

THEREUPON--

ALPHONSE SEPE,

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

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q Please state your name and your  
professional address.

A Alphonse C. Sepe, State's Attorney's  
office, Metropolitan Justice Building, Dade County,  
Florida.

Q Mr. Sepe, what is your official  
capacity with the State Attorney's office?

A I am the Executive Assistant to the  
State Attorney--Mr. Gerstein.

Q Are you here today in response to a  
subpoena?

A Yes, sir.

Q Mr. Sepe, have you, pursuant to the  
directions upon the subpoena, brought with you your  
records--that is, the records of the office of the  
State's Attorney--relative to Ricardo Morales

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Sepe - direct

Navarette?

A Yes, sir.

Q Have you had occasion to speak with any officers, agents, servants or employees of the United States Government relative to Ricardo Morales Navarette?

A Yes, sir.

Q Can you tell us when the first such conversations took place, sir?

A May I refer to my records?

THE COURT: Yes, sir.

A On September 9, 1968, at approximately ten minutes to four in the afternoon.

BY MR. GREENSPAHN:

Q Is your office charged with the prosecution of Ricardo Morales Navarette for a now pending case entitled "State of Florida v. Ricardo Morales Navarette"?

A Yes.

Q Who were the representatives of the United States Government that you spoke with on September 9?

Sepe - direct

A I spoke with Mr. Joseph C. Ball.

Q Did Mr. Ball identify himself to you as being with a particular United States Agency?

A Yes, sir; the Federal Bureau of Investigation.

Q Will you relate to us the nature of your conversation with Mr. Ball, telling us what he said to you and what you said to him?

A In substance Mr. Ball advised me of his identity and position and stated that Morales Navarette--as I knew him as Navarette--had been cooperating with the Federal Government and recommended that his case pending in the State Court be nolle prossed.

Q Will you explain in lay terms what the Latin phrase "nolle prossed" means, and especially what such a term means in connection with the duty of your office.

A Simply that the prosecution terminate and the case be dismissed.

Q Was there any particular significance in that time--that is, the date with regard to the

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Sepe - direct

pending proceeding against Mr. Navarette?

A In my conference just a few moments ago, the appearance of Mr. Ball was related to the case on September 9th, and some action was to have been taken on a case in Court on that same day. That action was continued. However, the action in the Court was continued, as I recall, prior to Mr. Ball's appearance in the State Attorney's office.

Q When is this matter continued to, if you know, sir?

A I don't recall. It may be January.

Q Did you solicit Mr. Ball's appearance at your office or did he present himself upon his own initiative? In other words, did you call him or did he come to you?

A Mr. Ball came with a member of the Miami Police Department. They came on their own.

Q Has any independent decision yet been made by you in your official capacity as to whether or not a nolle prosequere would be had in the case of the State of Florida v. Morales?

A No, it has not.

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Sepe - cross

MR. GREENSPAHN: Thank you, sir. I have no further questions.

THE COURT: All right. Cross examination?

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CROSS EXAMINATION

BY MR. BIERMAN:

Q Mr. Sepe, who was the state officer who came with Mr. Ball?

A Lieutenant Swilley, of the Miami Police Department Criminal Intelligence.

Q Do you know what relationship he had with your pending case?

A Yes. He was one of the principal investigating officers.

Q Did he make a recommendation in regard to the case that he had presented to your office?

A Yes.

Q What was his recommendation?

A His recommendation was that the case be nolle prossed or continued.

Q Would you relate to us, sir, the exact

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Sepe - cross

statement, if you have it exactly, that Mr. Ball made to you about the cooperation of Mr. Morales?

A Well, preliminary to this questioning by me directed to Mr. Ball was a description of what Navarette had been doing, and then I responded by asking the question, "What is your recommendation?"

Q I am talking about what Morales Navarette had been doing. What did he tell you he had been doing?

A I will read the answer of Agent Ball testifying to me. "The activities of the Cuban Power organization. . ."

THE COURT: No. He is not speaking to you now? You are taking his testimony under oath, are you?

THE WITNESS: Yes, sir.

THE COURT: All right, sir.

THE WITNESS: He was under oath. In testifying to me his answer was, "The activities of the Cuban Power organization have become nationwide in scope in that bombings have been connected by this organization in Los Angeles, Chicago, New York, as well

Sepe - cross

as Miami. Morales Navarette has been of substantial assistance to the FBI in investigating the over-all operations of this group both in Miami and in other parts of the United States. Additionally his services have been utilized in the operation through which one British ship has been saved from being bombed at sea with a possible loss of thirty-four lives and \$2,000,000 to \$3,000,000 damage.

Additionally seven other such ships are believed to have bombs containing simulated explosives, and attempts are being made to locate these bombs.

Morales personally can be credited, at the risk of his own life, with furnishing simulated dynamite to organizations engaged in an attempt to bomb British and Japanese vessels, which would severely impair the relationship between the United States Government and the governments of these countries."

Then I said, "Do you have any recommendation to make?"

Q And at this point he recommended to you that the case be nolle prossed?

A He said, "I recommend the case be

Sepe - cross

nolle prossed, if possible."

MR. BIERMAN: Thank you, Mr. Sepe.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Sepe, with the exception of that portion of your transcript that you read, did Mr. Ball indicate to you any other reason why he felt, in his official capacity, this case should be dropped or nolle prossed?

A No.

Q Did you know the purpose of his visit when he came to you and rendered that testimony?

A Did I know it before he started speaking to me?

Q Yes, sir.

A Frankly, Mr. Greenspahn, I can't recall if I had not been advised of this by Lieutenant Swilley in some other conversation I might have had with Mr. Swilley that Mr. Ball was of this opinion and would make an expression of this kind to me. I just don't remember that.



Q Now, your office, up to that point, at any rate, had not conducted any investigation relative to the case that is now pending before this Court on these defendants, had it, with regard to this case?

A No, sir. It would be outside of our jurisdiction.

Q And you had no indication that these defendants were, in fact, involved in the case that your office was prosecuting?

A No.

Q When Mr. Ball made the statement to you that has been read by you or that has been transcribed in your notes, did you have any knowledge as to any of the statements made by Mr. Ball--that is, with reference to the bombing of the ships and the various other things that he said in the course of that statement? This was something that he was relating to you and that you were hearing for the first time?

A Yes.

Q As a matter of practice and policy, would your office have undertaken the prosecution of

Mr. Navarette in this instance without having had a reasonable basis for undertaking such prosecution?

MR. BIERMAN: I will object.

THE COURT: I will sustain the objection.

MR. GREENSPAHN: I have nothing else. Thank you, Mr. Sepe.

THE COURT: Now, ladies and gentlemen, I want to give you a cautionary instruction. This testimony has been admitted by me solely for the purpose of relating to the weight and credibility that you might place upon the testimony of the witness Morales, with respect to whether or not his testimony has been motivated by any promises or inducements. The statements of Mr. Ball are not in evidence in this case with respect to the guilt or the innocence of the defendants. They are statements that he made at this time to this witness, but they are not evidence before you. You are to decide this case solely upon the evidence which you have heard in this case and not from the statements made by Mr. Ball or anyone else outside of this courtroom.

Does everybody on the jury understand

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that?

(The jury indicates in  
the affirmative.)

THE COURT: All right.

MR. GREENSPAHN: Your Honor, the  
defendants jointly and severally rest.

THE COURT: All right, sir. Does the  
Government have any rebuttal testimony?

MR. BIERMAN: Yes, we do, your Honor.

THE COURT: Call your witness, please.

