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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.)

COPY

CASE NO: CR 87-422(F)-ER

VOLUME 26

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, JULY 6, 1990; 9:30 A.M.
LOS ANGELES, CALIFORNIA

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SUSAN A. LEE, CSR
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APPEARANCES (CONTINUED):

FOR DEFENDANT JAVIER VASQUEZ-VELASCO:

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ALSO PRESENT:

DOUGLAS KUEHL, SPEC.AGT., D.E.A.
HECTOR BERRELLEZ, SPEC. AGT. D.E.A.

SPANISH INTERPRETERS

1 LOS ANGELES + CALIFORNIA FRIDAY, JULY 6, 1990

2 + 9:30 A.M.

3 (JURY NOT PRESENT.)

4 THE COURT: GOOD MORNING.

5 MR. MEDRANO: GOOD MORNING, YOUR HONOR.

6 ALL COUNSEL: GOOD MORNING, YOUR HONOR.

7 THE COURT: WHY ARE WE DELAYED THIS MORNING, COUNSEL?

8 MR. MEZA: PART OF THE PROBLEM IS THAT WE WERE

9 ANTICIPATING THE ARRIVAL OF A WITNESS WHO MS. KELLY IS OUT IN

10 THE HALL WAITING FOR NOW. SHE CONTACTED HIM, AND APPARENTLY

11 THEY'RE HAVING SOME TRANSPORTATION PROBLEM. THEY'RE SUPPOSED

12 TO BE ONLY TEN MINUTES AWAY. WE SENT A CAB OUT THERE AND THEY

13 SHOULD BE HERE MOMENTARILY.

14 THE COURT: IS THAT LAST WITNESS OR ARE THERE OTHERS?

15 MR. MEZA: I BELIEVE THAT WILL BE OUR LAST WITNESS.

16 MR. STOLAR: I HAVE BEEN ABLE TO, WITH RESPECT TO

17 PHOTOGRAPHS THAT MAY HAVE BEEN SEEN BY AGENTS LEYVA AND

18 AGUILAR, I HAVE BEEN ABLE TO WORK OUT A STIPULATION WITH THE

19 GOVERNMENT WITH RESPECT TO 3 PHOTOGRAPHS, 3 EXHIBITS.

20 AND THAT, EXCEPT FOR MATTERS HAVING TO DO WITH THE

21 CONTEMPLATED HEARING OUTSIDE THE PRESENCE OF THE JURY WITH

22 RESPECT TO MR. HARRISON AND THE MARRIAGE, BAPTISM AND TELEPHONE

23 RECORDS, WOULD BE OUR CASE UNLESS, AGAIN, MR. MATTA WANTS TO

24 TWIST MY ARM.

25 THE COURT: ALL RIGHT. I HAVE TWO MOTIONS HERE THAT

1 I'M PREPARED TO RULE ON THIS MORNING.

2 ONE IS MR. VASQUEZ'S MOTION TO ADMIT THE DEFENSE
3 TRIAL EXHIBIT P FOR THE TRUTH OF THE MATTER STATED THEREIN
4 PURSUANT TO FEDERAL RULES OF EVIDENCE 804(B)3.

5 THE COURT HAS READ AND CONSIDERED THE MOTION AND THE
6 OPPOSITION TO IT AND THE COURT IS PREPARED TO RULE. HERE, THE
7 DEFENDANT HAS FILED A MOTION TO ADMIT THIS DEFENSE TRIAL
8 EXHIBIT P FOR THE TRUTH OF THE MATTER STATED THEREIN. EXHIBIT
9 P, WHICH IS ATTACHED AS EXHIBIT A TO THE DEFENDANT'S MOTION, IS
10 A CABLE FROM THE D.E.A. AGENT CASTILLO, WHICH WAS TRANSMITTED
11 TO D.E.A. HEADQUARTERS ON NOVEMBER 15, 1985, AND PURPORTS TO BE
12 A SUMMARY OF THE STATEMENTS MADE BY GONZALES ONTIVEROS TO
13 MEXICAN INVESTIGATORS WITH D.E.A. AGENT CASTILLO PRESENT DURING
14 THE INVESTIGATION.

15 GONZALES ONTIVEROS IS A WITNESS AND/OR PARTICIPANT OR
16 BOTH IN THE WALKER AND RADELAT MURDERS WITH WHICH MR. VASQUEZ
17 IS CHARGED. THIS WITNESS, MR. CASTILLO, HAS ALREADY TESTIFIED
18 HERE, HAS HE NOT?

19 MR. NICOLAYSEN: YES, YOUR HONOR, HE HAS. AND HIS
20 TRANSCRIPT OF MY CROSS-EXAMINATION IS THE LAST EXHIBIT TO MY
21 ORIGINAL MOVING PAPERS.

22 THE COURT: YES. AND HERE IS THE WAY THE COURT SEES
23 THIS. THERE ARE BASICALLY -- FIRST OF ALL, THE EVIDENCE MUST
24 BE RELEVANT. THE DECLARANT MUST BE UNAVAILABLE TO TESTIFY.

25 THE STATEMENTS MADE MUST BE AGAINST THE PERSON'S

1 PENAL INTERESTS, AND THERE MUST BE SOME CORROBORATION. THESE
2 ARE THE REQUIREMENTS FOR THE ADMISSIBILITY UNDER SECTION
3 804(B)3.

4 IT'S THE COURT'S VIEW THAT THE CABLE IS RELEVANT TO
5 THE DEFENSE BECAUSE IT DIRECTLY CONTRADICTS THE STATEMENTS OF
6 PLASCENCIA AGUILAR, THE GOVERNMENT'S ONLY TESTIFYING WITNESS TO
7 THE WALKER-RADELAT MURDERS.

8 PLASCENCIA TESTIFIED THAT AND ONTIVEROS, AS WELL AS
9 OTHERS, WERE PRESENT AT THE PARTY BEING HOSTED BY CARO QUINTERO
10 AT THE LA LANGOSTA RESTAURANT.

11 HE TESTIFIED THAT THEY LEFT AT ABOUT 7:00 P.M.
12 AND AS THEY SAT IN THEIR TRUCK, HE TESTIFIED THEY SAW TWO
13 AMERICANS GO INTO THE RESTAURANT AND THEN ATTEMPT TO LEAVE AND
14 GET PULLED BACK IN. HE SAID THAT HE WENT TO THE WINDOW AND SAW
15 VASQUEZ AND OTHERS DRAGGING WALKER AND RADELAT OR CARRYING THEM
16 BACK INTO THE RESTAURANT.

17 ACCORDING TO PLASCENCIA, ONTIVEROS ORDERED THEM ALL
18 BACK IN THE VAN, AND THEY ALL DROVE BACK TO I.P.S.
19 HEADQUARTERS, INCLUDING ONTIVEROS, AND HAD NO PARTICIPATION OR
20 OBSERVATION OF THE KILLING.

21 ONTIVEROS' STATEMENT TO THE D.E.A. -- STRIKE THAT --
22 TO THE MEXICAN POLICE, AS REPORTED IN THIS CABLE, CONTRADICTS
23 PLASCENCIA'S VERSION OF THE FACTS IN SEVERAL RESPECTS.
24 ONTIVEROS STATED THAT HE WAS A D.F.S. AGENT AND NOT AN I.P.S.
25 AGENT.

1 HE STATED THAT HE WAS STANDING GUARD AT THE FRONT OF
2 THE LA LANGOSTA RESTAURANT DURING THE PARTY AND THAT HE HELPED
3 DRAG THE DEFENDANTS BACK INTO THE RESTAURANT AND THEN RESUMED
4 HIS LOOKOUT POSITION.

5 HE STATES THAT IN PLACING THE -- HE ASSISTED IN
6 PLACING THE VICTIMS IN THE CAR OUTSIDE THE RESTAURANT. HE
7 STATED THAT HE HEARD GROANS EMANATING FROM THE BODIES WRAPPED
8 IN SHEETS, THAT HE DROVE THE VEHICLE CONTAINING THE TWO BODIES.
9 HE DROVE THE BODIES TO PRIMAVERA PARK. HE HELPED UNLOAD THE
10 BODIES, BUT DID NOT HELP BURY THE BODIES.

11 HE STATED THAT HE HEARD SHOTS BEING FIRED IN THE AREA
12 WHERE THE BODIES WERE BEING BURIED. HE WAS GIVEN ORDERS IN THE
13 NEXT FEW DAYS FROM TEJEDA, JARAMILLO, EL PACO, TO DELIVER THREE
14 CARS TO CABORCA, SONORA.

15 ONTIVEROS ALSO STATES THAT CARO QUINTERO ARRIVED IN
16 CABORCA ON FEBRUARY 12TH BY PLANE. THUS, THIS EVIDENCE IS
17 CLEARLY RELEVANT TO IMPEACH THE TESTIMONY OF THE WITNESS
18 PLASCENCIA, WHO WAS THE KEY WITNESS ON THIS PARTICULAR ACCOUNT.

19 NOW, ON THE QUESTION OF WHETHER THIS WITNESS IS
20 UNAVAILABLE TO TESTIFY, A DECLARANT IS DEEMED UNAVAILABLE WHERE
21 HE IS ABSENT FROM THE HEARING AND THE PROPONENT OF A STATEMENT
22 HAS BEEN UNABLE TO PROCURE THE DEFENDANT'S ATTENDANCE BY
23 PROCESS OR OTHER REASONABLE MEANS.

24 DEFENSE COUNSEL ASSERTS THAT ONTIVEROS HAS BEEN
25 CONVICTED IN MEXICO FOR THE WALKER-RADELAT MURDERS AND IS

1 CURRENTLY SERVING TIME FOR THOSE OFFENSES. HE BASES HIS
2 ASSERTION ON COURT DOCUMENTS OBTAINED FROM MEXICO AND TELEPHONE
3 CONVERSATIONS WITH ONE OF THE LEGAL COUNSELORS IN THE MEXICAN
4 CONSULATE IN LOS ANGELES.

5 THE GOVERNMENT SAYS THIS IS NOT ENOUGH TO SHOW
6 UNAVAILABILITY. THEY ARGUE THAT THE FOREIGN RECORDS HAVE NOT
7 BEEN PROPERLY AUTHENTICATED UNDER RULE 902 NOR PROPERLY
8 CERTIFIED FOREIGN BUSINESS RECORDS UNDER 18 USC 3505. THE
9 PROBLEM WITH THIS ARGUMENT IS THAT THE RULES OF EVIDENCE DO NOT
10 APPLY IN PRELIMINARY DETERMINATIONS OF ADMISSIBILITY MADE BY A
11 JUDGE.

12 THE COURT BELIEVES THAT ONTIVEROS IS UNAVAILABLE
13 BASED ON THE DEFENDANT'S SHOWING, AND THE COURT FINDS IT HARD
14 TO BELIEVE THAT THE GOVERNMENT DOES NOT KNOW WHERE THIS
15 DEFENDANT -- WITNESS, RATHER, IS. WHETHER HE IS IN PRISON OR
16 NOT IS NOT A SECRET AND SHOULD BE EASILY ASCERTAINABLE.

17 CLEARLY THE STATEMENTS ARE AGAINST HIS PENAL INTEREST
18 BECAUSE HE IS ADMITTING TO COMPLICITY AND PARTICIPATION IN
19 THESE TWO MURDERS TO A VERY GREAT EXTENT. THE GOVERNMENT'S
20 ASSERTION TO THE CONTRARY CAN'T BE TAKEN SERIOUSLY THAT THIS IS
21 NOT A STATEMENT AGAINST PENAL INTEREST. IF IT ISN'T, I NEVER
22 HEARD ONE.

23 NOW, THE RULE REQUIRES THAT CORROBORATING
24 CIRCUMSTANCES CLEARLY INDICATES THE TRUSTWORTHINESS OF THE
25 STATEMENT. THIS HAS BEEN INTERPRETED TO REQUIRE SUFFICIENT

1 CORROBORATION TO CLEARLY PERMIT THE REASONABLE MAN TO BELIEVE
2 THAT THE STATEMENTS MIGHT HAVE BEEN MADE IN GOOD FAITH AND THAT
3 IT COULD BE TRUE.

4 CORROBORATION MAY BE FOUND IN THE DETAILED NATURE OF
5 THE STATEMENT, STATEMENTS MADE THAT ONLY THE DECLARANT COULD
6 KNOW OF CORROBORATION IN THE FORM OF STATEMENTS BY OTHERS AND
7 POSSIBLE MOTIVATIONS TO LIE.

8 THE SUPREME COURT HAS SUGGESTED THAT WHERE THE
9 TESTIMONY IS CRITICAL TO THE DEFENSE AND THE CONSTITUTIONAL
10 RIGHT TO CALL A WITNESS IS AT STAKE, THE HEARSAY RULE MAY NOT
11 BE APPLIED MECHANICALLY TO DEFEAT THE ENDS OF JUSTICE.

12 NOW, THE DEFENDANT POINTS TO THE DETAILED NATURE OF
13 THE STATEMENT. DEFENSE COUNSEL ALSO NOTES THAT HIS STATEMENT
14 IS CORROBORATED BY THAT OF EL PACO, ALSO CALLED PACO TEJEDA,
15 WHICH IS ATTACHED TO THE MOTION AS EXHIBIT F.

16 AGENT CASTILLO HAS ALREADY TESTIFIED THAT THE PACO
17 TEJEDA STATEMENT LED THEM TO THE BODIES OF WALKER AND RADELAT.
18 THUS HIS STATEMENT HAS ALREADY BEEN ESTABLISHED SOMEWHAT TO BE
19 CREDIBLE.

20 THE AUDIO CASSETTE OF THE INTERROGATION WHICH WAS
21 MADE BY THE MEXICAN POLICE AND LATER TURNED OVER TO THE D.E.A.
22 INDICATES THAT ONE OF THE AUTOMOBILES WHICH HE CLAIMED TO HAVE
23 TRANSPORTED TO CABORCA WAS THE SAME BROWN AND WHITE STATION
24 WAGON OWNED BY CARO, WHICH EL PACO ALSO IDENTIFIED AS THE ONE
25 CARRYING THE BODIES.

1 I SEEMS THAT ONTIVEROS WOULD HAVE NO REASON TO LIE
2 ABOUT THIS. INDEED, BY CONFESSING, AS HE DID AND NAMING NAMES,
3 INCLUDING CARO AND FONSECA AND OTHERS, HE PUT HIMSELF AT RISK
4 BY MAKING THE STATEMENT.

5 NOW, THE GOVERNMENT ARGUES THAT THERE ARE NOT
6 CORROBORATING CIRCUMSTANCES SUCH AS TO SUGGEST TRUSTWORTHINESS
7 RELYING ON THE CLAIM THAT THE MODUS OPERANDI OF THE MEXICAN
8 POLICE INTERROGATORS AND THE USE OF TORTURE AND BEATINGS TO
9 OBTAIN INVOLUNTARY CONFESSIONS. THE INFERENCE IS THAT
10 ONTIVEROS' STATEMENT WAS OBTAINED BY SUCH MEANS.

11 MY RECOLLECTION OF AGENT CASTILLO'S TESTIMONY IS THAT
12 HE OBSERVED NO SUCH TACTICS BEING USED WHEN THIS STATEMENT WAS
13 BEING MADE AND APPEARED TO BE A VOLUNTARY STATEMENT BY THIS
14 WITNESS.

15 NOW, IT IS SPECULATION TO SUGGEST THAT AT SOME OTHER
16 TIME AND PLACE, PERHAPS THOSE MEANS WERE USED. IF THE
17 STATEMENT WAS OBTAINED BY THOSE MEANS, THE STATEMENT WOULD BE
18 LACKING IN TRUSTWORTHINESS AND COULD NOT BE ADMITTED.

19 I WOULD BE WILLING TO HAVE A BRIEF HEARING TO
20 DETERMINE WHETHER THERE IS ANY EVIDENCE THAT SUCH FORCE OR
21 EXCESSIVE INTIMIDATION WAS USED. IF IT CANNOT BE SHOWN, THEN I
22 WOULD ALLOW THIS EVIDENCE UNDER THE EXCEPTION TO THE HEARSAY
23 RULE UNDER 804(B)3 FOR THE REASONS THAT I HAVE STATED.

24 DO YOU WISH TO BE HEARD ON THIS?

25 MR. MEDRANO: YES, VERY MUCH SO, YOUR HONOR. THANK

1 YOU.

2 YOUR HONOR, THE DIFFICULTY WITH THIS RULING IS THAT
3 ANY RELIANCE ON THESE TYPES OF STATEMENTS ARGUABLY COULD BE THE
4 BASIS FOR CHARGES AND INDICTMENT AGAINST ALL THESE PEOPLE THAT
5 GAVE COERCED STATEMENTS. THAT'S IMPROPER, YOUR HONOR. WE
6 COULD NO MORE RELY ON THOSE TYPES OF STATEMENTS TO INDICT
7 PEOPLE IN THE UNITED STATES, AND CLEARLY THEN, THEY SHOULDN'T
8 BE ALLOWED IN BECAUSE OF THE CIRCUMSTANCES UNDER WHICH THEY
9 WERE OBTAINED AND BECAUSE THEY'RE BLATANT HEARSAY.

10 THE COURT: WHAT ARE THE CIRCUMSTANCES UNDER WHICH
11 THEY WERE OBTAINED.

12 MR. MEDRANO: WELL, THAT'S -- THERE'S THE RUB, YOUR
13 HONOR, BECAUSE --

14 THE COURT: WELL, YOU DON'T HAVE ANY EVIDENCE THAT
15 THEY WERE OBTAINED IMPROPERLY, DO YOU?

16 MR. MEDRANO: WELL, ON THE CONTRARY, I THINK WHAT
17 WE'VE ESTABLISHED IS A COUPLE THINGS. ONE, YOU HAVE EVIDENCE
18 IN THE RECORD THAT IT IS THE M O OF MEXICAN INTERROGATORS TO
19 TORTURE. AND THAT'S CORROBORATED BY WHAT THEY DID TO CAMARENA,
20 WHO WAS INTERROGATED BY COMANDANTE ESPINO VERDIN.

21 IN ADDITION, MR. CASTILLO -- AND WE WOULD WELCOME AN
22 ADDITIONAL HEARING ON THIS, YOUR HONOR, BECAUSE SOME THINGS DID
23 NOT COME OUT -- MR. CASTILLO WOULD TELL YOU, IF YOU BRING HIM
24 BACK -- AND THIS IS OUR PROFFER TO YOU -- THAT WHEN HE WALKED
25 IN, HE WAS IN THERE FOR ONLY AN HOUR AND THAT THERE HAD ALREADY

1 BEEN A PREVIOUS INTERROGATION OF THE WITNESS .

2 THE COURT: YOU ALREADY TOLD ME THAT .

3 MR . MEDRANO: I UNDERSTAND THAT , YOUR HONOR , BUT THE
4 POINT IS THIS . YES , CLEARLY THAT EXCEPT FOR BEING BOUND AND
5 BLINDFOLDED THE ENTIRE TIME THAT HE WAS BEING INTERVIEWED IN
6 THE PRESENCE OF CASTILLO , THE AGENT , THAT DOES NOT FORECLOSE
7 THE LIKELIHOOD , THE VERY STRONG LIKELIHOOD THAT WHAT LED UP TO
8 THAT MANIFEST VOLUNTARY STATEMENT WAS TORTURE AND
9 INTERROGATION , YOUR HONOR .

10 THE COURT: WELL , IF YOU CAN PROVE THAT , I 'LL BE GLAD
11 TO LISTEN .

12 MR . MEDRANO: WELL , THERE 'S A PROBLEM --

13 THE COURT: YOU 'RE ASKING THE COURT TO SPECULATE ON
14 THAT .

15 MR . MEDRANO: BY THE SAME TOKEN , YOU 'RE BEING ASKED
16 BY DEFENSE COUNSEL TO SPECULATE THAT IT WAS VOLUNTARILY , YOUR
17 HONOR , WHEN , IN FACT --

18 THE COURT: NO .

19 MR . MEDRANO: -- THE RECORD MILITATES AGAINST THAT .

20 THE COURT: YOUR OWN WITNESS TESTIFIED TO THAT .

21 MR . MEDRANO: WELL , HE ALSO TESTIFIED , THOUGH , THAT
22 HIS INTERVIEW -- HE DIDN 'T INTERVIEW , HE JUST SAT IN AS AN
23 OBSERVER -- CAME ON THE HEELS OF A PREVIOUS INTERROGATION BY
24 VENTURA . SO IF THERE HAD BEEN A PRIOR INTERROGATION , WE DON 'T
25 KNOW THE CIRCUMSTANCES OF THAT , BUT YOU DO KNOW THE

1 CIRCUMSTANCES, GENERALLY, OF THE M O OF THE INTERROGATORS DOWN
2 THERE, YOUR HONOR. AND IT SEEMS TO ME THAT THAT STRONGLY
3 SUGGESTS THAT --

4 THE COURT: I BELIEVE IT WOULD BE ERROR TO EXCLUDE
5 THIS ON THAT BASIS, THAT I SHOULD PRESUME THAT THE STATEMENT
6 WAS MADE UNDER DURESS OR COERCION OR PHYSICAL OR PSYCHOLOGICAL
7 INTIMIDATION --

8 MR. MEDRANO: WELL, LET ME ADD ONE MORE POINT --

9 THE COURT: -- BECAUSE THAT IS --

10 MR. MEDRANO: -- JUST ONE MORE POINT ON THAT ISSUE TO
11 SHOW THE UNTRUSTWORTHINESS.

12 WE GAVE YOU COPIES OF THE RECANTATIONS, NOT ONLY OF
13 GONZALEZ, BUT FIVE OTHER INDIVIDUALS, YOUR HONOR. WHAT GREATER
14 EVIDENCE IS THERE THAT THEY WERE TORTURED AND INTERROGATED --
15 AND IT SAYS THAT IN THE STATEMENTS WHEN THEY RECANT -- THAT IN
16 FACT THOSE STATEMENTS WERE OBTAINED UNDER DURESS AND COERCION.

17 WE GAVE YOU COPIES OF THE RECANTATIONS. ADMITTEDLY,
18 THEY WERE IN SPANISH, BUT I HAD A D.E.A. AGENT READ THEM, AND I
19 FILED HIS DECLARATION -- ABEL REYNOSO -- AND HE TELLS YOU THAT
20 GONZALEZ RECANTS IT.

21 YOUR HONOR, THAT IS THE GREATEST EVIDENCE OF THE
22 UNTRUSTWORTHINESS OF ALL THOSE STATEMENTS. AND ON THAT
23 SUBJECT, YOUR HONOR, IF YOU PUT ALL THAT TOGETHER, IN ADDITION
24 TO HEARING FURTHER FROM CASTILLO, I WOULD RESPECTFULLY AND
25 STRONGLY SUBMIT TO YOU THAT IT WOULD BE EGREGIOUS AND

1 PREJUDICIAL TO THE GOVERNMENT TO ADMIT THAT KIND OF HEARSAY .

2 NOW, ONE MORE POINT, YOUR HONOR. LET ME JUST THROUGH
3 THIS OUT AS A POSSIBILITY; THAT IF YOU'RE INCLINED TO ADMIT THE
4 STATEMENT, YOUR HONOR, EVEN AFTER REVIEWING -- AND LET ME
5 TRANSLATE THE RECANTATION FOR YOU. GIVE ME A DAY TO GIVE IT TO
6 AN INTERPRETER TO GIVE YOU THE FULL RECANTATION SO YOU'LL HAVE
7 THE WHOLE BIG PICTURE .

8 BUT EVEN AFTER THAT, YOUR HONOR, IF YOU'RE STILL
9 INCLINED TO ADMIT THAT STATEMENT, THEN I WOULD RESPECTFULLY ASK
10 YOU, INDEED BEG YOU, TO ALSO LET US SUBMIT THEN THE RECANTATION
11 SO THAT THE JURY HAS THE WHOLE PICTURE. THEY SHOULD NOT BE
12 TOLD THAT HE CONFESSED .

13 THE COURT: WHERE DID THE RECANTATION COME FROM?

14 MR. MEDRANO: THE SAME PLACE WE GOT THE GONZALES
15 STATEMENT THAT WE GAVE TO MR. NICOLAYSEN ORIGINALLY. WE GET A
16 WHOLE BUNCH OF DOCUMENTS FROM A SOURCE, AND THAT INCLUDES THE
17 ORIGINAL CONFESSION AND THE RECANTATION .

18 SO, YOU KNOW, OUT OF FAIRNESS, YOUR HONOR, TO THE
19 GOVERNMENT, IF YOU'RE INCLINED IN ANY WAY TO ADMIT THAT CABLE,
20 THEN THE JURY SHOULD ALSO HEAR ABOUT THE RECANTATION, BECAUSE
21 OTHERWISE IT'S UNFAIR TO THE GOVERNMENT .

22 THE COURT: WELL, ANOTHER THING, IN THE CABLE THERE
23 IS NO QUALIFICATION MADE BY THE AGENT WHO SENDS IT THAT THE
24 CONFESSION IS SUSPECT IN ANY WAY OR THAT IT IS A PRODUCT OF
25 COERCION .

1 YOU WOULD THINK THAT IT IS SENT -- IT APPEARS TO BE
2 A -- TO HAVE THE BELIEF THAT IT IS AN APPROPRIATE STATEMENT TO
3 SEND WITHOUT QUALIFICATION OR RESERVATION ABOUT HOW IT WAS
4 OBTAINED.

5 MR. MEDRANO: WELL, THERE IS TWO DIFFICULTIES WITH
6 THAT, YOUR HONOR. FIRST OF ALL, THERE IS AN ELEMENT OF
7 HINDSIGHT HERE THAT IS BENEFICIAL TO THE DEFENSE NOW, BUT WHEN
8 CASTILLO WROTE THAT CABLE, YOUR HONOR, IT CERTAINLY WAS NOT
9 WITH AN EYE FOR PUTTING ALL THE POSSIBLE SUSPICIOUS
10 CIRCUMSTANCES AT THE INTERVIEW. HIS SOLE JOB AND FUNCTION, IF
11 YOU WILL RECALL --

12 THE COURT: WELL, WHEN YOU SAY HE RECANTED -- WHAT
13 WAS IT THAT HE RECANTED?

14 MR. MEDRANO: THE CONFESSION, AND HE SAYS HE WAS
15 TORTURED. THAT'S IN THE RECANTATION. THAT'S MY UNDERSTANDING.

16 THE COURT: WELL, THE IMPORTANCE OF THIS STATEMENT
17 HERE IS NOT THAT HE WAS INVOLVED IN THE MURDER, BUT IT IS
18 OFFERED TO REBUT THE STATEMENTS OF YOUR WITNESS ABOUT WHAT THEY
19 WERE ABLE TO OBSERVE.

20 MR. MEDRANO: BUT IT'S OFFERED FOR THE TRUTH OF THE
21 MATTER ASSERTED, AND THAT'S THE GIST OF IT, YOUR HONOR. AND
22 THAT'S HEARSAY. AND WHEN YOU HAVE CLEARLY CIRCUMSTANCES --

23 THE COURT: WE'RE NOT HERE TRYING TO DECIDE WHETHER
24 ONTIVEROS WAS GUILTY OF THOSE MURDERS OR NOT; IT'S TO WHETHER
25 OR NOT THIS WITNESS WAS ABLE TO SEE WHAT HE SAID HE SAW AND WAS

1 IN THE PLACES THAT HE SAID HE WAS .

2 THESE THINGS THAT YOU TALK ABOUT RECANTATION, THIS
3 FELLOW, FOR EXAMPLE, WOULD HAVE NO REASON TO RECANT WHETHER OR
4 NOT HE WAS A MEMBER OF THE D.F.S. OR THE --

5 MR. NICOLAYSEN: I.P.S., YOUR HONOR .

6 THE COURT: BUT --

7 MR. MEDRANO: BUT THE POINT IS, YOUR HONOR --

8 THE COURT: I WOULD THINK THE RECANTATION RELATES TO
9 THE ACTUAL MURDER .

10 MR. MEDRANO: THE RECANTATION RECANTS THE WHOLE
11 PREVIOUS STATEMENT, YOUR HONOR. THAT'S WHY THE HOLE PREVIOUS
12 STATEMENT IS SUSPECT .

13 THE COURT: WHY HASN'T THAT BEEN DONE BEFORE, SINCE
14 THIS MOTION HAS BEEN PENDING; THAT IS, THE TRANSLATION OF THIS?

15 MR. MEDRANO: FOR THAT, YOUR HONOR, I APOLOGIZE .
16 IT'S UNDER THE GUN OF BEING IN TRIAL AND DEALING WITH VARIOUS
17 MOTIONS FILED BY THE DEFENSE. IT SHOULD HAVE BEEN DONE AND
18 THAT CAN BE DONE IN A VERY SHORT PERIOD OF TIME .

19 BUT I THINK IT WOULD BE APPROPRIATE SO AT LEAST
20 YOU'LL HAVE THE BIG PICTURE, TO LOOK AT THAT RECANTATION AND
21 TAKE THAT INTO CONSIDERATION ON THE ELEMENT OF UNTRUSTWORTHI-
22 NESS .

23 AT LEAST GIVE US THAT OPPORTUNITY, YOUR HONOR,
24 BECAUSE YOU SHOULD HAVE SOME IDEA OF WHAT REALLY TRANSPIRES AS
25 TO THE UNTRUSTWORTHINESS .

1 AND FINALLY, ONCE YOU GO BEYOND THAT STAGE, AND AFTER
2 WE HEAR FURTHER FROM CASTILLO, IF NECESSARY, AS TO WHY HE
3 DIDN'T PUT OTHER INFORMATION IN THE CABLE, AND THAT, IN FACT,
4 HE PREVIOUSLY HAD ALREADY BEEN INTERROGATED -- AND WE DON'T
5 KNOW WHAT HAPPENED DURING THAT INTERROGATION.

6 EVEN AFTER ALL THAT, YOUR HONOR, IF YOU'RE STILL
7 INCLINED TO ADMIT IT, THEN UNDER FAIRNESS TO THE GOVERNMENT --

8 THE COURT: WELL, YOU'RE REPEATING YOURSELF.

9 MR. MEDRANO: I UNDERSTAND, YOUR HONOR, BUT IT'S SUCH
10 A CRUCIAL ISSUE, THAT'S WHY I'M BEING ZEALOUS ABOUT IT.

11 THE COURT: REPETITION IS NOT NECESSARY.

12 MR. NICOLAYSEN: I CAN SPEAK TO THE RECANTATION, IF
13 THE COURT WISHES ME TO BE HEARD ON THAT.

14 YOUR HONOR, I'M NOT INTERESTED IN A ONE-SIDED
15 PERSPECTIVE FROM EITHER VANTAGE POINT. THE RECANTATION DOESN'T
16 DISTURB ME IN THE SLIGHTEST.

17 IF YOUR HONOR GETS A TRANSLATION OF IT -- AND I'LL BE
18 HAPPY TO SUMBIT IT IF THE GOVERNMENT DOESN'T HAVE TIME -- IT
19 SAYS IN SO MANY WORDS IN ONTIVEROS' RECANTATION, THAT HE WASN'T
20 EVEN AT THE RESTAURANT. SO PLASCENCIA IS CONTRADICTED EITHER
21 WAY, EITHER BY THE CABLE OR BY THE RECANTATION.

22 AND IF THE COURT FEELS THAT THE RECANTATION WOULD
23 PROVIDE THE TYPE OF BALANCE THAT WOULD ALLOW FAIRNESS AND
24 JUSTICE TO BE DONE, I HAVE NO PROBLEM. BUT I WOULD REMIND THE
25 COURT THAT THERE WAS ABSOLUTELY NO INDICATION BY CASTILLO THAT

1 THE STATEMENTS MADE BY ONTIVEROS ON NOVEMBER 14 OF '85 WERE
2 SUSPECT.

3 THE CABLE WAS AN OVER NIGHT TRANSMISSION, AS THE
4 COURT KNOWS, NOT A D.E.A. 6, WHICH WOULD INDICATE, I THINK, A
5 REASONABLE INFERENCE CAN BE DRAWN THAT CASTILLO CONSIDERED THE
6 STATEMENTS SIGNIFICANT AND SOMETHING THAT HEADQUARTERS IN
7 WASHINGTON SHOULD TAKE VERY SERIOUSLY. THAT CERTAINLY
8 CONTRADICTS THE NOTION OF TORTURE OR PHYSICAL ABUSE.

9 THE COURT: ALL RIGHT. HERE IS WHAT THE COURT WILL
10 DO. I WANT TO SEE A TRANSLATED COPY OF THE RECANTATION, AND I
11 WILL HOLD A BRIEF HEARING TO HEAR FURTHER FROM CASTILLO, IF
12 THERE IS EVIDENCE TO BE PRESENTED THAT THERE WAS PSYCHOLOGICAL
13 OR PHYSICAL INTIMIDATION.

14 IF THE RECANTATION ITSELF IS EVIDENCE OF THAT, THEN
15 WE'LL CONSIDER THAT AS WELL.

16 MR. NICOLAYSEN: MAY I MAKE JUST ONE SUGGESTION, YOUR
17 HONOR, SINCE WE ARE AT THE CLOSE OF THE DEFENSE CASE. MY COURT
18 INTERPRETER, CYNTHIA PARKER, HAS REVIEWED THE RECANTATION AND
19 IS FAMILIAR.

20 I WOULD RESPECTFULLY ASK THE COURT TO ALLOW HER TO
21 SIT ON THE WITNESS STAND AND TRANSLATE IT LINE-BY-LINE IN OPEN
22 COURT FOR YOUR HONOR SO THAT WE CAN MOVE THIS MORE QUICKLY.

23 AND I THINK YOUR HONOR WILL HEAR THE SECTION THAT I'M
24 REFERRING --

25 THE COURT: I'M NOT SURE THAT WOULD BE MORE QUICKLY;

1 I THINK I WOULD PREFER TO HAVE A WRITTEN TRANSLATION.

2 MR. MEDRANO: AND THAT WOULD BE OUR PREFERENCE, TOO,
3 YOUR HONOR. THAT COULD BE DONE RATHER QUICKLY AND WE'LL GET
4 THAT TO YOU AS SOON AS POSSIBLE AND ALSO PROVIDE IT TO
5 MR. NICOLAYSEN.

6 MR. NICOLAYSEN: IS THE COURT ORDERING THE GOVERNMENT
7 THEN TO PREPARE IT?

8 THE COURT: YES.

9 MR. NICOLAYSEN: ALL RIGHT.

10 MR. MEDRANO: THANK YOU, YOUR HONOR.

11 MR. NICOLAYSEN: CAN WE HAVE A TIME TABLE ON THAT,
12 YOUR HONOR, SINCE WE ARE AT THE CLOSE OF THE CASE?

13 THE COURT: WELL, IT SHOULD BE DONE --

14 MR. MEDRANO: IMMEDIATELY, YOUR HONOR. WE'LL TALK TO
15 THE INTERPRETERS' OFFICE.

16 THE COURT: ALL RIGHT. NOW WE HAVE OATH MOTION HERE
17 BY THE DEFENDANT ZUNO ARCE, A MOTION TO ADMIT FOREIGN BUSINESS
18 RECORDS AND OTHER FOREIGN DOCUMENTS INTO EVIDENCE, AND THE
19 GOVERNMENT'S MOTION TO EXCLUDE PRIOR BAD ACTS OF CERVANTES.

20 WHAT WE HAVE HERE IS THAT DEFENDANT ZUNO SEEKS TO
21 HAVE 13 FOREIGN DOCUMENTS ADMITTED INTO EVIDENCE. TO DO THIS,
22 HE BASICALLY MUST OVERCOME TWO HURDLES.

23 FIRST, HE MUST LAY A FOUNDATION FOR THE DOCUMENTS
24 PURSUANT TO FEDERAL RULE OF EVIDENCE 902. THAT SECTION
25 PROVIDES -- THAT RULE PROVIDES THAT IF ITS REQUIREMENTS ARE

1 SATISFIED, FOREIGN PUBLIC DOCUMENTS WILL BE SEEMED SELF-
2 AUTHENTICATING.

3 AND SECOND, HE WILL HAVE TO ESTABLISH THAT THESE
4 DOCUMENTS FALL WITHIN THE EXCEPTION TO THE HEARSAY RULE. TO DO
5 THIS, MR. ZUNO SEEKS TO RELY ON THE TRADITIONAL EXCEPTIONS TO
6 THE HEARSAY RULE. THAT IS, FOR EXAMPLE, REGULARLY MAINTAINED
7 BUSINESS RECORDS.

8 AND AS TO TWO OF THE 13 DOCUMENTS, THE DEFENDANT
9 RELIED IN THE ALTERNATIVE ON TITLE 18 UNITED STATES CODE
10 SECTION 3505, WHICH PROVIDES THAT IF CERTAIN CERTIFICATIONS ARE
11 MADE, THE DOCUMENT WILL NOT BE EXCLUDED AS HEARSAY.

12 THE GOVERNMENT CHALLENGES THE FOUNDATIONAL SHOWING OF
13 MR. ZUNO WITH REGARD TO CERTAIN DOCUMENTS AND CHALLENGES THE
14 ADMISSIBILITY OF ALL OF THE DOCUMENTS UNDER THE HEARSAY RULE.
15 THE GOVERNMENT ASSERTS THAT THE TRADITIONAL HEARSAY OBJECTIONS
16 DO NOT APPLY TO FOREIGN DOCUMENTS, BUT THAT ALL SUCH EXCEPTIONS
17 ARE NOW GOVERNED BY TITLE 18 OF THE UNITED STATES CODE SECTION
18 3505, WHICH WAS PASSED IN 1984, THAT THAT IS THE EXCLUSIVE
19 HEARSAY EXCEPTION FOR FOREIGN RECORDS.

20 THE GOVERNMENT ALSO ARGUES THE DOCUMENTS ARE
21 INADMISSIBLE AS IRRELEVANT OR CUMULATIVE.

22 NOW, THE COURT HAS READ AND CONSIDERED THE MOTION AND
23 REVIEWED THESE EXHIBITS AND THE OPPOSITION TO THE MOTION AND
24 HAS COME TO THIS TENTATIVE CONCLUSION. IT IS THE COURT'S
25 TENTATIVE CONCLUSION -- FIRST, IT IS THE COURT'S CONCLUSION

1 THAT CONGRESS DID NOT INTEND TITLE 18 USC 3505 TO CREATE THE
2 EXCLUSIVE MEANS FOR AUTHENTICATING FOREIGN PUBLIC DOCUMENTS,
3 NOR DID CONGRESS INTEND THAT THIS STATUTE DEFINE THE ONLY
4 EXCEPTION TO THE HEARSAY RULE APPLICABLE TO FOREIGN RECORDS.

5 HEARSAY ADMISSIBLE UNDER FORMER PRACTICE SHOULD
6 CONTINUE TO BE ADMISSIBLE ABSENT THE CLEAREST CONGRESSIONAL
7 INTENT TO THE CONTRARY. SUCH INTENT DOES NOT APPEAR IN THIS
8 STATUTE.

9 IF THE LANGUAGE OF SECTION 3505 WERE TO LIMIT THE
10 APPLICATION OF THE GENERAL HEARSAY EXCEPTION TO THE FOREIGN
11 RECORD, IT SHOULD ALSO BE READ TO PRECLUDE FUTURE USE OF
12 FEDERAL RULE OF EVIDENCE 9023, WHICH DEALS EXCLUSIVELY WITH
13 FOREIGN PUBLIC RECORD.

14 CONGRESS WOULD HAVE MADE CLEAR ITS INTENTION TO
15 REPEAL THIS RULE OF EVIDENCE BY PASSAGE OF SECTION 3505, IF
16 THIS WAS, IN FACT, CONGRESS'S INTENTION.

17 NOW, THE COURT FINDS THAT EXHIBITS AA, BB, CC, AND
18 THAT PORTION OF EXHIBIT DD THAT DEALS WITH THE TIMING OF
19 CERVANTES' DISCHARGE FROM THE DEPARTMENT OF PUBLIC SAFETY ONLY,
20 AND EXHIBIT NN MAY BE ADMITTED.

21 EXHIBITS EE, FF, GG, HH, II, JJ, KK, LL AND MM --
22 INCIDENTALLY, THIS NUMBING SYSTEM THAT THE DEFENDANTS HAVE
23 ADOPTED FOR THESE EXHIBITS IS SOMEWHAT CUMBERSOME. IF WE GET
24 INTO THE -- WE WERE UP TO 4-K. IF WE GET TO 10-K, SOMEBODY
25 WILL START RUNNING.

1 (COURTROOM LAUGHTER.)

2 I SUGGEST THAT IF YOU WANT TO USE A LETTERING SYSTEM,
3 THAT YOU USE K-1 AND K-2 AND K-3 AND K-10 INSTEAD OF KKKK.

4 ALL RIGHT. NOW, THESE ARE THE COURT'S REASONS. THE
5 COURT IS OF THE VIEW THAT EXHIBITS AA AND BB HAVE BEEN PROPERLY
6 AUTHENTICATED AND ARE RELEVANT AND ADMISSIBLE.

7 THE COURT FINDS THAT EXHIBIT CC HAS BEEN PROPERLY
8 AUTHENTICATED AND MAY BE ADMITTED AS PROPOSED TO IMPEACH BY
9 CONTRADICTION ON A NONCOLLATERAL MATTER.

10 THE SAME IS TRUE WITH REGARD TO EXHIBIT DD, BUT ONLY
11 TO THE EXTENT THAT IT DEALS WITH THE PROXIMITY OF THE TIMING OF
12 CERVANTES' DISCHARGE FROM THE DEPARTMENT OF PUBLIC SAFETY AND
13 HIS BECOMING A PAID INFORMANT FOR THE GOVERNMENT. THIS IS
14 PROBATIVE OF POSSIBLE BIAS, WHICH IS NEVER A COLLATERAL MATTER.

15 THE REMAINDER OF EXHIBIT DD, DEALING WITH CERVANTES'
16 PRIOR ARREST, AND ALL OF EXHIBIT MM, DEALING WITH CERVANTES'S
17 ALLEGED BUSINESS ADDRESS, CONSTITUTE EXTRINSIC EVIDENCE SOUGHT
18 TO BE USED TO IMPEACH BY CONTRADICTION ON A COLLATERAL MATTER
19 AND ARE NOT ADMISSIBLE.

20 IT IS THE COURT'S VIEW THAT EXHIBITS EE THROUGH LL
21 HAVE BEEN PROPERLY AUTHENTICATED, BUT HAVE NOT BEEN SHOWN BY
22 THE PROPONENT OF THIS EVIDENCE TO FALL WITHIN AN EXCEPTION TO
23 THE HEARSAY RULE.

24 SPECIFICALLY, THE DEFENDANT HAS FAILED TO SATISFY THE
25 COURT THAT WEDDINGS AND BIRTHS MUST BE REGISTERED IN ACCORDANCE

1 WITH MEXICAN LAW. FOR THESE REASONS, THESE EXHIBITS WILL NOT
2 BE ADMITTED.

3 THE COURT FINDS THAT EXHIBIT NN IS PROPERLY
4 AUTHENTICATED AND IS ADMISSIBLE PURSUANT TO RULE 803.10,
5 BECAUSE ABSENCE OF PUBLIC RECORD OR ENTRY -- AND IS ADMISSIBLE
6 BECAUSE DEFENDANT SEEKS TO USE THIS DOCUMENT TO IMPEACH ON A
7 NONCOLLATERAL MATTER.

8 JUST SO YOU KNOW WHAT THE COURT IS TALKING ABOUT
9 HERE, EXHIBIT AA IS A CERTIFIED COPY OF A SALES CONTRACT FOR
10 THE SALE OF THE LOPE DE VEGA PROPERTY TO DR. SANCHEZ. AND
11 EXHIBIT BB IS A CERTIFIED COPY ALSO OF THE SALE OF TRACT 2 OF
12 THAT PROPERTY.

13 EXHIBIT CC IS AN AERIAL PHOTOGRAPH OF PRIMAVERA PARK
14 ISSUED BY THE FOREST COMMISSION OF THE STATE OF JALISCO. THIS
15 DOCUMENT IS PROPERLY CERTIFIED AND AUTHENTICATED UNDER RULE
16 9023. IT IS OFFERED BY THE DEFENDANT AS EVIDENCE TO ESTABLISH
17 THAT PRIMAVERA PARK IS A NATIONAL PARK, AND THEREBY IMPEACH
18 CERVANTES, WHO ATTRIBUTED OWNERSHIP OF THE PARK TO MR. ZUNO
19 ARCE. IT IS RELEVANT FOR THAT PURPOSE.

20 I HAVE ALREADY DISCUSSED EXHIBIT DD, WHICH IS A FILE
21 PICTURE THAT CERVANTES MAINTAINED BY THE DEPARTMENT OF PUBLIC
22 SAFETY FOR THE STATE OF JALISCO. THE FOUNDATION HAS BEEN LAID.
23 THESE RECORDS ARE OFFERED TO IMPEACH CERVANTEZ, WHO TESTIFIED
24 THAT HE HAD NEVER BEEN ARRESTED BEFORE AND TO SHOW CERVANTES'
25 MOTIVE FOR TESTIFYING FALSELY.

1 THE RECORD INDICATES THAT HE WAS ARRESTED THREE TIMES
2 AND WAS DISCHARGED FOR THEFT OF GOVERNMENT PROPERTY ONE WEEK
3 BEFORE HE BECAME A GOVERNMENT EMPLOYEE.

4 THE GOVERNMENT ARGUES THESE ARE IMPROPERLY ADMITTED
5 BAD ACTS. AND THAT WOULD BE TRUE, HAD THE WITNESS NOT STATED
6 THAT HE HAD NEVER BEEN ARRESTED BEFORE. SO THIS THEN BECOMES A
7 DIFFERENT MATTER. THIS IS NOT AN OFFER TO PROVE THAT HE HAS A
8 BAD CHARACTER, BUT TO IMPEACH HIS TESTIMONY BY CONTRADICTION.

9 NOW, THE CERTIFICATES FROM MUNICIPALITIES WHICH ARE
10 EXHIBITS EE-2 -- THAT IS, EE THROUGH II -- ARE CERTIFICATES
11 FROM MUNICIPALITIES IN GUADALAJARA REGARDING THE NONEXISTENCE
12 OF MARRIAGE RECORDS OF JORGE BARBA. THESE DOCUMENTS HAVE BEEN
13 AUTHENTICATED.

14 CERVANTES TESTIFIED ABOUT THESE TWO MEETINGS THAT
15 TOOK PLACE, ONE AT THE WEDDING OF BARBA AND THE OTHER AT THE
16 BAPTISM. THE DEFENDANT SEEKS TO ADMIT THESE STATEMENTS AS AN
17 EXCEPTION TO THE HEARSAY RULE FOR VITAL STATISTICS, BECAUSE
18 THEY ARE RECORDS OF VITAL STATISTICS PURSUANT TO 8039, WHICH
19 PROVIDES THAT -- THE KEY WORDS OF THE REPORT THERE WAS MADE TO
20 A PUBLIC OFFICE PURSUANT TO THE REQUIREMENTS OF THE LAW, WHICH
21 PROVIDE:

22 "TO PROVE THE ABSENCE OF A RECORD OR THE
23 NON-OCCURRENCE OR NON-EXISTENCE OF A MATTER OF WHICH
24 A RECORD WAS REGULARLY MADE AND PRESERVED BY A PUBLIC
25 OFFICE OR AGENCY, EVIDENCE IN THE FORM OF A

1 CERTIFICATION IN ACCORDANCE WITH RULE 902, OR
2 TESTIMONY OF A DILIGENT SEARCH FAILED TO DISCLOSE THE
3 RECORD."

4 THIS, IN ITS REPLY BRIEF, IS THE FIRST TIME THE ISSUE
5 OF THE REQUIREMENTS OF THE LAW ARE ADDRESSED, WHICH IS THE
6 WRONG TIME TO ADDRESS IT.

7 YOU ATTACHED A SUPPLEMENTAL DECLARATION OF A LAW
8 PROFESSOR WHO STATES THAT ACCORDING TO MEXICAN LAW, ALL BIRTHS
9 AND MARRIAGES MUST BE RECORDED IN THE CIVIL REGISTRY.

10 "TO BE VALID UNDER MEXICAN LAW, ALL MARRIAGES MUST BE
11 REGISTERED IN THE CIVIL REGISTRY." THIS DECLARATION IS
12 INSUFFICIENT EVIDENCE THAT ALL LEGAL MARRIAGES MUST BY LAW BE
13 RECORDED.

14 FIRST, IT IS PROCEDURALLY IMPROPER TO SUBMIT IT IN
15 THE REPLY.

16 SECOND, THE DEFENDANTS SHOULD HAVE AT LEAST SUPPLIED
17 THE COURT WITH A COPY OF THE PERTINENT MEXICAN LAW.

18 AND THIRD, YOU CAN GET -- IN THIS COUNTRY, FOR
19 EXAMPLE, YOU CAN GET MARRIAGE LICENSES ISSUED IN 58 COUNTIES IN
20 THIS STATE AND YOU CAN BE MARRIED SOMEPLACE ELSE IN THIS STATE,
21 AND THE RECORD WOULD BE IN LOS ANGELES COUNTY, IF YOU GOT THE
22 LICENSE ISSUED THERE.

23 THERE IS NO INDICATION WHERE -- OR THERE IS NO
24 INDICATION TO SATISFY THE COURT THAT WE NEED NECESSARILY OBTAIN
25 A LICENSE. WE HAVE A PROCEDURE HERE IN CALIFORNIA WHERE PEOPLE

1 CAN HAVE UNREGISTERED MARRIAGES BY SIMPLY REGISTERING THEM WITH
2 THE CHURCH RATHER THAN IN THE PUBLIC RECORD. THAT'S IN A
3 SITUATION WHERE THEY HAVE LIVED TOGETHER A LONG TIME AND THEY
4 HAVE CHILDREN.

5 AND TO AVOID THE INFAMY RESULTING FROM A PUBLIC
6 MARRIAGE, THOSE PRIVATE MARRIAGES ARE PERMITTED. SO THERE IS
7 NO INDICATION HERE THAT -- I'M NOT SATISFIED FROM WHAT HAS BEEN
8 SUBMITTED THAT THIS IS APPROPRIATE.

9 NOW, THE CERTIFICATE OF MUNICIPALITY REGARDING THE
10 BIRTH OF YUREMI BARBA IS A PROPER FOUNDATION LAID FOR THESE
11 DOCUMENTS. I WOULD EXCLUDE THESE UNDER THE SAME REASONING.

12 FIRST OF ALL, WE DON'T KNOW WHERE THIS CHILD WAS
13 BORN, IF THERE IS SUCH A CHILD, WHETHER IT WAS BORN IN
14 GUADALAJARA OR SOMEPLACE ELSE.

15 THIS EXHIBIT MM, WHICH IS A CERTIFICATE FROM A
16 MUNICIPALITY, AS TO THE NONEXISTENCE OF THE ADDRESS AT WHICH
17 CERVANTES CLAIMED HE HAD A BUSINESS, IS PROPERLY AUTHENTICATED
18 BUT THE COURT EXCLUDES THIS AS BEING RELATED TO A PURELY
19 COLLATERAL MATTER, AND YOU CANNOT IMPEACH BY USE OF EXTRINSIC
20 EVIDENCE A CONTRADICTION ON A PURELY COLLATERAL MATTER, WHICH
21 THIS IS.

22 HAVE WE COVERED EVERYTHING HERE?

23 DO YOU WISH TO BE HEARD BRIEFLY?

24 MR. DI NICOLA: YOUR HONOR, I BELIEVE WE'VE COVERED
25 ALL OF THE EXHIBITS, THE 14 THAT WE'VE SUBMITTED. AS I

1 UNDERSTAND THE COURT'S RULING, AA, BB, CC, DD AND NN ARE IN,
2 SUBJECT TO --

3 THE COURT: NO, DD IS NOT IN, ONLY THAT PORTION OF
4 IT --

5 MR. DI NICOLA: -- SUBJECT TO THE QUALIFICATION THE
6 COURT HAS STATED.

7 THE COURT: YES.

8 MR. DI NICOLA: I WOULD LIKE TO ADDRESS, IF I MAY,
9 THE BASIS FOR THE ADMISSIBILITY OF EE THROUGH MM.

10 FIRST OF ALL, DEALING WITH E THROUGH L, WHICH ARE --

11 THE COURT: WELL, COUNSEL, I READ WHAT YOU WROTE
12 HERE, AND IF YOU'RE JUST GOING TO REPEAT THAT, I DON'T WANT YOU
13 TO DO THAT.

14 IF YOU WANT TO ANSWER WHAT I SAID ABOUT THE
15 INADEQUACY OF THEM, YOU MAY DO THAT.

16 MR. DI NICOLA: I WOULD LIKE TO, YOUR HONOR. FIRST
17 OF ALL, AS THE COURT IS AWARE, THE COURT HAS FREE REIGN IN
18 MAKING A DETERMINATION OF FOREIGN LAW UNDER 26.1.

19 WE WOULD SUBMIT THAT THE DECLARATIONS ARE ONE SUCH
20 RESOURCE AVAILABLE TO THE COURT IN MAKING A DETERMINATION OF
21 FOREIGN LAW, BOTH ON THE ISSUE OF AUTHENTICITY, HEARSAY AND
22 WHERE APPROPRIATE, RELEVANCY.

23 BUT THE INQUIRY DOESN'T NECESSARILY STOP THERE.
24 WE'RE PERFECTLY PREPARED TO PRESENT MR. CUELLAR, IF THE COURT
25 DEEMS THAT APPROPRIATE, ON THIS DETERMINATION OF FOREIGN LAW

1 WITH RESPECT TO THE REQUIREMENTS OF MEXICAN LAW THAT ALL BIRTHS
2 BE REGISTERED, THAT ALL MARRIAGES BE REGISTERED, AND THAT IN
3 ORDER TO BE VALID UNDER MEXICAN LAW, A MARRIAGE MUST BE
4 RECORDED.

