

1 AFTERNOON SESSION

2 2:03 O'CLOCK P.M.

3
4 MS. BACKIEL: Before we resume,
5 there is one procedural issue about the
6 identification process at this point. My
7 understanding is that the witness cannot identify
8 the person she's been asked to identify and
9 subsequent to saying that she had no present
10 recognition or memory of that person here in the
11 courtroom, she was shown a photograph which she
12 had previously identified.

13 It's my position at this point any
14 identification which she might make in the
15 courtroom after seeing that photograph could be
16 nothing but the product of that photograph and,
17 therefore, she should be precluded from being
18 asked whether she can make an identification at
19 the present time.

20 THE COURT: She might be
21 cross-examined on it. That's happened on occasion.

22 MS. BACKIEL: That's my risk. I
23 will decide whether I thought that was wise or not.

24 THE COURT: I would think until he's
25 finished with her, he could ask her any question

1 he wants. So, I won't preclude that.

2 If you want your client to stay
3 where he is and use one of those headphones so
4 he'll hear everything that goes on, you're
5 entitled to do that. That's why I warned you
6 about that before. I don't know what counsel is
7 going to do.

8 MS. BACKIEL: It's possible after
9 reviewing these pictures, I don't know what she's
10 going to say, but I didn't want to preclude it.

11 THE COURT: The reason I'm bringing
12 it up, because it's my position, as a matter of
13 law, if after being intelligible to identify she
14 now makes an identification after reviewing the
15 photograph, that in-court identification would be
16 clearly impermissibly tainted by her review of the
17 photograph and would be improper to be admitted at
18 this time.

19 So that I believe that as a matter
20 of law, the Court should not permit an effort to
21 identify after the witness has been exposed to a
22 photograph which she has seen previously and
23 initialed and been questioned about this morning,
24 because without looking at the photograph she
25 testified, "I cannot identify."

1 If now she identifies, it's clearly
2 the product of her review of that photograph.

3 THE COURT: You could argue that.
4 No question about that.

5 MS. BACKIEL: I believe your Honor
6 should rule that as a matter of law and I believe
7 it should not be left to the witness' subjective
8 decision about whether her identification now is
9 the product of having seen that photograph or some
10 miracle by which she recognizes what she did not
11 without the aid of that photograph.

12 I believe that's a matter of due
13 process and a matter of law. She should not be
14 permitted to make an in-court identification,
15 having failed to make an identification and having
16 been exposed to a photograph with her name on it
17 and questioned about that for some period of time.

18 MR. BOYLE: Your Honor, I intend to
19 ask Ms. Gassin if she can see the person who she
20 will be testifying about when we reach that point
21 in her direct examination.

22 If she can identify that person now
23 after having failed to do so this morning and if
24 that identification is in some way the result of
25 her having seen his photograph earlier, then that

1 is the product of a process that the Defendant
2 insisted upon.

3 The Court will recall that after Ms.
4 Gassin failed to identify the Defendant I asked a
5 few more questions and the Court suggested that we
6 needn't go any further. The Government agreed.

7 The Defense insisted on going
8 further and having a hearing as to the
9 photographic identification.

10 If now that photographic
11 identification in any way affects her ability to
12 identify the Defendant in court it certainly may
13 be inquired upon on cross-examination, but the
14 Defense, having created that, cannot now preclude
15 the Government from asking a question that is
16 perfectly legitimate of any witness.

17 MS. BACKIEL: This is not a matter
18 of first impression. There are legion cases on
19 the issue of due process and suggestive
20 identifications.

21 THE COURT: Let me ask you this,
22 counselor. As you've done and others have done
23 here in court many times, witnesses have been
24 asked questions they didn't recall. Couldn't give
25 any information on a particular subject. Then you

1 bring a paper over to them, "Look at this just for
2 identificaion. Does this refresh your
3 recollection?"

4 Suppose the Government argues having
5 seen these pictures her memory is refreshed. Now,
6 if it happens, there is a possibility, if it
7 happens, "my memory is refreshed, I do see X, Y, Z,"
8 it will go to the weight the jury wants to give
9 that identification.

10 MS. BACKIEL: No, it goes to
11 fundamental fairness and due process. It goes to
12 the fairness of the identification process because
13 having failed to recognize the refreshment of her
14 recollection by a photograph previously identified
15 creates an impermissible suggestion in her mind.
16 It's into the question of simply refreshing her
17 recollection.

18 At this point she should be precluded
19 from testifying because it's a matter of due
20 process. That identification in the courtroom,
21 that confrontation after being shown the
22 photograph cannot be fair. It's not like having
23 no memory and then looking at a document. The
24 whole purpose -- a Defendant cannot be put in a
25 position where he or she either appears without

1 ever contesting or challenging or finding out what
2 the pretrial identification process is and having
3 an impermissibly suggestive confrontation in the
4 courtroom.

5 THE COURT: Do you have any cases to
6 support that?

7 MS. BACKIEL: That's the whole
8 thrust of the cases that led to Wade and came
9 after Wade. The point is the Defendant has a
10 right to a determination pretrial of whether the
11 initial confrontation was fair or not, but once a
12 witness fails to identify and goes through that
13 process, the prosecution may not rely on the fact
14 that a Defendant exercised his right to a fair
15 identification process and to a determination
16 about the fairness of that process.

17 THE COURT: Do either of you have
18 any cases that will support that proposition?

19 MR. BOYLE: I have no cases to
20 support Ms. Backiel's proposition. I can't cite
21 to a case that allows this procedure. I thought
22 it was made clear this morning that the Government
23 intended to ask this question when we reached that
24 point in direct examination.

25 However, I've been apprised of this

1 objection in advance of the question. I can't
2 cite any case authority one way or the other, your
3 Honor.

4 THE COURT: Maybe we won't reach
5 that. If you have any cases, I'll be glad to
6 review them. At the moment I would rule against
7 Ms. Backiel if I was asked to rule right now.

8 MS. BACKIEL: The effect of your
9 Honor's ruling would be to require every Defendant
10 to chose between exercising a due process right to
11 a pretrial hearing to determine whether there was
12 a suggestive photographic identification and
13 having such confrontation take place in the
14 courtroom.

15 THE COURT: The Supreme Court ruled
16 on that many times.

17 MS. BACKIEL: It has.

18 THE COURT: Judge Blumenfeld had
19 some. There was a split in the door. He threw in
20 the split in the door and the Supreme Court reversed
21 the lower court, Court of Appeals, that threw it
22 out and said that was sufficient.

23 Now, we get to it, I'm going to rule
24 in favor of the Government on that. I want you to
25 know ahead of time. If we can wait until 4:30 and

1 it hasn't come up and you have some cases to show
2 me on that point that supports your position, I'll
3 be glad to read them. That's all I can say.

4 MS. BACKIEL: I think none of the
5 cases with regard to a fair identification process
6 under due process can allow the procedure which
7 the Government is now suggesting, starting with
8 Wade and going through to the most recent cases.

9 None of them can permit the kind of
10 process that is now being suggested because it
11 means that no Defendant may litigate the fairness
12 of an out-of-court identification process,
13 particularly a photo spread without risking an
14 impermissibly suggestive confrontation in the
15 courtroom as the result of litigating that due
16 process right.

17 THE COURT: Let's proceed now until
18 4:30 and, counsel, do you think we'll reach that
19 issue before 4:30?

20 MR. BOYLE: I expect we probably
21 will.

22 MR. WEINGLASS: We're about to.

23 MR. DABROWSKI: Any witness who had
24 previously made a photographic identification
25 based upon a photographic array would logically be

1 precluded from making an in-court identification
2 on the basis that the suggestion is implicit in
3 the photograph.

4 THE COURT: She did make this
5 identification on the array, to start with. No
6 question about that.

7 MR. DABROWSKI: Whether she made it
8 before or now, she has seen a photographic array.
9 She picked a photograph which she describes to be
10 the individual who she encountered on a prior
11 occasion.

12 I note as of this moment in time the
13 witness, Ms. Gassin, does not know whether or not
14 the individual she has picked out, in fact, is the
15 right person. The only thing she has testified to
16 in her mind, she believes that's a picture of the
17 individual she met.

18 She hasn't been told whether or not
19 that's right or wrong. It's not as though she
20 knows that she has made the right identification
21 and that that's in some way reinforced and,
22 therefore, she should come in and identify this
23 individual if she should be able to do so in court.

24 MS. BACKIEL: The flow of Mr.-- are
25 you finished?

1 THE COURT: I told you what my
2 ruling is going to be. That's what it's going to
3 be, unless you show me some case that demonstrates
4 otherwise. If the issue comes up before the end
5 of the day, my present ruling would be the
6 question can be asked. So, be guided accordingly.

7 MS. BACKIEL: I will call to the
8 Court's attention one fact which Mr. Dabrowski
9 left out of his analogy. This is not a situation
10 of a witness who simply made a pretrial
11 identification on the basis of a photograph and
12 then asked, "Can you now recognize that person?"
13 She was asked that question and she said, "No."

14 What the prosecution now wants to do
15 after her having seen the photograph is ask her
16 whether she now has a recollection when she's
17 testified several hours ago that she could not
18 identify.

19 My position is that no witness who
20 has no ability to identify is then shown a
21 photograph that she has previously identified and
22 signed should be permitted to refresh her
23 recollection with that in order to make a present
24 tense identification.

25 THE COURT: My recollection,

1 counselor, many years ago there was someone who
2 robbed a Brinks car up here on Capitol Avenue I
3 think it was. The witness came in to court and
4 couldn't identify the person in the courtroom.

5 As a matter of fact, as I recall it
6 very clearly, he kept looking at the jury. We
7 knew the jury hadn't been one of the robbers. But
8 he kept looking at the jury.

9 I remember saying, "Why don't you
10 look over on this side of the courtroom?" He
11 still couldn't identify.

12 Then it turned out that the
13 Government had some pictures that he had
14 identified the particular person right after the
15 robbery and then they went into the pictures and
16 it went up on appeal, as I remember. I don't
17 think anybody raised that point, particularly.
18 The case was affirmed on appeal.

19 MS. BACKIEL: I argued she should
20 not be able to identify the picture at this point
21 because of the impermissible and unnecessary
22 suggestive procedure. Having been overruled on
23 those grounds, I am not now arguing that she may
24 not be asked whether she identified a photograph,
25 if this is the photograph and if she signed it.

1 She may do that under the law once
2 the Court
3 overrules my objections and I can cross-examine
4 her about that procedure.

5 THE COURT: She's done that in court.

6 MS. BACKIEL: She may do that before
7 the jury. My position is what she may not do now
8 before the jury is be asked, after having failed
9 to identify and after having been shown the
10 photograph, whether she can now identify him
11 because, as a matter of law, that identification
12 will only be the fruit of her viewing the
13 photograph.

