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#2439

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

No. 68-420-Cr-WM

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ORLANDO BOSCH AVILA,
ANDRES JORGE GONZALEZ GONZALEZ,
BARBARO BALAN GARCIA,
RICO RODRIGUEZ RAMOS,
JOS DOMINGUEZ BENITEZ,
JOSE DIAZ MORESON,
JORGE LUIS GUTIERREZ ULLA,
PAULINO GUTIERREZ, and
JIMMIE MIRANDA CRUZ,

Defendants.

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

Transcript of proceedings at trial

Pages 1-500, inclusive (Volume I of III)

(including witness index)

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

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

No. 68-420-Cr-WM

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORLANDO BOSCH AVILA, ANDRES
JORGE GONZALEZ GONZALEZ,
BARBARO BALAN GARCIA, MARCO
RODRIGUEZ RAMOS, JESUS
DOMINGUEZ BENITEZ, JOSE DIAZ
MOREJON, JORGE LUS GUTIERREZ
ULLA, PAULINO GUTIERREZ, and
AIMEE MIRANDA CRUZ,

Defendants.

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The North Courtroom,
United States District Court,
300 Northeast 1st Avenue,
Miami, Florida.
Tuesday, November 5, 1968.

The above-entitled matter came on for
hearing, pursuant to notice, commencing at 9:00
o'clock a.m.

BEFORE:

HON. W. O. MEHRTENS,
United States District Judge.

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MIAMI, FLORIDA 33101

APPEARANCES:

**DONALD F. BIERMAN and THEODORE KLEIN,
Assistant United States Attorneys;**

and

**JAMES PHILIP MORRIS, ESQ.,
Special Attorney,
Department of Justice,
On behalf of the United States
Government.**

**MELVYN GREENSPAHN, ESQ.,
Appearing on behalf of the Defendants.**

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LEONARD LAIKEN

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U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
William James Killian	49	63	--	--
Sophia Saliba	74	--	--	--
H. W. Sandridge	82	--	--	--
Edgar Barrett, Jr.	103	106	--	--
David Morris Rich	110	113	--	--
Kenneth Morse Bernaw	117	125	--	--
Norbert Tinsley	128	131	--	--
Larry Stephen Hardin	135	139	145	146
Thomas Stickney	147	157	165	--
Joseph M. Boyett	167	176	--	--
Jose Pinson	185	188	191	--
Paul John Longley	198	206	--	--
Alphonso L. Popolato	212	220	--	--
Jose Pinson (resumed)	--	224	--	--
Ricardo Morales Navarette	236	346	418	426
Bernardo M. Perez	431	436	--	--
Harry Moseley	443	447	--	--
John C. Phelps	452	457	463	463
Joseph C. Ball	465	474	481	--
Benjamin P. Grogan	482	495	498	--
William E. Dowling	500	504	--	--
Joseph R. Marszalek	509	512	--	--
Marvin M. Eubanks	602	607	608	--
Coleman Geary	609	614	--	--
George Evan Davis, Jr.	615	625	647	651
Alfred Yeomans	655	658	--	--
David R. Cribbs	659	662	--	--
Thomas P. Toomey	667	672	--	--
Luis Garcia	675	677	681	--
Fred H. Hallbauer	682	688	--	--
Henry I. Martin	696	705	--	--
Robert Murray	713	716	--	--
Ricardo Morales Navarette	719	--	--	--
(recalled)				
Sophia Saliba	724	--	--	--
(recalled)				
Charles L. Killion	792	806	814	--
Edwin B. Zehnder	815	820	--	--
Fred N. Hendon	825	832	840	--
John Jaidinger	843	850	860	861
Margaretta Caballero	863	866	866	--
James P. Donnelly	867	871	876	--

4/15/69
witness

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U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

I N D E X (continued)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Armando Garcia Siffredo	879	889	--	--
Antonio Garcia Ruiz	900	908	916	--
Tomas Pedro Regalado	918	--	--	--
Thomas G. Brodie	922	937	--	--
Joseph C. Frechette	964	--	--	--
Bernardo M. Perez	966	982	988	989
Michael E. Crane	991	993	--	--
Michael P. Doohar	994	1001	--	--
Edwin L. Sweet	1005	1010	--	--
John Menton	1013	1018	--	--
Charles L. Killion	1020	1029	1046	--
(recalled)				
Bruce E. Clinkscales	1053	1055	--	--
Dan A. Bailey	1057	1069	1075	--
Henry B. Heiberger	1078	1084	--	--
Leon LaRock	1091	1091	--	--
Thomas G. Brodie	1093	1095	--	--
(recalled)				
Tomas Pedro Regalado	1097	1101	--	--
(recalled)				
Sophia Saliba	1104	--	--	--
(recalled)				
O. D. McEachern	1151	1156	--	--
Evelio Bosch	1159	1166	--	--
Jose Diaz Morejon	1171	1201	--	--
Jorge Luis Gutierrez Ulla	1225	1235	--	--
Orlando Bosch Avila	1256	1312	1347	--
Alphonse Sepe	1387	1391	1394	--
Thomas James Stickney	1399	1403	1406	--
(rebuttal)				
George Evan Davis, Jr.	1407	--	--	--
(rebuttal)				

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U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

THE COURT: Mr. Reporter, please have the record show that I have called this preliminary hearing in case No. 68-420, United States of America v. Orlando Bosch Avila, et al., for the purpose of preliminary discussion. This hearing is being held in the North Courtroom outside of the presence of any prospective jurors.

MR. BIERMAN: Your Honor, at yesterday's hearing there was some question as to certain types of statements which the Government stated that it would not produce, but last evening we did produce copies of transcripts of tape recordings made between the Government and the informant and several of the defendants. We have made our transcripts and translations available to Mr. Greenspahn. And today, at the luncheon recess, he will be listening to the actual tapes which are in Spanish.

THE COURT: All right, sir. Then so far as you are concerned, Mr. Greenspahn, that has been taken care of?

MR. GREENSPAHN: Yes, sir.

THE COURT: Gentlemen, the Government has furnished me with a memorandum with respect to

trial procedure; and yesterday afternoon they gave you, I am sure, Mr. Greenspahn, a copy.

The Government takes the position, as I gather from their memorandum, that if the defense of entrapment is involved, then conceivably evidence with respect to the CIA involvement might be relevant and material. But other than that, they take the position that it has no relevancy or materiality and does not in any way constitute any possible defense with respect to the actual commission or non-commission of the alleged offense. What do you say about that?

MR. GREENSPAHN: Your Honor, the observations by the Court are quite correct as to the defense of entrapment.

Last night, when I was provided with the transcript of the tapes which concerned the witness Ricardo Morales, it became apparent and obvious that this witness is the principal witness for the Government, and the issue in this other applies to the existence of CIA participation in this entire procedure.

THE COURT: Let me note for the record that the defendants are not present at this time.

MR. GREENSPAHN: I will waive the presence of the defendants, in any event.

The credibility of the witness Ricardo Morales is going to be very much in issue, and the possibilities do exist that the CIA and his affiliation or connection with the CIA will become part of such impeachment testimony as may be elicited from him, your Honor, and I ask that I not be restricted in that regard.

At this point I am not prepared to indicate that there is any intention to bring in or to utilize any reference to the CIA other than in that reference, although I certainly do not want to waive the right to do so if it should become germane to these proceedings.

THE COURT: I am not asking you to and I do not want you to. I do not want, however, to have this trial to be replete with inferences and suggestions and a lot of unnecessary cross examination of witnesses, et cetera, so far as relevancy and materiality are concerned, unless, as I say, counsel makes a bona fide offer to me with respect to any evidence that he intends to put on. I do not intend

to permit that type of cross examination. ✓

MR. BIERMAN: Your Honor, we would have no objection to a complete and full cross examination of Mr. Morales in regard to his CIA affiliation which admittedly at one time did exist, but we would suggest that it be done initially outside the presence of the jury so that if it is shown that--we suggest it be shown that he has had no affiliation with them since 1965 and that this irrelevant matter would not come before the jury.

