

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,

vs.

VICTOR MANUEL GERENA, ET AL,
Defendants.

Criminal Number

H-85-50 TEC

Sept 1985

11/10/85

Hartford, Connecticut 06110

B e f o r e :

THE HONORABLE F. OWEN EAGAN, U.S. MAGISTRATE

A p p e a r a n c e s :

For the Plaintiff:

CARMEN ESPINOSA VANKIRK, ESQUIRE
Assistant U.S. Attorney
450 Main Street
Hartford, Connecticut 06110

ALAN H. NEVAS, ESQUIRE
U.S. Attorney
141 Church Street
New Haven, Connecticut 06510

ROBERT S. MUELLER, III, ESQUIRE
First Assistant U.S. Attorney
Room 1107
John W. McCormack P.O. and Courthouse
Boston, Massachusetts 02109

CAPITOL COURT REPORTERS
P.O. Box 1532
HARTFORD, CONNECTICUT 06101
(203) 247-8200

Appearances continued:

For the Defendant, Filiberto Inocencio Ojeda-Rios:

LUIS ABREU ELIAS, ESQUIRE
Calle Z #1
Hato Rey, Puerto Rico 00919

and
WILLIAM M. KUNSTLER, ESQUIRE
13 Gay Street
New York, New York 10014

For the Defendant, Juan Enrique Segarra II Palmer:

JON L. SCHOENHORN, ESQUIRE
97 Oak Street
Hartford, Connecticut

For the Defendant, Hilton Edgardo Fernandez-Diamante:

GREGORIO LIMA, ESQUIRE
P.O. Box 2827
Bayamon, Puerto Rico 00021
and
JOHN R. WILLIAMS, ESQUIRE
51 Elm Street
New Haven, Connecticut 06510

and
JUDITH BERKAN, ESQUIRE
P.O. Box 8464
Est. Idz. Juncos
Santurce, Puerto Rico 00910

For the Defendant, Norman Ramirez-Talavera:

REINALDO RAMPOLLA, ESQUIRE
Ponce de Leon # 613
Hato Rey, Puerto Rico 00918
and
MARK KOSTECKI, ESQUIRE
P.O. Box 2457
79 Central Avenue
Waterbury, Connecticut 06722

For the Defendant, Orlando Gonzalez-Claudio:

JUAN R. ACEVEDO, ESQUIRE
105 Chambers Street
Suite 5-J
New York, New York 10007

For the Defendant, Jorge Aurelio Fernandez-Garcia:

AVERY & FRIEDMAN
BY: MICHAEL AVERY, ESQUIRE
Six Beacon Street, Suite 520
Boston, Massachusetts 02108

For the Defendant, Elias Samuel Castro-Ramos:

DIANE POLAN, ESQUIRE
265 Church Street, Room 808
New Haven, Connecticut 06510
and

1 Appearances continued:

2 JOSE ANTONIO LUGO, ESQUIRE and
3 PETER BERKOWITZ, ESQUIRE
4 Banco Coop. Plaza, 309-B
5 Ponce de Leon 623
6 Hato Rey, Puerto Rico 00917

7 For the Defendant, Luis Alfredo Colon-Osorio:
8 RONALD L. KUBY, ESQUIRE
9 13 Gay Street
10 New York, New York 10014

11 For the Defendant, Ivonne Melendez-Carrion:
12 P. SPENCER CLAPP, ESQUIRE
13 90 Babcock Street
14 Hartford, Connecticut 06106

15 For the Defendant, Angel Diaz-Ruiz:
16 RAFAEL ANGLADA-LOPEZ, ESQUIRE
17 853 Broadway, 14th Floor
18 New York, New York 10003
19 and
20 MARGARET P. LEVY, ESQUIRE
21 410 Asylum Street, Suite 517
22 Hartford, Connecticut 06103
23 and
24 FONT & GLAZER
25 BY: LOUIS FONT, EQUIRE
 1348 Cambridge Street
 Cambridge, Massachusetts 02139

 For the Defendant, Isaac Camacho-Negron:
 VICTOR M. AGRAIT-DeFILLO, ESQUIRE
 Box 1953
 Hato Rey, Puerto Rico 00919

 For the Defendant, Luis Alfredo Colon-Osorio:
 JUAN G. CASOSNOVAS-LUIGGI, ESQUIRE
 602 Munoz Rivera Avenue
 Le Mans Cond., Suite 603
 Hato Rey, Puerto Rico 00919

 For the Defendant, Carlos M. Ayes-Suarez:
 BARBARA GOREN, ESQUIRE
 400 Orange Street
 New Haven, Connecticut 06511
 and
 PEDRO J. VARELA, ESQUIRE
 613 Ponce de Leon
 Hato Rey, Puerto Rico 00917

I N D E X

Witness:

Page

Jose P. Rodriquez -----	27
Direct Examination by Ms. Vankirk -----	27
Cross-Examination by Mr. Williams -----	40
Redirect Examination by Ms. Vankirk -----	114
Recross-Examination by Mr. Williams -----	120
Further Redirect Examination by Ms. Vankirk -----	130

Exhibits

Page

Government's

2	Document	33
---	----------	----

Defendant's

D	Affidavits	26
E	Jose P. Rodriquez' notes	41
F	Card	59
G	Card	81
H	Newspaper article from Claridad	129

P R O C E E D I N G S

(10:00 o'clock a.m.)

THE COURT: Good morning, ladies and gentlemen. Please be seated. The Court apologizes for starting at 10:00 rather than 9:30, as we directed. However, I received a message a little earlier this morning that the vans were stuck in traffic on the way up from 84 and they won't be here for some time. I, therefore, took that opportunity to start to write on the first case, so that we would have at least a decision that both sides could see.

In the middle of that, I was notified that the Defendants were here, that they had cleared the construction and were here. I felt it was better I continue with my thoughts while they were still fresh, so, I did continue.

I apologize for any inconvenience caused to any of you.

MR. WILLIAMS: Magistrate, if I can say, actually you could continue working on that for a while. The bulk of the material that was to have been turned over to me was, in fact, handed to me three minutes ago and I

1 will need, probably, twenty minutes to review
2 that material.

3 THE COURT: All right. Is that so? You
4 didn't stay all night and photostat?

5 MS. VANKIRK: We stayed as late as we
6 could, your Honor, but there was a lot of
7 material and we had to find it, so it did
8 take longer than we expected. I won't say
9 the bulk was turned over this morning but a
10 substantial portion was.

11 THE COURT: All right. About how much
12 time do you need?

13 MR. WILLIAMS: I think I'm going to need
14 about twenty minutes.

15 THE COURT: All right. Are there some
16 other things that we could do? Could we start
17 the other case while you're reviewing that? I
18 don't want to confuse things, if that would
19 confuse the -- The prosecutor is frowning. I
20 think that that means that it would make it
21 too confusing.

22 MR. WILLIAMS: I think it would be
23 easier. It's not going to be that much time.

24 THE COURT: Let me put some things on
25 record at this time, just so there's no

1 misunderstanding. I am, once again,
2 reiterating my sequestration order and
3 understanding that the order, as given last
4 time, could have been misinterpreted, I went
5 back and reread it.

6 The intent of my order is that all
7 witnesses, prosecution or defense, will be
8 sequestered from the courtroom, until they
9 testify. Once they testify, they are at
10 liberty to stay in the courtroom.

11 Now, that means all witnesses on
12 H-85-50, on the whole case. It doesn't mean
13 on each individual case.

14 I can see where you misinterpreted it by
15 rereading, and I apologize if it wasn't clear.
16 But, the intent is to have all witnesses out
17 of the courtroom before they testify. Once
18 they testify, they are welcome to stay.

19 The order is based on the discretion of
20 the trial judge, to clear a courtroom and also
21 on the personal feeling of mine for over
22 thirty years, that the best witnesses are
23 clean witnesses that come in without hearing
24 anything, one way or the other, from other
25 witnesses and that goes for both sides. The

1 one exception is the case agent or case
2 agents, if there happen to be more than one,
3 so that they would be there to advise the
4 Government regarding the case.

5 There have been several questions
6 regarding witness fees. I would tell you,
7 preliminarily, at this time, if you are
8 talking about witnesses that are character
9 witnesses, the Court is not going to grant any
10 witness fees for other -- for character
11 witnesses because I have already told you that
12 I will accept a proffer, an affidavit.

13 We have had very illustrative, technical
14 devices. We have had the video tape and I
15 have taken affidavits.

16 You should be aware at this time, that I
17 will do that and I have made that clear. I
18 think, right from the very beginning, I more
19 than likely would rule against any character
20 witnesses.

21 If you have a fact witness, a fact
22 witness, that may be a different story and
23 I'll take that at each case.

24 Someone, yesterday, reraised the
25 harassment issue regarding one of the

1 Defendants. I am not sure who counsel was
2 that reraised it.

3 MR. WILLIAMS: That was Attorney Levy,
4 your Honor.

5 THE COURT: Margaret Levy. I don't see
6 her here. I'll wait to see whether she has
7 discussed that with the U.S. Attorney and
8 they have worked that out.

9 I have had several requests regarding
10 the status of the wire tap material. I do not
11 know what the status of the wire tap order,
12 application, and affidavit it. By that
13 status, I mean was that sealed, originally, by
14 the District Court Judge, that granted that.
15 Is whatever has been filed here, was that
16 filed under seal or was that filed as an
17 exhibit and, therefore, a public record?

18 MS. VANKIRK: Your Honor, the status is
19 that the information is sealed and we would
20 request that the information remain sealed
21 until the legality of the interceptions is
22 determined.

23 THE COURT: That was sealed, originally,
24 by the District Court Judge.

25 MS. VANKIRK: That's correct.

1 THE COURT: And it's a common practice
2 that that would not be unsealed.

3 MS. VANKIRK; That's correct.

4 THE COURT: Until such time that the
5 District Court Judge has had a chance to rule
6 on the admissibility of that evidence, the
7 legality, or motion to suppress.

8 MS. VANKIRK: That's correct, your Honor.

9 MR. WILLIAMS: It would seem to me that
10 what would be appropriate would be to order
11 it unsealed only for the limited purpose of
12 making copies of everything available to the
13 side that has to argue, whether its legal or
14 illegal and then reseal it.

15 I would ask the motion be made.

16 THE COURT: Will you accept that motion?

17 MS. VANKIRK; That's fine, your Honor.

18 THE COURT: All right. The material, the
19 order, the application of the affidavit, are
20 to remain sealed, except for the purpose of
21 giving the counsel of interest a copy of those
22 items for the purpose of arguing the
23 preliminary bail hearing and for arguing the
24 motion, itself, to suppress.

25 However, counsel must understand that

1 they are under the same seal as the Court, and
2 the Clerk would be --

3 MR. AGRAIT-DEFILLO: May I ask --

4 MS. POLAN: May I have a clarification
5 that the availability of those documents to
6 counsel are those people working with counsel
7 in their law offices?

8 THE COURT: Do you mean by that,
9 co-counsel?

10 MS. POLAN: Right, and employees.

11 THE COURT: Secretaries and paralegals?

12 MS. POLAN: Paralegals, investigators.

13 THE COURT: Any comments? Do you agree
14 with that, Mr. Williams?

15 MR. WILLIAMS: I do.

16 THE COURT: Any comments from the
17 Government?

18 MS. VANKIRK: Well, your Honor, I think
19 all attorneys know what it means to observe
20 an order of sealing and I'm not going to
21 comment further.

22 THE COURT: All right. In the Court's
23 practice, and in common knowledge, I think
24 in legal circles, that it is not just the
25 attorney who works on it, otherwise everything

1 would come in, like my notes and nobody would
2 read them, and that's why I have to have
3 everybody type them before I come in here. So
4 that normal people, this doesn't mean anybody
5 outside your office now. That means your
6 normal working staff that would normally work
7 on a case; it may be co-counsel, it may be a
8 paralegal, it may be a secretary. In some
9 cases, it may be an investigator. But, I
10 would limit that to that at this time unless
11 you think of something else.

12 MS. POLAN: Might it be a law student,
13 your Honor, who is not an employee, but is
14 working on the case?

15 THE COURT: Can't we at least qualify
16 them as a paralegal?

17 MS. POLAN: I just don't want to run
18 into problems, either.

19 THE COURT: I don't want you either and I
20 don't want to be unclear for my orders and I'm
21 grateful for your questions.

22 MR. AGRAIT-DEFILLO: I'm sole counsel in
23 my specific case and there is no additional,
24 no co-counsel that have filed any appearance
25 in this case. And I definitely will and have

1 already started seeking some help in Puerto
2 Rico, as far as the research, the review of
3 material and things like that.

4 After meeting with the Government's
5 attorneys yesterday, it seems more than clear
6 that I will need all the help I can get in
7 Puerto Rico and that, basically, would mean
8 seeking at least two attorneys, which are not
9 a member of my law firm, that have the time
10 to help me with that. They will be particular
11 attorneys that I assign for that specific
12 task.

13 THE COURT: They will be working under
14 your direction?

15 MR. AGRAIT-DEFILLO: Yes, your Honor.

16 THE COURT: So, as far as this case,
17 they are really a co-counsel with you on the
18 case.

19 MR. AGRAIT-DEFILLO: They are of counsel.

20 THE COURT: I don't see any problem with
21 that. Do you see any problem?

22 MS. VANKIRK: No, your Honor.

23 THE COURT: All right.

24 MS. VANKIRK: I have something further.

25 In light of the order of sealing, that I would

1 think that the transcripts that have been
2 provided should also be sealed, as well as any
3 that have been made court exhibits.

4 MR. WILLIAMS: It would be -- Frankly, I
5 was under the impression they were sealed.
6 I have been treating them that way and I think
7 the rest of that have been --

8 THE COURT: That's why I brought that up
9 this morning. I didn't want anybody getting
10 themselves into any problem violating any
11 court orders or running into the ethical
12 problems or anything like that.

13 So, all of that material is sealed, will
14 remain sealed until the District Court Judge,
15 whoever hears the case, would be Judge Clarie,
16 will unseal it.

17 Mr. Williams, remember the problem I
18 discussed with you yesterday, lack of a better
19 term, physical inaccess, because that's
20 taken from a probate term, that's not taken
21 in any way to mean anything derogatory. By
22 physical inaccess, I mean that you do not
23 have the ability to be in two places at one
24 time.

25 MR. WILLIAMS: Yes.

1 THE COURT: I have a call from Judge
2 Burns's chambers --

3 MR. WILLIAMS: Saying they are planning
4 to start tomorrow morning.

5 THE COURT: That's right.

6 MR. WILLIAMS: I wasn't sure if there
7 were enough marshals in this district to go
8 around with all the securities they have been
9 having down there and up here.

10 I am certain your Honor had the
11 impression that my portion of the proceeding
12 is going to conclude today.

13 THE COURT: We have so informed Judge
14 Burns, but I wanted to put you on notice
15 that this is the first time that -- it only
16 took about twelve hours before it came to
17 fruition, but --

18 MR. WILLIAMS: I was expecting that.

19 THE COURT: Fine. But I just wanted to
20 let you know she had called and told us you
21 were on trial for tomorrow.

22 MR. WILLIAMS: Thank you.

23 THE COURT: We assured her we'll have
24 you out of here. All right.

25 At this time, then, we'll take a twenty-

1 minute recess for the purpose of defense
2 counsel -- I'm sorry. The Government has --

3 MS. VANKIRK: No, your Honor. I was
4 just getting ready.

5 THE COURT: All right. And we'll take a
6 twenty-minute recess.

7 MR. BERKOWITZ: So we can avoid wasting
8 further time, when the next case comes, I was
9 given, this morning, a handwritten page
10 purporting to be some of the wire tap
11 materials, by the U.S. Attorney, that is in
12 Spanish and with some marginal notations,
13 some arrows.

14 I assume that this isn't the document
15 that purports to be wire tap transcript and
16 I would hope that prior to our hearing, we'll
17 have something more appropriate.

18 MS. VANKIRK: That's all we have, your
19 Honor.

20 MR. BERKOWITZ: I would assume then --

21 THE COURT: It won't take you twenty
22 minutes to examine it, then.

23 MR. BERKOWITZ: No, but I presume it
24 won't have any value as it is. This is the
25 Federal Court. That is a Spanish document.

1 THE COURT: I think it's turned over for
2 his use, not for the Court's use.

3 MS. VANKIRK: That's correct, your Honor.
4 The agent will translate it on the stand.

5 THE COURT: Do you need the services of
6 an interpreter to help you with it?

7 MR. BERKOWITZ: Yeah. I would want this
8 translated, certainly.

9 THE COURT: All right. Then, our
10 interpreter -- Is Mr. Segarro here?

11 MR. SEGARRO: Yes, your Honor.

12 THE COURT: I'll assign Mr. Segarro to
13 you for the purpose of helping you translate
14 that and if you will assist counsel
15 immediately with that --

16 Mr. AGRAIT-DEFILLO: I just received this
17 morning, from a group of people that -- local
18 people, that I was intending to use as a
19 witness, a sworn statement because they have
20 to leave, and for some reason they gave me
21 copies.

22 My client has none of the -- they are
23 paying for --

24 THE COURT: We'll make a copy for them.

25 MR. AGRAIT-DEFILLO: May I have the

1 copies made?

2 THE COURT: If you file them with the
3 Clerk, she'll make a copy for you.

4 Anything further?

5 All right, ladies and gentlemen, we'll
6 take a twenty-minute recess and then we'll
7 come back.

8 (Recess taken at 10:15 a.m. and concluded
9 at 10:50 a.m.)

10 THE COURT: Thank you very much. Please
11 be seated.

12 Are both counsel ready at this time?

13 MR.WILLIAMS: Well, I'm not quite
14 through. Some of this was in handwriting and
15 it goes a little more slowly and I was trying
16 to communicate with my client through
17 co-counsel as well. So, I'm probably going to
18 need another, maybe, five minutes.

19 THE COURT: Can you give it to co-counsel
20 to look at and let co-counsel do that and you
21 carry on with what you have got already? I
22 have people --

23 MR. WILLIAMS: I don't mind trying to do
24 both. I would rather, however, read it
25 myself, if I'm going to cross-examine from it,

1 that's all.

2 THE COURT: Let's see if we can go ahead.
3 If you get to a real sticky point, then we'll
4 have to --

5 MR. WILLIAMS: Yes. As a matter of fact,
6 there's something we can do. Co-counsel can
7 go through the affidavits.

8 THE COURT: Can we, by any chance, get
9 rid of it?

10 MR. WILLIAMS: If they want to put that
11 back across the hall for the duration of our
12 hearing, though, it will be needed for the
13 next hearing.

14 THE COURT: All right.

15 MR. WILLIAMS; Many of the people are
16 going to be using it.

17 THE COURT: We'll leave it, then, because
18 the next hearing will be starting fairly
19 quickly, I hope.

20 MS. BERKAM; At this time I would like to
21 submit to the Court a set of fifty-eight
22 affidavits. We have a copy for the U.S.
23 Attorney. These are a series of affidavits
24 that have been prepared in support of Mr.
25 Fernandez' bail application.

1 THE COURT: All right. The Court will
2 accept that.

3 MS. BERKAM: And I would like to point
4 out for the benefit of the Court, just what
5 it is we're submitting. As I say, we have
6 fifty-eight affidavits which includes a wide
7 array of people in Puerto Rico, an impressive
8 show of support for this application. It
9 includes twenty-eight neighbors of his at the
10 Los Robles Cooperative in Rio Piedras, who
11 includes people of all walks of life, as you
12 will see.

13 There are affidavits from a number of
14 friends and family members. We have
15 affidavits from former co-workers of his and
16 I would like to point out, the affidavit of
17 Edi Heriberto, H-E-R-I-B-E-R-T-O,
18 S-A-N-C-H-E-Z, who has known Mr. Fernandez for
19 thirteen years. When they worked together, he
20 was his supervisor, at the Atlantic Insurance
21 Company and sold insurance.

22 We have another co-worker, Miss Christina
23 Rehbein, R-E-H-B-E-I-N, who was a co-worker of
24 Mr. Fernandez, when he worked as an
25 epidemiologist and has known him for eleven

1 years.

2 For purposes of the record, let me state
3 that I am just giving the first last name of
4 these people, so there is no confusion. I
5 haven't given both last names, so we're clear
6 on who we're talking about.

7 THE COURT: The father's name.

8 MS. BERKAM: The father's last name.

9 Yes.

10 We also have affidavits from a number of
11 people who are parents of the children who
12 attend school with Mr. Fernandez' children,
13 and I would like to call your attention to the
14 affidavit of Celia, C-E-L-I-A, Romano, who is
15 the administrator of the nursery school where
16 Mr. Fernandez' younger daughter attends.

17 As to other people, we have the
18 affidavits of two ministers, and I would
19 particularly like to call your attention to
20 Juan Antonio Franco. This person has already
21 been mentioned in these hearings. He is the
22 president of the World's Student Christian
23 Federation, an international organization of
24 young christians. I believe its headquarters
25 is in Geneva; I may be mistaken about that.

1 But, he is the president on a worldwide basis
2 and has known Mr. Fernandez for twenty years.

3 We also have the affidavit of Reverend
4 Yolanda Ortiz and the choir director of the
5 United Evangelist Church, whose name is
6 Cayetano, C-A-Y-E-T-A-N-O, Figueroa,
7 F-I-G-U-E-R-O-A, Gonzalez.

8 We also have affidavits from a number of
9 professionals in the Puerto Rican community;
10 from a psychiatrist, Dr. Miguel Casto de
11 Jesus, who works with Mr. Fernandez wife, and
12 knows the family quite well. A psychologist,
13 sociologist, as well, and we have an affidavit
14 from the pediatrician for Mr. Fernandez'
15 daughter.

16 You'll note when you review the
17 affidavit, that we have references from
18 several university professors, who have known
19 Mr. Fernandez for a number of years.

20 We already have had the live testimony
21 of Dr. Luis Rivera-Pagan. I believe we
22 actually submitted an affidavit on his behalf,
23 as well. Professor Kalman Barsi, K-A-L-M-A-N,
24 B-A-R-S-I, who has known Mr. Fernandez for
25 some eight years and, who I should say from my

1 own personal experience in Puerto Rico, is one
2 of the most widely known writers in Puerto
3 Rico. He was very modest in his affidavit in
4 not specifying this but has been the winner of
5 a number of literary prizes and is recognized
6 internationally. I believe he's originally
7 from Argentina.

8 We also have Professor Aaron Ramos, who
9 has known Mr. Fernandez for twenty years, as
10 well.

11 I would like to call your attention
12 particularly to the affidavit submitted by
13 Marcia, M-A-R-C-I-A, Rivera, who is a former
14 university professor, very well known in Puerto
15 Rico, and the Director of the Center for the
16 Study of Puerto Rican Reality, which is a wide
17 ranging research and publication center that
18 groups Puerto Rico and intellectuals in Puerto
19 Rico and receives funds from such sources as
20 the Ford Foundation. Very widely known, both
21 Marcia Rivera, as the director, and also the
22 institution as such. She, in her affidavit,
23 refers to the extensive knowledge that she has
24 of Mr. Fernandez, dating back from his
25 participation along with her, twelve years

1 ago, as the founder of that day care center
2 for children in Puerto Rico.

3 Dr. -- Miss Rivera, I don't believe
4 she's a doctor, but Miss Rivera has a child
5 approximately the age of Mr. Fernandez' older
6 child and participated actively with him in
7 the development of this day care center, which
8 is attended by such people as the daughter --

9 THE COURT: Could I just ask a question
10 of interest with the number of children that
11 attend these schools. The classes must be
12 somewhere between one hundred and two hundred
13 in each class with the number of people that
14 have children with the Defendant.

15 MS. BERKAM: Well, Mr. Fernandez is known
16 for his active participation in these
17 programs, obviously. I would point out that
18 one of those one hundred people is the former
19 governor of Puerto Rico, Roberto Sanchez,
20 V-I-L-E-L-L-A.

21 We also are in the similar situation to
22 Mr. Avery the other day, in that we have
23 included affidavits from people who know Mr.
24 Fernandez since his intermediate school days,
25 from intermediate school, I guess -- What is

1 that called? Is that the appropriate
2 translation?

