20 CLASSES OF CHARACTERISTICS THAT I
17 USE, WITHIN EACH ONE OF THESE CLASSES ARE SUBCLASSES. AND
18 THERE CAN BE LITERALLY HUNDREDS OF CHARACTERISTICS IN THESE
19 20 CLASSES.

20 SO 40 TO 50 IS A MEANINGLESS NUMBER, BECAUSE IF I
21 MULTIPLIED ALL OF THESE TOGETHER, I COULD HAVE HUNDREDS OF
22 CLASSES THAT I COULD IDENTIFY.

23 Q. BUT THE 20 THAT YOU USE IS NOT A MEANINGLESS NUMBER
24 BECAUSE THAT'S WHAT YOU USE.

25 A. WELL, I USE CLASSES OF CHARACTERISTICS. AND WITHIN EACH

1 OF THESE CLASSES, THERE COULD BE ANYWHERE FROM TWO TO HALF A
2 DOZEN SUBCLASSES.

3 Q. SO THAT TWO HAIRS THAT ARE THE SAME CLASS, UPON FURTHER
4 ANALYSIS COULD BE DIFFERENT ACCORDING TO THEIR SUBCLASSES?

5 A. CORRECT.

6 Q. AND YOU DID NOT DO THE SUBCLASSES?

7 A. YES, I DID.

8 Q. BUT YOU STILL ONLY GOT 20?

9 A. I PICKED THE APPROPRIATE SUBCLASSES OUT OF THE 20
10 CLASSES OF CHARACTERISTICS.

11 Q. AND YOU ONLY DID THIS FOR THE HAIRS THAT YOU WERE MAKING
12 COMPARISONS FOR; IS THAT CORRECT?

13 A. THAT'S CORRECT, YES.

14 Q. NOW, OF THE HAIRS THAT YOU TOLD THE JURY WERE FORCIBLY
15 REMOVED, DO YOU KNOW WHAT GROWTH PHASE THOSE HAIRS WERE IN?

16 A. THE GROWTH PHASE OF THE HAIRS -- THE MAJORITY OF THE
17 HAIRS WERE IN THE EARLY STAGES OF THE GROWTH PHASE. IN OTHER
18 WORDS, I DID NOT GET ANY CORTIFIED ROOTS WITH FOLLICULAR
19 TAGS.

20 MOST OF THE ROOTS WERE STRETCHED AND SHRIVELED,
21 WHICH WOULD INDICATE THEY WERE IN THE EARLY GROWTH STAGES.
22 THE TWO HAIRS THAT I GOT THAT WERE SNAPPED AT THE BASE WERE
23 PROBABLY IN THE LATTER STAGES, BECAUSE THE ROOT WAS SO
24 SECURELY ANCHORED IN THAT FOLLICLE THAT THE ROOT WOULD NOT
25 COME OUT.

1 Q. NOW, ISN'T THAT -- ISN'T IT FAIR TO SAY THAT ONE WOULD
2 EXPECT A FAIR DISTRIBUTION OF HAIRS IN THE DIFFERENT GROWTH
3 PHASES?

4 IN OTHER WORDS, YOU SAID MOST OF THE HAIRS WERE
5 FORCIBLY REMOVED DURING THEIR EARLY STAGES OF GROWTH.
6 WOULDN'T YOU EXPECT A DISTRIBUTION OF THE EARLY, MIDDLE AND
7 LATER -- MAYBE NOT TOO MANY IN THE LATER, BUT AN EVEN
8 DISTRIBUTION BETWEEN THE EARLY GROWTH STAGES AND THE MIDDLE
9 GROWTH STAGES? JUST ON LOGIC?

10 A. THE HAIRS THAT I MATCHED TO SPECIAL AGENT CAMARENA,
11 WHICH WERE THE ONLY FORCIBLY-REMOVED HAIRS -- THERE WAS A
12 TOTAL OF SIX -- TWO OF THEM SHOWED NO FORCE, THREE OF THEM
13 WERE IN THE -- APPEARED TO BE IN THE EARLY GROWTH STAGES, AND
14 THE ONE THAT WAS SNAPPED AT THE BASE, I COULD NOT TELL.

15 Q. THOSE WERE ALL THE UNKNOWN SAMPLES I WAS TALKING ABOUT.
16 NOW, I'D LIKE TO ASK YOU ABOUT THE KNOWN SAMPLES.

17 WHEN YOU ARRIVED ON THE SCENE, YOU SAID A SQUAD OF
18 FEDERALES WERE THERE; IS THAT TRUE?

19 A. THAT'S CORRECT, YES.

20 Q. HOW BIG WAS THE SQUAD, IF YOU RECALL?

21 A. I'D SAY THERE WERE -- THEY WERE IN AND OUT, BUT I'D SAY
22 THEY WERE PROBABLY AT LEAST TEN OF THEM.

23 Q. DID IT CROSS YOUR MIND TO ASK THEM FOR HAIR EXEMPLARS AT
24 ALL?

25 A. AT THE TIME, NO.

1 Q. DID YOU TAKE A HAIR EXEMPLAR OF THE CARETAKER WHO WAS
2 LIVING IN THE GUEST HOUSE?

3 A. NO, I DID NOT.

4 Q. AND I WOULD GUESS THAT YOU DID NOT TAKE A HAIR EXEMPLAR
5 FROM ANY D.E.A. AGENTS ON THE SCENE WITH YOU?

6 A. WELL, NO, THE -- MOST OF THE D.E.A. AGENTS WERE
7 CAUCASIAN. THERE WERE TWO HISPANIC AGENTS WITH US.

8 Q. NOW, IN YOUR F.B.I. LABORATORY IN WASHINGTON, IN THE
9 SCRAPING ROOM, DID YOU EVER TAKE HAIR EXEMPLARS FROM EACH
10 OTHER TO CHECK FOR CONTAMINATION WITHIN THE SCRAPING ROOM?

11 A. WELL, BASICALLY, I DON'T TAKE THEM FROM MY HAIR BECAUSE
12 I KNOW WHAT MY HAIRS LOOK LIKE AND I CAN RECOGNIZE THEM
13 IMMEDIATELY.

14 AND ALL OUR TECHNICIANS WEAR HAIR COVERINGS WHEN
15 THEY ARE IN THE HAIR SCRAPING ROOMS.

16 Q. SO THE ANSWER IS YOU DON'T TAKE THE HAIR EXEMPLARS FROM
17 THE PEOPLE WHO WORK THERE?

18 A. THERE'S NO NEED TO.

19 Q. IT'S NOT LIKE FINGERPRINTS?

20 A. I DON'T UNDERSTAND YOUR QUESTION.

21 Q. IF I WERE TO TELL YOU THAT THERE WAS TESTIMONY IN THIS
22 COURT THAT EVERY FIVE YEARS OR SO SOME LAW ENFORCEMENT
23 AGENCIES TAKE FINGERPRINT EXEMPLARS OF THEMSELVES TO HAVE ON
24 FILE, YOU DO NOT TAKE HAIR EXEMPLARS TO HAVE ON FILE FROM THE
25 PEOPLE IN THE F.B.I.?

1 A. THAT'S CORRECT.

2 Q. AND YET IT'S FAIR TO SAY FINGERPRINTS ARE A MUCH MORE
3 ACCURATE BASIS OF PERSONAL IDENTIFICATION THAN HAIR
4 COMPARISONS; IS THAT TRUE?

5 A. FINGERPRINTS, AS I SAID EARLIER, ARE A POSITIVE MEANS;
6 HAIRS ARE NOT. IT'S A VERY STRONG ASSOCIATION, BUT IT'S NOT
7 A POSITIVE MEANS.

8 Q. SO EVEN THOUGH IT'S NOT A POSITIVE MEANS OR A MORE
9 INACCURATE MEANS, YOU DID NOT KEEP A BANK OF HAIR SAMPLES.
10 YES OR NO?

11 MR. CARLTON: OBJECTION. ASKED AND ANSWERED.

12 THE COURT: YES. THE WITNESS HAS ANSWERED THE
13 QUESTION.

14 BY MR. BURNS:

15 Q. OKAY. DID YOU GET A KNOWN HAIR SAMPLE SENT TO YOU OR
16 DELIVERED TO YOU OUT OF RAFAEL CARO QUINTERO?

17 A. NO, TO THIS DATE, I HAVE NOT.

18 Q. ON ERNESTO FONSECA CARRILLO?

19 A. NO, TO THIS DATE, I HAVE NOT.

20 Q. ON MIGUEL ANGEL FELIX GALLARDO?

21 A. NO.

22 Q. ON MANUEL IBARRA HERRERA?

23 A. I'VE GOT A LIST OF EVERYBODY I TOOK HAIR SAMPLES FROM.
24 THIS IS WHAT I'M TRYING TO FIND NOW.

25 Q. WHY DON'T YOU REFER TO THAT, IF THAT WOULD HELP YOU.

1 A. YES. WHAT WAS THAT NAME?

2 Q. MANUEL IBARRA HERRERA.

3 A. EXCUSE ME. (WITNESS PUTTING ON EYE GLASSES.)

4 Q. HAVE YOUR EYES GONE FROM LOOKING AT THE MICROSCOPE ALL
5 THESE YEARS?

6 A. NO, JUST GETTING OLD.

7 Q. MINE, TOO.

8 A. (REFERRING TO LIST OF NAMES) NO, I BELIEVE NOT.

9 Q. AND MIGUEL ALDANA IBARRA?

10 A. NO.

11 Q. DID YOU EVER RECEIVE A SAMPLE OF JAVIER BARBA HERNANDEZ?

12 A. NO.

13 Q. ARMANDO PAVON REYES?

14 A. NO.

15 Q. MR. JUAN GILBERTO HERNANDEZ PARRA?

16 A. NO.

17 Q. AN INES CALDERON QUINTERO?

18 A. NO.

19 Q. AN ALBINO BAZAN PADILLA?

20 A. WHAT WAS THE FIRST NAME?

21 Q. ALBENO OR ALBINO, A L B I N O.

22 A. NO.

23 Q. MR. HECTOR CERVANTES SANTOS?

24 A. NO.

25 Q. A LORENZO HARRISON OR VICTOR LAWRENCE HARRISON?

1 A. NO.

2 Q. NOW, THIS MEANS YOU'VE NEVER RECEIVED ANY KNOWN HEAD
3 HAIR SAMPLES FROM THESE PEOPLE, NOT THAT YOU WERE UNABLE TO
4 MAKE A COMPARISON?

5 A. I'VE NEVER RECEIVED ANY FROM THESE PEOPLE YOU JUST
6 MENTIONED.

7 Q. SO YOU -- JUST TO REPEAT -- I JUST WANT TO GET THIS
8 STRAIGHT.

9 YOU DID NOT RECEIVE A KNOWN HEAD HAIR SAMPLE FROM
10 MIGUEL ANGEL FELIX GALLARDO?

11 A. THAT'S CORRECT. AN ADEQUATE, KNOWN SAMPLE - NO, I DID
12 NOT.

13 Q. YOU DID NOT RECEIVE AN ADEQUATE SAMPLE?

14 A. CORRECT.

15 Q. BUT YOU DID RECEIVE A SAMPLE THEN?

16 A. I RECEIVED ONE SINGLE HEAD HAIR, WHICH I CONCLUDED WAS
17 AN INSUFFICIENT SAMPLE, SO I DID NOT LOOK AT -- WHEN I SAY
18 SAMPLE, I MEAN AN ADEQUATE SAMPLE, 20 OR MORE HAIRS.

19 Q. NOW, ARE YOU AWARE OF A REPORT IN THE JOURNAL OF
20 FORENSIC SCIENCES BY MR. AIKEN AND MR. ROBINSON WHERE THEY
21 SENT OUT QUESTIONNAIRES TO DIFFERENT HAIR COMPARISON
22 LABORATORIES THROUGHOUT THE WORLD WITH A QUESTIONNAIRE ASKING
23 WHAT SORT OF PROBLEMS PEOPLE WERE HAVING WITH THE
24 CLASSIFICATIONS AND THE CHARACTERISTICS THAT THEY WERE USING?

25 ARE YOU FAMILIAR WITH THAT?

1 A. I HEARD HIM SAY THAT HE WAS GOING TO DO IT. I DON'T
2 BELIEVE HE EVER SENT THE F.B.I. LAB ONE.

3 Q. SO HE NEVER SENT YOU A QUESTIONNAIRE ABOUT THE
4 CHARACTERISTICS THAT YOU USE IN YOUR LABORATORY, AND WHETHER
5 YOU NEED MORE OF THEM OR WHETHER THEY SHOULD BE CHANGED OR BE
6 DIFFERENT?

7 A. I WAS NEVER TOLD OF ONE, IF THERE WAS.

8 Q. DO YOU KNOW IF HE SENT ONE TO YOUR SUPERVISOR OR TO ANY
9 OF THE OTHER HAIR EXAMINERS IN THE F.B.I. LAB?

10 A. I DON'T KNOW.

11 Q. NOW, ISN'T IT TRUE THAT WHEN YOU WORK WITH A KNOWN HEAD
12 HAIR SAMPLE, HAIRS FROM KNOWN INDIVIDUALS, THAT YOU WOULD
13 LIKE TO USE ABOUT 20 OR 30 OR 40 HAIRS?

14 A. IN THE F.B.I. LAB, WE HAVE A RULE IT HAS TO BE A MINIMUM
15 OF 20.

16 Q. AND OF ALL THOSE 20, OF THOSE 20 KNOWN HAIRS, YOU
17 CHECKED TO MAKE SURE THAT THEY ALL HAD SIMILAR
18 CHARACTERISTICS?

19 A. YOU NEED AT LEAST 20 TO ESTABLISH THE RANGE OF
20 CHARACTERISTICS EXHIBITED BY AN INDIVIDUAL.

21 Q. THEY TAKE 20 KNOWN HEAD HAIRS AND EXAMINE THEM UNDER THE
22 MICROSCOPE AND MAKE SURE THAT THEY'RE ALL WITHIN SOME RANGE
23 THAT YOU DETERMINE?

24 A. YOU DETERMINE THAT RANGE.

25 Q. AND IS IT FAIR THAT IN YOUR EXPERIENCE WHEN YOU'RE

1 EXAMINING A SUSPECT'S HAIR OR AN UNKNOWN HAIR, YOU USUALLY
2 WORK WITH ONE OR TWO?

3 A. NO, THE UNKNOWN HAIR IS COMPARED TO THE ENTIRE SAMPLE.
4 THEN YOU'RE USUALLY ABLE TO FIND ONE OR MORE HAIRS THAT ARE
5 ABSOLUTELY INDISTINGUISHABLE FROM THE UNKNOWN HAIR. THAT'S
6 OUR CRITERIA FOR A MATCH.

7 Q. BUT THE UNKNOWN HAIRS, THE NUMBER OF UNKNOWN HAIRS THAT
8 YOU USED, IS USUALLY ONE, TWO OR THREE?

9 A. I'D SAY ONE OR TWO THE MAJORITY OF TIMES.

10 Q. AND HOW MANY OF MR. MATTA'S KNOWN HAIRS DID YOU HAVE TO
11 WORK WITH, IF YOU RECALL AN ESTIMATE?

12 A. AT LEAST 50.

13 Q. AT LEAST 50.

14 AND YOU LOOKED AT ALL THOSE 50 HAIRS FIRST; IS THAT
15 TRUE?

16 A. I LOOKED AT, YES, THE ENTIRE KNOWN SAMPLE FIRST.

17 Q. TO GET A RANGE WHICH YOU DETERMINED WAS APPROPRIATE?

18 A. CORRECT.

19 Q. AND THEN YOU WENT THROUGH AND CHECKED EVERY SINGLE
20 SUITABLE HAIR TAKEN FROM 881 LOPE DE VEGA?

21 A. YES, I DID.

22 Q. NOW, ISN'T IT TRUE OR ISN'T IT FAIR TO SAY THAT WITH A
23 LARGE ENOUGH POOL OF UNKNOWN HAIRS, YOU'D FIND A HAIR THAT
24 MATCHED A HAIR IN THE POOL OF KNOWNS? YES OR NO?

25 A. OH, IF I HAD ENOUGH OF THEM, OF COURSE.

1 Q. IT WASN'T LIKE YOUR EXAM AT THE F.B.I. WHERE YOU HAD 50
2 KNOWN AND 50 UNKNOWN, AND EVERY TIME YOU MADE A MATCH,
3 THERE ARE ONLY 49 MORE TO WORK WITH?

4 A. CORRECT.

5 Q. SO THAT AT THE END, IT GOT ESIER AS YOU WENT ALONG; IS
6 THAT TRUE?

7 A. NO. ACTUALLY, IF YOU MISSED ONE, YOU MISSED TWO. IF
8 YOU MISSED TWO, YOU MISSED FOUR, SO IT WOULD BE VERY
9 DIFFICULT.

10 Q. SO IF YOU WERE RIGHT, THE LAST ONES WERE EASIER THAN THE
11 FIRST ONES?

12 A. IF YOU WERE RIGHT, THEY WERE.

13 Q. NOW, IS THERE ANY CHARACTERISTIC THAT YOU FOUND IN THE
14 KNOWN HAIR SAMPLES OF MR. MATTA THAT ARE TOTALLY INDIVIDUAL
15 TO HIM?

16 A. YOU MEAN ONE SINGLE CHARACTERISTIC?

17 Q. A CHARACTERISTIC THAT HE HAS THAT NOBODY ELSE COULD HAVE
18 OR ONE IN A MILLION OR VERY A HIGH -- I'LL REPHRASE MY
19 QUESTION.

20 IS THERE ANY MICROSCOPIC CHARACTERISTIC IN
21 MR. MATTA'S KNOWN HAIRS THAT IS UNIQUE ONLY TO HIM?

22 A. ANY SINGLE CHARACTERISTIC, NO.

23 Q. NO. NOW, FOR FINGERPRINTS, PEOPLE CAN USE EIGHT
24 CHARACTERISTICS AND FEEL THEY HAVE A MATCH; IS THAT TRUE?

25 A. AT THE F.B.I. -- IT'S UP TO THE INDIVIDUAL EXAMINER. I

1 THINK MOST OF THEM, THEIR BOTTOM LINE IS SEVEN OR EIGHT, BUT
2 IT'S UP TO THE INDIVIDUAL EXAMINER.

3 Q. NOW, IN THE UNKNOWN HAIR SAMPLES THAT YOU SAY ARE
4 CONSISTENT WITH COMING FROM MR. MATTA, DID YOU FIND ANY SIGN
5 OF WEATHERING?

6 A. ANY SIGN OF WEATHERING?

7 Q. WEATHERING.

8 A. NO.

9 Q. IF THE CUTICLE SCALES WERE WORN OR IF THERE WERE GAPS IN
10 THE CUTICLE SCALES, WOULDN'T IT INDICATE THAT THE HAIR HAD
11 LAID AROUND FOR A LONG TIME?

12 A. NORMALLY, WHEN YOU SEE A HAIR THAT HAS LAID AROUND FOR A
13 LONG TIME, INSECTS GET TO IT AND YOU'LL SEE LITTLE BITE MARKS
14 IN THE HAIR.

15 IF YOU DON'T BOTHER IT AND IT'S PROTECTED FROM THE
16 ELEMENTS, THAT THING CAN LAY THERE FOR YEARS AND NOT CHANGE.

17 Q. YOU SAID THAT THE RUG IN THE GUEST HOUSE WAS VERY OLD
18 AND DIRTY?

19 A. IT WAS THE OLDEST RUG IN THE HOUSE.

20 Q. NOW, DO YOU STAY UP TO DATE WITH WHAT IS IN THE
21 LITERATURE?

22 A. YES, I DO.

23 Q. AND YOU READ THE JOURNAL OF FORENSIC SCIENCES?

24 A. YES, I DO.

25 Q. AND ARE YOU AWARE -- WELL, DID YOU TAKE ANY CROSS

1 SECTIONS OF THE UNKNOWN HAIRS?

2 A. NO, I DID NOT.

3 Q. SO YOU DID NOT DO ANY A, B, O TYPING ON THE HAIR?

4 A. WE DON'T DO THAT. WE DON'T FEEL THAT'S AN ACCEPTED
5 TECHNIQUE.

6 Q. THE TECHNIQUE OF TAKING A CROSS SECTION OF THE HAIR AND
7 STAINING IT FOR A, AB, B OR O BLOOD TYPE, YOU DON'T FEEL THAT
8 THAT'S A LEGITIMATE TECHNIQUE?

9 A. IF YOU'RE GOING TO DO IT, YOU'RE GOING TO DO IT IN THE
10 ROOT. BUT IT'S NEVER BEEN ACCEPTED BECAUSE NOBODY HAS EVER
11 BEEN ABLE TO COME UP WITH COMPLETELY RELIABLE RESULTS FOR
12 THAT.

13 Q. WEL, DID YOU SEE THE ARTICLE IN THE MAY 1988 ISSUE OF
14 THE JOURNAL OF FORENSIC SCIENCES WHERE A HAIR EXPERT WAS ABLE
15 TO DO IT ON DUST CONTAINING SHAVED BEARDS?

16 A. REPEAT THAT.

17 Q. HE DESCRIBED IT AS DUST, BEARD SHAVINGS, AND HE WAS ABLE
18 TO TAKE BLOOD TYPINGS FROM A CROSS SECTION OF THE BEARD. I
19 THOUGHT OF THAT THIS MORNING WHEN I WAS SHAVING.

20 ARE YOU AWARE OF THIS ARTICLE BY RIOSUKI TANABE,
21 T A N A B E?

22 A. NO, I'M AFRAID I MISSED THAT.

23 Q. YOU DIDN'T DO ANY TEST FOR AMINO ACIDS, DID YOU?

24 A. NO, I DID NOT.

25 Q. DID YOU DO ANY TEST FOR ENZYMES?

1 A. NO.

2 Q. YOU'RE AWARE OF AN ARTICLE IN THE APRIL -- ARE YOU AWARE
3 OF AN ARTICLE IN THE APRIL 1978 ISSUE OF THE JOURNAL OF
4 FORENSIC MEDICINE WHERE THEY ARE ABLE TO DO ENZYME TYPINGS ON
5 HAIR SAMPLES?

6 A. THE JOURNAL OF FORENSIC MEDICINE?

7 Q. SCIENCES. I'M SORRY, I MISSPOKE.

8 A. YES. AND THERE IS A LOT OF CONTROVERSEY ABOUT THAT
9 ARTICLE.

10 Q. DID YOU TEST FOR TRACE ELEMENTS?

11 A. NO. WE BELIEVE THAT'S ABSOLUTELY AN UNRELIABLE TEST.

12 Q. BUT YOU'RE FAMILIAR WITH THE ELECTRON MICROSCOPE; ARE
13 YOU NOT?

14 A. OH, YES, I AM.

15 Q. AND IS THERE ONE IN YOUR F.B.I. LABORATORY?

16 A. YES. WE HAD A HIGHLY-TRAINED EXPERT IN THE SCANNING
17 ELECTRON MICROSCOPE.

18 Q. AND SOME OF THE CHARACTERISTICS THAT YOU LOOK AT, YOU
19 FIRST UNDER LOW POWER, CORRECT?

20 A. CORRECT.

21 Q. AND YOU LOOK UNDER A HIGHER POWER, ABOUT 400 POWER; IS
22 THAT WHAT YOU SAID?

23 A. CORRECT.

24 Q. AND IT IS THE F.B.I.'S OPINION THAT IT WOULD NOT BE
25 HELPFUL TO LOOK UNDER AN EVEN HIGHER POWER WITH THE ELECTRON

1 MICROSCOPE; YES OR NO?

2 A. WE DON'T BELIEVE THAT, NO.

3 Q. YOU DO GET A CLOSER LOOK UNDER THE ELECTRON MICROSCOPE;
4 ISN'T THAT TRUE?

5 A. IT'S BASICALLY WHAT'S CALLED INFRAMAGNIFICATION.

6 Q. IF YOU COULD JUST CHECK YOUR NOTES AGAIN, DID YOU GET A
7 HAIR SAMPLE FROM A MR. GOMEZ-ESPANA?

8 A. IS GOMEZ HIS FIRST NAME?

9 Q. NO, IT'S -- GOMEZ-ESPANA ARE HIS TWO LAST NAMES.

10 A. NO.

11 Q. NOW, IN YOUR EXPERIENCE - ONE OF THE THINGS YOU DO WHEN
12 YOU ARRIVE ON A CRIME SCENE IS YOU PRESERVE IT AND PROTECT
13 IT; IS THAT TRUE?

14 A. AS MUCH AS POSSIBLE, YES.

15 Q. AND THAT WAS NOT VERY MUCH POSSIBLE WHEN YOU GOT DOWN TO
16 881 LOPE DE VEGA?

17 A. IT'S THE FIRST CRIME SCENE I'VE EVER DONE WHERE THEY
18 SENT ANOTHER TEAM IN THERE TO CLEAN OUT THE EVIDENCE BEFORE I
19 GOT THERE.

20 Q. SO YOU'RE UNABLE TO BE CERTAIN ABOUT WHAT HAD BEEN
21 REMOVED, CORRECT?

22 A. WELL, UNTIL I MET THE PROSECUTOR IN NOVEMBER, CORRECT, I
23 DIDN'T KNOW WHAT HAD BEEN REMOVED.

24 Q. AND YOU ARE UNABLE TO SAY WHAT HAD BEEN PUT IN, IF
25 ANYTHING, CORRECT?

1 A. THAT'S CORRECT.

2 Q. NOW, YOU HAD FIVE DIFFERENT BASES, INDIVIDUAL BASES, FOR
3 SAYING THAT ENRIQUE CAMARENA WAS PRESENT AT 881 LOPE DE VEGA;
4 IS THAT TRUE?

5 A. THAT'S CORRECT, YES.

6 Q. BUT YOU REALLY CAN'T SAY WHEN HE WAS THERE BASED ON
7 THOSE FIVE DIFFERENT ANALYSES?

8 A. ONLY THAT HE WAS THERE AT A TIME WHEN HIS HAIRS WERE
9 BEING FORCIBLY REMOVED.

10 Q. CORRECT. BUT YOU CAN'T SAY WHEN, CORRECT?

11 A. CORRECT.

12 Q. AND YOU HAD KNOWN THAT THE CRIME SCENE WAS NOT PROTECTED
13 BEFORE YOU GOT THERE?

14 A. CORRECT. I WAS NOT RUNNING THE SHOW.

15 Q. ISN'T IT TRUE THAT THERE IS NO SINGLE TECHNIQUE OF HAIR
16 EXAMINATION THAT CAN YIELD THE CONCLUSION THAT A PARTICULAR
17 SPECIMEN ORIGINATED WITH A PARTICULAR INDIVIDUAL?

18 A. THAT'S CORRECT.

19 Q. AND MORE OF THE FUNCTION OF HAIR COMPARISON IS TO
20 EXCLUDE INDIVIDUALS?

21 A. NO, ABSOLUTELY NOT. NOT AT OUR LAB.

22 Q. BUT IT'S NOT LIKE FINGERPRINTS?

23 A. CORRECT.

24 Q. AND YOU DO MORE THAN EXCLUDE IN YOUR LAB, CORRECT?

25 A. THAT'S CORRECT.

1 Q. ARE YOU AWARE OF A 1978 TEST OR EXPERIMENT CONDUCTED BY
2 THE DEPARTMENT OF JUSTICE WHERE 90 CRIME LABORATORIES AROUND
3 THE UNITED STATES WERE SENT HAIR SAMPLES?

4 A. YES, I AM.

5 Q. AND ISN'T IS IT TRUE THAT 50 PERCENT OF THE LABORATORIES
6 TURNED IN UNACCEPTABLE RESPONSES?

7 A. THE F.B.I. LAB WAS NOT INCLUDED IN THAT TEST, BUT I
8 THINK YOUR FIGURES ARE FAIRLY CORRECT.

9 Q. NOW, THE STATE OF THE PROFESSION OF HAIR COMPARISON --
10 QUESTION WITHDRAWN.

11 BASED ON THE COMPARISON YOU MADE BETWEEN THE
12 UNKNOWN HAIR SAMPLES FROM 881 LOPE DE VEGA AND THE KNOWN HAIR
13 SAMPLES FROM MR. MATTA, YOU WERE NOT ASKED TO GIVE AN OPINION
14 ON WHETHER OR NOT MR. MATTA WAS AT 881 LOPE DE VEGA; IS THAT
15 CORRECT?

16 A. I WAS ASKED TO GIVE AN OPINION WHETHER HIS HAIRS WERE
17 THERE.

18 Q. WELL, IT'S NOT EVEN HIS HAIRS, IT'S THE HAIRS THAT IN
19 YOUR OPINION ARE CONSISTENT WITH COMING FROM THE SAME SOURCE;
20 ISN'T THAT TRUE?

21 A. IN MY OPINION, HIS HAIRS WERE PROBABLY THERE.

22 Q. BUT YOU CANNOT SAY THAT HE WAS THERE; YOU CAN SAY HIS
23 HAIR MAYBE WAS THERE, BUT NOT HE WAS THERE?

24 A. NOT ONE HUNDRED PERCENT, NO.

25 Q. AND YOU CANNOT SAY WHEN -- IF ONE WAS TO BELIEVE THAT

1 HIS HAIR WAS THERE, YOU CANNOT SAY HOW LONG IT HAD BEEN
2 THERE?

3 A. THERE IS NO WAY TO TELL.

4 Q. IT COULD BE TWO YEARS?

5 A. THERE IS NO WAY TO TELL.

6 Q. TWO HOURS?

7 A. I BELIEVE I ANSWERED THAT.

8 Q. OKAY. AND MY LAST QUESTION TO YOU IS YOU INCLUDE IN ALL
9 YOUR HAIR COMPARISON REPORTS THAT HAIR COMPARISON IS NOT AN
10 ABSOLUTE BASIS FOR PERSONAL IDENTIFICATION; ISN'T THAT TRUE?

11 A. IN THE INTEREST OF FAIRNESS, ABSOLUTELY.

12 MR. BURNS: THANK YOU, MR. MALONE.

13 EXCUSE ME. ONE LAST QUESTION, I'M SORRY.

14 BY MR. BURNS:

15 Q. HOW MANY DIFFERENT PEOPLE WERE AT 881 BASED UPON ALL OF
16 THE UNKNOWN HAIR SAMPLES THAT YOU COLLECTED?

17 A. BASED ON THE UNKNOWN?

18 Q. WELL, THE VACUUM SWEEPINGS AT 881.

19 A. WELL, TODAY I HAVE ASSOCIATED FOUR DIFFERENT INDIVIDUALS
20 WITH 881 LOPE DE VEGA.

21 Q. AND HOW MANY INDIVIDUALS WERE THERE BASED ON ALL THE
22 UNKNOWN HAIRS THAT YOU VACUUMED UP?

23 A. WELL, I DON'T HAVE KNOWN SAMPLES. I CAN'T SAY. BUT
24 WITH THE KNOWN I HAVE GOTTEN, I HAVE ASSOCIATED FOUR PEOPLE.

25 Q. YOU SAID YOU HAD 500 SUITABLE HAIRS?

1 A. CORRECT.

2 Q. SO THERE COULD BE 500 PEOPLE THAT WERE THERE AT 881?

3 A. WELL, IF YOU ASSUME THAT EVERY HAIR CAME FROM A
4 DIFFERENT PERSON, YES.

5 Q. AND IF YOU ASSUME TWO HAIRS PER PERSON, THERE WOULD BE
6 AT LEAST 250 PEOPLE, CORRECT?

7 A. WELL, THERE IS NO WAY TO KNOW WITHOUT A KNOWN.

8 MR. BURNS: OKAY.

9 THE COURT: IS THERE ANY REDIRECT EXAMINATION OF
10 THIS WITNESS?

11 MR. MEDVENE: IF THE COURT PLEASE?

12 THE COURT: DO YOU HAVE SOME QUESTIONS?

13 MR. MEDVENE: YES, I DO.

14 MADAM CLERK, WITH THE COURT'S PERMISSION WOULD YOU
15 BE GOOD ENOUGH TO PLACE BEFORE THE WITNESS WHAT HAS BEEN
16 MARKED AS 12-C.

17 IF I MIGHT ALSO APPROACH THE WITNESS, YOUR HONOR,
18 WITH WHAT HAS BEEN PREMARKED K.

19 THE COURT: EXHIBIT K?

20 MR. MEDVENE: YES, SIR.

21 MAY I PLACE THIS IN FRONT OF THE WITNESS?

22 THE COURT: (NODDING AFFIRMATIVELY.)

23 REDIRECT EXAMINATION +

24 BY MR. MEDVENE:

25 Q. MR. MALONE, I'VE PLACED BEFORE YOU, SIR, WHAT'S MARKED

1 PROSECUTION 12-C AND DEFENDANTS' K.

2 DO YOU HAVE BOTH OF THESE DOCUMENTS IN FRONT OF
3 YOU, SIR?

4 A. YES, I DO.

5 Q. AND DOES 12-C PURPORT TO BE A PICTURE OF THE FRONT OF
6 THE 881 LOPE DE VEGA HOUSE?

7 A. THE FRONT OF THE RESIDENCE.

8 Q. YES, SIR.

9 A. CORRECT.

10 Q. AND IS DEFENDANTS' K ALSO A PICTURE OF 881 LOPE DE VEGA
11 AND A CERTAIN PORTION OF THE SURROUNDING AREA?

12 A. IT APPEARS TO BE, YES.

13 Q. IS THE SMALL FENCE THAT YOU CAN SEE CLEARLY IN
14 DEFENDANTS' K ACROSS THE FRONT OF THE HOUSE, SIR, IS THAT A
15 FOUR-FOOT WROUGHT IRON FENCE?

16 A. IT APPEARS TO BE, YES.

17 Q. AND THAT FENCE, AS SHOWN IN DEFENDANTS' K -- STRIKE
18 THAT.

19 IS DEFENDANTS' K, AS WELL AS 12-C, ACCURATE
20 REPRODUCTIONS OF OR AN ACCURATE VISUAL REPRESENTATION OF THE
21 FRONT OF 881 LOPE DE VEGA AT THE TIME YOU SAW IT IN THE
22 SPRING OF '85?

23 A. WELL, THE ONE IN 12-C IS THE ONE IN THE PANORAMIC SHOT.
24 K APPEARS A LITTLE MORE OVERGROWN, BUT SUBSTANTIALLY THE
25 SAME.

1 Q. CERTAINLY THE FOUR-FOOT WROUGHT IRON FENCE IN FRONT OF
2 THE PROPERTY IS THE SAME?

3 A. CORRECT.

4 Q. AND IF YOU LOOK CLOSELY ON DEFENDANTS' K, IN THE SIDE OF
5 THE FENCE OR THIS FOUR-FOOT WROUGHT IRON FENCE, IS THERE A
6 LITTLE GATE, LITTLE LATCH GATE THAT YOU WOULD JUST OPEN TO
7 WALK TO THE FRONT OF THE HOUSE?

8 A. TO THE FRONT DOOR, YES.

9 Q. THE FRONT DOOR. AND THERE ARE NO OBSTRUCTIONS OF ANY
10 KIND BETWEEN THIS SMALL GATE AND THE LATCH YOU CAN OPEN AND
11 WALK TO THE FRONT DOOR AND THE FRONT DOOR; IS THAT CORRECT?

12 A. WELL, IN 12-C, THERE DOES NOT APPEAR TO BE. YOU CAN'T
13 TELL FROM EXHIBIT K.

14 Q. BUT YOUR MEMORY WHEN YOU WERE THERE, THERE ARE NONE.
15 THERE ARE NO OBSTRUCTIONS BETWEEN THE GATE YOU WOULD OPEN AND
16 THE SMALL FOUR-FOOT WROUGHT IRON FENCE THAT FACES THE STREET
17 AND THE FRONT DOOR. YOU JUST OPEN THE GATE AND WALK IN; IS
18 THAT CORRECT, SIR?

19 A. I DON'T BELIEVE THERE WERE, BUT I NEVER WENT THROUGH THE
20 FRONT DOOR OF 881 LOPE DE VEGA.

21 Q. BUT YOUR BEST MEMORY IS AS YOU COME IN OFF THE STREET,
22 THERE'S A FOUR-FOOT WROUGHT IRON FENCE, THERE'S A SMALL GATE
23 THAT YOU WOULD OPEN THAT HAS A LATCH, AND YOU'D WALK UP TO
24 THE FRONT DOOR AND RING THE BELL; IS THAT CORRECT, SIR?

25 A. THE BEST I RECALL, YES.

1 Q. NOW, OFF TO THE SIDE OF THE FRONT DOOR THERE IS A
2 TWO-CAR GARAGE; IS THAT CORRECT, SIR?

3 A. IT'S MORE OF A CARPORT.

4 Q. AND IT HAS A DOOR THAT YOU OPERATE MANUALLY, THAT YOU
5 SWING OPEN SO THAT YOU CAN GET ONE CAR OR THE OTHER INTO THE
6 GARAGE; IS THAT CORRECT, SIR?

7 A. I DON'T REALLY KNOW, BECAUSE WHEN I WENT THERE THE GATE
8 WAS WIDE OPEN AND WE NEVER HAD TO OPEN IT OR CLOSE IT. THE
9 FEDERALES DID THAT FOR US.

10 Q. YOU DON'T HAVE ANY INFORMATION THAT THE GATE TO GET INTO
11 THE GARAGE IS OTHER THAN A HAND GATE THAT YOU WOULD OPEN
12 MANUALLY, DO YOU?

13 A. I CAN'T REALLY RECALL. IT WAS ALWAYS OPEN.

14 Q. IN FACT, WERE NO GATES AROUND THE PREMISES THAT WERE
15 OTHER THAN HAND GATES, ONES YOU WOULD YOU MANUALLY OPEN;
16 ISN'T THAT CORRECT, SIR?

17 A. WELL, THERE WERE TWO GATES ON THE RIGHT SIDE. ONE GAVE
18 YOU ACCESS TO THE CARPORT AND THE REAR GROUNDS. THE OTHER
19 GAVE YOU ACCESS TO THE OUT BUILDING, WHERE MOST OF THE
20 STORAGE ROOMS WERE.

21 Q. AND YOU OPEN THE GATES MANUALLY?

22 A. CORRECT.

23 MR. MEDVENE: MAY I APPROACH THE WITNESS, YOUR
24 HONOR, FOR THE PURPOSE OF ASKING A QUESTION? I DON'T HAVE
25 THE PICTURES IN FRONT OF ME. I'LL JUST BE A MINUTE.

(COUNSEL APPROACHING THE WITNESS STAND.)

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BY MR. MEDVENE:

Q. JUST A QUESTION OR TWO.

IF YOU LOOK AT K, WOULD THAT BE A PICTURE, IF YOU
COULD TELL, FROM SOL, A STREET CALLED SOL STREET?

A. WELL, THE STREET RUNNING IN FRONT IS LOPE DE VEGA.

Q. YES, SIR. A STREET THAT RUNS PERPENDICULAR TO LOPE DE
VEGA AND INTERSECTS LOPE DE VEGA RIGHT AT THE HOUSE; IS THAT
CALLED SOL, S O L, STREET?

A. ON THE FAR SIDE OR NEAR SIDE?

Q. GOING DIRECTLY IN FRONT OF LOPE DE VEGA?

A. I DON'T KNOW WHAT THE NAME OF IT IS.

Q. BUT THERE IS A STREET THAT RUNS PERPENDICULAR, BISECTED
BY LOPE DE VEGA, AND THEN YOU HAVE THE HOUSE ON LOPE DE VEGA?

A. AS FAR AS I CAN REMEMBER, YES.

Q. AND ON K, THE PICTURE, THERE'S ALSO A STREET THAT'S
SHOWN ON THE RIGHTHAND SIDE OF THE PROPERTY?

A. YES, IT'S A FAIRLY LARGE STREET.

Q. YES. THAT A CONTINUATION OF SOL; ISN'T IT?

A. I'M NOT SURE.

Q. AND WHAT'S SHOWN TO THE RIGHT, TO THE BEST OF YOUR
KNOWLEDGE, IS THAT AN APARTMENT HOUSE OF SOME KIND?

A. WELL, BASICALLY, I WAS CONCENTRATING ON LOPE DE VEGA.
AND I DON'T REALLY REMEMBER THE APARTMENT HOUSE.

Q. OKAY. DO YOU REMEMBER IF UP THE BLOCK A LITTLE BIT

1 THERE WAS A BREWERY?

2 A. YES, I DO. THE CORONA BREWERY. THIS IS HOW WE FOUND
3 THE PLACE, WE LOOKED FOR THE CORONA BOTTLE.

4 Q. THERE WERE A LOT OF LARGE TRUCKS PARKED UP NEAR THERE?

5 A. YES.

6 MR. CARLTON: OBJECTION. RELEVANCE, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 BY MR. MEDVENE:

9 Q. NOW, YOU MADE REFERENCE TO A GUEST HOUSE?

10 A. WELL, WE CALLED IT A GUEST HOUSE, YES.

11 Q. YES, SIR. AND THERE WERE FOUR SMALL ROOMS OR THERE WERE
12 FOUR ROOMS THAT YOU TOLD US WERE BASICALLY EQUIPMENT ROOMS?

