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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 68-420-Cr-WM

8/8

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ORLANDO BOSCH AVILA, et al.,

Defendants.

LAW OFFICES
DANIEL NEAL HELLER
1205 AINSLEY BUILDING
MIAMI, FLA. 33132

Transcript of Proceedings at Trial (concluded)

Pages 1001-1473 (Volume III of III)

LEONARD LAIKEN
OFFICIAL REPORTER U. S. DISTRICT COURT
FEDERAL BUILDING
MIAMI, FLORIDA 33101

Dooher - direct

opinion by that witness.

MR. KLEIN: Could we have it marked for identification?

THE COURT: It will be marked for identification. But until you qualify him as an expert or have somebody come in to testify as to what it can be used for, just on his opinion I am not going to admit it.

(Thereupon the document referred to was marked as Exhibit 73-E for identification.)

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Dooher, with regard to the photograph of the MIKAGESAN MARU, did you find that or any of the documents either in or accompanied by an envelope or a container of any sort?

A Yes, sir.

Q Where are the envelopes or containers in which you found these documents?

A The photo of the MIKAGESAN MARU and the DECLARACIONES DEL PODER CUBANO, the second sheet,

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U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Dooher - cross

were together. They are separate now, but they were together when I found them.

THE COURT: Were they inside an envelope?

THE WITNESS: Yes, sir.

THE COURT: What kind of envelope was it? Was it a regular letter envelope or a big brown envelope or what?

THE WITNESS: No. It was a brown envelope about so big, sir.

THE COURT: Did it have any writing on the outside of it? I do not want to know whether it was, but I want to know whether or not it was an envelope which has been transmitted through the United States mail.

THE WITNESS: It appeared to be so, yes, sir.

THE COURT: All right, sir. Go ahead.
BY MR. GREENSPAHN:

Q To whom was the envelope addressed?

MR. KLEIN: Is this the envelope, Mr. Dooher?

Dooher - cross .

THE WITNESS: Yes, sir, that's it.

BY MR. GREENSPAHN:

Q To whom is that envelope addressed?

A M.I.R.R., Post Office Box 322,
Riverside Station, Miami, Florida.

Q Do you know, sir, who the M.I.R.R. is
or purports to be?

A No, sir. I am not familiar with that.

16-1

MR. GREENSPAHN: Your Honor, may I
ask that inasmuch as the exhibit has been introduced
in evidence, I recognize it is not my turn to put it
in, but to make it a complete exhibit--

THE COURT: It will be in as part of
the exhibit with those two other documents--the
photograph and the statement that he said was
contained in it. It will be incorporated in Exhibit
No. 73.

(Thereupon the envelope referred
to was received in evidence as
Government's Exhibit No. 73-A & B
(1).)

BY MR. GREENSPAHN:

Q Were any of the other objects in

Dooher - cross

containers, envelopes or any other type of box or carton?

A No, sir. It was as I saw them, as they are now.

Q Were the several items that you have identified and that have been admitted in evidence submitted to the FBI Laboratory in Washington for examination?

A Some were, yes, sir. I am not familiar with all of them.

Q Do you know which ones of those that have been admitted in evidence were, in fact, sent up to the laboratory?

A I am not knowledgeable. I wasn't in charge of sending them to the laboratory. I'm sorry.

MR. GREENSPAHN: That is all I have.

THE COURT: Redirect?

MR. KLEIN: No redirect.

THE COURT: You may step down.

(Witness excused)

THE COURT: Call your next witness, please.

Sweet - direct

THEREUPON--

EDWIN L. SWEET,

called as a witness on behalf of the Government,
having first been duly sworn, was examined and
testified as follows:

THE CLERK: Please state your full
name, address and occupation.

THE WITNESS: Edwin L. Sweet, 3801
Biscayne Boulevard. I am a Special Agent of the
Federal Bureau of Investigation.

DIRECT EXAMINATION

BY MR. KLEIN:

Q Mr. Sweet, were you on duty on
October 11, 1968?

A Yes, sir.

Q Where was that?

A At 297 Northwest 48th Place.

Q I am going to show you some items and
documents and ask you if you are familiar with any of
these. Are you familiar with any of these items?

A Yes, sir.

Q What is your familiarity with them?

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Sweet - direct

A Well, in this envelope are cards which are called "Bonds of Cuban Power." They bear the facsimile signature of Ernesto, and they run from \$1, \$2, \$5, \$10 and \$100 in amount. These are captioned at the top, "A Million for Liberation. Cuban Power."

Q What else is there?

A There is a document which is in English and begins with a foreword signed on the third page or bearing the typed name "Dr. Orlando Bosch, Coordinator-M.I.R.R." This document in all is fourteen pages long and ends on the last page with plans for the purchase of rifles and guns. I didn't examine this all the way through. Just general contents.

THE COURT: That's all right, sir. You have told us enough about what is in it.

A (Continuing) The next is a Manila envelope. It contains four sheets of paper. The first is headed "Junta Patriotica de Trabajadores." The other is in blank. It is just a letterhead of the "Alianza M.I.R.R. - Comandos 'L'." The other is the same type of stationery.

Sweet - direct

The third document is what appears to be a rough draft sketch of Cuban Power with the outline starting at the top with the "Direccion - Nacional En Cuba"--the National Directorate in Cuba. Immediately under that--

Q It is an organizational diagram, in your opinion?

A Yes, sir, of Cuban Power.

Q Are you conversant in the Spanish language?

A Yes, sir.

Q Will you take a look at this chart and see if it accurately reflects a translation of that chart?

A Yes, sir, it does.

Q Where did you find these items? Where did you first see them?

A In the back bedroom. That would be the southwest corner just off the hall in the Bosch home.

Q Those Cuban Power stickers that you identified, were there any other in the residence

Sweet - direct
besides those that you have identified?

A Yes, sir. There were two white envelopes containing a large number of them.

Q What do you consider a large number?

A Well, I would say about 500 of the \$5 ones, and there were less of the bigger denominations.

MR. KLEIN: I offer these into evidence at this time.

THE COURT: Together with the translation?

MR. KLEIN: Yes, sir.

MR. GREENSPAHN: Your Honor, counsel has handed me a file containing many instruments including some blank pages, and I submit to the Court that at this stage they are neither material nor relevant.

THE COURT: I am going to overrule the objection and admit the documents into evidence.

MR. KLEIN: I have no further questions.

Sweet - direct

(Thereupon the documents referred to were received in evidence as Government's Composite Exhibit No. 74.)

MR. GREENSPAHN: And the same objection to Exhibit No. 75.

THE COURT: The objection is likewise overruled. The document is admitted into evidence.

(Thereupon the document referred to was received in evidence as Government's Exhibit No. 75.)

THE COURT: And the same thing with respect to Exhibit No. 76.

MR. GREENSPAHN: May I ask the Court's pleasure as far as the publication of this is concerned? Is Exhibit No. 75 going to be read to the jury?

THE COURT: Well, I would think that the Government, to make a good presentation of its case, might read a portion of it. Any document which is admitted into evidence may be taken by the jury into the jury room. But I would not believe that any

Sweet - direct

Government lawyer, with the time I am going to allow him to make his argument, will stand up there and read a fourteen-page document. Because if he does, he has made half of his argument.

MR. GREENSPAHN: All right, sir.

MR. KLEIN: Your witness.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Agent Sweet, without going into the circumstances of it, when did you first become professionally or personally acquainted with Orlando Bosch?

MR. KLEIN: I am going to object.
It is beyond the scope of direct on this particular witness.

MR. GREENSPAHN: I don't think it is.

THE COURT: I am going to overrule the objection. You may answer the question, sir.

A I can't exactly recall. I have seen Dr. Bosch several times. The first time I ever saw him real close was when he was on trial once before.

Sweet - cross

BY MR. GREENSPAHN:

Q And you testified in that case?

A Right.

Q And that was the case he was acquitted in?

A Yes, sir.

Q Now, Mr. Sweet, do you know what the M.I.R.R. is?

A Yes, sir.

Q What is it, sir?

A It is an anti-Castro revolutionary organization.

Q Do you know what position, if any, Dr. Bosch has held and presently does hold with regard to that anti-Castro organization?

A Firsthand, no. But from the documents that he has, he is the coordinator general of the M.I.R.R.

Q Did you find any containers or envelopes for any other materials that you found in his home that you have presented?

A There were a lot of blank envelopes

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Sweet - cross

with--I don't know if I saw any like that or not.

Q Do you still have those envelopes in your possession?

A No, sir.

Q What happened to the other small red-white-blue bonds that we saw? Not bombs but bonds?

A I just left them there.

Q You only took a specimen of each denomination?

A Right.

Q Have you ever seen those bond forms anywhere else?

A No, sir.

Q Do you know of your own knowledge that these are, throughout the Cuban community in the South Florida area, very prevalent?

A It would only be hearsay. I have only heard that. I haven't seen them.

Q Did you cause these documentary exhibits to be examined by the FBI Laboratory for fingerprints or other identifying features?

A No.

MR. GREENSPAHN: That is all I have.

Thank you.

THE COURT: Redirect?

MR. KLEIN: No redirect.

THE COURT: Thank you, sir. You may
be excused.

(Witness excused)

THEREUPON--

JOHN MENTON,

called as a witness on behalf of the Government,
having first been duly sworn, was examined and
testified as follows:

THE CLERK: Please state your full
name, address and occupation.

THE WITNESS: My name is John Menton.
I am a Special Agent of the Federal Bureau of
Investigation.

DIRECT EXAMINATION

BY MR. KLEIN:

Q Were you on duty on October 11, 1968?

A Yes, sir, I was.

Q Where were you on duty?

A I was on duty--may I refer to my notes?

Menton - direct

THE COURT: Yes, sir.

BY MR. KLEIN:

Q Go right ahead.

A I was on duty at Miami, Florida, in the vicinity of 297 Northwest 48th Place, Miami.

Q What did you have with you at that time?

A I had a search warrant.

Q What was the search warrant for?

A For the search of a green 1961 automobile.

Q What make automobile was that?

A Chevrolet.

Q To whom did that automobile belong?

A Dr. Bosch.

Q Did you conduct a search of that automobile?

A Yes.

Q I am going to show you certain objects and ask you if you are familiar with these. Are you familiar with those objects?

THE COURT: Give him a chance to look

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Menton - direct

at them.

A Yes, I am.

BY MR. KLEIN:

Q Where did you first see them?

A In this Chevrolet automobile.

Q Would you describe each one, please?

You can take that out of that bag. Take all these items out of these plastic bags.

A The first item I can identify by my notes rather than the appearance of the item. It refers to a small fuse-type instrument with two wires coming out of it. It is not in the same condition it was when I picked it up.

Q What condition was it in when you picked it up?

A It was one solid cone with two wires coming out of it.

Q Is this your signature on this slip accompanying it?

A Yes, it is.

Q What else did you find? Will you describe those other items, please?

Menton - direct

A I found a paper bag which has my name on it, with two holes in it.

Q All right, what else?

A I found two pieces of blue cloth, one with a couple of holes in it, and another piece of blue cloth sewed in a hood effect.

Q What else?

A A large piece of foam rubber.

Q What was done with that foam rubber subsequent to your recovery of it, do you know?

A This was sent to the FBI Laboratory in Washington.

MR. KLEIN: We will offer these items into evidence at this time.

MR. GREENSPAHN: Your Honor, as to the paper bag and the two blue pieces of cloth, they are in no way germane to these proceedings and I object to them as being immaterial and irrelevant.

If it is the Government's intention to show that Dr. Bosch had something to do with Ernesto, the testimony is that the hood that he was wearing was black, not blue.

Menton - direct

THE COURT: What about the other?

Do you object to the others?

MR. GREENSPAHN: Yes, sir. To all of them. There is no showing--

THE COURT: You have limited your objection right now to two things. I want to know about the others, also.

MR. GREENSPAHN: The paper bag is nothing more or less than a paper bag.

THE COURT: I will sustain your objection to the paper bag at this time on the basis that no connection has been shown with this case. I will overrule your objection with respect to the hoods.

I will sustain your objection with respect to the fuse-type things, because no sufficient explanation has been made concerning the changed condition. And I will sustain your objection to the material in that thing upon the same ground.

MR. KLEIN: May I ask one further qualifying question on this, your Honor?

THE COURT: All right.

Menton- direct

BY MR. KLEIN:

Q What was done with this subsequent to your recovery of it (referring to the fuse-type instrument)?

A It was sent to the FBI Laboratory in Washington.

MR. KLEIN: No further questions of this witness at this time.

THE COURT: All right, sir. Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Do you know what these were used for (referring to the hoods previously referred to)?

A No, I don't.

MR. GREENSPAHN: Thank you. That is all.

THE COURT: You may be excused.

(Witness excused)

THE COURT: Call your next witness.

The other documents or articles will be marked for identification.

Menton - cross

MR. KLEIN: Our next witness is our laboratory witness, and I would like to organize some of these exhibits, if I could have a few moments.

THE COURT: How long is it going to take you?

MR. KLEIN: About five minutes, Judge. And I suspect that this witness is going to be a very lengthy witness.

THE COURT: That is all the more reason why we ought to hear some of it today and finish with him tomorrow.

MR. GREENSPAHN: All right, sir.

THE COURT: Ladies and gentlemen, we will recess for about ten minutes.

Will it seriously inconvenience anybody on the jury to continue until about six o'clock?

(The jury indicates in the negative.)

THE COURT: I propose, then, that we will continue until about six o'clock, at which time we will quit.

We will be in recess for about ten

Menton - cross

minutes. And I would like for you, as soon as you get those things organized, to let me know.

(Thereupon a short recess was taken, pursuant to which the following proceedings were had:)

THEREUPON--

CHARLES L. KILLION,
having previously been duly sworn, was recalled as a witness and testified further as follows:

THE CLERK: Please state your full name for the record.

THE WITNESS: Charles L. Killion.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Mr. Killion, you are the same gentleman who testified previously?

A Yes.

Q You are still under oath, sir.

A Yes, sir.

Q Previously, sir, you were qualified as an expert in explosives. What other fields do you work in in the laboratory?

Killion - direct

A In firearms examinations and tool markings.

Q What are tool markings or tool marking examinations?

A This is the identification of marks as having been made by a particular tool, a sledge-hammer mark on a safe door or some similar mark; and it also includes the comparison of two materials to determine whether they were at one time joined; that is, two pieces of plastic, metal, wood, to determine whether they were at one time joined into one piece.

Q How long have you been doing this type of work?

A For eight years.

Q Did you have any special training in this?

A Yes, in the laboratory.

Q Have you ever instructed or lectured in this?

A Yes.

Q I show you, sir, what is marked as Government's Exhibit No. 66 in evidence and ask you if

Killion - direct

you have ever seen this before, sir.

A Yes, sir, I have.

Q Where was that that you saw that?

A In the FBI Laboratory in Washington,
D. C.

Q I show you what has been marked
Government's Exhibit 80 for identification and ask
you, sir, if you have ever seen that before.

A Yes, sir, I have.

Q When and where did you see that?

A In Washington, D. C., in the laboratory.
It was received by me in the laboratory.

Q Did you cause a comparison to be made
between Government's Exhibit 66 and Government's
Exhibit No. 80 for identification?