MR. BIERMAN: I will call Agent  
Stickney.

Also, your Honor, there was some  
confusion as to whether or not Government's Exhibit  
No. 24 has been formally offered into evidence. It  
is the spring and the two screws.

MR. GREENSPAHN: My understanding is  
it was received in evidence, your Honor.

THE COURT: It is my understanding  
that they have been offered and received in evidence.  
But do you now offer them in evidence?

MR. BIERMAN: I re-offer them.

THE COURT: I will note an objection by

the defendants and they will be admitted in evidence.

(Thereupon the articles referred  
to were received in evidence as  
Government's Exhibit No. 24.)

MR. BIERMAN: I am not quite positive  
if we had introduced the following registration  
documents in the presence of the jury.

THE COURT: Again it is my understanding and recollection that they have been offered and admitted into evidence. But to avoid any possible misunderstanding or confusion, I will permit you to now re-offer them in evidence. I will note the objection of the defendants and I will overrule that objection and admit them into evidence as official documents.

THEREUPON--

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

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

THE WITNESS: My name is Thomas James

Stickney - direct

Stickney.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Agent Stickney, have you had occasion to meet one Jorge Luis Gutierrez?

A I have.

Q When and where was that, sir?

A That was here in Miami on October 11th of this year.

Q What was the occasion?

A I was one of three persons who participated in his arrest.

Q Were you present, sir, when, if ever, he was advised of his constitutional rights?

A Yes, I was present.

Q What was he advised of?

A He was advised first in English by another agent and then in Spanish by me.

Q What did you advise him?

A I advised him that he had the right to remain silent; that anything he said at this time or at any other time could be used against him in a court

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of law; that he had the right to an attorney of his own choice, and if he didn't have an attorney or couldn't afford one, the Government will appoint one for him.

Q Then did he make any statements at that time, sir?

A No. He said he understood his rights and that he didn't care to say anything.

Q Then where did you go from there?

A From his house we went down in a Bureau car, the FBI car, went down directly to the FBI Building on Biscayne Boulevard.

Q During the course of this ride do you know if any conversation ensued?

A Yes, there was a conversation, part of it in Spanish and part in English.

Q Did you have any conversation with Mr. Gutierrez in regard to a 1964 Dodge Dart?

A I overheard. I had very little to do with that particular conversation. I overheard the conversation between Special Agent David Jellison and Gutierrez. I think I participated only slightly in that particular phase of the conversation.

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Stickney - direct

Q What did you overhear, sir?

A The conversation went generally to the effect that--

MR. GREENSPAHN: If it please the Court, I would object to a general restatement of the conversation. If the gentleman heard it, he should recall it as it was.

THE COURT: I will sustain the objection as to the general conversation.

Give the substance of the conversation as best you recall it, sir.

THE WITNESS: Yes, sir. As I recall this conversation, Gutierrez was very concerned with whether or not his name and photograph would appear in the press and on television. It was explained to him that we had no control over the press and it very well might be his name and photograph might appear in the newspaper.

He then wanted to know if anyone had gone to his future father-in-law or questioned him about any part of this investigation, and Jellison said yes, that he had. And he wanted to know why--

Stickney - direct

Gutierrez wanted to know why, and Jellison told him that a car, a Dodge Dart--I believe it was a Dart--had been observed on the night of the shooting of the POLANICA, and it was checked out to his future father-in-law, and as a result the future father-in-law had been interviewed.

Q What, if any, response did Mr. Gutierrez make to that, sir?

A Gutierrez said, "Well, I wasn't involved. I was just driving the car."

Q Were you nervous that day, Agent Stickney?

A No more than usual, not particularly.

Q How many arrests have you made during your career as an FBI agent?

A It's hard to say. Hundreds, I would say.

Q Did you express to Mr. Gutierrez any particular distress in having to arrest him?

A Distress?

Q Distress, yes.

A Well, he said--he was complaining about



being abused, being arrested. And, after all, he was fighting to get rid of Cuban Communism, et cetera, and he didn't like the idea generally of being arrested. I told him, "I don't like this particularly. I don't get any fun out of arresting people."

I don't think the word "distress" would be quite the word to use.

Q In other words, you were expressing your opinion that you have no great pleasure in arresting people, is that correct?

A That is just about it.

MR. BIERMAN: I have nothing further.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q When the conversation between Agent Jellison and Jorge Gutierrez took place, what was the position of each of the occupants in the automobile that you were in?

A Gutierrez was sitting in the middle of the rear seat of the car. Agent Jellison was sitting on the right side of the rear seat and I was sitting on the left side. In other words, Gutierrez was

sitting between us in the rear seat of the car.

Q When the conversation was taking place, was it in English or in Spanish?

A Most of the conversation that I have represented here--in fact, almost all of it was in the English language.

Q Was Gutierrez turned toward you or did he turn his head toward Agent Jellison when he made the statement that you say he made?

A I don't recall.

Q Was there any noise of any sort in that automobile other than the normal conversation of the occupants?

A Yes, sir, there was.

Q What was that, sir?

A There was the two-way FM radio up in the front seat, up under the cowl.

Q Was that relatively active at the time of this ride in the automobile?

A In my opinion it was not any more active at that time than it is ordinarily during the day.

Q Was it on?

A It was on.

Q Was there conversation coming through that radio with some degree of regularity during the course of the time that you were proceeding to the FBI Building?

A Fairly regular.

Q Gutierrez told you that he understood his rights and didn't have any desire to say anything to you, did he not?

A This is true.

Q Were there any other words by Gutierrez in connection with his operation of his future father-in-law's motor vehicle other than what you have told us, or was that the extent of it? That seemed to be the extent of it, wasn't it?

A I don't recall at this time if there was. I frankly don't recall.

Q Do you know of your own knowledge whether Jorge Gutierrez had been utilizing his future father-in-law's automobile for his personal pleasure, social pleasure during the course of the days preceding the arrest?

MR. BIERMAN: I am going to object to

that.

THE COURT: I am going to overrule  
the objection.

A I have no personal knowledge.

MR. GREENSPAHN: Thank you, sir. That  
is all.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. BIERMAN:

Q Did you have any difficulty hearing,  
Agent Stickney?

A Do I have any difficulty?

Q Did you have any difficulty hearing?

A None whatsoever.

MR. BIERMAN: I have nothing further.

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

(Witness excused)

THE COURT: Call your next witness.

THEREUPON--

GEORGE EVAN DAVIS, JR.,  
called as a witness in rebuttal by the Government,  
having first been duly sworn, was examined and  
testified as follows:

THE CLERK: Please state your full  
name.

THE WITNESS: George Evan Davis, Jr.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Agent Davis, have you ever placed any-  
thing or taken anything out of the car of Dr. Orlando  
Bosch?

A No, sir.

MR. BIERMAN: I have nothing further.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q In the question that counsel has just  
asked you, he used the word "ever." I would ask you,  
sir, have you ever removed any items of property from  
the home or the automobile or any other place from  
the possession of Dr. Orlando Bosch?

A No, sir, with the exception of some keys which we took from his possession incidental to his arrest on October 11, 1968.

MR. GREENSPAHN: No further questions.

THE COURT: Redirect?

MR. BIERMAN: No redirect.

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

(Witness excused)

THE COURT: Call your next witness.

MR. BIERMAN: The Government rests, your Honor.

THE COURT: All right, sir.

Is the Government ready to commence its opening argument?

MR. KLEIN: Yes, your Honor.

THE COURT: You may.