THE COURT: Well, I have no objection to passing on it in the first instance outside the presence of the jury. But as I say, I do not want this to get into a situation where there are a lot of questions and insinuations and inferences about the CIA or any other Government agency unless, as I say, it has some materiality.

I could see no materiality basically--and you correct me if I am wrong--except as it might possibly go to a defense of entrapment. Because, basically, if the Attorney General of the United States were to tell me to rob a bank, that would not constitute any defense. It would not be either

material or relevant whether I did or did not rob the bank. But I wanted to discuss that and get it straightened out.

Now, you gentlemen are all capable trial lawyers and I am going to expect each of you to adhere to the rules as well as you can and to proceed with promptness and dispatch.

The matters as they come up I will rule on them, and I am not trying to limit anybody in their method or mode of presentation, but I just do not want at this point to get into a whole field that may not have anything to do with this case at all.

All right, gentlemen. Is there anything else that any of you want to discuss in the way of procedure or possible evidence that we can dispose of now?

MR. BIERMAN: Your Honor, on the proposed jury voir dire questions, each side gave copies to the opposing side, and we do not know if the Court would hear objections on any of the opposing counsel's objections or his objections to our questions.

THE COURT: I will be glad to have you say anything you want to.

MR. BIERMAN: Question No. 8 of the defendants which reads, "Can you consider and weigh the evidence as a whole without giving special attention or priority to the evidence presented by the Government simply because such evidence is presented by the Federal Bureau of Investigation or another federal agency?"

We have no objection to the idea of that question, but we feel it should be in the terms of instructions by the Court.

THE COURT: In my proposed questions I do not intend to ask that question on voir dire. ✓
I shall, of course, instruct the jury, if and when the case is delivered to them, that the testimony of Government agents or police officers is to be weighed and considered under the same rules and circumstances as is applicable to any other witness and no more and no less weight is to be given to the testimony because of their official position.

I do not propose to go into it on voir dire.

MR. BIERMAN: And No. 9 relates to the same matter.

THE COURT: All right, sir.

Now, Mr. Greenspahn, is there anything you want to bring up?

MR. GREENSPAHN: Yes, sir, if the Court please. With reference to the proposed Government's questions on voir dire, referring to question No. 3, reading "Do you have any feelings that anyone has any right to take the law in his own hands--that is, to violate the laws of the United States--even if you believe that his motives are good?"

I submit that is an improper question. I think that the Court--and I have presumed this all along--will ask the proper question and that this is not a proper question because this creates an inference immediately prejudicial to the interest of these defendants. It is to No. 3 that I have my principal objection. I have no objection to the other questions that are asked or submitted by the Government. However, I think that that question, perhaps in its wording or perhaps in its concept, is an

improper question. I think the Court is going to ask about these very points in any event, but in a proper manner.

THE COURT: All right, sir.

Gentlemen, I do not have before me the questions I propose to ask from the lists submitted to me. And I am not certain and I do not believe that is in there, but I am not certain whether it is or not. In the event, however, that I should give it, I will note an objection and exception on the part of the defendants at this time.

MR. GREENSPAHN: Thank you, sir.

MR. BIERMAN: Just one point of information, your Honor. Yesterday you announced the hours that the Court intended to work. For the purpose of the witnesses' appearances I would be curious to know the Court's formula, at what point it plans to adjourn for lunch and at what time it will recess.

THE COURT: No, sir, I haven't. But I very probably will recess from about twelve o'clock, depending, of course, on the situation as it exists. But I just cannot say twelve o'clock. If you have a

witness on the stand that you need to ask maybe two or three more questions and you are through with him, then I will recess for lunch in the neighborhood of around twelve o'clock. Normally, unless I feel that the case is dragging, I will recess until one-thirty. And if I get the feeling that the case is dragging, I may very well recess from twelve o'clock to one o'clock. But unless I do, why, the normal recess will be from around twelve to one-thirty.

MR. BIERMAN: And in the announcement by the Court, we would work daily. Does the Court intend to include Saturdays and Sundays?

THE COURT: No, sir.

MR. BIERMAN: Is there any pre-disposition to work on Veterans Day, the 11th?

THE COURT: Well, let us do this, gentlemen: Let us wait until Monday and then we will discuss that on Monday.

MR. BIERMAN: Monday is Veterans Day.

THE COURT: Then we will discuss it Friday. But as I say, unless this case starts dragging along, I do not have any intention, certainly at the present time, of working on the weekends or at

night. But if it gets to where it is dragging slowly and nobody is making any progress, we are liable to find our hours from 9:00 a.m. to 11:00 p.m. But that is just something that I do not intend to do now unless I feel that we are just getting hopelessly slowed down and we are going to have to put in the extra hours in order to keep up with the schedule.

Basically, I am not inclined at the present time, unless there is some serious objection by one of you gentlemen, to hold court on the 11th. But we will wait until Friday and then we will see what the situation is and we will make up our minds then. My present feeling is that it will not be necessary to do those things, but we will see where we are and then we will decide it. I would rather not do it if I do not feel that I have to.

MR. BIERMAN: For the record, we would state that last night we delivered to Mr. Greenspahn all of the Jencks Act statements which we have available for our Western Union witnesses today.

THE COURT: All right, sir. Fine. And I would like for you to repeat that as we go from day to day, because I want him to have the Jencks Act

statements tonight of the witness you propose to call tomorrow. If there is any special problem or anything of that sort, then you gentlemen come to me and I will straighten it out outside the presence of the jury. But I would prefer that he receive them from the Government tonight.

I realize sometimes you get a situation where perhaps you may have to call a witness unexpectedly or something of that sort; and I think that is equally applicable to either side. But I do not want, if it possibly can be avoided, any problem about Jencks Act statements once the trial starts.

MR. BIERMAN: Thank you, your Honor.

THE COURT: Gentlemen, I have just been reminded that on Friday morning, since this is my term of criminal court, I have arraignments and sentences. So on Thursday I will have to recess this case until eleven o'clock Friday. If I should forget on Thursday evening and say "Nine o'clock Friday," somebody remind me, because it will take about two hours, actually, to get rid of the arraignments and sentences. And then we will start at eleven o'clock on Friday. I'm sorry, gentlemen,

but there is just nothing that I can do about it.

MR. BIERMAN: Should we tentatively plan to go a little bit later Friday evening or what?

THE COURT: We can plan on it tentatively.

Now, if there is nothing else, we will adjourn to the Central Courtroom. We will adjourn this hearing and start in the Central Courtroom as soon as the jurors are all in there.

I think that is the only room that is sufficiently large to accommodate the jurors and spectators.

(Thereupon a short recess was taken, pursuant to which the hearing reconvened in the Central Courtroom, at which time the following proceedings were had:)

THE COURT: Good morning again, ladies and gentlemen. We have set for this morning the trial of case No. 68-420, which is styled United States of America versus Orlando Bosch Avila, Andres Jorge Gonzalez Gonzalez, Barbaro Balan Garcia,

Marco Rodriguez Ramos, Jesus Dominguez Benitez, Jose Diaz Morejon, Jorge Lus Gutierrez Ulla, Paulino Gutierrez, and Aimee Miranda Cruz.

Are all the defendants personally present in Court?

MR. GREENSPAHN: The defendants are all present, your Honor.

THE COURT: Will counsel please announce their appearances for the record?

MR. GREENSPAHN: Melvyn Greenspahn, 704 Ainsley Building, for each of the named defendants.

MR. BIERMAN: Donald Bierman, Assistant United States Attorney; Theodore Klein, Assistant United States Attorney, and James P. Morris, Special Attorney of the Department of Justice, for the Government.

THE COURT: Mr. Clerk, will you please administer the preliminary oath to the prospective jurors?

(Thereupon the prospective jurors were sworn, pursuant to which the following proceedings were had:)

MR. BIERMAN: Your Honor, we would note for the record that the defendants have with them their own interpreters.

THE COURT: All right, sir. Fine. Does the Government have an interpreter?

