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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA, :  
:  
vs. : 82 Mag. 1444  
:  
EDUARDO AROCENA, :  
:  
Defendant. :  
:  
-----x

Before:  
  
HON. NINA GERSHON,  
U. S. Magistrate.

New York, N. Y.  
September 21, 1983  
2:30 o'clock p.m.

APPEARANCES:

RUDOLPH W. GIULIANO, ESQ.,  
United States Attorney for the  
Southern District of New York,  
Attorney for the Government;  
BY: MICHAEL L. TABAK, ESQ.,  
Assistant United States Attorney.

ROSENMAN, COLIN, FREUND, LEWIS & COHEN, ESQS.,  
----- Attorneys for the Defendant; -----  
BY: GERALD WALPIN, ESQ., and  
HECTOR J. TORRES, ESQ., of Counsel.

PRESENT:  
  
Sara Garcia-Rangel, Interpreter.

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THE MAGISTRATE: Mr. Tabak?

MR. TABAK: Your Honor, the purpose of our being here today is for the preliminary examination with regard to Eduardo Arocena, who is charged in complaint 82 Magistrate 1444 with illegal interstate transportation of explosives, and conspiracy in violation of Title 18, United States Code, Sections 842(a)(3)(A), Section 2 and 371.

I would like to note for the record that one of the Court interpreters, Sara Garcia-Rangel is translating for Mr. Arocena.

The complaint was signed on October 1st, 1982, and Mr. Arocena was not arrested until July 22, 1983. He was a fugitive during the intervening period.

Mr. Arocena was arrested in Florida, and the removal proceedings took until July 29, 1983.

Once he got up here, the Government moved to disqualify Anna Marie Carnesoltas from acting as Mr. Arocena's lawyer on the basis of conflict of interest.

That was heard before the Part I Judge, that was Judge Broderick, and he ruled that she should be disqualified, and he appointed Mr. Walpin, Gerald Walpin --

THE MAGISTRATE: Appointed or retained?

MR. TABAK: Appointed Gerald Walpin as counsel

1 for Mr. Arocena.

2 THE MAGISTRATE: You are not on the list of  
3 the CJA panel, are you, Mr. Walpin?

4 MR. WALPIN: No, I don't believe so.

5 THE MAGISTRATE: I just noticed it, and I was  
6 curious about that.

7 MR. WALPIN: Your Honor, I was assigned by  
8 Judge Broderick who requested that I accept the representa-  
9 tion.

10 THE MAGISTRATE: Very good.

11 MR. TABAK: Following the appointment of  
12 Mr. Walpin and very shortly before the preliminary  
13 examination was scheduled, Paul Goldberger, who was  
14 another attorney representing some other people with  
15 regard to this matter, went to see Mr. Arocena at the  
16 Otisville Federal Correctional Institution where Mr. Arocena  
17 is being lodged, and then reported to me that Mr. Arocena  
18 wanted Mr. Goldberger to represent him instead of Mr.  
19 Walpin.

20 We then had a proceeding before Judge  
21 Broderick wherein yesterday Judge Broderick ruled that  
22 Mr. Goldberger not be permitted to enter the case because  
23 of the conflict of interest, and that Mr. Walpin was to  
24 remain in the case.

25 Judge Broderick made the appropriate Speedy

1 Trial Act exclusion findings with regard to both of the  
2 motions to disqualify counsel, and according to my  
3 calculation, only six days of speedy trial time has  
4 actually elapsed at this point.

5 THE MAGISTRATE: Six days has --

6 MR. TABAK: Has elapsed of the Speedy Trial  
7 Act time. In particular, the period from July 22  
8 through July 29, 1983 were excluded under --

9 THE MAGISTRATE: Mr. Walpin, do you agree that  
10 only six days have elapsed?

11 MR. WALPIN: Your Honor, I have not addressed  
12 myself to the specific number of days, and I would prefer  
13 not commenting on the specifics. There have been  
14 findings made by Judge Broderick twice on that point,  
15 but I don't think we are at this moment in any way  
16 questioning, for this hearing here, questioning the  
17 speedy trial representation made by Mr. Tabak.

18 THE MAGISTRATE: Thank you.

19 MR. WALPIN: I do reserve the right to compute  
20 that myself at an appropriate time.

21 THE MAGISTRATE: Fine.

22 MR. TABAK: In any event, the Government is  
23 prepared to proceed by calling James R. Lyons as its first  
24 witness.

25 MR. WALPIN: Before we do, your Honor -- and

1 I don't wish to delay Mr. Tabak's presentation of his  
2 evidence - I think it's fair to advise your Honor and  
3 counsel that while a preliminary examination probable  
4 cause hearing is before your Honor, that I wish to make  
5 a motion as well to reduce the bail from the million  
6 dollars that at presently he is at, and I think that all  
7 of the facts that will be involved that will come out,  
8 it would be just as well for your Honor, I might suggest,  
9 to hold that motion in abeyance until the end of the  
10 hearing and hear all of the evidence which may be relevant  
11 to either item on our motion to reduce bail.

12 THE MAGISTRATE: Well, preliminarily, as to  
13 that, bail was fixed by a District Judge, and in the  
14 light of that I don't know that I would have any authority  
15 to reduce it absent communicating with the Judge and see  
16 what he thinks about that.

17 MR. WALPIN: Your Honor, the bail was fixed  
18 by a District Judge, I'm advised - and Mr. Tabak can  
19 correct me - with no one present from the defendant.  
20 It was fixed on a warrant without anybody present, and  
21 I do not know of any application to the Court thereafter  
22 in the Southern District to reduce it, and I would believe,  
23 your Honor, that your Honor has the power and jurisdiction,  
24 and in view of the fact that your Honor will be hearing  
25 this matter right now, can entertain our motion.

1 MR. TABAK: Well, it's the Government's  
2 position that Judge Duffy in the District Court did set  
3 the bail --

4 THE MAGISTRATE: Was there anyone there from  
5 the defendant?

6 MR. TABAK: It was an ex parte proceeding,  
7 but it was not anything out of the ordinary. It is  
8 common practice, and, indeed, on the arrest warrant there  
9 is a place for bail to be designated --

10 THE MAGISTRATE: I am not suggesting otherwise.  
11 Wasn't the defendant ever presented to the  
12 Court?

13 MR. TABAK: He was presented to the Magistrate's  
14 Court.

15 THE MAGISTRATE: What happened then?

16 MR. TABAK: At that point the Magistrate, who  
17 I believe was Magistrate Buchwald, when he was presented --

18 THE MAGISTRATE: My recollection of the  
19 disposition is \$1 million as fixed by Judge Duffy.

20 MR. TABAK: That is my recollection also, your  
21 Honor.

22 THE MAGISTRATE: Is it your position, Mr. Tabak,  
23 that the matter should first be brought to Judge Duffy?

24 MR. TABAK: Either to Judge Duffy or a  
25 District Judge.

1 THE MAGISTRATE: Well, I think the simple  
2 resolution would be that at some time during the afternoon  
3 counsel or I could make a telephone to Judge Duffy's  
4 chambers and ask whether or not he wishes to have the  
5 matter heard or whether or not the matter should proceed  
6 before me. I believe, or I am 99-1/2 percent confident  
7 he will say I should go ahead.

8 MR. WALPIN: May I just suggest, for efficiency's  
9 sake, that we at least go ahead so as not to waste time,  
10 as if your Honor can entertain our motion.

11 THE MAGISTRATE: Yes, absolutely.

12 MR. TABAK: On the possibility that your Honor  
13 might be hearing the bail reduction motion, the Government  
14 does not intend at this preliminary examination to present  
15 evidence relevant to it, but we would preserve the right,  
16 obviously, to make facts known to your Honor at a bail  
17 reduction hearing.

18 THE MAGISTRATE: Very good.

19 MR. TABAK: The Government then calls James R.  
20 Lyons.

21 - -

22 J A M E S R. L Y O N S, called as a witness by  
23 the Government, being first duly sworn, was examined  
24 and testified as follows:

25 DIRECT EXAMINATION  
BY MR. TABAK:

1 Q Agent Lyons, what is your current occupation?

2 A I'm a special agent with the FBI.

3 Q How long have you been a special agent with  
4 the Federal Bureau of Investigation?

5 A Approximately 13 years.

6 Q What squad are you currently assigned to?

7 A I am assigned to the New York City Police  
8 Department, FBI, Joint Terrorist Task Force.

9 Q How long have you been assigned to the Joint  
10 Terrorist Task Force?

11 A Since the inception of the Task Force, which  
12 was approximately May of 1980. I've been assigned to  
13 terrorist investigations for approximately 11 years.

14 Q Do you have any additional designation within  
15 the FBI besides special agent?

16 A Yes, I am a bomb technician.

17 Q What is that designation based upon?

18 A It's based upon training that I receive at  
19 numerous bomb technology courses, starting with the U. S.  
20 Army which had devices course at Red Stone Arsenal, and  
21 then there were numerous courses after that, including  
22 the New York City Police Department bomb disposal course,  
23 and numerous FBI bomb technology courses.

24 Q On March 25, 1980, during the course of your  
25 duties were you called with regard to a bomb that had been



1 recovered?

2 A Yes, I was.

3 Q Where were you told the bomb had been recovered?

4 A The bomb had been recovered on a street under-  
5 neath a limousine belonging to Raoul Roa. He was a Cuban  
6 Ambassador to the United Nations at the time.

7 The car was parked in front of his residence  
8 and an explosive device was found underneath his car.

9 Q Who told you that information?

10 A I was initially called at my home by my super-  
11 visor; I was on a day off; and I subsequently called  
12 the New York City Police Department Bomb Squad and was  
13 advised of further information.

14 Q Do you happen to know in what county and on  
15 what street the bomb was recovered?

16 A It was on East 81st Street in Manhattan.

17 Q Now, did you speak with police officers and  
18 other special agents of the FBI about what they learned  
19 about this incident?

20 A Yes, I did.

21 Q And what did they tell you, briefly?

22 A They told me that the chauffeur drove the  
23 Ambassador's car from the Cuban Mission on East 38th  
24 to East 81st street, the Ambassador's residence; the  
25 chauffeur subsequently went into the residence, and when

1 he came out he moved the car, he bumped the car behind  
2 him, and when the Ambassador and his bodyguard came out  
3 of the residence they saw the box containing the device  
4 underneath the front bumper.

5 Q Were you told at approximately what time the  
6 bomb was found?

7 A At approximately 8:00 a.m.

8 Q Now did you on the following day, March 26,  
9 1980, come to see the bomb?

10 A Yes, I did.

11 Q Where did you see it?

12 A At the New York City Police Department Bomb  
13 Squad office.

14 Q Can you describe in general terms what the  
15 bomb consisted of?

16 A Yes. It consisted of a substance which I  
17 believe to be C-4, or composition C-4 plastic explosive.  
18 It consisted of a black substance that appeared to be an  
19 explosive; it consisted of detonating cord, which is  
20 another form of explosive. It had two electric blasting  
21 caps, and a firing system consisted of a Futaba - that's  
22 a model airplane remote control device.

23 Q How powerful an explosive is C-4?

24 A It's a high explosive with a very high detona-  
25 tion velocity that is used by the United States Military.

1 Q How powerful an explosive is the blasting  
2 cap?

3 A The blasting cap also contained high explosives.

4 Q And how powerful an explosive is detonating  
5 cord?

6 A Detonating cord is also high explosive.

7 Q What did you do with the bomb components, if  
8 anything?

9 A I transported the components to the FBI,  
10 Explosives Unit of the FBI laboratory in Washington, D.C.

11 Q Did the FBI laboratory subsequently report to  
12 you or did officials there report to you about the com-  
13 ponents of the bomb?

14 A Yes, they did.

15 Q What, in substance, briefly, did they tell you?

16 A They stated that the white substance was, in  
17 fact, composition C-4 explosive. The black substance  
18 was a plastic explosive of a foreign manufacture, and that  
19 the detonating cord was, in fact, detonating cord, and the  
20 blasting caps were, in fact, live blasting caps.

21 Q Were you told by the New York City Police  
22 Department Bomb Squad how this bomb apparently was attached  
23 to the car?

24 A Yes. And I also observed disc shaped magnets  
25 protruding from the box itself. The device was in a gun

1 box mounted on a pressboard panel.

2 MR. TABAK: I am going to show to the Court  
3 and to counsel Government's Exhibit 1 for identification.

4 MR. WALPIN: I assume, your Honor, since we  
5 obviously don't have a copy, that at any time I would be  
6 able to have access to it?

7 MR. TABAK: There is no objection to that.

8 BY MR. TABAK:

9 Q Agent Lyons, I show you what has been marked  
10 Government's Exhibit 1 for identification and ask you if  
11 you can identify it.