So that you may understand the proceeding in this trial in the event you have not participated as a jury before, we have reached the point where all of the evidence which will be introduced in this cause has been introduced. There now remain the argument of counsel to the jury. And I

might preliminarily instruct you that the statements and arguments of counsel are not evidence. They are only intended to assist you in understanding the evidence and the contentions of the parties. What they themselves say to you is not evidence. The evidence you have heard from the stand. It is their inferences and their contentions which will be presented to you.

And after the Government has done that-- they have the right to make an opening and a closing argument. The defense will have to present their entire argument in between. Both sides have been allotted equal amounts of time in which to present their arguments.

At the conclusion of their arguments, it then remains for the Court to charge you with respect to the law which is applicable to the case. And after that the case will then be turned over to you for your deliberation and decision. But those will be the steps which will be taken before the case is received by you.

And I want to impress upon you that there is a great necessity for keeping an open mind

and not trying to form any opinion until you have heard all of the evidence and the arguments and the instructions of the Court.

The Government may proceed.

(Thereupon closing arguments were made by counsel for the prosecution and counsel for the defense, pursuant to which the following proceedings were had:)

THE COURT: Ladies and gentlemen of the jury, we will recess now until 10:00 a.m. But Court will be recessed until 9:00 o'clock tomorrow morning.

(Thereupon at 4:53 p.m., the hearing was recessed to reconvene on Friday, November 15, 1968, at 10:00 o'clock a.m.)

. . . . .



MIAMI, FLORIDA

Friday, November 15, 1968

(The hearing resumed at 10:00  
o'clock a.m., pursuant to prior  
recess, pursuant to which the  
following proceedings were had:)

THE COURT: Mr. Greenspahn, I understand that you have a matter you wish to present?

MR. GREENSPAHN: Yes, sir. Yesterday in the confusion of the afternoon, I completely forgot to move, at the close of the Government's case, for a judgment of acquittal, and for the record I will do so now.

THE COURT: Well, I was going to remind you of it myself, actually. It was in my mind, and then during the course of the arguments it slipped my mind. But the record will show that the Court has permitted counsel to now interpose a motion for a judgment of acquittal on behalf of each and every one of the defendants severally as though the motion had been made at the conclusion of the Government's case. The Court will deny the motion.

MR. GREENSPAHN: Thank you, sir.

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MR. BIERMAN: Your Honor, during the closing arguments some reference was made to the transcript going to the jury. We have no objection to it.

THE COURT: That is a problem because actually, Mr. Greenspahn, the entire transcript was not introduced in evidence. Only those portions which were actually read from into the record are in evidence.

MR. BIERMAN: Then we would prepare an excised copy.

THE COURT: After you told them they could take it in there, it does create sort of a situation. It is just one of those things. I realize when you are all wound up and you are in a case that happens. I could not permit those transcripts to be taken into the jury room unless counsel agrees that that can be done. I don't know whether they will ask for them, but since there was an argument presented to them, there is a problem. They may ask for them. If they do, then we have a situation where I will have to tell them they cannot have them because they are not in evidence or, if

counsel wish, if they are willing to agree, the entire transcript may be given to them.

MR. GREENSPAHN: The Government says it will prepare an excised copy reflecting only those portions that were in fact introduced in evidence.

THE COURT: That is perfectly all right with me, but they are going to have to move fast.

MR. GREENSPAHN: One last point before the jury comes back. If you will remember, the other day there was a large thing described as a bomb head that was removed from the evidence. I don't know what the Court's procedure is in this regard. I know it was introduced and received in evidence, and the jury may still have the conception that it is still in evidence. I wonder if the Court would make known to the jury the fact that it has, because of whatever reason the Court had for removing it--

THE COURT: I ruled on that thing three times, sir. I ruled first that it wasn't in evidence. Then I ruled, based upon the testimony of Captain Brodie, that it would be admitted in evidence. And then I ruled again--frankly I don't recall what I

ruled.

MR. BIERMAN: You ruled that it be stricken.

MR. GREENSPAHN: It was stricken but it was stricken outside the presence of the jury and they may think it is still in evidence.

THE COURT: All right. I'll be glad to do that. Let me have it so they will know what I am talking about.

MR. GREENSPAHN: Those are all the motions that we have before you at this time.

THE COURT: Thank you, sir.

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

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury, in the trial of this case the judge and the jury have separate functions. The judge presides over the trial to rule on questions of law so that proper and relevant evidence will be presented, and to instruct the jury on the law which is applicable to the case.

The jury should follow the law as it is given by the judge. All of the instructions should be considered together and regarded as the law applicable to this case. The jury has no right to disregard or to give special attention to any one of the instructions or to question the wisdom of the rules of law which the Court gives to you.

The function of the jury is to determine the facts. This should be done without prejudice, fear or favor, and solely from a fair consideration of all of the evidence. The evidence should be considered and viewed by the jurors in the light of their own observations and experiences. If, during the trial, the Court has intimated any opinion as to the facts, the jury may entirely disregard such

intimation since you, as jurors, are the sole and exclusive judges of the facts.

It is the province of the jury to determine the credibility of each witness and the weight to be given to his or her testimony. In weighing the testimony of each witness the jury should consider his relationship to the Government or to the defendants; the witness's interest, if any, in the outcome of the case; his manner of testifying; his candor, fairness and intelligence; and the extent to which he has been corroborated or contradicted, if at all, by other credible evidence.

The testimony of police officers or of Government agents is to be subjected to the same tests and given the same consideration as that of any other witness, and no more and no less weight is to be given to such testimony because of the official capacity of the police officer or Government witness.

A defendant in a criminal case is presumed by law to be innocent. This presumption remains with him throughout the trial unless and until he is proven guilty of the crime charged by credible evidence beyond a reasonable doubt.

The burden of proving a defendant guilty beyond a reasonable doubt rests upon the Government. This burden never shifts throughout the trial. The law does not require a defendant to prove his innocence or to produce any evidence. He may rely upon evidence brought out by the Government itself. If the Government fails to prove a defendant guilty beyond a reasonable doubt the jury must acquit him.

A reasonable doubt means a doubt that is based on reason and common sense. Such a doubt must be a substantial one rather than a speculative one; that is, a defendant is never to be convicted on mere suspicion and conjecture. Such doubt, however, must be a doubt that is reasonable and one which arises from the evidence or the lack of it. It does not mean a mere possible doubt or a speculative, imaginary or forced doubt because anything relating to human affairs is open to some possible or imaginary doubt.

A defendant may be proven guilty by either direct or circumstantial evidence. Direct evidence is the testimony of one who asserts actual

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knowledge of a fact, such as an eyewitness.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence; it requires only that the jury, after weighing all of the evidence, must be convinced of the guilt of a defendant beyond a reasonable doubt before he can be convicted.

A defendant has an absolute right not to testify, and the jury may not draw a presumption of guilt or any inference against any defendant because he did not testify.

However, any defendant who wishes to testify is a competent witness, and his testimony should be judged in the same way as that of any other witness.

In determining the degree of credibility that should be accorded by you to a defendant's testimony, you are entitled to take into consideration the fact that he is one of the defendants and the personal interest that he has in the result of your verdict.



Now, we had a number of expert witnesses in this case and in that regard the Court will charge you that the rules of evidence ordinarily do not permit a witness to testify as to his opinions or conclusions. An expert witness is an exception to this rule. A witness who by education and experience has become expert in any art, science, profession or calling may be permitted to state his opinion as to a matter in which he is versed and which is material to the case, and he may also state the reason for his opinion. You should consider such expert testimony received in evidence in this case and give it such weight as you think it deserves.

