

MAR 27 REC'D

#2439

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

No. 68-420-Cr-WM

2/3

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 (continued)

Pages 501-1000 (Volume II of III)

*Michael Thompson*

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

Dowling - direct

Q How long did you stay there?

A Approximately forty to forty-five minutes.

Q Did you observe Mr. Morales leaving?

A Yes, I did.

Q Where did you proceed to from there, sir?

A Mr. Morales proceeded to the vicinity of Northwest 27th Avenue and Flagler Street. I followed him down in another car, and at that point or near that point Agent Grogan and I removed the tape recorder from the person of Mr. Morales.

Q Did you have occasion to see Mr. Morales again, sir?

A Yes, I did.

Q Where and when was that?

A I'm trying to remember the date.

Q Did you make notes of that?

A Yes, I did.

Q Do you have those notes?

A (No response)

Q Would you like to see a copy?

Dowling - direct

A I would like to see a copy. I think it was September 30, but I am not sure.

THE COURT: Do not think. Let's take a look at your notes and then see if that refreshes your recollection.

BY MR. BIERMAN:

Q Are these your handwritten notes, sir?

A Yes, they are.

Q Would you review them and see if that refreshes your memory?

A All right. On September 30 I was in the vicinity of the Jose Marti Building which is located on Southwest 8th Street and 3rd Avenue; and while in that vicinity I saw Ricardo Morales come to the building, go inside. And while he was standing in the rear lobby I saw him having a conversation with two individuals who are known to me as Jose Diaz Morejon and Jorge Gonzalez Gonzalez.

Q Do you see those two individuals in the courtroom today, sir?

A Yes, I do.

Q Will you point them out, please?

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Dowling - direct

A Mr. Gonzalez is the gentleman in the gray suit and white shirt, sitting toward the back there. And Jose Diaz Morejon is sitting next to him in the checkered jacket.

MR. BIERMAN: Let the record reflect that the witness has identified the defendants Andres Jorge Gonzalez Gonzalez and Jose Diaz Morejon, also known as Tony Prieto.

BY MR. BIERMAN:

Q At approximately what time was this?

A About 2:40 in the afternoon.

Q Were you on duty, sir, on August 14, 1968?

A Yes, I was.

Q Where were you then, sir?

A At about nine-thirty in the evening I was in a parked car on Southwest 2nd Street between 12th and 13th Avenues.

Q What, if anything, did you observe?

A I observed a blue 1961 Chevrolet driving out of the parking lot of the 1150 Building, which is the building located at 1150 Southwest 1st

Dowling - direct

Street. The car turned toward the west and approached my position. As it approached I was able to see that it had a Virginia license plate on the front, and as it went by I saw the Florida license plate on the back. As a result of seeing the license plate, I know that it was the car belonging to Orlando Bosch.

Q Is that the car which you had previously seen him driving in?

A Yes, I had seen him driving it previously.

MR. BIERMAN: I have nothing further. You may inquire.

THE COURT: All right, sir. Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q You were in the company of Agent Grogan, were you not, sir, on September 30?

A On the 30th?

Q Yes, sir.

A I was in an automobile by myself on the 30th.

Dowling - direct

Q When was it that you were with Grogan?

A On the 26th.

Q At that time you went to the Jackson High School during the course of that evening?

A No, that's not right. Miami High School.

Q That was the Miami High School?

A Right.

Q Did you participate in a search of Morales' person and a search of his automobile during the course of that evening?

A Yes, I did.

Q Did you assist Agent Grogan or did you do it yourself?

A I did it myself along with another agent, not Grogan.

Q Did Grogan that evening, to your recollection, conduct any search of Morales or of his automobile?

A Of Morales, yes.

Q Not the automobile?

A Not when I was at the automobile.

Dowling - cross

Agent Grogan was not there.

Q What was your purpose in searching the automobile?

A To determine if there was any other tape recorder in it or any tapes of the kind that we contemplated using.

Q And for what reason did you have suspicions that there might be another tape recorder?

MR. BIERMAN: I am going to object to the form of that question.

MR. GREENSPAHN: Let me rephrase the question.

THE COURT: All right, sir. Rephrase the question.

BY MR. GREENSPAHN:

Q Agent Dowling, did you have any reason to believe that there would be a tape recorder or other recording device in that automobile?

A No, we did not.

Q Is it your standard practice to search the automobile of an individual who is working as an undercover agent with you?

Dowling - cross

A It depends on the circumstances. In this case we wanted to be able to be in a position at this time to say that the tape we put on him was the only one he had in his possession or in his car.

Q Was he aware of the search?

A Yes, he was.

Q Now, you have made some identification of people that you know. You know Orlando Bosch and apparently you know Jorge Gonzalez Gonzalez and Jose Diaz Morejon. You say they were known to you. How did you know these people? How were they known to you?

A Mr. Gonzalez was pointed out to me by another agent who had previously interviewed him and identified him during the interview.

Q How about Mr. Morejon?

A The same situation.

Q How long have you been an FBI agent?

A Over sixteen years.

Q You are well trained in perception and in remembering things as they occur?

A Yes, sir.

Q Gonzalez is in the gray suit and Morejon

Dowling - cross  
is in the checkered coat, as you indicated?

MR. GREENSPAHN: Do you want to stand  
up?

THE WITNESS: Wait just a minute,  
please. Will the gentleman in the yellow jacket look  
this way, please?

THE COURT: Look this way.

THE WITNESS: I made a mistake. This  
is Jose Diaz Morejon. They look quite a bit alike.

MR. GREENSPAHN: I will dispute that.  
But the fact remains that this is Morejon and not  
the other gentleman that you pointed out?

THE WITNESS: That's right.

MR. GREENSPAHN: I have nothing further.

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

(Witness excused)

THEREUPON--

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

Marszalek - direct

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

THE WITNESS: My name is Joseph R. Marszalek. I am a Special Agent of the Federal Bureau of Investigation. I live at 1750 Northeast 115th Street, Miami.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q How long have you been so employed, Agent Marszalek?

A A little over twenty-one years.

Q Were you on duty, sir, on September 30, 1968?

A I was.

Q Where were you?

A I was on surveillance during the evening of September 30th in Miami.

Q At what time, sir, were you on surveillance?

A I was on duty from four to midnight.

Q What, if anything, did you observe?

A Just in what particular do you mean?

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Marszalek - direct

MR. GREENSPAHN: The question is explicit enough--"What did you observe?", meaning what did you observe without counsel telling the answer to Mr. Marszalek.

MR. BIERMAN: Well, there was eight hours.

BY MR. BIERMAN:

Q Did you observe any activity or movement, sir?

A Yes, sir, I did. I was instructed to go to the apartment of Benjamin Grogan to meet Ricardo Morales there.

Q At what time did you go there?

A May I refer to my notes?

THE COURT: Yes, sir, if you made notes of the thing at or about the time.

A About 6:35 p.m. I was at the apartment.

BY MR. BIERMAN:

Q After Agent Grogan placed the tape recorder on Mr. Morales, where did you go, sir?

A We followed Morales to the apartment of Aimee Miranda in Miami.

Marszalek - direct

Q And from there?

A From Aimee Miranda's apartment we went then to the parking lot of the Miami Senior High School.

Q Where is that located?

A West Flagler and 24th Avenue.

Q What occurred there?

A Morales turned over to me two tools, a pair of pliers and a small crescent wrench.

Q Who else was present? What other agents?

A Agent Ben Grogan was there with me.

Q Did you go anywhere from there, sir?

A Yes. We then followed Morales to the Jose Marti Building.

Q What, if anything, did you observe there?

A Well--

Q And approximately what time was it then?

A I have recorded here that Morales entered the Marti Building at 9:26 p.m. that same

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Marszalek - direct

evening. And I have a note here that I observed the brown Ford driven by Gonzalez Gonzalez. I observed Balan's black Chevrolet parked there, and I observed Bosch's blue Chevrolet parked there.

Q Was that at or about the Jose Marti Building?

A Immediately adjacent to the Jose Marti Building.

MR. BIERMAN: I have no further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Marszalek, can I see your notes that you are relying on here?

A Yes, sir.

Q These are written by you, are they, and were they made simultaneously with the times indicated on them?

A Absolutely. I recorded those at the time those things occurred.

Q And your testimony today is based upon

Marszalek - cross

your refreshed memory after looking at these?

A Yes, sir.

Q You testified you went to the Miami Senior High School at West Flagler and 24th, is that right?

A Yes, sir.

Q Now, your notes, which were made independently and at the time, allegedly, that all of this took place indicates you went to the parking lot of Miami Jackson High.

A That's right. That's the way it's recorded.

Q All right, sir. Which is it: Miami Jackson High or Miami Senior High?

A I have since been informed it is Miami Senior High School.

Q I did not hear you. What did you say?

A I have since been informed that it is the Miami Senior High School.

Q When were you informed of that? Were you informed of that while you were sitting in the witness room?

A No, sir.

Marszalek - cross

Q Well, does the accuracy portrayed by your notations of September 30 reflect themselves in your other testimony?

MR. BIERMAN: I am going to object to the form of the question.

THE COURT: I will sustain the objection.

MR. GREENSPAHN: I have only one last question and that is this:

BY MR. GREENSPAHN:

Q Did you search the automobile or person of Mr. Morales?

A I did.

Q Who else was present when you searched him?

A Ben Grogan--Special Agent Ben Grogan.

Q Anybody else?

A No, sir.

Q What was your purpose in searching the automobile or person of Morales?

A To make sure that the tools that he turned over to me came from the apartment. He did not

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Marszalek - cross

have them on his person or hidden in his car before he got to the apartment.

Q And that was the only reason for the search?

A Yes, sir.

MR. GREENSPAHN: Thank you, sir.

MR. BIERMAN: I have nothing further.

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

(Witness excused)

THE COURT: Do you have any more short witnesses?

MR. BIERMAN: No more short witnesses.

THE COURT: All right, fine.

Gentlemen, I want to talk with you for a few minutes before I announce what the Court is going to do.

Ladies and gentlemen, if you will excuse us for about five minutes. The same instructions, of course, are applicable and I will talk with counsel and we will decide about tomorrow.

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

THE COURT: What procedure does the  
Government propose with respect to these tape  
recordings?

MR. BIERMAN: We propose to play the  
tape recordings and the Court will follow along with  
our Spanish transcript and then the English translation--  
first the Spanish transcript and then we will present  
testimony outside the presence of the jury as to how  
this was arrived at, and giving counsel for the  
defendants an opportunity to find any discrepancies  
between the transcript and the tape. And then we  
would proceed, if the Court rules that they are  
accurate, to play them for the jury. And then subse-  
quent to that put Mrs. Saliba on with the translations.

MR. GREENSPAHN: Judge, if I may proce-  
durally make a suggestion to the Court, the Court has  
announced previously that tomorrow, Friday, is your  
sentencing and arraignment day.

THE COURT: That is the reason I excused

the jury, because I want to discuss this thing before I told them I wanted them to come back.