3 MR. WILLIAMS: Middle school.

4 MS. BERKAM: Middle school. Including
5 his teacher in the middle school, who has
6 known him, obviously, for some twenty-five
7 years, and two classmates from the middle
8 school. These are Mercedes, like the car,
9 Quinones, Q-U-I-N-O-N-E-S, who was his teacher
10 in the middle school, and Jose Gonzalez and
11 Jose Grosa-Labrone. Obviously, these people
12 know him for a quarter century or more, or
13 approximately a quarter century.

14 We also have an affidavit from a person
15 who has known him for some seventeen years,
16 Feliciano Santos-Rojas. I gave you both last
17 names there. Who is -- For whom Mr.
18 Fernandez is the godfather of his son, Diego.

19 We also have included in our list of
20 affidavits a number from family members and
21 I would point out the following. We have his
22 current in-laws, Laura Kinyosa and Mariano
23 Rodriquez. Mrs. Kinyosa is a retired
24 secretary and Mariano Rodriquez, he is,
25 though it's not reflected in the affidavit,

1 I can make a proffer that he is a retired
2 civilian employee who was an accountant for
3 many years with the U.S. Navy. And I want
4 to make emphasis with regard to Mr.
5 Rodriquez and his wife, Laura Kinyosa,
6 because they have indicated to us that should
7 there be any bail requirement put on Mr.
8 Fernandez, they would be willing to stake
9 their property for those purposes. And we're
10 talking about a property with a value of some
11 seventy thousand dollars, and Mr. and Mrs.
12 Rodriquez have that confidence in him.

13 We also have the affidavit of Carlos
14 Carrera-Benitez, who is an attorney, and is
15 some seventy years of age. He has known Mr.
16 Fernandez since 1971, when Mr. Fernandez
17 entered into a common law situation with is
18 daughter, that is, Carlos Carrera's daughter.
19 And in his affidavit, Mr. Carrera indicates
20 that his contact with Mr. Fernandez has been
21 consistent over the years and that Mr.
22 Fernandez not only was a -- or is, continues
23 to be, a loving and responsible father to the
24 child of that union, who is the older daughter
25 to whom we have been referring to, lives four

1 days of the week with Mr. Fernandez and the
2 rest of the time with Mr. Fernandez' ex-wife.

3 But that Mr. Fernandez entered into a
4 stepfather relationship that has been
5 consistent over the years, with the son of his
6 first wife, son, Orlando, who, I understand,
7 is currently studying in Ohio, at the
8 University of Ohio and for whom Mr. Fernandez
9 has consistently been a father figure for the
10 last fourteen years. The son is eighteen
11 year of age.

12 I think that if you review the
13 affidavits, you will find as I said, an
14 impressive show of support from a wide range
15 of people, including young people, old people,
16 people of professions, housewives, friends,
17 relatives, people who have known him for a
18 number of years, people who have just known
19 him for the last several years, since he's in
20 the cooperative community.

21 I can add from my contact that we did
22 not include affidavits from his sisters and
23 brother and from his mother. I can attest to
24 their active concern and participation in the
25 obtaining of these -- this evidence on such

1 short notice. And I think that you will see
2 that the evidence reflects a broad support and
3 a broad impression in the community in Puerto
4 Rico, as to the qualities of this Defendant.

5 THE COURT: All right. Thank you very
6 much.

7 Mr. Williams, have you now finished
8 your --

9 MR. WILLIAMS: Yes, I have.

10 THE COURT: All right. These will be
11 marked as full exhibits.

12 THE CLERK: Defendant's Exhibit D.

13 (Defendant's Exhibit D was marked.)

14 THE COURT: The Court will take them
15 and read them.

16 MS. VANKIRK: I would also like an
17 opportunity to read all of them before oral
18 argument.

19 THE COURT: You may have that.

20 At this time are we prepared to go
21 forward?

22 MS. VANKIRK: The Government is ready,
23 your Honor.

24 MR. WILLIAMS: Yes, we are ready.

25 MS. VANKIRK: We are going to recall Jose

1 Rodriquez.

2 THE COURT: Mr. Rodriquez, if you would
3 come back to the stand.

4 MS. VANKIRK: Is that equipment going to
5 be moved, your Honor?

6 THE COURT: If that's going to give you a
7 problem, we'll ask that perhaps someone could
8 assist you. Maybe someone --

9 MR. WILLIAMS: I would be happy to help.

10 (Off the record while video equipment was
11 moved.)

12 THE COURT: Mr. Rodriquez, you will
13 recall you have been previously sworn and
14 there is no need to reswear you in this
15 particular case.

16 THE WITNESS: Yes.

17 J O S E P. R O D R I Q U E Z,
18 having been previously duly sworn, testified as
19 follows on direct examination.

20 DIRECT EXAMINATION BY MS. VANKIRK:

21 Q Mr. Rodriquez, do you know this Defendant by
22 any other name?

23 A Yes, ma'am, I do.

24 Q And what name is that?

25 A Romano.

1 Q How do you know him as Romano?

2 A On August 30, 1985, when this Defendant and
3 the other Defendants were arrested, Luis Colon-Osorio,
4 told us that this individual was known to the
5 organization as Romano.

6 Q Did he say anything else about Romano?

7 A He said Romano is of low moral character and
8 was lax in security, with little regard for the security
9 of the organization.

10 Q Do you know him -- Withdrawn.

11 Now, during the course of the F.B.I. electronic
12 surveillance, did the name Romano come to the attention
13 of the F.B.I.?

14 A Yes, ma'am, it did.

15 Q And when was that?

16 A Several times. On May the 15th, 1984, in the
17 Levittown apartment of Ojeda-Rios, Ojeda-Rios -- that's
18 Filiberto Ojeda-Rios and Ivonne Melendez-Carrion were
19 inside the apartment. They were discussing an
20 apparent dispute that has developed between Ojeda-Rios
21 and the members of the Directive Central Committee.

22 During this time Ojeda-Rios lists people that he is
23 in dispute with; three of whom are Romano, Roberto and
24 Tino. He also stated during this conversation that
25 these three individuals felt as if as long as the money

1 was over there, that the organization would not control
2 it. I'm sorry. As long as the money was over there,
3 Ojeda-Rios stated that the Cubans controlled the money
4 and not him.

5 Q I direct your attention to May 18, 1984. Did
6 the F.B.I. conduct electronic surveillance on that day?

7 A Yes, ma'am. Again in the Levittown apartment
8 of Mr. Filiberto Ojeda-Rios, again, the two persons
9 engaged in conversation are Filiberto Ojeda-Rios and
10 Ivonne Melendez-Carrion. At this time they continued
11 discussing the dispute between Ojeda-Rios and, again,
12 he names Romano, Roberto, Tino and Martin and he states
13 that it is his belief that these -- excuse me -- these
14 members of the organization are not attempting to
15 resolve the problems between them.

16 He stated that they intended to keep two and a half
17 million.

18 Q I direct your attention to May 19, 1984. Was
19 there any conversation intercepted on that day?

20 A Yes. Again, in the Levittown apartment of Mr.
21 Filiberto Ojeda-Rios, Ojeda-Rios is involved in a
22 conversation with an unidentified male. During this
23 conversation, he again discusses difficulties he's
24 having with members of the Directive and Central
25 Committees.

1 He lists as being members of the Central
2 Committee, Romano, Martin, Tino and Roberto and Johnny.
3 And he stated later in the conversation that the seven
4 million dollars had affected them.

5 Q Now, you told us yesterday, that you had
6 learned from Customs that Mr. Fernandez Diamante had
7 traveled to Panama; is that correct?

8 A Yes, ma'am.

9 Q Was that information corroborated in any other
10 fashion?

11 A Yes, ma'am, it was. Besides the Customs
12 report that I talked about yesterday, on July the 3rd,
13 1985, in El Centro condominium, suite 249, there was
14 electronic surveillance conducted of this condominium.
15 People involved in the conversation were Ruben Ramos-
16 Acosta, Roberto Maldonado. R-U-B-E-N, R-A-M-O-S,
17 A-C-O-S-T-A. R-O-B-E-R-T-O, M-A-L-D-O-N-A-D-O. Luis,
18 L-U-I-S, C-O-L-O-N, O-S-O-R-I-O. And Filiberto,
19 F-I-L-I-B-E-R-T-O, O-J-E-D-A - R-I-O-S.

20 Q What was said during that conversation?

21 A During this conversation, Ojeda-Rios stated
22 that he had seen Tino and Romano near the flood gates.
23 He also stated that they had received a call in Panama,
24 referring to Tino and Romano, in which the caller
25 allegedly told him to stay there because of possibly

1 impending arrest.

2 Ojeda-Rios was concerned about this call because
3 they apparently made it from an individual's house by
4 the name of M-O-N-C-H-O, and he was concerned that the
5 bill would reflect the call from San Juan to Panama.

6 Q Do you know why Romano was in Panama?

7 A No, ma'am, I do not.

8 Q It was not reflected in this conversation?

9 A No, ma'am.

10 Q Now, you stated that on April 3, 1984, there
11 was a search of a Macheteros safe house; is that
12 correct?

13 A That's correct.

14 Q And what was found in that safe house?

15 A In addition to what I've already listed, the
16 fingerprints of Mr. Hilton Fernandez-Diamante --

17 MR. WILLIAMS: I'm going to move to
18 strike that unless there is a basis, your Honor.

19 THE COURT: Do you have a basis?

20 MS. VANKIRK: Yes, your Honor.

21 THE COURT: Show it.

22 Q How do you know that the fingerprints of this
23 Defendant, Hilton Fernandez-Diamante were found in the
24 Macheteros safe house?

25 A Subsequent to our search, all the documents,

1 all the items recovered in the safe house, almost all
2 the items were sent to the F.B.I. laboratory for
3 fingerprint examinations. Subsequent to their
4 examination, they have forwarded copies of their reports
5 on the fingerprints to San Juan F.B.I., which I have
6 read and that report stated that Mr. Hilton Fernandez-
7 Diamante's fingerprints were on the documents inside
8 that safe house.

9 Q I direct your attention to Government Exhibit
10 2 for identification and I ask you if you can identify
11 that.

12 A Yes, ma'am. This is a copy of a document that
13 was found inside the safe house, that contained the
14 fingerprints, latent fingerprints of Mr. Hilton
15 Fernandez-Diamante.

16 MS. VANKIRK: Your Honor, we offer it as
17 a full exhibit.

18 THE COURT: Counsel?

19 What was the number on that?

20 THE CLERK: Government's Exhibit 2.

21 MR. WILLIAMS: I don't know whether I
22 object or not. It's three typewritten pages
23 in Spanish.

24 THE COURT: Co-counsel speaks Spanish.

25 MR. WILLIAMS: Could we have a moment

1 for co-counsel to read it?

2 THE COURT: You may.

3 MS. BERKAN: Even so, three pages is
4 going to take a while.

5 THE COURT: You may.

6 (Pause.)

7 MR. WILLIAMS: I have no objection.

8 THE COURT: No objection. It may be
9 marked as a full exhibit.

10 (Government Exhibit No. 2 was marked.)

11 THE COURT: Before we go any further,
12 just for the benefit of counsel and to see
13 if we can get an agreement, we have a
14 certified interpreter for your client, who
15 was sworn in yesterday.

16 MR. WILLIAMS: We met him yesterday.

17 THE COURT: He is the only certified
18 interpreter. We do have in the courtroom
19 a competent distinguished graduate of the
20 University of Connecticut Law School, who
21 is one of our usual interpreters, Mr. Pedro
22 Segarra, seated here in the courtroom. He's
23 not certified. The Court would propose, in
24 order to spell the certified interpreter
25 that he be able to do that and I would swear

1 him in, if that's acceptable to both counsel.

2 MS. BERKAN: That's absolutely
3 acceptable. We have full confidence in Mr.
4 Segarra.

5 MS. VANKIRK: No objection, your Honor.

6 THE COURT: I know Mr. Segarra well. If
7 you would stand for a second, I will have the
8 interpreter swear you in.

9 (Interpreter is sworn.)

10 THE COURT: Thank you very much. I would
11 then ask the certified interpreter if, when
12 you need a break, if you would just motion to
13 Mr. Segarra to fill in for you, that would be
14 permissible.

15 Mr. Segarra, you understand also --

16 MR. SEGARRA: Yes, sir.

17 THE COURT: Do you wish to move the chair
18 over next -- at this time would that be
19 helpful? We'll take one of these chairs.

20 Mr. Segarra, here's a chair, right here.

21 All right. Counsel for the Government
22 ready?

23 MS. VANKIRK: Yes, your Honor.

24 THE COURT: You may proceed.

25 Q (By Ms. Vankirk) Agent Rodriguez, do you

1 speak Spanish?

2 A Yes, ma'am, I do.

3 Q Do you read Spanish?

4 A Yes, mam'am.

5 Q Have you read that document, Government
6 Exhibit No. 2?

7 A Yes, ma'am, I have.

8 Q And what is it about?

9 A This is a memorandum to the Central Committee,
10 to the CC. It is -- involves an apparent dispute that
11 has arisen between a comrade by the name of, they have
12 abbreviated, R-M-O-N, and another comrade by the
13 abbreviation name of GL. RMON is alleging that GL
14 should be removed as the head of the military area.

15 This dispute apparently arose during the planning
16 and execution of the Wells Fargo robbery.

17 Q Now, how do you know it was the Wells Fargo
18 robbery that they are talking about in this document?

19 A They list the Wells Fargo robbery in the
20 document by the initials AB.

21 Q And how do you know what AB means?

22 A I'm going to have to go back to wire
23 intercepts on July 31, 1985, wire intercept made at El
24 Centro condominium --

25 MR. WILLIAMS: I'm sorry. Could I have

1 that date again?

2 THE WITNESS: July 31st of this year.

3 MR. WILLIAMS: '85?

4 THE WITNESS: Yes, sir. In the
5 condominium where Sylvia Mulling-Cowart and
6 Filiberto Ojeda-Rios live. Sylvia was
7 assigned the task of reviewing the financial
8 ledgers of the organization at that time and
9 she was asking Ojeda-Rios to clarify certain
10 -- and she terms it, strange accounts.

11 She asked AB, what does AB stand for, to
12 which Ojeda-Rios replied, Aguila Blanca,
13 A-G-U-I-L-A, B-L-A-N-C-A.

14 On July the 1st, 1984, in the Levittown
15 apartment of Ojeda-Rios, a conversation was
16 intercepted between Ojeda-Rios and Juan
17 Enrique Segarra.

18 MR. WILLIAMS: Excuse me. I apologize.
19 Could I get that date again?

20 THE WITNESS: That was July 1st, 1984.

21 They were discussing the Aguila Blanca
22 project. Segarra made mention to Ojeda-Rios
23 that they had not been able to send the
24 postcards but that they would be sent. And
25 he stated that the message on the postcards

1 would be, I'm going to make an important
2 announcement soon.

3 Segarra continued and stated that the
4 postcards should be sent nine days before
5 the anniversary, to which Ojeda-Rios asked,
6 November? And Segarra came back and said,
7 No. September 12, the birthday of Don Pedro.

8 On September 12, on or about September
9 12, 1984, three postcards were received by
10 the news media in Hartford and San Juan,
11 Puerto Rico. These postcards were signed by
12 Victor Manuel Gerena. They were subsequently
13 obtained by the F.B.I. in San Juan and
14 Hartford. They were sent to the laboratory
15 and a handwriting analysis was done on these
16 cards.

17 Subsequent to the handwriting analysis,
18 the F.B.I. laboratory issued reports both to
19 San Juan and Hartford in which they stated
20 that the postcards had been written by
21 Victor Manuel Gerena. In the postcards
22 Victor Manuel Gerena stated that he would be
23 making an important announcement soon.

24 In October 19, 1984, a communique was
25 issued to, again, the news media. F.B.I. in

1 San Juan retrieved a copy from the news media.

2 This communique was issued by the
3 Macheteros, claiming credit for the Wells
4 Fargo robbery in Hartford, Connecticut, on
5 September 12, 1983. They claimed that Victor
6 Manuel Gerena had been recruited and trained
7 by the Macheteros to assist in this robbery,
8 that they had conducted the robbery in
9 celebration of Don Pedro Albizu-Campos'
10 birthday, which was September 12th. And they
11 stated in the communique that the money was
12 well guarded.

13 Q Now, during the course of your F.B.I.
14 electronic surveillance, were you able to determine where
15 Aguila was?

16 A Yes, ma'am.

17 Q And where is Aguila?

18 A On July the 13th, 1984, in the vehicle of Mr.
19 Filiberto Ojeda-Rios, a conversation was intercepted
20 between, among, excuse me, Filiberto Ojeda-Rios, Juan
21 Enrique Segarra and Orlando Gonzalez-Claudio. They were
22 discussing Aguila and the fact that his female companion
23 wishes to be with him.

24 They mentioned that the female companion is on
25 probation and they state in this conversation, Segarra

1 states that for us, meaning Ojeda and Orlando, Cuba is
2 an attraction for him. It's real because he has been
3 there.

4 Q And who is Aguila?

5 A Aguila is Victor Manuel Gerena.

6 Q What does Aguila mean in English?

7 A It means eagle.

8 Q What does Aguila Blanca mean in English?

9 A The white eagle.

10 MS. VANKIRK: Nothing further.

11 THE COURT: Cross-examination?

12 MR. WILLIAMS: Thank you, your Honor.

13 MS. VANKIRK: Your Honor, one more
14 question, if I might.

15 MR. WILLIAMS: I should have jumped in.

16 All right.

17 THE COURT: You had your chance.

18 Q (By Ms. Vankirk) Mr. Rodriquez, do you know
19 who Pedro Albizu-Campos is?

20 A Yes. He was a nationalist that was a Puerto
21 Rican citizen, advocated the independence of Puerto
22 Rico in the early '30s. I believe it was -- he was
23 convicted of seditious conspiracy. I believe it was in
24 1934.

25 THE COURT: Mr. Williams, are you ready

1 to go forward?

2 MR. WILLIAMS: Yes, I'm ready.

3 CROSS-EXAMINATION BY MR. WILLIAMS:

4 Q The man was a graduate of Harvard Law School,
5 I understand; is that correct?

6 A Who is that, sir?

7 Q The gentleman whose name you just answered.

8 A I don't know that fact.

9 Q You don't know that?

10 A No.

11 Q You are not at all familiar with the facts of
12 this investigation or at least the history thereof?

13 A Not Mr. Pedro Campos; you are correct.

14 Q Now, you told us yesterday, sir, that you had
15 some notes which you were using to prepare you to
16 refresh your recollection on the witness stand.

17 A Yes. That's correct.

18 Q You furnished us with copies of a few of those
19 notes, I believe. And do you have with you today some
20 similar-looking documents. Are those the exact same
21 documents that you had with you yesterday?

22 A Yes, possibly with the addition of one.

23 Q All right. Could I just take a look at those?

24 A Certainly.

25 (Pause.)

1 (Mr. Williams looking at documents.)

2 MR. WILLIAMS: Could these be marked,
3 please?

4 THE COURT: May they be marked for
5 identification? What number is that?

6 THE CLERK: I'm going to have to clip
7 all those together. It's going to cause a
8 problem, if he's going to be using them.

9 THE COURT: Are you going to need those?

10 THE WITNESS: I'll need probably two of
11 them, sir.

12 THE COURT: Why don't you just put a
13 paper clip on them for the time being and
14 we'll then, after, staple them together.

15 THE CLERK: Defendant's Exhibit E.

16 THE COURT: These are full exhibits you
17 are offering?

18 MR. WILLIAMS: No, for identification
19 only.

20 THE COURT: Marked for identification
21 only.

22 (Defendant's Exhibit E was marked.)

23 Q (By Mr. Williams) Now, let me see if I can go
24 back and try to move along in some sequence here.

25 Yesterday, you described a document marked in

1 evidence as Government's Exhibit No. 1, which was a
2 handwritten document with a typewritten translation
3 attached to it.

4 Is that familiar to you?

5 A Yes, sir.

6 Q Now, this was a document, I think you said,
7 you correct me if I'm misunderstanding you, this was a
8 document which you said was seized in Mr. Fernandez'
9 residence at the time he was arrested?

10 A Yes, sir. That's correct.

11 Q I think you were asked about some of the
12 locations which were described on here, two of them in
13 particular, Havana and Managua and you demonstrated that
14 you knew the countries in the world, which had those
15 communities located in them.

16 I take it that you are also familiar with the
17 countries which have the other towns located in them; is
18 that correct?

19 A Yes, sir.

20 Q Now, in preparing for your testimony yesterday,
21 had you had some discussion with Assistant United States
22 Attorney indicating that she wanted to make a big point
23 for the newspapers about those two particular towns? I
24 noticed, she just mentioned those two towns.

25 A No, sir.

1 Q So, you probably thought it was odd, did you
2 not, that she only had about two of the six towns listed
3 on that list?

4 A I don't think anything is odd in this
5 courtroom.

6 Q Is this based on your extensive experience
7 working with the United States Department of Justice?

8 A No, sir.

9 Q Now, the document that was actually taken out
10 of Mr. Fernandez' house was the handwritten one; is that
11 correct?

12 A That's correct.

13 Q And has that handwriting been analyzed in your
14 laboratory?

15 A No, sir, not at this point.

16 Q Do you -- Does your organization have a known
17 sample of the handwriting of Mr. Fernandez?

18 A Not that I'm aware of.

19 Q Not that you are aware of.

20 So, are you making any claim that this document is
21 in his handwriting?

22 A No, sir.

23 Q Has this document been processed for latent
24 fingerprints?

25 A It's been sent forward. I don't know if it

1 has yet or not.

2 Q So, you are not able to tell us whether or not
3 any latent fingerprints appear on it?

4 A No at this time; no, sir.

5 Q No. Furthermore, I think you told us already
6 you don't know the situation of this document; is that
7 correct?

8 A I described the document. I don't think I
9 stated that.

10 Q Did you not testify yesterday on direct, that
11 you don't know what this is all about?

12 A No, sir. I described it.

13 Q Okay. Is it in fact the case that you don't
14 know what it's all about or you think you do?

15 A I think I understand what this document is
16 about; yes, sir.

17 Q And you think that this document describes
18 secret meetings at various places?

19 A Yes, sir.

20 Q Now, sir, has your testimony here today been
21 based to any degree whatsoever on any information
22 provided to you by Carlos Rodriguez-Rodriguez?

23 A I believe I stated, sir, yesterday, that he
24 had told us that Mr. Hilton Fernandez-Diamante did drive
25 him to the safe apartment, when he fled from being

1 sentenced.

2 Q And did he tell you -- Withdrawn.

3 At what time did he make that statement to you?

4 A What time?

5 Q Yes.

6 A The statement was made to two other
7 interviewing agents that interviewed him in November of
8 1984.

9 Q Where did this interview take place?

10 A I do not know, sir.

11 Q Is that not revealed in the documents
12 contained in your file?

13 A Yes, sir, location would be revealed.

14 Q And you've reviewed those documents?

15 A Yes, sir, I have.

16 Q But you don't remember?

17 A I do not remember the location; no.

18 Q Is that indicated in any place on these cards
19 you brought with you to court?

20 A The location?

21 Q Yes.

22 A No, sir.

23 Q Was that the first interview that had ever
24 been conducted by your agency with this particular
25 informant?

1 A I do not know that, sir.

2 Q Do you know at what point your agency first
3 began to interview this man?

4 A November 1984.

5 Q That would have been, then, approximately five
6 -- more than that. Approximately seven months after the
7 search of the so-called safe house; is that correct?

8 A April 3rd search.

9 Q Yes.

10 A Yes, sir.

11 Q Now, in the search of that so-called safe
12 house, I believe you testified yesterday you had seized
13 a number of documents including documents which had
14 certain names on them; is that correct?

15 A That's correct.

16 Q And one of the names that was listed on those
17 documents was the name Romano; is that correct?

18 A That's correct.

19 Q Now, there was nothing, was there, in those
20 documents which indicated the identity of this
21 individual name Romano?

22 A That's correct. By name.

23 Q By name.

24 A By name.

25 Q And let me ask you this. At the time that you

1 or your agents first began interviewing Mr. Rodriguez-
2 Rodriguez, did your agency or any of the members thereof
3 come to any conclusion, you know, about -- from
4 reviewing the record, as to the identity of this
5 person's name, Romano?