As I have previously instructed you, the indictment in this case is not evidence of any kind against any of the defendants and does not create any presumption or permit any inference of guilt. It is merely the formal manner by which the Government accuses a person of crime in order to bring him to trial.

The defendants here have answered those charges by pleading not guilty, thus denying that each of them has committed the crimes charged.

You must not be prejudiced against any defendant because an indictment was returned against him.

Statements and arguments of counsel are not evidence. They are only intended to assist the jury in understanding the evidence and the contentions of the parties. During the course of the trial it often becomes the duty of counsel to make objections, and for the Court to rule on them in accordance with the law. You should not consider or be influenced by the fact that objections have been made by either side.

Testimony and exhibits to which the Court has sustained an objection, or which the Court has ordered stricken from the record, do not constitute evidence, and may not be considered by the jury, and particularly in that regard I call your attention to this cone device here which I ordered stricken from the evidence, and it is eliminated for all purposes and should not be considered by you in any respect whatsoever.

Now, the indictment in this case is as follows:

"United States of America v.

Orlando Bosch Avila, a/k/a Ernesto;  
Andres Jorge Gonzalez Gonzalez, a/k/a  
Bombillo; Barbaro Balan Garcia, a/k/a  
Bobby; Marco Rodriguez Ramos, Jesus  
Dominguez Benitez, a/k/a El Isleno;  
Jose Diaz Morejon, a/k/a Tony Prieto;  
Jorge Luis Gutierrez Ulla, a/k/a George  
Gutierrez; Paulino Gutierrez, Aimee  
Miranda Cruz.

"Indictment

"The Grand Jury charges:

"COUNT I

"That from on or about April 15,  
1968, up to and including the date of this  
indictment in the Southern District of  
Florida and elsewhere the defendants,  
ORLANDO BOSCH AVILA, a/k/a Ernesto;  
ANDRES JORGE GONZALEZ GONZALEZ, a/k/a  
Bombillo; BARBARO BALAN GARCIA, a/k/a  
Bobby, MARCO RODRIGUEZ RAMOS, JESUS  
DOMINGUEZ BENITEZ, a/k/a El Isleno,  
JOSE DIAZ MOREJON, a/k/a Tony Prieto,  
JORGE LUIS GUTIERREZ ULLA, a/k/a George

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Gutierrez, PAULINO GUTIERREZ, and AIMEE MIRANDA CRUZ, unlawfully, wilfully and knowingly did conspire with each other, and with divers other persons to the Grand Jury unknown, to violate the laws of the United States, to-wit: Title 18, United States Code, Section 2275, in the manner and by the means hereinafter set forth:

"1. It was the plan of said conspiracy to violate Title 18, United States Code, Section 2275, by knowingly and wilfully causing damage to vessels of foreign registry docked at the Port of Miami, Dodge Island, in the Southern District of Florida, within the jurisdiction of the United States, and elsewhere, by placing explosives in or upon said vessels with the intent of injuring and endangering the safety of the said vessels and their cargo.

"2. It was a part of said conspiracy that the said defendants and co-conspirators would collect money for the purchase of explosives and equipment to be used in the

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placement of said explosives on vessels. As a part of the plan to raise money publicity of the explosions accomplished would be sought.

"3. It was a part of the said conspiracy that the said defendants and co-conspirators would gather explosives and assemble and prepare weapons and other equipment to be used in causing damage to vessels of foreign registry."

No. 4 was withdrawn by the Government.

"5. It was also a part of said conspiracy that said defendants and co-conspirators would fire and cause to be fired a 57 mm. recoilless rifle at a vessel of foreign registry docked at Dodge Island in the Southern District of Florida within the jurisdiction of the United States.

"6. It was a part of said conspiracy that the said defendants and co-conspirators would assemble bombs and cause them to be attached to vessels of foreign registry.

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"In pursuance and furtherance of said conspiracy and to effect the objects thereof the defendants did commit in the Southern District of Florida within the jurisdiction of the United States, and elsewhere, the following overt acts among others:

"1. On or about August 13, 1968, at 1150 S. W. First Street, Miami, Florida, Orlando Bosch Avila and Jose Diaz Morejon, defendants herein, received a package labeled 'Dynamite.'

"2. On or about August 22, 1968, defendants Orlando Bosch Avila, Barbaro Balan Garcia and Jorge Luis Gutierrez Ulla met with Ricardo Morales Navarette at 735 S. W. First Street, Miami, Florida."

No. 3 was withdrawn by the Government.

"4. On or about August 27, 1968, Marco Rodriguez Ramos and Jesus Dominguez Benitez engaged in a conversation with each other at 735 S. W. First Street, Miami,

Florida.

"5. On or about September 15, 1968, Orlando Bosch Avila, Barbaro Balan Garcia, Jose Diaz Morejon and Aimee Miranda Cruz met together at 218 S. W. 16th Avenue, Miami, Florida.

"6. On or about September 15, 1968, Orlando Bosch Avila and Paulino Gutierrez traveled from 1029 S. W. First Avenue to the west end of the MacArthur Causeway in Miami, Florida.

"7. On or about September 16, 1968, Jorge Luis Gutierrez Ulla drove an automobile on and in the vicinity of the MacArthur Causeway in Miami, Florida.

"8. On or about September 16, 1968, Barbaro Balan Garcia and Jose Diaz Morejon fired a 57 mm. recoilless rifle at the vessel SS Polanica at Dodge Island, Dade County, Florida.

"9. On or about September 30, 1968, Orlando Bosch Avila, Andres Jorge Gonzalez Gonzalez, Jose Diaz Morejon, Jorge Luis

Gutierrez Ulla and Paulino Gutierrez attended a meeting of 'Cuban Power' at the Jose Marti Building in Miami, Florida.

"All in violation of Title 18, United States Code, Section 371.

"COUNT II

"On or about September 16, 1968, ORLANDO BOSCH AVILA, BARBARO BALAN GARCIA, and JOSE DIAZ MOREJON, defendants herein, knowingly, wilfully, and unlawfully, and with the intent to injure and endanger the safety of the vessel, SS Polanica, a vessel of foreign registry, to-wit: Poland, did fire a 57 mm. rifle at said vessel, causing an explosive missile to strike the said vessel at Dodge Island, Dade County, Florida, in the Southern District of Florida within the jurisdiction of the United States; in violation of Title 18, United States Code, Section 2275.

"COUNT III

"On or about June 6, 1968, at Miami, Dade County, in the Southern District of



Florida, ORLANDO BOSCH AVILA, wilfully and knowingly through the use of telegraph did convey and cause to be conveyed a threat to Gustavo Diaz Ordaz, President of Mexico, to damage and destroy personal property, to-wit: Mexican ships and planes, for the purpose of interfering with their use for business objectives, and of intimidating persons pursuing said business objectives; in violation of Title 18, United States Code, Section 837(d).

"COUNT IV

"On or about June 6, 1968, at Miami, Dade County, in the Southern District of Florida, ORLANDO BOSCH AVILA, wilfully and knowingly through the use of telegraph did convey and cause to be conveyed a threat to General Francisco Franco to damage and destroy personal property, to-wit: Spanish ships and planes, for the purpose of interfering with their use for business objectives, and of intimidating persons pursuing said business objectives; in

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violation of Title 18, United States Code,  
Section 837(d).