5 MR. CUELLAR IS AVAILABLE TO TESTIFY. HE IS A
6 RESPECTED EMINENT MEMBER OF THE LEGAL PROFESSION FROM MEXICO,
7 AND HE COULD FURTHER ASSIST THE COURT UNDER 26.1 IN MAKING THE
8 DETERMINATION NECESSARY TO ESTABLISH THE EXCEPTION TO THE
9 HEARSAY RULE.

10 THE COURT: COUNSEL, THAT'S WHAT YOUR MOTION IS FOR.
11 I DON'T INTEND TO HOLD AN EVIDENTIARY HEARING ON EVERY SINGLE
12 MOTION. YOU'RE SUPPOSED TO PROVIDE THE COURT WITH THAT
13 EVIDENCE. YOU HAVE NOT DONE SO AND I'M NOT GOING TO GIVE YOU
14 ANY ADDITIONAL OPPORTUNITY TO DO SO.

15 MR. DI NICOLA: WELL, YOUR HONOR, WE HAVE ACTUALLY --

16 THE COURT: WHAT YOU HAVE PROVIDED IS INADEQUATE.

17 MR. DI NICOLA: WELL, IN THE ORIGINAL DECLARATION IN
18 PARAGRAPH TWO AND IN THE SUPPLEMENTAL DECLARATION AT PARAGRAPH
19 FIVE, WE HAVE DISCUSSED THE ISSUE OF THE REQUIREMENTS OF
20 MEXICAN LAW WITH RESPECT TO THE RECORDATION OF A MARRIAGE.

21 YOUR HONOR, FURTHERMORE, WE WOULD SUBMIT THAT THIS
22 ISSUE, BEING AS CRITICAL AS IT IS, AS THE COURT HAS RECOGNIZED,
23 IS FURTHER CORROBORATED; THAT IS, THE NONEXISTENCE OF A RECORD,
24 THE NONEXISTENCE OF A MARRIAGE, THE NONOCCURENCE OF A MARRIAGE
25 BY THE TESTIMONY OF TWO WITNESSES.

8 1 THE ISSUE OF THE SATISFACTORY NATURE OF THE EVIDENCE
2 GOES TO ITS WEIGHT RATHER THAN ITS ADMISSIBILITY.

3 THE COURT: NO, SIR. IT GOES TO ITS ADMISSIBILITY.

4 MR. DI NICOLA: BUT IN TERMS OF OUR PROFFER UNDER
5 26.1, YOUR HONOR, WE INDICATED TO THE COURT THAT MR. CUELLAR
6 WAS AVAILABLE AND THAT FURTHER EVIDENCE COULD BE TAKEN FROM
7 HIM. AND WE WOULD SUBMIT THAT WE LIKE THE OPPORTUNITY TO
8 PRESENT THAT EVIDENCE IN ORDER TO ESTABLISH THE RELEVANCY OF
9 THIS EVIDENCE.

10 THE COURT: THAT REQUEST IS DENIED.

11 DO YOU WISH TO BE HEARD?

12 MR. MEDRANO: JUST VERY BRIEFLY, YOUR HONOR. TWO
13 THINGS.

14 ONE, ON EXHIBIT CC, WHICH IS THE PHOTO OF LA
15 PRIMAVERA PARK AND THAT IT IS A NATIONAL PARK, I THINK YOU
16 OUGHT TO BE AWARE OF THE MISCHARACTERIZATION OF CERVANTES'
17 TESTIMONY BY DEFENSE COUNSEL.

18 I REVIEWED MY NOTES ON WHAT HE TOLD THE JURY. HE
19 SAID HE WAS AWARE THAT ZUNO HAD PROPERTY IN A TOWN CALLED LA
20 PRIMAVERA AND THAT HE HAD BEEN THERE ONCE.

21 CERVANTES NEVER SAID --

22 THE COURT: WE HAVE A TRANSCRIPT OF THIS; DON'T WE?

23 MR. MEDRANO: WELL, I AGREE WITH YOU, YOUR HONOR,
24 BUT --

25 THE COURT: WELL, LET'S LOOK AT IT.

1 MR. MEDRANO: I DON'T HAVE IT READILY AVAILABLE.
2 I'LL TRACK IT DOWN AND SHOW IT TO THE COURT.

3 THE COURT: TRACK IT DOWN, BECAUSE IF THAT'S WHAT HE
4 SAID --

5 MR. MEDRANO: -- THEN I WOULD ASK YOU TO RECONSIDER
6 ON THAT PARTICULAR EXHIBIT.

7 THE COURT: -- AND IT SOUNDS FAMILIAR, THEN MAYBE
8 THAT SHOULDN'T COME IN EITHER.

9 MR. MEDRANO: VERY WELL. AND I'LL TRACK THAT DOWN
10 FOR YOU.

11 AND FINALLY, YOUR HONOR, JUST FOR CLARIFICATION, ON
12 DD, THE CERVANTES WORK HISTORY DOCUMENTS --

13 THE COURT: YES.

14 MR. MEDRANO: -- IF I COULD ASK YOU JUST TO RESTATE
15 WHAT IS ADMISSIBLE AND WHAT IS NOT.

16 THE COURT: WHAT IS ADMISSIBLE IS THAT HE WAS
17 DISCHARGED JUST SHORTLY BEFORE HE BECAME AN INFORMANT. THE
18 LAST DISCHARGE THERE, WHATEVER THE DATE IS.

19 MR. MEDRANO: YES, YOUR HONOR.

20 THE COURT: THAT TENDS TO -- MAY BE RELEVANT ON THE
21 ISSUE OF BIAS OF THE WITNESS.

22 MR. MEDRANO: BUT EVERYTHING ELSE IS EXCLUDED --

23 THE COURT: THAT'S CORRECT.

24 MR. MEDRANO: -- INCLUDING THAT THERE IS ARREST
25 WARRANTS AND THIS AND THAT. ALL OF THAT IS OUT?

1 THE COURT: THAT'S RIGHT.

2 MR. MEDRANO: THANK YOU.

3 MR. DI NICOLA: YOUR HONOR, WE BELIEVE THAT THE
4 REFERENCE TO PRIMAVERA PARK IS AS WE'VE STATED IN THE RECORD.

5 THE COURT: WELL, THEN SHOW ME IN THE RECORD.
6 PRODUCE THE RECORD, BECAUSE I THINK THAT NOW THAT COUNSEL
7 MENTIONS IT, IT SOUNDS MORE LIKE WHAT COUNSEL SAID IT WAS.

8 MR. DI NICOLA: IN ADDITION, YOUR HONOR, WITH RESPECT
9 TO THE ARREST PORTION OF EXHIBIT D, THE REASON THAT WE OFFER
10 THAT PORTION OF THE EXHIBIT, YOUR HONOR, IS BECAUSE THAT LINE
11 OF QUESTIONING WAS OPENED UP BY THE GOVERNMENT IN ITS DIRECT
12 EXAMINATION OF MR. CERVANTES. SO IT'S NOT A 608 SITUATION
13 WHERE WE ARE ATTEMPTING TO IMPEACH ON A COLLATERAL MATTER.

14 AS WE HAVE CITED IN OUR PAPERS, THIS WAS A MATTER
15 THAT WAS RAISED ON DIRECT EXAMINATION, AND THEREFORE IS FAIR
16 GAME FOR IMPEACHMENT ON CROSS AND IMPEACHMENT THROUGH THIS
17 DOCUMENT.

18 THE SAME, WE WOULD SUBMIT, IS ALSO TRUE WITH RESPECT
19 TO EXHIBIT MM.

20 THE COURT: JUST SO THERE IS NO DISPUTE, THE PRIOR
21 ARRESTS ARE EXCLUDED AS BEING COLLATERAL MATTERS.

22 THE DOCUMENT DEMONSTRATING THE PROXIMITY OF THE
23 WITNESS'S DISCHARGE AND HIS BECOMING AN INFORMANT FOR THE
24 D.E.A. IS RELEVANT BECAUSE IT MAY HAVE SOME BEARING ON THE
25 ISSUE OF BIAS. BIAS IS NEVER A COLLATERAL MATTER, AS I HAVE

1 TOLD YOU ALREADY. SO THE PURPOSE OF LETTING THIS IN WOULD BE
2 ONLY TO DEMONSTRATE THE PROXIMITY BETWEEN HIS TERMINATION AND
3 THE TIME THAT HE BECAME AN INFORMANT. THE REST OF IT IS NOT --
4 IT'S COLLATERAL AND SHOULD NOT BE ADMITTED. SO THAT'S ALL.
5 THAT'S THE ORDER.

6 MR. STOLAR: YOUR HONOR, JUST SO THAT I CAN MAKE A
7 RECORD WITH RESPECT TO MR. MATTA, I THINK THE RECORD SHOULD BE
8 CLEAR THAT THE PROFFER OF THE DOCUMENTS IS ONE THAT IS ON
9 BEHALF OF ALL DEFENDANTS, INCLUDING MR. MATTA, AND I BELIEVE
10 OTHER COUNSEL, AS WELL, THAT WE HAVE RELIED ON THE GOOD WORK
11 THAT MR. DI NICOLA HAS DONE.

12 THE COURT: WELL, THAT ISN'T CLEAR FROM THE MOTION.

13 MR. STOLAR: I UNDERSTAND THAT. WE DID NOT MAKE AN
14 OFFICIAL JOINDER IN IT. THERE WAS A DISCUSSION AMONG DEFENSE
15 COUNSEL.

16 FOR EXAMPLE, WITH THE TELEPHONE RECORDS, WE DEVELOPED
17 A DIFFERENT DOCUMENT AND WE FIGURED OUT THEY WERE DOING IT AND
18 FOR THE COURT'S PURPOSES, WE WANTED TO DO IT ALL IN ONE
19 PACKAGE. SO FOR THE RECORD, WE JOIN.

20 I WOULD LIKE TO SAY, HOWEVER, THAT PARTICULARLY WITH
21 RESPECT TO THE RECORD OF NON -- OF THE NONRECORD OF A MARRIAGE,
22 THAT I WOULD LIKE THE COURT TO PLEASE RECONSIDER.

23 AND WE WOULD LIKE TO BRING IN COPIES OF THE MEXICAN
24 LAW TRANSLATED. IT IS MY UNDERSTANDING THAT THERE IS A
25 SUBSTANTIAL DIFFERENCE IN MEXICO AND IN OTHER COUNTRIES WHICH

1 ARE DOMINATED WITH CATHOLIC CHURCH RELIGION, THAT IN MEXICO ALL
2 MARRIAGES MUST BE RECORDED CIVILLY. THERE IS NO SUCH THING AS
3 ONLY A CHURCH MARRIAGE TO BE A VALID MARRIAGE.

4 IF THE GOVERNMENT WANTS TO ARGUE THAT THIS MARRIAGE
5 TOOK PLACE AND THEY DIDN'T RECORD IT, THAT IT WAS A PHONY
6 MARRIAGE IN SPITE OF THE FACT THAT HECTOR CERVANTES SANTOS SAYS
7 THAT WELL, EVERYBODY WENT TO THE CHURCH AND THEN THEY CAME BACK
8 TO THE PARTY, THAT'S FINE. BUT WE WOULD LIKE TO BRING IN
9 SOMEBODY TO DEAL WITH THE COURT.

10 IT IS NOT A COLLATERAL QUESTION FOR US. WITH RESPECT
11 TO MR. MATTA, IT IS THE QUESTION. IF THERE IS NO MARRIAGE,
12 MR. MATTA WALKS. IF THERE IS A MARRIAGE, MAYBE THE JURY COULD
13 CONVICT HIM. BUT IT A VERY, VERY CRUCIAL QUESTION. THAT IS
14 HIS ONLY INVOLVEMENT, AND WE WOULD LIKE THE OPPORTUNITY, IN
15 CONNECTION WITH CO-COUNSEL, TO BRING SOME LAW IN, TO BRING A
16 LAW PROFESSOR IN -- DO IT ON MONDAY, IF NECESSARY, WITHOUT
17 TAKING UP THE JURY'S TIME, ET CETERA. SO THAT'S THE POSITION
18 THAT I WOULD LIKE TO DIRECT TO THE COURT, BECAUSE IT IS SUCH A
19 CRUCIAL QUESTION FOR US.

20 MR. MEDRANO: YOUR HONOR, ONE FINAL THING ON THIS.
21 THEY HAVE STILL NOT ADDRESSED ONE OF YOUR MAIN CONCERNS. THE
22 58 COUNTY ANALOGY IS IDEAL HERE. THEY STILL HAVEN'T
23 ESTABLISHED WHERE THE MARRIAGE OCCURRED. AND IN ADDITION, THAT
24 THEY CHECKED EVERY CIVIL REGISTRY.

25 THE COURT: WELL, THE MARRIAGE OCCURRED IN

1 GUADALAJARA ACCORDING TO YOUR WITNESS.

2 MR. MEDRANO: NO, YOUR HONOR. HE NEVER TESTIFIED --

3 MR. STOLAR: YES.

4 MR. MEDRANO: WELL, HE SAID THE WEDDING PARTY WAS AT
5 LA QUINTA HOUSE, AND HE SAID THAT THE WEDDING WAS AT -- THE
6 ACTUAL CEREMONY WAS AT A CHURCH. HE DIDN'T SAY WHERE THE
7 CHURCH WAS.

8 THE COURT: MAY WE ASSUME IT WAS IN JALISCO?

9 (COURTROOM LAUGHTER.)

10 MR. MEDRANO: OKAY. THIS IS THE POINT, THOUGH, YOUR
11 HONOR. THE POINT IS EVEN IF THEY BROUGHT IN THE LAW PROFESSOR
12 AND THEY GIVE YOU COPIES OF THE STATUTES, THEY HAVEN'T SHOWN
13 THAT THEY CHECKED WITH EVERY COUNTY EQUIVALENT. AND NOT HAVING
14 MET THAT BURDEN, IT'S PREJUDICIAL AND IT'S IRRELEVANT BECAUSE
15 THEY'RE NOT BEING TRUTHFUL. SO WE WOULD AGAIN OBJECT, YOUR
16 HONOR.

17 IT IS A WASTE OF TIME TO GO FORWARD ON THAT ISSUE.

18 MR. DI NICOLA: IF I MAY, THAT IS SIMPLY NOT THE
19 CASE, YOUR HONOR.

20 THE COURT: I DON'T WANT TO HEAR ANY MORE --

21 MR. DI NICOLA: WE HAVE CHECKED --

22 THE COURT: DID YOU HEAR ME?

23 MR. MEZA: YOUR HONOR, JUST BRIEFLY ON THE JOINDER,
24 WE, ON BEHALF OF BERNABE, HAD FELT THAT WE HAD JOINED IN THE
25 ZUNO MOTION.

1 THE COURT WILL RECALL WE MADE A MOTION FOR A
2 CONTINUANCE, IN ADDITION TO OTHER SANCTIONS, CONCERNING THE
3 CERVANTES TESTIMONY BASED ON A REPRESENTATION THAT HE HAD MADE
4 OR I HAD MADE A DECLARATION THAT I HAD HEARD THAT CERVANTES
5 HAD --

6 THE COURT: WHAT IS YOUR POINT HERE? DO YOU WISH TO
7 JOIN IN THIS?

8 MR. MEZA: YES.

9 THE COURT: ALL RIGHT. THAT'S FINE.

10 MR. MEZA: ONE OTHER QUICK PROCEDURAL MATTER, THE
11 COURT WAS REFERRING TO EXHIBITS DOUBLE A THROUGH WHATEVER THE
12 DOUBLE LETTERS END AT.

13 WE HAVE TWO OTHER COURT EXHIBITS WHICH WERE REFERRED
14 TO YESTERDAY IN TESTIMONY, WHICH WERE REFERRED TO PRIOR TO THE
15 TIME THAT THE ZUNO PEOPLE FILED THEIR MOTION, WHICH ARE ALSO
16 REFERRED TO AS DOUBLE A AND DOUBLE B, WHICH ARE THE TWO ALARMA
17 MAGAZINES. THEY WERE TESTIFIED TO BY AGENT KUYKENDALL PRIOR TO
18 THE TIME THAT --

19 THE COURT: WHAT IS YOUR POINT?

20 MR. MEZA: THE ALARMA MAGAZINES -- I DON'T HAVE ANY
21 PROBLEM RENUMBERING THEM, JUST SO THE RECORD IS CLEAR.

22 THE COURT: WHY DO THEY HAVE TO BE RENUMBERED?

23 MR. MEZA: THEN THERE WOULD BE TWO DOUBLE A EXHIBITS
24 AND TWO DOUBLE B EXHIBITS.

25 THE COURT: WE SHOULDN'T HAVE DOUBLE EXHIBITS. THEN

1 THEY SHOULD BE RENUMBERED.

2 MR. MEZA: IF I COULD JUST SUGGEST THAT THE ALARMA
3 MAGAZINES THEMSELVES WILL BE DOUBLE A-2 OR DOUBLE B-2, BECAUSE
4 I ALREADY HAVE A DOUBLE A-1 IN TERMS OF THE --

5 THE COURT: WHY CAN'T IT BE A-2 AND B-2?

6 MR. MEZA: THAT'S FINE, TOO. I DON'T HAVE ANY
7 PROBLEM WITH THAT.

8 MR. MEDRANO: YOUR HONOR, JUST TO ADVISE YOU AND
9 COUNSEL IN GENERAL, LORENZO HARRISON IS AVAILABLE IMMEDIATELY
10 AND AT ANY TIME AT YOUR CONVENIENCE FOR THIS OUT-OF-THE-JURY
11 PRESENCE HEARING. THAT CAN BE DONE. MR. SCHMIDT IS ALSO
12 AVAILABLE AT ANY TIME TODAY.

13 THE COURT: WHO IS; MR. SCHMIDT?

14 MR. MEDRANO: YES, YOUR HONOR.

15 THE COURT: AND THAT WAS RELATING TO --

16 MR. MEDRANO: REGARDING SOME NOTES THAT HE HAD
17 GENERATED, YOUR HONOR. YOU HAD ORDERED THAT --

18 THE COURT: OH, REGARDING THE SEPTEMBER 7TH NOTES?

19 MR. MEDRANO: THAT'S CORRECT, YOUR HONOR. SO I JUST
20 WANTED TO LET YOU KNOW BOTH WITNESSES ARE IN THE COURTHOUSE,
21 AND TODAY AFTER THE WORKDAY WE COULD DO THE HEARING, IF YOU
22 WERE SO INCLINED.

23 THE COURT: YES, I THINK WE SHOULD GET THAT OUT OF
24 THE WAY.

25 MR. MEDRANO: THANK YOU.

1 THE COURT: ARE THERE ANY WITNESSES TO APPEAR BEFORE
2 THE JURY HERE AT THIS TIME?

3 MS. KELLY: YES, YOUR HONOR. MRS. BERNABE IS HERE.

4 THE COURT: LET'S BRING THE JURY IN.

5 MR. STOLAR: AS FAR AS I KNOW, WE HAVE MRS.
6 BERNABE --

7 THE COURT: IS SHE THE ONLY WITNESS?

8 MR. STOLAR: WE HAVE A STIPULATION WITH RESPECT TO
9 THE PHOTOGRAPHS, WHICH ARE THE ONLY ONES THE D.E.A. HAS.

10 THE COURT: IS THAT ALL THERE WILL BE THEN OTHER THAN
11 THESE HEARINGS?

12 MR. STOLAR: THAT'S ALL WE HAVE.

13 MR. MEDVENE: YES, YOUR HONOR.

14 MR. STOLAR: WITH RESPECT TO THE FOREIGN RECORDS THAT
15 HAVE BEEN ADMITTED BY THE COURT, IS THERE A WAY TO THE INDICATE
16 TO THE JURY THAT SUCH RECORDS HAVE BEEN ADMITTED AND WHAT THEY
17 ARE?

18 THE COURT: WELL, I SUPPOSE THAT SOMEBODY COULD OFFER
19 THEM AND I WILL SAY THEY'RE RECEIVED.

20 MR. STOLAR: OKAY.

21 MR. MEDVENE: IF THE COURT PLEASE, AT THIS TIME WE
22 WOULD OFFER --

23 THE COURT: NO, NO, WE WANT TO WAIT FOR THE JURY.

24 MR. MEDRANO: YOUR HONOR, JUST TO GIVE US A CHANCE TO
25 REDACT GG, THE CERVANTES DOCUMENTS, SO BEFORE THAT'S DONE, WE'D

1 LIKE TO REDACT --

2 THE COURT: WELL, THIS CAN BE DONE AND REDACTED
3 AFTERWARDS.

4 MR. MEDRANO: VERY WELL, YOUR HONOR. THANK YOU.

5 THE COURT: BRING THE JURY IN, PLEASE.

6 (BRIEF PAUSE.)

7 (JURY PRESENT.)

8

9 MARIA GUADALUPE GARCIA DE BERNABE + PLAINTIFF'S WITNESS, SWORN

10 (THROUGH A SPANISH INTERPRETER)

11 THE CLERK: PLEASE BE SEATED.

12 PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL

13 YOUR LAST NAME.

14 THE WITNESS: MARIA GUADALUPE GARCIA DE BERNABE.

15 THE INTERPRETER: MARIA GUADALUPE GARCIA DE BERNABE.

16

17 DIRECT EXAMINATION +

18 BY MS. KELLY:

19 Q. GOOD MORNING, MRS. BERNABE.

20 A. GOOD MORNING.

21 Q. CAN YOU TELL US HOW YOU'RE RELATED TO THE DEFENDANT JUAN
22 JOSE BERNABE?

23 A. HE'S MY HUSBAND.

24 Q. HOW LONG HAVE YOU BEEN MARRIED?

25 A. FOR NINE YEARS.

1 Q. I'M GOING TO DIRECT YOUR ATTENTION TO A TIME PERIOD IN
2 JULY OF 1989.

3 A. YES. THAT'S FINE.

4 Q. DID THERE COME A TIME AROUND THE 20TH OF JULY, OR MAYBE
5 THE 19TH OF JULY, THAT YOU MADE PLANS TO COME TO THE UNITED
6 STATES?

7 A. MY HUSBAND TOLD ME THAT HE WOULD BE TRAVELING TO THE
8 UNITED STATES WITH A PERSON NAMED FEDERICO CASTEL DEL ORO WITH
9 WHOM HE WAS GOING TO WORK AT A COMPANY IN GUADALAJARA.

10 Q. AND DID YOU EVER GO TO A BUSINESS OFFICE IN GUADALAJARA
11 WHERE YOUR HUSBAND WAS GOING TO WORK?

12 A. YES. THE DAY THAT WE WERE GOING TO TRAVEL OVER HERE TO
13 LOS ANGELES.

14 MS. KELLY: YOUR HONOR, I'D LIKE TO HAVE EXHIBIT 4-J
15 PLACED IN FRONT OF THE WITNESS.

16 THE CLERK: THE EXHIBIT IS BEFORE THE WITNESS.

17 BY MS. KELLY:

18 Q. MRS. BERNABE, WOULD YOU TAKE A LOOK AT THE EXHIBIT THAT IS
19 BEFORE YOU THAT IS MARKED AS JJJJ.

20 A. YES.

21 Q. HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

22 A. YES. YES, I HAD IT IN MY HANDS AND I LOOKED THROUGH IT
23 AND I SAW THAT IT WAS A PROSPECTUS FOR THE COMPANY THAT MY
24 HUSBAND WAS GOING TO WORK FOR.

25 Q. WHEN IS THE FIRST TIME THAT YOU SAW THIS DOCUMENT?

1 A. BEFORE WE TRAVELED, IT WAS IN MY HOUSE.

2 A. DID YOU MAKE -- STRIKE THAT.

3 DID YOU MAKE ARRANGEMENTS TO OBTAIN YOUR VISA TO
4 TRAVEL TO THE UNITED STATES?

5 A. NO. MR. FEDERICO CASTEL GOT MY HUSBAND AND MYSELF A VISA.

6 Q. IS THAT THE SAME VISA THAT YOU CAME TO THE UNITED STATES
7 WITH ON THIS TRIP?

8 A. YES.

9 Q. WHEN YOU GOT TO THE UNITED STATES, WHO MET YOU AT THE
10 AIRPORT?

11 A. MR. FEDERICO CASTEL INTRODUCED US TO SOME PERSON THAT HE
12 SAID WAS HIS COMPADRE.

13 MR. MEDRANO: OBJECTION, YOUR HONOR, TO HEARSAY
14 STATEMENTS.

15 THE COURT: WELL, THAT'S OVERRULED. BUT I SUGGEST,
16 COUNSEL, THAT IF WE'RE GOING TO RECOUNT -- ALL THIS HAS BEEN
17 DESCRIBED BEFORE. IT DOES NOT APPEAR TO BE IN DISPUTE, THE
18 CIRCUMSTANCES UNDER WHICH THEY CAME TO THIS COUNTRY, SO IF
19 THERE IS SOME OTHER POINT IN CALLING THIS WITNESS, YOU SHOULD
20 GET TO IT.

21 MS. KELLY: VERY WELL, YOUR HONOR.

22 BY MS. KELLY:

23 Q. THEN I'LL DIRECT YOUR ATTENTION TO THE DAY THAT YOU WENT
24 TO MAGIC MOUNTAIN.

25 A. YES.

1 Q. DID YOU HAVE ANY AMERICAN MONEY?

2 A. NO.

3 Q. AND AT SOME POINT DID YOU THEN OBTAIN SOME AMERICAN MONEY?

4 A. YES. MR. FEDERICO CASTEL GAVE MY HUSBAND \$500 AND HE GAVE
5 THEM TO ME.

6 Q. NOW, DURING THE TRIP THAT YOU CAME TO THE UNITED STATES
7 FOR IN JULY OF 1989, WERE YOU INVOLVED IN ANY OF THE BUSINESS
8 MEETINGS THAT YOUR HUSBAND AND MR. CASTEL HAD?

9 A. NO. AT NONE OF THEM.

10 Q. AND WHAT IS IT THAT YOU WERE DOING DURING THIS TIME?

11 A. THEY SENT US WITH THE CHAUFFEUR SO THAT WE WOULD BE TAKEN
12 OUT ON TRIPS OR ON SOME OF THE DAYS TO GO SHOPPING.

13 Q. AND WHO DID YOU TRAVEL WITH?

14 A. WITH THE WIFE OF MR. FEDERICO CASTEL, HIS DAUGHTER AND HIS
15 SON.

16 Q. DID YOU EVER HAVE DINNER WITH MR. CASTEL DEL ORO AND YOUR
17 SPOUSE?

18 A. IT WAS LUNCH.

19 Q. AND AT ANY TIME DID YOU EVER OBSERVE MR. CASTEL, FEDERICO
20 CASTEL DRINKING ANY ALCOHOLIC BEVERAGES?

21 MR. MEDRANO: OBJECTION, RELEVANCY, YOUR HONOR.

22 THE COURT: SUSTAINED.

23 BY MS. KELLY:

24 Q. WHAT HAPPENED TO THE \$500 THAT YOUR SPOUSE GAVE TO YOU?

25 A. WE WENT SHOPPING -- MR. CASTEL DEL ORO'S WIFE, HIS

1 DAUGHTER AND MYSELF .

2 MAY I CONTINUE?

3 Q. YES .

4 A. WHEN WE WENT SHOPPING , WE WOULD SEE THE PRICES OF THE
5 THINGS I LIKED . AND I WANTED TO BUY A PRESENT , I WANTED TO BUY
6 A PRESENT FOR EACH ONE OF MY SISTERS , SO I WOULD BE CAREFUL
7 ABOUT MY EXPENSES .

8 THE LADY , THE WIFE OF MR . CASTEL WOULD TELL ME "BUY
9 IT" , "BUY IT" , BECAUSE EVERYTHING SHE SAW SHE LIKED .

10 I WASN'T ABLE TO DO ALL OF THE SHOPPING , AND THE DAY
11 THAT MY HUSBAND WAS ARRESTED , MR . CASTEL DEL ORO ASKED ME FOR
12 MONEY BECAUSE HE DID NOT HAVE ANY MORE MONEY TO PAY FOR THE
13 HOTEL ROOM .

14 Q. SO YOU GAVE THE REMAINING MONEY BACK TO MR . CASTEL DEL
15 ORO?

16 A. YES .

17 Q. DID YOU HAVE ANY MONEY OF YOUR OWN?

18 A. MEXICAN MONEY .

19 Q. AND LET ME DIRECT YOUR ATTENTION TO THE EVENING BEFORE ,
20 THE EVENING OF JULY 25TH , PRIOR TO YOUR HUSBAND'S ARREST .

21 THE INTERPRETER : I DIDN'T HEAR THE LAST PART .

22 BY MS . KELLY :

23 Q. THE EVENING OF JULY 25TH PRIOR TO YOUR HUSBAND'S ARREST?

24 A. YES .

25 Q. DID YOU NOTICE ANYTHING UNUSUAL WHEN YOUR HUSBAND RETURNED

1 TO THE HOTEL?

2 A. YES. HE RETURNED VERY LATE, PROBABLY ABOUT 10:00 OR AFTER
3 10:30.

4 HE WAS STRANGE, HE WAS STRANGE. I ASKED HIM -- HE
5 WAS STRANGE. I ASKED HIM WHY HE HAD BEEN DRINKING. HE WAS
6 STUTTERING. I COULD TELL BY THE WAY HE WALKED TOWARDS THE
7 LOBBY AND IN HIS EYES.

8 I ASKED HIM WHY WAS IT THAT HE HAD BEEN DRINKING,
9 BECAUSE MR. CASTEL WAS VERY CALM, HE HADN'T BEEN DRINKING. HE
10 ANSWERED ME THAT THERE WAS NO PROBLEM, THAT MR. CASTEL HAD
11 TAKEN HIM AND THERE WAS A LOT OF BEER, A LOT OF DRINK.

12 Q. DID MR. CASTEL EVER HAVE ANY CONVERSATION WITH YOU ABOUT
13 YOUR HUSBAND'S BUSINESS WITH HIM?

14 A. (WITNESS ANSWERING IN SPANISH.)

15 MR. MEDRANO: OBJECTION, YOUR HONOR. THIS WILL
16 ELICIT HEARSAY.

17 THE COURT: WELL, WE HADN'T HEARD THE ENGLISH
18 TRANSLATION.

19 (COURTROOM LAUGHTER.)

20 MR. MEDRANO: IT IS A SIXTH SENSE, YOUR HONOR. I
21 DON'T KNOW WHERE I GET IT FROM.

22 THE WITNESS: WHEN WE WENT TO MAGIC MOUNTAIN, HE KEPT
23 ON TALKING ONLY ABOUT THE BUSINESS, HOW IT WAS A GREAT
24 BUSINESS, HOW IT WAS GOING TO GO VERY WELL FOR US.

25 MR. MEDRANO: OBJECTION, HEARSAY, YOUR HONOR.

1 THE COURT: YES, THE OBJECTION IS SUSTAINED AND THE
2 ANSWER WILL BE STRICKEN.

3 BY MS. KELLY:

4 Q. FOLLOWING -- HOW DID YOU LEARN THAT YOUR HUSBAND HAD BEEN
5 ARRESTED?

6 A. THE MORNING IN WHICH IT HAPPENED WHEN THEY ARRESTED HIM,
7 WE WERE IN THAT MORNING INSIDE OUR HOTEL ROOM WHEN HE WAS
8 CALLED ON THE TELEPHONE. HE TOLD ME THAT MR. CASTEL WAS
9 CALLING HIM, FOR HIM TO COME DOWN TO THE LOBBY.

10 MR. MEDRANO: OBJECTION, YOUR HONOR. CIRCUMSTANCES
11 OF ARREST ARE IRRELEVANT.

12 THE COURT: SUSTAINED.

13 MS. KELLY: VERY WELL.

14 BY MR. KELLY:

15 Q. WHAT HAPPENED AFTER YOU WERE INFORMED OF YOUR HUSBAND'S
16 ARREST?

17 A. I STAYED AFTER MY HUSBAND WAS ARRESTED FOR TWO OR THREE
18 DAYS AFTER THAT. I DON'T REMEMBER EXACTLY. MR. CASTEL WOULD
19 ASK ME QUESTIONS LIKE WHAT DID I INTEND TO DO.

20 MR. MEDRANO: OBJECTION, HEARSAY.

21 THE COURT: COUNSEL, DON'T ELICIT ANY HEARSAY
22 STATEMENTS FROM THE WITNESS OR MAKE YOUR QUESTIONS MORE
23 SPECIFIC IF YOU'RE TRYING TO ELICIT SOME FACT FROM THE WITNESS.

24 MS. KELLY: ALL RIGHT, YOUR HONOR.

25 (BRIEF PAUSE.) YOUR HONOR, COULD I HAVE A MOMENT?

1 THE COURT: (NODDING HEAD.)

2 (BRIEF PAUSE.)

3 BY MS. KELLY:

4 Q. MR. CASTEL WAS VERY COMPLIMENTARY ABOUT YOUR HUSBAND
5 BEFORE HE WAS ARRESTED; IS THAT RIGHT?

6 A. YES.

7 Q. AND AFTER HE WAS ARRESTED, DID HE -- WAS HE STILL
8 COMPLIMENTARY OF YOUR HUSBAND?

9 A. NO.

10 MR. MEDRANO: OBJECTION, YOUR HONOR.

11 THE COURT: SUSTAINED.

12 MS. KELLY: YOUR HONOR, AT THIS TIME WE WOULD LIKE TO
13 OFFER EXHIBIT JJJJ INTO EVIDENCE.

14 MR. MEDRANO: IF WE MAY BE HEARD LATER, YOUR HONOR,
15 OBJECTION TO ITS ADMISSIBILITY.

16 THE COURT: ALL RIGHT.

17 MS. KELLY: THERE IS NOTHING FURTHER, YOUR HONOR.

18 THE COURT: CROSS-EXAMINE.

19

20 CROSS-EXAMINATION +

21 BY MR. MEDRANO:

22 Q. GOOD MORNING, MRS. BERNABE.

23 A. GOOD MORNING.

24 THE INTERPRETER: EXCUSE ME, COUNSEL. I THINK I NEED
25 TO CORRECT SOMETHING. I MIGHT HAVE MADE A MISTAKE IN A

1 PREVIOUS INTERPRETATION.

2 AT ONE POINT THE WITNESS SAID THAT MRS. CASTEL'S --
3 MR. CASTEL'S WIFE -- I UNDERSTOOD HER TO SAY THAT SHE LIKED
4 EVERYTHING SHE SAW, BUT I THINK SHE MIGHT HAVE SAID THAT SHE
5 BOUGHT EVERYTHING SHE SAW.

6 MAY I ASK THE WITNESS?

7 THE COURT: YES.

8 (DISCUSSION BETWEEN THE INTERPRETER AND WITNESS IN
9 SPANISH.)

10 THE INTERPRETER: THE ANSWER IS EVERYTHING SHE SAW,
11 IF SHE LIKED IT, SHE BOUGHT IT.

12 THANK YOU.

13 BY MR. MEDRANO:

14 Q. MRS. BERNABE, DO YOU RECALL YESTERDAY WHEN YOUR HUSBAND
15 TESTIFIED IN COURT?

16 MR. MEZA: OBJECTION, YOUR HONOR --

17 MS. KELLY: YOUR HONOR, SHE WAS NOT IN COURTROOM
18 WHEN HER HUSBAND TESTIFIED.

19 THE COURT: PARDON?

20 MS. KELLY: I'M SORRY, YOUR HONOR. SHE WAS NOT IN
21 THE COURTROOM WHEN HER HUSBAND TESTIFIED.

22 THE COURT: WELL, SHE CAN ANSWER IT FOR HERSELF.

23 THE WITNESS: NO.

24 BY MR. MEDRANO:

25 Q. SO YOU WERE NOT IN THE COURTROOM AT ALL YESTERDAY WHEN

1 YOUR HUSBAND TESTIFIED YESTERDAY?

2 A. NO.

3 Q. IN MEXICO YOUR HUSBAND WAS INVOLVED IN THE SECURITY
4 BUSINESS, CORRECT?

5 A. YES.

6 Q. AND HE FREQUENTLY SUPERVISED OTHER INDIVIDUALS?

7 A. I DON'T UNDERSTAND.

8 Q. HE USED TO BE A HEAD OF OR CHIEF OF SECURITY IN MEXICO?

9 A. YES.

10 Q. AND AS PART OF THAT, HE HAD PEOPLE WHO WORKED UNDER HIM?

11 A. YES.

12 Q. AND FREQUENTLY YOUR HUSBAND WOULD HAVE MEETINGS, CORRECT?

13 A. YES.

14 Q. MRS. BERNABE, YOU NEVER ATTENDED ANY OF THOSE MEETINGS,
15 RIGHT?

16 A. NO.

17 Q. BECAUSE THAT WAS JUST YOUR HUSBAND'S JOB?

18 A. YES.

19 Q. AND YOU DID NOT HAVE TO GO TO THOSE MEETINGS?

20 A. NO.

21 MR. MEDRANO: MAY I HAVE ONE MOMENT, YOUR HONOR?

22 (BRIEF PAUSE.)

23 BY MR. MEDRANO:

24 Q. MRS. BERNABE, YOU LOVE YOUR HUSBAND VERY MUCH, DON'T YOU?

25 A. YES.

1 Q. YOU WANT TO HELP IN ANY WAY THAT YOU CAN, CORRECT?

2 A. ONLY BY TELLING THE TRUTH.

3 Q. IF YOUR HUSBAND HAD TOLD YOU THAT HE WAS INVOLVED IN THESE
4 CRIMES, WOULD YOU TELL THAT TO THE JURY TODAY?

5 MS. KELLY: OBJECTION, YOUR HONOR. THAT CALLS FOR
6 SPECULATION.

7 THE COURT: SUSTAINED.

8 MR. MEDRANO: ONE MOMENT, YOUR HONOR.

9 THANK YOU, MRS. BERNABE.

10 MR. STOLAR: MAY I HAVE ONE MOMENT.

11 (BRIEF PAUSE.)

12 MR. STOLAR: MAY I?

13 THE COURT: (INDICATING.)

14 CROSS-EXAMINATION +

15 BY MR. STOLAR:

16 Q. THE \$500 THAT WAS GIVEN TO YOU; WHO ASKED FOR IT BACK?

17 A. MR. FEDERICO CASTEL.

18 Q. THIS WAS AFTER YOUR HUSBAND WAS ARRESTED?

19 MR. MEDRANO: OBJECTION, COVERED -- CUMULATIVE.

20 THE COURT: YES, SUSTAINED.

21 BY MR. STOLAR:

22 Q. WHY DID YOU GIVE THE MONEY BACK THE HIM?

23 MR. MEDRANO: OBJECTION TO RELEVANCY, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 MR. STOLAR: NOTHING FURTHER.

1 THE COURT: YOU MAY STEP DOWN.

2 THE WITNESS: THANK YOU.

3 (WITNESS EXCUSED.)

4 THE COURT: I'LL ASK THE JURY TO RETURN TO THE JURY
5 ROOM AT THIS TIME.

6 MR. STOLAR: YOUR HONOR, I COULD OFFER ANOTHER PIECE
7 OF EVIDENCE, IF YOU WOULD LIKE.

8 THE COURT: OH, YES. WELL, LET'S DO THAT THEN.

9 MR. STOLAR: THIS PIECE OF EVIDENCE IS OFFERED BY
10 STIPULATION BETWEEN THE GOVERNMENT AND COUNSEL FOR THE
11 GOVERNMENT AND COUNSEL FOR MR. MATTA ON THE QUESTION OF WHAT,
12 IF ANY, PHOTOGRAPHS OF MR. MATTA DID AGENTS LEYVA AND AGUILAR
13 SEE BEFORE THEY WENT TO GUADALAJARA TO ENABLE THEM TO MAKE THE
14 IDENTIFICATION THEY CLAIM TO HAVE MADE AT THE HOTEL.

15 THE STIPULATION IS THAT AGENTS LEYVA AND AGUILAR HAVE
16 NO SPECIFIC RECOLLECTION OF WHAT PHOTOGRAPH OF MR. MATTA THEY
17 SAW PRIOR TO FEBRUARY 12, 1985.

18 THE STIPULATION IS ALSO THAT THE GOVERNMENT HAS
19 SEARCHED THE FILES OF D.E.A. HEADQUARTERS AND VARIOUS FIELD
20 OFFICES AND HAS BEEN ABLE TO IDENTIFY THE FOLLOWING THREE
21 PHOTOS AS HAVING BEEN IN D.E.A. POSSESSION SOMEPLACE PRIOR TO
22 FEBRUARY 12, 1985.

23 THE FIRST PHOTOGRAPH WHICH IS OFFERED AS EXHIBIT KKKK
24 IS FROM THE HEADQUARTERS FILE, AND THE GOVERNMENT HAS --

25 THE COURT: WE ALREADY HAVE A KKKK.

1 MR. STOLAR: I'M SORRY.

2 THE COURT: DO YOU WANT TO MAKE THAT A 5-K?

3 (COURTROOM LAUGHTER.)

4 MR. STOLAR: I WON'T TAKE THE LINE UP. WE'LL MAKE IT
5 5-K.

6 IT COMES FROM THE HEADQUARTER'S FILE. THE GOVERNMENT
7 HAS NO IDEA OF THE CIRCUMSTANCES OF THE ORIGIN OF THE
8 PHOTOGRAPH. THAT'S OFFERED AS 5-K'S.

9 THE SECOND IS MARKED WITH 4 L'S. IT IS A PHOTOGRAPH
10 FROM A NEWSPAPER APPARENTLY PUBLISHED IN 1978. IT IS A XEROX
11 COPY.

12 THE COURT: WE HAVE A 4-L ALSO.

13 MR. STOLAR: WE DO?

14 THE COURT: YES.

15 MR. STOLAR: MAKE IT 5 L'S.

16 THE COURT: IT WOULD HAVE BEEN 5 L'S, YES.

17 MR. STOLAR: THAT'S THE BEST COPY AVAILABLE. IT IS A
18 XEROX COPY.

19 AND THE THIRD, WHICH IS MARKED 4 M'S.

20 THE COURT: YOU MAY HAVE A 4-M. DID YOU HAVE A 4-M?

21 MR. MEZA: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 MR. STOLAR: IT IS A PHOTOGRAPH WHICH IS REPRESENTED
24 TO HAVE BEEN TAKEN IN THE MEXICO CITY AIRPORT IN OCTOBER OF
25 1983. THE PHOTOGRAPH PURPORTS TO SHOW MR. MATTA AND HIS WIFE.

1 THESE ARE THE ONLY THREE PHOTOS THAT THE GOVERNMENT
2 HAS BEEN ABLE TO -- IT SHOWS JUST MATTA.

3 IT SHOWS ANOTHER PERSON IN THE PICTURE. THESE ARE
4 THE ONLY THREE PHOTOS THE GOVERNMENT HAS BEEN ABLE TO PRODUCE.

5 THE COURT: IS THAT THE STIPULATION?

6 MR. MEDRANO: SO STIPULATED, YOUR HONOR.

7 THE COURT: ALL RIGHT. THOSE CAN BE RECEIVED.

8 MR. STOLAR: THANK YOU, SIR.

9 MAY I GIVE THEM TO THE CLERK.

10 THE COURT: YES.

11 (DOCUMENTS TENDERED TO THE COURT CLERK.)

12 MR. DI NICOLA: YOUR HONOR, THE DEFENDANTS WOULD
13 OFFER CERTAIN EXHIBITS AT THIS TIME.

14 THE COURT: YES.

15 MR. DI NICOLA: I BELIEVE, YOUR HONOR, WE HAVE
16 RESERVED WITH MADAM CLERK CERTAIN CERTAIN TRIPLE LETTERS,
17 TRIPLE A, I BELIEVE, THROUGH TRIPLE N. TRIPLE A AND TRIPLE B,
18 WHICH ARE CERTIFIED COPIES OF TWO SALES CONTRACTS FOR 881 LOPE
19 DE VEGA, EXECUTED JANUARY 11, 1985 BETWEEN RUBEN ZUNO ARCE, THE
20 SELLER, AND DR. RUBEN SANCHEZ BARBA AS PURCHASER.

21 EXHIBIT TRIPLE D, THAT PORTION ORDERED ADMITTED BY
22 THE COURT OF THE FILE ON HECTOR CERVANTES SANTOS MAINTAINED BY
23 THE DEPARTMENT OF PUBLIC SAFETY, STATE OF JALISCO. AND EXHIBIT
24 TRIPLE N, CERTIFIED RECORD FROM THE TELEPHONO DE STATE MEXICO,
25 INDICATING THE NONEXISTENCE OF ANY RECORD OF PHONE SERVICE AT

1 THE RESIDENCE OF 114 CARRETERA GUADALAJARA-TONALA, JALISCO IN
2 THE LOMA DISTRICT IN THE MUNICIPALITY OF TONALA, JALISCO PRIOR
3 TO MARCH 15, 1988.

4 WE WOULD SO MOVE THESE EXHIBITS AT THIS TIME, YOUR
5 HONOR.

6 THE COURT: YES. THE EXHIBITS MAY BE RECEIVED, ONLY
7 I SHOW THEM AS DOUBLE A, BB.

8 MR. DI NICOLA: YES, YOUR HONOR. THEY WERE
9 DESIGNATED IN THAT FASHION PRIOR TO OUR BEING ABLE TO RESERVE
10 TRIPLE LETTERS WITH MADAM CLERK.

11 THE COURT: ALL RIGHT. THEY MAY BE RECEIVED THEN AS
12 INDICATED; AAA, BBB, CCC, DDD AND NNN; IS THAT RIGHT?

13 MR. DI NICOLA: I BELIEVE CCC, YOUR HONOR, IS
14 RESERVED PENDING A FURTHER RULING BY THE COURT.

15 MR. MEDRANO: YES, YOUR HONOR. C (SIC) IS RESERVED

16 THE COURT: ALL RIGHT. THE OTHERS ARE RECEIVED.

17 MR. DI NICOLA: THANK YOU VERY MUCH, YOUR HONOR.

18 (EXHIBIT # AAA RECEIVED IN EVIDENCE.)

19 (EXHIBIT # BBB RECEIVED IN EVIDENCE.)

20 (EXHIBIT # DDD RECEIVED IN EVIDENCE.)

21 THE COURT: I'LL ASK THE JURY TO ADJOURN TO THE JURY
22 ROOM.

23 THE CLERK: PLEASE RISE.

24 (JURY EXCUSED.)

25 THE COURT: WE'LL TAKE A RECESS AT THIS TIME, AND

1 AFTER WHICH I WANT TO PROCEED WITH ONE OF THESE HEARINGS .

2 IS MR. HARRISON AVAILABLE?

3 MR. MEDRANO: HE CAN BE HERE IN FIVE MINUTES .

4 THE COURT: WELL PROCEED WITH HIM RIGHT AFTER THE
5 RECESS .

6 THE COURT: VERY WELL , THANK YOU .

7 (BRIEF RECESS TAKEN .)

8 (JURY NOT PRESENT .)

9 THE COURT: THIS WITNESS HAS PREVIOUSLY BEEN SWORN .

10 THE CLERK: HAVING PREVIOUSLY BEEN SWORN , YOU'RE
11 REMINDED THAT YOU ARE STILL UNDER OATH .

12 PLEASE STATE YOUR NAME FOR THE RECORD , PLEASE .

13 THE WITNESS: LAWRENCE HARRISON .

14 THE COURT: YOU MAY PROCEED .

15

16 LAWRENCE V. HARRISON + PLAINTIFF'S WITNESS , PREVIOUSLY SWORN

17 VOIR DIRE EXAMINATION +

18 BY MR. CARLTON:

19 Q. MR. HARRISON , DID YOU MEET ON FEBRUARY 9 OF THIS YEAR WITH
20 AGENT WAYNE SCHMIDT OF THE DRUG ENFORCEMENT ADMINISTRATION?

21 A. YES , I DID .

22 Q. AND WHAT WAS -- WELL , WAS ANYONE ELSE PRESENT?

23 A. I DON'T THINK SO .

24 Q. WHAT WAS THE PURPOSE OF THAT MEETING?

25 A. IT WAS A GENERAL DEBRIEFING ON CERTAIN ASPECTS OF RELATIONS

1 WITH THE MEXICAN POLICE DEPARTMENTS AND MEXICAN INTELLIGENCE
2 COMMUNITY AND MEXICO AND THE D.E.A.

3 Q. WAS THE D.E.A. BASICALLY INQUIRING OF YOU AS TO ANY
4 INFORMATION YOU MIGHT HAVE WHY MEXICAN POLICE AUTHORITIES WERE
5 NOT COOPERATING WITH THEM?

6 A. THAT HAD BEEN DISCUSSED. WE HAD DISCUSSED WHY THEY HAD
7 NOT -- WHY THEY SOMETIMES WERE NOT FORTHCOMING WITH
8 COOPERATION, WHY THEY SOMETIMES FELT THAT THE AMERICAN
9 GOVERNMENT WAS INSINCERE OR HYPOCRITICAL IN THEIR DEALINGS WITH
10 THEM.

11 Q. HAVE YOU REVIEWED A REPORT DATED FEBRUARY 13, 1990 BY
12 AGENT SCHMIDT CONCERNING HIS MEETING WITH YOU?

13 A. YES, I SAW IT THIS MORNING.

14 Q. IN THAT REPORT, IT DESCRIBES CERTAIN ACTIVITIES BY THE
15 AMERICAN C.I.A. IN MEXICO.

16 DO YOU RECALL READING THOSE STATEMENTS IN THE REPORT?

17 A. YES, I DID READ THOSE STATEMENTS.

18 Q. AND AT ANY POINT DURING YOUR MEETING WITH AGENT SCHMIDT ON
19 FEBRUARY 9 OF 1990, DID YOU DISCUSS THOSE ACTIVITIES WHICH
20 APPEAR IN THIS REPORT?

21 A. YES, I DID.

22 Q. AND WERE THOSE DISCUSSIONS BY YOU WITH AGENT SCHMIDT ON
23 FEBRUARY 9TH BASED UPON ANYTHING THAT YOU PERSONALLY KNEW TO BE
24 TRUE THROUGH PERSONAL INVOLVEMENT?

25 A. THERE ARE ONE OR TWO INSTANCES IN THERE THAT WERE BASED ON

1 PERSONAL KNOWLEDGE. THE MAJORITY OF IT WAS BASED ON A
2 RECONSTRUCTION OF RUMORS THEN PREVALENT IN MEXICO THAT WERE
3 PREVALENT AMONG THE MEXICAN INTELLIGENCE COMMUNITY AND THE
4 MEXICAN POLICE DEPARTMENTS, WHICH LED THEM TO BELIEVE THAT THE
5 UNITED STATES WAS NOT BEING ENTIRELY FORTHCOMING IN DEPICTING
6 THE RELATIONSHIP BETWEEN THEM AND THE MEXICANS.

7 Q. DURING YOUR INTERVIEW WITH AGENT SCHMIDT, DID YOU MAKE ANY
8 REPRESENTATION BASED UPON YOUR OWN PERSONAL KNOWLEDGE THAT THE
9 C.I.A. WAS INVOLVED WITH NARCOTICS TRAFFICKERS IN MEXICO?

10 A. NO. I DID NOT.

11 Q. DID YOU MAKE ANY REPRESENTATION TO AGENT SCHMIDT ON THAT
12 DATE BASED UPON YOUR OWN PERSONAL KNOWLEDGE CONCERNING EVENTS
13 SURROUNDING THE DEATH OF MANUEL BUENA DIA (PHONETIC)?

14 A. NO, I DID NOT.

15 Q. SO, BASICALLY, WERE YOU PROVIDING TO AGENT SCHMIDT
16 INFORMATION YOU HAD OBTAINED FROM OTHER INDIVIDUALS IN MEXICO?

17 A. I WAS PROVIDING TO MR. SCHMIDT AN INTELLIGENCE REPORT ON
18 WHAT THE PREVAILING IDEAS WERE AMONG THE MEXICAN INTELLIGENCE
19 COMMUNITY AND THE MEXICAN POLICE DEPARTMENTS ON THE TRUE
20 RELATION OF EVENTS THAT HAD TRANSPIRED IN 1983, '84, '85 IN
21 MEXICO.

22 I WAS GIVEN EVIDENCE AS TO BELIEFS. OPINIONS.

23 Q. NOW ALSO, MS. HARRISON, DO YOU RECALL MEETING WITH AN
24 INDIVIDUAL NAMED DALE IN JUNE OR JULY OF 1987?

25 A. YES, I DO.

1 Q. AND DID YOU STATE TO DALE THAT C.I.A. OPERATIONS PERSONNEL
2 HAD STAYED AT ERNESTO FONSECA'S HOUSE?

3 A. EXCUSE ME. I WASN'T LISTENING.

4 Q. DID YOU STATE TO DALE THAT C.I.A. OPERATIONS PERSONNEL HAD
5 STAYED AT ERNESTO FONSECA'S HOUSE?

6 A. I STATED TO HIM THAT THE MEXICAN INTELLIGENCE COMMUNITY
7 WAS IN POSSESSION OF INFORMATION THAT LED THEM TO BELIEVE THAT
8 THERE HAD BEEN SOME RELATIONSHIP, YES.

9 Q. YOU DID NOT KNOW THAT OF YOUR OWN PERSONAL KNOWLEDGE,
10 CORRECT?

11 A. I HAD SEEN PEOPLE AT ERNESTO FONSECA'S HOUSE THAT HAD
12 GIVEN ME TO BELIEVE THEY WERE WORKING FOR SOME U.S. AGENCY, BUT
13 THEY DID NOT SAY WHICH ONE, AND I WAS NOT IN ANY -- IN
14 POSSESSION OF ANY PERSONAL KNOWLEDGE THAT THEY WERE.

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

16 (DISCUSSION HELD OFF THE RECORD BETWEEN MR. CARLTON
17 MR. MEDRANO AND MR. KUEHL.)

18 MR. CARLTON: NOTHING FURTHER.

19 THE COURT: OKAY. YOU MAY CROSS-EXAMINE THE WITNESS.

20

21

VOIR DIRE EXAMINATION +

22 BY MR. STOLAR:

23 Q. GOOD MORNING, SIR.

24 A. GOOD MORNING, MR. STOLAR.

25 Q.

1 Q. YOU WERE JUST QUESTIONED ABOUT THE FEBRUARY 9, 1990
2 INTERVIEW, AND YOU INDICATED THAT IT WAS YOUR BELIEF THAT IT
3 WAS ONLY AGENT SCHMIDT WHO WAS PRESENT IN THE DEBRIEFING; IS
4 THAT RIGHT?

