

Davis - direct

THE WITNESS: George Evan Davis, Jr.

I am a Special Agent of the FBI.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Agent Davis, how long have you been so employed, sir?

A Twenty-nine years.

Q Other than those occasions, sir, upon which you accompanied Mr. Ball to deliver simulated dynamite, did you make any other deliveries?

A I did.

Q When and where was that, sir?

A It was on August 27, 1968.

Q Where?

A I delivered a box to him from our office to the St. Clair-Boulevard Cafeteria.

Q Who is "him"?

A To Morales--Ricardo Morales.

Q All right. What was that box for?

A It was a simulated dynamite box manufactured by the duPont Company.

Q How many sticks of dynamite were in it,

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if you know?

A There were thirteen sticks in it.

Q Is that how many come in a box?

A Fifteen come in a box.

Q I show you Government's Exhibit 19 in evidence and ask you if this is that type of box, sir.

A Yes, it is.

Q What happened to the other two sticks?

A I kept the other two sticks out and put the date 8-27-68 and my initials on each stick.

Q I show you, sir, Government's Exhibit No. 22 in evidence and ask you when and where you have seen this before.

A This is one of the sticks that I removed from the box just described on August 27, 1968, and it bears my name--G. E. Davis--and the date 8-27-68.

Q Agent Davis, you testified that you removed two sticks. What did you do with the other one, sir?

A The other stick was sent to the FBI laboratory.

Q Have any alterations been made on this

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stick other than the placing of the evidence sticker and these papers and your initials?

A No, sir, none whatsoever.

Q This has the remaining sticks in the box at the time you made the delivery?

A Yes.

Q Where did you go, sir, after having left Mr. Morales?

A I returned to the Miami office of the FBI.

Q At approximately what time was that?

A That was approximately 10:25 a.m., approximately.

Q Where did you get this box, sir?

A We got it from our Birmingham office of the FBI.

Q How much, if any, did you personally receive?

A Two hundred pounds.

Q Do you have with you, sir, the waybill which was attached to the package?

A Yes, sir, I do.

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Q May I see that, please? Do you have with you, sir, the waybill which was attached to the 100 pounds which you did not personally receive?

A Yes, I do.

Q Where did you get these waybills, sir?

A I got these from our office records.

Q Are they kept in your office records as a regular course of business?

A They are.

Q Is it the regular course of business to keep these records?

A It is.

Q Do these records reflect approximately those events which they purport to reflect?

A They do.

MR. BIERMAN: Your Honor, I would offer these at this time as Exhibit No. 39.

THE COURT: Let counsel see them.

MR. GREENSPAHN: Your Honor, I would note before the Court that these are copies. There should be originals if they came with the shipment.

MR. BIERMAN: The testimony is that this

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was on--

THE COURT: I gather from the testimony that is one of the duplicate originals which is retained by the person who received the package.

MR. BIERMAN: That is correct, your Honor. I would presume the trucking company keeps their own originals.

THE COURT: I will ask him. Is that the copy that you were given at the time the package was received by you?

THE WITNESS: Yes, sir, that is.

THE COURT: That is the only one that you got?

THE WITNESS: That's the only one we have, yes, sir.

THE COURT: All right, sir.

MR. BIERMAN: I would offer, your Honor, renumbering these, this one waybill as Exhibit 38-A and this exhibit as 37-A.

THE COURT: They will be received in evidence as Government's Exhibit 38-A and 37-A.

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(Thereupon the instruments
referred to were received in
evidence as Government's
Exhibits Nos. 37-A and 38-A.)

BY MR. BIERMAN:

Q I show you, Agent Davis, what will be
marked as Government's Exhibit No. 39 for identifi-
cation and ask you when and where you have seen this.

A May I open it?

Q Yes, sir. Be careful. There is
powder.

THE COURT: Yes. You would have to
open it if you are going to tell us what is in it.

Is this the other stick of dynamite?

THE WITNESS: Yes, sir.

THE COURT: What is the purpose of
offering that?

MR. BIERMAN: The laboratory will be
here later and he has to identify it.

A This is the second stick that was
removed by me from the box, which also bears my name,
George E. Davis and the date 8-27-68.

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Q And is this the stick which you testified was sent to the FBI laboratory?

A Yes, sir, it is.

MR. BIERMAN: I move the introduction of Government's Exhibit No. 39 for identification into evidence.

MR. GREENSPAHN: No objection.

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

(Thereupon the stick of dynamite referred to was received in evidence as Government's Exhibit No. 39.)

THE COURT: Are there any further questions?

MR. BIERMAN: Yes, your Honor.

BY MR. BIERMAN:

Q Where, Agent Davis, did the thought of getting simulated dynamite come from?

MR. GREENSPAHN: If it please the Court, this is going to require a hearsay answer.

THE COURT: Well, does this man know of

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his own knowledge?

MR. BIERMAN: Well, he would know if something was communicated to him.

THE COURT: Then that would be hearsay and I will sustain the objection to it.

BY MR. BIERMAN:

Q At what time did you first hear of the idea of simulated dynamite?

A In June, 1968.

Q Did you ever have any occasion to give any money to Ricardo Morales?

A Yes, sir, I did.

Q When was that?

A The first occasion was on October 16, 1968.

Q How much money was that?

A \$424.33.

Q For what purpose was that money given?

A That was to pay for his expense in moving from one residence to another in Miami, upon our suggestion and request.

Q Did he request money from you?

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A No, sir, he did not.

Q Did he accept it when you gave it to him?

A Yes, he did.

Q Did you ever give him any other money?

A Yes, sir, I did.

Q When was that?

A I gave him \$200 on October 24, 1968.

Q Did he request that money from you, sir?

A No, sir, he did not.

Q I have just one more exhibit to show you and then we will be through.

I show you Government's Exhibit No. 25 in evidence and ask you when and where you have seen these before.

A These are two tools--a small wrench and a pair of pliers--which I first saw on October 1, 1968, when they were left in my mail folder with a note attached by Special Agent Joseph Marszalek.

Q What did you do with them, sir?

A I kept them and I contacted Ricardo

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Morales and requested him to come to our office.

Q After you were completed with that portion, what did you do with them? Did they remain in Miami, sir?

A Oh, they remained in Miami, yes, sir, until I gave them to another agent to transmit to the FBI laboratory.

Q Are these the same tools which were transmitted?

A Yes, sir. At the time, I X'ed these in the company of Mr. Morales. With an electric pencil I etched on this tool the initials "R. M."

Q Do you see that now, sir?

A Yes, I do. It's right here on the flat surface. On this pair of pliers, I first tried to etch with a steel pencil, but it would not receive any impression because of the hardness, apparently. So then I took a red pencil and wrote the initials "R. M." right here in the presence of Mr. Morales.

Q Do you find that?

A Yes, sir, I do, right here.

MR. BIERMAN: I have no further questions.

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CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Davis, with regard to the shipment from Birmingham or from the duPont Company to the FBI office in Miami that you have talked about, were you the direct deliverer or was there some intermediate to you who received the shipment?

A There was an intermediary.

Q Who was the intermediary?

A I don't remember. It was one of the clerks in our office.

Q What is the procedure that is employed when something is delivered to your office? Are they addressed to the Special Agent in Charge or one of the Special Agents?

A When the delivery is received by the clerk who handles such matters--and in this particular case I can only speak of what happened in this particular case because I am not normally in the business of receiving shipments to the office, but in this case I was notified by a clerk, and the receipt was placed on my desk relating to the delivery of 200

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pounds. And at that point I verified that the delivery had been received, and it was placed in a vault in our office.

Q Did the bill of lading come attached to the package itself or was it separate and apart from the package?

A I don't know about that, because all I saw on my desk was the receipt.

Q You have, of course, before coming in here today, studied the receipt, looked at it?

A Yes.

Q I would call to your attention--and I will bring the exhibit to you--this is Exhibit 38-A. I would call to your attention some marking apparently handwritten and in inked pen a description of the article.

A Yes, I see that.

Q What does that say, sir?

A That means "Received and acknowledged on 7-31-68." And the initials are LDS.

Q Who is LDS, if you know?

A That is Linda Smith.

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Q Who is Linda Smith?

A She is a property clerk in our office.

Q She would have been the one to whom these were transmitted?

A That's correct.

Q Now, sir, you will also note that in the description of the article, in describing the article as one package of Government property, there is a column calling for a designation of the weight of the article. Do you see that?

A Yes, I do.

Q What was the weight that was indicated in typewriter fashion on the waybill before it arrived at your office?

A It appears to be "100 pounds."

Q Now, what, if anything, has been done to modify that?

