

Judge. Could we excuse the interpreter for a minute just to make sure we--

THE COURT: Yes.

MR. BARONE: I have nothing further at this time of this witness. Thank you, sir.

THE COURT: Mr. Kaye.

MR. KAYE: I have no questions.

THE COURT: Fine. Would you tell the witness he is excused.

All right, next witness.

MR. BARONE: Let me just double check, your Honor.

Reupon:

**JOSE N. NADAL**

called as a witness on behalf of the Defendant and, having duly sworn, was examined and testified as follows:

THE COURT: Have a seat.

MR. KAYE: Let us have a side bar.

[Whereupon, counsel for the respective parties and court reporter approached the bench, and the following proceedings were had outside the hearing of the jury:]

MR. KAYE: Your Honor--correct me if I am wrong, counsel.

MR. STEDMAN: You are wrong.

MR. KAYE: Then I will leave.

I believe that the purpose of this witness is to

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show that he knew Luciano Nieves, and to talk about an incident in Cuba when Luciano Nieves was a captain in the Navy, Army--correct me if I am wrong,

MR. BARONE: That is part of it.

MR. KAYE: I would object to any testimony regarding that, because it doesn't fall within the purview of the law as it regards to character or anything of the victim. Specific accounts, things of that nature, are not allowed to show reputation and character. And all he would testify to within the limit of the law is as to the victim, and that happened many, many years ago when he was in Cuba. I don't think it is--

THE COURT: It is too remote in time.

MR. BARONE: The problem we have, Judge, one, the wife said that the husband in Cuba was a very nice fellow and peaceful fellow.

MR. KAYE: She never said that.

MR. BARONE: Mr. Nadal will state specifically intelligence attached to the American Embassy--

THE COURT: He was one.

MR. BARONE: In intelligence attached to the American Embassy.

THE COURT: What relevancy is that?

MR. BARONE: That he knows Mr. Nieves was a pro-Communist, that--

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MR. KAYE: That is his opinion.

THE COURT: Is there some doubt about that?

MR. KAYE: Pro-Communist?

THE COURT: Pro-Castro?

MR. KAYE: No, no, that hasn't been established,  
That doesn't make--

MR. BARONE: In any event, he also can testify  
that about two weeks before the man was killed, he per-  
sonally saw him on Southwest 8th Street armed with a  
weapon and assaulted some person there.

THE COURT: I am not going to let you put that on.

MR. BARONE: I think that is probably just about it.

MR. KAYE: I would object to it.

MR. STEDMAN: Judge, you have let into evidence  
through Mrs. Nieves the fact that the deceased was  
allegedly in the Cuban Army in an officer capacity, that  
he became out of favor and went into a civilian job,  
that is to say, with the public health office or some-  
thing of that nature, and that because he was not a  
fink, he lost that job and was ultimately imprisoned  
as a political prisoner, and that thereafter he was to  
be freed and sent to this country. And he came here.

Now, it seems to me all that is rather remote to  
this case, but you let it in.

THE COURT: I don't recall any objection to that.

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effect. I agree it is rather remote.

MR. STEDMAN: You let it in as part of the conspiracy, and told us at side bar conferences that it was admissible, and you have let it in. And we have relied upon the Court's rulings in that direction with regard to this witness.

I don't see that it is any more remote or too-far removed from what Mr. Barone has said.

THE COURT: You want to establish by this witness that Nieves was pro-Castro?

MR. BARONE: Active in the Army.

MR. STEDMAN: Active Communist. If he is a

Communist, this jury is entitled to know about it.

MR. KAYE: There is no way in the world he can establish that.

THE COURT: What difference does that make if he was a Communist back then? It was the reason they killed him, by Salon, was that he was pro-Communist. The State's witness testified to that. I am talking about the time of the alleged conspiracy.

MR. STEDMAN: I am sorry, I don't follow.

THE COURT: At the time of the alleged conspiracy up to the trial of Nieves, because he was pro-Castro. It is one of the motives. It was Salon's own testimony. That has been established.

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MR. STEDMAN: Nieves lived, with all due respect, a political amorphodyte life, as I understand it. First he was pro-Castro, pro-Communist; then he became anti-Communist. Then he became pro-Communist.

MR. KAYE: That is not true, darn it.

THE COURT: I don't understand what the relevancy of it is anyway. Are you trying to argue to the jury that because somebody is pro-Communist that you have a right to kill him in this country?

MR. STEDMAN: We don't say anyone has a license to kill Communists in Florida.

MR. KAYE: What they are trying to do is simply besmirch the memory of the deceased, and that is--

MR. STEDMAN: What we are trying to do is corroborate on the defense portion of the case the fact that this man was a Communist. All we have thus far, as I understand it, is the prosecution's testimony in that direction. Certainly the--

THE COURT: The prosecution is bound by it though. It is established.

MR. STEDMAN: I understand, but we are not bound by it.

THE COURT: I don't think it is relevant. I am not going to let it in. I fail to see the relevancy of it.

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MR. STEDMAN: We are not bound by what the prosecution does.

THE COURT: You can take advantage of it,

MR. STEDMAN: That is our election.

THE COURT: It is up to you, sir.

MR. STEDMAN: I understand that, but we are entitled--

THE COURT: I am ruling the testimony as proffered is inadmissible as to this witness.

[Thereupon, the following proceedings were had within the hearing of the jury:]

MR. BARONE: You are excused at this time.

THE COURT: Nice to see you.

Mr. Barone, let me ask you, do you have a short witness? I don't mean in height, but in length of testimony?

MR. BARONE: Your Honor, I do have one very important witness coming at one o'clock that is getting off work. If you want to adjourn right now, we might do that.

THE COURT: Let me say this to the jury. The attorneys, listen, please.

Mr. Galbar, the bailiff, has gone to get your lunch. He should be back in five or ten minutes. And I will ask you to eat your lunch in the jury room.

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