MR. BIERMAN: We will, when needed, your Honor.

THE COURT: All right, sir. Will the Marshal please fill the jury box?

(Thereupon the names of twelve jurors were called, pursuant to which the following proceedings were had:)

THE COURT: Now, ladies and gentlemen, if all of the prospective jurors whose names have not been called will listen to what I have to say about this case and the questions which I ask the jurors in the box and the answers which they give me, we may perhaps save some repetition of questions.

Before I start making any statements, as you were told when you were first called for jury duty, the right to a trial by jury derives from the

Magna Carta as one of the bulwarks of our liberties preserved by our Anglo-Saxon ancestors and by the Fathers of the Revolution.

Our country is traditionally committed to the doctrine that no matter what the charge may be, an accused person has the right to a fair and impartial trial by a jury of his peers. The policy of the law in all cases in which jurors are impaneled for trial to try a case is to secure men and women for that responsible duty whose minds are wholly free from bias or prejudice either for or against the accused or for or against the Government.

We seek, therefore, to obtain as jurors persons who have not made or expressed any fixed opinion as to the guilt or innocence of any of the accused and who can and will decide the case impartially, based solely upon the evidence which they hear from the witness stand and the court's instructions as to the law which is applicable.

It will be necessary for the Court to ask some questions of the jury, and I wanted to make that statement to make it plain what the purpose of those questions is. We do not seek to pry into your

personal affairs, but certain questions do have to be asked and certain statements do have to be made in order that the Court and counsel can feel assured that there is a fair and impartial jury which has been selected to try the case.

This is a criminal case and it comes before you by virtue of an indictment. The indictment reads as follows:

"UNITED STATES OF AMERICA

"v.

"ORLANDO BOSCH AVILA

"a/k/a Ernesto

"ANDRES JORGE GONZALEZ GONZALEZ

"a/k/a Bombillo

"BARBARO BALAN GARCIA

"a/k/a Bobby

"MARCO RODRIGUEZ RAMOS

"JESUS DOMINGUEZ BENITEZ

"a/k/a El Isleno

"JOSE DIAZ MOREJON

"a/k/a Tony Prieto

"JORGE LUIS GUTIERREZ ULLA

"a/k/a George Gutierrez

"PAULINO GUTIERREZ

"AIMEE MIRANDA CRUZ

"The Grand Jury charges:

"COUNT I

"That from on or about April 15, 1968,
up to and including the date of this
indictment in the Southern District of

LEONARD LAIKEN

OFFICIAL COURT REPORTER

U. S. DISTRICT COURT

MIAMI, FLORIDA 33101

Florida and elsewhere the defendants,

"ORLANDO BOSCH AVILA, a/k/a Ernesto,

"ANDRES JORGE GONZALEZ GONZALEZ,
a/k/a Bombillo,

"BARBARO BALAN GARCIA, a/k/a Bobby,

"MARCO RODRIGUEZ RAMOS,

"JESUS DOMINGUEZ BENITEZ, a/k/a El
Isleno,

"JOSE DIAZ MOREJON, a/k/a Tony Prieto,

"JORGE LUIS GUTIERREZ ULLA, a/k/a
George Gutierrez,

"PAULINO GUTIERREZ, and

"AIMEE MIRANDA CRUZ,

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

"1. It was the plan of said conspiracy
to violate Title 18, United States Code,
Section 2275, by knowingly and wilfully

causing damage to vessels of foreign registry docked at the Port of Miami, Dodge Island, in the Southern District of Florida within the jurisdiction of the United States, and elsewhere, by placing explosives in or upon said vessels with the intent of injuring and endangering the safety of the said vessels and their cargo.

"2. It was a part of said conspiracy that the said defendants and co-conspirators would collect money for the purchase of explosives and equipment to be used in the placement of said explosives on vessels. As a part of the plan to raise money publicity of the explosions accomplished would be sought.

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

"4. It was further a part of said

conspiracy that some of the defendants and co-conspirators would train and receive training in underwater demolition.

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

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

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

"1. On or about August 13, 1968, at 1150 S. W. First Street, Miami, Florida,

Orlando Bosch Avila and Jose Diaz Morejon, defendants herein, received a package labeled 'Dynamite.'

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

"3. On or about August 27, 1968, Orlando Bosch Avila communicated instructions to Ricardo Morales Navarrete.

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

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

"6. On or about September 15, 1968, Orlando Bosch Avila and Paulino Gutierrez

traveled from 1029 S. W. First Avenue to the west end of the MacArthur Causeway in Miami, Florida.

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

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

"9. On or about September 30, 1968, Orlando Bosch Avila, Andres Jorge Gonzalez Gonzalez, Jose Diaz Morejon, Jorge Luis Gutierrez Ulla and Paulino Gutierrez attended a meeting of 'Cuban Power' at the Jose Marti Building in Miami, Florida.

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

"COUNT II

"On or about September 16, 1968,

"ORLANDO BOSCH AVILA, a/k/a Ernesto,

"BARBARO BALAN GARCIA, a/k/a Bobby,
and

"JOSE DIAZ MOREJON, a/k/a Tony Prieto,
defendants herein, knowingly, wilfully, and
unlawfully, and with the intent to injure
and endanger the safety of the vessel,
SS Polanica, a vessel of foreign registry,
to-wit: Poland, did fire a 57 mm. rifle
at said vessel, causing an explosive missile
to strike the said vessel at Dodge Island,
Dade County, Florida, in the Southern
District of Florida within the jurisdiction
of the United States; in violation of
Title 18, United States Code, Section 2275.

"COUNT III

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

"ORLANDO BOSCH AVILA, a/k/a Ernesto,
wilfully and knowingly through the use of
telegraph did convey and cause to be
conveyed a threat to Gustavo Diaz Ordaz,
President of Mexico, to damage and destroy

personal property, to-wit: Mexican ships and planes, for the purpose of interfering with their use for business objectives, and of intimidating persons pursuing said business objectives; in violation of Title 18, United States Code, Section 837(d).

"COUNT IV

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

"ORLANDO BOSCH AVILA, a/k/a Ernesto, wilfully and knowingly through the use of telegraph did convey and cause to be conveyed a threat to General Francisco Franco to damage and destroy personal property, to-wit: Spanish ships and planes, for the purpose of interfering with their use for business objectives, and of intimidating persons pursuing said business objectives; in violation of Title 18, United States Code, Section 837(d).

"COUNT V

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

"ORLANDO BOSCH AVILA, a/k/a Ernesto, wilfully and knowingly through the use of telegraph did convey and cause to be conveyed a threat to Sir Harold Wilson, Prime Minister of England, to damage and destroy personal property, to-wit: British ships, for the purpose of interfering with their use for business objectives, and of intimidating persons pursuing said business objectives; in violation of Title 18, United States Code, Section 837(d)."

Now, ladies and gentlemen, to that indictment each of the defendants has pleaded not guilty, and that will raise the issues of fact which will have to be tried in this case.

Preliminarily the Court will instruct you, although at the conclusion of the trial I will give much more detailed instructions, that under the law of the United States every person charged with a crime is presumed to be innocent unless and until the

Government has proven to the satisfaction of the jury beyond a reasonable doubt their guilt. Further, the bringing of an indictment is merely a formal method of advising a person or persons that they have been accused of a crime. And it itself is no evidence whatsoever of guilt nor does the indictment permit any inference of guilt. It is merely a means by which a person is notified that they have been charged and brought into court. It has no weight as evidence whatsoever.

Will counsel for the Government introduce themselves and the Government's representatives?

MR. BIERMAN: Donald Bierman,
Assistant United States Attorney.

MR. KLEIN: Theodore Klein, Assistant
United States Attorney.

MR. MORRIS: James P. Morris, Special
Attorney, Department of Justice; and Michael Crane,
a Special Agent of the Federal Bureau of Investigation.

THE COURT: Will counsel for the
defendants enter his appearance and the defendants to
the jury, please?

MR. GREENSPAHN: Yes, sir.