"COUNT V

"On or about June 6, 1968, at Miami, Dade County, in the Southern District of Florida, ORLANDO BOSCH AVILA, wilfully and knowingly through the use of telegraph did convey and cause to be conveyed a threat to Sir Harold Wilson, Prime Minister of England, to damage and destroy personal property, to-wit: British ships, for the purpose of interfering with their use for business objectives, and of intimidating persons pursuing said business objectives; in violation of Title 18, United States Code, Section 837(d)."

With respect to the statute in which the defendant Orlando Bosch Avila is accused of violating in Counts III, IV and V of the indictment the statute reads in pertinent part as follows:

"Title 18, U.S.C. § 837(d)

"Whoever, through the use of ... ..  
telegraph .. .. willfully imparts or conveys,

or causes to be imparted or conveyed, any threat, . . . concerning an attempt, or alleged attempt being made, or to be made, to damage or destroy any . . . personal property for the purpose of interfering with its use for . . . business . . . objectives, or of intimidating any person pursuing such objectives, shall be . . ."

guilty of an offense against the laws of the United States.

Therefore, the essential elements of this offense are these:

- (1) Use of the telegraph.
- (2) To willfully impart or convey or cause to be imparted or conveyed.
- (3) A threat concerning or relating to an attempt or alleged attempt being made, or to be made, to damage or destroy any personal property.
- (4) For the purpose of interfering with the property's use for business objectives; or for the purpose of intimidating any person pursuing such objectives.

The Government must prove each of these

elements beyond a reasonable doubt.

The Court instructs you that the act of sending a message by telegram is a use of the telegraph.

The statute forbids use of the telegraph to willfully impart or convey or cause to be imparted or conveyed a certain threat for certain purposes. To impart or convey means to communicate, transmit, transport or carry. The threat must be imparted or conveyed willfully. An act is done willfully if done voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

In order to cause another person to do some act it is necessary that the accused knowingly do some act which in the ordinary course of business of some other person, or by reason of the ordinary course of business, results in the doing of the act in question by such person.

A threat is an avowed present determination, or intent to injure presently or in the future, and the fact that the threat is conditioned

upon a possible contingency subject to the maker's control does not deprive it of the quality of a threat. It is the making of the threat, not the intent to carry it out, that violates the law; but the threat must relate to an attempt or alleged attempt being made, or to be made, to damage or destroy personal property. It is immaterial whether the attempt is actually made or actually intended to be made.

Therefore, the Government must prove beyond a reasonable doubt that the accused avowed a present determination or intention to attempt to damage or destroy personal property, either presently or in the future.

The Court instructs you that a vessel is a craft or structure capable of floating and transporting cargo or passengers on water; and, together with its fixtures and necessary parts, is considered personal property.

The term "business objectives," as it is used in the statute, means those objectives or purposes which are commercial in nature; that is, those which relate to mercantile transactions, for

example, commercial transportation of cargo or passengers by vessel.

The threat forbidden by the statute is a threat to damage personal property made either for the purpose of interfering with its use for business objectives, or for the purpose of intimidating a person who is pursuing business objectives.

To interfere is to hamper, hinder, disturb, or intermeddle; and to intimidate is to willfully act in such a manner as to place the victim in such fear of harm as to cause him to relinquish a right or interest.

Therefore, the threat described in the statute is a threat to damage personal property made for the purpose of hampering, hindering, or intermeddling with the use of the personal property for business objectives; or for the purpose of placing a person who is pursuing business objectives in such fear of harm as to cause him to relinquish a right or interest.

The Government need not prove that an alleged threat accomplished either an interference with the use of property for business objectives, or

that any person pursuing such objectives was actually intimidated by the threat. Success of the threat in interfering or intimidating is immaterial, since the offense is complete upon the willful conveyance of it by telegraph.

The statute which the defendants Orlando Bosch Avila, Barbaro Balan Garcia and Jose Diaz Morejon are accused of violating in Count II of the indictment reads in pertinent part as follows:

"Whoever ... does ... any ... act to ... (any vessel of foreign registry) ... while within the jurisdiction of the United States ... with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended / to take place within the jurisdiction of the United States, or after the vessel shall have departed therefrom, and whoever attempts to do so shall be ..."

guilty of an offense against the laws of the United States.

Therefore, the essential elements of

this offense are these:

1. The willfull commission of any act.
2. To any vessel of foreign registry while it is within the jurisdiction of the United States.
3. With intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, regardless of where the injury is intended to take place.
4. The statute also forbids an attempt to commit such an act.

The Government has the burden of proving each of these elements beyond a reasonable doubt.

To do an act willfully is to do it voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

The Court instructs you that that part of the high seas within three miles of the coast of the United States or its territories is within its jurisdiction.



The Court takes judicial notice of and instructs the jury that the ports of Miami, Florida, New Orleans, Louisiana, and San Juan, Puerto Rico, are within the jurisdiction of the United States.

A sea-going vessel must be registered under the laws of some nation in order to be entitled to the protection afforded by the laws of the United States.

The Court instructs you that a vessel of foreign registry is one which is registered in a country other than the United States of America.

To violate the statute, the act must be done with intent to injure or danger the safety of the vessel, or of her cargo, or of persons on board. That is, the act must be done with intent to injure the vessel, her cargo, or persons on board, or to endanger the safety of the vessel, or of her cargo or of persons on board.

To endanger the safety of something or someone means to put in jeopardy or danger without actually inflicting injury. The phrase "endanger the safety of" covers cases where do specific injury was done or intended, but only a dangerous condition

created.

Therefore, the statute forbids commission of an act with the intent either to actually injure the vessel, her cargo, or persons aboard; or to create a dangerous condition to any of them without actually causing injury.

It is immaterial whether the injury or danger is intended to take place within the jurisdiction of the United States, or after the vessel has departed therefrom.

In addition to forbidding the actual commission of an act with intent to injure or endanger the safety of the vessel or her cargo, or of persons on board, the statute also forbids an attempt to commit such an act.

To attempt an offense means willfully to do some act, in an effort to bring about or accomplish something the law forbids to be done.

The Court charges you that in a case where two or more persons are charged with the commission of a crime, the guilt of an accused may be established without proof that the accused personally did every act constituting the offense.

Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Every person who thus willfully participates in the commission of a crime may be found guilty of that offense.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself or herself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

Now, with respect to the first count, the statute which all nine of the defendants are accused of violating in Count I of the indictment reads in pertinent part as follows:

"Title 18, United States Code,  
Section 371.

"If two or more persons conspire  
to commit any offense against the United  
States, and one or more of such persons  
do any act to effect the object of the  
conspiracy, each shall be guilty of an  
offense against the laws of the United  
States."

Therefore, with respect to this offense,  
the essential elements are these:

1. The existence of the conspiracy  
described in the indictment at or about the time  
alleged.
2. The defendant's knowing and willfull  
membership in the conspiracy.
3. The knowing commission by one of  
the conspirators of at least one of the overt acts  
charged in the indictment, such act having been  
committed in furtherance of some object or purpose of  
the conspiracy as charged.

If you find from the evidence that the  
existence of the conspiracy charged in the indictment

has been proved beyond a reasonable doubt, and during the existence of the conspiracy one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy beyond a reasonable doubt, proof of the conspiracy offense charged is then complete; and it is complete as to every person found by you to have been knowingly and willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

The Government has the burden of proving each of these elements beyond a reasonable doubt.

A conspiracy exists when two or more persons combine to accomplish some unlawful purpose by concerted action; or to accomplish some lawful purpose by unlawful means. So a conspiracy is a kind of "partnership in criminal purposes," in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard the law.