A A "2" has been placed over the "1."

Q Is there any other writing in that particular column?

A Yes, sir. Somebody has initialed it.

Q Do you know whose initials they are?

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A No, sir, I do not.

Q Was this waybill in the condition that it now presents itself at the time that you received it, or was the alteration made on the face of it after you received it?

A Well, I cannot testify to that because I did not see this portion, the bill of lading portion, until several days ago when I contacted this clerk in order to get the record relating to this shipment.

Q When this was offered into evidence, you testified, Mr. Davis, that you received this with the package and observed it at that time. Was I incorrect about that?

A Well, I received the receipt. The receipt was placed by my desk.

Q Now, you are referring to the blue slip that is on top of the waybill?

A That's right.

MR. GREENSPAN: Your Honor, in the light of the testimony, I would respectfully move that Exhibit 38-A be stricken. It has not been properly qualified for admission. The blue slip or

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the waybill will have to be produced, if that is what Mr. Davis is talking about.

THE COURT: I am inclined to agree with you, sir.

MR. BIERMAN: We will bring in an additional witness in regard to that.

THE COURT: All right, sir. At this moment the defense's motion to strike that exhibit is granted. It is no longer to be considered in the evidence.

BY MR. GREENSPAHN:

Q I show you Government's Exhibit No. 38-A, which is the other waybill, if I am not mistaken, that you presented today and ask you if the same set of occurrences presented themselves that you have testified to with regard to 38-A.

A No, sir. I did not receive this, myself.

MR. GREENSPAHN: I would have the same motion, your Honor.

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

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BY MR. GREENSPAHN:

Q Now, Mr. Davis, with regard to the second stick of dynamite that you indicated had been sent to the laboratory, when you identified it today, did it appear to be in the same condition, the same packaging that it had been when you sent it up there?

A Yes, sir.

Q Were there any changes, any alterations in that package?

A It was the same except that the contents appear to have been changed--that is, examined or changed. It is not what you would call a perfect stick now.

Q What you are telling me is that it appears some of the contents have been removed?

A Yes, sir.

Q Was it a perfect stick when you first saw it?

A Yes, sir.

Q Did you at any time personally open up the wrapping of that exhibit?

A No, sir, I did not.

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Q What was your procedure in sending it to your laboratory?

A I gave it to Mr. Crane to handle.

Q You do not know of your own personal knowledge what, if anything, transpired subsequent to that time in terms of the physical handling of the object?

A No, sir, I don't.

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Q On October 16 you gave Morales \$424.33. This is evidenced by a receipt that he signed for you. That is part of the composite exhibit that is in evidence. It is dated October 16th. Now, was this money asked for by Mr. Morales--that is, the \$424.33?

A No, sir, it was not.

Q Did you prepare this receipt where Morales acknowledged the receipt from you specifically of this sum?

A Yes, sir, I did.

Q Did you personally type that up?

A I personally typed that up.

Q Now, on the receipt you itemize the first month's rent and the last month's rent on a one-

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year lease. Were you personally familiar with the terms and conditions of the lease agreement that this refers to?

A No, sir.

Q Were you aware of the fact that Morales had committed himself to a one-year occupancy by a lease either of an apartment or a house or whatever it may have been?

A Yes. He told me that he had obtained a lease for one year.

Q To your knowledge he remained a resident at that place of abode since October 16, 1968?

A Yes, sir, he has.

Q And, to your knowledge, it is his intention to remain there?

A So far as I know it is.

Q On the receipt form of October 16, 1968, among other things it says this money was being furnished to Morales to enable him to remove himself from his past residence to a new residence, to afford him greater protection and security as a witness for

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the Government in this case?

A That's correct.

Q You also paid \$64.33 for the installation of water and electric; you paid \$35 for moving costs, and \$25 for light bulbs and floodlights, et cetera?

A That's correct.

Q Now, you say he did not ask you for this. What were the circumstances, then, that compelled you on October 16 to gratuitously give to him or to offer it to him?

A Because of the type of undercover investigative work that Mr. Morales was doing upon our request, and because of the nature of the individuals that he was dealing with, and the type of activity that we had reason to believe they were involved in, we felt like it would be a risk to his personal safety if he continued to reside where he was then living, which was in a Cuban neighborhood; and in view of the fact that by this time he had stated that he would be willing to testify as a Government witness in this case.

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Q Were you of the opinion at that time that any of these nine defendants, any of the male defendants, were going to do him harm?

A Not as individuals.

Q Collectively so or with particular reference to these defendants?

A I had no specific evidence.

Q But if I understand you, you imputed whatever thoughts you had to these defendants?

A Yes, sir.

Q Well, Mr. Davis, on October 16th, if memory serves me correctly, all of these named defendants were in the County Jail.

A That is true.

Q So really you were not worried about them doing any harm?

A I was worried about the group they belonged to, their friends and people who might be sympathetic with them, who believed things they do.

Q You had no concrete evidence of any form of intimidation of Mr. Morales, had you?

A No, no specific form.

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Q Then, sir, on October 24, a matter of some eight days after you paid Mr. Morales the money for the first and last month's rent, you gave him some more money which you said he did not request. What was your purpose in doing that?

A My purpose was--I knew that when a person moves from one location to another, there are always incidental expenses that come up, and I felt like undoubtedly he incurred other expenses, and I felt like he was certainly due this additional amount of money to take care of any such expenses, although he had not requested any additional money. He had never requested any money, as a matter of fact.

Q Did he ever refuse any money that you offered to him?

A No, he did not, although we had insisted in each case that he accept money.

Q Why did you insist that he accept it if he did not want it?

A Because I felt it was his just due, and the least we could do because of the risky business that he was involved in on our behalf.

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Q Well, was he involved in any risky business on your behalf on October 16 or October 24?

A He had already been involved in this risky business prior to that time.

Q Did you know Mr. Morales before April, 1968?

A I never knew him in April, 1968.

Q Before that time is the question.

A No, sir, I did not.

Q When was your first acquaintance with him?

A About the middle of July, 1968.

Q Up to that point he had been Agent Ball's principal concern?

A That's correct.

Q Had you, in the course of your official duties, ever had occasion to investigate or become concerned with Mr. Morales?

A No, sir.

Q To your knowledge, had your partner, prior to 1968, had occasion to become concerned with Mr. Morales in any respect, for the purpose of

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investigation or otherwise?

MR. BIERMAN: Your Honor, I am going to object to that question.

THE COURT: I am going to sustain the objection.

BY MR. GREENSPAHN:

Q Mr. Davis, how often did you meet personally with or speak to Mr. Morales?

A Beginning in about the middle of July, I had occasion to contact him or speak to him several times a week.

Q Did you at any time direct him as to the manner and means he was to go about his undercover work?

A Yes.

Q What were your specific instructions to him?

MR. BIERMAN: I object to the form of that question. That is rather vague, to say the least.

THE COURT: Let us find out whether he gave him any specific instructions. If he did, then

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ask him what they are.

BY MR. GREENSPAHN:

Q Did you give him any specific instructions?

A Yes, from time to time.

Q Taking it one step further, as you recall them, what were those specific instructions?

A For instance, when he reported that Mr. Bosch had requested dynamite, our instructions were to meet us at a certain place to accept the delivery of simulated dynamite that he could hand to Mr. Bosch.

Q Were there any other instructions of a different and specific nature that transpired over the course of these several months that you and Morales dealt?

A To report the results to us of his contact with Mr. Bosch and with members of Bosch's organization.

Q Did you at all times have trust in Mr. Morales?

A Yes, I did.

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Q You never doubted him?

A No.

Q Did you ever search his car or his house or any other object that belonged to him?

A Never.

Q Were you aware that some of your fellow agents had made such searches?

A I don't specifically recall any such search.

Q Mr. Davis, with particular reference to yesterday and today, is Mr. Morales still in the service of your agency?

MR. BIERMAN: I am going to object to the form of that question. I do not exactly know what it means.

THE COURT: I am going to sustain the objection to the question as it is presently phrased.
BY MR. GREENSPAHN:

Q Is Mr. Morales still employed either on a regular or full-time or part-time basis by your agency?

A He was never employed by our agency.

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Q Doing either on a full-time or part-time basis, has he, to your knowledge, done any such work since October 11, 1968?

A Not to my knowledge; not in the sense of being employed.

Q Well, in any sense, sir?

A He has assisted the FBI.

Q In prosecutions other than this?

A Not to my knowledge.

THE COURT: I will ask counsel to rephrase his question. The FBI has nothing to do with the prosecution. It is purely an investigative and arresting agency. The United States Attorney is the one who conducts the prosecution.