A I did.

Q What was the result of that comparison,
sir?

A I concluded that the two pieces of
plastic foam (Government's Exhibit 66) were cut from
the piece of plastic foam (Government's Exhibit 80).

MR. BIERMAN: Your Honor, we would offer

Killion - direct

Government's Exhibit 80 into evidence at this time.

THE COURT: All right, sir.

MR. GREENSPAHN: Our objection previously made is rendered again as to materiality and relevancy.

THE COURT: The objection is overruled. It is now admitted into evidence.

(Thereupon the plastic foam referred to was received in evidence as Government's Exhibit No. 80.)

BY MR. BIERMAN:

Q I show you a pair of pliers which are part of Government's Exhibit No. 25 in evidence, and a piece of wire which is Government's Exhibit 8-B in evidence and ask you if you have ever seen these before, sir.

A I have seen them before.

Q When and where did you see them?

A I saw them in the FBI Laboratory in Washington, D. C.

Q Did you make any comparison or find

Killion - direct

any relationship between the pliers, sir, and the piece of metal?

A I did.

Q What was that relationship?

A I concluded that one end of the piece of wire was cut by these pliers.

Q How did you do that, sir?

A An examination is conducted by making test cuts of wire with the pliers and comparing those marks with the cut marks on the piece of wire (Government's Exhibit 8-B) and an examination is conducted under a comparison microscope which is, in effect, a duplicate microscope permitting someone to view two objects at the same time and make a direct comparison.

Q I show you, sir, Government's Exhibit 81 for identification and Government's Exhibit 68 in evidence and ask you to open those up and examine them.

THE COURT: All right, sir. He has examined them.

Killion - direct

BY MR. BIERMAN:

Q What relationship is there between the two of them, if you found one?

A Government's Exhibit 81 and Government's Exhibit 68 are each electric blasting caps--specifically, military M6 blasting caps--manufactured by Hercules, Inc., in Wilmington, Delaware.

Q Are these both of the same size and type and shape, sir?

A Yes.

MR. BIERMAN: Your Honor, we would offer Government's Exhibit No. 81 for identification into evidence.

MR. GREENSPAHN: The same objection.

THE COURT: He has still not satisfactorily explained the change in condition. I am going to sustain the objection until he does.

BY MR. BIERMAN:

Q Would you, sir, describe to us the condition of Government's Exhibit 81 when you received it, if it was different from this.

A It was different from this at the time

Killion - direct

I received it. It was an unfired blasting cap, and I detonated it in the laboratory for safety reasons.

Q Did you take photographs of it prior to detonating it?

A Yes.

Q Do you have those photographs?

A Yes.

Q Could I see them, please?

A (Producing photographs)

MR. BIERMAN: May this be marked as Government's Exhibit 81-A?

(Thereupon the photograph referred to was marked for identification as Government's Exhibit No. 81-A.)

THE COURT: Do the photographs which you have handed counsel accurately depict the condition of the detonator at the time it was received by you, sir?

THE WITNESS: Yes, sir, your Honor.

MR. BIERMAN: Your Honor, I would now offer, with the explanations, Government's Exhibit 81

Killion - direct
and 81-A into evidence.

MR. GREENSPAHN: The same objections
as to materiality and relevancy.

THE COURT: The objection is over-
ruled. They are admitted into evidence.

(Thereupon the items referred
to were received in evidence as
Government's Exhibits Nos. 81 and
81-A.)

BY MR. BIERMAN:

Q I show you, Mr. Killion, Government's
Exhibit 71-C in evidence and ask you to examine these,
please, sir. Have you seen these objects before,
sir?

A Yes, sir, I have.

Q Where was that?

A In the FBI Laboratory.

Q Are they in the same condition they
were at that time?

A No, sir.

Q What difference is there?

A It consisted originally of three

Killion - direct

unfired regular blasting caps. The difference at the present time is the fact that I fired the caps, and the remains of those caps are in these boxes.

Q So each was in functioning order when you received it?

A Yes, sir.

Q Do you have photographs of those prior to the firing?

A Yes, sir.

Q Does this photograph which you have handed me actually depict how they looked at the time of the photographing?

A Yes, sir.

MR. BIERMAN: I would offer those photographs as Exhibit 71-C(1).

THE COURT: I will note the same objection and make the same ruling. They will be admitted into evidence.

(Thereupon the photograph referred to was received in evidence as Government's Exhibit No. 71-C(1).)

Killion - direct

MR. BIERMAN: I have no further questions.

THE COURT: All right, sir. Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Killion, during the course of your professional activities have you had occasion to examine other evidence or purported pieces of evidence relating to this case?

A I have.

Q Do you have with you today, sir, your complete worksheet, your complete written memorandum of such examinations as you made with regard to the exhibits that you have identified and as to which you have expressed your opinions with regard to today and the other exhibits that you may have examined?

A This is in the form of a laboratory report, a copy of which I do not have with me.

Q Where are those reports, sir?

A With the prosecutor at our office in Miami.

Killion - cross

MR. GREENSPAHN: May I request that the prosecutor make available to me or to this gentleman his reports so he can refresh his memory during the course of his testimony?

MR. BIERMAN: I gave it to you, Mr. Greenspahn. That is the only copy available.

BY MR. GREENSPAHN:

Q With regard to the foam pieces, the two exhibits--No. 66 and 80--you referred to this material as plastic foam, is that right, sir?

A Yes.

Q What was the means by which you compared Exhibit 66 with Exhibit 80?

A By visual examination and by comparing it under a microscope.

Q What standards of comparison or what criterion of comparison did you establish with regard to the two exhibits?

A Based upon the cut edges of the material, plus the marks that appear from the material being cut, the marks that appear on the cut edge.

Q Did you compare, then, the two small

Killion - cross

pieces of Exhibit No. 66 with the large piece (Exhibit 80)?

A Yes, sir.

16-2

Q Had you, prior to the time that you were first confronted with these exhibits, had experience in the comparison of foam materials?

A Yes.

Q Do you know the various grades of foam materials?

A No, sir.

Q Do you know whether or not the foam material in Exhibit 80 is a standard and usual grade of plastic foam material?

A No, sir.

Q Do you know in what size sheets or lots the materials evidence by Exhibit 80 are sold or manufactured?

A This is one-inch, and there would be other thicknesses, but I don't know the various thicknesses.

Q Do you know what the uses of this plastic foam material are principally in industry?

Killion - cross

A This particular foam? I do not know.

Q Was the large piece (Exhibit 80) in the very same condition that it now presents itself in, or was it in a different condition when you examined it?

A At the time I examined it, it was in this condition.

Q With one piece almost coming out but still attached, is that correct?

A Yes.

Q Now, sir, will you show me the criterion or the comparison that you had indicated previously?

A The comparison is based upon the characteristics of the cut line that can be seen on this side and on the opposite side; and in addition, the fact that on the cut edges there are materials, for instance, on one side that match into the cut area of the opposite cut edge.

Q When you first received Exhibit 80 with the markings that are on it--and I don't mean the penned in or blue markings on the face of it--but

Killion - cross

the rust stains, the dirt stains and the other stains that are on there, were they on the exhibit itself at that time?

A Yes.

Q Was there any continuity between the rust stains and the other stains that are observed on Exhibit 80 and the exhibits which are marked as Exhibit No. 66?

A There is not.

Q There are, as you have aligned them, interruptions of the various apparent rust stains, is that right?

A That's correct.

Q Do your records refresh your memory as to when it was, by date, that you made the comparison of those foam items?

A Yes, sir.

Q When was that, sir?

A On October 17, 1968.

Q Do you know by whom the plastic foam is manufactured, sir?

A No, I do not.

Killion - cross

Q Now, with regard to the wire that you referred to and the pliers--and I don't have the exhibit numbers--but I am sure you will recall what you testified to?

A Yes.

Q What was your criterion technically for determining whether or not there was any relationship between the instrument and the wire? How did you go about making a determination?

A The identification of a tool mark is based upon the fact that, in the manufacture and use of a tool, your irregularities will appear on the tool, whether it is a cutting tool or a hammer or whatever tool it might be. In this instance, it is a fact that the cutting edge of the pair of pliers is unique to that particular tool based upon the irregularities on the cutting edge. So if the pliers are used to cut, as in this instance a piece of wire, it will produce marks that are peculiar to that particular tool. So on a questioned piece of wire--that is, questioned as to whether it was cut by a particular tool--that wire is compared with a wire or

Killion - cross

other material that I cut as a test cut with the pliers.

Q Do you know by whom the pliers were manufactured?

A I don't recall.

Q Can you tell us whether this is an expensive or an inexpensive pair of pliers?

A Relatively inexpensive.

Q Based upon your training and experience, do you have knowledge as to whether dies are used in the manufacture of tools such as this set of pliers?

A Dies?

Q Yes, sir.

A I would not expect dies to be used on this particular set of pliers.

Q What is your considered professional opinion as to the manner or mechanism of the manufacture of such an instrument?

A That they would be cast and machined.

Q Would they be produced in mass quantities based upon the casting or the procedures

Killion - cross

that you are envisioning when you give us that opinion?

A Yes, sir.

Q Would there not be, then, common characteristics between each of the individual tools that were the product of such a process?

A There will be common and there will be uncommon.

Q Based upon your training and experience do you have an opinion as to whether this set of pliers is a unique set of pliers? That is, is it one of a kind or do you know whether there are others in quantity possessing the same characteristics as this instrument?

A In my opinion, there are no other pliers that have a cutting edge the same as the cutting edge on this pair of pliers.

Q Show me what you mean when you talk about a cutting edge.

A The cutting edge being the portion at the back end of the jaw where the wire may be cut. So the cutting edge is the inner portion of that jaw

Killion - cross

on this side and the inner portion of this jaw on the inside.

Q Going into your knowledge of the casting procedure employed in manufacturing an instrument such as this, is not there a common mold or cast into which the metallic substance is shaped and produced into the ultimate and final form?

A Yes, sir.

Q Wouldn't the dimensions necessary for the preparation of such an instrument be the same on all such instruments that are cast in the same or general lot as the instrument that I hold before me?

A The general dimensions, yes.

Q Would that not apply to all of the surfaces, including the cutting edges as you referred to them, of the instrument?

A They will vary from one to the other.

Q Showing you Government's Exhibit 8B which you indicate was the object that can be matched with those cutting edges, open it up, if you will, please.

A (Witness complies) The end to which I

Killion - cross

referred is the end to which I am pointing.

Q Now, that would be the end on the same side that the label is affixed to?

A That's correct.

Q Did you check out the other side?

A I did.

Q What finding did you find?

A It was not possible to determine whether the opposite end was cut by that pair of pliers, nor was there enough characteristic on the cut end to identify it with any particular tool.

Q What characteristics were different on the upper end from those on the lower end?

A From the cut end there are, under the microscope, irregularities that are seen as a result of the cutting of the end of the wire. It is a comparison of those irregularities, those marks produced by the tool.

On the opposite end there was not enough of these irregularities, which is not uncommon, to be able to arrive at any conclusion.

Q Would you anticipate that both ends,

Killion - cross

if they were cut by the same pair of pliers, would manifest the same characteristics?

A The same general characteristic, yes, sir.

Q Sufficient characteristics to enable an identification as to the instrument that was used to cut it?

A Not necessarily. It depends upon an examination of each end.

Q Do you have your laboratory report relative to this exhibit?

A No, sir. It is in a different laboratory report that I do not have. I beg your pardon. I believe I do have that laboratory report.

Q What is the date of that report, sir?

A Yes, sir, I do have it. It's October 14, 1968.

Q How would you describe the piece of coat hanger that we have been talking about, in terms of its newness as opposed to its oldness?

A What do you mean?

Q Was it a new piece of hanger or was it

Killion - cross

an old piece of hanger?

A It is not possible to tell whether it was new or old because of the fact it had not been corroded to any extent.

Q Let me take a look at your report, please.

A (Handing document to Mr. Greenspahn)

Q Mr. Killion, I would call your attention to your report of October 14, 1968, the last page thereof, the next to the last paragraph thereon. Is that piece of wire that we are talking about identified by you, for the purposes of your laboratory study, as Q14?

A The piece of wire is referred to as Q14? No. The laboratory is not the same piece of wire to which I have been testifying.

Q Do you know what Q14 is in relationship to any evidence that has been presented in this case?

A Only that it was a piece of wire that was submitted to me. Its specific origin I do not know.

Killion - cross

Q A piece of coat hanger wire?

A Yes, sir.

Q That was badly corroded and you made no definitive test as to the relationship between that and any tools of any sort?

A That's correct.

Q What other items did you examine on October 14, 1968?

A Are you referring in connection with the laboratory report of October 14?

Q Yes, sir. That would fully reflect the items that were examined by you, wouldn't it?

A A portion of the items, yes, sir.

Q Now, with regard to the item identified as K1 by you, was that a 57 millimeter recoilless rifle?

A Yes, sir.

Q Did you in any way alter the condition of that recoilless rifle while it was in your possession?

A I did.

Q In what respect, sir?

Killion - cross

A At the time I received it, there was a tape around the muzzle along with the piece of wire that I have testified to. I removed that so that the examination could be conducted.

In attempting to open the weapon, a knob broke off. And I, in general, cleaned the gun to determine that it would be--that it was in operating condition.

Q Is it a fair assumption to say it was not in the same condition as when you received it?

A It was in operating condition after I cleaned it up. It was dirty to some extent.

Q No. The question I asked you is, when you received it, was it in operating condition?

A That is a matter of the definition of "operating condition." It required no additional parts or other mechanism to fire. To that extent it was in operating condition. To the extent of being dirty and some corrosion, it was not in firing condition.

Q Did you have an opportunity to examine the metal fragments?

Killion - cross

A Yes, sir.

Q Did you make any significant finding with regard to those metal fragments?

A I did.

Q What findings did you make, sir?

A I found that some of the metal fragments were like those from the projectile of a 57 millimeter recoilless rifle. That is the bullet portion.

Q Did you have an opportunity to examine a handkerchief that has been smeared against the hull of the POLANICA, the hull of the vessel that had allegedly been shelled?

A I did not do that examination, no, sir.

Q With regard to Page 3 of your report of October 14, indication is made of the examination of a handkerchief, paint chips and debris. Do you recall that?

A I recall that portion of the report, yes, sir.

Q What findings, if any, did you make in that regard?

Killion - cross

A I did not do the examination relative to that. That was conducted by another examiner.

Q I see. What other items did you examine, sir, in the course of your examination?

A Shall I list them?

Q Yes, sir.

A Based upon just the ones in the report of October 14?

Q No, sir. In the course of your official duties in regard to the evidence in this case.

MR. BIERMAN: Your Honor, I haven't objected to any of this, but we have offered the man on direct for certain evidence, and unless there is some Brady material which has not been shown, it seems to me he is going far afield of the direct examination.

MR. GREENSPAHN: Your Honor, I would request of the Court at this time that this agent be required to remain so I can call him as part of my case. I'll do it that way.

MR. BIERMAN: I just couldn't let him

Killion - cross

continue. In any event, he has got another trial to go to.

THE COURT: Well, we have got one trial right here, which is the most important trial he is in right now.