14 THE COURT: All right. The ruling
15 of the Court will be as stated: Your objection is
16 noted and the objection is overruled. Proceed.

17 MR. WEINGLASS: Your Honor, when the
18 trial began, Defense made a request for daily copy.
19 The Court denied the request presumably because of
20 the expense and perhaps limited resource.

21 THE COURT: It's a very real problem,
22 counselor. Frankly --

23 MR. WEINGLASS: What we've done --

24 THE COURT: If you have a particular
25 witness and feel that there's good cause for it,

1 it might be this witness, I can see a reason for
2 it.

3 MR. WEINGLASS: Your Honor --

4 THE COURT: Is that all you're
5 asking for, daily copy on this witness?

6 I don't know about daily copy. I
7 don't want to order something they're not prepared
8 to give.

9 (Pause.)

10 THE COURT: The Clerk tells me the
11 Stenographer has advised me she's not equipped to
12 do it. So, he says he can't provide it. So, I
13 can't order something that's impossible to provide.

14 MR. WEINGLASS: We did get it when
15 the witness, Kenny Cox, was here. He's one
16 witness out of approximately 70 that we made the
17 request and the Court granted it.

18 THE COURT: I'll make inquiry
19 through the Stenographer again. This isn't the
20 young lady who we have to do the business with.
21 It's her employer. I'll make inquiry again.

22 If it's possible to do it, I will
23 try to accommodate you, but I can't assure you
24 unless I know that the manpower is available to do
25 it. There is the problem. If it can be done, I

1 shall make every effort to do it; on this witness.
2 This witness alone.

3 MR. WEINGLASS: This is only the
4 second request we've made.

5 THE COURT: I understand. Call the
6 jury, please.

7 (Whereupon, the jury entered the
8 courtroom.)

9

10 A N N E G A S S I N ,

11 resumed the witness stand and testified
12 further on her oath as follows:

13 THE COURT: Do you need the last
14 question read back before lunch?

15 MR. BOYLE: No, your Honor. I think
16 we can proceed.

17 THE COURT: All right.

18

19

DIRECT EXAMINATION

20 CONTINUED BY MR. BOYLE:

21 Q. Ms. Gassin, when you were discussing with
22 Mr. Segarra the plan to take the money across the
23 border into Mexico at the diner, was any
24 discussion had of who would be accompanying Mr.
25 Segarra in the truck?

1 A. In the truck on the way down before we
2 met them, is that what you're asking me?

3 Q. Yes.

4 A. Well, I'm not sure whether it was at the
5 moment of that conversation, but around that time
6 and when I was learning about the plan I knew that
7 there was going to be in the truck the person who
8 helped put the money inside the truck and also
9 Gaby.

10 Q. Had you ever met Gaby?

11 A. No.

12 Q. Had you ever seen the person who was
13 going to help put the money inside the truck?

14 A. At that point, no.

15 Q. How long did your meeting at the diner
16 last?

17 A. It was short. I would say about half an
18 hour.

19 Q. Roughly, what time was it when the
20 meeting broke up?

21 A. It was early in the morning. I would say
22 before 8:00 o'clock.

23 Q. Where were each of the participants in
24 the meeting; that is you, Mr. Segarra and Mr.
25 Weinberg to go to after you left the meeting?

1 A. Well, Paul went on to go to work. Papo
2 told me that he was going to go back to where they
3 were working on the truck, which I understood to
4 be some kind of campground near the area and I
5 went back to Cambridge.

6 Q. When did you next talk to --

7 THE COURT: What kind of a truck was
8 this? Can you describe it. Was it a 10-ton truck
9 or pickup truck; what kind of truck was it?

10 THE WITNESS: As I remember, it was
11 a green and white pickup truck.

12 THE COURT: Like a half-ton truck, a
13 pickup?

14 THE WITNESS: A pickup truck with an
15 open back.

16 BY MR. BOYLE:

17 Q. Did you know if the plan called for there
18 to be any other sort of vehicle that was involved
19 besides the pickup truck?

20 A. Yeah. There was a trailer that was
21 supposed to be attached to the truck.

22 Q. Now, you told us that you saw the pickup
23 truck; is that right?

24 A. Yes.

25 Q. Did you ever see the trailer?

1 A. No.

2 Q. Do you know where it was at the time that
3 you were at the diner with the pickup truck?

4 A. Well, Papo told me that they were working
5 on the truck and the trailer was on some
6 campground. That's where it was.

7 Q. When did you next talk to Juan Segarra?

8 A. I talked to him early in the morning of
9 the 30th.

10 Q. How did that come about?

11 A. He called me to let me know that the plan
12 was cancelled because they had an accident. The
13 truck had flipped.

14 Q. Where were you at that time?

15 A. I was at home.

16 Q. You say early morning. Approximately
17 what time was it?

18 A. I would say around 2:00 in the morning.
19 Early morning.

20 Q. Would this be less than 24 hours after
21 you had met at the restaurant?

22 A. Well, we met on the 29th around whenever
23 it was, 8:00 o'clock. It would be early morning
24 on the 30th.

25 Q. August 30, 1984?

1 A. Yes, that's right.

2 Q. What did he say specifically in that
3 telephone call about the accident?

4 A. At that point he just told me that they
5 had an accident; that the truck had flipped and he
6 told me that Paul Weinberg was on his way down to
7 bring them back.

8 Q. Did Juan Segarra tell you exactly where
9 they were?

10 A. He told me he was in Pennsylvania.

11 Q. Did you know where he was calling from?

12 A. No, I didn't know. He told me later that
13 the accident happened somewhere on Route 84.

14 Q. What did you do after you spoke with Juan
15 Segarra on the telephone?

16 A. I called Paul Weinberg.

17 Q. What did Paul Weinberg say?

18 A. Well, I asked Paul whether he needed any
19 help or whether I should go down and he said no he
20 was on his way out the door and he was going to
21 bring them back.

22 Q. Did he bring them back?

23 A. Yes.

24 Q. When did you next see Juan Segarra?

25 A. Either on the 31st or the 1st of

1 September, I don't remember.

2 Q. Do you recall approximately what time it
3 was that you saw him?

4 A. Well, he came in late at night on the 31st,
5 I imagine.

6 Q. Was anyone with him when he came to your
7 house on the 31st?

8 A. Well, he told me that --

9 MS. BACKIEL: Objection. The
10 question was, "Was anyone with him," and she began
11 "He told me that."

12 THE COURT: Was anyone with him?

13 MR. BOYLE: That was the question
14 and the witness was in the process of answering.

15 THE COURT: She started to say what
16 he told her. Why don't you finish the first
17 question? Was there anybody with him and counsel
18 may have an objection on what he told her.

19 MR. BOYLE: I'll withdraw that
20 question and ask this one.

21 BY MR. BOYLE:

22 Q. Ms. Gassin, did you see anyone with Juan
23 Segarra when he came to your house that night?

24 A. No, I didn't see anyone.

25 Q. Did he tell you if anyone was with him?

1 A. Yes, he did.

2 MS. BACKIEL: Objection.

3 THE COURT: Objection is overruled.

4 BY MR. BOYLE:

5 Q. What did he say?

6 A. He just told me that he had brought back
7 with him the person who -- one of the two people
8 who had been with him in the truck.

9 Q. Was it Gaby?

10 A. No, it wasn't Gaby.

11 Q. Did he tell you the name of this other
12 person?

13 A. I don't remember.

14 Q. Do you remember -- you don't remember
15 that he told you the name? Do you remember if he
16 told you the name at any point?

17 A. I don't remember if he told me the name
18 at that point.

19 Q. Did you have a conversation with Juan
20 Segarra about the accident involving the pickup
21 truck and the trailer in Pennsylvania?

22 A. Yes.

23 Q. What did he say?

24 A. He just told me that what happened was
25 someone, a large truck passed them as they were

going down a hill and whoever was driving lost
control of the vehicle and the truck overturned.

Q. What happened after the truck overturned?

A. Well, I don't know whether they called for help or whether the State Police just arrived. What happened afterwards, he told me that Gaby wanted to take whatever money they could and just leave and he refused and, being Papo, went out to meet the State Police and keep them away from the vehicle while the others put the money in large trash bags.

Q. After Juan Segarra returned from Pennsylvania, did he make a trip?

A. Yes, he did.

Q. Where did he go?

A. He told me that he had to go to Mexico to meet with the people who were supposed to meet the truck; the truck that was coming with the money, to tell them that the plan had failed and that to make plans for a next trip.

Q. How long did he remain in Mexico?

A. He stayed about a week.

Q. Do you recall approximately when he returned?

A. He came back on September 7th.

1 Q. After his return from Mexico, did you and
2 he visit Paul Weinberg?

3 A. Yes, we did.

4 Q. Would you tell us about that, please?

5 A. We went up to New Hampshire near
6 Franconia where Paul has a house. Papo told me
7 that he had to speak with Paul about the following
8 trip and what type of truck they should use and
9 what to do about the truck that had flipped. We
10 went up there to discuss that with him.

11 Q. When you say the following trip, what are
12 you referring to?

13 A. Well, they wanted to redo this trip. In
14 other words, they hadn't gotten the money across
15 and they had to make another plan to get the money
16 across.

17 Q. Did you go to Franconia to meet with Paul
18 Weinberg?

19 A. Yes.

20 Q. Would you tell us what happened when you
21 were there, please?

22 A. Well, Paul and Papo were working on the
23 house and I wasn't around both of them all the
24 time. So -- but I heard a conversation relating
25 to when I was with them, relating to the purchase

1 of a new vehicle.

2 Q. Do you recall what sort of vehicle they
3 discussed purchasing?

4 A. Yes. It was a mobile home.

5 Q. Do you recall if Juan Segarra said why
6 they decided to purchase a mobile home?

7 A. Well, in order to have a more stable
8 vehicle, in order not to have a truck with a hitch
9 and trailer.

10 Q. After that meeting with Paul Weinberg,
11 did Juan Segarra buy a mobile home?

12 A. Yes.

13 Q. When?

14 A. About a week later on the 14th of
15 September, I think.

16 Q. Do you recall what sort of mobile home he
17 bought?

18 A. I think it was a Jamboree.

19 Q. Would you describe that for us, please?

20 A. It's just a beige -- and it had some
21 brown -- mobile home. I don't really know how to
22 describe a mobile home.

23 THE COURT: Was it a motorized home
24 or trailer? Was there a motor in it?

25 THE WITNESS: Yes, there was a motor

1 in it.