6 A Yes, sir.

7 Q And do you know the basis on which that
8 conclusion had been drawn?

9 A Yes, sir. It was additional wire and
10 surveillance combinations.

11 Q Information that you have not presented here
12 in court today?

13 A Yes, sir. That's correct.

14 Q And you are not prepared at this time?

15 A I can present it; yes, sir.

16 Q Do you have those with you today, those
17 conversations?

18 A June 4th, 5th and the 17th.

19 MS. VANKIRK: We have those?

20 THE WITNESS: 1984, Levittown.

21 MR. WILLIAMS: If those could be
22 provided at this time.

23 THE COURT: Counsel?

24 MS. VANKIRK: Well, your Honor, I will
25 have to check. I'm not certain what

1 conversations he's referring to. Could I
2 consult with the witness?

3 MR. WILLIAMS: I have no objection to
4 that.

5 THE COURT: Yes. Come forward.

6 (Ms. Vankirk talking to the Witness.)

7 THE WITNESS: Your Honor, may I talk
8 to her just a second?

9 THE COURT: The U.S. Attorney come
10 forward a minute, please.

11 (Ms. Vankirk talking to the Witness.)

12 MS. VANKIRK: I believe this is what
13 we're talking about.

14 THE COURT: The record will indicate
15 you are handing to Mr. Williams two or three
16 sheets of paper.

17 MR. WILLIAMS: It's three sheets of
18 paper, apparently referring to two separate
19 reports.

20 Q (By Mr. Williams) All right. Now, let's talk
21 about that.

22 One of these documents refers to an interception on
23 June 17, 1984; is that right?

24 A That's correct. Yes, sir.

25 Q What was the nature of that interception? Was

1 it a wire tap or was it a bug?

2 A It was a microphone.

3 Q Okay. Placed inside a vehicle or a residence?

4 A Residence.

5 Q All right. What was the residence?

6 A 3384 Levittown Boulevard.

7 Q That's the same one you've referred to on
8 other dates as well?

9 A That's correct.

10 Q Would you identify the persons participating
11 in this particular conversaton?

12 A On the 17th, it was Filiberto Ojeda-Rios and
13 an unidentified male.

14 Q That's on June 17th of eighty --

15 A That's on June 17th.

16 Q Now, you have no -- Withdrawn.

17 You do not make any claim that Mr. Hilton Fernandez
18 was participating in that conversation?

19 A On June 17th?

20 Q Yes, sir.

21 A No.

22 Q And in fact, Mr. Fernandez' name is not
23 mentioned anywhere in the portion of the conversation
24 that you have turned over to us, is it?

25 A I believe he asked me about Romano.

1 Q I understand that. I'm asking you this
2 question.

3 A No, sir, it is not.

4 Q The name Romano is mentioned?

5 A Yes, sir, it is.

6 Q And the connection in which that name is
7 mentioned, is that one of the speakers said, The next
8 day Martin and Romano came and didn't tell me anything
9 about what they said and they began to argue with me
10 about the materials; is that correct?

11 A That's correct.

12 Q And that's it, isn't it?

13 A Yes, sir, but you asked me if we could prove
14 the code name, Romano. I told you through intercepts
15 and surveillance, I can do -- I can do it through those
16 conversations and additional testimony on surveillances.

17 Q Now, is it your testimony, then, that after
18 having listened to this conversation, somebody in your
19 agency was able to say, Well, gee, I was there, I saw
20 that, something to that effect?

21 A No, sir.

22 Q Why don't you tell me in what way this
23 particular statement, The next day Martin and Romano
24 came and they didn't tell me about anything, about what
25 they said and they began to argue with me.

1 In what way do you claim you are able to tie that
2 up to Mr. Hilton Fernandez?

3 A I have to refer to the other one, also.

4 Q All right. Fine. That's the one in Spanish,
5 I believe; is that correct?

6 A Yes, sir.

7 Q And that refers to a bug in that residence,
8 interception on that bug, June the 4th, 1984?

9 A Yes, sir.

10 Q Do you want to tell the decision of that?

11 A Yes, sir. This is a conversation in which, in
12 the residence of Filiberto Ojeda-Rios and Luis Colon-
13 Osorio at first, then observed going into the residence
14 of Elias Castro-Ramos, ECR -- who is listed here as ECR,
15 Maria Fernos, F-E-R-N-O-S, Cepero, C-E-P-E-R-O.

16 Now, okay, as it states here, Maria and Ojeda-Rios
17 engaged in a conversation in which they told Mr. Ojeda-
18 Rios that he had been expelled, separated from the
19 Central Committee and they also told him that the
20 female, Falcon, would determine -- Melendez-Carrion was
21 also expelled.

22 Q If I could just interrupt you. Now, is that
23 document from which -- to which you are referring, is
24 that document a transcript of a conversation?

25 A Yes, sir. But it's probably -- It's not a

1 final transcript.

2 Q Okay. The first handwritten version.

3 A Yes, sir.

4 Q And in the original Spanish, in which it
5 speaks of both.

6 A Yes.

7 Q And one other thing, you said a moment ago that
8 there had been an observation of people entering that
9 premises.

10 A That's correct.

11 Q That's not indicated on that particular
12 document, is it?

13 A No, sir. This is a transcript. We have many
14 forms and reports in the bureau. The surveillance would
15 be independent, totally, from this report.

16 Q All right. Would that have been a -- Would
17 that have been observations only with the eye or would
18 those have been observations that were also filmed?

19 A On this date, we did take photographs.

20 Q And did you review those photographs?

21 A Yes, sir.

22 Q And in those photographs, you saw the persons
23 whose names you have given us; is that correct?

24 A We have photographs of a Mrs. Farinacci and an
25 Elias Castro-Ramos exiting after the conversation.

1 Q All right. Now that conversation, again, does
2 not mention Mr. Fernandez, does it?

3 A No, sir.

4 Q And yet, in the conversation that you've
5 described to us, on June 17, 1984, the speaker says
6 that Romano came to visit him; is that correct?

7 A That's correct.

8 Q And in the incident that you've described
9 here, you do not have Mr. Fernandez making any **such**
10 visit, do you?

11 A No, sir, but you asked me to see if I could
12 prove the code name, Romano. If you let me put
13 everything together, I can show you how we can identify
14 it.

15 Q I thought we could go one step at a time. So,
16 there is nothing in this document, either, then, that
17 links that particular name to Mr. Fernandez; is that
18 correct?

19 A That's correct. Standing by itself.

20 Q Or standing in conjunction with the other
21 document you've given.

22 A No, sir. That's correct.

23 Q All right. So, you link those into something
24 else; is that correct?

25 A That's correct.

1 Q And what is the something else to which you
2 linked them?

3 A Okay. Subsequent to the conversation on the
4 June the 4th, which Martin or Elias Castro-Ramos and
5 Maria Fernos visited with Ojeda-Rios and told him that
6 he had been expelled from the Central Committee of the
7 organization. They left. Okay. On June the 5th,
8 surveillance again places Elias Castro-Ramos and the
9 vehicle of Mr. Hilton Fernandez Diamante at the
10 residence.

11 Q Okay. Now, when you say surveillance, you are
12 talking about visual or --

13 A Physical visual surveillance.

14 Q And who conducted that surveillance?

15 A Sir, I'm not aware of the exact agent on that
16 day.

17 Q It wasn't you, in any event?

18 A No, sir, it was not.

19 Q And you have reviewed the reports of those
20 agents?

21 A Yes, sir, I have.

22 Q Now, in that instance, was there a
23 photographic memorization?

24 A No, sir.

25 Q No pictures were taken?

1 A Not on that day.

2 Q So, you saw Mr. Fernandez going into that
3 particular dwelling; is that correct?

4 A No. I said we saw Elias come into the
5 residence and the surveillance only saw Elias and the
6 car of Mr. Hilton Fernandez-Diamante.

7 Q You didn't see him that day, either, then?

8 A No, sir.

9 Q And of course, you determined whose car it was
10 by checking the registration with the motor vehicle
11 department; is that right?

12 A No, sir. It's not registered to Mr.
13 Fernandez-Diamante.

14 Q So, it gets a little more extenuating then.
15 To whom is it registered?

16 A I don't recall, but it's not -- I believe it's
17 Mr. Fernandez-Diamante's wife.

18 Q And it's because it's in the name of his wife
19 that you conclude that it's "his car"; is that correct?

20 A No, sir.

21 Q You have some other basis for that?

22 A It is his car. We have seen him drive it on
23 numerous occasions, by concentrating physical
24 surveillance on Mr. Fernandez-Diamante.

25 Q The fact that somebody drives his wife's car

1 doesn't necessarily mean it is his car, it means that
2 it's a car to which he has access?

3 A That's true.

4 Q What you mean is, it was a family car; is that
5 right?

6 A Correct.

7 Q And you are quite sure that was a car
8 registered to his wife?

9 A Yes, sir.

10 Q What kind of a car was it?

11 A It's an Oldsmobile, white. I've got the
12 license number.

13 Q You have that written down here on one of
14 those cards. That's on 55G189.

15 A Correct.

16 Q All right. Now, this particular card, there is
17 one that you copied while you were reading from one of
18 your 302 reports; is that correct?

19 A No, sir, I did not copy that card.

20 Q This is not your handwriting?

21 A No, sir.

22 Q Whose handwriting is this?

23 A That's another agent's.

24 Q Who is the agent?

25 A Fernando Candelario.

1 Q Is that agent here in Hartford at this time?

2 A Yes, sir, he is.

3 Q Is he assigned to this office or is he working
4 out of San Juan?

5 A Working out of San Juan.

6 Q Up here for this hearing?

7 A He is here to assist me; yes, sir.

8 Q Now, do you know when this card was written?
9 Do you know by that particular agent?

10 A No, sir, I do not.

11 Q Did you yourself, ever look at the documents
12 that are supposedly described in this card?

13 A Yes, sir.

14 Q And when did you do that?

15 A That was when I was in San Juan.

16 Q So, you asked him to make a few notes for you
17 to help you out on the stand?

18 A Yes, sir.

19 Q And did he do that sometime within the last 24
20 hours, to your knowledge?

21 A I don't believe it was the last 24 hours; no.

22 Q Did it before you left San Juan?

23 A He did not.

24 Q Do you know whether those documents are stil
25 in San Juan or up here?

1 A San Juan.

2 Q Now, this indicates that Mr. Fernandez went to
3 a shopping center.

4 A That's totally different than the vehicle --
5 the same vehicle observed on June the 5th, at the
6 residence of Ojeda-Rios. That note is made on other
7 testimony that I was going to give or that I did give.

8 Q And that was a trip to a shopping center in
9 April; is that right?

10 A That's when he transported Mr. Carlos
11 Rodriquez-Rodriquez.

12 Q Now, does that refer to a surveillance
13 conducted by your agents?

14 A Yes, sir.

15 Q So, the report which is summarized on this
16 card, would indicate that agents had observed the
17 people, the two people mentioned in that car going to
18 that shopping center on that day; is that correct?

19 A Yes, sir.

20 Q And it indicates that there were only two
21 people in the car on that partiucular occasion; is that
22 right?

23 A That card does but the report does not.

24 Q So, this card is not an accurate summary of
25 what's in the report?

1 A It's got the names of the people that were
2 identified. We also saw an unidentified person, or
3 person that was unidentified at that time.

4 Q Okay. And was that person in the car?

5 A Yes, sir.

6 Q Or did you see that person getting into the
7 car, getting out of the car?

8 A Saw him both getting in and driving in the
9 vehicle with those two individuals named on that card.

10 MR. WILLIAMS: I wonder if this could
11 just be given a separate identification
12 designation so we'll --

13 THE COURT: It may.

14 THE CLERK: Defendant's Exhibit F.

15 (Defendant's Exhibit F was marked.)

16 MR. WILLIAMS: For identification.

17 THE COURT: You mark Defendant's Exhibit
18 F for identification only.

19 Q Now, so far, we still haven't gotten to the
20 connection between Romano and Mr. Fernandez, have we?

21 A No, sir, we have not.

22 Q So, there is another step beyond the one you
23 have just told us about?

24 A Yes, sir, there is.

25 Q Why don't you tell us what that is.

1 A On June 17 --

2 The COURT: What year?

3 THE WITNESS: 1984.

4 Okay. Now, keeping in mind I told you
5 the four people that were in the apartment
6 on June 4 and June 5, let me go back to June
7 5. Okay. We saw the vehicle and Elias at
8 Ojeda-Rios' apartment. However, inside the
9 apartment were electronic surveillance. We
10 have the voice of Elias Castro-Ramos, Ojeda-
11 Rios and one additional person. Okay.

12 June 17, back now, Ojeda-Rios is talking
13 to a person, unidentified male, in the
14 apartment. June 4 was a Monday. Ojeda-Rios
15 told him on a Monday, they had sent a
16 communication to tell him that he had been
17 expelled from the Central Committee.

18 Q Now, is that described in one of the documents
19 that we have?

20 A That conversation?

21 Q Yes.

22 A June 17, yes, sir.

23 Q That's the June 17th conversation. Well,
24 that's the one we were just talking about.

25 A That's the one I'm talking about now.

1 Q That's the one you were talking about earlier,
2 where Martin and Romano came, they began to argue with
3 me about the material?

4 A Right.

5 Q Now, you are saying that in that particular
6 document, which consists of two pages, that there is
7 such a reference; is that right?

8 A Do I?

9 Q Is that this indication, right here?

10 A Yes, sir. What I have said is, they sent a
11 committee to tell me they had expelled me and that they
12 would ask me for all the equipment and all the copies
13 that I had. Okay. Referring back to the conversation
14 on June 4th.

15 Q Referring to the conversation on June 4th.
16 Okay. Go ahead.

17 A In that same conversation on June 17, he
18 states that Romano and Martin had also visited him the
19 following day, June 5th.

20 Q Well, I guess I'm just not -- as swift as you
21 are.

22 Where did you see it was the following day?

23 A Then at night, they go and put in -- they get
24 into the place the next day, Martin and Romano come.

25 Q Right.

1 A And they don't tell me anything about what
2 they had.

3 Q Right. But how do you know that it refers
4 back to the previous -- that is, how do you know that
5 that refers back to what he's talking about on the first
6 page?

7 A He says the next day.

8 Q Yeah. But when he says the next day, that's
9 next in relation to something; is that right?

10 A The next day.

11 Q How do you know that, because he says that
12 it's the next day after whatever happened at night; does
13 it not?

14 A I don't want to argue with you, but. Day does
15 follow night; yes, sir.

16 Q How do you know that this night refers back to
17 what they are talking about on Page No. 1?

18 A It's an ongoing conversation.

19 Q I understand that. But, it's an ongoing
20 conversation about various times; isn't that right, he
21 talks about Sunday, he talks about money. The next day,
22 so, Monday being the next day after Sunday, right?

23 A Right.

24 Q So that what you are talking about is this
25 visit from Martin and Romano. You are claiming that

1 took place on Monday; is that right?

2 A No, sir. Monday is June the 4th, the next day
3 would be Tuesday, June the 5th.

4 Q Well, that's my concern, I guess. I don't
5 want to get into a futile debate with you. But, I don't
6 understand how you can conclude that he's talking about
7 Tuesday, rather than referring from Sunday to Monday or
8 some other days, altogether.

9 A It says Monday. The next statement is the
10 next day, Tuesday.

11 Q So, it's your contention, then, that this took
12 place on June the 5th?

13 A Yes, sir.

14 Q And now you are going to tell us about what
15 you observed on June the 5th that ties us in; is that
16 right?

17 A I already told you.

18 Q Why don't you go over that again, because I
19 missed something.

20 A Okay. The vehicle of Mr. Hilton Fernandez-
21 Diamante and then Elias' voice in the residence. And a
22 third voice, besides Roberto Ojeda-Rios, and then his
23 conversation on June 17, saying the Central Commission,
24 which was June the 4th, on Monday, to tell me I was
25 expelled. And that conversation is corroborated by the

1 intercept on the wire.

2 Then he says, on the next day Romano and Martin
3 again visited me.

4 Q Where does he say "again," that word isn't in
5 there, is it?

6 A Maybe it's not.

7 Q As a matter of fact, the indication is that
8 Martin -- Romano had not been there the day before,
9 whenever that may have been.

10 A Romano was not; you are correct.

11 Q Well, I think we're losing the thread of it.
12 Isn't it a fact that when you saw that Oldsmobile go to
13 the house, you didn't see Mr. Fernandez in that car?

14 A That's correct.

15 Q So, in fact, you have no visual surveillance
16 that corroborates your contention that, assuming for the
17 purpose of this discussion, that it was June the 5th,
18 1984, that Martin -- Romano made the visit. You have no
19 physical surveillance that corroborates the claim that
20 the Romano who made that visit was Mr. Fernandez; isn't
21 that so?

22 A The vehicle and the voice.

23 Q Well, the vehicle was there and you already
24 told us that you didn't see Mr. Fernandez.

25 A I didn't see him; that's correct.

1 Q I realize it's not you, but whoever your
2 surveilling agent or agents were, didn't see him.

3 A We did not have a physical surveillance,
4 moving surveillance on that day. We had a fixed
5 surveillance site only.

6 Q Didn't you tell us you had pictures of that?

7 A I did not.

8 Q That was the day your camera wasn't working?

9 A That's the day we did not obtain pictures;
10 correct.

11 Q But the agent didn't see him?

12 A No. That's true.

13 Q Now, you said you had a voice, voice of an
14 unidentified male on the tape; is that right?

15 A Unidentified male.

16 Q You are claiming, now, that he is not
17 unidentified?

18 A That person in the conversation?

19 Q That's right.

20 A Romano.

21 Q And what is your basis for saying that?

22 A Ojeda tells Romano in that apartment at that
23 time.

24 Q And what is your basis for saying that that
25 voice is the voice of Mr. Fernandez?

1 A I say it because of what I just explained.

2 Q Because of what you just explained. That is,
3 that a car which you have seen Mr. Fernandez in on
4 previous occasions --

5 A Yes, sir.

6 Q -- was outside the residence at that time?

7 A Yes, sir.

8 Q But you saw people getting out of it, and Mr.
9 Fernandez wasn't one of them.

10 A No, sir. We did not see people getting out of
11 it.

12 Q Didn't you give us the names of a couple of
13 people?

14 A We saw Elias enter the residence of Mr. Ojeda-
15 Rios.

16 Q And you have previously described other people
17 as using that vehicle, as well; isn't that so?

18 A No, sir, I did not.

19 Q Don't you refer in that particular card there,
20 to Avalino?

21 A He wasn't using the car. He was a passenger
22 in the vehicle.

23 Q It doesn't say that on the card, does it?

24 A No, sir, it does not.

25 Q And you weren't there.

1 A No, sir, I was not.

2 Q But you are claiming that the report contains
3 those things in it; is that right?

4 A It's corroborated by Carlos Rodriguez.

5 Q Let's take it one step at a time. Does the
6 report that you say you have read, assert that it was
7 Mr. Fernandez who was driving the car on that day in
8 April, when the trip was made to the shopping center?

9 A Yes, sir.

10 Q Okay. And is that the only prior occasion on
11 which your records indicate you had surveilled that
12 particular vehicle?

13 A Which time, which date?

14 Q The date in April, the trip to the shopping
15 center.

16 A No, sir.

17 Q What were the other occasions?

18 A Besides this one on June the 5th, I'm not --
19 besides June the 5th, I'm not aware of the other
20 occasions at this time, by date.

21 Q By date. Can you give us some descriptions of
22 those occasions?

23 A We have surveilled Mr. Fernandez-Diamante from
24 -- at the condos, Ros Robles, where he lives, and at his
25 previous residence, the address of which I don't recall

1 at this time.

2 Q Right. And you have surveilled him in
3 conjunction with this vehicle.

4 A Yes, sir.

5 Q But, of course, you have already told us that
6 the vehicle was registered to his wife, so you are not
7 surprised to see that. Have you ever seen anybody else
8 get in that vehicle?

9 A I haven't.

10 Q Have your agents?

11 A Not that I can recall.

12 Q It's possible that they have and you don't
13 remember?

14 A It's possible.

15 Q You have no reason to believe, do you, that
16 Mr. Fernandez had exclusive use of that vehicle?

17 A I don't know that.

18 Q And you don't even make that claim, do you?

19 A No, sir, I don't.

20 Q So now, you have in the agency files, the tape
21 of that bugged conversation which took place on June the
22 5th, 1984, don't you?

23 A Yes, sir.

24 Q And of course, you have in your department a
25 number of people who were skilled in the use of machines

1 that can analyze the sound waves that are generated when
2 the human voice transmits those waves across the air;
3 isn't that so?

4 A I'm not well versed in that field; no, sir.

5 Q But I understand that you are not in that
6 department. But, you do have that capability within the
7 F.B.I.

8 A You mean voice comparison equipment?

9 Q Sure. Right.

10 A Certainly.

11 Q And, you certainly have somewhere in your
12 files, known tapes of the voice of Mr. Fernandez; don't
13 you?

14 A No, sir, we do not.

15 Q You do not?

16 A No, sir.

17 Q Is it not so that agents of your department
18 have filed with various United States District Judges,
19 sworn affidavits in which they state that Mr. Fernandez
20 has been overheard in various conversations that were
21 intercepted by your agents?

22 A He was intercepted on June 5th.

23 Q So, that's what you're talking about in those
24 affidavits?

25 A If it's my affidavit, that's what I'm talking

1 about.

2 Q I use "you" in the plural in that sense.

3 Is it your testimony, then, after -- as the case
4 agent and after having reviewed the department's file in
5 this matter, that you do not have any electronic
6 interception of a voice which is identified thereon as
7 being the voice of Mr. Fernandez?

8 A June 5th.

9 Q That's not identified right then and there, is
10 it? You go through this long process --

11 A Yes, sir. That's correct.

12 Q My question to you is, do you have any
13 interceptions where it's known just from listening to
14 the tape, without having to go through all of these
15 processes, you go through --

16 A Where he identifies himself as being --

17 Q Well, where somebody makes a call to his
18 telephone number or something of that sort, where there
19 is something that's quite clear, right from the tape
20 itself.

21 A Since October 30, 1983, when this case
22 started, we do not. I do not know if he has been
23 intercepted previously.

24 Q Okay. So that in the affidavits that, many
25 affidavits by other agents or yourself, which assert

1 that Mr. Fernandez is orally intercepted, though not the
2 target, is orally intercepted on these calls. It's all
3 based on a process similar to the one you have just gone
4 through with us here, concerning the June 5th incident;
5 is that it?

6 A The June 5th incident?

7 Q Right.

8 A Yes, sir.

9 Q Now, let me just go back a minute . You have
10 told us a number of things by which you have reached
11 your conclusion, all right, that that unknown person,
12 that unidentified person, on June 5th, is Mr. Fernandez.

13 Is there anything else that you haven't told us
14 about yet upon the basis of which you conclude that that
15 particular voice is the voice of Mr. Fernandez?

16 A You are talking about on those three days?

17 Q Well, I'm talking about that one particular
18 day, June 5th.

19 A I have not seen the final transcript of that
20 conversation, so I do not know if there is something in
21 there than can identify him positively as being Hilton
22 Fernandez-Diamante.

23 Q From what you have seen, there is not.

24 A At this point, that is correct.

25 Q So when it all boils down, what it really

1 comes to is that you saw his wife's car out in front of
2 the place at the time the conversation was intercepted
3 and that's really it, isn't it?

4 A And the fact that on June 17th, Ojeda-Rios
5 states Romano and Martin were in that apartment.

6 Q That's correct.

7 But, we still haven't got -- All right.

8 And you are of the belief that Romano is Mr.
9 Fernandez?

10 A I know Hilton Fernandez-Diamante is Romano.

11 Q And I asked you if you think it -- you said --
12 you know you are distinguishing between belief and
13 knowledge; is that right?

14 A No, sir. I'm fully convinced that Hilton
15 Fernandez Diamante is Romano, in the minds of his
16 organization, if I know it.

17 Q All right. And now, let's see if we can
18 analyze that a little bit.

19 You base that on what you just told us about the
20 June 5th matter.

21 A Not totally.

22 Q I understand that. I'm going to try to go
23 through a list with you.

24 You base that on, apparently, an interrogation of a
25 co-defendant in this case, which was conducted after

1 this indictment was handed down.

2 A That is Luis Colon's statement, and we have
3 got othe ways that we have identified --

4 Q As I told you, I'm trying to go through the
5 list. Let's talk about that one. Were you prsent at
6 that interrogation?