Ladies and gentlemen, my name is Melvyn Greenspahn, and in order here are Jorge Luis Gutierrez Ulla, Orlando Bosch Avila, Marco Rodriguez Ramos, Aimee Miranda Cruz, Paulino Gutierrez, Barbaro Balan Garcia, Jose Diaz Morejon, Jesus Dominguez Benitez, Andres Jorge Gonzalez Gonzalez.

Those, your Honor, are the defendants.

(Thereupon, pursuant to voir dire of the jury, a jury of twelve and two alternates were sworn, pursuant to which the following proceedings were had:)

THE COURT: Gentlemen, may it be stipulated by counsel that unless it is otherwise shown in the record, the defendants, their counsel, and the jury are present in the courtroom?

MR. GREENSPAHN: Yes, sir. So stipulated.

MR. BIERMAN: Yes, sir. And can we also ask that the stipulation include the fact that the interpreter is present?

THE COURT: Is that agreeable to you, Mr. Greenspahn?

MR. GREENSPAHN: Yes, sir, certainly.

THE COURT: Ladies and gentlemen, I am about to call a short recess, after which we will start with the trial of this case. During this case there will be recesses from time to time. The instructions which I am about to give you will be applicable at each and every recess. If I do not repeat them, they are still applicable.

The jury is admonished not to converse or communicate among yourselves nor with anyone else upon any subject matter relating to this suit or any of the defendants. You are not to attempt to form or express any opinion whatsoever until such time as all of the evidence has been heard. And until the Court has instructed you on the law and you have heard the arguments of counsel. There is a very good reason for that latter rule because, as I say, while you are the sole and exclusive judges of the facts, you have to apply to those facts the law which the Court tells you is the applicable law. And until you hear the law you are just not in any position to try to form any

opinion. So keep your minds open until such time as the case is delivered to you for your deliberation and decision.

You are further admonished and instructed not to read, listen to or observe any news media or television media, if there should be any, about this case or any of the persons involved. Again, there is a very sound reason for that. What you will hear in this case will be the evidence which comes before you. And some newspaper reporter's idea of what has happened or some television reporter's idea of what happened is not always correct. Therefore, you are cautioned and instructed not to read or observe any news media about it. Decide this case solely upon the evidence which you hear in this courtroom.

Does everybody think they can do that?

(The jury indicates in
the affirmative.)

THE COURT: All right. You are further instructed and admonished not to permit any third person in your hearing or presence to discuss any subject matter relating to this suit or any of the

defendants. And should any such person attempt to do so, you will immediately report it to the Court.

Does everybody understand those instructions?

(The jury indicates in the affirmative.)

THE COURT: They will be applicable at each and every recess.

All right. The Court will be in recess for about five minutes, ladies and gentlemen.

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

1-2 THE COURT: Now, ladies and gentlemen, you who have come into the courtroom as spectators, the Court wants to advise you that this is a United States District Court lawfully called for the purpose of holding this trial. This trial will be conducted with decorum and with dignity; and the Court will not tolerate any talking or any outbursts or any demonstrations of any nature whatsoever. Should that take place, the Court will be prone to hold the

person doing it in contempt of Court. So I want to warn you now that we are going to proceed in an orderly fashion.

All right. Does the Government have an opening statement it desires to make?

MR. KLEIN: Yes, sir, your Honor.

THE COURT: You may proceed.

OPENING STATEMENT BY MR. KLEIN

MR. KLEIN: Ladies and gentlemen of the jury, it is now my opportunity to briefly outline to you at the outset of the case what we expect the Government's proof to show.

I am sure you are all familiar with a child's jigsaw puzzle and I am sure you are familiar with the box it comes in. That often has a picture on the top of the box of what the pieces will comprise. It is my object here to briefly outline to you what that picture will be; just to map out the general areas of the picture and the pieces inside the box, the pieces of the jigsaw puzzle, which will be the testimony and the exhibits that are offered into evidence, and together they will connect, and I am sure you will see that they connect to make the

picture that is on top of the box.

First, we have the indictment which his Honor has read to you, and I would like to go into this just a little bit. This is a five-count indictment that we have. The first count is a conspiracy count against all nine of the defendants. You heard their names. You will hear them again and again throughout the trial, and you will become more familiar with them. Some of these names that you will hear--you will hear them by other names other than the ones that are mentioned specifically in the indictment. For example, Andres Jorge Gonzalez Gonzalez will be known as Bombillo. Barbaro Balan Garcia will be known as Bobby. You will hear Jesus Dominguez Benitez also referred to as El Isleno. Jose Diaz Morejon also will be known as Tony Prieto.

Now, referring to the first count, just generally, it was the plan in this conspiracy as you will hear to place explosives on vessels of foreign registry here in Miami and in other ports. The plan also in this conspiracy was to raise money and to publicize these explosions. The plan of conspiracy, in addition to that, was to gather

explosives and prepare weapons, and some of the defendants and some of these co-conspirators were to receive training in underwater demolition. The plan also included the firing of a 57 millimeter recoilless rifle at a Polish vessel, the POLANICA. There was also a plan to attach bombs to vessels of foreign registry; and in furtherance of these objectives of this conspiracy, the defendants committed a number of overt acts which you will hear about in the way of testimony. That is what the first count is about.

Now, the second count charges just three of these defendants. The three that are charged are Barbaro Balan Garcia, Orlando Bosch, and Jose Diaz Morejon, also known as Tony Prieto, with firing on the POLANICA on September 16th at Dodge Island with a 57 millimeter recoilless rifle. That is the second count.

The third, fourth and fifth counts are against Orlando Bosch alone. These are very similar counts. They charge him with sending threatening telegrams to the heads of three foreign countries, namely, Mexico, Spain and England.

Those are the five counts of the indictment. The first is the conspiracy count against all nine, the second concerns the firing of the 57 millimeter rifle by Bosch, Balan and Morejon (also known as Prieto) and in the third, fourth and fifth count it concerns telegrams against Bosch alone.

Now, the Government's proof first will be on the telegrams, and that is what I will go into first, that being on the third, fourth and fifth counts. The evidence will show that on June 6, 1968, Orlando Bosch went to the Western Union office here in Miami and sent three telegrams. One was to the President of Mexico, threatening to blow up Mexican ships and planes. The telegram, which was pretyped, was signed "Ernesto, General Delegate, Cuban Power."

The second telegram was to the President of Spain, also threatening to blow up Spanish ships and planes, again signed "Ernesto, General Delegate, Cuban Power."

And the third telegram was to Prime Minister Harold Wilson of England, with a similar

threat and with the additional threat that British blood would flow if trade did not cease, with a similar signature, "Ernesto, General Delegate, Cuban Power."

And in addition, this telegram to Harold Wilson also claimed credit for an explosion which had already occurred aboard a ship under British Registry, which was called the GRANWOOD. You will hear more about that ship later. This occurred on June 6, 1968, the sending of those telegrams. The GRANWOOD, which had already had an explosion, occurred on May 4, 1968. The evidence will show that the GRANWOOD had an explosion aboard ship while it was in Key West, Florida. The evidence will also show that this ship, the GRANWOOD, had been docked here in Miami before going to Key West, and the evidence will also show that as part of the plan, this conspiracy, a press release was sent about June 5 or so to the newspapers locally, claiming credit for the GRANWOOD explosion by this group known as Cuban Power, by "Ernesto, General Delegate, Cuban Power."

In that release that was sent to the

newspapers, there was also a claim for credit for another explosion which occurred during the month of May. Besides the GRANWOOD there was an explosion aboard a vessel known as the ASAKA MARU. This was a Japanese vessel, and this explosion occurred in Tampa about May 30th. The evidence will show that that particular vessel, the ASAKA MARU, was here in Miami about May 26th.

You will also hear testimony of a man named Ricardo Morales Navarette. "Navarette," I am sure you know, is the mother's maiden name. He will be referred to most of the time as Ricardo Morales.

Ricardo Morales, in common parlance, was an informant for the Government. He received compensation from the Government.