12 A Yes. This is the Futaba receiver that was  
13 in the explosive device.

14 MR. TABAK: The Government offers Exhibit 1 in  
15 evidence.

16 MR. WALPIN: May I just ask Mr. Lyons a  
17 question, please?

18 THE MAGISTRATE: Sure.

19 BY MR. WALPIN:

20 Q Where is the remainder of the explosive device?

21 A Excuse me?

22 Q Where is the remainder of the explosive device?

23 A It is in our evidence room.

24 Q Where is that?

25 A At 26 Federal Plaza in the FBI office.

1 Q Is there any reason why you didn't bring the  
2 entire device here?

3 MR. TABAK: Objection.

4 THE MAGISTRATE: On what ground?

5 MR. TABAK: It is irrelevant to what this is  
6 and why this should be offered.

7 THE MAGISTRATE: Overruled.

8 You may answer.

9 A Why was it not brought?

10 Q Yes.

11 A Mr. Tabak didn't ask me to bring it.

12 MR. WALPIN: I have no objection.

13 THE MAGISTRATE: All right, it will be received  
14 in evidence as Government's Exhibit 1.

15 (Government's Exhibit 1 for identification was  
16 received in evidence.)

xx 17 MR. TABAK: Your Honor, may I just cross out  
18 the "ID" to indicate that it was received?

19 THE MAGISTRATE: Yes.

20 BY MR. TABAK:

21 Q Now, Agent Lyons, on Exhibit 1 there is a  
22 circular red tag marked 72.240 MHZ.

23 A Yes, I just looked at it.

24 Q Would you tell the Court what that is?

25 A That signifies the megahertz, and it is the

1 frequency on which that particular receiver operates.

2 Q In order to detonate a bomb using this device,  
3 what frequency or frequencies would the transmitter have  
4 to be at?

5 A It would have to be at the same frequency or  
6 a very close frequency to it.

7 Q Now, Agent Lyons, do you know an individual  
8 named Eduardo Arocena?

9 A Yes, I do.

10 Q Do you see him in the courtroom today?

11 A Yes, I do.

12 Q Would you please point him out?

13 A He's wearing a gray pinstripe suit, gray tie  
14 and sitting next to the interpreter.

15 MR. TABAK: May the record reflect that that  
16 is Mr. Arocena?

17 MR. WALPIN: No objection.

18 THE MAGISTRATE: All right.

19 BY MR. TABAK:

20 Q When did you first meet Mr. Arocena?

21 A I first met him in this building when he  
22 appeared at the Federal grand jury.

23 Q Do you recall approximately what date that was?

24 A It was some time in September of '82, but the  
25 date I don't recall.

1 Q Did you subsequently come to meet with him  
2 again during the latter part of September 1982?

3 A Yes, I did.

4 Q How did that meeting come about?

5 A I met with him on September 26, 1982.

6 Mr. Arocena had telephoned Agent Larry Wack --

7 MR. WALPIN: I am going to object unless  
8 Agent Lyons states that he was on the telephone himself  
9 during this telephone call.

10 Agent Wack is in the room, and I don't think  
11 we need to have this hearsay in this fashion.

12 I recognize the rules of a preliminary hearing,  
13 but I think your Honor has the discretion in view of the  
14 fact that Agent Wack is in the room not to go through  
15 this unnecessary double proof --

16 THE MAGISTRATE: Is Agent Wack here?

17 MR. TABAK: Agent Wack is in the room at the  
18 request of Mr. Walpin.

19 The Government intends at this point only to  
20 present Agent Lyons.

21 As your Honor is well aware, under Rle 5.(1)(a)  
22 under the Federal Rules of Criminal Procedure, the finding  
23 of probable cause on a preliminary examination may be based  
24 upon hearsay evidence in whole or in part, and we think  
25 there is absolutely no basis for that objection.

1 THE MAGISTRATE: Well, under 'U. S. versus  
2 Umans the Second Circuit has said that while that's the  
3 case, it's nonetheless highly preferable to present direct  
4 testimony unless it's unavailable or inconvenient.

5 Is there any reason that Agent Wack can't  
6 testify?

7 MR. TABAK: There is no reason that he can't,  
8 other than it's going to waste a lot of time if we have  
9 to call every single different agent who had anything to  
10 do with this case.

11 This is a preliminary question, in any event,  
12 that I am Agent Lyons.

13 THE MAGISTRATE: Well, what I would like to do  
14 is this. You put in the testimony that you think is  
15 sufficient, and if it turns out that it's on a very  
16 important point and the direct testimony is available, I  
17 may require you to offer it; but if it turns out that it  
18 is not particular significant in any event, then I will  
19 agree with you that you don't need to call anyone else.

20 So why don't you go ahead with Agent Lyons  
21 and we will preserve Mr. Walpin's objection.

22 BY MR. TABAK:

23 Q Agent Lyons, I am not sure if you finished  
24 the answer of how it is that your meeting of September 6,  
25 1982 with the defendant came about.



1           A       I don't believe I have.

2                   Mr. Arocena telephone Agent Wack, who subse-  
3 quently related this information to me that Mr. Arocena  
4 desired to come to New York to speak with us.

5           Q       Were various interviews conducted with the  
6 defendant in at least one of which you participated?

7           A       Yes.

8           Q       At the interview in which you participated  
9 was Mr. Arocena advised of his constitutional rights before  
10 he was interviewed?

11          A       Yes, he was.

12          Q       And have you been informed by Agent Wack as to  
13 whether or not Mr. Arocena was advised of his constitutional  
14 rights before Agent Wack interviewed him?

15          A       Yes, he was.

16                   MR. WALPIN: I am going to object and move to  
17 strike unless we know what date that occurred, the inter-  
18 view, each of those two interviews or one interview, I am  
19 not sure what it is, or which number of interviews Agent  
20 Lyons is referring to.

21                   THE MAGISTRATE: I assume Mr. Tabak is going  
22 to ask the question.

23                   MR. TABAK: I was just about to get to that.

24                   MR. WALPIN: All right, I will withhold that  
25 objection, your Honor.

1 MR. TABAK: I have previously shown counsel,  
2 and I will now show the Court what has been marked as  
3 Government's Exhibit 2-A, 2-B and 2-C for identification.

4 THE MAGISTRATE: Are you going to offer them?

5 MR. TABAK: I am going to after I show it to  
6 the witness.

7 THE MAGISTRATE: Do you have any objection?

8 MR. WALPIN: I would like to have the witness  
9 identify them.

10 THE MAGISTRATE: Why don't you do that first,  
11 and then if they are in evidence I will read them.  
12 Otherwise I won't.

13 BY MR. TABAK:

14 Q Agent Lyons, I show you Government's Exhibits  
15 2-A, 2-B and 2-C for identification.

16 Can you identify those?

17 A They are all advice of rights forms, which are  
18 the standard forms that we use.

19 2-A is an advice of rights form in the Spanish  
20 language, dated September 25, 1982;

21 2-B is the English version of the same advice  
22 of rights form, with the same date, September 25, 1982;  
23 and 2-C is an English version of a rights form dated  
24 September 26, 1982.

25 Q Is your signature on any of those forms?

1 A Yes, it's on Exhibit 2-C.

2 Q And have you spoken with Special Agent Wack  
3 and with Police Detective Brandt with regard to Exhibits  
4 2-A and 2-B for identification?

5 A Yes. The answer is yes to all.

6 Q And what have they told you with regard to all  
7 those exhibits?

8 MR. WALPIN: Same objection, your Honor.

9 Q As to whose signature is on there?

10 THE MAGISTRATE: Do you object because you  
11 want to be more specific?

12 MR. WALPIN: My objection is, and if it can  
13 be considered objection, to anything that Agent Wack told  
14 him --

15 THE MAGISTRATE: Why don't we consider it a  
16 continuing objection?

17 MR. WALPIN: Yes.

18 A Yes, Agent Wack informed me and Detective  
19 Brandt that this form was presented in the English version  
20 and the Spanish version to Eduardo Arocena.

21 Agent Wack read the English version to him.

22 Eduardo Arocena read the Spanish version, and  
23 he subsequently signed both of the forms, as did Agent  
24 Wack and Detective Brandt.

25 Q With regard to Exhibit 2-C for identification,

1 what procedure was followed with that?

2 A I read this form to Mr. Arocena in English,  
3 and then he subsequently signed it.

4 I witnessed it and so did Agent Thomas Menapace.

5 Q Do you know on what date the first interview  
6 by FBI agents of Mr. Arocena following what you testified  
7 was his phone call to Agent Wack took place?

8 A I believe it was September 24th or 25th, I'm  
9 not sure of that date. It was prior to my interview of  
10 him.

11 MR. TABAK: The Government offers Exhibits 2-A,  
12 2-B and 2-C in evidence.

13 THE MAGISTRATE: I will overrule your earlier  
14 objection.

15 Do you have any other objection, Mr. Walpin?

16 MR. WALPIN: No.

17 THE MAGISTRATE: I will receive those in  
18 evidence.

19 (Government's Exhibits 2-A, 2-B and 2-C  
20 for identification were received in evidence.)

21 BY MR. TABAK:

22 Q On September 26, 1982 did you participate in an  
23 interview of the defendant Mr. Arocena?

24 A Yes, I did.

25 Q In what language or languages was the interview

1 conducted?

2 A In English.

3 Q Was the entire interview conducted in English?

4 A Yes, it was.

5 Q What language did Mr. Arocena speak in during  
6 the interview?

7 A Englilsh.

8 Q That was the case during the entire interview?

9 A Yes.

10 Q Had you been informed that that also was the  
11 Case during the interviews Mr. Arocena had with other FBI  
12 agents?

13 MR. WALPIN: I object to the form of the  
14 question.

15 THE MAGISTRATE: Overruled.

16 A I know that the interviews of Wack and Brandt  
17 were in English.

18 Q Now did Mr. Arocena indicate any familiarity  
19 with Omega-7?

20 A Ye, he did.

21 Q And what did he sday?

22 A He said that he was the founder of Omega-7 and  
23 the leader.

24 Q Did he indicate there was any particular name  
25 he had used with regard to Omega-7?

1 A Yes, Omar --

2 MR. WALPIN: I am going to object to leading  
3 questions.

4 MR. TABAK: Of course, the strict rules of  
5 evidence don't apply to this hearing under Evidence Rule  
6 1101(d)(3)C, your Honor, but I will try to be less leading,  
7 your Honor.

8 THE MAGISTRATE: Thank you.

9 BY MR. TABAK:

10 Q Now, did you discuss with Mr. Arocena the bomb  
11 that was recovered on March 25, 1980 under Ambassador Roa's  
12 car?

13 A Yes, I did.

14 Q What did Mr. Arocena say with regard to that  
15 bomb?

16 A He stated that the bomb was initially con-  
17 structed by an individual by the name of Ramon Sanchez,  
18 and that was back at the time of the visit of Fidel Castro  
19 to the United States in October 1979.

20 They were going to use the device to attempt  
21 to assassinate Castro. The opportunity to place it did  
22 not present itself. The device was then partially  
23 dismantled and saved.

24 At the time of the attempted assassination  
25 of Roa Mr. Arocena told me that he reconstructed the

1 device to be used on Roa's automobile.

2 Q Did he describe to you the device?

3 A Yes, he did.

4 Q What did he say about the device?

5 A He said that the device consisted of C-4  
6 explosive, a black explosive; it consisted of a Futaba  
7 remote control radio system with six switches -- they are  
8 designated as servos; I had some problem, you know, getting  
9 the terminology in that regard. He called them switches  
10 and I called them servo units, but he stated there were  
11 six, and he stated there were two blasting caps and  
12 detonating cord.

13 Q Now did Mr. Arocena tell you how the bomb came  
14 to be attached to Ambassador Roa's car?

15 A Yes. He stated that it was placed on the car  
16 with the magnets by an individual named Pedro Remon.

17 Q Did Mr. Arocena tell you how the bomb came  
18 to New York for that purpose?

19 A Yes --

20 MR. WALPIN: I object to the form of the  
21 question.

22 Q Did Mr. Arocena tell you how the bomb came to  
23 New York?

24 A He did not tell me personally. He told  
25 Agent Wack how it came to New York.

1           Q       What did Agent Wack tell you what Arocena  
2 had told him about how the bomb came to New York?

3           MR. WALPIN: Your Honor, we are getting into,  
4 it seems to me, rather material matter in the complaint,  
5 and I recognize I have a continuing objection, but I  
6 think it's Important that I renew it at this point.

7           THE MAGISTRATE: Mr. Tabak, since the charge  
8 here is interstate transportation of explosive and not  
9 placing of a bomb under a car, I'm going to ask that you  
10 have a witness readily available to testify exactly as to  
11 that point.

12          MR. TABAK: Your Honor, the Government is  
13 prepared to do that if necessary. However, as a  
14 courtesy to Mr. Walpin and at Mr. Walpin's request, at  
15 his specific request, I asked Agent Wack to be here.  
16 Agent Wack was not subpoenaed here, and the Government did  
17 not intend to call Mr. Wack --

18          THE MAGISTRATE: You don't have to subpoena  
19 him to have him available here, do you?

20          MR. TABAK: If Mr. Walpin had wanted him he  
21 could have subpoenaed him.

22          THE MAGISTRATE: Let me cut this short.

23                When I talk about availability I don't mean the  
24 fact that he happens to be in the room. But if he  
25 happened not to be in the room and was readily available



1 in his office I would consider that highly available;  
2 so the mere fact that he was physically brought in at  
3 Mr. Walpin's request is irrelevant from my point of  
4 view.