Mere similarity of conduct among various persons and the fact that they may have

associated with each other, and may have assembled together and discussed certain aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished, or that every member knew the exact part to be played by other members.

What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner or through some contrivance, expressly or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon were actually used or put into

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operation; nor that all of the persons charged to have been members of the alleged conspiracy were such.

What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indictment were agreed upon to be used in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that two or more persons, including one or more of the accused, were knowingly members of the conspiracy, as charged in the indictment.

It is alleged in Count I that the defendants entered into a conspiracy to violate Title 18, United States Code, Section 2275, the pertinent part of which reads as follows:

Title 18, United States Code, Section 2275.

"Whoever ... places bombs or explosives in or upon (any vessel of foreign registry), or does any other act to or upon such vessel while within the jurisdiction of the United States, ... with intent to injure or

or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States, or after the vessel shall have departed therefrom and whoever attempts to do so shall be ..."

guilty of an offense against the United States.

Violation of Title 18, U.S.C., Section 2275, is the offense which is charged in Count II of the indictment, about which I have just instructed you.

The conspiracy charged in Count I is that all the defendants allegedly conspired to do the things forbidden by Section 2275, including but not limited to conspiring to do the acts charged in Count II. It is also alleged in Count I that the defendants further conspired to place, or attempt to place, bombs or explosives in or upon one or more vessels of foreign registry, such vessel or vessels being within the jurisdiction of the United States, with intent to injure or endanger the safety of the



vessel or of her cargo or of persons on board, regardless of whether the injury or danger was intended to take place within or without the jurisdiction of the United States.

In your deliberations on Count I you are to consider whether the alleged conspiracy was formed to do any of the things forbidden by Section 2275, taking into consideration the instructions I have given you on the elements of an offense under that section.

The Court charges you that one may become a member of a conspiracy without full knowledge of all of the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find that a defendant or any other person has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have become a member,

willfully participated in the unlawful plan, with intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily and intentionally and with specific intent to do something the law forbids; that is to say, to act or participate with the bad purpose to disobey or to disregard the law. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willfull participant--a conspirator.

On the other hand, mere knowledge that an offense is being committed is not equivalent to participation. Nor is mere physical presence by a defendant at a crime sufficient to establish his guilt.

In determining whether or not a defendant or any other person was a member of a conspiracy, the jury is not to consider what others may have said or done. That is to say, the membership of a defendant or any other person in a conspiracy

must be established by the evidence in the case as to his own conduct, what he himself willfully said or did.

In your consideration of the evidence in the case as to the offenses of conspiracy, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not any of the accused willfully became a member of the conspiracy.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was willfully formed and that the accused willfully became a member of the conspiracy, either at the inception or beginning of the plan or scheme, or afterwards; and that thereafter one or more of the conspirators knowingly committed, in furtherance of some object or purpose of the conspiracy, one or more of the overt acts charged; then the success or failure of the conspiracy to accomplish the common object or purpose is immaterial.

An "overt act" is an act knowingly

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committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed and that a defendant was one of its members, then the statements thereafter knowingly made and the acts thereafter knowingly done by any person likewise found to be a member may be considered by the jury as evidence in the case as to the defendant found to be a member, even though the statements and acts may have occurred in the absence and without the knowledge of that defendant, provided such statements and acts were knowingly made and done during the continuance of the conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of court, by one person, may not be considered as evidence against any person who was not present and heard the statement made, or saw the act done.

You will note that the indictment charges that the alleged offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient, if the evidence in the case establishes beyond a reasonable doubt, that the offense was committed on a date reasonably near the date alleged.

The jury should give separate consideration, and render separate verdicts with respect to each defendant and as to each count. Each defendant is entitled to have his guilt or innocence as to each of the crimes charged determined from his own conduct and from the evidence which applies to him as if he were being tried alone.

If the jury finds that a defendant is guilty beyond a reasonable doubt of any one of the crimes charged in the indictment, a verdict of guilty

should be returned as to him or her. The guilt or innocence of any one defendant of any of the crimes charged should not influence the jury's verdicts respecting the other defendants. The jury may find any one or more of the defendants guilty or not guilty of the offenses with which they are charged.

In arriving at a verdict, each of you must make up your own mind after a consideration of all of the evidence as it is recalled. That consideration should include the opinions of your fellow jurors as well as your own. It is the essence of the jury system that you will listen to the views of one another and that you will do so with open minds and with a disposition to accept the views of the others, if the reasons advanced are persuasive, based on the evidence, and not contrary to the court's instructions on the law.

Any juror, however, who, after such consideration of all of the evidence, comes to a firm conclusion different from the others, should not change that conclusion merely for the sake of conformity or unanimity. You should, however, listen to and consider, with open minds, the views of your

fellow jurors so that, if possible, you may arrive at a unanimous verdict. In this Court, in order to render a verdict in any case, all the jurors must concur.

Upon retiring to the jury room, you will select one of your number to act as your foreman. The foreman will preside over your deliberations and be your spokesman in Court.

Forms of verdict have been prepared for your convenience.

You will take these forms with you to the jury room, together with any or all of the exhibits you desire, and after you have reached a unanimous agreement you will have your foreman fill in, date and sign the form which sets forth the verdict upon which you agree; and then return with your verdict to the courtroom.

There is a separate form as to each defendant, and as to each defendant it relates only as to the particular offense with which he is charged.

As an illustration, with respect to Dr. Bosch, the form of verdict is November blank, 1968.

"We, the jury, find the defendant  
Orlando Bosch Avila,"

and, as you will recall, he is charged with five counts. There is a blank line as to Count I, as to Count II, as to Count III, as to Count IV, and as to Count V. You will fill in what your verdict is, guilty or not guilty, in each of those lines, and then you will have your foreman sign on that line.

Then as we go down to the other defendants, a number of them are charged only on one count, and so the form says with respect to that only as to Count 1. As to other defendants that are charged in two counts, and with respect to those particular defendants, the form reads as to Count 1, and as to Count II.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note in writing by the United States Marshal, signed by your foreman. Never attempt to communicate with the Court by any means other than a signed writing, because it becomes a part of the record in the case. And bear in mind that you are not to reveal to the Court or to any person how the jury stands,



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numerically or otherwise, until you have reached a  
unanimous verdict.

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Now, ladies and gentlemen, if you will just retire for a few minutes, it will only be a few minutes.

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

THE COURT: All right, sir. The Court having charged the jury in accordance with the Court's statements as to what the charges would be at the pretrial conference, does the Government have any objections or exceptions?

MR. BIERMAN: Your Honor, we would just point out your Honor taking judicial notice of the different ports. It was our understanding that the Port of Tampa was included in the original listing and it was--

THE COURT: It may have been and I may have or may not have read it.

MR. BIERMAN: It was read on this occasion.

THE COURT: I do not think that is particular material. I think that this jury knows that Tampa is in the jurisdiction of the United States.

MR. BIERMAN: I think so, too.

THE COURT: I think it is conceivable there could be a question with respect to San Juan, but so far as Miami and Tampa are concerned, I do not think that is important enough to do anything about it.

Do you have any further objections or exceptions?

MR. BIERMAN: No, sir.

THE COURT: Does the defendant have any further objections or exceptions as to the charge?

MR. GREENSPAHN: No, sir.

THE COURT: All right, gentlemen. If you will bring the jury back in, please.