13 A. WELL, ONE OF THE ROOMS WAS USED FOR HABITATION; IT HAD A
14 BATHROOM. THE OTHER WERE JUST STORAGE ROOMS. ONE WAS FOR
15 THE FILTERS AND THE EQUIPMENT FOR THE POOL.

16 Q. YOU TOOK A GOOD LOOK AT THE - WHAT WE'RE CALLING THE
17 GUEST HOUSE OR THESE COMPOSITE OF STORAGE ROOMS OR THE ONE
18 ROOM THAT COULD BE LIVED IN. YOU TOOK A GOOD LOOK AT THE
19 STRUCTURE?

20 A. YES. AND ACTUALLY, THERE WERE TWO ROOMS BEING LIVED IN.
21 IN ONE OF THE SMALL STORAGE ROOMS, THE CARETAKER WAS LIVING.

22 Q. THE BUILDING ITSELF LOOKED LIKE IT HAD BEEN -- THAT IS,
23 THIS COMPOSITE OF STORAGE ROOMS WITH THE HABITABLE ROOM --
24 LOOKED LIKE IT HAD BEEN CONSTRUCTED SOME YEARS AGO?

25 A. IT LOOKED LIKE IT WENT WITH THE HOUSE. I DON'T KNOW HOW

1 LONG AGO IT HAD BEEN CONSTRUCTED.

2 Q. IN LOOKING AT IT, IT WOULD NOT SURPRISE YOU IF THAT WERE
3 CONSTRUCTED, FROM YOUR VIEW, SOMEWHERE IN THE EARLY '70S?

4 A. I HAVE NO WAY OF KNOWING.

5 Q. IT CERTAINLY WAS NOT NEW CONSTRUCTION?

6 A. IT DIDN'T APPEAR TO BE.

7 Q. IT SEEMED TO BE CONSTRUCTED AT OR ABOUT THE SAME TIME AS
8 THE MAIN HOUSE?

9 A. WELL, IT WAS -- ONE OF THE WALLS OF THE OUT BUILDING WAS
10 ATTACHED TO THE ARCHWAY. THE ARCHWAY ACTUALLY FORMED THE
11 SIDE WALL OF THE OUT BUILDING. SO, OBVIOUSLY, IT HAD TO HAVE
12 BEEN CONSTRUCTED AT THE SAME TIME THE ARCHWAY WAS.

13 AS FAR AS WHEN, IT APPEARED ABOUT THE SAME AS THE
14 REST OF THE RESIDENCE.

15 Q. AT LEAST BASED ON YOUR OPERATION (SIC), IT HAD BEEN
16 THERE MANY YEARS?

17 A. AGAIN, I HAVE NO IDEA.

18 Q. FROM YOUR INVESTIGATION, DO YOU HAVE ANY INFORMATION
19 THAT IT HADN'T BEEN AS YOU SAW IT FOR MANY YEARS?

20 A. WELL, IT HAD THE OLDEST RUG IN THE HOUSE, THAT'S ABOUT
21 THE BEST I COULD DO.

22 Q. THE BEST YOU COULD DO IS IT'S NOT NEWLY CONSTRUCTED,
23 IT'S THE SAME -- SEEMS THE SAME VINTAGE AS THE ORIGINAL
24 HOUSE, BUT YOU DON'T KNOW IF IT WAS UP FIVE YEARS OR 15
25 YEARS; IS THAT THE BEST YOU CAN DO?

1 A. THAT'S ABOUT IT.

2 Q. NOW, THE ROOM WHERE YOU SAID A HUNDRED OR MORE -- OR A
3 HUNDRED OR SO HAIRS WERE FOUND, THAT WAS WHAT COULD BE
4 REFERRED TO AS A ONE-ROOM BATHHOUSE; ISN'T THAT CORRECT?

5 A. ARE YOU SPEAKING ABOUT THE GUEST HOUSE STILL?

6 Q. I'M TALKING ABOUT THAT ROOM IN THE GUEST HOUSE WHERE YOU
7 TOLD US YOU FOUND ABOUT A HUNDRED HAIRS.

8 A. CORRECT. IT WAS A SMALL ROOM ABOUT TEN BY TEN, WITH AN
9 ATTACHED BATH TO THE REAR SO THAT IF SOMEBODY -- IF YOU HAD A
10 GUEST AND PUT BEDS OUT THERE, THEY COULD SLEEP THERE AND HAVE
11 THEIR OWN PRIVATE BATHROOM.

12 Q. OR IT COULD BE -- IT APPEARED TO BE SOMETHING SIMILAR TO
13 WHAT YOU MIGHT CALL A ONE-ROOM BATHHOUSE; ISN'T THAT TRUE?

14 A. I'M NOT SURE WHAT YOU MEAN BY "BATHHOUSE."

15 Q. WOULD YOU SAY THAT IT WAS COMPATIBLE WITH BEING USED FOR
16 A PURPOSE LIKE, IF SOMEBODY WERE GOING TO THE NEARBY SWIMMING
17 POOL, FOR CHANGING THEIR CLOTHES?

18 A. NO. THEY HAD A SPA NEXT TO THE TENNIS COURT THAT WOULD
19 BE MORE SUITABLE FOR THAT.

20 Q. SIR, WERE YOU ASKED -- STRIKE THAT.

21 DID YOU TESTIFY ON SEPTEMBER 26TH, 1986, BEFORE A
22 GRAND JURY IN SAN DIEGO, CALIFORNIA?

23 A. YES, I DID.

24 Q. AND WERE YOU ASKED, SIR -- AND I -- WERE YOU ASKED THE
25 FOLLOWING QUESTION AND DID YOU GIVE THE FOLLOWING ANSWER?

1 "Q." -- PAGE 36 -- "MR. MALONE, IF WE COULD
2 STOP FOR JUST A SECOND, WE'VE BEEN REFERRING
3 TO THIS AS A GUEST ROOM.

4 SO THE MEMBERS OF THE GRAND JURY AREN'T
5 MISLED, IT'S REALLY JUST A ONE-ROOM BATHHOUSE
6 OR GUEST HOUSE, OR WHATEVER; IS THAT CORRECT?

7 "A. CORRECT. IT'S A SMALL ROOM WITH AN
8 ATTACHED BATH, BUT NO WINDOWS AND ONE DOOR.
9 AND AGAIN, IT COULD BE USED FOR SOMETHING,
10 LIKE IF YOU WANTED TO GO TO THE SWIMMING
11 POOL, FOR CHANGING.

12 IT'S NOT WHAT WE WOULD CONSIDER A GUEST
13 HOUSE UP HERE. IT'S ALWAYS BEEN CALLED A
14 GUEST HOUSE."

15 WERE YOU ASKED THAT QUESTION AND DID YOU GIVE THAT
16 ANSWER, SIR?

17 A. YES, I DID.

18 Q. AND ON REFLECTION NOW THAT YOU THINK ABOUT IT, IS IT
19 TRUE, SIR, THAT THIS ROOM YOU HAD BEEN DESCRIBING WAS
20 COMPATIBLE AS FAR AS YOU KNEW WHEN YOU SAW IT, WITH ONE
21 WANTING TO GO TO THE SWIMMING POOL AND USING THE ROOM FOR
22 CHANGING?

23 A. NO. I'D SAY IT'S MORE COMPATIBLE IF YOU PUT A BED IN
24 THERE FOR A GUEST ROOM.

25 Q. I UNDERSTAND, SIR. WAS IT ALSO COMPATIBLE, AS YOU SAID

1 HERE UNDER OATH, FOR ONE GOING TO THE SWIMMING POOL AND
2 CHANGING?

3 MR. CARLTON: OBJECTION. RELEVANCE. YOUR HONOR.

4 THE COURT: WHAT IS YOUR OBJECTION?

5 MR. CARLTON: RELEVANCE.

6 THE COURT: SUSTAINED.

7 MR. MEDVENE: MAY I BE HEARD, YOUR HONOR? I DON'T
8 WANT TO BE HEARD IN FRONT OF THE JURY. THERE IS SOME
9 RELEVANCE TO THE WAY IT WAS CHARACTERIZED.

10 THE COURT: IT'S TIME FOR THE MORNING RECESS.

11 (JURY EXCUSED.)

12 THE COURT: PLEASE BE SEATED.

13 MR. MEDVENE: THE WITNESS ON HIS DIRECT EXAMINATION
14 WAS ASKED SPECIFICALLY AND WENT OUT OF HIS WAY TO REFER TO
15 THIS ROOM AS ONE THAT WAS LIKE A JAIL CELL, OR THAT IMPLIED
16 THAT IT WAS USED, IN EFFECT, AS A JAIL CELL. HE SAID THAT ON
17 HIS DIRECT EXAMINATION.

18 WE WANT TO SHOW THAT HE HAD REFERRED TO THIS ROOM
19 BEFORE NOT AS A JAIL CELL, BUT AS A ROOM THAT COULD BE USED --
20 SWIMMING POOL FOR CHANGING.

21 THE COURT: YOU'VE ALREADY SHOWN THAT. HE HAS
22 TESTIFIED TO THAT, AND HE AGREES THAT HE DID.

23 MR. MEDVENE: HE AGREES -- HE AGREES -- WELL, HE --

24 THE COURT: YOU SEEM BENT ON FORCING HIM TO ADMIT
25 THAT THIS IS A USE THAT COULD BE MADE OF IT.

1 MR. MEDVENE: WE HAVE A PROFESSIONAL WITNESS WHO HAS
2 SAID UNDER OATH THAT -- AT ANOTHER OCCASION BEFORE ANOTHER
3 BODY -- THAT THIS ROOM WAS USED FOR CHANGING FOR A SWIMMING
4 POOL. HE HAS NOT SAID THAT BEFORE THIS BODY. HE HAS ADMITTED
5 SAYING WHAT HE SAID BEFORE THE GRAND JURY, BUT THAT WAS IN
6 '86.

7 NOW, HE'S EITHER GOING TO ADMIT THAT THAT'S STILL
8 HIS BELIEF OR HE'S GOING TO SAY THAT HE CHANGED FOR SOME
9 REASON.

10 THE COURT: WELL, I THINK HE SAID HE CHANGED.

11 MR. MEDVENE: I DON'T KNOW IF HE SAID HE CHANGED.

12 THE COURT: HE SAID THAT THERE WAS ANOTHER ROOM BY
13 THE TENNIS COURT THAT WAS MORE SUITABLE FOR THAT.

14 MR. MEDVENE: NO, HE SAID THERE WAS A SPA SOMEWHERE.
15 BUT I BELIEVE WE'RE ENTITLED TO GET FROM HIM THAT AT ONE
16 TIME -- IF HE'S SAYING THAT THE ROOM'S NOT COMPATIBLE WITH
17 BEING USED FOR CHANGING, I THINK WE OUGHT TO BE -- I THINK
18 WE'RE ENTITLED TO GET IT.

19 THE COURT: I DON'T THINK THAT YOU CAN PURSUE IT
20 FOREVER.

21 MR. MEDVENE: I WON'T.

22 THE COURT: IF YOU DON'T LIKE THE WITNESS'S ANSWER,
23 THAT IS NO REASON TO CONTINUE ASKING HIM THE SAME QUESTION.

24 MR. MEDVENE: IT HAS NOTHING TO DO WITH LIKING HIS
25 ANSWER, IT HAS TO DO WITH HIS -- WITH HIS INTEGRITY.

1 THE COURT: WELL, YOU HAVE HIS PRIOR TESTIMONY
2 BEFORE THE JURY.

3 MR. MEDVENE: I HAVE IT.

4 THE COURT: SO THAT'S SUBSTANTIVE EVIDENCE.

5 MR. MEDVENE: YES, SIR.

6 THE COURT: ALL RIGHT. DO YOU HAVE ANY FURTHER
7 QUESTIONS THAT YOU WANT TO ASK THIS WITNESS? YOU'VE BEEN
8 OUTSIDE THE SCOPE OF HIS DIRECT EXAMINATION FOR SOME TIME.

9 MR. MEDVENE: WELL, THE QUESTIONS ABOUT THE GUEST
10 HOUSE -- THAT CERTAINLY COULD NOT BE MORE --

11 THE COURT: THAT MAY BE PERTINENT, BUT THE REST OF
12 YOUR EXAMINATION WAS NOT.

13 MR. MEDVENE: THIS WITNESS HAS TESTIFIED, YOUR
14 HONOR -- I MEAN, I HAVE BEEN UP HERE FIVE MINUTES. THIS
15 WITNESS --

16 THE COURT: I UNDERSTAND THAT, BUT --

17 MR. MEDVENE: THIS WITNESS HAS TESTIFIED ABOUT WALLS
18 BEING AROUND THE BUILDING. WE SHOWED THERE'S NO WALL AROUND
19 THE FRONT OF THE BUILDING. THAT'S CERTAINLY PERTINENT.

20 THE COURT: WHY IS IT PERTINENT AND HOW DOES IT
21 RELATE TO THE GUILT OR INNOCENCE OF YOUR CLIENT IN ANY WAY?

22 MR. MEDVENE: WELL --

23 THE COURT: JUST BE SEATED.

24 YOU CAN CONTINUE WHEN WE RESUME HERE.

25 THE GOVERNMENT INDICATED HE WANTED TO TAKE SOMETHING

1 UP WITH THE COURT.

2 MR. MEDRANO: YES, YOUR HONOR. THANK YOU. VERY
3 BRIEFLY.

4 ENRIQUE PLASCENCIA AGUILAR, I WOULD JUST LIKE TO
5 ADVISE THE COURT, IS READILY AVAILABLE, YOUR HONOR, TO DO THIS
6 VERY LIMITED HEARING THAT YOU ASKED FOR AS TO HIS PRIOR
7 IDENTIFICATIONS.

8 I WANTED TO LET YOU KNOW THAT HE'S HERE AND
9 AVAILABLE AT ANY TIME. IF THE GOVERNMENT HAD ITS --

10 THE COURT: FIRST OF ALL, THIS IS A WITNESS THAT YOU
11 WANT TO HAVE ATTEMPT A SECOND IN-COURT IDENTIFICATION OF MR.
12 VASQUEZ?

13 MR. MEDRANO: AND IN ADDITION TO THAT, YOUR HONOR,
14 SHOULD YOU NOT ALLOW THAT, OF COURSE, WE'VE ALSO FILED A
15 SECOND MOTION PREVIOUSLY ASKING THAT HIS PRIOR OUT-OF-COURT
16 IDENTIFICATIONS, WHICH ARE NON-HEARSAY, BE ADMITTED BECAUSE HE
17 HAS PICKED JAVIER VASQUEZ OUT OF ONE OR TWO OTHER PHOTO
18 SPREADS.

19 THE COURT: INSTEAD OF TRYING TO SQUEEZE THESE
20 THINGS IN, I SUGGEST THAT YOU FINISH PRESENTING ALL OF THE
21 EVIDENCE THAT YOU HAVE. CALL ALL YOUR WITNESSES.

22 AND THEN WE'LL CLEAN UP THE REST OF THESE THINGS.

23 MR. MEDRANO: I UNDERSTAND THAT, YOUR HONOR. JUST
24 FROM THE GOVERNMENT'S PERSPECTIVE AND JUST FOR WHAT IT'S
25 WORTH, WE WOULD LIKE TO END WITH WITNESSES OTHER THAN MR.

1 PLASCENCIA AGUILAR AND THAT'S WHY WE WANTED TO ASK YOU IF IT
2 WOULD BE POSSIBLE -- FOR EXAMPLE, TODAY AT 4:30, TO JUST DO
3 THAT HEARING SO THAT --

4 THE COURT: WE HAVE SCHEDULED SOMETHING ELSE AT
5 4:30.

6 MR. MEDRANO: OR ALTERNATIVELY TO DO IT FOR 15 OR 20
7 MINUTES IMMEDIATELY BEFORE OR AFTER LUNCH. IT'S JUST -- WE'D
8 LIKE TO PUT HIM ON TODAY

9 THE COURT: I WANT TO RULE ON THIS MOTION THAT YOU
10 HAVE MADE TO ALLOW AGUILAR TO RETAKE THE STAND AND ATTEMPT A
11 SECOND IN-COURT IDENTIFICATION OF MR. VASQUEZ.

12 MR. MEDRANO: DOES THE COURT HAVE OUR PAPERS ON
13 THAT, YOUR HONOR?

14 THE COURT: YES, AND I HAVE READ THEM AND CONSIDERED
15 THEM AND I'M GOING TO DENY THE MOTION.

16 IF THERE WAS A PROBLEM WITH THIS WITNESS BEING ABLE
17 TO SEE THE DEFENDANT, IT SHOULD HAVE BEEN BROUGHT TO THE
18 ATTENTION OF THE COURT AT THE TIME THAT HE WAS ATTEMPTING TO
19 MAKE THE IDENTIFICATION. NOTHING WAS SAID EITHER BY THE
20 WITNESS OR BY YOU.

21 IT IS TRUE THAT YOU ASKED IF THE WITNESS COULD STEP
22 DOWN, AND I ASKED HIM IF HE WAS UNABLE TO SEE. AND HE SAID
23 THERE WAS NOTHING WRONG WITH HIS VISION.

24 SO THAT I DON'T BELIEVE ANY --

25 MR. CARLTON: YOUR HONOR, MAY I JUST POINT OUT THE

1 SEQUENCE OF THAT PARTICULAR PART OF THE TRANSCRIPT? I'M SURE
2 YOU'VE READ IT, BUT JUST FOR OUR OWN RECORD.

3 HE STOOD THERE FOR LIKE TWO MINUTES, I IMAGINE,
4 SOMETHING LIKE THAT, AND STATED THAT HE DID NOT SEE OR COULD
5 NOT RECOGNIZE JAVIER VASQUEZ.

6 AT THAT POINT, MR. MEDRANO DID ASK IF HE WOULD LIKE
7 TO STEP DOWN.

8 MR. NICOLAYSEN OBJECTED TO THE QUESTION AND THEN THE
9 FOCUS WAS CHANGED TO WHETHER HIS VISION WAS APPROPRIATE. THEN
10 THERE WAS NEVER A RULING ON WHETHER HE COULD STEP DOWN. IT
11 WENT TO THE POINT OF WHETHER HIS VISION WAS GOOD. AT THE
12 COURT'S SUGGESTION --

13 THE COURT: WELL, THE PREVIOUS WITNESS WE HAD
14 PERMITTED TO STEP DOWN BECAUSE HE SAID HE HAD EYE PROBLEMS
15 SEEING FROM THAT FAR.

16 MR. CARLTON: THIS WAS THE FIRST WITNESS, YOUR
17 HONOR, WHO WAS ASKED TO IDENTIFY ANYONE FROM THE STAND.

18 THE NEXT WITNESS, YOU MAY RECALL, WAS HECTOR
19 CERVANTES SANTOS, WHO HAD THE SAME PROBLEM, WHO THEN STEPPED
20 DOWN AND IDENTIFIED MR. ZUNO.

21 NONE OF US AT THIS TABLE, AT LEAST, WERE AWARE OF
22 THE POSSIBLE OBSTRUCTION PROBLEMS ARISING FROM THE
23 CONFIGURATION OF THE COURTROOM. AND CERTAINLY IF MR.
24 PLASCENCIA WAS UNABLE TO SEE ANYONE, HE WOULDN'T KNOW IF HE
25 HAD A PROBLEM BECAUSE OF THE OBSTRUCTIONS. HE COULDN'T HAVE

1 RESPONDED, I CAN'T SEE SOMEONE BECAUSE THERE'S SOMEONE IN MY
2 WAY. HE WOULDN'T KNOW.

3 MR. MEDRANO: YOUR HONOR, IN ADDITION, BY THE
4 PHOTOGRAPHS WE'VE ATTACHED, CLEARLY WE'VE ESTABLISHED, I
5 THINK, THAT THERE IS AN ISSUE OF OBSTRUCTION HERE.

6 YOU WILL NOTE THAT WITH THE WAY YOUR AREA AROUND THE
7 WITNESS STAND IS SET UP, THERE'S MANY PEOPLE IN THAT CORNER OF
8 THE COURTROOM. IT IS VERY DIFFICULT TO SEE, YOUR HONOR.

9 SO I DID ASK THE WITNESS IF HE WOULD LIKE TO STEP
10 DOWN. MR. NICOLAYSEN OBJECTED, AND THE COURT NEVER RULED ON
11 IT. SO WE DID ATTEMPT TO DO THAT, YOUR HONOR.

12 AND FINALLY, YOUR HONOR, JUST ONE THING FOR YOUR
13 CONSIDERATION. I WOULD ASK THE COURT WHAT IS THE PREJUDICE
14 HERE? BECAUSE TWO THINGS ARE GOING TO HAPPEN, YOUR HONOR.
15 THERE ARE ONLY TWO CHOICES: EITHER HE CAN'T IDENTIFY HIM --
16 THEN WHAT'S GOING TO RESULT FROM THAT IS POSSIBLY THE CASE
17 CANNOT GO FORWARD ON THAT PARTICULAR DEFENDANT -- OR
18 ALTERNATIVELY, HE CAN MAKE AN I.D. BECAUSE HE'S PERMITTED TO
19 STEP AWAY FROM THAT WITNESS BOX.

20 AND IF HE IS ABLE TO MAKE AN I.D., THEN HE'S SUBJECT
21 TO CROSS-EXAMINATION AS TO WHY HE COULD ON THE SECOND TIME.
22 AND MR. NICOLAYSEN COULD BRING OUT ALL THESE FACTORS,
23 INCLUDING WHAT IS PROBABLY HIS MAIN CONCERN, AT WHETHER THIS
24 WITNESS RECEIVED ANY COACHING OR ANYTHING LIKE THAT, WELL,
25 THAT IS SUBJECT FOR CROSS-EXAMINATION, YOUR HONOR.

1 BUT I THINK THE ISSUE HERE IS THE PURSUIT OF TRUTH,
2 AND I THINK WE SHOULD BE GIVEN A SHOT AT THAT, YOUR HONOR,
3 WITH ALL DUE RESPECT.

4 THE COURT: DO YOU WISH TO BE HEARD BRIEFLY?

5 MR. NICOLAYSEN: YES. THE SEQUENCE OF THE TESTIMONY
6 IS ON PAGE FIVE OF THE GOVERNMENT'S PAPERS. AND YOUR HONOR
7 SPECIFICALLY INITIATED THE SUGGESTION TO THE GOVERNMENT THAT
8 THEY ASK THE WITNESS IF HE HAS DIFFICULTY SEEING AT A
9 DISTANCE. THEY ASKED AND THE WITNESS SAID HE DID NOT.

10 THERE WAS NO INDICATION FROM THE WITNESS THAT HE WAS
11 HAVING TROUBLE MAKING HEADS OR TAILS OUT OF ANYBODY IN THE
12 COURTROOM.

13 AND, YOUR HONOR, THE FINAL POINT I WOULD MAKE IS
14 THAT THE GOVERNMENT'S ATTEMPT TO PROVIDE THE COURT WITH A
15 SIMULATED PANORAMA OF THE SEATING ARRANGEMENTS THROUGH THE
16 PHOTOGRAPHS IN ITS MOTION, IS HIGHLY SPECULATIVE, AND I THINK
17 IT'S IMPROPER. IN FACT, I WAS SURPRISED THAT THE GOVERNMENT
18 HAS SUCH FREE ACCESS OF THE COURTROOM TO FREELY OCCUPY THE
19 SEATS HERE OF ALL DEFENSE COUNSEL, TO CREATE THE SIMULATED
20 SEATING ARRANGEMENTS TO GIVE THE COURT IN THE MOVING PAPERS.

21 I THINK THAT'S AN INAPPROPRIATE INVASION OF THE
22 DEFENSE COUNSEL'S SPACE, AND IT'S HIGHLY SPECULATIVE IN TERMS
23 OF TRYING TO RECONSTRUCT THE ANGLE OF VISION FOR A WITNESS.
24 THERE SHOULD HAVE AT LEAST BEEN A DECLARATION FROM MR.
25 PLASCENCIA ATTACHED TO THE MOTION, AND THERE WASN'T ONE. SO

1 THERE'S A LACK OF FOUNDATION, IT'S HIGHLY SPECULATIVE, AND I
2 THINK, IN FACT, IT SEVERELY IMPAIRS THE INTEGRITY OF THE
3 IN-COURT I.D. PROCESS.

4 THE COURT: WELL, IT MAY BE OF SOME INTEREST TO YOU
5 THAT I CAN HARDLY EVER FIND YOUR CLIENT BECAUSE HE'S ALWAYS
6 OBSCURED BY THE INTERPRETER. HE LEANS BACK AND THE
7 INTERPRETER LEANS FORWARD, AND IT'S VERY DIFFICULT TO SEE HIM.

8 MR. NICOLAYSEN: WE DON'T KNOW THAT THAT WAS THE
9 SITUATION AT THE SPECIFIC POINT IN TIME WHEN MR. AGUILAR WAS
10 ASKED TO STAND UP.

11 TWO THINGS: WE ARE GENERALIZING, IN TERMS OF YOUR
12 HONOR'S GENERAL OBSERVANCE THAT MY CLIENT MAY SHIFT IN AND OUT
13 OF THE LINE OF VISION, BUT WE'RE TALKING ABOUT A SPECIFIC
14 MOMENT IN TIME WHEN MR. AGUILAR WAS ASKED TO STAND UP, AND WE
15 DON'T KNOW ANY OF THOSE THINGS, WHETHER MR. VASQUEZ WAS OR WAS
16 NOT IN THE LINE OF VISION.

17 AND THERE WAS NO INDICATION FROM THE WITNESS THAT HE
18 FOUND SOMEBODY TO BE OBSTRUCTED FROM HIS VIEW AND COULD HE
19 POSSIBLY MOVE IN ORDER TO SEE WHO THAT PERSON WAS.

20 SECONDLY, THE WITNESS WAS STANDING, YOUR HONOR. AND
21 BY STANDING, HE WAS CONSIDERABLY HIGHER IN TERMS OF HIS
22 ELEVATION, IF YOU WILL, THAN YOUR HONOR IS WHEN YOU SIT IN
23 YOUR CHAIR. AND I BELIEVE THAT'S A PERFECTLY FAIR STATEMENT
24 TO MAKE, AND IT SUBSTANTIALLY INFLUENCES HIS ABILITY TO SEE.

25 MR. MEDRANO: ONE FINAL COMMENT, YOUR HONOR. ALL WE

1 ASK OF YOU IS TO HEAR IT FROM THE HORSE'S MOUTH. THESE VERY
2 CONCERNS THAT MR. NICOLAYSEN AND YOURSELF HAVE, MR. PLASCENCIA
3 WILL TELL YOU OUTSIDE THE PRESENCE OF THE JURY.

4 HE WILL TELL YOU, JUST AS YOU COMMENTED YOURSELF,
5 THAT -- BECAUSE I'VE ASKED HIM THIS, YOUR HONOR -- I'VE ASKED
6 HIM IF HE HAD ANY DIFFICULTY SEEING. AND HE'LL SAY THAT IN
7 THAT CORNER, IT WAS DIFFICULT. AND, IN FACT, HE NOTICED THAT
8 ONE OR TWO PEOPLE WERE SITTING BACK, BUT -- AND HE'LL TELL YOU
9 THIS, AS WELL -- AND I -- I -- I -- PLEASE, ASK YOU TO ASK HIM
10 ON THE STAND, THAT THROUGHOUT THIS ENTIRE EFFORT, IT'S A
11 CROWDED COURTROOM, HE'S NERVOUS, IT'S THE FIRST TIME HE'S EVER
12 TESTIFIED, AND MR. STOLAR -- AND I DON'T MEAN THIS
13 DISRESPECTFULLY -- BUT MR. STOLAR WAS LAUGHING BECAUSE THE
14 IDENTIFICATION WAS TAKING SO LONG. THIS UPSET THE WITNESS,
15 YOUR HONOR.

16 AND ALL I ASK OF YOU IS THAT YOU RESERVE YOUR RULING
17 FOR A SECOND IN-COURT I.D. UNTIL YOU TALK TO HIM YOURSELF ON
18 THE STAND. WHAT HARM IS THERE? IT TAKES FIVE MINUTES, YOUR
19 HONOR. AND THE SOLE ISSUE HERE, AGAIN, IS THE PURSUIT OF
20 TRUTH.

21 THAT'S WHY I THINK THE HEARING ON THE SIMMONS ISSUE
22 SHOULD BE HELD.

23 MR. NICOLAYSEN: I SUBMIT THAT WE'VE NOW RECEIVED A
24 PROFFER THAT WOULD SUGGEST THERE MAY BE SOME UNDULY SUGGESTIVE
25 COACHING INVOLVED, AND I'M DEEPLY CONCERNED ABOUT THAT.

1 HOW CAN THE GOVERNMENT ASK THE COURT AS STRENUOUSLY
2 AS IT JUST DID --

3 THE COURT: JUST A MOMENT. THAT'S ENOUGH. THE
4 MOTION IS DENIED.

5 NOW, THE GOVERNMENT HAS MOVED TO QUASH DEFENDANT
6 MATTA'S SUBPOENA ISSUED TO VARIOUS GOVERNMENT INVESTIGATORY
7 AGENCIES. THE COURT HAS READ AND CONSIDERED THIS MOTION AND
8 OPPOSITION FILED BY THE DEFENDANT. THE COURT IS GOING TO
9 GRANT THIS MOTION. THIS IS NOTHING MORE THAN A FISHING
10 EXPEDITION BASED UPON A NEWSPAPER ARTICLE.

11 IT DOES NOT MEET THE STANDARD FOR THE ISSUANCE OF A
12 SUBPOENA DUCES TECUM. RULE 17(C) WAS NOT INTENDED AS A
13 DISCOVERY DEVICE TO ALLOW A FISHING EXPEDITION OF UNKNOWN
14 EVIDENCE. AND THE FACTORS THAT THE COURT IS REQUIRED TO
15 CONSIDER IN DETERMINING WHETHER A SUBPOENA IS REASONABLE IS,
16 FIRST, THAT THE REQUEST SHOULD BE RELEVANT.

17 SECOND, THE SUBPOENA SHOULD SPECIFY THE DOCUMENTS TO
18 BE PRODUCED WITH PARTICULARITY. ALTHOUGH THE SUBPOENA NEED
19 NOT DESIGNATE EACH PARTICULAR DOCUMENT DESIRED, THERE OUGHT TO
20 AT LEAST BE SOME RELATIONSHIP.

21 THE SUBPOENA MUST IDENTIFY THE DOCUMENTS WITH
22 SUFFICIENT CLARITY TO PERMIT COMPLIANCE. A SUBPOENA SHOULD
23 NOT BE OVERLY BURDENSOME.

24 THIS SHOWING THAT HAS BEEN MADE HERE BY THE
25 DEFENDANT IN THIS CASE, RELYING UPON A NEWSPAPER ARTICLE TO

1 ESTABLISH THE RELEVANCE OF THE REQUESTED DOCUMENTS, ASSERTING
2 THAT THESE DOCUMENTS, AS REPORTED, COULD ESTABLISH A COMPLETE
3 DEFENSE TO COUNT III BECAUSE THE CARTEL MAY HAVE BEEN
4 OPERATING UNDER THE AUTHORIZATION OF UNITED STATES GOVERNMENT,
5 AND SPECIFICALLY THE C.I.A. -- BUT EVEN ACCEPTING THE REPORT
6 AS TRUE, ASSUMING IT TO BE TRUE, THE REPORT DOES NOT STATE
7 THAT GALLARDO SUPPORTED THE C.I.A.-BACKED CONTRAS AT THE
8 C.I.A.'S REQUEST, OR WITH THE C.I.A.'S APPROVAL.

9 THE SMUGGLING OF ARMS IS NOT THE CHARGE IN COUNT
10 III. THE ENTERPRISE IS ALLEGED TO BE ENGAGED IN NARCOTICS
11 MANUFACTURE AND TRAFFICKING, AND SO THIS SHOWING FAILS TO
12 DEMONSTRATE THAT THIS SUBPOENA WOULD PRODUCE RELEVANT EVIDENCE
13 IN THIS CASE, AND IT IS THE COURT'S VIEW THAT IT IS NOTHING
14 MORE THAN A FISHING EXPEDITION.

15 THAT IS THE WAY -- NOW, DO YOU WISH TO BE HEARD,
16 COUNSEL? THOSE ARE MY REASONS.

17 MR. STOLAR: I'M NOT SURE THERE'S MUCH TO BE HEARD
18 ON AT THIS POINT, YOUR HONOR. BUT I WOULD JUST SAY TWO
19 THINGS: ONE IS THAT, OBVIOUSLY, THAT THE WAY THAT GALLARDO
20 GETS MONEY IS BY DEALING DRUGS. THAT'S WHAT THE ALLEGATIONS
21 ARE HERE; HOW DOES HE OTHERWISE GET MONEY TO BUY GUNS AND TO
22 GIVE MONEY TO THE CONTRAS? AND, BELIEVE ME, THAT DOESN'T
23 HAPPEN -- BECAUSE THIS PRESUMABLY HAPPENED AT THE TIME THE
24 BOLIN AMENDMENT IS IN FORCE.

25 THE CONGRESS IS CUT OFF AND THE C.I.A. AND OLLIE

1 NORTH AND THE N.S.A. NEEDS TO GET ARMS TO THE CONTRAS SOMEHOW
2 OR OTHER. THAT'S WHEN THEY START AUTHORIZING DRUG DEALERS,
3 ALLEGEDLY, TO TAKE THEIR PROFITS AND TURN THEM OVER. THAT'S
4 THE RELEVANCE.

5 SECONDLY, ALL I'M LOOKING FOR -- HERE AND IT'S NOT
6 FISHING -- THERE IS A SPECIFIC REFERENCE TO A SPECIFIC D.E.A.
7 REPORT THAT WAS CREATED IN 1987. AND THIS IS PUBLISHED BY A
8 RESPECTED JOURNALIST, JEFF GIRT, IN WHAT IS, EXCEPT FOR THE
9 LOS ANGELES TIMES, THIS COUNTRY'S PAPER OF RECORD, THE NEW
10 YORK TIMES, WHICH IS NOT A FLY-BY-NIGHT JOURNALISTIC RAG, BY
11 ANY MEANS. IT'S A RESPECTED PAPER. IT'S RELIED ON THROUGHOUT
12 THE WORLD.

13 SO I'M LOOKING FOR ONE SPECIFIC D.E.A. REPORT THAT
14 WILL THEN, IF THERE'S SOMETHING IN THERE. TAKE US FURTHER DOWN
15 THE LINE TO DEVELOP RELEVANT EVIDENCE. THAT'S WHAT I WANT TO
16 SHOW.

17 THE COURT: ALL RIGHT. WELL, ON THE SHOWING THAT IS
18 MADE, THE COURT QUASHES THAT SUBPOENA.

19 NOW, THIS --

20 MR. STOLAR: WE HAVE ANOTHER SUBPOENA, ALSO.

21 THE COURT: YES, I KNOW THAT.

22 THE EX PARTE MOTION THAT YOU FILED HERE SHOULD BE A
23 NOTICED MOTION.

24 MR. STOLAR: THERE WAS A NOTICE OF IN-CAMERA FILING.

25 THE COURT: WELL, THEN THEY SHOULD BE SERVED WITH

1 THE NOTICE.

2 MR. STOLAR: THEY WERE SERVED WITH THE NOTICE.

3 THE COURT: WITH A COPY OF THE MOTION, I MEAN.

4 MR. STOLAR: NO, NO.

5 THE COURT: A COPY OF THE MOTION SHOULD BE SERVED
6 BECAUSE THERE MAY BE CONCERNS THAT NEED TO BE RAISED REGARDING
7 THIS REQUEST.

8 MR. STOLAR: FINE. I WOULD LIKE TO EXPRESS TO YOU
9 IN-CAMERA THE REASONS WHY I DID NOT -- I WANTED TO FILE THIS
10 PARTICULAR MOTION IN AN IN-CAMERA FASHION.

11 I WOULD BE DELIGHTED TO DO THAT, BUT THERE ARE
12 REASONS HAVING TO DO WITH THE DEFENSE.

13 THE COURT: WELL, THE COURT CANNOT RULE ON THE
14 IN-CAMERA WITHOUT NOTICE TO THE OTHER SIDE.

15 MR. STOLAR: I UNDERSTAND.

16 THE COURT: ALL RIGHT. NOW, COUNSEL FOR THE
17 GOVERNMENT, SOME TIME AGO I ORDERED THE GOVERNMENT IN AN
18 UNRELATED ISSUE -- NOT RELATED TO THESE DEFENDANTS -- BUT I
19 ORDERED THE GOVERNMENT TO PRODUCE CERTAIN DOCUMENTS IN THE
20 MACHAIN- DR. ALVAREZ CASE. DO YOU RECALL THAT ORDER THAT I
21 MADE ABOUT TWO WEEKS AGO?

22 MR. CARLTON: MAY I HAVE JUST ONE MOMENT?

23 (DISCUSSION HELD OFF THE RECORD BETWEEN GOVERNMENT
24 COUNSEL.)

25 MR. MEDRANO: YOUR HONOR, WAS THIS IN THIS

1 PROCEEDING?

2 THE COURT: NO, IT WAS NOT IN THIS PROCEEDING.

3 MR. MEDRANO: THE HEARING YOU HAD ON DR. MACHAIN?

4 THE COURT: YES. I ISSUED AN ORDER DIRECTING THE
5 GOVERNMENT TO PRODUCE AND SUBMIT TO THE COURT AS A PART OF
6 THAT HEARING ANY COMMUNICATION RECEIVED FROM THE GOVERNMENT OF
7 MEXICO, ANY PROTESTS, ANY OTHER DOCUMENTS THAT HAVE BEEN FILED
8 WITH THE UNITED STATES AS A RESULT OF THAT MATTER.

9 AND DO YOU KNOW WHETHER THESE HAVE BEEN SUBMITTED?

10 MR. MEDRANO: I VAGUELY RECALL THE ORDER, YOUR
11 HONOR, AND SINCE YOU WERE IN TRIAL --

12 THE COURT: WELL, WHO'S HANDLING IT?

13 MR. MEDRANO: BILL FAHEY, OUR COLLEAGUE, HAS BEEN
14 WORKING ON THAT MOTION. AND AT THE FIRST CONVENIENCE, I CAN
15 CALL HIM AND ASK HIM THE STATUS.

16 THE COURT: WELL, I'D LIKE TO KNOW IF THEY HAVE BEEN
17 FILED.

18 MR. MEDRANO: I CAN CERTAINLY FIND THAT OUT.

19 THE COURT: I'M NOT AWARE THAT THEY HAVE BEEN.

20 MR. MEDRANO: I'LL DEFINITELY CHECK WITH MR. FAHEY,
21 YOUR HONOR.

22 AND ON THIS SUBJECT, I ASKED MADAM CLERK, AND SHE
23 SUGGESTED I JUST RAISE IT WITH YOU AT THIS TIME -- WOULD IT BE
24 POSSIBLE AT THE EARLIEST CONVENIENCE FOR YOU TO SET A STATUS
25 CONFERENCE WITH THE GOVERNMENT AND COUNSEL FOR DR. MACHAIN TO

1 PERHAPS AT LEAST GET A TRIAL DATE?

2 AND THE REASONS FOR THAT, YOUR HONOR, IS WE HAVE
3 WITNESSES WHO ARE ASKING US IF THEY NEED TO BE AVAILABLE IN
4 THE SUMMER OR THEREAFTER, AND I'D LIKE TO GIVE THEM SOME
5 GUIDANCE.

6 THE COURT: WELL, I THINK THAT WE'LL SET THE TRIAL
7 DATE AT THE TIME THAT I RULE ON THAT -- ON THAT MOTION. THERE
8 MAY NOT BE ANY NEED FOR A TRIAL DATE.

9 MR. MEDRANO: I UNDERSTAND, YOUR HONOR, AND I DON'T
10 MEAN TO BE PRESUMPTUOUS. BUT I WAS JUST -- AGAIN, I WAS JUST
11 VOICING THE REQUEST ON BEHALF OF SEVERAL WITNESSES THAT WE
12 HAVE TO SEE IF WE COULD TO GET SOME GUIDANCE ON A TRIAL DATE.

13 THAT'S FINE, YOUR HONOR. THANK YOU.

14 THE COURT: ALL RIGHT. WE'LL TAKE A BRIEF RECESS.

15 (RECESS TAKEN.)

16 (JURY PRESENT.)