5 MR. TABAK: They may be, your Honor. However,  
6 the function of a preliminary examination, if I understand  
7 it, is for the Magistrate to determine whether there was  
8 probably cause or not, not to be a fishing expedition and  
9 discovery device where the defense calls many witnesses --

10 THE MAGISTRATE: I quite agree, and I think  
11 I can control any attempted use by Mr. Walpin to turn this  
12 simply into a discovery hearing.

13 It is clearly within my discretion to decide  
14 whether or not direct evidence is readily available and  
15 ought to be offered, and, indeed, as I said, the Second  
16 Circuit has spoken quite clearly on this.

17 MR. TABAK: All right.

18 BY MR. TABAK:

19 Q Agent Lyons, I am going to show you what has been  
20 marked Government's Exhibit 3 for identification, which  
21 has previously been shown to defense counsel.

22 Can you identify that?

23 A Yes, it is an Avis Rent-A-Car agreement.

24 Q Where was that obtained from?

25 A It was obtained from Avis Rent-A-Car.

1 Q At what location, if you know?

2 A I'm not sure exactly where this was obtained,  
3 but it indicates the vehicle was rented in Newark  
4 Airport. I believe it was their main offices right here  
5 in Queens. I'm not sure if this was recovered at  
6 Newark Airport or at their main office in Queens.

7 MR. TABAK: The Government offers Exhibit 3  
8 in evidence.

9 THE MAGISTRATE: Any objection?

10 MR. WALPIN: May I just see it again, please,  
11 our Honor?

12 THE MAGISTRATE: Yes.

13 MR. WALPIN: I have no objection, your Honor.

14 THE MAGISTRATE: It may be received in  
15 evidence.

16 (Government's Exhibit 3 for identification  
17 was received in evidence.)

xx 18 MR. TABAK: If I might I would like to just  
19 read a few items that are contained on Exhibit 3 into the  
20 record:

21 This indicates that it's an Avis Rent-A-Car  
22 rental agreement from Newark Airport, Newark, New Jersey;  
23 the car is rented in the name of Eduardo Arocena. It  
24 indicates that the date and time when rented was the 24th  
25 of March 1980, 11:26, and that the date and time when it

1 was returned was the 25th of March, 1980, at 1525.

2 THE MAGISTRATE: Okay.

3 BY MR. TABAK:

4 Q Agent Lyons, are you aware of where Mr. Arocena,  
5 the defendant, was employed during March of 1980?

6 A Yes, he was employed as a longshoreman or a  
7 stevedore at Port Elizabeth in New Jersey.

8 Q Have you spoken with anybody from the Port  
9 with regard to Mr. Arocena's attendance on March 25, 1980  
10 at work?

11 A Yes, I spoke with Special Agent Al Sanagetta --  
12 I'm not sure of the spelling -- who is a special agent  
13 with the Waterfront Commission Police at Port Elizabeth  
14 and Port Newark.

15 Q What did he tell you with regard to Mr. Arocena's  
16 attendance or non-attendance at work on March 25, 1980?

17 A He told me that he did not report for work  
18 on that day.

19 Q Now did you participate in any conversations  
20 with Mr. Arocena with regard to the murder on September  
21 11, 1980 of Felix Garcia, an attache to the Cuban UN  
22 mission?

23 A Yes, I did.

24 Q Who did he say was the triggerman in that  
25 murder, if he said?

1 A Pedro Remon.

2 Q What type of weapon, if he said, did Mr. Arocena  
3 say was used in that murder?

4 A He said it was a .45 caliber Ingraham submachine-  
5 gun, which is also known as a Mack 10.

6 THE MAGISTRATE: What was the date on that?

7 MR. TABAK: Septmber 11, 1980.

8 Q Has yet the FBI laboratory communicated with  
9 you with regard to the type of murder weapon that, in fact,  
10 was used, according to their tests, in the Garcia murder?

11 A Yes, they did.

12 Q What did they tell you?

13 A They said that murder weapon was a .45 caliber,  
14 and it was consistent, the round was consistent with a  
15 Mack 10 submachine-gun.

16 Q Now I show you what has been marked Government's  
17 Exhibit 4 for identification, which is a cassette tape,  
18 and a copy of a rough transcript which was previously  
19 made available to defense counsel.

20 Can you identify this?

21 A Yes.

22 ~~This is a tape recording made by WCBS News~~  
23 on September 11, 1980, of an individual who called to  
24 claim credit for the assassination of Cuban Attache  
25 Felix Garcia, using the name Omega-7.

1 Q Was this tape or another copy of this tape  
2 played for defendant Arocena during September of 1982?

3 A Yes, by Agent Wack.

4 Q Do you know whether Mr. Arocena identified  
5 the voice of the caller on that tape?

6 A Yes, he did.

7 Q What did he say?

8 A He said the caller was Pedro Remon.

9 Q Do you know whether --

10 MR. WALPIN: Your Honor --

11 Excuse me, Mr. Tabak -- I have an objection  
12 that I think we are entitled to get this information  
13 directly from Agent Wack.

14 THE MAGISTRATE: Well, let's proceed and see  
15 what it is and whether it has any real significance in  
16 this case.

17 BY MR. TABAK:

18 Q Has this tape been analyzed along with voice  
19 exemplars by any voice analysis expert, to your knowledge?

20 A It has.

21 Q By whom?

22 A It was examined by a voice analyzer in the  
23 Michigan State Police Department.

24 Q Do you know whether he has ever been qualified  
25 as an expert in any Federal Court?

1 A Yes, in the Southern District.

2 Q Of what state?

3 A Of New York.

4 Q And have you been informed what results he  
5 reached as to who the caller was --

6 MR. WALPIN: May we have his name, please?

7 Q Is his name Lonnie Smrkovski? S-m-r-k-o-v-s-k-i.

8 MR. WALPIN: Did you say S-m-r?

9 MR. TABAK: Yes. S-m-r-k-o-v-s-k-i.

10 MR. WALPIN: And his first name?

11 MR. TABAK: Lonnie.

12 MR. WALPIN: Thank you.

13 BY MR. TABAK:

14 Q What did he tell you with regard to whether he  
15 could identify the voice of the caller?

16 A He stated that his examination concluded that  
17 Pedro Remon was, in fact, the caller.

18 Q Now, have you listened to this tape yourself?

19 A Yes, I have, numerous times.

20 Q Does a portion of the call relate to the  
21 attempted bombing of Ambassador Roa?

22 A Yes, it does.

23 MR. TABAK: The Government offers this tape in  
24 evidence.

25 THE MAGISTRATE: Did you say Mr. Walpin has had

1 an opportunity to read it?

2 MR. TABAK: He has read a transcript of it.

3 MR. WALPIN: I have, just a few minutes before  
4 this session.

5 THE MAGISTRATE: All right.

6 Do you have any objection?

7 MR. WALPIN: I do not believe that there has  
8 been a total competency on it, but I will, subject to --  
9 I know the purpose of this hearing and the rules of evidence,  
10 and while I will for the record state that I object on a  
11 competency basis, at present I recognize your Honor can  
12 take it.

13 THE MAGISTRATE: All right.

14 MR. TABAK: Your Honor, if I may I would like  
15 to play that tape.

16 THE MAGISTRATE: Yes.

17 MR. WALPIN: For this purpose only.

18 THE MAGISTRATE: Yes, of course.

19 Let me ask you, Mr. Tabak, is the sound pretty  
20 clear?

21 MR. TABAK: It is pretty clear.

22 THE MAGISTRATE: All right, but I am going to  
23 ask there be no conversations in the courtroom so that we  
24 don't have to play it back.

25 (Tape played.)

1 MR. TABAK: That concludes the playing of the  
2 tape, your Honor.

3 BY MR. TABAK:

4 Q Agent Lyons, did the defendant, Mr. Arocena,  
5 say anything in September of 1982 as to where the FBI  
6 could look for further evidence that related to Omega-7  
7 acts?

8 MR. TABAK: Your Honor, objection to the form  
9 of the question.

10 I would like to know at least if this was a  
11 conversation at which Agent Lyons was present.

12 THE MAGISTRATE: All right, fair enough.

13 Q Did he say anything to you about where else  
14 evidence relating to Omega-7 activities could be found?

15 A No, to Agent Wack and Detective Brandt.

16 Q As a result of those conversations was the  
17 search begun at any location?

18 A Yes, it was.

19 Q Where was that location?

20 A It was at the Fruit Meat King Supermarket in  
21 Newark New Jersey.

22 Q Who, if you know, had owned the Fruit Meat King  
23 Supermarket previously?

24 A At the time of the search, I don't know, but it  
25 was previously owned by Eduardo Losada Fernandez.



1 Q L-o-s-a-d-a Fernandez?

2 A Correct.

3 Q Did you take part in a search at that location?

4 A Yes, I did.

5 Q By what means was entry gained to the location?

6 A By consent of the owner, the current owner.

7 Q Was the current owner somebody other than  
8 Eduardo Losada Fernandez?

9 A Yes.

10 Q What if anything did you find there?

11 A In a search that I participated in we found  
12 some fresh board paneling, a roll of black electrician's  
13 tape, some string, a New Ylrk Daily News, a copy of  
14 New York Daily News, a copy of the New York Times.

15 Q Did those pertain to anything in particuloar?

16 A The copy of the New York Daily News and the  
17 copy of the New York Times contained the articles having  
18 to do with the reporting the assassination of Cuban Attache  
19 Felix Garcia.

20 Q Was there anything else that you could remember  
21 at the moment that you found on the search that you  
22 participated in?

23 A No.

24 Q Now, what happened to the items that were  
25 found there?

1           A       We submitted them -- I submitted them to the  
2 FBI laboratory.

3           Q       Were you subsequently informed of the results  
4 of any tests that were done by the FBI laboratory?

5           A       Yes, I was informed that the paneling was very  
6 similar and consistent with the paneling with the explosive  
7 device used against Roa - that the device was mounted on  
8 a pressboard paneling, and that the paneling we found in  
9 the Fruit Meat King was consistent with it.

10                   I was also told that the tape utilized to tape  
11 together the Roa device had the same or similar character-  
12 istics as the tape, the roll of tape we recovered in the  
13 Fruit Meat King. Also that the cut on the roll of tape,  
14 the way the person cut it in V fashion was similar to the  
15 cut on the tape in the Roa device.

16                   Also that the string that we recovered in the  
17 Fruit Meat King was consistent with the string utilized in  
18 the Roa device. It had the same number of strands and  
19 chemical composition.

20           Q       Do you know whether any search was done in July  
21 1983 of the premises where Mr. Arocena was arrested?

22           A       Yes.

23           Q       Did you personally participate in the search?

24           A       No, I did not.

25           Q       Is there anyone in the courtroom today who

1 personally participated in that search, to your knowledge?

2 A Not to my knowledge.

3 Q What was the basis for the search, if you know?

4 A It was based pursuant to a search warrant.

5 Q Do you know what some of the items were that  
6 were found at this location?

7 A Yes.

8 Q What were some of those items?

9 A There were several watches which were altered  
10 to be utilized in fusing systems of explosive devices;  
11 there were several weapons --

12 MR. WALPIN: I'm going to object to the con-  
13 clusory statement.

14 Q Could you explain what manner the watches were  
15 altered, or what the watches looked like?

16 A They were pocket watches drilled through the  
17 crystal with screws as contact points. At least one that  
18 I observed personally was contained in a box, and they  
19 were altered to be used in conjunction with an explosive  
20 device.

21 THE MAGISTRATE: Well, the witness is an expert,  
22 and I think he can testify as to whether or not the alter-  
23 ations were such that it might be usable for the purpose  
24 suggested, and I think I will allow him to ask questions  
25 along that line.

1 BY MR. TABAK:

2 Q In your opinion as a bomb technician, were  
3 these watches altered in a manner consistent with being  
4 used as timing devices for a bomb?

5 A Yes.

6 Q And in your opinion did these watches appear  
7 similar to watches that had been recovered from other bombs  
8 for which Omega-7 had taken credit for?

9 A Yes.

10 Q Now, what were some of the other things that  
11 were found that were informed were found in the search  
12 where Arocena had been arrested in Miami?

13 A There were weapons, shoulder weapons and  
14 handguns; Omega-7 stickers, that's the seal of Omega-7,  
15 on stickers, and Omega-7 type literature.

16 Q Was anything else found at that location?

17 A A transmitter for a Futaba model airplane  
18 system.

19 Q Now, do you recall or were you informed what,  
20 if any, frequency was indicated on the transmitter?

21 A Yes. I spoke with Special Agent Dennie Klein  
22 from the FBI laboratory, and he indicated to me that the  
23 sticker on the transmitter was consistent with the sticker  
24 on the receiver in the Roa device.