2 BY MR. BOYLE:

3 Q. Was it the sort of vehicle that people
4 could sleep in?

5 A. Yes, it was.

6 Q. Did it have kitchen facilities?

7 A. Yes, kitchen facilities and it had places
8 to sleep.

9 Q. When he bought that vehicle, did he buy
10 it in the name Juan Segarra?

11 A. No.

12 Q. What name did he use?

13 A. Ron Princiotta.

14 THE COURT: What's the name again?

15 THE WITNESS: Ron Princiotta.

16 THE COURT: How do you spell that
17 last name?

18 THE WITNESS: I think it's

19 P-r-i-n-c-i-o-t-t-a.

20 BY MR. BOYLE:

21 Q. Ms. Gassin, is that a name that you had
22 ever known Juan Segarra to use before he bought
23 the mobile home?

24 A. Well, he told me he had used it before.

25 Q. After the purchase of the mobile home do

1 you know of any occasions when he used that name
2 again?

3 A. Well, he had a passport with that name.

4 Q. Ms. Gassin, showing you Government
5 Exhibits 453-A for Identification and 453-B for
6 Identification, do you recognize those?

7 A. Yes, I do.

8 Q. Would you tell us what they are, please?

9 A. They're two passports. One which expired
10 in '85 and then there's a new passport here which
11 goes from '85 to '95.

12 Q. Have you seen those passports before I
13 showed them to you today?

14 A. Yes, I have.

15 Q. When did you see them?

16 A. The one that expired I don't remember
17 exactly when, but Papo had showed it to me and
18 this one he asked me to pick up for him at a place
19 where he had a mailbox in Cambridge.

20 Q. Were those passports in your house on the
21 day you were arrested?

22 A. Yes, they were.

23 MR. BOYLE: I move 453-A and B as
24 full exhibits, your Honor.

25 THE COURT: Without objection, full

1 exhibit.

2 (Government's Exhibits 453-A and
3 453-B: Received in evidence.)

4 BY MR. BOYLE:

5 Q. Ms. Gassin in whose name are those
6 passports issued?

7 A. Ronald Paul Princiotta.

8 Q. The other?

9 A. The same.

10 Q. Do both of those passports bear a
11 photograph?

12 A. Yes, they do.

13 Q. Do you recognize the photograph?

14 A. Yes.

15 Q. Who is that a photograph of?

16 A. They're both Papo.

17 MR. BOYLE: May I publish these to
18 the jury, your Honor?

19 THE COURT: You may.

20 BY MR. BOYLE:

21 Q. After Juan Segarra bought the Jamboree
22 motor home, did you and he visit Paul Weinberg
23 again?

24 A. Yes, we did.

25 Q. When did that occur?

1 A. On September 16th.

2 Q. Would you tell us what happened, please?

3 A. We drove to Paul's house. We left the
4 mobile home in a parking lot which is near his
5 house and then walked to his house. There we met
6 Paul, got in his car and drove in to town to meet
7 up with this other person who had come in from
8 Puerto Rico.

9 Q. You say you drove into town. What town
10 did you drive into?

11 A. The town of Florence is where he lives,
12 as I remember.

13 THE COURT: What town?

14 THE WITNESS: Florence,
15 Massachusetts.

16 THE COURT: Florence?

17 THE WITNESS: Yes.

18 BY MR. BOYLE:

19 Q. Did Juan Segarra tell you why this person
20 was coming from Puerto Rico?

21 A. He was coming because, apparently, he
22 knew how to --

23 MS. BACKIEL: Objection. The
24 witness is speculating, apparently.

25 THE COURT: Well, did he tell you

1 specifically? In other words, is this speculation
2 or did he tell you?

3 THE WITNESS: No, he told me.

4 THE COURT: Objection overruled.

5 BY MR. BOYLE:

6 Q. Please answer the question.

7 A. He told me he was coming to take apart
8 this mobile home and take out the inside, the
9 panels, to put the money in and to put back the
10 panels in the mobile home and he told me this
11 person had done this before and was skilled in
12 this kind of work.

13 Q. Now, why is it that were you meeting this
14 person in Florence, Massachusetts?

15 A. As opposed to Boston or somewhere else
16 you're asking?

17 Q. Did Juan Segarra ever tell you why it was
18 that that person was supposed to meet you in
19 Florence?

20 A. No.

21 Q. Who went with you to pick that man up in
22 Florence?

23 A. It was just me, Papo and Paul.

24 Q. Did you pick him up?

25 A. Yes.

1 Q. What happened after you picked that man
2 up?

3 A. We drove back to Paul's house.

4 Q. What happened there?

5 A. Well, then I went inside the house and I
6 was talking about Paul's wife. They stayed
7 outside and they were doing some work around the
8 house in and near the garage.

9 Q. By they, who are you referring to
10 specifically?

11 A. Papo, Paul and the person who had come up
12 from Puerto Rico.

13 Q. How long did you remain at Paul Weinberg's
14 house that day?

15 A. We left around 8:00 or 9:00 o'clock at
16 night.

17 Q. When you left Paul Weinberg's house, did
18 Juan Segarra take anything with him?

19 A. Yes. As we were walking back, one of
20 them was carrying a box.

21 Q. Do you recall now who was carrying the
22 box?

23 A. No.

24 Q. What was done with that box?

25 A. It was put inside the mobile home.

1 Q. Do you recall what was inside the box?

2 A. There were some tools. There was a
3 staple gun, some tin foil and some plastic, as I
4 remember.

5 Q. Did Juan Segarra ever tell you what it is
6 that he wanted those things for?

7 A. He told me later that they were used in
8 concealing the money inside the mobile home.

9 Q. How did you get back to Cambridge from
10 Paul Weinberg's home that night?

11 A. Papo and I drove back in the mobile home
12 and the other person who had come up from Puerto
13 Rico drove back in the red van that Papo had
14 bought earlier that summer.

15 Q. As you drove back to Cambridge from
16 Florence, did you have a conversation with Juan
17 Segarra about anything inside the van?

18 A. Yes.

19 Q. Would you tell us what that was, please?

20 A. He told me that there were boxes of money
21 inside the van and what was going to happen within
22 the next few days was that the money was going to
23 be taken out of the van bit by bit and put into
24 the mobile home.

25 Q. Did he tell you what was going to be done

1 with the money after it was put in the mobile home?

2 A. It was then, the mobile home was going to
3 be driven down to Mexico.

4 Q. What happened after you returned to
5 Cambridge that night?

6 A. We all returned to my house and Papo and
7 I and this other person stayed there.

8 Q. Do you know, do you recall, if whatever
9 was inside that van was taken into your house that
10 night?

11 A. I don't remember if the boxes of money
12 were taken in to my house that night or whether
13 possibly some of them were taken in. As I said
14 earlier, I know that at some point between Papo's
15 return from Panama on the first trip which was
16 around, which was at the end of August, around 25th
17 or 26th and between the time of the second trip
18 the time the mobile home left that at some point
19 there was money in my house in boxes under my bed.

20 Q. How many boxes were stored under your bed?

21 A. I would say six or eight.

22 Q. I believe before you said these boxes
23 were approximately two feet wide by two feet deep;
24 is that correct?

25 A. Yes.

1 Q. How high were the boxes?

2 A. I think about the same height; two feet.

3 Q. Now, how is it that those boxes of that
4 size were able to fit under your bed?

5 A. My bed was up on top of a platform.

6 Q. After you returned from Paul Weinberg's
7 house on the 16th, did the Jamboree motor home and
8 the van remain parked at your house?

9 A. Yes, for a few days they worked on the
10 mobile home in back of my house. They also took
11 it to a campground near Boston to finish working
12 on it.

13 Q. When you say, "they," who was involved in
14 working on the mobile home?

15 A. Papo, the man from Puerto Rico and later
16 on a woman came from Puerto Rico to join them.

17 THE COURT: Came up from where?

18 THE WITNESS: Puerto Rico.

19 BY MR. BOYLE:

20 Q. Did you meet the woman who came from
21 Puerto Rico?

22 A. I never met her. I just saw her from
23 standing inside my house looking out in the
24 parking lot in back and I saw her.

25 Q. Do you know if that was the same woman

1 who was supposed to come in August of '84?

2 A. Yes.

3 Q. Was Paul Weinberg supposed to be involved
4 in this moving of money to Mexico in September
5 of '84?

6 A. No. He wasn't supposed to be involved in
7 the second trip in September.

8 THE COURT: What was his occupation;
9 do you know?

10 THE WITNESS: Paul Weinberg?

11 THE COURT: Yes.

12 THE WITNESS: He's a lawyer.

13 BY MR. BOYLE:

14 Q. Were you ever told why Paul Weinberg was
15 to be involved in the first effort to move the
16 money, but not the second?

17 A. Well, the reason that Papo gave before
18 his not being involved in the second was that he
19 had already -- he had had to put in -- to tell his
20 firm he was going on vacation to take his first
21 trip and he couldn't justify his second absence.

22 Q. At some point did Juan Segarra leave for
23 Mexico?

24 A. Yes.

25 Q. Do you recall when that was?

1 A. Around the 20th or 21st of September.

2 Q. Did the man and woman from Puerto Rico go
3 with him?

4 A. Yes.

5 Q. The boxes of money that you have told us
6 about, where were they as of the 21st or 22nd of
7 September?

8 A. As I remember, they were gone.

9 Q. When did you next see Juan Segarra?

10 A. September 30th.

11 Q. Do you recall where you were when you saw
12 him?

13 A. Yes. I was moving out of one house and
14 into the other and he came to meet me at my old
15 house.

16 Q. Did you have a discussion with him about
17 his trip?

18 A. Yes.

19 Q. What did he say?

20 A. Well, all that I remember was that
21 everything had gone according to plan.

22 Q. Did he say anything about his two
23 companions?

24 A. He had brought them back with him. They
25 weren't at my house. They were at some restaurant

1 in Cambridge and they were going to fly back to
2 Puerto Rico that day.

3 Q. Did Juan Segarra tell you anything about
4 the condition of the motor home after they had
5 returned to Cambridge?

6 A. Well, he told me that when we took the
7 mobile home back to the Wanderlust, the place
8 where he had purchased it to have it stored, he
9 told me that he was a little bit concerned because
10 the person who had taken apart and put back the
11 mobile home had put the window cranks on backwards
12 and he was wondering whether someone would pick up
13 on that.

14 Q. If I may have just a moment, please, your
15 Honor.

16 (Pause.)

17 BY MR. BOYLE:

18 Q. Ms. Gassin, would you please describe for
19 us the woman who came to Cambridge from Puerto
20 Rico to assist in the money move?

21 A. As I said, I saw her from a distance.
22 She had brown hair that she wore up as I remember.

23 THE COURT: She wore what?

24 THE WITNESS: Up. She was light
25 skinned. I would say she was in her mid-thirties.

1 She was a heavy set woman.

2 BY MR. BOYLE:

3 Q. Did you ever speak with her?

4 A. No.

5 Q. Ms. Gassin, would you describe for us,
6 please, the man who came up from Puerto Rico to
7 help work on the mobile home whom you met in
8 Florence on September 16th?

9 A. Describe him?

10 Q. Yes, please.

11 A. He was, as I remember, about the same
12 height as Papo.

13 Q. Approximately what height would that be?

14 A. Five-seven. He was -- he had a beard, a
15 small beard, as I remember, at the time and he was
16 losing some of his hair. He was balding a bit.