MR. GREENSPAHN: I stand corrected, your Honor.

BY MR. GREENSPAHN:

Q Other than this case has he participated in any way with your department?

MR. BIERMAN: I will object on the basis of relevancy. If the question deals with whether the money was for anything else, that might be

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relevant. But anything other than Mr. Morales did is not relevant.

THE COURT: I will permit the witness to answer that question if he knows. Answer it yes or no. I will not permit any inquiry, if he answers yes, as to what, if anything else, he has done. But the witness, if he knows, can answer it yes or no.

A The answer is yes.

MR. GREENSPAHN: I have forgotten what the question was.

THE COURT: The question was whether he was assisting the FBI in any other investigation since October 16, 1968.

MR. GREENSPAHN: Okay.

THE COURT: And the answer was yes, and I have said that I will not permit counsel to go into those investigations unless they are connected with these defendants and this case.

BY MR. GREENSPAHN:

Q Then, Mr. Davis, are these subsequent investigations to which you have now said Mr. Morales is a participant in any way remotely or otherwise

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related to these defendants?

A No.

Q Is Mr. Morales being paid for his services in behalf of the other investigations that you referred to?

A He is not being paid for his services.

Q When did he, to your knowledge, terminate his investigation of these nine defendants?

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

THE COURT: I will sustain the objection to the question as it is phrased.

Mr. Morales was not conducting the investigation; the FBI was conducting the investigation.

BY MR. GREENSPAHN:

Q Has Mr. Morales received any money from you or from any other federal agency that you are aware of since October 24, 1968?

A Not to my knowledge.

Q Were you personally acquainted with any of the nine defendants prior to the inception of this case?

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A Yes.

Q With which of the defendants were you personally acquainted?

MR. BIERMAN: Your Honor, I fail to see what on direct examination this goes to.

THE COURT: I cannot possibly see the materiality unless counsel intends to develop some bias or prejudice on the part of this particular witness as against a particular individual. Other than that, whether he knew them or not would not be material.

MR. GREENSPAHN: Your Honor, your perception is quite right.

THE COURT: I will permit the question to be asked if that is your purpose.

BY MR. GREENSPAHN:

Q Go ahead, sir.

A I had been previously acquainted with Dr. Bosch. I have met Jorge Gutierrez and Miss Aimee Miranda.

Q With particular regard to Dr. Bosch, you have previously testified against Dr. Bosch in

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other prosecutions that were unsuccessful, have you not?

A In one other prosecution.

Q And you have apparently worked on several other prosecutions that were unsuccessful, have you not, sir?

A Not any FBI case. I only had one FBI case involving Dr. Bosch.

Q When was that, if you can recall, in point of time?

A That began back in 1964.

Q When did it terminate?

A The trial was held in 1966.

Q Did you continue your investigation in the regular course and scope of your duties subsequent to December, 1966, of the defendant Bosch?

A Off and on at different times, with the exception of almost a two-year period beginning in March, 1966.

Q Mr. Davis, this calls for complete candor. Was it your desire, as of the conclusion of the proceeding in December, 1966, to do anything and

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everything that you could to again prosecute Orlando Bosch?

A Only in the event any evidence came to our attention which would indicate that he had violated a law of the United States.

Q Did you at that time formulate the personal opinion that you would personally make every effort available to you to discover such evidence if any evidence there be?

A Yes.

Q You might say, then, that Dr. Bosch has been a thorn in your side?

MR. BIERMAN: I am going to object to that.

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

BY MR. GREENSPAHN:

Q Did you or your department receive any added impetus to your efforts to investigate Dr. Bosch from your departmental superiors either in Washington or anywhere else?

MR. BIERMAN: I will object to the

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question.

THE COURT: I will sustain the objection.

BY MR. GREENSPAHN:

Q Mr. Davis, you are Spanish-speaking, are you not, sir?

A No, I am not.

Q You are not Spanish-speaking?

A No.

Q But you have concentrated over the course of the last few years in cases involving Spanish-speaking people?

A Yes, I was connected with many individuals or with many investigations involving Spanish-speaking people.

Q Have you, sir, conducted any investigation relative to the existence or operation of the persons who may be acting in behalf of the Fidel Castro Government in Cuba?

A Yes, I have.

Q To your knowledge, sir, have there been any prosecutions of any persons as agents of that

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government in the Southern District of Florida or in this entire judicial district?

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

THE COURT: I will sustain the objection.

MR. GREENSPAHN: If the Court please--

THE COURT: I do not need any argument.

MR. GREENSPAHN: Then, your Honor, I would ask that, in the interest of time, Mr. Davis be instructed, as some other witnesses have been, to be available for my further examination.

THE COURT: All right, sir.

Is there any redirect?

MR. BIERMAN: Yes, sir.

REDIRECT EXAMINATION

BY MR. BIERMAN:

Q What division of the FBI here in Miami are you assigned to, sir?

A Security Division.

Q In your assignments, Mr. Greenspahn asked

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you if you paid any attention to Dr. Bosch. Have you done that, sir?

A I have.

Q For what reason?

A It is part of my duties to investigate groups that are involved in possible violation of the laws of the United States.

Q And you were asked, sir, whether or not you were involved in another prosecution of Dr. Bosch; is that correct, sir?

A Yes.

Q What was the nature of that prosecution?

A That was for extortion.

Q At the conclusion of that trial and at some later time, did you make any recommendations to the United States Attorney's office?

A I did.

MR. GREENSPAHN: If it please the Court, this gets way out of the scope of cross examination. I don't know the answer to it, but it is way out in left field somewhere.

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MR. BIERMAN: The entire area of his dealings with Dr. Bosch have gone way beyond--

THE COURT: Gentlemen, you have both gone a long ways, and since I have permitted counsel for the defense to go a long way and counsel for the Government did not object, I am going to permit that particular question to be answered.

BY MR. BIERMAN:

Q What did you recommend, sir, if you did?

A An investigation for perjury.

Q Did you conduct that investigation?

A I did.

Q Who was the subject of that investigation?

A Orlando Bosch.

THE COURT: I will permit you to recross on that. I expect you will want to.

MR. GREENSPAHN: Thank you.

THE COURT: Did any indictment result or was any indictment returned as the result of your investigation and your recommendations?

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THE WITNESS: No, sir.

THE COURT: All right.

BY MR. BIERMAN:

Q Agent Davis, have you treated Dr. Bosch in any way different from other subjects which you have investigated in regard to the internal security of the United States?

A No, sir, I have not.

Q Did you, sir, manufacture or produce any evidence in this case?

A Never.

Q On the date of October 16th when you arranged for the moving of Mr. Morales, did you know, sir, whether or not any of these individuals were on bail or could make bail?

A I am not certain about that particular date, but I did know that the bail for several of them was rather low, and it was presumed that they could very easily make bail.

Q Agent Davis, you testified, sir, that you have been an agent for twenty-nine years. How much of that has been in the Miami area?

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Davis - redirect

A Seventeen years.

MR. BIERMAN: I have nothing further.

THE COURT: Counsel may recross with respect to that portion I have indicated, if he so desires.

MR. GREENSPAHN: Yes, sir.

RECROSS EXAMINATION

BY MR. GREENSPAHN:

Q One question relating to something the Judge said about this bail being relatively low. Is \$50,000 a low bail, in your estimation?

A No, that is not a low bail.

THE COURT: That all depends on who it is. To John D. Rockefeller it would be pretty low. To me it would be awfully high.

BY MR. GREENSPAHN:

Q Mr. Davis, have you at any time threatened Orlando Bosch?

A No, I never have.

Q Mr. Davis, when did you commence your investigation relative to perjury and when did you terminate that investigation?

Davis - recross

A Beginning in December, 1966, shortly after the trial.

Q When did you terminate it?

A In approximately February, 1967.

Q Were you assisted by anyone in that investigation?

A No. I conducted that by myself.

Q Did you do that in the normal and usual course and scope of your professional activities, or did you do that on your own time?

A I did it in the normal scope of my activities and after consulting the United States Attorney as to the advisability of doing that.

Q Was any presentment ever made to the Grand Jury or other lawfully constituted authority for the issuance of an arrest warrant?

A No, it was not.

Q Do you have in your present possession, back at your office or elsewhere, the files and records of those investigations?

A Yes, sir, we do.

Q Is it your standard procedure, Mr. Davis, to investigate a defendant who has been

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Davis - recross

successful and has received a judgment of acquittal from a United States Federal Court and a jury properly impaneled for perjury?

MR. BIERMAN: I object.

THE COURT: I will sustain the objection.