Now, Ricardo Morales had numerous meetings and conversations with Orlando Bosch and with many of the other defendants. You will hear about a conversation. You will hear Mr. Morales' testimony and you will hear about a conversation in which Orlando Bosch admitted that the GRANWOOD and the ASAKA MARU explosions were his work and the work of his group, and he explains how the GRANWOOD

explosion was done, how the bomb was chained onto the vessel.

He will also admit, you will hear from the testimony of Ricardo Morales, that he sent press releases using the name "Ernesto" about these explosions.

You will hear another conversation from Ricardo Morales later in which Bosch admits responsibility for still a later explosion aboard another British ship known as the CARIBBEAN VENTURE. The actual proof on the CARIBBEAN VENTURE will be later on in the trial, but I mention this now because the testimony of Ricardo Morales, which you will hear earlier in the trial, will go into this. The CARIBBEAN VENTURE you will hear about later. That was a ship that had an explosion while it was here in Miami on August 4. Now, in that particular explosion on the CARIBBEAN VENTURE, some clips from chains and chain fragments were recovered in the explosion area. Again, Cuban Power issued a press release after this, claiming credit for that bomb.

You will hear testimony about two other bombs later in the proof which comes up in some

of these conversations between Ricardo Morales and some of the other defendants. One was aboard another Japanese vessel called the MIKAGESAN MARU. The MIKAGESAN MARU had an explosion in Galveston, Texas, on June 1, and the evidence will show that that ship, also, was here in Miami prior to going to Galveston.

The evidence will show that a press release again was sent, and a photograph of the MIKAGESAN MARU was sent to the papers, and on the photo, typed across the top, which was sent, was a legend in Spanish translating roughly into English, "Courtesy of Intelligence Service of Cuban Power." And this will be important later for reasons that you will see.

The other ship that you will hear about is a Spanish ship, the COROMOTO, which had an explosion in Puerto Rico about September 12.

Now, there are two other ships that are involved in this conspiracy which I am going to go into slightly greater detail. You will hear the testimony of Ricardo Morales that Orlando Bosch asked Ricardo Morales to get him some explosives in order to carry on his bombing activities. Ricardo

Morales advised the FBI about this fact that Orlando Bosch wanted these explosives, and the FBI, for the purpose of saving lives and for the purpose of saving property and cargo, had specially prepared dynamite furnished to Ricardo Morales. This specially prepared dynamite was simulated or dummy dynamite consisting mostly of table salt, cornstarch, rye flour and motor oil, a totally non-explosive combination. This dummy dynamite was given to Ricardo Morales to supply to Bosch. It was done on a number of occasions.

You will hear that about four or five of those times that was done in order to transfer to these vessels. You will hear about the involvement of some of these other defendants in the taking of this dynamite and in the transferring and in the transportation of it. You will hear about Jesus Dominguez Benitez who also will be referred to as El Isleno. You will also hear about Jose Diaz Morejon, also known as Tony Prieto. And Barbaro Balan Garcia, also known as Bobby, and you will hear about Jorge Gutierrez and Marco Rodriguez Ramos.

Now, when these transfers of dynamite

were made, that was all that was seen of this simulated dynamite for the time being. But then you will hear testimony later about a bomb being discovered chained to the underside of a British ship which had not exploded aboard the British ship underneath. That British ship was the LANCASTRIAN PRINCE which was here in Miami about August 28th. Divers went down, demolition men took over, the bomb was recovered from the underside of the ship and it was disassembled, and you will see that bomb. And inside it was the very same simulated dynamite which had been supplied to Ricardo Morales to give to Orlando Bosch. Besides that, there was a detonator which you will hear more about, and inside the bomb, packed inside besides the dynamite was a homemade gasket to keep the water from entering the bomb. The gasket was made out of gasket paper which bears a trade label "Tanpac" and also stuffed inside were pieces of foam rubber used as stuffing for the bomb. You will hear more about these later. They will become important for reasons that you will see.

You will also hear that this vessel, the LANCASTRIAN PRINCE, before coming here to Miami,

was in New Orleans. This is important because inside the bomb also besides the stuffing and the dynamite, et cetera--used for stuffing were two newspapers. One was a New Orleans newspaper and one was a Miami Herald, and on the New Orleans newspapers, which were sent to the FBI laboratory, were the palm prints of two of the defendants--the prints of Jorge Gutierrez and Marco Ramos. This bomb did not explode. Apparently he did not realize it would not. A mistake was made, but nevertheless a press release was issued to the local newspapers claiming credit in the same manner for the same scheme, et cetera, for the explosion aboard the LANCASTRIAN PRINCE.

Now, the other vessel about which I said I was going into greater detail was the POLANICA. You will hear Ricardo Morales' testimony. Then he will go into the actual shelling of the POLANICA with the 57 millimeter rifle here in Miami at the Dodge Island Seaport. You will hear testimony that Ricardo Morales was called by Bosch to help assemble a 57 millimeter recoilless rifle. Ricardo Morales and Bosch went along with two of the other defendants--Barbaro Balan and Jose Diaz (also known as Tony Prieto)

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and they went to Aimee Miranda Cruz' apartment where the gun was assembled. Miss Cruz is the sole female defendant here. Ricardo Morales used his own pliers in the apartment of Aimee Miranda to cut a coat hanger there in the apartment to make a sight for the gun. Ricardo Morales left out two bolts and a spring when he reassembled the gun. These were left in Aimee's apartment, and he also left his own tools, his pliers and his wrench, et cetera. Then Balan and Diaz went their separate ways from there, and Morales and Bosch went and picked up Paulino Gutierrez and they went to the MacArthur Causeway after a few meetings and conversations, et cetera, that you will hear about.

Balan and Diaz were already set up on the causeway across the channel from the POLANICA, and Paulino Gutierrez, Ricardo Morales and Orlando Bosch went and waited for the shot at the Miami Herald end of the causeway. Jorge Gutierrez then came along, and you will hear about his connection in that.

Subsequently the POLANICA was fired upon and hit. The rifle was dumped into the water and

later the FBI recovered the actual rifle which was used and which you will see; also the spent shell and the shell casing along the causeway.

After that, later, Ricardo Morales, a few weeks later, went back to Aimee's apartment and got his pliers back. You will also hear testimony of some of the FBI agents that some of these meetings along the way were being observed by them in various manners.

Now, while they were unable to make out exactly what was going on, you will hear the testimony which tends to corroborate the testimony of Ricardo Morales. He went to that apartment and he got his pliers back, and these were sent up to the FBI laboratory which compared the flat edge on the pliers with the edge of the coat hanger on the gun, and you will hear about the result of that test. Then you will also hear about some press releases which I have mentioned before, that were made with regard to these various explosions, including the furnishing of many photographs of many of these vessels. You will also hear about a news conference held by a man supposedly calling himself Ernesto,

wearing a hood and appointing Orlando Bosch as head of Cuban Power. And then you will hear about a later news conference by Orlando Bosch accepting the appointment as the head of Cuban Power.

And then finally you will hear from some men from the FBI laboratory who will give the results of some of the tests that they made, which I have mentioned earlier.

This is what the Government's proof, in essence, will contain, ladies and gentlemen. And I think you will agree that when you hear it, these little pieces of the jigsaw puzzle connecting together do make a total picture on the cover of this box, I think that you will agree that the Government has proved its case beyond a reasonable doubt.

THE COURT: Thank you, sir.

Does the defense desire to make an opening statement or do they desire to reserve it?

MR. GREENSPAHN: Your Honor, the defense desires at this time to reserve its opening statement.

THE COURT: All right, sir. You may.
The Government will call its first

witness.

MR. GREENSPAHN: Could we ask that the exclusionary rule be invoked?

MR. BIERMAN: We will agree, but we ask for an exception of Agent Crane.

THE COURT: Ladies and gentlemen, at the request of counsel, the Rule has been invoked, which means this: All persons who were subpoenaed or who expect to be called as witnesses in this case will please retire from the courtroom at the conclusion of these instructions. Until such time as you yourself have been called and testified, you will remain out of the hearing and earshot of any witnesses who have testified or who are testifying.