7 A No, sir. Which one?

8 Q The interrogation which took place on, I think
9 you said August 30 of 1985.

10 A With Colon, no, sir, I was not.

11 Q Who participated in that interrogation?

12 A Fred Fernando. R-I-V-E-R-O.

13 Q One of your agents?

14 A Yes, sir.

15 Q Anybody else?

16 A There may have been a second agent.

17 Q And do you know who that was?

18 A Initially only Maldonado, M-A-L-D-O-N-A-D-O.

19 Q Okay. And that's also an agent with the
20 F.B.I.?

21 A Yes, sir.

22 Q I'm sorry. Anybody else?

23 A No, sir, that's all.

24 Q So there were the three of you?

25 A Colon-Osorio, Maldonado and Rivero.

1 Q That took place at the F.B.I. offices in San
2 Juan?

3 A It was in the federal building.

4 Q But not in the F.B.I. office?

5 A No, sir.

6 Q Where was it in that building?

7 A During the time of the arrest, because of the
8 number of defendants, we set up a processing center in
9 the basement and then they were further processed on the
10 first floor of the courthouse area of the federal
11 building of Hato Rey.

12 Q Where did this particular interrogation take
13 place?

14 A Exactly? I don't know.

15 Q Of course, this arrest obviously was made
16 after the indictment was handed down, wasn't it?

17 A That's correct.

18 Q Did this interrogation take place before the
19 arraignment in front of the Magistrate in San Juan?

20 A I don't know.

21 Q Had any attorney been appointed to represent
22 that particular defendant at or prior to the time of
23 this interrogation?

24 A I believe not.

25 Q Okay. Had any attorney appeared at the

1 courthouse on his behalf at or prior to the time of that
2 interrogation?

3 A No, sir.

4 Q The statement you have referred to, was that
5 statement reduced to writing and signed by this
6 particular defendant?

7 A By Colon-Osorio. No, sir, it was not.

8 Q Was it tape recorded?

9 A No, sir.

10 Q How long did that interrogation last?

11 A I don't know.

12 MS. VANKIRK; Your Honor, I'm going to
13 object. I don't see the relevance of this at
14 all, about the physical obtaining of it and
15 I don't see that Mr. Williams has any standing
16 to object to the voluntariness of the
17 confession.

18 MR. WILLIAMS: I didn't object to the
19 voluntariness of it. It came in. I'm
20 inquiring because it's relevant to the
21 reliability.

22 THE COURT: Overrule the objection.

23 MR. WILLIAMS: Would you like the pending
24 question or is it in your mind?

25 THE COURT: Please read back the

1 question.

2 (The question was read back by the
3 reporter.)

4 THE WITNESS: I do not know.

5 Q (By Mr. Williams) Would it be safe to say, it
6 was more than thirty minutes?

7 A I don't know.

8 Q What time did the interrogation begin?

9 A In the morning; the exact time, I do not know.

10 Q Was it before court had convened?

11 A Which court?

12 Q What time did the magistrate convene his court
13 for the purpose of these arraignments?

14 A I don't know.

15 Q What time does court ordinarily convene in
16 that particular courthouse?

17 A I don't know.

18 Q You have been there for a few years, probably
19 been in those courts quite a lot, haven't you?

20 A To be honest with you, I have not been in
21 court, except for this case in San Juan.

22 Q All right. Did that defendant sign a Miranda
23 waiver prior to making any of these statements?

24 A He was read the Miranda waiver. He did not
25 sign.

1 Q Did he in any way verbally purport to waive
2 his Miranda rights?

3 A I don't know that.

4 Q That's not reflected on the document; is that
5 correct?

6 A On the --

7 Q On the document you reviewed.

8 A He did not sign it.

9 Q And the document you reviewed, does not
10 reflect whether or not he expressed a verbal waiver?

11 A I have not seen the actual warning. I have
12 seen the report prepared by Fred Rivero.

13 Q Now, if there had been a verbal Miranda
14 waiver, that ordinarily would have been indicated in the
15 agent's report following usual bureau procedures; would
16 it not?

17 A Yes, sir.

18 Q But you don't remember in this instance,
19 whether or not that was indicated; is that correct?

20 A No, sir, I do not.

21 Q Now, what else did that defendant say in the
22 course of that interview?

23 A He identified Mr. Farinacci as being Roberto.

24 Q Was that the statement that you were referring
25 to in your testimony yesterday, when you said something

1 about he was quoted as saying that Mr. Farinacci should
2 be hit or something to that effect, the other agent?

3 A That was Fred Rivero.

4 Q You apparently both read the same report?

5 A He wrote it; I read it.

6 Q He was there. Is that reflected in his
7 report?

8 A The statment about hitting him in the mouth?

9 Q Yes, sir. Is that the reference that you had
10 in mind just now?

11 A Where he identified Mr. Farinacci as Roberto;
12 yes, sir.

13 Q What else did he say?

14 A He identified Avalino Gonzalez-Claudio as
15 being Tino. T-I-N-O. And he goes on to describe both
16 Mr. Farinacci and Mr. Hilton Fernandez-Diamante, as,
17 like I said, low morals, lax in security and he stated
18 that Mr. Fernandez-Diamante had apparently gone to some
19 type of demonstration and handed out literature with the
20 Macheteros heads or logo on it, which he described as
21 being, you know, a security violation.

22 Q Is that incident in any way confirmed or
23 corroborated by your files?

24 A The handing out of the literature?

25 Q Right.

1 A No, sir.

2 Q And if it had happened on the Island, you
3 would know about it, wouldn't you?

4 A Not necessarily.

5 Q You keep a pretty close watch on Mr. Fernandez
6 and on demonstrations; don't you?

7 A No, sir.

8 Q You do not. All right.

9 Did he give any more detail about that particular
10 incident, the alleged handing out of literature?

11 A Did he give any what, sir?

12 Q Any more detail concerning that incident.

13 A Not that I can recall.

14 Q What else did he tell you?

15 A That's about all I can recall on the report.

16 Q All right. Did he subsequently, at any time,
17 give any additional statements to any of your agents?

18 A I don't know.

19 Q Do you know whether he had been interviewed by
20 any of your agents at any time since then?

21 A Since the date of the arrest?

22 Q Yes.

23 A I don't know that, either.

24 Q Do you have any information in your files or
25 known to you personally, concerning his medical history?

1 A Yes, sir, we do.

2 Q What can you tell me about that?

3 A I know that in nineteen --

4 THE COURT: May I just interrupt.

5 The medical history of your client or the
6 other gentleman?

7 MR. WILLIAMS: The other gentleman.

8 THE WITNESS: Might I pull a card for
9 exact time?

10 MR. WILLIAMS: Sure.

11 A I know that in 1973, Mr. Luis Colon-Osorio was
12 arrested for bank robbery in Puerto Rico. In 1975, that
13 charge was dismissed only because he was incarcerated
14 for an indeterminate period in a psychiatric ward of a
15 hospital in Mato Rey.

16 Q Do you have any additional information
17 concerning his psychiatric condition?

18 A I have the Macheteros documents, themselves,
19 which describe him.

20 Q In what respect?

21 A They describe Luis Colon-Osorio. They are the
22 documents that came from the organization that were
23 seized, again, April 3, to de Ponce de Leon, describe
24 him as being diagnosed as schizophrenic.

25 Q May I relieve you of your card?

1 A Certainly.

2 (Mr. Williams looking at card.)

3 MR. WILLIAMS: May that be marked for
4 identification?

5 THE COURT: It may. Mark it separately.

6 THE CLERK: Defendant's Exhibit G.

7 (Defendant's Exhibit G was marked.)

8 THE COURT: We have marked Defendant's
9 Exhibit G for identification only.

10 Q Now, aside from the June 5, 1984, matter that
11 you have told us about, and aside from the statement
12 made on August 30 by the co-defendant, what other basis
13 do you have, if any, for your assertion that Romano is
14 Mr. Fernandez?

15 A On January 19th of this year, we have the
16 death of Juan Antonio-Corretjer, and subsequent to his
17 death on the 19th, we intercepted a conversation on
18 January the 23rd, 1985, in the residence of Juan Segarra
19 and Luis Esperiso in Vega Baja, Puerto Rico.

20 During this conversation between Filiberto Ojeda-
21 Rios and Juan Enrique Segarra, and they are discussing
22 the death and the subsequent funeral of Mr. Juan Antonio
23 Corretjer. During this discussion, they state in the
24 conversation that Romano was at the funeral, acting, in
25 Segarra's word, I believe he called him acting like a

1 director of the funeral.

2 Photographs were obtained of that funeral, numerous
3 photographs which depict Hilton Fernandez-Diamante at
4 the wake, standing next to Mrs. Corretjer and then,
5 subsequently, he, walking, numerous photographs of him
6 walking along with the casket, not as a pallbearer, but
7 in front, and then on the side of the casket.

8 Q You said at the wake?

9 A Yes.

10 Q Was that contemporaneous with the funeral or
11 before the funeral?

12 A Before.

13 Q Was that located at a different place?

14 A Yes, sir.

15 Q In fact, the wake took place the night before
16 the funeral, did it not, or more than the night before?

17 A Yes, sir.

18 Q Did your -- Withdrawn.

19 Would you tell me a little bit or tell us a little
20 bit, please, about the individual whose funeral was
21 involved here?

22 A Excuse me?

23 Q Tell us a little bit about this person who was
24 being buried.

25 A Yes, sir. Mr. Juan Antonio Corretjar was the

1 head of the Liga Socialista in Puerto Rico, which is an
2 organization which, again, seeks the independence of
3 Puerto Rico through violence, as stated in their own
4 documents.

5 Q Are you calling this an underground terrorist
6 organization, also?

7 A The Liga, no, sir, it is very overt, or at
8 least part of it is very overt.

9 Q Quite public?

10 A Yes, sir.

11 Q As a matter of fact, this particular gentleman
12 is -- was, in his lifetime, quite popular on the Island,
13 was he not?

14 A That's correct.

15 Q And his memory is quite revered throughout all
16 walks of life on the Island; isn't that true?

17 A I can't comment on that, sir. No, sir.

18 Q In any event, your bureau was very interested
19 in who might show up at his wake and who might show up
20 at his funeral; isn't that right?

21 A No, sir.

22 Q Well, they are taking pictures.

23 A We did not take the pictures.

24 Q I see. It was a news agency that took the
25 pictures; is that right?

1 A That's correct.

2 Q And it was the news agency that was taking the
3 pictures at the wake, as well?

4 A Yes, sir.

5 Q All right. And you then -- All of the photos
6 and films that you have reviewed were obtained from
7 public sources; is that correct?

8 A That's correct.

9 Q And have you made an effort to obtain all the
10 film that's available concerning the wake and the
11 funeral?

12 A No, sir.

13 Q So, there might be other pictures out there
14 you don't have?

15 A True. Very true.

16 Q Have you looked at them, the ones you have?
17 Have you looked at those films and photos, yourself?

18 A The films and photos?

19 Q Yes. Showing the wake and the funeral.

20 A Yes, sir, I have.

21 Q All right. And it would be correct to say,
22 would it not, sir, that the wake and the funeral were
23 attended by large numbers of people?

24 A Yes, sir.

25 Q And that, not only was Mr. Hilton Fernandez

1 there, but the highest ranking officers of the
2 government, of the commonwealth were there; isn't that
3 true?

4 A I'm not aware of that.

5 Q As a matter of fact, the head of the Justice
6 Department was there, was he not, paying his respects?

7 A I don't know.

8 Q The police superintendent was there, paying
9 his respects at the wake, was he not?

10 A I do not know that, either.

11 Q You are not saying they weren't there?

12 A I'm not saying they weren't there; no, sir.

13 Q As a matter of fact, considering the
14 popularity of this man, they might very well be there;
15 isn't that true?

16 A I don't know.

17 Q I take it, then, you have not looked at all of
18 the pictures, you have even in your own files; is that
19 correct?

20 A I have looked at all the pictures we have in
21 the file.

22 Q Have you made an effort to identify all the
23 people shown in those pictures?

24 A No, sir.

25 (Pause.)

1 Q Now, the particular conversation that you are
2 referring to on January 23rd of this year, was between
3 two individuals listed as FOR and JPM; is that right?

4 A Yes, sir.

5 Q And again, the names of the people with those
6 initials?

7 A Yes, sir. It's Filiberto Ojeda-Rios and Juan
8 Enrique Segarra.

9 Q He's JPM?

10 A Yes, sir. I can explain that --

11 Q Okay.

12 A -- if you will allow me.

13 Q You are claiming that that's an alias, I
14 suppose; is that right?

15 A Yes, sir.

16 Q In fact, that he's supposed to be Jose Perez
17 Morano; isn't that right?

18 A Yes, sir.

19 Q And is listed that way on some of your
20 documents?

21 A Yes, sir.

22 Q Now, it's your claim that you were able to
23 independently corroborate by looking at those
24 photographs, that the person described as Romano in this
25 January 23rd conversation, was, in fact, Mr. Fernandez;

1 is that right?

2 A Yes, sir.

3 Q Because you claim that you have pictures
4 showing him doing what they are talking about in this
5 conversation; is that right?

6 A Yes, sir.

7 Q In this conversation, it is specifically
8 stated that it was Romano who put the flag on the casket?

9 A Yes, sir.

10 Q But Mr. Fernandez did not do that; did he?

11 A We don't have a photograph of that.

12 Q You do have a photograph of somebody putting a
13 flag on the casket; don't you?

14 A No, sir, we do not.

15 Q Isn't it so, that you know for a fact that Mr.
16 Fernandez did not put the flag on the casket?

17 A That is not correct.

18 Q Have you talked to any of the people who were
19 there?

20 A No, sir.

21 Q A lot of public officials who would be happy
22 to cooperate with the F.B.I. were present at that
23 funeral; weren't they?

24 A This investigation was completely covert. The
25 F.B.I. was the only one involved. We shared the

1 information we had with no one.

2 Q Well, you told the superintendent of police
3 about your operations; did you not?

4 A No, sir, we did not. Not until two days
5 before the arrest.

6 Q You let him know it, two days before the
7 arrest took place?

8 A Yes, sir.

9 Q So, at that point, you weren't hiding your
10 activities from him in any way; were you?

11 A We weren't hiding our activities from anyone,
12 sir. It's just the nature of the beast, let me say.

13 Q Well, I take it you never asked the
14 superintendent who it was that put the flag on the
15 casket?

16 A No, sir, we have not.

17 Q And I suppose it would surprise you to learn
18 that there are photographs showing the flag being placed
19 on the casket and it was not Mr. Fernandez who put it on
20 the casket?

21 A That would surprise me.

22 Q That would surprise you?

23 A Yes, sir.

24 Q If you did see such photographs, you would be
25 persuaded, wouldn't you, that Mr. Fernandez is not

1 Romano?

2 A No, sir, I would not.

3 Q You would then believe that there is more than
4 one Romano?

5 A No, sir, I would not.

6 Q Is Romano an unusual name in Puerto Rico?

7 A I do not know, sir.

8 Q I beg your pardon?

9 A I don't know.

10 Q You don't know.

11 A I don't know of any other individual named
12 Romano, either, by true name or nickname, code name,
13 except for this gentleman here. (Pointing.)

14 Q Is that right? It seems to me, we submitted
15 an affidavit by somebody named Romano just this morning.

16 A I don't know this person.

17 Q So, your circle of acquaintances is limited to
18 people who are not named Romano?

19 A That's correct.

20 Q There is a reference in this one-page
21 transcript of January 23rd to Donna Connie.

22 A Donna what?

23 Q Donna Connie, C-O-N-N-I-E.

24 A Yes.

25 Q Who is that?

1 A That's the wife of Mr. Antonio Corretjer.

2 Q And it's indicated in this transcript that her
3 role in this funeral was less important than the role of
4 Romano; isn't that right?

5 A They probably say that; yes, sir.

6 Q Now, let's see. To support your claim that
7 Romano and Mr. Fernandez are one in the same, we have
8 the June 5th conversation, when you never saw Mr.
9 Fernandez there. And we have the statement by the
10 former psychiatric patient. And we have the
11 conversation on January 23rd, which has never been
12 corroborated by any indication, whether or not he really
13 is the person who put the flag on the casket.

14 Now, besides those three bases for your statement,
15 that Mr. Fernandez is Romano, we are talking about in
16 these documents, have you any other basis?

17 A Yes, sir.

18 Q What is that?

19 A Nothing in particular, but since we began this
20 investigation of the rocket attack in October of 1983,
21 we began physical surveillance and at that time
22 concentrated on Avelino Gonzalez-Claudio and Luis
23 Gonzalez-Claudio, Filiberto Ojeda-Rios, concentrated on
24 these three individuals in particular.

25 Before the break-up of the faction of Mr. Hilton

1 Fernandez-Diamante with the faction of Filiberto Ojeda-
2 Rios, which occurred on June the 3rd of 1984, or it was
3 occurring at this time, as is evidenced by the fact that
4 on June the 4th, Elias Castro-Ramos, who was in the
5 faction of Mr. Hilton Fernandez-Diamante, came and told
6 Ojeda-Rios he was expelled from the Central Committee.

7 During this time and subsequent time, we have seen
8 Mr. Hilton Fernandez-Diamante meet on numerous occasions
9 with members of the Directive Committee at Los Frailes
10 condominium where we know only the Directive Committee
11 of the organization met.

12 Through a process of elimination of the other
13 names, plus what I've just told you about the June 5th,
14 June 17th conversations, Luis Colon-Osorio statements,
15 we can definitely identify him as being Romano and a
16 member of the Directive Committee of Los Macheteros.

17 Q You must have had a bug in that tape to pick
18 up these meetings; didn't you?

19 A We had authorization for a bug to pick up
20 these conversations. On some of the locations which we
21 received authority to enter and conduct electronic
22 surveillance, because of the structure and the nature of
23 that building, the security afforded that apartment in
24 particular, to include the fact that while they met, the
25 tenant of that apartment would leave, however, he lived

1 there.

2 It was a residence that was used by an individual
3 during the night. They would use it during the day as a
4 meeting location. Because -- Well, to put it briefly,
5 we could not and did not enter that place to place a
6 microphone inside as we had authority to do.

7 Q Who was the tenant?

8 A Oscar Cardona-Ramirez.

9 THE COURT: Could you spell the last
10 name?

11 THE WITNESS: Yes. Oscar, C-A-R-D-O-N-A,
12 R-A-M-I-R-E-Z.

13 Q And where was this apartment located?

14 A It was located in the condominium called Los
15 Frailes Condominium, Guynabo, Puerto Rico.
16 G-U-A-Y-N-A-B-O.

17 Q Now, you said that nobody went in there except
18 the Board of Directors of this faction; is that right?

19 A I believe that's correct. That's correct.

20 Q You are not really sure of that, are you?

21 A The only other person that may have been
22 there, of course, was Oscar Cardona-Ramirez, who is not,
23 as we can determine, a member of the Directive
24 Committee. Also, I believe one possible -- one Orlando
25 Gonzalez-Claudio, who is a Defendant in this case, but

1 at the present time, a fugitive, was also at that
2 apartment.

3 Q You were maintaining twenty-four-hour a day
4 surveillance on this?

5 A No, sir, we were not. Not for an extended
6 period of time. We did for approximately one week.

7 Q So, you really don't know that nobody else had
8 access to this, then, do you?

9 A Other than the persons that I've named.

10 Q Right.

11 A That's correct.

12 Q So, this process of elimination kind of breaks
13 down when you look at it this way, doesn't it?

14 A No, sir. When I talk about a process of
15 elimination, I'm talking about through documents, wire
16 surveillances and physical surveillances; we have the
17 Directive Committee members identified as being Hilton
18 Fernandez-Diamante, Elias Samuel Castro-Ramos, Hilton
19 Fernandez-Diamante, the Defendant, Orlando Gonzalez-
20 Claudio, Norberto Gonzalez-Claudio, Filiberto Ojeda-
21 Rios, Jorge Farinacci-Garcia.

22 Did I mention any others?

23 Elias Samuel Castro-Ramos. I think I got them all.
24 Okay.

25 Q All right. But your basis for making the

1 claim that those are the people on the Committee, goes
2 back to information provided by Rodriquez-Rodriquez and
3 your so-called process of elimination, right?

4 A And the documents.

5 Q Now, those are the documents that came out of
6 the safe house in April of 1984?

7 A April 1984. Well, that's 210 Ponce de Leon.
8 We also had a search that occurred at El Cortijo, the
9 documents of which are still being processed, that
10 occurred January 9th.

11 Q Of what year?

12 A Of this year.

13 Q '85?

14 A Yes, sir. Plus the documents seized. We
15 seized volumes of documents on August 30, which are
16 still being processed.

17 Q And since they are still being processed, you
18 are not sure yet what you have?

19 A Not completely; that's correct.

20 Q And you don't know whether or not you have any
21 other indication of who is on the Board of Directors of
22 one particular faction or not, do you?

23 A I don't know that. They are still being
24 processed.

25 Q All right. And this list you had from April

1 of 1984, that never used the hame of Hilton Fernandez,
2 did it?

3 A Romano.

4 Q Right. So, you are back to the code names
5 again?

6 A Yes, sir.

7 Q So, the plain fact of the matter is that you
8 don't have anything other than this elimination business
9 you were telling us about by which you are able to draw
10 the conclusion that the people you have just named were,
11 in fact, members of the Board of Directors?

12 A Let me say this. We do not have, at this
13 time, anything that says -- written, Romano is Hilton
14 Fernandez-Diamante, except our report.

15 Q Except?

16 A Our report.

17 Q Exactly. Written by your own agents.

18 A Correct.

19 Q And so, when you come in here and you tell us
20 that you know that he's Romano, it's because your fellow
21 agents have been saying it all the time and you have
22 confidence in them and that's the department's position;
23 isn't that right?

24 A Plus the documents, plus the surveillances,
25 plus --

1 Q You have already told us about that.

2 A Plus the statment of other Macheteros members,
3 who are cooperating with the F.B.I.

4 Q Besides Rodriquez-Rodriquez?

5 A Colon-Osorio.

6 Q Colon-Osorio is cooperating with the F.B.I.?

7 A No, sir. I'm saying that statement that he
8 made.

9 Q Is he, in fact, cooperating with the F.B.I. at
10 this time?

11 A No, sir, he is not.

12 Q And has he at any time been considered an
13 informer by the F.B.I.?

14 A Not by the F.B.I.; no, sir.

15 Q By any other governmental agency?

16 A Yes, sir.

17 Q By what agency?

18 A The United States Military.

19 Q When was that?

20 A He was in the military in nineteen -- for
21 approximately six months, 1969 and 1970.

22 Q And during that time, he worked as an
23 informant; is that correct?

24 A Yes, sir.

25 Q For what specific agency?

1 A He was furnishing information on narcotics to
2 the military police.

3 Q In other words, narcotic use by his fellow
4 soldiers?

5 A Correct.

6 Q Has he been an informant on any other
7 occasion, to your knowledge?

8 A Yes, sir.

9 Q When?

10 A In 1973, when he was arrested, I believe,
11 reading from our files, that he led the police of
12 Puerto Rico to a residence where his accomplices in that
13 bank robbery were arrested.

14 Q On any other occasion, has he, to your
15 knowledge, worked as an informer?

16 A Not to my knowledge; no, sir.

17 Q Was he convicted of that particular bank
18 robbery, himself?

19 A No, sir. As I stated, it was dismissed
20 because he was incarcerated in a psychiatric hospital.

21 Q Now, besides the statement made by Colon-
22 Osorio, the statement made by Rodriguez-Rodriguez, did
23 you have some other information that led you to believe
24 what you have been telling us?

25 A No, sir.

1 Q All right.

2 MR. WILLIAMS: Excuse me, just a minute.

3 (Pause.)

4 Q Now, you have presented to us here, a document
5 marked as Government's Exhibit 2. A document, which I
6 believe, which is dated January 10 of 1984, three-page
7 typewritten document, which I think you said there was a
8 copy of a document seized --

9 A Yes, sir.

10 Q -- on April 3, '84?

11 A No, sir.

12 Q When was that seized?

13 A Yes, sir. That's correct. I'm sorry.

14 Q Now, this photocopy which we have here in
15 evidence, was this photocopy made directly from the
16 original -- I'm sorry -- directly from the document that
17 was seized?

18 A That particular copy, no, sir, it was not.

19 Q It was made from a copy?

20 A It was made from a copy.

21 Q Have you ever seen the document that was
22 actually seized?

23 A No, sir, I have not.

24 Q Do you know whether the document which was
25 actually seized was, in fact, a typewritten original or

1 was itself a photocopy?