MR. BIERMAN: I agree.

MR. GREENSPAHN: Frankly, I would prefer to have him as my witness.

THE COURT: I am sorry, sir, but I will not be able to excuse you. I will have to ask you to remain subject to call. I hope we can get to you relatively soon.

MR. GREENSPAHN: All right. Let me finish with you on this cross examination, if I may.

BY MR. GREENSPAHN:

Q You identified Exhibits 81 and 68 as electrical military M6 blasting caps manufactured in Wilmington, Delaware, by the Hercules Company. Had you seen such blasting caps before, sir?

A Yes, sir.

Q Would you estimate, if you can, the quantity in which such blasting caps are produced

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Killion - cross

either on an annual or semi-annual basis?

A Many caps are produced, perhaps thousands. I don't know.

Q Do such blasting caps have commercial and industrial uses?

A They have military application.

Q Do they have commercial and industrial uses?

A None that I know of.

MR. GREENSPAHN: That is all I have at this time, your Honor.

I will ask that the witness be instructed to remain subject to call.

THE COURT: The witness will remain subject to call.

Redirect examination?

REDIRECT EXAMINATION

BY MR. BIERMAN:

Q Mr. Killion, did you make any photographs of the sponge that was cut?

A I did.

Q Do you have those?

Killion - redirect

A (Producing photographs)

MR. BIERMAN: Will you mark this as
Government's Exhibit 82?

(Thereupon the photograph
referred to was marked as
Government's Exhibit No. 82
for identification.)

BY MM. BIERMAN:

Q Does this accurately depict the two
pieces of sponge?

A That depicts one piece of sponge
(Government's Exhibit 66) and the piece of sponge
(Government Exhibit 80).

MR. BIERMAN: With the Court's
permission, may he step down and explain this
photograph to the jury, your Honor?

THE COURT: All right, sir.

THE WITNESS: Depicted in the photo-
graph is the cut edge of the two pieces of foam.
The bottom half is the largest piece of foam, and the
upper half is the smaller piece of foam. In cutting
through the foam, the marks appear as the result of

Killion - redirect

a cutting action, and there will be, in effect, mounds and valleys on one piece that will correspond to the mounds and valleys of the edge of the other piece.

BY MR. BIERMAN:

Q Did you examine this sponge rubber under a microscope?

A Yes.

Q Was your conclusion affected by that examination?

A Yes.

Q Did you find them to be identical in cut and texture?

A Yes.

Q And, sir, referring to the rust markings on the complete piece of foam, would you have any way of knowing whether that was on there prior to or after the time that this piece (Exhibit No. 66) came from it?

A It would appear that the rust mark on the larger piece of foam occurred after the small pieces were cut.

Killion - redirect

Q Did the discovery of the differences in that rust mark in any way affect your opinion?

A No, sir.

Q In regard to the wire, did you make photographic microscopic enlargements of the pliers and the wire?

A Yes.

Q Do you have those?

A Yes.

Q Would you give me those, please, sir?

A (Producing photographs)

THE COURT: What magnification is that, Mr. Killion?

THE WITNESS: Your Honor, they are different magnifications. Referring to these photographs, the magnification is 15, approximately, and the magnification of the third photograph is approximately twenty-six. That is the magnification and enlargement total.

MR. BIERMAN: Mr. Blerk, will you mark this as composite Exhibit No. 83?

Killion - redirect

(Thereupon the photographs
referred to were marked as
Government's Exhibit No. 83
for identification.)

MR. BIERMAN: I would offer Exhibit
No. 82 into evidence, your Honor.

MR. GREENSPAHN: No objection.

THE COURT: It will be admitted in
evidence.

(Thereupon the photographs
referred to were received in
evidence as Government's
Exhibit No. 82.)

BY MR. BIERMAN:

Q Do these photographs accurately depict
what you observed under the microscope?

A Yes, sir.

Q Can you explain to the jury the
comparisons on those tool marks?

Never mind. I will withdraw that
question.

Have you done an examination of these?

Killion - redirect

A Yes.

Q With the microscope as well as with the naked eye?

A With the microscope.

Q Solely with the microscope?

A Yes.

Q And you found them to be identical, is that correct?

A That's correct.

Q Now, sir, Mr. Greenspahn asked you about pliers being of the same mold and kind. Is that as to the naked eye or as to microscope?

A As to the microscope.

Q In other words, you saw that some of them were made from the same mold?

A Yes, that's correct, but microscopic differences will still occur.

Q Are these microscopic differences as to which you have testified the basis for your comparison?

A Yes.

MR. BIERMAN: I have nothing further.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

THE COURT: All right, sir. Thank you very much. I am sorry, but you will have to remain subject to call.

THE WITNESS: Very good.

MR. BIERMAN: I would offer those photographs into evidence.

THE COURT: All right, sir. Is there any objection?

MR. GREENSPAHN: I don't know what I am looking at.

MR. BIERMAN: Exhibit No. 83.

THE COURT: All right, sir. I will note an objection, anyhow, will overrule the objection and admit them into evidence.

(Thereupon the photographs referred to were received in evidence as Government's Exhibit No. 83.)

THEREUPON--

BRUCE E. CLINKSCALES,
called as a witness on behalf of the Government,
having first been duly sworn, was examined and
testified as follows:

Clinksscales - direct

THE CLERK: Please state your full name, address and occupation.

THE WITNESS: Bruce E. Clinksscales, Special Agent for the FBI here in Miami.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Agent Clinksscales, did you have occasion to see some palm and fingerprints in regard to this case, sir?

A Yes, sir, I did.

Q Do you have those with you?

A I have some of them, yes, sir.

Q Showing you, sir, what is marked as Government's Exhibit No. 84 for identification and what will be marked Government's Exhibit No. 85 for identification, I will ask you when and where you had occasion to see these, sir.

A I took both of these sets of fingerprints and palm prints on October 11, 1968, at the Miami FBI office.

Q Referring to Government's Exhibit No. 84, from whose hands did you take those, sir?

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Clinkscale - direct

A These are the fingerprints and palm prints of Jorge Gutierrez Ulla.

Q Do you see that individual in the courtroom today?

A Yes, sir.

Q Where is he, if you will point him out, please? Just step down and point him out.

A He is the gentleman in the brown coat, as I recall.

MR. BIERMAN: Let the record reflect that the witness has identified the defendant Jorge Gutierrez Ulla.

BY MR. BIERMAN:

Q What other prints did you take, referring to Government's Exhibit No. 85?

A These are the fingerprints and palm prints, also taken on October 11, 1968, of Marcos Rodriguez Ramos.

Q Do you see that individual in the courtroom today?

A Yes, sir.

Q Will you point him out, please?

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Clinkscates - direct

A He is the gentleman on the front end,
on this end.

MR. BIERMAN: Will the record reflect
that the witness has identified the defendant Marcos
Rodriguez.

BY MR. BIERMAN:

Q What did you do with these after you
took them, sir?

A Those were forwarded to the FBI
Identification Division in Washington, D. C.

MR. BIERMAN: I have no further
questions.

THE COURT: All right, sir. Is there
any cross examination?

MR. GREENSPAHN: Yes, sir.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Did you, in the course of your
official duties, have occasion to send any other
fingerprints or palm prints for analysis to the FBI
Laboratory?

A Yes, sir. On the same date the

Clinkscale - cross
fingerprints and palm prints were taken of the other
defendants present here.

Q Those were sent to Washington?

A Yes, sir.

Q In the official course of your
professional activities, did you receive back any
records or references or analyses reports relative
to the other defendants as well as these two?

A I personally did not, sir.

Q To your knowledge, did your department
in Miami receive such reports?

A I'm sure they did.

MR. GREENSPAHN: Thank you, sir. I
have nothing else.

THE COURT: Is there any redirect?

MR. BIERMAN: No redirect.

THE COURT: Thank you, sir. You may
be excused.

(Witness excused)

Bailey - direct

THEREUPON--

DAN A. BAILEY,

called as a witness on behalf of the Government,
having first been duly sworn, was examined and
testified as follows:

THE CLERK: Please state your full
name, address and occupation.

THE WITNESS: Dan A. Bailey, finger-
print examiner, Washington, D. C.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q By whom are you employed, Mr. Bailey?

A Federal Bureau of Investigation.

Q How long have you been so employed?

A Twenty-eight years.

Q How many years' experience do you have
in fingerprint work, sir?

A That is all. Twenty-eight years.

Q Have you ever had occasion to give
instructions or lecture in fingerprint work?

A Yes, to police schools, new agents,
different law enforcement agencies.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Bailey - direct

Q What is a latent palm print, sir?

A That is a result of a person having touched an object, leaving on that object either perspiration or foreign substances that are on the hand.

Q What is an inked palm print or fingerprint?

A That is where you put the ink on the palm itself and then place the hand on a piece of paper, thereby leaving the impression of the palm on that paper.

Q How are latent palm prints compared with the inked palm prints?

A By the actual ridge detail that appears on the palm prints.

Q In your experience, sir, are any two palm prints of different individuals alike?

A No, sir.

Q In this field is the writing in agreement with you, sir?

A Yes, sir.

MR. GREENSPAHN: Objection. It calls

Bailey - direct

for a conclusion.

THE COURT: I will sustain the objection to the question.

BY MR. BIERMAN:

Q I show you, sir, Government's Exhibits 84 and 85 and ask you if you have ever seen these before.

A Yes, sir, I have.

Q When and where did you see them, sir?

A I brought those from Washington and turned them over to the agent this morning.

Q Where did you receive them from?

A From the Miami office.

Q I show you, sir, Government's Exhibit No. 67 in evidence and ask you when and where you have ever seen that before, if you have.

A Yes, sir. In Washington, D. C.

Q What condition was it in when you received it?

A Well, it was just a regular piece of newspaper, and then I treated it with Ninhydrin and silver nitrate. That is the reason for the difference

Bailey - direct

in color.

Q As a result of this treatment by Ninhydrin, did you raise any latent prints on this?

A I did, sir.

Q How many did you raise?

A Four palm prints and the lower joint of a finger.

Q Were you able to make any identification of the palm prints?

A Yes, sir.

Q What identifications were you able to make, sir?

A I identified one palm print as the palm print of Jorge Gutierrez and three palm prints as that of Marcos Rodriguez Ramos.

Q That is, sir, you compared them with these cards which are Government's Exhibits 84 and 85?

A Yes, sir.

Q You have no personal knowledge as to whose cards these are?

A No, sir.

17-1

Bailey - direct

Q Did you make any enlargements or charts reflecting this examination?

A I did, sir.

Q Do you have those with you?

A Yes, sir.

Q While you are looking for those, on which newspaper did you find these, sir?

A The New Orleans States-Item.

Q Did you find any latent prints on the newspaper The Miami Herald?

A No, sir, I did not.

Q Is it unusual, sir, not to find any prints or any identifiable prints on objects that are sent to you for identification?

A It happens quite often.

Q Are these charts, sir, ones which you personally prepared?

A Yes, sir.

MR. BIERMAN: Mr. Clerk, will you mark this for identification, please?

(Thereupon the newspaper referred to was marked as Government's Exhibit No. 86 for identification.)

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Bailey - direct

THE COURT: In the identification of palm prints, do you have your points of similarity just as you do in fingerprints?

THE WITNESS: Yes, sir, you do.

THE COURT: How many points, in your opinion, are necessary for you to obtain in order to make an identification?

THE WITNESS: There is no set number.

THE COURT: No set number?

THE WITNESS: I have testified in Federal Court on seven before.

THE COURT: In your opinion, seven is sufficient for you to form an identification?

THE WITNESS: Yes, sir.

THE COURT: For similarity?

THE WITNESS: Yes, sir.

BY MR. BIERMAN:

Q I show you, sir, what has been marked as Government's Exhibit No. 86 for identification and ask you if that is an accurate representation and blow-up of the latent prints and inked prints.

A Yes, it is.

Bailey - direct

Q Whose print is that, sir?

A That is the print of Jorge Gutierrez Ulla.

MR. BIERMAN: I would offer that into evidence, your Honor.

MR. GREENSPAHN: Your Honor, until the photographs and the fine points of similarity are established, I feel that it is not a proper exhibit.

THE COURT: All right, sir. Go ahead and ask him about it.

BY MR. BIERMAN:

Q Would you, sir, explain to the Court and jury and demonstrate with this chart the points of similarity?

A Yes, sir. The black lines on here represent the ridges or the raised portions of the palm of the hands. The white portions are the places in between the ridges of the hand. The numbers and lettering I put on there myself just merely to help me explain the different points of identity.

Starting on the inked print, this is the way I make my identification. In the center toward

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Bailey - direct

the top of the print there are two ridges coming together, and I have marked that as point No. 1. Seven ridges directly to the right there are two ridges coming together, and I marked that as point No. 2. Directly below that three ridges and two other ridges coming together, and I have marked that as point No. 3. Over to the left and straight down I find two more ridges coming together, and I marked that as point No. 4. Keeping those four points in mind, I then looked at the latent print to see whether or not I could find the same points. We find the same two ridges coming up here and joining. I marked that as point No. 1. Seven ridges directly to the right, two ridges coming together. I marked that as point No. 2. Four ridges below that, two ridges coming together. I marked that as point No. 3. Over to the left and down we find two ridges coming together. - I marked that as point No. 4.

Keeping those points in mind, I then looked at the other points 6 through 13, and I found that they were in the same position as to each other. Therefore I made my opinion that they were made by one

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Bailey - direct
and the same person.

Q Do these points have names?

A Well, they are either end ridges--

THE COURT: Let's not confuse this
with a lot of technical testimony unless it is
necessary.

Do you re-offer it?

MR. BIERMAN: I re-offer Government's
Exhibit No. 86.

MR. GREENSPAHN: The same objection.

THE COURT: It shall be admitted in
evidence.

(Thereupon the item referred to
was received in evidence as
Government's Exhibit No. 86.)

MR. BIERMAN: Will you mark this as
Exhibit No. 87?

(Thereupon the photograph
referred to was marked as
Government's Exhibit No. 87
for identification.)

Bailey - direct

BY MR. BIERMAN:

Q Did you make a photo enlargement of the other print?

A Yes, sir, I did.

Q Whose would that be?

A That is marked as those of Marcos Ramos.

THE COURT: All right. Would you mind stepping down and doing the same thing you did with that one?

A On the right is the inked print; on the left is the latent print. Starting up in the right-hand corner we find a ridge ending at a point that I have marked as No. 1. Going directly to the left there is a short ending ridge, and I marked each end of that as point No. 2 and point No. 3. Directly between those two ridges and straight down we find an ending ridge, and I have marked that as point No. 4. To the right of that, the first ridge, there is another ending ridge, and I marked that as point No. 5.

Then keeping those in mind, I looked at

Bailey - direct

the latent impressions and find the same points as No. 1. Then going over we find a short ending ridge or ridges which I have marked as points Nos. 2 and 3. Straight down below and between those two ridges there is an ending ridge and I marked that as point No. 4. And the first ridge up and to the right is an ending ridge and I marked that as point No. 5. I then looked at the rest of the point and found 12 points on there that were in the same position as to each other, and I formed my opinion that they were made by one and the same person.