MR. GREENSPAHN: I have no objection, of course, to working into the night tonight if need be.

THE COURT: Well, I would rather not do it if I do not have to.

I anticipate, gentlemen, that with my present calendar I can take care of it in about half an hour, which would mean that certainly by nine-thirty or fifteen minutes of ten I can start back on this case.

One of the reasons I am asking you is that, in an effort to avoid working or making you gentlemen work tonight and making myself work tonight, if we might not handle that in the morning, have the jury come back, say, at about twelve-thirty and proceed from there.

MR. BIERMAN: And to have our hearing as soon as the Court finishes the arraignment and sentence calendar?

THE COURT: Yes, sir. I think that might be a more satisfactory situation.

Now, I am in this rather unusual situation in that I can speak and understand a little Spanish. I am not competent, certainly, to interpret nor to follow it accurately in Spanish. So that if it is played to me, I would have to have an interpreter interpret it for me in order for me to reach any conclusion as to whether or not the translation is a correct translation.

MR. BIERMAN: We would not be offering the translations as correct at that time; only the transcription in the Spanish language. The same problem arises from listening to the Spanish.

THE COURT: I am just wondering if perhaps we might not do this: Mr. Greenspahn has his interpreter and the Government has its interpreter. It might be feasible to play these records or these tapes in the presence of these two interpreters, to see if they agree that the Spanish translation of it is correct. If they have a problem on a particular part of it, then I will have to call in my own interpreter and make my own mind up. It may well be that both of these people hearing the thing tomorrow morning--and I don't mind being here--I am

just talking about--

MR. GREENSPAHN: Here is the problem that I face. At this point I cannot challenge the interpretation that has been done by the FBI in several instances because after hearing part of the tape the other day I concluded the young man--the young man I had as an interpreter who was with me concluded that the recording contained a good part of it which was just plain inaudible and a lot of the things that are reflected on the transcript are not audible and are not subject, we feel, to interpretation. That is what I am afraid the Court is going to have to determine for itself.

THE COURT: I would not mind hearing it, too, but I am talking now about all of us hearing it in the presence of the two interpreters, and then when we get to the disputed parts we can raise some question or I can pass on it rather than me trying to hear it by myself in the first instance and determine whether it is correct, because I am just not that familiar enough with Spanish to be able to do it.

Of course, without knowing anything about Spanish I can tell whether it is inaudible.

MR. BIERMAN: On the transcription, your Honor, I would point out this took about thirty hours on the transcription originally, because, as Mr. Greenspahn points out, it is not readily audible.

THE COURT: What I would like for you gentlemen to do is-- Have you received a copy of this transcription?

MR. GREENSPAHN: Yes, sir, I have.

THE COURT: Can you gentlemen agree on what portions, if any, are immaterial and irrelevant and should be omitted?

MR. BIERMAN: We could probably agree on some of them.

THE COURT: Well, that might save a lot of time, because I understand that counsel is going to raise some objection. And if you can agree on some of it, it will leave that much less for me to have to rule on. So suppose we do this: I will recess until nine-thirty tomorrow morning. Just to play safe, I'll make it nine-forty-five tomorrow morning, at which time we will then proceed and have both interpreters present in Court listening to the thing. Of course, I will be listening to it, too. And we will

pass on it as we can.

In the meantime, if you gentlemen can agree on what you will both agree should be eliminated, then the other matters can be brought up before me and I will rule on them, and I think possibly certainly by twelve-thirty we should be in a position to go ahead and proceed.

MR. GREENSPAHN: I think the Court's suggestion is a good one.

What about Saturday and Sunday?

THE COURT: No, sir. I am not going to try the case Saturday or Sunday.

As you know, I left it up to the jury as to whether they wanted to sit Monday or not. I did that, first of all, because I had a feeling of responsibility for having missed a day because of my own illness. However, I am reluctant to make a jury sit if they do not want to. And the Marshal has advised me that the majority of the jury has stated that they would prefer not to sit Monday. So I do not think it would be best for the parties to make them do it if they do not want to. So I propose, when we recess Friday, to recess until Tuesday morning.

MR. GREENSPAHN: Will the Court work later tomorrow night or will it be about this time?

THE COURT: Probably until about six o'clock. It depends a little bit on the situation. If we have something we can finish in a reasonable time I would rather finish it. If not, we will quit.

MR. BIERMAN: Okay. That sounds fine, your Honor.

THE COURT: We can figure basically somewhere between five-thirty and six o'clock.

MR. GREENSPAHN: Fine.

THE COURT: I will excuse the jury until 9:45 tomorrow morning and then we will pick up as we suggested.

MR. BIERMAN: I thought your Honor was going to let the jury come back later and we would go through the tapes.

THE COURT: You are right. I beg your pardon. I will excuse them until twelve-thirty.

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

THE COURT: Ladies and gentlemen of the jury, I think perhaps I told you that, having the criminal calendar, I have some other matters that I have to attend to tomorrow that take precedence over this case. There are some matters that I have to hear. And while I dislike giving the case to you piecemeal more or less as it is, I am not going to be able to start this case until later in the morning. So I am going to recess this case until twelve-thirty tomorrow, at which time we will probably then continue until about six o'clock.

I have been advised by the Marshal that the majority of the jury had decided that they do not want to work Monday, is that correct?

(The jury indicates  
in the affirmative.)

THE COURT: So when we recess Friday, then we will recess until Tuesday morning. So you can make your plans accordingly.

The instructions that I have given you, of course, are still applicable and will be applicable during each and every recess. With that I will excuse you until twelve-thirty tomorrow morning. If you will

be here at that time we will do our best to get started on this case.

This case will be recessed until 9:45 tomorrow morning.

(Thereupon at 6:00 o'clock p.m., the hearing was recessed until 9:45 o'clock a.m., with the jury to return at 12:30 o'clock p.m. on Friday, November 8, 1968.)

. . . . .

MIAMI, FLORIDA

Friday, November 8, 1968

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

THE COURT: All right, gentlemen. We will call this matter this morning for the Government to make a presentation with respect to some tape recordings. The Government may proceed.

MR. BIERMAN: Your Honor, the Court suggested last night that we go through these and do some pruning, which we have done. Mr. Greenspahn did his and we did ours, and I do not know whether the twain shall meet or not.

MR. GREENSPAHN: Your Honor, we are in complete agreement with the Government's deletions as far as they go, but we feel that the entirety of the thing should be struck. Therefore, many of these matters should be left up to the consideration of the Court.

THE COURT: All right, sir.

MR. BIERMAN: Then I will proceed to tell the Court--

THE COURT: First of all, let me ask this question: Gentlemen, is there any question about the translations being an accurate reflection as to what actually appears on the tape?

MR. GREENSPAHN: There is this question, Judge: Mr. Bierman announced to the Court that the Government spent some thirty or forty hours, using special equipment, to hear this. In the little bit of it that we have pre-heard on this, most of it that we have heard has been completely inaudible. Therefore, any translation that is inaudible is contested.

THE COURT: Well, I have read this transcript of the thing; I studied it over last night and, of course, it contains references where certain portions were unintelligible or inaudible to the translators. Are there other portions which purport to be translations that you say are inaudible?

MR. GREENSPAHN: Yes, sir. Without the use of the special equipment--and I don't know anything about the special equipment--and thirty or forty hours of time, I doubt if much could be made of a good part

of this.

This is the point. Of course, I have not had the access to the special equipment. So I don't know--

MR. BIERMAN: We have the equipment here.

THE COURT: You will have the benefit of any equipment that the Government used. Let's proceed.

MR. BIERMAN: Shall we announce what we agreed to, first, to save time?

MR. GREENSPAHN: Before we do that, just for the record I would move to exclude any of it on the basis of the case of Collins v. Wainwright, which is a Fifth Circuit case. I have a copy of the opinion from the court if the Court requires it. And I feel that it pertains to a situation very much akin to the situation at hand. And, of course, this is a case that in the end result holds there has been a violation of the Fourth Amendment to the Constitution by the insertion of microphones and other listening devices and recording devices into the privacy of the premises operated by the defendants. I am sure the

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Court is aware of the case.

THE COURT: All right, sir. The Court will at the present time deny your motion upon the basis of *Fountain v. United States*, 384 Fed. 2d 624; and *Hoffa v. United States*, 385 U.S. 293.

MR. BIERMAN: Starting at Tape 1, Page 3, we would agree to omit Page 4 up until the last paragraph. And we are throwing out Page 3. Page 3 of Tape 1 we agree to omit.

On Page 4 we agree to omit all except the last paragraph which begins "B: The bad thing about Orozquito..."

THE COURT: Okay.

MR. GREENSPAHN: Do you want us to argue these as we go along, or do you want to wait until we are done and come back? I think it would be easier if we did them as we go along.

THE COURT: Then let's get them as we go along.

MR. GREENSPAHN: As far as Page 4 is concerned, that counsel wants to leave in, that is completely irrelevant and immaterial and has no reference to anything in this case.

MR. BIERMAN: Your Honor, it sets up the next page which discusses the recoilless rifle. It is just the introduction to it. If you see at the beginning of the next page, it says "He is the one who talked to you about the recoilless rifle that you have, isn't that so?"

THE COURT: Yes, sir.

MR. BIERMAN: Then it goes on about lending it to him and they dumped it right there, and we have had testimony about where it was dumped, and Orlando told Morales where it was dumped.

MR. GREENSPAHN: Here is the problem. Again, many of these similar situations will arise throughout the course of this. Most of the incriminating statements that are made are statements that are made by Morales who was trying to pull information out of these people.

With particular reference to this area of the transcript, there is nothing that ties in this conversation with any of the evidence in this case. Again, it is out of context, and I think it will be unfair to use this just because the word "recoilless" is mentioned, because there is more than one "recoilless"

mentioned in the course of this transcript, as the Court knows. I just do not see how any of it is material or relevant. They have got to have more than just an inference, Judge, that this might be the same thing that they are talking about. They have got to lay a proper foundation.

THE COURT: How are we going to handle this thing? I am asking counsel. With respect to the actual tapes?

MR. BIERMAN: I would suggest this, your Honor: that since the tapes are totally in Spanish, that we play the entire tapes for the jury.

THE COURT: You are going to have to.

MR. BIERMAN: And let them listen to it and then just translate those portions.

THE COURT: Portions of it, but then I am a little bit disturbed about how you are going to handle a translation that would be read or made to the jury.

MR. BIERMAN: I would suggest that what we would do would be play the tape and then ask the interpreter to translate those parts which the

Court has ruled relevant, and then--the jury does not understand Spanish. So it is only for their sake to listen to them so as to get a feeling for what the tapes sound like, and then we just translate what is agreed on is relevant.

MR. GREENSPAHN: Here again is the problem, without belaboring the point.