2 A I don't know that.

3 Q Do you know the meaning of the initials CC at
4 the head of this memorandum?

5 A Yes, sir.

6 Q What is that?

7 A Refers to the comite, C-O-M-I-T-E, Central.

8 Q In English would be the Central Committee.

9 A Yes, sir.

10 Q Do you know from reviewing your reports, your
11 fingerprint report, how many fingers or portions of
12 fingers or palms or whatever, which you attribute to Mr.
13 Fernandez, were lifted off the original of this
14 document?

15 A I've got it on that card, sir.

16 Q You do. All right.

17 (Mr. Williams handing card to the
18 Witness.)

19 A Thank you. Two latent fingerprints.

20 Q Where were they on the particular document?

21 A I do not know.

22 Q Do you know which fingers of which hand?

23 A No, sir, I do not.

24 Q Do you know whether latent fingerprints of any
25 other person were located on that document?

1 A That document, we found two copies of it in
2 the safe house. Okay. On the other copy, we had the
3 fingerprints of Rodriquez Farinacci-Garcia and Elias
4 Samuel Castro-Ramos.

5 Q So, we know from that, then, that at least one
6 of the two documents was a photocopy?

7 A Exactly.

8 Q And possibly both?

9 A That's correct. Possibly both.

10 Q Was a photocopying machine seized inside that
11 safe house?

12 A No, sir.

13 Q You know from the investigation conducted by
14 other agents, do you not, that in 1984, Mr. Fernandez
15 was in fact employed at a print shop?

16 A Yes, sir. I do not know that.

17 Q And the name of that print shop was what?

18 A Let me take that back. Not employed. Let me
19 say, associated with the print shop.

20 Q All right. The print shop had a name and that
21 was what?

22 A Tallares, T-A-L-L-A-R-E-S, Alborado,
23 A-L-B-O-R-A-D-O.

24 Q And that particular concern did all sorts of
25 commercial printing; isn't that true?

1 A I don't know that.

2 Q Have you ever surveilled that particular
3 location yourself?

4 A Please? No, sir, I have not.

5 Q Other agents have done so, have they not?

6 A Yes, sir.

7 Q You have reviewed their reports?

8 A Yes, sir.

9 Q Probably seen photographs of the site, have
10 you not?

11 A Yes, sir, I have seen photographs. I have
12 been to the site.

13 Q You have been there. All right.

14 And you know that one of the things they do is
15 commercial photocopying; isn't that right?

16 A Yes, sir.

17 Q Somebody has something they want to have a few
18 copies made of, they go in there and pay them whatever
19 it is, five cents a page or ten cents a page, and they
20 copy it for them; isn't that so?

21 A I have never been inside.

22 Q But, you believe that to be the case, do you
23 not?

24 A It's possible.

25 Q And is it true, based on the investigation

1 conducted by your agent, that this particular concern is
2 one which is patronized by a number of people in leftist
3 organizations?

4 A Including members of the Macheteros; yes, sir.

5 Q Right?

6 A Yes, sir.

7 Q So, it's probable, is it not --

8 A Excuse me?

9 Q It is probable, isn't it, that the
10 photocopying of this particular memorandum was in fact
11 done at that print shop?

12 A It's possible.

13 Q You indicated in your testimony yesterday,
14 that when the search was conducted on April 3, 1984, you
15 found a lot of documents, including index cards of
16 supporters of the organization; is that right?

17 A What we have determined to be supporters; yes,
18 sir.

19 Q And could you tell us how you define
20 supporters?

21 A It appeared they used a card to mail mailings
22 out; propaganda literature that was mailed to these
23 people. We seized not only the cards, but envelopes,
24 sealed, with leftist propaganda that were going to these
25 people, some of these people listed on the cards.

1 Q So, it is their mailing list?

2 A More or less; yes, sir.

3 Q But you had concluded that the people on that
4 mailing list support the organization; is that right?

5 A Let me say that they support the organization
6 -- Let me say that they will accept literature from the
7 organization.

8 Q Well, you guys will do that, won't you?

9 A Very readily; yes, sir.

10 Q You don't categorize yourselves as supporters,
11 do you, or perhaps you do?

12 A No, sir, we don't.

13 Q Is it true that the president of the Puerto
14 Rican Senate is on that list?

15 A Not that I am aware of it.

16 Q Didn't the F.B.I., the other day, release a
17 list of some of those names in Puerto Rico, including
18 that gentleman's name?

19 A There were one thousand eight hundred names,
20 and as a matter of fact, I can't recall any. That may
21 be correct. I don't know.

22 Q Okay. Was there some other way in which you
23 came to the conclusion that the people on the list were
24 supporters?

25 A No, sir.

1 Q Now, yesterday you told us about a number of
2 acts, obviously illegal acts, which you furnish
3 testimony attributed to the Macheteros.

4 Now, you are not claiming, are you, that Mr.
5 Fernandez, himself, participated in any of those
6 specific acts?

7 A Not at this time.

8 Q Okay. You did tell us yesterday, that Mr.
9 Fernandez had been arrested once before in his life; is
10 that right?

11 A Yes, sir. Reviewing the F.B.I. files showed
12 an arrest in 1968 for failure to report for induction.

13 Q That was during the Vietnam period, wasn't it?

14 A Yes, sir.

15 Q And I think you told us yesterday that the
16 charge was dismissed by the Federal Court; is that
17 right?

18 A That's correct.

19 Q So, he was -- He was vindicated on that
20 charge?

21 A I have no knowledge of the actual case itself.

22 Q In your report, did the report provide some
23 information about that particular prosecution?

24 A No, sir, it did not.

25 Q You are aware, are you not, that Mr. Fernandez

1 was released on bond after his arrest in 1968 on that
2 charge?

3 A No, sir, I was not. The -- No, sir, he was
4 not.

5 Q You are familiar with the fact, are you not,
6 that in 1968, it was standard practice in the United
7 States District Courts throughout the United States,
8 there is a presumption that people should be released?

9 A I don't know that.

10 Q How long have you been an F.B.I. agent?

11 A Three and a half years.

12 Q Prior to last October, that was the practice
13 that usually people were charged in Federal Court, got
14 released; isn't that right?

15 A Charged for what, sir?

16 Q Charged with almost any crime, there was a
17 presumption in favor of release, wasn't there?

18 A I don't know that.

19 Q You don't know that?

20 A No, sir.

21 Q Have you ever heard of the Bail Reform Act?

22 A Yes, sir, I have.

23 Q I'm not talking about the current one. I'm
24 talking about the reform.

25 A Yes, sir, I have.

1 Q You know that the case was pending for a
2 period of about eight months between the time of arrest
3 and the time that the charges were dismissed; do you
4 not?

5 A Yes, sir.

6 Q And you know that there is no indication in
7 your records that he ever failed to appear in court when
8 he was supposed to appear; isn't that true?

9 A The only thing I saw was an F.B.I. criminal
10 transcript, which lists a date of arrest and that the
11 charge was dismissed in '69.

12 Q Okay. Isn't it a fact with reference to the
13 dangerousness particularly, isn't it a fact that Mr.
14 Fernandez was a conscientious objecter during the war?

15 A I do not know that.

16 Q And that he did not register for the draft
17 because he was opposed to war and violence?

18 A I don't know that.

19 Q And he didn't report for induction for the
20 same reason? You don't know?

21 A I don't know that.

22 MR. WILLIAMS: I have nothing further.

23 THE COURT: Redirect?

24 MS. VANKIRK: Your Honor, could we do
25 that after lunch?

1 THE COURT: Yes, we can. We'll break for
2 lunch at this time; return at two o'clock.
3 Recess court.

4 (Whereupon at 12:55 o'clock p.m., the
5 luncheon recess was taken.)
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AFTERNOON SESSION

(2:10 o'clock p.m.)

THE COURT: Mr. Williams, I have had a chance now at the lunch break to review all of the affidavits and we have read them all with some care. The only comment that I have to make is, I think we have lost a little bit in the translation, once or twice. For example, where someone was saying that the Defendant as a very, for example, a very good father and a homely man. I think they meant homey, I think is what I am going to take that to mean.

MR. WILLIAMS: I think somewhere in about one hundred years ago, that word was sometimes used in this country, too, in that context.

THE COURT: Is that right? Well, maybe they did mean what they said.

And then, another, peaceful is specific but I understood, I'm accepting that as peaceful.

MR. WILLIAMS: Thank you.

THE COURT: All right. And I'll find for a fact, he's not a homely man.

MR. SCHOENHURN: If your Honor please, I

1 understand from the U.S. Attorney's office
2 that the tape from the Magistrate's hearing in
3 Texas has arrived and is presently in the U.S.
4 Attorney's office.

5 I would like to listen to that tape now,
6 if possible, so that I could have further
7 information on whether we should be going
8 ahead immediately after this hearing with a
9 normal bail hearing for Mr. Segarra.

10 MS. VANKIRK: Well, your Honor, I have
11 no objection to Mr. Schoenhorn listening to
12 the tape, but I have not listened to it, so I
13 will have to have a chance to do that before
14 we argue a motion.

15 THE COURT: Before you argue it, yes, but
16 there is no problem in him listening to it at
17 this time and reporting back to the Clerk of
18 the report.

19 MS. VANKIRK: The Clerk of the Court
20 went to get it.

21 MR. SCHOENHORN: I understand your Clerk
22 has a tape recorder and I will be allowed to
23 listen to it.

24 THE COURT: You may be. You may use my
25 office and listen to it there in the outer

1 office and I believe there is machine he can
2 use.

3 MR. SCHCENHORN: There is one -- While
4 I'm standing, your Honor, there is one other
5 issue. In further clarification of the order
6 regarding sequestration, it is my
7 understanding that today it was your order
8 that individuals who will be witnesses in the
9 later hearings could not be permitted to
10 remain?

11 THE COURT: That is so.

12 MR. SCHOENHORN: I have a witness who
13 came today, who is an attorney from Puerto
14 Rico and at the time that was raised, I
15 didn't consider it an issue.

16 However, if these hearings are separate
17 hearings, I'm not sure how the Court -- how
18 it is that the public, whether it's this
19 witness or any member of the public can be
20 excluded from another person's proceedings.

21 I just want to take objection. Nobody
22 raised the objection before and I didn't know
23 that the individual would want to be in court.

24 THE COURT: Your objection will be noted.
25 It's the inherent power of the Court to

1 control the processes of trial. However, if
2 you have an attorney and you wish to talk to
3 the U.S. Attorney and he or his assistant is
4 willing to waive that sequestration, because
5 of that I'm not suggesting they should do it,
6 but if it is something, if you can convince
7 them that they should do it, they are the
8 ones who request it. I would find no
9 problem with it in that particular case and
10 giving courtesy to a member of the Puerto
11 Rican bar.

12 But, that's their prerogative and if
13 they object, it will be upheld.

14 MR. SCHOENHORN: Okay. Thank you.

15 MS. VANKIRK: Your Honor, I would just
16 like to note in this regard, that I was told
17 that some of the people in the audience are
18 passing notes of what happens in the
19 courtroom to prospective witnesses and I
20 would like the Court to admonish everyone,
21 if they are doing it.

22 THE COURT: Perhaps we could have Mr.
23 Segarra also do this for me in Spanish.
24 But, ladies and gentlemen of the general
25 public, please do not, if you are doing it,

1 and I'm not saying that you are doing it, but,
2 please do not hand any notes to prospective
3 witnesses in this case.

4 You may, if you do that, prevent their
5 testimony from getting onto the record,
6 because I may have to order that they can't
7 testify, if someone is communicating from the
8 courtroom to the room where the witnesses are
9 waiting or outside.

10 So, if anybody is doing it, and I'm not
11 saying anybody is doing it, but if you are,
12 please desist because you run the risk of
13 disqualifying that person as a witness.

14 Mr. Segarra, if you would tell them in
15 Spanish.

16 (Mr. Segarra repeating the Magistrate's
17 statement to the audience in Spanish.)

18 THE COURT: Thank you very much, Mr.
19 Segarra.

20 Is the Government ready to proceed with
21 redirect examination?

22 MS. VANKIRK: Yes, your Honor.

23 THE COURT: Mr. Williams, are you ready?

24 MR. WILLIAMS: Yes, your Honor. Before
25 I forget it, and before Attorney Schoenhorn

1 leaves, yesterday when your Honor appointed
2 me under the CJA, a question of nunc pro
3 tunc appointment came up and you indicated if
4 there was any authority for doing that, you
5 would do it.

6 Attorney Schoenhorn tells me that the
7 authority is Magistrate Eagan, on CJA, he
8 advises me that you have appointed him
9 nunc pro tunc. On the CJA form, there is a
10 nunc pro tunc box to be checked.

11 THE COURT: You mean if I sign once, I
12 must always sign thereafter.

13 MR. WILLIAMS: Absolutely.

14 THE COURT: I have taken the opportunity,
15 with some help from the Clerk's office, found
16 the CJA in Chapter 1 of the CJA. It reads,
17 Appointment of counsel, counsel furnishing
18 representation under the plan, shall be
19 selected from a panel of attorneys designated
20 or approved by the court or from a bar
21 association, et cetera.

22 Well, I have lost the exact place, but it
23 says that such appointment may be made to
24 include any representation furnished pursuant
25 to the plan prior to appointment.

1 So, there is statutory language for that
2 which we have found, and I won't hold it
3 against Mr. Schoenhorn for squealing on me for
4 something I have done before.

5 MR. WILLIAMS: So in that event, may I be
6 -- may my appointment be retroactive to the
7 date I filed --

8 THE COURT: Yes, it may.

9 MR. WILLIAMS: Thank you very much.

10 THE COURT: Is the Government ready at
11 this time?

12 MS. VANKIRK: Yes, your Honor.

13 THE COURT: You may proceed.

14 MS. VANKIRK: Your Honor, at the break or
15 sometime, could we have this filing cabinet
16 removed so I could get around it?

17 MR. WILLIAMS: I'll do it right now.

18 (Pause while filing cabinet is moved.)

19 REDIRECT EXAMINATION BY MS. VANKIRK:

20 Q Agent Rodriguez, I show you what has been
21 marked Government Exhibit No. 1 and, once again, what is
22 that?

23 A It's a list of contact points and signs and
24 co-signs to be used at locations.

25 Q And what significance does that have to you as

1 a law enforcement officer?

2 A The significance of this document is that Mr.
3 Hilton Fernandez-Diamante apparently has international
4 contacts.

5 Q Where?

6 A According to these points that are listed,
7 Mexico, Panama, Havana and Managua.

8 MR. WILLIAMS: What about New York?

9 THE WITNESS: That's not international.

10 MR. WILLIAMS: Depends on where you're
11 from.

12 THE WITNESS: That's true.

13 Q Now, directing your attention to April 3,
14 1984, concerning the documents that were seized by the
15 F.B.I. Did any of the documents mention Romano?

16 A Yes, ma'am.

17 Q And what did they say about Romano?

18 A Romano is a member of the Central and
19 Directive Committee of the Macheteros.

20 Q And what is the Central Committee of the
21 Macheteros?

22 A The Central Committee is the body of the
23 organization which is tasked with issuing policies and
24 directives of the organization.

25 Q And what is the Directive Committee of the

1 organization?

2 MR. WILLIAMS: I'm going to object. I
3 should have objected earlier. This is
4 repetitious. We went through this in detail
5 yesterday on direct.

6 MS. VANKIRK: Your Honor, that was
7 yesterday. I don't think it will hurt to
8 have a little review.

9 THE COURT: Well, I have now a pretty
10 good idea of what the Central Committee does
11 and what the Directive Committee does. I'll
12 allow you. However, if you feel that you
13 want to reiterate it at this time --

14 MS. VANKIRK: He's almost done.

15 THE WITNESS: The Directive Committee
16 supervises and directs all actions of the
17 Macheteros to include the armed military
18 actions.

19 Q Now, regarding your conclusion that Hilton
20 Fernandez-Diamante is Romano, would you explain that to
21 us concerning the June 4, 1984 conversation.

22 A I will have to use all three.

23 Q Yes. Yes.

24 A June 4, 1984, Ojeda-Rios and Luis Colon-Osorio
25 were in the residence. He was advised by Elias Samuel

1 Castro-Ramos and Maria Fernos Cepero on that day,
2 conversation between Ojeda-Rios and Castro-Ramos
3 indicated that Elias came to Ojeda to deliver the
4 message to him from the organization that he had
5 been expelled from the Central Committee.

6 In this conversation, Manuel apparently told them
7 -- Manuel, who we can identify as Luis Colon Osorio --
8 apparently told him that he was staying with Ojeda-Rios.
9 On June 5th, the vehicle of Mr. Hilton Fernandez-
10 Diamante was observed at the residence of Ojeda-Rios.
11 Inside the apartment was Ojeda-Rios, Elias Castro-Ramos
12 and a voice of an unidentified male.

13 On June the 17th, in a conversation, again, at the
14 same residence of Ojeda-Rios and -- excuse me -- of
15 Ojeda-Rios, we have Ojeda-Rios speaking with an
16 unidentified male, whom he tells, on Monday, they sent a
17 communication to tell me that I was expelled from the
18 organization -- excuse me -- from the Central Committee.

19 He said at that time, Manuel told Martin that he
20 was staying with me, more or less. We can attribute
21 Manuel and Martin to Luis Colon-Osorio and Castro-Ramos.
22 Then he continues on the next day, which was a Tuesday,
23 June the 5th, I was again visited by Martin and Romano.
24 Therefore, I can attribute the name Romano to Mr. Hilton
25 Fernandez-Diamante.

1 Q Now, the Luis Colon-Osorio that you just
2 mentioned, is that the same Luis Colon-Osorio who is a
3 Defendant in this case?

4 A Yes, ma'am.

5 Q And you stated that he had been -- well, that
6 the documents of the Macheteros said that he had been
7 diagnosed as a schizophrenic; is that correct?

8 A That was a document seized in the search of
9 210 Ponce de Leon; yes, sir.

10 Q Was there any reference in that matter of
11 documents seized in that search?

12 A Yes.

13 Q What was that?

14 A Document continued and said, he simulated
15 mental problems, so that he could be released from the
16 military.

17 Q You stated that during the course -- that the
18 F.B.I. investigation of Los Macheteros has been covert.
19 What do you mean by that?

20 A Covert, only in the sense that we did it only
21 on a need-to-know basis, not wanting or letting as few
22 people know of the investigation, as possible. Not
23 because we trust -- we did not trust people. It was
24 simply because the more people that know, the more
25 people talk and the quicker it gets around.

1 The Island of Puerto Rico is a small island.
2 Actions that occur there are in the investigation that
3 occurs there, that becomes public, is quickly spread
4 around the island. For this reason, we, knowing that
5 if the members of Los Macheteros learned of our
6 investigation, they would flee. And knowing that they
7 have international ties, we decided to keep it only
8 within the F.B.I.

9 Q Now, you stated that when you were referring
10 to the meetings at Los Frailes Condominiums, you stated
11 that Orlando-Claudio had been observed and that he was
12 presently a fugitive, was that correct?

13 A No, ma'am, that is not correct. Orlando
14 Gonzalez-Claudio had been observed at Los Frailes, not on
15 frequent terms. His two brothers, Avelino Gonzalez-
16 Claudio and his brother, Norberto Gonzalez-Claudio, were
17 also observed there on a frequent basis, more frequent
18 basis and they are both fugitives at this time.

19 Q Now, concerning the print shop, Tallares
20 Alborado, do you know who owns that?

21 A We have documents that show that it is
22 possible, these are old documents, that show that
23 Avelino Gonzalez-Claudio is the owner.

24 Q You stated that during the search of the
25 Macheteros safe house on April 3, 1984, numerous index

1 cards had been found. Is that correct?

2 A Yes, ma'am.

3 Q And you stated on cross-examination, that it
4 appeared that there had been -- it was a mailing list;
5 is that correct?

6 A Yes.

7 Q Were there any other cards there?

8 A Yes, there were.

9 Q What kind of cards?

10 A There's approximately eight hundred index
11 cards which contained the names and, on some, the
12 addresses of police officers and F.B.I. agents.

13 Q And did you find any envelopes containing
14 Macheteros literature addressed to those individuals?

15 A No, ma'am.

16 MS. VANKIRK: Nothing further, your
17 Honor.

18 THE COURT: Recross-examination?

19 RECROSS-EXAMINATION BY MR. WILLIAMS:

20 Q Are all of the -- Withdrawn.

21 How many people are employed by that print shop, to
22 your knowledge?

23 A I have no idea.

24 Q You don't make any claim that the fact that
25 somebody is employed at that print shop makes them a

1 member of the Macheteros?

2 A Not because simply they are employed; no, sir.

3 Q Okay. And in fact, there are some people, I'm
4 sure, who are employed there that you don't consider to
5 be members of the Macheteros; isn't that true?

6 A Let me answer it this way. I do not know of
7 anyone who works there who is not a member and that is
8 not to say that I know everybody that works there.

9 Q But you know people who work there, but don't
10 know whether or not they are members; is that it?

11 A Correct.

12 Q Of course, there are other cases where you
13 believe they are members, but it's possibly conceivable
14 you might be wrong, true?

15 A No, sir.

16 Q You never make mistakes?

17 A I make mistakes, but the people I can tell you
18 that are in, I have no qualms about making that
19 determination.

20 Q All right, sir. Now, you testified -- Excuse
21 me a second.

22 What do you mean when you say a member? Is this a
23 -- Do people get membership cards or are they elected to
24 membership, or do you know?

25 A I don't know.

1 Q What do you mean when you refer to somebody as
2 being a member?

3 A A person who has established a code name, who
4 we have seen in meetings, who we can put in Central or
5 Directive Committees of the organization. The persons
6 who are listed in the documents seized from their
7 respective safe houses, by code name, who we have
8 identified.

9 Q I see. So that goes back to the business
10 about how you figure out what code names you think are
11 related to what people; is that right?

12 A That's right.

13 Q Okay. Now, you testified that you were
14 concerned that if you told the Puerto Rican police or
15 the Administrator of Justice for the Commonwealth of
16 Puerto Rico or other law enforcement officials, however
17 high, that if you told them in advance of your plans,
18 that the information would leak out; is that basically
19 what you are saying?

20 A No, sir, it is not.

21 Q Well, what are you saying in that respect,
22 then?

23 A I said that we limited this investigation
24 within the F.B.I.

25 Q For a reason?

1 A For a reason.

2 Q And your reason was you feared leaks?

3 A Not leaks.

4 Q Well, you feared the information would get
5 out?

6 A Yes, sir.

7 Q Not that it would leak out, but it would get
8 out some way other than leaking out?

9 A That it would get out.

10 Q Perhaps spill out, fall out or pour out, but
11 not leak out?

12 A I wasn't concerned about leaks.

13 Q You certainly -- So, you would rather say that
14 it would get out rather than it would leak out?

15 A Right.

16 Q So, in any event, you didn't want to tell the
17 superintendent of police or the justice minister or any
18 of the other high-ranking law enforcement officials on
19 the Island about what you are doing because you felt
20 somehow, if you told them, the information would get
21 out; is that correct?

22 A That was not my decision.

23 Q I understand. When I say "you," of course, I
24 mean the F.B.I. I know the decision isn't yours but that
25 was the view of the higher-ups in your bureau; is that

1 correct?

2 A That's my understanding of their view.

3 Q It's your understanding that's why they
4 wouldn't let you tell these law enforcement officials
5 what was going on?

6 A We simply did not want the information to get
7 out; correct.

8 Q But, of course, prior to the 23rd of August
9 1985, you know, you know that the word was already out,
10 that a number of very specific people named by name
11 were, in fact, going to be arrested in either late
12 August or early September; isn't that true?

13 A You are referring to a conversation in El
14 Centro, I believe; is that correct?

15 Q I may be. I'm actually referring,
16 specifically, to a statement contained in an affidavit
17 submitted to a United States District Judge on or about
18 the 23rd of August 1985. And specifically, I guess it's
19 mentioned several places, one place is on page 97 of
20 that affidavit.

21 A Yes, sir. You are referring to a conversation
22 intercepted in El Centro where they discussed that they
23 had information. I think if you will note in that
24 affidavit, it was something like seventh-hand, where
25 they are trying to determine exactly and they were

1 unable to determine and when I say they, it was Ojeda-
2 Rios, Colon-Osorio and one other individual, that Roberto
3 Maldonado and they were discussing the fact that they
4 had received information that Roberto Maldonado, and I'm
5 not sure at that time if they listed Romano or not,
6 would be arrested in the near future.