MR. BIERMAN: I offer Government's Exhibit No. 87 into evidence.

THE COURT: All right, sir. I will note the same objection, overrule the objection, and the document will be admitted as Government's Exhibit No. 87.

(Thereupon the photograph referred to was received in evidence as Government's Exhibit No. 87.)

Bailey - direct

BY MR. BIERMAN:

Q Now, there are two remaining latent prints, sir. Did you make a comparison with these?

A Yes, sir, I did.

Q Whose prints were these, in your opinion?

A Marcos Ramos.

Q Did you use these exhibits, 86 and 87, as your only means of making your comparison?

A For demonstration purposes, yes, sir.

Q Did you make, independent of these charts, an identification of the other two latent prints?

A Yes, sir, I did.

Q And is it your determination that they were also made by Marcos Ramos?

A That's correct.

Q How many points of similarity were there?

A There were at least twelve or thirteen in each one of them.

MR. BIERMAN: No further questions.

Bailey - direct/cross

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q With regard to the other two latent prints of Marcos Ramos as identified by you--

MR. BIERMAN: Excuse me. I have one further question.

THE COURT: All right, sir. Ask it quickly.

BY MR. BIERMAN:

Q What result in coloration is there when you have treated exhibits for fingerprints?

THE COURT: He already testified to that. He has testified he treated it with this treatment and that caused it to turn to the color it is now. That is correct, is it not?

THE WITNESS: A brownish color, yes.

MR. BIERMAN: I just wanted to make sure.

BY MR. BIERMAN:

Q Did you also treat the dynamite packages?

Bailey - cross

A Yes, sir.

THE COURT: Good enough.

BY MR. GREENSPAHN:

Q In regard to the other two latent prints that you did not testify in detail about as to Marcos Ramos, did you find the same points of similarity?

A Do you mean the exact same points as I have on the charts?

Q Yes, sir.

A No, sir. It was a different portion of the hand.

Q What was the different portion of the hand? In other words, what portion does that reflect and what portions were the others?

A On the other two they were higher on the hand. The one that I have shown in the chart is from the deep base part of the hand near the wrist.

Q Were there any points of dissimilarity between the inked print and the latent prints that were developed?

A Insofar as ridge detail, no.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Bailey - cross

Q Insofar as any constructive portion of the palm, hand or fingerprints that were reflected on the exhibits?

A No, sir. The outside of the latent print is not as complete as the inked print.

Q In what respect is it not as complete, sir?

A The inked print shows the whole palm print. The latent print just shows a section of it.

Q May I see the latent print?

THE COURT: The one on your left is the latent print and the one on the right is the inked print.

THE WITNESS: It is marked.

MR. GREENSPAHN: I see that.

BY MR. GREENSPAHN:

Q Where on that piece of newspaper did you take the fingerprint that is Government's Exhibit 86?

A It might be that these things have been discolored enough that you wouldn't be able to see it any more. I can show you two photographs, if

Bailey - cross

that will do any good.

Q Perhaps it would. If you have them, let me take a look at them, please.

A (Handing items to Mr. Greenspahn)

Q This is purportedly Exhibit 86. Whose is this, sir, do you know?

A That is Gutierrez.

Q Will you show me where on the photographs of the newspapers that you have these appeared on? I would appreciate it.

A This is it right here.

Q Show me where, if you will, by pointing to the area of the palm print.

A Let me make sure I have the right one.

Q Please do.

A The left palm print is at the top in here in the paper where it says "State" across the top of the paper.

Q Now, that reflects in its entirety, does it not, the full palm print of the individual whose print it shows?

A No, sir; barely the side and base

Bailey - cross

portion of the left hand.

Q Did you do any other fingerprint studies on any other materials?

A Yes, sir; numerous items.

MR. GREENSPAHN: I would like to inquire about those, but I suspect that is going to be very lengthy.

THE COURT: Well, let's ask him a general question and you may solve your problem.

BY MR. GREENSPAHN:

Q Did you have provided to you for comparative purposes the fingerprints of all nine of these defendants?

A Yes, sir, I did.

Q And other persons as well?

A Yes, sir.

Q And did you have provided to you the various exhibits that are now piled up and around the front of this courtroom?

A Some of those, yes, sir.

Q Did you examine the exhibits for latent prints, palm prints, fingerprints, against the

Bailey - cross

inked prints or palm prints that were provided to you?

A Yes, sir.

MR. GREENSPAHN: It is at this point that I would want to go into the specifics.

MR. BIERMAN: We will tell you that there are no further prints that were found that were identifiable.

THE COURT: I am going to ask you: Were you able to find any prints that you could identify positively connected with any of these defendants or any other persons?

THE WITNESS: No, sir.

THE COURT: Then your search was completely negative except as to what you have testified to?

THE WITNESS: Yes, sir.

THE COURT: All right, sir.

BY MR. GREENSPAHN:

Q Were there latent fingerprints which could not be identified as to these defendants upon several or various of these exhibits?

Bailey - cross

A I had had a lower joint of a finger on one of the wrappers for a bomb.

THE COURT: But, as I understand it, you could not make any positive identification from that?

THE WITNESS: No, sir.

BY MR. GREENSPAHN:

Q Did you have a fingerprint lifted from the 57 millimeter recoilless rifle?

A No, sir.

MR. GREENSPAHN: That is all I have.

THE COURT: All right, sir.

MR. BIERMAN: Just a few very short questions.

REDIRECT EXAMINATION

BY MR. BIERMAN:

Q If you have one lower joint, are you able to then match it up with whose print it is?

A Presuming that the print would be in the file of the FBI and only if that person was named or his print submitted for that purpose. You could not search for it through our files.

MR. BIERMAN: That's all.

THE COURT: All right, sir. Thank you very much. You may be excused.

(Witness excused)

THE COURT: Ladies and gentlemen, I am getting ready to recess now until nine o'clock in the morning. I am afraid that it may be a little dark when we leave here. If any of you ladies have cars parked in the parking lot, I would appreciate it if some of you gentlemen on the jury would see to it that they get to their cars safely.

The same instructions I have given you, of course, will be applicable. We will be in recess until nine o'clock tomorrow morning. Court will be in recess until nine o'clock tomorrow morning.

(Thereupon at 6:12 p.m., the
hearing was recessed to
reconvene on November 13, 1968.)

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MIAMI, FLORIDA

November 13, 1968

(The hearing resumed, pursuant
to prior recess, at 9:00 o'clock
a.m.)

THE COURT: Good morning, ladies and
gentlemen.

Is the Government ready to proceed?

MR. BIERMAN: Ready, your Honor.

THE COURT: All right, sir. You may.

THEREUPON--

HENRY B. HEIBERGER,

called as a witness on behalf of the Government,
having first been duly sworn, was examined and
testified as follows:

THE CLERK: Please state your full
name, address and occupation.

THE WITNESS: Henry B. Heiberger,
H-e-i-b-e-r-g-e-r. I reside at Silver Spring,
Maryland, which is a suburb of Washington, D. C. I
am employed as a Special Agent of the Federal Bureau
of Investigation as a chemist assigned to the FBI
Laboratory in Washington, D. C.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Heiberger - direct

DIRECT EXAMINATION

BY MR. BIERMAN:

Q What training have you received in the field of chemistry, Mr. Heiberger?

A I have a degree from the University of Georgetown in Washington, D. C.; a B.S. degree in chemistry.

I was two years in the graduate school of chemistry at the University of Maryland, College Park, Maryland. I was employed at the University of Maryland as an assistant professor in chemistry for a year and a half. And I was also employed at the University of Maryland on a research fellowship for a year.

Q What employment experience have you had in dealing with chemical analyses?

A After graduate school I was employed at the duPont Laboratory in Wilmington, Delaware, in instrumental analysis, especially in the plastics field--plastics, paints, small bits of material. Then I have worked with the Bureau for the last twenty-two years.

Heiberger - direct

Q During the course of this time, sir, have you had occasion to make chemical analyses and analyses of different materials?

A Yes, sir. The last twenty years I have spent in the laboratory working with paints, plastics and bomb residues. I am one of three men in the laboratory that has worked on every bombing case, from at least one or two a week, submitted to us for the last twenty years by police departments, FBI agents, the CAB in every airplane crash. My full time has been devoted to bomb residues, the materials found at the scene of a bomb.

Q I show you Government's Exhibit No. 39 in evidence, sir, and ask you if you have ever seen this before.

A Yes, sir, I have.

Q When and where did you see that?

A I received this stick in the laboratory. It was sent to me by registered mail from the Miami office. And I examined the contents of this stick. I placed my initials on the tape on the end, also on the tarp, the paper wrapper. And I

Heiberger - direct

analyzed the material inside this stick.

Q Did you then, sir, have an opportunity to view the eleven sticks of simulated dynamite? Will you step over here rather than have me bring them over to you?

A Yes.

Q These which have been marked as Government's Exhibit 45-A?

A Yes, sir. I examined the eleven sticks in the laboratory.

Q As a result of that examination, what conclusions were you able to reach, sir?

A I removed the material from the inside of the paper wrapper and I found that the material in all of the eleven sticks and the material in this stick consisted of a mixture of sodium chloride (common table salt) motor oil, starch and flour. I found no explosive residues, no explosive constituent; nothing which would cause an explosion in any of these. And on the material I ran a quantitative-- that is, the amounts of each constituent--the amount of sodium chloride in this stick and the amount of

Heiberger - direct

sodium chloride in each of the eleven other sticks, and I found that the percentage of motor oil, the percentage of flour, the percentage of starch and the percentage of salt agreed. That is, the composition of this stick was the same as the composition of the eleven other sticks.

Q Then, sir, were you able to conclude that they were manufactured under the same specification?

A Yes, sir. They would have had to have been.

Q Showing you what is a part of Government's Exhibit 45-A, the short stick of simulated dynamite, was it in that size, sir, when you received it?

A Yes, sir. This was the stick that one end of it is shredded, and this stick was in a container with the other ten sticks. This is one of the eleven, and it was shredded in this manner. There was loose material laying along with it as well as in a bag which was given to me.

Q From your analysis of that material and

Heiberger - direct

the contents of that stick, were you able to reach any conclusions as to that stick, sir?

A In the first two or three inches of this stick and in the loose material, the paper and the mixture of salt, motor oil, starch and flour that was in a bag which was given to me separately, were small bits of metal. These pieces of metal were in the size of the head of a pin up to a quarter of an inch square, and there were little pieces of metal which I ran in the laboratory on the spectrograph, and I determined that these were pieces of aluminum metal, and I compared them composition-wise. These pieces of metal were with another object which was given to me, which was portions of a blasting cap, and I found that the little pieces of metal in this stick and in the debris that was supposed to have been associated with this, that these little pieces of metal were the same in composition as the remnants of a blasting cap which had been exploded.

Q Were you able to reach a conclusion from that?

A I concluded that the particles of metal found in this stick could have come from the blasting

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Heiberger - direct
cap which was exploded and sent to me.

Q I call your attention to Government's Exhibit 45. Do you recognize that, sir?

A Yes, sir, I do. This is the container in which the ten full sticks and this one partial stick, these eleven sticks, they were inside that container when I received it in the laboratory in Washington, D. C.

Q Calling your particular attention to the yellow paint markings on that, were they on there when you received it?

A No, sir, they were not.

Q Did you then give it to someone?

A I was asked to do a--to determine as to where that may have come from. And I was asked a lot of questions about weld joints and so forth. I am not a metallurgist. So I gave it to the metallurgist in the FBI Laboratory.

Q Who was that?

A Agent Leon LaRock.

Q All right.

A And Agent LaRock did some work on it.

Heiberger - direct

And when he returned it to me, he placed his initials on it in the yellow marking pencil.

Q Did that change it in any way other than the fact that the yellow markings were present?

A No, sir. I don't know of any way he changed it.

MR. BIERMAN: All right. I have nothing further.

THE COURT: All right. Cross examination, please?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Sir, when you received Exhibit No. 45, the cylinder, did you make an inspection of all of the contents of the cylinder?

A Yes, sir, I did.

Q Did you remove the objects that were within the cylinder?

A Yes, sir.

Q Did you take anything by way of fragments, anything in the way of any metal or metallic origin or anything of a chemical composition

Heiberger - direct

And when he returned it to me, he placed his initials on it in the yellow marking pencil.

Q Did that change it in any way other than the fact that the yellow markings were present?

A No, sir. I don't know of any way he changed it.

MR. BIERMAN: All right. I have nothing further.

THE COURT: All right. Cross examination, please?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Sir, when you received Exhibit No. 45, the cylinder, did you make an inspection of all of the contents of the cylinder?

A Yes, sir, I did.

Q Did you remove the objects that were within the cylinder?

A Yes, sir.

Q Did you take anything by way of fragments, anything in the way of any metal or metallic origin or anything of a chemical composition

Heiberger - cross

out of the cylinder other than the dynamite sticks and the other matters that you discussed?

A At the time I received it, I was under the impression that it was a live bomb. Inasmuch as it is so tremendous in size for the type of thing I see in the laboratory, I removed it and didn't find out until several hours later that it probably was not a live one. So that I removed everything from it.

Q What I am getting at is, I noticed the moment when Mr. Bierman lifted it up there was a noise of something coming out of there, sounded like articles. Did you make any observation of any such particles?

A I removed everything from it--dirt, rust. I even wire brushed the inside to see and I examined the inside for any kind of markings, to see if there were markings inside the metal.

Q Were there any kind of markings within the inside?

A I couldn't see. It was very rusty.

Q I presume that you are familiar with the matter in which a blasting cap blasts or explodes?

Heiberger - cross

A Yes.

Q Is that a directional force? In other words, does it explode in one direction or does it go off in many directions?

A I have seen many movies, and I have done it myself many times, and it is very definitely a cone-shaped effect; that is, you can place a stick of dynamite and put the blasting cap in this end of it and when the blasting cap goes off, the cone goes down so that the force of not only the blasting cap but also a lot of times the dynamite itself will create a big crater, because the force will be down. If it is pointed up, the cone will completely destroy an object above it. So that depending on where the blasting cap is in a stick of dynamite, whether it's in the middle or the end, the cone comes out of the blasting cap, just out of the bottom, so to speak, just like out of a flashlight.

Q Wouldn't you anticipate that portions of that blasting cap would have presented themselves in the cylinder itself?

A They may have, because the paper was

Heiberger - cross

completely shredded here, and this was an inner stick. But I do not know if someone removed them before me. But when I got it, this was not an outer stick. There were eleven sticks there, and it is possible-- in fact, some of the particles had to go through this wrapper and may have gone into adjacent sticks or hit the side of the container, yes, sir.

Q Of course, you didn't find any?

A I didn't find any that were significant to me, no, sir.

Q Based upon your experience and training, what is the force capacity of a blasting cap? In other words, is it a considerable force, is it a light force or what?

A This is a little out of my field as to the exact actual force.

Q I am not talking about in terms of physical principals, but does it go at some impetus or does it just--

A I have seen ones where a man lost a hand. I have also seen where it has gone off and a man has lost a finger. I think it varies. People have

Heiberger - cross

lost teeth when they have put them in their mouth and yet lived. So that it kind of varies as to what type of blasting cap you have.