5 A. YES.

6 Q. IN FACT, HECTOR BERRELLEZ WAS ALSO THERE; WAS HE NOT?

7 A. WELL, THAT'S A QUESTION OF TIMING, MR. STOLAR.

8 MR. BERRELLEZ AND I HAD SPOKEN BEFORE THE DEBRIEFING
9 STARTED, BUT THEN HE LEFT AND THE DEBRIEFING WAS CONDUCTED
10 BETWEEN MYSELF AND MR. SCHMIDT.

11 Q. SO THAT IF A REPORT WAS PUT IN BY AGENT SCHMIDT, CO-SIGNED
12 BY AGENT BERRELLEZ INDICATING THAT BOTH OF THEM HAD DEBRIEFED
13 YOU, THAT WOULD BE AN INCORRECT CHARACTERIZATION?

14 A. I WAS TOLD AT ALL TIMES BY MR. SCHMIDT, AND EACH TIME I
15 SPOKE WITH HIM, THAT HE WOULD GET HIS NOTES TOGETHER AND WRITE
16 UP THE REPORT LATER, OUTSIDE OF MY PRESENCE.

17 Q. IS IT TRUE THAT THE FIRST TIME SAW THE REPORT OF THE
18 FEBRUARY 9 DEBRIEFING OF YOU WAS THIS MORNING?

19 A. YES, THAT'S CORRECT.

20 Q. DID YOU ALSO TAKE A LOOK AT THE REPORT PREPARED BY AGENT
21 SCHMIDT ON SEPTEMBER 18, 1989, WHEN YOU GAVE HIM CERTAIN
22 INTELLIGENCE INFORMATION?

23 A. I SAW FOUR REPORTS THIS MORNING. I DIDN'T LOOK VERY
24 CLOSELY AT THE DATES, SIR.

25 Q. ONE OF THE FOUR REPORTS THAT YOU SAW WAS THE REPORT THAT

1 IS THE TAPE RECORDING OF THE CONVERSATION WITH YOU; IS THAT
2 RIGHT?

3 A. I DON'T KNOW IF THAT IS.

4 Q. THAT'S THE ONE, I BELIEVE, WHEN YOU TESTIFIED BEFORE THAT
5 THERE WAS SOME INCORRECT TRANSCRIPTIONS ON IT ; IS THAT RIGHT?

6 A. THAT IS THE 59-PAGE REPORT. I ALSO SAW THAT REPORT, BUT
7 THAT'S NOT ONE OF THE FOUR REPORTS OF WHICH I'M SPEAKING.

8 Q. YOU SAW FOUR REPORTS THIS MORNING?

9 A. AS I REMEMBER CORRECTLY, YES.

10 MR. STOLAR: YOUR HONOR, I WOULD LIKE TO INDICATE TO
11 YOU THAT WE ARE IN POSSESSION AND HAVE BEEN PROVIDED WITH THREE
12 REPORTS, AND I WOULD LIKE TO INQUIRE THROUGH THE COURT AS TO
13 WHAT THE FOURTH ONE IS.

14 THE COURT: WELL, DO YOU RECALL?

15 THE WITNESS: I WAS GIVEN PAPERS THAT WEREN'T STAPLED
16 TOGETHER. THEY PHOTOCOPIED THEM AND GAVE THEM TO ME, AND I
17 SEPARATED THEM. MAYBE I MADE FOUR OUT OF THREE.

18 THE COURT: DO YOU HAVE WHAT HE LOOKED AT HERE?

19 MR. CARLTON: I BELIEVE WE DO, YOUR HONOR.

20 THE COURT: ALL RIGHT. THEN GIVE IT TO THE WITNESS
21 AND LET HIM IDENTIFY IT .

22 MR. CARLTON: MAY I APPROACH?

23 THE COURT: YES, YOU MAY APPROACH.

24 (DOCUMENTS TENDERED TO THE CLERK.)

25 THE COURT: MARK THESE FOR IDENTIFICATION AS THE NEXT

1 IN ORDER FOR THE GOVERNMENT .

2 (BRIEF PAUSE.)

3 THE COURT: JUST GET THEM TO THE WITNESS NOW. WE CAN
4 DO THAT LATER. ALL RIGHT.

5 MR. STOLAR: MAY I SEE THEM BEFORE THEY'RE GIVEN TO
6 THE WITNESS?

7 THE COURT: NO. LET'S SEE IF THE WITNESS IDENTIFIES
8 THEM FIRST.

9 (DOCUMENTS TENDERED TO THE WITNESS.)

10 THE COURT: WOULD YOU EXAMINE THOSE AND DETERMINE IF
11 THOSE ARE OR ARE NOT WHAT YOU LOOKED AT THIS MORNING?

12 THE WITNESS: YES. THESE ARE THE FOUR REPORTS THAT I
13 SAW THIS MORNING.

14 THE COURT: NOW YOU MAY SEE THEM.

15 MR. STOLAR: THANK YOU.

16 (DOCUMENTS TENDERED TO MR. STOLAR.)

17 THE COURT: WHAT IS THE MARKING ON THESE, BY THE WAY?

18 MR. CARLTON: THE STAMPED MARKING, YOUR HONOR?

19 THE COURT: YES. WHAT IS THE EXHIBIT NUMBER FOR
20 IDENTIFICATION?

21 MR. CARLTON: OH. 189 AND 189-A THROUGH -C, I
22 BELIEVE.

23 THE COURT: 189-A THROUGH -C. OKAY.

24 MR. STOLAR: YOUR HONOR, I BELIEVE THE REPORTS WHICH
25 WERE PREPARED ON SEPTEMBER 18TH, '89, OCTOBER 19TH, '89 AND

1 FEBRUARY 13TH, '90 WERE PROVIDED TO US.

2 THE FOURTH REPORT, WHICH WAS PREPARED SEPTEMBER 25,
3 '89, IS BRAND NEW AND HAS NOT PREVIOUSLY BEEN PROVIDED TO
4 DEFENSE COUNSEL.

5 MR. CARLTON: YOUR HONOR, THAT WAS PRODUCED IN
6 DISCOVERY ALONG WITH THE 59-PAGE TRANSCRIPTION.

7 THE COURT: ALL RIGHT.

8 MR. STOLAR: MAY I HAVE ONE MOMENT?

9 (BRIEF PAUSE.)

10 BY MR. STOLAR:

11 Q. THIS IS IN MY THEODORE CASH FILE.

12 ON FEBRUARY 13TH OF 1990, YOU REPORTED TO AGENT
13 SCHMIDT THAT THERE WAS INFORMATION THAT GUATEMALAN GUERRILLAS
14 WERE TRAINING AT A RANCH OWNED BY RAFAEL CARO QUINTERO IN
15 VERACRUZ; IS THAT RIGHT?

16 A. THAT IS -- THE TRUTH IS THAT AGENT SCHMIDT CONDENSED A
17 GREAT DEAL OF THIS INFORMATION. I GAVE HIM A LOT OF
18 INFORMATION, AND AS I SAW THIS MORNING, IT WAS ALL CONDENSED.

19 I TOLD HIM THAT THERE WAS INFORMATION THAT A RANCH
20 HAD BEEN USED. AT THAT TIME THAT CERTAIN ELEMENTS OF THE
21 DIRECCION FEDERAL DE SEGURIDAD AND THE I.P.S. OF THE
22 GUBERNACION MINISTRY HAD BEEN SENT DOWN TO GUATEMALA BECAUSE OF
23 A SUPPOSED INVASION OF GUATEMALA'S GUERRILLAS OVER THE BORDER.

24 AND THAT WAS CONDENSED INTO THIS BEING GUATEMALAN
25 GUERRILLAS AT A RANCH.

1 Q. WHERE IN VERACUSE, IF YOU KNOW, WAS THE RANCH?

2 A. I DON'T KNOW WHERE THE RANCH WAS.

3 Q. WERE THE GUERRILLAS GUATEMALAN GUERRILLAS OR WERE THEY
4 CONTRA TRAINEES?

5 MR. CARLTON: I'LL OBJECT TO THIS AS BEING
6 IRRELEVANT.

7 THE COURT: WELL, YOU'RE ASKING WHAT THE WITNESS
8 SAID.

9 BY MR. STOLAR:

10 Q. DID YOU STATE THEY WERE GUATEMALAN GUERRILLAS OR CONTRAS
11 BEING TRAINED IN GUATEMALA?

12 A. I DID NOT STATE TO HIM THAT. I STATED TO HIM THAT I KNEW
13 AT THAT TIME THAT AGENTS OF THE MEXICAN GOVERNMENT, INCLUDING
14 THE FEDERAL JUDICIAL POLICE, THE I.P.S. AND THE D.F.S. HAD BEEN
15 SENT TO THE BORDER WITH GUATEMALA AT THAT PERIOD OF TIME TO
16 CONTAIN A SUPPOSED INCURSION OF GUATEMALA GUERRILLAS ACCROSS
17 THE BORDER INTO MEXICAN TERRITORY.

18 Q. DID YOU INDICATE TO HIM THAT THE TRAINING PLACE WAS AT A
19 RANCH OWNED BY CARO QUINTERO?

20 A. YES, I DID.

21 Q. AND THAT IT WAS USED FOR OPERATIONS TRAINING?

22 A. YES, I DID.

23 Q.

24 Q. AND THAT THE OPERATIONS AND TRAINING WERE CONDUCTED BY THE
25 C.I.A. AT THAT RANCH?

1 A. I INDICATED TO HIM THAT THE OPERATIONS AND TRAINING WERE
2 CONDUCTED BY MEMBERS OF THE MEXICAN GOVERNMENT UNDER SOME TYPE
3 OF A FIAT OR CONTRACT FROM OUR GOVERNMENT.

4 I DID NOT SPECIFICALLY SAY THAT IT WAS THE C.I.A.

5 Q.

6 Q. HE REPORTED IN HIS REPORT, AS YOU'VE READ, THAT YOU
7 INDICATED THAT THE OPERATIONS TRAINING WAS CONDUCTED BY THE
8 AMERICAN C.I.A. USING THE D.F.S. AS A COVER.

9 A. AS I TOLD YOU, MR. STOLAR, I MADE MANY, MANY STATEMENTS.
10 THEY WERE ALL CONDENSED. AFTER HAVING READ THESE REPORTS AND
11 READ THE NEWSPAPER ARTICLES YESTERDAY, I HAVE SINCE BECOME
12 CONVINCED THAT I SOMETIMES TALK TOO MUCH.

13 Q. WELL, YOU INDICATED TO YOUR KNOWLEDGE THAT THE D.F.S. HAD
14 ACTED IN CONCERT WITH MAJOR DRUG OVERLORDS; IS THAT RIGHT?

15 A. THAT'S IS TRUE, SIR.

16 Q.

17 Q.

18 Q. AND THAT'S FROM YOUR OWN PERSONAL KNOWLEDGE; IS THAT
19 RIGHT?

20 A. THAT'S FROM MY OWN PERSONAL KNOWLEDGE.

21 Q. NOW, WHAT PERSONAL KNOWLEDGE, IF ANY, DO YOU HAVE OF ANY
22 AMERICAN INTELLIGENCE AGENCY WORKING WITH OR USING THE D.F.S.
23 AS A COVER?

24 A. THAT I COULD DEFINITELY IDENTIFY THESE AMERICANS AS BEING
25 FROM AN AMERICAN INTELLIGENCE AGENCY, NONE, SIR.

1 Q. DO YOU HAVE ANY INDICATIONS THAT THEY MIGHT BE?

2 MR. CARLTON: THAT CALLS FOR SPECULATION, YOUR HONOR.

3 THE COURT: RESTATE THE QUESTION.

4 BY MR. STOLAR:

5 Q. DO YOU HAVE ANY INDICATIONS THAT THEY ARE NOT FROM ANY
6 UNITED STATES INTELLIGENCE AGENCY?

7 MR. CARLTON: YOUR HONOR, THAT'S IRRELEVANT.

8 THE COURT: YOU MAY ASK THE WITNESS TO DESCRIBE WHAT
9 FACTS HE KNOWS THAT LEAD HIM TO CONCLUDE OR TO MAKE ANY
10 CONCLUSIONS OR ASSUMPTIONS.

11 MR. STOLAR: I'LL ADOPT THE COURT'S QUESTION.

12 THE WITNESS: I WAS TOLD BY MR. FONSECA, A MR.
13 FONSECA CARRILLO AND MR. CARO QUINTERO, BY JAVIER BARBA
14 HERNÁNDEZ, BY SERGIO ESPINO VERDIN, BY FEDERICO CASTEL DEL ORO,
15 AND BY OTHER MEMBERS OF THE FEDERAL SECURITY DIRECTORATE THAT
16 THESE ACTIVITIES DID, IN FACT, OCCUR, AND MET WITH TWO
17 AMERICANS AT MR. FONSECA'S HOUSE IN 1983 WHO REFERRED TO
18 THEMSELVES AS TRAINERS FOR THE CONTRAS AND REFERRED TO ME THAT
19 THEY HAD PREVIOUSLY BEEN MERCENARIES OR ON SOME TYPE OF AN
20 OPERATION IN OTHER PARTS OF THE WORLD, INCLUDING SOUTH AFRICA
21 AND BERLIN. PEOPLE THAT SPOKE GERMAN.

22 THEY TOLD ME THAT THEY WERE WORKING WITH THE CONTRAS,
23 THAT THEY WERE SOMEHOW TOGETHER WITH THE AMERICAN GOVERNMENT.
24 THEY DID NOT PULL OUT ANY CREDENTIALS OR IDENTIFY THEMSELVES AS
25 BEING C.I.A. AGENTS OR AGENTS OF ANY OTHER AGENCY OF THE U.S.

1 GOVERNMENT .

2 Q. AND THE TRAINING OF THE CONTRAS , IS THAT THE REFERENCE TO
3 THE RANCH OF CARO QUINTERO IN VERACRUZ?

4 A. YES , IT WAS .

5 Q. DID CARO ALSO TELL YOU THAT?

6 A. NO , HE DID NOT .

7 Q. WHAT WAS IT THAT FONSECA , CARO , IBARRO , ESPINO , CASTEL DEL
8 ORO TOLD YOU ABOUT THEIR RELATIONS WITH ANY AMERICAN
9 INTELLIGENCE AGENCY?

10 A. THEY INDICATED TO ME THAT THEY HAD SOME TYPE OF A
11 RELATIONSHIP WITH THE AMERICAN GOVERNMENT; THAT THEY HAD NO
12 REASON TO FEAR ANY REPRISALS FROM THE AMERICAN GOVERNMENT; THAT
13 SOMEHOW OR ANOTHER THEY WERE IN SOME TYPE OF A POLITICAL
14 CONFLAGRATION WITH THE AMERICAN GOVERNMENT; AND THAT I
15 SHOULDN'T ASK ABOUT IT OR GET INVOLVED IN IT , THAT IT WAS
16 POLITICAL .

17 Q. AND THAT THE PROTECTION , SO TO SPEAK , IF I COULD USE THAT
18 WORD ; THAT THEY BELIEVED THEY HAD FROM THE AMERICAN GOVERNMENT
19 WAS PROTECTION IN CONNECTION WITH THEIR NARCOTICS OPERATIONS?

20 MR . CARLTON : OBJECTION . CALLS FOR SPECULATION , YOUR
21 HONOR .

22 THE COURT : OVERRULED .

23 THE WITNESS : THEY NEVER REFERRED IN THAT WAY . I
24 UNDERSTOOD FROM THE CONVERSATIONS WITH THEM THAT THEY HAD SOME
25 TYPE OF A RELATIONSHIP .

1 THEY NEVER EVER INDICATED TO ME THAT THAT INDICATED
2 PROTECTION ON THE PART OF THE AMERICAN GOVERNMENT FOR THEIR
3 NARCOTICS OPERATIONS. AS A MATTER OF FACT, THEY STATED ON MANY
4 OCCASIONS THAT THEY WOULD HAVE STILL BEEN NARCOTICS TRAFFICKERS
5 ANYWAY. I THINK THAT WAS -- THAT WAS THEIR LINE OF WORK.

6 Q. SO WHAT WAS IT THAT THE RELATIONSHIP WITH THE AMERICAN
7 GOVERNMENT WAS TO PROVIDE THEM, BY YOUR UNDERSTANDING?

8 MR. CARLTON: AGAIN, THAT CALLS FOR SPECULATION,
9 YOUR HONOR.

10 THE COURT: RESTATE THE QUESTION.

11 BY MR. STOLAR:

12 Q. WHAT WAS IT -- WHAT KIND OF CONDUCT ON THEIR PART WAS IT
13 THAT THEY WERE NOT TERRIBLY WORRIED ABOUT BECAUSE THEY HAD SOME
14 FORM OF RELATIONSHIP WITH THE UNITED STATES?

15 A. THEY DID NOT DESCRIBE THE RELATIONSHIP WITH ME.

16 Q. I UNDERSTAND THAT, BUT THEY TOLD YOU, BASICALLY, DON'T
17 WORRY BECAUSE WE ARE IN TIGHT WITH THE U.S. GOVERNMENT, IN
18 ESSENCE; IS THAT RIGHT?

19 A. YES, THAT'S RIGHT.

20 Q. WHAT WAS THAT IT YOU WERE NOT SUPPOSED TO WORRY ABOUT?

21 A. I WASN'T SUPPOSED TO ASK ANY QUESTIONS ABOUT IT , SO I
22 DIDN'T.

23 Q. ALL RIGHT. YOU INDICATED ON THE DIRECT EXAMINATION THAT
24 ONE OR TWO INCIDENTS IN YOUR DEBRIEFING OF FEBRUARY 9TH ARE
25 BASED ON PERSONAL KNOWLEDGE.

1 CAN YOU TELL ME WHAT THOSE ARE; AND IF YOU NEED TO,
2 REFER TO YOUR BOOK?

3 A. FEBRUARY 9TH?

4 Q.

5 Q. FEBRUARY 9TH; THAT'S THE REPORT PREPARED FEBRUARY 13TH.

6 A. ITEM 4 SAYS THAT: "THE D.F.S. WAS OPERATING IN CONCERT
7 WITH THE MAJOR DRUG OVERLORDS TO ENSURE THE FLOW OF NARCOTICS
8 THROUGH MEXICO AND THE UNITED STATES." THAT I KNOW OF MY OWN
9 PERSONAL KNOWLEDGE.

10 I KNOW OF MY OWN PERSONAL KNOWLEDGE STATEMENTS MADE
11 TO ME BY GUADALA MENYARACAS (PHONETIC).

12 Q. WHAT PARAGRAPH IS THAT?

13 A. PARAGRAPHS 30 AND 31.

14 Q. THANK YOU. IF YOU WOULD LOOK AT PARAGRAPH 6, YOU PROVIDED
15 INFORMATION THAT THERE WAS SOME INFORMATION GATHERED ON C.I.A.
16 ARMS SMUGGLING ACTIVITIES AND THE RELATIONSHIP THE C.I.A. HAD
17 WITH KNOWN NARCOTICS TRAFFICKERS IN THE VERACRUZ AREA.

18 A. YES.

19 Q. IS THAT ALSO A CONDENSATION OF A MORE EXPANDED VERSION OF
20 WHAT YOU DESCRIBED?

21 A. THAT IS A CONDENSATION OF THE RESULTS OF AN INVESTIGATION
22 I MADE, YES.

23 Q.

24 Q.

25 Q. YOU MADE AN INVESTIGATION?

1 A. YES, I DID.

2 Q. COULD YOU TELL US WHAT THE CONCLUSIONS WERE OF YOUR
3 INVESTIGATION AND THEN TELL US HOW YOU WENT ABOUT IT?

4 A. I WENT ABOUT IT BY CONDUCTING INTERVIEWS WITH FRIENDS AND
5 OF A GROUP OF MEXICAN NEWSPAPER REPORTERS WHO HAD FORMED
6 THEMSELVES INTO AN INFORMAL GROUP TO INVESTIGATE AND PUSH
7 FORWARD THE POLICE INVESTIGATION INTO THE ASSASSINATION OF
8 MANUEL BUENDIA.

9 PART OF THE INVESTIGATION WAS TALKING TO PEOPLE, THE
10 OTHER PART WAS THE READING OF BOOKS THAT THEY PUBLISHED,
11 NEWSPAPER ARTICLES THAT THEY PUBLISHED -- THAT WERE PUBLISHED
12 IN MEXICO AND THEN WITHDRAWN FROM PUBLICATION AFTER A VERY
13 SHORT AMOUNT OF TIME.

14 Q. UNDER UNUSUAL CIRCUMSTANCES?

15 A. YES, UNDER UNUSUAL CIRCUMSTANCES -- WITH SOME OF THE PAGES
16 MISSING IN THE ORIGINAL PUBLICATION WHEN IT WAS ORIGINALLY
17 PUBLISHED.

18 Q. AND WERE THERE ANY INDICATIONS THAT YOU OR THE GROUP YOU
19 WERE WORKING WITH LEARNED THAT IT WAS AMERICAN INTELLIGENCE
20 OFFICIALS OR MEXICAN INTELLIGENCE OFFICIALS THAT MIGHT HAVE HAD
21 A HAND IN THAT?

22 A. THERE WAS A STRONG SUSPICION OF THAT.

23 Q.

24 Q.

25 Q. AMERICAN C.I.A.?

1 A. THERE WAS A STRONG SUSPICION OF THAT, YES, SIR.

2 Q. OKAY. GO AHEAD.

3 A. MR. BUENDIA HAD INVESTIGATED PRIMARILY THE RELATIONSHIP
4 WITH THE C.I.A. IN MEXICO. THAT WAS HIS PRIMARY FOCUS IN THE
5 BOOKS THAT HE PUBLISHED. HE JOKINGLY CALLED HIS NEWSPAPER
6 OFFICE THE M.I.A., THE MEXICAN INTELLIGENCE AGENCY. HE KEPT A
7 PLAQUE ON THE DOOR THAT SAID M.I.A.

8 THE FACTS AS STATED IN THE NEWSPAPERS IN MEXICO DID
9 NOT SUPPORT THE CONTENTION THAT HIS ASSASSINATION WAS CARRIED
10 OUT BECAUSE OF THE CREDENTIALS, BECAUSE THE CREDENTIALS THAT
11 WERE WERE PICKED UP FROM THE NARCOTICS TRAFFICKERS WERE
12 IMMEDIATELY PUBLISHED IN THE NEWSPAPERS. AND HAD HE, IN FACT,
13 BEEN KILLED FOR THAT REASON, THEY WOULD NOT HAVE BEEN PUBLISHED
14 SO QUICKLY.

15 THE CONCLUSION WAS THAT THERE WAS ANOTHER REASON.
16 WHAT THAT REASON WAS HAS NOT BEEN BROUGHT TO LIGHT. AND I WAS
17 TRYING TO PROVIDE TO THE D.E.A. IN THESE REPORTS A PICTURE OF
18 THE SPECULATION THEN EXISTING IN MEXICO, WHICH LED TO THE LACK
19 OF COOPERATION BY MEXICAN OFFICIALS WITH THE AMERICANS BECAUSE
20 THEY DOUBTED THEIR SINCERITY.

21 Q. YOU INDICATED IN PARAGRAPH 10 OF THIS SAME REPORT THAT
22 EVEN PASTORA, I PRESUME -- ALSO KNOWN AS COMMANDER ZERO -- THAT
23 IS SOMEBODY WHO WAS HEAVILY INVOLVED WITH THE CONTRAS; IS THAT
24 CORRECT?

25 A. YES, I THINK HE WAS.

1 Q.

2 Q. HE HAD PROVIDED INFORMATION TO MR. BUENDIA ON C.I.A. ARMS
3 SMUGGLING; IS THAT RIGHT?

4 A. NO.

5 MR. CARLTON: OBJECTION, YOUR HONOR. WE ARE VERY
6 FAR AFIELD HERE.

7 THE COURT: WE ARE HERE TO TEST THE PERSONAL
8 KNOWLEDGE OF THIS WITNESS.

9 BY MR. STOLAR:

10 Q. WELL, WITH RESPECT TO THE INFORMATION CONCERNING COMMANDER
11 ZERO, DO YOU KNOW WHERE THAT INFORMATION CAME FROM?

12 A. I DID NOT MAKE THAT STATEMENT. I STATED ONLY THAT THE
13 BOMB ATTEMPT AT ZAPORA (PHONETIC) ON COMMANDER ZERO'S LIFE CAME
14 AT EXACTLY THE SAME TIME AS THE ASSASSINATION OF MANUEL BUENDIA
15 AND THE INVESTIGATIVE REPORTER VELASCO IN VERACRUZ. THAT WAS A
16 COINCIDENCE I BROUGHT UP.

17 Q. YOU INDICATED THAT IT WAS LEARNED BY CERTAIN COLLEAGUES
18 THAT MR. BUENDIA HAD OBTAINED INFORMATION ON CERTAIN MEMBERS OF
19 THE P.R.I., WHO WERE ASSISTING THE C.I.A. WITH ARMS SMUGGLING
20 AND KNEW OF THE C.I.A. LINK TO NARCOTICS TRAFFICKERS.

21 THAT IS WHAT IS REPORTED HERE.

22 A. YES, SIR.

23 Q. IS THAT AN ACCURATE STATEMENT OF WHAT YOU TOLD THE AGENTS?

24 MR. CARLTON: OBJECTION, YOUR HONOR. IT HAS NOTHING
25 TO DO WITH HIS PERSONAL KNOWLEDGE.

1 MR. STOLAR: I'M GOING TO GET TO THAT --

2 THE COURT: WELL, HE'S GOING TO GET TO THAT, I
3 ASSUME.

4 IS THAT AN ACCURATE STATEMENT OF WHAT YOU TOLD THE
5 AGENT?

6 THE WITNESS: YES, THAT IS AN ACCURATE STATEMENT OF
7 WHAT I DESCRIBED TO THE AGENT.

8 BY MR. STOLAR:

9 Q. COULD YOU TELL US WHERE YOU LEARNED THAT INFORMATION?

10 A. ALSO AS PART OF THE INVESTIGATION THAT I TOLD YOU I HAD
11 MADE. I WAS RELATING TO THE AGENT THE FACTS THAT I HAD
12 UNCOVERED OR THE SUPPOSITIONS OR THE RUMORS THAT I UNCOVERED IN
13 SUPPORT OF THIS HYPOTHESIS ONLY.

14 Q. DID YOU SPEAK TO ANY MEMBERS OF THE AMERICAN INTELLIGENCE
15 COMMUNITY IN CONNECTION WITH YOUR INVESTIGATION?

16 A. I DON'T KNOW IF I DID OR NOT.

17 Q. SO YOU MAY HAVE?

18 A. ANYTHING IS POSSIBLE, SIR.

19 Q. HAVE YOU EVER HAD ANY FORMAL RELATIONSHIP WITH ANY
20 AMERICAN INTELLIGENCE AGENCY IN MEXICO?

21 A. FORMAL RELATIONSHIP; NO, I HAVEN'T.

22 Q. HOW ABOUT AN INFORMAL RELATIONSHIP?

23 A. I DON'T THINK SO.

24 Q. DO YOU KNOW WHERE THE C.I.A. OFFICE WAS IN GUADALAJARA,
25 FOR EXAMPLE?

1 A. I HAVE NO IDEA. I DON'T KNOW IF THERE WAS AN OFFICE
2 THERE.

3 Q. ONE OF THE THINGS THAT YOU DID WHILE WERE YOU IN
4 GUADALAJARA WAS BASICALLY TO TAP INTO THE D.E.A.'S RADIO
5 COMMUNICATION SYSTEM; IS THAT RIGHT?

6 A. THAT WAS ONE OF MY JOBS, SIR, YES.

7 Q. WHO DID YOU REPORT THE INFORMATION THAT YOU LEARNED TO?

8 A. FROM SERGIO ESPINO VERDIN.

9 Q. NOT TO THE C.I.A. OR ANY CHIEF OF STATION IN GUADALAJARA
10 OR MEXICO CITY?

11 A. NOT THAT I KNOW OF.

12 Q.

13 Q.

14 Q. WERE YOU EVER CONTACTED BY ANYBODY WHO PURPORTED TO BE A
15 MEMBER OF THE C.I.A.?

16 A. WELL, LET ME UNDERSTAND THE BREADTH OF YOUR QUESTION.
17 SOMEBODY WHO GAVE ME TO UNDERSTAND THAT THEY WERE FROM THE
18 C.I.A., YES.

19 . SOMEBODY WHO CAME UP AND IDENTIFIED THEMSELVES AS
20 BEING WITH THE C.I.A., NO.

21 Q. TAKE THE FORMER; WHO WAS THAT AND WHEN DID IT HAPPEN?

22 A. A MAN NAMED DALE. I DON'T KNOW IF HE WAS OR WAS NOT. HE
23 CONTACTED ME SOMETIME IN 1987. HE ASKED ME THE SAME QUESTIONS
24 THAT YOU'RE ASKING ME NOW.

25 I REFERRED TO A FEW OF THE SAME THINGS THAT I'M

1 TELLING YOU, AND I WAS NEVER TALKED TO AGAIN.

2 Q. SINCE YOU HAVE BEEN IN THIS COUNTRY, HAVE YOU BEEN
3 CONTACTED BY ANY INTELLIGENCE AGENCY OTHER THAN THE D.E.A.?

4 A. NO, SIR, I HAVE NOT.

5 Q. LET'S GO TO THE DISCUSSION YOU HAD WITH DALE. YOUR
6 MEETING WITH DALE WAS ARRANGED BY A D.E.A. AGENT; IS THAT
7 RIGHT?

8 A. YES, SIR, IT WAS.

9 Q. THAT WAS AN AGENT NAMED HERRERA; IS THAT CORRECT?

10 A. THAT'S TRUE.

11 Q. WHAT WAS YOUR RELATIONSHIP WITH AGENT HERRERA AT THE TIME
12 YOU ARRANGED THE MEETING WITH DALE?

13 A. I HAD BEEN BOTHERED BY THE D.E.A. FOR AN AMOUNT OF TIME
14 FOLLOWING THE EVENTS IN 1984-1985. BECAUSE OF THIS SAME
15 INFORMATION, BECAUSE OF MY OWN BELIEFS, I DID NOT WANT TO HAVE
16 ANY RELATIONSHIP WITH THEM.

17 WHEN I WAS CONTACTED BY MR. HERRERA, I REFERRED SOME
18 OF THESE SAME MATTERS -- IT WAS REALLY MORE OF A WAY TO GET
19 THEM TO LEAVE ME ALONE. WHEN I RELAYED THESE SAME BELIEFS TO
20 THIS MAN NAMED DALE, THEY DID, IN FACT, LEAVE ME ALONE AND
21 THEY -- I HAD NO MORE PROBLEMS WITH THEM AFTER THAT.

22 Q. THERE WAS A PHOTOGRAPH OF YOU TAKEN IN WHAT IS
23 CHARACTERIZED AS AN OFFICIAL GOVERNMENT VEHICLE THAT YOU SEEM
24 TO BE SOMEWHAT WORRIED ABOUT; IS THAT RIGHT?

25 MR. CARLTON: OBJECTION TO THE RELEVANCY OF THIS,

1 YOUR HONOR. THIS GOES BEYOND THE SCOPE.

2 THE COURT: SUSTAINED.

3 BY MR. STOLAR:

4 Q. WELL, IN JUNE OR JULY OF '87 YOU HAD A MEETING AT A
5 PARTICULAR LOCATION WITH THIS FELLOW NAMED DALE; IS THAT RIGHT?

6 A. YES, SIR.

7 Q.

8 Q. WERE YOU ADVISED THAT HE WAS SOMEBODY WHO WAS FROM THE
9 AMERICAN EMBASSY?

10 A. YES, I WAS.

11 Q. WHEN HE ARRIVED OR WHEN HE INTRODUCED HIMSELF TO YOU, DID
12 HE CONFIRM THAT?

13 A. HE STATED THAT.

14 Q. THAT HE WAS FROM THE AMERICAN EMBASSY?

15 A. HE SAID HE WAS FROM THE AMERICAN EMBASSY, YES. HE SAID HE
16 WORKED DIRECTLY OUT OF THE AMERICAN EMBASSY IN MEXICO CITY.

17 Q. ALL RIGHT. WAS IT YOUR KNOWLEDGE OR INFORMATION THAT THE
18 C.I.A. OPERATIVES IN FOREIGN COUNTRIES ARE STATIONED IN THE
19 EMBASSIES?

20 MR. CARLTON: OBJECTION. CALLS FOR SPECULATION AND
21 NO FOUNDATION.

22 MR. STOLAR: I'LL REPHRASE THE QUESTION, IF I MAY.

23 BY MR. STOLAR:

24 Q. DO YOU HAVE ANY INFORMATION INDICATING THAT, THAT THE
25 C.I.A. WORKS OUT OF THE EMBASSY?

1 A. I ASSUME THAT THEY PROBABLY HAVE SOME KIND OF AN OFFICE IN
2 THE EMBASSY.

3 Q. IN FACT, THAT'S THE WAY IT WORKS PRETTY MUCH AROUND THE
4 WORLD --

5 MR. CARLTON: OBJECTION.

6 THE COURT: SUSTAINED.

7 BY MR. STOLAR:

8 Q. YOU ARRIVED AT THIS APARTMENT TO MEET DALE AND YOU SAW
9 SOMEBODY WHO WAS IDENTIFIED TO YOU AS "BENNY"; IS THAT RIGHT?

10 A. YES.

11 Q. HOW, IF AT ALL, WAS BENNY IDENTIFIED TO YOU AND WHAT WAS
12 HIS FUNCTION, IF YOU KNOW?

13 A. NOBODY TOLD ME WHAT HIS FUNCTION WAS. AND HE WAS
14 IDENTIFIED, HE JUST SAID HIS NAME WAS BENNY.

15 Q. YOU BELIEVED HE WAS A D.E.A. AGENT; IS THAT RIGHT?

16 A. YES, I DID.

17 Q. WHY WAS THAT?

18 A. I LATER LEARNED THAT HE WAS A D.E.A. AGENT. AT THAT TIME
19 THEY JUST INTRODUCED ME TO HIM.

20 Q.

21 Q.

22 Q. THERE WERE TWO OR THREE OTHER INDIVIDUALS THERE ALSO; IS
23 THAT CORRECT?

24 A. YES, THERE WERE.

25 Q. YOU INDICATE YOU'RE NOT SURE IF THEY WERE D.E.A. AGENTS;

1 IS THAT RIGHT?

2 A. I'M NOT SURE.

3 Q. HAVE YOU SUBSEQUENTLY LEARNED WHETHER THEY WERE OR THEY
4 WERE NOT?

5 A. NO, I HAVE NOT.

6 Q. DID THEY IDENTIFY THEMSELVES AT ALL?

7 A. NOBODY EVER IDENTIFIED THEMSELVES TO ME IN MEXICO CITY.

8 Q.

9 Q.

10 Q. DID THEY INDICATE WHERE THEY CAME FROM?

11 A. NO, THEY DID NOT NOT.

12 Q. DID DALE, WHEN HE ARRIVED, SAY TO YOU "I'M NOT D.E.A. LIKE
13 THESE GUYS" -- REFERRING TO THE OTHER THREE OR FOUR PEOPLE IN
14 THE ROOM?

15 A. YES, HE DID SAY THAT. THERE WERE ONLY TWO OTHER PEOPLE IN
16 THE ROOM AND HE DID SAY THAT.

17 Q. HE INDICATED THAT HE WENT TO LAW SCHOOL; IS THAT RIGHT?

18 A. YES, HE DID.

19 Q. HE ALSO INDICATED THAT HE HAD KNOWLEDGE THAT YOU HAD GONE
20 TO LAW SCHOOL; DIDN'T HE?

21 A. YES, HE DID.

22 Q. WERE YOU SOMEWHAT SURPRISED TO HEAR THAT?

23 MR. CARLTON: OBJECT TO THE RELEVANCE, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 Q.

1 BY MR .

2 Q. STOLAR:

3 Q.

4 Q. YOU INDICATED THAT HE WORKED OUT OF THE EMBASSY IN MEXICO
5 CITY; IS THAT RIGHT?

6 A. YES, SIR.

7 Q. AND HE INDICATED THAT HE WAS NOT INTERESTED IN ANY
8 NARCOTICS INFORMATION THAT YOU MIGHT HAVE; IS THAT CORRECT?

9 A. HE SAID THAT, YES.

10 Q. AND THEN HE TOLD EVERYBODY TO GO OUTSIDE?

11 A. YES, HE DID.

12 Q. THAT WHAT HE HAD TO TALK WITH YOU ABOUT WAS -- AND THE
13 AGENT REPORTS THAT HE SAID, OR HE CHARACTERIZES WHAT HE SAID --
14 THAT "WHAT HE WANTED TO TALK TO YOU ABOUT WAS TOO IMPORTANT FOR
15 THEIR VIRGIN EARS"

16 A. THAT STATEMENT WAS MADE BY THE MAN WHO WAS IDENTIFIED AS
17 BENNY?

18 A. HE COMPLAINED THAT --

19 Q. THAT THEY WERE BEING KICKED OUT?

20 A. YES. HE COMPLAINED ABOUT BEING ASKED TO STEP OUTSIDE.

21 Q. NOW, DALE INDICATED TO YOU --

22 THE COURT: I HAVE TO KEEP YOU AWAY FROM THIS MIKE.

23 THE WITNESS: I'M SORRY. I CAN'T HEAR THE AUDIO OVER

24 THIS --

25 THE COURT: WELL, JUST LEAVE IT TO THE SIDE HERE --

1 THE WITNESS: THANK YOU.

2 THE COURT: -- AND IT WILL PICK UP. YOU DON'T EVEN
3 NEED TO LOOK AT IT.

4 BY MR. STOLAR:

5 Q. DALE INDICATED TO YOU, DID HE NOT, THAT HE WAS VERY
6 CONCERNED ABOUT ANY INFORMATION THAT YOU HAD GIVEN TO THE
7 D.E.A. ABOUT THE C.I.A. OPERATIONS IN MEXICO; IS THAT RIGHT?

8 A. NO, THAT'S NOT. HE ONLY ASKED ME WHAT I HAD SAID.

9 Q. AGENT SCHMIDT PUT IN HIS REPORT THAT DALE ADVISED YOU THAT
10 HE WANTED TO KNOW WHAT INFORMATION YOU HAD SUPPLIED TO THE
11 D.E.A. CONCERNING C.I.A. OPERATIONS IN MEXICO.

12 HAVE YOU READ THAT IN THE REPORT?

13 A. YES.

14 Q. CAN YOU TELL ME WHERE HE GOT THAT FROM OUT OF YOUR MOUTH,
15 IF AT ALL?

16 A. AS I TOLD YOU A MINUTE AGO, HE ASKED ME WHAT I HAD SAID
17 ABOUT THE C.I.A.. HE SAID, GENERALLY, "WHAT IS ALL THIS ABOUT
18 THE C.I.A.? WHAT DO YOU KNOW?"

19 Q. NOW, YOU BELIEVED THAT DALE WAS A C.I.A. OPERATIVE; IS
20 THAT RIGHT?

21 A. I BELIEVE THAT, YES.

22 Q. WHAT MADE YOU BELIEVE HE WAS A C.I.A. OPERATIVE?

23 Q. BECAUSE OF THE STATEMENTS THAT HE HAD MADE.

24 Q. CONCERNING?

25 A. UNLESS HE WAS A MEMBER OF THE U.S. COAST GUARD OR THE

1 HEALTH DEPARTMENT, I ASSUMED THAT HE WAS A C.I.A. AGENT.

2 Q. HE NEVER SHOWED YOU ANY CREDENTIALS; IS THAT RIGHT?

3 A. NO, HE DID NOT.

4 Q. YOU TOLD HIM THAT YOU GUYS, MEANING THE C.I.A., ARE
5 WORKING WITH THE DRUG TRAFFICKERS IN MEXICO, DIDN'T YOU?

6 A. I SAID THAT THE INTELLIGENCE COMMUNITY IN MEXICO HAD
7 INFORMATION TO THAT EFFECT, YES.

8 Q. AND HE AFFIRMATIVELY NODDED, INDICATING THAT HE SAYS I
9 KNOW THAT'S TRUE; IS THAT RIGHT?

10 A. HE NODDED HIS HEAD, AND THAT'S WHAT I BELIEVED.

11 MR. CARLTON: OBJECTION. CALLS FOR SPECULATION AS TO
12 WHAT IT MEANT, YOUR HONOR.

13 THE COURT: OVERRULED.

14 BY MR. STOLAR:

15 Q. YOU INDICATED TO HIM, DID YOU NOT, THAT C.I.A. OPERATIONS
16 PERSONNEL HAD STAYED AT ERNESTO FONSECA'S HOUSE. DID YOU TELL
17 HIM THAT?

18 A. I INDICATED TO HIM THAT I BELIEVED THAT.

19 Q. AND HE AGAIN INDICATED TO YOU, NODDING IN A MANNER
20 INDICATING YES, I KNOW; IS THAT RIGHT?

21 A. THAT IS CORRECT.

22 Q. HE OFFERED YOU A JOB AND TOLD YOU YOU COULD GET A JOB ANY
23 PLACE IN THE WORLD?

24 Q. YES, HE DID SAY THAT.

25 Q.

1 Q.

2 Q. WHAT KIND OF WORK WERE YOU SUPPOSED TO BE DOING FOR HIM?

3 A. WE DIDN'T GET THAT FAR; I TURNED HIM DOWN.

4 Q. WAS IT YOUR UNDERSTANDING HE WAS OFFERING COMPANY WORK FOR
5 YOU, C.I.A. WORK?

6 Q. THAT CROSSED MY MIND.

7 Q. IT MORE THAN CROSSED YOUR MIND. THAT'S WHAT YOU UNDERSTOOD;
8 IS THAT RIGHT?

9 A. THE THOUGHT CAME TO MY MIND, SIR, YES.

10 Q. YOU TOLD DALE -- OR IT'S REPORTED, ANYWAY, THAT YOU TOLD
11 DALE THAT YOU DIDN'T TRUST THE U.S. GOVERNMENT AND THAT IF THE
12 C.I.A. INVOLVEMENT DIDN'T BOTHER DALE, IT DIDN'T BOTHER YOU.

13 WHAT IS THE BASIS FOR AGENT SCHMIDT TELLING US THAT
14 IN HIS REPORT?

15 A. I HAD ALREADY GONE THROUGH AN ASSASSINATION ATTEMPT BY THE
16 MEXICAN POLICE AT THE BEHEST OF THE NARCOTICS LORDS. I DIDN'T
17 WANT TO GET IN TROUBLE WITH OTHER -- I DIDN'T NEED ANY MORE
18 ENEMIES AT THAT POINT, SIR.

19 Q. AND THE OTHER ENEMIES YOU WERE THINKING ABOUT WERE
20 POSSIBLE C.I.A. ENEMIES; IS THAT RIGHT?

21 A. YES, SIR. AT THE TIME THESE STATEMENTS WERE BEING MADE,
22 THIS WAS SENSITIVE KNOWLEDGE.

23 Q. AND THE STATEMENTS YOU WERE MAKING WERE INFORMATION THAT
24 YOU HAD GATHERED AND HEARD, THAT THE C.I.A. WAS INVOLVED WITH
25 THE NARCOTICS TRAFFICKERS IN MEXICO; IS THAT CORRECT?

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

2 THE COURT: SUSTAINED.

3 BY MR. STOLAR:

4 Q. TWO WEEKS OR SO AFTER THE MEETING THAT YOU HAD WITH DALE,
5 YOU -- AGENT SCHMIDT REPORTS THAT YOU TELEPHONED A SPECIAL
6 "COLD" NUMBER AT THE AMERICAN CONSULATE IN GUADALAJARA.

7 COULD YOU TELL US WHAT THAT IS ABOUT?

8 A. I WANTED TO SEE IF THE FLOYD (PHONETIC) WORKED.

9 Q.

10 Q.

11 Q. WHERE DID YOU GET THE NUMBER?

12 A. I WAS GIVEN THE NUMBER BY MR. HERRERA.

13 Q. IS IT YOUR UNDERSTANDING HE GOT IT FROM DALE?

14 A. I DON'T KNOW.

15 Q. YOU INDICATE OR AGENT SCHMIDT INDICATES THAT'S A QUOTE
16 "COLD" END QUOTE, TELEPHONE NUMBER.

17 WHAT DOES THAT MEAN?

18 A. A COLD NUMBER IS A NUMBER THAT IS NOT GENERALLY KNOWN TO
19 THE PUBLIC SO THAT IT PROBABLY IS NOT INTERVENED OR TAPPED,
20 THOUGH I WOULD SUSPECT THAT THE AMERICAN CONSULATE IS MISTAKEN
21 IN THAT ASSUMPTION.

22 Q. DO YOU HAVE ANY -- WELL, NEVER MIND. IT'S OUTSIDE THE
23 SCOPE.

24 YOU SPOKE TO HERRERA WHEN HE CALLED; ISN'T THAT
25 RIGHT?

1 A. YES, I DID.

2 Q. AND HERRERA TOLD YOU THAT HE DIDN'T WANT TO OR HE WAS NOT
3 PERMITTED TO SPEAK TO YOU ANYMORE; IS THAT RIGHT?

4 A. HE INDICATED THAT.

5 Q. DID HE INDICATE TO YOU THE BASIS --

6 MR. CARLTON: THIS IS WAY BEYOND THE SCOPE, YOUR
7 HONOR.

8 THE COURT: COUNSEL, THE PURPOSE OF THIS IS NOT TO
9 RECITE EVERYTHING THAT THIS WITNESS SAID BUT TO DETERMINE IF
10 THERE IS ANY PERSONAL KNOWLEDGE FROM WHICH THESE STATEMENTS
11 EMANATE.

12 I'M NOT GOING TO JUST CONTINUE WITH THIS, HAVING THIS
13 WITNESS DISCUSS WHAT HE TOLD THE AGENT.

14 MR. STOLAR: LET ME PUT IT THIS WAY.

15 THE COURT: IF YOU WANT TO ASK QUESTIONS RELATING TO
16 HIS PERSONAL KNOWLEDGE OF ANYTHING HE TOLD THE AGENTS, THEN
17 THAT'S WHAT YOU SHOULD DO.

18 MR. STOLAR: ALL RIGHT. MAY I ASK ONE MORE QUESTION?

19 BY MR. STOLAR:

20 Q. HERRERA TOLD YOU THAT ESSENTIALLY DALE DID NOT WANT
21 HERRERA TALKING TO YOU; IS THAT RIGHT?

22 A. HE SAID THE OTHER GUY SAID THAT.

23 Q. BUT YOU ASSUMED IT WAS DALE; IS THAT RIGHT?

24 A. THAT WAS MY ASSUMPTION, YES.

25 Q. SOMETIME IN SEPTEMBER OF 1987, YOU SAW PHOTOGRAPHS OF

1 AGENT AYALA AND AGENT HERRERA IN MILITARY FATIGUES CARRYING
2 RIFLES AND STANDING NEAR HELICOPTERS; IS THAT RIGHT?

3 A. YES.

4 Q. WAS ANYBODY ELSE IN THE PHOTO?

5 MR. CARLTON: OBJECTION TO THE RELEVANCE OF THIS,
6 YOUR HONOR.

7 THE COURT: OVERRULED.

8 BY MR. STOLAR:

9 Q. WAS ANYBODY ELSE IN THE PHOTOGRAPHS?

10 A. THERE WERE MEXICAN FEDERAL JUDICIAL POLICE COMMANDERS AND
11 THE HELICOPTER PILOTS, TROOPS.

12 Q. DID IT APPEAR TO YOU THAT THE PHOTOGRAPH WAS OF SOME SORT
13 OF A TRAINING CAMP OR SOME SORT OF A POLICE OPERATION?

14 A. NO. IT APPEARED TO ME TO BE A DRUG OPERATION.

15 Q. A DRUG OPERATION?

16 A. YES.

17 THE COURT: WE ARE GOING ADJOURN AT THIS TIME.
18 BEFORE WE RECONVENE, UNLESS WE ARE GOING TO ASK QUESTIONS
19 RELATING TO THIS WITNESS'S PERSONAL KNOWLEDGE, I WILL NOT
20 CONTINUE WITH THIS.

21 MR. STOLAR: I'LL GO THROUGH THE REPORTS AND CLEAN UP
22 WHAT I CAN OVER THE LUNCH RECESS.

23 THE COURT: ALL RIGHT.

24 THE CLERK: PLEASE RISE. THIS COURT IS NOW IN
25 RECESS. (COURT STANDS IN RECESS UNTIL 1:30 P.M.)

1 LOS ANGELES + CALIFORNIA FRIDAY, JULY 6, 1990

2 + 1:30 P.M.

3
4 (JURY NOT PRESENT.)

5 THE COURT: DO YOU HAVE ANY FURTHER QUESTIONS?

6
7 LAWRENCE V. HARRISON + PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

8 VOIR DIRE + EXAMINATION CONTINUED

9
10 BY MR. STOLAR:

11 Q. YES, SIR. THE PERSON WHO YOU MET UPSTAIRS ON THE 14TH
12 FLOOR, DOES HE NOW WORK FOR THE D.E.A; IS THAT YOUR
13 UNDERSTANDING?

14 A. I DON'T KNOW WHETHER HE DOES OR NOT.

15 Q. HAVE YOU LEARNED HIS TRUE NAME?

16 A. I DON'T KNOW HIS TRUE NAME.

17 Q. WHEN DID YOU SEE HIM ON THE 14TH FLOOR?

18 A. APPROXIMATELY TWO WEEKS AGO.

19 Q. WAS HE IN THE COMPANY OF ANY D.E.A. AGENTS?

20 A. I JUST SAW HIM IN THE AISLE ON THE 14TH FLOOR. I DON'T
21 KNOW WHO HE WAS WITH.

22 Q. THE AISLE BEING ON THE INSIDE OF THE SECRETARIES OR THE
23 RECEPTIONIST'S GATE?

24 A. YES, SIR.

25 Q. THIS PERSON -- WELL, WOULD IT BE FAIR TO SAY THAT DALE IS

1 A MALE CAUCASIAN, LIGHT BROWN, BLOND HAIR, MOUSTACHE, LIGHT
2 COMPLEXION, BLUE EYES, 35 TO 38 YEARS OLD, FIVE-SEVEN TO
3 FIVE-NINE?

4 A. YES, SIR, IT WOULD BE.

5 Q. DOES THE LAST NAME STINSON RING A BELL?

6 A. THAT COULD BE HIS NAME; I'M NOT SURE.

7 Q. THIS PERSON WHO YOU DESCRIBED AS BENNY TO AGENT SCHMIDT,
8 HAVE YOU EVER SEEN THAT PERSON SUBSEQUENTLY?

9 A. I BELIEVE I ALSO SAW HIM ON THE 14TH FLOOR.

10 Q. HOW LONG AGO?

11 A. A COUPLE WEEKS AGO ALSO.

12 Q. IS THAT PERSON PRESENTLY IN THE COURTROOM?

13 A. NO, SIR, HE'S NOT.

14 Q. COULD YOU DESCRIBE THAT PERSON FOR US, PLEASE?

15 A. FIVE-NINE, FIVE-TEN, BLACK HAIR, KIND OF RAKISH HAIR.

16 Q. KIND OF WHAT?

17 A. RAKISH. HE LOOKED LIKE A STREET HOODLUM.

18 Q. GO AHEAD.

19 A. HE HAD A DARK COMPLETION, POCKMARKED FACE.

20 Q. HEIGHT?

21 A. 175 POUNDS PERHAPS.

22 Q. WHEN YOU SAW HIM ON THE 14TH FLOOR, DID EITHER OF THESE
23 TWO GENTLEMEN HAVE SUITS AND TIES ON?

24 A. I BELIEVE THEY DID.

25 Q. NOW, WHEN YOU SPOKE TO AGENT SCHMIDT ON FEBRUARY THE 9TH,

1 YOU TALKED TO HIM ABOUT A GENTLEMAN NAMED GERHARDT MERTINS; DO
2 YOU RECALL THAT?

3 A. YES, SIR.

4 Q. IS THAT SOMEBODY WHO YOU HAD MET?

5 A. NO, IT WAS NOT.

6 Q. MR. MERTENS, YOU SAID, HAD A CONNECTION TO THE C.I.A. WITH
7 REGARD TO ARMS TRAFFICKING; IS THAT RIGHT?

8 A. NO, SIR, I DID NOT SAY THAT. I SAID THAT I FELT HE HAD A
9 RELATIONSHIP WITH THE ISRAELIES, AS FAR AS ARMS TRAFFICKING.
10 BUT IT CAME OUT THE C.I.A. IN THE REPORT.

11 Q. WHAT WAS THE SOURCE OF YOUR INFORMATION WITH RESPECT TO
12 THAT?

13 A. THE SOURCE OF MY INFORMATION WERE INFORMANTS AROUND THE
14 UNIVERSITY OF GUADALAJARA.

15 Q. WHAT TYPES OF INFORMANTS?

16 A. PEOPLE WHO WERE FRIENDS OF HIS SON. HIS SON ATTENDS
17 CLASSES WITH HIM.

18 Q. THIS IS IN CONNECTION WITH YOUR INVESTIGATION OF BUENDIA'S
19 MURDER?

20 A. YES, SIR, IT WAS.

21 Q. IN CONDUCTING THIS INVESTIGATION, DID YOU RECEIVE ANY
22 COMPENSATION FOR WORK THAT YOU DID?

23 A. NO, SIR, I DID NOT.

24 Q. DID YOU REPORT YOUR RESULTS TO ANYBODY?

25 A. YES.

1 Q. TO WHOM?

2 A. AGENT SCHMIDT.

3 Q. ANYBODY ELSE?

4 A. NOT THAT I RECALL, SIR.

5 Q. WERE YOU DOING THIS ON YOUR OWN OR WERE YOU ASKED BY
6 SOMEBODY; FOR EXAMPLE, AN INTELLIGENCE AGENCY, TO LOOK INTO
7 THIS?