7 Q And it was your understanding from what you
8 heard that that information was being shared among these
9 people; isn't that so?

10 A From that conversation, it appeared that it
11 was.

12 Q And from that conversation and others that you
13 monitored or that your men monitored, men and women, you
14 also determined that somebody had actually seen reports
15 within either the bureau or the United States Department
16 of Justice, listing those people and indicating the plan
17 to make an arrest within that particular time frame,
18 late August, early September; isn't that so?

19 A According to that conversation, yes, sir.

20 Q And in addition to that, the conversations
21 that you monitored, in the course of those conversations,
22 the statement was made that in fact there was nothing to
23 be done about it, if we're going to be arrested, we're
24 going to be arrested, we'll continue with our work;
25 isn't that true?

1 A That was the attitude, I believe, of not the
2 entire group. That was spoken by an individual in that
3 group.

4 Q But the fact of the matter is -- The fact of
5 the matter is that the people whose names you mentioned
6 right there, when the time came on August 30, that you
7 did in fact arrest them; isn't that so?

8 A They expected the arrest in September and as I
9 recall, not only were comments made to the effect that,
10 I think Ruben Ramos Acosta was the one who stated, We'll
11 just continue working. We have heard this many times
12 before. It's just a way of life.

13 He said, We'll continue working because this is
14 something we have heard before. Filiberto Ojeda-Rios
15 made the statement, I'm going to move out of my place a
16 little bit at a time, so they won't notice that I'm
17 leaving. He also stated, I will get in gear. And
18 that's in that affidavit.

19 Q But, in fact, your surveillance showed that
20 this didn't happen; isn't that true?

21 A I said we arrested him at the same place he
22 was at the time of that conversation.

23 Q Which was certainly more than a week later?

24 A The arrest?

25 Q Yes.

1 A Yes.

2 Q And as a matter of fact, word of the impending
3 arrests was such public knowledge that there were
4 newspaper articles about it before it happened; isn't
5 that true?

6 A There was one small article.

7 Q What was that?

8 A That was on June 21st of 1985, El Mundo
9 newspaper. That was a press conference held by Mr.
10 Jorge Farinacci-Garcia in which he stated that the
11 F.B.I. were fabricating evidence to arrest over one
12 hundred independentistas in Puerto Rico.

13 Q That wasn't just a small newspaper article,
14 was it?

15 A Sir, the section that I read in El Mundo was
16 extremely small.

17 Q It was carried in every single television news
18 broadcast on the Island.

19 A That I was not aware of.

20 Q And as a matter of fact, in the newspaper
21 called Claridad which published a full page article on
22 the same subject in its edition of the week of June
23 28th; isn't that so?

24 A I don't read the Claridad.

25 Q That is the newspaper, the Puerto Rican

1 Socialist paper; is it not?

2 A That's correct.

3 Q And monitoring that newspaper is part of your
4 overall investigation of the independent movement; is it
5 not?

6 A We do not investigate political papers.

7 Q I see. You don't monitor them either?

8 A Excuse me?

9 Q You don't monitor them either?

10 A What, sir?

11 Q You do not monitor them either?

12 A Do not.

13 Q Do not read their newspapers?

14 A Some of our agents do; it's up to them.

15 Q We were just talking about the stacks of
16 freedom of information material we get in our offices
17 with all these clippings from the New York Times.

18 In any event --

19 THE COURT: Are you claiming that that's
20 a socialist newspaper?

21 MR. WILLIAMS: No. I'm claiming that it
22 is the practice to monitor newspapers, other
23 than those of organizations that are being
24 investigated.

25 THE COURT: I just didn't want to

1 misinterpret you.

2 MR. WILLIAMS: Of course, they seem to be
3 clipping the New Haven Register. I don't
4 know where that fits in, nor does the New
5 Haven Register know where it fits in.

6 Q Showing you Page 11 from that issue of the
7 newspaper, Claridad, it is correct, it is not, that
8 there was a full-page article publicizing those
9 assertions at that time?

10 (Witness reading document.)

11 A Yes, sir. The individual who wrote this is
12 speculating that an arrest would occur.

13 Q Okay.

14 MR. WILLIAMS: I'm going to offer this as
15 an exhibit.

16 THE COURT: Objection from the
17 Government? Are you offering it as a full
18 exhibit?

19 MR. WILLIAMS: Yes, full exhibit.

20 MS. VANKIRK: No objection.

21 THE COURT: No objection. It may be
22 marked a full exhibit.

23 THE CLERK: Defendant's Exhibit H.

24 THE COURT: H is a full exhibit.

25 (Defendant's Exhibit H was marked.)

1 Q (By Mr. Williams) Incidentally, this is the
2 official newspaper of a political organization which
3 runs candidates for public office; isn't that so?

4 A That's correct.

5 Q Some of whom, in fact, serve in the Puerto
6 Rican legislature; isn't that so?

7 A Yes, sir.

8 MR. WILLIAMS: I have no further
9 questions, your Honor.

10 THE COURT: Anything further from the
11 Government?

12 MS. VANKIRK: Yes, your Honor.

13 FURTHER REDIRECT EXAMINATION BY MS. VANKIRK:

14 Q During the course of that conversation that
15 defense counsel referred to about the members suspecting
16 arrest, was anything else said?

17 A Yes.

18 Q What was said?

19 (Pause.)

20 A Are you talking in reference to the arrests
21 themselves?

22 Q The arrests or related events.

23 A Yes. They continued discussing arrest and
24 what the organization would do for some of the members.

25 Q What was that?

1 A Luis Colon-Osorio, in particular, came in a
2 little later in the conversation. He was, apparently,
3 designated by the organization to offer safe houses to
4 individual members of the organization.

5 He stated in that conversation that he had offered
6 one to Junior, who we can identify as Juan Enrique-
7 Segarra, and Junior had fled the country, in his words.
8 He stated that he had offered one to Pedro, who we can
9 identify as another man, Ramirez-Talavera and Norman
10 told him to do everything that he could to obtain the
11 safe house because he had, at the present time, did not
12 help -- have the facilities to acquire one.

13 He offered one to -- He only stated that he had
14 also offered one to Falcon, Ivonne Melendez-Carrion, at
15 the same time that he had offered one to Pedro. He did
16 not relate her comments.

17 Q Now, you said that Miss Colon-Osorio said that
18 in fact Junior had fled. Was the F.B.I. able to confirm
19 that?

20 A Yes, ma'am, we were.

21 Q And how did you do that?

22 A Through additional wire intercepts.

23 Q Did you find out how Mr. Segarra had learned
24 of his impending arrest?

25 A Yes.

1 MR. WILLIAMS: I'm going to object to
2 that. This isn't his hearing.

3 MS. VANKIRK: Your Honor, the territory
4 was opened. Counsel was talking about or
5 trying to imply that because some of the
6 members knew or suspected that they were
7 going to be arrested, that they didn't flee
8 and our position is some of them did. And
9 the way that they found out about the
10 impending arrest is pertinent.

11 MR. WILLIAMS: Well, that may be. But
12 the point is that the man who is having his
13 hearing right now, didn't flee and that's
14 why this inquiry was relevant on my part.

15 If she were offering relevance about
16 him, that would be relevant to -- This is
17 not going to Junior. Our way, it seems --
18 It unduly protracts the hearing, if they
19 have such a claim they should offer it
20 for the hearing for Mr. Segarra. It has
21 nothing to do with Mr. Fernandez.

22 THE COURT: Can be a double-edged sword.
23 Can be argued both ways. I'll overrule the
24 objection. You may ask the question.

25 THE WITNESS: Yes, ma'am. Apparently,

1 as Mr. Williams stated, they do state that
2 they possibly had a source within the
3 Department of Justice. This information,
4 they are attempting to track down, they
5 determine one way and going from person to
6 person, Ojeda-Rios stated that it had come
7 to him about seventh-hand.

8 The other way in which the information
9 came to the organization was, they stated
10 that a friend of the father of Junior, which
11 would make it Juan Enrique Segarra, Jr., had
12 obtained the information from another person,
13 a friend of his who had seen a report with
14 Juan Enrique Segarra Palmer III's, true name on
15 the report.

16 Q (By Ms. Vankirk) And where did Juan Enrique
17 Segarra-Palmer go after he learned that information?

18 A Mexico.

19 MS. VANKIRK: Nothing further.

20 MR. WILLIAMS: I have no questions.

21 THE COURT: All right. No questions from
22 the Court. You may excuse this witness. You
23 remain, however, because you are the case
24 agent.

25 Do you have any other witnesses?

1 MS. VANKIRK: No, your Honor.

2 MR. WILLIAMS: We have nothing further.

3 THE COURT: No rebuttal witness?

4 MR. WILLIAMS: No.

5 THE COURT: Are you ready for final
6 argument?

7 MR. WILLIAMS: I did want to make
8 certain additional proffers concerning
9 particular facts of my client, though I'm
10 sure you may want to get into those in other
11 ways, too, but I do want to.

12 THE COURT: The Court is going to ask
13 questions of your client. Do you want me
14 to do that first or do you wish --

15 MR. WILLIAMS: Why don't I mention a
16 few things that I think he ought to know and
17 it might expedite the procedure a little bit.

18 THE COURT: All right, Mr. Williams,
19 thank you.

20 MR. WILLIAMS: One of the things that
21 you have ascertained from review of the
22 affidavits is the nature of employment, that
23 has been followed by Mr. Fernandez at his
24 employment history is that he was in the
25 insurance industry, first as an insurance

1 salesman. He worked as an epidemiologist
2 at a venereal disease control clinic. And
3 then, he went to work in the printing
4 business.

5 Now, in there, in that context, it
6 gets a little bit confusing because he had
7 both a paid position and an unpaid position.
8 The paid position had to do with the
9 commercial printing business, in which he
10 was, as has been indicated, a salesman. And
11 I think he indicated on his CJA affidavit,
12 the approximate income which he was making.
13 My memory is, it was in the range of eight
14 hundred a month and he left that position in
15 May of this year.

16 However, that printing concern also
17 published the magazine, Pensamiento Critico,
18 which is, I think you have heard some
19 testimony about and that is a magazine that
20 publishes the views of a spectrum of groups
21 on the left. Included within its pages are
22 views of Macheteros, but certainly not limited
23 to that. As a matter of fact, they publish
24 views opposing the Macheteros, as well.

25 But, of course, within the context of

1 being on the left within overall context of
2 Puerto Rican policy.

3 Now, for them, he does a variety of
4 things, including gathering articles from
5 authors and so forth, as well as some
6 magazine distribution. That is an unpaid
7 position. And that work he had continued to
8 do through the summer of 1985.

9 Now, in addition to that, he had, for
10 some years, a private business, a fumigating
11 business, which he does out of his home in
12 his spare time and you have heard some
13 testimony from one of our witnesses
14 yesterday, that he had fumigated his
15 apartment.

16 As a matter of fact, his income from
17 that, because it was a part-time position,
18 has not been large but that has been another
19 regular activity of his.

20 So, I think that that's what I wanted to
21 bring to your attention, specifically
22 concerning his employment history.

23 Now, his wife, Iris Rodriguez, was here
24 in court throughout until late yesterday
25 afternoon at the end of court, she had to

1 return. She is a licensed clinical
2 psychologist, as you have heard, and is
3 employed at a private psychiatric hospital.
4 She received her MA from the university in
5 1984. He has two children; one of this
6 marriage, the three year old, and one of the
7 former common law marriage, which is referred
8 to in at least one of our affidavits and that
9 daughter is 15.

10 Now, this natal family are people of very
11 modest means and I understand that they grew
12 up living in subsidized housing and the
13 children all literally pulled themselves up
14 by their boot straps and are very close. And
15 I am advised and I think Attorney Berkan
16 mentioned this to the Court earlier today,
17 particularly his sister, who happens to be a
18 close friend of Attorney Berkan's, is very,
19 very active in the professional world.

20 His wife's family is of somewhat more
21 substantial means, though, again, they are not
22 anywhere close to the economic class of the
23 attorney who appeared before you a couple of
24 days ago, Attorney Farinacci. His father-in-
25 law is a retired accountant, employed through

1 most of his career by the United States
2 Government in the Department of the Navy and
3 his mother-in-law is also retired and she was
4 employed at the time of retirement as a
5 secretary with the Internal Revenue Service on
6 the Island.

7 He has been married to his present wife
8 for four years. They have very limited --
9 he has very limited finances as has been
10 indicated and his wife, as well, though she
11 does have a good job, it is just sufficient to
12 take care of the needs of their children and,
13 of course, her own needs.

14 Now, so far as the finances are
15 concerned, there is very little cash that is
16 likely to be raised. It could probably be
17 raised, though it might -- I think it is
18 likely that there would be some. There are,
19 I understand, a number of pieces of property
20 in his wife's family and his own family, and
21 these are modest properties, but I understand
22 that as of this morning, there are perhaps
23 three pieces, most, if not all of which are
24 mortgaged. But my secretary told me at the
25 break that her understanding is that they

1 would have a total equity in those properties
2 of around, I think she said, one hundred
3 thirty thousand. And those are pieces of
4 property within the extended families, that
5 would certainly be posted, if that were within
6 the range of what you want.

7 Those, I think, are the points I wanted
8 to make at this time, though both my client
9 and I are prepared, of course, to respond to
10 inquiries that you think are relevant.

11 THE COURT: All right. Fine. Mr.
12 Fernandez-Diamante, I'm going to ask you
13 certain questions at this time. You are under
14 no obligation to answer my questions. You
15 have a legitimate right to refuse to answer
16 all of the questions. You may answer some
17 and refuse to answer others, or you may
18 answer all, as you and your attorney feel are
19 proper.

20 I am part of the judicial arm of the
21 Government. I am not here to investigate the
22 case. However, common sense and reality tells
23 me that sometimes the questions I ask may leak
24 over into the fields that are in question in a
25 particular case. I don't want you to feel

1 that you have to answer any questions that
2 your attorneys feel that you should not
3 answer. Please do not answer it.

4 I'm not going to be mad. I'm not
5 going to be upset and I'm not going to draw
6 any inference from that.

7 Do you understand?

8 (The Defendant, Hilton Fernandez-
9 Diamante, answering through the Interpreter.)

10 THE WITNESS: Yes.

11 THE COURT: What is your full name?

12 THE WITNESS: Hilton Edgardo Fernandez-
13 Diamante.

14 THE COURT: What is your date of birth?

15 THE WITNESS: 28th of August, 1944.

16 THE COURT: Where were you born?

17 THE WITNESS: Town of Guayama, Puerto
18 Rico. G-U-A-Y-A-M-A.

19 THE COURT: Is that correct?

20 MS. BERKAN: Yes. That's correct.

21 THE COURT: And where do you live now?

22 THE WITNESS: In the Town of Rio Piedras,
23 Los Robles Cooperative, 812.

24 THE COURT: How long have you lived
25 there?

1 THE WITNESS: For the last three years.

2 THE COURT: Two?

3 THE WITNESS: Three.

4 THE COURT: Where did you live prior to
5 that?

6 THE WITNESS: In condominium townhouse.

7 THE INTERPRETER: Townhouse condominium.

8 THE WITNESS: In the Town of Rio Piedras.

9 THE COURT: How long did you live there?

10 THE WITNESS: One year.

11 THE COURT: Where did you live prior to
12 that?

13 THE WITNESS: In the housing project.

14 THE COURT: Where was that?

15 THE WITNESS: In Santurce.

16 THE COURT: Is there a number address
17 there?

18 THE WITNESS: El Mirador apartments.

19 THE COURT: How long did you live there?

20 THE WITNESS: Five years.

21 THE COURT: Do you have a telephone
22 number where you are living now?

23 THE WITNESS: Yes, sir.

24 THE COURT: Would you give me that
25 number, please?

1 THE WITNESS: 751-3898.

2 THE COURT: If you were released today,
3 where would you go?

4 THE WITNESS: Immediately to my home.

5 THE COURT: All right. You are married?

6 THE WITNESS: Yes, sir.

7 THE COURT: And you have had one other
8 relationship with a woman that's been
9 characterized as a common law marriage; is
10 that correct?

11 THE WITNESS: Yes, sir.

12 THE COURT: Do you have two children?

13 THE WITNESS: Two children, two
14 daughters.

15 THE COURT: Fifteen and three?

16 THE WITNESS: One adopted child.

17 THE COURT: So, you have a stepchild,
18 besides the two natural children; is that
19 correct?

20 THE INTERPRETER: He has a stepchild
21 besides the two natural children.

22 THE WITNESS: Yes. One stepchild.

23 MR. WILLIAMS: Your Honor, just to clear
24 up. That child, I understand, lives with the
25 former wife.

1 MS. BERKAN: No, that child is in
2 college.

3 THE COURT: I think, in Ohio.

4 Are you employed at the present time?

5 THE WITNESS: At this time I am self-
6 employed.

7 THE COURT: And what is the nature of
8 your business?

9 THE WITNESS: Extermination services.

10 THE COURT: And where do you operate
11 that business from?

12 THE WITNESS: From my home.

13 THE COURT: And what type of equipment do
14 you use in that business?

15 THE WITNESS: Fumigation pumps.

16 THE COURT: And where do you store that?

17 THE WITNESS: In my home.

18 THE COURT: Isn't that poisonous?

19 THE WITNESS: I don't store the poisons
20 there.

21 THE COURT: Where do you store the
22 poisons?

23 THE WITNESS: Excuse me? I store it in
24 my mother's house, in a separate room.

25 MS. BERKAN: Can I just ask that Mr.

1 Fernandez speak up, as well as the
2 interpreter, both.

3 THE COURT: Yes.

4 MS. BERKAN: Thank you.

5 THE COURT: Mr. Fernandez, your lawyer
6 would like to have you keep your voice up
7 and I would request that the interpreter do
8 the same.

9 Where does your mother live?

10 THE WITNESS: In the Town of Guayana.

11 THE COURT: And are there any other
12 children at home, in that house?

13 THE WITNESS: Yes, sir.

14 THE COURT: But she stores poison in
15 that house with children present there?

16 MS. BERKAN: We need a translation.

17 THE WITNESS: They are not children.
18 It's my oldest sister.

19 THE COURT: How old is his older sister?

20 THE WITNESS: She's younger than I am.

21 THE COURT: What's her age?

22 THE WITNESS: She's thirty-four years
23 old.

24 THE COURT: I guess it doesn't qualify.

25 MS. BERKAN: That was a translation

1 problem with the word children, as sons and
2 daughters.

3 THE COURT: I was going to use sibling,
4 but I didn't know whether there was a Spanish
5 word for that.

6 THE WITNESS: I want to say something to
7 your Honor.

8 THE COURT: It's fine with me but you
9 better check with your attorneys, first.

10 THE WITNESS: That I am trying to deal
11 with all types of poisons that have to deal
12 with exterminating and I know the Puerto
13 Rican laws relating to storage and use of
14 these poisons.

15 THE COURT: Fine. How long have you
16 been doing this work?

17 THE WITNESS: In the last few years,
18 sporadically, around four years.

19 THE COURT: Did you graduate from the
20 university?

21 THE WITNESS: Yes, sir.

22 THE COURT: 1968?

23 THE WITNESS: 1967.

24 THE COURT: What did you do when you
25 graduated from the university?

1 THE WITNESS: High school teacher.

2 THE COURT: Where and for how long?

3 THE WITNESS: For a year. Barrio

4 Obrero. That's located in Santurce.

5 THE COURT: Where did you work after
6 that?

7 THE WITNESS: I worked as a credit
8 manager.

9 THE COURT: For whom and for how long?

10 THE WITNESS: For the Department of
11 Aqueducts and Sewerage, in charge of the Rio
12 Piedras office.

13 THE COURT: How long did you do that?

14 THE WITNESS: For about six months.

15 THE COURT: You are still in 1968, then,
16 possibly '69?

17 THE WITNESS: Possibly '69.

18 THE COURT: What did you do after that?

19 THE WITNESS: Insurance salesman.

20 THE COURT: For whom and for how long?

21 THE WITNESS: Atlantica Life Insurance.

22 THE COURT: And what years did you work
23 for that company?

24 THE WITNESS: I don't remember if I was
25 employed for up to a year.

1 THE COURT: That would bring us to about
2 1970. What did you do after that?

3 THE WITNESS: I had several jobs.

4 THE COURT: What type of jobs?

5 THE WITNESS: Employment interviewer for
6 the Employment Department of the Government
7 of Puerto Rico.

8 THE COURT: How long did you hold that
9 job?

10 THE WITNESS: Approximately one year, I
11 think.

12 THE COURT: What did you do after that?

13 THE WITNESS: I was unemployed for a
14 while until --

15 THE COURT: How long were you unemployed?

16 THE WITNESS: Approximately three years,
17 I was unable to find employment.

18 THE COURT: Did you have a specialty in
19 college? What type of a degree did you get?

20 That's two questions. Let me go back.

21 Did you have a specialty in college?

22 THE WITNESS: I am a graduate of social
23 sciences, with a specialty in political
24 science and economics.

25 THE COURT: What is the -- How is your

1 degree termed? Is it an AB, a BA, a BS or
2 what?

3 THE WITNESS: Bachelor of Arts.

4 THE COURT: All right. It would appear
5 that you are unemployed until about 1974.
6 What did you do after that?

7 THE WITNESS: I worked as an
8 epidemiologist for the Center of Disease
9 Control in Virginia.

10 THE COURT: In Virginia?

11 THE WITNESS: For the venereal disease
12 program in Puerto Rico.

13 MS. BERKAN: That was not Virginia.

14 THE WITNESS: The Center for Disease
15 Control in Virginia was the employer, but I
16 worked in Puerto Rico.

17 MS. BERKAN: And if I could just clarify
18 for the record because there might be a little
19 bit of confusion. When we're talking about
20 Santurce, Rio Piedras, Barrio Obrero --

21 THE COURT: The high school.

22 MS. BERKAN: -- Guayana, these are all
23 areas right in the metropolitan area of San
24 Juan. The first three that I mentioned are
25 all part of the community of San Juan and

1 Guayana is right at the border of San Juan.
2 We're not talking about distinct places within
3 the Island. It's all in the metropolitan
4 area.

5 THE COURT: I would have assumed that.

6 How long -- What is an epidemiologist?
7 What does that job -- What do you do?

8 THE WITNESS: It involves coming in
9 contact with the patient who has acquired a
10 venereal distase, an auditory related to the
11 disease, establish a good communication with
12 the patient so that confidentially they may --
13 they can inform the persons with whom they
14 have been carrying out sexual relations.

15 So, in that way, we may contain the
16 spread of the disease to other persons. To
17 provide advice to the doctors in terms of the
18 treatments of the patients. Fundamentally,
19 those are the tasks.

20 THE COURT: Are you like a counselor?

21 THE WITNESS: Yes, with the patients.
22 There is an orientation phase with the
23 patients.

24 THE COURT: How long did you do this?

25 THE WITNESS: Until 1978.

1 THE COURT: After 1978, what did you do?

2 THE WITNESS: I began to work with
3 Tallares Alborada.

4 THE COURT: What is that?

5 THE WITNESS: It's a printing shop.

6 THE COURT: And how long did you work
7 there?

8 THE WITNESS: Until last May.

9 THE COURT: And what was your job there?

10 THE WITNESS: Sell and collect and do
11 some minor jobs including photocopying and
12 small printing.

13 THE COURT: When you were arrested, did
14 you have any money on your person?

15 THE WITNESS: Ten dollars.

16 THE COURT: Do you have any money in the
17 bank?

18 THE WITNESS: No, sir.

19 THE COURT: Do you own any real estate?

20 THE WITNESS: No, sir.

21 THE COURT: Do you own vehicles?

22 THE WITNESS: No.

23 THE COURT: How do you get back and forth
24 to work?

25 THE WITNESS: Both cars that are at home

1 belong to my wife. I use one of them.

2 THE COURT: Do you own any personal
3 property, such as art objects or jewelry worth
4 more than three hundred dollars?

5 THE WITNESS: No.

6 THE COURT: Do you own any stocks or
7 bonds?

8 THE WITNESS: No, sir.

9 THE COURT: Do you have any life
10 insurance policies that have a cash value?

11 THE WITNESS: No, sir.

12 THE COURT: Do you have any lawsuits
13 pending that might get you some money, if you
14 were successful?

15 THE WITNESS: No, sir.

16 THE COURT: Do you have any interest in
17 the estate of any person that may have passed
18 away that would bring you some funds?