Gentlemen, I think we are going a little too far now.

MR. GREENSPAHN: That is all I have as to that, but I do have a motion to make before the Court.

THE COURT: You may step down. You will have to remain subject to call. If you will keep in touch with the United States Attorney so that you will be available on short notice, I would appreciate it.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Do you have a motion?

MR. GREENSPAHN: Yes, sir, I do.

THE COURT: Ladies and gentlemen of the jury, this may be a good time to take a little break. We will have a recess for about ten minutes.

The same instructions, of course, are still applicable.

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

MR. GREENSPAHN: Your Honor, I would
most respectfully move that the Court now require the
Government to produce for my inspection at any place
the Court designates the files to which Mr. Davis has
alluded relative to his investigation of Dr. Bosch
since that may be very material to this defendant to
show a personal motivation on the part of this agent
and perhaps of his administrative bureau to prosecute
this defendant before you.

THE COURT: The motion is denied.

MR. GREENSPAHN: Thank you, sir.

THE COURT: The Court will be in recess
for about ten minutes.

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

THE COURT: You may proceed. Bring the
jury in, please.

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

THEREUPON--

ALFRED YEOMANS,

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

THE CLERK: Will you please state your full name, your address and your occupation.

THE WITNESS: Alfred Yeomans, 5025 Northwest 8th Avenue. Occupation: Longshoreman.

DIRECT EXAMINATION

BY MR. KLEIN:

Q Mr. Yeomans, I call your attention to the night of May 25, 1968. Were you working on that date?

A I was.

Q Where were you working?

A On Dodge Island, on the ASAKA MARU.

Q What kind of work were you doing?

A Dock foreman.

Yeomans - direct

Q Did anything out of the ordinary happen while you were working there that night?

A Nothing except that coincident.

Q What was that?

A Well, I saw a boat behind the ASAKA MARU.

Q What kind of boat?

A A little small--it looked like a little aluminum boat, a little small boat, and there was a man in the boat. I went back down. I was handling the lines. I went back there to turn the lines loose. This guy jumped out of the boat, and a couple of seconds later one come out from up in the rudder.

Q The rudder of where?

A Of the boat.

Q Of which boat?

A The ASAKA MARU.

Q Then what happened?

A I asked him, "What you all doing up in there?"

He said "Fishing." And he jumped

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Yeomans - direct

overboard.

Q Were you able to tell what kind of voice it was?

A It was a foreign accent, sounded like Spanish.

Q Then what happened?

A Another one was up in there. He just come sliding down. He didn't stop. He went right on over behind him.

Q Then what happened?

A He got in the water, they swum and pushed the boat out and away, and then he climbed in it and rode across the bay.

Q Were you able to make out any of the faces of those people?

A I was not.

Q Did the ASAKA MARU leave after that?

A It leaved immediately.

MR. KLEIN: I have nothing further.

THE COURT: All right, sir. Cross examination?

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Yeomans - cross
CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Yeomans, do you speak the Spanish language?

A I don't.

Q You have identified an accent from the fisherman as a Spanish accent?

THE COURT: No, sir. He said a foreign accent.

THE WITNESS: A foreign accent.

BY MR. GREENSPAHN:

Q Do you know what language?

THE COURT: He just said "foreign."

MR. GREENSPAHN: I thought he had said "Spanish."

THE COURT: All right, sir.

BY MR. GREENSPAHN:

Q Do you have any idea what nationality it was?

A No, I don't.

MR. GREENSPAHN: I have nothing else.

THE COURT: All right, sir.

MR. KLEIN: Thank you. Nothing further.

THE COURT: You may be excused.

(Witness excused)

THE COURT: He has clarified that he is unable to distinguish one from the other. His testimony does not amount to it being Spanish.

THEREUPON--

DAVID R. CRIBBS,

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: David R. Cribbs.

Address: 305 Pennell Circle, Tallahassee. Student.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Mr. Cribbs, I will ask you to speak nice and loud so the last jurors in the last seats can hear you, sir.

A Fine.

Q How were you employed this summer?

Cribbs - direct

A I was employed as an office boy with Harrington & Co., Inc. I was--but I was an assistant agent to the main agent.

Q Were you working, sir, on August 8, 1968?

A Yes, I was.

Q Where were you?

A Before twelve o'clock I went to Customs and cleared the ship for release, and at one o'clock brought the papers aboard the ship.

Q Did anything unusual occur?

A There was an explosion about 1:15.

Q Were you able in any way to judge the strength of that explosion?

A It was enough to throw me off my feet up under the railing of the ship. I was directly at amidships.

Q That was around one o'clock on August 8, 1968?

A About 1:15.

Q Did you observe or did you go to the area of the explosion?

Cribbs - direct

A We went directly to the side of the ship it was on. That's where we thought the explosion occurred. That is where most of the smoke was taking place, and that was near the portside, and the chief engineer ran out of his room and down, and we started to go down the stairs, and he said--

MR. GREENSPAHN: Objection as hearsay.

THE COURT: I will sustain the objection to what he said. You cannot testify to what someone else said out of the presence of any of the defendants.

A (Continuing) There was so much water going into the engine room we were not able to go down into it.

BY MR. BIERMAN:

Q What ship were you aboard?

A The CARIBBEAN VENTURE.

Q Do you know, sir, whether or not this was a regular voyage of the CARIBBEAN VENTURE?

A It was scheduled to leave for Nova Scotia.

Q And in your position as an assistant

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Cribbs - direct

ship's agent, do you have any knowledge of how many previous trips the CARIBBEAN VENTURE had taken?

A It had made one. It made its maiden voyage from Germany to Miami, Dodge Island, and then it made one to Venezuela and back, and it was scheduled to leave for Nova Scotia, Sheet Harbour.

Q And at the time of the explosion, then, it had been from Europe to Venezuela?

THE COURT: From Venezuela to Miami and then it was en route to Nova Scotia.

MR. BIERMAN: I have nothing further.

THE COURT: All right, sir. Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Cribbs, for how long a period of time, to your knowledge, had the CARIBBEAN VENTURE been in Venezuela?

A It was approximately four days, I believe.

Q Of course, you were not there? You did not make a personal observation of the vessel?

Cribbs - cross

A No, but we always had contact by Telex.

Q Do you know the nature of the cargo the vessel was carrying from Venezuela?

A It was trailers.

Q Was there anything else in the hold other than trailers that you are aware of?

A There was one automobile a student had that he was taking to La Guaira.

Q Talking about trailers? Are you talking only about trailers or--

A Vans.

Q Were there any automotive machines on the vessel other than the machinery of the vessel itself?

A None.

Q Where at Dodge Island was this vessel when you boarded it on the 8th of August?

A It was at Dodge Island at the old Pier 3.

Q Pier 3?

A Correct.

Cribbs - cross

Q Were there other vessels docked at the same time at the same pier?

A There was one directly behind us. It was a very small vessel. I'm not sure what flag it flew under.

Q Do you recall whether it was in fact a foreign as opposed to an American ship?

A It was a foreign flag, yes, sir.

Q Were the dock workers on the dock working with the unloading or loading of the vessel at Pier 3?

A This ship that was directly behind us, it was not loading or unloading. They were doing repair work. I think they were installing a radar system.

Q Was this a ship of war or was it a commercial merchantman?

A Commercial.

Q Now, sir, when you boarded the vessel, were you required to identify yourself? Was there any vessel security?

A No, sir, because I had gone through

Cribbs - cross

that previously when it first came in to Dodge Island from Germany. They knew who I was because I had been in contact with them.

THE COURT: What he is asking you, in substance, is this: Did they have anybody at the gangplank in order to pass people on board the vessel, or could anybody just walk on board? Is that what you mean?

MR. GREENSPAHN: Yes, sir, that's correct.

A No one with any authority whatsoever greeted me at the top of the gangplank.

BY MR. GREENSPAHN:

Q How many people were there in and about the pier area immediately adjacent to the vessel and on the vessel at the time that you were there, and the approximate number?

A I have no way of saying that because there were warehouses there and office buildings there, and I know that the crew was on board the ship and the crew behind the ship.

Q Is it fair to say there was a good many

Cribbs - cross

people?

A Yes, sir.

Q Did you observe any persons immediately after the explosion that you have described who removed themselves from the pier area or from the vessel?

A No. We were just merely concerned with the chaos on board the ship and the cause of the explosion.

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

THE COURT: Redirect?

MR. BIERMAN: No further questions.

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

(Witness excused)

THEREUPON--

THOMAS P. TOOMEY,
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,

Toomey - direct
address and occupation.