25

1 BY THE MAGISTRATE:

2 Q What do you mean by consistent?

3 A The same number, 72--240.

4 BY MR. TABAK:

5 Q Let me show you Exhibit 1.

6 Does that refresh your recollection of what  
7 Agent Klein told you was the frequency?

8 A Yes, that's what I just said, 72-240.

9 Q Did Agent Klein tell you anything fgrther  
10 regarding the actual crystal that was in the transmitter?

11 A Yes.

12 Q What did he say?

3 13 A The crystal in the transmitter was of a differ-  
14 ent frequency than the sticker indicated on the transmitter,  
15 which indicates that someone had changed the crystal.  
16 Those crystals are interchangeable: you can pull them  
17 right out.

18 Q Based on your experience in this field, is it  
19 easy to replace the crystal in one of those devices?

20 A Yes, it's removable. It's a plug-in crystal  
21 which can be removed.

22 MR. TABAK: I have no further questions.

23 THE MAGISTRATE: Mr. Walpin?

XX 24 CROSS EXAMINATION

25 BY MR. WALPIN:

1 Q Agent Lyons, were did you meet Mr. Arocena  
2 and the first day you met him after the grand jury  
3 proceeding?

4 A I met him at the Westbury Hotel which is on  
5 69th Street and Madison Avenue in Manhattan.

6 Q What time did you meet him?

7 A Approximately 11 o'clock in the evening.

8 Q Where did you meet him at the Westbury Hotel?

9 A We had two rooms up there. We had one room  
10 and he had the room next door. We met in our room, in  
11 he agent's room.

12 Q And who had reserved or arranged it for those  
13 two rooms?

14 A I believe Larry Wack did.

15 Q Somebody from the FBI?

16 A Yes.

17 Q And were they adjacent rooms?

18 A Yes.

19 Q Do you know for what reason they were adjacent?

20 A Excuse me?

21 Q For what reason did you have adjacent rooms?

22 MR. TABAK: Objection.

23 THE MAGISTRATE: Overruled.

24 A Security purposes.

25 Q When you say security purposes, would you

1 explain what you mean by that?

2 A Well, we know that Omega-7 -- I have been  
3 involved in investigations for many years, and over that  
4 period of time I have learned that Omega-7 is very good  
5 at countersurveillance; they are very good at evasive  
6 maneuvers, and they mean business.

7 Q What I be correct to say that you had adjacent  
8 rooms so that you could keep your eye on Mr. Arocena?

9 A Yes.

10 Q Now, to your knowledge was 11 p.m. or approx-  
11 imately 11 p.m. on that evening the first time that day  
12 that Mr. Arocena had met with any FBI agent?

13 A I know he was -- he met with Agents Wack and  
14 Brandt some time during the day, and during the evening  
15 he went to visit his mother.

16 Q During the day it is your knowledge that he  
17 did meet with two other agents and spoke with them?

18 A I don't know if they spoke with him, but,  
19 obviously, there were people with him.

20 Q What was that?

21 A I don't know they spoke with him or what was  
22 said.

23 Q I didn't ask you if you know what was said.

24 Are you aware of the fact that they spoke with  
25 Mr. Arocena during the day before 11 o'clock?

1 MR. TABAK: It has already been asked and  
2 answered, your Honor.

3 Q If you know.

4 A No, I really can't answer that.

5 Q What is the basis of your information that  
6 they met with him prior to 11 p.m.?

7 A They obviously had to check him into the hotel,  
8 so somebody had to be with him to check him into the hotel.

9 Q That is the only basis you have?

10 A Right.

11 Q Now how long did you meet with Mr. Arocena on  
12 the evening of September 26?

13 A It was only for a couple of hours, maybe two  
14 hours, approximately.

15 Q And Mr. Arocena had been traveling up from  
16 Florida that day?

17 A No, he was already here.

18 He wished to go visit his mother in Jersey,  
19 so he was allowed to do so. He didn't return until  
20 11 at night and so that's when we interviewed him.

21 Q When you say he was allowed to do so, who  
22 allowed him?

23 A He asked if he could, and we said yes.

24 Q To whom did he address the inquiry?

25 A It wasn't to me.



1 Q Do you know to whom he addressed the inquiry?

2 A Not specifically.

3 Q Do you know if it was some other FBI agent?

4 A Or detective.

5 Q Or detective working on the same squad?

6 A It was either Larry Wack or Detective Brandt.

7 Q So there's no doubt in your mind that some  
8 time earlier in the day Mr. Arocena had had some conversa-  
9 tions with one of your joint bomb Task Force Squad?

10 A Right.

11 Q Is it your testimony you don't know how long  
12 they spoke?

13 A No, I do not know.

14 Q Do you know why Mr. Arocena had to ask leave  
15 of either Mr. Wack or Detective Brandt to go visit his  
16 mother?

17 A No, I don't know. I assume he felt it was  
18 necessary.

19 Q When you say "he," what do you mean?

20 A Well, I don't know what he was thinking at the  
21 time --

22 Q No, I want to know who is "he"?

23 A Mr. Arocena.

24 Q I take it your understanding is that either  
25 Mr. Wack or Mr. Brandt did give the permission for

1 Mr. Arocena to go visit his mother?

2 A Well, he went to visit his mother, so I'm  
3 assuming he asked and was told -- I know that he asked,  
4 and they said, "Yes, go meet your mother."

5 Q Did anybody follow him to his mother?

6 A No.

7 Q Do you know?

8 A Yes. I know no one did.

9 Q How is it that you know that no one did?

10 A Because I was told.

11 Q By whom?

12 A By Detective Brandt.

13 Q And when were you told that?

14 A When I arrived at the Westbury Hotel it was  
15 early in the evening, approximately six, seven o'clock,  
16 because I thought Mr. Arocena would be there, and he was  
17 not there.

18 Q Now, he arrived at about what time?

19 A It was somewhere around eleven o'clock.

20 Q Would you tell us what happened when he  
21 arrived?

22 A Myself and Tom Menapace, who is an agent from  
23 Newark, sat with him and we talked to him in our room.

24 Q In your room?

25 A The room we were going to stay in that night,

1 yes.

2 Q How did Mr. Arocena get to your room as  
3 distinguished from his own room?

4 A He went into his room and came into ours.

5 Q How did he know to come into your room?

6 A I don't remember exactly what transpired.

7 Q Was somebody waiting in his room?

8 A No, no one was waiting.

9 Q But you have no recollection how it was that  
10 he knew to come into your room at that time?

11 A He knew what room we were in.

12 Q And the two of you were just sitting in your  
13 room?

14 A Yes.

15 Q Now can you tell us what then transpired?

16 He came in. What then transpired?

17 A We interviewed him; we gave him his rights;  
18 we told him, would he mind if we talked to him? He said  
19 no. We informed him of his rights; he signed the form,  
20 and we spoke to him.

21 Q Is it your testimony that as soon as he came  
22 into your room you gave him his rights?

23 A No, not exactly at that point.

24 Q How long after he came into the room, do you  
25 know?

1           A       No. It was a short period of time. Exactly  
2 how long, I don't remember.

3           Q       What did you discuss before you gave him his  
4 rights?

5           A       I don't recall. I asked him how his mother  
6 was, I would assume --

7           Q       I'm not asking you to assume; I'm asking you --

8           A       I don't know specifically the reason. He was  
9 not interviewed at that point until we advised him of his  
10 rights.

11          Q       How long after you advised him of his rights  
12 did he leave the room?

13          A       Excuse me?

14          Q       How long after you advised him of his rights,  
15 as you say, did he leave the room and return to his own  
16 room?

17          A       Approximately two hours later.

18          Q       And do you have handwritten notes of that  
19 interview?

20          A       Yes.

21          Q       And do those handwritten notes contain timings  
22 of when you advised him of his rights and when he arrived  
23 and when he left the room?

24          A       They should.

25          Q       Do you have them with you?

- 1           A       No, I don't have them with me.
- 2           Q       Now, when he went into his room next door what
- 3       did you and Agent Menapace do?
- 4           A       We went to sleep.
- 5           Q       Both went to sleep?
- 6           A       Yes.
- 7           Q       In that room you had?
- 8           A       Yes.
- 9           Q       And neither of you remained outside Mr. Arocena's
- 10       room?
- 11          A       No, we did not.
- 12          Q       When was the next time you saw Mr. Arocena?
- 13          A       The following morning.
- 14          Q       What time?
- 15          A       Seven or eight o'clock.
- 16          Q       Did he come to your room?
- 17          A       We called him from our room.
- 18          Q       What did you do with him then?
- 19          A       We went to the FBI office.
- 20          Q       You took him there?
- 21          A       Yes.
- 22          Q       At what time?
- 23          A       We got there somewhere about nine in the
- 24       morning, nine-thirty.
- 25          Q       And how long did he stay with you there?

1           A       He was with us for a couple of hours in the  
2 morning, and we had lunch, and then he left for Miami in  
3 the afternoon.

4           Q       Before you got to the FBI office did you go  
5 straight from the hotel to the FBI office?

6           A       I believe so, yes.

7           Q       Did you advise him of his rights again on the  
8 morning of the 27th?

9           A       No, I did not.

10          Q       Now, did anybody accompany him when he left  
11 for Florida in the afternoon?

12          A       Yes.

13          Q       Who did?

14          A       Agent Wack and Detective Brandt.

15          Q       And was Mr. Arocena under arrest then?

16          A       No, he was not.

17          Q       Did Agent Wack and Detective Brandt subse-  
18 quently return from Florida?

19          A       Yes.

20          Q       The next day, if you know?

21          A       A couple of days later.

22          Q       And that was without Mr. Arocena?

23          A       Yes.

24          Q       Mr. Arocena was down at his home in Florida?

25          A       No, Mr. Arocena was not at his home.

1 Q Mr. Arocena to your knowledge was in Florida?

2 A He was for a while, at least, until he  
3 decided to take off.

4 Q When you say "take off," do you know whether  
5 he was still in Florida?

6 A At that point?

7 Q Yes.

8 A Larry Wack received a phone call from Mr. Arocena  
9 stating that he was going to flee. He was not coming  
10 back as was the original agreement between them.

11 Q Is it your understanding that he was not in  
12 Florida, or do you know?

13 A I don't know where he was.

14 MR. WALPIN: That was my question. I move to  
15 strike the rest.

16 MR. TABAK: Oppose.

17 THE MAGISTRATE: On the assumption that I am  
18 going to hear the bail application, I will let the testimony  
19 stand.

20 BY MR. WALPIN:

21 Q Now, the Fruit Meat King Supermarket, is that  
22 in an area which might be conveniently called the Cuban  
23 community area?

24 A Yes.

25 Q There is an area -- is this Newark, by the way?

1 A It is Newark, yes.

2 Q And there is an area where a large number of  
3 Cuban people live?

4 A Yes.

5 Q And many of these are exiles from Cuba from the  
6 Castro Communist regime in Cuba?

7 A Yes.

8 Q What kind of tape was that?

9 A Black electrician's tape.

10 Q Is that the type of black electrician's tape  
11 one might find in any hardware store?

12 A Yes.

13 Q And if anybody is ever working with any sort  
14 of paneling or anything like that it wouldn't be unusual  
15 to see that there, would it?

16 A Electrician's tape with paneling?

17 Q Paneling, if you're putting up wall paneling,  
18 or putting up some electrical unit, putting on a wire or  
19 something like that?

20 A No.

21 Q You wouldn't be surprised -- I don't know whether  
22 you have a house -- if you had some electrician's tape at  
23 home?

24 A Yes, I do.

25 Q Now, the paneling, is that paneling board



1 regularly sold at hardware stores?

2 A I wouldn't know that.

3 Q You have no knowledge if that is a normal type  
4 of paneling that might be bought, whether at a lumber-  
5 yard or hardware store?

6 A It had a specific design to it, but how common  
7 it is, I don't know; I could not say.

8 Q You do not /know either way?

9 A No.

10 Q You can't say it wasn't common?

11 A No, I can't.

12 Q The string - what kind of string is that?

13 A The string is a string that's used i a meat  
14 market, in Fruit Meat King, I assume for wrapping meat.  
15 It's on a roll.

16 Q So it's not surprising to have that in that  
17 market?

18 A No, not at all.

19 Q And the New York Daily News and New York Times,  
20 I take it that that isn't surprising to see in the New York  
21 area?

22 A Excuse me?

23 Q Seeing the New York Times and New York Daily  
24 News is not surprising in the New York area?

25 A No, only that it dealt with the assassination,

1 both of them.

2 Q Am I correct that in the Cuban community it  
3 is not surprising to see that the Cuban people were  
4 interested in that news?

5 MR. TABAK: Objection.

6 THE MAGISTRATE: Overruled.

7 Q Did you find it somewhat surprising that the  
8 Cuban people in that area were interested in that news?

9 A Oh, no.

10 Q By the way, cutting electrical tape in a V  
11 fashion, do you claim that that's unusual for somebody  
12 working with electrical tape?