17 THE COURT: MR. MEDVENE.

18 MR. MEDVENE: THANK YOU, YOUR HONOR.

19 CROSS-EXAMINATION + CONTINUED

20 BY MR. MEDVENE:

21 Q. MR. MALONE, ON REFLECTION, SIR, AS YOU TOLD THE GRAND
22 JURY, WASN'T ONE OF THE PURPOSES OF THE ROOM THAT WE WERE
23 TALKING ABOUT THAT IT COULD HAVE BEEN USED AS A CHANGING ROOM
24 FOR SOMEBODY WHO'S USING THE POOL?

25 MR. CARLTON: OBJECTION. SPECULATION, RELEVANCE.

1 THE COURT: ANSWER.

2 THE WITNESS: YOU COULD USE IT AS A CHANGING ROOM,
3 YOU COULD USE IT AS A GUEST HOUSE, YOU COULD HOLD A TEA PARTY
4 IN THERE, YOU COULD DO ANYTHING YOU WANT IN THERE, BUT IF YOU
5 CLOSE THE FRONT STEEL DOOR WITH THE STEEL BARS, YOU COULD ALSO
6 USE IT AS A VERY EFFECTIVE PRISON CELL.

7 BY MR. MEDVENE:

8 Q. PRIOR TO FEBRUARY OF 1985 YOU HAVE NO EVIDENCE THAT THE
9 ROOM WAS USED FOR ANY REASON OTHER THAN AS A CHANGING ROOM FOR
10 A POOL. IS THAT CORRECT, SIR?

11 MR. CARLTON: OBJECTION, RELEVANCE.

12 THE COURT: THE OBJECTION IS SUSTAINED.

13 BY MR. MEDVENE:

14 Q. ONE LAST QUESTION IN THIS AREA, SIR. WAS THE LAST TIME
15 YOU SAW THE LOPE DE VEGA RESIDENCE SOMETIME PRIOR TO THE TIME
16 THAT YOU TOLD THE GRAND JURY UNDER OATH THAT THE ROOM IN
17 QUESTION COULD BE USED FOR SOMETHING LIKE IF YOU WANTED TO GO
18 TO THE SWIMMING POOL FOR CHANGING?

19 A. YES, IT WAS.

20 Q. NOW, YESTERDAY YOU MADE REFERENCE TO EXHIBIT 155. IT'S
21 TO THE BACK AND TO THE RIGHTHAND SIDE OF YOU, SIR. IT'S
22 CALLED CATEGORIES OF FORENSIC EVIDENCE IN THE CAMARENA CASE.

23 A. YES.

24 Q. IN THOSE CATEGORIES, SIR, ONE IS LABELED, IS IT NOT,
25 "SOIL LA PRIMAVERA"?

1 A. CORRECT.

2 Q. AND DOES THAT HAVE REFERENCE, SIR, TO SOIL THAT WAS
3 ANALYZED BY THE F.B.I., TAKEN FROM A SITE WHERE IT WAS
4 BELIEVED ENRIQUE CAMARENA HAD BEEN BURIED FOR MORE THAN A
5 MONTH OR SO BEFORE HE WAS MOVED TO THE BRAVO RANCH?

6 A. CORRECT.

7 Q. AND THAT BURIAL SITE WAS IN THE SOUTH PART OF WHAT IS
8 CALLED PRIMAVERA PARK; IS THAT CORRECT?

9 A. ON THE SOUTH SIDE OF THE MOUNTAIN THERE, YES.

10 Q. AND IT'S IN A VERY WILD, PRIMITIVE, REMOTE AREA; IS THAT
11 CORRECT?

12 A. CORRECT. CORRECT.

13 Q. NO CAMP GROUNDS, SNACK BARS ANY OF THAT SORT OF THING?

14 A. CORRECT.

15 Q. NO HOUSES OR ANY OF THAT?

16 A. NOTHING.

17 Q. IT'S -- SO WE CAN PICTURE -- IT'S FOUND IN A BIG, WILD,
18 PRIMITIVE KIND OF AREA THAT YOU MIGHT IMAGINE YELLOWSTONE PARK
19 HERE IN THIS COUNTRY; IS THAT TRUE?

20 MR. CARLTON: OBJECTION. ASKED AND ANSWERED.

21 THE COURT: RESTATE YOUR QUESTION.

22 BY MR. MEDVENE:

23 Q. THE AREA IS SOMEWHAT SIMILAR TO WHAT IN THIS COUNTRY YOU
24 MIGHT THINK OF AS YELLOWSTONE PARK; IS THAT CORRECT?

25 A. WELL, MAYBE YELLOWSTONE WITHOUT THE CONCESSION STANDS,

1 THE PICNIC TABLES AND THE PAVED ROADS. THEY WERE ALL DIRT
2 ROADS.

3 Q. IS THIS A NATIONAL PARK IN MEXICO, TO THE BEST OF YOUR
4 KNOWLEDGE?

5 A. I HAVE NO IDEA.

6 Q. NOW, YOU DISCUSSED HAIR YESTERDAY AND TODAY AND CERTAIN
7 HAIRS YOU FOUND AT LOPE DE VEGA. AND IT'S TRUE, IS IT NOT,
8 THAT THE PURPOSE FOR DOING THE COMPARISONS WAS INITIALLY TO
9 TRY TO IDENTIFY IF MR. CAMARENA WAS AT THAT HOUSE AT SOME
10 POINT IN TIME?

11 A. THAT WAS THE FIRST ATTEMPT, THAT WAS THE FIRST KNOWN HAIR
12 SAMPLES WE HAD.

13 Q. AND THEN THE NEXT ATTEMPT WAS TO FIND OUT IF YOU COULD
14 SEE IF ANYBODY ELSE WAS AT THAT LOCATION AT AROUND THE TIME
15 MR. CAMARENA MIGHT HAVE BEEN THERE?

16 A. CORRECT.

17 Q. AND IN THE COURSE OF DOING YOUR ANALYSIS, IT'S TRUE, IS
18 IT NOT, THAT A HAIR SAMPLE WAS TAKEN FROM MR. ZUNO AND SENT TO
19 THE F.B.I. LABORATORY IN WASHINGTON?

20 EXCUSE ME, SIR, YOU'RE LOOKING AT SOMETHING?

21 A. YES.

22 MR. MEDVENE: MAY I APPROACH THE WITNESS, YOUR
23 HONOR, JUST TO SEE WHAT IT IS?

24 THE COURT: YES.

25 MR. MEDVENE: THANK YOU, SIR.

1 (MR. MEDVENE APPROACHES THE WITNESS STAND AND
2 RETURNS TO PODIUM.)

3 BY MR. MEDVENE:

4 Q. GO AHEAD, SIR. PLEASE REFER TO WHATEVER YOU WANT TO.

5 A. WOULD YOU REPEAT; THE HAIR SAMPLE FROM WHOM?

6 Q. YES, SIR. WAS A HAIR SAMPLE TAKEN FROM MR. RUBEN ZUNO
7 ARCE. ONE OF THE DEFENDANTS IN THIS CASE?

8 A. A LEGITIMATE KNOWN HAIR SAMPLE. NO.

9 Q. WELL, WAS A HAIR SAMPLE FROM MR. ZUNO SENT TO THE F.B.I.
10 LABORATORY?

11 A. UNKNOWN HAIRS FROM THE ROOM WHERE HE WAS BEING DETAINED
12 WERE SENT IN, BUT NOT A LEGITIMATELY PROCURED KNOWN SAMPLE.

13 Q. WHEN YOU SAY "NOT A LEGITIMATELY PROCURED KNOWN
14 SAMPLE" --

15 MR. MEDVENE: MAY I APPROACH THE WITNESS, YOUR
16 HONOR?

17 THE COURT: YES.

18 (DOCUMENT PLACED BEFORE THE WITNESS.)

19 BY MR. MEDVENE:

20 Q. I PLACE BEFORE YOU WHAT'S BEEN MARKED J AND ASK YOU IF
21 THAT IS A REPORT OF THE FEDERAL BUREAU OF INVESTIGATION
22 LABORATORY OF WASHINGTON, D.C., DATED SEPTEMBER 7TH, 1989?

23 A. YES, IT IS.

24 Q. AND IT'S A REPORT SENT BY THE F.B.I. LABORATORY TO THE
25 DRUG ENFORCEMENT ADMINISTRATION, OPERATION LEYENDA, IN LOS

1 ANGELES; IS THAT CORRECT, SIR?

2 A. THAT'S CORRECT.

3 Q. AND THAT REPORT WAS DONE BY YOU OR UNDER YOUR
4 SUPERVISION; IS THAT CORRECT, SIR?

5 A. IT WAS DONE BY ME, YES.

6 Q. AND IN YOUR EXAMINATION, SIR, ISN'T IT TRUE THAT YOU
7 FOUND -- STRIKE THAT.

8 ISN'T IT TRUE THAT YOU FOUND AND STATED THAT THERE
9 WERE A NUMBER OF HAIRS THAT YOU HAD WHICH YOU FOUND SUITABLE
10 FOR COMPARISON THAT WERE FOUND IN THE 881 LOPE DE VEGA
11 RESIDENCE?

12 A. CORRECT.

13 Q. AND DID YOU COMPARE THOSE HAIRS, SIR, TO HAIRS FOUND IN
14 CERTAIN SPECIMENS, NAMELY WHAT IS REFERRED TO AS Q-250 AND
15 Q-251, HAIRS FROM THE CELL OF RUBEN ZUNO ARCE?

16 A. YES, I DID.

17 Q. AND YOU CONCLUDED. DID YOU NOT, SIR, AFTER DOING THE
18 LEVELS OF RESEARCH THAT YOU HAVE TOLD THE JURY ABOUT OVER THE
19 LAST SEVERAL DAYS, THAT NO HAIRS LIKE THE HAIRS IN SAMPLES 250
20 AND 251 WERE FOUND IN THE ABOVE-MENTIONED HAIRS FROM 881 LOPE
21 DE VEGA?

22 A. THAT'S WHAT I SAID.

23 Q. AND THAT WAS CORRECT; WAS IT NOT, SIR?

24 A. THAT STATEMENT IS CORRECT.

25 Q. THE SAMPLES SENT TO YOU FOR ANALYSIS, IT WAS REPRESENTED

1 TO YOU, WERE HAIR SAMPLES OF RUBEN ZUNO ARCE?

2 A. NO. THEY WERE HAIR SAMPLES TAKEN OUT OF THE ROOM THAT
3 RUBEN ZUNO ARCE WAS IN. THEY WERE NOT TAKEN OFF OF HIS HEAD.
4 A LEGITIMATE HAIR SAMPLE HAS TO BE TAKEN FROM A PERSON'S HEAD.

5 Q WHEN YOU SAY "LEGITIMATE," LEGITIMATE MEANS SO YOU COULD
6 BE 100 PERCENT SURE IT CAME FROM THAT PERSON; IS THAT WHAT YOU
7 MEAN BY THE WORD "LEGITIMATE"?

8 A. NO. WHAT I MEAN IS SO YOU CAN DO AN ACCURATE SCIENTIFIC
9 EXAMINATION.

10 Q. WELL, IF THE HAIR -- YOU'VE TOLD US THAT 100 HAIRS FALL
11 OUT OF ONE'S HEAD ROUGHLY EVERY DAY?

12 A. CORRECT.

13 Q. SO IF A HAIR FELL OUT OF SOMEBODY'S HEAD AND YOU PICKED
14 UP THAT HAIR AND ANALYZED IT, THAT WOULD BE APPROPRIATE TO
15 ANALYZE; WOULD IT NOT?

16 A. CORRECT, YES.

17 Q. NOW, NOBODY ELSE WAS IN THIS CELL TO THE BEST OF YOUR
18 KNOWLEDGE BUT MR. ZUNO; IS THAT CORRECT?

19 MR. CARLTON: OBJECTION. LACK OF FOUNDATION, YOUR
20 HONOR. HEARSAY.

21 THE COURT: RESTATE YOUR QUESTION.

22 BY MR. MEDVENE:

23 Q. THE PURPOSE OF DOING THE ANALYSIS, WHEN YOU DID IT, WAS
24 TO FIND OUT IF THE HAIR THAT WAS REPRESENTED TO YOU TO BE
25 ZUNO'S HAIR MATCHED ANY HAIR FOUND AT LOPE DE VEGA. WASN'T

1 THAT THE PURPOSE OF YOUR EXAMINATION, SIR?

2 MR. CARLTON: OBJECTION. MISCHARACTERIZES ANY
3 REPRESENTATIONS MADE TO MR. MALONE.

4 THE COURT: THE WITNESS MAY ANSWER.

5 THE WITNESS: THE PURPOSE OF MY EXAMINATION WAS TO
6 SEE IF ANY OF THE HAIRS IN THE ROOM OCCUPIED BY MR. ZUNO ARCE
7 MATCHED ANY OF THE HAIRS AT 881 LOPE DE VEGA.
8 BY MR. MEDVENE:

9 Q. AND NONE OF THE HAIRS IN THE ROOM OCCUPIED BY ZUNO ARCE
10 MATCHED ANY OF THESE 500 OR MORE HAIRS THAT YOU FOUND AT LOPE
11 DE VEGA; ISN'T THAT CORRECT?

12 A. THAT'S CORRECT.

13 Q. DO YOU HAVE ANY INFORMATION THAT -- STRIKE THAT.

14 NOW, BEFORE YOU DID THE EXAMINATION, YOU WERE
15 ADVISED, WERE YOU NOT, THAT THE HAIRS YOU WERE BEING SENT TO
16 EXAMINE WERE HAIRS OF MR. ZUNO; IS THAT CORRECT?

17 MR. CARLTON: HEARSAY, YOUR HONOR, OBJECTION.

18 THE COURT: OVERRULED.

19 THE WITNESS: NO, I WAS ADVISED THAT THESE WERE
20 HAIRS FROM A ROOM THAT WAS OCCUPIED BY MR. ZUNO ARCE.

21 BY MR. MEDVENE:

22 Q. WELL, TO YOUR KNOWLEDGE, DID ANYBODY HAVE ANY INTEREST OF
23 ANYONE THAT -- STRIKE THAT.

24 DID YOU RECEIVE ANY INFORMATION THAT ANYONE ELSE WAS
25 IN THE CELL FROM WHICH THE HAIRS WERE TAKEN OTHER THAN MR.

1 ZUNO?

2 MR. CARLTON: OBJECTION. LACK OF FOUNDATION,
3 HEARSAY.

4 THE COURT: COUNSEL, THIS QUESTION, AS FAR AS THE
5 COURT IS CONCERNED, HAS BEEN FULLY ANSWERED. THE WITNESS HAS
6 SAID HE RECEIVED HAIRS FROM THAT CELL, HE COMPARED THEM
7 AGAINST HAIRS HE HAD FROM THE OTHER PLACE, HE COULD NOT FIND
8 ANY MATCHES, AND YOU'RE ASKING THE SAME THINGS OVER AND OVER
9 AGAIN.

10 MR. MEDVENE: ALL RIGHT, SIR.

11 BY MR. MEDVENE:

12 Q. IS IT ALSO TRUE, SIR, THAT NO HAIRS LIKE THE HAIRS FOUND
13 IN SPECIMENS Q-250 OR Q-251 WERE FOUND IN THE VOLKSWAGON
14 ATLANTA THAT YOU EXAMINED?

15 A. THAT'S CORRECT.

16 Q. IT'S ALSO TRUE THAT NO HAIRS FOUND IN SPECIMENS Q-250 AND
17 251 WERE FOUND IN THE MERCURY MARQUIS THAT YOU EXAMINED?

18 A. THAT'S CORRECT.

19 Q. WHO SENT YOU THE HAIR SAMPLE THAT IS REFERENCED IN YOUR
20 SEPTEMBER 7, 1989 REPORT THAT'S MARKED DEFENDANTS' J?

21 A. D.E.A. LOS ANGELES.

22 Q. WHO IN D.E.A. LOS ANGELES, SIR?

23 A. I BELIEVE THE AGENT THAT COLLECTED THE HAIR SAMPLES WAS
24 WAYNE SCHMIDT.

25 Q. HAD YOU SPOKEN TO MR. SCHMIDT BEFORE HE COLLECTED THE

1 SAMPLE?

2 A. I HAD SPOKEN TO MR. GURULE.

3 Q. MR. GURULE AT THE TIME WAS THE PROSECUTOR?

4 A. CORRECT.

5 Q. AND IN THAT CONVERSATION DID YOU SAY THAT OR DID HE SAY
6 THAT HE WANTED YOU TO EXAMINE A HAIR SAMPLE THAT YOU WOULD BE
7 SENT OF MR. ZUNO?

8 MR. CARLTON: OBJECTION, HEARSAY.

9 THE COURT: OVERRULED.

10 MR. CARLTON: IMPROPER FORM.

11 THE WITNESS: NO. HE SAID HE WANTED ME TO ANALYZE A
12 HAIR SAMPLE FROM THE ROOM THAT MR. ZUNO WAS IN.

13 BY MR. MEDVENE:

14 Q. DO YOU HAVE ANY INFORMATION THAT THE HAIR YOU EXAMINED
15 WAS NOT MR. ZUNO'S? YES OR NO, SIR.

16 A. I DON'T HAVE ANY INFORMATION, NO.

17 Q. YOU SAY YOU DON'T HAVE ANY INFORMATION. THE INFORMATION
18 YOU HAVE IS THAT HAIR WAS SENT FROM MR. ZUNO'S CELL TO YOU AND
19 THAT HAIR DIDN'T MATCH ANYTHING AI LOPE DE VEGA; IS THAT
20 CORRECT?

21 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 MR. MEDVENE: IF THE COURT PLEASE, WE WOULD MOVE
24 INTO EVIDENCE AT THIS TIME A REPORT THAT IS DEFENDANTS' J.

25 MR. CARLTON: I'LL OBJECT TO THE ADMISSION OF THAT,

1 YOUR HONOR.

2 THE COURT: IF THERE IS ANY OBJECTION, WE'LL HOLD IT
3 UNTIL LATER.

4 MR. MEDVENE: I WOULD ALSO MOVE INTO EVIDENCE, YOUR
5 HONOR, K, WHICH ARE THE PICTURES.

6 THE COURT: THAT MAY BE RECEIVED.

7 (EXHIBIT # DEFENDANTS' K RECEIVED IN EVIDENCE.)

8 MR. MEDVENE: NOTHING FURTHER. THANK YOU, YOUR
9 HONOR.

10 MR. MEZA: I HAVE A QUESTION.

11
12 FURTHER CROSS-FXAMINATION +

13 BY MR. MEZA:

14 Q. DIRECTING YOUR ATTENTION TO THE EXHIBITS THAT REFLECT THE
15 ROOMS HERE, WOULD YOU GIVE US AN IDEA OF WHAT THE DIMENSIONS
16 OF BEDROOM NUMBER ONE IS OR WERE AT THE TIME?

17 A. I DIDN'T TAKE -- I DIDN'T MEASURE THEM AT THE TIME, BUT
18 ALL OF THE ROOMS. I'D SAY, WERE IN THE RANGE OF 10 TO 12 FEET
19 SQUARE.

20 Q. AND YOU'RE TALKING ABOUT THE BEDROOMS IN THE MAIN HOUSE?

21 A. CORRECT, YES.

22 Q. NOW, THE ROOM THAT IS IN THE GUEST HOUSE, BATHHOUSE, HOW
23 LARGE WAS THAT ROOM, WHERE THE OLD RUG IS?

24 A. SLIGHTLY SMALLER. I'D SAY TEN BY TEN.

25 Q. TEN FEET BY TEN FEET?

1 A. CORRECT.

2 Q. ROUGHLY, IT'S A SQUARE ROOM THEN?

3 A. FAIRLY SQUARE, YES.

4 Q. YOU TOLD US YESTERDAY THAT THE WALLS APPEAR TO BE FRESHLY
5 PAINTED IN THAT ROOM, CORRECT?

6 A. YES, I DID.

7 Q. AND WHEN YOU FIRST WALKED IN THAT ROOM, DID YOU NOTICE
8 ANY ODOR OF FRESH PAINT?

9 A. NO. THERE WAS ABSOLUTELY NO ODOR.

10 Q. AND DID YOU NOTICE ANY PAINT SPLATTERING ON THE OLD RUG
11 OR OVERSPRAY?

12 A. NO, THERE WAS NONE.

13 Q. IT JUST LOOKED IT WAS FRESH PAINT TO YOU?

14 A. IT WAS A GLEAMING WHITE WALL WITH NO SMUDGES, NO MARKS
15 AND IT APPEARED THAT IT WAS FRESHLY PAINTED.

16 Q. THERE WERE NO SMUDGES ON THAT WALL? WASN'T THERE ONE UP
17 IN THE MIDDLE OF ONE OF THE WALLS?

18 A. NO, I DON'T RECALL ANY SMUDGES.

19 Q. YOU TALKED ABOUT -- DID YOU ASK ANYBODY IF THEY HAD
20 PAINTED THAT WALL?

21 A. NO, I DID NOT.

22 Q. YOU INDICATED THERE WAS A CARETAKER ON THE PREMISES. DID
23 YOU ASK HIM ABOUT THAT?

24 A. I HAD BEEN ADVISED --

25 Q. DID YOU ASK HIM ABOUT THAT?

1 A. THE CARETAKER, NO.

2 Q. NOW, YOU PREPARED A REPORT, DID YOU NOT, COMPARING THE
3 KNOWN HAIR SAMPLES OF MR. BERNABE RAMIREZ WITH THE HAIR
4 SAMPLES TAKEN FROM LOPE DE VEGA, DID YOU NOT?

5 A. YES, I DID.

6 Q. AND YOU PREPARED THAT REPORT IN OR ABOUT AUGUST OF 1989?

7 A. YES, I DID.

8 Q. AND WHAT WERE YOUR RESULTS?

9 A. THERE WERE NO HAIRS LIKE MR. BERNABE AT 881 LOPE DE VEGA.

10 Q. SO BASED ON YOUR PREVIOUS TESTIMONY, YOU POSITIVELY
11 ELIMINATED MR. BERNABE'S HAIRS FROM THE HAIRS THAT WERE
12 RECOVERED FROM 881 LOPE DE VEGA?

13 A. NONE OF THE KNOWN HAIRS AT 881 LOPE DE VEGA ORIGINATED
14 FROM MR. BERNABE.

15 Q. THANK YOU.

16 MR. MEZA: EXCUSE ME. MAY I SPEAK TO CO-COUNSEL?

17 (DISCUSSION OFF THE RECORD.)

18 MR. MEZA: NOTHING FURTHER. THANK YOU.

19 THE COURT: IS THERE ANY REDIRECT EXAMINATION?

20 MR. CARLTON: YES, YOUR HONOR.

21
22 REDIRECT EXAMINATION +

23 BY MR. CARLTON:

24 Q. NOW, AGENT MALONE, YOU'VE TESTIFIED THAT THERE ARE
25 SEVERAL BASIC TYPES OF CARPET FIBER, INCLUDING POLYESTER; IS

1 THAT CORRECT?

2 A. CORRECT.

3 Q. AND YOU'VE IDENTIFIED SOME OF THE FIBERS THAT WERE FOUND
4 AT THE LOPE DE VEGA ADDRESS AS CONSISTING OF DACRON POLYESTER?

5 A. YES. THE FIBERS FROM ALL OF THE BEDROOMS, ONE THROUGH
6 FOUR, THE DEN AND THE HALLWAY WERE ALL DACRON POLYESTERS.

7 Q. DO YOU KNOW WHAT PROPORTION OF CARPETS MANUFACTURED IN
8 1985 CONSISTED OF DACRON POLYESTER?

9 MR. STOLAR: OBJECT TO THE RELEVANCE.

10 THE COURT: SUSTAINED.

11 BUY MR. CARLTON:

12 Q. NOW, YOU TESTIFIED THAT YOU WERE ABLE TO FIND UNKNOWN
13 HAIRS AT LOPE DE VEGA THAT MATCHED IN ALL RESPECTS THAT YOU
14 MEASURED THE KNOWN HAIRS OF DEFENDANT MATTA.

15 IN YOUR EXPERIENCE, HOW GOOD WAS THAT MATCH?

16 MR. STOLAR: OBJECTION.

17 THE COURT: WHAT IS THE OBJECTION?

18 MR. STOLAR: IT'S CUMULATIVE AND IT'S SPECULATIVE.

19 THE COURT: IT'S A REPETITION OF THE REDIRECT
20 EXAMINATION, AS WELL.

21 MR. CARLTON: THIS QUESTION HAS NEVER BEEN ASKED,
22 YOUR HONOR. THE RELATIVE VALUE OF THIS COMPARISON AS TO ALL
23 OF THE OTHER HAIR COMPARISONS THAT THIS AGENT HAS MADE OVER
24 HIS CAREER, THAT QUESTION HAS NOT BEEN ASKED.

25 THE COURT: RESTATE YOUR QUESTION.

1 BY MR. CARLTON:

2 Q. IN THE COURSE OF YOUR CAREER, AGENT MALONE, HOW MANY
3 TIMES HAVE YOU COMPARED UNKNOWN HAIRS TO KNOWN HAIRS?

4 A. SEVERAL THOUSAND.

5 Q. AND IN THE COURSE OF MAKING THOSE SEVERAL THOUSAND
6 COMPARISONS, HAVE YOU FOUND MATCHES BETWEEN UNKNOWNNS AND
7 KNOWNNS?

8 A. SEVERAL HUNDRED.

9 Q. AND OF THOSE SEVERAL HUNDRED MATCHES - IN YOUR OPINION,
10 WERE SOME OF THEM STRONGER THAN OTHERS?

11 A. SOME OF THE HAIRS WERE MORE UNIQUE THAN OTHERS, YES.

12 Q. AND WAS THE MATCH THAT YOU MADE -- THE TWO MATCHES, I
13 SHOULD SAY, BETWEEN THE UNKNOWN HAIRS FOUND AT LOPE DE VEGA
14 AND THE KNOWN HAIRS OF DEFENDANT MATTA, COULD YOU CHARACTERIZE
15 THOSE MATCHES AS BEING STRONGER OR WEAKER THAN THE GENERAL --
16 WELL, IN YOUR EXPERIENCE, STRONGER OR WEAKER THAN THE GENERAL
17 COMPARISONS THAT YOU 'VE MADE?

18 MR. STOLAR: OBJECT TO THE RELEVANCE.

19 THE COURT: SUSTAINED.

20 BY MR. CARLTON:

21 Q. WERE THERE ANY CHARACTERISTICS OF DEFENDANT MATTA'S HAIR
22 THAT WERE UNUSUAL AND SIGNIFICANT TO YOU IN MAKING YOUR
23 COMPARISON?

24 A YES, THERE WERE.

25 Q. WHAT WERE THOSE?

1 A. RACIAL MIXTURE OF MONGOLOID/NEGROID IS VERY RARE. I'VE
2 ONLY SEEN IT A FEW TIMES IN 15 YEARS.

3 Q. NOW, IN EXAMINING THE KNOWN HAIRS OF DEFENDANT MATTA, DID
4 YOU EXAMINE ALL OF THOSE KNOWN HAIRS?

5 A. YES, I DID.

6 Q. AND DID YOU DISCERN ANY VARIATION BETWEEN THESE KNOWN
7 HAIRS?

8 A. WITH RESPECT TO VARIATION OF MR. MATTA'S HAIRS, I WOULD
9 CLASSIFY THEM AS HAVING A NARROW RANGE OF VARIATION.

10 Q. IN YOUR EXPERIENCE HAVE YOU EVER SEEN UNDRAWN POLYESTER
11 ROPE BEFORE?

12 A. NO.

13 Q. AND YOU'VE BEEN EXAMINING ROPE IN THE F.B.I. LAB FOR HOW
14 LONG?

15 A. 15 YEARS.

16 Q. HAVE YOU ON PRIOR OCCASIONS AT THE F.B.I. LAB EXAMINED
17 HAIRS OF HISPANIC INDIVIDUALS?

18 A. YES, NUMEROUS TIMES.

19 Q. AND DOES ANYONE, TO YOUR KNOWLEDGE, AT THE F.B.I. LAB
20 HAVE ANY GREATER EXPERIENCE IN EXAMINING THE HAIRS OF HISPANIC
21 INDIVIDUALS THAN YOU DO?

22 MR. STOLAR: OBJECTION. HEARSAY.

23 THE COURT: OVERRULED.

24 THE WITNESS: NO. I HAVE MORE EXPERIENCE IN
25 EXAMINING HISPANIC HAIRS THAN ANY INDIVIDUAL AT THE F.B.I.

1 LAB.

2 BY MR. CARLTON:

3 Q. NOW, I BELIEVE YOU WERE ASKED BY MR. BURNS THAT IF YOU
4 HAD ENOUGH HAIRS, ENOUGH UNKNOWN HAIRS, WOULD IT BE POSSIBLE
5 TO MATCH THE KNOWN HAIRS OF ANYBODY? AND YOUR RESPONSE, I
6 BELIEVE, WAS YES.

7 WHAT DID YOU MEAN BY THAT?

8 A. WELL, HE'S SAYING IF I HAD ENOUGH KNOWN SAMPLES,
9 EVENTUALLY I WOULD MATCH THE UNKNOWN HAIR TO SOMEBODY BESIDES
10 MR. MATTA, AND THAT'S TRUE.

11 BUT IF YOU BASE IT ON MY EXPERIENCE, IT WOULD TAKE
12 SEVERAL THOUSAND MORE KNOWN SAMPLES.

13 Q. THAN YOU HAD AT LOPE DE VEGA?

14 A. CORRECT.

15 Q. NOW, YOU'VE TESTIFIED THAT THE F.B.I. BELIEVES IT'S NOT
16 USEFUL TO USE THE HIGHER MAGNIFICATION POWERS OF THE SCANNING
17 ELECTRON MICROSCOPE IN EXAMINING HAIRS TO COMPARE THEM.

18 WHY IS THAT?

19 A. BASICALLY. YOU CAN SEE JUST ABOUT EVERYTHING AT 400 POWER
20 WHICH YOU CAN WITH THE S.E.M., WITH THE EXCEPTION OF SOMETHING
21 AT THE EDGES OF THE SCALE, AND THAT HAS NO VALUE AT ALL FOR
22 IDENTIFICATION.

23 THE EXTERNAL CHARACTERISTICS SCALE INDEX, SCALE
24 MARGINS, THINGS LIKE THAT, HAVE NO VALUE FOR IDENTIFICATION SO
25 THERE'S NO PURPOSE IN DOING IT.

1 Q. NOW, YOU HAVE ALSO TESTIFIED ON CROSS-EXAMINATION THAT
2 WHEN YOU FIND TWO HAIRS THAT ARE CONSISTENT IN ALL THE
3 CHARACTERISTICS THAT YOU MEASURE, THIS CREATES A STRONG
4 ASSOCIATION BETWEEN THE UNKNOWN HAIR AND THE INDIVIDUAL FOR
5 WHOM THE KNOWN HAIR WAS OBTAINED?

6 A. CORRECT.

7 Q. WHAT DID YOU MEAN BY THAT?

8 A. IF I MATCH A HAIR TO A PARTICULAR INDIVIDUAL, I CONSIDER
9 THE CHANCES OF THAT HAIR COMING FROM SOMEBODY ELSE OTHER THAN
10 THAT INDIVIDUAL TO BE HIGHLY UNLIKELY.

11 Q. NOW, IN YOUR EXPERIENCE AS A HAIR AND FIBERS EXPERT WITH
12 THE F.B.I. LABORATORY, AGENT MALONE, HAVE YOU EVER FOUND TWO
13 HAIRS ORIGINATING FROM TWO DIFFERENT PEOPLE THAT YOU WERE
14 UNABLE TO DIFFERENTIATE? AND THIS IS, TO YOUR KNOWLEDGE, JUST
15 THE TWO KNOWN HAIRS?

16 A. ONLY TWO TIMES.

17 Q. OUT OF HOW MANY EXAMINATIONS?

18 A. OUT OF OVER 10,000 KNOWN SAMPLES THAT I'VE EXAMINED
19 PERSONALLY.

20 Q. THAT'S OVER 15 YEARS?

21 A. CORRECT.

22 Q. DID YOU PERFORM ANY COMPARISON OF ALL OF THE UNKNOWN
23 HAIRS FOUND AT LOPE DE VEGA BETWEEN AND AMONG THEMSELVES?

24 A. NO. THIS IS ABSOLUTELY UNSCIENTIFIC, AND IT'S OUR POLICY
25 AT THE LAB NOT TO DO THIS.

1 Q. YOU HAVE DISCUSSED -- IN CROSS-EXAMINATION BY MR.
2 MEDVENE, YOU WERE ASKED ABOUT A SLIDING GATE AT THE LOPE DE
3 VEGA PROPERTY. DO YOU RECALL BY WHAT MECHANISM, IF ANY, THAT
4 GATE OPENED?

5 A. NO, BECAUSE THE GATE WAS ALWAYS OPENED WHEN WE EITHER
6 ENTERED OR LEFT THE RESIDENCE.

7 Q. DO YOU HAVE ANY IDEA HOW LARGE PRIMA VERA PARK IS?

8 A. SEVERAL THOUSAND ACRES.

9 Q. HOW MUCH OF THAT PARK DID YOU VISIT, IF ANY?

10 A. WE VISITED A LOT OF IT, BECAUSE WE WERE TESTING,
11 CONSTANTLY TESTING SOIL SAMPLES ALONG THE WAY. I JUST TESTED
12 THE NORTH SIDE, I NEVER WENT TO THE SOUTH SIDE.

13 Q. DID THE -- YOU TALKED ABOUT THE GUEST HOUSE AT LOPE DE
14 VEGA HAVING APPEARED TO HAVE BEEN FRESHLY PAINTED.

15 WAS THERE ANY EVIDENCE OF THAT IN REST OF THE HOUSE?

16 A. THE WALLS OF THE BEDROOMS APPEARED TO BE FRESHLY PAINTED
17 ALSO.

18 Q. NOW, THE BATHROOM OF THE GUEST HOUSE, WHAT WAS THE
19 CONDITION OF THE BATHROOM OF THE GUEST HOUSE?

20 MR. MEZA: OBJECTION. ASKED AND ANSWERED AND IT'S
21 BEYOND THE SCOPE.

22 THE COURT: SUSTAINED.

23 MR. CARLTON: MAY I HAVE A MOMENT, YOUR HONOR.

24 (BRIEF PAUSE.)

25 MR. CARLTON: NOTHING FURTHER.

1 THE COURT: IS THERE ANY RECROSS?

2 MR. BURNS: YES, YOUR HONOR.

3 MR. STOLAR: DO YOU WANT TO WAIT UNTIL AFTER LUNCH?

4 THE COURT: I WANT TO FINISH WITH THIS WITNESS.

5

6

RECROSS-EXAMINATION +

7

BY MR. BURNS:

8

Q. MR. MALONE, YOU JUST STATED THAT THE RACIAL MIXTURE OF
9 MONGOLOID AND NEGROID YOU'VE ONLY MATCHED A FEW TIMES; IS THAT
10 CORRECT?

11

A. NO, I SAID I'VE ONLY SEEN IT A FEW TIMES.

12

Q. YOU'VE ONLY SEEN IT A FEW TIMES.

13

SO IN YOUR 15 YEARS OF EXPERIENCE AT THE F.B.I., YOU
14 HAVE NOT SEEN HUNDREDS OF THOUSANDS OF NEGROID/MONGOLOID MIXED
15 RACIAL CHARACTERISTICS IN HAIR; IS THAT CORRECT?

16

A. THAT'S CORRECT.

17

Q. DO YOU REMEMBER HOW MANY TIMES -- WHEN WAS THE LAST TIME
18 YOU -- PREVIOUS TO SEEING THE NEGROID/MONGOLOID MIXTURE IN
19 THIS UNKNOWN SAMPLE - WHEN WAS THE LAST TIME YOU SAW ONE?

20

DO YOU RECALL WHEN THAT WAS?

21

A. IN THIS CASE.

22

Q. PRIOR TO THIS CASE?

23

A. PRIOR TO THIS CASE, ONCE OR TWICE, AND I CAN'T GIVE YOU A
24 DATE. IT'S BEEN YEARS.

25

Q. AND YOU DO NOT SEPARATE THE HAIRS ACCORDING TO RACIAL

1 CHARACTERISTICS?

2 A. OH, YES, I DO.

3 Q. YOU TOOK ALL THE UNKNOWNNS FROM 881 AND SEPARATED THEM
4 INTO RACIAL CHARACTERISTICS?

5 A. THE KNOWNNS, I DID.

6 Q. NOT THE UNKNOWNNS?

7 A. THE KNOWNNS, I DID. THE UNKNOWNNS, I DID, ALSO. THEY WERE
8 ALL MIXED RACE EXCEPT FOR CAUCASIAN-ORIGIN HAIRS THAT I
9 REFERRED TO EARLIER.

10 Q. AND IN THE MIXED RACE, DO YOU KNOW IF HISPANICS FROM THE
11 CARIBBEAN HAVE A DIFFERENT OVERALL RACIAL MIXTURE IN THEIR
12 HAIR THAN HISPANICS IN CENTRAL AMERICA?

13 A. THE HAIRS THAT I HAVE EXAMINED FROM THE CARIBBEAN, MOST
14 OF THEM HAVE BEEN FROM PUERTO RICO, EXHIBIT ALL KINDS OF
15 RACIAL MIXTURES, NEGROID, MONGOLOID, CAUCASIAN AND EVERYTHING
16 IN BETWEEN

17 THE PREDOMINANT HISPANIC HAIRS OF MEXICANS IS
18 MONGOLOID/CAUCASIAN.

19 Q. YOU'RE A VERY CAREFUL SPEAKER, MR. MALONE; IS THAT FAIR
20 TO SAY?

21 A. I ASSUME, YES.

22 Q. SO WITH ALL THE TESTS YOU'VE DONE -- WELL, I'LL WITHDRAW
23 THAT QUESTION. EXCUSE ME.

24 THIS WAS ALL A FORENSIC NIGHTMARE, WASN'T IT, FOR
25 YOU TO DO?

1 MR. CARLTON: OBJECTION. ARGUMENTATIVE.

2 THE COURT: THE OBJECTION IS SUSTAINED. THE
3 QUESTION IS NOT CLEAR, EITHER, IT'S AMBIGUOUS.

4 BY MR. BURNS:

5 Q. YOU WROTE AN ARTICLE ABOUT YOUR INVESTIGATION OF THE
6 CAMARENA CASE FOR THE F.B.I. PUBLICATION THE LAW ENFORCEMENT
7 BULLETIN?

8 A. YES, I DID.

9 Q. AND THE TITLE OF THAT ARTICLE WAS -- I'LL PARAPHRASE --
10 "THE CAMARENA CASE WAS A FORENSIC NIGHTMARE."

11 A. CORRECT.

12 Q. AND BEING A CAREFUL SPEAKER, YOU CAN SAY THAT THE UNKNOWN
13 HAIR SAMPLE IS ASSOCIATED WITH THE KNOWN HAIR SAMPLES OF MR.
14 MATTA, CORRECT?

15 A. IT'S A STRONG ASSOCIATION, CORRECT.

16 Q. BUT YOU CANNOT SAY WITH ABSOLUTE CERTAINTY, CAN YOU?

17 A. I CANNOT SAY IT CAME FROM HIM AND NO OTHER PERSON IN THE
18 WORLD, THAT'S CORRECT.

19 MR. BURNS: THANK YOU VERY MUCH.

20 THE COURT: DO YOU HAVE ANY QUESTIONS?

21 MR. MEDVENE: IF THE COURT PLEASE, IT WOULD BE
22 OUTSIDE THE SCOPE. THERE ARE JUST TWO OR THREE -- THEY GO TO
23 THE DOCUMENT --

24 THE COURT: GO AHEAD.

25 MR. MEDVENE: -- IF IT'S ALL RIGHT.

REXCROSS-EXAMINATION +

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BY MR. MEDVENE:

Q. JUST A QUESTION OR TWO, MR. MALONE. ON WHAT HAS BEEN MARKED DEFENDANTS J, IT SAYS IN PART, "ITEMS FROM CELL NUMBER ONE" THEN SOME OTHER WORDS AND THEN PARENTHESES "ZUNO ARCE."

WHO TOLD YOU OR WHO GAVE YOU THAT INFORMATION SO COULD YOU WRITE THAT DOWN?

A. MR. GURULE.

Q. AND IT SAYS "Q-250, 251, HAIRS FROM BENCHES." WHO GAVE YOU THAT INFORMATION?

A. MR. GURULE.

Q. WERE YOU SENT BACK WITH THE HAIR SAMPLE OF MR. ZUNO -- OR WHOEVER WAS IN CELL NUMBER ONE -- WERE YOU SENT THAT BACK WITH ANY NOTE OR MEMO OF ANY KIND? LETTER, DOCUMENT?