As you will note, at the top of Page 3, where the translator's notes indicates that the first half of the tape is drowned out because of a television playing in the background, it is entirely possible--

I'm not saying this is the case--but it is possible that during the course of this portion that is drowned out and not incorporated in the transcript of the testimony, the conversation between the parties included a statement such as, "Did you hear about this event?"

"Yes, I heard about it," and then the references that are later made to it are what the man heard, which is certainly a long way from having any first-hand direct knowledge of it. This is why I feel that it either is in its entirety good or in its entirety bad, because it leaves too much to the

imagination as to what foundation, if any, was laid for any of the conversations that ensued after that. We don't know what was said in the first half of the tape.

MR. BIERMAN: Your Honor, on any occasion where you do not tape your entire conversations with a person for the entire five months that Morales knew Bosch--he was here and available for cross examination as to whether that did, in fact, exist.

MR. GREENSPAHN: Obviously I am not going to cross examine him about the tapes until the tapes are either admitted or refused in evidence. The point is, it lays itself open to so much imagination on the part of the hearer or the viewer.

If there is a direct statement saying, "Yes, I did," that is a different story. That is an admission against interest. But if you will note, if I read these things correctly, that is never the case. There is conversation about it, conversation about something that was in the newspapers, something that was broadcast over the radio, something that the Cuban people and American people in this community had an indirect knowledge of by reason of communications media.

That is the thing that disturbs me about these transcripts. There is never any relevant or real direct statement as such. It is a relation of what was at that time public knowledge. Do I make my point?

THE COURT: Yes, sir, I understand what you are saying.

MR. BIERMAN: Your Honor, the public does not know what activity the FBI undertook. The public does not know that Marcelino went out to look at the gun. The public does not know that they followed the wrong car away from the bridge that evening. And this is all corroborative of what Mr. Morales said. And that is the purpose of the Lopez rule that you cannot use a tape until the person is present there who recorded it. And that witness has been here, he is subject to recall for cross examination about these tapes.

MR. GREENSPAHN: They talk about the FBI following them for months and months and months before this ever happened. It is no secret that they were aware of the fact that they were under surveillance, not necessarily about these things but perhaps about

other things.

The FBI has instituted four or five previous prosecutions against some of these people. That again lends itself to the imagination of the hearer.

MR. BIERMAN: Shall we continue?

THE COURT: All right, sir. We will go ahead. I am not ruling on this thing. We are just seeing what you say.

So far as you are concerned, you want to start with the last statement on Page 4?

MR. BIERMAN: Continue to 5 and 6 and 7 and 8; and then on Page 9 we would omit that as irrelevant matter. And omit Page 10 up to the last question, "Orlando, what do you think of the press?"

THE COURT: What do you say?

MR. GREENSPAHN: No argument as we go along, your Honor.

THE COURT: No.

MR. BIERMAN: Then at Page 10 we would omit the top portion which relate to Dr. Bosch's wife. That is on Page 11. And then include the last statement by Dr. Bosch to the end of Page 12.

THE COURT: You are going to have to include the statements by Mr. Morales preceding his statement, because that is what brings his statement out.

MR. GREENSPAHN: That's right.

THE COURT: Now you go on to 12.

MR. BIERMAN: And we include 12.

Page 13 would be out. Page 14 is out. Page 15, the first paragraph, is out. And then from "Did you see Rivero saying that the matter of the cannon blast..."? We go until the next to the last Bosch statement on Page 16.

THE COURT: Up to and including or omitting the last?

MR. BIERMAN: Until and including the last.

THE COURT: On Page 16?

MR. BIERMAN: On 16.

THE COURT: All right.

MR. BIERMAN: Then from the "M" at the bottom of Page 16, 17, 18, 19, 20 and 21 would be out.

THE COURT: 17, 18, 19, 20 and 21 are out?

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MR. BIERMAN: Yes, sir. Then on Page 22 beginning with "Well, I will give you a call in two or three days" after "for being a blackmailer."

THE COURT: All right. Starting there now?

MR. BIERMAN: Right.

THE COURT: Okay.

MR. BIERMAN: Then we would just include that "Well, I'll give you a call" and then the response on that. That would be all we would want from that page. The remainder of the page would be out.

THE COURT: How about Page 23?

MR. BIERMAN: On Page 23, the first two paragraphs would be out and the last paragraph would be in.

THE COURT: All right. That concludes the first tape. Is there any part of that which the Government has stated it desires to omit that the defense does not want omitted?

MR. GREENSPAHN: Yes. That is a fair question, but depending upon your rulings, there are references throughout the first tape--for instance, to

Dr. Bosch's denunciation of the local Cuban terroristic activities against these bombings that occurred in Miami. I would want that in, of course.

THE COURT: Where is that?

MR. GREENSPAHN: That is near the end, Judge.

THE COURT: I recall in these tapes somewhere where he expresses that.

MR. GREENSPAHN: It is repeated a couple of times. The first time is on Page 23 at the top of the page, which is the first real reference to it.

Something else that disturbs me--and I really don't understand it--and I wonder if the Court has any such similar impression. On Page 22--

THE COURT: Are you using the type-written numbers or--

MR. GREENSPAHN: The numbers down at the bottom of the page.

THE COURT: Page 22? All right, sir.

MR. GREENSPAHN: If I read this correctly, it begins to lose a lot of its connection and meaning to this defendant. Because you will note

the fourth paragraph from the bottom of the page the words "Very well." The next is by Morales which reads, "Well, so you have resumed your friendship with Dr. Bosch. Now that your trial is coming up, you chose a bad time, and all that sort of thing."

THE COURT: Okay. I've got it.

MR. GREENSPAHN: Of course, Bosch didn't have a trial pending. So the impression I have here is that maybe this wasn't Dr. Bosch talking, because they are talking about Dr. Bosch.

MR. BIERMAN: To explain what this is, they are talking about a blackmailer and Morales is saying how he will be blackmailed for resuming his friendship with Dr. Bosch.

MR. GREENSPAHN: I don't read it that way. I don't understand it that way.

MR. BIERMAN: The trial they are talking about is Morales' trial.

MR. GREENSPAHN: But you see this sentence: "Now that your trial is coming up, you chose a bad time, and all that sort of thing." That is Morales talking.

THE COURT: It reads the way Mr. Greenspahn

says, actually, that Morales is telling Dr. Bosch "Now that your trial is coming up," and the inference would be certainly that he has been charged with something and has a trial coming up. I do not know whether it is an error in translation or what.

MR. BIERMAN: Well, what he is referring to is what people will say to him about being friendly with Bosch. It is Morales speaking, but--

MR. GREENSPAHN: That is not the way it reads. That is where the confusion is.

THE COURT: Well, giving it that interpretation, it could be susceptible of that interpretation. He is apparently speaking of himself in the third person. "Well, so you have resumed your friendship with Dr. Bosch." Certainly he is talking about himself.

MR. GREENSPAHN: Then the very next line where Dr. Bosch is supposedly talking, "Yes, yes, to blackmail you. Look, I have been a friend of Orlando for twenty years."

MR. BIERMAN: They are going to blackmail him and he will answer that he was a friend of

Bosch for twenty years. We have said we are willing to omit this. I don't know what it adds.

MR. GREENSPAHN: It doesn't add anything. There is just a question in my mind as to the validity of the whole transaction, frankly.

Then also, Judge, with reference to this first tape, the Court I am sure has noticed on Page 7, the fourth paragraph from the bottom where Bosch allegedly says, "Now they felt the stick. The Spanish one was after this?"

And Morales says "No, before, before."

It would indicate where a man was accusing him of having been the incipient force behind the bombing of the Spanish ship, in this instance he didn't know anything about it, because Morales was the one who told him when it was. This again, I just wonder, if we are excluding things, how much of this is favorable to Dr. Bosch.

MR. BIERMAN: This is it. We have offered this to be in, and if you feel it is favorable, we assure you can argue it.

MR. GREENSPAHN: That one sentence is favorable. I don't think the rest of it is favorable,

because I think it is susceptible to many inferences which are not established and for which no foundation is laid.

What I would like to do is, with the Court's permission, I would like to explain to the Court what I would like included if and when the Court has ruled on the admissibility of the tapes as a whole.

THE COURT: All right, sir.

MR. GREENSPAHN: Because that is obviously going to be influential if any portion of it is going in that it then becomes relevant to me what other portion should go in.

THE COURT: You want the question of the admissibility of the tapes as such ruled upon prior to my ruling?

MR. GREENSPAHN: Yes. In that way I will know where I am going with it.

THE COURT: All right, sir. I have no objection to doing that.

Does the Government have any further matters to offer before they offer the tapes into evidence?

MR. BIERMAN: In the trial or at this time?

THE COURT: Well, before me for the purpose of ruling preliminarily upon their admissibility. That is what counsel says he wants done, and I will do it that way.

MR. BIERMAN: The only thing we have further to offer are the people who listened to them and what method they used.

THE COURT: Then he wants you to lay your foundation, offer the tapes into evidence and then obtaining a ruling before he wants to go into the question of what, if any, part of it is to be omitted, if I should rule it is admissible. That's correct, isn't it?

MR. GREENSPAHN: I think that correctly states it.

THE COURT: All right, sir. We will proceed.

MR. BIERMAN: Does this include listening to the tape at this time? I am a little bit confused.

THE COURT: I am just ruling now on

the admissibility of the tapes as they are. If I rule that the tapes are admissible, before we proceed to present any evidence of it to the jury, I will listen to them and we will decide what parts might or might not be proper. We are just talking now about the tapes themselves in general, not as to whether it is a correct translation of them or whether the translator could or could not hear parts of it or parts of it were inaudible or anything else. We are just taking the tapes as they are in general.

MR. GREENSPAHN: Will the Court later rule on the motion to strike portions or would it be appropriate at that time?

THE COURT: Yes, sir.

MR. GREENSPAHN: Your Honor, before we hear the tapes, again for the record I would respectfully ask the Court that the tapes be heard on the equipment upon which they were made without special modification or alteration or other electronic devices.

THE COURT: No, sir, I am going to deny that motion. I am going to rule that the tapes do not have to be played back on the machine itself but can be played on any playback. The testimony has been

before me that while this machine is capable of playing back, it is not made specifically for that purpose. It is made specifically for the purpose of taking and recording, and if there is better or more capable equipment which will give a clearer playback, I will permit the Government to use that equipment. So I will, therefore, deny your motion that the tapes have to be played back on the same instrument on which they were recorded.

MR. GREENSPAHN: May I ask, then, for one final ruling from the Court? I don't know this equipment, and I presume that it is, in a sense, screening equipment. Will we hear them as the tapes are or with these changes on them?

MR. BIERMAN: The presumption is incorrect. This is not screening equipment. It is just regular listening equipment.

THE COURT: I understand the difference, actually, between this equipment is that it is basically standard regular equipment. The difficulty came in connection with tape No. 4 where apparently something went wrong and it was recorded too fast. Then a copy was made and this equipment that had to be

used in order to slow it down to what was a normal tone or conversational speech level.

Is that substantially correct?

MR. GROGAN: That's correct.