13 A I'm only reporting to you or testifying to what  
14 I have been told --

15 Q I'm asking you, from your own knowledge.  
16 Do you have any knowledge that that's unusual?

17 A Well, I wouldn't cut it that way.

18 Q I didn't ask you whether you would cut it that  
19 way. You are not an electrician, are you?

20 A No.

21 Q I'm asking if you have any knowledge that that's  
22 unusual.

23 A I was told it's unusual.

24 Q Who told you?

25 A The examiner in the FBI laboratory.

1 Q Did he tell you it was unusual why? Did he  
2 give you a reason why it was unusual?

3 A Because of the V cut --

4 Q Did he tell you why --

5 A -- he stated he had not run into that before,  
6 and he has examined numerous, numerous explosive devices  
7 and tapes.

8 Q And what was his name?

9 A Dennie Klein.

10 Q He's down at the Bureau Laboratory in Washington?

11 A Yes, in the Explosives Unit.

12 Q Now, that transmitter that you mentioned before,  
13 where are those sold for model airplanes?

14 A In hobby shops.

15 Q And you and I can go in and buy it if you have  
16 any model airplanes?

17 A Yes.

18 Q And you can have different frequencies on them?

19 A Yes.

20 Q And you can change the frequency?

21 A Yes, you can.

22 Q Nothing unusual about that, is there?

23 A To change the frequency?

24 Q To have those for your model airplane, and then  
25 if for any reason you're working on two different model

1 airplanes, to have different frequencies?

2 A No.

3 Q I take it the place that Mr. Arocena was  
4 arrested in was not his wife's residence?

5 A No, it was not.

6 Q It was not his own residence; that is, I mean  
7 where his family lives, his wife and two children, I  
8 believe?

9 A That's correct.

10 Q And the house -- that is, Mr. and Mrs. Arocena  
11 and their children own a house down in Florida?

12 A Yes, I believe so,

13 Q And Mrs. Arocena and their two children were  
14 living there, but Mr. Eduardo Arocena was at that time  
15 living in somebody else's place, is that correct?

16 A I'm not sure exactly whose place it was he was  
17 living in when he was arrested.

18 Q It wasn't his family place?

19 A No, it was not.

20 Q And you are well aware that the Arocena family,  
21 Mr. and Mrs. Arocena, are very close, and they still are?

22 A Yes.

23 Q Just to avoid any questioning --

24 A I don't know whether they were. Whether they  
25 still are or not --

1           Q       Just so there's no question about my question  
2           and your answer relating to how close the family is, the  
3           reason that he was not living at home at that time was  
4           not because he wasn't close to his wife, was it?

5                   MR. TABAK:  Objection.

6                   THE MAGISTRATE:  Overruled.

7                   Do you know the answer?

8           A       That is right.

9           BY MR. WALPIN:

10           Q       Now am I correct, Agent Lyons, that the basis  
11           for a good part of your complaint that you signed and your  
12           testimony here was the undetonated bomb which you were  
13           able to examine, or the FBI was able to examine?

14                   MR. TABAK:  Objection.

15                   THE MAGISTRATE:  On what ground?

16                   MR. TABAK:  It calls for mental processes and  
17           conclusions.  It is totally irrelevant, and the fact that  
18           Agent Lyons signed the complaint and swore to its truth  
19           doesn't indicate that he drafted it.

20                   THE MAGISTRATE:  Overruled.

21                   THE WITNESS:  Would you repeat the question?

22                   MR. WALPIN:  May I have the reporter repeat it,  
23           please?

24                   THE MAGISTRATE:  Yes.

25                   (Question read.)

1 MR. TABAK: A further ground for the objection  
2 is that I don't understand what the question is.

3 THE MAGISTRATE: Do you have any trouble  
4 understanding the question?

5 THE WITNESS: A part of the affidavit was based  
6 on my examination of the components of the bomb.

7 Q And that part related to being able to testify  
8 about the explosives involved in your complaint?

9 MR. TABAK: Objection.

10 Q The bomb that contained the explosives to  
11 which you referred to in your testimony in the complaint,  
12 isn't that correct?

13 A I didn't get the first part of your question.

14 Q Am I correct that that undetonated bomb is the  
15 bomb that contained the explosives to which you referred  
16 in your testimony?

17 A Yes.

18 Q And am I correct that it is your position that  
19 from the information that you learned, that Mr. Arocena  
20 was supposed to have detonated that bomb?

21 A I'm sorry, would you repeat that, please?

22 Q My question of you, Agent Lyons, is:

23 Is it your position that from the information  
24 you say you received that Mr. Arocena was the person who  
25 was supposed to have detonated that bomb?

1 A Yes.

2 Q And is it your assertio that from the information  
3 you had that the purpose was to assassinate Ambassador Roa,  
4 one of the leaders of the Cuban Community Government?

5 A Yes.

6 Q And from your information is it your assertion  
7 that there was nothing that would have stopped Mr. Arocena  
8 physically from detonating that bomb when Mr. Roa, Ambassador  
9 Roa, was right next to it?

10 A I have no way of knowing what he is thinking  
11 or how his thinking processes were going.

12 Q Well, is it your information that there was a  
13 time when Mr. Roa was directly next to or closely proximate  
14 to where the bomb was?

15 A Yes.

16 Q And you have no reason to believe that there  
17 was anything mechanically wrong in any detonating device  
18 that might have been there?

19 A No.

20 Q And is it your information that the reason  
21 you have been given as to why the bomb was not detonated  
22 by Mr. Arocena was that it was in front of a parochial  
23 scholl where there were lots of young girls who could have  
24 been hurt?

25 MR. TABAK: Objection.

1           Your Honor, the charge is illegal interstate  
2 transportation of explosives, and I tried to be patient,  
3 but I think we are going way afield.

4           MR. WALPIN: Your Honor, I do not believe so  
5 at all for both reasons of the motion, and ths is the first  
6 time I understand an objection to a question which is  
7 seeking to elicit other parts of conversations and state-  
8 ments that the Government's own witness already testified  
9 to.

10           The defendant has a right to bring out the  
11 full statements instead of just -- that's why I was  
12 objecting to the leading before -- these are, I understand,  
13 part of the entire information which the Government claims,  
14 the FBI claims it received from Mr. Arocena, and I think  
15 that we have a right not to have it piecemeal to the  
16 extent that we want to elicit other portions of the same  
17 conversations they claim they received.

18           THE MAGISTRATE: I don't have any objection to  
19 that, but I think that that can be accomplished very  
20 simply by asking him a couple of questions about a con-  
21 versation, but I think that Mr. Tabak makes a good point.

22           We have here a charge of interstate trans-  
23 portation. They have not shown that yet; they are  
24 obviously waiting for Agent Wack, and I don't see --

25           MR. TABAK: That's not the Government's view,



1 your Honor.

2 THE MAGISTRATE: Well, you're waiting for  
3 Agent Wack -- Do you think you have made your case now?

4 MR. TABAK: Your Honor, this is a probable  
5 cause hearing, as you are well aware.

6 We certainly believe that we have established  
7 the fact that there was a bomb at this location in Manhattan  
8 on the date in question.

9 We have further established through the rental  
10 agreement that a car was rented in New Jersey the day  
11 before the bombing took place; the defendant returned to  
12 New Jersey after the time that the bomb was discovered;  
13 it was rented by this defendant, and his address is listed  
14 in New Jersey.

15 Now, on probable cause I think we have shown  
16 far more than enough.

17 THE MAGISTRATE: I will consider it. But, in  
18 any event, I don't think the defendant has to defend  
19 against the charge of making a bomb or setting off a bomb,  
20 which it seems to me you're trying to do.

21 MR. WALPIN: Your Honor, with all due respect,  
22 I think the defendant has an absolute right to put in here  
23 and elicit the full conversation --

24 THE MAGISTRATE: As I said, I don't have any  
25 objection to that, but you take a rather roundabout way

1 of doing it, and I'm not sure why --- .

2 MR. WALPIN: Let me try and do it more

3 directly.

4 THE MAGISTRATE: Fine.

5 MR. TABAK: May I have a moment, your Honor?

6 THE MAGISTRATE: Why don't we take a five-minute

7 recess. I want to find out what other matters we have on

8 anyway.

9 (Recess.)

10 MR. WALPIN: May I proceed, your Honor?

11 THE MAGISTRATE: Yes.

12 MR. TABAK: If I may, your Honor, I was in

13 the middle of the objection.

14 The Government will not object to further  
15 answers about what the other agents told Agent Lyons if  
16 the original objection to our introducing that testimony  
17 will be removed and so we can go forward.

18 MR. WALPIN: I don't think that's my question.

19 Let me pose the question directly, if you will  
20 just bear with me a minute?

21 THE MAGISTRATE: All right.

22 BY MR. WALPIN:

23 Q To avoid any confusion or doubt, Agent Lyons,  
24 would it be correct to say that the confidential informant  
25 to whom you referred in the complaint you filed in this

1 matter against Mr. Arocena was Mr. Arocena himself?

2 A That's correct.

4 3 Q And what you have been setting forth here, to  
4 the extent that you have, has been what would relate to  
5 what Mr. Arocena said was what Mr. Arocena said to you,  
6 you say he said to you in conversations and said to other  
7 agents to the extent you have been permitted to testify  
8 to it?

9 A Yes.

10 Q Now, in those same conversations that you have  
11 been permitted to testify to and you have testified to, is  
12 it your testimony that you were advised that the bomb on  
13 the underneath the Roa car fell off when the car was driven  
14 back and banged into the car behind?

15 MR. TABAK: I object on the same basis.

16 THE MAGISTRATE: I will take it.

17 Overruled.

18 A It was told to me, yes.

19 Q And were you also told that the reason that  
20 Mr. Arocena, according to the information, did not detonate  
21 it was because of his close proximity to a large number of  
22 young girls whom he didn't want to hurt?

23 MR. TABAK: I object, your Honor. I really  
24 don't see how it is fair to allow him to testify to some  
25 things that Agent Wack and Detective Brandt told him and

1 not to allow me to elicit other things that they told him.

2 THE MAGISTRATE: I thought we were talking about  
3 the conversations between Mr. Arocena and Agent Lyons.

4 MR. WALPIN: That's what I thought.

5 THE MAGISTRATE: And so does Agent Lyons have  
6 the same understanding, so the objection is overruled.

7 Agent Lyons, you can testify in accordance with  
8 what your conversations were with Mr. Arocena.

9 A That is what Mr. Arocena told me. He mentioned  
10 children in the area.

11 Q And would I be correct, perhaps, to say just  
12 an obvious thing that if the bomb had been detonated you  
13 would have had nothing to examine as evidence against  
14 Mr. Arocena?

15 A Incorrect.

16 Q All right. If the bomb had been detonated  
17 would you likely have, for example, Exhibit No. 1?

18 MR. TABAK: Objection.

19 THE MAGISTRATE: Overruled.

20 A It is possible we could have portions of it  
21 and that could be identified, but you don't know that until  
22 you do a crime scene. On other bombings we have recovered  
23 numerous components of bombs.

24 Q And on other bombings you have not recovered  
25 anything, is that correct?

1 A That's correct.

2 Q You mentioned the term Omega-7.

3 Do you recall that?

4 A Yes.

5 Q Did he tell you, according to your testimony,  
6 what the meaning of Omega-7 was?

7 MR. TABAK: Objection.

8 THE MAGISTRATE: Overruled.

9 A No, he did not tell me specifically.

10 Q Has anybody ever told you what the meaning  
11 of Omega-7 is?

12 MR. TABAK: Objection.

13 THE MAGISTRATE: Overruled.

14 A Yes, I believe so, but I don't recall the  
15 meaning.

16 Q By the way, on the killing of Mr. Garcia which  
17 you mentioned, that is, the Cuban bodyguard, Garcia --

18 A Yes?

19 Q -- did you learn that Mr. Arocena was not in  
20 the vicinity of where the killing occurred?

21 MR. TABAK: Objection to the form.

22 THE MAGISTRATE: The question was:

23 Did you learn that?

24 MR. WALPIN: Withdrawn.

25 Q Were you told that Mr. Arocena was nowhere in

1 the vicinity of where the killing took place?

2 MR. TABAK: Objection to the form again.

3 I think all that has been allowed is, was he told by Mr.  
4 Arocena?

5 THE MAGISTRATE: What difference does it make  
6 if he was told by anybody?

7 Can you answer the question? Wer you told  
8 by anybody?

9 A I was told -- I was told that at the time of  
10 the shooting he was not in the vicinity, but he was in  
11 that vicinity earlier, and I am going to ask what do you  
12 mean by vicinity?

13 MR. WALPIN: I move to strike the answer.

14 BY MR. WALPIN:

15 Q Agent Lyons, do you know what vicinity is, the  
16 meaning of vicinity?

17 A Yes.

18 Q What does vicinity mean?

19 A Do you want me to explain what I said?

20 Q No, I asked you what does vicinity mean? You  
21 said you don't know what is meant by the word vicinity.

22 A It depends on what scope you're talking about.  
23 Vicinity of what?

24 Q Was the information you had with regard to the  
25 Garcia killing that Mr. Arocena was nowhere in the area

1 at the time of the killing?