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

9 THE COURT: OVERRULED.

10 THE WITNESS: IT WAS AN INVESTIGATION OF PERSONAL
11 INTEREST TO ME.

12 BY MR. STOLAR:

13 Q. YOU WERE NOT DOING IT AT THE REQUEST OF ANY INDIVIDUAL OR
14 ORGANIZATION IS THAT YOUR TESTIMONY?

15 A. NO, SIR, I WAS NOT.

16 Q. AND YOU INDICATED THIS MORNING THAT WHEN YOU MADE THE CALL
17 TO THE COLD TELEPHONE AT THE EMBASSY, THAT YOU CALLED THE LINE
18 TO TEST IT ; IS THAT WHAT YOU SAID?

19 A. NO, SIR. I SAID I CALLED THAT NUMBER TO SEE IF THE FLOYD
20 (PHON.) HAD WORKED. THOSE WERE MY WORDS. I HAD GIVEN THIS
21 INFORMATION TO THIS MAN FOR THE EXPRESS PURPOSE OF BEING LEFT
22 ALONE.

23 AND IT SEEMS TO HAVE WORKED; THEY LEFT ME ALONE AFTER
24 THAT. THEY NO LONGER WISHED TO SPEAK TO ME AT ANY POINT.

25 Q. NOW, YOU KNOW OR YOU MET A GENTLEMAN BY THE NAME OF MIGUEL

1 ANGEL FELIX GALLARDO; IS THAT RIGHT?

2 A. YES, SIR, THAT'S TRUE.

3 Q. DO YOU KNOW THAT HE WAS A VERY STRONG SUPPORTER OF THE
4 CONTRAS, THE NICARAGUAN CONTRAS?

5 A. HE TOLD ME THAT.

6 Q. UNDER WHAT CIRCUMSTANCES DID HE TELL YOU THAT?

7 A. GENERAL CONVERSATION.

8 Q. FACE TO FACE?

9 A. YES, SIR.

10 Q. DID HE DESCRIBE TO YOU WHAT KIND OF SUPPORT HE WAS
11 INVOLVED WITH?

12 A. NO, SIR, HE DID NOT.

13 Q. WAS HE, TO YOUR KNOWLEDGE, IN THE BUSINESS OF SUPPLYING
14 ARMS TO THE CONTRAS?

15 MR. CARLTON: OBJECT TO THIS AS BEING HEARSAY, YOUR
16 HONOR.

17 THE COURT: WELL, IT IS HEARSAY, BUT I'LL PERMIT IT .
18 FOR THE PURPOSE OF THIS HEARING.

19 THE WITNESS: HE GAVE ME TO UNDERSTAND THAT HE WAS,
20 YES, SIR.

21 BY MR. STOLAR:

22 Q. WAS HE ALSO GIVING YOU TO UNDERSTAND ALSO THAT HE WAS
23 SUPPLYING MONEY TO THE CONTRAS?

24 A. HE GAVE ME TO UNDERSTAND THAT HE HAD CAUSED MONEY TO BE
25 SUPPLIED TO THEM.

1 Q. DID HE GIVE YOU ANY INDICATIONS OR UNDERSTANDINGS THAT THE
2 C.I.A. OR ANY OTHER INTELLIGENCE AGENCY WAS AWARE OF THESE
3 ACTIVITIES WITH RESPECT TO THE CONTRAS?

4 A. EVERY TIME I SPOKE TO HIM OR ANY OTHER PERSON THEY ALWAYS
5 SAID THE AMERICANS, BUT THEY NEVER SPECIFIED ANY AGENCY OF THE
6 UNITED STATES GOVERNMENT.

7 Q. BUT THEY SAID THE AMERICANS KNEW WHAT THEY WERE DOING; IS
8 THAT RIGHT?

9 A. YES, THEY DID, SIR.

10 Q. DID MR. GALLARDO, FELIX GALLARDO, MAKE ANY COMMENTS TO YOU
11 WITH RESPECT TO THE SOURCES OF THE FUNDS FOR SUPPLYING ARMS AND
12 MONIES TO THE CONTRAS?

13 A. NO, SIR, HE DIDN'T.

14 Q. WAS IT YOUR UNDERSTANDING THAT HE WAS INVOLVED IN
15 NARCOTICS TRAFFICKING?

16 A. YES, SIR, IT WAS.

17 Q. DID HE GIVE YOU ANY INDICATION OR DID ANYBODY WHO WAS
18 ASSOCIATED WITH HIM GIVE YOU ANY INDICATION THAT THE FUNDS
19 DERIVED FROM NARCOTICS TRAFFICKING WERE THE FUNDS BEING USED TO
20 HELP THE CONTRAS?

21 MR. CARLTON: THIS JUST CALLS FOR SPECULATION, YOUR
22 HONOR.

23 THE COURT: SUSTAINED.

24 BY MR. STOLAR:

25 Q. DID HE TELL YOU THAT THAT'S WHAT HAPPENED?

1 A. YES, SIR, HE DID.

2 Q. DID HE GIVE YOU ANY INDICATION THAT HIS MONEY RAISING
3 OPERATION, THAT IS, NARCOTICS TRAFFICKING, WAS THEREBY SAFE
4 FROM INTERVENTION BY THE AMERICANS BECAUSE OF WHAT HE WAS
5 DOING?

6 MR. CARLTON: AGAIN, SPECULATION AND HEARSAY, YOUR
7 HONOR.

8 THE COURT: OVERRULED.

9 THE WITNESS: HE DID SAY THAT TO ME.

10 THE COURT: DID OR DIDN'T?

11 THE WITNESS: HE DID, SIR.

12 MR. STOLAR: THANK YOU. I'M GOING TO QUIT WHILE I'M
13 AHEAD.

14 THE COURT: DO ANY OTHER COUNSEL HAVE ANY QUESTIONS
15 THAT ARE PERTINENT TO THE ISSUE BEFORE US?

16 MS. KELLY: YES, SIR.

17

18 FURTHER VOIR DIRE + EXAMINATION

19 BY MS. KELLY:

20 Q. GOOD AFTERNOON, MR. HARRISON. MR. HARRISON, YOU OBSERVED
21 A PILOT THAT YOU LATER IDENTIFIED AS THEODORE CASH IN THE
22 RESIDENCE OF ERNESTO FONSECA; IS THAT RIGHT?

23 A. YES, MA'AM.

24 Q. DID YOU EVER HAVE ANY CONVERSATION WITH MR. CASH?

25 A. NO, MA'AM, I DID NOT.

1 Q. AT SOME -- WOULD YOU REMEMBER WHEN THIS WAS THAT YOU SAW
2 HIM?

3 A. THIS WAS IN THE LATTER PART OF 1983.

4 Q. WAS THIS THE SAME TIME THAT YOU SAW A DC-3 AIRCRAFT WITH A
5 SHIPMENT OF ARMS OR LOAD OF ARMS?

6 A. I NEVER SAW THE AIRCRAFT.

7 Q. DID YOU EVER SEE ANY AIRCRAFT WITH ARMS THAT SEEMED LIKE
8 THEY WERE CAMOUFLAGED OR LOOKED LIKE THEY HAD SOME KIND OF
9 FATIGUE MATERIAL AROUND THEM?

10 A. THAT'S A DOUBLE QUESTION: DID I SEE THE AIRCRAFT AND THE
11 ARMS OR THE ARMS AND THE AIRCRAFT?

12 I NEVER SAW ANY AIRCRAFT TOGETHER WITH ANY ARMS.

13 Q. DID YOU SEE A DC-3 AT AN AIR STRIP THAT WAS CONTROLLED BY
14 ERNESTO FONSECA?

15 A. NO, MA'AM, I DID NOT.

16 Q. DID YOU EVER SEE ARMS THAT WERE IN CAMOUFLAGE, KIND OF. I
17 THINK YOU REPORTED IT -- IT MIGHT HAVE BEEN MISINTERPRETED, BUT
18 IT LOOKED LIKE THEY WERE ARMY TYPE OF WEAPONS?

19 A. YES, MA'AM, I DID.

20 Q. WHERE DID YOU SEE THOSE WEAPONS?

21 A. MR. FONSECA'S HOUSE.

22 Q. DID YOU EVER HAVE ANY DISCUSSION WITH MR. FONSECA ABOUT
23 THE ORIGINS OF THESE WEAPONS?

24 A. YES, I DID.

25 Q. CAN YOU RELATE THAT CONVERSATION?

1 A. HE REFERRED TO THE FACT THEY RECEIVED THE ARMS AND BEGAN
2 TO PASS THEM OUT. I COULD SEE THAT THEY WERE DIFFERENT FROM
3 THE AK-47 RIFLES THEY HAD RECEIVED EARLIER, WHICH HAD THE LOGO
4 OF THE INTER-AMERICAN ARMS OR THE AMERICAN ARMS COMPANY ON THEM
5 FROM FLORIDA. THESE HAD NO IDENTIFYING MARKS ON THEM. THEY
6 WERE OBVIOUSLY CHINESE OR CZECHOSLOVAKIAN.

7 I REMARKED AT THE SAME TIME THEY RECEIVED M-16 RIFLES
8 THAT HAD -- WERE FULLY AUTOMATIC AND HAD A GAS DISCHARGE RELIEF
9 VALVE ON THEM, WHICH LED ME TO BELIEVE THEY WERE ARMY WEAPONS.

10 AND I ALSO RECEIVED NIGHT VISION EQUIPMENT THAT HAD
11 CAMOUFLAGE MARKINGS ON IT, WHICH LED ME TO BELIEVE THAT PERHAPS
12 HE HAD PURCHASED IT AT AN ARMY SURPLUS STORE.

13 Q. IT LED YOU TO BELIEVE THAT HE HAD PURCHASED IT AT AN ARMY
14 SURPLUS STORE?

15 A. IT HAD THESE CAMOUFLAGE MARKINGS ON IT. AND I SPOKE TO
16 THEM AND HE SAID THAT THESE DID COME FROM THE AMERICANS. HE
17 DIDN'T SAY WHERE FROM.

18 Q. BUT YOU KNEW THEM TO BE CHINESE ARMS?

19 A. YES. THE AK-47 WAS, YES.

20 Q. DID HE INDICATE TO YOU WHAT THE -- WHAT HE WAS GOING TO BE
21 DOING WITH THESE ARMS?

22 A. I DIDN'T UNDERSTAND YOUR QUESTION.

23 Q. DID MR. FONSECA INDICATE TO YOU WHAT HE WAS GOING TO BE
24 DOING WITH THESE ARMS?

25 A. HE DIDN'T HAVE TO. HE PASSED THEM OUT TO ALL HIS PEOPLE.

2

1 Q. NOW, AT SOME POINT YOU LEARNED THAT A PILOT HAD BROUGHT
2 THOSE IN TO MR. FONSECA ON AN AIR STRIP THAT WAS CONTROLLED BY
3 HIM?

4 A. I LEARNED THAT THEY HAD BEEN BROUGHT IN ON A PLANE BY THAT
5 PILOT. THE AIRSTRIP WAS ONE THAT WAS GENERALLY USED BY A
6 NUMBER OF AGENCIES: THE CUSTOMS PEOPLE, THE FEDERAL JUDICIAL
7 POLICE, THE D.F.S. AND THE TRAFFICKERS.

8 Q. AND THAT PILOT; YOU'RE REFERRING TO THEODORE CASH?

9 A. IT WAS THEODORE CASH.

10 Q. BUT YOU NEVER HAD ANY CONVERSATION WITH MR. CASH?

11 A. NO, MA'AM, I DID NOT.

12 Q. NOW, WHEN THE AMERICANS CAME TO VISIT MR. FONSECA, WAS
13 THIS VISIT PRECEDED BY A VISIT OF PEOPLE YOU BELIEVED TO BE
14 CUBAN NATIONALS?

15 A. IT HAPPENED AROUND THE SAME TIME.

16 Q. SO WAS THERE A MEETING WITH MR. FONSECA WITH CUBAN
17 NATIONALS FIRST?

18 A. I'M NOT REALLY SURE IF IT WAS BEFORE OR AFTER. IT WAS
19 AROUND THE SAME TIME. IT WAS DURING THAT SAME PERIOD.

20 Q. WHEN WAS THAT?

21 A. THE LATTER PART OF 1983.

22 Q. DID YOU OVERHEAR ANY OF THE CONVERSATIONS WITH THE CUBANS?

23 A. THE CONVERSATION WAS CONDUCTED IN A ROOM UPSTAIRS AT A
24 HOTEL. I WAS IN THE LOBBY AND COULDN'T OVERHEAR ANY OF THE
25 CONVERSATION.

1 Q. WHAT WAS YOUR PURPOSE IN BEING IN THE LOBBY?

2 A. I WAS PART OF THE ESCORT FOR MR. FONSECA.

3 Q. AND WITH RESPECT TO THE MEETING WITH THE TWO AMERICANS,
4 THAT HAPPENED IN MR. FONSECA'S HOUSE?

5 A. YES, MA'AM, IT DID.

6 Q. AND DID EITHER OF THESE GENTLEMEN IDENTIFY THEMSELVES TO
7 YOU BY NAME?

8 A. NO, THEY DID NOT.

9 Q. AND THEY WERE -- WHEN DID YOU HAVE THIS DISCUSSION WITH
10 THE ONE GENTLEMEN YOU IDENTIFIED AS A MERCENARY?

11 A. DURING THE TIME THAT ONE OF THEM WAS INSIDE TALKING TO
12 MR. FONSECA -- BOTH OF THEM HAD COME TOGETHER WITH A CENTRAL
13 AMERICAN MAN.

14 THEY WENT INSIDE AND TALKED TO MR. FONSECA WHILE ONE
15 OF THEM STAYED OUTSIDE. THE ONE WHO STAYED OUTSIDE -- I WAS
16 ASSEMBLING A REPEATER IN THE KITCHEN OF MR. FONSECA'S HOUSE --
17 THERE WASN'T ANYPLACE ELSE TO DO IT -- SO THE ONE THAT STAYED
18 OUTSIDE SPOKE TO ME IN GERMAN WHILE THE OTHER PEOPLE WERE
19 INSIDE MR. FONSECA'S OFFICE.

20 Q. DID HE EVER INDICATE TO YOU THAT HE WAS GOING TO BE DOING
21 ANY BUSINESS WITH MR. FONSECA WITH RESPECT TO THE ARMS, MOVING
22 ARMS TO THE CONTRAS?

23 A. HE INDICATED THAT HE WAS LOOKING FOR LANDING STRIPS. HE
24 DIDN'T SAY HE WAS GOING TO BE DOING IT WITH MR. FONSECA.

25 Q. REFUELING STRIPS?

1 A. THAT'S WHAT HE GAVE ME TO UNDERSTAND.

2 Q. WHEN YOU SAY HE GAVE YOU TO UNDERSTAND, IS THAT SOMETHING
3 HE SAID TO YOU?

4 A. HE ASKED ME IN THE SAME CONTEXT THE SAME QUESTIONS ABOUT
5 LANDING STRIPS AND THE AVAILABILITY OF GASOLINE, WHICH LED ME
6 TO BELIEVE THAT HE WISHED TO REFUEL AIRPLANES BECAUSE HE ASKED
7 ABOUT AVIATION GASOLINE.

8 Q. NOW, WHEN YOU HAD THE CONVERSATION WITH MR. FONSECA
9 CONCERNING HIS UNDERSTANDING THAT HE HAD AN AGREEMENT WITH THE
10 AMERICANS, DO YOU RECALL THAT CONVERSATION?

11 A. I HAD A NUMBER OF CONVERSATIONS WITH MR. FONSECA ON THAT
12 SUBJECT.

13 Q. DID HE EVER TELL YOU THAT HE BELIEVED HE WAS PROTECTED BY
14 SOME AGREEMENT BECAUSE HE WAS USING MONIES OR EXCHANGING ARMS
15 FOR PROTECTION?

16 A. NO, MA'AM, HE DID NOT. HE ONLY INDICATED THAT HE WAS NOT
17 WORRIED.

18 Q. AND THEN IN EACH OF THESE CONVERSATIONS, THAT'S ALL HE
19 WOULD SAY TO YOU IS THAT HE WAS NOT WORRIED?

20 A. HE LED ME TO BELIEVE THAT HE WAS NOT WORRIED BECAUSE HE
21 HAD NOTHING TO WORRY ABOUT FROM THESE PEOPLE, THAT SOMEHOW THEY
22 WERE HIS FRIENDS, AND -- HE DID NOT MENTION PROTECTION.

23 Q. DID HE EVER GIVE YOU ANY IMPRESSION THAT HE WAS SUPPORTING
24 THE CONTRA REVOLUTION?

25 A. NO, HE DID NOT. HE ASKED ME ABOUT IT ONCE.

1 Q. HE ASKED YOU ABOUT WHAT?

2 A. HE ASKED ME ABOUT THE CONFLICT IN NICARAGUA AND HE ASKED
3 ME TO EXPRESS MY VIEWS ON WHOSE SIDE I WAS ON AND WHETHER I
4 WOULD BE ON THE SIDE OF THE CONTRAS OR ON THE SIDE OF THE
5 SANDINISTAS, AND WHICH SIDE I THOUGHT WAS RIGHT.

6 AND LATER ON HE ACCUSED ME OF NOT BEING SUPPORTIVE
7 ENOUGH OF MY OWN GOVERNMENT.

8 Q. WELL, WHEN YOU REFERRED EARLIER TO HAVING A NUMBER OF
9 CONVERSATIONS WITH FONSECA, CARO QUINTERO, JAVIER BARBA, SERGIO
10 ESPINO VERDIN, CASTEL DEL ORO AND OTHER MEMBERS OF THE D.F.-S.
11 CONCERNING THE PROTECTION FOR THEIR ACTIVITIES WITH THE
12 AMERICANS, WAS THERE ANYTHING MORE SPECIFIC SAID TO YOU ABOUT
13 THAT AGREEMENT OTHER THAN THERE WAS JUST PROTECTION?

14 A. THE CONVERSATIONS THAT I HAD WITH THEM WERE NOT ABOUT THE
15 PROTECTION THAT THEY HAD FROM THE AMERICANS. THEY NEVER TOLD
16 ME THAT THEY HAD PROTECTION FROM THE AMERICANS.

17 I HAD CONVERSATIONS WITH THEM, TRYING TO CONVINCING
18 THEM THAT THEY HAD GONE TOO FAR, THAT THEY SHOULD RETIRE FROM
19 THE BUSINESS THEY WERE IN, THAT THEY WERE SERIOUSLY
20 COMPROMISING THE SECURITY APPARATUS OF THE MEXICAN REPUBLIC,
21 THAT THEY HAD SERIOUSLY COMPROMISED THE REPUTATION OF THE
22 INSTITUTIONS OF THE MEXICAN REPUBLIC, AND THAT THEY HAD
23 SERIOUSLY COMPROMISED THE INTERNAL SECURITY OF THE COUNTRY, AND
24 ASKING THEM TO PLEASE CONSIDER RETIRING.

25 AND THEY ALWAYS ANSWERED BACK THAT THEY HAD NO

1 PROBLEMS AND THAT EVERYTHING WAS ARRANGED.

2 Q. BUT NOTHING MORE SPECIFIC THAN THAT?

3 A. NOTHING MORE SPECIFIC THAN THAT.

4 Q. NOW, WERE YOU A MEMBER OF THE EQUIVALENT OF THE MEXICAN
5 C.I.A.?

6 MR. CARLTON: OBJECTION. CALLS FOR CHARACTERIZATION.
7 OBJECT TO THE CHARACTERIZATION. VAGUE AND AMBIGUOUS.

8 THE COURT: IT IS VAGUE AND AMBIGUOUS. YOU CAN ASK
9 HIM WHAT HE BELONGED TO OR WHAT HE WAS A MEMBER OF.

10 MS. KELLY: VERY WELL, YOUR HONOR.

11 BY MS. KELLY:

12 Q. CAN YOU ANSWER THAT QUESTION?

13 A. I WAS A COMMUNICATIONS EXPERT WITH THE MEXICAN FEDERAL
14 SECURITY DIRECTORATE AND THE OFFICE OF POLITICAL AND SOCIAL
15 INVESTIGATIONS.

16 I WAS NOT IN A -- I PUT IN AND MAINTAINED THEIR
17 COMMUNICATION SYSTEMS IN SO FAR AS THEY ALLOWED ME TO. I DID
18 OTHER ELECTRONICS WORK FOR THEM.

19 THE COURT: COUNSEL, THIS IS GETTING OUTSIDE THE
20 SCOPE OF WHAT THIS HEARING WAS CONVENED FOR.

21 IT IS NOT CROSS-EXAMINATION, THERE IS NO JURY
22 LISTENING TO IT. UNLESS YOU HAVE SOME PERTINENT QUESTIONS
23 RELATING TO THIS PERSON'S PERSONAL KNOWLEDGE, I WILL END THIS
24 HEARING.

25 MS. KELLY: VERY WELL, YOUR HONOR. I'LL MOVE ON.

1 BY MS. KELLY:

2 Q. DID YOU -- IN CONNECTION WITH YOUR FAMILIARITY WITH MR.
3 FONSECA, DID YOU EVER MEET A PERSON BY THE NAME OF WERNER LOTZ?

4 A. WHO?

5 Q. WERNER LOTZ, L O T Z?

6 A. NO, I DID NOT.

7 Q. DID YOU EVER MEET A PERSON BY THE NAME OF EDEN (PHONETIC)
8 PASTORA?

9 A. WITH MR. FONSECA, NO.

10 Q. DID YOU MEET MR. EDEN PASTORA AT SOME OTHER TIME?

11 A. I HAD SOME CONTACT WITH HIM BRIEFLY YEARS BEFORE, BECAUSE
12 HE HAD SOME CONTACTS WITH THE AUTONOMOUS UNIVERSITY OF
13 GUADALAJARA.

14 Q. THE REFERENCE THAT YOU MAKE TO MR. PASTORA, AND IN
15 CONNECTION WITH THE MEXICAN INVESTIGATIVE REPORT OF BUENDIA --
16 I'M NOT SURE I'M PRONOUNCING HIS NAME RIGHT -- WAS THAT JUST
17 SOMETHING THAT MR. BUENDIA RELATED TO YOU?

18 A. (CHUCKLING) MR. BUENDIA WAS DEAD AT THAT TIME. JUST
19 RELATING THE COINCIDENCE THAT THE BOMBING ATTEMPT AT ZAPORA,
20 THE ASSASSINATION OF MR. BUENDIA, AND THE ASSASSINATION OF THE
21 INVESTIGATIVE REPORTER IN VERACRUZ HAPPENED ON THE SAME DAY.

22 Q. DID YOU EVER MEET A PERSON BY THE NAME OF THOMAS CASTILLO?

23 A. NO, I DID NOT.

24 Q. OR MR. GARY WAYNE BETZAR (PHONETIC)

25 A. NO, NOT -- PEOPLE WERE NOT IDENTIFIED TO ME BY NAME AT ANY

1 OF THESE PLACES .

2 Q. WHEN YOU'RE REFERRING TO THESE PLACES , YOU MEAN MR .
3 FONSECA 'S RESIDENCE ?

4 A. MR . FONSECA 'S RESIDENCE , MR . CARO 'S , MR . -- ANY OF THE
5 RESIDENCES . NOBODY IDENTIFIED ANYBODY BY NAME . THOSE TYPES OF
6 INTRODUCTIONS WERE NOT MADE .

7 Q. SO -- I JUST WANT TO BE CLEAR ON THIS . THE CONVERSATION
8 THAT YOU HAD WITH MR . FELIX GALLARDO WITH RESPECT TO HIS
9 INVOLVEMENT WITH THE CONTRAS , YOU HAD NO CONVERSATION LIKE THAT
10 WITH MR . FONSECA ?

11 A. NO , I DID NOT .

12 MS . KELLY : YOUR HONOR , MAY I HAVE ONE MOMENT ?

13 (BRIEF PAUSE .)

14 MR . MEDVENE : IF THE COURT PLEASE , THERE IS ONE
15 ADDITIONAL AREA , NOT A C.I.A. AREA --

16 THE COURT : IS IT COVERED IN THESE REPORTS THAT THIS
17 WITNESS MADE TO THE C.I.A. -- I MEAN TO THE D.E.A. ?

18 MR . MEDVENE : IT IS THE AREA OF THE REPORT BEING
19 GIVEN , AND IT 'S NO LONGER AVAILABLE . I WANTED TO TAKE THAT UP
20 WITH HIM ALSO . I HAVE A COUPLE OF C.I.A. QUESTIONS AND I WANT
21 TO TAKE THAT UP , IF IT 'S PERMISSIBLE WITH YOUR HONOR . WE HAVE
22 A MOTION TO STRIKE .

23 THE COURT : YOU CAN START , BUT IF THIS IS NOT
24 PERTINENT TO WHAT THIS MEETING IS FOR -- THIS HEARING IS FOR , I
25 WILL NOT ALLOW IT .

1 I THINK YOU'RE FINISHED, MS. KELLY.

2 MS. KELLY: I AM?

3 THE COURT: THAT'S RIGHT.

4 MS. KELLY: YOUR HONOR, JUST FOR THE RECORD, I WAS
5 GOING TO INQUIRE -- I WAS JUST GOING INQUIRE AS TO MR.
6 HARRISON'S RELATIONSHIP WITH NASAR HARRAH.

7 THE COURT: WITH WHO?

8 MS. KELLY: NASAR HARRAH, YOUR HONOR, WHICH IS THE
9 QUESTION THAT WHEN I WAS PREVIOUSLY CROSS-EXAMINING MR.
10 HARRISON, YOUR HONOR SUSTAINED AN OBJECTION ON RELEVANCY
11 GROUNDS.

12 THIS IS THE GENTLEMAN WHO WAS A MEMBER OF THE D.F.S.,
13 YOUR HONOR, WHO ALLEGEDLY HAD C.I.A. CONNECTIONS.

14 THE COURT: WHAT IS YOUR QUESTION?

15 MS. KELLY: I WANTED TO KNOW IF HE HAD ANY PERSONAL
16 INTERACTIONS WITH HIM.

17 THE COURT: YOU MAY ANSWER THAT.

18 THE WITNESS: NO, I HAVE NO PERSONAL CONNECTION WITH
19 HIM. I MET HIM ONCE IN MATAMOROS, BUT HE WAS VERY HIGH UP ON
20 THE CHAIN OF COMMAND AND I HAD NO PERSONAL CONNECTION WITH HIM
21 AT ALL.

22 MS. KELLY: THE ONLY OTHER QUESTION THAT I WANTED TO
23 INQUIRE INTO IS THE NATURE OF HIS MEETING WITH THE GENTLEMAN
24 IDENTIFIED AS EDEN PASTORA, KNOWN TO HIM AS CAPTAIN ZERO, AT
25 THE UNIVERSITY OF GUADALAJARA.

1 THE COURT: WHAT IS YOUR QUESTION?

2 BY MS. KELLY:

3 Q. WHAT WAS THE NATURE OF THE MEETING THAT YOU HAD WITH MR.
4 EDEN PASTORA AT THAT TIME?

5 A. I WAS JUST TOLD --

6 MR. CARLTON: I WOULD OBJECT, YOUR HONOR. THIS IS
7 WAY BEYOND THE SCOPE. THIS WAS YEARS AGO.

8 BY MS. KELLY:

9 Q. OH, I'M SORRY. WHAT YEAR WAS THAT?

10 A. 1972 OR '73. MANY YEARS AGO.

11 Q. YOU HAD NO CONTACT WITH HIM AFTER THAT?

12 A. NO, I DID NOT.

13 MS. KELLY: ALL RIGHT.

14 MR. MEDVENE: I ASK, YOUR HONOR, INITIALLY FOR
15 GUIDANCE. THE WAY WE GOT STARTED TODAY, WE FILED A MOTION TO
16 STRIKE CERTAIN OF MR. HARRISON'S TESTIMONY BASED ON THE FACT
17 THAT CERTAIN D.E.A. REPORTS WERE NO LONGER AVAILABLE, AND TO BE
18 ABLE TO GET INTO THE FACT THAT HE HAD INDICATED HE SET UP A
19 COMMUNICATIONS CENTER.

20 IF THIS IS THE -- AND TALKED TO THE D.E.A. ABOUT THE
21 COMMUNICATIONS CENTER. WE ARE PREPARED TO ASK A FEW QUESTIONS
22 ABOUT THE C.I.A. ISSUE. IF THIS ISN'T THE APPROPRIATE TIME TO
23 GET INTO THE REPORTS, WE WON'T GET INTO THEM.

24 THE COURT: WELL, I'M HOLDING AN EVIDENTIARY HEARING
25 ON THE FAILURE TO PRODUCE THE SEPTEMBER 7TH NOTES AND THE

1 EXISTENCE OF THE D.E.A. 6 REPORTS REGARDING HARRISON'S
2 AGREEMENT.

3 MR. MEDVENE: YES, SIR. OR D.E.A. REPORTS AT ALL, AS
4 WE UNDERSTOOD THEM. WE'LL TOUCH THOSE AREAS THEN, YOUR HONOR.
5 WE'LL JUST HAVE A FEW CASE ON THE C.I.A. ISSUE FIRST.

6 THE COURT: ALL RIGHT.

7

8

FURTHER VOIR DIRE +

9

BY MR. MEDVENE:

10

Q. MR. HARRISON, IN NOVEMBER -- OCTOBER OF 1983, SIR, DID

11

JAVIER BARBA HERNANDEZ HAVE A DISCUSSION WITH YOU ABOUT THE

12

FACT THAT JOSE ESPARRAGOZA, MANUEL SALCIDO, CARO QUINTERO, AND

13

ON SOME OCCASIONS FELIX GALLARDO, HAD MORE -- HAD MORE

14

INFLUENCE WITH THE AMERICAN GOVERNMENT THAN CERTAIN OTHER

15

PEOPLE?

16

A. HE DID NOT MENTION ALL THOSE NAMES, SIR. HE JUST SAID

17

THEY HAD MORE INFLUENCE WITH MY GOVERNMENT THAN I DID.

18

Q. AND DID HE MENTION THE NAME ESPARRAGOZA?

19

A. NO, HE DID NOT.

20

Q. DID YOU MENTION THAT NAME TO WAYNE SCHMIDT WHEN YOU SAW

21

HIM ON SEPTEMBER 8TH AS ONE OF THE PEOPLE WHO PURPORTEDLY HAD

22

MORE INFLUENCE WITH THE AMERICAN GOVERNMENT THAN YOU DID?

23

A. WELL, MR. BARBA SAID "NOSOTROS", AND THEY PROBABLY ASKED

24

ME -- THAT MEANS WE -- PROBABLY ASKED ME WHO I THOUGHT THEY

25

MEANT BY WE.

1 I THOUGHT THEY MEANT THEIR GROUP, AND I INCLUDED MR.
2 ESPARRAGOZA IN THEIR GROUP.

3 Q. DID MR. BARBA HERNANDEZ TELL YOU WHAT HE MEANT BY THE
4 PEOPLE IN THAT GROUP HAVING MORE INFLUENCE WITH THE AMERICAN
5 GOVERNMENT THAN YOU DID?

6 MR. MEDRANO: OBJECTION, YOUR HONOR. THIS HAS
7 NOTHING TO DO WITH PERSONAL KNOWLEDGE.

8 THE COURT: YES. THE OBJECTION IS SUSTAINED. I'M
9 ABOUT TO TERMINATE THIS UNLESS THIS GOES TO THE WITNESS'S
10 KNOWLEDGE.

11 MR. MEDVENE: HIS KNOWLEDGE AS DERIVED FROM HIS
12 DISCUSSIONS --

13 THE COURT: HIS KNOWLEDGE OF THE EVENTS RELATED TO
14 THE D.E.A. THAT'S THE PURPOSE OF THIS HEARING, WAS TO
15 DETERMINE IF HE HAD ANY PERSONAL KNOWLEDGE OF THE STATEMENTS
16 THAT HE MADE TO AGENT SCHMIDT.

17 MR. MEDVENE: ALL RIGHT, SIR. WE'LL GET INTO THE
18 OTHER AREA THEN, YOUR HONOR.

19 BY MR. MEDVENE:

20 Q. DID YOU MEET WITH AGENT SCHMIDT ON SEPTEMBER 7TH, SIR?
21 SEPTEMBER 7TH OF 1989.

22 A. I REALLY DON'T RECALL. I HAVE HAVE.

23 Q. DO YOU REMEMBER MEETING WITH HIM ON TWO SUCCESSIVE DAYS,
24 AND WHICH ON THE SECOND DAY YOU MADE OR PURPORTED TO MAKE SOME
25 CORRECTIONS TO WHAT YOU TOLD HIM THE FIRST TIME?

1 A. I WAS CONSTANTLY MAKING CORRECTIONS BECAUSE I FELT HE WAS
2 CONSTANTLY CONVINCING ALL MY REMARKS AND CHANGING THE MEANING
3 OF THEM.

4 MR. MEDVENE: MAY I APPROACH THE WITNESS, YOUR HONOR,
5 FOR PURPOSES OF SHOWING HIM WHAT PURPORTS TO BE MR. SCHMIDT'S
6 SEPTEMBER 8, 1989 REPORT TO SEE IF HE HAS REVIEWED IT?

7 MR. MEDRANO: THIS IS IRRELEVANT, YOUR HONOR. THESE
8 ARE HANDWRITTEN NOTES. THIS HAS NOTHING TO DO WITH THE ISSUE
9 OF PERSONAL KNOWLEDGE.

10 MR. MEDVENE: I'M NOT TALKING ABOUT THE C.I.A. ISSUE;
11 I'M TALKING ABOUT A D.E.A. REPORT, YOUR HONOR.

12 THE COURT: WELL, LOOK, WHAT ARE YOU TRYING TO GET
13 FROM THIS WITNESS? HE SAYS HE DOES NOT REMEMBER WHETHER HE HAD
14 A MEETING SEPTEMBER 7TH.

15 THE AGENT SAID HE DID HAVE A MEETING. WHAT IS IT
16 YOU'RE TRYING TO PROVE?

17 MR. MEDVENE: WHAT WE'RE TRYING TO PROVE, YOUR HONOR,
18 IS WE ARE TRYING TO DEVELOP WHAT MEETINGS THERE WERE, IF THE
19 AGENTS TOOK NOTES AT THOSE MEETINGS, AND IF THOSE NOTES ARE NOW
20 GONE.

21 I'LL REPRESENT TO YOUR HONOR THAT --

22 THE COURT: THIS WITNESS HAS NO KNOWLEDGE OF THAT,
23 DOES HE?

24 MR. MEDRANO: THAT'S WHAT SCHMIDT IS FOR. HE'S NEXT,
25 YOUR HONOR.

1 THE COURT: HE'S GOING TO BE CALLED AS A WITNESS, AND
2 YOU CAN ASK HIM THOSE QUESTIONS.

3 MR. MEDVENE: WELL, WHAT THE WITNESS WILL BE ABLE TO
4 TELL US, YOUR HONOR, IS WHAT MEETINGS HE RECALLS HAVING WITH
5 MR. SCHMIDT, AND IF MR. SCHMIDT TOOK NOTES AT THOSE MEETINGS.

6 THE COURT: MR. SCHMIDT HAS ALREADY SAID HE MET WITH
7 HIM ON SEPTEMBER 7TH, HASN'T HE?

8 THE GOVERNMENT HAS ADMITTED IT IN RESPONSE TO YOUR
9 MOTION.

10 MR. MEDVENE: I DON'T KNOW IF HE HAS TESTIFIED TO THE
11 EXTENT THAT HE MET WITH HIM THE 7TH.

12 WHAT HAPPENED, YOUR HONOR, IS THAT WHEN MR. HARRISON
13 GOT OFF THE WITNESS STAND AND WAS FINISHED, AT THAT TIME WE
14 WERE GIVEN A SEPTEMBER 8TH REPORT BY MR. SCHMIDT.

15 WE THEN ASKED -- IT REFERS TO A SEPTEMBER 7TH REPORT.
16 THAT'S THE FIRST WE KNEW OF A SEPTEMBER 7TH REPORT.

17 THE COURT: I UNDERSTAND THAT.

18 MR. MEDVENE: WE ASKED FOR THAT AND THEY DON'T HAVE
19 IT.

20 THE COURT: I UNDERSTAND THAT. HOW IS THIS WITNESS
21 GOING TO HELP YOU?

22 MR. MEDVENE: IT SEEMS TO ME THIS WITNESS IS HELPFUL
23 TO THE EXTENT THAT IF HE WILL TESTIFY, AS I WOULD IMAGINE HE
24 WILL, THAT HE DOESN'T REMEMBER WHAT HE TOLD MR. SCHMIDT ON
25 SEPTEMBER 7TH, AND WE GET FROM MR. SCHMIDT THAT HE HAS LOST HIS

1 NOTES AND LOST HIS REPORT, IT SEEMS TO ME IT GOES TO THE
2 PROPRIETY OF STRIKING THE WITNESS'S TESTIMONY, YOUR HONOR,
3 BECAUSE INADVERTENTLY OR INTENTIONALLY THE GOVERNMENT HAS LOST
4 THE BASIS FOR US IN CROSS-EXAMINING THIS WITNESS.

5 IT WAS BASICALLY THE INITIAL TIME THEY SAW HIM, THE
6 INITIAL TIME THEY TOOK DEBRIEFING FROM HIM. AND IT WAS THE
7 VEHICLE WE HAD TO WORK WITH.

8 THEY DIDN'T GIVE IT TO US WHEN WE WAS ON THE STAND
9 AND WE WANT TO FIND OUT IF THEY HAD SPOKEN TO HIM BEFORE.

10 THE COURT: WELL, THIS WITNESS HAS SAID HE DOESN'T
11 REMEMBER IF HE MET SEPTEMBER 7TH WITH AGENT SCHMIDT.

12 MR. MEDVENE: YES, SIR. ALL I WAS GOING TO DO, WITH
13 YOUR HONOR'S PERMISSION -- IF I HAVE IT, FINE, AND IF NOT, I
14 WON'T ASK HIM -- IS SHOW HIM THE SEPTEMBER 8TH NOTES THAT
15 PURPORT TO BE CHANGES AND ASK HIM IF HE WAS EVER SHOWN THIS BY
16 MR. SCHMIDT. IF HE WAS, IT MIGHT TEND TO REFRESH HIM IF HE WAS
17 QUESTIONED ON SEPTEMBER 7TH.

18 THE COURT: SHOW IT TO THE WITNESS.

19 MR. MEDVENE: THANK YOU.

20 BY MR. MEDVENE:

21 Q. MR. HARRISON, I PLACE BEFORE YOU, SIR, A DOCUMENT THAT IS
22 DESCRIBED AT THE TOP "SEPTEMBER 8, 1989 INTERVIEW WITH
23 SCHMIDT."

24 IT'S A NUMBER OF PAGES MARKED 6386 THROUGH 6397, AND
25 ASK YOU IF YOU HAVE EVER SEEN THAT BEFORE IN WHOLE OR IN PART?

1 A. YES, I HAVE, SIR.

2 Q. 'AND MAY I QUESTION FOR A MOMENT FROM HERE, YOUR HONOR?

3 THE COURT: YES.

4 BY MR. MEDVENE:

5 Q. WHEN DID YOU FIRST SEE IT, SIR?

6 A. THE LAST TIME I TESTIFIED, I BELIEVE.

7 Q. DID YOU HAVE AN OPPORTUNITY TO READ IT, SIR?

8 A. I DIDN'T READ THROUGH IT ALL BECAUSE I DIDN'T NEED TO. I
9 KNOW WHAT I TOLD THEM AND I KNOW WHAT I TESTIFIED TO.

10 Q. YOU BASICALLY GLANCED THROUGH IT, SIR?

11 A. I BELIEVE I DID.

12 Q. AND IF THAT DOCUMENT IS DATED SEPTEMBER 8, WOULD THAT
13 REFRESH YOU THAT THE PREVIOUS DAY THAT YOU HAD MET WITH MR.
14 SCHMIDT AND HE DEBRIEFED YOU ON YOUR KNOWLEDGE ABOUT THE DRUG
15 TRAFFICKING IN MEXICO AND DRUG TRAFFICKERS' RELATIONSHIPS WITH
16 VARIOUS GOVERNMENT OFFICIALS?

17 A. I'M GENERALLY WILLING TO GO ALONG WITH THE DATE HE PUT ON
18 THERE. I DID NOT SPECIFICALLY TRY TO REMEMBER THE DATES.

19 Q. BUT IF THAT WAS THE DATE OF THIS DOCUMENT, SIR, WOULD THAT
20 REFRESH YOU THAT THIS CORRECTION MEMO, SO TO SPEAK, IF I MAY
21 CALL IT THAT, WAS A MEETING THE NEXT DAY AFTER YOUR INITIAL
22 MEETING WITH MR. SCHMIDT?

23 A. I DON'T REMEMBER IF IT WAS THE INITIAL MEETING WITH HIM OR
24 NOT. I COULDN'T SAY THAT TO YOU, SIR. I CAN ONLY SAY THAT
25 ANYTHING THAT I TOLD HIM I COULD TESTIFY HERE, TOO. I JUST

1 DON'T REMEMBER THE EXACT DATES.

2 Q. ALL RIGHT, SIR. IF WE ASSUMED THAT THE MEETING WITH MR.
3 SCHMIDT THAT'S REFERRED TO IN THE SEPTEMBER 8 DOCUMENT OCCURRED
4 SEPTEMBER 7TH, COULD YOU TELL US, SIR, IF YOU MET WITH ANY
5 D.E.A. REPRESENTATIVES PRIOR TO THAT DATE?

6 A. AT THAT TIME I BELIEVE THE ONLY D.E.A. REPRESENTATIVE THAT
7 I HAD MET WITH HERE IN THE UNITED STATES WAS MR. BERRELLEZ AND
8 MR. SCHMIDT.

9 AND I HAVE SEEN ALL OF THAT, AND THERE IS NOTHING
10 ASIDE FROM WHAT IS CONTAINED IN THAT REPORT AND THE OTHER
11 REPORTS THAT YOU HAVE THAT I HAVE TESTIFIED OR SAID TO THEM
12 THAT IS NOT IN EVIDENCE HERE OR THAT YOU HAVEN'T SEEN.

13 Q. SIR, MY QUESTION, SIR, IS USING SEPTEMBER 7, 1989 AS A
14 DATE, DID YOU MEET WITH ANY REPRESENTATIVE OF THE D.E.A. PRIOR
15 TO THAT DATE, SIR?

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

17 THE COURT: SUSTAINED.

18 BY MR. MEDVENE:

19 Q. YOU TALKED WHEN YOU WERE LAST HERE ABOUT SETTING UP SOME
20 SORT OF COMMUNICATION SYSTEM AT THE REQUEST OF THE D.E.A.

21 WHEN WAS THAT REQUEST MADE OF YOU, SIR?

22 A. I DID NOT TALK ABOUT THAT THE LAST TIME I WAS HERE. I
23 USED THE WORDS "LISTENING POST".

24 Q. ALL RIGHT, SIR. USING YOUR WORDS, SIR, LISTENING POST,
25 WHEN WERE YOU ASKED TO SET UP A LISTENING POST?

1 A. THE FIRST TIME I CAME UP HERE, I WAS GOING TO GO BACK TO
2 MEXICO. WHEN I WENT BACK TO MEXICO, THEY ALREADY KNEW THAT I
3 HAD --

4 THE COURT: DO YOU KNOW WHEN THEY ASKED YOU TO
5 DO THAT?

6 THE WITNESS: I DON'T REMEMBER THE EXACT DATE. IT
7 WAS AFTER THE FIRST TIME I CAME UP HERE. WHEN I WENT BACK,
8 SOMETIME AFTER --

9 THE COURT: WHEN WAS THE FIRST TIME YOU CAME?

10 THE WITNESS: SEPTEMBER, I BELIEVE OF, 1989.

11 BY MR. MEDVENE:

12 Q. AND WHAT WAS THE PURPOSE OF THE LISTENING POST?

13 MR. MEDRANO: OBJECTION, RELEVANCY.

14 THE COURT: SUSTAINED.

15 MR. MEDVENE: ALL RIGHT, SIR. MAY WE ASK ANYTHING
16 ABOUT THE LISTENING POST, YOUR HONOR?

17 MR. MEDRANO: OBJECTION, YOUR HONOR. COVERED ON
18 CROSS.

19 THE COURT: YOU MAY ASK ANY QUESTION DESIGNED TO FIND
20 OUT WHAT PERSONAL KNOWLEDGE THIS WITNESS HAD ABOUT THE
21 STATEMENTS HE MADE TO AGENT SCHMIDT. THAT'S WHAT THIS HEARING
22 IS FOR.

23 MR. MEDVENE: WITH DUE DEFERENCE, YOUR HONOR, WE
24 THOUGHT -- IF THAT'S WHAT IT SET OUT, WE UNDERSTAND, BUT WE
25 THOUGHT IT WAS BROADER THAN THAT.

1 WE THOUGHT IT HAD TO DO WITH CONVERSATIONS WITH
2 D.E.A. AND MISSING D.E.A. REPORTS. WE THOUGHT IT ALSO HAD TO
3 DO WITH THAT.

4 THE COURT: TO THE EXTENT THAT YOU WANT TO ASK THIS
5 WITNESS ABOUT THAT, THAT'S PART OF THE NEXT HEARING, BUT I'D
6 RATHER HAVE YOU DO THAT NOW THAN HAVE THIS WITNESS COME BACK.
7 I WANT TO FINISH WITH THIS WITNESS.

8 MR. MEDVENE: YES, SIR. SO, WITH YOUR PERMISSION,
9 MAY I GET INTO THAT AREA? THAT'S THE ONLY --

10 THE COURT: YOU MAY ASK ANY QUESTIONS THAT ARE
11 PERTINENT.

12 MR. MEDVENE: ALL RIGHT, SIR.

13 BY MR. MEDVENE:

14 Q. I'M TRYING TO DEAL NOW, MR. HARRISON, WITH MEETINGS WITH
15 D.E.A. REPRESENTATIVES THAT YOU HAD DEALINGS WITH SETTING UP A
16 LISTENING POST.

17 AND YOU HAVE TOLD US THERE WAS ONE AT OR AROUND THE
18 TIME YOU FIRST MET WITH D.E.A. REPRESENTATIVE SCHMIDT IN EARLY
19 SEPTEMBER '89; IS THAT CORRECT, SIR?

20 A. YES.

21 Q. WHEN WAS THE NEXT ONE, IF THERE WAS A NEXT ONE?

22 A. THERE WASN'T A NEXT ONE.

23 Q. IT WAS JUST THAT ONE MEETING?

24 A. IT WASN'T A MEETING, IT WAS SOMETHING THAT HECTOR
25 BERRELLEZ AND I DISCUSSED ONE SATURDAY AT THE SAME TIME WE WENT

1 AND PICKED UP SOME EQUIPMENT. TO TELL THE TRUTH, SIR, I WAS
2 MORE INTERESTED IN THE EQUIPMENT.

3 Q. ALL RIGHT, SIR. AND THERE WERE NO OTHER MEETINGS YOU
4 RECALL WITH D.E.A. AGENTS DEALING WITH THE LISTENING POST; IS
5 THAT WHAT YOU'RE SAYING?

6 A. THAT'S TRUE; THERE WERE NO FURTHER MEETINGS.

7 MR. MEDVENE: THANK YOU, YOUR HONOR.

8 THE COURT: DID YOU WANT TO ASK THIS WITNESS IF HE
9 EVER HAD AN AGREEMENT TO SET UP THIS LISTENING POST? THAT'S
10 PART OF YOUR MOTION.

11 MR. MEDVENE: I WANTED TO GET INTO THAT, YOUR HONOR.

12 THE COURT: IT'S JUST A SIMPLE QUESTION: DID HE EVER
13 HAVE AN AGREEMENT.

14 BY MR. MEDVENE:

15 Q. DID YOU HAVE ANY AGREEMENTS WITH THE D.E.A. WITH RESPECT
16 TO A LISTENING POST OR SETTING UP ONE?

17 A. YES, I DID.

18 Q. WHO DID YOU MAKE THAT AGREEMENT WITH?

19 A. HECTOR BERRELLEZ.

20 Q. WHEN DID YOU MAKE THAT AGREEMENT?

21 A. SEPTEMBER OF 1989.

22 Q. WHO ELSE WAS PRESENT WHEN YOU MADE THE AGREEMENT?

23 A. I DON'T BELIEVE ANYBODY WAS.

24 Q. WAS THE AGREEMENT EVER REDUCED TO WRITING?

25 A. NO, IT WAS NOT.

1 Q. WHERE DID THE CONVERSATION TAKE PLACE?

2 A. IT TOOK PLACE AT A HOTEL.

3 Q. IN LOS ANGELES?

4 A. YES.

5 Q. AND WOULD YOU TELL US WHAT YOU SAID AND WHAT HE SAID, SIR?

6 MR. CARLTON: OBJECTION YOUR HONOR. THIS IS JUST
7 GOING TO WHETHER THERE ARE REPORTS OR NOT.

8 THE COURT: WE'RE ONLY TRYING TO FIND OUT IS THAT --
9 YOUR MOTION IS -- YOU'RE CHASTISING THE GOVERNMENT FOR FAILING
10 TO PRODUCE AN AGREEMENT.

11 NOW, HE SAYS THERE IS NO WRITTEN AGREEMENT.

12 MR. MEDVENE: BUT IF THERE WAS A SPOKEN AGREEMENT --

13 THE COURT: HE HAS ALREADY SAID THERE WAS.

14 MR. MEDVENE: ALL RIGHT, SIR. BUT IF WE CAN GET THE
15 DETAILS OF IT, THEN MAYBE WE CAN SEE IF THERE WAS A D.E.A.
16 REPORT. IF THERE IS NOT, WE CAN AT LEAST --

17 THE COURT: IF THERE IS A D.E.A. REPORT, HE'S NOT THE
18 WITNESS TO ASK, IS HE?

19 MR. MEDVENE: HE'S CERTAINLY THE WITNESS TO ASK WHAT
20 THE AGREEMENT WAS SO WE KNOW WHAT WE'RE LOOKING FOR. IF THEY
21 TELL US THERE IS NO REPORT, THEN WE CAN AT LEAST SEE WHAT THE
22 AGREEMENT IS, IF WE'RE PERMITTED TO ASK.

23 THE COURT: HE HAS ALREADY DESCRIBED IT, AS FAR AS I
24 COULD SEE. I DON'T KNOW WHAT ELSE YOU WANT TO ASK HIM ABOUT.

25 MR. MEDVENE: I WANT TO ASK HIM IF HE CAN TELL ME THE

1 DETAILS OF WHAT THE AGREEMENT IS. WHAT WAS HE SUPPOSED TO SET
2 UP AND WHERE AND WHAT WAS IT TO DO?

3 MR. MEDRANO: THE SOLE ISSUE IS THAT IT'S IN WRITING.
4 HE SAYS THERE IS NOTHING IN WRITING, YOUR HONOR. IRRELEVANT.

5 THE COURT: WHAT DID YOU AGREE TO DO?

6 THE WITNESS: I AGREED TO SET UP A NUMBER OF ANTENNAS
7 AND LISTEN ON A NUMBER OF FREQUENCIES AND REPORT ANYTHING THAT
8 HAD TO DO WITH NARCOTICS TRAFFICKING TO MR. BERRELLEZ. THAT'S
9 ALL.

10 THE COURT: AND WAS THAT THE TOTAL AGREEMENT?

11 THE WITNESS: THAT WAS THE TOTAL AGREEMENT.

12 BY MR. MEDVENE::

13 Q. LISTEN IN ON WHO?

14 A. ON THE GENERAL AIR WAVES AND ALL PARTS OF THE FREQUENCY
15 SPECTRUM ON WHICH THERE MIGHT BE RADIO TRANSMISSIONS THAT HAD
16 TO DO WITH NARCOTICS TRAFFICKING WITHIN THE SCOPE AND
17 JURISDICTION OF THE DRUG ENFORCEMENT ADMINISTRATION, AND TO
18 REPORT SUCH ACTIVITY TO MR. BERRELLEZ. THAT WAS IT.

19 MR. MEDVENE: THANK YOU VERY MUCH, YOUR HONOR.

20 THE COURT: NO MORE QUESTIONS.

21 MR. STOLAR: I HAVE SOMETHING TO ASK THE COURT BEFORE
22 THE WITNESS IS EXCUSED, SIR.

23 THE COURT: YES.

24 MR. STOLAR: UNLESS THE GOVERNMENT --

25 THE COURT: ARE YOU FINISHED WITH THIS WITNESS?

1 MR. MEDRANO: THERE IS NO REDIRECT.

2 MR. STOLAR: BEFORE THE WITNESS IS EXCUSED, I THINK
3 IT MIGHT BE IMPORTANT TO ESTABLISH WHILE THE WITNESS IS HERE --
4 AND PERHAPS WITH THE ASSISTANCE OF THE AGENTS AT THE TABLE AND
5 THE GOVERNMENT -- WHO DALE AND BENNY ARE WHO WERE UP ON THE
6 14TH FLOOR TWO WEEKS AGO. DALE PARTICULARLY --

7 THE COURT: WHY IS IT IMPORTANT?

8 MR. STOLAR: BECAUSE I THINK IF DALE IS SOMEBODY WHO
9 IS AVAILABLE, HE OUGHT TO BE CALLED BY THE COURT TO TESTIFY.
10 HE'S THE GUY WHO THIS GENTLEMAN UNDERSTANDS WAS THE C.I.A.
11 AGENT WHO WAS CONFIRMING "YES, WE KNOW WE'RE INVOLVED WITH THE
12 NARCOTICS TRAFFICKERS" WITH THIS WITNESS.

13 THE COURT: WHAT IS YOUR REQUEST?

14 MR. STOLAR: MY REQUEST IS THAT WE ATTEMPT TO
15 IDENTIFY WITH THE COURT'S HELP AND WITH THE WITNESS AND WITH
16 THE AGENTS AND THE PROSECUTORS WHO DALE IS, IF HE WAS HERE TWO
17 WEEKS AGO.