MR. GREENSPAHN: If that is correct, then I don't want any part of the background noise removed from those tapes.

THE COURT: No, sir. The testimony before is that these are exact copies. There has been no screening. I specifically asked about that, if you remember, and there was no screening. It is an exact copy allegedly of what took place.

MR. GREENSPAHN: Are we going to hear the copies or the originals?

THE COURT: The originals.

MR. GREENSPAHN: Fine.

THE COURT: If we have the originals there is no point in listening to the copies unless on tape No. 4 it is necessary to use the copies.

MR. GREENSPAHN: This is an unusual request of the Court, but I am sure the Government will have no objection. The courtroom is filled with people who speak the Spanish language and there are

personal matters spoken of in these tapes. Would the Court ask the people to remove themselves or permit me to have a minute to do so so we can do that?

MR. BIERMAN: We have no objection if he doesn't want it heard.

THE COURT: Do you want it done in the privacy of the Court?

MR. GREENSPAHN: I would like to, sir, for a reason that must be obvious to the Court.

THE COURT: All right, sir.

MR. GREENSPAHN: Will you give me about a two-minute recess and I will ask these people to wait out in the hall?

THE COURT: All right, sir. We will take a recess for five minutes and you explain to them.

I am perfectly willing to direct that the spectators leave the courtroom for the purpose of this particular hearing, but I would prefer, if you can, that you do it by explaining to them without me having to order it.

MR. GREENSPAHN: Yes, sir. I think that is the best way.

THE COURT: All right. We will take a few minutes' recess and see what you can do.

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

THE COURT: Are you ready to proceed?

MR. BIERMAN: Yes, sir.

Agent Grogan, you are still under oath and you may be testifying. What is this that is on the recording, sir?

MR. GROGAN: This is the original of tape No. 1.

THE COURT: All right.

MR. BIERMAN: Have you listened to this before?

MR. GROGAN: Yes, I have.

MR. BIERMAN: Will you play it at this time, please?

(Thereupon the tape referred to was played before the Court.)

MR. BIERMAN: Is that your voice?

MR. GROGAN: Yes.

MR. BIERMAN: When did you begin the

transcription? At what point?

MR. GROGAN: We began it at zero on the machine.

MR. BIERMAN: Have we been into the transcribed period yet?

MRS. SALIBA: We have just come to the first speech that I have transcribed.

THE COURT: You just started the first part of it.

MR. BIERMAN: Proceed.

THE COURT: I wish you would identify, if you can, the voices as they go along. I have the Government's transcription of that, and I'll try to follow it on the transcription, but for the purpose of the record, I think it would be better. You may proceed.

(Thereupon the tape was played additionally.)

MR. BIERMAN: Where are we?

MRS. SALIBA: We are on Page 4, about to begin Mr. Morales' speech about halfway down the page.

MR. BIERMAN: Would you, as each new

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voice comes on, just identify the voice?

MRS. SALIBA: It is rather hard  
because--

THE COURT: I do not think that is  
necessary.

MRS. SALIBA: I would lose my place  
if I turned around to tell you, sir.

THE COURT: That is all right. I think  
I can follow the thing. Go ahead.

MR. BIERMAN: Proceed.

(Thereupon the tape was played  
additionally.)

MR. BIERMAN: We have earphones  
available on the difficult areas.

THE COURT: Well, that is all right.  
Go ahead and proceed.

MR. GREENSPAHN: Mark on this  
transcript the point in question.

THE COURT: You cannot make out anything  
about this paragraph about Marcelino?

MR. DIAZ (Interpreter for Mr.  
Greenspahn): No, sir.

THE COURT: You cannot make anything out

of that?

MR. DIAZ: No, sir. There is quite a bit of noise.

THE COURT: Is there anything wrong with your ears?

MR. DIAZ: No, sir.

THE COURT: I can hear some of it myself and I cannot speak Spanish very well. I can understand a little bit of it, but I can hear some of it myself.

MR. GREENSPAHN: Not Marcelino.

MR. DIAZ: The "Marcelino" I don't hear at all.

MRS. SALIBA: I just wonder whether there is some reason for leaving that out, because he was told by Mr. Bosch that he didn't hear it.

THE COURT: I am not interested in the reasoning. Go ahead.

MR. GREENSPAHN: If the Court wishes to bring in another interpreter, I certainly will agree.

THE COURT: No, sir. He has a perfect right to be here and he has a perfect right to express

his opinion, and I will give it whatever weight I think it deserves. Go ahead.

(Thereupon Tape 1 was played to its conclusion, pursuant to which the following proceedings were had:)

MR. GREENSPAHN: There is one observation I made during the playing of these tapes. I don't know enough Spanish to say "Hello" in, but for instance, the very end of the tape is a good example of it--where on the transcription it reflects that an individual is making a statement. It appeared to me that during the conversation--and I tried to follow it on paper here--but during the course of some of these paragraphs there would be more than one person speaking, and it would come in as one person saying it. This is something I noticed. I don't know if the Court did. I noted that in the very last paragraph. I heard the word "Espana" which I think is "Spain" or a word similar to that, which was not in the same voice as the voice that was talking in principal there. And I had heard that throughout the tape on several occasions.

And I think on Page 18 or 17--I didn't make the note--but there was another example that came to my naked ear immediately, and I am wondering if anybody else made that same observation.

THE COURT: Let us ask the interpreter, see what she says.

MRS. SALIBA: Did you feel someone else had said that?

THE COURT: Would you like that played over to see whether that is correct? Let us play it back.

(Thereupon the tape was replayed, pursuant to which the following proceedings were had:)

MRS. SALIBA: I don't know whether I would change it. It may mean nothing.

MR. DIAZ: It is a bad word.

THE COURT: You do not know? You are better off.

MRS. SALIBA: I thought after the last trial you would know all these words, because I had to find out then.

THE COURT: It is not necessary. It is

not used in polite society.

MRS. SALIBA: No, it isn't.

MR. GREENSPAHN: The only point is it sounded to me like somebody else said it.

MRS. SALIBA: I agree it was repeated by someone and then it went back to the same speaker.

MR. GREENSPAHN: So we get this happening throughout the course of the transcription. It is not an accurate transcript.

THE COURT: Gentlemen, it seems to devolve down to this question, basically: I have understood the testimony of this lady and I think she is eminently qualified in Spanish and is a capable translator. And based upon her testimony she said that, so far as she has been capable of doing, she translated this thing first stenographically into Spanish and then into English and, so far as she is concerned and as far as she knows, it is a true and accurate translation. She does give, of course, some instances, either in this tape or in other tapes, where words can be used in different senses, and possibly different meanings can be ascribed to them. But so far as I understand her testimony, first of all, she is admittedly with some difficulty capable of

getting from this tape those things which she has put down; that is, the conversations so far as she has put them down. She has indicated where she has not been able to get it. She has been able, apparently, in her mind to identify the speakers--that is, so far as Dr. Bosch and Mr. Morales are concerned. There are other obvious background things in there such as music and a woman talking and other things that she has not put in this translation that had, according to her translation, nothing to do with the conversation that took place between these two individuals. Is that correct?

MRS. SALIBA: Yes. I concerned myself principally with Morales and whoever was speaking to him.

Now, I did indicate that a woman's voice comes in and says, "Papi, ven temprano." I don't know who is calling, but a woman is calling, "Father, come early." It just added a little bit to the sense there, because then Dr. Bosch answers "Si."

THE COURT: So far as you are concerned, have you been able, from listening to that tape, to identify the voices of Dr. Bosch and Mr. Morales?

MRS. SALIBA: This tape, yes, sir. I felt that I could.

THE COURT: Have you been able, from listening to it, to understand and to record, to the extent that you have, the conversation which took place?

MRS. SALIBA: Yes, sir.

THE COURT: Based upon your experience and your training and your knowledge, is that a true and accurate recordation?

MRS. SALIBA: Yes, your Honor.

THE COURT: Gentlemen, I think the burden, Mr. Greenspahn, shifts to you. I will be happy to listen to your interpreter or to anybody else, but that is the basis that I have understood this lady's testimony to have been in the very beginning. And I think at this point it is up to you--but whether it is up to you or not--I am perfectly willing to give you an opportunity to demonstrate any inaccuracies that you say are made in there. And by you, of course, I include your own interpreter, too, because I am perfectly willing to hear from him.

MR. GREENSPAHN: Judge, I have not even talked to the interpreter yet to find out about the

words or the verbal translations. But what concerned me more than anything else are two things:

(1) The inaudible parts of this. I recognize that the Court has asked Mrs. Saliba, who is a very qualified interpreter--and I don't challenge her qualifications in that regard--the Court has asked her if she was able to hear it. The tape has been played for the Court to hear as well as for anybody else standing up here, and I feel, not being conversant with the language, perhaps I am at a handicap, but I feel that the portions of the tape preceding the part where it becomes much clearer are inaudible and cannot be heard.

Secondly--and this is equally important to me--the one instance that I called to the attention of the Court using the obscenity that is referred to in the last paragraph of that tape, indicates to me that there was somebody else who said or repeated that word. That is not in the transcript. The transcript is incorrect in that regard, and I heard at other times during the course of the translation where the voices changed and yet on the narrative transcript of the tape it remained to be

indicated as the person who had initiated that particular segment of the conversation. Those are the problems about which I complain to the Court, not the verbal translation, but who said what, and is the transcript, which is obviously going to be offered by the Government and published before the jury, is this an authentic transcript. I suggest to the Court it is not an accurate transcript.

THE COURT: Well, what you are doing in effect is telling me that I have to pass on the credibility of this lady's testimony, and I cannot do that.

MR. GREENSPAHN: No, sir, I am asking you--

THE COURT: I am not in a position, based upon her testimony that it is accurate so far as those parts which are audible and intelligible, I cannot say that is not true. I cannot follow the entire thing. And frequently I have difficulty distinguishing between the people, but that is due to my lack of facility with the language.

I certainly would not take judicial notice of the fact that nobody else could. Because I

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cannot speak German and that would not mean that I would take judicial notice of the fact that nobody else could speak German.

MR. GREENSPAHN: This point crosses my mind, though: I don't think Mrs. Saliba can testify and I don't think she has testified, really meaningfully that yes, this is Dr. Bosch speaking and this is Mr. Morales speaking.

THE COURT: She has testified to the effect that she has been able to identify the voices and based on that identification, as set out in the written transcript, in effect it is said here, for example, on Page 23 she has identified the first statement "En esta cosa" as being that of Dr. Bosch, and the next one "Bueno" as Mr. Morales, and "ellos lo saben." And then there is "Ellos lo saben" by Dr. Bosch again. She has definitely identified those as being the voices of those speakers. She has said that she has omitted other background voices, et cetera.