A. I'M SURE IT HAD AN ACCOMPANYING COMMUNICATION, BUT I CAN'T RECALL OFF THE TOP OF MY HEAD WHAT IT WAS.

Q. DO YOU HAVE YOUR RECORDS THERE WITH YOU, SIR?

A. YES, I DO.

Q. OKAY. COULD YOU PLEASE CHECK FOR US AND LET US KNOW WHAT THE ACCOMPANYING COMMUNICATION ON THIS HAIR WAS?

A. IT APPEARS TO BE A D.E.A. FORM. I'M NOT FAMILIAR WITH THE NUMBER.

MR. MEDVENE: MAY I APPROACH THE WITNESS, YOUR HONOR, JUST TO LOOK AT IT?

THE COURT: (NODDING AFFIRMATIVELY.)

1 MR. MEDVENE: THANK YOU.

2 BY MR. MEDVENE:

3 Q. IF YOU DON'T MIND, MR. MALONE, I'LL LOOK AT IT WITH YOU,
4 SIR.

5 MR. MEDVENE: MAY I QUESTION FROM HERE, YOUR HONOR?

6 THE COURT: YES, IF YOU HAVE A QUESTION.

7 MR. MEDVENE: YES, SIR.

8 BY MR. MEDVENE:

9 Q. WERE YOU ADVISED, SIR, WHEN YOU -- BEFORE YOU EXAMINED
10 THIS HAIR, THAT MR. SCHMIDT SANITIZED CELL NUMBER ONE AND
11 OBSERVED RUBEN ZUNO BEING PLACED INTO THE SANITIZED CELL BY
12 MARSHALS' PERSONNEL?

13 YOU WERE ADVISED THAT, WEREN'T YOU, SIR?

14 MR. CARLTON: OBJECTION, YOUR HONOR. HEARSAY.
15 IRRELEVANT.

16 THE COURT: THE OBJECTION IS SUSTAINED.

17 BY MR. MEDVENE:

18 Q. DID YOU HAVE INFORMATION, SIR, THAT THE CELL HAD BEEN
19 SANITIZED BEFORE THE HAIRS FELL OUT OF SOMEONE'S HEAD IN THAT
20 CELL?

21 MR. CARLTON: LACK OF FOUNDATION, YOUR HONOR.

22 IRRELEVANT. HEARSAY.

23 THE COURT: THE OBJECTION IS SUSTAINED AS TO
24 HEARSAY.

25 BY MR. MEDVENE:

1 Q. DID YOU KNOW, SIR, OR WERE YOU ADVISED THAT MR. ZUNO, AS
2 REFLECTED IN THE REPORT, WAS THE SOLE OCCUPANT OF THE CELL
3 AFTER IT HAD BEEN SANITIZED?

4 MR. CARLTON: OBJECTION. SAME OBJECTION, YOUR
5 HONOR.

6 THE COURT: WELL --

7 MR. CARLTON: THIS HAS BEEN ASKED AND ANSWERED, AS
8 WELL.

9 THE COURT: WHAT IS THE PROPER WAY TO DO WHAT WAS
10 DONE IN CONNECTION WITH MR. ZUNO'S CASE? IS THE PROPER
11 PROCEDURE TO SANITIZE THE CELL BEFORE GETTING THE SAMPLE?

12 THE WITNESS: YES.

13 BY MR. MEDVENE:

14 Q. AND YOU WERE ADVISED THE CELL HAD BEEN SANITIZED, WERE
15 YOU NOT?

16 MR. CARLTON: OBJECTION.

17 THE COURT: COUNSEL --

18 MR. MEDVENE: ALL RIGHT, SIR.

19 BY MR. MEDVENE:

20 Q. WERE YOU ADVISED THAT AFTER THE CELL HAD BEEN SANITIZED
21 THAT MR. SCHMIDT REMOVED HAIRS FROM THE LEFT AND RIGHT
22 BENCHES?

23 MR. CARLTON: SAME OBJECTION, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 MR. MEDVENE: I'D LIKE TO MARK, IF THE COURT PLEASE,

1 IF I MIGHT -- I APOLOGIZE, MR. MALONE -- I'D LIKE TO MARK THIS
2 D.E.A. REPORT, YOUR HONOR, AS NEXT DEFENDANTS' IN ORDER.

3 THE COURT: IT MAY BE MARKED FOR IDENTIFICATION.

4 THE CLERK: CLERK, DEFENDANTS' L.

5 (EXHIBIT # DEFENDANTS' L MARKED FOR IDENTIFICATION.)

6 MR. MEDVENE: DEFENDANTS L. THANK YOU.

7 NOTHING FURTHER. THANK YOU, YOUR HONOR,

8 THE WITNESS: YOUR HONOR, THAT'S THE ORIGINAL
9 GOVERNMENT FILE.

10 MR. CARLTON: YOUR HONOR, WE CAN MAKE A COPY OF THAT
11 AT THE LUNCH BREAK?

12 MR. MEDVENE: AND IF THE COURT PLEASES, WE MAY
13 ALSO -- WE CAN TAKE IT UP AT THE BREAK -- RECALL WAYNE
14 SCHMIDT.

15 THE COURT: ALL RIGHT. WE'LL TAKE IT UP AT THE
16 BREAK.

17 IF THERE ARE NO FURTHER QUESTIONS FOR THIS WITNESS,
18 YOU MAY STEP DOWN AND MAY BE EXCUSED.

19 THE WITNESS: THANK YOU, YOUR HONOR.

20 THE COURT: YOU MAY STEP DOWN.

21 WE'LL TAKE OUR NOON RECESS AT THIS TIME. THE JURY
22 MAY BE EXCUSED.

23 (JURY EXCUSED.)

24 THE CLERK: YOU MAY BE SEATED.

25 THE COURT: NOW, LET'S FIRST DEAL WITH THESE TWO

1 OBJECTIONS TO THE F.B.I. REPORT AND THIS COVER LETTER THAT WAS
2 SUPPOSED TO HAVE BEEN MARKED FOR IDENTIFICATION AS THE LAST
3 TWO DEFENDANTS' IN ORDER. WHAT IS THE OBJECTION OF THE
4 GOVERNMENT TO THESE EXHIBITS?

5 MR. CARLTON: THE OBJECTION, YOUR HONOR, IS IT'S
6 HEARSAY. THE WITNESS HAS TESTIFIED AS TO THE VARIOUS
7 EXAMINATIONS THAT HE PERFORMED -- AND THAT THE TESTIMONY
8 SPEAKS FOR ITSELF. THE REPORT IS JUST HEARSAY, THERE'S NO
9 APPLICABLE EXCEPTION TO IT.

10 THE COURT: WELL, IT IS HEARSAY.

11 MR. MEDVENE: IT'S A REPORT KEPT IN THE REGULAR
12 COURSE OF BUSINESS BY THE BUREAU. IT WAS PREPARED BY THE MAN
13 IN CHARGE OF THEIR FORENSIC UNIT AND KEPT IN THE REGULAR
14 COURSE OF BUSINESS AND RELIABLE.

15 MR. CARLTON: INVESTIGATIVE REPORTS ARE NOT KEPT IN
16 THE REGULAR COURSE OF BUSINESS FOR PURPOSES OF EXCEPTIONS TO
17 THE HEARSAY RULE, YOUR HONOR. IN THAT CASE, ALL INVESTIGATIVE
18 REPORTS WOULD BE ADMISSIBLE RATHER THAN THE TESTIMONY.

19 THE COURT: THE OBJECTION IS SUSTAINED AS TO THESE
20 EXHIBITS. THE TESTIMONY REGARDING THEM HAS BEEN ELICITED, AND
21 THAT IS SUFFICIENT.

22 NOW, I WANT TO RULE ON THIS MOTION THAT MR. ZUNO
23 FILED HERE REGARDING -- I REFERRED TO IT, I DON'T WANT ANY
24 ARGUMENT ON IT. I'VE CONSIDERED IT AND THIS IS A MOTION
25 SEEKING THE DISCOVERY OF REDACTED PORTIONS OF THE D.E.A. 6

1 REPORT PREPARED BY AGENT COONCE REGARDING THE SALE OF LOPE DE
2 VEGA, THE REDACTED PORTIONS OF JENKS MATERIAL OF JORGE
3 GONZALES, DOCUMENTS IN THE GOVERNMENT'S POSSESSION REGARDING
4 LOPE DE VEGA AND DOCUMENTS RELATING TO PRESIDENT ECHEVERRIA.

5 MR. ZUNO EARLIER, THAT IS, COUNSEL FOR MR. ZUNO
6 EARLIER REQUESTED THIS AND THIS REQUEST WAS DENIED BY THE
7 COURT.

8 HOWEVER, THE DEFENDANT ASSERTS THAT THE COURT DENIED
9 THIS REQUEST BECAUSE OWNERSHIP OF 881 WAS NOT IN CONTENTION.
10 I DON'T UNDERSTAND IT TO BE IN CONTENTION AT THIS TIME. THE
11 GOVERNMENT SUGGESTS THAT THIS EVIDENCE WILL BE USED TO
12 DEMONSTRATE THAT SERGIO AND ZUNO WERE ASSOCIATED, NOT
13 NECESSARILY THE RESIDENCE WAS NOT LEGITIMATELY SOLD BY ZUNO.

14 I WILL THEREFORE DENY THIS REQUEST UNLESS THE
15 GOVERNMENT ASSURES THE COURT THAT IT DOES NOT TAKE A POSITION
16 THAT THIS WAS NOT A LEGITIMATE SALE BUT A SHAM SALE. IF IT
17 WAS, THEN I WOULD RECONSIDER IT. IS THAT THE POSITION OF THE
18 GOVERNMENT?

19 MR. MEDRANO: MAY I HAVE JUST ONE MOMENT, YOUR
20 HONOR, TO CONSULT WITH MY CO-COUNSEL?

21 (DISCUSSION HELD OFF THE RECORD BETWEEN GOVERNMENT
22 COUNSEL.)

23 MR. MEDRANO: YOUR HONOR, THE ONLY THING THAT THE
24 GOVERNMENT -- I'M SORRY. ONE MOMENT.

25 (BRIEF PAUSE.)

1 MR. MEDRANO: I'M SORRY, YOUR HONOR. JUST ONE MORE
2 MOMENT.

3 (BRIEF PAUSE.)

4 MR. MEDRANO: YOUR HONOR, AT THIS TIME, THE
5 GOVERNMENT DOES NOT POSSESS AFFIRMATIVE EVIDENCE THAT WOULD
6 SUGGEST THAT THE SALE BY ZUNO TO WHOEVER IT WAS WAS A SHAM
7 SALE. WHAT IS A CONCERN TO THE GOVERNMENT, THOUGH, AND
8 ARGUABLY MAY BE SUBJECT -- MAY BE SUBJECT FOR CLOSING ARGUMENT
9 TO THE JURY, IS THE TIMING OF THE SALE.

10 AND EVEN IF ZUNO SELLS THE PROPERTY, THAT DOES NOT
11 PRECLUDE HIM FROM STILL BEING AT LOPE DE VEGA. SO IF YOUR
12 QUESTION IS, DO WE ASSERT THAT IT WAS A SHAM SALE, WE HAVE NO
13 EVIDENCE TO THAT EFFECT, OTHERWISE IT WOULD HAVE BEEN IN OUR
14 CASE IN CHIEF.

15 BUT THAT DOES NOT PRECLUDE US, I BELIEVE, FROM, JUST
16 FOR EXAMPLE, CROSS-EXAMINING DEFENSE WITNESSES ON WHEN THAT
17 PROPERTY WAS SOLD AND THINGS OF THAT NATURE, YOUR HONOR. SO,
18 NO, IT ISN'T A SHAM SALE, WE DON'T HAVE EVIDENCE TO THAT
19 EFFECT, BUT WE ARE DEFINITELY GOING TO QUERY DEFENSE WITNESSES
20 WHO MAY HAVE KNOWLEDGE OF THE SALE AS TO THE TIMING.

21 MR. NICOLAYSEN: YOUR HONOR, IF WE MIGHT BE HEARD
22 BRIEFLY.

23 THE COURT: JUST A MOMENT. I'LL LET YOU BE HEARD IF
24 THERE'S A NEED. WELL, I INTEND TO DENY THIS REQUEST BECAUSE
25 THERE'S NOT BEEN ANY DEMONSTRATED NEED FOR IT. I FAIL TO SEE

1 WHY THE NAME OF THE PERSON MAKING THE STATEMENT TO THE D.E.A.
2 AGENT IS BRADY MATERIAL, FOR ONE THING.

3 THIS IS A ROVIERO REQUEST IF IT IS AIMED AT
4 DETERMINING THE IDENTITY OF THE PERSON AND THE DEFENDANT HAS
5 FAILED TO MAKE A SHOWING THAT THE INFORMANT'S TESTIMONY WOULD
6 BE RELEVANT AND HELPFUL TO THE DEFENSE. I WOULD THEREFORE
7 DENY THIS REQUEST AS A MERE FISHING EXPEDITION BASICALLY.

8 MR. DI NICOLA: YOUR HONOR, IF I MIGHT BE HEARD.

9 THE COURT: YES.

10 MR DI NICOLA: BESIDES BEING, WE BELIEVE, RELEVANT
11 ON THE ISSUE OF THE TIMING, THE GOVERNMENT HAS JUST MENTIONED
12 IT'S ALSO RELEVANT FOR ANOTHER REASON AND BRADY MATERIAL, YOUR
13 HONOR, BECAUSE IN THE REPORT, STATEMENTS ARE ATTRIBUTED TO
14 THIS PERSON THAT SUGGEST -- ACTUALLY, EXPRESSLY STATE THAT
15 CARO QUINTERO WAS SHOWN LOPE DE VEGA FOR THE FIRST TIME IN
16 JANUARY OF 1985.

17 THE EVIDENCE THROUGH LORENZO HARRISON HAS BEEN THAT
18 MR. QUINTERO WAS IN THAT HOUSE PREVIOUSLY IN 1984. THE
19 STATEMENTS OF THIS INFORMANT IN THIS STATEMENT DIRECTLY
20 CONTRADICT LORENZO HARRISON'S STATEMENTS.

21 THE COURT: YOU ALREADY KNOW OF THE STATEMENT AND
22 HOW DO YOU SUPPOSE TO GET IT IN?

23 MR. DI NICOLA: WELL, YOUR HONOR, WE DON'T KNOW WHO
24 THE WITNESS IS. WE SHOULD HAVE THE OPPORTUNITY TO KNOW WHO
25 THAT IS SO THAT WE CAN, IN THE COURSE OF OUR INVESTIGATION,

1 SEEK THAT WITNESS OUT, INVESTIGATE HIM --

2 THE COURT: THIS IS NOT AN IDEA THAT YOU MENTIONED
3 IN YOUR MOTION.

4 MR. DI NICOLA: I BELIEVE IT IS, YOUR HONOR. I
5 BELIEVE THAT IT WAS SET FORTH IN THE MOTION AND ONE OF THE
6 BASES FOR THE DISCLOSURE WAS THAT THIS WITNESS, THIS
7 UNDISCLOSED WITNESS, SAYS HE SHOWED CARO QUINTERO THE HOUSE
8 AND HE DIDN'T LIKE IT IN JANUARY OF 1985.

9 THE GOVERNMENT HAS PRESENTED THE EVIDENCE THROUGH
10 LORENZO HARRISON THAT CARO QUINTERO --

11 THE COURT: YOU'RE REPEATING YOURSELF. THE MOTION
12 IS DENIED.

13 WITH RESPECT TO THE REDACTED PORTIONS OF JORGE
14 GONZALES'S JENKS MATERIAL, AGAIN C.I. -- CONFIDENTIAL
15 INFORMANT -- IDENTITIES ARE WHITED OUT OF A D.E.A. 6 FORM AND
16 THESE WHITED OUT MATERIALS ARE NOT BRADY, GIGLIO OR RULE 16
17 MATERIALS, AND, THEREFORE, THEIR PRODUCTION IS DENIED.

18 THE DOCUMENT PERTAINING TO THE OWNERSHIP OR SALE OF
19 881, THE GOVERNMENT'S POSITION THAT THE ONLY DOCUMENTS WHICH
20 FIT THIS REQUEST WHICH HAVE NOT BEEN DISCLOSED ARE THE GRAND
21 JURY TRANSCRIPT OF SANCHEZ BARBARA -- THESE TRANSCRIPTS ARE
22 NOT DISCOVERABLE BECAUSE THEY ARE PROTECTED BY GRAND JURY
23 SECRECY, AND THESE TRANSCRIPTS ARE NOT JENKS BECAUSE THE
24 GOVERNMENT WILL NOT CALL THIS WITNESS.

25 DOCUMENTS REGARDING ZUNO'S RELATIONSHIP WITH

1 ECHEVERRIA: THESE DOCUMENTS ARE NEITHER BRADY NOR GIGLIO
2 MATERIAL THAT -- AND THIS AGAIN, SOUNDS LIKE A FISHING
3 EXPEDITION RATHER THAN A -- AND I DENY THIS MOTION IN ITS
4 ENTIRETY, SUBJECT TO RECONSIDERATION IF THERE IS A CHANGE IN
5 THE POSTURE OF THE EVIDENCE.

6 MR. DI NICOLA: YOUR HONOR, IF I MAY BE HEARD
7 BRIEFLY.

8 THE COURT: NO FURTHER HEARING. ADJOURNED.

9 MR. STOLAR: I JUST HAVE TWO MINOR MATTERS TO RAISE
10 WITH YOU. THE FIRST IS THE QUESTION OF WHETHER YOU'VE RULED
11 ON OUR MOTION TO QUASH THE GOVERNMENT'S SUBPOENA FOR THE
12 DEFENDANTS' EXPERT.

13 THE COURT: NO. I WILL LET YOU KNOW.

14 MR. STOLAR: ALL RIGHT. AND SECONDLY, I WOULD LIKE
15 FOR THE RECORD, BASED ON THE TESTIMONY OF MR. MALONE, TO RENEW
16 OUR MOTION TO SUPPRESS THE HAIR EVIDENCE. AND, BRIEFLY, WHAT
17 HE SAYS IS THAT A SAMPLE TAKEN FROM SOMETHING LIKE A CELL IS
18 NOT A LEGITIMATE HAIR SAMPLE FOR COMPARISON PURPOSES. IF YOU
19 RECALL THE MANNER IN WHICH THE D.E.A. --

20 THE COURT: WHAT IS THE GROUNDS FOR THE MOTION TO
21 SUPPRESS?

22 MR. STOLAR: BECAUSE THE WAY THE D.E.A. GOT THE
23 SEARCH WARRANT TO GET MY CLIENT'S HAIR, WHICH THEY USED FOR
24 COMPARISON AND PUT IN EVIDENCE IN THIS CASE WAS BY GOING TO A
25 CELL THAT MR. MATTA HAD OCCUPIED, ALLEGEDLY, AND USING THAT AS

1 A WAY TO SAY THAT THE COMPARISON, THEREFORE, GIVES US A SEARCH
2 WARRANT. THAT WAS THE PROBABLE CAUSE FOR THE WARRANT.

3 NOW THE WITNESS SAYS GETTING HAIR FROM A CELL IS NO
4 A LEGITIMATE WAY OF GETTING A COMPARISON. SO I RENEW THE
5 MOTION TO SUPPRESS ON THAT BASIS.

6 THE COURT: THE MOTION IS DENIED.

7 NOW, DID YOU HAVE SOMETHING YOU WANTED TO TAKE UP?

8 MR. MEDRANO: JUST ONE MOMENT, YOUR HONOR, IF I MAY

9 MR. CARLTON: YOUR HONOR, AFTER THE LUNCH BREAK THE
10 GOVERNMENT EXPECTS TO BE GETTING TO THE PLAYING OF THE VIDEO
11 TAPES AND THE AUDIO TAPES OF DEFENDANT BERNABE RAMIREZ.

12 NOW, WE HAVE INFORMED THE DEFENSE OF THE VARIOUS
13 PORTIONS OF THOSE TAPES THAT WE PROPOSE TO PLAY IN THE
14 COURTROOM AND YOU RULED YESTERDAY ON THE ADMISSABILITY OF
15 CERTAIN PORTIONS OF THAT.

16 THERE ARE OTHER PORTIONS OF THE CONVERSATIONS, YOUR
17 HONOR, WHICH THE GOVERNMENT WOULD WISH TO ELICIT BRIEFLY FROM
18 THE WITNESS WHO WAS PRESENT THERE WITHOUT PLAYING THEM ON THE
19 COURTROOM WALL. I HAVE INFORMED THE DEFENSE COUNSEL OF THESE
20 VARIOUS PORTIONS -- THERE MIGHT BE TEN OR SO OF THEM -- AND I
21 JUST WANTED TO BRING TO THE COURT'S ATTENTION THAT THE DEFENSE
22 MAY HAVE SOME OBJECTION TO THOSE PORTIONS.

23 AND I THINK THEY SHOULD BE RESOLVED BEFORE WE GET TO
24 THAT WITNESS AND PLAY THESE TAPES. I DON'T KNOW IF THEY'RE
25 GOING TO OBJECT --

1 MATERIALS MIGHT BE IRRELEVANT AND THEY MIGHT BE IMPROPER
2 404(B) MATERIAL. FOR EXAMPLE, ONE OF THE EXCERPTS --

3 THE COURT: THIS IS NOT -- THE REASON THE TAPE WAS
4 GIVEN TO YOU IN ADVANCE, AND THE TRANSCRIPT AND ALL THE REST
5 OF THAT, IS SO THAT YOU WOULD HAVE AN OPPORTUNITY TO RAISE IT.

6 MS. KELLY: YES, YOUR HONOR. WHEN I HAD NOTICE OF
7 WHAT WAS GOING TO BE IN THE TAPE, I DID RAISE IT, BUT I JUST
8 FOUND OUT.

9 THE COURT: THEN IT'S BEEN RULED ON.

10 MS. KELLY: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 MS. KELLY: THIS MORNING I JUST RECEIVED NOTICE OF
13 ADDITIONAL INFORMATION THAT IS GOING TO BE ELICITED, AND SO I
14 WOULD LIKE TO HAVE THE OPPORTUNITY -- FOR EXAMPLE, YOUR
15 HONOR --

16 THE COURT: COUNSEL, IT IS NOT CUSTOMARY TO TELL A
17 DEFENSE COUNSEL THAT THEY'RE GOING TO ASK A WITNESS ABOUT
18 STATEMENTS MADE. YOU'RE NOT ENTITLED TO KNOW.

19 IF YOU HAVE OBJECTIONS TO ANY QUESTION THAT IS ASKED
20 OF THE WITNESS REGARDING STATEMENTS MADE BY YOUR CLIENT, MAKE
21 THE OBJECTION AT THAT TIME AND I WILL RULE ON IT.

22 MS. KELLY: VERY WELL, YOUR HONOR.

23 THE CLERK: PLEASE RISE.

24 THIS COURT IS NOW IN RECESS.

25 (NOON RECESS.)

1 LOS ANGELES + CALIFORNIA WEDNESDAY, JUNE 20, 1990

2 + 1:30 P.M.

3
4 (JURY PRESENT.)

5 THE COURT: CALL YOUR NEXT WITNESS.

6 MR. CARLTON: YOUR HONOR, THE GOVERNMENT CALLS
7 DELBERT SALAZAR.

8 DELBERT SALAZAR + PLAINTIFF'S WITNESS, SWORN

9 THE CLERK: PLEASE BE SEATED. FOR THE RECORD, SIR,
10 PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

11 THE WITNESS: MY NAME IS DELBERT A. SALAZAR,
12 S A L A Z A R .

13 DIRECT EXAMINATION +

14 BY MR. CARLTON:

15 Q. MR. SALAZAR, BY WHOM ARE YOU PRESENTLY EMPLOYED?

16 A. THE DRUG ENFORCEMENT ADMINISTRATION.

17 Q. AND IN WHAT CAPACITY?

18 A. I'M A SPECIAL AGENT.

19 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY THE DRUG ENFORCEMENT
20 ADMINISTRATION?

21 A. 16 YEARS.

22 Q. WHAT IS YOUR PRESENT ASSIGNMENT?

23 A. MY PRESENT ASSIGNMENT IS PHOENIX, ARIZONA. I'M ON
24 SPECIAL DETAIL FOR OPERATION LEYENDA IN LOS ANGELES.

25 Q. WHEN WERE YOU ASSIGNED TO OPERATION LEYENDA?

1 A. APPROXIMATELY 13 MONTHS AGO.

2 Q. NOW, IN THE COURSE OF YOUR WORK ON OPERATION LEYENDA,
3 WERE YOU INVOLVED IN AN INVESTIGATION OF DEFENDANT JUAN JOSE
4 BERNABE RAMIREZ?

5 A. YES, SIR, I WAS.

6 Q. AND IN COURSE OF THAT INVESTIGATION, DID YOU MEET WITH
7 DEFENDANT BERNABE?

8 A. YES, SIR, I DID.

9 Q. WHEN IS THE FIRST TIME THAT YOU MET WITH HIM?

10 A. JULY 20TH, 1989.

11 Q. AND WHERE WAS THAT?

12 A. AT THE LOS ANGELES INTERNATIONAL AIRPORT.

13 Q. WERE YOU ACCOMPANIED BY ANYONE ELSE?

14 A. YES, SIR. SPECIAL AGENT HECTOR BERRELLEZ AND SPECIAL
15 AGENT ABEL REYNOSO.

16 Q. AND ON THE OCCASION OF YOUR FIRST MEETING WITH DEFENDANT
17 BERNABE, WERE YOU ACTING IN AN UNDERCOVER CAPACITY?

18 A. YES, SIR, I WAS.

19 Q. WHAT ROLE WERE YOU ASSUMING?

20 A. I WAS ASSUMING A ROLE OF BEING AN ASSOCIATE OF SPECIAL
21 AGENT -- AN ASSOCIATE AND BODYGUARD OF SPECIAL AGENT HECTOR
22 BERRELLEZ.

23 Q. WAS SPECIAL AGENT BERRELLEZ ALSO ACTING IN AN UNDERCOVER
24 CAPACITY?

25 A. YES, SIR, HE WAS.

1 A. YES, SIR. HE'S SEATED AT THE FAR TABLE, THE FOURTH
2 INDIVIDUAL FROM MY RIGHT, WEARING GLASSES, A LIGHT -- I
3 BELIEVE IT'S A LIGHT BLUE SHIRT.

4 MR. CARLTON: MAY THE RECORD REFLECT --

5 THE COURT: YES, HE HAS INDICATED THE DEFENDANT
6 BERNABE.

7 BY MR. CARLTON:

8 Q. NOW, AGENT SALAZAR, YOU TESTIFIED THAT YOU MET WITH
9 DEFENDANT BERNABE AGAIN ON JULY 21ST. WHERE DID THAT MEETING
10 OCCUR?

11 A. THAT MEETING OCCURRED AT THE HOWARD JOHNSON'S HOTEL
12 LOCATED IN MONROVIA, CALIFORNIA.

13 Q. WHERE AT THE HOTEL DID THIS MEETING OCCUR?

14 A. IN ONE OF THE HOTEL ROOMS.

15 Q. WHO ELSE WAS PRESENT IN THE HOTEL ROOM DURING THIS
16 MEETING?

17 A. SPECIAL AGENT HECTOR BERRELLEZ, THE CONFIDENTIAL
18 INFORMANT AND DEFENDANT BERNABE.

19 Q. NOW, WAS THIS MEETING VIDEOTAPED?

20 A. YES, SIR, IT WAS.

21 Q. HAVE YOU REVIEWED THOSE VIDEO TAPES?

22 A. YES, SIR, I HAVE.

23 Q. AND I WOULD ASK YOU TO PLEASE LOOK AT WHAT IS IN FRONT OF
24 YOU MARKED AS EXHIBIT 157. WOULD YOU LOOK AT THAT?

25 A. (WITNESS COMPLIES.)

1 Q. NOW, ON THIS VIDEOTAPE, WAS THERE ALSO AN AUDIO PORTION
2 OF THE TAPE?

3 A. YES, SIR, THERE WAS.

4 Q. AND YOU'VE HEARD THAT, AS WELL --

5 A. YES, I HAVE.

6 Q. -- IN IT'S ENTIRETY.

7 LOOKING AT EXHIBIT 157, DO YOU RECOGNIZE WHAT THAT
8 IS?

9 A. YES, SIR.

10 Q. WHAT IS IT?

11 A. IT'S A SPANISH TRANSCRIPTION OF WHAT OCCURRED ON JULY
12 21ST, 1989 --

13 Q. IS THAT A SPANISH --

14 A. -- AT THE HOWARD JOHNSON'S HOTEL.

15 Q. IS THAT A SPANISH TRANSCRIPT OF THE VIDEOTAPE THAT YOU
16 HAVE REVIEWED?

17 A. YES, SIR, IT IS.

18 Q. AN ACCURATE TRANSCRIPTION OF THAT TAPE?

19 A. YES, IT IS.

20 Q. LOOKING THEN AT EXHIBIT 158, WILL YOU LOOK AT THAT?

21 A. (WITNESS COMPLIES.) OKAY.

22 Q. DO YOU RECOGNIZE EXHIBIT 158?

23 A. YES, SIR, I DO.

24 Q. NOW, AGENT SALAZAR, ARE YOU FLUENT IN BOTH SPANISH AND
25 ENGLISH?

1 A. YES, SIR, I AM.

2 Q. WRITTEN AND ORAL? BOTH IN WRITING AND ORALLY?

3 A. YES.

4 Q. WHAT IS EXHIBIT 158?

5 A. EXHIBIT 158 IS AN ENGLISH TRANSLATION OF THE SPANISH
6 TRANSCRIPTION AS IT APPEARED ON THE VIDEOTAPE.

7 Q. HAVE YOU COMPARED THE ENGLISH TRANSLATION TO THE SPANISH
8 TRANSCRIPTION?

9 A. YES, SIR, I HAVE.

10 Q. AND IS THAT AN ACCURATE ENGLISH TRANSLATION OF THE
11 SPANISH TRANSCRIPTION?

12 A. YES, SIR, IT IS.

13 Q. I WOULD ASK YOU TO LOOK, PLEASE, AT WHAT HAS BEEN MARKED
14 AS EXHIBIT 159, WHICH SHOULD BE ONE OF THE LARGE CASSETTE
15 BOXES TO YOUR RIGHT THERE.

16 NOW, DO YOU RECOGNIZE THAT?

17 A. YES, SIR, I DO.

18 Q. AND WHAT IS THAT?

19 A. IT IS THE VIDEOTAPE WHICH WAS MADE ON JULY 21ST, 1989.

20 Q. ARE THESE EXCERPTS OF THAT TAPE?

21 A. YES. EXCERPTS, RIGHT.

22 Q. NOW, HAVE YOU REVIEWED THIS ENTIRE TAPE?

23 A. YES, I HAVE.

24 Q. DOES THIS TAPE CONTAIN, IN ADDITION TO THE EXCERPTS OF
25 THE JULY 21ST VIDEOTAPE, ENGLISH SUBTITLES?

1 A. YES, IT DOES.

2 Q. HAVE YOU COMPARED THOSE ENGLISH SUBTITLES TO THE ENGLISH
3 TRANSLATION, WHICH IS EXHIBIT 158?

4 A. YES, I HAVE.

5 Q. AND ARE THE ENGLISH SUBTITLES TO THOSE PORTIONS OF THE
6 VIDEOTAPE, WHICH IS EXHIBIT 159, ACCURATE COPIES OF THE
7 ENGLISH TRANSLATION FOR THOSE PERSPECTIVE PORTIONS OF THE
8 TAPE?

9 A. YES, SIR, THEY ARE.

10 Q. NOW, AFTER THE MEETING WITH DEFENDANT BERNABE ON THE 21ST
11 OF JULY OF LAST YEAR, DID YOU ATTEND ANOTHER MEETING WITH HIM?

12 A. YES, SIR, I DID.

13 Q. WHEN WAS THAT?

14 A. JULY 24TH, 1989.

15 Q. WHERE DID THIS NEXT MEETING OCCUR?

16 A. AGAIN, AT THE SAME HOWARD JOHNSON'S HOTEL IN MONROVIA,
17 CALIFORNIA.

18 Q. WAS IT ALSO IN SAME ROOM?

19 A. I DON'T RECALL IF IT WAS THE SAME ROOM.

20 Q. WHO ATTENDED THIS MEETING?

21 A. SPECIAL AGENTS HECTOR BERRELLEZ, AND SPORADIC ATTENDANCE
22 BY SPECIAL AGENTS MORALES AND REYNOSO, AND THE CONFIDENTIAL
23 INFORMANT AND THE DEFENDANT BERNABE RAMIREZ.

24 Q. NOW, WAS THIS MEETING ALSO VIDEOTAPED?

25 A. YES, SIR. IT WAS.

1 Q. AND, AGAIN, HAVE YOU REVIEWED THE VIDEOTAPE OF THIS
2 MEETING?

3 A. YES, I HAVE.

4 Q. IN THEIR ENTIRETY?

5 A. YES, I HAVE.

6 Q. IF WOULD YOU PLEASE LOOK AT WHAT HAS BEEN MARKED AS
7 EXHIBIT 161.

8 A. OKAY.

9 Q. DO YOU SEE THAT?

10 A. YES, SIR, I DO.

11 Q. DO YOU RECOGNIZE WHAT THAT IS?

12 A. YES, I DO.

13 Q. WHAT IS IT?

14 A. THIS IS A SPANISH TRANSCRIPTION OF THE MEETING THAT
15 OCCURRED ON JULY 24TH, 1989.

16 Q. SPANISH TRANSCRIPTION OF THE VIDEOTAPE?

17 A. VIDEOTAPE, YES.

18 Q. HAVE YOU COMPARED THIS SPANISH TRANSCRIPTION TO THE
19 VIDEOTAPE ITSELF?

20 A. YES, I HAVE.

21 Q. AND IS IT AN ACCURATE TRANSCRIPTION OF THE AUDIO PORTION
22 OF THAT VIDEOTAPE?

23 A. YES, SIR, IT IS.

24 Q. ALL RIGHT. WOULD YOU PLEASE LOOK AT WHAT HAS BEEN MARKED
25 AS EXHIBIT 162.

1 A. OKAY.

2 Q. DO YOU RECOGNIZE WHAT THAT IS?

3 A. YES, SIR, I DO.

4 Q. WHAT IS IT?

5 A. THIS IS AN ENGLISH TRANSLATION OF THE SPANISH
6 TRANSCRIPTION OF THE VIDEOTAPE THAT WAS TAPED ON JULY 24,
7 1989.

8 Q. AND HAVE YOU COMPARED THOSE TWO ITEMS, EXHIBIT 162 WITH
9 EXHIBIT 161?

10 A. YES, SIR, I HAVE.

11 Q. AND IS THIS ENGLISH TRANSLATION AN ACCURATE ENGLISH
12 TRANSLATION OF THE SPANISH TRANSCRIPTION, WHICH IS EXHIBIT
13 161?

14 A. YES, SIR, IT IS.

15 Q. WOULD YOU PLEASE LOOK AT WHAT HAS BEEN MARKED AS EXHIBIT
16 163.

17 AND DO YOU KNOW WHAT THAT IS?

18 A. YES, SIR.

19 Q. WHAT IS IT?

20 A. THIS IS A VIDEOTAPE WHICH CONTAINS EXCERPTS OF THE JULY
21 24, 1989 MEETING.

22 Q. HAVE YOU REVIEWED THIS VIDEOTAPE IN ITS ENTIRETY?

23 A. YES, SIR, I HAVE.

24 Q. DOES THIS VIDEOTAPE CONTAIN IN ADDITION TO EXCERPTS OF
25 THE JULY 24TH VIDEOTAPE, ENGLISH SUBTITLES OF THE AUDIO

1 PORTION?

2 A. YES, SIR, IT DOES.

3 Q. AND HAVE YOU COMPARED THOSE ENGLISH SUBTITLES TO THE
4 RESPECTIVE PORTIONS OF THE ENGLISH TRANSLATION, WHICH IS
5 EXHIBIT 162?

6 A. YES, SIR, I HAVE.

7 Q. AND ARE THE ENGLISH SUBTITLES IN EXHIBIT 163 ACCURATE
8 COPIES OF THE RESPECTIVE PORTIONS OF THE ENGLISH TRANSLATION,
9 EXHIBIT 162?

10 A. YES, SIR, THEY ARE.

11 Q. NOW, AFTER THE MEETING WITH DEFENDANT BERNABE ON THE 24TH
12 OF JULY OF LAST YEAR, DID YOU ATTEND ANOTHER MEETING WITH
13 DEFENDANT BERNABE?

14 A. YES, SIR, I DID.

15 Q. AND WHEN WAS THAT?

16 A. JULY 25TH, 1989.

17 Q. WHERE WAS THIS NEXT MEETING? WHERE DID YOU FIRST MEET
18 WITH HIM ON THAT DATE?

19 A. AT A HOTEL AT ARCADIA, THE EMBASSY SUITES.

20 Q. AND WHAT WAS YOUR PURPOSE IN GOING THERE?

21 A. TO PICK UP DEFENDANT BERNABE AND THE CONFIDENTIAL
22 INFORMANT AND GO TO A RESTAURANT.

23 Q. WERE YOU ACCOMPANIED BY ANYONE?

24 A. YES, SIR, BY SPECIAL AGENT HECTOR BERRELLEZ.

25 Q. DID YOU, IN FACT, PICK UP THE DEFENDANT AND THE INFORMANT

1 AT THAT HOTEL?

2 A. YES, SIR, WE DID.

3 Q. DID YOU DRIVE SOMEWHERE?

4 A. YES, SIR.

5 Q. WHERE?

6 A. WE DROVE TO A RESTAURANT LOCATED IN COVINA, CALIFORNIA.

7 Q. AND DID YOU DRIVE WITH ALL OF THE OTHER INDIVIDUALS YOU
8 JUST IDENTIFIED?

9 A. YES, SIR. ALL IN ONE VEHICLE.

10 Q. WAS THERE A CONVERSATION IN THE VEHICLE DURING THE PERIOD
11 YOU DROVE FROM THE HOTEL TO THE RESTAURANT?

12 A. YES, SIR, THERE WAS.

13 Q. WAS THAT CONVERSATION RECORDED?

14 A. NO. SIR, IT WAS NOT.

15 Q. AND WHEN YOU ARRIVED AT THE RESTAURANT, WHAT DID YOU DO?

16 A. WE WENT IN THE RESTAURANT AND WE HAD SOME BEVERAGES AND
17 SOME HORS D'OEUVRES OR FOOD AND HAD SOME CASUAL CONVERSATION.

18 Q. AT SOME POINT DURING THE MEETING, DID AGENT BERRELLEZ AND
19 THE INFORMANT LEAVE?

20 A. YES, SIR, THEY DID.

21 Q. AND AFTER THEY LEFT, DID YOU REMAIN?

22 A. YES, I DID.

23 Q. DID DEFENDANT BERNABE REMAIN?

24 A. YES, SIR, HE DID.

25 Q. DID YOU HAVE A CONVERSATION WITH HIM?

1 A. YES, I DID.

2 Q. DID HE ASK YOU A QUESTION?

3 A. YES, SIR, HE DID.

4 Q. WHAT DID HE ASK YOU?

5 A. HE ASKED ME WHAT PART OF MEXICO I WAS FROM.

6 Q. NOW, UP TO THIS POINT IN YOUR RELATIONS WITH DEFENDANT
7 BERNABE, HAD HE APPEARED TO YOU TO BE SUSPICIOUS OF YOU?

8 A. YES, SIR. HE WAS NOT AT EASE.

9 Q. HOW DID YOU RESPOND TO HIS QUESTION?

10 A. I TOLD HIM THAT I WAS NOT FROM MEXICO THAT I WAS
11 NATIVE-BORN MEXICAN/AMERICAN.

12 Q. AND AT THAT POINT DID YOU VOLUNTEER SOME INFORMATION IN
13 ORDER TO PUT HIM AT EASE?

14 A. YES, SIR, I DID.

15 Q. WHAT DID YOU TELL HIM?

16 A. I TOLD HIM THAT I WAS THE BROTHER-IN-LAW OF MIGUEL
17 GODINEZ, AN INDIVIDUAL THAT I BELIEVED DEFENDANT BERNABE KNEW.

18 MR. MEZA: OBJECTION, YOUR HONOR. MOVE TO STRIKE AS
19 NONRESPONSIVE AS TO WHAT THIS OFFICER BELIEVED. THE QUESTION
20 WAS WHAT DID YOU TELL HIM.