But before you do that, however, I want to excuse the two alternate jurors. They are now excused from any further consideration in this case and the Court wants to express the Court's thanks and particularly the thanks on the part of all of the persons who have participated in this trial for your attention and willingness to sit as jurors in this case. But you may now be excused from any further

consideration of this case. Only the twelve regular jurors will retire to the jury room.

(Thereupon at 11:14 a.m., the jury retired to the jury room to deliberate on their verdict.)

THE COURT: The Court will be at ease until we hear something from the jury.

(Thereupon a short recess was taken, pursuant to which at 12:00 o'clock noon, the following proceedings were had out of the presence of the jury:)

25-1 THE COURT: I understand it has been stipulated and agreed between counsel for the United States and counsel for the defendants, Melvyn Greenspahn, that Government's Exhibit No. 90, an excised copy of the transcript which was prepared under the supervision of Mr. Greenspahn and the United States Attorney's office shall be submitted to the jury pursuant to their request.

MR. GREENSPAHN: So stipulated.

MR. BIERMAN: So stipulated.

(Thereupon the hearing was recessed, pursuant to which at 2:55 o'clock p.m., the following proceedings were had out of the presence of the jury:)

THE COURT: Gentlemen, I have received two questions from the jury. The first question is this:

"On Page 5 of Tape 1, does 'Marcellino' refer to Marco Rodriguez Ramos?"

What the jury is apparently talking about, gentlemen, is this portion here on Page 5 where Morales says "And they dumped it right there, Orlando?" and Dr. Bosch is supposed to have said, "Yes, they dumped it right there....the tide went out...and Marcellino went and checked the next day to see more or less..."

They apparently want to know whether this "Marcellino" means Marco Rodriguez Ramos.

MR. GREENSPAHN: It does not, sir.

MR. BIERMAN: We will agree it does not, and the answer is no.

THE COURT: It means a third person

that is not involved in this suit?

MR. GREENSPAHN: Yes, sir.

MR. BIERMAN: That's correct.

THE COURT: The next question is, "Transcript of testimony pertaining to Jorge Gonzalez."

Now, that sounds very simple, but my recollection of the testimony is there are different places through this testimony where there were references or statements pertaining to Jorge.

MR. GREENSPAHN: What was the question?

THE COURT: "Transcript of testimony pertaining to Jorge Gonzalez."

There is not a situation where a jury could come in and say, "We would like to hear certain portions of the testimony of a witness." But I do not know how a request of this kind could be complied with without necessarily going through the entire evidence in the case wherever any reference was made to this particular gentleman.

MR. BIERMAN: There is only one particular point in the testimony which mentions with

some degree of detail in regard to the rebreather.  
But other than that--

THE COURT: His name was mentioned a  
number of times.

MR. BIERMAN: Right.

THE COURT: It was mentioned by  
different witnesses in different regards, and I  
would certainly not pick out one part that might be  
unfavorable to him and possibly leave out something  
that would be unfavorable to him. I just do not see  
how, as I say, without an editing, which is  
impossible, of the entire oral testimony I can give  
this jury or summarize to this jury what testimony  
there is relating to that individual, and I propose  
to tell them just exactly that.

I will be glad to hear any discussion  
from counsel.

MR. GREENSPAHN: The only point that I  
would make, Judge Mehrtens, is the point that I have  
made before or attempted to make and apparently  
haven't made.

THE COURT: I may not have agreed with  
you, but you made your point.

MR. GREENSPAHN: Yes, sir.

The defendant Gonzalez has had his name mentioned either as Gonzalez or as Bombillo throughout the course of this, but again I suggest that there is no place that I recall where he was mentioned in a manner that would be incriminating to him as part of any conspiracy. I don't know how to suggest to the Court that it be addressed to the jury except that I think it would be prejudicial to either one or both of the adversaries in this proceeding if any expression were made by the Court, and perhaps the Court's best answer to it would be--

THE COURT: I would not trust my memory and I could not accurately attempt to at this time, to sit here and separate what testimony there is with respect to that particular defendant and who said what and what was said.

MR. GREENSPAHN: That is their function, Judge, and I think that is the way to do it.

THE COURT: I do not see how I can do it. So I am going to tell them that.

MR. BIERMAN: We agree with that.

THE COURT: He was, of course, mentioned,



as I say. Some of it might have been purely coincidental about him being at a particular place or being with somebody, and certainly in the tapes he was mentioned as Bombillo several times. But I do not propose to try to do that, and that is what I am going to tell them--that I just cannot do it. It is up to them and it is their recollection.

MR. GREENSPAHN: You are not going to preface your advice to the jury with the statement that he is mentioned in the tapes? In other words, I think that would be prejudicial to the defendant. They will have a copy of the transcript--

THE COURT: I am not going to tell them that he is mentioned in the case several times. I am just going to tell them--to comply with their request and would have to, in effect, edit the entire testimony in an effort to obtain everything that was said pertaining to him or about him; and that I just cannot do.

MR. GREENSPAHN: I am satisfied with that, your Honor. I think that is a fair way of putting it.

THE COURT: All right, sir. Will you

bring the jury in?

(Thereupon at 3:06 p.m., the jury returned to the courtroom, pursuant to which the following proceedings were had in open Court:)

THE COURT: Gentlemen, I have received two communications from the jury signed by the foreman as follows:

"On Page 5 of Tape 1, does

Marcellino refer to Marco Rodriguez Ramos?"

Ladies and gentlemen of the jury, the answer to that question is no. The Marcellino who is mentioned by name at that portion of the tape is a person completely separate and apart from any of these defendants. And so, Marcellino does not mean or refer to any of the defendants in this case. It refers to a third person.

The second one is "Transcript of testimony pertaining to Jorge Gonzalez."

With respect to that, ladies and gentlemen, in order to comply with that, I would have to, in effect, edit all of the testimony in an effort

to find out what part of the testimony, if any, does pertain to Jorge Gonzalez, and I would have to do it all and it will be basically an impossible job for me to do. The only thing I can tell you is that I cannot give you any transcript of testimony pertaining to that particular individual and that you, as the sole and exclusive judges of the facts, it is your recollection of the testimony as a whole that counts. I just have to leave it up to you. But for me to try to do it, I could not do it. It would mean actually editing every bit of testimony that has been given in this case and trying to separate the testimony. It would just be an impossible job. So I am sorry. I cannot help you.

All right. You may again retire and resume your deliberations.

(Thereupon at 3:09 p.m., the jury retired to the jury room, pursuant to which the following proceedings were had out of the presence of the jury:)

THE COURT: Gentlemen, does the Government have any objections or exceptions to the

additional instructions given by the Court to the jury in response to their questions?

MR. BIERMAN: No, sir.

THE COURT: Do the defendants have any objections or exceptions to the additional instructions as given by the Court to the questions of the jury?

MR. GREENSPAHN: No, sir.

THE COURT: All right, sir.

Gentlemen, we will remain at ease.

(Thereupon a recess was taken, pursuant to which at 3:50 p.m., the jury returned to the courtroom, pursuant to which the following proceedings were had:)

THE COURT: Ladies and gentlemen of the jury, have you reached a verdict?

THE FOREMAN: We have.

THE COURT: Mr. Clerk, will you please receive the verdict from the foreman?

Mr. Clerk, will you please publish the verdict.

THE CLERK: Ladies and gentlemen of the

jury, rise and harken to your verdict.

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal. United States of  
America v. Orlando Bosch Avila.  
Verdict: November 15, 1968, Miami,  
Florida.