18 MR. MEDRANO: OBJECTION, YOUR HONOR. ALL THAT
19 MATTERS IS THIS MAN'S PERSONAL KNOWLEDGE. HE HAS LAID IT OUT
20 FOR YOU. THIS IS A CONTINUATION OF A FISHING EXPEDITION THAT
21 IS GOING NOWHERE AND WASTING THE COURT'S TIME. WE WOULD
22 OBJECT.

23 THE COURT: THE REQUEST IS DENIED.

24 MR. STOLAR: YOUR HONOR, THE WITNESS SAID --

25 THE COURT: THE REQUEST IS DENIED.

1 MR. STOLAR: WITH RESPECT THEN TO THE HEARING, I
2 BELIEVE THAT AT A BARE MINIMUM, THAT THE GOVERNMENT, OR PERHAPS
3 THE COURT SHOULD CALL AS A COURT'S WITNESS, SOMEBODY FROM THE
4 C.I.A. OR A NATIONAL SECURITY AGENCY PARTICULARLY WITH RESPECT
5 TO THE NARCOTICS OPERATION BEING RUN MR. FELIX GALLARDO.

6 IT IS CLEAR THAT THE ONLY AMERICANS WHO ARE INVOLVED
7 WITH CONTRAS -- AND THIS IS GENERAL KNOWLEDGE THROUGHOUT, AND
8 THE COURT MIGHT EVEN TAKE JUDICIAL NOTICE OF VARIOUS
9 CONGRESSIONAL HEARINGS -- ARE THE C.I.A.

10 THOSE ARE THE AMERICANS. THAT IS WHO'S RUNNING THE
11 CONTRAS. THAT'S CLEAR. IF FELIX GALLARDO IS INVOLVED IN HIS
12 NARCOTICS BUSINESS AND MADE ADMISSIONS TO THIS GENTLEMAN THAT
13 HIS NARCOTICS BUSINESS IS PROTECTED BY THE C.I.A. BECAUSE HE'S
14 DOING THE CONTRA WORK, THEN I THINK THAT WE HAVE AN OBLIGATION
15 TO AT LEAST CALL SOMEBODY WHO HAS KNOWLEDGE OF THAT AND HAVE
16 THAT PERSON FROM THE C.I.A. OR N.S.A. CALL IN TO FIND OUT IF
17 WHAT FELIX GALLARDO TOLD THIS GENTLEMAN IS TRUE.

18 MR. GALLARDO HAD A MAJOR REPUTATION FOR BEING A
19 CONTRA SUPPORTER. THERE IS ALSO -- APPARENTLY, IT IS IN A
20 REPORT OF SOME INFORMATION THAT COMES FROM WERNER LOTZ, ALSO
21 WHO WORKED FOR THE C.I.A. OR WHO WAS AN AGENT OF THE C.I.A. AS
22 A PILOT.

23 THERE IS SOMETHING THAT IS PRETTY CLEAR, PARTICULARLY
24 WITH RESPECT TO MY CLIENT WHO WAS ALLEGEDLY CONNECTED THROUGH
25 FELIX GALLARDO WITH THE BUSINESS THAT HE IS INVOLVED IN, THAT

1 THE NARCOTICS TRAFFICKING IS BEING USED TO FUND THE CONTRAS .

2 I'M REPEATING MYSELF. IT'S PERFECTLY CLEAR. I THINK
3 THE COURT SHOULD COMPEL THE GOVERNMENT TO DO IT OR THE COURT
4 SHOULD CALL SOMEBODY FROM THE C.I.A. OR N.S.A. TO RE UP THE
5 QUESTION OF THE SUBPOENAS THAT ARE ISSUED.

6 THE COURT: I'M NOT GOING TO CALL ANYBODY FROM THE
7 C.I.A. OR ANYBODY ELSE BECAUSE I HAVEN'T HEARD ONE WORD OF
8 COMPETENT EVIDENCE OF ANY C.I.A. INVOLVEMENT. THIS WITNESS'S
9 TESTIMONY IS BASED ENTIRELY ON HEARSAY, SUPPOSITION, RUMORS,
10 GOSSIP, SPECULATION. PEOPLE WITH NO NAMES.

11 THAT IS HARDLY THE BASIS FOR CONTINUING AN INQUIRY OR
12 CALLING WITNESSES BY THE COURT.

13 IT'S CLEAR TO THE COURT THIS WITNESS HAD NO PERSONAL
14 KNOWLEDGE OF WHAT HE REPORTED. HE WAS SIMPLY REPORTING WHAT
15 WAS IN THE AIR AND WHAT WAS BEING SAID AND DISCUSSED AND WHAT
16 HE HEARD FROM VARIOUS PEOPLE.

17 TO USE THAT AS A BASIS FOR ME TO CALL ANYONE OR TO
18 PERMIT IT WOULD BE SIMPLY TO EXTEND THIS FISHING EXPEDITION,
19 WHICH IT WAS WHEN IT STARTED AND IT STILL IS, AND THAT HAS NOT
20 CHANGED. SO THE REQUEST IS DENIED.

21 I'M NOT INVITING ARGUMENT. I'M SIMPLY TELLING YOU
22 THAT YOUR REQUEST IS DENIED.

23 MR. MEDRANO: YOUR HONOR, AT THIS JUNCTURE THEN, IN
24 LIGHT OF YOUR RULING, I WOULD HAVE AN ADDITIONAL REQUEST
25 BECAUSE I THINK IT'S APPROPRIATE AT THIS JUNCTURE.

1 WE SPENT A LOT OF TIME TRYING TO PRESERVE A JURY THAT
2 IS UNTAINTED. DEFENSE COUNSEL -- IT'S THEIR TYPICAL PRACTICE
3 TO HAVE COURTHOUSE STEP INTERVIEWS WITH THE PRESS.

4 WHEN THIS WHOLE ISSUE OF THE C.I.A. BROKE, IT WAS
5 FRONT PAGE NEWS ON VIRTUALLY EVERY MAJOR PAPER IN THE COUNTRY.
6 I WOULD ASK YOU, YOUR HONOR, TO INSTRUCT THE DEFENSE LAWYERS TO
7 HAVE NO COMMENTS TO THE PRESS ON THIS WHOLE ISSUE BECAUSE IT'S
8 GOING TO GET IN THE PRESS AND WE DON'T WANT ANY OF THESE JURORS
9 TO GET AHOLD OF THIS INNUENDO AND HEARSAY, BECAUSE IF THEY
10 CAN'T GET IT IN THIS WAY TO THE JURY, THEY'LL TRY TO BACK DOOR
11 IT THROUGH MAJOR PRESS ARTICLES.

12 I'D ASK THE COURT TO INTERVENE ON THIS LIMITED ISSUE
13 ONLY, YOUR HONOR, BECAUSE IT'S VERY IMPORTANT AND VERY CRUCIAL.
14 AND WE HAVE SPENT TWO MONTHS WITH THIS JURY, AND I THINK THEY
15 SHOULD NOT BE TAINTED IN ANY FASHION BECAUSE OF THEIR
16 COURTHOUSE STEP INTERVIEWS.

17 MR. STOLAR: I'M AFRAID THAT NOW IT'S TOO LATE, BUT
18 I THINK THE FIRST AMENDMENT DOES ALLOW US TO COMMENT AND WE DO
19 COMMENT ON THINGS THAT ARE ON THE RECORD IN COURT.

20 THE COURT: WELL, JUST A MINUTE. I'M GOING TO ISSUE
21 THE SAME ORDER THAT I HAD IN THE LAST CASE, IF I COULD FIND IT.

22 I'LL DO THAT BEFORE WE ADJOURN TODAY. BUT I THINK
23 COUNSEL SHOULD ACT RESPONSIBLY AND BE CAREFUL OF WHAT
24 STATEMENTS ARE MADE.

25 MR. STOLAR: YOUR HONOR, I, PERSONALLY SPEAKING,

1 BELIEVE I HAVE ACTED AS RESPONSIBLY AS I EVER POSSIBLY COULD.

2 THE COMMENTS I MAKE TO THE PRESS HAVE TO DO WITH
3 THINGS THAT HAPPEN IN THE COURTROOM ON THE RECORD -- EVERY
4 SINGLE ONE OF THEM. AND YOU CAN CHECK EVERY QUOTE I'VE EVER
5 MADE. I DO NOT GO OFF ON WILD COMMENT THINGS THAT HAPPEN.

6 EVERYTHING I SAY IS BASED ON WHAT IS ON THE RECORD.
7 FOR GOVERNMENT TO STAND UP HERE WHEN THEY'RE THE ONES WHO ALSO
8 USE THE PRESS, IT SEEMS TO ME --

9 THE COURT: I HAVEN'T SEEN ANYTHING LIKE THAT.

10 MR. STOLAR: CERTAIN INFORMATION TENDS TO GET INTO
11 THE PRESS.

12 THE COURT: I WALK DOWN THE HALLWAY AND I SEE YOU --

13 MR. STOLAR: I DO, BUT CERTAIN INFORMATION GETS INTO
14 THE PRESS THAT DOESN'T COME FROM US.

15 MR. MEDRANO: THE U.S. ATTORNEY HAS A POLICY OF NO
16 COMMENTING WITH THE PRESS DURING THE COURSE OF THIS TRIAL, YOUR
17 HONOR.

18 MR. STOLAR: DOES THAT APPLY TO THE D.E.A. AGENTS AS
19 WELL, YOUR HONOR?

20 MR. MEDRANO: THE U.S. ATTORNEY'S OFFICE IS THE
21 SPOKESPERSON FOR THE GOVERNMENT DURING THE PENDENCY OF THIS
22 TRIAL.

23 MS. KELLY: YOUR HONOR, I DID SUBMIT TO YOUR HONOR A
24 BRIEF IN SUPPORT OF FURTHER CROSS-EXAMINATION WITH RESPECT TO
25 THIS WITNESS BASED ON THE DOCUMENTATION WE RECEIVED TODAY.

1 THE COURT: BASED AND WHAT I HEARD TODAY, I DON'T SEE
2 ANY FURTHER CROSS-EXAMINATION IS WARRANTED, AND PARTICULARLY IN
3 RELATION TO YOUR CLIENT.

4 MS. KELLY: YOUR HONOR, I WOULD JUST ASK YOU TO
5 CONSIDER IT, BECAUSE IN THE BRIEF --

6 THE COURT: YOU SAID YOU SUBMITTED A BRIEF ALREADY?

7 MS. KELLY: I DID SUBMIT IT, YOUR HONOR.

8 THE COURT: THEN I WILL CONSIDER IT, IF YOU HAVE
9 ALREADY SUBMITTED IT.

10 MS. KELLY: THERE IS A DECLARATION THERE FROM A
11 FORMER PROSECUTOR WHO'S NOW A JUDGE IN SAN DIEGO. WELL, NOT
12 HIS DECLARATION, BUT WE SPOKE WITH HIM AND HE DOES CONFIRM THAT
13 NASSIR HARRAH WASN'T ACTING AS A -- HIS PROSECUTION WAS
14 STYMIED. AND THIS WAS A GENTLEMAN WHO IS --

15 THE COURT: BUT THIS FELLOW -- THIS WITNESS SAYS HE
16 HAS NEVER -- HE DOESN'T KNOW HIM.

17 MS. KELLY: WELL, YOUR HONOR, HE SAYS HE DOESN'T KNOW
18 HIM, BUT IN HIS EARLIER TESTIMONY, HE SAID THAT HE WAS HIGH UP
19 ON THE PILE (SIC) IN THE D.F.S., AND THAT'S --

20 THE COURT: HE SAID HE MET HIM ONCE IN MATAMOROS AND
21 HE HAS NOT MET HIM OR TALKED TO HIM SINCE.

22 MS. KELLY: YES, YOUR HONOR. BUT IN HIS TRIAL
23 TESTIMONY HE SAID THAT ON THE HIERARCHY OF SUPERIORS, HE WAS
24 SUPERIOR TO HIS SUPERIOR, MARTINEZ.

25 THE COURT: WHAT IS THIS TO PROVE? WHAT IS THIS

1 CROSS-EXAMINATION FOR?

2 MS. KELLY: BECAUSE, YOUR HONOR, THERE IS -- IF THERE
3 IS RAMPANT GOVERNMENT SANCTIONS BY THE MEXICAN GOVERNMENT AND
4 THE D.F.S. IS INVOLVED IN NARCOTICS SMUGGLING, AND IT IS --
5 THERE ARE C.I.A. OPERATIVES -- THIS NASSIR HARRAH IS A C.I.A.
6 OPERATIVE -- THE C.I.A. IS SANCTIONING THIS CONDUCT, YOUR
7 HONOR. IT GOES TO A DEFENSE OF AUTHORITY.

8 THE COURT: I'LL READ WHAT YOU HAVE FILED, COUNSEL,
9 BECAUSE I'M NOT UNDERSTANDING WHAT YOU'RE TRYING TO ARTICULATE.

10 MS. KELLY: ALL RIGHT.

11 MR. MEDRANO: FINALLY, YOUR HONOR, JUST FOR YOUR
12 INFORMATION, WE ARE READY AT ANY TIME TO COMMENCE WITH
13 REBUTTAL, SHOULD THAT BE NECESSARY THIS AFTERNOON.

14 THE COURT: THAT'S FINE, BECAUSE I'D LIKE TO FINISH
15 WITH THIS OTHER WITNESS.

16 NOW, WE HAD A HEARING, IF YOU'RE STILL INTERESTED IN
17 IT, OF -- REGARDING THE NOTES OF SEPTEMBER 7TH. THAT IS THE
18 HEARING THAT I SAID WE WOULD HOLD RESPECTING THE FAILURE TO
19 PRODUCE SEPTEMBER 7 NOTES AND THE EXISTENCE OF D.E.A. 6
20 REPORTS.

21 D.E.A. 6 REPORTS, OF COURSE, WERE ORDERED DISCLOSED,
22 BUT YOU'RE LOOKING FOR OTHER REPORTS; IS THAT IT?

23 MR. MEDVENE: YES. AND WE'RE TRYING TO ASCERTAIN
24 WHAT HAPPENED TO THE SEPTEMBER 7TH REPORT, YOUR HONOR.

25 THE COURT: THE SEPTEMBER 7TH NOTES; IS THAT RIGHT?

1 MR. MEDVENE: I IMAGINE NOTES.

2 THE COURT: NOTES IS WHAT I UNDERSTOOD THE MOTION TO
3 BE.

4 MR. MEDVENE: YES. WHATEVER THERE IS FROM SEPTEMBER
5 7TH. ALL WE HAVE IS SEPTEMBER 8TH MAKING REFERENCE TO
6 SOMETHING THEY HAD ON SEPTEMBER 7TH.

7 MR. CARLTON: YOUR HONOR, I SHOULD POINT OUT JUST FOR
8 EVERYBODY'S CLARIFICATION THAT AGENT SCHMIDT WILL TESTIFY THAT
9 HE MET WITH MR. HARRISON ON THREE DAYS: THE 7TH, 8TH, AND 9TH.
10 AND HIS NOTES FROM THE 7TH AND 9TH ARE MISSING, AND THAT'S WHAT
11 THIS HEARING WILL DEAL WITH.

12 THE COURT: ALL RIGHT. THE WITNESS MAY STEP DOWN.

13 IS AGENT SCHMIDT HERE?

14 MR. MEDRANO: YES, YOUR HONOR.

15 (WITNESS EXCUSED.)

16 THE COURT: JUST TO MAKE CLEAR, WITH RESPECT TO THE
17 HEARING I CONVENED REGARDING THIS WITNESS -- I THINK I'VE MADE
18 IT CLEAR -- IT IS CLEAR TO THE COURT THAT THE WITNESS HAS NO
19 PERSONAL KNOWLEDGE WHICH WOULD JUSTIFY ANY FURTHER INQUIRY OR
20 THAT WOULD JUSTIFY ANY FURTHER EXAMINATION OF THIS WITNESS
21 BEFORE THE JURY.

22 THE COURT'S FINDING IS THAT THE WITNESS HAS NO
23 PERSONAL KNOWLEDGE OF ANY FACTS THAT WOULD BE RELEVANT TO THIS
24 CASE OTHER THAN WHAT HE HAS ALREADY TESTIFIED TO AND BEEN
25 THOROUGHLY CROSS-EXAMINED ON.

1 CALL AGENT SCHMIDT.

2 (WITNESS ENTERS COURTROOM.)

3 THE CLERK: AGENT SCHMIDT, HAVING PREVIOUSLY BEEN
4 SWORN, YOU'RE REMINDED THAT YOU ARE STILL UNDER OATH.

5 PLEASE BE SEATED AND STATE YOUR NAME FOR THE RECORD.

6 THE WITNESS: MY NAME IS WAYNE SCHMIDT, S C H M I D T.

7

8

VOIR DIRE + EXAMINATION

9 BY MR. CARLTON:

10 Q. AGENT SCHMIDT, DID YOU MEET WITH LAWRENCE HARRISON IN
11 EARLY SEPTEMBER OF LAST YEAR?

12 A. YES, SIR, I DID.

13 Q. DO YOU RECALL THE DATES?

14 A. IT WAS THE AFTERNOON OF 7 SEPTEMBER, THE 8TH AND THE 9TH
15 OF SEPTEMBER.

16 Q. HAD YOU EVER MET LAWRENCE HARRISON PRIOR TO SEPTEMBER 7TH?

17 A. I BELIEVE I WAS BRIEFLY INTRODUCED TO HIM IN THE EARLY
18 PART OF SEPTEMBER 7TH; BUT FOR PURPOSES OF DISCUSSION, NO, I
19 HADN'T MET HIM PREVIOUS TO THAT.

20 Q. HOW LONG DID YOU MEET WITH HIM ON THE 7TH?

21 A. I THINK FOR APPROXIMATELY THREE HOURS.

22 Q. DID YOU MAINTAIN ANY NOTES OF THAT MEETING?

23 A. I TOOK NOTES AT THE MEETING; YES, I DID.

24 Q. AND LIKEWISE ON THE 8TH, HOW LONG DID YOU MEET WITH HIM?

25 A. APPROXIMATELY THREE TO FOUR HOURS.

1 Q. HOW LONG DID YOU MEET WITH HIM ON THE 9TH?

2 A. MAYBE AN HOUR AND A HALF, MAYBE TWO HOURS.

3 Q. DID YOU KEEP NOTES AT EACH OF THESE MEETINGS?

4 A. I TOOK NOTES ON THE 7TH, THE 8TH. AND I BELIEVE, IF
5 MEMORY SERVES ME RIGHT, I BASICALLY WENT THROUGH MY NOTES OF
6 THE 7TH AND 8TH WITH HIM ON THE 9TH.

7 Q. WHAT WAS YOUR PURPOSE IN MEETING WITH HIM ON THE 7TH?

8 A. I WAS -- I BELIEVE I WAS THE FIRST PERSON FROM OUR
9 OPERATION TO MEET WITH HIM AND INTERVIEW HIM, OR AT LEAST
10 ATTEMPT TO INTERVIEW HIM IN DEPTH CONCERNING ANY INFORMATION
11 THAT HE HAD WITH REGARD TO HIS LIFE IN MEXICO AND THE CAMARENA
12 CASE.

13 Q. AND WAS THAT ALSO YOUR PURPOSE IN MEETING WITH HIM ON THE
14 8TH?

15 A. YES, SIR.

16 Q. AND THEN ON THE 9TH, YOUR PURPOSE WAS TO GO OVER THE NOTES
17 THAT YOU HAD PREPARED FROM THE PREVIOUS TWO DAYS, CORRECT?

18 A. CORRECT.

19 Q. DID YOU HAVE SOME DIFFICULTY IN INTERVIEWING MR. HARRISON?

20 A. YES, I DID, FROM A COUPLE STANDPOINTS.

21 Q. WHAT WAS THAT?

22 MR. MEDVENE: OBJECTION. RELEVANCY AND MATERIALITY,
23 YOUR HONOR. THE QUESTION IS --

24 THE COURT: YES, IT SEEMS IRRELEVANT. WHAT IS THIS
25 FOR?

1 MR. CARLTON: THIS GOES TO THE NATURE OF THE NOTES
2 THAT HE PREPARED AND WHAT HE DID WITH THEM, YOUR HONOR.

3 THE COURT: WHY DON'T YOU TELL US -- HAVE HIM
4 DESCRIBE WHAT NOTES HE PREPARED AND WHY HE DID WHAT HE DID.
5 BY MR. CARLTON:

6 Q. AFTER YOU PREPARED YOUR -- THESE WERE HANDWRITTEN NOTES, I
7 TAKE IT, YOU PREPARED?

8 A. YES, SIR.

9 Q. AFTER YOU PREPARED YOUR NOTES OF YOUR MEETINGS WITH MR.
10 HARRISON ON THESE THREE DAYS, WHAT DID YOU DO WITH THEM?

11 A. I BASICALLY PUT THEM IN MY DESK. I HAD MADE XEROXES OF
12 EACH OF THE ORIGINAL COPIES AND PLACED THEM IN FOLDERS INSIDE
13 MY DESK.

14 Q. DID YOU EVER REDUCE THESE NOTES TO FINAL REPORTS?

15 A. NO, SIR, I DIDN'T.

16 Q. WHY WAS THAT?

17 A. AFTER THE THIRD MEETING WITH MR. HARRISON, I WENT TO MY
18 OPERATIONS GROUP SUPERVISOR AND I STRONGLY SUGGESTED THAT HE
19 ASSIGN TWO FLUENT SPANISH SPEAKERS AND HAVE THESE AGENTS
20 INTERVIEW MR. HARRISON IN DEPTH, AND ESPECIALLY AGENTS ASSIGNED
21 TO OUR GROUP WHO HAVE MORE SIGNIFICANT KNOWLEDGE OF MEXICO AND
22 OF INDIVIDUALS INVOLVED IN THE CAMARENA CASE THAN I.

23 Q. AND WAS THAT DONE?

24 A. YES, SIR, IT WAS.

25 Q. DO YOU KNOW WHETHER ANY OTHER AGENTS INTERVIEWED MR.

1 HARRISON SHORTLY AFTER YOU DID?

2 A. I BELIEVE TWO OTHER AGENTS, SENIOR AGENTS.

3 Q. DID THAT RESULT IN A RATHER LENGTHY, TAPED INTERVIEW OF
4 MR. HARRISON, TO YOUR KNOWLEDGE?

5 A. YES, I BELIEVE IT DID.

6 Q. DID YOU REVIEW THE TRANSCRIPT OF THAT INTERVIEW?

7 A. I REVIEWED A COPY OF THE D.E.A. 6 THAT WAS MADE FROM THE
8 TAPE.

9 Q. DID THAT INTERVIEW CONTAIN VIRTUALLY ALL OF THE
10 INFORMATION THAT MR. HARRISON HAD GIVEN TO YOU WHEN YOU SPOKE
11 WITH HIM ON THE 7TH, 8TH AND 9TH OF SEPTEMBER?

12 MR. MEDVENE: OBJECTION. COMPOUND, CALLS FOR A
13 CONCLUSION.

14 THE COURT: OVERRULED.

15 THE WITNESS: AS FAR AS I COULD DETERMINE, YES, SIR.

16 BY MR. CARLTON:

17 Q. AFTER YOU PUT THESE NOTES INTO YOUR DESK, WHAT DID YOU DO
18 WITH THEM NEXT?

19 A. IF MEMORY SERVES ME CORRECT, I REALLY DIDN'T REVIEW THEM
20 AFTER THAT POINT IN TIME. THERE CAME A COUPLE SITUATIONS WHERE
21 I HAD TO MOVE MATERIAL OUT OF MY DESK TO MAKE ROOM FOR OTHER
22 MATERIAL. I PLACED THEM IN FILE BOXES UNDER MY DESK.

23 Q. NOW, DID THERE COME A TIME WHEN YOU WERE ASKED TO GO FIND
24 ANY NOTES OR REPORTS YOU PREPARED ON MR. HARRISON?

25 A. YES, SIR.

1 Q. WERE YOU ABLE TO LOCATE ALL OF THESE NOTES THAT YOU HAD
2 PREPARED?

3 A. NO, SIR. IT WAS A COPY OF -- I BELIEVE IT WAS THE 8TH --
4 WAS THE ONLY NOTES I COULD FIND.

5 Q. WHEN WAS THAT THAT YOU FOUND THOSE NOTES, IF YOU CAN
6 RECALL.

7 A. I DON'T RECALL THE EXACT DATE. APPROXIMATELY A MONTH OR
8 MORE AGO.

9 Q. NOW, BETWEEN THE TIME THAT YOU PUT THE NOTES IN THE FILE
10 BOXES AND THE TIME YOU WERE ABLE TO RETRIEVE THESE NOTES OF
11 SEPTEMBER 8TH, HAD THE D.E.A.'S OFFICE BEEN MOVED?

12 A. YES, SIR. WITHIN THE SAME BUILDING, IT HAD BEEN MOVED.

13 Q. HAD YOUR DESK AND ALL THE FILE BOXES BEEN MOVED AT THAT
14 TIME?

15 A. A NUMBER OF TIMES.

16 Q. HAD YOU -- A NUMBER OF TIMES?

17 A. YES, SIR.

18 Q. DID YOU PERSONALLY MOVE THE FILE BOXES?

19 A. NO, SIR.

20 Q. SO OTHER PEOPLE HAD MOVED THESE FOR YOU?

21 A. YES, SIR.

22 Q. AND HAD YOU LOOKED THROUGHOUT ALL OF THE FILE BOXES IN
23 YOUR DESK IN AN EFFORT TO FIND THE NOTES OF YOUR SEPTEMBER 7TH
24 AND SEPTEMBER 9TH MEETINGS WITH MR. HARRISON?

25 A. I HAVE LOOKED AND TRIED TO FIND THE FILE BOXES, BUT I

1 HAVEN'T BEEN ABLE TO.

2 Q. THE ENTIRE FILE BOXES ARE MISSING?

3 A. YES, SIR.

4 Q. HAVE YOU EXHAUSTED EVERY AVENUE YOU CAN THINK OF IN AN
5 EFFORT TO LOCATE THESE NOTES?

6 A. YES, SIR.

7 Q. IS IT YOUR OPINION THAT THEY HAVE BEEN LOST?

8 A. I BELIEVE SO.

9 MR. CARLTON: NOTHING FURTHER, YOUR HONOR.

10 MR. STOLAR: MAY I ASK ONE.

11 THE COURT: (NO AUDIBLE RESPONSE.)

12

13 FURTHER VOIR DIRE EXAMINATION +

14 BY MR. STOLAR:

15 A. ON SEPTEMBER THE 11TH, YOU WERE WORKING WITH LORENZO
16 HARRISON IN WHAT IS CALLED THE CONFIDENTIAL INFORMANT
17 ESTABLISHMENT PROCESS; IS THAT RIGHT?

18 A. YES, SIR.

19 Q. NOW, WHAT DOES THAT CONSIST OF?

20 MR. CARLTON: OBJECTION, YOUR HONOR. THIS IS WELL
21 BEYOND THE SCOPE.

22 THE COURT: BY THE WAY, THIS IS NOT YOUR MOTION.

23 MR. STOLAR: I UNDERSTAND, JUDGE.

24 THE COURT: WHY ARE YOU IN IT?

25 MR. STOLAR: BECAUSE I THINK THERE IS --

1 THE COURT: JUST SIT DOWN PLEASE.

2 MR. STOLAR: -- THERE IS A PIECE OF --

3 THE COURT: LET COUNSEL WHO FILED --

4 MR. STOLAR: -- 3500 MATERIAL THAT IS MISSING.

5 THE COURT: JUST HAVE A SEAT. LET COUNSEL WHO FILED
6 THE MOTION BE THE PARTY TO EXAMINE THIS WITNESS.

7

8 FURTHER VOIR DIRE EXAMINATION +

9 BY MR. MEDVENE:

10 Q. THE INTERVIEW, MR. SCHMIDT, WITH MR. HARRISON ON SEPTEMBER
11 THE 7TH, WAS THE BASIC INTERVIEW WHERE FOR THE FIRST TIME YOU
12 WROTE DOWN, AS BEST YOU COULD, RESPONSES TO YOUR QUESTIONS
13 ABOUT WHAT DID MR. HARRISON KNOW ABOUT DRUG DEALING IN MEXICO
14 AND THE INVOLVEMENT OF GOVERNMENT OFFICIALS IN DRUG DEALING; IS
15 THAT CORRECT, SIR?

16 A. YES AND NO. IT'S -- BASICALLY, IT WAS -- THE FIRST
17 INTERVIEW WITH MR. HARRISON WAS KIND OF A BREAK THE ICE SORT OF
18 INTERVIEW.

19 I BASICALLY LET HIM GO AHEAD AND GIVE A NARRATIVE AS
20 FAR AS THE INFORMATION HE KNEW.

21 Q. IS IT CORRECT THAT ON THE 8TH WHEN YOU SPOKE TO HIM, A
22 GOOD PART OF SEPTEMBER 8TH WAS GOING OVER CERTAIN OF THE
23 DETAILS OF SEPTEMBER 7TH AND MAKING CORRECTIONS OR ADDITIONS?

24 A. IF I REMEMBER RIGHT, THERE WAS ONE ADDITION FROM THE
25 SEPTEMBER 7TH INTERVIEW, AND THE REST WAS AGAIN MR. HARRISON

1 GOING AHEAD AND DOING A NARRATIVE, BUT MORE INFORMATION.

2 Q. NOW, IS IT TRUE THAT ON THE 8TH YOU ACTUALLY FIRST MADE
3 REFERENCE TO THE 7TH INTERVIEW BY MAKING CERTAIN REFERENCES TO
4 PAGE 17, 18 AND 19 OF THE INTERVIEW YOU HAD DONE THE PREVIOUS
5 DAY?

6 A. CORRECT.

7 Q. SO YOU, WITH ONE EXCEPTION, DIDN'T REPEAT THE FIRST 17
8 PAGES IN WHAT YOU DID ON SEPTEMBER 8TH; IS THAT CORRECT?

9 A. AS BEST MY MEMORY SERVES ME, THAT'S CORRECT.

10 Q. APPROXIMATELY HOW MANY PAGES WAS YOUR INTERVIEW OF THE
11 7TH?

12 A. I SEEM TO RECALL WHEN I INTERVIEWED HIM IT WAS REGULAR,
13 STANDARD NOTE PAPER THAT I HAD IN MY BRIEFCASE. I WOULD HAVE
14 TO SAY PROBABLY MAYBE 20 PAGES OF HANDWRITTEN NOTES.

15 Q. NOW, YOU DON'T RECALL WHAT AREAS YOU COVERED IN ANY
16 DETAIL -- STRIKE THAT.

17 YOU DON'T RECALL IN DETAIL WHAT MR. HARRISON TOLD YOU
18 ON THE 7TH, DO YOU, NOT HAVING YOUR NOTES TO REFRESH YOU?

19 A. NOT IN SPECIFIC DETAIL, NOT AT THIS TIME, NO, SIR.

20 Q. AND YOU REALLY COULDN'T SAY WITH ANY DEGREE OF CERTAINTY
21 WHAT PORTION, IF ANY, OF WHAT HE COVERED WITH YOU ON THE 7TH IS
22 INCLUDED IN THE INTERVIEW YOU ALLUDED TO IN YOUR DIRECT
23 EXAMINATION THAT OCCURRED APPROXIMATELY SEPTEMBER 25TH THAT WAS
24 TAPE RECORDED, CAN YOU?

25 A. IF I UNDERSTAND YOUR QUESTION CORRECTLY, I RECALL AT SOME

1 POINT GOING OVER THE D.E.A. 6, WHICH WAS PREPARED OF THAT -- IT
2 WAS A RATHER LENGTHY D.E.A. 6.

3 AND AT THAT TIME, I MAY HAVE HAD -- I MAY HAVE HAD
4 THE NOTES, BECAUSE I REMEMBER GOING OVER IT. AND AS I WENT
5 OVER CERTAIN AREAS I KIND OF REFRESHED MY MEMORY AS SAYING,
6 "OH, I REMEMBER HIM TELLING ME THIS."

7 OF COURSE, THERE WAS A LOT OF OTHER THINGS IN THAT
8 LENGTHY D.E.A. 6 THAT WAS BASICALLY NEW TO ME.

9 Q. LET ME STEP BACK FOR A MINUTE. ARE YOU SAYING NOW THAT
10 YOU HAVE SOME RECOLLECTION, AFTER YOU WROTE YOUR NOTES OF
11 SEPTEMBER 7TH, OF SEEING OR WORKING WITH THOSE NOTES AT A LATER
12 DATE?

13 A. I THINK IT WOULD BE -- AGAIN, IF MEMORY SERVES ME RIGHT,
14 IT WOULD BE RIGHT AROUND THE SAME TIME THAT 6 WAS WRITTEN.

15 Q. ARE YOU SAYING THAT YOU HAVE A RECOLLECTION OF WORKING
16 WITH THOSE NOTES AT OR AROUND THE END OF SEPTEMBER?

17 A. NOT A HUNDRED PERCENT RECOLLECTION.

18 Q. WELL, CAN YOU SAY WITH CERTAINTY AT THIS TIME THAT AT ANY
19 TIME AFTER SEPTEMBER 8TH YOU MADE REFERENCE TO THOSE NOTES IN
20 CHECKING THE TAPED TRANSCRIPTION THAT WAS DONE THE LATTER PART
21 OF SEPTEMBER?

22 A. NO, NOT WITH A HUNDRED PERCENT CERTAINTY, NO, SIR.

23 Q. WELL, NOT ONLY A HUNDRED PERCENT CERTAINTY, MR. SCHMIDT,
24 IT WOULD BE TRUE, WOULD IT NOT, THAT YOU CAN NOT SAY WITH ANY
25 REASONABLE CERTAINTY THAT AT THE END OF SEPTEMBER, IF YOU

1 LOOKED AT THE TAPE RECORDED CONVERSATION, THAT YOU REFERENCED
2 IT AGAINST ANY NOTES YOU TOOK SEPTEMBER 7TH?

3 THAT'S A FAIR STATEMENT; IS IT NOT, SIR?

4 A. IF I UNDERSTAND YOUR STATEMENT, YES, SIR.

5 Q. ALL RIGHT. SO, HAVING SAID THAT AND HAVING DEVELOPED
6 THAT, YOU REALLY DON'T KNOW AND CANNOT SAY IF AT THE TIME YOU
7 REVIEWED THE TRANSCRIPT AT THE END OF SEPTEMBER YOU HAD THE
8 SEPTEMBER 7TH NOTES WITH YOU, IT WOULD BE A FAIR STATEMENT,
9 WOULD IT NOT, SIR, THAT AS YOU SIT HERE, YOU DON'T KNOW WHAT IN
10 THE SEPTEMBER 7TH NOTES YOU TOOK IS OR IS NOT INCLUDED IN THE
11 SEPTEMBER 25TH TRANSCRIPT?

12 THAT'S A FAIR STATEMENT; IS IT NOT, SIR?

13 MR. CARLTON: I'LL OBJECT TO THAT AS ONE OF THE MOST
14 CONVOLUTED QUESTIONS I'VE EVER HEARD.

15 THE COURT: RESTATE IT.

16 BY MR. MEDVENE:

17 Q. YES, SIR. AS YOU SIT HERE YOU CANNOT TELL US THAT THE
18 SUBSTANCE OF YOUR SEPTEMBER 7TH NOTES IS INCLUDED IN THE
19 TRANSCRIPT OF THE SEPTEMBER 25 INTERVIEW. ISN'T THAT CORRECT,
20 SIR?

21 A. NO, IT'S NOT A HUNDRED PERCENT, COUNSEL.

22 Q. WELL, NOT ONLY NOT 100 PERCENT, BUT YOU CANNOT TELL WITH
23 ANY REASONABLE CERTAINTY, NOT HAVING THE NOTES TO CHECK
24 AGAINST. THAT IS A FAIR STATEMENT, IS IT NOT, MR. SCHMIDT?

25 A. YES, THAT'S A FAIR STATEMENT.

1 Q. ALL RIGHT. NOW, YOU TOOK NOTES OF SEPTEMBER 9TH ALSO AND
2 YOU PUT THOSE IN YOUR DRAWER?

3 A. YES, SIR.

4 NO, I'M SORRY. WHAT I DID WAS -- AGAIN, I'M DOING
5 THIS FROM MEMORY. I WENT OVER THE 7TH AND 8TH WITH MR.
6 HARRISON BASICALLY BECAUSE I KNEW I WAS GOING TO GO BACK TO MY
7 BOSS AND REQUEST THAT A COUPLE SPANISH-SPEAKING AGENTS
8 THOROUGHLY INTERVIEW HIM.

9 Q. DID YOU MAKE -- STRIKE THAT. I DON'T WANT TO MISSTATE
10 YOUR TESTIMONY, BUT YOU HAD THE ORIGINAL OF YOUR NOTES AND YOU
11 MADE A XEROX COPY OF YOUR NOTES FOR THE 7TH; IS THAT CORRECT?

12 A. THE 7TH AND THE 8TH.

13 Q. THE 7TH AND THE 8TH. AND DID YOU DO THE SAME THING FOR
14 YOUR NOTES OF THE 9TH?

15 A. AGAIN, I DON'T -- I'M NOT REALLY A HUNDRED PERCENT SURE
16 WHETHER I MADE ADDITIONAL NOTES ON THE 9TH OR I JUST WENT OVER
17 STRICTLY THE 7TH AND 8TH WITH MR. HARRISON.

18 Q. ALL RIGHT. WHETHER YOU MADE --

19 DID YOU TAKE THE NOTES THAT YOU MADE ON THE 7TH AND
20 8TH AND THE 9TH, IF YOU MADE THEM, AND MAKE COPIES OF WHATEVER
21 NOTES YOU HAD MADE?

22 A. I ALSO MADE AN ADDITIONAL SET, AN ADDITIONAL COPY AND PUT
23 THEM ALL TOGETHER.

24 Q. SO DO YOU REMEMBER STAPLING TOGETHER THE NOTES YOU TOOK OF
25 YOUR HARRISON INTERVIEW?

1 A. I DON'T KNOW IF THEY WERE ALL STAPLED TOGETHER.

2 Q. BUT YOU RECALL WHATEVER NOTES YOU TOOK THE 7TH AND 8TH,
3 AND IF YOU HAD ANY THE 9TH, YOU PUT THEM ALL TOGETHER IN A
4 FOLDER; IS THAT CORRECT?

5 A. YES. THEY WOULD HAVE BEEN IN INDIVIDUAL FOLDERS, BUT YES,
6 THAT'S BASICALLY CORRECT.

7 Q. AND THE FOLDERS WERE TOGETHER?

8 A. YES.

9 Q. NOW, DO YOU REMEMBER IF THEY WERE ALL THREE IN ONE FOLDER
10 OR IN THREE DIFFERENT FOLDERS?

11 A. NO, I THINK THEY WOULD HAVE BEEN IN THREE DIFFERENT
12 FOLDERS.

13 Q. AND YOU KEPT THEM IN YOUR DESK?

14 A. YES, SIR.

15 Q. IS THAT WHERE YOU CUSTOMARILY KEPT REPORTS OF INTERVIEWS,
16 IN A PARTICULAR PLACE IN YOUR DESK?

17 A. BASED ON THE SIZE OF THE FOLDER, THERE WAS ONE DESK DRAWER
18 THAT I COULD KEEP THEM IN AND --

19 Q. SO YOU KEPT THOSE INTERVIEWS THERE AND YOU KEPT OTHER
20 INTERVIEWS YOU DID THERE ALSO; IS THAT CORRECT, OF OTHER PEOPLE
21 OR OTHER EVENTS?

22 A. I DON'T KNOW IF THERE WERE OTHER INTERVIEWS IN THERE.
23 IT'S CUSTOMARILY A SECTION OF THE DESK WHERE YOU KEEP LIKE
24 HANGING FOLDERS.

25 Q. RIGHT. NOW, AFTER MR. HARRISON TESTIFIED HERE SOME WEEKS

1 AGO, WAS THAT THE FIRST TIME THAT -- STRIKE THAT.

2 WERE YOU THE INDIVIDUAL THAT FOUND THE SEPTEMBER 8TH
3 NOTES OR SOMEONE ELSE?

4 A. NO. THE U.S. ATTORNEY, ASSISTANT U.S. ATTORNEY, ASKED ME
5 TO CHECK AND SEE WHATEVER NOTES I HAD, IF I HAD ANY.

6 AND AT THAT TIME I PRETTY MUCH KNEW THAT THE FILE
7 BOXES HAD THE ORIGINAL NOTES IN THEM. IT SHOULD HAVE BEEN
8 ALONG WITH ALL THE COPIES. THE FILE BOXES I COULD NOT FIND.

9 JUST AS AN OFF CHANCE, I DID CHECK THE DRAWER OF THE
10 HANGING FOLDER AREA. AND ON THE BOTTOM OF IT I FOUND ONE SET
11 OF XEROX NOTES, AND THAT WAS, I BELIEVE, FOR THE 8TH. THAT'S
12 ALL I COULD FIND.

13 Q. THE ORIGINAL WASN'T THERE?

14 A. NO.

15 Q. IN THE ORDINARY COURSE, DIDN'T YOU ACTUALLY TURN THE
16 ORIGINAL OF YOUR 7TH AND 8TH NOTES IN TO SOMEONE?

17 A. NO, SIR.

18 Q. DIDN'T YOU GIVE THOSE TO THE INTERVIEWING AGENTS THAT WERE
19 GOING TO DO THE SUBSEQUENT INTERVIEWING AT THE LATTER PART OF
20 SEPTEMBER?

21 A. NO, SIR.

22 Q. IN THE ORDINARY COURSE, IF THERE IS GOING T BE A FOLLOW-UP
23 INTERVIEW BY A DIFFERENT AGENT, IS IT THE CUSTOMARY PRACTICE TO
24 GIVE THE RESULT OF YOUR INTERVIEW TO THE FOLLOW-UP AGENT SO HE
25 WOULD KNOW THE BASE LINE OR WHERE YOU WERE?

1 A. JUST TO STATE THIS -- I DON'T KNOW OF ANY CUSTOMARY
2 PROCEDURAL -- FOR THIS -- TO ANSWER YOUR QUESTION.

3 THE SECOND THING I HAD SUGGESTED WAS THAT THESE
4 AGENTS INTERVIEW HIM FROM SQUARE ONE.

5 Q. SO YOU DIDN'T -- YOU PURPOSELY DIDN'T GIVE THEM NOTES?

6 A. I CAN'T SAY I DIDN'T PURPOSELY GIVE THEM, I JUST --

7 Q. DO YOU KNOW WHETHER YOU GAVE THEM THE ORIGINALS OF YOUR
8 NOTES OR NOT AS YOU SIT HERE TODAY?

9 A. I KNOW I DIDN'T GIVE THEM THE ORIGINALS AND I KNOW I
10 DIDN'T GIVE THEM A COPY, SO THAT I CAN TESTIFY TO.

11 Q. SO YOU HAD AN ORIGINAL AND A COPY OF THE 7TH AND AN
12 ORIGINAL AND COPY OF THE 8TH, AND ALL WERE YOU ABLE TO FIND
13 WHEN YOU LOOKED WAS A COPY OF THE 8TH?

14 A. THAT IS CORRECT, SIR.

15 Q. AND THIS LOOKING WAS AFTER MR. HARRISON HAD TESTIFIED ON
16 THE STAND?

17 A. I DON'T KNOW WHETHER IT WAS AFTER HE TESTIFIED OR -- I
18 REMEMBER APPROXIMATELY A MONTH OR SO AGO I WAS ASKED BY THE
19 U.S. ATTORNEY TO CHECK AND SEE IF I HAD ANY NOTES, AND THAT'S
20 WHAT I DID.

21 Q. WERE ANY OTHER NOTES OR RECORDS FROM YOUR HANGING FILE OR
22 YOUR DRAWER MISSING OTHER THAN THE SEPTEMBER 7TH NOTES, AGENT
23 SCHMIDT, THAT YOU RECALL AS YOU SIT HERE TODAY?

24 A. WELL, I CAN'T ANSWER YOUR QUESTION DIRECTLY. I CAN TELL
25 YOU THAT I TOOK A LOT OF DIFFERENT DOCUMENTS OUT OF THAT ONE

1 DRAWER TO MAKE ROOM: RECEIPTS AND OTHER THINGS, AND VOUCHERS,
2 AND THINGS OF THAT NATURE, AND I PUT THEM IN A FILE BOX.

3 Q. ALL RIGHT, SIR. BUT THERE WERE NO OTHER NOTES OF
4 INTERVIEWS THAT YOU HAD DONE THAT WERE MISSING OTHER THAN THIS
5 SEPTEMBER 7TH, 20-PAGE HARRISON REPORT; IS THAT A FAIR
6 STATEMENT TO THE BEST OF YOUR RECOLLECTION?

7 A. I THINK MR. HARRISON'S PROBABLY -- I'M DOING THIS FROM
8 MEMORY -- PROBABLY ONE OF THE FEW PEOPLE I ACTUALLY
9 PARTICIPATED IN INTERVIEWING, BECAUSE HE'S ONE OF THE FEW
10 PEOPLE THAT SPEAK ENGLISH AS FAR AS THIS CASE GOES.

11 Q. IS IT CORRECT, SIR, THAT THE ONLY MEMO OR NOTES THAT YOU
12 RECALL BEING MISSING FROM YOUR DESK OR HANGING DRAWER OR
13 WHATEVER WERE THE SEPTEMBER 7TH NOTES OF YOUR INTERVIEW WITH
14 MR. HARRISON?

15 TO THE BEST OF YOUR RECOLLECTION, IS THAT A CORRECT
16 STATEMENT?

17 A. I COULDN'T FIND THE 7TH AND THE 8TH ORIGINALS. I FOUND A
18 COPY OF THE 8TH BUT, YES, THAT'S A FAIR STATEMENT.

19 Q. THE ONLY MISSING THINGS HAD TO DO WITH MR. HARRISON; IS
20 THAT CORRECT?

21 A. YES, SIR.

22 MR. MEDVENE: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: DO YOU HAVE ANYTHING FURTHER?

24 MR. CARLTON: NOTHING, YOUR HONOR.

25 THE COURT: YOU MAY STEP DOWN.

1 THE WITNESS: THANK YOU, YOUR HONOR.

2 (WITNESS EXCUSED.)

3 THE COURT: IS THERE ANYTHING ELSE ON BEHALF OF
4 GOVERNMENT WITH RESPECT TO THIS MOTION?

5 MR. CARLTON: ONE MOMENT, YOUR HONOR.

6 (DISCUSSION HELD OFF THE RECORD BETWEEN MR. MEDRANO,
7 MR. CARLTON AND MR. KUEHL.)

8 MR. CARLTON: YOUR HONOR, THE GOVERNMENT CALLS HECTOR
9 BERRELLEZ TO THE STAND, NOT REGARDING THE NOTES BUT REGARDING
10 THE LISTENING POST, UNLESS YOUR HONOR FEELS THAT'S OUT OF THE
11 SCOPE.

12 THE COURT: I THINK THAT HAS BEEN COVERED.

13 MR. CARLTON: ALL RIGHT. VERY GOOD.

14 THE COURT: NOW, COUNSEL, THAT CONCLUDES THE HEARING
15 ON THIS ISSUE.

16 DO YOU WISH TO BE HEARD?

17 MR. MEDVENE: YES, YOUR HONOR.

18 THE COURT: LET'S KEEP IT BRIEF. JUST MAKE YOUR
19 POINT.

20 MR. MEDVENE: OUR POINT IS A SIMPLE ONE, YOUR HONOR.
21 WE WOULD RESPECTFULLY ASK THAT THE TESTIMONY OF MR. HARRISON BE
22 STRUCK. WHETHER BY INADVERTENCE OR NOT, THE NOTES ARE LOST
23 THAT WOULD HAVE BEEN THE BASIS OF CROSS-EXAMINATION, THE
24 INITIAL INTERVIEW OF MR. HARRISON.

25 WHETHER THERE WERE NOTES OF THE 9TH OR NOT, WE KNOW

1 THE FIRST 16 PAGES OF THE NOTES OF THE 7TH ARE LOST. THE OTHER
2 NOTES TAKEN THAT DAY ARE BASICALLY LOST.

3 AND WE THINK IT'S UNFAIR TO IMPOSE ON THE DEFENSE THE
4 OBLIGATION OF MEETING A WITNESS WHO HAS BEEN DEBRIEFED IN
5 DETAILED PART, AND THE RESULTS OF THAT DEBRIEFING ARE GONE.

6 WE'RE NOT CASTING ANY BLAME ON ANYONE; WE'RE JUST
7 SAYING THERE IS AN OBLIGATION ON THE GOVERNMENT TO MAINTAIN
8 THOSE NOTES OR HAVE SOME CREDIBLE EXPLANATION.

9 THE WITNESS HAS SAID THERE ARE NO OTHER NOTES OF ANY
10 KIND THAT HE KNOWS OF THAT ARE MISSING. STRANGELY, THE NOTES
11 OF THE 8TH ARE THERE AND THE NOTES OF THE 7TH ARE NOT THERE.

12 IT'S CURIOUS, YOUR HONOR, AND WE THINK THE BURDEN IS
13 ON THE GOVERNMENT TO COME FORWARD WITH WHERE THEY ARE. IF
14 EVERYTHING WAS THERE, IT MIGHT BE ONE SITUATION.

15 THE COURT: ALL RIGHT.

16 MR. MEDVENE: THANK YOU, YOUR HONOR.

17 MR. CARLTON: YOUR HONOR, JUST VERY BRIEFLY, I THINK
18 THE EVIDENCE IS PRETTY CLEAR THAT THIS WASN'T ANYBODY'S FAULT
19 WHY THESE NOTES ARE MISSING. THIS WAS SIMPLY A MATTER WHERE
20 THE DESK AND THE BOXES WERE MOVED SEVERAL TIMES, AND THE ENTIRE
21 BOXES ARE LOST.

22 I SHOULD POINT OUT THAT THE DEFENSE HAS HAD ACCESS TO
23 A VERY, VERY LENGTHY INTERVIEW OF MR. HARRISON -- 59 PAGES
24 SINGLE-SPACED -- MADE JUST A MATTER OF A WEEK OR TWO AFTER THIS
25 WAS DONE.

1 AGENT SCHMIDT HAS TESTIFIED THAT HE BELIEVES THAT
2 MUCH OF THE SUBSTANCE OF HIS INTERVIEW WAS CONTAINED IN THAT,
3 IF NOT ALL OF IT. CERTAINLY, IF YOU COMPARE THE NOTES OF THE
4 8TH TO THE 59-PAGE INTERVIEW, YOU WON'T FIND ANY DISCREPANCIES
5 BETWEEN THOSE TWO.

6 AND FINALLY, MR. HARRISON HAS BEEN AVAILABLE EVER
7 SINCE THE DAY THAT HE TESTIFIED. THE DEFENSE COULD HAVE CALLED
8 HIM TO ASK HIM ABOUT WHAT HE TOLD AGENT SCHMIDT. AND I BELIEVE
9 HE EVEN TESTIFIED HERE TODAY, ONCE HE GOT PAST THE DATES THAT
10 HE TALKED TO AGENT SCHMIDT, THAT HE REMEMBERED WHAT HE TOLD
11 HIM, AND THEY DIDN'T TAKE ADVANTAGE OF THAT OPPORTUNITY.

12 AND UNDER THESE CIRCUMSTANCES, THE GOVERNMENT SUBMITS
13 THAT STRIKING HIS TESTIMONY WOULD BE AN UNWARRANTED SANCTION
14 FOR SOMETHING THAT WAS ABSOLUTELY NO FAULT OF THE GOVERNMENT.

15 AND ON THAT, WE'LL SUBMIT.

16 THE COURT: WELL, I'M GOING TO DENY THE MOTION TO
17 STRIKE HARRISON'S TESTIMONY. IT APPEARS TO THE COURT THAT THE
18 INFORMATION IS AVAILABLE THROUGH THIS RECORDING THAT WAS MADE
19 AND THIS LENGTHY INTERVIEW OF THE DEFENDANT -- OR OF THE
20 WITNESS, RATHER.

21 AND IT IS THE COURT'S VIEW THAT THAT -- BASED ON THE
22 EVIDENCE OF THIS WITNESS THAT THEY STARTED FROM SQUARE ONE,
23 THAT THAT IS PROBABLY A COMPLETE AND COMPREHENSIVE INTERVIEW OF
24 THAT WITNESS; AND THEREFORE, THE INFORMATION IS AVAILABLE
25 THROUGH OTHER SOURCES. THE MOTION WILL BE DENIED.

1 NOW, AFTER A SHORT RECESS, I THINK WE SHOULD START
2 HEARING THESE REBUTTAL WITNESSES.

3 YOU HAVE SOME EXHIBITS THAT I STILL HAVE TO RULE ON.
4 I'M AWARE OF THAT AND WE'LL DO THAT, BUT I DON'T THINK THAT
5 SHOULD DELAY US.

6 MR. MEZA: THAT'S FINE, YOUR HONOR, WITH THAT
7 UNDERSTANDING.

8 ALSO, THERE ARE SOME GOVERNMENT WITNESSES TO BE
9 CALLED ON REBUTTAL THAT WE WOULD HAVE OBJECTION TO UNDER 403,
10 NOT PROPER REBUTTAL WITNESSES.

11 THE COURT: HOW CAN YOU KNOW THAT?

12 MR. MEZA: WELL, BECAUSE THEY PROVIDED CERTAIN JENKS
13 MATERIAL CONCERNING THAT. AND I'M ASSUMING THAT'S GOING TO BE
14 THE SUBJECT MATTER OF THE TESTIMONY. WE HAVE OBJECTIONS AS NOT
15 BEING PROPER REBUTTAL.