Furthermore, you are not to discuss anything relating to your testimony or this case or the parties involved except with the lawyers in the case; nor are you to permit any third person to discuss anything pertaining to the alleged facts of this case or the individuals involved in your presence until such time as you are called to appear as a witness. All prospective witnesses will now please retire from the courtroom.

(Thereupon the prospective witnesses were excused from the courtroom.)

MR. BIERMAN: Mr. Regalado is with the press and he is under Government subpoena. We have no objection to him remaining if Mr. Greenspahn does not. However, I want to point out that he may be called.

There is also another gentleman from the Associated Press who is not here at this time but would like to be here if he could be excused from the Rule.

THE COURT: All right, sir. What do you say, Mr. Greenspahn?

MR. GREENSPAHN: I have no objection to Mr. Regalado, and I would inquire of the Government as to whom they have reference when they mention the Associated Press.

MR. BIERMAN: Mr. Ted Ettinger.

MR. GREENSPAHN: I would have no objection to that at this time.

THE COURT: Fine. The Government may proceed and call its first witness.

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THEREUPON--

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

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

THE WITNESS: My name is William James
Killian, K-i-l-l-i-a-n. My address is 115 Calabria,
Coral Gables, Florida. I am employed by the Western
Union Telegraph Company as an administrative
assistant.

THE COURT: Will you please talk a
little bit louder than you normally do? And, ladies
and gentlemen of the jury, if any of you have diffi-
culty in hearing any of the witnesses, if you will
advise me, I will have them speak loud enough so that
you can hear them clearly.

You may proceed.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Killian, how long have you been

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employed in your present position?

A Approximately three and a half years,
sir.

Q Approximately how long have you been
employed by the Western Union Telegraph Company, sir?

A Approximately nineteen years, sir.

Q In your present position, do you have
the custody of any of the business records of the
Western Union Telegraph Company?

A Yes, sir.

MR. MORRIS: May I have these three
documents marked as Government's exhibits?

THE COURT: The Clerk will please mark
them as Government's exhibits for identification.

(Thereupon the documents
referred to were marked as
Government's Exhibits Nos. 1,
2 and 3, respectively, for
identification.)

BY MR. MORRIS:

Q Mr. Killian, I am going to show you
Government Exhibits for Identification Nos. 1, 2 and

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3 and ask you to state whether or not you can identify these. Just answer yes or no, please.

A Yes, sir.

Q Will you state whether or not these are business records of the Western Union Company in Miami?

A Yes, sir, they are.

Q And are these records within your custody, sir?

A Yes, sir.

Q I show you Government's Exhibit for Identification No. 1 and ask you to state what that is, please.

A This is a cablegram, sir; a deferred service cablegram filed in our office in Miami.

Q Can you state when the telegram was filed?

A Yes, sir.

Q And how are you able to do that?

A It was filed on June 6th at 10:24 p.m., and our cancelling stamp--I can state that because when it is filed, the accepting clerk timed and dated

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the telegram by a process of a stamp that shows on the face of it, sir.

Q Would you point out to the jury and show where that time stamp is?

A (Indicating)

THE COURT: Please point it out to the jury. I do not want to see it. I can read it myself.

THE WITNESS: Yes, sir. It is just at the top of the telegram, and it is recorded here in black ink.

BY MR. MORRIS:

Q Are there any other markings or identifications on that telegram which would indicate whether or not the telegram had been transmitted?

A Yes, there is.

Q What is that?

A At the time a message is actually sent to a sending or transmitting position, the sending operator immediately, after transmission, again records the time and date of that transaction by an automatic timing and dating stamp. And that does appear on here, sir.

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Q Would you point that out to the jury, please?

A Yes, sir. It's in red ink and it is lower on the message, on the body of the message.

Q I notice that that exhibit has some sort of a writing across the top which appears to be in ink. Would you explain what that is?

A Yes, sir. The accepting clerk--that is, the counter clerk who did accept the message--records certain details at the counter, and at the time of acceptance--those details are specific in this case.

MR. GREENSPAHN: Pardon me. Your Honor, this gets into the realm of hearsay and it is not the best evidence.

THE COURT: I will sustain the objection to the remainder of the answer of the witness.

MR. GREENSPAHN: Thank you.

BY MR. MORRIS:

Q Mr. Killian, does this telegram that you have identified indicate to whom it is addressed?

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A Yes, sir, it does.

THE COURT: I will sustain my own objection. The telegram speaks for itself if and when it is put in evidence.

MR. MORRIS: All right, sir.

BY MR. MORRIS:

Q Mr. Killian, I now show you Exhibit No. 2 for identification and ask you whether you can make any further identification with respect to whether or not there are any markings on it which would indicate to you whether or not it was received and sent by Western Union.

MR. GREENSPAHN: If it please the Court, the same objection is rendered at this time. The markings thereon are conclusions on the part of the witness.

THE COURT: I will overrule the objection insofar as it is part of the normal and customary business procedure to place these stamps on there. For the purpose of clarifying what they are and explaining them to the jury, I will permit the witness to answer the question.

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A Well, there is one additional identification. Each message or all messages transmitted are transmitted under an identification number, and this particular message does have such a number on it. It is 066A, and that means simply this: On that day and on this particular channel, which was the A transmission channel, it was our 066th message of the day. The identification number is in red and it appears on the face of the message.

BY MR. MORRIS:

Q Are you able to determine, by examining this exhibit for identification, when this message was received by Western Union?

A Yes, sir.

Q When was that, sir?

A 10:23 p.m. on June 6th it was filed at our counter and received by us.

Q Is there any marking on there which indicates whether or not that message was transmitted by Western Union?

A Yes, sir, it was.

MR. GREENSPAHN: Objection, your Honor.

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That marking would be better expressed by the person who made the marking. And the instrument speaks for itself.

THE COURT: Objection overruled.

BY MR. MORRIS:

Q You may answer.

A Yes, sir. The red time and date stamp placed on there by the sending operator at the conclusion of this transmission does appear on the face of this.

Q I now show you Government's Exhibit for Identification No. 3 and ask you whether or not that bears any markings which would indicate when and where that telegram was received by Western Union.

A Yes, sir, it does. Once again it has the--

THE COURT: It has the same stamp on it as the others do, does it not?

THE WITNESS: Yes, sir.

THE COURT: All right. Proceed to something else.

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BY MR. MORRIS:

Q Mr. Killian, I now show you Government's Exhibit for Identification No. 4 and ask you whether you can determine, by examining the markings on that exhibit, what it is; and if so, please explain.

A Yes, sir. It is a service message. To clarify that, it is a message from Madrid via the RCA carrier to our office in Miami. That is, to the Western Union office. And they are making an inquiry--

MR. GREENSPAHN: May it please the Court--

THE COURT: I will sustain the objection to it on the ground it is purely hearsay.

MR. MORRIS: Your Honor, I submit this is a matter that is received in the regular course of business.

THE COURT: I do not care whether it was received or not. You are going to have to lay a proper foundation. You have not laid the proper foundation for the others yet. This is not something that is done in the normal and customary course of

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his business; nor was it in the normal and customary course of his business to make these, nor was there any showing made that it was made at or about the time of the date that it purports to bear. That is particularly applicable with the three that you have been talking about. You have not yet laid a foundation for this.

MR. MORRIS: We will have additional evidence, your Honor.

THE COURT: All right. If you can connect it up, fine.

BY MR. MORRIS:

Q Mr. Killian, I now show you Government's Exhibit for Identification No. 5 and ask you if you can state what that is.

A Yes, sir. It is a number sheet.

Q What is the purpose of number sheets?

A These sheets are maintained at each of our transmission positions and it essentially records the signer or the initials or identification of the various operators that might work at that position. It shows the time that it goes on--it shows

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the time that the operator goes on and comes off the position; and the messages--that is, by identification number--that he transmitted during his tour on that position.

Q Is there any indication on this sheet with regard to the messages which I have shown you as Government's Exhibits for Identification Nos. 1, 2 and 3?