MR. GREENSPAHN: I think, Judge, if I could just pursue this for one minute, I think what Mrs. Saliba is doing--and she can correct me if she is

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not the retiring type--if I am wrong, do correct me-- the testimony, I think, that Mrs. Saliba has given is that there are two voices, and I would think that it will be impossible for her, unless she has some special knowledge that I don't have, to identify Dr. Bosch and Mr. Morales because she did not know Mr. Morales at any time before she heard these tapes and had no standard of comparison to ask about his voice.

MRS. SALIBA: If you will look through the transcript there, from time to time you see that they identify each other. For example, on Page 5 Morales identifies Orlando.

MR. GREENSPAHN: That is a different thing altogether, I grant you. But that is not what I am talking about.

MRS. SALIBA: But when people are speaking to each other and one says one thing and one says another thing, I think after you listen to this as much as I have you could distinguish quite accurately that there are two different voices--one is Morales and one is Dr. Bosch.

THE COURT: That is all she can testify

to. Morales is the one who has to lay the foundation for that. He has testified that he was fitted with this recorder; that he had these conversations with Dr. Bosch and with these different people; that he turned it back over to the FBI and that was what it was.

MR. BIERMAN: He also testified, your Honor, that certain things were said by other individuals and these things are in these tapes. And in addition, we can put on independent evidence of people who have heard these voices on tape recordings. In fact, I have heard Dr. Bosch's voice on a tape recording approximately two hundred times, and I can identify his voice on this tape recording under oath. And I have spoken with Morales on the phone innumerable times, and I can identify his voice.

Let me ask this question of Mrs. Saliba so my conscience on this is clear.

On Page 3, Mrs. Saliba, at the time of the obscenity, did you hear a second voice?

MRS. SALIBA: I did not.

MR. BIERMAN: Did you hear it today when we called it to your attention?

MRS. SALIBA: No, I didn't. I heard that as one single conversation. I think the voice was dropped a little bit.

MR. BIERMAN: At that point?

MRS. SALIBA: But I don't think that anyone interrupted. I think it was one continuous speech.

MR. GREENSPAHN: At that point, your Honor, I think unfortunately it becomes the burden of the Court to make a determination of fact as to whether that was the same voice or not, because it is a matter of opinion on the part of the interpreter. But then again I have expressed a contrary opinion as to who was speaking, not as to the language itself. And I am sure that in this room we will probably find other opinions that either agree or disagree with me. So that it falls squarely on the Court, I suppose, to make a final determination in that regard, and I submit that if the Court does find it is a different person or a different voice, then the transcript is not a correct one and it is not true and accurate as a transcript of the conversation between the parties, because it has omitted that which has been heard on the

recording.

MR. BIERMAN: Your Honor, Mr. Greenspahn's continual blanket attack on the transcript is fine for polemics, but when these points are found, if they are in fact different and if the Court makes that determination and if that point is not accurate, that change can be made in the transcript. But any single inaccuracy does not make the transcript invalid, and I would suggest we are not going to pass these transcripts to the jury, but because of the omissions they will have to be read to the jury, preferably by Mrs. Saliba who made the translation as to what they say. So if there is a certain specific change and the Court agrees with Mr. Greenspahn that it can be read to the jury or the dispute can be presented to the jury to listen to, but to say that the inaccuracies invalidate the whole tape is just not the law.

MR. GREENSPAHN: Judge, this is what bothers me. I don't think that it is a matter of testimony, corroborative or otherwise, as to whether certain portions of this were inaudible. I thought we were playing the tapes for the Court. I think that the ultimate decision is the Court's decision. You

have really heard the evidence. You know whether it is audible or not from your own perception, just as I have an opinion based on whether it is or isn't on the tape. It is my own opinion. The fact that there is nothing contradicting Mrs. Saliba on what she felt was audible I don't think is enough in this sense. I think that the Court should make that determination. The Court may agree with her. I don't know.

THE COURT: Well, of course, it is not the best tape recording in the world and you would not be able to sell it for a cartridge, but it is audible enough for a person who gives it careful study to certainly understand and interpret the major portion of it. At this point I am not in a position to say whether it is correctly interpreted or not. But I think it is audible enough in at least a greater portion of it for a person who is fluent in Spanish to be able to hear it and understand it and interpret it. And I will so rule.

MR. GREENSPAHN: Your Honor, when the tape is played and the identification is made, can Mrs. Saliba be instructed that when she identifies them, she will identify them only as voices purportedly

to be those of those individuals rather than making a positive identification of the voice, which might put an inference in the jury's mind that she knows the voice is then identified as these parties, because this, too, is in issue.

MR. BIERMAN: Let me ask her a question for the record:

Do you know the voice of Mr. Morales?

MRS. SALIBA: Yes, I do. I have spoken with Mr. Morales.

MR. BIERMAN: Do you know the voice of Dr. Bosch?

MRS. SALIBA: Yes, I do. I heard Dr. Bosch speak. I have listened to some of these recordings and also I heard him on broadcasts on the radio as recently as October 6th when he was interviewed, and I think I have recognized his voice and that I could distinguish his voice from Mr. Morales' voice.

THE COURT: Gentlemen, I am going to rule that, basically, the tape is admissible. Any questions with respect to inaccuracies or interpretations or identifications, so far as I am concerned,

is a matter of cross examination of this witness.

MR. BIERMAN: All right. Shall we then proceed to the question of relevancy and determine those? I see no need, personally, to play the entire tape to the jury, except to get a feel for the tape. If Mr. Greenspahn wants it all played, we have no objection.

THE COURT: If Mr. Greenspahn wants it, we will play it.

Do you want them all played, Mr. Greenspahn?

MR. GREENSPAHN: I think so, your Honor. I think the jury should have a right to hear and determine, I guess, whether this is audible enough to make these decisions.

THE COURT: I think that is exactly right.

MR. BIERMAN: That is agreeable with me.

THE COURT: This hearing is only for the purpose, so far as I am concerned, of passing upon the admissibility of it as a matter of law. It should be submitted to the jury and the jury has a perfect right at that point to determine whether this

lady could hear it, whether she could interpret it or whether she could speak Spanish at all. And you have a perfect right, if you contest that, to ask her any questions you want to on cross examination. And if you wish, you can put your man on, and if there is any difference or any dispute that he has with respect to the interpretation, you can have him testify, and the Government can cross examine him as to his qualifications and the correctness of it. And, so far as I am concerned, it is then a question for the jury to decide. The jury may well decide that none of it is audible as far as they are concerned and that they do not believe any of it.

But that is not my question. My question is to determine in the first instance whether or not the machine which was used was a machine which was capable of recording and preserving the conversation. And upon what I have heard, I so rule.

Among other things, the question has come up whether or not it was capable, insofar as being audible or being heard or understood and translated, and I have ruled that the greater portion of it was.

The next question as to the ability of this lady to understand Spanish and to transcribe what was said, I have ruled that she is so qualified.

So far as the accuracy of it is concerned, she has testified that, to the best of her knowledge, training and ability, her transcription and translation of it is accurate. And I will accept her testimony for the purpose of this particular preliminary hearing.

I want to say one other thing. So far as the identity is concerned of the purported speakers, that, of course, is another material question. She has testified that she is familiar with the voices of both speakers and that she is able to identify them and that she has so identified them. And I will accept her testimony to that extent.

Does the defense raise any questions or objections so that we can get it straightened out on this preliminary hearing as to whether there has been any alteration, change, erasures or anything of that nature made with respect to these tapes?

MR. GREENSPAHN: Your Honor, I have no reasonable basis for such a suggestion to the Court.

THE COURT: Well, I wanted to know because if there has been any such contention, I want both sides to present the question to me so that I can pass on it.

So far as it being authentic and correct, at this point at least, Mr. Morales has testified that it was; that he took those recordings himself, operated the machine and recorded the alleged conversation. And in the absence of any contention that they have been altered or erased or changed, I will accept that testimony for the purpose of the admissibility of the tapes.

If counsel desires, we will play the other tapes, but basically I am holding now that, with respect to cartridge No. 1, it is admissible and, in the absence of some showing to the contrary, the same ruling will apply to No. 2, No. 3 and No. 4.

MR. BIERMAN: Your Honor, with respect to the method of examining Mrs. Saliba for the translations, I would suggest that the Government proceed and ask what might be somewhat leading questions dealing with the translation, and then in addition, anything that Mr. Greenspahn feels is

relevant, he may ask on cross examination. I realize these questions would be somewhat leading in a sense, but I think this would be the most practical manner of doing it.

In other words, I would ask her to translate what appears on Page 3 of her transcript, let's say, or whatever page it was, and if there was anything additional Mr. Greenspahn wants to ask her, he could ask her about it on cross examination.

MR. GREENSPAHN: I would have no objection to that.

THE COURT: That is perfectly all right.

MR. GREENSPAHN: I would like to know, with reference to the other three tapes from the Government, what portions they are voluntarily willing to delete.

THE COURT: All right, sir. Let us get to that.

MR. BIERMAN: Referring to the second reel, all of Page 4 would be in, all of Page--on Page 5, up to the end of the first incomplete paragraph would be in.

THE COURT: What do you mean the first

incompleted paragraph? That part would be in. What do you mean "the first incompleted paragraph"?

MR. BIERMAN: The one ending in "It twists his (1)."

THE COURT: You are talking about the first paragraph on Page 5?

MR. BIERMAN: Will be in, yes, sir, and the next G, M, G, M and G would be omitted. The bottom paragraph at the end would be in, all of Page 6 would be in, all of Page 7, all of Page 8, all of Page 9 would be in, all of Page 10 would be in, Page 11 would be in. On Page 12, the first G would be in, and the remaining part of the page would be out. Page 13 would be out, Page 14 would be out up to the point where it reads "You know that the people of the ESA came down from up there."

And then beginning with "Yes, they are here. Did you give me the clipping of the editorial?" That would be in. And up to Page 15 where it reads "Five or six is very few. I went alone. They allowed me to go." That would be in. The next four paragraphs would be out. And Page 16 would be in.

THE COURT: All right, sir. What is the

next one?

MR. BIERMAN: The first page would be in. We would agree to omit all of Miss Miranda's references to the other people, if counsel would agree that the Court could instruct the jury that they were in there but that the details are irrelevant. This is for corroborative purposes. We do not feel it is necessary for her opinion of her fellow workers to be published, but we do feel it is necessary for corroboration.

THE COURT: Where are you reading from now?

MR. BIERMAN: Page 5 and 6.

THE COURT: Oh. I'm not on Page 4 yet.

MR. BIERMAN: All of Page 4 will go in, up until, on Page 5, the first completed paragraph, stopping at "Sifredo must be scared."

THE COURT: All right.

MR. BIERMAN: Thereafter, I am suggesting that Miss Miranda makes numerous comments about her co-workers, and Mr. Morales testified to that. That is in corroboration of what she said. We would not go into her personal feelings, if counsel

would agree.

MR. GREENSPAHN: You are talking about the rest of Page 5? And Page 6?

MR. BIERMAN: Yes.

MR. GREENSPAHN: And Page 7?

MR. BIERMAN: Page 7, 8 and 9 have some personal things. Page 10, Page 11--up to Page 11.