19 THE WITNESS: No.

20 THE COURT: Have you been in the hospital
21 for care within the last year?

22 THE WITNESS: No.

23 THE COURT: Are you under a doctor's
24 care, yourself?

25 THE WITNESS: Not at this present time, I'm

1 in jail.

2 THE COURT: Do you have any medical or
3 any physical or any mental problems?

4 THE WITNESS: Not that I know of.

5 THE COURT: Have you ever been treated
6 for a mental condition?

7 THE WITNESS: Never.

8 THE COURT: Are you addicted to drugs or
9 alcohol?

10 THE WITNESS: Never.

11 THE COURT: Do you have any criminal
12 record, other than the record that the
13 Government has mentioned on the failure to
14 register for the draft?

15 THE WITNESS: No. No time.

16 MR. WILLIAMS: I should interrupt at
17 this point. I misspoke. It was not a failure
18 to register; it was a failure to report.

19 THE COURT: To report. He had
20 registered?

21 MR. WILLIAMS: He didn't report, but he
22 registered.

23 THE COURT: That was dismissed, though?

24 MR. WILLIAMS: Yes.

25 THE COURT: Have you ever been under parole

1 or probation? It's not a trick question.
2 It's possible to have a judgment or be under
3 parole or probation.

4 THE WITNESS: No, I have not been
5 convicted on anything.

6 THE COURT: Have you ever had to appear
7 in court and post a bond?

8 THE WITNESS: Yes.

9 THE COURT: What was the amount of the
10 bond?

11 THE WITNESS: As I remember, it was
12 ten thousand dollars for failing to report to
13 the service.

14 THE COURT: And did you post that bond?

15 THE WITNESS: Not me.

16 THE COURT: Did someone post the bond?

17 THE WITNESS: Yes.

18 THE COURT: Who posted the bond?

19 THE WITNESS: A man by the name of
20 Cepero.

21 THE COURT: Did you appear at all times
22 that you were required to appear?

23 THE WITNESS: At all times.

24 THE COURT: Was the bond returned to
25 Mr. Cepero?

1 THE WITNESS: Up to where I understand,
2 yes, the case was dismissed.

3 THE COURT: Do you have a social security
4 number?

5 THE WITNESS: Yes, sir.

6 THE COURT: May I have it, please?

7 THE WITNESS: 578-73-8372.

8 THE COURT: Do you have a driver's
9 license?

10 THE WITNESS: Yes, sir.

11 THE COURT: Do you know the number of the
12 driver's license?

13 THE WITNESS: 69-5961.

14 THE COURT: When does it expire?

15 THE WITNESS: August of 1987 or '88.

16 THE COURT: Thank you very much. I'm
17 now going to ask the Government to tell me
18 what part of the act you are proceeding under
19 and to outline your claims under each. Are
20 you proceeding under both sections of the
21 Act?

22 MS. VANKIRK: Yes, your Honor, we are.

23 THE COURT: I would ask you to outline
24 your points that you think you have proved
25 under each section and then I will ask the

1 defense to address your argument and then I
2 will give you a chance to rebut, since you
3 have the burden.

4 MS. VANKIRK: Does the Court want the
5 exact cite of the statute or just the
6 category?

7 THE COURT: The category, whether it's
8 flight or danger.

9 MS. VANKIRK: I thought maybe you wanted
10 me to quote the statute.

11 THE COURT: No. I don't want you to
12 quote the statute. Unless you feel you have
13 to. I'm not trying to shut you off. Please
14 don't think that I'm doing that.

15 MS. VANKIRK: I understand, your Honor.
16 Regarding the Government's position on
17 danger to the community, with respect to this
18 particular Defendant, it is our position that
19 he is a member of Los Macheteros, he is
20 Romano, he is a member of the Directive
21 Committee, of the Central Committee, which
22 runs and directs and approves operations by
23 Los Macheteros.

24 The Court is aware that this Defendant is
25 charged with conspiracy to obstruct and delay

1 commerce by violence, by robbery. He's
2 charged with doing that with other individuals
3 named in the indictment, and with individuals
4 unknown to the grand jury. The individuals
5 which were indicted and named as members of
6 Los Macheteros in the indictment, was not the
7 extent of the membership.

8 There are other members of Los Macheteros
9 which have not been identified and/or
10 addressed. The Macheteros have claimed
11 responsibility for several violent actions
12 which have included the murder of innocent
13 people, theft of explosives, and the active
14 firing of missiles at government property, as
15 well as the bombing of government property.

16 They are not an organization which
17 espouses the independence of Puerto Rico by
18 the electoral processes. It is an
19 organization which espouses the independence
20 of Puerto Rico by violence.

21 We have shown that this individual, as I
22 said, is a member of that organization. We
23 have shown that searches of Macheteros safe
24 houses -- excuse me -- a safe house on April
25 3, 1984, disclosed that this Defendant's

1 fingerprints were on a document which
2 explained some problems during the Aguila
3 Blanca operation. That operation, as we have
4 heard, was the Wells Fargo robbery. Aguila
5 Blanca meaning The White Eagle. Aguila
6 meaning the eagle and being Victor Manuel
7 Gerena.

8 We have seen that their documents --
9 Withdrawn.

10 We have seen that through the wire
11 interceptions, Aguila, Victor Manuel Gerena,
12 is in Cuba and that the Cubans have some of
13 the money which are the proceeds of the Wells
14 Fargo robbery.

15 We have seen through the wire
16 interceptions that associates of Mr. Hilton
17 Fernandez-Diamante have millions of dollars
18 in their possession. Millions of dollars,
19 which I might add, your Honor, that the
20 Government has not located.

21 As such, we have shown that not only is
22 Mr. Hilton Fernandez-Diamante a Macheteros,
23 but he was a Macheteros that participatd in
24 the Wells Fargo robbery. For that, he faces
25 at this time, forty years in prison.

1 We believe that this severe penalty which
2 he faces and the violent nature of the crime
3 for which he is indicted, the robbery of a
4 Wells Fargo, two Wells Fargo guards at
5 gunpoint, was a violent act which was
6 consistent with the other acts that were
7 created and claimed by Los Macheteros.

8 Accordingly, we submit that this
9 Defendant, for the foregoing reasons, is a
10 danger to the community.

11 THE COURT: All right. Your next --

12 MS. VANKIRK: With respect to the risk of
13 flight, we have seen that he has traveled
14 abroad, having entered the United States from
15 Costa Rica and having a gap in his passport
16 from June 22, 1985 to June 25, 1985. There is
17 no indication on that passport, where Mr.
18 Hilton Fernandez was at that time.

19 At the time he left Panama on the 22nd,
20 he returned on the 25th to Panama. No
21 indication, as I said, where he had been during
22 that gap. When he entered the United States
23 and was asked where he had been, he refused to
24 answer Customs' questions, merely stating
25 that he would not say where he had been and

1 that he was an independentista, which means
2 that he is a person who favors independence.

3 We also submitted evidence of Mr. Hilton
4 Fernandez' international contacts. We
5 submitted a document which was found in his
6 residence at the time of his arrest on August
7 30, 1985, which reflects a sophisticated
8 method of contacts in locations such as Cuba,
9 Mexico, Nicaragua and a system of contacts
10 which comes and is similar to those seen in
11 spy novels where an individual shows up at a
12 location with a Time magazine or a Newsweek
13 magazine in his arm and certain other indicia
14 and symbols for other people.

15 We believe that the international
16 contacts which are reflected in that document
17 which was found in Mr. Hilton Fernandez-
18 Diamante's residence is consistent with the
19 evidence which shows that he has contact with
20 Cuba, and that is where Victor Gerena and
21 that is where the money is, a substantial part
22 of the money.

23 He has ties to the community, however,
24 those ties are not consistent with the
25 testimony that was provided by his witnesses.

1 He presented testimony from a neighbor who was
2 very close to him, who almost shared each
3 other's apartments, yet he had never heard of
4 Mr. Hiron Fernandez Diamante's travels. Close
5 neighbors talk of travel when they go
6 somewhere and they return. This neighbor had
7 never heard of that.

8 His employment history, as the Court has
9 explored, is hardly a model of stability or
10 reliability. There was a period of three
11 years he did not work, though he had a college
12 degree. He has held no job for an extended
13 period of time, or jobs that cannot be
14 corroborated or verified.

15 He was under surveillance by the F.B.I.
16 for an extended period of time, and he was
17 never observed going to employment.

18 Also, your Honor, we have heard that
19 the organization, Los Macheteros, has offered
20 safe houses to those individual members when
21 they learned or suspected that they would be
22 arrested. They started planning for flight
23 and, indeed, three individuals indicted in
24 this case did flee. Two individuals who are
25 still fugitives, Roberto Gonzalez-Claudio and

1 Avelino Gonzalez-Claudio and Juan Segarra-
2 Palmer, who fled to Mexico. And also Luis
3 Berrios, Mr. Segarra's wife, also fled with
4 their family.

5 So, we submit, your Honor, that in this
6 case, we have presented strong evidence of
7 flight, certainly beyond a preponderance of
8 the evidence, which is what is required and
9 we submit that this Defendant should be held
10 without bond.

11 THE COURT: All right. Let me ask you a
12 couple of questions.

13 Do you have any or have you presented
14 any evidence to me that shows that this
15 Defendant physically took part in the robbery
16 here in West Hartford?

17 MS. VANKIRK; You mean, was he actually
18 present in Hartford?

19 THE COURT: That's what I'm saying. Was
20 there any evidence that was shown from the
21 stand that he physically took part in the
22 robbery here in West Hartford.

23 MS. VANKIRK: He's charged with conspiring
24 in that robbery, your Honor, not actually
25 participating in it in the sense that he was

1 not in West Hartford and did not --

2 THE COURT: It was my understanding of
3 what was going on.

4 MS. VANKIRK: That's correct.

5 THE COURT: Do you have any evidence
6 that he has taken part in any other physical
7 activity of the organization? In other words,
8 you have put in evidence that he is a member
9 of the Central Committee, a member of the
10 Executive Committee, if I can recall it, and
11 that this organization has done certain acts.

12 Do you have any tie-in link between the
13 acts and his position, other than the fact
14 that I'm supposed to interpret that, if you
15 are a director of the corporation, you are
16 responsible for the acts of the employees?

17 MS. VANKIRK: Well, I believe that that
18 is not an inference that should be made, but
19 it was a fact. There was testimony that in
20 the documents that were seized at the safe
21 house, they, themselves, stated what the
22 functions of the Directive Committee and
23 Central Committee were. That they were --
24 the persons who formulated the policy that
25 planned the activities and directed the

1 execution of the activities. So, that that
2 is Mr. Hilton Fernandez-Diamante's position.

3 And with respect to other violent acts,
4 I might add that is, the agent testified the
5 investigation of this organization has been
6 covert, and that it could not investigate all
7 of the activities at one time without being
8 detected. So that it should not be inferred
9 that because no charges have been brought,
10 that it was because there was an insufficiency
11 of the evidence.

12 The investigation is ongoing.

13 THE COURT: Did you also present evidence
14 here to show a division in this Board of
15 Directors?

16 MS. VANKIRK: There was at one point,
17 there was a division in the sense of a
18 splitting of the movement and permit conflict.
19 However, they still maintain the money. When
20 there was a division of the money; two and a
21 half million, I believe was the figure, Mr.
22 Hilton Fernandez-Diamante did not turn over
23 that money to the F.B.I. or the police of
24 Puerto Rico. They kept that money. They
25 used it and they still have it.

1 THE COURT: All right. Thank you very
2 much.

3 Mr. Williams?

4 MR. WILLIAMS: Thank you, your Honor. Of
5 course, I don't think that the evidence shows
6 that Mr. Fernandez is Romano. It seems to me
7 that it's been demonstrated that unless the
8 Government has more by the time of trial, it's
9 highly dubious whether they are ever going to
10 be able to succeed in getting by even a motion
11 to present at the close of their case, if
12 their case hinges on proving beyond a
13 reasonable doubt that he's Romano.

14 Assuming, however, for the sake of
15 argument, that they had established that, it
16 seems to me, clear that they have not in any
17 sense established that Mr. Fernandez has,
18 himself, done anything which suggests either
19 that he is, himself, a danger to other people
20 if he is at liberty. Or that if at liberty,
21 he, himself, would flee. And those, of
22 course, are the tests.

23 Agent Rodriguez testified this
24 afternoon that not just that he hasn't been
25 charged but they have no evidence that Mr.

1 Fernandez, himself, personally participated in
2 any of the violent or even semi-violent acts
3 which he described in his testimony both
4 yesterday and today.

5 No evidence whatsoever that this man
6 participated in those. They claim that it was
7 an organizational thing that he was a member
8 of the Board, that he was a part of the
9 clearing section or whatever. No suggestion
10 that he participated. And in that context,
11 of course, when you look at Judge Weinstein's
12 decision in the Columbo case, that is a
13 decision which, itself, talks about the role
14 of the Defendant there as a director of a
15 criminal organization, and finds that the
16 question of incarceration or not incarceration
17 has really nothing to do with the man's role
18 in that respect and that the level of danger
19 necessary, if one were to consider a
20 directorship evidence of danger, that that is
21 not affected one way or the other by whether
22 the person is in jail or out of jail. He can
23 still be a director, as Judge Weinstein held.

24 The Government asserts that the
25 fingerprints of Mr. Fernandez were found on

1 one Xeroxed document at the safe house. We
2 know that that document from the testimony
3 of the agent, was almost certainly photocopied
4 at the print shop where Mr. Fernandez works.
5 It is asserted that he is associated with
6 people who have access to the millions of
7 dollars.

8 We sure haven't seen any evidence that
9 he has access to any kind of money of that
10 kind whatsoever. And, as a matter of fact,
11 the evidence is quite the contrary.

12 And in that respect, with reference to
13 the question of flight, it is dramatic, that
14 the Government itself had evidence indicating
15 that Mr. Fernandez and others believed for
16 sometime prior to August 30th, that there
17 were going to be many arrests, that Mr.
18 Fernandez might well be arrested, Mr.
19 Fernandez chose not to flee. Mr. Fernandez
20 made no efforts to flee. Did not discuss
21 flight. There is no suggestion that he
22 discussed flight or that he thought about
23 flight, where he was concerned and, of course,
24 he did not flee. He remained at home,
25 continued about his daily affairs, despite

1 all of the other things that the Government
2 has said.

3 The Government asserts that Mr. Fernandez
4 has an unstable employment history. The fact
5 is, however, that in the last ten years, the
6 man has held a total of two jobs,
7 continuously, up until just this past May.
8 And since May, of course, he has been in the
9 process of trying to get his own business off
10 the ground floor, so to speak, and at the same
11 time has been doing volunteer work with the
12 magazine in which he is involved.

13 It is also worth noting that there has
14 been, I understand, an unemployment rate in
15 Puerto Rico which is significantly higher than
16 anywhere in the mainland United States and I'm
17 surprised, in fact, that it is as high as
18 twenty-five percent.

19 It is also true that Mr. Fernandez,
20 because of his political beliefs, might
21 conceivably be inhibited in seeking certain
22 forms of government work, particularly, though
23 I don't actually know whether or not that is
24 the case.

25 It was asserted by counsel for the

1 Government that Mr. Fernandez has been under
2 heavy F.B.I. surveillance and hasn't gone to
3 work. Well, I think that counsel is confused
4 in that respect. There is no such testimony.
5 There was no such evidence of any kind
6 offered. The only testimony about Mr.
7 Fernandez going to work came from one of our
8 witnesses on cross-examination by counsel for
9 the Government, who -- and he did testify that
10 he does go to work, though he doesn't know the
11 hours that he goes to work.

12 But, it's, in fact, my understanding from
13 the testimony of Agent Rodriguez that Mr.
14 Fernandez has not been under surveillance.
15 That they claim to have seen him from time to
16 time in the course of other surveillances but
17 that he has not been a target of surveillance
18 and in that respect, it is worth noting, as
19 well, in the wire tap applications which
20 have been submitted to the Court, he is not
21 listed as a target of those taps, either
22 which may have peripheral significance, but
23 I think that it is more indication of what
24 I think is apparent from the evidence that
25 you have heard in the course of this hearing

1 and that is that even if we credit the
2 Government's claim and even if we gave them
3 the benefit of every possible doubt, which
4 we don't in this hearing, but if we do, all
5 they are saying is that in this case we have
6 very peripheral involvement indeed and I
7 think that that demonstrates that unless we
8 are going to have a presumption favoring
9 pretrial incarceration in all felony
10 prosecution or in all prosecution under the
11 Hobbs Act, and we do not, then this man
12 surely ought to be entitled to release on a
13 reasonable bond.

14 THE COURT: Thank you very much. Let
15 me ask one or two questions. I'm puzzled
16 how a man who has a wife and children to
17 care for, who gives up his job in May and
18 is living in subsidized housing is out --
19 has the ability to travel as he seems to
20 have done this summer, travel is not cheap.

21 MR. WILLIAMS: Well, the travel isn't
22 cheap but the travel that was asserted, of
23 course, was a relatively limited scope.
24 And I'm not a witness and I'm not in a
25 position to go in a lot of this but it is my

1 understanding that the nature of his work
2 for the magazine did involve getting articles.
3 They do publish, in fact, I had some of those
4 magazines in my office. I didn't bring them
5 in. Quite frankly, I don't read Spanish, but
6 they appear to publish articles concerning
7 political activities throughout the
8 Caribbean area.

9 THE COURT: But he terminated his
10 employment in May.

11 MR. WILLIAMS: His employment for the
12 printing company and he was continuing to
13 work and I indicated that to you in my earlier
14 representations, continued to work without pay
15 as he has for many years, for the magazine,
16 Pensamiento Critico, in among other things,
17 gathering articles from their writers.

18 THE COURT: Are you representing to me
19 that the magazine paid for his --

20 MR. WILLIAMS: I am reluctant to make
21 that as a representation. Frankly, I haven't
22 checked out, that is, my understand is that
23 that is the case.

24 THE COURT: All right. The Government?

25 MS. VANKIRK: Yes, your Honor. Counsel

1 stated that we have shown that this Defendant
2 has had peripherhal involvement in the case. I
3 would like to emphasize that the Government
4 has not presented its entire case. The
5 statute does not require --

6 THE COURT: No, but you understand that
7 I must make my decision upon the case that you
8 have presented, not upon what your entire case
9 is or what I might speculate it is.

10 MS. VANKIRK: That's correct, your Honor,
11 but that's only one factor to be considered by
12 the Court in making its ultimate
13 determination, and we would emphasize that the
14 case that was presented is not the Government's
15 entire case. And we did not think that we had
16 to prove it beyond a reasonable doubt.

17 So that the Court can consider that
18 element. We have shown Mr. Fernandez-Diamante
19 to the robbery, to the amount of money, to his
20 conspiracy and association with other
21 Defendants. And I believe that that is
22 sufficient regarding his flight, that the
23 contention that, well, they knew that they
24 were going to be arrested and they didn't
25 flee.

1 As you will recall the testimony, they
2 suspected the arrest to occur in September,
3 not in August. Therefore, your Honor, I
4 believe that we have presented strong evidence
5 of cite, as I said before, beyond a
6 preponderance and we submit that this
7 Defendant should be detained.

8 Also, with regard to the travel that Mr.
9 Hilton Fernandez did go to Panama, Costa Rica
10 and the three days that his passport has
11 missing, the gap, where did he go for those
12 three days when he was in Panama? He was in
13 Panama; he left Panama; he didn't return to
14 Panama. No indication where he went.

15 We submit that in light of the
16 connections to Cuba, that he went to Cuba,
17 and he refused to explain that. When he
18 returned to this country, he refused to
19 explain where he had gone. I query why he
20 would refuse to explain if he were on
21 vacation in Panama.

22 MR. WILLIAMS: Well, geography wasn't
23 my best subject when I was in school, but
24 my recollection is that the country closest
25 to Panama is Nicaragua, not Cuba, and it is a

1 fact that Pensamiento Critico carries regular
2 articles about activities in Nicaragua. The
3 Cuban speculation is just not founded. In
4 fact --

5 MS. VANKIRK: The money was in Cuba,
6 your Honor.

7 MR. WILLIAMS: So what?

8 THE COURT: I have enough.

9 MR. WILLIAMS: All right.

10 THE COURT: All right. Ladies and
11 gentlemen, again, I have tried to pay strict
12 and close attention to everything that has
13 come in. I have read every document that
14 people have given to me. The Government has
15 requested pretrial detention under the danger
16 to the community standard.

17 As I understand it, the standard that I
18 must use in applying that is a clear and
19 unequivocal standard and I don't find that
20 the Government has met their burden as far as
21 dangerousness to the community.

22 However, the burden that they have on
23 the risk of flight is somewhat different.
24 That's both by a fair preponderance of the
25 evidence and I find that this Defendant, I'll

1 make the following finding, does have the
2 university education, graduating in 1967.
3 That he has maintained a very low profile.
4 That comes from most of the people that he
5 put on the stand, as well as from the
6 Government agents that have testified.
7 Doesn't give very much personal information
8 about himself and not even to the next door
9 neighbor whom he shares toilet facilities
10 with at times.

11 He has a spasmodic work record not
12 equal to his knowledge and to his education.

13 The Court is still troubled by the fact
14 that this man had quit his job in May. He's
15 living in HUD, subsidized housing. I have
16 appointed a lawyer for him because he does
17 not have enough funds to hire his own lawyer.
18 And I did that at his request, as his right.

19 However, he does then have funds or did
20 have funds to travel to several foreign
21 countries, which leaves me at a loss to
22 explain and I am not accepting at this time
23 Mr. Williams' speculation as to how he got
24 there because there was no testimony to that
25 or no real proffer made.

1 The evidence that comes in both from
2 his own people and the Government is that he
3 has a tremendous amount of free time and that
4 he is active around the community at various
5 times when most people would be at work.

6 His refusal to answer questions to the
7 immigration authorities just furthers my
8 belief that he intends to keep a very low
9 profile and some secretiveness. Maybe it's
10 an attempt to hide things or maybe it's just
11 an attempt to be a smart aleck, but either
12 way it works against him.

13 I do find that he has a membership in
14 Los Macheteros. That he holds a position
15 there in the Central Committee and that he is
16 part of the executive board.

17 However, I do not find that there has
18 been enough connection between that fact and
19 the actual physical violence that has gone on.

20 However, I do find that he has a low
21 regard for life, honesty, and the respect for
22 legitimate authority.

23 I do find that there is at least a casual
24 connection with the seven million that has been
25 stolen.

1 I am disregarding his past record because
2 I don't think it's important. I believe that
3 these charges are serious. They cover many
4 years in prison, should he be found guilty.

5 I do also find that he has international
6 ties, ties that he has used at various times.

7 I find it quite interesting that he has
8 an Ian Fleming type code name which I find is
9 Romano, I find is a fact, is his code name in
10 the organization. And that the organization
11 has used codes to set up meetings and other
12 clandestine type of activities.

13 I find that he has taken part in at
14 least one occasion in helping a person with
15 a safe house, that he is aware of it. And
16 that he would have the ability, as well as
17 the knowledge of how to take advantage of
18 such a thing.

19 I do also find in his favor that he is
20 an excellent husband, that he is a good
21 father. I don't think that we could question
22 that one single bit.

23 There has been more than an abundance of
24 evidence that has come in, but that's not
25 strange. That's not strange, given his

1 heritage and it's not strange given the fact
2 of the father loving his children. That has
3 nothing to do with the activities he might or
4 might not take part in in the outside world.

5 The weight of the evidence that has been
6 produced by the Government in this case is
7 sufficiently greater than the weight of the
8 evidence that was produced in the previous
9 case. I, therefore, will hold this man in
10 pretrial detention.

11 We'll take a recess at this time. I
12 want to see Mr. Schoenhorn and the
13 Government's attorneys in my chambers,
14 please.

15 MS. POLAN: May we approach the bench,
16 first? We have a problem. Under your
17 Honor's scheduling, ordinarily Elias Castro
18 was supposed to be next and Mr. Berkowitz
19 and I have been here all day, waiting for
20 that hearing and I understand there is an
21 issue with Mr. Segarra but the marshals refuse
22 to bring Mr. Castro down today and all the
23 other Defendants indicated that he was
24 supposed to be here.