17 Q. Do you see that man in the courtroom
18 today? If you wish, you can get up and move about
19 the courtroom. If you wish anyone to stand up,
20 you may ask Judge Clarie to order that person to
21 stand up.

22 A. Yeah, there is someone I would like to
23 stand up. He's sitting in the fourth row back,
24 light suit, sitting between two women.

25 MR. BOYLE: Would the Court order

1 that gentleman to stand up, please, your Honor?

2 THE WITNESS: I'm just going to step
3 down.

4 (Pause.)

5 BY MR. BOYLE:

6 Q. Do you recognize that man, Ms. Gassin?

7 A. Yes, I do.

8 Q. Would you tell us who he is, please?

9 A. That's the person that I met in September
10 of 1984.

11 MR. BOYLE: Your Honor, may the
12 record reflect that the witness has identified the
13 Defendant, Antonio Camacho-Negron?

14 THE COURT: The record may so
15 disclose.

16 When you first met him, what was the
17 name that you knew him by?

18 THE WITNESS: Well --

19 THE COURT: Or introduced to you by?

20 THE WITNESS: I don't remember that
21 name.

22 THE COURT: You don't remember?

23 THE WITNESS: No.

24 MS. BACKIEL: I'd like to voir dire
25 at this point.

1 MR. BOYLE: I don't know what the
2 basis is.

3 THE COURT: You'll have the
4 opportunity on cross-examination.

5 MS. BACKIEL: I may not voir dire
6 now?

7 THE COURT: Not at this time. You
8 can examine him as long as you want after the
9 Government finishes their questions.

10 BY MR. BOYLE:

11 Q. Ms. Gassin, after Juan Segarra returned
12 from Mexico at the end of September, did he remain
13 in Cambridge?

14 A. After the final trip you're saying?

15 Q. Yes.

16 A. He stayed in Cambridge a few days. He
17 left again on the 5th of October.

18 Q. Where did he go on the 5th of October?

19 A. Back to Puerto Rico.

20 Q. Now, when he went back to Puerto Rico on
21 the 5th of October, do you know if any money was
22 still being stored in your house?

23 A. Yes, there was money in my house.

24 Q. Can you tell us when that money came into
25 your house?

1 A. As I remember, he put money in a
2 footlocker of mine at that time and kept the money
3 there in the footlocker under my bed.

4 THE COURT: What do you mean by a
5 footlocker; can you describe that?

6 THE WITNESS: A black trunk. A
7 black footlocker.

8 THE COURT: What were the
9 measurements of it, roughly?

10 THE WITNESS: I think about this
11 wide, (indicating).

12 THE COURT: About five feet?

13 THE WITNESS: Yes, about five feet.

14 THE COURT: How wide was it?

15 THE WITNESS: About two feet.

16 THE COURT: Five feet by two feet.
17 How high was it?

18 THE WITNESS: About two feet.

19 THE COURT: All right.

20 BY MR. BOYLE:

21 Q. Now, it was your footlocker the money was
22 kept in?

23 A. Yes, it was my footlocker.

24 Q. When Mr. Segarra brought the money into
25 your house, did he have it in any other sort of

1 container?

2 A. Well, he also, inside the footlocker, had
3 a brown athletic bag and there was money in that,
4 but if there was another container as well, I
5 don't remember that.

6 Q. Would you describe the brown athletic bag
7 for us, please?

8 A. It was a brown vinyl athletic bag with a
9 black zipper that ran up it.

10 Q. Would you tell us approximately how long
11 the zipper was?

12 A. It ran the width of the bag, which was
13 the same length; about five feet.

14 Q. Did you ever look at that money?

15 A. Yeah.

16 Q. How much was there?

17 A. Well, I counted it at some point. I
18 don't remember exactly when that was and when I
19 counted it, I counted \$35,000.

20 Q. What denominations was the money in?

21 A. In singles, in fives and in fifties, if I
22 remember correctly.

23 Q. Was it new money or old?

24 A. The one-dollar bills seemed quite old.
25 The five-dollar bills were new.

1 Q. Would you tell us please how the one-
2 dollar bills were wrapped?

3 A. They were just wrapped in rubber bands.

4 Q. How about the five-dollar bills?

5 A. They had red and white paper bands.

6 Q. During the fall of 1984 -- I'm sorry.

7 Let me back up.

8 I believe you testified that Juan Segarra
9 left Cambridge about October 5, 1984?

10 A. That's right.

11 Q. Where was he going then?

12 A. Puerto Rico.

13 Q. When did he next return to Cambridge?

14 A. Second week of November, about the 7th of
15 November.

16 Q. During that visit did you ever accompany
17 him to any banks in the Cambridge area?

18 A. I don't remember doing that specifically
19 in November.

20 Q. How long did he remain in Cambridge
21 during November?

22 A. About, I would say four or five days.

23 Q. When he left, do you know where he was
24 going?

25 A. Back to Puerto Rico.

1 Q. From that point in November until the end
2 of 1984 did he come back to Cambridge?

3 A. He came back once in early December.

4 Q. During either of those visits, either
5 November or December, did you go with him when he
6 went to any banks?

7 A. In November or December?

8 Q. Yes.

9 A. I don't remember specifically, no.

10 Q. In December did you have any
11 conversations with Juan Segarra about an event
12 that he had planned for January 1985?

13 A. I learned about that are event later. I
14 don't remember discussing it with him in December.

15 Q. During these visits in November and
16 December, did Juan Segarra take any of the money
17 out of the footlocker that was kept under your bed?

18 A. Yes. He usually did. Again, I don't
19 remember specifically what date, but he would take
20 back the money with him.

21 Q. When you say take back the money with him,
22 what do you mean?

23 A. Back to Puerto Rico.

24 Q. At some point after that did you have a
25 conversation with Juan Segarra about an event that

1 he had planned for January 1985?

2 A. Yes.

3 Q. What did he tell you?

4 A. It was a gift-giving operation that was
5 supposed to take place on Three Kings Day in 1985
6 in January. The plan was that gifts were going to
7 be given away both in Hartford and Puerto Rico to
8 communities of children who were poor who would
9 otherwise not receive such gifts. His
10 organization put that plan together and carried it
11 out.

12 He participated in the gift-giving
13 operation in Puerto Rico.

14 Q. Did he tell you --

15 MR. WEINGLASS: May I have the date
16 and the place of that discussion and who was
17 present?

18 MR. BOYLE: I don't think there is
19 any requirement that the witness can recite the
20 date, time and place of the discussion, your Honor.

21 THE COURT: She can be
22 cross-examined in due course.

23 MR. BERGENN: Could we have the week
24 or the month? Could we have some orientation when
25 this took place?

1 THE COURT: This was in December and
2 the event was to happen in January.

3 MR. BOYLE: Perhaps I can satisfy
4 counsel's concern.

5 BY MR. BOYLE:

6 Q. Ms. Gassin, you testified about an event
7 that was to occur on Three Kings Day. When does
8 Three Kings Day fall?

9 A. January 6th.

10 Q. The conversation that you just told us
11 about that you had with Juan Segarra, was that
12 conversation before the actual event or after?

13 A. I had two conversations, as I remember.
14 One was before when it was in the planning stages,
15 and as best I remember, it would have been in
16 December after his trip which was from the 3rd to
17 about the 8th of December.

18 It would have been towards the end of
19 December and another conversation with him on the
20 phone after it happened.

21 THE COURT: Excuse me. I understood
22 you to say January '89.

23 THE WITNESS: No, '85.

24 THE COURT: I want to make sure
25 there was no misstatement. All right.

1 BY MR. BOYLE:

2 Q. Would you tell us, please, about the
3 conversation that you had with Juan Segarra after
4 January 6, 1985 when he discussed this toy
5 giveaway?

6 A. Well, he told me that he had participated
7 in the gift giving in Puerto Rico. That, as I
8 recall, they were dressed up as kings and they
9 went into a community in the center of San Juan
10 and gave out the gifts and went out to a more
11 rural area and gave out gifts to children there as
12 well.

13 Q. Did he tell you why his organization was
14 doing this?

15 A. The only reason given was that, again,
16 they were poor communities and it was to give
17 gifts to poor children.

18 Q. Did he ever tell you why part of that
19 activity was going to occur in Hartford,
20 Connecticut?

21 A. I don't remember specifically.

22 Q.. Did he ever mention who else was to be
23 involved in the planning of the Three Kings
24 giveaway?

25 A. He told me that his wife was going to

1 coordinate the gift giving in Hartford by phone.

2 Q. Did he tell you who else was involved in
3 the execution of the giveaway?

4 A. No. Other members of his organization.
5 I don't know them by name. He never told me.

6 Q. Did he tell you how many members of his
7 organization were to come to Hartford for the
8 giveaway?

9 A. As I recall, it was two or three people.

10 Q. In the conversation that you had with
11 Juan Segarra after the Three Kings giveaway, did
12 he tell you that the other members of his group
13 expressed their displeasure with him over this in
14 any way?

15 A. Well, he told me that other members of
16 his group didn't approve of the fact that he had
17 made some sort of statement to the press about the
18 fact that his organization was responsible for the
19 gift giving.

20 Q. What sort of statements to the press had
21 been made?

22 MR. ACEVEDO: If she knows, your
23 Honor.

24 THE WITNESS: Pardon, I didn't hear
25 you.

1 THE COURT: If she knows.

2 BY MR. BOYLE:

3 Q. If you know, Ms. Gassin, what sort of
4 statements to the press had Juan Segarra made?

5 MR. BERGENN: To be fair, we should
6 ask her what kind of disclosures or statements to
7 the press he said he made, unless she was there or
8 has knowledge.

9 MR. BOYLE: If there's an objection,
10 it ought to be in the form of objection rather
11 than advice to the witness.

12 THE COURT: I think the question
13 surrounds that. What did he tell her.

14 MR. BERGENN: That's correct.

15 THE COURT: That's in the question.

16 BY MR. BOYLE:

17 Q. Would you please answer that, Ms. Gassin?

18 A. Again, all I know is that he informed the
19 press that his group was responsible for the gift
20 giving.

21 Q. Sometime after you had this conversation
22 concerning the Three Kings giveaway, did you meet
23 Juan Segarra in Mexico?

24 A. Yes, I did.

25 Q. Would you tell us how that came about,

1 please?

2 A. He asked me to fly down to Mexico to meet
3 him in February of 1985.

4 THE COURT: Where in Mexico?

5 THE WITNESS: I flew to Mexico City.

6 BY MR. BOYLE:

7 Q. Did you fly there to meet him?

8 A. Yes.

9 Q. Did he ask you to bring anything with you
10 when you went to Mexico?

11 A. Yes, he did.

12 Q. What did he ask you to bring?

13 A. He asked me to bring a pack of the
14 five-dollar bills that I had in my footlocker.

15 Q. Did he tell you why he wanted you to
16 bring a pack of five-dollar bills?

17 A. Well, he told me either at that time or
18 later that the five-dollar bills could not be used
19 in the States because they could be traced. So,
20 he wanted to use them in Mexico.