Q From your examination of the other ten sticks of simulated dynamite, do you find any portions of them embedded in those sticks?

A No, sir. I didn't find any. I didn't really look. After I found so many in this, I was more interested at the time in whether there was any explosive, because I was interested--if one stick there is an explosive, I've got problems. And so I was interested in finding out if there was any explosive in any of the sticks. And there may have been a few little particles which I was not interested in.

Q And there were no markings that you found indicating whether anything hit with any corresponding force against the interior of that cylinder?

A No, sir.

Q You did indicate that you compared the portion of the blasting caps that you had been given

Heiberger - cross

with the fragments that you found in the short stick?

A Yes, sir.

Q Your statement was that this could have been--you said it could have come from the blasting cap. Now, is there any other source to which you could attribute this? You used the word "could." You didn't go beyond the word "could."

A I didn't associate it with that particular one. This is a military blasting cap. And they are all mass produced. And this metal is the same and there might be 10,000 blasting caps all made on the same machine by the same company. And if you presented me with 10,000 of these, produced by the same company at the same time and if every one of them had been exploded, I couldn't relate these particles with any one particular one. It is from that type of blasting cap.

Q Did you, sir, open up the short stick?

A Yes, sir, I did.

Q Entirely?

A I opened up both ends of all sticks and I removed everything from all of them, and then I

Heiberger - cross

repacked them again.

Q These sticks are not in the same condition they were at the time?

A No, sir. They have been repacked with the same material I took out.

MR. GREENSPAHN; I have nothing else.
Thank you.

THE COURT: Redirect?

MR. BIERMAN: No redirect.

THE COURT: All right, sir. Thank you.
You may be excused.

(Witness excused)

THE COURT: Call your next witness,
please.

THEREUPON--

LEON LA ROCK,
called as a witness on behalf of the Government,
having first been duly sworn, was examined and
testified as follows:

THE CLERK: Please state your full
name, address and occupation.

THE WITNESS: Leon LaRock. I live at

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

LaRock - direct

3637 Camelot Drive, Annandale, Virginia. I am employed by the Federal Bureau of Investigation.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Agent LaRock, I will not go into your type of expertise but I will just ask you a simple question. Will you step down and look at Government's Exhibit 45?

A Yes, sir.

Q Have you seen this before, sir?

A Yes, sir, I have.

Q And these yellow markings here, did you place these on there?

A Yes, I did.

Q Did they in any way affect the metal or the container of this bomb?

A No. They are only for identification purposes.

MR. BIERMAN: I have nothing further.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Did you concern yourself professionally

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

LaRock - cross

Mr. LaRock, with any other items that were submitted in connection with this case?

A Yes, I did.

Q What were those items, sir?

A I examined some pieces of chain, some "S" clips and some fragments of snap hooks.

Q Were you given any steel or sheet metal fragments to examine?

A Yes, I was.

Q With regard to those, do you know from whence they came and what they were?

A They were fragments submitted to me as residues or fragments of metal recovered at the scene of some bombings.

Q Were you able to make any identification or comparative tests relating to those fragments with any other objects that were given to you?

A No, sir.

MR. GREENSPAHN: Thank you, sir. I have nothing else.

THE COURT: Redirect?

MR. BIERMAN: No redirect.

THE COURT: Thank you, Mr. LaRock.
You may be excused.

(Witness excused)

THE COURT: Call your next witness,
please.

MR. BIERMAN: I will recall Captain
Brodie.

THEREUPON--

THOMAS G. BRODIE,
having previously been duly sworn, was recalled and
testified further as follows:

THE CLERK: Please state your full
name for the record.

THE WITNESS: Thomas G. Brodie.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Mr. Brodie, I would like you to examine
what has been marked as Government's Exhibit 73-E for
identification, which includes two parts. Tell me,
sir, if you can, what that is.

A Yes, sir.

Q What is that, sir?

A That is a nose for a homemade aerial

Brodie - direct

bomb.

Q What would be the function of the dark pin in the top?

A That is a firing pin.

Q Showing you Government's Exhibit 71-E for identification, can you tell me what relationship, if any, this would have to that?

A This is the safety pin.

Q A safety pin? Where would that go, if any place?

A In through this hole and into the firing pin.

Q Then the function of that, sir, is to prevent this from exploding prematurely, is that correct?

A Yes.

MR. BIERMAN: Your Honor, I would offer Government's Exhibit 73-E and 71-E into evidence.

MR. GREENSPAHN: Your Honor, there is no showing of any materiality or relevancy. If that is part of an aerial bomb, there is nothing in this

Brodie - direct
case involving any aerial bombs.

THE COURT: The objection is overruled.
They are admitted into evidence.

(Thereupon the objects referred
to were received in evidence as
Government's Exhibits 71-E and
73-E.)

THE COURT: Do you have anything
further?

MR. BIERMAN: No, sir.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Brodie, as Government's Exhibit
73-E appears, is there anything of a dangerous
propensity about it, or is it just a piece of metal?

A It's not dangerous, not explosive, no.

Q This heavy object which I don't know
what the number of it is, but what you identified as
a firing pin, was this, when you observed it, in a
fixed position in the object that I hold in my left
hand (indicating Government's Exhibit 73-E)?

Brodie - cross

A No.

Q Where would this firing pin be if it were properly inserted?

A Into the nose.

Q Would it be at that time in a fixed position, or would it just be sitting loosely such as this?

A That would be sitting loosely. The point goes inward.

Q Still loose? Would it be sitting like that?

A Yes. In that nose, the opening there is a little wider than it should be.

Q Did you have submitted to you for examination any other piece or quantity of material that would relate to this piece of metal that I hold in my left hand?

A I have seen similar ones.

Q No. In this case?

A No.

MR. GREENSPAHN: That is all I have.

Thank you.

THE COURT: Redirect?

MR. BIERMAN: No redirect.

THE COURT: All right, sir. May this witness be excused?

MR. GREENSPAHN: Yes, sir.

THE COURT: Thank you, sir. You may be excused.

(Witness excused)

THEREUPON--

TOMAS PEDRO REGALADO,
having previously been duly sworn, was recalled as
a witness and testified further as follows:

MR. KLEIN: Please state your full
name for the record.

THE WITNESS: My name is Tomas Pedro
Regalado. I am Latin News Editor of WCKT, Channel 7.
BY MR. KLEIN:

Q Mr. Regalado, you previously testified
that you were at a conference--

THE COURT: Yes, sir. He testified he
was at a conference where there was a hooded man and
they met in a small living room and from there they
went into a small room where there wasn't anything but

Regalado - direct

a bed, and a desk and a man was sitting there and they took pictures and talked to him. All right, let's go.

BY MR. KLEIN:

Q Are you familiar with that document I just handed you?

A Yes, sir.

Q When did you first see that?

A Well, that was in an envelope on a small table in that room that we went into.

MR. KLEIN: Will the Clerk please mark it for identification only?

THE COURT: All right.

MR. GREENSPAHN: If it please the Court, I would object to the bringing back of a witness who has already testified about the events that he apparently is now going to testify to. This is doing by indirection that which can be done, under the Court's rules, by direction. The concept of redirect examination and re-redirect examination is now being vitiated by the fact that this man is back testifying about an event that he testified to

Regalado - direct
yesterday.

THE COURT: Well, I don't know what he is going to testify to.

MR. GREENSPAHN: Right at this point he has not testified to anything he hasn't already testified to. I don't know what the purpose of recalling him is, but he testified, when he was called, as to the envelopes and the paper inside and being given to me, et cetera. That is all he has testified to up to this point.

BY MR. KLEIN:

Q I am going to show you another document. Are you familiar with that?

A Yes, sir.

Q How did you come to see that?

A Well, that was handed to us in an open, public news conference. I believe it was in the Biscayne Terrace Hotel.

Q Who was holding that news conference?

A Dr. Orlando Bosch.

Q Was that received by you from him?

A No.

Regalado - direct

Q Was it received at that time?

A At that time it was, but not from him directly; from somebody else, I don't know who.

MR. KLEIN: I will offer this into evidence at this time.

MR. GREENSPAHN: Objection as to materiality and relevancy, your Honor.

THE COURT: I am not satisfied with where he got it from. He said he went to the news conference and got it from somebody. I don't know where he got it from. I don't know that it is in any way binding on Dr. Bosch.

BY MR. KLEIN:

Q Do you know who you got it from if it wasn't from Dr. Bosch?

A I don't know exactly who gave it to me because at that time I was paying attention to Dr. Bosch's statements, and somebody put it at my side. So I don't know who did.

Q Do you recall what Dr. Bosch was saying at that time, to the best of your recollection?

A The same words that are in that

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Regalado - direct

document.

Q The same thing that is contained in that?

A Yes.

MR. KLEIN: We offer it at this time.

MR. GREENSPAHN: The same objection, your Honor.

THE COURT: All right, sir. I will overrule the objection and admit it into evidence.

That constitutes what Dr. Bosch said orally? This paper is what he said orally at this press conference?

THE WITNESS: Yes, sir.

THE COURT: All right, sir.

MR. KLEIN: Nothing further.

(Thereupon the instrument referred to was received in evidence as Government's Exhibit No. 89.)

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Did you receive any typewritten or

Regalado - direct

other communications in the mail or photographs in the mail, Mr. Regalado, at any time relative to shipping?

A Yes, I did.

Q What did you receive?

A Well, I received some mail, some press releases, and one time some photograph came through the mail to my house, to the station I work for.

Q I would show you Government's Exhibit 73-C and ask you if this is the photograph that you received in the mail.

A It's similar to what I received.

Q To your personal knowledge as a newsman in this community, did other news media reporters, people connected with TV and newspapers, receive similar mailings?

A All the news media, sir.

MR. GREENSPAHN: Thank you, sir. I have nothing further.

THE COURT: Redirect?

MR. KLEIN: No redirect.

THE COURT: Thank you, sir. You may step down.

(Witness excused)

THE COURT: Call your next witness.

MR. BIERMAN: We will call Mrs. Sophia Saliba back.

And prior to Miss Saliba coming in, we would offer Exhibit No. 88, the news release from the hooded press conference.

MR. GREENSPAHN: There is absolutely no predicate laid for it, your Honor, establishing any connection between these defendants and anybody as to that instance and that event. The last correspondence, I might add, your Honor, that was put in through the witness Regalado was a letter that was signed by Dr. Bosch or a press release signed by Dr. Orlando Bosch.

THE COURT: I admitted that on the basis of this witness's testimony that what he received was what Dr. Bosch had orally said. So it didn't make any difference to me who gave it to him, because if it was an accurate restatement of what had been said orally, I would admit it into evidence.

With respect to this hooded conference thing, I don't presently see any evidence in there that will connect that particular release with any of these defendants.

MR. BIERMAN: All right.

THE COURT: And I will sustain the objection to it.

MR. GREENSPAHN: Thank you, sir.

THEREUPON--

SOPHIA SALIBA,
having previously been duly sworn, was recalled as a witness and testified further as follows:

THE CLERK: Please state your full name for the record.

THE WITNESS: My name is Sophia Saliba.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Mrs. Saliba, I show you Government's Exhibit 89 in evidence and ask you if you prepared a translation of that.

A Yes, I did.

Q I show you what will be marked Government's Exhibit 89-A and ask you if this is the

Saliba - direct

translation.

A Yes, it is.

Q Are there any idiomatic expressions or colloquialisms or anything in the original documents which you, in your translation, have had to give a literal interpretation to? In other words, is there anything that you yourself want to explain or is that an accurate translation of the original document?

A Well, I think it follows quite closely, as I remember it. But I would have to read it over and compare in order to say for certain.

If I deviate from a close translation, I usually put a footnote to indicate, and I don't remember having put one on this.

THE COURT: All right, ma'am. Thank you.

MR. BIERMAN: We offer Exhibit 89-A into evidence.

MR. GREENSPAHN: No objection, your Honor.

THE COURT: All right, sir. It will be admitted and received in evidence.

Saliba - direct

(Thereupon the instrument
referred to was received in
evidence as Government's
Exhibit No. 89-A.)

BY MR. BIERMAN:

Q I show you Government's Exhibit 73-D
and ask you if you have prepared a translation of
that?

A I have.

Q Do you have that?

A Well, I had prepared a translation of
this previously, and I was working on it now preparing
another one, because I didn't have that copy and I
haven't quite completed it.

Q How much longer will it take?

A There is about another paragraph to go.

MR. BIERMAN: If counsel will not have
any objection, if she could complete this and then we
will bring it in?

THE COURT: That is all right. Go
ahead and complete it.

MR. GREENSPAHN: Why don't you finish

Saliba - direct

it?

THE COURT: Why don't you just go ahead and let the lady finish it and then we can bring her back.

MR. BIERMAN: Okay.

THE COURT: Mr. Clerk, wherever there is a translation of an original document, I want the translation clipped to the original document.

THE CLERK: Yes, sir.

THE COURT: So that they cannot get mixed up with other papers.

MR. BIERMAN: Your Honor, there was some confusion this morning as to whether or not Government's Exhibits 84 and 85 had been admitted into evidence. So we will re-offer them at this time. These are the fingerprint cards.

THE COURT: All right, sir. Is there any objection, Mr. Greenspahn?

MR. GREENSPAHN: No objection, your Honor.

THE COURT: All right, sir. They will be admitted into evidence.

Saliba - direct

(Thereupon the fingerprint cards referred to were received in evidence as Government's Exhibits Nos. 84 and 85.)

MR. BIERMAN: And we would also offer the foreign ship registrations into evidence before the jury. We previously offered those but not before the jury.

THE COURT: I thought they were offered in evidence.

MR. BIERMAN: They were offered outside the presence of the jury and we would offer them now.

THE COURT: All right, sir. Do you make the same objection?

MR. GREENSPAHN: Yes, sir.

THE COURT: I will overrule the objection and admit the--

Are you talking about the ship registration?

MR. BIERMAN: The registrations with the stamps from the different countries.

THE COURT: All right.

Saliba - direct

MR. GREENSPAHN: Your Honor, I said "Yes" when you asked me if I made the same objection. I presume the Court will recall the objection I made at the time?

THE COURT: Yes, sir. I have admitted them upon the basis that the evidence shows that they are official documents and, therefore, are subject to being admitted into evidence upon proper certification.

MR. GREENSPAHN: I also objected, as I recall, on the grounds of relevancy and materiality.

THE COURT: Yes, I realize that.

(Thereupon the registrations referred to were received in evidence as Government's Exhibits Nos. 31 through 36, inclusive.)

MR. BIERMAN: And we offer Government's Exhibit No. 52 into evidence, it being a copy of PATRIA, containing the story and the picture of the MIKAGESAN MARU.

MR. GREENSPAHN: The same objection I interposed yesterday.

Saliba - direct

THE COURT: Yes, sir, I know.

MR. BIERMAN: I call the Court's attention to Exhibit 73-C in relation to this.

THE COURT: I know what that is. I am going on the basis of the state of the evidence as it is at the present time. I am going to overrule the objection as to Exhibit 52 and permit that portion of it--all you want is the front page?

MR. BIERMAN: Yes, sir, your Honor. And we have a translation of that already prepared. Mrs. Saliba has it with her.

Other than Miss Saliba and some publishing, we are prepared to rest, your Honor.