16 THE COURT: WHO IS THE FIRST REBUTTAL WITNESS?

17 MR. MEDRANO: THE FIRST REBUTTAL WOULD BE MR. WENDALL
18 BOYD, YOUR HONOR.

19 THE COURT: MR. WENDALL BOYD?

20 MR. MEDRANO: THAT HAS NOTHING TO DO WITH MR.
21 BERNABE.

22 THE COURT: WHAT IS HE GOING TO REBUT?

23 MR. MEDRANO: HE IS A MEMBER OF THE BUREAU OF PRISONS
24 AND WORKS AT THE M.D.C. FACILITY, YOUR HONOR.

25 THE COURT: HE'LL REBUT THE TESTIMONY OF MR. --

1 MR. MEDRANO: MACIAS BARAJAS, WHO TESTIFIED FOR
2 DEFENDANT ZUNO, YOU MAY RECALL, SIR.

3 THE COURT: WELL, THAT SOUNDS PROPER.

4 MR. MEDVENE: IF THE COURT PLEASE, WE HAVE NO JENKS,
5 WE HAVE NO GIGLIO, WE HAVE BEEN GIVEN NOTHING AT ALL. AND I
6 WOULD ASK THE COURT --

7 MR. MEDRANO: THERE IS NONE, YOUR HONOR.

8 THE COURT: COUNSEL SAYS THERE IS NONE, AND I WOULD
9 BE SURPRISED IF THERE WAS.

10 MR. STOLAR: YOUR HONOR, WHEN THE JURY COMES IN, MAY
11 WE HAVE THE PRIVILEGE OF ANNOUNCING THAT WE REST OUR CASE IN
12 FRONT OF THE JURY?

13 THE COURT: YOU MAY IF YOU WISH, YES.

14 MR. NICOLAYSEN: YOUR HONOR, FOR THE RECORD ON BEHALF
15 OF THE DEFENDANT VASQUEZ, THE CHIEF OF THE INTERPRETER SECTION
16 IS CURRENTLY WORKING ON THE TRANSLATION OF THE SO-CALLED
17 RECANTATION BY MR. ONTIVEROS SO THE COURT WILL HOPEFULLY HAVE
18 IT BY THE END OF THE AFTERNOON.

19 THE COURT: YES. THAT'S ANOTHER MATTER THAT CAN
20 RECEIVED AFTER, SO WE DON'T NEED TO WAIT.

21 IT'S UNDERSTOOD THAT YOU'RE RESTING SUBJECT TO --

22 (BRIEF INTERRUPTION.)

23 MR. MEDVENE: IF THE COURT PLEASE, MAY WE ADDRESS YOU
24 BRIEFLY ON TWO POINTS, YOUR HONOR?

25 ON THE WITNESS BOYD, WE ASK WHILE IT MAY NOT BE

1 TRADITIONAL JENKS, IF THERE ARE ANY REPORTS -- SO WE DON'T TAKE
2 YOUR HONOR'S TIME WHILE THE WITNESS IS ON THE STAND -- IF THERE
3 ARE ANY REPORTS THAT HE PREPARED THAT HE'S RELYING ON?

4 IF THERE ARE REPORTS, WE THINK WE ARE ENTITLED TO
5 THEM.

6 MR. MEDRANO: I'M NOT AWARE OF ANY.

7 THE COURT: ALL RIGHT.

8 MR. MEDVENE: WE WOULD ASK THIS ALSO, YOUR HONOR --
9 NOT TO REARGUE THE MOTION, BUT ON THE DOCUMENTS WITH RESPECT TO
10 THE MARRIAGE AND BAPTISM RECORDS, WE HAVE -- A MR. CUELLAR FROM
11 MEXICO IS HERE AND MR. DI NICOLA IS PREPARED TO PUT HIM ON THE
12 STAND IN TERMS OF -- IT WOULD BE VERY BRIEF AND JUST LIMITED TO
13 THE REQUIREMENT IN MEXICO ABOUT THE NECESSITY TO HAVE THOSE
14 RECORDS LODGED IN PARTICULAR PLACES.

15 HE'S A LAWYER, HE A PROFESSOR OF LAW AND EXPERT IN
16 THE AREA. AND HE'S HERE FROM MEXICO, YOUR HONOR, AND WE WOULD
17 RESPECTFULLY ASK IF HE COULD BE PUT ON AT THIS TIME OUT OF THE
18 PRESENCE OF THE JURY SO YOUR HONOR CAN MAKE A DETERMINATION
19 WHETHER WE'VE MADE A PROPER BASIS.

20 THE COURT: NOT AT THIS TIME. I WANT TO PROCEED WITH
21 THE -- I MAY HEAR FROM THIS WITNESS SO KEEP HIM STANDING BY.

22 MR. MEDVENE: ALL RIGHT. SO IF WE COULD REST SUBJECT
23 TO THE DOCUMENTS, YOUR HONOR, WE'D APPRECIATE IT.

24 THANK YOU, YOUR HONOR.

25 THE COURT: WE'LL RECONVENE IN 10 MINUTES.

1 MR. MEDRANO: IS THERE ANY KIND OF ADMONITION THAT
2 CAN BE GIVEN TO ALL COUNSEL AS TO CONTACTS ON THE C.I.A. ISSUE
3 WITH THE PRESS?

4 THE COURT: YES, THERE IS. HERE IS THE ORDER THAT I
5 MADE IN THE LAST CASE REGARDING DISSEMINATION OF TRIAL
6 PUBLICITY.

7 COUNSEL, I WANT TO CAUTION YOU THAT THESE MEMBERS OF
8 THE PRESS ARE IN COURT AND WITNESS THE PROCEEDINGS. THEY DON'T
9 NEED TO BE TOLD WHAT THE PROCEEDINGS MEAN. I THINK THAT THEY
10 UNDERSTAND LEGAL PROCEEDINGS.

11 BUT HERE IS THE ORDER THAT I AM MAKING AT THIS TIME
12 AND THIS IS TO ALL COUNSEL REGARDING DISSEMINATION OF TRIAL
13 PUBLICITY. IT IMPOSES A BURDEN ON YOU TO DO SOME READING, SO
14 YOU HAD BETTER GET THIS. WE'LL GIVE YOU A WRITTEN COPY OF THIS
15 ORDER.

16 "ALL COUNSEL ARE FORTHWITH ORDERED TO READ
17 LEVINE VERSUS UNITED STATES DISTRICT COURT FOR THE
18 CENTRAL DISTRICT OF CALIFORNIA, 764 FED 2ND 590,
19 NINTH CIRCUIT, 1985, CERTIORARI DENIED, 106 SUPREME
20 COURT 2276, AND RADIO AND TELEVISION NEWS ASSOCIATION
21 VERSUS UNITED STATES DISTRICT COURT FOR THE CENTRAL
22 DISTRICT OF CALIFORNIA, 781 FED 2ND 1443, NINTH
23 CIRCUIT, 1986, FOR GUIDELINES AS TO THE PROPER
24 SUBJECT MATTER FOR DISCUSSION WITH THE MEDIA."

25 "ALL COUNSEL ARE ALSO REFERRED TO

1 DISCIPLINARY RULE 7-107 AND CANNON 20 OF THE AMERICAN
2 BAR ASSOCIATIONS CANNONS OF PROFESSIONAL ETHICS
3 GOVERNING TRIAL PUBLICITY, AS WELL AS THE A.B.A.
4 ADVISORY COMMITTEE ON FAIR TRIALS AND FREE PRESS,
5 STANDARDS RELATING TO FAIR TRIAL AND FREE PRESS;
6 RECOMMENDATIONS RELATING TO THE CONDUCT OF ATTORNEYS,
7 SECTION 1.1 ET SEQ. AND COMMENTARY, FINAL DRAFT 1967,
8 ALL OF WHICH ARE INCORPORATEED IN MY ORDER AS THOUGH
9 FULLY SET FORTH."

10 "COUNSEL ARE ORDERED THEREAFTER TO CONDUCT
11 THEMSELVES IN ACCORDANCE WITH THE GUIDELINES THEREIN
12 IN RELATION TO THIS CASE."

13 SPECIFICALLY, THE PRESS HAS HEARD THIS TESTIMONY AND
14 THEY MAY REPORT IT AS THEY SEE FIT. I DON'T THINK COUNSEL, IN
15 VIEW OF THE FACT THAT IT IS NOT TESTIMONY THAT IS INTENDED FOR
16 THE EYES OR EARS OF THE JURY, THAT YOU SHOULD BE MAKING
17 STATEMENTS ABOUT IT REGARDING WHAT IT MEANS OR YOUR
18 INTERPRETATION OF IT.

19 THE COURT HAS RULED THAT IT IS INCOMPETENT EVIDENCE
20 BECAUSE IT IS BASED ENTIRELY ON HEARSAY AND COULD NOT BE
21 PRESENTED TO THE JURY IN ANY EVENT, SO IT SHOULD NOT BE
22 PRESENTED TO THEM INDIRECTLY, AT LEAST THROUGH YOUR STATEMENTS.

23 INSOFAR AS THE PRESS CAN REPORT IT, THAT'S THEIR
24 BUSINESS. THEY MAY REPORT WHAT THEY HERE IN COURT, BUT THAT IS
25 THE ORDER THAT I WILL MAKE.

1 MR. STOLAR: I UNDERSTAND AND WE'LL GET FAMILIAR WITH
2 THAT, ALTHOUGH I DO KNOW THE A.B.A. CANNON AND THE LOCALE RULE,
3 I WILL READ THOSE CASES.

4 I JUST WANT THE RECORD TO REFLECT AND HAVE THE COURT
5 KNOW SO THAT NOTHING HAPPENS, THAT MS. KELLY AND I SPOKE TO
6 T.V. PEOPLE AT NOON TODAY AND WE SPOKE TO THE PRESS ALSO AT
7 NOON TODAY SO THAT HAPPENED BEFORE YOU SAID THAT.

8 THE COURT: THAT'S FINE. I THINK, THOUGH, THAT
9 MR. MEDRANO, YOUR QUARREL IS NOT WITH SO MUCH WHAT COUNSEL SAYS
10 AS WHAT THE PRESS HAS REPORTED. THEY HAVE REPORTED WHAT HAS
11 TAKEN PLACE IN COURT.

12 MR. MEDRANO: NO, YOUR HONOR. NOT AT ALL. IN FACT,
13 IT'S WHAT THESE ATTORNEYS SAY TO THE PRESS TO GET IT TO THE
14 JURY INDIRECTLY. AND THEY'RE TRYING TO PUT IN FRONT OF THE
15 JURY THIS DEFENSE OF C.I.A. INVOLVEMENT AND THEY'RE GOING TO
16 GET IT TO THEM THROUGH THE PRESS.

17 THAT'S OUR OBJECTION.

18 THE COURT: THAT'S GOING TO BE BEFORE -- THAT'S IN
19 THE PRESS ANYWAY. THE PRESS HAS A RIGHT TO REPORT WHAT THEY
20 SEE AND HEAR IN COURT.

21 MR. MEDRANO: I AGREE, YOUR HONOR, BUT WITHOUT BEING
22 CONSTRUED OR SOMEHOW INTERPRETED BY DEFENSE LAWYERS FOR THE
23 PRESS. THAT'S OUR OBJECTION, YOUR HONOR.

24 THE COURT: WELL, THE PRESS ARE GENERALLY FAIRLY
25 OBJECTIVE AND THEY WILL REPORT THAT THE COURT HAS DECLARED THIS

1 EVIDENCE TO BE INCOMPETENT .

2 THE CLERK: PLEASE RISE. THIS COURT IS NOW IN
3 RECESS .

4 (BRIEF RECESS .)

5 (JURY PRESENT .)

6 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I WANT
7 TO APOLOGIZE TO YOU FOR HAVING TO WAIT SO MUCH OF THE TIME BUT
8 I WANT TO ASSURE YOU WE HAVEN'T BEEN IDLE, WE HAVEN'T BEEN
9 PLAYING CARDS. AND THESE THINGS ARE NECESSARY SOMETIMES, THESE
10 DELAYS, BUT WE TRY TO AVOID THEM AS MUCH AS POSSIBLE.

11 NOW, I CAN TELL YOU THAT THE CASE IS ALMOST OVER IN
12 TERMS OF THE EVIDENCE, AND PROBABLY IN THE NEXT DAY OR SO WE
13 SHOULD BE COMPLETED WITH THE EVIDENCE. THEN YOU WILL HEAR
14 ARGUMENT BY COUNSEL AND INSTRUCTIONS BY THE COURT AND BEGIN TO
15 DELIBERATE .

16 NOW, I BELIEVE THE DEFENDANT'S AT THIS TIME --

17 MR. STOLAR: FOR THE RECORD FOR THE COURT AND JURY, I
18 WOULD INDICATE THAT SUBJECT TO THE ONE EXHIBIT WE HAVE OPEN,
19 THE DEFENSE RESTS .

20 MR. NICOLAYSON: ON BEHALF OF JAVIER VASQUEZ VELASCO
21 SUBJECT TO THE EVIDENTIARY MATTER, I WOULD REST .

22 MS. KELLY: ON BEHALF OF DEFENDANT BERNABE, WE WOULD
23 ALSO REST SUBJECT TO THE RULING .

24 MR. MEDVENE: ON BEHALF OF MR. ZUNO, WE WOULD ALSO
25 REST SUBJECT TO THE MOTION ON DOCUMENTS, YOUR HONOR .

1 THE COURT: LADIES AND GENTLEMEN, WELL THAT MEANS
2 THE DEFENDANT HAVE RESTED. NOW THE GOVERNMENT HAS AN
3 OPPORTUNITY TO PRESENT REBUTTAL WITNESSES.

4 THESE DO NOT GENERALLY TAKE A LONG TIME BUT THEY ARE
5 WITNESSES WHO THEY ARE THE PERMITTED TO CALL FOR THE PURPOSE OF
6 REBUTTING THE EVIDENCE THAT HAS BEEN PRESENTED TO THEM BY THE
7 DEFENDANTS. WHEN THEY FINISH WITH THEIR REBUTTAL, THE
8 DEFENDANTS HAVE AN OPPORTUNITY TO PRESENT REBUTTAL IF THEY WISH
9 TO DO SO.

10 YOU MAY CALL YOUR FIRST REBUTTAL WITNESS.

11 MR. MEDRANO: AT THIS TIME THE GOVERNMENT WOULD CALL
12 MR. WENDALL BOYD TO THE STAND.

13 WENDALL VAN BOYD + PLAINTIFF'S REBUTTAL WITNESS, SWORN

14 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
15 RECORD AND SPELL YOUR LAST NAME.

16 THE WITNESS: MY NAME IS WENDALL VAN BOYD, B O Y D.

17

18 DIRECT EXAMINATION +

19 BY MR. MEDRANO:

20 Q. GOOD AFTERNOON, MR. BOYD.

21 COULD YOU TELL US BY WHOM YOU'RE EMPLOYED, SIR?

22 A. I'M EMPLOYED BY THE M.D.C.-L.A. BUREAU OF PRISONS.

23 Q. WHAT DOES M.D.C. STAND FOR?

24 A. METROPOLITAN DETENTION CENTER. THE BUREAU OF PRISONS,
25 FEDERAL BUREAU OF PRISONS.

1 MR. MEDRANO: YOUR HONOR, PERHAPS IT'S JUST ME BUT
2 I'M HAVING DIFFICULTY HEARING MR. BOYD.

3 THE COURT: LET'S SEE IF WE MOVE THIS UP ABOVE AND
4 GET CLOSER; OTHERWISE, WE HEAR ALL THE BREATHING.

5 LET'S TRY THAT.

6 BY MR. MEDRANO:

7 Q. MR. BOYD, M.D.C., IS THAT THE METROPOLITAN DETENTION
8 CENTER?

9 A. YES.

10 Q. IS THAT FACILITY A SHORT TWO BLOCKS AWAY FROM THIS FEDERAL
11 COURTHOUSE?

12 A. YES.

13 Q. WHAT HAPPENS AT M.D.C.; WHAT IS THE PURPOSE OF THAT
14 FACILITY?

15 A. IT IS A HOLDING AREA OR A JAIL FOR PRISONERS. SOME
16 PRISONERS ARE INMATES THAT HAVE NOT BEEN SENTENCED, PRESENTENCE
17 AND SENTENCED INMATES.

18 Q. AND AT THAT FACILITY DO YOU SUPERVISE INMATES?

19 A. YES, I DO.

20 Q. DO YOU ALSO SUPERVISE OTHER CORRECTIONAL OFFICERS LIKE
21 YOURSELF?

22 A. YES.

23 Q. MR. BOYD, HOW LONG HAVE YOU SERVED OR WORKED AT THE M.D.C.
24 FACILITY?

25 A. THEY HAVE BEEN OPEN FOR TWO YEARS. I HAVE BEEN THERE FOR

1 TWO YEARS .

2 Q. PRIOR TO THAT WERE YOU STILL WITH THE BUREAU OF PRISONS?

3 A. YES .

4 Q. WHERE WERE YOU ASSIGNED BEFORE YOUR M.D.C. ASSIGNMENT?

5 A. AT TERMINAL ISLAND PRISON .

6 Q. HOW LONG WERE YOU THERE?

7 A. FIVE YEARS .

8 Q. FINALLY, MR. BOYD, IN ADDITION TO YOUR FEDERAL EXPERIENCE
9 IN CORRECTIONS, HAVE YOU EVER BEEN IN THE STATE CORRECTIONAL
10 SYSTEM?

11 A. YES, I HAVE .

12 Q. AND HOW LONG WAS THAT?

13 A. NINE YEARS .

14 Q. WHAT STATE?

15 A. THE STATE OF CALIFORNIA .

16 Q. NOW, I'D LIKE TO DIRECT YOUR ATTENTION SPECIFICALLY TO A
17 UNIT AT THE M.D.C.. ARE THERE UNITS FOR VARIOUS INMATES
18 ACROSS THE STREET AT M.D.C.?

19 A. YES, THERE IS .

20 Q. IS THERE A UNIT IN PARTICULAR THAT IS REFERRED TO AS 6-S
21 OR 6-SOUTH?

22 A. YES .

23 Q. HAVE YOU EVER IN THE PAST BEEN ASSIGNED TO 6-SOUTH?

24 A. YES .

25 Q. DO YOU RECALL APPROXIMATELY THE TIME FRAME YOU WERE

1 ASSIGNED TO 6-SOUTH?

2 A. YES. FROM 3 -- THE THIRD MONTH OF THIS YEAR TO THE SIXTH
3 MONTH OF THIS YEAR.

4 Q. SO IT WOULD BE MARCH UNTIL JUNE OF 1990?

5 A. THAT'S CORRECT. THAT WOULD BE THE LAST OF THE THIRD
6 MONTH.

7 Q. AND ARE WE TALKING THE LATTER PART OF MARCH?

8 A. YES, WE CHANGE ON THE 25TH.

9 Q. SO THE END OF MARCH TO THE END OF JUNE?

10 A. THAT IS RIGHT.

11 Q. ABOUT A THREE-MONTH PERIOD?

12 A. THAT'S CORRECT.

13 Q. NOW, WHEN YOU WERE ASSIGNED TO THE 6-SOUTH UNIT, DID YOU
14 HAVE A SPECIFIC TIME SHIFT THAT YOU WERE ASSIGNED TO?

15 A. YES.

16 Q. WHAT WAS THAT, MR. BOYD?

17 A. TWO P.M. TO TEN P.M.

18 Q. NOW, I'D LIKE TO SPEAK BRIEFLY ABOUT THIS 6-SOUTH UNIT
19 WHEN YOU WERE THERE. IS IT A GENERAL POPULATION UNIT?

20 A. YES.

21 Q. APPROXIMATELY HOW MANY INMATES WHEN YOU WERE THERE ON THE
22 AVERAGE WERE HELD AT THE 6-SOUTH UNIT?

23 A. IT FLUCTUATED BELOW 96 TO A HIGH OF 100 -- BETWEEN 127 OR
24 125.

25 Q. AND WOULD THE POPULATION IN 6-SOUTH FLUCTUATE BETWEEN

1 THOSE TWO EXTREME NUMBERS?

2 A. YES.

3 Q. THAT WAS DURING THE THREE-MONTH PERIOD WHILE YOU WERE AT
4 6-SOUTH?

5 A. YES.

6 Q. NOW, WHEN YOU WERE AT 6-SOUTH, ARE THERE CELLS FOR THE
7 INMATES TO SLEEP IN?

8 A. YES.

9 Q. AND ARE INMATES ASSIGNED TO THESE CELLS?

10 A. YES.

11 Q. ON THE AVERAGE, HOW MANY INMATES PER CELL IN 6-SOUTH?

12 A. TWO INMATES.

13 Q. NOW, YOU WOULD COME ON DUTY AT ABOUT 2:00, IS THAT RIGHT?

14 A. YES.

15 Q. NOW AFTER YOU CAME ON, DUTY AT ANY POINT ARE THE INMATES
16 COUNTED?

17 A. YES.

18 Q. ABOUT WHAT TIME WOULD THE COUNTING OF INMATES OCCUR AFTER
19 YOU CAME ON DUTY?

20 A. WE HAD AN OFFICIAL 4:00 COUNT, 4:00 P.M.

21 Q. WHEN INMATES HAD TO BE COUNTED, DID THEY HAVE TO BE IN
22 THEIR CELLS TO BE COUNTED?

23 A. YES, SIR.

24 Q. AFTER THEY WERE COUNTED, COULD THEY WALK OUT OF THEIR
25 CELLS AGAIN?

1 A. YES, THAT'S TRUE.

2 Q. NOW, MR. BOYD, AFTER INMATES WERE COUNTED -- AFTER THEY
3 WERE RELEASED FROM THEIR CELLS, COULD THEY ROAM IN THAT AREA OF
4 THE 6-SOUTH UNIT?

5 A. YES.

6 Q. SO THAT ALL GENERAL POPULATION CO-MINGLE IF THEY SO
7 DESIRED?

8 A. YES.

9 Q. AND DURING THAT TIME ARE THE CELLS UNLOCKED WHEN THE
10 INMATES ARE MINGLING?

11 A. YES, THEY ARE.

12 Q. DURING YOUR SHIFT, MR. BOYD, AT ANY POINT WAS A MEAL
13 SERVED?

14 A. YES.

15 Q. AT ABOUT WHAT TIME WOULD THAT BE?

16 A. APPROXIMATELY FIVE, TEN 'TIL FIVE.

17 Q. WERE YOU INVOLVED WITH THE SERVING OF FOOD IN ANY WAY TO
18 THE INMATES?

19 A. YES, SIR.

20 Q. AFTER THE FOOD WAS SERVED TO THE 6-SOUTH INMATES, WHERE
21 WOULD THE INMATES EAT?

22 A. IN THE DINING AREA.

23 Q. FOR 6-SOUTH?

24 A. FOR 6-SOUTH, YES.

25 Q. AND IS THIS A CENTRAL TYPE OF DINING AREA FOR 6-SOUTH?

1 A. THAT'S CORRECT.

2 Q. AND ARE THERE TABLES THERE FOR THE INMATES TO SIT AT?

3 A. YES, SIR.

4 Q. CAN THE INMATES AT 6-SOUTH EAT ALL TOGETHER IN THAT
5 CENTRAL DINING AREA?

6 A. YES.

7 Q. WHEN THE INMATES ARE EATING AT THIS 5:00 DINNER AREA, CAN
8 THEY EAT IN THEIR CELL?

9 A. NO.

10 Q. ARE THEY ALLOWED TO EAT ANYWHERE ELSE OTHER THAN THE
11 CENTRAL DINING AREA?

12 A. NOWHERE ELSE.

13 Q. NOW, ASIDE FROM THE COUNT AND ASIDE FROM THE MEAL, WHAT DO
14 THE INMATES IN 6-SOUTH DO? WHAT OPTIONS DO THEY HAVE?

15 A. WE HAVE RECREATION, PING-PONG, POOL, BASKETBALL, WE HAVE
16 WHAT WE CALL A DECK -- IT'S AN AREA THAT IS CONNECTED TO PART
17 OF THE UNIT THERE.

18 WE HAVE A WEIGHT MACHINE OUT THERE AND BASKETBALL,
19 THEY CAN PLAY CARDS AND, LIKE I SAID, POOL AND PING-PONG.

20 Q. ANY OTHER TYPES OF GAMES THAT CAN BE PLAYED OTHER THAN
21 CARDS?

22 A. DOMINOES AND THAT'S ABOUT IT. CARDS, DOMINOES.

23 Q. THIS IS THE RECREATION PERIOD AT THE 6-SOUTH UNIT?

24 A. THAT IS CORRECT.

25 Q. AND DURING THIS RECREATION PERIOD, MR. BOYD, ARE THE

1 INMATES ALLOWED TO MINGLE?

2 A. YES, THEY ARE.

3 Q. FINALLY, AT ABOUT WHAT TIME DO THE INMATES HAVE TO BE
4 LOCKED DOWN TO GO TO SLEEP?

5 A. WE START OUR LOCK DOWN AROUND 9:45. THAT'S WHEN WE START
6 CLEARING THE DECK AND BRINGING EVERYONE IN AND PREPARING FOR
7 LOCK DOWN.

8 Q. AND WHEN THEY ARE LOCKED DOWN, DO THEY HAVE TO BE IN THEIR
9 CELLS

10 A. AT 10:00, YES.

11 Q. IS THAT FOR THE ENTIRE EVENING, MR. BOYD?

12 A. YES, IT IS.

13 Q. AND THEY HAVE TO STAY THERE UNTIL THE FOLLOWING MORNING?

14 A. YES.

15 Q. AND THIS IS AGAIN THE TWO PEOPLE PER CELL; IS THAT
16 CORRECT?

17 A. THAT'S CORRECT.

18 Q. NOW, SIR, IF I COULD ASK YOU TO LOOK AT GOVERNMENT EXHIBIT
19 187, I BELIEVE THAT'S IN FRONT OF YOU, DO YOU SEE THAT?

20 MR. MEZA: I'D LIKE TO BE HEARD ON THIS. WE WERE
21 TOLD THERE WERE CERTAIN LIMITED AREAS THAT THIS WITNESS WAS BE
22 GOING TO BE LIMITED TO AND THAT IS GOING BEYOND THE SCOPE OF
23 THAT LIMITATION.

24 THE COURT: THE OBJECTION IS OVERRULED.

25 BY MR. MEDRANO:

1 Q. MR. BOYD, WHEN YOU WERE ASSIGNED TO THE 6-SOUTH UNIT, DID
2 YOU EVER KNOW OR DO YOU KNOW A MAN BY THE NAME OF DAVID MACIAS
3 BARAJAS?

4 A. YES.

5 Q. IF I COULD ASK YOU TO LOOK AT GOVERNMENT EXHIBIT 187,
6 COULD YOU TELL ME WHAT THAT IS?

7 A. THAT'S A PICTURE OF HIM.

8 Q. OF MR. MACIAS BARAJAS.

9 Q. I DIDN'T HEAR. WHAT IS 187?

10 A. 187 IS -- I HAVE 187 HERE.

11 Q. PERHAPS I MISSPOKE. IS THAT THE NUMBER ON THE YELLOW TAG?
12 I MISSPOKE, I'M SORRY. LET ME DIRECT YOU TO 118.

13 CAN YOU TELL ME WHAT 118 IS?

14 A. THAT IS A PICTURE.

15 Q. OF WHO?

16 A. A PICTURE OF WHO? I CALL HIM BARAJAS.

17 Q. THIS IS THE MAN YOU KNEW AS BARAJAS?

18 A. YES.

19 MR. MEDRANO: WE MOVE THE ADMISSION AT THIS TIME.

20 THE COURT: THAT MAY BE RECEIVED.

21 (EXHIBIT # 118 RECEIVED IN EVIDENCE.)

22 BY MR. MEDRANO:

23 Q. NOW, MR. BOYD, WHEN WERE YOU AT 6-SOUTH DID YOU EVER COME
24 TO KNOW A MAN BY THE NAME OF RUBEN ZUNO ARCE?

25 A. COULD YOU REPEAT THAT NAME?

1 Q. WHEN YOU WERE AT 6-SOUTH, DID YOU EVER COME TO KNOW A MAN
2 BY THE NAME OF RUBEN ZUNO ARCE?

3 A. ZUNO, YES.

4 Q. AND DID YOU EVER -- DID RUBEN ZUNO EVER SPEAK TO YOU WHEN
5 YOU WERE AT 6-SOUTH?

6 A. YES.

7 Q. WHAT WERE THE CIRCUMSTANCES UNDER WHICH YOU EVEN HAD ANY
8 CONTACTS WITH HIM?

9 A. NUMEROUS. USING THE PHONE, WHEN HE WOULD COME IN AND OUT
10 FOR DIFFERENT REASONS.

11 Q. WOULD ZUNO EVER ASK YOU TO USE THE TELEPHONE?

12 A. OH, YES, QUITE A BIT.

13 Q. NOW, SIR --

14 MR. MEDRANO: YOUR HONOR, WITH THE COURT'S
15 PERMISSION, IF I MAY ASK MR. BOYD TO STAND AT THIS TIME.

16 Q. MR. BOYD, I'LL ASK YOU TO STAND, AND IF NECESSARY, TO STEP
17 DOWN SO YOU CAN SEE. TELL US IF YOU SEE RUBEN ZUNO ARCE IN THE
18 COURTROOM TODAY, SIR.

19 MR. MEDVENE: WITH THE COURT'S PERMISSION, WE HAVE
20 ASKED MR. ZUNO TO STAND, SIR.

21 THE COURT: ALL RIGHT.

22 BY MR. MEDRANO:

23 Q. DO YOU SEE HIM?

24 A. YES, I DO.

25 Q. IS THAT --

1 A. RIGHT THERE (POINTING).

2 THE COURT: INDICATING MR. ZUNO.

3 YOU MAY BE SEATED.

4 BY MR. MEDRANO:

5 Q. MR. BOYD, WHEN WERE YOU WORKING AT 6-SOUTH, DID IT EVER
6 OCCUR, SIR, THAT YOU SAW THIS BARAJAS MAN WITH RUBEN ZUNO ARCE?

7 A. YES.

8 Q. NOW, CAN YOU TELL US WHEN YOU SAW THIS OR WHAT YOU SAW,
9 RATHER?

10 A. DURING RECREATION TIME AT THE TABLE THE CARDS WERE BEING
11 PLAYED.

12 Q. WOULD YOU SPEAK UP, PLEASE, SIR?

13 A. DURING RECREATION, WHAT WE CALL RECREATION OR FREE TIME,
14 I'VE SEEN THEM AT THE TABLE TOGETHER.

15 Q. AND YOU SAW -- I'M SORRY, DID I INTERRUPT YOU? I'M SORRY.

16 A. NO, YOU DIDN'T INTERRUPT ME.

17 Q. DID YOU SEE MACIAS AND ZUNO?

18 MR. MEDVENE: OBJECTION, IT'S STARTING TO BE LEADING,
19 YOUR HONOR.

20 THE COURT: RESTATE YOUR QUESTION.

21 BY MR. MEDRANO:

22 Q. DID YOU SEE ZUNO AT THAT TABLE?

23 A. YES, SIR, I DID.

24 Q. DID YOU SEE BARAJAS AT THIS TABLE?

25 A. YES.

1 Q. THIS IS THE SAME TABLE?

2 MR. MEDVENE: OBJECTION. IT'S LEADING AND
3 SUGGESTIVE, YOUR HONOR, AND MOVE TO STRIKE.

4 (NO RULING GIVEN.)

5 THE WITNESS: SAME TABLE.

6 BY MR. MEDRANO:

7 Q. WERE GAMES BEING PLAYED AT THAT TIME WHEN YOU SAW THIS?

8 A. CARDS.

9 Q. APPROXIMATELY HOW MANY TIMES DID YOU SEE THESE TWO MEN
10 TALKING TOGETHER AT THAT TABLE?

11 A. MAYBE TWO OR THREE TIMES.

12 Q. NOW, SIR, WERE THERE OTHER OCCASIONS AT THE 6-SOUTH UNIT
13 THAT YOU EVER SAW THESE TWO MEN TOGETHER?

14 A. THE SAME TABLE OR SAME AREA OF THE TABLE? DURING THEIR --
15 WHAT THE SPANISH MEN CALL THEIR SNACK TIME -- THEY WOULD HAVE
16 DORITOS AND SALSA AND THERE WOULD BE 8 OR TEN OF THEM SITTING
17 AND STANDING AROUND THE TABLE AND TAKING ONE AND WALKING AWAY
18 OR SOMETHING OR JUST STANDING.

19 Q. AND WHAT TIME OF NIGHT OR WHAT TIME ARE WE TALKING ABOUT
20 WHEN YOU SAW THIS?

21 A. BETWEEN 5 AND 9.

22 Q. AND ABOUT HOW MANY SUCH TIMES DID YOU SEE THIS OCCUR?

23 A. ONE OR TWO TIMES PROBABLY.

24 Q. IN THAT GROUP OF PEOPLE WAS BARAJAS THERE?

25 A. BOTH.

1 Q. AND ZUNO AS WELL?

2 A. RIGHT.

3 MR. MEDRANO: MAY I HAVE ONE MOMENT, YOUR HONOR?

4 (BRIEF PAUSE.)

5 BY MR. MEDRANO:

6 Q. FINALLY, IF YOU WILL RECALL, MR. BOYD, OVER WHAT PERIOD OF
7 TIME DID IT OCCUR THAT ZUNO OR BARAJAS WERE IN THE SAME UNIT
8 WORKING TOGETHER OR WERE IN THE SAME VICINITY?

9 MR. MEDVENE: OBJECTION, ASKED AND ANSWERED, YOUR
10 HONOR.

11 THE COURT: NO, THAT WAS NOT ASKED AND ANSWERED.

12 MR. MEDRANO: THAT WAS WHEN THE MAN STARTED WORKING
13 AND WHEN.

14 THE COURT: HE ASKED THE WITNESS WHEN HE STARTED
15 WORKING IN 6-SOUTH.

16 HE'S TALKING ABOUT THE PERIOD OF TIME THEY WERE
17 TOGETHER AT A GIVEN TIME.

18 MR. MEDRANO: THAT'S MY EXACT QUESTION, YOUR HONOR.

19 DO YOU UNDERSTAND MY QUESTION, MR. BOYD?

20 THE WITNESS: WOULD YOU REPEAT IT?

21 MR. MEDRANO: CERTAINLY.

22 BY MR. MEDRANO:

23 Q. APPROXIMATELY WHAT PERIOD OF TIME ARE WE TALKING ABOUT, IF
24 YOU REMEMBER, THAT YOU WERE AT THE UNIT AS WELL AS THIS BARAJAS
25 AND RUBEN ZUNO ARCE?

1 A. IT WAS APPROXIMATELY A 7- TO 8-DAY PERIOD OF TIME. A WEEK
2 OR A LITTLE MORE THAT WE WERE ALL IN THE SAME UNIT TOGETHER.

3 Q. IS IT DURING THIS ONE -- PARDON ME -- WAS IT DURING THIS
4 7- TO 8-DAY PERIOD THAT YOU SAW WHAT YOU JUST DESCRIBED FOR US?

5 A. YES.

6 MR. MEDRANO: YOUR HONOR, THAT CONCLUDES DIRECT.
7 THANK YOU.

8 THE COURT: YOU MAY CROSS-EXAMINE THE WITNESS.

9 CROSS-EXAMINATION +

10 BY MR. MEDVENE:

11 Q. GOOD AFTERNOON, MR. BOYD.

12 A. HOW ARE YOU, SIR.

13 Q. FINE, THANK YOU.

14 YOU NEVER OVERHEARD MR. ZUNO AND MR. MACIAS TALK,
15 DID YOU?

16 A. WOULD YOU REPEAT THAT?

17 Q. I ASKED IF YOU EVER HEARD THEM TALK?

18 A. NO, SIR.

19 Q. AND IS THE WAY IT WORKS AT THE JAIL, FORTUNATELY OR
20 UNFORTUNATELY, HISPANIC MEN ARE IN A GROUP TOGETHER AND BLACK
21 MEN ARE IN A GROUP TOGETHER AND CAUCASIANS ARE IN A GROUP
22 TOGETHER?

23 IS THAT THE WAY IT WORKS MOSTLY ON FREE TIME?

24 A. YES.

25 Q. IS IT FAIR TO SAY THAT THE ONLY TIME OF THESE FEW TIMES

1 YOU TOLD US YOU SAW MR. MACIAS AND MR. ZUNO, IT WAS WHEN HE
2 WAS -- THEY WERE TOGETHER AMONGST A GROUP OF HISPANIC MEN?

3 A. YES.

4 Q. AND YOU DIDN'T OBSERVE THEM -- STRIKE THAT.

5 YOU WERE SUPERVISING 100-ODD PEOPLE IN 6-SOUTH DURING
6 THAT WEEK OR SO WHEN THEY WERE BOTH IN 6-SOUTH; IS THAT
7 CORRECT?

8 A. I WOULD HAVE TO CHECK THE RECORDS TO MAKE SURE.

9 Q. IT WAS THAT AMOUNT?

10 A. IT COULD BE.

11 Q. BUT SOME AMOUNT APPROXIMATELY LIKE 100?

12 A. BETWEEN 90 TO 100, LIKE I SAID.

13 Q. YES, SIR. AND YOU NEVER SAW MR. MACIAS -- STRIKE THAT.

14 YOU HAVE TOLD US ALREADY YOU NEVER HEARD THEM TALKING
15 WHILE YOU SAW THEM IN A GROUP. YOU NEVER SAW THEM TALKING TO
16 EACH OTHER, DID YOU?

17 A. NO.

18 Q. AND ISN'T IT TRUE, TO YOUR KNOWLEDGE, THAT THE FIRST TIME
19 YOU EVEN EVER SAW MR. MACIAS WAS AFTER HE HAD ALREADY BEEN
20 INTERVIEWED, IF YOU KNOW, BY THE D.E.A.?

21 MR. MEDRANO: OBJECTION, LACK OF FOUNDATION AND
22 HEARSAY AND BEYOND THE SCOPE.

23 THE COURT: SUSTAINED. THAT MEANS YOU DON'T HAVE TO
24 ANSWER.

25 THE WITNESS: OH.

1 BY MR. MEDVENE:

2 Q. IS IT TRUE, SIR, IF YOU KNOW, THAT BEFORE MR. MACIAS WAS
3 IN 6-SOUTH, HE WAS HOUSED IN WHAT IS CALLED 6-NORTH?

4 MR. MEDRANO: OBJECTION, YOUR HONOR. RELEVANCY AND
5 BEYOND THE SCOPE.

6 THE COURT: SUSTAINED. WELL, ANSWER IT.

7 DO YOU KNOW IF HE WAS IN 6-NORTH BEFORE HE WAS IN
8 6-SOUTH?

9 THE WITNESS: TO BE TRUTHFUL, NO, I DON'T KNOW IF HE
10 WAS IN THERE BEFORE GOING THERE BECAUSE I WAS SOMEWHERE ELSE.

11 BY MR. MEDVENE:

12 Q. IF ONE IS KEPT IN 6-NORTH -- STRIKE THAT.

13 6-NORTH IS A SEPARATE FACILITY FROM 6-SOUTH IS IT
14 NOT?

15 A. YES.

16 Q. AND IF A PERSON WAS HOUSED IN 6-NORTH, THEY WOULD HAVE NO
17 OPPORTUNITY TO EVEN SIT AT THE SAME TABLE AMONG TEN OTHER MEN
18 WITH PEOPLE AT 6-SOUTH; IS THAT CORRECT?

19 MR. MEDRANO: OBJECTION, RELEVANCY AND COMPOUND AND
20 BEYOND THE SCOPE OF DIRECT.

21 MR. MEDVENE: I'LL TIE IT UP, YOUR HONOR.

22 THE COURT: WHAT IS THE QUESTION? PEOPLE IN 6-NORTH
23 DO NOT HAVE A COMMON AREA WHERE THEY SIT WITH PEOPLE IN
24 6-SOUTH?

25 MR. MEDVENE: YES.

1 THE COURT: DO YOU UNDERSTAND THE QUESTION?

2 THE WITNESS: I UNDERSTAND THE QUESTION.

3 THE COURT: WHAT IS YOUR ANSWER?

4 BY MR. MEDVENE:

5 Q. IS THAT CORRECT?

6 A. THEY DON'T.

7 Q. YOU'RE IN 6-NORTH AND YOU JUST SEE THE PEOPLE IN 6-NORTH
8 OR YOU'RE IN 6-SOUTH AND YOU JUST SEE THE PEOPLE IN 6-SOUTH; IS
9 THAT CORRECT?

10 A. ARE YOU TALKING ABOUT ME OR THE INMATES?

11 Q. I'M SORRY, THE INMATES.

12 A. THE INMATES ARE IN 6-SOUTH, THAT IS WHERE THEY'RE HOUSED
13 AT.

14 Q. IF THEY'RE IN 6-NORTH, THAT'S WHERE THEY'RE HOUSED?

15 A. RIGHT.

16 Q. CORRECT?

17 A. CORRECT.

18 Q. AND THE PEOPLE IN 6-NORTH, THE INMATES, DON'T HAVE
19 RECREATION PERIOD WITH THE PEOPLE IN 6-SOUTH; ISN'T THAT
20 CORRECT?

21 A. NOT UNLESS IT'S SOMETHING SPECIAL.

22 Q. BUT AS AN ORDINARY COURSE, THEY DO NOT MINGLE BECAUSE
23 THEY'RE IN A SEPARATE FACILITY; ISN'T THAT CORRECT?

24 A. CORRECT. CORRECT.

25 Q. SO IT IS, IN YOUR EXPERIENCE WORKING AT THE DETENTION

1 CENTER, IF THE SYSTEM -- IF THE PRISON SYSTEM OR THE GOVERNMENT
2 DID NOT WANT TWO PEOPLE EVEN TO SEE EACH OTHER, THEY COULD KEEP
3 ONE, IF THEY WANTED, IN THIS 6-NORTH AND THEY COULD KEEP ONE IN
4 6-SOUTH; ISN'T THAT CORRECT?

5 MR. MEDRANO: OBJECTION, RELEVANCY, YOUR HONOR, AND
6 BEYOND THE SCOPE OF DIRECT.

7 THE COURT: OVERRULED.

8 BY MR. MEDVENE

9 Q. IS THAT CORRECT, MR. BOYD?

10 THE WITNESS: CAN I SAY SOMETHING?

11 THE COURT: YOU MAY ANSWER.

12 THE WITNESS: REPEAT THE QUESTION AND I'LL GIVE YOU
13 THE ANSWER.

14 BY MR. MEDVENE:

15 Q. IF THE GOVERNMENT DID NOT WANT AN INMATE IN 6-NORTH TO BE
16 IN THE VICINITY OF 6-SOUTH, ALL THEY WOULD HAVE TO DO IS PUT
17 ONE INMATE IN 6-NORTH AND THE OTHER INMATE IN 6-SOUTH; ISN'T
18 THAT CORRECT?

19 A. THAT'S INCORRECT.

20 Q. YOU SAY IT'S INCORRECT?

21 A. THAT'S WHAT I SAY; IT'S INCORRECT.

22 Q. LET ME SEE IF I CAN GET IT RIGHT.

23 IF THE PRISON SYSTEM HOUSED AN INMATE IN 6-NORTH AND
24 A DIFFERENT INMATE IN 6-SOUTH, THOSE TWO INMATES WOULDN'T HAVE
25 AN OPPORTUNITY TO - ON A DAILY BASIS - BE IN A RECREATION AREA

1 TOGETHER; ISN'T THAT CORRECT?

2 A. THAT IS CORRECT.

3 Q. OKAY. AND ALL I WAS TRYING TO -- I DIDN'T ASK IT VERY
4 WELL -- WAS IF THE GOVERNMENT DIDN'T WANT MR. JONES TO BE IN
5 THE SAME AREA AS MR. SMITH, ALL THEY WOULD HAVE TO DO IS PUT
6 MR. JONES IN 6-NORTH AND MR. SMITH IN 6-SOUTH.

7 THE COURT: THE QUESTION IS AMBIGUOUS, YES. I
8 SUSTAIN THE OBJECTION.

9 BY MR. MEDVENE:

10 Q. ALL RIGHT. NOW, DO YOU KNOW OR DID YOU HAVE OCCASION TO
11 KNOW EACH OF THE INMATES BY NAME?

12 A. REPEAT THAT.

13 Q. YES, SIR. DID YOU KNOW EACH OF THE INMATES IN 6-SOUTH BY
14 NAME?

15 A. BARAJAS AND ZUNO.

16 Q. BARAJAS?

17 A. BY BARAJAS.

18 Q. YES. DID YOU KNOW THAT SHORTLY AFTER -- STRIKE THAT.

19 BARAJAS WASN'T ANY PROBLEM TO YOU, WAS HE?

20 A. NO.

21 Q. HE WASN'T ANY PROBLEM TO ANYBODY, ANY OF THE GUARDS OR THE
22 INSTITUTION TO THE BEST OF YOUR KNOWLEDGE, WAS HE?

23 A. I COULDN'T SAY FOR ANYONE ELSE.

24 Q. BUT TO THE BEST OF YOUR KNOWLEDGE, HE WASN'T A PROBLEM,
25 WAS HE?

1 A. YES, TO THE BEST OF MY KNOWLEDGE.

2 Q. HE WAS NOT A PROBLEM?

3 A. I HAVEN'T HEARD ANYTHING. I DIDN'T HEAR ANYTHING.

4 Q. THAT HE WAS NOT A PROBLEM?

5 A. THAT HE WAS NOT A PROBLEM.

6 Q. YOU DIDN'T HAVE ANY INFORMATION THAT HE WAS A PROBLEM; IS
7 THAT CORRECT?

8 THE COURT: HOW MANY TIMES DO YOU WANT TO ASK THIS
9 QUESTION?

10 MR. MEDVENE: I WASN'T SURE I HAD IT CLEAR, YOUR
11 HONOR.

12 BY MR. MEDRANO:

13 Q. DO YOU KNOW WHY MR. BARAJAS WAS MOVED FROM ABOUT A WEEK
14 AFTER YOU GOT THERE FROM THE M.D.C. AND PUT IN AN ISOLATION
15 CELL ON TERMINAL ISLAND?

16 MR. MEDRANO: OBJECTION TO THE FORM OF THE QUESTION.
17 BY MR. MEDVENE:

18 Q. DO YOU KNOW WHY MR. BARAJAS WAS MOVED FROM THE M.D.C. TO
19 TERMINAL ISLAND APPROXIMATELY APRIL 27TH?

20 MR. MEDRANO: OBJECTION, RELEVANCY, BEYOND THE SCOPE
21 AND -- BEYOND THE SCOPE (SIC).

22 THE WITNESS: I DON'T KNOW HE WAS MOVED TO A
23 DIFFERENT AREA.

24 THE COURT: WE'RE HAVING TROUBLE HEARING YOU, SIR.
25 KEEP YOUR -- SPEAK UP.

1 THE WITNESS: I DIDN'T KNOW HE WAS MOVED TO ANYWHERE.

2 THE COURT: SO YOUR ANSWER IS YOU DON'T KNOW?

3 THE WITNESS: NO, I DON'T KNOW.

4 BY MR. MEDVENE:

5 Q. DID YOU GET A CALL FROM SOMEBODY THAT ASKED YOU IF YOU HAD
6 EVER SEEN MR. BARAJAS IN THE SAME AREA AS MR. ZUNO SOMETIME THE
7 LATTER PART OF MARCH OF THIS YEAR?

8 DID SOMEBODY CALL YOU AND ASK YOU THAT?

9 A. NO, NO ONE CALLED ME.

10 Q. DID YOU CALL SOMEBODY AND SAY GEEZ, ARE YOU INTERESTED? I
11 SAW MR. ZUNO AND MR. BARAJAS -- I NEVER SAW THEM TALK TO EACH
12 OTHER, BUT THEY WERE AMONGST THE TEN OTHER LATIN MEN AND I SAW
13 THEM AT THE SAME TABLE.

14 MR. MEDRANO: OBJECTION, RELEVANCY. THIS IS A
15 FISHING EXPEDITION.

16 THE COURT: WELL, I THINK THEY'RE TRYING TO ASK YOU
17 WHEN WERE YOU FIRST CONTACTED ABOUT BEING A WITNESS IN THIS
18 CASE?

19 THE WITNESS: SEVERAL DAYS AGO.

20 BY MR. MEDVENE:

21 Q. AND YOU DIDN'T CALL ANYONE; SOMEONE CALLED YOU?

22 A. I TALKED -- YOU MEAN A PHONE CALL?

23 Q. YES. IN OTHER WORDS --

24 A. NO. NO PHONE CALL.

25 THE COURT: SOMEBODY CAME TO SEE YOU?

1 BY MR. MEDVENE:

2 Q. DID SOMEBODY COME TO SEE YOU?

3 A. MY LIEUTENANT.

4 Q. WHAT IS HIS NAME?

5 A. LIEUTENANT CLARK.

6 Q. ALL RIGHT. AND DID MR. CLARK COME TO YOU AND SAY IN
7 SUBSTANCE THAT SOMEBODY --

8 MR. MEDRANO: OBJECTION TO THE FORM OF THE QUESTION,
9 YOUR HONOR.

10 THE COURT: THE FORM OF THE QUESTION IS IMPROPER.
11 YOU CAN ASK HIM WHAT HE SAID TO HIM.

12 BY MR. MEDVENE:

13 Q. DID MR. CLARK ASK YOU IF YOU HAD ANY INFORMATION, WHETHER
14 YOU EVER SAW MR. ZUNO AND MR. MACIAS IN THIS SAME VICINITY?

15 A. YES, HE DID.

16 Q. AND DID HE TELL YOU WHO WANTED TO KNOW THAT?

17 A. NO, HE JUST ASKED ME IF I HAD EVER SEEN THEM.

18 Q. DO YOU REMEMBER THE NAMES OF THE OTHER LATIN MEN THAT WERE
19 AT THE SAME TABLE BASICALLY WHENEVER YOU SAW -- THE FEW
20 OCCASIONS YOU SAW MR. ZUNO OR MR. BARAJAS?

21 DO YOU REMEMBER THEIR NAMES?

22 A. FACES. I HAVE PICTURES HERE I COULD -- SEVERAL, MORE THAN
23 LIKELY.

24 Q. BUT NOT THE NAMES?

25 A. OFFHAND, NO.

1 Q. DO YOU REMEMBER EACH OF THEIR FACES?

2 A. NO, I COULDN'T REMEMBER EACH OF THEIR FACES. IT WAS LIKE
3 THEY MOVED -- SITTING THERE AND THEN SOME GET UP.

4 Q. SOME GET UP AND OTHERS SIT DOWN?

5 A. CORRECT.

6 Q. MR. ZUNO MIGHT BE SITTING IN A GROUP OF TEN OR MORE LATIN
7 MEN AND THEN GET UP AND DO SOMETHING ELSE; IS THAT CORRECT?

8 A. THAT HAS HAPPENED.

9 Q. OKAY. NOW, MR. MACIAS, TO THE BEST OF YOUR KNOWLEDGE,
10 DOES NOT PLAY CARDS, DOES HE?

11 A. I HAVE NO IDEA.

12 Q. YOU'VE NEVER SEEN HIM PLAY CARDS, HAVE YOU?

13 A. I'VE SEEN HIM AT THE TABLE WHERE CARDS ARE BEING PLAYED.

14 Q. BUT DID YOU EVER SEE HIM PLAYING CARDS?

15 A. I'VE NEVER SEEN CARDS IN HIS HANDS.

16 Q. YOU NEVER SAW HIM PLAY DOMINOES, DID YOU?

17 A. I NEVER NOTICED -- JUST AT THE TABLE WHERE IT IS BEING
18 PLAYED.

19 Q. NOW MR. ZUNO, THOUGH, UNLIKE MR. MACIAS, YOU'VE SEEN HIM
20 PLAY CARDS AT THE TABLE WITH OTHER LATIN MEN, HAVEN'T YOU?

21 A. THE SAME. I'VE SEEN HIM WHERE THE CARDS AND DOMINOES ARE
22 BEING PLAYED.

23 Q. THE COUPLE OF OCCASIONS YOU REMEMBER MR. MACIAS BEING AT
24 THE SAME TABLE AS THE OTHER LATIN MEN, THE OCCASION THE LAST
25 WEEK OR SO OF MARCH, THERE WAS NOTHING IN PARTICULAR MR. MACIAS

1 DID ON THOSE COUPLE OF OCCASIONS TO ATTRACT YOUR ATTENTION, WAS
2 THERE?

3 A. WOULD YOU REPEAT THAT?

4 Q. YES, SIR. THIS LAST WEEK IN MARCH WHEN YOU SAW MR. MACIAS
5 AT THE TABLE WITH A NUMBER OF LATIN MEN AND ONE OF THEM WAS MR.
6 ZUNO, ON OCCASION -- THERE WAS NOTHING THAT MR. MACIAS DID ON
7 THOSE OCCASIONS TO ATTRACT YOUR ATTENTION; ISN'T THAT TRUE?

8 HE DIDN'T STAND UP AND SHOUT OR MAKE A LOT OR NOISE
9 OR SOMETHING LIKE THAT?

10 A. ARE WE TALKING ABOUT LAST WEEK OR ARE WE TALKING ABOUT THE
11 THIRD AND FOURTH OR FOURTH MONTH?

12 Q. NO, SIR, WE'RE TALKING ABOUT THIS ONE WEEK WHEN YOU WERE
13 AT THE METROPOLITAN DETENTION CENTER AT THE END OF MARCH WHEN
14 MR. MACIAS WAS THERE, AND I'M ASKING YOU DURING THAT WEEK WHEN
15 YOU SAID YOU SAW HIM FROM TIME TO TIME WITH THE OTHER LATIN
16 MEN, IS IT TRUE THERE WAS NEVER ANYTHING HE DID TO ATTRACT YOUR
17 ATTENTION IN PARTICULAR?

18 A. NO. NO.

19 Q. IS MY STATEMENT A CORRECT ONE?

20 A. THAT'S RIGHT.

21 Q. DID YOU MAKE ANY NOTES OF ANY KIND OR DO YOU MAKE ANY
22 NOTES OF ANY KIND WHEN YOU SEE ONE INDIVIDUAL SITTING WITH
23 ANOTHER OR SITTING AT THE SAME TABLE WITH TEN PEOPLE; DO YOU
24 MAKE ANY RECORD OF THAT?