THE WITNESS: Thomas P. Toomey,
explosives ordnance disposal technician at San Juan,
Puerto Rico.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Toomey, I notice you are in
uniform. Are you in the United States Navy, sir?

A That's right.

Q What is your rank?

A I am a warrant officer.

Q How long have you been in the Navy,
Mr. Toomey?

A I am in my twentieth year.

Q Do you have any specialty in the Navy?

A I specialize in explosive ordnance
disposal.

Q How long have you been engaged in that
type of work?

A I am in my twelfth year.

Q Have you had any specialized training
in the field of ordnance?

Toomey - direct

A Yes, sir. Our basic training starts out at the Underwater Swimming School in Key West, Florida. And from there on to Indianhead, Maryland. The basic course is approximately a year long.

Q When did you take that course?

A In 1957 I completed that course.

Q Were you on duty on September 12, 1968?

A Yes, sir, I was.

Q Do you recall anything unusual that occurred that day?

A That evening I received a call from the staff duty officer--Commander, Caribbean Sea Frontier.

MR. GREENSPAHN: If it please the Court--

MR. MORRIS: He said he received a call. He is not going to be asked to relate conversation.

THE COURT: All right, sir. Go ahead.

BY MR. MORRIS:

Q Go ahead.

A I received a call to--

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Toomey - direct

THE COURT: Do not tell us what the call was, sir. After you received the call, what did you then do?

THE WITNESS: I proceeded to the Coast Guard Search and Rescue Coordinating Center at San Juan.

Q Then what did you do, sir?

A We boarded a boat--a Coast Guard craft--and proceeded to the Spanish ship COROMOTO.

Q Where was that located?

A She was approximately five miles at sea outside the channel entrance at this time.

Q Did you go aboard the COROMOTO?

A Yes, sir, I did.

Q What did you observe there aboard the ship?

A We were taken to the engine room spaces and were shown damage that was sustained from an explosion.

Q Will you describe what you saw, please?

A The after bulkhead in the engine room was buckled inward with numerous piping, water mains

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Toomey - direct

ruptured. The deck plates were buckled, and there were fragmentations from a fractured shaft that had been thrown through the engine room.

Q Could you determine whether or not the vessel was taking on any seawater?

A No, sir, not at that point.

Q What happened next?

A We stayed aboard the ship for entrance into the port and tied up at Pier 6.

Q At which port, sir?

A San Juan.

Q All right. Go ahead.

A The vessel tied up at Pier 6, and I conducted a dive to investigate the external damages and to try to determine if any other dangerous devices were attached to the ship.

Q What did you observe during the course of that dive, sir?

A On the starboard side aft near the rudder and screw there was a hole approximately four feet in diameter. The metal at this point was blown inward to the inside of the ship. And the other side,

Toomey - direct

on the port side immediately adjacent to this hole the bulkhead or the shell plating was buckled outward. Numerous rivets in this area were blown outward completely and others were blown outward partly.

Q Could you determine what had been the nature of the cause of this damage?

A It was apparent to me that it was from an explosion from some sort of a device that was in contact with the hull at the stern of the ship.

Q Could you determine from your examination whether the explosion had occurred on the exterior or interior of the hull of the vessel?

A Yes, sir. I'm sure that it was on the exterior.

Q How could you be sure of that?

A From the condition of the metal and--

THE COURT: He has already testified where the explosion took place the metal was bent inward, and on the opposite side of the explosion the metal of the ship was bent outward; the bolts were blown out in that direction, and it is perfectly obvious that the explosion was from that side inward,

Toomey - direct

is that correct?

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

MR. MORRIS: Thank you, your Honor. I have no further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Toomey, had you, previous to November 12, 1968, conducted similar investigations on other vessels that had been disabled by reason of unexpected demolition equipment? In other words, had you ever before looked at a vessel that had a hole in it that somebody thought was related to or resulted from an explosion caused by some external explosive force?

A No, sir.

Q Have you, in the course of your training and your experience, encountered vessels of war, for instance, that have received direct hits from torpedoes or perhaps been damaged in a mine field?

Toomey - direct

A Have I conducted the investigation on it?

Q Yes, sir.

A No, sir.

Q Have you seen such vessels?

A Yes, sir.

Q Can you tell me if that was a frequent occasion or an occasional thing?

A This is an occasional thing.

Q Do you know whether or not, based upon your experience and training and based upon your personal or professional knowledge, there were any indications to be found in the hold of the vessel, in the engine room of the vessel or in any other place in, about or around the vessel, the COROMOTO, indicating the nature or the type of device from whence the explosion came?

A No, sir.

Q Nothing?

A Nothing.

Q Do you know the route of travel that the COROMOTO had pursued prior to the point of the

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Toomey - direct

explosion--where it had been and where it was coming to?

A It had left San Juan previous to this. I can't give the exact time, but it had been berthed at San Juan, and the explosion took place while at sea.

MR. GREENSPAHN: Thank you, sir.

I have nothing else.

MR. MORRIS: No redirect.

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

(Witness excused)

THE COURT: Call your next witness, please.

THEREUPON--

LUIS GARCIA,

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: Luis Garcia, 2628 Avenue Q,

Garcia - direct
Galveston, Texas. My occupation is I am employed for
a steamship agency, traffic clerk.

DIRECT EXAMINATION

BY MR. BIERMAN:

Q Were you so employed in May and June
of this year, sir?

A Yes, I was.

Q Where were you, sir, at that time?
Where were you working?

A Well, at that particular time I was
working in Galveston. I was working the vessel
MIKAGESAN MARU which was at Pier 40.

Q When you say you were working it, what
does that mean, sir?

A Well, I was following the loading
operations; in other words, the process of the
loading operations. I was waiting to be notified that
the operations had been completed so that I could order
pilots, et cetera, to sail the vessel.

Q Did anything unusual occur, sir, with
regard to that vessel?

A Yes. I was called in and told that--

Garcia - direct

Q Do not relate what you were told, sir. You received a phone call. What did you do as a result of that, sir?

A Well, when I was told there was an explosion on the vessel, I immediately went to the vessel and investigated, checked with the master and the chief mate.

Q What did you personally observe, sir?

A I went with the chief mate down into the afterpeak tank to see for myself what had happened. And I observed that there had been an explosion in the afterpeak tank, in the rudder trunk which houses the rudder post, blowing a fairly good size hole into the afterpeak tank.

Q Will you give us a description in size, in feet or some other measure?

A Of the hole?

Q Yes.

A I would say roughly about ten feet.

Q In diameter?

A In height; and about four or five feet in width.

Garcia - direct

Q As a result of that explosion, did any water enter the ship?

A No. This was above the waterline at the time. The vessel was light and it was above the waterline.

Q Was the vessel able to proceed from Galveston on schedule?

A Not on schedule, no. She was delayed until the following day, after which they had to burn away some of the steel, part of the bulkhead that was in the way of the rudder so that she could maneuver. And she did proceed to Houston where the repairs were carried out.

MR. BIERMAN: I have nothing further.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Garcia, how long from a matter of minutes was it from the time that the explosion was reported to you until you arrived at the scene of the explosion?

A I would say about ten minutes.

Garcia - cross

Q When you arrived at the scene, by whom were you greeted? Who else was there?

A I went aboard the vessel immediately, and the master of the vessel and the chief mate had just come up from the part of the vessel where the explosion occurred. And they are the first ones that I talked to.

Q Were you conversing with them in the English language?

A In the English language, that's correct.

Q Did you notice at that time approximately how many members of the crew were then present on the vessel?

A I don't recall the number. I would say practically the entire crew was aboard the vessel. There were some, of course, on deck.

Q What is the usual complement of the vessel, as you know it?

A The number of the crew members is approximately forty-two. I have a crew list here.

Q Were they all Japanese nationals as you recall?

Garcia - cross

A That's correct.

Q Now, sir, had there been any activity on the dock loading to that vessel and unloading from that vessel during her berth in Galveston?

A Yes, there had been. She commenced loading at seven o'clock that morning and was in the process of loading when the explosion occurred.

Q By whom was the vessel being loaded?

A She was being loaded by members of the ILA local in Galveston under the supervision of Strachan Shipping stevedores.

Q How many stevedores were there?

A Well, stevedores, as we know, are supervisors. The longshoremen, there were five gangs, as I recall, working. Well, excuse me. At the time of the explosion there were only three gangs working, which were on the forward end of the vessel. The other two gangs that were working in the after end of the vessel had completed their loading operations.

MR. BIERMAN: Your Honor, I am going to object to this line of questioning. We have not offered this witness to show who caused the explosion.