21 Q. When you were in Mexico, did Juan Segarra
22 tell you anything about the status of his group?

23 A. Yes. He told me that he had been pushed
24 out of the group.

25 Q. Did he tell you why?

1 A. Well, the words that come to mind which
2 were his words, were that the group felt that he
3 was too much of an independent producer.

4 Q. Did he --

5 MR. WEINGLASS: Could we take a
6 break with that comment? May we have the
7 afternoon recess?

8 THE COURT: Counselor?

9 MR. WEINGLASS: It's 3:00 o'clock,
10 your Honor.

11 THE COURT: Yes. Usually at 3:00
12 o'clock, sometimes I forget and I'm always reminded.
13 The jury is excused for five minutes.

14 (Whereupon, the jury was excused.)

15 THE COURT: The witness is excused
16 for five minutes.

17 (Whereupon, the witness was excused,
18 and a recess was taken from 3:02 o'clock p.m. to
19 3:12 o'clock p.m.)

20 Call the jury please.

21 MS. BACKIEL: I will not argue until
22 4:30. I didn't have a chance to leave the
23 courtroom and find the cases before the witness
24 made the identification.

25 I have cases and I will argue these

1 cases in support for a motion for mistrial.

2 I believe the identification was a
3 violation of due process.

4 THE COURT: I think I found one case
5 during the recess that stands the other way.

6 MR. WEINGLASS: Before we call the
7 jury, there's a question. Mr. Boyle was good
8 enough to bring it up with me. I think the
9 Government is about to play some tapes.

10 MR. BOYLE: We will be playing tapes
11 before the end of the day, your Honor. That's why
12 I brought this up.

13 MR. WEINGLASS: I see Agent
14 Rodriguez assuming his position in front of the
15 recorder.

16 I believe the Government might
17 attempt to put some transcripts before the jury.

18 THE COURT: There is no Spanish
19 transcript, is there?

20 MR. WEINGLASS: This is in English
21 and these are telephone calls and they're very
22 clear. They're very audible and only English is
23 spoken. My understanding is the evidence is the
24 tape, the sound. The jury will have no difficulty
25 in hearing and receiving this evidence.

1 It's further my understanding that
2 the only time a transcript becomes necessary as an
3 "aid" to the jury is when the language spoken on
4 the tape is not understandable. So, the jury may
5 resort to the aid of a transcript.

6 That isn't the situation that we
7 have here. We object to the jury being given the
8 transcript. It would amount to a double form of
9 the same evidence. It would be as if they wrote
10 out part of Anne Gassin's testimony and
11 distributed it to the jury to assist the jury in
12 understanding her oral testimony.

13 So, I don't believe it qualifies as
14 an aid and I believe it's a double hit on the same
15 evidence which is not permissible, particularly if
16 you go from oral testimony or oral evidence to
17 written.

18 THE COURT: Is it going to be
19 simultaneous?

20 MR. DANAHER: Yes, your Honor.

21 THE COURT: The written and the oral?

22 MR. DANAHER: Yes, your Honor.

23 MR. WEINGLASS: Your Honor, it's a
24 double play of the evidence to emphasize its
25 importance.

1 THE COURT: You have the sensitivity
2 of the word and seeing it at the same time.

3 MR. WEINGLASS: All psychology
4 teaches us that if a person is exposed to hearing
5 something and reading it at the same time, it's a
6 double impact. That's why I understand it's not
7 permitted.

8 THE COURT: There's no rule of law
9 to that effect that I know of, counselor. You
10 made the point and the objection is overruled.

11 MR. DANAHER: Your Honor, just to be
12 clear as to what the Government's position is on
13 this, I know the Court has ruled, I think --

14 THE COURT: Unless you want to
15 convince me otherwise.

16 MR. DANAHER: I don't. To complete
17 the cycle, it is appropriate under the law in the
18 Second Circuit when an aid is used of this type
19 and it is appropriate --

20 THE COURT: The jury would be told.
21 The tape is the evidence and the typewritten copy
22 is only an aid, and if there's any difference or
23 distinction between the two, they shall be
24 governed by the tape and not by the typewritten
25 copy.

1 MR. DANAHER: That would be fine.
2 The Government had proposed an instruction.
3 Copies were given to the Defendants. It's along
4 the lines what your Honor just stated. I can give
5 it to the Court.

6 THE COURT: If you think yours is
7 better than what I just stated. Other than that,
8 I think I stated it in the nutshell.

9 MR. DANAHER: Different but not
10 better, your Honor.

11 MR. ACEVEDO: I don't have any
12 objection to the Court's instruction expressed for
13 the record. I have objection to the Government's
14 typed, proposed instruction.

15 THE COURT: I'll give my
16 instructions without having read the Government's.

17 MS. BACKIEL: I would request an
18 opportunity before the end of the day to voir dire
19 the witness about anything that might have
20 occurred over the lunch break that encouraged her
21 to make the identification. I would like to do
22 that before her memory fades.

23 THE COURT: You will have the
24 opportunity at cross-examination.

25 MS. BACKIEL: I just requested that

1 I be able to do that today because I'm not sure
2 that we're going to get to my cross-examination
3 today.

4 THE COURT: Well, if you don't get
5 to it today, I trust you'll get to it in the
6 morning and it will be orderly.

7 MS. BACKIEL: I'm sure it will be.

8 THE COURT: You'll have all the time
9 you want to ask her about it.

10 MS. BACKIEL: I wanted to voir dire
11 her out of the presence of the jury today while
12 the facts are fresh in everyone's mind.

13 THE COURT: We won't interrupt the
14 direct offering at this time. You may have that
15 opportunity on cross-examination at great length.

16 MS. BACKIEL: Thank you.

17 THE COURT: Proceed.

18 Call the jury.

19 (Whereupon, the jury entered the
20 courtroom.)

21 THE COURT: Mr. Clerk, I just
22 thought of something about the weather for
23 tomorrow, before I forget it. I hope it will be
24 good.

25 Do you have an understanding if the

1 weather is bad tomorrow? I hope it won't be, but
2 if it is, and so bad that it's not safe and proper
3 for the jury to drive in here, you will adequately
4 notify them?

5 MR. IAVARONE: I get the phone call
6 and I call them.

7 THE COURT: All right. So long as
8 they have that understanding. Very good. Call
9 the witness, please.

10 MR. BOYLE: Your Honor, may the last
11 question and answer be reread?

12 THE COURT: Yes.

13 (Whereupon, the Court Reporter read
14 back the last few questions and answers.)

15 BY MR. BOYLE:

16 Q.. Ms. Gassin, in that discussion did you
17 talk about the ramifications to Mr. Segarra about
18 being pushed out of his group?

19 A. Yes. He needed to find another way of
20 making a living because he explained to me he had
21 been receiving a salary as being a member of the
22 organization and so he needed to find this type of
23 work.

24 Q.. How long did you remain in Mexico?

25 A. Two to three days.

1 Q. Did you return to Cambridge from there?

2 A. Yes, I did.

3 Q. When was the next time that you saw Juan
4 Segarra?

5 A. Well, he later came back to Cambridge
6 from Mexico in February.

7 Q. How often did he visit you during the
8 spring of 1985?

9 A. He came back to Boston at the end of
10 April and stayed for two weeks, went back to
11 Puerto Rico and then came back for the last time
12 on the 20th or the 21st of June.

13 THE COURT: I missed that last part.

14 THE WITNESS: He came back on the 20th
15 or 21st of June.

16 BY MR. BOYLE:

17 Q. During any of his visits to Cambridge in
18 that period, did you go with him to any banks?

19 A. Well, I had gone with him prior to that
20 time and, again, I don't remember exactly the
21 months, but I would say in the fall of '84. In
22 the spring of '84, I don't remember precisely
23 going with him, but I did put money in my account
24 for him.

25 Q. When you went with him to banks, did he

1 take any of the money that had been stored under
2 your bed?

3 A. Yes.

4 Q. What was I doing with it?

5 A. He was exchanging it, exchanging the
6 small bills into larger bills.

7 Q. During the spring of 1985, did he ask you
8 to do that same sort of thing for him?

9 A. Yes.

10 Q. Did you do that?

11 A. I put money in my account for him.

12 Q. What did you do with the money after it
13 was credited to your account?

14 THE COURT: She put money in her
15 account for him. Where did she get the money to
16 put into her account for him?

17 A. I took the money out of the footlocker
18 that was under my bed.

19 BY MR. BOYLE:

20 Q. What did you do with the money after it
21 was credited to your account?

22 A. It stayed in my account.

23 Q. Did you ever turn money over to him?

24 A. I withdrew some money from him on one
25 occasion in the spring of 1985 that I remember,

1 yes.

2 Q. Ms. Gassin, you testified about Juan
3 Segarra-Palmer. For the ladies and gentlemen of
4 the jury, would you point him out in the courtroom
5 today?

6 A. Yes, he's sitting in the table on the
7 right next to Mr. Weinglass.

8 MR. BOYLE: Your Honor, may the
9 record reflect the witness has identified the
10 Defendant, Juan Segarra-Palmer?

11 THE COURT: Without objection, it
12 may so be disclosed on the record.

13 BY MR. BOYLE:

14 Q. Ms. Gassin, earlier in response to my
15 questions, you identified the person whom you
16 believe to be the man who came from Puerto Rico;
17 is that correct?

18 A. That's right.

19 Q. Earlier today, outside the presence of
20 the jury, were you asked to do the same thing?

21 A. Yes.

22 Q. Were you able to pick him out at that
23 time?

24 A. No.

25 Q. What happened between then and 20 minutes

1 ago that enabled you to pick him out?

2 A. Well, I would say the first thing is time.
3 I was asked to identify him as I had just
4 practically entered the courtroom. I walked off
5 the stand. I was nervous. It was difficult for
6 me to calmly identify that individual. Also, this
7 individual has changed since I last had seen him.
8 He doesn't have any beard anymore.

9 Q. When you were asked to pick him out this
10 morning --

11 MR. WEINGLASS: Your Honor, I think
12 the witness was inadvertently interrupted by
13 counsel.

14 MR. BOYLE: I'm sorry.

15 BY MR. BOYLE:

16 Q. Did you have anything more to add to that?

17 A. I was going to add, too, that he's
18 heavier now than when I met him.

19 Q. When you were asked to identify him when
20 you first walked in here this morning, was he also
21 seated back in that fourth row, as he was this
22 afternoon?

23 A. Well, I noticed him sitting in that area
24 later on in the morning. Whether he was sitting
25 right there when I stepped off the stand to

1 identify him, I don't know.