MR. GREENSPAHN: If it please the Court, the question, of course, is leading, as well as at this point again no proper predicate or foundation has been laid.

THE COURT: I will sustain the objection on the ground it is leading.

MR. GREENSPAHN: Thank you, sir.

THE COURT: What connection, if any, does that sheet have with the three telegrams that have been testified to before now?

THE WITNESS: This, your Honor: The identification number on those three messages are recorded on here in this sense:--

THE COURT: That is all I need to know,

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sir. I will give counsel an objection to the question that I asked.

MR. GREENSPAHN: Thank you, sir.

THE COURT: Proceed.

BY MR. MORRIS:

Q With respect to Government's Exhibits 1, 2, 3 and 5, I will ask you, Mr. Killian, will you state whether or not these are records of the Western Union Company which are kept in the regular course of business.

A Yes, sir, they are.

Q I show you again Government's Exhibits 1, 2, 3, 4 and 5 and ask you whether it is the regular practice of Western Union to retain these records.

A Yes, sir, it is a regular practice to retain the records.

Q These particular items?

A These particular documents, sir, these particular ones lying in front of me, sir.

Q Yes, sir. And all documents of that character?

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A Of that character and nature, yes, sir. That is the regular practice. Each of these, as a matter of fact, is retained for a specific period of time, after which they are destroyed.

Q And as such, would you state whether or not these documents represent events as they occurred at the time they were made?

MR. GREENSPAHN: Objection, your Honor. The documents speak for themselves.

THE COURT: I will sustain the objection.

BY MR. MORRIS:

Q In the normal course of business, are these documents made at or about the time that they purport to be made?

MR. GREENSPAHN: Objection, your Honor, as calling for hearsay and a conclusion. This man has not yet been qualified to render that conclusion.

THE COURT: I will sustain the objection to Exhibit No. 4 and will overrule it as to Exhibits 1, 2, 3 and 5.

MR. MORRIS: Will the witness please

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answer that question?

A Yes, sir, they are.

MR. MORRIS: Your Honor, I offer Government's Exhibits for Identification 1, 2, 3 and 5 in evidence.

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

MR. GREENSPAHN: Yes, sir. There has been no proper predicate or foundation, and at this point they are neither relevant nor material to the matter before the Court.

THE COURT: All right, sir. The objection is overruled and the documents will be admitted in evidence as Government's Exhibits 1, 2, 3 and 5.

(Thereupon the documents referred to were received in evidence as Government's Exhibits Nos. 1, 2, 3 and 5, respectively.)

BY MR. MORRIS:

Q Mr. Killian, I show you again

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Government's Exhibit No. 5 and ask you to state what that is.

THE COURT: He has testified what it is. He said it contains the code numbers on the first three exhibits.

MR. MORRIS: All right, sir.

THE COURT: I will sustain my own objection on the ground it is unduly repetitious.

MR. MORRIS: I have no further questions.

THE COURT: All right, sir. Cross examination?

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Mr. Killian, when did you first become familiar with and aware of Exhibits numbered 1, 2 and 3, the cablegrams?

A On the morning of June 7 I had a--on the morning of June 7th, sir, I believe that answers your question.

Q And to your knowledge, in the interim period, between the time indicated on the face of

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them, as you have testified that they were received-- 10:23 and 10:24--until the time that you had personally become aware of them, had they been out of the possession of the Western Union office or its personnel?

A No, sir. Let me be quite sure I understand. You are saying from the time that they were accepted, as I testified, from ten o'clock until the time that I became aware of their existence, had they actually been out of our possession?

Q Yes, sir.

A Not to my knowledge, sir, no.

Q And to your knowledge, in that interim period, how many people were then employed at the Western Union office at 230 North Miami Avenue?

A A great many, sir.

Q I am talking about between that period--that is, ten o'clock or 10:23 in the evening until the next morning when you became aware of it.

A This, of course, is an estimate, but I would say probably fifty people.

Q Based upon your experience over the

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course of the last nineteen years, how many of these fifty people would have had occasion to personally handle or touch these telegrams?

A May I have just a moment, sir?

Q Certainly. Think it over.

THE COURT: Do you need then to look at?

THE WITNESS: No, sir. Just to refresh my--most of those things going through are routine.

THE COURT: All right, sir.

THE WITNESS: I believe six, six, or about six.

BY MR. GREENSPAN:

Q Subsequent to the time of your first awareness, for how long a period of time did these remain in the possession of Western Union, yourself, or any of the other personnel of Western Union?

THE WITNESS: Might I bear that once more?

THE COURT: Yes, sir. From the time you found out about them, how long did Western Union have possession of them after that?

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Killian - cross

THE WITNESS: Yes, sir. I found out about them on the morning of June 7th which, I believe, was a Friday. And as I recall, they were subpoenaed by the Government and passed into their possession--I can be certain about this by looking at my records, but I think it was on the following Monday, sir.

BY MR. GREENSPAHN:

Q In that interim period, how many persons other than yourself handled these at the Western Union office?

A Well, I initially estimated six. And then when I did learn of their existence, I removed them from our regular files and kept them in my desk thereafter. They were then under lock and key, and I think that no one had access to them after that, sir, until they were subpoenaed.

Q Now, you referred, in the course of your direct testimony, to a number "066A" and you explained what that was?

A Yes.

Q That was evidenced on Exhibit No. 2?

Killian - cross

A Yes.

Q Are there any other similar numbers indicated on Exhibits 1 or 3?

A Yes, sir, there is. There is 219 on Exhibit 1 and 065 on Exhibit 3.

Q What is the time indicated on Exhibit 1, sir?

A The time of acceptance on Exhibit 1 at our counter was 10:24.

Q And on Exhibit No. 3 that you have there?

A It was accepted or appears to be at 10:23.

Q I have Exhibit 2 in my hand and I ask you the time of acceptance on that.

A At 10:23, sir, on June 6.

Q In orderly sequence, then, is it true that Exhibit No. 3 is 065 and Exhibit No. 2 is 066?

A Yes, sir.

Q And it would appear, in terms of time sequence, that the following and succeeding cablegram, No. 3, would then be 067? Is that a fact, sir?

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A No, it is not.

Q What is the reason for that, if any, that you know of?

A I can surmise it, sir.

Q Without surmising, sir, but in the light of your past training and experience and your understanding of the operations of the Western Union office at 230 North Miami Avenue?

A Yes, sir. The two lower numbers--that is, 065 and 066--were transmitted some hours ahead of Exhibit 3 which, of course, accounts for the fact that the two messages have a lower number and the later transmission or transmitted message has a considerably higher number.

Q Can you tell us, again based upon your history of training and experience with Western Union or from your direct investigation into this matter, how much time elapsed between the sending of message No. 066 and 219?

A Do you mind giving me just a moment, sir, to look at this?

Q No, sir.

Killian - cross

A Approximately four and a half hours, sir. That is not exact. Let me make that--066 was transmitted at 12:54 in the morning. No. 219 was transmitted apparently at 5:27, sir. The last digit in this time stamp is off line and I can't be certain. It was 5:20 and some minutes.

Q Would any of these identifying numbers--065, 066 or 219--be reflected on the other number log sheet that has been further identified as Exhibit No. 5?

A It would be among those numbers, not as such, sir, but the sending operator, when he signs on or she signs on, puts down the next number that they send. In other words, the first number they send, and when they sign off, they record the last number which they send. So these would fall in those groups. But I doubt very much--I feel sure from having examined that record, that these numbers as such specifically are not stated on there, no, sir.

Q Are these numbers reflected in any way upon the fact of Exhibit No. 5?

A Only in that relationship that I

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indicated, sir.

Q With particular reference, then, to 065 and 066, where--and designate it by line or other indication--is there an indication of 065 or 066?

A The very first recording on that channel--channel A--it starts at 01. And the operator who signed on at that time signed off after he sent No. 123. So these two messages--065 and 066--would have been transmitted during that period of his tour. The 219, of course, would be different. It was transmitted considerably later and would fall in the fourth line on this sheet. Another operator or a different operator who transmitted from 202 to 331 would pick up that particular message, sir.