THE COURT: All right.

At this time, ladies and gentlemen, we will take a short recess until this lady finishes this translation. As soon as she does, we will start again.

The Court will be in recess until such time as the translator has finished.

(Thereupon a short recess was taken, pursuant to which the

following proceedings were had:)

THE COURT: Are you ready to proceed?

MR. BIERMAN: Yes, your Honor.

THE COURT: All right. You may.

THEREUPON--

SOPHIA SALIBA,

the witness on the stand at the time of the recess,
resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued)

BY MR. BIERMAN:

Q Mrs. Saliba, have you prepared a
translation of Government's Exhibit 52?

A Yes, I have.

Q Is this it?

A This is it.

MR. BIERMAN: May this be marked as
Government's Exhibit 52-A?

THE COURT: Yes, sir.

MR. BIERMAN: We will offer that into
evidence.

THE COURT: All right, sir.

MR. GREENSPAHN: Subject to cross
examination as to the accuracy of it, I have no

Saliba - direct

objection.

THE COURT: All right, sir. It will
be admitted.

(Thereupon the instrument
referred to was received in
evidence as Government's
Exhibit No. 52-A.)

BY MR. BIERMAN:

Q Have you prepared a translation of
Government's Exhibit 89?

A Yes.

Q Is this it?

A That is it.

MR. BIERMAN: May this be marked
Government's Exhibit 89-A?

MR. GREENSPAHN: No objection.

THE COURT: All right, sir. It will
be admitted.

(Thereupon the instrument
referred to was received in
evidence as Government's
Exhibit No. 89-A.)

Saliba - direct

BY MR. BIERMAN:

Q Have you prepared a translation of Government's Exhibit 73-D?

A Yes.

Q Is that the handwritten translation that we were discussing?

A Yes, it is.

Q Would you read this translation, please?

MR. GREENSPAHN: May I have either a copy of the Spanish or English, something that I can follow along with?

THE COURT: Isn't the lady's handwriting legible?

THE WITNESS: I think it is. I write a schoolgirlish writing.

MR. BIERMAN: It looks legible to me. Compared to mine, anything is legible.

THE COURT: I do not see any reason why it should be read into evidence. Offer it into evidence.

MR. BIERMAN: I will offer that as

Saliba - direct

Government's Exhibit 73-D(1).

MR. GREENSPAHN: No objection.

THE COURT: All right, sir. It will be admitted.

(Thereupon the instrument referred to was received in evidence as Government's Exhibit No. 73-D(1).)

BY MR. BIERMAN:

Q Have you examined Government's Exhibit 73-A in Spanish?

A Yes.

Q Will you tell me how it compares with Government's Exhibit 89 in Spanish?

A It seems to be an exact copy of it, judging from the paragraph beginnings and the wording of the first paragraph. I would say it is, except I notice that there is a correction here on this.

THE COURT: Which exhibit are you speaking of?

BY MR. BIERMAN:

Q Which one are you referring to?

Saliba - direct

A 73-A, and it says "I repeat, thanks" and I say "Thank you."

That is a handwritten correction there. There may be something else on the other pages which I didn't catch.

MR. BIERMAN: Your Honor, we would offer another edition of PATRIA, the one with reference to the LANCASTRIAN PRINCE, which is Government's Exhibit 54, based on the fact that the bomb did not explode and that any story about the bomb splitting would have to come from those people--would have to come from the people who placed the bomb on there. And we have scientifically tied that in.

Have you a translation of that on the LANCASTRIAN PRINCE?

A Yes, the one of September 11.

Q Here it is in English, if you prefer to read it in English.

THE COURT: Is this tied in with any of the exhibits that are in evidence?

MR. BIERMAN: Well, it is tied in with the fact there was an alleged explosion on board, and

Saliba - direct

we have tied in the dynamite and the alleged explosion, and we suggest that no one else would know about it except for the people who placed it on board. We have tied that in specifically with three defendants.

MR. GREENSPAHN: What three defendants have been tied into it?

MR. BIERMAN: Marcos, Jorge and Orlando, with the foam rubber.

MR. GREENSPAHN: I don't agree with what counsel has said. There is nothing in that article that I know of that ties in any of these defendants. It is a newspaper article; it is not only an inaccurate reporting of the news but it is an editorial and a statement of conjecture based upon hearsay.

THE COURT: I am going to sustain the objection.

MR. GREENSPAHN: Thank you.

MR. BIERMAN: I have nothing further.

THE COURT: Does the Government rest?

MR. BIERMAN: No. We have one other matter.

THE COURT: All right. Let's go.

MR. GREENSPAHN: I have no questions.

THE COURT: Thank you, ma'am.

(Witness excused)

MR. BIERMAN: Your Honor, we would ask the Court to take judicial notice of the fact that New Orleans, Tampa and Miami and the ports thereof are within the jurisdiction of the United States.

THE COURT: All right, sir. The Court will do so.

MR. BIERMAN: And we would request permission to publish certain exhibits to the jury.

THE COURT: All right, sir.

MR. BIERMAN: Ladies and gentlemen of the jury, this is Exhibit No. 75 which begins with a foreword and contains the proposal contained in relationship to the M.I.R.R., Dr. Orlando Bosch, Coordinator, and it says that the first stage will take three months and it contains actions to be carried out within Cuba and then the first stage of three months showing actions to be carried out from outside Cuba. And No. 2 calls for a tax on vessels trading with Communist Cuba, to make insurance policies

impracticable, thus enforcing a complete and effective blockade of the island.

(Thereupon counsel for the Government published to the jury various and sundry exhibits, pursuant to which the following proceedings were had:)

MR. BIERMAN: I have nothing further.
The Government rests.

THE COURT: All right, sir.

Ladies and gentlemen, we will again have to take a recess for a few minutes. During that recess, of course, the same instructions will be applicable. I will have to ask you to excuse us for a few minutes.

(Thereupon the jury was excused, pursuant to which the following proceedings were had:)

THE COURT: Does the defense have any motions it wishes to present?

MR. GREENSPAHN: The defense has two motions, the first of which is a motion to strike

various pieces of evidence that have been admitted before the Court and were admitted by the Court subject to being tied up with the defendants.

Firstly, there is Exhibit 8A, one-inch surgical tape. Unfortunately, your Honor, I cannot reach down into this morass before me and pull out the exhibit, but it is up here somewhere. There is, to my knowledge, no relevancy to this and there has not been shown to be--

THE COURT: Well, there is evidence, as I understand the evidence, and recall it, very specifically that this homemade sight was fastened to the muzzle of this 57 millimeter recoilless rifle by that tape which was taken off for the purpose of conducting tests at the FBI Laboratory with respect to the wire.

MR. GREENSPAHN: The Court is right about that. I stand corrected.

THE COURT: All right, sir.

MR. GREENSPAHN: But more important is Exhibit No. 10, Exhibit No. 11, Exhibit No. 12 and Exhibit No. 13, which are the entry papers for the vessels GRANWOOD, ASAKA MARU, MIKAGESAN MARU, and the CARIBBEAN VENTURE.

Your Honor, the Government has gone to great lengths to show the occurrences involving these vessels, but there is not one iota of evidence verified before this Court as to those vessels which would indicate any participation in any respect by the defendants in this case. And I suspect and submit respectfully to the Court that the inclusion of these evidentiary items will serve in great measure to prejudice these defendants before the jury and will, of course, encumber this record.

THE COURT: Well, as I understand those exhibits, they were introduced primarily and solely for the purpose of proving the nationality of the ships and the fact that they were in particular ports and departed particular ports at certain times. I have admitted those documents upon the theory that they were official documents required by law and maintained by Customs pursuant to law. And I can't, under the Government's theory of the case, accept counsel's convention that they are wholly irrelevant and immaterial. So I will deny the motion with respect to those.

MR. GREENSPAHN: And I did not name, but

I should have named, also, the entry papers of the COROMOTO, that being Exhibit No. 15.

THE COURT: We will include that in the objection and that will be considered as having been offered in the same objection and I will make the same ruling with respect to it.

MR. GREENSPAHN: Your Honor, and upon the same principles, the photographs of the ASAKA MARU, which again, I submit to the Court, can serve no useful purpose in the determination of any of the evidence by this jury and can only serve to confuse them. There is no relationship, to my seeing of the pictures, that there has been painted in the last several days, between any of these defendants and the acts purportedly occurring on the ASAKA MARU.

THE COURT: I will overrule the objection.

MR. GREENSPAHN: And the same objections as to Exhibits 37, 38, 37-A and 38-A, the bills of lading and the waybills which have been introduced relating to material that was sent. And there are other portions of the Government's case which I feel have not been tied up or linked to these

defendants.

THE COURT: What materiality does that have?

MR. BIERMAN: Those relate to the dynamite to show it was shipped.

MR. GREENSPAHN: 37-A and 37-B have been stricken, which would leave only the two others.

MR. BIERMAN: We would submit, your Honor, even though they have been submitted, the documents on their face, one being shown by the FBI from Birmingham and one being shown from the FBI from Miami, whether or not the man personally received it would reflect the fact that this was shipped to him. They are identical to each other.

THE COURT: Well, I think to some extent they are corroborative of the Government's witness's testimony to the effect that simulated dynamite was agreed to be made. It was received by the office and sent to the Miami office.

I will deny the motion with respect to that.

MR. BIERMAN: 37-A and 37-B were stricken, but we are talking about No. 38 now.

MR. GREENSPAHN: Your Honor, there were several photographs of vessels. The ASAKA MARU and the COROMOTO were pictured. They were offered at various stages of the case.

I would take the time here to note my blanket objection to each and every photograph that relate to any vessels other than the POLANICA and other than the LANCASTRIAN PRINCE.

THE COURT: Well, I am going to deny the motion although I want to get straightened out with the Government. This indictment charges in the conspiracy count that these people did conspire with each other in violation of the statutes by knowingly and willfully causing damage to vessels of foreign registry docked at the Port of Miami, Dodge Island, in and for the Southern District of Florida, within the jurisdiction of the United States and elsewhere by placing explosives in and upon the said vessels.

Is it the Government's position that that language within the indictment is sufficient to include the alleged bombings of these other vessels, or is that testimony offered not in proof of the commission of an offense charged in the indictment but

merely for the purpose of showing knowledge and intent and motive?

MR. BIERMAN: We would suggest it is within the indictment as part of the planned conspiracy, and if the conspiracy were hatched within the United States, the acts were evidently--

THE COURT: In the preliminary proceedings in this case, I did order the Government to give some information to the defense. Was any request made by the defense with respect to what might be encompassed in that language and elsewhere?

MR. BIERMAN: There was no request of that nature. There was a request for the names of the ships and we gave a detailed list of the names of the ships and where they were registered.

THE COURT: All right, sir. Then in that event I will deny the motion.

MR. GREENSPAHN: If it please the Court, may I have a moment just to check my motion to see if it is an accurate statement or not?

THE COURT: All right, sir.

MR. GREENSPAHN: It may well be an accurate statement, but I don't recall it that way.

THE COURT: What I am trying to ascertain is whether this position of the Government is an afterthought--that information as to these instances was requested but not given to you. There was a bill of particulars, as I recall it, that was furnished, that gave some information, but I do not recall it specifically.

MR. BIERMAN: All of the ships that we have proved up were listed in the bill of particulars.

THE COURT: All right, sir.

MR. GREENSPAHN: Apparently the Government's statement is correct, your Honor.

THE COURT: All right, sir. Then I will deny the motion.

MR. GREENSPAHN: Your Honor, there were other items--two links of chain and deformed metal hooks which were never tied into any of these defendants.

MR. BIERMAN: We will agree it wasn't.

THE COURT: All right, sir. I will grant the motion.

MR. GREENSPAHN: And as I have it,

No. 43 on my list is not wholly accurate.

THE COURT: What is No. 43, Mr. Clerk?

THE CLERK: Two links of chain.

THE COURT: I don't think that was connected up.

MR. BIERMAN: No, it wasn't.

THE COURT: I will grant the motion.

MR. BIERMAN: It was connected on cross once by Mr. Greenspahn.

THE COURT: Well, there was testimony about a chain, but I don't think these specific links of chain were testified to or identified. The motion is granted.

MR. GREENSPAHN: The same is true of the next one, Exhibit No. 44, which we have described as three pieces of brass.

MR. BIERMAN: We will agree on that.

THE COURT: All right. The motion is granted.

MR. GREENSPAHN: Your Honor, I would renew at this time my objection and move to strike the various newspaper articles, the exhibit, that the scope of the newspaper articles goes way beyond the

scope of what I believe the Court intended in admitting the document.

Primarily, if the Court will recall, there was a point in this trial when the question of damage to one of the vessels was raised, and I objected to it and the Court agreed with me that this was not material and it didn't matter whether it was one cent or \$1,000,000.

THE COURT: I ruled at that point it didn't make any difference whether it was a dollar or \$100,000, and that the extent of the damage was immaterial.

MR. GREENSPAHN: At that point it became apparent to me that it was the Court's feeling at that time as the Court has now announced.

And in the article that was read, there was mention made of insurance companies and of \$175,000 worth of damage, which I think is prejudicial in the sense that the indictment and the statute under which the indictment is framed do not require proof as to dollars and cents value, but the showing of the enormity of the damage is in and of itself prejudicial to the defendants and it goes way beyond what is

required in proof under the indictment.

I noticed, frankly, the faces of a couple of jurors when that \$175,000 was mentioned, and it had exactly the apparent effect that I anticipated that it would have. And I don't know, again, with regard to all of the other newspaper articles how much of it is fact and how much of it is fantasy.

THE COURT: Well, I have kept all the other newspaper articles out. One newspaper article I admitted because it was apparent to me that the photographs contained in the article were identical with the photographs which had been taken from the home of Dr. Bosch and, therefore, I felt that a reasonably minded jury could infer that the other photograph came from Dr. Bosch.

19-1

The second article was on the basis, as I recall it, that there was a written declaration or something that was furnished by Dr. Bosch to the newspapers upon which that was based. Now, that is my recollection. There has been so much here I could have--

MR. BIERMAN: That declaration is in evidence and there is a translation with it and it also

mentions the \$175,000.

THE COURT: That was the basis upon which I admitted those two articles into evidence. The others I have sustained your objection to and have not permitted them to be received in evidence upon the ground that they constituted hearsay and they were not definitely connected with any of the defendants and, therefore, I didn't think that they were competent evidence.

MR. BIERMAN: Only one has been admitted into evidence, as I understand it, your Honor, which is the one--

THE COURT: The one with the picture, and there was another one, wasn't there?

MR. BIERMAN: We offered it to the Court.

THE COURT: And I sustained the objection to it.

MR. GREENSPAHN: I would say again parenthetically with relation to the photograph that is on the front page of it that the inference can be drawn that this is the same photograph that Dr. Bosch had. It didn't catch my eye before but it just caught

my eye. This is the photograph that has been put into evidence by the Government and it is the Government's photograph.

THE COURT: I didn't admit that in evidence. Your objection has been sustained to that.

MR. GREENSPAHN: The same inference can be drawn.

THE COURT: No, sir. I take a different viewpoint. What the Government puts in evidence is one thing. What they have obtained, for example, from the home of Dr. Bosch is something else.