25 The U.S. Attorney knew he was next.

1 We all knew he was next and they refuse to
2 bring him.

3 THE COURT: I'll handle that problem
4 when I come back.

5 (Reces taken at 3:42 o'clock p.m. and
6 concluded at 4:15 o'clock p.m.)

7 THE COURT: Ladies and gentlemen, we
8 seem to be moving along at a little slower
9 pace than we had hoped to move at. The
10 Court apologizes to the attorneys for having
11 to stay and for the Defendants who are
12 waiting both here and back at the various
13 prisons.

14 So that there will be no problem, we
15 are going to continue until nine o'clock
16 tonight. The next case that we will be
17 handling is the Luis -- Luis Colon-Osorio
18 matter. Mr. Ramos has not been brought
19 today, so that Mr. Osorio will move up one
20 place.

21 So there is no confusion for tomorrow,
22 we will, of course, if Osorio is not
23 finished, we will continue with Osorio and move
24 immediately to Mr. Castro-Ramos' case.

25 I'm asking the marshals to bring in

1 Isaac Camacho-Negron, Orlando Gonzalez-
2 Claudio. So the attorneys will know that
3 their clients will be here in the courthouse
4 and in Otisville.

5 Now, I have my doubts that we will get
6 through that much but just in case lightning
7 strikes, I'm also -- since that van will be
8 coming from Otisville, asking the marshal to
9 include in that van, Angel Diaz-Ruiz. So
10 that you are --

11 MR. CLAPP: Your Honor, I believe that
12 my client Ivonne Melendez-Carrion was
13 scheduled to come before --

14 THE COURT: That's correct.

15 MR. CLAPP: So does that mean that she
16 will also be coming up tomorrow as scheduled?

17 THE COURT: No. She will not be coming
18 up tomorrow, because I don't believe that we
19 will get as far as Gonzalez-Claudio and the
20 only thing I am doing with Mr. Ruiz is
21 bringing in a backup just in case that we
22 have to do it.

23 MR. CLAPP: Well, your Honor, if it's a
24 matter of bringing in a backup, with all due
25 respect, in terms of scheduling and

1 -- I see that neither Attorney Levy nor
2 Attorney Font representing Mr. Diaz are here.
3 I'm not going to object and prejudice their
4 clients. I'm only asking for the Court to --

5 THE COURT: The Court will abide by its
6 order. The four will be brought in. Neither
7 Melendez or Ruiz-Diaz will be brought in.
8 You may leave them at the prison. We'll
9 continue that hearing on Saturday, probably.

10 The next matter we're going to do is the
11 matter of Mr. Segarra-Palmer.

12 The Court had an opportunity to talk with
13 both counsel. I will ask counsel at this
14 time, for the Defendant to put on the record,
15 a summary of the tape recording that was --
16 that he has played and listened to from the
17 bail proceedings in Dallas.

18 MR. SCHOENHORN: The proceedings which
19 I believe were before Magistrate Sanderson in
20 the Northern District of Texas at Dallas, were

21 false . This is a summary based on my
22 listening to the tape in your chambers earlier
23 this afternoon.

24 The Magistrate indicated that the
25 indictment was sealed and, therefore, he could

1 not give a copy of that indictment to the
2 Defendant. The Defendant was there without
3 counsel and spoke directly to the Court on his
4 own behalf.

5 The Assistant U.S. Attorney, who is not
6 identified, summarized the indictment by
7 mentioning what the charges were, simply what
8 the charges were. The Magistrate asked
9 whether Mr. Segarra-Palmer generally
10 understood what he's been charged with. He
11 responded, Yes. The Magistrate then went
12 through his rights, advised him of certain
13 rights that he had, indicating the right to
14 remain silent, the right that anything he said
15 may be used against him, that he may stop
16 questioning at any time.

17 He indicated he had a right to have an
18 attorney present for questioning, at which
19 point Mr. Segarra was asked if he understood
20 that and he said, Yes, I have no attorney at
21 this point. The Magistrate then said, Well,
22 I'm just running through the questions at
23 this point. He continued by indicating he
24 was entitled to have an attorney, any
25 statement he makes may be used against him.

1 He asked him whether he understands or
2 has any questions and Mr. Segarra said, In
3 practice, Yes, but the Magistrate said, Well,
4 do you have any questions in theory rather
5 than practice, and Mr. Segarra said, No. He
6 understands the theory of the rights.

7 The Magistrate indicated that Mr. Segarra
8 had the right to a removal hearing. Mr.
9 Segarra did not understand what that was and
10 the Magistrate explained to him what a removal
11 hearing was and what he was entitled to.

12 But then, the Magistrate said, Do you
13 claim not to be the individual named in the
14 indictment and Mr. Segarra, again, without
15 counsel, said, No, sir, I do not. So, the
16 Magistrate made the finding at that point.

17 He then indicated that Mr. Segarra was
18 naturally entitled to bond but he said that
19 based on the allegations that were read by
20 the Assistant U.S. Attorney, and the fact that
21 the Magistrate said he had read the indictment
22 on his own, that he felt it was inappropriate
23 that any bond be set and that there should be
24 preventive detention for Mr. Segarra.

25 He explained what preventive detention

1 was and what a detention hearing was. He
2 indicated that at such a hearing, he would be
3 entitled to have counsel present. Then he
4 indicated that he may want to consider being
5 removed to Connecticut, that the order for
6 removal will take place and that he be
7 promptly -- he used the word "promptly"
8 several times -- brought before a Magistrate
9 there and the hearing wouldn't take place
10 until he was in Connecticut.

11 And then he indicated, the Magistrate
12 said that he would look into the question of
13 whether Mr. Segarra was entitled to have
14 counsel in Texas, but no further discussion on
15 that point is made, he says, or removing the
16 case to Connecticut. And Mr. Segarra
17 indicated that the last option is preferable
18 and those, I believe, were the exact words on
19 the tape.

20 Then the Magistrate ordered that the
21 removal take place to Connecticut and he
22 directed the marshals that upon arrival, that
23 Mr. Segarra be promptly taken before a
24 Magistrate for a detention hearing. That he
25 either be released on bond or that there be

1 specific findings made. And that would
2 conclude the hearing in the Texas Court.

3 He also indicated that if the word came
4 down that the indictment should be unsealed,
5 he would supply a copy to the Defendant. He
6 then issued his verbal order, again, that Mr.
7 Segarra be remanded to the custody of the
8 marshals, promptly be granted a detention
9 hearing.

10 Mr. Segarra asked if he could notify his
11 family of his circumstances and the Magistrate
12 indicated that that would depend upon the
13 marshals making that available, so as not to
14 jeopardize the safety or security of the
15 marshals.

16 And then the Court was recessed at that
17 point.

18 That is a summary of what is on the tape.
19 Only about six minutes, I believe.

20 THE COURT: It's my understanding, you
21 believe that there are some legal problems,
22 then, created by that hearing?

23 MR. SCHOENHORN: Yes, your Honor. There
24 are several, one of which is the apparent
25 denial of counsel at that hearing, so that Mr.

1 Segarra could make a claim or could determine
2 whether it was in his best interest to have
3 his hearing in Texas or to come to
4 Connecticut.

5 In any event, since the Payden case in
6 the Second Circuit by Judge Meskell has said
7 that the time limits of this statute must be
8 strictly followed, the Defendant did not
9 request a continuance as this term is defined
10 and, therefore, the time limits, the
11 Government certainly didn't request any. They
12 didn't make a motion for preventive detention,
13 either verbally or in writing and, therefore,
14 the time limits for holding such a hearing
15 have expired and, therefore, this Court has
16 no other remedy or recourse than to hold a
17 regular bail hearing with the least
18 restrictive measures being imposed on Mr.
19 Segarra.

20 THE COURT: All right. Mr. Segarra is
21 quite a way down on the list so that he
22 probably would not be reached. The only one
23 I believe, Mr. Segarra, at the time is Roberto
24 Ojeda-Rios and that is by original request of
25 lead counsel in this case.

1 What I would propose to do with this, I
2 would make it -- Mr. Nevas indicates that the
3 Government does not agree with the legal
4 contentions as outlined by the Defendant at
5 this time.

6 MR. NEVAS: No, they do not, your Honor.
7 And if I can just make a couple of points for
8 the record, your Honor, please.

9 Number one, I think the record should
10 indicate that there is no interpreter present
11 at this time and the reason for that is that
12 Mr. Segarra is fluent in the English language
13 and needs no interpreter.

14 THE COURT: Thank you very much. The
15 record will note that. Mr. Segarra has been
16 before the Court on one other occasion and
17 did not need an interpreter.

18 Mr. Segarra, are you in need of an
19 interpreter?

20 THE WITNESS: No. I understand.

21 THE COURT: And are you satisfied,
22 counsel that he doesn't need an interpreter?

23 MR. SCHOENHORN: That's correct, your
24 Honor. He does understand.

25 MR. NEVAS: And I would also suspect that

1 the record --

2 THE COURT: I should also note the
3 interpreters are here. They are seated in
4 the jury box and are available in the event
5 counsel, you think your client needs them.
6 They are standing by and they would come over
7 at any time.

8 MR. NEVAS: And also, that in terms of
9 any appearance in Dallas, that his fluency in
10 the English language is sufficient that no
11 interpreter was necessary at that time, as
12 well.

13 I also want to note for the record, that
14 the statute provides that the Government is
15 not the only entity that can move for a
16 pretrial detention hearing. That under the
17 Bail Reform Act, the Magistrate has the power
18 on his own motion or on her own motion, to
19 request that a preventive detention hearing
20 be held and it's our position that -- Well, I
21 have not listened to the transcript.

22 Based on Mr. Schoenhorn's representations
23 and his summary of what took place, it is my
24 understanding that it would be the
25 Government's claim that that's, in effect,

1 what happened in Dallas. That the Magistrate
2 moved for the preventive detention hearing.

3 As your Honor indicated, there are some
4 issues here that I think Mr. Schoenhorn wants
5 to address and we want to be able to respond
6 to. And I think I would respectfully request
7 at this point, that your Honor set some kind
8 of briefing schedule.

9 THE COURT: All right. Mr. Schoenhorn,
10 I will set -- give you until Friday to prepare
11 a brier addressed to these matters regarding
12 the timing and the interpretation of the
13 statute and would then give the Government
14 until Tuesday at five o'clock to file their
15 brief addressed to this matter.

16 It would appear, the way the cases are
17 moving now, that you would not have been
18 reached by that time, anyway.

19 MR. SCHOENHORN: Well, that is probably
20 true, your Honor. However, I would just state
21 that if my position is correct, then Mr.
22 Segarra is being held and detained illegally,
23 in violation of the Constitution.

24 It would further be my claim that a
25 violation of that nature must be met with an

1 appropriate remedy, such as the equivalent of
2 Gerstein versus Pugh, which would mean that
3 I would, at that point, request that Mr.
4 Segarra be released on personal recognizance
5 because of the fact that he has been denied
6 a constitutional right and for those reasons,
7 the longer this is delayed -- I'm only --
8 I understand that the Court wants briefs and
9 I think it's an issue that's so new and there
10 is so few cases, that it requires some level
11 of briefing for that purpose.

12 However, I would just state that the
13 longer this goes on, the more Mr. Segarra is
14 being denied his constitutional right.

15 THE COURT: I understand. The briefs
16 will be filed. The Court will try to reach
17 an immediate decision as soon as you can give
18 us the favor of your briefs.

19 Mr. Schoenhorn, are you moving at this
20 time for the appointment of counsel? Have
21 you filed an affidavit?

22 MR. SCHOENHORN: Yes, I have, your Honor.

23 THE COURT: Does the Clerk have an
24 affidavit in this case?

25 THE CLERK: I believe everything is

1 attached to the file.

2 THE COURT: Mr. Schoenhorn, there's no
3 debts or payments listed on this.

4 MR. SCHOENHORN: That's correct.

5 THE COURT: Financial affidavit.

6 MR. SCHOENHORN: At the moment, he has
7 nothing. He had an apartment that he no
8 longer is using, so, therefore, he doesn't
9 owe the rent.

10 THE COURT: What about -- His wife and
11 his children must be living somewhere. He
12 must incur some expense which he will be
13 liable for.

14 MR. SCHOENHORN: The wife is presently
15 incarcerated, your Honor, and the children
16 are living with family members.

17 THE COURT: But isn't he responsible for
18 their upkeep? Does the Government care to
19 examine any financial --

20 MR. NEVAS: I would like to look at it;
21 yes, your Honor.

22 (Handing document to Attorney Nevas.)

23 MR. NEVAS: Thank you.

24 MR. SCHOENHORN: I'll state for the
25 record, the client indicates that the family

1 members are caring for the children and,
2 therefore, he didn't put that down. He didn't
3 feel that at this time he has any debts that
4 he has to pay because the children are with
5 family members and they are in public school,
6 your Honor.

7 THE COURT: Mr. Nevas, do you have any
8 comments?

9 MR. NEVAS: No. The only comment I have,
10 your Honor, is that under assets, where it
11 talks about income and asks for the source,
12 he simply says, self-employed, without any
13 explanation.

14 THE COURT: Can you elaborate on that?

15 MR. SCHOENHORN: Yes, your Honor. Yes.
16 Mr. Segarra was in the business of selling
17 clothing and in addition, he has the
18 satellite company which had just started,
19 the assets which are listed there. It was
20 originally unknown and we figured out an
21 amount and I have put down the amount that
22 his interest would be.

23 THE COURT: That's a minus. Is that
24 what you --

25 MR. SCHOENHORN: It's not my intention

1 to put a minus amount, your Honor. It is a
2 -- It was just that originally, it couldn't
3 be determined exactly how much his property
4 was worth and we have determined that it
5 comes to approximately twenty-eight hundred
6 dollars and his fifty percent share would be
7 fourteen hundred dollars.

8 I have a receipt from clothing that Mr.
9 Segarra obtains and then sells which is his
10 main basis of livelihood.

11 THE COURT: Do you wish to make this an
12 exhibit?

13 MR. SCHOENHORN: Yes, please.

14 THE COURT: We'll attach this to the
15 financial affidavit.

16 MR. SCHOENHORN: I would just note that
17 his nickname is Papo, P-A-P-O, and even the
18 Government, in some of their documents,
19 concedes that that's a nickname. I think
20 they claim he has other nicknames, as well,
21 but --

22 THE COURT: All right. I will attach
23 that to the document, finding that he does
24 need the appointment of counsel.

25 You are on the CJA list?

1 MR. SCHOENHORN: Yes, I am, your Honor.

2 THE COURT: You have come before the Court
3 on many occasions on two or three minutes'
4 notice. I think that there is no problem.
5 You meet all the qualifications for the CJA
6 appointment and you will be appointed to
7 represent Mr. Segarra.

8 Mr. Palmer, are you satisfied with the
9 representation that you are receiving from
10 your attorney?

11 THE WITNESS: Very much so, yes.

12 THE COURT: All right. And that will
13 date back to the time that you started to
14 serve.

15 MR. SCHOENHORN: I would ask whether that
16 could be dated back to 9/3/85, which was the
17 date that I began working on the case in
18 anticipation of Mr. Segarra's arrival. The
19 appearance itself was filed on the sixth of
20 September but I was here in Court, as your
21 Honor recalls, on the third of September.

22 THE COURT: I see no problem with that
23 because we started the hearings at that time.

24 MR. SCHOENHORN: That's correct.

25 THE COURT: All right. Nothing further

1 on Mr. Segarra-Palmer's matter. Mr. Segarra-
2 Palmer may return and counsel will file their
3 briefs and we'll then enter an order,
4 promptly.

5 Mr. Segarra-Palmer, of course, will be
6 brought back in the normal course. If there's
7 anything that requires it ahead of time, we
8 will have him brought back earlier than that.

9 MR. SCHOENHORN: Thank you.

10 THE COURT: Thank you for coming.

11 All right. At this time we are going to
12 take a brief recess to allow counsel for the
13 Government and counsel for the defense to be
14 ready. We will be starting with Colon-Osorio
15 in about -- Can you be ready in twenty
16 minutes? At five o'clock?

17 MR. NEVAS: I believe so, your Honor. I
18 will go upstairs.

19 THE COURT: Mr. Kuby, can you be ready at
20 five o'clock?

21 MR. KUBY: Yes.

22 MR. CLAPP: I would like to inquire of
23 the Court. There was a reference made earlier
24 with respect to the scheduling and I was
25 unclear whether or not for those defendants,

1 particularly my own, who would not be heard
2 tomorrow. Is the Court planning to hold
3 court on Friday so that they would be heard
4 on Friday? We do plan to hold court on
5 Friday?

6 MR. AGRAIT-DEFILLO: May I address the
7 Court?

8 THE COURT: Identify yourself.

9 MR. AGRAIT-DEFILLO: Victor Agrait-
10 Defillo, attorney for the Defendant, Isaac
11 Negron. There's been some question as to
12 the order and I would like to -- I have my
13 schedule.

14 THE COURT: You can take the Court's
15 and look at it and see if that --

16 MR. AGRAIT-DEFILLO: According to this,
17 my client would be following this hearing, so
18 it would proably be either starting tonight
19 or tomorrow.

20 THE COURT: Well, Ramos will have to
21 come in tomorrow because Ramos should have
22 been the one --

23 MS. POLAN: Castro-Ramos.

24 THE COURT: -- should be the one coming
25 in tomorrow. I'm doing everything I can to

1 shorten this, and I'm going to use shorter
2 names, if I can get away with it.

3 MS. POLAN: It's fine, but Castro is the
4 correct shorthand.

5 THE COURT: All right. Castro-Ramos
6 should have been the case. There was a
7 regrettable mix up that was not the fault of
8 anyone and the marshals did not bring him.
9 Therefore, that will start --

10 MR. AGRAIT-DEFILLO: That case would
11 start tomorrow, unless Mr. Kuby's case is
12 finished?

13 MR. KUBY: I know you never get an
14 adjournment unless you ask for one, Judge.

15 THE COURT: Not as quickly as I would
16 like.

17 MR. KUBY: I know from Mr. Kunstler, I
18 spoke to him this afternoon as to scheduling.
19 He will be available all of this week,
20 including Saturday, if necessary.
21 Unfortunately, on Monday he begins hearings
22 in the case of United States versus Levasseur.

23 THE COURT: Is there someone else on his
24 case?

25 MR. KUBY: Luis Abreu Elias. I'm not

1 certain Mr. Abreu will be able to make it up,
2 given -- if we ever find out, you know, as the
3 time draws near.

4 THE COURT: Put that case last at his
5 request.

6 MR. KUBY: Right, exactly. And what I'm
7 -- I don't think anybody anticipated quite
8 this pace. We certainly didn't. And I don't
9 think your staff did either, frankly.

10 What I would say is, if Mr. Ojeda is not
11 going to be heard on Saturday, Mr. Kunstler's
12 request at this point would be to defer it
13 until the end of next week, which would be
14 Friday or perhaps Saturday.

15 THE COURT: We'll see. I'll take the
16 request under advisement. I would ask, if
17 you could, write it out as you have been
18 kind enough to do always. It would be
19 helpful and then we'll go from there.

20 MR. KUBY: Always.

21 THE COURT: We'll take a recess until
22 five o'clock.

23 (Recess taken at 4:40 o'clock p.m. and
24 concluded at 5:03 o'clock p.m.)

25 MR. KUBY: Good evening.

1 THE COURT: The next matter we have is
2 the matter of Luis Colon-Osorio. The
3 Government attorney is not here yet?

4 MR. KUBY: I will resist the impulse
5 to make that motion, Judge.

6 THE COURT: They are walking in the door.

7 MR. KUBY: What I would say is, I have
8 spoken to the representative of pretrial
9 services and after reviewing the case, we
10 have given her substantial information, more
11 is forthcoming now, with the signature and
12 authorizations.

13 What I would ask this Court, simply at
14 this time, assuming that by the end of the
15 evening, we'll not have a recommendation from
16 pretrial services, based on this new
17 information. What I would simply ask your
18 Honor is that if a recommendation would make
19 any difference in your opinion, based on the
20 testimony that you hear, that is, if a
21 detention -- recommendation for detention
22 would be persuasive or a recommendation for
23 bond would be persuasive upon you, after you
24 have heard the evidence, to preserve that
25 decision until pretrial services can file the

1 appropriate report.

2 If, based on what you hear, it's not
3 going to make much difference one way or the
4 other.

5 THE COURT: The officer is here at this
6 point, if you have some material to turn over
7 to her.

8 (Handing documents to Ms. Hermosillo.)

9 THE COURT: If it's agreeable with
10 counsel, we might take an oral recommendation
11 from her but we'll wait and see as we go
12 through the evening.

13 MS. HERMOSILLO: I called in the
14 information to Puerto Rico, your Honor. They
15 were going to verify as much as they could.
16 I don't know when they will get back to me.
17 Other than that, all I have is what
18 information he gave me.

19 THE COURT: All right. You are -- Can
20 you make a report on Mr. Colon-Osorio?

21 MS. HERMOSILLO: Originally, your Honor,
22 before interviewing him --

23 THE COURT: You have a copy of that
24 report?

25 MR. KUBY: Yes, I do, your Honor.

1 MS. HERMOSILLO: The other interview was
2 done this afternoon, after twelve o'clock, and
3 that's all I did. I had to tend to another
4 client since then, and all I did was call the
5 information in to Puerto Rico.

6 THE COURT: All right. And will you ask
7 them to speed up the work that they do on
8 that?

9 MS. HERMOSILLO: He said he would put two
10 people on it tomorrow morning.

11 THE COURT: All right. So, we won't have
12 it, then, by tonight, one way or the other.
13 We'll just have to see when we get to that
14 part of it, where we're going.

15 Do you have a copy of the original
16 report?

17 MR. KUBY: Yes, I do.

18 THE COURT: All right. Fine. The Court
19 will note that the interpreters are coming in
20 the courtroom. Mr. Luis Colon-Osario is in
21 the courtroom and both his counsel are
22 present.

23 It would appear that --

24 MR. KUBY: Just one other name matter.
25 It's Osorio.

1 THE COURT: I'm sorry. Did I say
2 something else? I have it, Luis Colon-Osario.

3 MR. KUBY: Osorio. I was telling the
4 reporter there's a language school in Con
5 Vacca (phonetic) in Mexico, that has a six-
6 week program and perhaps you could apply to
7 Judge Clarie in the interim, after these
8 motions and before the substantive motions
9 are heard, to go there for six weeks. I can
10 recommend it.

11 THE COURT: Well, I thought I would try
12 the one in Gaelic, first, and when I finished
13 with that one, then I will try the other.

14 At this point, are both counsel for the
15 defense ready?

16 MR. CASOSNOVA-LUIGGI: Yes, your Honor.

17 THE COURT: Thank you. Counsel for the
18 Plaintiff -- excuse me -- for the Government
19 ready?

20 MS. VANKIRK: Yes, your Honor, we are
21 ready.

22 THE COURT: Do you have your witnesses
23 present?

24 MS. VANKIRK: Yes, your Honor. Before
25 we start, I would like to turn over some

1 copies of transcripts. It will be at the end
2 of our presentation, before we discuss this.

3 MR. KUBY: Judge, it's my understanding
4 that, based on the past proceedings, that
5 transcripts of alleged interceptions that are
6 being referred to in testimony are being
7 provided to counsel. I will attempt to review
8 them at the table here. If I am unable to
9 review them successfully, I have to make a
10 request for a short adjournment.

11 THE COURT: Make it known to the Court.
12 Is there anything else that you wish to turn
13 over or any other material you wish the
14 Court to have, before we start?

15 MS. VANKIRK: Not at this time, your
16 Honor.

17 THE COURT: All right. I see that we
18 have our other stenographer. We are changing
19 at this time. You may start the review while
20 the stenographers change.

21 (5:18 o'clock p.m.)
22
23
24
25

C E R T I F I C A T E

I, Kim U. Sears, do hereby certify that I took the hearing re: Criminal Number H-85-50 TEC, on September 18, 1985, taken in the U.S. District Court, Hartford, Connecticut, beginning at 10:00 o'clock a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 203 pages are a transcript of the notes taken by me of the evidence and proceedings to the best of my ability.

I further certify that I am not related to any of the parties hereto or their counsel, and that I am in no way interested in the outcome of said cause.

Dated at Kensington, Connecticut this _____ day of October, 1985.

Kim U. Sears, C.S.R., R.P.R.