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Garcia - cross

This is what the cross examination seems to be about.
It seems rather irrelevant to me.

THE COURT: I will permit counsel to
continue. Go ahead.

BY MR. GREENSPAHN:

Q Finally, Mr. Garcia, how long have you
been in the shipping industry in Galveston, Texas?

A Sixteen years.

Q During that period of time have there
been labor disputes on the docks?

A What do you mean by labor disputes?

Q The ILA or other stevedoring or
longshoremen unions pulled off the job?

A There have been, of course, strikes,
ends of contracts expired, and negotiation of strikes,
as we all know, that have been experienced throughout
the years, yes.

Q When you came to the scene of the
explosion itself, did you find any debris or any
equipment of any type whatsoever that you could
associate with the explosive device?

A No, none whatever.

Garcia - redirect

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

REDIRECT EXAMINATION

BY MR. BIERMAN:

Q Was there a strike at that time?

A No, there was no strike at that time.

Q Had there been one right before or right after?

A No, there had not been.

Q Do you know what the flag of the MIKAGESAN MARU is?

A The Japanese flag.

MR. BIERMAN: Thank you. Nothing further.

THE COURT: Thank you. You may be excused.

(Witness excused)

THEREUPON--

FRED H. HALLBAUER,
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

Hallbauer - direct
name, address and occupation.

THE WITNESS: Fred H. Hallbauer, 1130
Southwest 22nd Street, Miami. Marine surveyor.

DIRECT EXAMINATION

BY MR. KLEIN:

Q What is a marine surveyor?

A A marine surveyor is a person who
inspects floating equipment for underwriters,
classification societies and individuals.

Q How long have you been a marine
surveyor?

A My first survey was made in 1926. And
I was a surveyor on a part-time basis from then until
1941; and since then I have devoted my entire time to
it.

Q Do you hold any licenses of any kind?

A Yes. I have an unlimited chief
engineer's license issued by the United States Coast
Guard as chief engineer of any American steamship
flying the United States flag.

Q In the course of your duties, do you
inspect vessels for damage of any kind?

Hallbauer - direct

A Yes.

Q What kind of damage have you seen on vessels in the course of your experience?

A Anything and everything that happened to a ship.

Q Have you ever testified before as an expert?

A Yes.

MR. KLEIN: I will offer Mr. Hallbauer as an expert.

MR. GREENSPAHN: I have no objection to Mr. Hallbauer's qualifications.

THE COURT: Go ahead.

BY MR. KLEIN:

Q Mr. Hallbauer, did you have occasion to examine the GRANWOOD?

A Yes.

Q When and where did you first see that vessel?

MR. GREENSPAHN: If it please the Court, I would object to any testimony relative to the GRANWOOD because of there not having been

Hallbauer - direct

established a corpus delicti with reference to the GRANWOOD or, for that matter, with reference to any of the other vessels. And until such time as a corpus delicti is established, any testimony by a marine surveyor becomes immaterial and irrelevant.

MR. KLEIN: This is not the rule in Federal Court. Furthermore, I think we have sufficiently connected the necessary elements on this question.

THE COURT: All right, sir. The objection is overruled. Proceed.

BY MR. KLEIN:

Q Did you have occasion to see the GRANWOOD, Mr. Hallbauer? And if so, when and where did you see it?

A Well, I saw her laying in Miami Harbor or while she was discharging cargo. I merely saw her laying at the dock. I had nothing to do with her.

Q Where did you see it again after that?

A At anchor down off Key West.

Q Under what conditions did you see the

Hallbauer - direct

GRANWOOD at that time?

A Well, I went down there because her engine room had been filled with water, and there was a question on the best procedure to get her into port; and for the underwriters, also, for classification.

Q When did you see it in Key West? Do you recall the date?

A May I refer to my notes?

THE COURT: Yes, sir, if you have them.

THE WITNESS: On May 7, 1968.

BY MR. KLEIN:

Q Did you go on board?

A Yes, sir.

Q What did you see on board?

A Well, I found that the engine room had been flooded.

Q About how many feet of water would you estimate?

A I don't know as I could say how many feet of water were in the engine room, but she was

Hallbauer - direct

flooded up to the top of the main engines which, for a guess, would probably be 25 to 30 feet.

Q What else did you see there at that time? Was there anything else that you are able to see?

A The No. 5 hold had been filled with water to about 20 feet, but both spaces had been pumped out prior to my boarding the vessel.

Q Did you have occasion to see the vessel after it had been pumped out?

A The engine room and hold were pumped out before I boarded the vessel.

Q What did you observe in the engine room and in the hold?

A Well, the engine room was completely coated with oil that had floated on top of the water and had followed the water up. And it went down again when they pumped her out. And the hold had been full of water and at least 20 feet of water in there. And the newsprint had swelled up.

Q What sort of newsprint?

A Newsprint in rolls for printing

Hallbauer - direct

newspapers.

Q Was that part of the cargo?

A That was the cargo.

Q What else did you observe?

A Well, I found damaged pumps--a damaged pump. The auxiliary machine on the starboard side of the engine room had been displaced, and the tank top had been displaced and pulled upward, so that there was a slight leak at that time. The main leak had been repaired by a diver before I got there.

Q Where is it in relation to the front or the back of the ship, if you are able to tell?

A Where had the explosion or damage taken place?

Q Yes.

A It was in the stern. It would be in the afterpart of the vessel.

Q Based upon your experience did you form an opinion as to what the cause of that explosion was?

A Well, I don't know that I can tell you what caused it except that it was an external

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OFFICIAL COURT REPORTER

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Hallbauer - direct

explosion.

Q How were you able to determine that?

A By the fact that the tank top was set upward. The floors in the double bottom where they could be seen were set upward and bent, buckled. The machinery in the engine room had been set up and set to one side and broken.

Q What was done with the vessel after that, if you know?

A Yes. I approved the vessel to be towed to Mobile for discharge of the balance of the cargo and drydocking for examination.

Q Mr. Hallbauer, did you also have occasion to see the vessel, the CARIBBEAN VENTURE?

A Yes.

MR. KLEIN: I will withdraw the last question. I have nothing further.

THE COURT: All right. Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Hallbauer, all together how many

Hallbauer - cross

times were you on board the vessel the GRANWOOD?

A I was aboard once.

Q Just the one time and that was at sea?

A That was at where?

Q The vessel was in the water at the time? That was not after it was taken in drydock?

A No. She was laying at anchor afloat.

Q She was afloat at that time?

A Yes, sir.

Q Did you at any time subsequent to that time have any further opportunity to observe the vessel either afloat or on shore?

A The only time I saw her after that, I was flying from Freeport to Nassau and looked out of the plane and saw her at the end of a towline headed for Germany.

Q Or England?

A I don't remember which it was.

Q Did you, in the course of your duties as a surveyor, ultimately speak to Special Agent Gilbert E. Todd of the Federal Bureau of Investigation?

A I'm afraid I couldn't hear you.

Hallbauer - cross

Q Did you, as a marine surveyor, after you had been on board the vessel the GRANWOOD speak to Special Agent Gilbert E. Todd of the FBI?

A Yes, I believe that was his name.

Q Did you at that time, sir, advise him that because of the high seas at the time that you were aboard the vessel and the fact that the explosion had occurred below the waterline you were required to conduct a very cursory examination of the vessel?

A No, I don't remember anything like that.

Q Did you also tell him at that time, sir, that the explosion might well have occurred from the outside of the hull of the engine room rather than from the inside, but you could not make a definite determination along those lines until the ship was placed in drydock and a more thorough examination undertaken by you?

A No, I don't remember that conversation. It was my opinion from the very beginning that it was an external explosion.

Q May I see your records? Is there

Hallbauer - cross

anything else other than these you have handed me?

A Yes (handing documents to Mr. Greenspahn).

Q Is there any indication on any of these instruments that you have that the explosion was an external explosion as opposed to an internal explosion?

A Can I read this?

THE COURT: Yes, go ahead.

THE WITNESS (reading): "It is further stated about 7:00 a.m. on May 4 while the vessel was near Cosgrove Shoal west of Sand Key an explosion took place apparently under the hull of the vessel under the starboard side of the engine room space, following which the engine room became flooded to sea level and water apparently entered No. 5 hold from the engine room to a depth of 20 feet."

BY MR. GREENSPAHN:

Q Did you form an independent conclusion,

Hallbauer - cross

sir, based upon your examination of the vessel, as to whether it was an internal or external explosion?

A Yes. My opinion is it was an external explosion.

Q Did you--

A From the fact that the tank top was set upward and the machinery on top of the tank top had been displaced and the floors in the tank had been buckled and set up.