2 Q. At my request, did you listen to certain
3 tape recordings before you came into court here
4 today?

5 A. Yes, I've listened to tape recordings,
6 uh-huh.

7 Q. Do you recall how many tapes you listened
8 to?

9 A. I think four or five.

10 Q. Did you recognize the voices that you
11 heard on those tapes?

12 A.. Yes.

13 Q.. Tell us, please, whose voices you heard?

14 A. My voice and Papo's.

15 Q. Did you review a tape on which you did
16 not hear your voice?

17 A. Yes.

18 Q. Do you recall now, as you sit here today,
19 what number that was?

20 A. No.

21 Q. Do you know if you recall if you knew the
22 voice of the other person with whom Juan Segarra
23 was speaking on that tape?

24 A. No.

25 Q. The tapes on which you heard both your

1 voice and Juan Segarra's, did you also review some
2 transcripts that I had provided to you of portions
3 of those conversations?

4 A. Yes, I did.

5 Q. On those transcripts were the voices of
6 you and Juan Segarra identified with your initials?

7 A. I'm sorry. I didn't understand the
8 question.

9 Q. On those transcripts was your voice and
10 Juan Segarra's voice identified, statement by
11 statement, with your initials?

12 A. With my initials and then his initials?

13 Q. Yes.

14 A. Yes.

15 Q. Did you have any dispute with the
16 attribution of names to those voices?

17 A. No.

18 Q. Did you also listen to the tapes to
19 determine the accuracy of the transcripts?

20 A. Yes, I did.

21 Q. Did you have any disputes with the
22 accuracy of the transcripts?

23 A. No, I didn't. I made some minor
24 corrections which were just a phrase that I picked
25 up that a person hadn't picked up.

1 Q. Did you note those corrections on the
2 transcript, as I asked?

3 A. Yes.

4 MR. BOYLE: At this point we propose
5 to play tape 6 and distribute to the jury a
6 transcript of that conversation.

7 I ask now that the voice attribution
8 has been made, that tape 6 be admitted in full.

9 THE COURT: It may be made a full
10 exhibit.

11 (Government's Exhibit 437-A:
12 Received in evidence.)

13 THE COURT: I think I should mention
14 to the jury in this instance the offering is tape
15 6, which is the English language. This will,
16 however, be accompanied by the playing of the tape
17 of a typewritten copy of the alleged content, same
18 as you always have been accustomed to on the
19 Spanish tape.

20 I would simply caution you and
21 direct you if -- and I repeat -- if there is any
22 difference between what you hear on the tape and
23 what you see on the printed word in the exhibit,
24 which each of you will have with you, the evidence
25 is the tape.

1 That is primary. The copy is only
2 provided to you as an aid or an assistance in
3 following the tape as we proceed.

4 Proceed, counselor.

5 MR. BOYLE: I'll ask the Clerk to
6 assist with distributing the transcripts.

7 THE COURT: Does the witness need
8 one?

9 MR. BOYLE: I'm about to present the
10 witness with the Government Exhibit 437-A.

11 BY MR. BOYLE:

12 Q. Ms. Gassin, does that appear to be the
13 transcript while you were reviewing tape 6,
14 conversation 1?

15 A. Yes.

16 Q. Did you make any corrections on that
17 transcript, Ms. Gassin?

18 A. I don't think so.

19 MR. BOYLE: We'll play that tape.

20 THE COURT: Is this on a small tape
21 recorder or a larger one?

22 MR. BOYLE: On the reel-to-reel
23 machine, your Honor.

24 THE COURT: Have we hit upon that
25 first line yet?

1 MR. RODRIQUEZ: Yes, your Honor.

2 THE COURT: Would you do that once
3 more?

4 (Whereupon, a tape was played.)

5 BY MR. BOYLE:

6 Q. Ms. Gassin, what trailer was being
7 discussed in that conversation?

8 A. The mobile home that was taken down to
9 Mexico.

10 Q. This conversation was recorded when?

11 A. In March. March 13th.

12 Q. Of 1985?

13 A. Nineteen eighty-five.

14 Q. What is it that Juan Segarra wanted to do
15 with the trailer in March 1985?

16 A. He was trying to sell it.

17 Q. Did he ever tell you why he was trying to
18 sell it?

19 A. Well, because after he had been pushed
20 out of the organization there's other individuals
21 who had formed a group together and they had set
22 up some kind of a printing shop or printing press.
23 People, he told me, mortgaged their homes to put
24 that press together and they needed the money from
25 the selling of the mobile home.

1 Q. Now, where were you when this
2 conversation was taking place?

3 A. At my house.

4 Q. You were not aware at that time that that
5 conversation was being recorded; were you?

6 A. No, I wasn't aware.

7 Q. Do you know where Juan Segarra was as you
8 were having this conversation?

9 A. In Puerto Rico.

10 Q. Do you know specifically where he was
11 calling from in Puerto Rico?

12 A. No, I don't.

13 Q. Did you have frequent telephone
14 conversations with him throughout 1984 and 1985?

15 A. Yes, I did.

16 Q. Did you have any particular pattern by
17 which you actually made these telephone calls?

18 A. Yeah. He would call and he would call
19 asking to speak with Teresa and leave a number,
20 which I could then decode to get the number where
21 he was really at and call him back.

22 Q.. Who was Teresa?

23 A. Teresa was me.

24 Q. Why were you Teresa?

25 A. I imagine it was so as not to give my

1 name on the phone.

2 Q. When you say you decoded the number,
3 please tell us how that came about.

4 A. It was in order to get the phone number
5 where he was actually calling from. I think I had
6 to subtract one from each number to get the number
7 where he was usually at.

8 Q. Did he usually call you from the same
9 phone?

10 A. He often did.

11 Q. Do you know where that phone was?

12 A. No.

13 Q. Do you know if it was in his own
14 residence?

15 A. No. It was a pay phone, but I don't know
16 where it was.

17 Q. In the times that you and he were
18 together, did you see him use a pay phone?

19 A. Yes.

20 Q. Did he do that with any regularity?

21 A. Yes, he used pay phones a lot.

22 Q. Did you ever have a conversation about
23 why?

24 A. Well, he explained to me that it was
25 better to use pay phones because that way there

1 would be no way of having calls and conversations
2 taped or traced.

3 THE COURT: What was this decoding
4 business? How did that work?

5 THE WITNESS: Well, he would give me
6 a phone number and then I would -- he would say
7 leave a message for Teresa to call back at a
8 certain number and in order not to give the number
9 where he was actually at, he would give me this
10 coded number and I would subtract one and get the
11 number where he was at.

12 THE COURT: How do you know how many
13 numbers to subtract to get the right number?

14 THE WITNESS: He told me beforehand
15 what that was. He told me what the decoding was;
16 how to do it.

17 THE COURT: How does it work? It
18 sounds interesting. You take out one number, two
19 or three? How does it work?

20 THE WITNESS: I think it was one
21 number.

22 THE COURT: One number?

23 THE WITNESS: Yes.

24 THE COURT: All right.

25 BY MR. BOYLE:

1 Q. Showing you Government Exhibit 437-B for
2 Identification, do you recognize that, Ms. Gassin?

3 A. Yes, I do.

4 Q. Can you tell us what it is, please?

5 A. It's a transcript of a conversation that
6 I had with Papo.

7 Q. Is that also on tape number 6?

8 A. Yes.

9 Q. Is that labeled tape number 6,
10 conversation 2?

11 A. That's right.

12 Q. Did you make any changes on that
13 transcript, Ms. Gassin?

14 A. Yes, I did.

15 Q. Would you tell us, please, specifically
16 where you made changes?

17 A. Well, on page 1 the unintelligible is, in
18 fact, Papo saying, "I know."

19 Q. Is that next to the JSP attribution in
20 the middle of the page?

21 A. That's right. Then at the bottom --

22 THE COURT: What change did you make
23 there to that UI?

24 THE WITNESS: He says, "I know." At
25 the bottom of the page the word, "now," is, in

1 fact, not, n-o-t.

2 BY MR. BOYLE:

3 Q. Is this the next to last word on the
4 entire page?

5 A. That's right. It's really hard because
6 it's not.

7 Q. Continue, please.

8 A. On page 2 it's Papo's conversation. It's
9 the next to the last one. I'll describe it. The
10 word is, instead of, "them."

11 Q. This is the first line attributed to Juan
12 Segarra, next to last statement he makes on page 2?

13 A. That's right.

14 Q. Any other changes?

15 A. Yes. At the bottom of the page he says,
16 "It's not to reinvest," rather than, "reinvest."

17 There's nothing on page 3 or 4 or 5. On
18 page 6 the third line he says, "Yes," instead of,
19 "Yeah."

20 Q. This would be the second attribution to
21 Juan Segarra from the top of the page?

22 A. Yes. Then about mid page Papo says,
23 "I don't know. We're talking about a month is my
24 guess, but I guess that's really not much time for,"
25 it should be "you" instead of, "your." That's all.

1 MR. BOYLE: If we may now play that
2 conversation, your Honor.

3 (Pause.)

4 MR. BOYLE: Your Honor, I hope the
5 record is clear on this. I asked that tape 6 be
6 moved in full. I believe it was. If it wasn't, I
7 ask that the record now reflect that.

8 THE COURT: This is conversation 2.
9 The first one was conversation 1 on tape 6.

10 MR. BOYLE: Yes, your Honor.

11 THE COURT: I think that was
12 understood. That's where I first was accustomed
13 to having the Spanish on one side and the English
14 on the other. So, I started along the right. I
15 started reading the English and I found out the
16 other was English.

17 That's when I went back and that's
18 what caused me to miss the first line. It's very
19 clear now.

20 (Whereupon, a tape was played.)

21 BY MR. BOYLE:

22 Q.. Ms. Gassin, before we resume playing that
23 tape, when you were talking about the money thing
24 in the bank, what were you referring to?

25 A. That was the fact that I was supposed to

1 put in the bank the money that was left inside my
2 footlocker. So, I was saying it was going to take
3 a long time?

4 Q. Ms. Gassin, what money were you talking
5 about with Juan Segarra in that conversation?

6 A. The money that was in my footlocker.

7 Q. Did you also listen at my request to tape
8 number 17?

9 A. I don't remember the number. I'd have to
10 see the transcript.

11 (Government's Exhibits 436-A and
12 436-B: Marked for identification.)

13 BY MR. BOYLE:

14 Q. Showing you Government's 436-A and 436-B
15 for Identification; do you recognize those?

16 A. Yes, I do.

17 Q. Could you tell us what they are, please?

18 A. They're conversations between Papo and I
19 on March 24, 1985.

20 Q. Are those the transcriptions of those
21 conversations?

22 A. Yes.

23 Q.. Ms. Gassin, does that refresh your
24 recollection as to whether you listened to tape 17
25 at my request?

1 A. Yes.

2 Q. Did you listen to that tape specifically
3 to identify the voices that appear on it?

4 A. Yes.

5 Q. What voices appear on that tape?

6 A. My voice and Papo's voice.

7 MR. BOYLE: Your Honor, I move tape
8 17 as a full exhibit.

9 (Government's Exhibit 436: Received
10 in evidence.)