Q Mr. Killian, what was the procedure that was employed as of June 6 or June 7 at the 230 North Miami Avenue office of Western Union relative to the giving of a message to a transmitter for the purpose of transmission?

A At that time of the morning the supervisor--the traffic supervisor--would have

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doubtless gotten these messages or picked up these messages from a central source at the end of a conveyor belt and distributed them to the several operators. And at that time of the morning there is usually only one, two or perhaps three, depending on the load, operators on duty. And normally that would be what did take place and presumably did take place in this instance.

Q Based upon the indications on Exhibit No. 5, was that a particular busy period or was that the usual and normal type of period?

A I think not, sir. All of these messages are deferred service. By that I mean they are deferred classification and overnight messages. I think that probably, in moving along a conveyor belt, they could have been separated or could have been separated when spilling over into this, what we call a tub. It is actually a tray. And then in being picked out by the supervisor or whoever was making the assignments of the messages--I assume it was a supervisor--they first take them out as they fall and take from the bulk the fast messages, the

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straight messages and send those--because they are not as critical. You do have as much time as is required to do it. They are not sent after the so-called straight messages or fast messages. And in some manner--and I can't explain this, sir--I don't know--these were separated. Two of them were sent relatively soon after acceptance and the third was not. And I have to assume there was a group of straight messages or for some reason there were messages that the supervisor gave precedence over these and priority of transmission.

2-4 Q Finally, Mr. Killian, between the hours of four and twelve midnight, how many people are on the counter or in the desk area to receive telegrams brought in for delivery by the lay public?

A It would vary a little, sir, depending on the occasion and how much so-called counter traffic we might have. At a minimum there ought to be two. I can't specifically say there was this at this stage, but at a minimum there should be two and there might be as many as three.

Q Is that a duty shift period at your

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office at 230 North Miami Avenue? That is, from four o'clock to twelve o'clock?

A Yes, sir.

Q And, sir, can you, on the basis of Exhibit 5 or any independent recollection you have, tell us approximately how many wires or cablegrams or telegrams were composed at or brought into the Western Union office for transmission between ten o'clock and midnight on the night of June 6, 1968?

A Sir, I don't have that information. I could not.

Q Are all of the numbers reflected on Exhibit 5 with particular reference solely to your North Miami Avenue office or are other offices included in that?

A These are entirely the 230 North Miami Avenue office.

MR. GREENSPAHN: Thank you, Mr. Killian. I have nothing further.

THE COURT: Is there any redirect?

MR. MORRIS: I have no further questions.

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

(Witness excused)

THEREUPON--

SOPHIA SALIBA,
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 name, your address and your occupation.

THE WITNESS: My name is Mrs. Sophia
Y. Saliba, S-a-l-i-b-a, 90 Northeast 128th Street,
North Miami, Florida. I am an interpreter and
translator for the FBI.

THE COURT: All right. You may
proceed.

DIRECT EXAMINATION

BY MR. MORRIS:

Q How long have you been so employed,
Mrs. Saliba?

A Twenty-six years.

Q Mrs. Saliba, as an interpreter and
translator, are you qualified in the Spanish language?

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A Yes, I am.

Q What are your qualifications in the Spanish language?

A My preparation in Spanish, do you mean?

Q Yes.

A I have an A.B. degree from Radcliffe in romance languages. I have a Master's degree from Boston College. And then, of course, my work all this time.

Q How long has that been?

A Almost twenty-six years.

Q Mrs. Saliba, have you ever on any previous occasions qualified as an interpreter/translator of the Spanish language in any Federal Court?

A Yes, I have.

Q In which court is that?

A In this Court two years ago; in this courthouse.

MR. MORRIS: Your Honor, I offer this witness as qualified as an interpreter/translator in

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the Spanish language.

THE COURT: Is there any objection to
the qualifications of this witness?

MR. GREENSPAHN: No objection.

THE COURT: All right. She will be
accepted as an expert in the Spanish language.

You may proceed.

BY MR. MORRIS:

Q Mrs. Saliba, I show you Government's
Exhibit No. 1 and I ask you whether or not you have
ever seen that document previously.

A Yes, sir. It was given to me for
translation.

Q When was that?

A I don't remember the exact date.

Q Approximately when was that?

A I would say within the last six months.
I can't give you any more accurate time than that.

Q Who gave you this document?

A Agent George Davis.

Q Did you prepare a translation on that?

A Yes, I did.

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MR. MORRIS: I ask that these documents be marked as Government's Exhibits 1A, 2A and 3A for identification.

(Thereupon the documents referred to were marked as Government's Exhibits Nos. 1A, 2A and 3A, respectively, for identification.)

BY MR. MORRIS:

Q Mrs. Saliba, I show you Government's Exhibit 1A and ask you if you can identify that.

A Yes. This is the translation I made of this telegram.

Q I show you Government's Exhibit 2A and ask you if you can identify that.

A This is also a translation I made of a telegram.

Q I give you Government's Exhibit 3A and ask you if you can identify that.

A This is also a translation I made of a telegram.

Q You have got Exhibit 1 there. I show you Government's Exhibit 1A. First of all, let me ask

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you if there is any connection between Government's Exhibit 1 and Government's Exhibit 1A for identification.

A 1A is a translation of Exhibit 1.

THE COURT: And the same thing is true with respect to Exhibits 2 and 2A and Exhibits 3 and 3A, is it not?

THE WITNESS: Yes, sir.

THE COURT: Let us move on.

MR. MORRIS: Your Honor, I offer into evidence Government's Exhibits for Identification 1A, 2A and 3A.

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

MR. GREENSPAHN: Yes, your Honor.

It seems proper to me that the qualified interpreter interpret, for the purpose of this jury hearing the interpretation, the contents of Exhibits 1, 2 and 3, but it does not seem proper to put in 1A, 2A and 3A, each of which has a literal and a sense translation. The sense translation really is a conclusion drawn by the interpreter. I think her interpretation as

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such can be expressed, but not by way of a written translation.

THE COURT: Let me look at them.

MR. MORRIS: Your Honor, I believe that literal translations frequently make very little sense and a sense translation is necessary in the valid translation of a document.

THE COURT: Your sense translation is your opinion as to what the literal translation means in English?

THE WITNESS: It is not exactly my opinion, but it is the good English translation, because when you translate from one foreign language into another and give the meaning of each word, it is not good English necessarily and, therefore, the sense translation there is a good English translation.

For example, to give you just an example. In French you say "I have hunger." You say the same thing in Spanish. It doesn't make good English to say "I have hunger" because in English we say "I am hungry." Therefore the sense translation is just giving a good English interpretation.

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THE COURT: With that explanation I will overrule the objection and admit the documents into evidence as Government's Exhibits 1A, 2A and 3A.

(Thereupon the documents referred to were received in evidence as Government's Exhibits 1A, 2A and 3A, respectively.)

MR. MORRIS: Your Honor, I would like permission to publish these documents at this time.

THE COURT: I do not think it is necessary to publish them at this time. Go ahead and put your case in. You can publish them later, if you wish, but let us move. We have been wasting time here all morning. We have spent about two and a half hours doing something that should have taken no more than forty-five minutes. Let us move on.

MR. MORRIS: All right, sir. I have no further questions.

THE COURT: Cross examination?

MR. GREENSPAHN: No cross examination.

THE COURT: All right, ma'am. You may be excused.

(Witness excused)

THE COURT: Ladies and gentlemen of the jury, the Court will now recess until one-thirty. The instructions which I gave you this morning, of course, will be applicable during this recess and during each other recess.

Court will be recessed until one-thirty.

MR. BIERMAN: We would request permission to recall Mrs. Saliba at a later time for other translations.

THE COURT: That is perfectly all right with me.

(Thereupon at 12:00 o'clock noon,
the hearing was recessed to
reconvene at 1:30 o'clock p.m.)

. . . .