My reaction is that, having obtained that photograph--that one particular photograph--from amongst his possessions, a reasonably minded jury could infer that he had had the copies made and did send them out for publication.

With respect to the other photograph, I don't think you can make any such inferences at all and consequently I sustained your objection to it.

MR. GREENSPAHN: All right, sir. The next exhibit was, as I have it, No. 65. That was a gasket that was taken from the metal chamber on the LANCASTRIAN PRINCE.

THE COURT: I am going to deny the motion with respect to that, because I think for whatever evidentiary value it has, it is admissible in connection with the container and the other matters that were in it.

MR. GREENSPAHN: No. 68, which was a piece of wire, was never really, to my knowledge, tied in.

THE CLERK: That was a blasting cap.

MR. GREENSPAHN: There was a piece of wire, and it must have been right next to it.

MR. BIERMAN: There was a piece of wire connected to the blasting cap.

MR. GREENSPAHN: Well, I will withdraw that.

THE COURT: That was Captain Brodie, I believe, who testified he found that wire inside the canister and it was connected to the blasting cap.

MR. GREENSPAHN: I will withdraw that.
Now, the port schedule--and I am not sure of the number of this--I think it is 71-A--the port schedule dated May 13, 1968--

THE COURT: As I construe those,

Mr. Greenspahn, they are not evidence of the matters that are directly charged in this indictment but they are relevant in that they show an interest on the part, at least, of the participants who had that and who marked it in these particular vessels, which again I think a jury could reasonably infer from his keeping track of that vessel in May that he may well have wanted to place a bomb on it the next time it came into port. And they may not. But I think, looking at the Government's case in the most favorable light, that would be so because it is extremely unusual for a person who was not interested in maritime matters to have a list of arrivals and departures and have vessels of foreign registry circled or underlined, particularly the ones which form the basis of the first count and the second count in the indictment. So for whatever value it may have, I have admitted it into evidence and I will deny your motion to strike it.

MR. GREENSPAHN: All right, sir.

Now, the paper bag and the two blue pieces of material.

THE COURT: As to the paper bag there is

no testimony about it at all, and if it is in evidence I will grant your motion to strike it.

THE CLERK: It was not admitted.

MR. GREENSPAHN: It was not admitted? All right. But the two pieces of blue material were admitted. There is no testimony at all about this. The only testimony is that it was a black hood on the individual described as Ernesto.

THE COURT: I will agree with you to that extent. However, again, I think that they possibly could have relevancy and materiality in view of the type of the offenses which are charged in the indictment.

Again I would say, looking at the Government's case in the most favorable light possible, the jury could well infer that a person would not have those articles on or about him unless he was about to engage in unlawful activities of some nature or to disguise himself, although they are not directly related, so far as I know, to anything in here. I think that, basically, they have some slight materiality and relevancy, although I realize fully that they are prejudicial to the defendant.

MR. GREENSPAHN: Finally, your Honor, in one of the last exhibits there has been what has been described as an aerial bomb head. If, in fact, this is an aerial bomb head, there is nothing in this case involving an aerial bomb or showing any involvement of these people with this type of mechanism.

THE COURT: What do you say about that?

MR. BIERMAN: I would suggest the indictment says conspiracy to bomb and explode foreign ships, and it is not limited--first of all, it is a rather unusual item for one to have in his home, especially since it also connects up to Tony Prieto and Dr. Bosch, since the pin which Mr. Brodie has testified to is the safety pin was found in Prieto's home and the bomb cap and detonating and exploding device, whatever it was, was found in Dr. Bosch's house. It is an explosive device or a type of one. I admit there is nothing explosive about this in itself, but the presence of this in Dr. Bosch's home is further evidence of conspiracy.

MR. MORRIS: We have shown at least two methods used by these people in bombing ships: One was the 57 millimeter and the other was the bombs.

THE COURT: You couldn't call a 57 millimeter shelling a bombing.

MR. MORRIS: It is more or less a method of attacking ships. So this could be another method.

THE COURT: Well, what is the connection with this pin that you have been talking about now?

MR. BIERMAN: Captain Brodie testified that this pin fits in here as the safety device which prevents this from springing loose and this holds this from going down.

THE COURT: I know what his testimony is, but what is the connection between the pin and that object?

MR. BIERMAN: He testified this pin is for this head and the head was found at Dr. Bosch's apartment and the pin was found at Tony Prieto's apartment. We suggest that this ties them in together.

MR. GREENSPAHN: We admit that they knew each other before all these acts. If that is what you want to prove, we will stipulate with you. It ties them in together, but does it tie them

together in the commission of an unlawful act as specified in the indictment? That is the question.

MR. BIERMAN: We suggest a bomb head is not a mere token of friendship where one man keeps the pin and one keeps the bomb head.

MR. GREENSPAHN: I think it can be acknowledged that these pins, Judge, are fairly interchangeable, and that may not even have been the same pin for the same exhibit. The only reason that it bothers me is that it has a horrendous look to it and it just isn't related to this case in any way, and there has been no showing that it is. It looks like it could have an atomic warhead on it.

THE COURT: Gentlemen, I am inclined to grant the motion. I think certainly it is a suspicious circumstance, but whether it goes to proving anything in relation to these particular offenses I have my doubts. I am going to grant the motion.

MR. GREENSPAHN: Thank you.

THE CLERK: That is 73-E and 71-E.

MR. GREENSPAHN: That would conclude my objections to the evidence.

Your Honor, I would now respectfully in behalf of each of the named defendants move for a judgment of acquittal, starting with what I think is the most obvious entitlement to a judgment of acquittal. I would start with the defendant Andres Jorge Gonzalez Gonzalez. Your Honor, there is but one allegation in the indictment against Gonzalez, and that is on Page 4 of the indictment, Paragraph numbered 9 at the end of Count 1, one of the overt acts alleged by the Government as to the conspiracy alleged. There is the alleged allegation that on or about September 30, 1968, the defendant Andres Jorge Gonzalez Gonzalez attended a meeting of Cuban Power at the Jose Marti Building in Miami, Florida.

Your Honor, I respectfully submit that there is not one iota of evidence before this Court that Jorge Gonzalez Gonzalez attended the meeting of Cuban Power.

THE COURT: Isn't there a conversation in the tape recordings between Morales and Jorge Gonzalez?

MR. GREENSPAHN: No, sir, not to me.

THE COURT: My recollection is that

there is a tape recording--No. 2 or No. 3--that relates to a conversation between Morales and Jorge.

MR. GREENSPAHN: There is such a recording, but that conversation, sir, has nothing to do with the allegations of the overt acts as set forth on Page 4 of the indictment. That is a conversation which may in and of itself--

THE COURT: The Government, in order to have a prima facie case, does not have to prove all of the overt acts in the alleged conspiracy. They can only prove one. So long as they can prove an understanding or an agreement, tacit, implied or direct, between all of the defendants to participate in that matter--it is not essential--if they allege, we will say, ten overt acts, basically they only have to prove one, and it doesn't have to be but by one person, so far as there is further proof of some tacit or implied understanding.

MR. GREENSPAHN: I agree with that statement, but I submit, your Honor, there is nothing in this record that would tie in Gonzalez with any of the co-conspirators that are alleged or with any of the acts that are alleged.

THE COURT: Well, I am going¹ to deny your motion with respect to Gonzalez at this time.

MR. GREENSPAHN: I would respectfully submit that the same is true as to the defendant Benitez. There is, to my recollection, no material or relevant evidence tying him in or making him a part of the conspiracy as alleged.

THE COURT: What do you say?

MR. MORRIS: Your Honor, Morales testified that Benitez received dynamite along with some of the other defendants.

THE COURT: I don't recall that there has been too much testimony for me to accurately remember all of this, but upon that representation I will deny the motion. This, of course, is without any prejudice to your renewing your motion at such time as the defense rests. If it is necessary at that point, we can go into the testimony and have the court reporter read it.

MR. BIERMAN: We have it, your Honor.

MR. GREENSPAHN: Your Honor, with regard to the other named defendants, it is respectfully submitted that the Government has not met the

burden that is imposed upon it as to Count 2 of the indictment. There has been no showing by the Government of the alleged acts having been perpetrated with the intent to endanger the safety of the vessel or to injure the safety of the vessel as charged, as the statute requires.

I respectfully submit in that regard Count 2 should fall against the three named defendants therein.

THE COURT: Well, actually, there is testimony in the conversation and the tape recordings, for example, between Morales and other defendants which would permit the inference, at least, if not directly show that the original intent in firing that thing was to hit the bridge. There was conversation about the vessel having a fiberglass bridge, et cetera, and a great deal of the testimony was with respect to the law of gravity and pulling the weapon down and the flight of the shell down and causing it to hit the side of the vessel. And based upon that alone I think the Government has made a prima facie case. I will deny the motion.

MR. GREENSPAHN: Your Honor, if I may,

without belaboring the point because I think it is a matter of more than academic interest, but certainly the conversation in the tapes that relate to the bridge, as the Court has noted, to the fiberglass, as the Court has noted, are parts of the conversation that can be attributed to Mr. Morales. I do not recall any statement by any of these defendants as to those points. This is one of the reasons why I objected originally to the tapes because there are so many statements made and can be confused by Morales that are self-serving to Morales and the Government has not acquiesced in it and are not even responded to in many instances by the defendants.

The second point I want to make was this: As I understand the law--and I have submitted the law as I understand it in some of the charges that I have proposed to the Court for the jury--the showing must be that there is an intent to do more than damage to the machinery of the vessel or to the exterior of the vessel. The showing must be that the vessel as a whole is in danger. It is not just a question of a piece of apparatus or machinery being endangered, but the vessel must be made unseaworthy

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MIAMI, FLORIDA 33101

by reason of it.

THE COURT: I think the law is that actually the damage does not have to be actually accomplished. It is the intent to do it which is the crux of the offense.

For example, I think that had this rifle been fired at the ship and missed the ship completely--

MR. GREENSPAHN: It would have made no difference.

THE COURT: It would have made no difference. So long as the intent existed. And I cited that testimony about the bridge and everything because surely if that be given that interpretation it would be a rather serious thing.

As it so happened, of course, this shell was a fragmentation shell and didn't apparently do very much damage. But it is not the extent of the damage but the intent.

I'm sorry, but I can't go along with you in your argument.

MR. GREENSPAHN: I am sorry you are sorry, sir.

And finally, Judge, with regard to the allegations of the conspiracy itself in Count 1, your Honor, I submit that there is no showing that the defendant Aimee Miranda was a part of the conspiracy.

THE COURT: Well, it was at her home where the 57 millimeter recoilless rifle was put together and actually reworked so that it would be in operable firing condition. It was from her home that the clothes hanger was taken for the purpose of making the sight, and she certainly had full knowledge not necessarily that these people are going out to fire that gun that night but the purpose for which all this was being done; and, at least tacitly, in my opinion, she agreed to the thing. So far as I know, that is the only evidence that connects her with the thing other than her conversation with Morales, which would indicate a knowledge, a very close tie to Dr. Bosch and a knowledge of the activities that were going on. But that is the only evidence that I recall that relates to her directly.

MR. BIERMAN: There was something additional about explosives at the time that the dynamite was in doubt and they went to her house and

she had other explosives there--the C-4 and the Pentolite.

THE COURT: I didn't recall that, but I do recall the others.

MR. GREENSPAHN: That would conclude my argument on motion for a judgment of acquittal.

THE COURT: All right, sir.

MR. BIERMAN: Your Honor, before we proceed to the defendants' case, we have had prepared a transcript of Mr. Morales' testimony originally, and we would ask that the Court make a ruling on the exact limitation on the questions about the local bombing, and we would ask the Court to peruse Pages 115 to 119 where this originally came up.

MR. GREENSPAHN: While we are at it, as long as the Government has a copy, may I inquire as to whether or not I would be permitted to have a copy of it, for which I would be willing to pay, if necessary? I don't mean from the reporter. I mean from the Government.

THE COURT: Well, let us dispose of the first matter.

Upon consideration of the defendants'

motion for a judgment of acquittal, the Court taking the view most favorable to the Government, finds that a reasonably minded jury might accept the relevant evidence as adequate to support a conclusion of each of the defendants' guilt beyond a reasonable doubt, and the Court therefore denies the motions severally and collectively for a judgment of acquittal.

Now, what do you want to talk about about this testimony?

MR. BIERMAN: I want to discuss the limitations on Mr. Morales' criminal charge as it relates to a bombing locally and point out to the Court how this originally came up in the Court and the Court's earlier ruling. We objected to it then as anything more than the fact that he has a pending felony which could go to motivation. The details of this bombing are relevant, we would suggest.

MR. GREENSPAHN: Your Honor, the Court has now been called upon to express an opinion three times.

THE COURT: I will tell you, gentlemen, I am not going to do a thing about the testimony. It is in there now. If I tried to go through this thing

at this point and charged the jury to disregard certain parts of this evidence, I wouldn't be doing anything more than just fixing it more firmly in their minds, and I think that I would be prejudicing the defendants if I tried to do it, and I am just not going to do it. I am going to take the evidence as it is now.

MR. BIERMAN: I agree with you on that point. I am just discussing the future limitations on what detail Mr. Greenspahn can go into on that. I have been informed he subpoenaed the prosecutor for the State.

THE COURT: I have told Mr. Greenspahn that, so far as I am concerned, the evidence in the case, without controversy, shows that Mr. Morales was arrested and charged with a bombing; that he was put in jail on that charge; that his case has not been tried and it has been continued. There has been no trial nor any conclusion to that charge.

I am not interested, as I said before, in trying his guilt or innocence as to whether he did it or he didn't do it. But for the purposes of cross examination, particularly with respect to going to

whether or not he had been offered any promises or inducements or rewards for his testimony and his activities, I am of the opinion that much of it is admissible.

MR. BIERMAN: I agree.

THE COURT: Normally I would not permit a mere arrest to be introduced except under circumstances such as this. There would only have to be a conviction. But under the particular circumstances of this case, I have permitted that and I think it is proper. And I have told Mr. Greenspahn that he may argue to the jury any reasonable inference that he may want to from those facts, but I do not want him to go into the details of whether it was a bombing of a dry-cleaning store or an airline office or whether it was dynamite or Pentolite or whatever else was used or whether they found his fingerprints on it, et cetera. I am not interested in trying the case or going into the details. It is a local bombing, and that is all I think is before the Court.

I think I have ruled substantially the same way twice and I think everybody understands.

MR. GREENSPAHN: Exactly, sir.

Do you want a little more time, Mr. Greenspahn, before you get ready to start?

MR. GREENSPAHN: Yes, if possible. I've got a witness coming in between eleven and eleven-fifteen.

THE COURT: Well, we will be in recess. We will give you a few minutes to get yourself organized and to get started. If you will let me know when you are ready, we will proceed.

The Court will be in recess for a short period.

(Thereupon a short recess was taken, pursuant to which the following proceedings were had:)

THE COURT: You may proceed.

OPENING STATEMENT BY MR. GREENSPAHN

MR. GREENSPAHN: May it please the Court, ladies and gentlemen, the Government having rested its case, it now becomes incumbent upon the defendants to present their case to you. At this stage of the proceeding I am to make what is known as an opening statement to you. I assure you that my remarks at this moment will be extremely brief.