2 A At the specific moment of the killing, that's  
3 correct.

4 Q Was Mr. Garcia, from your information, driving  
5 in a car at the time?

6 A Yes, he was.

7 Q And had that been a moving car?

8 A It was questionable it was moving at the exact  
9 point of the shooting. However, it did move following  
10 the shooting or during the shooting.

11 Q Did it move into that area before the shooting?

12 A Yes.

13 Q And had it been driven, as far as you know,  
14 from the information you had about Garcia, to the point  
15 where the shooting occurred?

16 A Yes.

17 MR. TABAK: Objection.

18 THE MAGISTRATE: Overruled.

19 Q And is it your information that whoever did the  
20 shooting had been following Mr. Garcia in the car?

21 A Yes.

22 Q And is it a fact that Mr. Arocena was nowhere  
23 in that car that had been following -- in the car containing  
24 the person that had been following the Garcia car, accord-  
25 ing to your information?

1 THE MAGISTRATE: Mr. Walpin, I think you ought  
2 to try that one over.

3 MR. WALPIN: Okay, I'm sorry, your Honor.

4 Q Is it your information that there was a car  
5 in which the person who killed Mr. Garcia was seated  
6 which had been following the Garcia car as it drove quite  
7 a distance to reach the point at which the killing took  
8 place?

9 MR. TABAK: Your Honor, I fail to see the  
10 relevancy of any of this. Therefore I object.

11 THE MAGISTRATE: For reasons of your own you  
12 introduced the Garcia killing into this preliminary hear-  
13 ing.

5 14 MR. TABAK: Yes, so I could introduce the tape  
15 which was made following the Garcia killing, relating back  
16 to the Roa attempt.

17 MR. WALPIN: If Mr. Tabak will concede there  
18 is information Mr. Arocena was not in the car, that is,  
19 in which the killer, the alleged killer was present, that  
20 had been following the Garcia car, and that Mr. Arocena  
21 was not there in that vicinity at the time of the killing,  
22 I will move on.

23 MR. TABAK: I am prepared to concede that it  
24 is totally irrelevant to what is before your Honor.

25 Now, if Mr. Walpin wants a press conference he



1 can hold one, but I don't see how it has any relevance  
2 to this charge or anything that pertains to it.

3 THE MAGISTRATE: Is it your position then  
4 that the Garcia killing has no relevance to this charge?  
5 If that's your position then I will ask Mr. Walpin to  
6 go on.

7 MR. TABAK: It is the Government's position  
8 that whether Mr. Arocena was in the first car that was  
9 following Mr. Garcia or the second car that was following  
10 Mr. Garcia is irrelevant to the question of whether he  
11 took part in the illegal interstate transportation of  
12 explosives from New Jersey to Manhattan.

13 The Government believes that the Garcia murder,  
14 to the extent that it is a basis for introducing the tape  
15 recording, and to the extent that it corroborates other  
16 things this defendant had said, is relevant.

17 MR. WALPIN: Now, you Honor, Mr. Tabak, who is  
18 a very able attorney, carefully worded that, but I don't  
19 think it's fair to Mr. Arocena. He raised the question  
20 of the murder of Mr. Garcia --

21 MR. TABAK: To save time I will withdraw the  
22 objection.

23 MR. WALPIN: Now we have to get the question  
24 again.

25 THE MAGISTRATE: May we have it read back, please?

1 (Pending question read as previously  
2 recorded.)

3 A Yes, there was a car.

4 Q And is it your information that Mr. Arocena  
5 was not in that car?

6 A He was in the second car.

7 Q Let's take it one step at a time.

8 Was he in that car?

9 A That car, no.

10 Q Now, you referred to a second car. Am I  
11 correct that it is your information that that second car  
12 wasn't in that vicinity at that time?

13 A Not at the time of the shooting.

14 Q And am I correct that there was information  
15 you received that there was, in effect, an attempt by  
16 somebody in that second car to stop the whole episode?

17 A There was, but there was a reason for that.

18 MR. WALPIN: Your Honor, I wish there would  
19 be an instruction to the witness to answer the question  
20 and not be someone who will volunteer. Mr. Tabak is a  
21 very able lawyer; I'm sure he will be able to elicit ---

22 THE MAGISTRATE: Agent Lyons, listen carefully  
23 to the question and try to answer just the question that  
24 is asked.

25

1 BY MR. WALPIN:

2 Q First, to make sure the record is clear, is  
3 it your information, or what you say the information you  
4 have, that in the car Mr. Arocena was in, the second car,  
5 that he attempted to signal to that first car to stop the  
6 whole thing and then got lost?

7 A Yes.

8 MR. WALPIN: Your Honor, I have no further  
9 questions of this witness.

10 MR. TABAK: I have a brief redirect, your  
11 Honor.

12 THE MAGISTRATE: Very good.

13 REDIRECT EXAMINATION

14 BY MR. TABAK:

15 Q Agent Lyons, I show you what has been marked  
16 as Government's Exhibit 5 for identification, which is a  
17 copy of the complaint in this case --

18 MR. WALPIN: Oh, excuse me, may I ask one other  
19 question which I just realized I missed?

20 May I, with your Honor's permission and  
21 Mr. Tabak's?

22 MR. TABAK: No objection.

23 THE MAGISTRATE: Proceed.

24 CROSS EXAMINATION (Continued)

25 BY MR. WALPIN:

XX

XX

1 Q You have been an FBI agent for how many years?

2 A 13.

3 Q And would I be wrong to estimate that you have  
4 probably signed or seen thousands of criminal complaints  
5 of this type? I don't mean of this nature of this time,  
6 but any criminal complaint?

7 A Not thousands, no.

8 Q Hundreds?

9 A Yes.

10 Q If you don't have an indictment you need a  
11 criminal complaint --

12 Well, I will withdraw that.

13 Would I be wrong to say this is the first time  
14 you have ever seen where the confidential informant is the  
15 defendant himself?

16 A That I have seen personally?

17 Q Yes.

18 A Yes --

19 MR. WALPIN: All right, I have no further  
20 questions.

21 A Oh, rather, that I have been involved in.

22 Q All right, been involved in.

XX

23 REDIRECT EXAMINATION

24 BY MR. TABAK:

25 Q Agent Lyons, do you know why Mr. Arocena was

1 not identified as a confidential informant in this  
2 complaint?

3 A Because he was at the time missing and we  
4 wanted to protect his identity.

5 Q Are you aware of any other reasons why his  
6 identity was not indicated?

7 MR. WALPIN: I am going to object, and I don't  
8 think it's relevant. The reason for it --

9 MR. TABAK: You're the one who --

10 THE MAGISTRATE: Overruled.

11 Counsel will not argue among themselves.

12 BY MR. TABAK:

13 Q Are you aware of any other reason why he was  
14 not identified by name as a confidential informant?

15 A We didn't want the people who he told us about  
16 to know that he was the person that was telling us.

17 Q Why was that?

18 A Several reasons. His family was still living  
19 in Miami and possible retaliation against them and himself.

20 Q Now aside from a typographical error in  
21 Paragraph 11 of this complaint where it says 1982 instead  
22 of 1980, was this complaint and is this complaint to the  
23 best of your knowledge accurate?

24 A Yes, it is.

25 Q I direct your attention to Paragraph 6 and I

1 ask you to read that to yourself.

2 A Yes?

3 Q Does that refresh your recollection with regard  
4 to any conversations you had with Mr. Arocena?

5 A Yes.

6 Q In what regard does it refresh your recollection?

7 A He stated that he transported it from New Jersey  
8 to New York in a rented vehicle.

9 Q That is something Mr. Arocena told directly  
10 to you?

11 A Yes.

12 Q Now what is the reason why following the  
13 interviews in late September 1982 Mr. Arocena was permitted  
14 to return to Florida?

15 A He did not tell -- he told Larry Wack that  
16 he could recover some explosives, approximately 600 pounds  
17 that was still in the possession of these people and --

18 MR. WALPIN: Objection, again, unless this  
19 witness was present.

20 THE MAGISTRATE: Overruled.

21 I don't think it's essential to the charge  
22 here.

23 Go ahead.

24 A -- and that he could get the transmitter used  
25 in the -- that was to be used in the detonation of the Roa

1 device.

2 Q Did he, in fact, voluntarily turn over to the  
3 FBI either the explosives or the detonator?

4 A No, he did not.

5 MR. TABAK: Your Honor, the Government has no  
6 further questions.

7 THE MAGISTRATE: Let's see if Mr. Walpin has any.

8 MR. WALPIN: I just have a couple.

9 RECROSS EXAMINATION

XX 10 BY MR. WALPIN:

11 Q In your direct testimony it was recollection  
12 Mr. Arocena had not said anything about taking, physically  
13 taking the explosive device in his own car from New Jersey  
14 to New York, do you recall that?

15 A No, I don't recall saying that he did not  
16 say that. I don't think --

17 Q When you were asked about the subject you did  
18 not testify that he had told you --

19 A Right.

20 Q -- that he had taken it, physically taken it in  
21 his own car from New Jersey to New York?

22 A That's correct.

23 Q Where in Paragraph 6 does it say that he  
24 physically took the bomb or explosive device from New  
25 Jersey to New York in his own car?

1 A He said he was an accomplice.

2 Q Agent Lyons, I think you know the meaning of  
3 the term "accomplice," do you?

4 A Yes -- if your question is, is it in here that  
5 he took it, the answer is yes -- I mean, it's not in there.

6 Q An accomplice is what, to your understanding?  
7 I'm not asking you to give a legal opinion.

8 A An accomplice could be many things. Someone  
9 who assists.

10 Q In any way, is that correct?

11 A In any way.

12 Q It can be in any way as an allegation without  
13 regard to whether you physically were present, isn't that  
14 correct?

15 A Correct.

16 Q And you understand that?

17 A Yes.

18 Q Now, again point out -- I ask you to point out  
19 to me anything other than the word accomplice which you  
20 say caused you to refresh your recollection in your  
21 testimony that you say Mr. Arocena personally told you  
22 that he had personally taken it from New Jersey to New  
23 York in his car.

24 A I recall that.

25 Q You do?



1 A Yes?

2 Q But there is nothing in this paragraph that  
3 says that?

4 A No, there is not.

5 Q When you say no, we have a double negative.  
6 Am I correct that there is nothing in the paragraph that  
7 says that?

8 A You are correct.

9 Q By the way, you observe -- you see me carrying  
10 this briefcase, do you not?

11 A Yes.

12 Q Would you normally refer to this as saying  
13 that Walpin observed someone carrying this briefcase?

14 A I don't understand the question.

15 THE MAGISTRATE: Mr. Walpin, I think maybe  
16 you got your names mixed up. Why don't you try that  
17 over?

18 MR. WALPIN: I will try it over, but I did  
19 mean myself, and that is the problem.

20 THE MAGISTRATE: Okay.

21 MR. WALPIN: That's exactly the point. Your  
22 Honor has caught it.

23 BY MR. WALPIN:

24 Q If you were to describe what I've been doing  
25 here, you would say Walpin is carrying the briefcase, is

1 that fair?

2 A Yes.

3 Q Transporting the briefcase, if you will, is  
4 that fair?

5 A Well, you are just standing there, and so --  
6 (Mr. Walpin takes several steps.)

7 A Now you're transporting it.

8 Q Would it be normal for you to say that Walpin  
9 observed the transportation of the briefcase? Would you  
10 say that about what I was doing?

11 A You're doing it, and I suppose you are observing  
12 it, what you are doing.

13 Q Would you normally say that?

14 A No, I wouldn't normally say that.

15 Q But aren't those words in your criminal  
16 complaint when you say Mr. Arocena observed the taking  
17 of the bomb from New Jersey to New York?

18 MR. TABAK: Your Honor, I object on the ground  
19 that it is irrelevant. If all he did was observe as an  
20 accomplice that's still sufficient, and I think the agent  
21 has testified in any event --

22 THE MAGISTRATE: I understand the point  
23 Mr. Walpin is making, and it probably is not very sub-  
24 stantial, but I will allow him to pursue it.

25 MR. WALPIN: I have no further questions, your

1 Honor, of this witness.

2 THE MAGISTRATE: Anything further?

3 MR. TABAK: No, your Honor, the Government has  
4 no further questions of this witness.

5 THE MAGISTRATE: All right, Agent Lyons, you  
6 can leave the stand.

7 (Witness excused.)

8 MR. TABAK: The Government submits we have  
9 demonstrated probable cause to believe that explosives  
10 were transported from out of state into New York on or  
11 about the date indicated in the complaint, and that this  
12 defendant did it.

13 MR. WALPIN: Your Honor, I don't believe that  
14 there is probable cause shown for the interstate trans-  
15 portation at this point, and I would ask your Honor to  
16 rule to that effect as to probable cause.

17 I would state if your Honor holds that there  
18 is, out of candor we do have a witness to call.

19 THE MAGISTRATE: I am satisfied that there  
20 is probable cause to believe that interstate transportation  
21 did occur, and that Mr. Arocena committed the crime.

22 MR. WALPIN: Your Honor, I think under the  
23 rules -- first of all, under the ruling your Honor made  
24 before, I think we are entitled to have Mr. Wack take  
25 the witness stand.