11 THE COURT: There are two
12 conversations here, the one on the left and the
13 one on the right.

14 MR. BOYLE: Yes, your Honor.

15 BY MR. BOYLE:

16 Q. Ms. Gassin, at my request, did you review
17 tape 17, conversation 1, for the content of the
18 transcriptions and its accuracy?

19 A. Yes.

20 Q. Did you make any changes after reviewing
21 the tape?

22 A. I don't remember. I'd have to see the
23 original.

24 Q. Do you recognize any from what you see in
25 front of you?

1 THE COURT: Do you have the original,
2 counselor?

3 MR. BOYLE: I believe that's it.

4 THE WITNESS: So, there are no
5 corrections.

6 MR. BOYLE: If we may play tape 17,
7 conversation 1, your Honor.

8 (Whereupon, a tape was played.)

9 BY MR. BOYLE:

10 Q. Ms. Gassin, when you were having that
11 conversation and you talked about spending time
12 counting, what were you counting?

13 A. The money I had in my footlocker.

14 Q. The 500 ones that you discussed, where
15 did they come from?

16 A. The same place; footlocker.

17 THE COURT: Did you ask him where
18 this money came from in the footlocker?

19 THE WITNESS: I don't remember if I
20 specifically asked him. It was clear that --

21 MR. WEINGLASS: Objection. Question
22 was answered. "I don't know if I specifically
23 asked him." What is clear is an assumption on the
24 mind of the witness.

25 THE COURT: Did he tell you without

1 your asking him?

2 THE WITNESS: Your Honor, I knew
3 that he participated in --

4 MR. WEINGLASS: Objection, your
5 Honor. This is the opinion of the witness based
6 on assumption. We've had screenplays,
7 assumptions, inferences.

8 The Court asked a straightforward
9 question. "Did he tell you?" That could get the
10 straightforward answer.

11 MR. BOYLE: We've had nothing in the
12 way of assumptions. Every time the witness
13 mentioned that word, there was an objection. The
14 question was rephrased and she answered from
15 conversations she has heard. There was no
16 assumption.

17 THE COURT: This question is simple.
18 Did he ever tell you where the money came from?

19 THE WITNESS: I have to answer yes.

20 THE COURT: What?

21 THE WITNESS: Yes.

22 THE COURT: What did he tell you?

23 MR. ACEVEDO: Could we have some
24 foundation, your Honor, when? Time frame?

25 THE COURT: We'll see what he told

1 her and you can ask when.

2 THE WITNESS: The money came into my
3 house and was put in the footlocker the end of
4 September of '84, which was after the trip to
5 Mexico: The purpose of which was to bring money
6 down to Mexico which was from the robbery.

7 THE COURT: Did he tell you this?

8 THE WITNESS: Your Honor, he had
9 told me about -- he had told me about the robbery.
10 He hadn't told me about any other robbery that he
11 had participated in. That's the best answer that
12 I can give.

13 THE COURT: All right.

14 MR. WEINGLASS: Your Honor, I ask
15 that be stricken. I don't believe that's
16 responsive to the question.

17 THE COURT: The answer will stand as
18 it is. The jury will weigh it and make their own
19 conclusions. Proceed.

20 BY MR. BOYLE:

21 Q.. Ms. Gassin, would you turn your attention,
22 please, to the transcript for tape number 17,
23 conversation 2? Did you review that transcript to
24 verify its accuracy against the tape at my request?

25 A. Yes, I did.

1 Q. Did you make any corrections there?

2 A. Yes, I did.

3 Q. Would you tell us what corrections you
4 made, please?

5 A. On the first page, eight lines down, the
6 statement from Papo. It should be, "Her coming
7 down," instead of, "Her coming back."

8 Q. Anything else on that transcript?

9 A. No.

10 MR. BOYLE: If we may play tape 17,
11 conversation 2, your Honor.

12 (Whereupon, a tape was played.)

13 BY MR. BOYLE:

14 Q.. Ms. Gassin, did you know who Wanda was?

15 A. Yes, that was Papo's daughter who lives
16 in New York.

17 (Whereupon, a tape was played.)

18 BY MR. BOYLE:

19 Q.. Ms. Gassin, in that conversation when
20 Juan Segarra is referring to a man for whom he
21 feels sorry; do you know who that man was?

22 A. Someone in the organization who pushed to
23 get him out.

24 Q. Did you also listen to tape number 38 at
25 my request?

1 A. Again, I'd have to see the transcript. I
2 don't remember the number.

3 (Government's Exhibit 438: Marked
4 for identification.)

5 BY MR. BOYLE:

6 Q. I show the witness Government Exhibit
7 438-A for identification.

8 (Government's Exhibit 438-A: Marked
9 for identification.)

10 BY MR. BOYLE:

11 Q. Do you recognize that, Ms. Gassin?

12 A. Yes, I do.

13 Q. Can you tell us what it is, please?

14 A. It's a conversation between me and Papo.

15 Q. Does that refresh your recollection as to
16 whether you listened to tape 38 at my request?

17 A. Yes.

18 Q. Did you identify the voices that appear
19 on that tape?

20 A. Yes.

21 Q. Whose voices did you hear?

22 A. Papo's and mine.

23 MR. BOYLE: I move tape 38,
24 Government's 438, as a full exhibit.

25 THE COURT: Full exhibit

1 (Government's Exhibit 438: Received
2 in evidence.)

3 (Whereupon, a tape was played.)

4 BY MR. BOYLE:

5 Q. Ms. Gassin, as of that date, April 14,
6 1985, what had you done at Juan Segarra's request?

7 A. Well, I had considered going on the first
8 trip down to Mexico and I had put money in my
9 account.

10 THE COURT: Put money in your
11 account from where; your own account or the
12 locker?

13 THE WITNESS: I took money out of
14 the locker and put it into my account.

15 THE COURT: The last sentence isn't
16 clear to me. Do you know what he's referring to,
17 "It's not our fault for not letting you know."

18 THE WITNESS: Letting me know that
19 they are grateful.

20 THE COURT: All right.

21 BY MR. BOYLE:

22 Q. At my request, did you review tape 50?

23 A. Again, I have to see the transcript.

24 (Government's Exhibit 439: Marked
25 for identification.)

1 MR. BOYLE: Your Honor, tape 50 has
2 been marked for identification as Government
3 Exhibit 439. I'll show the witness 439-A for
4 Identification.

5 (Government's Exhibit 439-A: Marked
6 for identification.)

7 BY MR. BOYLE:

8 Q. Do you recognize that, Ms. Gassin?

9 A. Yes.

10 Q. Is that a transcript that you looked at
11 while reviewing tape 50?

12 A. Yes.

13 Q. At my request did you listen to tape 50
14 for the purpose of determining whose voices appear
15 on the tape?

16 A. Yes.

17 Q. Whose voices did you hear?

18 A. My voice and Papo's voice.

19 MR. BOYLE: Your Honor, I move
20 Government exhibit tape 50 into identification.

21 THE COURT: Full exhibit.

22 (Government's Exhibit 440: Marked
23 for identification.)

24 BY MR. BOYLE:

25 Q. Did you review this transcript for the

1 accuracy of the words that appear on that portion
2 of the tape?

3 A. Yes.

4 Q. Did you make any corrections to the
5 transcript, Ms. Gassin?

6 A. No, I didn't.

7 (Whereupon, a tape was played.)

8 BY MR. BOYLE:

9 Q. Ms. Gassin, where were you when this
10 conversation transpired?

11 A. I was calling from work, as I remember.

12 Q. You were calling from your work in
13 Cambridge?

14 A. I worked in Boston at the time.

15 Q. Where was Juan Segarra?

16 A. At my house.

17 Q. Do you know what he was counting?

18 A. He was counting the money that was in the
19 footlocker.

20 THE COURT: How much was in there
21 then; if you know?

22 THE WITNESS: I don't know.

23 BY MR. BOYLE:

24 Q. Ms. Gassin, if you recall, did you listen
25 to two conversations on tape 54?

1 A. I'd have to see the transcript.

2 (Government's Exhibit 441: Marked
3 for identification.)

4 MR. BOYLE: Your Honor, tape 54 has
5 been marked previously as Government 441 for
6 Identification. I'm now going to show the witness
7 Government Exhibit 441-A and 441-B for
8 Identification.

9 (Government's Exhibits 441-A and
10 441-B: Marked for identification.)

11 BY MR. BOYLE:

12 Q. I ask you, Ms. Gassin, if you recognize
13 those?

14 A. Yes, I do.

15 Q. What is 441-A for Identification?

16 A. It's a conversation between me and Papo.

17 Q. Does that refresh your recollection as to
18 whether you listened to that tape?

19 A. Yes, I listened to that tape.

20 Q. Did you compare it to the transcript that
21 you're now that you're now holding?

22 A. Yes.

23 Q. Did you recognize the voices that appear
24 on that tape?

25 A. Yes.

1 Q. What voices did you hear?

2 A. Mine and Papo's.

3 MR. BOYLE: Your Honor, I move tape
4 54, Government 441 as a full exhibit.

5 THE COURT: Motion granted.

6 (Government's Exhibit 441: Received
7 in evidence.)

8 BY MR. BOYLE:

9 Q. Ms. Gassin, directing your attention to
10 Government 441 A for identification, which you
11 told us is a transcript of conversation 1 of tape
12 54, did you also review that transcript for the
13 accuracy of the transcription?

14 A. Yes, I did.

15 Q. After reviewing the tape, did you make
16 any changes in the transcript?

17 A. Yes, on page 2.

18 Q. What change did you make there?

19 A. For flying down and Papo says, "And see
20 what we could work out."

21 Q. That's a typographical mistake that you
22 corrected?

23 A. Yes.

24 MR. BOYLE: If we may, your Honor,
25 we'd now like to play tape 54, conversation 1.

1 (Whereupon, a tape was played.)

2 BY MR. BOYLE:

3 Q. Ms. Gassin, at the bottom of page 1, did
4 you also make a change in the transcription of the
5 words that Juan Segarra spoke to you?

6 A. Yes. There was just, I think, a
7 typographical error. It's "got it" on the next to
8 the last line instead of, "Going to."

9 MR. BOYLE: Thank you.

10 (Whereupon, a tape was played.)

11 BY MR. BOYLE:

12 Q. Ms. Gassin, what was the trailer Juan
13 Segarra was referring to in that conversation?

14 A. It was the mobile home that went down to
15 Mexico.

16 Q. Where were you when this conversation
17 occurred?

18 A. I was at home.

19 Q. Where was Juan Segarra?

20 A. He was calling me from the Northampton
21 area.

22 Q. Directing your attention to Government
23 Exhibit 441-B for identification, which I believe
24 you also have in front of you, did you review that
25 transcript to determine its accuracy?

