

1 (During the trial of U. S. v. Arocena, the
2 following took place on September 10, 1984, in the robing
3 room. The transcript of that proceeding was at that time
4 sealed, but transcription has been authorized by Hon. Robert
5 J. Ward, by order dated April 4, 1989)

6 (In the robing room. Present, the Court and
7 defense counsel

8 DEFENSE COUNSEL: Your Honor --

9 THE COURT: Good morning.

10 DEFENSE COUNSEL: Your Honor, we had discussions
11 all week end long with our client, Mr. Arocena, concerning
12 his testimony today.

13 We have an ethical problem. We believe Mr.
14 Arocena will perjure himself consistently throughout his
15 testimony. We were instructed as to what to ask him and the
16 answers that we expect from him. We believe that the
17 testimony will come out rather ridiculous on his part.

18 That is what he wants to do, your Honor. We have
19 been instructed that -- we advised him that if he is going
20 to testify that way our advice would be not to testify, and
21 he said he has to testify and he will testify this way, and
22 all we ask is the Court to have this record sealed, but for
23 our sakes, the attorneys representing him, we wish this
24 known at this time.

25 THE COURT: As I understand it, counsel, Mr.

1 Arocena has expressed to his counsel -- that is, to you and
2 Mr. Fernandez -- a desire to testify. That is the first
3 thing. Obviously, he has that right. His testimony, of
4 course, should be truthful.

5 You have indicated that you believe there will be
6 occasions, perhaps numerous occasions, where his testimony,
7 from what you have been able to perceive, will not be
8 truthful and may go to the extent of not only not being
9 truthful but -- the word I think you used -- may very well
10 appear to be ridiculous.

11 Under the circumstances, I would suggest that he
12 has the right to take the stand and, once he takes the oath,
13 to testify truthfully.

14 The only additional suggestion I would make
15 to you, counsel: there may come a point early on where it is
16 obvious to you that he has made a statement which, based
17 upon your discretion, at least in your judgment, is not
18 truthful. If you wish at that time to make an application,
19 I would excuse the jury and admonish the witness essentially
20 that from what I have perceived of the evidence in the case,
21 it would appear that his testimony is not wholly truthful.

22 I was not present when these various events that
23 will be testified to happened, and I can't say more than
24 that, but I will indicate to him, if you wish, that it is in
25 his interest to testify truthfully on a subject or not at

1 all. I am prepared to do that.

2 At the same time, if you believe that you have
3 done all you can do by advising him, as I know you have, I
4 am not prepared to intrude in the matter, since in fact with
5 regard to probably everything he will testify to I was not
6 present and I could not vouch for the fact that his
7 testimony is not true. I leave that to the judgment of
8 yourself and Mr. Fernandez.

9 I believe that you have fulfilled your ethical
10 obligation, which is to counsel your client. The only other
11 thing that you can do is to attempt to continue to give him
12 the best legal advice that you can. If he, on his own
13 initiative, continues to disregard your advice, it is he who
14 will ultimately face the consequences.

15 DEFENSE COUNSEL: Your Honor, may this record be
16 sealed?

17 THE COURT: The Court directs that the record be
18 sealed.

19

20

21

22

23

24

25