Q At the time that you examined the vessel, was the vessel at anchor in high seas?

A Well, now, what do you mean by "high seas"?

Q Seas that were enough to cause the vessel to be jostled about?

A It can be what?

Q Seas that were sufficient, enough to cause the vessel to be jostled about so that you could not have a--

THE COURT: Was the vessel in port or was it out on--

THE WITNESS: The vessel was at anchor

Hallbauer - cross

off the Keys, and she was laying pretty quiet with the salvage tug alongside, and it was quiet enough so that we could go alongside, and I got aboard the vessel from the pilot boat with no difficulty at all. So far as I am concerned, the weather was good.

BY MR. GREENSPAHN:

Q Did you report all that you have told us today in essentially the same fashion to the FBI agent, Mr. Todd, that you spoke to?

A We discussed it sitting in the captain's room and--yes, I think probably the same.

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

THE COURT: Redirect?

MR. KLEIN: No further questions.

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

(Witness excused)

THE COURT: Call your next witness, please.

MR. GREENSPAHN: Your Honor, may we approach the Bench?

THE COURT: Yes, sir.

(Thereupon the following sidebar conference was held at the Bench out of the hearing of the jury:)

MR. GREENSPAHN: In accordance with the Court's instructions, I have been provided with the Form 302 of Mr. Hallbauer relating to the GRANWOOD, and I have the report made by Special Agent Gilbert Todd, and it is completely to the contrary of what this man has testified to. I don't know how that can be rectified except by bringing Mr. Todd under our subpoena before the Court. I don't know if Special Agent Gilbert Todd is susceptible to process at this time. I don't know where he is now or how I am going to get him here.

MR. KLEIN: Your Honor, this is not completely contrary. This happens quite often. These are merely summaries that we give to counsel. They are not a sworn statement in any way. It is actually the agent's internal memorandum, but we, in absolute compliance with anything that might be considered a Jencks statement, turned these over.

The mere fact that there seems to be some variation between what the agent reported in his personal memorandum and what the witness has testified to is no reason to bring up an issue as to whether or not the credibility--

MR. GREENSPAHN: It goes to the credibility either of the agent or of the witness, one or the other.

THE COURT: Where is this agent?

MR. KLEIN: He is in Key West. We are going to have another witness on this ship, and I do not think it is going to make any difference at all.

THE COURT: Well, I might say--

MR. GREENSPAHN: In that case, why did you put this witness on in the first place?

THE COURT: Under the circumstances, if counsel for the defense wants to recall this witness, I will permit him to call him and I will instruct you to have him available.

MR. KLEIN: All right, sir. Thank you.

MR. GREENSPAHN: Thank you. I do want him.

(Thereupon the sidebar conference
was concluded, pursuant to which
the following proceedings were
had in open Court:)

THEREUPON--

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

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

THE WITNESS: Henry I. Martin, 1235
Grandview Drive, Jacksonville. Marine surveyor.

DIRECT EXAMINATION

BY MR. KLEIN:

Q By whom are you employed as a marine
surveyor?

A Salvage Association of London.

Q What, in particular, is the Salvage
Association of London?

A A group of surveyors representing
British Marine Underwriters.

Q How long have you been so employed?

Martin - direct

A About fifteen or sixteen years.

Q What is your background in this particular area?

A Do you mean my full history?

Q Yes, if you would.

THE COURT: Well, not necessarily the full history, but what he wants to find out from you is what experience and training have you had as a marine surveyor?

THE WITNESS: Sixteen years with the Salvage Association of London, examining all marine damage claims for them.

THE COURT: Do you have any papers or licenses?

THE WITNESS: I have a British chief engineer's certificate.

THE COURT: And you have engaged in this work, you say, for sixteen years now?

THE WITNESS: Yes, sir.

THE COURT: Approximately how many vessels have you, in your opinion, surveyed or examined during that period of time?

Martin - direct

THE WITNESS: I would guess somewhere between four thousand and six thousand.

THE COURT: I hold he is qualified.

Go ahead.

BY MR. KLEIN:

Q Mr. Martin, did you have occasion to see the vessel the GRANWOOD?

A Yes, sir.

Q When and where did you see it?

A In Mobile, both afloat and on dry-dock.

Q Do you recall when that was?

A Can I look?

THE COURT: Yes, sir. If you have some notes, you can look at them.

A On May 14-15.

THE COURT: Of what year?

THE WITNESS: Of this year.

BY MR. KLEIN:

Q Did you go aboard the vessel?

A Yes, sir.

Q What did you observe?

Martin - direct

A She had severe damage in the engine room from flooding. Externally on the hull, the hull plating was badly indented and holed. The engine room accommodations were covered with oil and water. There were castings and platings broken and distorted.

Q How many of these platings were indented or distorted?

A May I look?

THE COURT: Yes, sir.

A There were fourteen plates involved.

BY MR. KLEIN:

Q Were you able to determine the cause of this damage?

A My opinion was that was caused by an external explosion.

Q Upon what do you base your opinion?

A From the fact that the shell plating was set in from the outside. The internal structural members were severely distorted, blown awkward. The castings and machinery in the area had completely broken.

Q Did you make any estimate as to the

Martin - direct
amount of damage that the vessel incurred?

MR. GREENSPAHN: Objection.

MR. KLEIN: May we approach the Bench
on this point, your Honor?

THE COURT: Yes, sir.

(Thereupon the following sidebar
conference was held at the Bench
out of the hearing of the jury:)

MR. KLEIN: Your Honor, the amount of
the damage involved is relevant as to whether it was
de minimis damage or what it was.

THE COURT: It does not make any
difference whether it was \$1,000 or \$100,000.

MR. KLEIN: It goes to whether or not
the intent was to do damage to their business.

THE COURT: I do not buy your argument.

MR. KLEIN: He has shown on cross
examination as to one of the vessels that the damage
done to the POLANICA was quite minimal or he attempted
to.

THE COURT: He may have, and there was
no particular point made of it. If I permit you to go

Martin - direct

into the damage, I will permit him to go into the question of whether it was covered by insurance or not.

I am not going to do that, gentlemen.

As far as I am concerned, the fact that you have had external explosions and the ship was damaged is sufficient, and the amount of it is immaterial.

(Thereupon the sidebar conference was concluded, pursuant to which the following proceedings were had in open Court:)

BY MR. KLEIN:

Q Did you also have occasion to see the vessel CARIBBEAN VENTURE?

A Yes.

Q When and where did you first see that vessel?

A Lying afloat in Miami, and later on in drydock in Jacksonville.

Q Do you know when it was that you saw it in Miami?

A On August 10-11.

Martin - direct

Q Did you go aboard the vessel?

A Yes, sir.

Q What did you observe?

A Similar damage to the GRANWOOD, as I just explained to the GRANWOOD, and the engine room castings were broken and the engine room was flooded with oil and water.

Q Were you able to determine the source or the cause of this explosion?

A The cause again was similar, from an external explosion and in the vicinity of the sea chest below the engine room.

Q Will you continue?

A The sea chest was originally constructed almost square or rectangular, and after the explosion it was almost circular. It apparently had been blown outwards.

Q What was done with the vessel after that, do you know?

A It was patched and pumped out in Miami and towed to Jacksonville, placed on drydock there. We did some additional structural repairs in the way

Martin - direct

of placing steel on the bottom to stiffen it, and then we towed it to Europe.

Q Did you take any photographs of the damage on that vessel?

A Yes.

Q May I see them, please?

A (Handing photographs to Mr. Klein)
These photographs were taken by the chief engineer of the vessel.

Q Are you able to recognize those photographs?

A Most of them. I have marked them.

Q Do they accurately depict what you saw on that particular time?

A Yes.

Q And would you explain them, please, generally?

A One is a photograph here of destroyed piping valves and the tank top area above the sea chest where the explosion occurred.

The next one is similar, looking down into this main sea chest.

Martin - direct

This one here is of a starboard generator forward of the sea chest, and the remaining switchboard.

And another one looking down into the destroyed sea chest. The other one is of the sea chest; another one of the switching--the area of the explosion looking starboard to a switchboard, a fractured main turbocharger feed. These are on the main engines. This is one that I couldn't identify. Broken main lube oil pump castings.

Q Hold out the one that you could not identify.

A There is another one here I couldn't identify. It's too dark. This is one of the sound-proof alarm systems in the engine room, which is completely destroyed. Another one, the main sea chest and tank top.

This is what remained aboard the vessel.

Q We do not need that.

A A generator end cover which was blown off. And these are two photographs on the deck of the

Martin - direct
vessel.