THE COURT: Is that to or through?

MR. BIERMAN: Up to. It is to and including Page 11.

THE COURT: All right.

MR. BIERMAN: Do you agree to that?

MR. GREENSPAHN: Yes.

MR. BIERMAN: On Page 12, beginning with the "M" where it says "You know that was some party."

THE COURT: Wait just a second. Let me get these now. All right, sir.

MR. BIERMAN: On Page 12, beginning with "You know that was some party."

MR. GREENSPAHN: Judge, while we are looking at Page 12, the name "Bombillo" is mentioned.

MR. BIERMAN: We previously interpreted "Bombillo" for the jury but we will be glad to do it again.

THE COURT: I think that would be proper, because it could be that somebody on the jury could think that the connotation or get the impression that it was something about a bomb. I think that would be the proper thing to do.

MR. BIERMAN: The remainder of 12 and all of 13, and 14 we would want in, 15 in, 16 in up to and including the second from the bottom paragraph. That part beginning with "Aimee, you know I have never gotten along with him" and to the end would be out. And all the way down on Page 17, the first two paragraphs would be out and that portion which reads "Aimee, what is your opinion of all this". . .that would be in.

All of 18 would be in, all of 19 would be in, all of 20 would be in, all of 21 up to "For heaven's sake, Aimee, I know that." We will have all of Page 21.

THE COURT: You want Page 21 out?

MR. BIERMAN: In. Page 22 is in, Page

23 is out, Page 24 is out, the first paragraph on Page 25 is out and the rest of Page 25 is in.

THE COURT: All right. Let us go to the next one.

MR. BIERMAN: Page 5 is out, Page 6 is out and on Page 7, in the middle of the paragraph, beginning with the fourth line down after the inaudible "Even the businessmen began to realize that there were two powers. . ." That will go in. And going down to the bottom of the page where it says "I hope so." And then the last paragraph is out.

Going over to Page 8 after "In Cuba" and beginning with "G: In Cuba, the CIA" the rest of the page. Page 9 is in, and on Page 10, up to and including "Bombillo, give me a light" but not including that.

THE COURT: All right.

MR. BIERMAN: No. I'm sorry. The whole page is in. Page 11 is in, Page 12. Page 13 is in and on Page 14, where it reads "They are going to my business. When I arrived the other day, I had strong, strong" that goes out. And the remainder of the page.

Page 15, beginning right at the top of

the page, "We have all the young pigeons behind us" up until Page 16 where it says "three hours? In three hours you can leave Cuba and arrive in Key West."

Where it starts with "I cannot stand these meetings" that goes out to the end of the page. Page 17 is out, Page 18 is out, Page 19 is out. Page 20 is in, Page 21 is in.

Page 22, other than "Also going around" is out, but "What is needed is money for moving about" and the rest of that page is in.

Page 23 is out, Page 24 is out, Page 25 is out, Page 26 is out, Page 27 is out, Page 28 is out, Page 29, 30 is out.

THE COURT: Now let us ask Mr. Greenspahn if there is anything which the Government has said that it does not want to put in now that you want to put in.

MR. GREENSPAHN: Yes, sir. A good deal.

THE COURT: All right. Let us find out what you want.

MR. BIERMAN: Your Honor, I thought we had agreed that upon cross examination he could ask

what was there. I think that might be an easier method. We will not object to anything that they want to put in.

THE COURT: All right. That is the situation. He said that anything you want to put in you can put in. And you can do it without any objection by the Government.

MR. BIERMAN: With one reservation: that if a portion comes in, we may want to complete that portion on redirect.

THE COURT: That is perfectly all right. If it has any connection or relation to it, why, you can add to it. You cannot repeat what you have already put in.

MR. GREENSPAHN: Or if it becomes generally irrelevant for consideration of the Court as to any objections that I might have as to those portions the Government announced it was going to put in. I don't know if the Court wants to do it now. I feel some of these things are out in left field and have no real purpose in this case except to prejudice the jury.

THE COURT: All right, sir. We will

start at the beginning.

Let's start with tape No. 1.

MR. GREENSPAHN: Page 4, sir. I don't see what that has to do with the matter at hand. It is talking about somebody who is not a party, that nobody ever heard of before.

MR. BIERMAN: It is true, except that this introduces the next page.

THE COURT: I think that is true. I think it is relevant to the extent that whatever that conversation is about the recoilless rifle might be relevant. I will overrule the objection to that.

MR. GREENSPAHN: All of Page 6-- actually, the last two paragraphs of Page 5 and then all of Page 6 is by Morales. There doesn't seem to be any answer. It is just a lot of words which, I suppose, is repetitious of what he said yesterday.

THE COURT: Well, I think what you say is probably true down to where it says "Laughs." I think it becomes material from that point on.

MR. BIERMAN: We can omit that.

THE COURT: I will grant the motion to eliminate that part of it.

MR. GREENSPAHN: Then where it says "A man has just arrived from Santo Domingo," that doesn't say much, and then this last sentence--I think the Court can see where I could be concerned about that sentence, the last sentence on Page 6, which doesn't add anything to this. It is inflammatory.

MR. BIERMAN: It certainly does add to it. It corroborates what Morales says, and it relates to his knowledge of Poland and the shelling of the Polish vessel.

MR. GREENSPAHN: Then again, everybody in Miami who read the newspapers that morning had an opinion on the thing. I have not been asked my opinion; so I will not give it. Everybody in Miami knew about this at the time.

MR. BIERMAN: Morales testified that Bosch told him that. This is corroborative. That is one of the purposes of the tape, is corroboration.

MR. GREENSPAHN: Your Honor, I never heard the word "pervert" being used. I think that may have another meaning in Spanish.

THE COURT: Well, I am going to grant the motion, because to me it is not really intelligible

and it does not connect up. If there was a complete sentence before that--but you pick up with half a sentence and then you pick up with another half of a sentence--

MR. BIERMAN: But they were right behind that, your Honor, discussing why it didn't hit the bridge or boat.

THE COURT: I realize that. I have left in, "Listen, you know why it didn't hit the bridge?

"Why?

"When you fire from land, et cetera."  
I have left that in.

Then I have granted the motion for "A man has just arrived from Santo Domingo" and "The way these perverts, et cetera" because I don't think they are complete enough or intelligible enough to permit them to stay in. So I am granting that motion.

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MR. BIERMAN: Of course, we could change the translation to "maricones" which means "queers" from the word "perverts."

MR. GREENSPAHN: What is the difference?

MR. BIERMAN: All right. I will withdraw

it.

MR. GREENSPAHN: Then, your Honor, I don't quite understand the relevancy on Page 7 of the last two paragraphs, this business about "Carol was there." Carol is not a party. I don't even know who Carol is. That is another name out of the blue.

MR. BIERMAN: We will be willing to omit that.

THE COURT: Okay.

MR. BIERMAN: No. I take that back, your Honor. Right above it we have had testimony or will about the Spanish boat COROMOTO, and we have had statements about it being in Puerto Rico and about someone else going down there--Tony Prieto going down there--and this shows Dr. Bosch's knowledge of what went on in Puerto Rico.

MR. GREENSPAHN: Well, if this says Tony Prieto was there, that is one thing. This thing does not say Tony Prieto.

I do not think it is proper, Judge.

THE COURT: Well, I am going to overrule the objection because of the fact that apparently, according to this transcript, Dr. Bosch was the one who

interjected the name, and it does have some connection with Puerto Rico and the situation there. So I will overrule your objection with respect to that. Now we are on Page 8, gentlemen. Page 8 is in, according to the Government.

MR. GREENSPAHN: I do not think it is relevant or material as to the first paragraph. There is no identification about who was talking or who he is talking about when he says "These people are going to kill me," but I really don't care about that. It is not that important.

I think I can anticipate the Court's ruling as far as the rest of Page 8. I don't see where Morales' statement in the middle of the page is relevant. And I question it because it is not sufficiently stated with definitiveness as to whether the last statement on the page is of any real value.

MR. BIERMAN: If not, there is no sense in us playing the tape.

THE COURT: I feel this way, frankly: I think that point you have objected to in the first paragraph is probably as favorable to the defendant as it is to the Government. If you want it, I will grant

your motion, but I will let you think about it.

MR. GREENSPAHN: I will withdraw it, Judge, because I had it marked previously.

THE COURT: Then I will overrule your motion as to the other portion of the page. Page 9 is out. We are now down to the last two paragraphs on Page 10.

MR. GREENSPAHN: Those are all right.

THE COURT: Now we are in the middle of 11.

MR. GREENSPAHN: 11 is all right.

Judge, I do, with particular reference on Page 11, object to the last sentence, the reference to the cannon blast. There is conversation in here about things passed that are probably unrelated to this, and this cannon blast statement will be prejudicial. It is not tied up in my mind or linked to any of the instant proceedings. So I would like that sentence stricken out of the transcript.

MR. BIERMAN: We would suggest, your Honor, that this tape has discussion of the POLANICA and a recoilless rifle is quite often called a cannon, and this can be argued to the jury that this is not it,

but--

THE COURT: I am going to overrule the objection. I think it is susceptible to either interpretation.

13 is out, 14 is out, and starting at Page 15, the first paragraph is out. We have the same situation there. Do you want to make the same objection?

MR. GREENSPAHN: Yes, sir.

THE COURT: All right, sir. I'll make the same ruling.

MR. GREENSPAHN: Page 22, this one small portion that--

MR. BIERMAN: No complaint about 16?

THE COURT: 16 is in except for the last part of it.

MR. GREENSPAHN: I have no complaint with 16.

THE COURT: All right, sir. Then we will go to 22.

MR. GREENSPAHN: The two paragraphs that are in are really out of context if read in this thing and have no significant meaning. Of course, I

shudder when I hear the word "blackmailer" used.

MR. BIERMAN: We were not including the blackmailer.

THE COURT: Not that. What the Government says they want is "Well, I will give you a call in two or three days, Orlando, because you are tied up and all that."

MR. GREENSPAHN: Then I will withdraw my objection.

THE COURT: That other part is out.

MR. GREENSPAHN: This is the part, of course, that I objected to before, about the fact that it is not properly transcribed; that, to my hearing, there were two voices in the last paragraph on Page 23. So I would reiterate that, your Honor. I feel that to properly have the meaning, if any meaning there be, attributed to the last paragraph on Page 23, the testimony should commence at the top of the page and then the entire page should be read in.

THE COURT: All right. What do you say?

MR. BIERMAN: I have no objection.

THE COURT: I think the whole thing

should be in. I agree with Mr. Greenspahn.

Let us go to the next one.

MR. GREENSPAHN: Your Honor, if I read it correctly, Page 4 and continuing on to Page 5, I think it is so vague and indefinite that the jury is not capable of a true understanding of it. These people are talking about some particular incident of which these people do not have any personal knowledge. They talk about a Chavo.