21 THE COURT: THE OBJECTION IS OVERRULED.

22 MS. KELLY: YOUR HONOR, ALSO LACK OF FOUNDATION AS
23 TO WHAT MR. BERNABE RAMIREZ WOULD KNOW.

24 THE COURT: COUNSEL, YOU'RE NOT ENTITLED TO MAKE TWO
25 OBJECTIONS, ONE EACH. ONE COUNSEL SHOULD HANDLE BOTH.

1 MR. MEZA: THANK YOU.

2 THE COURT: THE OBJECTION IS OVERRULED.

3 BY MR. CARLTON:

4 Q. HOW DID DEFENDANT BERNABE RESPOND TO YOUR REMARK?

5 A. HE STATED THAT HE KNEW MIKE VERY WELL.

6 Q. DID YOU SAY ANYTHING ABOUT HIM?

7 A. HE STATED THAT HE KNEW MIKE FROM IN MEXICO.

8 Q. DID YOU SAY ANYTHING ELSE ABOUT YOUR RELATIONSHIP?

9 A. I TOLD HIM THAT MIGUEL GODINEZ WAS MARRIED TO MY SISTER.

10 Q. DID HE RESPOND TO THAT?

11 A. HE BECAME A LITTLE BIT MORE AT EASE AT THAT POINT IN THE
12 CONVERSATION.

13 Q. NOW, DID YOU CONTINUE TO HAVE A CONVERSATION WITH HIM?

14 A. YES, SIR, I DID.

15 Q. AND AT SOME POINT DURING YOUR CONTINUING CONVERSATION --
16 I SHOULD ASK YOU, WAS THIS CONVERSATION IN THE RESTAURANT
17 RECORDED?

18 A. NO, SIR, IT WAS NOT.

19 Q. DO YOU RECALL ALSO THE ACTUAL NAME THAT AGENT BERRELLEZ
20 WAS UTILIZING IN HIS UNDERCOVER ROLE?

21 A. YES - SIR, I DO.

22 Q. AND WHAT NAME WAS THAT?

23 A. MANUEL LIZARRAGA.

24 Q. DURING YOUR CONVERSATION WITH DEFENDANT BERNABE, DID THE
25 SUBJECT OF SPECIAL AGENT ENRIQUE CAMARENA COME UP?

1 A. YES, SIR, IT DID.

2 Q. HOW DID THAT HAPPEN?

3 A. I TOLD -- I ASKED DEFENDANT BERNABE IF HE HAD BEEN
4 PRESENT WHEN -- DURING THE TORTURE OF SPECIAL AGENT CAMARENA.
5 I TOLD HIM THAT SPECIAL AGENT BERRELLEZ OR MANUEL LIZARRAGA
6 WAS VERY INTERESTED IN FINDING OUT IF HE, LIZARRAGA, HAD BEEN
7 IMPLICATED IN ANY FASHION.

8 Q. IMPLICATED IN WHAT WAY?

9 A. BY BEING MENTIONED DURING THE INTERROGATION.

10 Q. AND HOW DID DEFENDANT BERNABE RESPOND TO THAT?

11 A. HE TOLD ME THAT HE HAD BEEN PRESENT WHEN SPECIAL AGENT
12 CAMARENA HAD BEEN TORTURED AND THAT MANUEL LIZARRAGA'S NAME
13 HAD NOT BEEN MENTIONED DURING THE INTERROGATION.

14 Q. AND WAS THERE ANY FURTHER DISCUSSION OF THIS SUBJECT?

15 A. YES, SIR. I TOLD HIM THAT WAS GOOD NEWS AND THAT HE
16 SHOULD LET LIZARRAGA KNOW WHAT HE KNEW SO -- BECAUSE LIZARRAGA
17 WAS VERY INTERESTED IN RETURNING TO MEXICO AND THAT HE HAD NOT
18 BEEN TO MEXICO SINCE THE TORTURE OF AGENT CAMARENA FOR FEAR OF
19 BEING IMPLICATED IN THE TORTURE.

20 Q. AGENT SALAZAR, PERHAPS YOU COULD MOVE THE MICROPHONE OFF
21 TO ONE SIDE.

22 THE COURT: RAISE IT ABOVE YOUR NOSE. I THINK IT
23 WORKS BETTER THAT WAY.

24 BY MR. CARLTON:

25 Q. AT SOME POINT THEN, DID AGENT BERRELLEZ AND THE INFORMANT

1 RETURN TO THE RESTAURANT?

2 A. YES, SIR, THEY DID.

3 Q. AND HOW LONG AFTER THAT DID YOU REMAIN IN THE RESTAURANT?

4 A. APPROXIMATELY 10 OR 15 MINUTES.

5 Q. AT SOME POINT DID YOU INFORM AGENT BERRELLEZ OF WHAT YOU
6 HAD BEEN TOLD BY DEFENDANT BERNABE?

7 A. YES, SIR. RIGHT AFTER HIS SECOND -- RIGHT AFTER SPECIAL
8 AGENT BERRELLEZ' SECOND ARRIVAL TO THE RESTAURANT, WE WENT TO
9 THE RESTROOM AND I INFORMED HIM OF WHAT BERNABE HAD TOLD ME.

10 Q. AND WHERE DID YOU GO FROM THERE?

11 A. WE THEN WENT BACK TO THE TABLE AND DEPARTED THE
12 RESTAURANT SHORTLY THEREAFTER.

13 Q. ALL OF YOU?

14 A. YES, SIR.

15 Q. WHEN YOU DEPARTED THE RESTAURANT, WHERE DID YOU GO?

16 A. WE WENT TO A D.E.A. UNDERCOVER VEHICLE AND PROCEEDED BACK
17 TO THE EMBASSY SUITES HOTEL.

18 Q. WAS THERE A CONVERSATION IN THAT VEHICLE WHILE WERE YOU
19 DRIVING?

20 A. YES, SIR, THERE WAS.

21 Q. AND WAS THAT CONVERSATION RECORDED?

22 A. YES, SIR, IT WAS.

23 Q. WHEN YOU GOT TO THE EMBASSY SUITES, WHAT HAPPENED?

24 A. I WAS DRIVING THE VEHICLE. AND I PARKED THE VEHICLE AND
25 SPECIAL AGENT BERRELLEZ ASKED THE INFORMANT AND I TO EXIT THE

1 VEHICLE, AS HE HAD A PRIVATE CONVERSATION HE WISHED TO HAVE
2 WITH DEFENDANT BERNABE.

3 Q. AND DID SPECIAL AGENT BERRELLE⁷ AND DEFENDANT BERNABE
4 THEN REMAIN IN VEHICLE FOR SOME PERIOD OF TIME?

5 A. YES, SIR, THEY DID.

6 Q. DID DEFENDANT BERNABE EVENTUALLY GET OUT OF THE CAR?

7 A. YES, SIR, HE DID.

8 Q. AND WHERE DID HE GO FROM THERE?

9 A. INTO THE HOTEL.

10 Q. WHAT DID YOU DO?

11 A. WE DEPARTED THE AREA OF THE HOTEL.

12 Q. NOW, HAVE YOU REVIEWED THE AUDIO TAPE OF THE CONVERSATION
13 THAT OCCURRED INSIDE THAT AUTOMOBILE ON THE 25TH OF JULY?

14 A. YES, SIR, I HAVE.

15 Q. IN ITS ENTIRETY?

16 A. YES, I HAVE.

17 Q. I WOULD ASK YOU, PLEASE, TO LOOK AT WHAT HAS BEEN MARKED
18 AS EXHIBIT 165.

19 A. (WITNESS COMPLIES.)

20 Q. DO YOU SEE THAT?

21 A. YES, SIR, I DO.

22 Q. AND DO YOU RECOGNIZE WHAT IT IS?

23 A. YES, I DO.

24 Q. WHAT IS IT?

25 A. IT'S A SPANISH TRANSCRIPTION AND AN ENGLISH TRANSLATION

1 OF THE SPANISH ON THE SAME SHEET OF THE CONVERSATION HELD
2 INSIDE THE VEHICLE ON JULY 25TH, 1989.

3 Q. NOW, DID YOU COMPARE THE SPANISH TRANSCRIPTION THAT
4 APPEARS ON EXHIBIT 165 TO THE AUDIO TAPE OF THE CONVERSATION
5 THAT YOU LISTENED TO?

6 A. YES, SIR, I DID.

7 Q. AND IS THAT AN ACCURATE SPANISH TRANSCRIPTION OF THE
8 AUDIO TAPE?

9 A. YES, SIR, IT IS.

10 Q. HAVE YOU COMPARED THE ENGLISH TRANSLATION WHICH APPEARS
11 ON EXHIBIT 165 TO THE SPANISH TRANSCRIPTION?

12 A. YES, SIR, I HAVE.

13 Q. IS IT AN ACCURATE ENGLISH TRANSLATION OF THAT
14 TRANSCRIPTION?

15 A. YES, IT IS.

16 Q. NOW, I WOULD ASK YOU PLEASE TO LOOK AT WHAT HAS BEEN
17 MARKED AS EXHIBIT 166. THERE SHOULD BE ANOTHER ONE OF THOSE
18 BOXES.

19 A. YES, SIR.

20 Q. DO YOU RECOGNIZE THAT?

21 A. YES, I DO.

22 Q. WHAT IS IT?

23 A. THIS IS A VIDEOTAPE WHICH CONTAINS AUDIO EXCERPTS FROM
24 THAT CONVERSATION HELD ON JULY 25TH, 1989.

25 Q. SO THIS EXHIBIT 166 ARE AUDIO EXCERPTS OF THE AUDIO-TAPED

1 JULY 25TH CONVERSATION INSIDE THE AUTOMOBILE?

2 A. IT'S ON A VIDEOTAPE, BUT THEY ARE AUDIO EXCERPTS, YES.

3 Q. ON THIS VIDEOTAPE, DID THERE APPEAR ENGLISH SUBTITLES?

4 A. YES, SIR.

5 Q. AND DO THOSE ENGLISH SUBTITLES REFLECT THE ENGLISH
6 TRANSLATIONS FOR THE RESPECTIVE PORTIONS OF THE AUDIO TAPE
7 THAT ARE CONTAINED ON THAT EXHIBIT 166?

8 A. YES, SIR.

9 Q. AND ARE THOSE PORTIONS OR THOSE ENGLISH SUBTITLES, I'M
10 SORRY, ACCURATE COPIES OF THE RESPECTIVE PORTIONS OF THE
11 ENGLISH TRANSLATION, WHICH IS EXHIBIT 165?

12 A. YES, SIR, THEY ARE.

13 Q. NOW, AGENT SALAZAR, IN THE COURSE OF YOUR INVOLVEMENT IN
14 THE LEYENDA OPERATION, HAVE YOU MET WITH AN INDIVIDUAL NAMED
15 HECTOR CERVANTES SANTOS?

16 A. YES, SIR, I HAVE.

17 Q. WHERE DID YOU FIRST MEET WITH HIM?

18 A. AT THE LOS ANGELES INTERNATIONAL AIRPORT.

19 Q. WHEN WAS THAT?

20 A. NOVEMBER 30TH, 1989.

21 Q. AND WAS ANYONE WITH YOU?

22 A. SPECIAL AGENT HECTOR BERRELLEZ.

23 Q. DID YOU HAVE ANY DISCUSSION WITH HIM AT THAT TIME ABOUT
24 THIS CASE OR ANY OF HIS KNOWLEDGE CONCERNING THIS CASE.

25 A. NOT AT THAT INITIAL MEETING, NO.

1 Q. DID YOU EVENTUALLY HAVE SUCH A DISCUSSION WITH HIM?

2 A. YES, SIR.

3 Q. WHEN WAS THAT?

4 A. THE FOLLOWING DAY, STILL ON NOVEMBER 30TH.

5 Q. AND WHERE DID THIS OCCUR?

6 A. AT THE D.E.A. OFFICE.

7 Q. IN LOS ANGELES.

8 A. IN LOS ANGELES?

9 Q. WHO WAS WITH YOU?

10 A. SPECIAL AGENT HECTOR BERRELLEZ.

11 Q. HAD YOU EVER MET HECTOR CERVANTES BEFORE MEETING HIM AT
12 THE AIRPORT?

13 A. NO, SIR.

14 Q. AND IN YOUR MEETING WITH HIM ON THE 30TH OF NOVEMBER OF
15 LAST YEAR, WHAT WAS HIS Demeanor?

16 MR. STOLAR: OBJECT TO THE RELEVANCE.

17 THE COURT: SUSTAINED.

18 BY MR. CARLTON:

19 Q. DID HE APPEAR TO BE COMFORTABLE WITH YOU?

20 MR. STOLAR: OBJECT TO THE RELEVANCY.

21 THE COURT: SUSTAINED.

22 BY MR. CARLTON:

23 Q. DID YOU QUESTION MR. CERVANTES AT THIS TIME ABOUT HIS
24 KNOWLEDGE CONCERNING -- WELL, RELATED TO YOUR INVESTIGATION OF
25 THE LEYENDA OPERATION?

1 MR. MEDVENE: OBJECTION. RELEVANCY AND MATERIALITY
2 AT THIS TIME, YOUR HONOR.

3 THE COURT: SUSTAINED.

4 MR. CARLTON: MAY I HAVE A MOMENT, YOUR HONOR?

5 NOTHING FURTHER, YOUR HONOR.

6 THE COURT: CROSS-EXAMINE.

7 CROSS-EXAMINATION +

8 BY MS. KELLY:

9 Q. GOOD AFTERNOON, AGENT SALAZAR.

10 A. GOOD AFTERNOON.

11 Q. AGENT SALAZAR, WHEN YOU -- ARE YOU THE PERSON WHO TOOK
12 THE TAPE RECORDINGS INTO CUSTODY, INTO D.E.A. CUSTODY?

13 A. THESE PARTICULAR TAPE RECORDINGS?

14 Q. YES. AFTER THEY WERE MADE.

15 A. NO, MA'AM.

16 Q. DO YOU KNOW WHO THAT PERSON IS WHO TOOK THEM INTO
17 CUSTODY?

18 A. I BELIEVE SPECIAL AGENT BERRELLEZ.

19 Q. DO YOU HAVE ANY IDEA -- ON THE 20TH, DO YOU HAVE ANY IDEA
20 HOW MANY TAPE RECORDERS WERE ACTUALLY USED TO MAKE THE TAPE
21 RECORDINGS OF THE 20TH CONVERSATION YOU HAD AT THE AIRPORT?

22 THE COURT: YOU'RE SPEAKING OF THE 20TH; WHAT MONTH
23 AND WHAT YEAR?

24 MS. KELLY: I'M SORRY, YOUR HONOR.

25 BY MS. KELLY:

1 Q. WE ARE TALKING ABOUT FOUR MEETINGS, IS THAT RIGHT, THAT
2 WERE TAPE RECORDED? ONE WAS -- IS THAT RIGHT, AGENT SALAZAR?

3 MR. CARLTON: YOUR HONOR, I DON'T BELIEVE THERE HAS
4 BEEN ANY TESTIMONY THAT THE MEETING ON THE 20TH WAS RECORDED.
5 BY MS. KELLY:

6 Q. ALL RIGHT. LET ME START THIS WAY.

7 YOU HAD A CONVERSATION WITH MY CLIENT, MR. BERNABE
8 RAMIREZ, ON THE 20TH OF JULY IN 1989; IS THAT RIGHT?

9 A. NO, MA'AM, THAT'S NOT RIGHT.

10 Q. YOU WERE NOT PRESENT DURING ANY OF THE CONVERSATION AT
11 THE AIRPORT?

12 A. JUST A CASUAL GREETING, THAT WAS IT.

13 Q. AND WHERE DID THE CASUAL GREETING TAKE PLACE?

14 A. AT THE LOS ANGELES INTERNATIONAL AIRPORT.

15 Q. DID YOU THEN ACCOMPANY MR. BERNABE RAMIREZ IN AN
16 AUTOMOBILE TO THE EMBASSY SUITES?

17 A. NO, MA'AM.

18 Q. YOU JUST MET HIM BRIEFLY AT THE LOS ANGELES AIRPORT?

19 A. YES, MA'AM.

20 Q. DID YOU THEN DRIVE HIS FAMILY MEMBERS TO THE EMBASSY
21 SUITES?

22 A. YES, MA'AM, I DID.

23 Q. SO YOU DID NOT PARTICIPATE IN ANY OF THE TAPE RECORD-- --
24 WELL, YOU DID NOT PARTICIPATE IN ANY OF THE SUBSTANTIVE
25 CONVERSATION BETWEEN AGENT BERRELLE⁷ AND MR. BERNABE RAMIREZ

1 AND THE CONFIDENTIAL INFORMANT ON JULY 20TH, 1989; IS THAT
2 RIGHT?

3 A. THAT'S CORRECT.

4 Q. YOU DID PARTICIPATE IN CONVERSATION ON JULY 21ST, 1989;
5 IS THAT RIGHT?

6 A. YES, I DID.

7 Q. AND THOSE CONVERSATIONS INVOLVED YOURSELF - AGENT
8 BERRELLEZ, THE CONFIDENTIAL INFORMANT AND MY CLIENT, MR.
9 BERNABE RAMIREZ, RIGHT?

10 A. YES.

11 Q. AND THE CONFIDENTIAL INFORMANT'S NAME IS CASTEL DEL ORO;
12 IS THAT RIGHT?

13 A. YES, MA'AM.

14 Q. DID YOU FILL OUT A CASE INITIATION REPORT WITH RESPECT TO
15 THIS INVESTIGATION CONCERNING MY CLIENT, MR. BERNABE RAMIREZ?

16 A. NO, MA'AM.

17 Q. YOU DID FILL OUT SOME REPORTS, THOUGH; IS THAT RIGHT?

18 A. YES, MA'AM.

19 Q. AND I BELIEVE YOU PREPARED A REPORT CONCERNING THE JULY
20 21ST, 1989 EVIDENCE; IS THAT RIGHT?

21 A. YES, MA'AM, I DID.

22 Q. AND THAT REPORT WAS PREPARED ON WHAT IS CALLED A D.E.A. 6
23 FORM; IS THAT RIGHT?

24 A. YES, MA'AM.

25 Q. AND THAT'S A FORM THAT IS A SIX-PART TRIPLICATE FORM; IS

1 THAT RIGHT?

2 A. YES, MA'AM.

3 Q. AND THESE REPORTS ARE TO BE MADE WHENEVER THERE'S A
4 SIGNIFICANT EVENT WITH RESPECT TO AN INVESTIGATION; ISN'T THAT
5 RIGHT?

6 A. YES, MA'AM.

7 Q. NOW TURNING YOUR ATTENTION TO THE 25TH, JULY 25TH, 1989.
8 WHEN YOU HAD A CONVERSATION WITH MY CLIENT, MR. BERNABE
9 RAMIREZ, IN A RESTAURANT CONCERNING AN ADMISSION MADE BY HIM
10 OF THE TORTURE -- OF BEING PRESENT DURING THE TORTURE OF AGENT
11 CAMARENA, DID YOU PREPARE A REPORT OF THAT CONVERSATION?

12 A. NO, MA'AM, I DID NOT.

13 Q. THAT WAS A SIGNIFICANT EVENT, WASN'T IT?

14 A. I DID NOT PREPARE A REPORT. IT IS IN A REPORT.

15 Q. THE ADMISSION WAS MADE TO YOU; IS THAT RIGHT? YOU WERE
16 ALONE WHEN MY CLIENT, MR. BERNABE RAMIREZ, MADE THESE
17 STATEMENTS TO YOU?

18 A. YES, MA'AM.

19 Q. AND YOU'RE AN EXPERIENCED, SEASONED D.E.A. AGENT; IS THAT
20 RIGHT?

21 A. YES, MA'AM.

22 Q. AND IN YOUR EXPERIENCE, IS WHAT TRANSPIRED IN THE
23 RESTAURANT CONVERSATION BETWEEN YOU AND MY CLIENT, WAS THAT A
24 SIGNIFICANT EVENT?

25 A. YES, MA'AM, IT WAS.

1 Q. NOW, GOING BACK TO THE 21ST, CONCERNING THE VIDEOTAPE,
2 THAT WAS A VIDEOTAPE RECORD AND AN AUDIO TAPE RECORD OF THE
3 CONVERSATION THAT OCCURRED ON JULY 21ST, 1989; IS THAT RIGHT?

4 A. YES, MA'AM, IT WAS.

5 Q. AND DID YOU TAKE THOSE TAPES AND THE TAPE RECORDING INTO
6 CUSTODY AFTER THE CONVERSATION WAS COMPLETED?

7 A. NO, I DID NOT.

8 Q. DO YOU KNOW WHO DID?

9 A. I BELIEVE, AGAIN, IT WAS SPECIAL AGENT BERRELLEZ.

10 Q. AND THEN ONCE -- IN YOUR EXPERIENCE, THIS IS CONSIDERED
11 NON-DRUG -- ACQUISITION OF NON-DRUG PROPERTY, IS THAT RIGHT, A
12 TAPE RECORDING OF CONVERSATIONS BETWEEN A SUSPECT AND AN
13 AGENT?

14 A. WELL, IT'S NOT REALLY AN ACQUISITION, IT'S JUST A TAPE
15 RECORDING.

16 Q. THE TAPE RECORDING IS CONSIDERED TO BE EVIDENCE, THOUGH;
17 ISN'T IT?

18 A. YES, MA'AM.

19 Q. AND IT'S IMPORTANT TO HAVE THE CHAIN OF CUSTODY
20 DOCUMENTED AS TO WHAT TRANSPIRES WITH EVIDENCE; ISN'T IT?

21 A. YES, MA'AM.

22 Q. AND IN DOING THAT, DON'T AGENTS OF THE D.E.A. FILL OUT AN
23 ACQUISITION OF NON-DRUG PROPERTY FORM, WHICH IS FORM 7(A)?

24 A. YES, MA'AM.

25 Q. AND GENERALLY, DO THE D.E.A. AGENTS TURN OVER EVIDENCE TO

1 THE EVIDENCE CUSTODIAN IN THE FIELD OFFICE, SUCH AS THE LOS
2 ANGELES FIELD OFFICE?

3 A. YES, MA'AM.

4 Q. AND THAT SHOULD BE DONE AS SOON AS POSSIBLE; ISN'T THAT
5 RIGHT?

6 A. YES, MA'AM.

7 Q. AND THE IMPORTANCE OF DOING THAT IS TO INSURE THAT THERE
8 IS NO TAMPERING WITH THE EVIDENCE; ISN'T THAT RIGHT?

9 A. THAT'S ONE FACTOR, YES.

10 Q. AND IT'S IMPORTANT TO DOCUMENT EVERY PERSON WHO HAS
11 ACCESS TO A PARTICULAR PIECE OF EVIDENCE; ISN'T IT?

12 A. YES, MA'AM.

13 Q. AND, IN FACT, ONCE THE EVIDENCE IS DOCUMENTED TO BE WITH
14 THE EVIDENCE CUSTODIAN IN THE D.E.A. -- IN THE D.E.A. CUSTODY,
15 EVERY TIME IT IS REMOVED FROM THE EVIDENCE CUSTODIAN'S
16 POSSESSION THERE MUST BE SOME DOCUMENTATION OF THAT REMOVAL;
17 ISN'T THAT RIGHT?

18 A. YES, MA'AM.

19 Q. AND THAT WOULD INCLUDE THE TIME AND THE PEOPLE INVOLVED
20 IN THE REMOVAL OF THAT EVIDENCE, THE DATE AND TIME AND THE
21 PERSON WHO'S REMOVING THAT EVIDENCE?

22 A. IT MAY INCLUDE THAT. IT'S NOT NECESSARY TO INCLUDE
23 EVERYTHING YOU JUST MENTIONED.

24 Q. WELL, HOW ABOUT THE PERSON'S NAME WHO'S TAKING IT?

25 A. THAT WOULD BE INCLUDED, YES.

1 Q. AND THE DATE?

2 A. YES, MA'AM.

3 Q. BUT MAYBE, NOT NECESSARILY, THE TIME?

4 A. THAT'S CORRECT.

5 Q. DO YOU ALSO -- AS PART OF YOUR INVESTIGATION WITH THE
6 DRUG ENFORCEMENT ADMINISTRATION, DO YOU ALSO MAINTAIN RECORDS
7 OF AMOUNTS OF MONIES THAT ARE EXPENDED TO A PARTICULAR
8 INVESTIGATION?

9 A. DO I?

10 Q. DOES ONE? DOES THE D.E.A. OR DO D.E.A. AGENTS KEEP TRACK
11 OF MONIES EXPENDED?

12 MR. CARLTON: OBJECTION. BEYOND THE SCOPE.

13 THE COURT: SUSTAINED.

14 MS. KELLY: THEN I WOULD ASK THAT THE WITNESS BE
15 MADE AVAILABLE, YOUR HONOR, IN THAT CASE TO BE RECALLED.

16 BY MS. KELLY:

17 Q. GOING BACK TO THE EVENTS CONCERNING THE 25TH, DO YOU KNOW
18 WHAT RESTAURANT IT WAS THAT YOU WERE AT WITH MY CLIENT WHEN
19 YOU HAD THE CONVERSATION?

20 A. YES, I DO.

21 Q. WHAT RESTAURANT WAS THAT?

22 A. EL TORITO IN COVINA, CALIFORNIA. IT'S ON GARVEY AVENUE
23 AT INTERSTATE 10.

24 Q. AND APPROXIMATELY HOW LONG WOULD YOU SAY THAT YOU AND
25 BERNABE RAMIREZ WERE ALONE IN THE RESTAURANT?

1 A. APPROXIMATELY 30 TO 45 MINUTES.

2 Q. SO WHAT TIME DID YOU LEAVE THE EMBASSY SUITES? LET ME
3 JUST BACK UP. YOU LEFT THE D.E.A. OFFICE OR WHEREVER YOU WERE
4 TO TRAVEL WITH THE INFORMANT AND AGENT BERRELLEZ TO PICK UP
5 THE INFORMATION -- I'M SORRY. LET ME START OVER AGAIN.

6 YOU LEFT TO GO TO THE EMBASSY SUITES WITH AGENT
7 BERRELLEZ TO PICK UP THE CONFIDENTIAL INFORMANT AND MY CLIENT;
8 IS THAT RIGHT?

9 A. YES, MA'AM.

10 Q. AND YOU PICKED HIM UP AT THE EMBASSY SUITES WHERE? WHERE
11 IS THAT LOCATED?

12 A. IN ARCADIA, CALIFORNIA.

13 Q. DO YOU REMEMBER WHAT TIME THAT WAS?

14 A. NO, MA'AM, I DON'T.

15 Q. DO YOU REMEMBER IF IT WAS IN THE MORNING OR THE AFTERNOON
16 OR THE EVENING?

17 A. IT WAS THE BEGINNING OF THE EVENING.

18 Q. AND YOU TRAVELED DIRECTLY FROM THE EMBASSY SUITES IN
19 ARCADIA TO THE RESTAURANT IN COVINA; IS THAT RIGHT?

20 A. YES, MA'AM.

21 Q. AND THEN YOU WERE THERE FOR 35 MINUTES OR SO ALONE,
22 RIGHT?

23 A. WELL, INITIALLY -- NOT INITIALLY.

24 Q. INITIALLY, YOU WERE THERE FOR -- YOU'RE SAYING INITIALLY
25 YOU WERE PRESENT WITH THE INFORMANT, AGENT BERRELLEZ AND MY

1 CLIENT; IS THAT RIGHT? YOU WERE ALL TOGETHER IN A GROUP AT
2 THE RESTAURANT?

3 A. YES, MA'AM.

4 Q. WERE YOU ACTUALLY SEATED IN THE RESTAURANT OR WERE YOU
5 SEATED IN THE BAR?

6 A. IN THE BAR.

7 Q. AND WHAT BEVERAGES WERE YOU DRINKING?

8 A. BEER.

9 Q. WHO PAID FOR BEER?

10 A. I DID.

11 Q. HOW MANY BEERS DID YOU HAVE?

12 A. FROM WHAT TIME TO WHAT TIME? FROM WHEN AGENT BERRELLEZ
13 WAS THERE OR IN TOTAL?

14 Q. WELL, LET'S -- I'LL BREAK IT UP. HOW MANY BEERS DID YOU
15 HAVE WHILE ALL FOUR OF YOU WERE PRESENT?

16 A. PROBABLY TWO, MAYBE THREE.

17 Q. OKAY. AND THIS WAS OVER WHAT TIME PERIOD?

18 A. APPROXIMATELY 45 MINUTES OR AN HOUR.

19 Q. AND THE CONVERSATION DURING THIS TIME PERIOD WAS GENERAL
20 CONVERSATION?

21 A. YES, MA'AM.

22 Q. BY THAT I MEAN NOT SPECIFIC TO THIS INVESTIGATION; IS
23 THAT RIGHT?

24 A. THAT'S CORRECT.

25 Q. AND THEN AGENT BERRELLEZ AND THE INFORMANT LEFT; IS THAT

1 RIGHT?

2 A. YES, MA'AM.

3 Q. AND YOU AND MY CLIENT REMAINED IN THE BAR, RIGHT?

4 A. YES, MA'AM.

5 Q. AND THIS WAS THE 45-MINUTE PERIOD, CORRECT?

6 A. 30 TO 45 MINUTES.

7 Q. AND HOW MANY BEERS DID YOU HAVE THEN?

8 A. I BELIEVE ONE, MAYBE TWO.

9 Q. AND DO YOU RECALL HOW MANY BEERS DID MY CLIENT HAVE,
10 STARTING WITH THE FIRST -- IN THE FIRST 45-MINUTE PERIOD WHEN
11 THE FOUR OF YOU WERE TOGETHER?

12 A. I DON'T RECALL, BUT I DO RECALL HIM STATING THAT HE DID
13 NOT WANT TO DRINK BECAUSE HE HAD TO TAKE HIS WIFE TO DINNER
14 AND DID NOT WANT TO BE DRUNK WHEN HE DID SO.

15 Q. SO, HE DIDN'T HAVE ANYTHING TO DRINK?

16 A. NO, HE DID. HE HAD A TOTAL OF MAYBE TWO OR THREE BEERS.

17 Q. AND IS THAT DURING THE FIRST 45-MINUTE PERIOD OR IS THAT
18 FOR THE WHOLE TIME PERIOD?

19 A. I WAS SAY THAT FOR THE TOTAL TIME FRAME. I WASN'T REALLY
20 COUNTING HOW MANY BEERS HE HAD.

21 Q. DO YOU REMEMBER HOW MUCH THE BILL WAS?

22 A. NO, MA'AM, I DON'T, BECAUSE IT INCLUDED THE FOOD.

23 Q. DO YOU RECALL WHAT KIND OF -- HOW MUCH OR WHAT HE HAD FOR
24 FOOD?

25 A. IT WAS JUST AN HOR D'OEUVRE TRAY ORDERED OFF THE

1 SPECIALTY MENU.

2 Q. SO YOU WEREN'T COUNTING HOW MANY BEERS MR. BERNABE
3 RAMIREZ HAD; IS THAT RIGHT?

4 A. THAT'S CORRECT.

5 Q. DO YOU RECALL HOW MANY BEERS AGENT BERRELLEZ HAD, IF HE
6 HAD ANY?

7 A. NO, MA'AM, I DON'T RECALL.

8 Q. DO YOU RECALL WHAT BEVERAGE HE HAD AT ALL?

9 A. I DO RECALL THAT HE HAD A BEER. AGAIN, I DON'T RECALL IF
10 HE HAD MORE THAN ONE DURING HIS PRESENCE THERE.

11 Q. NOW, IS THIS NORMAL PRACTICE FOR D.E.A. AGENTS TO DRINK
12 WHILE THEIR CONDUCTING AN INVESTIGATION? DRINK ALCOHOLIC
13 BEVERAGES?

14 A. WELL, NORMAL IF YOU'RE IN THAT TYPE OF A SETTING, YES.

15 Q. SO IF YOU WERE IN A SETTING WHERE EVERYBODY WAS SNORTING
16 COCAINE, THEN THAT WOULD BE -- ACCORDING TO D.E.A. PROCEDURES,
17 THAT WOULD BE AUTHORIZED AS WELL?

18 MR. CARLTON: OBJECTION, YOUR HONOR, IRRELEVANT.

19 THE COURT: OVERRULED. YOU MAY ANSWER.

20 THE WITNESS: NO, MA'AM.

21 BY MS. KELLY:

22 Q. IT'S ENTIRELY CONSISTENT WITH D.E.A. POLICY FOR D.E.A.
23 AGENTS TO DRINK ALCOHOLIC BEVERAGES WHILE THEY'RE CONDUCTING
24 AN INVESTIGATION; IS THAT RIGHT?

25 A. YES, MA'AM. AS LONG AS YOU'RE WITHIN THE LAW.

1 Q. WHAT DOES THAT MEAN?

2 A. SNORTING COCAINE IS NOT WITHIN THE LAW.

3 Q. WELL, WHEN YOU SAY "WITHIN THE LAW," DOES THAT MEAN AS
4 LONG AS YOU'RE NOT DRIVING WITH A .8 BLOOD ALCOHOL LEVEL?

5 A. YES, MA'AM.

6 Q. AND WHO WAS DRIVING A CAR THAT NIGHT?

7 A. I WAS.

8 Q. HAD YOU HAD ANYTHING ELSE TO DRINK DURING THE DAY, PRIOR
9 TO THIS CONVERSATION AT THE RESTAURANT?

10 A. DO YOU MEAN OF AN ALCOHOLIC NATURE?

11 Q. YES.

12 A. NO, MA'AM, I HAD NOT.

13 Q. THEN AFTER THIS -- AFTER THE -- EXCUSE ME.

14 AFTER THE INFORMANT CASTEL DEL ORO AND AGENT
15 BERRELLEZ RETURNED TO THE RESTAURANT TO PICK YOU UP, YOU
16 IMMEDIATELY LEFT AND DROVE BACK TO THE EMBASSY SUITES; IS THAT
17 RIGHT?

18 A. NOT IMMEDIATELY, IT WAS ABOUT TEN MINUTES. AS I STATED,
19 I MET WITH AGENT BERRELLEZ IN THE BATHROOM.

20 Q. FOR TEN MINUTES?

21 A. NO, MA'AM.

22 Q. THAT WAS A BRIEF PERIOD OF TIME; IS THAT RIGHT?

23 A. YES, MA'AM.

24 Q. NOW, DO YOU REMEMBER IF THERE WAS A MALE OR A FEMALE
25 BARTENDER WORKING THAT NIGHT?

1 A. NO, MA'AM, I DON'T.

2 Q. DO YOU RECALL IF YOU WERE WAITED ON BY A WAITRESS OR DID
3 YOU HAVE TO GET YOUR OWN DRINKS?

4 A. WE WERE WAITED --

5 MR. CARLTON: OBJECTION TO THE RELEVANCY OF THIS,
6 YOUR HONOR.

7 THE COURT: OVERRULED.

8 THE WITNESS: WE WERE WAITED ON BY A WAITRESS.

9 BY MS. KELLY:

10 Q. SOMEONE WITH WHOM YOU WERE FAMILIAR?

11 A. NO, MA'AM.

12 Q. HAD YOU EVER BEEN IN THIS RESTAURANT BEFORE?

13 A. NO, MA'AM.

14 Q. SO AFTER THE TEN-MINUTE PERIOD, ROUGHLY, THAT IT TOOK YOU
15 TO GET YOUR THINGS TOGETHER, YOU PAID FOR THE BILL THEN,
16 RIGHT?

17 A. YES, MA'AM.

18 Q. AND WAS IT ONE TOTAL BILL OR WERE THERE SEVERAL? WERE
19 YOU PAYING AS YOU WENT ALONG FOR THE ROUNDS?

20 A. I DON'T RECALL.

21 Q. AND DID YOU PAY FOR THIS OUT OF YOUR OWN MONEY OR WAS IT
22 REIMBURSED BY THE D.E.A.?

23 A. IT WAS REIMBURSED BY THE D.E.A.

24 Q. SO YOU SUBMITTED SOME VOUCHER TO THE D.E.A. FOR THAT?

25 A. YES, MA'AM.

1 Q. AND WOULD THAT HAVE BEEN SUBMITTED ON A D.E.A. FORM 12?

2 A. NO, MA'AM.

3 Q. NOW, DO YOU STILL HAVE -- EXCUSE ME. IN TURNING IN A
4 VOUCHER FOR REIMBURSEMENT, WOULD YOU HAVE TO SUBMIT THE
5 RECEIPTS?

6 A. IT DEPENDS ON THE SITUATION.

7 Q. AND WHAT DOES THAT MEAN? WHAT SITUATION -- LET ME ASK IT
8 THIS WAY.

9 WHAT SITUATION WOULD YOU HAVE TO TURN IN RECEIPTS?
10 IN WHAT SITUATION WOULD YOU HAVE TO TURN IN THE RECEIPTS TO
11 GET REIMBURSED?

12 A. DURING THE NORMAL COURSE OF CONDUCTING BUSINESS YOU WOULD
13 RECEIVE A RECEIPT.

14 Q. IS THERE A DOLLAR AMOUNT WHERE YOU HAVE TO TURN IN A
15 RECEIPT? FOR EXAMPLE, IF IT'S UNDER \$10 YOU DON'T HAVE TO
16 TURN IN A RECEIPT OR IF IT'S OVER \$10, YOU DO?

17 A. AGAIN, IT DEPENDS ON THE SITUATION.

18 Q. DID YOU TURN IN RECEIPTS ON THIS PARTICULAR DAY?

19 A. NO, MA'AM.

20 Q. SO YOU'RE RELYING ON YOUR MEMORY OF HOW MUCH IT WAS?

21 A. YES, MA'AM.

22 Q. HOW LONG DID THE DRIVE FROM THE RESTAURANT TO THE EMBASSY
23 SUITES TAKE? THIS IS AFTER YOU LEFT THE RESTAURANT, I'M
24 SORRY.

25 A. I WOULD GUESS APPROXIMATELY 20 MINUTES.

1 Q. SO WAS IT DARK BY THE TIME -- BY THE TIME YOU WERE
2 GETTING OUT OF THE CAR TO LEAVE THE INFORMANT AND AGENT
3 BERRELLEZ ALONE?

4 A. YES, IT WAS.

5 Q. AND DURING THE TIME PERIOD WHEN YOU WERE ALL IN THE CAR
6 TOGETHER DRIVING FROM THE RESTAURANT BACK TO THE EMBASSY
7 SUITES, DO YOU REMEMBER A PART OF THE CONVERSATION WHERE MY
8 CLIENT POINTS OUT AN AREA AND TELLS YOU THAT HE HAD WALKED ALL
9 THIS WAY WITH THE INFORMANT THAT NIGHT BEFORE?

10 A. YES, MA'AM, I DO.

11 Q. AND DO YOU RECALL THAT -- THAT HE SAID THAT THEY "WALKED
12 LIKE HELL TOGETHER"?

13 A. WORDS TO THAT EFFECT, YES.

14 Q. AND DO YOU RECALL THAT HE SAID THAT THAT WAS BECAUSE ONE
15 COULD TALK BETTER ON THE STREET?

16 A. I DON'T RECALL THAT PART, MA'AM.

17 Q. WOULD IT REFRESH YOUR RECOLLECTION IF YOU LOOKED AT A
18 COPY OF THE TRANSCRIPT?

19 A. IT MIGHT, YES.

20 Q. I BELIEVE YOU'VE PREVIOUSLY IDENTIFIED THE ENGLISH
21 TRANSCRIPTION OF THE 25TH AS EXHIBIT 164.

22 MS. KELLY: COULD I HAVE JUST A MOMENT?

23 BY MS. KELLY:

24 Q. DO YOU HAVE THAT IN FRONT OF YOU? 165. IF YOU COULD
25 TURN TO PAGE 26. IF YOU SEE SORT OF MIDPOINT DOWN THE, PAGE I

1 WOULD BE LOOKING AT THE ENGLISH PORTION ON THE SIDE WHERE IT
2 SAYS "WE WALKED ALL THIS WAY ON FOOT."

3 A. YES, MA'AM.

4 Q. AND C. WHAT DOES THE INITIAL C STAND FOR, IF YOU KNOW?

5 A. THE INITIAL C INDICATES THAT THAT'S WHEN THE INFORMANT
6 WAS SPEAKING.

7 Q. DID YOU PUT THESE INITIALS ON YOUR TRANSCRIPTS? LET ME
8 STATE IT ANOTHER WAY.

9 DID YOU IDENTIFY THE VOICES ON THE -- ON THIS
10 PARTICULAR TRANSCRIPT?

11 A. YES, MA'AM, I DID.

12 Q. YOU DID NOT PREPARE THIS TRANSCRIPT; IS THAT RIGHT?

13 A. YES, MA'AM.

14 Q. THIS TRANSCRIPT ON THE 25TH WAS PREPARED BY A FEDERALLY
15 CERTIFIED COURT INTERPRETER; ISN'T THAT CORRECT?

16 A. YES, MA'AM.

17 Q. BUT THE TRANSCRIPTS OF THE 20TH AND THE 21ST AND THE
18 24TH, WHO WERE THEY PREPARED BY, IF YOU KNOW?

19 A. I BELIEVE THE ONES OF THE 21ST AND THE 24TH WERE PREPARED
20 BY A CONTRACT EMPLOYEE. AND I DON'T -- DO NOT KNOW ABOUT THE
21 ONES OF JULY 20TH.