1 THE MAGISTRATE: I don't think so. The  
2 testimony is sufficient without regard to any conversations  
3 that Mr. Arocena may have had with Agent Wack.

4 I think there was ample testimony in the direct  
5 testimony from Agent Lyons.

6 MR. WALPIN: Your Honor, I think there was  
7 specific testimony that he gave relating to what Mr.  
8 Arocena was alleged to have said to Mr. Wack.

9 THE MAGISTRATE: The point is that Agent Lyons  
10 himself hear statements from Mr. Arocena about placement  
11 of bombs and confirmed the use of explosives, and the  
12 admission that he participated in the transportation of  
13 the explosives interstate. That is enough. There is  
14 direct testimony from the agent corroborated by the other  
15 evidence.

16 MR. WALPIN: Your Honor, in order to avoid any  
17 continuation -- and, of course, your Honor's ruling is  
18 going to be your Honor's ruling -- but since I have asked  
19 to present the motion for bail, I would like to present  
20 some evidence on that and then ask you to make both  
21 decisions after that.

22 MR. TABAK: The Government objects to that.

23 THE MAGISTRATE: I don't understand what you  
24 are saying.

25 I have heard the testimony of probable cause;

1 That's my ruling. I'm not going to hold the bail  
2 hearing and then change my mind about probable cause.

3 MR. WALPIN: Your Honor, the fact that your  
4 Honor may say on the Government's one witness that your  
5 Honor finds probable cause --

6 THE MAGISTRATE: Do you want to put on a  
7 witness on both things?

8 MR. WALPIN: Yes.

9 THE MAGISTRATE: I don't have any objection.

10 MR. TABAK: The Government would ask for an  
11 offer of proof as to what he intends to demonstrate and  
12 what he is going to negate about probable cause.

13 MR. WALPIN: Your Honor, I don't think in  
14 this situation I have to make an offer of proof, since  
15 the same evidence will go on the bail, and it is the same  
16 witness, Agent Wack, and I don't think I have to telegraph  
17 in advance to Agent Wack or to the Government what I  
18 would go into.

19 The fact is that under Rule 5.(1) the defendant  
20 is given absolute right to introduce evidence in his own  
21 behalf, and since that evidence, I represent to your Honor,  
22 will go for the bail application as well, I think it  
23 would be more expeditious just to proceed.

24 MR. TABAK: The Government strenuously objects  
25 unless there is some basis that can be set forth in an

1 offer of proof as to what it is that he expects the agent  
2 is going to say that is going to negate the probable  
3 cause. We don't feel he should be allowed to call him  
4 and waste everybody's time here. He had extensive cross-  
5 examination of the first agent; he clearly only wants to  
6 use it as a discovery device, and it's not the proper  
7 function, and there is no reason to join a bail hearing  
8 with a probable cause hearing.

9 THE MAGISTRATE: Counsel, it seems to me that  
10 Mr. Tabak's point is well taken.

11 Unless you have some reason to believe that  
12 the Government agent is going to have testimony that's  
13 going to help your client, and that is going to utterly  
14 refute the showing of probably cause made by the other  
15 agent, I think he's quite correct.

16 MR. WALPIN: Your Honor, I don't think that  
17 given the mandatory requirement of Rule 5.(1)(a) that we  
18 should proceed by just putting a total block in front  
19 of the witness I wish to call, particularly since as a  
20 matter of practical efficiency that witness' testimony  
21 is relevant to the question of the bail hearing, the bail  
22 application.

23 If what your Honor is saying, for some reason  
24 that I cannot understand, that we must have a cut off on  
25 the probably cause hearing and have a decision on that

1 for some reason that can't wait an hour, until your  
2 Honor hears the other evidence, your Honor can then  
3 decide that it doesn't change your Honor's mind, and I  
4 don't see the harm or any reason for us to engage in a  
5 legal discussion as to whether or not we are entitled to  
6 have it on the record.

7 THE MAGISTRATE: It seems to me the issue is  
8 probable cause, and the issues on bail are totally differ-  
9 ent, totally unrelated, and I don't see any reason they  
10 should be confused. I think you ought to be able to  
11 tell me what it is that you think you will be able to show  
12 with regard to probable cause.

13 MR. WALPIN: Your Honor, in part I will make  
14 the representation that we wish to show that the state-  
15 ments that have been testified to are inadmissible under  
16 the Constitution --

17 THE MAGISTRATE: That's clearly not a matter  
18 for a probable cause hearing. Bring on a motion to  
19 suppress.

20 MR. WALPIN: Your Honor, I respectfully dis-  
21 agree with your Honor --

22 THE MAGISTRATE: It's right in the rules.

23 MR. WALPIN: Yes, your Honor, I realize that  
24 it is, and I was going to state to your Honor that I do  
25 realize it is directly in the rule, but I think your

1 Honor will agree with me that no rule of the Rules of  
2 Criminal Procedure can ever rescind a constitutional  
3 right.

4 THE MAGISTRATE: That isn't what I am saying.  
5 I'm saying that the probable cause hearing is not the  
6 time to litigate the question of admissibility of that  
7 nature.

8 MR. WALPIN: Your Honor, if your Honor will  
9 hear me on that, I think as a matter of law, your Honor,  
10 I must respectfully disagree, because the Constitution  
11 contains the requirement of proof of probable cause.  
12 The constitution also contains that the requirements with  
13 regard to not forcing or compelling by any means incrimin-  
14 ating evidence against oneself, and I think, your Honor,  
15 if I may pose a hypothetical -- and I'm not suggesting  
16 these are the facts here -- if your Honor had the Government  
17 come in here with an alleged confession given by someone,  
18 which had all of the elements, and the defendant wanted  
19 to put in evidence the fact that he was held up by his  
20 fingernails for two days before he gave that statement, I  
21 cannot believe that your Honor would sit there and find  
22 probable cause on the basis of that confession.

23 Now, I grant you, that's an extreme case, but  
24 the fact --

25 THE MAGISTRATE: That's a different question.



1 MR. WALPIN: No, it isn't, your Honor,  
2 respectfully. That is the question I am posing.

3 THE MAGISTRATE: You're saying that the  
4 admission may not be at all probative. It is a different  
5 question.

6 MR. WALPIN: I'm saying --

7 THE MAGISTRATE: You're saying an admission  
8 was obtained under such extreme duress that I should  
9 conclude that it is a pack of lies regardless of whether  
10 it's admissible. That's a different thing.

11 But if you're going to argue the technicalities  
12 of the Miranda rights and whether or not it was given at  
13 this point or at that point without any suggestion of  
14 duress or whatever, and thoroughly probative but perhaps  
15 inadmissible, I don't think that's a matter for this  
16 proceeding. I think it's a matter for a motion to  
17 suppress.

18 MR. WALPIN: Your Honor, I respectfully except.

19 THE MAGISTRATE: I take it you want to make  
20 your bail application.

21 -----  
22 Has anyone made a call to Judge Duffy or the  
23 Part I Judge? Because I do believe that this matter  
24 should first be brought to the attention of the District  
25 Jjdge.

25 MR. TABAK: I had thought your Honor said you

1 were going to call, so we didn't make any call.

2 MR. TABAK: All right, then let me do that.

3 Perhaps we will call Judge Duffy or the Part I  
4 Judge.

5 Now let me just put you on notice on the  
6 timing.

7 Assuming that the Judge does want me to go  
8 forward with this, I'm going to break this afternoon here  
9 at 4:45. Magistrate Buchwald is going to take over for  
10 me for the arraignments, and so on.

11 Now if you think that his matter will take some  
12 time, we can meet again tomorrow morning at 10 o'clock.

13 The other thing, this courtroom is -- I see  
14 other people who have been waiting, and which really should  
15 take precedence over a bail hearing.

16 MR. TABAK: Your Honor, if I may respond to  
17 that, the Government sees no reason or no need for  
18 Agent Wack to be testifying at a bail hearing. I don't  
19 think that there is anything that Mr. Walpin, who has  
20 gotten a certain amount of discovery in this matter that  
21 he will probably introduce that we can't agree on.  
22 I don't think the bail hearing needs to be extensive.

23 I would further tell your Honor that I am  
24 tied up all day tomorrow with several witnesses who are  
25 coming in from out of the state, and I can't possibly

1 cancel them.

2 THE MAGISTRATE: Perhaps you could get somebody  
3 to stand in for you on this.

4 MR. WALPIN: Your Honor, with all due respect  
5 to Mr. Tabak on the question of the witness, this is not  
6 bail of \$10,000. This is a million dollars bail where  
7 somebody has already been in jail for two months, and,  
8 very frankly, a million dollars bail, I think all of us  
9 can agree, is the equivalent of no bail here, and I think  
10 it's a very serious question, I think particularly with  
11 regard to the facts involved here, and some of which your  
12 Honor has already heard, and so that's why I think it  
13 would be a waste of judicial time if your Honor did not  
14 hear the rest of this.

15 THE MAGISTRATE: If the Government is prepared  
16 to agree to the facts that you think can be elicited by  
17 the testimony of Agent Wack, it does seem to me it would  
18 be quite unnecessary to call Agent Wack.

19 MR. WALPIN: Your Honor, I think it is in the  
20 practicalities an unfair imposition because Mr. Tabak --  
21 and again I have great respect for him, but he is an  
22 advocate here -- to require in advance, for me to discuss  
23 with Mr. Tabak, when I think it would be more expeditious  
24 and our right to hear from the agent who has certain  
25 facts which we believe will support the requested reduction

1 of the bail.

2 THE MAGISTRATE: Counsel, bail is a judicial  
3 inquiry. It's not an adversary proceeding, and you  
4 don't have the same rights to call witnesses whenever  
5 you want in order to prove your case or make it more  
6 dramatic. It is not this kind of a case, and I'm telling  
7 you that unless you can give me some better reason than  
8 you have given me, I don't see any reason why you can't  
9 attempt to agree with Mr. Tabak as to what the facts  
10 are.

11 After all, what are the facts we are talking  
12 about? Where does he live? Where does he work?  
13 And this kind of thing. I take it you are not talking  
14 about anything that anything to do with the facts of this  
15 case.

16 MR. WALPIN: Oh, yes, your Honor.

17 What you have in this case is -- and I know  
18 the Government does this, and I am not at this point  
19 suggesting any criticism -- they have a single complaint  
20 which is a charge of being involved in the transportation  
21 across state lines of an explosive device, and what they  
22 then do is use that as the allegation to arrest him and  
23 hold him; but then they go off into the whole world to  
24 discuss why a million-dollar bail ought to be imposed  
25 on him.

1           If all we have here is this complaint, your  
2 Honor, we would not be here with a million dollars bail.

3           THE MAGISTRATE: Let me put it this way then.

4           I have not heard anything about bail yet.  
5 If the Government is going to attempt to prove that, in  
6 general, Mr. Arocena is a very bad character, involved  
7 in very many other crimes, I will allow you to attempt  
8 to counter that ---

9           MR. WALPIN: Fine, your Honor.

10          THE MAGISTRATE: With whatever evidence you  
11 choose that you think appropriate, if that's what the  
12 point is.

13          MR. TABAK: May I make a brief statement?

14          THE MAGISTRATE: Yes.

15          MR. TABAK: The bail was set at a million  
16 dollars by Judge Duffy before the Government had done an  
17 extremely intensive search over a nine and a half months  
18 period to locate Arocena, who was a fugitive, and it's  
19 hard for me to imagine what Mr. Walpin is going to come  
20 up with that will change the fact that Arocena was a  
21 fugitive for nine and a half months.

22          THE MAGISTRATE: Counsel, if that's what your  
23 bail presentation is based upon, then that's what it is  
24 based upon.

25          I take it that what Mr. Walpin is concerned

1 about is that the bail presentation will include, as it  
2 often does, not just allegations about the particular  
3 crime before us but about other crimes and other bad  
4 acts; and if that's the case, and if you want to rely  
5 on that kind of thing, which is the kind of thing which  
6 can be extremely inflammatory, then Mr. Walpin is entitled  
7 to defend.

8 So those are the ground rules I am giving you,  
9 and you will have a chance to consider your presentation.

10 MR. TABAK: I don't think the Government needs  
11 to go beyond anything beyond what your Honor has heard  
12 today. So under the circumstances right now we are  
13 prepared to proceed on the bail question if the District  
14 Judge wants to send it down here.

15 THE MAGISTRATE: All right, Counsel, we will  
16 take a recess until we hear from the Judge.

17 MR. WALPIN: Fine, your Honor.

18 I should state, in view of what your Honor  
19 said, I would be prepared to go ahead at this time if your  
20 Honor is going to hear it and make our presentation as to  
21 why bail should be reduced.

22 THE MAGISTRATE: Right now?

23 MR. WALPIN: Yes, without witnesses, in view  
24 of what was said.

25 THE MAGISTRATE: Mr. Tabak, did you hear that?

1 MR. TABAK: Yes.

2 (Recess.)