THE COURT: Well, I am going to leave it in. Personally, I think it is helpful to the defendant. I do not think it is enough to be of any benefit to the Government and I think the defendants can make more of it than the Government can. So I am going to leave it in.

MR. GREENSPAHN: One thing that concerns me about the continuing testimony on Page 5 and 6 is that again Morales is doing all of the talking. I don't know that this is particularly helpful to the defendants. I think if it is read as it is here, Judge, the lack of response or the lack of clear response to any of the questions that Morales asked will not detract from the fact that Morales has restated many

of these things that are left by the Government without any real corroboration on this portion of the tape. It seems like Morales is telling the story over and there is not any commitment made by the person to whom he is speaking.

THE COURT: What do you say, sir?

MR. BIERMAN: It sets the area which they are discussing. We would have no strong feeling about that.

THE COURT: Well, I am going to knock all of that out down to Page 6 where it starts "Prieto." I think that is material, but the other part of it I don't think is. I am going to grant the motion to leave it out.

MR. GREENSPAHN: The same is applicable on Page 8, your Honor. At Paragraph No. 3, "And the aim that was taken." That is a gratuitous statement by Morales and there is no response to it.

THE COURT: I will grant your motion. I will leave it out.

MR. MORRIS: The first two paragraphs are in, your Honor?

THE COURT: I will leave the first two paragraphs in.

MR. GREENSPAHN: My general objection to the next portion on Page 8 and Page 9, the date of the event they are talking about is never recited, and it doesn't really connect up with anything other than an event which they are discussing. That general objection is made to Page 8, Page 9 and Page 10.

MR. MORRIS: I think this conversation ties in closely with Morales' testimony about discussions of what took place on the causeway.

THE COURT: I think it connects up with the entire thing, particularly getting along about Page 10. I will deny the motion with respect to that.

MR. GREENSPAHN: Then on Page 14, I don't see the relevancy of that.

THE COURT: Well, half of 14 is out. What do you say about the bottom part of 14?

MR. BIERMAN: This was testified to, your Honor, by Mr. Morales, that he gave him a newspaper clipping on this day and it related to the activities of the Cubans in the area and Bosch discussed it with him, and it is corroborative of that.

MR. GREENSPAHN: Corroborating evidence should corroborate material points. That is not

material. I will stipulate with you he probably did give him a newspaper clipping.

THE COURT: Well, I will overrule the objection. For whatever value it may have, I will let it in.

MR. GREENSPAHN: At the bottom of Page 15 and 16, I really don't see what purpose this serves. I don't see how it is material or relevant to this case.

THE COURT: What about that?

MR. BIERMAN: This relates to the newspaper article, your Honor, which was writing the editorials and his knowledge of it.

THE COURT: I am going to leave it out. I am going to grant the motion and leave it out.

MR. GREENSPAHN: And finally, objection to Page 4, the first portion of Page 5, and then continuing on to Page 12. The portion on Page 12 is not deleted by the Government. The objection is that the events that are being described are not described by time, date, place or the event itself. It is merely reference to an event. It is possible that could be referring to something other than what the

Government intended to be referring to.

THE COURT: I am going to overrule the objection to that. I think it connects up with and corroborates the testimony of Mr. Morales. I think it can be related to events that he has identified.

And I would like to omit on Page 14, after eight lines from the bottom, starting with "Babi." I don't see where that serves any purpose.

THE COURT: "This Babi is crazy, abnormal, and so forth."

MR. BIERMAN: That would go under the same stipulation as before. They are the opinions of friends or people named here.

THE COURT: All right, sir.

MR. GREENSPAHN: Going to Page 17, this opinion expressed by Aimee Miranda is a speculative question that has no materiality or relevancy to this proceeding.

"What is your opinion of all this? What do you think will be the outcome of all this? Everybody in jail?" And then the answer that is given.

MR. MORRIS: I think it suggests her knowledge and part in the conspiracy.

MR. GREENSPAHN: I don't see how that could suggest anything. He just asked a question and she gave an answer. That does not relate to anything.

MR. MORRIS: It is in connection with Morales' testimony.

MR. GREENSPAHN: Conspiracy in what? Maybe these people in her mind were engaged in other activities that aren't even before this Court.

MR. MORRIS: That is possible. We have not had testimony or anything about that.

MR. GREENSPAHN: And my particular objection is to the two paragraphs at the bottom of Page 17 through the first two paragraphs or the first paragraph of Page 18.

MR. MORRIS: They have been talking throughout about the POLANICA incident and what has been said by the various defendants about that.

MR. GREENSPAHN: I have not seen a word about the POLANICA in the entire transcript.

MR. MORRIS: I do not think they mentioned it by name.

THE COURT: Gentlemen, I do not think it has a great deal of materiality. I am going to

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grant the motion and leave it out.

MR. GREENSPAHN: Now, with reference to Page 25, your Honor, the small portion of it is left in. The first two sentences "No, no, but that is beginning now. That is beginning now." and "They are hiding the news." That says nothing that relates to or ties into this case.

MR. MORRIS: It mentions the MIKAGESAN, your Honor.

MR. GREENSPAHN: But it does not say anything about their involvement with the MIKAGESAN.

MR. MORRIS: It discusses explosions.

MR. GREENSPAHN: Of course, Morales says that. Aimee Miranda does not say that.

MR. MORRIS: She says that there have been many which have not exploded. We have had testimony that Bosch complained his bombs were not going off. We will have further evidence that there was a bomb which did not go off.

THE COURT: What about the last two?

MR. MORRIS: The last two paragraphs are out, according to my copy.

THE COURT: And they are out on mine

now. I will overrule the objection with respect to that portion.

Now we go to Tape 4.

MR. GREENSPAHN: Your Honor, on Page 7, I don't have any great objection to what is in here. The only thing that bothers me is that I think something should precede it. It is wholly out of context. We are using the word "blackmailers" and it has no reference in this instance to any of these defendants, but the way it reads it looks like it does.

MR. BIERMAN: This is advantageous to the defendants. We only left it in because we did not think it was fair to take it out. We will be glad to take it all out.

MR. GREENSPAHN: That is what I say. I have no objection to the paragraph, but I think there should be something preceding it so that it comes in the right context. This is why I would think that perhaps starting with--well, I would think even just the five words that precede the portion that they have stipulated can go in--"Then everybody began to react. Even the businessmen began to realize. . ." That would be all right.

MR. MORRIS: We have no objection to the omission of any of it, your Honor.

THE COURT: All right, sir. Do it that way.

MR. GREENSPAHN: The Government and I have agreed within the last few minutes that Mrs. Saliba can refer to the obscenities with the word "obscenity," not with the particular verbalized obscenity used.

THE COURT: All right, sir.

Mr. Greenspahn, I just checked with the Marshal. He says he has lunch for the prisoners. We may not be able to get lunch. But are you willing to waive their presence for the rest of this hearing?

MR. GREENSPAHN: Yes, sir. We will waive their presence.

THE COURT: All right.

MR. GREENSPAHN: Referring to Page 11, this business about the Cuban people in Miami paralyzing Miami industry--that came out during the course of Morales' testimony. Frankly, at the time it came out I didn't think much of it, and then I saw it in five-point headlines when I saw it when I walked out of here.

This is the kind of thing that can be extremely influential and prejudicial as to the defendants. There has been no strike; there has been no paralysis. There has been nothing. Something has merely been taken out of context and blown up by the press. Our jurors are not sequestered and I am sure they will walk out on the street and see the headlines just as well as we do, and I do not think this is of assistance to the Government in its prosecution. Therefore, I would ask the Court to take from the portion on Page 11 the first paragraph, the part commencing from approximately nine lines from the top of that--or from the bottom of that first page on Page 11, commencing, "Why do you think that we are in existence?" to the end of the paragraph.

MR. BIERMAN: We feel that is relevant for two reasons:

(1) It is part of a continuing conspiracy and

(2) If they were not involved with anything at all, they would not be worried about the arrest.

THE COURT: Gentlemen, I am going to

deny the motion. Mr. Morales has testified substantially to that already. I am going to deny the motion.

MR. GREENSPAHN: We object to Page 13 on the basis of relevancy and materiality. I don't see how it links into this case.

MR. BIERMAN: We have no strong feeling on it, your Honor.

THE COURT: All right, sir. In that case Page 13 is out.

MR. GREENSPAHN: And all of Page 14.

THE COURT: That is out.

MR. GREENSPAHN: All of this business on Page 15 starting with the second paragraph where Morales starts with "Bombillo, that little apparatus," I didn't understand it when I read it, and I don't see what connection this has to this case. At least it hasn't any connection with the evidence thus far about some man throwing away three thousand pounds of oxygen tanks.

MR. BIERMAN: This relates to the re-breather.

THE COURT: That is what he is talking

about.

MR. BIERMAN: The only thing inoperative about it was the oxygen. There was extensive cross examination on that.

THE COURT: That is what he was talking about, as I gather it.

MR. GREENSPAHN: Just about everything else is out of this.

THE COURT: I will deny your motion with respect to that, and then we get down to Page 20, I think?

MR. BIERMAN: Yes, sir.

MR. GREENSPAHN: I would like to object to it, but I can't think of any reasonable basis for it. So we will leave it at that.

THE COURT: Well, I will deny your motion with respect to it.

MR. BIERMAN: And down on Page 22, about the frogmen falling in the water, we may have to use some nice words for the obscenities in there because there are so many of them.

THE COURT: Well, that is up to you.

MR. GREENSPAHN: Those are all the objections.

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THE COURT: All right, gentlemen.

MR. BIERMAN: Your Honor, could we request the Court what we propose to do, although we have been through the tapes this morning, would be to put on certain live out-of-town witnesses first?

MR. GREENSPAHN: If they are relatively short witnesses, we have no objection.

THE COURT: That is all right with me. You can control the order of your case as long as it is reasonable.

MR. BIERMAN: And we would offer some documents at this time and then whatever recess your Honor wants to take, unless you want to take a recess first.

THE COURT: Well, I will not take a recess right now. I want to get a sandwich for my lunch right now, because I want to get a sandwich in my office that I can eat in ten minutes, to be sure it is there when I get there because that is about all the time I am going to give you. I am going to take a recess for about five minutes, give each one of you the opportunity to order a sandwich, and then I am going to sit for about an hour, and I am going to recess

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for about fifteen minutes and we are going to eat lunch and start back again. That is going to be the order of procedure.

Court will be in recess for five minutes.

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

THE COURT: You may proceed.

MR. BIERMAN: Your Honor, we have certain records which we would offer pursuant to Rule 44 of the Federal Rules of Criminal Procedure. These are the registrations and copies thereof of the vessels in question, including the POLANICA, the Polish vessel.

THE COURT: Let counsel see them and then you can hand them up to me.

MR. Clerk, you can be making out the exhibit tickets and we can save a little time.

MR. BIERMAN: And on the ASAKA MARU and the MIKAGESAN MARU, the CARIBBEAN VENTURE, the LANCASTRIAN PRINCE and the GRANWOOD. Each is affixed with the seal of the Consul of the United States

recognizing that the signature of the official of the country in question is that official and is empowered to make such signature.