25 A. NO.

1 Q. IT IS A THING YOU SEE EVERY DAY, THE LATINS TOGETHER AND
2 THE BLACKS TOGETHER AND THE CAUCASIANS TOGETHER?

3 MR. MEDRANO: OBJECTION, ASKED AND ANSWERED.

4 THE COURT: SUSTAINED.

5 MR. MEDVENE: I HAVE NOTHING FURTHER, YOUR HONOR.
6 THANK YOU VERY MUCH.

7 THE COURT: ANY REDIRECT? ALL RIGHT.

8

9 CROSS-EXAMINATION +

10 BY MR. STOLAR:

11 Q. DO YOU HAVE ANY SPECIFIC RECOLLECTION OF WHEN IT WAS THAT
12 YOU WERE FIRST CONTACTED ABOUT YOUR TESTIMONY IN THIS CASE BY
13 YOUR LIEUTENANT?

14 A. YES. IT WAS ON THE NIGHT SHIFT LAST WEEK.

15 Q. WHAT DAY LAST WEEK; DO YOU KNOW?

16 A. TUESDAY OR WEDNESDAY LAST WEEK.

17 Q. WHO WAS -- WHO, IF ANYONE, WAS YOUR NEXT CONTACT WITH
18 CONCERNING YOUR TESTIMONY IN THIS CASE? WITH WHOM DID YOU HAVE
19 THE NEXT CONTACT ABOUT IT AFTER YOU SPOKE TO THE LIEUTENANT?

20 A. ANOTHER LIEUTENANT CALLED MY HOUSE THE SAME DAY.

21 NO, IT WAS SEVERAL DAYS LATER. THIS WAS A WEEK
22 BEFORE LAST. I'M SORRY, THE WEEK BEFORE LAST, AND ADVISED ME
23 THAT I HAD TO COME DOWN HERE TO THE -- TO HIS OFFICE.

24 Q. DID YOU COME DOWN HERE?

25 A. YES, I DID.

1 Q. AND DO YOU REMEMBER WHAT DAY THAT WAS?

2 A. THE FIRST DAY I WAS HERE, WHICH WAS LAST WEEK, WAS MONDAY.

3 Q. WITH WHOM DID YOU SPEAK AT THAT TIME?

4 A. THE ATTORNEY.

5 Q. THERE ARE TWO OF THEM HERE AT THE TABLE. MR. MEDRANO?

6 A. MR. MEDRANO.

7 Q. WAS ANYBODY ELSE PRESENT?

8 A. AT THE TIME WE SPOKE? THERE WERE SEVERAL ATTORNEYS GOING
9 IN AND OUT.

10 Q. MR. BERRELLEZ OR MR. KUEHL HERE?

11 A. I'VE SEEN ALL THREE OF THEM IN AND OUT OF HIS OFFICE
12 DURING THAT TIME.

13 Q. AND DID YOU HAVE ANY SUBSEQUENT CONVERSATIONS WITH EITHER
14 OF THE AGENTS OR MR. MEDRANO BETWEEN LAST MONDAY AND TODAY?

15 A. YES.

16 Q. HOW MANY OCCASIONS?

17 A. APPROXIMATELY FOUR.

18 Q. FOUR OTHER? FOUR SEPARATE OCCASIONS YOU DISCUSSED YOUR
19 TESTIMONY WITH MR. --

20 A. MR. MEDRANO.

21 Q. -- MR. MEDRANO?

22 Q. DO YOU HAVE ANY IDEA HOW LONG THE SESSIONS WERE WHEN YOU
23 WERE DISCUSSING YOUR TESTIMONY WITH HIM?

24 A. 20 MINUTES.

25 Q. EACH? 20, 30 MINUTES EACH?

1 A. AROUND THERE.

2 Q. ALL RIGHT. AND THE PHOTOGRAPH THAT YOU IDENTIFIED, IN
3 FACT, THAT IS A XEROX COPY OF A PHOTO; IS IT NOT?

4 A. YES, IT IS.

5 MR. STOLAR: THANK YOU. I HAVE NOTHING FURTHER.

6 THE COURT: ANY REDIRECT?

7 MR. MEDRANO: VERY BRIEFLY, YOUR HONOR.

8

9 REDIRECT EXAMINATION +

10 BY MR. MEDRANO:

11 Q. WHEN YOU SAW THEM PLAYING CARDS, HOW MANY MEN WOULD BE AT
12 THE CARD TABLE?

13 MR. MEDVENE: OBJECTION. WHEN HE SAYS THEY WERE
14 PLAYING CARDS, THERE IS NO TESTIMONY MR. ZUNO OR MACIAS EVER
15 PLAYED CARDS TOGETHER. THAT MISSTATES THE RECORD.

16 BY MR. MEDRANO:

17 Q. AND YOU HAVE DESCRIBED WHEN YOU SAW ZUNO AND MACIAS AT THE
18 SAME TABLE; DO YOU RECALL THAT?

19 A. YES.

20 Q. WHERE CARDS WERE BEING PLAYED; DO YOU REMEMBER THAT?

21 A. YES.

22 Q. HOW MANY MEN WOULD BE AT THE TABLE THOSE TIMES YOU SAW
23 THEM?

24 A. ALL SEATS WERE FULL, FOUR ON EACH SIDE.

25 Q. SO EIGHT PEOPLE AT THE TABLE?

1 A. YES.

2 Q. AND WHEN YOU SAW THE MEN PLAYING CARDS, YOU DON'T RECALL
3 WHICH OF THE MEN WAS HOLDING CARDS IN THEIR OWN HANDS, DO YOU?

4 MR. MEDVENE: OBJECTION, LEADING SUGGESTIVE AND
5 OUTSIDE THE SCOPE.

6 THE COURT: OVERRULED.

7 THE WITNESS: NO, I JUST SAW THEM PLAYING CARDS.

8 BY MR. MEDRANO:

9 Q. FINALLY, MR. BOYD, WHEN ZUNO WOULD ASK YOU TO USE THE
10 TELEPHONE, WHAT LANGUAGE WOULD HE SPEAK TO YOU IN?

11 A. ENGLISH.

12 MR. MEDVENE: OBJECTION --

13 THE COURT: OVERRULED.

14 BY MR. MEDRANO:

15 Q. WHEN INMATES ARE IN TWO SEPARATE UNITS, 6-NORTH AND
16 6-SOUTH, CAN THEY STILL COMMUNICATE?

17 MR. MEDVENE: OBJECTION, THAT'S SPECULATION, YOUR
18 HONOR. IT'S A SPECULATIVE QUESTION, "CAN THEY"?

19 THE COURT: OVERRULED.

20 BY MR. MEDRANO:

21 Q. DID YOU HEAR THE QUESTION, MR. BOYD?

22 A. WOULD YOU REPEAT IT, PLEASE.

23 Q. WHEN ONE INMATE IS AT 6-NORTH AND THE OTHER IS AT 6-SOUTH,
24 CAN THEY STILL COMMUNICATE?

25 A. YES.

1 Q. IN WHAT FASHION? HOW?

2 A. ON A REC DECK.

3 Q. WHAT IS A REC DECK? IS THAT A RECREATION DECK?

4 A. IT IS A RECREATION AREA. I'M SORRY.

5 WE HAVE A DOOR THERE THAT'S BETWEEN THE TWO DECKS FOR
6 SAFETY REASONS, AND THEY CAN HOLLER BACK AND FORTH. HOWEVER,
7 THERE IS A PENALTY IF I CATCH THEM OR IF THE OTHER OFFICERS
8 CATCH THEM THAT THEY HAVE TO PAY.

9 Q. BUT THEY CAN HOLLER BETWEEN TWO DECKS?

10 A. YES.

11 Q. FINALLY, AT THE M.D.C., IS IT THE BUREAU OF PRISONS THAT
12 DECIDES WHAT UNIT TO PLACE AN INMATE AT?

13 A. YES.

14 MR. MEDRANO: MAY I HAVE A MOMENT, YOUR HONOR.

15 (BRIEF PAUSE.)

16 MR. MEDRANO: THAT CONCLUDES REDIRECT, YOUR HONOR.

17 MR. MEDVENE: TWO QUESTIONS, YOUR HONOR.

18 RE-CROSS-EXAMINATION +

19 BY MR. MEDVENE:

20 Q. MR. BOYD, YOU NEVER OBSERVED UP ON THE ROOF OR ANYWHERE
21 ELSE MR. ZUNO AND MR. MACIAS YELLING AT EACH OTHER OR CALLING
22 TO EACH OTHER, DID YOU?

23 A. WOULD YOU REPEAT THAT?

24 Q. MR. MEDRANO ASKED YOU SOME QUESTIONS ABOUT COULD YOU BE ON
25 THE ROOF SOMEWHERE IF YOU'RE IN 6-NORTH AND YELLED TO SOMEBODY

1 ON SOME ROOF ON 6-SOUTH.

2 YOU NEVER SAW MR. MACIAS AND MR. ZUNO UP ON ANY ROOFS
3 YELLING AT EACH OTHER, DID YOU?

4 A. OUR SECURITY WOULDN'T ALLOW THAT, NO.

5 THE COURT: HE SAID REC DECK.

6 BY MR. MEDVENE:

7 Q. YOU NEVER SAW THEM YELLING OR CALLING TO EACH OTHER UP ON
8 ANY REC DEC, DID YOU?

9 A. NO.

10 Q. MR. MEDRANO ASKED YOU WHOSE CUSTODY IS THE PRISONER IN.
11 MR. MACIAS WAS BROUGHT, TO YOUR KNOWLEDGE, BY THE U.S.
12 ATTORNEY'S OFFICE OUT ON A WRIT OF HABEUS CORPUS FROM
13 LEVENWORTH TO THE M.D.C.; ISN'T THAT CORRECT, SIR?

14 MR. MEDRANO: OBJECTION TO THE FORM OF THE QUESTION,
15 BEYOND THE SCOPE.

16 THE COURT: SUSTAINED.

17 BY MR. MEDVENE:

18 Q. DO YOU KNOW IF MR. MACIAS, WHEN HE WAS OUT THERE, WAS
19 UNDER THE CUSTODY OF THE BUREAU OF PRISONS OR WAS SPECIFICALLY
20 A PRISONER WHO WOULD BE MOVED BY THE U.S. ATTORNEY'S OFFICE AND
21 THE D.E.A. WHEREVER THEY WANTED TO MOVE HIM?

22 MR. MEDRANO: COMPOUND AND CONVOLUTED.

23 THE COURT: SUSTAINED.

24 MR. MEDVENE: I HAVE NOTHING FURTHER, YOUR HONOR.

25 THE COURT: THANK YOU. REDIRECT?

1 MR. MEDRANO: NO REDIRECT, YOUR HONOR.

2 THE COURT: YOU MAY STEP DOWN.

3 (WITNESS EXCUSED.)

4 MR. CARLTON: AT THIS TIME THE GOVERNMENT WOULD CALL
5 GREGORY LEE TO THE STAND.

6 MR. STOLAR: THE RECORD SHOULD REFLECT THAT THE
7 WITNESS WAS IN THE COURTROOM DURING THIS LAST WITNESS'S
8 TESTIMONY.

9 THE COURT: YES, HE WAS.

10 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

11 THE WITNESS: I DO.

12 GREGORY D. LEE + PLAINTIFF'S WITNESS, SWORN

13 MR. MEDVENE: IF THE COURT PLEASE, THERE WAS A RULE
14 THAT THE WITNESS MAY NOT BE IN THE COURTROOM.

15 THE COURT: THAT'S CORRECT, THERE WAS A RULE. WHY
16 WAS THIS WITNESS IN THE COURTROOM?

17 MR. CARLTON: I DON'T KNOW, YOUR HONOR. I CAN SAY
18 THAT HIS SYSTEM HAS ABSOLUTELY NO RELATIONSHIP TO WHAT WAS
19 TESTIFIED TO.

20 THE COURT: KEEP OTHER WITNESSES OUT.

21 MR. MEDVENE: IS IT POSSIBLE -- WE DON'T KNOW WHO THE
22 WITNESS IS OR WHAT HE HAS TO DO.

23 THE COURT: YOU'LL HEAR IN A MOMENT, SIR. JUST BE
24 SEATED. PROCEED.

25 DIRECT EXAMINATION +

1 BY MR. CARLTON:

2 Q. I'M SORRY, I DIDN'T HEAR IF YOU STATED YOUR NAME FOR THE
3 RECORD.

4 A. GREGORY D. LEE, L E E.

5 Q. MR. LEE, WHAT IS YOUR EMPLOYMENT?

6 A. I'M A SPECIAL AGENT WITH THE U.S. DEPARTMENT OF JUSTICE
7 DRUG ENFORCEMENT ADMINISTRATION.

8 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY THE D.E.A.?

9 A. SINCE 1983.

10 Q. WHERE ARE YOU PRESENTLY ASSIGNED?

11 A. I'M ASSIGNED TO THE SAN FRANCISCO FIELD DIVISION IN THE
12 SAN JOSE, MEADE, MONTEREY POSTAL DUTY.

13 Q. I WOULD ASK YOU TO LOOK IN FRONT OF YOU TO WHAT HAS BEEN
14 MARKED AS EXHIBIT 184.

15 A. YES, SIR.

16 Q. DO YOU RECOGNIZE THAT?

17 A. YES, I DO.

18 Q. WHEN DID YOU FIRST SEE THAT? WHAT IS IT, BY THE WAY?

19 A. IT'S A MICRO-CASSETTE THAT I FIRST OBSERVED A WEEK AGO,
20 THURSDAY, JUNE 28TH, HERE IN THIS COURTROOM.

21 Q. AND DID YOU AT THAT TIME SEE THAT MICRO-CASSETTE IN THE
22 POSSESSION OF MR. NORMAN PEARL?

23 A. YES, I DID.

24 Q. DID YOU SEE HIM PROVIDE IT TO ME?

25 A. YES.

1 Q. AND I THEN PROVIDED IT TO YOU?

2 A. THAT'S CORRECT.

3 Q. WHAT DID YOU DO WITH IT?

4 A. THAT EVENING I TOOK A COMMERCIAL AIR FLIGHT TO THE
5 WASHINGTON, D.C. AREA WHETHER I MET WITH A FORENSIC EXPERT WITH
6 THE F.B.I. NAMED BRUCE KOENIG.

7 I MET WITH HIM, MADE ARRANGEMENTS PREVIOUSLY AND MET
8 WITH HIM THAT MORNING ABOUT 9:00 WASHINGTON TIME ON FRIDAY, THE
9 29TH, AND PROVIDED THAT TAPE AND OTHERS TO HIM.

10 Q. DID HE SUBSEQUENTLY RETURN THE TAPE TO YOU?

11 A. YES. I WAS THERE THE ENTIRE DAY WITH HIM. WHEN HE
12 COMPLETED HIS EXAMINATION, HE RETURNED THEM TO ME THAT
13 FOLLOWING SUNDAY.

14 I RETURNED FROM WASHINGTON BACK TO THE LOS ANGELES
15 AREA AND I HAVE BEEN -- UNTIL THAT MONDAY MORNING, AT WHICH
16 TIME I RETURNED ALL THE TAPES BACK TO YOU.

17 MR. CARLTON: THANK YOU VERY MUCH. NOTHING FURTHER.

18 THE COURT: ANY QUESTIONS FOR THIS WITNESS?

19 MS. KELLY: YOUR HONOR, AT THIS TIME I REALLY DON'T
20 HAVE A SPEAKING VOICE TO ASK HIM ANY QUESTIONS, YOUR HONOR, SO
21 I WOULD ASK THAT IN THE EVENT IT BECOMES NECESSARY TO RECALL
22 THE WITNESS --

23 THE COURT: YOUR COLLEAGUE IS HERE, HE CAN ASK HIM
24 QUESTIONS.

25 YOU MAY STEP DOWN.

1 MR. MEDRANO: THE WITNESS IS FROM OUT OF TOWN SO WE'D
2 LIKE, IF CO-COUNSEL COULD ASK QUESTIONS.

3 THE COURT: IF YOU HAVE ANY QUESTIONS, THIS IS THE
4 TIME TO DO IT.

5 MS. KELLY: NO, YOUR HONOR.

6 THE COURT: YOU MAY STEP DOWN.

7 (WITNESS EXCUSED.)

8 THE COURT: THANK YOU, SIR.

9 CALL YOUR NEXT WITNESS.

10 MR. CARLTON: THE GOVERNMENT CALLS HECTOR BERRELLEZ
11 TO THE STAND.

12

13 HECTOR BERRELLEZ + PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

14 DIRECT EXAMINATION +

15 BY MR. CARLTON:

16 Q. RESTATE YOUR NAME FOR THE RECORD.

17 A. HECTOR BERRELLEZ.

18 Q. AGENT BERRELLEZ, I WOULD ASK YOU TO LOOK AT EXHIBIT 184,
19 PLEASE.

20 NOW, DID YOU HAVE A MEETING -- I BELIEVE YOU'VE
21 ALREADY TESTIFIED THAT YOU HAD A MEETING WITH DEFENDANT BERNABE
22 RAMIREZ ON JULY 20TH OF LAST YEAR, CORRECT?

23 A. YES, SIR, I DID.

24 Q. THAT MEETING WAS -- AND YOU HAD A CONVERSATION WITH HIM IN
25 AUGUST; IS THAT ALSO TRUE?

1 A. ON THE 25TH OF JULY --

2 MR. MEZA: THIS HAS ALREADY BEEN TESTIFIED TO AND IT
3 IS NOT PROPER REBUTTAL.

4 THE COURT: SO FAR IT IS NOT. LET'S GET TO IT.
5 BY MR. CARLTON:

6 Q. DO YOU RECOGNIZE EXHIBIT 184, AGENT BERRELLEZ?

7 A. YES, SIR, I DO.

8 Q. WHAT IS IT?

9 A. THIS IS THE MICRO-CASSETTE THAT I PUT IN THE HIDDEN TAPE
10 RECORDER IN THE GOVERNMENT VEHICLE ON THE DATE OF JULY 25TH
11 1989.

12 Q. 25TH OR -- I'M SORRY. I'M SORRY.

13 MR. MEZA: I'M GOING TO INTERPOSE ANOTHER OBJECTION.
14 I'D LIKE TO BE HEARD ON THIS BEFORE THIS WITNESS CONTINUES TO
15 TESTIFY.

16 THIS MATTER WAS BROUGHT UP PREVIOUSLY IN THIS TRIAL
17 AND THERE WAS A PREVIOUS RULING ON IT AND I'D LIKE TO BE HEARD
18 ON IT BEFORE IT GOES ANY FURTHER.

19 THE COURT: PROCEED.

20 BY MR. CARLTON:

21 Q. COULD YOU FINISH IDENTIFYING THAT?

22 A. YES, SIR. THIS IS THE SAME MICRO-CASSETTE THAT I REMOVED
23 OUT OF THE TAPE RECORDER ON THAT DATE, SIR.

24 Q. AND YOU MAINTAINED POSSESSION OF THAT UNTIL WHEN?

25 A. I BELIEVE UNTIL THE 18TH OF THE FOLLOWING MONTH, AT WHICH

1 TIME I SURRENDERED IT TO SPECIAL AGENT WAYNE SCHMIDT TO MAKE
2 COPIES OF THIS EXHIBIT, AND SUBMITTED THE EXHIBIT TO THE
3 NON-DRUG EVIDENCE CUSTODIAN AND THE LOS ANGELES FIELD DIVISION.

4 Q. LET ME DRAW YOUR ATTENTION TO JULY 20TH OF 1989.

5 ON THAT DATE, DID YOU HAVE A MEETING WITH DEFENDANT
6 BERNABE RAMIREZ?

7 A. YES.

8 MR. MEZA: THIS HAS ALREADY BEEN COVERED ON DIRECT
9 EXAMINATION.

10 THE COURT: YES, IT HAS BEEN COVERED. IF YOU HAVE A
11 POINT TO MAKE WITH THIS WITNESS, PLEASE GET TO IT. JUST ASK
12 HIM WHAT IT IS YOU WANT TO ELICIT FROM HIM WITHOUT LAYING OUT
13 THIS BACKGROUND THAT HAS BEEN PREVIOUSLY COVERED.
14 BY MR. CARLTON:

15 Q. ON JULY 20TH WHEN YOU WERE MEETING WITH DEFENDANT BERNABE
16 RAMIREZ, DID HE TELL YOU THAT HE HAD BEEN AT THE HOUSE?

17 MR. MEZA: THIS HAS ALREADY BEEN TESTIFIED TO BY THIS
18 WITNESS THREE OR FOUR WEEKS AGO.

19 MR. CARLTON: -- WITH THE WITNESS ON THE JULY 20TH
20 CONVERSATION ON THIS POINT --

21 THE COURT: IT CERTAINLY WAS.

22 MR. MEZA: THIS CAME OUT ON THE TESTIMONY YESTERDAY
23 OF DEFENDANT BERNABE.

24 THE COURT: OBJECTION OVERRULED.

25 BY MR. CARLTON:

1 Q. DID DEFENDANT BERNABE TELL YOU THAT HE HAD BEEN AT THE
2 HOUSE AT LOPE DE VEGA.

3 THE COURT: YOU SAY IT CAME OUT ON CROSS-EXAMINATION?

4 MR. MEZA: HE DENIED THAT HE HAD -- HE DENIED THAT HE
5 SAID THIS TO THE AGENT.

6 THE COURT: HE'S GOING TO DENY IT AGAIN. GO AHEAD.
7 GO AHEAD.

8 BY MR. CARLTON:

9 Q. DID HE TELL YOU THAT HE HAD BEEN AT THE HOUSE AT LOPE DE
10 VEGA?

11 A. ON JULY 20TH, MR. BERNABE RAMIREZ TOLD ME THAT HE HAD BEEN
12 AT THE HOUSE OF 881 LOPE DE VEGA ON ONE OCCASION.

13 Q. ALL RIGHT. AGENT BERRELLEZ, DID YOU EVER PROVIDE ANY
14 INSTRUCTION TO THE BUREAU OF PRISONS CONCERNING THE CONDITIONS
15 OF CONFINEMENT OF DAVID MACIAS BARAJAS?

16 A. NONE WHATSOEVER. WE HAVE NO INPUT ON WHAT THE BUREAU OF
17 PRISONS DOES WITH THEIR INMATES AND WE ARE NOT ALLOWED TO GIVE
18 ANY INPUT.

19 Q. DID ANYONE AT THE D.E.A., TO YOUR KNOWLEDGE, PROVIDE ANY
20 DIRECTIONS TO THE BUREAU OF PRISONS IN THAT REGARD?

21 MR. STOLAR: OBJECTION, LACK OF FOUNDATION.

22 THE COURT: THE QUESTION WAS TO HIS KNOWLEDGE. HE
23 MAY ANSWER.

24 THE WITNESS: TO MY KNOWLEDGE, NOBODY RELAYED ANY
25 REQUEST OR ANY SUGGESTION OF ANY KIND OF THE BUREAU OF PRISONS,

1 SIR, AS TO MR. BARAJAS OR ANY OTHER INMATE.

2 BY MR. CARLTON:

3 Q. NOW, AT THE TIME THAT DEFENDANT BERNABE RAMIREZ WAS
4 ARRESTED, WAS AN INDIVIDUAL NAMED CASTEL DEL ORO ALSO ARRESTED?

5 A. YES, SIR, HE WAS. IT WAS PART OF THE UNDERCOVER
6 INVESTIGATION. IT WAS A RUSE -- HE WASN'T REALLY ARRESTED.

7 Q. WHY WAS THAT? WHY WAS HE ARRESTED ON A RUSE?

8 A. AT THE TIME, IT WAS DECIDED THAT HE WOULD PLAY OUT THE
9 ROLE UNTIL THE END, THE END BEING UNTIL THE TIME THAT MR.
10 BARAJAS WAS ARRESTED. AND SO, THEREFORE, HE PLAYED THE PART
11 THAT HE WAS PLAYING UNTIL THE POINT WHERE THEY WERE ARRESTED
12 AND BROUGHT TO THE OFFICE.

13 Q. YOU REFERRED TO THE TIME THAT MR. BARAJAS WAS ARRESTED.
14 DID YOU MEAN DEFENDANT BERNABE?

15 A. I MEANT DEFENDANT BERNABE, YES, I'M SORRY.

16 Q. IN THE COURSE OF YOUR WORK AS A D.E.A. AGENT, AGENT
17 BERRELLEZ, DID YOU HAVE OCCASION TO BECOME INVOLVED IN
18 INVESTIGATIONS REGARDING HEROIN?

19 A. YES, SIR, BACK IN 1980.

20 MR. MEZA: OBJECTION, HEROIN HAS NEVER BEEN MENTIONED
21 IN THIS TRIAL IN CONNECTION WITH ANY DEFENDANTS, MUCH LESS MY
22 CLIENT.

23 MR. STOLAR: OBJECTION --

24 THE COURT: OVERRULED. LET'S HEAR THE QUESTION
25 FIRST.

1 THE WITNESS: YES, SIR. BACK IN 1985 I STARTED A
2 SPECIAL ENFORCEMENT OPERATION WHERE MY GROUP TARGETED NOTHING
3 BUT MEXICAN BROWN HEROIN TRAFFICKERS.

4 MR. STOLAR: I WOULD MOVE TO STRIKE THE TESTIMONY.
5 IT'S TOTALLY IRRELEVANT AND IMPROPER REBUTTAL.

6 MR. CARLTON: I'LL TIE THIS UP, YOUR HONOR.

7 THE COURT: YOU'D BETTER.

8 BY MR. CARLTON:

9 Q. IN THE COURSE OF YOUR WORK, DID YOU BECOME FAMILIAR WITH
10 THE USAGE OF HEROIN BY PEOPLE ON THE STREET?

11 A. YES, SIR, I DID.

12 Q. IN THE COURSE OF YOUR EXPERIENCE WITH HEROIN USERS, DID
13 YOU BECOME FAMILIAR WITH AMOUNTS OF HEROIN THAT PEOPLE WOULD
14 USE OR HAVE FOR PERSONAL USE, WHAT WAS GENERALLY THE CASE?

15 A. ADDICTS THAT INJECT HEROIN INTO THEIR VEINS USUALLY INJECT
16 MILLIGRAMS OF HEROIN INTO THEIR VEINS.

17 Q. IN YOUR EXPERIENCE, WOULD 76 GRAMS OF HEROIN BE MORE THAN
18 YOU WOULD ENCOUNTER SOMEONE WOULD HAVE FOR PERSONAL USE?

19 A. DEFINITELY. 76 GRAMS WOULD AMOUNT TO THREE MEXICAN OUNCES
20 OF BROWN HEROIN, SIR, WHICH IS A LOT.

21 MR. CARLTON: ONE MOMENT.

22 (BRIEF PAUSE.)

23 MR. CARLTON: NOTHING FURTHER.

24 THE COURT: YOU MAY CROSS-EXAMINE THE WITNESS.

25

CROSS-EXAMINATION +

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BY MR. MEZA:

Q. THIS RELATES TO THE STATEMENT THAT YOU ATTRIBUTE TO MY CLIENT CONCERNING 881 LOPE DE VEGA. YOU'RE SAYING THAT WAS THE EXACT -- THAT IS THE EXACT QUOTE?

A. THAT'S NOT WHAT I SAID, SIR.

Q. YOU SAID THAT MY CLIENT TOLD YOU THAT HE WAS AT 881 LOPE DE VEGA. IS THAT WHAT HE SAID TO YOU?

A. THAT'S NOT WHAT I SAID TO YOU.

Q. IS THAT WHAT HE SAID TO YOU? YES OR NO?

THE COURT: JUST A MOMENT. CALM DOWN.

DO YOU HAVE THE QUESTION IN MIND?

THE WITNESS: YES, SIR, I DO. YES, YOUR HONOR, I DO.

THE COURT: IS THAT WHAT HE SAID TO YOU, IS THE QUESTION.

THE WITNESS: NO, THAT'S NOT WHAT HE SAID, THOSE ARE NOT HIS WORDS.

BY MR. MEZA:

Q. SO, IN FACT, THE WORDS 881 LOPE DE VEGA WERE FIRST MENTIONED BY YOU IN YOUR UNDERCOVER CAPACITY; ISN'T THAT RIGHT?

A. YES.

Q. IN FACT, THE WORDS 881 LOPE DE VEGA WEREN'T MENTIONED AT ALL ON THE 20TH; ISN'T THAT CORRECT?

A. IT IS POSSIBLE.

Q. IS THERE ANY WAY YOU CAN REFRESH YOUR RECOLLECTION TO

1 DETERMINE WHETHER 881 WAS MENTIONED?

2 A. I'LL TAKE YOUR WORD THAT WE MIGHT HAVE SAID 881 LOPE DE
3 VEGA.

4 Q. YOU STARTED IT FIRST WITH LOPE DE VEGA?

5 A. THAT'S WHAT I SAID, SIR.

6 Q. HE WAS JUST REPEATING TO YOU "THE ONE ON LOPE DE VEGA,"
7 AND HE WAS ASKING YOU A QUESTION, WAS HE NOT?

8 A. (NO RESPONSE.)

9 Q. RIGHT?

10 A. I DON'T REMEMBER IF HE ASKED ME A QUESTION.

11 Q. WAS THERE A TRANSCRIPT PREPARED RELATING THIS JULY 20TH
12 CONVERSATION?

13 A. I DON'T BELIEVE SO.

14 MR. MEZA: YOUR HONOR, I BELIEVE THE GOVERNMENT IS
15 PREPARED TO STIPULATE THERE WAS A TRANSCRIPT PREPARED, AND --
16 BY MR. MEZA:

17 Q. IF I WERE TO SHOW YOU A COPY OF THE TRANSCRIPT IN THE AREA
18 YOU'RE TALKING ABOUT, DO YOU THINK IT WOULD HELP REFRESH YOUR
19 RECOLLECTION?

20 A. I DON'T THINK I NEED TO SEE IT, SIR. I REMEMBER THE
21 CONVERSATION.

22 Q. WHEN YOU MENTIONED LOPE DE VEGA, HE ASKED YOU LOPE DE
23 VEGA?

24 A. YES.

25 Q. AND THEN HE SAID THAT'S THE HOUSE -- THAT'S THE ONE WHERE

1 THE EVENTS SUPPOSEDLY HAPPENED?

2 A. THE EVENTS OCCURRED.

3 Q. OR SUPPOSEDLY HAPPENED?

4 A. OR SOMETHING TO THAT EFFECT, SIR.

5 Q. SO THE ONLY TIME HE MENTIONED LOPE DE VEGA WAS IN THE FORM
6 OF A QUESTION, RIGHT?

7 A. YES, AND THEN HE TOLD ME WHERE THE EVENT OCCURRED. HE
8 VOLUNTEERED THAT.

9 Q. RIGHT.

10 A. MEANING THE CAMARENA MURDER, SIR.

11 Q. WELL. THE EVENTS. THAT'S THE WAY YOU INTERPRETED IT?

12 A. THAT'S THE EVENT.

13 Q. ALL RIGHT. THIS WAS IN 1989?

14 A. BY THAT TIME, ANYBODY WHO COULD READ A NEWSPAPER KNEW THAT
15 THIS EVENT HAD HAPPENED AT LOPE DE VEGA; ISN'T THAT RIGHT?

16 MR. CARLTON: OBJECTION, CALLS FOR SPECULATION.

17 BY MR. MEZA:

18 Q. YOU HAD READ BY 1989 IN THE NEWSPAPER THAT THIS EVENT HAD
19 HAPPENED AT LOPE DE VEGA; ISN'T THAT RIGHT?

20 MR. CARLTON: IRRELEVANT, YOUR HONOR.

21 THE COURT: SUSTAINED.

22 BY MR. MEZA:

23 Q. NOW THIS PARTICIPATION BY MR. CASTEL, AFTER HE WAS
24 ARRESTED, HE CONTINUED HIS PARTICIPATION IN THIS UNDERCOVER
25 OPERATION, DID HE NOT, AT LEAST FOR A SHORT TIME?

1 A. I BELIEVE SO, YES.

2 Q. AND, IN FACT, YOU USED HIM WHEN YOU WERE INTERROGATING MR.
3 BERNABE AT THE D.E.A. HEADQUARTERS; YOU USED HIM, MEANING MR.
4 CASTEL, TO TRY TO GET MR. BERNABE TO COOPERATE WITH THE D.E.A.;
5 ISN'T THAT RIGHT?

6 MR. CARLTON: OBJECTION, BEYOND THE SCOPE, YOUR
7 HONOR.

8 THE COURT: SUSTAINED.

9 MR. MEZA: I'D LIKE TO BE HEARD AT LEAST ON THAT
10 ISSUE, YOUR HONOR, AND I HAVE NOTHING FURTHER AT THIS TIME.

11 I TAKE IT BACK. LET ME TALK TO MY CO-COUNSEL.

12 THE COURT: ALL RIGHT.

13 (BRIEF PAUSE.)

14 MR. MEZA: I HAVE NOTHING FURTHER, SUBJECT TO THAT
15 RESERVATION.

16 THE COURT: THAT'S ALL.

17 MR. STOLAR: I'M SORRY, ARE YOU TELLING ME THAT'S
18 ALL, I CANNOT QUESTION?

19 THE COURT: THAT IS RIGHT. RIGHT.

20 MR. STOLAR: OKAY.

21 THE COURT: ANY REDIRECT.

22 MR. MEDRANO: JUST VERY BRIEFLY, YOUR HONOR.

23 REDIRECT EXAMINATION +

24 BY MR. CARLTON:

25 Q. DURING THIS CONVERSATION WITH DEFENDANT BERNABE ON THE

1 20TH, DIDN'T YOU REFER TO THE FACT THAT YOUR COMPADRE HAD JUST
2 BOUGHT THE HOUSE AT LOPE DE VEGA?

3 MR. MEZA: OBJECTION, BEYOND THE SCOPE. I DIDN'T
4 ASK ABOUT THE SOURCE OF FUNDS TO PURCHASE THIS.

5 MR. CARLTON: MAY I CLARIFY WHAT WAS SAID, YOUR
6 HONOR?

7 THE COURT: (INDICATING.)

8 BY MR. CARLTON:

9 Q. THAT YOUR COMPADRE HAD JUST BOUGHT THE HOUSE AT LOPE DE
10 VEGA?

11 A. YES, SIR.

12 Q. AND YOU SAID THAT'S WHAT HE, MEANING YOUR COMPADRE, HAD
13 TOLD YOU?

14 A. THAT IS RIGHT, SIR.

15 Q. AND AT THAT POINT, DID DEFENDANT BERNABE SAY ONE HOUSE,
16 THE ONE IN LOPE DE VEGA?

17 A. YES, SIR.

18 Q. YOU WENT --

19 A. THAT IS CORRECT.

20 Q. AT THAT POINT DID DEFENDANT BERNABE SAY, "THE ONE WHERE
21 SUPPOSEDLY THE EVENT HAPPENED"?

22 A. THAT'S CORRECT.

23 Q. YOU SAID JUST BECAUSE IT DIDN'T HAVE ANY FURNITURE, THAT'S
24 WHAT THEY TOLD ME?

25 A. THAT'S CORRECT.

1 Q. AND THEN DEFENDANT BERNABE SAID YES, IT WAS EMPTY. I WENT
2 THERE ONLY ONCE -- ONLY ONCE I WENT THERE?

3 A. THAT'S WHAT HE SAID, SIR.

4 THE COURT: ANYTHING FURTHER? COUNSEL?

5 MR. MEZA: NO, YOUR HONOR.

6 MR. STOLAR: WE'D LIKE TO MAKE A RECORD ON WHAT I WAS
7 GOING TO ASK.

8 THE COURT: I'LL DISCUSS THAT WITH YOU.

9 YOU MAY STEP DOWN.

10 THE WITNESS: THANK YOU, YOUR HONOR.

11 (WITNESS EXCUSED.)

12 THE COURT: DO YOU HAVE ANY OTHER REBUTTAL WITNESS AT
13 THIS TIME?

14 MR. CARLTON: YES, WE DO, YOUR HONOR. I DON'T KNOW
15 IF WE CAN FINISH WITH THIS NEXT WITNESS BY 4:30, BUT I'LL MAKE
16 EVERY EFFORT TO DO THAT.

17 THE GOVERNMENT CALLS BRUCE KOENIG.

18 MR. MEZA: YOUR HONOR, I MADE A PREVIOUS MOTION PRIOR
19 TO RESTING CONCERNING CERTAIN IMPROPER REBUTTAL IN MY VIEW, AND
20 THIS IS ONE OF THE WITNESSES.

21 THE COURT: YOU MAKE YOUR OBJECTIONS WHEN THE
22 QUESTION IS ASKED.

23 MR. MEZA: ALL RIGHT.

24

25 BRUCE E. KOENIG + PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE
2 RECORD AND SPELL YOUR LAST NAME.

3 THE WITNESS: BRUCE E. KOENIG, K O E N I G.

4 DIRECT EXAMINATION +

5 BY MR. CARLTON:

6 Q. MR. KOENIG, WHAT IS YOUR PRESENT EMPLOYMENT?

7 A. I'M A SUPERVISORY SPECIAL AGENT FOR THE FEDERAL BUREAU OF
8 INVESTIGATION.

9 Q. HOW LONG HAVE YOU BEEN EMPLOYED AS A SPECIAL AGENT FOR THE
10 F.B.I.?

11 A. I STARTED IN 1970.

12 Q. WHAT IS YOUR CURRENT ASSIGNMENT?

13 A. I'M AT THE NEWARK RESEARCH FACILITY IN NEWINGTON,
14 VIRGINIA, WHICH IS PART OF F.B.I. HEADQUARTERS.

15 Q. WHAT IS IT THAT YOU DO THERE?

16 A. I'M INVOLVED IN THE MAGNETIC TAPE ANALYSIS FIELD, WHICH IS
17 PART OF THE TECHNICAL SERVICES DIVISION.

18 Q. WHEN YOU SAY MAGNETIC TAPE, ARE YOU REFERRING TO TAPE THAT
19 IS USED IN TAPE RECORDERS AND AUDIO EQUIPMENT?

20 A. YES, SIR, STANDARD CASSETTES, REEL TO REEL, MICRO-
21 CASSETTES, TECHNICAL FORMATS, VIDEO -- ANYTHING THAT HAS
22 BASICALLY A MAGNETIC BASIS FOR RECORDING.

23 Q. WHAT ARE YOUR RESPONSIBILITIES IN THIS FIELD?

24 A. THE MAJORITY OF MY WORK IS INVOLVED WITH FORENSIC
25 EXAMINATIONS THERE, ANALYZING TAPE RECORDINGS THAT MAY HAVE

1 SOME USE IN INVESTIGATIVE OR COURTROOM SITUATIONS .

2 THAT INCLUDES ENHANCING TAPES TO IMPROVE
3 INTELLIGIBILITY , COMPARING VOICES TO DETERMINE IF TAPES HAVE
4 BEEN ALTERED OR NOT , DETERMINE WHETHER SOUNDS ON A TAPE ARE
5 GUNSHOTS OR SOMETHING ELSE .

6 I ALSO HAVE SUPERVISORY RESPONSIBILITY FOR BUYING
7 TAPE RECORDERS , TAPE ANALYSIS EQUIPMENT FOR THE F.B.I .
8 WORLDWIDE .

9 Q. HAVE YOU CONDUCTED THIS TYPE OF FORENSIC TYPE ANALYSIS FOR
10 ANY OTHER AGENTS IN THE F.B.I.?

11 Q. NUMEROUS FEDERAL , STATE AND LOCAL LAW ENFORCEMENT AGENCIES
12 IN ALL 50 STATES , THE DISTRICT OF COLUMBIA , PUERTO RICO , THE
13 VIRGIN ISLANDS , GUAM AND FOR 19 FOREIGN COUNTRIES .

14 Q. AND IN HOW MANY DIFFERENT INVESTIGATIONS HAVE YOU
15 PERSONALLY CONDUCTED TAPE EXAMINATION?

16 A. LAST WEEK I EXCEEDED -- I WENT OVER THE THREE THOUSAND
17 MARK .

18 Q. WHAT IS THE TOTAL NUMBER OF SEPARATE TAPE RECORDINGS
19 INVOLVED IN ALL THESE INVESTIGATIONS?

20 A. OVER 7500 .

21 Q. AND YOU DEVOTE MOST OF YOUR TIME TO MAGNETIC TAPE
22 ANALYSIS?

23 A. YES , SIR , I DO .

24 Q. HOW LONG HAVE YOU BEEN EMPLOYED ON A FULL-TIME BASIS DOING
25 THIS KIND OF WORK?

1 A. SINCE 1974.

2 Q. DO YOU HAVE ANY ARTICLES PUBLISHED IN THE FIELD, IN THIS
3 PARTICULAR FIELD?

4 A. YES, I HAVE HAD SCIENTIFIC ARTICLES PUBLISHED IN THE
5 JOURNAL OF AUDIO ENGINEERS SOCIETY. JOURNAL OF ACOUSTICAL --
6 SOCIETY OF AMERICA CRIME MANAGER DIGEST, LAW ENFORCEMENT
7 BULLETIN, A NUMBER OF OTHER SCIENTIFIC JOURNALS.

8 Q. HAVE YOU QUALIFIED AS AN EXPERT IN COURT ON PRIOR
9 OCCASIONS IN THE FIELD OF MAGNETIC TAPE ANALYSIS?

10 A. YES, SIR, ON OVER 190 OCCASIONS.

11 Q. HAVE YOU INSTRUCTED PERSONNEL AT THE F.B.I. AND OTHER
12 FEDERAL AGENCIES IN AUDIO ANALYSIS?

13 A. YES, SIR. WE DO THIS ON A CONTINUING BASIS. WE HAVE
14 TRAINED PEOPLE HERE FROM THE L.A. POLICE DEPARTMENT, STATE OF
15 CALIFORNIA. RECENTLY WE HAVE HAD DELEGATIONS IN FROM BOTH
16 SPAIN AND ITALY. IT IS A CONTINUING PROCESS THAT OUR LAB TRIES
17 TO HELP OTHER LABS IN THE WORLD AND IN THIS COUNTRY COME UP IN
18 THIS TECHNOLOGY.

19 Q. HAVE YOU LECTURED IN THIS FIELD BEFORE?

20 A. YES, SIR, AGAIN ON A CONTINUING BASIS, I LECTURE BEFORE
21 VARIOUS LAW ENFORCEMENT GROUPS, THE AMERICAN BAR ASSOCIATION,
22 VARIOUS SCIENTIFIC ORGANIZATIONS. I WAS ABLE TO, IF THEY
23 REQUEST AND WE HAVE THE TIME TO DO IT, WE TRY TO HELP THEM AS
24 MUCH AS POSSIBLE.

25 Q. WOULD YOU PLEASE DESCRIBE YOUR FORMAL EDUCATIONAL

1 BACKGROUND?

2 A. YES, SIR. I HAVE A BACHELOR OF SCIENCE DEGREE FROM THE
3 UNIVERSITY OF MARYLAND, DOUBLE MAJORS IN PHYSICS AND
4 MATHEMATICS.

5 I HAVE COMPLETED AN ELECTRONICS COURSE --

6 MR. MEZA: IF IT WILL HELP MOVE THIS ALONG -- I'M
7 FAMILIAR WITH HIS BACKGROUND. I'LL BE PREPARED TO STIPULATE
8 FOR PURPOSES --

9 THE COURT: WOULD YOU BE WILLING TO STIPULATE TO HIS
10 QUALIFICATIONS?

11 MR. MEZA: YES, SIR.

12 THE COURT: IS THAT AGREEABLE WITH THE OTHER
13 DEFENDANTS?

14 MR. STOLAR: WE DON'T HAVE ANYTHING TO DO WITH THIS
15 IN PARTICULAR.

16 THE COURT: ALL RIGHT. THAT'S GOOD.

17 THE INTERPRETER: CAN WE ASK HIM TO MOVE TO THE
18 MICROPHONE? I'M HAVING TROUBLE HEARING.

19 MR. CARLTON: WE ARE ALMOST FINISHED, YOUR HONOR.

20 THE WITNESS: I WENT TO AN ELECTRONICS COURSE AT THE
21 *DE VRY INSTITUTE OF TECHNOLOGY, I HAVE A MASTERS DEGREE IN
22 FORENSIC SCIENCE FROM GEORGE WASHINGTON UNIVERSITY.

23 I HAVE TAKEN ADDITIONAL GRADUATE LEVEL COURSES IN
24 ENGINEERING AND SCIENCE RELATED TO MY FIELD AT GEORGE MASON
25 UNIVERSITY AT THE UNIVERSITY OF UTAH AND THE MASSACHUSETTS

1 INSTITUTE OF TECHNOLOGY.

2 BY MR. CARLTON:

3 Q. AND HAVE YOU RECEIVED ANY PARTICULAR TRAINING IN MAGNETIC
4 TAPE ANALYSIS?

5 A. I HAVE RECEIVED EXTENSIVE TRAINING BOTH IN THE F.B.I.
6 LABORATORY AND TECHNICAL SERVICES DIVISION.

7 A. I ALSO HAVE GONE TO NUMEROUS SEMINARS AND CLASSES,
8 INCLUDING A COURSE IN *F F T ANALYSIS AND AT SPECTRODYNAMICS IN
9 SAN DIEGO, COURSES IN AUTHENTICITY AND SIGNAL ANALYSIS IN UTAH,
10 COURSES IN SPECTROGRAPHIC ANALYSIS AT VOICE IDENTIFICATION,
11 INCORPORATED IN NEW JERSEY, AND I HAVE ATTENDED
12 INTERNATIONAL ASSOCIATION OF BROADCASTER ACOUSTICAL SOCIETY OF
13 AMERICA AND THE AUDIO ENGINEERING SOCIETY.

14 Q. ARE YOU A MEMBER OF ANY PROFESSIONAL SOCIETIES?

15 A. YES, SIR. I'M A MEMBER OF THE AUDIO ENGINEERING SOCIETY,
16 THE ACOUSTICAL SOCIETY OF AMERICA, THE AMERICAN INSTITUTE OF
17 PHYSICS, IT IS THE INSTITUTE OF ELECTRICAL AND ELECTRONICS
18 ENGINEERING AND THE INTERNATIONAL ASSOCIATION FOR
19 IDENTIFICATION.

20 MR. CARLTON: AT THIS TIME, YOUR HONOR, I WOULD
21 PROFFER AGENT KOENIG AS AN EXPERT IN THE AREA OF MAGNETIC TAPE
22 ANALYSIS.

23 THE COURT: YES, AND I WOULD LIKE TO EXPLAIN THIS
24 PROCESS TO THE JURY SO THEY UNDERSTAND IT.

25 BEFORE A PERSON IS PERMITTED TO EXPRESS OPINIONS IN

1 COURT AS AN EXPERT WITNESS, IT MUST BE SHOWN THAT HE HAS A
2 CERTAIN EXPERTISE AND HOW HE OBTAINED IT.

3 NOW, WHEN THE COURT ACCEPTS A WITNESS AS AN EXPERT
4 WITNESS, THAT DOES NOT MEAN THAT THE COURT IS TAKING A POSITION
5 ON WHAT WEIGHT THE JURY SHOULD GIVE TO THE EVIDENCE GIVEN BY
6 THAT WITNESS. THAT IS STILL UP TO THE JURY.

7 THE JURY DETERMINES WHAT WEIGHT TO GIVE TO THE
8 EVIDENCE OF ANY EXPERT WITNESS, AND YOU EVALUATE THE
9 CREDIBILITY OF EXPERT WITNESSES THE SAME AS YOU DO ANY OTHER
10 WITNESS. SO THE FACT THAT I FIND THIS WITNESS QUALIFIED TO
11 TESTIFY ON THIS SUBJECT STILL LEAVES OPEN FOR YOU TO DETERMINE
12 WHAT WEIGHT TO GIVE TO THE WITNESS'S TESTIMONY, AND THAT IS
13 TRUE OF ANY OTHER WITNESS WHO IS TESTIFYING IN THIS COURT AS AN
14 EXPERT.

15 BY MR. CARLTON:

16 Q. AGENT KOENIG, WOULD YOU PLEASE LOOK IN FRONT OF YOU AT
17 WHAT HAS BEEN MARKED AS EXHIBIT 184?

18 A. YES, SIR.

19 Q. DO YOU RECOGNIZE THAT?

20 A. YES, SIR. THIS IS A TAPE THAT I RECEIVED IN MY LABORATORY
21 AND I MARKED WITH A QUEUE NUMBER, A LABORATORY NUMBER AND MY
22 INITIALS.

23 Q. WHEN DID YOU FIRST SEE IT?

24 A. I RECEIVED THIS TAPE FROM GREG LEE LAST FRIDAY. I DON'T
25 REMEMBER THE EXACT -- THAT'S WHY.

1 THE COURT: LAST FRIDAY IS GOOD ENOUGH. I BELIEVE
2 THAT WAS THE 29TH.

3 THE WITNESS: JUNE 29TH, YES, SIR.

4 BY MR. CARLTON:

5 Q. WHERE WAS IT THAT MR. LEE, AGENT LEE PRESENTED THIS TO
6 YOU?

7 A. HE DELIVERED TO IT OUR LABORATORY IN NEWINGTON, VIRGINIA.
8 FOR THE JURY'S SAKE, IS IT IN NORTHERN VIRGINIA OFF THE
9 BELTWAY.

10 Q. AFTER YOU RECEIVED THIS MICRO-CASSETTE FROM AGENT LEE, DID
11 YOU PERFORM ANY PROCEDURES WITH REGARD TO IT TO ENHANCE THE
12 SOUND?

13 A. YES, SIR.

14 Q. WHAT WAS IT THAT YOU DID?

15 A. THIS TAPE WAS MADE ON A SMALL, MINIATURE TAPE RECORDER
16 THAT RUNS AT A VERY SLOW SPEED. IT RUNS AT ABOUT A HALF AN
17 INCH PER SECOND, TO GIVE YOU AN EXAMPLE, AND A STANDARD
18 CASSETTE WOULD RUN SOMEWHERE NEAR 2 INCHES PER SECOND.

19 IT IS MADE IN A STEREO FORMAT. WHEN WE EXAMINED IT,
20 WE ACTUALLY CAN LOOK AT THE TRACK. YOU HAVE STEREO, SOMETHING
21 COMING OUT OF THE LEFT CHANNEL AND RIGHT CHANNEL, THERE ARE
22 SEPARATE TRACKS ON THE TAPE ITSELF THAT HAVE SEPARATE
23 INFORMATION.

24 WE LOOKED AT IT AND REALIZED THE LEFT CHANNEL HAD NOT
25 BEEN CONFIGURED PROPERLY AND IT WAS ALMOST OFF THE TAPE, AND

1 IT'S VERY NARROW. AND WE ALSO NOTICED THAT THE RIGHT CHANNEL
2 LOOKED FINE.

3 WE THEN COPIED IT, AND INSTEAD OF PLAYING IT BACK ON
4 ONE OF THE MINIATURE RECORDERS, WE GOT MUCH BETTER FIDELITY BY
5 PLAYING IT BACK ON A HIGH QUALITY STEREO MICRO-CASSETTE
6 RECORDER ON HIGH SPEED AND MAYBE A *SPEED AT 15 INCHES PER
7 SECOND, WHICH IS VERY FAST.

8 WE THEN CAN TAKE IT AND SLOW IT DOWN TO THE PROPER
9 SPEED AND WE GET A MUCH BETTER COPY. SO WHEN WE DID THAT, WE
10 WE DISCOVERED BECAUSE OF THE OFFSET OF THAT LEFT CHANNEL, THE
11 LEFT CHANNEL IS NOT AS GOOD AS THE RIGHT CHANNEL, NOT AS GOOD A
12 QUALITY, BUT WE WENT ON AND FILTERED BOTH THE LEFT AND RIGHT.

13 WHAT WE DID WAS RUN IT THROUGH PAST FILTERS AND ALL
14 THESE DO IS REMOVE THE FREQUENCIES BELOW WHERE THE VOICE
15 INFORMATION IS AND THE FREQUENCIES ABOVE THE VOICE INFORMATION.
16 WE LEAVE ALL THE VOICE INFORMATION IN, BUT REMOVE ANYTHING THAT
17 IS NOT IN THAT RANGE.

18 SECOND, WE RAN EACH CHANNEL THROUGH AN EQUALIZER.
19 THE RECORDING INDUSTRY OUT HERE USES THEM VERY HEAVILY. LINDA
20 RONSTADT SINGS A SONG AN <SOUS> <PWAOEUZ> I SO SHE CAN RUN THEM
21 THROUGH THERE AND MAKE IT SOUND BETTER.

22 THEY THEN MAKE MINOR CORRECTIONS. CORRECTIONS TEND TO
23 BE A LOT MORE THAN THAT SO WE INSPECTED THE SPECTRUM, KNOW WHAT
24 SPEECH SHOULD LOOK LIKE AND PUT IT ON A DISPLAY CALLED F F T.

25 AND THIS DISPLAY ALLOWS ME TO LOOK AT THE VARIOUS

1 FREQUENCIES OF THE VOICE AND THE NOISE AND I CAN DIFFERENTIATE
2 BY LOOKING AT THE SCREEN WHERE THEY'RE AT.

3 I THEN LEVEL OUT THE VOICE INFORMATION. AT THAT
4 POINT WE HAVE TWO CHANNELS THAT ARE BASICALLY IN STEREO. YOU
5 LISTEN TO THAT AND LISTEN TO EACH CHANNEL SEPARATELY AND WE
6 DISCOVERED THAT LEAVING THE LEFT CHANNEL IN, REDUCED
7 INTELLIGIBILITY BECAUSE THE LEFT CHANNEL WAS SUFFICIENTLY PURER
8 THAN THE RIGHT CHANNEL.

9 IT'S LIKE LISTENING ON HEADPHONES AND YOU HAVE NOISE
10 IN ONE EAR AND THE MUSIC YOU WANT, TOO, OR IN BOTH EARS AND IT
11 WOULD SOUND BETTER. WELL, THAT'S WHAT HAPPENED HERE.

12 WE THEN MADE COPIES OF THE WHOLE TAPE AND PORTIONS OF
13 IT ON THE STANDARD CASSETTES AND ALL THOSE WERE TO BE USED AND
14 ALL PROFESSIONAL QUALITIES OF EQUIPMENT AND ALLOWED US TO MAKE
15 GOOD QUALITY COPIES OF THIS TAPE.