22 Q. WHO'S THE CONTRACT EMPLOYEE? DO YOU MEAN A CONTRACT
23 EMPLOYEE OF THE D.E.A.?

24 A. YES, MA'AM.

25 Q. SOMEONE WHO'S WORKING -- WHO'S PAID AND WHO'S WORKING FOR

1 D.E.A.; IS THAT RIGHT?

2 A. YES, MA'AM.

3 Q. AND DO YOU KNOW WHO THAT PERSON IS?

4 A. NO, MA'AM, I DO NOT.

5 Q. YOU DIDN'T HAVE ANY CONTACT WITH THAT PERSON IN
6 PREPARATION OF THE TRANSCRIPT; IS THAT RIGHT?

7 A. THAT'S CORRECT.

8 Q. BUT DID YOU ALSO IDENTIFY THE VOICES ON THOSE PARTICULAR
9 TAPES? I'M SPEAKING ABOUT -- LET ME START WITH THE 20TH.

10 DID IDENTIFY THE VOICES ON THAT TAPE?

11 A. IDENTIFY THE VOICES, NO.

12 Q. DID YOU DO SOMETHING ELSE WITH THAT TAPE?

13 A. ON THE 20TH, NO.

14 Q. HOW ABOUT THE 21ST, DID YOU IDENTIFY THE VOICES ON THAT
15 DATE?

16 A. YES, I DID.

17 Q. AND ON THE 24TH, DID YOU ALSO IDENTIFY VOICES ON THAT?

18 A. YES, MA'AM.

19 Q. NOW, GOING BACK TO THIS PARTICULAR TRANSCRIPT WHICH WAS
20 PREPARED BY THE FEDERALLY CERTIFIED COURT REPORTER, THERE'S A
21 REFERENCE HERE TO C WHO IS, YOU ARE SAYING, CASTEL DEL ORO.

22 AND HE'S SAYING ALL THIS, RIGHT, AND THEN THERE'S
23 SOMETHING UNINTELLIGIBLE AND THEN THERE'S ANOTHER REFERENCE TO
24 ALL THIS AND ALL OF IT AND THEN DO YOU SEE MR. BERNABE
25 RAMIREZ' STATEMENT, "WE WALKED LIKE HELL, BUT ONE NEEDS TO

1 BECAUSE ON THE STREET ONE CAN TALK BETTER"?

2 A. DO I SEE THAT?

3 Q. YES.

4 A. YES, I DO.

5 Q. AND NOW, IS THAT WHAT WAS SAID AT THAT TIME?

6 A. YES, MA'AM.

7 Q. AND CASTEL DEL ORO -- AFTER THAT STATEMENT, CASTEL DEL
8 ORO SAYS, "ALL THE TIME"; ISN'T THAT RIGHT?

9 A. YES, MA'AM.

10 Q. AND AGENT BERRELLEZ SAYS, "YES, THAT'S RIGHT"?

11 A. YES, MA'AM.

12 Q. AND THEN MR. BERNABE RAMIREZ SAYS, "-- ON FOOT, AND THERE
13 IS NO TAIL"?

14 A. THAT'S CORRECT.

15 Q. AND THEN THE CONVERSATION CHANGES TO SOMETHING ABOUT
16 FOOD; IS THAT RIGHT?

17 A. YES, MA'AM.

18 Q. NOW, WERE YOU THE SUPERVISING AGENT IN THIS PARTICULAR
19 INVESTIGATION?

20 A. NO, MA'AM.

21 Q. AND THAT SUPERVISING AGENT WAS AGENT BERRELLEZ?

22 A. YES, MA'AM.

23 Q. AND WHO'S THE SPECIAL AGENT IN CHARGE WITH RESPECT TO
24 THIS INVESTIGATION?

25 A. JOHN ZANER (PHONETIC).

1 Q. NOW, THE INFORMANT -- CASTEL DEL ORO WAS THE INFORMANT;
2 IS THAT RIGHT? IN THIS CASE?

3 A. YES, MA'AM.

4 Q. AND HE'S SOMEONE WHO'S FROM MEXICO; IS THAT RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND FORMERLY A MEMBER OF THE MEXICAN GOVERNMENT; IS THAT
7 RIGHT?

8 MR. CARLTON: OBJECTION. LACK OF FOUNDATION, YOUR
9 HONOR.

10 THE COURT: SUSTAINED.

11 BY MS. KELLY:

12 Q. DO YOU KNOW ANYTHING ABOUT THE BACKGROUND OF CASTEL DEL
13 ORO?

14 A. YES, I DO.

15 Q. DO YOU HAVE ANY KNOWLEDGE ABOUT HIS FORMER EMPLOYMENT
16 WITH THE MEXICAN GOVERNMENT?

17 MR. CARLTON: OBJECTION, BEYOND THE SCOPE, YOUR
18 HONOR.

19 THE COURT: OVERRULED.

20 THE WITNESS: DO I HAVE ANY KNOWLEDGE OF HIS FORMER
21 EMPLOYMENT?

22 BY MS. KELLY:

23 Q. YES.

24 A. YES, MA'AM.

25 Q. AND HE WAS EMPLOYED WITH THE D.F.S.; IS THAT RIGHT? THE

1 MEXICAN GOVERNMENT?

2 A. YES, MA'AM.

3 Q. AND HE WAS COMANDANTE, CORRECT?

4 A. YES, MA'AM.

5 Q. DO YOU HAVE ANY KNOWLEDGE OF HIS CRIMINAL BACKGROUND?

6 HIS, BEING CASTEL DEL ORO?

7 A. NO, MA'AM.

8 Q. WERE YOU INVOLVED WHEN MR. CASTEL DEL ORO WAS HIRED OR

9 BROUGHT IN BY THE D.E.A. TO BECOME AN INFORMANT?

10 A. NO, MA'AM.

11 Q. WOULD THAT BE THE RESPONSIBILITY OF THE CASE AGENT?

12 A. IT DEPENDS ON THE SITUATION.

13 Q. BUT YOU HAD NO INVOLVEMENT WITH THAT?

14 A. THAT'S CORRECT.

15 Q. DID YOU HAVE ANY INVOLVEMENT IN THE DECISION NOT TO

16 RECORD THE CONVERSATION THAT YOU WERE HAVING WITH MR. BERNABE

17 RAMIREZ IN THE RESTAURANT?

18 A. DID I HAVE WHAT, NOW?

19 Q. DID YOU PARTICIPATE IN THE DECISION NOT TO RECORD THAT

20 CONVERSATION THAT YOU HAD WITH MR. BERNABE RAMIREZ IN THE

21 RESTAURANT ON THE 25TH OF JULY?

22 A. WELL, IT'S MORE OR LESS A COMMON-SENSE DECISION, BECAUSE

23 IT'S DIFFICULT TO RECORD INSIDE A NOISY RESTAURANT.

24 Q. NOW, THE CONVERSATION AT THE AIRPORT WAS RECORDED; ISN'T

25 THAT RIGHT?

1 A. NO, MA'AM,

2 Q. IT WASN'T RECORDED?

3 A. NO, MA'AM.

4 Q. AND I'M REFERRING TO THE 20TH OF JULY. DIDN'T YOU
5 PREVIOUSLY -- WELL, YOU HAVE BEEN INVOLVED IN THIS
6 INVESTIGATION, THOUGH, RIGHT?

7 A. YES, MA'AM.

8 Q. AND HAVE YOU EVFR REVIEWED ANY TAPE OF JULY 20TH, 1989?

9 A. NO, MA'AM.

10 Q. WERE YOU AWARE THAT ONE HAD BEEN MADE?

11 A. YES, MA'AM.

12 Q. AND IS IT YOUR UNDERSTANDING THAT THE RECORDING WAS MADE
13 IN THE CAR AND NOT AT THE AIRPORT?

14 A. YES, MA'AM.

15 Q. NOW, YOU COMPLETED A REPORT ON THE EVENTS CONCERNING THE
16 21ST OF JULY 1989; IS THAT RIGHT?

17 A. YES, MA'AM.

18 Q. AND YOU PREPARED THAT REPORT ON THE 27TH OF JULY; IS THAT
19 RIGHT? 1989.

20 A. I DON'T RECALL THE DATE, BUT IF THAT'S WHAT IT SAYS,
21 THAT'S WHEN IT WAS SIGNED.

22 Q. WELL, IT SAYS IT WAS THE DATE THAT IT WAS PREPARED. THAT
23 USUALLY MEANS IT IS THE DATE THAT IT WAS DICTATED, RIGHT?

24 A. NO, MA'AM, WE DON'T DICTATE REPORTS.

25 Q. DO YOU TYPE YOUR OWN REPORTS?

1 A. NO, MA'AM. WE RIGHT THEM OUT LONGHAND.

2 Q. SO WERE THERE ANY OTHER HANDWRITTEN NOTES OF THE -- OF
3 THIS PARTICULAR REPORT, THIS REPORT BEING THE REPORT OF THE
4 JULY 21ST, 1989 CONVERSATION THAT OCCURRED AT THE HOWARD
5 JOHNSON'S RESTAURANT?

6 A. NO, MA'AM.

7 Q. SO YOUR HANDWRITTEN REPORT WAS ACTUALLY THE ROUGH DRAFT;
8 IS THAT RIGHT?

9 A. YES, MA'AM.

10 Q. AND DO YOU STILL HAVE THAT ROUGH DRAFT IN YOUR
11 POSSESSION?

12 A. NO, MA'AM.

13 Q. DID YOU COMPLETE ANY OTHER REPORTS IN THE CASE?

14 A. YES, MA'AM.

15 Q. AND CAN YOU TELL ME WHEN THOSE WERE DONE?

16 A. IN THIS CASE -- IN THIS CASE, I'VE COMPLETED SEVERAL
17 REPORTS.

18 Q. AND THAT MEANS -- THAT DOESN'T NECESSARILY MEAN THE
19 EVENTS CONCERNING MY CLIENT; IS THAT WHAT YOU'RE SAYING?

20 A. THAT'S CORRECT.

21 Q. LET'S DEAL WITH THE EVENTS OF MY CLIENT. DID YOU MAKE
22 ANY OTHER REPORTS -- DID YOU MAKE A REPORT OF THE EVENTS
23 SURROUNDING THE JULY 24TH, 1989 CONVERSATION?

24 A. YES, MA'AM.

25 Q. AND BOTH THE REPORTS THAT YOU PREPARED ON THE 21ST AND

1 THE 24TH WERE SIGNED BY YOUR SUPERVISOR, AGENT BERRELLEZ;
2 ISN'T THAT RIGHT?

3 A. YES, MA'AM.

4 Q. AND YOU SAY THAT THERE WAS A REPORT PREPARED CONCERNING
5 THE JULY 25TH, 1989 CONVERSATION; IS THAT RIGHT?

6 A. YES, MA'AM.

7 Q. AND IS THAT A REPORT THAT YOU REVIEWED?

8 A. YES, MA'AM.

9 Q. AND WHO WAS THAT -- WHO PREPARED THAT REPORT?

10 A. SPECIAL AGENT BERRELLEZ.

11 Q. NOW, HAVE YOU REVIEWED MOST OF THE REPORTS CONCERNING THE
12 INVESTIGATION WITH RESPECT TO MY CLIENT, MR. BERNABE RAMIREZ?

13 A. YOUR QUESTION WAS IF I REVIEWED THEM?

14 Q. YES.

15 A. I DON'T KNOW THAT I REVIEWED ALL THE REPORTS, NO.

16 Q. WERE YOU AWARE OF THE FACT THAT THERE WAS A D.E.A. REPORT
17 WRITTEN ABOUT THE FIRST INITIAL APPEARANCE WHERE I REPRESENTED
18 MY CLIENT?

19 MR. CARLTON: OBJECTION, YOUR HONOR. IRRELEVANT.

20 MS. KELLY: YOUR HONOR, I THINK IT IS.

21 THE COURT: OVERRULED. YOU MAY ANSWER.

22 THE WITNESS: NO, MA'AM, I'M NOT AWARE OF THAT.

23 BY MS. KELLY:

24 Q. WERE YOU AWARE THAT THERE WAS A D.E.A. 6 REPORT PREPARED
25 WITH RESPECT TO THE MAGISTRATE LEVEL ARRAIGNMENT IN THIS WITH

1 RESPECT TO MY CLIENT MR. BERNABE RAMIREZ?

2 A. ARE YOU ASKING ME IF I AM AWARE THAT IT EXISTS OR IF I
3 REVIEWED IT?

4 Q. ARE YOU AWARE THAT IT EXISTS?

5 A. NO, I DON'T KNOW THAT.

6 Q. SO THEN OBVIOUSLY YOU DIDN'T REVIEW IT?

7 A. THAT'S CORRECT.

8 Q. NOW IN YOUR EXPERIENCE AS AN D.E.A. AGENT IN THE CASES
9 THAT YOU'VE HAD, IS IT THE NORMAL PRACTICE OF D.E.A. AGENTS TO
10 PREPARE D.E.A. 6 REPORTS ON LAWYERS -- ON CLIENTS AND THE
11 LAWYERS THAT ARE REPORTED -- THAT ARE RETAINED OR APPOINTED
12 FOR COURT PROCEEDINGS?

13 MR. CARLTON: I'LL OBJECT, YOUR HONOR, AS BEING
14 BEYOND THE SCOPE AND IRRELEVANT.

15 THE COURT: THE WITNESS MAY ANSWER.

16 THE WITNESS: IS IT NORMAL, ARE YOU ASKING ME?
17 NORMAL PROCEDURE?

18 BY MS. KELLY:

19 Q. RIGHT.

20 A. YES, MA'AM, IT IS.

21 Q. AND SO THAT WOULD INCLUDE EVERY -- IS IT JUST FOR
22 ARRAIGNMENTS OR IS IT EVERY COURT PROCEEDING THAT THERE'S A
23 D.E.A. 6 REPORT PREPARED?

24 A. WELL, IT DEPENDS ON THE STATUS OF THE INVESTIGATION.
25 YOU'RE REQUIRED TO REPORT ON A PERIODIC BASIS. IF YOU HAVEN'T

1 COMPLIED WITH THAT, THEN YOU HAVE TO FILE A REPORT.

2 Q. SO THE D.E.A. 6 IS THE FORM THAT'S USED FOR THE PERIODIC
3 RECORDING ON THE STATUS OF INVESTIGATION?

4 A. NOT NECESSARILY. IT DEPENDS ON -- EVERY SITUATION IS
5 DIFFERENT.

6 Q. NOW, WITH RESPECT TO A PARTICULAR SUSPECT, HOWEVER, IS
7 THE INVESTIGATION STILL ONGOING ONCE A COMPLAINT OR INDICTMENT
8 HAS BEEN FILED AGAINST THAT SUSPECT?

9 A. IS THAT NORMAL?

10 Q. NO. I'M ASKING WITH RESPECT TO --

11 A. IT COULD BE ONGOING, YES.

12 Q. SO WHAT IT -- THE FACT THAT THERE -- LET'S ASSUME FOR
13 PURPOSES OF THIS DISCUSSION THERE ARE D.E.A. 6'S CONCERNING
14 THE ARRAIGNMENT OF MY CLIENT AT THE MAGISTRATE LEVEL AND THE
15 DISTRICT COURT LEVEL.

16 AND THE ATTORNEYS WHO ARE REPRESENTING THOSE PEOPLE
17 ARE NAMED IN THE D.E.A. 6. WOULD THAT SIGNIFY TO YOU THAT THE
18 INVESTIGATION IS STILL ONGOING WITH RESPECT TO A PARTICULAR
19 INDIVIDUAL WHO'S INVOLVED?

20 A. I DON'T UNDERSTAND YOUR QUESTION. YOU'RE ASKING ME TO
21 ASSUME THAT THERE'S A REPORT THAT I HAVEN'T REVIEWED AND I
22 DON'T KNOW THAT THAT REPORT EXISTS.

23 Q. WELL, YES, I'M ASKING YOU A HYPOTHETICAL QUESTION.
24 ASSUMING THAT THERE IS A D.E.A. 6 --

25 THE COURT: WELL, COUNSEL, HYPOTHETICAL QUESTIONS

1 HAVE NO PLACE HERE.

2 MS. KELLY: ALL RIGHT. VERY WELL, YOUR HONOR. YOUR
3 HONOR, COULD I BE PERMITTED TO APPROACH AND SHOW THE WITNESS
4 THE D.E.A. 6 REPORTS, SO THAT HE KNOWS THAT ONE, IN FACT,
5 EXISTS?

6 THE COURT: YOU MAY.

7 MS. KELLY: PARDON?

8 THE COURT: YOU MAY, IF IT'S NECESSARY.

9 MR. CARLTON: YOUR HONOR, THIS JUST DOESN'T CHANGE
10 IT FROM BEING A HYPOTHETICAL QUESTION. HE HASN'T REVIEWED
11 THIS AND HAS TESTIFIED TO THAT.

12 THE COURT: APPROACH AND SHOW IT TO THE WITNESS.
13 (DOCUMENT TENDERED TO THE WITNESS.)

14 THE COURT: WHAT IS YOUR QUESTION?

15 BY MS. KELLY:

16 Q. DOES THE FACT THAT THIS REPORT WAS MADE CONCERNING THE
17 ARRAIGNMENT OF MR. BERNABE RAMIREZ, DOES THAT FACT SIGNIFY TO
18 YOU THAT AT THAT POINT THE INVESTIGATION WAS STILL ONGOING
19 WITH RESPECT TO MY CLIENT?

20 A. I STILL DON'T UNDERSTAND YOUR QUESTION.

21 Q. WELL, LET ME APPROACH IT ANOTHER WAY. WHEN IS THE D.E.A.
22 6 REPORT SUPPOSED TO BE MADE OUT BY A D.E.A. AGENT AS PART OF
23 THE NORMAL COURSE OF AN INVESTIGATION?

24 A. WHENEVER AN INCIDENT OCCURS THAT SHOULD BE REPORTED.

25 Q. AND WHAT ARE THE CRITERIA ON WHICH YOU BASE WHENEVER AN

1 INCIDENT SHOULD BE REPORTED?

2 A. THE CRITERIA? THE CRITERIA IS ONGOING. IT JUST -- IF
3 THE AGENT FEELS THAT IT SHOULD BE REPORTED, HE'LL REPORT IT.
4 IN THE CASE OF AN ARRAIGNMENT OR A TRIAL SETTING, HE'LL REPORT
5 IT.

6 Q. SO THAT IT'S LEFT UP TO -- WHETHER A D.E.A. 6 REPORT
7 SHOULD BE COMPLETED WITH RESPECT TO A PARTICULAR INCIDENT IN
8 AN INVESTIGATION, IT'S COMPLETELY UP TO THE INDIVIDUAL AGENT'S
9 DISCRETION; IS THAT WHAT YOU'RE SAYING?

10 A. NOT NECESSARILY. NO.

11 Q. AND WHEN IS IT NOT COMPLETELY UP TO THE AGENT'S
12 DISCRETION?

13 THE COURT: COUNSEL, I THINK WE'RE GOING FAR AFIELD
14 HERE.

15 MS. KELLY: WELL, YOUR HONOR, I'M TRYING TO ELICIT
16 WHEN A REPORT IS SUPPOSED TO BE --

17 THE COURT: YOU'VE ASKED THAT QUESTION SEVERAL TIMES
18 AND THE WITNESS HAS ANSWERED.

19 MS. KELLY: WELL, THE WITNESS HAS ANSWERED, BUT THE
20 WITNESS'S ANSWER DOESN'T NECESSARILY HAVE TO BE COMPLETE. I'M
21 TRYING TO FIND OUT THE CRITERIA OR THE BASIS FOR WHICH A
22 REPORT WOULD BE COMPLETED.

23 THE COURT: WHY IS THAT RELEVANT THEN TO ANY ISSUE
24 IN THIS CASE?

25 MS. KELLY: THERE WASN'T ONE COMPLETED WHERE THERE

1 WAS A SIGNIFICANT CONVERSATION ON THE 25TH.

2 THE COURT: WELL, THAT'S ALREADY BEEN ELICITED,
3 HASN'T IT?

4 MS. KELLY: YES, YOUR HONOR. BUT I DON'T BELIEVE
5 THAT I'VE ESTABLISHED WHAT THE CRITERIA ARE FOR THE
6 APPROPRIATENESS.

7 THE COURT: WHY DON'T YOU ASK THE WITNESS WHY HE
8 DIDN'T DO IT THEN.

9 BY MS. KELLY:

10 Q. WHY DIDN'T YOU DO IT?

11 A. REFERRING TO THE CONVERSATION IN THE RESTAURANT?

12 Q. YES.

13 A. I DID NOT PREPARE A REPORT OF THAT CONVERSATION BECAUSE
14 IT WAS MY INTENT TO GET DEFENDANT BERNABE INTO THE VEHICLE
15 WHERE I KNEW THE CONVERSATION WOULD BE RECORDED.

16 Q. SO YOU DIDN'T THINK IT WAS IMPORTANT TO MAKE A RECORD OF
17 WHAT HAD TRANSPIRED IN THE RESTAURANT; IS THAT RIGHT?

18 A. NO - MA'AM. IN THE SCENARIO THAT WAS SET, IT WAS
19 IMPORTANT FOR THE DEFENDANT TO TELL AGENT BERRELLEZ WHAT WAS
20 ONGOING AND NOT FOR ME TO HAVE THAT INFORMATION.

21 Q. WHY WAS IT IMPORTANT FOR HIM TO SAY IT TO AGENT BERRELLEZ
22 AND NOT TO YOU?

23 A. BECAUSE IN THE SCENARIO THAT WAS SET, AGENT BERRELLEZ WAS
24 THE ONE THAT WAS DESIROUS OF RETURNING TO MEXICO IN HIS
25 UNDERCOVER ROLE OR THE PERSON THAT HE WAS PORTRAYING TO BE.

1 Q. THAT'S WHY IT WAS IMPORTANT FOR THE INFORMATION TO BE
2 RELAYED TO AGENT BERRELLEZ?

3 A. YES, MA'AM.

4 Q. DID IT HAVE ANYTHING TO DO WITH THE FACT THAT YOU KNEW
5 THAT THE -- THAT THERE WAS GOING TO BE A RECORDING OF THE
6 CONVERSATION IN THE CAR?

7 A. YES, MA'AM. I THINK I JUST MENTIONED THAT.

8 Q. NOW, THIS -- THE CONVERSATION THAT YOU HAD WITH MY CLIENT
9 HAPPENED ALMOST A YEAR AGO; ISN'T THAT RIGHT? SHY OF A COUPLE
10 MONTHS, TEN MONTHS AGO?

11 A. YES, MA'AM.

12 Q. AND YOU'RE RELYING NOW ON YOUR MEMORY OF WHAT WAS SAID,
13 RIGHT?

14 A. YES, MA'AM.

15 Q. AND WOULD YOU SAY THAT YOUR MEMORY WAS BETTER AT OR
16 AROUND THE TIME OF THE EVENTS THAN IT IS TEN MONTHS AFTER THE
17 EVENTS?

18 A. WELL, AGAIN, IT WOULD DEPEND ON THE EVENT.

19 Q. WELL, WOULD YOU SAY THAT YOUR -- OR WHAT -- HOW WOULD THE
20 EVENT -- WHAT DO YOU MEAN BY THAT?

21 A. IF SOMEONE WAS ADMITTING TO ME THAT THEY WERE PRESENT
22 WHEN AN AGENT WAS TORTURED, THAT WOULD BE SIGNIFICANT AND I
23 WOULD REMEMBER IT.

24 Q. BUT YOU WOULDN'T WRITE A REPORT ABOUT IT?

25 A. I MENTIONED THAT IT WAS COVERED IN ANOTHER REPORT THAT I

1 DID NOT WRITE.

2 Q. NOW, WITH RESPECT TO THE Demeanor OF MY CLIENT, IN YOUR
3 OPINION ON THE 21ST AND ON THE 24TH, IN YOUR OPINION, MY
4 CLIENT DID NOT SEEM COMFORTABLE WITH EITHER YOU OR AGENT
5 BERRELLEZ; IS THAT TRUE?

6 A. NO, MA'AM, THAT'S NOT TRUE. I THINK HE JUST FELT AT EASE
7 WITH MY PRESENCE.

8 Q. DID YOU SAY BEFORE THAT HE SEEMED NOT AT EASE ON THE 21ST
9 AND THE 24TH?

10 A. YES, MA'AM, I SAID THAT.

11 Q. AND YOU THOUGHT THAT HE SEEMED SUSPICIOUS, RIGHT?

12 A. I DON'T BELIEVE I USED THE WORD "SUSPICIOUS", BUT HE
13 SEEMED ILL AT EASE.

14 Q. AND HE SEEMED MORE COMFORTABLE ON THE 25TH; IS THAT
15 RIGHT?

16 A. AFTER A CERTAIN POINT IN THE CONVERSATION, YES, MA'AM.

17 Q. HOW LONG WOULD YOU SAY IN THE CONVERSATION HE SEEMED MORE
18 COMFORTABLE?

19 A. PARDON?

20 Q. HOW LONG WOULD YOU SAY -- HOW MANY MINUTES TRANSPIRED
21 BETWEEN THE TIME THAT THE CONVERSATION STARTED AND HE BEGAN TO
22 SEEM MORE COMFORTABLE?

23 A. I COULDN'T GIVE YOU A TIME REFERENCE. I CAN TELL YOU
24 WHAT WAS SAID THAT PUT HIM MORE AT EASE.

25 Q. THAT'S YOUR OPINION; ISN'T IT? I MEAN, IN YOUR OPINION,

1 IT'S BECAUSE YOU TOLD HIM -- I BELIEVE YOU TESTIFIED IN YOUR
2 OPINION, IT WAS BECAUSE YOU TOLD HIM THAT YOU WERE SOMEONE
3 THAT HE WAS FAMILIAR WITH IN MEXICO; IS THAT RIGHT?

4 A. YES, MA'AM.

5 Q. BUT HE HAD AT LEAST HAD SOME BEER AT THIS POINT, RIGHT?

6 A. PARDON?

7 Q. HE HAD AT LEAST HAD SOME BEERS AT THIS POINT, RIGHT?

8 A. YES, MA'AM.

9 Q. NOW, ON THE 25TH YOU HAD A MEETING WITH AGENT BERRELLEZ
10 IN THE RESTAURANT RIGHT BEFORE YOU LEFT FOR THE EMBASSY
11 SUITES; IS THAT RIGHT?

12 A. YES, MA'AM.

13 Q. BUT AT SOME POINT ON THE RIDE BACK TO THE HOTEL THERE WAS
14 SOME DISCUSSION ABOUT THE URGENCY AND THE NEED TO URINATE;
15 ISN'T THAT RIGHT?

16 A. YES, MA'AM.

17 Q. AND WAS THAT DUE TO THE ALCOHOLIC BEVERAGES THAT WERE
18 CONSUMED?

19 A. IT WASN'T ME THAT HAD TO URINATE, SO I WOULDN'T KNOW.

20 (COURTROOM LAUGHTER.)

21 Q. DO YOU RECALL WHO IT WAS?

22 A. YES, MA'AM. I BELIEVE IT WAS THE INFORMANT.

23 Q. SO HIS VOICE WOULD BE IDENTIFIED ON THE TRANSCRIPT; IS
24 THAT RIGHT?

25 A. YES, MA'AM.

1 Q. NOW, WAS THERE ALSO SOME DISCUSSION -- IF YOU HAVE THE
2 TRANSCRIPT IN FRONT OF YOU, TURN TO PAGE 7171.

3 A. WHAT TRANSCRIPT ARE YOU REFERRING TO?

4 Q. I'M SORRY, ON THE 25TH, WHICH I BELIEVE IS EXHIBIT 165.

5 A. EXCUSE ME. THE DATE AGAIN, PLEASE.

6 Q. I BELIEVE IT'S 165, JULY 25TH.

7 A. OKAY. AND THE PAGE NUMBER?

8 Q. THE PAGE NUMBER IS 7171.

9 A. THE TRANSCRIPT THAT I HAVE ONLY GOES UP TO PAGE 45.

10 Q. OH, I'M SORRY. YES, I'M USING THE NUMBERS AT THE BOTTOM.
11 IT WOULD BE PAGE 19, I'M SORRY.

12 NOW, THERE IS A REFERENCE THERE WITH YOUR -- "S"
13 STANDS FOR YOU; IS THAT RIGHT?

14 A. YES, MA'AM.

15 Q. AND YOU'RE SAYING THAT "WE WERE WAITING FOR YOU TO HAVE
16 DINNER AND WE DRANK UP."

17 AND DO YOU REMEMBER WHAT THE -- WHAT THE ENDING
18 PORTION OF THAT SENTENCE WAS?

19 A. NO, MA'AM, I DON'T.

20 Q. NOW, "WE" REFERS TO YOU AND MY CLIENT; IS THAT RIGHT?

21 A. YES, MA'AM, IT DOES.

22 Q. AT SOME POINT, THE WIVES OF MY CLIENT AND THE INFORMANT
23 WERE TAKEN TO DISNEYLAND; IS THAT RIGHT?

24 A. YES, MA'AM.

25 Q. AND IS THAT SOMETHING THAT THE D.E.A. PAID FOR?

1 A. NOT DIRECTLY, BUT, YES.

2 Q. WHAT DO YOU MEAN "NOT DIRECTLY"? WAS IT A REIMBURSED
3 EXPENSE? IS THAT WHAT YOU MEAN BY THAT?

4 A. I DON'T UNDERSTAND YOUR QUESTION. IF YOU'RE ASKING IF A
5 D.E.A. AGENT WENT UP AND BOUGHT THE TICKETS, NO.

6 Q. DO YOU KNOW WHO BOUGHT THE TICKETS?

7 A. I BELIEVE THE WIVES DID.

8 Q. DO YOU KNOW WHO PAID FOR THE HOTEL WHERE THE -- CASTEL'S
9 FAMILY AND MY CLIENT'S FAMILY WERE STAYING?

10 A. INDIRECTLY, THE D.E.A. PAID FOR IT.

11 Q. HOW DO YOU MEAN INDIRECTLY?

12 A. I BELIEVE A PAYMENT WAS MADE TO THE INFORMANT AND THE
13 INFORMANT PAID FOR THE HOTEL.

14 Q. DO YOU KNOW HOW MUCH THAT WAS?

15 A. NO, MA'AM, I DON'T.

16 Q. AND WERE THESE EXPENSES WITH RESPECT TO THE HOTEL, WERE
17 THEY PAID IN CASH?

18 A. YES, MA'AM.

19 Q. DID YOU TAKE THE WIVES TO DISNEYLAND?

20 A. YES, MA'AM. AND DID YOU HAVE ANY CONVERSATION WITH MY
21 CLIENT'S WIFE ABOUT ANY OF HIS ACTIVITIES IN GUADALAJARA?

22 A. NO, MA'AM.

23 Q. AND DID YOU TAKE THE INFORMANT AND MY CLIENT TO MAGIC
24 MOUNTAIN?

25 A. NO, MA'AM.

1 Q. DID SOMEONE FROM THE D.E.A. TAKE THEM TO MAGIC MOUNTAIN?

2 A. I DON'T KNOW THAT.

3 Q. AND DO YOU KNOW WHAT THE REASON -- DO YOU KNOW WHY MY
4 CLIENT CAME UP HERE WITH CASTEL DEL ORO?

5 DO YOU KNOW WHAT BUSINESS IT WAS THAT THEY WERE
6 SUPPOSED TO BE DOING?

7 A. I BELIEVE IT HAD SOMETHING TO DO WITH SECURITY AND THE
8 GUARD DOG BUSINESS.

9 Q. DO YOU KNOW WAS THIS AN EXISTING BUSINESS THAT THE
10 INFORMANT HAD ESTABLISHED IN GUADALAJARA?

11 A. I BELIEVE IT WAS.

12 Q. AND THERE WERE TWO -- YOU SAY THERE WERE TWO
13 VETERINARIANS THAT CAME ALONG?

14 A. YES, MA'AM.

15 Q. FEMALE VETERINARIANS; IS THAT RIGHT?

16 A. YES, MA'AM.

17 Q. DURING THE THREE CONVERSATIONS THAT YOU WERE PRESENT FOR,
18 THE 21ST, THE 24TH, AND THE 25TH -- LET'S JUST DEAL WITH THE
19 21ST AND THE 24TH -- YOU WERE ATTEMPTING AS A GROUP TO GAIN MY
20 CLIENT'S CONFIDENCE; IS THAT RIGHT?

21 A. YES, MA'AM.

22 Q. AND THERE WAS A FAIR AMOUNT OF MACHO BRAVADO GOING ON,
23 WOULDN'T YOU SAY?

24 MR. CARLTON: OBJECTION, YOUR HONOR. VAGUE AND
25 AMBIGUOUS.

1 THE COURT: RESTATE YOUR QUESTION.

2 MS. KELLY: ALL RIGHT.

3 BY MS. KELLY:

4 Q. THERE WAS A FAIR AMOUNT OF SWEARING ON THE PART OF
5 BERNABE; IS THAT RIGHT?

6 A. YES, MA'AM.

7 Q. FOUL LANGUAGE?

8 A. YES, MA'AM.

9 Q. DIRTY JOKES?

10 A. YES, MA'AM.

11 Q. SEXIST REMARKS ABOUT WOMEN?

12 MR. CARLTON: OBJECTION, YOUR HONOR. VAGUE AND
13 AMBIGUOUS, ARGUMENTATIVE.

14 THE COURT: YES, THE OBJECTION IS SUSTAINED. YOU
15 CAN HAVE THE REMARKS READ, IF YOU WANT, OR QUESTION HIM ABOUT
16 IT.

17 BY MS. KELLY:

18 Q. THERE WERE SOME REMARKS MADE ABOUT SEXUAL ATTRACTION TO
19 THE VETERINARIANS, WEREN'T THERE?

20 A. YES, MA'AM.

21 Q. AND THOSE REMARKS WERE MADE BY AGENT BERRELLEZ, RIGHT?

22 MR. CARLTON: I'LL OBJECT TO THE RELEVANCE, YOUR
23 HONOR.

24 MS. KELLY: WELL, YOUR HONOR, I THINK -- I COULDN'T
25 ASK ABOUT THE MACHO BRAVADO, SO I'M TRYING TO ESTABLISH BY

1 ASKING HIM THE RIGHT QUESTION.

2 THE COURT: I DON'T HEAR YOU.

3 MS. KELLY: I'M SORRY, YOUR HONOR. I ASKED THE
4 QUESTION ABOUT WHETHER THERE WAS A FAIR AMOUNT OF MACHO
5 BRAVADO GOING ON BETWEEN THESE OR AMONGST THESE MEN, AND THE
6 PROSECUTOR FELT THAT WAS VAGUE AND AMBIGUOUS. SO I'M TRYING
7 TO BREAK IT DOWN TO ASK A PARTICULAR QUESTION, AND I'M --

8 THE COURT: WHY IS IT RELEVANT TO CHARACTERIZE IT AS
9 MACHO, SEXIST OR OTHERWISE?

10 MS. KELLY: WELL, BECAUSE -- DO YOU WANT -- SHOULD I
11 ARGUE THIS OUTSIDE THE PRESENCE OF THE JURY?

12 THE COURT: JUST IF COULD YOU GIVE ME SOME BRIEF
13 INFORMATION.

14 MS. KELLY: BECAUSE, YOUR HONOR, I THINK IT PUTS THE
15 CONVERSATION IN CONTEXT. I MEAN, I THINK WHAT'S GOING TO BE
16 HAPPENING IS IT'S GOING TO BE A MOVIE WITH EXCERPTS. AND
17 THINGS ARE GOING TO BE TAKEN OUT OF CONTEXT, AND I WANT TO PUT
18 INTO CONTEXT WHAT WAS GOING ON AMONGST THE THESE FOUR MEN.

19 THE COURT: WELL, WON'T THAT DEMONSTRATE IT, WHAT
20 WAS GOING ON?

21 MS. KELLY: WELL, I DON'T THINK THE LITTLE SELECTED
22 PIECES DO DEMONSTRATE THAT.

23 THE COURT: WELL, IT'S NOT PROPER TO ASK THE WITNESS
24 TO CHARACTERIZE THE CONVERSATION. YOU MAY ELICIT WHATEVER YOU
25 BELIEVE IS APPROPRIATE.

1 MS. KELLY: VERY WELL, YOUR HONOR.

2 THE COURT: WE'LL TAKE OUR AFTERNOON RECESS AT THIS
3 TIME.

4 THE CLERK: PLEASE RISE.

5 THIS COURT IS NOW IN RECESS.

6 (BRIEF RECESS.)

7 (JURY PRESENT.)

8 (WITNESS RESUMED THE STAND.)

9 THE COURT: DO YOU HAVE ANY FURTHER QUESTIONS FOR
10 THIS WITNESS?

11 MS. KELLY: YES, YOUR HONOR, I DO.

12 YOUR HONOR, I'D LIKE TO APPROACH AND SHOW THE
13 WITNESS THE EXHIBIT AND ASK HIM IF THIS IS THE REPORT HE
14 PREPARED.

15 MAY I APPROACH THE WITNESS, YOUR HONOR? IT'S THE
16 REPORT OF JULY 24TH, 1989.

17 THE COURT: DID THE WITNESS PREPARE IT?

18 MS. KELLY: NO, YOUR HONOR.

19 THE COURT: DO YOU WISH TO ASK HIM IF HE DID?

20 MS. KELLY: NO, YOUR HONOR. I BELIEVE HE SAID THAT
21 THE --

22 THE COURT: SOMEONE ELSE?

23 MS. KELLY: PARDON ME?

24 THE COURT: FOR WHAT PURPOSE DO YOU WANT TO APPROACH
25 THE WITNESS?

1 MS. KELLY: YOUR HONOR, HE INDICATED THAT THE
2 SUBSTANCE OF THE CONVERSATION ON THE 25TH THAT HE HAD WITH MY
3 CLIENT IN THE BAR WAS RECORDED IN THE D.E.A. 6 REPORT OF THE
4 25TH.

5 THE COURT: WHAT DO YOU WANT TO APPROACH THE WITNESS
6 FOR?

7 MS. KELLY: WELL, I WANT TO SHOW HIM THE REPORT,
8 YOUR HONOR, AND ASK HIM IF IT DOES APPEAR IN THERE.

9 THE COURT: GO AHEAD.

10 BY MS. KELLY:

11 Q. AGENT SALAZAR, IS THIS THE REPORT OF JULY 25TH, 1989 THAT
12 YOU INDICATED -- A D.E.A. 6 REPORT OF JULY 25, 1989?

13 A. IT APPEARS TO BE, YES.

14 Q. HAVE YOU EVER REVIEWED THAT IN CONNECTION WITH THIS
15 INVESTIGATION?

16 A. YES, MA'AM.

17 Q. AND DO YOU SEE ANYWHERE THE REFERENCE TO THE SUBSTANCE OF
18 THE CONVERSATION THAT YOU HAD, THAT YOU NOW SAY THAT YOU HAD
19 WITH MY CLIENT IN THE BAR ON JULY 25TH, 1989?

20 A. DO I SEE ANY WHAT, NOW?

21 Q. REFERENCE OR ANY STATEMENT ABOUT THE SUBSTANCE OF THE
22 CONVERSATION THAT YOU HAD WITH MY CLIENT ON JULY 25TH, 1989 IN
23 THE BAR?

24 MR. CARLTON: OBJECTION, YOUR HONOR. THIS IS
25 HEARSAY, INDIRECT HEARSAY.

1 THE COURT: OVERRULED.

2 THE WITNESS: IF I SEE REFERENCE TO IT? YES, I DO.

3 BY MS. KELLY:

4 Q. COULD YOU TELL ME WHERE THAT APPEARS?

5 A. I BELIEVE IN PARAGRAPH FOUR.

6 Q. AND THE SUBSTANCE OF THE CONVERSATION THAT YOU HAD WITH
7 MR. BERNABE RAMIREZ IN THE BAR IS RELATED THERE IN PARAGRAPH
8 FOUR?

9 A. THE -- MAYBE I DON'T UNDERSTAND WHAT YOU MEAN BY THE
10 SUBSTANCE OF THE CONVERSATION. IF IT'S A VERBATIM TRANSCRIPT
11 OR SOMETHING LIKE THAT? NO, IT ISN'T; IT JUST REFERS TO THAT.

12 IT REFERS TO THE FACT THAT DEFENDANT BERNABE RAMIREZ
13 STATED THAT HE HAD BEEN PRESENT DURING SPECIAL AGENT
14 CAMARENA'S INTERROGATION.

15 Q. AND THAT, IN YOUR MIND, IS THE RECORD OF WHAT TRANSPIRED
16 AT THE BAR, THE CONVERSATION THAT YOU HAD WITH MY CLIENT AT
17 THE BAR ON JULY 25TH, 1989; IS THAT RIGHT?