It will be the proof of the defendants, each and every of them, that the allegations made by the Government in the indictment which you have heard so much about are erroneous and that, in fact, the evidence that has been presented up to this point in these proceedings is incorrect. The evidence will speak for itself; so I will not go into a broad outline as to that evidence.

The defendants will, with particular regard to the individual portions of the indictment appertaining to each individual defendant that is named as a defendant--and, of course, certain of the defendants are not named in portions of the indictment whereas others are, show by the evidence that we will bring before you today and hopefully no later than tomorrow noon, that, among other things, the witness Mr. Sandridge, who testified and made a positive identification of Orlando Bosch as the individual who delivered the three telegrams that are now in evidence, was erroneous and intentional but erroneous. We will conclusively prove this to your satisfaction.

We will prove to you, with regard to the

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

other elements of the indictment, that the matters and things that have been brought out before you up to this point are, in many regards, incorrect and, in many regards, erroneous. We ask only that you heed the evidence of the defendants as you have heeded the facts adduced by the Government.

Thank you.

Your Honor, we would proceed at this time.

THE COURT: Thank you, sir.

MR. GREENSPAHN: We will call as our first witness Mr. McEachern.

THEREUPON--

O. D. McEACHERN,
called as a witness on behalf of the Defendants,
having first been duly sworn, was examined and
testified as follows:

THE CLERK: Please state your full
name, address and occupation.

THE WITNESS: My name is O. D. McEachern,
M-c-E-a-c-h-e-r-n. My residence address is 13501
Northeast Miami Court. My occupation is telegraphy.
And my position is regional operations manager in the

State of Florida.

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q Mr. McEachern, by whom are you employed and for how long have you been so employed?

A By the Western Union Telegraph Company for thirty-nine and a half years.

Q How long have you occupied your present position as regional manager?

A Since June, 1965.

Q As regional manager what are your specific duties, sir?

A My specific duties are to supervise operational matters throughout the State of Florida, and primarily in Miami, Florida. I am in charge of all of the Miami operations.

Q Do operations include the receiving of communications for transmittal by your company from individuals within the community?

A Yes, sir.

Q Mr. McEachern, have you had, pursuant to my direction, occasion to search the records of the Western Union Company office at 230 North Miami Avenue

McEachern - direct

Miami, Florida, for a particular document?

A Yes, I have.

Q Did you discover and make a determination that such a document did, in fact, exist?

A Yes, sir.

Q Are the records which you searched and the documents which you determined existed all kept within your control and supervision and are they accessible to you?

A Yes, sir.

Q Did you bring with you today, sir, the documents which I, by subpoena requested of you?

A I did.

Q Do you have them so that you can present them to me at this time?

A Yes, sir (Producing documents).

MR. GREENSPAHN: Mr. Clerk, will you mark these, please, as the Defendant Bosch Exhibit No. 2?

(Thereupon the instrument referred to was marked as Defendant Bosch Exhibit No. 2 for identification.)

McEachern - direct

BY MR. GREENSPAHN:

Q Sir, showing you Defendant's Exhibit No. 2 for identification, I would ask you if the white paper stapled onto the yellow paper was in this condition when you found them in your search of your files.

A Yes, it was.

Q Will you identify for us, first, the white paper and then the yellow paper?

A The white paper is the paper which has the addressee's name and address, and it contains the text of the message and a signature in Spanish, I believe, which I am not able to pronounce.

Q Will you identify the yellow paper to which the white paper is stapled?

A Company policy is that when we receive a telegram or cable on a piece of paper not on a telegraph form, we attach it to a telegraph sending blank. And that is what the yellow form is. It's a regular, standard blank. On this sending blank we have shown the number of words contained in this white paper, the text of the message, as well as certain

McEachern - direct
accounting information.

Q And are there indicated on the yellow form, by symbol or otherwise, indications as to the date and time that the white paper was presented for transmittal?

A Yes, sir. The paper shows--I might add in response to the previous question that the yellow paper also shows the sender's name and address and telephone number.

In response to your last question, the cable shows it was filed at our front counter at our main office at 230 North Miami Avenue on June 6, 1968, at 9:40 p.m.

Q What is the procedure that is employed by the person receiving that at the time of its filing to indicate the time and to indicate the date?

A We have a time stamp which is automatic at the front counter. And at the time of the receipt of the message, this impression is placed on the blank, and that is the time and date that I referred to--June 6, 1968 at 9:40 p.m.

Q Now, was the message that you have

indicated is contained on the white sheet, transferred in full to the yellow sheet?

A I'm sorry. I don't quite understand the question.

Q Is there anything other than the typewritten statement on the white sheet that was transferred over to the yellow sheet?

A Not in transmission, except the number of words. And then, for reference purposes, of course, we have the sender's name and address.

Q Will you indicate, please, the sender's name and address as your records reflect it.

A I believe it is Evelio, E-v-e-l-i-o. I'm not certain about the "L." It could be a "C." The surname is Bosch, B-o-s-c-h, and it shows the address as 1136 Southwest 9th Street, Miami, Florida. The telephone number is 377-3168.

Q Now, between the time that this was received at your office until the time that you removed it from your files in response to the subpoena that was served upon you, has this yellow sheet and the white sheet stapled onto it remained within the possession, control and custody of the Western Union

McEachern - direct

Company?

A Yes, sir.

MR. GREENSPAHN: Your Honor, I would respectfully remove the admission of this exhibit.

THE COURT: All right, sir. Let counsel for the Government see it, please, sir.

MR. MORRIS: Your Honor, I would object to this. No relevancy has been shown to this case.

THE COURT: Let me see it, please.

I am going to overrule the objection at the present time. It will be admitted in evidence as the Defendant Bosch Exhibit No. 2.

(Thereupon the telegram referred to was received in evidence as Defendant Bosch Exhibit No. 2.)

MR. GREENSPAHN: You may inquire.

CROSS EXAMINATION

BY MR. BIERMAN:

Q Mr. McEachern, do you know, sir, whether it is a policy of your company to require identification when people give their names?

A It is not a policy.

McEachern - cross

THE COURT: Except when you are receiving money.

THE WITNESS: Yes, sir.

BY MR. BIERMAN:

Q Then you do not have personal knowledge as to who actually presented this telegram?

A No, I do not.

Q Could you calculate for me the cost of this telegram?

A I'm sorry. I don't have the rate sheets. I can tell you--it shows on the face of it \$14.16, and I would presume that is a correct rating.

Q Whether or not that would be a correct rate, that would be a rate which you charged the customer?

A Yes, sir.

Q Do you recognize the writing here as being one of your clerks, or do you know?

A No, sir, I don't recognize it.

Q Is it the policy to request the name of the sender in each instance when a telegram is sent?

McEachern - cross

A Yes, sir.

Q Showing you, sir, Government's Exhibits 1, 2 and 3, do you have any idea as to why the name of the sender would not be reflected on these?

A No, sir, I don't, except in some cases the sender refuses it and, of course, when they do we have no recourse. I can't say that they did refuse it or not. It could be--

Q So then--

A It could be that the clerk may possibly have not asked for it.

Q But then, sir, whether or not a sender's name appears on a telegram is pretty much at his option?

A Yes, it is. It is our policy to ask for it, and it is his option as to whether he gives it or not.

MR. BIERMAN: I have nothing further.

MR. GREENSPAHN: Thank you, Mr. McEachern. You may step down.

THE COURT: You may be excused.

(Witness excused)

Bosch - direct

THEREUPON--

EVELIO BOSCH,

called as a witness on behalf of the Defendants,
having been first duly sworn, testified through the
interpreter Rafael Campi as follows:

THE CLERK: Please state your full
name, address and occupation.

THE WITNESS: Evelio Bosch, B-o-s-c-h,
1136 Southwest 9th Street. I work on the docks.

MR. GREENSPAHN: Your Honor, the
Government has permitted me to use Mr. Campi as an
interpreter in this instance.

Mr. Campi, would you please interpret
in the first person throughout the course of this
testimony?

THE INTERPRETER: Yes, sir.

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Bosch, are you personally acquainted
with any of the nine defendants in this case who sit
at the wall on my right?

A No, sir.

Bosch - direct

Q When did you come to the United States?

A September 3, 1962.

Q From what place did you come, sir?

A From Regla.

Q Where is that?

A In the Province of Havana.

Q What country, sir?

A Cuba.

Q How long have you resided in Miami, Dade County, Florida?

A Ever since, with the exception of six months I was in New York.

Q What kind of work do you do, Mr. Bosch?

A I sit on the docks, and in New York I worked in the Berlitz School.

Q What kind of work do you do on the docks?

A Checker of loading and unloading.

Q Are you in any way related, either by marriage or otherwise, to the defendant Orlando Bosch Avila?

A. In no way.

Q. Mr. Bosch, I show you Defendants' Exhibit No. 2 and ask you if you can identify the white portion of it.

A. I put that telegram.

Q. To whom was the telegram addressed?

A. Sara Vazquez.

Q. At what place, sir?

A. In Regla.

Q. In Cuba?

A. Yes.

Q. On what date did you prepare that white slip?

A. On June 6.

Q. Was it this year?

A. Yes, this year. She came from Cuba afterwards.

Q. At what place did you prepare that white slip?

A. In my home.

Q. Did you personally do the typewriting that is reflected on the face of it?

A. I did. I have a typewriter at home.

Q. Do you still have the typewriter?

Bosch - direct

A Yes, I still have it, yes.

Q Did you take that white slip to any place outside of your home on June 6th?

A From my home to the Western Union only.

Q Was that the Western Union on North Miami Avenue?

A The one on North Miami Avenue.

Q Mr. Bosch, at approximately what time did you arrive at the Western Union office?

A About ten to ten-thirty at night. From nine-thirty to quarter to ten, approximately.

Q When you arrived at the Western Union Station, were there other people present?

A Yes, there were, many.

Q Did you present the white instrument that is a part of Exhibit No. 2 to any person employed at Western Union?

A Yes, I presented that. A copy of this writing I sent to a person in New Jersey after they came from Cuba. And it was stapled at the Western Union afterwards.

Q Did you hand that white piece of paper

Bosch - direct

to anybody at the Western Union Station?

A Yes, sir, I did.

Q What observations, if any, did you make of the person to whom you handed that white piece of paper?

A The only observations that I had was I had to send this to Cuba and I paid for it.

Q Can you in any way recall and describe the man to whom you handed that white instrument?

A If I see him, yes.

Q Can you recall sufficiently well enough to describe to us verbally any characteristics of his?

A He is a little shorter than I, he uses glasses. And from what I could see--because he was sitting down--he had some physical defect in his shoulders. He is shorter than I.

MR. BIERMAN: We will stipulate that is a description of Mr. Sandridge and then we will move to strike the entire line of testimony as irrelevant.

MR. GREENSPAHN: If the Government stipulates that it was Mr. Sandridge, that's fine. That is all I wanted to prove by that point.

Bosch - direct

THE COURT: All right, sir.

BY MR. GREENSPAHN:

Q Mr. Bosch, how were you dressed on that evening?

A Really I cannot remember, but I believe I was wearing a white shirt, because it was summer, and in the summer I wear white shirts.

Q Were you wearing glasses at the time?

A I always use glasses.

Q Which glasses were you wearing at that time?

A I have to use two glasses. These are for writing and reading; and the other glasses are to see far. Otherwise I cannot read or write.

Q Were you wearing this pair of glasses that I hold--the clear glasses with the black frames--at that time?

A Yes, because those are the ones that I use for writing.

MR. BIERMAN: Your Honor, for the record, if these glasses are going to be discussed and I suppose they have some relevancy, they should be

Bosch - direct

marked.

MR. GREENSPAHN: I cannot ask the man to give up his glasses.

THE COURT: I do not think they have to be marked. I think that the testimony is clear enough without the glasses being marked or put in evidence. Proceed.

BY MR. GREENSPAHN:

Q How old are you, sir?

A Fifty-six years.

Q What is your height, sir?

A I don't know.

Q What is your weight, sir?

A 190 pounds.

Q Do you recall whether or not you made payment to the clerk at the Western Union Station?

A Yes.

Q What was the amount of the charge that was charged for the telegram?

A \$14.55 or \$14.45. It fluctuates between those amounts.

Q In what manner did you make the payment?

Bosch - direct

A A \$20 bill, and I received \$5 and some cents change.

Q Was that payment made to the clerk that you have identified?

A To the clerk in the Western Union.

Q In what language is the message on the white sheet?

THE COURT: It is in Spanish. Let's go on.

MR. GREENSPAHN: I have no further questions. You may inquire.

A It's in Spanish.

CROSS EXAMINATION

BY MR. BIERMAN:

Q Is that message addressed to any head of a state?

MR. GREENSPAHN: Objection. That is obviously not in cross of anything on direct.

THE COURT: All right, sir. Ask him who the addressee is.

BY MR. BIERMAN:

Q Who is the addressee?

Bosch - cross

A To the person I know from Cuba. The wife of my godfather. I did not send it to him because he was in agriculture, according to the letter that she sent to me.

MR. BIERMAN: I have no further questions.

MR. GREENSPAHN: No redirect.

THE COURT: May this witness be excused?

MR. BIERMAN: I think we had best keep him around unless our motion is granted.

THE COURT: All right, sir.

Tell Mr. Bosch that he may step down, but he will have to remain subject to recall.

(Witness excused)

MR. BIERMAN: We would like to make a motion.

THE COURT: Ladies and gentlemen, we will recess until one-thirty. So you may be excused until one-thirty. The same instructions, of course, are and will be applicable. So you may retire.

(Thereupon the jury was excused,
pursuant to which the following
proceedings were had out of the
presence of the jury:)

THE COURT: What is the Government's
motion?

MR. BIERMAN: I move to strike this
morning's defense testimony as not being relevant to
this case. If it is an attempt to show a faulty
identification, it is not a proper manner to bring in
another man. And so far as this witness testified,
he could not identify any of the defendants and he
sent the telegram. It did not relate to this case.
And he gave his name and address on the back, which
is optional. Unless defense counsel ties him in in
some way, it is not relevant to this case.

MR. GREENSPAHN: It is most material
to the identification of Mr. Sandridge. He is the
only identification witness. He used as a criterion
along with the Spanish, he mentioned the man as
wearing glasses. The weight and height and all these
things go toward that. And this happened within forty
minutes of the other telegram.

MR. BIERMAN: That is still not the proper way to attack an identification.

First of all, he said it was an exact amount. This telegram is not an exact amount. He said it was on a Western Union form and typed. This was not on a Western Union form. And he said there were three messages brought by the same person. It is just not relevant.

MR. GREENSPAHN: It is for the jury to determine.

THE COURT: Well, I think that it might have some relevancy and some materiality. Insofar as the identification is concerned, although as I recall the witness's testimony he positively identified Dr. Bosch as the one who sent these three messages and there were three messages sent. However, for whatever value it may have, I am going to deny the motion and permit it to remain in there. If the Government wishes to pursue the matter further on rebuttal, it may.

I am not going to comment on the evidence, but in view of the closeness of the time and the similarity of the verbal description, although