Q Is this your writing on top of each of these photographs?

A Yes.

Q You have marked each one with what you have just said?

A Right.

MR. KLEIN: We offer these as a composite exhibit.

MR. GREENSPAHN: No objection.

THE COURT: They will be admitted.

(Thereupon the photographs referred to were received in evidence as Government's Exhibit No. 40.)

MR. KLEIN: I have no further questions.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Martin, the CARIBBEAN VENTURE was how old at the time you saw it in August?

A I believe about two months.

Martin - cross

Q A brand-new vessel?

A Yes, sir.

Q On these photographs--and I recognize the clerk has yet to mark them--but if I may, on these photographs of the interior of the vessel that you produced for us, it would appear that there were markings upon the surfaces of the metal or the metallic instruments and machines and on the vessel notwithstanding the damage done to the particular machines, and the area was in some sense reminiscent of a much older vessel.

A That is how it would look now.

Q That is how it does look now?

A Yes, sir.

Q Now, when you came to the vessel for the first time in August, was that the first time that you had ever been aboard the vessel?

A Yes, sir.

Q Do you know what, if any, damage had been done to the vessel either by its crew or otherwise prior to the time of the alleged explosion?

A I know of none.

Martin - cross

Q This sea chest that you have talked to us about, was this the containing or the consigning area of the source of the explosion?

A Well, the sea chest is immediately above the sea strainer. I assume the explosion came through the strainer into the sea chest.

Q You are assuming that. Do you have any basis, based upon the physical evidence as you observed it, to draw that conclusion?

A We did find one of the sea strainers which was heavily indented set up and on bottom, and I believe in a small area of it there were marks where the metal was burned.

Q Now, sir, had you, prior to your examination of that sea strainer, ever seen that particular sea strainer before?

A Never.

Q Where in relationship to the hull of the vessel is the sea strainer, the particular sea strainer that you are referring to? Where is it located?

A Can I refer to my notes?

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Martin - cross

Q Please, sir.

A I have some drawings here if you can use a few prints.

Q If they help to answer the question, they might be of some help.

A It was on the bottom of the vessel, actually. It is just to one side of the center line in the engine room and immediately next to the generators. It is in a separate compartment from the main engines.

Q In lay language, is it at the bottom of the vessel?

A Bottom of the vessel.

Q Not on the side?

A Oh, no, no. Immediately on the bottom.

Q If for some reason this vessel were to have been in a position where it encountered any object under it that made contact with its underside, that could well account for the indenture or the dent that you observed on the sea strainer, could it not?

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Martin - cross

A It could have caused a dent on the sea strainer, but not the burning of the sea strainer.

Q Now, when you say the sea strainer was burned, what observations did you make that indicated that it was, in fact, burned as opposed to otherwise damaged?

A I don't quite understand.

Q How do you know it was burned? It was damaged.

A You could see the metal burned. There was a visual examination.

Q Did you see bent metal burned? Does it look different, Mr. Martin, from ordinary metal?

A Instead of being clean, smooth castings, you had small pieces of it burned out, blobs of metal where it melted.

Q Can't you assume as easily that there may have been an imperfection in the sea strainer at the time of its original insertion into the vessel?

A No.

Q Or in the absence of any other reasonable

Martin - cross

cause?

A No, sir.

Q You cannot?

A No.

Q Why not?

A When a vessel is constructed, it is constructed with all of the necessary regulatory bodies present and these things are thoroughly gone over. This would have never passed a classification society survey.

Q You do not know, in fact, who the surveyor was or what the place or what the circumstances were at the time the survey was made?

A No.

Q Now, did you find any evidence in the course and scope of your investigation of the specific cause--that is, other than an explosive source--of the explosion?

A There was a small piece of metal found.

Q Where?

A I believe it was found under the bottom

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Martin - cross
of the ship while she was afloat.

Q Did you see this or is there something you later became aware of?

A I saw a piece of metal on the deck of the vessel.

Q On the deck of the vessel after it had been brought up by somebody else?

A Yes.

Q Will you describe to us what that piece of metal looked like--its dimensions and type of metal, if you know?

A Roughly, six or eight inches by about two or three inches, jagged edges on it.

Q Do you know what that piece of metal was or where it came from?

A I don't know where it was from, I don't know what it was, no.

Q Where, at what part or at what place in the port was this piece of metal found?

A It was found immediately below where the explosion took place.

Q Where was that, sir? Was that here in

Martin - cross

the City of Miami?

A In Miami, yes, sir.

Q Was that at Dodge Island?

A Dodge Island, yes. It was at the pier where she was pumped up. I have it here if you want the actual--

Q It is not necessary.

Have you, sir, ever been on the bottom of that pier or at any pier in this or any other shipping center?

A No.

Q You do not know what is on the bottom?

A No.

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

THE COURT: Redirect?

MR. KLEIN: No redirect.

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

(Witness excused)

Murray - direct

THEREUPON--

ROBERT MURRAY,

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: Robert Murray, 18 Adler
Circle, Galveston, Texas.

I am a private marine surveyor.

DIRECT EXAMINATION

BY MR. BIERMAN:

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

A About fifteen years.

Q Have you received any special training
in marine surveying?

A Yes. I am a graduate of the Merchant
Marine Academy at Kings Point, New York, with a degree
in marine engineering. And about fifteen years of
private survey work.

Q About how many ships would you estimate

Murray - direct
you surveyed in that time?

A I would say probably between seven hundred and eight thousand.

Q Did you, sir, have an opportunity to inspect a vessel called the MIKAGESAN MARU?

A Yes, I did.

Q When and where was that?

A This was at Galveston, Texas, on June 1, 1968.

Q What did you find?

A The vessel had had an explosion in the after end near the rudder trunk and in the afterpeak tank area.

Q Can you describe the explosion, sir, or the results of the explosion?

A The damage consisted of several shell plates on the starboard side buckled out and torn, the rudder trunk buckled and torn, and holed from top to bottom; extensive damage to the internal structural framing of the vessel in the way of the afterpeak tank.

Q Were you able to determine the source of the explosion, whether it was internal or external?

Murray - direct

A From looking at the damage, it appeared to me that the explosion had occurred in the rudder trunk and had blown into the afterpeak tank and out through the side of the ship.

Q Did you detect anything else, sir?

A There was a smell of some type of explosive odor in the vessel at the time that we went inside.

Q Did you examine the implements which were regularly aboard the ship to see if any of them had exploded?

A Well, yes. There hadn't been anything on the ship that had exploded. None of the equipment on the ship had exploded.

Q Can you give me the date this occurred?

A This? The explosion occurred, according to the ship records, at 3:15 in the afternoon on June 1, 1968.

Q When did you come aboard, sir?

A I went aboard about five o'clock that afternoon.

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Murray - direct

Q Did it appear to be a fresh explosion to you?

A Yes, it was.

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

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Murray, you say the explosion occurred in the rudder trunk. Where is the rudder trunk on the vessel?

A The rudder trunk on this particular vessel is the access opening that the rudder stock passes through from the rudder into the steering room.

Q How is that accessible? Is that accessible from the outside or the inside?

A It is only accessible from the outside.

Q That apparently is where this occurred?

A That is what it appeared to me, that there had been an explosion in that location and it had blown into the afterpeak tank and the sides of the ship had been blown out.

Q Did you examine the rudder of the

Murray - cross

vessel?

A Yes.

Q Was there any damage done to the rudder?

A Not that I could determine. The vessel was not drydocked at that time.

Q Finally, when you got to the point of the explosion, did you observe whether any work was being done by any of the crew or any other persons at the place of the explosion? Were they doing anything?

A No. As far as I could tell, there wasn't any work in progress, sir. There didn't appear to have been anything.

Q Would you have described the odor that you described as gun powder as a strong or weak odor?

A Well, it was a rather weak odor. The tank that it penetrated was a water tank, and it had been reportedly full of water, and when it was penetrated, the water flushed out through the opening in the side of the ship, and we assumed that whatever odor had been in there may have been evacuated in that manner.

Murray - cross

Q That is an assumption. That is really unsupported by anything factual that you observed, is it not, sir?

A That is true, yes.

MR. GREENSPAHN: Thank you.

THE COURT: Redirect?

MR. BIERMAN: No redirect.

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

(Witness excused)

THE COURT: We will take a recess for about ten minutes. The same instructions are, of course, still applicable.

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

MR. BIERMAN: Your Honor, the Government would offer into evidence at this time Government's Exhibits Nos. 27, 28, 29, 30 and 30-A.

THE COURT: The objections of the defendants heretofore made will be noted. Are there any additional objections?