3 THE MAGISTRATE: The Part I Judge said he  
4 would like me to hand this matter, but I think we should  
5 meet again tomorrow morning to give you sufficient time --

6 MR. WALPIN: Your Honor, Mr. Tabak is not  
7 going to be here.

8 Could your Honor give us -- I will take just  
9 five minutes.

10 THE MAGISTRATE: Well, I really literally have  
11 three minutes, and I am sure Mr. Tabak is going to want  
12 to answer what you have to say.

13 MR. TABAK: I can say what I want to say in  
14 one minute.

15 THE MAGISTRATE: All right.

16 Go ahead.

17 MR. TABAK: Mr. Arocena, as has been indicated  
18 by the testimony, was not arrested until late September  
19 1982. He made representations to the Government that  
20 he could be trusted, come back after he received the  
21 explosives, and the Government decided that it was very  
22 important to get those explosives off the street, if they  
23 really were there, as well as to get the original bomb  
24 transmitter, and the Government took a chance on Mr.  
25 Arocena.

1           Not only did Mr. Arocena then call the agent  
2 and say that he had changed his mind, that he was running  
3 away, but during the period that he was a fugitive he  
4 called the agent at home, Agent Wack, on a number of  
5 occasions, and Agent Wack attempted to persuade him to  
6 turn himself in, and Arocena said he was not willing to  
7 turn himself in.

8           The Government undertook extremely intensive  
9 efforts to find him, including interviewing a great number  
10 of people, doing surveillances, attempting to trace phone  
11 calls, analyze telephone records, and so on and so forth,  
12 and it took ten months to find him.

13           While he was a fugitive, in one of the calls  
14 to the agent he indicated he had been out and had come  
15 back, and it's reasonable to assume that what he meant by  
16 that was that he was out of the country and had managed  
17 to come back.

18           We are aware that Arocena has used aliases  
19 and has provided other people with false Social Security  
20 information, and so on. He certainly is capable of doing  
21 that.

22           The charge that he faces just on this complaint  
23 alone, and, obviously, based on the exact same facts, he  
24 could be charged with conspiracy as well as an attempt to  
25 murder a foreign official in the United States under



1 Sections 1116 and 1117, as well as what it's charged with,  
2 and they are extremely serious charges. He has every  
3 reason to want to flee, especially now that it has been  
4 revealed publicly for the first time that he was the  
5 source of information against a great many of these other  
6 people, and we think it's absurd to think that anything  
7 less than a million dollars will be sufficient.

8 I will note that in the Otelier case, it was  
9 my understanding it was the attempted assassination of a  
10 former Ambassador, and it is my understanding that the  
11 Cuban community raised \$400,000 to bail out the individual,  
12 and as well as legal fees.

13 MR. WALPIN: Your Honor, I will state first  
14 that obviously Mr. Tabak has admitted while Mr. Arocena  
15 knew the Government had an arrest warrant out for him and  
16 knew these charges were pending and knew exactly what the  
17 facts were. He left the country and came back. He  
18 could have left and stayed. He had ties; he knew people  
19 elsewhere, and he could have stayed. If he wanted to  
20 stay out, he could have. He has so many ties in this  
21 country for many reasons that it is nonsense to point out  
22 the fact that he was away and did not surrender himself  
23 for any of that period of time. The fact is that he  
24 stayed in this country; he came back.

25 Let me explain to your Honor the amazement of

1 this whole case.

2 The Government has itself, I think they will  
3 admit, describe Mr. Arocena as an honest, proud freedom  
4 fighter, as a man who is fighting for the freedom of his  
5 family and his people. The enemy -- and this is what  
6 the agents told him during all of these conversations when  
7 they suggested to him that he would work together with  
8 the agents in order to strengthen his organization, in  
9 order to act as he had been properly acting in other ways,  
10 to make sure that his very good anti-Castro organization  
11 for the Cuban people would be strengthened, unified, and  
12 that he work together with the agents.

13 Indeed, the agents specifically said to him  
14 on numerous occasions - and I would have brought that out  
15 from Agent Wack, and I am sure he would so testify --

16 THE MAGISTRATE: You are free to tell me about  
17 it.

18 MR. WALPIN: That they were willing to give  
19 him immunity; that they knew that there were certain  
20 people who had a contract out on Arocena's life because  
21 Arocena was one who would stand for nothing to do with  
22 drug dealing in anything about this organization at all,  
23 in any way, and he was interested only in helping the  
24 Cuban people and the Cuban community, and what the agent  
25 said was, "We want to make sure that the person who has a

1 contract out on you is not there so you can be out there  
2 working with your people without anybody looking over  
3 your shoulder to see that your life is in danger."

4           The fact is that on every occasion -- and your  
5 Honor heard some of it -- this is not the typical type of  
6 guerrilla situation which your Honor and we all have  
7 heard of. This was - and the Government will concede -  
8 basically a group of people who believed that their enemy  
9 was the Castro Cuban Government that was torturing and  
10 killing their own families and their own people.

11           Now, it's understood, completely, that what  
12 happened here was that Mr. Arocena was inveigled to come  
13 talk to the Government at times on the ground that that  
14 would help strengthen his group and his people.

15           It has now become a conspiracy against  
16 Mr. Arocena, and he is willing, obviously, he has to face  
17 whatever charges, but those charges are ones that will  
18 have to go to a jury properly; those are charges as to  
19 which there are a number of defenses. These are charges  
20 as to which I don't think the Government, from the little  
21 I've been able to see, has sufficient evidence that is  
22 admissible which could prove Mr. Arocena's guilt, or that  
23 a jury in this situation would come up with a guilty  
24 verdict of these extreme crimes that Mr. Tabak has implicit-  
25 ly referred to.

1           We have a man here who has a family, wife,  
2 two children from his present wife, two others from his  
3 former wife, one of whom lives with his mother, the other  
4 one is married and they have a grandchild. He has a  
5 mother here living in this country; he has a sister, a  
6 stepfather, brothers, two uncles and an aunt and a grand-  
7 mother.

8           Now, your Honor, the FBI has his re-entry  
9 permit which he had and was able to use before, and, as  
10 I say, he could have stayed out.

11           He has never been arrested before. He was a  
12 man that came up and fulfilled what he believed was his  
13 responsibility, being told that he was going to be  
14 assisting in his own cause.

15           Some of the many statements that were made  
16 are wrong, but that goes to the merits. The point is  
17 that on this specific crime when you talk about -- and we  
18 will face those charges when they come with the evidence --  
19 but when it comes to the situation of a man, with the  
20 factors your Honor should consider, you have a man who  
21 is highly principled, a man who is standing up for his  
22 family and the freedom of his country.

23           I thought that since the revolution in the  
24 United States we don't treat as common criminals somebody  
25 who is principled enough to stand up in this day and age

1 to a dictator like Castro, and we have a man who has a  
2 family here; he is a man who has shown responsibility  
3 to the Government by meeting with them himself, and  
4 perhaps, as the evidence shows very incorrectly, that the  
5 Government was not misrepresenting to him but wanted to  
6 strengthen his organization, as they expressly told him,  
7 and I think, your Honor, to say that this type of man has  
8 to remain in jail on a million dollars bail when it  
9 apparently has become an attempt just to persecute him  
10 in order to supposedly get him to talk for the Government  
11 further, a thing that he doesn't believe, given what the  
12 Government has misrepresented to him, that he wants  
13 to do.

14 Now, your Honor, I think this man is entitled  
15 to be with his family during this time. I think he's  
16 entitled to have his defense. I am assigned counsel,  
17 and I think it would be much easier for me to represent  
18 him and build up his defense if he wasn't up in Otis-  
19 ville -- and I realize why he is in Otisville; I'm not  
20 suggesting at this moment a change of prison because of  
21 my understanding of the Government's own problems that  
22 they have - but what I am saying is that he's entitled  
23 to be treated as a human being, as a courageous man that  
24 he is, and as a man who is thinking only of his fellow  
25 Cuban exiles who have been thrown out of their homeland,

1 and his family and people, and a man like that does not  
2 have to be held on a million dollars bail.

3 THE MAGISTRATE: Counsel, the application for  
4 reduction of bail is denied.

5 Mr. Walpin has made a very impassioned plea,  
6 but nothing that he has said in any way has diminished  
7 the fact that this defendant was a fugitive for many, many  
8 things.

9 The fact that many members of his family are  
10 in the United States, and therefore has a lot of ties to  
11 the United States, is utterly irrelevant where despite  
12 those ties he makes himself into a fugitive.

13 The Government is not required to repeatedly  
14 go out and search for him. He is simply not permitted to  
15 do that.

16 I would just like to make one comment, although  
17 I don't know how relevant it is to this, but in light of  
18 the fact that Mr. Walpin relied on it so seriously I'm  
19 going to comment on it:

20 Mr. Walpin has said that I should treat this  
21 man not as an alleged common criminal but as some kind of  
22 a hero, and I decline to do so.

23 I also reject the suggestion that the crimes  
24 that are alleged here are remotely related to the experience  
25 of the founding of America and the revolution here. We are

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1 talking here about alleged terrorist activities which  
2 I don't believe are part of our heritage, and, in any  
3 event, I certainly do not believe that the mere fact that  
4 the defendant feels that what he is doing is in further-  
5 ance of a high principle, relieves him of the obligation  
6 that is imposed on any other citizen or non-citizen who  
7 lives here to obey our laws and not to engage in violent  
8 activities.

9 MR. WALPIN: Your Honor, with all due respect,  
10 just two additional comments?

11 THE MAGISTRATE: All right.

12 MR. WALPIN: First, I am not asking your Honor  
13 to decide on the guilt or innocence of Mr. Arocena,  
14 obviously.

15 I think the factors I mentioned are relevant  
16 to determining the amount of the bail. I know of no  
17 other fugitive, using your Honor's words, who was in  
18 repeated contact with the Government during the period  
19 of his "fugitive status" ---

20 THE MAGISTRATE: But they couldn't find him.  
21 He made himself unavailable.

22 MR. WALPIN: But, your Honor, a million dollars  
23 on somebody like that? Where else and in what other situ-  
24 ation have we had such high bail on an individual with  
25 family here and where there are such extenuating circum-

1 stances of his keeping in contact, and there was --

2 THE MAGISTRATE: The contact was not contact  
3 which allowed the Government to have him available for  
4 prosecution.

5 MR. WALPIN: But, your Honor, fugitive status  
6 has usually to me always meant an attempt to get away.

7 There were obviously -- I think your Honor  
8 has just gotten a slight feel of it; I couldn't give you  
9 everything - as to the reasons why although he could have  
10 gotten away in the sense of leaving the country, he did  
11 not because of his interest and his attachment to the  
12 people here and his principles.

13 Now, somebody like that is not going to  
14 suddenly now just leave, and there is no need for a million  
15 dollars bail on him.

16 Secondly, your Honor, with all due respect to  
17 your Honor's statement, I think the English called the  
18 Boston Tea Party terrorist activities, and there were other  
19 terrorist activities in the Revolutionary War too.

20 THE MAGISTRATE: Counsel, I continue my  
21 rejection of the notion that because a terrorist is high-  
22 minded that he should be treated differently. Indeed,  
23 so far as I know, all the terrorists, whether they be  
24 Croatsians, FALN, or whatever, have based their actions on  
25 the highest of principles and the highest of concerns for



1 their people. I simply think this is an almost bizarre  
2 argument.

3 MR. WALPIN: Your Honor, with all respect, I  
4 think you made a point I should point out. The contrast  
5 between the FALN, for example, which uses bombs indis-  
6 criminatingly to hurt innocent people -- there's no claim  
7 here, and, in fact, the Government has admitted in the  
8 bit I have pointed out, and I think they will admit that  
9 Mr. Arocena, according to their claim, took many, many  
10 steps to, in fact, hurt himself by leaving evidence around  
11 because of the fact that he didn't want to hurt any single  
12 innocent person.

13 I think the evidence will show, for example,  
14 the Government's own position is that at one point he  
15 jumped out and stopped an elderly couple who were walking  
16 nearby.

17 Now, this is the type of man you have.

18 Now, your Honor, I respect your Honor's view  
19 about the use of bombs, and I recognize that that's some-  
20 thing that's going to have to be faced at the time of  
21 the trial, but I'm talking about the qualities of a human  
22 being as a matter of principle. You won't find the FALN,  
23 your Honor, who go out and prevents an elderly couple from  
24 walking by in order to prevent them from being hurt.

25 THE MAGISTRATE: Counsel, I take my privilege

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as Magistrate here to bring these proceedings to a close.  
If the defendant should be convicted here I look forward  
to your argument on sentencing.

Thank you very much.

MR. WALPIN: Thank you, your Honor.

MR. TABAK: Your Honor, may I make one state-  
ment since there is the Press here?

THE MAGISTRATE: Yes.

MR. TABAK: The Government does not agree with  
many of the characterizations by Mr. Walpin of what was  
said in the conversations, and I will just leave it at  
that.

THE MAGISTRATE: Very good. Thank you.

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I (We) hereby certify that the foregoing  
is a true and accurate transcription of the  
of my (our) best and ability from my (our)  
stenographic notes of the proceeding.



Official Court Reporter  
U. S. District Court