18 A. YES, MA'AM.

19 Q. NOW, IN FACT, NOWHERE DOES IT APPEAR, HOWEVER, IN THAT
20 PARTICULAR REPORT, THERE'S NO RECORD OF WHAT YOU SAID TO MR.
21 BERNABE RAMIREZ, RIGHT?

22 A. IN RELATION TO WHAT? OF WHAT I SAID IN RELATION TO
23 WHAT? EXCUSE ME.

24 Q. OKAY. I'M SORRY, I CONFUSED YOU. WHAT I'M REFERRING TO
25 IS THE CONVERSATION YOU HAD WITH MR. BERNABE RAMIREZ IN THE

1 BAR. AND THAT'S THE ADMISSION THAT MR. BERNABE MADE TO YOU IN
2 RESPONSE TO A CONVERSATION THAT YOU ELICITED FROM HIM, RIGHT?

3 A. YES, MA'AM.

4 Q. YOU BROUGHT UP THE SUBJECT, RIGHT?

5 A. YES, MA'AM.

6 Q. AND IN BRINGING UP THE SUBJECT, YOU TOLD HIM A CERTAIN
7 STORY ABOUT YOURSELF, RIGHT?

8 A. YES, I DID.

9 Q. AND HOW LONG DID YOU SAY THIS CONVERSATION LASTED?

10 A. THAT PARTICULAR CONVERSATION, JUST A FEW MINUTES.

11 Q. AND THE ONLY REFERENCE THAT YOU MADE TO IT IN THAT
12 PARTICULAR REPORT IS THE REFERENCE THAT AN ADMISSION WAS MADE
13 BY MR. BERNABE RAMIREZ CONCERNING HIS PRESENCE AT THE LOPE DE
14 VEGA RESIDENCE, CORRECT?

15 MR. CARLTON: OBJECTION, YOUR HONOR. THE TESTIMONY
16 IS THAT HE DIDN'T WRITE THIS REPORT. THERE IS NO FOUNDATION.

17 THE COURT: NOW, RESTATE YOUR QUESTION.

18 BY MS. KELLY:

19 Q. MAYBE I'M MISCHARACTERIZING WHAT YOU SAID EARLIER WHEN I
20 ASKED YOU ABOUT WHETHER THERE WAS ANY D.E.A. 6 REPORT PREPARED
21 OF THE CONVERSATION THAT YOU HAD WITH MY CLIENT IN THE BAR ON
22 JULY 25TH.

23 AND I'M DEALING WITH THE CONVERSATION CONCERNING THE
24 ADMISSION THAT HE MADE TO YOU. YOU INDICATED TO ME, I
25 BELIEVE, THAT THE RECORD OF THAT WAS CONTAINED IN A D.E.A.

1 REPORT PREPARED BY SOMEBODY ELSE OF THE EVENTS ON THE 25TH OF
2 JULY; IS THAT RIGHT?

3 A. YES, MA'AM. THE FACTS AS I RECALL, BUT NOT THE
4 CONVERSATION, PER SE.

5 Q. AND MY QUESTION TO YOU IS, IN THAT PARTICULAR REPORT, DO
6 YOU SEE ANY REFERENCE TO THE CONVERSATION THAT YOU AND MR.
7 BERNABE RAMIREZ HAD CONCERNING YOUR DESCRIPTION TO HIM WHO YOU
8 WERE AND HOW HE SHOULD LET AGENT BERRELLEZ KNOW ABOUT HIS
9 PRESENCE AT LOPE DE VEGA?

10 A. NO, MA'AM.

11 Q. NOW, YOU WERE PRESENT DURING THE JULY 21ST CONVERSATION,
12 RIGHT?

13 A. YES, MA'AM.

14 Q. AND WERE YOU PRESENT DURING THE ENTIRE -- DURING THE
15 ENTIRE CONVERSATION?

16 A. YES, MA'AM.

17 Q. NOW, DURING THAT CONVERSATION, MR. BERNABE RAMIREZ IS
18 TALKING ABOUT OBTAINING DOCUMENTATION FROM AN ATTORNEY; IS
19 THAT RIGHT?

20 A. YES, MA'AM.

21 Q. AND THAT DOCUMENTATION WOULD BE THE CONFESSIONS THAT WERE
22 ELICITED BY THE MEXICAN GOVERNMENT IN CONNECTION WITH THEIR
23 INVESTIGATION OF AGENT CAMARENA'S DEATH; IS THAT RIGHT?

24 A. YES, MA'AM.

25 Q. AND THERE ARE A NUMBER OF -- AND THERE ARE A NUMBER OF

1 CONFESIONS THAT WERE TAKEN BY THE MEXICAN GOVERNMENT IN
2 CONNECTION WITH THAT INVESTIGATION; IS THAT RIGHT?

3 A. I HAVE BEEN TOLD THAT THEY EXIST, YES.

4 Q. YOU HAVE NOT PERSONALLY REVIEWED ANY OF THOSE
5 CONFESIONS?

6 A. NO, I HAVE NOT.

7 Q. BUT WHEN MR. -- WHEN MY CLIENT WAS DISCUSSING THIS, YOU
8 UNDERSTOOD HIM TO REFER TO THE DOCUMENTS THAT WERE PART OF THE
9 COURT FILE THAT WERE THE CONFESIONS OF SUSPECTS WHO HAD BEEN
10 ARRESTED IN CONNECTION WITH THE MEXICAN GOVERNMENT'S
11 INVESTIGATION; IS THAT RIGHT?

12 A. I CAN'T SAY THAT I UNDERSTOOD HIM TO SAY THEY WERE PART
13 OF THE COURT FILE. I UNDERSTOOD HIM TO SAY HE COULD OBTAIN
14 DECLARATIONS OF INDIVIDUALS THAT HAD BEEN ARRESTED.

15 Q. AND FROM WHOM WAS HE GOING OBTAIN THESE DOCUMENTS?

16 A. FROM AN ATTORNEY.

17 Q. NOW, HAVE YOU REVIEWED -- WERE YOU -- STRIKE THAT.

18 AS PART OF YOUR INVESTIGATION IN THIS CASE, YOU
19 REVIEWED NO DECLARATIONS THEN, NOT EVEN -- NONE OF THE
20 DECLARATIONS THAT WERE GIVEN TO THE MEXICAN GOVERNMENT; IS
21 THAT RIGHT?

22 A. THAT'S CORRECT.

23 Q. DO YOU REMEMBER ON THE 21ST THAT THERE WAS DISCUSSION
24 ABOUT THE VETERINARIAN BUSINESS THAT MR. CASTEL DEL ORO HAD
25 STARTED IN GUADALAJARA?

1 A. NO, MA'AM, I DON'T.

2 Q. WOULD IT HELP YOU TO LOOK AT A COPY OF THE TRANSCRIPT
3 THAT WAS PREPARED AT YOUR DIRECTION CONCERNING THE EVENTS OF
4 THE 21ST?

5 A. ARE YOU REFERRING TO THE SECURITY GUARD DOG BUSINESS OR
6 VETERINARY BUSINESS?

7 Q. WELL, MY LAST QUESTION TO YOU WAS ABOUT WHETHER THE
8 TRANSCRIPT WILL REFRESH YOUR RECOLLECTION, BUT THE QUESTION
9 BEFORE THAT ABOUT THE VETERINARIAN BUSINESS.

10 A. TO MY KNOWLEDGE, I DON'T BELIEVE THAT THE INFORMANT HAD A
11 VETERINARY BUSINESS.

12 Q. BUT HE DID HAVE A SECURITY BUSINESS?

13 A. SECURITY, YES, MA'AM.

14 Q. AND WHAT WAS THE PURPOSE OF HAVING THE VETERINARIANS
15 ACCOMPANY HIM ON THIS TRIP; DO YOU RECALL?

16 MR. CARLTON: OBJECTION. LACK OF FOUNDATION.

17 THE COURT: OVERRULED.

18 THE WITNESS: I WAS TOLD THAT THE VETERINARY DOCTORS
19 WERE --

20 MR. CARLTON: MOVE TO STRIKE, YOUR HONOR, ON THE
21 BASIS OF HEARSAY.

22 MS. KELLY: I'M NOT OFFERING IT FOR THE TRUTH OF THE
23 MATTER ASSERTED.

24 THE COURT: WELL, WHAT ARE YOU OFFERING IT FOR?

25 MS. KELLY: I'M OFFERING IT TO SHOW THE PURPOSE FOR

1 WHICH MY CLIENT CAME UP HERE AND WHAT HE WAS LED TO BELIEVE
2 WAS THE PURPOSE OF THE BUSINESS THAT WAS GOING TO BE
3 CONDUCTED. IT'S OBVIOUS THAT IT WASN'T -- THAT WASN'T THE
4 BUSINESS.

5 THE COURT: WELL, THE WITNESS MAY ANSWER.

6 THE WITNESS: I WAS TOLD THAT THE PURPOSE OF THE
7 VETERINARY DOCTORS ACCOMPANYING THEM WAS FOR THOSE DOCTORS TO
8 FIND OUT HOW SIMILAR BUSINESSES WERE RUN IN THE UNITED STATES.

9 BY MS. KELLY:

10 Q. WERE THERE GOING TO BE PURCHASES OF DOGS, ACCORDING TO
11 WHAT THE PLAN WAS?

12 A. I DON'T RECALL THAT.

13 Q. DO YOU RECALL ANY DISCUSSION ABOUT THE IDEA FOR A HOME
14 SERVICE VETERINARIAN, HOUSE CALLS, AND THE NATURE OF THAT
15 BUSINESS?

16 A. NO, MA'AM, I DON'T.

17 Q. WOULD IT HELP YOUR RECOLLECTION TO LOOK AT A COPY OF THE
18 TRANSCRIPT THAT WAS PREPARED AT YOUR DECLARATION (SIC) -- AT
19 YOUR DIRECTION -- CONCERNING THE SEVEN -- JULY 21ST
20 CONVERSATIONS?

21 A. IF I READ THE TRANSCRIPT, YES, IT WOULD REFRESH MY
22 RECOLLECTION.

23 Q. I BELIEVE YOU HAVE THAT TRANSCRIPT IN FRONT OF YOU, WHICH
24 IS EXHIBIT 158.

25 A. I HAVE 158 IN FRONT OF ME.

1 Q. IF YOU'LL TURN TO PAGE -- IT'S PAGE 5-- -- 58. ON THE TOP
2 IT'S INDICATED.

3 A. THERE'S -- I DON'T SEE ANY REFERENCE NUMBERS ON THE TOP
4 OF THESE PAGES.

5 MS. KELLY: COULD I HAVE A MOMENT, YOUR HONOR?

6 BY MS. KELLY:

7 Q. ARE THERE ANY NUMBERS ON THE BOTTOM OF THE PAGE?

8 A. YES, MA'AM, THERE IS.

9 Q. IF YOU WILL TURN THEN TO PAGE 6856, THE VERY BOTTOM.

10 A. YES, MA'AM.

11 Q. AND THE TRANSCRIPT HAS A NUMBER NEXT TO IT. I'M ASSUMING
12 THAT THE STV 88 0014 NUMBER REFERS TO CASTEL DEL ORO; IS THAT
13 RIGHT?

14 A. YES - MA'AM, IT DOES.

15 Q. IF YOU LOOK AT THE VERY LAST PARAGRAPH, IT'S TALKING
16 ABOUT -- THE INFORMANT IS TALKING ABOUT CHECKING ON THE
17 BUSINESS; IS THAT RIGHT?

18 A. YES, MA'AM.

19 Q. IF YOU WILL TURN TO THE NEXT PAGE, IS THERE A DISCUSSION
20 ABOUT THE BUSINESS THAT NEEDS TO BE DONE, ABOUT WHAT IS GOING
21 TO BE SOLD FOR BUSINESS?

22 A. WHAT IS GOING TO BE SOLD?

23 Q. THE INFORMANT SAID THE IDEA IS VETERINARIAN HOME
24 SERVICES?

25 A. YES, MA'AM.

1 Q. VETERINARIANS MAKING HOUSE CALLS?

2 A. YES, MA'AM.

3 Q. MEMBERSHIPS BEING SOLD WITH FREE EXAMINATIONS?

4 A. YES, MA'AM.

5 Q. AND THE CATCH IS THAT THEY'LL BE KEPT CLIENTS, SO THEY
6 CAN BE SOLD THE DOG FOOD, THE SHOTS AND EVERYTHING THE DOGS
7 NEED, RIGHT?

8 A. YES, ON THE FOLLOWING PAGE.

9 Q. YES, ON PAGE 68.

10 NOW, IN ADDITION TO THE DISCUSSION ABOUT -- THERE
11 WAS ALSO ANOTHER BUSINESS, THAT SECURITY BUSINESS; IS THAT
12 RIGHT, THAT CASTEL DEL ORO HAD STARTED IN GUADALAJARA AND HAD
13 HIRED MY CLIENT TO BE A MANAGER OF?

14 A. I WAS TOLD THAT THAT BUSINESS EXISTED, YES.

15 Q. DURING THE COURSE OF THE CONVERSATION ON THE 21ST OF
16 JULY, DO YOU RECALL THE INFORMANT MENTIONING THAT MY CLIENT
17 NEEDED FINANCIAL HELP?

18 MR. CARLTON: OBJECTION, YOUR HONOR. HEARSAY.

19 THE COURT: I DIDN'T HEAR YOU. WOULD YOU PLEASE USE
20 THE MICROPHONE, COUNSEL, I CAN'T HEAR YOU.

21 MS. KELLY: I'M SORRY, YOUR HONOR.

22 THE COURT: YOU LET YOUR VOICE FADE AWAY.

23 MS. KELLY: I APOLOGIZE.

24 BY MS. KELLY:

25 Q. DO YOU RECALL ON JULY 21ST A DISCUSSION BETWEEN THE

1 INFORMANT AND AGENT BERRELLEZ ABOUT THE FACT THAT MY CLIENT
2 NEEDED FINANCIAL HELP?

3 A. NO, MA'AM, I DON'T.

4 Q. AND I'LL DIRECT YOUR ATTENTION TO PAGE 6861.

5 A. PAGE NUMBER AGAIN, PLEASE.

6 Q. I'M SORRY. 6861. IN THE MIDDLE OF THE PAGE, THE
7 INFORMANT SAYS THAT HE JUST GOT OUT AND HE'S TRYING TO BREAK
8 EVEN AND HE NEEDS A LITTLE HELP.

9 A. YES, MA'AM.

10 Q. NOW, THERE WAS AN ADDITIONAL DISCUSSION ABOUT
11 OBTAINING -- I WANT TO GO BACK TO OBTAINING TRANSCRIPTS OF THE
12 DOCUMENTS IN MEXICO. DID YOU UNDERSTAND THOSE DOCUMENTS TO BE
13 THE CONFESSIONS OF PEOPLE WHO HAD BEEN ARRESTED IN MEXICO?

14 MR. CARLTON: ASKED AND ANSWERED, YOUR HONOR.

15 THE COURT: SUSTAINED.

16 BY MS. KELLY:

17 Q. DO YOU RECALL A DISCUSSION -- DO YOU RECALL A DISCUSSION
18 WITH THE INFORMANT AND AGENT BERRELLEZ AND MY CLIENT WHERE HE
19 SAID THAT HE WOULD ASK A LAWYER TO LOOK AT THE FILE AND HE
20 WOULD OBTAIN COPIES OF THE DOCUMENTS IN THE FILE?

21 A. YES, MA'AM.

22 Q. AND THE PURPOSE OF OBTAINING THESE DOCUMENTS IN THE FILE
23 WAS TO SEE IF ANYBODY IN THEIR CONFESSION HAD MENTIONED AGENT
24 BERRELLEZ, WHO WAS POSING AS LIZARRAGA; IS THAT RIGHT?

25 A. YES, MA'AM.

1 Q. AND I BELIEVE -- DIDN'T MY CLIENT REFER TO THOSE
2 DOCUMENTS AS DOCUMENTS WITHIN THE LAW?

3 A. YES, MA'AM.

4 Q. DO YOU ALSO RECALL A DISCUSSION WITH MY CLIENT WHERE HE
5 TOLD YOU THAT SINCE -- HE DID MENTION DURING HIS CONVERSATION
6 WITH YOU THAT HE HAD BEEN ARRESTED BY THE MEXICAN GOVERNMENT
7 IN CONNECTION WITH THEIR INVESTIGATION OF AGENT CAMARENA,
8 RIGHT?

9 A. YES, MA'AM.

10 Q. AND HE TOLD YOU THAT HE WAS -- THAT HE WAS RELEASED AT
11 SOME POINT ON BAIL, RIGHT?

12 A. THIS CONVERSATION THAT YOU'RE REFERRING TO WAS HELD
13 BASICALLY BETWEEN BERNABE RAMIREZ AND SPECIAL AGENT BERRELLEZ.

14 Q. SO, YOU WEREN'T THERE?

15 A. YES, I WAS THERE, BUT I WASN'T PART OF THE CONVERSATION.

16 Q. BUT YOU DO RECALL THAT CONVERSATION?

17 A. I WAS IN THE ROOM, YES.

18 Q. DO YOU RECALL THAT HE SAID THAT SINCE HE HAD GOTTEN OUT
19 OF JAIL, HE REALLY HAD NOTHING TO DO WITH THESE PEOPLE AND
20 THAT HE WAS JUST WORKING AND WORKING AND WORKING?

21 A. YES, MA'AM.

22 Q. NOW, AT SOME POINT HE WAS ALSO TALKING ABOUT THE WAY
23 THINGS WERE IN MEXICO AND ABOUT HIS WAGES AND HOW EXPENSIVE
24 THINGS WERE; IS THAT RIGHT?

25 A. I DON'T RECALL IF THAT WAS THE EXACT CONVERSATION.

1 Q. DO YOU REMEMBER HIM SAYING THAT THE WAGES IN MEXICO WERE
2 PRACTICALLY WORTHLESS?

3 A. NO, MA'AM, I DON'T.

4 Q. I'LL DIRECT YOUR ATTENTION TO PAGE 6885. I'M SORRY, I
5 HAVE THE WRONG PAGE NUMBER. WELL, LEAVING THAT. ON PAGE
6 6885, THERE IS A DISCUSSION ABOUT EXPENSES THAT BERNABE
7 RAMIREZ HAS; ISN'T THAT RIGHT?

8 A. YES, MA'AM.

9 Q. AND IF YOU WILL GO ONE PAGE PRECEDING THAT, 6884, IN THE
10 MIDDLE OF THE PAGE, IS THERE A REFERENCE BY MY CLIENT, IN THE
11 MIDDLE OF THE PARAGRAPH THERE'S A DISCUSSION ABOUT GOING TO
12 MEXICO CITY AND HOW EXPENSIVE THAT WOULD BE.

13 AND BERNABE RAMIREZ SAYS, "I DEDICATED MYSELF, LIKE
14 I'M TELLING YOU, TO WORK HARD, TO WORK FOR MY WAGES, BUT THE
15 WAGES THERE, WELL, YOU KNOW, THAT IT'S ALL FUCKED UP."

16 RIGHT?

17 A. I DON'T SEE THE PART WHERE HE MENTIONS HOW EXPENSIVE IT
18 WOULD BE.

19 Q. ALL RIGHT. ABOVE THAT, HE SAID, "AND BESIDES THAT, THE
20 TRUTH IS I HAVEN'T GONE TO MEXICO CITY BECAUSE, WELL, IT COST
21 SOME MONEY AND I DON'T HAVE IT"?

22 A. I SEE THAT, YES.

23 Q. THAT'S THE WAY IT IS, RIGHT?

24 A. YES, MA'AM.

25 Q. AND THEN ON THE FOLLOWING PAGE, PAGE 6885, WHERE

1 THERE'S -- AFTER THE DISCUSSION OF THE EXPENSES OF THE HOUSE
2 AND THE FAMILY, A DISCUSSION OF BEING SURE OF HIS -- DO YOU
3 SEE THAT REFERENCE TO THE FAMILY?

4 A. YES, MA'AM.

5 Q. AND THE EXPENSES. AND, THEREAFTER, MY CLIENT SAYS THAT
6 HE'D RATHER BE SURE OF HIS SALARY BEFORE HE GOES DOWN THERE IN
7 THE HOPE OF GETTING SOMETHING.

8 AND THEN FOLLOWING THAT, THE INFORMANT SAYS -- WELL,
9 HE SAYS, "IT'LL GO WELL FOR US THERE. IT'LL GO WELL FOR US
10 THERE"; IS THAT RIGHT?

11 A. NO. FOLLOWING THAT, MA'AM, SPECIAL AGENT BERRELLEZ
12 SPEAKS, AND THEN YOUR CLIENT SPEAKS AGAIN.

13 Q. AND SPECIAL AGENT SAYS, "WHAT FOR? YES, THAT'S RIGHT."

14 A. THAT'S CORRECT.

15 Q. AND THEN MY CLIENT SAYS, "YES." AND THEN THE INFORMANT
16 SAYS, "WELL, IT'LL GO WELL FOR US THERE. IT'LL GO WELL FOR US
17 THERE." IS THAT RIGHT?

18 A. THAT'S WHAT IT SAYS. I'M NOT FAMILIAR WITH THE CONTEXT
19 OF THE WHOLE CONVERSATION AT THAT POINT, THOUGH.

20 Q. WELL, DO YOU WANT TO TAKE A LOOK AT THE PRECEDING PAGES
21 TO SEE? I BELIEVE THERE'S A DISCUSSION OF WHETHER HE WOULD GO
22 TO VISIT FONSECA IN PRISON TO ASK FOR MONEY.

23 A. HOW MANY PRECEDING PAGES SHOULD I READ BEFORE I BECOME
24 FAMILIAR WITH THE CONTEXT OF THE CONVERSATION?

25 Q. WHATEVER YOU FEEL WOULD DO IT IN KNOWING WHAT THE CONTEXT

1 OF THE CONVERSATION IS.

2 A. (WITNESS READING TRANSCRIPT TO HIMSELF.) OKAY.

3 Q. AM I -- WAS MY CHARACTERIZATION OF THE CONTEXT OF THE
4 CONVERSATION CORRECT?

5 A. YES, MA'AM.

6 Q. AND DO YOU RECALL A CONVERSATION ALSO ABOUT MY CLIENT
7 REFERRING TO HIS WIFE'S BUSINESS, WHICH WAS SELLING FOOD
8 STUFFS?

9 A. I RECALL THE CONVERSATION. I DON'T RECALL THE SUBSTANCE
10 OF THE CONVERSATION AT THIS TIME.

11 Q. I'LL DIRECT YOUR ATTENTION TO PAGE 68- -- I'M SORRY. I
12 HAVE THE WRONG PAGE NUMBER WRITTEN DOWN. I'LL RETURN TO THAT.

13 NOW, WHEN YOU WERE PRESENT AT THE AIRPORT, DID AGENT
14 BERRELLEZ INTRODUCE HIMSELF -- DID CASTEL DEL ORO INTRODUCE
15 AGENT BERRELLEZ AS A MAJOR TRAFFICKER -- NARCOTICS TRAFFICKER?

16 A. I WAS NOT WITHIN EARSHOT WHEN THAT PRESENTATION WAS MADE.

17 Q. BUT THE FAMILIES WERE ALL PRESENT; IS THAT RIGHT? THE
18 FAMILIES OF THE INFORMANT AND MR. BERNABE RAMIREZ'S WIFE WAS
19 PRESENT?

20 A. YES, MA'AM.

21 Q. TO YOUR KNOWLEDGE, WAS MR. CASTEL DEL ORO'S WIFE AWARE OF
22 THE UNDERCOVER NATURE OF THE TRANACTIONS THAT HAD TRANSPIRED?

23 MR. CARLTON: LACK OF FOUNDATION. OBJECTION, YOUR
24 HONOR.

25 THE COURT: OVERRULED.

1 THE WITNESS: NOT TO MY KNOWLEDGE, NO.

2 BY MS. KELLY:

3 Q. NOW, ON THE 25TH OF JULY, WAS IT PREARRANGED THAT YOU
4 WOULD BE LEFT ALONE IN THE RESTAURANT WITH MR. BERNABE
5 RAMIREZ?

6 A. YES, MA'AM.

7 Q. WAS THERE SOME -- IS THERE SOME REASON THAT YOU CHOSE TO
8 GO TO THE EL TORITO RESTAURANT IN COVINA FROM ARCADIA?

9 A. NO, MA'AM.

10 Q. DO YOU RECALL THE ROUTE THAT YOU TOOK?

11 A. JUST THE MOST DIRECT FREEWAY ROUTE.

12 Q. SO DID YOU TRAVEL ON THE 210 FREEWAY?

13 A. YES, MA'AM.

14 Q. DO YOU RECALL WHAT THE VETERINARIANS LOOKED LIKE WHO WERE
15 PRESENT WITH CASTEL DEL ORO WHEN THEY ARRIVED AT THE AIRPORT?

16 MR. CARLTON: OBJECTION, VAGUE AND AMBIGUOUS.

17 MS. KELLY: I'LL BREAK IT DOWN THEN.

18 BY MS. KELLY:

19 Q. THERE WERE TWO FEMALE VETERINARIANS WHO ARRIVED AT THE
20 AIRPORT WITH CASTEL DEL ORO AND MR. BERNABE RAMIREZ; IS THAT
21 RIGHT?

22 A. THERE WAS A TOTAL OF FOUR FEMALES THAT ARRIVED. I WAS
23 TOLD ONE WAS THE INFORMANT'S WIFE, ONE WAS BERNABE RAMIREZ'S
24 WIFE, AND I WAS TOLD THAT THE OTHER TWO WERE VETERINARY
25 DOCTORS.

1 MR. CARLTON: MOVE TO STRIKE, YOUR HONOR. HEARSAY.

2 THE COURT: OVERRULED.

3 BY MS. KELLY:

4 Q. ALL RIGHT. CAN YOU DESCRIBE WHAT MRS. BERNABE RAMIREZ
5 LOOKED LIKE?

6 A. SHORT, HISPANIC-LOOKING FEMALE.

7 Q. ANYTHING ELSE?

8 MR. CARLTON: OBJECTION. IRRELEVANT, YOUR HONOR.

9 THE COURT: OVERRULED.

10 THE WITNESS: SHE HAD LONG DARK HAIR THAT I RECALL.

11 THAT'S ALL I RECALL.

12 BY MS. KELLY:

13 Q. AND CASTEL DEL ORO'S WIFE?

14 A. I'M SORRY. I THOUGHT THAT'S WHO YOU WERE ASKING ME
15 ABOUT.

16 Q. HOW ABOUT MR. BERNABE RAMIREZ'S WIFE?

17 A. HIS WIFE WAS A LITTLE BIT TALLER THAN THE FIRST FEMALE
18 AND A LITTLE THINNER, AND I BELIEVE SHE HAD A LITTLE SHORTER
19 HAIR.

20 Q. ANYTHING ELSE ABOUT HER?

21 A. NO, MA'AM.

22 Q. AND THE OTHER TWO WOMEN WHO WERE IDENTIFIED AS
23 VETERINARIANS?

24 A. THEY BOTH APPEARED TO BE YOUNGER IN AGE THAN THE OTHER
25 TWO FEMALES. ONE HAD BLONDE HAIR AND THE OTHER HAD DARK HAIR.

1 Q. AND DO YOU KNOW THEIR NAMES?

2 A. NO, MA'AM,

3 Q. DID THE D.E.A. PAY FOR THEIR TRANSPORTATION TO THIS
4 COUNTRY AS WELL?

5 A. I DON'T KNOW THAT.

6 Q. HOW ABOUT THE WIVES AND CHILDREN OF MY CLIENT AND CASTEL
7 DEL ORO; THEIR TRANSPORTATION?

8 A. I DON'T KNOW THE ANSWER TO THAT.

9 Q. WERE YOU PRESENT ON THE DAY THAT MY CLIENT WAS ARRESTED?

10 A. PRESENT WHERE?

11 Q. WHERE WAS HE ARRESTED, IF YOU KNOW?

12 A. I WAS TOLD HE WAS ARRESTED IN THE AREA OF THE EMBASSY
13 SUITES. I DON'T KNOW WHERE.

14 Q. SO YOU WEREN'T PRESENT DURING THE ARREST?

15 A. DURING THE ARREST, NO, MA'AM.

16 Q. DID YOU TALK TO HIM AT ALL AFTER THE ARREST?

17 A. I WAS PRESENT WHEN HE WAS SPOKEN WITH, YES.

18 Q. AND WHEN WAS HE SPOKEN WITH?

19 A. SOMETIME AFTER HE WAS ARRESTED HE WAS TRANSPORTED TO THE
20 D.E.A. OFFICE AND WAS INTERVIEWED AT THAT TIME.

21 Q. AND WHO DID THE INTERVIEWING?

22 A. PARDON?

23 Q. WHO DID THE INTERVIEW?

24 A. SPECIAL AGENT HECTOR BERRELLEZ.

25 Q. DID YOU TAKE NOTES?

1 A. PARDON?

2 Q. DID YOU TAKE ANY NOTES?

3 A. NO, MA'AM.

4 Q. AND DID AGENT BERRELLEZ TAKE ANY NOTES?

5 A. NONE THAT I SAW.

6 Q. AND WAS THIS CONVERSATION RECORDED?

7 A. NO, MA'AM,

8 Q. AND WAS A D.E.A. 6 PREPARED ABOUT THIS CONVERSATION?

9 A. I DID NOT PREPARE ONE.

10 Q. AND TO YOUR KNOWLEDGE DID AGENT BERRELLEZ?

11 A. NOT TO MY KNOWLEDGE.

12 Q. AND DURING THIS CONVERSATION DID YOU ASK MY CLIENT TO
13 COOPERATE IN THE COURSE OF -- IN CONNECTION WITH THE
14 INVESTIGATION?

15 A. DID I ASK HIM?

16 Q. WAS HE ASKED, I SHOULD SAY, IN YOUR PRESENCE?

17 A. YES. MA'AM.

18 Q. AND HE TOLD YOU THAT HE HAD ALREADY TOLD YOU EVERYTHING
19 THAT HE KNEW?

20 MR. CARLTON: OBJECTION, YOUR HONOR. HEARSAY.

21 THE COURT: OVERRULED.

22 THE WITNESS: THAT WAS ONE OF THE THINGS HE
23 MENTIONED, YES.

24 BY MS. KELLY:

25 Q. AND YOU HAVE NO ROUGH NOTES OF THIS CONVERSATION THAT

1 OCCURRED; IS THAT RIGHT?

2 A. THAT'S CORRECT.

3 Q. AND DID YOU EVER TELL ANYONE IN THE PROSECUTION ABOUT
4 THIS CONVERSATION?

5 A. NO, MA'AM.

6 Q. WERE YOU EVER ASKED?

7 MR. CARLTON: OBJECTION, YOUR HONOR. IRRELEVANT.

8 THE COURT: SUSTAINED.

9 BY MS. KELLY:

10 Q. NOW, GOING BACK TO THE CONVERSATION THAT WAS CONDUCTED ON
11 THE 21ST WHERE WERE YOU PRESENT, MY CLIENT WAS TELLING YOU
12 THAT HE HAD HEARD MORE OR LESS THE GIST OF WHAT HAD HAPPENED
13 AT LOPE DE VEGA CONCERNING AGENT CAMARENA; IS THAT RIGHT?

14 A. I DON'T RECALL THAT.

15 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO PAGE 6908.

16 (BRIEF PAUSE.)

17 NOW, IN CONTEXT THIS CONVERSATION -- DURING THIS
18 CONVERSATION, AGENT BERRELLEZ IS INDICATING THAT HE HAS SOME
19 CONCERNS THAT THE GRINGO MAY HAVE MENTIONED HIM DURING THE
20 COURSE OF THE INTERROGATION; ISN'T THAT TRUE?

21 A. NOT FROM WHAT I'M READING ON 6908.

22 Q. DO YOU RECALL THAT THERE WERE -- WELL, WHY DON'T YOU GO
23 AHEAD AND REVIEW AS MUCH AS YOU NEED FROM THE TRANSCRIPT.

24 DO YOU RECALL THAT THERE WERE TWO CONCERNS THAT
25 AGENT BERRELLEZ WAS EXPRESSING? ONE WAS THAT HE WAS MENTIONED

1 IN THE CONFESSIONS, AND TWO, THAT HE MIGHT HAVE BEEN
2 IMPLICATED BY AGENT CAMARENA DURING THE TORTURE; IS THAT
3 RIGHT?

4 A. EXCUSE ME FOR SOUNDING CONFUSED. BUT DO YOU WANT ME TO
5 REVIEW THE PRECEDING PAGES OR --

6 Q. WELL, I'M JUST ASKING YOU IF YOU HAVE A RECOLLECTION. IF
7 YOU DON'T, YOU CAN REFRESH YOUR RECOLLECTION WITH THE
8 TRANSCRIPT.

9 A. I DO RECALL THAT ONE OF AGENT BERRELLEZ'S CONCERNS WAS
10 WHETHER HE WAS MENTIONED DURING INTERROGATION, YES.

11 Q. THEN IF YOU LOOK AT PAGE 6908, THERE'S A DISCUSSION
12 ABOUT -- NOW, AGENT -- LET ME JUST BACK UP.

13 AGENT BERRELLEZ AT THIS POINT IS PRETENDING TO BE A
14 COMPADRE OR A VERY GOOD FRIEND OF RAFAEL CARO QUINTERO, RIGHT?

15 A. YES, MA'AM.

16 Q. AND IN CONNECTION WITH THAT, HE'S RELATING BITS AND
17 PIECES OF INFORMATION THAT HE CLAIMS TO HAVE HEARD AND ASKING
18 FOR VERIFICATION OF MY CLIENT; IS THAT RIGHT?

19 A. I DON'T KNOW THAT TO BE A FACT.

20 Q. DO YOU RECALL THAT HE RELATED CERTAIN --

21 A. I DON'T NOW WHAT WAS GOING ON THROUGH AGENT BERRELLEZ'S
22 MIND.

23 Q. NO. NO, I'M NOT ASKING ABOUT HIS MIND, I'M ASKING ABOUT
24 WHAT WAS SAID. YOU WERE THERE, RIGHT?

25 A. YES, MA'AM.

1 Q. AND YOU REVIEWED THE TRANSCRIPTS AND IDENTIFIED THE
2 VOICES ON THESE TAPES; IS THAT RIGHT?

3 A. YES, MA'AM.

4 Q. AND YOU CHECKED THESE TRANSCRIPTS FOR ACCURACY, RIGHT?

5 A. YES, MA'AM.

6 Q. SO HOW MANY TIMES HAVE YOU REVIEWED THE TAPES?

7 A. SEVERAL TIMES.

8 Q. SO, I'M JUST ASKING YOU FOR THE SUBSTANCE OF WHAT WAS
9 SAID, NOT WHAT WAS IN ANYBODY'S MIND. AND AS PART OF THAT,
10 PART OF THE WAY -- STRIKE THAT. LET ME BACK UP.

11 PART OF THE WAY OF ATTEMPTING TO ELICIT THE
12 INFORMATION FROM MY CLIENT WAS BY AGENT BERRELLEZ RELATING
13 CERTAIN THINGS THAT HE UNDERSTOOD OR HAD HEARD AND THEN ASKING
14 MY CLIENT IF IT WAS TRUE, RIGHT?

15 A. YES, MA'AM.

16 Q. SO IF I LOOK AT PAGE 6908, IS AGENT BERRELLEZ INDICATING
17 TO THE INFORMANT AND TO MY CLIENT THAT HE WAS TOLD THAT RAFAEL
18 CARO QUINTERO, HIS COMPADRE, IN FACT, HAD SENT FOR A DOCTOR TO
19 ATTEND TO THE GRINGO?

20 A. YES, MA'AM.

21 Q. AND MY CLIENT SAYS HE DOESN'T KNOW ABOUT THAT, RIGHT?

22 A. YES, MA'AM.

23 Q. AND FURTHER DOWN THE PAGE, AGENT BERRELLEZ SAYS, "WELL,
24 IT COULD HAVE BEEN -- IT COULD HAVE BEEN NATO ERNESTO, THE ONE
25 THAT -- "; IS THAT RIGHT? TOWARDS THE END OF THE PAGE?

1 A. YES, MA'AM.

2 Q. AND MY CLIENT INDICATES THAT WHAT HE HAD HEARD, HE SAYS,
3 "WHAT I HEARD ALSO, I MEAN, WHAT I MORE OR LESS GOT THE GIST
4 OF THE MATTER, WHEN WE GOT TO OUR -- THE HOUSE, THEY HAD
5 ALREADY MESSED HIM UP QUITE A BIT," RIGHT?

6 A. YES, MA'AM.

7 Q. AND THEN ON THE NEXT PAGE HE SAYS, WHEN AGENT BERRELLEZ
8 ASKED HIM WAS HE BEAT UP PRETTY BAD, HE SAYS, "THAT IS WHAT
9 WAS UNDERSTOOD," RIGHT?

10 A. I THINK AGENT -- YOU'RE NOT READING WHAT AGENT BERRELLEZ
11 SAYS CORRECTLY.

12 Q. AGENT BERRELLEZ SAYS, "WAS HE PRETTY BEAT UP ALREADY?"

13 A. YES, MA'AM.

14 Q. THAT'S WHAT HE SAYS, RIGHT?

15 AND MY CLIENT SAYS, "THAT'S WHAT WAS UNDERSTOOD,"
16 RIGHT?

17 A. YES, MA'AM.

18 Q. AND THEN HE GOES ON TO SAY, "BECAUSE BY THE TIME WE CAME
19 BACK, THE BOSS LEFT US IN THE RESIDENCE. HE JUST TOOK THREE
20 PEOPLE AND LEFT US THERE"; IS THAT RIGHT?

21 A. YES, MA'AM.

22 Q. AND, IN FACT, IN THE COURSE OF THAT CONVERSATION MY
23 CLIENT INDICATED THAT HE HAD ONLY BEEN AT LOPE DE VEGA ONCE;
24 ISN'T THAT RIGHT?

25 A. I DON'T RECALL THAT.

1 Q. WELL, DO YOU RECALL THAT HE STATED DURING THIS
2 CONVERSATION THAT HE WAS IN A PICKUP TRUCK AND REMAINED
3 OUTSIDE LOPE DE VEGA WHILE ERNESTO FONSECA WENT IN TO THE LOPE
4 DE VEGA RESIDENCE AND THEN CAME OUT AND APPEARED TO HAVE AN
5 ARGUMENT WITH CARO QUINTERO?

6 A. I RECALL SOME OF WHAT YOU'RE STATING, BUT THE PART ABOUT
7 THE ARGUMENT WITH CARO QUINTERO, I DON'T RECALL ANY REFERENCE
8 TO A PICKUP TRUCK.

9 Q. OR A STATION WAGON?

10 A. NO, MA'AM, I DON'T RECALL THAT.

11 Q. WELL, THE IMPORTANT POINT IS THAT HE INDICATED THAT HE
12 WAS OUTSIDE OF THE RESIDENCE, RIGHT?

13 A. AT ONE POINT I BELIEVE HE DID INDICATE THAT, YES.

14 Q. AND HE ALSO TOLD -- AND HE ALSO STATED THAT HE DIDN'T
15 KNOW, EVEN KNOW, IN FACT, WHO IT WAS ABOUT; ISN'T THAT TRUE?

16 A. I DON'T RECALL THAT.

17 Q. WELL, IF YOU LOOK AGAIN ON PAGE 6909, IN THE MIDDLE OF
18 THE PAGE, AND MR. BERNABE RAMIREZ WAS SAYING "HE," REFERRING
19 TO FONSECA, "LEFT IN HIS CAR AND HE TOOK THREE PEOPLE WITH
20 HIM, AND WE DIDN'T HEAR ANYTHING ELSE," RIGHT?

21 "WHAT'S MORE, IN FACT, WE DIDN'T EVEN KNOW WHO IT
22 WAS ABOUT. THAT'S WHY IT'S --" AND THEN THERE'S AN
23 INTERRUPTION OR BREAK OFF POINT, AND AGENT BERRELLEZ SAYS,
24 "OH, WELL, WHAT ARE YOU GOING TO KNOW?"

25 AND THE INFORMANT SAYS, "YOU, WHAT WERE YOU GOING TO

1 KNOW?"

2 AND THEN MY CLIENT SAYS, "UNTIL AFTER THE --" AND
3 THEN THERE IS ANOTHER ELLIPSIS, RIGHT? IS THAT CORRECT?

4 A. YES, MA'AM.

5 Q. AND DIRECTING YOUR ATTENTION TO PAGE 6910, MR. BERNABE
6 RAMIREZ SAYS, "BUT WHEN WE WENT TO THAT HOUSE, I'M TELLING YOU
7 DON ERNESTO WENT IN FOR JUST A MINUTE AND HE CAME OUT AND HE
8 CAME OUT LIKE THIS."