MR. GREENSPAHN: Your Honor, with counsel's permission, Rule 44, under which these are purportedly being offered at this time, says if reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the document, it may for good cause shown be admitted as an attested copy.

MR. BIERMAN: Well, these have the final certification on them before the argument starts on it.

MR. GREENSPAHN: The point is that I have just been handed these. They look like they are probably legitimate instruments. I cannot say that they are not. I do not know.

THE COURT: Do you have any other objections to them?

MR. GREENSPAHN: I can't read some of them because I do not know what they are.

MR. MORRIS: They are translations there, I believe.

MR. GREENSPAHN: No, there is not a translation that I can see. This seems to be in a language that is completely foreign to me. So I do not know what it says.

This is written in English, but I do not understand it.

I think, without going any further, apparently this is the registry of one of the Japanese ships. There is attached to it what purports to be a translation. Frankly, I have no way of challenging the translation. I do not know what these scribblings are. And this seems to be true of the others except for those that are in English. There are some that are in English.

THE COURT: I am going to note an objection for the defendants and I am going to overrule the objection and I am going to admit the documents into evidence with the opportunity, before they are presented to the jury, for counsel to make any such examination as he wishes as to their authenticity; and further to obtain any translations of any parts of it that are to be presented to the jury.

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MR. GREENSPAHN: Thank you, sir.

THE COURT: That ruling is without prejudice to your right to renew your objection at that time.

Let the Clerk mark them and then I will, as an officer of the Court, permit you to have them in your possession for the purpose of checking their authenticity. And you may have my permission to take them out of the courtroom if you desire.

Is there anything else?

MR. BIERMAN: We are prepared to proceed.

THE COURT: All right, sir.

Mr. Marshal, will you bring the jury in, please?

(Thereupon the jury resumed their seats in the jury box, pursuant to which the following proceedings were had:)

THE COURT: Good afternoon, ladies and gentlemen. I am sorry I am such a bad judge of time and made you sit around, but you can blame me. But I really could not help it.

Is the Government ready to proceed?

MR. BIERMAN: We are.

THE COURT: You may proceed.

THEREUPON--

MARVIN M. EUBANKS,  
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: I am Marvin M. Eubanks.  
I am a Special Agent of the Federal Bureau of  
Investigation, assigned to the Birmingham office.

DIRECT EXAMINATION

BY MR. MORRIS:

Q How long have you been so employed,  
Mr. Eubanks?

A Eighteen years.

Q Mr. Eubanks, during the month of June,  
1968, were you on duty with the FBI?

A Yes, sir, I was.

Q Are you acquainted with a Mr. Hendon?

A Yes, sir.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Eubanks - direct

Q Did you see Mr. Hendon during that month?

A Yes, sir, I did.

Q Would you relate approximately when that occurred and what happened?

A Yes. On June 25, 1968, I contacted Mr. Fred Hendon, who is a plant manager at the duPont Powder Plant at Watson, Alabama, and it was in regard to two boxes of simulated dynamite that he had prepared for the Birmingham office of the FBI.

Q Did you receive anything from him?

A Yes, sir. On that date I received two boxes of dynamite which each weighed approximately 50 pounds.

THE COURT: Dynamite or simulated dynamite?

THE WITNESS: Simulated dynamite.

THE COURT: There is a little difference.

THE WITNESS: Yes, sir.

BY MR. MORRIS:

Q Mr. Eubanks, I show you a box and ask

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Eubanks - direct

you whether the boxes which you received were anything similar to this.

A Yes, sir. It had a similar appearance to this, yes, sir. It had a similar appearance, yes.

Q This is Government's Exhibit No. 19. What did you do with those boxes after you received them?

A I took the two boxes back to the Birmingham office of the FBI where they were wrapped together, addressed to the Special Agent in Charge, Miami FBI Office; and also there was a Government bill of lading prepared in regard to that shipment. On June 25 was when I took them back to the office, and that was when they were wrapped together, packaged together for shipment. On that day I also telephonically contacted Ryder Truck Lines in Birmingham, Alabama, and made arrangements for that shipment to be picked up the next day--June 26, 1968.

Q Was it picked up, sir?

A It was picked up on the afternoon of June 26th.

Q Was that in your presence or not?

Eubanks - direct

A It was in my presence, yes, sir.

Q You mentioned a bill of lading. Do you have a copy of that?

A Yes, sir, I have a copy.

Q May I see it, please?

A (Producing document)

Q Where did you obtain this, sir?

A From the Birmingham FBI Office.

Q Did you make any comparison between this copy and the original bill of lading which was on the package?

A Yes, sir. That is a duplicate of the original.

MR. MORRIS: Will you mark this for identification?

(Thereupon the instrument referred to was marked as Government's Exhibit No. 37 for identification.)

MR. MORRIS: I offer it in evidence.

MR. GREENSPAHN: Note my objection, please.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Eubanks - direct

MR. MORRIS: I beg your pardon? I thought you said no objection.

MR. GREENSPAHN: I said I was going to object to it.

THE COURT: The bill of lading being attached to the parcel sent to the FBI office in Miami, the original would be or should be in the possession of the FBI here and this, of course, is a copy, not the original.

MR. MORRIS: That could be presented at a later time. This is to show a copy of what went out of Birmingham.

MR. GREENSPAHN: If it can be presented at a later time, I should think it could be presented now, too.

MR. MORRIS: Not by this witness.

THE COURT: I will admit it solely for the purpose as indicated by counsel as indicating a shipment by this witness of that package from Birmingham and for no other purpose.

MR. MORRIS: That is the purpose we want, your Honor.

Eubanks - cross

THE COURT: All right, sir.

MR. MORRIS: You may inquire.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Did anyone else from your office have any dealings with the duPont Company other than yourself?

A In regard to this shipment?

Q Yes, sir.

A Yes, sir.

Q Who else was involved?

A Special Agent Coleman Geary.

Q Were there any other subsequent shipments made that you participated in?

A No, sir.

Q Referring to the contents of the package that you referred to that were wrapped by the FBI in Birmingham, in what manner were they wrapped?

A The packages were the two packages similar to the box or package that were wrapped together, and then they were wrapped in a cardboard or brown wrapping paper and then labeled.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Eubanks - cross

Q You indicated a box that you say was similar to this box (Exhibit 19)?

A Right.

Q Did you look inside the box?

A No, sir.

Q Of your own personal knowledge do you know what was inside either of the two boxes at the time that they were shipped other than that which had been told to you by someone else?

A No, sir.

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

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Eubanks, can you estimate the approximate weight of the boxes?

A Approximately 50 pounds each. Yes, sir.

MR. MORRIS: No further questions.

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

(Witness excused)

LEONARD LAIKEN

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U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

THE COURT: Call your next witness,  
please.

THEREUPON--

COLEMAN GEARY,  
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: Coleman D. Geary III,  
Special Agent, Federal Bureau of Investigation, 1603  
Mongaup Circle, Birmingham.

DIRECT EXAMINATION

BY MR. MORRIS:

Q How long have you been so employed,  
Mr. Geary?

A Sixteen years.

Q Mr. Geary, are you acquainted with a  
man named Hendon?

A Yes, sir.

Q Did you have occasion to see Mr. Hendon  
during the month of June of this year?

A Would you describe the circumstances  
and the date on which this meeting took place?

Geary - direct

A I first saw and talked with Mr. Hendon on or about the middle of June, somewhere about the 17th, in connection with determining--

Q Where was that?

A That was at the E. I. duPont Plant at Watson, Alabama. I requested him to prepare some simulated dynamite, which he said he would. Then again, Mr. Eubanks previously mentioned that he came by and picked up--

Q Do not tell us about what Mr. Eubanks said, but go ahead with your own contact with Mr. Hendon.

A He agreed that the duPont--

MR. GREENSPAHN: If it please the Court, I would have a continuing objection to the hearsay as to these defendants.

THE COURT: I will sustain the objection.

BY MR. MORRIS:

Q Just tell us what you saw and did, sir.

A Okay. On July 26th I went out to the duPont plant and picked up four 50-pound packages which

Geary - direct

contained the simulated dynamite which had been prepared by Mr. Hendon and returned to the FBI office with the four packages which were labeled "50 pounds Red Cross Extra Dynamite, 2 x 24 inch sticks, Dangerous and duPont Explosive." Each box also contained the red letter "D" and these boxes were dated July 22, 1968.

Q I show you Government's Exhibit No. 19 and ask you whether this is similar to the boxes that you are describing.

A I would like to look at it, yes, sir. Yes, sir. This is the similar box which Mr. Hendon gave to me on October 22, 1968.

Q What date, sir?

A October 22, 1968. And I initialed this on that date.

Q I'm sorry. I have not asked you about this particular box yet, sir.

With regard to your contact in July I am talking about.

A After I picked up these four boxes, I returned to the Birmingham FBI office and there wrapped the boxes for shipment. And they were turned

Geary - direct

over to me to a Ryder Truck Line driver for shipment to the Special Agent in Charge of the Miami FBI office under Government bill of lading No. D-4942255.

Q Do you have a copy of that bill of lading, sir?

A Yes, sir, I do (producing document).

Q Where did you obtain this copy?

A I obtained this copy from our files in the Birmingham office of the FBI.

Q Did you compare this with the bill of lading which was on the package which you turned over to the Ryder Truck Lines?

A Yes, sir, I did.

Q You stated it is identical or a duplicate?

A It is a duplicate, yes, sir.

MR. MORRIS: I will offer this.

MR. GREENSPAHN: The same objection.

THE COURT: I will note the same objection for the defendants and make the same ruling and admit it solely for the purpose I have indicated.

Geary - direct

(Thereupon the instrument  
referred to was received in  
evidence as Government's  
Exhibit No. 38.)

BY MR. MORRIS:

Q Now, did you have occasion to see  
Mr. Hendon during the month of October of this year?

A Yes, sir, I did.

Q Will you relate what happened on that  
occasion?

A On that date Mr. Hendon furnished me--

MR. GREENSPAHN: If it please the  
Court, this is immaterial and irrelevant to the offense  
charged in this indictment. It goes only up to and  
including the date of the indictment.

THE COURT: When is this date?

MR. GREENSPAHN: October 22nd the  
indictment was returned--on either the 10th or the  
11th. I am not real sure.

THE COURT: What is the materiality?

MR. MORRIS: He obtained this box that  
we have been using to illustrate--

Geary - direct

THE COURT: It is not necessary. That box is already in evidence. I will sustain the objection to it.

MR. MORRIS: You may inquire.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Geary, did you ever inspect the contents of any of the boxes that you received?

A No, sir, I did not.

MR. GREENSPAHN: I have nothing else.

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

(Witness excused)

THE COURT: Call your next witness, please, sir.

THEREUPON--

GEORGE EVAN DAVIS, JR.,  
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.

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101