16 Q. AND IN PERFORMING THIS PROCEDURE, DID YOU CHANGE WHAT WAS
17 SAID ON THE TAPES?

18 A. THE PROCEDURE, IF DONE PROPERLY, IT IS IMPOSSIBLE TO
19 CHANGE WHAT SOMEBODY SAID. IT CAN ONLY BE MADE CLEARER OR HAVE
20 NO EFFECT OR EVEN DEGRADE IT, IT WILL ALSO BE EVEN LESS
21 UNDERSTANDABLE. THERE IS NO WAY TO PROCESS OR CHANGE WHAT
22 SOMEBODY SAID. IT IS NOT POSSIBLE.

23 Q. IF YOU WOULD LOOK, PLEASE, AT WHAT HAS BEEN MARKED AS--
24 WHAT HAS BEEN MARKED AS 184-A.

25 SIR, DO YOU RECOGNIZE THAT?

1 A. THEY HAVE MY LAB NUMBER AND MY INITIAL AND A DESCRIPTION.

2 Q. WHAT ARE THEY?

3 A. THESE ARE THE ENHANCED COPIES OF EXHIBIT 184, THE
4 MICRO-CASSETTE, THE WHOLE TAPE. THE TAPE RAN ABOUT 55 MINUTES
5 SO I PUT THE FIRST 45 ON 1-C-90 AND TEN MINUTES ONTO THE NEXT
6 ONE.

7 I DON'T USUALLY MAKE COPIES ON THE BACK OF A TAPE SO
8 THIS INCLUDES A WHOLE TAPE HERE WAS COPIED, ALL 55 MINUTES.
9 THIS IS AN ENHANCED VERSION OF THAT.

10 Q. DID YOU COPY ONE SIDE ON EACH CASSETTE SO AS TO PRESERVE
11 THE CLARITY OF THE ENHANCED COPY?

12 A. I DON'T LIKE PUTTING THINGS ON THE SECOND SIDE, THERE IS
13 ALWAYS A CHANCE OF CROSS CHECK CASSETTES OR CHEAP. THEY DON'T
14 COST ANY MONEY AND WE JUST BASICALLY ONLY JUST ONE SIDE.

15 Q. WOULD YOU THEN LOOK AT WHAT HAS BEEN MARKED AS EXHIBIT
16 184-B?

17 A. YES, SIR.

18 Q. WHAT IS THAT?

19 A. THIS IS AN ENHANCED COPY OF ONE PORTION THAT I WAS ADVISED
20 THAT THEY WERE INTERESTED IN. AND THIS IS THAT PORTION ON
21 THERE THAT IS REPEATED FIVE TIMES, SO I HAVE THIS AREA THAT
22 JUST REPEATS FIVE TIMES, AND I DID THIS BY PUTTING IT INTO A
23 SCIENTIFIC COMPUTER, A VERY LARGE COMPUTER THAT TAKES UP ABOUT
24 AS BIG A SPACE AS WHERE THE JURY IS SITTING HERE, THAT WE CAN
25 PUT IT IN THERE AND IT WILL CONTINUALLY PLAY BACK ANY PORTION

1 WE WANT OVER AND OVER AGAIN WITH EXTREMELY HIGH QUALITY.

2 AND WE PUT IT IN THERE AND RAN THE TAPE SO IF
3 SOMEBODY WAS TRYING TO MANIPULATE THIS PORTION, IT WOULD KEEP
4 PLAYING IT OVER AND OVER FOR THEM.

5 Q. IN DOING THAT, DID YOU CHANGE WHAT WAS SAID ON THAT
6 PORTION OF THE TAPE AT ALL?

7 A. NO. THIS WOULD BE THE SAME. 184-B WOULD BE THE SAME AS
8 184-A, EXCEPT IT'S JUST A SMALL PORTION OF IT.

9 Q. REPEATED FIVE TIMES?

10 A. YES.

11 Q. IF YOU WOULD LOOK THEN AT 184-C, DO YOU RECOGNIZE THAT?

12 A. YES, SIR.

13 Q. WHAT IS THAT?

14 A. THIS IS AN ENHANCED COPY OF THAT SAME PORTION AGAIN,
15 EXCEPT WE SLOWED IT ABOUT TEN PERCENT.

16 A. THIS PORTION, THE PEOPLE WERE TALKING SO QUICKLY THAT WE
17 FELT IT MAY BE OF SOME ASSISTANCE IF WE SLOWED THE SPEED OF THE
18 TAPE DOWN.

19 SO WE SLOWED IT DOWN TO A POINT THAT WE FELT IT --
20 GOING MORE THAN 10 PERCENT KIND OF DISTORTED THE VOICE ITSELF
21 AND WE FELT THE TEN PERCENT WAS A GOOD TRADE OFF AND WE SLOWED
22 IT DOWN TO THAT, AND REPEATED IT AGAIN FIVE TIMES, ONE
23 DESIGNATED AREA.

24 SO IT HAS BEEN SLOWED DOWN ABOUT 10 PERCENT.

25 Q. SO 184-C CONTAINS THE SAME PORTION AS 184-B, JUST 10

1 PERCENT SLOWER?

2 A. YES, SIR.

3 Q. AFTER YOU COMPLETED THESE PROCEDURES, WHAT DID YOU DO WITH
4 THE MICRO-CASSETTE AND THE COPIES THAT YOU HAVE IN FRONT OF
5 YOU?

6 A. I RETURNED IT TO SPECIAL AGENT GREGORY LEE OF THE DRUG
7 ENFORCEMENT ADMINISTRATION.

8 MR. CARLTON: I WOULD MOVE AT THIS TIME THAT
9 EXHIBITS 184 AND 184-C BE RECEIVED.

10 MR. MEZA: I'LL OBJECT TO THE ADMISSION OF THEM.

11 IT'S IMPROPER REBUTTAL. WE ALREADY HAVE A COPY OF
12 184 IN THE FORM OF ANOTHER TAPE.

13 THE COURT: OBJECTION OVERRULED. IT MAY BE RECEIVED.

14 (EXHIBIT # 184 RECEIVED IN EVIDENCE.)

15 (EXHIBIT # 184-C RECEIVED IN EVIDENCE.)

16 BY MR. CARLTON:

17 Q. ONE FINAL QUESTION. ARE YOU AWARE OF ANY COURSES THAT AN
18 INDIVIDUAL CAN TAKE IN THE FIELD OF MAGNETIC TAPE ANALYSIS?

19 A. YES, SIR.

20 Q. I GUESS THEY KIND OF FALL INTO TWO AREAS. ONE, THE
21 ACADEMIC COURSES FILTERS, DESIGN AND EVERYTHING ELSE, KIND OF
22 BASIC COURSES. THEY WOULD NORMALLY REQUIRE THAT YOU HAVE
23 ENOUGH MATH PROBABLY THROUGH, MAYBE BEGINNING DIFFERENTIAL
24 CALCULUS -- I'M SORRY, DIFFERENTIAL EQUATIONS, PROBABLY, AND
25 ENOUGH PHYSICS AND OTHER COURSES LIKE THAT TO HANDLE.

1 IN YOUR OWN HANDWRITING?

2 A. YES, SIR.

3 Q. SO EACH LABEL THAT YOU MADE WAS IN YOUR OWN HANDWRITING;
4 IS THAT RIGHT?

5 A. YES, SIR.

6 Q. EACH ONE OF THE SEVEN LABELS THAT YOU MADE WOULD BE
7 RELATIVELY IDENTICAL TO THE ONE YOU'VE IDENTIFIED IN 184-C?

8 A. THAT IS CORRECT.

9 Q. NOW, OTHER THAN THE MICRO-CASSETTE THAT YOU WERE ASKED TO
10 LOOK AT, WERE YOU ASKED TO EXAMINE ANY OTHER TAPES WHICH
11 PURPORTED TO BE OR TO CONTAIN THE SAME CONVERSATION AS
12 REPRESENTED IN 184?

13 A. NO, SIR.

14 Q. DID YOU LISTEN TO 184, HEAR THE WORDS?

15 A. I LISTENED TO IT REPEATEDLY, YES, SIR.

16 Q. YOU SAID ONE OF THE TRACKS CAME OFF, THE LEFT TRACK WAS --

17 A. THE LEFT TRACK WAS OFFSET, OFF THE END OF THE TAPE.

18 Q. HOW WOULD SOMETHING LIKE THAT HAPPEN?

19 A. THE ALIGNMENT IN THE TAPE RECORDER IS INCORRECT.

20 Q. SO IT'S NOT A DEFECT IN THE TAPE, IT IS IN ALL
21 PROBABILITY, SOMETHING THAT WAS WRONG WITH THE MACHINE; IS THAT
22 RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND WHY -- AND WHAT IN THE MACHINE WOULD CAUSE THAT TO
25 HAPPEN TO THE TAPE?

1 A. THE GUIDES THAT DIRECT THE TAPE IN THE HOUSING ARE VERY
2 SLIGHTLY OFFSET. YOU'RE NOT TALKING MEASUREMENT VERY MUCH, BUT
3 IT IS ENOUGH THAT IT HAS THAT EFFECT.

4 Q. AND IF I UNDERSTAND YOU CORRECTLY -- I'LL WITHDRAW THAT.
5 IF THE GUIDES ARE OFF, HOW WOULD THAT AFFECT, IF AT
6 ALL, THE WORDS THAT WERE BEING RECORDED?

7 A. THE RIGHT CHANNEL WASN'T AFFECTED AT ALL, AND SINCE BOTH
8 CHANNELS HAVE BASICALLY THE SAME INFORMATION, THE END RESULT
9 WAS THAT SOMEONE WHEN THEY PLAYED IT BACK SHOULD HAVE REALIZED
10 THEY SHOULD ONLY USE THE RIGHT CHANNEL.

11 Q. SO ALL OF THE INFORMATION THAT IS CONTAINED ON 184 IS
12 INFORMATION THAT IS CONTAINED ON THE RIGHT CHANNEL ALONE; IS
13 THAT RIGHT?

14 A. WE LOOKED AT THE LEFT CHANNEL. IT'S THERE AND MOST OF IT
15 IS UNDERSTANDABLE, IT'S JUST NOISIER.

16 Q. STATIC OR --

17 A. SOMETHING THAT THE CHANNEL WOULD CAUSE BY THE TAPE RUNNING
18 OVER IT?

19 A. THE SMALLER THE TRACK WIDTH, THE MORE NOISE YOU HAVE ON
20 THE TAPE. THE PROFESSIONAL RECORDING WILL OFTEN USE ALL THE
21 WAY ACROSS THE TAPE ON A WIDE TAPE. THIS IS A NARROW TAPE AND
22 NARROW TRACK.

23 IF YOU CUT THE TRACK IN HALF, YOU WOULD EXPECT THE
24 NOISE TO APPROXIMATELY DOUBLE.

25 Q. SO IF SOMEONE PRIOR TO YOUR ENHANCING OR LISTENING TO THE

1 TAPE HAD EMPLOYED THIS PARTICULAR TAPE ON ANOTHER MACHINE, NOT
2 REALIZING THAT IT WAS OFF THE CHANNEL, THAT THERE WAS A CHANNEL
3 PROBLEM, WHAT WOULD YOU EXPECT THE SOUND TO BE LIKE?
4 A. YOU'D HAVE MORE NOISE IN IT.
5 Q. MORE INTERFERENCE, CORRECT?
6 A. INTERFERENCE WOULD BE A WORD I WON'T USE; MORE NOISE, LIKE
7 OF THE NOISE OF SHHH.
8 Q. IT MIGHT HAVE A TENDENCY TO OBSCURE WORDS THAT MIGHT
9 OTHERWISE BE READILY HEARD ON A TAPE, BUT FOR THE SHHH SOUNDS?
10 A. THAT IS CORRECT.
11 Q. YOU DON'T SPEAK SPANISH, DO YOU?
12 A. I TOOK THREE YEARS OF IT IN THE 1960'S WHEN I WAS IN HIGH
13 SCHOOL -- SO THE ANSWER IS NO.
14 Q. AND THIS TAPE WAS IN SPANISH, WAS IT NOT?
15 A. I COULD PICK UP ENOUGH OF A DESIGNATED AREA OF A
16 TRANSCRIPT THAT WAS IN SPANISH.
17 Q. BUT THAT TAPE WAS IN SPANISH?
18 A. I HAVE A SPANISH TRANSLATION. I COULD PICK THAT AREA
19 OUT.
20 Q. BUT YOUR AREA OF EXPERTISE WAS TO -- JUST TO TAKE THAT
21 PARTICULAR AREA AND REDUCE IT TO A SEGMENT PLACED ON 184-B AND
22 THEN LATER SLOWED DOWN 184-C?
23 A. AND ALSO I DID THE WHOLE TAPE.
24 Q. AND YOU DID WHOLE TAPE?
25 A. INTELLIGIBILITY DOESN'T REQUIRE THAT I UNDERSTAND THE

1 LANGUAGE. I REALIZE THAT SOMETHING IS CLEARER AND HAS LESS
2 NOISE WITHOUT UNDERSTANDING EVERY WORD.

3 Q. YOU JUST WERE REMOVING THE JUNK ON THE TAPE, AS IT WERE?

4 A. I'LL BUY THAT.

5 Q. WERE YOU ASKED TO LISTEN TO ANY OTHER TAPES?

6 A. NOT AT THIS -- THIS WAS THE ONLY TAPE BROUGHT TO ME LAST
7 FRIDAY TO WORK WITH.

8 Q. YOU NEVER LISTENED TO ANY TAPES THAT HAD THE LOGO, AUDIO
9 FORENSIC LABEL ON IT, DID YOU?

10 A. I DON'T BELIEVE SO. CERTAINLY I DIDN'T FRIDAY, AND I CAN
11 SAY PRIOR TO THAT --

12 Q. AT LEAST NOT ON FRIDAY?

13 A. CORRECT.

14 MR. MEZA: JUST ONE MOMENT. EXCUSE ME.

15 (BRIEF PAUSE.)

16 BY MR. MEZA:

17 Q. DID YOU PERFORM ANY MAGNETIC ANALYSIS ON 184?

18 A. WHAT IS -- MAGNETIC ANALYSIS IS AN EXTREMELY GENERAL
19 TERMINOLOGY. DEFINE VIRTUALLY EVERYTHING I EVER DO ON ANY
20 TAPE?

21 DO YOU HAVE A PARTICULAR ASPECT OF IT YOU ARE
22 INTERESTED IN?

23 BY MR. MEZA:

24 Q. WOULD IT BE FAIR TO SAY THAT THE ONLY AREA OF MAGNETIC
25 ANALYSIS THAT YOU PERFORMED ON THE TAPE WAS REMOVING THE JUNK,

1 THE STUFF TO MAKE THE TAPE INTELLIGIBLE?

2 A. ENHANCEMENT, WHICH I NOTED A NUMBER OF STEPS, AND ALL THAT
3 COULD BE CALLED MAGNETIC ANALYSIS, TO USE YOUR TERMINOLOGY.

4 Q. THE ONLY THING YOU DID ON IT WAS GO THROUGH THE
5 ENHANCEMENT INTELLIGIBILITY PROCESS; IS THAT CORRECT?

6 A. THAT'S WHAT I WAS ASKED TO DO.

7 Q. AND NOTHING FURTHER?

8 A. THAT'S CORRECT.

9 THE COURT: ANY REDIRECT?

10 MR. CARLTON: NO, YOUR HONOR.

11 THE COURT: WE'LL ADJOURN AT THIS TIME, LADIES AND
12 GENTLEMEN, AND RECONVENE TUESDAY MORNING AT 9:30. AND I WANT
13 TO CAUTION YOU AGAIN, MOST IMPORTANTLY, THAT -- DO NOT DISCUSS
14 THIS CASE WITH EACH OTHER OR WITH ANYONE ELSE.

15 DO NOT FORM OR EXPRESS ANY OPINION OR CONCLUSION
16 ABOUT THIS CASE AND AVOID ANY EXPOSURE TO PUBLICITY ABOUT THIS
17 CASE -- NO NEWSPAPERS, NO TELEVISION, NO RADIO OR ANY KIND OF
18 PUBLICITY RELATED TO THIS CASE.

19 I EXPECT YOU TO ABIDE BY THAT. YOU MAY NOW BE
20 EXCUSED AND WE'LL SEE YOU ON TUESDAY MORNING.

21 (WITNESS EXCUSED.)

22 (JURY EXCUSED.)

23 (BRIEF PAUSE.)

24 MR. MEDRANO: I WANTED TO BRING SOMETHING TO THE
25 ATTENTION OF THE THE COURT. THANKS TO THE CERTIFIED COURT

1 INTERPRETER DOWNSTAIRS, THEY HAVE JUST BROUGHT UP TO ME TWO
2 COPIES OF THE TRANSLATION OF THAT RECANTATION.

3 WITH YOUR PERMISSION, I'D LIKE TO SUBMIT ONE TO YOU
4 THROUGH THE CLERK AT THIS TIME, AND THE SECOND ONE I'LL COPY TO
5 PROVIDE MR. NICOLAYSEN WITH A COPY.

6 THE COURT: I BELIEVE HE WAS PROVIDED --

7 MR. MEDRANO: SO WE WILL BE GIVING THAT TO YOU AFTER
8 COURT TODAY.

9 THE COURT: THAT'S FINE.

10 MR. MEDRANO: IN ADDITION, JUST TO GIVE COUNSEL SOME
11 GUIDANCE AS TO YOUR CONTEMPLATED DAY FOR CLOSING ARGUMENT SO WE
12 CAN SORT OF GEAR UP FOR THAT AND BE PREPARED, OBVIOUSLY. DOES
13 THE COURT HAVE ANY SUGGESTIONS OR INCLINATIONS?

14 THE COURT: WELL, I THINK -- WHEN ARE WE GOING TO
15 FINISH THIS REBUTTAL AND SURREBUTTAL, IF THERE IS ANY?

16 MR. MEDRANO: IF I MAY HAVE JUST ONE MOMENT, YOUR
17 HONOR.

18 (BRIEF PAUSE.)

19 THE COURT: ORDINARILY, THE ARGUMENT WOULD
20 IMMEDIATELY FOLLOW THE CLOSE OF THE EVIDENCE AND THE SETTLEMENT
21 OF THE JURY INSTRUCTIONS.

22 IN OTHER WORDS, I DON'T TAKE ANY TIME IN BETWEEN.

23 MR. MEDRANO: YOUR HONOR, OUR REBUTTAL WILL FINISH ON
24 TUESDAY. I CAN REPRESENT THAT TO THE COURT.

25 THE COURT: I DON'T KNOW IF THERE WILL BE ANY

1 SURREBUTTAL, IF WE FINISH ON TUESDAY?

2 MR. MEZA: DEPENDING ON THE THE COURT'S RULING ON OUR
3 OBJECTION CONCERNING THE REBUTTAL WITNESS, THERE MAY BE
4 SURREBUTTAL.

5 THE COURT: WHICH OBJECTION? WHICH REBUTTAL WITNESS?

6 MR. MEZA: YOUR HONOR, I'M ANTICIPATING THE
7 GOVERNMENT IS GOING TO CALL ANOTHER CERTIFIED COURT INTERPRETER
8 WHO'S GOING TO HAVE LISTEN TO THIS TEN PERCENT SLOWED TAPE AND
9 IS GOING TO TESTIFY THAT -- ACTUALLY TESTIFY TO TWO THINGS.
10 THERE WAS THE AREA ABOUT THE "NO, NO, NO." ACTUALLY, THAT "NO,
11 NO, NO" CAME UP ON THIS ENHANCED TAPE SO TO THAT EXTENT, WE ARE
12 IN AGREEMENT WITH THAT.

13 THERE WAS ANOTHER AREA THAT HAD TO DEAL WITH WHETHER
14 OUR CLIENT AFFIRMED OR DENIED HAVING MADE A PREVIOUS STATEMENT.
15 OUR FIRST GOVERNMENT --

16 THE COURT: DOES IT RELATE TO TRANSLATION?

17 MR. MEZA: YES.

18 THE COURT: WELL, IS THE TRANSLATION DIFFERENT FROM
19 YOUR INTERPRETER'S TRANSLATION?

20 MR. MEZA: WELL, IT DIFFERS FROM OUR INTERPRETER'S
21 TRANSLATION, WHICH DIFFERED FROM THE GOVERNMENT'S FIRST
22 TRANSLATION.

23 IN OTHER WORDS, THE SECOND TRANSLATION THE GOVERNMENT
24 IS SEEKING TO OFFER ESSENTIALLY IS CONSISTENT WITH THEIR FIRST
25 TRANSLATION. TO THE EXTENT THAT IT'S CONSISTENT, IT'S

1 CUMULATIVE .

2 MR. MEDRANO: THAT IT IS ERRONEOUS, YOUR HONOR .

3 MR. MEZA: WE'RE GOING TO DO IT TO THE TEN PERCENT
4 TAPE THAT WE RECEIVED FROM THE GOVERNMENT .

5 THE COURT: LOOK, IF YOU NEED SURREBUTTAL YOU CAN
6 HAVE IT. THAT'S YOUR RIGHT. BUT IF WE FINISH ON TUESDAY AND
7 WE EVER SOME TIME IN THE AFTERNOON, WE'LL WORK ON THE
8 INSTRUCTIONS AND PROCEED WITH THE ARGUMENT ON WEDNESDAY .

9 MR. MEDRANO: THANK YOU, YOUR HONOR .

10 THE COURT: MR. STOLAR .

11 MR. STOLAR: YES, SIR .

12 THE COURT: NOW, THROUGHOUT THIS TRIAL YOU HAVE BEEN
13 CROSS-EXAMINING EVERY WITNESS WHETHER IT'S RELATED TO YOUR CASE
14 OR NOT, AND WHETHER IT RELATED TO YOUR CLIENT OR NOT, AND I
15 PERMITTED YOU TO DO THAT OFTENTIMES BEFORE THE PARTY WHO WAS
16 REALLY AGGRIEVED BY THE TESTIMONY, WHO I THINK SHOULD --
17 COURTESY -- HAVE THE FIRST CRACK AT THE TESTIMONY .

18 THE LAST STRAW WAS THE PRISON GUARD WHO WAS CALLED AS
19 A REBUTTAL WITNESS TOTALLY UNRELATED TO YOUR CLIENT .

20 MR. STOLAR: YOUR HONOR, IF I MAY .

21 THE COURT: YES .

22 MR. STOLAR: THAT WITNESS, AS WELL AS WHAT I WANTED
23 TO ASK AGENT BERRELLEZ, IS RELATED TO MY CLIENT .

24 THE COURT: WELL, COULD YOU EXPLAIN TO ME HOW .

25 MR. STOLAR: YES, SIR. DAVID MACIAS BARAJAS PUTS

1 THE LIE BACK TO CERVANTES SANTOS. ANYTHING THAT I CAN DO IN
2 ASSESSING DAVID MACIAS BARAJAS TO BE A CREDIBLE WITNESS IS TO
3 SHOW HOW THE GOVERNMENT DID THINGS TO HIM HELPS MY CLIENTS,
4 HELPS MY CASE?

5 IT'S PERFECT, HE'S A WONDERFUL WITNESS FOR MR. MATTA.

6 THE COURT: WELL, YOU HAD AN OPPORTUNITY TO
7 CROSS-EXAMINE HIM.

8 WHAT ABOUT MR. BERRELLEZ, WHO WAS --

9 MR. STOLAR: MR. BERRELLEZ, AS I KNOW, AS THE COURT
10 KNOWS, AS MR. BERRELLEZ KNOWS, THE BUREAU OF PRISONS DIRECTS
11 WHERE PEOPLE ARE HOUSED. HOWEVER, IT IS COMMON KNOWLEDGE THAT
12 INFORMATION IS PROVIDED TO THE BUREAU OF PRISONS BY AGENTS, BY
13 PROSECUTORS. YOU CAN'T HOUSE SAM WITH JOE. BILL IS GOING TO
14 BE A WITNESS SO YOU HAVE TO PUT HIM IN THE WITNESS STAR IN THE
15 JAIL. KEEP THESE TWO GUYS AWAY FROM EACH OTHER BECAUSE THEY
16 HAVE A FEUD GOING.

17 THEY MAKE THE DECISION, BUT EVERYBODY KNOWS THAT
18 INFORMATION IS PROVIDED BY OUTSIDE SOURCES. THAT IS, THE
19 PRISON KNOWS HOW TO HOUSE PEOPLE. THAT'S WHAT I WANTED TO
20 BRING OUT, HE DIDN'T MAKE THE DECISION BUT HE PROVIDED
21 INFORMATION.

22 THE COURT: I'LL PERMIT TO YOU DO THAT.

23 MR. MEDRANO: FINALLY, YOUR HONOR, WE HAVE SUBMITTED
24 TO THE COURT THE SPECIFIC PORTIONS OF THE TRANSCRIPT ON
25 CERVANTES ABOUT LA PRIMAVERA PARK.

1 MR. DI NICOLA HAS SUBMITTED THEIR PORTION AND THE
2 GOVERNMENT HAS SUBMITTED THEIRS.

3 THE COURT: WELL, I'VE SEEN IT AND IT APPEARS THAT
4 THIS WITNESS WAS NOT TALKING ABOUT PRIMAVERA PARK AT ALL, BUT
5 THOSE WORDS WERE THE WORDS OF DEFENSE COUNSEL.

6 HE SAID LA PRIMAVERA IS A SMALL TOWN WHICH IS NEXT TO
7 GUADALAJARA, WHICH IS WHAT I REMEMBER HIM SAYING. THIS IS PAGE
8 8-28 OF THE TRANSCRIPT, AND THAT WAS ORIGINALLY HIS TESTIMONY
9 ABOUT LA PRIMAVERA.

10 MR. DI NICOLA: YOUR HONOR, WE HAVE ALSO SUBMITTED
11 THE TRANSCRIPT OF MAY 24, AND YOU WILL NOTE ON PAGE 7-52 OF
12 THAT TRANSCRIPT THAT MR. CERVANTES TESTIFIES INITIALLY ON
13 DIRECT EXAMINATION "THE BODIES WERE AT LA PRIMAVERA, THEY WOULD
14 HAVE TO BE MOVED BECAUSE IT BELONGED TO DON RUBEN."

15 THE COURT: WHERE IS THAT?

16 MR. DI NICOLA: THAT'S AT 7-52, YOUR HONOR, LINES 11
17 TO 14.

18 THE COURT: WHAT PAGE?

19 MR. DI NICOLA: 7-52; THAT'S THE TRANSCRIPT OF MAY
20 24.

21 THE COURT: I HAVEN'T SEEN THAT. OH, HERE IT IS.
22 BUT THE INTRODUCTION OF LA PRIMAVERA PARK WAS BY
23 COUNSEL.

24 MR. DI NICOLA: IT ACTUALLY OCCURRED ON DIRECT
25 EXAMINATION, YOUR HONOR.

1 THE COURT: WHAT LINE?

2 MR. DI NICOLA: LINE 7-52 (SIC) -- LINE 11 THROUGH
3 14.

4 THE COURT: LINE 11?

5 MR. DI NICOLA: YES, YOUR HONOR.

6 THE COURT: THAT THE BODIES WERE THERE AT LA
7 PRIMAVERA AND THEY WOULD BE MOVED BECAUSE IT BELONGED TO DON
8 RUBEN.

9 MR. DI NICOLA: YES, YOUR HONOR. IT PROVIDES SOME
10 CONTEXT FOR THE COURT. UP TO THAT POINT IN TIME, THE ONLY
11 EVIDENCE THE JURY HAD HEARD, OR AT LEAST THE EVIDENCE THEY HAD
12 HEARD MOST RECENTLY, THE DAY BEFORE FROM DR. FELIPE RADELAT WAS
13 THAT HE HAD GONE TO PRIMAVERA PARK TO VIEW THE PLACE WHERE THE
14 BODY -- HIS SON HAD PREVIOUSLY BEEN FOUND.

15 LATER, ON THE SAME DAY ON CROSS-EXAMINATION, AT PAGE
16 7-95, LINE 4 TO 6 WHEN ASKED BY MR. MEDVENE -- BECAUSE AT THAT
17 POINT MR. CERVANTES HAD BEEN GIVING CONFLICTING TESTIMONY --
18 PAGE 7-95, YOUR HONOR, LINE 4.

19 THE COURT: I SEE IT HERE.

20 MR. DI NICOLA: HE WAS ASKED:

21 "Q. YOU MADE NO MENTION OF ANY LAND AT PRIMAVERA PARK THAT MR.
22 ZUNO ALLEGEDLY OWNED. YOU NEVER MENTIONED THAT, DID YOU?"

23 AND HE ANSWERS:

24 "A. YES, I DID MENTION IT."

25 AND THEN HE GOES ON, LATER ON THE SAME PAGE, YOUR

1 HONOR, LINE 10 TO 14 AND AGAIN THE QUESTION IS PUT TO HIM WITH
2 RESPECT TO PRIMAVERA PARK. AND AGAIN UP TO THAT POINT IN TIME,
3 THE ONLY EVIDENCE IN THE RECORD IS ABOUT PRIMAVERA PARK, AND HE
4 SAYS:

5 "A. YES, I DID MENTION THAT."

6 AND THEN A DAY GOES BY --

7 THE COURT: YES, I DID MENTION LA PRIMAVERA.

8 MR. DI NICOLA: YES, I UNDERSTAND THAT THE
9 TRANSCRIPT, AT LEAST, DOES NOT DIFFERENTIATE AT THAT POINT.

10 THEN A DAY GOES BY AND HE TESTIFIES THE NEXT DAY, AND
11 THEN HE TESTIFIED REGARDING LA PRIMAVERA.

12 YOUR HONOR, WE WOULD SUBMIT THAT THE RECORD AT LEAST
13 IS AMBIGUOUS ON THE POINT, SUGGESTING AT ONE POINT THAT HE
14 MAINTAINED THAT HE WAS -- HE DID TELL THE D.E.A. ABOUT
15 PRIMAVERA PARK. THAT ISSUE WAS BEFORE THE JURY AND IT'S FAIR
16 FOR US TO REBUT THAT WITH THIS RATHER, WE SUBMIT, INNOCUOUS MAP
17 OF LA PRIMAVERA PARK.

18 THE COURT: WHAT IS ALL THE EXCITEMENT ABOUT THIS,
19 ANYWAY?

20 I CAN'T IMAGINE THAT EITHER COUNSEL IS GOING TO BE
21 DEALING WITH THIS ISSUE BEFORE THE JURY.

22 MR. MEDRANO: YOUR HONOR, THEY ARE IN CLOSING. IN
23 CLOSING, THEY'RE GOING TO SAY THAT CERVANTES SAID "PARK" WHEN
24 HE SAID "TOWN", AND WE'VE GIVEN YOU THE TRANSCRIPT WHERE HE
25 SAYS "TOWN OF PRIMAVERA".

1 THE COURT: WELL, HE SAID BOTH.

2 MR. MEDRANO: NO, YOUR HONOR.

3 THE COURT: HE NEVER ACTUALLY SAID THAT HIMSELF, BUT
4 HE ADOPTED THE WORDS OF THE QUESTION.

5 MR. MEDRANO: WELL, THERE IS THE RUB, YOUR HONOR.
6 THE PORTION I GIVE YOU, IT COMES OUT OF HIS OWN MOUTH. HE SAYS
7 "TOWN OF LA PRIMAVERA".

8 IN THEIR VERSION, THEY'RE THE ONES THAT SAY PARK.
9 CERVANTES NEVER DOES. SO, YOU'RE RIGHT, IT'S AN ADOPTION
10 ISSUE, BUT THE POINT IS, HE'S MORE CONCISE AND SUCCINCT IN OUR
11 VERSION WHEN THEY WERE ASKING THE QUESTIONS. AND HE SAID "THE
12 TOWN OF", SO THAT'S UNEQUIVOCAL.

13 SO CLEARLY WHAT HAPPENED WAS THIS WAS FOUR DAYS OF
14 CROSS-EXAMINATION, YOUR HONOR. THEIR TRANSCRIPT IS DAYS LATER
15 AND SHOWS THAT CLEARLY THE WITNESS WAS SIMPLY CONFUSED. SO
16 THEY SHOULDN'T BE ABLE TO ARGUE IN CLOSING THAT IT WAS A PARK
17 WHEN HE SAID IT WAS A TOWN.

18 THE COURT: THE CLEAR PURPORT OF THIS EVIDENCE IS
19 THAT THIS WITNESS NEVER SAID THAT MR. ZUNO OWNED LA PRIMAVERA
20 PARK.

21 HE CLEARLY TESTIFIED TO LAND IN THE TOWN OF LA
22 PRIMAVERA AND THE WORD PRIMAVERA PARK EMANATED FROM COUNSEL'S
23 STATEMENT; AND THEREFORE, THIS EXHIBIT CC, WHICH I EARLIER SAID
24 COULD BE RECEIVED, IS NOT REALLY NECESSARY IN MY VIEW AND IT IS
25 NOT RECEIVED.

1 MR. NICOLAYSEN: YOUR HONOR, IF I MAY JUST BE HEARD
2 FOR A MOMENT ON THE STATEMENT OF ONTIVEROS. IT IS ONLY THREE
3 AND A HALF PAGES LONG. IS IT POSSIBLE WE MIGHT ASK THE COURT
4 TO LOOK AT IT NOW SO WE COULD HAVE A FINAL RULING ON MY MOTION
5 BEFORE THE WEEKEND?

6 THE COURT: IT IS POSSIBLE TO ASK.

7 (COURTROOM LAUGHTER.)

8 THE COURT: BUT I'M NOT SURE. I MAY WANT TO LOOK AT
9 THE WHOLE PICTURE AGAIN BEFORE I RULE ON THAT.

10 MR. NICOLAYSEN: YOUR HONOR, I FILED A SUPPLEMENTAL
11 MEMORANDUM THIS MORNING, WHICH I DID SERVE ON THE GOVERNMENT
12 ABOUT 9:00, JUST SO THE COURT KNOWS.

13 THE COURT: ALL RIGHT, FINE. NOW, THERE IS --

14 MR. DI NICOLA: YOUR HONOR, IF I MIGHT, JUST ONE --

15 THE COURT: REGARDING THAT THING -- THAT'S CLOSED.

16 MR. DI NICOLA: ONE CLARIFICATION?

17 THE COURT: NO. YOU CAN ARGUE THE RECORD. IF IT'S
18 IN THE RECORD, IT'S IN THE RECORD, WHATEVER THE EVIDENCE IS.

19 IN MY VIEW, THE WITNESS WAS NOT TESTIFYING ABOUT THAT
20 PARK, HE WAS TESTIFYING THE HOUSE -- HE EVEN SAID HE WANT TO A
21 HOUSE IN LA PRIMAVERA, A SMALL TOWN NEAR GUADALAJARA.

22 ALL RIGHT. NOW, WHAT DO WE HAVE LEFT, THE QUESTION
23 RELATING TO MR. --

24 MR. NICOLAYSEN: VASQUEZ, YOUR HONOR, THE 804 MOTION.

25 THE COURT: VASQUEZ, 804 MOTION.

1 NOW, MR. --

2 MR. MEDVENE: WE ALSO HAVE ONE OTHER ISSUE, YOUR
3 HONOR.

4 THE COURT: YES.

5 MR. MEDVENE: MR. CUELLAR, YOUR HONOR SAID --

6 THE COURT: I THINK I SHOULD HEAR THAT TESTIMONY.

7 MR. MEDVENE: MR. CUELLAR IS HERE.

8 THE COURT: EVEN THOUGH I SAID I WOULD NOT EARLIER, I
9 HAVE RECONSIDERED AND I THINK I SHOULD HEAR IT.

10 MR. MEDRANO: ONE THOUGHT ON THAT, YOUR HONOR.

11 THE COURT: YES.

12 MR. MEDRANO: I WOULD JUST RESPECTFULLY SUBMIT IT'S
13 SORT OF A WASTE OF TIME BECAUSE NO MATTER WHAT HE SAYS, THAT
14 DOESN'T ADDRESS THE SECOND PRONG YOU'VE HAD WITH HIS DOCUMENTS,
15 THAT IS IT DOESN'T SHOW AN ALL-INCLUSIVE SEARCH OF EVERY CIVIL
16 REGISTRY, YOUR HONOR. SO IF IT DOESN'T, THEN CUELLAR'S
17 TESTIMONY IS IRRELEVANT.

18 THE COURT: THEN THE EXHIBITS WOULD NOT BE RECEIVED,
19 BUT I THINK THAT SINCE HE'S HERE AND THEY BROUGHT HIM HERE, WE
20 SHOULD HEAR WHAT HE HAS TO SAY.

21 MR. MEDRANO: I UNDERSTAND, YOUR HONOR. THANK YOU.
22 THANK YOU.

23 THE COURT: ALL RIGHT. BUT NOT TODAY.

24 MR. MEDVENE: COULD YOU TELL US WHEN IT'S CONVENIENT,
25 YOUR HONOR, BECAUSE WE'LL BRING HIM BACK. WHATEVER YOU SAY.

1 THE COURT: WELL, IT WOULD HAVE TO BE TUESDAY.

2 MR. MEDVENE: YES, SIR. WE'LL HAVE HIM HERE TUESDAY.

3 THE COURT: TUESDAY WE'LL FIT IT IN.

4 MR. MEDRANO: COULD THAT BE DONE MONDAY AT ALL, YOUR
5 HONOR, JUST OUT OF CURIOSITY?

6 THE COURT: MONDAY WE HAVE A BIG, HEAVY DAY. WE HAVE
7 A HEAVY DAY ON MONDAY, DON'T WE, JUDY?

8 THE CLERK: YES.

9 MR. MEDVENE: IF THE COURT PLEASE, IF IT'S
10 APPROPRIATE NOW, COULD WE JUST HAVE THE NAMES OF FOUR REMAINING
11 GOVERNMENT REBUTTAL WITNESSES?

12 WE UNDERSTAND TWO ARE INTERPRETERS. IF THERE IS
13 ANYBODY ELSE -- WE ARE JUST TRYING TO FIGURE OUT IF WE HAVE ANY
14 SURREBUTTAL, IF THEY HAVE ANY -- AND THE ONLY REASON I ASK
15 THAT, I DON'T WANT TO INCUR YOUR DISPLEASURE -- IF THEY HAVE
16 ANY SO-CALLED "SNITCH WITNESSES", WE'RE GOING TO HAVE REBUTTAL
17 OF A SNITCH EXPERT AND HOW UNRELIABLE THEY ARE.

18 I DON'T WANT TO BRING HIM UNLESS WE NEED HIM AND I
19 WOULD ASK, YOUR HONOR, IF THEY COULD INDICATE WHAT THEY'RE
20 GOING TO HAVE TUESDAY. THIS LOOKS LIKE AN HOUR OF TESTIMONY
21 RIGHT HERE, AND WE WOULD ASK --

22 THE COURT: THEY SAID THAT THEY'RE GOING TO FINISH
23 TUESDAY.

24 MR. MEDVENE: YES, SIR, BUT THEY HAVE GIVEN US FOUR
25 PEOPLE, TWO OF WHOM ARE INTERPRETERS.

1 THE COURT: WE GO OVER THIS EVERY DAY. YOU WANT ME
2 TO FIND OUT WHAT THESE PEOPLE --

3 (COURTROOM LAUGHTER.)

4 MR. MEDVENE: THAT'S THE MESSAGE, YOUR HONOR, AND
5 THEY'RE NOT GIVING IT TO US.

6 THE COURT: WELL, I KNOW, BUT THEY'RE NOT REQUIRED TO
7 GIVE IT AND I'M NOT GOING TO ASK THEM.

8 MR. MEDVENE: THEY'RE NOT REQUIRED TO GIVE US THE
9 WITNESSES TWO DAYS AHEAD LIKE WE GAVE THEM?

10 THE COURT: THEY'RE REQUIRED TO DO WHAT YOU DO FOR
11 THEM.

12 MR. MEDVENE: WE GAVE IT TO THEM, JUDGE, AND THEY
13 HAVEN'T GIVEN IT TO US.

14 THE COURT: THEY HAVEN'T GIVEN YOU THE NAME OF THE
15 WITNESS FOR TUESDAY?

16 MR. MEDVENE: NO. WELL, UNLESS -- WHAT THEY HAVE
17 GIVEN IS STONE, CORONA, REYNOSA, CORASSO (PHONETIC). IF THERE
18 IS ANYBODY ELSE, THEY HAVEN'T GIVEN THEM.

19 I ASK THROUGH YOUR HONOR, IS THERE ANYBODY ELSE?
20 PRETTY STRAIGHTFORWARD.

21 THE COURT: IS THERE ANYONE ELSE?

22 MR. MEDRANO: YOUR HONOR, HE HAS THE LIST OF
23 WITNESSES.

24 MR. MEDVENE: THAT'S NOT MY QUESTION. MY QUESTION
25 IS, IS THERE ANYONE ELSE, YOUR HONOR, BECAUSE WE HAVE SOME

1 DIFFICULTY --

2 MR. MEDRANO: I REITERATE THAT HE HAS THE LIST FOR
3 TUESDAY, YOUR HONOR.

4 THE COURT: WELL --

5 MR. MEDVENE: DOES THAT MEAN THAT'S THESE FOUR? JUST
6 TO SAY IT IN ENGLISH FOR MR. MEDRANO.

7 THE COURT: ALL RIGHT. THAT'S ENOUGH. THAT'S WHAT
8 IT MEANS.

9 MR. MEDVENE: OKAY.

10 THE COURT: ALL RIGHT. WE HAVE THE MARRIAGE QUESTION
11 AND VASQUEZ; THOSE ARE THE ONLY TWO REMAINING EVIDENTIARY
12 ISSUES, ARE THEY NOT? AND WE'LL RESOLVE THOSE.

13 MS. KELLY: I JUST FILED THAT MOTION. YOUR HONOR WAS
14 GOING TO LOOK AT THE MOTION.

15 THE COURT: I CAN'T HEAR YOU VERY WELL. DO YOU HAVE
16 A PROBLEM WITH YOUR VOICE?

17 MR. MEZA: YES. WE FILED A MOTION EARLIER TODAY AND
18 THE COURT INDICATED YOU WOULD LOOKE AT IT, YOUR HONOR.

19 THE COURT: YES, I WILL. WHAT IS THE MOTION?

20 MR. MEZA: IT IS A MEMORANDUM IN SUPPORT OF OPENING
21 CROSS-EXAMINATION OF WITNESS HARRISON.

22 THE COURT: TO REOPEN CROSS OF HARRISON BEFORE THE
23 JURY.

24 MR. MEZA: AND I WOULD ADD PARENTHETICALLY IT WOULD
25 ALSO BE TO REOPEN CROSS-EXAMINATION ON AGENT KUYKENDALL TO THE

1 LIMITED AREA THAT IS RAISED IN THE HARRISON MOTION.

2 THE COURT: THAT WITNESS HAS BEEN HERE TWICE ALREADY.

3 MR. MEZA: THAT'S CORRECT, YOUR HONOR.

4 MR. MEDRANO: THREE TIMES, YOUR HONOR.

5 THE COURT: THREE TIMES?

6 MR. MEZA: TWICE FOR THE GOVERNMENT AND ONCE FOR US.

7 THE COURT: I'LL LOOK AT THE MOTION. AND THOSE ARE
8 THE ONLY THINGS REMAINING: THE VASQUEZ MOTION, THE MARRIAGE
9 DOCUMENTS AND HEARING FROM THIS WITNESS, AND A MEMORANDUM TO
10 REOPEN THE CROSS-EXAMINATION OF HARRISON AND KUYKENDALL.

11 I THINK I'LL GO BEFORE YOU THINK OF ANYTHING ELSE.

12 (COURTROOM LAUGHTER.)

13 THE COURT: BY THE WAY, I HAVE MADE A COPY OF -- I
14 HAVE SIGNED AN ORDER WHICH I EARLIER READ TO YOU, AND I WANT
15 THE CLERK TO GIVE EACH COUNSEL A COPY OF THE ORDER.

16 THE CLERK: THIS COURT IS NOW IN RECESS.

17 (COURT STANDS IN RECESS.)

18

19

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20 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
21 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

22

23

24

25

Julie A. Churchill #1655

DATED: 3/23/91

INDEX: U.S.A. -VS- JUAN RAMON MATTA BALLESTEROS

		PG	LN
(EXHIBIT #	AAA RECEIVED IN EVIDENCE.)	53	4
(EXHIBIT #	BBB RECEIVED IN EVIDENCE.)	53	5
(EXHIBIT #	DDD RECEIVED IN EVIDENCE.)	53	6
(EXHIBIT #	118 RECEIVED IN EVIDENCE.)	154	21
(EXHIBIT #	184 RECEIVED IN EVIDENCE.)	202	14
(EXHIBIT #	184-C RECEIVED IN	202	15
COURSE AT THE	* DE VRY INSTITUTE OF	194	21
INCLUDING A COURSE IN	* F F T ANALYSIS AND AT	195	8
SPEED AND MAYBE A	* SPEED AT 15 INCHES PER	198	6
HERE. I MARKED THEM	* 00629, *017 *EQSZ, WHICH IS	203	21
I MARKED THEM *00629,	* 017 *EQSZ, WHICH IS THE	203	21
THEM *00629, *017	* EQSZ, WHICH IS THE	203	22
LOS ANGELES	+ CALIFORNIA FRIDAY, JULY 6,	4	1
JULY 6, 1990	+ 9:30 A.M. (JURY	4	2
GARCIA DE BERNABE	+ PLAINTIFF'S WITNESS, SWORN	38	20
DIRECT EXAMINATION	+ BY MS. KELLY: Q.	39	3
CROSS-EXAMINATION	+ BY MR. MEDRANO: Q.	46	6
CROSS-EXAMINATION	+ BY MR. STOLAR: Q.	48	25
LAWRENCE V. HARRISON	+ PLAINTIFF'S WITNESS,	54	2
VOIR DIRE EXAMINATION	+ BY MR. CARLTON: Q.	54	3
VOIR DIRE EXAMINATION	+ BY MR. STOLAR: Q.	57	7
LOS ANGELES	+ CALIFORNIA FRIDAY, JULY	83	12
JULY 6, 1990	+ 1:30 P.M.	83	13
V. HARRISON	+ PLAINTIFF'S WITNESS,	83	18
VOIR DIRE	+ EXAMINATION CONTINUED	83	19
FURTHER VOIR DIRE	+ EXAMINATION BY MS.	90	4
FURTHER VOIR DIRE	+ BY MR. MEDVENE: Q.	101	19
VOIR DIRE	+ EXAMINATION BY MR.	121	19
VOIR DIRE EXAMINATION	+ BY MR. STOLAR: A. ON	126	24
VOIR DIRE EXAMINATION	+ BY MR. MEDVENE: Q.	127	19
WENDALL VAN BOYD	+ PLAINTIFF'S REBUTTAL	146	24
DIRECT EXAMINATION	+ BY MR. MEDRANO: Q.	147	4
CROSS-EXAMINATION	+ BY MR. MEDVENE: Q.	159	9
CROSS-EXAMINATION	+ BY MR. STOLAR: Q.	170	9
REDIRECT EXAMINATION	+ BY MR. MEDRANO: Q.	172	9
RE CROSS-EXAMINATION	+ BY MR. MEDVENE: Q.	174	18
GREGORY D. LEE	+ PLAINTIFF'S WITNESS, SWORN	176	12
DIRECT EXAMINATION	+ BY MR. CARLTON: Q.	176	25
HECTOR BERRELLEZ	+ PLAINTIFF'S WITNESS,	179	13
DIRECT EXAMINATION	+ BY MR. CARLTON: Q.	179	14
CROSS-EXAMINATION	+ BY MR. MEZA: Q. THIS	185	1
REDIRECT EXAMINATION	+ BY MR. CARLTON: Q.	188	23
BRUCE E. KOENIG	+ PLAINTIFF'S WITNESS, SWORN	190	25
DIRECT EXAMINATION	+ BY MR. CARLTON: Q.	191	4

			PG	LN
CROSS-EXAMINATION	+	BY MR. MEZA: Q. THIS	203	14
TO 3 PHOTOGRAPHS, 3	EXHIBIT	S. AND	4	21
THE DEFENSE TRIAL	EXHIBIT	P FOR THE TRUTH OF	5	5
THIS DEFENSE TRIAL	EXHIBIT	P FOR THE TRUTH OF	5	10
STATED THEREIN.	EXHIBIT	P, WHICH IS ATTACHED	5	10
WHICH IS ATTACHED AS	EXHIBIT	A TO THE DEFENDANT'S	5	11
IS THE LAST	EXHIBIT	TO MY ORIGINAL MOVING	5	22
TO THE MOTION AS	EXHIBIT	F. AGENT	9	18
AND REVIEWED THESE	EXHIBIT	S AND THE OPPOSITION	21	6
THE COURT FINDS THAT	EXHIBIT	S AA, BB, CC, AND	21	25
AND THAT PORTION OF	EXHIBIT	DD THAT DEALS WITH	22	1
SAFETY ONLY, AND	EXHIBIT	NN MAY BE ADMITTED.	22	3
MAY BE ADMITTED.	EXHIBIT	S EE, FF, GG, HH, II,	22	4
ADOPTED FOR THESE	EXHIBIT	S IS SOMEWHAT	22	6
IS OF THE VIEW THAT	EXHIBIT	S AA AND BB HAVE BEEN	22	14
THE COURT FINDS THAT	EXHIBIT	CC HAS BEEN PROPERLY	22	16
TRUE WITH REGARD TO	EXHIBIT	DD, BUT ONLY TO THE	22	19
THE REMAINDER OF	EXHIBIT	DD, DEALING WITH	22	25
ARREST, AND ALL OF	EXHIBIT	MM, DEALING WITH	23	1
THE COURT'S VIEW THAT	EXHIBIT	S EE THROUGH LL HAVE	23	5
THESE REASONS, THESE	EXHIBIT	S WILL NOT BE	23	12
THE COURT FINDS THAT	EXHIBIT	NN IS PROPERLY	23	13
TALKING ABOUT HERE,	EXHIBIT	AA IS A CERTIFIED	23	19
TO DR. SANCHEZ. AND	EXHIBIT	BB IS A CERTIFIED	23	21
OF THAT PROPERTY.	EXHIBIT	CC IS AN AERIAL	23	23
ALREADY DISCUSSED	EXHIBIT	DD, WHICH IS A FILE	24	5
WHICH ARE	EXHIBIT	S EE-2 -- THAT IS, EE	24	21
THIS	EXHIBIT	MM, WHICH IS A	27	1
COVERED ALL OF THE	EXHIBIT	S, THE 14 THAT WE'VE	27	11
ONE, ON	EXHIBIT	CC, WHICH IS THE	29	25
ON THAT PARTICULAR	EXHIBIT	. THE	30	17
THE ARREST PORTION OF	EXHIBIT	D, THE REASON THAT WE	31	20
THAT PORTION OF THE	EXHIBIT	, YOUR HONOR, IS	31	21
TRUE WITH RESPECT TO	EXHIBIT	MM. THE	32	5
WAS REFERRING TO	EXHIBIT	S DOUBLE A THROUGH	35	22
HAVE TWO OTHER COURT	EXHIBIT	S WHICH WERE REFERRED	35	24
WOULD BE TWO DOUBLE A	EXHIBIT	S AND TWO DOUBLE B	36	9
AND TWO DOUBLE B	EXHIBIT	S. THE	36	10
SHOULDN'T HAVE DOUBLE	EXHIBIT	S. THEN THEY SHOULD	36	11
I'D LIKE TO HAVE	EXHIBIT	4-J PLACED IN FRONT	39	25
THE CLERK: THE	EXHIBIT	IS BEFORE THE	40	2
TAKE A LOOK AT THE	EXHIBIT	THAT IS BEFORE YOU	40	4
WOULD LIKE TO OFFER	EXHIBIT	JJJJ INTO EVIDENCE.	45	24
WHICH IS OFFERED AS	EXHIBIT	KKKK IS FROM THE	50	9
WOULD OFFER CERTAIN	EXHIBIT	S AT THIS TIME.	51	24
AS PURCHASER.	EXHIBIT	TRIPLE D, THAT	52	7
OF JALISCO. AND	EXHIBIT	TRIPLE N, CERTIFIED	52	9
WOULD SO MOVE THESE	EXHIBIT	S AT THIS TIME, YOUR	52	15
THE COURT: YES. THE	EXHIBIT	S MAY BE RECEIVED,	52	17
HONOR. (	EXHIBIT	# AAA RECEIVED IN	53	4
(	EXHIBIT	# BBB RECEIVED IN	53	5

INDEX: U.S.A. -VS- JUAN RAMON MATTA BALLESTEROS

			PG	LN
	(	EXHIBIT # DDD RECEIVED IN	53	6
YES. WHAT IS THE		EXHIBIT NUMBER FOR	60	5
YOU HAVE SOME		EXHIBIT S THAT I STILL HAVE	139	14
SUBJECT TO THE ONE		EXHIBIT WE HAVE OPEN, THE	146	4
TO LOOK AT GOVERNMENT		EXHIBIT 187, I BELIEVE THAT'S	153	18
TO LOOK AT GOVERNMENT		EXHIBIT 187, COULD YOU TELL	154	5
	(	EXHIBIT # 118 RECEIVED IN	154	21
HAS BEEN MARKED AS		EXHIBIT 184. A. YES,	177	14
ASK YOU TO LOOK AT		EXHIBIT 184, PLEASE.	179	18
DO YOU RECOGNIZE		EXHIBIT 184, AGENT	180	6
MAKE COPIES OF THIS		EXHIBIT , AND SUBMITTED THE	181	2
AND SUBMITTED THE		EXHIBIT TO THE NON-DRUG	181	2
HAS BEEN MARKED AS		EXHIBIT 184? A. YES, SIR.	196	17
ENHANCED COPIES OF		EXHIBIT 184, THE	200	3
HAS BEEN MARKED AS		EXHIBIT 184-B? A. YES,	200	15
AT THIS TIME THAT		EXHIBIT S 184 AND 184-C BE	202	9
	(	EXHIBIT # 184 RECEIVED IN	202	14
	(	EXHIBIT # 184-C RECEIVED IN	202	15
AND THEREFORE, THIS		EXHIBIT CC, WHICH I EARLIER	216	23
THE COURT: THEN THE		EXHIBIT S WOULD NOT BE	218	18