1 A. Yes, I did.

2 Q. After reviewing the transcript and the
3 tape did you make any changes to the transcript?

4 A. Yes, on the last page.

5 Q. That's page 4?

6 A. Page 4, yes.

7 Q. What change did you make?

8 A. I say it's about midway. "Whatever
9 happens is settled," instead of, "Got settled."

10 MR. BOYLE: If we may play
11 conversation 2, your Honor.

12 THE COURT: All right.

13 (Whereupon, a tape was played.)

14 MR. BOYLE: It's now 4:30, your
15 Honor.

16 THE COURT: I had a question, but
17 I'll save it until tomorrow. All right, ladies
18 and gentlemen of the jury, we're going to adjourn
19 now until tomorrow morning.

20 As I said many times before, do not read
21 about this case or permit anyone to discuss it
22 with you or discuss it with anyone else yourself.

23 Please refrain from listening to any
24 radio or television broadcast, should there be any,
25 so when you return tomorrow, you can truthfully

1 respond that you followed the Court's instructions.

2 With that reminder and the fact that the
3 Clerk has been reminded although I hope the
4 weather will be beautiful again tomorrow, in the
5 event it should be a bad storm, he's been alerted
6 to alert you and try to make a proper judgment. I
7 thank you, ladies and gentlemen.

8 (Whereupon, the jury was excused.)

9 THE COURT: Don't get concerned
10 about the weather. When I was Chief Judge, we
11 only cancelled court once in eight years. So,
12 don't anticipate. The weather will have to be
13 pretty bad.

14 Is there anything else we can discuss at
15 4:30 at this time?

16 MS. BACKIEL: At this point I would
17 like to make or renew a motion for mistrial in
18 connection with the in-court identification by the
19 witness. I've been in court all day and have had
20 assistance in identifications of several cases
21 which support the proposition that -- well, the
22 cases basically deal with not a failure to
23 identify, but a tentative identification which
24 becomes more positive as the result of repeated
25 exposure to photographs or to the Defendant in

1 person.

2 The Court indicated that it found the
3 case that it believes supported the proposition
4 that a witness, after a failure, could be
5 permitted to testify following a photographic
6 identification.

7 I'm not sure, but I suspect that the
8 Court is referring to United States versus
9 Harrington, which was a case which this Court
10 decided in which the Second Circuit, upheld in
11 1973.

12 THE COURT: Second Circuit didn't
13 uphold it, counselor. Second Circuit reversed it.
14 Two to one decision, but the man who wrote the
15 dissent was Henry Friendly, and I thought he gave
16 a lot better reason in his dissent than the
17 majority gave and I have great respect for him.

18 MS. BACKIEL: I stand corrected.
19 The issue in that case was not the permissibility
20 of allowing a witness to identify after reviewing
21 a photo array following a failure to identify.

22 The issue in that case was the
23 permissibility of introducing the mug shots and
24 permitting the witness to testify about the
25 photographic identification.

1 THE COURT: The other issue wasn't
2 ruled upon, although it was there if they thought
3 it appropriate. At least it didn't become an
4 issue.

5 MS. BACKIEL: That's correct.

6 THE COURT: I don't remember who was
7 the majority in the decision. Who wrote that
8 opinion?

9 MS. BACKIEL: I haven't had a chance
10 to look at it.

11 THE COURT: I liked Henry Friendly's
12 dissent.

13 MS. BACKIEL: I assumed what the
14 prosecution would do in this case was try to
15 rehabilitate the failure to identify with a
16 previous out of court photographic line-up
17 identification process.

18 THE COURT: That's what they did.

19 MS. BACKIEL: That is not.

20 THE COURT: It was a question of
21 putting tape on the -- I'm not saying your case.

22 The case of Harrington.

23 MS. BACKIEL: That was the case in
24 Harrington. The issue in Harrington was not the
25 propriety of the identification process.

1 THE COURT: I understand.

2 MS. BACKIEL: Whether it was a
3 violation of due process to permit these mug shots
4 to go into evidence.

5 THE COURT: Even though they were
6 taped over.

7 MS. BACKIEL: That's not by any
8 means the issue in this case.

9 The issue here is we had a complete
10 and total failure to identify in court. The
11 witness spent about five minutes this morning
12 walking around and looking at every person in the
13 courtroom and returned to the witness stand and
14 testified that she did not see anyone who
15 resembled the person whom she had met in 1984.

16 Subsequent to that, because I knew
17 that there had been a photographic array and
18 because I knew that the witness had made some
19 identification there and because I believe that
20 that array was impermissibly and unnecessarily
21 suggested, I moved to preclude her in-court
22 testimony about the photographic identification
23 she had previously made and a brief hearing was
24 held on that issue.

25 During that hearing it was revealed

1 that of the nine photographs shown to the witness
2 earlier, only one of them depicted a balding,
3 Puerto Rican male. The two most outstanding
4 characteristics described by the witness of the
5 person who she had met. I then argued that that
6 out of court photographic identification should
7 not be permitted to go to the jury either and the
8 Court overruled me.

9 Obviously, during the hearing that was
10 held on the impermissibility of the out of court
11 photographic identification, the photograph of the
12 Defendant, Antonio Camacho-Negron, was before the
13 witness.

14 Her attention was called to that
15 photograph. She was asked if she could pick out
16 that photograph previously. She was asked if she
17 signed that photograph. For a period of not
18 counting the lunch break, possibly three hours,
19 and that's very, very rough, I haven't calculated
20 it -- but sometime between 11:00 o'clock in the
21 morning and I would say 2:00 o'clock in the
22 afternoon, possibly 2:30, the witness was here in
23 the courtroom, having spent at least half an hour
24 with the photographs in front of her, having as a
25 reasonable person every expectation that the

1 Defendant was present in the courtroom and was
2 engaged naturally enough, in a process of trying
3 to match the photograph which she had previously
4 identified and about which she had testified this
5 morning with some face in the courtroom.

6 That is clearly the basis on which
7 she later identified Mr. Camacho. That is
8 impermissible and a violation of due process and
9 in support of that process, that conclusion, I
10 cite to the Court two Second Circuit cases decided,
11 one in 1981 and the other in 1986.

12 Both of these are habeas corpus
13 cases finding that as a matter of due process the
14 identification process used in the trial court was
15 impermissibly suggestive and --

16 THE COURT: Citation, please. I
17 think I know one of them.

18 MS. BACKIEL: Solomon versus Smith.
19 S-o-l-o-m-o-n. That case is found at 645 F.2d.
20 1179, decided by Second Circuit in 1981.

21 THE COURT: What page?

22 MS. BACKIEL: 1179. Solomon versus
23 Smith speaks specifically about the right of a
24 Defendant to avoid having a suggestive message
25 transform a tentative identification into a

1 positive one.

2 Here we transformed a complete
3 inability to identify into an identification and
4 it specifically deals with the prejudice apparent
5 in permitting after a tentative identification
6 there a witness to be exposed to photographs or
7 the presence of the Defendant.

8 The second case is Jarrett,
9 J-a-r-r-e-t-t, versus Headley. H-e-a-d-l-e-y.
10 That is found at 802 F.2d 34 and is a Second
11 Circuit case, also habeas corpus, decided in 1986
12 and discusses the transformation of a tentative
13 identification into a positive one after an
14 impermissibly suggestive photographic array.

15 I believe that Jarrett versus
16 Headley also speaks to the impropriety of the
17 photographic array in this case and in support of
18 that cites United States versus Archibald,
19 A-r-c-h-i-b-l-d, which is found at 734 F.2d. 938,
20 Second Circuit case from 1984.

21 Archibald is about the
22 impermissibility of the photographic array. In
23 that case the witness was shown a number of
24 photographs of which the Defendant was the only
25 light skinned black man with an Afro haircut. In

1 this case the Defendant was the only Puerto Rican
2 male who was balding.

3 Also suggests the Jarrett versus
4 Headley case goes to say where there has been such
5 an impermissible identification, the repeated
6 exposure of the witness to other images or
7 in-person views of the Defendant makes an
8 identification virtually certain, unavoidable and
9 due process does not permit the Court to obtain an
10 identification by such processes in support of my
11 motion for a mistrial on behalf of Mr. Antonio
12 Camacho-Negron.

13 In light of today's proceedings, I
14 rely principally on Solomon versus Smith and
15 Jarrett versus Headley.

16 THE COURT: Motion denied.

17 Anything else that needs to be
18 argued?

19 MR. DABROWSKI: Just to protect the
20 record, I would ask the Court, in denying the
21 motion, to make a factual finding that, in fact,
22 Anne Gassin did not spend, on that first occasion,
23 five minutes walking around the courtroom as
24 represented by Ms. Backiel. It was nowhere near
25 that time.

1 Nor did she spend a half hour
2 examining the photographs in front of her. The
3 photographs may have been in front of her when she
4 was a witness for that duration,, but she did not
5 spend, as represented by counsel, a half h our
6 with the photographs in front of her.

7 THE COURT: Anything else?

8 MR. DABROWSKI: No, your Honor.

9 MS. BACKIEL: I think the proper way
10 to make findings of fact is to hold a hearing.
11 However, I will stand by the statement that I
12 clocked the witness' view around the courtroom at
13 approximately five minutes.

14 I would also like the record to note
15 if we're not going to have a hearing that she was
16 standing within 10 feet of Mr. Camacho-Negron at
17 one point when she concluded she did not see
18 anyone in the courtroom who resembles the person
19 whom she met in 1984.

20

21 THE COURT: All right. Anything
22 that needs to be done? I told the Clerk to get
23 Mr. Weinglass to get a copy of the transcript
24 today if it was at all possible and he said the
25 best they could get is an unedited copy, and that

1 was agreeable to you, if that's the best that
2 could be produced.

3 MR. WEINGLASS: How would I get
4 that?

5 THE COURT: I'll leave it between
6 you and the Clerk. I can't deliver it to your
7 house. You work it out with the Clerk. Anything
8 else?

9 MR. DABROWSKI: No, your Honor.

10 THE COURT: Adjourn court. Mr.
11 Bailiff.

12 (Whereupon, court was adjourned at
13 4:45 o'clock p.m.)

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CERTIFICATE

I hereby certify that the foregoing 232 pages are a complete and accurate computer-aided transcription of my original stenotype notes taken of the Trial in re: United States of America vs. Victor Manuel Gerena, et al. Criminal No. H-85-50 (TEC), which was held before The Hon. T. Emmet Clarie, Senior U.S.D.J., at the Federal Building, 450 Main Street, Hartford, Connecticut, on February 2nd, 1989.

Dolores A. Falzarano, R.P.R., C.M.
Official Court Reporter