

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----x  
UNITED STATES OF AMERICA,  
  
Plaintiff,

-v-

Crim. Case No. 78-367

JUAN MANUEL CONTRERAS SEPULVEDA,  
et al.,  
  
Defendants.  
-----x

MOTION BY DEFENDANTS GUILLERMO  
NOVO SAMPOL AND ALVIN ROSS DIAZ  
FOR REASSIGNMENT OF THIS CASE  
TO A DIFFERENT JUDGE

Defendants Guillermo Novo Sampol and Alvin Ross Diaz  
hereby move this Court for reassignment of this case to a  
different judge on the grounds that

1. reassignment is required under the due process and  
fair trial provisions of the Federal Constitution and Rule 32  
of the Federal Rules of Criminal Procedure since the present  
judge presided over defendants' original trial and read defendants'  
presentence reports, and

2. reassignment is required under the fair trial provisions  
of the Federal Constitution and 28 USC §144 since the present  
judge demonstrated actual prejudice against these defendants  
during the prior proceedings.

WHEREFORE, the defendants respectfully request that this  
Court enter an order directing that this case be reassigned to  
a different judge.

Respectfully submitted,

GOLDBERGER, FELDMAN,  
DUBIN & YOUNG  
Attorneys for Defendants  
Guillermo Novo Sampol and  
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By: MICHAEL YOUNG

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ORDER

This matter having come before the Court on defendants' motion for an order directing the clerk of the court to reassign this case to a judge other than the judge who has presided over the proceedings to date, and the Court having considered the motion, the memoranda filed in support thereof and in opposition thereto, it is by this Court this \_\_\_\_ day of \_\_\_\_\_, 1980,

ORDERED, that the defendants' motion is granted, and the clerk of the United States District Court for the District of Columbia is hereby directed to reassign this case to a judge of this district other than Judge Barrington Parker.

\_\_\_\_\_  
J U D G E

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,

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Crim. Case No. 78-367

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Defendants.  
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MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
REASSIGNMENT OF THIS CASE  
TO A DIFFERENT JUDGE.

A defendant in a criminal case is constitutionally entitled to a fair and impartial trial. Even the appearance of partiality is to be avoided whenever possible. See eg. United States v. Robin, 553 F.2d 8 (2d Cir. 1977).

Given the numerous decisions which a trial judge makes affecting the course of a trial and thereby unavoidably influencing its outcome, it is particularly important for the judge to avoid even the appearance of partiality. Once he has read the presentence report, however, it is frequently difficult for even the most conscientious judge to remain completely impartial. Consequently, the Federal Rules require that that report not be given to the judge until after conviction. Rule 32, Federal Rules of Criminal Procedure, Gregg v. United States, 394 U.S. 489, 491-2 (1969). Where, as here, the defendant is granted a new trial, that proceeding should be assigned to a judge other than the judge who read his presentence report following the first trial. United States v. Robin, 553 F.2d 8, 10 fn.2 (2d Cir. 1977) (en banc); United States v. Montecalvo, 533 F.2d 1110, 1113 (9th Cir. 1975); United States v. Park, 521 F.2d 1381 (9th Cir. 1975)

In addition to Rule 32; defendants submit that assignment to a different judge would be best "both for the judge's sake and the appearance of justice" United States v. Schwarz, 500 F.2d 1350, 1352 (2d Cir. 1974) in that such reassignment "minimizes even a suspicion of partiality." United States v. Simon, 393 F.2d 90, 91 (2d Cir. 1968). Reassignment at this stage in the proceedings would not entail any duplication of effort (see eg. United States v. Robin, supra, 553 F.2d at 10) since a new trial must be held, regardless of who presides over it.

Finally, defendants submit that reassignment is required under 28 U.S.C. §144. At the sentencing in this case, the judge expressed his personal opinion that these defendants had committed the most "monstrous" and "coldblooded" crime he had ever presided over in his ten years on the bench (sentencing minutes at 66). The judge also indicated his personal belief that the defendants were particularly heinous because they were immigrants rather than native-born Americans.

Based on these opinions, the judge sentenced these defendants to consecutive life sentences, certainly one of the harshest penalties ever imposed in a federal court. This sentence was imposed despite the fact that Townley, by far the most culpable of the alleged conspirators, was sentenced to only ten years. The sentence was so inappropriate that the appellate court, while affirming its legality, took the unusual step of disavowing any approval of its fairness stating:

We express no opinion on the wisdom of any of the sentences -- merely on their legality.

(slip op. at 113)  
(emphasis by the court)

In light of the strong personal feelings which this case apparently engendered in the trial judge, the interests of justice would best be served if the retrial were reassigned to someone else.

CONCLUSION

FOR THE ABOVE-STATED REASONS, THIS COURT SHOULD GRANT DEFENDANTS' MOTION TO HAVE THEIR CASE REASSIGNED TO A DIFFERENT JUDGE.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document  
has been mailed to the United States Attorney for the District  
of Columbia, United States District Court Building, Washington,  
D.C. 20001 this        day of        , 1980.

MICHAEL YOUNG