9 AND THEN THERE'S A REFERENCE THAT THE PORTION IN THE
10 TRANSCRIPT IS UNINTELLIGIBLE. AND THEN AGENT BERRELLEZ SAYS,
11 "PISSSED OFF," RIGHT?

12 A. YES, MA'AM.

13 Q. AND FURTHER DOWN THE PAGE HE INDICATES THAT HE WAS LEFT
14 OUTSIDE OF THE HOUSE; ISN'T THAT RIGHT?

15 A. YES, MA'AM.

16 Q. NOW, HE DIDN'T INDICATE TO YOU A DIFFERENT STORY UNTIL
17 THE 25TH OF JULY; ISN'T THAT TRUE? HE DIDN'T INDICATE -- LET
18 ME CHANGE THAT. STRIKE THAT AND LET ME START OVER AGAIN.

19 THE ONLY TIME THAT HE TOLD YOU HE WAS INSIDE THE
20 HOUSE WAS ON THE 25TH; ISN'T THAT RIGHT? OF JULY?

21 A. YES, MA'AM.

22 Q. NOW, AND ON THIS PARTICULAR DATE, ON THIS PARTICULAR
23 CONVERSATION, THERE WAS SOME CONVERSATION WHILE WERE YOU
24 PRESENT IN THE CAR, WASN'T THERE, ABOUT LOPE DE VEGA?

25 A. YES, MA'AM.

1 Q. AND DO YOU RECALL THE SUBSTANCE OF THAT CONVERSATION?

2 WELL, LET ME ASK YOU A SPECIFIC QUESTION. I'M
3 SORRY, THAT WASN'T FAIR.

4 THERE IS FURTHER DISCUSSION BETWEEN AGENT BERRELLEZ
5 AND MY CLIENT ABOUT FINDING OUT THE INFORMATION FOR AGENT
6 BERRELLEZ; ISN'T THAT RIGHT? ABOUT WHETHER HE WAS MENTIONED.

7 A. ARE YOU ON THE 25TH NOW OR THE 21ST?

8 Q. ON THE 25TH OF JULY.

9 A. DO YOU HAVE AN EXHIBIT REFERENCE NUMBER?

10 Q. THAT WAS, I BELIEVE, 164.

11 MR. CARLTON: 165.

12 MS. KELLY: OH, 165. I'M SORRY.

13 BY MS. KELLY:

14 Q. I'M JUST ASKING A QUESTION. DO YOU REMEMBER THAT DURING
15 THE 25TH OF JULY CONVERSATION THERE WAS STILL DISCUSSION ABOUT
16 AGENT BERRELLEZ ASKING MY CLIENT IF HE COULD FIND OUT WHAT WAS
17 MENTIONED IN THE FILES?

18 A. YES, MA'AM.

19 Q. OKAY. WITH RESPECT TO HIS NAME, LIZARRAGA, RIGHT?

20 A. YES, MA'AM.

21 Q. AND AT SOME POINT DO YOU RECALL THAT HE MENTIONS THAT HE
22 HAD BEEN TOLD THAT THERE WAS A RECORDING DONE OF THE
23 INTERROGATION AT LOPE DE VEGA?

24 A. EXCUSE ME. THAT WHO MENTIONED?

25 Q. THAT YOU DID.

1 WELL, I'LL DIRECT YOUR ATTENTION TO PAGE 7 OF THE
2 JULY 25TH TRANSCRIPT WHICH IS EXHIBIT 165. AT THE VERY
3 BOTTOM, "S" REFERS TO YOU, RIGHT?

4 A. YES, MA'AM.

5 Q. AND YOU SAY, "THE ONLY PROBLEM, AS I'VE TOLD YOU, IS THAT
6 THE INFORMATION WE HAVE IS THAT THEY'VE DONE A RECORDING
7 THERE."

8 AND WHEN YOU SAY THAT, YOU'RE REFERRING TO A TAPE
9 RECORDING OF THE INTERROGATION OF AGENT CAMARENA; IS THAT
10 RIGHT?

11 A. YES, MA'AM.

12 Q. AND ON THE FOLLOWING PAGE MY CLIENT SAYS, "THAT'S NOT
13 TRUE," RIGHT?

14 A. YES, MA'AM.

15 Q. AND THEN THERE'S FURTHER DISCUSSION BETWEEN AGENT
16 BERRELLEZ AND MY CLIENT. AGENT BERRELLEZ INDICATES THERE'S A
17 DILEMMA, THAT IT'S A DILEMMA?

18 A. YES, MA'AM.

19 Q. AND MY CLIENT SAYS, "IT IS NOT TRUE. THERE -- AND
20 BESIDES, IN MEXICO, WHAT HAS BEEN SAID IS GONE. WHAT COUNTS
21 IS WHAT'S WRITTEN. AND WHAT I CAN TELL YOU -- WHAT I
22 CAN'T" -- WELL, THIS IS A LITERAL TRANSLATION. "-- AND WHAT I
23 CAN, IT'S AS I ALREADY TOLD YOU."

24 AND THEN AGENT BERRELLEZ INDICATES, "GOOD. I'M
25 GOING TO TRUST YOU OR" -- THE TRANSLATION SAYS -- "OR RELY ON

1 YOU FOR THAT." ISN'T THAT TRUE?

2 A. THAT'S WHAT IT READS, YES, MA'AM.

3 Q. AND THEN ON THE 24TH, ON JULY 24TH, THE SUBJECT OF
4 FINDING OUT THE INFORMATION COMES UP AGAIN, DOESN'T IT?

5 DO YOU RECALL THAT, THE SUBSTANCE OF THAT
6 CONVERSATION COMING UP? FINDING OUT WHETHER OR NOT AGENT
7 BERRELLEZ POSING AS MANUEL LIZZARAGA, WHETHER HIS NAME SHOWS
8 UP?

9 A. YES, MA'AM.

10 Q. AND, IN FACT, AGENT BERRELLEZ INDICATES THAT HE WANTS TO
11 HELP SOMEONE BY THE NAME OF ESPINO VERDIN, RIGHT?

12 A. I DON'T KNOW IF THAT OCCURRED ON THAT DATE. IF YOU GIVE
13 ME ANOTHER REFERENCE POINT, I CAN REFRESH MY MEMORY.

14 A. I BELIEVE THE TRANSCRIPT OF THE 24TH IS EXHIBIT --

15 MR. CARLTON: 162.

16 BY MS. KELLY:

17 Q. -- 162.

18 A. I HAVE THAT EXHIBIT IN FRONT OF ME.

19 Q. ALL RIGHT. AND THEN DIRECTING YOUR ATTENTION TO PAGE
20 7066 -- ARE THEY NUMBERED ON THE BOTTOM, AS WELL?

21 A. YES, MA'AM.

22 Q. 7066. AT THE VERY BOTTOM AGENT BERRELLEZ IS INDICATING
23 TO MY CLIENT THAT HE HASN'T BEEN ABLE TO GO TO MEXICO SINCE
24 THERE WAS THE MATTER WITH THE GRINGO, RIGHT?

25 A. WELL, IT DOESN'T READ EXACTLY LIKE THAT.

1 Q. WELL, HE SAYS, "LOOK, MY PROBLEM IS I HAVEN'T BEEN DOWN
2 THERE SINCE THE MATTER WITH THE GRINGO."

3 A. RIGHT. I DIDN'T SEE THE REFERENCE TO MEXICO.

4 Q. DID YOU UNDERSTAND THAT THEY WERE TALKING ABOUT MEXICO?
5 THAT WAS THE WHOLE POINT OF TRYING TO FIND SOME INFORMATION
6 OUT, RIGHT?

7 A. YES, MA'AM.

8 Q. AND HE CONTINUES THAT HE HASN'T BEEN DOWN THERE BECAUSE
9 "THEY TOLD ME THAT THE DUDE -- I AM MENTIONED THERE, AND
10 THAT'S WHY I NEVER EVER WANTED TO GET INVOLVED DOWN THERE
11 SINCE THAT GOD-DAMN HASSLE. IN FACT, I DON'T EVEN GO TO
12 TIJUANA."

13 RIGHT?

14 A. THAT'S WHAT IT READS. THAT'S CORRECT.

15 Q. AND THEN MY CLIENT SAYS, "DO YOU WANT ME TO FIND OUT FOR
16 YOU?" RIGHT?

17 AND THEN AGENT BERRELLEZ INDICATES THAT HE DOES WANT
18 HIM TO FIND OUT. I MEAN, THERE'S MORE CONVERSATION, BUT THE
19 GIST OF THE CONVERSATION IS THAT HE'S SCARED TO GO DOWN THERE
20 BECAUSE OF THE PROBLEM, RIGHT?

21 A. YES, MA'AM.

22 Q. AND MY CLIENT MENTIONS THAT HE HAS A RELATIONSHIP WITH A
23 LAWYER THAT IS HANDLING A MATTER DIRECTLY IN MEXICO; IS THAT
24 RIGHT?

25 A. THAT'S WHAT IT READS. I DON'T KNOW IF THAT WAS -- IF HE

1 DID HAVE A RELATIONSHIP WITH THEM.

2 Q. I UNDERSTAND THAT. I'M JUST ASKING ABOUT THE SUBSTANCE
3 OF THE TRANSCRIPT.

4 AND DIRECTING YOUR ATTENTION TO PAGE -- I'M SORRY, I
5 THINK YOU WERE RIGHT ABOUT -- ESPINO VERDIN PROBABLY WAS NOT
6 ON THAT PARTICULAR DAY. I THINK I DID GOOF IT UP, SO, I'M
7 SORRY. I'LL HAVE TO CHANGE THE REFERENCE TO THAT.

8 ON PAGE 7066 -- I'M SORRY, PAGE 7072, MY CLIENT
9 INDICATES TO AGENT BERRELLEZ THAT HE WILL GET THE PAPERS, THAT
10 HE WILL GET PHOTOCOPIES OF THE CONFESSIONS; IS THAT RIGHT?
11 STILL ON JULY 24TH.

12 A. YES, MA'AM.

13 Q. HE SAYS, "SO, IF YOU LIKE, I CAN GET YOU -- I CAN GET YOU
14 A PHOTOCOPY, EVEN A PHOTOCOPY, SO YOU CAN SEE THE STATEMENTS,
15 BECAUSE THAT'S THE ONLY WAY TO CONVINC --"

16 AND AGENT BERRELLEZ SAYS, "YES. YEAH."

17 AND MY CLIENT SAYS, "-- FOR YOU TO READ IT, SO YOU
18 CAN SEE."

19 AND LATER ON AT THE BOTTOM OF THE PAGE, THERE'S A
20 REFERENCE TO NUMEROUS CONFESSIONS FROM PEOPLE WORKING FOR CARO
21 QUINTERO; IS THAT RIGHT?

22 MY CLIENT REFERS TO HIM AS A "PIECELOAD OF
23 STATEMENTS FROM RAFA'S SIDE."?

24 A. YES, MA'AM. I SEE THAT. THAT'S WHAT IT READS, YES.

25 Q. AND THE REFERENCE WE TALKED EARLIER ABOUT, THE PAYMENT BY

1 THE MEXICAN GOVERNMENT, IF YOU CAN TAKE A LOOK AT PAGE 7059,
2 THERE'S A DISCUSSION ABOUT -- MY CLIENT SAYS HE'S GOING TO BE
3 BLUNT, THAT HE LIKES TO WORK AND THAT HE LIKES POLICE WORK.

4 AND IF YOU LOOK ON THE TOP OF THE OTHER PAGE, THE
5 GIST OF THE CONVERSATION IS THAT THE MEXICAN GOVERNMENT -- IN
6 THE MIDDLE OF THE PAGE -- HE SAYS THAT THEY PAY LOW; IS THAT
7 RIGHT?

8 A. DO I SEE THAT?

9 Q. YES.

10 A. YES, I DO.

11 Q. DO YOU RECALL THAT OCCURRING DURING THAT PARTICULAR
12 CONVERSATION?

13 A. YES, I DO.

14 Q. AND THEN DIRECTING YOUR ATTENTION TO PAGE 7076, THERE'S
15 ANOTHER DISCUSSION ABOUT -- AT THE TOP OF THE PAGE, THE GIST
16 OF THE CONVERSATION WHERE AGENT BERRELLEZ IS INDICATING THAT
17 THERE ARE A LOT OF STATEMENTS THAT HAVE BEEN MADE AND THAT HE
18 HASN'T GONE OVER THERE, NOT EVEN TO TIJUANA.

19 AND FURTHER DOWN ON THE PAGE HE ASKS -- HE SAYS,
20 "BECAUSE I'M SCARED HE'LL COME UP AND THAT I WON'T EVEN BE
21 ABLE TO GET THE GOD-DAMN HEAT OFF OF ME. THAT'S WHY I'M
22 ASKING YOU, SINCE YOU -- SINCE YOU WERE INVOLVED IN THE
23 MATTER, IF AT ANY TIME YOU SAW THAT -- WHETHER YOU SAW THAT
24 THE GRINGO MADE A STATEMENT THAT I -- OR SOMETHING -- MANUEL
25 LIZARRAGA -- OR SOMETHING LIKE THAT. I MEAN, DON'T YOU RECALL

1 HAVING HEARD MY NAME?"

2 AND AFTER HE ASKS, "DON'T YOU RECALL HAVING HEARD
3 MY NAME?" MR. BERNABE RAMIREZ SAYS, "PERSONALLY, I --
4 PERSONALLY, I DON'T REMEMBER, SIR. I DON'T REMEMBER, NO,
5 SIR."

6 ISN'T THAT RIGHT?

7 A. THAT'S WHAT IT READS, THAT'S CORRECT.

8 Q. AND THEN AGAIN ON THE FOLLOWING PAGE, AGENT BERRELLEZ
9 ASKS IF MANUEL LIZARRAGA WAS KICKED OUT OF MAZATLAN BECAUSE
10 HE'S ALWAYS SAID HE WAS FROM MAZATLAN. THAT'S THE GIST OF
11 AGENT BERRELLEZ'S CONTINUING CONVERSATION.

12 AND MY CLIENT'S RESPONSE IS, "NO, NO. PERSONALLY,
13 NO, SIR. WELL, I'LL TELL YOU. IT COULD BE -- WE COULD GET --
14 WE COULD GET PHOTOCOPIES, STATEMENTS THAT EXIST. I DON'T KNOW
15 HOW MUCH A LAWYER WILL CHARGE, BUT I -- IF YOU WOULD LIKE,
16 I'LL LEAVE MY PHONE NUMBER."

17 THEN HE GOES ON IN THE FOLLOWING CONVERSATION AND HE
18 SAYS, "DO YOU KNOW WHAT INTERESTS ME?" "LOOK, FROM WHAT I
19 UNDERSTAND, I'M GOING TO BE FRANK WITH YOU" -- THIS IS AGENT
20 BERRELLEZ -- "AND I'M GOING TO TRUST YOU. THEY TOLD ME THAT
21 WHEN THE DUDE -- WHEN THEY WERE WARMING HIM UP, THE GRINGO,
22 THAT THEY GOT A LOT OF THINGS OUT OF HIM, AND THAT IN THAT
23 THING WAS THE -- WHAT HE MENTIONED ABOUT PEOPLE THAT HE WAS
24 SEEING AND THAT SHIT. AND MY NAME HAS COME OUT AND THAT'S WHY
25 I GOT SCARED. AND I SAID, 'HELL NO, I WON'T STOP.' THAT'S

1 WHY I'M TELLING YOU, TRY TOMORROW. I MEAN, DIDN'T YOU HEAR
2 ANY LIZARRAGA AND ABOUT THE LIZZARAGAS IN MAZATLAN OR
3 ANYTHING?"

4 AND ON THE FOLLOWING PAGE, MY CLIENT SAYS, "NO,
5 SIR."

6 ISN'T THAT RIGHT?

7 A. THAT'S WHAT IT READS, THAT'S CORRECT.

8 Q. AND THEN AGENT BERRELLEZ CONTINUES ON ABOUT HOW HE'S
9 GOT -- HE STILL HAS TO WORRY AND HE'S ASKING HIM FOR THE
10 FAVOR, AND INDICATES THAT HE DOESN'T WANT THE COMANDANTE TO
11 KNOW, BUT ASKS IF MY CLIENT WILL SEND THE FILES, RIGHT?

12 A. WELL, I HAVE A PROBLEM FOLLOWING YOU WHEN YOU PARAPHRASE
13 AND THEN WHEN YOU READ WORD-FOR-WORD.

14 Q. OKAY. WELL, AGENT BERRELLEZ SAYS, "BECAUSE I STILL GOT
15 THIS WORRY, MAN, AND I'LL ASK YOU THIS FAVOR. I DON'T WANT
16 THE COMANDANTE TO KNOW, BUT I WANT YOU TO SEND ME THE FILES.
17 PLEASE, MAN, BECAUSE --"

18 RIGHT?

19 A. YES, MA'AM.

20 Q. AND MY CLIENT SAYS, "YES, I'LL GET THEM FOR YOU," RIGHT?

21 A. YES, MA'AM.

22 Q. AND LATER ON ON THE PAGE, MY CLIENT MENTIONS AGAIN --

23 THE COURT: COUNSEL --

24 MS. KELLY: YES?

25 THE COURT: I BELIEVE YOU'RE PUTTING ON YOUR CASE

1 NOW AND NOT CROSS-EXAMINING THIS WITNESS. HE DID NOT TESTIFY
2 TO THESE OTHER CONVERSATIONS, HE ONLY TESTIFIED TO ONE.

3 NOW, IF YOU WANT TO DO THAT DURING YOUR PART OF THE
4 CASE, YOU MAY DO SO.

5 MS. KELLY: VERY WELL, YOUR HONOR.

6 THE COURT: DON'T YOU AGREE THAT YOU'RE EXCEEDING
7 THE SCOPE?

8 MS. KELLY: I'M SORRY?

9 THE COURT: DON'T YOU AGREE THAT YOU'RE OUTSIDE THE
10 SCOPE OF THE DIRECT EXAMINATION?

11 MS. KELLY: WELL, YOUR HONOR, THIS PERSON IDENTIFIES
12 ALL THE VOICES ON THIS PARTICULAR TRANSCRIPT.

13 THE COURT: WELL, THAT'S WHAT HE WAS, AN
14 AUTHENTICATING WITNESS, AND YOU CAN EXAMINE HIM ABOUT THAT.
15 BUT YOU'RE GOING INTO ALL THESE OTHER CONVERSATIONS WHICH HE
16 DID NOT TESTIFY ABOUT.

17 MS. KELLY: WELL, THE PROBLEM IS -- COULD I BE
18 PERMITTED TO RECALL THE WITNESS DURING MY CASE?

19 THE COURT: WELL, OF COURSE.

20 MS. KELLY: THANK YOU. I'LL MOVE ON TO THE
21 AUTHENTICATION AREA THEN.

22 BY MS. KELLY:

23 Q. NOW, WITH RESPECT TO THE AUTHENTICATION OF THESE
24 PARTICULAR TAPES, DID YOU REVIEW AUDIO TAPES AS WELL AS
25 VIDEOTAPES?

1 A. YES, MA'AM.

2 Q. AND THAT WOULD BE FOR THE JULY 21ST AND JULY 24TH
3 CONVERSATIONS?

4 A. YES, MA'AM.

5 Q. AND HOW MANY TAPES WERE THERE OF THE JULY 25TH
6 CONVERSATION?

7 A. ONE.

8 Q. AND DO YOU REMEMBER HOW MANY AUDIO TAPES THERE WERE OF
9 THE JULY 24TH CONVERSATION?

10 A. NO, MA'AM, I DON'T.

11 Q. ON THE JULY 21ST CONSERVATION, DO YOU RECALL HOW MANY
12 AUDIO TAPES THERE WERE FOR THAT?

13 A. NO, MA'AM, I DON'T.

14 Q. DID YOU LISTEN TO THE AUDIO TAPES SEPARATELY FROM THE
15 VIDEOTAPES?

16 A. I'VE HEARD THEM IN BOTH FASHIONS, SEPARATE AND TOGETHER.

17 Q. NOW, YOU MET MY CLIENT TWICE; IS THAT RIGHT? PRIOR TO
18 HIS -- STRIKE THAT.

19 YOU MET HIM THREE TIMES PRIOR TO HIS ARREST; IS THAT
20 RIGHT?

21 WELL, LET ME BREAK IT DOWN. YOU DID NOT REALLY
22 TALK -- OR DID YOU TALK TO MY CLIENT ON THE 20TH OF JULY?

23 A. I MET YOUR CLIENT ON THE 20TH OF JULY.

24 Q. AND HOW LONG WAS THAT CONVERSATION?

25 A. JUST A CASUAL MEETING, INTRODUCTION.

1 Q. TWO MINUTES?

2 A. APPROXIMATELY.

3 Q. THEN YOU MET WITH HIM ON THE 24TH OF JULY -- I'M SORRY,
4 ON THE 21ST OF JULY; IS THAT RIGHT?

5 A. YES, MA'AM.

6 Q. AND WERE YOU INTRODUCED TO MY CLIENT AT THAT TIME?

7 A. NO, MA'AM.

8 Q. AND HOW LONG DID THIS CONVERSATION LAST?

9 A. THE CONVERSATION WAS, AGAIN, PRIMARILY BETWEEN SPECIAL
10 AGENT BERRELLEZ AND DEFENDANT BERNABE RAMIREZ.

11 Q. BUT YOU WERE LISTENING TO IT, RIGHT?

12 A. YES, MA'AM.

13 Q. IF YOU RECALL, HOW LONG DID THAT CONVERSATION LAST?

14 A. I DON'T RECALL.

15 Q. WAS IT MORE THAN AN HOUR?

16 A. I BELIEVE IT WAS, YES.

17 Q. WAS IT MORE THAN TWO HOURS?

18 A. NO, MA'AM, I DON'T THINK SO.

19 Q. AND THE CONVERSATION ON THE 24TH, DO YOU RECALL HOW LONG
20 THAT LASTED?

21 A. APPROXIMATELY THE SAME PERIOD OF TIME.

22 Q. SOMEWHERE BETWEEN AN HOUR AND TWO HOURS?

23 A. YES, MA'AM.

24 Q. AND ON THE 25TH OF JULY, I BELIEVE IT WAS ABOUT -- THE
25 TOTAL TIME THAT YOU SPENT CONVERSING WITH MY CLIENT WAS ABOUT

1 AN HOUR?

2 A. I WOULD HAVE TO SAY IT WOULD BE A LITTLE BIT LONGER THAN
3 AN HOUR.

4 Q. HOUR AND A HALF?

5 A. FROM THE TIME THAT WE PICKED HIM UP AT THE EMBASSY SUITES
6 TO THE TIME THAT WE DROPPED HIM OFF, IT WAS MORE THAN AN HOUR.

7 Q. WAS IT MORE THAN TWO HOURS?

8 A. YES, MA'AM, I BELIEVE IT WAS.

9 Q. WAS IT MORE THAN THREE HOURS?

10 A. I WOULD SAY IT WAS BETWEEN TWO AND THREE HOURS.

11 Q. AND THEN HOW LONG WAS THE CONVERSATION FOLLOWING MY
12 CLIENT'S ARREST?

13 A. APPROXIMATELY 45 MINUTES TO AN HOUR.

14 Q. AND THAT'S THE TOTAL TIME PERIOD THAT YOU LISTENED TO MY
15 CLIENT SPEAKING, RIGHT? THE TIME PERIODS WE'VE OUTLINED; IS
16 THAT CORRECT.

17 A. IN PERSON?

18 Q. UH-HUH.

19 A. YES, MA'AM.

20 Q. OKAY. NOW, YOU'VE SUBSEQUENTLY LISTENED TO THE TAPE
21 RECORDINGS, RIGHT?

22 A. YES, MA'AM.

23 Q. AND YOU BASED YOUR ABILITY TO IDENTIFY MY CLIENT'S VOICE
24 ON THE TIMES THAT YOU MET WITH HIM AND HEARD HIM SPEAKING ON
25 THE 21ST OF JULY, THE 24TH OF JULY AND THE 25TH OF JULY; IS

1 THAT RIGHT?

2 A. YES, MA'AM.

3 Q. NOW, DID ANYONE ELSE ASSIST YOU IN IDENTIFYING THE VOICES
4 ON THE TAPES?

5 A. NO, MA'AM.

6 Q. AND HAVE YOU ANY SPECIAL TRAINING IN VOICE
7 IDENTIFICATION?

8 A. NO, MA'AM.

9 Q. HOW TALL WOULD YOU SAY YOU ARE? ABOUT SIX FEET?

10 A. I'M SIX-ONE.

11 Q. ARE YOU OVER 200 POUNDS?

12 MR. CARLTON: OBJECTION, YOUR HONOR. RELEVANCE.

13 THE COURT: YOU MAY ANSWER.

14 THE WITNESS: YES, MA'AM.

15 MS. KELLY: YOUR HONOR, COULD I HAVE ONE MOMENT?

16 BY MS. KELLY:

17 Q. I'M SORRY. COULD YOU GIVE ME YOUR EXACT WEIGHT?

18 A. I DON'T KNOW MY EXACT WEIGHT RIGHT NOW.

19 Q. DO YOU KNOW WHAT IT WAS ON JULY 25TH, 1989?

20 A. NO, MA'AM, I DON'T.

21 Q. AND WERE THE VETERINARIANS, WERE THEY AWARE -- STRIKE
22 THAT.

23 WERE YOU -- WAS IT YOUR UNDERSTANDING THAT THE
24 VETERINARIANS WERE PART OF THE UNDERCOVER OPERATION, THE
25 VETERINARIANS THAT WERE BOUGHT UP?

1 A. NO. I WAS NEVER INFORMED OF ANYTHING LIKE THAT.

2 Q. NOW, I JUST WANT TO, IN CONCLUSION, I JUST WANT TO ASK
3 YOU A FEW QUESTIONS ABOUT THE -- DURING THE COURSE OF THE
4 UNDERCOVER CONVERSATIONS WHERE WERE YOU PRESENT, BOTH YOU AND
5 AGENT BERRELLEZ WERE ACTING AS OTHER PEOPLE, RIGHT?

6 A. YES, MA'AM WE WERE PLAYING A ROLE.

7 Q. AND AS PART OF THAT ROLE, YOU PRESENTED YOURSELF IN A
8 CERTAIN POSTURE; IS THAT RIGHT?

9 MR. CARLTON: OBJECTION, YOUR HONOR. VAGUE.

10 THE COURT: YES, IT IS.

11 MS. KELLY: I'LL TRY TO BE MORE CLEAR, YOUR HONOR.

12 BY MS. KELLY:

13 Q. WERE YOU TRYING TO DEVELOP A SENSE OF COMRADERIE WITH MY
14 CLIENT.

15 A. ALL OF THESE MEETINGS OR -- I DON'T --

16 Q. WELL --

17 A. ARE YOU REFERRING TO THE 20TH, THE 25TH, THE 21ST OR THE
18 24TH?

19 Q. WELL, YOU WERE PRESENT AT THE 20TH, RIGHT? JUST FOR A
20 BRIEF INTERRUPTION.

21 A. I WAS PRESENT. I MET HIM ON THE 20TH, YES, MA'AM.

22 Q. FOR A COUPLE MINUTES, RIGHT?

23 A. YES, MA'AM.

24 Q. SO ON THE 21ST AND THE 24TH AND THE 25TH WHEN WERE YOU
25 ALL TOGETHER AT THE BAR HAVING A COUPLE DRINKS, WERE YOU

1 TRYING TO DEVELOP A SENSE OF COMRADERIE WITH MY CLIENT?

2 A. COMRADERIE AND TRUST I THINK WOULD BE A FAIR --

3 Q. AND IS PART OF THE WAY THAT YOU DEVELOP THAT SENSE BY
4 PORTRAYING YOURSELF FOR THIS CERTAIN MALE ROLE?

5 MR. CARLTON: OBJECTION, AGAIN, YOUR HONOR, TO THE
6 VAGUENESS.

7 THE COURT: THAT'S NOT VERY CLEAR.

8 COUNSEL, ARE YOU TRYING TO ASK THE WITNESS IF HE WAS
9 MAKING AN EFFORT TO PERSUADE YOUR CLIENT THAT THEY ARE WHO
10 THEY SAY THEY ARE?

11 IS THAT WHAT YOU'RE TRYING TO --

12 MS. KELLY: WELL, YES, YOUR HONOR. NOT REALLY.
13 THAT'S NOT WHAT I'M TRYING TO SAY.

14 I'M TRYING TO ASK A QUESTION ABOUT WHETHER HE WAS
15 TRYING -- WHETHER THEY WERE TRYING TO DEVELOP A SENSE OF MALE
16 FRIENDSHIP IN A PARTICULAR WAY BY TELLING DIRTY JOKES.

17 THE COURT: WELL, THE WITNESS HAS ALREADY SAID THAT
18 HE WAS TRYING TO WIN THE FRIENDSHIP AND TRUST OF HIS CLIENT.

19 BY MS. KELLY:

20 Q. AND WERE YOU NOT ABLE TO ACCOMPLISH THAT WINNING OF THE
21 TRUST, IN YOUR VIEW, UNTIL JULY 25TH; IS THAT RIGHT?

22 A. YES, MA'AM.

23 MS. KELLY: I HAVE NOTHING FURTHER.

24 FURTHER CROSS-EXAMINATION +

25 BY MR. NICOLAYSEN:

1 Q. GOOD AFTERNOON, AGENT SALAZAR. I WANT TO TAKE YOU BACK
2 TO YOUR MEETING OF NOVEMBER 30, 1989, THAT YOU TESTIFIED ABOUT
3 ON DIRECT EXAMINATION; THAT IS, A MEETING WITH HECTOR CERVANTES
4 SANTOS.

5 DO YOU HAVE THAT MEETING IN MIND? DO YOU RECALL?

6 MR. CARLTON: I'LL OBJECT, YOUR HONOR. THIS IS
7 BEYOND THE SCOPE.

8 THE COURT: WELL, THE WITNESS TESTIFIED TO IT.

9 MR. CARLTON: NOT TO THE SUBSTANCE, THAT WAS
10 OBJECTED TO AND THE OBJECTION WAS SUSTAINED.

11 THE COURT: WELL, HE DID NOT TESTIFY TO ANY
12 SUBSTANCE.

13 MR. NICOLAYSEN: YOUR HONOR, IT'S REALLY NO MATERIAL
14 DIFFERENCE TO ME WHETHER I EXPLORE IT WITH HIM NOW OR IF I
15 RECALL AGENT SALAZAR LATER.

16 THE COURT: WELL, THEN SAVE IT FOR WHEN YOU PUT ON
17 YOUR OWN EVIDENCE.

18 MR. NICOLAYSEN: I'LL DO THAT. THEN I'LL SIMPLY ASK
19 FOR THE RECORD THAT THE GOVERNMENT MAKE THE AGENT AVAILABLE TO
20 THE DEFENSE ON FRIDAY.

21 THE COURT: ALL RIGHT.

22 MR. NICOLAYSEN: THANK YOU.

23 THE COURT: ANY --

24 MR. STOLAR: I HAVE NOTHING FURTHER NOW. I WOULD
25 LIKE THE AGENT, AS WELL.

1 THE COURT: ANY REDIRECT EXAMINATION?

2 MR. CARLTON: JUST BRIEFLY, YOUR HONOR.

3 REDIRECT EXAMINATION +

4 BY MR. CARLTON:

5 Q. AGENT SALAZAR, DIRECTING YOUR ATTENTION TO THE TRANSCRIPT
6 OF THE JULY 21ST CONVERSATION AT PAGE 6908.

7 I BELIEVE DURING YOUR CROSS-EXAMINATION YOU WERE
8 ASKED ABOUT A SPECIFIC PORTION OF YOUR CONVERSATION THAT
9 APPEARS IN THE MIDDLE OF THAT PAGE IN WHICH SPECIAL AGENT
10 BERRELLEZ STATED, "IN FACT, BUT I -- I -- THEY TOLD ME THAT --
11 THAT -- THAT MY COMPADRE, IN FACT, SENT FOR THE DOCTOR TO
12 ATTEND TO THAT GRINGO."

13 AND THEN BERNABE RAMIREZ REPLIES, "THAT I DON'T --"

14 AND BERRELLEZ SAYS, "AND I KNEW ABOUT THAT."

15 AND BERNABE THEN SAYS, "I DIDN'T KNOW ABOUT IT."

16 NOW, IF YOU'D DIRECT YOUR ATTENTION TO PAGE 6910, IF
17 YOU WOULD, DO YOU RECALL THE PORTION OF THE CONVERSATION THAT
18 IS REFLECTED ON THIS PAGE READING AS FOLLOWS. SPECIAL AGENT
19 BERRELLEZ: "WHO SAID 'WE'VE GOT TO BUMP HIM OFF'?" CLOSED
20 QUOTES.

21 BERNABE RAMIREZ: QUOTES. "DON -- DON ERNESTO. I
22 MEAN, WE'VE GOT TO BUMP HIM OFF LIKE THIS," CLOSED QUOTES.

23 "AND THEN AFTERWARDS A DOCTOR WOULD BE SENT -- I DON'T KNOW,
24 NOW IT'S NOT..." DOT, DOT, DOT.

25 DO YOU RECALL THAT PORTION OF THE CONVERSATION?

1 A. YES, SIR.

2 MR. CARLTON: NOTHING FURTHER.

3 MS. KELLY: JUST BRIEFLY, YOUR HONOR.

4 RE-CROSS-EXAMINATION +

5 BY MS. KELLY:

6 Q. NOW, CONTINUING RIGHT ON THAT PAGE, ON 6910, AFTER THE
7 CONVERSATION ABOUT DON ERNESTO, AND AGENT BERRELLEZ SAYS:
8 "AND WAS THERE A LOT OF PEOPLE WHEN YOU GOT THERE OR NOT?"

9 AND BERNABE RAMIREZ SAYS, "NO, HE LEFT US OUTSIDE
10 AND THE HOUSE IS..." DOT, DOT, DOT.

11 AND AGENT BERRELLEZ SAYS: "HE DIDN'T HAVE PEOPLE
12 OUTSIDE, NOT EVEN TWO?"

13 AND BERNABE RAMIREZ SAYS, "NO."

14 ISN'T THAT RIGHT?

15 A. YES, MA'AM.

16 MS. KELLY: I HAVE NOTHING FURTHER.

17 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

18 DO WE HAVE ANOTHER WITNESS?

19 MR. CARLTON: YOUR HONOR, THE NEXT WITNESS WILL BE
20 SPECIAL AGENT BERRELLEZ. AND DURING THE COURSE OF HIS
21 TESTIMONY WE HOPE TO BE PLAYING SOME OF THESE TAPES.

22 IT IS RATHER LATE IN THE AFTERNOON. WE WON'T GET TO
23 THAT BY 4:30 OR WE WON'T COMPLETE IT. AND I WOULD ASK, SO
24 THAT WE DON'T INTERRUPT THAT PROCESS, PERHAPS WE COULD PUT IT
25 OVER TO THE MORNING.

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THE COURT: ALL RIGHT. WE WILL ADJOURN THEN AT THIS
TIME AND RECONVENE AT 9:30 TOMORROW MORNING.

THE CLERK: PLEASE RISE.

THIS COURT IS NOW IN RECESS.

(WITNESS EXCUSED.)

(JURY EXCUSED.)

(END OF PROCEEDINGS.)

C E R T I F I C A T E

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

Julie A. Churchill DATED: 1-29-92

JULIE A. CHURCHILL, CSR 6155, RPR

OFFICIAL COURT REPORTER

		PG	LN
(EXHIBIT #	DEFENDANTS' K RECEIVED IN	73	7
(EXHIBIT #	DEFENDANTS' L MARKED FOR	88	5
LOS ANGELES	+ CALIFORNIA WEDNESDAY,	4	1
JUNE 20, 1990	+ 9:00 A.M.	4	2
MICHAEL P. MALONE	+ PLAINTIFF'S WITNESS,	4	9
CROSS-EXAMINATION	+ (CONTINUED) BY MR. BURNS:	4	10
REDIRECT EXAMINATION	+ BY MR. MEDVENE: Q.	39	23
CROSS-EXAMINATION	+ CONTINUED BY MR. MEDVENE:	63	19
CROSS-EXAMINATION	+ BY MR. MEZA: Q.	73	12
REDIRECT EXAMINATION	+ BY MR. CARLTON: Q.	75	22
RE-CROSS-EXAMINATION	+ BY MR. BURNS: Q. MR.	82	6
RE-CROSS-EXAMINATION	+ BY MR. MEDVENE: Q.	85	1
LOS ANGELES	+ CALIFORNIA WEDNESDAY,	101	1
JUNE 20, 1990	+ 1:30 P.M.	101	2
DELBERT SALAZAR	+ PLAINTIFF'S WITNESS, SWORN	101	8
DIRECT EXAMINATION	+ BY MR. CARLTON: Q.	101	13
CROSS-EXAMINATION	+ BY MS. KELLY: Q.	120	7
CROSS-EXAMINATION	+ BY MR. NICOLAYSEN: Q.	195	24
REDIRECT EXAMINATION	+ BY MR. CARLTON: Q.	197	3
RE-CROSS-EXAMINATION	+ BY MS. KELLY: Q. NOW,	198	4
COURT: INDICATE THE	EXHIBIT NUMBERS WHEN YOU SAY	12	19
THE COURT:	EXHIBIT K? MR.	39	19
YOU CAN'T TELL FROM	EXHIBIT K. Q. BUT YOUR	41	13
YOU MADE REFERENCE TO	EXHIBIT 155. IT'S TO THE	64	20
(EXHIBIT # DEFENDANTS' K	73	7
FROM PUERTO RICO,	EXHIBIT ALL KINDS OF RACIAL	83	14
L. (EXHIBIT # DEFENDANTS' L	88	5
OF YOU MARKED AS	EXHIBIT 157. WOULD YOU LOOK	104	24
LOOKING AT	EXHIBIT 157, DO YOU RECOGNIZE	105	7
LOOKING THEN AT	EXHIBIT 158, WILL YOU LOOK AT	105	20
DO YOU RECOGNIZE	EXHIBIT 158? A. YES, SIR,	105	22
YES. Q. WHAT IS	EXHIBIT 158? A. EXHIBIT	106	4
IS EXHIBIT 158? A.	EXHIBIT 158 IS AN ENGLISH	106	5
HAS BEEN MARKED AS	EXHIBIT 159, WHICH SHOULD BE	106	14
TRANSLATION, WHICH IS	EXHIBIT 158? A. YES, I	107	3
VIDEOTAPE, WHICH IS	EXHIBIT 159, ACCURATE COPIES	107	6
HAS BEEN MARKED AS	EXHIBIT 161. A. OKAY.	108	7
HAS BEEN MARKED AS	EXHIBIT 162. A. OKAY.	108	25
THOSE TWO ITEMS,	EXHIBIT 162 WITH EXHIBIT 161?	109	8
EXHIBIT 162 WITH	EXHIBIT 161? A. YES, SIR,	109	9
WHICH IS	EXHIBIT 161? A. YES, SIR,	109	12
HAS BEEN MARKED AS	EXHIBIT 163. AND	109	15
TRANSLATION, WHICH IS	EXHIBIT 162? A. YES, SIR,	110	5
ENGLISH SUBTITLES IN	EXHIBIT 163 ACCURATE COPIES	110	7

				PG	LN
ENGLISH TRANSLATION,	EXHIBIT	162?	A. YES, SIR,	110	9
HAS BEEN MARKED AS	EXHIBIT	165.	A. (WITNESS	116	18
THAT APPEARS ON	EXHIBIT	165 TO THE AUDIO TAPE		117	4
WHICH APPEARS ON	EXHIBIT	165 TO THE SPANISH		117	11
HAS BEEN MARKED AS	EXHIBIT	166. THERE SHOULD BE		117	17
1989. Q. SO THIS	EXHIBIT	166 ARE AUDIO		117	25
ARE CONTAINED ON THAT	EXHIBIT	166? A. YES, SIR.		118	7
TRANSLATION, WHICH IS	EXHIBIT	165? A, YES, SIR,		118	11
OF THE 25TH AS	EXHIBIT	164. MS.		134	21
WHICH I BELIEVE IS	EXHIBIT	165. A. EXCUSE		151	4
SHOW THE WITNESS THE	EXHIBIT	AND ASK HIM IF THIS		156	13
OF YOU, WHICH IS	EXHIBIT	158. A. I HAVE		163	24
A. DO YOU HAVE AN	EXHIBIT	REFERENCE NUMBER?		181	9
TRANSCRIPT WHICH IS	EXHIBIT	165. AT THE VERY		182	2
OF THE 24TH IS	EXHIBIT	-- MR.		183	14
A. I HAVE THAT	EXHIBIT	IN FRONT OF ME. Q.		183	18