"We, the jury, find the defendant  
Orlando Bosch Avila guilty as to Count I;  
"Guilty as to Count II;  
"Guilty as to Count III;  
"Guilty as to Count IV; and  
"Guilty as to Count V, as charged  
in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal. United States of America  
v. Barbaro Balan Garcia. Verdict:  
November 15, 1968, Miami, Florida.

"We, the jury, find the defendant  
Barbaro Balan Garcia guilty as to Count I

and guilty as to Count II as charged in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal, United States of America  
v. Jose Diaz Morejon. Verdict: Miami,  
Florida, November 15, 1968.

3 "We, the jury, find the defendant  
Jose Diaz Morejon guilty as to Count I and  
guilty as to Count II as charged in the  
indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal. United States of America  
v. Aimee Miranda Cruz. Verdict: Miami,  
4 Florida, November 15, 1968.

"We, the jury, find the defendant  
Aimee Miranda Cruz guilty as to Count I  
as charged in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal, United States of America  
v. Paulino Gutierrez. Verdict: Miami,  
Florida, November 15, 1968.

"We, the jury, find the defendant  
Paulino Gutierrez guilty as to Count I  
as charged in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal, United States of America  
v. Jorge Luis Gutierrez Ulla. Verdict:  
Miami, Florida, November 15, 1968.

"We, the jury, find the defendant  
Jorge Luis Gutierrez Ulla guilty as to  
Count I as charged in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Southern District of Florida, Case No.  
68-420-Criminal. United States of America  
v. Marco Rodriguez Ramos. Verdict:  
November 15, 1968, Miami, Florida.

"We, the jury, find the defendant  
Marco Rodriguez Ramos guilty as to Count I  
as charged in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal. United States of America  
v. Jesus Dominguez Benitez. Verdict:  
Miami, Florida, November 15, 1968.

"We, the jury, find the defendant  
Jesus Dominguez Benitez guilty as to  
Count I as charged in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

"United States District Court,  
Southern District of Florida, Case No.  
68-420-Criminal. United States of America  
v. Andres Jorge Gonzalez Gonzalez.



Verdict; November 15, 1968, Miami,  
Florida.

9 "We, the jury, find the defendant  
Andres Jorge Gonzalez Gonzalez guilty as  
to Count I as charged in the indictment.

"So say we all.

"(Signed) B. H. VanBuren, Foreman."

THE COURT: Do any of the defendants  
desire a poll of the jury's verdict as read?

MR. GREENSPAHN: Yes, sir.

THE COURT: All right, Mr. Clerk.  
Will you please proceed to poll the jury as to each  
and every defendant.

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

THE COURT: Is counsel satisfied  
with the poll of the jury?

MR. GREENSPAHN: Yes, sir.

THE COURT: Ladies and gentlemen of  
the jury, before discharging you, I want to express  
the gratitude and the appreciation of the Court for  
your willingness to serve and for the diligence with

which you did serve and the care and attention that you gave to the evidence as it was received. I am truly grateful to you and want to thank you for it.

I think that for most of you who have not served on a jury before you have found it troublesome and tiresome at times, but it is really an interesting experience. Without people such as you, of course, the Court would be unable to proceed; because you, as jurors, are as much a part of the Court as the judge, the clerk, the court reporter or any of the lawyers. You are an essential part in the administration of justice, and only by having people such as you does it mean that we can maintain the principles upon which this country was founded. Without you, of course, this case would have never been tried or adjudicated, and I do want to express my thanks and appreciation to you.

We just hate to really make you work like we do, but we have to do it in order to get things done. We hate to make you sit around at times, but it is not because we are just sitting around. We are tied up with something else. Although I have kept you here long hours, I have been here myself from

between ten minutes of eight and eight o'clock in the morning until after you have been discharged. So it takes a lot of time and it requires an effort on the part of everybody in the matter.

You may now be excused with the thanks of the Court from any further service as jurors.

Thank you very, very much for your service.

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

THE COURT: Orlando Bosch Avila, upon the rendition of a verdict by the jury adjudging you guilty as to Counts I, II, III, IV and V as charged in the indictment, the Court now adjudges you guilty as to Counts I, II, III, IV and V as charged in the indictment.

(Through the Interpreter) Barbaro Balan Garcia, upon rendition of a verdict by the jury adjudging you guilty as to Counts I and II as charged in the indictment, the Court now adjudges you guilty as to Count I and Count II as charged in the indictment.

(Through the Interpreter) Jose Diaz Morejon, upon the rendition of a verdict by the jury adjudging you guilty as to Count I and Count II as charged in the indictment, the Court now adjudges you guilty as to Count I and Count II as charged in the indictment.

(Through the Interpreter) Aimee Miranda Cruz, upon the rendition of a verdict by the jury adjudging you guilty as to Count I, the Court now adjudges you guilty as to Count I as charged in the indictment.

Paulino Gutierrez, upon the rendition of a verdict by the jury of guilty as to Count I of the indictment, the Court now adjudges you guilty as to the offense charged in Count I of the indictment.

Jorge Luis Gutierrez Ulla, upon the rendition of a verdict of guilty by the jury as to Count I as charged in the indictment, the Court now adjudges you guilty of the offense charged in Count I of the indictment.

Marco Rodriguez Ramos, upon the rendition of a verdict of guilty by the jury of the offense charged in Count I of the indictment, the

Court now adjudges you guilty of the offense charged in Count I of the indictment.

Jesus Dominguez Benitez, upon the rendition of a verdict of guilty of the offense charged in Count I of the indictment, the Court now adjudges you guilty of the offense charged in Count I of the indictment.

Andres Jorge Gonzalez Gonzalez, upon the rendition of the verdict of guilty by the jury adjudging you guilty of the offense charged in Count I of the indictment, the Court now adjudges you guilty of the offense charged in Count I of the indictment.

Now, Mr. Interpreter, if you will repeat this out loud so that all of the defendants, the people who do not speak English, can hear it, it is the order of the Court that imposition of sentence be deferred and that this matter or these matters be referred to the probation officer for pre-sentence investigation.

I will permit the defendants to remain at liberty on bond as now set. However, I want counsel--and you had better interpret this to them--about being on bond. You have an obligation to appear

at any time ordered by the Court. And should you fail to do so you will have committed a separate felony for which you could be sent to the penitentiary for five years. And that is separate and apart completely from anything that has to do with this case.

Do you all understand?

(The defendants indicate  
in the affirmative.)

THE COURT: I have ordered that all the bonds shall continue in the same amount. Those that are out on bond shall continue to be at liberty on bond in the amount and on the conditions as heretofore set. Those who are not out on bond, the same bond will be effective if and when it is made.

All right, gentlemen. Is there anything else?

MR. BIERMAN: We would ask permission of the Court to substitute photostats for certain originals in evidence. I think Mr. Greenspahn wanted to do that with certain exhibits, also.

THE COURT: Either counsel may substitute for original documents photostatic copies of the documents as long as they are accurate photostatic

legie copies for use for appellate purposes.

Court will be in recess until Monday  
mornng.

(Thereupon at 4:30 p.m., the  
trial of the above-entitled  
matter was concluded.)

. . . . .

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

CERTIFICATE

STATE OF FLORIDA )  
                              ) SS.  
COUNTY OF DADE )

I, LEONARD LAIKEN, Official Court Reporter,  
do hereby certify that the foregoing transcript,  
Page 1 through 1472-A, contains a true and correct  
transcription of my stenotype notes as taken by me  
of the proceedings before the Honorable W. O.  
MEHRENS, United States District Judge, at the times  
and place aforesaid.

Dated at Miami, Florida, this 24th day of  
March, 1969.

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Official Court Reporter

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